



news

Colorado Judicial Branch
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FOR IMMEDIATE RELEASE
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Colorado Court of Appeals to hear arguments at Pine Creek High School on Monday, Nov. 8

DENVER – The Colorado Court of Appeals will hear oral arguments in two cases on Monday, Nov. 8, 2010, at Pine Creek High School in Colorado Springs before an audience of students. The public also is invited to attend.

The visit is part of the Colorado Judicial Branch's *Courts in the Community*, the outreach program the Colorado Supreme Court and Court of Appeals initiated on Law Day (May 1), 1986. The *Courts in the Community* program was developed to give Colorado high school students firsthand experience in how the Colorado judicial system works and illustrate how disputes are resolved in a democratic society. These are not mock proceedings. The court will hear arguments in actual cases from which it will issue opinions. The court generally issues opinions within a few weeks of the arguments.

The 22 judges of the Colorado Court of Appeals sit in divisions of three judges to hear cases. Judges hearing today's cases are John D. Dailey (presiding), Jerry N. Jones and Nancy J. Lichtenstein.

The two cases are:

- **Whipple v. BNSF:** Lavern Whipple is asking the Colorado Court of Appeals to review a jury's conclusion that BNSF Railway Co. was not negligent in connection with a workplace accident that left him with a neck injury. After the trial, one of Mr. Whipple's coworkers recalled a set of photographs of the accident scene that Mr. Whipple believed could have changed the jury's verdict.
- **People v. Shepard-Duncan:** Ms. Shepard-Duncan was convicted of felony drug possession after a stabbing incident occurred at her home when she was not there. The charges were based on drug paraphernalia and two plastic baggies containing methamphetamine residue found by a police officer who searched the home. Ms.

Shepard-Duncan is asking the Court of Appeals to review her case, arguing the trial court should have concluded the officer illegally searched her home, and should not have admitted the drug evidence.

The proceedings will begin at 10 a.m. Monday, Nov. 8, 2010, in the auditorium at Pine Creek High School, 10750 Thunder Mountain Ave., Colorado Springs, CO 80908. A question-and-answer session, during which the students can ask questions of the attorneys, will follow the arguments in each case. At the conclusion of the second argument, the students also will have the opportunity to participate in a question-and-answer session with the Court of Appeals judges.

There will be a limited number of seats for the public. Audio recordings from the two arguments will be available online within one to two days of the arguments at http://www.courts.state.co.us/Courts/Court_Of_Appeals/Oral_Arguments/Index.cfm.

Editor's Note:

The documents related to these two cases are located at:

<http://www.courts.state.co.us/Courts/Education/Materials3.cfm>

Additional information on the Courts in the Community program is available at:

<http://www.courts.state.co.us/Courts/Education/Community.cfm>

News media organizations interested in recording the arguments may contact Jon Sarché at the State Court Administrator's Office (contact information below). The following pages contain information about expanded media coverage.

We will be reserving seats for journalists. Please contact Jon Sarché at jon.sarche@judicial.state.co.us or at 303-837-3644 if you plan to attend.

Media opportunity

What: Colorado Court of Appeals Oral Arguments
When: 10 a.m. – noon, Nov. 8, 2010
Where: Pine Creek High School, 10750 Thunder Mountain Ave., Colorado Springs, CO 80908

Photo opportunities. During oral arguments, the requirements set forth in Chapter 38, Rule 2 of the Colorado Supreme Court Rules are in effect. Rule 2 is attached. Highlights include:

- a. A written request for expanded media coverage (form is attached below) must be filed in advance with copies to counsel for the parties.
- b. If granted, only one video camera and/or one still camera is allowed, and that media source must share and pool its coverage with other media.
- c. No flash attachments or lighted television cameras are allowed during the arguments.
- d. The camera operator may use a tripod, but shall not change location while court is in session.

For information, contact Jon Sarché, (303) 837-3644.

Following each argument, during the question-and-answer interaction between the students, lawyers and judges, access is open for photography and videography without the limitations of Rule 2. All media representatives also are welcome to photograph the luncheon immediately following the cases.

Schedule:

10 a.m. – 10:15 a.m.	Opening remarks
10:15 a.m. – 10:45 a.m.	<u>09CA1872, Whipple v. BNSF</u>
10:45 a.m. – 10:55 a.m.	Judges conference; attorneys answer students' questions
10:55 a.m. – 11:25 a.m.	<u>09CA750, People v. Shepard-Duncan</u>
11:25 a.m. – 11:35 a.m.	Judges conference; attorneys answer students' questions
11:35 a.m. – 11:50 a.m.	Judges answer students' questions
12 p.m. – 1:30 p.m. (est.)	Lunch, judges and selected students

Request for Expanded Media Coverage. A written request for expanded media coverage must be submitted to Chris Ryan, clerk of the Court of Appeals, by fax at 303-864-4534 at least one day prior to the proceeding as outlined in Rule 2 (submitting requests earlier is appreciated to allow for response time). A fill-in-the-blank request form is attached below.

Expanded media coverage of court proceedings

The presence of expanded media coverage in the Colorado court system's courtrooms is controlled by strict standards spelled out in Chapter 38, Rule 2 of the Colorado Supreme Court Rules effective July 1, 2010. The rule also outlines each step necessary to garner approval for such coverage.

There are several points in the Rule of particular note:

1. A written request for expanded media coverage must be submitted to the court at least one day before expanded media coverage is requested to begin, unless a longer or shorter time is required or permitted by the court.
2. Copies of the expanded media coverage request shall be mailed or faxed to all counsel for each party participating in the proceeding prior to submitting the request to the court.
3. The request must include a description of the pooling arrangements, including the identity of the designated representatives.
4. Any party or witness may lodge with the judge a written objection to expanded coverage of all or a portion of a proceeding.

Request for expanded media coverage in Colorado state courts

Rule 2. Media Coverage of Court Proceedings

(a) Expanded Media Coverage: A judge may authorize expanded media coverage of court proceedings, subject to the guidelines set forth below.

(1) **Definitions.** As used in this section, unless the context otherwise requires:

- (A) "Proceeding" means any trial, hearing, or any other matter held in open court which the public is entitled to attend.
- (B) "Photograph" and "photography" means all recording or broadcasting of visual images, by means of still photographs, videotape, television broadcasts, motion pictures, or otherwise.
- (C) "Expanded media coverage" means any photography or audio recording of proceedings.
- (D) "Judge" means the justice, judge, magistrate, or other judicial officer presiding over the proceedings. In proceedings with more than one judge presiding, any decision required shall be made by a majority of the judges.
- (E) "Media" means any news gathering or reporting agency and the individual persons involved, and includes newspapers, radio, television, radio and television networks, news services, magazines, trade papers, in-house publications, professional journals, or any other news reporting or news gathering agency whose function it is to inform the public or some segment thereof.

(2) **Standards for Authorizing Coverage.** In determining whether expanded media coverage should be permitted, a judge shall consider the following factors:

- (A) Whether there is a reasonable likelihood that expanded media coverage would interfere with the rights of the parties to a fair trial;
- (B) Whether there is a reasonable likelihood that expanded media coverage would unduly detract from the solemnity, decorum and dignity of the court; and
- (C) Whether expanded media coverage would create adverse effects which would be greater than those caused by traditional media coverage.

(3) **Limitations on Expanded Media Coverage.** Notwithstanding an authorization to conduct expanded media coverage of a proceeding, there shall be no:

- (A) Expanded media coverage of pretrial hearings in criminal cases, except advisements and arraignments;
- (B) Expanded media coverage of jury voir dire;
- (C) Audio recording or "zoom" close-up photography of bench conferences;

- (D) Audio recording or close-up photography of communications between counsel and client or between co-counsel;
 - (E) Expanded media coverage of in camera hearings;
 - (F) Close-up photography of members of the jury.
- (4) **Authority to Impose Restrictions on Expanded Media Coverage.** A judge may restrict or limit expanded media coverage as may be necessary to preserve the dignity of the court or to protect the parties, witnesses, or jurors. A judge may terminate or suspend expanded media coverage at any time upon making findings of fact that: (1) rules established under this Rule or additional rules imposed by the judge have been violated; or (2) substantial rights of individual participants or rights to a fair trial will be prejudiced by such coverage if it is allowed to continue.
- (5) **Conditions for Coverage.** Expanded media coverage shall be conducted only under the following conditions:
- (A) Equipment Limitations.
 - (i) Video. Only one person at a time shall be permitted to operate a videotape, television, or motion picture camera. There shall be only one such camera at a time in the courtroom, except that, at the discretion of the judge, the camera operator may have a second camera. The camera operator may use a tripod, but shall not change location while court is in session.
 - (ii) Audio. The court's audio system shall be used if technically suitable and, in that event, there must be no interference with the court's use of its system. If the court's system is not technically suitable, then the person conducting expanded media coverage may install an audio recording system at his or her own expense upon first obtaining approval of the judge. All microphones and related wiring shall be unobtrusive and shall not interfere with the movement of those in the courtroom.
 - (iii) Still Cameras. Only one person at a time shall be permitted to operate still cameras, which shall make as little noise as possible. The still photographer may use a tripod, but shall not change location while court is in session.
 - (iv) Lighting. No movie lights, flash attachments, or sudden lighting changes shall be permitted during a proceeding. No modification or addition of lighting equipment shall be permitted without the permission of the judge.
 - (v) Operating Signals. No visible or audible light or signal (tally light) shall be used on any equipment.
 - (B) Pooling Arrangements. The media shall be solely responsible for designating one media representative to conduct each of the categories of expanded media coverage listed in subsection (I) of this section, and for arranging an open and impartial distribution scheme with a distribution point located outside of the courtroom. If no agreement can be reached on either of these matters, then there shall be no expanded media coverage of the type for which no pooling agreement has been made. Neither judges nor other court personnel shall be called upon to resolve any disputes concerning such pooling arrangements.
 - (C) Conduct of Media Representatives. Persons conducting expanded media coverage shall conduct themselves in a manner consistent with the decorum and dignity of the courtroom. The following practices shall apply:
 - (i) Equipment employed to provide expanded media coverage shall be positioned and operated so as to minimize any distraction;
 - (ii) Identifying marks, call letters, logos, symbols, and legends shall be concealed on all equipment. Persons operating such equipment shall not wear clothing bearing any such identifying information;
 - (iii) Equipment used to provide expanded media coverage shall not be placed in, or removed from, the courtroom while court is in session. No film, videotape, or lens shall be changed within a courtroom while court is in session.
- (6) **Procedures.** The following procedures shall be followed in obtaining authorization for expanded media coverage:
- (A) Request for Expanded Media Coverage. A written request shall be submitted to the judge at least one day before expanded media coverage is requested to begin, unless a longer or shorter

time is required or permitted by the judge. Copies of the request shall be given to counsel for each party participating in the proceeding. The request shall include the following:

- (i) The name, number, date and time of the proceeding;
- (ii) The type (audio, video or still photography) of expanded media coverage requested and a description of the pooling arrangements required by section (e)(II), if any, including the identity of the designated representatives.

(B) Objections. Any party or witness may lodge with the judge a written objection to expanded media coverage of all or a portion of a proceeding.

(C) Judicial Authorization. The judge shall rule on a request or objection within a reasonable time prior to the proceeding or promptly after the request or objection if the proceeding has begun. The ruling shall be made on the record and the reasons therefore set forth briefly.

(D) The media or any witness may not appeal, or seek review by original proceeding, the granting or denial of expanded media coverage. A party to the case may seek review of a ruling by original proceeding, if otherwise appropriate, or by post-trial appeal.

(b) Other use of Media.

- (1) A judge may authorize the use of electronic or photographic means for the perpetuation of a record, or for purposes of judicial administration.
- (2) A judge may authorize the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings.

Request for Expanded Media Coverage

The name of media group: _____

Person making request: _____

Contact information: _____

Name, address of counsel (if represented): _____

Date of request: _____ Date of proceeding: Nov. 8, 2010

Time of the proceeding	Case Number	Case Caption
10:15 a.m.	09CA1872	Whipple v. BNSF
10:55 a.m.	09CA750	People v. Shepard-Duncan

The type of expanded media coverage requested:

Designated Representative:

____ audio

____ video

____ still photography

Description of the pooling arrangements required by section (5)(B), including the identity of the designated representatives:

Request for Expanded Media Coverage. A written request for expanded media coverage must be submitted to Chris Ryan, clerk of the Court of Appeals, by fax at 303-864-4534 at least one day prior to the proceeding as outlined in Canon 3 (submitting requests earlier is appreciated to allow for response time). A fill-in-the-blank request form is attached below.

The undersigned hereby certifies that on the ____ day of _____, 2010, a true and correct copy of the foregoing Request for Expanded Media Coverage was mailed, faxed or hand delivered to the following persons at the locations or fax numbers indicated:

09CA1872 – Lavern Whipple v. BNSF Railway Co.

For the Appellant:

Donald F. D’Antuono, Schnell & D’Antuono, 1120 Lincoln St. #1304, Denver, CO 80203, tel. 303-830-2200, fax 303-830-2211; and William Kvas, Hunegs LeNeave & Kvas PA, 900 Second Ave. South, Suite 1650, Minneapolis, MN 55402, tel. 612-339-4511, fax 612-339-5150

For the Appellee:

Malcolm S. Mead, Andrew J. Carafelli, Thomas L. Beam, Hall & Evans LLC, 1125 17th St., Suite 600, Denver, CO 80202, tel. 303-628-3300, fax 303-628-3368

09CA750 – The People of the State of Colorado v. Suzanne Shepard-Duncan

For the Appellant:

Mary Bullard, Colorado State Public Defender’s Office, 1290 Broadway, Suite 900, Denver, CO 80203, tel. 303-764-1400, fax 303-764-1479

For the Appellee:

Joseph G. Michaels, Assistant Attorney General, 1525 Sherman St., 7th Floor, Denver, CO 80203, tel. 303-866-5709, fax 303-866-3955

_____I agree to comply with all relevant orders and all criteria set forth in Rule 2.

Signature _____ Date _____