

CASE ANNOUNCEMENTS
COLORADO SUPREME COURT
MONDAY, MAY 21, 2018

"Slip opinions" are the opinions delivered by the Supreme Court Justices and are subject to modification, rehearing, withdrawal, or clerical corrections. Modifications to previously posted opinions will be linked to the case number in the petition for rehearing section the day the changes are announced.

Click on the case number to view the opinion in pdf format.

OPINIONS

[2018 CO 36](#)

[Supreme Court Case No. 16SC377](#)
Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 14CA1869

Petitioner:

Colorado Union of Taxpayers Foundation,

v.

Respondents:

City of Aspen; Steve Skadron, Adam Frisch, Art Daily, Ann Mullins, and Bert Myrin, all
in their official capacities as members of the Aspen City Council.

Judgment Affirmed

en banc

CHIEF JUSTICE RICE delivered the Opinion of the court.
JUSTICE COATS dissents, and **JUSTICE BOATRIGHT** joins in the dissent.
JUSTICE HOOD dissents.

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[2018 CO 37](#)

[Supreme Court Case No. 16SC851](#)
Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 15CA1572

Petitioner:

The City and County of Denver,

v.

Respondent:

Sean Dennis, as conservator and on behalf of Doreen Heyboer.

Judgment Reversed
en banc

CHIEF JUSTICE RICE delivered the Opinion of the Court.
JUSTICE GABRIEL dissents, and **JUSTICE HOOD** and **JUSTICE HART** join in the dissent.

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[2018 CO 38](#)

[Supreme Court Case No. 17SA5](#)

Appeal from the District Court

Weld County District Court, Water Division 1, Case No. 15CW3018

Honorable James F. Hartmann, Water Judge

Plaintiff-Appellant:

The Jim Hutton Educational Foundation, a Colorado non-profit corporation,

v.

Defendants-Appellees:

Kevin Rein, in his capacity as the Colorado State Engineer; David Nettles, in his capacity as Division Engineer in and for Water Division No. 1, State of Colorado; Colorado Division of Water Resources; and Colorado Division of Parks and Wildlife,
and

Defendants-Intervenors-Appellees:

Yuma County Water Authority Public Improvement District; Colorado Ground Water Commission; and Marks Butte, East Cheyenne, Frenchman, Sandhills, Central Yuma, Plains, W-Y, and Arikaree Ground Water Management Districts,
and

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Defendants-Well Owners-Appellees:

Republican River Water Conservation District; City of Wray; City of Holyoke; Harvey Colglazier; Lazier, Inc.; Marjorie Colglazier Trust; Mariane U. Ortner; Timothy E. Ortner; Protect Our Local Community's Water, LLC; Saving Our Local Economy, LLC; the "North Well Owners"; Tri-State Generation and Transmission Association, Inc.; Dirks Farms Ltd; Julie Dirks; David L. Dirks; Don Andrews; Myrna Andrews; Nathan Andrews; Happy Creek, Inc.; J&D Cattle, LLC; 4M Feeders, Inc.; May Brothers, Inc.; May Family Farms; 4M Feeders, LLC; May Acres, Inc.; Thomas R. May; James J. May; Steven D. Kramer; Kent E. Ficken; Carlyle James as Trustee of the Chester James Trust; Colorado Agriculture Preservation Association; Colorado State Board of Land Commissioners; and the City of Burlington.

Judgment Affirmed
en banc

JUSTICE BOATRIGHT delivered the Opinion of the Court.

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[2018 CO 39](#)

[Supreme Court Case No. 15SC472](#)
Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 13CA2361

Petitioner:

State Farm Mutual Automobile Insurance Company,

v.

Respondent:

Dale Fisher.

Judgment Affirmed
en banc

JUSTICE HOOD delivered the Opinion of the Court.

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[2018 CO 40](#)

[Supreme Court Case No. 18SA24](#)
Interlocutory Appeal from the District Court
Adams County District Court Case No. 16CR2367
Honorable Robert Kiesnowski, Judge

Plaintiff-Appellant:

The People of the State of Colorado,

v.

Defendant-Appellee:

David Morris Ehrnstein.

Order Reversed
en banc

JUSTICE GABRIEL delivered the Opinion of the Court.

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[2018 CO 41](#)

[Supreme Court Case No. 17SC406](#)

Certiorari to the District Court

Boulder County, District Court Case No. 17CV30006

Petitioner:

Megan Maya Parocha,

v.

Respondent:

Richard Francis Saga Parocha.

Judgment Reversed

en banc

JUSTICE HART delivered the Opinion of the Court.

COLORADO SUPREME COURT CASE ANNOUNCEMENTS

PETITIONS FOR REHEARING

NONE

GRANTED PETITIONS FOR WRIT OF CERTIORARI

18SC3, Court of Appeals Case No. 16CA1316

Petitioners:

Department of Revenue of the State of Colorado and Michael Hartman in his official capacity as the Executive Director of the Department of Revenue of the State of Colorado,

v.

Respondent:

Oracle Corporation and subsidiaries.

Petition for Writ of Certiorari GRANTED. EN BANC.

Whether a holding company that has no foreign property, payroll, or operations is exempt from Colorado taxation under the “Water’s Edge” exemption (§39-22-303(8), (12)(c)).

Whether section 39-22-303(6) authorizes the Department to allocate a domestic holding company’s income to its corporate parent to “clearly reflect” the parent’s income and “avoid abuse.”

COLORADO SUPREME COURT CASE ANNOUNCEMENTS

18SC45, Court of Appeals Case No. 14CA1920

Petitioner:

Julian Anastacio Deleon,

v.

Respondent:

The People of the State of Colorado.

Petition for Writ of Certiorari GRANTED. EN BANC.

Whether a trial court’s introductory comments to unsworn venire members fulfill the constitutional requirement for jurors to be instructed, in an effective manner, that a defendant has the right to not testify and no adverse inference can be drawn from his decision to not testify.

Whether appellate courts review a trial court’s failure to give a jury instruction, tendered and repeatedly requested by a litigant, for plain error.

DENIED AS TO ALL OTHER ISSUES.

18SC101, Court of Appeals Case No. 17CA255

Petitioner:

M.M.A.

v.

Respondent:

The People of the State of Colorado,

In the Interest of

M.R.M., M.A.M., and M.M.M.

Petition for Certiorari GRANTED. The judgment of the Colorado Court of Appeals is vacated, and the case is remanded to the Colorado Court of Appeals for reconsideration in light of People in the Interest of R.S. v. G.S., 16SC970, 2018 CO 31. EN BANC.

Whether a juvenile court’s order terminating its jurisdiction is a final and appealable order from which an appeal may be taken; or whether an order allocating parental responsibilities automatically terminates the juvenile court’s jurisdiction such that the APR order is the only order from which an appeal may be taken after entry of the allocation order.

COLORADO SUPREME COURT CASE ANNOUNCEMENTS

No. 17SC595, Court of Appeals Case No. 14CA562

Petitioner:

Kyree Davon Howard-Walker,

v.

Respondent:

The People of the State of Colorado.

Petition for Writ of Certiorari GRANTED. EN BANC.

Whether the court of appeals erroneously held that five trial errors, two instructional errors, and one instance of prosecutorial misconduct did not rise to the level of cumulative error because the court of appeals applied federal cumulative error law for the first time in Colorado, contradicting this Court's precedent.

Whether the court of appeals erred in holding that the improper expert testimony was not plain even though the error was plain at the time of direct appeal.

DENIED AS TO ALL OTHER ISSUES.

JUSTICE MÁRQUEZ would grant as to the following issue:

Whether the court of appeals erred in affirming the trial court's denial of three Batson v. Kentucky, 476 U.S. 79 (1986), challenges.

COLORADO SUPREME COURT CASE ANNOUNCEMENTS

17SC840, Court of Appeals Case No. 16CA849

Petitioners/Cross-Respondents:

Department of Revenue of the State of Colorado and Michael Hartman, in his official capacity as the Executive Director of the Department of Revenue of the State of Colorado,

v.

Respondent/Cross-Petitioner:

Agilent Technologies, Inc.

Petition and Cross-Petition for Writ of Certiorari GRANTED. EN BANC.

Whether a holding company that has no foreign property, payroll, or operations is exempt from Colorado taxation under the “Water’s Edge” exemption (C.R.S. § 39-22-303(8), (12)(c), (2017).

Whether section 39-22-303(6) authorizes the Department to allocate a domestic holding company’s income to its corporate parent to “clearly reflect” the parent’s income and “avoid abuse.”

Whether the principles of federal conformity require that the federal “check-the-box” elections made by World Trade’s subsidiaries be followed for Colorado income tax purposes, resulting in World Trade being excluded from Agilent’s Colorado combined returns under Section 303(8) because, as a result of those elections, more than 80% of World Trade’s property and payroll is located outside the United States.

Whether World Trade be excluded from Agilent’s combined returns because at least three of the six factors required for combination under Section 303(11)(a) are not satisfied.

DENIED AS TO ALL OTHER ISSUES.

COLORADO SUPREME COURT CASE ANNOUNCEMENTS

DENIED PETITIONS FOR WRIT OF CERTIORARI

17SC263, Court of Appeals Case No. 14CA326

Petitioner:

Rafael Perez,

v.

Respondent:

The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 17SC414, Court of Appeals Case No. 14CA2128

Petitioner:

Grover Cleveland Floyd, IV,

v.

Respondent:

The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

COLORADO SUPREME COURT CASE ANNOUNCEMENTS

No. 17SC448, Court of Appeals Case No. 16CA573

Petitioner:

Thomas Horiagon,

v.

Respondent:

Colorado Medical Board.

Petition for Writ of Certiorari DENIED. EN BANC.

JUSTICE MÁRQUEZ does not participate.

No. 17SC458, Court of Appeals Case No. 15CA1434

Petitioner:

Thomas E. Espinoza,

v.

Respondent:

The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 17SC503, Court of Appeals Case No. 16CA392

In re the Marriage of

Petitioner:

Cindy Gall,

and

Respondent:

Daniel Gall.

Petition for Writ of Certiorari DENIED. EN BANC.

JUSTICE HOOD and JUSTICE HART would grant as to the following issues:

[REFRAMED] Whether the Uniform Dissolution of Marriage Act allows for an implied waiver or forfeiture of spousal maintenance.

[REFRAMED] Whether there was an implied waiver of spousal maintenance on the facts present here.

COLORADO SUPREME COURT CASE ANNOUNCEMENTS

No. 17SC511, Court of Appeals Case No. 14CA1540

Petitioner:

Thomas Kevin Casey,

v.

Respondent:

The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 17SC561, Weld County District Court, 16CV30971

Petitioner:

Jovanny Nieves,

v.

Respondent:

The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 17SC606, Court of Appeals Case No. 16CA974

Petitioner / Cross-Respondent:

City of Woodland Park, Colorado,

v.

Respondents / Cross-Petitioners:

Dale R. Carley and Debbie C. Carley.

Petition and Cross-Petition for Writ of Certiorari DENIED. EN BANC.

COLORADO SUPREME COURT CASE ANNOUNCEMENTS

No. 17SC625, Court of Appeals Case No. 15CA1955

Petitioner/Cross-Respondent:

The People of the State of Colorado,

v.

Respondent/Cross-Petitioner:

Angelita Sue Ramos.

Petition and Cross-Petition for Writ of Certiorari DENIED. EN BANC.

JUSTICE BOATRIGHT and JUSTICE HOOD would grant as to the following issues:

Whether the court of appeals erroneously construed section 18-4-401(4)(a), C.R.S. (2017), to create an offense of aggregated theft that is distinct from that of theft.

Whether the prosecution, upon charging and failing to prove “aggregated thefts” under section 18-4-401(4)(a), C.R.S (2017), is entitled to entry of judgment for a single theft under section 18-4-401(1), C.R.S (2017).

No. 17SC668, Court of Appeals Case No. 15CA914

Petitioner:

Jason Romeo Forbes,

v.

Respondent:

The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 17SC689, Court of Appeals Case No. 16CA1590

In re the Parental Responsibilities Concerning Children:

T.H. and A.H.,

and Concerning

Petitioner:

James Hamilton,

v.

Respondent:

Cynthia Dawn Fields.

Petition for Writ of Certiorari DENIED. EN BANC.

COLORADO SUPREME COURT CASE ANNOUNCEMENTS

No. 17SC726, Court of Appeals Case No. 14CA583

Petitioner:

Desean Willie Owens,

v.

Respondent:

The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 17SC742, Arapahoe County District Court Case No. 16CV31455

Petitioner:

Ricky Griffing,

v.

Respondent:

The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 17SC747, Court of Appeals Case No. 13CA952

Petitioner:

Albert Roy Gonzales, Jr.,

v.

Respondent:

The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 17SC761, Court of Appeals Case No. 15CA1346

Petitioner:

Howell F. Roberts, III,

v.

Respondent:

The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

COLORADO SUPREME COURT CASE ANNOUNCEMENTS

No. 17SC763, Court of Appeals Case No. 16CA1660

Petitioner:

Jose Riccardo Sarabia-Martinez,

v.

Respondent:

Pablo Sarabia-Martinez.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 17SC769, Court of Appeals Case No. 13CA1371

Petitioner:

Ryan J. Miller,

v.

Respondent:

The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 17SC780, Court of Appeals Case No. 14CA1050

Petitioner:

Damon Wayne Summers, II,

v.

Respondent:

The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

COLORADO SUPREME COURT CASE ANNOUNCEMENTS

No. 17SC783, Court of Appeals Case No. 17CA665

In re the Parental Responsibilities Concerning P.A.P.-B., a child

Petitioner:

Matthew Paul Asbery,

and

Respondent:

Jenna Ruth Bell.

Petition for Writ of Certiorari DENIED. EN BANC.

JUSTICE BOATRRIGHT would grant as to the following issue:

Whether the court of appeals erred in concluding that petitioner's status as "psychological parent" was irrelevant to the determination of standing under section 14-10-123, C.R.S. (2017), and in denying petitioner standing based solely on the single factor that the biological parent exercised "direction and control" over the child's care.

No. 17SC809, Court of Appeals Case No. 16CA83

Petitioner:

Willie Trimble, Jr.,

v.

Respondent:

The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 17SC851, Court of Appeals Case No. 15CA1303

Respondent:

The People of the State of Colorado,

In the Interest of

Petitioner:

N.M.E.

Petition for Writ of Certiorari DENIED. EN BANC.

COLORADO SUPREME COURT CASE ANNOUNCEMENTS

No. 17SC859, Court of Appeals Case No. 17CA643

Petitioner:

Chaddrick L. Thomas, Sr.,

v.

Respondents:

Rick Raemisch, Executive Director of the Colorado Department of Corrections and
Michael Miller, Warden of the Crowley County Correctional Facility.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 17SC880, Court of Appeals Case No. 16CA744

Petitioner:

Timothy Allen Jayne,

v.

Respondent:

The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 17SC893, Court of Appeals Case No. 16CA553

Petitioner:

Dion P. Martinez,

v.

Respondent:

The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 17SC904, Court of Appeals Case No. 16CA743

Petitioner:

Shams Abdul-Rahman,

v.

Respondent:

The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

COLORADO SUPREME COURT CASE ANNOUNCEMENTS

No. 17SC906, Court of Appeals Case No. 15CA1844

Petitioner:

Horacio Espinoza,

v.

Respondent:

The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 17SC909, Court of Appeals Case No. 15CA2009

Petitioner:

Hanif Sims,

v.

Respondent:

The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 18SC8, Court of Appeals Case No. 16CA1810

Petitioner:

Derek Cole,

v.

Respondents:

Conerstone Equity, LLC; 1532 Galena, LLC; Douglas Adams; Michael Rasser; Markus Williams Young & Zimmermann, LLC; Thomas J. Bissell; Jireh Christian Center; Verdale Goins; Sharice Goins; Michael M. Noyes; Vesuvio Enterprises, LLC; Shelli Star; David F. Pellegrino; Brown, Berardini, Dunning & Walker, P.C.; Erick S. Arriola; Treasures, LTD; and Stan Ford.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 18SC9, Court of Appeals Case No. 14CA2085

Petitioner:

Robert Wolfgang Baillie,

v.

Respondent:

The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

COLORADO SUPREME COURT CASE ANNOUNCEMENTS

No. 18SC11, Court of Appeals Case No. 16CA1679

In re the Marriage of:

Petitioner/Cross-Respondent:

Fiona Mary Lohman,
and

Respondent/Cross-Petitioner:

Michael Joseph Lohman.

Petition and Cross-Petition for Writ of Certiorari DENIED. EN BANC.

No. 18SC13, Court of Appeals Case No. 17CA282

Petitioner:

Tnias Dimitri Pike,
v.

Respondent:

The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 18SC17, Court of Appeals Case No. 16CA943

Petitioner:

Arick Rinaldo,
v.

Respondents:

Bryan Mahan, D.O.; Catholic Health Initiatives Colorado d/b/a Centura Health-Penrose-St. Francis Health Services; Memorial Hospital; Judge Robin Chittum; Jeremy Patterson; Colorado Springs Police Officers; Kristen Hoffecker; and Pikes Peak Palliative and Hospice Care, Inc.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 18SC22, Court of Appeals Case No. 16CA973

Petitioner:

Ramon Lopez,
v.

Respondent:

The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

COLORADO SUPREME COURT CASE ANNOUNCEMENTS

No. 18SC23, Court of Appeals Case No. 16CA1948

Petitioner:

Jesus R. Quinonez-Hurtado,

v.

Respondent:

The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 18SC26, Court of Appeals Case No. 16CA843

Petitioner:

Jason M. Hogan,

v.

Respondent:

The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

JUSTICE COATS does not participate.

No. 18SC27, Court of Appeals Case No. 16CA536

Petitioner:

Patrick D. Portley-El,

v.

Respondent:

The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 18SC29, Court of Appeals Case No. 15CA1635

Petitioner:

Scott A. Eberhart,

v.

Respondent:

The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

COLORADO SUPREME COURT CASE ANNOUNCEMENTS

18SC33, Court of Appeals Case No. 14CA867

Petitioner:

Heather Lynn Jensen,

v.

Respondent:

The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

18SC38, Arapahoe County District Court Case No. 17CV30469

Petitioner:

Oscar Carillo-Carillo,

v.

Respondent:

The People of the City of Aurora, State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 18SC48, Court of Appeals Case No. 16CA911

Petitioner:

Ronald Joseph Aguilar,

v.

Respondent:

The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 18SC51, Court of Appeals Case No. 16CA1046

Petitioner:

Charles Whitten,

v.

Respondent:

The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

COLORADO SUPREME COURT CASE ANNOUNCEMENTS

No. 18SC53, Jefferson County District Court Case No. 16CV30956

Petitioner:

Derrick Smith,

v.

Respondent:

The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 18SC57, Court of Appeals Case No. 15CA950

Petitioner:

Tony Dotson,

v.

Respondent:

The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 18SC98, Court of Appeals Case No. 16CA1494

Petitioner:

Joyce B. Armstrong and Mary E. J. Armstrong Trust,

v.

Respondent:

The City of Lakewood, Colorado, a Colorado home rule municipality.

Petition for Writ of Certiorari DENIED. EN BANC
