STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1270

State of Minnesota,
Respondent,

vs.

Ali Dayib Warsame,
Appellant.

Filed June 30, 2025
Affirmed
Bjorkman, Judge

McLeod County District Court
File No. 43-CR-23-1849

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

Ryan S. Hansch, McLeod County Attorney, Michael K. Junge, Assistant County Attorney, Glencoe, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, John Patrick Monnens, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Harris, Judge; and Klaphake, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant challenges his conviction of first-degree burglary, arguing that the district court's instructions to the jury directed a verdict on the "dwelling" element of the offense. We affirm.

FACTS

In December 2023, T.L. arrived at her farmhouse after completing a shift at work and running errands. T.L. pulled her car into the house's attached garage and was unloading shopping bags from the passenger seat when she heard "banging" noises coming from inside the house. She listened at the door between the garage and the interior hallway and determined the sounds to be coming from "right on the other side" of the door.

Because T.L. knew that the rest of her family was not home, she quickly reentered her car and began backing out of the garage. As she was leaving, she observed a man, later identified as appellant Ali Dayib Warsame, walk around the side of the attached garage. Warsame told her that he was looking for someone to help pull his car out of a nearby ditch. T.L. replied that she would get help; she then drove the half mile to her closest neighbor's home and called 911. As T.L. drove away, she noticed a vehicle "stuck in [the family's] pasture."

T.L. later walked through the house with responding police officers. She observed that several things were not how she had left them; her bedroom drawers had been opened and emptied, and there was a hammer lying on her pillow. T.L. also noticed that a ring was missing from its usual place on the top of her jewelry cabinet. The ring contains the

birthstones of T.L.'s two children and is inscribed with their names and birthdates. An inspection of the exterior of the house revealed that the handle and frame of the door leading to the walkout basement had been damaged by a hammer.

Officers eventually located Warsame walking approximately half a mile from T.L.'s house. As they placed Warsame in the back of a squad car, officers noticed that he was wearing an ill-fitting ring on his pinky finger. Upon examination, officers observed that the ring was engraved with two names and dates. T.L. later identified the ring as hers.

Respondent State of Minnesota charged Warsame with first-degree burglary, second-degree burglary, and theft.[1] A three-day jury trial was held, during which T.L. and three police officers testified consistent with the facts presented above. Warsame testified in his own defense, explaining that he crashed his truck in a ditch after falling asleep behind the wheel and that he only approached T.L.'s home to knock "on the back porch" for help. When asked about T.L.'s ring, Warsame testified that he found it on the ground near the back porch of the house.

Following the close of evidence, the district court instructed the jury on the elements of the charged offenses. The court explained that the first-degree burglary offense has four elements:

> First, the defendant entered or remained in a building without the consent of a person in lawful possession.
>
> . . . .
>
> Second, the building was a dwelling.

[1] Warsame was also charged with driving after revocation, but that charge was later dismissed.

. . . .

> Third, another person, not an accomplice, was present in the dwelling when the defendant entered it or at any time when the defendant was in the dwelling.
>
> . . . .
>
> Fourth, the defendant committed the crime of Theft, Taking Property of Another, while in the building.

The district court defined the term "building" to mean "a structure suitable for affording shelter for human beings, including . . . any adjacent, appurtenant, or connected structure." And the court defined "dwelling" as "a structure suitable for affording shelter for human beings that is used as a permanent or temporary residence."

After the district court instructed the jury, counsel presented their closing arguments. The following exchange occurred during defense counsel's argument:

> DEFENSE COUNSEL: Count 1, the defendant entered or remained in the building, without—without consent? Yes, there was no consent for Mr. Warsame to be in the building. However, it's an undisputed fact that nobody saw Mr. Warsame in that building, nobody. If it had been the Easter Bunny, I don't know. I wouldn't know; I wasn't there. None of you were there. None of us were there. Mr. Warsame was there. [T.L.] was there. It could have been anyone that—that disrupted the house.
>
> However, Mr. Warsame, it doesn't make sense for him to be in that house; it would not.
>
> The building was a dwelling, obviously. Another person entered the building, third element on that. It's undisputed no one entered that building.
>
> PROSECUTOR #1: Your Honor, objection. One, the "undisputed" language is not appropriate in closing, anyway, which has been used repeatedly; two, "There—There was evidence that [T.L.] entered the building," that's just a gross misstatement of facts.

> DEFENSE COUNSEL: I'm arguing my side of the view.
>
> THE COURT: Well, you can—you can argue the facts—
>
> DEFENSE COUNSEL: Yep.
>
> THE COURT: —as far as what you believe the evidence shows.
>
> DEFENSE COUNSEL: Yep, and that's what I intend to do. I will use "undisputed." The facts show that [T.L.] did not enter the residence, did not—
>
> PROSECUTOR #2: Objection. Your Honor, may we approach?
>
> THE COURT: You may.
>
> (Bench conference off the record.)
>
> THE COURT: *So, Jurors, just for clarification, "the dwelling" includes the entire building.*
>
> DEFENSE COUNSEL: It's un—Well, facts show that [T.L.] went into the garage, never opened the door, never walked in; however, she went in—back into her car and left. That's when the interaction happened.

(Emphasis added.)

The jury found Warsame guilty as charged. The district court entered a conviction on the first-degree burglary offense and imposed a 51-month prison sentence.[2]

Warsame appeals.

[2] The district court did not enter convictions for second-degree burglary or theft because they are included offenses of first-degree burglary.

DECISION

Warsame contends that the district court's clarifying instruction impermissibly directed a verdict in favor of the state on one element of the burglary offense. District courts have "considerable latitude" in selecting jury-instruction language. *State v. Gatson*, 801 N.W.2d 134, 147 (Minn. 2011) (quotation omitted). We review the adequacy of jury instructions for an abuse of discretion. *State v. Moore*, 699 N.W.2d 733, 736 (Minn. 2005). In doing so, we assess whether the instructions, reviewed in their entirety, fairly and adequately explain the law of the case. *State v. Koppi*, 798 N.W.2d 358, 362 (Minn. 2011). An instruction is erroneous if it materially misstates the law. *State v. Kuhnau*, 622 N.W.2d 552, 556 (Minn. 2001). Because the jury must determine that a defendant is guilty beyond a reasonable doubt of every element of the charged offense, *United States v. Gaudin*, 515 U.S. 506, 510 (1995), a jury instruction is also erroneous if it directs a verdict on an offense element, *Moore*, 699 N.W.2d at 737.

A person commits first-degree burglary if they "enter[] a building without consent and commit[] a crime while in the building" if "the building is a dwelling and another person, not an accomplice, is present in it when the burglar enters or at any time while the burglar is in the building." Minn. Stat. § 609.582, subd. 1(a) (2022).[3] As used in the burglary statutes, "building" means "a structure suitable for affording shelter for human beings including any appurtenant or connected structure." Minn. Stat. § 609.581, subd. 2

[3] Second-degree burglary has the same offense elements, with the exception of the presence of a third party at the time the burglar is in the dwelling. Minn. Stat. § 609.582, subd. 2(a)(1) (2022).

(2022). And "dwelling" is defined as "a building used as a permanent or temporary residence." *Id.*, subd. 3 (2022).

Warsame argues that the district court committed structural error[4] because its direction to the jury in the midst of defense counsel's closing argument that "'the dwelling' includes the entire building" effectively directed the jury's verdict on the "dwelling" element of first-degree burglary charge. As support for his argument, Warsame cites *Moore* and *State v. Staeheli*, No. A15-0250, 2016 WL 456804 (Minn. App. Feb. 8, 2016).[5]

Moore was charged with first-degree assault, an element of which is the infliction of "great bodily harm." *Moore*, 699 N.W.2d at 736. "Great bodily harm" is defined as "an injury that causes a permanent or protracted loss or impairment of the function of any bodily member or organ." *Id.* at 736-37 (quotation omitted). In *Moore*, the district court instructed the jury that "[t]he loss of a tooth is a permanent loss of the function of a bodily member." *Id.* at 736. Our supreme court held that this instruction was structural error because it prevented the jury from independently determining whether the element of "great bodily harm" was proved. *Id.* at 736-38.

[4] A structural error is a "defect[] in the constitution of the trial mechanism" that typically requires automatic reversal. *State v. Watkins*, 840 N.W.2d 21, 25-26 (Minn. 2013) (quotation omitted). But in *Pulczinski v. State*, our supreme court explained that where, as here, the defendant does not object to a structural error at trial, plain-error review may instead apply. 972 N.W.2d 347, 356-59 (Minn. 2022). We need not decide which standard of review applies here because we discern no error in the district court's instruction.

[5] Nonprecedential opinions may be cited as persuasive authority. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c).

Similarly, in *Staeheli*, we concluded that the district court's instruction on second-degree burglary that "[a]n attached garage is included in the definition of a dwelling," directed a verdict on that offense element because the instruction effectively "asked and answered a question of fact." 2016 WL 456804, at *2-3 (emphasis omitted). We also noted that the instruction likely misstated the law because a garage could be attached to a house but not satisfy the definition of "dwelling"—for instance, if the house were abandoned. *Id.* at *3 n.1.

Warsame contends that, like in *Moore* and *Staeheli*, the district court resolved questions of fact by effectively "inform[ing] the jury that [T.L.'s] residence was a dwelling" and that "the dwelling included the attached garage." He also argues that, for the same reasons set out in *Staeheli*, the district court misstated the law. We disagree for two reasons.

First, the district court did not misstate the law. Warsame does not dispute that the district court's general instructions on the elements of first-degree burglary were accurate. He challenges only the court's subsequent clarification that "'the dwelling' includes the entire building." But the term "building" is used in the statutory definition of "dwelling." Minn. Stat. § 609.581, subd. 3 (defining "dwelling" as "a *building* used as a permanent or temporary residence" (emphasis added)). And a building includes "any appurtenant or connected structure." *Id.*, subd. 2. Unlike in *Staeheli*, the district court did not use fact-specific language or suggest that a particular type of structure meets the definition of "dwelling." Considering the instructions as a whole, we see no error by the district court in explaining the law. *Koppi*, 798 N.W.2d at 362.

Second, the district court's clarifying instruction did not tell the jury how to resolve a question of fact. Rather, it essentially reiterated the statutory definitions the court had already provided in its general instructions. The jury was then responsible for applying those definitions to the facts of Warsame's case. To find Warsame guilty, the jury was required to find that (1) T.L.'s house was "suitable for affording shelter for human beings," (2) the attached garage constituted an "appurtenant or connected structure" relative to the house, and (3) the house is "used as a permanent or temporary residence." Minn. Stat. § 609.581, subds. 2, 3. Nothing in the district court's clarifying instruction resolves these questions or departed from the court's general instructions, to which Warsame did not object.

Because we discern no error in the district court's general jury instructions and we conclude that the district court's clarifying instruction did not direct the verdict on the burglary charge, we affirm.

Affirmed.