

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1361**

State of Minnesota,
Respondent,

vs.

Dejarriel Travon Burgie,
Appellant.

**Filed July 22, 2024
Affirmed
Frisch, Judge**

Ramsey County District Court
File No. 62-CR-23-217

Keith Ellison, Attorney General, St. Paul, Minnesota; and

John J. Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney,
St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Richard Schmitz, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Frisch, Presiding Judge; Larkin, Judge; and
Bratvold, Judge.

NONPRECEDENTIAL OPINION

FRISCH, Judge

Following his conviction of first-degree burglary, appellant argues that he is entitled
to a new trial because the district court's jury instructions deprived him of his right to a

unanimous verdict. Because we discern no error in the district court’s jury instructions, we affirm.

FACTS

Respondent State of Minnesota charged appellant Dejarriel Travon Burgie with first-degree burglary of a dwelling in the presence of another person in violation of Minn. Stat. § 609.582, subd. 1(a) (2022), and first-degree burglary with a dangerous weapon in violation of Minn. Stat. § 609.582, subd. 1(b) (2022).¹ Neither charge specified a particular underlying crime or victim. At trial, the district court permitted the state to add a charge of second-degree assault in violation of Minn. Stat. § 609.222 (2022), which the state intended to prove as the underlying offense for the burglary charges. The district court limited the second-degree assault charge to one victim—C.J. The evidence elicited at trial was as follows.

Burgie and T.T. were in a long-term relationship and have two children together. Burgie was not on the lease for T.T.’s apartment. In fall 2022, T.T. began seeing C.J. Burgie came to T.T.’s apartment on several occasions, sometimes forcibly entering the apartment and becoming violent with T.T. or C.J.

On the evening of December 23, 2022, T.T. was at her apartment with the children and C.J. T.T. heard pounding on the door. No one inside the apartment opened the door. Burgie kicked the door down, entered the apartment, and asked where his kids were. C.J. stabbed Burgie in the leg with a sword or machete. C.J. saw that Burgie had a gun in his

¹ Parts of the record refer to the appellant by the name “Burgin.” But we use the name Burgie in this opinion, as it is what was used in his appellate brief.

hand, and both T.T. and C.J. saw Burgie drop a gun. C.J. and Burgie fought, during which Burgie picked up the gun, cocked it, and pointed it at C.J. T.T. left the apartment with their daughter and called 911. Eventually, Burgie left the apartment, taking the gun with him.

While finalizing the jury instructions, the state requested that the court include both T.T. and C.J. in the description of the elements for the burglary charges. The state explained that it would “argue that [Burgie] clearly expected [T.T.] to be present. But also with the high likelihood that [C.J.] could be present too.” Defense counsel objected, arguing that such an instruction would create an issue impacting Burgie’s right to a unanimous verdict. The district court disagreed, stating, “The other option, of course, is to simply say another. Another person. Which could presumably include the children. I don’t think there is any evidence of that.” In the final jury instructions, the district court included both T.T. and C.J. in describing the elements of burglary.

The jury found Burgie guilty of first-degree burglary in the presence of another person and first-degree burglary with a dangerous weapon. The jury also found Burgie not guilty of second-degree assault with a dangerous weapon. The district court entered a conviction of first-degree burglary with a dangerous weapon, did not adjudicate the count of first-degree burglary in the presence of another person, and sentenced Burgie to 120 months’ imprisonment.

Burgie appeals.

DECISION

Burgie challenges the district court’s jury instructions arguing that the instructions deprived him of his right to a unanimous verdict because the jury was improperly permitted

to find him guilty if he entered T.T.’s apartment with the intent to assault either T.T. or C.J. We disagree.

A “jury’s verdict must be unanimous in all cases.” Minn. R. Crim. P. 26.01, subd. 1(5). “To achieve that end, a jury must unanimously find that the government has proved each element of the offense.” *State v. Pendleton*, 725 N.W.2d 717, 730-31 (Minn. 2007) (quotation omitted). “[T]he jury must unanimously agree on which acts the defendant committed if each act itself constitutes an element of the crime,” but the jury need not agree on “alternative means or ways in which the crime can be committed.” *State v. Stempf*, 627 N.W.2d 352, 354-55 (Minn. App. 2001) (quotation omitted). “Thus, a jury must reach a unanimous verdict on all elements of the crime but need not agree on the underlying facts.” *State v. Dalbec*, 789 N.W.2d 508, 511 (Minn. App. 2010), *rev. denied* (Minn. Dec. 22, 2010). But “different factual courses of conduct or states of mind that are offered to prove an element of a crime must show equivalent blameworthiness or culpability.” *Id.* (quotation omitted). We review a district court’s jury instructions, including whether the instructions violated a defendant’s right to a unanimous verdict, for an abuse of discretion. *Stempf*, 627 N.W.2d at 354.

Burgie focuses his argument on the intent element of the burglary charges. To prove intent under the state’s theory, the state was required to prove that Burgie entered a building without consent and with intent to commit a crime.² Minn. Stat. § 609.582, subd. 1. The

² A person may also commit a burglary by entering a building without consent and committing a crime while in the building. Minn. Stat. § 609.582, subd. 1 (2022). The state’s theory of the case was limited to Burgie’s *intent to commit a crime*, and the district court limited the jury instructions accordingly.

alleged underlying crime here was Burgie's attempt to commit second-degree assault. Second-degree assault occurs when a person "assaults another with a dangerous weapon." Minn. Stat. § 609.222, subd. 1.

The district court instructed the jury that an element of first-degree burglary is that Burgie entered with "intent to commit assault in the second degree." The district court then instructed the jury that the elements of second-degree assault include that Burgie "assaulted [C.J.] or [T.T.]," where assault "means an act done with intent to cause [C.J.] or [T.T.] to fear immediate bodily harm or death," and that Burgie "in assaulting [C.J.] or [T.T.] used a dangerous weapon." And it instructed the jury that its verdict must be unanimous.

The identity of the victim of Burgie's intended crime is not "an element of the crime" and therefore jury unanimity with respect to who Burgie intended to assault was not required. *Stempf*, 627 N.W.2d at 354-55. We have addressed similar arguments regarding verdict unanimity and multiple potential victims. In *State v. Begbie*, the defendant argued that his right to a unanimous verdict was violated because the jury instructions did not require the jury to agree on whether the defendant intended to threaten a husband or wife when the defendant called the couple's home, spoke directly to only the wife, and threatened both husband and wife's lives during the conversation. 415 N.W.2d 103, 104-05 (Minn. App. 1987), *rev. denied* (Minn. Jan. 20, 1988). We concluded that the jury agreed that the defendant threatened wife and could have reasonably found the defendant intended to, and did, terrorize both husband and wife. *Id.* at 106. We stated that "[i]t is sufficient that all jurors unanimously agreed on their ultimate conclusion that [the

defendant] was guilty of the crime charged, even though they may not have agreed upon exactly which victim [the defendant] had intended to terrorize.” *Id.* Thus, the jury was not required to determine whether the defendant threatened husband or wife because the relevant statute did not make the identity of the victim an element of the crime. *Stempf*, 627 N.W.2d at 356 (describing *Begbie*).

In *State v. Porte*, we rejected an argument that jury instructions violated a defendant’s right to a unanimous verdict because the jurors could find the defendant guilty of witness tampering without agreeing on who was the intended victim of the crime. No. A22-1354, 2023 WL 5012210, at *2 (Minn. App. Aug. 7, 2023), *rev. denied* (Minn. Dec. 19, 2023).³ We reasoned that the witness-tampering statute does not make the identity of the victim an element of the crime—even though the statute included language suggesting the requirement of specific intent—and we declined to apply single-behavioral-incident analysis because only a single act of witness tampering was at issue. *Id.* at *3-4.

Burgie’s arguments are similar to those we rejected in *Begbie* and *Porte*. Here, the identity of the victim is not an element of second-degree assault. Rather, as noted by the district court, second-degree assault occurs when a defendant “assaults *another* with a dangerous weapon.” Minn. Stat. § 609.222, subd. 1 (emphasis added). Whether first-degree burglary is a specific-intent crime does not alter that conclusion. *See Porte*, 2023 WL 5012210, at *4 (citing *Begbie*, 415 N.W.2d at 105). And, like in *Porte*, we need not

³ We cite nonprecedential opinions for their persuasive authority. Minn. R. Civ. App. P. 136.01, subd. 1(c).

apply single-behavioral-incident analysis because the offense at issue is a single act of burglary where both C.J. and T.T. were both present in the apartment at the time Burgie entered. *Id.* at *4.

Because the district court correctly instructed the jury that Burgie could have intended to assault either T.T. or C.J. as part of the underlying crime for his first-degree burglary charges, the instructions did not violate Burgie's right to a unanimous verdict.

Affirmed.