Missouri Court of Appeals

Southern District

In Division

STATE OF MISSOURI,

Respondent,

v.

JEREMY RUIZ-TOMASSINI,

Appellant.

No. SD39229

Filed: November 3, 2026

APPEAL FROM THE CIRCUIT COURT OF TANEY COUNTY

Honorable R. Tiffany Yarnell, Judge

AFFIRMED

Jeremy Ruiz-Tomassini ("Defendant") appeals his conviction of resisting arrest under § 575.150, RSMo (2016). Defendant brings two points on appeal, alleging insufficient evidence to support his conviction and error during *voir dire*. We affirm.

Background

On July 19, 2024, two Branson Police officers were responding to an unrelated ordinance violation. One of the officers ("Officer C.L.") recognized Defendant as he

walked by and was aware that Defendant had a warrant for his arrest. Based on this knowledge, Officer C.L. called Defendant by his first name and approached him to execute the arrest. Officer C.L. instructed Defendant to put his hands behind his back and then attempted to physically restrain Defendant. Defendant began to argue and pull away, turning his body. A struggle ensued and officers pulled Defendant to the ground. Once Defendant was on the ground, one of the arresting officers stated, "You're under arrest, you got a warrant." Defendant continued to struggle and argue with officers until he was placed in the back of a patrol car several minutes later. Bodycam videos showed the interaction.

At trial, Defendant testified in his own defense. The jury returned a guilty verdict. Defendant was sentenced to 180 days in jail, with 150 of those days suspended. Defendant filed a timely notice of appeal.

Analysis

Point 1

Defendant contends that the trial court erred in overruling his motions for judgment of acquittal and sentencing Defendant on his conviction of resisting arrest, because the State's evidence was insufficient to prove beyond a reasonable doubt that Defendant knew that he was being arrested. We find sufficient evidence and affirm.

> When considering the sufficiency of the evidence on appeal, this Court must determine whether sufficient evidence permits a reasonable juror to find guilt beyond a reasonable doubt. This Court accepts as true all evidence tending to prove guilt together with all reasonable inferences

> that support the verdict, and ignores all contrary evidence and inferences. In reviewing whether sufficient evidence supports a criminal conviction, the Court does not act as a super juror with veto powers, but gives great deference to the trier of fact. This Court, however, cannot supply missing evidence, or give the [S]tate the benefit of unreasonable, speculative or forced inferences.

State v. Guthrie, 733 S.W.3d 421, 423 (Mo. banc 2026) (internal quotations and citations omitted).

The issue before us is whether a reasonable juror could have found beyond a reasonable doubt that Defendant knew or reasonably should have known that he was being placed under arrest.

> To prove that [Defendant] committed [resisting arrest], the [S]tate needed to establish three elements: (1) that [Defendant] knew or reasonably should have known that a law enforcement officer was making an arrest or attempting to lawfully detain or stop him; (2) that [Defendant] resisted this arrest, stop or detention by fleeing from that officer; and (3) that [Defendant] did so for the purpose of preventing the officer from effecting the arrest, stop or detention.

State v. Jones, 479 S.W.3d 100, 109 (Mo. banc 2016); § 575.150. The State is required to prove each element of the offense charged beyond a reasonable doubt. ***State v. Johnson***, 461 S.W.3d 842, 844 (Mo. App. E.D. 2015). Defendant challenges only the first element: that he knew or reasonably should have known that the officer was attempting to arrest him.

"Resisting arrest cannot occur unless the officer was in the process of arresting the defendant." ***State v. Dill***, 693 S.W.3d 177, 186 (Mo. App. S.D. 2024) (quoting ***State v. Redifer***, 290 S.W.3d 184, 186 (Mo. App. W.D. 2009)). "The officer does not have to tell

the person he is under arrest if the circumstances show that the officer is attempting an arrest." ***Id.*** "Once an officer is attempting to actually restrain or control the person of the defendant, an arrest is in progress." ***Id.*** at 187. "The totality of the circumstances allows a jury to reasonably find police officers' intent to arrest a defendant to support a conviction of resisting arrest." ***Id.***

While there are times an officer may instruct someone to place their hands behind their back when they are not under arrest, when the instruction is accompanied by the officer attempting physical restraint, it makes clear that the person is under arrest. *See* ***State v. Dickerson***, 499 S.W.3d 378, 381-82 (Mo. App. S.D. 2016); *see also* ***State v. Ruiz-Tomassini***, 738 S.W.3d 750, 752-53 (Mo. App. S.D. 2026).[1] In ***Dickerson***, a suspect was being questioned by officers regarding an assault and armed criminal action. The interview became a physical altercation when one of the officers instructed the suspect to put his hands behind his back. The officer never explicitly informed the suspect that he was "under arrest" but repeatedly gave instructions to stop resisting. This Court held that there was sufficient evidence that the suspect knew or should have known that he was under arrest. ***Dickerson***, 499 S.W.3d at 381-82. In so holding, we reasoned that:

[1] We note that this Court recently affirmed a separate conviction of Defendant for resisting arrest. The earlier conviction contained strikingly similar facts. Our analysis in the previous appeal also relied heavily on ***Dickerson***. *See* ***Ruiz-Tomassini***, 738 S.W.3d at 752-53.

> [o]nce it was clear that the conversations had come to an end and three officers got into a physical confrontation with [the suspect], … [he] was under arrest and had to know he was under arrest. It is clear from the recorded events that [the suspect] resisted at every step of the remaining confrontation where it had to be clear that he was under arrest.

Id.

In the case at hand, we have reviewed all bodycam footage admitted at trial as well as the testimony of Defendant and the arresting officers. Before the arresting officers made any physical contact with Defendant, Officer C.L. recognized Defendant and recalled that he had an active warrant for his arrest. Officer C.L. approached Defendant, called him by his first name, and instructed him to place his hands behind his back. When the officers reached Defendant, Officer C.L. grabbed Defendant's left arm to place it in handcuffs. At this physical contact, Defendant began to struggle. Officer C.L.'s instruction for Defendant to place his hands behind his back, accompanied by his attempt to physically restrain Defendant, made it clear that Defendant was being placed under arrest. After Defendant was wrestled to the ground, Officer C.L. informed him that he was under arrest because he had a warrant. Defendant continued to struggle with arresting officers after being explicitly informed of his arrest for the warrant.

The facts of the instant case are similar to ***Dickerson***. Officer C.L. did not initially inform Defendant that he was "under arrest." Instead, like the officer in ***Dickerson***, Officer C.L. instructed Defendant to put his hands behind his back. At this instruction coupled with officers attempting to physically restrain him, Defendant began to struggle

with the arresting officers. Once Defendant was on the ground, Officer C.L. went beyond the actions of the ***Dickerson*** officers by explicitly informing Defendant that he was under arrest because he had a warrant. Nevertheless, Defendant continued to struggle while officers instructed him to stop resisting. Like the suspect in ***Dickerson***, Defendant "resisted at every step of the remaining confrontation where it had to be clear that he was under arrest." ***Id.*** at 381-82. Thus, there is sufficient evidence that Defendant knew or should have known he was under arrest. Point 1 is denied.

Point 2

Defendant's second point alleges as follows:

> The trial court abused its discretion in sustaining the prosecutor's objection to defense counsel's *voir dire* questioning of the venirepanel regarding potential bias towards members of [Defendant's] ethnicity, because this curtailment of defense counsel's *voir dire* violated [Defendant's] rights to due process and a fair trial before a fair and impartial jury, guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 10 and 18(a) of the Missouri Constitution, in that defense counsel sought to explore the venirepersons' biases and prejudices regarding race in the community in order to appropriately exercise his peremptory strikes.

We again disagree.

During *voir dire*, Defense Counsel told the *venire* that he was going to inquire about a topic "that is maybe a little bit uncomfortable for some." After informing them that Defendant was "visibly Hispanic," Defense Counsel asked, "[w]ho [here] saw the raids that happened at the Flaming Margaritas this last … two weeks ago maybe?" The State asked to approach and the following exchange ensued:

[The State]: I don't think it's necessarily improper to figure out if they're going to hold that against him, his race. But I don't know that we need to go into things outside that don't really have anything to do with it.

The Court: What are you talking about?

[Defense Counsel]: His race. And I want to explore race.

The Court: His what? His race. What's Flaming Margaritas?

[Defense Counsel]: It was the -- I think a couple of weeks ago the, um -- you may know better than I do. The, um -- it was raided by ICE and I'm going to explore that to see sort of the jurors' opinions regarding Hispanic in a roundabout way [sic].

The Court: All right. Mmm, I think you can address race. I think that's a very hot topic right now and that's not -- I don't think it's actually relevant to our case. Um, so if you can find another way to talk about race. I guess, I understand --

[Defense Counsel]: Yeah.

The Court: -- you want to explore that a little bit. But I think talking about current events, something like that, which I didn't even know what you were talking about, but, um, I just don't know that that's necessarily the appropriate way in this case to talk about race.

Um, I'm trying to think. Also, because I think the subject matter of that current topic is talking about people being here illegally. And I don't, to my knowledge --

[Defense Counsel]: No, he's not.

The Court: He is.

[Defense Counsel]: Yeah.

The Court: And so I think it is going to pull a whole lot of opinions about that topic rather than about actual the race topic [sic]. So I think we need to keep focused on the actual topic that you're trying to address rather than getting opinions about people being here illegally, which he is not. Does that make sense?

[Defense Counsel]: Yeah. And that's --

The Court: So we have to be focused.

[Defense Counsel]: Yeah.

[The State]: And that would -- I mean, that was just my point. Like, I think it's entirely appropriate to see --

The Court: And that's my concern.

[The State]: -- if anybody will hold the fact that he's Hispanic against him.

The Court: Yeah.

[The State]: But I don't know about going into --

The Court: That's my concern is weaving off of the actual --

[Defense Counsel]: Understood. And my plan was to weave back, but I will --

The Court: Sure.

[Defense counsel]: -- abandon that line and go to something else.

Defendant argues that his point is preserved and therefore deserves review for an abuse of discretion. *See* ***State v. Stewart***, 859 S.W.2d 913, 916-17 (Mo. App. E.D. 1993). We find, however, that the trial court was not given any chance to provide a ruling on whether the questioning was proper. The record does not reflect any formal objection, and upon discussion with the trial court, Defense Counsel chose to "abandon that line and go to something else."

> During *voir dire*, especially, it is important to make objections, because the court may take corrective action by giving a cautionary instruction or, in an aggravated case, by excusing the panel and calling for a new one, with minimal waste. By failing to object counsel deprives the trial judge of the opportunity to correct any deficiencies or misapprehensions.

State v. Parham, 645 S.W.3d 105, 107 (Mo. App. S.D. 2022) (quoting ***State v. Darden***, 843 S.W.2d 376, 377 (Mo. App. E.D. 1992)). Here, this matter was not preserved and can only be reviewed for plain error.

"Because the circuit court cannot be convicted of error for something it was never asked to do, appellate courts do not generally review unpreserved claims of error." ***State v. Burkett***, 725 S.W.3d 565, 571 (Mo. banc 2025). "[P]lain errors affecting substantial rights may be considered in the discretion of the court when the court finds that manifest injustice or miscarriage of justice has resulted therefrom." Rule 30.20 Missouri Court Rules (2025). Plain error review is discretionary. ***State v. Minor***, 648 S.W.3d 721, 731 (Mo. banc 2022). "The plain error rule is to be used sparingly and may not be used to justify a review of every point that has not been otherwise preserved for appellate review." ***State v. Jones***, 725 S.W.3d 577, 584 (Mo. banc 2025) (quoting ***State v. Brandolese***, 601 S.W.3d 519, 530 (Mo. banc 2020)).

Plain errors have been defined as errors that are facially evident, obvious, and clear. ***Id.*** at 583. "Requiring the error to be 'facially evident, obvious, and clear' signifies the circuit court definitively should have recognized the error." ***Id.*** Where there is no plain error on the face of the claim, appellate courts are to decline to exercise plain-error review. ***State v. Starks***, 470 S.W.3d 410, 414 (Mo. App. E.D. 2015).

Even if it is established that the alleged error constitutes plain error affecting substantial rights, "Rule 30.20 specifically provides plain error review is available only

when appellate courts find manifest injustice or miscarriage of justice resulted." ***Jones***, 725 S.W.3d at 583. "Generally, the existence of manifest injustice or miscarriage of justice depends on the strength of the evidence … and whether 'the error was outcome determinative.'" ***Id.*** (quoting ***Deck v. State***, 68 S.W.3d 418, 427 (Mo. banc 2002)). "[M]ere prejudice alone fails to demonstrate manifest injustice or miscarriage of justice." ***Id.*** It is a defendant's burden to establish that plain error has occurred that resulted in manifest injustice or miscarriage of justice. ***State v. Whitaker***, 405 S.W.3d 554, 559 (Mo. App. E.D. 2013).

"A liberal latitude is allowed in the examination of jurors, as long as the scope of voir dire remains commensurate with its purpose to discover bias or prejudice in order to select a fair and impartial jury." ***Parham***, 645 S.W.3d at 107 (internal quotations and citation omitted). "[T]he trial court has discretion to judge the appropriateness of specific questions" during *voir dire*. ***State v. Clark***, 981 S.W.2d 143, 146 (Mo. banc 1998).

Here, there was no formal objection made by either the State or Defendant. Upon Defense Counsel's inquiry about the ICE raid, the State asked the trial court to discuss the question during a bench conference. The trial court stated, "But I think talking about current events, … I just don't know that that's necessarily the appropriate way in this case to talk about race." The trial court voiced concerns that the questioning would insert the *venire's* views on illegal immigration rather than Defendant's race. Defense Counsel chose to "abandon that line and go to something else." The trial court

did not plainly err by encouraging Defense Counsel to refine his questioning. The trial court's direction was made to ensure the scope of *voir dire* was "commensurate with its purpose to discover bias or prejudice[.]" ***Parham***, 645 S.W.3d at 107. Furthermore, Defense Counsel continued to successfully probe the *venire's* opinions regarding race without further mention of the ICE raid. Thus, there was no prejudice. We decline plain error review of point 2.

Conclusion

The trial court's judgment is affirmed.

BRYAN E. NICKELL, J. – OPINION AUTHOR

BECKY J. WEST, C. J. – CONCURS

JEFFREY W. BATES, J. – CONCURS