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SUPREME COURT
STATE OF COLORADO

2 East 14th Ave.
Denver, CO 80203

On Certiorari to the Colorado Court of Appeals, 2017CA2249
District Court, Mesa County, 17CR190

TIMOTHY ROBERT MCBRIDE,

Petitioner,

v.

THE PEOPLE OF THE STATE OF COLORADO,

Respondent.

▲ **COURT USE ONLY** ▲

Case No. 2020SC717

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PEOPLE'S ANSWER BRIEF

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 or C.A.R. 28.1, and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with the word limits set forth in C.A.R. 28(g) or C.A.R. 28.1(g).

It contains 6,733 words.

The brief complies with the standard of review requirements set forth in C.A.R. 28(a)(7)(A) and/or C.A.R. 28(b).

In response to each issue raised, the appellee must provide under a separate heading before the discussion of the issue, a statement indicating whether appellee agrees with appellant's statements concerning the standard of review and preservation for appeal and, if not, why not.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 or 28.1, and C.A.R. 32.

/s/John T. Lee

TABLE OF CONTENTS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

PAGE

CASES

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES

STATUTES

TABLE OF AUTHORITIES

OTHER AUTHORITIES

ISSUE GRANTED

Whether there is liability under section 42-4-206(1), C.R.S. (2020), where a vehicle's tail lamps emit any white light, regardless of whether they emit a red light plainly visible from a distance of five hundred feet to the rear.

INTRODUCTION

In enacting Part 4 of the Vehicle and Traffic Code, the General Assembly created an expansive list of regulations intended to put an end to conflicts which "lead to uncertainty in the movement of traffic on the state's highways and streets." § 42-4-102, C.R.S. (2021). As part of that effort, the law obligates all vehicles used on streets to contain different lights with designated colors. The law proscribes that all vehicles "must be equipped with at least one tail lamp mounted on the rear, which, when lighted as required in section 42-4-204, emits a red light plainly visible from a distance of five hundred feet to the rear. …" § 42-4-206(1).

As this case comes to the Court, there is no dispute that the defendant's tail lamps emitted white light. This case therefore turns entirely on the defendant's argument that the tail lamp statute must be understood as allowing an operator to use visible red light plus any other colors.

The text, context, and purpose of section 42-4-206(1) all foreclose the defendant's effort to argue the General Assembly's requirement that tail lamps emit red light somehow evidences an intent to authorize red light plus any other colors of the driver's choosing when the whole point of the traffic and vehicle code is to create uniformity. The statute's text is not silent as to whether it allows tail lamps to emit colors other than red—it explained what color is permitted when it required that tail lamps, when lighted, emit red light. Surrounding statutes underscore both that the General Assembly intended a tail lamp to emit just red light and that, when it wants to allow car lights to emit more than one designated color, it says so directly. And significantly missing from the defendant's argument is any explanation as to what purpose the statute

would serve under his interpretation. If the statute only requires some minor and visible red light but is unconcerned with the public safety advanced by predictable uniform standards and allows for the use of other colors—why would the General Assembly have required any particular color in the first place? This Court should reject the defendant's interpretation because it disavows the General's Assembly's intent and seeks to empty the statute of its purpose.

STATEMENT OF THE CASE

I. Factual background.

On January 31st, 2017, Deputy Gowley patrolled a Travelodge because it "had been identified as an area for illegal drug trafficking that had been happening." (TR 8/23/17, pp 246-47, 248:17-18; *see* TR 8/24/17, pp 8-9.) Deputy Gowley saw a silver Lincoln Town Car pull up to the Travelodge, park, and leave after staying for less than 10 minutes. (TR 8/23/17, pp 248-49.)

Deputy Gowley relayed his observations to Deputy Briggs, and she followed the vehicle. (TR 8/24/17, pp 19-24.) Deputy Briggs noticed

broken tail lamps on the car, and though it looked like red tape had been put over the lights, the "red tape was melted." (TR 8/24/17, p 13:2-4.) As a result, there was "some white light emitting from [] those bulbs." (TR 8/24/17, p 13:5.) The vehicle then went on a roundabout, and when it exited, the car did not use its turn signal. (TR 8/24/17, pp 13-14.)

Deputy Briggs advised Deputy Joseph Stratton that she had observed the car fail to signal as it exited the roundabout and that the car's tail lamps were broken. (TR 8/23/17, p 215:3-6.) When Deputy Bratton got behind the car, he also saw that the car's tail lamps were damaged with white light emitting from the tail lamps. (TR 8/23/17, p 215:3-13.) Deputy Stratton pulled the defendant's car over. (TR 8/23/17, pp 215-16.) After running the defendant's information, Deputy Stratton learned that the defendant had an active warrant for his arrest. (TR 8/23/17, p 217:11-14.)

Deputy Stratton asked the defendant to step out of his vehicle and then placed him under arrest. (TR 8/23/17, p 217:18-23.) A police dog

arrived at the scene and alerted to the presence of illegal narcotics inside the vehicle. (TR 8/23/17, p 218:12-14.) An officer searched the car and found a gun between the driver's seat and the passenger's seat. (TR 8/23/17, p 219:6-12.) He also found a baggie containing methamphetamine between the floorboards of the driver's side and the passenger's side. (TR 8/23/17, pp 223-24, 253:7-11; TR 8/24/17, p 16:13-19.)

II. Trial court proceedings.

The People charged the defendant with possession of a controlled substance, as a special offender, possession of a weapon by a previous offender ("POWPO"), tail lamp violation, and failure to signal for a turn. (CF, pp 12-13.) At trial, the defense argued that the drugs and gun belonged to the passenger and not the defendant. (TR 8/24/17, pp 133-34.) Following trial, the jury convicted the defendant of POWPO and the traffic offenses. (CF, pp 235-38.) The jury acquitted the defendant of possessing a controlled substance and therefore did not need to reach the special offender issue. (CF, p 234.) The trial court sentenced the

defendant to two years for POWPO and assessed monetary penalties for the traffic convictions. (CF, p 310; TR 10/19/17, p 23:4-13.)

III. Court of appeals' opinion.

On appeal, the court of appeals agreed with some of the defendant's arguments and rejected others. *See, e.g.*, *People v. McBride*, 2020COA111, ¶ 1. The court of appeals agreed with the defendant that Colorado law does not require a driver to use a turn signal when entering or exiting a roundabout. *McBride,* ¶ 37. The court also found that the evidence failed to prove he committed the crime of POWPO. *McBride,* ¶ 66.

The court of appeals rejected the defendant's argument that insufficient evidence supported his tail lamp violation misdemeanor because the law only required that his tail lamps emit *some* red light visible from 500 feet and permitted a tail lamp to show other colors, including white. *McBride,* ¶¶ 12-21. According to the court, a natural reading of the statute indicated that it required a tail lamp emit only red light. *Id.* at ¶ 14. "[A]llowing the use of additional colors would

detract from uniformity and uniform enforcement of the law." *Id.* Additionally, as another section required white light to illuminate the license plate, that statute indicated the law only allowed white light for that purpose. *Id.* at ¶ 15. And as other provisions showed that the General Assembly knew how to authorize more than one color light, those statutes demonstrated that when it used one color, it only meant that color. *Id.* at ¶¶ 16-17.

STANDARD OF REVIEW

Jury verdicts deserve deference and are entitled to a presumption of validity. *See, e.g., Mata-Medina v. People*, 71 P.3d 973, 983 (Colo. 2003). A court reviews questions relating to sufficiency of the evidence de novo. *People v. Rediger*, 416 P.3d 893, 904 (Colo. 2018); *accord Dempsey v. People*, 117 P.3d 800, 807 (Colo. 2005). In so doing, a reviewing court must determine whether the relevant evidence, when viewed as a whole and in the light most favorable to the prosecution, is sufficient to support a conclusion by a reasonable mind that the defendant is guilty of the charges beyond a reasonable doubt. *Oram v.*

People, 255 P.3d 1032, 1038 (Colo. 2011); *People v. Lehnert*, 163 P.3d 1111, 1115 (Colo. 2007); *see also People v. Gonzales*, 666 P.2d 123, 127 (Colo. 1983) (a reviewing court "may not serve as a thirteenth juror and determine what specific weight should be accorded to . . . the evidence . . . ."). Although sufficiency of the evidence claims do not require preservation, *see e.g., McCoy v. People*, 2019 CO 44, ¶ 27, the defendant moved for a judgment of acquittal below on all counts, and the trial court denied his motion.[1] (TR 8/24/17, pp 71:12-14, 73-76.)

The defendant correctly provides that statutory interpretation is also a question of law that is reviewed de novo. *See A.S. v. People*, 2013 CO 63, ¶ 10; *People v. Cross*, 127 P.3d 71, 73 (Colo. 2006). The purpose underlying such review is to effectuate the General Assembly's intent. *Cross*, 127 P.3d at 73. To that end, this Court must consider the language of the applicable statutory provisions as a whole to accord a consistent, harmonious, and sensible effect. *See A.S.*, 2013 CO 63, ¶ 10.

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[1] In his motion for acquittal, the defendant did not make any specific arguments challenging his charge for violating the tail lamp statute.

SUMMARY OF THE ARGUMENT

This case raises the question of what the General Assembly intended, as part of its effort to create uniform traffic and vehicle standards, when it enacted a statute governing the color of tail lamps. The defendant claims that in requiring tail lamps emit visible red light, the General Assembly intended to allow tail lamps to emit other colored lights so long as it displays some visible red light as well. But the mere articulation of that reading should raise red flags. The General Assembly's use of "red" in no way evinces an intent to authorize colors other than red.

The court of appeals' decision should be affirmed on the threshold ground that the defendant does not present a reasonable alternative interpretation of the tail lamp statute and its red light requirement. The defendant's only argument is that the court of appeals erred because the statute is susceptible to one reading. According to the defendant, because the statute is silent as to whether it requires only red light, it mandates that a tail lamp emit some red light, and it

therefore otherwise allows for the display of any other colors. But the statute's language and the statutory context all establish that the General Assembly intended tail lamps to emit only red light.

In any event, an unreasonable reading of a statute provides no basis for a court to depart from the General Assembly's plain intent. The defendant's interpretation voids the statute of the General Assembly's intent as the whole purpose of the vehicle code is to create uniform regulations because predictability promotes public safety on roadways. The problems with the defendant's reading does not stop there. As the court of appeals found, the defendant's interpretation also leads to enforcement concerns. On all fronts, therefore, the defendant's claim fails.

While the People urge that there is just one interpretation of the statute that effectuates the General Assembly's intent, under either construction before the Court, the evidence supports the jury's verdict. Under the correct application of the statute, there is no disputing the defendant's guilt because the uncontroverted evidence established his

tail lamps emitted white light. Even under the defendant's reading, the evidence supports the jury's verdict as the jury could have found that one or both of the defendant's tail lamps did not emit red light visible from 500 feet.

ARGUMENT

I. The General Assembly intended uniform vehicle standards and that tail lamps emit only red light.

The court of appeals correctly held that the statute requires tail lamps emit only red light. Despite the defendant's arguments to the contrary, the most natural reading of the statute's requirement that tail lamps must emit red light is that it requires red light and not red light plus other colors. The defendant's interpretation also frustrates the purpose of the act. Because the purpose of requiring a particular color was to create uniformity and predictability, the defendant's reading allowing for drivers to display colors in addition to red frustrates the purpose of the statute. Interpreting the statute as allowing only red light is essential to the sensible need for uniform and predictable standards on roadways.

A. The plain language of the statute controls this case.

Since the enactment of the 1935 Uniform Traffic Code, and for more than 85-years, Colorado law steadfastly required tail lamps emit red light. *See* Ch. 16, § 244 C.S.A. (1935); *see Webb v. City of Black Hawk*, 2013 CO 9, ¶ 22 (the "General Assembly enacted the Uniform Motor Vehicle Law ("Uniform Law") in 1935, the first comprehensive traffic regulation aimed to set statewide traffic standards."). As the court of appeals correctly held, the plain language of that statute is controlling and it requires tail lamps emit only red light.

1. The court of appeals correctly read red to mean red and not red plus other colors.

The General Assembly's intent is plain on the face of the statute. As with any statute, this Court strives to adopt a construction that best gives effect to the legislative purposes, and "[i]n doing so, [its] starting point is the plain meaning of the language used." *Romanoff v. State Comm'n on Jud. Performance*, 126 P.3d 182, 188 (Colo. 2006); *see also* § 2-4-101, C.R.S. (2021); *State v. Nieto*, 993 P.2d 493, 500 (Colo. 2000)

(recognizing that courts "must refrain from rendering judgments that are inconsistent" with the General Assembly's intent when construing a statute). The court of appeals correctly observed that giving section 42-4-204's "words their plain and ordinary meanings, the statute signifies that tail lamps must shine only red." *McBride*, ¶ 14. The statute unambiguously provides that any motor vehicle operated on the road "must be equipped with at least one tail lamp mounted on the rear, which, when lighted as required in section 42-4-204, emits a red light plainly visible from a distance of five hundred feet to the rear." § 42-4-206(1).

This Court has explained time and again that it will not create an exception to a statute that the plain language does not suggest or demand. *See Slack v. Farmers Ins. Exchange*, 5 P.3d 280, 284 (Colo. 2000); *see also In re Marriage of Chalat*, 112 P.3d 47, 54 (Colo. 2005) ("We will not read in a statutory exception to pre-1991 postsecondary education support order modifiability that the General Assembly opted not to include."); *People v. MacLeod*, 176 P.3d 75, 76 (Colo. 2008)

(refusing to read exception into detailed statute). The defendant rests his reading of the statute on his supposition that the court of appeals incorrectly inserted the word "only" into the statute. In his view, therefore, the statute allows a tail lamp to emit red light or red light *plus* other colors. But it is his reading that seeks to add words by creating an exception to the statute's terms. "[W]hen the legislature speaks with exactitude, [this Court] must construe the statute to mean that the inclusion or specification of a particular set of conditions necessarily excludes others." *Lunsford v. W. States Life Ins.*, 908 P.2d 79, 84 (Colo. 1995). The statute provides that a taillight "emit[] red light." There was no need for the General Assembly to include the word "only" when the statute lists one color; specifically identifying one color necessarily excluded others. *See id.*; *Ceja v. Lemire*, 154 P.3d 1064, 1067 (Colo. 2007) (explaining that "[s]trained or forced statutory interpretations are disfavored.").

The statute's other terms further confirm that it requires only red light. *See Young v. Brighton Sch. Dist. 27J*, 2014 CO 32, ¶ 12 (a

"statutory term may be ascertained by reference to the meaning of words associated with it"). The statute provides that a tail lamp, "*when lighted* as required in section 42-4-204, emits a red light plainly visible from a distance of five hundred feet to the rear." § 42-4-206(1) (emphasis added). For its part, section 42-4-204 itself already dictates at what times vehicles "shall display lights." *See* § 42-4-204(1), C.R.S. (2021) (requiring the use of lighted lamps between "sunset and sunrise" and other times of insufficient light). The General Assembly could have omitted the "when lighted" language and written section 42-4-206 as just providing that a tail lamp, "*as required in* section 42-4-204, emits a red light plainly visible from a distance of five hundred feet to the rear." The inclusion of the "when lighted" language further reflects the General Assembly's intent to require that a tail lamp, "when lighted," emits only red light. *See, e.g.*, *People v. Hernandez*, 250 P.3d 568, 571 (Colo. 2011) (holding that although statute did not expressly state that a driver needed to provide their identification following an accident, that conclusion was logically implied by the language "of the statute,

which repeatedly and specifically refers to 'the driver.'"); *People v. McNeese,* 892 P.2d 304, 311 (Colo. 1995) (similarly holding that although the statute did not "expressly describe a culpable mental state," the implication of a mental state was necessary to give effect to the statutory requirements). The defendant's interpretation is therefore not only inconsistent with a natural reading of the statute's requirement, but it also asks this Court to improperly delete words from the statute. *See, e.g.*, *Slack*, 5 P.3d at 284 ("We construe a statute so as to give effect to every word, and we do not adopt a construction that renders any term superfluous.").

Although the statute is far from silent on whether it authorizes colors in addition to red, the defendant's argument stumbles even on that ground. A legislature cannot "be expected to specifically address each issue of statutory construction which may arise." *Albernaz v. United States*, 450 U.S. 333, 341 (1981). A court should avoid "read[ing] much into nothing." *See id.* As the General Assembly required that a

tail lamp emit red light, there was no need to further pontificate that a tail lamp should display red and not red plus other colors.

2. The General Assembly knew how to authorize more than one color, and when it wanted to, it did so expressly.

Moreover, as the court of appeals explained, when the General Assembly wants to allow different colors, it says so directly. The General Assembly could have drafted a statute along the same lines as the defendant proposes. Indeed, it did so in several different traffic code provisions. Section 42-4-215(1), C.R.S. (2021), requires vehicles to have stop lamps on the rear that "display a red or amber light, or any shade of color between red and amber" when the driver applies the brake. *See also Lombard v. Colorado Outdoor Educ. Ctr., Inc.*, 187 P.3d 565, 571 (Colo. 2008) ("Generally, we presume the disjunctive use of the word 'or' marks distinctive categories."). Several other provisions in the statutory scheme likewise make clear that the General Assembly's choice of language was purposeful. *See UMB Bank, N.A. v. Landmark Towers Ass'n, Inc.*, 2017 CO 107, ¶ 22 (directing that this Court looks to the

entire statutory scheme in order to give consistent, harmonious, and sensible effect to all of its parts and "must respect the legislature's choice of language"). Section 42-4-215(2), section 42-4-215(7), section 42-4-215(8), and section 42-12-204—all expressly allow for alternative or mixed lights. *See* § 42-4-215(2), C.R.S. (2021) (requiring vehicles to have flashing turn signal lamps in the front "display[ing] a white or amber light, or any shade of color between white and amber" and in the rear "display[ing] a red or amber light, or any shade of color between red and amber"); § 42-4-215(7), C.R.S. (2021) (permitting vehicles to have hazard lights on the front flashing "white or amber lights, or any shade of color between white and amber" and on the rear flashing "amber or red lights, or any shade of color between amber and red"); § 42-4-215(8), C.R.S. (2021) (permitting vehicles to have up to three identification lamps in the front and up to three such lamps in the rear, with any front lamps "emit[ting] an amber light" and any rear lamps "emit[ting] a red light"); § 42-12-204, C.R.S. (2021) (permitting street-rod or custom vehicles to use "blue dot tail lights" (red lamps with blue or purple

inserts) for stop lamps, rear turn signal lamps, and rear hazard lamps); *see also* § 42-4-238(1), C.R.S. (2021) (prohibiting any vehicle, that is not an authorized emergency vehicle, from displaying "red or blue" light in front of the center of a vehicle). The fact that the tail lamp statute does not include these terms shows that the General Assembly intended tail lamps to only display red light. *See e.g.*, *Weinstein v. Colborne Foodbotics, LLC*, 2013 CO 33, ¶ 16 (finding that the legislature did not create a remedy that was not present in a statute because had the legislature intended to, it "could have done so"); *People v. Yascavage*, 101 P.3d 1090, 1096 (Colo. 2004) (rejecting an interpretation because had the legislature intended the proposed outcome, it presumably would have used a different word).

3. The surrounding statutory scheme confirms that the statute's plain text requires only red light.

Even if it was not otherwise clear that the General Assembly intended tail lamps to emit only red light, such an interpretation is necessary to give consistent and harmonious effect to the statutory

design. *See, e.g.*, *Young*, ¶ 11 ("[W]e read the statutory design as a whole, giving consistent, harmonious, and sensible effect to all of its parts"); *Mooney v. Kuiper*, 194 Colo. 477, 479, 573 P.2d 538, 539 (1978) (if separate clauses in the same statutory scheme may be harmonized by one construction, but would be antagonistic under a different construction, this Court "should adopt that construction which results in harmony rather than that which produces inconsistency"). As the court of appeals explained, "[a]nother subsection of section 42-4-206 requires "a tail lamp or a separate lamp" to illuminate the rear registration plate "with a white light." *McBride*, ¶ 15 (quoting § 42-4-206(3)). That provision further establishes that the General Assembly intended white lights only illuminate the rear plate. *See id.*

In short, the court of appeals correctly held that the plain language of the statute is clear and imposes the duty it says it does—that a tail lamp must emit red light. As a majority of other courts have held when construing similarly worded and motivated statutes, the text of the tail lamp requirement allows for the uniform display of red light.

See, e.g., *Williams v. State*, 853 P.2d 537, 538 (Alaska Ct. App. 1993) ("We ... interpret [the statute] to require that taillights emit only red light."); *Robinson v. State*, 431 S.W.3d 877, 879 (Ark. 2014) ("Th[e] statute does not contemplate a taillight that displays a white light in addition to a red light."); *State v. Patterson*, 97 P.3d 479, 482 (Idaho Ct. App. 2004) ("Based upon the plain reading of [the statutory sections, the defendant] violated Idaho law by driving with taillights that emit light of a color other than red."); *People v. Allen*, 90 A.D.3d 1082, 1085 (N.Y. App. Div. 2011) ("We hold that the statute requires a tail light to display only red light."); *see also Flood v. Mercantile Adjustment Bureau, LLC*, 176 P.3d 769, 772 (Colo. 2008) ("In construing a statute, we may consider persuasive authority of another jurisdiction."). Nothing in the text of Colorado's statute authorizes red light plus other lights of the driver's choosing.

B. Reading the statute as requiring red light and no other colors is necessary for the statute to serve its purpose of promoting public safety through predictability.

The defendant's reading is flawed in several respects, but its central problem is its failure to account for the General Assembly's intent in enacting the tail lamp statute as part of its efforts to create uniform standards on roadways. Reading the tail lamp statute as requiring a uniform standard that allows only red light is necessary to give effect to the General Assembly's intent.

1. The General Assembly's intent turned on creating a uniform standard.

Even if the statute is silent on whether it requires only red light, when "silence prevents a reasonable application of the statute, [this Court] still must endeavor to interpret and apply the statute to effectuate legislative intent." *Martinez v. People*, 2020 CO 3, ¶ 17 (internal quotations omitted); *accord In re 2000–2001 Dist. Grand Jury*, 97 P.3d 921, 924 (Colo. 2004); *see People v. Mosley*, 397 P.3d 1122, 1126

(Colo. App. 2011), *aff'd*, 2017 CO 20. To that end, this Court has "not hesitated to abjure literal definitions when such definitions would defeat legislative intent." *City of Westminster v. Dogan Const.* Co., 930 P.2d 585, 592 (Colo. 1997); *see Danielson v. Castle Meadows, Inc.,* 791 P.2d 1106, 1113 (Colo. 1990) (no formalistic rule of grammar or word form should stand in the way of carrying out legislative intent); *People v. Hale,* 654 P.2d 849, 850 (Colo. 1982) (where literal interpretation clearly not contemplated by legislature it will not be adopted); *Frohlick Crane Service v. Mack,* 182 Colo. 34, 37, 510 P.2d 891, 892 (1973) (definition that exalts "form over substance" and overrides obvious legislative intent will not be followed). "Instead, in such a situation we have considered the consequences of a proposed construction and have adopted constructions that will achieve consequences consistent with legislative intent." *Martinez*, ¶ 17. Applying those principles here, there is no availing reason to believe that the General Assembly intended to require that tail lamps emit just some red light plus other lights of the driver's choosing.

The General Assembly intent in enacting the vehicle code was simple and straightforward. *See, e.g.*, *State, Dep't of Lab. & Emp. v. Esser*, 30 P.3d 189, 195 (Colo. 2001) ("When construing legislative intent, [this Court] consider[s] legislative declarations of purpose."). Section 42-4-102 provides that the General Assembly deemed enacting the vehicle and traffic code necessary because of "the many conflicts which presently exist between the state's traffic laws and many of the municipal traffic codes, which conflicts lead to uncertainty in the movement of traffic on the state's highways and streets." Those conflicts extended to the "large influx of traffic from many areas," and the lack of uniformity between the laws of this state and other states. *See id.* The General Assembly, therefore, declared that "the purpose of this article [is] to alleviate these conflicts and lack of uniformity by conforming, as nearly as possible … with the recommendations of the national committee of uniform traffic laws and ordinances as set forth in the committee's 'Uniform Vehicle Code.'" *Id.* Colorado's tail lamp red light requirement mirrors that of the Uniform Vehicle Code. *See, e.g.*, UVC, §

12-204(a) (1956)[2] (providing that a tail lamp "shall emit a red light plainly visible from a distance of 500 feet to the rear").[3]

The whole purpose of both Colorado's law and the uniform code is to create just that—uniform standards. Indeed, the Uniform Vehicle Code, which the General Assembly expressly intended to join, provides additional evidence supporting the conclusion that the tail lamp requires a *uniform* standard allowing for just red light. As the foreword to the Uniform Vehicle Code explained, "[n]onuniform laws and ordinances are a source of inconvenience and hazard to the motorist and pedestrian alike." Model Traffic Ordinance, National Committee on Uniform Traffic Laws and Ordinances, p III (1962).[4] Requiring tail lamps to emit only red light creates the most uniform standard

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[2] Available at Colorado Supreme Court Library, KF 2228.3 N35

[3] The one difference is that the UVC provides that a vehicle "shall" be equipped with at least one tail lamp while Colorado's current statute provides that a vehicle "must" be equipped with at least one tail lamp. That difference should have no bearing here—as both terms set forth the same mandatory obligation.

[4] Available at Colorado Supreme Court Library, KF 2228.5 N35.

consistent with the General Assembly's intent. Mandating just some red light, along with any other colored lights of a driver's choosing, subverts the whole purpose of the statute. *Cf. People v. Wright*, 742 P.2d 316, 321 n.7 (Colo. 1987) ("In Colorado, the legislature has expressly stated that, as a matter of policy, traffic laws and enforcement throughout the state should be uniform." (citing § 42-4-102, C.R.S. (2019)).

2. Requiring only red light is necessary to protect the statute's goal of promoting public safety.

In arguing against a uniform standard, the defendant's interpretation also thwarts the goal of public safety that the uniform standards protect. Colorado law mandates that a vehicle's front lamps emit "white or amber" light. § 42-4-215(2). As the court of appeals reasoned, requiring tail lamps emit only red light creates "uniformity of lighting helps drivers ascertain what direction a car is facing and whether it is backing up." *McBride,* ¶ 18. A driver knowing that white lights should not be shining towards him at night will know to react to a driver driving the wrong way or backing up in reverse. *See id.*; *see also*

Allen, 90 A.D.3d at 1085 (rejecting an interpretation similar to the defendant's because "the safety aspects of the equipment statute can only be fully realized if taillights are entirely red and backup lights are white"); *Williams*, 853 P.2d at 538 (likewise rejecting an interpretation similar to the defendant's because "highway safety would be jeopardized: drivers would not have an unambiguous visual cue to help them recognize when another vehicle was backing up"). "Permitting vehicles to emit white light (even if mixed with red) from tail lamps could therefore lead to confusion and accidents." *McBride*, ¶ 18; *see also Gallagher Transp. Co. v. Giggey*, 101 Colo. 116, 120, 71 P.2d 1039, 1042 (1937) (drivers have a "right to assume" other vehicles will be lawfully lighted).

3. This Court's precedent supports reading the statute in the way that protects public safety.

The defendant's interpretation also clashes with this Court's precedent. In *People v. Brant*, 252 P.3d 459, 463 (Colo. 2011), this Court held that a broken taillight alone justified a traffic stop under section

42-4-206. As this Court never addressed what colors the tail lamps were emitting—that holding appears to have accepted that the statute requires tail lamps conform to a uniform and unbroken standard. More fundamentally, this Court's precedent recognizes that concerns about public safety are at the center of traffic laws. *See, e.g.*, *People v. Lessar*, 629 P.2d 577, 579-80 (Colo. 1981) (rejecting an interpretation of a statute that would "vitiate the public safety purposes of the Uniform Traffic Code"); *see People v. Purvis*, 735 P.2d 492, 493-96 (Colo. 1987) (applying *Lessar*'s reasoning); *accord Colorado Dep't of Revenue, Motor Vehicle Div. v. Brakhage*, 735 P.2d 195, 196-97 (Colo. 1987) (same). Interpretations that defeat the public safety interest inherent in driving legislation are "unreasonable" and should not be adopted. *See Brakhage*, 735 P.2d at 496; *Purvis*, 735 P.2d at 496; *Lessar*, 629 P.2d at 580. In asserting that a driver may use tail lamps with some red plus any other color or colors of that particular driver's choosing, the defendant proposes a rule that creates no real uniformity at all. As predictability through uniformity promotes public safety on roads, the

General Assembly would not have intended the rule the defendant proposes. *See, e.g.*, *Pringle v. Valdez*, 171 P.3d 624, 628 (Colo. 2007) (interpreting a broad construction of the term "pain and suffering" to "ensur[e] that the seatbelt defense provision fulfill the legislature's purpose to encourage the mandatory use of seatbelts and cannot be nullified through artful pleadings); *see also People v. Disher*, 224 P.3d 254, 255 (Colo. 2010) (refusing to interpret statute in a way that "would restrict the scope of the statute").

C. The defendant's arguments in support of his contrary reading are unavailing.

Although the defendant relies heavily on a minority of courts that he contends are "better reasoned," those cases provided little persuasive help to his argument here. In two of those cases—the prosecution never even argued that their respective state statute only required red light. *See Vicknair v. State*, 670 S.W.2d 286, 287 (Tex. App. 1983) ("The State concedes in its brief that the evidence would be insufficient to sustain a conviction for the taillight violation. Furthermore, the State cites not a single case upholding a search under these circumstances."), *aff'd*, 751

S.W.2d 180 (Tex. Crim. App. 1986); *Doctor v. State*, 596 So.2d 442, 446-47 (Fla. 1992) (explaining that the prosecution argued the applicable Florida law prevented "malfunctioning equipment, even if the equipment is not required by statute, poses no safety hazard, or otherwise violates no law."). In the remaining case—the court reached its conclusion that the statute allowed for red plus any other color light without any analysis other than remarking that its statute did not use the word "only." *See Kroft v. State*, 992 N.E.2d 818, 822 (Ind. Ct. App. 2013). In any event, those cases never addressed whether their interpretations made any sense given what their respective legislatures intended. What matters most here is that our General Assembly has made its declaration clear—the purpose of the code was to avoid conflicts and create uniformity. That end can only be accomplished if Colorado's tail lamp statute requires what its language indicates—that all tail lamps emit red light alone.

The defendant points this Court to section 42-12-204(1) as support for his reading, but that comparison favors the court of appeals'

interpretation. According to the defendant, "section 42-12-204(1), C.R.S., calls into question the division's idea that color specification implies an 'only.'" Opening Br. at 12. But that statute provides a "blue dot light" means a red lamp installed in the rear of a motor vehicle containing a blue *or* purple insert." § 42-12-204(1) (emphasis added). As that section shows, when the General Assembly wants to allow for more than one color, it specifies that it allows more than one color.

The defendant observes that the court of appeals' "rule would hold drivers liable even when they have repaired their tail lamps [with tape]." Opening Br. at 13. He hypothesizes that "[t]his Court should not require Coloradans to replace expensive plastic lenses when red repair tape can do the job." Opening Br. at 14.

Either as a freestanding policy argument or as an explanation of the General Assembly's intention, that argument bears little weight. As the statute requires tail lamps emit red light, a person would only violate it when the red tape melted or was otherwise compromised, which means it was not "do[ing] the job." As driving involves a costly

and dangerous activity, much of the code imposes regulations that could incur costs to ensure compliance. *See, e.g.*, § 42-4-207, C.R.S. (2021) (requiring four clearance lamps); § 42-4-208, C.R.S. (2021) (requiring a stop light in good working order); § 42-4-223, C.R.S. (2021) (requiring every motor vehicle be equipped with "adequate" brakes); § 42-4-229(1), C.R.S. (2021) (requiring all vehicles be equipped with safety glazing materials); *see also generally* § 42-3-102, C.R.S. (2021) (setting forth authority for requiring yearly registration fees). But even among those costs, having to pay for non-broken replacement taillamps is not necessarily a comparatively significant one. *Cf.* https://www.carparts.com/tail-light-lens/replacement/11-1282-09 (listing the price for a replacement light at $11.99) (last visited 12/28/2021).

Finally, as the court of appeals explained, the defendant's arguments and interpretation are problematic because they raise potential enforcement challenges. *See McBride*, ¶ 14. Under the doctrine of constitutional doubt, "courts should construe ambiguous statutes to avoid the need even to address serious questions about their

constitutionality." *Rocky Mountain Gun Owners v. Polis*, 2020 CO 66, ¶ 74 (quoting *United States v. Davis*, —— U.S. ——, 139 S. Ct. 2319, 2332 n.6 (2019)). Due process "demands that a penal statute establish standards that are sufficiently precise to avoid arbitrary and discriminatory enforcement." *People v. Graves*, 2016 CO 15, ¶ 17. The court of appeals expressed concern that "if a tail lamp shone a lot of white light with a smidge of red but could be perceived as faintly red at a 500-foot distance, that would introduce subjectivity on the part of police." *McBride*, ¶ 14. This concern further militates against the defendant's argument.

The defendant is left with his summary assertion that this Court should apply "the rule of lenity if the language is ambiguous." Opening Br. at 18. But as the text is plain that it does require a tail lamp emit just red light, the rule of lenity does not apply. *See, e.g., People v. Leske*, 957 P.2d 1030, 1042 (Colo. 1998) (rejecting application of rule of lenity when there was no ambiguity in the statutory text). In any event, "application of the rule of lenity is a last resort and will not be applied

when [a court is] able to discern the intent of the General Assembly." *Frazier v. People*, 90 P.3d 807, 811 (Colo. 2004). As the General Assembly's intent to create a uniform standard is clear, the rule of lenity is inapposite.

II. The evidence established that the defendant violated the tail lamp statute.

When reviewing the sufficiency of evidence, an appellate court must determine whether any rational trier of fact might accept the evidence, taken as a whole and in the light most favorable to the prosecution, as sufficient to support a finding of guilt beyond a reasonable doubt. *Clark v. People*, 232 P.3d 1287, 1291-92 (Colo. 2010); *People v. Sprouse*, 983 P.2d 771, 777 (Colo. 1999). "For purposes of review, it will be assumed that the jury adopted that evidence, or any reasonable inferences therefrom, which supports its verdicts." *Wilson v. People*, 143 Colo. 544, 548, 354 P.2d 588, 590 (1960); *see also, e.g.*, *People v. Crawford*, 230 P.3d 1232, 1237 (Colo. App. 2009). "[T]he sufficiency of the evidence is measured against the elements of the offense, not against the jury instructions." *People v. Vigil*, 251 P.3d 442,

447 (Colo. App. 2010) (quotation omitted); *see also Musacchio v. United States*, 136 S. Ct. 709, 715-16 (2016).

The defendant's challenge to the sufficiency of the evidence supporting his conviction for violating the tail lamp statute rests on his erroneous interpretation that it allows other color light so long as "some" red light is visible from 500 feet. There is no dispute that the evidence proved his tail lamps emitted white light. In addition, even under his interpretation of the statute, the evidence supports his guilt.[5] Based on the evidence presented, the jury could have inferred his tail lamps did not emit red light, viewable from 500 feet away.

A. The jury could have found the defendant's tail lamps emitted white light.

Under a correct reading of the statute, there is no disputing that the evidence fully supported the jury's verdict that the defendant

[5] In his brief, the defendant includes exhibits and discusses testimony presented at the suppression hearing. Opening Br. at 5-7. To the extent the defendant includes that discussion to support his position in this Court, those pictures and testimony were not presented at trial. They are irrelevant to any sufficiency of the evidence issue before this Court.

violated section 42-4-204. The uncontroverted evidence provided that the defendant's tail lamps emitted white light. (*See, e.g.*, TR 8/23/17, pp 215:6-12, 250:9-10; TR 8/24/17, p 13:4-5.) As the tail lamp statute requires the display of red light, the defendant's conduct violated the statute.

B. The jury could have found the defendant's tail lamps did not emit red light visible from 500 feet.

Under the defendant's reading, the evidence nonetheless still supported the jury's verdict. Deputy Stratton testified at trial that he observed "white light emitting from the rear of the car." (TR 8/23/17, p 215:6-12.) Deputy Gowley also testified that she saw the tail lamps emit "white light." (TR 8/23/7, p 250:9-13.) Neither ever testified that they saw red light. From that evidence, the jury could have concluded that Deputy Stratton and Deputy Gowley were only able to see white light. And the jury could have relied on that evidence in finding that the defendant's tail lamps did not display red light visible from 500 feet away.

While the defendant emphasizes that Deputy Briggs testified she saw some red light, she also testified that she was immediately behind the defendant's car. (TR 8/24/17, p 14:7-9.) Pictures of the car also showed that the red tape had melted. (People's Exs. 6 & 7.) Accordingly, even considering Deputy Briggs' testimony, as the exhibits showed that most of the red tape around the middle of the red tail lamp had melted and considering the other testimony presented at trial from Deputy Stratton and Deputy Gowley, the jury could have inferred that, from a distance of 500 feet, the tail lamps did not display visible red light. *See, e.g., People v. Perez*, 2016 CO 12 ("When conflicting evidence exists, the jury must be allowed to perform its historic fact-finding function.") (quotation omitted).

CONCLUSION

Based upon the foregoing arguments and authorities, the People respectfully request that this Court affirm the court of appeals' decision and the defendant's judgment of conviction for violation of the tail lamp statute.

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **ANSWER BRIEF** upon **JACOB MCMAHON** via Colorado Courts E-filing System (CCES) on January 3, 2021.

/s/ Tiffiny Kallina