Colorado Supreme Court 2 East 14th Avenue Denver, Colorado 80203	DATE FILED January 8, 2026 4:39 PM
Adams County District Court Honorable Teri Lynn Vasquez Case No. 2024CV030648	
Alexis Teran-Sanchez, Petitioner v. People of the State of Colorado, Respondent	COURT USE ONLY
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Petitioner's Consolidated Reply Brief and Opposition to Respondent's Motion to Strike

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28, 32, and 57. The undersigned specifically certifies that:

This brief complies with the applicable word limit set forth in C.A.R. 28(g). It contains 5,528 words. I acknowledge this brief may be stricken if it fails to comply with any requirement of the foregoing rules.

/s/ NoahLani Litwinsella
NoahLani Litwinsella

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

TABLE OF AUTHORITIES
(*continued*)

Page(s)

TABLE OF AUTHORITIES
(*continued*)

Page(s)

Other Authorities

Rules

INTRODUCTION

Mr. Teran Sanchez was convicted of multiple charges stemming from a car crash, all based on remarkably weak evidence. Notwithstanding notable gaps in the prosecution's case, the jury convicted after being given the 2023 Model Criminal Jury Instruction on reasonable doubt, which told the jury it need only be "firmly convinced" of guilt, and should acquit only if "there is a real possibility the defendant is not guilty."

This jury instruction unconstitutionally lowered the prosecution's burden. Multiple empirical studies show that potential jurors understand the instruction to allow conviction on a lower burden than required by the Constitution; some even understand it to shift the burden to a defendant to prove his own innocence. Opening Brief ("OB") at 20–28. Modern usage of the key phrases in the instruction—"firmly convinced" and "real possibility"—similarly suggests that modern jurors would understand those terms to imply a burden less than beyond a reasonable doubt. *Id.* at 28–33. And those problems were all the more apparent in Mr. Teran Sanchez's case in light of multiple statements made to the jury suggesting it could convict based on a "best guess," or even that it "need[ed]" to convict. *Id.* at 33–35.

The prosecution's response to all this is to ask the Court to turn a blind eye. The prosecution does not dispute the empirical studies' methodology, data, results, or analysis. Instead, it asks the Court to disregard those studies because they are not part of the trial record. *See generally* Motion to Strike ("Mot."); Answering Brief ("AB") at 28–29. But the studies do not deal with adjudicative facts that have to be established at trial. Instead, they are exactly the kind of social-science studies that this Court has referenced—and indeed, commissioned—when addressing legal questions. *See, e.g.*, *Medina v. People*, 114 P.3d 845, 853–55 (Colo. 2005). And even if this Court were to treat the studies as adjudicative evidence, they are properly subject to judicial notice.

Similarly, the prosecution does not dispute any of Mr. Teran Sanchez's examples of modern usage or provide contradictory examples. Instead, it says without elaboration that these sources are not "germane dialectal authority" and that the Court should instead look solely to "what case law says" the words in the jury instruction mean. AB at 25–26. But that is not the test: The constitutionality of a jury instruction is decided not by reference to what other judges and lawyers think of the instruction, but instead by asking how the instruction would be "commonly understood" by "modern jurors."

Cage v. Louisiana, 498 U.S. 39, 41 (1990); *Victor v. Nebraska*, 511 U.S. 1, 14 (1994). And because none of the cases on which the prosecution relies persuasively engage with evidence of modern usage of the terms in the instruction—much less empirical evidence about those instructions—the Court need not give them any weight. *See Medina*, 114 P.3d at 854 (declining to follow other courts' decisions on issues of jury behavior where the cases "do not provide empirical support for their . . . conclusions, but rather base their decisions . . . on possibilities and speculation").

This case boils down to what this Court should look to when deciding how "modern jurors would have understood" the 2023 model reasonable-doubt instruction. *Tibbels v. People*, 2022 CO 1, ¶¶ 33, 41–42. The prosecution insists this Court should answer that question solely by reference to cases—most of which are decades old—in which judges speculate on the answer to that question. That would require the Court to ignore unrebutted empirical evidence and modern usage showing that ordinary jurors interpret the instruction to unconstitutionally lower the burden. The people of Colorado deserve a more thorough analysis of a model instruction. This Court should deny the motion to strike and reverse.

ARGUMENT

I. The Court can and should consider the empirical evidence showing how ordinary jurors interpret reasonable doubt jury instructions.

The opening brief cites five academic studies that shed light on how ordinary jurors understand language used in the 2023 model reasonable doubt jury instruction. OB at 20–28. That includes a 2025 study demonstrating that the 2023 model instruction resulted in as high or higher conviction rates than the instructions ruled unconstitutional in *Tibbels* and *Cage*. *See* E. Paige Lloyd & Abigail J. Langeberg, *The effect of jury instructions on verdict thresholds and guilt perception* 1–2, 11–29 (2025) (Psy ArXiv preprint), https://doi.org/10.31234/osf.io/vrfs7_v1; OB at 20–25, 27–28. This study—along with other papers from 1996, 2016, 2017, and 2020, OB at 21–22, 25, 31—demonstrates that the 2023 reasonable doubt instruction unconstitutionally "lower[s] the prosecution's burden of proof below the reasonable doubt standard" and shifts the burden to criminal defendants to prove their innocence. *See Tibbels*, ¶ 22.

The prosecution offers no response at all as to the 1996, 2016, 2017, or 2020 studies. As to the 2025 study, it provides only a "cursory examination," limited to a single footnote, in which it contends without elaboration that the

study includes "debatable decisions regarding its methods, designs, and underlying premises." AB at 28 n.6. But the prosecution does not and cannot dispute any of the actual study data, including that 62.8% of those presented with the 2023 model instruction voted to convict, while only 52.2% and 59.8% voted to convict when presented with the *Cage* and *Tibbels* instructions, respectively. *See* OB at 23. Moreover, the prosecution does not and cannot dispute the significance of this difference—namely, that the 2023 instruction lowered the prosecution's burden below thresholds courts have already held to be unconstitutional.

Nor does the prosecution dispute that nearly 90% of these ordinary jurors interpreted the instruction's "real possibility" language to include a substantive requirement and more than 37% understood it to shift the burden to a defendant. *Id.* at 27–28. It does not dispute this data, when paired with a 1996 study, suggests that jury instructions with "real possibility" language similar to that used in the 2023 instruction leads to convictions at a lower-than-preponderance standard. *See* Irwin A. Horowitz & Laird C. Kirkpatrick, *A Concept in Search of a Definition: The Effects of Reasonable Doubt*

Instructions on Certainty of Guilt Standards and Jury Verdicts, 20 L. & HUM. BEHAV. 655 (1996); OB at 25–27.

Although the prosecution insinuates that counsel's role in catalyzing the 2025 study somehow weighs against its reliability, *e.g.*, Mot. at 2—again without any elaboration—it ignores the explicit disclosure that the academic authors "retained final control of the study design, analysis, and conclusions." OB at 22 n.2. The data speak for themselves, and the prosecution has no response on the merits.

Rather than address the substance of the multiple studies showing the flaws in the 2023 model reasonable doubt instruction, the prosecution instead asks this Court to stick its head in the sand and ignore the studies because they were not introduced by Mr. Teran Sanchez's state-appointed counsel in the trial court. *See generally* Mot.; AB at 28–29.

The Court should decline that invitation for three reasons. *First*, the studies are non-adjudicative evidence of the type that appellate courts regularly consult, regardless of whether it is in the record below. *Second*, even if the studies were adjudicative, they are the proper subject of judicial

notice. *Third*, sound policy warrants consideration of and reliance on the studies now to resolve this important constitutional question.

It Is Proper to Consider These Non-Adjudicative Studies. The studies here are academic papers that inform the constitutionality of the 2023 model instruction—not expert analysis of the facts adjudicated in Mr. Teran Sanchez's case. Appellate courts have accepted such evidence for over a century and do not require it to be part of the record below. Famously, in 1908, the U.S. Supreme Court relied on social science studies—introduced for the first time on appeal in a party brief filed by future Justice Louis Brandeis—to resolve a constitutional challenge. *See Muller v. Oregon*, 208 U.S. 412, 419 (1908).

This has been the case ever since. For example, in *Swidler & Berlin v. United States*, the U.S. Supreme Court cited empirical studies outside the trial-court record concerning the impact of a posthumous exception to the attorney-client privilege. 524 U.S. 399, 408-09, 409 n.4 (1998). Likewise, in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, the U.S. Supreme Court relied "extensively on nonrecord materials" to strike down a spousal-notice requirement to obtain an abortion. 505 U.S. 833, 891-93, 991 n.6 (1992).

Nor is this well-established principle limited to the U.S. Supreme Court. For instance, in *United States v. Hunt*, the Tenth Circuit relied on "studies and literature" in deciding an issue related to ballistics, reasoning that it could consider those materials because the "studies at issue do not address adjudicative facts peculiar to the specific case before us." 63 F.4th 1229, 1250 (10th Cir. 2023). Instead, the court explained, those studies "concern legislative facts that are applicable to a great many, and wide range of, cases" and "[w]hen the resolution of a dispute turns on legislative facts," an appellate court can consider those facts even if they were not "referenced in the district court and were subject to prior examination and dispute by all the parties." *Id.* at 1250–51.

This distinction between "adjudicative facts" (which generally must be first presented in the trial court) and "legislative facts" (which an appellate court can consider at any time) is borne out in the Colorado Rules of Evidence. *See* CRE 201(a) ("only" requiring "adjudicative" facts to be of record or noticed). As the advisory committee notes to the parallel federal rule explain, "[a]djudicative facts are simply the facts of the particular case"—the "who did what, where, when, how, and with what motive or

intent"—and are established at trial "through the introduction of evidence, ordinarily consisting of the testimony of witnesses." Fed. R. Evid. 201, 1972 advisory committee's note to subdivision (a). By contrast, "legislative facts"—which go to "legal reasoning and the lawmaking process, whether in the formulation of a legal principle or ruling by a judge or court"—need not be introduced in the record below. *Id.*

The prosecution misses this distinction entirely. Not one of the cases it relies on involved academic studies used to inform a constitutional analysis. Instead, at most, those cases involved introduction of adjudicative facts—the who did what and when—for the first time on appeal. *See, e.g.*, *People v. MacCallum*, 925 P.2d 758, 767 (Colo. 1996) (facts about statements to officers in the particular case improper on appeal when not part of the trial court's findings); *Linley v. Hanson*, 477 P.2d 453, 454 (Colo. 1970) (improper for appellate court to contradict trial court's finding on a party's particular acceptance of horses to take an oral contract out of the Statute of Frauds).[1]

[1] The other cases the prosecution cites all similarly revolve around adjudicative facts; none involve social-science studies going to legislative facts. *See Taylor v. Holland*, 506 P.2d 1249, 1251 (Colo. App. 1973) (determination on the facts of the reasonableness of a fee would not be disturbed on appeal); *In re Pet. of Edilson*, 637 P.2d 362, 364 (Colo. 1981)

Those cases have no bearing here, where the question is whether the Court can consider academic studies to help inform the resolution of a constitutional question.

The constitutionality of a reasonable-doubt jury instruction is a question of law. *Tibbels*, ¶ 22. And the studies here inform the question of an instruction's constitutionality rather than the "adjudicative facts peculiar to the specific case." *Hunt*, 63 F.4th at 1250. Specifically, they address how ordinary jurors understand the language of the 2023 model instruction. OB at 20–28 (citing studies). As other courts have recognized, such studies are

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(documents filed with appellate brief supporting argument that the court did not have to give full faith and credit to a California decree awarding custody due to lack of personal jurisdiction on the particular facts of the case improper); *McClellan v. Colo. Dept. Hum. Servs.*, 2022 COA 7, ¶¶ 25–30 (improper to consider agreement outside the record to adjudicate the validity of appellant's agreement with the state); *Panos Inv. Co. v. Dist. Ct. In and For Larimer Cnty.*, 662 P.2d 180, 182 (Colo. 1983) (declining to consider evidence introduced on appeal as to whether personal jurisdiction was satisfied on the facts of the particular case); *People v. Rubanowitz*, 688 P.2d 231, 241 n.5 (Colo. 1984) (excluding evidence about the distinctiveness of a group available for a jury in the particular case); *Rumnock v. Anschutz*, 2016 CO 77, ¶ 13 n.4 (evidence that a particular party's information was a trade secret improperly presented for the first time); *People v. Ray*, 2012 COA 32, ¶¶ 25–28 (denying request to supplement the record with occurrences from the specific trial below that were not recorded or filed); *Fendley v. People*, 107 P.3d 1122, 1125–26 (Colo. App. 2004) (unclear basis for trial court's decision in the case cannot be clarified on appeal).

useful in this context. *E.g.*, *Stoltie v. California*, 501 F. Supp. 2d 1252, 1261–62 (C.D. Cal. 2007), *aff'd* 538 F.3d 1296 (9th Cir. 2008) (citing empirical research in support of reforming reasonable-doubt instruction). Because all five studies go directly to the constitutionality of the law at issue—not the adjudication of any fact about Mr. Teran Sanchez's arrest or specific charges—this Court can and should consider them on appeal.

In the Alternative, Judicial Notice Is Warranted. Under Rule 201, a court may take judicial notice of facts "at any stage of the proceeding," either at the request of a party or on its own initiative, so long as the facts are "not subject to reasonable dispute" and are "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." CRE 201; *see also, e.g.*, *People In Interest of T.T.*, 2019 CO 54, ¶ 25 n.4 (taking judicial notice of facts relevant to resolving legal questions on appeal); *Colorow Health Care, LLC v. Fischer*, 2018 CO 52M, ¶ 29 n.4 (same).

The multiple studies presented in Mr. Teran Sanchez's opening brief are "not subject to [any] dispute." CRE 201. Each is a publicly available academic work, authored by identifiable and credible academic researchers, and employing a transparent and replicable methodology. Critically, the

prosecution does not dispute the reliability of the research methods, the reported data, the mathematical analysis, or the accuracy of the results in any of these studies. *See* Mot. at 4.

This Court has approved judicial notice of the type of undisputed empirical studies presented here. For example, in *In re Water Rights of Lazy D Grazing Association in Weld County*, the Court approved judicial notice of the substance of "scientific . . . scholarship" related to the impact of withdrawal from an aquifer on surrounding tributaries. 2024 CO 63, ¶¶ 25–26, 26 n.6. As the Court explained, a court may "consider information outside of the record in reaching its ultimate conclusions," as long as the information "is 'not subject to reasonable dispute.'" *Id.* at ¶ 23 (quoting CRE 201(b)). Here, because the prosecution does not dispute the reliability of the cited studies, judicial notice is proper.

Sound Policy Supports Consideration of These Studies Now. This Court has relied on—and even commissioned—empirical jury studies like these in the past when considering important constitutional questions. *See, e.g.*, *Medina*, 114 P.3d at 853–55 (discussing multiple empirical studies and noting that the Court "commissioned a study which . . . gathered empirical

evidence" from jury trials). Given the importance of the issues presented in this case, the same treatment is warranted here.

All five studies are available to the public. If the Court were to set one or more of these studies aside, it would come back in the next case. *See, e.g.*, *T.T.*, ¶ 25 n.4 ("To remand for a hearing to present the same [judicially noticed] information by testimony would be an unnecessary waste of judicial resources"). Whether these papers are presented in this case or the next would not change their data, methodology, results, or reliability in any way. Nor would prosecutors necessarily have the opportunity to cross-examine the independent academic authors who wrote these papers in the way the prosecution suggests. *See* Mot. at 4; AB at 28. Indeed, the prosecution does not assert that any of the independent academics involved in this research are retained experts whom a prosecutor would have the right to examine. Instead, their studies speak for themselves.

* * *

The prosecution provides no response to the substance of the jury studies because it has no response. Those studies demonstrate that, whatever judges in the past may have thought about language like that used

in the 2023 model instruction, ordinary jurors interpret that language to lower the prosecution's burden to an unconstitutional level. And the prosecution's argument that this Court should ignore this data is wrong on the law. The studies present non-adjudicative data that are appropriate for this Court to consider in resolving this case. Even if they are adjudicative, they are the proper subject of judicial notice. And sound policy counsels consideration of the studies. This Court should deny the prosecution's motion to strike and should consider the empirical literature demonstrating how the language used in the 2023 model instruction unconstitutionally lowers and shifts the prosecution's burden of proof.

II. Modern usage of "real possibility" and "firmly convinced" shows those phrases set a standard below reasonable doubt.

The conclusions from the jury studies align with evidence from another source that courts look to when assessing jury instructions: how terms in the instruction are used in "modern lexicon," and thus "how a modern jury would understand" those terms in the context of the jury instruction. *Victor*, 511 U.S. at 12–13.

Here, the phrase "real possibility" is used in modern speech to denote a *substantial* likelihood, and thus would be understood by jurors to indicate

that they could have acquitted Mr. Teran Sanchez only if there was a substantial likelihood he was *not* guilty, impermissibly flipping the burden of proof. OB at 29–31. And the phrase "firmly convinced" is used in modern speech to denote a level of certainty falling below "beyond a reasonable doubt." *Id.* at 31–33. Thus, a "modern jury would understand" both of those phrases to unconstitutionally lower the prosecution's burden of proof. *Victor*, 511 U.S. at 12–13.

The prosecution does not offer any competing argument as to modern usage. Instead, it tries to hand-waive all of this away by saying that plain-language uses of these phrases are not "germane dialectal authority"—presumably because they come from "television series" and "internet articles" rather than Westlaw. AB at 25-26. Rather than engage in this kind of "analyses of words or phrases," the prosecution says this Court should simply look to "what case law says" the words mean. *Id.*

That is asking the wrong question. The constitutionality of a jury instruction is decided not by reference to what other judges and lawyers think of the instruction, but instead by asking how the instruction would be "commonly understood" by "modern jurors." *Cage*, 498 U.S. at 41; *Victor*,

511 U.S. at 12–13. Ordinary modern jurors are not reading case law when deciding what phrases like "real possibility" and "firmly convinced" mean. *See Boyde v. California*, 494 U.S. 370, 380-81 (1990) (jurors do not "pars[e] instructions for subtle shades of meaning in the same way that lawyers might"). Instead, jurors are much more likely to interpret those phrases in line with how they are used in "modern lexicon," *Victor*, 511 U.S. at 12–13—that is, through reference to ordinary speech and usage of the kind the prosecution derides as being insufficiently "dialectal."

Finally, the prosecution suggests the discussion of modern usage in the opening brief is too "conclusory" to establish that ordinary jurors would understand terms in the instruction to "mean[] something other than what courts have said they mean." AB at 26. But the prosecution does nothing to substantively respond to the five pages of analysis and half-dozen examples addressing exactly that issue. *See* OB at 28–33. And in any event, the prosecution again misses the point: the question is not what "courts have said [certain words] mean," but instead how "a modern jury would understand" those words. *Victor*, 511 U.S. at 13–17.

The prosecution provides no analysis as to what ordinary, non-lawyer jurors would think of the 2023 model instruction. If anything, the prosecution's legalese-laden criticism of any sources other than "published case law," AB at 26, underlines the problem here: judges are not jurors, and judges cannot divine what ordinary jurors think solely by reference to case law ordinary jurors never read. Because the actual evidence of modern usage and common understanding demonstrates that jurors would have understood the instruction to lower the burden, this Court should reverse.

III. The case law on which the prosecution relies is of limited use here.

Rather than address the evidence as to what ordinary jurors think of the 2023 model instruction, the prosecution insists this Court should look solely to what other judges think of that instruction's language. But contrary to what the prosecution suggests, none of the opinions it cites from other courts assessing other instructions are "controlling" on this Court. AB at 10. And this Court should decline the prosecution's invitation to unquestioningly follow those cases because none of them persuasively engage with what ordinary, non-lawyer jurors would think of the instruction at issue here. *See* OB at 15–20; *see also Medina*, 114 P.3d at 854 (declining to

follow other courts' decisions on issues of jury behavior where the other "jurisdictions do not provide empirical support for their . . . conclusions, but rather base their decisions . . . on possibilities and speculation").

Take the case the prosecution relies on most heavily: *United States v. Taylor*, 997 F.2d 1551 (D.C. Cir. 1993). There, the trial court gave a reasonable-doubt instruction that differed from the 2023 model instruction in several respects but used two of the same phrases: "firmly convinced" and "real possibility." 997 F.2d 1551 at 1556. On appeal, the court held—more than thirty years ago—that the instruction did not violate due process. *Id.* at 1557–58. But in doing so, it relied solely on other courts' opinions on this issue. *See id.* (collecting and string-citing cases). At no point did the court discuss what ordinary, non-lawyer jurors would think of the instruction, much less address modern usage. It just relied on other judges' say-so.

The same is true of the Court of Appeals opinion the prosecution points to: *People v. Schlehuber*, 2025 COA 50. There, the court rejected a challenge to the use of "firmly convinced" and "real possibility" in the 2022 model instruction based on the court's determination that the language has been "approved by federal courts." *Schlehuber*, ¶ 30. The analysis centered

on assessing the "weight of authority" from other courts, and at no point did the court engage with sources other than judicial opinions to assess how ordinary jurors would interpret the language at issue. *See id.* at ¶¶ 29–34. The other Court of Appeals opinion the prosecution relies on did not even involve a challenge to the language at issue here, instead analyzing only "the absence of language informing the jurors that they could consider a lack of evidence"—an issue that was addressed in the 2023 instruction and is not presented in this case. *People v. Melara*, 2025 COA 48, ¶ 22.

As the prosecution points out, AB at 19–20, the origin for all this rubber-stamping of the use of "firmly convinced" and "real possibility" is a short, solo concurrence from Justice Ginsburg. *See Victor*, 511 U.S. at 23–28 (Ginsburg, J., concurring). Justice Ginsburg approvingly cited "studies of jury behavior," noting that such studies show jurors can be confused if the term "reasonable doubt" is left "undefined." *Id.* at 26. She then proceeded to opine—without referring to any such studies or anything else to show ordinary-juror understanding—that an instruction using the terms "real possibility" and "firmly convinced" "surpasses others I have seen." *Id.* at 27. That statement is, by its own terms, a thirty-year-old opinion from one

highly sophisticated legal reader—not a reflection of what ordinary, non-lawyer jurors would think of the language today.

Justice Ginsburg's personal opinion may be due considerable weight in many contexts. The same goes for the federal and state appeals-court judges whose opinions the prosecution relies on throughout its brief. But esteemed as they may be, none of those judges have special insight into how language in a jury instruction is interpreted by modern, ordinary, non-lawyer jurors. Because the cases the prosecution relies on do not engage with evidence that would be helpful in answering that question—namely, jury studies and modern usage of the language at issue—they provide little help in deciding whether "there is a reasonable likelihood" that the jurors in Mr. Teran Sanchez's case understood the instruction "to allow a conviction based on a standard lower than beyond a reasonable doubt." *Tibbels*, ¶ 2.

IV. Pattern jury instructions are not due any deference.

As this Court has repeatedly made clear, "pattern instructions are not law, not authoritative, and not binding on this [C]ourt." *Krueger v. Ary*, 205 P.3d 1150, 1154 (Colo. 2009); *accord, e.g.*, *People v. Hoskin*, 2016 CO 63, ¶ 20 (same); *Walker v. Ford Motor Co.*, 2017 CO 102, ¶ 18 n.7 ("That the instruction

was a pattern instruction does not save it from a finding of error . . . ."). That remains true here: the 2023 model instruction is not authoritative or binding, and is due no deference in this case.

The prosecution pushes back on this rule, arguing that "[u]se of pattern jury instructions . . . is generally considered sufficient to instruct juries on relevant principles of law," AB at 9, and that those instructions are "unlikely to mislead a jury," *id.* at 15. Yet the sole case they cite—*Galvan v. People*, 2020 CO 82—does not support that argument.

In *Galvan*, the Court held there was no plain error where a trial court used a jury instruction that tracked the exact language of a statute codifying self-defense. *See* 2020 CO 82, ¶¶ 35–41. The Court noted in passing that pattern instructions "serve as beacon lights to guide trial courts." *Id.* at ¶ 38. But it reiterated that such instructions do not "insulate[] instructional error from reversal." *Id.* ¶ 38. Contrary to what the prosecution suggests, at no point did the Court say anything about the likelihood that such instructions lead to juror confusion.

When the new model instructions on reasonable doubt were first promulgated, the committee made clear that the instruction is not "binding

and authoritative" until it is "tested" by "appellate courts" like this one. Michael Karlik, *Prosecutors, defense lawyers blindsided by new 'reasonable doubt' instruction*, COLORADO POLITICS (Jan 28, 2023), https://tinyurl.com/7b6cvdbm. As demonstrated in this case, the 2023 model instruction has not passed that test, and no deference to the instruction is warranted.

V. The record in this case demonstrates that the jury interpreted the instructions in a constitutionally impermissible manner.

In assessing a challenge to a jury instruction, this Court looks to "the context of the instructions as a whole and the trial record." *Tibbels*, ¶ 43. Here, nothing said to the jury throughout trial ameliorated the fact that the 2023 model instruction unconstitutionally lowered the prosecution's burden. If anything, additional statements made at trial further lowered that burden. And the very fact of Mr. Teran Sanchez's convictions based on remarkably weak evidence suggests the jury understood the instruction to impose a burden lower than beyond a reasonable doubt.

First, the trial court impermissibly lowered the prosecution's burden during *voir dire* when it repeated and failed to correct a juror's statement suggesting the prosecution's burden could be satisfied by a juror's "best guess." OB at 8 (citing Tr. at 55:5–20), 34–35 (same); *see Tibbels*, ¶¶ 9–15, 38–

40 (discussion of the burden to convict during *voir dire* unconstitutional). The prosecution now argues that this error occurred during a conversation about the right to remain silent. AB at 34–35. But that does not change the underlying point: The trial court opened the door to conviction based on a juror's "best guess." OB at 34–35. The prosecution suggests that the trial court somehow re-elevated the prosecution's burden by reminding the jury that the prosecution has the burden of proof. AB at 35–36. But that confuses two distinct issues: who has the burden, and what that burden is. The trial court's error was with respect to the latter—it lowered the prosecution's burden.

Second, the prosecution lowered its own burden during closing argument by instructing the jury that it "need[ed]" to find Mr. Teran Sanchez guilty of driving while ability impaired ("DWAI") if it was "not convinced that Mr. Teran Sanchez was driving under the influence." OB at 2, 9, 34 (citing Tr. at 309:7–10). That statement unequivocally misstated the prosecution's burden; the jury was free to acquit on *both* charges.

The prosecution tries to explain away this error by saying it was the trial court's job to instruct the jury. AB at 32–33. But the prosecution's cited

cases do not support its position. In *People v. Jones*, the court held that a correct statement of the law by defense counsel did not cure a misstatement by the trial court. 2018 COA 112, ¶ 64. And in *Taylor v. Kentucky*, the U.S. Supreme Court reversed a conviction where the prosecutor made improper assertions to the jury and the trial court did not provide an instruction on the presumption of innocence, instead using a disfavored reasonable-doubt instruction. 436 U.S. 478, 488-89 (1978).

Neither of the prosecution's cases stands for the proposition that *only* the trial court can corrupt an instruction to the jury. *See* AB at 32. Nor could they, as that argument is contradicted by black-letter law. *See, e.g.*, *Mahorney v. Wallman*, 917 F.2d 469, 473–74 (10th Cir. 1990) (finding a violation of due process where "the trial court's overall charge on the presumption of innocence and burden of proof was not sufficiently specific to preserve that presumption in light of the prosecutor's specific . . . misrepresentations" to the jury); *State v. Portillo*, 998 N.W.2d 242, 254-56 (Minn. 2023) (reversing conviction where prosecutor in closing argument stated that Portillo "no longer ha[d] . . . the presumption of innocence"). And although the trial court stated that the burden rested with the prosecution, *see* AB at 36, that general

admonition did not correct the specific misstatements the prosecution made to the jury about "need[ing]" to convict Mr. Teran Sanchez of DWAI.

Third, the facts underlying Mr. Teran Sanchez's charges make clear that a jury could have only convicted under some burden lower than beyond a reasonable doubt. The jury acquitted Mr. Teran Sanchez on the charges of careless driving. OB at 9 (citing Tr. at 326:20–24). And it acquitted him on driving under the influence. *Id.* (citing 326:15–18). The prosecution's only evidence supporting its DWAI charge came from the testimony of a non-expert police officer who admitted that all of the impairment-related mannerisms he could identify were also consistent with "somebody that's worked up over an accident." *Id.* at 4–6, 35 (quoting Tr. at 219:5-7). And while the officer stated he smelled a "light or slight odor of an unknown alcoholic beverage," he later clarified he was "concerned more about [Mr. Teran Sanchez's] mannerisms that are drug related than . . . alcohol." *Id.* at 5–6 (quoting Tr. at 219:5–220:19, 225:1–2), 35. There is no way a properly instructed jury could have found Mr. Teran Sanchez guilty of DWAI under these facts. *See id.* at 4–6, 33–35.

Mr. Teran Sanchez's convictions for leaving the scene of an accident involving injury and failing to report an accident involving injury were equally infirm. The undisputed record is that Mr. Teran Sanchez checked on the other driver immediately after the accident, moved his car out of the intersection, and had already parked and exited his car to return to the accident by the time police arrived. OB at 4–6, 33–35. Here again, the only way the jury could have possibly convicted was by relying on an unconstitutional instruction regarding the prosecution's burden. In sum, the facts of this case stand in stark contradiction to the prosecution's argument that "[t]here is no evidence in the record to suggest that the jury acted contrary" to the 2023 "instruction" and followed the prosecutor's erroneous instruction. AB at 33.

Taken as a whole—the 2023 instruction's language, the prosecutor's gloss, the *voir dire* discussion, and the weakness of the evidence—there is at least a reasonable likelihood the jury convicted Mr. Teran Sanchez on less than proof beyond a reasonable doubt. *See Tibbels*, ¶¶ 2, 43. This Court should thus reverse his convictions in their entirety. *Id.* at ¶ 59.

CONCLUSION

This Court should reverse Mr. Teran Sanchez's convictions and deny the prosecution's motion to strike.

Respectfully submitted this 8th day of January, 2026.

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CERTIFICATE OF SERVICE

I hereby certify that, on January 8, 2026, a true and correct copy of this pleading was served via the Colorado Courts E-Filing system upon all parties who appear of record and have entered their appearances.

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