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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0797**

State of Minnesota,
Respondent,

vs.

Chad William Kessler,
Appellant.

**Filed June 9, 2009
Affirmed
Minge, Judge**

Dakota County District Court
File No. 19-K6-07-003092

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

James C. Backstrom, Dakota County Attorney, Helen Brosnahan, Assistant County Attorney, Dakota County Judicial Center, 1560 West Highway 55, Hastings, MN 55033 (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 Minge, Presiding Judge; Worke, Judge; and Collins, 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.

UNPUBLISHED OPINION

MINGE, Judge

Appellant challenges his felony convictions, claiming that a police officer's trial testimony regarding his post-*Miranda* silence was reversible error. We affirm.

FACTS

On September 23, 2007, while on routine patrol, Minnesota State Patrol Trooper Tegdesch ran a random license-plate check on a green Chevrolet Blazer. The check indicated that the Chevrolet Blazer had been reported stolen. After a high-speed chase and foot pursuit, the trooper arrested and searched appellant, discovering a tin of what was determined to be methamphetamine.

Appellant Chad William Kessler was charged with four felony counts: theft in violation of Minn. Stat. § 609.52, subd. 2(17) (2006); possession of stolen property in violation of Minn. Stat. §§ 609.52, subd. 3(2), .53, subd. 3(3)(c)(v) (2006); fifth-degree controlled substance crime in violation of Minn. Stat. § 152.025, subd. 2(1) (2006); and fleeing from a police officer by means of a motor vehicle in violation of Minn. Stat. § 609.487, subd. 3 (2006).

At appellant's jury trial, the state examined Trooper Tegdesch. The following exchange occurred:

State: And then, Trooper Tegdesch, once you had the individual in custody, what do you do?

Tegdesch: Once they're in custody I read him the Miranda warning, where you read you have the right to remain silent. Read him that, and he declined to answer any of my questions.

Appellant did not object to this exchange at trial. There were no follow-up questions or comments about appellant's discussions with law enforcement nor were any special instructions given or requested related to the subject.

The jury returned a guilty verdict on all counts, and appellant was given a 21-month sentence. This appeal follows.

D E C I S I O N

The only issue on appeal is whether Trooper Tegdesch's previously quoted testimony constituted plain error affecting appellant's substantial rights. Appellant concedes that, because there was no objection to the error at trial, we review for plain error. Under the plain error analysis, a new trial is warranted if there was an error; that was plain; that affected the defendant's substantial rights; and, if the first three factors are satisfied, that the error undermined the fairness and the integrity of the judicial proceedings. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998).

The constitution confers on a criminal suspect the right not to "be compelled in any criminal case to be a witness against himself." U.S. Const. amend. V. "Evidence that a defendant exercised his rights to remain silent or to have an attorney present for questioning is generally inadmissible at trial." *State v. Penkaty*, 708 N.W.2d 185, 199 (Minn. 2006). Respondent concedes that the reference to appellant's silence was plain error. Law enforcement officers should be aware that such comments are improper. However, we note the reference was unsolicited, spontaneous, the only reference to appellant's exercise of his rights, and not repeated at any other point in the trial.

Under the plain error analysis, once it is determined that an unobjected-to plain error has occurred, the appellant must show that the error affected his substantial rights. *Griller*, 583 N.W.2d at 740. “[A]n error affects substantial rights where there is a reasonable likelihood that the absence of the error would have had a significant effect on the jury’s verdict.” *State v. Reed*, 737 N.W.2d 572, 583 (Minn. 2007) (quotation omitted). Thus, our task is to determine the likelihood that this comment had a prejudicial effect that contributed to appellant’s conviction.

Appellant claims that his case was close and that the determination of guilt was a difficult call. Appellant points out that, although he conceded at trial that he was fleeing police in a motor vehicle, he did not know that the car was stolen or that the substance he was carrying was methamphetamine. The defense attorney also argued that appellant only fled from the police because he thought he had an outstanding warrant.¹ In response to the prosecution’s claim that a punched-out steering column in the car put appellant on notice that he was driving a stolen vehicle, appellant argues that this testimony was neutralized by the statement by another state trooper that a car’s steering column is sometimes punched out by car owners who have lost their keys. According to appellant, this demonstrates that there was a plausible alternative explanation for the damage beyond theft, and that appellant could have been driving the car stolen by another without knowing that it was stolen.

¹ At trial there was testimony that appellant did not have any outstanding warrants at the time of arrest.

In reviewing the record, we conclude that the evidence of guilt was strong. First, after chasing the appellant, the trooper found a substance in appellant's possession that tested positive for methamphetamine. Second, evidence was presented that appellant fled in a vehicle that was not his, that the owner of the vehicle did not know appellant, and that the steering column had been damaged. There was substantial evidence that would lead a jury to conclude that appellant stole the vehicle, purposefully fled from the state trooper in the vehicle, and was in knowing possession of methamphetamine.

We conclude that, in view of the evidence of guilt, together with the fleeting, the unsolicited, bland reference by Trooper Tegdesch to appellant's decision to remain silent, and the absence of any subsequent reference to this matter, appellant has not shown that the error affected his substantial rights. Accordingly, we affirm.

Affirmed.

Dated: