MISSOURI COURT OF APPEALS
WESTERN DISTRICT

WD88347

DALE GOOD,
Appellant,

v.

MISSOURI DEPARTMENT OF CORRECTIONS,
Respondent.

Opinion Filed: November 17, 2026

Appeal from the Circuit Court of Jackson County, Missouri
The Honorable Lauren Barrett, Judge

Before Division Four: Edward R. Ardini, Jr., Chief Judge, Presiding, Lisa White Hardwick, Judge and Gary D. Witt, Judge

Dale Good appeals the judgment of the Circuit Court of Jackson County ("the trial court") finding, after a jury trial, in favor of Good's former employer the Missouri Department of Corrections ("Employer") in Good's lawsuit for age discrimination and retaliation. In his first point on appeal, Good argues the trial court abused its discretion in admitting a witness's personal notes over a hearsay objection. In his second point on appeal, Good argues the trial court erred in refusing to give a proffered verdict directing

instruction to the jury that submitted the claims for age discrimination and retaliation together in a single instruction. The judgment is affirmed.

Facts

Good filed a petition in December 2023 and an amended petition in January 2024 in the trial court seeking damages against his Employer for age discrimination and retaliation. The evidence presented at the June 2025 jury trial included the following:

Good was born in 1961 and began working for Employer in 1991. He began work as a probation officer and was promoted several times. He became a District Administrator in approximately 2005. The District that Good oversaw was one of the largest in the state with over sixty staff and contained two prisons and a community supervision center ("CSC").[1] In August 2022, Good testified in a discrimination case brought against Employer by another employee ("Other Employee"). Other Employee was awarded $500,000 by a jury in her discrimination case.

In November 2022, Good was called to a meeting with his immediate supervisor K.H.S. ("Supervisor"), his next level supervisor J.L. ("Deputy Director"), and the Division Director J.K. ("Division Director").[2] Division Director gave Good the option of retiring or being terminated. Good retired at the end of December 2022; he was over 60 years old.

[1] A community supervision center is a place to provide stability for probationers who have not yet been to prison. The CSCs are meant to support probationers in meeting the conditions of their probation. There are six CSCs in the state of Missouri.

[2] Division Director was "the top official in the Division of Probation and Parole."

Supervisor testified that Good was being terminated because he failed to communicate with his staff, was disconnected from his staff, did not visit other offices in his district, morale in his district was low, did not document Engage[3] meetings with staff, his improvement when given feedback was only temporary, failed to increase numbers at the community supervision center, failed to meet deadlines, and did not connect with and motivate staff. Deputy Director testified that Good's community supervision center numbers were low compared to other districts. Division Director testified that Good was not available to his staff, did not have staff meetings, the "health" of his district was declining, and staff complained about his failure to have Engage meetings. Multiple employees testified that Good was not available to staff, did not attend leadership meetings, did not respond in a timely manner, and that he was aggressive and less engaged with staff. Good acknowledged that he missed deadlines, and his numbers for the community supervision center were low.

The jury found in favor of Employer on Good's claims for age discrimination and retaliation. This appeal follows.

Standard of Review

A trial court has "considerable discretion" in admitting evidence, and this Court will only reverse if the trial court abused that discretion. *Rinehart v. Mo. Dept. of Corr.*, 669 S.W.3d 679, 685 (Mo. App. W.D. 2023). Even if the trial court did abuse its

[3] Engage is a program implemented by Employer that encourages frequent communication between a supervisor and a subordinate to address problems and strategize solutions. It is intended to assist employees with professional development and raise morale.

discretion, this Court will still not reverse the judgment unless the objecting party was prejudiced by the admission of the evidence. *Id*.

This Court reviews *de novo* whether the jury was properly instructed. *McGaugh v. Naudet*, 733 S.W.3d 441, 470 (Mo. App. W.D. 2026). We reverse for instructional error if the given instruction "misdirected, misled, or confused the jury and resulted in prejudice that materially affected the merits of the case." *Harned v. Spurlock*, 658 S.W.3d 562, 574 (Mo. App. W.D. 2022) (internal quotation marks omitted).

Point 1

Good called Supervisor as a witness in his case in chief. During defense counsel's cross-examination of Supervisor, several of Supervisor's handwritten notes from meetings between Supervisor and Good were admitted into evidence over Good's hearsay objection. The notes showed that, from April 2020 through June 2022, Supervisor was discussing the following areas of concern with Good regarding his job performance: the need for Good to increase the number of probationers at the community supervision center, Good's communication issues with his staff, Good's staff not following the chain of command because Good was not available or effective, Good's team not operating as a team, Good failing to meet with and gain rapport with his staff, low office morale among the employees he supervised, Good's failure to respond in a timely fashion, and Good's failure to be present at other facilities he supervised in his

district. In his first point on appeal, Good argues the trial court erred in admitting these notes because they were prejudicial hearsay.[4]

At oral argument before this Court, Employer conceded that the Supervisor's notes were hearsay, but argues their admission was not prejudicial because they were cumulative to other evidence regarding Good's performance at work that was presented without objection. *St. Louis U. v. Geary*, 321 S.W.3d 282, 292 (Mo. banc 2009) ("A complaining party is not entitled to assert prejudice if the challenged evidence is cumulative to other related admitted evidence." (internal quotation marks omitted)); *State v. Gibbons*, 629 S.W.3d 60, 90 (Mo. App. W.D. 2021) ("A defendant is not prejudiced by hearsay testimony that is merely cumulative of evidence already before the trial court, especially if that evidence was presented by another witness who was subject to cross-examination.") (internal quotation marks omitted)).

Good argues in his reply brief that "the notes were used by [Employer] to suggest that Good had been informed of performance deficiencies for a period of two years when that was not the case." Good properly addressed this in his cross-examination of the witnesses and properly argued it in his closing argument. As noted, *supra*, a substantial

[4] Good's brief identifies Exhibits 255, 256, 259, 260, 261, 262, 263, 266, and 267. Good's motion for a new trial did not identify Exhibits 266 or 267; any argument regarding these two exhibits is not preserved for appellate review. Rule 78.07(a). Good's motion for new trial identified Exhibit 265 as one of Supervisor's handwritten notes, but Good does not challenge the admission of this exhibit before this Court. Further, portions of this exhibit were e-mails from Good, and he affirmatively stated at trial that he was not objecting to those portions of the exhibit. Accordingly, this Court will consider whether the trial court abused its discretion in admitting Exhibits 255, 256, 259, 260, 261, 262, and 263.

amount of evidence, presented through multiple witnesses and multiple exhibits, was introduced at trial, without objection, to support Employer's contention that Employer had concerns about Good's performance as an employee and communicated those concerns to Good. Further, any possible prejudice is alleviated by the fact the author of the hearsay statements testified before the jury and was subject to cross-examination. *Id*. at 90 (stating that prejudice will not be found from the admission of hearsay evidence when the declarant was a witness, testified as to the same facts, and was subject to cross-examination, because the defects in the admission of hearsay testimony are alleviated.). Good fails to establish that he was prejudiced by the admission of these exhibits.

Good further argues that the admission of the challenged exhibits was prejudicial because those handwritten notes improperly bolstered the testimony of Supervisor. "Improper bolstering occurs when the out-of-court statement of a witness is offered solely to be duplicative or corroborative of trial testimony." *State v. Bell*, 936 S.W.2d 204, 206 (Mo. App. W.D. 1996). "A claim of error on the basis of improperly admitted hearsay is not the same as a claim of error based upon improper bolstering." *State v. Register*, 487 S.W.3d 15, 17 (Mo. App. W.D. 2016). The words "bolster", "bolstering", "corroborate", or "corroborative" do not appear anywhere in the transcript of the trial. Good's objection to the challenged exhibits was based solely on hearsay. Therefore, any claim that these exhibits constituted improper bolstering is not preserved for our review and can only be reviewed for plain error. *State v. Forrest*, 183 S.W.3d 218, 224 (Mo. banc 2006) ("Appellant objected to these statements at trial solely on the basis of being

hearsay. Consequently, the Court applies abuse of discretion review to the hearsay argument but reviews the bolstering claim for plain error.").

"It is inappropriate for a reviewing court to assign error to a lower court for issues never raised before it." *Lange v. GMT Auto Sales, Inc.*, 708 S.W.3d 147, 154 (Mo. banc 2025). "This Court may review unpreserved claims of error for '[p]lain errors affecting substantial rights' if the Court finds a 'manifest injustice or miscarriage of justice has resulted therefrom.'" *Id*. (quoting Rule 84.13(c)). "Plain error review, however, rarely is granted in civil cases and only when there are substantial grounds for believing the circuit court committed plain error." *Id*. (internal quotation marks omitted). Good does not request plain error review and has not identified facts persuading this Court that substantial grounds exist to believe the trial court committed plain error. Because Good failed to raise this argument before the trial court and fails to persuade this Court to review his claim of bolstering for plain error, the Court will therefore not review this claim further. *See id.*

Point 1 is denied.

Point 2

In his second point on appeal, Good argues the trial court erred in refusing to give his tendered combined verdict directing instruction. Good sought to have his proffered Instruction No. D, which read as follows, submitted to the jury:

> Your verdict must be for plaintiff on plaintiff's claim if you believe:
>
> First, plaintiff was given the option by defendant to either retire or be terminated; and

> Second, plaintiff's testimony in [Other Employee's] trial and/or plaintiff's age, actually played a role in and had a determinative influence on plaintiff being given this option, and
>
> Third, such conduct directly caused damage to plaintiff.

Instead of Good's proposed combined instruction, the jury was instructed separately on each claim as follows:

INSTRUCTION NO. 7

> Your verdict must be for plaintiff if you believe:
>
> *First*, Plaintiff was given the option by Defendant to either retire or be terminated, and
>
> *Second*, Plaintiff's age actually played a role in and had a determinative influence on such action, and
>
> *Third*, such conduct directly caused damage to Plaintiff.
> …

INSTRUCTION NO. 9

> On Plaintiff's retaliation claim, your verdict must be for Plaintiff if you believe:
>
> *First*, Plaintiff testified at the trial of [Other Employee's] case, and
>
> *Second*, Plaintiff was given the option by Defendant to either retire or be terminated, and
>
> *Third*, Plaintiff testifying at [Other Employee's] trial actually played a role in and had a determinative influence of such action, and
>
> *Fourth*, such conduct directly caused damage to Plaintiff.

(Emphasis in original).

Rule 70.02(b)[5] mandates that "[w]henever Missouri Approved Instructions contains an instruction applicable in a particular case that the appropriate party requests or the court decides to submit, such instruction shall be given to the exclusion of any other instructions on the same subject." However, "where there is no applicable MAI so that an instruction not in MAI must be given, then … such instructions shall be simple, brief, impartial, free from argument, and shall not submit to the jury or require findings of detailed evidentiary facts." *Id*. "Therefore, we test the instruction as to whether it follows the substantive law and can be readily understood." *Rosales v. Benjamin Equestrian Ctr., LLC*, 597 S.W.3d 669, 683 (Mo. App. W.D. 2019) (internal quotation marks omitted).

Section 213.055.1(1)(a)[6] provides in relevant part that it is unlawful for an employer to discharge any individual because of the individual's age. Missouri Approved Instruction ("MAI") 38.06 applies to actions for employment discrimination that accrue on or after August 28, 2017. Instruction No. 7 in the current case, pertaining to Good's claim of age discrimination, tracks the language in MAI 38.06.

Section 213.070.1(2) provides in relevant part that it is unlawful for an employer:

> To retaliate or discriminate in any manner against any other person because such person has opposed any practice prohibited by this chapter or because such person has filed a complaint, testified, assisted, or participated in any

[5] All citations to Rules are to the Missouri Supreme Courts Rules (2026) unless otherwise stated.

[6] All statutory citations are to RSMo 2016 as supplemented through 2022, the date of Good's termination meeting, unless otherwise stated. Chapter 213 is the Missouri Human Rights Act ("MHRA"). *Najib v. Missouri Comm'n on Human Rights*, 645 S.W.3d 528, 538 (Mo. App. W. D. 2022).

> manner in any investigation, proceeding or hearing conducted pursuant to this chapter;

There is not a Missouri Approved Instruction that pertains specifically to a claim for retaliation as set forth in section 213.070.[7]

Good argues that section 213.070 makes a distinction between an employer retaliating because the employee *opposed* a discriminatory action and an employer retaliating because the employee *participated* in a proceeding pursuant to discrimination protection laws. *McCrainey v. Kansas City Missouri Sch. Dist*. held that, in the context of *opposing* a discriminatory practice, a "plaintiff need only have a good faith, reasonable belief that the conduct he or she opposed was prohibited by the MHRA in order to prevail on a retaliation claim." 337 S.W.3d 746, 754 (Mo. App. W.D. 2011). Good agrees that it would not be appropriate to combine a claim for discrimination and a claim for retaliation in the same verdict director when the employee *opposed* a discriminatory action because that retaliation claim has the added element of proving the employee had a reasonable, good faith belief the conduct opposed was unlawful. Good argues, however, that a retaliation claim based on *participation* in a trial against the employer does not have the added element and should have been combined with the claim for age discrimination. He argues that it was unnecessary to submit the issue of whether he participated in a proceeding against his employer pursuant to discrimination protection laws to the jury

[7] MAI 38.03 pertains to wrongful discharge in violation of public policy, which can include discharge for retaliatory reasons like reporting of wrongdoing. MAI 38.04 and MAI 38.05 pertain to retaliation for filing a workers compensation claim. None of these apply to the current case.

because that issue was undisputed. Good relies on MAI 17.02 which provides for the submission of multiple alternative acts constituting negligence in the context of an automobile crash.

Good argues the refusal to give his combined jury instruction denied him the right to a verdict if any combination of nine jurors[8] believed that either age discrimination or retaliation were motivating factors in his termination. Good's proposed instruction stated the jury should find in favor of the plaintiff if his "testimony in [Other Employee's] trial *and/or* plaintiff's age" had a determinative influence on him being given the option to retire or be terminated. (Emphasis added). In the current case, the jurors signed one verdict form. On that form, the same nine jurors found in favor of Employer on the age discrimination claim as set out in Instruction No. 7 and on the separate retaliation claim as set out in Instruction No. 9. Presumably, had the claims been combined, the same nine jurors would have continued to find in favor of Employer for each individual claim. To the extent that Good's proposed instruction stated the jury should find in favor of him if his "testimony in [Other Employee's] trial *or* plaintiff's age" had a determinative influence on him being given the option to retire or be terminated, Good was not prejudiced by the two discriminatory practices being submitted in two different instructions.

To the extent Good's proposed instruction submitted that the jury should find in his favor if his "testimony in [Other Employee's] trial *and* plaintiff's age" had a

[8] "Three-fourths or more jurors may return a lawful verdict." Section 494.490.

determinative influence on him being given the option to retire or be terminated, Good argues that the refusal of his combined verdict directing instruction denied him the right to have the jury consider whether age and retaliation, together, were a motivating factor in his termination. Good states that "[t]he defense verdict here means the jury did not think that either factor, standing alone, had a determinative influence on the decision. However, Plaintiff was entitled to a verdict if the jury had found that the two factors combined were a determinative influence."

Good does not cite any authority for the proposition that a plaintiff is entitled to a verdict under the MHRA if he does not prove a violation of section 213.055 and does not prove a violation of section 213.070, but does somehow prove a violation of both sections together occurred, resulting in the adverse employment action. Good's argument regarding his proposed instruction, using the "and" conjunction, does not follow the substantive law. *See Rosales*, 597 S.W.3d at 683. Further, he never offered a proposed instruction solely with the conjunction of "and"; his proposed instruction contained the alternative conjunction "and/or". Instructions No. 7 and No. 9, as given to the jury, did not misdirect, mislead, or confuse the jury. *Harned*, 658 S.W.3d at 574. They further did not result in "prejudice that materially affected the merits of the case." *Id*. (internal quotation marks omitted).

Point 2 is denied.

Conclusion

The judgment of the circuit court is affirmed.



Gary D. Witt, Judge

All concur.