

<p><b>COLORADO COURT OF APPEALS</b>  Address: Ralph L. Carr Colorado Judicial Center  2 East 14<sup>th</sup> Avenue  Denver, CO 80203</p>	<p>DATE FILED  January 1, 2024 7:45 PM</p> <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Appeal of El Paso County 2018CR801  Honorable Jann DuBois and Honorable Samuel  Albert Evig, District Court Judges</p>	
<p><b>Plaintiff-Appellee:</b></p> <p><b>THE PEOPLE OF THE STATE OF COLORADO</b></p> <p><b>Defendant-Appellant:</b></p> <p><b>PATRICK PESCHONG</b></p>	<p>Appeal Case No.: 2023CA2</p>
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<p><b>DEFENDANT-APPELLANT'S AMENDED OPENING BRIEF</b></p>	

## **CERTIFICATE OF COMPLIANCE**

The undersigned hereby certifies that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

1. The amended brief complies with the word limit set forth in C.A.R. 28(g). It contains 9376 words. The brief was amended to cut the word count from its original number after the motion to exceed the word limit was denied by the court.

2. The brief complies with the standard of review requirements set forth in C.A.R. 28(a)(7)(A). For each issue raised, the brief contains under a separate heading before the discussion of the issue, a concise statement: (1) of the applicable standard of appellate review with citation to authority; and (2) whether the issue was preserved, and, if preserved, the precise location in the record where the issue was raised and where the court ruled, not to an entire document.

The undersigned acknowledges that the brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 and C.A.R. 32.

/s/ Elizabeth A. McClintock  
Elizabeth A. McClintock

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## **STATEMENT OF THE CASE**

Patrick Peschong was charged in El Paso County case 2018CR801 with three felonies: 1) possession with intent to manufacture or distribute controlled substance, a DF1 under §18-18-405(1),(2)(c)(II), C.R.S.; 2) distribution of a controlled substance, a DF3 under §18-18-405(1),(2)(c)(II), C.R.S.; and 3) possession of a controlled substance, a DF4 pursuant to §18-18-403.5(1),(2)(a), C.R.S. (Cf, pg. 13-16 ).

Peschong was a passenger in the backseat of a car stopped by the Colorado Springs Police Department on January 22, 2018. The vehicle was stopped for a lane violation. Upon contact, the driver of the vehicle, Dakota Willmann, could not produce valid insurance, registration information for the vehicle, nor a valid driver's license. Another occupant of the vehicle, a female, had active warrants. Peschong and the fourth occupant were allowed to leave while the vehicle was impounded and searched. Before leaving, Peschong offered to drive the vehicle to the home of the friend, as he had a valid license. The police refused his offer.

After searching the vehicle, 3 grams of methamphetamine was found underneath the driver's seat and a black, zippered bag was located somewhere behind the passenger seat, containing 144 grams of methamphetamine.

Willmann was charged in El Paso County case 2018CR463 with charges relating to the drugs, as a co-defendant of Peschong. Peschong was charged thirteen days later, also with charges relating to drugs found in the vehicle. (Cf, pg. 13).

Peschong waived his right to a preliminary hearing in case 18CR801. A motion hearing occurred on March 8, 2019. The defense requested disclosure of any promises, inducements and/or threats that had been made to witnesses in the case. The trial court ordered the district attorney to comply as required by Crim. P. Rule 16. (Cf, pg. 53 – 55; R. Tr. 3/8/19, pg. 51, ln. 24 – pg.52, ln. 2).

The trial in 18CR801 began on September 23, 2019 with jury selection. Willmann, the co-defendant, was present under a subpoena by the prosecution, having also been endorsed by the defense, as Peschong had endorsed all witnesses endorsed by the prosecution. (Cf, pg. 64). Willmann was ordered to return that afternoon and told by the court that he would have an attorney present to advise him about “legal issues.” (R. Tr. 9/23/19, pg. 10, ln. 8-13). There was no other discussion on the record about Willmann needing legal counsel prior to his testimony at Peschong’s trial. When Willmann returned that afternoon, counsel was appointed to advise him about testifying, as he could potentially be prosecuted by the federal government for

possession of drugs, and the court wanted him advised of that prior to his testimony. Despite Willmann having pled guilty to manufacturing 144 grams of methamphetamine in his El Paso County case, the trial court agreed that he could invoke a blanket Fifth Amendment right to refuse to testify in Peschong's case. Willmann was allowed to leave. Defense counsel did not object at that time and did not make any comment. (R. Tr. 9/23/19, pg. 126, ln. 13 – pg. 129, ln. 20; pg. 135, ln. 22 – pg. 139, ln. 24; pg. 148, ln. 2 – 22).

The case against Peschong proceeded to trial on September 23 and 24, 2019. The jury convicted Peschong of all charges, finding that the drugs involved were a scheduled I or II, that the drugs were methamphetamine and that regarding Count I, the amount was greater than 112 grams. (Cf, pg. 157-162).

After the trial, but prior to sentencing, Peschong hired new defense counsel and filed a motion for a new trial. This motion was heard on the day of his sentencing, January 31, 2020. The trial court initially denied the motion, but after hearing Peschong's statement during his right of allocution, the trial court reconsidered, granting the motion for a new trial. The trial court found the issues Peschong had raised concerning enough to warrant a new trial in the interests of justice. (R.Tr.1/31/20, pg. 4, ln. 12 – pg. 18, ln. 10).

The prosecution successfully appealed the trial court's decision to grant a new trial, and the matter was remanded from the appellate court for an evidentiary hearing. (R.TR. 1/28/22, pg. 8, ln. 4 – pg. 14, ln. 5). On July 11, 2022, the evidentiary hearing took place. The original trial judge had retired and the judge who had taken her place heard the evidentiary hearing. The new trial judge denied the motion for a new trial and set the case for sentencing.

Peschong was sentenced on September 6, 2022. Because he was on probation at the time of the offense in 18CR801, the court sentenced him to a department of corrections sentence in the aggravated sentencing range. The court noted that if it had the discretion, it would sentence Peschong to probation, due to his outstanding behavior since the jury verdicts, but the court did not have discretion in the imposition of a department of corrections sentence. (R. Tr. 9/6/22, pg. 25, ln. 4-pg. 26, ln. 6). The court sentenced Peschong to 12 years in the Colorado Department of Corrections, followed by 3 years of mandatory parole. The court merged counts 2 and 3 with count 1, not imposing separate sentences for those counts. (Id, pg. 26, ln. 6 – 17).

Peschong sought to appeal his conviction and sentence. He is currently on an appeal bond pending the outcome of his appeal with regular reviews in the district court.

## **SUMMARY OF THE ARGUMENT**

Patrick Peschong raises four issues for review by this court. The trial court committed reversible error by allowing the co-defendant, Dakota Willmann, to invoke a blanket privilege against self-incrimination prior to being called to testify. This invocation allowed Willmann to avoid all questioning, even those regarding Willmann's guilty plea to manufacturing 144 grams of methamphetamine. These 144 grams of methamphetamine were the same drugs the prosecution alleged Peschong was the sole possessor, manufacturer, and distributor of in this case. Once Willmann was allowed to avoid all questioning in front of the jury, the defense sought to introduce the guilty plea Willmann had signed, showing he had pled guilty to manufacturing 144 grams of methamphetamine. The trial court erroneously denied Peschong's admission of this exhibit at trial.

With this evidence excluded, the prosecution impermissibly argued in closing that Peschong was a "drug dealer" who was being driven around by a drug addict (Willmann) who only possessed a small amount of meth that had been provided to him by Peschong. The prosecutors in closing told the jury that the 3-gram baggie of meth found under the driver's seat was Willmann's meth, but the 144 grams of methamphetamine contained in a black bag, was

Peschong's. This argument was made by the prosecutors despite knowing that Willmann had pled guilty to manufacturing 144 grams of methamphetamine prior to Peschong's case going to trial. The prosecution then compounded the improper arguments by alleging that Peschong walking a few blocks to a friend's house, when the police told him he could leave, demonstrated his "consciousness of guilt."

The evidence presented against Peschong to sustain the convictions was insufficient. Other than speculation and untruths, the only evidence presented by the prosecution was that Peschong was in proximity to the drugs, that were in a container, in a vehicle, that he was a passenger in, at the time the vehicle was stopped. No other evidence connected Peschong to the drugs, to the distributing the drugs, or to any crime. He was in the wrong seat of a vehicle at the wrong time.

The prosecution was not required to prove the elements of distribution of a controlled substance beyond a reasonable doubt because the jury was never instructed as to the elements of the offense. The instruction for distribution contained no element relating to the sale of a controlled substance or an exchange of something of value for a controlled substance.

Based upon the errors alleged herein, Peschong requests this court reverse his convictions and remand his case for a new trial.

**STATEMENT OF THE ISSUES**

- I. Whether the trial court violated Peschong's right to due process of the law and to present a defense by refusing to admit as defense Exhibit A, the co-defendant's guilty plea to manufacturing 144 grams of methamphetamine, after allowing the co-defendant to invoke a blanket right against self-incrimination.
- II. The prosecution committed misconduct during closing arguments by repeatedly misstating co-defendant's culpability, by calling Peschong a "drug dealer," and by saying Peschong "showed consciousness of guilt."
- III. The prosecution presented insufficient evidence to prove the charges against Patrick Peschong beyond a reasonable doubt.
- IV. The court committed a reversible error when it incorrectly instructed the jury on the elements of the offense of distribution of a controlled substance.

## ARGUMENT

I. Whether the trial court violated Peschong's right to due process of the law and to present a defense by refusing to admit as defense Exhibit A, the co-defendant's guilty plea to manufacturing 144 grams of methamphetamine, after allowing the co-defendant to invoke a blanket right against self-incrimination.

### A. Standard of Review

A trial court has broad discretion to admit or exclude evidence. An appellate court will not overturn a ruling unless it is manifestly arbitrary, unreasonable, or unfair. *People v. Carter*, 402 P.3d 480, 487 (Colo. App. 2015). If an erroneous evidentiary ruling implicates a defendant's constitutional rights, it is considered under a constitutional harmless error standard. *People v. Fry*, 92 P.3d 970, 980 (Colo. 2004); *People v. Phillips*, 315 P.3d 136 (Colo. App. 2012). Appellate courts review de novo a claim that the government violated a defendant's constitutional right to present a defense. *United States v. Serrano*, 406 F.3d 1208, 1214 (10<sup>th</sup> Cir. 2005); cf. *People v. Phillips*, supra.

Because the issue was preserved and involves the denial of Peschong's constitutional right to due process and to present a defense, the error would be reviewed for constitutional harmless error. This standard of reversal

“require[es] the People to prove beyond a reasonable doubt the absence of any reasonable possibility that the error might have contributed to the conviction.” *James v. People*, 426 P.3d 336, 341 (Colo. 2018). The question “is not whether, in a trial that occurred without the error, a guilty verdict would surely have been rendered, but whether the guilty verdict actually rendered in this trial was surely unattributable to the error.” *People v. Mendenhall*, 363 P.3d 758,770 (Colo. App. 2015)(quoting *Blecha v. People* 962 P.2d 931, 942 (Colo. 1998)).

#### B. Citation to the Record and Preservation for Review

Willmann was an unavailable witness, due to the trial court allowing him to make a blanket invocation of his Fifth Amendment right not to incriminate himself, without any questions being asked of him. Defense counsel then sought to introduce Willmann’s signed guilty plea in case number 2018CR463 as a defense exhibit in Peschong’s trial (Defense Exh. A). Willmann had pled guilty to manufacturing methamphetamine, with the amount listed in the plea agreement being 144 grams. (Defense Exh. A. pg. 2, ¶5).

The prosecution objected to the admission of the exhibit on the grounds of relevance, arguing there was no agreement for Willmann to testify in exchange for his plea agreement. The defense argued the guilty plea was

directly relevant, as Willmann pled guilty to manufacturing the exact quantity of drugs the prosecution was arguing Peschong was guilty of manufacturing and possessing. During arguments to admit the plea agreement, the court stated, “And it’s unfortunate that we’re doing this in the middle of trial.” Defense counsel noted, “Your Honor, I think the invocation, or the assessment was sort of a surprise.” (R. Tr. 9/24/19, pg. 301, ln. 6-9). The defense argued the plea agreement was from an unavailable witness under C.R.E. 804, and it was a plea agreement that was admissible under C.R.E. 803(22).

The prosecution argued if Peschong was allowed to enter the plea agreement into evidence, then the State should be allowed to explain why Willmann was offered the plea bargain by the district attorney’s office, otherwise the information was being provided to the jury “in a vacuum”. The trial court ruled that the D.A.s should be allowed to do this if the plea agreement was admitted, and that would cause too much confusion for the jury, so the court did not allow the introduction of Willmann’s plea agreement. (R.TR. 9/24/19, pg. 281, ln. 14- pg. 306, ln. 15).

At that time, defense counsel noted that the trial court’s ruling was a violation of Peschong’s right to due process under both the federal and state

constitutions as the court's rulings deprived Peschong of the ability to present a defense. (R.Tr. 9/24/19, pg.306, ln. 16-21).

After Peschong was found guilty of the charges against him, his new counsel filed a motion for a new trial. As part of the evidentiary hearing after the order remanding the case from the court of appeals, Peschong testified about some of the issues he believed had been unfair in his trial. Peschong testified to his inability to present his defense, which was that another individual had already admitted guilt regarding the drugs found in the vehicle he was a passenger in and that negated the inference, and the prosecution's statements, that the drugs were solely Peschong's. He was kept from presenting the evidence that was relevant to this defense, particularly Willmann's plea agreement. Counsel at the hearing further argued that the admission of the plea would have countered the prosecution's ability to make the argument, as it did in closings, that Willmann had only 3 grams of meth, and Peschong had 144 grams. The prosecution, during this evidentiary hearing, ignored the arguments made by the prosecutors at trial, and stated that the admission of Willmann's plea agreement would have only shown that Peschong had assistance in the manufacturing of the methamphetamine. The new trial judge

denied the motion for a new trial on remand after the evidentiary hearing. (R.Tr. 7/11/22, pg. 4, ln. 16 – pg. 64, ln. 9).

The issue of the denial of admitting the plea agreement of Willmann into evidence has been sufficiently preserved for appellate review.

### C. Analysis of Willmann's Invocation of the Fifth Amendment

Dakota Willmann was allowed to assert a blanket Fifth Amendment right to remain silent so that he could not to be called for any reason at trial. (R.Tr. 9/23/19, pg. 135, ln. 22 – pg. 139, ln, 24). Peschong had a valid reason to call him at trial, which was to confront him with the fact that he had pled guilty to manufacturing the 144 grams of methamphetamine that the prosecution was now claiming Peschong had manufactured and possessed with the intent to distribute. Peschong's defense, as articulated by defense counsel in opening statements and closing arguments, as well as later at the evidentiary hearing on the motion for a new trial, was that the drugs in the vehicle belonged to Willmann and the prosecution could not prove that the drugs belonged to Peschong.

There was no analysis of Willmann's blanket invocation of his fifth amendment right not to testify when he had not been asked any questions at the point when he invoked the privilege. The error in allowing Willmann to do

this was logically inconsistent considering that Willmann had already made an admission, pursuant to a fully advised guilty plea, to manufacturing the 144 grams of methamphetamine that had been found in the vehicle. If he was concerned about incriminating himself regarding the large quantity of drugs found in the vehicle, Willmann had already done so when he pled guilty. It is unclear how much more incriminating his testimony could have been when viewed in light of his guilty plea.

Defense counsel did not raise an objection to Willmann's blanket invocation but did address it later when trying to admit Willmann's guilty plea paperwork. The trial court's decision to allow Willmann to invoke the privilege in such a manner, without being subjected to any questioning before a jury, when he would have to assert the privilege, was still erroneous. Colorado appellate courts have recently disapproved allowing the invocation of privilege in such a manner, noting that while a criminal defendant cannot be forced to take the stand and invoke the Fifth Amendment at his own trial, a witness who wishes to invoke the privilege must do so at the time of the testimony. The privilege only gives the option to the witness to refuse to answer, it does not prohibit the witness from being asked questions. "As such, a witness cannot assert the privilege 'as a blanket claim in advance of the

questions actually propounded’ because to do so impermissibly converts the privilege into a ‘prohibition against inquiry.’ Thus, a witness may invoke the privilege only when there is ‘reasonable cause to apprehend danger from a direct answer’ to a question.” *Rios-Vargas v. People*, 532 P.3d 1206, 1213 (Colo. 2023), *reh'g denied* (Aug. 7, 2023)(internal citations omitted).

The court here allowed the witness to avoid all questioning about his involvement in the case. The jury did not hear him invoking the Fifth Amendment, if he had chosen to do so, in response to questioning. Peschong was denied the right to question the witness about his guilty plea to the charge of manufacturing the 144 grams of methamphetamine recovered from the vehicle on January 22, 2018. Such testimony, put before the jury that Willmann had pled guilty to any charge relating to the 144 grams of meth, would have defeated the prosecution’s later argument that Peschong was a “drug dealer” who was supplying Willmann, who was only a drug addict driving Peschong around that night.

The trial court’s decision to allow Willmann to invoke a blanket invocation of his Fifth Amendment right to avoid testifying at all in this case was erroneous and it violated Peschong due process rights and his right to present a defense to the charges brought against him. This error was

compounded when considered in light of the trial court's refusal to allow the defense to introduce Willmann's guilty plea as an exhibit at trial.

#### D. Analysis of Failure to Admit Proposed Exhibit A – Willmann's Guilty Plea

Once Willmann was unavailable to testify, the defense sought to introduce Willmann's guilty plea as an exhibit. The defense argued, and the prosecution agreed, that Willmann's invocation of his Fifth Amendment right against self-incrimination made him unavailable under C.R.E. 804. (R.Tr. 9/24/19, pg. 282, ln. 24 – pg. 283, ln.1). The defense argued Willmann's guilty plea was admissible under C.R.E. 803(22):

**Judgment of Previous Conviction.** Evidence of a final judgment, entered after a trial or upon a plea of guilty or *nolo contendere*, adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the Government in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused. The pendency of an appeal may be shown but does not affect admissibility.

C.R.E. 803.

The prosecution never addressed the admissibility under C.R.E. 803 other than to argue that the guilty plea was not relevant and if the guilty plea was admissible, than the prosecution should be able to bring in the reasons for offering the plea bargain to Willmann because otherwise the plea would be admitted “in a vacuum.” The prosecution then argued that would require a special prosecutor because Ms. Chase, one of the prosecutors for Peschong’s case, was the one who signed the plea agreement that was entered in Willmann’s case. (R.Tr. 9/24/19, pg. 306, ln. 6-10).

The guilty plea was relevant because it made the issue of whether Peschong manufactured or possessed 144 grams of methamphetamine, with the intent to distribute it, more or less likely. It was also relevant to whether he possessed methamphetamine and whether he was distributing the methamphetamine. As pointed out by the prosecution, the State did not have to prove that Peschong was the sole possessor of the drugs. But even knowing that Willmann had pled guilty to manufacturing the 144 grams of methamphetamine, the prosecution still alleged at trial that Willmann was just a small-time drug addict driving Peschong, the big-time “drug dealer,” around that evening. The State alleged the 144 grams had to belong to Peschong because it was “between his feet” and no drug dealer would let such

a large stash out of his reach. Yet, Willmann had already pled guilty to manufacturing the large amount of methamphetamine. The State's argument would have been nonsensical, as the person who made that admission was driving the vehicle that the drugs were concealed inside.

It is unclear how admitting a guilty plea showing Willmann pled guilty to manufacturing 144 grams of methamphetamine on the same date of offense as Peschong, would need to be explained. The guilty plea demonstrated the elements of the offense, the waiver of rights, a basic recitation of facts that correspond with those in the information and complaint for the count Willmann pled guilty to in the agreement. Other than a discussion of his agreed upon sentence, which could have been redacted, if that was their real concern, there was nothing to explain. Peschong wanted the guilty plea admitted because Willmann pled guilty to manufacturing 144 grams of methamphetamine, the same methamphetamine that Peschong was now on trial for having manufactured and possessed with intent to distribute, not to question why the DA made Willmann the plea offer they did.

The court's decision to not admit the plea agreement of Willmann, after the court had already allowed him to invoke a blanket privilege against testifying, was erroneous. The plea agreement was not inadmissible hearsay

as it met an exception to the hearsay rule and it was relevant evidence that should have been admitted at trial so Peschong could present his defense.

The trial court's error in failing to admit the evidence cannot be deemed harmless when considered in light of the prosecution's characterization of Willmann's involvement in the case. Willmann was Peschong's co-defendant, but the jury never knew that information. (CF, pg. 13-15). The inability to use Willmann's guilty plea and inform the jury that he had pled guilty to manufacturing the large amount of methamphetamine that the prosecution accused Peschong of solely possessing with the intent to distribute, infringed upon Peschong's ability to defend against the charges. If anyone was forced to present a case "in a vacuum" it was Peschong, due to the trial court's erroneous ruling. The State's argument at trial that it should be allowed to "explain" why the plea agreement was given to Willmann was a collateral issue separate and irrelevant to the fact that Willmann pled guilty to manufacturing the 144 grams of methamphetamine the prosecution alleged belonged solely to Peschong.

The "vacuum" in this case was created once Willmann was allowed *not* to testify and his plea was *not* admitted, because the prosecution took advantage of that to tell the jury an untruth. The State told the jury that

Willmann was just a drug addict who was driving Peschong around. The State was allowed to fill the “vacuum” with an untruth, rather than informing the jury that Willmann was a convicted felon; convicted of manufacturing the 144 grams of methamphetamine the prosecution was contending in this trial only belonged to Peschong.

The prosecution described Willmann during their rebuttal closing argument, the last word to the jury, as being a “twenty-something, disheveled ... individual with 3 grams of meth and hypodermic needles. Hypodermic needles, instruments of use, right underneath his seat,” but then describing Peschong as a drug dealer:

“But what do we have in the back right, the back seat behind the passenger in that car? We have the defendant. We had an individual that was born on August 4, 1961. 58 years old. In a car, who knows who owns it, with drug users in the very front of that car, a drug user driving that car. Hanging out with people that are 20 years younger than he is. Hanging out. Having drug users drive him around, apparently from Walmart. .... A 58-year-old man in a car with people that are decades younger than him that clearly had drug usage. What does that tell us? We’ve got our drug dealer sitting in the back right of that car having the

addict, having the people use what he peddles, to drive him around. ...

Where do you think the front driver got the 3 grams of meth from?"

(R. Tr. 9/24/19, pg. 346, ln. 6 – 348, ln. 24).

When the prosecutor made that argument, that Willmann was just a disheveled drug-user, who didn't even know whose vehicle he was driving, (a fact not in evidence and something Peschong could not cross-examine Willmann about), the prosecutor knew that Willmann had pled guilty to manufacturing the 144 grams of methamphetamine that had been found in that vehicle. The defense had already moved to admit the plea agreement of Willmann as an exhibit into the trial and had that request denied. Yet the prosecutor went forward, making the argument in rebuttal closing. The prosecutor's argument was not just creative argument or an inference from the evidence. It is not an inference from the evidence when the prosecutor already knows about Willmann's guilty plea to the charge of manufacturing 144 grams of methamphetamine, the same methamphetamine that the prosecutor was trying Peschong for as well. The prosecutor's argument to jury can only be described as untruthful.

The person who suffered due to these improper arguments was Peschong and the error was not harmless. If he had been allowed to present the

evidence that Willmann, the person originally arrested by the police for the drugs that were found in the vehicle, it is very possible, that with no other evidence tying Peschong to the bag in the vehicle, the jury would not have returned the guilty verdicts it did against him. The prosecution certainly seemed concerned about this outcome, as their arguments against the admission of the evidence focused not so much on the fact that Willmann had pled guilty, but on wanting to explain to the jury why the district attorney's office had made him an offer of probation when he had pled guilty to manufacturing 144 grams of methamphetamine, which should have been an DF1 level felony offense, even under the plea agreement as written. The prosecutors in the case against Peschong wanted to paint an inaccurate picture of what was going on January 22, 2018 so that the jury would convict even without evidence tying Peschong to the drugs found in a vehicle in which he was only a passenger.

This court cannot say with a fair assurance that the trial court's error in allowing Willmann to invoke a blanket privilege against self-incrimination, followed by a refusal to allow the defense to introduce the proposed Exhibit A, Willmann's guilty plea paperwork, and to tell the jury about Willmann's guilty

plea, that these errors did not contribute to Peschong's convictions. The convictions of Peschong should be reversed due to these errors.

II. The prosecution committed misconduct during closing arguments by repeatedly misstating co-defendant's culpability, by calling Peschong a "drug dealer," and by saying Peschong "showed consciousness of guilt."

A. Standard of Review

When trial counsel has failed to object contemporaneously to instances of prosecutorial misconduct, a reviewing court will only reverse a conviction if, after review of the entire record, the court can say with fair assurance that the error so undermined the fundamental fairness of the trial as to cast serious doubt on the reliability of the judgment of conviction. *People v. Hogan*, 114 P.3d 42, 56 (Colo. App. 2004) citing *People v. Wilson*, 838 P.2d 284 (Colo.1992) and *People v. Avila*, 944 P.2d 673 (Colo.App.1997).

B. Citation to the Record and Preservation for Review

In closing argument, both initial and rebuttal, both prosecutors led the jury to believe that Dakota Willmann only possessed 3 grams of methamphetamine on January 22, 2018. On initial closing, prosecutor Chase held up the baggie containing the 3 grams of methamphetamine when she

stated in her direct closing argument, “You heard testimony about the driver also had some drugs. Dakota Willmann. He did. He had some drugs.” (R.Tr. 9/24/19, pg. 335, ln. 12-13). Defense counsel noted after the arguments were complete, “Your Honor, I guess I just want to put one thing on the record. I know Ms. Chase, during her closing argument, referenced Willmann’s drugs a couple of times, holding up a 3 -gram bag. That was part of – I just want this to supplement my request with respect to the plea agreement. I think that was, in a sense, slightly misleading, because we know Willmann has pled to involvement with 144 grams of Methamphetamine. I just wanted the record to be clear that was part of my thinking as to why I wanted that to be admissible, and I think that was somewhat misleading to the jury.” When asked to respond, Ms. Chase said if Willmann had pled to the 144 grams it would have been a DF1, not a DF3, as Willmann’s plea reflected. Defense counsel pointed out, Page 2, paragraph 5 of the plea agreement, which Ms. Chase signed, showed that Willmann indeed pled guilty to manufacturing 144 grams of methamphetamine. (R.Tr. (9/24/19, pg. 359, ln. 2- 24).

During the prosecution’s rebuttal closing argument, the prosecutor argued that Willmann was a disheveled small time drug user, who possessed only 3 grams of drugs while he drove around the “drug dealer” Peschong in the

back of the vehicle. The prosecutor also claimed that because Peschong walked to his friend's house, that the police officer admitted was a few blocks from where the traffic stop occurred, that this showed "consciousness of guilt." Defense counsel did not raise a contemporaneous objection to these statements made by the prosecution in closing argument nor did he address them after the jury was, excused.

In the motion for a new trial, the issue of prosecutorial misconduct was addressed, but not these specific comments. As such, Peschong would concede that the court should examine this issue under a plain error standard. While the argument could be made that counsel statement after closing that the prosecutor's argument in direct closing was "misleading" was an objection, the trial court did not make a ruling and the objection was not made contemporaneously to the argument being made so that the trial court could attempt to correct it at the time. But even under a plain error standard, the comments raise to level of egregiousness that warrants reversal, especially when considered in light of the lack of evidence against Peschong and the timing of the prosecutors' statements.

### C. Analysis

Prosecutorial misconduct in closing arguments rises to the level of plain error only if it is “flagrantly, glaringly, or tremendously improper.” *People v. Avila*, 944 P.2d 673, 676 (Colo.App.1997)(quoting *People v. Vialpando*, 804 P.2d 219, 224 (Colo.App.1990)). Claims of improper argument must be evaluated in the context of the argument as a whole and in light of the evidence before the jury. *See People v. Raehal*, 971 P.2d 256 (Colo.App.1998). The prosecution is afforded considerable latitude in replying to opposing counsel's arguments. *Vialpando, supra*. Moreover, a defendant's failure to object suggests, that at least at the time the comment was made, “the live argument was not overly damaging.” *People v. Krutsinger*, 121 P.3d 318, 324 (Colo. App. 2005) quoting *Avila, supra*, 944 P.2d at 676.

It is one thing to argue inferences, but it is quite another to fabricate stories to paint the defendant in a light that is untrue, not based on any evidence that has been presented, and is contrary to what the prosecutor knows to be true.

The prosecutors knew Willmann had pled guilty to manufacturing 144 grams of methamphetamine when they made their closing arguments to the jury. Ms. Chase was the prosecutor who signed Willmann's plea agreement form. The exhibit had been tendered and rejected already. (R.Tr. 9/24/19, pg.

289, ln. 22-24; pg.297, ln. 3 – pg. 307, ln. 8). The facts demonstrate that Willmann was not a small-time drug user nor a simple possessor of only 3 grams of meth for his own personal use, as Ms. Chase indicated to the jury in her closing argument. Rather, Willmann was a convicted manufacturer of 144 grams of methamphetamine, something Peschong was not at the time the prosecutors were calling him a “drug dealer”. Yet in their zeal to obtain a conviction, the prosecution told the jury a fictional story, not based upon evidence, but concocted from some television show type scenario of what they thought a jury would believe.

The prosecution went forward with their argument, depicting Willmann in the false light of an innocent taken advantage of by a terrible “drug dealer.” Willmann was painted as a poor drug user just driving the “drug dealer” around, the one who was getting his supply from his passenger, Peschong. Yet there was zero evidence for this portrait. The facts that the prosecution knew at that time, that had already been admitted to by Willmann, freely, voluntarily, intelligently, and knowingly, was that Willmann was the manufacturer of 144 grams of methamphetamine. Yet the prosecution kept that evidence from the jury.

All that was put before the jury was that Peschong had been one of two passengers in the back seat of the car Willmann had been driving when it was stopped and impounded by the police and 144 grams of methamphetamine had been found in a zipped up, black, opaque bag that was located either under the front passenger seat or on the floor between the two backseat passengers. There was no other evidence that tied the black package to Peschong other than it was in the same vehicle as he had been a passenger that evening. The prosecution's statements improperly portrayed Peschong as a "drug dealer", being driven around by a drug user that Peschong was supplying, when there was no evidence to support either contention. The prosecution knew that the driver was already a convicted manufacturer of those very drugs, yet in a dishonest manner told the jury that Willmann only possessed the 3 grams that were under the driver's seat.

Then, adding to the prosecution's argument a final twist of facts in an improper manner, the prosecutor told the jury towards the end of his rebuttal closing that by Peschong leaving the scene, *as he was directed to do by the police*, that he was demonstrating "consciousness of guilt". The exact argument from the prosecutor was as follows:

“He got caught. He got caught possessing 144 grams of meth. He got caught having the people he pedals his meth to, the addicts, drive him around. And he certainly showed his consciousness of guilt when he left the scene on foot on a January night.”

(R.Tr. 9/24/19, pg. 351, ln. 19-23).

Walking a few blocks to a friend’s home, instead of standing around a traffic stop, on a freezing cold January night, after being told to leave by the police, now demonstrates “consciousness of guilt” according to El Paso County prosecutors. Consciousness of guilt means, “Proof that after the charged crime the accused acted in ways apparently calculated to avoid detection, arrest, prosecution, or conviction [that] is often relevant in suggesting a guilty mind.” Christopher B. Mueller & Laird C. Kirkpatrick, *Federal Evidence* § 85, at 420 (1994). Peschong had stood around for over 20 minutes already to see if they were going to let him drive the car to his friend’s house. He was not fidgety or nervous, apparently didn’t try to re-enter the vehicle to obtain anything. He did not run from the scene. Yet the prosecutor used this legal phase to tell the jury that Peschong’s actions demonstrated that he was guilty of the offenses charged. Peschong exercised his right to leave, as he had been told to do by the police, as he was not being detained.

A prosecutor should not intentionally misstate the evidence or mislead the jury as to the inferences it may draw from that evidence, *Domingo-Gomez*, 125 P.3d 1043, 1049 (Colo. 2005). Prosecutors “have a higher ethical responsibility than other lawyers because of their dual role as both the sovereign's representative in the courtroom and as advocates for justice.” *Id.* Because prosecutors represent the State and the People of Colorado, “their ‘argument is likely to have significant persuasive force with the jury.’ ” *Id.* (quoting ABA Standards § 3-5.8 cmt.). Rebuttal closing is the last thing a juror hears from counsel before deliberating, and it is therefore foremost in their thoughts.” *Id.* at 1052. *People v. Buckner*, 2022 509 P.3d 452, 460 (Colo. App. 2022).

In this case, the prosecutors took the thinnest of cases and spun a false narrative around inferences and untruths to obtain a conviction against Peschong. The only evidence the State had against Peschong was that he was a passenger sitting in the back seat of a vehicle where 144 grams of methamphetamine was found in black, opaque, sealed bag. This bag was located either stuffed up under the front passenger seat or on the floorboard between the two back passenger seats. The prosecution had no more evidence that the drugs belonged to Peschong than any other occupant of that

vehicle, certainly not any more than the other passenger in the backseat of the vehicle, and not more than Willmann, who had already pled guilty to manufacturing the 144 grams of methamphetamine. Yet the prosecution called Peschong repeatedly a “drug dealer,” told the jury that Willmann only possessed 3 grams of meth, when they knew he had already pled guilty to manufacturing 144 grams of methamphetamine, and then, right before the jury was sent back to deliberate, told the jury that Peschong walking a few blocks to his friend’s house, showed “consciousness of guilt.”

The arguments of the prosecutors in this case during closing arguments were flagrantly, glaringly, or tremendously improper and when viewed in the light of the evidence, can only be found to have contributed to Peschong’s convictions. The court should find that the comments made by the prosecutors here amount to plain error and reverse the convictions of Peschong.

III. The prosecution presented insufficient evidence to prove the charges against Patrick Peschong beyond a reasonable doubt.

A. Standard of Review

A court reviews sufficiency of the evidence claims de novo. *McCoy v. People*, 442 P.3d 379, 382, 389. (Colo. 2019). “The prosecution has the burden of establishing a prima facie case of guilt through the introduction of sufficient evidence at trial. The appellate court must review the record to determine whether the evidence presented to the jury was sufficient in both quantity and quality to sustain a conviction. In making this determination, the court will consider whether the relevant evidence, both direct and circumstantial, when viewed as a whole and in the light most favorable to the prosecution, is substantial and sufficient to support a conclusion by a reasonable mind that the defendant is guilty of the charge beyond a reasonable doubt. And although the court will give the prosecution the benefit of every reasonable inference that may fairly be drawn from the evidence, those inferences must be supported by a logical and convincing connection between the facts established and the conclusion inferred. A verdict cannot rest on guessing, speculation, conjecture, or a mere modicum of relevant evidence.” *McBride v. People*, 511 P.3d 613, 619 (Colo. 2022)(internal citations omitted).

#### B. Citation to the Record and Preservation for Review

At the close of the prosecution’s case in chief, the defense moved for a judgment of acquittal. The defense argued the prosecution could not prove

anything more than Peschong was in the proximity to a black bag, in a vehicle he was not operating or owned, that turned out to have 144 grams of methamphetamine in it. The prosecution presented no evidence, even when viewed in the light most favorable to the prosecution, tying Peschong to the bag other than he was in proximity to it. The trial court denied the motion for a judgement of acquittal. (R.Tr. 9/24/19, pg.273, ln. 22 – pg, 274, ln. 22).

In closings, the defense again argued that the prosecution had not met its burden of proof beyond a reasonable doubt that Peschong was in possession of the bag (People’s Ex. #10) that contained the 144 grams of methamphetamine (Exh. #14, #37, #39) for which he was charged.

The issue was sufficiently preserved for appellate review.

### C. Analysis

Other than the prosecution repeatedly claiming that Peschong had 144 grams of meth “between his feet,” the State presented no evidence actually tying Peschong to the drugs that were found in the vehicle that was stopped on January 22, 2018.

The methamphetamine that was recovered was in a glass jar and a baggie in a black, opaque “lunch pail,” which was really a zippered, insulated bag. If a person did not know what was in the black bag, it would not be

readily apparent because the bag was not see-through. (See People's Exhibit #10- photo of the bag). The bag had a very large pull tab on the zipper that the police could have checked for fingerprints, yet there was no testimony of any attempts to collect fingerprints. Also, the glass jar with the methamphetamine in it would most likely have fingerprints on it, yet, also no testimony of attempts to collect fingerprint evidence from that jar was entered.

The prosecution did not offer any evidence that Peschong was nervous or tried to run from the police. In fact, the police officers testified that Peschong voluntarily provided his driver's license, he stayed on scene and spoke with the officers. He told Officer Ingram that he had been coming from the Walmart store on Razorback and was going to Stormie's (the other backseat passenger) house on West Cucharras. Officer Ingram confirmed West Cucharras was not far from the location of the traffic stop. He did not appear nervous or fidgety or upset. After offering to drive the vehicle to Stormie's house, since he had a driver's license, and being told that that would be up to officer who stopped the vehicle, he had no reaction. After waiting to hear about the car, he was told he was free to leave, with the officer stating, "Yes, I did. He was not detained, he was just in the vehicle, and he indicated that he just wanted to wait around to see what was to happen with the vehicle

in the event that it wasn't impounded." (R.Tr. 9/23/19, pg.222, ln. 7-pg. 224. Ln. 13). He did ask if he could drive the vehicle to his friend's house, but he didn't insist. He then left when told that he was free to leave, walking the few blocks to West Cucharras Street.

Other than the prosecutors repeatedly insisting these drugs were "between his feet," which was not the testimony of the officers, no one saw the bag between Peschong's feet, in his hands, in Peschong's possession in any way and the prosecution offered nothing more. When pressed about the "between his feet" statements the prosecutor kept trying to put in the officers' mouths, the following exchanges took place:

Counsel: Now, when you said a couple of times – referring to that lunch pail, you said "the lunch pail that was between Mr. Peschong's feet." And that was the words you used, rights?

Officer Spicuglia: Yes, sir.

Counsel: Now, you didn't actually see the lunch pail between Mr. Peschong's feet?

Spicuglia: The lunch pail was – when I found the lunch pail –

Counsel: Right

Spicuglia: -- I saw where Mr. Peschong was sitting.

Counsel: Right.

Spicuglia: I saw where his feet were.

Counsel: Right.

Spicuglia: And that's where the lunch pail was located, was found, when I picked it up.

Counsel: Okay. Mr. Peschong was out of the car when you found that lunch pail?

Spicuglia: When I found it, yes.

Counsel: So what I'm saying, you never actually – you just kept saying it was the lunch pail between his feet, but you never actually saw a lunch pail between his feet.

Spicuglia: The lunch pail was located where Mr. Peschong's feet were.

Counsel: Where his feet would have been, right?

Spicuglia: Yes

Counsel: And, in fact, you described the lunch pail as being half up underneath the passenger seat, the front passenger seat?

Spicuglia: Yes.

Counsel: So stuffed partially up underneath there?

Spicuglia: Yes.

Counsel: Again, along with all kinds of other stuff?

Officer Spicuglia: Yes.

(R.TR. 9/23/19, pg. 182, ln. 10 – pg. 183, ln. 23).

Later, when Officer Ingram, the second officer on scene, described the location of the “lunch pail” type container in the vehicle differently:

DA: Okay. And so this is the bag that was found at Mr. Peschong's feet. Is that fair?

Officer Ingram: Yes.

DA: Okay. And where exactly did you find the bag?

Officer Ingram: So that bag was in the floorboard area next to – in between the two rear passenger seats.

DA: Okay. So was it on the floor where Mr. Peschong was sitting?

Officer Ingram: Correct.

(R.Tr. 9/23/19, pg. 204, ln. 6-14).

No information was provided to tie Peschong to the vehicle other than he was a passenger in it. No information was provided to link Peschong to the bag with the drugs other than it was in the backseat area of the car, and even

where in the backseat area was not clear, as one officer said it was shoved up under the front passenger seat and another said it was in the floorboard area between the two back seats. No information was provided tying Peschong to the multitude of belongings that were piled up throughout the vehicle. The pictures of the vehicle demonstrated that there were a multitude of things that could have shown ownership or information about people in the vehicle. Receipts. Bags from McDonalds, Walmart, other stores were present in the car, but nothing to tie things to Peschong.

Counsel: And, as I said, in looking through all those boxes and paperwork and all that stuff, you never found any indication that Mr. Peschong was associated with that car in any way?

Officer Spicuglia: No, sir.

(R.Tr. 9/23/19, pg. 182, ln. 10-14).

There were four people in a car that was pulled over. There were drugs in the vehicle in all parts of the car. The driver had no license, driving a vehicle with no registration and no insurance. The front passenger had a warrant and a purse with drugs in it. The only thing presented to the jury tying Peschong to the drugs in the black, opaque bag that was found somewhere in the backseat area of the vehicle he was a passenger in, was that he was unlucky enough to be in the backseat of that vehicle.

The prosecution was required to prove beyond a reasonable doubt that Peschong knowingly possessed the methamphetamine contained within that black, opaque “lunch pail” with intent to distribute it in order to convict him of the charges against him. The prosecution did not prove he was in exclusive possession of that vehicle before he got into it. They did not prove that he had even ever been in the vehicle before it was stopped that night. The prosecution did not prove that he had the “lunch pail” package with him before he got into the vehicle, which they could have done, as they knew he was coming from a Walmart store. The prosecution could have easily obtained surveillance video from the Walmart at Razorback to see if he entered the store with a black “lunch pail” type package, or exited the store with one, or got into the vehicle with that bag or not. Walmart stores are known for their extensive security systems and cameras. There was no attempt to do this, even though when the original trial judge granted him a new trial, it was partially based on Peschong complaining that his trial attorney had not sought out the security footage from Walmart at *his* request because he believed it would provide exculpatory evidence. (R.Tr.1/31/20, pg. 12, ln. 20 – 13, ln. 9). The evidence could have been used by the

prosecution just as easily, but they had no interest in evidence tying Peschong to the bag with the drugs, other than saying the bag was “between his feet.”

Proximity, speculation and then just falsehoods made up the prosecution’s case in closing arguments. By the end of its case in rebuttal closing arguments, Peschong was a drug dealer being chauffeured around by the young, disheveled drug addict who only had 3 grams of meth on him, that he must have gotten from Peschong. Despite the prosecutor knowing full well that “disheveled young drug addict” was a thirty-something who had already pled guilty to manufacturing the 144 grams of methamphetamine that the prosecutor was now saying Peschong had also manufactured with intent to distribute. Walking a few blocks from the traffic stop, when the officer had told him he was free to leave, instead of calling an Uber, now “showed his consciousness of guilt when he left the scene on foot on a January night.”

“Verdicts in criminal cases may not be based on guessing, speculation, or conjecture,” and “a modicum of relevant evidence will not rationally support a conviction beyond a reasonable doubt.” *People v. Sprouse*, 983 P.2d 771, 778 (Colo. 1999). In this circumstance, where the defendant was not in exclusive possession of the car in which an object was found and there was no evidence aside from mere proximity linking the defendant to that object, a

conviction premised on knowing possession cannot stand. This is because any finding that the defendant knowingly possessed the object would necessarily be based on speculation. See *People v. McBride*, 490 P.3d 810, 820–21, (Colo. App. 2020) *rev'd and remanded*, 2022 CO 30, ¶¶ 58-59, 511 P.3d 613 (Colo. 2022).

The prosecution's arguments in closing were mostly speculation and, at times, fabrication. While knowing that Willmann, the driver of the vehicle had already pled guilty to manufacturing 144 grams of methamphetamine, the prosecutor still told the jury that he was just a "3 grams" possessing drug user who was simply driving a big-time 'drug dealer' around in the back seat of a car so he could do his business. The prosecutor knew this was not true, but made the argument anyway, just to convince the jury of a story and win a conviction.

The prosecution presented no evidence, direct or circumstantial, of any controlled substance being sold or distributed by Peschong, but the jury was convinced, nonetheless. There was no money found, no evidence of any drugs being sold, or even packaged for sale, or even scales to measure out drugs for sale, but still the jury convicted Peschong of distribution of a controlled substance.

Even when viewed in the light most favorable to the prosecution, the evidence in this case does not sustain the guilty verdicts rendered in this case. Proximity to a bag in a vehicle, without anything more, is not enough to prove knowing possession with intent to distribute, manufacture, or sell methamphetamine, a distribution of methamphetamine conviction, or even a simple possession charge. The court must reverse Peschong's convictions on these charges as the evidence presented was insufficient to sustain the convictions returned by the jury in this case.

IV. The court committed a reversible error when it incorrectly instructed the jury on the elements of the offense of distribution of a controlled substance.

A. Standard of Review

Unpreserved errors are subject to plain error review and if the error affects the substantial rights of the defendant, reversal is required if the court is persuaded, with fair assurance that the error so undermined the fairness of the trial itself to cast serious doubt on the judgement of conviction. *People v. Petschow*, 119 P.3d 495, 502 (Colo. App. 2004)

B. Citation to the Record

Jury instruction #16 was provided to the jury listing the elements that were to be proven for the charge of Distribution of Controlled Substance. The elements of the offense are the same as those listed in Jury Instruction #13, which were for the charge of Possession with Intent to Manufacture or Distribute a Controlled Substance. (Cf, pg. 143, 148). Defense counsel did not object to jury instruction #16 being given for the distribution charge. (R.TR. 9/24/19, pg.310, ln. 11 – pg. 313, ln. 17). Peschong concedes that the court should review the issue under a plain error standard of review.

### C. Analysis

Peschong was charged with one count of possession with intent to manufacture or distribute a controlled substance, one count of distribution of a controlled substance, and one count of possession of a controlled substance. (Cf, pg. 71-73). In the jury instructions listing the elements of the offenses for the jury, Instruction #13 lists the elements of the offense of possession of a controlled substance *with intent* to manufacture, dispense, sell or distribute. (Cf, pg. 143). Jury instruction #16, which in its heading indicates it lists “The elements of the crime of Distribution of Controlled Substance” then goes on to list the same elements as those listed for possession of a controlled substance with intent to manufacture, dispense, sell or distribute.

The charge of distribution of a controlled substance requires proof that the defendant “sold or distributed a controlled substance,” not just that he possessed a controlled substance with intent to sell it or distribute it. The elemental jury instruction provided for the charge of Distribution of a Controlled Substance was missing the required elements of “sold or distributed” the controlled substance. As instructed, the jury found Peschong guilty of two counts of possession of with intent to manufacture or distribute a controlled substance, when he was only charged with one count of that offense.

It is quite possible that the jury was not correctly informed as to the elements of the offenses because the prosecutor did not understand what charges had been brought against Peschong as well. In closing arguments, the prosecutor, in explaining the charges to the jury said, “The second charge is the same. The possession of a controlled substance with the intent to distribute.” (R.Tr. 9/24/19, pg. 332, ln. 23-24).

The due process clause of the United States Constitution protects the accused against conviction “except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.” *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 1073, 25 L.Ed.2d 368, 375 (1970). It

is the duty of the trial court to instruct the jury properly on all matters of law, *People v. Woods*, 501 P.2d 117 (Colo. 1972), and “the failure to do so with respect to the essential elements of the crime charged constitutes plain error.” *People v. Archuleta*, 503 P.2d 346, 347 (Colo. 1972). “Plain error occurs when the error so undermined the fundamental fairness of the trial itself as to cast serious doubt on the reliability of the judgment of conviction.” *People v. Kruse*, 839 P.2d 1, 3 (Colo.1992).

Without instructing the jury as to the essential elements of the offense of distribution of a controlled substance, namely that the controlled substance was “sold or distributed,” there is no assurance that the jury correctly convicted Peschong of the offense charged in count 2 of the information and complaint. Without the jury being correctly instructed on the actual elements of the charge, the conviction for distribution of a controlled substance cannot be deemed valid and proven beyond a reasonable doubt. The trial court’s error, even though trial counsel failed to object to the erroneous instruction, deprived Peschong of the due process of the law and holding the prosecution to the burden of proof beyond a reasonable doubt as to each and every element of the charge of distribution of a controlled substance before he was convicted of that crime.

Even under a plain error standard of review, Peschong's conviction for distribution of a controlled substance must be reversed as the jury was not correctly instructed as to the elements of the offense.

**CONCLUSION**

Based upon the issues and arguments raised herein, Patrick Peschong requests this court reverse his convictions and sentence and remand his case to the El Paso County District Court for a new trial.

RESPECTFULLY SUBMITTED this 1st day of January, 2024.

*/s/ Elizabeth A. McClintock* \_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

Counsel certifies that a true and correct copy of “Defendant-Appellant’s Amended Opening Brief” has been served upon the Office of the Attorney General by electronic service through the ICCES service on January 1, 2024.

/s/ Elizabeth A. McClintock  
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Attorney at Law