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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0183**

State of Minnesota,
Respondent,

vs.

Andre Antonio Walker Hansbrough,
Appellant.

**Filed January 21, 2025
Affirmed
Ede, Judge**

Hennepin County District Court
File No. 27-CR-22-12752

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

Mary F. Moriarty, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Suzanne M. Senecal-Hill, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Connolly, Judge; and Ede, Judge.

NONPRECEDENTIAL OPINION

EDE, Judge

In this direct appeal from judgments of conviction for unlawful possession of a firearm and second-degree assault, appellant argues (1) that the evidence was insufficient to prove that he unlawfully possessed a firearm and (2) that he is entitled to a new trial

because the district court failed to provide a specific unanimity instruction. In addition, appellant advances several pro se arguments in a supplemental brief. Because none of appellant's contentions warrant reversal, we affirm.

FACTS

Respondent State of Minnesota charged appellant Andre Antonio Walker Hansbrough with unlawful possession of a firearm, in violation of Minnesota Statutes section 624.713, subdivision 1(2) (2020), and second-degree assault, in violation of Minnesota Statutes section 609.222, subdivision 1 (2020). The matter proceeded to a jury trial. The following recitation of facts is based on the trial evidence and is described in the light most favorable to the jury's verdict.

Relevant Trial Evidence

In late June 2022, the owner of a Minneapolis restaurant encountered S.F., the mother of Hansbrough's children, ordering food in the owner's establishment. The owner's granddaughter—who was cashiering—informed S.F. that her food would be ready about 20 minutes from the time that S.F. had placed her order.

While S.F. was waiting, Hansbrough walked into the restaurant and asked, "what the f--k is taking so long for the motherf-----g food." The granddaughter responded that the restaurant did not serve fast food and that the meal would take some time to prepare. The owner asked S.F. if she wanted to continue waiting, and S.F. responded that she did. Hansbrough, however, expressed frustration about the delay. He and the owner began arguing about the language Hansbrough used to convey his impatience. In response to the owner's statement that Hansbrough could leave if he did not like being in the restaurant,

Hansbrough told the owner: “I’ll show you what I can do, I’ll show you what I’m about.” Hansbrough then left the restaurant. Although S.F. had initially declined a refund, she ultimately asked the owner for her money back. Hansbrough reentered the restaurant and the owner saw that he had a firearm in his front pocket. He said that he “could air this place out if he wanted to,” which the owner took to mean that Hansbrough “would shoot it up.” As Hansbrough was yelling and screaming, the owner observed him with his hand on the firearm.

Surveillance cameras located both inside and outside the restaurant captured the incident. The interior video shows Hansbrough leave the restaurant and later reenter with an object in his pocket. Hansbrough then remains by the front door while S.F. waits for her refund. When S.F. heads toward the door, Hansbrough removes the object from his pocket and holds it at his side. Hansbrough then puts the object back in his pocket and leaves the restaurant. The exterior video depicts the incident beginning with S.F. exiting the front passenger side of a vehicle and rounding the street corner to enter the restaurant. About five minutes later, Hansbrough exits the driver’s side of the vehicle and walks to the restaurant. He reemerges a little over a minute later and can be seen opening the passenger-side door of the vehicle. Hansbrough appears to grab something from the passenger side of the vehicle, closes the door, and walks back into the restaurant.

During his trial testimony, Hansbrough conceded that he did grab something after he opened the passenger side door of his vehicle outside the restaurant. But he claimed that the object he retrieved from the vehicle was a BB gun and that the BB gun was in his pocket when he reentered the restaurant.

After Hansbrough and S.F. left the restaurant, the owner called 911 to report the incident. Several customers mentioned to the owner that they recognized Hansbrough and that he might be headed to a nearby liquor store. The owner closed the restaurant for the day and went to the liquor store, where she saw Hansbrough. Again calling 911, the owner reported Hansbrough's location and described Hansbrough, his vehicle, and the vehicle's license plate number.

Officer A.A. responded to the liquor store. Upon arrival, the officer observed a vehicle and a male who matched the description that Officer A.A. had received from the 911 dispatcher. The officer approached the male, who was later identified as Hansbrough. After he detained Hansbrough in the back of his squad car, the officer asked Hansbrough if there was a firearm in Hansbrough's vehicle. Hansbrough repeatedly denied having a firearm in the vehicle. When Officer A.A. asked if he could look inside Hansbrough's vehicle, Hansbrough became hesitant. Hansbrough eventually told the officer that he could ask the passenger, S.F., for permission to look inside the vehicle. Additional officers arrived on scene and requested that S.F. exit the vehicle. After an officer asked S.F. if there were any weapons in the vehicle, S.F. responded that she had a firearm in her bag on the passenger side. According to S.F., she bought the firearm in the spring of 2022 and had a permit to carry it. In his trial testimony, Hansbrough admitted that he was prohibited from possessing firearms because of a 2016 felony conviction and claimed that he did not know S.F. had a weapon.

Officer P.X. searched the front passenger area of Hansbrough's vehicle and found a white bag with a firearm inside. The officer also searched the passenger's side door but

discovered no other weapons in the vehicle. Officer J.H. likewise searched the back passenger side of the vehicle and located no other weapons.

Jury Instructions, Verdict, and Sentencing

Based on Hansbrough's testimony that he had possessed a BB gun, defense counsel requested that the district court instruct the jury on threats of violence as a lesser-included offense of second-degree assault. The state separately asked that the district court instruct the jury on both actual and constructive possession of a firearm. The district court granted both requests. As to the unlawful-possession charge, the district court instructed the jury that they "may find that the element of possession . . . is present if [they] find beyond a reasonable doubt that the defendant had actual or constructive possession." The district court also instructed the jurors that each of them must agree with the verdict and that their verdict must be unanimous.

During her closing argument, the prosecutor maintained that the state had proven that Hansbrough had both actual and constructive possession of a firearm. The prosecutor asserted that Hansbrough had actual possession when he brandished the weapon in the restaurant and that he constructively possessed the weapon in the vehicle when he was arrested at the liquor store.

The jury found Hansbrough guilty of unlawful possession of a firearm and of second-degree assault, but acquitted Hansbrough of the threats-of-violence charge. The district court sentenced Hansbrough to 60 months' imprisonment on the unlawful-possession offense and to a concurrent prison term of 34 months for the crime of second-degree assault. This appeal follows.

DECISION

Hansbrough challenges his convictions, arguing (1) that the state provided insufficient evidence to prove that he possessed a firearm, (2) that he is entitled to a new trial because the district court failed to provide a specific unanimity instruction, and (3) that several issues raised in his pro se supplemental brief warrant reversal. Below, we address each of Hansbrough's arguments in turn.

I. There is sufficient direct and circumstantial evidence to prove that Hansbrough actually and constructively possessed the firearm.

A. Standard of Review

Hansbrough maintains that, because “[t]here was no direct evidence that [he] had a firearm,” his unlawful-possession conviction “can only be affirmed if the state’s circumstantial evidence proves his guilt.” The state counters that direct evidence alone is sufficient to prove that Hansbrough possessed a firearm. Assuming without deciding the direct evidence adduced at trial was not alone sufficient to sustain the guilty verdict for unlawful possession of a firearm, we apply the heightened circumstantial-evidence standard of review.¹

¹ “The relevant standard of review depends on whether the factfinder . . . reached its conclusion of law based on direct or circumstantial evidence.” *State v. Petersen*, 910 N.W.2d 1, 6 (Minn. 2018). Direct evidence is evidence that is “based on personal knowledge or observation and that, if true, proves a fact without inference or presumption.” *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation omitted). Circumstantial evidence is “evidence from which the factfinder can infer whether the facts in dispute existed or did not exist.” *Id.* (quotation omitted). “When the direct evidence of guilt on a particular element is not alone sufficient to sustain the verdict,” appellate courts apply the heightened circumstantial-evidence standard of review. *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017).

That heightened standard requires appellate courts “to consider whether the reasonable inferences that can be drawn from the circumstances proved support a rational hypothesis other than guilt.” *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010) (quotation omitted). But appellate courts “will not overturn a conviction based on circumstantial evidence on the basis of mere conjecture.” *Id.* (quotation omitted). When applying the circumstantial-evidence standard of review, appellate courts employ “a two-step process.” *State v. Gilleylen*, 993 N.W.2d 266, 275 (Minn. 2023). “Step one involves identifying the circumstances proved.” *Id.* (quotation omitted). At this step, appellate courts “winnow down the evidence presented at trial to a subset of facts that is consistent with the jury’s verdict and disregard evidence that is inconsistent with the jury’s verdict.” *Id.* (quotations omitted). “The jury is the sole judge of credibility and is free to accept part and reject part of the testimony of a particular witness.” *Id.* (quotations omitted). Step two requires appellate courts to “analyze whether the circumstances proved are consistent with the hypothesis that the accused is guilty and inconsistent with any rational hypothesis other than guilt.” *Id.* (quotations omitted).

With this standard in mind, we next review the sufficiency of the trial evidence.

B. The circumstances proved are consistent only with hypotheses that Hansbrough is guilty and are inconsistent with any rational hypothesis other than guilt.

Hansbrough posits that there is a rational hypothesis other than his guilt of unlawfully possessing a firearm. We disagree.

“To convict [Hansbrough] of possession of a firearm by an ineligible person, the State was required to prove in relevant part that he knowingly possessed the firearm.”

Harris, 895 N.W.2d at 601; *see also* Minn. Stat. § 624.713, subd. 1(2). “Possession may be proved through evidence of actual or constructive possession.” *Id.* “Actual possession, also referred to as physical possession, involves direct physical control.” *State v. Stone*, 982 N.W.2d 500, 510 (Minn. App. 2022) (quoting *State v. Barker*, 888 N.W.2d 348, 353 (Minn. App. 2016)), *aff’d*, 995 N.W.2d 617 (Minn. 2023). Constructive possession may be proved by showing that the item was found “in a place under [a] defendant’s exclusive control to which other people did not normally have access.” *State v. Florine*, 226 N.W.2d 609, 611 (Minn. 1975). But if the item was found “in a place to which others had access,” the state must prove that “there is a strong probability (inferable from other evidence) that [the] defendant was at the time consciously exercising dominion and control over [the firearm].” *Id.* As explained below, we conclude that there was sufficient direct and circumstantial evidence to prove actual and constructive possession.

At the first step, we identify the following circumstances proved:

- S.F. ordered food from the owner’s restaurant and was informed by the owner’s granddaughter that it would take about 20 minutes to prepare the meal.
- Hansbrough entered the restaurant, cursed about the wait for the food, and began arguing with the owner about the language he had used to convey his impatience.
- The owner told Hansbrough that he could leave the restaurant, to which Hansbrough responded: “I’ll show you what I can do, I’ll show you what I’m about.”
- Hansbrough exited the restaurant, walked toward his vehicle, opened the passenger-side door, and grabbed something from that area.
- Hansbrough reentered the restaurant with an object in his front pocket, which the owner saw was a firearm.

- Hansbrough said that he “could air this place out if he wanted to,” which the owner understood as meaning that Hansbrough “would shoot it up.”
- As Hansbrough was yelling and screaming, the owner observed him with his hand on the firearm.
- Hansbrough remained by the front door while S.F. waited for a refund.
- Once S.F. headed toward the door, Hansbrough removed the object from his pocket, held it at his side, then put the object back in his pocket and left the restaurant.
- After closing her business for the day, the owner located Hansbrough at a liquor store near her restaurant and called 911.
- Police arrived at the liquor store and asked Hansbrough if they could look inside the vehicle, but Hansbrough was hesitant about allowing law enforcement to search.
- Police ultimately searched Hansbrough’s vehicle and found a firearm in S.F.’s bag on the passenger side.

Having identified the circumstances proved, we turn to the second step: determining “whether the circumstances proved are consistent with the hypothesis that [Hansbrough] is guilty and inconsistent with any rational hypothesis other than guilt.” *Gilleylen*, 993 N.W.2d at 275 (quotations omitted). We conclude that there are two rational hypotheses consistent with Hansbrough’s guilt—one, that he actually possessed the firearm in the restaurant, and two, that he constructively possessed it in the vehicle outside the liquor store. And we conclude that the circumstances proved are inconsistent with any rational hypothesis other than guilt.

The first rational hypothesis consistent with guilt—that Hansbrough actually possessed a firearm in the restaurant—arises from the circumstances proving that

Hansbrough had direct physical control of a firearm when he returned to the business after his initial confrontation with the owner. More specifically, the circumstances proved establish that, after an argument with the owner, Hansbrough grabbed S.F.’s firearm from the passenger side of his vehicle and reentered the restaurant with the firearm in his pocket. On appeal, Hansbrough does not claim that there is a rational hypothesis other than guilt as to his actual possession of a firearm in the restaurant.

The second rational hypothesis consistent with guilt—that, while he was at the liquor store, Hansbrough constructively possessed the firearm in his vehicle—stems from the circumstances proving that Hansbrough continued to consciously exercise dominion and control over the firearm at the liquor store after he actually possessed it in the restaurant. This conclusion aligns with a nonprecedential but persuasive opinion in which we determined that analogous evidence of prior possession of a firearm sufficiently established a defendant’s constructive possession of the weapon. *See State v. Owens*, No. A16-0559, 2017 WL 958474 (Minn. App. Mar. 13, 2017).²

In *Owens*, the appellant challenged the sufficiency of the evidence supporting his conviction of unlawfully possessing a Kel–Tec firearm that law enforcement recovered from the center console of a sport utility vehicle (SUV), which the appellant had been driving. *Id.* at *1. Applying the circumstantial-evidence standard of review, we explained that the circumstances proved included the following: when police stopped appellant, he was wearing a baseball-style cap with an Oakland Raiders emblem; and “appellant’s

² Under Minnesota Rule of Civil Appellate Procedure 136.01, subdivision 1(c), we cite this nonprecedential opinion only as persuasive authority.

property inventory included a cellphone that contained photo[graph]s of a male who resembled appellant wearing a baseball-style cap with an Oakland Raiders emblem and holding a handgun that looked like the Kel–Tec handgun.” *Id.* at *4. Relying on the photographic evidence depicting the appellant’s prior actual possession of the firearm that law enforcement found in the SUV’s center console, we concluded that the circumstances proved were consistent only with a hypothesis that appellant constructively possessed the firearm in the center console and were inconsistent with any rational hypothesis other than guilt. *Id.*

Similar to *Owens*, the restaurant surveillance footage here shows Hansbrough grabbing S.F.’s firearm from the passenger side of the vehicle and brandishing the weapon in the restaurant, thereby evincing Hansbrough’s actual possession of the firearm before law enforcement found it in the vehicle at the liquor store. And just as the circumstances proved in *Owens* established that the appellant had been driving the SUV where the Kel–Tec firearm was found, it is undisputed here that law enforcement discovered the charged firearm in Hansbrough’s vehicle. *See also State v. Porter*, 674 N.W.2d 424, 427 (Minn. App. 2004) (concluding that “the evidence was sufficient to allow the jury to conclude that [appellant] constructively possessed [a] firearm” based on the facts that appellant lived in an apartment where the firearm was found and the firearm was discovered near appellant’s personal belongings).

Hansbrough nonetheless contends that the circumstances proved support a rational hypothesis other than guilt—that only S.F. exercised dominion and control over the firearm when it was located in the vehicle at the liquor store. But this hypothesis fails to consider

all the circumstances proved. These include the owner’s testimony and the surveillance footage that appellant accessed the same part of the vehicle where the firearm was found and retrieved an object that appeared to be a firearm, just hours before law enforcement found the weapon in S.F.’s bag on the passenger side of the vehicle at the liquor store. As a result, we conclude that the circumstances proved—considered in their totality—are inconsistent with any rational hypothesis other than guilt.

Thus, there was sufficient evidence to support Hansbrough’s unlawful-possession conviction based on his actual possession of the firearm in the restaurant and his constructive possession of the firearm in his vehicle.

II. Hansbrough is not entitled to a new trial based on the lack of a specific unanimity instruction because he has not shown that his substantial rights were prejudiced.

Hansbrough asserts that he is entitled to a new trial on the unlawful-possession charge because the district court did not provide a specific unanimity instruction, which he claims allowed the jurors “to choose between two separate and distinct acts to find that he possessed a firearm, resulting in a non-unanimous verdict.” We are not persuaded.

Generally, appellate courts “review a district court’s jury instructions for an abuse of discretion.” *State v. Stay*, 935 N.W.2d 428, 430 (Minn. 2019). But Hansbrough did not object to the district court’s jury instructions on specific unanimity grounds. Appellate courts review unobjected-to jury instructions for plain error. *See State v. Beganovic*, 991 N.W.2d 638, 655 (Minn. 2023). “To establish plain error warranting reversal of a conviction based on an unobjected-to error, an appellant must show (1) an error (2) that is

plain (3) that affects a defendant’s substantial rights.”³ *Id.* “The third prong, requiring that the error affect substantial rights, is satisfied if the error was prejudicial and affected the outcome of the case.” *State v. Griller*, 583 N.W.2d 736, 741 (Minn. 1998). Plain error is prejudicial “if there is a reasonable likelihood that the giving of the instruction in question would have had a significant effect on the verdict of the jury.” *Id.* “The defendant has the burden of proving prejudice, and it is a heavy burden.” *State v. Huber*, 877 N.W.2d 519, 525 (Minn. 2016).

Assuming without deciding that the lack of a specific unanimity instruction amounted to plain error,⁴ we turn to the third prong of the plain-error analysis. Hansbrough maintains that, because “there is a reasonable likelihood that the jurors . . . relied on different acts, . . . the district court’s error in failing to provide the jury with a specific unanimity instruction impacted” his substantial rights. He argues that some jurors could have found that he possessed a BB gun in the restaurant but still found him guilty because they believed that he constructively possessed the firearm recovered from the vehicle at the liquor store. He also asserts that other jurors could have rejected his testimony and found him guilty because they thought he actually possessed the firearm in the restaurant.

³ “But even when these three prongs are established, a plain error does not justify granting a new trial unless [the appellate court’s] failure to do so will cause the public to seriously question the fairness and integrity of our judicial system.” *State v. Bey*, 975 N.W.2d 511, 521 (Minn. 2022) (quotation omitted).

⁴ “A unanimous verdict shall be required in all cases.” *State v. Stempf*, 627 N.W.2d 352, 354 (Minn. App. 2001) (quotation omitted). “[T]he jury must unanimously agree on which acts the defendant committed if each act itself constitutes an element of the crime.” *Id.* at 355. A “jury cannot convict unless it unanimously finds that the Government has proved each element.” *Id.* (quotation omitted).

We conclude that any assumed instructional error did not affect Hansbrough’s substantial rights. Hansbrough has not established that there is a reasonable likelihood that providing a specific unanimity instruction would have had a significant effect on the jury’s verdict. Although Hansbrough claims that some jurors could have believed his testimony that he merely had a BB gun in the restaurant, the jury acquitted Hansbrough of the threats-of-violence offense based on that incident. That charge—as instructed by the district court—required the jury to find that Hansbrough “display[ed], exhibit[ed], brandish[ed] or otherwise employ[ed] a BB gun in a threatening manner.” The jury’s acquittal on that count was a rejection of such a finding. At the same time, the jury unanimously found Hansbrough guilty of second-degree assault for the restaurant incident, which—as instructed by the district court—required the jury to find that Hansbrough assaulted the victim with a dangerous weapon. And in defining “dangerous weapon” for the jury in its instructions, the district court explained only that “[a] firearm, whether loaded or unloaded, or even temporarily inoperable, is a dangerous weapon.” Aside from the general arguments raised in his pro se supplemental brief,⁵ Hansbrough does not challenge his second-degree assault conviction in this appeal.

In finding Hansbrough guilty of second-degree assault, the jury therefore necessarily determined that Hansbrough actually possessed a firearm during the incident at the restaurant. *See State v. Thompson*, 3 N.W.3d 257, 265 n.7 (Minn. 2024) (explaining that appellate courts “must assume that the jury follows the [district] court’s instructions”).

⁵ As explained below, the contentions that Hansbrough asserts in his pro se supplemental brief are forfeited.

Because the jury unanimously found that Hansbrough used a firearm to commit the second-degree assault, there is no reasonable probability that—had the district court provided a specific unanimity instruction—the jury would have failed to reach a unanimous verdict that Hansbrough actually possessed a firearm during the restaurant incident for purposes of the unlawful-possession charge. And, as discussed above, the evidence—including the owner’s testimony and the surveillance footage of his earlier actual possession of the firearm in the restaurant—sufficiently supports Hansbrough’s guilt of unlawfully possessing the firearm based on his constructive possession of the weapon in the vehicle outside the liquor store.

Hansbrough has failed to carry his “heavy burden” of proving prejudice. *Huber*, 877 N.W.2d at 525. Because we conclude that there is no reasonable likelihood that providing a specific-unanimity instruction would have significantly affected the unlawful-possession verdict, Hansbrough is not entitled to reversal. *See Griller*, 583 N.W.2d at 741; *see also State v. Wenthe*, 865 N.W.2d 293, 301 (Minn. 2015) (concluding that “any error did not affect [the defendant’s] substantial rights” because “it is not reasonably likely that the district court’s failure to provide a specific-unanimity jury instruction significantly affected the verdict”).

III. The alleged errors in Hansbrough’s pro se supplemental brief are forfeited.

Hansbrough submitted a pro se supplemental brief in which he makes several claims. He asserts: (1) that the district court judge “persuaded” the jury to find him guilty; (2) that the prosecutor committed misconduct; (3) that the composition of the jury violated his constitutional rights; (4) that the process—including that state’s ability to argue twice

in closing—favored the prosecutor over his attorney; and (5) that his attorney provided him ineffective assistance of counsel. We conclude that these contentions are forfeited because Hansbrough’s pro se brief contains no arguments or citation to legal authority.

“Claims in a pro se supplemental brief that are unsupported by either arguments or citation to legal authority are forfeited.” *State v. Montano*, 956 N.W.2d 643, 650–51 (Minn. 2021) (quotations omitted). “Such arguments will not [be] considered unless prejudicial error is obvious on mere inspection.” *Id.*

Based on our mere inspection of the record, we discern no obvious prejudicial error. Thus, Hansbrough’s pro se claims are forfeited and we decline to consider them.

Affirmed.