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ADVANCE SHEET HEADNOTE
March 2, 2026

2026 CO 12

No. 25SA187, *In Re People v. Dilka* – Criminal Law – Statutes – Second Degree Burglary – Protection Orders

The supreme court addresses whether the criminal violation of a protection order under section 18-6-803.5, C.R.S. (2025), serves as a predicate crime for second degree burglary under section 18-4-203, C.R.S. (2025). To be a predicate crime for second degree burglary, the underlying crime must be a “crime against another person or property.” § 18-4-203(1).

The supreme court concludes that its ruling in *People v. Rhorer*, 967 P.2d 147 (Colo. 1998), created a bright-line rule that criminal protection order violations under section 18-6-803.5 are crimes against another person or property because such violations always involve the harm or threat of harm to another person or property. Accordingly, the supreme court discharges the order to show cause and remands to the trial court for further proceedings consistent with this opinion.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2026 CO 12

Supreme Court Case No. 25SA187
Original Proceeding Pursuant to C.A.R. 21
Weld County District Court Case No. 25CR336
Honorable Audrey Galloway, Judge

In Re
Plaintiff:

The People of the State of Colorado,

v.

Defendant:

Robert Joe Dilka.

Order Discharged

en banc

March 2, 2026

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CHIEF JUSTICE MÁRQUEZ delivered the Opinion of the Court, in which **JUSTICE BOATRIGHT, JUSTICE HOOD, JUSTICE SAMOUR** and **JUSTICE BERKENKOTTER** joined.
JUSTICE GABRIEL dissented.

CHIEF JUSTICE MÁRQUEZ delivered the Opinion of the Court.

¶1 In this original proceeding, we review the trial court’s ruling at a preliminary hearing that Robert Joe Dilka’s criminal violation of a protection order¹ under section 18-6-803.5, C.R.S. (2025), constituted a predicate crime for purposes of second degree burglary under section 18-4-203, C.R.S. (2025).

¶2 To commit second degree burglary, a person must enter or remain unlawfully in a building or occupied structure “with intent to commit therein a crime against another person or property.” § 18-4-203(1). The question here is whether, as a matter of law, the criminal violation of a protection order amounts to a “crime against another person or property” for purposes of second degree burglary.

¶3 Per our decision in *People v. Rhorer*, 967 P.2d 147 (Colo. 1998), the answer is yes. There, we expressly held “that a violation of a no-contact order constitutes a predicate crime for purposes of the burglary statute.” *Id.* at 148. In so holding, we reasoned that because the General Assembly has deemed the violation of a protection order a crime in and of itself, *see id.* at 151 n.6 (citing § 18-6-803.5, 8B

¹ Protection orders are also called “no-contact orders” and “restraining orders” in common parlance and past case law. For consistency, we refer to them as “protection orders” throughout this opinion, consistent with current Colorado statutes. *See* § 18-1-1001, C.R.S. (2025); § 18-6-803.5, C.R.S. (2025); § 18-6-803.7, C.R.S. (2025).

C.R.S. (1986 & Supp. 1992)), the defendant’s “intent to violate the no-contact order by breaking into [the victim’s] home constituted an ‘intent to commit therein a crime against [a] person or property’ and fulfilled that element of the crime of second degree burglary.” *Id.* at 151 (quoting § 18-4-203, C.R.S. (1997)). Today, we confirm that *Rhorer* established a bright-line rule that a criminal violation of a protection order under section 18-6-803.5 serves as a predicate crime for second degree burglary because such a violation constitutes a crime against another person or property.

¶4 Here, the trial court properly concluded that, under *Rhorer*, the criminal violation of a protection order serves as a predicate offense for purposes of second degree burglary. Accordingly, we discharge the order to show cause and remand the case for further proceedings.

I. Facts and Procedural History

¶5 The People charged Dilka with second degree burglary and several other offenses² after he unlawfully entered his ex-wife’s home in violation of a mandatory protection order issued under section 18-1-1001, C.R.S. (2025). The

²Dilka is charged with one count of second degree burglary, § 18-4-203(1), (2)(b)(I); two counts of violation of a protection order, § 18-6-803.5(1)(a) (relating to mandatory protection orders issued in two separate Weld County cases); one count of criminal mischief, § 18-4-501(1), (4)(c), C.R.S. (2025); and one count of second degree criminal trespass, § 18-4-503(1)(a), C.R.S. (2025).

protection order prohibited Dilka from contacting his ex-wife and barred him from her home.

¶6 At a preliminary hearing on the burglary charge, the People presented testimony and other evidence that Dilka violated the protection order when he jumped the fence to enter his ex-wife's yard, damaged the doorbell and back door, and ultimately entered the home. Despite his ex-wife's insistence that he leave, he followed her into the home. His ex-wife locked herself in the bathroom and called the police. When the police arrived, they found Dilka jumping back over the fence and placed him in custody.

¶7 Dilka did not contest this evidence. Instead, he argued that his conduct did not amount to a "crime against another person or property" for purposes of second degree burglary. The trial court rejected Dilka's argument, reasoning that under *Rhorer*, the violation of a protection order serves as a predicate crime for purposes of second degree burglary because it is a crime against a person or property. The court further reasoned that the protection order in this case clearly stated that Dilka was to stay away from the victim's home or any other location where she was likely to be found, and that by violating that order, Dilka committed a crime against a person or property. Thus, based on its understanding of *Rhorer*, the court concluded that the People had met their burden to establish probable cause for the second degree burglary charge and set that charge over for trial.

¶8 Dilka sought this court’s review of the trial court’s ruling under C.A.R. 21. We granted his petition and now discharge the order to show cause.

II. Jurisdiction

¶9 Under C.A.R. 21, this court has “sole discretion to exercise our original jurisdiction.” *People v. Justice*, 2023 CO 9, ¶ 17, 524 P.3d 1178, 1182 (quoting *People v. Cortes-Gonzalez*, 2022 CO 14, ¶ 21, 506 P.3d 835, 842). Any relief granted under Rule 21 is “extraordinary in nature and . . . will be granted only when no other adequate remedy is available.” C.A.R. 21(a)(2). We have granted such relief under Rule 21 “when an appellate remedy would be inadequate, when a party may otherwise suffer irreparable harm, [or] when a petition raises ‘issues of significant public importance that we have not yet considered.’” *People v. Walthour*, 2023 CO 55, ¶ 8, 537 P.3d 371, 374 (alteration in original) (quoting *People v. Kilgore*, 2020 CO 6, ¶ 8, 455 P.3d 746, 748).

¶10 Here, we agree with Dilka’s contention that any appellate remedy would be inadequate because the issue concerns the trial court’s probable cause determination at Dilka’s preliminary hearing, which is unreviewable on appeal. *See People v. Nicholson*, 219 P.3d 1064, 1066–67 (Colo. 2009). In addition, this case presents an issue of statutory interpretation that warrants guidance from this court. For these reasons, we exercise our jurisdiction under Rule 21.

III. Analysis

¶11 After setting forth the standard of review, we begin by discussing the holding in *Rhorer* and confirm that it established a bright-line rule that a criminal violation of a protection order serves as a predicate crime for purposes of the second degree burglary statute. We then explain that the rule in *Rhorer* is consistent with the text of the burglary statute and the legislative intent behind section 18-6-803.5. We conclude that the trial court did not err in applying *Rhorer* to Dilka's case to find probable cause to bind over the second degree burglary charge for trial.

A. Standard of Review

¶12 We review a trial court's probable cause determination at a preliminary hearing for an abuse of discretion. *White v. MacFarlane*, 713 P.2d 366, 369 (Colo. 1986). But to the extent a trial court's probable cause finding rests on interpreting a question of law, we review the trial court's interpretation de novo. See *People v. Webb*, 2014 CO 36, ¶ 15, 325 P.3d 566, 570. Here, because the trial court's probable cause finding centered on its interpretation of sections 18-6-803.5 and 18-4-203, as well as our opinion in *Rhorer*, we review those interpretations de novo.

¶13 When interpreting statutes, our goal is to discern and give effect to the legislature's intent. See *Town of Minturn v. Tucker*, 2013 CO 3, ¶ 27, 293 P.3d 581, 590. In doing so, we apply the plain and ordinary meaning of undefined phrases

and read statutes “in context” to give “consistent, harmonious, and sensible effect to all of [their] parts.” *McCoy v. People*, 2019 CO 44, ¶¶ 37–38, 442 P.3d 379, 389.

B. *Rhorer*

¶14 Dilka argues that *Rhorer* only addressed whether a protection order violation amounted to a crime at all and did not establish a categorical rule that violating a protection order constitutes a predicate crime “against another person or property” for purposes of burglary. We disagree.

¶15 The defendant in *Rhorer* broke his ex-girlfriend’s basement window in an effort to get into her home. 967 P.2d at 148. At the time, a protection order issued by the Denver County Court was in effect prohibiting the defendant from contacting the victim. *Id.* The People charged the defendant with second degree burglary and other crimes. *Id.*

¶16 At trial, the jury was instructed and given a verdict form that allowed it to find the defendant guilty of burglary using any of three predicate crimes: assault, menacing, or violation of a protection order. *Id.* The jury returned a verdict finding the defendant guilty of second degree burglary based solely on the defendant’s intent to violate the protection order. *Id.*

¶17 A split division of the court of appeals reversed the conviction, reasoning that the violation of a protection order entered pursuant to a *municipal ordinance* (rather than a state statute) was not a crime. *People v. Rhorer*, 946 P.2d 503, 506–08

(Colo. App. 1997), *rev'd*, 967 P.2d at 151. The division majority refused to consider section 18-6-803.5, the state statute criminalizing protection order violations, because the People did not rely on section 18-6-803.5 to justify the second degree burglary charge. *Id.* at 507–08. The division majority further reasoned that “an intent simply to enter [the] premises, even if in violation of a court order, would not constitute an intent to commit another crime ‘therein’” beyond the intent to make an unlawful entry. *Id.* at 508. Dissenting in part, Judge Metzger reasoned that at the time of the offense, a violation of a protection order issued by a municipal court was a misdemeanor under section 18-6-803.5, and thus, such a violation “was an appropriate predicate offense for the crime of burglary.” *Id.* at 509 (Metzger, J., concurring in part and dissenting in part).

¶18 We granted certiorari review and reversed. We noted at the outset that “the court of appeals held that an intent to violate a no-contact order does not qualify as an ‘intent to commit therein a crime against a person or property’” in violation of section 18-4-203. *Rhorer*, 967 P.2d at 147 (quoting § 18-4-203(1), C.R.S. (1997)). We observed that the court of appeals reversed the defendant’s conviction for burglary based solely on the jury’s finding that the defendant intended to violate a protection order (and not an intent to commit assault or menacing). *Id.* at 148. In other words, the court of appeals reasoned that the defendant’s act of breaking into the victim’s home in violation of the protection order could not,

without more, serve as a predicate crime for second degree burglary. We then expressly disagreed with the court of appeals' analysis and held that "a violation of a no-contact order constitutes a predicate crime for purposes of the burglary statute." *Id.* We reasoned that at the time of the crime, section 18-6-803.5 was already the law, making the violation of a protection order a crime under state law. *Id.* at 149-51. In particular, we observed that the protection order at issue in the case "was obviously intended to protect [the ex-girlfriend] from the harms delineated in section 18-6-803.5(1)." *Id.* at 150. Specifically, the order barred the defendant from "threatening, beating, striking, or assaulting" her and "require[d] [the defendant] to leave certain premises and refrain from entering or remaining on such premises." *Id.* (first alteration in original) (quoting § 18-6-803.5(1), 8B C.R.S. (1986 & Supp. 1992)).

¶19 We reasoned that the violation of the protection order issued in the case by the Denver County Court pursuant to its authority under the Domestic Abuse Act, sections 14-4-101 to -105, 6B C.R.S. (1987 & Supp. 1992), constituted a crime under section 18-6-803.5. *Rhorer*, 967 P.2d at 150. Thus, the defendant's "violation of the no-contact order was an appropriate predicate crime under the second degree burglary statute." *Id.* In reaching this conclusion, we expressly rejected the court of appeals' reasoning that the jury failed to find that the defendant intended to commit a crime apart from the intent to commit an unlawful entry, again

emphasizing that the legislature has deemed the violation of a protection order “a crime in and of itself.” *Id.* at 151 n.6. We then summarized our analysis, holding that the defendant’s “intent to violate the no-contact order by breaking into [the victim’s] home constituted an ‘intent to commit therein a crime against [a] person or property’ and fulfilled that element of the crime of second degree burglary.” *Id.* at 151 (quoting § 18-4-203(1), C.R.S. (1997)).

¶20 This categorical statement in *Rhorer* means what it says: a criminal violation of a protection order is not just a crime, but a requisite predicate “crime against another person or property” for purposes of second degree burglary. § 18-4-203(1).

¶21 We therefore reject Dilka’s contention that our holding in *Rhorer* was limited to whether a violation of a protection order constituted a crime at all. Rather, the language quoted above makes clear that we held that it *does* serve as a predicate crime, specifically, that a criminal violation of a protection order under section 18-6-803.5 qualifies as a “crime against [a] person or property.”

C. *Rhorer* Is Consistent with the Text of the Burglary Statute and the Purpose of Section 18-6-803.5

¶22 The legislature did not define the phrase “crime against another person or property” in the burglary statute. § 18-4-203(1). Although the legislature could have easily referenced specific categories of offenses in the Criminal Code, such as “Offenses Against the Person” in article 3 of title 18, or “Offenses Against

Property” in article 4 of title 18, it did not do so. Accordingly, we construe the phrase according to its plain and ordinary meaning to refer to an offense involving harm or the threat of harm to another person or to property.³

¶23 With this plain and ordinary meaning of the phrase in mind, a close look at the definition of protection order in section 18-6-803.5 clarifies why the *Rhorer* court understood a criminal violation of a protection order to qualify as a “crime against [a] person or property.” *Rhorer*, 967 P.2d at 151 (quoting § 18-4-203(1), C.R.S. (1997)). This statute defines a protection order as any order issued by a state

³ Although *Dilka* relies on the court of appeals’ analysis of this phrase in *People v. Poindexter*, 2013 COA 93, ¶¶ 11–15, 338 P.3d 352, 355–56, we are not bound by that decision. In any event, the statutory history of the second degree burglary statute supports a broad reading of the phrase. The phrase did not appear in the second degree burglary statute until 1971 when the legislature added it as part of the overhaul of Colorado’s criminal code. See Ch. 121, sec. 1, § 40-4-203, 1971 Colo. Sess. Laws 388, 427. Before that time, second degree burglary allowed *any* felony or misdemeanor to serve as a predicate crime. See § 40-3-5, 3 C.R.S. (1963) (defining the predicate offenses for second degree burglary as “murder, robbery, rape, mayhem, larceny, or other felony or misdemeanor” (emphasis added)). When the 1971 revision replaced this language with the phrase “crime against a person or property,” 1971 Colo. Sess. Laws at 427, an official comment accompanied the amendment, clarifying that the new language “embod[ied] the substance of section 40-3-5, C.R.S. 1963.” § 40-4-202 cmt., 3 C.R.S. (1963 & Supp. 1971). Because the “substance of section 40-3-5, C.R.S. 1963,” *id.*, included all felonies and misdemeanors as predicate crimes, we can infer, at a minimum, that the legislature intended the replacement phrase “crime against a person or property” to be broadly construed. See *Cooper v. People*, 973 P.2d 1234, 1240 (Colo. 1999) (relying on the official comments appended to the burglary statutes as evidence of the statutes’ proper scope).

or municipal court that prohibits the restrained person from harming or threatening to harm the protected person or their property (including animals):

‘Protection order’ means any order that prohibits the restrained person from contacting, harassing, injuring, intimidating, molesting, threatening, or touching any protected person or protected animal, or from entering or remaining on premises, or from coming within a specified distance of a protected person or protected animal or premises or any other provision to protect the protected person or protected animal from imminent danger to life or health

§ 18-6-803.5(1.5)(a.5)(I).

¶24 Every aspect of this definition shows that protection orders exist to shield protected persons and their property from harm or the threat of harm by the restrained party. Notably, this definition applies to protection orders throughout the Colorado statutes, including both civil protection orders issued pursuant to article 14 of title 13, and mandatory criminal protection orders issued pursuant to section 18-1-1001. § 18-6-803.5(1.5)(a.5)(I)(A).⁴

¶25 The legislative declaration in section 13-14-100.2, C.R.S. (2025), further reveals the legislature’s concern with shielding protected parties from harm or the

⁴ The definition also applies to orders under section 19-2.5-607, C.R.S. (2025) (requiring protection orders against juvenile criminal offenders and their parents akin to those imposed on adults under section 18-1-1001); section 19-4-111(4), C.R.S. (2025) (allowing parties to family law proceedings concerning parental rights and responsibilities to request temporary protection orders concerning the allocation of parental responsibility, decision-making responsibility, and parenting time); and C.R.C.P. 365 (providing limited authority to county courts to issue temporary restraining orders).

threat of harm.⁵ The declaration begins by recognizing that protection orders “promote safety, reduce violence and other types of abuse, and prevent serious harm and death.” § 13-14-100.2(1). It underscores that victims of domestic abuse are subjected to not just physical violence and harm, but also mental and emotional abuse, as well as various forms of control that make “a victim more likely to return to an abuser due to fear of retaliation or inability to meet basic needs.” § 13-14-100.2(2). The declaration further acknowledges that victims experience both physical and emotional trauma from unwanted contact with perpetrators and endure intense physical and emotional distress from stalkers. § 13-14-100.2(3)-(4).

¶26 Similarly, the statute establishing mandatory protection orders in criminal cases acknowledges the potential for harm to the victims of crime as well as the potential for witnesses to be subjected to intimidation or retaliation. § 18-1-1001(1). The statute thus requires a court to enter protection orders that bar a defendant from “harassing, molesting, intimidating, retaliating against, or tampering with

⁵ The statute criminalizing protection order violations cross references and incorporates elements of the civil protection order statutes. *See* § 18-6-803.5(1)(c)(I), (1.5)(a.5)(I)(A) (stating that certain civil protection order violations can be crimes and including civil protection orders in the definition of “[p]rotection order”). And the legislative declaration itself cross references the “mandatory criminal process” for protection orders in section 18-1-1001. § 13-14-100.2(1). Thus, while the civil and criminal protection order statutes reside in different titles of the code, the legislature has treated the criminal violation of either the same under section 18-6-803.5. Such violations present the same harm or threat of harm to protected persons and their property.

any witness to or victim of the acts charged.” § 18-1-1001(1)(a). It also authorizes the court to impose additional restrictions, such as prohibitions on contacting a protected party, being in locations where the victim or witness is likely to be found, possessing firearms, and the consumption of alcohol when there is a sufficient nexus to the safety of a victim or witness. § 18-1-1001(3)(a)(II).

¶27 Section 18-6-803.5 recognizes that a restrained party’s violation of such protection order provisions innately threatens a protected person’s safety. Such violations present the very psychological, emotional, and potentially physical harm to the protected party (or to property, including animals) that such protection orders seek to avoid.

¶28 For all these reasons, we reaffirm the rule established in *Rhorer*: the criminal violation of a protection order under section 18-6-803.5 is a “crime against another person or property” for purposes of section 18-4-203(1) and thus serves as a predicate crime for second degree burglary.

IV. Conclusion

¶29 The trial court correctly relied on our holding in *Rhorer* to conclude that Dilka’s violation of the mandatory protection order served as a predicate crime for second degree burglary and properly bound the charge over for trial. Accordingly, we discharge the order to show cause and remand the case to the trial court for further proceedings.

JUSTICE GABRIEL dissented.

JUSTICE GABRIEL, dissenting.

¶30 Relying on our decision in *People v. Rhorer*, 967 P.2d 147, 148 (Colo. 1998), the majority concludes that the violation of a protection order is, as a matter of law, a predicate crime to support a burglary charge, regardless of whether the facts establish that the violation constituted a crime against another person or property, an essential element of the crime of burglary. Maj. op. ¶¶ 2-3, 14, 20, 28.

¶31 Because (1) I do not agree that every violation of a protection order, regardless of the facts at issue, constitutes a crime against another person or property sufficient to establish a predicate crime for second degree burglary; (2) holding otherwise unnecessarily lowers the prosecution's burden of proof in all burglary cases in which the defendant may have violated a protection order and will lead to absurd and unjust results in many cases; and (3) our decision in *Rhorer* did not actually decide the question now before us, I respectfully dissent.

I. Factual Background

¶32 The majority sufficiently sets forth the relevant facts. I will not repeat all of those facts here, but I will highlight the facts most pertinent to my analysis.

¶33 The alleged victim, who is Robert Joe Dilka's ex-wife, had a protection order against Dilka. The protection order precluded Dilka from contacting the alleged victim or being in any place that she was likely to be.

¶34 Notwithstanding the terms of the protection order, on the day in question, Dilka entered the alleged victim's backyard and then her home. No evidence presented at the preliminary hearing indicated that he said anything to the alleged victim after he entered the home, nor did he make any threats. In addition, it appears that, at all times, there was a door between him and the alleged victim, and he did not make any attempt to open that door. According to him, he simply wanted to retrieve his backpack.

¶35 The alleged victim contacted the police to report a protection order violation, and the police responded to her home. Dilka was subsequently arrested and charged with second degree burglary, which requires the prosecution to prove that Dilka “[broke] an entrance into, enter[ed] unlawfully in, or remain[ed] unlawfully . . . in a building or occupied structure with intent to commit therein a crime against another person or property.” § 18-4-203(1), C.R.S. (2025).

¶36 The matter proceeded to a preliminary hearing. In his pre-hearing briefing and at the hearing, Dilka, relying on the division's opinion in *People v. Poindexter*, 2013 COA 93, 338 P.3d 352, argued that, on the facts presented, the prosecution could not establish that any violation of the protection order was a crime against another person or property. Specifically, Dilka argued that in *Poindexter*, ¶ 11, 338 P.3d at 355–56, the division had concluded that (1) crimes against a person involve either offenses in which the perpetrator had used or threatened to use

force or crimes against the body of another human being and (2) crimes against property involve offenses in which the perpetrator sought to derive an unlawful benefit from or to damage another's property without the threat of force. Dilka asserted that no facts in this case support a finding of a crime against another person or property under these definitions.

¶37 The prosecution responded that in *Rhorer*, 967 P.2d at 148, this court had held that a violation of a protection order *always* constitutes a predicate crime for purposes of the burglary statute and, therefore, the violation of the protection order alone was enough.

¶38 The district court agreed with the prosecution and, thus, did not analyze the specific facts of this case, beyond Dilka's protection order violation, in finding that the prosecution had established probable cause to support the second degree burglary charge.

¶39 Dilka then sought relief under C.A.R. 21, and we issued an order to show cause.

II. Analysis

¶40 I begin by setting forth the elements of second degree burglary, and I note particularly the meanings of the pertinent terms contained therein. Next, I explain why I do not believe that a violation of a protection order *always* constitutes a crime against another person or property and why, in holding otherwise, the majority's

opinion (1) unnecessarily lowers the prosecution's burden of proof in burglary cases in which the defendant violated a protection order and (2) will lead to absurd and unjust results. I end by explaining why I believe the majority errs in relying substantially on *Rhorer* to reach its conclusion in this case.

A. Applicable Legal Principles

¶41 “A person commits second degree burglary, if the person knowingly breaks an entrance into, enters unlawfully in, or remains unlawfully after a lawful or unlawful entry in a building or occupied structure with intent to commit therein a crime against another person or property.” § 18-4-203(1).

¶42 Although the statute does not define “a crime against another person or property,” in *Poindexter*, ¶ 11, 338 P.3d at 355-56, the division adopted the definitions of those terms contained in *Black's Law Dictionary*, and the parties appear to agree that those definitions apply here.

¶43 Specifically, the *Poindexter* division noted that a crime against another person is “[a] category of criminal offenses in which the perpetrator uses or threatens to use force.” *Id.*, 338 P.3d at 355 (quoting *Crimes Against Persons*, *Black's Law Dictionary* (8th ed. 2004)). Likewise, an offense against the person is “[a] crime against the body of another human being.” *Id.* (quoting *Offense Against the Person*, *Black's Law Dictionary* (8th ed. 2004)). And a crime against property is “[a] category of criminal offenses in which the perpetrator seeks to derive an

unlawful benefit from – or do damage to – another’s property without the use or threat of force.” *Id.*, 338 P.3d at 356 (alteration in original) (quoting *Crimes Against Property*, Black’s Law Dictionary (8th ed. 2004)). (The current definitions in *Black’s Law Dictionary* are identical. See *Crimes Against Persons*, Black’s Law Dictionary (12th ed. 2024); *Crimes Against Property*, Black’s Law Dictionary (12th ed. 2024); *Offense Against the Person*, Black’s Law Dictionary (12th ed. 2024).) And the division pointed out that for purposes of the foregoing definition of a crime against property, the fact that an offense presents a risk of physical harm to a person does not necessarily establish that the offense is a crime against a person. *Poindexter*, ¶ 12, 338 P.3d at 356.

B. Protection Orders and Crimes Against Persons or Property

¶44 Applying the plain meanings of the foregoing terms, it is indisputable that a violation of a protection order *can* constitute a crime against another person or property. For example, a person who is subject to a protection order would likely commit a crime against another person if the perpetrator accosted a protected person and used or threatened to use force in the course of the interaction. Similarly, a person who is subject to a protection order would likely commit a crime against property if the perpetrator entered into a protected space and stole or damaged items belonging to the protected person.

¶45 But under the plain meanings of the foregoing terms, a violation of a protection order does not *always* constitute a crime against another person or property. For example, a person subject to a protection order might enter a protected space simply by walking into it without using or threatening to use any force and without encountering another person. Likewise, a person subject to a protection order might enter a protected space without force or threat of force and at a time when the protected person is not expected to be there simply to retrieve the perpetrator's own property. I am hard-pressed to see how such conduct would constitute either a crime against another person or property as defined above (again, the People do not appear to dispute those definitions here).

¶46 Nor is every protection order violation by its very nature a crime against another person, as the People suggest. For example, as Dilka observes, section 18-1-1001(1)(a), C.R.S. (2025), imposes a mandatory protection order against all persons charged with violating any provision of title 18, which would include persons charged with drug distribution, possession of a weapon by a previous offender, or other crimes unrelated to domestic violence, many of which might be deemed victimless crimes (i.e., as crimes against society, rather than crimes against individual victims).

¶47 For these reasons, in my view, there is no legitimate basis to conclude that a violation of a protection order is—in every case, regardless of the facts of the

case—a crime against another person or property and, therefore, a predicate offense to second degree burglary. Rather, I believe that the law requires a case-by-case assessment to determine whether the protection order violation at issue was, in fact, a crime against another person or property.

¶48 To hold otherwise, as the majority does today, unnecessarily lowers the prosecution’s burden of proof in burglary cases in which the defendant violated a protection order. Now, in such a case, the prosecution need no longer prove that the defendant committed a crime against another person or property, as those terms have been defined in case law. Rather, the violation of a protection order alone and as a matter of law establishes these essential elements of the crime of second degree burglary.

¶49 I perceive no basis in law for allowing a court to relieve the prosecution of the burden of proving beyond a reasonable doubt essential elements of second degree burglary (or any other crime), and the majority cites none.

¶50 Moreover, the majority’s ruling will lead to absurd and unjust results in many cases. Take the examples that I cited above (i.e., the scenarios in which (1) a person subject to a protection order enters a protected space simply by walking into it without using or threatening to use any force or without encountering another person and (2) the perpetrator enters a protected space without force or threat of force and at a time when the protected person is not expected to be there

simply to retrieve the perpetrator's own property). Under the majority's view, this conduct alone can be a predicate offense for second degree burglary, which is either a class 3 or class 4 felony, § 18-4-203(2), with all of the severe collateral consequences attendant to convictions of such crimes. I, however, cannot perceive how such conduct would constitute a crime against another person or property, and I believe that concluding otherwise, and allowing such conduct to support a second degree burglary charge, would be absurd and manifestly unjust.

C. *Rhorer*

¶51 The majority's principal basis for concluding that any violation of a protection order is, as a matter of law, a crime against another person or property and therefore a predicate crime for second degree burglary is that we purportedly so concluded in *Rhorer*, 967 P.2d at 148. Although I acknowledge that certain language that we used in that case was broad, a close reading of the case shows that the issue presented today was not, in fact, before us in *Rhorer*. Nor did we actually conclude that a violation of a protection order is, in every case, a crime against another person or property.

¶52 In *Rhorer*, the Denver County Court had issued, pursuant to a municipal ordinance, a no-contact order against the defendant. *Id.* at 147-48. A division of our court of appeals subsequently concluded that because a municipal ordinance is not a public law, its violation is not a crime. *Id.* at 149. Accordingly, in the

division's view, the prosecution had not proved that the defendant had committed a predicate "crime" for purposes of the burglary statute. *Id.* at 147, 149.

¶53 The People sought certiorari, and we granted their petition, explaining in the very first sentence of our opinion, "We granted certiorari . . . to determine whether violation of a 'no-contact' court order . . . issued by the Denver County Court pursuant to a municipal ordinance can serve as a predicate act, i.e., constitutes a 'crime,' for purposes of the second degree burglary statute." *Id.* at 147 (citations omitted). This was the only question before us in that case.

¶54 We ultimately reversed the division's judgment, concluding that when the Denver County Court had issued its no-contact order, it had invoked its authority under state law. *Id.* at 150. Thus, we determined that the jury was appropriately instructed that the violation of the no-contact order at issue could serve as a predicate crime for purposes of the second degree burglary statute. *Id.* at 151.

¶55 Notwithstanding that the foregoing was the actual holding in that case, in our opinion, we said, "We hold that a violation of a no-contact order constitutes a predicate crime for purposes of the burglary statute." *Id.* at 148. Although when taken out of context, this statement seems exceptionally broad, we must read the statement in the context of our conclusion that a protection order violation can be a predicate crime to burglary even if the order was issued pursuant to a municipal ordinance. In my view, that is all that our statement was intended to convey. And

as Dilka contends, we did *not* address the issue presented here, namely, whether a protection order violation is *always* a crime against another person or property and is therefore, in every case, a predicate crime that can support a burglary charge. As noted above, that question was not before us.

¶56 Because I believe that the district court here misinterpreted what we actually held in *Rhorer* (as I respectfully believe my colleagues in the majority do), that court never considered whether, on the facts presented, the violation of the protection order at issue constituted a crime against another person or property, as those terms have been defined by case law. Moreover, without pre-judging the issue, I believe that Dilka has presented a credible argument that the district court could not properly have found that he committed a crime against another person or property because no evidence indicated that he had used or threatened to use force against the alleged victim, committed a crime against the alleged victim's person, or sought to damage the alleged victim's property without the use of force.

¶57 Accordingly, I believe that further proceedings are warranted to allow the district court to determine, on the facts presented, whether probable cause indeed exists to permit the prosecution to pursue a charge of second degree burglary against Dilka.

III. Conclusion

¶58 For these reasons, (1) I do not agree that every violation of a protection order, regardless of the facts at issue, constitutes a crime against another person or property sufficient to establish a predicate crime for second degree burglary; (2) holding otherwise unnecessarily lowers the prosecution's burden of proof in all burglary cases in which the defendant may have violated a protection order and will lead to absurd and unjust results in many cases; and (3) our decision in *Rhorer* did not actually decide the question now before us. Accordingly, I would make our order to show cause absolute and return this case to the district court with instructions that the court determine, based on the facts presented, whether Dilka committed a crime against another person or property sufficient to support the second degree burglary charge against him.

¶59 I therefore respectfully dissent.