This opinion is nonprecedential except as provided by Minn.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
A24-0038

State of Minnesota,
Respondent,

vs.

Angela Rena Cloar,
Appellant.

Filed December 2, 2024
Affirmed
Ross, Judge

Hennepin County District Court
File No. 27-CR-22-22818

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

Stacy A. Woods, New Hope City Attorney, Melanie P. Persellin, Assistant City Attorney, Jensen Sondrall Persellin & Woods, P.A., Brooklyn Park, Minnesota (for respondent)

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

Considered and decided by Schmidt, Presiding Judge; Ross, Judge; and Ede, Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

A police officer stopped Angela Cloar for running a stop sign and learned that she possessed no valid driver's license or car insurance. The jury in Cloar's trial on the consequent stop-sign, licensure, and insurance charges viewed without objection some of the officer's body-camera footage. This footage allegedly included audio of insurance-company representatives informing the officer that Cloar's policies had expired, the officer's mentioning Cloar's other offenses, and Cloar's passenger urging the officer to allow Cloar to purchase insurance on the spot. Cloar appeals from her convictions, arguing that admitting the camera footage violated her right to a fair trial under the Sixth Amendment's Confrontation Clause and the evidentiary rule prohibiting character evidence. We hold that Cloar has failed to meet her burden on appeal to provide a record establishing that the jury heard the allegedly violative portions of the camera footage. We also hold that the passenger's statements were nontestimonial and the alleged plain error of allowing the jury to hear the footage could not have significantly affected the verdict. We therefore affirm.

FACTS

New Hope police officer Mike Keithahn was on patrol in November 2022 and saw a car enter an intersection without stopping at the stop sign. Officer Keithahn stopped the car and asked the driver, Angela Cloar, to present her driver's license and proof of insurance. Cloar said that she had not seen the stop sign and answered "no" when the officer asked if her license was valid. She volunteered that she was in the driver diversion program. Officer Keithahn inquired through a law-enforcement database and confirmed that Cloar's driver's license had been revoked.

Cloar provided Officer Keithahn with insurance information that she claimed covered her car. Officer Keithahn returned to his police cruiser and telephoned the two insurance companies that Cloar had identified—Progressive and Bristol. Representatives from those companies each told the officer that Cloar's policies had lapsed. Officer

Keithahn approached to arrest her. A passenger in Cloar's car told the officer that Cloar was at that time trying to purchase car insurance. Officer Keithahn told Cloar that he was arresting her for gross-misdemeanor driving without insurance because "[she'd] had priors." Throughout the traffic stop, Officer Keithahn's body-worn and squad-car cameras were recording the interaction visually and audibly.

Officer Keithahn cited Cloar for gross-misdemeanor driving without insurance, misdemeanor driving after license revocation, and petty-misdemeanor failure to stop at a stop sign. Before trial, the state amended the driving-without-insurance citation from a gross misdemeanor to a misdemeanor. The attorneys agreed that no testimony about Cloar's prior offenses, convictions, or prior driving conduct would be introduced at trial. To avoid introducing this evidence and to avoid potential hearsay statements from the insurance representatives, the attorneys agreed not to play selected portions of the recordings at trial.

Only Officer Keithahn testified at the jury trial. The prosecutor introduced two video exhibits during this testimony: the dash-camera footage showing Cloar's car failing to stop at the stop sign and the officer's body-camera footage. Cloar's attorney did not object to the introduction or playing of these recordings. The prosecutor started playing the body-camera video near its beginning and stopped it after the segment when Officer Keithahn began the arrest. The prosecutor stopped and started the video multiple times within this range, questioning the officer during pauses. The record does not indicate at which points the video was incrementally stopped or at what points it was restarted. Officer Keithahn testified that he had determined that Cloar's insurance policies were not valid and that he observed her trying to purchase insurance.

The jury found Cloar guilty on all three charges. The district court entered corresponding convictions and sentenced Cloar to 60 days in jail and stayed execution for all but five days.

Cloar appeals.

DECISION

Cloar challenges her convictions based on two principal arguments. She argues first that the district court erroneously admitted the parts of the recordings that included statements from the insurance representatives and Cloar's passenger. She argues second that the district court erroneously failed to provide a cautionary instruction or strike the parts of the recordings that included Officer Keithahn's statements about her past offenses. We have carefully considered Cloar's arguments and conclude that, for the following reasons, none leads us to reverse.

I

We are not persuaded by Cloar's contention that the district court erroneously admitted parts of the body-camera footage because the record is insufficient for us to properly analyze this argument on the merits. Cloar never objected when the prosecutor introduced the video or played parts of it for the jury, so we can review only for plain error. Under this standard Cloar has the burden to "demonstrate both that error occurred and that the error was plain." *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). But in light of material gaps in the record on appeal, Cloar cannot show that any error occurred.

The state asserts that the portions of the video footage about which Cloar now complains (those parts where insurance representatives spoke with Officer Keithahn and where he references Cloar's past offenses) were never presented to the jury during trial because they were intentionally skipped during the officer's testimony. "[T]he party seeking review has the duty to see that the appellate court is presented with a record which is sufficient to show the alleged errors." *Truesdale v. Friedman*, 127 N.W.2d 277, 279 (Minn. 1964). Neither party described on the record which parts of the footage were played and which parts were skipped when the prosecutor played the video during trial. The transcript offers little help, clearly indicating only that portions were played beginning at 3 seconds and ending at 38 minutes and 45 seconds, with five pauses and fast-forwarding and resumptions at points indiscernible to us on review. In short, Cloar failed to produce a record sufficient to show that the jury heard the allegedly violative hearsay and character evidence captured by the officer's body-worn camera.

Our combing the record does not help Cloar's position on appeal. The record informs us that the prosecutor and defense counsel made considerable efforts to avoid referencing the insurance representatives or their statements. Cloar's attorney had seemingly agreed before trial that the state could play the video to the jury if it omitted "those points where the officer returns to the squad car" and "portions where the officer is at Ms. Cloar's window and he has a third-party, an insurance company . . . on the phone, which would be hearsay about the v[e]racity of what they're saying." This understanding may explain why Cloar's attorney did not object during trial while the video was played to the jury. And although the prosecutor urged the jury during closing argument to closely consider portions of the officer's body-camera footage that did not implicate hearsay evidence, she avoided any direct reference to the insurance representatives' statements. She emphasized that the jury could "observe on the body camera that . . . Officer Keithahn while in his squad car attempted to determine whether or not her driver's license was valid." In contrast, the prosecutor used only the passive voice to describe the insurance verification, seeming to intentionally avoid revealing the statements of the insurance representatives: "Ms. Cloar provided the police officer with information regarding a Progressive Insurance policy which *it was determined* had been -- was not valid due to nonpayment . . . . She provided a subsequent policy . . . which again *was indicated as* being invalid due to nonpayment." (Emphasis added.) The prosecutor also referred to the officer's inquiries about insurance vaguely as "research regarding the insurance" and "run[ning] that [insurance] information." It is true that Officer Keithahn stated during cross-examination, "I remember the Bristol saying that the -- The insurance policy wasn't active." But this sole reference does not sufficiently indicate that he received information from an insurance representative.

We likewise cannot say that the jury ever heard the portion of the body-camera video where Officer Keithahn referenced Cloar's prior offenses. The attorneys agreed before trial that character evidence would not be admitted. The prosecutor never mentioned Cloar's other offenses during her opening statement or closing arguments, and Officer Keithahn never mentioned them during his testimony. Cloar has failed to demonstrate that any portion of the body-camera video showing Officer Keithahn's statements about Cloar's offenses was presented to the jury. We hold that Cloar has failed to meet her burden to show any error, let alone a plain error, in the district court's failure to strike or redact the body-camera footage.

We are not persuaded otherwise by the fact that the entire body-camera video was admitted into evidence. Although the jury had the option to access the entire body-camera video during deliberations, the record informs us that they did not do so. The attorneys had requested that the jury be allowed to access the video during deliberations only after asking and receiving the district court's permission. The record includes no jury request to view the footage during their deliberations. Because Cloar has not met her burden to provide a record reflecting that the relevant portions of the body-camera video were seen by the jury we cannot conclude that the district court erred by failing *sua sponte* to strike or redact the video.

We add alternatively that, even had Cloar shown that the jury viewed the entire video and that failing to prevent it established a plain error, her appeal would nevertheless fail. We will not consider reversing a plain evidentiary error unless the appellant also shows that the error affected her substantial rights. *State v. Horst*, 880 N.W.2d 24, 38 (Minn. 2016). That is, we would not reverse if the error was harmless, meaning that there is no "reasonable likelihood that the absence of the error would have had a significant effect on the jury's verdict." *Id.* (quotation omitted). We are confident that the alleged error here did not affect Cloar's substantial rights.

Insurance Representatives' Statements

Cloar argues unconvincingly that the erroneous admission of the insurance representatives' statements violated her substantial rights because, without them, the state had no evidence that Cloar lacked insurance. Officer Keithahn testified that he verified that Cloar's insurance policies were inactive. And his testimony did not state or imply that he reached his conclusion based on hearsay. We recognize that a police officer generally may not testify relaying hearsay under the guise of describing an investigation. *State v. Fields*, 679 N.W.2d 341, 348 (Minn. 2004). But alleged errors not raised in an appellate brief are forfeited, *State v. Butcher*, 563 N.W.2d 776, 780 (Minn. App. 1997), *rev. denied* (Minn Aug. 5, 1997), and Cloar did not object to the officer's testimony at trial on hearsay grounds and has not directly argued on appeal that the district court erred by admitting the testimony. The prosecutor did not explicitly reference the insurance representatives' statements in closing arguments. And as we conclude below, the jury also permissibly saw the body-camera video and heard Cloar trying to buy car insurance before Officer Keithahn arrested her. The jury had ample evidence of Cloar's lack of insurance coverage apart from the allegedly erroneous footage of the representatives' statements. She has not shown that the district court's failure to strike or redact those hearsay statements affected her substantial rights.

Cloar's Other-Acts Evidence

Cloar likewise unconvincingly maintains that failing to exclude Officer Keithahn's statements on video about her past infractions affected her substantial rights. Again we are assuming for the sake of argument that the jury saw footage of the officer explaining to Cloar that he was arresting her for gross-misdemeanor driving without insurance because "[she's] had priors . . . priors for the same thing . . . failures to appear, pay fine, tickets that's what [she's] revoked for along with the other one." In a harmless-error analysis, we consider the manner in which evidence was presented, its persuasive value, whether it was used in the proponent's closing argument, and how effective the defense was at countering it. *Townsend v. State*, 646 N.W.2d 218, 223 (Minn. 2002). The statements about Cloar's criminal history here were brief and vague and were not testified to by Officer Keithahn. The prosecutor did not mention Cloar's criminal history in opening statements or closing arguments. And the jury received uncontested and compelling evidence of her guilt, including video footage of Cloar's failing to stop for the stop sign, her on-scene admission that her license was invalid, and the officer's testimony that he heard her trying to purchase insurance during the stop. There is no reasonable possibility that the district court's failure to provide a cautionary instruction or strike references to Cloar's other acts had a substantial impact on the verdict.

II

We are similarly unconvinced by Cloar's contention that the district court violated her Confrontation Clause right to confront witnesses and violated the evidentiary rules prohibiting hearsay by admitting the recording of her passenger's statements about Cloar trying to purchase insurance. The state does not expressly contend on appeal that the passenger's statements were not played for the jury. We therefore address Cloar's argument on its merits.

Cloar argues that statements of the passenger, who did not testify at trial, amount to testimonial hearsay. We review *de novo* whether evidence admission is contrary to the protections of the Confrontation Clause of the Sixth Amendment. *State v. Caulfield*, 722 N.W.2d 304, 308 (Minn. 2006). The district court violates a criminal defendant's

Confrontation Clause rights when it admits testimonial out-of-court statements without affording the defendant a chance to cross-examine the speaker. *Crawford v. Washington*, 541 U.S. 36, 61 (2004). The Supreme Court has said that testimonial statements include those "made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial." *Id.* at 51–52. We examine the context of a conversation to determine whether the primary purpose of a purportedly testimonial statement is to create an "out-of-court substitute for trial testimony." *Ohio v. Clark*, 576 U.S. 237, 245 (2015) (quotation omitted). We apply this standard to consider the passenger's statements.

The passenger's statements are not testimonial because they were not objectively made within a context that had the primary purpose of developing evidence. The body-camera video depicts Officer Keithahn approaching Cloar while she was on a phone call to inform her that she was under arrest. Cloar's passenger announces to the officer, "She's talking to the insurance company." And after Officer Keithahn asked Cloar to exit the car and told the passenger that Cloar's car cannot be driven without insurance, the passenger asked, "Can she finish getting insurance?" As the Supreme Court has explained, "[T]he most important instances in which the [Confrontation] Clause restricts the introduction of out-of-court statements are those in which state actors are involved in a formal, out-of-court interrogation of a witness to obtain evidence for trial." *Michigan v. Bryant*, 562 U.S. 344, 358 (2011). The passenger did not make his inquiry and statement in response to police questioning. He instead made them spontaneously. His statements also narrate a present and ongoing occurrence rather than relay "past events potentially relevant to future criminal prosecution," a feature that tends to reflect a testimonial statement. *See Davis v. Washington*, 547 U.S. 813, 822 (2006). The context and structure of the passenger's statements do not indicate that their purpose would be for testimony in future criminal prosecution.

Cloar's reliance on *State v. Sutter* does not change our mind because that case is readily distinguished. 959 N.W.2d 760 (Minn. 2021). The *Sutter* court held that a nontestifying co-conspirator's statements constituted testimonial hearsay even though they were an exculpatory false narrative to police. *Id.* at 763–64, 768. The supreme court so held because the challenged statements were made to police in response to questioning to establish past events for a criminal prosecution. *Id.* at 768. As we have already explained, the statements here neither resulted from questioning nor described past events. Cloar offers other, less persuasive reasons urging us to conclude the passenger's statements are testimonial; these warrant no discussion. Because the passenger's statements were not testimonial, Cloar's Confrontation Clause argument fails.

Affirmed.