

*This opinion is nonprecedential except as provided by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
A25-1546**

Donavon Dexter Boone, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed June 8, 2026
Affirmed
Ross, Judge**

Hennepin County District Court
File No. 27-CR-20-12084

Cathryn Middlebrook, Chief Appellate Public Defender, Jenna Yauch-Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Mary F. Moriarty, Hennepin County Attorney, Elizabeth Scoggin, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Bratvold, Presiding Judge; Worke, Judge; and Ross, Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

At Donavon Boone’s trial for first-degree burglary and domestic assault, the prosecutor told the jury that there were “multiple ways” it could find that the state proved that Boone committed domestic assault—either by his kicking in the door of the victim’s

apartment or by his then choking her. The district court did not instruct the jurors that they must unanimously agree as to which act Boone committed to find him guilty of this offense, and the jury found Boone guilty as charged. Boone unsuccessfully petitioned for postconviction relief partially on the ground that the district court plainly erred by failing *sua sponte* to issue a unanimity instruction. We affirm, because a unanimity instruction is not required when two acts satisfying the same element of an offense occur within the same behavioral incident.

FACTS

Alleging that Donavon Boone kicked in a woman's apartment door and strangled her in May 2020, the state charged him with first-degree burglary of an occupied dwelling in violation of Minnesota Statutes section 609.582, subdivision 1(a) (2018), and felony domestic assault in violation of Minnesota Statutes section 609.2242, subdivision 4 (2018). We will call the woman "Lara," a name we have randomly chosen in the interest of protecting her privacy.

The prosecutor in Boone's trial played for the jury a recording of Lara's 9-1-1 call during which she told the dispatcher, "My baby daddy Donav[o]n Boone just broke my door and he . . . choked me and put his hands on me." The New Hope police officers who responded to the call testified that they found significant damage to Lara's front door and that she was visibly shaking when she spoke with them. One officer, who served as the breacher on a SWAT team, opined that the door had been kicked in. The prosecutor introduced photographs of the damaged door and of scratches on Lara's arm and collarbone. The jury also heard excerpts from recordings of calls Boone made from jail

that included multiple incriminating statements: “I got into it with my baby mom . . . and I end up breaking the door” “I did break the door but I didn’t try to break in.” “[W]e was fighting, you know. It wasn’t like fist fighting nothing like, we was just, you know, like wrestling.”

The district court instructed the jury on Boone’s domestic-assault charge that “‘assault’ as used in this case means an act done with intent to cause [Lara] to fear . . . immediate bodily harm or death.” No party asked the court to issue a unanimity instruction on this or any element of Boone’s domestic-assault charge, and Boone did not object to the district court’s instructions.

In closing, the prosecutor argued, “There’s multiple ways that you can find that the defendant assaulted [Lara],” suggesting that the jury could base the conviction either on a finding that Boone put Lara in fear of imminent bodily harm by actually choking and scratching her or that he did so by kicking in her apartment door while she and her children were inside.

The jury found Boone guilty of both first-degree burglary and felony domestic assault. The trial court sentenced him to serve 52 months in prison on the burglary conviction but, finding both offenses to have occurred in the same course of conduct, did not sentence him on the assault conviction.

Boone petitioned for postconviction relief. He argued, among other things not relevant to this appeal, that the district court’s failure to issue a unanimity instruction on his domestic-assault offense invalidates his conviction. The postconviction court denied Boone’s petition, identifying alternative grounds for the trial court not to have issued a

unanimity instruction: the two acts that the state argued constituted the assault occurred within a single behavioral incident, and the two acts also constituted different means of satisfying the assault element.

Boone appeals.

DECISION

Boone challenges the postconviction court's decision denying his petition for relief. We review this denial for an abuse of discretion, which occurs when the postconviction court's decision is contrary to fact and logic or it incorrectly applies the law. *State v. Nicks*, 831 N.W.2d 493, 503 (Minn. 2013). We review the postconviction court's fact findings for clear error and its legal conclusions *de novo*. *Id.* For the following reasons, we see no abuse of discretion.

Boone unconvincingly argues that the postconviction court failed to recognize that the trial court erred by not issuing a unanimity instruction. We review the unobjected-to jury instructions for plain error. *See State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). Boone can prevail under this test only if he identifies an error, the error was plain, and the error affected his substantial rights. *Id.* If he carries that burden, we will grant relief only if we conclude that doing so is in the interest of justice and judicial integrity. *Id.* We have carefully considered the arguments and conclude that Boone fails to identify a plain error.

The district court did not err by failing to issue a unanimity instruction on the “assault” element of Boone’s domestic-assault charge. It is true that a jury verdict must be unanimous in criminal trials. Minn. R. Crim. P. 26.01, subd. 1(5); *State v. Bey*, 975 N.W.2d 511, 517 (Minn. 2022). This requires juries to unanimously find that the state proved each

element of a crime to reach a guilty verdict. *State v. Pendleton*, 725 N.W.2d 717, 730–31 (Minn. 2007). And when an element of a crime consists of an act, if the state presents evidence of multiple acts that could satisfy that element, the jurors must unanimously agree as to which act the defendant committed for the guilty verdict to be valid. *State v. Stempf*, 627 N.W.2d 352, 355 (Minn. App. 2001). If the state does not specify which act it is relying on to satisfy that element of the offense, the district court must issue a unanimity instruction. *Id.* at 358.

But jurors need not unanimously agree as to the means by which a defendant committed a crime if the relevant statute lists multiple behaviors that would satisfy the element. *State v. Begbie*, 415 N.W.2d 103, 106 (Minn. App. 1987), *rev. denied* (Minn. Jan. 20, 1988). And the district court also need not issue a unanimity instruction if the defendant’s actions were part of the same behavioral incident. *State v. Infante*, 796 N.W.2d 349, 356–57 (Minn. App. 2011), *rev. denied* (Minn. June 28, 2011). We believe that here, the district court correctly concluded that no unanimity instruction was necessary because the two acts that the state argued could satisfy the assault element of Boone’s domestic-assault charge occurred in a single behavioral incident. We therefore do not address Boone’s argument that the postconviction court erred by concluding that the state presented the jury with multiple means rather than multiple acts of an assault, other than to say that the argument appears plausible.

The postconviction court concluded that Boone’s acts of kicking in the door and strangling Lara occurred within the same course of conduct, and Boone does not contest that conclusion. He argues instead that it does not follow from this conclusion that a

unanimity instruction is unnecessary for two reasons: the caselaw providing the same-course-of-conduct precept does so only as dicta, and even if it is not dicta, United States Supreme Court and Minnesota Supreme Court precedent contradict it. Neither argument leads us to reverse.

We are not convinced by Boone's contention that *Infante*'s same-course-of-conduct precept is merely dicta. Dictum is a declaration in a judicial opinion that is unnecessary to the court's decision. *State v. Atwood*, 914 N.W.2d 422, 425 (Minn. App. 2018), *aff'd*, 925 N.W.2d 626 (Minn. 2019). But the contested portion of *Infante* provides an independently sufficient basis for its resolving the issue on appeal separate from its alternative acts-versus-means analysis. 796 N.W.2d at 356–57. As the *Infante* court's single-course-of-conduct decision is just as necessary to its resolution as its acts-versus-means decision, its single-course-of-conduct rationale constitutes its holding.

We also are not persuaded to reverse by Boone's argument that we should reject *Infante*'s single-course-of-conduct holding because of generalized statements in precedent by the federal and state highest courts. Even if we agreed with Boone's premise, the district court was bound by *Infante* as a directly controlling opinion. *See State v. M.L.A.*, 785 N.W.2d 763, 767 (Minn. App. 2010), *rev. denied* (Minn. Sept. 21, 2010). And more specific to the issue on appeal today, the alleged district court error could not be considered plain in light of *Infante*, meaning that the postconviction court's denial of Boone's petition claiming error does not constitute an abuse of discretion.

The trial court's implicit reliance on *Infante*'s holding did not constitute a plain error. Plain errors violate precedential caselaw, a rule, or a standard of conduct. *State v.*

Ramey, 721 N.W.2d 294, 302 (Minn. 2006). *Infante* does not stand alone to defeat Boone’s plainness argument, as the supreme court has suggested the same single-behavioral-incident basis for excepting the unanimity-instruction requirement. *See State v. Ihle*, 640 N.W.2d 910, 919 (Minn. 2002) (holding that a unanimity instruction was not necessary in part because the defendant’s behaviors “were committed as part of a single behavioral incident”). We add that, although our nonprecedential opinions have no binding effect, multiple opinions indicate that we have continued to rely on the *Infante* holding that Boone would have us disregard. *See, e.g., State v. Shines*, No. A23-1794, 2024 WL 4344953, at *3 (Minn. App. Sept. 30, 2024), *rev. denied* (Minn. Jan. 21, 2025); *State v. Capshaw*, No. A21-1694, 2022 WL 17748210, at *5 (Minn. App. Dec. 19, 2022), *rev. denied* (Minn. Mar. 14, 2023); *State v. Covington*, No. A12-0589, 2013 WL 141691, at *4–5 (Minn. App. Jan. 14, 2013), *rev. denied* (Minn. Mar. 27, 2013). At most, the legal proposition that Boone contests is not settled, and an error is not plain if the law is unsettled. *See State v. Ayala-Leyva*, 848 N.W.2d 546, 555 (Minn. App. 2014), *rev. denied* (Minn. Aug. 11, 2015).

Also unavailing is Boone’s argument that the alleged error was plain because *Stempf* requires a unanimity instruction when the state alleges that the defendant committed multiple acts that could each satisfy an offense element. *See* 627 N.W.2d at 358. *Stempf* explicitly reserved the issue of whether its analysis should apply to cases where the defendant’s acts “constitute a continuing course of conduct.” *Id.* at 358–59. Because Boone identifies no plain error by the trial court, he has not shown that the postconviction court abused its discretion by denying his petition for relief.

Affirmed.