

# Summaries of Published Opinions

**July 1, 2019**

**2019 CO 68. No. 16SA291. City and County of Denver v. Consolidated Ditches of Water District No. 2.** *Water Law—Priorities—Exchange and Substitution Operations.*

Under a 1940 water use agreement, the City and County of Denver, acting by and through its Board of Water Commissioners (Denver), agreed, in lieu of making releases from certain streambed reservoirs to replace seepage and evaporation losses, not to reuse or successively use return flows from water imported from the Western Slope. Earlier litigation established that this reuse prohibition in the 1940 agreement applies only to return flows derived from decreed water rights from Colorado River sources with appropriation dates before May 1, 1940; Denver may therefore use return flows derived from sources that were appropriated or acquired after that date. The question in this appeal was whether the 1940 agreement prohibits Denver from using return flows from water imported from the Blue River system under exchange and substitution operations decreed in 1955 and administered under a 1946 priority date using water stored in the Williams Fork Reservoir under a 1935 priority as a substitute supply.

Because the water imported through the Roberts Tunnel under Blue River exchange and substitution operations is a source acquired by Denver after May 1, 1940, the Supreme Court concluded that the resulting return flows are not subject to the 1940 Agreement and Denver may reuse and successively use them. Accordingly, the Court affirmed the water court's judgment and decree.

**2019 CO 69. No. 17SC595. Howard-Walker v. People.** *Cumulative Error.*

In this case, the Supreme Court concluded that a division of the Court of Appeals erred by supplementing this Court's cumulative error standard with case law from federal courts. The Court reaffirmed that the proper standard for analyzing cumulative error claims stems from *Oaks v. People*, 371 P.2d 443 (Colo. 1962).

Applying that standard, the Court concluded that the cumulative prejudicial effect of various trial errors deprived defendant of a fair trial. Accordingly, the Court reversed the judgment of conviction and remanded for a new trial.

**2019 CO 70. No. 17SA285. Diehl v. Weiser.** *Habeas Corpus—Parole Eligibility.*

The Supreme Court determined how the Department of Corrections (DOC) should calculate an inmate's parole eligibility date when an inmate is released to serve mandatory parole and receives additional concurrent sentences. The Court concluded that the DOC's interpretation of the statutory scheme for inmate and parole time computations is reasonable. Accordingly, the Court held that the new parole eligibility date for an inmate who was re-incarcerated for a parole violation and is sentenced for additional offenses should be calculated using the beginning of the period of mandatory parole as the start of the inmate's one continuous sentence. The district court's judgment was reversed.

**2019 CO 71. No. 16SC546. People v. Mazzarelli.** *Plea Agreements—Sentence Concessions—Prosecution's Authority to Withdraw after Guilty Plea Enters.*

The Supreme Court considered whether the People are entitled to withdraw from a plea agreement where, following the defendant's guilty plea, the trial court determines that a more lenient sentence than the one the parties set

forth in the agreement is appropriate. Answering the question in the negative, the Court held that the statute and the rules governing plea agreements in Colorado allow the defendant, but not the People, to withdraw from a plea agreement when the trial court rejects a sentence concession after accepting the guilty plea. In so doing, the Court reiterated what it had previously made clear: sentence concessions in a plea agreement—whether they are called sentence stipulations, sentence agreements, or something else—are sentence recommendations that the trial court, in the exercise of its independent judgment, may adopt or reject. The Court of Appeals' judgment was affirmed and the opinion was vacated.

**2019 CO 72. No. 17SC144. Phillips v. People.** *Waiver Versus Forfeiture—Unpreserved Arguments to Suppress Statements and Evidence—Plain Error Review.*

In a pretrial motion, defendant sought to suppress his statements at a police station and the handgun recovered during a search of his car. The trial court denied both requests and, following a conviction, defendant appealed the two rulings. However, on appeal, defendant raised a new argument with respect to each evidentiary item. A division of the Court of Appeals denied him relief, ruling that he had waived the right to advance the unpreserved contentions.

The Supreme Court agreed with the division that the claims were not preserved. But it determined that no waiver occurred. Instead, relying on *People v. Rediger*, 2018 CO 32, 416 P.3d 893, it held that the claims were forfeited and are thus subject to plain error review. Upon undertaking such review, the Court concluded that the trial court did not err in admitting the

police-station statements and that the record does not establish that the admission of the gun was plain error. The Court of Appeals' judgment was affirmed.

**2019 CO 73. No. 17SC541. Cardman v. People.** *Waiver Versus Forfeiture—Unpreserved Arguments to Suppress Statements—Plain Error Review.*

A detective coerced defendant into making a confession, and the prosecution then used that confession as evidence against defendant to convict him of multiple offenses. Before trial, defendant sought to suppress his statements but neglected to challenge their voluntariness. As a result, the trial court did not rule on that issue

and a division of the Court of Appeals declined to review its merits, finding that it was waived.

The Supreme Court agreed with the division that the voluntariness claim was not preserved. But it determined that no waiver occurred. Instead, relying on the companion case of *Phillips v. People*, 2019 CO 72, \_\_P.3d \_\_, announced the same day, and on *People v. Rediger*, 2018 CO 32, 416 P.3d 893, it held that the voluntariness claim was forfeited, not waived, and is thus subject to plain error review. Upon conducting such review, the Court concluded that the trial court erred in admitting defendant's statements and that the error amounts to plain error and requires reversal. The Court of Appeals' judgment was reversed and the case was remanded. 

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.

CBA Find A Lawyer is now

Trusted  
**Licensed Lawyer**<sup>TM</sup>

We've added more categories and eased searchability so that your practice is more visible to a wider range of clients.

Be sure to log into [LicensedLawyer.org/CO](https://LicensedLawyer.org/CO) using your FindALawyer password to update your bio. Email [membersip@cobar.org](mailto:membersip@cobar.org) or call 303-860-1115, ext. 1 for questions and support.

**CBA**<sup>®</sup>  
Est. in 1897  
Colorado Bar Association