SUPREME COURT OF COLORADO

Murray v. Just In Case Business Lighthouse, LLC

2016 CO 47 (2016) · No. 13SC722 · Decided June 20, 2016

SUMMARY

The Colorado Supreme Court held that violating Colorado Rule of Professional Conduct 3.4(b) does not require automatic exclusion of testimony from an improperly compensated witness; admissibility remains subject to the trial court's discretion under CRE 403. The court also held that non-expert summary witnesses may testify based on personally reviewed documentary evidence when the evidence is complex and voluminous, but summary exhibits under CRE 1006 may not characterize evidence argumentatively. The court affirmed in part and reversed in part, reversing the remand concerning the witness's testimony and finding the admission of one argumentative chart harmless.

CASE DETAILS

COURT	Supreme Court of Colorado
WRITING FOR THE COURT	Justice Boatright
JURISDICTION	Colorado
DECIDED	June 20, 2016
DOCKET	13SC722
DISPOSITION	other
PROCEDURAL POSTURE	Murray sought review of a Colorado Court of Appeals decision arising from a jury verdict and judgment in favor of Just In Case Business Lighthouse, LLC. The Colorado Supreme Court granted certiorari to review the treatment of a contingent-fee witness, non-expert summary testimony, and summary exhibits.
STANDARD OF REVIEW	Evidentiary rulings are reviewed for abuse of discretion. A ruling is an abuse of discretion when it is manifestly arbitrary, unreasonable, or unfair, or rests on an erroneous view of the law or clearly erroneous assessment of the evidence. Evidentiary error is reversible only if it affects a substantial right.
PRECEDENTIAL VALUE	Published, precedential en banc opinion of the Colorado Supreme Court.
PARTIES	Patrick Murray v. Just In Case Business Lighthouse, LLC

TOPICS

evidence | commercial litigation | best evidence rule | expert testimony | relevance

PRACTICE AREAS

Evidence | Professional responsibility | Civil litigation | Commercial litigation

QUESTIONS PRESENTED

1. Whether violation of RPC 3.4(b) by compensating a witness through a contingent fee requires per se exclusion of the witness's testimony.
2. Whether a non-expert summary witness may testify under CRE 602 based on personal examination of underlying documentary evidence.
3. Whether the trial court abused its discretion under CRE 1006 by admitting summary charts that organized evidence but, in one chart, characterized it in an argumentative manner.
4. Whether the court of appeals properly remanded for the trial court to determine whether Sumner's testimony should be excluded as a sanction for the ethical violation.

HOLDINGS

1. A violation of an ethical rule does not displace the rules of evidence, and RPC 3.4(b) does not require per se exclusion of testimony from an improperly compensated witness. The trial court may exclude such testimony under CRE 403 when the danger of unfair prejudice substantially outweighs its probative value.
2. The trial court did not abuse its discretion by allowing Sumner to testify because the danger of unfair prejudice did not substantially outweigh the testimony's probative value.
3. Trial courts may permit non-expert summary testimony when the evidence is sufficiently complex and voluminous that the testimony would assist the trier of fact. In those circumstances, a summary witness may satisfy CRE 602's personal-knowledge requirement by examining the underlying documentary evidence on which the summary testimony is based.
4. Under CRE 1006, summary charts must accurately and nonmisleadingly summarize sufficiently voluminous evidence and may not be embellished with the proponent's argumentative conclusions or inferences. Exhibit 1 was properly admitted because it neutrally organized chronological facts; Exhibit 1.1 was improperly admitted because its headings characterized the evidence argumentatively, but the error was harmless.

KEY QUOTATIONS

> *"We hold that the violation of an ethical rule does not displace the rules of evidence and that trial courts retain the discretion under CRE 403 to exclude the testimony of improperly compensated witnesses."* (¶ 2)

> *"We further hold that in those circumstances, summary witnesses may satisfy CRE 602's personal-knowledge requirement by examining the underlying documentary evidence on which they based their summary testimony."* (¶ 3)

> *"We hold that that under CRE 1006, trial courts abuse their discretion when they admit summary charts that characterize evidence in an argumentative fashion rather than simply organize it in a manner helpful to the trier of fact."* (¶ 4)

> *"We reject a per se rule excluding improperly compensated witness testimony because excluding entire categories of witnesses from testifying neither promotes the discovery of truth nor assures the fairness of the judicial proceedings, and it precludes the trial court from exercising its discretion."* (¶ 25)

FACTUAL BACKGROUND

Just In Case Business Lighthouse, LLC entered agreements with Pearl Development Company under which JIC would receive a commission for facilitating a sale of Pearl. Pearl's owners later sold Pearl to Epic Energy Resources, Inc. after Murray persuaded JIC's owner to sign a termination agreement, preventing JIC from receiving the expected commission. During the litigation, JIC hired Preston Sumner as an advisor and agreed to pay him a ten-percent interest in the outcome; Sumner reviewed admitted documents, prepared summary exhibits, and testified as a non-expert summary witness in a complex case involving more than 200 exhibits.

PROCEDURAL HISTORY

JIC sued Murray and others concerning the loss of a commission connected to the sale of Pearl Development Company. The trial court allowed Preston Sumner, who had a contingent interest in the case outcome, to testify as a non-expert summary witness and admitted two summary exhibits; the jury returned a verdict for JIC. The court of appeals held that the contingent fee violated RPC 3.4(b), declined to adopt automatic exclusion, and remanded for consideration of exclusion as a sanction, while affirming on the summary-testimony and summary-exhibit issues. The Colorado Supreme Court reversed the remand portion and affirmed the remaining rulings.

DISPOSITION

other

REMAND INSTRUCTIONS

No remand was required. The court reversed the court of appeals' judgment insofar as it remanded for determination whether Sumner's testimony should be excluded, and affirmed the court of appeals on all remaining issues.

CASES CITED

- Just in Case Bus. Lighthouse, LLC v. Murray, 2013 COA 112M, ¶¶ 21, 26, 34, 43, __ P.3d __
- People v. Segovia, 196 P.3d 1126, 1129 (Colo. 2008)
- Liebnow ex rel. Liebnow v. Boston Enters. Inc., 2013 CO 8, ¶¶ 11, 14, 296 P.3d 108, 113-14
- Buckley Powder Co. v. State, 70 P.3d 547, 559 (Colo. App. 2002)
- People v. Belfor, 591 P.2d 585, 587 (Colo. 1979)
- People v. Dist. Ct. of El Paso Cty., 869 P.2d 1281, 1285 (Colo. 1994)
- Palizzi v. City of Brighton, 228 P.3d 957, 962 (Colo. 2010)

- In re Estate of Myers, 130 P.3d 1023, 1025 (Colo. 2006)
- Jamaica Time Petroleum, Inc. v. Fed. Ins. Co., 366 F.2d 156, 158 (10th Cir. 1966)
- People v. Romero, 745 P.2d 1003, 1015-16 (Colo. 1987)
- United States v. Lemire, 720 F.2d 1327, 1346-50 (D.C. Cir. 1983)
- United States v. Scales, 594 F.2d 558, 562-63 (6th Cir. 1979)
- Bryant v. Farmers Ins. Exchange, 432 F.3d 1114, 1123 (10th Cir. 2005)
- United States v. Brooks, 736 F.3d 921, 931 (10th Cir. 2013)
- United States v. Bray, 139 F.3d 1104, 1109-10 (6th Cir. 1998)
- United States v. Irvin, 682 F.3d 1254, 1261-63 (10th Cir. 2012)
- United States v. Swanquist, 161 F.3d 1064, 1073 (7th Cir. 1998)
- Laura A. Newman, LLC v. Roberts, 2016 CO 9, ¶ 24, 365 P.3d 972, 978