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SUPREME COURT, STATE OF COLORADO

Ralph L. Carr Judicial Center
2 East 14th Avenue
Denver, CO 80203

Certiorari to the Colorado Court of Appeals
Case No. 2017CA2249

Petitioner
TIMOTHY ROBERT MCBRIDE

v.

Respondent
THE PEOPLE OF THE
STATE OF COLORADO

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OPENING BRIEF

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

It contains 4,533 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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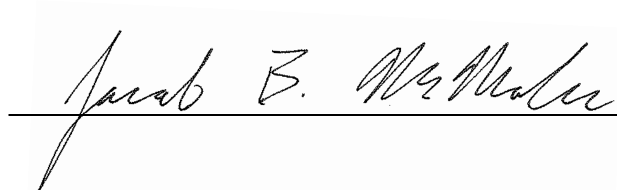

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ISSUE ANNOUNCED BY THE COURT

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

STATEMENT OF THE CASE

After sheriff's deputies pulled over Mr. McBride and searched the car he was driving, the district attorney for the Twenty-First Judicial District (Mesa County) filed a five-count complaint charging:

1. Possession of a controlled substance (DF4), § 18-18-403.5(1), (2)(a), C.R.S.;
2. Special offender—firearm possession (DF1), § 18-18-407(1)(d)(II), C.R.S.;
3. Possession of a weapon by a previous offender ("POWPO") (F6), § 18-12-108(1), C.R.S.;
4. Tail lamp violation (TIB), § 42-4-206(1), C.R.S.; and
5. Failure to signal a turn (TIA), § 42-4-903, C.R.S.

(CF pp.12-16.) Mr. McBride pled not guilty. (*Id.* p.22.)

The district court denied his suppression motion, which argued the stop was unjustified, and the case proceeded to a jury trial. (*Id.* pp.34-37, 81-85.) Mr. McBride defended that he did not know about the prohibited items belonging to the

front-seat passenger, Maria Salazar.[1] (TR 8/24/17 pp.132-50.) The jury convicted him of POWPO and the traffic offenses but acquitted him of possessing a controlled substance, which obviated Count 2's special-offender allegation. (*Id.* pp.167-68; CF pp.234-38.)

The trial court sentenced Mr. McBride to two years in prison for the POWPO offense and imposed monetary sanctions for the traffic offenses. (TR 10/19/17 pp.23-24; CF p.310.) He appealed.

A division of the court of appeals reversed (1) the POWPO conviction for insufficient evidence of knowing possession and (2) the failure-to-signal infraction because Colorado's traffic laws impose no duty to signal when navigating roundabouts. *People v. McBride*, 2020 COA 111, ¶¶ 8, 22-40, 44-66. Those rulings are not at issue, but the division affirmed the tail-lamp infraction. *Id.* ¶¶ 12-21, 67.

This Court agreed to review the division's interpretation of Colorado's tail-lamp law. *McBride v. People*, No. 20SC717, 2021 WL 2769047 (Colo. June 28, 2021). The law requires modern vehicles to have two rear-mounted tail lamps that emit "a red light plainly visible from a distance of five hundred feet to the rear." § 42-4-206(1), C.R.S.

[1] The State separately charged her with drug possession and POWPO. (CF pp.12, 277; TR 8/24/17 p.49:5-7.)

STATEMENT OF THE FACTS

Mesa County sheriff's deputies surveilled the Travelodge for drug trafficking on January 31, 2017. (TR 8/23/17 pp.247-48.) From his unmarked car, Deputy Garth Cowley watched a Lincoln Town Car pull into the Travelodge parking lot. (*Id.* pp.248-49.) He could see the Lincoln had two occupants, but neither person got out of the car, and he did not recall anyone coming out to the car from the hotel. (*Id.* pp.248-49, 259-60.) The Lincoln drove away less than 10 minutes later, and he relayed his observations to law-enforcement counterparts. (*Id.* pp.248-49.)

Deputy Nicole Briggs, in a different unmarked car, followed the Lincoln south on Horizon Drive. (*Id.* pp.249-50; TR 8/24/17 pp.11-13.) She said the Lincoln's "tail lights were broken," and although someone had repaired them with red tape, "there was some white light emitting from those bulbs." (TR 8/24/17 p.13:2-5.) The Lincoln navigated a roundabout without signaling, and Deputy Briggs radioed Deputy Joseph Stratton to use his marked patrol car to stop the Lincoln for the purported traffic infractions. (*Id.* pp.13-14; TR 8/23/17 pp.212-15.) The stop was admittedly pretextual. (TR 5/31/17 pp.30, 39.)

Deputy Stratton saw white light emitting from the tail lamps and pulled the Lincoln over. (TR 8/23/17 pp.215-16.) Mr. McBride was in the driver's seat, and

Ms. Salazar was the front passenger seat. (*Id.* p.216:2-4.) The deputy arrested Mr. McBride on an outstanding failure-to-appear warrant. (*Id.* pp.216-18; CF p.304.)

Additional officers arrived on scene. (TR 8/23/17 pp.217-19.) They searched the Lincoln and found a baggie of methamphetamine on the floor and a handgun between the seats under Ms. Salazar's purse. (*Id.* pp.219, 238-40; TR 8/24/17 pp.16-18.) She was carrying drug paraphernalia on her person. (TR 8/23/17 pp.255-56, 263; TR 8/24/17 pp.21-22, 35-37.)

The jury acquitted Mr. McBride of possessing the drugs (CF p.234), and the division vacated his POWPO conviction because the prosecution failed to show he knew about the gun, *McBride*, ¶ 66. Because the division also reversed his infraction for failing to signal in a roundabout, *McBride*, ¶ 40, the validity of Mr. McBride's remaining conviction turns on the meaning of section 42-4-206(1), C.R.S.

SUMMARY OF THE ARGUMENT

This Court should apply the plain language of section 42-4-206(1), C.R.S., and hold that, notwithstanding the emission of some white light, tail lamps emitting "a red light plainly visible from a distance of five hundred feet to the rear" comply with the law. The division considered inapplicable policy issues and added an unadministrable "only red" requirement not found in the law's text. This Court should reverse and vacate Mr. McBride's infraction because the evidence did not

show beyond a reasonable doubt that these tail lamps failed to emit a red light plainly visible from a distance of five hundred feet to the rear.

ARGUMENT

I. This Court should vacate Mr. McBride's tail-lamp infraction for insufficient evidence. The prosecution never proved that these tail lamps failed to emit a red light plainly visible from five hundred feet to the rear.

A. Standard of review

This Court reviews sufficiency issues, including those that require initial resolution of statutory-interpretation questions, de novo. *McCoy v. People*, 2019 CO 44, ¶ 27; *see id.* ¶ 37. Plain-error review does not apply to sufficiency claims, *id.* ¶ 2, but Mr. McBride preserved this issue by moving for a judgment of acquittal. (TR 8/24/17 p.71:12-21.)

B. Proceedings below

1. *The trial court denied Mr. McBride's suppression motion because it ruled there was reasonable suspicion to investigate a tail-lamp infraction.*

Mr. McBride moved to suppress evidence from the car search because the deputies lacked reasonable suspicion to initiate the traffic stop. (CF pp.34-37.) The State responded the stop was valid. (*Id.* p.53.)

During the hearing on the motion to suppress, Deputy Stratton testified that he did not spend time following the Lincoln but initiated the stop as soon as he

caught up. (TR 5/31/17 pp.7, 16.) He wasn't sure how far behind the Lincoln he was when he first observed it, but he saw the Lincoln's tail lamps were on. (*Id.* pp.15-16.) When he activated his overhead lights, the Lincoln braked, and he observed the tail lamps were covered in red tape "but you could see white light emitting from the rear of the vehicle." (*Id.* pp.8-9, 20-21.) The white light did not cause him to think the Lincoln was backing up. (*Id.* p.21:7-11.) This is how the Lincoln looked that night:

(*Id.* pp.16-17; Def. Exs.A-D.) Deputy Stratton did not recall seeing a gap in the red tape while on scene. (TR 5/31/17 p.18:4-13.) The illuminated, passenger-side tail

lamp, shown in Exhibit C (lower left image), was how the light looked, which Deputy Stratton agreed was red. (*Id.* pp.18-19.) He said he saw both white and red light on his approach. (*Id.* p.22:17-21.)

Deputy Briggs testified she was looking for a reason to pull this car over based on Deputy Crowley's report from the Travelodge. (*Id.* p.30:11-25.) She said she saw white light despite the red-tape fix. (*Id.* pp.26, 35-37.) She agreed red light was also plainly visible as she followed. (*Id.* pp.36-38.)

Defense counsel argued section 42-4-206(1), C.R.S., required that the tail lamps emit red light plainly visible from five hundred feet to the rear, and both officers saw red light. (*Id.* pp.39-40.) "[T]he statute does not say exclusively red light[.]" (*Id.* p.40:21.) The prosecution argued the tail lamps were "broken" and the repair efforts were unsuccessful. (*Id.* pp.44-45.) The prosecution claimed the statute "says only red light should be emitting from the tail lamps." (*Id.* p.45:16-17.)

The trial court denied the suppression motion because the Lincoln's "broken" tail lamps provided reasonable suspicion for the stop. (CF pp.81-85 (order relying on *People v. Brant*, 252 P.3d 459 (Colo. 2011)).)

2. *The jury convicted Mr. McBride of violating section 42-4-206(1), C.R.S.*

At trial, Deputy Briggs testified that she followed the Lincoln based on Deputy Cowley's report that it briefly stopped at the Travelodge. (TR 8/24/17

pp.11-12, 42-43.) It looked to her like the bulbs had melted the red tape such that "there was some white light emitting from those bulbs." (*Id.* p.13:2-5.) She thought she made her observations from immediately behind the Lincoln, then she requested Deputy Stratton stop the car. (*Id.* p.14:7-12.)

Deputy Stratton testified that Deputy Briggs asked him to stop the Lincoln. (TR 8/23/17 p.233:8-20.) He observed white light emitting from the tail lamps and made the stop. (*Id.* pp.213-15.) Through him, the prosecution admitted pictures of the Lincoln's exterior. (*Id.* pp.219-22; People's Exs.6-8.)

The jury convicted Mr. McBride of violating section 42-4-206(1), C.R.S. (TR 8/24/17 pp.167-68; CF p.237.) The trial court imposed a fine. (TR 10/19/17 p.23:7-9; CF pp.310-12.)

3. *A division of the court of appeals affirmed by misinterpreting the tail-lamp statute as requiring "only red light."*

On appeal, the division agreed with the trial court that suspicion of a tail-lamp violation justified the traffic stop. *McBride*, ¶¶ 41-43. Unlike the trial court, which found this Court's inapposite *Brant* decision controlling (CF p.84), the division looked to the statutory text and interpreted section 42-4-206(1), C.R.S. *See People v. Chavez-Barragan*, 2016 CO 16, ¶ 12 ("Whether an officer's suspicion is reasonable . . . depends on the meaning and scope of the underlying prohibition."). The division read the law as requiring "tail lamps to shine *only* red light." *McBride*,

¶ 13 (emphasis added); *see id.* ¶ 20 (asserting *Brant* "comports with" this interpretation). On that understanding of the law, the division found the evidence sufficient and affirmed. *Id.* ¶¶ 9-21.

C. Under the law's plain language, tail lamps, regardless of whether they emit some white light, comply if they emit "a red light plainly visible from a distance of five hundred feet to the rear."

1. *This Court's statutory-interpretation precedent prohibits courts from adding words to statutes.*

This Court interprets statutes by reading their plain language. "Because a statute takes its meaning from the language chosen for it by the legislature, as long as that language is unambiguous and does not conflict with other statutory provisions, the legislative intent, and therefore the meaning of the statute, is clear without reference to other interpretative aids." *People v. Bott*, 2020 CO 86, ¶ 17; *see Cowen v. People*, 2018 CO 96, ¶ 12 ("[I]f the language in a statute is clear and unambiguous, we give effect to its plain meaning and look no further."). "We do not add words to the statute or subtract words from it." *Turbyne v. People*, 151 P.3d 563, 567 (Colo. 2007). The statutory scheme must be read "as a whole, giving consistent, harmonious, and sensible effect to all of its parts, and . . . avoid[ing] constructions that would render any words or phrases superfluous or lead to illogical or absurd results." *McCoy*, ¶ 38.

If the language is ambiguous—that is, if the law "is silent or susceptible to more than one reasonable interpretation"—and the legislature's intent is unclear, the rule of lenity provides that the ambiguity "must be interpreted in favor of the defendant." *People v. Jones*, 2020 CO 45, ¶¶ 55, 70 (quotations omitted).

2. *The division inserted the word "only" into the law and looked to policy concerns, but compliance turns on whether the tail lamps emit "a red light plainly visible from a distance of five hundred feet to the rear."*

Section 42-4-206(1), C.R.S., provides:

> To be operated on a road, every motor vehicle, trailer, semitrailer, and pole trailer and any other vehicle that is being drawn at the end of a train of vehicles must be equipped with at least one tail lamp mounted on the rear, which, when lighted as required in section 42-4-204,[2] emits a red light plainly visible from a distance of five hundred feet to the rear; except that, in the case of a train of vehicles, only the tail lamp on the rear-most vehicle need actually be seen from the distance specified, except as provided in section 42-12-204. Furthermore, every vehicle registered in this state and manufactured or assembled after January 1, 1958, must be equipped with at least two tail lamps mounted on the rear, on the same level and as widely spaced laterally as practicable, which, when lighted as required in section 42-4-204, comply with this section.

The division misinterpreted section 42-4-206(1), C.R.S., because framed the issue as whether the law "requires that tail lamps shine *only* red light, or whether it

[2] Section 42-4-204(1), C.R.S., requires illumination between sunset and sunrise as well as during other times of restricted visibility. This stop was at night so Mr. McBride needed to comply with section 42-4-206(1), C.R.S. He did.

simply requires that lamps shine red light without prohibiting lamps from also shining other colors." *McBride*, ¶ 13. The division asked how much red light was necessary for compliance, but the statute's text resolves the issue—enough to be plainly visible from five hundred feet to the rear. The division should have asked whether the prosecution's evidence allowed a reasonable jury to conclude that these tail lamps failed to emit "a red light plainly visible from a distance of five hundred feet to the rear." § 42-4-206(1), C.R.S. As shown below, this evidence was insufficient.

The division's interpretation violates this Court's statutory-interpretation precedent. The word "only" appears just once in section 42-4-206, C.R.S., and it is not before "red." *See* § 42-4-206(1), C.R.S. (providing that, "in the case of a train of vehicles, *only* the tail lamp on the rear-most vehicle need actually be seen from the distance specified" (emphasis added)). The division added the restrictive word "only" so that the law "requires tail lamps to shine only red light." *McBride*, ¶ 13. This Court should reject the division's interpretation. *See Turbyne*, 151 P.3d at 567 ("We do not add words to the statute . . . .").

According to the division, "when the legislature says 'red' it means only 'red.'" *McBride*, ¶¶ 16-17. But Mr. McBride's argument is not that white light can satisfy section 42-4-206(1)'s red requirement. Rather, when a red light is plainly

visible from five hundred feet to the rear, the presence of some white light does not matter. Moreover, section 42-12-204(1), C.R.S., calls into question the division's idea that color specification implies an "only." Under that section, a "'blue dot tail light' means a red lamp installed in the rear of a motor vehicle containing a blue or purple insert." § 42-12-204(1), C.R.S.

The division fretted that "allowing the use of additional colors would detract from uniformity and uniform enforcement of the law. If tail lamps had red light mixed with a host of other colors, there would no longer be uniformity in tail lamps shining as red." *McBride*, ¶ 14. But this is not a case of an eccentric driver seeking to operate purple or green tail lamps on a theory that the law did not expressly preclude those colors. The law's plain language shows that tail lamps comply by emitting a red light plainly visible from five hundred feet to the rear. § 42-4-206(1), C.R.S. If that condition is satisfied, the presence of other light is immaterial. If colors mix such that there is not a red light plainly visible from five hundred feet, then the tail lamp is out of compliance.

The division thought some white light amidst the plainly visible red light could "lead to confusion and accidents" by suggesting the car was going in reverse. *McBride*, ¶ 18. The division turned to policy concerns instead of applying the law as written. The General Assembly determined that tail lamps are red enough to avoid

this confusion if they are plainly visible from five hundred feet to the rear. Reliance on this policy concern was particularly inappropriate here given there was no confusion about which way Mr. McBride was going. (TR 5/31/17 p.21:7-11.)

The division worried that, "if a tail lamp shone a lot of white light with a smidge of red but could be perceived as faintly red at a 500-foot distance, that would introduce subjectivity on the part of police." *McBride*, ¶ 14. If the light is "faintly red" at five hundred feet, the tail lamp may be out of compliance because the law requires a red light that is "plainly visible," but regardless of whether "faintly" is enough for "plainly" in the division's hypothetical, the division's interpretation made the law's subjective-enforcement problem worse, not better. The division substituted the text's objective, five-hundred-foot rule for officers' subjective assessments of the red light's purity. Officers will see different shades of lighter and darker reds based on the mix of red and white lights they will confront. They will not encounter pure red light. As the division noted, *see id.*, ¶ 15, another part of the law requires white-light illumination of rear registration plates, § 42-4-206(3), C.R.S. The division's "only red" rule does not comport with the law's text, nor is it administrable.

The division's rule would hold drivers liable even when they have repaired their tail lamps. According to the division, it does not matter if the tail lamps emit

red light plainly visible from five hundred feet to the rear because any white light, even from just a hairline crack in the tape, will support a traffic stop and infraction. The General Assembly did not write a strict-liability statute prohibiting Colorado drivers from emitting any white light from their tail lamps. This Court should not require Coloradans to replace expensive plastic lenses when red repair tape can do the job. To comply with section 42-4-206(1), C.R.S., tail lamps must emit a red light plainly visible from five hundred feet to the rear. Where they do, the emission of additional white light is no violation.

D. This Court's *Brant* precedent is inapplicable.

The trial court found *People v. Brant*, 252 P.3d 459 (Colo. 2011), controlling. (CF p.84 ("The direction from the higher court is clear. If a person is driving with a broken taillight, law enforcement may conduct a traffic stop.").) The division recognized section 42-4-206, C.R.S., "regulates color, not brokenness," but thought *Brant* supported its "interpretation that a broken tail lamp that emits some white light along with red light violates the statute," *McBride*, ¶ 20.

Brant is inapplicable. The case reached this Court on interlocutory review after the trial court suppressed evidence from the *search* of a car. 252 P.3d at 461-62; *see* C.A.R. 4.1 ("Interlocutory Appeals in Criminal Cases"). The trial court upheld the initial *stop* of the car, 252 P.3d at 461-42, a ruling favorable to the

prosecution over which this Court had no jurisdiction, *see People v. Ealum*, 211 P.3d 48, 53 (Colo. 2009) (explaining that, on interlocutory review, "we lack jurisdiction to address an issue the trial court resolved in favor of the prosecution"). *Brant* held the trial court misapplied the "plain feel" doctrine in suppressing evidence from the search, but the stop's constitutionality was not disputed. 252 P.3d at 461-65.

The *Brant* opinion gave context that police "pulled over a car for a broken taillight," and explained that generally "[a] traffic infraction, such as driving with a broken taillight, is sufficient justification for a police vehicle stop," *id.* at 461-42; *see also id.* at 463 (explaining there was "no question" the broken tail lamp justified the stop), but *Brant* did not interpret this statute. That is, *Brant* did not address what constitutes a violation of section 42-4-206(1), C.R.S. Given its posture, *Brant*'s use of the non-technical term "broken" to describe the tail lamps is unsurprising, but *Brant* did not hold, as the trial court thought, that a "broken" tail lamp violates the law. (CF p.84.) A brokenness standard tells drivers nothing about how to comply. The statute's text establishes the governing law.

The question is not whether these tail lamps were broken but whether they "emit[ted] a red light plainly visible from a distance of five hundred feet to the rear," § 42-4-206(1), C.R.S. *Brant* offers no support for the division's "only red" interpretation.

E. The better-reasoned, out-of-state decisions support Mr. McBride.

The division claimed support for its interpretation from four out-of-state cases, *McBride*, ¶ 19, but the better-reasoned decisions follow Mr. McBride's plain-language reading.

In the division's first case, *Williams v. State*, 853 P.2d 537 (Alaska Ct. App. 1993), the law at issue did not have a distance requirement, like Colorado's five-hundred-foot rule, that resolved the "how much red light?" question. *See Williams*, 853 P.2d at 538 (quoting 13 AAC 04.145(e)). Further, the Alaska law went on to provide that only the specified colors were allowed. *Id.* (quoting 13 AAC 04.145(f)).

In two of the division's other cases, *State v. Patterson*, 97 P.3d 479 (Idaho Ct. App. 2004), and *People v. Allen*, 933 N.Y.S.2d 756 (N.Y. App. Div. 2011), the laws at issue had distance provisions like Colorado's law, *see* Idaho Code § 49-906(1); N.Y. Veh. & Traf. Law § 375(2)(a)(2)-(3), but those courts did not consider arguments that such provisions resolve cases where the tail lamps emit a mix of red and white light.

Likewise, in *Robinson v. State*, 431 S.W.3d 877 (Ark. 2014), the division's other case, the court rested more on "a long line of [state] precedent" that broken tail lamps justify stops than on an interpretation of the law's distance provision. *Id.* at 879; *see* Ark. Code Ann. § 27-36-215(a)(1)-(3). The *Robinson* dissent noted that,

"[w]hile the requirement that the tail lamp 'emit a red light' [was] clearly expressed, the prohibition against emitting white light that the majority ascribe[d] to [the] section [was] nowhere to be found." 431 S.W.3d at 881 (Hart, J., dissenting, joined by Hannah, C.J.). The division's cases are not persuasive.

The division acknowledged a fifth out-of-state case, *Vicknair v. State*, 670 S.W.2d 286 (Tex. App. 1983), *aff'd*, 751 S.W.2d 180, 189 (Tex. Crim. App. 1986), supported Mr. McBride. *McBride*, ¶ 19. In Texas, tail lamps' red light must be plainly visible from 1,000 feet to the rear. *Vicknair*, 670 S.W.2d at 287 (quoting Tex. Rev. Civ. Stat. Ann. art. 6701d, § 111 (Vernon 1977)). The officer in *Vicknair* testified the suspect's tail-lamp lens was cracked so both red light and white light were visible. *Id.* The intermediate court found no basis for the stop since the evidence showed the light was red at unstated distances. *Id.* The high court agreed there was no evidence "that the tail light on appellant's vehicle failed to emit a red light as required by a plain reading" of the statute. *Vicknair*, 751 S.W.2d at 190.

Texas is not alone. Florida requires tail lamps to "emit a red light plainly visible from a distance of 1,000 feet to the rear," Fla. Stat. § 316.221(1), which the Supreme Court of Florida interpreted as not permitting a stop for cracked lens covers, *Doctor v. State*, 596 So.2d 442, 446-47 (Fla. 1992).

In Indiana, tail lamps must "emit[] a red light plainly visible from a distance of five hundred (500) feet to the rear." Ind. Code § 9-19-6-4(a). In *Kroft v. State*, 992 N.E.2d 818 (Ind. Ct. App. 2013), the driver was stopped for "a dime-sized hole" in one of his two working tail lamps "that let out a miniscule amount of white light," but the appellate court noted the statute had "no requirement about 'only' red light being visible from a distance of 500 feet." *Id.* at 820-21. The court ruled the stop unjustified because there was no allegation the defective tail lamp "did not emit red light plainly visible from a distance of 500 feet to the rear." *Id.* at 822.

Following these better reasoned decisions, this Court should hold that, notwithstanding the emission of some white light, tail lamps emitting a red light plainly visible from five hundred feet to the rear comply with section 42-4-206(1), C.R.S. The law's text compels this interpretation, but this Court should reach the same conclusion under the rule of lenity if the language is ambiguous.

F. The evidence here is insufficient so this Court should vacate the infraction.

"At trial, the prosecution has the burden of establishing a prima facie case of guilt through introduction of sufficient evidence." *Clark v. People*, 232 P.3d 1287, 1291 (Colo. 2010). Appellate review of sufficiency issues "protect[s] an essential component of due process, namely, that 'no person shall be made to suffer the onus of a criminal conviction except upon sufficient proof.'" *McCoy*, ¶ 20 (quoting

Jackson v. Virginia, 443 U.S. 307, 316 (1979)); *see* U.S. Const. amends. V, XIV; Colo. Const. art. II, § 25; *In re Winship*, 397 U.S. 358, 364 (1970).

"We employ a substantial evidence test to determine if the evidence presented to the jury is sufficient to sustain a defendant's conviction." *Clark*, 232 P.3d at 1291. The evidence must be both substantial and sufficient to support the defendant's guilt beyond a reasonable doubt. *Dempsey v. People*, 117 P.3d 800, 807 (Colo. 2005); *People v. Bennett*, 515 P.2d 466, 469 (Colo. 1973). The prosecution receives the benefit of all reasonable inferences fairly drawn from the evidence, but those inferences "must be supported by a logical and convincing connection between the facts established and the conclusion inferred." *People v. Donald*, 2020 CO 24, ¶ 19 (quotations omitted). Courts may not sustain verdicts resting on guessing, speculation, conjecture, or a mere modicum of relevant evidence. *Id.*

The evidence here did not prove that the Lincoln's tail lamps failed to emit a red light plainly visible from a distance of five hundred feet to the rear. The deputies seemed to equate white light with a violation. Deputy Briggs testified that, despite the red tape, she saw some white light, but she was immediately behind the Lincoln so her observations did not establish whether the tail lamps emitted a red light plainly visible at the required distance. (TR 8/24/17 pp.13-14.) Once Deputy Stratton got behind the Lincoln, he "observed white lights emitting from the rear" and initiated

the traffic stop. (TR 8/23/17 p.215:1-15.) No one testified that these tail lamps were not emitting red light at the required distance. Photos of the Lincoln do not suggest the tail lamps failed to emit a red light plainly visible from five hundred feet. Viewed in the light most favorable to the prosecution, the evidence merely showed these tail lamps emitted a mix of red and white light at unspecified distances. *See McBride*, ¶ 43 (stating evidence established "both red and white light"). This is not proof beyond a reasonable doubt. The prosecution did not prove the tail lamps failed to "emit[] a red light plainly visible from a distance of five hundred feet to the rear." § 42-4-206(1), C.R.S.; *see also Vicknair*, 751 S.W.2d at 189 ("There is no evidence in the record before us that the tail light on appellant's vehicle failed to emit a red light as required by a plain reading of [the Texas law]."). Because Colorado's law does not prohibit tail lamps from emitting white light so long as they emit a red light plainly visible from five hundred feet to the rear, the evidence is insufficient.

CONCLUSION

This Court should reverse and vacate Mr. McBride's traffic infraction.

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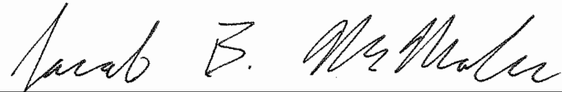

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CERTIFICATE OF SERVICE

I certify that, on September 17, 2021, a copy of this Opening Brief was electronically served through Colorado Courts E-Filing on John T. Lee of the Attorney General's Office.