

ANNOUNCEMENTS

COLORADO SUPREME COURT

MONDAY, SEPTEMBER 9, 2002

"Slip opinions" are the opinions as filed by the judges with the clerk. Slip opinions are subject to modification, rehearing, withdrawal, or clerical corrections. A link (in the htm format only) to any modifications to previously posted opinions will appear in the petition for rehearing section of the announcement document the day the changes are announced.

Click on the case number to view the opinion in Word format.

OPINIONS

<p>SUPREME COURT, STATE OF COLORADO</p> <p>Two East 14th Avenue</p> <p>Denver, Colorado 80203</p> <p>Certiorari to the Colorado Court of Appeals</p> <p>Court of Appeals Case No. 98CA838</p>	<p>Case No. 00SC672</p>
<p>Petitioner/Cross-Respondent:</p> <p>THE PEOPLE OF THE STATE OF COLORADO,</p> <p>v.</p> <p>Respondent/Cross-Petitioner:</p> <p>WAYNE ROBERT STEWART.</p>	
<p>AFFIRMED IN PART, REVERSED IN PART</p> <p>EN BANC</p> <p>CHIEF JUSTICE MULLARKEY delivered the Opinion of the Court.</p>	

Case No. [02SA156](#)

SUPREME COURT, STATE OF COLORADO

Two East 14th Avenue

Denver, Colorado 80203

Interlocutory Appeal from the Pueblo County District Court, Case No. 00CR1261

Honorable Victor I. Reyes, Judge

Plaintiff-Appellant:

THE PEOPLE OF THE STATE OF COLORADO,

v.

Defendant-Appellee:

JOSEPH PHILLIP DIAZ.

ORDER AFFIRMED IN PART REVERSED IN PART

EN BANC

JUSTICE HOBBS delivered the Opinion of the Court.

Case No. [01SC136](#)

SUPREME COURT, STATE OF COLORADO

Two East 14th Avenue

Denver, Colorado 80203

Certiorari to the Colorado Court of Appeals

Court of Appeals Case No. 99CA1349

In the Matter of the Estate of Michael D. DeWitt, deceased.

Petitioner:

REBECCA HILL, Personal Representative of the Estate of Michael D. DeWitt, deceased,

Respondent :

JANET DEWITT and USAA LIFE INSURANCE COMPANY.

JUDGMENT REVERSED

EN BANC

* * * *

Case No. [01SC248](#)

SUPREME COURT, STATE OF COLORADO

Two East 14th Avenue

Denver, Colorado 80203

Certiorari to the Colorado Court of Appeals

Court of Appeals Case No. 99CA2251

In the Matter of the Estate of Darwin J. Becker, a/k/a Darwin James Becker, deceased.

Petitioner:

DONNA FASI, f/k/a DONNA BECKER or DONNA SUE BECKER,

Respondent :

DOUGLAS J. BECKER, Personal Representative of the Estate of Darwin J. Becker, a/k/a Darwin James Becker, deceased.

JUDGMENT AFFIRMED

EN BANC

JUSTICE MARTINEZ delivered the Opinion of the Court.

SUPREME COURT, STATE OF COLORADO

Two East Fourteenth Avenue

Denver, Colorado 80203

Original Proceeding Pursuant to C.A.R. 21

Las Animas County District Court, Case No. 99CV24

Honorable C. Dennis Maes Judge

IN RE

Plaintiff:

ALLIANCE CONSTRUCTION SOLUTIONS, INC.,

v.

Defendant and Counterclaim Plaintiff:

DEPARTMENT OF CORRECTIONS,

Additional Counterclaim Defendants:

THE AMERICAN INSURANCE COMPANY, a subsidiary of FIREMAN'S FUND INSURANCE COMPANY.

RULE MADE ABSOLUTE

EN BANC

JUSTICE RICE delivered the Opinion of the Court.

JUSTICE BENDER does not participate.

SUPREME COURT, STATE OF COLORADO

Two East 14th Avenue
Denver, Colorado 80203

Appeal from the District Court,

Water Division No. 3, Case No. 99CW25

Honorable Robert W. Ogburn, Judge

CONCERNING THE APPLICATION FOR WATER RIGHTS IN RIO GRANDE COUNTY

Opposers-Appellants:

THE STATE ENGINEER and THE DIVISION ENGINEER FOR

WATER DIVISION 3,

v.

Applicant-Appellee:

DAVID W. BRADLEY.

JUDGMENT REVERSED AND REMANDED

EN BANC

JUSTICE COATS delivered the Opinion of the Court.

PETITIONS FOR REHEARING

NONE

PETITIONS FOR WRIT OF CERTIORARI

Court of Appeals Case No. 00CA1469 (8/30/01)

DEPARTMENT OF REVENUE; MOTOR VEHICLE DIVISION

OF THE STATE OF COLORADO, FRED FISHER,

EXECUTIVE DIRECTOR, Petitioner,

v.

SUSAN LYNN EDGE, Respondent.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 01SC797

Court of Appeals Case No. 99CA990 (10/4/01)

THE CITY OF BOULDER, Petitioner,

v.

LEANIN' TREE, Respondent.

Petition and Cross-Petition for Writ of Certiorari GRANTED as to one reframed issue. EN BANC.

SUMMARY OF ISSUE:

Whether a business that reproduces art on its greeting cards is liable for city use tax on the royalty fee it pays to the artists.

DENIED AS TO ALL OTHER ISSUES

No. 02SC13

Court of Appeals Case No. 99CA2316 (11/23/01)

CHARLES LEE MILLER, Petitioner,

v.

THE PEOPLE OF THE STATE OF COLORADO, Respondent.

Petition for Writ of Certiorari DENIED. EN BANC.

JUSTICE MARTINEZ would grant as to the following issues:

Whether the trial court committed constitutional error by infringing upon Petitioner’s right to testify and right to present a defense by restricting his testimony regarding circumstances relating to a prior felony conviction and sentence when it was the defendant, who sought to present this information to the jury as part of his defense; and, whether the court of appeals erred by concluding that no reversible error occurred.

Whether the trial court committed reversible error by refusing to instruct the jury on the lesser included offense of obstructing a peace officer when there was a rational basis in the evidence to support a conviction of that lesser offense, and an acquittal on the second degree assault charge; and, whether the majority opinion erred by concluding that no reversible error occurred.

No. 02SC31

Court of Appeals Case No. 00CA0573 (11/29/01)

ARTEE CABRAL, Petitioner,

v.

THE PEOPLE OF THE STATE OF COLORADO, Respondent.

Petition for Writ of Certiorari DENIED. EN BANC.

JUSTICE KOURLIS would grant as to the following issue:

Whether the trial court abused its discretion when refusing to respond to the jury’s question about a specific portion of a key witness’ testimony by providing the jury with a transcript of that testimony.

No. 02SC93

Court of Appeals Case No. 00CA2050 (12/27/01)

RONNIE D. WALKER, Petitioner,

v.

SCHOOL DISTRICT NO. 1 in the City and

County of Denver, Denver Public Schools;

THAYNE M. MCKNIGHT; and LYNN D. COLEMAN, Respondents.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 02SC114

Court of Appeals Case No. 00CA331 (1/3/02)

DONALD R. HONEYSETTE, Petitioner,

v.

THE PEOPLE OF THE STATE OF COLORADO, Respondent.

Petition for Writ of Certiorari DENIED. EN BANC.

JUSTICE BENDER would grant as to the following issues:

Whether the court of appeals erred in holding, contrary to the plain language of C.R.S. § 18-3-405(2)(d), which states that “the acts constituting the pattern of sexual abuse must have been committed within ten years *prior* to the offense charged in the information or indictment,” that “both the predicate act and the earlier pattern act or acts may occur within the period alleged in the pattern of sexual assault count of the information.”

Whether the defendant’s conviction for sexual assault on a child-pattern of abuse must be vacated because the evidence to support this charge was insufficient as a matter of law.

No. 02SC117

Court of Appeals Case No. 00CA860 (12/20/01)

GARY YARDLEY DAVIS, Petitioner/Cross-Respondent,

v.

THE PEOPLE OF THE STATE OF COLORADO, Respondent/Cross-Petitioner.

Petition and Cross-Petition for Writ of Certiorari DENIED. EN BANC.

No. 02SC131

Court of Appeals Case No. 00CA2126 (2/14/02)

DONALD T. TRINEN, Petitioner,

v.

CITY AND COUNTY OF DENVER, Respondent.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 02SC134

Court of Appeals Case No. 99CA2314 (9/27/01)

JIMMY D. GRAHAM, Petitioner,

v.

THE PEOPLE OF THE STATE OF COLORADO, Respondent.

Petition for Writ of Certiorari DENIED. EN BANC.

JUSTICE MARTINEZ would grant as to the following issue:

Whether a vehicle search incident to arrest is lawful if the search is commenced once the arrestee has been transported away from the scene.

No. 02SC136

Court of Appeals Case No. 00CA940 (1/17/02)

BRYCE A. KIRK, Petitioner,

v.

THE PEOPLE OF THE STATE OF COLORADO Respondent.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 02SC158

Court of Appeals Case No. 99CA779 (12/20/01)

JOHN WATSON, Petitioner,

v.

THE PEOPLE OF THE STATE OF COLORADO, Respondent.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 02SC163

Court of Appeals Case No. 00CA1635 (1/31/02)

JAMES F. BLUM, Petitioner,

v.

THE PEOPLE OF THE STATE OF COLORADO Respondent.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 02SC167

Court of Appeals Case No. 00CA1706 (1/31/02)

MARY E. MARQUEZ, Petitioner,

v.

THE PEOPLE OF THE STATE OF COLORADO, Respondent.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 02SC202

Court of Appeals Case No. 01CA1773 (12/27/01)

PAULINE A. SMITH, Petitioner/Cross-Respondent,

v.

ARNOLD TONNER; ROBERT BUGGAGE;

and SOUTHLAND CORPORATION,

individually and jointly, Respondents/Cross-Petitioners.

Petition and Cross-Petition for Writ of Certiorari DENIED. EN BANC.

No. 02SC220

Court of Appeals Case No. 01CA218 (03/14/02)

In re the Matter of the Estate of Courtney M. Foster,

a minor child and protected person,

STEVEN JAMES FOSTER, Petitioner,

v.

SHERRIE A. NUNN, Respondent.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 02SC233

Court of Appeals Case No. 01CA469 (2/28/02)

In the Interest of:

DENNIS MERRELL, Petitioner,

v.

THE PEOPLE OF THE STATE OF COLORADO, Respondent.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 02SC235

Court of Appeals Case No. 01CA259 (2/28/02)

COLORADO DEPARTMENT OF REVENUE ,

Petitioner ,

v.

JAKE A. GARNER,

Respondent.

Petition for Writ of Certiorari GRANTED. EN BANC.

SUMMARY OF ISSUES:

Whether a driver whose license has been revoked, who has notice of the revocation, who continues to drive and is involved in an accident, who is identified as the driver of a motor vehicle in the accident report and is charged with driving under restraint, avoids the revocation extension imposed by section 42-2-138(3) C.R.S., when the district attorney drops criminal charges associated with the accident.

Whether the court of appeals erred as a matter of law by holding that an “accident report alone” does not support the extension of revocation, where the statute, § 42-2-138(3), C.R.S., directs “[t]he department, upon receiving a record of conviction or accident report of any person for an offense committed while operating a motor vehicle . . . to immediately . . . determine if the license or operating privilege of such person has been suspended or revoked,” and if so, to extend the restraint and notify the district attorney of the violation.

No. 02SC248

Court of Appeals Case No. 00CA1367 (3/14/02)

HUBERT UNDERWOOD,

Petitioner,

v.

THE PEOPLE OF THE STATE OF COLORADO,

Respondent.

Petition for Writ of Certiorari DENIED. EN BANC.

JUSTICE COATS does not participate.

No. 02SC302

Court of Appeals Case No. 01CA517 (2/14/02)

In re the Marriage of:

ELMER E. SPRINGER, Petitioner,

and

M. ELLEN SPRINGER, Respondent.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 02SC305

Court of Appeals Case No. 00CA2100 (3/28/02)

MICHAEL A. BREAUX, Petitioner,

v.

THE PEOPLE OF THE STATE OF COLORADO, Respondent.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 02SC310

Court of Appeals Case No. 00CA1506 (3/14/02)

MICHAEL HALEY, Petitioner,

v.

THE PEOPLE OF THE STATE OF COLORADO, Respondent.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 02SC311

Court of Appeals Case No. 00CA675 (2/28/02)

TRINIDAD RAMOS, Petitioner,

v.

THE PEOPLE OF THE STATE OF COLORADO, Respondent.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 02SC313

Court of Appeals Case No. 00CA2302 (3/28/02)

THOMAS MCCASLIN, Petitioner,

v.

THE PEOPLE OF THE STATE OF COLORADO, Respondent.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 02SC315

Court of Appeals Case No. 00CA1997 (2/21/02)

CHARLES R. WORKMAN, Petitioner,

v.

THE PEOPLE OF THE STATE OF COLORADO, Respondent.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 02SC318

Court of Appeals Case No. 01CA997 (4/18/02)

JOHN DAVID VALKINBURG, Petitioner,

v.

THE PEOPLE OF THE STATE OF COLORADO, Respondent.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 02SC323

Court of Appeals Case No. 01CA955 (4/11/02)

K.L.C. MANAGEMENT CO., INC. d/b/a COWBOYS COUNTRY

AND WESTERN BAR; and SAGE KRAIG STUART, Petitioners,

v.

JAMES ADAMS, Respondent.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 02SC325

Court of Appeals Case No. 01CA251 (4/4/02)

WILLIE DANIELS, Petitioner,

v.

THE PEOPLE OF THE STATE OF COLORADO, Respondent.

Petition for Writ of Certiorari DENIED. EN BANC.

JUSTICE COATS does not participate.

No. 02SC326

Court of Appeals Case No. 00CA201 (4/4/02)

COLLETTE T. GILLIAN, Petitioner,

v.

THE PEOPLE OF THE STATE OF COLORADO,

Respondent.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 02SC329

Court of Appeals Case No. 01CA962 (4/4/02)

STEPHANIE M. BULL, Petitioner,

v.

KIMBERLY S. WILLIS, individually and as parent

and guardian of TIFFANY HUGGANS, Respondent.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 02SC339

Court of Appeals Case No. 00CA1725 (3/21/02)

JAMES DAVID KIMO SMITH, Petitioner,

v.

THE PEOPLE OF THE STATE OF COLORADO, Respondent.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 02SC342

Court of Appeals Case No. 00CA1872 (4/11/02)

JUSTINO SERRATO, Petitioner,

v.

THE PEOPLE OF THE STATE OF COLORADO, Respondent.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 02SC345

Boulder County District Court Case No. 01CV1595 (03/19/02)

MARIA CHAVEZ and JOSE CHAVEZ, Petitioners,

v.

COUNTYRYSIDE VILLAGE ASSOCIATION/BOULDER

A LIMITED PARTNERSHIP, d/b/a BOULDER MEADOWS, Respondent.

Petition for Writ of Certiorari DENIED. EN BANC.

CHIEF JUSTICE MULLARKEY would grant as to the following issue:

Whether the District Court erred in ruling that Petitioners – who successfully defeated Respondent’s attempted eviction after entering their appearance, answering the eviction complaint and conducting a contested hearing – were not legally entitled to an award of attorney’s fees under section 13-40-123, 5 C.R.S. (2001).

No. 02SC348

Court of Appeals Case No. 01CA1068 (4/11/02)

C.G.G., a child, Petitioner,

v.

THE PEOPLE OF THE STATE OF COLORADO, Respondent.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 02SC350

Court of Appeals Case No. 01CA182 (4/18/02)

WALLACE G. GARRETT, Petitioner,

v.

THE PEOPLE OF THE STATE OF COLORADO, Respondent.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 02SC352

Eagle County District Court Case No. 01CV613

THOMAS LISTON, Petitioner,

v.

DOUGLAS DURRETT, Respondent.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 02SC355

Court of Appeals Case No. 00CA1457 (4/18/02)

FRED A. WILSON, Petitioner,

v.

THE PEOPLE OF THE STATE OF COLORADO, Respondent.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 02SC356

Court of Appeals Case No. 00CA1544 (4/18/02)

LUIS N. RAMIREZ, Petitioner,

v.

THE PEOPLE OF THE STATE OF COLORADO, Respondent.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 02SC357

Court of Appeals Case No. 00CA382 (4/18/02)

MICHAEL SCHWIRZINSKI, Petitioner,

v.

THE PEOPLE OF THE STATE OF COLORADO, Respondent.

Petition for Writ of Certiorari DENIED. EN BANC.

JUSTICE COATS does not participate.

No. 02SC364

Court of Appeals Case No. 00CA2377 (4/18/02)

WILLIAM ROGERS, Petitioner,

v.

THE PEOPLE OF THE STATE OF COLORADO, Respondent.

Petition for Writ of Certiorari DENIED. EN BANC.

JUSTICE COATS does not participate.

No. 02SC365

Court of Appeals Case No. 01CA217 (4/18/02)

MARK DENMAN, Petitioner,

v.

THE PEOPLE OF THE STATE OF COLORADO, Respondent.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 02SC369

Court of Appeals Case No. 00CA2064 (1/24/02)

RYAN SEPOLEN, Petitioner,

v.

THE PEOPLE OF THE STATE OF COLORADO, Respondent.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 02SC371

Court of Appeals Case No. 01CA683 (5/2/02)

GREGORY STOCKS, Petitioner,

v.

THE PEOPLE OF THE STATE OF COLORADO, Respondent.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 02SC382

Court of Appeals Case No. 99CA1998 (1/10/02)

GREG G. ABEYTA, Petitioner,

v.

THE PEOPLE OF THE STATE OF COLORADO, Respondent.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 02SC383

Court of Appeals Case No. 00CA986 (1/24/02)

NIEVES MARIONI-CHAVEZ, Petitioner,

v.

THE PEOPLE OF THE STATE OF COLORADO, Respondent.

Petition for Writ of Certiorari DENIED. EN BANC.

JUSTICE COATS does not participate.

No. 02SC386

Adams County District Court Case No. 01CV389

MICHAEL ROMAN and JARED ROMAN, Petitioners,

v.

MICHAEL HAYWARD; JEANIE HAYWARD; CHRISTOPHER

HAYWARD; and PAUL HAYWARD, Respondents.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 02SC389

Court of Appeals Case No. 00CA2214 (5/2/02)

JOSHUA BECKIUS, Petitioner,

v.

THE PEOPLE OF THE STATE OF COLORADO, Respondent.

Petition for Writ of Certiorari DENIED. EN BANC.
