

FILED IN THE ORIGINAL
COURT OF APPEALS
STATE OF COLORADO

COURT OF APPEALS, STATE OF COLORADO Colorado State Judicial Building Two East 14 th Avenue Denver, Colorado 80203	2006 JUL 10 P 5:09 JOHN P. DOERNER CLERK COURT OF APPEALS 6-5-06 JFP
El Paso District Court Honorable Gilbert Martinez Case Number 04CR5770	
THE PEOPLE OF THE STATE OF COLORADO Plaintiff-Appellee v. TODD NEWMILLER Defendant-Appellant	06CA 1402 σ COURT USE ONLY σ
David S. Kaplan, Colorado State Public Defender Kathleen A. Lord, Chief Appellate Deputy 110 16 th Street, Suite 800 Denver, Colorado 80202 (303) 620-4888 (Telephone) kathleen.lord@state.co.us Registration Number: 14190	Case Number:
APPELLANT'S NOTICE OF APPEAL	

I. DESCRIPTION OF NATURE OF CASE AND DISPOSITION IN TRIAL COURT

NATURE OF CASE: This case is a criminal defendant's appeal of the judgment of conviction and sentence imposed by the court. The appeal is taken pursuant to C.A.R. 3.

CHARGES FOR WHICH DEFENDANT WAS TRIED: Second Degree Murder

CHARGES FOR WHICH DEFENDANT WAS CONVICTED: As Tried

DATE JUDGMENT OF CONVICTION ENTERED: March 16, 2006

DATE MOTION FOR NEW TRIAL FILED: May 23, 2006

DATE MOTION FOR NEW TRIAL DENIED: May 24, 2006

DATE SENTENCE IMPOSED: May 24, 2006

SENTENCE: 31 years in the Department of Corrections plus mandatory parole

II. APPEAL BOND INFORMATION

WHETHER APPEAL BOND GRANTED, AMOUNT OF BOND: Denied

III. ISSUES PROPOSED TO BE RAISED ON APPEAL

Issues on appeal may include, but are not limited to: All issues raised in the Motion for New Trial (attached hereto); all issues preserved by objection at trial; sufficiency of the evidence; sentencing; and, any other issues Appellant chooses to raise as plain error.

IV. TRANSCRIPT INFORMATION

A transcript of all evidence taken at trial is necessary to resolve the issues on appeal and will exceed twenty-five pages. The court reporters are Cindy Pressprich, Claudette Cotter, Kimberly Jancik, Kathy Kopta, and Rebecca Lucas.

V. ATTORNEY INFORMATION

Defendant-Appellant Attorney:
DAVID S. KAPLAN
Colorado State Public Defender
110 Sixteenth Street, Suite 800
Denver, Colorado 80202
(303) 620-4888

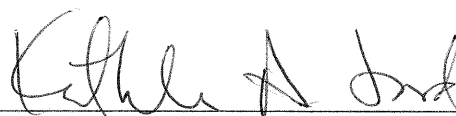
Plaintiff-Appellee Attorney:
JOHN W. SUTHERS
Attorney General
1525 Sherman Street, Fifth Floor
Denver, Colorado 80202
(303) 866-5785

VI. APPENDICES TO THIS NOTICE OF APPEAL

Attached to this Notice of Appeal are copies of the following:

1. Mittimus
2. Designation of Record
3. Motion for New Trial
4. Order denying the Motion
5. Findings of the Trial Court

DAVID S. KAPLAN
Colorado State Public Defender



KATHLEEN A. LORD, #14190
Chief Appellate Deputy
110 Sixteenth Street, Suite 800
Denver, Colorado 80202
(303) 620-4888

CERTIFICATE OF SERVICE

I certify that a copy of this Notice of Appeal with attachments was served by mail delivery on the District Court, the Office of the District Attorney, and the Office of the Attorney General (by placing the same in the Attorney General's mailbox at the Colorado Court of Appeals).

7/10/06

Alicia D. Thomas

DISTRICT COURT, EL PASO COUNTY, COLORADO Court Address: 20 East Vermijo, Colorado Springs, CO 80903	FILED-DISTRICT & COUNTY COURTS-EL PASO CO., CO JUN 5 - 2006 DIVISION 10 ▲ COURT USE ONLY ▲
PEOPLE OF THE STATE OF COLORADO, Plaintiff, v. TODD NEWMILLER, Defendant.	
Attorney: James Phillip Tate 1018 S. Tejon St. Colorado Springs, CO 80903 Phone number: (719) 634-5416 FAX number: (719) 634-6105 E-mail: philtate@xpediusmail.net Atty. Reg. #21066 and Deborah J. Grohs Deborah J. Grohs, LLC 630 North Tejon Street Colorado Springs, CO 80903 Phone Number: (719) 228-9200 FAX Number: (719) 473-1666 E-mail: djgrohs@earthlink.net Atty. Reg. #: 29161	Case Number: 04CR5770 Division 10
<p style="text-align: center;">ORDER RE: MOTION TO PROCEED IN FORMA PAUPERIS AND TO APPOINT PUBLIC DEFENDER ON APPEAL</p>	

It is ordered and determined that Defendant-Appellant herein is indigent and without funds with which to pay the costs of an appeal, with which to obtain a transcript of the proceedings in this case, or with which to employ counsel to represent Defendant-Appellant in this appeal. Application, therefore, is hereby approved. Defendant-Appellant shall be entitled to prosecute this appeal in *forma pauperis*, to obtain a record and transcript of the proceedings in this case at the Colorado State Public Defender's expense, and the Colorado State Public Defender is appointed to represent Defendant-Appellant on appeal.

See mailing

 JUDGE

6-5-06

 Dated

District Court, El Paso County, State of Colorado

Case#:D0212004CR005770 Div/Room: 10

JUDGMENT OF CONVICTION, SENTENCE Original

The People of Colorado vs NEWMILLER, TODD WILLIAM

DOB 11/19/1973 SID 1644794

AKA: NEWMILLER, TODD WILLIAM

AKA: NEWMILLER, TODD W

The Defendant was sentenced on: 5/24/2006

People represented by...: LINDSEY/RIKEMAN

Defendant represented by: TATE/GROHS

UPON DEFENDANT'S CONVICTION this date of: 3/16/2006

The defendant was found guilty after trial of:

Count # 1 Charge: Murder 2

C.R.S # 18-3-103

Class: F2

Date of offense(s): 11/20/2004 to 11/20/2004

Date of finding(s): 3/16/2006

FILED-DISTRICT & COUNTY
COURTS-EL PASO CO., CO

MAY 24 2006

DIVISION 10

IT IS THE JUDGMENT/SENTENCE OF THIS COURT that the defendant be sentenced to

THE CUSTODY OF THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF CORRECTIONS

Department of Corrections 31.00 YEARS

COUNT

Credit for Time Served 183.00 DAYS

COUNT

Plus a mandatory period of parole as required by statute.

Months on parole 0060

The Court has NO recommendation as to the Regimented Inmate Training Program

	Assessed	Balance
\$	4,328.27	\$ 4,328.27

THEREFORE, IT IS ORDERED the Sheriff of EL PASO COUNTY shall convey the DEFENDANT to the following department TO BE RECEIVED AND KEPT ACCORDING TO LAW COLORADO STATE DEPARTMENT OF CORRECTIONS DIAGNOSTIC CENTER

ADDITIONAL REQUIREMENTS

The restraining order pursuant to C.R.S. 18-1-1001 shall remain in effect until final disposition of the action, or in the case of an appeal, until disposition of the appeal.

JUDGMENT OF CONVICTION IS NOW ENTERED, IT IS FURTHER ORDERED OR RECOMMENDED:

DATE 5/24/06 NPT _____

JUDGE/MAGISTRATE *Gilbert Anthony Martinez*
GILBERT ANTHONY MARTINEZ

CERTIFICATE OF SHERIFF

I CERTIFY THAT I EXECUTED THIS ORDER AS DIRECTED

DATE _____

SHERIFF _____
BY DEPUTY *[Signature]*

2. After Mr. Newmiller's trial, it was brought to defense counsel's attention that prior to Mr. Newmiller's trial, that Mr. Orgill had been accused of a sexual assault. The allegation was brought to counsel's attention by way of rumor through Mr. Newmiller's circle of friends. Apparently Mr. Orgill had made a comment about the allegation to a friend. The rumor eventually made its way to the Newmiller family and then to defense counsel.
3. Defense counsel requested records from the Colorado Springs Police Department for all reports regarding the allegations against Mr. Orgill. The records Department for the Colorado Springs Police Department informed defense counsel that they could not locate any such records, but even if they had, they would not release any records dealing with a sexual assault without a court order.
4. The Court subsequently granted defense counsel's motion for discovery and ordered the prosecution to provide the discovery to defense counsel. The prosecution tendered the discovery to defense counsel on Friday May 19, 2006.
5. The discovery provides information that would go to the issue of Mr. Orgill's credibility which would have been relevant at trial, to wit:
 - a. Mr. Orgill informed the police that he was a witness for the prosecution in a homicide case and that the sexual assault allegation would affect his situation with the case.
 - b. Mr. Orgill would have been more likely to testify favorable to the prosecution in an effort to protect his deferred sentence agreement and to avoid prosecution in the sexual assault case.
 - c. Mr. Orgill made himself out to be a law abiding citizen during his testimony. The discovery reveals that Mr. Orgill was providing alcohol to a minor.
6. This information could not have been discovered by defense counsel prior to the trial. Defense counsel did interview every witness that would agree to be interviewed in preparation for trial. Mr. Orgill however, refused to be interviewed by the defense prior to trial. The District Attorney's Office did not tender the discovery to defense counsel prior to the trial. Mr. Orgill was never charged with any offenses as a result of the police investigation, therefore the information did not appear on a records check of Mr. Orgill.
7. Mr. Orgill was the alternate suspect in the trial. Mr. Orgill was covered in the victim's blood and was identified as fighting with the victim. Mr. Orgill was one of the main witnesses against Mr. Newmiller. Mr. Orgill's credibility was a central issue in the trial. The information revealed in this discovery is relevant to the credibility of Mr. Orgill. The jury should have been made aware of this information in order to fully evaluate the credibility of a major witness in the case.
8. Wherefore, Mr. Newmiller respectfully requests this Honorable Court to grant him a new trial.
9. Mr. Newmiller makes this motion, and all motions and objections in this case, whether or not specifically noted at the time of making the motion or objection, on the following grounds and authorities: the Due Process, Trial by Jury, Right to Counsel, Equal Protection, Cruel and Unusual Punishment, Confrontation, Compulsory Process, Right to Remain Silent, and Right to Appeal Clauses of the

Federal and Colorado Constitutions, and the First, Fourth, Sixth, Eighth, Ninth, Tenth, and Fourteenth Amendments to the United States Constitution and Article II, Sections 3, 6, 7, 10, 11, 16, 18, 20, 23, 25, and 28 of the Colorado Constitution.

Respectfully submitted this 23rd day of May, 2006.

James Phillip Tate, Reg. No. 21066

Deborah J. Grohs, Reg. No. 29161
Attorneys for Mr. Newmiller

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2006, I delivered a true and complete copy of the above and foregoing to the following:

Office of the District Attorney
20 E. Vermijo
Colorado Springs, CO 80903

Option: U (U,D,T,B,P,E) Work with Register of Action 6/06/06 2:24 PM
 Status: CLSD District Court, El Paso County
 Case #: 2004 CR 5770 Div/Room: 10 Type: Homicide
 The People of Colorado vs NEWMILLER, TODD WILLIAM

FILE DATE	EVENT DESCRIPTION	SCHD DATE	TIME	ROOM
05/23/2006	Motion ATY/ GROHS, DEBORAH J FOR A NEW TRIAL BASED ON NEWLY DISCOVERED EVIDENCE			/HLD
05/24/2006	Minute Order (print) MARTINEZ 5-24-06 JB DDA-LINDSEY/RIKEMAN DPWC-TATE/GROHS; STMTS; DEF MOTN NEW TRIAL DENIED; STMTS FROM FAMILY/FRIENDS; ARGU; DEF SENT 31 YRS DOC AS TO CT 1; 183 DAYS CREDIT TIME SERVED; MOTN FOR APPEAL BOND DENIED; COSTS; CUST; SSJSM.			/JAB
05/24/2006	Case Closed			
05/24/2006	Mittimus Issued DEF/ NEWMILLER, TODD WILLIAM			
05/24/2006	Reopened			
05/24/2006	Sentencing Hearing	05/24/2006	09:00 AM	10

More...

F3=Exit F5=Refresh F6=Print F10=Jump F12=Cancel F24=More keys

<input type="checkbox"/> District Court El Paso County, Colorado Court Address: El Paso County District Court Clerk of the Court P.O. Box 2980 Colorado Springs, Colorado 80901-2980	
THE PEOPLE OF THE STATE OF COLORADO Plaintiff v. TODD NEWMILLER Defendant	σ COURT USE ONLY σ
David S. Kaplan, Colorado State Public Defender Kathleen A. Lord, Chief Appellate Deputy 110 16 th Street, Suite 800 Denver, Colorado 80202 Phone: (303) 620-4888 E-mail: kathleen.lord@state.co.us Fax: (303) 620-4931 Atty. Reg. #: 14190	Case Number: 04CR5770 Division: 10
DESIGNATION OF RECORD ON APPEAL	

The Clerk will prepare for the Court a record on appeal which shall include the following:

1. All original process and pleadings on file in the trial court including all motions, judgments, orders of the court, presentence report, and minute orders.
2. The reporter's original transcript of all hearings on pretrial and post trial motions, in their entirety, including, but not limited to, evidence, argument of counsel and rulings of the court which were held on: June 30, 2005 (CC), July 25, 2005 (CP), August 29, 2005 (CP), September 6, 2005 (CP), October 17, 2005 (KJ), December 15, 2005 (KK), December 27, 2005 (RL), February 21, 2006 (CP), February 27, 2006 (CP), April 10, 2006 (CP), and May 11, 2006 (CP).
3. The reporter's original transcript of trial (occurring on February 28, March 1, 2, 3, 6, 7, 8, 9, 10, 13, 14, 15, 16, 2006 (CP)), any motions hearings held immediately prior to the

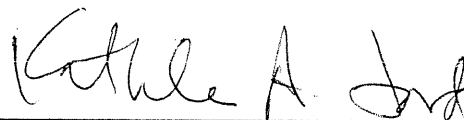
beginning of the first day of trial, as well as opening and closing statements, arguments of counsel, rulings of the court, questions from the jury, colloquies concerning questions and receipt of verdict.

4. A transcript of voir dire and jury questionnaires are requested.
5. A complete copy of the materials provided to jurors in the juror notebooks.
6. Jury instructions, including instructions tendered and refused, and any colloquy regarding the jury instructions.
7. All exhibits, including exhibits tendered and refused.
8. The reporter's original transcript of the sentencing hearing which was held on May 24, 2006 (CP).
9. The court reporters in this matter are: Cindy Pressprich, Claudette Cotter, Kimberly Jancik, Kathy Kopta, and Rebecca Lucas.

The Clerk of the Court shall send a copy of the register of actions to the Appellate Division of the Public Defender's Office thirty days after filing of the notice of appeal.

Pursuant to C.A.R. 11, the record on appeal must be transmitted to the clerk of the court October 9, 2006. Please notify the Appellate Division of the Public Defender's Office if you will be unable to complete the record on appeal within this time limitation.

DAVID S. KAPLAN
Colorado State Public Defender



KATHLEEN A. LORD, #14190
Chief Appellate Deputy
110 Sixteenth Street, Suite 800
Denver, Colorado 80202
(303)620-4888

CERTIFICATE OF SERVICE

I certify that a copy of this Designation of Record was served by mail delivery on the District Court, the Office of the District Attorney, the Office of the Attorney General (by placing the same in the Attorney General's mailbox at the Colorado Court of Appeals), and the court reporter(s), Cindy Pressprich, Claudette Cotter, Kimberly Jancik, Kathy Kopta, and Rebecca Lucas.

7/10/06

Alicia D. Thomas