# In the Missouri Court of Appeals
# Eastern District
## DIVISION THREE

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| STATE OF MISSOURI, | ) | No. ED108591 |
| | ) | |
| Respondent, | ) | Appeal from the Circuit Court |
| | ) | of Cape Girardeau County |
| vs. | ) | |
| | ) | Honorable Benjamin F. Lewis |
| BRANDON SHANE UMFLEET, | ) | |
| | ) | |
| Appellant. | ) | FILED: March 23, 2021 |

Brandon Shane Umfleet ("Umfleet") appeals from his convictions following a jury trial on attempted burglary in the first degree and stalking in the first degree. Umfleet raises five points on appeal. Point Ones and Two challenge the sufficiency of the evidence for attempted first-degree burglary. Point One maintains the State failed to prove Umfleet attempted to unlawfully enter Victim's home while Point Two contends the State failed to prove Umfleet attempted to do so with the intent to commit an offense therein. Both Points Two and Three challenge the State's failure to denote the specific object offense of attempted first-degree burglary. Specifically, Point Two argues the evidence was insufficient to sustain the conviction on attempted first-degree burglary because it failed to establish what specific offense Umfleet intended to commit once he gained access to Victim's home. Correspondingly, Point Three maintains the trial court plainly erred in giving a jury instruction on attempted first-degree burglary that failed to denote the specific object offense as required by the Missouri Approved Instructions–Criminal. Points Four and Five seek plain-error review of the trial court's failure to sua sponte intervene in the State's cross-examination of Umfleet for exceeding the permissible scope of impeachment on prior convictions and for improperly asking him to opine on the truthfulness of another witness.

AFFIRMED IN PART, REVERSED IN PART AND REMANDED.

DIVISION THREE HOLDS: Because the evidence at trial showed that Umfleet was banging on Victim's window and doors and trying to enter through Victim's window following a history of unwanted contact, sufficient evidence supported finding Umfleet took a substantial step towards unlawfully entering Victim's home, and we deny Point One. However, because the State did not specify the intended object offense of attempted first-degree burglary, the State correspondingly failed to adduce sufficient evidence that Umfleet attempted to commit the burglary with the purpose of committing an offense inside Victim's home, and we grant Point Two. Because Point

Two is dispositive of Umfleet's challenge to the verdict directing instruction for attempted first-degree burglary, we need not review Point Three. Because Umfleet fails to demonstrate manifest injustice arose from the State's cross-examination on his prior convictions or Victim's truthfulness, we deny Points Four and Five. Accordingly, we affirm in part and reverse in part. We reverse the conviction on attempted first-degree burglary, enter judgment on the lesser-included offense of trespass in the first degree, and remand for sentencing consistent with this opinion.

Opinion by: Kurt S. Odenwald, Judge
Angela T. Quigless, P.J., and James M. Dowd, J., concur.

Attorney for Appellant: Ellen H. Flottman

Attorney for Respondent: Kristen S. Johnson

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