SUPREME COURT, STATE OF COLORADO Colorado State Judicial Building 2 East 14th Avenue Denver, Colorado 80203	DATE FILED June 10, 2024 10:55 PM
Denver County, Denver County Court Honorable Kerri Lombardi, Judge Case No. 19M00428	
IN RE: **THE PEOPLE OF THE STATE OF COLORADO** Respondent-Appellee, v. **RICHARD LEWIS,** Petitioner-Appellant	**Δ COURT USE ONLY Δ**
Megan A. Ring Colorado State Public Defender John Patrick Galligan, Deputy State Public Defender Attorney Registration No. 46266 1560 Broadway, Suite 300 Denver, Colorado 80202 Phone: (303) 620-4999 Fax: (303) 620-4987 Email: john.galligan@coloradodefenders.us	Case Number: **24SA75**

REPLY BRIEF

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_/s/ John Galligan___________________

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INTRODUCTION

Under the simplified procedures applicable to county courts, a stay of the judgment of conviction and sentence is mandatory upon request pending appeal. § 16-2-114(6), C.R.S. (2024); Crim. P. 37(f); *People v. Steen*, 2014 CO 9. Those provisions allow a county court judge to require the posting of bail if a jail sentence has been imposed. Nothing in those provisions authorizes the county court to deny bail altogether.

The Respondent and the People argue the provisions applicable to appeal bonds in felony matters, arising out of final judgments of the district court should apply here. However, pursuant to statute:

> If a general provision conflicts with a special or local provision, it shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail.

§ 2-4-205, C.R.S. (2024).

The county court appeals statute, § 16-2-114, C.R.S., and the corresponding rule of criminal procedure, Crim. P. 37, "specifically govern stays of execution where, as here, a misdemeanor conviction obtained in county court is appealed to the district court." *Steen*, ¶ 12.

This Court may give effect to both the county court appeals statute and the appeal bond statutes by concluding that a bond imposed under § 16-2-114(6), C.R.S. and Crim. P. 37(f) is not an "appeal bond." Rather, a bond imposed under § 16-2-114(6), C.R.S. and Crim. P. 37(f) is something specific to county court appeals: a bond imposed as a condition of a stay of execution. Thus, the appeal bond statutes do not apply to a bond imposed as a condition of a stay of execution under § 16-2-114(6), C.R.S. and Crim. P. 37(f).

In the alternative, "[i]f the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail." § 2-4-205, C.R.S. The statute on which the county court relied to deny an appeal bond here, § 16-4-201.5, C.R.S. postdates the county court appeals statute. *See* Ch. 23, sec. 8, § 16-4-201.5, 1999 Colo. Sess. Laws 57 (adopting § 16-4-201.5); Ch. 44, sec. 1, § 39-2-114, 1972 Colo. Sess. Laws 195-97 (adopting the county court appeals statute, then located at § 39-2-114). However, there is no "manifest intent . . . that the general [appeal bond statutes] prevail" over the more specific county court appeal bond provision. *See* § 2-4-205, C.R.S. As a result, the county court appeals statute—which requires a stay of execution, authorizes bail, and

omits any authority for denying bail altogether—is an exception to the appeal bond statutes allowing the court to deny an appeal bond. *See id.*

"[W]here a misdemeanor conviction obtained in county court is appealed to the district court, the plain language of section 16-2-114(6) and Crim. P. 37(f) require the county court to grant a stay of execution upon request made pending the docketing of an appeal." *Steen*, ¶ 23. This stay of execution requirement exists because "county court defendants are at a greater risk of completing all, or most, of their sentences before an appellate judgment has been reached by the district court." *Id.* at ¶ 24. The mandatory stay of execution "remov[es] the specter of a useless appeal." *Id.*

Finally, Mr. Lewis does not assert that he has a constitutional right to bail after conviction. Rather, Mr. Lewis asserts that he has a right to bail after conviction as part of the mandatory stay execution of sentence upon request pending appeal of a county court judgment pursuant to § 16-2-114(6), C.R.S., Crim. P. 37(f), and *Steen*. Mr. Lewis' right to bail pending appeal of a county court judgment under § 16-2-114(6), C.R.S. and Crim. P. 37(f) is expressly authorized by Colorado's Constitution. *See People. Hoover*, 119 P.3d 564, 566 (Colo. App. 2005). ("The constitution does not establish a right to bail after trial; it merely allows the legislature to authorize post-trial bail, and only for certain defendants[.]") .

STANDARD OF REVIEW

Mr. Lewis agrees that this Court "generally review[s] a [trial] court's bail determination for abuse of discretion." *People v. Smith*, 2023 CO 40, ¶ 18; (DCC AB, p 4 n.1).[1] However, this case involves interpretation of § 16-2-114(6), C.R.S. and Crim. P. 37(f), which is a question of law this Court reviews de novo. *Steen*, ¶ 9.

When interpreting a statute, a court must ascertain and give effect to the legislature's intent. *People v. Cross*, 127 P.3d 71, 73 (Colo. 2006). This Court must "look first to the plain text of a statute, reject interpretations that render words or phrases superfluous, and harmonize potentially conflicting provisions, if possible." *Id.*; *see also Steen*, ¶ 9 ("Where two legislative acts may be construed to avoid inconsistency, the court is obligated to construe them in that manner."); *Kisselman v. Am. Family Mut. Ins. Co.*, 292 P.3d 964, 973 (Colo. App. 2011) ("[W]e must avoid interpretations that render statutory language a nullity."); § 2-4-201(b), C.R.S. (2024) ("The entire statute is intended to be effective."); § 2-4-205, C.R.S.

In addition, this Court has plenary authority to interpret the rules of criminal procedure. *Steen*, ¶ 10. This Court looks to the plain meaning of those rules, *see id.*,

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[1] References to the Respondent's Answer Brief will be cited as (DCC AB). References to the People's Answer Brief will be cited as (DA AB).

and construes them "to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay." Crim. P. 2.

ARGUMENT

I. § 16-4-204, C.R.S. does not provide a plain, speedy, and adequate remedy for Mr. Lewis, and C.A.R. 21 is an appropriate mechanism for review of the trial court's ruling because this case raises an issue of first impression that is of significant public importance.

§ 16-4-204, C.R.S. "does not provide a plain, speedy, and adequate remedy for" Mr. Lewis and therefore this Court should exercise its discretion under C.A.R. 21. *People v. Martinez*, 22 P.3d 915, 921 (Colo. 2001) (citations omitted). The Respondent and the People assert that this Court should decline to exercise original jurisdiction because Mr. Lewis could appeal the trial court's ruling pursuant to § 16-4-204, C.R.S. (2024); (DA AB, p 10; DCC AB, pp 6–8). Both assert that because review under § 16-4-204, C.R.S. is expedited, then this provides an adequate mechanism to appeal the trial court's ruling. (DA AB, p 10; DCC AB, pp 6–8). These arguments miss the mark.

First, the Respondent correctly notes that "Petitioner was sentenced to 12 months in county jail, as well as a suspended sentence of 12 months of county jail conditioned upon successful completion of five years of sex offender probation, with probation running concurrently with the jail sentence." (DCC AB, p 7). The Respondent therefore claims that "Petitioner's sentence encompassed at least a four-

year period." (*Id*). However, the issue presented in this case is not relevant to the probationary portion of the sentence given that Mr. Lewis will be released upon completion of the jail sentence. The issue of bond pending appeal is only relevant to the jail sentence that he is currently serving.

The Respondent relies heavily on this Court's decision in *People v. Jones*, 2015 CO 20 in asserting that "this Court should decline to exercise its jurisdiction over this case[]" because "C.R.S. § 16-4-204 is the exclusive method of appellate review for orders regarding bail or appeal bond, and under *Jones*, the review is expedited." (DCC AB, pp 7–8). The Respondent's reliance on *Jones* is misplaced. In *Jones*, the defendant originally appealed pursuant to § 16-4-204, C.R.S., but the Court of Appeals "found itself to be without jurisdiction to entertain an expedited appeal[.]" *Jones*, ¶ 1. Ultimately, this Court exercised its original jurisdiction to entertain the appeal pursuant to C.A.R. 21. *Id.* at ¶ 22.

In doing so, this Court noted that "[a]lthough the defendant therefore has an exclusive right of review in the appellate court, *that right in no way limits this court's exercise of its original jurisdiction*." *Id.* (emphasis added). Further, like here, this Court held:

> In light of the procedural history of this case, the urgency that attaches to the review of bail bond orders, and the fact that the matter at issue is one of statutory construction, fully briefed to and already partially resolved by this court in addressing the question of appellate review, we

> consider it appropriate to exercise our original jurisdiction and address the merits of the district court's order.

Id.

Therefore, although Mr. Lewis does have the ability to appeal the trial court's bond decision pursuant to § 16-4-204, C.R.S. that avenue does not preclude this Court from exercising its original jurisdiction pursuant to C.A.R. 21. This Court also recently deemed it appropriate to review a trial court's bond decision pursuant to C.A.R. 21. *See Smith*, ¶¶ 15–17. As a result, this Court should reject both parties' request to discharge the rule to show cause on this basis.

II. §§ 16-4-201.5, 16-4-202, C.R.S. do not apply to county court proceedings and both conflict with § 16-2-114(6), C.R.S. and Crim. P. 37(f).

The Respondent claims that "the statutes presently before the Court, C.R.S. §§ 16-4-201.5 and 16-4-202, do not directly conflict with C.R.S. § 16-2-114(6) nor Crim. P. 37(f)." (DCC AB, p 12). The Respondent also asserts that this Court's holding in *Steen* only applied to § 16-4-201(2), C.R.S., but the remaining subsections nevertheless apply to appeals of a county court judgment. (DCC AB, pp 11–12).

These assertions fail for several reasons. First, the Respondent's argument that "*Steen*'s ruling was narrow, and only applied to subsection (2) of C.R.S. § 16-4-201 in regard to a stay of execution of a sentence[]" misinterprets *Steen*. (DCC AB, p 11) (citation omitted). In support of this assertion, and without realizing that they are

undercutting their own argument, the Respondent quotes *Steen* where this Court provided "[w]here two legislative acts may be construed to avoid inconsistency, the court is obligated to construe them in that manner." (DCC AB, p 12) (quoting *Steen*, ¶ 9).

However, this Court used this principle to later find that neither §§ 16-4-201(2) or 18-1.3-202(1) applied to the simplified procedures governing appeals of a county court judgment. *Steen*, ¶¶ 11–23. Instead, again with this principle of statutory construction in mind, this Court concluded:

> Because section 16-2-114 and Crim. P. 37(f) expressly govern appeals from county court, we conclude that, where a misdemeanor conviction obtained in county court is appealed to the district court, the plain language of section 16-2-114(6) and Crim. P. 37(f) require the county court to grant a stay of execution upon request made pending the docketing of an appeal.

Id. at ¶ 23.

Immediately following this conclusion, this Court noted that "[o]ur interpretation ensures that effect is given to the plain language of section 16-2-114(6) and Crim P. 37(f) in the context presented here." *Id.* (citing *City of Florence v. Pepper*, 145 P.3d 654, 657 (Colo. 2006) ("If two acts of the General Assembly may be construed to avoid inconsistency, this court is obligated to construe them in that manner.")).

In fact, avoiding conflict between dueling statutory provisions is precisely what this Court is required to do here in concluding § 16-2-114(6), C.R.S. governs bail

pending appeal of a county court judgment as opposed to §§ 16-4-201.5 or 16-4-202, C.R.S. And § 16-2-114(6), C.R.S. and Crim. P. 37(f) mandate a stay of execution upon request and likewise prevent county courts from denying bail altogether pending appeal of a county court judgment and only authorize bail as a condition of the stay when a sentence of imprisonment has been imposed. This would indeed comply with the intent of the General Assembly and this Court's rule which both provide such stays are mandatory. *See* § 16-2-114(6), C.R.S.; Crim. P. 37(f).

The Respondent's argument that §§ 16-4-201.5 and 16-4-202, C.R.S. apply to bail pending appeal of a county court judgment also completely ignores § 16-2-103(2), C.R.S. (2024). Specifically, the statute provides:

> Any matter arising in a proceeding under simplified procedure *not specifically covered by sections 16-2-102 to 16-2-114* shall be subject to the other provisions of this code and any other applicable statute or court rule or, in the absence of such statute or court rule, to the application of common law principles. In any case due regard shall be had for speed and simplicity.

§ 16-2-103(2), C.R.S. (emphasis added).

§ 16-2-114(6), C.R.S. expressly covers bail after conviction pending appeal of a county court judgment and requires the county court to release the defendant but permits the county court to impose bail as a condition of the stay of execution when a sentence of imprisonment has been imposed. *See id.*

The Respondent's reliance on *People v. Craig*, 585 P.2d 1257 (Colo. App. 1978) is also misplaced. (DCC AB, p 14). First, in *Craig*, the defendant was charged in district court "with felony theft and conspiracy to commit felony theft[,] . . . and pled guilty to an amended charge of misdemeanor theft." *Id.* at 1257. The holding in *Craig* had no applicability regarding whether § 16-2-114(6) applied pending appeal of a county court judgment as opposed to § 16-4-201(2), C.R.S., such as the issue before this Court in *Steen*. Further, "Sections 16-2-102 to 16-2-114 apply only to the prosecution of misdemeanors and petty offenses in county courts under simplified procedure *and have no application to misdemeanors or petty offenses prosecuted in other courts or to felonies*." § 16-2-103(1), C.R.S. (2024) (emphasis added). Therefore, this Court does not need to resort to §§ 16-4-201, 16-4-201.5, and 16-4-202, C.R.S., which is precisely the logic that this Court applied in *Steen* in finding that § 16-4-201(2), C.R.S. did not apply to a stay of execution of sentence of a county court judgment, and instead § 16-2-114(6), C.R.S. and Crim. P. 37(f) controlled. *Steen*, ¶¶ 11–23.

III. Crim P. 37(f), § 16-2-114(6), C.R.S., and this Court's decision in *Steen* do not authorize county courts to deny bail altogether in conjunction with a mandatory stay of execution of sentence pending appeal of a county court judgment.

A commonsense interpretation of both the rule and statute yields the conclusion that Colorado county courts are not authorized to deny bail altogether

pending appeal of a county court judgment as part of the mandatory stay of execution of sentence. A plain reading of neither the statute nor rule provides Colorado county courts with the authority to completely deny bail pending appeal altogether. If this Court "read[s] the rules together and adopt[s] a construction consistent with their overall purpose[,]" then it would make little sense that while a county court defendant is entitled to a mandatory stay of execution of sentence pending appeal, the trial court would still nevertheless be able to deny that same defendant the ability to post bail, rendering the stay superfluous. *Peterson v. People*, 113 P.3d 706, 708 (Colo. 2005) ("We are also mindful that in Colorado, the right to direct appeal of a criminal conviction is fundamental. Therefore, we construe the rules liberally and disfavor interpretations that work a forfeiture of that right."). (internal citations omitted).

In support of their argument, the People rely upon § 16-12-103, C.R.S. to argue that "[a]ll criminal defendants, not just those in county court, are entitled to stays of execution pending appeal." (DA AB, p 5). This argument fails for two separate but interrelated reasons.

First, § 16-12-101, C.R.S. provides: "Every person convicted of an offense under the statutes of this state has the right of appeal to review the proceedings resulting in conviction. *The procedures to be followed in any such appeal shall be as*

provided by applicable rule of the supreme court of Colorado." *See id.* (emphasis added). Therefore, pursuant to § 16-12-101, C.R.S. appeals of county court judgments are specifically governed by Crim. P. 37. And Crim. P. 37(f) makes clear that the stay of execution upon request is mandatory and remains in effect during the pendency of an appeal of a county court judgment unless modified by the district court. *See id.* Conversely, the language of § 16-12-101, C.R.S. makes clear that appeals of a district court judgment are governed by Crim. P. 38. And this rule provides that "[a]ppeals from the district court shall be conducted pursuant to the Colorado Appellate Rules." Crim. P. 38.

Here, the People incorrectly assert § 16-12-103, C.R.S. demonstrates that all defendants are entitled to a stay of execution pending appeal. (DA AB, p 5). But the statute provides: "When a person has been convicted of an offense and a notice of appeal is filed, he shall be entitled to *a stay of execution by compliance with the provisions and requirements of the applicable rules of the supreme court of Colorado.*" § 16-12-103, C.R.S. (emphasis added). In turn, a stay of execution of a district court judgment is governed by C.A.R. 8.1(a)(2), which provides:

> A sentence of imprisonment shall be stayed if a notice of appeal is filed and a defendant elects not to commence service of the sentence or is admitted to bail. The sentencing court shall, upon written notice of the defendant for a stay and stating that he intends to seek review, stay a sentence of imprisonment but for not more than sixty days if the defendant is not admitted to bail.

See id.; *see also Steen*, ¶ 18 ("Notably, however, C.A.R. 8.1 governs appeals from district courts.").

Unlike Crim. P. 37(f) which makes clear that a stay of execution is mandatory upon request for an appeal of a county court judgment unless modified by the district court, C.A.R. 8.1(a)(2) imposes a time constraint on a stay of execution pending appeal of a district court judgment if the defendant remains imprisoned. The distinction between these two rules demonstrates that a stay of execution of a county court judgment is treated differently than a stay of execution of a district court judgment.

Both the Respondent and the People also rely upon § 16-11-307, C.R.S. to argue that a defendant can be held in custody while a stay of execution is in effect during the pendency of an appeal. (DA AB, p 6; DCC AB, p 8). Both parties' reliance on this statute is misguided.

For one, Mr. Lewis never argued that he could *not* be held in custody pending appeal of a misdemeanor conviction while a stay of execution is in effect. Obviously, for example, if the trial court set bail in the amount of $5,000 cash, property, or surety, as it did upon conviction and prior to sentencing, and Mr. Lewis was unable to post that bond, then he would be held in custody for the duration of the confinement unless he was able to post that bond even though the stay of

execution remained in place. And this scenario would not conflict with the plain language of the statute or rule which provides the county court discretion to require a defendant to post bail if a sentence to imprisonment has been imposed. *See* § 16-2-114(6), C.R.S.; Crim. P. 37(f). Mr. Lewis contends that the trial court is without authority to deny bail altogether pending appeal as it is contrary to the mandatory stay of execution provisions required by § 16-2-114(6), C.R.S., Crim. P. 37(f), and this Court's decision in *Steen*.

Additionally, § 16-11-307, C.R.S. appears in Part 3 of Article 11 in the Colorado Code of Criminal Procedure. It is clear that Part 3 applies to sentences to the Colorado Department of Corrections (DOC). For example, § 16-11-301(1), C.R.S. provides that the placement of an offender convicted of a felony offense is determined by the DOC executive director. *See id.* Further, the only time county jail is referenced is in subsection (2), which provides:

> Unless otherwise provided in the 'Colorado Children's Code', title 19, C.R.S., a defendant convicted of a crime which may be punished by imprisonment in a county jail may be sentenced to a correctional facility other than state correctional facilities if at the time of sentencing the defendant is sixteen years of age or older but under the age of twenty-one years, and if, in the opinion of the court, rehabilitation of the person convicted can best be obtained by such a sentence, and if it also appears to the court that the best interests of the person and of the public and the ends of justice would thereby be served.

See § 16-11-301(2), C.R.S. (2024).

And the latter sections of Part 3 apply to DOC procedures regarding facility placement for inmates and provide DOC with the authority to contract with local county jails. *See* §§ 16-11-308(1)–(5), 16-11-308.5(1)–(5), C.R.S. (2024).

Both the Respondent and the People mention this Court's language in *Steen*, which provides that this Court "will read and consider the statutory scheme as a whole to give consistent, harmonious, and sensible effect to all its parts." (DA AB, p 5; DCC AB, p 19) (quoting *Steen*, ¶ 9). And in fact, this language supports Mr. Lewis' position that the county court was without authority to deny him bail altogether as part of the stay of execution of sentence pending appeal in this case.

§ 16-2-114(6), C.R.S. is found "[i]n Article 2 of the Criminal Procedure Code," which is where "the General Assembly enacted special, simplified criminal procedures to govern county court criminal proceedings." *Steen*, ¶ 16. Therefore, it is clear that if this Court "read[s] and consider[s] the statutory scheme as a whole to give consistent, harmonious, and sensible effect to all of its parts[,]" then § 16-2-114(6), C.R.S. controls appeals of a county court judgment, including bail. *Steen*, ¶ 9.

Both parties also assert that *Steen* has no applicability to bail pending appeal of a county court judgment. (DA AB, pp 6–10; DCC AB, pp 8–9). They correctly note that bail and stay of execution are separate concepts. (DA AB, pp 5–6; DCC

AB, p 8). However, neither party addresses the policy considerations that this Court considered in affirming such stays are mandatory. *Steen*, ¶¶ 24–26. In fact, nowhere in their answer briefs does either party attempt to address this Court's justification for affirming such stays are mandatory because they are intended to remove "the specter of a useless appeal." *Id.* at ¶ 24.

As noted in Mr. Lewis' petition, if trial courts are authorized to deny bail pending appeal of a county court judgment, then this would render the mandatory stay of execution provisions in both § 16-2-114-(6), C.R.S. and Crim. P. 37(f) superfluous. And this Court "must avoid constructions that would render any words or phrases superfluous or lead to illogical or absurd results." *Doubleday v. People*, 2016 CO 3, ¶ 20.

The People assert that this Court's policy considerations were dicta and "[t]his observation was not necessary to decide the question of statutory interpretation before the Court and does not create controlling precedent." (DA AB, p 7, n.3). This, however, is not accurate because this Court used this rationale to conclude that the simplified provisions governing county court appeals controlled, and thus this "dicta" was part of the reasoning that engendered this Court's decision. *Steen*, ¶¶ 11–26.

Finally, the People's concerns about "practical and doctrinal problems[]" are

without merit. (DA AB, pp 7–10). The issue is simply boiled down to the following: § 16-2-114(6), C.R.S. and Crim. P. 37(f) provide that upon conviction, a defendant is entitled to a stay of execution of sentence pending appeal upon request, and the county court may require the defendant to post bail if a sentence of imprisonment has been imposed but is without authority to deny bail altogether. The length of the jail sentence is a factor that the trial court may consider pursuant to both statute and rule in determining the amount of bail required pending appeal of that confinement.

The People's concerns about whether a defendant presents a community safety or flight risk are also valid factors for the county court to consider when setting the amount of bail pending appeal of a county court judgment when a sentence of imprisonment has been imposed. (DA AB, p 9). If the county court finds that these considerations apply, then the county court judge can set the bail amount higher than for a defendant who does present with those risks. These are also factors that county courts take into consideration when setting the bail amount for a county court defendant prior to conviction. *See generally* § 16-4-103, C.R.S. (2024).

The People's concerns about equal protection clause issues are equally unavailing. (DA AB, pp 9–10). For one, this issue is not presently before this Court. For another, as noted above: "Sections 16-2-102 to 16-2-114 apply only to the prosecution of misdemeanors and petty offenses in county courts under simplified

procedure *and have no application to misdemeanors or petty offenses prosecuted in other courts or to felonies*." § 16-2-103(1), C.R.S. (emphasis added). Therefore, the simplified procedures in county court make clear that the provisions of § 16-2-114(6), C.R.S. have no application to appeals of misdemeanor convictions obtained in district court. *See* § 16-2-103(1), C.R.S.

IV. Colorado's Constitution does not authorize county courts to deny bail altogether as part of the mandatory stay of execution upon request pending appeal of a county court judgment.

The People's primary argument is that the Colorado Constitution explicitly supports the trial court's bond decision since the county court judge found that Mr. Lewis "poses a danger to the safety of the victim and the community and therefore denied bail, a result explicitly required by the constitution." (DA AB, p 3). The People omitted a key provision of Colorado's Constitution.

Specifically, the relevant provision provides the following: "The court may grant bail after a person is convicted, pending sentencing or appeal, *only as provided by statute as enacted by the general assembly*[.]" Colo. Const. art. II, § 19(2.5)(a) (emphasis added). The provision goes on to provide a list of felony offenses for which a defendant is not entitled to bail pending appeal. Colo. Const. art. II, § 19 (2.5)(a)(I)–(V). Further, the following subsection notes that Colorado courts cannot set bail that is otherwise authorized by the preceding subsection "unless the court

finds that: (I) The person is unlikely to flee and does not pose a danger to the safety of any person or the community; and (II) The appeal is not frivolous or is not pursued for the purpose of delay." Colo. Const. art. II, § 19(2.5)(b)(I),(II).

Both parties use these provisions to assert that there is no constitutional right to bail after conviction; however, this misconstrues the argument. (DA AB, pp 3–6; DCC AB, pp 19–21). Mr. Lewis is not asserting that he has a constitutional right to postconviction bail. Rather, Mr. Lewis asserts that he has a statutory right to postconviction bail pending appeal of a county court judgment which is expressly authorized by our state constitution. *See People v. Roca*, 17 P.3d 835, 836 (Colo. App. 2000) ("There is no constitutional right to bail after conviction in Colorado. The power to grant such bail is provided by statute and is within the sound discretion of the trial court.") (internal citation omitted);

Finally, "the U.S. Supreme Court has long recognized that state courts are free to interpret their own state constitutions as they wish." *Rocky Mountain Gun Owners v. Polis*, 2020 CO 66, ¶ 34; *see Curios Theatre Co. v. Colo. Dep't of Pub. Health & Env't*, 220 P.3d 544, 551 (Colo. 2009) ("This court is the final arbiter of the meaning of the Colorado Constitution[.]"). This Court also "presume[s] that a statute is constitutional; unless the conflict between the constitution and the law is

clear and unmistakable, [this Court] will not disturb the statute." *Garhart v. Columbia/Healthone, L.L.C.*, 95 P.3d 571, 581 (Colo. 2004).

§ 16-2-114(6), C.R.S. and Crim. P. 37(f) preclude Colorado county courts from denying bail altogether pending appeal of a county court judgment, and this construction is expressly authorized by Colorado's Constitution. *See* Colo. Const. art. II, § 19(2.5)(a). Therefore, the trial court erred and violated Mr. Lewis' federal and state constitutional rights to due process of law by denying him bail pending appeal of his misdemeanor convictions in this case, which was required by § 16-2-114(6), C.R.S. and Crim. P. 37(f). *See* U.S. Const. amends. V, VIII, XIV; Colo. Const. art. II, §§ 19, 25; *see also Young v. Hubbard*, 673 F.2d 132, 134 (5th Cir. 1982) (quoting *Finetti v. Harris*, 609 F.2d 594, 599 (2nd Cir. 1979) ("[W]hile there is no absolute federal constitutional right to bail pending appeal, once a state makes provisions for such bail, the Eighth and Fourteenth Amendments require that it not be denied arbitrarily or unreasonably.")).

CONCLUSION

Mr. Lewis should be granted relief under C.A.R. 21 because the trial court erred and abused its discretion by denying him bail pending appeal of his misdemeanor convictions in this case. This Court should make the rule absolute and require the county court to set bail pending appeal in this case.

Dated this day: June 10, 2024.

MEGAN A. RING
COLORADO STATE PUBLIC DEFENDER

Respectfully submitted,

*/s/ John Galligan*______________________________

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CERTIFICATE OF SERVICE

I certify that, on June 10, 2024, a copy of this reply brief was served on Alison Suthers with the Denver District Attorney's Office and Paige Arrants with the Denver City Attorney's Office.

_*/s/ John Galligan*__________