In the Missouri Court of Appeals
Eastern District

DIVISION FOUR

STATE OF MISSOURI, Respondent, v. CHRISTOPHER J. WHITBEY, Appellant.	)))))))))	ED113286 Filed: March 3, 2026

Appeal from the Circuit Court of Lincoln County
The Honorable David Ash, Judge

Introduction

Christopher Whitbey (Whitbey) appeals his convictions for fourteen counts of statutory sodomy in the first degree. On appeal, Whitbey presents two points of alleged error: (1) the trial court's failure to sua sponte exclude the testimony of child abuse forensic examiner and expert witness, Michelle Stille (Ms. Stille), that "2 to 3 percent of all allegations made by children are false"; and (2) the trial court's failure to conform its written judgment sentencing Whitbey to "999 Years" on Count Fourteen to its oral pronouncement sentencing him to "life" imprisonment. We affirm in part and remand with instructions.

Factual and Procedural Background

This Victim was born in 2001. Whitbey was Victim's stepfather and the biological father of Victim's younger brother (Brother). Whitbey married Victim's Mother (Mother) in 2007, separated in 2013, and divorced in 2016. In 2018, after an incident at school Brother told Mother Whitbey had sexually abused Victim. Mother immediately went home and asked Victim about it, but Victim refused to talk to her about it. Mother subsequently took Victim to a child advocacy center for a forensic interview, and during the interview Victim disclosed Whitbey had sexually abused him. Subsequently, the State charged Whitbey with fourteen counts of statutory sodomy in the first degree.

Evidence at Trial

Brother testified he remembered some things that seemed "out of place" during his childhood. He testified that during a family camping trip he walked into the family camper to use the restroom and saw Victim on the bed and Whitbey on his knees on the floor in between Victim's legs with a hand on each of Victim's legs. Whitbey "jolt[ed]" when he noticed Brother and told Brother to go outside. On cross-examination, Brother testified he observed Whitbey and Victim when coming out of the camper's restroom contrary to his testimony on direct-examination. Victim testified Whitbey pulled down his pants and put his mouth on Victim's penis while they were alone in the camper.

Victim testified about several other instances when Whitbey sexually abused him, and that Whitbey abused him from age five to age thirteen. Victim recalled Whitbey abusing him at least twenty times. Victim testified to an instance of abuse that occurred

in his basement bedroom. While there, Whitbey touched Victim's penis with his hand and mouth, and when Whitbey heard somebody outside the room, he walked outside and saw Brother. Victim was not sure if Brother witnessed anything. Brother also testified that on one occasion he caught Whitbey and Victim in Victim's basement bedroom and saw Victim sitting on the bed, and Whitbey on his knees in front of Victim in between Victim's legs. Again, Whitbey "jolt[ed]" when Brother walked in. Whitbey told Brother to go upstairs, and he did. Whitbey testified on his own behalf, and denied ever abusing Victim.

The State also called expert witness Ms. Stille, Director of Forensic Services at the Child Advocacy Center of Northeast Missouri (CAC), to testify. Ms. Stille testified she worked for the CAC for seventeen years, and in that time had conducted over 2,000 forensic interviews. She testified about the training she received regarding how children disclose sexual abuse, and that children typically do not disclose abuse in one event, but rather that disclosure is a process taking any number of times for a child to talk about what happened to them. She also testified to different types of disclosure, including "delayed disclosure," which in her experience occurs very often—as well that children often initially deny abuse and disclose later in life. Ms. Stille acknowledged she did not interview Victim and she was "just speaking to generalities based on [her] training and [her] experience." On cross-examination, the following exchange occurred between defense counsel and Ms. Stille:

> Defense: So you're taking down what a child tells you, whether that could be the truth or could be a lie?

Ms. Stille: That is correct. Part of our job as forensic interviewers is not – it's not to determine whether or not the child is telling the truth or not. It's just to gather information for that investigative team to use.

Defense: All right. And so, again, you spoke a lot about reasons why kids may have delayed disclosure and a variety of things. You talked about grooming and so forth. But are there other reasons why children may make a disclosure other than the truth?

Ms. Stille: Sometimes, yes.

Defense: Okay. And that could include what?

Ms. Stille: So it doesn't happen often. Research and my experience coincide with about 2 to 3 percent of all allegations made by children are false. Of those cases, what I have seen sometimes would be one parent telling a child what to say, or an adult in that child's life telling them what to say.

Defense: Okay. So children can lie, right?

Ms. Stille: Yes, people in general can lie.

Defense: And they can misremember things?

Ms. Stille: Yes.

Defense: All right. Maybe they dreamt of things or they fantasized some things?

Ms. Stille: It's possible, yes.

Defense: I'm just throwing out that there's other reasons other than it is what happened.

Defense counsel did not object or move to strike Ms. Stille's testimony. On redirect, Ms. Stille reasserted she does not determine the veracity of the child's statement during an interview. In closing argument, defense counsel stated, "… Michelle Stille, the so-called expert at the beginning, said there are other reasons why people say things happen, which you are required to consider in this case. They could be a lie. It could be

misremembered. It could be a misplanted memory, a misplaced or transplanted memory." The jury found Whitbey guilty on all counts.

Sentencing

On January 24, 2025, the trial court orally pronounced its judgment on all counts. Relevant to this appeal, the trial court pronounced, "[a]nd as to Count [Fourteen], though it's not clear to the time, the Court finds that particular count to be particularly disturbing for a number of reasons, and it is a sentence of **life in prison** to be consecutive to the other counts in this case." (emphasis added). On January 29, 2025, the trial court signed a written judgment reflecting a sentence of "999" years' imprisonment on Count Fourteen. Whitbey did not include a claim of error pertaining to the discrepancy between the oral pronouncement and written judgment in his motion for new trial. This appeal follows.

Standard of Review

Whitbey concedes, and we agree, he did not object at trial to properly preserve his first point for appeal, nor was it included in his motion for new trial, thus, Whitbey requests we review Point One for plain error pursuant to Supreme Court Rule 30.20. "[P]lain 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." Rule 30.20, Mo. R. Crim. P. (1988). "Under plain error review, we first examine the record to determine whether or not the appellant's claim is one that, on its face, establishes grounds for believing that a manifest injustice has occurred." *State v. D.W.N.*, 290 S.W.3d 814, 817 (Mo. App. W.D. 2009) (internal citation omitted). Only

after plain error is facially established do we review the record to determine whether a manifest injustice or a miscarriage of justice actually occurred. *Id.* (internal citation omitted). Because plain error review should be used sparingly, "in the absence of such a determination, appellate courts should decline to exercise discretion to review for plain error under Rule 30.20." *Id.* (citing *State v. Brown*, 902 S.W.2d 278, 284 (Mo. banc 1995)).

Analysis

Point One: We decline to review Point I for plain error as Whitbey invited the testimony complained of on cross-examination

In his first point on appeal, Whitbey alleges the trial court plainly erred in failing to *sua sponte* strike Ms. Stille's testimony wherein she testified, "2 to 3 percent of all allegations made by children are false." Specifically, Whitbey claims Ms. Stille's testimony invaded the province of the jury because the jury has the sole responsibility to make credibility determinations, and that unsolicited statistic provided jurors a de facto 97-98% "truth rate" for sexual abuse allegations by children, including Victim.

"Although plain error review is discretionary, this court will not use plain error to impose a *sua sponte* duty on the trial court to correct Defendant's invited errors." *State v. Jasso*, 688 S.W.3d 804, 809 (Mo. App. E.D. 2024) (internal quotation omitted); *see State v. Ellis*, 512 S.W.3d 816, 837 (Mo. App. W.D. 2016) (holding defendant cannot use the complained-of testimony that children can and do lie and will often twist stories when caught in a lie to seek reversal because defense counsel invited the error by eliciting the testimony on cross-examination); *see also State v. Drago*, 531 S.W.3d 627, 633 (Mo.

App. E.D. 2017) (holding defendant "[could not] take advantage of invited error to seek a reversal of his conviction, and the trial court did not plainly err in failing to sua sponte … strike the witnesses' testimony" where defense counsel asked whether "children disclose sexual abuse for attention ... and then continue to disclose for the sole purpose of being in fear?" and the witness responded: "my training states that that is a myth and it's very rare that a child would falsely accuse for attention.") (internal quotation marks omitted).

Here, Whitbey invited this error by asking, "[s]o you're taking down what a child tells you, whether that could be the truth or could be a lie?" and "[b]ut are there other reasons why children may make a disclosure other than the truth?" among other sought-after concessions that children can lie, misremember, or fantasize such things. As such, Point One is denied.

Point Two: The trial court erred in executing its written judgment because the written judgment does not match the oral pronouncement for Count Fourteen

In his second point, Whitbey alleges the trial court's written judgment and sentence of 999 years' imprisonment does not conform to the trial court's oral pronouncement of life imprisonment. Whitbey requests this Court order the trial court to correct this error pursuant to Rule 29.12(c) as he alleges it is a clerical mistake. The State concedes that a material discrepancy between the oral pronouncement and written judgment is a clerical mistake that can be corrected by a nunc pro tunc order.

Rule 29.12(c) provides "[c]lerical mistakes in judgments, orders or other parts of the record and errors in the record arising from oversight or omission may be corrected by the court at any time after such notice, if any, as the court orders." Rule 29.12(c), Mo.

R. Crim. P. (1980). "Generally, the written sentence and judgment should reflect the trial court's oral pronouncement of sentence before the defendant." *Rupert v. State*, 250 S.W.3d 442, 448 (Mo. App. E.D. 2008) (internal citation omitted). "If there is a material difference between the court's oral pronouncement of sentence and the written judgment, the oral pronouncement of sentence controls." *State v. Berry*, 506 S.W.3d 357, 364 (Mo. App. W.D. 2016) (internal quotation omitted). "The failure to memorialize accurately the decision of the trial court as it was announced in open court is clearly a clerical mistake." *McArthur v. State*, 428 S.W.3d 774, 782 (Mo. App. E.D. 2014) (internal quotation omitted).

In this case, the trial court orally pronounced a life sentence as to Count Fourteen. However, the trial court's written judgment reflected "999" years' imprisonment for that conviction. Because the trial court's written judgment does not memorialize accurately the trial court's oral pronouncement of sentence, the judgment contains a clerical mistake. A nunc pro tunc order can correct this type of clerical mistake. *See State v. Brown*, 558 S.W.3d 105, 118 (Mo. App. E.D. 2018) (internal citations omitted). Accordingly, we remand this matter for the trial court to correct the written judgment to conform with its oral pronouncement of a life sentence on Count Fourteen.

Conclusion

We affirm in part and remand in part. This case is remanded for the sole purpose of entering a nunc pro tunc order that conforms the written judgment to reflect the trial court's oral pronouncement of life imprisonment for Count Fourteen. The judgment is affirmed in all other respects.



Rebeca M. Navarro-McKelvey, Presiding Judge

Gary M. Gaertner, Jr., Judge and
James M. Dowd, Judge, concur.