OPINION SUMMARY
MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION TWO

STATE OF MISSOURI,	)	No. ED108761
	)	
Respondent,	)	Appeal from the Circuit Court
	)	of Jefferson County
v.	)	18JE-CR02781-01
	)	
FREDERICK J. BROWN,	)	Honorable Brenda Stacey
	)	
Appellant.	)	FILED: March 23, 2021

Frederick Brown ("Brown") appeals from the trial court's judgment and sentence entered upon a jury verdict finding him guilty of one count of unlawful use of a weapon. Brown argues the trial court plainly erred in failing to intervene *sua sponte* when the State questioned a defense witness about the veracity of the victim's testimony that Brown was armed on the night in question.

AFFIRMED.

Division Two Holds: It is well-settled law in Missouri that a witness should not be asked to opine on the veracity of another witness's testimony. *See State v. Savory*, 893 S.W.2d 408, 410–11 (Mo. App. W.D. 1995); *State v. Roper*, 136 S.W.3d 891, 900 (Mo. App. W.D. 2004). Therefore, it was improper here for the State to twice ask a defense witness on cross-examination whether the victim was "making up" portions of his testimony. However, because Brown's claim of error was not preserved and our review is only for plain error, we nonetheless affirm the judgment because Brown has not met his burden of demonstrating manifest injustice has occurred. We are not convinced there is a reasonable probability that the verdict would have been different had the trial court taken *sua sponte* action regarding the State's improper questioning, given the circumstances of this case. Here, there was drastic disagreement between the testimony presented by the State and the defense witnesses and, as such, the jury was already tasked with making a credibility determination to resolve these discrepancies; the witness answered the State's improper questions in such a way that she declined to call the victim a liar or opine on his state of mind; and there was sufficient evidence to support Brown's conviction. Given our standard of review under plain error, we therefore affirm the judgment and sentence of conviction despite the impropriety of the State's conduct.

Opinion by: Robin Ransom, P.J.,
Sherri B. Sullivan, J., and Lisa P. Page, J. concur.

Attorney for Appellant: Katharine P. Curry

Attorney for Respondent: Dora A. Fichter

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