

MODEL CRIMINAL JURY INSTRUCTIONS COMMITTEE

REPORTER'S ONLINE UPDATE

Updated July 15, 2024

Introduction

The Committee intends to publish annual updates to the model jury instructions. During the periods between these formal publications, the Committee's Reporter will maintain a "Reporter's Online Update," which will include developments in case law relevant to the instructions. The update may also include substantive changes to instructions that the Committee has formally approved but that have yet to appear in the most recent edition.

Although the Committee expects that the Reporter's Online Update will be a valuable research tool, the Committee emphasizes that it will be an informal publication that is not subject to review by the Committee. Thus, users should not assume that the Committee will make modifications based on information that appears in the Reporter's Online Update.

The Reporter's summaries are purely descriptive; they do not include recommendations for how (or whether) to draft jury instructions based on the authorities that are summarized. Although each summary appears beneath a caption that corresponds to the most relevant model instruction(s), irrespective of whether the summarized authority refers to the model instruction(s), the use of this organizational structure here should not be construed as an indication that the Committee intends to modify an instruction, or a Comment.

The Committee encourages users to alert the Reporter of any errors at: mcjic@judicial.state.co.us.

I. Decisions of the Colorado Supreme Court

E:22 INSTRUCTION TO EXTRA JUROR RELEASED SUBJECT TO RECALL

Castro v. People, 2024 CO 56, ¶ 6, __ P.3d __ (holding that where a trial court substitutes a regular juror with an alternate after deliberations have begun, a presumption of prejudice attaches, but further holding that the court may overcome the presumption if it follows the precautions laid out in *People v. Burnette*, 775 P.2d 583 (Colo. 1989), and *Carrillo v. People*, 974 P.2d 478 (Colo. 1999)).

H:15 USE OF PHYSICAL FORCE, INCLUDING DEADLY PHYSICAL FORCE (INTRUDER INTO A DWELLING)

People v. Howell, 2024 CO 42, ¶ 1, __ P.3d __ (“[A]n uncovered, unenclosed, and unsecured doorstep is not part of a ‘dwelling’ for the purposes of section 18-1-704.5.”).

Martinez v. People, 2024 CO 48, ¶¶ 1-2, 5, __ P.3d __ (holding that for crimes involving reckless conduct, the force-against-intruders defense is a traverse rather than an affirmative defense; approving of the trial court’s reckless manslaughter instruction, which stated that “the prosecution does not have an additional burden to disprove self-defense” but that “a person does not act recklessly . . . if his conduct is legally justified as set forth” in the conditions of section 18-1-704.5(2)).

3-3:15 ENTICEMENT OF A CHILD

People v. Johnson, 2024 CO 32, ¶¶ 24, 27-28, 549 P.3d 957 (holding that the enticement statute doesn’t incorporate the general definition of “criminal attempt” because “there must exist a distinction between the *inchoate* crime of an attempt to invite or persuade[] and the *completed* crime of enticement that is based on an attempt to invite or persuade”; concluding instead that “attempt” should be interpreted “in accordance with its plain meaning” – i.e., an “act or an instance of making an effort to accomplish something, esp. without success” (quoting *Black’s Law Dictionary* (11th ed. 2019) – meaning that a person violates the enticement statute “if they make an effort to invite or persuade a child to enter their vehicle with the requisite

intent”).

4-2:03 SECOND DEGREE BURGLARY and 4-5:03 FIRST DEGREE CRIMINAL TRESPASS

Whiteaker v. People, 2024 CO 25, ¶ 19, 547 P.3d 1122 (overruling *People v. Garcia*, 940 P.2d 357 (Colo. 1997), and holding that first-degree criminal trespass of a dwelling is a lesser included offense of second-degree burglary).

II. Final Decisions of the Colorado Court of Appeals

H:11 USE OF NON-DEADLY PHYSICAL FORCE (DEFENSE OF PERSON)

People v. Whiteaker, 2022 COA 84, ¶¶ 40–42, 519 P.3d 1127 (rejecting the argument that the initial aggressor instruction is only permissible where the defendant initiated the physical conflict *prior* to engaging in self-defense; stating that the exception “does not require that the alleged victim acted in self-defense or, more generally, implicate the conduct of the alleged victim” but instead “solely considers the actions of the first party to “us[e] or threaten[] the imminent use of unlawful physical force” (alterations in original) (quoting *People v. Griffin*, 224 P.3d 292, 300 (Colo. App. 2009))), *rev’d on other grounds*, 2024 CO 25, 547 P.3d 1122.

People v. Martinez, 2022 COA 111, ¶¶ 34–36, 522 P.3d 725 (considering a case where the defendant shot the victim while drunk, and the trial court instructed the jury that the defendant’s intoxication was irrelevant because “the reasonable person standard requires the actor using physical force against another in defense to appraise the situation as would a reasonable sober person”; holding that the instruction accurately stated the law because self-defense “ultimately requires that a reasonable person would have believed and acted as the defendant did,” and that standard “requires a defendant to appraise the situation as would a reasonable sober person”).

3-1:12 VEHICULAR HOMICIDE (RECKLESS)

People v. Tarr, 2022 COA 23, ¶ 49, 511 P.3d 672 (holding that nothing in the vehicular homicide statute evinces a legislative intent “to preclude

prosecution under the general murder statutes for causing the death of a person while driving”), *rev’d on other grounds*, 2024 CO 37, 549 P.3d 966.

3-4:40 SEXUAL ASSAULT ON A CHILD BY ONE IN A POSITION OF TRUST

People v. Salazar, 2023 COA 102, ¶¶ 14, 22, 542 P.3d 1209 (holding that the mental state of “knowingly” doesn’t apply to the position of trust element; disapproving of this model instruction, which applies “knowingly” to all subsequent elements).

4-4:23 MOTOR VEHICLE THEFT IN THE SECOND DEGREE (PROPERTY DAMAGE)

People v. Garcia, 2022 COA 83, ¶ 18, 519 P.3d 1064 (stating that it was “unclear whether the People were required to prove that Garcia ‘knowingly’ caused damage to the truck” because such proof “is a sentence enhancer, not an element,” and “[t]he mental state does not necessarily apply to sentence enhancers”), *rev’d on other grounds*, 2024 CO 41M, __ P.3d __.

5-1:03 FORGERY (LEGAL RIGHT, INTEREST, OBLIGATION, OR STATUS)

People v. Garcia, 2023 COA 58, ¶¶ 40–41, 46–47, 536 P.3d 847 (holding that, where the charging instrument only alleged that Garcia altered a check but the jury instruction listed a variety of other potential instruments (e.g., deed, codicil, contract), the instruction constituted a constructive amendment, but the error was not plain).

5-9:01 IDENTITY THEFT (USE) and 5-9:06 CRIMINAL POSSESSION OF A FINANCIAL DEVICE

People v. Poot-Baca, 2023 COA 112, ¶ 1, 544 P.3d 683 (holding that criminal possession of a financial device is not a lesser included offense of identity theft).

18:05 UNLAWFUL DISTRIBUTION, MANUFACTURING,

DISPENSING, OR SALE

People v. Rodriguez, 2024 COA 46, ¶¶ 22–26, __ P.3d __ (stating that, in a prosecution for conspiracy to distribute a controlled substance, “[e]ither the frequency of standardized transactions or the quantity of drugs exchanged, if truly significant, could be sufficient to permit an inference of further distribution”; but holding that, where Rodriguez once agreed to sell an ounce of methamphetamine, his conviction couldn’t stand because “absent supporting evidence,” one ounce wasn’t “so significant on its face to permit a reasonable inference of further distribution”; emphasizing that there was “no evidence of repeated dealings . . . that could have reinforced evidence that the quantity exchanged furthered a conspiracy to distribute”).

42:09 DRIVING UNDER THE INFLUENCE

People v. Montoya, 2022 COA 55M, ¶¶ 9–10, 34, 38–42, 516 P.3d 970 (trial court admitted video of Montoya refusing a blood test but redacted later portion of video where he changed his mind and volunteered to take the test, and court then instructed jury that it could consider Montoya’s refusal if it found that he refused: holding that the court violated the rule of completeness and that “when refusal to take a chemical test is disputed by the defendant based on the defendant’s recorded or written statement that the prosecution seeks to use at trial, the entire statement must be presented to the jury for its consideration”; concluding that the error wasn’t harmless because the jury “was *invited* to consider Montoya’s refusal as part of the evidence when it did not have the entire video in which Montoya later claimed a willingness to take the test” (citing *Cox v. People*, 735 P.2d 153, 159 (Colo. 1987)), *aff’d in part and rev’d in part*, 2024 CO 20, 546 P.3d 605; *see also id.* at ¶¶ 52–61 (Welling, J., specially concurring) (arguing that the trial court’s refusal instruction was problematic because (1) it asked the jury “to make a *finding* regarding whether Montoya refused chemical testing,” even though courts don’t “ask juries to make findings that aren’t elements of charged crimes or facts necessary to enhance a sentence,” (2) “nothing in the court’s instructions tells the jury what it means for a defendant to ‘refuse’ chemical testing,” and (3) the court didn’t advise the jury about the burden of proof as to this finding; discouraging trial courts from giving refusal instructions at all because (1) section 42-4-1301(6)(d) doesn’t require an instruction but simply provides that refusal evidence is admissible,

(2) “no reported case holds that a refusal instruction is required or necessary,” (3) “courts don’t generally ask juries to make predicate findings before they can consider evidence,” and (4) “courts don’t generally tell jurors that they *can* consider evidence for a particular purpose,” and when they do, “it’s almost always because their consideration of the evidence is *limited* to that identified purpose,” yet refusal evidence isn’t limited by statute; concluding that “crafting a refusal instruction is a perilous endeavor, particularly when the fact of refusal is contested”).

People v. Herold, 2024 COA 53, ¶¶ 17, 20, __ P.3d __ (stating that, to establish the prior conviction element of felony DUI, “a match between the defendant’s name and date of birth and those of the individual with the prior conviction, ‘*without more*, will generally be insufficient” (quoting *Gorostieta v. People*, 2022 CO 41, ¶ 28, 516 P.3d 902); holding that the description of “Caucasian Male” was insufficiently corroborative because it’s “too broad to allow a jury to determine whether the person with the prior conviction is the same person as the defendant”).

III. Non-Final Decisions of the Colorado Court of Appeals

B:01 INTRODUCTORY REMARKS, JUROR QUALIFICATIONS, AND JURY SELECTION

People v. Torrez, 2024 COA 11, ¶¶ 40, 44, 548 P.3d 685 (holding that, where a trial court neglects to give the empanelment oath to the jury and no party objects, plain error review applies; concluding that even assuming the error here was obvious, it wasn’t substantial because the trial court “provided substantial comments, instructions, and guidance that secured the fundamental fairness of Torrez’s trial”).

Status: Petition for certiorari pending as of 7/14/24.

C:01 OATH FOR WITNESSES

People v. Lopez, 2024 COA 26, ¶ 52, __ P.3d __ (holding that, where the trial court administered the oath to a ten-year-old witness by asking if he understood “the difference between what is true and what is not true” and by posing sample questions (e.g., “If I said you’re wearing a blue shirt, would that be true?”), those questions didn’t improperly bolster the

witness's credibility but were instead "part of an age-appropriate oath" per CRE 603).

Status: Petition for certiorari pending as of 7/14/24.

E:12 MULTIPLE COUNTS (STANDARD CASE)

People v. Lopez, 2024 COA 26, ¶¶ 39, 43, __ P.3d __ (jury asked court if it could return verdicts on some charges and hang on others, and court re-read the multiple-counts instruction: holding that (1) the trial court didn't abuse its discretion by *not* telling the jury that it could hang, and (2) the court's re-reading of the multiple-counts instruction wasn't coercive).

Status: Petition for certiorari pending as of 7/14/24.

E:14 LESSER-INCLUDED OFFENSES

People v. Martinez, 2024 COA 34, ¶¶ 3-4, __ P.3d __ (holding that, where the trial court relied on the jury's answer to a special interrogatory in order to enter judgment on an uncharged lesser *nonincluded* offense, the court violated the defendant's due process rights even though she "knew about the fact addressed in the verdict question from the inception of the proceedings").

Status: Petition for certiorari pending as of 7/14/24.

F:332 SERIOUS BODILY INJURY

People v. Duncan, 2023 COA 122, ¶ 1, 545 P.3d 963 (holding that the word "protracted" in this definition "means 'prolonged, continued, or extended' but does not necessarily mean 'permanent'").

Status: Petition for certiorari pending as of 7/14/24.

F:195 KNOWINGLY OR WILLFULLY

People v. Schnorenberg, 2023 COA 82, ¶¶ 19, 22, 36, 541 P.3d 1 (recognizing that "[c]onvictions for securities fraud under section 11-51-501 require proof that the defendant acted 'willfully,'" and holding that "advice of counsel regarding the materiality of a misstatement or omission is relevant to determining if a defendant had the requisite mental state to commit

securities fraud,” meaning the trial court erred in refusing to give the defendant’s tendered instruction “that good faith reliance on the advice of counsel is relevant to whether he had acted willfully”).

Status: Petition for certiorari granted. Oral arguments not set as of 7/14/24.

F:272 PERSONAL IDENTIFYING INFORMATION

People v. Rodriguez-Morelos, 2022 COA 107M, ¶¶ 20, 26, 522 P.3d 213 (holding that the term “specific individual” in the statutory definition of “personal identifying information” refers to “one identified human being,” meaning the defendant’s use of a nonprofit entity’s information couldn’t substantiate a conviction for identity theft).

Status: Petition for certiorari granted. Oral arguments not set as of 7/14/24.

H:12 USE OF DEADLY PHYSICAL FORCE (DEFENSE OF PERSON)

People v. Jones, 2023 COA 104, ¶¶ 31–35, 543 P.3d 419 (holding that a trial court may refuse to give a self-defense instruction when it “calls only for a subjective test” (quoting *People v. Toler*, 981 P.2d 1096, 1099 (Colo. App. 1998)), meaning that where evidence of self-defense was “based only on Jones’s actual belief” that she was afraid for her life, the court properly refused the instruction).

Status: Petition for certiorari pending as of 7/14/24.

H:15 USE OF PHYSICAL FORCE, INCLUDING DEADLY PHYSICAL FORCE (INTRUDER INTO A DWELLING)

People v. Jones, 2023 COA 104, ¶ 23, 543 P.3d 419 (holding that, where Jones shot the victim in his home after mistakenly believing he was an intruder, the trial court properly refused to instruct the jury on the force-against-intruders defense because Jones “did not make the threshold showing of the objective element of the statute – that the victim knowingly entered into the dwelling unlawfully”).

Status: Petition for certiorari pending as of 7/14/24.

H:41 FELONY MURDER – DISENGAGEMENT

People v. Gallegos, 2023 COA 47, ¶¶ 5, 35–37, 535 P.3d 108 (holding that a defendant “need not be compelled to admit felony murder, and thus admit the predicate felony, to assert the felony murder affirmative defense”; noting that neither the legislature nor the supreme court has “imposed on the affirmative defense statute a categorical requirement that the defendant admit to the underlying charged offense,” and disagreeing with *People v. Snider*, 2021 COA 19, 491 P.3d 423, “to the extent [it] suggests that a defendant charged with any offense must admit to the offense before he can assert any affirmative defense – at least in the context of felony murder”).

Status: Petition for certiorari granted. Oral arguments not set as of 7/14/24.

H:35 INTOXICATION (INVOLUNTARY)

People v. Mion, 2023 COA 110M, ¶ 2, 544 P.3d 111 (“[T]he affirmative defense of involuntary intoxication is legally cognizable when (1) a defendant knowingly ingests what he believes to be a particular intoxicant; (2) in so doing, he *unknowingly* ingests a different intoxicant; and (3) it is the different intoxicant that deprives him of the capacity to conform his conduct to the requirements of the law.”).

Status: Petition for certiorari pending as of 7/14/24.

J:03 COMPLICITY

People v. Gallegos, 2023 COA 47, ¶¶ 75–80, 535 P.3d 108 (holding that, where the fourth element of the trial court’s complicity instruction read, “the defendant was aware of all of the circumstances relating to the elements of the commission of that crime, as defined at the end of this Instruction,” the instruction was an accurate statement of the law).

Status: Petition for certiorari granted on other grounds. Oral arguments not set as of 7/14/24.

3-1:07 MURDER IN THE SECOND DEGREE

People v. Shockey, 2023 COA 121, ¶¶ 49–51, 545 P.3d 984 (holding that, where the jury found Shockey guilty of second-degree murder but answered “no” to a special interrogatory asking whether he used a deadly weapon during the commission of the crime or in immediate flight therefrom, the findings were inconsistent because the jury found both that Shockey shot the victim and that he wasn’t the shooter; recognizing that the only way to reconcile these findings was to apply a complicity theory, but refusing to do so because the trial court refused to instruct the jury on complicity; concluding that the jury’s latter finding “negated the causation and identity elements of second degree murder,” meaning vacatur was required).

Status: Petition for certiorari pending as of 7/14/24.

3-1:09 MANSLAUGHTER (RECKLESS), 3-1:12 VEHICULAR HOMICIDE (RECKLESS), and 42:17.INT CARELESS DRIVING – INTERROGATORY (DEATH)

People v. Kirby, 2024 COA 20, ¶ 2, 549 P.3d 1055 (holding that reckless manslaughter and careless driving resulting in death are both lesser included offenses of reckless vehicular homicide).

Status: Petition for certiorari pending as of 7/14/24.

3-1:12 VEHICULAR HOMICIDE (RECKLESS) and 42:23.INT FAILURE TO FULFILL DUTIES AFTER INVOLVEMENT IN AN ACCIDENT INVOLVING INJURY, SERIOUS BODILY INJURY, OR DEATH – INTERROGATORY

People v. Kirby, 2024 COA 20, ¶¶ 56–61, 549 P.3d 1055 (holding that, where the trial court aggravated Kirby’s sentence in part because it found sua sponte that his conduct “was obviously aggravating,” the court erred in performing this fact-finding itself, but concluding that reversal wasn’t required because the court also considered Kirby’s prior convictions, a *Blakely*-exempt factor that sufficed to support its judicial fact-finding).

Status: Petition for certiorari pending as of 7/14/24.

3-2:16.7 ASSAULT IN THE SECOND DEGREE (RESTRICT BREATHING), 3-2:20 ASSAULT IN THE THIRD DEGREE (KNOWINGLY OR RECKLESSLY), and 9-1:33 HARASSMENT (PHYSICAL CONTACT)

People v. Wade, 2024 COA 13, ¶¶ 30–32, 548 P.3d 1164 (holding that harassment is not a lesser included offense of either second- or third-degree assault).

Status: Petition for certiorari pending as of 7/14/24.

3-2:20 ASSAULT IN THE THIRD DEGREE (KNOWINGLY OR RECKLESSLY) and 6-4:01 CHILD ABUSE (KNOWINGLY OR RECKLESSLY)

People v. Wade, 2024 COA 13, ¶ 39, 548 P.3d 1164 (holding that third-degree assault is a lesser included offense of child abuse).

Status: Petition for certiorari pending as of 7/14/24.

3-5:04 HUMAN TRAFFICKING OF A MINOR FOR SEXUAL SERVITUDE

People v. Shannon, 2024 COA 41, ¶¶ 45–49, __ P.3d __ (holding that Shannon’s human trafficking conviction didn’t violate his right to equal protection (vis-à-vis child prostitution) because he didn’t merely “entice” the victim—in addition, he “maintained” the victim, meaning his conduct “ran afoul of the human trafficking statute in ways that aren’t proscribed by” the child prostitution offenses).

Status: Mandate not issued as of 7/14/24.

3-6:03 STALKING (SERIOUS EMOTIONAL DISTRESS)

People v. Miller, 2024 COA 66, ¶ 1, __ P.3d __ (holding that the term “contacts” in section 18-3-602(1)(c) “encompasses making phone calls, even if the victim doesn’t answer the calls”).

Status: Mandate not issued as of 7/14/24.

4-2:01 FIRST DEGREE BURGLARY and 4-5:03 FIRST DEGREE

CRIMINAL TRESPASS

People v. Miller, 2024 COA 66, ¶¶ 67–69, __ P.3d __ (applying *Whiteaker v. People*, 2024 CO 25, 547 P.3d 1122, and holding that first-degree criminal trespass is a lesser included offense of first-degree burglary).

Status: Mandate not issued as of 7/14/24.

4-3:01 ROBBERY

People v. Mortenson, 2023 COA 92, ¶¶ 12–14, 22–23, 27, 30–31, 541 P.3d 639 (holding that, where Mortenson hid store merchandise in her purse, a security guard approached her in the exit vestibule, and the guard tackled her after she revealed a gun, the evidence was insufficient to establish the “taking” element of robbery because the merchandise wasn’t taken from the guard’s presence and “[r]obbery victims are people, not businesses”; further holding that robbery requires a *successful* taking, meaning that “[w]hen a person is unsuccessful in a taking by force, she could, at most, be guilty of attempted robbery,” and that theft from a store “cannot alone prove a successful taking under the robbery statute”; recognizing that “a perpetrator may be guilty of robbery if she uses force to maintain possession of property already in hand,” but noting that “the use of force must ‘culminat[e] in the taking of property from the victim’s person or presence’” (alteration in original) (quoting *People v. Bartowsheski*, 661 P.2d 235, 244 (Colo. 1983)); rejecting the argument that “immediate flight” can substantiate a robbery taking because that term only appears in the aggravated robbery statute, and commission of simple robbery is a prerequisite for aggravated robbery).

Status: Petition for certiorari pending as of 7/14/24.

4-4:14 THEFT (MULTIPLE THEFTS; AGGREGATED AND CHARGED IN THE SAME COUNT)

People v. Rodriguez-Morelos, 2022 COA 107M, ¶ 66, 522 P.3d 213 (holding that per *People v. Ramos*, 2017 COA 100, 417 P.3d 902, the prosecution need only prove “all the aggregated thefts that are submitted to the jury,” *not* “all the aggregated thefts that may have, at one point, appeared in counts and then been removed before the jury was instructed, deliberated, and

returned a verdict”).

Status: Petition for certiorari granted on other grounds. Oral arguments not set as of 7/14/24.

5-3:27 MONEY LAUNDERING (TRANSPORTED, TRANSMITTED, OR TRANSFERRED)

People v. Woodyard, 2023 COA 78, ¶¶ 59, 69, 540 P.3d 278 (holding that for a person to commit money laundering under section 18-5-309(1)(b)(I), “it isn’t enough that the person charged was involved in a transfer” but instead that “the person charged must have done the transferring” and “must have transferred ‘moneys,’ not something else in exchange for moneys”; further holding that the People “aren’t required to prove that the funds involved in the transaction or transfer were derived from a preceding offense separate from the transaction or transfer charged” but instead need only “prove that the transaction or transfer promoted the ‘commission of a criminal offense’”).

Status: Petition for certiorari held in abeyance pending resolution of *People v. Crabtree*, 22SC589.

7-4:01 SOLICITING FOR CHILD PROSTITUTION (ANOTHER) and 7-4:02 SOLICITING FOR CHILD PROSTITUTION (ARRANGING)

People v. Randolph, 2023 COA 7, ¶ 31, 528 P.3d 917 (holding that the culpable mental state for the crime of soliciting for child prostitution is “knowingly,” and in so holding disagreeing with *People v. Ross*, 2019 COA 79, 482 P.3d 452, *aff’d on other grounds*, 2021 CO 9, 479 P.3d 910).

Status: Petition for certiorari granted. Oral arguments not set as of 7/14/24.

People v. Vega Dominguez, 2024 COA 32, ¶ 10, __ P.3d __ (agreeing with *Randolph* that the means rea for the crime of soliciting for child prostitution is “knowingly”).

Status: Petition for certiorari pending as of 7/14/24.

7-4:09 PIMPING OF A CHILD and 7-4:11 PATRONIZING A

PROSTITUTED CHILD (ACT)

People v. Price, 2023 COA 96, ¶¶ 56–59, 542 P.3d 268 (rejecting Price’s argument that the patronizing a prostituted child statute violates equal protection because it prohibits the same conduct as pimping of a child (yet prescribes a more severe sentence), and holding instead that pimping “prohibits substantially different conduct than patronizing”).

Status: Petition for certiorari pending as of 7/14/24.

7-4:10 INDUCEMENT OF CHILD PROSTITUTION and 7-4:11 PATRONIZING A PROSTITUTED CHILD (ACT)

People v. Vega Dominguez, 2024 COA 32, ¶¶ 27, 30, __ P.3d __ (holding that, where Vega Dominguez “took a substantial step toward exchanging money with [a child] for sexual acts,” his conduct constituted both attempted inducement of child prostitution and attempting patronizing a prostituted child, meaning his conviction for the latter violated equal protection as it carried a harsher punishment than the former).

Status: Petition for certiorari pending as of 7/14/24.

8-1:08 ACCESSORY TO CRIME

People v. Gallegos, 2023 COA 47, ¶¶ 66–69, 535 P.3d 108 (holding that, where Gallegos was charged with attempted aggravated robbery, the trial court erred in refusing to instruct the jury on the lesser nonincluded offense of accessory because (1) “there was a rational evidentiary basis for the jury to acquit Gallegos of attempted aggravated robbery,” and (2) the jury “still had a rational evidentiary basis to convict Gallegos of being an accessory”).

Status: Petition for certiorari granted on other grounds. Oral arguments not set as of 7/14/24.

8-3:09 ATTEMPT TO INFLUENCE A PUBLIC SERVANT

People v. Hupke, 2024 COA 73, ¶¶ 1–2, 11, __ P.3d __ (holding that the phrase “by means of deceit” in section 18-8-306 “does not limit the offense to acts of deception personally committed by the offender” but instead “includes deceptive acts that the offender engages a third party to commit

on their behalf”; elaborating that the statute “does not require that the offender commit the deception themselves, only that they use some sort of plan or method to deceive the public servant”).

Status: Mandate not issued as of 7/14/24.

9-1:55.INT VEHICULAR ELUDING – INTERROGATORY (BODILY INJURY OR DEATH)

People v. Sloan, 2024 COA 52M, ¶¶ 24-25, P.3d __ (holding that the trial court plainly erred when its interrogatory asked the jury to find whether the “accident” resulted in death rather than whether the “vehicular eluding” resulted in death).

Status: Petition for certiorari pending as of 7/14/24.

9-1:59 FAILURE OR REFUSAL TO LEAVE PREMISES OR PROPERTY UPON REQUEST OF A PEACE OFFICER (NONCOMPLIANCE)

People v. Montoya, 2024 COA 37, ¶ 36, __ P.3d __ (holding that section 18-9-119(2) “provides two ways of committing failure to leave the premises: (1) barricading and refusing to leave the premises when asked to do so by law enforcement or (2) refusing police entry by using or threatening to use force and refusing to leave the premises when asked to do so by law enforcement”).

Status: Petition for rehearing pending as of 7/14/24.

17:03 COLORADO ORGANIZED CRIME CONTROL ACT (EMPLOYED BY, OR ASSOCIATED WITH, AN ENTERPRISE)

People v. Woodyard, 2023 COA 78, ¶ 51, 540 P.3d 278 (holding that, where the evidence showed only that Woodyard was “‘close to’ and ‘lived together’ with certain of his associates and had ‘strong connections’ with others,” this was insufficient to “show the kind of ‘structure’ – the ‘ongoing organization of associates functioning as a continuing unit’ – required to prove an associated-in-fact enterprise” (citation omitted) (quoting *McDonald v. People*, 2021 CO 64, ¶ 46, 494 P.3d 1123)).

Status: Petition for certiorari held in abeyance pending resolution of

People v. Crabtree, 22SC589.

**18:05 UNLAWFUL DISTRIBUTION, MANUFACTURING,
DISPENSING, OR SALE**

People v. Bice, 2023 COA 98, ¶¶ 2, 10–11, 25, 542 P.3d 709 (holding that when a defendant is convicted under section 18-18-405(1) for conspiring to perform any of the proscribed acts, their crime’s classification is determined by section 18-18-405(2), meaning section 18-2-206(7)(a) – which provides that “[e]xcept as otherwise provided by law, conspiracy to commit a level 1 drug felony is a level 2 drug felony” – does not apply).

Status: Petition for certiorari pending as of 7/14/24.