

DISTRICT COURT EL PASO COUNTY, COLORADO Court Address: El Paso County Justice Center 270 S. Tejon Street, Colorado Springs, CO 80901	
THE PEOPLE OF THE STATE OF COLORADO v. TERRANCE MAKETA, Defendant	COURT USE ONLY
Attorney: GEORGE H. BRAUHLER, 18 th Judicial District Attorney, Special Prosecutor 6450 S. Revere Pkwy Suite 100, Centennial, CO 80111 Phone: (720) 874-8500 Atty. Reg. #: 25910	Case Number: 2016CR2675 Division/Ctrm: 5

PEOPLE’S MOTION TO DISMISS

This motion to dismiss is filed by Mark Hurlbert, Assistant District Attorney for the 18th Judicial District, acting as special prosecutor in the above captioned matter.

1. Over a period of almost three years, the agents from Colorado Bureau of Investigation investigated this case. Due to a potential conflict of interest, the Fourth Judicial District Attorney’s Office asked the Eighteenth Judicial District Attorney’s Office to consult with CBI on the investigation.
2. In April 2016, the People presented the CBI investigation to the 2016 Grand Jury for El Paso County.
3. The 2016 Grand Jury for El Paso County considered testimony from a number of former employees of the El Paso County Sheriff’s Office and citizens of El Paso County who testified to defendant’s conduct during his final years in office. Over five separate sessions, the Grand Jury of El Paso heard from nineteen separate witnesses, including former employees of the El Paso County Sheriff’s Office and citizens of El Paso County. This testimony resulted in over 750 pages of transcripts.
4. On May 25, 2016, the Grand Jury for El Paso County indicted the defendant, along with codefendants Paula Presley, and Juan San Agustin.
5. The Grand Jury indicted the defendant on nine separate charges: one count of Criminal Extortion, a class four felony; one count of Conspiracy to Commit Criminal Extortion, a class five felony; one count of Tampering with a Victim or Witness, a class four felony; one count of Conspiracy to Commit Tampering with a Victim or Witness, a class five felony; one count of Second Degree Kidnapping, a class four

- felony; one count of False Imprisonment, a class five felony, and three counts of First Degree Official Misconduct, all class two misdemeanors.
6. On May 26, 2016, the Office of the District Attorney for the Eighteenth Judicial District was appointed by the Court to act as a Special Prosecutor to act on behalf of the People.
 7. Subsequently, the People successfully resisted in court three attempts by the defendant, one written motion and two oral motions, to deprive El Paso County jurors from considering this case by moving it to a different Colorado county.
 8. In addition to those repeated efforts to change venue, the defendant also sought to have the case dismissed outright. On October 20, 2016, the defense filed three motions asking the Court to dismiss the grand jury indictment: a Motion to Dismiss Indictment as Facially Defective, a Motion to Dismiss the Indictment for Misuse of Grand Jury Process and a Request for Probable Cause Review.
 9. Each motion was considered by the Court and denied.
 - a. In the Motion to Dismiss Indictment as Facially Defective, the defendant attacked the grand jury indictment alleging the indictment was facially defective, because there was no substantial threat to cause economic harm.
 - b. On November 25, 2016, this Court denied the Motion. In the Court's order, it specifically rejected the defense contentions and dismissed no charges.
 - c. In the Motion to Dismiss the Indictment for Misuse of Grand Jury Process, the defense recited a litany of alleged abuses of the grand jury process by the People.
 - d. On November 25, 2016, the Court found no basis for the defense motion.
 - e. The defendant also filed a motion asking the Court to review the indictments for probable cause under C.R.S. 16-5-204(4)(k), claiming the evidence was insufficient to hold the defendant for the indicted charges. That statute requires the judge to "dismiss any indictment of the grand jury if such district court finds, upon the filing of the motion by the indicted defendant based upon the grand jury record without argument or further evidence, that the grand jury finding of probable cause is not supported by the record."
 - f. On November 25, 2016, the Court ruled "that none of the charges should be dismissed for lack of probable cause."
 10. On March 17, 2017, the defendant filed a Motion to Dismiss for Legal Insufficiency.

11. On March 31, 2017, the Court denied the defense's attempt to get the indictment dismissed.
12. On June 28, 2017, trial by jury commenced on seven of the original nine counts. At the first jury trial, the People presented evidence for five days and called twenty-one witnesses.
13. On July 11, 2017, after eight hours of deliberations spanning two days, the jury acquitted the defendant on three counts, but was deadlocked as to the Extortion, Conspiracy to Commit Extortion, and two of the Official Misconduct counts. In an interview with the Colorado Springs Gazette, the foreperson stated on the deadlocked counts, the vote was eleven jurors to convict, one to acquit. The Court declared a mistrial on the four deadlocked counts and the defendant was acquitted on three counts.
14. On September 5, 2017, the case was scheduled for trial on the deadlocked charges.
15. On January 23, 2018, the second trial began, and the defendant was tried on the remaining four counts. During the second jury trial, seventeen witnesses testified under oath and the People presented evidence for four days. The jury deliberated for thirteen hours.
16. On February 5, 2018, the defendant was acquitted on two counts of Official Misconduct. The jury deadlocked on the Extortion and Conspiracy to Commit Extortion counts. In an article to the Colorado Springs Gazette, one of the jurors indicated ten jurors voted to convict, two to acquit on those counts.
17. The remaining courses of action are to reschedule the trial on the remaining charges for a third jury trial, or to dismiss the case.
18. Despite the close votes of each trial jury, our system requires unanimity to convict. The defendant's remaining counts would require presenting to a third jury a very different and limited picture of the conduct in this case. Rather than examining a pattern of activity and the toxic environment discussed throughout the first two trials, a third jury would examine the defendant's limited conduct surrounding only one individual.
19. This case has always been about acts in El Paso County committed by a former elected official from El Paso County, which needed to be adjudicated in El Paso County by El Paso County citizens. During the more than four years which have passed since the majority of the events at issue took place, three separate groups of citizens from El Paso County—the place in which these acts occurred—have had the opportunity to consider the facts and applicable law relevant to this case. Those

groups are the 2016 Grand Jury of El Paso County, the 2017 Trial Jury, and the 2018 Trial Jury.

20. There are two ethical prongs the People must honor in the continuing pursuit of criminal charges. First, the People must have a good faith basis to believe that specific individual committed a specific crime. The People continue to believe that the evidence supports that ethical prong.
21. Second, prosecutors must believe that they have a reasonable likelihood of success at trial. Given the nearly unanimous votes of two separate El Paso County juries and the now-truncated nature of the remaining evidence which can be presented to a possible third El Paso County jury, the People believe that the appropriate course of action at this time is to dismiss the remaining counts against the defendant.
22. The People have consulted with victims, both primary and secondary to the remaining charges, and advised them of this motion. Wendy Habert, a victim to the extortion charge has asked the Court to consider the following statement:

“The decision to not pursue a 3rd trial and drop the two Extortion related felony charges is incredibly disappointing to me; however, I fully understand and comprehend the reasoning behind the decision. Dropping these charges and not proceeding with a 3rd criminal trial DOES NOT, in any way, mean he is innocent of these felony charges. We all deserve to move on – united, committed and strong.”

Wherefore, the People respectfully ask this Court to dismiss the remaining charges against the defendant.

Dated 2/16/2018.

George H. Brauchler, District Attorney

By /s/ Mark Hurlbert
Assistant District Attorney
Registration No. 24606