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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1997**

State of Minnesota,
Respondent,

vs.

Brian Donnell Bridges,
Appellant.

**Filed December 30, 2013
Affirmed
Larkin, Judge**

St. Louis County District Court
File No. 69HI-CR-08-657

Lori Swanson, Attorney General, Karen B. Andrews, Assistant Attorney General,
St. Paul, Minnesota; and

Mark Rubin, St. Louis County Attorney, Duluth, Minnesota (for respondent)

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Considered and decided by Rodenberg, Presiding Judge; Larkin, Judge; and
Chutich, Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges his convictions on charges of first-degree criminal sexual conduct, first-degree burglary, and third-degree assault. He argues that the district court erred by (1) denying his motion for a mistrial, (2) denying his request to introduce alternative-perpetrator evidence, (3) admitting evidence of an unrelated shoplifting, and (4) concluding that a search-warrant application provided probable cause to search his residence. We affirm.

FACTS

During the early morning of June 3, 2008, a man entered P.B.'s home in Hibbing and repeatedly sexually assaulted her. The police were called to the scene and collected bedding and a Trojan Magnum condom wrapper from P.B.'s bed, where the assault occurred. P.B. reported that the assailant wore a ski mask, rubber gloves, and a dark, "slippery nylon" jacket. She said that he "wasn't real tall," around 5'9" or 5'10", with a "smaller thinner build." She also reported that he did not sound like an "Iron Ranger" and that his dialect "sounded black." Appellant Brian Donnell Bridges, a black male, was a similar height and weight at the time of the crime, and he was staying at B.E.'s apartment, approximately two blocks from P.B.'s house.

The police obtained a warrant to search B.E.'s apartment, based on allegations of an unrelated theft. The search-warrant affidavit alleged that Bridges stole a bottle of champagne from a nearby liquor store. During the search, the police found an empty bottle of champagne and Amtrak tickets in Bridges's name from a trip to Washington,

D.C., in April 2008. The police also found a black nylon jacket, Trojan Magnum condoms, and a latex glove. Believing that those items were related to P.B.'s sexual assault, the police froze the scene and obtained a second warrant to further search the apartment. During the second search, the police found a pair of latex gloves in a garbage can. When Bridges arrived at the apartment, the police took him into custody. An investigator observed scratches and bruising on Bridges's right forearm and elbow, bruising near his left elbow, and what appeared to be a bruise on his left knee.

While in custody, Bridges told the police that he spent the evening of June 2 with B.E.'s children at B.E.'s mother's trailer home and that he returned to B.E.'s apartment between 1:00 and 2:00 a.m. He further stated that he called his daughter's mother, who brought his child to the apartment around 2:30 a.m. He said that B.E.'s brother and a friend came over, watched the end of a movie, and everyone went to sleep after B.E.'s brother and his friend left. After witnesses failed to corroborate Bridges's statement, he changed his story and told the police that he was at B.E.'s apartment alone the evening of June 2 and went to bed around 2:00 a.m.

B.E.'s sister, C.B., testified that she saw Bridges on the evening of June 2 and that he was wearing a black jacket that looked like the jacket the police recovered during the search of B.E.'s apartment.

Analysts at the Minnesota Bureau of Criminal Apprehension (BCA) tested DNA obtained from several items that the police collected during their investigation. Testing revealed that the condom wrapper recovered from P.B.'s bed contained a mixture of DNA from at least three males. Neither Bridges nor P.B.'s boyfriend were excluded as

contributors to the DNA. Bridges was excluded as a contributor to DNA from hair on P.B.'s bedding. DNA from two of the gloves found in B.E.'s apartment matched P.B. The BCA tested 22 hairs found on the black jacket. The DNA from two hairs matched Bridges. The DNA from one hair matched P.B. The cuff of the jacket contained blood with a mixture of DNA. P.B. could not be excluded as a contributor to this DNA mixture.

Respondent State of Minnesota subsequently charged Bridges with two counts of first-degree criminal sexual conduct, first-degree burglary, and third-degree assault.¹ A jury found Bridges guilty of all four charges and also found three aggravating factors. The district court sentenced Bridges to consecutive prison terms of 312 and 48 months. Bridges appeals.

D E C I S I O N

I.

Bridges argues that the district court abused its discretion by denying his mistrial motion, which was based on the jury's exposure to documents that had not been offered or received as evidence. "[A] mistrial should not be granted unless there is a reasonable probability that the outcome of the trial would be different" if the event that prompted the motion had not occurred. *State v. Spann*, 574 N.W.2d 47, 53 (Minn. 1998). "[T]he district court is in the best position to evaluate whether prejudice, if any, warrants a mistrial." *State v. Marchbanks*, 632 N.W.2d 725, 729 (Minn. App. 2001). The denial of

¹ The state also charged Bridges with two counts of first-degree attempted murder, but the state dismissed those charges before trial.

a motion for a mistrial is reviewed for an abuse of discretion. *State v. Jorgensen*, 660 N.W.2d 127, 133 (Minn. 2003).

The mistrial motion stemmed from the black nylon jacket that the police found in B.E.'s apartment, which was received as evidence at trial. The district court provided the jacket to the jury during its deliberations. A juror examined the jacket and found, in an inside pocket, two receipts dated April 26, 2008, from a store in Union Station in Washington, D.C. The district court became aware of the jury's discovery of the receipts when a juror wrote the following note to the court during deliberations: "While examining the jacket in question, I, . . . , came across two receipts inside an 'inside' pocket. Do you want us to disregard?" The district court held a hearing on the matter. Bridges moved for a mistrial, arguing that the receipts were "never introduced as a piece of evidence" and that he was "afraid there may be a taint on the jury that can't be excised with an instruction from the [c]ourt."

With the consent of both parties, the district court called the juror who wrote the note to provide testimony regarding the documents. The juror explained that as the jurors "started discussing . . . the jacket," they "ended up noticing a little bit of white that was on . . . the inside jacket pocket." The juror further explained that he "examined just to see what they were, and [he] mentioned that they were from Washington, D.C., but there wasn't any much further discussion on them, just it wasn't something brought to us."

In evaluating Bridges's motion, the district court relied primarily on *State v. Winningham*, 406 N.W.2d 70 (Minn. App. 1987), *review denied* (Minn. July 15, 1987). The district court noted that in *Winningham*, "there was evidence [that] the [c]ourt had

determined was not admissible in that case, [which] got in [to jury deliberations] by mistake, and the appellate court decided that under those facts there's no way that the defendant had a fair trial." But the district court reasoned that unlike the circumstances in *Winningham*, the receipts here "could have been admitted" if they "had been found and offered into evidence." The district court acknowledged that there was "prejudice to [Bridges] because [the receipts were] found in the pocket of the jacket, essentially tying the jacket to him, given the fact the jury heard evidence that he was in D.C. at that time." But the district court noted that there was other evidence that tied Bridges to the jacket, including the "testimony of [C.B.], that he was wearing a jacket like that," Bridges's DNA from hair on the jacket, and the location where the police found the jacket.

The district court "provisionally" denied Bridges's mistrial motion. Bridges requested a curative instruction "[i]n lieu of the provisional denial." The district court instructed the jury as follows:

[Y]ou must disregard that evidence. It is evidence, but it was not introduced.

[T]he defendant is entitled to have a fair trial, and you have heard all of the evidence in this case. As I told you before, you have to disregard anything you may have heard or seen elsewhere about this case. So those two pieces of paper and what they say and what you know about them, you must set aside and not allow to enter into your deliberations. The defendant never had an opportunity to confront that evidence, he has a right to a fair trial, and to confront all of the evidence against him. And I know that it's a difficult thing for you to do, and I hope that you can do your best to set aside those two pieces of paper, not allow it to enter into your deliberations, go back into the jury room and continue to follow the [c]ourt's instructions, decide this case strictly on the evidence

you heard during the trial in this courtroom, and do your best to render a fair and impartial verdict as to each count.

The district court asked the members of the jury if they could do this, and every juror responded affirmatively. After the jury returned its guilty verdict for first-degree criminal sexual conduct, the district court asked each juror if “the paper in the jacket [had] anything to do with this verdict?” Each juror responded that it did not.

Bridges argues that the district court erred in “failing to carefully consider the four-factor test set forth in *State v. Cox*, 322 N.W.2d 555 (Minn. 1982),” when ruling on his mistrial motion. In *Cox*, a sheriff, acting as an officer of the court, made a statement during a criminal trial that was heard by at least seven jurors, along the lines of, “As far as I am concerned it is all over when the prosecution rests, but I am prejudiced.” 322 N.W.2d at 557-58. The issue on appeal was whether the district court clearly abused its discretion in determining that the defendant could still obtain a fair trial by an impartial jury, despite the sheriff’s remark. *Id.* at 558.

The supreme court stated that the “[s]tatements of a court official about the merits of a criminal case raise a rebuttable presumption of prejudice” and that “[t]he burden on the prosecution to rebut the presumption is met only by showing beyond a reasonable doubt that the asserted error did not contribute to the verdict obtained.” *Id.* Next, the supreme court conducted “an independent evaluation of the verdict,” considering the following factors: “the nature and source of the prejudicial matter, the number of jurors exposed to the influence, the weight of evidence properly before the jury, and the likelihood that curative measures were effective in reducing the prejudice.” *Id.* at 559.

The supreme court held that there was no reasonable possibility that the sheriff's remark would affect the verdict of an average jury and that the district court therefore did not abuse its discretion in denying a mistrial. *Id.* at 559-60.

We now independently evaluate the verdict in this case, using the *Cox* factors. Because it is undisputed that all of the jurors were exposed to the receipts, we focus on the remaining three *Cox* factors.

First, as to “the nature and source” of the receipts, the source favors Bridges. *See Winningham*, 406 N.W.2d at 72 (concluding that the source of the evidence favored reversal because “it was the State’s responsibility . . . as the source of the exhibits, to make sure the inadmissible evidence was not delivered to the jury”). But the nature of the receipts does not support reversal.

Although this court has reversed convictions based on a deliberating jury’s exposure to materials that were not received in evidence, in those cases, the materials had been ruled inadmissible and were much more prejudicial than the receipts here. For example, in *Winningham*, we held that the defendant was denied his constitutional right to a fair trial because the deliberating jury inadvertently viewed “inflammatory” evidence that the district court had ruled inadmissible. *Id.* The defendant was on trial for sexual offenses involving children. *Id.* at 70-71. The state offered letters that the defendant allegedly had written to commercial pornographers, which “spoke in vulgar and graphic terms of the writer’s fondness for photos of ‘baby dolls’ or ‘little girls’ in various stages of undress and erotic posture.” *Id.* at 71. After a mid-trial hearing, the court ruled that the letters were inadmissible, partly reasoning that the letters were more prejudicial than

probative. *Id.* Minutes after the case was submitted to the jury, a court clerk discovered that the excluded letters had been delivered to the jury room along with the evidence that had been admitted at trial. *Id.*

Regarding the nature of the evidence, this court reasoned that “the nature of the evidence was described by the [district] court itself as ‘highly prejudicial’ and ‘more prejudicial than probative.’ The prejudicial nature of the evidence was also demonstrated by the jurors’ comments describing the letters as ‘filthy’ and ‘garbage.’” *Id.* at 72. We found it “very unlikely that the [district] court’s curative measures, although properly administered, could realistically have been effective[,] [g]iven the inflammatory nature of the evidence in question.” *Id.*

Similarly, in *State v. Cash*, a deliberating jury inadvertently received portions of a transcript of the defendant’s police interrogation that the district court had ruled inadmissible. 391 N.W.2d 875, 878 (Minn. App. 1986). The defendant was on trial for having sex with a minor. *Id.* at 877. The district court ruled that portions of his statement were inadmissible and must be stricken from the transcript to be offered at trial, including allegations that the defendant had sexual intercourse with certain minors and furnished others with alcohol. *Id.* at 879-80. This court concluded that the jury’s exposure to the inadmissible evidence during its deliberations was prejudicial error necessitating reversal. *Id.* at 882. We explained that

[w]e do not accept the [district] court’s assessment that the error was harmless. [Defendant] was on trial for criminal sexual conduct in the third degree involving a 13-year-old girl. We would ignore reality and the common sense of a jury to conclude that a jury will not be unduly prejudiced against a

defendant when the jury is allowed to see a written statement by a police officer made to the defendant in which the officer claims to have statements from other young individuals alleging that [defendant] had sexual intercourse with them.

Id. at 880.

Unlike the circumstances in *Winningham* and *Cash*, the receipts in this case had not been ruled inadmissible. Moreover, the receipts were not inflammatory or more prejudicial than probative. *See State v. Swinger*, 800 N.W.2d 833, 839 (Minn. App. 2011) (stating that “unfair prejudice is not merely damaging evidence, even severely damaging evidence; rather, unfair prejudice is evidence that persuades by illegitimate means, giving one party an unfair advantage” (quotation omitted)), *review denied* (Minn. Sept. 28, 2011).

Bridges’s only argument for how the receipts impacted the outcome of the trial is that they proved he owned and wore the jacket. He contends that the receipts proved “that it was [his] jacket and he’d been wearing it weeks prior to the assault and indicated to the jury he was wearing it at the time of the assault.” But as the state argues and the district court observed in its analysis, other evidence connected Bridges to the jacket, including C.B.’s testimony, the presence of his DNA in hair found on the jacket, and the presence of the jacket in the apartment where he resided. In fact, during his closing argument, Bridges did not dispute that the jacket belonged to him. Instead, he argued that the state failed to prove that the jacket was the one worn by the assailant. For example, Bridges argued that P.B. “never identified the black nylon jacket here.” He asked “if [the assailant was] wearing this jacket, and [he had] it zipped up, is there a reason the front of this [jacket] wasn’t swabbed [for DNA]?” He also asked:

If the black jacket sent to the BCA was in police custody for 18 months prior to testing and only one of 455 hairs found on the jacket are found to be that of [P.B.], and if the hair follicle is only viable for nuclear DNA analysis within one to two months after removal from the scalp, how is it that one was found after the jacket had been in police custody for 18 months?”

Unlike the circumstances in *Cash*, 391 N.W.2d at 880, where this court reasoned that the “defense in the case was a denial of sexual intercourse with [the victim], and the allegations refer to similar contact with other girls,” the potential for the receipts to connect Bridges to the jacket did nothing to frustrate Bridges’s defense theory that the jacket was not used in the assault.

To be clear, there is no excuse for the jury’s exposure to the receipts during its deliberations, and the state is solely responsible for this error. *See Cash*, 391 N.W.2d at 880 (stating that “[e]ach party bears responsibility for its own exhibits” and observing that we could not “find any explanation for the prosecutor who, intending to offer the transcript as part of his case, did not thoroughly check it after the blacking out was done”). But the error in this case simply is not as egregious as the errors in *Winningham* and *Cash* because the nature of the receipts is not as prejudicial.

Second, the “weight of evidence properly before the jury” does not support reversal in light of the minimal impact the receipts had on Bridges’s defense. The state presented evidence that Bridges’s physical appearance was consistent with P.B.’s description of her assailant. After the police took Bridges into custody, an investigator noticed scratches and bruising on his right forearm and elbow, bruising near his left elbow, and what appeared to be a bruise on his left knee, which suggested that he had

been involved in a physical struggle. When interviewed, Bridges provided the police with an alibi and then gave an inconsistent statement after learning that witnesses failed to corroborate his alibi. The police found condoms in the apartment where Bridges resided that were the same brand as the condom wrapper recovered from the crime scene. Finally, two of the latex gloves found in the apartment where Bridges resided contained P.B.'s DNA.

Third, at Bridges's request, the district court instructed the jury to disregard the receipts. "We presume that jurors follow a judge's instructions." *State v. Miller*, 573 N.W.2d 661, 675 (Minn. 1998). Bridges challenges the district court's failure "to swear the individual jurors and have them affirm under oath—before they reached a verdict—they would not consider the outside evidence in reaching their verdict." Bridges suggests that *Cox* mandates such a procedure. We disagree. Although the district court in *Cox* examined each juror out of the presence of the others to determine whether any juror had drawn any inference from the remark and whether the remark would affect any juror's ability to be fair and impartial, the supreme court did not say that an individual inquiry is mandatory. *See Cox*, 322 N.W.2d at 558-59 (stating that "[a] trial judge's prompt individual voir dire and careful instructions may be sufficient . . . to support a finding of no prejudice"). Moreover, the supreme court concluded that the pre-verdict voir dire "reinforced the jurors' understanding that the sheriff's remark was improper and that defendant was entitled to have his case decided by an open-minded, impartial jury." *Id.* at 559. In this case, the district court's pre-verdict cautionary instruction had the same

impact and was likely effective in reducing any prejudice resulting from the jury's discovery of the receipts.

In sum, under these facts—in which the jury was exposed to materials that had not been ruled inadmissible, that were not more prejudicial than probative, and that did not contradict the defense theory at trial—the state has met its burden to overcome any presumption of prejudice. The district court therefore did not abuse its discretion in denying a mistrial.

Bridges also argues that the receipts are “testimonial statements” and that the jury's exposure to the receipts violates his rights under the Confrontation Clause. Whether the admission of evidence violates a defendant's rights under the Confrontation Clause is a question of law, which we review de novo. *State v. Caulfield*, 722 N.W.2d 304, 308 (Minn. 2006). The Confrontation Clause bars “admission of testimonial statements of a witness who did not appear at trial unless he was unavailable to testify, and the defendant had had a prior opportunity for cross-examination.” *Crawford v. Washington*, 541 U.S. 36, 53-54, 124 S. Ct. 1354, 1365 (2004). The central consideration when determining whether a statement is testimonial is “whether either a declarant or government questioner is acting, to a substantial degree, in order to produce a statement for trial.” *State v. Scacchetti*, 711 N.W.2d 508, 513 (Minn. 2006) (quotation omitted). The receipts in this case were not produced for trial, and they therefore are not testimonial statements.

II.

Bridges argues that “[t]he district court violated [his] right to present a meaningful defense by prohibiting him from introducing alternative perpetrator evidence.” Alternative-perpetrator evidence is admissible only if it has an inherent tendency to connect the alternative party with the commission of the crime. *State v. Nissalke*, 801 N.W.2d 82, 99 (Minn. 2011).

Once a foundation is laid with evidence having an inherent tendency to connect the alleged alternative perpetrator to the commission of the crime, it is permissible to introduce evidence of a motive of the third person to commit the crime, threats by the third person, or other miscellaneous facts which would tend to prove the third person committed the act, in order to cast a reasonable doubt on the state’s case.

State v. Jones, 678 N.W.2d 1, 16 (Minn. 2004) (quotation omitted).

A defendant may also present evidence of other crimes, wrongs, or bad acts committed by the alleged alternative perpetrator to cast reasonable doubt on the identification of the defendant as the perpetrator of the crime. *Id.* This type of alternative-perpetrator evidence has been referred to as “reverse-*Spreigl* evidence.” *Id.* (quotation omitted). But such evidence is not admissible unless the defendant meets the threshold requirement of connecting the alternative perpetrator to the commission of the charged crime. *Id.* A district court’s exclusion of alternative-perpetrator evidence is reviewed for an abuse of discretion. *See Huff v. State*, 698 N.W.2d 430, 435 (Minn. 2005) (stating that alternative-perpetrator “[e]videntiary rulings lie within the sound discretion of the district court and will not be reversed absent a clear abuse of discretion”).

Prior to trial, Bridges provided notice of an alternative-perpetrator defense. In his offer of proof, Bridges stated that he intended to offer the following evidence that K.G. was connected to the offense: (1) K.G. is the father of B.E.'s child and was a signatory on B.E.'s lease; (2) K.G.'s driver's license was found at B.E.'s residence during the execution of a search warrant related to the offense; (3) K.G.'s DNA was on a latex glove that was found in the apartment and that glove contains the DNA of the alleged victim; (4) K.G. matches "the very vague physical description [of the perpetrator] given by the alleged victim"; and (5) K.G. was living in the Hibbing area at the time of the alleged assault. Bridges also noticed his intent to offer evidence of K.G.'s indictment and two prior convictions for criminal-sexual-conduct offenses.

During oral argument regarding the proffered alternative-perpetrator evidence, the state clarified that DNA found on the latex glove did not match K.G. Instead, K.G. was part of approximately 65% of the world population that could not be excluded as a contributor to the DNA. The district court stated that "[t]here has got to [be] a minimal foundational nexus of this individual to this crime. And I don't think being a part of two-thirds of the population that cannot be excluded from a particular piece of DNA, is necessarily going to make it." At a later hearing, the district court formally ruled that the alternative-perpetrator evidence would not be allowed. Bridges renewed his request to present alternative-perpetrator evidence during trial. The district court denied his request, reasoning that "there's not enough of a threshold connection of [K.G.] to anything involved here to allow for alternative perpetrator evidence or reverse *Spreigl* evidence."

The supreme court has upheld the exclusion of alternative-perpetrator evidence where there is no evidence placing the alternative perpetrator at the crime scene or showing that the alternative perpetrator had an opportunity to commit the crime. *See Nissalke*, 801 N.W.2d at 102 (holding that “the district court did not abuse its discretion in limiting the introduction of alternative perpetrator evidence” where appellant did not provide evidence that tied alternative perpetrators to the scene or make a “showing that either had the opportunity to commit the crime”); *State v. Larson*, 787 N.W.2d 592, 598 (Minn. 2010) (affirming the district court’s exclusion of alternative-perpetrator evidence and observing that appellant “proffered no evidence that [the alleged alternative perpetrator] was anywhere near the crime scene”); *State v. Vance*, 714 N.W.2d 428, 437 (Minn. 2006) (holding that the district court did not abuse its discretion in excluding alternative-perpetrator evidence where “none of the evidence places [the alleged alternative perpetrator] either at or near [the scene of the crime] at the time of [the victim’s] murder”). Bridges’s offer of proof did not place K.G. at the scene of the crime, and it did not show that K.G. had an opportunity to commit the crime. Bridges’s offer of proof created nothing more than bare suspicion, which is inadequate. *See Larson*, 787 N.W.2d at 598 (stating that courts “require proper foundation in order to avoid the use of bare suspicion” (quotation omitted)). The district court therefore did not err by concluding that Bridges did not meet the threshold requirement of connecting K.G. to the commission of the crime.

Bridges argues that he “should have been allowed to question the police about their investigation or lack of investigation of [K.G.]” But the district court allowed

Bridges to introduce evidence that the police found driver's licenses belonging to two other black males in B.E.'s apartment and Bridges acknowledges that "he was allowed to question police witnesses about their lack of investigation of the registered sex offenders residing in Hibbing at the time of the incident." The evidence Bridges argues should have been admitted to show lack of police investigation—including K.G.'s name, race, relationship to B.E., residence, prior criminal record, physical appearance, and DNA—was the proffered alternative-perpetrator evidence. But "the alternative perpetrator rule cannot be circumvented" by introducing the evidence "under the guise of criticizing the police investigation." *State v. Tran*, 712 N.W.2d 540, 551-52 (Minn. 2006). The district court's evidentiary rulings regarding the alternative-perpetrator evidence therefore were not an abuse of discretion.

III.

Bridges argues that "[t]he district court erred in admitting hearsay evidence that Bridges stole a bottle of champagne as an explanation for how the investigation came to focus on him." "Evidentiary rulings rest within the sound discretion of the [district] court and will not be reversed absent a clear abuse of discretion." *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). "On appeal, the appellant has the burden of establishing that the [district] court abused its discretion and that appellant was thereby prejudiced." *Id.*

[W]hen dealing with a claim of erroneous *admission* of evidence . . . the question is whether there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict; to put it another way, if there is a reasonable possibility that the verdict might have been more favorable to the defendant if the evidence had not been

admitted, then the error in admitting the evidence was prejudicial error.

State v. Post, 512 N.W.2d 99, 102 n.2 (Minn. 1994).

The district court ruled that the evidence of Bridges's champagne theft was irrelevant but allowed testimony regarding the theft because "[t]he jury is going to be wondering, and they are entitled to know how the investigation came to focus on the defendant."

The supreme court has stated that in a criminal trial, "an arresting or investigating officer should not be put in the false position of seeming just to have happened upon the scene; he should be allowed some explanation of his presence and conduct." *State v. Hardy*, 354 N.W.2d 21, 24 (Minn. 1984) (quotation omitted). But because the "need for the evidence is slight" and "the likelihood of misuse great," the officer's "testimony that he acted 'upon information received', or words to that effect, should be sufficient." *Id.* (quotation omitted).

In this case, the police could have explained their search of B.E.'s apartment by testifying that they obtained a warrant to conduct a search for evidence pertaining to an unrelated matter. It was not necessary to testify that they believed Bridges stole a bottle of champagne. As to prejudice, Bridges asserts that "it is likely that the jury misused [the testimony regarding his theft] as substantive evidence . . . that [he] was a criminal who committed brazen crimes in the neighborhood in which he lived," and that "the verdicts may have been different if the [district] court had not allowed the [s]tate to introduce this evidence."

Bridges's assertion that testimony regarding his misdemeanor-level theft of a bottle of champagne would lead the jury to believe he had a propensity to commit the serious sex offense alleged in the complaint is not persuasive. Moreover, the jury otherwise heard about the champagne theft because Bridges admitted stealing the champagne during his custodial statement, which was received into evidence. In sum, Bridges has not met his burden to demonstrate that there is a reasonable possibility that the verdict might have been more favorable if evidence of the champagne theft had been excluded. Thus, even if the district court erred by allowing the evidence, reversal is not warranted. *See Amos*, 658 N.W.2d at 203 (stating that an appellant must show error and prejudice).

IV.

In his pro se supplemental brief, Bridges challenges the validity of the initial search warrant that led to the discovery of evidence implicating him in the sexual assault. The initial warrant authorized a search of B.E.'s apartment for evidence related to the theft of a champagne bottle. After the police found the black nylon jacket, Trojan Magnum condoms, and a latex glove, they froze the scene and obtained a warrant to search for evidence of the sexual assault. Bridges argues that "the [initial] search warrant application lacked sufficient probable cause for the issuance of the search warrant" and that the evidence discovered as a result of that warrant must be suppressed as the "fruit of the poisonous tree." *See Wong Sun v. United States*, 371 U.S. 471, 484, 83 S. Ct. 407, 416 (1963) (stating that "evidence seized during an unlawful search could not constitute

proof against the victim of the search” and that “[t]he exclusionary prohibition extends as well to the indirect as the direct products of such invasions”).

The United States and Minnesota Constitutions provide that no warrant shall issue without a showing of probable cause. U.S. Const. amend. IV; Minn. Const. art. I, § 10. Generally, a search is lawful only if it is executed pursuant to a valid search warrant issued by a neutral and detached judge based on a finding of probable cause. *See* Minn. Stat. § 626.08 (2006); *State v. Harris*, 589 N.W.2d 782, 787 (Minn. 1999). “When determining whether a search warrant is supported by probable cause, we do not engage in a de novo review.” *State v. McGrath*, 706 N.W.2d 532, 539 (Minn. App. 2005), *review denied* (Minn. Feb. 22, 2006). Instead, “when reviewing a district court’s probable cause determination made in connection with the issuance of a search warrant, an appellate court should afford the district court’s determination great deference.” *State v. Rochefort*, 631 N.W.2d 802, 804 (Minn. 2001). This court limits its “review to ensuring that the issuing judge had a substantial basis for concluding that probable cause existed.” *McGrath*, 706 N.W.2d at 539.

We look to the totality of the circumstances to determine whether the issuing judge had a substantial basis for finding probable cause. *State v. Holiday*, 749 N.W.2d 833, 839 (Minn. App. 2008).

The task of the issuing [judge] is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the “veracity” and “basis of knowledge” of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.

State v. Wiley, 366 N.W.2d 265, 268 (Minn. 1985) (quotation omitted).

Bridges argues that the information in the first search-warrant application was stale because the application was dated June 4, 2008 and stated that the theft occurred on May 7, 2008. The supporting affidavit indicates that one witness stated that the theft took place on May 7. But the affidavit also indicates that another witness said the theft took place “last week.” Moreover, the affidavit states that a third witness said that he “recently saw the bottle of champagne” in B.E.’s apartment, where Bridges resided. Because at most only one month had passed since the theft, and a witness had recently seen the champagne bottle in B.E.’s apartment, there was a substantial basis to believe that there was a fair probability that the bottle would still be at the apartment.

Bridges additionally argues that “the search warrant application failed to establish the requisite nexus between the place to be searched, [his] residence, and the stolen bottle of champagne.” “When the request of the court is for the issuance of a warrant to search a particular location, there must be specific facts to establish a direct connection between the alleged criminal activity and the site to be searched.” *State v. Souto*, 578 N.W.2d 744, 749 (Minn. 1998).

[T]he required nexus between the place to be searched and the items to be seized need not rest on direct observation; instead, the nexus may be inferred from the totality of the circumstances, including the type of crime involved, the nature of the items sought, the extent of an opportunity for concealment, and reasonable assumptions about where a suspect would likely keep that evidence.

State v. Ruoho, 685 N.W.2d 451, 456 (Minn. App. 2004), *review denied* (Minn. Nov. 16, 2004).

The search-warrant affidavit indicates that a liquor store employee viewed a surveillance video of the theft and discussed it with a Domino's Pizza employee, who thought the suspect's description fit "that of a black male named Brian." The Domino's employee told police that he dated B.E. and that Brian stayed with B.E. He also told police that he recently saw the champagne bottle at B.E.'s apartment. The liquor store manager confirmed that a person named Brian special ordered the bottle of champagne because the store was out of stock. These assertions establish the required nexus. *See State v. Flom*, 285 N.W.2d 476, 477 (Minn. 1979) (stating that "the normal place defendant would be expected to keep [stolen] items would be at his house").

Lastly, Bridges argues that "the [district] court erred when it allowed the state to provide testimony and exhibits to supplement the search warrant affidavit going outside the four corners of the document." Generally, "[i]n determining whether probable cause exists, both the district court and the reviewing court may consider only the information in the application for the search warrant." *State v. Secord*, 614 N.W.2d 227, 229 (Minn. App. 2000), *review denied* (Minn. Sept. 13, 2000).

When considering Bridges's probable-cause challenge to the search warrant, the district court heard officer testimony to supplement the written search-warrant application and affidavit. The district court erred in considering information beyond the four corners of the search-warrant application. *See id.* But because the information within the affidavit established probable cause to search B.E.'s apartment, we conclude that "the

issuing judge had a substantial basis for concluding that probable cause existed.” *See McGrath*, 706 N.W.2d at 539.

Affirmed.