MODEL CRIMINAL JURY INSTRUCTIONS COMMITTEE

REPORTER'S ONLINE UPDATE

Updated May 7, 2015

Introduction

The Committee intends to keep COLJI-Crim. (2014) current by periodically publishing new editions or supplements. During the periods between these formal publications, the Committee Reporter will maintain a "Reporter's Online Update" by posting these online summaries of developments in the law related to criminal jury instructions based on legislative changes and decisions of the United States Supreme Court, the Colorado Supreme Court, and the Colorado Court of Appeals.

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.

In addition to these interim summaries of developments in the law related to criminal jury instructions, the Reporter's Online Update will include notations documenting any errors that the Reporter learns of subsequent to publication. Accordingly, the Committee encourages users to alert the Reporter of errors at: mcjic@judicial.state.co.us. However, here again, users should not assume that the Committee will make modifications based on recommended corrections that appear in the Reporter's Online Update.

I. Reporter's Recommended Corrections

** On pages 38 and 872 (in the main table of contents and in the table of contents for Chapter 3-2), the entries for Instruction 3-2:29.SP should refer to the offense of "VEHICULAR ASSAULT," and not to the offense of "VEHICULAR HOMICIDE."

** On page 87, under the heading "Citation," in the example of how to cite to comments, the date should be enclosed within two parentheses, as shown here with the missing parenthesis highlighted:

> Individual comments should be cited as:
>
> COLJI-Crim. ___:___, Comment ___ (2014).

** On page 348, Instruction F:141 (defining "falsely complete" (forgery and impersonation offenses)), the third line of the definition should be corrected to comport with the statutory definition in section 18-5-101(3)(a), C.R.S. 2014. As modified, this portion of the definition should read as follows: "by adding, ~~or~~ inserting, or changing matter without the authority".

** On page 408, Instruction F:201, there should be a blank line before the first numbered Comment.

** On page 463, Instruction F:255 (defining "order"), the definition with brackets should be replaced, in its entirety, with the following unbracketed definition, which mirrors the language and structure of section 18-18-102(23), C.R.S. 2014.

> "Order" means a prescription order which is any order, other than a chart order, authorizing the dispensing of drugs or devices that is written, mechanically produced, computer generated, transmitted electronically or by facsimile, or produced by other means of communication by a practitioner and that includes the name or identification of the patient, the date, the symptom or purpose for which the drug is being prescribed, if included by the practitioner at the patient's authorization, and sufficient information for compounding, dispensing, and labeling; or a chart order which is an order for inpatient drugs or medications to be dispensed by a pharmacist, or pharmacy intern under the direct supervision of a pharmacist, which is to be administered by an authorized person

only during the patient's stay in a hospital facility. It shall contain the name of the patient and of the medicine ordered and such directions as the practitioner may prescribe concerning strength, dosage, frequency, and route of administration.

** On page 678, Instruction H:12, there should be a blank line between the first and second paragraphs describing the burden of proof.

** On page 694, the citation to *People v. Oslund*, 292 P.3d 1025, 1029, 2012 COA 62, ¶23-¶26 (2012), should be corrected to replace the "P.2d" with "P.3d" (as shown here).

** On page 734, Instruction H:38, in the final sentence, the "s" in "charges" should be enclosed within brackets.

** On page 737, Instruction H:39, in the final sentence, there should be an "s" enclosed within brackets at the end of the word "charge."

** On page 739, Instruction H:40, in the final sentence, there should be an "s" enclosed within brackets at the end of the word "charge."

** On page 743, Instruction H:42, in the final sentence, there should be an "s" enclosed within brackets at the end of the word "charge."

** On page 806, Instruction H:76, the first paragraph describing the prosecution's burden of proof should be modified as follows: "In order to meet this burden of proof, the prosecution must disprove, beyond a reasonable doubt, ~~all~~ at least one of the above numbered conditions." In addition, in the final two paragraphs, the offense should be described as "driving with excessive alcohol content" (instead of "driving a motor vehicle or vehicle with a B.A.C. of 0.08 or more at the time of driving, or within two hours thereafter") to be consistent with Instruction 42:13.

** On page 850, the highlighted words and punctuation should be deleted from the sixth Comment to Instruction 3-1:04(murder in the first degree (extreme indifference)): "'Universal malice' is not defined by statute~~; the above definition was developed through case law~~. *See Candelaria v. People*, 148 P.3d at 181; *People v. Jefferson*, 748 P.2d 1223, 1228 (Colo. 1988); *Longinotti v. People*, 46 Colo. 173, 181, 102 P. 165, 168 (1909).

** On page 865, Instruction 3-1:13 vehicular homicide (under the influence of alcohol and/or drugs), Comment 3, the following sentence should be revised as indicated: First, although sections 18-3-106(1)(b)(I) and 18-3-205(1)(b)(I) apply only to motor vehicles, the definitions of "driving under the influence" in sections 18-3-106(1)(b)(IV) and 18-3-205(1)(b)(IV) speak in terms of driving "a vehicle," with no references to motorization.

** On page 923, Instruction 3-2:27(vehicular assault (under the influence)), Comment 3, the following sentence should be revised as indicated: First, although sections 18-3-106(1)(b)(I) and 18-3-205(1)(b)(I) apply only to motor vehicles, the definitions of "driving under the influence" in sections 18-3-106(1)(b)(IV) and 18-3-205(1)(b)(IV) speak in terms of driving "a vehicle," with no references to motorization.

** On page 1048, Instruction 3-4:42.INT(sexual assault on a child by one in a position of trust - interrogatory (pattern)), the second Comment should include a citation to Instruction F:262(defining "pattern of sexual abuse"). With this revision, the Comment will be identical to the corollary Comment for Instruction 3-4:36.INT(sexual assault on a child - interrogatory (pattern)):

> 2. *See* Instruction F:262(defining "pattern of sexual abuse"); *see, e.g.*, Instruction E:28(special verdict form).

** On page 1104, Instruction 3-6:03(stalking (serious emotional distress)), the third and fourth elements should be combined (and the subsequent elements should be renumbered) so that the third element reads as follows:

> 3. knowingly, repeatedly followed, approached, contacted, placed under surveillance, or made any form of communication with another person, either directly, or indirectly through a third person,

This corrected format is what the Committee actually approved based on *People v. Cross*, 127 P.3d 71, 77-78 (Colo. 2006) ("The legislature obviously thought it possible, if not likely, that a stalker could and would lose consciousness of the offensive nature of his untoward devoted attention towards the victim. The General Assembly therefore intended that the statute's mens rea 'knowingly' would not apply to require that a perpetrator be aware that his or her acts would cause a reasonable person to suffer serious emotional distress.").

However, due to an oversight by the Reporter, the third and fourth elements were not consolidated in the final publication.

** On page 1124, Instruction 4-2:01(first degree burglary), the seventh element should include the highlighted words: "to commit therein the crime[s] of [insert name(s) of offense(s)] against another person or property, and"

** On page 1231, Instruction 4-4:39(altering or removing a vehicle identification number (with intent)), Comment 3, and on page 1233, Instruction 4-4:40(altering or removing a vehicle identification number (with knowledge)), Comment 3, the citation to section 18-4-420(3)(a)(I), C.R.S. 2014, should be replaced with a citation to section § 18-4-420(3)(b), C.R.S. 2014.

** On page 1292, Instruction 4-5:33(criminal operation of a device in a motion picture theater), Comment 3, the citation to section 18-4-601(4), C.R.S. 2014, should be replaced with a citation to section 18-4-516(4).

** On page 1420, Instruction , the citation to section 18-6-401(b)(III), C.R.S. 2014, should be corrected to section 18-6-401(1)(b)(III), C.R.S. 2014.

II. New Legislation

Initially, this section will be blank because COLJI-Crim. (2014) will be current on the date of publication. As legislation is enacted in 2015, entries will be added here noting any changes that need to be made to the model jury instructions and comments that were published in COLJI-Crim. (2014). However, entries will not be included here for legislation relating to other parts of the criminal and traffic codes (i.e., parts of those codes for which model instructions were not included in COLJI-Crim. (2014)).

III. Amendments to the Colorado Rules of Criminal Procedure and the Colorado Rules of Evidence

Initially, this section will be blank because COLJI-Crim. (2014) will be current on the date of publication.

IV. Decisions of the United States Supreme Court

Initially, this section will be blank because COLJI-Crim. (2014) will be current on the date of publication.

V. Decisions of the Colorado Supreme Court[1]

D:08 JUDICIAL NOTICE

Doyle v. People, ___ P.3d ___, ___, 2015 CO 10, ¶15 (Feb. 17, 2015)("Although the specific language of the court's instruction concerning its own assessment of the noticed fact and the reasonableness of finding otherwise has long been included in the pattern jury instructions of this jurisdiction, *see* COLJI-Crim. 4:10 (1983), which, at the time of this case, presented this instruction as a mandate of CRE 201, COLJI-Crim. 4:10 Notes on use (1983), this additional language goes beyond the dictate of the rule. In fact, it effectively converts what could be understood as an intent to render judicially noticed facts in criminal cases nothing more than permissive inferences, into a mandate to instruct the jury that it is not bound to accept a judicially noticed fact for the sole reason that it retains the power, however unreasonably, to nullify. . . . The extent to which it may be appropriate for a criminal court in this jurisdiction to offer its opinion concerning evidence before a jury, *see generally Annotation, Scope and Application of Rule Which Permits Judge in Criminal Case to Comment on Weight or Significance of Evidence*, 113 A.L.R. 1308 (1938), and the propriety of COLJI-Crim. 4:10 (1983) generally, are questions that need not be resolved in the case before us today.").

F:10 (DEFINING "AFTER DELIBERATION") & 3-1:01 MURDER IN THE FIRST DEGREE (AFTER DELIBERATION)

Martinez v. People, 344 P.3d 862, 2015 CO 16, ¶ 11 (Colo. 2015)("The trial court in this case erroneously instructed the jury that 'after deliberation' means an interval of time 'sufficient for one thought to follow another.' The prosecution culled this language from an 1895 case, *Van Houten v. People*, that

[1] THE COLORADO SUPREME COURT HAS GRANTED CERTIORARI IN THE FOLLOWING CASES:

People v. Molina , 14SC498 (April 20, 2015)(Issues: (1) "Whether the court of appeals erred in concluding Colorado's identity theft statute, section 18–5–902, C.R.S. (2014), requires proof that the offender knew the information she exploited belonged to a real person, and if so, whether no rational juror could reasonably infer that an offender knew the last name and associated Social Security number she used to obtain employment and an apartment lease belonged to a real person"; (2) "Whether, in connection with the use of false identification documents, obtaining employment requiring work for pay or an apartment requiring payment for residence constitutes a "thing of value" under section 18–5–902, C.R.S."; and (3) "Whether defendant's constitutional right to due process was violated and reversible error occurred when the trial court did not provide the jury with the proper definition of "thing of value" as contemplated by section 18–5–902, C.R.S.").

Roberts v. People, 14SC517 (March 2, 2015) (granting certiorari to review a district court decision affirming a county court conviction)(Issue [reframed]: "Whether a defendant may assert self-defense as an affirmative defense to the specific intent crime of harassment under section 18-9-111(1)(a), C.R.S. (2014).").

considered how quickly premeditation can occur in the first-degree murder context. 22 Colo. 53, 43 P. 137, 142 (1895). More recently, however, this court has rejected the *Van Houten* language as inconsistent with the element of deliberation that the current first-degree murder statute requires. *People v. Sneed*, 183 Colo. 96, 514 P.2d 776, 778 (1973). . . . [However,] because the record in this case reveals overwhelming evidence of deliberation, and the instructions as a whole adequately informed the jury of the law, the instructional error did not seriously impair the reliability of the jury's guilty verdict. We therefore affirm the court of appeals' holding that there was no plain error in the trial court's jury instructions.").

VI. Final Decisions of the Colorado Court of Appeals

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

People v. Lane, 343 P.3d 1019, 1024, 2014 COA 48 ¶ 19 (09CA1351, April 24, 2014)("[W]e conclude that [*Smith v. United States*, 568 U.S. ___, 133 S. Ct. 714 (2013)(when a defense excuses conduct that would otherwise be punishable but does not controvert any of the elements of the offense itself, the prosecution has no constitutional duty to overcome the defense by proof beyond a reasonable doubt)] did not overrule [*People v. Pickering*, 276 P.3d 553 (Colo. 2011)(When a defendant presents evidence that raises the issue of an affirmative defense, the affirmative defense effectively becomes an additional element, and the trial court must instruct the jury that the prosecution bears the burden of proving beyond a reasonable doubt that the affirmative defense is inapplicable; when a defendant presents evidence that raises the issue of an elemental traverse, however, no such instruction is required; self-defense is an affirmative defense to second degree murder, but it is a traverse to crimes requiring recklessness, criminal negligence, or extreme indifference, such as reckless manslaughter)], and, thus, the trial court did not err in relying on *Pickering* to instruct the jury that self-defense was not an affirmative defense to the lesser-included charges of manslaughter and criminally negligent homicide.").

H:68 MEDICAL MARIJUANA

People v. Fioco, 342 P.3d 530, 533, 2014 COA 22, ¶¶ 13-24 (12CA1529, March 13, 2014)(holding, as a matter of first impression, that the medical marijuana affirmative defense did not apply to a defendant who obtained a physician's assessment and certification of medical necessity after he committed the offense).

3-4:02 SEXUAL ASSAULT (INCAPABLE OF APPRAISING THE NATURE OF CONDUCT)

People v. Bertrand, 2014 COA 142, ¶¶ 17-21 (Colo. App. No. 12CA0709, Oct. 23, 2014)(noting that COLJI-Crim. (2014) does not include an instruction quoting from *Platt v. People*, 201 P.3d 545, 548 (Colo. 2009), and holding that the trial court committed reversible error by misquoting from that opinion). (Mandate issued, following denial of petition for certiorari, on January 22, 2015)

6-4:01 CHILD ABUSE (KNOWINGLY OR RECKLESSLY)

People v. Becker, ___ P.3d ___, ___, 2014 COA 36 (12CA0784, March 27, 2014)("a prior child abuse conviction, as specified in section 18-6-401(7)(e), C.R.S. 2013, serves as a sentence enhancer — and not as an element — of the child abuse crimes set forth in sections 18-6-401(1)(a)(7)(b)(I)-(II), C.R.S. 2013"). Note: Although the mandate issued on July 25, 2014, a citation to this decision was not included in COLJI-Crim. (2014), because, on the date of publication (September 3, 2014), Westlaw® still indicated (erroneously) that the opinion was not yet final.

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

People v. Jaso, 2014 COA 131, ¶ 23 (12CA1072, Oct. 9, 2014)("in a case where the prosecution seeks to increase a defendant's misdemeanor to a felony pursuant to the [Habitual Domestic Violence Offender] statute and the jury's verdict does not reflect a finding of domestic violence, the defendant is entitled to have that question submitted to the jury"). (Mandate issued Dec. 3, 2014)

7-4:11 PATRONIZING A PROSTITUTED CHILD (ACT)

People v. Houser, ___ P.3d ___, 2013 WL 363313, 2013 COA 11 (09CA2147, Jan. 31, 2013) (holding, as a matter of first impression, that a reasonable belief that a child was at least eighteen years old is not defense to charge of patronizing a prostituted child). (Mandate issued Sept. 8, 2014)

9-1:23 INTERFERENCE AT A PUBLIC BUILDING (IMPEDING)

People v,. Moore, 2013 COA 86, ¶13 (11CA2338, June 6, 2013)("we interpret the phrase 'public official or employee' in section 18-9-110(2) to apply only to a victim who is either an official or an employee of a public entity. Contrary to the trial court's reading, the adjective 'public' modifies both 'official['] and ['']employee.'"'). (Certiorari proceeding dismissed August 12, 2014; Mandate issued August 18, 2014.)

VII. Non-final Decisions of the Colorado Court of Appeals

E:18 SUPPLEMENTAL INSTRUCTION — WHEN JURORS FAIL TO AGREE

People v. Payne, 2014 COA 81, ¶ 18 (10CA0173, July 3, 2014)("We agree with the federal authority cited herein, and conclude that a defendant has a right to be present when a modified *Allen* instruction is read to the jury because of the psychological influence his absence or presence may have on the jury.").

(Petition for certiorari pending as of 5/7/15)

F:303 (DEFINING "PUBLIC PLACE")

People v. Naranjo, 2015COA56, ¶ 17 (Colo. App. No. 13CA1063, May 7, 2015) (for purposes of the definition of a "public place" in section 18-1-901(3)(n), "the method of transportation a person uses on a highway — whether walking, biking, driving, or some other type of transport — does not alter the fact that the person is on a highway, and therefore in a public place").

F:81(DEFINING "CUNNILINGUS"); F:343(DEFINING "SEXUAL PENETRATION")

People v. Morales, 2014 COA 129, ¶¶ 37-44 (11CA1132, Oct. 9, 2014)(trial court did not commit plain error by using the definition of "cunnilingus" from the prostitution statute, section 18-7-201(2)(b), C.R.S . 2014, to define "sexual penetration" for purposes of sexual assault: (1) the definition in the prostitution

statute is practically identical to the dictionary definition; (2) both COLJI-Crim. F(238)(2008) and COLJI-Crim. F:343 (2014) reference the definition of "cunnilingus" in the prostitution statute for purposes of defining "sexual penetration"; and (3) the definition of "sexual penetration" can be read as requiring some degree of penetration, "however slight," even if the act at issue is cunnilingus).

(Petition for certiorari pending as of 5/7/2015)

F:337 (DEFINING "SEXUAL CONTACT")

People v. Lovato, 2014 COA 113, ¶¶ 26, 32 (11CA1227, Sept. 11, 2014)("[W]e conclude that 'sexual' modifies 'abuse' in the definition of 'sexual contact' contained in section 18-3-401(4). . . . Even in deciding that the term 'abuse' in section 18-3-401(4) means 'sexual abuse,' and accepting that 'abuse' means pain, injury, or discomfort, we nonetheless discern no statutory requirement of a 'sexual motivation' on the part of a perpetrator under this definition.").

(Petition for certiorari pending, as of 5/7/2015)

G1:06 COMPLICITY (INTENTIONALLY, DELIBERATELY, WILLFULLY, OR KNOWINGLY)

People v. Childress, 2012 COA 116 (08CA2329, July 19, 2012)(a person cannot be held criminally liable as a complicitor for a strict liability crime). Petition for certiorari granted, 12SC820, June 24, 2013: "Whether the court of appeals erred in holding "as a matter of first impression in Colorado, that complicitor liability does not apply to the strict liability crime of vehicular assault (DUI) because the crime does not require a culpable mental state." (At issue; oral argument scheduled for Dec. 10, 2014.)

(The Colorado Supreme Court heard oral arguments on Dec. 10, 2014)

H:11 USE OF NON-DEADLY PHYSICAL FORCE (DEFENSE OF PERSON)
H:12 USE OF DEADLY PHYSICAL FORCE (DEFENSE OF PERSON)

People v. Castillo, 2014 COA 140, ¶ 30 (Colo. App. No. 10CA1477, Oct. 23, 2014)("[W]e agree with the rationale of [*People v. Manzanares*, 942 P.2d 1235, 1241 (Colo. App. 1996)] and hold that unless a defendant demonstrates the required level of prejudice under a harmless error or plain error standard, the

giving of an unsupported instruction on a self-defense exception does not necessarily warrant reversal. To the extent that [*People v. Silva*, 987 P.2d 909, 914 (Colo. App. 1999)] and [*People v. Beasley*, 778 P.2d 304, 305-06 (Colo. App. 1989)] are inconsistent with this holding, we decline to follow them."). *See also*, *id*. at ¶ 42, n.3 ("The latest version of the Colorado pattern criminal jury instructions, which was not available at the time of the trial in this case, more explicitly instructs the jury that the jury's determinations regarding the exceptions to self-defense must be made beyond a reasonable doubt by including language that the prosecution must disprove beyond a reasonable doubt that the defendant did not provoke the use of unlawful physical force by the other person and the defendant was not the initial aggressor. COLJI-Crim. H:11, H:12 (2014).").

(Petition for certiorari pending, as of 5/7/2015)

3-1:02 MURDER IN THE FIRST DEGREE (FELONY MURDER))

People v. Doubleday, 2012 COA 141, ¶29-¶30 (08CA2433, Aug. 30, 2012)("Here, the completed special interrogatory shows that the jurors found defendant not guilty of attempted aggravated robbery because the prosecution failed to disprove one of the elements of duress and not because the prosecution failed to prove one of the elements of the offense. Thus, the jurors clearly believed that defendant attempted to commit aggravated robbery, but that he was not legally liable for the offense because he was under duress at the time. Therefore, because the record shows that the prosecution proved that defendant attempted to commit aggravated robbery as well as the other elements of felony murder, we will not disturb the jury's verdict convicting defendant for felony murder.")(citations omitted).

(Petition for certiorari granted October 7, 2013, No. 12SC916 (Issues: "Whether a defendant can be convicted of felony murder when he is acquitted of an essential element of felony murder, namely, the underlying offense. Whether, even assuming arguendo that a felony murder conviction can be upheld where the defendant is acquitted of the predicate offense due to the existence of an affirmative defense, the court of appeals erred by (1) considering the jury's response to the special interrogatory, which was prohibited by CRE 606(b), and (2) to the extent the response could be considered, concluding that it established the jurors unanimously believed the prosecution only failed to disprove duress. Whether duress is a defense to felony murder for purposes of section 18–1–708, C.R.S.").

(Request for extension of time to file Reply Brief granted; due 5/15/15)

3-1:13 VEHICULAR HOMICIDE (UNDER THE INFLUENCE OF ALCOHOL AND/OR DRUGS)

People v. Medrano-Bustamante, 2013 COA 139, ¶ 12 (10CA0791, Dec. 5, 2013)(DUI is not a lesser-included offense of either vehicular homicide-DUI or vehicular assault-DUI; "To be found guilty of DUI, a person must drive a motor vehicle or vehicle as those terms are defined by the Uniform Motor Vehicle Law, and to be found guilty of vehicular assault or homicide, a person must drive or operate a motor vehicle as that term is defined in the criminal code.").

(Petition for certiorari granted Sept. 8, 2014, No 14SC3(Issue: "Whether DUI is a lesser included offense of vehicular assault-DUI or vehicular homicide-DUI.").

(Extension of time for opening brief granted; due 5/15/15).

3-2:27 VEHICULAR ASSAULT (UNDER THE INFLUENCE)

People v. Smoots, 2013 COA 152, ¶ 7 (11CA2381, Nov. 21, 2013)(trial court did not err by instructing the jury that "[f]or the purposes of the strict liability crime of Vehicular Assault, 'proximate cause' is established by the voluntary act of driving under the influence of alcohol")

(Petition for certiorari granted, No. 14SC7, June 30, 2014. Issues [REFRAMED]: (1) Whether a double jeopardy claim can be raised for the first time on direct appeal; and (2) whether driving under the influence is a lesser included offense of vehicular assault-driving under the influence, requiring merger.).

(Extension of time for opening brief granted; due 5/29/15).

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

People v. Heywood, 2014 COA 99, ¶ 28 (11CA2165, Aug. 14, 2014)(section 18-3-405.4(1)(b) "prohibits an actor from actively and affirmatively importuning, inviting, or enticing a person to view the actor's intimate parts, *while the actor knows or believes* that the person is less than fifteen years old and at least four years younger than the actor")(emphasis added).

(Petition for certiorari pending as of 5/7/2015)

5-9:01 IDENTITY THEFT (USE)

People v. Perez, 2013 COA 65, ¶ 21 (10CA0587, May 9, 2013)("we hold that, to convict a defendant of identity theft under section 18–5–902(1)(a), the prosecution must prove that the defendant knew the personal identifying information, financial identifying information, or financial device he or she used was, in fact, the information or device of another").

(Certiorari granted, 13SC465, Dec. 23, 2013: "Whether the court of appeals erred in concluding Colorado's identity theft statute, section 18–5–902, C.R.S. (2012), requires proof that the offender knew the information he exploited belonged to a real person, and if so, whether no rational juror could reasonably infer that an offender knew the social security number he used over a five-year period belonged to a real person.").

(Motion for extension of time to file Reply Brief granted; due June 4, 2015 with "no further extensions")

People v. Campos, 2015COA47, ¶ 15 n.3 (14CA0125, Apr. 23, 2015)("even under the narrower interpretation set forth in [*People v. Beck*, 187 P.3d 1125, 1128-29 (Colo. App. 2008)], employment is a 'thing of value' for purposes of identity theft").

6-4:01 CHILD ABUSE (KNOWINGLY OR RECKLESSLY)

People v. Friend, 2014 COA 123, ¶¶ 63-64 (09CA2536, Sept. 25, 2014)(holding, in a case where the defendant was charged with five counts of child abuse under subsections (1)(a), (7)(a)(I), and (7)(a)(III) of section 18-6-401, that because "[t]he child abuse statute at issue here is structured to set forth a disjunctive series of acts in an extended single sentence, without any attempt to differentiate them by name or an organizational device," "the child abuse statute is similar to the one interpreted in [*People v. Abiodun*, 111 P.3d 462 (Colo. 2005) where] the court held that a series of acts, with reference to the same controlled substance and governed by a common mens rea, that included acts that were not mutually exclusive but rather overlapping, constituted different ways of committing a single offense").

(Petition for certiorari pending as of 5/7/15)

6-4:19 SEXUAL EXPLOITATION OF A CHILD (POSSESSION OR CONTROL)

People v. Marsh, 2011 WL 6425492 (08CA1884, Dec. 22, 2011).

(Petition for certiorari granted, 12SC102, Jan. 23, 2013: "Whether images automatically stored by a computer in its Internet cache are sufficient, without additional evidence of a defendant's awareness of the cache or evidence of a defendant's affirmative conduct such as downloading or saving such images, to establish 'knowing possession' under section 18–6–403, C.R.S. (2012)."

(Extension of time for filing Reply Brief granted; due 7/15/15)

18:43.INT ANY FELONY CONTROLLED SUBSTANCE CONVICTION UNDER PART 4 – INTERROGATORY (DEADLY WEAPON OR FIREARM)

People v. Cisneros, 2014 COA 49, ¶ 51 (Colo. App. No. 09CA2717, April 24, 2014)(trial court did not abuse its discretion by refusing defendant's tendered instruction concerning the constitutional right to bear arms; even if the use of the gun for self-defense would ordinarily be constitutionally protected, the simultaneous use of the gun to protect drugs is punishable through an enhanced sentence for drug possession with the intent to distribute). [Note: This case was decided before the 2010 recodification, at a time when the relevant provision was located in section 18-18-407(1)(f).]

(Petition for certiorari pending as of 5/7/15)

42:05 DRIVING AFTER REVOCATION PROHIBITED 42:09 DRIVING UNDER THE INFLUENCE

People v. Valdez, 2014 COA 125, ¶ 23 n.1 (11CA1659, Sept. 25, 2014)("[T]he instruction set forth in [*People v. VanMatre*, 190 P.3d 770, 772 (Colo. App. 2008)] involves an element-negating traverse because, if a defendant establishes that a 'vehicle may not have been reasonably capable of being operable,' such evidence would necessarily negate the required elements of 'driving' and 'operating' a vehicle." "Although the newly promulgated criminal jury instructions for DUI and DARP cite to *VanMatre* in the comments, those comments do not address whether the *VanMatre* instruction is an element-negati[ng] traverse. [*See* COLJI-Crim. 42:05, Comment 4 (2014) (DARP); COLJI-Crim. 42:09, Comment 3 (2014)(DUI)].").

(Petition for certiorari pending as of 5/7/15)