

STATE OF MINNEOSTA

DISTRICT COURT

COUNTY OF HENNEPIN COUNTY

FOURTH JUDICIAL DISTRICT

State of Minnesota,

MNCIS No. 27-CR-21-23628

Plaintiff,

v.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
VERDICT**

Carmen Bendu Greaves,

Defendant.

The above-entitled matter came before the Honorable Daniel C. Moreno for trial on February 28, 2022. The parties submitted this matter to the Court on a stipulated evidence basis under Minn. R. Crim. Pro 26.01, Subd. 3. Andrea Reynolds represented Defendant Carmen Bendu Greaves. Britta Rapp and Courtney Nussbaumer represented the State of Minnesota.

Defendant waived her jury trial and associated rights outlined in Minnesota Rule of Criminal Procedure 26.01, Subd. 1 and Subd. 3 on the record and in writing.

The parties submitted a signed stipulation on February 28, 2022. This stipulation outlines the evidence constituting the record for a verdict in this case. The stipulated exhibits are as follows:

- 1) Police Report (file named "BC21-004405 report.pdf")
- 2) Sentencing order from felony battery in Clark County, Nevada. Court File No. C-16-312877-1
- 3) Sentencing order from battery in Gwinnett County, Georgia. Court File No. 13-D-02642
- 4) 7/1/21 OFP Order Following Hearing (27-DA-FA-21-3253)
- 5) 7/3/21 Certificate of Service (27-DA-FA-21-3253)
- 6) 7/6/21 Certificate of Service (27-DA-FA-21-3253)
- 7) 7/3/21 Police Report (BCPD 21-002430)
- 8) Complaint (27-CR-21-12497)
- 9) 7/7/21 DANCO (27-CR-21-12497)
- 10) Register of Actions (27-CR-21-12497)

- 11) 9/3/21 Conditional Release Order (27-CR-21-12497)
- 12) 911 Call #1
- 13) 911 Call #2
- 14) 911 Call #3
- 15) Fry Squad Video Clip (beginning to 7:12:19 AM)
- 16) Map
- 17) Photo – page 4 (blood on sock)
- 18) Photo – page 5 (scratches on arm)
- 19) Photo – page 7 (footprints in snow)
- 20) Photo – page 8 (footprints in snow)
- 21) Photo – page 9 (window from inside)

FINDINGS OF FACT

1. Defendant was convicted of Felony Battery with Substantial Bodily Harm in violation of Nev. Rev. Stat. § 200.481 on November 27, 2017, in Clark County, Nevada in Case No. C-16-312877-1. (Ex. 2).
2. Defendant was convicted of Family Violence Battery in violation of Ga. Code Ann. § 16-5.23.1(f) on March 27, 2017, in Gwinnett County, Georgia in Case No. 13-D-02642-5. (Ex. 3).
3. Defendant and Victim M.B.P. were previously in a romantic relationship and they have a child in common. (Exs. 1, 4).
4. Victim M.M.M. was Victim M.B.P.'s girlfriend on December 22, 2021. (Exs. 12-14).
5. At the time of the charged offense (December 22, 2021), Defendant was the subject of a subject of an active, pre-trial Domestic Abuse No Contact Order (DANCO) in Court File No. 27-CR-21-12497 issued on July 7, 2021. (Exs. 9; 10; 11).
6. Victim M.B.P. was the protected party of this DANCO. (Ex. 9) The DANCO orders Defendant to have no contact directly, indirectly or through others, in person, by telephone, in writing, electronically or by any other means with Victim M.B.P., except to contact a third party for child visitation. (Id.). The DANCO prohibits Defendant from going to

wherever Victim M.B.P. resides. (Id.). The DANCO prohibits Defendant from using, attempting to use, or threatening to use physical force against Victim M.B.P. that would reasonably be expected to cause bodily injury. (Id.).

7. Defendant knew about the DANCO because Defendant was personally served at the arraignment on July 7, 2021. (Ex. 10 at 1). The DANCO was reinforced as a condition of Defendant's release at hearings on September 3, 2021, November 19, 2021, and December 14, 2021. (Id. at 2; Ex. 11).
8. At the time of the charged offense (December 22, 2021), Defendant was the subject of an active, served Order for Protection (OFP) in Court File No. 27-DA-FA-21-3253 issued on July 1, 2021, that expires on June 28, 2023. (Exs. 1, 4).
9. The OFP prohibits Defendant from committing acts of domestic abuse against Victim M.B.P. and prohibits contact, either direct or indirect, with Victim M.B.P. or their child, whether in person, by telephone, mail, over the internet and/or through social media or by any other electronic means, or through a third party, except to participate in any Alternative Dispute Resolution processes ordered in any future family court proceeding. (Ex. 4). The OFP orders that Defendant must not go to or enter Victim M.B.P.'s residence located at 6813 Humboldt Ave. N, #102, Brooklyn Center, MN 55430 or any future residences. (Id.). The OFP prohibits Defendant from entering or staying at Defendant's home for any reason even if invited by Victim M.B.P. (Id.) The OFP also orders that Defendant must stay away from a reasonable area surrounding petitioner's residence and/or any future residence, specifically, two city blocks or 1/4 mile, whichever is greater, in all directions. (Id.).
10. Defendant knew about the OFP in Court File No. 27-DA-FA-21-3253. On June 28, 2021, an ex parte version of the OFP was issued, and Defendant was personally served on June

30, 2021. (Ex. 4 at 1). After a hearing on July 1, 2021, the final OFP order was issued. (Ex. 4). On July 3, 2021, Defendant was located in Victim M.B.P.'s apartment and she admitted to officers that she knew about the OFP and knew she was not allowed to be at M.B.P.'s apartment. (Exs. 6, 7). After she was arrested, she was personally served with the ex parte OFP on July 3, 2021, at the Hennepin County Jail, and she was personally served with the OFP Following Hearing on July 6, 2021, at the Hennepin County Jail. (Exs. 5, 6). The OFP was reinforced as a condition of Defendant's release on September 3, 2021. (Ex. 11). On December 14, 2021, Defendant pled guilty to knowingly violating the OFP based on her conduct on July 3, 2021. (Exs. 8, 10).

11. On December 22, 2021, eight days after pleading guilty to the previous OFP violation, Defendant entered Victim M.B.P.'s apartment, located at 6813 Humboldt Ave N, Apt. 102, Brooklyn Center, MN 55430, through a window that Victim M.B.P. leaves open for air flow. (Ex. 1 at 1-2, 4-5; Exs. 12-13). When officers responded to the scene, they observed footprints in the snow leading to the window. (Ex. 1 at 5; Exs. 19-21). As evidenced by the multiple no contact orders and the 911 calls placed by Victim M.B.P., Defendant did not have permission to enter the apartment. (Ex. 1 at 4-5; Exs. 12-14).
12. When she was inside the apartment, Defendant assaulted Victim M.M.M. by hitting her, throwing her to the floor, grabbing her hair, and striking her on the back of the neck. (Ex. 1 at 4-5; Exs. 12-14). Victim M.M.M. was injured by the assault and she requested an ambulance. (Ex. 1 at 4-5; Ex. 14). Victim M.M.M.'s injuries included scratches on her arms. (Ex. 1 at 4-5; Ex. 18). During the 911 call, Victim M.B.P. reported that Victim M.M.M. was bleeding, and responding officers observed blood on Victim M.M.M.'s sock. (Exs. 14; 17).

13. During the assault, Victim M.B.P. tried to get Defendant off Victim M.M.M. (Ex. 1 at 5). Defendant fought Victim M.B.P. and bit him. (Ex. 14).

14. Victims M.B.P. and M.M.M. called 911 three times on December 22, 2021, at 7:01 AM, 7:03 AM, and 7:07 AM. (Exs. 12-14). During the first two calls, the victims reported that Defendant was still inside the apartment, despite the fact that Victim M.B.P. told Defendant there was an OFP and she needed to leave. (Ex. 1 at 4; Exs. 12-13). Screaming, yelling, and fighting can be heard in the background of the calls. (Id.). By the time of the third call, Defendant had left the apartment and fled. (Ex. 14).

15. A Brooklyn Center Police Officer (Officer Sara Fry) promptly responded to the 911 calls. (Ex. 1 at 6). Officer Fry is familiar with Defendant based on her previous interactions with Defendant. (Id.) When she arrived, Officer Fry observed Defendant running from Victim M.B.P.'s apartment building. (Id.; Ex. 15). Defendant ran to the dumpster area of the apartment complex. (Id.). Officer Fry got into her squad car, briefly chased Defendant, and apprehended Defendant on 69th Avenue just west of the Humboldt intersection. (Ex. 1 at 6; Exs. 15-16). The location where Officer Fry apprehended Defendant was within the radius prohibited by the OFP. (Exs. 1; 4; 16). When Officer Fry located Defendant, Defendant was wearing a black jacket, consistent with what Victim M.B.P. described in the 911 call. (Exs. 14, 15).

CONCLUSIONS OF LAW

Defendant is charged with three counts: I) Burglary in the First Degree in violation of Minn. Stat. § 609.582.1(a); II) Felony DANCO Violation in violation of Minn. Stat. § 518B.01.14(d)(1); and III) Felony OFP Violation in violation of Minn. Stat. § 629.75.2(d).

I. The State Proved Defendant Committed Burglary in the First Degree in violation of Minn. Stat. § 609.582.1(a).

Under Minnesota law, whoever enters a building without consent and with intent to commit a crime or enters a building without consent and commits a crime while in the building, either directly or as an accomplice, commits burglary in the first degree 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).

For Count I, the State must prove the following five elements beyond a reasonable doubt:

1. The property involved in this case was a dwelling. A “dwelling” means a building used as a permanent or temporary residence.
2. Defendant entered the dwelling without consent of the person in lawful possession or remained within a building without consent of the person in lawful possession. The entry does not have to have been made by force or by breaking in. Entry through an open or unlocked door or window is sufficient.
3. Another person, not an accomplice, was present in the dwelling when the Defendant entered it or at any time when Defendant was in the dwelling.
4. Defendant committed the crime of assault in the fifth degree while in the building.
5. Defendant’s act took place on or about December 22, 2021, in Hennepin County.

See CRIMJIG 17.02.

The elements of assault in the fifth degree are:

1. First, the defendant assaulted the victim.
 - The term “assault” is defined as the intentional infliction of bodily harm upon another or the attempt to inflict bodily harm upon another.
 - “Bodily harm” means physical pain or injury, illness, or any impairment of a person's physical condition.
 - “Attempted” means that the actor did an act which was a substantial step toward, and more than mere preparation for, causing the result, and that the actor did that act with intent to cause that result.
 - “Intentionally” means that the actor either has a purpose to do the thing or cause the result specified, or believes that the act performed by the actor, if successful, will cause the result. In addition, the actor must have knowledge of those facts that

are necessary to make the actor's conduct criminal and that are set forth after the word "intentionally."

2. Second, the defendant's act took place on or about December 22, 2021, in Hennepin County.

See CRIMJIG 13.33; Minn. Stat. § 609.02, Subds. 7, 9, 10.

The Stated proved all five elements of First Degree Burglary beyond a reasonable doubt.

The State proved the first element because the property involved in this case was a dwelling. Namely, the dwelling was Victim M.B.P.'s apartment and his residence.

The State proved the second element because Defendant entered Victim M.B.P.'s apartment without his consent. Victim M.B.P. was in lawful possession of the apartment. It is his primary residence as documented in multiple police reports and the OFP, and he informed responding officers that he has lived there for years. Defendant entered the apartment without M.B.P.'s consent. Defendant was not welcomed into the apartment through the front door by the victims; she snuck in through a window while both victims were asleep. Victim M.B.P. left that window open for ventilation, but as reflected in the JIGs, forced entry is not required for a burglary conviction; entry through an open or unlocked window is sufficient. At the time of Defendant's entry, there were two active no contact orders prohibiting her from entering the apartment. Defendant previously went through the effort of obtaining an OFP that prohibits Defendant from entering Victim M.B.P.'s apartment, which is clear evidence of his intent to exclude her from the apartment. Victim M.B.P.'s lack of consent is further demonstrated by the victims calling 911 three times to report Defendant's unlawful entrance and to request police assistance. When Victim M.B.P. realized Defendant was in the apartment on December 22, 2021, he told Defendant there was an OFP and she should leave. Thus, the evidence proves Defendant entered without consent.

In the alternative, Defendant remained in the apartment without Victim M.B.P.'s consent. This conclusion is supported by all three 911 calls in which Victim M.B.P. reports Defendant's unwanted presence and requests police assistance. When Victim M.B.P. realized Defendant was in the apartment, he told her to leave because of the OFP. Despite the Victim M.B.P.'s clear lack of consent, Defendant remained in the apartment until the third 911 call. The State proved the second element beyond a reasonable doubt.

The State proved the third element because both Victim M.B.P. and Victim M.M.M., non-accomplices, were present when Defendant entered Victim M.B.P.'s residence.

The State proved the fourth element of burglary in the first-degree and all the elements of Assault in the Fifth Degree beyond a reasonable doubt because Defendant assaulted Victim M.M.M. and Victim M.B.P. inside the apartment. Assault means "the intentional infliction of or attempt to inflict bodily harm upon another." Minn. Stat. § 609.02, subd. 10(2). "Bodily harm" means "physical pain or injury, illness, or any impairment of a person's physical condition." Minn. Stat. § 609.02, subd. 7. Defendant intentionally inflicted bodily harm upon Victim M.M.M. while they were inside the apartment. In the 911 calls, Victim M.B.P. described Defendant "beating up" Victim M.M.M. and hitting her. When officers responded, Victim M.M.M. elaborated and explained that Defendant threw her to the floor, grabbed her hair, and struck her on the back of the neck. Victim M.M.M. experienced physical pain and injury, as demonstrated by her request for an ambulance and the injuries officers observed and photographed. Photographs from the scene show blood on Victim M.M.M.'s sock and scratches on Victim M.M.M.'s arm. Victim M.B.P. tried to intervene when Defendant was assaulting Victim M.M.M. Defendant tried to fight him, and Defendant bit him. This was an intentional attempt to inflict physical pain or injury upon M.B.P.,

and therefore satisfies the definition of an assault. Thus, the State proved that Defendant committed the crime of fifth degree assault while in the building.¹

The State proved the fifth element because Defendant's act took place on December 22, 2021, in Brooklyn Center, which is in Hennepin County, Minnesota.

II. The State Proved Defendant Committed a Felony OFP Violation in violation of Minn. Stat. § 518B.01.14(d)(1).

Under Minnesota law, a person who violates an order for protection issued by a judge or referee is guilty of a felony if the person violates the OFP within ten years of the first of two or more previous qualified domestic violence-related offense convictions or adjudications of delinquency. Minn. Stat. § 518B.01.14(d)(1).

For Count II, the State must prove the following five elements beyond a reasonable doubt:

1. There was an existing court order for protection.
2. Defendant knew of the existence of the order.
3. Defendant violated a term or condition of the order.
4. Defendant committed this crime within ten years of the first of defendant's two or more previous qualified domestic violence-related offense convictions.
5. Defendant's act took place on or about December 22, 2021, in Hennepin County.

See CRIMJIG 13.56.

The State proved all five elements beyond a reasonable doubt.

¹ While the Court recognizes that the facts of this case would also satisfy the elements of First Degree Burglary – Assault under Minn. Stat. § 609.582, Subd. 1(c), Defendant is not charged with that offense. As part of the stipulated evidence trial, the parties agreed to limit the Burglary analysis to First Degree Burglary – Occupied Dwelling under Minn. Stat. § 609.582, Subd. 1(a).

The State proved the first element because there was an existing order for protection in Court File No. 27-DA-FA-21-3253 on the date of the offense. The OFP was issued on July 1, 2021, and it does not expire until June 28, 2023.

The State proved the second element because Defendant had knowledge of the OFP. She was personally served with the OFP multiple times in June and July 2021, she admitted to officers in July 2021 that she was aware of the OFP and she knew she was not allowed to be at Victim M.B.P.'s apartment, the OFP was reinforced as a condition of release in her criminal case in September 2021, and Defendant pled guilty to violating the OFP on December 14, 2021 (eight days before this offense). *See* Court File No. 27-CR-21-12497 (charging Defendant with violating the OFP in Court File No. 27-DA-FA-21-3253). Based on the elements of the offense, that guilty plea required Defendant to acknowledge the existence of the OFP, affirm her knowledge of the OFP, and confirm that being at Victim M.B.P.'s apartment was a violation of the OFP. In addition, Defendant was seen running away from the apartment as police arrived, which is further evidence that Defendant knew she was not supposed to be there, and she did not want to get caught inside or near Victim M.B.P.'s apartment.

The State proved the third element because the OFP prohibits Defendant from committing acts of domestic abuse against Victim M.B.P., and she assaulted him when she bit him. The OFP prohibits Defendant from having any in-person contact with Victim M.B.P., and Defendant was in the same room with him and had physical contact with him after she entered his apartment. The OFP prohibits Defendant from entering or staying at Victim M.B.P.'s home for any reason even if invited by Victim M.B.P. The Victims' statements to responding officers, as well as all three 911 calls, the injury photos, and squad footage of Defendant fleeing Victim M.B.P.'s residence, demonstrate Defendant entered Victim M.B.P.'s home in violation of the OFP. Finally, the OFP

prohibits Defendant from being within two city blocks or 1/4 mile, whichever is greater, in all directions, from Victim M.B.P.'s apartment on Humboldt Ave N in Brooklyn Center. The location where Officer Fry apprehended Defendant was within the radius prohibited by the OFP.

The State proved the fourth element because Defendant has been convicted of two previous qualified domestic violence-related offenses within the 10 years preceding the offense. "Qualified domestic violence-related offense" includes a violation of or an attempt to violate Minnesota statute sections 609.221 (first-degree assault); 609.223 (third-degree assault); 609.224 (fifth-degree assault); 609.2242 (domestic assault); and similar laws of other states, the United States, the District of Columbia, tribal lands, and United States territories. Minn. Stat. § 609.02, Subd. 16.

Defendant was convicted of Felony Battery with Substantial Bodily Harm in violation of Nev. Rev. Stat. § 200.481 on November 27, 2017, in Clark County, Nevada in Case No. C-16-312877-1. That offense is similar a qualifying assault conviction under Minnesota law. *Compare* Minn. Stat. § 609.02, Subd. 10 (defining assault) *and* NRS 200.481.1(a) (defining battery). As explained by the Nevada Supreme Court, "[w]here a battery results in substantial bodily harm, the battery becomes a felony. *See* NRS 200.485(2); NRS 200.481(2)(b). NRS 0.060 defines substantial bodily harm as '[b]odily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ; or ... [p]rolonged physical pain.'" *LaChance v. State*, 130 Nev. 263, 271, 321 P.3d 919, 925 (2014). Nevada's definition of "substantial bodily harm" is similar to Minnesota's definition of "great bodily harm" as required for a first-degree assault conviction. *See* Minn. Stat. § 609.221; Minn. Stat. § 609.02, Subd. 8 (defining "great bodily harm" as "bodily injury which creates a high probability of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other

serious bodily harm”). Thus, Defendant’s felony battery conviction from Nevada is similar to a felony assault conviction under Minnesota law, which makes it a qualified domestic violence-related offense. *See* Minn. Stat. § 609.02, Subd. 16.

Defendant was convicted of misdemeanor Family Violence Battery in violation of Ga. Code Ann. § 16-5.23.1(f) on March 27, 2017, in Gwinnett County, Georgia in Case No. 13-D-02642-5. This offense is similar to domestic assault under Minnesota law, which is a qualifying domestic-violence related offense. *See* Minn. Stat. § 609.02, Subd. 16. Under Georgia law, “[i]f the offense of battery is committed between household members, it shall constitute the offense of family violence battery.” Ga. Code Ann. § 16-5.23.1(f)(2). “A person commits the offense of battery when he or she intentionally causes substantial physical harm or visible bodily harm to another.” Ga. Code Ann. § 16-5.23.1(a). A battery conviction in Georgia is similar to an assault conviction in Minnesota, because both involve inflicting bodily harm upon another. *See* Minn. Stat. § 609.02, Subd. 10. Defendant’s conviction in Georgia was for “family violence battery” because it was committed against a household member. Similarly, in Minnesota, an assault becomes a domestic assault when it is committed against a family or household member. *See* Minn. Stat. § 609.2242. Thus, Defendant’s family violence battery conviction from Georgia is similar to a domestic assault conviction under Minnesota law, which makes it a qualified domestic violence-related offense. *See* Minn. Stat. § 609.02, Subd. 16.

The State proved the fifth element because Defendant’s act took place on December 22, 2021, in Brooklyn Center, which is in Hennepin County, Minnesota.

III. The State Proved Defendant Committed a Felony DANCO Violation in violation of Minn. Stat. § 629.75.2(d).

Under Minnesota law, a person who violates a DANCO within ten years of the first of two or more previous qualified domestic violence-related offense convictions or adjudications of delinquency is guilty of a felony. Minn. Stat. § 629.75.2(d).

For Count III, the State must prove the following five elements beyond a reasonable doubt:

1. There was an existing domestic abuse no contact order.
2. Defendant knew of the existence of the order.
3. Defendant violated a term or condition of the order.
4. Defendant committed this crime within ten years of the first of defendant's two or more previous qualified domestic violence-related offense convictions.
5. Defendant's act took place on or about December 22, 2021, in Hennepin County.

See CRIMJIG 13.56.

The State proved all five elements beyond a reasonable doubt.

The State proved the first element because there was an existing DANCO at the time of the offense in Court File No. 27-CR-21-12497. It was issued in July 2021 and reinforced as a condition of Defendant's release eight days before she committed this offense.

The State proved the second element because Defendant was personally served with the DANCO at the arraignment on July 7, 2021. The DANCO was reinforced as a condition of Defendant's release at hearings on September 3, 2021, November 19, 2021, and December 14, 2021 (eight days before the offense). In addition, Defendant was seen running away from the apartment as police arrived, which is further evidence that Defendant knew she was not supposed to be there, and she did not want to get caught inside or near Victim M.B.P.'s apartment.

The State proved the third element beyond a reasonable doubt because the DANCO prohibits Defendant from using or attempting to use any physical force against Victim M.B.P., and she assaulted him when she bit him. The DANCO prohibits Defendant from having any in person contact with Victim M.B.P., and Defendant was in the same room with him and had physical contact with him after she entered his apartment. The DANCO prohibits Defendant from going to wherever Victim M.B.P. resides. The Victims' statements to responding officers, as well as all three 911 calls, the injury photos, and squad footage of Defendant fleeing Victim M.B.P.'s residence, demonstrate Defendant entered Victim M.B.P.'s home in violation of the DANCO.

The State satisfied the fourth element because Defendant has been convicted of two previous qualified domestic violence-related offenses within the 10 years preceding the offense. As discussed in detail above, Defendant was convicted of Battery with Substantial Bodily Harm on November 28, 2017, in Clark County, Nevada in Case No. C-16-312877-1. Defendant was convicted of Family Violence Battery in on March 27, 2017, in Gwinnett County, Georgia in Case No. 13-D-026420S5. Both of these convictions from 2017 are similar to assault-based convictions under Minnesota law that meet the statutory definition of "qualified domestic violence-related offense" convictions. *See* Minn. Stat. § 609.02, Subd. 16.

The State proved the fifth element because Defendant's act took place on December 22, 2021, in Brooklyn Center, which is in Hennepin County, Minnesota.

VERDICT

1. Defendant is hereby found GUILTY of Count I, Burglary in the First Degree, in violation of Minn. Stat. § 609.582.1(a).
2. Defendant is hereby found GUILTY of Count II, Felony OFP Violation, in violation of Minn. Stat. § 518B.01.14(d)(1).

3. Defendant is hereby found GUILTY of Count III, Felony DANCO violation, in violation of Minn. Stat. § 629.75.2(d).

BY THE COURT:

Dated: _____

Daniel C. Moreno
Judge of District Court

MINNESOTA
JUDICIAL
BRANCH