MODEL CRIMINAL JURY INSTRUCTIONS COMMITTEE

REPORTER'S ONLINE UPDATE

Updated November 18, 2025

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 U.S. Supreme Court

6-8:01.INT TRIGGERING MISDEMEANOR OFFENSE OF DOMESTIC VIOLENCE—INTERROGATORY (HABITUAL DOMESTIC VIOLENCE OFFENDER)

Erlinger v. United States, 602 U.S. 821, 835 (2024) (holding that under the Armed Career Criminal Act ("ACCA"), 18 U.S.C. § 922(g)—which provides for heightened punishment if the defendant has three prior convictions for violent felonies or serious drug offenses "committed on occasions different from one another"—the defendant "was entitled to have a jury resolve ACCA's occasions inquiry unanimously and beyond a reasonable doubt").

II. Decisions of the Colorado Supreme Court

HABITUAL CRIMINAL COUNTS (NO CURRENT INSTRUCTION)

People v. Gregg, 2025 CO 57, ¶¶ 17 n.3, 24–26, 576 P.3d 725 (holding that the prior version of the habitual sentencing scheme was compatible with *Erlinger v. United States*, 602 U.S. 821 (2024)—and thus constitutional—because, although it instructed "the trial judge" to determine "whether the defendant has been convicted as alleged," it didn't "explicitly *prohibit* the jury from finding that those prior convictions stemmed from separate and distinct criminal episodes"; noting that the legislature has since amended section 18-1.3-803, which now requires a jury to make this determination).

F:195 KNOWINGLY OR WILLFULLY

People v. Schnorenberg, 2025 CO 43, ¶ 2, 570 P.3d 1036 (stating that in the context of securities fraud, "the mens rea of 'willfully' . . . is synonymous with 'knowingly,'" and holding that such mens rea applies to all elements of the crime under section 11-51-501(1)(b) and (c)).

F:341 SEXUALLY EXPLOITATIVE MATERIAL

People in Int. of S.G.H., 2025 CO 59, ¶¶ 31–32, 43, __ P.3d __ (holding that, where S.G.H. used AI to blend non-explicit photographs of classmates with computer-generated images portraying naked bodies, his acts didn't involve "sexually exploitative material" as it was then defined because the

items weren't photographs and weren't "reproduced"; stating that the 2025 amendment—which added the second paragraph regarding visual depictions—*changed* the law rather than merely clarifying it).

H:41 FELONY MURDER—DISENGAGEMENT

People v. Gallegos, 2025 CO 41M, ¶¶ 3, 27, 572 P.3d 136 ("[A] defendant need not admit the predicate felony to raise the affirmative defense to felony murder. . . . Assuming sufficient evidence supports the affirmative defense to felony murder, it is the province of the jury to weigh the credibility of any conflicting evidence and decide both (1) whether the defendant committed the underlying crime and, if so, (2) whether the affirmative defense shields the defendant from felony murder liability.").

F:272 PERSONAL IDENTIFYING INFORMATION and 5-9:01 IDENTITY THEFT (USE)

People v. Rodriguez-Morelos, 2025 CO 2, ¶ 18, 562 P.3d 71 (holding that "the definition of personal identifying information . . . is focused on specific individuals and does not apply to organizations," meaning "[f]or that particular type of identity theft, a defendant can only be convicted when the crime is committed against a specific human person").

3-6:04.5.SP STALKING (SERIOUS EMOTIONAL DISTRESS)—SPECIAL INSTRUCTION (COMMUNICATION)

People v. Crawford, 2025 CO 22, ¶¶ 19–23, 31, 562 P.3d 71 (stating that the recklessness requirement of *Counterman v. Colorado*, 600 U.S. 66 (2023), "only applies to true-threats cases based on the actual content of the speech involved"; holding that because the prosecution here "explicitly disavow[ed] any reference to the content of any communications" and instead based its stalking charges on Crawford's "repeated, unwelcome, and content-neutral conduct," the prosecution didn't need to prove recklessness; noting that Crawford "did not convey true threats in his communications"; disapproving of this model instruction for suggesting "that proof of recklessness is required for any stalking charge including reliance on the defendant's communications," and emphasizing that *Counterman* "only applies to charges targeting the threatening *content* of communications").

5-9:06 CRIMINAL POSSESSION OF A FINANCIAL DEVICE

People v. Hudson, 2025 CO 52, ¶ 2, 576 P.3d 131 (holding that the prosecution need not prove "that a financial device was capable of use at the time of possession to support a conviction for criminal possession of a financial device").

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

People v. Randolph, 2025 CO 44, ¶ 29, 570 P.3d 1022 (holding that the culpable mental state of "knowingly" applies to the crime of soliciting for child prostitution under section 18-7-402(1)(a) and (1)(b), and in so holding overruling *People v. Ross*, 2019 COA 79, 482 P.3d 452).

18:09.6.INT UNLAWFUL DISTRIBUTION, MANUFACTURING, DISPENSING, OR SALE—INTERROGATORY (SYNTHETIC OPIATES CAUSING DEATH OF ANOTHER)

People v. Beverly, 2025 CO 18, ¶ 6, 568 P.3d 398 (holding that, where a defendant is charged with this sentence enhancer, a court may admit "evidence of a purchaser's suicidal intent in taking fentanyl").

III. Final Decisions of the Colorado Court of Appeals

CHAPTER A: DEFENSES

People v. Cuevas, 2024 COA 84, ¶¶ 37, 39, 558 P.3d 1041 (rejecting Cuevas's claim that the trial court should have instructed the jury that (1) guilt by association "is not an acceptable rationale" and (2) guilt can't be established by "by mere presence at the scene of a crime," and holding instead that where "proper instructions are given concerning the presumption of innocence, the prosecution's burden of proof, reasonable doubt, the essential elements of the offenses, and the definition of the requisite mens rea, the so called 'mere presence' instruction is necessarily encompassed by the instructions as a whole" (quoting *People v. Chavez*, 190 P.3d 760, 769 (Colo. App. 2007))).

D:12 OUT OF COURT STATEMENTS—CHILD DECLARANT

People v. Melara, 2025 COA 48, ¶¶ 110–12, 572 P.3d 619 (rejecting the argument that, when the trial court instructed the jury that it had heard "evidence *of* a child's out-of-court statement," the court instead should have said "evidence *repeating* a child's out-of-court statement" (emphases added); also holding that the court properly omitted the word "allegedly" because the jury viewed a video recording of the child's interview, even though it "also received evidence of [her] parallel hearsay statements"; finally rejecting the argument that, rather than telling the jury that it could consider "any other evidence that has been admitted" the court should have said the jury could consider "any other relevant factor," and reasoning that "by limiting the jury's consideration to other admissible evidence, the court limited the jury's consideration to relevant evidence").

E:03 PRESUMPTION OF INNOCENCE, BURDEN OF PROOF, AND REASONABLE DOUBT

People v. Melara, 2025 COA 48, ¶¶ 24, 28, 572 P.3d 619 (stating that a trial court's reasonable doubt instruction "should inform the jury . . . that it may consider the lack of evidence in the case," but holding that the court's use of *the 2022* model instruction—which didn't include the extant sentence regarding "the lack of evidence presented"—didn't impermissibly lower the prosecution's burden of proof; remarking that the *current* instruction—which *does* include "lack of evidence" language—reflects "an objective and balanced explanation that the jury may consider both the evidence presented and the lack of evidence when assessing whether a reasonable doubt exists," and reiterating that trial courts going forward "should include a statement within the reasonable doubt instruction that the jury may consider the lack of evidence in a case when determining whether the prosecution has met its burden").

E:14 LESSER-INCLUDED OFFENSES

People v. Martinez, 2024 COA 34, ¶¶ 3–4, 552 P.3d 551 (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 *non*included 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").

E:18 SUPPLEMENTAL INSTRUCTION—WHEN JURORS FAIL TO AGREE

People v. Claycomb, 2025 COA 36, ¶¶ 86, 92, 569 P.3d 1233 (agreeing with *People v. Cox*, 2023 COA 1, 528 P.3d 204, that *People v. Black*, 2020 COA 136, 490 P.3d 891, didn't "establish a hard-and-fast rule that, when a jury asks about reaching unanimity at any point during deliberations, the trial court must immediately proceed to the modified-*Allen* instructional framework"; holding that the court's "getting close to 5 instruction"—which asked the jury to select whether (1) it wanted to break and return Monday morning, (2) it was close to reaching a verdict and sought to continue deliberating until 5:30, or (3) it had reached a verdict—didn't coerce the jury into reaching a verdict, but cautioning trial courts against giving such instructions because they "run the risk of encouraging the jury to rush to reach a verdict to avoid returning the next day").

F:195 KNOWINGLY OR WILLFULLY

People v. Ramcharan, 2024 COA 110, ¶¶ 60–62, 562 P.3d 425 (holding that, where the trial court in a sexual assault on a child case defined "knowingly" as referring to "the actor's general awareness of the nature of his conduct in relation to the child or his awareness of the circumstances in which he commits an act against the well-being of the child," the court erred because it (1) added the word "general" before "awareness," (2) "materially deviated from the statutory definition by specifying that the subject conduct must be in relation to the child or the defendant's awareness of the circumstances in which his act impacts the child's well-being," and (3) omitted the statutory language that the person is "aware that his conduct is practically certain to cause the result").

F:281 POSSESSION

People in Int. of L.E.R-N., 2025 COA 16, ¶ 37, 567 P.3d 768 ("Possession means 'actual or physical control.' This means that the [defendant] must either physically possess the [object] or exercise immediate control over it." (citation omitted) (quoting *People v. Allgier*, 2018 COA 122, ¶ 65, 428 P.3d

713)).

H:09 CHOICE OF EVILS

People v. Ragsdal, 2025 COA 9M, ¶ 19, 566 P.3d 1042 (recognizing that to present a choice of evils defense, the defendant must first provide an offer of proof that "(1) all other potentially viable and reasonable alternative actions were pursued [by the defendant], or shown to be futile, (2) the action taken had a direct causal connection with the harm sought to be prevented, and that the action taken would bring about the abatement of the harm, and, (3) the action taken was an emergency measure pursued to avoid a specific, definite, and imminent injury about to occur" (alteration in original) (quoting *Andrews v. People*, 800 P.2d 607, 610 (Colo. 1990))).

H:35 INTOXICATION (INVOLUNTARY)

People v. Williams, 2025 COA 26, ¶¶ 11, 14–21 & n.6, 568 P.3d 1267 (stating that to receive this instruction, a defendant must show that "(1) 'a substance was introduced into [the defendant's] body'; (2) the defendant took the substance pursuant to medical advice, did not know it was an intoxicant, or did not know it could act as an intoxicant; '(3) the substance caused a disturbance of mental or physical capacities; and (4) the introduction of the substance resulted in the defendant's lack of capacity to conform his or her conduct to the requirements of the law'" (alteration in original) (quoting *People v. Voth*, 2013 CO 61, ¶ 19, 312 P.3d 144); holding that where Williams intended to ingest cocaine but instead ingested methamphetamine, he wasn't entitled to the instruction because he didn't take the drugs per medical advice and his behavior likely stemmed from "his voluntary alcohol consumption, not his voluntary cocaine consumption or allegedly involuntary consumption of another drug"; declining to address whether *People v. Mion*, 2023 COA 110M, 544 P.3d 111 was wrongly decided, but deeming that case distinguishable in any event because (1) "nothing suggested that Mion acted erratically *before* consuming the allegedly laced marijuana," and (2) Williams presented no circumstantial evidence establishing the differing effects between cocaine and meth).

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).

3-1:12 VEHICULAR HOMICIDE (RECKLESS) and 42:17.INT CARELESS DRIVING—INTERROGATORY (DEATH)

People v. Claycomb, 2025 COA 36, ¶¶ 52, 55–58, 569 P.3d 1233 (defining "proximate cause" as "a cause which in natural and probable sequence produced the claimed injury . . . [and] without which the claimed injury would not have been sustained" (omission and alteration in original) (quoting *People v. Stewart*, 55 P.3d 107, 116 (Colo. 2002)); stating that, where the jury asked for a definition of "proximate cause," simply referring the jury to the original instructions (which didn't define the term) was insufficient; remarking that although the model instructions don't define "proximate cause," their comments explain that it's a "confusing" term, meaning they "counseled in favor of providing the jury the requested definition so it could better understand that phrase as used in the instructions"; thus holding that the trial court erred when it failed to define proximate cause "in response to the jury's question").

3-4:26 UNLAWFUL SEXUAL CONTACT (UNDER EIGHTEEN)

People v. Mena, 2025 COA 14, ¶¶ 33, 43, 567 P.3d 161 (rejecting the argument that the phrase "by any of the means" only encompasses categories of sexual assault "that set forth affirmative conduct by the defendant that causes the victim's submission or impairs the victim's capacity," and holding instead that "[e]ach of the enumerated ways to commit sexual assault in section 18-3-402 . . . provides possible means of committing unlawful sexual contact (coerce child) under section 18-3-404(1.5)").

3-4:26 UNLAWFUL SEXUAL CONTACT (UNDER EIGHTEEN) and 3-

4:31 SEXUAL ASSAULT ON A CHILD

People v. Mena, 2025 COA 14, ¶¶ 54–55, 567 P.3d 161 (holding that, where the prosecution proved unlawful sexual contact "through nothing more than the existence of a nonmarital relationship with the prohibited age difference," Mena's conviction for unlawful sexual contact violated equal protection because it proscribed "exactly the same conduct" as sexual assault on a child yet carried a mandatory prison sentence).

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

People v. Shannon, 2024 COA 41, ¶¶ 45–49, 553 P.3d 239 (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).

3-6:03 STALKING (SERIOUS EMOTIONAL DISTRESS)

People v. Miller, 2024 COA 66, ¶ 1, 556 P.3d 1262 (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").

3-6:04.5.SP STALKING (SERIOUS EMOTIONAL DISTRESS)—SPECIAL INSTRUCTION (COMMUNICATION)

People v. Morris, 2025 COA 15, ¶¶ 30, 34–37, 567 P.3d 172 (considering a case where the trial court (1) deleted "communication" from its stalking instruction, (2) granted judgment of acquittal as to the "contacted" portion of the charge because some of Morris's statements—e.g., "Will you talk to me?"—constituted protected speech and the prosecution couldn't prove recklessness as required by *Counterman v. Colorado*, 600 U.S. 66 (2023), and (3) limited the jury to deciding whether Morris repeatedly "approached" the victim; holding that *Counterman* "applies only in the context of a stalking conviction premised on the content of a communication or expressive conduct"; concluding that the jury "could have convicted Morris based on his conduct toward the victim but not on his

communications to her," meaning the court erred in granting judgment of acquittal on the "contacted" portion of the charge; emphasizing that because the trial court eliminated "communication" from its instruction, the prosecution's case "was premised exclusively on [Morris's] actions, not on the content of his communications to the victim," meaning *Counterman*'s recklessness requirement didn't apply).

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

People v. Miller, 2024 COA 66, ¶¶ 67–69, 556 P.3d 1262 (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).

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

People v. Rodriguez-Morelos, 2022 COA 107M, ¶¶ 55–56, 66, 522 P.3d 213 (holding that, where the prosecution *removed* from three theft counts victims who either didn't testify or whose testimony "addressed events outside the time period for the offenses as described in the information and in the bill of particulars," no constructive amendment occurred because the court didn't "add an additional element or a different offense to the charges," deprive the defendant of "adequate notice of what the charges against him were," or prejudice his substantial rights; distinguishing *People v. Ramos*, 2017 COA 100, 417 P.3d 902, and stating that, while the prosecution must prove "all the aggregated thefts that are submitted to the jury," it *doesn't* need to prove "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").

4-5:03 FIRST DEGREE CRIMINAL TRESPASS

People v. Hill, 2025 COA 12, ¶ 2, 566 P.3d 1027 ("[I]f a person secures permission to enter a dwelling by means of a ruse, trickery, or deception, the person enters 'unlawfully' for purposes of first degree criminal trespass . . . .").

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").

42:15 CARELESS DRIVING

People v. Claycomb, 2025 COA 36, ¶¶ 28, 31, 35, 569 P.3d 1233 (stating that, while the trial court *could have* defined the phrase "without due regard," it didn't abuse its discretion in declining to do so; noting that the phrase isn't overly technical and instead carries the ordinary meaning of "the absence of due care" (quoting *People v. Chapman*, 557 P.2d 1211, 1213 (Colo. 1977)); holding that, where the court refused to give Claycomb's tendered (inaccurate) instruction and didn't sua sponte provide a correct definition, it didn't plainly err because "no authority requires the giving of such an instruction").

42:17.INT CARELESS DRIVING—INTERROGATORY (DEATH)

People v. Claycomb, 2025 COA 36, ¶¶ 43, 47, 569 P.3d 1233 (holding that, where the evidence suggested that the victims' actions constituted at most simple negligence rather than gross negligence, the trial court didn't err in refusing to instruct the jury on the concept of "intervening cause").

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

HABITUAL CRIMINAL COUNTS (NO CURRENT INSTRUCTION)

People v. Fields, 2025 COA 84, ¶ 16, __ P.3d __ (applying *Gregg* and holding that, where the trial court rather than the jury adjudicated Fields a habitual criminal, the error was harmless because while the jury was still empaneled, the prosecution presented overwhelming evidence that Fields's prior convictions "were separately brought and tried and arose out of distinct criminal episodes").

Status: Mandate not issued as of 11/17/25.

C:01 OATH FOR WITNESSES

People v. Lopez, 2024 COA 26, ¶ 52, 550 P.3d 731 (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 granted on other grounds. Oral arguments held on 10/22/25.

D:02 EVIDENCE LIMITED AS TO PURPOSE (CONTEMPORANEOUS)

People v. Jones, 2025 COA 43, ¶¶ 54–55, 571 P.3d 947 (rejecting the argument that, where the trial court instructed the jury that evidence of injuries was admitted "for a limited purpose to establish identity and lack of accident," the court's use of the word "establish" told the jury that Jones inflicted the injuries, and holding instead that the word "establish" didn't constitute plain error).

Status: Petition for certiorari pending as of 11/17/25.

E:03 PRESUMPTION OF INNOCENCE, BURDEN OF PROOF, AND REASONABLE DOUBT

People v. Schlehuber, 2025 COA 50, ¶¶ 19–20, 28–34, 572 P.3d 641 (agreeing with *Melara* that the absence of "lack of evidence" language in the 2022 model instruction didn't constitute structural error, but disagreeing that a court "should" include such language, and holding instead that "a court does not err by omitting that language"; further holding that a court's decision not to include "hesitate to act" language (which no longer appears in the model instruction) isn't error "so long as the instruction otherwise correctly defines the reasonable doubt standard"; approving of the current model instruction's language—that proof beyond a reasonable doubt "is proof that leaves you firmly convinced of the defendant's guilt," and that

the prosecution fails to meet its burden "if you think there is a real possibility that the defendant is not guilty"—because it "give[s] the jury a complete picture of the reasonable doubt standard").

Status: Petition for certiorari pending as of 11/17/25.

E:12 MULTIPLE COUNTS (STANDARD CASE)

People v. Lopez, 2024 COA 26, ¶¶ 39, 43, 550 P.3d 731 (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 granted on other grounds. Oral arguments held on 10/22/25.

F:77 CREDIBLE THREAT (STALKING; RETALIATION AGAINST A JUDGE; RETALIATION AGAINST AN ELECTED OFFICIAL; RETALIATION AGAINST A PROSECUTOR)

People v. Casper, 2025 COA 69, ¶ 34, 577 P.3d 489 (holding that even though the definition of "credible threat" doesn't contain a subjective mental state, that definition isn't facially unconstitutional because Casper was charged under section 18-3-602(1)(a), which required the People to prove that he *knowingly* made a credible threat).

Status: Mandate not issued as of 11/17/25.

F:134 EXPLOSIVE OR INCENDIARY DEVICE (POSSESSION, USE, OR REMOVAL), 4-1:01 FIRST DEGREE ARSON, and 4-1:02.INT FIRST DEGREE ARSON—INTERROGATORY (EXPLOSIVE)

People v. Rodriguez-Ortiz, 2025 COA 61, ¶¶ 77–82, 574 P.3d 1196 (rejecting the argument that section 18-12-109(1)(a)—which defines "explosive *or* incendiary device"—separates "explosives" from "incendiary devices," and holding instead that the word "or" means "and/or," meaning all items contained in the definition can qualify as *either* term; applying this holding to conclude that a Molotov cocktail is "either an explosive or an incendiary device," meaning it qualifies as an "explosive" under the sentence

enhancer for first-degree arson).

Status: Petition for certiorari pending as of 11/17/25.

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 granted. Oral arguments held on 5/13/25.

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 declining 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 granted. Oral arguments held on 9/22/25.

3-3:05 SECOND DEGREE KIDNAPPING (SEIZED AND CARRIED)

People v. Fields, 2025 COA 84, ¶¶ 26–28, __ P.3d __ (holding that the trial court erred when it defined "seized and carried" as" any movement, however short in distance," but concluding that the error wasn't plain because it wasn't obvious at the time of trial).

Status: Mandate not issued as of 11/17/25.

3-6:01 STALKING (CREDIBLE THREAT AND CONDUCT)

People v. Casper, 2025 COA 69, ¶¶ 24–35, 577 P.3d 489 (noting that, whereas *Counterman v. Colorado*, 600 U.S. 66 (2023), addressed a prosecution under section 18-3-602(1)*(c)*, Casper was charged under section 18-3-602(1)*(a)*, and holding that because that subsection contains a "knowingly" element, the instructions in his case were "sufficient to meet the subjective mental state required under *Counterman*," as they "required the jury to make factual findings regarding Casper's subjective mental state about whether he was making a credible threat").

Status: Mandate not issued as of 11/17/25.

3-6:01 STALKING (CREDIBLE THREAT AND CONDUCT) and 9-1:36 HARASSMENT (COMMUNICATION)

People v. Casper, 2025 COA 69, ¶¶ 64–67, 577 P.3d 489 (holding that harassment under section 18-9-111(1)(e) isn't a lesser included offense of stalking under section 18-3-602(1)(a)).

Status: Mandate not issued as of 11/17/25.

3-6:03 STALKING (SERIOUS EMOTIONAL DISTRESS)

People v. Conlon, 2025 COA 79M, ¶¶ 91–92, __ P.3d __ (stating that although *Counterman v. Colorado*, 600 U.S. 66 (2023), abrogated *People v. Cross*, 127 P.3d 71 (Colo. 2006), as to the mens rea for the "serious emotional distress" element, it didn't "wholly invalidate *Cross*"; applying *Cross* and holding that section 18-3-602(1)(c) isn't unconstitutionally overbroad).

Status: Mandate not issued as of 11/17/25.

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

People v. Vega Dominguez, 2024 COA 32, ¶ 10, 551 P.3d 1205 (agreeing with *People v. Randolph*, 2023 COA 7, 528 P.3d 917, that the means rea for the crime of soliciting for child prostitution is "knowingly").

Status: Petition for certiorari granted. Oral arguments set for 1/14/26.

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, 551 P.3d 1205 (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 granted. Oral arguments set for 1/14/26.

8-3:09 ATTEMPT TO INFLUENCE A PUBLIC SERVANT

People v. Hupke, 2024 COA 73, ¶¶ 1–2, 11, 557 P.3d 816 (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 themself, only that they use some sort of plan or method to deceive the public servant").

Status: Petition for certiorari granted. Oral arguments held on 10/21/25.

8-7:08 RETALIATION AGAINST A WITNESS OR VICTIM

People v. Trujillo, 2025 COA 22, ¶¶ 29–34, 51–57, 568 P.3d 435 (stating that, per *People v. Hickman*, 988 P.2d 628 (Colo. 1999), the defendant "must intend to retaliate against the victim or witness for a specific reason: because of that person's 'status' as a witness to or victim of a crime"; holding that this model instruction, combined with the model instruction for "intent," failed to inform the jury "that the retaliation or retribution must be because of the witness's or victim's status as such"; noting that Trujillo's proposed instruction—which specified that the jury needed to

find that she "intended the threat or act of harassment as retaliation or retribution *because of [her] perception of [the alleged victim's] relationship to a criminal proceeding*" — would have "cured this defect"; rejecting the argument that the theory of defense instruction — in which Trujillo claimed that she "never intended to threaten or harass [the victim] as an act of retaliation for [the victim] being a victim in another case" — salvaged the issue, and emphasizing that "a guilty verdict could only be premised on a finding that Trujillo intended to retaliate against [the victim] for [the victim's] status as a victim of or witness to [the] alleged crime"); separately holding that Trujillo's statement that "I'm going to beat your ass" didn't qualify as "fighting words," but remanding for the trial court to consider if it was a true threat under the subjective standard announced in *Counterman v. Colorado*, 600 U.S. 66 (2023)).

Status: Petition for certiorari pending as of 11/17/25.

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

People v. Sloan, 2024 COA 52M, ¶¶ 24–25, 554 P.3d 527 (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 granted. Oral arguments not set as of 11/17/25.

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

People v. Montoya, 2024 COA 37M, ¶ 41, 552 P.3d 1099 (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: Judgment vacated on other grounds; mandate on remand not issued as of 11/17/25.

42:09 DRIVING UNDER THE INFLUENCE

People v. Schlehuber, 2025 COA 50, ¶¶ 50–54, 572 P.3d 641 (holding that, when the trial court admitted *the entirety* of the record of a prior Nebraska conviction, the court erred because "certain portions of the record were not relevant" and were unduly prejudicial, but concluding that the error was harmless because "the jury properly heard evidence that Schlehuber had three prior DUI convictions" and the court instructed the jury "that it could only consider the evidence to decide whether the prosecution had proved beyond a reasonable doubt that Schlehuber had three or more prior qualifying convictions"; cautioning that "such an instruction alone [will not] always make the erroneous admission of such evidence harmless").

Status: Petition for certiorari pending as of 11/17/25.