

STATE OF MICHIGAN
COURT OF APPEALS

WILLIAM ADAMS and TYRONE ANDERSON,

Plaintiffs-Appellants,

v

LIBERTY MUTUAL GROUP, INC.,

Defendant-Appellee,

and

ESURANCE PROPERTY AND CASUALTY
INSURANCE COMPANY,

Defendant.

UNPUBLISHED

July 27, 2023

No. 360876

Wayne Circuit Court

LC No. 19-014861-NI

Before: PATEL, P.J., and BOONSTRA and RICK, JJ.

BOONSTRA, J. (*dissenting*).

I respectfully dissent. In my view, the trial court correctly determined that Adams had not offered “independent evidence” of a collision with another vehicle sufficient to trigger coverage under the policy. The majority credits “Officer Theut’s independent opinion about the accident and the extent of the damage to Adams’s vehicle,” but I see no such independent opinion in the police report. Officer Theut’s report makes it clear that he arrived on the scene after the accident, observed one vehicle (Adams’s) and the damage to that vehicle, and transcribed what the occupants of that vehicle told him about the accident. And although the majority contends that Officer Theut, in his report, “states that Adams was in a hit-and-run accident,” I have scoured the police report in vain to find any such language. Rather, in the “Narrative” section of the report, Officer Theut clearly indicates that he asked “the driver of vehicle 2” “what happened” and that “[the driver] and both passengers stated” that they were involved in an accident with another vehicle, which fled the scene of the accident.

Police reports are generally considered inadmissible hearsay. *In re Forfeiture of a Quantity of Marijuana*, 291 Mich App 243, 254; 805 NW2d 217 (2011). Further, when a police report

records statements made by declarants other than the officer, that is a second layer of hearsay that must be independently validated to be admitted. See MRE 805. But in any event, even to the extent that the police report reflects evidence to which Officer Theut possibly could testify at trial, see *Latits v Phillips*, 298 Mich App 109, 113-114; 826 NW2d 190 (2012) (noting that evidence supporting a motion for summary disposition, while required to be admissible, need not be in admissible form, and further noting that officers could have testified at trial to their “personal observations” contained in police reports), in this case there simply is no evidence that Officer Theut personally observed any evidence that the accident was caused by a hit-and-run driver, or anything other than a single vehicle with front-end damage.¹

For these reasons, I would affirm the trial court’s order granting summary disposition in favor of defendant.

/s/ Mark T. Boonstra

¹ Despite being asked at oral argument, neither party has been able to explain the source of the partial information (including a Vehicle Identification Number), reflected in Officer Theut’s report, regarding a second vehicle. In any event, and while the majority does not appear to rely on that information in rendering its decision, it is not clear whether that information came from Adams or the other occupants of his vehicle, or indeed whether that information accurately identifies or pertains to the vehicle that allegedly struck Adams’s vehicle. Indeed, the record suggests that the information regarding Adams’s own vehicle, as reflected in the police report, is itself inaccurate. Accordingly, I would not find that the information constituted competent evidence of a hit-and-run collision.