

<p>COURT OF APPEALS, STATE OF COLORADO Ralph L. Carr Judicial Center 2 East 14th Avenue Denver, Colorado 80203</p> <p>Appeal from Mesa County District Court Judgment of Conviction and Sentence. Case Number 22CR371. Honorable Matthew D. Barrett.</p>	<p>DATE FILED February 12, 2026 5:50 PM FILING ID: 31B22CBF2A8A8 CASE NUMBER: 2024CA1951</p>
<p>Plaintiff-Appellee: PEOPLE OF THE STATE OF COLORADO v. Defendant-Appellant TINA PETERS</p>	
<p>Appellant's Attorneys: John Case, Atty reg. # 2431 John Case, P.C. 6901 South Pierce St. #340 Littleton CO 80128 Phone: (303) 667-7407 E-mail: brief@johncaselaw.com</p> <p>Patrick M. McSweeney, Pro Hac Vice Robert J. Cynkar, Pro Hac Vice McSweeney, Cynkar & Kachouroff, PLLC 3358 John Tree Hil Woodbridge VA 22192</p> <p>Peter Ticktin, Pro Hac Vice The Ticktin Law Group 270 SW Natura Avenue Deerfield Beach, Florida 33441</p>	<p>Case Number: 2024CA1951</p>
<p align="center">APPELLANT'S SUPPLEMENTAL BRIEF IN RESPONSE TO PEOPLE'S NOTICE OF <i>ERRATUM</i></p>	

CERTIFICATE OF COMPLIANCE

I hereby certify that this Brief contains 1524 words and is formatted in accordance with C.A.R. 32.

s/John Case
John Case #2431
Co-Counsel for Tina Peters

TABLE OF CONTENTS

I. The Prosecution Failed to Produce Sufficient Evidence that Gerald Wood
Might Have Been Subject to Criminal or Civil Liability.....1

II. Mrs. Peters Is Entitled to the Benefit of Ameliorative Legislation6

III. Conclusion.....7

CERTIFICATE OF SERVICE.....8

TABLE OF AUTHORITIES

Cases

<i>In re Winship</i> , 397 U.S. 358, 364 (1970).....	4
<i>McCoy v. People</i> , 442 P.3d 379, 385 (Colo. 2019)	4
<i>Montes-Rodriguez v. People</i> , 241 P.3d 924, 929 (Colo. 2010).....	3
<i>People v. Gonzales</i> , 666 P.2d 123, 128 (Colo. 1983)	5
<i>People v. McClintic</i> , 2020 Colo. App. LEXIS 2165 *8.....	5
<i>People v. Thomas</i> , 525 P.2d 1136, 1138 (Colo. 1974).....	6
<i>People v. Stellabotte</i> , 421 P. 3d 174, 175 Colo. 2018).....	7
<i>Veloz-Luvevano v. Lynch</i> , 799 F. 3d 1308, 1314 (10 th Cir. 2015)	3

Colorado Statutes

C.R.S. §18-5-113	1, 3, 6
C.R.S. §18-1-410	6, 7

Colorado Election Rules (8 CCR 1505-1)

Election Rule 20.5.3	2
----------------------------	---

I. The Prosecution Failed to Produce Sufficient Evidence that Gerald Wood Might Have Been Subject to Criminal or Civil Liability.

The People's Notice of *Erratum* ("Notice") invites a re-examination of the conviction for the class 6 felony, conspiracy to commit criminal impersonation. Instruction No. 16, cited at p. 3 of the Notice, set forth the elements of criminal impersonation under the version of C.R.S. §18-5-113(1)(d) that was in effect on the dates of the alleged offense, May 18-27, 2021:

The elements of criminal impersonation are:

1. That the defendant.
2. in the State of Colorado, at or about the date and place charged.
3. knowingly,
4. assumed a false or fictitious identity or capacity, legal or other,
5. and in such identity or capacity,
6. performed an act that, if done by the person falsely impersonated, might subject that person to an action or special proceeding, civil or criminal, or to liability, charge, forfeiture, or penalty,
7. without the affirmative defense of consent.

CF 4619 (underline added). The People alleged that Conan Hayes impersonated Gerald Wood by wearing Wood's keycard and swiping it to enter the computer room. However, the People presented no evidence that if Wood had worn his own keycard

and swiped it to enter the premises, he might be subject to liability.

Hayes swiped Wood's keycard to enter the computer room on May 23, 2021, where Hayes made a forensic image of the Mesa County EMS server hard drive. [People's Ex. 28, R. pp. 44-49; admitted Tr. 8/5/24 139:10]. Hayes wore Wood's keycard when he entered the computer room a second time on May 25, 2021, where he observed SOS employee Danny Casias perform the "Trusted Build." [Tr. 8/5/24 139:18-24; Tr. 8/7/24 114:16-18]. Hayes entered the room again on May 26, 2021, where Hayes made a second forensic image of the EMS hard drive. [Tr. 8/7/24 116:5 – 117:15]. On all three occasions when Hayes entered the premises, he was under the direct supervision of Clerk Peters and Elections Manager Sandy Brown, who authorized him to be present as permitted by SOS Election Rule 20.5.3(b). [People's Ex. 62, R. p. 350; admitted Tr. 8/8/24 42:8-10].

On April 30, 2021, the Department of State's Voting System Manager, Jessi Romero, sent an email to all county clerks with instructions for COVID precautions during the Trusted Build. [People's Ex. 17, R. pp. 24-25, admitted Tr. 8/1/24 149:21]. The email was not a statute, rule, or official Order of the Secretary of State. It was an email that announced the Trusted Build and explained SOS COVID policy. It also stated, "If, when we arrive onsite, or during the process there are others present (beyond Dominion and county election staff that have been authorized, and the Clerk

and Recorder) in the area where the Trusted Build will take place, we will move on to the next county.” [*Id.* at p. 25]. The email does not mention that persons who were not “authorized” to be present might incur some sort of civil or criminal liability.

The Secretary of State was informed by email from Sandra Brown that Gerald Wood was going to attend the Trusted Build. [People’s Ex. 18, R. p. 26, admitted Tr. 8/1/24 155:20-24]. Knowing that Wood was going to be present at the Build, Romero instructed SOS employee Danny Casias to perform the trusted build. [Tr. 8/1/24 159:1-12].

The burden was on the People to establish, beyond a reasonable doubt, that if Wood had committed the same acts as Hayes, i.e. wearing Wood’s keycard and swiping it to enter the premises, Wood might be subject to *actual* civil or criminal liability. The criminal impersonation statute C.R.S. §18-5-113(1)(d) “applies when one uses a false capacity to subject another to civil or criminal liability.” *Montes-Rodriguez v. People*, 241 P.3d 924, 929 (Colo. 2010). “One of the elements requires that enumerated consequences might have resulted to the impersonated individual had he (or she) committed the acts the impersonator took in his (or her) name. The statute cannot reasonably be read to have been violated when the interests of the impersonated individual were not put at risk by an impersonator's acts.” *Veloꝝ-Luwevano v. Lynch*, 799 F. 3d 1308, 1314 (10th Cir. 2015). At trial, the People produced

insufficient evidence that Hayes' use of Wood's keycard put Wood at risk.

Wood testified that he was *worried* about civil or criminal exposure (Tr. 8/2/24 154:7-14), but Wood's subjective worry is not proof that he might be subject to liability. The People's Answer Brief claims that Wood "would have been subject to liability if he had attended the Build because he was not authorized to attend since he was not a county employee." AB at 21. The People's assertion is wrong as a simple matter of fact. The prosecution's own witnesses, Danny Casias and Jessi Romero, testified that if they had known an unauthorized person was present at the Build, Casias would have stopped the procedure and gone on to the next county. [Casias testimony Tr. 8/5/24 173:13-15; Romero testimony Tr. 8/1/24 166:21 – 167:11). Neither Casias nor Romero testified that Wood might be subject to liability if he attended the Build.

The due process clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged. *In re Winship*, 397 U.S. 358, 364 (1970); accord *McCoy v. People*, 442 P.3d 379, 385 (Colo. 2019). Romero testified that if he had known that Wood was not a Mesa County employee, "I would have advised Danny who was on site to leave, and then, I would have followed up with our legal team and others in our office because we would have a serious issue to attend to." (Tr. 8/1/24 166:24 – 167:1).

Romero’s statement that he “would have followed up with our legal team” is not proof that Wood might be subject to liability. Verdicts in criminal cases may not be based on “guessing, speculation, or conjecture.” *People v. Gonzales*, 666 P.2d 123, 128 (Colo. 1983). A mere modicum of relevant evidence, supported by speculation, will not rationally support a conviction beyond a reasonable doubt. *People v. McClintic*, 2020 COA LEXIS 2165 ¶8 (reversing defendant’s conviction for introducing contraband because there was insufficient evidence to support a required element of the offense).

The People assert that Wood might be subject to criminal liability if he made forensic images of the EMS server hard drive. AB at 21. This is wrong as a matter of law. The trial court ruled correctly that no crime was committed when Hayes made forensic images of the EMS server. [Tr. 7/19/24 52:24 – 53:7]. Thus, Wood could not be subject to criminal liability if he made the forensic images.

The People claim that Wood might be subject to *civil* liability if he made the forensic images, because “no person was authorized to copy the vendor’s software.” AB at 21. This is also wrong as a matter of law. The contract between Dominion and Mesa County allowed the Clerk to copy the software for purposes of system backup. [Defense Ex. JJ8, R. p. 67, paragraph 6.1, admitted Tr. 8/2/24 62:23].

Because the prosecution failed to produce sufficient evidence of the essential

element that Wood might be subject to liability, the judgment of conviction for conspiracy to commit criminal impersonation must be vacated.

II. Mrs. Peters Is Entitled to the Benefit of Ameliorative Legislation

As the Notice points out, Senate Bill 21-271 was ameliorative legislation that changed the penalty for violating C.R.S. §18-5-113(1)(d) from a class 6 felony to a class 2 misdemeanor, effective March 1, 2022. Even if there was sufficient evidence to support a conviction for conspiracy to commit criminal impersonation (which there is not), C.R.S. § 18-1-410(1)(f) allows the trial court to re-sentence Mrs. Peters for the class 2 misdemeanor. The statute provides:

(f) (I) That there has been significant change in the law, applied to the applicant's conviction or sentence, allowing in the interests of justice retroactive application of the changed legal standard.

(II) The ground set forth in this paragraph (f) may not be asserted if, prior to filing for relief pursuant to this paragraph (f), a person has not sought appeal of a conviction within the time prescribed therefor or if a judgment of conviction has been affirmed upon appeal.

Subsection (f)(II) limits the application of subsection (I) to cases like this where the conviction is not final. The Colorado Supreme Court held in *People v. Thomas*, 525 P.2d 1136, 1138 (Colo. 1974), that the legislature intended changed legal standards of ameliorative legislation to apply retroactively wherever constitutionally permissible. A

more recent case held that, “our decision in *People v Thomas* allowing retroactive application of ameliorative statutory amendments under section 18-1-410(1)(f), remains good law and governs here.” *People v. Stellabotte*, 421 P. 3d 174, 175 Colo. 2018). If necessary, Mrs. Peters will file a Motion for Post-Conviction Relief pursuant to Rule of Criminal Procedure 35(c) before the mandate in this appeal issues.

III. Conclusion

Because the prosecution failed to present sufficient evidence of an essential element of criminal impersonation, the judgment of conviction for conspiracy to commit criminal impersonation must be vacated.

Dated: February 12, 2026

Respectfully submitted,

s/John Case
John Case Colo. Reg. 2431
6901 S. Pierce St. #340
Littleton, CO 80128

CERTIFICATE OF SERVICE

I certify that, on February 12, 2026, a copy of this Supplemental Brief was electronically served through Colorado Courts E-Filing on opposing counsel of record.

s/ John Case _____