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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0465**

State of Minnesota,
Respondent,

vs.

Eric Deonta Hill,
Appellant

**Filed February 5, 2018
Affirmed
Worke, Judge**

Ramsey County District Court
File No. 62-CR-16-4476

Lori Swanson, Attorney General, St. Paul, Minnesota; and

John J. Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rochelle R. Winn, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Worke, Judge; and Reilly, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant argues that the district court plainly erred by admitting evidence of another crime and by imposing sentences for both possession of a firearm and possession of ammunition by an ineligible person. We affirm.

FACTS

On June 16, 2016, Officer Cragg was in his squad car conversing with a pedestrian. Officer Cragg heard a voice say, “Why are you f-cking with my people?” and observed a man, later identified as appellant Eric Deonta Hill, sitting in an SUV at a stop sign with his head out the window. Officer Cragg asked Hill if he was speaking to him, to which Hill replied, “Yeah. You’re always f-cking with my people.” Hill then drove away at a high rate of speed and went through two stop signs without stopping.

Officer Cragg initiated a traffic stop and called for backup. Officer Cragg removed Hill from the vehicle and placed him in the rear of a squad car. The police determined that Hill’s driver’s license was revoked and searched the vehicle, where they found a loaded handgun in the center console. While in the squad car, Hill stated that he had “cocaine in [his] buttock.” Hill pulled out a small bag containing a white substance and handed it to the officer.

Police later conducted a recorded interview in which Hill was asked if the car was his. Hill replied, “Yeah, that’s my car, everything is mine’s [sic].” Although he denied that the gun was his or that he had touched it before, when asked if he had ever used the gun, Hill replied, “Never used it, never nothin’, it’s to protect my family from someone

[trying to] run up on me and kill me because all this crazy ass sh-t going on out there.” Hill also stated that the cocaine was for personal use and that he was not selling.

Hill was charged with possession of a firearm by an ineligible person and possession of ammunition by an ineligible person. At trial, the state introduced into evidence the recorded interview and a photograph of the bag of cocaine. Hill did not object to either exhibit. The jury found Hill guilty on both counts, and the district court sentenced him to 60 months in prison for each count, with the sentences running concurrently. This appeal followed.

D E C I S I O N

Evidence

Hill claims that the district court plainly erred by admitting evidence referring to his possession of cocaine. When a defendant does not object to the admission of evidence, this court reviews the district court’s admission of the evidence for plain error. *See State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). The appellant must show (1) an error, (2) that is plain, and (3) the error affects the appellant’s substantial rights. *State v. Vick*, 632 N.W.2d 676, 685 (Minn. 2001). If the appellant satisfies all three prongs of the plain-error test, this court must consider “whether reversal is required to ensure the fairness and integrity of the judicial process.” *State v. Horst*, 880 N.W.2d 24, 38 (Minn. 2016) (citation omitted). If this court concludes that any of the requirements of the plain-error test are not satisfied, it need not consider the others. *State v. Brown*, 815 N.W.2d 609, 620 (Minn. 2012).

To establish that the admission of evidence affected his substantial rights, the appellant must demonstrate “a reasonable likelihood that the absence of the error would have had a significant effect on the jury’s verdict.” *Horst*, 880 N.W.2d at 38 (quotation omitted). To that end, this court considers the persuasiveness of the evidence and the manner in which it was presented. *State v. Jackson*, 764 N.W.2d 612, 620 (Minn. App. 2009), *review denied* (Minn. July 22, 2009).

In *State v. Hollins*, we concluded that the appellant failed to prove a significant effect on the jury’s verdict, noting that there were only three references to the inadmissible evidence during the prosecutor’s case-in-chief and the prosecutor did not mention the evidence in his opening statement or closing argument. 765 N.W.2d 125, 133 (Minn. App. 2009). We also determined that the jury had ample evidence to support a conviction without improperly relying on the erroneously admitted evidence. *Id.*

Here, the prosecutor referred to the cocaine once in her opening statement, asked a police officer three questions about the cocaine, played Hill’s full recorded interview, and mentioned the cocaine once in closing argument. In her opening statement, the prosecutor mentioned the cocaine in describing the events leading to Hill’s arrest. In closing argument, the prosecutor mentioned the cocaine to explain that although Hill’s decision to attract police attention while illegally possessing a firearm, ammunition, and cocaine defied common sense, that was not a defense to the charged crimes. While the record here does contain more references to the erroneously admitted evidence than *Hollins*, the state did not emphasize Hill’s possession of cocaine.

Furthermore, the jury had ample evidence to support both of Hill's convictions. Police recovered a firearm and ammunition in the center console of Hill's vehicle. Hill confirmed that the vehicle and everything inside it was his. Hill stated that the weapon was there to protect his family from someone trying to kill him. He also told police that he is supposed to be able to have a gun to protect himself. Because the state did not emphasize Hill's cocaine possession and there was ample evidence to support his convictions, Hill has not established that the admission of evidence relating to cocaine affected his substantial rights. Therefore, the district court did not plainly err by admitting that evidence. Because we conclude that Hill cannot satisfy the third prong of the plain-error analysis, we need not consider the first two prongs.

Sentencing

Hill claims that we must vacate one of his 60-month concurrent sentences because both offenses were committed during a single behavioral incident. Although the state agrees with Hill, this court must still conduct an independent inquiry. *See State v. Hannuksela*, 452 N.W.2d 668, 673 n.7 (Minn. 1990) (noting that it is the responsibility of appellate courts to decide cases in accordance with the law, regardless of whether counsel chooses to contest an issue). Statutory construction is a question of law that this court reviews de novo. *State v. Koenig*, 666 N.W.2d 366, 372 (Minn. 2003).

Generally, Minnesota law prohibits district courts from imposing multiple sentences for offenses committed as part of a single behavioral incident. Minn. Stat. § 609.035, subd. 1 (2016). However, “a prosecution for or conviction of a violation of section . . . 624.713, subdivision 1, clause (2), is not a bar to conviction of or punishment for any other crime

committed by the defendant as part of the same conduct.” *Id.*, subd. 3 (2016). Hill was convicted of possession of a firearm by an ineligible person and possession of ammunition by an ineligible person pursuant to Minn. Stat. § 624.713, subd. 1(2) (2014).

Resolution of this issue turns on the meaning of “any other crime” in section 609.035, subdivision 3. In *State v. Holmes*, the supreme court interpreted this phrase in the context of the burglary exception to the single-behavioral-incident rule. 778 N.W.2d 336, 340-41 (Minn. 2010). The supreme court stated:

We read the statute to allow a conviction of another crime committed in the same course of conduct as the burglary provided that the statutory elements of that crime are different than the crime of burglary. The phrase “any other crime” means a crime that requires proof of different statutory elements than the crime of burglary.

Id. at 341.

Hill’s convictions require proof of different elements; one requires the state to prove possession of a firearm, and the other requires the state to prove possession of ammunition. Applying the supreme court’s reasoning from *Holmes*, a defendant may be sentenced for both possession of a firearm as well as possession of ammunition.¹ Consequently, the district court did not err by sentencing Hill to two concurrent 60-month sentences.

Affirmed.

¹ Hill relies on a 2016 unpublished opinion to support his argument. In that case, however, the appellant was sentenced for multiple convictions of possession of a firearm by an ineligible person, each of which requires proof of the same statutory elements.