

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0851**

State of Minnesota,
Respondent,

vs.

Kevin Deshaun Everett,
Appellant.

**Filed April 24, 2023
Affirmed
Frisch, Judge**

Hennepin County District Court
File No. 27-CR-20-27757

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Mary F. Moriarty, Hennepin County Attorney, Jonathan P. Schmidt, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Charles F. Clippert, St. Paul, Minnesota (for appellant)

Considered and decided by Frisch, Presiding Judge; Cochran, Judge; and Cleary,
Judge.*

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

NONPRECEDENTIAL OPINION

FRISCH, Judge

Appellant challenges his conviction for unlawful possession of a firearm, arguing that the circumstantial evidence showing that he possessed the firearm was insufficient to prove his guilt. He also raises several arguments in a pro se supplemental brief. Because the circumstantial evidence was sufficient to establish constructive possession, and appellant's pro se arguments are without support, we affirm.

FACTS

In December 2020, respondent State of Minnesota charged appellant Kevin Deshaun Everett with possession of a firearm by an ineligible person. Minn. Stat. § 624.713, subds. 1(2) (Supp. 2019), 2(b) (2018).

The district court conducted a two-day jury trial during which the jury received the following evidence. On May 23, 2020, two officers stopped a vehicle after observing a traffic violation. The first officer approached the driver's side of the vehicle, and the second officer approached the passenger side of the vehicle. The first officer testified that she observed three people in the car: a female in the driver's seat, a female in the back seat, and a male (later identified as Everett) in the front passenger seat.

When the second officer approached the passenger side of the vehicle, he observed Everett reach across to the driver's side of the vehicle, take the keys out of the ignition, and hold onto them. The second officer also observed that Everett was upset they had been pulled over. The driver indicated to the first officer that Everett owned the vehicle. Later,

Everett stated that he owned the vehicle. While the first officer spoke with the driver, Everett interrupted “several times.”

The first officer observed that the driver “spoke very slowly,” had “fairly dilated” pupils, and had “slightly slurred speech.” The second officer observed an open bottle of alcohol on the floor of the vehicle. The first officer directed all three passengers to exit the vehicle.

Meanwhile, a third officer arrived to assist. The third officer testified that, initially, Everett was calm and friendly. But Everett became uncooperative after he exited the vehicle. Everett dropped the vehicle keys and other items in his possession as he exited the vehicle. He picked up the keys and other items and attempted to put them into his pockets. The second officer instructed Everett to put all items on the top of the car, but Everett did not comply. Everett also did not comply with the officers’ commands to drop what was in his hand and to keep his hands visible, and he instead was reaching into his pockets. The officers attempted to handcuff Everett because his behavior caused the officers to be concerned for their safety. All three officers were needed to secure Everett in handcuffs.

The officers conducted a search of the vehicle. The officers discovered a firearm and ammunition in the center console between the driver and front passenger seat.¹ The officers also found several documents bearing Everett’s name in the glove compartment.

¹ The firearm was located inside a purple Crown Royal (a brand of liquor) cloth bag.

Later, an investigator obtained a DNA sample from Everett. A forensic scientist swabbed the firearm for DNA evidence. There were no latent fingerprints on the firearm. The DNA sample from the firearm contained a mixture of four or more individuals. A major DNA profile, meaning one individual contributed predominantly more DNA to that profile, from the firearm matched Everett. The major DNA profile from the firearm sample would not be expected to occur more than once among unrelated individuals in the world's population. Due to insufficient genetic information, the forensic scientist could not draw any conclusions about the other minor DNA profiles in the firearm sample.

The jury returned a guilty verdict. The district court imposed an executed sentence of 60 months' imprisonment.

Everett appeals.

DECISION

I. The circumstantial evidence was sufficient to prove Everett had constructive possession of the firearm.

Everett argues that there was insufficient evidence to support the verdict finding him guilty of possession of a firearm by an ineligible person. To convict Everett of possession of a firearm by an ineligible person, the state was required to prove beyond a reasonable doubt, among other elements, that he knowingly possessed the firearm. *State v. Harris*, 895 N.W.2d 592, 601 (Minn. 2017); *see also* Minn. Stat. § 624.713, subd. 2(b). Everett disputes the sufficiency of the evidence only as to the element of possession.

The state may prove possession through evidence of actual or constructive possession. *State v. Salyers*, 858 N.W.2d 156, 159 (Minn. 2015). The state may prove

constructive possession by showing (1) “that the police found the item in a place under the defendant’s exclusive control to which other people normally did not have access”; or (2) “if police found the item in a place to which others had access, the State must show that there is a strong probability (inferable from other evidence) that at the time the defendant was consciously or knowingly exercising dominion and control over it.” *Harris*, 895 N.W.2d at 601 (citing *State v. Florine*, 226 N.W.2d 609, 611 (Minn. 1975)).

The officers found the firearm in the center console of Everett’s car, a place to which others had access. Thus, the state had to prove constructive possession through evidence showing that Everett consciously or knowingly exercised dominion and control over the firearm. The state relied entirely upon circumstantial evidence to prove constructive possession. When a verdict relies on circumstantial evidence, “the circumstances proved must be consistent with guilt and inconsistent with any rational hypothesis except that of guilt.” *State v. Andersen*, 784 N.W.2d 320, 330 (Minn. 2010). Everett argues that the circumstances proved permit a rational inference inconsistent with guilt, and therefore the evidence was insufficient to sustain the verdict.

Standard of Review

We follow a two-step process in reviewing the sufficiency of the evidence in a case based on circumstantial evidence. *State v. Hawes*, 801 N.W.2d 659, 668 (Minn. 2011). In the first step, we identify the circumstances proved. *Id.* In identifying the circumstances proved, we “defer, consistent with [the] standard of review, to the jury’s acceptance of the proof of these circumstances and rejection of evidence in the record that conflicted with the circumstances proved by the State.” *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn.

2010) (quotation omitted). In other words, we must “construe conflicting evidence in the light most favorable to the verdict and assume that the jury believed the State’s witnesses and disbelieved the defense witnesses.” *State v. Tscheu*, 758 N.W.2d 849, 858 (Minn. 2008).

In the second step, we “determine whether the circumstances proved are consistent with the hypothesis that the accused is guilty and inconsistent with any rational hypothesis except that of his guilt.” *Hawes*, 801 N.W.2d at 669 (quotation omitted). While we give deference to the jury when reviewing the circumstances proved, we give “no deference to the fact finders’ choice between reasonable inferences.” *Id.* (quotation omitted). When evaluating whether the circumstances proved are consistent with a rational hypothesis of guilt and inconsistent with a rational hypothesis of innocence, we “do not review each circumstance proved in isolation.” *Andersen*, 784 N.W.2d at 332. Instead, we consider whether the circumstances proved are “consistent with guilt and inconsistent, *on the whole*, with any reasonable hypothesis of innocence.” *Id.* (quotation omitted).

Circumstances Proved

The following circumstances were proved at trial: (1) officers conducted a traffic stop on May 23, 2020; (2) there were three people in the vehicle; (3) Everett was seated in the front passenger seat of the vehicle; (4) as officers approached the vehicle, Everett reached over and turned the vehicle off; (5) Everett took the keys to the vehicle; (6) the driver indicated that Everett owned the vehicle, and Everett stated that he owned the vehicle; (7) Everett appeared frustrated that the vehicle had been stopped; (8) Everett did not comply with orders to drop what was in his hands, keep his hands visible, and put items

he was holding on top of the vehicle; (9) during a search of the vehicle, officers found documents bearing Everett's name in the glove compartment of the vehicle; (10) officers also found a firearm and four ammunition cartridges in a bag in the vehicle's center console between the driver and front passenger seat; (11) the DNA testing of the firearm revealed a mixture of four or more individuals in the swabbing from the textured areas of the firearm; (12) Everett was a major DNA profile in the sample obtained from the firearm; and (13) there was insufficient data from the minor DNA profiles to draw any conclusions about them.

These circumstances are sufficient to sustain Everett's conviction because, on the whole, they are consistent with a rational hypothesis of guilt and inconsistent with a rational hypothesis of innocence. *See id.* We have historically upheld "convictions based on circumstantial evidence of possession of contraband" where the record includes "evidence tying a defendant directly to the illegal items." *State v. Sam*, 859 N.W.2d 825, 835 (Minn. App. 2015). "Either the items were found in the defendant's home, effects identifying the defendant were found near or on the items, the defendant admitted possession of the items, or there was testimony at trial accusing the defendant of possessing the items." *Id.* (footnotes omitted).

Everett admitted he owned the vehicle. The firearm was found in the center console of Everett's vehicle. Everett was seated next to the center console. Nearby in the glove compartment were documents bearing Everett's name. The DNA swabbing taken from the firearm predominately matched Everett with a high degree of probability. This evidence ties Everett directly to the illegal item, the firearm, and it can be inferred that Everett

exercised dominion and control over the firearm. *See id.* at 835-36; *see also State v. Porter*, 674 N.W.2d 424, 427 (Minn. App. 2004) (holding there was sufficient evidence that defendant constructively possessed a firearm when the firearm was found in an apartment defendant admitted to living in, the state introduced utility bills and other mailings in defendant's name that were delivered to the apartment, and defendant kept his personal belongings in the apartment). Thus, these circumstances are consistent with guilt and inconsistent with a rational hypothesis other than guilt.

Everett argues these circumstances are “consistent with the driver being in possession of the gun and not Everett.” Everett argues the following circumstances proved support inferences that are inconsistent with a rational hypothesis of guilt: (1) the jury could infer the driver controlled the firearm because it was located in the center console, which is also located next to the driver; and (2) the jury could infer that Everett had contact with the gun based on the DNA sample, but not that he consciously exercised dominion and control over the firearm. We disagree.

Constructive possession may be joint. *State v. Ortega*, 770 N.W.2d 145, 150 (Minn. 2009); *see also State v. Lorenz*, 368 N.W.2d 284, 287-88 (Minn. 1985) (concluding that the evidence was sufficient to infer that the defendant jointly possessed marijuana found in the defendant's bedroom in an apartment defendant shared with a roommate). Thus, the fact that the circumstances proved are consistent with a rational inference that someone other than Everett *also* possessed the firearm is not a rational hypothesis inconsistent with Everett's guilt, nor does it render the circumstances proved inconsistent with Everett's guilt for possessing the firearm. Stated differently, Everett can be guilty of constructively

possessing a firearm even if the driver jointly possessed the firearm with Everett. Further, the DNA evidence supports an inference directly connecting Everett to the firearm, which, on the whole with the evidence of his ownership of the vehicle and proximity to the firearm, is sufficient to support the jury's conclusion that he constructively possessed the firearm. *See Sam*, 859 N.W.2d at 835 (stating we have historically upheld constructive possession convictions where there is "evidence tying a defendant directly to the illegal items"); *Andersen*, 784 N.W.2d at 332.

Everett asserts, "While possession can be joint, none of the other occupants of the car were charged with an offense involving the firearm." But Everett cites no support for the implicit proposition that the state was required to charge or conclusively establish others who may have had joint possession with Everett in order to convict Everett based on joint possession.

Everett also cites Minnesota Statutes section 609.672 (2022), which provides that the "presence of a firearm in a passenger automobile permits the fact finder to infer knowing possession of the firearm by the driver or person in control of the automobile when the firearm was in the automobile." Everett asserts, "Consistent with the statute, the circumstances proven are equally consistent with the driver possessing the firearm." First, we reiterate that possession need not be exclusive, and the circumstances proved are consistent with the hypothesis that Everett at least jointly possessed the firearm. Second, while section 609.672 permits the inference that the driver or person in control of the vehicle has knowing possession of a firearm found in the vehicle, such an inference does not negate or preclude other reasonable inferences of possession, including the inference

that Everett had dominion and control over the firearm as well.² *Cf. Sam*, 859 N.W.2d at 832 n.4 (concluding the permissive inference allowed by Minn. Stat. § 152.028 (2014) that a driver has knowing possession of everything in the vehicle “does not negate other reasonable inferences” and therefore does not affect the sufficiency-of-circumstantial-evidence analysis). Thus, Everett’s reliance on section 609.672 does not change our analysis, and we conclude that the evidence was sufficient to sustain the verdict.

II. Everett raises no meritorious claims in his pro se supplemental brief.

Everett summarily raises several arguments in a pro se supplemental brief. We do not assume error on appeal. *See State v. Fleming*, 869 N.W.2d 319, 329 (Minn. App. 2015) (citing *Loth v. Loth*, 35 N.W.2d 542, 546 (Minn. 1949) (stating that “on appeal error is never presumed” (quotation omitted))). Mere assertions of error without supporting authority or argument are inadequately briefed and are waived unless prejudicial error is obvious on mere inspection. *State v. Andersen*, 871 N.W.2d 910, 915 (Minn. 2015).

We conclude that Everett’s arguments are waived and are otherwise without merit. Everett seems to assert that the district court abused its discretion because it did not dismiss the case for lack of jurisdiction and failure to state a claim; the lack of jurisdiction violated due process; the state did “not possess authority to accept service of process on behalf of the defendant”; the state’s case was fraudulent; the district court lacked jurisdiction and

² We applied this same rationale regarding section 609.672 in another case involving constructive possession of a firearm. *State v. Harris*, No. A15-0711, 2016 WL 1396689, at *4 n.1 (Minn. App. Apr. 11, 2016), *aff’d*, 895 N.W.2d 592 (Minn. 2017). On review, the supreme court explicitly did “not decide whether the court of appeals correctly applied [section 609.672]” because the parties did not discuss the provision. *Harris*, 895 N.W.2d at 602 n.8.

venue; the state lacked standing because it is not a natural person; there is no justiciable controversy; and the laws of Minnesota are violating the federal constitution.³ These issues are not supported by any cited legal authority or rely on inapplicable authority such as the Minnesota Rules of Civil Procedure. Therefore, these issues are inadequately briefed and are waived on appeal. *Id.*

Affirmed.

³ Everett’s arguments seem to originate with the mistaken belief that he is able to “divest [himself] of government jurisdiction by using specific language in formal settings.” *See State v. Langston*, No. A17-1136, 2018 WL 1701898, at *4 n.5 (Minn. App. Apr. 9, 2018) (describing briefly the sovereign citizenship philosophy). These arguments have no merit. The district court had jurisdiction over Everett because his criminal act occurred within Minnesota. *See* Minn. Stat. § 609.025(1) (2022). And to the extent Everett’s arguments rely on viewpoints expressed by “sovereign citizens,” such concepts have “no conceivable validity in American law.” *State v. Winbush*, 912 N.W.2d 678, 686 (Minn. App. 2018) (quoting *United States v. Schneider*, 910 F.2d 1569, 1570 (7th Cir. 1990)), *rev. denied* (Minn. May 29, 2018).