18CA0334 Peo v Anderson 06-11-2020

COLORADO COURT OF APPEALS

DATE FILED: June 11, 2020
CASE NUMBER: 2018CA334

Court of Appeals No. 18CA0334
Larimer County District Court No. 16CR380
Honorable Julie Kunce Field, Judge

The People of the State of Colorado,

Plaintiff-Appellee,

v.

Chayce Aaron Anderson,

Defendant-Appellant.

JUDGMENT AFFIRMED

Division VI
Opinion by JUDGE YUN
Richman and Dunn, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)
Announced June 11, 2020

Philip J. Weiser, Attorney General, Jennifer L. Carty, Assistant Attorney General, Denver, Colorado, for Plaintiff-Appellee

Tanja Heggins, Alternate Defense Counsel, Denver, Colorado, for Defendant-Appellant

APPENDIX A

¶ 1 Chayce Aaron Anderson appeals his judgment of conviction. We affirm.

I. Background

¶ 2 Based on allegations that he and his friend, Jacob Ansari, broke into two construction sites and stole equipment from one of them, Anderson was charged with four counts of second degree burglary, a class 4 felony; criminal attempt to commit second degree burglary, a class 5 felony; criminal attempt to commit theft ($20,000 or more, but less than $100,000), a class 5 felony; theft ($2000 or more, but less than $5000), a class 6 felony; and two counts of misdemeanor criminal mischief. Following trial, the jury returned guilty verdicts on all nine counts, and the court sentenced Anderson to twelve years in prison.

¶ 3 On appeal, Anderson contends that (1) the district court erred when it denied his request for substitute counsel, and (2) the evidence was insufficient to support his seven felony convictions. We address each contention below.

II. Request for Substitute Counsel

¶ 4 Anderson contends that the district court erred when it denied his request for substitute counsel. We disagree.

A. Additional Facts

¶ 5 Anderson was represented in this case and a prior case (the sexual assault case) by the same alternate defense counsel. At the arraignment hearing in this case, defense counsel mentioned that Anderson would be appealing his conviction in the sexual assault case and that, while Anderson had not expressed any dissatisfaction with his services, it was common in his experience for defendants to challenge their convictions based on ineffective assistance of counsel. The court asked Anderson if he had any concerns with defense counsel representing him in this case, and Anderson said, "No."

¶ 6 A week before trial, Anderson requested substitute counsel, asserting the following:

- defense counsel was not representing him to the best of his ability;
- defense counsel was intentionally providing ineffective assistance and attempting to sabotage his right to a fair and impartial jury trial;
- defense counsel had provided ineffective assistance in the sexual assault case;

- defense counsel had not shown him audio or video discovery;
- defense counsel had done little trial preparation with him;
- defense counsel refused to file his requested pre-trial motions;
- defense counsel threatened him with 30.5 years in prison if he did not take a plea deal;
- defense counsel threatened him that his father would stop speaking to him if he did not take a plea deal;
- defense counsel was making up excuses to justify continuing the trial; and
- defense counsel refused to answer his questions.

In response, defense counsel filed a motion to withdraw.

¶ 7 A hearing on the motion was held before a different judge than the one presiding over the case. To allow both Anderson and defense counsel to freely discuss the alleged conflict, the prosecution was not present at the hearing. Only Anderson, defense counsel, court staff, and the judge were present. At the hearing, Anderson reasserted the claims in his request for substitute counsel and testified that, while he believed defense

counsel "did a decent job" in the sexual assault case, he was going to appeal on the ground of ineffective assistance of counsel because he received an indeterminate life sentence. When the court asked Anderson why he waited until a week before trial to raise the issue, Anderson testified that he wanted to "comply with the courts" but that he had wanted to fire defense counsel for a couple of months. He testified that, while he thought defense counsel had performed "rather well" in the sexual assault case because he was acquitted of one of the charges, he felt that his "version of the story and the truth" had not really come out at trial.

¶ 8 In response to Anderson's allegations, defense counsel stated that (1) he did not threaten Anderson with a 30.5-year prison term if he went to trial, but rather had explained to Anderson that it was part of his job to make sure Anderson was aware of the maximum sentence he could face; (2) he had conveyed a message from Anderson's father verbatim, and made sure Anderson knew that the message was from his father, not defense counsel; (3) he did not file Anderson's requested motions to recuse the district attorney and suppress the search of a cell phone because he did not think they were appropriate or would assist in the defense; (4) he had seen

Anderson four or five times since the last trial but had not had a chance to show him audio or video discovery because of a computer issue; (5) he was not purposely providing ineffective assistance of counsel; (6) he had explained to Anderson that if he alleged ineffective assistance of counsel on appeal in the sexual assault case, there would be some waiver of attorney-client privilege and he could be called to testify against Anderson; and (7) he had met with Anderson and Anderson had provided him with additional information about the case within "the past week," but there had been a total breakdown in communication "over the last couple of days" because Anderson would not talk to him.

¶ 9 After hearing from Anderson and defense counsel, the court made the following findings:

- Anderson's request for substitute counsel, made the week before trial, was not timely, as there was no reason why Anderson could not have raised his concerns earlier.
- The inability to review audio and video discovery might be grounds for a continuance, but was not grounds for substitution of counsel.

- Anderson had provided "very little basis" for not being comfortable with defense counsel, and there were no grounds to believe defense counsel was purposely providing ineffective assistance.
- Defense counsel's explanation of the alleged threats was more compelling than Anderson's.
- No explanation had been provided as to how any future claim of ineffective assistance of counsel in the sexual assault case would negatively affect the evidence or Anderson's constitutional rights in this case.
- There had been a short period of time in which Anderson chose not to communicate with defense counsel, but this did not constitute "a communication so broken down that the defendant cannot assist the attorney with a defense."
- Defense counsel had done nothing but act appropriately in refusing to file motions that were not proper, meeting with Anderson four or five times since the last trial, and conveying a message from Anderson's father to Anderson.
- Anderson had not consistently and persistently expressed disagreement with defense counsel; rather, he had been

equivocal about whether defense counsel did a good job in the sexual assault case and whether he was comfortable with defense counsel representing him in this case.

- Anderson contributed to the conflict by refusing to talk to defense counsel.
- Anderson's request for substitute counsel had "earmarks of a last-second attempt before trial to get a new lawyer without sufficient constitutional legal grounds for it."

Accordingly, the court denied Anderson's request for substitute counsel.

B. Standard of Review

¶ 10 We review a district court's denial of an indigent defendant's request for substitute counsel for an abuse of discretion. *People v. Johnson*, 2016 COA 15, ¶ 29. A district court abuses its discretion "when its decision is manifestly arbitrary, unreasonable, or unfair, or is based on an erroneous understanding or application of the law." *Id.*

C. Law and Analysis

¶ 11 The Sixth Amendment right to counsel includes the right to counsel of a defendant's choice, and the right to the effective

assistance of counsel. U.S. Const. amend. VI; *see also* Colo. Const. art. 2, § 16; *Ronquillo v. People*, 2017 CO 99, ¶ 16; *People v. Arguello*, 772 P.2d 87, 92 (Colo. 1989). However, "the right to counsel of choice does not extend to a defendant who requires counsel to be appointed for him." *Ronquillo*, ¶ 18. Rather, "[h]e is guaranteed only effective assistance of counsel." *Id.*

¶ 12 When an indigent defendant desires substitute counsel, he must show good cause for the substitution. *Id.* at ¶ 19. A defendant may establish good cause by demonstrating a conflict of interest, a complete breakdown in communication, or an irreconcilable conflict that will lead to an unjust verdict. *Arguello*, 772 P.2d at 94. A court is not required to grant substitute counsel unless it determines, after investigation, that a defendant's complaints are well founded. *Johnson*, ¶ 30.

¶ 13 To examine the constitutional implications of an indigent defendant's request for substitute counsel, we must consider "(1) the timeliness of the motion, (2) the adequacy of the court's inquiry into the defendant's complaint, . . . (3) whether the attorney-client conflict is so great that it resulted in a total lack of communication or otherwise prevented an adequate defense," and

(4) "the extent to which the defendant 'substantially and unreasonably contributed'" to the alleged conflict with counsel. *People v. Bergerud*, 223 P.3d 686, 695 (Colo. 2010) (quoting *United States v. Lott*, 310 F.3d 1231, 1250-51 (10th Cir. 2002)).

¶ 14 Anderson's arguments on appeal focus on the last two factors. He contends that his conflict with defense counsel was so great that it resulted in a total lack of communication and that he did not contribute to the conflict. We disagree.

¶ 15 There is no complete breakdown in communication when, despite some communication difficulties, counsel is nonetheless continuing to speak with the defendant and represent his interests. *Johnson*, ¶ 32; *People v. Thornton*, 251 P.3d 1147, 1151 (Colo. App. 2010); *cf. Lott*, 310 F.3d at 1249-50 (concluding that defendant was entitled to a hearing when he alleged that he had virtually no contact with his attorney, and had never been interviewed). Although there was a short period of time in which Anderson and defense counsel did not communicate, the court found that the communication was not so broken down that Anderson could not assist his counsel with a defense. Defense counsel had met with Anderson four or five times since the last trial, reviewed some

discovery with him, and discussed Anderson's requested motions with him, although he did not file them because he concluded they were inappropriate. *See People v. Krueger*, 2012 COA 80, ¶ 14 ("Disagreements pertaining to matters of trial preparation, strategy, and tactics do not establish good cause for substitution of counsel." (quoting *People v. Kelling*, 151 P.3d 650, 653 (Colo. App. 2006))). In addition, Anderson and defense counsel were communicating about the case within "the past week" before the hearing, when Anderson provided defense counsel with additional information to investigate. Thus, the record reflects that defense counsel was continuing to speak with Anderson and represent his interests.

¶ 16 Further, the district court found, with record support, that Anderson contributed to the conflict with defense counsel by refusing to talk to him. *See People v. Gonyea*, 195 P.3d 1171, 1173 (Colo. App. 2008) (defendant contributed to conflict when he walked out of the room during a meeting with counsel and advised her that he would only communicate with her in writing). Anderson testified that he was not comfortable with defense counsel, but provided "very little basis" for his discomfort, and there were no grounds to believe that defense counsel was providing ineffective assistance.

Specifically, the court did not find credible Anderson's accusations that defense counsel threatened him with a long prison sentence or the loss of contact with his father; rather, the court found that Anderson's request had the "earmarks of a last-second attempt" to get a new lawyer without sufficient legal grounds. *See Lawry v. Palm*, 192 P.3d 550, 558 (Colo. App. 2008) (we defer to the district court's credibility determinations). Because the district court's findings are supported by the record, we perceive no abuse of discretion.

¶ 17 Finally, the district court did not abuse its discretion in finding that any future claim of ineffective assistance of counsel in the sexual assault case would not negatively impact Anderson's constitutional rights in this case. *See Gonyea*, 195 P.3d at 1173 (trial court did not abuse its discretion in declining to appoint substitute counsel where defendant's concerns arose primarily out of another case in which defendant was represented by the same attorney). Despite stating that defense counsel had provided ineffective assistance in the sexual assault case, Anderson was equivocal about whether defense counsel did a good job in that case and whether he was comfortable with defense counsel representing

him in this one. As defense counsel explained, it is a common practice for defendants to challenge their convictions based on ineffective assistance of counsel. Additionally, because, at the time of trial, Anderson had not yet asserted the ineffective assistance of counsel claim, there was no immediate concern that defense counsel would have to testify against Anderson or divulge any attorney-client communication in the sexual assault case. Thus, the potential for a future claim of ineffective assistance of counsel in a different case did not affect counsel's ability to effectively represent Anderson in this case.

¶ 18 In sum, we perceive no abuse of discretion in denying the motion to substitute counsel. If a court has a reasonable basis to conclude that, despite difficulties communicating with his client, counsel can still render effective assistance, the court is justified in denying a defendant's request for substitute counsel. *Id.*

III. Sufficiency of the Evidence

¶ 19 Anderson contends that the evidence was insufficient to support his felony convictions. We disagree.

A. Additional Facts

¶ 20 Workers at a construction site in Fort Collins (the Cargill site) found one morning that the window of the construction office trailer was broken, the padlocks on subcontractor trailers had been cut, and "a couple of sheds" had been broken into. Tools and construction equipment including a survey laser and tripod, a set of cordless tools, a paint sprayer, a power drain cleaner, and a power-actuated nailing tool were missing.

¶ 21 A month later, the superintendent at another Fort Collins construction site (the LDS site), who lived on site during the week, woke up after midnight to banging noises. When he stepped outside, he saw two people banging on the back of a subcontractor's semitrailer. He yelled at them, and they ran away. When he started walking around the site to check on things, he saw that his construction office trailer had been broken into, at which point he called the police. He then noticed a pickup truck parked in a location that was not usually a parking spot for vehicles. He got in his own truck and "kind of circled" the "suspicious" truck until the police arrived.

¶ 22 The superintendent took police officers around the site. They found that the lock on a storage container (the Conex trailer) was broken, the Conex trailer was open, and a dirt compactor that had been stored inside was lying outside it. Next to the dirt compactor was a sledgehammer that did not belong to anyone on site. The back of the subcontractor's semitrailer, which the superintendent had seen two people banging on, was dented. A window of the construction office trailer was broken, and inside, electronics and construction equipment — including a concrete scanner, a piece of surveying equipment called a Trimble S6, iPads, and miscellaneous hand tools and computer equipment — had been "gathered up" and "were ready to take." A pair of red and black bolt cutters that did not belong to anyone on site was also found at the scene.

¶ 23 The suspicious truck belonged to Anderson. Face masks, another pair of bolt cutters, and Anderson's cell phone were found inside. After obtaining a search warrant, police analyzed the cell phone and found (1) "pictures of construction equipment similar to the item . . . that had been pulled out" of the Conex trailer at the LDS site and (2) "a variety of [internet] searches for very specific tools" that had been conducted the month before and matched tools

taken from the Cargill site. When a detective compared the "very specific searches" conducted on Anderson's cell phone to a database of items reported stolen in the county, he found that they matched "all of those items associated with the Cargill burglary."

¶ 24 Before trial, Anderson's friend, Jacob Ansari, told conflicting stories to the police, initially denying and then admitting that he and Anderson carried out the two construction site burglaries. Regarding the LDS burglary, Ansari testified that Anderson drove them to the LDS site, that they entered the site together and broke into the office trailer, that they used bolt cutters to open the Conex trailer, and that Ansari ran away when someone started yelling because "[i]t was every man for himself at that point." Regarding the Cargill burglary, Ansari testified that Anderson drove them there, that they split up once they entered the site, and that Anderson came back "with the tools and stuff" and put them in his truck. Cell phone records showed that both Anderson's and Ansari's cell phones accessed cell towers near the LDS and Cargill sites at the times of the burglaries.

¶ 25 As to the value of the items out of place at the LDS site, a detective testified that the total value was $28,765. The detective

explained that he had researched each item on the internet, "taking source information from multiple locations" to come up with a "conservative" price in an "effort to paint it in a favorable light towards the defendant." The detective repeatedly stated that his estimates were "conservative." The LDS site superintendent testified that, among the items out of place, the Trimble S6 alone would cost about $15,000 to replace. Photographs of the construction equipment and electronics found out of place were introduced into evidence.

¶ 26 As to the value of the items taken from the Cargill site, the Cargill site superintendent gathered a list of the missing items, and his field operations manager determined the value of each item based on his experience within the construction industry, arriving at a total value of $4260. The superintendent, who testified at trial, did not know whether the values determined by his field operations manager represented the price of buying the items new, or the value of the items in their used condition.

B. Standard of Review

¶ 27 We review the record de novo to determine whether the evidence was sufficient to sustain the defendant's convictions.

Clark v. People, 232 P.3d 1287, 1291 (Colo. 2010). Evidence is sufficient to support a conviction if the direct and circumstantial evidence, viewed as a whole and in the light most favorable to the prosecution, is substantial and sufficient to support a conclusion by a reasonable mind that the defendant is guilty of the offense beyond a reasonable doubt. *Id.* "If the prosecution presents evidence from which the trier of fact may properly infer the elements of the crime, the evidence is sufficient to sustain the conviction." *People v. Caldwell*, 43 P.3d 663, 672 (Colo. App. 2001).

C. Law and Analysis

¶ 28 A person commits second degree burglary if he or she "knowingly breaks an entrance into, enters unlawfully in, or remains unlawfully after a lawful or unlawful entry in a building or occupied structure with intent to commit therein a crime against another person or property." § 18-4-203(1), C.R.S. 2019.

¶ 29 "A person commits theft when he or she knowingly obtains, retains, or exercises control over anything of value of another without authorization . . . and [i]ntends to deprive the other person permanently of the use or benefit of the thing of value." § 18-4-401(1)(a), C.R.S. 2019.

¶ 30 "A person commits criminal attempt if, acting with the kind of culpability otherwise required for commission of an offense, he engages in conduct constituting a substantial step toward the commission of the offense." § 18-2-101(1), C.R.S. 2019.

1. LDS Site

¶ 31 Count 1 alleged a criminal attempt to commit theft of items with a value between $20,000 and $100,000. Count 2 alleged a second degree burglary of the Conex trailer. Count 3 alleged a second degree burglary of the construction office trailer. Count 4 alleged a criminal attempt to commit second degree burglary of the subcontractor's semitrailer.

¶ 32 Anderson summarily asserts that the evidence was insufficient to prove all of the elements of second degree burglary, attempt to commit second degree burglary, and attempt to commit theft at the LDS site. However, his arguments are developed only as to (1) his identity as the person who committed the crimes, and (2) the value of the items that were the basis for the attempt to commit theft conviction. Therefore, we address the sufficiency of the evidence only as it relates to those elements. *See People v. Romero*, 2015

COA 7, ¶ 53 (declining to review argument presented in a perfunctory and conclusory manner).

a. Identity

¶ 33 Anderson argues that the prosecution failed to prove that he was the person who committed the crimes at the LDS site because (1) neither Anderson's fingerprints nor his DNA were found on the red and black bolt cutters, the sledgehammer, the dirt compactor, or any of the items moved around inside the construction office trailer; (2) the evidence proved when and where Anderson's cell phone was accessed, but not that Anderson was the one using it; (3) the LDS superintendent saw two people banging on the subcontractor's semitrailer but could not identify Anderson or Ansari; and (4) Ansari changed his story and therefore his testimony was not credible.

¶ 34 As to Anderson's first three arguments, the absence of DNA or eyewitness testimony does not negate the circumstantial evidence in this case. *See Pena v. People*, 147 Colo. 253, 259, 363 P.2d 672, 674-75 (1961) (holding that the essential elements of a crime "may be established by circumstantial evidence as well as direct"). Here, police found Anderson's truck at the scene; his cell phone contained

pictures of items similar to the one the culprits removed from the Conex trailer; and cell phone data placed him at the site at the time of the burglary. As to Anderson's argument regarding Ansari's credibility,

> [t]he determination of the credibility of the witnesses is solely within the province of the fact finder, and it is the fact finder's function in a criminal case to consider and determine what weight should be given to all parts of the evidence and to resolve conflicts, testimonial inconsistencies, and disputes in the evidence.

People v. Chase, 2013 COA 27, ¶ 50. Here, Ansari told police that he and Anderson committed the crimes at the LDS site together. Giving proper deference to the jury's credibility findings, we conclude that the evidence was sufficient to establish Anderson's identity as the person who committed the crimes at the LDS site beyond a reasonable doubt.

b. Value

¶ 35 Attempted theft is a class 5 felony if the value of the thing involved is between $20,000 and $100,000, and a class 6 felony if the value of the thing involved is between $5000 and $20,000. §§ 18-2-101(4), 18-4-401(2)(h), (g). When the value of a stolen item determines the grade of the offense, the prosecution must present

competent evidence of the reasonable market value of the item at the time of the theft. *People v. Jensen*, 172 P.3d 946, 949 (Colo. App. 2007). Market value is what a willing buyer would pay to the true owner for the item. *People v. Moore*, 226 P.3d 1076, 1084 (Colo. App. 2009).

¶ 36 To reach a verdict, "[j]urors must rely on the evidence presented at trial and their own common sense." *Clark*, 232 P.3d at 1293; *see also People v. Marin*, 686 P.2d 1351, 1355-56 (Colo. App. 1983) ("The jury's very function is to use its 'common sense and ordinary experience' in evaluating the evidence.") (citation omitted). However, a verdict in a criminal case cannot be based on guessing, speculation, or conjecture. *People v. Duran*, 272 P.3d 1084, 1090 (Colo. App. 2011). Accordingly, there must be some basis for value other than pure speculation. *People v. Jamison*, 220 P.3d 992, 993 (Colo. App. 2009); *see also People v. Paris*, 182 Colo. 148, 151, 511 P.2d 893, 894-95 (1973) ("Without competent evidence of fair market value, the jury would have had to base its determination of the value of the goods in question at the critical time on pure speculation.").

¶ 37 Anderson argues that the prosecution failed to prove that the value of the items out of place at the LDS site was at least $20,000 because it was unclear from the detective's testimony whether the items he reviewed in his research were sufficiently similar in their specifications and condition to the items at the LDS site. However, the jury was also able to review pictures of the items, and could reasonably infer that the items were in working order because they were found at an active construction site. As to the Trimble S6 alone, the detective testified that it was worth $25,000, and the LDS site superintendent testified that it would cost $15,000 to replace. *See Burns v. People*, 148 Colo. 245, 251-52, 365 P.2d 698, 701 (1961) (the purchase price, junk price, replacement cost, use of the article, and common knowledge may all be considered in determining value).

¶ 38 Thus, we conclude that the evidence viewed as a whole and in the light most favorable to the prosecution was sufficient to support the jury's determination that the items out of place at the LDS site were worth at least $20,000.

2. Cargill Site

¶ 39 Count 6 alleged theft of items with a value between $2000 and $5000. Count 7 alleged a second degree burglary of the construction office trailer. Count 8 alleged a second degree burglary of the sheds.

¶ 40 Anderson again summarily asserts that the evidence was insufficient to prove all of the elements of second degree burglary and theft at the Cargill site. However, his arguments again are developed only as to identity and the value of the items that were the basis for the theft conviction. Accordingly, we address the sufficiency of the evidence only as it relates to those elements.

a. Identity

¶ 41 Anderson argues that the prosecution failed to prove that he was the person who committed the crimes at the Cargill site because there was no fingerprint or DNA evidence, and Ansari's testimony was not reliable. However, as discussed above, circumstantial evidence is sufficient to sustain a conviction, *Pena*, 147 Colo. at 257-60, 363 P.2d at 674-75, and the credibility of witnesses is up to the jury, *Chase*, ¶ 50.

¶ 42 Here, cell phone data placed Anderson at the scene, and "very specific" internet searches matching the stolen items were conducted on his cell phone shortly after the items were stolen. Further, Ansari testified that Anderson drove them to the Cargill site and, after they split up, Anderson came back "with the tools and stuff" and put them in his truck. Giving proper deference to the jury's credibility findings, we conclude that the evidence was sufficient to establish Anderson's identity as the person who committed the crimes at the Cargill site beyond a reasonable doubt.

b. Value

¶ 43 Theft is a class 6 felony if the value of the thing involved is between $2000 and $5000, and a class 1 misdemeanor if the value of the thing involved is between $750 and $2000. § 18-4-401(2)(f), (e).

¶ 44 Here, the field operations manager valued the stolen items at $4260 based on his experience in the construction industry. True, the superintendent stated that he did not know whether the values determined by the field operations manager represented the price of buying the items new, or the value of the items in their used condition. However, given that the field operations manager valued

the items at more than twice the amount necessary for the class 6 felony regardless of whether that value was based on new or used equipment, average jurors would be able to use their common sense to determine whether the aggregate market value of the missing items — high-end, brand name power tools — exceeded $2000. *See Jamison*, 220 P.3d at 994-95 (jury may be able to use its common sense and knowledge to determine issues of value where there is a large disparity between the statutory minimum amount required for theft and the number and apparent value of the items stolen); *People v. Early*, 692 P.2d 1116, 1120 (Colo. App. 1984) (regarding the value of a stolen vehicle, "the use of the article and common knowledge" left no reasonable basis for defendant to be convicted on lesser offense (quoting *Burns*, 148 Colo. at 251, 365 P.2d at 701)).

¶ 45 Thus, we conclude that the evidence viewed as a whole and in the light most favorable to the prosecution was sufficient to support the jury's determination that the items stolen from the Cargill site were worth at least $2000.

IV. Conclusion

¶ 46 The judgment is affirmed.

JUDGE RICHMAN and JUDGE DUNN concur.

Colorado Court of Appeals 2 East 14th Avenue Denver, CO 80203	DATE FILED: June 11, 2020 7:59 AM CASE NUMBER: 2018CA334
Larimer County 2016CR380	
Plaintiff-Appellee: The People of the State of Colorado, v. Defendant-Appellant: Chayce Aaron Anderson.	⚠ COURT USE ONLY ⚠ Case Number: 2018CA334

ORDER OF THE COURT

DENIED.

Richman, J.
Dunn, J.
Yun, J.

Issue 6/11/2020
BY THE COURT

APPENDIX A

states the following:

1. On of the issues on appeal is whether the trial court abused its discretion in denying Mr. Anderson's request for the appointment of substitute counsel and defense counsel's motion to withdraw.

2. In support of the Attorney General's argument that Mr. Anderson's request for substitution of counsel was properly denied, the Attorney General observed that in case no. 15CR1466 Mr. Anderson did not appeal on any grounds related to the performance of counsel or filed a Crim. P. 35(c) motion asserting ineffective assistance of counsel in the case as of the filing of the Answer Brief. (*See* AB, p 9, n 3.). Subsequent to the filing of the Reply Brief, Mr. Anderson filed a Petition for Postconviction Relief pursuant to Crim. P. 35(c) in case no. 15CR1466 asserting claims of ineffective assistance of counsel. The district court appointed postconviction counsel for Mr. Anderson on March 19, 2020.

3. The purpose of the Surreply Brief is to clarify that Mr. Anderson is litigating claims of ineffective assistance of counsel in postconviction proceedings in case no. 15CR1466. This court can take judicial notice of the information in the state judicial computer database. *See e.g., People v. Linares-Guzman*, 195 P.3d 1130, 1136 (Colo.App. 2008).

CERTIFICATE OF SERVICE

I certify that on May 15, 2020, a true and correct copy of the foregoing **MOTION FOR LEAVE TO FILE SURREPLY BRIEF** was electronically filed via Colorado Courts E-filing System (CCES) addressed to the following:

Jennifer L. Carty, Esq.
Colorado Department of Law
Appellate Division
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 9th Floor
Denver, CO 80203

/s/ Tanja Heggins
Tanja Heggins

Colorado Court of Appeals 2 East 14th Avenue Denver, CO 80203	DATE FILED: November 16, 2020 CASE NUMBER: 2018CA334
Larimer County 2016CR380	
Plaintiff-Appellee: The People of the State of Colorado, **v.** **Defendant-Appellant:** Chayce Aaron Anderson.	Court of Appeals Case Number: 2018CA334
MANDATE	

This proceeding was presented to this Court on the record on appeal. In accordance with its announced opinion, the Court of Appeals hereby ORDERS:

JUDGMENT AFFIRMED

POLLY BROCK
CLERK OF THE COURT OF APPEALS

DATE: NOVEMBER 16, 2020

APPENDIX B

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: November 16, 2020 CASE NUMBER: 2020SC608
Certiorari to the Court of Appeals, 2018CA334 District Court, Larimer County, 2016CR380	
Petitioner: Chayce Aaron Anderson, **v.** **Respondent:** The People of the State of Colorado.	Supreme Court Case No: 2020SC608
ORDER OF COURT	

Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals and after review of the record, briefs, and the judgment of said Court of Appeals,

IT IS ORDERED that said Petition for Writ of Certiorari shall be, and the same hereby is, DENIED.

BY THE COURT, EN BANC, NOVEMBER 16, 2020.

APPENDIX B

Certification of Word Count 2,971

SUPREME COURT, STATE OF COLORADO 2 E. 14th Ave. Denver, CO 80203	
Certiorari to the Court of Appeals, Case No. 2018CA0334 District Court, Larimer County, Case No. 2016CR380	
CHAYCE AARON ANDERSON Petitioner, v. THE PEOPLE OF THE STATE OF COLORADO Respondent.	**▲COURT USE ONLY▲** Case No. 20SC608
Attorney for Petitioner: Name: Tanja Heggins, #32121 The Law Firm of Tanja Heggins, P.C. Address: 303 South Broadway, Suite 200-363 Denver, Colorado 80209 Phone: (303) 893-1081 E-mail: heggins@thlawpc.onmicrosoft.com Alternate Defense Counsel	

PETITION FOR WRIT OF CERTIORARI

APPENDIX B

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TABLE OF AUTHORITIES

Cases

Other Legal Authorities

Pursuant to C.A.R. 49, Chayce Aaron Anderson, the Petitioner herein, respectfully requests this court to grant a writ of certiorari to the Colorado court of appeals to review its decision. As grounds, Petitioner states as follows:

ISSUE PRESENTED FOR REVIEW

Whether the court of appeals erred in holding the trial court did not abuse its discretion in denying Mr. Anderson's request for the appointment of substitute counsel and defense counsel's motion to withdraw.

OPINION BELOW

A copy of the court of appeals' unpublished opinion in case no. 2018CA334, *People v. Chayce Aaron Anderson*, is attached to this petition pursuant to C.A.R. 53(a)(6).

JURISDICTION

The court of appeals' opinion in *People v. Anderson, supra*, was issued on June 11, 2020. This court granted an extension of time until September 3, 2020 within which to file this petition. Thus, this petition is timely.

This court's certiorari jurisdiction is invoked pursuant to Colo. Const. Art. VI, §2(2); §13-4-108, C.R.S. (2019); and C.A.R. 49.

REFERENCE TO PENDING CASES WITH THE SAME LEGAL ISSUE

Counsel for Mr. Anderson is not aware of any case currently pending before this court with an issue that is the same or similar to the issue raised in this petition. *See* C.A.R. 53(a)(6).

STATEMENT OF THE CASE

In 2016, the prosecution charged Mr. Anderson by complaint and information with criminal attempt to commit theft - $20,000 - $100,000 (F5) (count 1), four counts of second degree burglary - of building (F4) (counts 2, 3, 7 and 8), one count of criminal attempt to commit second degree burglary (F5) (count 4), criminal mischief - $300 - $750 (M2) (count 5), theft - $2,000 - $5,000 (F6) (count 6), and criminal mischief - under $300 (M3) (count 9). CF, p 27-31. These charges arose, according to the prosecution, from an attempted theft and burglary and theft and burglary from two construction sites in September and October of 2014. CF, p 1-7.

The trial court denied Mr. Anderson's motion for judgment of acquittal. TR 10/24/17, p 118-119. Mr. Anderson's theory of defense was:

> It is the theory of defense that, on the night of October 15, 2014 into the early morning hours of October 16, 2014, Mr. Anderson consumed a large amount of alcohol. He met two men outside of a bar who offered him marijuana and a ride home if he would loan them his truck for the night. Mr. Anderson agreed. The two men drove home and then left with his truck.

> Mr. Anderson asserts that if his truck was used in the commission of a crime, he is not involved.
>
> It is the defense theory of the case that Mr. Anderson was not involved in the crimes committed at 2410 E. Drake Road on or about September 14 and 15, 2014.

CF, p 224.

At the conclusion of the jury trial, Mr. Anderson was convicted of all nine counts as charged. CF, p 307-317; TR 10/25/17, p 36-38. As to count 1, the jury found that the value of the items involved in the theft was $20,000 or more but less than $100,000. CF, p. 307. As to count 6, the jury found that the value of the items involved in the theft was $2,000 or more but less than $5,000. CF, p 313-314.

Mr. Anderson was sentenced to12 years in the Department of Corrections to be served consecutive to the sentence imposed in Larimer County District Court case no. 15CR1466 on January 19, 2018. CF, p 530-533; TR 1/19/18, p 41-43.

Mr. Anderson appealed the judgment of convictions to the court of appeals. *Anderson*, ¶ 1. The court of appeals affirmed the judgment of convictions. *Id.*

REASONS FOR GRANTING THE WRIT

This court should grant certiorari review Mr. Anderson's case under C.A.R. 49(b),(c) because the court of appeals' opinion decided a question of substance in a

way that is probably not in accord with applicable decisions of this court or other divisions of the court of appeals.

I. The court of appeals erred in holding the trial court did not abuse its discretion in denying Mr. Anderson's request for the appointment of substitute counsel and defense counsel's motion to withdraw.

A. Additional Facts

Mr. Anderson was represented by Alternate Defense Counsel ("ADC") due to an irreconcilable conflict of interest with the Public Defender's Office. CF, p 41-42; TR 10/17/17, p 15:12-18.

On October 15, 2017, Mr. Anderson wrote a letter to the trial court requesting to fire his ADC counsel and for the appointment of substitute ADC counsel. Seal (16CR380 - Sealed File) (Letter dated 10/15/17), p 3-4. Mr. Anderson stated:

- He desired to fire his court appointed attorney;
- Counsel was not representing him to the best of his ability;
- Counsel was intentionally providing ineffective assistance of counsel;
- Counsel was attempted to sabotage his right to a fair trial and impartial judge;
- He requested substitute counsel be appointed;
- Counsel provided ineffective assistance of counsel in a prior trial;

- Counsel refused to provided him with numerous items of discovery;
- Counsel has done little jury trial preparation with him;
- Counsel refused to file pretrial motions;
- Counsel threatened him with 30.5 years in prison if he refused to take a plea offer;
- Counsel threatened him with his father's threat to discontinue speaking to him if he did not take a plea deal;
- He is extremely uncomfortable proceeding with defense counsel as his attorney;
- Counsel refuses to answer his questions about the case; and
- Requested that the court appoint new ADC counsel.

Seal (16CR380 - Sealed File) (Letter dated 10/15/17), p 3-4.

On October 16, 2017, defense counsel filed a motion to withdraw from representing Mr. Anderson. CF, p 194-195. As grounds for the withdrawal, ADC stated:

- Mr. Anderson stated during recent conversations that he did not feel comfortable discussing his case with defense counsel;

- Mr. Anderson would not answer defense counsel's questions during the most recent conversation and stated that he wanted defense counsel fired and new counsel appointed;
- Defense counsel represented Mr. Anderson in case number 15CR1466, which was being appealed by Mr. Anderson and he would claim ineffective assistance of counsel during the appeal;
- Due to the ineffective assistance of counsel claim, defense counsel may be called to testify against Mr. Anderson in future proceedings;
- Mr. Anderson should not be forced to proceed to trial with an attorney he believed is ineffective and he may loose the attorney-client privilege;
- Both defense counsel and Mr. Anderson believe that Mr. Anderson would be better served if new counsel were appointed; and
- "The attorney-client relationship has been irreparably broken."

CF, p 194-195.

A hearing on the motion to withdraw was held on October 17, 2017.[1] CF, p 581; TR 10/17/17, p 2:2-7. Mr. Anderson requested the appointment of substitute counsel. TR 10/17/17, p 5:6-7. Mr. Anderson reiterated the grounds stated in his letter. TR 10/17/17, p 5-8; Seal (16CR380 - Sealed File) (Letter dated 10/15/17), p 3-4. Defense counsel told the court that he did not threaten that Mr. Anderson would receive a lengthy prison sentence, but rather explained the maximum sentence he could face. TR 10/17/17, p 9:2-8. Defense could stated that he conveyed a message from Mr. Anderson's father to Mr. Anderson. TR 10/17/17, p 9-10. Counsel stated that he did not believe that the pretrial motions Mr. Anderson requested that he file were appropriate and he did not filed them. In response to the court's question regarding trial preparation, counsel responded, "[c]ertainly Mr. Anderson and I have a different view of this trial." TR 10/17/17, p 10:2-6.

Defense counsel acknowledged that he did not have an opportunity to go through the discovery and audio discovery in the case with Mr. Anderson. TR 10/17/17, p 10-11. Defense counsel denied that he was purposefully providing ineffective assistance of counsel. TR 10/17/17, p 11-12.

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[1] The hearing on the motion to withdraw was held before a different judicial officer that the trial court. TR 10/17/17, p 2-3.

Defense counsel believed that the conflict between him and Mr. Anderson was so great that it resulted in a total lack of communication between them. TR 10/17/17, p 12-13. Mr. Anderson did not trust counsel because counsel could be a witness against him. TR 10/17/17, p 14:10-14. Defense counsel stated, [a]t this point in time there's been a complete breakdown between the two of us in being able to discuss the matter." TR 10/17/17, p 14:19-21. Mr. Anderson did not discuss trial matters with counsel. TR 10/17/17, p 14:22-25. The conflict with Mr. Anderson prevented counsel from preparing an adequate defense. TR 10/17/17, p 15:1-11. Defense counsel agreed with Mr. Anderson that he should be appointed new counsel. TR 10/17/17, p 15-16.

The district court denied ADC's motion to withdraw and Mr. Anderson's request for the appointment of substitute counsel. TR 10/17/17, p 16-21.

The court of appeals determined the trial court properly denied Mr. Anderson's request for substitute counsel. *Anderson*, ¶¶ 4-9.

B. Law and Analysis

A trial court's decision to deny an indigent defendant's request for substitute counsel is reviewed for an abuse of discretion. *People v. Johnson*, 2016 COA 15, ¶ 29. A trial court abuses its discretion when its decision is manifestly arbitrary,

unreasonable, or unfair, or was based on a misunderstanding or misapplication of the law. *People v. Manyik*, 2016 COA 42, ¶ 65.

Where an appellate court determines that a defendant's request for new counsel was erroneously denied, the error will be reviewed for harmless error. *People v. Bergerud*, 223 P.3d 686, 696 (Colo. 2010). Under harmless error review, reversal is required where the error affects a substantial right and substantially influenced the verdict or affected the fairness of the trial proceedings. *Crider v. People*, 186 P.3d 39, 42 (Colo. 2008); *see also People v. Rhea*, 2014 COA 60, ¶ 42.

The United States and Colorado Constitutions guarantee those accused of crimes the right to counsel. U.S. Const. amend. VI, XIV; Colo. Const. art. II, § 16.

When a defendant objects to his or her court-appointed counsel, the trial court must inquire into the reasons for the dissatisfaction. *People v. Bergerud*, 223 P.3d at 694. The court is required to appoint substitute counsel for the defendant if he or she can establish "good cause." *People v. Bergerud*, 223 P.3d at 706. Good cause exists when there is a conflict of interest, a complete breakdown in the communication, or an irreconcilable conflict that would lead to an unjust result. *People v. Krueger*, 2012 COA 80, ¶ 14. "[A]ttorneys should not labor under conflicts of interest or a complete breakdown in communications with their clients

that prevent them for putting on an adequate defense." *People v. Bergerud*, 223 P.3d at 694. However, disagreements as to matters of preparation, strategy, and tactics do not establish good cause for the substitution of counsel. *People v. Kelling*, 151 P.3d 650, 653 (Colo.App. 2006). A trial court may decline to appoint substitute counsel when it "had a reasonable basis for believing that the attorney-client relationship has not deteriorated to the point where counsel is unable to give effective aid in the fair presentation of a defense." *People v. Schultheis*, 638 P.2d 8, 15 (Colo. 1981).

Courts consider several factors in assessing a request for substitute counsel: (1) the timeliness of the motion; (2) the adequacy of the court's inquiry into the grounds for the defendant's complaint; (3) if the attorney-client conflict is so great that it resulted in a total lack of communication or otherwise prevented an adequate defense; and (4) the extent to which the defendant substantially and unreasonably contributed to the underlying conflict with his or her attorney. *People v. Bergerud*, 223 P.3d at 698.

Here, Mr. Anderson stated in his written request for the appointment of substitute ADC counsel: (1) he desired to fire his court appointed attorney; (2) counsel was not representing him to the best of his ability; (3) counsel was intentionally providing ineffective assistance of counsel; (4) counsel was attempted

to sabotage his right to a fair trial and impartial judge; (5) he requested substitute counsel be appointed; (6) counsel provided ineffective assistance of counsel in a prior trial; (7) counsel refused to provided him with numerous items of discovery; (8) counsel has done little jury trial preparation with him; (9) counsel refused to file pretrial motions; (10) counsel threatened him with 30.5 years in prison if he refused to take a plea offer; (11) counsel threatened him with his father's threat to discontinue speaking to him if he did not take a plea deal; (12) he is extremely uncomfortable proceeding with defense counsel as his attorney; (13) counsel refuses to answer his questions about the case; and (14) requested that the court appoint new ADC counsel. Seal (16CR380 - Sealed File) (Letter dated 10/15/17), p 3-4. Defense counsel's motion with withdraw included that, *inter alia*, "[t]he attorney-client relationship was irreparably broken." CF, p 194-195.

Mr. Anderson reiterated the grounds stated in his letter during a hearing on the motion to withdraw. TR 10/17/17, p 5-8; Seal (16CR380 - Sealed File) (Letter dated 10/15/17), p 3-4. Defense counsel believed that the conflict between him and Mr. Anderson was so great that it resulted in a total lack of communication between them. TR 10/17/17, p 12-13. Mr. Anderson did not trust counsel because counsel could be a witness against him. TR 10/17/17, p 14:10-14. Defense counsel stated, [a]t this point in time there's been a complete breakdown between

the two of us in being able to discuss the matter." TR 10/17/17, p 14:19-21. The conflict with Mr. Anderson prevented counsel from preparing an adequate defense. TR 10/17/17, p 15:1-11. Defense counsel agreed with Mr. Anderson that he should be appointed new counsel. TR 10/17/17, p 15-16.

The *Bergerud* factors favor a finding that there was good cause for the appointment of substitute counsel. First, Mr. Anderson did not "contribute" to the attorney-client conflict. Counsel and Mr. Anderson had differing views of the case. Second, the attorney-client conflict between Mr. Anderson and ADC was so great that it resulted in a total lack of communication and prevented an the preparation of an adequate defense. The reasons expressed both by Mr. Anderson and ADC indicated breakdown of communications and a lack of trust. ADC told the court that there's been a complete breakdown and the conflict with Mr. Anderson prevented counsel from preparing an adequate defense. In *Anaya v. People*, 764 P.2d 779 (Colo. 1988), the this court reiterated the important principle that, "[b]asic trust between counsel and defendant is the cornerstone of the adversary system and effective assistance of counsel." *Anaya v. People*, 764 P.2d 782 (quotation omitted). Mr. Anderson, therefore, established good cause for the appointment of substitute counsel. Contrary to the court of appeals, it was an

abuse of discretion to deny Mr. Anderson's request for substitute counsel and counsel's motion to withdraw.

The error was not harmless. While the right to counsel may not necessarily include a "meaningful attorney-client relationship," *People v. Arguello*, 772 P.2d 87 (Colo. 1989), there was a complete breakdown in the communication with his counsel, a complete lack of trust of defense counsel and a breakdown of the attorney-client relationship between Mr. Anderson and defense counsel. Because Mr. Anderson established good cause for the appointment of substitute counsel, he no longer had effective representation. "This ability to change appointed counsel upon good cause is unrelated to the right to counsel of choice; it protects only the right to effective assistance of counsel. If good cause exists, a defendant no longer has effective representation." *Ronquillo v. People*, 2017 CO 99, ¶ 19 (citation and quotation omitted).

Mr. Anderson respectfully submits that the issue of appointing substitute counsel when a defendant has demonstrated good cause is an important issue faced by courts throughout the State of Colorado. This court should grant certiorari review to provide guidance to courts addressing this issue, correct the court of appeals' erroneous decision, and to prevent injustice.

CONCLUSION

Petitioner, Chayce Aaron Anderson, respectfully requests this court grant this petition for writ of certiorari.

Dated this 3rd day of September, 2020.

Respectfully submitted,

/s/ Tanja Heggins
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CERTIFICATE OF SERVICE

I certify that on September 3, 2020, a true and correct copy of the foregoing **PETITION FOR WRIT OF CERTIORARI** was electronically filed via Colorado E-Filing System addressed to the following:

Jennifer L. Carty, Esq.
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Ralph L. Carr Colorado Judicial Center
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/s/ Tanja Heggins
Tanja Heggins