Missouri Court of Appeals
Southern District

In Division

STATE OF MISSOURI, Plaintiff-Respondent, v. MONIKA GEAN GRAY-EL,[1] Defendant-Appellant.	No. SD38991 Filed: January 28, 2026

APPEAL FROM THE CIRCUIT COURT OF SCOTT COUNTY

Honorable R. Zac Horack, Judge

AFFIRMED

Monika Gean Gray-El ("Gray-El") was charged with one count of the class D felony of forgery and the class E felony of resisting arrest. *See* sections 570.090 and 575.150, respectively.[2] The jury found her guilty of forgery, but acquitted her of resisting

[1] We note that the lower court's judgment listed known aliases for the defendant, including: Monika Mitchell, Monika Grayel, Monika G. Gray-el, and Monika Gray.

[2] Unless otherwise noted, all statutory citations are to RSMo 2016, including changes effective January 1, 2017, and all rule references are to Missouri Court Rules (2025).

arrest. The Circuit Court of Scott County, Missouri ("trial court"), sentenced her to six years' imprisonment in the Department of Corrections. Gray-el appeals the trial court's judgment, raising one point on appeal: that the trial court plainly erred in instructing the jury on the forgery count, because it mistakenly instructed the jury that it had to find Gray-el authenticated a writing, rather than instructing the jury that it had to find that she possessed a writing she treated as genuine. Because Gray-el did not contest that issue at trial, no manifest injustice resulted, and we affirm the trial court's judgment.

Factual Background and Procedural History

Gray-el does not contest the sufficiency of the evidence to sustain her conviction. On May 17, 2021, N.M. ("Victim") frequented a church in Sikeston, Missouri, which was both founded and pastored by her husband. When she arrived at the church that morning, she noticed that the office door was open and items were strewn across the office floor, and that her purse – previously sitting by the office door – was missing. Victim's purse contained a checkbook, connected to a bank account in Sikeston where Victim and her husband were the only authorized signers.

On May 19, 2021, Gray-el attempted to cash a check on Victim's account. Since Gray-el did not have an account at the bank, the bank employees required her to present identification and to put an ink print of her finger on the check. However, because Victim had placed a stop payment notice on her account, the bank would not accept the check. The bank then contacted Victim to ask whether she had written the check to Gray-el. When Victim said no, the bank informed her that Gray-el had just left the bank. Gray-el left the bank in her car.

The bank contacted police, who began searching for both Gray-el, whom police had recognized from her photos, and her car. On May 24, 2021, police located Gray-el's vehicle parked at a residence in Sikeston. After being arrested and read her *Miranda*[3] rights, Gray-el told officers that "a white guy named T.J." had given her the check from Victim's checkbook. Gray-el said that even though T.J.'s name was not on the check, she attempted to cash it anyway because "she needed the money."

Gray-el admitted at trial that she had attempted to cash the check. She testified that she did not know the check was stolen, and that she did not know Victim or her husband. According to Gray-el, the check was a gift to her from T.J.; she stated it did not make sense for her to submit the check to the bank's security protocol if she knew it was stolen. The jury convicted Gray-el of forgery as charged. Gray-el timely appeals.

Standard of Review

Because defense counsel stated at trial that he had "[n]o objection to [the forgery] verdict director[,]"[4] the State and Gray-el both agree that this issue is not preserved for appellate review, and only plain error review is available.

> "Generally, this Court does not review unpreserved claims of error." *State v. Brandolese*, 601 S.W.3d 519, 525 (Mo. banc 2020). Rule 30.20 creates an exception and gives this Court discretion to review "plain errors affecting substantial rights ... when the court finds that manifest injustice or miscarriage of justice has resulted." *Id.* at 526 (quoting Rule 30.20). Our

[3] ***Miranda v. Arizona***, 384 U.S. 436 (1966).

[4] In contrast to other areas of the law where a statement of "no objection" may waive plain error review, "in relation to claims of ***instructional error***, Missouri case law is clear that a defendant's affirmative statement of 'no objection' to a jury instruction proposed by the State does not waive plain error review." ***State v. Jones***, 686 S.W.3d 293, 302 (Mo. App. E.D. 2024).

> review under Rule 30.20 is a two-step process. *State v. Minor*, 648 S.W.3d 721, 731 (Mo. banc 2022). "The first step requires a determination of whether the claim of error facially establishes substantial grounds for believing that manifest injustice or miscarriage of justice has resulted." *Id.* (quoting *Grado v. State*, 559 S.W.3d 888, 899 (Mo. banc 2018)). Manifest injustice must be established in connection to the particular facts and circumstances of the case. *State v. Baxter*, 204 S.W.3d 650, 652 (Mo. banc 2006).
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> Only if the appellant meets this threshold burden do we proceed to the second step, where we initially determine whether the claimed error is "plain error," in that it is "evident, obvious, and clear." *State v. Jackson-Kuofie*, 646 S.W.3d 312, 315 (Mo. App. W.D. 2022) (citing *State v. Baumruk*, 280 S.W.3d 600, 607 (Mo. banc 2009)). If we find plain error, we determine whether it actually resulted in manifest injustice or miscarriage of justice. *Minor*, 648 S.W.3d at 731 (quoting *Grado*, 559 S.W.3d at 899-900). Instructional error constitutes plain error when it is apparent that the trial court's failure to instruct the jury affected the jury's verdict. *State v. Celis-Garcia*, 344 S.W.3d 150, 154 (Mo. banc 2011).

Jones, 686 S.W.3d at 301.

Analysis

In her sole point on appeal, Gray-el claims the trial court plainly erred in:

> [I]nstructing the jury on the forgery charge under Instruction 5 […], in that Instruction 5 misdirected the jury in Paragraph "First" when the jury was instructed that she had authenticated a writing and did not instruct the jury that [Gray-el] had a writing, a check, that she treated as genuine as provided for in form MAI 424.20.4, and thereby, relieved the [S]tate of satisfying its burden of proof of requiring the jury to find all the elements of the charged forgery offense.

We disagree.

The parties agree that the verdict director submitted to the jury in Instruction 5 deviated from the applicable Missouri Approved Instruction ("MAI"). Specifically, the applicable MAI for forgery provides as follows:

> 424.20.4 FORGERY: USING, POSSESSING, OR TRANSFERRING

1. A WRITING

(As to Count __, if) (If) you find and believe from the evidence beyond a reasonable doubt:

First, that (on) (on or about) [*date*], in the State of Missouri, the defendant (used as genuine) (possessed for the purpose of using as genuine) (transferred with the knowledge or belief that it would be used as genuine) [*Describe writing*.], a writing, and

Second, that defendant knew this writing had been [*Insert one of the following. Omit brackets and number.*]
[1] (made) (completed) (altered) (authenticated) so that it purported to have been made (by another) (at another time) (at another place) (in a numbered sequence other than was in fact the case) (with different terms) (by authority of one who did not give such authority),
[2] (erased) (obliterated) (destroyed),
and

Third, that defendant did so with the purpose to defraud, then you will find the defendant guilty (under Count ___) of forgery.

However, unless you find and believe from the evidence beyond a reasonable doubt each and all of these propositions, you must find the defendant not guilty of that offense.

In this case, the error occurred with respect to paragraph First. Instead of reading as provided for above, the First paragraph submitted to the jury read as follows: "As to Count I, if you find and believe from the evidence beyond a reasonable doubt: First, that on or about May 19, 2021, in the State of Missouri, *the defendant authenticated a writing*[.]" (Emphasis added.) The parties further agree this First paragraph differed from the applicable MAI in that it asked the jury to find that Gray-el had "authenticated" a writing, not that she had used as genuine, possessed for the purpose of using as genuine, or transferred with the knowledge or belief that it would be used as genuine. The parties, differ, however, on the requested relief.

Gray-el argues that the error misdirected the jury and relieved the State of its burden to prove all the elements of forgery. The State, however, argues that because Gray-el did not contest at trial that she had used the check as if it was genuine, paragraph First was not at issue for the jury and the omission of the correct language in paragraph First did not cause Gray-el to suffer a manifest injustice. We agree with the State.

> "A verdict-directing instruction must contain each element of the offense charged and must require the jury to find every fact necessary to constitute essential elements of [the] offense charged." *State v. Doolittle*, 896 S.W.2d 27, 30 (Mo. banc 1995); *State v. Krause*, 682 S.W.2d 55, 56 (Mo.App. [E.D.] 1985) (reversing defendant's conviction for first-degree burglary because verdict director omitted the word "knowingly"). A violation of due process arises when an instruction relieves the State of its burden of proving each and every element of the crime and allows the State to obtain a conviction without the jury deliberating on and determining any contested elements of that crime. *State v. Ferguson*, 887 S.W.2d 585, 587 (Mo. banc 1994). A verdict directing instruction that omits an essential element rises to the level of plain error if the evidence establishing the omitted element was seriously disputed. *State v. White*, 92 S.W.3d 183, 192 (Mo.App. [W.D.] 2003). On the other hand, if the evidence establishing the omitted element was not in dispute, the jury's verdict would not have been affected and no plain error relief need be given. *See, e. g.*, *State v. Nolan*, 872 S.W.2d 99, 103 (Mo. banc 1994); *State v. Busch*, 920 S.W.2d 565, 569–70 (Mo.App. [E.D.] 1996).

State v. Cooper, 215 S.W.3d 123, 126 (Mo. banc 2007).

As relevant to this case, a person commits the crime of forgery when he or she, with the purpose to defraud:

> (4) Uses as genuine, or possesses for the purpose of using as genuine, or transfers with the knowledge or belief that it will be used as genuine, any writing or other thing including receipts and universal product codes, which the person knows has been made or altered in the manner described in this section.

Section 570.090.1(4).

Here, we agree with the State that the record amply supports the contention that Gray-el did not contest paragraph First of the jury instruction at trial, specifically that she possessed the check and used the check as if it was genuine. Gray-el told police that a man named T.J. had given her the check. Gray-el admitted that she took the check to the bank and attempted to cash the check, even though she knew T.J.'s name was not on the check; Gray-el said that she needed the money. Gray-el testified to this same information at trial: that T.J. had given her the check and she attempted to cash the check at the bank. Gray-el never disputed that she used the check as if it was genuine, but rather she stated that she did not know the check was stolen:

> [Gray-el:] If I think it [sic] stolen, he give [sic] me some money, why would I hold it for days.
>
> [Defense counsel:] Why would you cash it?
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> [Gray-el:] Right. Wait for days to cash it.
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> [Defense counsel:] Why did you submit to the security protocol?
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> [Gray-el:] Exactly. That is what I am saying. Since I am such a criminal, my criminal history, why would I go to a bank and put my information, ID, all of my stuff on here, my ID, everything. I am not saying it is not me that cash [sic] it.

Gray-el told the jury she used the check but that she "had no idea that check was stolen[.]" As Gray-el did not dispute the element at issue in paragraph First of the jury instruction, that she used the check as genuine, the jury's verdict was not affected and no plain error resulted. ***Cooper***, 215 S.W.3d at 126.

The trial court's judgment is affirmed.

JENNIFER R. GROWCOCK, C.J. – OPINION AUTHOR

JACK A. L. GOODMAN, J. – CONCURS

BECKY J. WEST, J. – CONCURS