IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE OF MISSOURI,	)	
	)	
Respondent,	)	
	)	**WD87003**
v.	)	
	)	**OPINION FILED:**
	)	**June 16, 2026**
DAMON E. GOODRICH,	)	
	)	
Appellant.	)	

Appeal from the Circuit Court of Jackson County, Missouri
The Honorable S. Margene Burnett, Judge

Before Division Two: W. Douglas Thomson, Presiding Judge, Lisa White Hardwick, Judge, and Mark D. Pfeiffer, Judge

Mr. Damon E. Goodrich ("Goodrich") appeals *pro se* from the judgment of the Circuit Court of Jackson County, Missouri ("trial court"), following a jury verdict that convicted him of two counts of second-degree murder and two counts of armed criminal action. We affirm.

Factual and Procedural History[1]

Prior to her death, Victim 1[2] was in a romantic relationship with Goodrich. Around 2:30 a.m. on January 7, 2023, Goodrich was driving Victim 1 home from a club when they started arguing. During the argument, Goodrich struck Victim 1 in the face, causing noticeable bruising and swelling. During the fight, Victim 1 got out of the car and fled on foot to her cousin's house, where she began knocking on her back door. Cousin awoke to find that Victim 1 had jumped over her fence and was hiding in her backyard, so she let Victim 1 inside her home. Victim 1 rushed inside and began frantically looking for a place to hide. Unable to calm Victim 1 down, Cousin phoned her daughter to come help.

While waiting for her daughter to arrive, Cousin asked Victim 1 what happened. Victim 1 explained that she and Goodrich got into a fight; that Goodrich hit her in the face; and that she believed Goodrich was going to kill her, which was why she was trying to hide. After Cousin's daughter arrived, Goodrich, who was looking for Victim 1, stopped his car in front of Cousin's house. Eventually, Goodrich and Victim 1 returned to their respective homes without further incident.

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[1] "On appeal from a jury-tried case, we view the facts in the light most favorable to the jury's verdict." *State v. Boyd*, 597 S.W.3d 263, 267 n.2 (Mo. App. W.D. 2019) (quoting *State v. Shaw*, 541 S.W.3d 681, 684 n.1 (Mo. App. W.D. 2017)).

[2] Pursuant to the directive of section 509.520.1(4) (Supp. IV 2025), we do not use the names of any victims in this opinion. All statutory references are to THE REVISED STATUTES OF MISSOURI (2016), as supplemented through January 8, 2023, unless otherwise indicated. And, pursuant to Missouri Supreme Court Operating Rule 2.02(c)(3), we do not identify the names of non-party witnesses in our ruling today.

However, just after midnight on January 8, Goodrich arrived by car to Victim 1's house. When he arrived, Victim 2—another cousin of Victim 1 and a friend of Goodrich—came outside to speak with him. After speaking with Victim 2, Goodrich walked inside Victim 1's house and began shouting Victim 1's name. Victim 1 demanded that Goodrich leave. Victim 2 then forced Goodrich outside the house and also instructed him to leave. Goodrich refused.

Then, Goodrich grabbed Victim 2's arm and pulled out his handgun. Goodrich fired several shots in quick succession, hitting Victim 2 and Victim 1, who had also come outside. Observing this sequence of events from his bedroom, Victim 1's minor son ("Son 1") grabbed a rifle from Victim 1's bedroom and came outside. He shot at Goodrich multiple times, causing Goodrich to duck behind his car and, ultimately, to flee the scene in the car. Son 1 then checked on Victim 1 and Victim 2 and saw that they were unarmed and in need of immediate medical attention. So, Son 1 ran to a neighbor's house to call for help. While Son 1 ran for help, his brother ("Son 2") stayed at the house and called 9-1-1.

Police and paramedics arrived at the scene soon after Son 2 called them. They confirmed that Victim 2 was dead; sent Victim 1 to the hospital, where she soon died from her injuries; and then performed a sweep of the house. While examining Victim 1 and Victim 2 and performing the sweep, police did not locate any firearms. A crime scene investigator later located five casings spent by the same handgun in the yard; one casing spent by a rifle near the front door; and one other casing that appeared significantly older than the other six, deemed to be unrelated to the shooting.

Police conducted a video-recorded interview of Son 2 at a police station. Son 2 initially refused to cooperate and requested that his Aunt accompany him during the interview. Because Son 2 was a minor, police permitted Aunt to stay in the interview room with him. During the interview, Son 2 explained that he controlled an account connected to a Ring doorbell camera on Victim 1's front door and that the camera recorded some video on the night of the shooting. Interviewing Officer asked Son 2 to forward him any videos from the Ring camera and to consent to a search of his phone. Son 2 agreed: he forwarded one video clip via email and allowed police to copy his phone data, which included a second video clip.

A day or two later, Interviewing Officer reviewed the interview videotape. He discovered that, when he left Son 2 and Aunt alone in the interview room, they had a conversation about deleting content from Son 2's phone. During this time, Aunt asked Son 2 if the Ring camera recorded Son 1 on the night of the shooting; Son 2 responded that it did not. Aunt then told Son 2 that the police only needed to see the videos from the night of the shooting and that he should delete anything on his phone that was unrelated to that night and that he did not want police to see. Son 2 then began taking actions on his phone—which occurred before police extracted the phone's data.

Considering the possibility that Son 2 might have deleted Ring videos from the night of the shooting, Interviewing Officer subpoenaed Ring for any videos still in Ring's possession that had been recorded on the night of the shooting—regardless of whether the videos had been deleted from Son 2's account. Ring responded to the subpoena with four videos: the two already in law enforcement's possession and two new videos that

recorded police arriving at the scene after the shooting. None of the four videos captured the shooting itself.

Goodrich was arrested and charged with five counts: two counts of second-degree murder, two counts of armed criminal action, and one count of unlawful possession of a firearm.[3]

During the jury trial, the State presented testimony from several witnesses, including as relevant to this appeal—Cousin, Cousin's daughter, and Son 1. Thereafter, Goodrich presented his case-in-chief, which consisted of three witnesses: his cousin-in-law,[4] Interviewing Officer, and himself. During his testimony, Goodrich disputed the State's witnesses' accounts of both nights.

Regarding the events of January 7, Goodrich testified that Victim 1 was the one punching him and threatening him with a handgun. Goodrich claims to have taken the gun from Victim 1, fired a shot into the ground, after which Victim 1 ran away.

Regarding the shooting on January 8, Goodrich claimed that Victim 2 called him and invited him over to talk with Victim 1 about the previous night. Goodrich testified that, when he arrived, Victim 2 and Victim 1 ambushed him by pulling handguns on him, so he shot them both in self-defense.

Following the trial, the jury convicted Goodrich of two counts of second-degree murder and two counts of armed criminal action. Goodrich then filed a motion for

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[3] Before trial, Goodrich successfully moved to sever the lone count of unlawful possession of a firearm.

[4] Cousin-in-law briefly testified to Goodrich's demeanor before the incident on January 7 and before the shooting on January 8.

judgment of acquittal notwithstanding the verdict or for a new trial. The trial court denied the motion and sentenced Goodrich to terms of thirty years' imprisonment for each murder conviction and three years' imprisonment for each armed criminal action conviction with all terms to run consecutively for a total of sixty-six years' imprisonment.

Goodrich timely appealed.

Proceeding *pro se*, Goodrich raises eleven points. Goodrich acknowledges eight of his points on appeal are unpreserved and requests plain error review of those points. We first address Goodrich's preserved points in order and then address Goodrich's unpreserved points in groups and out of order for ease of analysis.

Rule 84.04 Briefing Violations

Before proceeding to Goodrich's points on appeal, we first address his failure to comply with the briefing requirements of Rule 84.04(c).[5] Rule 84.04(c) requires that "[t]he statement of facts shall be a fair and concise statement of the facts relevant to the questions presented for determination without argument." "To present a fair statement of facts, an appellant is required to provide a statement of the evidence in the light most favorable to the verdict, not simply recount appellant's version of the events." *Lavery v. Lavery*, 699 S.W.3d 575, 578 (Mo. App. W.D. 2024) (citation modified).

Here, Goodrich fails to comply with Rule 84.04(c). Goodrich's statement of facts simply recounts his version of the facts—that Victim 1 threatened him with a gun on the night before the shooting and that Victim 1 and Victim 2 tricked him into coming to

[5] All rule references are to I MISSOURI COURT RULES – STATE 2025.

Victim 1's house for an ambush. Goodrich ignores the evidence that the jury credited—that Goodrich punched Victim 1 in the face on the night before the shooting, prompting her to flee, and that on the following evening he shot unarmed Victims 1 and 2, who had only demanded that Goodrich leave Victim 1's residential premises. And, to the extent that Goodrich mentions any of the State's evidence in his statement of facts, he argumentatively refers to the evidence as "perjured" or "imaginative."

Goodrich's failure to present a fair statement of facts without argument justifies dismissing his appeal. *See, e.g.*, *R.M. v. King*, 671 S.W.3d 394, 398 (Mo. App. W.D. 2023) ("A violation of Rule 84.04(c), standing alone, constitutes grounds for dismissal of an appeal." (quoting *Gan v. Schrock*, 652 S.W.3d 703, 708 (Mo. App. W.D. 2022))). However, because the facts essential to this appeal have been provided in the State's brief, we exercise our discretion to review Goodrich's appeal, *ex gratia*. *See, e.g.*, *Lavery*, 699 S.W.3d at 579 (citing *ModivCare Sols., LLC v. Off. of Admin.*, 682 S.W.3d 810, 818 (Mo. App. W.D. 2024)).

Point I

In Point I, Goodrich argues the trial court erred in overruling his hearsay objection to Cousin testifying to Victim 1's statements from the night before her murder.

At trial, Cousin testified to the incident between Goodrich and Victim 1 from the night before Goodrich shot and killed Victim 1. Cousin testified that Victim 1 had jumped a fence to get into her backyard and then pounded on her back door until Cousin awoke from her sleep and let her in. Cousin then began to testify that she asked Victim 1 what had happened to her. Goodrich's trial counsel objected to this line of testimony as

hearsay before Cousin could testify to Victim 1's response and ultimately requested a bench conference outside the hearing of the jury:

> [COUNSEL]: I understand that the state wants to be able to introduce statements from [Victim 1] about something that this witness did not personally observe.
>
> THE COURT: Yes.
>
> [COUNSEL]: And, therefore, I'm renewing my objection for hearsay. So I think it's fair game for her to describe her demeanor, her appearance, her actions, but I don't believe there's any exception to the hearsay rule. It is being offered for the truth of the matter and, therefore, any statement from [Victim 1] to [Cousin] I believe is hearsay and inadmissible.
>
> THE COURT: All right. And is there an exception to the hearsay rule that you believe applies?
>
> [THE STATE]: Your Honor, . . . I do think this would fall under the excited utterance exception. [Cousin]'s described [Victim 1's] demeanor as being frantic. [Cousin]'s discussed [Victim 1] running through the house, trying to seek safety.

The trial court overruled Goodrich's objection and allowed the following testimony before the jury, which Goodrich argues is inadmissible hearsay:

> [THE STATE]: [Cousin], at that time, while [Victim 1]—so immediately when she came into your home, what if anything did she tell you at that point?
>
> [COUSIN]: [Victim 1] told me that she was at a comedy club, and that on her way home, her and [Goodrich] had gotten into it. He had hit her, you know, and she jumped out of the car, and she had to come over a few fences to get to my house from the back, and that she was hiding from him because he was going to kill her.

Goodrich contends the trial court erred in permitting this hearsay testimonial evidence.

Standard of Review

"Circuit courts have 'broad discretion to admit or exclude evidence during a criminal trial, and error occurs only when there is a clear abuse of this discretion.'" *State v. Hollowell*, 643 S.W.3d 329, 336 (Mo. banc 2022) (quoting *State v. Loper*, 609 S.W.3d 725, 731 (Mo. banc 2020)). "Such error requires reversal upon a showing of prejudice, or in other words, if such error deprives the accused of a fair trial." *Id.*

Analysis

"A hearsay statement is any out-of-court statement that is used to prove the truth of the matter asserted and that depends on the veracity of the statement for its value." *State v. Kemp*, 212 S.W.3d 135, 146 (Mo. banc 2007) (quoting *State v. Forrest*, 183 S.W.3d 218, 224 (Mo. banc 2006)). Hearsay statements are inadmissible unless an exception to the rule against hearsay applies. *See id.*

One recognized exception to the rule against hearsay is an excited utterance, which occurs when: "(1) a startling event or condition occurs; (2) the statement is made while the declarant is still under the stress of the excitement caused by the event and has not had an opportunity to fabricate the story; and (3) the statement relates to the startling event." *T.R.T. v. Juv. Officer*, 641 S.W.3d 263, 268 (Mo. App. W.D. 2021) (quoting *State v. Gray*, 347 S.W.3d 490, 500 (Mo. App. E.D. 2011)). In determining whether a statement qualifies as an excited utterance, Missouri courts consider the following factors:

> Among the factors to be considered in determining whether an excited utterance exists are [1] the time between the startling event and the declaration, [2] whether the declaration is in response to a question, [3]

> whether the declaration is self-serving, and [4] the declarant's physical and mental condition at the time of the declaration. While no one factor necessarily results in automatic exclusion, all should be considered in determining whether the declaration was the result of reflective thought.

Kemp, 212 S.W.3d at 146 (quoting *Bynote v. Nat'l Super Mkts., Inc.*, 891 S.W.2d 117, 122 (Mo. banc 1995)).

Here, all four factors support a finding that Victim 1's statements fall within the excited utterance exception. First, Victim 1 made her statement during an ongoing stressful event—fleeing and hiding from an active pursuer that she thought would kill her. Second, although Victim 1 made her statement in response to Cousin's questioning, the questions—"why are you hiding like this" and "[w]hy are you looking like this"—were minor; thus, Victim 1's statements remained trustworthy because they were primarily a product of the stress of the event, not Cousin's questioning. *See State v. Scott*, 716 S.W.2d 413, 414-15 (Mo. App. E.D. 1986) (holding that the victim's statements in the response to the question, "[d]id Jesse [defendant] and them do this to you[,]" were excited utterances, in part, because "[t]he responses were products of the event, and were therefore trustworthy" and because "[t]he fact they were responses to minimal questioning by [witnesses] did not vitiate their trustworthiness" (first and second alteration in original)). Third, the self-serving factor does not apply to Victim 1's statements because she is not the defendant in this case. *State v. Gott*, 523 S.W.3d 572, 578 (Mo. App. S.D. 2017) ("In the context of a criminal case, the self-serving factor focuses on exculpatory statements by a defendant that are the result of reflective thought." (collecting cases)). Fourth, Cousin laid ample foundation that Victim 1 was

experiencing significant distress at the time she made the statements: Victim 1 came to Cousin's house in the middle of the night, leaping over a fence, in frantic search of a place to hide from Goodrich; Victim 1's physical appearance was out-of-sorts with her wig missing, her eyelashes off, and her face swollen from being punched in the face; and Victim 1 was visibly frightened and could not fully calm down until Cousin's daughter arrived at Cousin's house—after Victim 1 had already made her excited utterances to Cousin.

The trial court did not abuse its discretion in concluding that Victim 1's statements fell within the excited utterance exception to the rule against hearsay.

Point I is denied.

Point IX

In Point IX, Goodrich argues the trial court erred in denying his post-trial motion for judgment of acquittal notwithstanding the verdict or for new trial because the State failed to present sufficient evidence to prove beyond a reasonable doubt that he did not act in self-defense.

Standard of Review

> When reviewing a claim challenging the sufficiency of the evidence, this Court must make a *de novo* determination whether the evidence is sufficient to permit a reasonable fact-finder to find the necessary facts beyond a reasonable doubt. This Court accepts as true all evidence tending to prove those facts and will draw all reasonable inferences in favor of finding those facts. This Court, however, may not supply missing evidence or give the State the benefit of unreasonable, speculative or forced inferences.

State v. Peters, 729 S.W.3d 243, 246 (Mo. banc 2026) (citation modified). Furthermore, all evidence and inferences contrary to the verdict are disregarded. *State v. Nash*, 339 S.W.3d 500, 509 (Mo. banc 2011). "When reviewing the sufficiency of evidence supporting a criminal conviction, the Court does not act as a 'super juror' with veto powers, but gives great deference to the trier of fact." *Id.* (quoting *State v. Chaney*, 967 S.W.2d 47, 52 (Mo. banc 1998)). Additionally, "this Court will not weigh the evidence anew since the fact-finder may believe all, some, or none of the testimony of a witness." *Id.* (citation modified).

Analysis

"Self-defense is an absolute defense to criminal prosecution for homicide offenses." *State v. Sinks*, 652 S.W.3d 322, 337 (Mo. App. E.D. 2022) (citing *State v. Oates*, 540 S.W.3d 858, 861 (Mo. banc 2018)). "Once the defendant has injected the issue of self-defense into the case, the burden shifts to the [S]tate to prove the absence of self-defense beyond a reasonable doubt." *Id.* (alteration in original) (quoting *State v. Williams*, 608 S.W.3d 205, 210 (Mo. App. W.D. 2020)). To establish a claim of self-defense, a defendant must demonstrate that the defendant "reasonably believe[d] such force to be necessary to defend himself or herself . . . from what he or she reasonably believe[d] to be the use or imminent use of unlawful force by such other person . . . ." § 563.031.1. Furthermore, a person may justifiably use deadly force in self-defense when that person reasonably believes such force is necessary to protect against death, serious physical injury, or a forcible felony. § 563.031.2(1). Here, Goodrich successfully injected the issue of justifiably using deadly force in self-defense into the trial through his

testimony that he shot Victim 1 and Victim 2 after they each pulled out firearms and threatened to kill him. *See State v. Westfall*, 75 S.W.3d 278, 280 (Mo. banc 2002) ("Substantial evidence of self-defense requiring instruction may come from the defendant's testimony alone as long as the testimony contains some evidence tending to show that he acted in self-defense.").

However, a defendant generally may not claim self-defense if the defendant was the initial aggressor in the altercation. *See* § 563.031.1(1). "An initial aggressor is one who first attacks or threatens to attack another." *State v. Morse*, 498 S.W.3d 467, 472 (Mo. App. W.D. 2016) (quoting *State v. Hughes*, 84 S.W.3d 176, 179 (Mo. App. S.D. 2002)). Here, the State contested Goodrich's claim of self-defense by introducing Son 1's testimony that Goodrich attacked Victim 1 and Victim 2, who were both unarmed and simply demanding that Goodrich leave Victim 1's residential premises.

"A person is entitled to acquittal as a matter of law on the basis of self-defense only if there is *undisputed and uncontradicted* evidence clearly establishing self-defense." *State v. Henderson*, 311 S.W.3d 411, 414 (Mo. App. W.D. 2010) (emphasis added) (quoting *State v. Dulaney*, 989 S.W.2d 648, 651 (Mo. App. W.D. 1999)). Due to the conflicting evidence, the trial court correctly concluded that Goodrich's claim of self-defense fell to the jury to resolve. *See id.* at 414 ("Where there is conflicting evidence or when different inferences can reasonably be drawn from the evidence, whether the defendant acted in self-defense is a question for the trier of fact."); *State v. Walton*, 166 S.W.3d 95, 100 (Mo. App. S.D. 2005) ("The state need not present undisputed evidence that defendant was an initial aggressor in order to submit the issue to the jury.

Conflicting evidence as to who was the initial aggressor presents an issue of fact for the jury to decide."). The jury resolved the contested evidence on self-defense against Goodrich, as it was entitled to do. *See State v. Kilgore*, 505 S.W.3d 362, 369 (Mo. App. E.D. 2016) ("When a defendant claims self-defense, the jury is not bound by his self-serving explanation.").

Here, Goodrich advances his sufficiency-of-the-evidence argument largely by highlighting evidence contrary to the jury's verdict and asserting that all of the State's evidence supporting the jury's verdict was false or refuted. Ultimately, Goodrich's argument on this point reflects his personal disagreement with the State's evidence and his belief that the jury should have accepted his evidence instead of the State's evidence. Goodrich's argument fails because this Court must defer to the jury's weighing of the evidence and its determinations on witness credibility: "In the final analysis, the defendant is asking this court to rule that the jury should have accepted his testimony rather than that of his victim. This is a criminal appeal. We may neither weigh the evidence nor determine the credibility of the witnesses." *State v. Luckinbill*, 744 S.W.2d 872, 874 (Mo. App. S.D. 1988).

Point IX is denied.

Point X

In Point X, Goodrich argues the trial court erred in denying his challenge to a purportedly race-based peremptory strike. Specifically, Goodrich contends that the trial court erred in rejecting his argument that the State's race-neutral justification for the peremptory strike was a pretext for unlawful race-based discrimination.

"The Equal Protection Clause prevents parties from using peremptory challenges to strike potential jurors on the basis of race." *State v. Carter*, 415 S.W.3d 685, 688 (Mo. banc 2013) (citing *Batson v. Kentucky*, 476 U.S. 79, 89 (1986); *State v. Marlowe*, 89 S.W.3d 464, 468 (Mo. banc 2002)). When a defendant raises a *Batson* challenge, the trial court evaluates it according to the following three-step framework:

> First, a defendant must challenge one or more specific venirepersons struck by the State and identify the cognizable racial group to which they belong. Second, the State must provide a race-neutral reason that is more than an unsubstantiated denial of discriminatory purpose. Third, the defense must show that the State's explanation was pretextual and the true reason for the strike was racial.

State v. McFadden, 369 S.W.3d 727, 739 (Mo. banc 2012). We review the denial of a *Batson* challenge for clear error:

> The trial court's ruling concerning a *Batson* challenge receives considerable deference from reviewing courts because it is largely based on an analysis of the prosecutor's credibility and demeanor. As such, the trial court's decision will only be overturned if it is clearly erroneous and the reviewing court is left with a definite and firm conviction that the trial court made a mistake.

Carter, 415 S.W.3d at 689 (citation omitted).

Here, Goodrich satisfied the first step of a *Batson* challenge by identifying a specific black female struck from the venire pool by the State: Juror Number 23. The State then responded to the *Batson* challenge by citing Juror Number 23's difficulty in understanding the law surrounding the burden of proof:

> [THE STATE]: Judge, as we discussed briefly earlier, although I don't know if it was on the record, Juror Number 23 gave . . . at least a couple different answers to questions posed by [Counsel] where . . . she was unable to—I think initially she was going to convict . . . short of the evidence necessary, and then . . . seemed to swing in the other direction.

> And frankly, her answers don't give me a clear indication that she can follow the instructions, and I don't want somebody in that scenario where I have a significant question about their ability to follow the law. I don't want that on the jury.

Because this explanation was specific to Juror Number 23, race-neutral, and relevant to the case being tried, it satisfied the State's burden on the second step of the *Batson* framework. *See Frazier v. City of Kansas City*, 467 S.W.3d 327, 343-44 (Mo. App. W.D. 2015) ("To be sufficient, the explanation need only be race-neutral, reasonably specific and clear, and related to the particular case to be tried." (quoting *State v. Parker*, 836 S.W.2d 930, 934 (Mo. banc 1992))).

Goodrich challenges the trial court's conclusion on step three of the *Batson* framework. As such, Goodrich must demonstrate in this appeal that the trial court clearly erred in its conclusion that Goodrich failed to carry his burden of establishing that the State's explanation was pretextual. *See State v. Powell*, 707 S.W.3d 822, 826 (Mo. App. W.D. 2025). "We determine whether a race-neutral explanation is pretextual by considering the plausibility of the explanation in light of the totality of the facts and circumstances." *Id.* (quoting *State v. Burnett*, 492 S.W.3d 646, 654 (Mo. App. E.D. 2016)).

> To determine if pretext exists, this Court considers a non-exclusive list of factors including: the explanation in light of the circumstances; similarly situated jurors not struck; the relevance between the explanation and the case; the demeanor of the state and excluded venire members; the court's prior experiences with the prosecutor's office; and objective measures relating to motive.

State v. Johnson, 284 S.W.3d 561, 571 (Mo. banc 2009). "Although the presence of similarly situated panelists who remain on the panel is crucial, and often determinative of

pretext, their presence is not dispositive of pretext." *Powell*, 707 S.W.3d at 827 (citation modified) (quoting *State v. Murray*, 428 S.W.3d 705, 711 (Mo. App. E.D. 2014)).

To demonstrate pretext to the trial court, Goodrich identified a purportedly similarly situated white juror who was not struck, Juror Number 12:

> [COUNSEL]: And Judge, my position . . . is I believe Juror Number 12, who is a Caucasian female, who remains on the jury at this point and the state has not struck, answered the question similarly, where there would have been an answer that was in conflict with the instruction, further questioning, and then a change of her statement once the law was fully explained and questioning continued to be explored. I believe that Juror Number 12 answered questions in a similar fashion, in a similar way to Juror 23. And yet, Juror Number 12 remains on the panel and is a Caucasian, Juror Number 23 is requested to being struck by the state and is African-American.

The trial court rejected Goodrich's argument because it determined that Juror Number 23 and Juror Number 12 discussed their concerns about following the trial court's instructions in materially different ways:

> THE COURT: Okay. In looking through my notes and what I recall . . . in comparing the exchanges of the two individuals, the exchanges were drastically different. Juror Number 23 did not necessarily question, she didn't understand. You both had to repeatedly go over what you were trying to explain to her, and . . . it appeared she was having trouble following, and she would agree . . . almost because you were the last person who asked. Juror Number 12, on the other hand, affirmatively asked questions . . . to clarify. And once it was clarified, she made a decision and didn't waffle from it. Whereas, 23 was kind of all over the board. And my concern is she's not going to follow my instructions. Because that was the initial encounter with 23. So I believe that that's race neutral, and I will grant the peremptory strike and deny the Batson challenge.

This record supports the trial court's characterization of the differences between their responses. Juror Number 23 initially indicated she would have difficulty presuming Goodrich not guilty at the start of the trial because she would need to know the evidence

before deciding whether Goodrich was guilty or not guilty. When questioned individually on this point, Juror Number 23 initially stood by her answer—even after Goodrich's counsel provided a hypothetical to illustrate how to apply the presumption; Juror Number 23 only changed her answer after an extended conversation on the rule. In contrast, Juror Number 12 initially indicated that she would have difficulty considering Goodrich's self-defense claim and deciding the case without Goodrich testifying. However, when questioned individually on both of these points, Juror Number 12 immediately ratified her ability to follow the trial court's instructions—without any further individualized explanation of the law.

Furthermore, both the prosecutor and the trial court created a record on the differences in the tone and demeanor of Juror Number 23's and Juror Number 12's answers: that Juror Number 23 did not appear to truly change her opinion while Juror Number 12 appeared to genuinely understand how to follow the trial court's instructions. Because this Court cannot evaluate differences in tone and demeanor—which were critical to the State's proffered justification and the trial court's evaluation of that justification—this Court must defer to the trial court's determination on those factors. *See State v. Johnson*, 220 S.W.3d 377, 383 (Mo. App. E.D. 2007) ("Tone of voice and demeanor cannot be gleaned from a transcript, so appellate courts defer to the trial court's findings.").

On this record, we find the trial court could have reasonably concluded that the State struck Juror Number 23 because of her perceived difficulty in following the trial court's instructions on the law—not because of her race—so we affirm the trial court's

denial of Goodrich's *Batson* challenge. *See Powell*, 707 S.W.3d at 826 (explaining that, where the trial court's action on a *Batson* challenge is plausible under review of the record in its entirety, an appellate court may not reverse it).

Point X is denied.

Unpreserved Points (Points II, III, IV, V, VI, VII, VIII, and XI)

Goodrich concedes that his remaining points are not properly preserved. Although Goodrich failed to preserve these points on appeal, we nonetheless have the authority to review them for plain error: "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." Rule 30.20; *see also State v. Jackson-Bey*, 690 S.W.3d 181, 186 (Mo. banc 2024) ("Generally, this Court does not review unpreserved claims of error. This Court, however, has discretion to review plain errors." (citation modified)). However, "plain error review is discretionary." *State v. Jones*, 725 S.W.3d 577, 584 (Mo. banc 2025). Thus, we may exercise our discretion to decline any review of Goodrich's unpreserved points. *See id.* at 585 ("In summary, an appellate court confronted with a request to grant relief applying plain error review may resolve the claim in one of five ways under the Rule 30.20 framework: . . . 4. Declining to exercise its discretionary authority to review for plain error . . . ."). However, here, we instead decline to grant Goodrich's unpreserved points because we find that none demonstrate the trial court committed plain error. *See id.* (holding that an appellate court may "[d]eclin[e] 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").

Points II, III, VI, and XI

In Points II, III, VI, and XI, Goodrich asserts the trial court plainly erred in allowing the State to present and discuss evidence that the State knew to be false or misleading. We reject all four points because they are not supported by the record.

In Point II, Goodrich contends that Interviewing Officer falsely implied on cross-examination that Ring provided all videos taken by Victim 1's front-door camera on the night of the shooting, including any and all deleted videos. We disagree. The record instead demonstrates that Interviewing Officer testified that he requested Ring to provide any and all videos *still in its possession*—regardless of whether the videos had been deleted—and that he received four videos, two of which were not available on Son 2's phone. Interviewing Officer never stated or represented that he received every video taken by the Ring camera on Victim 1's front door during the night of the shooting.

In Point III, Goodrich contends that Interviewing Officer improperly testified to his personal belief that Son 2 and Aunt discussed deleting videos to avoid incriminating Son 1 for shooting at Goodrich. Goodrich argues that Interviewing Officer lacked a basis for his testimony, that the testimony was speculative, and that it was false and misleading because it contradicted the impression included in his police report. However, Interviewing Officer testified that the basis for his belief came from observing the conversation between Aunt and Son 2 and his knowledge that Son 1 had admitted to

police that he had fired at Goodrich after the shooting.[6] Because Interviewing Officer only testified to his own mental impression and not the impressions of Aunt or Son 2, his testimony was not improperly speculative. *See State v. Shaffer*, 439 S.W.3d 796, 801-02 (Mo. App. W.D. 2014) ("Fulbright could have testified that it appeared to her that Shaffer Jr. was upset but just could not testify that Shaffer Jr. was in fact upset . . . ."); *State v. Arnold*, 700 S.W.3d 325, 331 (Mo. App. S.D. 2024) ("Because [Witness] was asked about what *he* was thinking, not about what *Arnold* was thinking, the circuit court did not err, let alone plainly err, in overruling the objection."). Furthermore, Interviewing Officer's testimony did not contradict his report. In his report, Interviewing Officer only noted that the conversation had occurred; Interviewing Officer's report did not include any statement of his impression of what motivated the conversation between Son 2 and Aunt.

In Point VI, Goodrich seizes upon several facts from Son 1's testimony that he deems to be inconsistent with other evidence in the record—including Goodrich's own testimony—to argue that Son 1 perjured the entirety of his testimony. Standing alone, "inconsistency in testimony cannot be said to constitute perjury." *See Cloud v. State*, 535 S.W.2d 577, 578 (Mo. App. 1976) ("If the movant's position were sound, the bare

[6] In Point III, Goodrich also argues that the trial court plainly erred in allowing the State to use leading questions when cross-examining Interviewing Officer, a witness that Goodrich called. Because leading questions may be used to cross-examine an adverse witness, the trial court committed no error. *King v. Copp Trucking, Inc.*, 853 S.W.2d 304, 310 (Mo. App. W.D. 1993) (recognizing that a "party may ask leading questions during cross-examination of the witness"); *cf. State v. Crone*, 399 S.W.2d 19, 22 (Mo. 1966) (allowing for the State to ask "leading questions amounting to a cross-examination" when its own witness turned unexpectedly hostile).

allegation of perjury would require re-examination of every trial in which inconsistencies appeared in the witnesses' testimonies, a proposition which once articulated demonstrates its absurdity."). Absent any evidence demonstrating Son 1 or the State knew Son 1's tesimony to be false, conflicts between Son 1's testimony and other evidence in the record were a matter for the jury to resolve. *See State v. Lakin*, 177 S.W.2d 500, 501 (Mo. 1944) ("An assignment accuses the State's witnesses of perjury. The jury passed on the credibility of the witnesses and conflicts in the testimony of the different witnesses were peculiarly within the province of the jury."); *State v. Donahue*, 625 S.W.2d 947, 949 (Mo. App. W.D. 1981) (holding that inconsistencies within a State witness's testimony were not indicative of perjury, were appropriately left for the jury to resolve, and did not prevent the State from establishing sufficient evidence to support the verdict). Here, the jury heard Son 1's testimony and the evidence that conflicted with it; nonetheless, the jury credited Son 1's testimony. On appeal, we must defer to this credibility determination.[7]

[7] Furthermore, as to Points II, III, and VI, we note that Missouri courts are reluctant to impose a *sua sponte* duty on trial courts to interject themselves into witness examinations, even where objectionable witness examination has occurred:

> But because of the lack of any objection, we are asked to determine whether the trial court plainly erred in failing to take any corrective action with regard to the prosecutor's improper cross-examination. Generally speaking, a trial court has an obligation to ensure that a criminal defendant has a fair trial, including the obligation to exercise its discretion to control obvious misconduct by the prosecution. That said, Missouri courts have been reluctant to criticize a trial court when it has declined to take action on its own motion on behalf of a party during the examination of a witness. Indeed, such invitations have been rejected in all but the most unusual

In Point XI, Goodrich argues the trial court committed plain error by failing to *sua sponte* intervene in the State's closing argument. As an initial matter, we note that unpreserved objections to statements made during closing arguments are particularly ill-suited for plain error review and are accordingly disfavored:

> It has long been held that plain error relief as to closing argument should rarely be granted and is generally denied without explanation. Courts are especially hesitant to find plain error in closing argument because counsel's opting not to object is often a matter of trial strategy, and absent an objection and request for relief, the trial court's options are narrowed to uninvited interference with summation and a corresponding increase of error by such intervention.

State v. Love, 700 S.W.3d 288, 296 (Mo. App. W.D. 2024) (citation modified) (quoting *State v. Parrish*, 684 S.W.3d 752, 759 (Mo. App. E.D. 2024)).

Nonetheless, Goodrich raises a number of objections, including that the State improperly bolstered witness credibility, testified to new evidence, and misrepresented the evidence surrounding the availability of the Ring videos. After reviewing the State's closing argument, we find that Goodrich's arguments are not supported by the record. Instead, the sections of the State's closing that Goodrich finds objectionable are all simply inferences fairly drawn from the evidence and attempts to resolve inconsistencies between conflicting pieces of evidence. Thus, the State stayed within the broad permissible scope of closing argument: "A prosecutor is allowed to argue the evidence and *all* reasonable inferences from the evidence during closing arguments." *State v.*

> circumstances. There is sound reasoning behind such hesitance to require a trial court to take *sua sponte* corrective action.

State v. Roper, 136 S.W.3d 891, 902 (Mo. App. W.D. 2004) (citations omitted).

Brown, 337 S.W.3d 12, 14 (Mo. banc 2011) (emphasis added) (citing *State v. Harris*, 870 S.W.2d 798, 814 (Mo. banc 1994)); *see also State v. Hurtt*, 807 S.W.2d 185, 188-89 (Mo. App. S.D. 1991) (holding that the State may explain inconsistencies in the evidence during closing arguments if the explanation is not based on evidence outside the record).

Points II, III, VI, and XI are denied.

Point IV

In Point IV, Goodrich argues the trial court committed plain error by allowing the State to elicit hearsay statements of Aunt and Son 2 through the cross-examination of Interviewing Officer. Goodrich specifically challenges the statements from the following portion of Interviewing Officer's testimony, which were presented without objection at trial:

> [THE STATE]: And again, when [Son 2]'s aunt is telling him what to watch out for, she's telling him that the only thing you all need to know is about the murder and anything on his phone that relates to the murder, correct?
>
> [OFFICER]: She—yeah. [Aunt] specifically referenced, "Do you have any crazy messages on there?" At the beginning of that she cautioned him that we were going to copy everything on his phone. She said something about crazy messages on there. He specifically mentioned, "I need to delete these pictures." She said—made the statement, "You better be quick about it."
>
> [THE STATE]: Okay. And did she say that in the context of, "The only thing they need to worry about is what happened tonight?"
>
> [OFFICER]: No. That's a statement she made to him, yes.
>
> [THE STATE]: Okay. Thank you. No further questions.

"Hearsay is an out-of-court statement offered to prove the truth of the matter asserted and depends on the statement's veracity for its value." *Hollowell*, 643 S.W.3d at

337 (Mo. banc 2022) (citing *Kemp*, 212 S.W.3d at 146). "If out-of-court statements are not offered for the truth of the matter asserted, however, the statements do not constitute hearsay, and 'there is no basis for requiring the proponent of the testimony to fit within an exception to the hearsay rule[.]'" *Id.* (alteration in original) (quoting *State v. Bell*, 62 S.W.3d 84, 89 (Mo. App. W.D. 2001)).

Statements that are instructions or commands do not assert any truth at all and, thus, are not hearsay. *State v. Dillon*, 728 S.W.3d 857, 864 (Mo. App. E.D. 2025) ("The statement 'Bae, get the gun' could not have been offered to prove the truth of the matter asserted because it does not assert any truth at all; it is a request or command, admissible to explain Dillon subsequently discharging his gun."); *see also State v. Parnell*, 792 S.W.2d 635, 638 (Mo. App. E.D. 1989) ("In this case, the out of court statement consisted of an order not to put defendant's calls through. This imperative statement was not offered for its truth. It makes no sense to ask whether the command was true or false. Since the statement is not hearsay, any facts tending to show an inference that the statement was made cannot be hearsay.").

Here, the out-of-court statements from Aunt to Son 2, "you better be quick about it," and "the only thing [the police] need to worry about is what happened tonight," were imperative commands and instructions. Because they had no truth value, they were not hearsay.

Additionally, when a question is intended to gain information that the declarant does not know—rather than an assertion disguised as a question—the question contains no truth value because it cannot be proven true or false and, thus, is not hearsay. *See*

State v. Williams, 118 S.W.3d 308, 311 n.3 (Mo. App. S.D. 2003) (comparing cases that hold a question never has truth value under any circumstance and cases that hold a question is hearsay only when it is intended as an assertion rather than a genuine question). Here, Aunt asked the question, "do you have any crazy messages on there?" to Son 2 so that she could learn information to provide further instruction on what actions to take. Because this question had no truth value, it was not hearsay.

Finally, Son 2's statement, "I need to delete these pictures," was admissible under two theories. First, it was admissible to explain why police subsequently subpoenaed Ring—to retrieve potentially deleted videos. *See Hollowell*, 643 S.W.3d at 337 ("Out-of-court statements offered not for the truth of the matter asserted but rather to explain and provide context for subsequent police action are not hearsay and are admissible."). Second, to the extent the statement was admitted to prove the truth of the matter asserted, it was admissible to demonstrate Son 2's then-existing intent to delete content off his phone, an exception to the rule against hearsay. *See State v. Rios*, 234 S.W.3d 412, 424 (Mo. App. W.D. 2007) ("Statements of intention to perform a future act in the immediate future are relevant to show that the act was probably done as planned." (citation modified)).

Goodrich has failed to demonstrate that any of the out-of-court statements elicited during Interviewing Officer's cross-examination constituted hearsay without an exception and, hence, there is no trial court error, plain or otherwise.

Point IV is denied.

Points V and VIII

In Point V, Goodrich argues the trial court committed plain error by allowing text messages discussing a past act of violence he committed against Victim 1 three months before the shooting—slashing Victim 1's car tires—into evidence because the text messages were improper character evidence and were not legally relevant.

"The general rule concerning the admission of evidence of uncharged crimes, wrongs, or acts is that evidence of prior uncharged misconduct is inadmissible for the purpose of showing the propensity of the defendant to commit such crimes." *State v. Emery*, 701 S.W.3d 585, 604 (Mo. banc 2024) (quoting *State v. Morrow*, 968 S.W.2d 100, 107 (Mo. banc 1998)).

However, "Missouri courts have long observed, particularly in assault and murder cases, that 'prior misconduct by the defendant toward the victim is logically relevant to show motive, intent, or absence of mistake or accident.'" *State v. Griffin*, 670 S.W.3d 105, 111 (Mo. App. E.D. 2023). And in cases where the defendant claims self-defense, prior threats and acts of violence between the defendant and the victim are admissible for the purpose of resolving a dispute over which party acted as the initial aggressor. *See State v. Rodgers*, 102 S.W.2d 566, 567 (Mo. 1937) ("This testimony is to the effect that the appellant called the deceased vile names and invited him into the yard to fight. . . . We are of the opinion that this evidence is admissible. Previous threats and bellicose attitude of the parties are admissible to show who was the aggressor.").

Here, the text messages evidencing a prior act of violence by Goodrich against Victim 1 were admissible for a valid purpose—demonstrating that Goodrich was the

initial aggressor in the shooting that killed Victim 1—and not for the invalid purpose of Goodrich's propensity to commit violent acts as a general matter.

"Legal relevance weighs the probative value of the evidence against its costs—unfair prejudice, confusion of the issues, misleading the jury, undue delay, waste of time, or cumulativeness." *State v. Prince*, 534 S.W.3d 813, 818 (Mo. banc 2017). Here, Goodrich asserts the prior act of violence had no probative value because it was unrelated to the crimes with which Goodrich was charged and because it occurred roughly three months before the shooting. As discussed above, prior acts of violence have considerable probative value for determining which party was the initial aggressor. Furthermore, the fact that the violent act occurred within three months of the shooting does not render it too remote to be legally relevant. *See State v. Danikas*, 11 S.W.3d 782, 791 (Mo. App. W.D. 1999) (holding that prior acts of violence occurring three *years* prior to the charged murder "was not too remote in time so as to render it legally irrelevant and inadmissible"). Goodrich has failed to demonstrate on this appeal that evidence of the prior violent act was not legally relevant.

Because the text messages were admissible for a valid purpose, the trial court committed no error, plain or otherwise, in permitting the admission of such evidence.

In Point VIII, Goodrich similarly argues the trial court committed plain error in instructing the jury that it could consider prior acts of violence in determining which party was the initial aggressor. Goodrich objects to the following instruction issued to the jury:

> Evidence has been introduced of the prior relationship between defendant and [Victim 1], including evidence of arguments and acts of violence. You may consider this evidence in determining who was the initial aggressor in the encounter, and you may also consider it in determining whether the defendant reasonably believed that the use of physical force was necessary to defend himself from what he reasonably believed to be the use or imminent use of unlawful force by [Victim 1].

The challenged instruction correctly followed the wording of the relevant Missouri Approved Instruction. *See* MAI-CR 4th 406.06, Evidentiary Matters [3] (2023). Thus, the wording of the challenged instruction satisfied the requirements of Rule 28.02(c): "Whenever there is an MAI-CR instruction or verdict form applicable under the law and Notes On Use, the MAI-CR instruction or verdict form shall be given or used to the exclusion of any other instruction or verdict form."

Nonetheless, Goodrich argues that the instruction was legally erroneous because it unlawfully instructed the jury to consider improper character evidence. *See Kerr v. Vatterott Educ. Ctrs., Inc.*, 439 S.W.3d 802, 813 n.6 (Mo. App. W.D. 2014) ("The Missouri Supreme Court has held that MAI and its Notes on Use are not binding to the extent they conflict with the substantive law. If an instruction following MAI conflicts with the substantive law, any court should decline to follow MAI." (quoting *Clark v. Mo. & N. Ark. R.R. Co., Inc.*, 157 S.W.3d 665, 671 (Mo. App. W.D. 2004))).

As discussed above, however, a defendant's prior threats or acts of violence against a victim are admissible for the purpose of demonstrating whether the defendant or the victim was the initial aggressor in an altercation. Thus, Goodrich has failed to demonstrate that the given instruction conflicted with substantive law, so the trial court did not err, plainly or otherwise, in submitting it to the jury. *See id*.

Points V and VIII are denied.

Point VII

In Point VII, Goodrich argues that the trial court plainly erred in failing to include a "withdrawal" paragraph in the jury instructions instructing the jury on Goodrich's claim of self-defense. Because no evidence in the record demonstrated that any of the parties to the conflict attempted to withdraw, the trial court did not err in refusing to include an inapplicable withdrawal paragraph in the instructions to the jury relating to self-defense.

"In determining whether a self-defense instruction should have been submitted to the jury, the evidence is viewed in the light most favorable to defendant's theory of self-defense." *State v. Morrow*, 41 S.W.3d 56, 59 (Mo. App. W.D. 2001). "If the evidence tends to establish the defendant's theory, or supports differing conclusions, the defendant is entitled to an instruction on it." *Westfall*, 75 S.W.3d at 280.

Missouri law recognizes that, although an initial aggressor may not claim self-defense, an initial aggressor may withdraw from a conflict, reclaiming the right to act in self-defense:

> Self-defense is not available to a defendant if he was the initial aggressor unless he withdrew from the conflict in such manner to have shown his intention to desist. A withdrawal is the abandonment of the struggle by one of the parties. The withdrawal must be made in good faith and be more than mere retreat, which may be simply a continuance of hostilities. Additionally, the withdrawal or abandonment must be perceived by or made known to the adversary.

Morrow, 41 S.W.3d at 59 (citations omitted). "Thus, to be entitled to a [withdrawal paragraph in a] self-defense instruction, substantial evidence must demonstrate that the

defendant . . . if he was the initial aggressor, that he effectively withdrew from the conflict." *Id.*

Here, *neither* the State nor Goodrich presented any evidence of withdrawal by Goodrich. According to the State's evidence, Goodrich attacked and killed Victim 1 and Victim 2 without any justification and without any attempt by Goodrich to withdraw from the incident that led to the murders of Victims 1 and 2. And, according to Goodrich's evidence, he was attacked by Victim 1 and Victim 2 and shot them in self-defense; Goodrich presented no evidence he withdrew from a conflict.

Thus, while Goodrich's testimony is sufficient to place before the jury the question of whether he was (or was not) the initial aggressor (and that Victim 1 and Victim 2 were the initial aggressors instead), his testimony is insufficient to place any facts in dispute about whether, *if* he were the initial aggressor, he had withdrawn from the conflict before acting in self-defense:

> [Defendant]'s testimony, however, was not sufficient to inject the issue of withdrawal from the encounter by an initial aggressor. [Defendant]'s testimony only constituted evidence that he was not the initial aggressor, not that he was the initial aggressor and that he effectively withdrew from the encounter. . . . [Defendant] never admitted that he was the initial aggressor in the ultimate episode or any other altercation. His testimony did not constitute evidence that he had withdrawn from an encounter in which he was the initial aggressor.

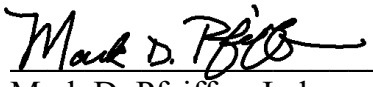
Id. at 59-60. Therefore, Goodrich was not entitled to a self-defense jury instruction that included a withdrawal paragraph. *See id.* at 60 (holding that, because the defendant did not present any evidence of an attempt to withdraw from a conflict, "[t]he trial court,

therefore, did not plainly err in submitting instruction No. 11, the self-defense instruction, which did not include the withdrawal paragraph").[8]

Point VII is denied.

Conclusion

The judgment of the trial court is affirmed.



Mark D. Pfeiffer, Judge

W. Douglas Thomson, Presiding Judge, and Lisa White Hardwick, Judge, concur.

[8] With regard to Goodrich's instructional error points on appeal, in both instances Goodrich either jointly submitted or otherwise agreed to use of the instruction complained of on appeal. As our Supreme Court has recently concluded, where a defendant's affirmative conduct has contributed to an alleged instructional error, appellate courts are well within their discretion to refuse to grant plain error review. *State v. Burkett*, 725 S.W.3d 565, 573 (Mo. banc 2025).