Missouri Court of Appeals

Southern District

In Division

STATE OF MISSOURI,

Respondent,

v.

JUSTIN LEVI WATERDOWN,

Appellant.

No. SD39176

Filed: September 23, 2026

APPEAL FROM THE CIRCUIT COURT OF GREENE COUNTY

Honorable T. Todd Myers, Judge

AFFIRMED

Justin Levi Waterdown ("Waterdown") appeals his convictions of (1) felony stealing under § 570.030; and (2) misdemeanor resisting a lawful detention under § 575.150.[1] Waterdown presents three points on appeal. We affirm.

[1] All statutory references are to RSMo Cum. Supp. (2021). All rule references are to Missouri Court Rules (2025).

Factual and Procedural Background

Victim owned a business that sold used appliances. In May of 2023, Victim learned that someone might be stealing inventory from the business. Victim contacted his cousin ("Cousin") and asked him to go to the business property to survey the situation. Upon arriving, Cousin observed a rental U-Haul pickup truck, occupied by two men, loaded with six washers and dryers leaving the premises. When Victim arrived at his property, he noticed that 10 to 12 appliances were missing.

At some point, Victim and his girlfriend ("Girlfriend") discovered some of the missing appliances from photos in a Facebook Marketplace ad. One of the photos also included a U-Haul truck with some identifying information. Using that information, Victim and Girlfriend were able to locate the U-Haul truck and follow it to a residence. Once there, they reported both the residence address and the U-Haul truck information to the police.

Police arrived at the residence and questioned two men, Waterdown and Daeviant'e Swearingen-Sing ("Co-Defendant"). Police found Waterdown on the property, attempting to sell one of the missing washer and dryer sets. When questioned about his activity, Waterdown claimed that the set was his own. Cousin later positively identified Waterdown and Co-Defendant as the men he saw in the U-Haul pickup truck.[2]

[2] Cousin identified Co-Defendant and another uninvolved individual in a photograph lineup not long after the crime had occurred. Later at trial, Cousin affirmatively

In March of 2024, Waterdown was contacted by police pursuant to a lawful warrant unrelated to the 2023 incident. When the police officer ("Officer") attempted to execute the arrest warrant at a McDonald's, Waterdown gave Officer a false name and then attempted to leave the restaurant. Waterdown began moving chairs between himself and Officer, despite Officer's verbal commands to stop. When Officer was eventually able to pull Waterdown's hands behind his back, Waterdown pulled his arms back up in front of him, away from Officer. Officer then threatened to use his taser on Waterdown if he did not comply. Waterdown subsequently complied.

On September 8, 2025, a jury convicted Waterdown of both felony stealing and resisting a lawful detention. The trial court found Waterdown was a persistent offender pursuant to § 558.016. As such, the trial court sentenced Waterdown to eight years for Count 1 - stealing in the amount of $750 or more, and to one year for Count 2 - resisting. These sentences were to be served concurrently.

Discussion

Waterdown argues three points on appeal: (1) that the trial court plainly erred in recording an incorrect sentence in the final written judgment; (2) that the trial court plainly erred in submitting the term "physical interference" in Jury Instruction 7 on resisting a lawful detention; and (3) that the trial court erred in overruling Waterdown's

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identified Waterdown as an occupant of the truck.

motion for judgment of acquittal as there was insufficient evidence as to the stealing count.

Point 1

The jury convicted Waterdown of stealing in the amount of $750 or more. However, the written judgment erroneously stated that the jury had convicted Waterdown of felony stealing in the amount of $25,000 or more. Waterdown made no objection to the incorrect entry at the time. However, Waterdown points out this error in his first point and requests that the trial court correct the judgment.

Subsequent to the filing of briefs, the trial court amended its written judgment *nunc pro tunc* on June 16, 2026. Trial courts may correct errors of omission or other clerical errors by way of *nunc pro tunc*. Rule 29.12(c). The authority to correct clerical errors exists at any time. ***State v. McCauley***, 496 S.W.3d 593, 594 (Mo. App. S.D. 2016). Such power derives from old common law principles now codified by Rule 29.12(c). ***Id.*** The general rule is that the trial court is master of its own records and as such has "continuing jurisdiction" over them to remedy clerical errors. ***Id.*** Therefore, a *nunc pro tunc* order is valid and binding even if the trial court entered the order after it lost jurisdiction upon appeal. ***Id.***; ***Collins v. State***, 54 S.W.3d 226, 229 n.1 (Mo. App. W.D. 2001).

The trial court properly remedied any erroneous filing in the final written judgment by exercising its authority to issue an order *nunc pro tunc*. Granting

Waterdown's first point on appeal would "have [no] practical effect upon any then existing controversy." ***State ex rel. Hawley v. Heagney***, 523 S.W.3d 447, 450 (Mo. banc 2017). Thus, Waterdown's first point is moot and, therefore, denied.

Point 2

In his second point, Waterdown contends that the trial court plainly erred in submitting Instruction 7, the verdict director for resisting a lawful detention. Specifically, Waterdown alleges the term "physical interference," misdirected the jury and caused manifest injustice.

Waterdown concedes he did not object to the instruction at trial nor did he raise the issue in his motion for new trial. Accordingly, Waterdown requests this Court to review this issue under plain error pursuant to Rule 30.20.

While this Court generally does not review unpreserved claims of error, Rule 30.20 affords us the opportunity to review unpreserved claims, including those of instructional error. ***State v. Emanuel***, 683 S.W.3d 348, 352 (Mo. App. S.D. 2024).

Plain error review is discretionary, and if used, should be used sparingly. ***State v. Jones***, 725 S.W.3d 577, 584 (Mo. banc 2025). To make a facial showing of plain error, Waterdown must show that the error affecting substantial rights is "evident, obvious, and clear error." ***Id.*** at 585.

> Rule 30.20 alters the general rule by giving appellate courts discretion to review plain errors affecting substantial rights [ ] in the discretion of the court ... when the court finds that manifest injustice or miscarriage of

> justice has resulted therefrom. Plain error review is discretionary, and this Court will not review a claim for plain error unless the claimed error facially establishes substantial grounds for believing that manifest injustice or miscarriage of justice has resulted. ... Unless manifest injustice or a miscarriage of justice is shown, an appellate court should decline to review for plain error under Rule 30.20.

Emanuel, 683 S.W.3d at 352-53 (internal quotations and citations omitted) (quoting ***State v. Brandolese***, 601 S.W.3d 519, 525-26 (Mo. banc 2020)); *see also* ***State v. Furtado***, 731 S.W.3d 564, 571 (Mo. App. S.D. 2026).

Instruction 7 was based on MAI-CR 4th 429.61 and stated as follows:

> As to Count [2], if you find and believe from the evidence beyond a reasonable doubt:
>
> First, that on or about March 22, 2024, in the State of Missouri, [Officer] was a law enforcement officer, and
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> Second, that [Officer] was attempting to detain [Waterdown], and
>
> Third, that [Waterdown] knew or reasonably should have known that a law enforcement officer was attempting to detain [Waterdown], and
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> Fourth, that the basis for the detention was for confirming if [Waterdown] had a warrant, and
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> Fifth, for the purpose of preventing the law enforcement officer from making the detention, [Waterdown]resisted ***by using or threatening the use of violence, physical force, or physical interference***,
>
> then you will find [Waterdown] guilty under Count [2] of resisting a lawful detention.
>
> However, unless you find and believe from the evidence beyond a reasonable doubt each and all of these propositions, you must find [Waterdown] not guilty of that offense.

(Emphasis added).

Waterdown alleges that the use of the phrase "physical interference" was plain error. Section 575.150 governs resisting a lawful detention. The plain text of that statute outlines two crimes: (1) resisting the detention of oneself, and (2) interfering with the detention of another. ***State v. Meeks***, 427 S.W.3d 876, 878 (Mo. App. E.D. 2014). The "physical interference" standard is applicable only to a third party attempting to interfere with the detention of another. ***Id.*** Thus, it is not an element of the crime of resisting one's own arrest, as here.

Waterdown highlights three cases from the Eastern District of this Court which he alleges justify reversal: ***Meeks***, 427 S.W.3d 876; ***State v. Dudley***, 475 S.W.3d 712 (Mo. App. E.D. 2015); ***State v. Wooten***, 479 S.W.3d 759 (Mo. App. E.D. 2016). In each of those cases, the trial court applied the "physical interference" standard incorrectly and the Appellate Court found plain error. However, here we do not need to reach this issue as the Instruction in this instance did not cause a manifest injustice or miscarriage of justice.

Determining whether a manifest injustice or miscarriage of justice occurred is largely a factual inquiry. ***State v. Johnson***, 524 S.W.3d 505, 513 (Mo. banc 2017). For such a miscarriage or injustice to occur, the error in question must have been "outcome determinative." ***Jones***, 725 S.W.3d at 583. Mere prejudice to a defendant is not the standard. ***Id.*** The error must have caused a defendant's rights to "suffer so substantially from the error that a miscarriage of justice or manifest injustice will occur if left

uncorrected." ***Id.*** To prove plain instructional error, a defendant must demonstrate the trial court so misdirected or failed to instruct the jury that the error affected the jury's verdict. ***Furtado***, 731 S.W.3d at 571. "Even clear and obvious instructional error rarely works a manifest injustice or miscarriage of justice demanding plain-error reversal." ***Id.*** (underlining removed); (citing ***State v. Parsons***, 339 S.W.3d 543, 549 (Mo. App. S.D. 2011)).

In the instant case, we find that any alleged instructional error caused no manifest injustice or miscarriage of justice. Bodycam footage showed Waterdown used physical force to resist his lawful detainment. When Officer attempted to execute the arrest warrant, Waterdown attempted to leave. Waterdown began moving chairs between himself and Officer, despite Officer's verbal commands to stop. Most importantly, when Officer pulled Waterdown's hands behind his back, Waterdown pulled his arms back up in front of him, away from Officer. Waterdown would not comply until threatened with a taser. The State did not ask the jury to convict Waterdown based on passive failures to act or comply. Rather, the State asked the jury to convict based solely on Waterdown's physical actions. Waterdown's argument at trial was that, given the facts, he could not have reasonably known that a law enforcement officer was attempting to detain him. Because Waterdown never contested the nature of his physical actions, and those actions are essentially undisputed, it was not outcome determinative. Waterdown's failure to contest the nature of his actions distinguishes

our facts from ***Meeks***, ***Dudley***, and ***Wooten***. We conclude, in light of the differing factual circumstances, that no manifest injustice occurred. As such, this case differs from ***Meeks***, ***Dudley***, and ***Wooten***. We also note that all three of these cases came before the Supreme Court of Missouri's latest rulings on plain-error review. *See* ***Jones***; ***Brandolese***; ***State v. Burkett***, 725 S.W.3d 565 (Mo. banc 2025). Thus, we deny plain error review of point 2.

Point 3

In his final point, Waterdown argues that the State failed to present sufficient evidence to prove that he was guilty of Count 1, stealing under § 570.030. We disagree.

We review point 3 under a sufficiency of the evidence standard. In so doing, this Court "accepts as true all of the evidence favorable to the [S]tate, including all favorable inferences drawn from the evidence and disregards all evidence and inferences to the contrary." ***State v. Grim***, 854 S.W.2d 403, 405 (Mo. banc 1993). Circumstantial evidence is sufficient to support a verdict and is viewed "no different from direct evidence." ***Id.*** at 406.

> In determining whether there is sufficient evidence to support a judgment of conviction, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. [T]he Court does not act as a "super juror" with veto powers, but gives great deference to the trier of fact. This Court accepts as true all evidence tending to prove guilt together with all reasonable inferences that support the verdict, and ignores all contrary evidences and inferences. This Court may not supply missing evidence, or give the [s]tate the benefit of unreasonable, speculative or forced inferences.

Furtado, 731 S.W.3d at 569 (internal quotations and citations omitted).

Count 1 alleged a violation of § 570.030, the class D felony of stealing. Specifically, Count 1 alleged that Waterdown, "acting alone [or] with another, appropriated appliances of a value of at least seven hundred fifty dollars" which were owned by Victim. Waterdown sets forth three arguments: (1) Police found Waterdown with only two appliances as opposed to the six purported stolen, (2) No witness saw Waterdown interact with Co-Defendant, and (3) Cousin identified a person other than Waterdown prior to trial.

We hold that there was sufficient evidence for a jury to convict beyond a reasonable doubt. To prove accomplice liability, the evidence "need not show the defendant personally committed every element of the crime." ***State v. Barnum***, 14 S.W.3d 587, 591 (Mo. banc 2000). A jury may find a defendant liable so long as he partook in the criminal act. ***State v. Ward***, 473 S.W.3d 686, 692 (Mo. App. W.D. 2015). The inquiry is whether the defendant (1) aided or agreed to aid the principle, (2) with the purpose of promoting the commission of the crime. § 562.041.

Here, the State produced sufficient evidence to show that Waterdown acted in concert with another to steal the washers and dryers. Cousin identified Waterdown at trial as the man he saw driving away with the six appliances in the truck.[3] Police found

[3] Pursuant to the applicable standard of review, Cousin's conflicting identifications are irrelevant. This court "must presume—even if it does not affirmatively appear in the

Waterdown attempting to sell the stolen goods. The State did not need to produce all six washers and dryers. The evidence presented, both circumstantial and direct, was sufficient to cause any juror to infer guilt beyond a reasonable doubt. Waterdown's third point is without merit and is denied.

Conclusion

The trial court's judgment is affirmed.

BRYAN E. NICKELL, J. – OPINION AUTHOR

JEFFREY W. BATES, J. – CONCURS

JACK A. L. GOODMAN, J. – CONCURS

record—that the trier of fact resolved any such conflicts in favor of the prosecution, and must defer to that resolution." **State v. Chaney**, 967 S.W.2d 47, 53 (Mo. banc 1998); *see also* ***State v. Osborn***, 663 S.W.3d 891, 898 (Mo. App. S.D. 2023).