

Order

Michigan Supreme Court
Lansing, Michigan

October 31, 2025

Megan K. Cavanagh,
Chief Justice

168242 & (80)

Brian K. Zahra
Richard H. Bernstein
Elizabeth M. Welch
Kyra H. Bolden
Kimberly A. Thomas
Noah P. Hood,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 168242
COA: 364570
Jackson CC: 2021-002468-FC

TRASHAWN DEMARQUS JOHNSON,
Defendant-Appellant.

On order of the Court, the application for leave to appeal the January 13, 2025 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court. The motion to remand is DENIED.

THOMAS, J. (*concurring*).

Video evidence is increasingly being viewed in criminal trials.¹ This is no surprise. Most Americans carry a cell phone with them, which necessarily gives them a camera everywhere they go.² And businesses and governments have turned to video surveillance to monitor public places in an attempt to deter, or assist in solving, crimes.³ Video surveillance has become nearly ubiquitous in the modern world.

¹ Granot et al, *In the Eyes of the Law: Perception Versus Reality in Appraisals of Video Evidence*, 24 Psychol Pub Pol’y & L 93, 94 (2018).

² Kimpel, *Violent Videos: Criminal Defense in a Digital Age*, 37 Ga St U L Rev 305, 310-311 (2021) (noting that 96% of Americans own a cell phone and 96% of those between the ages of 18 and 29 have a smart phone); Golaszewski, *Where’s the Video?*, 112 Ill B J 24, 24 (2024).

³ Lartey, *More Police Are Using Your Cameras for Video Evidence*, Marshall Project <<https://www.themarshallproject.org/2024/01/13/police-video-surveillance-california>> (accessed October 27, 2025) [<https://perma.cc/BA6M-SQ5A>]; Ratcliffe & Rosenthal, *Video Surveillance of Public Places* (2d ed), Arizona State University Center for Problem-Oriented Policing <<https://popcenter.asu.edu/content/video-surveillance-public-places-2nd-edition>> (accessed October 27, 2025) [<https://perma.cc/TR2M-2DAG>].

This case, in which a police officer who did not have personal knowledge of the events narrated to the jury during the showing of a video, showcases the need to consider what guardrails courts must have in place to preserve the jury's role as fact-finder in cases involving video evidence. As we have long recognized, “ ‘The jurors are the judges of the fact[s][.]’ ” *People v Lintz*, 244 Mich 603, 613 (1928), quoting 1 Zoline's Federal Criminal Law and Procedure, §§ 437 and 438.⁴ Therefore, we limit lay opinion testimony to that which is “rationally based on the witness's perception” and “helpful to clearly understanding the witness's testimony or to determining a fact in issue.” MRE 701. Likewise, we require the witness to “[have] personal knowledge of the matter.” MRE 602. The gist: “ ‘[I]t is error to permit a witness to give his own opinion or interpretation of the facts’ ” when the “ ‘jury is as capable as anyone else of reaching a conclusion’ ” *People v Perkins*, 314 Mich App 140, 161-162 (2016), vacated in part on other grounds 314 Mich App 801 (2016), quoting *People v Drossart*, 99 Mich App 66, 80 (1980).

Many view videos, and their own interpretations of them, as highly credible, if not unimpeachable.⁵ Yet, the interpretation of a video can be influenced by changes in the physical perspective of the camera, choices concerning what is and is not captured in-frame, and our own internal cognitive biases.⁶ In other words, video evidence does not necessarily “speak for itself.” What we “hear” and “see” is influenced by a variety of factors.

⁴ Cf. *Janetsky v Saginaw Co*, ___ Mich ___, ___ n 15 (July 25, 2025) (Docket Nos. 166477 and 166478); slip op at 20 n 15 (explaining that this Court “[does] not ‘decide . . . questions of fact’ because ‘appellate courts are not juries’ ”), quoting *People v Wolfe*, 440 Mich 508, 514-515 (1992) (some quotation marks omitted).

⁵ *In the Eyes of the Law*, 24 Psychol Pub Pol'y & L at 94.

⁶ See *In the Eyes of the Law*, 24 Psychol Pub Pol'y & L at 97-98 (explaining that viewers often “give too much weight to inaccurate, misleading, or superficial information at the expens[e] of relevant and probative details” and “overemphasize aspects of a video that are consistent with their preferences or expectations”); Williams, *The Noisy “Silent Witness”: The Misperception and Misuse of Criminal Video Evidence*, 94 Ind L J 1651 (2019) (discussing how camera angle, playback speed, and the scope of what is shown in the camera frame influences juror interpretation of video footage); Ristovska & Granot, *Justice by Video: Do Courts Need Legal Guidelines for Video Evidence?*, 20 ABA SciTech Law 4, 5-6 (2024) (“Information may be missed because viewers direct their attention away from it. However, sometimes viewers even miss things directly in their line of sight, a phenomenon known as inattention blindness. In the most well-known demonstrations of this phenomenon, commonly called the ‘invisible gorilla’ studies, over half of people missed a man in a gorilla suit walking through the middle of a ball-passing game between players in white and black shirts.”).

Allowing descriptions or narrations by a police officer or other authority figure risks improperly influencing jurors' interpretations of a video. First, providing the jury with a specific account as the video is presented can serve to prime them to interpret the video a specific way. Second, it provides an account explicitly or implicitly endorsed by an authority figure, which jurors may defer to as inherently credible.⁷ Thus, the increasing use of video threatens to water down the jury's role as fact-finder if we allow it without thoughtfully and uniformly applying our rules of evidence.

Though our courts have had little opportunity to address such issues, other jurisdictions have already considered the application of evidentiary principles to officer testimony narrating or interpreting videos. See, e.g., *Cuzick v Commonwealth*, 276 SW3d 260, 265 (Ky, 2009) ("Therefore, the fulcrum of the matter upon which this issue turns, is whether the witness has testified from personal knowledge and rational observation of events perceived and whether such information is helpful to the jury.").⁸ A common thread is that a lay witness "may not 'interpret' audio or video evidence" without "invad[ing] the province of the jury" *Id.* Rather, there must be "some basis for concluding that the witness is more likely to correctly" ascertain the events depicted than the jury. *Rossana v State*, 113 Nev 375, 380 (1997) (quotation marks and citation omitted) (concerning identification of individuals depicted in a video). This "something more" typically requires presence at the scene during or after the events depicted, see, e.g., *Mills v Commonwealth*, 996 SW2d 473, 488 (Ky, 1999) (describing characteristics of the room in the video based on presence during the crime scene investigation), overruled in part on other grounds by *Padgett v Commonwealth*, 312 SW3d 336 (Ky, 2010), or witnessing the events in person, see, e.g., *State v Watson*, 254 NJ 558, 599 (2023) ("By way of example, bank employees

⁷ Cf. *Butler v City of Camden*, 352 F3d 811, 817 (CA 3, 2003) (noting that "some . . . may believe '[l]aw enforcement officials wear an invisible cloak of credibility by virtue of their position.'"), quoting *United States v Anagnos*, 853 F2d 1, 4 (CA 1, 1988); see also Warren, *Hidden in Plain View: Juries and the Implicit Credibility Given to Police Testimony*, 11 DePaul J for Soc Just 1, 3-6 (2018) (discussing why some jurors view police testimony as inherently credible).

⁸ See also Anno: *Admissibility of Lay Witness Interpretation of Surveillance Photograph or Videotape*, 74 ALR 5th 643, 652-653, § 2(a) ("It appears that while some jurisdictions discourage [identification] testimony [based on a surveillance photo or videotape] except in unusually difficult circumstances, none of the in-point cases categorically prohibit such testimony, which is generally deemed admissible where such testimony is based on the perceptions and knowledge of the witness, the testimony would be helpful to the jury in the jury's fact-finding function rather than invasive of that function, and the helpfulness outweighs the possible prejudice to the defendant from admission of the testimony.").

can testify about the portion of a recording that depicts their encounter with a robber. Investigators can likewise testify about parts of a recording that reflect their investigative work at a crime scene or their familiarity with an area depicted in a video based on prior experience.”).⁹

The New Jersey Supreme Court has also recognized that the jury may require narration by one without first-hand knowledge to interpret the events in a low-quality or complex video. See *Watson*, 254 NJ at 601 (using as an example a “video of hundreds of demonstrators and violent incidents”). However, it later explained the prohibitions it places around such narrations as follows:

We disapproved of the presentation of “continuous commentary during a video by an investigator whose knowledge is based only on viewing the recording”; an investigator’s “subjective interpretations” of what appears on a video; an investigator’s testimony about personal views on “factual issues that are reasonably disputed”; and an investigator’s observations “on what is depicted in a video based on inferences or deductions, including any drawn from other evidence.” [*State v Allen*, 254 NJ 530, 547 (2023), quoting *Watson*, 254 NJ at 604.]

I recognize that the case at hand does not present the appropriate opportunity to address these important issues. It is questionable whether this defendant endured any prejudice given the limited nature of the testimony and the underlying facts of the case. See MCR 2.613(A). However, this issue is becoming increasingly relevant with the proliferation of cameras and the risks video evidence and narration thereof introduce. Accordingly, I write to identify this as an area of law for our courts to address further.

⁹ See also *Nadeau v Hunter Lawn Care, LLC*, 585 F Supp 3d 158, 161 (D Mass, 2022) (“[The witness] is not, however, permitted to testify as to what he saw on the surveillance video because he did not perceive those events as they happened.”).



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I, Elizabeth Kingston-Miller, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

October 31, 2025

Elizabeth Kingston-Miller
Clerk