*MISSOURI COURT OF APPEALS*
*WESTERN DISTRICT*

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| **STATE OF MISSOURI,** | ) | |
| | ) | |
| **Respondent,** | ) | **WD87929** |
| | ) | |
| **v.** | ) | **OPINION FILED:** |
| | ) | |
| **ROBERT E. MATLOCK, JR.,** | ) | **September 15, 2026** |
| | ) | |
| **Appellant.** | ) | |
| | ) | |

**Appeal from the Circuit Court of Jackson County, Missouri**
**Honorable Cory L. Atkins, Judge**

**Before Division Two: Janet Sutton, Presiding Judge,**
**Lisa White Hardwick, Judge, and W. Douglas Thomson, Judge**

Robert Matlock, Jr., (Matlock) appeals the judgment of the Circuit Court of Jackson County (trial court) convicting him, after a jury trial, of second-degree murder and armed criminal action. Matlock raises one point on appeal, arguing that the trial court plainly erred in giving the verdict directing instruction for second-degree murder because it used "or" rather than "and" when it referenced both the general self-defense and castle doctrine self-defense instructions. Matlock argues that the use of "or" between the references to the two use of force instructions lowered the State's burden of proof and that manifest injustice resulted. We agree.

Matlock's convictions for second-degree murder and armed criminal action are reversed and we remand for a new trial.

## Factual Background[1]

The State charged Matlock with second-degree murder and armed criminal action for causing Victim's death by shooting him. The case proceeded to a jury trial in early February 2025. Viewing the evidence in the light most favorable to the verdicts,[2] the evidence adduced at trial showed the following:

Matlock and Victim were co-renters of a house, and each signed separate leases in their own names. Matlock and Victim each had their own bedroom and had joint access to the house's common areas. They were not allowed in each other's bedrooms and both had locks on their bedroom doors.

Matlock called police to the house on June 16, 2021, and said that he shot Victim. When police arrived, Matlock was standing outside. Matlock told police that Victim "was reaching for something behind his back" and that Matlock thought Victim had a weapon. Victim was inside the house lying in the hallway, covered in blood. Victim died from the gunshot wounds. The medical examiner concluded that Victim had seven gunshot wounds: one below the right armpit, right shoulder, right jawline, right lower abdomen, outer right thigh, lower back, and chest.

Multiple 9-millimeter shell casings led from Matlock's bedroom into the hallway. Matlock's bedroom contained a 9-millimeter pistol, a .22-caliber pistol, a knife, and two holsters. The .22-caliber pistol was in one of the holsters. The magazine for the 9-millimeter pistol could

[1] Matlock does not challenge the sufficiency of the evidence to support his convictions.

[2] *State v. Wallace*, 725 S.W.3d 112, 115 (Mo. App. W.D. 2025).

hold seventeen bullets with one in the chamber. No other weapons were recovered from the house.

Matlock waived his Miranda rights and spoke with detectives about what happened before the shooting. The recording of Matlock's police interrogation was admitted and played for the jury. During the interrogation, Matlock showed the detectives a video he took on his cell phone during the immediate lead-up to the shooting. One of the detectives recorded the video on his own phone as it played on Matlock's phone, and that recording was played for the jury. The video lasted just under 30 seconds. The recording did not clearly capture Victim's or Matlock's actions in the moments leading up to Matlock shooting Victim. The images from Matlock's phone are not entirely clear, and some of the audio is indiscernible, but Victim can be heard yelling at Matlock. Victim appears briefly in a doorway before the picture moves off in another direction and the sound of eight gunshots are heard in rapid succession. Matlock is then heard saying, "F*** you, dammit!"

Matlock testified in his own defense and told the jury that he and Victim got into a dispute when he complained to Victim about the cleanliness of the house. Matlock said the argument continued and he went to his bedroom to grab some things so he could leave the house. Matlock opened his bedroom door to leave and Victim was standing in the doorway. Matlock testified that Victim blocked him from shutting his door and made a swiping motion that knocked Matlock's phone out of his hand. Matlock said that a "little bit" of Victim's arm went inside his bedroom when Victim stopped him from shutting the door, but Matlock did not think Victim was trying to get into his bedroom.

Matlock testified that Victim backed up and positioned himself like he was going to grab something from his back. Matlock, who had guns on his person, warned Victim that he would

shoot Victim if he "continue[d] with his actions." Matlock testified that Victim continued to reach behind his back and began to "turn a little bit" and that was when Matlock took the gun from his left outer hip and shot Victim. Matlock explained that, when he fired his gun, he believed Victim was going to "come at" him with a knife or a gun, so he closed his eyes or blinked for a long time in anticipation of that impact.

Matlock testified that he thought Victim was pulling something from his back, a knife or a gun, that he feared for his life, and was very panicked when he shot Victim. On cross-examination, Matlock admitted that he did not see a gun, knife, or anything else in Victim's hand and he also admitted that Victim did not physically assault him beyond knocking the phone out of his hand.

During the jury instruction conference, as relevant to this appeal, defense counsel proffered two self-defense instructions based on general self-defense and self-defense based on the castle doctrine.[3] Matlock also proffered a verdict director for the second-degree murder count. Matlock's proposed verdict director had "and" between the two cross-references to the general self-defense and castle doctrine instructions. The trial court informed the parties that it was not going to submit a self-defense castle doctrine instruction to the jury, and it refused Matlock's proposed second-degree murder verdict director. The trial court later reversed course regarding submission of the castle doctrine self-defense instruction and it gave the jury two self-defense instructions, Instruction No. 5 and Instruction No. 6, both submitted by the defense.

[3] Under Missouri law, the "castle doctrine permits a person to use deadly force to defend against what he or she reasonably believes to be the use or imminent use of unlawful force by another who unlawfully enters or attempts to unlawfully enter a dwelling, residence, or vehicle lawfully occupied by such person." *State v. Cummings*, 686 S.W.3d 709, 714 n.2 (Mo. App. E.D. 2024); § 563.031.2(2).

Instruction No. 5 was modeled after MAI-CR 4th 406.06 and submitted general self-defense. Instruction No. 6 was modeled after MAI-CR 4th 406.10 and submitted self-defense under the castle doctrine. As to the second-degree murder count, the trial court submitted to the jury the verdict directing instruction that the State proposed, Instruction No. 7. Defense counsel stated that he had no objection to that instruction,[4] and it does not appear from the record that Matlock attempted to resubmit his previously refused second-degree murder verdict director.

The second-degree murder verdict director, Instruction No. 7, read as follows:

> As to Count I, if you find and believe from the evidence beyond a reasonable doubt:
>
> First, that on or about June 16, 2021, in the State of Missouri, the defendant caused the death of [Victim] by shooting him, and
>
> Second, defendant knew or was aware that his conduct was causing or was practically certain to cause the death of [Victim], and
>
> Third, that the defendant did not act in lawful self-defense as submitted in Instruction No. 5, *or*
>
> Fourth, that the defendant did not act in lawful self-defense as submitted in Instruction No. 6,
>
> then you will find the defendant guilty under Count I of murder in the second degree.
>
> However, unless you find and believe from the evidence beyond a reasonable doubt each and all of these propositions, you must find the defendant not guilty of that offense.

(Emphasis added.).

[4] We note that plain error review is not waived when counsel affirmatively states that he or she has "no objection" to a jury instruction proposed by the State. *State v. Clay*, 533 S.W.3d 710, 715 (Mo. banc 2017); *State v. Jones*, 686 S.W.3d 293, 302 (Mo. App. E.D. 2024); *State v. Coyle*, 671 S.W.3d 702, 712 (Mo. App. W.D. 2023).

In closing argument, the State argued that Matlock did not act in self-defense under either general self-defense under Instruction No. 5 or the castle doctrine under Instruction No. 6. Specifically, the State argued that Matlock was the initial aggressor, arguing that Matlock started the argument and that he continued to "antagonize" Victim throughout the day. The State argued that, in the cell phone video Matlock provided to police, Matlock could be heard saying, "let's start, let's fight," before shooting Victim. The State highlighted that Victim had nothing in his hand and argued that Victim did not enter any part of the house unlawfully, including Matlock's bedroom.

The defense argued there was no evidence that Matlock attacked or threatened to attack Victim such that Matlock could be considered the initial aggressor. The defense addressed the State's proposition that Matlock said, "let's start, let's fight" before the shooting, but defense maintained that the cell phone footage was unclear. The defense emphasized that it did not matter that Victim was unarmed, and that Matlock acted out of fear for his life. The defense highlighted the applicability of the castle doctrine instruction, noting that Victim did not have to run into Matlock's room, and that all that was required was that Victim's arm or some part of his body went into Matlock's bedroom.

The jury found Matlock guilty of second-degree murder and armed criminal action, and recommended sentences of eighteen years' imprisonment on the murder count and seven years' imprisonment on the armed criminal action count. The trial court imposed the sentences recommended by the jury and ordered that they be served consecutively.

Matlock appeals.

## Standard of Review

To preserve a claim of instructional error for review, a defendant is required to make a specific objection to the instruction at trial and renew that same objection in his or her motion for new trial. *State v. Williams*, 718 S.W.3d 464, 468 (Mo. App. W.D. 2025). Matlock acknowledges that he failed to object at trial to the verdict directing instruction and that he did not include a claim of error related to Instruction No. 7 in his motion for new trial. Because Matlock's point is not properly preserved, we may review it only for plain error. *See id.* "When the unpreserved allegation concerns instructional error, plain error exists when it is clear that the circuit court has so misdirected or failed to instruct the jury that manifest injustice or miscarriage of justice has resulted." *Id.* at 469 (citation omitted). *See also State v. Hunt*, 451 S.W.3d 251, 260 (Mo. banc 2014).

## Analysis

In his sole point on appeal, Matlock claims that the trial court plainly erred in giving Instruction No. 7, the second-degree murder verdict director because it used "or" rather than "and" to connect the paragraphs requiring the State to prove beyond a reasonable doubt that Matlock did not act in lawful self-defense under both the general self-defense instruction and the castle doctrine self-defense instruction.

First, we start with some basic principles about self-defense in Missouri. Self-defense is a special negative defense[5] and the defendant has the burden of injecting the issue at trial. §

[5] A special negative defense is one:

> (1) upon which the defendant does not carry the burden of proof, (2) supported by enough evidence arising during the whole case to raise a reasonable doubt of defendant's guilt, and (3) which presents a positive fact or set of circumstances, as distinguished from a bare denial or converse, which, if found, would negate one

563.031.5; *State v. Kendrick*, 550 S.W.3d 117, 122 (Mo. App. W.D. 2018). Once a defendant carries his or her burden of injecting the issue, the burden then shifts to the State to prove beyond a reasonable doubt that the defendant did not act in self-defense, and the trial court must instruct the jury accordingly. *State v. White*, 92 S.W.3d 183, 191 (Mo. App. W.D. 2002).

When we consider whether there is instructional error, "we start with the proposition that if there is an MAI-CR instruction made applicable by the law or the Notes on Use, the trial court is required to instruct the jury based upon that instruction." *Id.* at 189 (citing Rule 28.02(c)). In addition to the giving of an instruction patterned after MAI-CR 4th 406.06 and MAI-CR 4th 406.10, both section's Notes on Use direct that a paragraph cross-referencing the self-defense instruction be included in the verdict director. The mandatory cross-reference paragraph, numbered after the main elements of the offense, reads as follows: "that defendant did not act in lawful self-defense as submitted in Instruction No. ____[.]" MAI-CR 4th 406.06 Note on Use 4; MAI-CR 4th 406.10 Note on Use 4. The Notes on Use for both MAI-CR 4th 406.06 and MAI-CR 4th 406.10 also direct that if there is evidence supporting more than one claim of justifiable use of physical force, such as evidence supporting both self-defense under MAI-CR 4th 406.06 and self-defense by a lawful occupier of dwellings, residences and vehicles, a separate numbered cross-reference paragraph for each instruction on the justifiable use of physical force will be

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> or more essential elements of an offense, or which would, if found, constitute a legal defense.

*State v. Dillon*, 728 S.W.3d 857, 862 n.2 (Mo. App. E.D. 2025) (quoting *State v. Jan.*, 176 S.W.3d 187, 197 (Mo. App. W.D. 2005)).

included in the verdict director. *See* MAI-CR 4th 406.06 Note on Use 4; MAI-CR 4th 406.10 Note on Use 4.

"The failure to give an instruction in violation of Rule 28.02 or any applicable Notes on Use is error, the prejudicial effect to be judicially determined." *White*, 92 S.W.3d at 189. Currently, in situations where a trial court is instructing the jury on more than one claim of self-defense, neither the instruction nor the Notes on Use direct whether "or" or "and" should be used as the connector in the verdict director when referencing each use of physical force instruction. To succeed on his claim of instructional plain error, Matlock has the burden of proving that Instruction No. 7 "was clearly and obviously in error" for using "or" to connect those paragraphs, and also "that the error resulted in manifest injustice or a miscarriage of justice." *State v. January*, 176 S.W.3d 187, 193 (Mo. App. W.D. 2005).

As a matter of due process, the State is required to prove beyond a reasonable doubt each and every element of a criminal offense in order to convict a defendant of the offense. *White*, 92 S.W.3d at 192. "As such, a verdict director which allows the jury to convict a defendant without requiring the State to satisfy its burden of proving each and every element of the offense beyond a reasonable doubt is clearly erroneous." *Id.* A special negative defense is not technically an element of an offense, but it functions like an element of which the State is required to prove beyond a reasonable doubt that the special negative defense does not apply. *See January*, 176 S.W.3d at 198 (discussing the special negative claim-of-right defense as: "in addition to proving the standard elements of the offense itself, the State has the burden of proving the special-negative-defense-proof element"). As we have already stated *supra*, once a defendant sets forth

sufficient evidence to inject the defense at trial, the State has the burden of disproving the special negative defense. *Id.*; *White*, 92 S.W.3d at 191.

In this case, the trial court found that Matlock had presented sufficient evidence to inject both self-defense and self-defense under the castle doctrine and it instructed the jury with these two separate instructions. Therefore, in order to convict Matlock of second-degree murder, the State was required to prove, beyond a reasonable doubt, as a third and fourth element of its case, that Matlock did not act in lawful self-defense under *both* general self-defense and the castle doctrine. Matlock argues that the trial court's giving of Instruction No. 7, using the word "or" between the references to the self-defense and castle doctrine instructions, relieved the State of its burden of disproving both physical force instructions beyond a reasonable doubt. We agree.

In this case, the verdict director's use of the word "or" between the two use of force instruction references misdirected the jury. The verdict director should have read "and" rather than "or" between the third and fourth paragraphs to correctly advise the jury that to convict Matlock of second-degree murder, it was required to find *both* paragraphs in the State's favor. *See id.* at 192. Put differently, the jury had to be properly instructed that to find Matlock guilty of second-degree murder, it needed to find that Matlock did not act in lawful self-defense generally *and* that he did not act in lawful self-defense under the castle doctrine. Instead, the jury was instructed that the State could meet its burden to sustain the conviction by disproving *either* general self-defense *or* self-defense under the castle doctrine, but that the State did not have to disprove both.

The use of "or" between paragraphs third and fourth in Instruction No. 7 was clear, obvious and evident error. The next question is whether this error resulted in manifest injustice or a miscarriage of justice requiring reversal. *See id.*

Matlock has the burden to demonstrate that the instructional error resulted in manifest injustice or a miscarriage of justice. *Id.* "In the context of instructional error, [reversible] plain error results when the trial court has so misdirected or failed to instruct the jury that it is apparent to the appellate court that the instructional error affected the jury's verdict." *Id.* (citation omitted). We "will be more inclined to reverse in cases where the erroneous instruction 'did not merely allow a wrong word or some other ambiguity to exist, [but] excused the State from its burden of proof on [a] contested element of the crime.'" *Id.* (quoting *State v. Harney,* 51 S.W.3d 519, 533-34 (Mo. App. W.D. 2001)).

In *White*, this Court conducted plain error review of a second-degree murder verdict director that used the disjunctive "or" rather than "and" between two cross-referencing paragraphs submitting lack of sudden passion without adequate cause and lawful self-defense. 92 S.W.3d at 191-93. We held that manifest injustice resulted, finding "no doubt" that the use of "or" rather than "and" between the required paragraphs was clear, obvious and evident error. *Id*. at 192. The State had argued that any initial misdirection caused by the improper use of "or" between the paragraphs was overcome by the additional language of the instruction which instructed the jury that it could not convict the defendant of second-degree murder "unless you find and believe from the evidence beyond a reasonable doubt each and all of these propositions." *Id.* at 192-93. In finding manifest injustice, we rejected the State's argument that manifest injustice or a miscarriage of justice did not result when the instruction was read as a

whole. *Id.* at 193. We explained that the State did not cite any authority for its proposition, and, that:

> [i]t is possible to argue that the instructional language in question could be interpreted as argued for by the State. However, when the instruction is read as a whole, it is clearly more susceptible to an interpretation by the jury that, in order to convict, it was simply required to find either paragraph third or fourth. Thus, while we understand the technical argument made by the State, it is unlikely that the jury believed that it was permitted to disregard the express disjunctive language of the instruction based on the "unless" language relied upon by the State.

*Id.* We said it was therefore apparent that the jury was misled by the verdict director such that the State was relieved of its burden of proving both propositions, resulting in manifest injustice and requiring reversal of the defendant's convictions. *Id*.

The State does not focus its responsive argument on whether it was in fact error for Instruction No. 7 to use "or" rather than "and" between the paragraphs referencing the general self-defense instruction and the castle doctrine instruction. Instead, the State argues that Matlock has not met his burden to show that it was apparent that the instructional error affected the verdict. The State contends that manifest injustice or a miscarriage of justice did not result from the instructional error because, when read as a whole with the other instructions and with counsel's arguments, the jury was not misdirected, confused or misled.[6]

In support, the State cites *State v. Miner*, 363 S.W.3d 145 (Mo. App. E.D. 2012), and two civil cases, *Ball v. Allied Physicians Group, L.L.C.*, 548 S.W.3d 373 (Mo. App. E.D. 2018); *Goff v. St. Luke's Hospital of Kansas City*, 753 S.W.2d 557 (Mo. banc 1988), where appellate courts

[6] We rejected a similar argument in *State v. White*, 92 S.W.3d 183, 193 (Mo. App. W.D. 2002), noting that the State did not cite any supporting authority, but simply argued that the language of the instruction at issue, given its plain and ordinary meaning, clearly informed the jury of the required elements of the offense and of the State's burden.

found that the omission of "and" (rather than the replacement of "and" with the word "or") in verdict directors between required elements did not result in prejudice or manifest injustice. In these cases, where the "and" between paragraphs was omitted entirely, the courts reasoned there was no risk for confusion as the jury would still read the instructions as requiring them to find each and every element. *Miner*, 363 S.W.3d at 149 (finding that the jury was not misdirected or confused where a verdict director connected the first and second elements with "and," but excluded a connecting word between the second and third elements because jurors could reasonably conclude that they were required to find and believe all three elements to find a defendant guilty); *Ball*, 548 S.W.3d at 389-90 (finding no logical way for the jury to read the instruction without understanding that they must find both paragraphs as the word "thereby" referred back to the other element, necessarily linking them); *Goff*, 753 S.W.2d at 564-65 (reasoning that no literate juror could conclude that they did not have to find the facts submitted in both paragraphs, such that there were no grounds for confusion by the omission of "and" between them).

These cases, however, are distinguishable from the situation here. Whether Matlock acted in lawful self-defense, under either proposed theory, was the primary contention at trial. As we have said *supra*, in Matlock's case, using "or" in the second-degree murder verdict director misdirected the jury because it provided that the State could meet its burden of proving the offense by disproving *either* general self-defense or self-defense under the castle doctrine, but that the State did not have to disprove *both*. [7] This is especially problematic in this case

[7] In fact, regarding Instruction No. 15, the verdict director for second-degree involuntary manslaughter, the trial court specifically instructed the jury to write in the word "or" between the two paragraphs referencing the general self-defense instruction and the castle doctrine instruction in their packet of jury instructions. The trial court verbally instructed the jury, "Paragraph third and paragraph fourth are combined by the word or. They are in the *alternative to each other*."

because "the castle doctrine as provided by section 563.031.2(2) allows for the use of deadly force in much broader circumstances than the general self-defense instruction submitted to the jury." *State v. Straughter*, 643 S.W.3d 317, 326 (Mo. banc 2022).[8] Under the general self-defense instruction given to the jury, Matlock was justified in using deadly force only if he reasonably believed he was protecting himself against death or serious physical injury. *See* § 563.031.2(1). But, under the castle doctrine, Matlock did not need to face death or serious physical injury to respond with deadly force. *See* § 563.031.2(2); *State v. Clement*, 661 S.W.3d 396, 403 (Mo. App. E.D. 2023) (citing § 563.031.2(2)) ("Unlike the general principle of self-defense or defense of others, a person need not face death, serious physical injury or a forcible felony to respond with deadly force under Missouri's codified Castle Doctrine."). Instead, as long as Matlock met the other requirements in section 563.031.2(2), he needed only to reasonably believe force was necessary to defend against "the use or imminent use of unlawful force" by another. *See Straughter*, 643 S.W.3d at 326.

Using "or" in place of "and" in Instruction No. 7 was not a "typographical or inadvertent" error where a "literate juror could conclude what the instructions were intended to communicate." *Miner*, 363 S.W.3d at 149. While Matlock only has to inject the issue that he acted under either theory of self-defense as stated in Instruction Nos. 5 and 6 in order for the jury to find him not guilty if they believe either to be true, the State, in order to prove him guilty, has the burden of disproving both theories of self-defense. Said another way, for a finding of guilt, both self-defense theories would have to be disbelieved by the jury. Therefore, there is a

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(Emphasis added). This further supports our conclusion that the jury was misdirected and the State's burden of proof was lowered with respect to the instruction at issue, Instruction No. 7.

[8] All statutory references are to RSMo 2016.

reasonable probability that instructing the jury with this erroneous instruction affected the trial's outcome. *See Straughter*, 643 S.W.3d at 326-27.

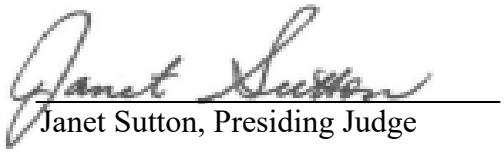
When the trial court instructed the jury with a verdict director that used "or" rather than "and" when referring to both the general self-defense and castle doctrine self-defense instructions, the State's burden of proof was lowered. Because the jury convicted Matlock without being required to find all of the essential elements of the offense, the error affected the verdict, and manifest injustice or miscarriage of justice resulted. *See White*, 92 S.W.3d at 193. *See also State v. Henderson*, 551 S.W.3d 593, 606 (Mo. App. W.D. 2018) (finding that because the erroneous instruction allowed the jury to convict a defendant "without being required to find all of the essential elements of the offense, the errors affected the verdict and manifest injustice or miscarriage of justice resulted"). Matlock's conviction for second-degree murder is, therefore, reversed. A conviction for armed criminal action cannot stand without a conviction on the underlying felony, therefore, Matlock's conviction for armed criminal action is also reversed. *See White*, 92 S.W.3d at 193 n.5.

"Where a conviction is reversed solely for trial error, such as the instructional error found in this case, retrial does not offend double jeopardy and is constitutionally permissible. Furthermore, where, as here, the appellant requests a new trial, he or she cannot plead double jeopardy on retrial." *Id*. at 193 (internal citations omitted). Thus, in reversing Matlock's convictions, we remand for a new trial.

Matlock's sole point on appeal is granted.

**Conclusion**

The judgment of the trial court convicting Matlock of murder in the second degree and armed criminal action is reversed and the case is remanded for a new trial in accordance with this opinion.



Janet Sutton, Presiding Judge

Lisa White Hardwick and W. Douglas Thomson, JJ. concur.