

The summaries of the Colorado Court of Appeals published opinions constitute no part of the opinion of the division but have been prepared by the division for the convenience of the reader. The summaries may not be cited or relied upon as they are not the official language of the division. Any discrepancy between the language in the summary and in the opinion should be resolved in favor of the language in the opinion.

SUMMARY
November 20, 2025

2025COA89

No. 21CA1539, *People v. Montoya*—Constitutional Law — Sixth Amendment — Right to Public Trial — *Waller* Test; Crimes — Failure or Refusal to Leave Premises — Barricading

This case returns to us following our supreme court’s grant of certiorari and issuance of an order vacating our opinion and remanding for us to reconsider our decision in light of *Rios v.*

People, 2025 CO 46, and *People v. Bialas*, 2025 CO 45. *People v. Montoya*, (Colo. No. 24SC543, Sept. 2, 2025) (unpublished order).

The division holds that the defendant’s right to a public trial was violated when the trial court conducted the trial virtually and made no findings under *Waller v. Georgia*, 467 U.S. 39 (1984).

Additionally, because the defendant’s sufficiency of the evidence argument implicates the prohibition against double jeopardy, the division addresses it and the novel issue it presents. The division

concludes that the plain language of section 18-9-119(2), C.R.S. 2025, provides two different means of committing failure to leave the premises and that sufficient evidence supports the defendant's conviction under the "barricading" clause. Accordingly, the defendant may be retried on this charge.

Court of Appeals No. 21CA1539
Alamosa County District Court No. 20CR301
Honorable Martin A. Gonzales, Judge

The People of the State of Colorado,

Plaintiff-Appellee,

v.

Gilberto Andres Montoya,

Defendant-Appellant.

JUDGMENT REVERSED AND CASE
REMANDED WITH DIRECTIONS

Division V
Opinion by JUDGE FREYRE
Brown and Johnson, JJ., concur

Prior Opinion Announced April 18, 2024, Vacated in 24SC543

Announced November 20, 2025

Philip J. Weiser, Attorney General, Sonia Raichur Russo, Senior Assistant
Attorney General, Denver, Colorado, for Plaintiff-Appellee

Megan A. Ring, Colorado State Public Defender, Julieanne Farchione, Deputy
State Public Defender, Denver, Colorado, for Defendant-Appellant

¶ 1 This case returns to us following our supreme court’s grant of certiorari and issuance of an order vacating our opinion and remanding for us to reconsider our decision in light of *Rios v. People*, 2025 CO 46, and *People v. Bialas*, 2025 CO 45. *People v. Montoya*, (Colo. No. 24SC543, Sept. 2, 2025) (unpublished order).¹

¶ 2 Defendant, Gilberto Andres Montoya, appeals the judgment of conviction entered on a jury verdict finding him guilty of first degree trespass (a class 5 felony), criminal mischief (a class 3 misdemeanor), and failure to leave the premises (a class 3 misdemeanor). Montoya challenges his convictions on four grounds, contending that the trial court reversibly erred by (1) denying his motion to disqualify the prosecutor and the entire district attorney’s office; (2) denying his right to a public trial by requiring the public to view the proceedings via livestream; (3) denying his motion for judgment of acquittal and finding that sufficient evidence supported his conviction for failure to leave the

¹ The supreme court’s remand instructions pertain only to the courtroom closure issue. Nevertheless, because the supreme court’s order vacating our judgment was not restricted or qualified in any way, it effectively abrogated our entire original opinion. So we reiterate our analysis and conclusion on the sufficiency issue.

premises; and (4) failing to make any findings concerning two jurors who were not paying attention to the evidence at trial.

¶ 3 Montoya's sufficiency argument raises a novel issue of statutory interpretation concerning section 18-9-119(2), C.R.S. 2025. Based on the statute's plain language, we conclude that it sets forth two means of committing the offense of failure to leave the premises and that sufficient evidence supports Montoya's conviction under the barricading clause. However, after considering both *Rios* and *Bialas*, as well as the parties' supplemental briefs, we find this case distinguishable from *Rios* and conclude that, like in *Bialas*, Montoya was deprived of his constitutional right to a public trial and that the court failed to make sufficient findings under *Waller v. Georgia*, 467 U.S. 39 (1984). Accordingly, we reverse the judgment and remand the case for a new trial. We do not address the remaining issues because they are unlikely to arise on retrial.

I. Background

¶ 4 In October 2020, the Alamosa County Sheriff's Office responded to a call from Montoya's sister reporting that Montoya had broken into a house in Alamosa County. When officers arrived at the house, Montoya's sister gave them a key to the front door,

but it did not work because the lock was damaged. The officers noticed chips in the paint and wood of the door, which indicated that the door had been pried open. The officers went to a set of French doors at the back of the home and saw that they were jammed shut by a two-by-four placed in the door track.

¶ 5 The officers then saw Montoya inside the house. After they gave Montoya several commands to unlock the door and come outside, he left the house and was arrested.

¶ 6 The People charged Montoya with first degree criminal trespass, failure to leave the premises, and criminal mischief.

¶ 7 Montoya proceeded to trial without counsel in April 2021, during the COVID-19 pandemic. The jurors were seated throughout the courtroom to allow for social distancing, and the public watched the trial via Webex. Throughout the proceedings, the Webex camera was focused solely on the judge, counsel, and Montoya.

¶ 8 At trial, Montoya asserted that he was not trespassing at the property in question because the deed to it was in his legal name, Gilberto A. Montoya. However, Montoya's father, Gilbert Andy

Montoya,² testified that he owned the property, that it was in his name (not in Montoya's legal name³), and that he had told Montoya that he could not be there.

¶ 9 The jury found Montoya guilty of all charges. The court sentenced him to eighteen months in community corrections.

II. Courtroom Closure

¶ 10 Montoya contends that the trial court completely closed the courtroom by excluding all members of the public and requiring them to view the trial in a separate courtroom via a live audio and video stream. He further contends that the trial court's failure to make findings justifying the closure under *Waller* and its failure to consider reasonable alternatives violated his right to a public trial under the Sixth Amendment to the United States Constitution and article II, section 16 of the Colorado Constitution. After considering *Rios* and *Bialas*, we again conclude that reversal for a new trial is required.

² Montoya's father testified that he has also used the name Gilberto Andres Montoya.

³ Montoya's father testified that Montoya's legal name is Gilberto Andres Miguel Montoya.

A. Additional Background Information

¶ 11 On March 18, 2021, the Twelfth Judicial District Chief Judge issued an order addressing the resumption of jury trials during the COVID-19 pandemic.⁴ Chief Judge Administrative Order 2020-08, 12th Judicial District — Covid-19 Plan/Order Regarding Resuming Jury Trials — Effective April 5, 2021 (amended Mar. 2021), <https://perma.cc/D7BV-NRCA> (the Order). The Order outlined the procedures required to safely resume jury trials, including information about mask orders, disinfecting policies, and self-screening procedures, as well as a detailed breakdown of the county courthouse locations and their capacities for purposes of social distancing requirements. *Id.* at 2-4. For Alamosa County, the Order listed three available courtrooms and their respective maximum number of jurors: Courtroom A, which could accommodate thirteen jurors and would be used for “all trial proceedings”; Courtroom B, which could accommodate twenty jurors and would be used for additional juror assembly; and

⁴ An appellate court may take judicial notice of public documents. See *Walker v. Van Laningham*, 148 P.3d 391, 397-98 (Colo. App. 2006).

Courtroom C, which could accommodate twenty jurors and would also be used for additional juror assembly. *Id.* at 3-4. Additionally, the Order provided that because of courthouse size limitations and the need for proper social distancing to comply with then-current health regulations, it was necessary to hold jury trials “off-site” in a number of counties in the district. *Id.* at 3. These “off-site” locations included a fire station, a school, and a community center. *Id.* No off-site locations were identified for Alamosa County, where Montoya’s trial was held. *Id.* The Order further explained that public seating for jury trials “will be on a first come, first seated basis” and that, due to “limited public courtroom seating[,] Webex audio and video connections will be made available to the public.” *Id.* at 6.

¶ 12 On April 12, 2021, three days before the trial, the trial court informed Montoya that the trial would take place in Courtroom A because “we will not have the jurors in close proximity to each other during the voir dire or during the deliberations Because of the way . . . Courtroom A is set up, we’re able to safely distance all the seating for the jurors.” The trial court said that it was going to try to make the trial “as safe as possible for all” and explained that it

would be using safety standards including masking and that voir dire would take place between two courtrooms.

¶ 13 At the beginning of trial, the trial court informed Montoya that the trial was being broadcast by Webex. Before voir dire, when a Webex attendee was audible to those in the courtroom, the trial court explained,

This is a public trial. That's what trials in this court and this country are. They're public. They are subject to people walking in on a normal courtroom and sitting down and watching what's going on. This is a different world. The way we're bringing the public in is through Webex. What you heard is I think somebody wanting to observe or hear the process but they have their phone unmuted so we are hearing that noise. That may or may not occur periodically during these proceedings.

¶ 14 Later, when a juror was not wearing a mask, the trial court commented, "I know it's a pain. God knows it's a pain. Right? We all wish we didn't have to wear these things, but as a respect to all of us, each other, let's do that today, shall we?"

B. Standard of Review

¶ 15 The parties agree that a trial court's decision to close the courtroom presents a mixed question of law and fact, and that we

review the court’s legal conclusions de novo and its findings of fact for clear error. *People v. Turner*, 2022 CO 50, ¶ 19. But, relying on *People v. Garcia*, 2023 COA 58, and *Stackhouse v. People*, 2015 CO 48, the People argue that Montoya knew about the closure and failed to object, so he waived this issue. We conclude, based on the record, that the issue is not waived.

¶ 16 The record shows that Montoya, who was pro se, sent a letter⁵ to the court on November 9, 2020, in which he objected to all proceedings being held “in remote form” and requested the “courthouse to remain open” under both the Federal and Colorado Constitutions. In an order dated November 12, 2020, the county court judge granted Montoya a preliminary hearing on the felony count, said that the “parties may proceed by Webex as desired [please refer to the latest health guidelines/chief judge directives],” and deferred entry of a not guilty plea until probable cause was determined. *See Presley v. Georgia*, 558 U.S. 209, 214-15 (2010) (noting that the court found error even though neither the

⁵ We construe this letter as a motion since it also requested a preliminary hearing and discovery.

prosecution nor the defense requested an open courtroom in *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501, 503 (1984)).

¶ 17 We acknowledge that the waiver issue is a close one because the record shows that, after filing his written objection, Montoya appeared to acquiesce in the virtual proceedings by saying such things as “let’s move along” and “I’m ready to proceed” when the court explained that it intended to comply with social distancing and masking requirements necessitated by the pandemic and that it would proceed virtually during the trial. However, we are not persuaded that *Stackhouse* compels a finding of waiver.

¶ 18 In *Stackhouse*, the closure issue arose at the trial proceeding when the judge advised the parties that the public would not be permitted in the courtroom for jury selection due to the large number of jurors, the limited space, and the risk that family members would come into contact with prospective jurors and potentially bias them. *Stackhouse*, ¶ 2. No one objected to the closure, and the Colorado Supreme Court held that a defendant waives his right to a public trial by not objecting to a known closure. *Id.* at ¶ 17.

¶ 19 As in *Stackhouse*, Montoya knew his case would be closed to the public from the onset of the proceedings because of the pandemic. But unlike the defendant in *Stackhouse*, he filed his written objection contemporaneously with this knowledge, and not only requested in-person proceedings, but also requested that the courthouse remain open to the public.

¶ 20 Moreover, the fact that Montoya filed his written objection at the commencement of his case does not alter our conclusion. While the right to a public trial does not mean that all aspects of the proceedings must be open to the public, *see, e.g., Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 598 n.23 (1980) (Brennan, J., concurring in the judgment) (noting no right of public or private access to bench conferences), many court proceedings are subject to the public access and public trial rights under the First and Sixth Amendments. These include (1) preliminary hearings in a criminal case, *Press-Enterprise Co. v. Superior Ct.*, 478 U.S. 1, 10 (1986); (2) pretrial suppression, due process, and entrapment hearings, *United States v. Criden*, 675 F.2d 550 (3d Cir. 1982); (3) suppression hearings, *Waller*, 467 U.S. at 48; (4) omnibus pretrial hearings, *United States v. Waters*, 627 F.3d 345, 359 (9th

Cir. 2010); (5) hearings on motions in limine, *Rovinsky v. McKaskle*, 722 F.2d 197, 200-01 (5th Cir. 1984); (6) voir dire, *Press-Enterprise*, 464 U.S. at 509-10; (7) plea hearings, *United States v. Haller*, 837 F.2d 84, 86-87 (2d Cir. 1988); (8) post-trial hearings to investigate jury misconduct, *United States v. Simone*, 14 F.3d 833, 840 (3d Cir. 1994); and (9) sentencing, *United States v. Rivera*, 682 F.3d 1223, 1228 (9th Cir. 2012).

¶ 21 In the end, we cannot say that the record clearly establishes that Montoya’s comments reflect an intention to relinquish his right to a public trial. At best, they are ambiguous regarding whether he sought to abandon his original request that all proceedings be public. And we must indulge every reasonable presumption against waiver. *People v. Rediger*, 2018 CO 32, ¶ 46. Indeed, “[t]he presumption of openness may be overcome only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest.” *Press-Enterprise*, 464 U.S. at 510. “The interest is to be articulated along with findings specific enough that a reviewing court can determine whether the closure order was properly entered,” the issue we next address. *Id.*

¶ 22 Having determined that this issue was not waived, we must decide whether there was a courtroom closure that violated Montoya’s constitutional rights, and, if so, the proper remedy.

C. Applicable Law

¶ 23 Both the United States and Colorado Constitutions guarantee a criminal defendant the right to a public trial. U.S. Const. amends. VI, XIV; Colo. Const. art. II, § 16; *Waller*, 467 U.S. at 44; *People v. Jones*, 2020 CO 45, ¶ 15. However, the public trial right is not absolute. *Waller*, 467 U.S. at 45. The right to a public trial may give way, in rare circumstances, to other rights or interests. *Id.*

¶ 24 Further, not every exclusion of the public constitutes a denial of a public trial. *See Rios*, ¶ 54. But when a court physically excludes members of the public from the courtroom for the duration of the trial and only allows them to view the trial via live video and audio streaming, such procedure constitutes a closure. *See Bialas*, ¶ 21; *People v. Roper*, 2024 COA 9, ¶ 16.

¶ 25 Still, to implicate a defendant’s right to a public trial, the courtroom closure must be nontrivial. *See Bialas*, ¶ 28; *People v. Lujan*, 2020 CO 26, ¶ 23 (noting that trivial closures do not violate

the public trial right because they are “inconsequential” and “de minimis”). A closure is trivial if it does not undermine the values advanced by the public trial guarantee — namely, ensuring a fair trial, reminding the prosecutor and judge of their responsibilities and the importance of their functions, encouraging witnesses to come forward, and discouraging perjury. *Lujan*, ¶¶ 27-28. Courts consider factors such as “the duration of the closure, the substance of the proceedings that occurred during the closure, whether the proceedings were later memorialized in open court or placed on the record, whether the closure was intentional, . . . whether the closure was total or partial,” or any other relevant consideration. *Id.* at ¶ 19.

¶ 26 To protect a defendant’s right to a public trial, any nontrivial courtroom closure requires that four conditions be met: (1) the party seeking to close the hearing must advance an overriding interest that is likely to be prejudiced if the proceeding is open to the public; (2) the closure must be no broader than necessary to protect that interest; (3) the trial court must consider reasonable alternatives to closing the hearing; and (4) the trial court must

make findings adequate to support the closure. *Waller*, 467 U.S. at 48.

¶ 27 Our supreme court recently decided two cases involving trials that, like this case, occurred during the COVID-19 pandemic and involved circumstances that limited the public's access to the proceedings. In *Rios*, ¶ 36, the court held that a virtual platform is not a substitute for public access, but an additional means of access. And a total closure occurs when a trial court conducts a trial that is exclusively virtual. *Id.* at ¶ 38. However, to implicate the public trial right, the closure must be nontrivial. *Id.* The court held that conducting an entire trial virtually, with the courtroom was otherwise closed, constituted an intentional and nontrivial closure. *Id.* at ¶ 40. But applying the *Waller* factors, it found no constitutional violation because (1) the public health restrictions justified the closure; (2) the closure was no broader than necessary to comply with the restrictions; (3) there were no other reasonable alternatives to the closure; and (4) the court made adequate findings concerning the closure. *Id.* at ¶¶ 42-49.

¶ 28 In *Bialas*, ¶¶ 1, 5, the trial court removed all spectators from the courtroom midtrial, based on misconduct by some of the

spectators, and allowed them to watch the remainder of the trial virtually. A division of this court reversed the conviction and remanded for a new trial after it determined there was a nontrivial closure that was not justified by the *Waller* factors. *Id.* at ¶¶ 8-9. The supreme court affirmed and first held that totally excluding the public from the physical courtroom constituted a closure. *Id.* at ¶ 24. The court next held that the closure was intentional and nontrivial because it encompassed more than a half day of a four-day trial. *Id.* at ¶¶ 29-30.

¶ 29 The court then applied the *Waller* factors and held that a constitutional violation warranting reversal had occurred. *Id.* at ¶ 31. While recognizing a trial court's ability to control its courtroom, the supreme court found there was no reason to remove Bialas' family members (which was not responsible for the disruption) or to close the entire courtroom to the public. *Id.* at ¶ 33. Likewise, there were alternatives to complete closure and the closure was broader than necessary because the trial court could have removed only the disruptive spectators. *Id.* Lastly, the supreme court found that the trial court did not make adequate findings to support the closure. *Id.* at ¶ 35.

D. Analysis

¶ 30 Applying *Rios* and *Bialas*, we first conclude that a total closure occurred when the trial court physically excluded all members of the public from the courtroom and relied on the livestream as a substitute for the public’s physical presence. *Rios*, ¶ 37. In doing so, we reject the People’s assertion that the record leaves open the possibility that members of the public were present because the trial court clearly stated, “The way we’re bringing the public in is through Webex.”

¶ 31 Next, as in *Rios*, we conclude that the closure was nontrivial because it was intentional and the court excluded the public from the courtroom for the duration of the trial. *Id.* at ¶ 40.

¶ 32 Having found a nontrivial closure, we now turn to the *Waller* factors. Concerning the first factor, we begin by noting that neither party requested the closure and that the trial court acted on its own in accordance with the public health guidelines and the Order in effect at the time of trial. As in *Rios*, the record reflects that the court was concerned with the health of the jurors and other trial participants. Therefore, we conclude that the first *Waller* factor is

satisfied by evidence in the record. But even so, we conclude that the remaining *Waller* factors are not satisfied.

¶ 33 The record here contains the Order in effect at the time of Montoya’s trial, which occurred much later in the pandemic than the trial in *Rios* and reflected the resumption of criminal jury trials in the jurisdiction. The Order recognized the need for the public’s physical presence in the courtroom by stating that public seating would be limited and available on a first come, first seated basis. Unlike *Rios*, where the court noted that courtroom capacity precluded the public’s physical presence in the courtroom, the trial court here did not make a finding that there was no room for the public in the courtroom.

¶ 34 In addition, the Order noted several possible alternatives, including the use of off-site locations and that “voir dire may have to be conducted in waves.” Order at 4. Such alternatives were not available in *Rios*, see *Rios*, ¶ 45 (“The record shows that the court considered the use of reasonable alternatives, here the use of Webex and video and audio streaming in the auxiliary courtroom, and that there simply weren’t — in the midst of a global pandemic — any other reasonable alternatives.”), and the record here does not

reflect that the trial court considered but rejected these alternatives. For example, the court did not explain why jury selection could not have occurred in waves to permit members of the public to observe, as noted in the Order. Nor did the court reference the possible use of off-site locations. Additionally, the Order shows that three differently sized courtrooms were available for use in Alamosa — Courtroom A (thirteen jurors), Courtroom B (twenty jurors), and Courtroom C (twenty jurors).⁶ But the record does not reflect that the trial court contemporaneously considered using another, larger courtroom so that *some* members of the public could attend in person. *See id.* at ¶ 35 (“[T]he inability of *some* members of the public to be physically present in a courtroom to observe the proceedings due to public health restrictions, like social distancing, is not a closure. Rather it is a limitation on courtroom capacity.”); *see also Bucci v. United States*, 662 F.3d 18, 26 (1st Cir. 2011) (“[E]ven if the courtroom were completely filled with prospective jurors, it would likely not justify the closure in this case. The

⁶ The trial court indicated the possibility of a fourth courtroom not mentioned in the Order when it said the proceedings would be livestreamed in Courtroom D while the trial took place in Courtroom A.

Supreme Court in *Presley* made clear that alternative methods of increasing the available public seating, such as splitting the venire, must be adopted if reasonable.”).

¶ 35 Under these circumstances, we conclude that the trial court failed to make findings sufficient for us to conclude that it considered reasonable alternatives or that the closure was not broader than necessary. Indeed,

[t]rial courts are obligated to take every reasonable measure to accommodate public attendance at criminal trials. . . . Without knowing the precise circumstances, some possibilities include reserving one or more rows for the public; dividing the jury venire panel to reduce courtroom congestion; or instructing prospective jurors not to engage or interact with audience members.

Presley, 558 U.S. at 215.

¶ 36 Finally, even though *Waller* is well-settled law, the trial court failed to make findings on any of its factors. *See Waller*, 467 U.S. at 48 (holding the trial court “must make findings adequate to support [a] closure”). Unlike in *Rios*, where the court made multiple findings and comments leading up to the trial, the substance of which satisfied the *Waller* factors, the trial court here did not comment on or explain the various options available to it as set

forth in the Order. In light of the many options that are part of the record, we conclude, as in *Bialas*, that the trial court “did not follow *Waller* in substance or form.” *Bialas*, ¶ 35.

¶ 37 In reaching this conclusion, we reject the People’s alternate request to remand the case for further findings pursuant to *Roper*, ¶ 44. In *Roper*, the trial court mentioned *Waller*, an indication that it was aware of and considered the factors in its decision. *Id.* at ¶ 26. As noted above, the court here did not do so, or if those factors were considered, it is not discernible from the record. Additionally, the *Roper* court specifically noted the availability of two larger courtrooms and stated it chose the smaller courtroom to permit the jurors to be closer to the witness stand — record evidence that the court was aware of and considered this *Waller* factor. *Id.* at ¶¶ 23-24. In contrast, here, the Order reflects the availability of larger courtrooms, the potential for using off-site locations, and the possibility of conducting voir dire in waves to accommodate public access, but nothing the court said, nor anything in the record, suggests that the court considered these

options when deciding to conduct the trial virtually.⁷ Thus, a remand would necessarily implicate faded memories and shifting recollections or interpretations. *Id.* at ¶ 42.

¶ 38 Accordingly, because the exclusion of the entire public from the physical courtroom during the trial constituted a nontrivial total closure and the court did not make findings on the *Waller* factors to justify the closure, we conclude that the closure violated Montoya's Sixth Amendment right to a public trial and therefore reverse the judgment and remand for a new trial.

III. Sufficiency

¶ 39 Montoya contends that his conviction for failure to leave the premises under section 18-9-119(2) must be vacated because the prosecution presented insufficient evidence to show that he used or threatened to use force to prevent law enforcement from entering the premises. Because the sufficiency issue implicates the prohibition against double jeopardy and may preclude a retrial, we address Montoya's contention.

⁷ The local policy regarding the conduct of trials during the pandemic was not part of the record in *Roper*.

¶ 40 Montoya contends that section 18-9-119(2) describes a single way to commit failure to leave the premises, which must include the “use . . . or threatened use of force.” The People contend that the statute’s plain language provides *two* distinct ways of committing the offense: (1) when a person barricades himself and refuses to leave the premises upon being requested to do so by law enforcement or (2) when a person refuses police entry through use of force or threatened use of force and refuses to leave the premises upon being requested to do so by law enforcement.

¶ 41 No Colorado case has interpreted this statute, so we must address whether the “barricade” clause and the “use of force” clause in section 18-9-119(2) describe one or two separate means of committing failure to leave the premises.

A. Additional Facts

¶ 42 Officer Paul Gilleland and Deputy Tyler Martinez responded to Montoya’s sister’s 911 call. Officer Gilleland saw that all the doors to the house were locked, including a set of French doors that were damaged and barricaded (a two-by-four had been placed in the space beneath them). Officer Gilleland saw Montoya inside the house behind the French doors and ordered him to open the door,

come outside, and show his hands. Both officers repeated this order several times, and each time, Montoya yelled back, “Or what?!” After several minutes of this back and forth, Montoya opened the door, came outside, and was taken into custody.

¶ 43 Following the trial, newly appointed counsel filed a motion for judgment of acquittal, arguing that the prosecution presented insufficient evidence that Montoya had used or threatened to use force and therefore insufficient evidence supported his conviction for failure to leave the premises under section 18-9-119(2). The court denied the motion, finding it was “not well taken based upon the evidence presented.”

B. Standard of Review and Applicable Law

¶ 44 We review questions of statutory construction de novo, *People v. Cali*, 2020 CO 20, ¶ 14, assessing “whether the evidence before the jury was sufficient both in quantity and quality to sustain the defendant’s conviction.” *Clark v. People*, 232 P.3d 1287, 1291 (Colo. 2010).

¶ 45 In construing a statute, our primary purpose is to ascertain and give effect to the legislature’s intent. *McCoy v. People*, 2019 CO 44, ¶ 37. To do so, we look first to the statutory language, giving

words and phrases their plain and ordinary meanings and giving consistent, harmonious, and sensible effect to all parts of the statute. *Id.*; *Finney v. People*, 2014 CO 38, ¶ 12. We read words and phrases in context and construe them according to the rules of grammar and common usage. *McCoy*, ¶ 37.

¶ 46 We will not add words to or subtract words from a statute. *People v. Laeke*, 2018 COA 78, ¶ 15. And we will avoid a reading of a statute that would lead to an absurd or illogical result. *McCoy*, ¶ 38.

¶ 47 If the statute is ambiguous, we may consider other principles of statutory construction. *Id.* A statute is ambiguous when it is reasonably susceptible of multiple interpretations. *People v. Opana*, 2017 CO 56, ¶ 35. But if a statute is clear and unambiguous, we need not resort to other principles of statutory interpretation. *Cali*, ¶ 18. “We apply facially clear and unambiguous statutes as written because we presume the General Assembly meant what it clearly said.” *People v. Durapau*, 280 P.3d 42, 45 (Colo. App. 2011).

¶ 48 A challenge to the sufficiency of the evidence requires a reviewing court to determine whether the evidence, both direct and circumstantial, when viewed as a whole and in the light most

favorable to the prosecution, is sufficient to support a conclusion by a reasonable fact finder that the defendant is guilty of the crime charged beyond a reasonable doubt. *People v. Duncan*, 109 P.3d 1044, 1045 (Colo. App. 2004).

¶ 49 Section 18-9-119(2) provides,

Any person who barricades or refuses police entry to any premises or property through use of or threatened use of force and who knowingly refuses or fails to leave any premises or property upon being requested to do so by a peace officer who has probable cause to believe a crime is occurring and that such person constitutes a danger to himself or herself or others commits a class 2 misdemeanor.

C. Analysis

¶ 50 We conclude that the plain language of section 18-9-119 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. We reach this conclusion for four reasons.

¶ 51 First, the General Assembly placed the disjunctive “or” between “barricades” and “refuses . . . entry . . . through . . . use of force,” signaling that the barricading clause and the refusing entry through use of force clause are two alternative means of committing the crime of failure to leave the premises. § 18-9-119(2). “[W]hen the word ‘or’ is used in a statute, it is presumed to be used in the disjunctive sense, unless legislative intent is clearly to the contrary.” *Armintrout v. People*, 864 P.2d 576, 581 (Colo. 1993); see also *People v. Valenzuela*, 216 P.3d 588, 592 (Colo. 2009) (“Use of the word ‘or’ is ordinarily ‘assumed to demarcate different categories.’” (quoting *Garcia v. United States*, 469 U.S. 70, 73 (1984))). Absent any language suggesting otherwise, we conclude that the General Assembly provided two ways of committing the offense and only the second way requires the use or threatened use of force.

¶ 52 Second, had the General Assembly intended for the barricading clause and the refusing entry by use of force clause to together provide a single way of committing the offense, it would have used the conjunctive word “and” instead of the disjunctive word “or.” Indeed, we find significant section 18-9-119(2)’s use of

the word “and” following both the barricading and refusing entry by use of force clauses (“and who knowingly refuses or fails to leave any premises or property upon being requested to do so by a peace officer”). This shows that the General Assembly intended this latter clause to apply to both the barricading and refusing entry by use of force clauses. See 1A Norman J. Singer & Shambie Singer, *Sutherland Statutory Construction* § 21:14, Westlaw (7th ed. database updated Nov. 2023) (“The literal meaning of [‘and’ or ‘or’] should be followed unless it renders the statute inoperable or the meaning becomes questionable.”).

¶ 53 Third, we note the absence of a comma between “property” and “through . . . use of force” in the following language: “Any person who barricades or refuses police entry to any premises or *property through . . . use of force . . .*” § 18-9-119(2) (emphasis added). This indicates that the use of force requirement applies only to “refuses police entry to any premises or property” and not to the preceding barricading clause. Had the General Assembly intended for the phrase “through . . . use of force” to modify both means of committing the crime, it would have set off these words by using a comma. See *People v. Tomaske*, 2022 COA 52, ¶¶ 23-24

(concluding that if the legislature had intended a specific meaning, it could have indicated so).

¶ 54 Fourth, the plain meaning of the operative words shows that the General Assembly intended the barricading clause and the refusing entry by use of force clause to describe different ways of committing the offense. “Barricade” is defined as “to block off or stop up with a barricade” or “to prevent access to by means of a barricade.” Merriam-Webster Dictionary, <https://perma.cc/A8UA-U8NA>. No Colorado statute defines what actions constitute “barricading.” *Cf. Grant v. Winik*, 948 F. Supp. 2d 480, 514 (E.D. Pa. 2013) (circumstances did not meet several criteria typical of a barricaded person scenario; notably, the defendant did not refuse orders to come out but instead remained nonresponsive and silent); *State v. Pejsa*, 876 P.2d 963, 969 (Wash. Ct. App. 1994) (“A ‘barricaded person’ is one who establishes a perimeter around an area from which others are excluded and either: (i) Is committing or is immediately fleeing from the commission of a violent felony; or (ii) Is threatening or has immediately prior threatened a violent felony or suicide” (quoting Wash. Rev. Code Ann. § 70.85.100(2)(b) (West 2025))).

¶ 55 As the People note, tethering the barricading clause to the phrase “through use of or threatened use of force” would create vagueness and lead to an absurd result because it would be unclear what actions beyond barricading would be needed to satisfy this requirement. *McCoy*, ¶ 38; see *AviComm, Inc. v. Colo. Pub. Utils. Comm’n*, 955 P.2d 1023, 1031 (Colo. 1998) (“[T]he intention of the legislature will prevail over a literal interpretation of the statute that leads to an absurd result.”). For example, because barricading constitutes a physical impediment to entry, we have difficulty conceiving of any circumstances in which one can barricade “through . . . threatened use of force.”

¶ 56 Moreover, if we follow Montoya’s proposed reading to its logical conclusion, merely placing a barricade to prevent entry, without any use or threatened use of force, would not be punishable under section 18-9-119(2), thereby rendering the word “barricading” meaningless. This reading runs contrary to the legislative purpose and cannot be what the General Assembly intended.

¶ 57 Considering the plain language of section 18-9-119(2) within the statute as a whole and giving consistent meaning to all its parts, we disagree with Montoya’s proffered interpretation. See

Reno v. Marks, 2015 CO 33, ¶ 20 (“[W]e examine . . . statutory language in the context of the statute as a whole and strive to give ‘consistent, harmonious, and sensible effect to all parts.’” (quoting *Denv. Post Corp. v. Ritter*, 255 P.3d 1083, 1088-89 (Colo. 2011))).

¶ 58 Applying our statutory interpretation to the evidence introduced at trial, we conclude that sufficient evidence supports Montoya’s conviction under the barricading clause of the statute. The record shows that when police officers arrived, they saw that the French doors had been barricaded with a two-by-four placed in the space beneath them. They also saw Montoya inside the house behind the French doors and repeatedly told him to open the doors and come outside. Each time he responded, “Or what?!” And only after repeated orders did he eventually comply and leave the house. Viewing this evidence in the light most favorable to the prosecution, we conclude that sufficient evidence supports Montoya’s failure to leave the premises conviction. Accordingly, the prosecution may retry him on this charge.

IV. Disposition

¶ 59 The judgment is reversed, and the case is remanded for a new trial.

JUDGE BROWN and JUDGE JOHNSON concur.