

Summaries of Published Opinions

December 2, 2019

2019 CO 98. No. 19SA260. In the Matter of Timbreza. *Violation of Duties as a Judge—Public Censure—Suspension.*

On September 3, 2019, Judge Lance P. Timbreza pleaded guilty to driving while ability impaired and was sentenced to one year of probation, alcohol monitoring, a \$200 fine, useful public service, and two days of suspended jail time. The Colorado Commission on Judicial Discipline (the Commission) recommended approval of the Stipulation for Public Censure and Suspension (the Stipulation), which Judge Timbreza and the Commission executed pursuant to Colorado Rules of Judicial Discipline 36(c), 36(e), and 37(e).

Consistent with the Stipulation, the Commission recommended that the Supreme Court issue a public censure and a 28-eight-day suspension of Judge Timbreza’s judicial duties without pay. The Court concluded that the terms of the Stipulation comply with RJD 37(e) and are supported by the record of the proceedings. Therefore, the Court ordered the Stipulation to become effective and issued the agreed-upon sanctions.

The Court publicly censured Judge Timbreza for failing to maintain the high standards of judicial conduct required of a judge; for violating Canon Rule 1.1 of the Colorado Code of Judicial Conduct, which requires a judge to comply with the law; and for violating Canon Rule 1.2, which requires a judge to act at all times in a manner that promotes public confidence in the judiciary and avoids impropriety and the appearance of impropriety. Further, the Court suspended Judge Timbreza from his judicial duties without pay for 28 days, to be served by January 31, 2020.

December 9, 2019

2019 CO 99. No. 16SC269. Rail v. People. *Criminal Law—Objections and Waiver—Verdicts or Findings—Special Interrogatories.*

A jury found defendant guilty of sexual assault on a child. In response to a special interrogatory, the jury also found that defendant committed the offense as part of a pattern of abuse and that the People proved each of the

listed incidents of sexual contact. However, in response to a unanimity interrogatory that the trial court failed to read aloud, the jury indicated that these same incidents of sexual contact were not proved. Defendant contended that his conviction amounts to structural error, requiring reversal under *Sanchez v. People*, 2014 CO 29, 325 P.3d 553.

The Supreme Court held that under *People v. Rediger*, 2018 CO 32, 416 P.3d 893, defendant did not waive his claim because he had no reason to be aware of the inconsistency of the jury’s responses. Next, turning to the merits of defendant’s claim, the Court held that *Sanchez* does not compel reversal because, unlike in that case, the jury here returned a guilty verdict reflecting its unanimous finding of guilt beyond a reasonable doubt, and any ambiguity in that verdict was resolved through individual polling of the jury.

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Accordingly, the Court of Appeals' judgment was affirmed, albeit based on somewhat different reasoning.

2019 CO 100. No. 18SC394. Margerum v. People. *Impeachment—Cross-Examination—Confrontation—Multiple Convictions.*

In this case, the Supreme Court considered whether (1) a witness's credibility may be impeached based on her probationary status at the time she testifies, and (2) Margerum may be convicted of both assault and menacing based on the same conduct. The Court held that a witness's probationary status is always relevant when the witness is on probation with the State and testifies for the prosecution. But because the trial court's error in not allowing defense counsel to impeach a witness based on her probationary status was harmless under the facts here, reversal was not required. The

Court further held that Margerum was properly convicted of assault and menacing because the facts support both convictions.

Accordingly, the Court of Appeals' judgment was affirmed

2019 CO 101. No. 16SC979. Williams v. People. *Deferred Judgment—Restitution—Ability to Pay—Statutory Interpretation.*

The Supreme Court considered whether, in a deferred judgment revocation proceeding based on a defendant's failure to pay restitution, the prosecution bears the burden of proving that the defendant has the ability to pay restitution. The Court held that when a defendant introduces some evidence of inability to pay restitution, a district court must make the ability-to-pay findings under CRS § 18-1.3-702(3)(c) before revoking a deferred judgment and sentence for failure to pay restitution. The Court further

held that the prosecution bears the burden of proving by a preponderance of the evidence that (1) "the defendant has the ability to comply with the court's order to pay a monetary amount due without undue hardship to the defendant or the defendant's dependents," and (2) "the defendant has not made a good-faith effort to comply with the order." CRS § 18-1.3-702(3)(c).

The Court of Appeals' judgment was reversed and the case was remanded with instructions to return this case to the district court for a new deferred judgment revocation hearing consistent with this opinion.

2019 CO 102. No. 17SC823. People v. Robinson. *Criminal Trials—Opening Statements—Prosecutorial Misconduct—Evidence.*

This case required the Supreme Court to decide whether a Court of Appeals division erred in concluding that a prosecutor's race-based comments in her opening statement constituted reversible plain error. The Supreme Court concluded that the prosecutor's comments on the contrasting skin tones of defendant and the victim were improper because any probative value these comments might have had was substantially outweighed by the danger of unfair prejudice to defendant. The Court further concluded, however, that the prosecutor's comments did not rise to the level of reversible plain error because even if obvious (an issue that the court need not decide), the error did not so undermine the fundamental fairness of defendant's trial as to cast serious doubt on the reliability of his judgment of conviction.

Accordingly, the division's judgment was reversed and the case was remanded for further proceedings consistent with this opinion.

2019 CO 103. No. 19SA151. In re People v. B.B.A.M. Juveniles—Competency to Stand Trial—Assessing Restoration to Competency.

The Supreme Court considered whether the juvenile court may order a second competency evaluation in lieu of holding a restoration review pursuant to CRS § 19-2-1303(2) or a restoration hearing pursuant to CRS § 19-2-1304(1). The Court concluded that the juvenile court may not do so. Under CRS § 19-2-1305(1), the court may find that the juvenile has been restored to



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competency either during a restoration review or after holding a restoration hearing. Because the relevant statutes do not permit a juvenile court to order a second competency evaluation to determine whether a juvenile has been restored to competency, the district court erred in affirming the juvenile court's order.

Accordingly, the district court's order was reversed the case was remanded with instructions to return the case to the juvenile court for a restoration review or a restoration hearing.

2019 CO 104. No. 19SA180. In re People v. Rowell. *Preliminary Hearing Demand Following Bond Revocation—“Within a Reasonable Time.”*

In this original proceeding brought pursuant to C.A.R. 21, the Supreme Court held that the district court erred in denying defendant's request for a preliminary hearing without first determining whether the request was advanced within a reasonable time after the bonds in his cases were revoked and he was taken into custody. The relevant charges are class 4, 5, and 6 felonies that do not carry mandatory sentencing, are not crimes of violence pursuant to section CRS § 18-1.3-406, and are not sexual offenses. It is undisputed that while defendant was on bond, he was not eligible to receive a preliminary hearing on those charges. But the Court ruled that when his bonds were later revoked, he was entitled to demand and receive a preliminary hearing within a reasonable time.

Accordingly, the Court reversed the district court's ruling. The case was remanded so that the district court may determine whether defendant's demand was made within a reasonable time after he became eligible to advance it.

December 16, 2019

2019 CO 105. No. 15SC770. Vigil v. People. *Criminal Law—Jury—Evidence—Witnesses.*

Vigil sought review of the Court of Appeals' judgment affirming his convictions of second degree burglary and second degree aggravated motor vehicle theft. As pertinent to the issues on review in the Supreme Court, the trial court denied Vigil's for-cause challenge to Juror C.A. but granted the prosecution's challenge to Juror D.K. At trial, and over defense counsel's

objection, an officer was permitted to opine without qualification as an expert that Vigil's shoes visually matched shoeprints he photographed at the crime scene. With regard to Vigil's assignments of error concerning these rulings, the Court of Appeals concluded that the trial court had not abused its discretion.

The Supreme Court affirmed, ruling that the trial court did not abuse its discretion by denying Vigil's challenge to Juror C.A.; that any error committed in granting the prosecution's challenge to prospective Juror D.K. would in any event have been harmless; and that the trial court did not abuse its discretion in allowing the officer to offer a lay opinion concerning the shoeprint comparison in question.

December 23, 2019

2019 CO 106. No. 18SC44. People v. Abu-Nantambu-El. *Criminal Law—Jury—Structural Error.*

The Supreme Court affirmed the Court of Appeals' judgment reversing defendant's convictions where the trial court erroneously denied defendant's for-cause challenge to a juror under CRS § 16-10-103(1)(k), defendant exhausted his peremptory challenges, and the challenged juror ultimately served on the jury. Consistent with the principle that the erroneous denial of a challenge for cause amounts to structural error if it results in an actually biased juror serving on the jury, the Court held that the erroneous seating of an impliedly biased juror is also structural error. In other words, for purposes of a criminal defendant's constitutional right to an impartial jury, a juror who is presumed by law to be biased is legally indistinguishable from an actually biased juror.

2019 CO 107. No. 19SA183. In re Proposed Ballot Initiative 2019–2020 #3 “State Fiscal Policy.” *Title Setting—Ballot Initiatives—Clear Title Requirement—Fiscal Impact Statement Abstract.*

In this case, the Title Board set a title for Proposed Ballot Initiative 2019–2020 #3 (Proposed Initiative) that reads, in pertinent part, “An amendment to the Colorado constitution concerning the repeal of the Taxpayer's Bill of Rights (TABOR), Article X, Section 20 of

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Lies in the
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the Colorado constitution.” The Board also ultimately adopted an abstract addressing the economic impact of the Proposed Initiative if passed.


The Supreme Court was asked to determine whether (1) the title is clear and not misleading; (2) the use of the phrase “Taxpayer’s Bill of Rights” in the title constitutes an impermissible catch phrase; and (3) the abstract is misleading. The Court concluded that the title and abstract are clear and not misleading, and that the phrase “Taxpayer’s Bill of Rights,” as used in this title, is not an impermissible catch phrase.

Accordingly, the Court affirmed the Title Board’s decision.

2019 CO 108. No. 17SC123. Williams v. People. *Searches and Seizures—Persons Giving Consent—Objecting Joint Occupants.*

Consent by one resident of jointly occupied premises generally suffices to justify a warrantless search. But *Georgia v. Randolph*, 547 U.S. 103 (2006), carved out a narrow exception to this rule: Consent by one resident is insufficient when another resident is physically present and objects to the search.


This case required the Supreme Court to decide whether the *Randolph* exception applies where the defendant’s wife provided police officers consent to enter the residence, and the defendant, though physically present, did not object until after the officers had already entered and were in the process of collecting drugs and paraphernalia. The Court concluded that the *Randolph* exception does not apply. The *Randolph* exception applies only if, at the time the officers receive an occupant’s consent, a co-occupant who is physically present on the

premises objects. Accordingly, the officers were not required to heed defendant’s request to leave and did not violate his Fourth Amendment rights. The judgment was affirmed. 

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