Missouri Court of Appeals

Southern District

In Division

STATE OF MISSOURI, Plaintiff-Respondent, v. ADEN XAVIER WARR HARPER, Defendant-Appellant.	Number SD38807 Filed: May 28, 2026

APPEAL FROM THE CIRCUIT COURT OF GREENE COUNTY

Honorable Joshua B. Christensen, Circuit Judge

(Before Bates, J., Goodman, J., and Nickell, J.)

AFFIRMED IN PART AND REMANDED IN PART WITH INSTRUCTIONS

PER CURIAM. Aden Harper (Defendant) forged signatures on documents of legal significance; filed with the recorder of deeds an affidavit of title and a quitclaim deed bearing forged signatures; filed a materially false petition for an adult abuse order of protection against H.B.; attempted to rent and sell H.B.'s house without her consent; threatened H.B.; and contacted H.B. in violation of a no-contact order; all in an effort to defraud and harass H.B., to cause her emotional harm, and to deprive her of her house.

A jury found Defendant guilty of 11 counts, which consist of: four counts of forgery, two counts of filing a false document, one count of attempted stealing by deceit, one count of first-degree harassment, and three counts of second-degree harassment. Defendant raises 16 points on appeal, including several plain error claims, as well as challenges to the sufficiency of the evidence, the admission or refusal of certain evidence and testimony, and the denial of his motion to recuse the trial judge. We remand for the court to enter an order *nunc pro tunc* correcting the written judgment to conform to Count 8 in the third-amended information and the jury's verdict thereon, reflecting conviction and sentencing for the class D felony of attempted stealing by deceit property valued at more than $25,000. In all other respects, we affirm.

Background[1]

Defendant had been convicted of attempted forgery and other felonies before he developed a romantic relationship with H.B., who, along with her minor children, lived in a house that H.B. had inherited. Defendant represented that he was a lawyer, and he and H.B. obtained a license to operate a business for which Defendant was to manage the legal affairs. When Defendant was "kicked off" the property where his RV had been parked, H.B. allowed Defendant to park his RV in her driveway in exchange for his help

[1] On appellate review, we accept as true all evidence tending to prove guilt, together with all reasonable inferences that support the verdict, and ignore all contrary evidence and inferences. ***State v. Eggleston***, 728 S.W.3d 432, 436 (Mo. banc 2026). We applied this principle in summarizing the factual background of this case.

paying her utility bill. Defendant lived in the RV with S.H., whom he represented as his daughter to H.B. when, in fact, Defendant and S.H. had a "marriage contract."

Defendant started referring to H.B. as his wife even though they were not married. A few months after moving the RV onto H.B.'s property, Defendant told H.B. that she and her children had to get out of their house. Defendant had petitioned for and obtained an *ex parte* order of protection against H.B. and another adult resident in the house, forcing H.B., her children, and her friend to leave the residence. H.B. and the children lived in a hotel room for 11 days before they could return home.

Defendant forged H.B.'s signature on a durable power of attorney that purported to name himself as H.B.'s attorney-in-fact, with full authority to manage her financial, property, and legal matters. Defendant then forged H.B.'s signature on an affidavit of title and a quitclaim deed, which purported to transfer H.B.'s house to Defendant. The notary public who notarized these documents testified that Defendant had appeared alone without a power of attorney document, only Defendant's signature had been witnessed, and the documents were altered by the addition of other signatures after the documents had been notarized. Defendant took the affidavit of title and quitclaim deed to the Greene County Recorder's Office and had them filed in the real estate records. H.B. neither signed these documents nor gave Defendant permission nor power of attorney to execute them on her behalf.

Defendant then filed a false and misleading petition for an adult abuse order of protection, which again forced H.B. and her children out of their house. Although he was not the father of H.B.'s children, Defendant attempted to use the court system to obtain custody of H.B.'s children, whom he referred to as "my kids[.]"

With H.B. removed from the home, Defendant contacted an investor and signed a written contract to sell H.B.'s house. H.B. had not given Defendant permission to sell the house. If the investor had known this, he never would have contracted with Defendant for the purchase. Defendant wanted cash on the spot, but the investor insisted on closing with a title company. The sale could not be completed because the quitclaim deed purporting to give Defendant title to the house appeared suspicious to the title company. To verify ownership, the title company attempted to contact H.B. through Defendant. Defendant said H.B. was unavailable because she was in the hospital.

When H.B. and her children were able to return to their house, some of their clothes and personal items were missing. H.B. decided to move out of the house for the safety of herself and her children.

Two months later, H.B. learned that Defendant had changed the locks on the house and was attempting to rent it to a tenant. The prospective tenant had placed a deposit, but he decided not to follow through when he learned that the house belonged to H.B. The prospective tenant testified that Defendant "planned on doing me wrong

from the beginning." When that lease fell through, Defendant sent H.B. a letter, from jail, in which he referred to himself as the house's landlord/owner, asserted H.B. was not current on her rent, and notified H.B. the house would be declared abandoned and her possessions removed. In September 2021, Defendant sent another letter, again from jail, offering to "settle" with H.B. in exchange for: (1) payments of $2,300 per month for 25 years; (2) full custody of H.B.'s children (referring to himself as "their Father[,]" even though he was not their father); and (3) an admission that H.B. had transferred the house to Defendant. He also referenced security cameras he had placed in the house, the Castle Doctrine, and his "right to defend my property at all cost[.]"

The Public Defender's Office represented Defendant after he was charged and arrested. Despite being represented, Defendant filed numerous *pro se* motions and communications with the trial court. Defendant was rude, disrespectful, and sometimes belligerent during pre-trial hearings.[2] He repeatedly and vociferously communicated dissatisfaction with his appointed counsel and asked to fire his public defender. The trial court strongly advised Defendant against self-representation and determined that Defendant understood: (1) the charges against him; (2) what waiver of the right to

[2] Among other things, Defendant purported to make a "citizen's arrest" of the trial judge and the prosecutors assigned to this case. He threatened to have the bailiff charged with "tampering with a victim" if he did not arrest the trial judge. The court and the prosecutor questioned Defendant's mental health and fitness to stand trial, but doctors with the Department of Mental Health determined he does not suffer from mental disease or defect by which he lacks the capacity to understand the proceedings against him or to assist in his own defense.

counsel entailed; (3) private counsel would not be appointed; (4) the trial date would not be continued due to his self-representation or later request for appointed counsel; and (5) the jail would not be ordered to change its electronic-device protocols for Defendant. After doing so, the trial court found that Defendant had knowingly, intelligently, and voluntarily waived his right to counsel. The court granted both the public defender's motion to withdraw and Defendant's request to represent himself.

Six weeks later, Defendant filed a motion for appointment of a specific defense attorney in private practice. That motion was denied, but a referral was made to the Public Defender's Office. The Public Defender's Office declined to represent Defendant at that time.

Defendant chose to testify in his own defense at trial. He testified that he completed and filed a petition for an adult abuse order of protection, which had H.B. removed from the house, and he expressed disappointment that H.B. got to take "my kids" or "my children" with her when she was removed from the house. Defendant also testified that he had attempted to sell and rent the house and that he had sent the letters to H.B. and called her from jail. Defendant's answers on cross-examination were evasive, but he admitted that he had signed H.B.'s name on the power of attorney, affidavit of title, and quitclaim deed. Defendant never filed any documents with the Greene County Recorder's Office to rectify the cloud he had created on the title to H.B.'s house.

The jury found Defendant guilty of all 11 counts charged in the third-amended information. Although the trial court had reviewed Defendant's prior convictions and had found him to be a prior and persistent offender, those sentencing enhancements were not applied because the jury had been discharged without making findings of fact as to Defendant's previous offenses.[3] Defendant was sentenced to four years for each conviction of forgery (Counts 1-4), filing false documents (Counts 5-6), and first-degree harassment (Count 7); five years on the attempted stealing conviction (Count 8); and 365 days on each of the second-degree harassment convictions (Counts 9-11). The sentences for Counts 1 and 2 were to run concurrently to each other but consecutive to all other counts, as were the sentences for Counts 3 and 4. The sentences for Counts 5-11 were also ordered to run consecutively. This appeal followed.

We first address Defendant's preserved allegations of error and next address the unpreserved claims for which Defendant has requested plain error review. For ease of analysis, we address Defendant's 16 points out of order.

[3] The Supreme Court of the United States handed down ***Erlinger v. United States***, 602 U.S. 821 (2024), less than a month prior to the beginning of Defendant's trial, ruling that "only a jury may find facts that increase the prescribed range of penalties to which a criminal defendant is exposed." ***Id***. at 833. The trial court refused the State's post-trial, pre-sentencing request to have a separate jury empaneled to make findings of fact as to Defendant's previous offenses.

Preserved Claims

Sufficiency of the Evidence (Points 1-5)

In Defendant's first five points, he challenges the sufficiency of the evidence on the scienter element of five of the offenses of which he was found guilty. He claims the State did not prove that he had the requisite purpose to defraud, to deprive H.B. of her house, or to cause H.B. emotional distress.

We review the record to determine whether the evidence was sufficient to support the charged crime, based on the elements of the offense as set forth in the statute creating that offense. ***State v. Eggleston***, 728 S.W.3d 432, 436 (Mo. banc 2026). "In determining whether there is sufficient evidence to support a judgment of conviction, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." ***Id***. (citation modified). This same standard applies whether the evidence is direct or circumstantial. ***Id***. at 439-41.

"Intent to defraud is rarely capable of proof by direct evidence and may be – and usually is – proven entirely by circumstantial evidence." ***State v. Byington***, 575 S.W.3d 720, 725 (Mo. App. E.D. 2019). The same is true of proving the purpose or intent to cause emotional distress, ***State v. Smith***, 668 S.W.3d 605, 608-09 (Mo. App. S.D. 2023), and the purpose or intent to deprive another person of their services or property. ***State v. Holbruck***, 410 S.W.3d 239, 242 (Mo. App. W.D. 2013). "Circumstantial evidence alone

can be sufficient to support a conviction, and the evidence need not demonstrate the impossibility of innocence." ***State v. Banks***, 511 S.W.3d 463, 466 (Mo. App. E.D. 2017).

Viewing the evidence and reasonable inferences therefrom in the light most favorable to the jury's verdicts, a reasonable juror could find beyond a reasonable doubt that Defendant acted with the purpose to defraud, to deprive H.B. of her house, and to cause H.B. emotional distress. Defendant signed H.B.'s name on documents of legal significance, altered documents that had been notarized, filed these documents with the Recorder of Deeds, and relied on these documents as the basis to claim he owned the house, in an attempt to sell it to an investor and in a later attempt to rent it to a tenant. Defendant used the judicial process to have H.B. and her children removed from their house and attempted to have H.B.'s children removed from her custody based on false and misleading assertions in a court filing. Defendant continued to contact H.B. from jail in violation of a court order not to do so. All these acts, as well as others previously set forth in more detail in this opinion, support an inference by a reasonable fact-finder that Defendant had a systematic, devious, and purposeful plan to defraud, to steal H.B.'s house, and to cause emotional harm to H.B.

Defendant would have us credit his testimony that he believed he had authority to act as he did. The jury could disbelieve this testimony and implicitly did so. ***State v. Jackson***, 433 S.W.3d 390, 399-40 (Mo. banc 2014). We must disregard it on appellate review. ***Eggleston***, 728 S.W.3d at 436. Points 1-5 are denied.

Judicial Recusal (Point 8)

While representing himself, Defendant filed a motion to recuse the trial judge. Defendant alleged that the trial judge: (1) "forced [Defendant] to go [p]ro [s]e"; (2) had shown prejudice against Defendant regarding discovery; and (3) "will also be called as a [w]itness for the [d]efense." On appeal, Defendant argues the trial judge abused his discretion in denying the motion to recuse because a reasonable person would lack confidence in the judge's impartiality since the judge was the alleged victim in a separate, pending case in which Defendant had been charged with judicial tampering.

Our review is for abuse of discretion. ***Anderson v. State***, 402 S.W.3d 86, 92 (Mo. banc 2013). We presume the trial judge "acts with honesty and integrity and will not preside over a hearing in which the judge cannot be impartial." ***Id***. "Rule 2-2.11(A) sets the standard for when a judge should recuse in a proceeding." ***Anderson***, 402 S.W.3d at 91.[4] Rule 2-2.11(A) provides, "A judge shall recuse himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned[.]" ***Id***. "The rule is not limited to actual prejudice and also requires recusal when a reasonable person would have factual grounds to find an appearance of impropriety and doubt the impartiality of the court." ***Anderson***, 402 S.W.3d at 91 (citation modified).

Rule 2-2.11(A) is balanced by the competing obligation in Rule 2-2.7: "A judge shall hear and decide matters assigned to the judge, except when recusal is appropriate

[4] Rule references are to Missouri Court Rules (2024).

under this code or other law." ***Id***. "If a judge recuses for reasons not truly warranting recusal, the judge is neglecting the ethical obligation to hear and decide matters for which there is no adequate basis for recusal." ***State ex rel. Bailey v. Pierce***, 690 S.W.3d 190, 192 n.2 (Mo. banc 2024).

"When evaluating facts in support of disqualification, this Court considers the entire record." ***Anderson***, 402 S.W.3d at 92. Whether a fact requires recusal depends on the context. ***Id***. at 91. "[A] disqualifying bias or prejudice is one that has an *extrajudicial source* and results in an opinion on the merits on some basis *other than what the judge learned from the judge's participation in a case*." ***Worthington v. State***, 166 S.W.3d 566, 579 (Mo. banc 2005) (emphasis added, quoting ***Smulls v. State***, 10 S.W.3d 497, 499 (Mo. banc 2000)).

Defendant has not alleged any factual grounds that rise to the appearance of impropriety by the trial judge. Defendant has not shown any of the specific circumstances for which recusal is required under Rule 2-2.11(A), and the circumstances he *did* raise did not require judicial recusal. Defendant was not "forced" to represent himself. He knowingly, voluntarily, and intelligently chose self-representation, as addressed more fully in response to Points 6 and 7 in this opinion. The trial judge's alleged bias in discovery was nothing more than the court's refusal to grant Defendant extraordinary privileges in jail. Defendant acknowledged self-representation would not be a means to get extraordinary access to his electronic devices in jail. However, after

his request for self-representation was granted, he blamed the trial judge for foreseeable difficulties accessing his devices and electronic copies of discovery previously provided to his appointed counsel.

Defendant's pending charge of tampering with a judicial officer also did not require the trial judge to recuse. Defendant's statement that he intended to call the judge as a witness at trial in *this* case was disregarded as a transparent attempt to have the trial date continued. When the prosecutor announced in open court that a judicial-tampering charge would be filed based on Defendant's statements and actions in court, Defendant stated he was "*begging*" the State to file the charge against him. The trial judge remained unfazed: "I take [Defendant's] comments as nothing more than an idle attempt to ask the Court to recuse, which has already been made and denied. And we … remain set for trial." At trial, Defendant only raised this issue in a blatant attempt to create a mistrial, or as he called it, "throw a skunk in the jury box." As the trial judge explained on the record outside of the jury's presence, the judicial-tampering charge was not filed at the judge's insistence or with his approval, and it played no role in his rulings in *this* case. At sentencing, the trial judge reiterated:

> [Defendant's] charged in that case with conduct that occurred in open court in this courtroom, and that involved some vulgar and indecorous remarks by [Defendant]. But as he's noted himself here today he can sometimes be hotheaded. Those types of outbursts have at times characterized his behavior in these proceedings, and yet it was patently obvious to the Court and to any reasonable observer familiar with [Defendant] that his remarks were empty and idle attempts to achieve what he had previously secured through the same tactics, which is

> obtaining a continuance or a recusal. … [T]hose remarks did not color the Court's impression of any issues at trial or affect any of the Court's rulings. The fact that the State has elected to file charges for that conduct does not either.

The full record shows the trial judge was exceedingly patient and accommodating with Defendant throughout pre-trial, trial, and sentencing. The judicial-tampering charge and any conflict Defendant thought existed with the trial judge were the self-invited result of Defendant's own poor decorum and decisions in the courtroom, not the result of bias arising from an extrajudicial source. Defendant's petulance and belligerence toward the trial judge and others in the courtroom did not need to be rewarded. ***State v. Redmond***, 686 S.W.3d 333, 341-42 (Mo. App. E.D. 2024). The trial court did not abuse its discretion in overruling Defendant's motion for judicial recusal. Point 8 is denied.

Evidentiary Claims (Points 13 and 15)

A trial court has broad discretion to admit or exclude evidence during a criminal trial. ***State v. Emery***, 701 S.W.3d 585, 600 (Mo. banc 2024). "Error occurs only when there is a clear abuse of this discretion." ***Id***. (citation modified). A court "abuses its discretion only if its decision to admit or exclude evidence is clearly against the logic of the circumstances then before the court and is so unreasonable and arbitrary that it shocks the sense of justice and indicates a lack of careful, deliberate consideration." ***Id***. (citation modified).

During its case-in-chief, the State offered, and the trial court admitted without objection, Exhibit 7. This exhibit was a certified copy of a petition for an adult abuse order of protection completed and signed by Defendant, as well as the judicial order granting *ex parte* relief on that petition. Later, Defendant attempted to offer Exhibit A, which had not been previously disclosed. Exhibit A purported to be a different version of Exhibit 7, offered under the theory that Exhibit 7 had been "forged" by the State and was not "the original" petition Defendant had filed. In Point 13, Defendant claims the court abused its discretion in excluding Exhibit A.

The court did not abuse its discretion in excluding Exhibit A because Defendant failed to prove the document was authentic. "In order for a writing or document to be admitted into evidence, the proponent must lay the foundation for the document, including authenticity. The authenticity of a document cannot be assumed, but what it purports to be must be established by proof." ***State v. Wilson***, 602 S.W.3d 328, 332-33 (Mo. App. W.D. 2020) (citation modified). The trial court checked Exhibit 7 and Exhibit A against its own file, of which it had taken judicial notice, and found that Exhibit 7 matched what had been filed and Exhibit A did not. Point 13 is denied.

In Point 15, Defendant claims the trial court erred in "permitting the State to knowingly elicit perjured testimony" from H.B. Defendant argues H.B.'s testimony – that she never signed her house over to Defendant and never gave him authority to sign

documents on her behalf – was contradicted by a social media post alleged to have been made by H.B.

"To succeed on the theory that the State knowingly used perjured testimony, Defendant has the burden to prove that: (1) the witness' testimony was false; (2) the State knew it was false; and (3) the conviction was obtained as a result of the perjured testimony." ***State v. McCoy***, 678 S.W.3d 125, 132-33 (Mo. App. E.D. 2023) (citation modified). "Inconsistent statements made prior to trial are not alone sufficient to establish that a witness has committed perjury." ***Id***. at 133 (citation modified).

Defendant has not shown that the State knowingly elicited and relied on perjured testimony to obtain a conviction. Even if H.B. had made a prior inconsistent statement, which we do not decide, "such statements go to the witness' credibility and can be used to cross-examine the witness." ***Id***. (citation modified).[5] Point 15 is denied.

Unpreserved Claims

Defendant acknowledges that Points 6, 7, 9, 10, 11, 12, 14, and 16 were not preserved for appellate review. For each of these points, he requests Rule 30.20 plain error review.

"[A]ppellate courts generally do not review unpreserved claims of error." ***State v. Jones***, 725 S.W.3d 577, 582 (Mo. banc 2025). "Rule 30.20 alters this guiding principle,

[5] We are unable to confirm whether the social media post even qualifies as a prior inconsistent statement because the exhibit Defendant tendered was not admitted and was not made a part of the record on appeal through an offer of proof.

allowing appellate courts to review specified unpreserved claims of error in criminal proceedings." ***Jones***, 725 S.W.3d at 582. Even so, plain error review is discretionary. ***Id***. at 584. "The plain language of Rule 30.20 demonstrates not every allegation of error is entitled to appellate review." ***Jones***, 725 S.W.3d at 582. The plain error rule is to be used sparingly and may not be used to justify a review of every point that has not been otherwise preserved for appellate review." ***Id***. at 584 (citation omitted).

Plain errors are "facially evident, obvious, and clear." ***Id***. at 582 (citation omitted). Plain errors affecting substantial rights, by their very definition, "are plainly erroneous, inherently self-evident, discernible, and undeniable, affecting the basic rights of a litigant. They are the type of errors on which the circuit court should have taken corrective action because, left uncorrected, a manifest injustice may result." ***Id***. at 583 (citation omitted).

The burden to prove a plain error affecting substantial rights rests with the appellant. ***Id***. "An appellate court will conduct review under Rule 30.20 only when the appellant's request for plain error review establishes facially substantial grounds for believing that the trial court's error was evident, obvious, and clear, and that manifest injustice or miscarriage of justice has resulted." ***Jones***, 725 S.W.3d at 583 (citation modified). "Unless the appellant makes this facial showing, this Court will decline to review for plain error under Rule 30.20." ***State v. Jones***, 427 S.W.3d 191, 195-96 (Mo. banc 2014), *see* ***State v. Brandolese***, 601 S.W.3d 519, 526 (Mo. banc 2020). This is the

framework by which this Court reviews Defendant's requests for plain error review. *See* ***Brandolese***, 601 S.W.3d at 526.

Self-Representation and Appointment of Counsel (Points 6 & 7)

Defendant had a contentious relationship with the Public Defender's Office, which had been appointed to represent him. In *pro se* filings, he expressed displeasure with appointed counsel, purported to waive his right to counsel, and requested a ***Faretta*** hearing.[6] On appeal, Defendant argues the trial court plainly erred by: (1) allowing Defendant to proceed *pro se*; and (2) not re-appointing counsel when he subsequently requested representation.

"The Sixth Amendment affords the right to those accused in all criminal prosecutions to have the assistance of counsel for their defense. At the same time, the Sixth Amendment grants the accused the right to make his own defense." ***State v. Teter***, 665 S.W.3d 306, 313 (Mo. banc 2023) (internal citation omitted). If the State shows: (1) compliance with § 600.051, which requires a written and signed waiver of counsel containing specific information; and (2) that the defendant was afforded a ***Faretta*** hearing; then, the burden of proof shifts to the unrepresented defendant to establish that the waiver of counsel was not knowing, voluntary, or intelligent. ***Teter***, 665 S.W.3d at 313.[7] In this case, Defendant signed a written waiver of counsel and was afforded

[6] ***Faretta v. California***, 422 U.S. 806 (1975).

[7] Statutory references are to RSMo (2016), unless otherwise indicated.

Faretta hearings, so it is his burden to prove his waiver was not knowing, voluntary, or intelligent. *See* ***Teter***, 665 S.W.3d at 314.

Defendant argues that he met this burden because, lacking counsel or exceptional access to his electronic devices in jail, he could not access the discovery necessary to mount a defense. The record conclusively refutes the facts and assumptions on which this argument is made.

Defendant's desire to have extraordinary access not permitted to others in the jail was an ongoing issue and topic of "extensive" discussion at numerous pre-trial hearings. At an initial ***Faretta*** hearing, Defendant indicated that his request to self-represent was contingent on being released from jail or having the scheduled trial continued. Appointed counsel was directed to remain on the case.

At a second ***Faretta*** hearing, the trial court did not find a waiver of counsel in part because it appeared Defendant was under the mistaken impression that self-representation would get him extraordinary access to his electronic devices in jail or result in a continuance of the trial date. The court wanted Defendant to know self-representation is "an important [and] weighty decision," and "it's not a means to an end."

At a third ***Faretta*** hearing, the trial court remained concerned about Defendant's conditioning of self-representation on extraordinary access to his electronic devices:

> [T]he Court's especially concerned that if this decision in any way hinges on expectations or conditions regarding what is happening with the

> devices if his waiver of counsel is granted, then the Court is not in a position to grant that because I don't want [Defendant] expecting to represent himself and to expect that these devices are going to be ordered to be taken into the jail and given to him because that's not within my authority to order. That's not something I will order. …. But his waiver needs to be unequivocal in the sense of without regard to consequences of what happens with these if I were to grant the request for [counsel] to withdraw.
>
> ….
>
> What I'm trying to make sure you understand is that if you forgo [your right to counsel] and [the Public Defender's Office is] not doing anything with your devices that that doesn't mean that the devices are going to you in jail, with you able to access them there. That's outside the scope of what the Court is going to be doing at this point[.]
>
> ….
>
> If you have expectations for what would happen if you represent yourself and your choice to represent yourself is in any way conditioned on those expectations, then I can't find that your waiver of right to counsel is unequivocal and I can't move forward with allowing you to represent yourself.
>
> And I don't say that to get you to change your position on anything, but I want you to know that if you want to represent yourself it has to be a decision to represent yourself in and of itself without any expectation of any collateral consequences or circumstances flowing from that.
>
> ….
>
> [T]he point that the Court is trying to make is that representing yourself is not and should not be viewed as a means to an end of [any] kind, it needs to be something that you're wanting for its own sake, and that the Court isn't offering any relief regarding the devices that you should expect if you choose to represent yourself. And that's what I was trying to make clear.

When asked, "Do you understand that," Defendant replied, "I understand that I would like to represent myself. Anything concerning the devices and evidence is secondary, which we'll handle at another matter." When asked, "Are you telling

me that your choice to represent yourself is being done separate and apart from what happens with your devices," Defendant answered, "Yes." The court granted the counsel's motion to withdraw only after this long discussion about access to electronic devices and colloquy on other matters of self-representation, including but not limited to Defendant's acknowledgement that he made the choice freely and voluntarily without threat or promises, and that he did so knowing the court strongly advised against self-representation.

Considering this record, Defendant has not made a facial showing that the court erred, much less plainly erred, in finding that Defendant knowingly, intelligently, and voluntarily waived his right to counsel, which expressly was *not* contingent on extraordinary access to his electronic devices in jail. We decline plain error review of Point 7.

In Point 6, Defendant argues that counsel should have been re-appointed to represent Defendant upon his request, after he had waived the right to counsel.

What Defendant sought was specific, private counsel of his choosing. "[Defendant's] constitutional right to counsel does not mean that he is entitled to the aid of a particular attorney." ***State v. Briggs***, 318 S.W.3d 203, 206 (Mo. App. W.D. 2010). The trial court explained that Defendant had waived his right to counsel, and the court lacked authority to appoint counsel outside the Public Defender's Office or to dictate which attorney within that office would represent Defendant. When Defendant was

asked if he wanted the court to make a referral to the Public Defender's Office, he replied, "Yes, Your Honor." That referral was made, but the Public Defender's Office initially declined to represent Defendant again.

"Once a defendant enters a knowing and voluntary waiver of counsel, the trial court is not categorically required to allow a criminal defendant to withdraw the previously entered, valid waiver of counsel at any time he so desires." ***State v. Howell***, 628 S.W.3d 750, 756 (Mo. App. E.D. 2021) (citation modified). "A defendant is not allowed to use the right to self-representation to avoid or delay the trial." ***Id***. A court does not abuse its discretion by declining a belated appointment of counsel, who would ethically be bound to seek a continuance of the scheduled trial date to have adequate time to prepare a defense. ***Id***. at 757.

Defendant had already made numerous, willful attempts to delay the proceedings against him before requesting re-appointment of counsel. Whether Defendant's belated request for re-appointment of counsel was disingenuous or sincere, the trial court did not abuse its discretion. First, the court lacked authority to appoint private counsel of Defendant's choosing.[8] Further, re-appointment of the Public Defender's Office over its objection would have necessitated a continuance of the trial date beyond the three years the case already had been pending. After the trial, but

[8] Defendant does not argue otherwise on appeal, and has provided no authority that supersedes the general legal principles expressed in ***Briggs***, 318 S.W.3d at 206.

before sentencing, a public defender from a different office entered her appearance on behalf of Defendant, so he was represented by counsel at the sentencing hearing. On the face of the record, it appears that the court honored Defendant's request to self-represent, then did what was within its authority to get counsel re-appointed after Defendant changed his mind.

The adage repeated with approval in ***State v. Thompson***, 711 S.W.3d 339 (Mo. banc 2025), also applies here:

> [A]n accused should never be permitted to play a "cat and mouse" game with the court … or by ruse or stratagem fraudulently seek to have the trial judge placed in a position where, in moving along the business of the court, the judge appears to be arbitrarily depriving the defendant of counsel.

Id. at 346 (quoting ***State v. Wilson***, 816 S.W.2d 301, 308 (Mo. App. S.D. 1991), which quoted ***United States v. McMann***, 386 F.2d 611, 618-19 (2nd Cir. 1967)). Defendant has not made a facial showing of error, much less plain error, so we decline plain error review of Point 6.

Double Jeopardy (Points 10 & 11)

Defendant next complains his right to be free from Double Jeopardy was violated by the entry of two forgery convictions arising from the affidavit of title (Point 10) and two forgery convictions arising from the quitclaim deed (Point 11). He argues each document constituted a single forgery offense and unit of prosecution under § 570.090. He acknowledges no authority directly supports this argument, but he argues by analogy to other offenses and asserts § 570.090 "is at least ambiguous as to the allowable unit of prosecution[.]"

"Because double jeopardy is an affirmative defense, it is the defendant's burden to prove that double jeopardy applies." ***State v. Heathcock***, 708 S.W.3d 163, 166 (Mo. banc 2025) (citations omitted). The Double Jeopardy Clause protects against multiple punishments for the same offense. ***State v. Onyejiaka***, 671 S.W.3d 796, 798 (Mo. banc 2023). Thus, Defendant must show that he has been subjected to multiple punishments for the *same offense*.

Defendant's four forgery offenses in this case all were charged pursuant to § 570.090.1(1), the category of forgery that occurs when a defendant "[m]akes, completes, alters or authenticates any writing so that it purports to have been made by another[.]" As held in ***State v. Bledsoe***, 178 S.W.3d 648 (Mo. App. W.D 2005), "the legislature's use of the singular term 'writing,' and its corresponding singular pronoun

'it,' … clearly indicates that the legislature intended each individual writing to be an allowable unit of prosecution under section 570.090." ***Bledsoe***, 178 S.W.3d at 654.

After ***Bledsoe***, which was a case of first impression, the law in Missouri has been clear: the unit of prosecution under § 570.090.1(1) is a "writing," not a "document" as Defendant argues. ***Bledsoe***, 178 S.W.3d at 654. In this case, the State pleaded, and the jury found, four separate "writings" made or altered by Defendant: (1) H.B.'s signature on the purported affidavit of title; (2) the notary public's signature on the purported affidavit of title; (3) H.B.'s signature on the purported quitclaim deed; and (4) the notary public's signature on the purported quitclaim deed. Like the defendant in ***Bledsoe***, Defendant committed separate forgery offenses each time he made or altered these signatures, and the legislature intended cumulative punishments for these offenses. ***Id.*** at 654-55.

Defendant has not met his burden to facially establish substantial grounds to believe that the trial court committed plain error in accepting verdicts for four forgery offenses arising from four forged signatures. We decline plain error review of Points 10 and 11.

Excluded Video Evidence (Point 12)

During cross-examination of a witness for the State, Defendant attempted to question the witness about a homemade sexual video. The State objected, and a discussion occurred outside the presence of the jury. Defendant described what he

expected the video would show: H.B. performing a sexual act on a person whom Defendant claimed to be the witness, even though that person's identity is not discernable from the video. The trial court declared, "I have no desire to watch this video. And I can't imagine anyone else would want to either. …. This entire thing is completely ridiculous." The court ruled:

> Given the nature of the alleged video and the fact that [a second video Defendant alleged confirmed the witness' identity] has not been produced in discovery it is most definitely not being admitted into evidence here. It is not to be referred to or alluded to. If you wish to ask this witness whether he has ever been involved with [H.B.] you may do so. But then we need to move on.

Defendant never made an offer of proof and did not attempt to provide further foundation for admission of the video. On appeal, he claims the court plainly erred in sustaining the State's objections to the video.

The State's objections and the trial court's ruling indicate three grounds for exclusion: irrelevance, lack of foundation, and Defendant's failure to produce in discovery an alleged second video, which he claimed could confirm the witness' identity. Any of these grounds could serve as the basis for exclusion of the video. In his briefing on appeal, Defendant unpersuasively argues only the relevance of the video but does not address the lack of foundation or Defendant's failure to provide necessary discovery to the State. Thus, Defendant has not facially established substantial grounds to believe that the court committed plain error in excluding the video. We decline plain error review of Point 12.

Credit for Time Served (Point 14)

Defendant next alleges plain error in the trial court's crediting of his jail time served while awaiting trial. We must consider, *sua sponte*, our authority to review this point. ***State v. Poe***, 724 S.W.3d 841, 843-44 (Mo. App. S.D. 2025).

Prior to 1971, judicial discretion did play a role in the crediting of jail time. ***State ex rel. Jones v. Cooksey***, 830 S.W.2d 421, 424 (Mo. banc 1992). Now, § 558.031 RSMo Cum. Supp. (2023) addresses how credit is calculated and applied for jail time served after an offense occurred and before commencement of the sentence.[9] "[E]very provision of § 558.031 appears clearly to contemplate that the department [of corrections], and not the sentencing court, is to be the actor in the crediting of jail time." ***Cooksey***, 830 S.W.2d at 424. "It is thus clear, and this Court holds, that this statutory scheme contemplates an administrative and not a judicial determination of the jail time to be credited, with no sharing of jurisdiction between the two branches of government." ***Id***. at 425.

More than two decades later, ***Cooksey*** was cited with approval by our Supreme Court in ***Farish v. Missouri Dept. of Corr.***, 416 S.W.3d 793 (Mo. banc 2013), in which

[9] Unless a statute provides otherwise, the applicable version of a statute is the one that was in effect at the time of a defendant's offense. ***Vickers v. Missouri Dep't of Corr.***, 706 S.W.3d 297, 302 n.8 (Mo. App. W.D. 2025). Section 558.031.7 *does* provide otherwise: "Subsection 2 of this section shall be applicable to offenses for which the offender was sentenced on or after August 28, 2023." ***Id***. Although Defendant's offenses occurred in 2020 and 2021, he was sentenced in December of 2024, so § 558.031.2 RSMo Cum. Supp. (2023) applies. All further references to § 558.031 are to this version.

that Court held: "A sentencing court has no authority to award jail time credit." ***Farish***, 416 S.W.3d at 798. If a sentencing court's judgment is inconsistent with the jail-time crediting procedure in § 558.031, that portion of the judgment is of no effect. ***Farish***, 416 S.W.3d at 798. Amendments to § 558.031 after ***Farish*** only reinforce these principles and holdings.

Defendant's claim of error is not cognizable in a direct appeal from the judgment in this criminal case. The Department of Corrections (DOC), not the trial court, calculates and applies credit for jail time served while awaiting trial. If Defendant believes the DOC has miscalculated or misapplied his jail time credit, his remedy would be through an administrative grievance procedure with the DOC, or a declaratory judgment action against that entity for a determination of entitlement to credit on his sentences. ***Roy v. Missouri Dept. of Corr.***, 23 S.W.3d 738, 743-44 (Mo. App. W.D. 2000), *as modified* (Aug. 1, 2000). We decline plain error review of Point 14.

Jury Question (Point 16)

During deliberations, the jury submitted a request for clarification of what was encompassed by "notary signature" in two of the forgery verdict directors. The trial court noted it was not inclined to add to or modify the given MAI verdict directors. The court instead proposed a reply that the court was not permitted to answer the question and that the jury must be guided by the evidence and the instructions given. After discussion, the court asked if there was "any objection to giving them a response like we

discussed?" Defendant answered, "No." The court's written response to the jury reflected what the court and the parties considered and agreed was proper: "The court is not permitted to answer your questions. You must be guided by the instructions you were given and the evidence as you remember it." Defendant now contends the trial court plainly erred in its response to the jury's question.

Defendant has not facially established substantial grounds to believe that the court committed plain error in its reply to the jury's question. Even if the court had erred, which we do not decide, Defendant assented to the proposed response. "Where a defendant affirmatively accepts and agrees to what the trial court proposes, any claim of error related to the trial court's action is affirmatively waived, negating plain error review." ***State v. Gee***, 684 S.W.3d 363, 373 (Mo. App. W.D. 2024) (citation modified). "A defendant cannot affirmatively accept a judge's proposed action in the hope of a strategic advantage; then, turn 180 degrees and urge an appellate court to find the trial court plainly erred in doing that to which the defendant originally agreed." ***Id***. (citation modified). We decline plain error review of Point 16.

Sentencing Discrepancy (Point 9)

Count 8 of the third-amended information charged Defendant with attempted "Stealing by Deceit – Value over $25,000" based on § 570.030. The information listed the offense as a class D felony. At sentencing, the trial court declared: "On Count 8, the *Class C* felony of attempted stealing by deceit, the defendant is sentenced to a term of

five years." (Emphasis added.) The written judgment reflects the oral pronouncement of sentence. This discrepancy was raised in the first instance in briefing to this Court on appeal. Defendant argues this discrepancy in classification rises to the level of plain error and resulted in a higher sentence than he should have received.

The version of § 570.030 in effect at the time of Defendant's offense included a broad range of classifications from a class A misdemeanor to a class A felony. As relevant here, stealing is a class C felony if the value of the property or services appropriated is $25,000 or more; and it is a class D felony if the value of the property or services appropriated is $750 or more. Due to the value of the property involved, the offense of stealing by deceit *could* have been classified and pursued by the State as either a class C felony or a class D felony.

The record clearly indicates that the State intended to pursue the higher classification, with the lower classification as a lesser-included alternative for the jury to consider. The $25,000 value was pleaded in the information, referenced in the State's closing argument, and was one of the necessary findings of fact in the verdict director, Instruction No. 22, which was given without objection. Another verdict director, Instruction No. 24, also given without objection, was submitted to the jury. This instruction, which contemplated an amount over $750, was to be considered only if the jury did not find a value of more than $25,000. The jury found that Defendant was "guilty of attempted stealing by deceit over $25,000 as submitted in Instruction No. 22."

Defendant had actual notice that the State was pursuing the higher classification, and the jury found the distinguishing fact necessary to support the higher classification.

Had Defendant been charged with stealing by deceit our examination of the offense classification would conclude here. But he was charged with *attempted* stealing by deceit. The jury was instructed to find him guilty, not if he completed the offense of stealing by deceit, but if his conduct was a substantial step toward the commission of the offense, with "substantial step" defined later in the verdict director. Some classifications of stealing in § 570.030 can be proven either by appropriation of property or an attempted appropriation. *See, e.g.*, § 570.030.3(1) (appropriation or attempted appropriation of anhydrous ammonia or liquid nitrogen). The relevant statute here, § 570.030.4, requires the State to prove appropriation of property or services valued at $25,000 or more; proving attempted appropriation does not satisfy the statute.

Because the statute defining the offense of stealing by deceit does not include an attempted offense, § 562.012 applies. This statute states:

> Unless otherwise set forth in the statute creating the offense, when guilt for a felony or misdemeanor is based upon an *attempt* to commit that offense, the felony or misdemeanor *shall be classified one step lower than the class provided for the felony or misdemeanor in the statute creating the offense*.

§ 562.012.3 (emphasis added). The statute defining the offense as pleaded was a class C felony, so the attempted commission of that offense would be a class D felony. Thus, we conclude that the State's third-amended information accurately classified as a class D

felony the attempted stealing by deceit of property valued at more than $25,000. However, the trial court expressly sentenced Defendant for the commission of the class C felony, which has a different range of punishment and a higher maximum penalty than that of a class D felony. § 558.011.1.

"A sentence passed on the basis of a materially false foundation lacks due process of law and entitles the defendant to a reconsideration of the question of punishment in the light of the true facts, regardless of the eventual outcome." ***State v. Pierce***, 548 S.W.3d 900, 904 (Mo. banc 2018) (citation omitted). Defendant has satisfied his burden to make a facial showing of evident, obvious, and clear error. However, he also must make a facial showing that the trial court's offense-classification error resulted in a manifest injustice or a miscarriage of justice. ***Jones***, 725 S.W.3d at 585-86.

Proving a manifest injustice or miscarriage of justice is a particularly high burden to meet. It is not enough to show a defendant's sentence might have been different had the sentence not been predicated on a mistaken belief about the possible range of sentencing. ***Pierce***, 548 S.W.3d at 904. As stated in ***Pierce***, Missouri courts have "never vacated a sentence and remanded the case to the circuit court for resentencing pursuant to plain-error review simply because the record shows the circuit court was mistaken concerning the acceptable sentencing range." ***Id***.

After ***Pierce***, remand for resentencing due to a manifest injustice or miscarriage of justice arising from the trial court's mistaken belief has occurred in only two

circumstances. The first is when a defendant is sentenced to a punishment greater than the maximum sentence for that offense. ***State v. Yocco***, 698 S.W.3d 819, 844 (Mo. App. E.D. 2024). The second circumstance is when the record shows the court imposed a sentence *based on* the mistaken belief. ***State v. Barnett***, 696 S.W.3d 421, 431-32 (Mo. App. E.D. 2024).

Defendant has not demonstrated applicability of either exceptional circumstance in this case. His five-year term of imprisonment on Count 8 was within the range of authorized sentences for either a class C felony or a class D felony. *See* § 558.011.1.[10] As in ***Pierce***, the record in this case shows that the trial court *held* a mistaken belief concerning the classification of offense in Count 8, but the sentence was *based on* valid considerations and not the mistaken range of punishment. *See* ***Pierce***, 548 S.W.3d at 905. Because Defendant has not made a facial showing that the improper classification of his offense during sentencing resulted in a manifest injustice or a miscarriage of justice, we decline plain error review of Point 9.

Although Defendant has not made the requisite showing for plain error review, he *has* shown that the written judgment fails to accurately memorialize the

[10] Defendant minimizes this fact, citing ***State v. Peters***, 729 S.W.3d 243, 250 and n.7 (Mo. banc 2026). ***Peters*** has little or no application in the context of Defendant's claim of error because the error in ***Peters*** was preserved and was not reviewed under the plain error standard. ***Peters*** did not overrule ***Pierce***, 548 S.W.3d at 904, or remove the requirement that an appellant must make a facial showing of manifest injustice or miscarriage of justice to obtain plain error review. ***Jones***, 725 S.W.3d at 585.

classification of his attempted stealing conviction. This is a clerical mistake. ***State v. Brown***, 558 S.W.3d 105, 114 (Mo. App. E.D. 2018). A mistaken sentencing classification may be corrected in the interest of justice without plain error review. ***Warren v. State***, 429 S.W.3d 480, 482 (Mo. App. E.D. 2014). When the trial court's intentions are clear and there is a basis in the record to support correction of the written sentence and judgment, as here, the appropriate remedy is to remand with instructions to enter a *nunc pro tunc* order to correct the clerical mistake. ***Brown***, 558 S.W.3d at 118-19.

Conclusion

Defendant has not demonstrated any trial court error in his claims preserved for appellate review. We decline to review his unpreserved claims for plain error for the reasons stated previously in this opinion. We remand only for the trial court to enter an order *nunc pro tunc* correcting the written judgment to conform to Count 8 in the third-amended information and the jury's verdict thereon, reflecting conviction and sentencing for the class D felony of attempted stealing by deceit property valued at more than $25,000. In all other respects, we affirm the judgment and convictions.