This opinion is nonprecedential except as provided by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
A21-0289

State of Minnesota,
Respondent,

vs.

Blas Palma-Alvarado,
Appellant.

Filed February 7, 2022
Affirmed
Bryan, Judge

Nobles County District Court
File No. 53-CR-20-574

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

Joseph M. Sanow, Nobles County Attorney, Worthington, Minnesota; and

Travis J. Smith, Special Assistant County Attorney, Slayton, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sharon E. Jacks, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Florey, Presiding Judge; Worke, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

BRYAN, Judge

In this direct appeal of his conviction, appellant challenges the district court's decision to admit a security video recording during the trial. We affirm the conviction because we conclude that the district court did not err when it admitted the video.

FACTS

On July 14, 2020, respondent State of Minnesota charged appellant Blas Palma-Alvarado with one count of first-degree assault with a dangerous weapon, in violation of Minnesota statutes section 609.221, subdivision 1. According to the complaint, on July 11, 2020, Palma-Alvarado got into a fist fight with J.Q. outside the front entrance of Palma-Alvarado's apartment building. Detective Dave Hoffman from the Worthington Police Department reviewed security footage from the front entrance of the apartment building, which depicted Palma-Alvarado enter the apartment building, then return holding a knife that he swung at J.Q. When the maintenance coordinator at the apartment was unable to download the security videos, Hoffman recorded the security videos using his body camera to film the recordings as they played on a monitor. As part of its disclosures, the state turned over four separate videos that Hoffman recorded, but only one is relevant to this appeal.

The case proceeded to trial and the state noted its intention to introduce one of the videos (the Hoffman video). Palma-Alvarado filed a motion in limine to exclude the Hoffman video, requesting that the court:

> Prohibit the state from playing the video captured by Worthington police . . . The video is incomplete. It does not capture the entire incident and is inconsistent with what the victim alleged happened . . . . The State had a duty to obtain the entire footage . . . Failure to do so violates Brady. It is also unfair to the defense to allow the state to only play the portion of the incident which it chose to preserve. *See State v. Dolo*, 942 N.W.2d 357 (2020) and Minnesota Rule of Evidence 106.

The case was tried over two days in October 2020. At the start of trial, the district court addressed the defense's motion and Palma-Alvarado's defense attorney again requested that the court exclude the video:

> Your Honor, the defense is requesting that the Court exclude the video from the [apartment building]. It is a video of . . . Agent Hoffman's body camera of surveillance camera footage. It's not the actual surveillance camera footage. There are gaps missing in the footage. At one point the video skips from 16:05:11 to 16:06:35. At another point it skips from 16:10:26 to 16:12:09. The defense is of the position that this is not the complete video that the—it appears that the video has been edited or that there are parts missing even in the parts that the State is wanting to play. And it's also not the complete incident. There were things that happened both before and after the incident. It doesn't actually show the actual stabbing. And based on those things, the defense is asking that the video be excluded.

The district court denied the motion. At trial, the state presented the testimony of Hoffman, J.Q., two doctors who treated J.Q.'s injuries, two other law enforcement officers and the maintenance coordinator for the apartment building. Palma-Alvarado testified on his own behalf and was the only witness for the defense.

The maintenance coordinator testified about the Hoffman video and the apartment building surveillance:

Q: I'm going to hand you what I've marked as State's exhibit number one. Do you recognize what exhibit number one is?
A: Yes. It's the video of the incident.
Q: And is that the video that you had—that you gave to Detective Hoffman?
A: Correct.
Q: Now, did you edit the video or alter it in any way?
A: I did not.
Q: Is it a true and accurate copy of the video that was on your system at the [apartment building?]
A: Yes.

The maintenance coordinator explained that there are skips in the video because the cameras operate on motion-capture, and the cameras "won't continue to film until it sees motion." He explained that although there are 13 or 14 cameras in the apartment building, the fight happened right outside the entrance. When asked why he did not give a digital copy of the apartment security video to the police, the maintenance coordinator explained that he could not figure out how to retrieve a recording from the system.

When Hoffman testified, he stated that he contacted the maintenance coordinator about any surveillance video from July 11th and the maintenance coordinator showed him the apartment security video.

Q: Detective Hoffman, I'm going to hand you what has been marked as state's exhibit number one. Do you recognize State's exhibit number one, Detective Hoffman?
A: Yes, I do.
Q: What is it?
A: Video from the [apartment building.]
Q: Is this the video that you recorded off of the [apartment building] surveillance system?
A: Yes.
Q: On July 13th of 2020?
A: Yes.

Q:	Is it a true and accurate copy of what you observed at [the apartment building] on their surveillance system?
A:	Yes.

Hoffman also testified that the footage skipped because of the motion-capture nature of the video. When the prosecutor offered the video as an exhibit, the defense made no new objections to the Hoffman video:

THE STATE:	Your Honor, I would offer exhibit number one.
THE COURT:	Any objection?
DEFENSE:	Your Honor, I would just note that my prior objection to the video is ongoing.

The district court overruled the objection and received the Hoffman video into evidence.

The jury found Palma-Alvarado guilty, and the district court sentenced Palma-Alvarado to 74 months in prison. Palma-Alvarado appeals.

DECISION

Palma-Alvarado challenges the admission of the Hoffman video on multiple grounds, some for the first time on appeal.[1] We first address the arguments on appeal that

[1] Palma-Alvarado filed a supplemental brief raising various concerns, but did not cite to any legal authority, and the arguments are either duplicative of those contained in the principal brief or concern evidence not offered or received at trial, although Palma-Alvarado makes no claim of ineffective assistance. We decline to address the additional concerns raised in the supplemental brief. *E.g.*, *State v. Bursch*, 905 N.W.2d 884, 889 (Minn. App. 2017) ("Arguments are forfeited if they are presented in a summary and conclusory form, do not cite to applicable law, and fail to analyze the law when claiming that errors of law occurred."); *see also Waters v. Fiebelkorn*, 13 N.W.2d 461, 464-65 (Minn. 1974) ("[O]n appeal error is never presumed. It must be made to appear affirmatively before there can be reversal . . . [and] the burden of showing error rests upon the one who relies upon it.").

were previously raised before the district court and then proceed to the new arguments raised only on appeal.

I. Review of the Objections Overruled by the District Court

Before the district court, Palma-Alvarado objected to the admissibility of the Hoffman video under rule 106 of the Minnesota Rules of Evidence and the "rule of completeness."[2] Palma-Alvarado also argued that the state's failure to "disclose additional footage of the fight" amounted to a *Brady* violation.[3] Neither argument convinces us to vacate the conviction.

Minnesota Rule of Evidence 106 requires admission of omitted portions of a written or recorded statement: "When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it." Rule 106 "does not govern its admissibility—in fact, the additional material must be independently admissible." *Dolo v. State*, 942 N.W.2d 357, 364 (Minn. 2020). Although rule 106 relates only to "a writing or recorded statement," the common law rule of completeness extends to conversations and other oral statements. *See*, 21A Kenneth W. Graham, Jr., *Federal Practice and Procedure* § 5073 n.1 (2d ed. 2015)

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[2] The motion in limine and the arguments before the district court arguably also raise a challenge to the authenticity of the original security video, as distinct from the authenticity of Hoffman's video. Palma-Alvarado, however, does not raise this challenge on appeal. In his reply brief and during oral argument, Palma-Alvarado concedes the authenticity of the apartment surveillance video under rule 901.

[3] In *Brady v. Maryland*, the United States supreme court held that a prosecutor's suppression of material evidence violates the defendant's constitutional due-process rights. 373 U.S. 83, 87 (1963).

(comparing cases interpreting rule 106 of the Federal Rules of Evidence to the common law parameters of the rule of completeness); David P. Leonard & Richard D. Friedman, *The New Wigmore: Selected Rules of Limited Admissibility*, § 5.7.3 n.40 (3d ed. 2020) (same).

"Evidentiary rulings rest within the sound discretion of the district court, and we will not reverse an evidentiary ruling absent a clear abuse of discretion." *State v. Ali*, 855 N.W.2d 235, 249 (Minn. 2014). This court will reverse only if the error prejudiced the appealing party. *Dolo*, 942 N.W.2d at 363; *see also* Minn. R. Crim. P. 31.01. An erroneous evidentiary ruling that does not implicate a constitutional right, prejudices a defendant if "there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict." *State v. Peltier*, 874 N.W.2d 792, 802 (Minn. 2016) (quotation and citation omitted).

Palma-Alvarado argues that rule 106 and the rule of completeness compelled exclusion of the Hoffman video. We are not persuaded. Rule 106 and the rule of completeness do not compel exclusion of incomplete evidence. Instead, they permit presentation of other, independently admissible evidence, in addition to the incomplete evidence that was already admitted. Similarly, there could be no prejudice in admitting the Hoffman video where Palma-Alvarado never sought to introduce any other videos under rule 106 or the rule of completeness. We also have concerns about the implications of Palma-Alvarado's argument. Palma-Alvarado cites no binding authority that has applied rule 106 or the rule of completeness to a video that is not a video recording of a person's oral statement. The argument invites us to set forth a new legal rule expanding either rule

106 or the common law parameters. In the absence of binding authority, however, we decline to interpret either rule as applicable to security videos or body camera videos like the Hoffman video.

Palma-Alvarado also contends that the admission of the video violated *Brady*. To determine if a *Brady* violation occurred, courts consider three elements:

> (1) the evidence must be favorable to the defendant because it would have been either exculpatory or impeaching; (2) the evidence must have been suppressed by the prosecution, intentionally or otherwise; and (3) the evidence must be material—in other words, the absence of the evidence must have caused prejudice to the defendant.

Walen v. State, 777 N.W.2d 213, 216 (Minn. 2010); (citing *Strickler v. Greene*, 527 U.S. 263, 281-82 (1999)). Again, we are not convinced. *Brady* places no obligation on the state to produce exculpatory evidence that does not exist or that is not in its possession. *See, e.g.*, *State v. Engle*, 731 N.W.2d 852, 854 (Minn. App. 2007) ("The state's failure to investigate to uncover and preserve potentially exculpatory evidence does not implicate a defendant's right to due process and trigger a *Brady* analysis."). Here, the parties agree that the state produced all the videos that were in its possession and that they obtained from the apartment maintenance coordinator. In addition, Palma-Alvarado cites no authority to support the proposition that *Brady*, which compels disclosure of exculpatory evidence, has also been interpreted to compel exclusion of inculpatory evidence.

For these reasons, Palma-Alvarado cannot establish that the district court abused its discretion by overruling his objections and admitting the Hoffman video.

II. Review of Unobjected-To Errors

On appeal, Palma-Alvarado makes two challenges to the admission of the Hoffman video that had not been raised previously with the district court. First, Palma-Alvarado contests the admissibility of the Hoffman video because it was "unauthenticated" under rule 901 of the Minnesota Rules of Evidence. Second, Palma-Alvarado challenges the admissibility of the Hoffman video as an improper duplicate of the original security video under rule 1003 of the Minnesota Rules of Evidence. We conclude that admission of the Hoffman video was not a clear and obvious error.

This court will review an unobjected-to error under the "plain error test." *State v. Myhre*, 875 N.W.2d 799, 804 (Minn. 2016). "In order to meet the plain error standard, a criminal defendant must show that (1) there was an error, (2) the error was plain, and (3) the error affected the defendant's substantial rights." *Id.* (citing *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998)). "An error is plain if it is clear or obvious, which is typically established if the error contravenes case law, a rule, or a standard of conduct." *State v. Webster*, 894 N.W.2d 782, 787 (Minn. 2017) (quotation and citation omitted).

Palma-Alvarado argues that the district court plainly erred by admitting the Hoffman video because it was "unauthenticated."[4] "The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." Minn. R. Evid. 901(a). One method of establishing a foundation for evidence is by the testimony of a

[4] As noted above, Palma-Alvarado makes no challenge on appeal to the authenticity of the original security video.

witness that the evidence is what the proponent claims it to be. *See* Minn. R. Evid. 901(b)(1).

In this case, the maintenance coordinator testified that he did not edit or alter the apartment security footage in any way. He also testified that he watched the Hoffman video and he believed that it was a true and accurate copy of the apartment security footage. He also explained that the gaps in the footage were because the cameras operated on motion-capture, and the video will only film when it senses motion. The state also offered Hoffman's testimony to authenticate and lay foundation for the Hoffman video. Hoffman testified how he recorded the video and that he believed it was a true and accurate copy of the original security video. Based on this testimony, we conclude that admitting the Hoffman video was not a clear or obvious error, contravening established law or rule. *See Webster*, 894 N.W.2d at 787.

Palma-Alvarado also challenges the admissibility of the Hoffman video as a duplicate or copy of the original surveillance footage, citing rule 1003. "A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original." Minn. R. Evid. 1003. The term "duplicate" includes mechanical or electronic re-recordings. Minn. R. Evid. 1001(4). Re-recordings of videotapes "should be accepted as duplicates when shown to have been made by a technique designed to ensure accurate reproduction of the original." *State v. Brown*, 739 N.W.2d 716, 722 (Minn. 2007).

We do not agree with Palma-Alvarado for several reasons. First, Palma-Alvarado cites no authority applying rule 1003 to a recording of this type, which is not strictly a duplicate of the original security video. Instead, the Hoffman video is a recording of Hoffman and the maintenance manager watching the original security video. Absent some authority, we are not convinced that rule 1003 applies. Second, even if rule 1003 applies, Palma-Alvarado does not challenge the authenticity of the original security video, a requirement of rule 1003. *Brown*, 739 N.W.2d at 722 ("Unless there is a genuine question as to the authenticity of the original recording or unfairness in the admission of the digital copy that qualifies as a duplicate, the properly authenticated digital copy is generally admissible."). Third, to determine the fairness of admitting the Hoffman video in lieu of the original security video, we would necessarily review whether the Hoffman video was recorded in a manner that is consistent with a "technique designed to ensure accurate reproduction of the original." *Id*. The record in this case, however, contains no evidence regarding techniques used to make duplicate video recordings. Thus, we cannot, on this record, conclude that Hoffman failed to follow accurate recording techniques. Fourth and finally, Palma-Alvarado's arguments of unfairness assume the existence of other security video recordings that would show him acting in self-defense. Palma-Alvarado argues it is unfair to *only* admit the Hoffman video and not to *also* admit these other video recordings. Absent any indication that security footage consistent with Palma-Alvarado's theory of defense actually exists, admission of the Hoffman video would not be unfair. Therefore, we cannot conclude that it was a clear or obvious error for the district court to admit the Hoffman video.

Because we conclude that Palma-Alvarado cannot establish that the district court plainly erred, we need not consider the remaining components of the plain error test. *State v. Hayes*, 826 N.W.2d 799, 808 (Minn. 2013).

Affirmed.