Supreme Court of Colorado

STATE OF COLORADO
2 EAST 14TH AVENUE
DENVER, COLORADO 80203

DATE FILED
August 17, 2026
CASE NUMBER: 2024SC492

MARIZELA CANO
CLERK OF THE COURT

Brown v. People

Case No. 24SC492

ORDER OF COURT

Upon consideration of the Petition for Rehearing filed in the above cause, and now being sufficiently advised in the premises,

The Opinion in the above referenced case announced on June 23, 2026 has been modified, and as Modified, said Petition for Rehearing shall be, and the same hereby is DENIED.

Attached is the marked page showing the revisions – page 7, ¶ 16.

BY THE COURT, EN BANC, August 17, 2026.
JUSTICE SAMOUR would modify in part, grant in part, and deny in part the petition.

¶15 As to the habitual criminal sentence, Brown argued that the trial judge's finding that Brown was a habitual offender must be vacated because the then-existing habitual offender scheme was facially unconstitutional under both the United States and Colorado Constitutions, given that it permitted a judge rather than a jury to make predicate findings of fact.

¶16 In a unanimous, unpublished opinion, a division of our court of appeals affirmed the LTS (death) convictions and habitual offender sentence. *People v. Brown*, No. 21CA405, ¶¶ 100–01, 105–07 (May 9, 2024).

¶17 With regard to Brown's challenge to the LTS instructions, the division concluded that it was bound to follow *Manzo*. *Id.* at ¶¶ 96–100. Even if *Rehaif* could be said to have effectively overruled *Manzo*, however, the division concluded that any error in the omission of the knowingly mental state from the elemental instructions was harmless beyond a reasonable doubt because the record established that element through substantial evidence, including the visibility of the white blanket in the alley, Brown's pausing after running over the victims, and his speeding away after being confronted by witnesses. *Id.* at ¶ 100.

¶18 With regard to Brown's constitutional challenge to the habitual offender statute, the division concluded that Brown's position was foreclosed by this court's precedent and settled case law from other divisions of the court of appeals. *Id.* at ¶¶ 106–07.

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

2026 CO 51M

Supreme Court Case No. 24SC492
Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 21CA405

Petitioner:

Jason P. Brown,

v.

Respondent:

The People of the State of Colorado.

Judgment Affirmed
en banc
June 23, 2026

Opinion modified, and as modified, petition for rehearing DENIED. EN BANC.

August 17, 2026

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

JUSTICE GABRIEL delivered the Opinion of the Court.

¶1 We granted certiorari to consider two issues: (1) whether *People v. Manzo*, 144 P.3d 551 (Colo. 2006), is no longer good law or is distinguishable, and whether the trial court reversibly erred and violated Jason P. Brown's right to due process because it allowed the jury to convict him of a class 3 felony for leaving the scene of an accident resulting in death ("LTS (death)") without the prosecution proving that he acted with any culpable mental state; and (2) whether Colorado's prior habitual offender scheme is unconstitutional because it required a judge rather than a jury to make findings of fact that increase a defendant's sentence, and whether Brown's adjudication as a habitual offender must be vacated because he was deprived of his right to a jury trial.

¶2 We now conclude that (1) *Manzo* remains good law, and therefore, the trial court did not err or violate Brown's right to due process in entering judgment for LTS (death) and leaving the scene of an accident resulting in serious bodily injury ("LTS (SBI)") against Brown without requiring the prosecution to prove that he acted with any culpable mental state; and (2) the prior Colorado habitual offender scheme was constitutional, and any error in Brown's adjudication as a habitual offender was harmless beyond a reasonable doubt. (We note that the first issue on which Brown sought certiorari was framed as addressing only LTS (death), but the substantive arguments that he presented in his briefs apply equally to LTS (death)

and LTS (SBI). Because, like him, we perceive no reason to treat those offenses differently for purposes of the first issue presented, we address both of those offenses in this opinion.)

¶3 Accordingly, we affirm the judgment of the court of appeals division below.

I. Facts and Procedural History

¶4 One night in June 2017, Brown turned his truck into an alley and drove over two people who were sleeping under a white blanket in an alcove there. He slowed down, and a witness told him through an open window on the truck that he "just ran those people over." He responded, "No, I didn't," and sped off while the witness ran after him, trying to get his license plate number.

¶5 One of the victims, D.W., survived, although he sustained serious injuries requiring emergency surgical intervention. The other victim, K.M., died that night as a result of her injuries.

¶6 Shortly thereafter, law enforcement officers, who were able to determine Brown's home address from the information provided by witnesses, met with Brown at his home. The officers observed that Brown had bloodshot, watery eyes and smelled of alcohol, although Brown told the officers that he did not drink until he arrived home. Later that evening, the witness who had told Brown that he had run over the victims identified him as the person who had done so.

¶7 The People subsequently charged Brown with, among other things, LTS (death) and LTS (SBI), pursuant to section 42-4-1601, C.R.S. (2025). Brown pleaded not guilty to those charges.

¶8 In addition, after filing their initial complaint against Brown, the People filed a motion to amend the complaint to add habitual criminal counts under section 18-1.3-801, C.R.S. (2017). In response, Brown filed a motion to declare the habitual criminal statute unconstitutional on its face and as applied to him. He also filed a motion demanding a jury trial on the habitual criminal counts.

¶9 The trial court ultimately granted the People's motion to amend to add the habitual criminal counts and denied Brown's responsive motions.

¶10 The case proceeded to trial, and at trial, the court instructed the jury as to the elements of LTS (death), in pertinent part, as follows:

> The elements of the crime of Failure to Fulfill Duties after Involvement in an Accident Involving Death are:
>
> 1. That the defendant,
>
> 2. in the state of Colorado, at or about the date and place charged,
>
> 3. drove a vehicle that was directly involved in an accident,
>
> 4. resulting in the death of any person, and
>
> 5. failed to do the following, without obstructing traffic more than necessary: immediately stop his vehicle at the scene of the accident, or as close to the accident scene as possible, and immediately return to the scene of the accident and remain at the scene of the accident until he had fulfilled the legal requirements of giving notice, information, and aid.

> After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of Failure to Fulfill Duties after Involvement in an Accident Involving Death.

¶11 The court instructed the jury on the elements of LTS (SBI) in virtually identical language, with the only difference being the instruction's reference to serious bodily injury rather than death. Neither of these elemental instructions included any culpable mental state.

¶12 The jury ultimately convicted Brown of both LTS charges, and the trial court thereafter adjudicated Brown a habitual offender without submitting questions of fact as to the habitual criminal counts to the jury. The court then sentenced Brown to a total of sixty years in the Department of Corrections.

¶13 Brown appealed both his LTS convictions and his habitual criminal sentence.

¶14 As to the LTS convictions, Brown argued that the trial court had erred by not including any culpable mental state in the elemental instructions regarding those counts, thereby effectively instructing the jury that the LTS crimes were strict liability offenses. Brown acknowledged that we had concluded in *Manzo* that LTS crimes were strict liability offenses that did not require a culpable mental state, but he contended that this determination was erroneous in light of the Supreme Court's subsequent ruling in *Rehaif v. United States*, 588 U.S. 225 (2019).

¶15 As to the habitual criminal sentence, Brown argued that the trial judge's finding that Brown was a habitual offender must be vacated because the then-existing habitual offender scheme was facially unconstitutional under both the United States and Colorado Constitutions, given that it permitted a judge rather than a jury to make predicate findings of fact.

¶16 In a unanimous, unpublished opinion, a division of our court of appeals affirmed the LTS (death) conviction and habitual offender sentence. *People v. Brown*, No. 21CA405, ¶¶ 100–01, 105–07 (May 9, 2024).

¶17 With regard to Brown's challenge to the LTS instructions, the division concluded that it was bound to follow *Manzo*. *Id.* at ¶¶ 96–100. Even if *Rehaif* could be said to have effectively overruled *Manzo*, however, the division concluded that any error in the omission of the knowingly mental state from the elemental instructions was harmless beyond a reasonable doubt because the record established that element through substantial evidence, including the visibility of the white blanket in the alley, Brown's pausing after running over the victims, and his speeding away after being confronted by witnesses. *Id.* at ¶ 100.

¶18 With regard to Brown's constitutional challenge to the habitual offender statute, the division concluded that Brown's position was foreclosed by this court's precedent and settled case law from other divisions of the court of appeals. *Id.* at ¶¶ 106–07.

¶19 Brown then petitioned this court for certiorari review, and we granted his petition.

II. Analysis

¶20 We begin by addressing the applicable standard of review. We then consider whether *Manzo* remains good law and is applicable to this case. Finally, we address whether the prior habitual offender scheme was facially unconstitutional and if Brown's adjudication by the trial court as a habitual offender must be vacated.

A. Standard of Review

¶21 We review jury instructions de novo to determine whether they accurately informed the jury of the governing law. *Roberts v. People*, 2017 CO 76, ¶ 18, 399 P.3d 702, 705.

¶22 We likewise review a statute's constitutionality, both facially and as applied, de novo. *See Dean v. People*, 2016 CO 14, ¶ 8, 366 P.3d 593, 596.

¶23 We review trial errors of constitutional dimension that were preserved, like those at issue here, for constitutional harmless error. *Hagos v. People*, 2012 CO 63, ¶ 11, 288 P.3d 116, 119. Such errors require reversal unless they were harmless beyond a reasonable doubt. *Id.* Accordingly, we will reverse if there is a reasonable possibility that such an error might have contributed to the conviction.

Id. For this type of error, the People bear the burden of proving that the error was harmless beyond a reasonable doubt. *Id.*

B. The LTS Jury Instructions

¶24 Brown first contends that *Manzo* is no longer good law or is distinguishable and therefore, the trial court reversibly erred in entering judgment on the LTS (death) and LTS (SBI) counts without proof of a culpable mental state (here, "knowingly"). We are not persuaded.

¶25 We begin, as we must, with settled principles of stare decisis.

¶26 "Stare decisis is a judge-made doctrine that requires courts to follow preexisting rules of law." *Love v. Klosky*, 2018 CO 20, ¶ 14, 413 P.3d 1267, 1270. Although courts are hesitant to undo settled law, they may depart from or overrule prior precedent when sound reasons exist to do so. *Id.* at ¶¶ 14–15, 413 P.3d at 1270. Specifically, we will depart from our existing law when we are clearly convinced that "(1) the rule was originally erroneous or is no longer sound because of changing conditions and (2) more good than harm will come from departing from precedent." *Id.* at ¶ 15, 413 P.3d at 1270.

¶27 Here, Brown contends that subsequent events have shown that *Manzo* is no longer good law. In particular, he asserts that the Supreme Court's ruling in *Rehaif* effectively overruled *Manzo* and that, in any event, the increased penalties for

LTS (death) and LTS (SBI) that were adopted after *Manzo* was decided rendered our decision in that case inapplicable. We disagree.

¶28 In *Rehaif*, 588 U.S. at 227, the Supreme Court considered a federal statute that made it unlawful for certain categories of individuals to possess firearms. A separate statute added that anyone who "knowingly violates" the first statute shall be fined or imprisoned for up to ten years. *Id.* (quoting 18 U.S.C. § 924(a)(2)). The question presented required the Court to decide whether the government had the burden of proving both that the defendant engaged in the relevant conduct (i.e., possession of a firearm) and that the defendant fell within one of the categories of individuals to whom the statute was directed. *Id.* The Court concluded that the word "knowingly" applied "both to the defendant's conduct and to the defendant's status." *Id.*

¶29 In so concluding, the Court began by noting that whether a statute requires the government to prove that the defendant had acted knowingly is a question of legislative intent. *Id.* at 228. To determine this intent, the Court observed that courts apply a longstanding presumption that Congress intends to require a defendant to have a culpable mental state as to each statutory element. *Id.* at 228–29. This presumption in favor of scienter applies, the Court said, even when Congress does not include any scienter in the statutory text. *Id.* at 229. And the court added that the presumption applies with equal or greater force when the

statute at issue includes a general scienter provision. *Id.* (citing Model Penal Code § 2.02(4), at 226 (A.L.I. 1985) for the proposition that when a statute prescribes a requisite culpability, without distinguishing among the material elements of that statute, the culpability provision will apply to all material elements of the offense unless a contrary purpose plainly appears). The Court noted, however, that it has "*typically* declined to apply the presumption in favor of scienter in cases involving statutory provisions that form part of a 'regulatory' or 'public welfare' program and carry only minor penalties." *Id.* at 232 (emphasis added).

¶30 For several reasons, we reject Brown's premise that the foregoing language in *Rehaif* effectively overruled *Manzo*.

¶31 First, as noted above, *Rehaif* concerned a statutory scheme that explicitly included a "knowingly" mental state. *Id.* at 227. The question before the Court involved the elements to which that mens rea applied. *Id.* The opinion thus has no bearing on a statute like the one at issue here that has no express mens rea requirement and thus tasks us with determining whether to imply such an element.

¶32 Second, although the *Rehaif* Court made comments about the presumption of scienter "typically" not applying to public welfare offenses and offenses carrying only minor penalties, in light of the foregoing, those comments were

dicta, as they had no direct bearing on the statute that the Court was construing, which *did* include a culpable mental state.

¶33 Third, the *Rehaif* Court's comments on these issues did not establish immutable principles of black letter law. As noted above, the Court prefaced the comments on which Brown relies with the word "typically," *id.* at 232, thus signaling that the principle on which the Court was commenting was a general one, and not one of uniform application.

¶34 Finally, even if the comments in *Rehaif* on which Brown relies were not dicta, we perceive nothing in *Rehaif* purporting to make the severity of an offense's penalty a sole determinant of whether a crime may be a strict liability offense. To the contrary, *Rehaif* relied on long-settled principles suggesting that the nature of an offense and the severity of its penalty may be considered in determining whether a crime may properly be construed to be a strict liability offense. *See id.* We see nothing in *Rehaif* suggesting an intent to depart from or alter that long-established law.

¶35 For all of these reasons, we discern nothing in *Rehaif* that can be read as effectively overruling *Manzo*.

¶36 Our conclusion that *Manzo* remains good law finds further support in the applicable statutory and legislative history of section 42-4-1601. Specifically, we note that in the many years since *Manzo* was decided, the General Assembly has

amended that statute four times and, among other things, increased the penalties for LTS (death) and LTS (SBI). *See* Ch. 225, sec. 1, § 42-4-1601(2)(c), 2008 Colo. Sess. Laws 850, 850 (elevating LTS (death) from a class 4 to a class 3 felony); Ch. 261, sec. 1, § 42-4-1601(2)(b), 2012 Colo. Sess. Laws 1354, 1354 (elevating LTS (SBI) from a class 5 to a class 4 felony); Ch. 337, sec. 2, § 42-4-1601(3), 2017 Colo. Sess. Laws 1797, 1803 (providing that the revocation of a person's driver's license due to an LTS conviction runs concurrently with any suspension imposed pursuant to section 42-2-127.9, C.R.S. (2025), if imposed as a result of the same driving episode); Ch. 331, sec. 3, § 42-4-1601(4), 2019 Colo. Sess. Laws 3070, 3072 (modifying the sections to which certain definitions apply).

¶37 Despite these several amendments, the General Assembly has never indicated an intent to overrule *Manzo* or to add a mens rea requirement to section 42-4-1601. To the contrary, the General Assembly appears to have acted to ensure that drivers involved in accidents resulting in death or serious bodily injury will remain at the scene of an accident or otherwise face strict liability charges. Thus, the legislative history reveals the General Assembly's intent to place LTS (death) and LTS (SBI) on equal footing with driving under the influence ("DUI") vehicular homicide and assault, both of which are strict liability offenses that carry a higher felony classification level than that which was prescribed for LTS before 2008. In doing so, the General Assembly sought to eliminate any incentive for intoxicated

drivers to flee the scene so that they would face a lesser penalty than they would have faced had they remained and been found to be intoxicated. *See, e.g.*, Hearing on S.B. 239 before the S. Judiciary Comm., 66th Gen. Assemb., 2d Sess. (Apr. 23, 2008) (statement of now-Judge Ted Tow, then a representative from the Colorado District Attorneys' Council) ("[LTS (death)] currently [is] a class 4 felony. The problem is if [an intoxicated driver] stick[s] around and they find out they're drunk, it's a class 3 felony. So, there's an incentive for someone to flee the scene, and that doesn't seem to make a lot of sense."); Second Reading of S.B. 239 before the Senate, 66th Gen. Assemb., 2d Sess. (Apr. 28, 2008) (statement of bill sponsor Sen. Bob Bacon) (noting that the bill's goal is to increase the penalty for an accident that results in death because, under then-existing law, if an individual flees the accident, that individual "is subject to a level 4 [felony], and one who stays there and has an aggravating factor like a DUI then gets the more severe penalty"; and further noting that "what this does is to make sure that the person stays there . . . if a death is involved"); Hearing on S.B. 239 before the H. Judiciary Comm., 66th Gen. Assemb., 2d Sess. (Apr. 30, 2008) (statement of now-Judge Ted Tow) (noting that under then-existing law, an individual's flight has forced the People into a position where they can prove only a low-level crime involving death, and thus, "what this bill will do is essentially put the individual at the same level as if he had committed the worst of these [vehicular crimes resulting in death]," in order

to disincentivize flight and allow the People to determine the correct level of the individual's culpability and to bring appropriate charges); Hearing on H.B. 1084 before the H. Judiciary Comm., 68th Gen. Assemb., 2d Sess. (Feb. 16, 2012) (statement of bill sponsor Rep. Kathleen Conti) (noting that under then-existing law, persons involved in alcohol-involved hit-and-run accidents resulting in serious bodily injury were incentivized to run home and sober up before coming back and admitting to the accident, at which point they faced a lesser charge, thus resulting in a "miscarriage of justice that we are seeing . . . right now in the law and a loophole that we feel needs to be repaired, and that's . . . the basis of this bill [which increased the penalty for such hit-and-run accidents]").

¶38 In light of the absence of any reference to a culpable mental state or disapproval of *Manzo* in the foregoing statutory and legislative history, we presume that the legislature accepted our conclusion in *Manzo* that LTS offenses are strict liability offenses. *See Griego v. People*, 19 P.3d 1, 5 (Colo. 2001) ("We must presume that, when the General Assembly legislates in a certain area of law, it does so with awareness of the judicial precedent in that area."); *People v. Swain*, 959 P.2d 426, 430–31 (Colo. 1998) ("Under an established rule of statutory construction, the legislature is presumed, by virtue of its action in amending a previously construed statute without changing the portion that was construed, to have accepted and ratified the prior judicial construction."). Ruling now that

LTS (death) and LTS (SBI) include a mens rea of "knowingly," as Brown asks us to do, would incentivize drivers to flee the scene of an accident, contrary to the General Assembly's expressed intent.

¶39 Finally, although Brown contends that *Manzo* is inapplicable because LTS (death) is now a class 3 felony, whereas *Manzo* involved LTS (SBI) when it was still categorized as a class 5 felony, this argument merely reiterates Brown's suggestion that under *Rehaif*, the severity of a sentence is essentially dispositive of whether an offense may be construed to be a strict liability offense. Again, however, we are unpersuaded by this contention. Moreover, *Rehaif*, 588 U.S. at 228, itself observed that whether a culpable mental state applies to a criminal statute "is a question of congressional intent." For the reasons discussed above, we perceive nothing in the statute requiring a culpable mental state and nothing in the legislative history suggesting an intent to adopt such an element.

¶40 Accordingly, we conclude that *Manzo* remains good law and that therefore, the trial court did not err in entering judgment against Brown for LTS (death) and LTS (SBI) without a jury finding on culpability.

¶41 In so concluding, we are not persuaded by Brown's contention that in enacting section 42-4-1601, the legislature intended for drivers to have, at the very least, knowledge of their involvement in an accident because without such knowledge, a driver would be unaware of their duty to remain at the scene.

Although we are not unsympathetic to this argument and acknowledge that some states with LTS statutes similar to ours have concluded that knowledge is required as to the accident element of the offense, *see, e.g.*, *State v. Al-Naseer*, 734 N.W.2d 679, 680–81 (Minn. 2007); *Clancy v. State*, 313 P.3d 226, 230 (Nev. 2013), we are constrained to follow the plain language of our own section 42-4-1601 and to effectuate our legislature's intent. Any effort to remedy perceived inequity that might result from the application of the statute's plain language is more appropriately directed to our General Assembly.

¶42 Moreover, requiring knowledge only as to the accident element of the offenses before us (i.e., concluding that a defendant must know of the accident but not of the resulting death or injury) would be inconsistent with the settled principle that the level of culpability generally applies to *all* elements of an offense unless the statute clearly indicates otherwise. *See* § 18-1-503(4), C.R.S. (2025) ("When a statute defining an offense prescribes as an element thereof a specified culpable mental state, that mental state is deemed to apply to every element of the offense unless an intent to limit its application clearly appears."); *People v. Coleby*, 34 P.3d 422, 424 (Colo. 2001) (applying section 18-1-503(4) to conclude that the mens rea of "knowingly" applied to all elements of the offense at issue, even though that mens rea appeared in only one part of the statute, when the legislative history revealed no intent on the part of the General Assembly to limit the

application of the culpable mental state to just one element of the offense); *People v. Trevino*, 826 P.2d 399, 402 (Colo. App. 1991) ("If a statute defining an offense contains a specific *mens rea* requirement, that mental state is deemed to apply to every element of the offense," and this same rule applies when the statute merely implies a mens rea.). We perceive no basis for applying an implied mens rea to only certain elements of the offenses at issue when, as here, neither the statutory text nor its statutory and legislative history supports our doing so.

¶43 Lastly, we are unpersuaded by Brown's assertion that allowing a judgment of conviction for LTS (death) and LTS (SBI) without a jury finding of knowledge of involvement in an accident violates due process. In making this argument, Brown essentially reiterates his view that *Rehaif* mandates such a result and effectively overruled *Manzo*. For the reasons set forth above, we do not agree.

¶44 Accordingly, we conclude that *Manzo* remains good law and that therefore, the trial court did not err in entering judgment against Brown for LTS (death) and LTS (SBI) without a jury finding of any culpable mental state attributable to him.

C. The Habitual Offender Statute

¶45 Brown next contends that the prior version of Colorado's habitual offender scheme, sections 18-1.3-801 to -804, C.R.S. (2017), under which the trial court found Brown to be a habitual offender, is facially unconstitutional because it purports to mandate that a judge rather than a jury make the requisite fact-finding. Brown

further contends that his adjudication as a habitual offender must be vacated because he was deprived of his right to a jury trial and even if such an error was not structural, it was not harmless beyond a reasonable doubt. Our precedent and the record undermine each of these arguments.

¶46 In *People v. Gregg*, 2025 CO 57, ¶ 3, 576 P.3d 725, 727–28, we concluded that the version of the habitual offender scheme at issue there (which is substantively the same as the version at issue in the present case) was not facially unconstitutional. In so concluding, we first observed, "A defendant is a habitual offender, and thus implicated in this sentencing scheme, if they have been convicted of a felony and 'three times previously convicted, upon charges separately brought and tried, and arising out of separate and distinct criminal episodes.'" *Id.* at ¶ 16, 576 P.3d at 729 (quoting section 18-1.3-801(2)(a)(I), C.R.S. (2024)). We went on to note that although the plain language of section 18-1.3-803(4), C.R.S. (2024), required the trial judge to determine whether the defendant had been convicted as alleged, the statute "did not explicitly *prohibit* the jury from finding that those prior convictions stemmed from separate and distinct criminal episodes." *Id.* at ¶ 24, 576 P.3d at 731. Accordingly, we concluded that under the version of the habitual sentencing statute at issue there (which, again, is also at issue here):

> [A] jury should first determine whether the defendant's prior convictions were based on charges arising out of separate and distinct

> criminal episodes. If the jury so finds, then the trial judge should review the jury's findings for sufficiency of the evidence, regarding whether the defendant "has been previously convicted as alleged." If the court determines that the jury's findings are supported by sufficient evidence, then it will enter the judgment and thereby satisfy the sentencing statute. Conversely, if the jury does not find that the defendant's prior convictions were based on charges arising out of separate and distinct criminal episodes, then the court must acquit the defendant of the habitual criminal counts.

Id. at ¶ 25, 576 P.3d at 731 (quoting § 18-1.3-803(4)(b); other citation omitted).

¶47 For these same reasons, we conclude that the habitual offender statute under which Brown was adjudicated is not facially unconstitutional. The question thus becomes whether (1) Brown's habitual offender adjudication must nonetheless be vacated because the trial court adjudicated Brown a habitual offender without permitting a jury to decide whether his prior felonies were based on charges arising out of separate and distinct criminal episodes and such an error was structural or (2) any error was harmless beyond a reasonable doubt. On this question, our decision in *People v. Crabtree*, 2024 CO 40M, ¶¶ 27, 32, 550 P.3d 656, 664–65, is informative.

¶48 In *Crabtree*, we concluded that errors of the kind presented here (i.e., those that omit an element of the offense from the jury's review) are nonstructural and therefore, when preserved, are subject to constitutional harmless error review. *See id.*; *see also Washington v. Recuenco*, 548 U.S. 212, 218, 222 (2006) (noting that "[f]ailure to submit a sentencing factor to the jury, like failure to submit an element

to the jury, is not structural error" and that if the defendant was represented by counsel and was tried by an impartial tribunal, then there is a strong presumption that constitutional errors that may have occurred are subject to harmless error analysis); *Neder v. United States*, 527 U.S. 1, 9 (1999) ("Unlike such defects as the complete deprivation of counsel or trial before a biased judge, an instruction that omits an element of the offense does not *necessarily* render a criminal trial fundamentally unfair or an unreliable vehicle for determining guilt or innocence.").

¶49 Accordingly, under *Crabtree*, a preserved error like that at issue here is not structural but rather is subject to constitutional harmless error review. The question thus remains whether, on the facts presented, the error here was harmless beyond a reasonable doubt. *See Hagos*, ¶ 11, 288 P.3d at 119. We conclude that it was.

¶50 During the habitual offender phase of the proceedings below, the People submitted evidence of Brown's prior felony convictions in Colorado for attempted theft (in Denver County) and forgery (one in Eagle County, one in Boulder County, and one in Douglas County) and in California for taking a vehicle without consent (one in Los Angeles County and one in San Diego County).

¶51 To prove that Brown was the same defendant who had been convicted of felonies in each of these prior cases, the People presented, among other things,

triple-certified case files for all but one of the judgments of convictions (the remaining file was dual certified). These files included, in different combinations, consistent physical descriptions of Brown; Brown's correct name, date of birth, and social security number (although one file had an apparent typographical error in the social security number); fingerprint cards with identical state identification numbers; and photographs of him.

¶52 In addition, the case files for each of the foregoing matters reflected different guilty plea, conviction, and sentencing dates, ranging from 1995 to 2008, thus demonstrating that Brown's prior felonies indisputably arose out of separate and distinct criminal episodes.

¶53 In these circumstances, the evidence presented on the habitual criminal counts against Brown was overwhelming, and any error in the trial court's adjudication of Brown as a habitual offender was harmless beyond a reasonable doubt. *See Bartley v. People*, 817 P.2d 1029, 1034 (Colo. 1991) ("A constitutional error is harmless when the evidence properly received against a defendant is so overwhelming that the constitutional violation was harmless beyond a reasonable doubt.").

¶54 In reaching this conclusion, we are unpersuaded by Brown's contentions that the prior felony records are unreliable because (1) some original exhibits were lost; (2) several of the prior convictions were decades old; and (3) the California

offenses may have been eligible for reclassification as misdemeanors under California law.

¶55 As noted above, all but one of the case files were triple certified. In particular, the triple-certified cases bore certifications from (1) the clerk or judicial assistant of the court attesting that the attached files were true and complete; (2) a judge of said court certifying the clerk or judicial assistant to be the custodian of records; and (3) the clerk or judicial assistant certifying the judge to be a judge of said court. All such certifications exhibited the court's seal. The other case file, while not triple certified, was dual certified and contained all of the foregoing markers of authenticity except for the final certification from the clerk certifying the judge to be a judge of the particular court. Accordingly, the case files were properly authenticated, and we perceive no basis on which to challenge their reliability. *See Brown v. People*, 238 P.2d 847, 851 (Colo. 1951) (concluding that triple-certified copies of final judgments containing certifications like those introduced here "clearly are amply and properly certified public records and come within all definitions of due authentication"); *see also* § 18-1.3-802, C.R.S. (2025) ("[A] duly authenticated copy of the record of former convictions and judgments of any court of record for any of said crimes against the party indicted or informed against shall be prima facie evidence of such convictions . . . .").

¶56 In addition, the passage of time alone does not call into question the authenticity of records prepared before January 1, 1998 when the records are "in such condition as to create no suspicion concerning [their] authenticity" and were found "in a place where [they], if authentic, would likely be." CRE 901(b)(8). The applicable record prepared before January 1, 1998 satisfied these requirements.

¶57 Finally, even assuming without deciding that the felony convictions in California were eligible for misdemeanor reclassification, the record still demonstrates Brown's involvement in more than three prior felonies, thus satisfying the requirements of the habitual offender statute.

¶58 We therefore conclude that (1) the habitual offender statute was not facially unconstitutional and (2) any error in the trial court's adjudicating Brown as a habitual offender without submitting the matter to the jury was harmless beyond a reasonable doubt.

III. Conclusion

¶59 For these reasons, we conclude that *Manzo* remains good law and is not distinguishable and therefore, the trial court did not reversibly err in entering judgment against Brown for LTS (death) and LTS (SBI) without requiring the prosecution to prove any culpable mental state.

¶60 We further conclude that the prior habitual offender statute under which Brown was adjudicated was not unconstitutional on its face and that any error in

the trial court's adjudicating Brown as a habitual offender without submitting the matter to the jury was harmless beyond a reasonable doubt.

¶61 Accordingly, we affirm the division's judgment.

JUSTICE SAMOUR concurred in part and concurred in the judgment only in part.

JUSTICE SAMOUR, concurring in part and concurring in the judgment only in part.

¶62 Popular culture is full of stories about characters who, sometimes after decades, struggle to break free from long-held opinions and assumptions. *Good Will Hunting*, the 1997 classic, captures this insight: People often hold tight to the beliefs they formed first, not necessarily because those beliefs are right, but because they are familiar, deeply ingrained, and worn in—providing a sense of security that alternatives do not. Letting go of a conclusion that has not aged well, even when compelling reasons point firmly in another direction, is never easy. I perceive that such reluctance may be playing out in this case.

¶63 Twenty years ago, in *People v. Manzo*, 144 P.3d 551 (Colo. 2006), our court held that leaving the scene of an accident resulting in serious bodily injury ("LTS (SBI)") was a strict liability offense—even though it was a class 5 felony punishable by prison. That determination rested on a brittle foundation. And in the decades since, developments in the United States Supreme Court's jurisprudence and Colorado's statutory provisions have steadily eroded *Manzo*'s footing.

¶64 Rather than step back and reconsider, the majority doubles down and reaffirms *Manzo*'s holding. In doing so, it overlooks that the ground beneath *Manzo* was shaky to begin with and has only grown more precarious with time. Yes, stare decisis is a principle we live by. But stare decisis is a presumption, not

a prison—a doctrine of stability, not an unyielding gatekeeper. And it recognizes that when continued adherence to precedent, in the face of change, would betray the law's underlying principles, its grip must loosen. Otherwise, precedent becomes an anchor too heavy for the vessel of law to navigate wisely.

¶65 Because I believe the time has come to put *Manzo* out to pasture, I strongly—but respectfully—register my unequivocal disagreement with the portion of the majority opinion that continues to consign leaving the scene of an accident ("LTS") to strict liability status. By allowing *Manzo* to dictate the path forward, the majority ensures that Colorado remains on an island—apparently the only state in the nation where courts refuse to impute a mens rea to an LTS statute that is silent on that element.

¶66 But because the error in this case was constitutionally harmless, I concur in part and concur in the judgment only in part. Although course correction may offer little benefit to the defendant, Jason P. Brown, I write at length because this issue warrants attention. I see an urgent need to sound the alarm about what I perceive as a significant risk of grave injustice in Colorado. Consider this: Brown was convicted of a class 3 felony carrying a possible twelve-year prison sentence—he received forty-eight years after his habitual criminal adjudication—for leaving the scene of an accident resulting in death ("LTS (death)"), even though the prosecution was *not* required to prove that he was

aware he'd been involved in an accident or otherwise acted with scienter. And while Brown himself may not have been morally blameless—an eyewitness told him he'd run over two people before he fled—his case nevertheless exposes a stark reality: *Manzo* and today's decision condemn drivers who are morally blameless to suffer the same fate. As I demonstrate, the question isn't whether such drivers are at risk of being unfairly charged, convicted, and sentenced in Colorado, but how many of them will be.

¶67 And the kicker is that nobody appears to be coming to the rescue. The legislature has not seen fit to abrogate *Manzo* in the twenty years since its announcement, and this court today decides to defend it, giving the legislature even less reason to question it.

I. Analysis

A. Colorado: We Have a Problem—And the Majority Doesn't See It

¶68 The majority's insistence on following *Manzo* has serious consequences. By prolonging *Manzo*'s reign, the majority ensures that Colorado drivers will continue to be charged, convicted, and punished under section 42-4-1601(1), C.R.S. (2025), for LTS (SBI) or LTS (death), without proof of any awareness that they were involved in an accident.[1] Put differently, the majority holds fast to *Manzo*'s

[1] Section 42-4-1601(1) requires "the driver of any vehicle directly involved in an accident resulting in injury to, serious bodily injury to, or death of any person" to

ill-advised conclusion that LTS is a strict liability offense—indifferent to whether the driver acted intentionally, knowingly, recklessly, or negligently.

¶69 Notably, during oral argument, the People acknowledged—almost with a shrug—that strict liability could "result hypothetically in the rare prosecution of a morally blameless defendant." They added that this was a calculated legislative choice—one they deemed acceptable because, in their estimation, morally blameless drivers "will be in the small minority," and strict liability is needed to advance public-safety goals. I did a double take when I heard the remark. I did another just now after writing it down. The prospect of an innocent driver being swept into the gears of the criminal justice machine—even if rare—cannot be written off as an unfortunate but tolerable cost of doing business.

¶70 Whatever happened to the "fundamental value determination of our society that it is far worse to convict an innocent man than to let a guilty man go free"? *Schlup v. Delo*, 513 U.S. 298, 325 (1995) (quoting *In re Winship*, 397 U.S. 358, 372 (1970) (Harlan, J., concurring)). Isn't it still a maxim of the law "that it is better that ninety-nine . . . offenders should escape, than that one innocent man should

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"immediately stop such vehicle at the scene of such accident or as close to the scene as possible or [to] return to the scene of the accident." The driver must then remain at the scene to fulfill the requirements set forth in section 42-4-1603(1), C.R.S. (2025). (Section 42-4-1601 was amended it 2026, but because none of the amendments affect the analysis in this case, I do not address them.)

be condemned"? Thomas Starkie, Treatise on the Law of Evidence 756 (1824) (quoted with approval in *Schlup*, 513 U.S. at 325). This principle is not some quaint relic gathering dust on a shelf; it is the bedrock of our criminal justice system. Indeed, the "concern about the injustice that results from the conviction of an innocent person has long been at the core of our criminal justice system." *Schlup*, 513 U.S. at 325.

¶71 Yet even in the face of the People's concession—an open admission that innocence may hypothetically be collateral damage—my colleagues in the majority choose to stand by *Manzo*. I cannot join them. When the law tolerates the very real risk of the conviction of the morally blameless, it has drifted perilously far from its moral underpinnings.

¶72 And to be clear, although the People referred to strict liability "hypothetically" allowing morally blameless drivers to be punished for LTS (death), there is nothing "hypothetical[]" about that prospect. Over and over, appellate courts across the country have intervened to prevent injustices in cases involving drivers who stood convicted of LTS, even though they genuinely appeared to have been unaware that an accident had occurred. A brief survey—one by no means comprehensive—makes the point unmistakably.

¶73 Start with a case from Florida that highlights the point vividly. In *State v. Dorsett*, 158 So. 3d 557, 558 (Fla. 2015), a teenage skateboarder lost control and slid

under the side of a large pickup truck driven by Dorsett. It was raining; the windows were up; the wipers and air conditioning were on; and a portable radio was playing at full volume. *Id.* There was no impairment, no evasive maneuver, no sign of braking, no change in speed, and no visible damage to the front of Dorsett's truck. *Id.* at 559. Dorsett appeared genuinely surprised when stopped by law enforcement three miles from the accident. *Id.* at 558–59. Although the LTS statute did not expressly require "actual knowledge" of an accident, the Florida Supreme Court held that the statute's requirement of a "willful" violation necessitated proof that the driver had actual knowledge that an accident had occurred. *Id.* at 560. Because the jury had not been instructed on that essential element, the court reversed the conviction.[2] *Id.* at 563.

¶74 Illinois sees it the same way. In *People v. Nunn*, 382 N.E.2d 1305, 1306 (Ill. App. Ct. 1978), *aff'd*, 396 N.E.2d 27 (Ill. 1979), Nunn's truck struck a vehicle in the early morning hours, but he testified that he had fallen asleep and was awakened only by a "thud." After pulling over shortly thereafter, he inspected his truck, saw only a dent, and reasonably assumed he had hit an animal. *Id.* The jury was

[2] I realize that, unlike Florida's LTS statute, Colorado's LTS statutory scheme does not require a "willful" violation. *See* § 42-4-1601. But *Dorsett*—along with the other out-of-state cases discussed here—still underscore a reality the majority seems reluctant to accept: Accidents can, and do, happen when morally blameless drivers are unaware of them.

instructed on LTS without any requirement that the State prove he knew an accident involving a person had occurred. *Id.* at 1307. The Illinois appellate court reversed the conviction. *Id.* at 1309. It held that, although the state's LTS statute lacked an express culpable mental state, knowledge was nonetheless an essential element of the offense. *Id.* at 1308–09. The court stressed that the purpose of hit-and-run statutes cannot be served where a driver is genuinely unaware of a collision. *Id.* at 1308. And it recognized—correctly—that accidents may occur without the driver's knowledge. As the court observed, "[e]xamples can come to mind where the driver neither knows nor should have known of the occurrence of an accident." *Id.* For instance, continued the court, "if a pedestrian walks into the side of a moving car or truck or perhaps his clothing becomes entangled with a passing motor vehicle, it is quite possible that the driver will be unaware of the incident even though properly operating his motor vehicle." *Id.* The court reasoned that "[t]here would appear to be no useful purpose served in imposing criminal sanctions for such conduct." *Id.*

¶75 Iowa is part of the chorus. In *State v. Miller*, 308 N.W.2d 4, 5 (Iowa 1981), Miller's truck, caked in mud with only a small portion of the windshield cleared, struck a pedestrian. He testified that he continued driving normally because he neither saw nor felt anything that would have alerted him to the collision. *Id.* Because the LTS statute didn't include a knowledge requirement, the jury was

instructed without one. *Id.* at 5–6. The Iowa Supreme Court reversed the conviction, holding that scienter was an essential element of LTS given the seriousness of the penalties associated with the offense. *Id.* at 6–7.

¶76 Kansas is on the same page. In *State v. Wall*, 482 P.2d 41, 43 (Kan. 1971), Wall collided with another vehicle late at night. His abandoned truck was found in a ditch about 100 feet from the victim's car. *Id.* When officers located him shortly afterward in a different location, he was in a dazed and bewildered condition, with significant injuries and no memory of the accident. *Id.* at 44. Although the LTS statute did not expressly require knowledge of the accident, the state supreme court reversed the conviction and held that such knowledge was an "essential" element of the offense. *Id.* at 45. The legislature, it explained, could not have intended criminal liability to attach where a driver is unaware of the collision. *Id.*

¶77 Kansas's neighbor, Missouri, traveled the same analytical road when confronted with a comparable situation in *State v. Palmer*, 822 S.W.2d 536, 541 (Mo. Ct. App. 1992). Palmer felt an impact while rounding a curve but, after checking his mirrors and seeing no damage, assumed—reasonably, given his long familiarity with the area—that he had struck a deer. *Id.* at 538–39. The State presented no evidence beyond Palmer's acknowledgment of an impact to show that he knew he had struck or injured a person. *Id.* at 541. The appellate court

reversed his conviction for LTS involving personal injury, concluding that the statute defining the offense required proof of knowledge. *Id.*

¶78 Alabama reached the same bottom line. In *Touchstone v. State*, 155 So. 2d 349, 350 (Ala. Ct. App. 1963), two boys were killed near a highway as Touchstone's extremely loud tractor-trailer passed by. Later examination of the front of the tractor-trailer revealed blood, hair, and fabric matching the victims. *Id.* Yet nothing in the record suggested Touchstone knew he had struck anyone, and there was no indication that he had attempted to conceal or remove the physical evidence from his tractor-trailer. *Id.* at 352. Because Alabama's LTS statute required proof of knowledge—and the State presented none—the appellate court reversed the conviction. *Id.*

¶79 Virginia rows in the same direction. In *Herchenbach v. Commonwealth*, 38 S.E.2d 328, 329–30 (Va. 1946), the Virginia Supreme Court concluded that Herchenbach had been improperly convicted of LTS while driving a bus that hit and killed a bicyclist. The court noted that at the time of the accident, it was dark and foggy, Herchenbach wouldn't have felt the impact, and there was no indication he had attempted to conceal the blood and hair found on one of the tires on the bus. *Id.* at 330. That the LTS statute didn't include a mens rea requirement didn't alter the analysis. *Id.* The court reasoned as follows: "How can a person perform these affirmative acts [in the LTS statute] unless he knows that his vehicle

has struck a person or an object? Knowledge necessarily is an essential element of the crime." *Id.* at 329.

¶80 Finally, Rhode Island marches in step. In *State v. Baker*, 627 A.2d 835, 836–39 (R.I. 1993), Baker had been violently beaten at a bachelor party immediately before getting in his truck and driving away. Disoriented, bleeding, and later reporting no memory of where he had driven, he unknowingly struck a pedestrian. *Id.* at 838–39. He was genuinely surprised when he learned of the accident the next morning at the police station while reporting the assault at the party. *Id.* at 839. Although the LTS statute required knowledge of involvement in an accident, the trial court denied his motion for judgment of acquittal. *Id.* The Rhode Island Supreme Court reversed, finding the evidence insufficient even under a "knew or should have known" standard. *Id.* at 841. Because Baker's head injuries and disorientation made any inference of awareness untenable, the court directed entry of a judgment of acquittal. *Id.*

¶81 Under *Manzo* and today's decision, Dorsett, Nunn, Miller, Wall, Palmer, Touchstone, Herchenbach, and Baker all would have lost on appeal in Colorado.[3]

[3] To be sure, these defendants may have been guilty of careless driving and perhaps other traffic offenses. But after today, in Colorado, these defendants—morally blameless at least with respect to LTS—could be convicted of a class 3 or 4 felony and sentenced to prison for leaving the scene of an accident they were unaware had occurred. This is an important distinction—one the majority may be overlooking.

The rationale in *Manzo* and in today's decision seems to rest on the assumption that a driver cannot be involved in an accident without realizing it—an assumption that case after case proves unfounded. The eight examples I've offered are only a glimpse; they represent but one tile in a sprawling mosaic of cases that have acknowledged that accidents happen without drivers being aware of them. *See, e.g.*, *State ex rel. Korkosz*, 393 So. 2d 332, 333–34 (La. Ct. App. 1980) (noting that a mens rea requirement was added to the state statute "specifically because many accidents happen at night and the driver is not aware that an accident has occurred"). And even if such situations arise infrequently, I cannot accept the risk they create. Even a single morally blameless driver being falsely accused, convicted and punished under section 42-4-1601(1) is one too many.

B. Constitutional Missteps in *Manzo* and Today's Decision in Light of United States Supreme Court Precedent

¶82 The majority's apparent willingness to accept the genuine risk of having morally blameless drivers charged, convicted, and punished under section 42-4-1601(1) reflects a misapprehension of the constitutional concerns at hand. Although the majority concludes that "the trial court did not . . . violate Brown's right to due process" in entering judgment for leaving the scene of an accident resulting in LTS (death) without requiring proof that he acted with any culpable mental state, it doesn't explain *why* that is so. Maj. op. ¶ 2. In fact, the majority uses the term "due process" only three times in its entire opinion—and one of

those instances appears merely in reciting the issues we agreed to review, including whether the trial court violated Brown's "right to due process." *Id.* at ¶ 1. The majority ultimately resolves the defense's full-throated due process claim in conclusory fashion, simply opining that declining to read section 42-4-1601(1) as implying a culpable mental state does not violate due process—i.e., it is so because the majority says so. *Id.* at ¶¶ 1–2.

¶83 To the extent the majority handcuffs the defense's constitutional challenge to the question whether the Supreme Court's recent decision in *Rehaif* overruled *Manzo*, it mischaracterizes Brown's position. Both in his briefs and at oral argument, Brown argued at length that *Manzo* is unsound precedent—apart from his further claim that recent developments, including *Rehaif*, have only made clearer that *Manzo* is a house of cards.[4] As I explain in this opinion, the defense is correct on both fronts.

¶84 Rather than grapple with the constitutional questions, the majority treats *Manzo* as its north star and adheres to it. Consequently, it devotes nearly its entire analysis to legislative intent. *See id.* at ¶¶ 36–44. The majority states that it is

[4] The two arguments fall within the scope of the first issue we agreed to review: "Whether *People v. Manzo*, 144 P.3d 551 (Colo. 2006), is no longer good law or distinguishable, *and whether the court reversibly erred and violated Brown's due process because it allowed the jury to convict him of a class 3 felony for leaving the scene of an accident resulting in death without the prosecution proving he acted with any culpable mental state.*" (Emphasis added.)

"constrained to follow the plain language of . . . section 42-4-1601." *Id.* at ¶ 41. With that, it effectively washes its hands of any potential resulting inequity, concluding that the remedy question "is more appropriately directed to our General Assembly." *Id.*

¶85 But we cannot sidestep constitutional questions simply by pointing to the legislature. Those issues fall squarely within our domain, and we should not shirk our responsibility by treating legislative intent as a substitute for constitutional analysis. Rather, when it comes to constitutional questions, the buck stops with us—the courts.

¶86 Importantly, those constitutional concerns bear directly on how we interpret a statute defining a criminal offense. We cannot properly construe section 42-4-1601(1) without accounting for them. It is precisely those concerns that have prompted the Supreme Court, time and again, to underscore the strong presumption in favor of scienter. Don't take my word for it, though—as I discuss next, the Court has spoken unequivocally and repeatedly on this subject, and its stance on the issue has remained unwavering for decades.

1. How Constitutional Defects in the Majority Opinion Lead to the Misinterpretation of Section 42-4-1601(1)—History Repeating Itself After *Manzo*

¶87 In determining Congress's intent, the Supreme Court's starting point is the "longstanding presumption . . . that Congress intends to require a defendant to

possess a culpable mental state regarding 'each of the statutory elements that criminalize otherwise innocent conduct.'" *Rehaif v. United States*, 588 U.S. 225, 228–29 (2019) (quoting *United States v. X-Citement Video, Inc.*, 513 U.S. 64, 72 (1994)). We must construe a statute in light of the "firmly-embedded" background rule requiring some *mens rea* for a crime. *Staples v. United States*, 511 U.S. 600, 605 (1994) (citation omitted). This interpretive maxim, which the Supreme Court reaffirmed in *Rehaif* just seven years ago, has been characterized as "a presumption in favor of 'scienter'"—i.e., "a presumption that criminal statutes require the degree of knowledge sufficient to 'mak[e] a person legally responsible for the consequences of his or her act or omission.'" *Rehaif*, 588 U.S. at 229 (alteration in original) (quoting *Scienter*, Black's Law Dictionary (10th ed. 2014)).

¶88 "There can be no doubt that this established concept has influenced [the Supreme Court's] interpretation of criminal statutes." *Staples*, 511 U.S. at 605. So critical is this presumption that it applies "even when Congress does not specify any scienter in the statutory text." *Rehaif*, 588 U.S. at 229. In fact, the Supreme Court's reverence for the presumption may best be reflected in cases in which it has "interpreted statutes to include a scienter requirement" despite "'the most grammatical reading'" not supporting one. *Id.* at 231 (quoting *X-Citement Video, Inc.*, 513 U.S. at 70). Relying on the strength of the presumption, the Court has cautioned that "offenses that require no *mens rea* generally are disfavored," and

has "suggested that some indication of congressional intent, express or implied, is required to dispense with *mens rea* as an element of a crime." *Staples*, 511 U.S. at 606.

¶89 But the presumption of scienter is hardly novel. It traces its lineage to the common law—it is as American as apple pie. It is a basic principle undergirding our criminal law—a precept with an ancient and sturdy pedigree. *Id.* at 605–06. Blackstone referred to it centuries ago as a "vicious will." *Id.* at 616–17 (quoting 4 William Blackstone, Commentaries *21 (1769)). As the Court observed in *Morissette v. United States*, 342 U.S. 246, 251–52 (1952), the idea that crime requires both "an evil-meaning mind" and "an evil-doing hand . . . was congenial to an intense individualism and took deep and early root in American soil."

¶90 Today, "the understanding that an injury is criminal only if inflicted knowingly 'is as universal and persistent in mature systems of law as belief in freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil.'" *Rehaif*, 588 U.S. at 231 (quoting *Morissette*, 342 U.S. at 250). "Scienter requirements advance this basic principle of criminal law by helping to 'separate those who understand the wrongful nature of their act from those who do not.'" *Id.* (quoting *X-Citement Video, Inc.*, 513 U.S. at 72 n.3).

¶91 It is difficult to conceive of language that stresses the significance of the presumption of scienter more emphatically. Unsurprisingly, the cases in which the Supreme Court has highlighted scienter's importance in distinguishing wrongful from innocent acts "are legion." *Id.*

¶92 *Manzo*, however, didn't mention—let alone apply—this presumption in interpreting section 42-4-1601(1). Instead, it concluded that nothing in the statute indicated an implied culpable mental state. *Manzo*, 144 P.3d at 552. That conclusion was doubly erroneous: First, as noted, it was reached without applying the presumption of scienter; and second, even apart from that fatal flaw, our legislature has furnished ample reason to impute a culpable mental state. I explore the latter point now.

¶93 As our court acknowledged in *Manzo*, the mere absence of an express culpable mental state in a statute defining an offense does not automatically equate to strict liability. *Id.* at 556. This understanding is based on our legislature's declaration that, despite the omission of scienter in a criminal statute, a culpable mental state "may nevertheless be required for the commission of that offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such a culpable mental state." *Id.* (quoting § 18-1-503(2), C.R.S. (2006)). *Manzo* also correctly observed that our role in

determining whether a statute contains an implied culpable mental state is to discern the legislature's intent. *Id.* So far so good.

¶94 But, alas, *Manzo* faltered at the next step. According to *Manzo*, the language of section 42-4-1601(1) "does not reflect a legislative intent to require a culpable mental state" because it requires "a driver involved in an accident" to "'immediately stop,'" which is a "a mandatory duty." *Id.* (quoting § 42-4-1601(1)). "Thus," *Manzo* concluded, the statute "does not involve a culpable mental state." *Id.* With all due respect, this is as circular as circular gets.

¶95 It is also backwards. Given that the statute imposes a mandatory duty to immediately stop if a driver has been involved in an accident, the driver *must necessarily be aware that an accident has occurred*. How does that not imply a culpable mental state? If a driver is unaware that an accident has occurred—and I've cited numerous cases showing that this does happen—how can there be a duty, backed by the threat of a felony conviction and severe punishment, to take the prescribed action? "[O]ne cannot stop at or return to the scene of a personal injury accident he does not know has occurred. Cognizance of the accident, then, is implicit in the obligations imposed by the statute." *Comstock v. State*, 573 A.2d 117, 123 (Md. Ct. Spec. App. 1990); *accord Herchenbach*, 38 S.E.2d at 329 (indicating that, although the LTS statute omitted a scienter requirement, knowledge of the accident was

nevertheless a necessary element of the crime because, without such knowledge, the driver could not be expected to stop).

¶96 The Minnesota Supreme Court recently captured the point when it declined to follow the strict liability route, even though the state's LTS statute included no mens rea requirement:

> [T]he act of continuing to drive (or failing to stop) is not criminal in itself, but only becomes criminal if the driver has caused an accident that is of the type that imposes a legal obligation to stop. In order for a person to be criminally liable for failing to stop, *basic fairness requires that the person be on notice that events that trigger the legal duty to stop have occurred*.

State v. Al-Naseer, 734 N.W.2d 679, 686 (Minn. 2007) (emphasis added).[5] And the Nevada Supreme Court sounded the same note more recently in *Clancy v. State*, 313 P.3d 226 (Nev. 2013). There, after acknowledging that the state's LTS statute did not expressly require proof of the driver's knowledge of involvement in an accident, the court nonetheless recognized such a requirement:

> The purpose behind [the LTS statute] is to require drivers involved in an accident to stop and provide identifying information and render reasonable assistance to injured persons . . . . "Implicit therein must be the element of recognition or awareness on the part of that driver of the fact of [an accident]." [*Wall*, 482 P.2d at 45.] *The statute's purpose is not served where the driver is unaware of the event requiring him to stop and provide identifying information and render assistance – the accident.* In that situation, the statute does nothing to encourage the driver to stop

[5] Unlike Minnesota's LTS statute, section 42-4-1601(1) does not tether liability to causation. Instead, it requires only that the defendant was "directly involved" in an accident. § 42-4-1601(1).

> and provide information and render assistance; the driver did not stop because he was not aware that there was a reason to do so.

Id. at 229–30 (second alteration in original) (emphasis added).

¶97 There is a constellation of cases like *Comstock*, *Herchenbach*, *Al-Naseer*, and *Clancy*. *See, e.g.*, *State v. Martin*, 440 P.2d 429, 436 (Wash. 1968) ("It is inconceivable that the legislature intended that punishment would be imposed for failure to follow the course of conduct outlined, if the operator of the vehicle was ignorant of the happening of an accident."); *State v. Ray*, 47 S.E.2d 494, 495 (N.C. 1948) ("It would be a manifest absurdity to expect or require the driver of a motor vehicle to perform the acts specified in the statute in the absence of knowledge that his vehicle has been involved in an accident resulting in injury to some person."); *Pardo v. State*, 160 A.3d 1136, 1145 (Del. 2017) ("Drivers logically must have knowledge that a collision has occurred before the duty to stop and render assistance can be triggered. It is not reasonable to believe the General Assembly intended for a penalty to be imposed for failure to perform certain duties if the driver was unaware of the collision."); *Kimoktoak v. State*, 584 P.2d 25, 31 (Alaska 1978) ("[N]umerous jurisdictions have enacted 'hit and run' statutes which, like ours, fail to expressly require that the accused knowingly fail to stop and render assistance. The great majority of courts have found the knowledge requirement to be implicit in these statutes."); *State v. Lemme*, 244 A.2d 585, 589 (R.I. 1968)

("Obviously, however, knowledge is so essentially an element of the offense as to be necessarily implied if not expressed.").

¶98 Looking at the tapestry these courts have woven, it is inconceivable that our General Assembly intended to punish drivers for failing to fulfill the duties it set forth without awareness that they were involved in an accident. There are no two ways about it: Proof of scienter must be a prerequisite to meeting the statute's obligations. Concluding otherwise—as *Manzo* did and the majority does—leads to illogical or absurd results. And our rules of statutory interpretation instruct us to avoid precisely such illogical or absurd results. *See Brubaker v. Colo. Sun*, 2026 CO 18, ¶ 34, 586 P.3d 706, 714.

¶99 It is no wonder Colorado has become a self-contained universe in this field. As the Delaware Supreme Court noted in 2017, "[w]e encountered only one state that imposes strict liability for hit-and-run collisions where the statute is silent with respect to the mental culpability required to secure a conviction." *Pardo*, 160 A.3d at 1146 n.39 (citing *Manzo*, 144 P.3d at 558–59); *see also Al-Naseer*, 734 N.W.2d at 684 ("At least one state has held that strict liability applies where the statute is silent about mens rea in [an LTS] statute." (citing *Manzo*, 144 P.3d at 559)). This is no badge of honor; it's a cursed heirloom.

¶100 But as unfortunate as *Manzo*'s circular and backwards reasoning is, it accounts for only half of the legislative-intent story. The court compounded its

misguided analysis by viewing "other traffic offenses" that "do not require a culpable mens rea" as bolstering its holding. *Id.* at 556–57 (referring to driving under the influence ("DUI"), driving while ability impaired ("DWAI"), and speeding). Yet those offenses actually *undercut* its holding. Unlike section 42-4-1601(1), the statutes governing DUI/DWAI and speeding explicitly state that they are strict liability offenses. *See* § 42-4-1301(3), C.R.S. (2025) (indicating DUI/DWAI are "strict liability" offenses); § 42-4-1101(11)(a), C.R.S. (2025) (stating that it is not a defense to a charge of speeding that "[t]he defendant's conduct was not performed intentionally, knowingly, recklessly, or with criminal negligence"). Other traffic offenses are of the same ilk as DUI/DWAI and speeding. *See* § 18-3-106(1)(b)(I), C.R.S. (2025) (stating that vehicular homicide (DUI/DWAI) is "a strict liability crime"); § 18-3-205(1)(b)(I), C.R.S. (2025) (stating that "vehicular assault" (DUI/DWAI) is "a strict liability crime").

¶101 The most sensible conclusion to draw is that when the legislature intends to classify a traffic offense as a strict liability one, it says so expressly. The Model Penal Code, which our criminal code is modeled after, has a general rule that requires a state legislature to expressly state its intent when it means to have strict liability apply to a crime. *See* Model Penal Code § 2.05(1) cmt. 1 (A.L.I. 1985), (indicating that "strict liability may be applied only if a legislative purpose to that effect plainly appears"). This makes sense given the presumption of scienter and

the constitutional principles animating it. Section 42-4-1601(1) offers no hint that the legislature meant to classify LTS (death) and LTS (SBI) as strict liability offenses. What I reasonably infer, then, is that strict liability was never the design.

¶102 Although the majority engages in an extensive discussion of the legislature's intent in amending section 42-4-1601, it largely overlooks the on-point authority I've discussed. It doesn't reckon with the fact that the legislature has expressly stated its intent when drafting other strict liability traffic offenses. And with respect to the presumption of scienter the Supreme Court has hammered for decades, it offers little more than a courteous bow. Rather than heed the Supreme Court's jurisprudence on the vital role the presumption plays in interpreting criminal statutes, the majority attempts to prop up *Manzo*'s construction of section 42-4-1601(1) with two pillars—legislative history and statutory history. Maj. op. ¶ 36. But a closer inspection reveals that both are made of bungaroosh and cannot support the weight the majority places on them.

¶103 Let's take legislative history first. The majority spends nearly two pages extolling the amendments to section 42-4-1601 that ratcheted up the felony classifications and penalties for LTS (death) and LTS (SBI). Maj. op. at ¶¶ 36–38. That history, however, proves nothing of consequence here. In all the commentary the majority quotes, not a single line—not one—mentions "strict liability" or the absence of a "culpable mental state." No legislator or speaker discusses an intent

to accord strict liability status to LTS (death) or LTS (SBI). Nor does anyone confront the unfairness of imposing heightened felony punishment on drivers who are unaware that an accident has even occurred. Every comment the majority relies on assumes a driver who knows an accident has happened and chooses to flee to avoid accountability. *Id.* at ¶ 37. At most, the legislative history shows that the General Assembly wanted to align LTS (death) with vehicular homicide (DUI/DWAI) and to place LTS (SBI) on equal footing with vehicular assault (DUI/DWAI)—both moves designed to remove any *incentive* for a driver involved in an accident to leave the scene. *But incentive presupposes awareness*. Drivers cannot be tempted to flee an accident they do not realize has occurred. Without awareness, the very premise of incentive collapses.

¶104 The statutory history offers the majority no lifeline either. The majority places considerable weight on the fact that, although the legislature has amended section 42-4-1601 four times since *Manzo*—never as to subsection (1), the subsection at issue—our General Assembly has never added a culpable mental state requirement or otherwise signaled disagreement with that decision. But the majority forgets that we have recently discounted the value of this kind of silent statutory history, recognizing that it often assumes more than it proves.

¶105 As we stated just a handful of years ago, "[i]t is 'impossible to assert with any degree of assurance that [legislative] failure to act represents' affirmative

[legislative] approval of the Court's statutory interpretation." *People v. Jones*, 2020 CO 45, ¶ 65, 464 P.3d 735, 747 (alterations in original) (quoting *Patterson v. McLean Credit Union*, 491 U.S. 164, 175 n.1 (1989)). In *Jones*, we declined the prosecution's invitation to infer legislative intent from the lack of an amendment to "the definition of 'child' or 'person'" in the child abuse statute following the court of appeals' interpretation of those terms in *People v. Lage*, 232 P.3d 138 (Colo. App. 2009), even though the statute had been amended multiple times after that decision. *Jones*, ¶ 63, 464 P.3d at 747.

¶106 *Jones* was only treading the ground the Supreme Court had already cleared. That Court has long cautioned that "'[c]ongressional inaction lacks persuasive significance' in most circumstances." *Star Athletica, L.L.C. v. Varsity Brands, Inc.*, 580 U.S. 405, 424 (2017) (alteration in original) (quoting *Pension Benefit Guar. Corp. v. LTV Corp.*, 496 U.S. 633, 650 (1990)). And the Court has been especially wary of drawing meaning from legislative silence where, as here, the legislature "has not comprehensively revised a statutory scheme but has made only isolated amendments." *Alexander v. Sandoval*, 532 U.S. 275, 292 (2001). Like the Supreme Court, I view it as "at best treacherous to find in [legislative] silence alone the adoption of a controlling rule of law." *United States v. Wells*, 519 U.S. 482, 496 (1997) (quoting *NLRB v. Plasterers' Loc. Union No. 79*, 404 U.S. 116, 129–130 (1971)). As the Court memorably put it in *Zuber v. Allen*, 396 U.S. 168, 185 (1969),

"[l]egislative silence is a poor beacon to follow in discerning the proper statutory route."

¶107 In short, when I set the legislative and statutory history on which the majority leans against the all-important presumption of scienter and the far stronger evidence of legislative intent that I've brought out of the shadows, the majority's foundation crumbles. And because we must "construe statutes in such a way as to avoid calling their constitutional validity into question," *People v. Lee*, 2020 CO 81, ¶ 11, 476 P.3d 351, 354, I would conclude that section 42-4-1601(1) implies a culpable mental state.

2. The Culpable Mental State Implied by Section 42-4-1601(1) Is Knowingly—There Must Be Knowledge of an Accident of the Type Imposing a Duty to Stop

¶108 Having decided that section 42-4-1601(1) implies a culpable mental state, the question that naturally flows is: which one? *See* § 18-1-501(3), (5), (6), (8), C.R.S. (2025) (setting out four culpable mental states—intentionally, knowingly, recklessly, and criminal negligence). I would conclude that the appropriate one is knowingly. Both the court of appeals and our court have generally imputed the culpable mental state of knowingly when statutory provisions not expressly designated strict liability offenses "are silent on a culpable mental state and there is no clear reason to resort to a different culpable mental state." *Randolph v. People*, 2025 CO 44, ¶ 57, 570 P.3d 1022, 1034; *see also Gorman v. People*, 19 P.3d 662, 666

(Colo. 2000) (recognizing that "we have held that the mens rea of knowingly applies to the act enunciated in the statute . . . when the statute does not specify a culpable mental state"); *People v. Moore*, 674 P.2d 354, 358 (Colo. 1984) (imputing the culpable mental state of knowingly in the counterfeit controlled substances statute); *People v. Bridges*, 620 P.2d 1, 3 (Colo. 1980) (concluding that the culpable mental state of knowingly is implied by the statute proscribing engaging in a riot), *overruled in part on other grounds by, People v. Jeffers*, 690 P.2d 194 (Colo. 1984); *People v. Lawrence*, 55 P.3d 155, 163 (Colo. App. 2001) (inferring, from a statutory provision proscribing the wasteful destruction of wildlife, the culpable mental state of "knowingly" because "[n]othing in [the statutory] language logically is tied to 'specific intent,' 'recklessness,' or 'neglect'"), *abrogated on other grounds by, Crawford v. Washington*, 541 U.S. 36 (2004).

¶109 Here, there is no reason to resort to a mental state different than knowingly. As noted, to avoid the imposition of impossible duties, section 42-4-1601(1) must be construed as requiring proof that the driver was aware there was an accident. Because knowingly is all about "aware[ness]," *see* § 18-1-501(6), it fits the bill perfectly. And imputing knowingly is in lockstep with what courts across the country have done in interpreting LTS statutes without an express mens rea. *See supra* at ¶¶ 32–34.

¶110 Drawing from the Minnesota Supreme Court's thoughtful analysis in *Al-Naseer*, I would then require proof of "knowledge that the driver's vehicle was in an accident of the type that imposes a duty to stop." 734 N.W.2d at 687. In Minnesota, that means knowledge that the driver's vehicle was in an accident "involving a person or another vehicle." *Id.* Because Colorado's LTS statutory scheme is a little more expansive, the relevant knowledge required here would be that the driver's vehicle was in an accident involving a person, a vehicle, other property, or fixtures or traffic control devices. *See* § 42-4-1601(1) (addressing a person who suffers injury, SBI or death); § 42-4-1602, C.R.S. (2025) (referring to damage to a driven or attended vehicle); § 42-4-1604, C.R.S. (2025) (relating to damage to an unattended vehicle or other property); § 42-4-1605, C.R.S. (2025) (discussing damages to fixtures or traffic control devices upon or adjacent to a highway).

¶111 Colorado's LTS statutory scheme does not impose obligations for all accidents. Whatever knowledge is required must correspond to the categories of accidents that actually trigger statutory duties. To be clear, however, this would not call for proof of awareness of the resulting harm—nothing supports extending the culpable mental state to the resulting harm. Thus, to charge a driver with LTS (death), the prosecution would not be required to prove that the driver was aware there was an accident *that resulted in someone's death*. Instead, what would be

required is that the driver was aware there was an accident of the type that imposes a duty to stop. In other words, the prosecution would have the burden of proving only that the driver was aware there was an accident and that the accident involved either a person, a vehicle, other property, or fixtures or traffic control devices.

¶112 The majority voices concern that requiring knowledge of involvement in an accident in Colorado would conflict with the settled principle that a mens rea term "applies to *all* elements of an offense unless the statute clearly indicates otherwise." Maj. op. ¶ 42 (citing § 18-1-503(4)). Under section 18-1-503(4), urges the majority, that would mean requiring knowledge not only of involvement in an accident but also of the resulting death, injury, or damage—unless the statute clearly indicates otherwise.

¶113 Here, though, the statute *does* clearly indicate otherwise. As discussed, there is ample basis to infer that section 42-4-1601(1) requires knowledge of involvement in an accident of the type that imposes the legislature's mandated duties. But there is no basis to infer that the statute requires knowledge of anything else. *See* § 18-1-503(2) (stating that even where a statute omits a culpable mental state, one "may nevertheless be required for the commission of that offense, *or with respect to some . . . of the material elements thereof*" (emphasis added)); *see also Gorman*, 19 P.3d at 666 (stating that Colorado case law recognizes that the mens rea of knowingly

applies to "the act enunciated in the statute" when the statute is silent on a culpable mental state). Thus, my analytical framework comports with section 18-1-503(4); nothing in that provision impedes imputing the mens rea of knowingly to a single element—involvement in an accident of the type imposing a duty to stop.

¶114 To be clear, requiring proof of the mens rea of knowingly with respect to the act described in section 42-4-1601(1) does not mean the prosecution must produce direct evidence that the driver acted knowingly—no, the prosecution may rely entirely on circumstantial evidence. As the Minnesota Supreme Court explained in *Al-Naseer*, "[a]ctual knowledge that there was a duty to stop is proven where the circumstantial evidence leads the fact finder to conclude, beyond a reasonable doubt, that the driver must have known that there was an accident" of the type that imposes a duty to stop. 734 N.W.2d at 688.

¶115 Other jurisdictions have arrived at the same destination, recognizing that the knowledge element in an LTS case may be established—just as in the prosecution of any other crime—through circumstantial evidence. *See, e.g.*, *State v. Nekolite*, 939 N.W.2d 850, 854 (S.D. 2020) (explaining that "knowledge of the accident is required" and that such knowledge "can be established, like other facts in criminal prosecutions, with circumstantial evidence"); *Wall*, 482 P.2d at 43 (observing that knowledge may be proven through "circumstantial evidence, so

long as that evidence satisfies the applicable requirements of consistency"); *State v. Sidway*, 431 A.2d 1237, 1239–40 (Vt. 1981) (noting that "a majority of jurisdictions . . . permit the necessary knowledge to be imputed to the defendant by the use of circumstantial evidence"); *People v. Wells*, 186 A.D.2d 867, 868–69 (N.Y. App. Div. 1992) (concluding that circumstantial evidence supported the defendant's conviction where he had been operating the van shortly before the accident, had a motive to flee, and was identified by a witness as the person leaving the scene).

¶116 This is nothing new. In criminal trials, actual knowledge is often established through circumstantial proof. *Miller*, 308 N.W.2d at 7. It should be no different in the context of an LTS charge.

¶117 Still, at oral argument, my colleagues and I expressed some concern that requiring proof of the mens rea of knowingly might render an LTS conviction unfairly difficult to attain. But that apprehension accompanies any criminal offense that demands proof of a culpable mental state. As the court in *Cahours v. State*, 147 So. 3d 574, 576 n.2 (Fla. Dist. Ct. App. 2014), recognized—echoing *Miller*—"[k]nowledge or intent is seldom capable of direct proof, but usually is established from the surrounding circumstances." (Quoting *Miller*, 308 N.W.2d at 7.) And given the practice in other jurisdictions, there is little reason to believe

that adopting a knowingly mens rea for LTS offenses in Colorado would erect an insurmountable barrier for the People.[6]

¶118 In sum, *Manzo* erred by disregarding the Supreme Court's mandate to apply the time-honored presumption of scienter when construing a criminal statute. The majority now repeats that misstep. And the efforts of both in discerning the relevant legislative intent fall short—*Manzo* because it relied on traffic-offense statutes that, on closer inspection, cut against its analysis, and the majority because it places weight on legislative and statutory history that is largely inconsequential. Giving effect to the age-old presumption of scienter and considering the legislature's intent, I would conclude that leaving-the-scene offenses must require proof that the defendant acted knowingly. Interpreting section 42-4-1601(1) in that manner is the only way to avoid casting doubt on the statute's constitutionality.

¶119 That's not the end of the analysis, however, because even if the majority correctly discerned our legislature's intent in enacting section 42-4-1601(1), that statute, so construed, cannot withstand constitutional scrutiny under Supreme Court precedent. *See People v. Rostad*, 669 P.2d 126, 128 (Colo. 1983) (remarking that the Supreme Court has long recognized that one of the most enduring

[6] Requiring scienter wouldn't mean entering a brave new world. For decades before *Manzo* was decided in 2006, our model criminal jury instructions included the culpable mental state of knowingly for LTS offenses. CJI-Crim. 37:13–37:17 (1983).

principles of criminal jurisprudence under the common law is that, in general, a person may not be subjected to severe punishment unless the act in question is accompanied by a culpable mental state reflecting awareness that such conduct is prohibited).

¶120 True, the Supreme Court has, on occasion, declined to apply the presumption in favor of scienter—and, in turn, declined to read a scienter requirement into a criminal statute. But the Court has typically done so only when interpreting "public welfare" offenses. In *Manzo*, this court concluded that LTS (death) passes constitutional muster despite the absence of a mens rea requirement because it is a public welfare offense. *Manzo*, 144 P.3d at 158. And today, the majority reaffirms that conclusion without further scrutiny, content merely to say that nothing has changed to warrant reexamining its merits. My next stop is thus the public welfare exception.

3. In Declining to Correct *Manzo*'s Misclassification of LTS (Death) as a Public Welfare Offense, the Majority Contravenes United States Supreme Court Precedent

¶121 By adhering to *Manzo*, the majority necessarily hitches its wagon to a category of offenses known as "public welfare" or "regulatory" offenses—those as to which the Court has "understood Congress to impose a form of strict criminal liability through statutes that do not require the defendant to know the facts that make his conduct illegal." *Staples*, 511 U.S. at 606. In interpreting such statutes,

the Court has inferred from the absence of a mens rea that Congress didn't intend to require proof of it. *Id.*

¶122 As noted, *Manzo* concluded that LTS (SBI) fell within the public welfare exception. 144 P.3d at 558. And the majority today goes further still by extending the public welfare classification to LTS (death), which has a higher felony-level designation and carries a harsher penalty. *See* Maj. op. ¶¶ 29, 44. The majority does so despite two developments since *Manzo*: First, our legislature has elevated both LTS (SBI) and LTS (death) to higher felony levels carrying harsher penalties; and second, the Supreme Court has placed increased emphasis on the severity of a sentence when determining whether an offense qualifies for public welfare status.

¶123 This court's conclusion that LTS (SBI) was a public welfare offense departed from Supreme Court precedent from the moment *Manzo* was committed to print. With the intervening developments, today's decision drifts even farther from the Supreme Court's jurisprudence. But I cannot put the cart before the horse. I must start from the beginning—the Supreme Court's writings on the public welfare exception. I focus in particular on the lessons of *Staples*, which are instructive. And because *Manzo* did not so much as mention *Staples*—and the majority embraces *Manzo* wholesale, no questions asked—I explore *Staples* at great length. As I demonstrate, *Manzo* and the majority opinion cannot coexist with *Staples*.

Where *Staples* took the road toward a presumption of scienter, *Manzo*—and now the majority—have taken the opposite road toward dispensing with scienter. Those paths do not converge.

¶124 The Court in *Staples* made clear that "public welfare offenses have been created by Congress, and recognized by [the] Court, in 'limited circumstances.'" 511 U.S. at 607 (quoting *United States v. U.S. Gypsum Co.*, 438 U.S. 422, 437 (1978)). Typically, the cases recognizing public welfare offenses have involved "statutes that regulate potentially harmful or injurious items." *Id.*; *see also United States v. Int'l Mins. & Chem. Corp.*, 402 U.S. 558, 564–65 (1971) (characterizing some of the public welfare cases as involving statutes regulating "dangerous or deleterious devices or products or obnoxious waste materials"). The Court's rationale in these cases is that as long as defendants know that they are "dealing with a dangerous device of a character that places [them] 'in responsible relation to a public danger,' [they] should be alerted to the probability of strict regulation." *Staples*, 511 U.S. at 607 (quoting *United States v. Dotterweich*, 320 U.S. 277, 281 (1943)). In such cases, the Court has assumed that "Congress intended to place the burden on the defendant[s] to 'ascertain at [their] peril whether [their conduct] comes within the inhibition of the statute.'" *Id.* (quoting *United States v. Balint*, 258 U.S. 250, 254 (1922)). The Court, therefore, has "essentially . . . relied on the nature of the statute and the particular character of the items regulated to determine whether

congressional silence concerning the mental element of the offense should be interpreted as dispensing with conventional *mens rea* requirements." *Id.*

¶125 With that framework in mind, I turn to what was at issue in *Staples*: whether the defendant had fairly been convicted under the National Firearms Act for possessing a machine gun that had not been properly registered, even though the Government was not required to prove that he knew the weapon he possessed had the characteristics that brought it within the statutory definition of a machine gun and thus within the statutory definition of a "firearm." *Id.* at 602–03. The Government argued that no such proof was necessary because the defendant was charged with a public welfare offense. *Id.* at 606.

¶126 To support its position, the Government invoked *Balint*, 258 U.S. at 254, where the Court held that the Narcotic Act of 1914 (the "Act"), which criminalized the undocumented sale of certain narcotics, "required proof only that the defendant knew that he was selling drugs, not that he knew the specific items he had sold were 'narcotics' within the ambit of the statute." *Staples*, 511 U.S. at 606. According to the Government, the statutory provision under which Staples was convicted defined "precisely the sort of regulatory offense described in *Balint*." *Id.* at 608. In its view, all guns—whether statutory "firearms" or not—were "dangerous devices that put gun owners on notice that they must determine at their hazard whether their weapons come within the scope of the Act." *Id.*

¶127 The argument didn't stop with *Balint*. The Government next pointed to *United States v. Freed*, 401 U.S. 601 (1971), which involved the possession of unregistered grenades. *Staples*, 511 U.S. at 608. The defendant in *Freed* knew that the items he possessed were grenades, and the Supreme Court concluded that the charging statute did not require proof that the "also knew that the grenades were unregistered." *Id.* In so doing, the Court suggested that the statute in question was "a regulatory measure in the interest of the public safety, which may well be premised on the theory that one would hardly be surprised to learn that possession of hand grenades is not an innocent act." *Id.* at 609 (quoting *Freed*, 401 U.S. at 609). Grenades, the Court explained, "are highly dangerous offensive weapons, no less dangerous than the narcotics involved in . . . *Balint*." *Id.* (quoting *Freed*, 401 U.S. at 609).

¶128 The *Staples* Court was not persuaded. It concluded that neither *Freed* nor *Balint* carried the Government's burden. As relevant here, it spoke as follows:

> [O]ur analysis in *Freed* likening the Act to the public welfare statute in *Balint* rested entirely *on the assumption that the defendant knew that he was dealing with hand grenades – that is, that he knew he possessed a particularly dangerous type of weapon* (one within the statutory definition of a "firearm"), possession of which was not entirely "innocent" in and of itself. The predicate for that analysis is eliminated when, as in this case, the very question to be decided is *whether* the defendant must know of the particular characteristics that make his weapon a statutory firearm.

Staples, 511 U.S. at 609 (first emphasis added) (citation omitted).

¶129 The Court was unmoved by the Government's insistence that guns, no less than grenades, are very dangerous items that should alert their owners to the probability of regulation. *Id.* at 609–10. Viewing this as too wide a gap to bridge, the Court reminded the Government about "the particular care" it had taken in the past "to avoid construing a statute to dispense with *mens rea* where doing so would 'criminalize a broad range of apparently innocent conduct.'" *Id.* at 610 (quoting *Liparota v. United States*, 471 U.S. 419, 426 (1985)). In *Liparota*, continued the Court, it held that the statute under which the defendant was charged required proof that he knew his possession of food stamps was unauthorized. *Staples*, 511 U.S. at 610. It did so as a matter of common sense—"largely because dispensing with such a *mens rea* requirement would have resulted in reading the statute to outlaw a number of apparently innocent acts." *Id.* It's for that reason that the *Liparota* Court concluded that "the statute should not be treated as defining a public welfare offense"; after all, a "'food stamp can hardly be compared to a hand grenade.'" *Staples*, 511 U.S. at 610 (quoting *Liparota*, 471 U.S. at 433).

¶130 This brought the Court to a central observation that distinguished the case before it from *Freed* and *Balint*. The long tradition of the widespread and lawful practice of gun ownership in this country had no analogue in the possession of hand grenades in *Freed* or the sale of dangerous drugs in *Balint*. *Staples*, 511 U.S.

at 610. Indeed, guns are generally not "'deleterious devices or products or obnoxious waste materials,' that put their owners on notice that they stand 'in responsible relation to a public danger.'" *Id.* at 607 (first quoting *Int'l Mins. & Chem. Corp.*, 402 U.S. at 565, and then quoting *Dotterweich*, 320 U.S. at 281).

¶131 Regardless, the Court was unwilling to adopt the Government's proposed approach, which would have rendered potential dangerousness alone as sufficient to "alert an individual to probable regulation and justify treating a statute that regulates the dangerous device as dispensing with mens rea." *Id.* at 611. "[T]hat an item is 'dangerous,' in some general sense, does not necessarily suggest, as the Government seem[ed] to assume, that it is not also entirely innocent." *Id.*

¶132 Nor was the Government's fallback position convincing. The Government contended that the array of regulations concerning guns at the federal, state, and local levels put gun owners on notice that they must ascertain the characteristics of their weapons and comply with all legal requirements. *Id.* at 611–12. But the Court concluded that "regulation in itself is not sufficient to place gun ownership in the category of the sale of narcotics in *Balint*." *Staples*, 511 U.S. at 613. Even in *Liparota*, which involved comprehensive regulations on food stamps, the Court explained that it "did not understand the statute . . . to dispense with a *mens rea* requirement." *Staples*, 511 U.S. at 613. At any rate, notwithstanding "the overlay of legal restrictions on gun ownership," the Court was skeptical that gun

regulations were "sufficiently intrusive" to "impinge upon the common experience that owning a gun is usually licit and blameless conduct." *Id.*

¶133 The concern was not merely conceptual; it was also practical. The Court had reservations about embracing the Government's suggestion "that dangerous and regulated items place their owners under an obligation to inquire at their peril into compliance with regulations." *Id.* at 614. As an example of potential "untoward results," the Court referred specifically to automobiles:

> Automobiles, for example, might also be termed "dangerous" devices and are highly regulated at both the state and federal levels. Congress might see fit to criminalize the violation of certain regulations concerning automobiles, and thus might make it a crime to operate a vehicle without a properly functioning emission control system. But we probably would hesitate to conclude on the basis of silence that Congress intended a prison term to apply to a car owner whose vehicle's emissions levels, wholly unbeknownst to him, began to exceed legal limits between regular inspection dates.

Id.

¶134 The same cautionary theme appeared years before in *International Minerals & Chemical Corp.*:

> In Balint the Court was dealing with drugs, in Freed with hand grenades, in this case with sulfuric and other dangerous acids. Pencils, dental floss, paper clips may also be regulated. But they may be the type of products which might raise substantial due process questions if Congress did not require, as in murdock, "mens rea" as to each ingredient of the offense. But where, as here and as in Balint and Freed, dangerous or deleterious devices or products or obnoxious waste materials are involved, the probability of regulation is so great that anyone who is aware that he is in possession of them or dealing with them must be presumed to be aware of the regulation.

402 U.S. at 564–65.

¶135 Significantly, the Court added that the severity of a statute's potential penalty has long been a compelling consideration in determining whether Congress intended to dispense with a mens rea requirement. *Staples*, 511 U.S. at 616. Because Staples faced a possible ten-year prison term—a penalty the Court regarded as "harsh"—this factor reinforced the Court's reading of the statute. *Id.* at 616. Such a potential sentence in the state penitentiary stood in stark contrast to the light penalties—fines or short jail sentences—"almost uniformly" involved in the early public welfare cases. *Id.*

¶136 Commentators, the Court noted, recognize that the lenient penalties accompanying public welfare offenses logically complement the absence of a mens rea requirement. *Id.* "In a system that generally requires a 'vicious will' to establish a crime, imposing severe punishment for offenses that require no mens rea would seem incongruous." *Id.* at 616–17 (quoting 4 William Blackstone, Commentaries, *21). In fact, observed the Court, some courts have justified the lack of a mens rea based in part on the offenses not bearing the same harsh punishments as "infamous crimes," and have questioned whether a term of imprisonment of any length is compatible with the reduced culpability inherent in regulatory offenses. *Id.* at 617 (quoting *Tenement House Dep't v. McDevitt*, 109 N.E. 88, 90 (N.Y. 1915)). Continuing, the Court added that, like these courts,

commentators have argued that offenses that are punishable by imprisonment should not be considered public welfare offenses and should, instead, require proof of a mens rea. *Id.*

¶137 But this wasn't all about commentators and other courts. The *Staples* Court acknowledged that "[i]n rehearsing the characteristics of the public welfare offense," it, too, had included in its consideration the severity of the punishment and had noted that "'penalties commonly are relatively small, and conviction does no grave damage to an offender's reputation.'" *Id.* at 617–18 (quoting *Morissette*, 342 U.S. at 256).

¶138 Zooming in on the felony designation of Staples's conviction sharpened the force of the Court's concern. After all, explained the Court, "'felony' is, as we noted in distinguishing certain common-law crimes from public welfare offenses, 'as bad a word as you can give to man or thing.'" *Id.* at 618. (quoting *Morissette*, 342 U.S. at 260). Indeed, close adherence to the early cases "might suggest that punishing a violation as a felony is simply incompatible with the theory of the public welfare offense." *Id.* Under this view, unless there is a clear statement from Congress that it does not intend to require a mens rea, courts "should not apply the public welfare offense rationale to interpret *any statute defining a felony offense* as dispensing with mens rea." *Id.* (emphasis added).

¶139 The Court, however, stopped just short of adopting such a bright-line rule, in part because it was not necessary to decide the case before it. *Id.* Instead, the Court concluded that "[w]here . . . dispensing with mens rea would require the defendant to have knowledge only of traditionally lawful conduct, a severe penalty is a further factor tending to suggest that Congress did not intend to eliminate a mens rea requirement." *Id.* In such a case, courts should apply the usual presumption of scienter requiring proof that the defendant knew the facts that made his conduct illegal. *Id.* at 619.

¶140 Against this backdrop, *Manzo*'s classification of LTS (SBI) as a public welfare offense strains credulity. Applying *Morissette*, the court furnished five reasons for this determination—none of them persuasive. *Manzo*, 144 P.3d at 558. First, the court stated that, like public welfare offenses, LTS (SBI) proscribes "inaction where the law requires performance of a duty." *Id.* But this is as circular as the court's conclusion that it could not infer a legislative intent to require a mens rea in section 42-4-1601(1) because the statute requires a driver involved in an accident to stop. How can a driver be expected to stop without knowledge of an accident? Thus, while public welfare offenses "typically proscribe 'neglect where the law requires care,'" in an LTS case involving a morally blameless driver, any such neglect is the result of lack of knowledge of the circumstances giving rise to a legal requirement for care. *Manzo*, 144 P.3d at 558 (quoting *Morissette*, 342 U.S. at 255).

¶141 Second, the *Manzo* court indicated that LTS (SBI) was analogous to public welfare offenses because rather than result in injury to a specific person, it created merely a probability of injury. *Id.* But this is inaccurate. LTS (SBI) is not a crime that principally endangers the general public at large; its most consequential harm is to the specific injured person. As pertinent here, the goal of section 42-4-1601(1) is to encourage a driver involved in an accident resulting in SBI to stop and render aid to the injured person. *Manzo*'s view of LTS (SBI) as a crime against the general public at large would risk placing nearly any offense in that category.

¶142 Third, the *Manzo* court discerned that the commission of LTS (SBI) impairs an important regulatory scheme. *Id.* Driving is dangerous, the court declared, and "[t]he public safety interest in regulating driving is self-evident." *Id.* (quoting *People v. Ellison*, 14 P.3d 1034, 1039 (Colo. 2000)). But the Supreme Court rejected this overly simplistic rationale in *Staples*. Dangerousness alone is insufficient to put an individual on notice about probable regulation and justify treating a statute that regulates a dangerous item as dispensing with a mens rea requirement. *Staples*, 511 U.S. at 611. A device may be entirely innocent even though it may also be deemed dangerous. *Id.* Indeed, for drivers with no knowledge of involvement in an accident, the fact that an automobile may be considered dangerous cannot be enough to put them on notice that section 42-4-1601(1) regulates automobiles by dispensing with a scienter requirement.

¶143 More importantly, the Supreme Court has been careful to avoid construing a statute to dispense with a *mens rea* requirement if the result would be the criminalization of a wide range of apparently innocent conduct. *Staples*, 511 U.S. at 610; *Liparota*, 471 U.S. at 426. By interpreting section 42-4-1601(1) as dispensing with a mens rea requirement, *Manzo* criminalized some apparently innocent conduct. Just as the Supreme Court in *Liparota*, 471 U.S. at 419, required proof that the defendant knew his possession of the food stamps was unauthorized, this court in *Manzo* should have done likewise by requiring proof that a defendant charged with LTS (SBI) had knowledge of being involved in an accident. As a matter of common sense, this is necessary to avoid outlawing a number of apparently innocent acts.

¶144 Nor was the *Manzo* court's take on regulations tenable. Much like dangerousness, regulation, without more, is not sufficient. *Staples*, 511 U.S. at 613. It wasn't sufficient in *Liparota*, despite the comprehensive restrictions on food stamps, and it wasn't sufficient in *Staples*, despite the overlay of restrictions on gun ownership. *Staples*, 511 U.S. at 611. *Manzo*'s analysis essentially mirrored the Government's unsuccessful position in *Staples*—"that dangerous and regulated items place their owners under an obligation to inquire at their peril into compliance with regulations." *Id.* at 614. The *Staples* Court wisely warned about

the unintended consequences of the Government's proposed approach—its automobiles example resonates here.

¶145 Fourth, the *Manzo* court noted that section 42-4-1601(1) doesn't specify intent as a necessary element. But a driver is *not* "in a position to prevent [the violation of section 42-4-1601(1)] with no more care than society might reasonably exact from one who assumed his responsibilities." *Manzo*, 144 P.3d at 558 (quoting *Morissette*, 342 U.S. at 256). Again, a driver who has no knowledge of involvement in an accident cannot act to avoid a violation of section 42-4-1601(1).

¶146 Fifth, the *Manzo* court acknowledged that the penalties for public welfare offenses are "typically relatively small" when compared to penalties for common law crimes. 144 P.3d at 558. Without even identifying what penalty Manzo faced, the court concluded, nearly in summary fashion, that LTS (SBI) "is penalized less severely than *several* typical common law crimes."[7] *Id.* at 559 (emphasis added). Thus, simply because the penalty for LTS (SBI) was less severe than the penalties for a few common law crimes, the court counted this factor in favor of classifying LTS (SBI) as a public welfare offense. I am aware of no authority that supports this proposition. The inquiry is *not* whether the offense is penalized more harshly

[7] At the time, LTS (SBI) was a class 5 felony carrying a potential sentence of three years in prison. *See* § 42-4-1601(2)(b), C.R.S. (2006); *see also* Ch. 261, sec. 1, § 42-4-1601(2)(b), 2012 Colo. Sess. Laws 1354, 1354 (elevating LTS (SBI) from a class 5 to a class 4 felony).

than a few common law crimes; it's whether the offense is penalized harshly. This is yet another aspect of the analysis in *Manzo* that cannot be harmonized with *Staples* but that nevertheless receives the majority's stamp of approval.

¶147 In a word, *Manzo* struck out—going zero for five under *Morissette*'s framework. Although stare decisis ordinarily binds us to our prior decisions, the doctrine has exceptions. I address next why an exception is justified here.

4. *Manzo* Should Never Have Seen the Light of Day—The Time Has Come to Finally Draw the Curtains on It

¶148 This is precisely the type of situation that warrants an exception to stare decisis—the judge-made doctrine that ordinarily requires us to stand by our prior decisions. *See People v. Kembel*, 2023 CO 5, ¶ 43, 524 P.3d 18, 27. Like most rules, stare decisis is not absolute. We are bound to a preexisting rule of law "unless we are 'clearly convinced that the rule was originally erroneous or is no longer sound because of changing conditions and that more good than harm will come from departing from [that] precedent.'" *Id.* (quoting *McShane v. Stirling Ranch Prop. Owners Ass'n*, 2017 CO 38, ¶ 26, 393 P.3d 978, 984).

¶149 For the reasons I have explained, more good than harm will unquestionably come from parting ways with *Manzo*. And although the doctrine requires only one of the other two alternative conditions, both are met. First, as discussed, *Manzo* was defective from its inception. Second, evolving circumstances have only

heightened the need to make an exception to stare decisis. Having addressed the former in detail, I now turn to the latter.

5. Recent Developments Compound the Majority's Troubling Reliance on *Manzo*

¶150 The majority's mistake in aligning itself with *Manzo* is exacerbated by (1) the post-*Manzo* elevation of the felony levels and punishment for LTS (SBI) and LTS (death), and (2) the Supreme Court's recent emphasis on the severity of the punishment as a factor in determining whether an offense qualifies for public welfare status. I take each development in turn.

¶151 As pertinent here, the General Assembly has amended section 42-4-1601 on two separate occasions since we decided *Manzo*—in 2008 to change LTS (death) from a class 4 to a class 3 felony, and in 2012 to change LTS (SBI) from a class 5 to a class 4 felony. *See* Ch. 225, sec. 1, § 42-4-1601(2)(c), 2008 Colo. Sess. Laws 850, 850 (elevating LTS (death) from a class 4 to a class 3 felony); Ch. 261, sec. 1, § 42-4-1601(2)(b), 2012 Colo. Sess. Laws 1354, 1354 (elevating LTS (SBI) from a class 5 to a class 4 felony). As a result, the possible penalty for LTS (death) has increased from six to twelve years in prison, and the possible penalty for LTS (SBI) has increased from three to six years in prison.

¶152 Recall that the Supreme Court in *Staples* regarded a ten-year sentence as harsh. *Staples*, 511 U.S. at 616; *see also X-Citement Video, Inc.*, 513 U.S. at 72 (same). LTS (death) carries a possible sentence that is two years harsher. And, in light of

his adjudication as a habitual criminal offender, Brown received a sentence that is four times the possible twelve-year sentence for LTS (death). Thus, Brown is serving a prison term of forty-eight years *without any requirement of proof of scienter*.

¶153 Yet the majority insists there is no constitutional infirmity here. I see no way of squaring that conclusion with the Supreme Court's analysis in *Staples* and its ancestors.

¶154 *Staples*'s progeny is even more pointed. Just seven years ago, in *Rehaif*, the Supreme Court reiterated that it "typically decline[s] to apply the presumption in favor of scienter in cases involving statutory provisions that form part of a 'regulatory' or 'public welfare' program *and carry only minor penalties*." 588 U.S. at 232 (emphasis added). For the first time, in defining a public welfare offense, the Court referenced statutory provisions that "carry only minor penalties" as a distinct consideration, separate and apart from its reference to statutory provisions "that form part of a 'regulatory' or 'public welfare' program." *Id.* And the court used the conjunctive "and" between the two clauses, signaling that *both* conditions must be met for an offense to qualify as a public welfare offense and for a court to dispense with the presumption of scienter. *Id.* I am not comfortable chalking this up to careless or imprecise drafting.

¶155 And, if there was any doubt about what the Court meant in that sentence, the very next two sentences paddled it safely to clarity:

> The firearms provisions before us are not part of a regulatory or public welfare program, *and they carry a potential penalty of 10 years in prison that we have previously described as "harsh." Hence*, *this exception* to the presumption in favor of scienter *does not apply*.

Id. (emphases added) (citation omitted). I suppose it's possible that the Court might have erred in one sentence—we're "only human after all." *People v. Crabtree*, 2024 CO 40M, ¶ 38, 550 P.3d 656, 666 (quoting Rag'n'Bone Man, *Human, on* Human (Columbia Records 2017)). But in three consecutive sentences? It requires a considerable leap to accept that. The most reasonable inference from the three quoted sentences in *Rehaif* is that typically where, as here, an offense carries a harsh sentence, courts may not dispense with the presumption of scienter.

¶156 The majority airbrushes *Rehaif* into dicta, treating some of its binding language as an aesthetic inconvenience. Maj. op. ¶ 32. According to the majority, the Court's relevant comments were of no consequence because the statute it was interpreting included a culpable mental state and the question raised was whether it applied to all the elements of the offense outside of the jurisdictional element. *Id.* But that reading doesn't do *Rehaif* justice. Indeed, the quoted language encapsulated the Court's holding on the mens rea issue: First, the Court articulated the law on when it may typically decline to give effect to the presumption of scienter; second, the Court applied that law to the facts; and third, the Court explained that applying the law to the facts led to the conclusion that the exception to the presumption didn't apply. *Rehaif*, 588 U.S. at 232. It made no difference that

the statute in question included a culpable mental state and the only issue was whether it applied to all the elements minus the jurisdictional one.

¶157 And to the extent the majority pins its hopes on the use of the "typically" qualifier in the first of the three sentences, it overlooks that there was nothing atypical in that case, which is why the Court omitted the qualifier in the second and third sentences. *Id.* It is likewise here—there is nothing atypical that would warrant departure from the presumption of scienter. And without a reason to call this case atypical—*Rehaif*'s stern pronouncements on scienter cannot be swept aside.

¶158 Even if *Rehaif* didn't alter the law by making the harshness of the penalty dispositive, it undeniably infused that factor with more weight than any precedent to date. And giving the harshness of the penalty for LTS (death) the forcefulness *Rehaif* assigned to it, while considering the other relevant factors, leads to the inescapable conclusion that LTS (death) is not a public welfare offense as to which the presumption of scienter is inapplicable. To my mind, a class 3 felony carrying a possible twelve-year prison sentence no more resembles a public welfare offense than a skyscraper resembles a bungalow.

¶159 To recap, inconsistent with Supreme Court precedent, the majority incorrectly declines to impute a culpable mental state to section 42-4-1601(1). Without a mens rea requirement, LTS (death) is unconstitutional as violative of

due process.[8] I would conclude that the statute implies the mens rea of knowingly: A driver charged with LTS (death) must have knowledge of involvement in an accident of the type imposing a duty to stop. Because the district court failed to instruct the jury on any mens rea, it erred. But does that error require reversal?

C. No Reversal Is Required Because the Error Was Constitutionally Harmless

¶160 Brown paused after running over the victims with his front tires. He then continued driving down the alley and accelerated after running over the victims with his rear tires. Multiple people yelled at him to stop. When he was told he'd run over two people, he denied it, paused, and then immediately drove away.

¶161 Under these circumstances, the error in failing to include the culpable mental state of knowingly in the elemental instruction for LTS (death) was harmless beyond a reasonable doubt. The evidence of Brown's guilt was overwhelming. *See Pettigrew v. People*, 2022 CO 2, ¶¶ 54–56, 501 P.3d 813, 825

[8] The question may arise about the constitutionality of traffic offenses that carry severe penalties even though the legislature has expressly indicated its intent to impose strict liability. Vehicular assault (DUI/DWAI) and vehicular homicide (DUI/DWAI) come to mind. Are these offenses also constitutionally problematic? The answer is no. A person who drives under the influence of, or impaired by, alcohol and/or drugs has voluntarily and consciously consumed an intoxicant and then chosen to get behind the wheel of a car. *See Rostad*, 669 P.2d at 129. By contrast, a driver who leaves the scene of an accident without any knowledge that an accident has occurred engages in no voluntary and conscious act—other than lawful driving.

(concluding that the admission of the evidence obtained from the search of the defendant's cell phone was harmless beyond a reasonable doubt because the constitutionally admissible evidence of guilt was "overwhelming").

II. Conclusion

¶162 The time has come, I believe, to take the step the Supreme Court seemed tempted to take in *Staples*: drawing a definitive line precluding any felony from being classified as a public welfare offense absent a clear statement from the legislature that it does not intend to require a mens rea.[9] Most, if not all, states have habitual-criminal or so-called three-strike statutes, and federal law likewise permits enhanced sentencing in some circumstances for repeat offenders. The problem with allowing a felony to be treated as a public welfare offense is that a defendant convicted of such an offense could face a sentence three or four times longer—if not more—than the maximum baseline penalty. Indeed, we have before us a defendant serving forty-eight years in prison on a class 3 felony conviction even though the People were not required to prove any mens rea. In 2026, in the United States of America, no person should be exposed to such severe punishment for a felony that requires no proof of scienter.

[9] As previously explained, in some circumstances treating a felony as a public welfare offense may raise due process concerns even when the legislature has clearly expressed an intent to impose strict liability. Remember: legislative intent alone cannot insulate a statute from due process scrutiny.

¶163 But that's a call for another day, for another tribunal, and perhaps for another case. Here, I write separately because I am convinced that the majority errs in its analysis of the first issue we agreed to review. However, because that error is constitutionally harmless, I concur in the judgment only with respect to that portion of the majority opinion. I otherwise concur in the majority opinion.

¶164 I cannot join the majority on the first issue because it rests on *Manzo*—a decision that was not only wrongly decided but has grown even more untenable in light of recent developments—and because I see no way to square the majority's analysis with binding Supreme Court precedent. The majority's effort to recast the issue as merely whether *Manzo* was overruled by *Rehaif* does not alter this conclusion. Make no mistake: The majority decides today that "*Manzo* remains *good law*." Maj. op. ¶¶ 2, 36, 40, 44, 59 (emphasis added).