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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0124**

State of Minnesota,
Respondent,

vs.

Cartez Lamar Cook,
Appellant.

**Filed April 28, 2009
Affirmed
Kalitowski, Judge**

Hennepin County District Court
File No. 27-CR-07005551

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, C-2000 Government Center, Minneapolis, MN 55487 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Suzanne M. Senecal-Hill, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Lansing, Judge; and Schellhas, Judge.

UNPUBLISHED OPINION

KALITOWSKI, Judge

Appellant Cartez Lamar Cook challenges his convictions of first-degree burglary and misdemeanor fifth-degree assault, contending that (1) the state failed to prove that he committed burglary because the evidence does not establish that he committed an assault while inside a building, and (2) the district court erred in denying his request to represent himself. We affirm.

DECISION

I.

Appellant was charged with first-degree burglary in violation of Minn. Stat. § 609.582, subd. 1(c) (2006), and misdemeanor fifth-degree assault, in violation of Minn. Stat. § 609.224, subd. 1(2) (2006), for an incident that occurred on private property appurtenant to a building. A jury convicted appellant of both counts. Appellant argues that under the jury instructions given by the district court, the evidence was insufficient to support the conviction. Specifically, appellant argues that the state failed to prove beyond a reasonable doubt that he committed first-degree burglary because the district court instructed the jury that one element of first-degree burglary was that appellant committed an assault *inside* a building, and the state failed to prove that element. We disagree because the record shows that the jury was instructed that a person can be convicted of burglary for an act occurring on appurtenant property.

In reviewing the sufficiency of the evidence in a criminal case, the reviewing court is limited to ascertaining whether, given the facts in the record and the legitimate

inferences that can be drawn from those facts, a jury could reasonably conclude that the defendant was guilty of the offense charged. *Bernhardt v. State*, 684 N.W.2d 465, 476 (Minn. 2004). This court “will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and for the necessity of overcoming it by proof beyond a reasonable doubt, could reasonably conclude that a defendant was proven guilty of the offense charged.” *Id.* (quotations and citations omitted). “We consider the evidence in the light most favorable to the verdict.” *Id.*

Because appellant’s challenge to the sufficiency of the evidence hinges on the particular jury instructions given by the district court, we examine those instructions. Jury instructions must be viewed in their entirety to determine whether they fairly and adequately explain the law of the case. *State v. Flores*, 418 N.W.2d 150, 155 (Minn. 1988). District courts are allowed “considerable latitude” in the selection of language for the jury instructions. *State v. Baird*, 654 N.W.2d 105, 113 (Minn. 2002).

The district court instructed the jury as follows:

There are two charges before you in this case. Burglary in the First Degree and Assault in the Fifth Degree. The definitions and elements of those crimes are set forth below.

First count, Burglary in the First Degree. Definition. Statutes of Minnesota provide that ‘whoever enters a building without consent of the person in lawful possession and assaults a person within the building *or on the building’s pertinent* [sic: appurtenant] *property* is guilty of a crime.

Now elements. The elements of Burglary in the First Degree are, first that the defendant entered a building without consent of the person in lawful possession.

Second, that the defendant committed the crime of assault while in the building. Assault is the intentional infliction or attempt to inflict bodily harm upon another.

Third, that the defendant's act took place on or about January 7, 2007, in Hennepin County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

(Emphasis added.) Although immediately preceded by a reading of the statute, the district court's explanation of the elements of first-degree burglary did not reference appurtenant property.

Although appellant does not argue that the jury instructions were prejudicial, the Minnesota Supreme Court case of *State v. Fernow*, 354 N.W.2d 438 (Minn. 1984), is instructive here. In *Fernow*, the defendant argued that the district court's jury instructions were prejudicial because they left one element of the charged crime unclear. *Id.* at 439. The supreme court concluded that although there was a defect in the instructions, the defect was not prejudicial because "the [district] court's enumeration of the elements was preceded by a reading of the statute that defendant was charged with violating," and both defense counsel and the prosecutor discussed the allegedly unclear element in their closing arguments to the jury. *Id.* at 439-40. Thus, the court concluded that reversal was not warranted. *Id.*

Here, as in *Fernow*, the district court read the statutory definition of first-degree burglary to the jury, and the prosecutor discussed the elements of the offense during closing argument, stating that the second element of first-degree burglary was that "defendant has assaulted someone while in the building or on the building's pertinent [sic: appurtenant] property." The prosecutor also defined the term "appurtenant" for the

jury, stating, “[n]ow pertinent [sic: appurtenant] is the way lawyers say it’s next to or attached to.” We conclude that in considering the jury instructions in their entirety, including the district court’s reading of the first-degree burglary statute and the prosecutor’s explanation of appurtenant property, the jury was properly informed that one element of the crime was that an assault occurred either inside the home or on its appurtenant property.

Appellant also argues that the evidence was not sufficient to support the burglary conviction. We disagree.

D.U. testified that on the morning of January 7, 2007, appellant began banging on the door of her bungalow-style home. D.U. called 911 because appellant, her ex-boyfriend, was at her house uninvited. While D.U. was making the 911 call, appellant kicked down the front door, entered the bungalow, began to argue with D.U., and wanted to see her cell phone. D.U. refused and they began wrestling over the cell phone.

The bungalow’s property manager lived in the adjoining bungalow. The manager testified that when she heard the sound of D.U.’s door being kicked in, she grabbed her handgun, and went outside to investigate. The manager stated that when she arrived outside, she saw the outside storm door fly open and appellant had his arms around D.U. as they came out of the bungalow. D.U. struggled against appellant as he grabbed her. As they struggled, they fell to the ground and appellant landed on top of D.U. According to the manager, appellant then sat on D.U.’s chest and strangled and shook her and banged her head on the ground.

Considering the manager's testimony, and viewing the jury instructions in their entirety, we conclude that the evidence is sufficient to uphold appellant's burglary conviction.

II.

Appellant argues that the district court erred in denying appellant's mid-trial request to represent himself. Appellant contends that the district court failed to balance appellant's right to self-representation against any potential disruption or delay in the trial proceedings, and that there would not have been a disruption or delay in the proceedings. We disagree.

The right to represent oneself as a criminal defendant is a corollary to the right to have an attorney. *State v. Worthy*, 583 N.W.2d 270, 279 (Minn. 1998). The right is unqualified only until trial begins. *State v. Christian*, 657 N.W.2d 186, 191 (Minn. 2003). After voir dire has begun, the district court has discretion and must balance the defendant's right to self-representation against the potential disruption and delay of proceedings already in progress. *Id.* at 193; *see also State v. Richards*, 552 N.W.2d 197, 205 (Minn. 1996) (stating that the district court must prevent the use of self-representation to delay trial). This court reviews a district court's denial of a defendant's request to represent himself for clear error. *Christian*, 657 N.W.2d at 190.

Appellant made his request for self-representation in the middle of trial, after the state had rested its case, and after the defense had commenced its case. While counsel for appellant was examining D.U., appellant informed his counsel that he wished to represent

himself. Appellant's counsel approached the bench and informed the district court of this request.

A review of the record shows that the district court did balance and consider appellant's right with the interests of avoiding delay and disruption. The record indicates that the district court considered appellant's argument in favor of self-representation including appellant's contention that his counsel was not asking the witnesses the questions that he wanted asked. The court noted that appellant's counsel is an experienced lawyer and that his attorney was not required to ask every question that appellant wanted asked. The court also noted that appellant's self-representation motion occurred near the end of the trial and in the middle of the cross-examination of a witness.

On this record, we conclude that the district court properly considered and balanced appellant's right to self-representation against the potential disruption and possible delay of proceedings already in progress. Therefore, the district court did not commit clear error in denying appellant's self-representation request.

Affirmed.