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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1561**

State of Minnesota,
Respondent,

vs.

Peter Maurice Suggs, Jr.,
Appellant.

**Filed December 2, 2008
Affirmed
Johnson, Judge**

Lyon County District Court
File No. CR-06-465

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Richard R. Maes, Lyon County Attorney, Lyon County Government Center, 607 West Main Street, Marshall, MN 56258 (for respondent)

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

Considered and decided by Johnson, Presiding Judge; Ross, Judge; and Larkin, Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

A Lyon County jury found Peter Maurice Suggs, Jr., guilty of second-degree and fifth-degree controlled-substance crimes based on evidence that he sold marijuana and cocaine to a cooperating informant. Suggs raises two issues on appeal. First, he argues that the district court erroneously permitted the state to cross-examine his girlfriend about his absence from the courtroom on the second day of trial. Second, Suggs argues that the district court erroneously ordered him to reimburse a multi-county drug task force for certain costs incurred in its investigation. We conclude that there was no plain error with respect to the cross-examination of Suggs's girlfriend and that the district court's order for reimbursement of costs is consistent with our caselaw. Therefore, we affirm.

FACTS

The state alleged and proved that Suggs made two sales of controlled substances to a cooperating informant: a sale of marijuana on April 21, 2006, and a sale of cocaine on April 25, 2006. At that time, T.W. was a student at Southwest Minnesota State University (SMSU) whose major subject of study was Justice Administration. Beginning in January 2006, T.W. assisted local law enforcement authorities by conducting numerous controlled purchases of narcotics.

On April 21, 2006, T.W. called Suggs at approximately 1:30 p.m. to arrange a purchase of marijuana at Suggs's apartment in the city of Marshall. T.W. was acquainted with Suggs through intramural sports at SMSU. Shortly after T.W.'s call to Suggs, Detective Jody Gladis of the Marshall Police Department, who was assigned to the

Brown, Lyon, and Redwood Drug and Gang Task Force (BLR Task Force), met with T.W. at the Marshall Law Enforcement Center. Detective Gladis was acquainted with T.W. because he taught one of T.W.'s classes at SMSU. Detective Gladis searched T.W. for contraband and equipped him with an audio-transmitting device. A police detective gave T.W. \$350 in cash that belonged to the BLR Task Force: \$100 for the marijuana that T.W. had discussed with Suggs and an additional \$250 in case T.W. also was able to purchase cocaine from Suggs. At approximately 2:15 p.m., Detective Gladis drove to Suggs's neighborhood and dropped off T.W. one block from Suggs's residence.

At approximately 2:20 p.m., T.W. entered Suggs's apartment. According to T.W.'s testimony at trial, Suggs retrieved a small bag of marijuana from underneath the kitchen sink. Suggs gave the bag to T.W., and T.W. gave Suggs \$100 in cash. Before leaving the apartment, T.W. discussed with Suggs the possibility of buying cocaine, and Suggs stated that he would contact T.W. at a later date, after he had acquired some cocaine from his source. Detective Gladis and another officer monitored the transaction via the audio-transmitting device. T.W. returned to Detective Gladis's car at approximately 2:25 p.m., and they returned to the law enforcement center, where T.W. gave the marijuana and the extra \$250 in cash to a police detective.

On April 25, 2006, Suggs called T.W. and arranged to sell him two bags of cocaine, each weighing three and one-half grams, for a total of \$400. Detective Gladis met T.W. at the law enforcement center at approximately 6:30 p.m., searched him, and equipped him with an audio-transmitting device. A police detective gave T.W. \$400 in cash that belonged to the BLR Task Force. Detective Gladis then took T.W. to the

Recreational and Athletic Facility at SMSU. As T.W. and Suggs were exiting the building, Suggs handed T.W. two bags of cocaine, and T.W. gave Suggs the cash that had been supplied to him. Detective Gladis monitored the transaction via the audio-transmitting device, while a detective witnessed the transaction. Detective Gladis and T.W. then returned to the law enforcement center, where T.W. gave the cocaine to a detective.

The state charged Suggs with second-degree and fifth-degree controlled-substance crimes. The case went to trial on March 13 and 14, 2007. On the first day of trial, T.W. testified about each controlled purchase and identified Suggs as the person who sold him the drugs. A forensic scientist from the Bureau of Criminal Apprehension testified that the bag obtained in the first purchase contained 27.8 grams of marijuana and that the two bags obtained in the second purchase contained a total of 7 grams of cocaine.

On the second day of trial, Suggs did not appear. His trial counsel had no information concerning Suggs's whereabouts. The district court instructed the jury that Suggs had "waived his right to be present" in the courtroom and that the jury "should not be concerned by the fact that he is absent." The defense called Suggs's girlfriend, M.H., as a witness. M.H. lived with Suggs in Marshall in 2006, and Suggs is the father of two of M.H.'s four children. M.H. testified that from April 20 to 22, 2006, she and Suggs were in Milwaukee, Wisconsin, where Suggs was working in a music-recording studio. This testimony was inconsistent with T.W.'s testimony that he saw both Suggs and M.H. in Suggs's apartment building on April 21, 2006. M.H. also testified that on the evening of April 25, 2006, she and Suggs were in Sioux Falls, South Dakota, shopping for gifts

for an upcoming bachelorette party. This testimony was inconsistent with T.W.'s testimony that he purchased cocaine from Suggs at SMSU on April 25, 2006.

The jury found Suggs guilty on both counts. The district court sentenced Suggs to concurrent sentences of 48 months of imprisonment for the second-degree offense and one year and one day for the fifth-degree offense. The state also sought restitution of two expenses related to Suggs's case: the \$500 in cash that the BLR Task Force had supplied to T.W. for the purpose of buying drugs from Suggs, and \$413.30 in travel expenses that T.W. incurred when traveling from Florida to Minnesota for the trial. The district court analyzed the state's request to be one for reimbursement of the costs of prosecution. The district court denied reimbursement of the travel expenses but ordered Suggs to reimburse the BLR Task Force for the \$500 that T.W. paid him during the two transactions. Suggs appeals.

D E C I S I O N

I. Testimony Concerning Suggs's Absence from Trial

Suggs first challenges the admission of M.H.'s testimony concerning Suggs's whereabouts on the second day of trial, which was as follows:

Q: Okay. Now, you and [Suggs] came back for this trial from California?

A: Yes.

Q: Do you know where your boyfriend is today?

A: I have no idea.

Q: When was the last time you saw him?

A: Last night.

Q: Did he tell you that he was leaving?

A: No.

Suggs's trial counsel did not object to the prosecutor's questions. Thus, we review the admission of this testimony for plain error. Minn. R. Crim. P. 31.02; *Arredondo v. State*, 754 N.W.2d 566, 574 (Minn. 2008). Plain error exists if (1) there is an error, (2) the error is plain, and (3) the error affects the defendant's substantial rights. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998).

Suggs argues that M.H.'s testimony is inadmissible because it is not relevant evidence. "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Minn. R. Evid. 401; *see also State v. Harris*, 521 N.W.2d 348, 351 (Minn. 1994) ("evidence is relevant if in some degree it advances the inquiry and thus has probative value" (quotation omitted)). With some exceptions, "[a]ll relevant evidence is admissible," and "[e]vidence which is not relevant is not admissible." Minn. R. Evid. 402. Furthermore, relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Minn. R. Evid. 403.

M.H. testified, as a witness for the defense, that Suggs was not in Marshall at the time of either of the alleged drug transactions. Her testimony that she and Suggs were in Milwaukee on April 21, 2006, was directly contrary to T.W.'s testimony that he saw both

of them in Suggs's apartment on that date; her testimony that she and Suggs were in Sioux Falls on April 25, 2006, was directly contrary to T.W.'s testimony that he met with Suggs at SMSU on that date. "It is a general rule that all evidence which may tend to impeach a witness is relevant." *State v. Underwood*, 281 N.W.2d 337, 341 (Minn. 1979). In light of M.H.'s direct examination, the prosecutor's cross-examination of M.H. about her knowledge of Suggs's whereabouts on the day of her testimony is appropriately directed to the credibility of her testimony. If M.H. did not know Suggs's whereabouts on the day of her testimony, a reasonable juror may question whether she actually knew of Suggs's whereabouts on the days of the controlled purchases. Thus, the testimony elicited by the state's cross-examination was relevant. *See Underwood*, 281 N.W.2d at 341. Furthermore, the evidence posed little or no prejudice to Suggs because his absence was obvious. The district court already had noted his absence at the beginning of the day's proceedings and had instructed the jury that it "should not be concerned by the fact that he is absent." *See State v. Cavegn*, 294 N.W.2d 717, 724 (Minn. 1980) (holding that defendant "could not have been prejudiced by questions relating to an incident already testified to by" another witness).

Suggs also argues that the evidence is inadmissible pursuant to Minn. R. Evid. 404(b), which provides, "Evidence of another crime, wrong, or act is not admissible to prove the character of a person in order to show action in conformity therewith." We question whether Suggs's absence is the type of act described in the first sentence of the rule. Suggs contends that it is a felony to fail to appear for a court appearance in a felony case, *see* Minn. Stat. § 609.49, subd. 1 (2006), but it does not appear that the conditions

of the applicable statute were satisfied. The jury likely did not perceive Suggs's absence to be wrongful because the district court instructed the jury to disregard it. *See State v. Ture*, 681 N.W.2d 9, 16-17 (Minn. 2005) (holding that evidence of defendant's gathering of information about certain women was not evidence of bad acts). Even if Suggs's absence is deemed a crime or bad act, it may be admissible "for other purposes," including "identity." *Id.* at 15. As discussed above, the cross-examination of M.H. was intended to impeach her testimony that Suggs was not present in Marshall on the two days in question and, thereby, to prove that Suggs was the person who provided T.W. with marijuana and cocaine. *See State v. Ferguson*, 581 N.W.2d 824, 834 (Minn. 1998) (holding that evidence of gang membership was not inadmissible under rule 404(b) because it tended to prove motive of gang-related murder). Thus, the testimony elicited from M.H. was not inadmissible pursuant to rules 401 through 404 and, accordingly, there was no error.

Furthermore, even if Suggs could establish error, he could not establish that the error is plain. Error is "plain" if it is "clear or obvious." *State v. Strommen*, 648 N.W.2d 681, 688 (Minn. 2002) (quotation omitted). The evidentiary issue that Suggs raises requires a balancing of probative value and unfair prejudice. Thus, even if the admission of the evidence was erroneous, it was not clearly or obviously so.

Moreover, even if Suggs could establish an error that is plain, he could not establish that the error affected his substantial rights. *See State v. Jones*, 753 N.W.2d 677, 686 (Minn. 2008). An error affects substantial rights if it "would have had a significant effect on the verdict of the jury." *State v. MacLennan*, 702 N.W.2d 219, 236

(Minn. 2005) (quotation omitted). In addition to the lack of prejudice, as mentioned above, there is abundant evidence supporting the verdict. T.W. testified about the controlled purchases and made an in-court identification of Suggs. Three police officers testified that they observed or heard all or part of each controlled purchase. The marijuana and cocaine obtained in the controlled purchases were admitted into evidence. Thus, the testimony elicited from M.H. concerning Suggs's absence from trial did not affect Suggs's substantial rights. *See State v. Davis*, 735 N.W.2d 674, 682 (Minn. 2007) (holding that prosecutor's improper questions on one of 64 pages of testimony did not affect substantial rights where evidence of defendant's guilt was strong).

II. Order to Pay \$500 as Cost of Prosecution

Suggs argues that the district court erroneously ordered him to pay \$500 to the BLR Task Force as compensation under Minn. Stat. § 631.48 (2004) for the cash that T.W. gave to Suggs during the controlled purchases of drugs. Statutory interpretation is a question of law, which we review de novo. *State v. Thompson*, 754 N.W.2d 352, 355 (Minn. 2008).

The state requested \$500 pursuant to both Minn. Stat. § 609.10, subd. 2(a)(2) (2004), which governs restitution, and Minn. Stat. § 631.48, which allows recovery of the costs of prosecution. The district court ordered reimbursement pursuant to the latter statute, which provides:

In a criminal action, upon conviction of the defendant, the court may order as part of the sentence that defendant shall pay the whole or any part of the disbursements of the prosecution, including disbursements made to extradite a defendant. The court may order this payment in addition to

any other penalty authorized by law which it may impose. The payment of the disbursements of prosecution may be enforced in the same manner as the sentence, or by execution against property. When collected, the disbursements must be paid into the treasury of the county of conviction, but this payment may not interfere with the payment of officers', witnesses', or jurors' fees.

Minn. Stat. § 631.48 (2004). To order reimbursement of costs pursuant to section 631.48, the cost “must either be expressly allowed in the statute or analogous to costs taxable to the prevailing party in a civil action.” *State v. Lopez-Solis*, 589 N.W.2d 290, 293 (Minn. 1999).

The district court based its ruling on *State v. Kujak*, 639 N.W.2d 878 (Minn. App. 2002), *review denied* (Minn. Mar. 25, 2002), in which this court affirmed an order requiring a defendant to reimburse a multi-county drug task force for unspecified costs of prosecution under section 631.48. *Id.* at 885. Suggs contends that section 631.48 does not expressly provide for the recovery of money used in controlled purchases and further contends that this type of expenditure is “not specifically listed as a prosecution cost and . . . is not analogous to civil costs.” Suggs also contends that a multi-county drug task force is “a separate organization that is not under the umbrella of the county attorney’s office.” Suggs further contends that *Kujak* was wrongly decided and should not be followed because it is in conflict with *Lopez-Solis*. We agree with Suggs that his argument is governed by *Kujak*, but we decline the invitation to reconsider our decision in *Kujak*. The doctrine of stare decisis generally obliges courts to “adhere to former decisions in order that there might be stability in the law.” *Woodhall v. State*, 738 N.W.2d 357, 363 (Minn. 2007) (quotation omitted). Suggs’s argument for overruling

Kujak would be more appropriately directed to the supreme court in a petition for further review. Thus, we conclude that the district court did not abuse its discretion by ordering Suggs to reimburse the BLR Task Force in the amount of \$500.

Affirmed.