

# Summaries of Published Opinions

## September 10, 2018

### **2018 CO 68. No. 17SC247. Munoz v. American Family Insurance Co.** *Prejudgment Interest—Statutory Interpretation.*

In this case, the Supreme Court considered whether an insured is entitled to collect pre-judgment interest when he settles an uninsured motorist claim with his insurer. The Court held that, under the plain language of the prejudgment interest statute, CRS § 13-21-101, an insured is entitled to prejudgment interest only after (1) an action is brought, (2) the plaintiff claims damages and interest in the complaint, (3) there is a finding of damages by a jury or court, and (4) judgment is entered. Because Munoz did not meet all of these conditions, the Court concluded he is not entitled to pre-judgment interest.

### **2018 CO 69. No. 17SC15. Przekurat v. Torres.** *Statutory Construction—Colorado Dram Shop Act.*

The Supreme Court affirmed the judgment of the Court of Appeals. The Court held that, under the plain language of CRS § 12-47-801(4) (a), a social host who provides a place to drink alcohol must have actual knowledge that a specific guest is underage to be held liable for any damage or injury caused by that underage guest.

### **2018 CO 70. No. 15SC163. Zoll v. People.** *Disclosure—In Camera Review—Critical Stage.*

The Supreme Court held that when an appellate court determines that the trial court erred in failing to disclose certain documents from a file reviewed in camera, the proper remedy is to remand the case to the trial court

with instructions to provide the improperly withheld documents to the parties and to afford the defendant an opportunity to demonstrate that there is a reasonable probability that, had the documents been disclosed before trial, the result of the proceeding would have been different. The Court also held that, even if the Court of Appeals erred in determining that replaying a small portion of a recording in the courtroom during deliberations was not a critical stage of the proceeding that required defendant's presence, any error in failing to secure defendant's attendance was harmless beyond a reasonable doubt.

### **2018 CO 71. No. 18SA56. People v. Pappan.** *Searches and Seizures—Emergencies and Exigent Circumstances—Plain View Doctrine.*

In this interlocutory appeal, the Supreme Court considered whether the trial court erred in suppressing two laser-sight rifles seized from defendant's residence during a warrantless search conducted after defendant and two other occupants exited the residence. The Court held that the warrantless search was justified under the exigent circumstances exception to the warrant requirement. More specifically, the Court concluded that (1) the officers had an objectively reasonable basis to believe there was an immediate need to protect their lives or safety by clearing the residence for other occupants, and (2) the manner and scope of the search was reasonable because it was protective in nature and narrowly tailored to neutralize the threat confronting the officers. The Court further held that the seizure of the laser-sight rifles was justified by the plain view doctrine. Accordingly, the decision of the trial court was reversed.

## September 17, 2018

### **2018 CO 72. No. 16SC81. James v. People.** *Jury Deliberations—Conduct Affecting Jurors—Risk of Prejudice—Harmless Error.*

James sought review of the Court of Appeals' judgment affirming his conviction for possession of methamphetamine. Upon realizing that it had failed to discharge the alternate juror before the jury retired to deliberate, the district court recalled and dismissed the alternate, instructed the jury to continue with deliberations uninfluenced by anything the alternate may have said or done, and denied the defense motion for dismissal or mistrial. The Court of Appeals concluded that the trial court's error in allowing the alternate juror to retire with the jury and the juror's presence for part of the deliberations were harmless beyond a reasonable doubt and, after rejecting James's other assignments of error, affirmed his conviction. The Supreme Court held that the evidence proving defendant's guilt of the offense of possession was overwhelming, and therefore the district court's failure to recall an alternate juror for approximately 10 minutes amounted, under the facts of the case, to harmless error. Accordingly, the judgment of the Court of Appeals was affirmed.

### **2018 CO 73. No. 16SC114. Johnson v. Schonlaw.** *Jury Deliberations—Conduct Affecting Jurors—Risk of Prejudice—Harmless Error.*

Johnson sought review of the Court of Appeals' judgment reversing jury verdicts in his favor on personal injury claims against Schonlaw and VCG Restaurants. At the close of the case, the district court overruled the objections of Schonlaw and VCG to its announced decision to allow the alternate to deliberate to verdict

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with the other jurors. The Court of Appeals concluded that the trial court had erred in allowing an alternate juror to participate in jury deliberations over the objection of a party, and that the error gave rise to a presumption of prejudice, which remained unrebutted by Johnson, and therefore required reversal.

The Supreme Court reversed, holding that because the error did not affect the substantial rights of any defendant, it should have been disregarded as harmless, as required by CRCP 61.

**2018 CO 74. No. 17SC115. Perfect Place, LLC v. Semler.** *Common Interest Communities—Quiet Title—Deeds.*

In this quiet title action, the Supreme Court reviewed whether the owner of a garage condominium unit validly subdivided the unit under CRS § 38-33.3-213 of the Colorado Common Interest Ownership Act by merely painting or marking lines on the garage wall, and thereafter separately conveying the spaces thus marked as individual condominium parking units. Because CRS § 38-33.3-213(3) provides that “no subdivision of units shall be effected” without executing and recording the necessary amendments to the condominium declaration, and because no documents were recorded in connection with his purported subdivision, the Court held that the owner did not accomplish a valid subdivision of the garage unit in this case. The Court further held that a quitclaim deed obtained from the owner was not void for fraud in the factum. Although evidence in the record suggests the owner may have been deceived as to the purpose of the deed, fraud in the factum requires proof that the grantor was ignorant as to the nature of the instrument itself. Here, the owner understood that he was signing a quitclaim deed, even if he failed to appreciate the ramifications of his act. Accordingly, the Court reversed the Court of Appeals’ judgment and remanded the case for further proceedings to determine the resulting chain of title for the disputed parking units.

**2018 CO 75. No. 17SA183. People v. Gutierrez.** *Motions to Continue—Abuse of Discretion.*

In this interlocutory appeal, the Supreme Court held that the trial court did not abuse its

discretion by denying the People’s request to have their witness testify remotely via Skype. Trial courts have broad discretion to control the manner in which witnesses offer testimony, and a decision to prohibit a witness from testifying is reviewed for an abuse of discretion. Because the trial court worked extensively to accommodate the witness, the People were on notice about the importance of the witness appearing in-person, and because denying the People’s request to allow the witness to testify remotely is not outcome determinative, the Court concluded that the trial court did not abuse its discretion.

**2018 CO 76. No. 17SC241. Lewis v. Taylor.** *Uniform Fraudulent Transfer Act—Ponzi Schemes—Reasonably Equivalent Value.*

The Supreme Court held that under the Colorado Uniform Fraudulent Transfer Act (CUFTA), an innocent investor who profits from his investment in an equity-type Ponzi scheme, lacking any right to a return on investment, does not provide reasonably equivalent value based simply on the time value of his investment. Here, an investor unwittingly invested in a Ponzi scheme. Before the scheme’s collapse, he withdrew his entire investment, plus a profit. A court-appointed receiver sued to claw back the investor’s profits under CUFTA, CRS § 38-8-105(1)(a), which provides that a “transfer made . . . by a debtor is fraudulent as to a creditor . . . if the debtor made the transfer . . . [w]ith actual intent to hinder, delay, or defraud any creditor of the debtor.” The investor raised an affirmative defense, CRS § 38-8-109(1), contending that he could keep his profit because he “took in good faith and for a reasonably equivalent value.” Because the time value of money is not a source of “value” under CUFTA and equity investors have no guarantee of any return on their investments, the Court concluded that the investor did not provide “reasonably equivalent value” in exchange for his profit. Accordingly, the Court reversed the Court of Appeals’ judgment.

**2018 CO 77. No. 18SA90. People v. Brooks.** *Special Legislation Clause—Sentencing—Felony Murder—Juvenile Sentencing.*

This case required the Supreme Court to determine whether Colorado’s recently enacted

sentencing scheme for juvenile offenders who received unconstitutional mandatory sentences to life in prison without the possibility of parole (LWOP) violates the Special Legislation Clause of the Colorado Constitution.

The Court assumed without deciding that the revised sentencing scheme, which the General Assembly enacted in response to U.S. Supreme Court cases deeming unconstitutional mandatory LWOP sentences for juvenile offenders, is subject to the Special Legislation Clause and implicates one of the provisions enumerated therein. The Court then concluded that the revised sentencing scheme does not run afoul of the Colorado Constitution’s prohibition of special legislation because the statute creates a genuine class and its legislative classifications are reasonable. The Court rejected the People’s contentions that the class must be deemed illusory because it is “closed” and that the class is, in fact, closed to future members.

Accordingly, the Court discharged the rule to show cause.

**September 24, 2018**

**2018 CO 78. No. 15SC292. Casillas v. People.** *Evidence—Searches and Seizures—Exclusionary Rule.*

In this criminal appeal, the Supreme Court reviewed whether the exclusionary rule required the suppression of evidence derived from a juvenile probation officer’s unauthorized collection of DNA from a juvenile in violation of CRS § 19-2-925.6 and the Fourth Amendment. The Court held that (1) juvenile probation officers are properly considered adjuncts to law enforcement; (2) the officer’s collection of the juvenile’s DNA for uploading to CODIS served an inherent law enforcement function; (3) nothing in the record suggests the officer conducted the buccal swab search in reliance on misinformation provided by a third party; and (4) the unlawful search here was not based on a reasonable misinterpretation of the law. Because suppression would have a deterrent effect by removing incentives to collect DNA from ineligible juvenile offenders, the Court held that suppression was warranted. Accordingly, the Court reversed the Court of Appeals’ judgment

and remanded the case with instructions to vacate petitioner's conviction.

**2018 CO 79. No. 16SC849. Bewley v. Semler.**  
*Strict Privility—Standing—Pleading.*

In this case, the Supreme Court considered whether the strict privity rule bars claims against attorneys by non-clients absent a showing of fraud, malicious conduct, or negligent misrepresentation. The Court held that, absent any wrongdoing, the strict privity rule does bar claims against attorneys by non-clients because holding otherwise may force attorneys to place non-clients' interests ahead of clients' interests. Here, because Semler did not allege any fraud, malicious conduct, or negligent misrepresentation, he lacked standing to assert a breach-of-contract claim.

**2018 CO 80. No. 16SC676. Estate of Brookoff v. Clark.**  
*Statutory Interpretation—Dead Man's Statute.*

In this case, the Supreme Court interpreted Colorado's "Dead Man's Statute" in light of recent amendments that removed language limiting the statute's applicability to matters in which a decedent's estate was a party. Discerning no ambiguity in the current version of the statute, the Court held that these amendments expand the scope of the statute such that it is now applicable "in all civil actions." The Court also held that because the statute applies irrespective of the potential impact of a judgment on an estate, the existence of insurance coverage is not a factor militating for or against the applicability of the statute. **CL**

These summaries of Colorado Supreme Court published opinions are provided by the Court; the CBA cannot guarantee their accuracy or completeness. Both the summaries and full opinions are available on the CBA website and on the Colorado Judicial Branch website.



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