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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0578**

State of Minnesota,
Respondent,

vs.

Alipio Santiago Veitia,
Appellant.

**Filed March 29, 2021
Affirmed in part, reversed in part, and remanded
Bratvold, Judge**

Freeborn County District Court
File No. 24-CR-19-1290

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

David Walker, Freeborn County Attorney, Albert Lea, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Workman Jesness,
Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Bratvold, Judge; and Bryan,
Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

Appellant raises three challenges to the final judgments of conviction for two counts of first-degree burglary and one count of domestic assault. First, appellant argues that the district court abused its discretion when it refused to accept his guilty plea to domestic

assault and requests specific performance of the plea agreement. Second, appellant contends that insufficient evidence supports his conviction of burglary. Third, he requests correction of his warrant of commitment. Because the district court did not abuse its discretion by rejecting appellant's guilty plea, and because the record evidence is sufficient to sustain the burglary conviction, we affirm in part. But, because the warrant of commitment erroneously shows convictions for three offenses even though the district court convicted appellant of only one offense, we reverse in part and remand for correction of the warrant of commitment.

FACTS

On July 20, 2019, appellant Alipio Santiago Veitia entered the home of A.O., the mother of his children, and assaulted her. Respondent State of Minnesota charged Veitia with first-degree burglary of an occupied dwelling, Minn. Stat. § 609.582, subd. 1(a) (2018) (count one); first-degree burglary with an assault, Minn. Stat. § 609.582, subd. 1(c) (2018) (count two); and domestic assault, Minn. Stat. § 609.2242, subd. 4 (2018) (count three). The case proceeded to trial.

Just before jury selection, Veitia and the state reached an agreement in which Veitia would plead guilty to domestic assault and the state would dismiss the two burglary counts. The parties conveyed the plea agreement to the district court on the record and outside the jury panel's presence. Veitia, who was aided by a Spanish translator throughout the proceedings, stated in English that he wanted to follow the agreement and plead guilty to domestic assault.

After Veitia was sworn, he answered questions to establish a factual basis. Veitia agreed that on July 20, 2019, he entered “my house” in Albert Lea, where he lived intermittently. He agreed that he was looking for A.O., “[m]y girlfriend, the mother of my children.” Veitia agreed that he “expected to startle her because” he thought she was “doing drugs.” Veitia also agreed that he pushed open a locked door, and then testified, “[A.O.] got scared. I saw her that she was, like, scared when she saw me come in.”

Veitia’s counsel stated that he had no more questions, but the district court responded that it was “not sure we’re quite there yet.” The district court asked Veitia if he had frightened A.O. Veitia responded, “Well, because of what she was doing, she got scared because she was not expecting me.” Veitia continued, “I am agreed—I am agreed she is scared.” The district court then asked Veitia, “And you frightened her when you went in on that day; is that correct?” Veitia responded, “Yes. It was not my intention.”

The district court then held a bench conference with the prosecuting attorney and Veitia’s counsel. The district court stated, “I don’t think I’ve got a plea here yet. He didn’t intend to frighten her?” The district court asked Veitia’s counsel if he would ask more questions. Veitia’s counsel responded that he could, and stated, “I think we’re spending too much time on the house itself, and the fact that he may have had a right to be there.” The district court agreed: “That is what I am saying. I don’t care whether he had a right to be there or not; I care that he came in; she wasn’t expecting him; and he did something that frightened her.”

After the bench conference, Veitia’s counsel asked more questions. Veitia agreed that he damaged the door to A.O.’s bedroom when he pushed it open. He also agreed that

he “expected to startle [A.O.] because [he] expected she was doing something that wasn’t appropriate [in the room].” When asked whether he pushed open the door in a way that was “wrong,” Veitia responded: “[I]t’s my house. I lived in my house for five years. . . . And I did not try to break the door. . . . Just that the door was locked, and I felt something was happening inside.” Veitia’s counsel continued his questioning:

Q: And if you had been . . . the person sitting in the room and somebody broke through the door, you would have been scared; right?

A: It can be.

Q: And you would, likewise, agree that by breaking through the door in that manner, you scared [A.O.]; right?

A: I noticed she was scared when she saw me.

Q: And that’s because you saw the expression on her face; right?

A: Yes.

Q: And she was also surprised to see you there; correct?

A: Yes.

Q: And she was concerned enough about what had happened that she called the police; right?

A: She was scared. She tried to call the police, but she couldn’t call the police. But she touched the phone; she dialed. She dialed 911.

At this point, the prosecuting attorney stated that Veitia’s testimony provided a factual basis. The district court inquired of Veitia about the voluntariness of the plea and his waiver of rights. The district court asked Veitia if he had any questions, and Veitia responded, “My question is that it is not like it seems for me to—when I enter my house.” Veitia and his counsel then had a brief discussion off the record.

When the parties went back on the record, Veitia spoke first:

Veitia: I don't agree with this. I don't agree with this. I don't feel good.

District court: Do you want to plead guilty to this charge?

Veitia: I don't feel good.

District court: That is not my question.

Defense counsel: Listen to the judge, please.

District court: *Do you want to plead guilty to this charge?*

Veitia: *No, no, no.*

District court: Okay.

Veitia: *I want to have a jury.*

District court: Okay.

Veitia: (In English) *Please, please.*

(Emphasis added.) The district court told the parties to return after a lunch break.

After the break, defense counsel asked the district court if Veitia could discuss whether he wanted to proceed with his current attorney. The district court told Veitia to go ahead, and Veitia stated, "I don't feel like he is defending me in my case. And the way that he asks me the questions and the answers I have to give, it feels as if I am making myself guilty of some of the things." Veitia continued, "I will plead guilty of the domestic according to the agreement that we made, but I did not enter my house with the intention of hitting or killing or hurting or anything." The district court responded, "[T]hen you are not guilty, and I can't accept the plea. If you are not guilty, you are not guilty. . . . If you don't think you are guilty of this, I can't accept a plea."

The district court specifically discussed with Veitia whether he wanted his current attorney to represent him. Veitia said that he did. The district court asked defense counsel,

“[A]re you okay with what we have done?” Defense counsel said he was “fine,” but asked the district court to “make very clear” what Veitia’s potential sentence would be for “the most serious count.” The district court told Veitia that, if he was convicted of count two, he faced up to 117 months in prison, while the plea offered a proposed sentence between 23 and 32 months, with an opportunity to argue for a departure. When asked if he understood, Veitia responded in English,

Yes, your Honor. I’m agree what they said, *and I am going to jury trial. I want to trust the jury trial*, please. Please. . . . *I’m not guilty*, and I am going to try to plead not guilty. I try to plead not guilty because I’m not guilty.

(Emphasis added.)

At that, the district court proceeded with Veitia’s jury trial. The state called six witnesses. A.O. testified that she bought her home in January 2015, she is the sole owner of the house, and Veitia paid no household expenses, even though he has lived there and they have three children together. Their relationship changed when “only 30 days after I had moved in . . . he left me for another woman.” But the two continued an “off-and-on-again relationship,” and Veitia would “come and go at his discretion.” Veitia “lived out of three duffle bags throughout the duration of [their] relationship [H]e was always prepared to walk out the door.” A.O. testified that their relationship finally ended in April 2019, and Veitia got his own apartment.

On the evening of July 20, 2019, A.O. brought their children to Veitia’s apartment for a visit. When A.O. tried to leave, Veitia “chased [her] down the hallway of the

apartment building.” A.O. testified that Veitia assaulted her, she ran from the apartment, and a police officer stopped and gave her a ride to her van.

A.O. returned home, went upstairs to her bedroom with a friend, watched a movie, and fell asleep. She awoke to “what sounded like somebody slamming a door over and over again.” The exterior door to A.O.’s home leads to a mudroom, which has a connecting door to the kitchen and leads to the rest of the house. A.O. testified that both the exterior door to the mudroom and the kitchen door were locked that night. A.O. explained that she has “little boys that like to steal food in the middle of the night, so [she] put a door on the kitchen with a padlock on it.” A.O. testified that the padlocked kitchen door “had been destroyed” when Veitia entered her home and she “found two keys on the floor of the mudroom the next day.” She testified that the keys were likely the ones Veitia “had to my house in the past,” even though she “was usually pretty vigilant about taking [Veitia’s] keys from him when he would leave.”

After A.O. woke up to a “slamming” door, she opened her bedroom door and heard Veitia “yelling” at her. A.O. was scared, so she shut the door to her bedroom and locked it. Veitia ascended the stairs and began kicking in the door to A.O.’s bedroom. Veitia’s foot “came through” one of the door panels, and eventually “the whole door was kicked open.” Veitia “punched [her] friend.” A.O. tried to push Veitia away from her friend, but Veitia grabbed her and “whipped [her] around.” Veitia “got his hand in [A.O.’s] hair and kind of threw [her] down onto the bed.” A.O. testified that “in eight years, [Veitia] has never acted the way he acted that evening, and I was scared.”

A.O.'s friend testified similarly. According to A.O.'s friend, Veitia kicked in the door and "started swinging," saying, "I'm going to kill you." Because Veitia "said something about [his] bike tipped over or smashed it," the friend left to check on his motorcycle.

A.O. called 911. Police stopped Veitia as he was exiting the backdoor. Veitia told police that he went to the house to find A.O. "doing drugs" with an "old man." Veitia told the officers he had a key to the house. Officers testified about the damage to the house and "believed it to be fresh."

After waiving his right to remain silent, Veitia testified that when A.O. bought the house, she wanted to put his name on the deed, but that he "didn't want to accept that offer." According to Veitia, A.O. gave him a key. Veitia also testified that he paid all the household bills, but stopped paying when he went to prison in 2016.

Veitia testified that he went to A.O.'s house that night because he was afraid that she "would be doing drugs in my house with my kids." He testified that he entered the house quietly and did not break through the front or kitchen door. Veitia stated that the bedroom door was locked so he "kick[ed] the door, and I open the door." Veitia testified that he did not touch A.O. or her friend, but he told A.O.'s friend, "You better leave before I break that motorcycle that I saw out there."

The jury returned a guilty verdict on all three counts. At the sentencing hearing, the district court entered a conviction on count two and sentenced Veitia to 98 months in prison.

Veitia appeals.

DECISION

I. The district court did not abuse its discretion by rejecting Veitia's guilty plea.

Veitia argues that the district court abused its discretion by rejecting his plea. Veitia contends that he “expressed to the court that he was not guilty of the burglary charges,” but provided an adequate factual basis for the domestic assault charge. He argues that the district court abused its discretion by rejecting his plea “based on [Veitia’s] denial that he entered [A.O.’s home] with the intent to commit a crime, even though this intent is not an element of felony domestic assault.” Veitia argues that because he was prejudiced by losing the benefit of the plea agreement, “[t]his Court must vacate [Veitia’s] convictions and order specific performance of the plea agreement.” The state argues that, under general principles of contract, “the State made [Veitia] an offer, and he rejected it.” Because the state did not renew the plea offer, the state argues that the plea offer was withdrawn and “is not revived at a defendant’s whim.”¹

We review a district court’s decision to accept a plea for abuse of discretion. *State v. Klug*, 839 N.W.2d 723, 726 (Minn. App. 2013). “Neither the constitution nor our Rules of Criminal Procedure give to a criminal defendant an absolute right to have his plea of

¹ The state analyzes this issue under the separation of powers doctrine, which provides that “the power to decide whom to prosecute and what charge to file resides with the executive branch.” *Johnson v. State*, 641 N.W.2d 912, 917 (Minn. 2002). We are not persuaded by the state’s reasoning. “[U]nder that same doctrine, the final disposition of a criminal case is ultimately a matter for the judiciary. . . . [And] a district court may, in its discretion, refuse to accept a plea agreement and is not bound by a plea agreement as to any sentence to be imposed.” *Id.* at 917-18 (citations omitted). Thus, we agree with Veitia that “[w]hether or not the prosecutor’s offer was withdrawn is inconsequential to whether the district court erred in rejecting the plea.”

guilty accepted.” *State v. Goulette*, 258 N.W.2d 758, 762 (Minn. 1997); *accord Klug*, 839 N.W.2d at 726 (“[W]e find no authority to support the assertion that a defendant has a right to have a plea agreement accepted.”). “To be valid, a guilty plea must be accurate, voluntary, and intelligent.” *Dikken v. State*, 896 N.W.2d 873, 876 (Minn. 2017) (quotation omitted).

Once “a plea is entered and the defendant questioned, the district court judge *must* reject or accept the plea of guilty on the terms of the plea agreement.” Minn. R. Crim. P. 15.04, subd. 3(2) (emphasis added). “The judge *may* accept a plea agreement of the parties when the interests of justice would be served.” *Id.*, subd. 3(3) (emphasis added). Several considerations are appropriate for determining whether to accept a plea. *Id.* Chief among those considerations is whether the “defendant has acknowledged guilt and shown a willingness to assume responsibility for the criminal conduct.” *Id.*, subd. 3(3)(b).

Veitia argues that he admitted facts establishing a factual basis for a guilty plea to domestic assault and the district court was wrong to reject it as insufficient. To be guilty of domestic assault, the state must prove that Veitia “commit[ted] an act with intent to cause fear in another of immediate bodily harm or death.” Minn. Stat. § 609.2242, subs. 1, 4 (2018). Veitia argues that the district court erred in its analysis for three reasons.

First, Veitia points out that, in his plea testimony, he agreed he “expected to startle [A.O.] because [he] expected she was doing something that wasn’t appropriate.” The statute requires that the defendant intended to “cause fear in another of immediate bodily harm or death.” Minn. Stat. § 609.2242, subd. 1. Relying on a dictionary definition, Veitia argues that “‘startle’ is another term for fear.” *See American Heritage Dictionary of the*

English Language 1706 (5th ed. 2011) (defining startle as “[t]o alarm, frighten, or surprise suddenly”). We do not disagree with this common definition of startle. But causing fear, alone, does not satisfy the intent element of domestic assault because the actor must intend to cause fear of immediate bodily harm or death. Veitia stated that “[i]t was *not* my intention” to frighten A.O. (Emphasis added.) The plea-hearing testimony, taken as a whole, does not show that Veitia intended to cause A.O. to fear immediate bodily harm or death. Rather, Veitia admitted only that he intended to startle A.O. because she was doing something inappropriate.

Second, Veitia argues that “[h]e further admitted that he broke the bedroom door and that caused [A.O.] to feel scared.” The record does not support Veitia’s argument. Defense counsel asked Veitia: “[I]f you had been the person sitting in the room and somebody broke through the door, you would have been scared; right?” Veitia responded: “It can be.” Veitia then testified that he “noticed [A.O.] was scared when she saw me,” and admitted that A.O. was scared. But Veitia did not admit that he intended to cause A.O. to be scared. Thus, Veitia did not acknowledge his guilt or show a willingness to assume responsibility for his conduct.

Third, Veitia argues that the district court “predicated its rejection of the plea on [Veitia’s] denial that he entered the house with the intent to commit a crime inside.” He points to his testimony that “I will plead guilty of the domestic according to the agreement we made, but I did not enter my house with the intention of hitting or killing or hurting or anything.” But Veitia’s brief is pulling this particular testimony out of context. The entire record shows that, immediately before the cited testimony, Veitia told the district court “I

don't agree with this. I don't agree with this. I don't feel good." When the district court asked Veitia if he wanted "to plead guilty to this charge," Veitia responded, "No, no, no." Then, after a brief recess, Veitia denied he intended to "hit[] or kill[] or hurt[] or anything." The district court reasonably interpreted Veitia's testimony as denying that he had the requisite intent and as requesting a jury trial. In fact, after the district court outlined the most severe sentence possible after a jury trial, Veitia stated, "I am going to jury trial. . . . Please. . . . I'm not guilty."

If the district court had accepted Veitia's plea and Veitia had later appealed the plea as involuntary or inaccurate, we would be hard-pressed to find no error. Appellate courts can and do reverse convictions when an appellant establishes that the underlying guilty plea is involuntary or the factual basis is insufficient. *See, e.g., Brady v. United States*, 397 U.S. 742, 750, 90 S. Ct. 1463, 1470 (1970) (stating that a guilty plea may not be the product of "overbearing the will of the defendant"); *State v. Trott*, 338 N.W.2d 248, 251-52 (Minn. 1983) ("The [district] court should not accept the plea unless the record supports the conclusion that the defendant actually committed an offense at least as serious as the crime to which he is pleading guilty."); *State v. Olson*, 133 N.W.2d 489, 492 (Minn. 1965) (holding district court erred in accepting guilty plea to burglary where defendant denied entering building).

Veitia specifically denied he had any intent to cause A.O. fear of immediate bodily harm and told the district court he was not guilty and wanted a jury trial. The district court did not abuse its discretion by refusing to accept Veitia's guilty plea.

II. The record evidence is sufficient to sustain Veitia’s burglary conviction.

Veitia argues that “the evidence failed to show that [he] did not have permission to enter the house [because] A.O. did not testify that [Veitia] lacked permission to enter the house.” When considering a claim of insufficient evidence, appellate review “is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did.” *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012) (quotation omitted). Appellate courts assume that “the jury believed the state’s witnesses and disbelieved any evidence to the contrary.” *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). “And we will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense.” *Ortega*, 813 N.W.2d at 100.

Veitia argues that the state failed to sufficiently prove the element of entry “without consent.”² Entry without consent means “to enter a building without the consent of the person in lawful possession,” or “to remain within a building without the consent of the person in lawful possession.” Minn. Stat. § 609.581, subd. 4(a), (c) (2018). The district court instructed the jury, “The entry does not have to have been made by force or by

² Because in resolving the third issue we determine that the warrant of commitment erroneously shows a conviction for count one even though the district court did not adjudicate Veitia of count one, we discuss the sufficiency of evidence only as it relates to count two. See *State v. Ashland*, 287 N.W.2d 649, 650 (Minn. 1979) (declining to review sufficiency of evidence for counts which defendant was not adjudicated or sentenced).

breaking in. Entry through a door or window is sufficient.” See 10A *Minnesota Practice*, CRIMJIG 17.02; .04 (2020); see also *Shannon v. State*, 379 N.W.2d 205, 207 (Minn. App. 1985) (forced entry not an element of first-degree burglary), *review denied* (Minn. Jan. 31, 1986).

The record evidence established that A.O. was in lawful possession of the house because she testified that she was the sole owner. It is true that Veitia stayed at the house while he and A.O. were together, and then intermittently after they separated. While Veitia’s possession of a house key is evidence that he had consent to enter the house, the jury had ample evidence to find otherwise based on A.O.’s testimony that she took away the key when they were not together and that they were not together on the date of the offense. Veitia does not have lawful possession by surreptitiously retaining a house key. The record evidence also established that A.O. was sleeping when Veitia entered the home and that A.O. did not invite Veitia into the home.

To show he had consent to enter the home, Veitia tries to differentiate his case from *State v. Spence*, 768 N.W.2d 104 (Minn. 2009). In *Spence*, the supreme court determined that the evidence was sufficient to support a conviction for burglary where (1) it was “undisputed that Spence moved out into his own apartment and occupied that apartment as his domicile for approximately nine months before the burglary,” (2) the victim testified that she did not think Spence had a key to the house, (3) Spence had been excluded from the property by an order for protection, and (4) “Spence’s surreptitious entry into the house in the middle of the night suggests he understood he did not have the right to enter the

house without the consent of [the victim.]" *Id.* at 110-11. Veitia makes four points based on *Spence*.

First, Veitia argues that he "retained his right to enter the house even after moving out because he possessed the key and A.O. had not revoked her consent for him to enter." As discussed above, A.O.'s testimony contradicts this argument and the jury may credit A.O.'s testimony. Second, Veitia argues that A.O. "did not divest [Veitia] of his right to enter the house by obtaining an [order for protection] against him," as occurred in *Spence*. But this argument relies on a false premise: an order for protection is not required to prove entry without consent.

Veitia's third argument relies on a similar false premise. He contends that he "did not make a surreptitious entry into the home," as occurred in *Spence*. But a surreptitious entry is not required to prove entry without consent. Fourth, Veitia argues that "A.O. had not denied him permission to enter." We disagree. Along with the record evidence already discussed, A.O. testified about her fight with Veitia before the burglary and Veitia's path of destruction through the house.

Because the record contains sufficient evidence to support the jury's verdict that Veitia did not have consent to enter A.O.'s home, we affirm Veitia's conviction of burglary.

III. Veitia's warrant of commitment must be corrected.

Veitia observes that the district court convicted and imposed a sentence for only count two, but his warrant of commitment shows convictions were entered for all three charged offenses. He argues this is error for two reasons: (1) Minnesota law prohibits

multiple convictions for lesser-included offenses, *see* Minn. Stat. § 609.04, subd. 1 (2018) (“Upon prosecution for a crime, the actor may be convicted of either the crime charged or an included offense, but not both.”); and (2) the district court convicted and sentenced Veitia only for count two, and a district court’s unambiguous, oral sentencing pronouncement controls. *See State v. Rasinski*, 527 N.W.2d 593, 595 (Minn. App. 1995) (holding a district court’s “formal on-the-record pronouncement of sentence is controlling”). The state agrees that the district court convicted Veitia and imposed a sentence for only count two, and that his warrant of commitment should be corrected.

“The court may at any time correct a sentence not authorized by law.” Minn. R. Crim. P. 27.03, subd. 9. “Clerical mistakes in a judgment, order, or in the record arising from oversight or omission may be corrected by the court at any time, or after notice if ordered by the court.” *Id.*, subd. 10. The validity of a sentence may be raised for the first time on appeal. *See State v. Maurstad*, 733 N.W.2d 141, 146-47 (Minn. 2007) (reviewing appellant’s sentencing challenge, even though that argument was not raised at sentencing).

Here, the district court convicted Veitia of count two. But the warrant of commitment erroneously shows convictions for all three counts. We therefore reverse in part as to counts one and three, and remand to the district court to vacate the convictions for those counts.

Affirmed in part, reversed in part, and remanded.