

COLORADO COURT OF APPEALS

DATE FILED: November 25, 2020
CASE NUMBER: 2018CA584

Court of Appeals No. 18CA0584
El Paso County District Court No. 16CR2069
Honorable Jann P. Dubois, Judge

The People of the State of Colorado,

Plaintiff-Appellee,

v.

James Takchuan Woo,

Defendant-Appellant.

JUDGMENT AFFIRMED

Division V
Opinion by JUDGE PAWAR
J. Jones and Berger, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)

Announced November 25, 2020

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Keyonyu X O'Connell, Alternate Defense Counsel, Denver, Colorado, for Defendant-Appellant

¶ 1 Defendant, James Takchuan Woo, appeals the judgment of conviction entered on a jury verdict finding him guilty of first degree murder. We affirm.

I. Background

¶ 2 Woo, who was married and lived in San Francisco, had been having an affair with J.T., who lived near Colorado Springs with her four children, for several years. After going to bed one night, J.T.'s teenage son heard the garage door open and close. When he got up in the morning, his mother was not home and he called 911. Police tracked J.T.'s cell phone to a storage unit leased to Woo. When police broke into the storage unit, they found J.T. dead in her car, handcuffed to the inside of the door, having suffered numerous gunshot wounds.

¶ 3 Shortly thereafter, law enforcement arrested Woo as he was attempting to board a flight from Seattle to Hong Kong.

¶ 4 The prosecution charged Woo with first degree murder in June 2016. After initially being represented by a public defender, Woo retained private counsel to take over his case in February 2017. The trial court granted Woo's retained counsel's first two motions to continue trial, originally scheduled for May 2017, to January 2018.

~~Beginning in November 2017, Woo's counsel filed another series of motions to continue the trial. Although the trial court pushed the trial date back one week, it otherwise denied Woo's motions to continue.~~

¶ 5 The trial occurred in late January and early February 2018. The evidence included surveillance video from several different businesses close to the storage facility where J.T. was found. There were seven different clips from three different cameras showing J.T.'s vehicle driving into the storage unit shortly after the estimated time of death and a person then exiting the unit and leaving the area in an Uber. The prosecution also introduced a written timeline placing the individual video clips in chronological order and summarizing the contents of each. Additionally, a police investigator narrated the clips for the jury and identified Woo as the individual in some of the clips.

¶ 6 The jury found Woo guilty of first degree murder after deliberation. The trial court convicted him and sentenced him to life without parole in the custody of the Department of Corrections.

¶ 7 On appeal, Woo argues that the trial court reversibly erred by (1) denying his motions to continue; (2) admitting the written

summary of the surveillance videos and the investigator's testimony

identifying Woo as the person in the footage; and (3) failing to suppress evidence obtained from the search of Woo's storage unit. We disagree with each argument and affirm.

II. Motions to Continue

¶ 8 Woo argues that the trial court erred by denying several of his motions to continue and that these rulings deprived him of his constitutional rights to counsel of choice and effective assistance of counsel. Specifically, he argues that the trial court erred by denying his motions without making the findings required by *People v. Brown*, 2014 CO 25.

¶ 9 We review a trial court's denial of a continuance for an abuse of discretion. *See People v. Ahuero*, 2017 CO 90, ¶ 11. A court abuses its discretion by denying a motion to continue "only when, based on the particular circumstances confronting it, its ruling on the motion is manifestly arbitrary, unreasonable, or unfair." *Id.* (quoting *People v. Crow*, 789 P.2d 1104, 1106 (Colo. 1990)).

¶ 10 Criminal defendants have a constitutional right to be represented by retained counsel of their choice. *See Brown*, ¶ 16. But this right is not absolute. *Id.* at ¶ 17. It must be balanced

against other interests, like those of judicial efficiency and the integrity of the judicial process. *Id.* For this reason, when a defendant requests a continuance so that he may be represented by counsel of choice, the trial court must consider and make a record on the eleven factors articulated in *Brown*. *Id.* at ¶ 24.

¶ 11 Importantly, when a defendant requests a continuance for a reason other than accommodating representation by counsel of choice, the trial court need not make findings on the *Brown* factors. See *People v. Travis*, 2019 CO 15, ¶ 12.

¶ 12 As mentioned above, Woo's retained counsel took over the case in February 2017. To allow counsel to get up to speed, the trial court first continued the trial to May and then August 2017. Then, in June 2017, Woo's counsel requested another continuance based on discovery that the prosecution had recently provided and was continuing to provide. Notably, the justification for this continuance had nothing to do with Woo exercising his constitutional right to counsel of choice — instead, it was based on the need to review voluminous evidence the prosecution had provided since counsel had taken over the case. The trial court granted this continuance and reset the trial for January 2018.

¶ 13 Beginning in November 2017, Woo requested the series of continuances that are the subject of this appeal. These motions were similar to the June 2017 motion in that they did not implicate Woo's right to counsel of choice. They were based on counsel's purported need for additional time to review recently provided evidence. Although the trial court continued the trial for a week, it otherwise denied these motions.

¶ 14 Woo now claims that these denials were error because the trial court failed to making findings on all the *Brown* factors. But findings under *Brown* were not required because Woo's motions did not implicate his right to counsel of choice. *Travis*, ¶ 12. Woo filed the denied motions nine months after counsel took over the case. And they were based on counsel's need to review evidence provided long after counsel took over, not to allow counsel time to get up to speed because he was new to the case. Because the motions did not implicate Woo's right to counsel of choice, we disagree with Woo that the trial court erred by failing to address the *Brown* factors in denying the motions.

¶ 15 In his opening brief, Woo argues only that the trial court erred by failing to address all of the *Brown* factors. For the first time in

~~his reply brief, he argues that even if the trial court was not~~

required to comply with *Brown*, the court nevertheless abused its discretion by denying the motions. Although we need not address arguments raised for the first time in a reply brief, *see People v. Montante*, 2015 COA 40, ¶ 58 n.4, we briefly explain why the denials here were not an abuse of discretion.

¶ 16 When it denied Woo’s motions to continue in December 2017, the trial court had already continued the trial from May to the following January. The trial court considered the burden of another continuance on J.T.’s family and found that the evidence that defense counsel claimed he needed additional time to review “had been available to Defense for a substantial period of time.” Moreover, at that time, there was still a month left before trial that defense counsel could use to prepare. Under these circumstances, we conclude that the court’s ruling was not manifestly arbitrary, unreasonable, or unfair. *See Travis*, ¶ 16 (determining there was no abuse of discretion where trial court denied motion to continue after considering previously granted continuances, the length of time the case had been pending, and unpersuasive arguments about why continuance was necessary).

III. Video Timeline and Narrative Testimony

¶ 17 Woo next argues that the trial court erred by admitting a written timeline of various admitted video surveillance clips and an investigator's identification of Woo in some of those clips. We review for an abuse of discretion. *See People v. Allgier*, 2018 COA 122, ¶ 43. If the trial court abused its discretion, we will reverse only if the error was not harmless. *Id.* An error is harmless as long as it does not substantially influence the verdict or affect the fairness of the trial proceedings. *See Hagos v. People*, 2012 CO 63, ¶ 12.

A. Written Timeline

¶ 18 Woo argues that the written timeline was inadmissible under CRE 1006 because the video clips it summarized were not so voluminous that they required a written summary.

¶ 19 CRE 1006 provides that “[t]he contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation.” Our supreme court has explained that to be admissible under this rule, the evidence summarized “must be sufficiently voluminous such that in-court examination would be

~~inconvenient.” *Murray v. Just In Case Bus. Lighthouse, LLC*, 2016~~

CO 47M, ¶ 50. But the number and size of the exhibits are not the only factors to consider when determining whether evidence is sufficiently voluminous to warrant a summary exhibit. *Id.* at ¶ 53. Instead, “it is the case’s complexity and the jury’s need of an aid to understand the evidence that warrant introducing summary exhibits.” *Id.*

¶ 20 If a summary exhibit is warranted, the exhibit should organize the summarized evidence in a manner helpful to the jury and free from arguments or conclusions. *Id.* at ¶ 54.

¶ 21 The written timeline here was warranted and did just that. It organized seven different video clips from three different cameras in chronological order along with neutral descriptions of what was seen in each clip. The timeline helped the jury track the chronology of events depicted in the surveillance footage without having to flip back and forth between the different clips and reorient itself with each switch between cameras. It helped the jury understand what the clips as a whole showed without arguing their significance. We therefore disagree with Woo’s argument that the summarized evidence was insufficiently voluminous to warrant a summary.

B. Investigator's Testimony

¶ 22 Woo also argues that the trial court abused its discretion by allowing an investigator to testify that Woo was the person depicted in the surveillance footage. We agree but conclude the error was harmless.

¶ 23 Lay witnesses may offer opinion testimony if it is rationally based on the witness's perception and helpful to a clear understanding of the witness's testimony or the determination of a fact in issue. CRE 701. "Lay opinion testimony is permitted under Rule 701 because 'it has the effect of describing something that the jurors could not otherwise experience for themselves by drawing upon the witness's sensory and experiential observations that were made as a firsthand witness to a particular event.'" *People v. McFee*, 2016 COA 97, ¶ 76 (quoting *United States v. Freeman*, 730 F.3d 590, 595 (6th Cir. 2013)). But a lay witness may not "form conclusions for jurors that they are competent to reach on their own." *Id.* Thus, a lay witness's testimony about what a video recording shows is improper if it is based only on having watched the video. *See id.* In such a situation, the witness is in no better position to view and interpret the video than the jury. *Id.*

¶ 24 The investigator here testified that he was able to identify Woo as the person in the video clips based only on his review of those clips. Thus, he was in no better position than the jury to identify Woo and his identification testimony was inadmissible.

¶ 25 Nevertheless, we conclude that admitting this identification testimony was harmless because it was consistent with Woo's theory of defense. During opening and closing argument, Woo's counsel argued that Woo found J.T. already dead and tried to delay discovery of her body because he knew he would be the number one suspect. The investigator identified Woo as the person in the video who exited the storage unit after J.T.'s car drove into it and then got in an Uber and left the facility. This was consistent with Woo's theory that he found J.T. already dead and tried to flee before her death was discovered. It is therefore not reasonably probable that the investigator's testimony substantially influenced the verdict and contributed to Woo's conviction. *See People v. Casias*, 2012 COA 117, ¶ 61 (error is harmless if there is no reasonable probability that it contributed to a defendant's conviction).

IV. Suppression

¶ 26 Finally, Woo argues that the trial court erred by failing to suppress evidence obtained as a result of the warrantless search of his storage unit. Our review of a suppression ruling presents a mixed question of fact and law. *See People v. Hyde*, 2017 CO 24, ¶ 9. We defer to the trial court's factual findings if they are supported by the record and assess the legal effect of those findings *de novo*. *Id.*

¶ 27 Under the Fourth Amendment, a warrantless search of a person's property is presumptively unreasonable and therefore illegal. *See People v. Dyer*, 2019 COA 161, ¶ 15. The prosecution can overcome the presumptive illegality of a warrantless search by establishing that it falls within a recognized exception to the warrant requirement. *Id.* One of these exceptions is the exigent circumstances exception. *See People v. Kluhsman*, 980 P.2d 529, 534 (Colo. 1999). As relevant here, the exigent circumstances exception applies when there is probable cause for the search and there is a colorable claim of emergency threatening the life or safety of another. *Id.*

¶ 28 At the suppression hearing, the trial court determined that the officers had probable cause to search Woo's storage unit. The court

~~also determined that breaking in without a warrant was justified~~

under the exigent circumstances exception because there was a colorable claim of emergency threatening the life or safety of J.T.

The court based these conclusions on the following factual findings:

- J.T.'s teenage son called 911 because although his mom sometimes went out at night, she had never before failed to be home in the morning and he was very concerned about her.
- J.T.'s son told officers that she had been dating Woo, was fearful of him, and had called the police several days before because Woo was stalking her.
- J.T.'s son gave officers both of J.T.'s cell phone numbers.
- Officers were able to ping the location of only one of those cell phones, and the ping indicated that the phone was at Woo's storage unit.

¶ 29 Woo does not challenge these factual findings or the trial court's determination that probable cause for the search existed. He challenges only the trial court's determination that there was a colorable claim of emergency threatening J.T.'s life or safety that

justified breaking into the storage unit without a warrant. Based

on the facts as found by the trial court, we disagree.

¶ 30 J.T. was missing and her oldest son feared for her safety. Woo had been stalking her, she was afraid of Woo, and police had located her cell phone at Woo's storage unit. Based on these facts, we conclude that the exigent circumstances exception authorized the officers to break into Woo's storage unit without a warrant. We therefore disagree with Woo's argument that the trial court erred by failing to suppress evidence obtained as a result of that search.

V. Conclusion

¶ 31 The judgment of conviction is affirmed.

JUDGE J. JONES and JUDGE BERGER concur.

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: March 29, 2021 CASE NUMBER: 2021SC8
Certiorari to the Court of Appeals, 2018CA584 District Court, El Paso County, 2016CR2069	
Petitioner: James Takchuan Woo, v.	Supreme Court Case No: 2021SC8
Respondent: The People of the State of Colorado.	
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, MARCH 29, 2021.

APPENDIX B