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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0483**

State of Minnesota,
Respondent,

vs.

Wilbert Glover,
Appellant.

**Filed May 21, 2018
Affirmed
Johnson, Judge**

Ramsey County District Court
File No. 62-CR-15-9245

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

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

Cathryn Middlebrook, Chief Appellate Public Defender, Rachel F. Bond, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Johnson, Judge; and Kirk,
Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

A Ramsey County jury found Wilbert Glover guilty of possession of a firearm by
an ineligible person and possession of ammunition by an ineligible person. The jury's

verdicts are based on evidence that a firearm was found in Glover's vehicle and evidence that two boxes of ammunition were found in his home. We conclude that the warrants that authorized the searches of Glover's vehicle and home were valid. We also conclude that Glover's *pro se* arguments are without merit. Therefore, we affirm.

FACTS

The charges of which Glover was convicted arose out of an investigation into a report of a sexual assault at his home. On November 24, 2015, Officer Finnegan of the St. Paul Police Department responded to a 911 call from a home in St. Paul. At a pre-trial hearing, he testified that, when he arrived, he found a young man, D.N.B., who was partially "shackled in chains" and crying. Officer Finnegan wrote in his application for a search warrant that D.N.B. had ligature marks around his neck, scabs on his wrists and ankles, and soiled clothing. D.N.B. told Officer Finnegan that he had been "abducted off the street" and "choked unconscious" and that when he awoke, "he was chained to a wall" in a basement and "spent several days there being sexually assaulted while chained to the wall." D.N.B. told Officer Finnegan that he had escaped by slipping out of a handcuff, breaking a ground-floor bathroom window with a fire extinguisher, and crawling out the bathroom window. D.N.B. also told Officer Finnegan that, before leaving the home, he removed the main fuse from the home's circuit box, thereby shutting off power to the home. D.N.B. told Officer Finnegan that he then crawled to a nearby house. D.N.B. told Officer Finnegan that the house from which he had escaped was within two blocks of the house from which the 911 call was made.

Officer Buchin also responded to the 911 call. At a pre-trial hearing, he testified that he helped look for the house from which D.N.B. had escaped. Officers looked for a house with a broken window on the first floor and no power. They soon found a house only two houses away with a torn window screen that was flapping in the wind. Upon investigation, the police saw that the window was in a bathroom. Upon checking the exterior electricity meter, officers noticed that electricity was not flowing to the house.

To determine whether the house was occupied, Officer Buchin checked the mailbox and found mail addressed to three persons, including Glover. Officers talked to neighbors to get more information about the person or persons residing at the house. While doing so, Officer Buchin saw a gray Cadillac approach, pause, and then park. Officer Buchin determined that the vehicle was registered to Glover. Officer Buchin identified the driver as Glover and arrested him.

The next day, November 25, 2015, Officer Finnegan and another officer signed an application for a warrant to search for evidence related to the reported sexual assault in Glover's home and in two vehicles registered to him. After a district court judge approved the application and issued the warrant, Officer Himes searched Glover's home and found two boxes of ammunition in the living room. Officers discovered that the warrant application had identified one of Glover's vehicles with an incorrect VIN number. On December 1, 2015, Officer Cottingham prepared a second application for a warrant to search that vehicle, identifying it with the correct VIN number. The second application stated that, in searching Glover's home, an officer had found ammunition and a holster for a firearm, and it further stated that Glover had a prior conviction that makes him ineligible

to possess a firearm. After a district court judge approved the second application and issued the second warrant, Officer Himes searched Glover's vehicle and found a loaded handgun in the trunk.

The state initially charged Glover with kidnapping, in violation of Minn. Stat. § 609.25, subd. 1(2) (2014), and first-degree criminal sexual conduct, in violation of Minn. Stat. § 609.342, subd. 1(e)(i) (2014). In January 2016, the state amended the complaint by adding charges of possession of a firearm by an ineligible person, in violation of Minn. Stat. § 624.713, subd. 1(2) (Supp. 2015), and possession of ammunition by an ineligible person, in violation of Minn. Stat. § 624.713, subd. 1(2).

At a pre-trial hearing, Glover waived his right to counsel and elected to represent himself. The district court appointed advisory counsel. *See* Minn. R. Crim P. 5.04, subd. 2. Before trial, Glover moved to suppress the evidence of the firearm and the ammunition on the ground that the search warrants were not supported by probable cause. At a pre-trial hearing, the state called four witnesses: Officer Finnegan, Officer Buchin, Officer Cottingham, and Officer Himes. Glover did not call any witnesses. The district court denied Glover's motions.

Before trial, the state voluntarily dismissed the kidnapping and the criminal-sexual-conduct charges. The two possession charges were tried to a jury on two days in July 2016. The state called four witnesses. Officer Buchin and Officer Himes testified about their investigation and the searches of Glover's home and vehicle. A forensic scientist with the state bureau of criminal apprehension testified that he conducted DNA testing on the firearm and the two boxes of ammunition but could not link the items to Glover or exclude

Glover as a possible match to genetic material found on the items. Glover's landlord testified that Glover had lived at the home where the ammunition was found since October 2014. Glover did not introduce any evidence.

The jury found Glover guilty of both possession charges. The district court sentenced Glover to 60 months of imprisonment. Glover appeals.

D E C I S I O N

I. Validity of Search Warrants

Glover argues that the district court erred by denying his motion to suppress the evidence of the firearm and the ammunition. He contends that the first search warrant, which authorized the search of his home, was invalid on the ground that it was not supported by probable cause. He further contends that the second search warrant, which authorized the search of his vehicle, was invalid on the ground that it was based on the results of the search authorized by the first warrant.

The Fourth Amendment to the United States Constitution guarantees the “right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures” and states that “no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” U.S. Const. amend. IV; *see also* Minn. Const. art. I, § 10. “Probable cause exists if the judge issuing a warrant determines that ‘there is a fair probability that contraband or evidence of a crime will be found.’” *State v. Yarbrough*, 841 N.W.2d 619, 622 (Minn. 2014) (quoting *Illinois v. Gates*, 462 U.S. 213, 238, 103 S. Ct.

2317, 2332 (1983)). Whether probable cause exists is a “practical, common-sense decision.” *Id.* Furthermore:

Probable cause not only requires that the evidence sought likely exists, but also that there is a fair probability that the evidence will be found at the specific site to be searched. A sufficient “nexus” must be established between the evidence sought and the place to be searched. However, direct observation of evidence of a crime at the place to be searched is not required. A nexus may be inferred from the totality of the circumstances.

Id. at 622–23 (citations omitted). “[W]hen 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” and should consider only “whether the issuing judge had a substantial basis for concluding that probable cause existed.” *State v. Rochefort*, 631 N.W.2d 802, 804 (Minn. 2001).

In this case, the district court found that the first search warrant was supported by probable cause. The district court reasoned that the damaged screen on Glover’s home and the officers’ observation that the home was without electricity provided probable cause to believe that evidence of a crime might be found in the home. Glover contends that the district court erred in its finding because the facts stated in the warrant application concerning the officers’ observations of his home do not conform to the information provided by D.N.B. Glover points out that D.N.B. stated that he broke a window with a fire extinguisher, but the warrant application mentions only a damaged screen, not a broken window pane. Glover also asserts that officers had no reason to believe that the absence of electricity at the home was caused by D.N.B. as opposed to being the result of some

other cause. Glover contends that the officers' information about the window and the absence of electricity might have supported a suspicion, but not probable cause, that Glover's home was the scene of a crime. In response, the state contends that, in light of all the information received by the officers and recited in the first warrant application, the issuing judge had a substantial basis to believe that evidence of a crime would be found in Glover's home.

D.N.B.'s statement to police officers that he broke a ground-floor bathroom window with a fire extinguisher, in combination with the officers' observation of a home with a damaged screen, is a sufficient basis for the issuing judge to believe that there was probable cause to believe that the reported sexual assault had occurred in that home. The warrant application states that the screen "appeared to have been damaged from the inside" and that the "window was large enough for a person to climb through" it. The issuing judge could have reasonably believed that the difference between the descriptions of a glass window and a screen is attributable to a miscommunication between D.N.B. and the officer who received his statement.

D.N.B.'s statement to police officers that he disabled the electric power service to Glover's home, in combination with the officers' observation of the exterior electricity meter at the home, also is a sufficient basis for the issuing judge to believe that officers had identified the home where the reported sexual assault had occurred. From a common-sense perspective, it is unusual for a home not to be using electricity.

The first warrant application also contained additional information that supports an inference of a nexus between the reported sexual assault and Glover's home. D.N.B. was

found with shackles on his ankles, and he stated that he had crawled to a neighboring home from which the 911 call was made, so it was reasonable to believe that the home from which he escaped was very near. In addition, Glover's neighbors had described his appearance and the vehicles he drove.

In light of all these facts, which were recited in the first warrant application, the issuing judge had a substantial basis to conclude that there was probable cause to believe not only that a crime had been committed but that evidence of the crime might be found in Glover's home. The minor differences concerning the bathroom window and the absence of additional information about the lack of electricity do not undermine the logical inferences that may be drawn from all the facts stated in the first warrant application. Accordingly, the district court did not err by finding that the first search warrant was supported by probable cause. Because the first search warrant was valid, Glover's challenge to the second search warrant also fails.

Thus, the district court did not err by denying Glover's motion to suppress the evidence of the firearm and the ammunition.

II. *Pro Se* Arguments

In a *pro se* supplemental brief, Glover makes additional arguments for reversal.

First, Glover contends that his neighbors were unable to accurately identify him during the investigation. But none of his neighbors testified at trial. Glover's identity and connection to the contraband was established at trial by the testimony of his landlord and the officers who saw him drive the car in which the handgun was found. Thus, the neighbors' attempts to identify Glover during the investigation are inconsequential.

Second, Glover contends that he was denied his constitutional right to the effective assistance of counsel. See U.S. Const. amend. VI. Glover does not challenge his waiver of his right to counsel. He also notes that the district court warned him about the risks of waiving his right to counsel. “[A] defendant who exercises his right to proceed pro se ‘cannot thereafter complain that the quality of his own defense amounted to a denial of ‘effective assistance of counsel.’”” *State v. Richards*, 456 N.W.2d 260, 263 (Minn. 1990) (quoting *Faretta v. California*, 422 U.S. 806, 834 n.46, 95 S. Ct. 2525, 2541 n.46 (1975)). Thus, Glover was not denied his constitutional right to the effective assistance of counsel.

Third, Glover contends that the evidence is insufficient to support his conviction because the state’s evidence is inconsistent and inaccurate. When determining the sufficiency of the evidence on appellate review, this court must “view the evidence in the light most favorable to the verdict and assume that the factfinder disbelieved any testimony conflicting with that verdict.” *State v. Dorn*, 887 N.W.2d 826, 830 (Minn. 2016) (quotation omitted). We defer to the jury’s assessments of the witnesses’ testimony and their credibility. *State v. Pendleton*, 759 N.W.2d 900, 909 (Minn. 2009). We do not attempt to second-guess the jury by determining whether any particular trial witness or piece of evidence was credible or not credible, and we do not attempt to reweigh the evidence. See *State v. Franks*, 765 N.W.2d 68, 73, 77 (Minn. 2009).

To establish Glover’s guilt, the state was required to prove that he previously had been convicted of a crime of violence and, with respect to count 3, that he possessed a pistol or semiautomatic military-style assault weapon and, with respect to count 4, that he possessed ammunition. See Minn. Stat. § 624.713, subd. 1(2). The state’s evidence shows

that Glover previously had been convicted of a crime of violence, that he possessed a handgun in the trunk of his car, and that he possessed two boxes of ammunition in the living room of his home. That evidence is sufficient to support the jury's findings of guilt. Thus, the evidence is sufficient to support Glover's convictions of possession of a firearm by an ineligible person and possession of ammunition by an ineligible person.

Affirmed.