



**In the Missouri Court of Appeals
Eastern District**

DIVISION THREE

CITY OF ST. LOUIS,)	No. ED105119
)	
Respondent,)	Appeal from the Circuit Court
)	of the City of St. Louis
vs.)	
)	
EMMANUEL V. JONES,)	Hon. Nicole Colbert-Botchway
)	
Appellant.)	Filed: January 9, 2018

OPINION

Emmanuel V. Jones (“Defendant”) appeals from the judgment of the circuit court convicting him of one count of resisting arrest following a bench trial. Defendant argues the court erred in finding him guilty because there was insufficient evidence he knew, or reasonably should have known, he was under arrest, and the court erred in speculating that the arresting officer warned Defendant he was under arrest because there was no evidence to support this finding. We affirm the judgment.

Factual and Procedural Background

We review the evidence and all reasonable inferences drawn from the evidence in the light most favorable to the judgment. *State v. Hutson*, 487 S.W.3d 100, 109 (Mo. App. W.D. 2016).

On the evening of May 29, 2015, Defendant was participating in a peaceful protest march in downtown St. Louis. There was heavy pedestrian and vehicular traffic downtown due to a baseball game and it being Friday night. Throughout the evening, Defendant and approximately two dozen other protesters walked into the streets, impeding traffic. Numerous uniformed police officers patrolling the area repeatedly warned the protesters, including Defendant, to “get out of the street” and that anyone who failed to comply could be arrested. At times, the protesters complied with the officers’ warning and temporarily moved back onto the sidewalks, but later returned to the street. The warnings continued throughout the evening.

Shortly before midnight, Defendant and the other protesters were marching through traffic down the middle of Washington Avenue. When the protesters reached Tucker Boulevard, they crossed the intersection into traffic against the traffic light, blocking traffic and endangering pedestrians and vehicles. After this incident, Lieutenant Dan Zarrick (“Lt. Zarrick”), the commanding officer of the St. Louis Police unit monitoring the protest, decided it was time to start arresting the protesters for impeding traffic. Lt. Zarrick called additional officers to the area and ordered an officer to announce that protestors not obeying orders to get out of the street would be placed under arrest. Lt. Zarrick then ordered his officers to start making arrests. Officer Daniel Osorio (“Officer Osorio”), a bike patrol officer assigned to the downtown area, responded to Lt. Zarrick’s call. He was in uniform when he arrived on the scene.

Four videos were stipulated to and admitted into evidence by the parties. The video relevant to Defendant’s arrest showed Lt. Zarrick, Officer Osorio, and several other officers approaching a small group of protesters, including Defendant. Officer Osorio testified that Lt. Zarrick yelled “grab anybody, they’re all under arrest, they’re all in the street.” On the video, an officer can be heard stating, “Grab anybody, they’re all in the streets.” As the officers began

arresting one of the protesters standing with Defendant, Defendant and two other protesters started walking away. Officer Osorio testified he commanded Defendant to “stop,” although this is not heard on the video. The video then shows Officer Osorio run in front of Defendant with his Taser drawn and shout, “Get back!” Defendant ignored Officer Osorio’s verbal commands and continued walking towards him, stating “no, I’m going this way, I’m leaving.” When Defendant was a few feet away, Officer Osorio again shouted, “Get back!” Defendant then quickly zig-zagged left, then right, pushed Officer Osorio’s shoulder with his hand, and ran past him. In response, Officer Osorio aimed his Taser at Defendant and fired, causing Defendant to fall to the ground. Officer Osorio then placed Defendant under arrest for impeding traffic and resisting arrest.

Defendant was charged with resisting arrest, in violation of Section 15.10.010¹ of the Revised Code of the City of St. Louis (“Section 15.10.010” or the “Ordinance”). Defendant was found guilty following a bench trial in the City of St. Louis Municipal Court. Defendant timely appealed his conviction and requested a trial *de novo* in the circuit court. Defendant was again found guilty following a bench trial in the circuit court. Defendant was sentenced to pay a \$500 fine. This appeal follows.

Points on Appeal

Defendant raises two points on appeal. In Point I, Defendant argues the circuit court erred in finding him guilty of resisting arrest because the City’s evidence was insufficient to sustain a finding of guilt beyond a reasonable doubt in that no evidence was offered at trial in which a reasonable factfinder could conclude beyond a reasonable doubt that Defendant knew, or

¹ All references to “Section 15.10.010” are to the Revised Code of the City of St. Louis. All other statutory references are to RSMo (2000), unless otherwise indicated.

reasonably should have known, he was under arrest during the events for which he is charged. In Point II, Defendant argues the circuit court erred when it speculated that Officer Osorio issued a warning of arrest to Defendant because it was improper for the court to supply missing evidence and the evidence presented at trial did not support the court's speculation in that two witnesses testified that Officer Osorio did not issue a warning of arrest and the video entered into evidence did not reflect a warning of arrest from Officer Osorio.

Discussion

I. Point One – Sufficiency of the Evidence for Resisting Arrest

Defendant's argument in Point I requires us to determine whether there was sufficient evidence of Defendant's mental state to support his conviction for resisting arrest. When reviewing a challenge to the sufficiency of the evidence to support a criminal conviction, appellate review is limited to determining whether sufficient evidence was presented from which a reasonable factfinder could find the defendant guilty beyond a reasonable doubt. *Hutson*, 487 S.W.3d at 108; *see State v. Clark*, 490 S.W.3d 704, 707 (Mo. banc 2016). We view the evidence and all reasonable inferences drawn from the evidence in the light most favorable to the jury's verdict, disregarding any contrary evidence and inferences. *Hutson*, 487 S.W.3d at 108. However, this Court "may not supply missing evidence, or give the [State] the benefit of unreasonable, speculative or forced inferences." *Clark*, 490 S.W.3d at 707. This court "does not act as a super juror with veto powers but gives great deference to the trier of fact." *State v. Lewis*, 466 S.W.3d 629, 631 (Mo. App. E.D. 2015). We will not reweigh the evidence because "the factfinder may believe all, some, or none of the testimony of a witness when considered with the facts, circumstances, and other testimony in the case." *State v. Nunley*, 353 S.W.3d 440, 443

(Mo. App. E.D. 2011). We defer to the trial court’s determinations of witness credibility and weight of the evidence. *State v. Rayburn*, 457 S.W.3d 760, 762 (Mo. App. E.D. 2014).

We must first address the mental state required to prove the municipal offense of resisting arrest. Under Section 15.10.010, a person commits the offense of resisting arrest when he or she “hinder[s], obstruct[s], resist[s] or otherwise interfere[s] with any City officer in the discharge of his official duties; or attempt[s] to prevent such officer from arresting any person, or attempt[s] to rescue from such officer any person in his custody[.]” Although Section 15.10.010 does not expressly require proof of any culpable mental state, “Missouri law generally requires a mental state as an element to any crime.” *Reprod. Health Servs. of Planned Parenthood of the St. Louis Region, Inc. v. Nixon*, 185 S.W.3d 685, 690 (Mo. banc 2006) (citing Section 562.016.1).²

Under Section 562.021.3, “if the definition of any offense does not expressly prescribe a culpable mental state for any elements of the offense, a culpable mental state is nonetheless required and is established if a person acts purposely or knowingly, but reckless or criminally negligent acts do not establish such culpable mental state.” Section 562.021.3; *see Hill v. State*, 88 S.W.3d 527, 530 (Mo. App. W.D. 2002) (quoting Section 562.021.3). Section 562.021.3 applies equally to offenses that are either violations of state statute or municipal ordinance violations. *See Bowling Green v. Pilliard*, 751 S.W.2d 413, 414 (Mo. App. E.D. 1988) (holding Section 562.021 applies to a violation of a municipal ordinance for driving with a suspended license).

² In 1975, the Missouri Supreme Court held that a similar Kansas City ordinance making it a misdemeanor to resist arrest did not require any culpable mental state. *See Kansas City v. La Rose*, 524 S.W.2d 112 (Mo. 1975). Because *La Rose* was decided prior to the enactment of Section 562.021 in 1977, it is not controlling law in this case.

Because Section 15.10.010 does not provide any mental state requirement, we must impute a mental state of “purposely or knowingly,” pursuant to Section 562.021.3.³ Therefore, in order to convict Defendant of resisting arrest in violation of Section 15.10.010, the City was required to prove Defendant purposely or knowingly “hinder[ed], obstruct[ed], resist[ed] or otherwise interfere[d] with any City officer in the discharge of his official duties; or attempt[ed] to prevent such officer from arresting any person, or attempt[ed] to rescue from such officer any person in his custody.” Section 15.10.010. Defendant does not challenge the evidence that he resisted arrest. Rather, he only argues he did not knowingly resist arrest, challenging the sufficiency of the evidence concerning the required mental state.

“Direct proof of a required mental state is seldom available and such intent is usually inferred from circumstantial evidence.” *State v. McCauley*, 528 S.W.3d 421, 428 (Mo. App. E.D. 2017) (quoting *State v. Randle*, 456 S.W.3d 535, 539 (Mo. App. E.D. 2015)). “A defendant’s mental state may be determined from evidence of his conduct before the act, from the act itself, and from his subsequent conduct.” *Randle*, 456 S.W.3d at 539. “[A] defendant’s presence, opportunity, companionship, conduct, and flight are circumstances from which his purpose to commit a crime can be inferred.” *Id.*

³ The parties stipulated, and the trial court accepted, that the mental state required to prove a violation of Section 15.10.010 was the mental state for the statutory offense of resisting arrest, Section 575.150, which requires proof “defendant knew or should have known” a police officer was attempting to arrest him, rather than using the correct statutorily proscribed mental state in Section 562.021. Defendant has not raised this issue in his appeal, therefore any claim of error related to the court’s application of the incorrect mental state is waived. Nonetheless, because Defendant challenges the sufficiency of the evidence supporting the mental state element of the offense, we must cite and apply the correct mental state in order to resolve the issues raised in this appeal. “Litigants cannot stipulate as to questions of law.” *Boyd v. State Bd. of Registration for the Healing Arts*, 916 S.W.2d 311, 318 (Mo. App. E.D. 1995); *see also Kan. Ass’n of Private Investigators v. Mulvihill*, 35 S.W.3d 425, 429 (Mo. App. W.D. 2000). “[A]n agreement of the parties or a stipulation of their counsel on a matter of law is not binding on an appellate court so as to exclude that legal point from its scope of review of the case.” *State v. Biddle*, 599 S.W.2d 182, 186 n.4 (Mo. banc 1980) (quoting 5 Am.Jur.2d Appeal and Error § 712 (1962)).

We find there was sufficient evidence to allow a reasonable factfinder to find beyond a reasonable doubt that Defendant acted knowingly when he resisted arrest.⁴ Officer Osorio testified that he commanded Defendant to stop, and the video of Defendant's arrest clearly shows Officer Osorio was in uniform and standing directly in front of Defendant with his Taser drawn when he commanded Defendant to "Get back!" The video also clearly shows Defendant ignored these commands and pushed past Officer Osorio, stating "no, I'm going this way, I'm leaving." This evidence alone is sufficient to support a reasonable inference that Defendant acted knowingly when he resisted Officer Osorio's attempt to arrest him. *McCauley*, 528 S.W.3d at 428 (evidence that defendant disregarded a command to stop from a uniformed police officer is circumstantial evidence of defendant's mental state in a prosecution for resisting arrest under Section 575.150.1); *State v. Gibbs*, 224 S.W.3d 126, 137-38 (Mo. App. W.D. 2007) (evidence that defendant could see the police officer's uniform was circumstantial evidence the defendant knew the individual attempting to arrest him was a police officer); *State v. Jones*, 479 S.W.3d 100, 111 (Mo. banc 2016) (disregarding a command to stop from an individual the defendant knew to be a police officer was circumstantial evidence defendant knew he was under arrest).

Moreover, there is additional evidence supporting an inference that Defendant acted knowingly when he resisted Officer Osorio's attempt to arrest him. Despite numerous warnings to get out of the street, Defendant and the protesters continued to impede traffic by walking through a busy intersection against the signal, a municipal offense for which he was arrested.⁵ Immediately after Defendant committing this arrestable offense, uniformed police officers

⁴ Because we find there was sufficient evidence to support a finding that Defendant acted knowingly, there was also sufficient evidence to support the defendant acted with the lesser mental state of "knew or should have known," which is the standard the parties stipulated to at trial.

⁵ Impeding vehicular traffic is a misdemeanor under Section 17.16.275 of the Revised Code of the City of St. Louis. Ord. No. 69282, § 4 (Nov. 16, 2012).

approached him and the group of protesters. When the officers began arresting a protester standing with Defendant, Defendant started to leave the scene. Officer Osorio then commanded Defendant to “stop” and “get back.” Defendant ignored this command, quickly zig-zagged left, then right, pushed Officer Osorio’s shoulder with his hand, and ran past him. “A defendant’s presence at the crime scene and flight therefrom are evidence of consciousness of guilt.” *Jones*, 479 S.W.3d at 110 (citations and quotations omitted). The court was entitled to consider what Defendant knew and what Defendant had just done when deciding whether Defendant had reason to know whether Officer Osorio was attempting to arrest him for impeding traffic. *See id.* at 110-11.

Nevertheless, Defendant argues the evidence did not support a finding that he knew Officer Osorio was attempting to arrest him because the officers did not warn him he was under arrest and there is no evidence Defendant attempted to flee. To support his argument, Defendant relies on *State v. Marshall*, 468 S.W.3d 902, 904 (Mo. App. S.D. 2015). In *Marshall*, the court found the defendant acted with the requisite mental state to prove the offense of resisting arrest because the defendant fled when he saw the police, and one of the officers was shouting he was under arrest and commanding him to stop. *Id.* at 902-903. Here, Defendant argues there was no evidence either that the police issued a verbal warning of arrest, or that Defendant attempted to flee. We disagree. There was testimony that the protesters, including Defendant, were repeatedly warned that they would be arrested if they were in the streets, and there was also testimony that Lt. Zarrick yelled “grab anybody, they’re all under arrest, they’re all in the street” when the officers began making arrests of Defendant and the other protesters. Additionally, Officer Osorio testified he commanded Defendant to “stop” and the video, reflects that Officer Osorio also commanded Defendant to “get back” as Defendant attempted to flee.

A warning of arrest is circumstantial evidence that a defendant knew he was under arrest. *Jones*, 479 S.W.3d at 110. Contrary to Defendant’s argument, a conviction for resisting arrest does not require evidence that the police specifically said, “you are under arrest.” *Id.* Regardless, we find this evidence demonstrates both that the police warned Defendant he was under arrest and that Defendant subsequently attempted to flee. Since the trial court is the factfinder and expressly found the testimony credible, we defer to the trial court on credibility findings. *Rayburn*, 457 S.W.3d at 762.

Based on the evidence, it was reasonable to infer Defendant acted knowingly when he resisted arrest. Accordingly, the court did not err in finding defendant guilty of resisting arrest. Point I is denied.

II. Point Two – Evidence Defendant Was Informed He Was Under Arrest

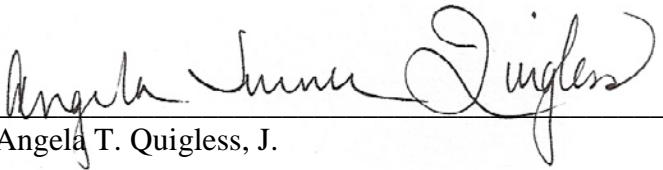
In Point II, Defendant challenges the court’s finding that Officer Osorio “told Mr. Jones that he was under arrest” prior to attempting to arrest him. Defendant argues there was no evidence to support this finding, and without it, there was insufficient evidence to infer Defendant knew he was under arrest.

Although Officer Osorio did not specifically say the words “you are under arrest,” we disagree with Defendant that there is insufficient evidence Defendant knew he was under arrest. As explained above, there was evidence that other officers, including Lt. Zarrick, issued arrest warnings. Moreover, it is well-settled in Missouri that a police officer is not required to “specifically say, ‘you are under arrest,’ when the circumstances indicate the officer is attempting an arrest.” *Jones*, 479 S.W.3d at 110; *Marshall*, 468 S.W.3d at 904 (requiring the State to prove the defendant was specifically told he was under arrest “would be a burden higher than the law places on the state”). Our standard of review requires us to view the evidence in the

light most favorable to the judgment, disregarding all contrary evidence and inferences. *State v. Hutson*, 487 S.W.3d at 109. Here, the circumstances clearly indicated that Officer Osorio was attempting to arrest Defendant. Point II is denied.

Conclusion

The judgment of the circuit court is affirmed.



Angela T. Quigless, J.

Gary M. Gaertner, Jr., P.J., and
Robert M. Clayton III, J., concur.