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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1174**

State of Minnesota,
Respondent,

vs.

Aron Montrell Evans,
Appellant.

**Filed June 23, 2014
Affirmed
Willis, Judge***

Hennepin County District Court
File No. 27-CR-12-25084

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

Michael O. Freeman, Hennepin County Attorney, Lee W. Barry, Assistant County
Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, St. Paul, Minnesota (for
appellant)

Considered and decided by Ross, Presiding Judge; Bjorkman, Judge; and Willis,
Judge.

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

UNPUBLISHED OPINION

WILLIS, Judge

Appellant challenges his conviction of ineligible person in possession of a firearm, arguing that the district court erred by admitting irrelevant evidence that the firearm was loaded and unsafe. Appellant also asserts that the prosecution committed misconduct by eliciting irrelevant testimony from its witnesses and instructing the jury that it “must consider” the testimony when determining appellant’s guilt. Because the contested evidence is relevant and its admission did not affect appellant’s substantial rights, we affirm.

FACTS

On August 2, 2012, Minneapolis police responded to a 911 call reporting a disturbance in the 3300 block of Oliver Avenue North and that a person there had a handgun. When Officer Ledman arrived, he saw that a crowd of people had gathered, and it appeared that a fight was about to begin. The officer immediately noticed a woman with a crowbar in her hand and a man standing nearby. The man, later identified as appellant Aron Montrell Evans, made eye contact with Officer Ledman and immediately turned away. Evans had a glove on his right hand and walked quickly to the back of a parked car. Officer Ledman saw Evans crouch behind the car and make an underhand throwing motion, and the officer then heard a loud clank that sounded like metal hitting the street. Officer Ledman went to the car, looked under it, and saw a gun lying there. He alerted another officer that a gun was present. Evans was arrested and was later charged with being an ineligible person in possession of a firearm.

At trial, Officer Ledman testified that when he found the gun, he asked Officer Pucely to secure the weapon. An exhibit described by Officer Ledman as “ten live rounds that were in the magazine when we recovered the weapon” was received without objection. Officer Pucely testified that on the night of the offense he was directed to recover the gun and “make it safe.” He ejected the magazine, saw that the gun was loaded, but noted that “there was no live round in the chamber.” The state’s third witness, a forensic scientist, testified that he performed a fingerprint analysis on the property inventoried at the crime scene. The items in his work order included “a .22 caliber handgun, a magazine, and ten live cartridges.” The forensic scientist stated that all of these items, including the bullets, were tested, but no fingerprints matching Evans’s were found.

At trial, the prosecutor also referred to the bullets that were found in the handgun. In his opening and closing statements he argued that police had to make the gun “safe” and “secure.” And after summarizing the witnesses’ testimony, the prosecutor instructed the jury that the testimony at trial was the evidence it “must consider.”

The jury found Evans guilty, and the district court sentenced him to 60 months in prison. This appeal follows.

D E C I S I O N

I. Evidence that the firearm was loaded and needed to be made safe was relevant and did not unfairly prejudice Evans’s substantial rights.

Evans asserts that the district court plainly erred when it admitted evidence that the handgun was loaded and that it was necessary to make the gun safe. Evans argues

that because the crime of ineligible person in possession of a firearm does not require evidence that the firearm was loaded, this evidence was irrelevant and prejudicial.

When a defendant fails to object to the admission of evidence, we review for plain error. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). Error is plain if it is “clear or obvious,” or if it “contravenes case law, a rule, or a standard of conduct.” *State v. Reed*, 737 N.W.2d 572, 583 (Minn. 2007); *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). But even if plain error occurred, a defendant is not entitled to relief unless the error affected his or her substantial rights. *State v. Goelz*, 743 N.W.2d 249, 258 (Minn. 2007). To show that his substantial rights were affected, the defendant has the burden of persuading this court that the error was unfairly prejudicial and affected the outcome of his case. *Griller*, 583 N.W.2d at 741. If the defendant establishes these elements, the reviewing court will consider whether the error should be addressed “to ensure fairness and the integrity of the judicial proceedings.” *Goelz*, 743 N.W.2d at 258 (quotation omitted).

At trial, Evans argued that the state had failed to prove that he was the person who threw the gun under the vehicle. He argued that police had arrived to a chaotic scene and that there were several people near the car where the handgun was found who could have put it there. Thus, the identity of the possessor of the handgun was the key issue at trial. The forensic scientist testified that he ran a fingerprint analysis on all of the items that were collected at the crime scene. No fingerprints were found on the weapon or on the bullets. But because the identity of the person who possessed the firearm could have been established if his or her fingerprints were on the weapon or the bullets, testimony

regarding the fingerprint testing of the bullets was relevant. *See* Minn. R. Evid. 401 (“‘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.”).

Further, evidence that Evans was carrying a device that was loaded is circumstantial evidence that he knew the device was a firearm. Evans correctly argues that the operability of a firearm is not an element of the offense. *Gerdes v. State*, 319 N.W.2d 710, 712 (Minn. 1982). But knowledge that the device was a firearm is an element of the offense. *See State v. Ndikum*, 815 N.W.2d 816, 818-19, 822 (Minn. 2012) (reading a mens rea requirement into statutes prohibiting possession of handguns). The state needed to establish that the device Evans possessed met the statutory definition of a firearm. That definition requires that the device be capable of ejecting “one or more solid projectiles by means of a cartridge or shell.” Minn. Stat. § 624.712, subd. 2 (2012). Evidence of the bullets in the gun established that the device was designed to fire projectiles and that Evans knew the device he possessed was a firearm. We therefore conclude that the district court did not plainly err by admitting this evidence.

II. There was no prosecutorial misconduct.

Evans argues that the prosecutor committed misconduct amounting to plain error by eliciting testimony from the state’s witnesses that the handgun was loaded and needed to be made safe, and by iterating these facts during his opening and closing statements, telling the jury that it “must consider” all of the testimony.

Alleged prosecutorial misconduct that was not objected to is analyzed under the plain-error standard, which requires that a defendant establish that an error occurred and that the error was plain. *Ramey*, 721 N.W.2d at 299, 302. Because the prosecutor's statements related to evidence that was lawfully admitted, there was no prosecutorial misconduct.

Affirmed.