

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0146**

State of Minnesota,
Respondent,

vs.

Patrick James Modtland,
Appellant.

**Filed February 14, 2022
Affirmed
Reyes, Judge**

Isanti County District Court
File No. 30-CR-20-41

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

Jeffrey R. Edblad, Isanti County Attorney, Joel Whitlock, Assistant County Attorney,
Cambridge, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Leah C. Graf, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Reyes, Judge; and Frisch,
Judge.

SYLLABUS

A district court does not violate a criminal defendant's right to confrontation when,
after considering the particular circumstances of the defendant's trial, it requires witnesses
to wear face masks while testifying to prevent the spread of COVID-19.

OPINION

REYES, Judge

Following a jury trial, the district court convicted appellant of third-degree possession of a controlled substance and giving false information to police. Appellant argues that his convictions must be reversed and that we must remand for a new trial because the district court (1) violated his right to confrontation by denying his request to require witnesses to remove their face masks while testifying; (2) violated his right to a public trial by closing the courtroom to the public but allowing the public to watch live video of the trial proceedings from a nearby open courtroom; and (3) committed plain error by admitting hearsay statements of a nontestifying police officer regarding the location of the methamphetamine appellant was convicted of possessing. Appellant also submitted a pro se supplemental brief asserting various other claims. We affirm.

FACTS

A police deputy and a sergeant were refueling their police vehicle at a gas station when the deputy noticed appellant Patrick James Modtland walking by and avoiding eye contact with the officers. Appellant had stopped at the gas station in a Chrysler 300 accompanied by S.N., who drove a separate vehicle. The deputy found appellant's behavior suspicious, and the sergeant informed the deputy that the Chrysler 300 was registered to a revoked driver. Appellant and S.N. left the gas station in their separate vehicles. The deputy followed the vehicles and, after viewing a photograph of the vehicle's registered owner, confirmed that appellant was not the registered owner of the Chrysler 300.

As appellant slowed and parked outside of an apartment complex, the deputy noticed that the vehicle's brake lights did not function and initiated a traffic stop as appellant exited the vehicle. When the deputy asked for identification, appellant said he had none with him but gave his name as "Patrick John Johnson" and his birth date as July 11, 1974. The deputy attempted to verify appellant's identity but could not. The deputy asked appellant several questions in an attempt to identify him and spoke with S.N., who had parked nearby. S.N. told the deputy that appellant's name was "Patrick" and that she owned the Chrysler 300.

The deputy arrested appellant based on the deputy's belief that appellant provided a false name. While searching appellant incident to that arrest, the deputy found a methamphetamine pipe in the back pocket of appellant's pants. A field test on the pipe indicated the presence of methamphetamine. A K-9 dog sniffed the Chrysler 300 and alerted to the presence of drugs. The officers searched the vehicle. The sergeant found a container behind the driver's seat that contained a bag of a crystalline substance. A field test identified the substance as methamphetamine. Testing by the Minnesota Bureau of Criminal Apprehension (BCA) confirmed the substance as methamphetamine weighing approximately 23 grams. Officers later discovered that appellant's real name was Patrick James Modtland.

Respondent State of Minnesota charged appellant with first- and second-degree sale of a controlled substance, third- and fifth-degree possession of a controlled substance, providing false information to police, and driving without proof of insurance. Appellant had a jury trial in September 2020. The district court implemented coronavirus disease

(COVID-19)-related safety procedures during trial, including configuring the courtroom to maintain a six-foot distance between everyone in the courtroom and requiring everyone, including testifying witnesses, to wear masks. It also limited courtroom access to trial participants and court staff but provided live video of the proceedings in a nearby courtroom open to the public.

During trial, the state played the deputy's body-worn camera (bodycam) video for the jury. The deputy testified that he had not personally located any drugs in the vehicle and that the sergeant found the methamphetamine behind the driver's seat. Appellant did not object to that testimony. The sergeant did not testify. A BCA forensic scientist who prepared the report identifying the substance taken from the Chrysler 300 as 23 grams of methamphetamine testified. And S.N. testified that she had never driven the Chrysler 300, that nothing in it was hers, and that she had no knowledge of the methamphetamine until officers found it during appellant's arrest.

The district court granted appellant's motion for a directed verdict on the driving-without-proof-of-insurance charge. After trial, the jury found appellant not guilty of first-degree sale of a controlled substance but found him guilty of second-degree sale of a controlled substance, third- and fifth-degree possession of a controlled substance, and giving a false name to police. The district court granted appellant's motion for judgment of acquittal on the second-degree-sale charge after concluding that the state presented insufficient evidence. The district court convicted appellant of third-degree possession of a controlled substance in violation of Minn. Stat. § 152.023, subd. 2(a)(1) (2018), with a sentence of 49 months in prison, and convicted him of giving a false name to police in

violation of Minn. Stat. § 609.506, subd. 1 (2018), with a concurrent 90-day sentence. This appeal follows.

ISSUES

I. Did the district court violate appellant's right to confrontation by denying his request to require witnesses to remove their face masks while testifying?

II. Did the district court violate appellant's right to a public trial by limiting courtroom access to trial participants and allowing the public to watch the trial proceedings via live video in a nearby open courtroom?

III. Did the district court plainly err by admitting statements of a nontestifying police officer regarding the location of the methamphetamine?

IV. Do any of appellant's claims in his pro se brief merit relief?

ANALYSIS

I. Based on the circumstances of appellant's trial, the district court did not violate appellant's right to confrontation by requiring testifying witnesses to wear face masks to prevent the spread of COVID-19.

Appellant first argues that the district court violated his right to confrontation by denying appellant's request to require witnesses to remove their face masks while testifying. We disagree.

A criminal defendant has the right under the United States and Minnesota Constitutions to confront the witnesses against him. U.S. Const. amend. VI; Minn. Const. art. I, § 6; *see also State v. Hull*, 788 N.W.2d 91, 100 (Minn. 2010) (stating that appellate courts apply same analysis to state and federal confrontation clauses). The Confrontation Clause guarantees a criminal defendant the right to a face-to-face meeting with witnesses

appearing before the trier of fact. *Coy v. Iowa*, 487 U.S. 1012, 1016 (1988). But this right is not absolute: it may be satisfied without a full physical, face-to-face confrontation at trial if (1) the interference with confrontation is necessary to further an important public policy and (2) the reliability of the testimony is otherwise assured. *Maryland v. Craig*, 497 U.S. 836, 850 (1990); *see also State v. Tate*, ___ N.W.2d ___, ___, No. A21-0359, slip op. at 13 (Minn. App. Jan. 3, 2022). Whether a defendant’s right to confrontation is violated is a question of law that we review de novo. *State v. Caulfield*, 722 N.W.2d 304, 308 (Minn. 2006). Appellant challenges both the necessity and reliability prongs. We address each in turn.

A. Necessity

To satisfy this prong of the *Craig* analysis, the district court must support its determination that an interference with physical confrontation is necessary to further an important public policy with case-specific findings. *Craig*, 497 U.S. at 850, 855; *see also Tate*, slip op. at 16-17. The district court is not, however, required to explore less-restrictive alternatives before determining that a certain interference is necessary. *Craig*, 497 U.S. at 859-60.

Appellant’s trial occurred against the backdrop of the COVID-19 pandemic in Minnesota. In March 2020, the governor declared a peacetime emergency in response to the pandemic. Emerg. Exec. Ord. No. 20-01, *Declaring a Peacetime Emergency & Coordinating Minnesota’s Strategy to Protect Minnesotans from COVID-19* (Mar. 13, 2020). Shortly after, the Chief Justice of the Minnesota Supreme Court suspended all new jury trials and restricted in-person courtroom proceedings. *Order Continuing Operations*

of the Courts of the State of Minnesota Under a Statewide Peacetime Declaration of Emergency, No. ADM20-8001 (Minn. Mar. 20, 2020). The Minnesota Judicial Council later approved a pilot program beginning in June 2020, which gradually restarted jury trials under new health and safety guidelines and instructed district courts to follow the Minnesota Judicial Branch’s COVID-19 Preparedness Plan. *See Order Governing the Continuing Operations of the Minnesota Judicial Branch Under Emergency Executive Order 20-48*, No. ADM20-8001 (Minn. May 1, 2020); *Order Governing the Continuing Operations of the Minnesota Judicial Branch Under Emergency Executive Order Nos. 20-53, 20-56*, No. ADM20-8001 (Minn. May 15, 2020). That plan generally required everyone to wear masks and maintain social distance while in judicial facilities. *Minnesota Judicial Branch COVID-19 Preparedness Plan*, Minn. Jud. Council (Minn. May 15, 2020).

Consistent with these orders, at the start of appellant’s September 2020 trial, the district court described the COVID-19 procedures it would implement. The district court noted that everybody would be masked and that the witnesses would be at least six feet away from everybody else. Appellant requested that witnesses remove their masks while testifying so the jury could see their faces to observe their demeanor and assess their credibility. The state took no position and deferred to the district court on the issue. The district court denied appellant’s request after making the following determination on the record:

[T]his is a question of some import here. It implicates [appellant’s] right under the United States and Minnesota constitutions to confront the witnesses against him And it is a profound and delicate balance. There are two kinds of confrontation that are implicated. One is the ability to cross-

examine witnesses. That is something that will occur with or without a mask. The other is the ability to physically face the witnesses against you. That is something that also happens even masked, but to a more limited extent. In the context of the current pandemic, the court, mindful of the Minnesota Constitution article I, section 6, preserving to [appellant] the right to be confronted with the witnesses against him, the court denies the parties' request to unmask the witnesses. Isanti County is a small county. This is a small courtroom. We have done our best under the state-approved guidelines to protect folks. But given the current state of the research, the risks increase absent mask wearing.

The district court determined the public-policy interest to be protecting the health and safety of everyone in the courtroom from the spread of COVID-19. This clearly qualifies as an important public policy. *See Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 67 (2020) (“Stemming the spread of COVID-19 is unquestionably a compelling interest . . .”); *Tate*, slip op. at 17.

The district court also supported its necessity determination with sufficient case-specific findings. *See Craig*, 497 U.S. at 855; *Tate*, slip op. at 17. Before appellant's trial, the district court carefully considered appellant's request, the small size of the courtroom, the need to comply with state-approved COVID-19 guidelines, and the research indicating that infection risk increased without masks, and concluded that it was necessary for testifying witnesses to wear masks. We further recognize that the district court made its determination that masks were necessary in September 2020, based on information known and prevalent at the time, months before COVID-19 vaccines were available and when public-health experts were still learning how to best prevent the spread of COVID-19. We

conclude that the district court's findings sufficiently established the necessity of mask-wearing by witnesses to protect the health of trial attendees.

In arguing that the district court failed to satisfy the necessity prong, appellant points to the Chief Justice's COVID-19 courtroom guidelines, which gave the district court discretion to authorize testifying witnesses to remove their masks:

[A] face covering worn in the courtroom *may* be removed only if physical distance requirements in the courtroom in which the proceeding is held are maintained and the presiding judge authorizes that removal. If during a particular proceeding—i.e., . . . witnesses when testifying . . .—unusual circumstances make it necessary to remove a face covering while in the courtroom even though physical distance is not maintained, *the presiding judge has the discretion to authorize that removal* if alternate measures, such as a face shield or plexiglass barriers, are available.

Order Requiring Face Coverings at Court Facilities, No. ADM20-8001 (Minn. July 7, 2020) (emphasis added).

We are not persuaded. As appellant acknowledges, the Chief Justice gave the district court *discretion* to allow witnesses to remove their masks, but it did not require the district court to do so. Rather, the Chief Justice's orders regarding courtroom safety procedures *support*, rather than undermine, the district court's determination. The Chief Justice's and Judicial Council's courtroom-procedure orders followed then-existing guidance from the Centers for Disease Control and Prevention (CDC) and the Minnesota Department of Health, which stated that face coverings could reduce the spread of COVID-19 in public settings. Appellant's September 2020 trial took place only a few months after the Chief Justice authorized the first jury trials to resume under its new COVID-19 safety

guidelines, when district courts were still working out best safety practices for in-person trials during the pandemic. The district court did not err by declining to exercise its discretion to authorize mask-removal.

Appellant also argues that the district court should have made more specific findings, such as infection or hospitalization rates within the state or county, comparisons with other risk-reducing measures such as clear face shields, or evidence of individual witnesses' health vulnerabilities. Appellant cites two cases from other jurisdictions, *State v. Jesenya O.*, 493 P.3d 418 (N.M. Ct. App. 2021), *cert. granted*, (N.M. Apr. 12, 2021), and *People v. Hernandez*, 488 P.3d 1055 (Colo. 2021), in which appellate courts concluded COVID-19 procedures did not violate the defendants' confrontation rights after the district courts made such detailed findings. But these decisions are only persuasive, not precedential, and we find them particularly unpersuasive here, when the analysis focuses on the unique circumstances of appellant's trial. While we encourage district courts to make detailed findings on the record regarding the need for any COVID-19-related trial modifications, the district court here provided sufficient findings to show necessity.

Using similar reasoning, appellant points to other Minnesota trials at which the district court allowed witnesses to testify without masks. We are likewise not persuaded by this argument. Embedded within the Chief Justice's order granting discretion to the district courts is the recognition that courtrooms are not identically configured and that there may be counties with varying levels of risk of COVID-19 spread based, for example, on local positivity or hospitalization rates. Accordingly, that other district courts in other

circumstances concluded that testifying witnesses need not wear masks does not undermine the district court's determination that such measures *were* necessary at appellant's trial.

Finally, appellant argues that the state's failure to offer evidence establishing the necessity of mask-wearing shows, by itself, that the necessity prong is not met. Appellant argues that the Supreme Court's decision in *Craig* requires the state to provide such evidence. But in *Craig*, the *state* moved to allow its child witness to testify via video, arguing the need for that procedure to protect the child's welfare. See *Craig*, 497 U.S. at 855. Here, the state made no such motion. Instead, *the district court* implemented a mask-wearing policy, to which the state merely deferred.¹ When the district court, not the state, is responsible for a confrontation interference, the district court must justify that interference.² Because we conclude that the district court *did* justify its interference with sufficient case-specific findings that mask-wearing furthered an important public policy of preventing COVID-19 infection and spread, it satisfied the necessity prong of the *Craig* standard.

¹ We note that the judicial branch has the authority to ensure the performance of basic judicial functions, see *Clerk of Court's Comp. for Lyon Cnty. v. Lyon Cnty. Comm'rs*, 241 N.W.2d 781, 784 (Minn. 1976), and that the district court is ultimately responsible for managing the courtroom during trials, see *State v. Lindsey*, 632 N.W.2d 652, 658 (Minn. 2001) (emphasizing the "grave responsibility" district courts have in overseeing and regulating courtroom conduct and procedure during trials).

² We recently reaffirmed in *Tate* that "the burden rests on the state to make an adequate showing of necessity." *Tate*, slip op. at 17. But that burden fell on the state in *Tate* because, as in *Craig*, the *state* moved to allow one of its witnesses to testify via video.

B. Reliability

Under the second *Craig* prong, the reliability of the testimony must be otherwise assured. *Craig*, 497 U.S. at 850. The Supreme Court has recognized four elements to ensure that testimony is reliable: (1) the physical presence of the witness; (2) witness testimony is given under oath; (3) the witness is subject to cross-examination; and (4) the trier of fact observes the witness's demeanor. *Id.* at 846. Appellant challenges only the fourth reliability element, arguing that the face masks prevented the jury from observing the witnesses' demeanor and judging their credibility. We are not persuaded.

The district court, in explaining why it would require testifying witnesses to wear masks, recognized that crucial credibility indicators were still available to the jury. The district court noted that in "its own anecdotal experience We can see eyes. We can see turn of head. We can hear tone of voice. All of those things that make up the physical confrontation are still present. Credibility of all the witnesses outlined who might testify is still probable and possible given the mask wearing." We agree with the district court. Although the mask requirement did limit the jury's view of the witnesses' mouths and noses, the jury could still see the witnesses' eyes, observe witnesses' body language, and hear witnesses' tone and vocal inflection. Because all testifying witnesses wore a face mask, the jury could consider each witness's demeanor to the same extent and based on the same factors. The masks therefore did not impair the jury's ability to observe demeanor to such an extent that the reliability of the testimony was no longer assured.

Appellant relies on *People v. Sammons*, 478 N.W.2d 901, 908 (Mich. Ct. App. 1991), in which the Michigan Court of Appeals concluded that allowing a witness to testify

while wearing a full-face mask precluded the factfinder from adequately observing the witness's demeanor and therefore denied the defendant a critical aspect of his confrontation rights. But *Sammons* is easily distinguishable. The witness in *Sammons* testified with his entire head covered, whereas witnesses in appellant's trial wore masks covering only their noses and mouths. The *Sammons* court also noted that a full-face mask tends to "diminish the aspect of personalization" associated with face-to-face confrontation. *Id.* Diminished personalization is less likely here, when masks only covered part of the witnesses' faces and did not obscure witnesses' identities. And the majority of courts considering this issue have determined that COVID-19-related masks worn by testifying witnesses do not violate a defendant's confrontation rights.³

We conclude that the district court did not violate appellant's confrontation rights by denying his request to require witnesses to remove their masks while testifying based on the particular circumstances of appellant's trial.

³ See *Jesenia O.*, 493 P.3d at 431; *United States v. Crittenden*, No. 4:20-CR-7, 2020 WL 4917733, at *6-7 (M.D. Ga. Aug. 21, 2020); *United States v. Clemons*, No. 19-CR-00438, 2020 WL 6485087, at *2-3 (D. Md. Nov. 4, 2020); *United States v. James*, No. CR-19-08019-001-PCT-DLR, 2020 WL 6081501, at *2 (D. Ariz. Oct. 15, 2020); *United States v. Maynard*, No. 2:21-CR-00065, 2021 WL 5139514, at *2 (S.D. W. Va. Nov. 3, 2021); *United States v. Holder*, No. 18-CR-00381-CMA-GPG-01, 2021 WL 4427254, at *8-9 (D. Colo. Sept. 27, 2021). *But cf.* *United States v. Tagliaferro*, 531 F. Supp. 3d 844, 850 (S.D.N.Y. 2021); *United States v. Robertson*, No. 17-CR-02949-MV-1, 2020 WL 6701874, at *1-2 (D.N.M. Nov. 13, 2020).

II. The district court did not violate appellant's right to a public trial.

Appellant argues that the district court violated his right to a public trial by allowing only trial participants and court staff in the courtroom and providing live video of the trial proceedings in a nearby courtroom open to the public. We disagree.

The United States and Minnesota Constitutions guarantee criminal defendants the right to a public trial. U.S. Const. amend. VI; Minn. Const. art. I, § 6. But the right to a public trial is not absolute. *State v. Taylor*, 869 N.W.2d 1, 10 (Minn. 2015). Some restrictions on access to the courtroom are so insignificant that they do not amount to a true closure and do not require further analysis of whether the closure was justified. *State v. Peterson*, 933 N.W.2d 545, 551 (Minn. App. 2019). If a closure occurs, it may be justified if: (1) the party seeking to close the courtroom advances “an overriding interest that is likely to be prejudiced,” (2) “the closure is no broader than necessary to protect that interest,” (3) “the district court considers reasonable alternatives to closing the proceeding,” and (4) “the district court makes findings adequate to support the closure.” *Id.* at 550 (quotations omitted); *see also Waller v. Georgia*, 467 U.S. 39, 48 (1984). These four factors are referred to as the *Waller* factors.

As an initial matter, the state argues that appellant waived his public-trial claim because he did not object to the courtroom-access limitations during trial. We note that the standard of review for an unobjected-to public-trial violation appears to be an unsettled

issue in Minnesota.⁴ We need not decide that issue here, however, because we conclude that, even under a de novo standard of review, the district court did not violate appellant’s right to a public trial. The state also argues that we need not analyze the *Waller* factors because, by playing a live video feed of the proceedings in a nearby open courtroom, the district court did not close the courtroom. But even assuming without deciding that the limitations constituted a closure, we conclude that they were justified under the *Waller* factors.

Because appellant did not object to the courtroom-access limitations at trial, the district court did not explicitly reference the *Waller* factors. The district court’s on-the-record description of the courtroom and its findings regarding appellant’s mask-removal request do, however, implicitly address the *Waller* factors. We accordingly conclude that those findings, though implicit, are sufficient to permit review of its decision. *See Waller*, 467 U.S. at 45 (noting that findings must be specific enough that reviewing court can determine whether closure was proper).

⁴ Although the unconstitutional closure of a courtroom is generally considered to be structural error, *State v. Bobo*, 770 N.W.2d 129, 139 (Minn. 2009), Minnesota courts have not squarely addressed whether *unobjected-to* structural error requires automatic reversal or whether a defendant’s failure to object at trial triggers a plain-error analysis. *Compare State v. Benton*, 858 N.W.2d 535, 540-41 (Minn. 2015) (concluding any error in closing courtroom was invited by defendant and did not seriously affect fairness, integrity, or reputation of judicial proceedings), *with State v. Brown*, 732 N.W.2d 625, 630 (Minn. 2007) (“Structural errors always invalidate a conviction whether or not a timely objection to the error was made.”), *and State v. Brown*, 815 N.W.2d 609, 616 (Minn. 2012) (reviewing de novo defendant’s public-trial claim even though defendant did not appear to have objected when district court had courtroom doors locked during jury instructions).

At the start of appellant’s trial, the district court explained “the COVID-19-related procedures” that would be implemented:

[E]verybody is masked. We have six-foot distances throughout the courtroom for safety purposes. We’ve reconfigured the courtroom with the witness six feet away from everybody else The public is in the overflow courtroom in courtroom C and also can be seen via . . . that large screen Now the public can see the courtroom.

The district court also explained to the jury during voir dire, “We are required to follow certain guidelines as it relates to safety You see us spaced out through the courtroom [for that reason].” It also noted that because of “the size of the courtroom and the COVID restrictions,” it had to do jury selection in two groups.

Under the first *Waller* factor, a courtroom closure is justified when the party seeking closure advances an overriding interest. *Waller*, 467 U.S. at 48. We have already established that preventing the spread of COVID-19 is undoubtedly an overriding interest.

Second, the district court implemented procedures no broader than necessary to protect that interest. The record shows that the district court configured the courtroom to comply with the six-foot social-distancing requirements set forth in the Minnesota Judicial Branch’s Preparedness Plan. *See Minnesota Judicial Branch COVID-19 Preparedness Plan*, Minn. Jud. Council (Minn. May 15, 2020). To maintain public access, the district court provided live video of the proceedings in a nearby courtroom that remained open to the public throughout the trial.

The third *Waller* factor is satisfied because the record also suggests that the district court arrived at its courtroom configuration after considering the alternatives available to

it. The COVID-19 Preparedness Plan listed ten “Courtroom Exposure Control Measures.” *Id.* at 5. The measures noted that social distancing must be maintained at all times and that “remote video participation, when technically feasible, should remain an option when social distancing is not maintained.” *Id.* (emphasis added). The district court noted the limited space of the courtroom at various times during the trial and noted the modifications it had to make to accommodate the COVID-19 protocol in the small courtroom. The record therefore shows that the district court considered the options available to it based on the judicial branch’s COVID-19 guidance and limited public access only insofar as necessary to maintain safety, while still allowing the public to view the trial from a nearby courtroom.

In arguing that the district court implemented a closure broader than necessary and failed to consider reasonable alternatives, appellant cites to the trial of Derek Chauvin in Hennepin County and to various federal court trials in which a district court imposed COVID-19 distancing requirements but nevertheless allowed some public spectators and the parties’ family members into the courtroom. But we are not persuaded that, because other district courts with different courtroom configurations and more resources could safely accommodate additional people, the district court here implemented overbroad procedures or failed to consider alternatives.

Finally, we conclude that the district court’s on-the-record courtroom description, its COVID-19 safety concerns, and its reliance on the Chief Justice’s guidance adequately supported its decision to limit public access to the courtroom. Appellant argues that the fourth *Waller* factor is not satisfied because the district court failed to make explicit findings justifying the courtroom closure. We disagree. As discussed above, although the

Waller factors were implicitly rather than explicitly satisfied, the district court's implicit findings were sufficient to permit review. Going forward, we encourage district courts to make explicit *Waller* findings on the record when they limit courtroom access. But because the *Waller* factors are satisfied here, we conclude that the courtroom-access limitations imposed by the district court did not violate appellant's right to a public trial.

III. The district court did not plainly err by admitting the statements of a nontestifying police officer regarding the location of the methamphetamine.

Appellant argues that the district court committed plain error by admitting, through the deputy's bodycam video, the sergeant's hearsay statements that he found methamphetamine behind the driver's seat in the Chrysler 300. We disagree.

Evidentiary rulings are generally reviewed for an abuse of discretion, but because appellant failed to object to the statements' admission at trial, we may review the admission for plain error. See Minn. R. Crim. P. 31.02; *State v. Manthey*, 711 N.W.2d 498, 504 (Minn. 2006). To show plain error, appellant must show (1) error, (2) that was plain, and (3) that affected his substantial rights. *Manthey*, 711 N.W.2d at 504. If all three conditions are met, this court may correct the error only if it seriously affects the fairness, integrity, or reputation of judicial proceedings. *State v. Smith*, 825 N.W.2d 131, 138 (Minn. App. 2012).

Hearsay is an out-of-court statement offered to prove the truth of the matter asserted. Minn. R. Evid. 801(c). Hearsay is generally not admissible unless it fits under an exception provided by the rules of evidence. Minn. R. Evid. 802. "The number and variety of exceptions to the hearsay exclusion make objections to such testimony particularly

important to the creation of a record of the [district] court's decision-making process in either admitting or excluding a given statement." *Manthey*, 711 N.W.2d at 504. A defendant's failure to object at trial deprives the state of the opportunity to establish the admissibility of the statement under a hearsay-rule exception. *Id.*

Because appellant did not object at trial, the state had no opportunity to establish that the challenged statements were admissible under a hearsay-rule exception, such as the residual exception under Minn. R. Evid. 807. Further, appellant's defense counsel elicited the deputy's testimony regarding the sergeant finding the methamphetamine behind the driver's seat. We therefore conclude that its admission did not constitute plain error. See *State v. DeShoatz*, 157 N.W.2d 517, 524 (Minn. 1968) ("When defendant introduces otherwise inadmissible evidence [defendant] cannot later complain that permitting the introduction of such testimony was error on the part of the [district] court.").

Additionally, even if we assumed that the statements were inadmissible hearsay, and further assumed that their erroneous admission affected appellant's substantial rights, we conclude that the error did not seriously affect the fairness, integrity, or reputation of judicial proceedings. Appellant knew that the deputy's bodycam video would be played for the jury and that the video included the sergeant's statements. At trial, appellant requested that certain other statements be muted while playing the video for the jury but made no objection to the sergeant's statements. The state originally included the sergeant on its witness list but later determined that it would not ask the sergeant to testify or play his bodycam video for the jury because that evidence would be cumulative and unnecessary. Had appellant objected then, the state likely could have addressed appellant's

hearsay challenge by having the sergeant testify. Appellant's failure to object deprived the state of that opportunity. We are persuaded that, given the problems created by appellant's failure to object at trial, it would be seriously *unfair* to grant relief to appellant on this issue, and we decline to do so.

IV. Appellant's claims in his pro se brief do not merit relief.

Appellant asserts additional claims in his supplemental pro se brief. None of them merit relief.

Appellant first argues that he received ineffective assistance of counsel because his trial counsel failed to investigate (1) video footage from the gas station, which appellant claims would show that his brake lights were working and that the deputy therefore made an illegal stop and (2) the deputy's history of improper conduct. Because this claim involves facts not in the record, the record is insufficient for appellate review. *See State v. Gustafson*, 610 N.W.2d 314, 321 (Minn. 2000). We therefore decline to review this claim.

Appellant's next two arguments are unsupported by legal citation, so we need not consider them. *See State v. Bartylla*, 755 N.W.2d 8, 22 (Minn. 2008). Nevertheless, we briefly address their deficiencies. Appellant asserts that officers discarded the container that the methamphetamine bag was found in and states that "the officers discarded material evidence." But appellant fails to show that the container had any apparent and material exculpatory value. *See State v. Friend*, 493 N.W.2d 540, 545 (Minn. 1992) ("To succeed in a claim that lost or destroyed evidence constitutes reversible error, a defendant must show . . . that the exculpatory value of the evidence was apparent and material.").

Appellant also claims malicious prosecution. Appellant disputes the BCA forensic scientist's testimony regarding the accuracy of the weight of the methamphetamine and argues that no documentation showed that the field tests were positive for methamphetamine. To the extent that appellant's arguments could be construed as challenging the sufficiency of the evidence, we must assume on review that the jury believed the state's evidence and disbelieved contrary evidence. *See State v. Brocks*, 587 N.W.2d 37, 42 (Minn. 1998).

Finally, appellant argues that the deputy intentionally covered his bodycam while saying that appellant was walking away during what appellant claims was an unlawful stop. Appellant challenged the traffic stop at the district court. The district court found reasonable articulable suspicion supporting the investigatory stop of the Chrysler 300 based on the deputy credibly testifying that the vehicle's brake lights were not working. Appellant's arrest occurred after that stop because appellant provided a false name. Officers found the incriminating drugs after a chain of events stemming from their search of appellant incident to that arrest. Because the district court concluded that the deputy lawfully stopped and questioned appellant based on appellant's faulty brake lights, the facts appellant disputes are irrelevant to appellant's controlled-substance conviction.

DECISION

The district court did not violate appellant's right to confrontation by requiring testifying witnesses to wear face masks to prevent the spread of COVID-19. The district court also did not deny appellant a public trial by limiting courtroom access to trial participants and court staff and allowing the public to view the proceedings via a live video

feed in a nearby courtroom. Additionally, the district court did not plainly err by admitting statements of a nontestifying officer regarding the location of the methamphetamine appellant was convicted of possessing. Finally, we have carefully reviewed appellant's prose brief and conclude that none of his claims merit relief.

Affirmed.