COURT OF APPEALS STATE OF COLORADO 2 East 14th Avenue Denver, CO 80203	DATE FILED July 28, 2025 11:55 AM FILING ID: 6F4316BAEEFD4 CASE NUMBER: 2024CA1951
Weld County District Court Honorable Matthew D. Barrett, Judge Case No. 22CA371	
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff-Appellee, v. TINA PETERS, Defendant-Appellant.	▲ **COURT USE ONLY** ▲ Case No. 24CA1951
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PEOPLE'S ANSWER BRIEF

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 or 28.1 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with the applicable word limits set forth in C.A.R. 28(g) or C.A.R. 28.1(g).

It contains 9,500 words.

The brief complies with the standard of review requirements set forth in C.A.R. 28(a)(7)(A) and/or C.A.R. 28(b).

In response to each issue raised, the appellee must provide under a separate heading before the discussion of the issue, a statement indicating whether appellee agrees with appellant's statements concerning the standard of review and preservation for appeal and, if not, why not.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 or 28.1 and C.A.R. 32.

/s/ Lisa K. Michaels

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STATEMENT OF THE CASE

Tina Peters is the former Mesa County Clerk and Recorder. TR 8/1/24, pp 29-30. A jury found her guilty of three counts of attempt to influence a public servant (F4) and one count each of: conspiracy to commit criminal impersonation (F6), first-degree official misconduct (M2), violation of duty (M), and failure to comply with requirements of the Secretary of State (M).[1] CF, pp 4638-51, 5207. The trial court sentenced Peters to a total term of eight years and nine months imprisonment. TR 10/3/24, pp 102-03.

STATEMENT OF THE FACTS

Government elections administered in Colorado are managed with a computer server called the election management system or EMS. TR 8/1/24, pp 138-39, 162:14-17. Private vendors provide the software. TR 8/1/24, p 140:2-17. In 2021, almost all counties, including Mesa

[1] The jury acquitted on criminal impersonation (F6), identity theft (F4), and one count of conspiracy to commit criminal impersonation (F6). CF, pp 4640-44.

County, contracted with the same vendor, Dominion Voting Systems. TR 8/1/24, p 140:4-8.

The system software is updated every other year through a confidential and secure process called the "trusted build" ("Build"). TR 8/1/24, pp 139-43. During the Build, staff from the Secretary of State's Office (SOS), with assistance from vendor personnel, upload an updated and certified version of the software to each county's server. TR 8/1/24, pp 139-43. Prior election records must be backed up before the Build; the vendor provides instructions to the counties on how to do this. TR 8/1/24, p 154:20-22; TR 8/2/24, pp 20-21; TR 8/5/24, pp 30-31. Paper ballots for each election are also retained under seal for 25 months. TR 8/1/24, pp 154-55; TR 8/2/24, p 21:8-19.

In April 2021, Peters requested that members of the public be permitted to attend Mesa County's 2021 Build. TR 8/1/24, pp 142-43. SOS Voting Systems Manager Jesse Romero denied this unusual request, explaining that only personnel from the vendor, state, and county could attend. TR 8/1/24, pp 143-44. He added that the cameras

in the room would document the Build, which the public could view at a later time. TR 8/1/24, pp 147-48; EX 13.

Peters held a meeting in her office with her chief deputy clerk, Belinda Knisley, and non-government individuals, Dr. Douglas Frank, Sherronna Bishop, and Maurice Emmer. TR 8/6/24, p 174:7-15; TR 8/8/24, pp 260-61. At different points, Peters also called her elections staff into the meeting. TR 8/2/24, pp 27-28, 203-05; TR 8/7/24, p 90:5-16; EX 22A. During the meeting, Dr. Frank gave a presentation about alleged election fraud. TR 8/2/24, pp 27-30. Peters then invited Dr. Frank to attend the Build to perform an "audit" of the election equipment despite the SOS's prohibition of third parties. TR 8/2/24, pp 27, 30-31. Dr. Frank said he had a team he would send to do the audit. TR 8/5/24, pp 20-22; TR 8/7/24, pp 93-94. At this point in the meeting, Peters asked her elections staff to leave. TR 8/2/24, p 31:6-18; TR 8/7/24, pp 92-93.

Thereafter, Peters contacted a person named Gerald Wood, who agreed to perform computer work as a county contractor. TR 8/2/24, pp 118-119. However, Peters directed her chief deputy to tell the county

IT department that Mr. Wood was a *state employee* who needed system access. TR 8/5/24, pp 92-94; TR 8/6/24, pp 170-72; EX 20. The county employee who gave Mr. Wood access, David Underwood, testified he would not have provided access had he known Peters misrepresented that Mr. Wood was a state employee. TR 8/5/24, p 121:2-10.

Peters meanwhile told her elections staff that Mr. Wood was a new *county employee*—an administrative assistant who would train as backup to the back-office elections manager. TR 8/5/24, pp 26-27; TR 8/7/24, p 109:12-16. Peters informed staff that Mr. Wood would attend the Build instead of her front-office elections manager. TR 8/5/24, pp 25-27.

SOS Employee Romero sent Build instructions to every county, reiterating that only state, county, and vendor personnel could attend. TR 8/1/24, pp 150-52; EX 17. He explained that the Build would not proceed if unauthorized persons were present. TR 8/1/24, p 153:2-15. Counties were required to affirm that they would follow SOS guidelines, provide the names of the county employees who would attend, and verify that the employees were vetted and part of the security plan.

TR 8/1/24, pp 152-53; TR 8/7/24, pp 108-09. Mr. Romero also directed the counties to back up any elections records not yet backed up. TR 8/1/24, pp 153-54; TR 8/5/24, pp 30-31.

Based on Peters' representations, the back-office elections manager told Mr. Romero that Mr. Wood would attend the Build as one of the three county employees permitted to attend. TR 8/1/24, p 158:2-7; TR 8/7/24, pp 108-09; EX 18. On this information, Mr. Romero allowed the Build to proceed. TR 8/5/24, pp 159-60. But he testified at trial that had he known an unauthorized person was present, he would have directed his technician to "pack up and leave." TR 8/1/24, pp 166-67.

At Peters' request, the county HR department provided Mr. Wood with the same highly-exclusive badge access as the back-office elections manager. TR 8/2/24, pp 97-98; TR 8/6/24, pp 171:2-20. After Mr. Wood received his badge, computer login, and email, he was directed to give his badge to Peters' chief deputy, who gave it to Peters. TR 8/2/24, pp 125-132; TR 8/6/24, p 182:20-24. Peters intended to give the badge to a third party to access the elections server and Build. TR 8/6/24, pp 182-83; TR 8/9/24, pp 64-70; EX 71, pp 9, 18.

At Peters' direction, the security cameras in the room with the election equipment were turned off a week before the Build and turned back on a month later. TR 8/2/24, pp 81-82; TR 8/5/24, pp 76-78, 81-82; TR 8/6/24, pp 177-79. The county's standard practice was for the cameras to stay on all the time. TR 8/5/24, p 74:16-24.

Peters directed her back-office elections manager to show Mr. Wood around the Sunday before the Build. TR 8/7/24, pp 100-01. But instead of Mr. Wood, Peters brought in Conan Hayes, an associate of Dr. Frank and Mike Lindell. TR 8/8/24, p 183:9-17; TR 8/9/24, pp 40-42, 52:16-21. Posing as Mr. Wood, Mr. Hayes made a "forensic image" of the elections server. TR 8/5/24, pp 137-38; TR 8/7/24, pp 102-104.

SOS Employee Danny Casias subsequently performed the Build. TR 8/5/24, pp 169-70. He first confirmed that prior election records had been backed up. TR 8/5/24, p 170:7-10, 18-22. Because not all counties back up before his arrival, he checks and allows time for backups as needed. TR 8/5/24, p 170:10-12. Counties are required to back up records from every election. TR 8/5/24, p 170:13-15; TR 8/7/24, p 104:14-

16. The back-office elections manager confirmed she had already performed the back-up. TR 8/7/24, pp 104-05.

Mr. Hayes arrived with Peters; she introduced him as county employee Gerald Wood. TR 8/5/24, pp 167-68; TR 8/7/24, pp 110-11. Mr. Casias testified he would not have performed the Build had he known an unauthorized person was present. TR 8/5/24, pp 173:13-15, 174-75. Although cell phones were not permitted in the room, Peters surreptitiously recorded video of the Build on her cell phone. TR 8/1/24, p 91; TR 8/5/24, pp 235-36; TR 8/6/24, pp 189-90, 212-13.

After the Build was complete, Hayes downloaded another copy of the server, which Peters later directed to be shipped to him since he had to leave before downloading was complete. TR 8/6/24, pp 125-33; TR 8/7/24, pp 118-120. Peters also sent him, or another person associated with Dr. Frank and Mike Lindell, the video she recorded of the Build. TR 8/7/24, pp 113:18-22, 118:10-13, 119-120.

Eventually, the video and still images of the Build were posted online, triggering an investigation of Peters and her office. TR 8/8/24, pp 29-33. The SOS issued an order for inspection and to provide

documentation. TR 8/8/24, pp 33-37; EX 51. Peters did not comply. TR 8/8/24, p 62:6-9. She directed her staff not to talk to police, to purchase "burner phones," and to use a separate email to communicate with her and their attorneys. TR 8/6/24, pp 198-99; TR 8/7/24, pp 124-125.

SUMMARY OF THE ARGUMENT

Ms. Peters' immunity claim is not properly before this Court. But in any event, the trial court properly ruled that the Supremacy Clause did not bar the state's prosecution because Peters is not a federal officer. Moreover, her criminal conduct was not "reasonable and necessary" to comply with federal law.

The evidence was sufficient to support the jury's verdicts. It established that Peters made and executed a plan in coordination with others to provide an unauthorized person with access to the elections server and Build by making false representations to state and other county employees.

The trial court properly excluded evidence about Peters' reasons for committing the crimes because it was irrelevant and would have created a substantial risk of unfair prejudice, confusion of the issues, and misleading the jury. In any event, any error was harmless.

The trial court's decisions not to instruct the jury on the affirmative defense of execution of a public duty or on Supremacy Clause immunity were proper. Neither were supported by the evidence, and Supremacy Clause immunity is not a trial defense.

The criminal impersonation jury instruction was not plainly erroneous. The extra word did not cast serious doubt on the reliability of the verdict because that element was not at issue and the evidence supporting it was overwhelming.

The indictment provided adequate notice of the charges. The charges, combined with the recitation of facts in the indictment, sufficiently informed Ms. Peters of the elements.

The prosecution's statements were proper, did not constitute misconduct, and were not reversible error in any event. The prosecutors

fairly commented on the evidence, and evidence of Peters' guilt was overwhelming.

The trial court properly denied a hearing to elicit testimony from a juror because, absent speculation, the proffered information does not support any exception to the general prohibition on juror testimony. In any event, any error was harmless given the speculative nature of any prejudice and the overwhelming evidence of guilt.

The trial court's sentencing considerations were proper, and Ms. Peters' rights were not violated. The court properly considered Peters' dishonesty as it related to her conduct, her allocution, and other sentencing considerations.

Ms. Peters' sentences do not give rise to an inference of gross disproportionality. None were longer than three-and-a-half years, and the offenses were serious.

ARGUMENT

I. Denial of the pretrial motion to dismiss on immunity grounds is not reviewable here, but in any event, the claim fails.

A. Preservation and Standard of Review

As discussed below, the denial of the pretrial motion to dismiss is not properly before this court; therefore, preservation and standard of review are immaterial. However, if this Court reviews the issue, review is de novo. *See, e.g.*, *Cantina Grill, JV v. City & Cnty. of Denver Cnty. Bd. of Equalization by & through Kennedy*, 2015 CO 15, ¶15.

B. Law and Analysis

1. Pretrial immunity claims are not reviewable on direct appeal.

In *Wood v. People*, 255 P.3d 1136, 1142 (Colo. 2011), the supreme court held that a trial court's pretrial denial of immunity from prosecution under the "make-my-day" statute is not reviewable on appeal after trial. Rather, a defendant must seek review prior to trial under C.A.R. 21. *Id.* at 1141. The *Wood* court reasoned that a pretrial motion on immunity is analogous to a preliminary hearing—both are designed to shield parties from the rigors of trial. *Id.* at 1140. Further,

declining to dismiss the charges is not a final judgment—it merely permits the case to proceed to trial. *Id.* at 1141. The same is true for immunity under the Supremacy Clause. *See New York v. Tanella*, 374 P.3d 141, 147 (2d Cir. 2004) (immunity shields federal officer from gauntlet of trial).

2. In any event, the claim fails.

"Supremacy Clause immunity governs the extent to which states may impose civil or criminal liability on *federal officials* for alleged violations of state law committed in the course of their federal duties." *Wyoming v. Livingston*, 443 F.3d 1211, 1213 (10th Cir. 2006) (emphasis added); *accord Ohio v. Thomas*, 173 U.S. 276, 283 (1899) (federal officers are immune from state prosecution when their offenses were committed while discharging their federal duties); *see also United States v. Moll*, 2023 WL 2042244, at *7 (D. Colo. 2023) ("Supremacy Clause immunity protects federal officers, acting within their federal authority, from liability under state law.").

Peters asserts "Supremacy Clause immunity is not limited to federal employees but extends to any individual who acts pursuant to a

duty imposed by federal law." OB, p 17. But the cases she cites do not support such a broad proposition. In *Hunter v. Wood*, 209 U.S. 205, 210 (1908), the Court extended immunity to a railroad employee acting under direct federal court order. And the lower federal court cases Peters cites—*Connecticut v. Marra*, 528 F. Supp. 381, 383-84 (D. Conn. 1982), and *Brown v. Nationsbank Corp.*, 188 F.3d 579, 589 (5th Cir. 1999)—extended immunity to persons acting as agents for federal officers. To the extent language in *Marra* could be read to extend immunity to *anyone* acting "pursuant to federal law," such a proposition would be dicta unsupported by *Marra*'s holding or reasoning. *See Marra*, 528 F. Supp. at 385 (referencing *Ex parte Conway*, 48 F. 77 (C.C.D.S.C. 1891), which involved a construction foreman building a telegraph line under congressional authorization).

The other federal cases Peters cites—*Mesa v. California*, 489 U.S. 121, 127 (1989); *In re Quarles*, 158 U.S. 532 (1895); *In re Neagle*, 135 U.S. 1 (1890), *Tennessee v. Davis*, 100 U.S. 257, 263 (1879); *Sowders v. Damron*, 457 F.2d 1182 (10th Cir. 1972); *Clifton v. Cox*, 549 F.2d 722 (9th Cir. 1977); and *Colorado v. Nord*, 377 Fed. Supp. 2d 945 (D. Colo.

2005)—do not support her assertion either because they concerned federal employees.

Here, no evidence supports a finding that Peters was a federal official or officer, or was acting as an agent of any federal official or officer or pursuant to a direct federal court order, when she committed the crimes in this case.

And even assuming arguendo that she could satisfy this threshold requirement for immunity, the Supremacy Clause would still not apply because her criminal conduct was not reasonably necessary to comply with federal law. *See Livingston*, 443 F.3d at 1222 (Supremacy Clause immunity requires that the federal officer had "an objectively reasonable and well-founded basis to believe [their] actions were necessary to fulfill [their] duties"); *accord In re Neagle*, 135 U.S. at 6 (federal officer's actions must be "necessary and proper" for execution of their duties).

Peters alleges she acted pursuant to her duty to preserve election records under 52 U.S.C. § 20701, which provides in relevant part:

> Every officer of election shall retain and preserve, for a period of twenty-two months from the date of [federal elections] all records and papers which come into his possession relating to any application, registration, payment of poll tax, or other act requisite to voting in such election.

OB, p 16. Notably, the statute does not authorize anyone to conduct an investigation of election fraud on behalf of the federal government.

Peters' criminal conduct was not reasonable and necessary to perform the duty set forth in § 20701 because:

- she had the ability to preserve election records by backing them up before the Build, and her staff had already done so;
- the "forensic images" of the elections server were not election records; they were copies of the vendor's proprietary software;
- she could have simply refused to allow the Build to occur if she believed it would destroy election records she had a duty to protect.

In sum, "the Supremacy Clause was not intended to be a shield for 'anything goes' conduct by federal law enforcement officers." *Kentucky v. Long*, 837 F.2d 727, 746 (6th Cir. 1988). Supremacy Clause immunity is

not absolute, and a state may prosecute even a federal officer if their criminal actions cannot reasonably be said to have been committed in performance of their duties. *United States ex rel. Drury v. Lewis*, 200 U.S. 1, 8 (1906).

Peters also contends the Privileges or Immunities Clause barred her state prosecution but makes only passing reference to this provision, without explanation or development of any argument as to how it applies here, *see* OB, pp 11-19. Therefore, this Court need not address it. *See, e.g.*, *People v. Relaford*, 2016 COA 99, ¶70 n.2 ("We do not consider bare or conclusory assertions presented without argument or development."). Finally, her assertion that the trial court lacked jurisdiction to rule on her motion to dismiss also fails. OB, p 18. The Tenth Circuit properly rejected this argument when Peters presented it in her related federal case, *Peters v. United States*, 2024 WL 3086003, *5-6 (10th Cir. 2024). *See also Wood*, 255 P.3d at 1140 (rejecting argument that immunity implicates court's jurisdiction).

II. The evidence supports the jury's verdicts.

A. Preservation and Standard of Review

The People agree preservation of this issue is immaterial and sufficiency of the evidence is reviewed de novo. *Clark v. People*, 232 P.3d 1287, 1291 (Colo. 2010).

B. Law and Analysis

In reviewing for sufficiency of the evidence, an appellate court must examine both direct and circumstantial evidence and determine whether such evidence, when viewed as a whole and in the light most favorable to the prosecution, is sufficient to support a conclusion by a reasonable person of the defendant's guilt beyond a reasonable doubt. *People v. Donald*, 2020 CO 24, ¶18. This standard is "daunting." *People v. McBride*, 228 P.3d 216, 226 (Colo. App. 2009).

A determination of the credibility of witnesses is solely within the province of the fact finder, and an appellate court will not sit as a thirteenth juror and set aside a verdict because it might have drawn a different conclusion from the same evidence. *People v. Gonzales*, 666 P.2d 123, 128 (Colo. 1983). Where reasonable minds could differ, the

evidence is sufficient to sustain a conviction. *See People v. Carlson*, 72 P.3d 411, 416 (Colo. App. 2003).

1. Attempt to influence a public servant

A person commits attempt to influence a public servant if the person attempted to influence a public servant by means of deceit with the intent to alter or affect the public servant's decision, vote, opinion, or action concerning any matter which was to be considered or performed by the public servant, agency, or body of which the public servant was a member. § 18-8-306, C.R.S. (2025).

Here, as outlined above, the evidence established that Peters executed a plan to provide an unauthorized person access to the elections server and Build. Specifically, Peters obtained security credentials for Gerald Wood by falsely representing to County Employee Underwood that Mr. Wood was a *state employee* who needed system access. TR 8/5/24, pp 92-94; TR 8/6/24, pp 170-72. Peters also made false statements to her staff about Mr. Wood, resulting in an email from her office to SOS Employee Romero falsely listing Mr. Wood

as a *county employee* who would attend the Build. TR 8/1/24, p 158:2-7; TR 8/7/24, pp 108-09; EX 18. Finally, Peters introduced Conan Hayes to SOS Employee Casias as Mr. Wood. TR 8/5/24, pp 167-68.

Peters asserts the evidence was insufficient to support the charge related to Mr. Romero because she did not send the email about Mr. Wood to Mr. Romero herself. But the jury could reasonably infer that Peters knew and expected that her staff would convey her false statements about Mr. Wood to Mr. Romero, which would induce him to allow the Build to proceed. TR 8/1/24, pp 143-44, 166-67; TR 8/7/24, pp 108-09; EX 18.

Peters next contends no evidence established a decision, opinion, vote, or action of Mr. Casias as a result of her falsely representing to him that Mr. Hayes was county employee Gerald Wood. To the contrary, the evidence established that Mr. Casias proceeded with the Build because he believed Hayes was an authorized county employee. TR 8/5/24, pp 167-69. Mr. Casias testified he would not have conducted the Build had he known an unauthorized person was present. TR 8/5/24, pp 173:13-15, 174-75.

Finally, pointing to testimony elicited by defense counsel that it was Peters who made the decision to issue security credentials for Mr. Wood, and Mr. Underwood merely did as he was told, Peters asserts the evidence was not sufficient to establish a decision, opinion, vote, or action of Mr. Underwood. OB, pp 20-21. But Mr. Underwood's decision was to follow Peters' directive to issue the security credentials. He testified he would not have done so had he known she misrepresented Mr. Wood as a state employee. TR 8/5/24, p 121:2-10.

2. Conspiracy to commit criminal impersonation[2]

A person commits conspiracy to commit criminal impersonation if the person, with the intent to promote or facilitate the commission of the crime of criminal impersonation, agreed with another person or persons that they, or one or more of them, would engage in conduct which constituted the crime or an attempt to commit the crime of criminal impersonation, or agreed to aid another person or persons in

[2] Peters' assertion about the criminal impersonation jury instruction, OB, p 22, is addressed in Argument V.

the planning or commission or attempted commission of the crime of criminal impersonation, and the person or a co-conspirator, performed any overt act to pursue the conspiracy. §§ 18-2-201, 18-5-113(1)(b)(I), C.R.S. (2025). A person commits criminal impersonation if the person knowingly assumes a false or fictitious identity or capacity, legal or other, and in such identity or capacity performed an act that, if done by the person falsely impersonated, subjects that person to an action or special proceeding, civil or criminal, or to liability, charge, forfeiture, or penalty. § 18-5-113(1)(b)(I).

Here, Peters asserts the evidence did not establish that Mr. Wood would have been subject to liability if he attended the Build and made a forensic image of the elections server. OB, pp 21-22. To the contrary, Mr. Wood would have been subject to liability had he attended the Build because he was not authorized to attend since he was not a county employee; additionally, no person was authorized to copy the vendor's software. TR 8/1/24, pp 166-67. Indeed, the evidence reflected that Mr. Wood was the subject of a criminal investigation because his

credentials were used to access the Build and elections server. TR 8/2/24, pp 152-55.

3. First degree official misconduct

A person commits first degree official misconduct if the person is a public servant, and with intent to obtain a benefit for any person, or maliciously to cause harm to another, knowingly commits an act relating to their office but constituting an unauthorized exercise of their official function and/or violated a statute or lawfully adopted rule or regulation relating to their office. § 18-8-404, C.R.S. (2025).

Here, Peters contends no evidence established that she intended to obtain a benefit for herself or anyone else. OB, p 22. But the evidence, and the reasonable inferences drawn therefrom, established that Peters intended to benefit Dr. Frank, his supporters, and herself by providing "forensic images" of the elections server to non-government actors. *See, e.g.*, TR 8/2/24, pp 27-31; TR 8/6/24, pp 182-83; TR 8/8/24, pp 39-40, 249:1-3; TR 8/9/24, pp 40-41, 64-70, 75-77; EX 71.

III. The trial court properly excluded inadmissible evidence, and in any event, any error was harmless.

A. Preservation and Standard of Review

The People agree this issue was preserved. However, the People disagree regarding the standard of review. Evidentiary errors are reviewed for an abuse of discretion. *People v. Tyme*, 2013 COA 59, ¶8. Additionally, not every erroneous evidentiary ruling that affects a defendant's presentation of his defense amounts to constitutional error. *Krutsinger v. People*, 219 P.3d 1054, 1062 (Colo. 2009). As discussed below, any error here did not rise to that level.

Non-constitutional error is harmless unless it substantially influenced the verdict or affected the fairness of the trial proceedings. *People v. Conyac*, 2014 COA 8M, ¶94. Constitutional error is harmless when the reviewing court is confident beyond a reasonable doubt that the error did not contribute to a guilty verdict. *Id.*

B. Additional Facts

Before trial, the court ruled Peters could not introduce evidence that the reason for her criminal conduct was that she was trying to

preserve election records or investigate destruction of evidence regarding election system reliability. TR 7/19/24, pp 23:3-10, 32-34, 38-42. The court ruled such evidence was irrelevant because it did not bear on the question of whether Peters committed the offenses. TR 7/19/24, pp 32-33. The court explained that because Peters' reasons for committing the crimes were not a defense, they could not be used to justify her crimes. TR 7/19/24, pp 32-33, 41-42; TR 8/1/24, pp 6-7.

Consistent with this ruling, the trial court excluded some evidence about the alleged reasons for Peters' criminal conduct, including:

- her alleged belief that Mr. Hayes was a government informant, TR 8/1/24, pp 4-7, 18;
- her duty to preserve election records, TR 8/1/24, pp 200-01; TR 8/6/24, pp 79-80; and
- her alleged concerns about the reliability of the election system and her so-called investigation into destruction of such evidence, TR 8/1/24, pp 200-03; TR 8/5/24, pp 207-13; TR 8/6/24, pp 59-60; TR 8/8/24, pp 254-258.

The court ruled this evidence was not relevant for the purpose Peters was offering it and would be misleading to the jury. TR 8/8/24, pp 254-258, 292. The court also ruled Peters could not argue she was authorized to use deception to investigate her allegations regarding election system reliability and destruction of evidence because no such affirmative defense existed and no law authorized her to do so. TR 8/5/24, pp 207-12; TR 8/9/24, pp 355-57.

C. Law and Analysis

Peters asserts the trial court denied her an opportunity to present her theory of the case and evidence that might tend to create doubt about her guilt. OB, p 23. But "the right to present a defense does not guarantee a right to [present evidence] in violation of the rules of evidence." *People v. Scearce*, 87 P.3d 228, 233 (Colo. App. 2003).

Evidence that "is not relevant is not admissible." CRE 402. Evidence is relevant if it has any "tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." CRE 401. Even if relevant, evidence "may be excluded if its probative

value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." CRE 403.

Here, the trial court properly excluded evidence of Peters' alleged reasons for committing the criminal offenses. First, this evidence was not relevant because it was not material. Other than motive, which was not the basis of her proffer, Peters' reasons for her criminal conduct did not bear on the only question before the jury: whether she committed the offenses. *Fletcher v. People*, 179 P.3d 969, 974 (Colo. 2007).

Moreover, the evidence was inadmissible because the danger of unfair prejudice, confusion of the issues, and misleading the jury substantially outweighed any relevance. Peters sought to justify her conduct by presenting this evidence, but because her reasons for committing the offenses were not a legal defense, the evidence would have created a substantial risk of confusing the issues, misleading the jury, and unfairly prejudicing the prosecution. This risk was magnified

by the controversial nature of the evidence, which would have resulted in a mini-trial about alleged election fraud.

To the extent Peters asserts that investigating the destruction of election records was a legal defense, the authorities she cites do not support this proposition. *See* OB, pp 26-27. She does not contend on appeal that such investigation served as the basis for the affirmative defense of execution of a public duty, *see id.*,[3] and this argument would fail in any event because no law authorizes her to investigate destruction of records or establishes such a duty.

Peters' contention that her reasons for committing the offenses were "key to [her] mens rea," OB, p 24, is likewise unavailing. Mens rea is the required mental state for a crime—e.g., intent to commit the conduct. *See, e.g., Copeland v. People*, 2 P.3d 1283, 1286 (Colo. 2000). Whether Peters had the requisite mental state for each charge is a different question than her reasons for committing the

[3] Nor may she do so in her reply brief. *See People v. Owens*, 2024 CO 10, ¶90 ("It is well-settled that an appellate court will not consider arguments raised for the first time in a reply brief.").

crimes. And if anything, the evidence would have tended to show that she *had* the requisite mens rea, but again, that limited relevance was substantially outweighed by the danger the evidence would be confusing, misleading, and unfairly prejudicial.

Peters also asserts the evidence was key to her affirmative defense of execution of a public duty. But as discussed in the following section, the trial court properly ruled that the evidence did not support that defense.

In any event, any error was harmless. Peters' reasons were not a legal justification to the offenses, and the evidence of her guilt was overwhelming. It established that Peters made and executed a plan with others to provide Build and election system access to an unauthorized person through false representations to state and other county employees.

Further, any error did not violate Peters' right to present a defense. *Krutsinger*, 219 P.3d at 1062. She vigorously cross-examined the prosecution's witnesses and presented her own witnesses. Moreover, despite some exclusions, Peters introduced ample evidence of her

alleged beliefs that she was preserving election records, investigating destruction of evidence regarding election system reliability, and had a legitimate need to conceal Mr. Hayes identity. *See, e.g.*, TR 8/6/24, pp 216-24, 227-28; TR 8/7/24, pp 91:13-20, 96:11-17, 118-19, 162-63, 169-72, 191:2-17; TR 8/8/24, pp 239:5-8, 242:11-14; TR 8/9/24, pp 25:20-22, 31:2-4, 23-25, 91:3-5, 91-97, 112-113, 207:10-18. In any event, any constitutional error was harmless beyond a reasonable doubt for the reasons discussed above.

IV. The trial court properly declined to give defense-proposed jury instructions.

A. Preservation and Standard of Review

The People agree these issues are preserved, TR 8/5/24, pp 207-12; TR 8/8/24, pp 369-71; TR 8/9/24, pp 355-57. Denial of an affirmative defense instruction is reviewed de novo. *People v. Hasadinratana*, 2021 COA 66, ¶15. Error in denying an affirmative defense is reviewed for constitutional harmlessness. *People v. Tardif*, 2017 COA 136, ¶34.

However, denial of other proposed jury instructions is reviewed only for an abuse of discretion. *People v. Trujillo*, 2018 COA 12, ¶11.

Any such error is harmless unless there is "a reasonable probability that [the instructional error] contributed to the defendant's conviction." *Mata-Medina v. People*, 71 P.3d 973, 980 (Colo. 2003).

B. Law and Analysis

1. Execution of Public Duty

Sections 18-1-701 to -709, C.R.S. (2025) provide very limited, narrowly-tailored exceptions to criminal liability, known as affirmative defenses. § 18-1-710, C.R.S. (2025). The affirmative defense of execution of public duty provides that "conduct which would otherwise constitute an offense is justifiable and not criminal when it is required or authorized by a provision of law or a judicial decree binding in Colorado." § 18-1-701(1). As relevant here, § 18-1-701(2) defines "provision of law" as "[l]aws defining duties and functions of public servants."

Here, the trial court properly determined that the proffered evidence did not support this affirmative defense for the charged offenses. Peters contends her conduct was required or authorized by 52 U.S.C. § 20701. But while § 20701 sets forth a duty to preserve

election records, it does not authorize an election officer to use criminal means to do so. *Cf. People v. Roberts*, 601 P.2d 654, 656 (Colo. App. 1979) (prison guard not entitled to affirmative defense of execution of a public duty where he failed to establish that he was authorized to use undercover techniques to apprehend an escaped convict). Nor does it provide authority to investigate election fraud.

2. Supremacy Clause immunity

As discussed, Supremacy Clause immunity limits state prosecution of federal officials for acts committed in the course of their federal duties. *Livingston*, 443 F.3d at 1213. Peters contends she was entitled to an affirmative defense instruction at trial because the court denied her pretrial motion to dismiss. OB, p 30. Again, Peters fails to provide any meaningful development of her argument. *See Relaford*, ¶70 n.2. And the single case she cites for this proposition, *People v. Guenther*, 740 P.2d 971, 981 (Colo. 1987), does not support it.

Specifically, the *Guenther* court concluded that pretrial denial of immunity under the make-my-day statute did not *preclude* an affirmative defense instruction at trial for that defense. 740 P.2d at 981.

It did not hold that the pretrial denial *entitled* the defendant to the affirmative defense at trial. Moreover, unlike Supremacy Clause immunity, the make-my-day defense is a codified affirmative defense. §§ 18-1-704.5, -710.

In any event, as discussed in Argument I, Peters' proffered evidence did not support such a defense at trial even if it was available.

V. The criminal impersonation jury instruction was not plainly erroneous.

A. Preservation and Standard of Review

Peters does not address preservation or standard of review for this issue. OB, p 22. The issue is unpreserved because she did not raise it in the trial court. Whether an instruction properly informs the jury of the governing law is reviewed de novo. *People v. Stellabotte*, 2016 COA 106, ¶18, *aff'd and remanded*, 2018 CO 66, ¶18. Unpreserved instructional errors are not reversible unless the error "so undermined the fundamental fairness of the trial itself so as to cast serious doubt on the reliability of the judgment of conviction." *Hagos v. People*, 2012 CO 63, ¶14 (cleaned up).

B. Law and Analysis

Peters contends that although the indictment charged her with criminal impersonation under § 18-5-113(1)(b)(I), the indictment and jury instruction used the broader language from § 18-5-113(1)(b)(II). OB, p 22. Again, Peters fails to develop this argument or cite any authority. Therefore, this Court need not consider it. *See Relaford*, ¶70 n.2.

In any event, no plain error occurred. "[A] trial court is obligated to instruct the jury correctly on the law applicable to the case." *People v. Van Meter*, 2018 COA 13, ¶41. But failure to instruct the jury properly on an element of an offense is not reversible error where the improperly defined element was uncontested or established by overwhelming evidence. *See, e.g.*, *People v. Lozano-Ruiz*, 2018 CO 86, ¶¶6-7; *People v. Miller*, 113 P.3d 743, 750 (Colo. 2005).

Here, the addition of the word "might" in the element "subject that person to [liability]" was not plainly erroneous because the evidence overwhelmingly established that the conduct would and did subject Mr.

Wood to criminal liability, and the defense theory on the charge—that a conspiracy did not occur—did not implicate that element.

VI. The indictment provided adequate notice of the charges.

A. Preservation and Standard of Review

The People agree this issue is preserved. This Court reviews the sufficiency of the charging instrument de novo. *People v. Perez-Hernandez*, 2013 COA 160, ¶30.

B. Additional Facts

The charges of attempt to influence a public official in the indictment stated that Peters, "unlawfully and feloniously attempted to influence [each of the relevant three public servants] by means of deceit, with the intent thereby to alter or affect the public servant's decision, vote, opinion, or action concerning a matter which was to be considered or performed by the public servant or the agency or body of which the public servant was a member, in violation of section 18-8-306, C.R.S." CF, pp 7-8. The "Criminal Conduct" section of the indictment explained that:

- Peters and Belinda Knisley formed a plan to allow an unauthorized person to be present at the Build, CF, pp 13-15;
- they implemented this plan by obtaining security credentials for the unauthorized person under false pretenses and representing to state officials that only authorized persons would be and were present, CF, pp 13-16;
- SOS Employee Romero denied Peters' request to have members of the public present at the Build, informed her that only county, state, and vendor personnel could attend, and stated that the Build would not proceed if any unauthorized persons were present, CF, pp 13-14;
- Peters subsequently directed County Employee Underwood to create security credentials for Gerald Wood, falsely stating that he was a state employee, and Mr. Underwood did so, CF, pp 14-16;
- Peters' office sent an email to Mr. Romero falsely stating that Mr. Wood was a county employee who would attend the Build, CF, p 15; and

- at the Build, Peters introduced Conan Hayes to SOS Employee Casias as Gerald Wood, CF, p 16.

C. Law and Analysis

A defendant must receive notice of the charges against them, *Cervantes v. People*, 715 P.2d 783, 785 (Colo. 1986), but "it is not necessary to allege every element that must be proved at trial," *People v. Richardson*, 58 P.3d 1039, 1044 (Colo. App. 2002). "An information is sufficient if it advises the defendant of the charges they are facing so they can adequately defend themselves and be protected from further prosecution for the same offense." *Cervantes*, 715 P.2d at 785 (cleaned up).

Here, Peters contends she was not provided adequate notice of the charges of attempt to influence a public servant—for Jesse Romero, Danny Casias, and David Underwood—because they did not specify the decision, vote, opinion or action. To the contrary, the "Criminal Conduct" section of the indictment explained the decision, vote, opinion, or action of each public servant. Specifically, Mr. Underwood's decision, opinion, or action was to create security credentials for Mr. Wood, and

Mr. Romero's and Mr. Casias's decision, opinion, or action was to allow the Build to proceed in the presence of an unauthorized person. CF, pp 13-16. Accordingly, the indictment provided Peters adequate notice of the charges against her.

VII. The prosecution's statements were proper, did not constitute misconduct, and were not reversible error in any event.

A. Preservation and Standard of Review

Peters does not fully address preservation or the standard of review for this issue. OB, pp 31-36. Although she objected to the prosecutor's statement in rebuttal close in a motion for new trial, CF, p 4567, because Peters did not make a contemporaneous objection, the challenge is unpreserved. *See People v. Rhea*, 2014 COA 60, ¶44. Peters objected to only one of the challenged references to a "security breach," and did not object to any of the references to the BIOS passwords. Therefore, only one challenge is preserved.

To justify reversal for prosecutorial misconduct, a defendant must make two analytically independent showings: (1) evaluated in the context of the argument as a whole and in light of the evidence

presented at trial, the prosecutor's conduct was improper; and (2) such actions warrant reversal under the appropriate standard of review. *Wend v. People*, 235 P.3d 1089, 1096 (Colo. 2010). "Whether a prosecutor's statements constitute misconduct is generally a matter left to the trial court's discretion." *Domingo-Gomez v. People*, 125 P.3d 1043, 1049-50 (Colo. 2005).

Preserved errors are reviewed for harmlessness. Crim. P. 52(a). Unpreserved errors are reversible only if they are plain. Crim. P. 52(b). Prosecutorial misconduct during closing arguments "rarely, if ever, is so egregious as to constitute plain error." *Rhea*, ¶43.

B. Additional Facts

1. BIOS passwords security breach

During a pretrial hearing, the trial court ruled the prosecution could introduce evidence the investigation was initiated when state officials learned BIOS passwords for Mesa County's Build had been posted online. TR 7/19/24, pp 53-54. Defense counsel agreed this evidence was admissible. TR 7/19/24, pp 54-55. During opening statement, the prosecutor explained that the investigation started after

state officials discovered the BIOS passwords online. TR 7/31/24, pp 191-92. The prosecution likewise introduced evidence about the investigation and how the secure nature of the BIOS passwords led investigators to discover Peters' criminal conduct. TR 8/1/24, pp 32-33, 38:2-9, 53:12-24, 130-31, 161-63.

At times, prosecution witnesses referred to the posting of the BIOS passwords online as a "security breach." TR 8/1/24, pp 32-33; TR 8/6/24, p 109:5-20; TR 8/8/24, pp 142-43. Peters objected only to the single instance a prosecutor used the term. TR 8/5/24, p 175:6-13. However, defense counsel also used the term when questioning the same witness. TR 8/1/24, p 228:18-22.

Mr. Romero testified about the secure nature of the BIOS passwords and discovering them online. TR 8/1/24, pp 162-63, 213-215. When Mr. Romero testified about reporting the leak, the prosecutor responded, "Denver, we have a problem?" referencing the famous quote from the Apollo 13 mission. TR 8/1/24, p 165:10-18. During cross-examination, defense counsel referenced the prosecutor's comment, calling it "cute." TR 8/1/24, pp 223-24.

Peters elicited testimony that the county maintains the system passwords, while the state maintains the BIOS passwords, which provides additional security to the elections server. TR 8/1/24, pp 226-27. Peters also presented testimony from cyber security experts that the video and passwords posted online provided no usable information for accessing the server. TR 8/9/24, pp 200-01, 230-31.

2. Dr. Frank's statement

During the meeting in Peters' office, Dr. Frank said it would be illegal to open the election equipment because it contained the vendor's proprietary information and Peters had signed a contract with the vendor. TR 8/2/24, p 31:6-12; TR 8/5/24, pp 18-19. During rebuttal closing argument, the prosecution referenced this discussion, which also included Dr. Frank's statement about sending an audit team—"the best in the country." TR 8/9/24, pp 40-41; TR 8/12/24, p 104:9-14. The prosecutor summarized Dr. Frank statements as, "That would be illegal but I have the best guy in the country." TR 8/12/24, p 104:9-14.

C. Law and Analysis

The prosecution has wide latitude in the language it uses to make arguments based on facts in evidence and reasonable inferences therefrom. *Domingo-Gomez*, 125 P.3d at 1048. "[B]ecause arguments delivered in the heat of trial are not always perfectly scripted, reviewing courts accord prosecutors the benefit of the doubt when their remarks are ambiguous or simply inartful." *People v. Samson*, 302 P.3d 311, 317 (Colo. App. 2012).

1. BIOS passwords security breach

The term "security breach" was a fair comment on the evidence. The evidence established that the BIOS passwords were a security feature, which was breached when the passwords were leaked online. Indeed, even defense counsel used the term. TR 8/1/24, p 228:18-22.

Contrary to Peters' assertion, OB, p 33, the prosecution did not contend that she was legally responsible for the passwords being posted online. Rather, the prosecution discussed the password breach in relation to how Peters' criminal conduct was discovered. These comments were not inconsistent with the court's pretrial ruling, *see* OB,

pp 33-34, which ordered only that the prosecution could not comment about whether copying the software and filming the Build was illegal. TR 7/19/24, p 53:16-19.

Based on the foregoing analysis, the prosecution had no obligation to introduce evidence that the posted passwords were redacted or could not be used to access the server. *See* OB, pp 31-33. In any event, Peters' judicial notice argument is unavailing. Not only is the website she cites inaccessible (as of 7/28/25), its contents could have changed since the date at issue (8/2/21). *See* CRE 201 (judicial notice requires absence of reasonable dispute based on general knowledge or an unquestionably accurate source). Similarly, the SOS news release and public statement *after* the trial do not establish what the prosecutors knew *at the time* of trial. Moreover, the governor's and the SOS's knowledge are not attributable to the prosecutors.

Finally, the record belies Peters' assertion that the prosecutor compared the password leak to the life-threatening emergency of Apollo 13. The prosecutor merely borrowed the now-commonplace

quote, "Houston, we have a problem" in response to the witness's testimony about reporting the leak. TR 8/1/24, p 165:13-17.

Accordingly, the prosecution did not commit misconduct, much less any constituting plain error. And any error in the singular preserved comment was harmless. The defense itself discussed a "security breach" and BIOS passwords and introduced evidence that the information posted online could not be used to access the elections server. Further, as discussed above, the evidence of Peters' guilt was overwhelming.

2. Dr. Frank's statement

The prosecutor's statement in rebuttal close was also a fair comment on the evidence. As outlined above, the prosecutor summarized Dr. Frank's statements as "that would be illegal but I have the best guy in the country." Even if the phrase could be characterized as ambiguous or inartful, this Court should afford the prosecutor the benefit of the doubt. In any event, the prosecutor's comment was isolated and fleeting. When considered in the context of the entire closing argument, the remark had a negligible effect on the verdict. It

cannot be said to be "flagrantly, glaringly, or tremendously improper" or to have "so undermined the fundamental fairness of the trial as to cast serious doubt on the reliability of the judgment of conviction." *People v. Cevallos-Acosta*, 140 P.3d 116, 122 (Colo. App. 2005). Therefore, any error was not plain.

VIII. The trial court properly denied a hearing to elicit juror testimony.

A. Preservation and Standard of Review

The People agree this issue is preserved and reviewed for an abuse of discretion. CF, pp 4700-02; *People v. Clark*, 2015 COA 44, ¶215. Even if a juror is exposed to improper outside influence, any error is harmless absent "a reasonable possibility that the [outside] influence would have adversely affected the verdict of a typical jury." *James v. People*, 2018 CO 72, ¶20.

B. Additional Facts

According to Peters' trial court motion, a juror told a defense investigator the telephone line at her business was cut during trial. CF, pp 4700, 4733. Although she mentioned an initial concern—which was

later dispelled—that it was related to her jury service, she did not say who she thought was responsible. CF, p 4733.

C. Law and Analysis

"CRE 606(b) is a broad ban against the solicitation and use of juror testimony, affidavits, or statements addressing the validity of a jury verdict." *Stewart v. Rice*, 47 P.3d 316, 320 (Colo. 2002), *as modified on denial of reh'g* (June 3, 2002). "Substantial policy considerations support the broad prohibition on post-verdict challenges based on juror testimony. *People v. Archuleta*, 2021 COA 49, ¶19. "Chief among them are the interests in verdict finality and protecting the secrecy of jury deliberations." *Id.*

CRE 606(b) provides three exceptions, specifically: (1) improper exposure to extraneous prejudicial information, (2) improper outside influence on any juror, and (3) mistakes concerning the verdict form.

Here, as the trial court properly determined, CRE 606(b) precluded a hearing. Peters does not assert that any exception applies, and her argument that a hearing was required is based only on her own speculation that the juror believed "she was being targeted by

supporters of Ms. Peters." OB, p 34; *see* CF, p 4733 (no statement of who the juror thought was responsible). In any event, given that no improper influence was actually brought to bear since the phone line was in fact cut in an unrelated incident, any error was harmless. *See* CF, p 4733. Any error was also harmless given the speculative nature of any prejudice and the overwhelming evidence of guilt.

IX. The trial court's sentencing considerations were proper; no rights were violated.

A. Preservation and Standard of Review

These issues are unpreserved because Peters did not raise them in the trial court. A trial court has broad discretion in sentencing decisions, which are upheld absent a gross abuse of discretion. *Lopez v. People*, 113 P.3d 713, 720 (Colo. 2005). However, constitutional challenges to sentencing decisions are reviewed de novo. *Id.*

B. Additional Facts

At sentencing, several people spoke on Peters' behalf. TR 10/3/24, pp 7-59. Her allocution included a slideshow and spans 24 pages of the transcript. TR 10/3/24, pp 67-91. Much of it was devoted to allegations

that the SOS used the Build to destroy records to cover up election reliability issues. TR 10/3/24, pp 67-91.

In sentencing Peters, the court addressed her allegations about election fraud, the publicity she received, and her repeated assertions of being an honest and devoted public servant. TR 10/3/24, pp 97-98. The court found that Peters purposefully sought attention and used her position as an elected official to promote allegations of election fraud and further her personal agenda. TR 10/3/24, pp 97-98. The court explained that Peters chose herself over her duty as a public servant by using her position to gain fame and its benefits by fueling controversy about the reliability of elections through lies. TR 10/3/24, pp 99-100. Addressing the damage her deceptions had caused to the public's trust, the court found that Peters' deceptive conduct and willingness to sacrifice her duty as a public servant for her own interests made her a danger to society. TR 10/3/24, pp 99-100.

C. Law and Analysis

Pointing to the court's comments about her dishonesty, Peters alleges the trial court based its sentencing decision on her protected

speech, violating the First Amendment. OB, pp 36-38. To the contrary, the court's consideration of her dishonesty was proper, particularly here, where the court considered it as it related to her allocution, her ties to the community, and her criminal conduct.

A sentencing court must consider the offense; the offender's record, character, and rehabilitative potential; aggravating and mitigating circumstances; deterrence of crime; and protection of the public. §§ 18-1.3-401(1)(b)(I), 18-1-102.5, C.R.S. (2025); *People v. Leske*, 957 P.2d 1030, 1043 (Colo. 1998).

The First Amendment protects a person's right to free speech. U.S. Const. Amend. I. As a general matter, this means the government may not punish a person for their speech. *Id.* In the sentencing context, a court may consider the defendant's protected beliefs, association, or speech "so long as it is relevant to the issues involved in the sentencing proceeding." *United States v. Stewart*, 686 F.3d 156, 167 (2d Cir. 2012) (cleaned up).

During her allocution, Peters repeatedly stated that she is an honest person. TR 10/3/24, pp 68, 82, 89. The trial court rejected these

assertions, noting various instances of her dishonesty. In considering mitigating factors, including Peters' age, limited criminal history, and ties to the community, the court noted that her deceptive conduct had damaged her reputation and community ties. Addressing Peters' assertion that she did not ask for the publicity she received, the court rejected the notion. The court found that Peters sought power and fame and betrayed her oath to benefit herself and her interests.

The court further found that Peters' actions demonstrated she believed she was above the law. It pointed to the deceptive conduct underlying her offenses and her disregard of the State's rules governing its election system. The court also cited her violation of a protection order in appearing at the county elections office (with a camera crew) and her dishonesty about kicking the police officer who arrested her. TR 10/3/24, pp 85:9-14, 99:9-11.

In short, the trial court did not punish Peters for her statements but weighed her dishonesty as a factor in its sentencing decision. While the court disagreed with Peters' allegations of election fraud, the court did not punish her for making the allegations. Rather, the court

discussed Peters' allegations because they formed the context of her criminal conduct. As the trial court stated, Peters used her position to commit crimes for the purpose of promoting allegations of election fraud, which benefitted her personally. She also tried to use those allegations as a justification for her criminal conduct.

Accordingly, Peters' assertion that "the court announced that [she] should be severely punished for expressing her concern that computerized voting systems are unreliable and subject to manipulation," OB, p 38, is simply not true. Similarly lacking support in the record is her contention that the court based its decision on her (later overturned) contempt finding.[4] It was Peters herself who broached the topic, and the court did not mention it in its sentencing explanation. TR 10/3/24, pp 68-69, 95-103.

Peters' allegations that the court failed to act in a neutral and impartial manner in violation of her rights to fairness and due process

[4] The contempt was not overturned because there was insufficient evidence of her conduct but because the district court had not made sufficient findings regarding the court order she violated. *See People in re Peters*, 23CA1073 (Colo. App. Dec. 19, 2024) (unpublished).

are likewise unavailing. In addition to her five supporters, the court listened attentively to Peters' lengthy slideshow presentation, asked clarifying questions, and engaged with Peters on her account of the facts. The fact that the court rejected Peters' attempt to justify her criminal actions and her assertions of honesty and service to the community does not mean the court was not impartial or did not consider information favorable to Peters. Indeed, the opposite is true. The court had to consider her assertions to reject them, which it did based on all the information it had before it. Ultimately, the trial court based its sentence on the corruption Peters exhibited through her criminal conduct. *See, e.g.*, TR 10/3/24, p 98:13-15. Therefore, the court's sentencing considerations were proper, and Peters' First and Fourteenth Amendment rights were not violated.

X. Peters' sentences give rise to no inference of gross disproportionality.

A. Preservation and Standard of Review

Peters did not seek a proportionality review in the trial court, but an appellate court may conduct an abbreviated proportionality review.

People v. Loris, 2018 COA 101, ¶10. The People agree proportionality of a sentence is reviewed de novo. *Lopez*, 113 P.3d at 720.

B. Additional Facts

The trial court sentenced Peters to a term of imprisonment on each count as follows:

> Counts 1 and 4, attempt to influence a public official (Romero and Casias): 3.5 years, to be served concurrently;
>
> Count 2, attempt to influence a public official (Underwood): 3.5 years, to be served consecutively;
>
> Count 6, conspiracy to commit criminal impersonation: 15 months, consecutive;
>
> Count 8, first degree official misconduct: 120 days, concurrent to Counts 9 and 10; otherwise consecutive
>
> Counts 9 and 10, violation of duty and SOS violation: 180 days, concurrent with Count 8, otherwise consecutive.

TR 10/3/24, pp 102-03. All sentences are in the presumptive range. §§ 18-1.3-401(1)(a)(V.5)(A), -501, C.R.S. (2025).

Peters' total term of imprisonment is eight years and nine months. TR 10/3/24, pp 102-03. As of July 28, 2025, she will be eligible for parole in less than four years. Her current parole eligibility date is March 2,

2029. *See* DOC offender website. That date will move closer if Peters earns additional time credits. *See* § 17-22.5-405, C.R.S. (2025).

C. Law and Analysis

Upon request, a court must conduct an abbreviated proportionality review by comparing the gravity of the offense to the harshness of the penalty. *Wells-Yates v. People*, 2019 COA 90, ¶¶8, 11. If an abbreviated proportionality review yields no inference of gross disproportionality, the reviewing court must affirm the sentence. *Id.* at ¶8. Only when an abbreviated review gives rise to an inference of "gross disproportionality" is an extended proportionality review warranted. *Id.* at ¶15. "[A]n abbreviated proportionality review will almost always yield a finding that the sentence is not unconstitutionally disproportionate." *McDonald v. People*, 2024 CO 75, ¶21.

In considering the gravity or seriousness of an offense, the reviewing court looks to the facts and circumstances underlying the defendant's conviction. *Id.* at ¶12. In considering the harshness of the penalty, the penalty established by the legislature "deserves great deference." *Id.* at ¶62. Parole eligibility is a relevant consideration

"because parole can reduce the actual period of confinement and render the penalty less harsh." *Id.* at ¶14.

Importantly, this Court reviews each sentence imposed separately, even if the sentences are to be served consecutively. *Lucero v. People*, 2017 CO 49, ¶23.

Here, Peters' criminal conduct is serious because it involved corruption. She betrayed her community so she could put her own agenda and interests above her duty to those she was elected to serve. She used deception to facilitate non-government actors gaining unauthorized access to the secured election system she was entrusted to protect. Her actions were a severe breach of the public's trust and will have a ripple effect of public distrust of the government and elections.

The longest individual sentence Peters received was three-and-a-half years. All of her sentences fell with the presumptive range, and she will be parole-eligible after serving less than half of her total sentence. Weighing the gravity of Peters' offenses against the penalties established by the legislature with the required deference, the sentences the trial court imposed for each offense give rise to no

inference of gross disproportionality. Accordingly, an extended proportionality review is neither required nor appropriate. *Wells-Yates*, ¶15.

CONCLUSION

Based on the foregoing reasons and authorities, Ms. Peters' judgment of conviction should be affirmed.

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **ANSWER BRIEF** upon **JOHN CASE,** and all parties herein, via Colorado Courts E-filing System on July 28, 2025.