ANNOUNCEMENTS
COLORADO SUPREME COURT
MONDAY, JANUARY 12, 2009

"Slip opinions" are the opinions delivered by the Supreme Court Justices and are subject to modification, rehearing, withdrawal, or clerical corrections. Modifications to previously posted opinions will be linked to the case number in the petition for rehearing section the day the changes are announced.

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

OPINIONS

SUPREME COURT, STATE OF COLORADO Two East 14th Avenue Denver, Colorado 80203 Original Proceeding Pursuant to C.A.R. 21 Adams County District Court Case No. 07CR2147 Honorable Edward Moss, Judge	Case No. 08SA170

In Re:

Plaintiff:

The People of the State of Colorado,

v.

Defendant:

Matthew Gene Maestas.

RULE MADE ABSOLUTE
EN BANC

CHIEF JUSTICE MULLARKEY delivered the Opinion of the Court.

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SUPREME COURT, STATE OF COLORADO Two East 14th Avenue Denver, Colorado 80203 Certiorari to the Colorado Court of Appeals Court of Appeals Case No. 05CA1996	Case No. 07SC497

Petitioner:

Colorado Mining Association,

v.

Respondent:

Board of County Commissioners of Summit County,

and

Intervenors-Respondents:
,
Alliance for Responsible Mining and Blue River Group of the Sierra Club.

JUDGMENT REVERSED
EN BANC

JUSTICE HOBBS delivered the Opinion of the Court.
JUSTICE EID concurs in the judgment, and JUSTICE COATS joins in the concurrence.
JUSTICE MARTINEZ dissents.

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SUPREME COURT, STATE OF COLORADO Two East 14th Avenue Denver, Colorado 80203 Certiorari to the Colorado Court of Appeals Court of Appeals Case No. 05CA1535	Case No. 07SC236

Petitioner:

Denny Construction, Inc., a Colorado corporation,

v.

Respondent:

City and County of Denver, Colorado, acting through its Board of Water Commissioners, a municipal corporation of the State of Colorado.

JUDGMENT REVERSED
EN BANC

JUSTICE EID delivered the Opinion of the Court.

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PETITIONS FOR REHEARING

SUPREME COURT, STATE OF COLORADO Two East 14th Avenue Denver, Colorado 80203 Original Proceeding Pursuant to C.A.R. 21 Delta County District Court, Case No. 07CV137 Delta County District Court, Case No. 99CR96 Honorable Charles R. Greenacre, Judge Honorable J. Steven Patrick, Judge	Case No. 07SA340
In Re: **Plaintiff:** The People of the State of Colorado, v. **Defendant:** Dean Carbajal.	
Petition for Rehearing DENIED. EN BANC.	

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SUPREME COURT, STATE OF COLORADO Two East 14th Avenue Denver, Colorado 80203 Certiorari to the Colorado Court of Appeals Court of Appeals Case No. 05CA2075	Case No. 07SC789
Petitioner: Acoustic Marketing Research, Inc., d/b/a Sonora Medical Systems, Inc., v. **Respondent:** Technics, LLC.	
Petition for Rehearing DENIED. EN BANC. JUSTICE COATS and JUSTICE EID would grant the petition.	

ANNOUNCEMENTS
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PETITIONS FOR WRIT OF CERTIORARI

No. 08SC384
Court of Appeals Case No. 06CA1526

Petitioner:
B.B. & C Partnership,
v.
Respondent:
The Edelweiss Condominium Association.

Petition for Writ of Certiorari GRANTED. EN BANC.

Summary of Issues:

Whether the court of appeals erred in holding that, as a matter of law, petitioner could not adversely possess a parking space on condominium property pursuant to C.R.S. section 38-41-108 (adverse possession under color of title) where petitioner had parked a car in the space without objection for over twenty years, paid property taxes for the space for over twenty years, recorded a warranty deed assigning the space to petitioner with the Eagle County Clerk and Recorder and paid condominium dues.

Whether the court of appeals erred in holding that C.R.S. section 38-41-108 does not, as a matter of law, apply to condominium common elements.

No. 08SC470
Court of Appeals Case No. 06CA2558

Petitioner:
Boulder Plaza Residential, LLC, a Colorado limited liability company,
v.
Respondent:
Summit Flooring, LLC, a Colorado limited liability company.

Petition for Writ of Certiorari DENIED. EN BANC.

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No. 08SC471
Court of Appeals Case No. 06CA1269

Petitioner:
Boulder Plaza Residential, LLC, a Colorado limited liability company,
v.
Respondent:
Summit Flooring, LLC, a Colorado limited liability company,

Petition for Writ of Certiorari DENIED. EN BANC.

No. 08SC483
Court of Appeals Case No. 07CA0461

Petitioner:
Douglas Burns,
v.
Respondent:
Department of Corrections.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 08SC539
Court of Appeals Case No. 06CA0186

Petitioner:
Daniel Zamarripa-Diaz,
v.
Respondent:
The People of the State of Colorado.

Petition for Writ of Certiorari GRANTED. EN BANC.

Whether the court of appeals erred in finding no reversible plain error arising from an instruction that prevented the jury from considering the lesser-included offense of second-degree burglary unless and until the jury first unanimously acquitted the petitioner of first-degree burglary.

Whether Medina v. People, 114 P.3d 845 (Colo. 2005), and due process require the trial court to give the petitioner an opportunity to be heard prior to asking juror questions of witnesses, and whether the court's refusal to do so in this case requires reversal.

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No. 08SC549
Court of Appeals Case No. 07CA0927

Petitioner:
Kevin Minh Le, d/b/a Marina Pointe Liquors,
v.
Respondent:
Colorado Department of Revenue, Liquor Enforcement Division.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 08SC554
Court of Appeals Case No. 06CA0359

Petitioner:
The People of the State of Colorado,
v.
Respondent:
Terence Kilpatrick Bruce.

Petition for Writ of Certiorari DENIED. EN BANC.

JUSTICE COATS would grant as to the following issue:

Did the Court of Appeals err in concluding that where a defendant is charged with theft over a specified amount, with no reference to specific transactions in the charging document, the jury instructions must require a unanimous verdict on which specific transaction(s) constitute the offense, even if the amount found was less than in the original charges, and a jury poll showed that the verdict was unanimous in regard to which transaction constituted the offense?

No. 08SC557
Court of Appeals Case No. 05CA1378

Petitioner:
Lawrence Carey,
v.
Respondent:
The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

ANNOUNCEMENTS
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No. 08SC588
Court of Appeals Case No. 04CA2118

Petitioner/Cross-Respondent:
The People of the State of Colorado,
v.
Respondent/Cross-Petitioner:
David Arthur Wittrein.

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

Summary of Issues:

Whether the court of appeals erred in finding that, when a defendant objects, it is per se reversible error for the trial court to permit the competency hearing to be held in front of the jury.

Whether the court of appeals erred in reversing the convictions based on expert testimony the defendant elicited during his cross-examination of the People's expert.

Whether the court of appeals erred in holding that a trial court may decline to even review an alleged sexual assault victim's school records in camera if the defendant argues that the records may contain impeachment evidence, and applied an erroneous legal standard in determining that, assuming the trial court should have reviewed the alleged victim's mental health records in camera, the error was harmless.

DENIED AS TO ALL OTHER ISSUES.

CHIEF JUSTICE MULLARKEY would grant as to the following issue:

Whether the court of appeals erred in concluding that an expert's statement that a child's detailed allegation of abuse was "in and of itself . . . extremely supportive of abuse" did not constitute a prohibited personal opinion that the child was telling the truth.

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No. 08SC631
Court of Appeals Case No. 05CA0931

Petitioner:
The People of the State of Colorado,
v.
Respondent:
Nina B. Rice.

Petition for Writ of Certiorari DENIED. EN BANC.

JUSTICE COATS and JUSTICE EID would grant as to the following issues:

Must the elemental instruction on computer crime, section 18-5.5-102, C.R.S. (2008), specify the name of the victim from whom the money was taken?

If the name of the victim is not required, and the victim is specified in the information and not in the elemental instruction, does this constitute a simple variance?

If there was a simple variance here, did it constitute plain error under the circumstances of this case?

No. 08SC643
Court of Appeals Case No. 05CA1231

Petitioner:
Rumon Robinson,
v.
Respondent:
The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

ANNOUNCEMENTS
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No. 08SC671
Court of Appeals Case No. 07CA1224

Petitioner:
Public Service Company of Colorado, d/b/a Xcel Energy,
v.
Respondent:
Betterview Investments, LLC.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 08S672
Court of Appeals Case No. 05CA0169

Petitioner:
Eloy Torres-Gonzalez,
v.
Respondent:
The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 08SC680
Court of Appeals Case No. 07CA0026

Petitioners:
Gary R. Hansen and Karen L. Hansen,
v.
Respondents:
Barbara A. Hemminger; The Estate of Robert J. Butler; Helen Bjorkquist; and Berkenkotter Motors, L.L.C., a Colorado limited liability corporation.

Petition for Writ of Certiorari DENIED. EN BANC.

ANNOUNCEMENTS
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No. 08SC686
Court of Appeals No. 07CA0667

Petitioner:
K.W.S., a juvenile,
v.
Respondent:
The People of the State of Colorado.

Petition for Writ of Certiorari GRANTED. EN BANC.

Summary of Issue:

Whether the court of appeals erred in dismissing petitioner's appeal based on a finding that a permanent probationary condition of his deferred judgment and sentence is not subject to direct appellate review unless and until such time as the deferred judgment is revoked.

No. 08SC767
Court of Appeals Case No. 05CA0809

Petitioner:
Rudolph Jackson,
v.
Respondents:
The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 08SC787
Court of Appeals Case No. 07CA0960

Petitioner:
David J. Beitzel,
v.
Respondent:
The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

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No. 08SC795
Court of Appeals Case No. 06CA0680

Petitioner:
Charles Scholtes,
v.
Respondent:
The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 08SC796
Court of Appeals Case No. 04CA1316

Petitioner:
Scott McKay,
v.
Respondent:
The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 08SC798
Court of Appeals Case No. 05CA1854

Petitioner:
Jesse Barajas,
v.
Respondent:
The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 08SC800
Court of Appeals Case No. 07CA1076

Petitioner:
Jerome McClain,
v.
Respondent:
The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

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No. 08SC812
Court of Appeals Case No. 07CA2375

Petitioner:
Jeff W. Lovett,
v.
Respondents:
Industrial Claim Appeals Office, Big Lots, and Zurich American Insurance Co.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 08SC843
Court of Appeals Case No. 07CA0901

In the Matter of the Estate of Edna R. Murphy, Deceased:

Petitioner:
John H. Licht, Personal Representative,
v.
Respondent:
Dorothy J. Moore.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 08SC851
Court of Appeals Case No. 06CA1139

Petitioner:
Dante Grissom,
v.
Respondent:
The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.
JUSTICE COATS does not participate.

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No. 08SC856
Court of Appeals Case No. 07CA1638

Petitioner:
Christopher Selectman,
v.
Respondent:
The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 08SC859
Court of Appeals Case No. 07CA0773

Petitioner:
David Eugene McCulloch,
v.
Respondent:
The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 08SC862
Court of Appeals Case No. 07CA0775

Petitioner:
Melvin P. Rivers,
v.
Respondent:
The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 08SC874
Court of Appeals Case No. 05CA2092

Petitioner:
Fred Tomlin,
v.
Respondent:
The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

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No. 08SC880
Court of Appeals Case No. 07CA0552

Petitioner:
Jon K. Alo,
v.
Respondent:
The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 08SC890
Court of Appeals Case No. 06CA2431

Petitioner:
Christopher Lawrence Soules,
v.
Respondent:
The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 08SC900
Court of Appeals Case No. 05CA0551

Petitioner:
Donald Ray Gonzales,
v.
Respondent:
The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

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No. 08SC901
Court of Appeals Case No. 07CA1669

Petitioner:
Sara Diggs,
v.
Respondents:
Regional Transportation District, a political subidivision of the State of Colorado; First Transit, Inc., a foreign corporation; and John Doe.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 08SC905
Court of Appeals Case No. 07CA2262

Petitioner:
Daniel W. Dauwe,
v.
Respondent:
John G. Otto.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 08SC906
Court of Appeals Case No. 08CA0440

Petitioner:
Nicholas Molina-Palma,
v.
Respondent:
The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

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No. 08SC915
Court of Appeals Case No. 06CA0219

Petitioner:
Salvador Vigil,
v.
Respondent:
The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 08SC922
Court of Appeals Case No. 07CA2283

Petitioner:
Daniel Bradshaw,
v.
Respondent:
Southern Ute Indian Tribe.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 08SC924
Court of Appeals Case No. 07CA0693

Petitioner:
Robert J. Villalobos,
v.
Respondent:
The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 08SC928
Court of Appeals Case No. 07CA0852

Petitioner:
William James Torivio,
v.
Respondent:
The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

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No. 08SC930
Court of Appeals Case No. 07CA0210

Petitioner:
Steven Melton-Meltone Ortiz,
v.
Respondent:
The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 08SC932
Court of Appeals Case No. 06CA0449

Petitioner:
Richard James Kasparson,
v.
Respondent:
The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 08SC940
Court of Appeals Case No. 07CA1885

Petitioner:
K.S.B.,
v.
Respondent:
The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

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No. 08SC941
Court of Appeals Case No. 07CA0003

Petitioner:
Shawn Gene Brandau,
v.
Respondent:
The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 08SC942
Court of Appeals Case No. 06CA1993

Petitioner:
Johnny Rodriguez,
v.
Respondent:
The People of the State of Colorado.

Petition for Writ of Certiorari DENIED. EN BANC.

No. 08SC952
Court of Appeals Case No. 08CA1307

Petitioner:
R.I.W.,
v.
Respondent:
The People of the State of Colorado,
In the Interest of I.A.D., Minor Child.

Petition for Writ of Certiorari DENIED. EN BANC.

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MONDAY, JANUARY 12, 2009

No. 08SC953
Court of Appeals Case No. 08CA0975

Petitioner:
T.R.,
v.
Respondent:
The People of the State of Colorado,
In the Interest of D.R., Minor Child.

Petition for Writ of Certiorari DENIED. EN BANC.