



news

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Colorado Court of Appeals to hear arguments at Berthoud High School on Nov. 13

DENVER – The Colorado Court of Appeals will hear oral arguments in two cases at Berthoud High School on Wednesday, Nov. 13, 2019, 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 give Colorado high school students insight into 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 weeks of the arguments.

The 22 judges of the Colorado Court of Appeals sit in divisions of three judges to hear cases. Judges hearing cases at Berthoud High School are Robert D. Hawthorne, David Furman and Anthony J. Navarro.

The two cases are:

- **18CA2236, Delores Cruz v. Colorado Dept. of Agriculture:** Delores and Joe Cruz are appealing a trial court's finding that their lawsuit against the Colorado Department of Agriculture cannot move forward because under the Colorado Governmental Immunity Act, the agency had no liability for Ms. Cruz's injuries or Mr. Cruz's losses based on his wife's injuries. Ms. Cruz was hurt in 2016 while walking down a ramp at the Palace of Agriculture at the Colorado State Fairgrounds. According to evidence presented in the trial court, the ramp appears to have been originally intended for use by motor vehicles, but is frequently used by pedestrians. There were no handrails or signs warning of potential danger for pedestrians, but the trial court concluded after an evidentiary hearing that none of the statutory exemptions applied to the case, so the state's immunity from

liability was intact. The trial court concluded that the Cruzes' complaint dealt with the design of the ramp as opposed to its construction or maintenance and that, under the law, the government is immune from liability for design flaws. The Cruzes argue that the ramp was not originally intended for use by pedestrians and that allowing such use is a change that the state needs to account for by making it safe for pedestrians. The state argues that the trial court's ruling regarding the design flaws was correct and that the court also correctly concluded that the government was not liable for injuries that result from a change in the use of a public building.

- **18CA1018, People v. Kelvin Dalexi Arteaga:** Kelvin Arteaga has asked the Colorado Court of Appeals to review his case, in which he was convicted of drug charges. His initial prison sentence was later reduced to probation. Mr. Arteaga and some friends were arrested during an undercover drug bust involving a confidential informant who was wearing a radio that transmitted sound of the drug deal to police. After the deal was done, police arrested several people including Mr. Arteaga, who was accused of handing two bindles of heroin to the confidential informant after the informant gave money to another person. Mr. Arteaga's attorney argued before trial that the arresting officers did not have probable cause to arrest Mr. Arteaga because they did not know which of the people involved had sold the drugs to the informant. Without probable cause, Mr. Arteaga argued police did not have the right to arrest him, and he asked the trial court to suppress evidence of the drugs and of Mr. Arteaga's statements to police because the police obtained that evidence as a result of an illegal arrest. The trial court rejected those arguments and allowed the prosecution to present the disputed evidence, and Mr. Arteaga was later convicted. The Court of Appeals will consider whether the trial court properly denied Mr. Arteaga's motion to suppress the evidence.

The proceedings will begin at 10 a.m. Wednesday, Nov. 13, at Berthoud High School, 850 Spartan Ave., Berthoud, CO 80513. 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 Court of Appeals judges.

There will be a limited number of seats for the public. Visitors will need to bring a government-issued photo identification to present to school security officers for entry after clearing a background check. 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/Court_Of_Appeals/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 Court of Appeals Oral Arguments
When: 10 a.m. - 12 p.m., Nov. 13, 2019
Where: Berthoud High School, 850 Spartan Ave., Berthoud, CO 80513

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.
- 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 judges, access is open for photography and videography without the limitations of Rule 3. All media representatives also are welcome to photograph the luncheon immediately following the cases.

Schedule:

10 a.m. – 10:15 a.m.	Opening remarks
10:15 a.m. – 10:45 a.m.	18CA2236, <i>Cruz v. Dept. of Agriculture</i>
10:45 a.m. – 11 a.m.	Judges conference; attorneys answer students' questions
11 a.m. – 11:30 a.m.	18CA1018, <i>People v. Arteaga</i>
11:30 a.m. – 11:45 a.m.	Judges conference; attorneys answer students' questions
11:45 a.m. – 12 p.m.	Judges answer students' questions
12 p.m. – 1:30 p.m. (est.)	Lunch, judges and selected students

Request for Expanded Media Coverage. Requests for expanded media coverage must be submitted at least one day prior to the proceeding as outlined in Rule 3 (submitting requests earlier 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.

Counsel contact information:

18CA2236 – *Delores Cruz and Joe Cruz v. Colorado Dept. of Agriculture*

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For the Appellee:

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18CA1018 – *People of the State of Colorado v. Kelvin Dalexi Arteaga*

For the Appellant:

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