

SUPREME COURT, STATE OF COLORADO Ralph L. Carr Judicial Center 2 East 14th Avenue Denver, Colorado 80203 Transfer from the Colorado Court of Appeals Case No. 2025CA2199 Appeal from the District Court, El Paso County, 2025CR420	DATE FILED July 13, 2026 9:54 AM
Plaintiff-Appellee/Cross-Appellant THE PEOPLE OF THE STATE OF COLORADO v. Defendant-Appellant/Cross-Appellee EDWARD BENJAMIN RUIZ	
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ANSWER BRIEF	

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I hereby certify 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:

This brief complies with the applicable word limit set forth in C.A.R. 28(g).

It contains 7,583 words.

This brief complies with the standard of review requirement set forth in C.A.R. 28(a)(7)(A).

For each issue raised by the Petitioner, 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.

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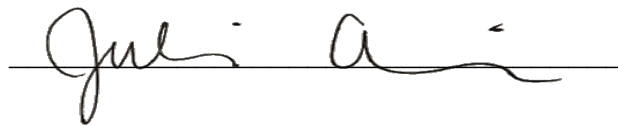


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INTRODUCTION

“[W]hat [a defendant] thinks does matter.” *Elonis v. United States*, 575 U.S. 723, 738 (2015) (internal quotation omitted). This is especially so for a serious crime such as first-degree motor vehicle theft: a class-three felony punishable by four-to-twelve-years in prison. §§ 18-4-409(6)(a); 18-1.3-401(1)(a)(V.5)(A), C.R.S. (2025). “The standard of culpability [for a felony theft statute], in order to be constitutional, must be what the state of mind of the particular defendant was, not what a jury concludes might be that of a fictional reasonably prudent man.” *People v. Johnson*, 193 Colo. 199, 200, 564 P.2d 116, 118 (1977).

The legislature, however, amended the first-degree motor vehicle theft statute in 2023 to expand the culpable mental state from “knowingly” to “knows or reasonably should have known” as it applies to the element: “the act was without authorization or was by threat or deception[.]” 2023 Colo. Legis. Serv. Ch. 309 (S.B. 23-097). By doing so, the legislature now premises liability on an objective reasonable person culpable mental state that doesn’t exist in Colorado.

“An awareness that one is obtaining or exercising *unauthorized* control over another’s property marks the dividing line between criminal knowledge or mens rea, on the one hand, and innocent conduct on the other.” *People v. Andrews*, 632 P.2d 1012, 1015–16 (Colo. 1981) (emphasis added). Borrowing a car isn’t a crime.

“Having liability turn on whether a ‘reasonable person’” knows the act was without authorization or was by threat or deception “—regardless of what the defendant thinks—‘reduces culpability on the all-important element of the crime to [civil] negligence[.]’” *Elonis*, 575 U.S. at 738 (quoting *United States v. Jeffries*, 692 F.3d 473, 484 (6th Cir. 2012)). The first-degree motor vehicle theft statute therefore violates due process because it premises liability on ordinary negligence in lieu of the required culpable mental state for felony theft.

STATEMENT OF THE ISSUE PRESENTED

Did the district court err in finding unconstitutional the “reasonably should have known” language in section 18-4-409(2), CRS 2025, the first-degree motor vehicle theft statute?

STATEMENT OF THE CASE AND FACTS

The prosecution charged Edward Ruiz with first-degree motor vehicle theft under § 18-4-409(2), C.R.S. (2025), which provided in part: “On or about January 31, 2025, Edward Benjamin Ruiz unlawfully, feloniously, and knowingly obtained, exercised control over, received, or retained the motor vehicle of Noe Amaya-Delgado, and knew *or reasonably should have known* it was without authorization, or by threat or deception...” (CF, pp.11-12) (emphasis added).

The defense moved to dismiss this charge before trial because the legislature didn't designate "reasonably should have known" as a cognizable culpable mental state under § 18-1-503, C.R.S., and such language "effectively converts motor vehicle theft into a strict liability offense." (CF, pp.84-85). Citing *People v. Johnson*, 193 Colo. 199, 564 P.2d 116 (1977), Mr. Ruiz contended that "[b]ecause § 18-4-409 allows an individual to be convicted of theft without actual knowledge, it violates due process protections guaranteed by the Colorado and U.S. Constitutions." (CF, p.87).

The prosecution responded, arguing "[t]he 'knew or reasonably should have known' standard is presumed constitutional and has long been accepted in criminal law as a constitutionally sufficient articulation of culpability." (CF, p.92) (citing *People v. Prante*, 177 Colo. 243, 493 P.2d 1083 (1972)). The prosecution later augmented its response, interpreting "reasonably should have known" as "merely supplement[ing] that mental state" of knowingly and "does not eliminate the need to prove that the defendant subjectively engaged in the proscribed conduct." (CF, p.144).

The trial court discussed the constitutionality of the first-degree motor vehicle theft statute at a pretrial hearing. Relying upon *Lee v. Smith*, 772 P.2d 82 (Colo. 1989), the court proposed "in the elements for the crime we put in defendant knew

or reasonably should have known based on circumstances he was aware of that.” (TR-4/30/25, p.7:6-22). The prosecution was “okay with that” alteration so long as the court didn’t “strike part of the statute.” (TR-4/30/25, p.7:23-24). While the defense characterized this language as “better[,]” a concern remained that “it allows a jury to convict Mr. Ruiz not on what he knew” but on “what this objective, fictional, reasonable person should’ve known[.]” (TR-4/20/25, p.16:1-7).

The trial court revisited the issue at trial, finding *Lee* “interpreted the -- should have known part to mean knowingly, not knew of circumstances that would lead a reasonable person to be aware of the stolen car, but just knowingly.” (TR-6/16/25, p.5:10-18). The court was thus “inclined ... to find that mens rea as just knowingly.” (TR-6/16/25, p.5:19-21). The defense agreed that “based on Lee, and based on the case that we relied upon, People v. Johnson, that the Defendant needs to have actual knowledge.” (TR-6/16/25, p.7:18-21) (underlining in original). The court took the matter “under advisement.” (TR-6/16/25, p.8:5-6).

Despite previously arguing that “reasonably should have known” only supplemented “knowingly,” the prosecution stated in opening that two alternative culpable mental states applied to the first-degree motor vehicle theft statute: “And he had the knowledge -- *or a reasonable person would have the knowledge* that he

did not have the authorization to operate.” (TR-6/16/25, p.179:6-8) (emphasis added).

At the jury instruction conference, the parties addressed the constitutionality of the first-degree motor vehicle theft statute. The trial court posited: “could it be a crime for a defendant to knowingly obtain, exercise control over, receive, or retain the motor vehicle of another person? That is not, that can’t be a crime. So the element of what the defendant knew or as the Legislature put it, reasonably should have known, is a constitutionally required element.” (TR-6/18/25, p.9:12-19). Relying upon *Johnson* which addressed “the theft by receiving statute that had very similar language to the language here[,]” the trial court determined that due process prohibits the legislature from inserting an objective reasonable person standard into “a constitutionally required element[.]” (TR-6/18/25, p.10:1-6).

After exhaustively reviewing this Court’s precedent, the trial court found “beyond a reasonable doubt that the should have known language of the statute is unconstitutional. So the mens rea for this is going to be knowingly.” (TR-6/18/25, p.12:15-18). Aligned with this ruling, the trial court excised the “reasonably should have known” language from the first-degree motor vehicle theft elemental jury instruction. (CF, p.316).

“The key issue of this case,” according to the defense, “was whether Mr. Ruiz had knowledge about the motor vehicle theft.” (TR-6/20/25, p.228:15-17). The defense disputed that Mr. Ruiz knew the truck was stolen and argued that another man with a history of stealing cars, Justin Hudson, stole the truck. (TR-6/20/25, pp.227-46). The jury rejected Mr. Ruiz’s defense and convicted him of first-degree motor vehicle theft. (TR-6/20/25, p.261:10-14). Mr. Ruiz appealed.

The prosecution cross-appealed the trial court’s finding that the first-degree motor theft statute was facially unconstitutional. (CF, pp.516-21). This Court accepted jurisdiction over the cross-appeal on January 21, 2026. (CF, pp.527-28).

SUMMARY OF THE ARGUMENT

“The vast majority of offenses[,]” including first-degree motor vehicle theft, require a defendant “to act with a culpable mental state to be criminally liable.” *Randolph v. People*, 2025 CO 44, ¶ 31. “[A] constitutional proscription [exists] against conviction of a defendant charged with felony by theft if it is predicated upon his negligence or his failure to exercise the intelligence of an ordinary prudent man.” *People v. Johnson*, 193 Colo. 199, 200, 564 P.2d 116, 118 (1977).

In 2023, the legislature amended the first-degree motor vehicle theft statute and expanded the culpable mental state from “knowingly” to “knows or reasonably should have known” as it applies to the element: “the act was without authorization

or was by threat or deception[.]” § 18-4-409(2), C.R.S. (2025). But “reasonably should have known” isn’t a cognizable culpable mental state under § 18-1-501, C.R.S., nor does it equate to one. “Reasonably should have known” permits “a finding, not on the defendant’s guilty knowledge, but rather on a basis that amounts to a [civil] negligence standard.” *People v. Freeman*, 668 P.2d 1371, 1383 (Colo. 1983). Utilizing a civil negligence standard in a felony theft statute violates due process because it criminalizes conduct based upon what a “reasonable person” may think or do, irrespective of the defendant’s subjective intent.

By adding the culpable mental state “reasonably should have known” to § 18-4-409(2), C.R.S. (2025), the legislature violated the constitutional proscription in *Johnson* and significantly reduced the required culpable mental state for a felony theft conviction in Colorado. Because the first-degree motor vehicle theft statute is unconstitutional under all circumstances, this Court should strike the language “or reasonably should have known” from the statute.

ARGUMENT

- I. The trial court correctly found the first-degree motor vehicle theft statute was facially unconstitutional because the legislature significantly reduced the culpable mental state required for this class-three felony offense by premising liability on an objective reasonable person standard that equates to civil negligence.**

A. Standard of review

Mr. Ruiz agrees that the prosecution preserved this issue. Opening Br., pp.7-8. This Court reviews issues of statutory interpretation de novo. *McCoy v. People*, 2019 CO 44, ¶ 37. The constitutionality of a statute is likewise a question of law reviewed de novo. *Dean v. People*, 2016 CO 14, ¶ 8.

“A statute is presumed to be constitutional; the challenging party bears the burden of proving its unconstitutionality beyond a reasonable doubt.” *Id.* “A statute is facially unconstitutional only if no conceivable set of circumstances exist under which it may be applied in a constitutionally permissible manner.” *People v. Montour*, 157 P.3d 489, 499 (Colo. 2007).

B. Principles of statutory construction

When construing a statute, this Court’s “primary purpose is to ascertain and give effect to the legislature’s intent.” *McCoy*, ¶ 37. In doing so, this Court examines the statute’s language, giving its words and phrases their plain and ordinary meanings. *Id.* This Court reads statutory words and phrases in context and construes

them according to the rules of grammar and common usage. *Id.* This Court must also read a statute as a whole, aiming to give consistent, harmonious, and sensible effect to all its parts. *Randolph v. People*, 2025 CO 44, ¶ 14.

If the statute is unambiguous, then this Court looks no further. *McCoy*, ¶ 38. But if the statute is ambiguous, this Court may consider other aids to statutory construction, including the consequences of a given construction, the end to be achieved by the statute, and the statute’s legislative history. *Id.* A statute is ambiguous when it is reasonably susceptible of multiple interpretations. *Elder v. Williams*, 2020 CO 88, ¶ 18.

This Court construes statutes to avoid constitutional conflicts if possible. *Lopez v. People*, 113 P.3d 713, 728 (Colo. 2005). “[I]f a challenged statute is capable of several constructions, one of which is constitutional, the constitutional construction must be adopted.” *People v. Schoondermark*, 699 P.2d 411, 415 (Colo. 1985). The canon of constitutional avoidance “comes into play only when, after the application of ordinary textual analysis, the statute is found to be susceptible of more than one construction.” *Clark v. Martinez*, 543 U.S. 371, 385 (2005).

Still, this Court “must give full effect to the language used by the General Assembly even if to do so results in a determination that the statute violates constitutional criteria.” *People v. Thomas*, 867 P.2d 880, 883 (Colo. 1994).

C. General law on criminal liability

“It is axiomatic that an accused is presumed innocent of the charge, and this presumption extends to every element of the crime including the requisite *mens rea*.” *Hendershott v. People*, 653 P.2d 385, 390 (Colo. 1982). See U.S. Const. amend. XIV; Colo. Const. art. II § 25; *Taylor v. Kentucky*, 436 U.S. 478, 483 (1978). Due process also “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 (1970). See *Vega v. People*, 893 P.2d 107, 111 (Colo. 1995); U.S. Const. amend. XIV; Colo. Const. art. II § 25. “An accused is not only entitled to the presumption of innocence on all elements of a charge but also is protected against a conviction unless the prosecution establishes the requisite *mens rea* by proof beyond a reasonable doubt.” *Hendershott*, 653 P.2d at 393.

Due process likewise protects a defendant against the imposition of criminal liability without criminal intent on the part of the actor:

The contention that an injury can amount to a crime only when inflicted by intention is no provincial or transient notion. It is as universal and persistent in mature systems of law as belief in freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil.

Morissette v. United States, 342 U.S. 246, 250 (1951). While exceptions exist, “the ‘general rule’ is that a guilty mind is ‘a necessary element in the indictment and proof of every crime.’” *Elonis v. United States*, 575 U.S. 723, 734 (2015) (quoting *United States v. Balint*, 258 U.S. 250, 251 (1922)). “[T]he boundary between intent and [civil] negligence spells freedom or condemnation for thousands of individuals.” *Morissette*, 342 U.S. at 254 n. 14 (internal quotation omitted).

“It is not open to question that the power to define criminal conduct and to establish the legal components of criminal liability is vested with the General Assembly.” *Hendershott*, 653 P.2d at 390. *See* Colo. Const. art. V, § 1. Our legislature pronounced that “[t]he minimum requirement for criminal liability is the performance by a person of conduct which includes a voluntary act or the omission to perform an act which he is physically capable of performing.” § 18-1-502, C.R.S. (2025). If such conduct is all that the offense requires, “or if an offense or some material element thereof does not require a culpable mental state on the part of the actor, the offense is one of ‘strict liability’.” *Id.* Conversely, “[i]f a culpable mental state on the part of the actor is required with respect to any material element of an offense, the offense is one of ‘mental culpability’.” *Id.*

“Rarely, however, will a legislative body attempt to impose the sanctions of the criminal law on the blameless.” *Hendershott*, 653 P.2d at 390. “The vast majority

of offenses” in Colorado thus require a defendant “to act with a culpable mental state to be criminally liable.” *Randolph*, ¶ 31. “With the exception of strict liability crimes, a person is not subject to criminal sanctions unless the prosecution establishes that, in addition to committing a proscribed act, the person acted with the culpable mental state required for the particular crime.” *People v. Hall*, 999 P.2d 207, 216 (Colo. 2000).

The legislature “overhauled the Colorado Criminal Code in 1971” in part “to eliminate the confusion stemming from the wide array of ambiguous terms defining the culpable mental state requirements for criminal offenses.” *Randolph*, ¶ 38. “Our General Assembly put an end to the practice of willy-nilly labeling culpable mental states: It proclaimed that, moving forward, a culpable mental state would ordinarily be designated by the terms ‘intentionally,’ ‘knowingly,’ ‘recklessly,’ or ‘criminal negligence.’” *Id.* (quoting § 18-1-503(1), C.R.S.). *See also* § 18-1-501(4), C.R.S. (2025) (“‘Culpable mental state’ means intentionally, or with intent, or knowingly, or willfully, or recklessly, or with criminal negligence”).

As relevant here, in 1971 the legislature defined “knowingly” as:

A person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when he is aware, *or reasonably should be aware*, that his conduct is of that nature or that the circumstance exists.

§ 40-1-601(7), C.R.S. (1971) (emphasis added). Just four years later—after this Court substantially changed the sufficiency of the evidence test, *see* subsection (D), *infra*—the legislature amended this definition to eliminate “or reasonably should be aware”:

A person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when he is aware that his conduct is of such nature or that such circumstance exists.

§ 18-1-501(6), C.R.S. (1975). The legislature last revised this definition in 1977.

“Knowingly,” as presently defined, means:

A person acts “knowingly” or “willfully” with respect to conduct or to a circumstance described by a statute defining an offense when he is aware that his conduct is of such nature or that such circumstance exists. A person acts “knowingly” or “willfully”, with respect to a result of his conduct, when he is aware that his conduct is practically certain to cause the result.

§ 18-1-501(6), C.R.S. (2025).

D. This Court prohibits a “reasonable person” standard from appearing as a culpable mental state required for committing an offense unless the offense constitutes a public welfare one.

This Court has repeatedly examined the legislature’s use of the “reasonable person” standard in criminal offenses. Consistent with due process protections, this Court has distilled the following rule: the “reasonable person” standard cannot

appear as a culpable mental state required for committing a criminal offense unless such offense is a public welfare one.

This Court first examined the “reasonable person” standard in *People v. Prante*, 177 Colo. 243, 493 P.2d 1083 (1972). The defendant was charged with and convicted of assault on a peace officer after having an altercation with an officer at his estranged wife’s home. *Id.*, 177 Colo. at 247, 493 P.2d at 1084. The defendant challenged the constitutionality of the assault on a peace officer statute because “of language therein requiring that a defendant ‘*knew or reasonably should have known* that the person assaulted was a peace officer engaged in the performance of his duties.’” *Id.*, 177 Colo. at 248, 493 P.2d at 1085 (quoting § 40-7-54, C.R.S. (1963) (emphasis added)). Affirming his conviction, *Prante* concluded the assault on a peace officer statute “states clearly the behavior sought to be proscribed[.]” and “the inclusion of a requirement of knowledge that the victim was a peace officer is not constitutionally required[.]” *Id.*, 177 Colo. at 249, 493 P.2d at 1085-86.

Prante’s holding conformed with the 1971 definition of “knowingly,” which authorized a criminal conviction based upon a “reasonable person” standard. *See* § 40-1-601(7), C.R.S. (1971) (“Knowingly” means that the defendant “is aware, *or reasonably should be aware*, that his conduct is of that nature or that the

circumstance exists.” (emphasis added)). The legislature, however, eliminated the “reasonable person” standard from the definition of “knowingly” soon thereafter.

In so holding, *Prante* also reasoned that “where it is difficult to determine what an actor knows or knew, there can be no better appraisal of it than for a jury to deduce what a temperate and measured man would know in the same circumstances.” *Id.*, 177 Colo. at 250, 493 P.2d at 1086. At the time of *Prante*’s holding, Colorado adhered to a stringent sufficiency of the evidence test: when evidence was “wholly circumstantial,” the prosecution had to “exclude every reasonable hypotheses other than that of guilt[.]” *People v. Bennett*, 183 Colo. 125, 131, 515 P.2d 466, 469 (1973). Revamping this test one year later, courts must now “afford[] the same status to both direct and circumstantial evidence.” *Id.* These significant changes in the law call into question the validity of *Prante*’s holding. But even if *Prante* remains good law,¹ this Court has since limited its holding.

¹ This Court later cited *Prante*’s holding. *See, e.g., Lybarger v. People*, 807 P.2d 570, 578 n. 4 (Colo. 1991) (citing *Prante* as support for “[t]he standard of objective reasonableness is no stranger to the criminal law.”); *People v. West*, 724 P.2d 623, 628 (Colo. 1986) (“We acknowledge that in several cases we have held that the legislature, consistent with due process of law, may employ a standard of objective reasonableness with respect to ... the knowledge element of an offense, *see, e.g., [Prante]*”); *People v. Beaver*, 190 Colo. 554, 556–57, 549 P.2d 1315, 1316–17 (1976) (citing *Prante* for the proposition that a standard of reasonableness in a statute isn’t unconstitutionally vague).

Five years later, this Court addressed the constitutionality of the theft by receiving statute, a class-four felony, which provided:

“A person commits theft by receiving when he receives, retains, loans money by pawn or pledge on, or disposes of anything of value of another *knowing [o]r believing or having reasonable cause to believe* that said thing of value has been stolen and intends to deprive the lawful owner permanently of the use or benefit of the thing of value.”

People v. Johnson, 193 Colo. 199, 200, 564 P.2d 116, 117 (1977) (quoting § 18-4-410(1), C.R.S. (1976 Supp.) (emphasis added)). *Johnson* held the “portion of the statute defining the mental state as including ‘having reasonable cause to believe’ is unconstitutional by reason of overbreadth.” *Id.*, 193 Colo. at 200, 564 P.2d at 117–18. To comport with due process, *Johnson* determined that the defendant must know the goods were stolen. *Id.*, 193 Colo. at 200, 564 P.2d at 118. “There is a constitutional proscription against conviction of a defendant charged with felony by theft if it is predicated upon his negligence or his failure to exercise the intelligence of an ordinary prudent man.” *Id.*

Justice Erickson specially concurred to address *Prante*. *Id.*, 193 Colo. at 201–02, 564 P.2d at 118–19. Reconciling *Johnson*’s and *Prante*’s holdings, Justice Erickson reasoned:

The principle which emerges from these cases is that use of a ‘reasonableness’ standard in a criminal statute is not overly vague when confined to elements which are not

constitutionally required. The theft by receiving statute in this case employs a ‘reasonable cause to believe’ standard as part of a constitutionally mandated [m]ens rea element in the crime. Certainly mere receipt of stolen goods without [a]ny culpable mental state could not be criminally proscribed as a strict liability crime.

Id., 193 Colo. at 202, 564 P.2d at 119.

This Court examined *Johnson*’s holding in two other cases. First, in *People v. Moore*, 674 P.2d 354, 357–58 (Colo. 1984), this Court confronted whether the counterfeit controlled substance statute—which stated: “... which is of such nature, packaging, or appearance *as to lead a reasonable person to believe* that the substance is a controlled substance[,]” § 18–5–306(1)(b), C.R.S. (emphasis added)—was “unconstitutional because it contains the mental state requirement struck down in *Johnson*.” *Moore* concluded that it wasn’t, reasoning that “the ‘reasonable person’ standard is not an element of knowledge or mental state required to commit the crime.” *Id.* at 358. In so concluding, *Moore* distinguished the theft by receiving statute in *Johnson* where the “reasonableness language appeared as an alternative mental state required for committing the crime.” *Id.* *Moore* also recognized that while *Johnson* purportedly invalidated the theft by receiving statute on overbreadth grounds, “[t]he ‘reasonable person’ standard in *Johnson* was unconstitutional because it was part of the mental state element of the crime.” *Moore*, 674 P.2d at 359.

Second, in *People v. Ellison*, 14 P.3d 1034, 1035 (Colo. 2000), this Court upheld the constitutionality of the driving under restraint (“DUR”) statute, which defined knowledge as: ““actual knowledge of any restraint from whatever source *or knowledge of circumstances sufficient to cause a reasonable person to be aware that such person’s license or privilege to drive was under restraint.*” *Id.* (quoting § 42–2–138(4)(a), C.R.S. (2000) (emphasis in *Ellison*)). *Ellison* acknowledged the above-italicized language “involves in part the use of an objective reasonable person standard”; however, a defendant couldn’t be punished for acting without actual subjective knowledge. *Id.* at 1036–37. Accordingly, “[t]he knowledge required by [the DUR] statute differs from the knowledge required by the former theft by receiving statute held unconstitutional in *Johnson*.” *Id.* at 1037.

“[A] subtle yet significant difference [exists] between these two definitions of knowledge: under the definition in *Johnson*, a defendant could be convicted solely on the basis of actions that violate the objective reasonable person standard—he need not be aware of the specific facts that would lead a reasonable person to believe that the property was stolen.” *Id.* Whereby in *Ellison*, “to be convicted of [DUR], one must be aware of specific facts that would cause a reasonable person to believe that his license was under restraint.” *Id.* Additionally, “the *Johnson* rationale does not

apply to the [DUR] statute because, unlike felony theft by receiving, [DUR] is a public welfare offense.” *Id.* at 1040.

As such, *Ellison* held “that the definition of knowledge in the [DUR] statute does not offend guarantees of due process of law and passes constitutional muster.” *Id.* See also *People v. Ford*, 773 P.2d 1059, 1068–69 (Colo. 1989) (rejecting the booksellers’ constitutional challenge to the obscenity statute because, unlike in *Johnson*, the statute didn’t premise “liability on the mental state of a third party.”).²

- E. The “reasonable person” standard in the first-degree motor vehicle theft statute violates due process because it significantly reduces the culpable mental state required for a felony theft offense.

The trial court deemed the first-degree motor vehicle statute facially unconstitutional and struck the following italicized language from it:

A person commits motor vehicle theft in the first degree if the person knowingly obtains, exercises control over, receives, or retains the motor vehicle of another person; and the person knows *or reasonably should have known*

² The prosecution cites numerous statutes containing similar language to “illustrate[] how an objective standard of reasonableness is used to determine constructive knowledge of a fact.” Opening Br., pp.13-15. None of these statutes constitute felony theft statutes like § 18-4-409(2), C.R.S. (2025). In any event, the prosecution doesn’t interpret these statutes to determine whether the “reasonably should have known” language appeared as an alternative culpable mental state required to commit the crime. Nor does it discuss whether these statutes amount to public welfare offenses. Additionally, the assault statutes cited by the prosecution seemingly satisfy due process because “inclusion of a requirement of knowledge that the victim was a peace officer is not constitutionally required” for an assault conviction. *Prante*, 177 Colo. at 249, 493 P.2d at 1085–86.

that the act was without authorization or was by threat or deception; ...

§ 18-4-409(2), C.R.S. (2025) (emphasis added).

This Court should affirm the trial court’s ruling. First-degree motor vehicle theft isn’t a strict liability offense. Rather, *Johnson* pronounced “[t]he standard of culpability” for a felony theft statute to comport with due process “must be what the state of mind of the particular defendant was, not what a jury concludes might be that of a fictional reasonably prudent man.” *Johnson*, 193 Colo. at 200, 564 P.2d at 118. The legislature’s insertion of “reasonably should have known” as an alternative culpable mental state to “knows”³ in the first-degree motor vehicle theft statute violates *Johnson*’s constitutional mandate.

³ In 2023, the legislature added the language “knows or reasonably should have known,” before the element: “the act was without authorization or was by threat or deception[.]” 2023 Colo. Legis. Serv. Ch. 309 (S.B. 23-097). By using the word “or” to separate “knows” from “reasonably should have known,” the legislature intended for “reasonably should have known” to appear as an alternative culpable mental state to “knows.” *See Johnson*, 193 Colo. at 200, 564 P.2d at 117–18. The legislative history confirms the statute’s plain language. *See* Hearing on S.B. 23-097 before the Senate Judiciary Comm., 74th Gen. Assembly, 1st Reg. Sess. (Feb. 27, 2023) (District Attorney Brian Mason of the 17th Judicial District’s Office explained: “We can’t prove that the suspect knew that they were in a stolen car. And so one of my top priorities for this bill was expanding that mens rea to ‘knew or should have known.’”); Hearing on S.B. 23-097 before the House Judiciary Comm., 74th Gen. Assembly, 1st Reg. Sess. (Apr. 27, 2023) (District Attorney Gordon McLaughlin of the 8th Judicial District’s Office agreed “an important thing this bill does that I don’t

The legislature doesn't list "reasonably should have known" as a cognizable mental state under § 18-1-501(4), C.R.S., and this Court has equated such a standard to civil negligence. The crucial element separating legal innocence from wrongful conduct in the first-degree motor vehicle theft statute is acting without authorization or by threat or deception. Because the alternative mental state "reasonably should have known" significantly reduces the culpable mental state on this crucial element to civil negligence, this statute is facially unconstitutional.

- a. Colorado doesn't recognize "reasonably should have known" as a culpable mental state and courts equate such a standard to civil negligence.*

Our legislature doesn't identify "reasonably should have known" as a culpable mental state in Colorado. *See* § 18-1-501(4), C.R.S. (2025) ("Culpable mental state' means intentionally, or with intent, or knowingly, or willfully, or recklessly, or with criminal negligence, as these terms are defined in this section."); *People v. Randolph*, 2023 COA 7M, ¶ 23 (*"Randolph I"*) ("The General Assembly has explicitly identified and defined the four possible mental states. It is not for [courts] to supplement that list."), *aff'd*, 2025 CO 44. "Reasonably should have known" seemingly emanates from the language "reasonably should be aware" in an obsolete

think has been mentioned yet is it changes ... the standard by which we can prove these cases to 'know or reasonably should have known'").

definition of “knowingly,” which hasn’t been in effect for over fifty years. *See* § 40-1-601(7), C.R.S. (1971).

Nor does “reasonably should have known” equate to any recognized culpable mental states in Colorado. “Reasonably should have known,” for instance, doesn’t satisfy the definition of “intentionally,” which is defined “only in terms of the result” and has a subjective standard. *See* § 18-1-501(5), C.R.S. (2025); *Randolph I*, ¶ 25.

Contrary to “knowingly” under § 18-1-501(6), C.R.S. (2025), “reasonably should have known” applies an objective standard in which to evaluate the defendant’s conduct. *See Oram v. People*, 255 P.3d 1032, 1038 (Colo. 2011) (“The mental state of knowingly is a subjective rather than an objective standard and does not include a reasonable care standard. Circumstances where a defendant should reasonably be aware that his conduct is of such a nature or that such circumstances exist are insufficient to fulfill the knowingly mental state.”); Wayne R. LaFave, *SUBSTANTIVE CRIMINAL LAW* § 21.2(c) (3d ed. 2025 Update) (“The prevailing knowledge test is, of course, a subjective standard, and thus it will not suffice to show that the defendant should have known, although the requisite knowledge can be established by circumstantial evidence” (internal footnotes omitted)).

Next, “recklessly” differs from “reasonably should have known” both by its use of a subjective standard and its requirement that a defendant “consciously

disregards *a substantial and unjustifiable risk* that a result will occur or that a circumstance exists.” § 18-1-501(8), C.R.S. (2025) (emphasis added).

Lastly, unlike “criminal negligence,” “reasonably should have known” doesn’t require “*a gross deviation* from the standard of care that a reasonable person would exercise.” § 18-1-501(3), C.R.S. (2025) (emphasis added). *See Hall*, 999 P.2d at 219 (“A substantial and unjustifiable risk must constitute a ‘gross deviation’ from the reasonable standard of care in order to justify the criminal sanctions imposed for criminal negligence or reckless conduct, as opposed to the kind of deviation from the reasonable standard of care that results in civil liability for ordinary negligence.”).

Had the legislature intended for “reasonably should have known” to mean “criminal negligence,” then it would have said that. § 18-1-503(1), C.R.S. It didn’t. *Cf. Randolph*, ¶ 35 (“Had the legislature meant to designate ‘for the purpose of’ as the applicable culpable mental state in subsections (1)(a) and (1)(b) [of the soliciting for child prostitution statute], it presumably would have done so ... by identifying the phrase as a ‘culpable mental state’ in sections 18-1-501(4) and 18-1-503(1)...”). Nor does COLJI-Crim 4-4:18.5 (2025)—the elemental instruction for the motor vehicle theft statute—recommend that parties define “criminal negligence” in the

notes. *See People v. Flockhart*, 2013 CO 42, ¶ 12 (pattern instructions “are grounded in our longstanding practice”).

Contrary to any recognized culpable mental states in Colorado, courts equate a reasonable person standard, such as “reasonably should have known,” to civil negligence. *See Elonis*, 575 U.S. at 737–38 (“Such a ‘reasonable person’ standard is a familiar feature of civil liability in tort law, but is inconsistent with ‘the conventional requirement for criminal conduct—*awareness* of some wrongdoing.’” (quoting *Staples v. United States*, 511 U.S. 600, 606–07 (1994) (emphasis in *Elonis*))); *People v. Freeman*, 668 P.2d 1371, 1383 (Colo. 1983) (finding “the court’s definition of ‘knowingly’ [which mirrored the 1971 version and provided in part: “he is aware, *or reasonably should be aware*,”] permitted a finding, not on the defendant’s guilty knowledge, but rather on a basis that amounts to a negligence standard.”); *People v. Bornman*, 953 P.2d 952, 954 (Colo. App. 1997) (“To apply an objective standard [to the mental state ‘knowingly’ in the theft statute] would be to authorize a conviction of theft based upon simple negligence.”).

Aligned with this precedent, “reasonably should have known” resembles the definition of civil negligence: ““a failure to do an act which a reasonably careful person would do, or the doing of an act which a reasonably careful person would not do, under the same or similar circumstances to protect oneself or others from bodily

injury.” *People v. Claycomb*, 2025 COA 36, ¶ 42 (quoting *Bedee v. Am. Med. Response of Colo.*, 2015 COA 128, ¶ 12). “A [person’s] failure to act with reasonable care or attention in the circumstances is nothing more than proof of his negligence as that term is used in the civil law.” *Com. v. Heck*, 491 A.2d 212, 216–17 (Pa. Super. Ct. 1985), *aff’d*, 535 A.2d 575 (Pa. 1987).

Although the legislature inserted “reasonably should have known” as an alternative mental state to “knows” in the first-degree motor vehicle theft statute, this culpable mental state doesn’t exist. To the contrary, “reasonably should have known” requires less proof than “criminal negligence”—the least culpable mental state required for a criminal conviction. *See People v. Rigsby*, 2020 CO 74, ¶ 21 (explaining “section 18-1-503(3) sets up a hierarchical system of culpable mental states in which ... criminal negligence is the least culpable”).

b. “Reasonably should have known” significantly reduces the culpable mental state required in the first-degree motor vehicle theft statute.

First-degree motor vehicle theft—a class-three felony offense carrying a presumptive prison sentence of four-to-twelve-years—isn’t a strict liability offense. *See People v. Washburn*, 197 Colo. 419, 422, 593 P.2d 962, 964 (1979) (“The culpable mental state required in a statute dealing with theft must be more than mere negligence”). Indeed, the legislature already determined two alternative culpable

mental states apply to the element at issue: “knows or reasonably should have known[.]” § 18-4-409(2), C.R.S. (2025). *See Brown v. People*, 2026 CO 51, ¶ 32 (recognizing that a statute isn’t a public welfare one where it “*did* include a culpable mental state.” (emphasis in original)). Nor does the prosecution contest that such a grave offense requires a culpable mental state.

Moreover, a defendant must knowingly obtain, exercise control over, receive, or retain the motor vehicle of another person under the first-degree motor vehicle theft statute. § 18-4-409(2), C.R.S. (2025). But obtaining, exercising control over, receiving, or retaining the motor vehicle of another person “is not what makes the conduct ‘wrongful.’” *Elonis*, 575 U.S. at 737. Borrowing someone’s car isn’t a crime.

“‘[T]he crucial element separating legal innocence from wrongful conduct’” is acting without authorization or by threat or deception. *Id.* (quoting *United States v. X-Citement Video, Inc.*, 513 U.S. 64, 73 (1994)). *See People v. Andrews*, 632 P.2d 1012, 1015–16 (Colo. 1981) (“An awareness that one is obtaining or exercising unauthorized control over another’s property [in the aggravated motor vehicle theft statute] marks the dividing line between criminal knowledge or mens rea, on the one hand, and innocent conduct on the other.”). “The mental state requirement must

therefore apply to the fact” that the act was without authorization or was by threat or deception. *Elonis*, 575 U.S. at 737.

The culpable mental state “knowingly” comports with due process for this crucial element; “reasonably should have known” does not. *Johnson* set forth the culpable mental state required for a felony theft statute:

In order for a statute such as this [theft by receiving] to be constitutional there must be a knowledge or belief by the defendant that the goods were stolen. There is a constitutional proscription against conviction of a defendant charged with felony by theft if it is predicated upon his negligence or his failure to exercise the intelligence of an ordinary prudent man. The standard of culpability, in order to be constitutional, must be what the state of mind of the particular defendant was, not what a jury concludes might be that of a fictional reasonably prudent man.

Johnson, 193 Colo. at 200, 564 P.2d at 118. The prosecution doesn’t contest that *Johnson*’s above pronouncement is no longer good law; thus, this Court must follow this “‘preexisting rule[] of law.’” See *Brown*, ¶¶ 26–27 (quoting *Love v. Klosky*, 2018 CO 20, ¶¶ 14–15).

Contrary to *Johnson*, the first-degree motor vehicle theft statute “permit[s] a finding, not on the defendant’s guilty knowledge, but rather on a basis that amounts to a [civil] negligence standard.” *People v. Freeman*, 668 P.2d 1371, 1383 (Colo. 1983). “Ordinary negligence is the ‘antithesis’ of willful or intentional conduct.”

Heck, 491 A.2d at 223 (quoting *Stenson v. Laclede Gas Co.*, 553 S.W.2d 309 (Mo. Ct. App. 1977)). “Having liability turn on whether a ‘reasonable person’” knows the act was without authorization or was by threat or deception “—regardless of what the defendant thinks—‘reduces culpability on the all-important element of the crime to [civil] negligence[.]’” *Elonis*, 575 U.S. at 738 (quoting *Jeffries*, 692 F.3d at 484). But, for the first-degree motor vehicle theft statute to comport with due process, “what [a defendant] thinks does matter.” *Elonis*, 575 U.S. at 738 (internal quotation omitted).

Even if this Court disagrees with *Johnson* that “knowingly” is constitutionally required for a conviction under § 18-4-409(2), C.R.S. (2025), then “reasonably should have known” still violates due process. “Reasonably should have known” isn’t a cognizable culpable mental state in Colorado nor does it equate to the least culpable one: criminal negligence. *Rigsby*, ¶ 21. Contrary to *Johnson*, the first-degree motor vehicle theft statute permits a defendant to be “convicted solely on the basis of actions that violate the objective reasonable person standard—he need not be aware of the specific facts that would lead a reasonable person to believe that” his use of the vehicle was without authorization or was by threat or deception. *Ellison*, 14 P.3d at 1037.

Simply stated, our legislature permits a defendant to be convicted of a class-three felony offense with a sentence of up to twelve-years in prison on a civil standard of liability. To make the unauthorized obtaining, exercising control over, receiving, or retaining the motor vehicle of another person, “without consciousness of wrongdoing ..., a serious crime, and criminals of those who fall within its interdiction, is inconsistent with the general law.” *Speidel v. State*, 460 P.2d 77, 80 (Alaska 1969).

c. Conclusion

Like the constitutionally infirm alternative mens rea in *Johnson*, “reasonably should have known” violates due process by reducing the culpable mental state required for first-degree motor vehicle theft. It is therefore “an unconstitutional mental state requirement.” *Moore*, 674 P.2d at 358.

No conceivable set of circumstances exist under which the first-degree motor vehicle theft statute may be applied in a constitutionally permissible manner. *Montour*, 157 P.3d at 499. As such, Mr. Ruiz proved the unconstitutionality of the statute beyond a reasonable doubt. *Dean*, ¶ 8. *See also Speidel*, 460 P.2d at 80 (“To convict a person of a felony for [“willfully” neglecting to return a motor vehicle to the owner], without proving criminal intent, is to deprive such person of due process of law. To the extent that AS 28.35.026 [failure to return a rented automobile]

permits that to happen, it is invalid and of no effect.”); 1 Jens David Ohlin, WHARTON'S CRIMINAL LAW § 5:6 (16th ed. 2025 Update) (recognizing “[t]he overwhelming trend [across jurisdictions] is to require gross or criminal negligence[.]” for a criminal conviction).

F. Because the constitutionally valid provisions in the first-degree motor vehicle theft statute are complete and can be given legal effect, this Court should strike “or reasonably should have known” from the statute.

“[T]he fact that a statute may be constitutionally infirm in some respects does not result in automatic invalidation of the entire statute.” *People v. Powell*, 716 P.2d 1096, 1101 (Colo. 1986). Rather, this Court “may sever and strike any portion of a statute which [it] hold[s] to be unconstitutional and may limit the portion stricken to single words or phrases where appropriate.” *Rodriguez v. Schutt*, 914 P.2d 921, 929 (Colo. 1996), *holding modified by Sperry v. Field*, 205 P.3d 365 (Colo. 2009) (internal citation omitted).

The legislature codified this principle in § 2-4-204, C.R.S. (2025), which provides:

If any provision of a statute is found by a court of competent jurisdiction to be unconstitutional, the remaining provisions of the statute are valid, unless it appears to the court that the valid provisions of the statute are so essentially and inseparably connected with, and so dependent upon, the void provision that it cannot be presumed the legislature would have enacted the valid

provisions without the void one; or unless the court determines that the valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

When severing “specific provisions in a statutory scheme[,]” this Court must “focus[] on whether the constitutionally valid provisions are complete in themselves and can, in turn, be given legal effect.” *Williams v. City & Cnty. of Denver*, 198 Colo. 573, 576, 607 P.2d 981, 983 (1979). This Court “must balance the obligation to construe statutes as constitutional and valid whenever possible against the duty to avoid judicially rewriting statutes in derogation of legislative intent.” *Id.* “[I]f the invalid portions of a statutory scheme are essential and pervasive parts of that scheme, the remaining portions inevitably fail to reflect legislative intent and therefore cannot be given independent legal effect by the judiciary.” *Id.*

The first-degree motor vehicle theft statute contains alternative culpable mental state requirements—“knows or reasonably should have known”—for the element: “the act was without authorization or was by threat or deception[.]” § 18-4-409(2), C.R.S. (2025). Were this Court to strike “or reasonably should have known” from the statute, then the culpable mental state “knows” would remain. This culpable mental state conforms with constitutional standards for a felony theft statute and independently supports the statute’s operation. *Johnson*, 193 Colo. at 200, 564 P.2d at 118. Additionally, the first-degree motor vehicle theft statute still comports

with the legislature’s intent: S.B. 23-097 promotes equity for victims by changing the penalties for motor vehicle theft from hinging on valuation of the stolen car to the offender’s conduct and criminal history. *See* Hearing on S.B. 23-097 before the Senate Judiciary Comm., 74th Gen. Assembly, 1st Reg. Sess. (Feb. 27, 2023).

This Court should therefore strike the unconstitutional culpable mental state from the first-degree motor vehicle theft statute.⁴

G. Alternatively, this Court should strike the language “or reasonably should have known” from the first-degree motor vehicle theft statute under the reasoning in *Lee v. Smith*, 772 P.2d 82 (Colo. 1989).

Assuming, *arguendo*, this Court finds the first-degree motor-vehicle theft statute “is susceptible of more than one construction[,]” then it should use the canon of constitutional avoidance to strike the language “or reasonably should have known” from the statute. *Clark*, 543 U.S. at 385.

In *Lee v. Smith*, 772 P.2d 82 (Colo. 1989), this Court examined the possession of drug paraphernalia statute, which stated:

“A person commits possession of drug paraphernalia if he possesses drug paraphernalia and *knows or reasonably should know* that the drug paraphernalia could be used under circumstances in violation of the laws of this state.”

⁴ Other subsections of the motor vehicle theft statute contain the same constitutionally infirm language. *See* § 18-4-409(3), (4)(a)-(b), C.R.S. This Court should strike the “or reasonably should have known” language from the other provisions of the statute for the reasons discussed above.

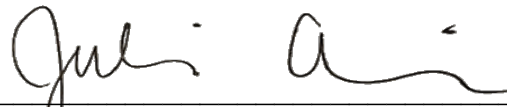
Id. at 86 (quoting § 12–22–504, C.R.S.) (emphasis added). Shop owners challenged this statute on vagueness grounds because it “lack[ed] a culpable mental state” *Id.* at 87. Citing *Moore, supra*, *Lee* “believe[d] that the statute[] c[ould] be interpreted in a constitutional manner[]” by “requiring a culpable mental state of ‘knowingly.’” *Id.* “To summarize,” *Lee* recited the elements of possession of drug paraphernalia statute as: “(1) possession; (2) of drug paraphernalia; (3) with knowledge that the paraphernalia is practically certain to be put to an illegal use in connection with a controlled substance.” *Id.* *Lee* thus held that the shop owners failed to prove the unconstitutionality of the statute beyond a reasonable doubt. *Id.*

Like in *Johnson*, *Lee* implicitly recognized that “or reasonably should know” amounted to an unconstitutional culpable mental state and struck this language from the statute. Where *Johnson* and *Lee* diverge, however, is how they struck it: *Johnson* used the doctrine of severability whereas *Lee* employed the canon of constitutional avoidance. While Mr. Ruiz maintains “reasonably should have known” constitutes an unconstitutional culpable mental state under *Johnson*, this language must still be struck under the rationale in *Lee*.

CONCLUSION

“[W]rongdoing must be conscious to be criminal[.]” *Morissette v. United States*, 342 U.S. 246, 252 (1952). The legislature violated this fundamental precept by premising liability for a class-three felony on an objective reasonable person standard found in civil law. No conceivable set of circumstances exist under which the first-degree motor vehicle theft statute may be applied in a constitutionally permissible manner. This Court must thus strike the “or reasonably should have known” language from the statute.

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A handwritten signature in black ink, appearing to read "Julia Chamberlin", written over a horizontal line.

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CERTIFICATE OF SERVICE

I certify that, on July 13, 2026, a copy of this Answer Brief was electronically served through Colorado Court E-Filing on Tanya A. Karimi of the District Attorney's Office and on Frank R. Lawson of the Attorney General's Office.

