



news

Colorado Judicial Department
Nathan B. Coats, Chief Justice
Steven Vasconcellos, Interim State Court Administrator

FOR IMMEDIATE RELEASE
Oct. 11, 2019

Contact: Robert McCallum or Jon Sarché
720-625-5815
720-625-5811

robert.mccallum@judicial.state.co.us
jon.sarche@judicial.state.co.us

Colorado Supreme Court to hear arguments at Cañon City High School

DENVER – The Colorado Supreme Court will hear oral arguments in two cases on Thursday, Oct. 17, 2019, at Cañon City High School before an audience of students. The public also is invited to attend.

The visit is part of the Colorado Judicial Branch's *Courts in the Community*, an outreach program the Colorado Supreme Court and Court of Appeals initiated on Law Day (May 1), 1986. The *Courts in the Community* program was developed to provide Colorado high school students insight regarding the Colorado judicial system and illustrate how disputes are resolved in a democratic society. These are not mock proceedings. The court will hear arguments in actual cases from which it will issue opinions. The court generally issues opinions within a few months of the arguments.

All seven justices hear cases together. They are Chief Justice Nathan B. Coats and Justices Monica M. Márquez, Brian D. Boatright, William W. Hood III, Richard L. Gabriel, Melissa Hart and Carlos A. Samour Jr.

The two cases are:

- **18SC84, *Alysha Walton v. People of the State of Colorado*:** After Alysha Walton was sentenced for driving under the influence, she asked the trial judge to grant her permission to use medical marijuana during her 12-month unsupervised deferred sentence. The judge denied the request, concluding that it is not appropriate for someone in substance abuse treatment classes to be under the influence of drugs, and Ms. Walton appealed. A District Court judge who heard the case on appeal from the County Court affirmed the decision, and Ms. Walton asked the Supreme Court to review the case. A critical issue is whether the statute permitting use of medical marijuana while on probation creates a presumption that the probationer may use medical marijuana unless the court determines that prohibiting its use is necessary and appropriate to accomplish

sentencing goals, or if a defendant first must provide evidence that she's received medical authorization to use marijuana in the first place. During a hearing in County Court, Ms. Walton's counsel presented Ms. Walton's medical marijuana registry card, her physician's certification form and her physician's active license but was unable to follow that court's policy to produce a physician to testify in support of her use of medical marijuana while on probation. Ms. Walton argued the prohibition violated her rights. But the District Court concluded that the County Court's policy of requiring a physician to testify regarding whether a defendant is legally authorized to use medical marijuana is reasonable and found for several reasons that the County Court's prohibition in this case was necessary and appropriate to meet sentencing goals. Prosecutors argued in support of the judges' decisions that Ms. Walton was unable to prove that she suffered a debilitating illness that might be alleviated through use of marijuana, and that there was insufficient evidence that she was authorized to use medical marijuana.

- **17SC430, *People of the State of Colorado v. William Steven Berry*:** The Supreme Court agreed to review this case after both sides appealed following the trial of William Berry, a former Lake County Sheriff's Deputy, who was charged with, among other things, embezzlement and official misconduct for buying privately owned guns that were being stored in the sheriff's evidence locker. The guns were removed from a home after Mr. Berry responded to a domestic violence call there. The husband was arrested and the wife asked that the guns be removed. After the husband's charges were resolved, prosecutors authorized law enforcement to either return the guns to their owner or destroy them. The husband had been deported, however, and Mr. Berry bought the guns from the wife for \$500. Prosecutors charged Mr. Berry with several counts after alleging, among other things, he forged the wife's signature on a release form. The jury convicted Mr. Berry of embezzlement of public property and official misconduct. A division of the Court of Appeals affirmed the misconduct conviction but reversed the embezzlement conviction. The division held that the guns at issue were not "public property" because they were merely in the possession of the sheriff's office as opposed to being owned by the county. On the charge of official misconduct, the division rejected Mr. Berry's argument that his purchase of the guns was not an act relating to his office, a necessary element of that offense. Prosecutors have asked the Supreme Court to reinstate the embezzlement conviction, and Mr. Berry asked the Supreme Court to overturn the conviction for official misconduct.

The proceedings will begin at 9 a.m. Thursday, Oct. 17, 2019 in the auditorium at Cañon City High School, 1313 College Ave., Cañon City, CO 81212. A question-and-answer session, during which the students may ask questions of the attorneys, will follow the arguments in each case. At the conclusion of the second argument, the students also will have the opportunity to participate in a question-and-answer session with the Supreme Court justices.

There will be a limited number of seats for the public. Audio recordings from the two arguments will be available online within one to two days of the arguments at

http://www.courts.state.co.us/Courts/Supreme_Court/Oral_Arguments/Index.cfm.

Editor's Note:

The documents related to these two cases are located at:

<https://www.courts.state.co.us/Courts/Education/Materials.cfm?s=Fall&y=2019>

Additional information on the Courts in the Community program is available at:

<http://www.courts.state.co.us/Courts/Education/Community.cfm>

News media organizations interested in recording the arguments may contact Jon Sarché at the State Court Administrator's Office (contact information below). The following pages contain information about expanded media coverage.

We will be reserving seats for journalists. Please contact Jon Sarché at jon.sarche@judicial.state.co.us or at 720-625-5811 if you plan to attend.

Media opportunity

What: Colorado Supreme Court Oral Arguments
When: 9 a.m. – noon, Oct. 17, 2019
Where: Cañon City High School, 1313 College Ave., Cañon City, CO 81212

Photo opportunities. During oral arguments, the requirements set forth in Chapter 38, Rule 3 of the Colorado Supreme Court Rules are in effect. Rule 3 is attached. Highlights include:

- a. A request for expanded media coverage (<https://www.courts.state.co.us/Media/request/>) must be filed in advance with copies to counsel for the parties (see below).
- b. If granted, only one video camera and/or one still camera is allowed, and that media source must share and pool its coverage with other media.
- c. No flash attachments or lighted television cameras are allowed during the arguments.
- d. The camera operator may use a tripod, but shall not change location while court is in session.

For information, contact Jon Sarché, (720) 625-5811.

Following each argument, during the question-and-answer interaction between the students, lawyers and justices, access is open for media opportunities without the limitations of Rule 3. All media representatives also are welcome to photograph the luncheon immediately following the cases.

Schedule:

9 a.m. – 9:15 a.m.	Opening remarks
9:15 a.m. – 10:15 a.m.	18SC84: <i>Walton v. People</i>
10:15 a.m. – 10:30 a.m.	Justices conference; attorneys answer students' questions
10:30 a.m. – 11:30 a.m.	17SC430: <i>People v. Berry</i>
11:30 a.m. – 11:45 a.m.	Justices conference; attorneys answer students' questions
11:45 a.m. – 12 p.m.	Justices answer students' questions
12 p.m. – 1:30 p.m. (est.)	Lunch, justices and selected students

Request for Expanded Media Coverage. Requests must be submitted at least one day prior to the proceeding as outlined in Rule 3 (submitting requests three days prior to the proceeding is appreciated to allow for response time). Requests may be made by filling out the form at <https://www.courts.state.co.us/Media/request/>. Contact information for counsel in the cases is provided below.

Expanded media coverage of court proceedings

The presence of expanded media coverage in the Colorado court system's courtrooms is controlled by strict standards spelled out in Chapter 38, Rule 3 of the Colorado Supreme Court Rules effective July 1, 2010. The rule also outlines each step necessary to garner approval for such coverage.

There are several points in the Rule of particular note:

1. A request for expanded media coverage (<https://www.courts.state.co.us/Media/request/>) must be submitted to the court at least one day before expanded media coverage is requested to begin, unless a longer or shorter time is required or permitted by the court.
2. Copies of the expanded media coverage request shall be sent to all counsel for each party participating in the proceeding prior to submitting the request to the court.
3. The request must include a description of the pooling arrangements, including the identity of the designated representatives.
4. Any party or witness may lodge with the judge a written objection to expanded coverage of all or a portion of a proceeding.

Request for expanded media coverage in Colorado state courts

Rule 3. Media Coverage of Court Proceedings

(a) Expanded Media Coverage: A judge may authorize expanded media coverage of court proceedings, subject to the guidelines set forth below.

- (1) **Definitions.** As used in this section, unless the context otherwise requires:
 - (A) "Proceeding" means any trial, hearing, or any other matter held in open court which the public is entitled to attend.
 - (B) "Photograph" and "photography" means all recording or broadcasting of visual images, by means of still photographs, videotape, television broadcasts, motion pictures, or otherwise.
 - (C) "Expanded media coverage" means any photography or audio recording of proceedings.
 - (D) "Judge" means the justice, judge, magistrate, or other judicial officer presiding over the proceedings. In proceedings with more than one judge presiding, any decision required shall be made by a majority of the judges.
 - (E) "Media" means any news gathering or reporting agency and the individual persons involved, and includes newspapers, radio, television, radio and television networks, news services, magazines, trade papers, in-house publications, professional journals, or any other news reporting or news gathering agency whose function it is to inform the public or some segment thereof.
- (2) **Standards for Authorizing Coverage.** In determining whether expanded media coverage should be permitted, a judge shall consider the following factors:
 - (A) Whether there is a reasonable likelihood that expanded media coverage would interfere with the rights of the parties to a fair trial;
 - (B) Whether there is a reasonable likelihood that expanded media coverage would unduly detract from the solemnity, decorum and dignity of the court; and
 - (C) Whether expanded media coverage would create adverse effects which would be greater than those caused by traditional media coverage.
- (3) **Limitations on Expanded Media Coverage.** Notwithstanding an authorization to conduct expanded media coverage of a proceeding, there shall be no:
 - (A) Expanded media coverage of pretrial hearings in criminal cases, except advisements and arraignments;
 - (B) Expanded media coverage of jury voir dire;
 - (C) Audio recording or "zoom" close-up photography of bench conferences;
 - (D) Audio recording or close-up photography of communications between counsel and client or between co-counsel;
 - (E) Expanded media coverage of in camera hearings;
 - (F) Close-up photography of members of the jury.

- (4) **Authority to Impose Restrictions on Expanded Media Coverage.** A judge may restrict or limit expanded media coverage as may be necessary to preserve the dignity of the court or to protect the parties, witnesses, or jurors. A judge may terminate or suspend expanded media coverage at any time upon making findings of fact that: (1) rules established under this Rule or additional rules imposed by the judge have been violated; or (2) substantial rights of individual participants or rights to a fair trial will be prejudiced by such coverage if it is allowed to continue.
- (5) **Conditions for Coverage.** Expanded media coverage shall be conducted only under the following conditions:
- (A) **Equipment Limitations.**
- (i) **Video.** Only one person at a time shall be permitted to operate a videotape, television, or motion picture camera. There shall be only one such camera at a time in the courtroom, except that, at the discretion of the judge, the camera operator may have a second camera. The camera operator may use a tripod, but shall not change location while court is in session.
 - (ii) **Audio.** The court's audio system shall be used if technically suitable and, in that event, there must be no interference with the court's use of its system. If the court's system is not technically suitable, then the person conducting expanded media coverage may install an audio recording system at his or her own expense upon first obtaining approval of the judge. All microphones and related wiring shall be unobtrusive and shall not interfere with the movement of those in the courtroom.
 - (iii) **Still Cameras.** Only one person at a time shall be permitted to operate still cameras, which shall make as little noise as possible. The still photographer may use a tripod, but shall not change location while court is in session.
 - (iv) **Lighting.** No movie lights, flash attachments, or sudden lighting changes shall be permitted during a proceeding. No modification or addition of lighting equipment shall be permitted without the permission of the judge.
 - (v) **Operating Signals.** No visible or audible light or signal (tally light) shall be used on any equipment.
- (B) **Pooling Arrangements.** The media shall be solely responsible for designating one media representative to conduct each of the categories of expanded media coverage listed in subsection (I) of this section, and for arranging an open and impartial distribution scheme with a distribution point located outside of the courtroom. If no agreement can be reached on either of these matters, then there shall be no expanded media coverage of the type for which no pooling agreement has been made. Neither judges nor other court personnel shall be called upon to resolve any disputes concerning such pooling arrangements.
- (C) **Conduct of Media Representatives.** Persons conducting expanded media coverage shall conduct themselves in a manner consistent with the decorum and dignity of the courtroom. The following practices shall apply:
- (i) Equipment employed to provide expanded media coverage shall be positioned and operated so as to minimize any distraction;
 - (ii) Identifying marks, call letters, logos, symbols, and legends shall be concealed on all equipment. Persons operating such equipment shall not wear clothing bearing any such identifying information;
 - (iii) Equipment used to provide expanded media coverage shall not be placed in, or removed from, the courtroom while court is in session. No film, videotape, or lens shall be changed within a courtroom while court is in session.
- (6) **Procedures.** The following procedures shall be followed in obtaining authorization for expanded media coverage:
- (A) **Request for Expanded Media Coverage.** A written request shall be submitted to the judge at least one day before expanded media coverage is requested to begin, unless a longer or shorter time is required or permitted by the judge. Copies of the request shall be given to counsel for each party participating in the proceeding. The request shall include the following:
- (i) The name, number, date and time of the proceeding;
 - (ii) The type (audio, video or still photography) of expanded media coverage requested and a description of the pooling arrangements required by section (e)(II), if any, including the identity of the designated representatives.
- (B) **Objections.** Any party or witness may lodge with the judge a written objection to expanded media coverage of all or a portion of a proceeding.
- (C) **Judicial Authorization.** The judge shall rule on a request or objection within a reasonable time prior to the proceeding or promptly after the request or objection if the proceeding has begun. The ruling shall be made on the record and the reasons therefore set forth briefly.
- (D) The media or any witness may not appeal, or seek review by original proceeding, the granting or denial of expanded media coverage. A party to the case may seek review of a ruling by original proceeding, if otherwise appropriate, or by post-trial appeal.

(b) Other use of Media.

- (1) A judge may authorize the use of electronic or photographic means for the perpetuation of a record, or for purposes of judicial administration.
- (2) A judge may authorize the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings.

18SC84: *Alysha Walton v. The People of the State of Colorado*

For the Petitioner:

Cayce Duncan, Office of the Colorado State Public Defender, 19 N. Tejon St., Ste. 105, Colorado Springs, CO 80903, 719-475-1235, cayce.duncan@coloradodefenders.us

For the Respondent:

Daniel May, Alexandra Staubach and Tanya A. Karimi, Office of the District Attorney, 4th Judicial District, 105 E. Vermijo Ave., Ste. 500, Colorado Springs, CO 80903, 719-520-6000, doylebaker@elpasoco.com

17SC430: *The People of the State of Colorado v. William Steven Berry*

For the Petitioner:

Jacob R. Lofgren, Assistant Attorney General, 1300 Broadway, 9th Floor, Denver, CO 80203, 720-508-6459, Jacob.lofgren@coag.gov

For the Respondent:

Reid J. Elkus and Lucas Lorenz, Elkus & Sisson PC, 501 S. Cherry St., Ste. 920, Denver, CO 80246, 303-567-7981, relkus@elkusandsisson.com, llorenz@elkusandsisson.com