NOT DESIGNATED FOR PUBLICATION

No. 126,273

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

BRADLEY T. GILLESPIE,
Appellant,

v.

STATE OF KANSAS,
Appellee.

MEMORANDUM OPINION

Appeal from Miami District Court; STEVEN C. MONTGOMERY, judge. Submitted without oral argument. Opinion filed March 22, 2024. Affirmed.

Adam Sokoloff, of The Sokoloff Law Firm, of Olathe, for appellant.

Jason A. Vigil, deputy county attorney, *J. Colin Reynolds*, county attorney, and *Kris W. Kobach*, attorney general, for appellee.

Before GARDNER, P.J., MALONE, J., and TIMOTHY G. LAHEY, S.J.

PER CURIAM: Following a jury trial, Bradley T. Gillespie was convicted of one count each of burglary and theft, four counts of possession of a controlled substance with intent to distribute within 1,000 feet of school property, and 83 counts of criminal possession of a firearm. This court affirmed Gillespie's convictions on direct appeal. *State v. Gillespie*, No. 118,617, 2019 WL 1213173, at *14 (Kan. App. 2019) (unpublished opinion). Gillespie timely filed a K.S.A. 60-1507 motion alleging ineffective assistance of counsel, which the district court denied. On appeal, Gillespie claims the district court erred in denying his K.S.A. 60-1507 motion. Gillespie claims that he received ineffective

assistance of counsel on three grounds: (1) His trial and appellate counsel failed to argue that his convictions were multiplicitous, (2) his trial counsel failed to investigate and present a claim of jury misconduct, and (3) his trial counsel failed to adequately question the jury during voir dire. Gillespie also claims cumulative error. For the reasons stated below, we disagree with Gillespie's claims and affirm the district court's judgment.

FACTUAL AND PROCEDURAL BACKGROUND

On February 2, 2016, police responded to the automated alarm of a pharmacy in Paola. The police found that the pharmacy had been broken into and ransacked. A cabinet normally containing the pharmacy's narcotics was empty. In the pharmacy's parking lot, officers found a PS90 firearm magazine. No information about the magazine was ever released to the public.

About a month later, Joshua Windler, a friend of Gillespie, met with Detective John Douglass, who was investigating the burglary at the pharmacy. Windler told Douglass that he had purchased prescription drugs from Gillespie. Based on this information, Douglass received a warrant to search Gillespie's residence for guns and stolen drugs. The warrant was executed on March 11, 2016, and Gillespie was not at home during the search. The search revealed over 100 firearms in Gillespie's home. Gillespie was a felon at that time. Officers also found a hand-drawn map of the pharmacy and a bottle of liquid hydrocodone.

Douglass was later contacted by Jaleh Esfandiary, who stated that she was Gillespie's girlfriend in February 2016. Esfandiary stated that she sometimes helped Gillespie count drugs that he sold to his customers. She provided Douglass with photographs of stolen drugs in Gillespie's home and a bag containing various drug samples that she had taken from Gillespie. Those drugs were later identified as the same types stolen from the pharmacy. Esfandiary had also helped Gillespie hide a PS90 firearm

at his dad's house because Gillespie had claimed the police were looking for it. Gillespie told Esfandiary that he had left a PS90 magazine behind while burglarizing the pharmacy.

The State eventually charged Gillespie with four counts of possession of a controlled substance with intent to distribute within 1,000 feet of a school, 86 counts of possession of a weapon by a felon, 1 count of theft of property valued between $25,000 and $100,000, and 1 count of burglary of a nondwelling. The State later dismissed three counts of possession of a weapon by a felon. Along with testimony on the above facts, the State produced at trial many witnesses who testified that Gillespie had admitted—with detailed descriptions—to burglarizing the pharmacy. Several witnesses testified that Gillespie had showed them the stolen drugs and had been in possession of large amounts of prescription drugs after the burglary. Some witnesses admitted that they had purchased drugs from Gillespie. The jury found Gillespie guilty of all counts.

Gillespie filed a motion for new trial alleging jury misconduct. At the hearing, Gillespie alleged that a juror in his trial had contacted him through his counsel and later filed an affidavit claiming (1) that she overheard a different juror tell other jurors that he recognized one of the firearms in Gillespie's possession as one stolen from his truck, and (2) that some jurors were discussing that Gillespie's prior felony was for a theft of over $200,000, although this evidence was not presented at the trial. Gillespie's counsel described that the disclosing juror had contacted him on her own, that he engaged in an email exchange with her that he also sent to the State, and that he thought it most important to admit the juror's statement as she presented it to him unsolicited to remove any doubt that he encouraged or helped produce the statement. The affidavit is not included in our record on appeal but is quoted in this court's opinion on Gillespie's direct appeal. In the affidavit, the disclosing juror stated that she had "no way of knowing if [the information] swayed minds . . . ." *Gillespie*, 2019 WL 1213173, at *4.

The district court denied the motion for new trial, and this court affirmed that ruling on appeal. 2019 WL 1213173, at *4-6. The *Gillespie* panel found that there was no juror misconduct because both statements were unsupported allegations related to the jurors' mental processes and were inadmissible under K.S.A. 60-441. The panel emphasized that there was also no prejudice because the jury was instructed to decide the case based on the evidence adduced at trial, and the evidence overwhelmingly supported the verdicts. 2019 WL 1213173, at *5-6.

Gillespie timely filed a K.S.A. 60-1507 motion prepared by counsel and a memorandum supporting the motion including exhibits. In the memorandum, Gillespie alleged that he received ineffective assistance of counsel for his trial and appellate counsel's failure to challenge his convictions as multiplicitous, for failing to investigate and present the claims of jury misconduct, and for failing to adequately question the venire panel. Gillespie also alleged cumulative error. The State responded to Gillespie's memorandum, and Gillespie filed a reply brief.

The district court held a nonevidentiary hearing on Gillespie's motion. The court announced at the beginning of the hearing that it had reviewed all the written material presented by each party. After hearing arguments of counsel, the court denied Gillespie's motion from the bench and in a subsequent journal entry. Gillespie timely appealed the district court's judgment.

INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS

On appeal, Gillespie claims the district court erred in denying his K.S.A. 60-1507 motion. Gillespie claims that he received ineffective assistance of counsel on three grounds: (1) His trial and appellate counsel failed to argue that his convictions were multiplicitous, (2) his trial counsel failed to investigate and present a claim of jury misconduct, and (3) his trial counsel failed to adequately question the jury during voir

dire. The State asserts that the district court correctly denied Gillespie's ineffective assistance of counsel claims in finding that Gillespie's drug possession and firearm convictions were not multiplicitous, that no prejudicial juror misconduct affected the trial outcome, and that trial counsel's performance during voir dire was reasonable.

A district court has three options when handling a K.S.A. 60-1507 motion:

> "'(1) The court may determine that the motion, files, and case records conclusively show the prisoner is entitled to no relief and deny the motion summarily; (2) the court may determine from the motion, files, and records that a potentially substantial issue exists, in which case a preliminary hearing may be held. If the court then determines there is no substantial issue, the court may deny the motion; or (3) the court may determine from the motion, files, records, or preliminary hearing that a substantial issue is presented requiring a full hearing.' [Citations omitted.]" *State v. Adams*, 311 Kan. 569, 578, 465 P.3d 176 (2020).

The standard of review depends on which of these options a district court used. If the district court holds a preliminary hearing after the appointment of counsel, the appellate court must give deference to any factual findings made by the district court and apply a findings of fact and conclusions of law standard of review to determine whether the findings are supported by substantial competent evidence and whether those findings are sufficient to support its conclusions of law. The appellate court, however, has unlimited review over the district court's conclusions of law and its decision to grant or deny the K.S.A. 60-1507 motion. 311 Kan. at 578.

Claims of ineffective assistance of trial counsel are analyzed under the two-prong test articulated in *Strickland v. Washington*, 466 U.S. 668, 694, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984), and adopted by the Kansas Supreme Court in *Chamberlain v. State*, 236 Kan. 650, 656-57, 694 P.2d 468 (1985). Under the first prong, the defendant must show that defense counsel's performance was deficient. If successful, the court moves to the

second prong and determines whether there is a reasonable probability that, absent defense counsel's unprofessional errors, the result would have been different. *State v. Evans*, 315 Kan. 211, 218, 506 P.3d 260 (2022).

To establish deficient performance under the first prong, the defendant must show that defense counsel's representation fell below an objective standard of reasonableness. Judicial scrutiny of counsel's performance in a claim of ineffective assistance of counsel must be highly deferential. A fair assessment of counsel's performance requires that every effort be made to eliminate the distorting effects of hindsight, reconstruct the circumstances of the challenged conduct, and evaluate the conduct from counsel's perspective at the time. 315 Kan. at 218. A court considering a claim of ineffective assistance of counsel must presume that defense counsel's conduct fell within the wide range of reasonable professional assistance; that is, the defendant must overcome the strong presumption that, under the circumstances, counsel's action might be considered sound trial strategy. *Khalil-Alsalaami v. State*, 313 Kan. 472, 486, 486 P.3d 1216 (2021).

Under the second prong, the defendant must show that defense counsel's deficient performance was prejudicial. To establish prejudice, the defendant must show with reasonable probability that the deficient performance affected the outcome of the proceedings, based on the totality of the evidence. 313 Kan. at 486.

In reviewing a district court's decision on claims of ineffective assistance of counsel, appellate courts review the district court's factual findings for substantial competent evidence. Appellate courts review the district court's legal conclusions based on those facts applying a de novo standard of review. *Evans*, 315 Kan. at 218.

Counsels' Failure to Argue Convictions Were Multiplicitous

Gillespie first argues that his trial and appellate counsel were ineffective for failing to argue that his 4 convictions of drug possession with intent to distribute were multiplicitous and for failing to argue that his 83 convictions of possession of a firearm by a felon were multiplicitous. Gillespie does not argue that the district court erred in denying him an evidentiary hearing on this claim. He simply argues that the convictions were multiplicitous as a matter of law. The State argues the opposite.

"[M]ultiplicity is the charging of a single offense in several counts of a complaint for information." *State v. Thompson*, 287 Kan. 238, 244, 200 P.3d 22 (2009). In determining whether a conviction is multiplicitous, this court engages in a two-part inquiry: "(1) Do the convictions arise from the same conduct and, if so, (2) by statutory definition, are there two offenses or only one?" 287 Kan. at 244.

As for the first inquiry, this court considers whether the conduct was unitary and in doing so considers these nonexhaustive factors:

> "'(1) whether the acts occur at or near the same time; (2) whether the acts occur at the same location; (3) whether there is a causal relationship between the acts, in particular whether there was an intervening event; and (4) whether there is a fresh impulse motivating some of the conduct.' [Citation omitted.]" 287 Kan. at 244.

For the second inquiry—whether the statutory provisions provide for two offenses or only one—the test to be applied depends on whether the convictions arise from a single statute or from multiple statutes. If the convictions arise from different statutes, they are multiplicitous only when the statutes on which the convictions are based contain an identity of elements. 287 Kan. at 244. If the convictions arise from a single statute, courts apply the unit of prosecution test: Did the Legislature intend to allow more than one unit of prosecution under the statute? 287 Kan. at 245.

The most fundamental rule of statutory construction is that the intent of the Legislature governs if that intent can be ascertained. *State v. Keys*, 315 Kan. 690, 698, 510 P.3d 706 (2022). An appellate court must first attempt to ascertain legislative intent through the statutory language enacted, giving common words their ordinary meanings. *State v. Betts*, 316 Kan. 191, 198, 514 P.3d 341 (2022). When a statute is plain and unambiguous, an appellate court should not speculate about the legislative intent behind that clear language, and it should refrain from reading something into the statute that is not readily found in its words. *Keys*, 315 Kan. at 698. Appellate courts review de novo questions of statutory interpretation. *Betts*, 316 Kan. at 197.

Drug possession convictions

Gillespie was convicted of four counts of possession of a controlled substance with intent to distribute in violation of K.S.A. 2015 Supp. 21-5705(a)(1). The statute provides:

> "(a) It shall be unlawful for any person to distribute or possess with the intent to distribute any of the following controlled substances or controlled substance analogs thereof:
>
> (1) Opiates, opium or narcotic drugs, or any stimulant designated in subsection (d)(1), (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto." K.S.A. 2015 Supp. 21-5705(a)(1).

Because both components of the multiplicity inquiry must be met for convictions to be multiplicitous, we choose to analyze Gillespie's multiplicity argument by proceeding directly to the second inquiry. Assuming that Gillespie's drug possession convictions arose from the same conduct, the second inquiry is to determine by statutory definition whether there are multiple offenses or only one. And because Gillespie's drug possession convictions arose from a single statute, we apply the unit of prosecution test to determine multiplicity—did the Legislature intend to allow more than one unit of

prosecution under the statute? Gillespie focuses on the language "'any' of the following controlled substances or controlled substance analogs" in K.S.A. 2015 Supp. 21-5705(a) to argue that "the [L]egislature made clear the *number of different* 'narcotic drugs' one possesses is irrelevant to the charge."

In *State v. Housworth*, No. 115,836, 2017 WL 2834502 (Kan. App. 2017) (unpublished opinion), this court addressed nearly this identical issue under K.S.A. 2016 Supp. 21-5705(a). Housworth argued that three of his convictions for possessing with intent to distribute different opiates (oxymorphone, morphine, and oxycodone) were multiplicitous under the statute. The *Housworth* court, like Gillespie, focused on the language criminalizing possession of "any" of the listed substances. But contrary to Gillespie's argument, the court found that the term "any" as used in K.S.A. 2016 Supp. 21-5705(a) "generally leads Kansas courts to conclude that a statute provides for multiple units of prosecution in cases involving the possession of multiple prohibited items." 2017 WL 2834502, at *14. Gillespie acknowledges the adverse holding in *Housworth* but argues that the case was wrongly decided.

The *Housworth* court cited several other cases to support its conclusion. In *State v. Hulsey*, No. 109,095, 2014 WL 4627486, at *11 (Kan. App. 2014) (unpublished opinion), this court held that the statute prohibiting the possession of "'any visual depiction'" of a child engaging in sexually explicit conduct showed a clear legislative intent to allow multiple units of prosecution for the possession of each depiction. In *State v. Odegbaro*, No. 108,493, 2014 WL 2589707, at *9 (Kan. App. 2014) (unpublished opinion), this court held that the term "any" in a statute criminalizing making a false information supports separate convictions for multiple written instruments. And in *State v. Odell*, No. 105,311, 2013 WL 310335, at *8 (Kan. App. 2013) (unpublished opinion), this court held that the phrase "any item" in a statute criminalizing traffic in contraband in a correctional institution provides for multiple units of prosecution.

The *Housworth* court concluded with the following analysis:

> "Because K.S.A. 2016 Supp. 21-5705(a) criminalizes the distribution or possession with intent to distribute 'any' of the listed controlled substances, including '[o]piates, opium or narcotic drugs,' and the controlled-substance statute separately lists oxymorphone, morphine, and oxycodone as types of opium, Housworth's convictions for possessing oxymorphone, morphine, and oxycodone aren't multiplicitous. See K.S.A. 2016 Supp. 65-4107(b)(1)(M)-(O). Even though all three drugs fall into the same controlled-substance category, K.S.A. 2016 Supp. 21-5705(a) criminalizes possession with intent to distribute 'any' of them, so possession of each drug can be charged as a separate crime." 2017 WL 2834502, at *14.

We adopt this court's reasoning in *Housworth* and apply it to the facts here. Gillespie was convicted of four counts of drug possession with intent to distribute in violation of K.S.A. 2015 Supp. 21-5705(a)(1). Each conviction was for a separate controlled substance: morphine, fentanyl, hydrocodone, and lisdexamfetamine (vyvanse). We find like the court in *Housworth* that the Legislature intended to allow more than one unit of prosecution under the statute, and Gillespie can be convicted for each separate controlled substance he possessed in violation of the statute.

In the more recent case of *State v. Eckert*, 317 Kan. 21, 27-31, 522 P.3d 796 (2023), the defendant was convicted of 8 counts of felony possession of drug paraphernalia and 17 counts of misdemeanor possession of drug paraphernalia in violation of K.S.A. 2016 Supp. 21-5709(b), which prohibits the possession of "any" drug paraphernalia. The Supreme Court held that the statute justified a conviction of only one felony count and one misdemeanor count, and the other convictions were multiplicitous. In doing so, the Supreme Court acknowledged this court's oft-used analysis of the term "any" to signal that the Legislature intended to criminalize multiple instances of possession under the same statute. 317 Kan. at 27-28.

Contrary to what Gillespie argues, the Supreme Court in *Eckert* did not disrupt or even criticize this court's analysis of the term "any" as signaling a legislative intent to allow multiple units of prosecution. Instead, the court focused on the term "paraphernalia" which can be defined as singular or plural. The court found that the statute was ambiguous as to whether it criminalized all drug paraphernalia as a unit or each individual paraphernalia item. Thus, the court held that the statute did not allow multiple units of prosecution. 317 Kan. at 30-31. *Eckert* is distinguishable because of its focus on the dual meaning of the term "paraphernalia" and the ambiguity in K.S.A. 2016 Supp. 21-5709(b). Nothing about the Supreme Court's analysis in *Eckert* persuades us to find that this court's analysis in *Housworth* is misguided.

Perhaps more persuasive is the *Thompson* case. The *Thompson* court found that K.S.A. 65-7006(a), which prohibits the possession of certain substances with the intent to manufacture controlled substances, did not allow for multiple units of prosecution where Thompson possessed two substances that were both used to make methamphetamine. In reaching this conclusion, the court considered K.S.A. 2007 Supp. 65-4160(a), the predecessor to K.S.A. 2015 Supp. 21-5705 with strikingly similar language. The court found that K.S.A. 2007 Supp. 65-4160(a) differed from K.S.A. 65-7006(a) in that "the gravamen of the offense in K.S.A. 2007 Supp. 65-4160(a) is clearly possession of each specified controlled substance . . . and the legislature criminalized the possession or control of 'any' of those drugs." *Thompson*, 287 Kan. at 248. While Gillespie tries to use *Thompson* to argue that the *Housworth* court improperly relied exclusively on the term "any," he ignores that the *Thompson* court directly addressed nearly identical language to K.S.A. 2015 Supp. 21-5705 and found that it allowed multiple units of prosecution.

In sum, Gillespie does not persuasively argue that the *Housworth* case was wrongly decided. The term "any" has consistently been held to allow multiple units of prosecution, and the Kansas Supreme Court has declined to overturn this court's long-held analysis on the matter despite being directly presented the issue in *Eckert*. Gillespie

was convicted of four counts of drug possession with intent to distribute in violation of K.S.A. 2015 Supp. 21-5705(a)(1). Each conviction was for a separate controlled substance. We find that the Legislature intended to allow more than one unit of prosecution under K.S.A. 2015 Supp. 21-5705(a)(1), and Gillespie can be convicted for each separate controlled substance he possessed in violation of the statute. Gillespie's separate drug possession convictions were not multiplicitous. It follows that Gillespie's trial and appellate counsel were not ineffective for failing to raise this issue.

Criminal possession of a firearm convictions

Gillespie also claims that his 83 convictions of possession of a firearm by a felon in violation of K.S.A. 2015 Supp. 21-6304(a)(2) were multiplicitous. We again assume that Gillespie's conduct was unitary and proceed to the second inquiry in the two-part test to determine multiplicity: By statutory definition, are there multiple offenses or only one? And because Gillespie's firearm convictions arose from a single statute, we apply the unit of prosecution test to determine multiplicity.

Gillespie's firearm convictions were not multiplicitous for the same reasons that his drug possession convictions were not multiplicitous. K.S.A. 2015 Supp. 21-6304(a) provides in part that "[c]riminal possession of a weapon by a convicted felon is possession of any weapon . . . ." As explained above, using the term "any" has been regularly found to support multiple units of prosecution and that analysis has not been overturned by the Kansas Supreme Court even when the court had the opportunity to do so in *Eckert*. K.S.A. 2015 Supp. 21-6304(c)(2) then defines "weapon" as "a firearm or knife." The State argues that the statute allows multiple units of prosecution because it prohibits the possession of "any" singular firearm by using the article "a" preceding the term "firearm." We agree. K.S.A. 2015 Supp. 21-6304(a)(2) should be read as prohibiting certain felons from possessing any single firearm. The Legislature made clear by its use

of the term "any" and by defining weapon in the singular that it intended to criminalize the possession of each single firearm by certain felons.

This result makes sense and produces sound public policy. The possession of a single firearm by a felon is troublesome, but far more troublesome and potentially dangerous is a felon's possession of 83 firearms. While K.S.A. 2015 Supp. 21-6304(a)(2) has not been challenged as allowing multiplicitous convictions, this court has upheld multiple convictions for the possession of weapons by a felon. See *Housworth*, 2017 WL 2834502, at *2-4 (where Housworth was convicted of two counts of possession of a weapon by a felon after police found two firearms in his home). Gillespie's criminal possession of a firearm convictions were not multiplicitous. It follows that Gillespie's trial and appellate counsel were not ineffective for failing to raise this issue.

Counsel's Failure to Investigate and Present a Claim of Jury Misconduct

Gillespie next claims that his trial counsel was ineffective for failing to properly investigate and present issues of jury misconduct. Gillespie argues two instances of misconduct: (1) that a juror overheard another juror mention that he recognized one of the guns in evidence as one stolen from his truck, and (2) that a juror overheard other jurors talking about Gillespie's involvement in a prior felony for the theft of $200,000 in stolen property. This court has already addressed these allegations in Gillespie's direct appeal. *Gillespie*, 2019 WL 1213173, at *4-6. This court found that no misconduct occurred because the statements in the affidavit Gillespie provided lacked detail and verification and were inadmissible under K.S.A. 60-441. Even if there were misconduct, this court found that Gillespie was not substantially prejudiced in light of the overwhelming evidence against him and because the jurors were instructed to consider only the evidence admitted at trial. *Gillespie*, 2019 WL 1213173, at *5-6.

The parties relitigate those same issues here, but as allowed in the context of an ineffective assistance of counsel claim. See *Bogguess v. State*, 306 Kan. 574, 582, 395 P.3d 447 (2017). As to allegations of the stolen gun, Gillespie argues that because a juror believed Gillespie possessed a gun stolen from his truck: "The bottom line is that a juror essentially became a State's witness when he provided evidence to the jury that the defendant was in possession of the juror's stolen property." As to the statement on Gillespie's prior felony, Gillespie argues that statements that he had stolen property before would bias the jury in a case in which he was alleged to have traded drugs for weapons. Gillespie does not argue that he was denied an evidentiary hearing on this issue; he simply argues that the district court erred in denying him relief on the claims made in his K.S.A. 60-1507 motion. The State mirrors this court's prior *Gillespie* analysis and holding that no misconduct occurred or it was not prejudicial.

Turning to a *Strickland* analysis, Gillespie has not met his burden to show that his counsel's performance fell below an objectively reasonable standard. Gillespie paints a picture of his counsel being unprepared and fumbling without any evidence at the hearing on the motion for new trial, but that was not the case. His counsel stated at the hearing that he was contacted by a juror, he exchanged emails with her about her disclosure, and he sought to admit the juror's unsolicited disclosure. When the disclosure was not read into the record, Gillespie's counsel persuaded the district court to admit into evidence an affidavit from the juror. Gillespie's counsel stated on the record why he relied so heavily on the single juror's statement—he felt it important, ostensibly for persuasive purposes, to admit the juror's unsolicited disclosure without any inference that he may have helped craft or articulate the allegation. Despite Gillespie's many complaints about his counsel's performance at the hearing, Gillespie fails to show that it was objectively unreasonable and constitutionally deficient. Gillespie's counsel presented the jury misconduct issue to the district court, but it was rejected by the district court and on appeal.

Even if the first *Strickland* prong were satisfied, Gillespie has failed to show prejudice. He argues that because this court found in the direct appeal that Gillespie had provided insufficient evidence to support his jury misconduct claim, his counsel's failure to present more evidence must have prejudiced him. Gillespie speculates that had his counsel more thoroughly investigated the juror's disclosure, his counsel would have found and presented more favorable evidence and the result would have been different.

But even in hindsight Gillespie does not claim to have any additional evidence to present beyond the affidavit that his counsel already presented into evidence. We observe that the memorandum supporting Gillespie's K.S.A. 60-1507 motion included attached affidavits summarizing conversations that a private investigator had with other jurors. The jury foreperson acknowledged the statement by a juror about one of the guns being stolen from his truck. But the foreperson told the investigator he immediately "shut it down" and informed the jurors the statement was not part of the evidence and could not be considered. Other jurors insisted to the investigator that there was no misconduct and "everything was fair." This evidence cuts into Gillespie's speculation that more investigation would have uncovered greater misconduct.

Turning to the evidence against Gillespie, the State called many witnesses who either saw Gillespie possess the stolen drugs, helped count the stolen drugs, or who Gillespie told that he stole the drugs. Some witnesses admitted that they had purchased stolen drugs from Gillespie. The police found a PS90 firearm magazine left at the pharmacy and did not make that information public. Yet Gillespie told Esfandiary that he left the magazine at the crime scene and had Esfandiary help hide the firearm because the police were looking for it. Esfandiary also provided police with photographs of the stolen drugs and a sample of the drugs that Gillespie possessed, which were identified as the same kind taken from the pharmacy. Police found a hand-drawn map of the pharmacy in Gillespie's home. A witness who had worked at the pharmacy testified to drawing the

map for Gillespie after Gillespie discussed how to break into the pharmacy with the witness. In short, the State presented overwhelming evidence of Gillespie's guilt.

Under these facts and in light of the entire record, Gillespie has not shown a reasonable probability that but for counsel's performance, the result of the trial would have been different. Even if trial counsel's performance in investigating and presenting the jury misconduct claim was objectively unreasonable, Gillespie fails to show that he was prejudiced by his counsel's performance. The district court did not err in rejecting Gillespie's claim that he received ineffective assistance of counsel on this issue.

Counsel's Failure to Adequately Question the Jury During Voir Dire

Gillespie claims that his trial counsel was ineffective during voir dire for failing to ask questions that would have uncovered the alleged misconduct described above in time to strike any biased jurors. Gillespie's argument is premised on this court finding the existence of prejudicial jury misconduct. Given that Gillespie has failed to succeed on his jury misconduct claim, this ineffective assistance of counsel claim lacks merit.

The record shows that Gillespie's counsel was engaged, used his strikes for cause, singled out panel members with specific questions, and thoroughly questioned the venire panel over 58 pages of transcript. Gillespie relies on hindsight to argue that his trial counsel should have asked more questions about firearms or knowledge of Gillespie or where he lived. But removing the distorting effects of hindsight, Gillespie's counsel's performance did not fall below an objectively reasonable standard. Gillespie also fails to show prejudice for the reasons explained above. The district court did not err in rejecting Gillespie's claim that his counsel failed to adequately question the jury during voir dire.

CUMULATIVE ERROR CLAIM

The memorandum supporting Gillespie's K.S.A. 60-1507 motion raised a cumulative error claim which the district court denied. Gillespie renews this claim on appeal. Gillespie argues that "[u]nder the totality of the circumstances, [t]rial [c]ounsel's failure to challenge the charges, select an impartial jury, investigate juror misconduct and develop an adequate record, when considered collectively, deprive Mr. Gillespie of a fair trial and was collectively ineffective." But the cumulative error rule does not apply if there are no errors or only a single error. *State v. Gallegos*, 313 Kan. 262, 277, 485 P.3d 622 (2021). We have identified no error committed by the district court in rejecting Gillespie's ineffective assistance of counsel claims. Thus, Gillespie is entitled to no relief based on cumulative error.

Affirmed.