

Summaries of Published Opinions

March 4, 2019

2019 CO 15. No. 16SC584. People v. Travis. *Sixth Amendment—Counsel of Choice—Motion to Continue—Abuse of Discretion.*

The People challenged the decision of a division of the Court of Appeals that concluded that Travis's request to "look for and pay for a lawyer" was an invocation of her Sixth Amendment right to be represented by counsel of her choice. The Supreme Court held that Travis's request did not implicate her Sixth Amendment right to counsel of her choice and that the trial court's decision to deny Travis's request to continue her trial to "look for and pay for a lawyer" was not an abuse of discretion. Accordingly, the Court reversed the division's decision and remanded for proceedings consistent with this opinion.

March 11, 2019

2019 CO 16. No. 18SA83. In the Matter of Booras. *Judicial Discipline—Sanctions.*

In this judicial disciplinary proceeding, the Supreme Court considered the exceptions of a now-former Colorado Court of Appeals judge to the Colorado Commission on Judicial Discipline's (Commission's) recommendation that the judge be removed from office and ordered to pay the costs the Commission incurred in this matter.

The Commission's recommendation was based on factual findings and conclusions of law determining that the judge had violated Canon 1, Rule 1.2, Canon 3, Rule 3.1, and Canon 3, Rule 3.5 of the Colorado Code of Judicial Conduct by (1) disclosing confidential information belonging to the Court of Appeals (namely, the vote of a Court of Appeals division

on a case prior to the issuance of the decision in that case) to an intimate, non-spousal partner, and (2) using inappropriate racial epithets in communications with that intimate partner, including a racially derogatory reference to a Court of Appeals colleague.

The Supreme Court concluded that the Commission properly found that the judge's communications with the judge's then-intimate partner were not protected by the First Amendment. The Court further concluded that, given the judge's resignation, which the judge tendered and which became effective after the Commission made its recommendation, the Court need not decide whether the judge's removal from office was an appropriate sanction. Rather, the Court concluded that the appropriate sanction in this case is the acceptance of the judge's resignation, the imposition of a public censure, and an order requiring the judge to pay the Commission's costs in this matter.

2019 CO 17. No. 17SC120. Johnson v. People. *Jury Instructions—Reasonable Doubt—Burden of Proof—Due Process.*

In this case, the Supreme Court considered whether the trial court's jury instruction defining "hesitate to act" lowered the prosecution's burden of proof in violation of due process. The Court held that the instruction did not lower the prosecution's burden of proof in violation of due process. Because the instruction was nonsensical, given only once during voir dire, not referenced by either party at any time, and flanked by the proper instruction regarding the burden of proof at the beginning and end of trial, there is not a reasonable likelihood that the jury understood the instruction and applied it in a manner that lowered the prosecution's burden.

2019 CO 18. No. 18SA263. People v. Threlkel. *Investigatory Stop—Grounds for Stop or Investigation—Fellow-Officer Rule.*

An extensive narcotics investigation culminated in arrest warrants for defendant and her significant other based on their alleged distribution of controlled substances. While attempting to execute the warrants, deputies observed a truck belonging to defendant's significant other driving away from the residence shared by the couple. The deputies suspected that defendant was a passenger in the truck. As the deputies tried to stop the truck, it evaded them. At one point, the deputies observed a white bag fly out of the passenger window, which supported their belief that there was a passenger in the truck. The truck eventually stopped within a mile of the home. Inside, they located defendant's significant other, but not defendant. Moments later, however, defendant was spotted a couple of hundred yards away, attempting to hitch a ride. It was a frigid and snowy night, the roads were slippery, and there was no easy access on foot between the home and the location of the stop. A deputy who recognized defendant detained her, and she was later arrested on her outstanding warrant.

The trial court suppressed all evidence and observations derived from defendant's stop, finding that the deputies lacked reasonable, articulable suspicion to detain her. Later, the trial court explained that its suppression order included the deputies' observations and investigation before they contacted defendant. The Supreme Court reversed. It concluded that the deputies had reasonable, articulable suspicion to stop defendant. It further concluded that the trial court lacked authority to suppress the deputies' observations and investigation before they contacted defendant.

March 18, 2019

2019 CO 19. No. 16SC75. Garner v. People. *Eyewitnesses—Identification Evidence and Procedures—In-Court Identification.*

The Supreme Court reviewed whether due process or the Colorado Rules of Evidence required the exclusion of victim-witnesses' in-court identifications of defendant, where

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each witness had failed to identify defendant in a photographic array before trial and almost three years had elapsed between the crime and the confrontations. The Court held that where an in-court identification is not preceded by an impermissibly suggestive pretrial identification procedure arranged by law enforcement, and where nothing beyond the inherent suggestiveness of the ordinary courtroom setting made the in-court identification itself constitutionally suspect, due process does not require the trial court to prescreen the identification for reliability. Here, because defendant alleged no impropriety regarding the pretrial photographic arrays, and the record revealed nothing unusually suggestive about the circumstances of the witnesses' in-court identifications, the in-court identifications did not violate due process. The Court further held that defendant's evidentiary arguments were unpreserved, and

the trial court's admission of the identifications was not plain error under CRE 403, 602, or 701. Accordingly, the Court affirmed the Court of Appeals' judgment.

March 25, 2019

2019 CO 20. No. 18SA257. In re People v. Roïna. Competency Proceedings.

The Supreme Court addressed whether a trial court erred in requiring the defense to provide a copy of its sealed motion raising competency to the prosecution before conducting an initial competency evaluation of defendant. Because CRS § 16-8.5-102(2)(b) requires trial courts to consider defense motions raising competency without disclosing that motion to the prosecution, the Court determined that the trial court erred in concluding that Rule 2.9(A) of the Colorado Code of Judicial Conduct prohibits

the trial court from conducting an ex parte review of the defense's motion. Accordingly, the Court made its rule to show cause absolute. **CL**

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