In the Missouri Court of Appeals
Eastern District

DIVISION FOUR

STATE OF MISSOURI, Respondent, v. DARYL CLEMMONS, Appellant.	)))))))))	ED113421 Filed: July 28, 2026

Appeal from the Circuit Court of the City of St. Louis
The Honorable Calea Stovall-Reid, Judge

Introduction

Daryl Clemmons (Clemmons) appeals from the trial court's judgment following jury convictions for Assault in the First Degree and Armed Criminal Action (ACA). Clemmons raises three points on appeal. First, Clemmons argues that the trial court erred in denying his motion for judgment of acquittal because the State failed to establish that he did *not* act in lawful self-defense. Second, Clemmons claims that the trial court plainly erred in sentencing him to ten years' imprisonment pursuant to the court's mistaken belief that probation, suspended imposition, or suspended execution of sentence were not permitted dispositions for first-degree assault. Third, Clemmons contends that

the trial court plainly erred in sentencing him because under section 557.045, a jury must make the finding beyond a reasonable doubt that his offense involved the use of a deadly weapon, not the court.[1]

As to Point One, because a reasonable jury could have found that Clemmons lacked the reasonable belief that deadly force was necessary to prevent the use of unlawful force against him, we affirm. As to Points Two and Three, we decline Clemmons' request for plain error review because he failed to establish facially evident, obvious, and clear errors affecting substantial rights.

Factual and Procedural Background

The tragic circumstances of this case illustrate the emotionally-charged environment that too often surrounds youth sporting events. Clemmons routinely attended his young son's football games and practices. Victim was the volunteer coach of the team. In October 2023, the two men argued after a game because Victim excluded Clemmons' son from the starting lineup. Before the argument could become physical, another coach intervened and separated them.

Nine days later, the two saw each other again at a practice during which Clemmons cheered for his son from the parking lot. Victim felt Clemmons was trying to get his attention, so he walked off the field and approached him in the parking lot to "beat him up." Victim had a gun, but handed it to a nearby parent (R.W.) because he intended to "fight" Clemmons, not kill anyone.

[1] Unless otherwise indicated, all statutory references are to RSMo Cum. Supp. (2021).

As Victim advanced toward him, Clemmons pulled out his own gun. Victim "kind of froze," "turned around," and "started running," "trying to get away." Victim hopped off a "little ledge" where the parking lot meets the grass and then Clemmons "started shooting." Of the multiple shots Clemmons fired, four struck Victim.

The State charged Clemmons with the Class A felony of Assault in the First Degree and ACA. In the indictment, the State did not cite to section 557.045(3), a statute that makes an individual ineligible for probation, suspended imposition or execution of sentence, if that person has been found guilty of a dangerous felony that involves the use of a deadly weapon.

Assault in the first degree is defined as a dangerous felony in section 556.061(19), RSMo Cum. Supp. (2020), and is a Class A felony under section 565.050.2, RSMo Cum. Supp. (2017), if serious physical injury is inflicted on the victim. As for punishment, the authorized range of imprisonment is ten to thirty years, or life imprisonment. Section 558.011.1(1). Regarding the ACA conviction, section 571.015.1 sets the minimum sentence at three years, precludes any probation or parole, and requires that the sentence imposed pursuant to the statute be served in addition to and consecutive to any sentence imposed for a crime committed through use of a deadly weapon. Section 571.015.1, RSMo Cum. Supp. (2020). The State offered Clemmons a plea deal in which he would plead guilty to both charges in exchange for the State's agreement that Clemmons would receive the minimum sentence on each count—ten years on Count One and three years on Count Two. Clemmons rejected the offer, and the case proceeded to trial.

At trial, Clemmons testified he fired his gun only after Victim sought to retrieve his own firearm from R.W. and managed to put his hand on it. For his part, Victim testified that he was unarmed and that when he saw Clemmons' gun, he turned and fled at which point Clemmons shot him. He fell to the ground after the first two shots struck him and then Clemmons shot him two more times while he was on the ground.

At the close of all the evidence, Clemmons moved for judgment of acquittal, which the court denied. After the jury returned guilty verdicts on the first-degree assault and ACA charges, Clemmons moved for a new trial, which the court also denied. At that point, the court advised the jury that "I will have you return tomorrow morning …, and you will receive evidence and then deliberate on punishment, okay?" Then, after an off-the-record discussion, the transcript noted that "[c]ounsel agreed to waive sentencing," and that "[j]urors were contacted … and advised their service was complete."

At sentencing, the trial court reminded Clemmons that "… after the jury returned their verdict, both you and the State agreed to the minimum sentence." After Clemmons claimed not to recall any such agreement, both his counsel and the State acknowledged the agreement, and then the court addressed Clemmons, "I guess you just don't remember it because you are upset." The court informed the parties that "the minimum is three years on armed criminal action," on "the assault first, the minimum is 10," and that "[i]t's a dangerous felony," so Clemmons "ha[s] to serve 85 percent."

In his pre-sentencing memorandum filed with the court, Clemmons requested credit against his prison sentences for the time he spent on electronic monitoring while on bond and for any pre-trial time in custody, he acknowledged he would have to serve at

least eighty-five percent of the sentence on the first-degree assault, and he did not request any type of probation.

In accordance with the sentencing agreement, the trial court sentenced Clemmons to ten years for first-degree assault and three years for ACA with the sentences to run consecutively. This appeal follows.

Standard of Review

Point One: Sufficiency of the Evidence

We review the denial of a motion for acquittal to determine if the State adduced sufficient evidence to make a submissible case. *State v. Meador*, 660 S.W.3d 650, 652 (Mo. App. S.D. 2022) (internal citation omitted). This Court accepts as true all evidence and inferences in the light most favorable to the verdict. *Id.* (internal quotation omitted). Sufficient evidence means "a reasonable [fact-finder] could have found the defendant guilty beyond a reasonable doubt." *State v. Sokolic*, 660 S.W.3d 54, 57 (Mo. App. E.D. 2023) (internal quotation and citation omitted). "We do not act as a super juror with veto powers, but give great deference to the trier of fact." *State v. Pool*, 674 S.W.3d 173, 182 (Mo. App. E.D. 2023) (internal citation omitted).

Points Two and Three: Plain Error

Clemmons concedes that he failed to properly preserve Points Two and Three on appeal, both alleging sentencing errors, and requests plain error review. Rule 30.20 allows appellate courts to review allegations of unpreserved plain error affecting substantial rights—"in the discretion of the court[—]when the court finds that manifest

injustice or miscarriage of justice resulted therefrom."[2] Initially, this Court must determine whether there has been an error that is facially evident, obvious, and clear. *State v. Jasso*, 688 S.W.3d 804, 808 (Mo. App. E.D. 2024) (internal quotation omitted). Plain errors "are not ordinary errors" and "involve important and essential legal rights fundamental to our system of justice." *State v. Jones*, 725 S.W.3d 577, 583, (Mo. banc 2025). Such errors affect substantial rights if, "there are significant grounds for believing that the error is of the type from which manifest injustice or miscarriage of justice **could** result if left uncorrected." *State v. Johnson*, 524 S.W.3d 505, 513 (Mo. banc 2017) (emphasis added). "Manifest injustice is determined by the facts and circumstances of the case, and the defendant bears the burden of establishing manifest injustice." *Id.* (internal quotation omitted).

Analysis

Point One: The trial court did not err in denying Clemmons' motion for judgment of acquittal as a reasonable jury could find that he did not act in lawful self-defense

The issue in Point One—Clemmons' only properly preserved point on appeal—is whether the State adduced sufficient evidence to prove beyond a reasonable doubt that by shooting Victim, Clemmons did **not** act in lawful self-defense. We find that the State did so prove.

Missouri law permits someone to "use physical force upon another person when and to the extent he or she reasonably believes such force to be necessary to defend himself or herself … from what he or she reasonably believes to be the use or imminent

[2] All Rule references are to Missouri Supreme Court Rules (2026).

use of unlawful force by such other person." Section 563.031.1, RSMo (2016). "Further, **deadly** force is justified only if the defendant 'reasonably believes that such deadly force is necessary to protect himself, or herself against death, serious physical injury, or any forcible felony.'" *State v. Bruner*, 541 S.W.3d 529, 536 (Mo. banc 2018) (quoting Section 563.031.2(1), RSMo. (2016)) (alteration omitted) (emphasis in original). Accordingly, "[a] person must have an objectively reasonable belief not only that physical force is necessary, but that the amount of force the person chooses to use is reasonably necessary to prevent the imminent harm or felony." *State v. Lechocki*, 728 S.W.3d 527, 534 (Mo. App. E.D. 2025) (citing Section 563.031.1–2, RSMo (2016)) (internal citation omitted) (emphasis removed). "Self-defense only provides a defense … when the danger is imminent, not when the victim is in retreat." *State v. Bowman*, 869 S.W.2d 901, 903 (Mo. App. W.D. 1994) (internal citation omitted). "Read together, subsections 1 and 2 [of Section 563.031] justify the use of deadly force only if the defending person reasonably believes that death, serious physical injury or a forcible felony is **actually occurring or is imminent**. *State v. Sinks*, 652 S.W.3d 322, 338 (Mo. App. E.D. 2022) (emphasis in the original).

"Once a defendant has injected the issue of self-defense into the case, the burden shifts to the State to prove beyond a reasonable doubt the absence of self-defense." *State v. Jackson*, 628 S.W.3d 761, 763 (Mo. App. S.D. 2021) (internal citation omitted). "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." *Id.* (internal quotation omitted). "The fact-finder may believe all, some, or none of the testimony of a

witness when considered with the facts, circumstances and other testimony in the case." *Pool*, 674 S.W.3d at 182 (internal citation omitted).

Viewing the evidence in the light most favorable to the verdict, a jury could, and did, reasonably find Clemmons did not act in lawful self-defense. Victim testified that when the first shot was fired he was unarmed, that Clemmons shot him as he was fleeing, that he was shot multiple times, and that Clemmons even shot him again after he had fallen wounded to the ground. A reasonable trier of fact could conclude that the use of deadly force is unreasonable when a defendant is approached by an unarmed aggressor. Moreover, a jury could reasonably find that once Victim was in retreat, and—certainly once Victim was wounded and, on the ground,—any continued use of deadly force would be wholly unreasonable, as Victim no longer posed any threat to Clemmons. Thus, the trier of fact here did not accept that Clemmons had a reasonable belief that deadly force was necessary to stop Victim's use of force, and such decision was reasonable in light of the evidence. We deny Point One.

Points Two and Three: We decline to exercise plain error review as to either point because Clemmons waived jury sentencing and instead entered into a sentencing agreement with the State

Point Two: That sentencing resulted from trial court's legal error

In Point Two, Clemmons claims that the trial court plainly erred in sentencing him to prison pursuant to the court's mistaken belief that probation, suspended imposition, or execution of sentence were not permissible dispositions of his first-degree assault

conviction.[3] We decline to exercise plain error review as Clemmons fails to establish that the trial court erred plainly or otherwise in sentencing him to ten years' imprisonment for first-degree assault. The trial court's sentence derived from Clemmons' waiver of jury sentencing and his agreement with the State to be sentenced to the minimum years of incarceration, not from any erroneous notion of the law on the part of the trial court. *See State v. Pierce*, 548 S.W.3d 900, 905 (Mo. banc 2018) (internal citations omitted) ("[T]he court of appeals has refused to remand for resentencing—on plain-error review or otherwise—when the record shows the [trial] court imposed sentence based on valid considerations unaffected by any mistaken belief.").

Point Three: Jury determination of facts increasing penalty

In Point Three, Clemmons contends that the trial court plainly erred in sentencing him under section 557.045, because a jury, not the trial court, must make the finding beyond a reasonable doubt that his offense involved the use of a deadly weapon, as this determination acts as a sentencing enhancement. "Virtually any fact that increases the prescribed range of penalties to which a criminal defendant is exposed must be resolved by a unanimous jury beyond a reasonable doubt (or freely admitted in a guilty plea)." *Erlinger v. United States*, 602 U.S. 821, 834 (2024) (quoting *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000)) (internal alterations and quotation marks omitted).

[3] A suspended imposition of sentence is not a conviction or a sentence. *Brown v. State*, 600 S.W.3d 829, 833 (Mo. App. E.D. 2020) (citing *Roe v. Replogle*, 408 S.W.3d 759, 762 n.2 (Mo. banc 2013)). But, a suspended execution of sentence is a sentence. *See Henson v. State*, 518 S.W.3d 828, 831 (Mo. App. S.D. 2017) (quoting *Hoskins v. State*, 329 S.W.3d 695, 698 n.3 (Mo. banc 2010)).

Section 557.045 states "[n]o person found guilty of, or pleading guilty to, the following offenses shall be eligible for probation, suspended imposition or execution of sentence, or conditional release, and shall be sentenced to a term of imprisonment" if one of four conditions are met. One of these conditions includes whether a defendant committed "[a]ny dangerous felony … where the commission of the felony involves the use of a deadly weapon[.]" Section 557.045(3). First-degree assault is a dangerous felony. Section 556.061(19), RSMo (2020). A firearm is a deadly weapon. Section 556.061(22), RSMo (2020).

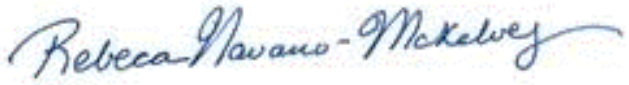
Clemmons argues that by excluding the possibility of a disposition of probation, section 557.045 acts as a sentencing enhancement because it increased the minimum punishment from a possibility of no prison to at least ten years for first-degree assault. We need not decide this issue in this case because a defendant may relieve the State of any burden it may have to plead the applicability of section 557.045 and to have a jury determine such facts by freely entering a guilty plea or, as in Clemmons' case, by waiving jury sentencing and entering into a sentencing agreement. *See Erlinger*, 602 U.S. at 834 (citing *Apprendi*, 530 U.S. at 490); *see also State v. Mills*, 687 S.W.3d 668, 674–77 (Mo. banc 2024).

By waiving jury sentencing and entering into an agreement that guaranteed the minimum sentence of imprisonment, Clemmons shrewdly avoided the risk of the jury recommending a sentence of up to thirty years in prison on the assault conviction and a consecutive sentence of many years on ACA for shooting his son's football coach point blank multiple times.

Again, we decline to exercise plain error review because Clemmons' valid and uncontested waiver of jury sentencing and valid sentencing agreement with the State precludes a determination that the trial court made an evident, obvious, or clear error of any kind. *See Jones*, 725 S.W.3d at 584.

Conclusion

The judgment of the trial court is affirmed.



Rebeca Navarro-McKelvey, Presiding Judge

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