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ADVANCE SHEET HEADNOTE
September 14, 2026

2026 CO 60

No. 25SC148, *Teran Sanchez v. People* – Pattern Jury Instructions – Reasonable Doubt – “Firmly Convinced” and “Real Possibility.”

The supreme court assesses the constitutionality of COLJI-Crim. E:03 (2022), the 2023 pattern jury instruction on the presumption of innocence, burden of proof, and reasonable doubt (“2023 Instruction”). In particular, the court considers whether the 2023 Instruction’s “firmly convinced” and “real possibility” language and the county court’s and prosecution’s statements impermissibly lowered the burden of proof and shifted that burden to the defendant.

After evaluating long-standing judicial endorsement of “real possibility” and “firmly convinced” under federal and Colorado law and their common meanings, the supreme court holds that the 2023 Instruction is constitutional and neither lowers the burden of proof nor shifts that burden to the defendant. In addition, the supreme court considers the county court’s statements in the context of the instructions as a whole and the trial record and reviews the prosecution’s statement for plain error. In doing so, the court further holds that there was no

reasonable likelihood that the jury understood the 2023 Instruction and the court's and prosecution's statements, taken as a whole, as allowing a conviction based on a standard lower than beyond a reasonable doubt.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2026 CO 60

Supreme Court Case No. 25SC148

Certiorari to the District Court

Adams County District Court Case No. 24CV30648

Honorable Teri L. Vasquez, Judge

Petitioner:

Alexis Teran Sanchez,

v.

Respondent:

The People of the State of Colorado.

Judgment Affirmed

en banc

September 14, 2026

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JUSTICE BOATRIGHT delivered the Opinion of the Court, in which **CHIEF JUSTICE MÁRQUEZ, JUSTICE HOOD, JUSTICE GABRIEL, JUSTICE SAMOUR, JUSTICE BERKENKOTTER,** and **JUSTICE BLANCO** joined.

JUSTICE BOATRIGHT delivered the Opinion of the Court.

¶1 In 2023, the Model Criminal Jury Instructions Committee published COLJI-Crim. E:03 (2022), revising Colorado’s model jury instruction on the presumption of innocence, burden of proof, and reasonable doubt (“2023 Instruction” or “Instruction”). Previously, the Committee’s model instruction defined reasonable doubt, in part, as “such a doubt as would cause reasonable people to hesitate to act in matters of importance to themselves.” COLJI-Crim. E:03 (2021). The 2023 Instruction removed this language and instead defined proof beyond a reasonable doubt as “proof that leaves you *firmly convinced* of the defendant’s guilt.” (Emphasis added.) In addition, the 2023 Instruction provided that “if you think there is a *real possibility* that the defendant is not guilty, then the prosecution has failed to prove the crime charged beyond a reasonable doubt.” (Emphasis added.)

¶2 These changes form the grounds of Alexis Teran Sanchez’s petition seeking a reversal of the district court’s judgment, which affirmed his conviction for various offenses related to alcohol-impaired driving. He argues that the 2023 Instruction—specifically its “firmly convinced” and “real possibility” language—which the county court used at his trial, impermissibly lowered the burden of proof, shifted it to the defense, and violated his rights to due process

and a fair trial. He further argues that the county court and the prosecution made statements which lowered the prosecution's burden of proof.¹

¶3 We now hold that the 2023 Instruction is constitutional and neither lowers the burden of proof nor shifts that burden to the defendant. We further hold that there was no reasonable likelihood that the jury understood the 2023 Instruction and the court's and prosecution's statements, taken as a whole, as allowing a conviction based on a standard lower than beyond a reasonable doubt. Accordingly, we affirm the district court's judgment.

I. Facts and Procedural History

¶4 In May 2023, police officers responded to a reported hit-and-run accident and approached Teran Sanchez, who was exiting a damaged vehicle in a nearby parking lot. They observed him behaving nervously, speaking quickly, and struggling to focus. They noticed his breath smelled like alcohol. Teran Sanchez admitted that he was driving the vehicle and was involved in a collision, but he provided conflicting statements about whether he remembered the specific details of the accident.

¹ We granted certiorari to determine the following issue:

Whether the trial court's jury instruction on burden of proof and reasonable doubt, based on the 2023 Model Criminal Jury Instruction, violated petitioner's federal and constitutional rights to due process and a fair trial.

¶5 The People subsequently charged Teran Sanchez with several offenses related to alcohol-impaired driving, as well as leaving the scene of an accident and failing to report an accident.

¶6 At trial, the county court gave the 2023 Instruction verbatim:

The burden of proof in this case is upon the prosecution. The prosecution must prove to the satisfaction of the jury beyond a reasonable doubt the existence of each and every element necessary to constitute the crime charged. This burden requires more than proof that something is highly probable, but it does not require proof with absolute certainty.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. If you are *firmly convinced* of the defendant's guilt, then the prosecution has proven the crime charged beyond a reasonable doubt. *But if you think* there is a *real possibility* that the defendant is not guilty, then the prosecution has failed to prove the crime charged beyond a reasonable doubt.

COLJI-Crim. E:03 (2022) (emphases added).

¶7 Teran Sanchez objected to this Instruction, arguing that its “real possibility” language impermissibly lowered the burden of proof and shifted it to the defense. He further contended that the clause, “[b]ut if you think,” put the jury’s focus on the strength of the prosecution’s case, leaving the defense’s case a secondary consideration. The county court overruled these objections. The jury ultimately found Teran Sanchez guilty of leaving the scene of an accident and failing to report an accident, along with the lesser included offense of driving while ability impaired.

¶8 Teran Sanchez appealed to the district court, which affirmed his convictions. The district court distinguished *Tibbels v. People*, 2022 CO 1, ¶¶ 10, 51, 501 P.3d 792, 795, 802 – which held that the trial court erred when it compared reasonable doubt to a visible “crack in the foundation” that would cause a prospective homebuyer to “hesitate to act” – noting that the trial court there devised its own illustration of reasonable doubt, whereas the county court here gave the 2023 Instruction verbatim without any further comment on reasonable doubt.

¶9 Moreover, the district court explained that the clause “[b]ut if you think” was to be read in context with the rest of the sentence: “But if you think there is a real possibility that the defendant is not guilty, then the prosecution has failed to prove the crime charged beyond a reasonable doubt.” The court thus concluded that “the modifier ‘real’ merely indicates that the jury is not to acquit a defendant if it can conceive of *any* possibility that the defendant is not guilty.” (Quoting *United States v. Williams*, 20 F.3d 125, 131 (5th Cir. 1994).) And because the county court consistently told the jury that Teran Sanchez was presumed innocent and that the People had the burden of proof beyond a reasonable doubt, the district court concluded that the 2023 Instruction neither lowered the burden of proof nor shifted that burden to Teran Sanchez.

¶10 Teran Sanchez sought certiorari review, and we granted his petition. He now argues that the modern-day and commonsense understanding of “firmly

convinced” and “real possibility” denotes a burden of proof lower than beyond a reasonable doubt. In support of his position, he offers, for the first time, two jury studies which he argues demonstrate that the 2023 Instruction invites juries to convict defendants based on a standard lower than beyond a reasonable doubt. Additionally, he argues that statements made by the county court and the prosecution lowered the burden of proof and shifted that burden to the defense. He points to an exchange during voir dire, when the court asked a prospective juror how she would know which of her two children broke a lamp if they “invoke[d] [the] right to silence.” After the juror said that she would “figure out [her] best guess,” the court repeated this remark (“Figure out your best guess”). Teran Sanchez also refers to the prosecution’s statements to the jury in closing arguments that it “need[ed] to find him guilty of driving while ability impaired.”

II. Analysis

¶11 We begin by setting out the standard of review. We next review the constitutional principles underpinning reasonable doubt and pattern jury instructions. After evaluating long-standing judicial endorsement of the phrases “real possibility” and “firmly convinced” under federal and Colorado law and their common meanings, we hold that the 2023 Instruction is constitutional and neither lowers the burden of proof nor shifts that burden to the defendant. Finally, we discuss and apply the test we adopted in *Tibbels* to the court’s statements and

review the prosecution's statements for plain error. In doing so, we further hold that there was no reasonable likelihood that the jury understood the 2023 Instruction and the court's and prosecution's statements, taken as a whole, as allowing a conviction based on a standard lower than beyond a reasonable doubt.

A. Standard of Review

¶12 We review de novo both the constitutionality of a jury instruction and whether a trial court properly instructed the jury. *See Garcia v. People*, 2023 CO 30, ¶ 9, 531 P.3d 1031, 1033. An instruction that lowers the prosecution's burden of proof is unconstitutional, amounting to structural error requiring automatic reversal. *See Tibbels*, ¶ 22, 501 P.3d at 797.

B. Applicable Law

¶13 The Due Process Clauses of the United States and Colorado Constitutions require that every conviction rests on proof by the prosecution of each factual element of the offense beyond a reasonable doubt. U.S. Const. amend. XIV, § 1; Colo. Const. art. II, § 25; *Pettigrew v. People*, 2022 CO 2, ¶ 33, 501 P.3d 813, 821. It follows that a trial court must correctly define what constitutes a reasonable doubt, though the court retains reasonable discretion in doing so. *Pettigrew*, ¶ 35, 501 P.3d at 821; *see also Victor v. Nebraska*, 511 U.S. 1, 5 (1994) (“[S]o long as the court instructs the jury on the necessity that the defendant's guilt be proved beyond a

reasonable doubt, the Constitution does not require that any particular form of words be used” (citation omitted)).

¶14 Pattern jury instructions are nonbinding but time-trusted guideposts for formulating constitutional jury instructions. *People v. Flockhart*, 2013 CO 42, ¶ 12, 304 P.3d 227, 231. Nevertheless, pattern jury instructions which misstate or lower the applicable standard of proof are erroneous and unconstitutional. *People v. Hoskin*, 2016 CO 63, ¶¶ 19–20, 380 P.3d 130, 136; see also *Flockhart*, ¶ 12, 304 P.3d at 231.

¶15 In assessing whether a pattern instruction—such as the definition of reasonable doubt—is constitutional, we may consider whether it mirrors longstanding expressions of the relevant principle under Colorado and federal case law. See *People v. Schlehuber*, 2025 COA 50, ¶¶ 24–33, 572 P.3d 641, 649–51. Additionally, we may consider jurors’ “commonsense understanding of the instructions,” because jurors “do not . . . pars[e] instructions for subtle shades of meaning in the same way that lawyers might.” *Boyde v. California*, 494 U.S. 370, 380–81 (1990).

¶16 To evaluate whether a trial court’s specific instruction together with its contextual statements lowered the prosecution’s burden of proof, we ask, “whether there is a reasonable likelihood that the jury understood the court’s statements, in the context of the instructions as a whole and the trial record, to

allow a conviction based on a standard lower than beyond a reasonable doubt.” *Tibbels*, ¶ 2, 501 P.3d at 794. We review the prosecution’s remarks for plain error, asking whether any “error so undermine[d] the fundamental fairness of the trial itself as to cast serious doubt on the reliability of the jury’s verdict.” *Domingo-Gomez v. People*, 125 P.3d 1043, 1053 (Colo. 2005). We consider “the language used, [its] context, and whether a contemporaneous objection was made.” *Id.* at 1048.

C. Constitutionality of the 2023 Instruction

¶17 At bottom, Teran Sanchez has two bones to pick with the 2023 Instruction. First, he argues that requiring jurors to be “firmly convinced” of the defendant’s guilt lowers the prosecution’s burden of proof to a more speculative standard. Second, he contends that asking jurors whether there is a “real possibility” that the defendant is not guilty flips the burden of proof and compels them to consider whether the defendant is substantially likely to be innocent. We now examine the challenged language.

1. Federal and Colorado Case Law Demonstrate a Positive Consensus on “Firmly Convinced” and “Real Possibility”

¶18 The 2023 Instruction’s use of “firmly convinced” and “real possibility” traces to a 1982 pattern instruction of the Federal Judicial Center (“FJC

Instruction”), which Justice Ginsburg endorsed over three decades ago.² See *Victor*, 511 U.S. at 27 (Ginsburg, J., concurring in part and concurring in the judgment) (“The ‘firmly convinced’ standard . . . is further enhanced by the juxtaposed prescription that the jury must acquit if there is a ‘real possibility’ that the defendant is innocent. This model instruction surpasses others I have seen in stating the reasonable doubt standard succinctly and comprehensibly.”).

¶19 However, even before *Victor*, several federal circuits had given the “firmly convinced” language the green light, deeming it similar to other constitutional expressions of reasonable doubt. In *United States v. Hunt*, 794 F.2d 1095, 1100 (5th Cir. 1986), for example, the Fifth Circuit stressed that “‘firmly convinced’ seems

² The text of the FJC Instruction does not exactly match the 2023 Instruction. However, the minor differences do not diminish Justice Ginsburg’s endorsement of the challenged language. In relevant part, the FJC Instruction provides:

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant’s guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt. If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, you must find him guilty. If, on the other hand, you think there is a real possibility that he is not guilty, you must give him the benefit of the doubt and find him not guilty.

Fed. Jud. Ctr., *Pattern Criminal Jury Instructions: Report of the Federal Judicial Center Committee to Study Criminal Jury Instructions* 36 (June 1982), <https://www.fjc.gov/sites/default/files/materials/35/Pattern-Criminal-Jury-Instructions-1982.pdf> [<https://perma.cc/976A-6NPD>].

little different from ‘a real doubt,’” which it had previously approved. *Id.* (citing *United States v. Alonzo*, 681 F.2d 997, 1002 (5th Cir. 1982)). And because the “firmly convinced” language “expounded the law accurately and conscientiously,” any “efforts to base error on abstract semantics must fail.” *Id.* at 1101.

¶20 Two years before *Victor*, the Ninth Circuit ratified the “firmly convinced” language in *United States v. Velasquez*, 980 F.2d 1275, 1278 (9th Cir. 1992), noting its similarity to “hesitate to act.” The court stated that “‘firmly convinced’ and ‘hesitate to act’ are essentially two ways of conveying the same definition of reasonable doubt.”³ *Id.*; cf. *United States v. Barrera-Gonzales*, 952 F.2d 1269, 1273 (10th Cir. 1992) (opining that “‘firmly convinced’ requires more persuasion than terms such as ‘reasonable certainty’ or ‘abiding conviction as to guilt’”). *But see Cage v. Louisiana*, 498 U.S. 39, 40 (1990) (concluding that language which described proof beyond a reasonable doubt as “*doubt as would give rise to a grave uncertainty*,”

³ We note, however, that the “hesitate to act” language has fallen out of favor. Specifically, in the 2023 Instruction, the Model Criminal Jury Instructions Committee omitted the “hesitate to act” language for three reasons: (1) “[I]t was phrased in the negative . . . and such phrasing arguably makes juror comprehension more challenging”; (2) some commentators had criticized the language, noting that most decisions in life “‘generally involve a very heavy element of uncertainty and risk taking,’ and are thus ‘wholly unlike the decisions jurors ought to make in criminal cases’”; and (3) “the prior instruction provided less context regarding the reasonable doubt standard.” COLJI-Crim. E:03 cmt. 1 (2022) (quoting *Victor*, 511 U.S. at 24 (Ginsburg, J., concurring in part and concurring in the judgment)).

and which required a “*moral certainty*,” lowered the burden of proof (quoting *State v. Cage*, 554 So. 2d 39, 41 (La. 1989))), *disapproved of on other grounds by*, *Estelle v. McGuire*, 502 U.S. 62, 72 n.4 (1991). In sum, the “firmly convinced” language has encountered little to no judicial criticism.

¶21 By contrast, the “real possibility” language came under scrutiny in *United States v. Porter*, 821 F.2d 968, 973 (4th Cir. 1987). The Fourth Circuit took issue with the “confusion . . . engendered by attempting to define a reasonable doubt in terms of a ‘real possibility’ that the accused is not guilty.” *Id.* Yet it clarified that this confusion came about because “[t]he district court did not explain the difference that it perceived between a ‘possibility’ and a ‘real possibility.’” *Id.* Importantly, the district court’s instruction “failed to tell the jury that the accused did not have the burden of showing a ‘real possibility’ of innocence.” *Id.* But while the Fourth Circuit stated that the instruction “*failed to allocate*” the burden of proof, it concluded that the instruction “*did not shift* the burden of proof on the question of a real possibility,” and it held that other instructions—which addressed the presumption of innocence and stated that the burden was always on the prosecution—“compensated for this omission.” *Id.* (emphases added).

¶22 Essentially, the concern arises only when the instruction implies that the defendant should be the one to supply the “real possibility” of innocence. See *United States v. Taylor*, 997 F.2d 1551, 1557 (D.C. Cir. 1993) (holding that there was

no structural error because the court explained the presumption of innocence and the prosecution's burden of proof, thereby dispelling the notion that the defendant must prove a "real possibility" of innocence). But the "real possibility" language does not shift the burden of proof to the defendant if other parts of the instruction clarify that the burden rests with the prosecution and the jury must be "firmly convinced" of the defendant's guilt to satisfy proof beyond a reasonable doubt. See FJC Instruction at 36.

¶23 Unsurprisingly, multiple federal circuits have followed Justice Ginsburg's clear nod to the twin formulation. See, e.g., *United States v. Conway*, 73 F.3d 975, 980 (10th Cir. 1995) (holding that "firmly convinced" juxtaposed with "a real possibility" presents "a correct and comprehensible statement of the reasonable doubt standard" (citing *Victor*, 511 U.S. at 27 (Ginsburg, J., concurring in part and concurring in the judgment))); accord *Williams*, 20 F.3d at 131–32; see also *United States v. Brand*, 80 F.3d 560, 566 (1st Cir. 1996) (approving the "firmly convinced" language together with the "court's further exposition"); *United States v. Petty*, 856 F.3d 1306, 1310 (10th Cir. 2017) (concluding that the "'firmly convinced' formulation of the reasonable doubt standard did not understate the degree of certainty"); *United States v. Watkins*, 66 F.4th 1179, 1187 (8th Cir. 2023) (approving language describing proof beyond a reasonable doubt as "proof that leave[s] you firmly convinced of the defendant's guilt" (quoting *Harris v. Bowersox*, 184 F.3d

744, 751 (8th Cir. 1999))). In fact, no circuit court has found that the use of the twin formulation constitutes reversible error. This overwhelming weight of authority indicates positive federal consensus about the challenged language.

¶24 More recently, two divisions of our court of appeals in *Schlehuber* and *People v. Melara*, 2025 COA 48, 572 P.3d 619, upheld the constitutionality of the “firmly convinced” and “real possibility” combination in the 2023 Instruction. *Schlehuber*, ¶ 33, 572 P.3d at 651; *Melara*, ¶ 30, 572 P.3d at 628. The *Schlehuber* division adopted the enduring view that the twin phrases complement each other. ¶ 33, 572 P.3d at 651. Specifically, it reasoned that (1) requiring the jury to be “firmly convinced” of the defendant’s guilt correctly connotes “near certitude,” which is greater than “‘highly probable’ but stops short of absolute certainty”; and (2) concordantly, the term “*real possibility*” informs the jury not to acquit just because it perceives a “*fanciful possibility*” that the defendant is not guilty. *Id.* at ¶ 31, 572 P.3d at 650 (emphases added).

¶25 Likewise, the *Melara* division characterized the 2023 Instruction’s twin formulation as “an accurate statement of the law,” noting the Instruction’s emphasis that “even proof that something is ‘highly probable’ is not sufficient to satisfy the reasonable doubt burden.” ¶ 30, 572 P.3d at 628.⁴

⁴ The *Melara* division *did* take issue with the 2023 Instruction’s omission of any language informing the jury that reasonable doubt can arise from a “lack of evidence.” ¶ 28, 572 P.3d at 627 (“[T]rial courts should include a statement within

¶26 Teran Sanchez disagrees, citing decisions to the contrary to argue that the twin formulation is infirm. Principally, he points to *State v. Perez*, 976 P.2d 427, 441 (Haw. Ct. App. 1998), *aff'd in relevant part*, 976 P.2d 379 (Haw. 1999), a Hawaii court of appeals decision which opined that “advising the jury [that] its verdict of ‘not guilty’ rests on whether it ‘think[s]’ there is a ‘real possibility’ the defendant is not guilty invites the jury to abandon the presumption of innocence.” (second alteration in original). He further cites *Perez* for the proposition that the “firmly convinced” language lowered the burden of proof because “it is possible to be firmly convinced of a fact, yet still retain a reasonable doubt.” *Id.* at 442. Moreover, he relies on the Fourth Circuit’s decision in *Porter*, which described the twin phrases as “unnecessary concepts” but nonetheless held that they were “compensated for” by “[t]he instructions taken as a whole.” 821 F.2d at 973. Teran Sanchez maintains that it is tautological to require the jury to find a “real possibility that the defendant is not guilty” in order to find that “the prosecution has failed to prove the crime charged.”

the reasonable doubt instruction that the jury may consider the lack of evidence in a case when determining whether the prosecution has met its burden.”). *But see Schlehuber*, ¶ 20, 572 P.3d at 648 (holding that a trial court does not err by omitting such language). Teran Sanchez takes no issue with the absence of this language. *See Reply Brief for Petitioner*, at 19 (stating that the issue “is not presented in this case”); *cf.* COLJI-Crim. E:03 (2025) (current model instruction which includes a sentence that “[a] reasonable doubt can be based on the evidence presented or the lack of evidence presented”).

¶27 Despite his position, Teran Sanchez recognizes that other state courts have blessed the challenged language in similar instructions. See *State v. Jackson*, 925 A.2d 1060, 1068 (Conn. 2007) (“The instruction properly informed the jury that the standard in criminal cases mandates a ‘firm conviction’ of guilt that is devoid of any rational basis for questioning the truth of the allegations.”); *State v. Putz*, 662 N.W.2d 606, 613 (Neb. 2003) (acknowledging *Perez*’s criticism of the twin formulation but holding that the language within Nebraska’s reasonable-doubt instruction did not lessen the burden of proof when “taken as a whole”); see also *United States v. Artero*, 121 F.3d 1256, 1258 (9th Cir. 1997) (holding that the twin language is permissible, relying on Justice Ginsburg’s approval in *Victor*, 511 U.S. at 24 (Ginsburg, J., concurring in part and concurring in the judgment)). And while the court in *Putz* unearthed “valid criticism” of this language, it emphasized that courts must not judge such language “in artificial isolation”; instead, they must examine it “in the context of the overall charge to the jury.” 662 N.W.2d at 614.

¶28 Our review of the 2023 Instruction, taken as a whole, reveals no concern that it lowers the burden of proof. The Instruction begins by directing the jury that the “burden of proof in th[e] case is upon the prosecution” to prove “each and every element necessary” of the charged offense, COLJI-Crim. E:03 (2022), thus unequivocally allocating the burden of proof to the prosecution. And it goes on to sufficiently describe the standard that the prosecution must meet—proving each

and every element beyond a reasonable doubt until the jury is “firmly convinced” of the defendant’s guilt—while also recognizing that the prosecution has failed to meet this burden if the jury thinks that there is a “real possibility” that the defendant is not guilty. *See Schlehuber*, ¶ 33, 572 P.3d at 651; *Melara*, ¶ 30, 572 P.3d at 628. In this regard, we particularly agree with the reasoning of our court of appeals: “firmly convinced” and “real possibility” combine to direct the jury to (1) demand significant evidence on the part of the prosecution before finding the defendant guilty, and (2) not seek some “fanciful,” “‘imaginary,’” or “‘mere[ly] possible’” doubt in order to return a not-guilty verdict. *Schlehuber*, ¶ 31, 572 P.3d at 650 (quoting *Victor*, 511 U.S. at 17). Both phrases work in tandem to describe proof beyond a reasonable doubt; they are neither redundant nor tautological.

2. Common Meanings of “Firmly Convinced” and “Real Possibility” Comport with Case Law

¶29 Teran Sanchez insists that even if courts have approved the challenged language, case law fails to grapple with the common meanings of the challenged language, i.e., how “ordinary, non-lawyer jurors” understand the language. Teran Sanchez offers two jury studies to demonstrate that the language of the 2023 Instruction causes jurors to return convictions on a standard lower than beyond a reasonable doubt. First, he presents a 1996 jury study, which found that one-third of mock jurors who used jury instructions containing the “real possibility” language, including the FJC Instruction, returned guilty verdicts. 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, 663 (1996). Teran Sanchez claims that this study spurred a federal district court to recommend abandoning the FJC Instruction, citing *Stoltie v. California*, 501 F. Supp. 2d 1252, 1261 (C.D. Cal. 2007), *aff'd sub nom.*, *Stoltie v. Tilton*, 538 F.3d 1296 (9th Cir. 2008). Second, he offers his attorneys' self-funded jury study, which found that mock jurors returned a greater percentage of guilty verdicts using the 2023 Instruction (62.8%), compared to the instructions used in *Tibbels* (59.8%) and *Cage* (52.2%). E. Paige Lloyd & Abigail J. Langeberg, *The Effect of Jury Instructions on Verdict Thresholds and Guilt Perception*, at 25 (2025), https://doi.org/10.31234/osf.io/vrfs7_v1 [<https://perma.cc/NNX5-AWD5>].

¶30 Teran Sanchez then aggregates some recent usages of the challenged language in newspapers and popular culture in an attempt to show that modern jurors would interpret “firmly convinced” more commonly as “some lower level of certainty” and a “real possibility” as a “substantial possibility.” For “firmly convinced,” he provides some examples, such as, “I am pretty firmly convinced that *Succession* is not going to let any of the Roy kids walk away happy,”⁵ and “I

⁵ Opening Brief for Petitioner, at 31 (quoting Judy Berman, *Succession's 'Church and State' Was a Funeral for Kendall's Soul*, TIME (May 21, 2023), <https://time.com/6281255/succession-season-4-episode-9-recap/> [<https://perma.cc/JH9L-P9H4>]).

am firmly convinced that our firm will emerge well-positioned to help our clients and communities recover.”⁶ For “real possibility,” his examples include, “That price isn’t final . . . but it’s a real possibility,”⁷ and “[b]ut you should know there is a very real possibility that this program fails.”⁸

¶31 However, nothing in the 2023 Instruction precludes jurors from considering and applying a commonsense meaning of the contested language. *See Melara*, ¶ 31, 572 P.3d at 628 (noting that the Instruction did not “dissuade the jurors from applying their common sense when considering the evidence”). Importantly, the ordinary meanings of “firmly convinced” and “real possibility” comport with those espoused in case law. To be “firmly” convinced (of the defendant’s guilt) is to be “strongly” or “steadfastly” convinced. *Firmly*, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/firmly> [https://perma.cc/X8M4-XBVY]. And a “real” possibility (that the defendant is not guilty) is

⁶ *Id.* at 32 (quoting Meghan Roos, *Economy Will Rebound in Second Half of 2020 as States Reopen for Business, Goldman Sachs Report Predicts*, Newsweek (Apr. 15, 2020), <https://www.newsweek.com/economy-will-rebound-second-half-2020-states-reopen-business-goldman-sachs-report-predicts-1498107> [https://perma.cc/S38L-CGGF]).

⁷ *Id.* at 29 (omission in original) (quoting Mitchell Clark, *Pebble Might Be Coming Back – as a Small Android Phone*, The Verge (Mar. 22, 2023), <https://www.theverge.com/2023/3/22/23595159/pebble-small-android-phone-project-crowdfunding-migicovsky>).

⁸ *Id.* (quoting *Stranger Things: The Monster and the Superhero*, at 55:41 (Netflix, accessed Sep. 8, 2026)).

“genuine” or “ha[s] objective independent existence.” *Real*, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/real> [https://perma.cc/AX4J-CURM]. These familiar definitions in no way suggest a lower burden than proof beyond a reasonable doubt.

¶32 Indeed, one could substitute these definitions for the challenged language in some of Teran Sanchez’s examples, and the meaning would not change. Take “firmly convinced,” whose common definition, “strongly convinced,” would fit into Teran Sanchez’s examples: “I am pretty [strongly] convinced that *Succession* is not going to let any of the Roy kids walk away happy”; “I am [strongly] convinced that our firm will emerge well-positioned to help our clients and communities recover.” Or consider “real possibility” for example, which could be swapped with “genuine possibility” and the meaning would still square with case law: “That price isn’t final . . . but it’s a [genuine] possibility”; “But you should know there is a very [genuine] possibility that this program fails.” Hence, we note that even Teran Sanchez’s examples do not support the strained interpretation of the challenged language that he urges us to adopt.

¶33 Addressing the presented jury studies, the findings and methodologies of these studies do not indicate conclusively that the 2023 Instruction lowers the burden of proof. As to the Horowitz & Kirkpatrick jury study, it in fact found that the FJC Instruction – which had both the “firmly convinced” and “real possibility”

language—“*produced lower guilt scores in the weak [evidence] case*” compared to the remaining kinds of jury instructions used by mock jurors. Horowitz & Kirkpatrick, *supra*, at 662–63 (emphasis added). The FJC Instruction was the most defendant-friendly instruction among the instructions used in the study, despite there being some avenue for clearer language in all of the instructions. *Id.* at 667 (“[O]nly the [FJC] juries interpreted the 50/50 split in evidentiary strength as failing to sustain the burden of proof.”); *cf. Stoltie*, 501 F. Supp. 2d at 1261 (“The ‘firmly convinced’ formulation, while outperforming others in helping jurors differentiate between strong and weak cases, still leaves something to be desired.”).

¶34 Regarding defense counsels’ self-funded study, even assuming the truth of its finding—that online participants returned relatively higher rates of conviction using the 2023 Instruction compared to an instruction that did not contain the “real possibility” language, Lloyd & Langeberg, *supra*, at 25—this does not indicate conclusively that the 2023 Instruction communicates a lower burden of proof than beyond a reasonable doubt in an actual courtroom setting, as the authors admit.⁹

⁹ Inter alia, the authors of counsels’ self-funded jury study recognized that participants “[r]eading jury instructions in the comfort of [their] home or office . . . likely doesn’t fully mimic the courtroom experience—where perspective [sic] jurors receive instructions directly from a judge and have an opportunity to deliberate.” Lloyd & Langeberg, *supra*, at 28.

Mock jurors individually responding to online surveys do not equate to an actual jury deliberation with the benefit of a trial judge's additional instructions. Nor can online jury surveys replicate the group dynamics of a real jury room where jurors aid one another in reaching a common understanding of the instructions during in-person deliberations.

¶35 Moreover, neither of these jury studies was presented to the trial judge, nor were the People given a full opportunity to confront the studies with their own expert evidence. In effect, the defense would have us take judicial notice of these jury studies. Judicial notice may be taken of facts "not subject to reasonable dispute" that are "either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." CRE 201(b); *see also Mun. Subdistrict, N. Colo. Water Conservancy Dist. v. OXY USA, Inc.*, 990 P.2d 701, 711 (Colo. 1999). These jury studies do not meet these requirements.

¶36 What's more, the trial judge is the appropriate "gatekeep[er]" for expert evidence ensuring that "expert[] testimony both rests on a reliable foundation and is relevant to the task at hand." *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 580, 597 (1993). It is for trial courts to "pass upon the weight of their evidence[] and find the facts," or to interpret the results of statistical studies like these jury studies, which may require an evidentiary hearing with cross examination.

Hines v. Oliver, 291 P.2d 693, 694 (Colo. 1955) (quoting *Davis v. Pursel*, 134 P. 107, 109 (Colo. 1913)). As a result, under these facts, we do not give much credence to these jury studies presented for the first time before us. *Petition of Edilson*, 637 P.2d 362, 364 (Colo. 1981) (“Evidence which was not presented to the trial court will not be considered on review.”).

¶37 Accordingly, we hold that the 2023 Instruction is constitutional and neither lowers the burden of proof nor shifts that burden to the defendant.

D. Additional Statements

¶38 Teran Sanchez alternatively argues that even if the 2023 Instruction is constitutional, additional statements made by the county court and the prosecution combined with the Instruction to lower the burden of proof.

1. Applicable Law

¶39 To evaluate the *county court's* statements, we ask, “whether there is a reasonable likelihood that the jury understood a contested instruction, in the context of the instructions as a whole and the trial record, to allow a conviction based on a standard lower than beyond a reasonable doubt.” *Tibbels*, ¶ 36, 501 P.3d at 799. This inquiry turns on “the nature of the statements, the context in which they were made, any other explanations or instructions that the court may have provided, and, of course, the court’s final jury charge.” *Id.* at ¶ 41, 501 P.3d at 800.

¶40 For instance, in *Tibbels*, the trial court first supplied the then-extant pattern reasonable-doubt jury instruction, COLJI-Crim. E:03 (2021), which defined reasonable doubt in part as “a doubt as would cause reasonable people to hesitate to act in matters of importance to themselves.” *Tibbels*, ¶ 9, 501 P.3d at 795. But the court then immediately diminished its significance: “Now, you’re all sitting there saying what the hell does that mean. It’s a lengthy definition, okay. And don’t lose heart. I’ll give you an example and see if we can put some teeth and make this concrete.” *Id.*

¶41 After so diminishing the pattern instruction, the court then supplied its own formulation. Specifically, it analogized reasonable doubt to a “crack in the foundation from the floor to the ceiling” visible to a prospective homebuyer taking a tour of the property, one “that’s causing you to hesitate” —i.e., “something that you can kind of touch or feel,” as distinct from “aliens coming down and telling you don’t buy the house.” *Id.* at ¶¶ 10, 12, 501 P.3d at 795–96. We deemed this reversible error, holding that it was “reasonably likely that the jury understood the court’s statements to allow a conviction based on a standard lower than beyond a reasonable doubt.” *Id.* at ¶ 53, 501 P.3d at 802. We reasoned that (1) by immediately directing the jury’s focus away from the pattern instruction and supplying its own illustration, the trial court “undermin[ed] the pattern instruction”; (2) the illustration “established a higher degree of doubt than is

required for an acquittal” because it erroneously “suggested that a reasonable doubt was one that was so obvious that it would give every reasonable person pause and cause them to hesitate to act”;¹⁰ and (3) the analogy suggested “that [the defense] had some obligation to present evidence to create a reasonable doubt in the jurors’ minds.” *Id.* at ¶¶ 50–52, 501 P.3d at 801.

¶42 Contrast the foregoing case with *Johnson v. People*, 2019 CO 17, ¶ 4, 436 P.3d 529, 530–31, in which the trial court first gave the same pattern jury instruction but then went on to embellish this definition:

[Y]ou would find Ms. Johnson guilty only if, after hearing all of that evidence, you just can’t bring yourself to do it. You just have to hesitate. It’s not there. You can’t find her guilty because the quality or quantity of evidence just doesn’t let you. That’s when you’ve hesitated to act.

We held that this remark did not prejudice Johnson because (1) it was “nonsensical and simply too confusing for the jury to follow” and was made only once, (2) the court read “the correct definitions of reasonable doubt and the burden of proof immediately” beforehand, and (3) the court “correctly instructed the jury

¹⁰ The then-extant reasonable-doubt jury instruction defined reasonable doubt as “such a doubt as would cause reasonable people to hesitate to act in matters of importance to themselves.” COLJI-Crim. E:03 (2021). Thus, our use of “hesitate to act” referred to the trial court’s paraphrasing, which portrayed reasonable doubt as a crack in the foundation “causing you to hesitate.” See *Tibbels*, ¶¶ 12, 51, 501 P.3d at 795, 801.

numerous times regarding the presumption of innocence, reasonable doubt, and the burden of proof.” *Id.* at ¶ 18, 436 P.3d at 534.

¶43 Besides the trial *court’s* instructions to which we apply the *Tibbels* inquiry, Teran Sanchez claims that the *prosecution* made improper statements during the trial, which prejudiced him. If such statements were “few in number [and] momentary in length” and not objected to contemporaneously, they do not require reversal unless they constitute “plain error” which “undermines the fundamental fairness of the trial itself as to cast serious doubt on the reliability of the jury’s verdict.” *Domingo-Gomez*, 125 P.3d at 1053.

¶44 With these principles in mind, we now turn to Teran Sanchez’s case.

2. The County Court’s Additional Statements During Voir Dire and the Prosecution’s Statements During Closing Arguments Did Not Lower the Burden of Proof

¶45 Teran Sanchez argues that even if the pattern 2023 Instruction did not violate his due process rights, certain statements made by the court *and* the prosecution to the jury did. He asserts that these statements caused his conviction despite what he characterizes as “remarkably weak” evidence. Specifically, he points to a statement during closing argument – when the prosecutor told the jury that it “need[ed] to find him guilty of driving while ability impaired” – and contends that this lowered the burden of proof because it conveyed that the jury was *required* to convict him. Teran Sanchez also points to an exchange during voir

dire, when the court asked a prospective juror how she would know which of her two children broke a lamp if they “invoke[d] [the] right to silence” and after the juror said that she would “figure out [her] best guess,” the court repeated this remark:

The court: So you go to the little one and she says, “Mom, I appreciate the question, but I’m going to invoke my right to silence at this time.” What’s – what’s your response, besides putting her in law school?

Juror: I just assess the situation and *figure out my best guess*.

The court: *Figure out your best guess. And so, as – as a juror today, if you’re selected to sit on this panel, you may be charged with assessing somebody’s credibility and determining what the facts were. And that burden will be entirely on the [p]rosecution to present the evidence to you. The burden never shifts over to the [d]efense at any point. I don’t know, again, what evidence you’ll hear today, but [defense attorneys] could put their feet up, pull out a deck of cards, and start playing Go Fish, and the burden would never shift to them to disprove anything in this case.*

(Emphases added.)

¶46 Teran Sanchez maintains that because the court did not explicitly correct the juror and instead repeated the comment, jurors might have believed they could apply their “best guess.”

¶47 We disagree that these stray remarks lowered the prosecution’s burden of proof. This is not a case like *Tibbels*, in which the trial court undermined the model instruction and provided its own lengthy, improper definition of “reasonable

doubt.” ¶ 51, 501 P.3d at 801. To the contrary, this case is closer to *Johnson*, in which the court repeatedly gave the “exact” definition of reasonable doubt in the pattern instruction (which we have already deemed constitutional). ¶¶ 16, 18, 436 P.3d at 533–34.

¶48 Moreover, the court here repeatedly informed the jury that the prosecution bore the burden of proving Teran Sanchez’s guilt beyond a reasonable doubt. Almost immediately after the court repeated the juror’s remark to “[f]igure out your best guess,” it stated that the “burden [would] be entirely on the [p]rosecution” and that the defense had no duty to present evidence. Additionally, during voir dire, after asking another prospective juror if she would have any “discomfort” about the prosecution’s burden, the court emphasized that this burden never shifted to the defense:

So again, as I sort of instructed a little bit ago, the *burden of proof in this case to prove each and every element of the offense beyond a reasonable doubt rests with the People.*

They’ll be the ones calling the witnesses at the start of this trial, and *the [d]efense never has to present any evidence.* The [d]efense can remain silent, they don’t have to call any witnesses. Again, they don’t have to do anything over the course of this trial and *the burden never shifts over to them.* We never ask ourselves, “We heard from this person so now they need to disprove anything.” *The burden rests entirely with the prosecution to prove this case beyond a reasonable doubt.*

(Emphases added.)

¶49 At another point during voir dire, after a third prospective juror expressed concern about “only getting one side of the story,” the court reiterated the law about the burden of proof:

And, again, that burden never shifts over to the [d]efense for them to disprove anything. If you did not hear from the [d]efense, it sounds like you’re hoping that they’ll fill in gaps or present their story, but do you understand that even if they don’t present any witnesses, that’s not something that you can consider in your deliberations? And that they don’t have any burden of proof in a criminal case?

(Emphases added.)

¶50 And at the close of trial, the court gave the 2023 Instruction – which correctly explains reasonable doubt – verbatim. In light of these accurate statements, the “best guess” remark cited by Teran Sanchez holds no water. And absent any infirmity with the court’s instruction, we decline to step into the shoes of the trial court and weigh the strength or weakness of the prosecution’s evidence. *See Oliver*, 291 P.2d at 694.

¶51 Nevertheless, even the prosecution, in its closing argument, reminded the jury that it needed “to be firmly convinced” that Teran Sanchez had committed the charged crimes. Thus, although the prosecution told the jury that it “need[ed] to find [Teran Sanchez] guilty of driving while ability impaired,” the jury was well aware that it needed to be “firmly convinced” to do so. Moreover, this was a short, passing comment to which no contemporaneous objection was made. Thus, it did nothing to diminish the correct definition of the burden of proof beyond a

reasonable doubt, which was present in the jurors' minds. Thus, in this case, we see no avenue wherein the jury's verdict was undermined by the prosecution's momentary comment that the jury needed to find Teran Sanchez guilty, which was shortly followed by the "firmly convinced" language. *See Domingo-Gomez*, 125 P.3d at 1053.

¶52 Accordingly, we hold that there was no reasonable likelihood that the jury understood the 2023 Instruction and the court's and prosecution's statements, taken as a whole, as allowing a conviction based on a standard lower than beyond a reasonable doubt.

III. Conclusion

¶53 For the foregoing reasons, we affirm the district court's judgment.