MODEL CRIMINAL JURY INSTRUCTIONS COMMITTEE

REPORTER'S ONLINE UPDATE

Updated January 13, 2021

Introduction

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

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

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

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

I. Decisions of the Colorado Supreme Court

E:11 SERIES OF ACTS IN A SINGLE COUNT and 5-1:03 FORGERY (LEGAL RIGHT, INTEREST, OBLIGATION, OR STATUS)

People v. Wester-Gravelle, 2020 CO 64, ¶¶ 35–40, 465 P.3d 570, 576–77 (considering a case where the prosecution charged the defendant with a single count of forgery "based on the alleged falsification of signatures on three shift charts"; holding that, where the trial court neither required the prosecution to make an election nor issued a modified unanimity instruction, any error was not plain because (1) the facts were similar to an existing case where the defendant's conduct constituted a single transaction, (2) the court gave Instruction E:23, which requires jurors to agree on "all parts of" the verdict, and (3) it was unlikely that jurors "would have disagreed about which of the charts Wester-Gravelle had falsified when they voted to convict her of the single count of forgery").

E:11 SERIES OF ACTS IN A SINGLE COUNT and 6-4:01 CHILD ABUSE (KNOWINGLY OR RECKLESSLY)

People v. Archuleta, 2020 CO 63M, ¶¶ 28, 33, 467 P.3d 307, 312–13 (holding that, although the prosecution "noted for the jury that the crime of child abuse can be committed in three ways and that Archuleta's conduct here 'could be one of these, two of these, all three,'" she was nevertheless not entitled to a modified unanimity instruction because "the record reflects that the prosecution tried this case as involving one pattern or transaction of abuse resulting in [the child's] death").

F:280 POSITION OF TRUST

Manjarrez v. People, 2020 CO 53, ¶ 27, 465 P.3d 547, 552 (clarifying the holding in *People v. Roggow*, 2013 CO 70, 318 P.3d 446, and stating that "a defendant's special access to the victim by virtue of an existing relationship or other conduct or circumstances is evidence of an implied duty or responsibility for the welfare or supervision of the victim during those periods of special access").

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

People v. Monroe, 2020 CO 67, ¶¶ 5, 30, 468 P.3d 1273, 1274, 1278 ("[T]he prosecution may not argue that a defendant acted unreasonably in self-defense because she failed to retreat from an encounter. . . . To allow the prosecution to argue that a defendant's failure to retreat undermines the reasonableness of that defendant's self-defense claim would cripple the no-duty-to-retreat rule. . . . The line between argument that imposes a duty to retreat (a threatened person *should* retreat instead of using force) and argument that undermines the reasonableness of a defendant's use of force (a threatened person *would* retreat instead of using force) is too thin to allow the latter.").

People v. Galvan, 2020 CO 82, ¶¶ 1–2, 4, 476 P.3d 746, 750 (holding that a trial court should instruct the jury on an exception to self-defense "if there is *some evidence* to support the exception"; further holding that, where the trial court's instruction on provocation tracked the model instruction, it made clear that for the defendant to forfeit his defense of self-defense, "he had to have provoked the same person as to whom he was asserting self-defense"; declining to consider whether the First Amendment bars a provocation instruction in a case of "mere words").

H:32 REPORTING AN EMERGENCY DRUG OR ALCOHOL OVERDOSE EVENT

People v. Harrison, 2020 CO 57, ¶ 29, 465 P.3d 16, 23 (holding that section 18-1-711(1)(a) "requires both that a person report in good faith what she subjectively perceives is an acute condition caused by the consumption or use of drugs or alcohol and that a layperson would reasonably believe that the reported condition is a drug or alcohol overdose needing medical assistance").

J:03 COMPLICITY and 4-4:09.INT THEFT—INTERROGATORY (IN THE PRESENCE OF AN AT-RISK PERSON)

People in Interest of B.D., 2020 CO 87, ¶¶ 1–2, __ P.3d __ (holding that the elevated penalty for theft in the presence of an at-risk victim "is a strict liability sentence enhancer and not an element of the offense," meaning that "a complicitor need not be aware that an at-risk victim is present" for the sentence enhancer to apply).

3-1:01 MURDER IN THE FIRST DEGREE (AFTER DELIBERATION)

People v. Jackson, 2020 CO 75, ¶¶ 21, 43, 472 P.3d 553, 559, 563 (holding that, because Colorado's first-degree murder statute "deems the identity of the person harmed immaterial to the issue of intent and holds a perpetrator just as liable when he kills an unintended victim as when he kills his intended victim," the doctrine of transferred intent is "unnecessary" in first-degree murder cases, as the statute "accomplishes directly that which the doctrine purports to accomplish indirectly via a legal fiction"; further holding that attempted first-degree murder is a lesser included offense of first-degree murder).

3-2:09 ASSAULT IN THE SECOND DEGREE (BODILY INJURY WITH A DEADLY WEAPON) and 3-2:16.7 ASSAULT IN THE SECOND DEGREE (RESTRICT BREATHING)

People v. Lee, 2020 CO 81, ¶ 3, 476 P.3d 351, 353 ("[A] defendant may not be charged with second degree assault based on conduct involving strangulation under both the deadly weapon subsection of the second degree assault statute, section 18-3-203(1)(b), and the strangulation subsection of that statute, section 18-3-203(1)(i). Rather, the defendant must be charged under the strangulation subsection.").

3-2:11 ASSAULT IN THE SECOND DEGREE (RECKLESS), 3-2:16 ASSAULT IN THE SECOND DEGREE (INTENT TO CAUSE BODILY

INJURY; CAUSING SERIOUS BODILY INJURY), and 3-2:21 ASSAULT IN THE THIRD DEGREE (NEGLIGENCE AND DEADLY WEAPON)

People v. Rigsby, 2020 CO 74, ¶¶ 22–23, 25, 32–34, 471 P.3d 1068, 1075, 1077 (stating that section 18-1-501(3), C.R.S., establishes that (1) "acting recklessly necessarily includes acting with criminal negligence," (2) "[a]cting knowingly necessarily includes acting recklessly and acting with criminal negligence," and (3) "[a]nd acting with intent necessarily includes acting knowingly, acting recklessly, and acting with criminal negligence"; further stating that "even if there is a *logical* inconsistency between acting with intent and acting with criminal negligence, and between acting recklessly and acting with criminal negligence, no *legal* inconsistency exists in either scenario based on section 18-1-503(3)"; accordingly holding that, where the jury found Rigsby guilty of three different assault counts—second-degree assault with a mental state of intent, second-degree assault with a mental state of recklessness, and third-degree assault with a mental state of criminal negligence—the verdicts were "legally consistent" and thus not mutually exclusive; noting that it was "inconsequential" that the jury was not instructed on section 18-1-503(3); concluding that the verdicts must merge into a single conviction because (1) the legislature "established a single offense of second degree assault that may be committed in alternative ways," meaning that, "by entering two second degree assault convictions for the same criminal conduct, the trial court violated Rigsby's right to be free from double jeopardy," (2) third-degree assault is a lesser included offense of second-degree assault, and (3) all three offenses "stemmed from the same criminal conduct").

5-1:10 SECOND DEGREE FORGERY

Hoggard v. People, 2020 CO 54, ¶¶ 27, 30, 32, 33 n.7, 35, 465 P.3d 34, 41–43 (holding that, where the defendant was charged with second-degree forgery—which requires that the defendant alter a written instrument "of a kind not described in" the felony forgery statute—but the trial court instructed the jury on the elements of felony forgery—which requires the written instrument to affect a legal right—the error did not constitute a constructive amendment because the instruction "simply placed an

additional burden on the prosecution to prove more about" the instrument at issue, i.e., an email; stating that, because "an email is *not* one of the written instruments specifically identified in the felony forgery statute," the instruction did not conflict with the statutory definition of second-degree forgery; declining to consider whether second-degree forgery is a lesser included offense of felony forgery; finally holding that the error was not plain because the defendant never disputed the type of document allegedly forged).

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

People v. Jones, 2020 CO 45, ¶ 71, 464 P.3d 735, 748 (holding that the term "person" as used in the child abuse statute "does not include a fetus who is later born alive").

6-4:01 CHILD ABUSE (KNOWINGLY OR RECKLESSLY) and 6-4:02 CHILD ABUSE (CRIMINAL NEGLIGENCE)

People v. Struckmeyer, 2020 CO 76, ¶ 7, 474 P.3d 57, 59 (applying *People v. Rigsby*, 2020 CO 74, 471 P.3d 1068, and holding that guilty verdicts for child abuse (knowingly or recklessly) and child abuse (criminal negligence), even are logically inconsistent, are not *legally* inconsistent because, "[b]y proving that Struckmeyer acted knowingly or recklessly, the People necessarily established that he acted with criminal negligence").

6-4:23.INT SEXUAL EXPLOITATION OF A CHILD—INTERROGATORY (QUANTITY)

People v. Bott, 2020 CO 86, ¶¶ 1–4, __ P.3d __ (holding that section 18-6-403 "makes clear the legislature's intent that possession pursuant to subsection (3)(b.5) of *any* number of items exceeding twenty that qualify as sexually exploitative material constitutes a single offense" (emphasis added), meaning the defendant's possession of 294 images of child pornography could only subject him to a single conviction).

8-3:09 ATTEMPT TO INFLUENCE A PUBLIC SERVANT

Hoggard v. People, 2020 CO 54, ¶¶ 17–18, 20 n.6, 465 P.3d 34, 39–40 (holding that, where the trial court's instruction tracked the language of the statute but did not apply the mental state of "with the intent" to every element of the crime, any error was not plain because the instruction comported with both the 1983 model instructions in effect at the time of trial and the holding of *People v. Norman*, 703 P.2d 1261 (Colo. 1985); declining to address "whether the General Assembly intended to limit the application of the mental state of 'with the intent' to only certain elements of the crime").

8-4:06 FIRST DEGREE OFFICIAL MISCONDUCT (COMMIT ACT)

People v. Berry, 2020 CO 14, ¶¶ 23–24, 457 P.3d 597, 602–03 (holding that this crime should be "broadly construed" such that, where the defendant obtained firearms "because of the opportunity afforded by his office as a sheriff's deputy," he committed an act "relating to his office" within the meaning of the statute).

8-4:12 EMBEZZLEMENT OF PUBLIC PROPERTY

People v. Berry, 2020 CO 14, ¶ 18, 457 P.3d 597, 601 (holding that this crime only applies to property *owned* by the state or a political subdivision).

8-2:28 VIOLATION OF BAIL BOND CONDITIONS

People v. Donald, 2020 CO 24, ¶ 37, 461 P.3d 4, 10 ("[T]o establish a violation of bail bond conditions, the prosecution must prove that the defendant had actual knowledge of the bond condition, not merely that he or she should have known of the condition.").

9-1:36 HARASSMENT (COMMUNICATION)

People in Interest of R.D., 2020 CO 44, ¶¶ 2, 4, 464 P.3d 717, 721–22 (considering whether statements were "true threats," and thus not

protected by the First Amendment in a proceeding for violating the harassment statute; holding that, "[i]n determining whether a statement is a true threat, a reviewing court must examine the words used, but it must also consider the context in which the statement was made," including the following non-exhaustive factors: (1) the statement's role in a broader exchange, if any, including surrounding events; (2) the medium or platform through which the statement was communicated, including any distinctive conventions or architectural features; (3) the manner in which the statement was conveyed (e.g., anonymously or not, privately or publicly); (4) the relationship between the speaker and recipient(s); and (5) the subjective reaction of the statement's intended or foreseeable recipient(s)").

42:09 DRIVING UNDER THE INFLUENCE and 42:10 DRIVING WHILE ABILITY IMPAIRED

Linnebur v. People, 2020 CO 79M, ¶ 2, 476 P.3d 734, 735 ("[T]he statutory provisions that define and provide penalties for felony DUI treat the fact of prior convictions as an element of the crime, which must be proved to the jury beyond a reasonable doubt . . . ."); *see also id.* at ¶ 54 (Márquez, J., dissenting) ("To the extent defendants anticipate that these prior convictions can be somehow bifurcated from the remaining elements of the felony offense, that may be wishful thinking.").

II. Final Decisions of the Colorado Court of Appeals

D:02 EVIDENCE LIMITED AS TO PURPOSE (CONTEMPORANEOUS) and E:07.2 EVIDENCE LIMITED AS TO PURPOSE (CLOSING)

People v. Yachik, 2020 COA 100, ¶¶ 11, 17, 43, 469 P.3d 582, 585–86, 590 (considering a sexual assault case where the trial court admitted res gestae evidence—specifically, that the defendant had previously abused the victim—and issued a limiting instruction explaining that the evidence "has been admitted for the limited purpose of providing the jury with a full and complete understanding of the events surrounding the charged crimes and the context in which the charged crimes occurred"; holding that the

limiting instruction was deficient because it "did not instruct the jury that defendant could not be convicted because he was physically abusive, and it did not limit the use of the evidence to explain why [the victim] did not report the sexual assaults").

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

People v. Flynn, 2019 COA 105, ¶¶ 36–38, 42, 49, 456 P.3d 75, 83–85 (holding that, where the court used several hypotheticals to explain the concept of reasonable doubt to the jury, the court's comments did not lower the burden of proof because they were made only once and the court "repeatedly referred back to the appropriate standard definition of reasonable doubt"; nevertheless noting that "such instructions run the risk of confusing the jurors and may even lower the burden of proof or diminish the presumption of innocence").

E:11 SERIES OF ACTS IN A SINGLE COUNT

People v. Dyer, 2019 COA 161, ¶ 56, 457 P.3d 783, 794 (holding that, where the prosecution charged the defendant with committing child abuse by engaging in a continuing course of conduct, the court did not need to give a modified unanimity instruction because "the jurors did not need to agree on the acts or omissions constituting the course of conduct").

+ E:12.5 MULTIPLE COUNTS (INCONSISTENT ELEMENTS)

People v. Brooks, 2020 COA 25, ¶¶ 22–25, 35, 471 P.3d 1170, 1175–76 (holding that, where the jury found Brooks guilty of burglary with a deadly weapon, "namely a firearm," but also answered "no" to an interrogatory asking whether he used or possessed and threatened to use a deadly weapon during the burglary, the response to the interrogatory nullified the burglary verdict; further holding that the interrogatory response did *not* nullify the jury's guilty verdicts on menacing charges because "the jury could well have determined that, though Brooks did not have a weapon when he entered the home, once inside he obtained the weapon from

somewhere inside the home and then threatened the victim with it," and also noting that "[t]here is no irreconcilable conflict in the two crimes such that proof of all of the elements of first degree burglary necessarily means a failure to prove all of the elements of menacing").

F:87 DEADLY PHYSICAL FORCE

People v. Ramirez, 2019 COA 16, ¶ 27, 459 P.3d 670, 674 (holding that the court plainly erred when it instructed the jury on deadly physical force when the victim did not die).

F:306.5 PUBLIC SERVANT (BRIBERY AND CORRUPT INFLUENCES; ABUSE OF PUBLIC OFFICE) and 8-3:09 ATTEMPT TO INFLUENCE A PUBLIC SERVANT

People v. Knox, 2019 COA 152, ¶ 26, 467 P.3d 1218, 1224 (holding that police officers are public servants for purposes of the crime of attempting to influence a public servant).

F:337 SEXUAL CONTACT

People v. Espinosa, 2020 COA 63, ¶¶ 7, 15, 20–21, 26, 465 P.3d 114, 116–19 (holding that, where the trial court defined "sexual abuse" in part as "behavior done with an intent to cause pain, injury, or discomfort . . . [which] can be either of a physical or an emotional nature," that part of the instruction correctly stated the law; but further holding that when the court instructed the jury that "[i]t is the nature of the act that renders the abuse 'sexual' and not the motivation of the perpetrator," this was reversible error because, although "the sexual nature of the act may be viewed from the victim's perspective rather than the perpetrator's" (interpreting *People v. Lovato*, 2014 COA 113, 357 P.3d 212), the requirement of *sexual* abuse nevertheless requires that the perpetrator act "for the purpose of causing sexual humiliation, sexual degradation, or other physical or emotional discomfort of a sexual nature"; declining to suggest language for an appropriate instruction, and instead leaving that task to the Committee).

H:02 EFFECT OF IGNORANCE OR MISTAKE UPON CULPABILITY (MISTAKEN BELIEF OF LAW)

People v. Whisler, 2019 COA 126, ¶ 14, 459 P.3d 722, 724 (holding that, where the defendant was charged with possession of a weapon by a previous offender and argued that he committed a mistake of law because he had passed background checks when purchasing other weapons, he wasn't entitled to assert the defense because he "present[ed] [no] evidence of an administrative regulation, order, or grant of permission by anyone authorized or empowered to give such permission that would have permitted him to possess firearms").

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

People v. Luna, 2020 COA 123M, ¶¶ 27, 33–35, 474 P.3d 230, 235–36 (holding that the trial court properly rejected a juvenile's tendered "reasonable child" instruction—specifically, that children "are generally less mature and responsible than adults, and often lack the experience, intelligence, perspective, and judgment necessary to evaluate consequences and risks"—because, while the juvenile was permitted to argue "that his age was a factor in determining whether he reasonably believed he was entitled to act in self-defense," the standard self-defense instruction "properly instructed the jury to consider [the juvenile's] subjective state of mind and the totality of the circumstances").

H:13 USE OF NON-DEADLY PHYSICAL FORCE (DEFENSE OF PERSON—OFFENSE WITH A MENS REA OF RECKLESSNESS, EXTREME INDIFFERENCE, OR CRIMINAL NEGLIGENCE)

People v. Luna, 2020 COA 123, ¶¶ 14–16, 474 P.3d 230, 233–34 (considering a case where the defendant was charged with both attempted first-degree murder and lesser crimes with a mens rea of recklessness, and where the court instructed the jury that (1) the affirmative defense of self-defense did "not apply" to the reckless crimes, and (2) "[i]f the defendant acted in self-

defense, then he cannot be found guilty of 'Reckless' conduct"; holding that the instruction was contradictory—and thus plainly erroneous—because, although it correctly explained that the defendant could not be guilty of "reckless" conduct if he acted in self-defense, it also "told jurors that the affirmative defense of self-defense does not apply to" reckless crimes without explaining "the fine, but significant, distinction between an 'affirmative defense' and a traverse"; clarifying that, "by instructing the jury that the affirmative defense of self-defense 'did not apply' to crimes of recklessness, the instruction conflicted with section 18-1-704(4)'s requirement that the trial court give the jury a self-defense instruction that outlines the elements of self-defense law" (citing *People v. McClelland*, 2015 COA 1, ¶ 24, 350 P.3d 976, 981–82)).

H:34 + SELF-INDUCED (VOLUNTARY) INTOXICATION

People v. Stone, 2020 COA 23, ¶¶ 20, 53, 57, 61–62, 471 P.3d 1148, 1153, 1157–58 (rejecting the argument that Colorado's statute on self-induced intoxication is unconstitutional; holding that, where the court instructed the jury that "[s]elf-induced intoxication is not a defense to any of the [general intent] charges in this case," the instruction was supported by the evidence because the defendant was "very talkative" and "hyperventilating" and an officer asked him "what are you on?"; further holding that although the trial court's instruction didn't precisely track the final sentence of the model instruction, it was nevertheless proper because "[t]elling the jury that it could not consider evidence of voluntary intoxication for purposes of deciding whether the prosecution had proved the elements of the general intent offenses is much the same as telling the jury that voluntary intoxication is not a defense to such crimes" (first alteration in original)).

H:36 CRIMINALITY OF CONDUCT—MISTAKE AS TO AGE, 7-4:01 SOLICITING FOR CHILD PROSTITUTION (ANOTHER), and 7-4:13.SP CHILD PROSTITUTION CRIMES—SPECIAL INSTRUCTION (IGNORANCE OR REASONABLE BELIEF IS NOT A DEFENSE)

People v. Maloy, 2020 COA 71, ¶¶ 38–43, 465 P.3d 146, 156–57 (holding that

section 18-7-407, C.R.S.—which provides that it is "no defense" in child prostitutions that the defendant "did not know the child's age or that he reasonably believed the child to be eighteen years of age or older"—trumps section 18-1-503.5(1), C.R.S.—which creates the general affirmative defense of "mistake of age"—meaning the defendant could not raise mistake of age as an affirmative defense to his child prostitution charges).

J:03 COMPLICITY

People v. Maloy, 2020 COA 71, ¶ 58, 465 P.3d 146, 159 (holding that the trial court did not err in refusing the give the defendant's tendered instructions on complicity because those instructions "conveyed concepts that are at least implied, if not explicit, in the court's [given] complicity instruction").

People v. Jackson, 2018 COA 79, ¶¶ 67–68, 474 P.3d 60, 74–75 (rejecting the defendant's argument that the court should have provided separate complicity instructions for each offense because "the court instructed the jury that each count charged 'a separate and distinct offense' and that 'the evidence and the law applicable to each count had to be considered separately, uninfluenced by [the jury's] decision as to any other count'" (alteration in original)), *aff'd*, 2020 CO 75, 472 P.3d 553.

3-2:01 ASSAULT IN THE FIRST DEGREE (DEADLY WEAPON) and 3-2:30 MENACING

People v. Procasky, 2019 COA 181, ¶¶ 14–15, 42, 467 P.3d 1252, 1257–58, 1261 (holding that, where an attempted first-degree assault instruction stated that the defendant must have acted "with intent" but did not state that he must have acted "with the specific intent to cause serious bodily injury," the trial court erred, but reversal was not required; further holding that felony menacing and attempted first-degree assault do not merge).

3-2:32 EXTORTION (UNLAWFUL ACT)

People v. Knox, 2019 COA 152, ¶ 51, 467 P.3d 1218, 1228 ("[T]he threat of litigation does not constitute criminal extortion.").

People v. Deutsch, 2020 COA 114, ¶ 26, 471 P.3d 1266, 1273 (holding that, where the complaint charged the defendant with extortion by "[making] a substantial threat to cause economic hardship" (alteration in original)—but where the elemental instruction tracked the entire extortion statute, i.e., that the defendant threatened either to "confine or restrain, cause economic hardship or bodily injury to, or damage the property or reputation of"—the instruction constituted a constructive amendment because it "expanded the bases upon which [the defendant] could be convicted beyond threatening to cause economic hardship").

3-3:01 FIRST DEGREE KIDNAPPING (FORCIBLY SEIZED AND CARRIED)

People v. Pratarelli, 2020 COA 33, ¶¶ 17–18, 471 P.3d 1177, 1182 (noting that the statute does not define "forcibly" or "force," and using dictionary definitions to determine that the prosecution needed to prove that the defendant "used (or threatened to use) power, violence, or pressure against [the victim] to seize and carry her, and that he did so against opposition or resistance").

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

People v. Pratarelli, 2020 COA 33, ¶ 27, 471 P.3d 1177, 1183 ("[A] custodial parent may not be convicted of second degree kidnapping." (citing *Armendariz v. People*, 711 P.2d 1268, 1270 (Colo. 1986))).

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

People v. McEntee, 2019 COA 139, ¶ 24, 461 P.3d 602, 606 (holding that the phrase "another person" in section 18-3-404(1.5), C.R.S., "is to be viewed from the perspective of the victim," meaning that the statute "does not require the participation of an additional person beyond the victim and the defendant").

3-4:33.INT SEXUAL ASSAULT ON A CHILD—INTERROGATORY (FORCE)

People v. Market, 2020 COA 90, ¶ 52, 475 P.3d 607, 616 ("[F]orce in the sexual assault context need not be distinct from the sexual contact.").

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

People v. Gillis, 2020 COA 68, ¶ 37, 471 P.3d 1197, 1205 (holding that first-degree criminal trespass is a lesser included offense of first-degree burglary).

4-4:01 THEFT (INTENT TO PERMANENTLY DEPRIVE)

People v. Halaseh, 2018 COA 111, ¶¶ 14, 20, 468 P.3d 1, 5 (holding that, where the court instructed the jury that the defendant must have "knowingly obtained or exercised control over anything of value which was the property of *another* person," the court did not err in specifically defining the word "another" (emphasis added)), *disapproved of on other grounds*, 2020 CO 35M, 463 P.3d 249.

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

People v. Halaseh, 2018 COA 111, ¶ 22, 468 P.3d 1, 6 (holding that the court erred when it failed to instruct the jury "as to both the prescribed units of prosecution and the proper values required to be found within those units"), *disapproved of on other grounds*, 2020 CO 35M, 463 P.3d 249.

4-5:28 LITTERING and 9-1:52 PROJECTING MISSILES AT A VEHICLE

People v. Kern, 2020 COA 96, ¶ 35, 474 P.3d 197, 204 (holding that littering is not a lesser included offense of projecting a missile at a vehicle).

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

People v. Dyer, 2019 COA 161, ¶¶ 51–52, 457 P.3d 783, 793–94 (holding that, where medical experts testified that the child was "medically neglected," the defendant was not entitled to an instruction differentiating medical neglect from child abuse).

6-4:18 SEXUAL EXPLOITATION OF A CHILD (PUBLICATION) and 6-4:19 SEXUAL EXPLOITATION OF A CHILD (POSSESSION OR CONTROL)

People v. Meils, 2019 COA 180, ¶¶ 43–44, 471 P.3d 1130, 1138–39 (holding that, because section 18-6-403(3) is written in the disjunctive, it prescribes alternative ways of committing the same offense, meaning the defendant could not be convicted of "both creating and possessing sexually exploitative material").

6-6:01 HARBORING A MINOR (FAILING TO RELEASE)

People v. Flynn, 2020 COA 54, ¶¶ 16, 18, 463 P.3d 360, 362–63 ("[S]ection 18-6-601(1)(a)(I) criminalizes a person's conduct when he or she intentionally fails to release a minor to the specific officer who requested the minor's release. . . . [T]he statute's use of the word 'the' to reference the officer requesting a minor's release particularizes or defines that officer as the same previously referenced law enforcement officer to whom the minor would be released.").

7-3:04 PUBLIC INDECENCY (KNOWING EXPOSURE) and 7-3:05 INDECENT EXPOSURE (KNOWING EXPOSURE)

People v. Lopez, 2020 COA 119, ¶¶ 1, 12, 471 P.3d 1285, 1287–88 (holding that "the common area in a prison facility is a 'public' area for purposes of the public indecency statute; further holding that, under the facts presented, public indecency was a lesser non-included offense of indecent exposure).

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

People v. Maloy, 2020 COA 71, ¶ 22, 465 P.3d 146, 154 (holding that the defendant's conviction for patronizing a prostituted child violated equal protection because the crimes of pandering of a child, § 18-7-403(1)(a), C.R.S. 2019, and inducement of child prostitution, § 18-7-405.5, C.R.S. 2019, "penalize the same or more culpable conduct with lighter sentences").

8-2:09 POSSESSION OF CONTRABAND IN THE FIRST DEGREE and 8-2:11 POSSESSION OF CONTRABAND IN THE SECOND DEGREE

People v. Oliver, 2020 COA 97, ¶ 63, 474 P.3d 207, 222 (holding that second-degree possession of contraband is a lesser included offense of first-degree possession of contraband).

8-2:24.4 UNAUTHORIZED ABSENCE (TAMPERING WITH MONITORING DEVICE) (*INSTRUCTION PENDING*)

People v. Gregory, 2020 COA 162, ¶ 6, __ P.3d __ (holding that the new crime of unauthorized absence "applies retroactively to cases being prosecuted as of the effective date of the new statute").

12-1:07 UNLAWFUL POSSESSION OF A WEAPON ON SCHOOL, COLLEGE, OR UNIVERSITY GROUNDS

People v. Procasky, 2019 COA 181, ¶ 31, 467 P.3d 1252, 1260 (holding that, where the defendant pulled into a school parking lot in response to police activating their sirens, he was not acting unlawfully, meaning he could not be found guilty of unlawfully knowingly and unlawfully possessing a weapon on school grounds).

42:06 AGGRAVATED DRIVING AFTER REVOCATION PROHIBITED and 42:20 ELUDING OR ATTEMPTING TO ELUDE A POLICE OFFICER

People v. Sims, 2020 COA 78, ¶ 40, 474 P.3d 189, 196 ("[T]he offenses listed in the subsections under section 42-2-206(1)(b), including eluding or attempting to elude under subsection (D), are lesser included offenses of aggravated DARP.").

42:09 DRIVING UNDER THE INFLUENCE and 42:10 DRIVING WHILE ABILITY IMPAIRED

People v. Viburg, 2020 COA 8M, ¶ 10, __ P.3d __ (holding that "prior convictions are elements of felony DUI," meaning that "to obtain a conviction for felony DUI, a prosecutor must prove those prior convictions to a jury beyond a reasonable doubt").

42:20 ELUDING OR ATTEMPTING TO ELUDE A POLICE OFFICER

People v. Procasky, 2019 COA 181, ¶ 25, 467 P.3d 1252, 1259 (holding that, where police engaged their lights and sirens and the defendant then drove two blocks before pulling over, the evidence was insufficient to convict him of eluding a police officer).

People v. Sims, 2020 COA 78, ¶ 32, 474 P.3d 189, 195 (rejecting the defendant's argument that "'elude' must invariably include some kind of trick or evasive action," and holding instead that, "depending on the circumstances, elude may simply be defined as 'avoid,' 'escape,' or 'to not be caught'").

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

DEFENSES

People v. Martinez, 2020 COA 141, ¶¶ 83–86, __ P.3d __ (considering a case where the defendant tendered a lengthy theory of defense instruction which concluded that "there wasn't anything about [the victim's] words or

physical demeanor to indicate to [the defendant] that she was not fully aware of what she was saying [or] doing," and the trial court modified it to simply read that "[i]t is Mr. Martinez's theory of the case that . . . [the victim] engaged in a consensual sexual relationship with him"; holding that the trial court didn't err in modifying the tendered instruction because it was argumentative, it wasn't general or brief, and it merely retained portions of the evidence that were favorable to the defendant; noting that the defendant "was not entitled to a theory of defense instruction that unduly emphasized his trial testimony," and that the trial court properly "excised the problematic components of [the] tendered instruction" while still providing the substance of his theory of defense).

Status: Petition for certiorari pending as of 1/12/21.

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

People v. Tibbels, 2019 COA 175, ¶¶ 25, 35, 40, __ P.3d __ (holding that, where the trial court analogized reasonable doubt to a "structurally significant" crack in a house's foundation, the remarks did not lower the prosecution's burden of proof; nevertheless "strongly discourag[ing] trial courts' use of everyday illustrations to explain reasonable doubt").

Status: Petition for certiorari granted. Oral arguments not set as of 1/12/21.

People v. Knobee, 2020 COA 7, ¶¶ 18, 38, __ P.3d __ (holding that, where the court analogized reasonable doubt to "a standard that we use a lot of times . . . when we do important things in our lives, like buying a home, or choosing doctors," the court "improperly trivialized the prosecution's burden of proof").

Status: Petition for certiorari granted. Oral arguments not set as of 1/12/21.

People v. Pettigrew, 2020 COA 46, ¶¶ 16–28, __ P.3d __ (discussing various statements that the trial court made in an effort to explain reasonable doubt—including (1) distinguishing between "innocent" and "not guilty,"

(2) distinguishing "reasonable doubt" from "beyond a shadow of a doubt," (3) instructing jurors not to rely on what they may have seen on television shows in their deliberations, (4) discussing a hypothetical about disproving a juror's birthday, and (5) answering a juror's question about the lack of certain charges by stating, "Maybe there's not enough evidence to charge him with that . . . we try people when there's evidence to support the charges"—and holding that the statements did not lower the prosecution's burden of proof, but noting that courts "have repeatedly disapproved of similar voir dire statements made by trial courts because they jeopardize otherwise valid convictions and almost never bring additional clarity to the difficult concept of reasonable doubt").

Status: Petition for certiorari granted. Oral arguments not set as of 1/12/21.

E:11 SERIES OF ACTS IN A SINGLE COUNT

People v. Cooper, 2019 COA 21, ¶ 48, __ P.3d __ (holding that, because the allegations against the defendant "concerned a short timeframe, a single incident, and one victim," it was unlikely that jurors would disagree on which acts the defendant committed, meaning the defendant was not entitled to a unanimity instruction).

Status: Petition for certiorari granted on other grounds. Oral arguments set for 2/9/21.

People v. Abdulla, 2020 COA 109M, ¶¶ 54–55, __ P.3d __ (considering a case where the court instructed the jury on both the charged offense of sexual assault and the lesser included offense of unlawful sexual contact, but where the unanimity instruction only referenced the charge of sexual assault; holding that, while "[i]t certainly would have been better for the unanimity instruction to have stated explicitly that it applied to both the greater and lesser offense," the court did not plainly err).

Status: Petition for certiorari pending as of 1/12/21.

E:11 SERIES OF ACTS IN A SINGLE COUNT and H:11 USE OF NON-DEADLY PHYSICAL FORCE (DEFENSE OF PERSON)

People v. Mosely, 2019 COA 143, ¶¶ 6–8, 19–21, __ P.3d __ (considering a case where, after the court provided a self-defense instruction with both the provocation exception and the initial aggressor exception—along with the standard unanimity instruction—the jury asked whether it needed to "unanimously agree on at least one of the factors, e.g. #1 . . . [or] unanimously agree that individually at least one of the factors 1-4 was disproved," and the trial court responded that "you have to unanimously agree that the prosecution has disproven at least one of the numbered conditions" but that "there is no requirement that you unanimously agree on *which numbered condition* or conditions have been disproven"; holding that "*absent the juror question here*, the unanimity instruction given to the jurors was sufficient to advise them that they had to agree unanimously as to the applicability of either the provocation or initial aggressor exception to self-defense"; but further holding that the trial court's response lowered the prosecution's burden of proof because "some jurors might have concluded that the provocation exception applied, while others concluded that the initial aggressor instruction applied," even though the two exceptions are mutually exclusive; finally stating that "if the prosecution argues the applicability of both exceptions, the trial court *in its discretion* may also provide the jurors with special verdict forms indicating whether they unanimously agree that the prosecution disproved one exception or the other or neither" and "may also give special verdict forms on the first two elements of self-defense" (emphases added)).

Status: Petition for certiorari granted. Orally argued on 12/9/20.

E:14 LESSER-INCLUDED OFFENSES

People v. Abdulla, 2020 COA 109M, ¶¶ 14, 16, __ P.3d __ (stating that the court may give a lesser included offense instruction where the lesser offense is "(1) easily ascertainable from the charging instrument, and (2) not so remote in degree from the offense charged that the prosecution's request appears to be an attempt to salvage a conviction from a case which has proven to be weak," quoting *People v. Cooke*, 525 P.2d 426, 429 (Colo.

1974), but holding that in addition, there must still be "a rational basis for a verdict acquitting the defendant of the offense charged and convicting him of the lesser included offense").

Status: Petition for certiorari pending as of 1/12/21.

E:18 SUPPLEMENTAL INSTRUCTION—WHEN JURORS FAIL TO AGREE

People v. Black, 2020 COA 136, ¶¶ 8, 19–22, 24, 27, 32, __ P.3d __ (considering a case where the deliberating jury submitted a question that read, "What happens if we can't come to a unanimous decision on only one charge?" and rather than submitting a modified *Allen* instruction, the court "simply instructed to the jury to 'please continue with your deliberations at this time'"; stating that, when the jury indicates that it cannot agree, a trial court must first "conduct a threshold inquiry" to determine "the likelihood of progress towards a unanimous verdict if deliberations continue," and that (1) "[i]f progress is likely, there is no impasse and the trial court can give the jury an unqualified instruction to continue deliberating," (2) if progress is unlikely, "the court may, in its discretion, give a modified-*Allen* instruction," and (3) "if progress towards a verdict is not just unlikely but is impossible, even a modified-*Allen* instruction may be impermissibly coercive"; holding that the trial court's failure to conduct the threshold inquiry in this case constituted reversible error, and in so holding disagreeing with *People v. Munsey*, 232 P.3d 113 (Colo. App. 2009)).

Status: Petition for certiorari pending as of 1/12/21.

F:114 DWELLING and H:15 USE OF PHYSICAL FORCE, INCLUDING DEADLY PHYSICAL FORCE (INTRUDER INTO A DWELLING)

People v. Rau, 2020 COA 92, ¶¶ 17–18, __ P.3d __ (holding that the basement of the apartment complex where the defendant lived constituted a "dwelling" for purposes of section 18-1-704.5, C.R.S., because even though it "was uninhabitable and was accessible to all tenants of the building, it was nonetheless part of the building that was used by [the defendant] for habitation"; declining to follow *People v. Cushinberry*, 855 P.2d 18 (Colo.

App. 1992), because it is inconsistent with *People v. Jiminez*, 651 P.2d 395 (Colo. 1982)).

Status: Petition for certiorari pending as of 1/12/21.

F:125 ENTERPRISE

People v. McDonald, 2020 COA 65, ¶¶ 16, 32, 47, __ P.3d __ (deferring to *People v. James*, 40 P.3d 36 (Colo. App. 2001), and rejecting the defendant's invitation to import factors required in federal prosecutions under the Racketeer Influenced Organizations Act ("RICO") when interpreting the "enterprise associated in fact" language in the Colorado Organized Crime Control Act ("COCCA"); holding that the trial court did not abuse its discretion when it refused to further define the phrase "associated in fact").

Status: Petition for certiorari granted. Oral arguments not set as of 1/12/21.

F:337 SEXUAL CONTACT

People v. Abdulla, 2020 COA 109, ¶ 2, __ P.3d __ (holding that "striking a person's intimate parts with an implement or object, rather than with a part of the actor's own body, can constitute 'touching'" under the statutory definition of "sexual contact").

Status: Petition for certiorari pending as of 1/12/21.

G2:09 CRIMINAL SOLICITATION

People v. Manzanares, 2020 COA 140M, ¶ 1, __ P.3d __ (holding that the unit of prosecution in the solicitation statute "is based on each person solicited, not the number of victims targeted").

Status: Mandate not issued as of 1/12/21.

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

People v. Knapp, 2020 COA 107, ¶¶ 23, 25, __ P.3d __ ("A provocation instruction should be given if (1) self-defense is an issue in the case; (2) the victim made an initial attack on the defendant; and (3) the defendant's conduct or words were intended to cause the victim to make the attack and provide a pretext for injuring the victim. . . . [T]here is some uncertainty about what quantum of proof is required to give an instruction on an exception to an affirmative defense like self-defense.").

Status: Petition for certiorari pending as of 1/12/21.

H:30 DURESS

People v. Leyba, 2019 COA 144, ¶ 52, __ P.3d __ (holding that, where the record was "devoid of any evidence to support a finding that [the defendant's] fellow gang member[] threatened him," the trial court properly refused to instruct the jury on the affirmative defense of duress).

Status: Petition for certiorari granted on other grounds. Case to be decided on the briefs.

H:36 CRIMINALITY OF CONDUCT—MISTAKE AS TO AGE, 7-4:01 SOLICITING FOR CHILD PROSTITUTION (ANOTHER), and 7-4:13.SP CHILD PROSTITUTION CRIMES—SPECIAL INSTRUCTION (IGNORANCE OR REASONABLE BELIEF IS NOT A DEFENSE)

People v. Ross, 2019 COA 79, ¶¶ 30, 49, __ P.3d __ (disagreeing with *People v. Emerterio*, 819 P.2d 516 (Colo. App. 1991), *rev'd on other grounds sub nom. People v. San Emerterio*, 839 P.2d 1161 (Colo. 1992), and holding that the phrase "for the purpose of prostitution" equates to the mental state of "intentionally"; further holding that, although it is no defense that the defendant "believed that the prostitute was of legal age," the prosecution must still prove that the defendant specifically intended to solicit another "for the purpose of child prostitution").

Status: Petition for certiorari granted. Orally argued on 12/10/20.

3-1:07 MURDER IN THE SECOND DEGREE and 3-2:03 ASSAULT IN THE FIRST DEGREE (EXTREME INDIFFERENCE)

People v. Ornelas-Licano, 2020 COA 62, ¶ 21, __ P.3d __ (rejecting the defendant's argument that attempted second-degree murder is indistinguishable from first-degree assault (extreme indifference)—and that his conviction for the former thus violated equal protection—and holding instead that the statutes do not proscribe the same conduct because "only one requires a substantial step toward the causation of another's death").

Status: Petition for certiorari pending as of 1/12/21.

3-2:20 ASSAULT IN THE THIRD DEGREE (KNOWINGLY OR RECKLESSLY) and 6.5:03 CRIMINAL NEGLIGENCE RESULTING IN BODILY INJURY TO AN AT-RISK PERSON

People v. Thomas, 2020 COA 19M, ¶ 36, __ P.3d __ (holding that criminally negligent injury to an at-risk adult is not a lesser included offense of third-degree assault).

Status: Petition for certiorari granted. Oral arguments not set as of 1/12/21.

3-3:09.INT SECOND DEGREE KIDNAPPING—INTERROGATORY (USE, OR SUGGESTED USE, OF A DEADLY WEAPON)

People v. Knobee, 2020 COA 7, ¶ 62, __ P.3d __ (stating that when the prosecution seeks the deadly-weapon sentencing enhancer for second-degree kidnapping, the court must instruct the jury that it must find "that the kidnapping was 'accomplished by' the use of a deadly weapon").

Status: Petition for certiorari granted on other grounds. Oral arguments not set as of 1/12/21.

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

People v. Burgandine, 2020 COA 142, ¶ 28, __ P.3d __ (holding that the term "contacts" in the stalking statute "includes phone and text message communications").

Status: Petition for certiorari pending as of 1/12/21.

4-1:01 FIRST DEGREE ARSON and 1.3:01.INT CRIME OF VIOLENCE—INTERROGATORY (DEADLY WEAPON)

People v. Magana, 2020 COA 148, ¶¶ 3, 47, __ P.3d __ (holding that the use of fire can serve as the basis for both a first-degree arson conviction and a crime of violence sentence enhancement; further holding that the unit of prosecution for first-degree arson is "the number of dwellings or structures burned").

Status: Mandate not issued as of 1/12/21.

4-1:03 SECOND DEGREE ARSON

People v. Magana, 2020 COA 148, ¶¶ 48, 50, __ P.3d __ (rejecting the contention that the unit of prosecution for second-degree arson is the number of fires set; recognizing that "every separately identifiable piece of property damaged may not necessarily support its own charge," but holding that the evidence supported two convictions when it showed that the defendant's actions damaged two vehicles belonging to two different people).

Status: Mandate not issued as of 1/12/21.

4-1:06 FOURTH DEGREE ARSON

People v. Magana, 2020 COA 148, ¶ 52, __ P.3d __ (holding that the fourth-degree arson statute permits a separate charge "for each person placed in danger by a defendant's fire or explosion").

Status: Mandate not issued as of 1/12/21.

4-3:01 ROBBERY, 4-3:03 AGGRAVATED ROBBERY (KILL, MAIM, OR WOUND), and 4-4:01 THEFT (INTENT TO PERMANENTLY DEPRIVE)

People v. Leyba, 2019 COA 144, ¶ 48, __ P.3d __ (holding that, where the defendant was charged with aggravated robbery and "[t]he undisputed evidence showed the use of force during the incident," the trial court correctly refused to instruct the jury on the lesser nonincluded offense of theft).

Status: Petition for certiorari granted on other grounds. Case to be decided on the briefs.

3-2:30 MENACING and 4-3:04 AGGRAVATED ROBBERY (WOUND, STRIKE, OR PUT IN FEAR)

People v. Sauser, 2020 COA 174, ¶ 117, __ P.3d __ (holding that felony menacing is not a lesser included offense of aggravated robbery).

Status: Mandate not issued as of 1/12/21.

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

People v. Rojas, 2020 COA 61, ¶ 30, __ P.3d __ (recognizing that section 18-4-401(4)(a) "permits, but does not require, the prosecution to aggregate the thefts and charge them in a single count").

Status: Petition for certiorari granted on other grounds. Oral arguments not set as of 1/12/21.

4-4:19 AGGRAVATED MOTOR VEHICLE THEFT IN THE FIRST DEGREE (RETAINED)

People v. Vialpando, 2020 COA 42, ¶ 30, __ P.3d __ ("The prosecution was

required to prove that Vialpando exercised control over the motor vehicle of another without authorization *or* by threat or deception. Because sufficient evidence was presented proving that Vialpando knowingly exercised control over [the victim's] stolen vehicle without authorization, the prosecution was not also required to prove threat or deception." (citation omitted)).

Status: Petition for certiorari granted on other grounds. Oral arguments not set as of 1/12/21.

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

People v. Houser, 2020 COA 128, ¶ 18, __ P.3d __ (holding that the patronizing a prostituted child statute is not unconstitutionally vague).

Status: Petition for certiorari pending as of 1/12/21.

8-1:02 RESISTING ARREST (FORCE OR VIOLENCE) and 8-1:03 RESISTING ARREST (ANY MEANS)

People v. Lowe, 2020 COA 116, ¶¶ 45, 47, __ P.3d __ (holding that "the unit of prosecution for resisting arrest is the number of *discrete volitional acts* of resisting arrest," meaning that, where the defendant's conduct "was a continuous course of action to avoid a single arrest that did not end until he was shot by" police, his multiple convictions must merge).

Status: Petition for certiorari pending as of 1/12/21.

8-1:03 RESISTING ARREST (ANY MEANS)

People v. Thomas, 2020 COA 19M, ¶ 15, __ P.3d __ ("[N]othing in the plain language of the statute dictat[es] that 'other means' cannot include conduct that puts an officer at risk of injury by falling or contacting nearby objects or conditions. . . . [T]he jury could properly consider evidence of the physical surroundings in which Thomas was handcuffed and transported to the patrol car.").

Status: Petition for certiorari granted. Oral arguments not set as of 1/12/21.

8-2:04 INTRODUCING CONTRABAND IN THE FIRST DEGREE (INTRODUCTION INTO)

People v. McClintic, 2020 COA 120, ¶¶ 16–18, 29, __ P.3d __ (stating that "active concealment of contraband upon involuntary entry to a detention facility may constitute an unlawful voluntary act giving rise to criminal liability," but holding that, where the defendant voluntarily turned over marijuana to police while being booked, she could not have committed the crime of introducing contraband because her actions did not "amount to an unlawful voluntary act of concealment"; further stating that to be guilty of this crime, "a defendant whose entry into a detention facility is involuntary must either deny possession when asked or conceal or attempt to conceal the presence of contraband on his or her person").

Status: Petition for certiorari pending as of 1/12/21.

8-2:10.INT POSSESSION OF CONTRABAND IN THE FIRST DEGREE—INTERROGATORY (DANGEROUS INSTRUMENT)

People v. Tibbels, 2019 COA 175, ¶¶ 48–51, __ P.3d __ (holding that, where the trial court did not give this interrogatory but did define "contraband" as "a dangerous instrument"—and then defined "dangerous instrument" according to its statutory definition, which is incorporated into the model interrogatory—the defendant's conviction of the sentence enhancer was proper because, "by defining dangerous instrument consistently with the statute, the court ensured that the jury unanimously found that the 'contraband' element was a dangerous instrument, thereby obviating the need for the special interrogatory"; rejecting the defendant's contention that the model instructions require an interrogatory in all cases).

Status: Petition for certiorari granted on other grounds. Oral arguments not set as of 1/12/21.

8-3:09 ATTEMPT TO INFLUENCE A PUBLIC SERVANT

People v. Barnett, 2020 COA 167, ¶ 1, __ P.3d __ (holding that an employee of ComCor Inc. can qualify as a public servant for purposes of this crime because the employee "is a person who performs a government function").

Status: Mandate not issued as of 1/12/21.

12-1:16 POSSESSION OF A WEAPON BY A PREVIOUS OFFENDER

People v. McBride, 2020 COA 111, ¶ 59, __ P.3d __ ("[W]here the defendant is not in exclusive possession of the car or premises in which [a firearm] is found and there is no evidence aside from mere proximity linking the defendant to that [firearm], a conviction premised on knowing possession cannot stand. . . . [A]ny finding that the defendant knowingly possessed the object would necessarily be based on speculation.").

Status: Petition for certiorari pending as of 1/12/21.

18:19 DISPENSING, SELLING, DISTRIBUTING, OR MANUFACTURING MARIJUANA OR MARIJUANA CONCENTRATE and 18:21 CULTIVATING OR GROWING MARIJUANA

People v. Torline, 2020 COA 160, ¶ 1, __ P.3d __ (holding that prosecuting a person who grows marijuana for religious reasons does not violate the Free Exercise Clause).

Status: Mandate not issued as of 1/12/21.

18:21 CULTIVATING OR GROWING MARIJUANA

People v. Garcia-Gonzalez, 2020 COA 166, ¶¶ 1, 15, __ P.3d __ (holding that the term "land" includes "the property surrounding a residence," but that it *excludes* "an enclosed, locked space on residential property" such as a garage,

Status: Mandate not issued as of 1/12/21.

18:22.3 CULTIVATING OR GROWING MARIJUANA (MORE THAN TWELVE PLANTS)

People v. Garcia-Gonzalez, 2020 COA 166, ¶ 19, __ P.3d __ ("Nothing in the text of section 18-18-406(3)(a)(II) immunizes a residential grow operation from potentially violating other sections of the code.").

Status: Mandate not issued as of 1/12/21.