

United States Court of Appeals
For the Eighth Circuit

No. 25-2281

United States of America

Plaintiff - Appellee

v.

Francis Lee Dubray

Defendant - Appellant

Appeal from United States District Court
for the District of South Dakota - Northern

Submitted: February 13, 2026
Filed: September 4, 2026

Before COLLOTON, Chief Judge, BENTON and KELLY, Circuit Judges.

KELLY, Circuit Judge.

A jury found Francis Lee Dubray guilty of burglary and assault. He appeals, challenging several of the district court's¹ trial-related rulings. We affirm.

¹The Honorable Charles B. Kornmann, United States District Judge for the District of South Dakota.

I.

On the evening of July 5, 2023, Nathan Griffin, Brian Taken Alive, and Dubray went to Peggy Thompson’s home in McLaughlin, South Dakota. They were looking for Burdon Lester to confront him with an accusation that he had inappropriately touched Griffin’s daughter earlier that day. When no one answered the locked door, Taken Alive kicked it open. Griffin and Taken Alive went inside the house, while Dubray stayed on the lawn. When the two men saw Thompson, they asked, “Where’s he at?” Thompson yelled at them to get out of her house and to leave Lester alone. Griffin and Taken Alive then went to the back bedroom, where Lester was passed out on the bed. Taken Alive began assaulting Lester and then dragged him into the living room. Thompson threw herself on Lester in an effort to protect him, but Taken Alive began to assault her as well. According to Thompson, when she crawled toward the door to close it, Dubray—who by then was standing in the doorway—kicked her in the face, “like a football kick.”

Dubray, along with Griffin and Taken Alive, was charged with one count of first degree burglary,² in violation of 18 U.S.C. § 1153 and SDCL § 22-32-1 (Count 1), and two counts of assault with a dangerous weapon, in violation of 18 U.S.C. §§ 1153, 113(a)(3) (Counts 2–3). Dubray was also charged with one count of witness tampering, in violation of 18 U.S.C. § 1512(b)(3) (Count 4). In Counts 1–3, all three defendants were charged, in the alternative, with aiding and abetting, in violation of 18 U.S.C. § 2.

After a trial, Dubray was convicted on Counts 1–3 and acquitted on Count 4. The district court imposed a 70-month sentence. Dubray appeals.

²Under the Major Crimes Act, the crime of burglary here is defined by the laws of South Dakota. See 18 U.S.C. § 1153(b).

II.

A.

To convict Dubray of first degree burglary, the government had to prove, among other elements, that the structure entered—here, Thompson’s home—was “not, at the time, open to the public nor was the defendant licensed or privileged to enter or remain in the structure.” The South Dakota statute also explicitly precludes criminal liability where “the premises are, at the time, open to the public or the person is licensed or privileged to enter or remain[.]” SDCL § 22-32-1 (2023).

Dubray sought to introduce, through testimony from the county sheriff, evidence of 911 calls regarding Thompson’s residence to show that her home was “open to the public.” According to Dubray, the calls included requests for an ambulance and reports of disorderly conduct and assault, which he wanted to introduce in support of his theory that the home was considered “abandoned” and “a drug house,” and thus “open to the public.” Dubray appeals the district court’s refusal to admit this evidence.

The parties dispute our standard of review. Dubray contends we review the district court’s ruling de novo because the exclusion of the sheriff’s testimony about the 911 logs implicated his right to present a complete defense. See United States v. Roubideaux, 112 F.4th 606, 613 (8th Cir. 2024). The government, in contrast, characterizes it as an evidentiary ruling reviewed for abuse of discretion. See United States v. Davis, 126 F.4th 610, 619 (8th Cir. 2025). We need not decide which standard applies because, even on de novo review, we conclude the district court did not err.

When excluding the evidence, the district court observed that the fact of the 911 calls meant only that the sheriff knew one or more persons had called in a complaint. But it failed to show the sheriff had personal knowledge of the substance or validity of any such complaints. The district court also found that the sheriff’s

testimony would risk putting “Thompson or somebody else [other than Dubray] on trial here.” And the court was concerned the jury might infer that simply because Thompson “let[] other people into the house,” she was making her home open to the public, noting that a tenant has a right to allow others into their home as they so choose. In this context, the district court’s application of Federal Rule of Evidence 403 to exclude evidence that risked distracting the jury or confusing the issues did not violate Dubray’s right to present a complete defense.³ See United States v. Duggar, 76 F.4th 788, 792 (8th Cir. 2023) (“The right to present a complete defense . . . does not trump a district court’s discretion to keep out confusing or misleading evidence, even if it would be helpful to the defense.”).

B.

Next, Dubray argues that the district court abused its discretion in refusing to submit his proffered jury instruction on first degree burglary. “We review a district court’s rejection of a proposed jury instruction for abuse of discretion,” United States v. Allen, 43 F.4th 901, 910 (8th Cir. 2022), while “recognizing a district court’s ‘broad discretion in submitting instructions to the jury,’” Jeffery v. Townsend, 165 F.4th 1065, 1069 (8th Cir. 2026) (quoting Acad. Bank, N.A. v. AmGuard Ins. Co., 116 F.4th 768, 786–87 (8th Cir. 2024)). A party “is not entitled to a particularly worded instruction as long as the instructions fairly and adequately instruct the jurors on the applicable law.” Allen, 43 F.4th at 910 (quoting United States v. Gilmore, 968 F.3d 883, 886 (8th Cir. 2020)).

The district court’s final jury instruction mirrored the South Dakota pattern jury instruction for first degree burglary and included the following elements:

³Dubray also asserts the district court erred in preventing him from asking Thompson’s neighbor why he installed surveillance cameras directed at Thompson’s residence. Dubray asserts he wanted the neighbor “to discuss his observations of activities” at the house. However, Dubray did not make an offer of proof, so there is no record of how the neighbor would have answered the question, and thus, no ability for us to review the alleged error.

1. On or about July 5, 2023, defendant unlawfully entered a structure described as the home of Peggy Thompson.
2. The structure was not, at the time, open to the public nor was the defendant licensed or privileged to enter or remain in the structure.
3. The structure was an occupied structure.
4. The defendant unlawfully entered or unlawfully remained within the structure with the intent to commit the crime of assault.
5. The defendant inflicted or attempted to inflict physical harm on another.
6. The defendant is an Indian.
7. The offense occurred in Indian country.

Dubray proposed the following paragraph also be submitted to the jury:

When evaluating whether a structure is open to the public, you must give the term its plain meaning. A structure, or a portion thereof, is either open to the public or it is not. You may find that an entire structure is open to the public, or you may find that only a portion of that structure is open to the public. If an entire structure is open to the public, then the defendant is not guilty of first degree burglary. If a portion of a structure is open to the public and another portion is not open to the public, then the evidence must show beyond a reasonable doubt that the defendant entered or remained within the portion of the structure that is not open to the public.

Dubray contends this instruction would have permitted the jury to recognize “a legal distinction between areas of a structure that are open to the public, and areas that are not.”

The district court did not abuse its discretion in refusing to submit this instruction. As an initial matter, Dubray relies almost entirely on Florida law to support the instruction but offers no authority that South Dakota courts would likely adopt the legal analysis of Florida courts on this issue. But more significantly, Dubray offered no admissible testimony—and he points to none on appeal—to support the theory that this instruction purportedly advances: that Thompson’s bedroom may not have been “open to the public,” but her living room was. Without

any evidentiary support for the instruction, the district court did not err in declining to include it.

C.

Dubray also argues that the district court abused its discretion by admitting photographs of the interior of Thompson’s house taken after the assault occurred. And he contends that a government witness offered impermissible testimony about the blood depicted in those photographs. “We review the district court’s evidentiary rulings for clear abuse of discretion.” United States v. Mackey, 83 F.4th 672, 675 (8th Cir. 2023) (quoting United States v. Williams, 41 F.4th 979, 984 (8th Cir. 2022)). We reverse only “if the district court’s evidentiary rulings constitute a clear and prejudicial abuse of discretion or when the ruling affected substantial rights or had more than a slight influence on the verdict.” Id. (quoting United States v. Oldrock, 867 F.3d 934, 938 (8th Cir. 2017)).

At trial, Bureau of Indian Affairs Agent Bryan Stark testified that he took photographs inside Thompson’s home in the early morning hours of July 6, 2023. The government offered the photographs into evidence, and the district court admitted them over Dubray’s objection on relevance grounds. Stark then testified—still on direct examination and without objection—that one of the photographs showed a pool of wet blood located in the front room just inside the doorway. On cross-examination, Dubray moved to strike the admitted photographs of Thompson’s home “for lack of foundation.” The court denied the motion.

On appeal, Dubray argues the district court erred in denying his motion to strike because—as his cross examination showed, he contends—the government failed to offer sufficient evidence that the photographs, in fact, depicted blood. As the district court recognized, however, a proper foundation was laid for the introduction of the photographs: Stark testified that he took the images himself and that the photographs accurately depicted Thompson’s home as it appeared on July 6, 2023. See United States v. Schropp, 829 F.3d 998, 1005 (8th Cir. 2016) (“A

photograph is admissible if it is an accurate representation of the thing depicted as it appeared at the relevant time.”) (quotations and citations omitted). It was then for the jury to decide what the photographs did, or did not, show. To the extent Dubray now argues that Stark impermissibly identified Lester as the source of the blood in the photographs, Stark offered this opinion only after Dubray asked him: “Is it your testimony here today that this blood belongs to anyone in particular?” Even if we assume Stark’s answer was impermissible speculation, “[i]t is fundamental that where the defendant ‘opened the door’ and ‘invited error’ there can be no reversible error.” United States v. Harris, 964 F.3d 718, 723 (8th Cir. 2020) (quoting United States v. Lomas, 826 F.3d 1097, 1105 (8th Cir. 2016)).

We discern no reversible error in these evidentiary rulings.⁴

D.

Next, Dubray argues the district court erred when it denied his motion for judgment of acquittal. “This court reviews de novo the denial of a judgment of acquittal, ‘considering the evidence presented at trial in the light most favorable to the verdict and drawing all reasonable inferences in the government’s favor.’” Roubideaux, 112 F.4th at 611 (quoting United States v. Zupnik, 989 F.3d 649, 652–53 (8th Cir. 2021)). We will reverse only “if there is no interpretation of the evidence that would allow a reasonable jury to find the defendant guilty beyond a reasonable doubt.” United States v. Nelson, 51 F.4th 813, 817 (8th Cir. 2022) (quotations and citation omitted).

On appeal, Dubray contests the jury’s findings that he or a portion of his body entered Thompson’s home or that he made physical contact with Thompson. Thompson testified that Dubray kicked her in the face through the open door to her living room. Dubray points to evidence that Thompson had used drugs and a

⁴In an argument heading in his opening brief, Dubray alleges error in the district court’s denial of his motion to strike Stark’s testimony. We find no record of Dubray making this motion at the district court.

significant amount of alcohol prior to the incident, and that she told police in an earlier interview that she was punched, not kicked. But these matters were explored during cross examination, and the jury could evaluate the importance of any infirmities or inconsistencies as they saw fit. In short, it is not our role to “weigh the evidence or assess the credibility of witnesses”—that is for the jury.” United States v. Nosley, 62 F.4th 1120, 1129 (8th Cir. 2023) (quoting United States v. Polk, 715 F.3d 238, 247 (8th Cir. 2013)). Dubray also contends there was insufficient evidence to support a “reasonable inference” that he entered the home, but at least one witness placed Dubray inside the living room. And the jury was instructed that it could convict Dubray of assault with a dangerous weapon and first degree burglary “even if he personally did not do every act constituting the crime charged,” so long as the government proved beyond a reasonable doubt that he aided and abetted the commission of the crime. Based on the evidence presented, a reasonable jury could find Dubray guilty on each of the three counts, and we affirm the district court’s denial of Dubray’s motion for judgment of acquittal.

E.

Finally, Dubray argues he was entitled to a new trial because the verdict was against the weight of the evidence. A district court “may vacate any judgment and grant a new trial if the interest of justice so requires,” Fed. R. Crim. P. 33(a), but “this authority should be exercised ‘sparingly and with caution.’” Roubideaux, 112 F.4th at 612 (quoting United States v. Smart, 501 F.3d 862, 865 (8th Cir. 2007)). Dubray repeats the arguments he made when challenging the sufficiency of the evidence. For the same reasons we affirm the denial of his motion for judgment of acquittal, we also find no abuse of discretion in the district court’s refusal to grant a new trial. See Roubideaux, 112 F.4th at 612 (standard of review).

III.

We affirm.