IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE OF MISSOURI,	)	
	)	
Respondent,	)	
	)	
v.	)	WD87238
	)	
PATRICK LOGAN PULSE,	)	Opinion filed: November 12, 2025
	)	
Appellant.	)	

APPEAL FROM THE CIRCUIT COURT OF CLAY COUNTY, MISSOURI
HONORABLE SHANE T. ALEXANDER, JUDGE

Division Two: Edward R. Ardini, Jr., Presiding Judge,
Alok Ahuja, Judge and Cynthia L. Martin, Judge

Patrick Logan Pulse ("Pulse") appeals the judgment of the Circuit Court of Clay County convicting him, after a jury trial, of first-degree assault and armed criminal action for shooting a Lyft driver who had arrived to drive Pulse's cousin and his cousin's girlfriend home from a bar. Pulse claimed he acted in self-defense. The trial court sentenced Pulse as a prior offender to serve consecutive terms of life imprisonment for assault and twenty years for armed criminal action.

Pulse asserts four points on appeal, three claiming the erroneous admission of evidence and one claiming instructional error. Specifically, Pulse argues the trial court

erred in admitting a video of his arrest, a video of him in the back of a police car after his arrest, and his hospital records from the day of the shooting, which revealed that Pulse tested positive for various controlled substances. Pulse also contends the trial court erred in failing to instruct the jury on the defense of justified use of force in defense of others, notwithstanding that Pulse advised the trial court during the instructions conference that he had considered submitting the defense to the jury but ultimately decided against it. Finding no merit to these claims of error, we affirm.

Factual and Procedural Background

On the evening of October 28, 2017, Pulse and his then-fiancée ("Fiancée") went to the Landing, a bar and restaurant in Liberty, Missouri, to attend the surprise birthday party of Pulse's cousin ("Cousin"). Cousin and his girlfriend ("C.G.") had just returned from a trip to Chicago that evening. A friend had picked them up from the airport and brought them directly to the Landing. The party began sometime between 8:00 and 9:00 p.m., and lasted until the bar closed at 1:30 a.m. Pulse, Fiancée, Cousin, and C.G., all drank alcohol at the party, although Fiancée only had two drinks early in the night.

When the bar closed at 1:30 a.m. on October 29th, C.G. "called for a Lyft," requesting a driver take her and Cousin to his home in Excelsior Springs. She, Cousin, Pulse, and Fiancée sat in Pulse's car to wait for the Lyft driver's arrival. Fiancée was in the driver's seat, Pulse was in the passenger's seat, and Cousin and C.G. were in the back seat. Cousin and C.G.'s luggage was stowed in the trunk of Pulse's car.

C.G. saw on her phone that the Lyft driver was approaching, so Fiancée drove Pulse's car from where they were parked to the front of the Landing to meet the driver. The

driver ("Victim") pulled up to Pulse's car and parked; the cars were facing opposite directions but "they overlapped slightly."

Victim, Cousin, C.G., and Fiancée gave varying accounts at trial of what happened next. Given our standard of review, we recite the evidence in the light most favorable to the verdict.[1] Pulse, Cousin, and C.G. exited Pulse's car. Cousin and C.G. went to the trunk to retrieve their luggage. Pulse went to Victim's car window. Victim asked Pulse if he was with C.G.; Pulse said yes, and that C.G. and Cousin were coming, they were just getting their bags. Pulse told Victim it was Cousin's birthday, and that they'd been drinking and having a good time. Pulse asked if Victim was having a good night and told Victim he was "a pretty fucking cool dude." Pulse put his fist in the vehicle to give Victim a fist bump, but Victim had bent over and was "not in the position to shake or dap or bump his hand," so Victim said, "I'm good with all that, bro."

When Victim did not return Pulse's fist bump, Pulse "just changed," like "Dr. Jekyll/Mr. H[y]de." Pulse began "cussing and fussing," saying "You're not fucking better than me" and "You going to be that kind of fucking asshole?" Pulse "hocked" and spit in Victim's face.

Victim opened the door and yelled, "What the fuck?" Pulse started to run toward his car. Cousin approached Victim, pushed him, and told him he needed to calm down. Victim pushed Cousin back, and said Cousin didn't know what was going on, and that Pulse had just spit in his face.

[1] "We view the evidence in the light most favorable to the jury's verdict, disregarding all contrary evidence and inferences." *State v. Latin*, 710 S.W.3d 584, 587 n.1 (Mo. App. W.D. 2025).

Meanwhile, Pulse had gone back to his car and was trying to get his handgun from the center console. Fiancée—who was still in the driver's seat—told him not to retrieve the gun and tried multiple times to close the console to stop him from taking it. She was unable to stop him, and Pulse removed the gun.

The gun had a "built-in laser sight"; upon pushing a button, it projected a laser light that was "used to aim with." Pulse shot Victim in the chest, then ran toward him and shot him twice in the face, shattering his jawbone. Victim collapsed.

Pulse ran back to his car. Fiancée had left the car to hide when she heard gun shots. Pulse found her, grabbed her by the waist, and "threw her into the vehicle." She got out and told Pulse they needed to stay, but he "put [her] back in the car." Pulse drove them away from the Landing, telling Fiancée that he needed to get her somewhere safe. Pulse's left thumb was injured and bleeding. He had injured it while shooting Victim. Pulse dropped Fiancée off at his mother's house and continued driving.

Meanwhile, back at the Landing, C.G. called 911. Cousin stayed with Victim and tried to help him until emergency personnel arrived.

After speaking with witnesses at the Landing, law enforcement officers conducted a search for Pulse's vehicle. They located him driving in Independence. Officers completed a traffic stop and arrested him. They recovered Pulse's handgun from the car—it was "by the driver's seat"—as well as a box of bullets from the center console.

Victim was not armed during the altercation, and there were no weapons in his vehicle.

Pulse was taken to Liberty Hospital on the morning of October 29th because of his thumb injury. During that visit, he submitted urine and blood samples, and his medical records contained the toxicology results from those samples. Various controlled substances were detected in Pulse's urine, including benzodiazepines, cocaine, opiates, and marijuana. Pulse also had a blood alcohol level of .079[2] at 9:21 a.m., approximately eight hours after the shooting.

Pulse was charged, as a prior offender, with first-degree assault and armed criminal action. Victim remained in the hospital for almost a month. He suffered extensive damage to his jaw, mouth, and tongue. When he was released from the hospital, he still had a feeding tube and his left arm was paralyzed. His jaw was wired shut for eight months. As of 2024, Victim had not fully recovered, he could not talk like he used to, and he still did not have full range of motion in his left arm.

The case proceeded to trial. Pulse argued to the jury that he was acting in self-defense when he shot Victim. The jury found Pulse guilty of both charges, and the trial court sentenced him to serve a life sentence for the assault conviction and twenty years for the armed-criminal-action conviction, to run consecutively.

Pulse appeals, asserting four claims of trial court error.

[2] The legal limit to drive in Missouri is .08.

Point I – Arrest Video

In his first point, Pulse asserts the trial court "erred in admitting Exhibit 59, a body-worn camera video showing [him] being arrested," because the video was irrelevant and its admission resulted in prejudice.

Relevant Record

At trial, Exhibit 59 was admitted and published to the jury over Pulse's objection. Exhibit 59 is a video recorded by a body-camera that a sheriff's deputy ("Deputy") wore during Pulse's arrest. The video is five minutes and fourteen seconds long. The first forty seconds show Deputy driving. Deputy then activates his lights and sirens, stops his car, and gets out with his gun pointed at Pulse's vehicle, which is parked in front of Deputy's. Deputy gives Pulse the following commands, all of with which Pulse complies: open the car door, put your hands above your head, step out of the vehicle, walk backwards, stop, get down on your knees, and lie down on your chest. Deputy handcuffs Pulse. Pulse says, "I'm not resisting." Deputy responds, "I know, you're good bud, you're good. Everything is just fine brother." Pulse then asks, "What's the problem?"

There are other law enforcement officers present in the video. They check Pulse's vehicle for occupants; there are none. Pulse is not wearing a shirt. Deputy checks Pulse's pants pockets and asks Pulse his name, which Pulse gives him. Deputy asks Pulse if he needs "medical." Pulse says, "Nope." Deputy asks, "What are you all cut up from?" Pulse answers, "I don't know," then says something unintelligible about his thumb.

Deputy helps Pulse stand up; Pulse thanks him. Deputy and another officer walk Pulse to a patrol vehicle. Pulse sits in the back and the officer fastens Pulse's seat belt and

shuts the door. The officer hears something and opens the door. The officer says, "Stop hitting." Pulse says, "Fuck," and slams his head into the barrier between the front and back seats of the patrol car. The officer yells, "Hey." The video ends.

Preservation and Standard of Review

To preserve a claim of evidentiary error in a jury-tried case, the defendant must object at the time the evidence is sought to be admitted and include the issue in his motion for new trial. *State v. Nichols*, 709 S.W.3d 372, 378 (Mo. App. W.D. 2025). Here, the State argues that "[i]t is not clear that this claim is preserved for review," asserting the claim of evidentiary error raised in Pulse's motion for new trial more accurately refers to a different police video, namely the video that is the subject of Point II in this appeal. The State contends that because Pulse did not challenge the admissibility of Exhibit 59 in his motion for new trial, we can only review this claim for plain error. Pulse disagrees, and argues his motion for new trial did challenge the admissibility of Exhibit 59. We need not resolve this dispute, however, because even presuming this claim was preserved, and thus a standard of review more favorable to Pulse applies to this claim, we find no error in the admission of Exhibit 59.

When properly preserved, "[t]he standard of review for the admission of evidence is abuse of discretion." *State v. Sander*, 682 S.W.3d 85, 96 (Mo. App. W.D. 2023). The trial court has broad discretion to admit evidence at trial. *Id.* "Abuse of discretion occurs when a trial court's ruling is clearly against the logic of the circumstances and is so unreasonable as to indicate a lack of careful consideration." *Id.* If reasonable persons can

differ about the propriety of the admission of the evidence, "then it cannot be said that the trial court abused its discretion." *State v. Williams*, 548 S.W.3d 275, 287 (Mo. banc 2018).

Moreover, we "will reverse only if the alleged circuit court error was so prejudicial it deprived the defendant of a fair trial." *State v. Jackson-Bey*, 690 S.W.3d 181, 184 (Mo. banc 2024). "Trial court error is not prejudicial unless there is a reasonable probability that it affected the outcome of the trial." *Sander*, 682 S.W.3d at 96.

Analysis

Evidence must be logically and legally relevant to be admissible. *State v. McWilliams*, 564 S.W.3d 618, 632 (Mo. App. W.D. 2018). Pulse argues Exhibit 59 was neither. He contends the exhibit was not logically relevant because "[e]vidence related to the circumstances of an arrest is only admissible if those circumstances are relevant to the crime or show an attempt to resist, evade, escape, or avoid arrest," and Exhibit 59 "did not show any of these circumstances." He asserts the exhibit was not legally relevant because "its prejudicial effects outweighed any probative value." As to both contentions, we disagree.

"Logical relevance is a low hurdle to clear; to be logically relevant, evidence must tend to make a 'fact of consequence' more or less probable, or tend to corroborate evidence which itself is relevant and bears on the principal issue of the case." *McWilliams*, 564 S.W.3d at 632 (internal marks and quotations omitted).

Here, the video of Pulse's arrest bore on a principal issue of the case: whether Pulse acted in self-defense when he shot Victim. Once Pulse injected the issue of self-defense into the case, the burden shifted to the State to prove Pulse did not act in self-defense. *See*

State v. Williams, 608 S.W.3d 205, 210 (Mo. App. W.D. 2020) ("Once the defendant has injected the issue of self-defense into the case, the burden shifts to the state to prove the absence of self-defense beyond a reasonable doubt."). Thus, the State was entitled to present evidence that Pulse fled from the Landing, requiring law enforcement to launch a search to locate and arrest him, as such evidence was inconsistent with his claim of self-defense. *See State v. Clark*, 486 S.W.3d 479, 491 (Mo. App. W.D. 2016) (In determining whether the defendant acted in self-defense, it was relevant that, "after shooting [the victim], [the defendant] did not render assistance, call for an ambulance, or even stay on the scene to tell police his version of the events. [The defendant], instead, fled the scene before the police arrived."); *see also State v. Herring*, 715 S.W.3d 623, 641 (Mo. App. W.D. 2025) ("Evidence of flight is admissible to show a defendant's consciousness of guilt."); *State v. Emery*, 701 S.W.3d 585, 605 (Mo. banc 2024) ("Evidence of [the defendant's] flight and efforts to avoid arrest were essential to give the jury a complete picture of what happened."). Therefore, contrary to Pulse's assertion on appeal, the video of his arrest did have probative value in establishing his guilt because it depicted his flight—and ultimate capture—by law enforcement. We find no abuse of discretion in the trial court's finding that Exhibit 59 was logically relevant.

Nor did the trial court abuse its discretion in finding Exhibit 59 legally relevant. "Legal relevance weighs the probative value of the evidence against its costs—unfair prejudice, confusion of the issues, misleading the jury, undue delay, waste of time, or cumulativeness." *Emery*, 701 S.W.3d at 601. "For evidence to be legally irrelevant, it is not mere prejudice that must outweigh the probative value of the evidence but *unfair*

prejudice." *Id.* "The determination whether evidence is legally relevant is firmly within the circuit court's discretion." *McWilliams*, 564 S.W.3d at 632.

Exhibit 59 was not unfairly prejudicial to Pulse. It was a short video that largely showed him cooperating with law enforcement during his arrest. Although Pulse contends the video was inflammatory because it depicted officers pointing guns at him and placing him in handcuffs, the officers were responding to a report that Pulse had shot someone and was armed and dangerous; there was nothing unreasonable or unusual about their treatment of Pulse in that situation. *See State v. Griffin*, 670 S.W.3d 105, 113 (Mo. App. E.D. 2023) ("[R]elevant evidence 'should not be excluded because it may be inflammatory, unless the situation is so unusual that the extent of the prejudice outweighs the [evidence's] probative value.'" (quoting *State v. Murray*, 744 S.W.2d 762, 772 (Mo. banc 1988))). To the extent that Exhibit 59 was inflammatory to Pulse because it showed him in an unflattering situation, that situation was not "so unusual that the extent of the prejudice outweigh[ed] [Exhibit 59's] probative value." *See id.* (trial court did not abuse its discretion in admitting police body-camera video of scene after shooting); *cf. State v. Sprofera*, 372 S.W.3d 17, 21 (Mo. App. W.D. 2012) ("Generally, under Missouri law, where relevant, evidence of the circumstances surrounding a defendant's arrest is admissible and may be considered by the jury on the issue of the defendant's guilt." (internal marks omitted)).

Finally, even if we were persuaded that the trial court abused its discretion in admitting Exhibit 59—which we are not—we nonetheless would not reverse the trial court's judgment because Pulse fails to establish prejudice from the admission of the video. To warrant reversal, the defendant must show he suffered "outcome-determinative

prejudice," meaning he must show "there is a reasonable probability that the jury would have reached a different conclusion but for the erroneously admitted evidence." *Herring*, 715 S.W.3d at 642. "Generally, prejudice does not exist when the objectionable evidence is merely cumulative of other evidence that was admitted without objection and that sufficiently establishes essentially the same facts." *State v. Wilson*, 602 S.W.3d 328, 334 (Mo. App. W.D. 2020); *see also State v. Edberg*, 185 S.W.3d 290, 294 (Mo. App. S.D. 2006) ("Any claim of error is not considered prejudicial where similar evidence has either been properly admitted elsewhere in the case or has come into evidence without objection.").

Two witnesses testified at trial about Pulse's arrest—without objection—prior to the admission of Exhibit 59: Deputy and a sergeant with the Liberty Police Department ("Sergeant"). Their testimony about Pulse's arrest was largely cumulative to the events depicted in Exhibit 59. They stated that Deputy had located Pulse driving, requested backup, and when the backup arrived, Deputy conducted a traffic stop. Deputy testified that it was a "felony car stop" and he had received information that Pulse was "armed and dangerous," so Deputy came out of his car with his gun pointed at Pulse. Deputy stated that he gave Pulse instructions to exit his vehicle and walk back to Deputy, where Deputy took Pulse into custody and "conducted a felony arrest" of him. Sergeant testified that there were multiple officers present when Pulse was taken into custody. Sergeant further testified that Pulse was not wearing a shirt, and there was blood on Pulse's hands and pants.

Given this testimony describing Pulse's arrest, there was no reasonable probability that the jurors would have acquitted Pulse had they not been shown the video of his arrest.

See State v. Brandolese, 601 S.W.3d 519, 536 (Mo. banc 2020) ("[W]hether the circuit court may have erred in allowing the officer to testify regarding [the victim's] statement in this instance is immaterial. Brandolese cannot show that the error was outcome-determinative . . . if later testimony demonstrated the same fact."). Pulse thus fails to establish prejudice from the admission of Exhibit 59.

For these reasons, we find the trial court did not abuse its discretion in admitting Exhibit 59, and Pulse did not suffer prejudice from the admission of the exhibit.

Point I is denied.

Point II – Video of Pulse in Back of Police Car

In his second point, Pulse asserts the trial court "erred in admitting Exhibit 60, an unredacted post-arrest video of [Pulse] in the back of a patrol car," because "the statements and actions depicted in the video were not logically or legally relevant, and their admission prejudiced [Pulse.]"

Relevant Record

At trial, Exhibit 60 was admitted and published to the jury over Pulse's objection. Exhibit 60 is a video showing Pulse in the back of a patrol car after his arrest. The video is forty minutes long; Pulse is in the video for approximately thirty of those minutes. Upon being placed in the back of the patrol car, Pulse starts kicking and hitting his head against the barrier separating the back and front seats of the vehicle. He hits his head against that barrier multiple times throughout the video, and blood is visible running down his forehead. Early in the video, officers place a spit shield over Pulse's mouth.

While Pulse is in the vehicle he is almost constantly speaking—to himself or to the officers—and his statements are laced with profanity. He repeatedly: calls himself "a fucking idiot," says he wishes he were dead, says he wishes he had killed himself before he was pulled over, requests the officers kill him, states that he would do the world a favor by dying, laments that no one loves him, states that he has had suicidal ideations in the past, and promises that he will kill himself at the first opportunity—either by "blowing [his] fucking brains out," "slitting [his] throat," "hanging" himself, or making himself "bleed out." He vacillates between insulting the officers, asking them questions, mocking them, joking with them, and pleading for them to shoot him. At times in the video he is screaming, at times he is sobbing, and at times he is laughing maniacally.

At one point, the following exchange occurs between Pulse and an officer:

Pulse: I'm the scum of the earth, you know what I mean?

Officer: No you're not, you're just having a rough night buddy.

Pulse: No I'm not.

Officer: Yeah, you are.

Pulse: Yeah the motherfucker who punched my fucking cousin in the mouth. Sorry I took it a little over edge. . . .

With about five minutes left in the video, Pulse is taken out of the car, gets onto a gurney, and is wheeled away.[3]

[3] Pulse was taken to North Kansas City Hospital for self-inflicted injuries to his forehead.

Preservation and Standard of Review

Pulse preserved this claim of trial court error, we therefore apply the same standard as applied in Point I and review for abuse of discretion.

Analysis

We find the trial court did not abuse its discretion in admitting Exhibit 60, as the exhibit was logically and legally relevant.

Exhibit 60 was logically relevant because it (1) tended to corroborate Victim's testimony and (2) evidenced Pulse's consciousness of guilt. While in the back of the patrol car, Pulse exhibited erratic changes in behavior and wild mood swings—including becoming suddenly aggressive and antagonizing—which tended to corroborate Victim's testimony that when Victim did not return Pulse's fist bump, Pulse "just changed" like "Dr. Jekyll/Mr. H[y]de." Exhibit 60 also showed officers placing a spit guard over Pulse's mouth, which was consistent with Victim's testimony that Pulse spat at him.

Additionally, the jury reasonably could have inferred that Pulse's behavior while in the back of the patrol car evidenced a consciousness of guilt. "Conduct and declarations" of a defendant post-offense "that are relevant to show a consciousness of guilt or a desire to conceal the offense are admissible because they tend to establish the defendant's guilt of the charged crime." *State v. Cannon*, 215 S.W.3d 295, 301 (Mo. App. W.D. 2007) (quoting *State v. Barton*, 998 S.W.2d 19, 28 (Mo. banc 1999)); *see also State v. Isa*, 850 S.W.2d 876, 894 (Mo. banc 1993) ("A permissible inference of guilt may be drawn from the acts or conduct of a defendant, subsequent to an offense, if they tend to show consciousness of guilt . . . .").

Pulse's "conduct and declarations" while in the back of the patrol car were inconsistent with his claim of self-defense and tended to show consciousness of guilt. Pulse made incriminating statements, such as he had "done fucked up everything" and—after referring to Victim—Pulse apologized that he "took it a little over edge." Pulse also antagonized law enforcement officers, and harmed and berated himself, actions that a reasonable juror could have concluded were inconsistent with those of an innocent person who had shot someone in self-defense. *See State v. White*, 870 S.W.2d 869, 875 (Mo. App. W.D. 1993) (the defendant's "threatening remarks" post-offense were "inconsistent with the demeanor of an innocent person who in self-defense accidently shot someone"); *see also Sprofera*, 372 S.W.3d at 20-21 (rejecting the defendant's claim that the trial court abused its discretion in allowing an arresting officer to testify that the defendant was agitated and used profanity as they transported him to jail: such evidence "reflected statements voluntarily made by [the defendant] while in custody immediately following his arrest" and could be considered "on the issue of the defendant's guilt").

Pulse also promised to kill himself at the first opportunity and stated that he wished he had killed himself before he was pulled over by the police, declarations that a reasonable juror could have concluded were indicative of guilt. *See State v. Robertson*, 674 S.W.3d 153, 172 (Mo. App. E.D. 2023) (the trial court did not abuse its discretion in admitting evidence of the defendant's suicide attempts post-offense: "like evidence of flight, evidence of a defendant's attempted suicide is admissible to show consciousness of guilt"); *see also State v. Painter*, 44 S.W.2d 79, 82 (Mo. 1931) (no error in the admission of evidence that the defendant attempted to commit suicide while confined in jail: while the

defendant's suicide attempt did not "raise[] a presumption of guilt," it was "a circumstance which might properly be proved and taken into consideration by the jury in connection with all the other facts and circumstances proven").

Pulse argues that *Painter* and *Robertson* do not apply here because the evidence was not that Pulse *attempted* to kill himself, only that he threatened and desired to do so. But for purposes of considering a defendant's consciousness of guilt, we see no meaningful distinction between a defendant's attempt to commit suicide and a defendant's threat or expressed desire to commit suicide. *See Robertson*, 674 S.W.3d at 172 ("Evidence that a defendant attempted *or threatened* suicide, subsequent to the time the crime was committed, is generally admissible as indicating a consciousness of guilt." (emphasis added) (quoting 23 C.J.S. *Criminal Procedure and Rights of Accused* § 1037 (2025))).

Moreover, although Pulse argues on appeal that his expressions of suicidality could have other explanations unrelated to a consciousness of guilt or a desire to avoid punishment (such as pre-existing mental illness), he never made these arguments to the trial court; we will not reverse the trial court's evidentiary ruling on the basis of arguments never presented to it. Nor does it appear from the record that Pulse specifically requested his past suicidal ideations be redacted from Exhibit 60; he simply argued that the video—in its entirety—should be excluded. Even if the issue had been preserved, we find that the few references to Pulse's past suicidal ideations did not result in outcome-determinative

prejudice: there was no reasonable probability that the jury would have acquitted Pulse had these statements been redacted from Exhibited 60.[4]

Finally, we conclude Exhibit 60 was legally relevant. Although Pulse argues that the prejudice of admitting the "disturbing 40-minute video" outweighed its probative value, we disagree. As previously stated, "[f]or evidence to be legally irrelevant, it is not mere prejudice that must outweigh the probative value of the evidence but *unfair* prejudice." *Emery*, 701 S.W.3d at 601. Exhibit 60 was not unfairly prejudicial to Pulse: if the video was disturbing, it was because Pulse's conduct was disturbing. *See id.* (Body-camera footage of the crime scene—described as "horrific"—was nonetheless legally relevant: "The scene was horrific because [the defendant's] crimes were horrific" and a "video does not create unfair prejudice merely because it depicts a terrible scene."). As described above, Exhibit 60 was highly probative, and its probative value was not outweighed by unfair prejudice.

For these reasons, Point II is denied.

Point III – Pulse's Medical Records

In his third point, Pulse asserts the "trial court plainly erred in admitting [his] entire medical record from Liberty Hospital and publishing it to the jury." He contends that the records were obtained in violation of his constitutional right to be free from unreasonable

[4] We additionally find Pulse's argument challenging the admission of his past suicidal ideations curious, given that a reasonable juror could have drawn an exculpatory inference from such evidence: namely that Pulse was not suicidal based on having committed a crime, but because he had suffered from such ideations throughout his life.

search and seizure because they were obtained through an improper investigative subpoena under section 56.085, RSMo.[5] He asserts that, by using an "improper *ex parte* subpoena after the case was already ongoing," the State failed to provide him notice so that he could move to quash the subpoena, and, as a result, the trial court should have suppressed the documents produced in response to the subpoena.

Relevant Record

The medical records at issue are those from Liberty Hospital, where Pulse was treated for his thumb injury the day of the shooting.[6] That same day—October 29, 2017—the State filed a criminal complaint against Pulse. On November 7, 2017, a subpoena—prepared by the prosecuting attorney and signed by an associate circuit judge—was served upon Liberty Hospital. The subpoena commanded an individual from Liberty Hospital to appear, pursuant to section 56.085, at the "Clay County Grand Jury, in the office of the Prosecuting Attorney," with Pulse's medical records from the date of October 29, 2017. Liberty Hospital produced seventy-three pages of Pulse's records to the prosecuting attorney. On November 17, 2017, the State filed an information charging Pulse with first-degree assault and armed criminal action.

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[5] Section 56.085 provides that, "In the course of a criminal investigation, the prosecuting or circuit attorney may request the circuit or associate circuit judge to issue a subpoena to any witness who may have information for the purpose of oral examination under oath to require the production of books, papers, records, or other material of any evidentiary nature at the office of the prosecuting or circuit attorney requesting the subpoena."

[6] Pulse visited two hospitals on October 29th. Law enforcement first took him to North Kansas City Hospital for his self-inflicted forehead injuries, but he refused treatment. He was then transported to jail. Later that day, he requested medical evaluation for his thumb, and was taken to Liberty Hospital. Pulse only challenges the admission of the Liberty Hospital records.

On February 1, 2024, Pulse filed a motion to suppress his medical records.[7] He argued that he had a reasonable expectation of privacy in the records, and the State violated his constitutional right to be free from unreasonable search and seizure because the State obtained the records without a warrant. The trial court heard argument on the motion and subsequently denied it. On March 18, 2024, the case proceeded to trial.

During Pulse's opening statement, defense counsel told the jurors that they would "see evidence that [Pulse] had some drugs in his system, which was found at the Liberty Hospital" and "one of those was cocaine."

The State sought to admit the Liberty Hospital medical records at trial during the testimony of a Liberty Police Department captain ("Captain"). Pulse objected, renewing his motion to suppress and arguing the records contained "private, confidential information" that was obtained without a warrant and thus in violation of Pulse's constitutional rights. The State countered that it "got a valid subpoena from a Clay County judge which is a proper method of obtaining these records," but nonetheless "agree[d] that they don't go back to the jury, if that's the case, about any private confidential information in there." The State also advised, "There is just a certain part we want to talk about, which the Defense talked about in their opening statement." The trial court overruled Pulse's objection, and admitted the Liberty Hospital medical records as Exhibit 69. Captain

[7] Although it is unclear from the record on appeal at what point the State produced the medical records to the defense, it is evident that the State produced them: In Pulse's motion to suppress, he requested the trial court "order that Defendant's Medical Records (Documents Bates Labeled 137-279) be suppressed from use at trial."

testified about toxicology results in the medical records that showed Pulse tested positive for benzodiazepines, cocaine, opiates, and marijuana, and had a blood alcohol level of .079. The records were not published to the jury at that time.

During closing argument, defense counsel asserted to the jury that the medical records showed Pulse had obtained a thumb injury, "suggesting a struggle had occurred" between Pulse and Victim. He told the jurors they could go through the medical records if they wanted to see evidence about Pulse's thumb injury.

During deliberations, the jury requested to see Pulse's medical records, among other exhibits. Pulse did not object to the jury receiving the medical records; the records were provided to the jury.

Preservation and Standard of Review

Pulse did not include in his motion for new trial any claim relating to his medical records. He acknowledges that the claim of error raised in this point is not preserved, and requests plain error review.

"Generally, this Court does not review unpreserved claims of error." *Brandolese*, 601 S.W.3d at 525. "Rule 30.20 alters the general rule by giving appellate courts discretion to review 'plain errors affecting substantial rights . . . in the discretion of the court . . . when the court finds that manifest injustice or miscarriage of justice has resulted therefrom.'" *Id.* at 526 (quoting Rule 30.20). In conducting plain error review, we consider "whether the trial court committed an error that was 'evident, obvious, and clear,'" and, if so, "whether the error resulted in manifest injustice or a miscarriage of justice." *Herring*, 715 S.W.3d at 634 (quoting *Brandolese*, 601 S.W.3d at 531).

The State argues the issue raised in this point is not preserved for any review, even plain error; Pulse disagrees. We need not resolve this dispute, however, because even if plain error review were available, Pulse could not prevail because he failed to establish manifest injustice.

Analysis

The State obtained the Liberty Hospital medical records through an investigative subpoena pursuant to section 56.085. On appeal, Pulse argues the prosecutor was not permitted to obtain the records under this statute because the statute only applies "[i]n the course of a criminal investigation." § 56.085. Pulse contends the subpoena was issued after Pulse had been charged, and thus the prosecutor "was no longer in the course of a criminal investigation, and instead was in the course of a criminal *prosecution*." Pulse asserts, therefore, that the records were improperly obtained and should have been suppressed.[8]

The fallacy with Pulse's argument is that he does not demonstrate how the alleged "improper" use of an investigative subpoena to obtain his medical records resulted in outcome-determinative prejudice. *See State v. Anderson*, 629 S.W.3d 39, 46 (Mo. App.

[8] Pulse provides no support for his assertion that an "investigation" for purposes of section 56.085 necessarily ceases when charges are filed. Although we express no opinion on the merits of Pulse's contention, we do note that we have affirmed a trial court's denial of a defendant's motion to suppress evidence that was obtained through an investigative subpoena issued pursuant to section 56.085 after the defendant was charged. *See State v. Plunkett*, 473 S.W.3d 166, 174-77, 176 nn.9 & 11 (Mo. App. W.D. 2015) (observing in *dictum* that "Section 56.085 does not impose an obligation to provide notice of an investigative subpoena to the subject of a criminal investigation").

We also note that Pulse's argument on appeal differs from the one raised before the trial court; his argument below was that the records were inadmissible because Pulse had a reasonable expectation of privacy in his medical records and thus the State was required to obtain a warrant for the records, which the State did not do.

W.D. 2021) ("Plain error can serve as the basis for granting a new trial on direct appeal only if the error was outcome determinative."). Pulse has not established that, but for the alleged "improper" use of the investigative subpoena, the State would not have obtained the medical records. In fact, he acknowledges that the State could have sought the records through other means, asserting the "proper procedure to obtain a subpoena once a prosecution begins is not § 56.085 but instead is under Rule 26.02," which provides for the issuance of a subpoena duces tecum. And although he contends that, had the State sought the medical records through Rule 26.02, Pulse would have received notice and "could have moved to quash the subpoena," given that the trial court denied Pulse's pre-trial motion to suppress, there was no reasonable probability that any motion to quash would have been successful.

Additionally, although Pulse argues the trial court erred by admitting the medical records into evidence and publishing them to the jury, he has not established the admission of the medical records affected the outcome of his trial. Pulse does not explain why the medical records were harmful to his case. Nor does he identify any information in the records that he asserts affected the verdict. Pulse contends that an "incorrect determination on a motion to suppress can cause manifest injustice requiring reversal," and "[t]his occurs whenever the evidence that should have been suppressed was key to the defendant's conviction," but he never explains why the medical records were "key to [his] conviction." Without doing so, he has not satisfied his burden to establish manifest injustice. *See State v. Johnson*, 524 S.W.3d 505, 513 (Mo. banc 2017) ("[T]he defendant bears the burden of establishing manifest injustice."); *State v. Stevens*, 684 S.W.3d 379, 383 (Mo. App. E.D.

2024) ("When, as here, the alleged error involves erroneously admitted evidence, an appellant establishes outcome-determinative error by showing that the erroneously admitted evidence so influenced the jury that, when considered with and balanced against all of the evidence properly admitted, there is a reasonable probability that the jury would have reached a different conclusion but for the erroneously admitted evidence." (internal marks omitted)).

Because Pulse fails to establish he suffered a manifest injustice from the admission of his medical records, Point III is denied.

Point IV – Failure to Instruct on Defense of Others

In his fourth and final point, Pulse claims the trial court "plainly erred in failing to instruct the jury regarding the justified use of force in defense of third persons." He contends the evidence was sufficient for the jury to find that Pulse was justified in using deadly force against Victim in defense of another, and he was thus entitled to have the jury instructed on the defense. We find, however, Pulse waived any claim that the trial court erred in failing to instruct the jury on this defense.

During the instructions conference at trial, Pulse's counsel advised the trial court that the defense had considered submitting a defense-of-others instruction, but had decided not to submit the defense to the jury:

> [Trial court]: All right. And with respect to your requesting additional instructions, the Defense has considered the submission of defense of others but has decided not to request that instruction; is that correct?
>
> [Defense counsel]: That is correct, Your Honor.

Plain error review is available when a defendant's failure to object is "due to inadvertence or negligence." *Jackson-Bey*, 690 S.W.3d at 187. But plain error review is waived "when counsel has affirmatively acted in a manner precluding a finding that the failure to object was a product of inadvertence or negligence." *Id.*; *see also Herring*, 715 S.W.3d at 632 ("Plain error review is waived when a defendant affirmatively makes a strategic decision not to object to the complained-of trial error." (internal marks omitted)).

Here, the record demonstrates Pulse made a conscious decision not to proffer a defense-of-others instruction after considering the issue. This was a strategic choice, not inadvertence or negligence. Pulse did not merely state he had "no objection" to the proposed jury instructions. *Cf. State v. Jones*, 686 S.W.3d 293, 302 (Mo. App. E.D. 2024) (finding the defendant did not waive plain error review of his claim of instructional error by stating he had "no objection" to the State's instructions). Rather, Pulse affirmatively stated he had "considered the submission of defense of others" but "decided not to request" that the defense be submitted to the jury. And although on appeal Pulse essentially argues the trial court should have disregarded his trial strategy decision and forced him to submit the defense to the jury, such interference would have allowed Pulse to argue that the trial court's interference with his trial strategy constituted error. *See State v. Paine*, 631 S.W.3d 691, 694 (Mo. App. W.D. 2021) ("Uninvited interference by the trial court in trial proceedings is generally discouraged because it risks injecting the court into the role of a participant and invites error."); *State v. Roper*, 136 S.W.3d 891, 902 (Mo. App. W.D. 2004) ("[A] trial judge's intervention in the proceedings may be unwelcome, as the failure to raise an objection may be a matter of trial strategy.").

Pulse waived his claim that the trial court erred by failing to instruct the jury on defense of others. Point IV is denied.

Conclusion

The judgment of the trial court is affirmed.



EDWARD R. ARDINI, JR., JUDGE

All concur.