STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1482

State of Minnesota,
Respondent,

vs.

Richard Leroy Giles, Jr.,
Appellant.

Filed July 22, 2008
Affirmed
Muehlberg, Judge[*]

Stevens County District Court
File No. 75-CR-07-147

Lori Swanson, Attorney General, Tibor M. Gallo, Assistant Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

Charles C. Glasrud, Stevens County Attorney, 601½ California Avenue, P.O. Box 593, Morris, MN 56267 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Marie Wolf, Assistant Public Defender, Suite 300, 540 Fairview Avenue North, St. Paul, MN 55104 (for appellant)

Considered and decided by Stoneburner, Presiding Judge; Worke, Judge; and Muehlberg, Judge.

[*] Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

MUEHLBERG, Judge

After a jury trial, appellant was convicted of escape from custody and violation of a no-contact order. Because venue was proper in Stevens County and no plain error occurred when officers testified regarding appellant's prior contacts with police, we affirm.

FACTS

In January 2007, the Stevens County Sheriff took custody of appellant Richard Giles based on a criminal charge unrelated to the current case. The prior charge apparently involved felony assault and property damage. Because Stevens County does not have its own jail facility, Giles was placed in another county's jail, apparently the Kandiyohi County jail. The district court ordered that Giles could be furloughed for chemical-dependency treatment and ordered him to have no contact with a woman, M.V.

Giles was furloughed to Project Turnabout, a chemical-dependency treatment facility in Yellow Medicine County, in February 2007. A month later, Giles left the treatment program without permission. The next day, police officers found Giles at M.V.'s house in Stevens County. Giles was charged with escape from custody. In addition, because M.V. was present at the house, Giles was charged with violation of a no-contact order.

The jury in Stevens County found Giles guilty of both offenses, and the district court sentenced him to 27 months. Giles now appeals his conviction.

D E C I S I O N

I.

A criminal defendant must be tried in "the county where the offense was committed," which means the county "where any element of the offense was committed." Minn. Stat. § 627.01, subds. 1, 2 (2006); *see also* Minn. Const. art. I, § 6 (providing right to trial by jury "of the county or district wherein the crime shall have been committed").

In this case, Giles was tried in Stevens County. Giles argues that the venue was improper in Stevens County because he was jailed in Kandiyohi County and the treatment program he left was located in Yellow Medicine County. Nonetheless, because Giles returned to Stevens County after leaving the treatment program, the evidence established that venue was appropriate in Stevens County.

Under Minn. Stat. § 609.485, subd. 2(1) (2006), a person escapes from legal custody if the person (1) is held in lawful custody on a charge and (2) escaped while in such custody. An escape includes "departure without lawful authority and failure to return to custody following temporary leave granted for a specific purpose or limited period." *Id.*, subd. 1 (2006).

In *State v. Burnett*, the supreme court held that escape is a continuing offense. 292 Minn. 484, 484, 195 N.W.2d 189, 189 (1972). In other words, the crime of escape continues to occur even after the initial departure or failure to return. This holding is consistent with the plain language of section 609.485. The statute regulates "departure" and "failure to return." A "departure" or "failure to return" is not a discrete act—the act continues even after the act begins.

In this case, Giles failed to return to custody after being furloughed to chemical-dependency treatment in Yellow Medicine County. Thus, he certainly failed to return to custody in Yellow Medicine County. But Giles then returned to Stevens County. As a result, his "departure" and "failure to return" continued into Stevens County. Based on the *Burnett* precedent and the plain language of section 609.485, Giles continued to commit the escape offense while in Stevens County. Therefore, the district court correctly concluded that an element of the escape offense was committed in Stevens County and venue was proper in Stevens County.

In addition to arguing that escape is a continuing offense, the state argues that venue was appropriate in Stevens County because Giles was in the custody of the Stevens County sheriff at the time of escape. Because we conclude that escape is a continuing offense, we do not address the state's alternative theory.

II.

In addition to arguing that venue was improper, Giles argues that the state improperly introduced evidence of his prior contacts with police officers. At trial, a police officer made a number of statements referencing Giles's prior contacts with police. First, the officer testified that "due to past dealings with Mr. Giles, we had officers stationed around the house." Second, the officer testified that he told Giles "to put his hands where we could see them for officer safety reasons." Third, the officer testified that Giles "[made] several comments at the time that he would always make police officers chase him and at one point stated to several officers in the room that the next time he may have us shoot him." Fourth, the officer testified that Giles told him that "he

knew that his treatment time was going to end and he didn't want to go back to jail." Fifth, when asked whether Giles said "that he thought he would take his chances because he didn't want to go back to jail," the officer answered, "yes."

Giles did not object to any of this testimony at trial. In general, the failure to object to the admission of evidence constitutes a waiver of the issue on appeal. *State v. Vick*, 632 N.W.2d 676, 684 (Minn. 2001). Under the plain-error doctrine, we can consider such issues if there is error that is plain and affects the defendant's substantial rights. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). An error is plain if it is clear or obvious under current law. *Johnson v. United States*, 520 U.S. 461, 467, 117 S. Ct. 1544, 1549 (1997). An error is clear or obvious if it "contravenes case law, a rule, or a standard of conduct." *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). If the plain-error standard is satisfied, we "correct the error only if it seriously affects the fairness, integrity or public reputation of judicial proceedings." *State v. Washington*, 693 N.W.2d 195, 204 (Minn. 2005) (quotation omitted).

Giles argues that the error was plain under *State v. Strommen*, 648 N.W.2d 681 (Minn. 2002). In *Strommen*, a police officer testified that he knew the defendant "on a first-name basis and from 'prior contacts and incidents.'" *Id.* at 687. Because the purpose of this evidence was to suggest the defendant "was a person of bad character who had frequent contacts with the police," the evidence should not have been introduced. *Id.* at 688.

But in *Strommen*, the defendant had been tried for attempted robbery. *Id.* at 682. Giles, in contrast, was on trial for escape from custody. Because being in custody is an

element of the offense, it is not plain or obvious that his prior contacts with police officers should not be introduced. Furthermore, the officer appears to be repeating Giles's admission to committing the crime. This is highly relevant and cannot be construed as evidence of prior bad acts. Even if some of the testimony could somehow be construed as improper, it does not rise to the level of plain error. Therefore, Giles has presented no basis for reversing his conviction.

Affirmed.