In the Missouri Court of Appeals
Eastern District

DIVISION ONE

STATE OF MISSOURI,	)	No. ED113080
	)	
Respondent,	)	
	)	
v.	)	
	)	
JAMES MCGREGORY,	)	
	)	
Appellant.	)	FILED: March 10, 2026

Appeal from the Circuit Court of the City of St. Louis
The Honorable Theresa Counts Burke, Judge

Following a jury trial, James McGregory appeals the judgment entered on his convictions for the class E felony of domestic assault in the third degree and the misdemeanor of property damage in the second degree. He raises two unpreserved claims of error, challenging the admissibility of certain evidence and the amount of the judgment entered against him for the Crime Victims' Compensation Fund ("the CVC judgment"). Because McGregory fails to show that admission of the challenged evidence resulted in manifest injustice or miscarriage of justice, we decline to engage in plain error review of his first point under Rule 30.20.[1] We exercise our discretion to review his second point,

[1] All rule references are to the Missouri Supreme Court Rules (2025).

however, and conclude that the trial court plainly erred by entering a judgment in excess of that authorized by law. We grant relief by amending the amount of the CVC judgment and affirm the judgment as modified.

Factual and Procedural Background

The State charged McGregory with domestic assault in the second degree for strangling A.W., domestic assault in the third degree for striking her, and property damage in the second degree for damaging her door. The jury acquitted McGregory of second-degree domestic assault but found him guilty of the other two charges.

We view the evidence in the light most favorable to the verdict. *State v. Barriner*, 34 S.W.3d 139, 141 (Mo. banc 2000). McGregory and A.W. shared custody of their minor child. In 2023, when the child was four years old, McGregory and A.W. began arguing more frequently about custody exchanges. On August 12, 2023, at 1:00 a.m., McGregory arrived at the front door of A.W.'s apartment building and began calling her on the phone, demanding that she bring the child to him. A.W. told McGregory that the child was asleep and that he should come back later in the morning, as they had previously arranged. McGregory continued calling and threatened to kick down the door and hurt A.W. Eventually, she relented and took the child downstairs, opened the front door, and handed the child over to him. McGregory then slapped A.W. When she tried to get the child back, McGregory set the child down, grabbed A.W. by her neck, pushed her down, and hit her multiple times. A.W.'s brother saw what was happening and called 911.

At some point before the police arrived, McGregory left the scene. But he soon called A.W., threatening to "come back and do it again." A.W. testified that the assault caused her to suffer a knot on her forehead, back pain, constant headaches, and soreness. A.W.'s brother observed the knot on her forehead, and both he and the responding officer testified that A.W. complained of pain after the assault.

This was not the first time McGregory had gotten angry when A.W. refused one of his demands to give him their child. In 2021, McGregory had texted her several short "voice memos" threatening to slap her if she did not answer the phone. A one-minute recording of those voice memos was admitted into evidence and played for the jury. McGregory testified at trial and admitted to getting angry with and threatening A.W. but denied ever hitting her.

After the jury verdicts, the trial court sentenced McGregory to a term of four years in prison for the class E felony of assault in the third degree, suspended the execution of that sentence, and placed him on probation. The trial court also sentenced him to a concurrent term of ten days in jail for the misdemeanor property damage offense. Additionally, the trial court entered a judgment against McGregory in the amount of $46 for the Crime Victims' Compensation Fund. This appeal follows.

Discussion

McGregory raises two points on appeal, challenging the admission of evidence relating to the threats he made against A.W. in 2021 and the imposition of the $46 CVC judgment. Having failed to preserve these allegations of error, McGregory seeks plain error review.

As recently reiterated by the Supreme Court of Missouri, "Rule 30.20 provides the limited framework for appellate courts to consider unpreserved allegations of error." *State v. Jones*, 725 S.W.3d 577, 582 (Mo. banc 2025). Rule 30.20 provides:

> Allegations of error that are not briefed or are not properly briefed on appeal shall not be considered by the appellate court except errors respecting the sufficiency of the information or indictment, verdict, judgment, or sentence. Whether briefed or not, plain errors affecting substantial rights may be considered in the discretion of the court when the court finds that manifest injustice or miscarriage of justice has resulted therefrom.

Under this rule, "not every allegation of error is entitled to appellate review." *Jones*, 725 S.W.3d at 582. To establish plain error, the appellant has the burden to show that the alleged error was "evident, obvious, and clear[,]" affected substantial rights, and resulted in manifest injustice or miscarriage of justice. *Id.* at 583. And even if an appellant meets that burden, we still have discretionary authority to decline to review the unpreserved claim. *Id.* at 584. As the Supreme Court summarized in *Jones*, an appellate court may resolve a request for plain error review under Rule 30.20 "in one of five ways":

1. Declining plain error review when an appellant fails to facially establish substantial grounds that the circuit court committed plain error, *i.e.*, evident, obvious, and clear error;
2. Declining plain error review when an appellant fails to facially establish substantial grounds that the circuit court committed an error affecting substantial rights;
3. Declining plain error review when an appellant fails to facially establish substantial grounds that any alleged error the circuit court committed resulted in manifest injustice or miscarriage of justice;
4. Declining to exercise its discretionary authority to review for plain error; or
5. Determining an appellant facially established substantial grounds that the circuit court committed plain error affecting substantial rights

> resulting in manifest injustice or miscarriage of justice, warranting exercise of the appellate court's discretion to review and grant relief.

Id. at 585. These alternatives need not be considered in any particular order, but appellate courts "should not review and cannot grant relief pursuant to Rule 30.20 unless the court finds plain error affecting substantial rights and manifest injustice or miscarriage of justice resulted." *Id.*

Admission of Uncharged Misconduct

Evidence of prior uncharged misconduct is inadmissible when the sole purpose is to show the defendant's propensity to commit such acts, although it may be admissible for other reasons, such as to prove intent, motive, lack of accident or mistake, or a common scheme or plan. *State v. Jensen*, 524 S.W.3d 33, 41 (Mo. banc 2017).

In his first point on appeal, McGregory contends the trial court plainly erred in admitting evidence that he threatened A.W. in 2021, claiming it was not admissible for any of the permissible reasons because none of those issues were in dispute in this case. We decline plain error review of this point because McGregory has failed to facially establish substantial grounds that any error in admitting the challenged evidence resulted in manifest injustice or miscarriage of justice. *See Jones*, 725 S.W.3d at 585.

"Generally, the existence of manifest injustice or miscarriage of justice depends on the strength of the evidence leading to conviction and whether the error was outcome determinative." *Id.* at 583 (internal quotation marks and citation omitted). To find that the erroneous admission of evidence was outcome-determinative, we must conclude that the challenged 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." *Barriner*, 34 S.W.3d at 150 (internal quotation marks and citation omitted). "Put another way, the question is whether the evidence had an effect on the jury's deliberations to the point that it contributed to the result reached." *Id.* at 151. In answering this question, we consider several factors: "the overwhelming nature of the properly admitted evidence, the similarity of the charged offenses to the improperly admitted evidence, the amount of improperly admitted evidence, the extent the prosecution relied on or highlighted the improperly admitted evidence, and the prosecution's intention—whether deliberate or inadvertent—in eliciting the improper evidence." *State v. Bell*, 488 S.W.3d 228, 249 (Mo. App. E.D. 2016) (citing *Barriner*, 34 S.W.3d at 150-51).

According to McGregory, each of these factors weighs in favor of finding that the evidence of his prior threats to harm A.W. contributed to the jury's verdict. We agree that McGregory's 2021 threats, which the State intentionally proffered, were similar to the threats he made in this case. But the record belies McGregory's assertion that the State made the 2021 threats a "central feature" of its opening statement and "heavily emphasized" them throughout the trial. While the State did mention the prior threats in its opening statement and closing arguments, the references were brief, with the focus mainly on what occurred in 2023 and how the evidence established the elements of the charged crimes. Likewise, the amount of evidence about the prior threats was relatively minor when compared to the other evidence before the jury. The voice memos containing

the threats were short, totaling only about one minute. A.W. and McGregory each answered a handful of questions—by the State and defense counsel—about the 2021 threats, but most of their testimony related to the assault in 2023. And the remainder of the evidence focused on what occurred in 2023, including the eyewitness testimony of A.W.'s brother, an audio recording of his 911 call, and the testimony of the responding officer.

Characterizing this non-propensity evidence as "far from overwhelming," McGregory points to one portion of A.W.'s testimony (regarding whether any photos were taken of her injuries) that was contradicted by the responding officer. McGregory posits that his acquittal of second-degree domestic assault indicates the jury did not find A.W. entirely credible and therefore it must have been the propensity evidence that swayed the jury to find him guilty of third-degree domestic assault.

To the contrary, the jury's disparate verdicts suggest that it was not McGregory's propensity for violence against A.W. that impacted its deliberations but the strength of the non-propensity evidence specific to each assault count. As the trial court instructed, the jury was to find McGregory guilty of second-degree domestic assault if it believed that he knowingly caused "physical injury" to A.W. by strangling her; but as to third-degree domestic assault, the jury had only to find that McGregory knowingly caused A.W. "physical pain" by striking her. The jury was free to disbelieve that McGregory had strangled A.W. or that she had suffered a physical injury as a result for purposes of the second-degree count, while simultaneously believing her testimony that McGregory hit her and caused her pain (which was corroborated by her brother's testimony) for

purposes of the third-degree count. If the 2021 threats had actually influenced the jury to convict McGregory because of his propensity for violence against A.W., as he claims, then it would have convicted him on *both* counts regardless of A.W.'s credibility or the strength of the evidence on either count.

We conclude there is no reasonable probability that the jury would have reached a different verdict on the third-degree domestic assault count but for the evidence that McGregory threatened A.W. in 2021. Because McGregory cannot show that admission of the challenged evidence was outcome-determinative, he has failed to meet his burden of establishing the manifest injustice or miscarriage of justice required to warrant plain error review. Therefore, we decline plain error review of this point. *See Jones*, 725 S.W.3d at 585. Point denied.

Crime Victims' Compensation Fund Judgment

The Crime Victims' Compensation Fund was established by section 595.045[2] to provide financial assistance for certain crime victims. The statute directs the court in a criminal proceeding to enter judgment against a defendant in an amount determined by the classification of the offense for which the defendant is found guilty. Section 595.045.1 and .8.

In his second point on appeal, McGregory challenges the trial court's entry of the $46 CVC judgment, arguing that, at the time of his offenses, section 595.045 did not authorize the imposition of such a judgment in *any* amount based on his conviction for a

[2] All statutory references are to RSMo (2016), unless otherwise indicated.

class E felony. Rather, McGregory contends, the statute permitted only the imposition of a $10 judgment based on his conviction for misdemeanor property damage. According to McGregory, the trial court plainly erred in entering a CVC judgment in excess of that authorized by law. We conclude that McGregory has facially established substantial grounds that the trial court committed plain error affecting substantial rights and resulting in manifest injustice or miscarriage of justice. *See Jones*, 725 S.W.3d at 585. Therefore, we exercise our discretion to review this claim and grant relief. *See id.*

The applicable version of section 595.045 is the one in effect at the time of a defendant's offense. *See, e.g.*, *State v. Drewel*, 835 S.W.2d 494, 496-97 (Mo. App. E.D. 1992) (concluding amount of CVC judgment was not authorized by version of statute in effect at time of offense); *see also Wright v. State*, 677 S.W.2d 425, 426 (Mo. App. E.D. 1984) (finding imposition of CVC judgment "represents a substantive additional punishment" and the statute cannot be applied ex post facto to crimes committed prior to its effective date). Our primary goal when interpreting a statute is to ascertain the intent of the legislature by considering the plain and ordinary meaning of the words used in the statute. *State v. Sharp*, 341 S.W.3d 834, 844 (Mo. App. W.D. 2011). "We ordinarily presume that any omitted terms were not intended to be included within the scope of the statute." *Id.*

At the time of McGregory's offenses in August 2023, section 595.045.8 provided:

> [T]he court shall enter a judgment in favor of the state of Missouri, payable to the crime victims' compensation fund, of sixty-eight dollars upon a plea of guilty or a finding of guilt for a class A or B felony; forty-six dollars upon a plea of guilty or finding of guilt for a class C or D felony; and ten

> dollars upon a plea of guilty or a finding of guilt for [certain] misdemeanor[s] under Missouri law[.]

Because this version of the statute omits any reference to class E felonies, any such felonies committed while this version was in effect are presumptively outside the scope of crimes for which a court can impose a CVC judgment. *See Sharp*, 341 S.W.3d at 844.

There was, of course, no "E" class of felonies when the Crime Victims' Compensation Fund was first established in 1981. *See* section 595.045.1 RSMo (Supp. 1981).[3] The legislature created class E felonies as part of the amendments to the criminal code that went into effect in 2017. *See* section 557.016.1 RSMo (Supp. 2014). We presume the legislature was aware when it made those revisions that section 595.045.8 did not already encompass this new class of felonies. *See Turner v. Sch. Dist. of Clayton*, 318 S.W.3d 660, 667 (Mo. banc 2010) ("It is presumed that the General Assembly legislates with knowledge of existing laws."). The legislature certainly could have amended section 595.045.8 to add the newly-created class of E felonies at that time, but it chose not to do so. The legislature has since amended section 595.045.8, and effective August 28, 2025, defendants convicted of class C, D, *and E* felonies are subject to the

[3] At that time, a CVC judgment was to be imposed "[i]n all cases in which defendants are given a sentence of imprisonment or are placed under the supervision of the state board of probation and parole[,]" without regard to the classification of the offense for which the defendant was sentenced. Section 595.045.1 RSMo (Supp. 1981). In 1988, the legislature amended the statute, directing that CVC judgments be entered in certain amounts depending on the classification of the offense for which the defendant was convicted: $68 for class A and B felonies, $46 for class C and D felonies, and $10 for certain misdemeanors. *See* section 595.045.5 RSMo (Supp. 1988). The version of section 595.045.8 quoted above and applicable to this case went into effect in 2004. *See* section 595.045.8 RSMo (Cum. Supp. 2007).

imposition of a $46 CVC judgment. Although the State acknowledges that the 2025 version does not apply here, it claims the amendment clarifies that the legislature has always intended for class E felonies to be treated the same as class C and D felonies under section 595.045.8. According to the State, this Court should interpret the applicable version as if it too included class E felonies. We disagree.

While later statutory amendments can sometimes be helpful in determining legislative intent, we must also presume that statutory amendments are intended to affect some *change* to the existing law. *See State ex rel. Coleman v. Wexler Horn*, 568 S.W.3d 14, 20-21 (Mo. banc 2019); *see also Sharp*, 341 S.W.3d at 844 ("when the legislature amends an existing statute, any change in the law is generally deemed to have an intended effect"). Thus, we presume that, by expressly adding class E felonies to section 595.045.8 in 2025, the legislature meant to change the statute from not including those felonies to including them. In other words, the legislature did not believe that class E felonies were already within the scope of the statute when it added them. *See Sharp*, 341 S.W.3d at 844 (assuming that, by amending statute to expressly include class of persons omitted from earlier version of statute, legislature did not understand that such persons were already within the scope of earlier version). We "cannot extend the meaning of the statute to include a class of [felonies] that were not expressly listed at the time of the offense." *Id*.

When McGregory committed his offenses in 2023, section 595.045.8 authorized the imposition of a $10 CVC judgment for his misdemeanor property damage offense but did not provide for any amount to be imposed for the class E felony of third-degree

domestic assault. Therefore, the trial court erred in imposing the $46 CVC judgment against him and—given the plain language of the applicable version of the statute, which was still in effect at the time of sentencing in 2024—this error was "facially evident, obvious, and clear." *Jones*, 725 S.W.3d at 583.

A CVC judgment that does not comport with the applicable version of the statute constitutes a sentence in excess of the maximum authorized by law. *See Herron v. State*, 728 S.W.2d 569, 572 (Mo. App. W.D. 1987); *see also State ex rel. Ashford v. Rowley*, 120 S.W.3d 749, 749 (Mo. banc 2003). The trial court's error affected McGregory's substantial right not to be sentenced in excess of what is authorized by law. *State v. Bates*, 464 S.W.3d 257, 267 (Mo. App. E.D. 2015). Left uncorrected, this unauthorized sentence would result in manifest injustice and miscarriage of justice. *See id.* As such, plain error review and relief are warranted here. *See Jones*, 725 S.W.3d at 585. Point granted.

Rule 30.23 directs this Court to finally dispose of a criminal case, unless justice requires otherwise. Justice does not require remand to the trial court because it would have no discretion to do anything other than enter the correct amount in the CVC judgment. Under these circumstances, this Court may finally dispose of the case by modifying the judgment itself. *See State v. Schnelle*, 398 S.W.3d 37, 47-49 (Mo. App. W.D. 2013) (correcting judgment to strike unauthorized order of restitution and affirming modified judgment); *State v. Garcia*, 587 S.W.3d 688, 696 (Mo. App. W.D. 2019) (correcting amount of restitution and affirming modified judgment).

Conclusion

We amend the amount of the CVC judgment to $10. The judgment is affirmed as modified.



MICHAEL E. GARDNER, Judge

Robert M. Clayton III, Presiding Judge, concurs.
Lisa P. Page, Judge, concurs.