MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE OF MISSOURI,	)	
	)	
Respondent,	)	
	)	
v.	)	**WD87979**
	)	
MICHAEL LEROY BUTLER,	)	**Filed: July 28, 2026**
	)	
Appellant.	)	

APPEAL FROM THE CIRCUIT COURT OF BOONE COUNTY
THE HONORABLE STEPHANIE M. MORRELL, JUDGE

BEFORE DIVISION TWO: JANET SUTTON, PRESIDING JUDGE,
LISA WHITE HARDWICK, JUDGE, AND W. DOUGLAS THOMSON, JUDGE

Michael Butler appeals his conviction for third-degree domestic assault. He contends the circuit court erred in sentencing him as a persistent offender because Sections 558.016 and 558.021[1] are unconstitutional. Butler also asserts the court erred in admitting evidence of an uncharged crime. For reasons explained herein, we deny Butler's motion to transfer the case to the Missouri Supreme Court and affirm the circuit court's judgment.

[1] All statutory references are to the Revised Statutes of Missouri 2016, as updated by the 2023 Cumulative Supplement.

FACTUAL AND PROCEDURAL HISTORY

In April 2024, Butler lived with Victim in her home in Centralia. Victim's 11-year-old son, her 16-year-old daughter, and Butler's daughter lived with them. Butler and Victim had been dating for approximately five years.

On April 4, 2024, Butler, Victim, and her son were home. Butler wanted to go to Victim's mother's house, but Victim did not want to go because she was tired. They began to argue, and Butler threw his vape pen at Victim, who was sitting on the couch. Victim threw the vape pen behind her and told Butler, "Don't throw that at me." Butler walked behind Victim, grabbed her around the neck with one hand, and tried to take her cell phone with his other hand. Victim struggled to keep her cell phone and told Butler to get off of her. Victim's son saw part of this altercation and ran at Butler, yelling at him to get off of Victim. Butler let go of Victim.

Victim and her son ran outside to Victim's car. When they attempted to leave, Butler jumped up and down on the step rail of Victim's car and broke a door handle. As Victim drove to Victim's mother's house three blocks away, Butler got into his car, chased Victim's car, and tried to run her car off the road.

Victim arrived at her mother's house and told her mother what happened. Shortly thereafter, Butler arrived and was "very aggressive." Victim stayed at her mother's house for 20 minutes but left after Butler said he was going back to their house to "get his stuff." Worried that Butler would damage her house and belongings like he had damaged her car, Victim drove home.

When Victim returned home, Butler was inside. He asked her "if we were really going to throw away five years." Victim responded, "Fuck five years." Butler then began punching Victim in the face. Victim's body "went numb," and she put her hand over her face to try to block him. Butler struck her repeatedly in her forehead, nose, and eyes. Victim was terrified.

Butler stopped hitting Victim when Victim's brother arrived at the house and told Butler to get off of Victim and "get the hell out" of the house. Butler left. Victim's brother put Victim in the bathroom for a time. Victim saw she was bleeding from her face, head, and nose, and there was blood all over the walls and the floor around her. She had gashes, one of which left a scar, on her head and on her nose.

Victim was scared and called her mother and daughter. Victim's mother arrived with Victim's son, and Victim called the police because she was afraid Butler would return. Victim did not want Butler arrested, however, because she still loved him.

Victim spoke to an officer at her home. Victim was "very obviously upset" and "a bit scared" when she spoke to police, and she asked for an extra patrol in her area. The officer noticed Victim had bleeding cuts on her forehead and the bridge of her nose, a "pretty dark black eye," and a "busted lower lip." The inside of her nose was also bleeding. Victim's injuries took a long time to heal.

After the assault, Butler sent Victim texts apologizing to her, acknowledging he was wrong, and admitting he "should be in jail." Butler also tried to reach out to Victim on Facebook, but she did not respond to his messages.

The State charged Butler as a persistent offender with one count of third-degree domestic assault. A jury found him guilty of that offense. In the second phase of the trial, the jury found Butler had been convicted of two other felonies that were committed on separate occasions. The court then sentenced Butler as a persistent offender to seven years in prison. Butler appeals.

APPELLATE JURISDICTION

Butler filed a motion to transfer this case to the Missouri Supreme Court. In his motion, Butler alleges the Supreme Court has exclusive appellate jurisdiction of his appeal under Article V, Section 3, of the Missouri Constitution because he is challenging the constitutionality of Sections 558.016 and 558.021.

The "mere assertion" that a statute is unconstitutional does not deprive intermediate courts of appeal of jurisdiction. *State v. Robinson*, 707 S.W.3d 60, 64 (Mo. App. 2025). Rather, to invoke the Supreme Court's exclusive appellate jurisdiction, the "constitutional issues must be real and substantial, and not merely colorable." *Id*. (citation omitted). "A claim is merely colorable if the United States Supreme Court or Missouri Supreme Court has already addressed the constitutional challenge." *Id*. If the claim is merely colorable, we retain jurisdiction. *Id*.

While the appeal was pending, the Missouri Supreme Court addressed the constitutionality of the statutory scheme for the imposition of extended terms for persistent intoxication-related traffic offenders. In *State ex rel. Hanaway v. Hellmann*, 728 S.W.3d 410 (Mo. banc 2026), the Court determined Section 557.023.2, which is a similar sentence enhancement statute to Section 558.021.2, is not facially

unconstitutional. In so holding, the Court rejected the same arguments Butler raises here. *Hellmann*, 728 S.W.3d at 412-16. Butler provides no reasons why *Hellmann*'s analysis of the constitutional challenge to Section 557.023.2 should not apply to his constitutional challenge to Sections 558.016 and 558.021, and we see none. Because the Missouri Supreme Court has addressed Butler's constitutional challenge, his claim is merely colorable, and we retain jurisdiction of this appeal. Butler's motion to transfer is denied.

ANALYSIS

In his first three points, Butler contends the circuit court erred in overruling his motion to strike the persistent offender allegation, overruling his objection to admitting exhibits showing his prior offenses at the pretrial hearing and relying on those exhibits to find him to be a persistent offender, and overruling his objection to admitting the same exhibits at trial and allowing the jury to rely on them to find him to be a persistent offender. Butler's argument for all three points is the same: Under the United States Supreme Court's decision in *Erlinger v. U.S.*, 602 U.S. 821 (2024), Sections 558.016 and 558.021 are unconstitutional and, therefore, he should not have been charged or sentenced as a persistent offender.

In *Erlinger*, 602 U.S. at 835, the United States Supreme Court held the Fifth and Sixth Amendments to the United States Constitution require a unanimous jury to determine, beyond a reasonable doubt, whether a criminal defendant's past offenses were committed on separate occasions for purposes of enhancing the defendant's sentence under the Armed Career Criminal Act, 18 U.S.C. § 924(e). The Court explained a unanimous jury must resolve any fact that increases a defendant's prescribed range of

penalties and, because a finding that the defendant's prior convictions occurred on different occasions would lengthen his sentence, the jury must be allowed to make that finding. *Id*. at 834-35.

Butler asserts Missouri's procedure for sentencing a defendant as a persistent offender under Sections 558.016 and 558.021 is constitutionally deficient because it does not require a jury to make this finding. Section 558.016.3 defines a "persistent offender" as "one who has been found guilty of two or more felonies committed at different times," and Section 558.016.6 states these "findings of guilt shall be prior to the date of commission of the present offense." Section 558.021.1 directs the court to find the defendant to be a persistent offender if: (1) the charging documents plead the essential facts that warrant such a finding; (2) evidence is introduced that establishes this finding beyond a reasonable doubt; and (3) the court makes findings of fact that warrant a finding, beyond a reasonable doubt, that the defendant is a persistent offender. Section 558.021.2 further provides, in pertinent part, that in a jury trial, "the facts shall be pleaded, established and found prior to submission to the jury outside of its hearing." Because Sections 558.016 and 558.021, as written, make no provision for the jury to find his prior offenses occurred on separate occasions, Butler contends they are unconstitutional under *Erlinger*.

As we noted, *supra*, however, the Missouri Supreme Court addressed the constitutionality of a similar sentence enhancement statute in *Hellmann*, 728 S.W.3d at 412. The defendant in *Hellmann* challenged the constitutionality of Missouri's sentence enhancement statute for persistent intoxication-related traffic offenders. *Hellmann*, 728

S.W.3d at 412. Like Section 558.016.3, Section 577.001(18)(a) defines a "persistent offender" in that context as someone who has been found guilty of "[t]wo or more intoxication-related traffic offenses committed on separate occasions." Like Section 558.021.2, Section 577.023.2 provides for the court to make a pre-submission determination, outside the jury's hearing, as to whether the defendant was convicted of two or more intoxication-related offenses on separate occasions. Thus, like Section 558.021.2, Section 577.023.2 does not provide any method for the jury to find the prior offenses were committed on separate occasions and, instead, requires the court to make this finding prior to submission of the case to the jury. *Hellmann*, 728 S.W.3d at 414.

The Court rejected the defendant's contention that this renders Section 577.023.2 facially unconstitutional.[2] The Court noted the circuit court's pre-submission determination that the defendant is a persistent offender does not, by itself, violate his rights under the Fifth and Sixth Amendments. *Id*. at 415. The Court explained the defendant's "rights would be violated only if the jury was removed from its constitutionally mandated fact-finding role." *Id*. Hence, "[i]f, after the circuit court has made its pre-submission finding [the defendant] is a persistent offender, the jury makes the requisite finding the convictions occurred on separate occasions, unanimously and beyond a reasonable doubt, [the defendant's] Fifth and Sixth Amendments rights remain

[2] "When raising a facial challenge, the proponent must establish there is no set of circumstances under which the statute would be valid." *Hellmann*, 728 S.W.3d at 412. "It is not enough to show that, under some conceivable circumstances, the statute might operate unconstitutionally." *Id*. (citation omitted).

inviolate." *Id*. Because Section 577.023.2 "is constitutional under such a factual scenario," the defendant's facial challenge to the statute necessarily failed. *Id.*

The Court further noted there are procedural rules "already in place" to ensure a defendant's constitutional rights are protected. *Id*. "Second-stage proceedings to determine criminal sentencing and sentencing enhancement are commonplace and allow for such protection." *Id*. Indeed, Rule 27.02(s) provides: "For second stage proceedings in non-death penalty cases when the jury will not assess and declare punishment but the state is required to prove an additional fact beyond a reasonable doubt, the order of those proceedings shall be in accordance with MAI-CR 4th 405.01 through 405.08." "MAI-CR 4th 405.01 outlines jury instructions when the jury is required to find specific additional facts to enhance punishment," while "MAI-CR 4th 405.08 provides the appropriate verdict form to use in such a scenario." *Hellmann*, 728 S.W.3d at 415. The Court summarized the sentence enhancement procedure circuit courts are to follow:

> After making its pre-submission finding, the circuit court must allow the jury to make a finding of guilt. Upon a guilty verdict, the parties can submit the additional sentence enhancing facts to the jury through jury instructions to determine if the defendant is a persistent offender. If the jury finds the required facts, then the defendant may be sentenced as a persistent offender. Complying with this procedure would secure [the defendant]'s constitutional rights.

Id.

The circuit court in this case followed this procedure. The first amended information charged Butler as a persistent offender and identified three separate convictions for felonies he committed in August 2012, March 2013, and October 2011. The State offered certified copies of the court records for the three convictions identified

in the information. Based on the exhibits, the court found Butler was a persistent offender. After the jury returned a guilty verdict on the charged offense, the jury received a series of instructions, modeled after MAI-CR 4th 405.01, 405.02, 405.04, 405.06, and 405.08, for the second-stage proceeding to determine the facts necessary for sentence enhancement. The State offered to the jury the certified copies of the court records for Butler's three prior felony convictions. The jury unanimously found, beyond a reasonable doubt, that Butler committed the charged offense after having been convicted of two other felonies that were committed on occasions different from one another.

Based on *Hellmann*, Sections 558.016 and 558.021 are not facially unconstitutional and are not unconstitutional as applied to Butler. Therefore, the circuit court did not err in overruling Butler's motion to strike the persistent offender allegation, overruling his objection to admitting exhibits showing his prior offenses at the pretrial hearing and relying on those exhibits to find him to be a persistent offender, and overruling his objection to admitting the same exhibits at trial and allowing the jury to rely on them to find him to be a persistent offender. Points I, II, and III are denied.

In Point IV, Butler contends the circuit court erred in admitting evidence of an uncharged crime. Specifically, Butler argues the court erred in allowing Victim to testify, over his objection, that he damaged her car by jumping up and down on the step rail of her car and breaking a door handle after she and her son got into the car to drive to her mother's house. He insists this evidence was irrelevant to prove he committed third-degree domestic assault, and its probative value was outweighed by its prejudicial effect.

The circuit court has broad discretion to admit evidence. *State v. Tisius*, 362 S.W.3d 398, 405 (Mo. banc 2012). We will not interfere with that decision unless the appellant makes "a clear showing of an abuse of discretion." *State v. Collings*, 450 S.W.3d 741, 756 (Mo. banc 2014). An abuse of discretion occurs when the "ruling 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." *State v. Hudson*, 643 S.W.3d 679, 684 (Mo. App. 2022) (citation omitted). To be admissible, evidence must be both logically and legally relevant. *State v. Emery*, 701 S.W.3d 585, 601 (Mo. banc 2024). Evidence is logically relevant if it tends to make a "fact of consequence" more or less probable, "or if it tends to corroborate evidence which itself is relevant and bears on the principal issue of the case." *Id.* (citation omitted). Evidence is legally relevant if its probative value outweighs its prejudicial effect. *Id.*

Evidence of uncharged wrongs or misconduct is not admissible to show a defendant's propensity to commit crimes, but "evidence of uncharged crimes that are part of the circumstances or the sequence of events surrounding the offense charged may be admissible to present a complete and coherent picture of the events that transpired." *Id.* at 604 (internal quotation marks and citation omitted). "Generally, acts, statements, occurrences, and the circumstances forming part of the main transaction may be shown in evidence . . . where they precede the offense immediately or by a short interval of time and tend, as background information, to elucidate a main fact in issue." *State v. Wilson*, 692 S.W.3d 54, 65 (Mo. App. 2024) (citation omitted).

Here, Butler's act of damaging Victim's car was part of "the main transaction." Butler damaged Victim's car after he initially assaulted Victim by grabbing her around the neck and before he struck her repeatedly on her face and head. Evidence that Butler followed Victim and her son out of the house, jumped up and down on the car's step rail, and exerted sufficient force to break a door handle showed his continued anger after the initial altercation and his desire to continue the assault. This evidence also explained why, after seeking refuge at her mother's house following Butler's initial assault, Victim returned to her house when she learned Butler was going there. As Victim testified, she was worried Butler would damage her house and belongings, just as he had damaged her car.

Because it was part of the sequence of events surrounding the charged offense, was probative of Butler's mental state when he committed the charged offense, and provided important context for understanding Victim's conduct, evidence that Butler damaged Victim's car was admissible to present a complete and coherent picture of the events that transpired. This evidence had significant probative value, and Butler fails to provide any facts or law to support his bare assertion that its probative value was outweighed by its prejudicial effect. *See State v. Hanna*, 420 S.W.3d 569, 578 n.8 (Mo. App. 2013). The circuit court did not abuse its discretion in admitting it. Point IV is denied.

CONCLUSION

Butler's motion to transfer the case to the Missouri Supreme Court is denied, and the judgment is affirmed



LISA WHITE HARDWICK, JUDGE

All Concur.