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ADVANCE SHEET HEADNOTE  
April 7, 2014

**2014 CO 23**

**No. 11SC674, People v. Montero-Romero – Criminal Law – Jury.**

The People petitioned for review of the court of appeals judgment in People v. Montero-Romero, No. 10CA833 (Colo. App. Aug. 25, 2011) (not published pursuant to C.A.R. 35(f)), in which that court reversed Montero-Romero's convictions for first degree assault and first degree burglary and his sentence to 28 years in the Department of Corrections. After concluding that the trial court abused its discretion in denying a challenge for cause on the grounds of juror bias, and that the defendant removed the prospective juror in question with a peremptory challenge and subsequently exhausted his remaining peremptory challenges, the division reversed, noting this court's rule of automatic reversal in People v. Macrander, 828 P.2d 234, 244 (Colo. 1992).

The supreme court reversed and remanded for reconsideration in light of its holding in People v. Novotny, 2014 CO 18, overruling the bright-line, automatic reversal rule of Macrander, and mandating an outcome-specific harmless error analysis.

**The Supreme Court of the State of Colorado**  
2 East 14<sup>th</sup> Avenue • Denver, Colorado 80203

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**2014 CO 23**

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**Supreme Court Case No. 11SC674**  
*Certiorari to the Colorado Court of Appeals*  
Court of Appeals Case No. 10CA833

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**Petitioner:**

The People of the State of Colorado,

v.

**Respondent:**

Eusebio Montero-Romero.

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**Judgment Reversed**

*en banc*

April 7, 2014

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**JUSTICE COATS** delivered the Opinion of the Court.

**JUSTICE HOOD** dissents, and **JUSTICE HOBBS** joins in the dissent.

¶1 The People petitioned for review of the court of appeals judgment in People v. Montero-Romero, No. 10CA833 (Colo. App. Aug. 25, 2011) (not published pursuant to C.A.R. 35(f)), in which that court reversed Montero-Romero’s convictions for first degree assault and first degree burglary and his sentence to 28 years in the Department of Corrections. As is relevant here, upon concluding that the trial court abused its discretion in denying a challenge for cause on the grounds of juror bias, and that the defendant removed the prospective juror in question with a peremptory challenge and subsequently exhausted his remaining peremptory challenges, the division reversed, noting this court’s rule of automatic reversal in People v. Macrander, 828 P.2d 234, 244 (Colo. 1992). The People petitioned solely to request that this court reconsider the requirement for automatic reversal under these circumstances.

¶2 In People v. Novotny, 2014 CO 18, ¶ 27, we overruled the automatic reversal rule announced in Macrander, holding that the reversal of a criminal conviction for other than structural error, in the absence of express legislative mandate or an appropriate case specific, outcome-determinative analysis, could no longer be sustained. We further found that allowing a defendant fewer peremptory challenges than authorized by statute or rule does not, in and of itself, amount to structural error. Id.

¶3 Because the court of appeals relied on the bright-line, automatic reversal rule of Macrander, rather than evaluating the likely effect of the trial court’s error on the outcome of the specific case in which it occurred, and because the automatic reversal requirement of Macrander has now been overruled, the judgment of the court of

appeals is reversed, and the case is remanded for reconsideration in light of our holding in Novotny.

**JUSTICE HOOD** dissents, and **JUSTICE HOBBS** joins in the dissent.

JUSTICE HOOD, dissenting.

¶4 In People v. Novotny, 2014 CO 18, ¶ 27, this court overturned the automatic-reversal rule of People v. Macrander, 828 P.2d 234 (Colo. 1992), and replaced it with an “appropriate case specific, outcome-determinative analysis.” I dissented, in part because I am convinced that Novotny substitutes “Macrander’s rule mandating automatic reversal with a rule seeming to mandate automatic affirmance.” See Novotny, ¶ 31 (Hood, J., concurring in part and dissenting in part). For the same reasons articulated in that dissent, I respectfully dissent here as well.

I am authorized to state that JUSTICE HOBBS joins in the dissent.