COURT OF APPEALS STATE OF COLORADO 2 East 14th Avenue Denver, CO 80203	
Larimer County District Court Honorable Julie Kunce Field, Judge Case No. 15CR1466	
Plaintiff-Appellee, THE PEOPLE OF THE STATE OF COLORADO, v. Defendant-Appellant, CHAYCE AARON ANDERSON.	▲ **COURT USE ONLY** ▲ Case No. 17CA0469
PHILIP J. WEISER, Attorney General JENNIFER L. CARTY, Assistant Attorney General* Ralph L. Carr Colorado Judicial Center 1300 Broadway, 9th Floor Denver, CO 80203 Telephone: 720-508-6000 E-Mail: jennfer.carty@coag.gov Registration Number: 48991 *Counsel of Record	
PEOPLE'S ANSWER BRIEF	

APPENDIX E

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 or C.A.R. 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 word limits set forth in C.A.R. 28(g) or C.A.R. 28.1(g).

Choose one:

☒It contains 7,760 words (principal brief does not exceed 9500 words; reply brief does not exceed 5700 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/ Jennifer L. Carty

Signature of attorney or party

TABLE OF CONTENTS

TABLE OF AUTHORITIES

PAGE

CASES

TABLE OF AUTHORITIES

STATUTES

TABLE OF AUTHORITIES

STATEMENT OF THE CASE AND FACTS

Defendant, Chayce Aaron Anderson, was charged with sexual assault (physically helpless) (F3) and second degree burglary (F3). Supp. F., pp 9-11. On November 17, 2016, a jury found defendant guilty of sexual assault, but acquitted him of burglary. TR 11/17/16, pp 52-53. The court sentenced defendant to four years to life in the Department of Corrections, followed by twenty years to life of parole. Defendant was ordered to register as a sex offender. TR 02/03/17, pp 49-50. Defendant appeals his conviction on the grounds that (1) the trial court violated his confrontation rights in limiting the scope of cross-examination of a prosecution witness; (2) the trial court reversibly erred when it admitted certain evidence; and (3) the trial court erred in denying defendant's motion for a mistrial.

The victim, S.W., and her roommate, K.M., met the defendant on August 26, 2016 on their way to class at Colorado State University in Fort Collins. Defendant was working at a booth on campus, and approached the two women. TR 11/15/16, pp 77-79, 173-75. At some

point, the victim and defendant exchanged phone numbers. The two exchanged text messages that day concerning music, recreational drugs, and maybe hanging out at some point. No definite plans were made to meet up and the two did not exchange further text messages after that day. *Id.*, pp 80-81, 117-19; TR 11/16/16, pp 169-70.

The next night, the victim and her roommate had a group of friends over to drink and hang out before heading out to the bars in town. The victim drank quite of bit of alcohol at the apartment, and she was already drunk when the group left for the bars. TR 11/15/16, pp 83-85, 145-46,153-54, 176-77. She met up with more of her friends in Old Town, and continued drinking at various bars in town. At some point in the night, the victim and her roommate got separated. *Id.*, pp 84-85, 146-48, 160, 179-80. Eventually, the victim was so intoxicated that she was slurring her words and needed help walking. Her other friends took her home. Id., pp 86, 147-48, 160-61.

When the group got back to the apartment, the victim's friends carried her to her bed. The victim was "barely conscious" and couldn't really walk on her own. She immediately fell asleep. The victim's

friends hung out at the apartment for another 30-40 minutes before deciding to leave. However, before they left, they went into the victim's bedroom to check on her – she was still asleep in bed. *Id.*, pp 86-87, 148, 163-64.

Meanwhile, K.M. was still out at the bars in town. She ran into the defendant, who was working at one of the bars, and the two exchanged numbers. K.M. was extremely intoxicated and as she was leaving the bars for the night, defendant suggested they share a ride back to the west side of campus. When K.M. got back to the apartment, she got out of the car and defendant followed her. K.M. testified that when she entered the apartment, she looked into the victim's room and she was still asleep. K.M. also testified that while she was trying to drunkenly undress in her room, the defendant kept trying to push his way in. She stood in front of the door and told defendant that he needed to leave. Eventually defendant stopped pushing on K.M.'s door, and she assumed he had left the apartment or passed out on the couch. *Id.*, pp 183-87.

In actuality, defendant had walked down the hall and went into the victim's room. Defendant raped the victim while she was drunk and asleep. The victim woke up to the defendant penetrating her. She yelled for the defendant to get off of her and fought against him, but the defendant refused to stop. When the victim was finally able to fight him off, the defendant was indignant. He angrily yelled that he gave her HIV, and stormed out of the apartment, breaking liquor bottles as he went. *Id.*, pp 91-93, 187, 211-13; TR 11/16/16, pp 17-18, 87-88. The victim and her roommate briefly came out into the hallway as the defendant stormed through the house. Shocked and scared, the victim went back into her bedroom. She texted her roommate to ask if they should call the police. The victim, then still highly intoxicated and emotional, "shut down" and cried herself back to sleep. TR 11/15/16, pp 93-94, 188; TR 11/16/16, pp 17-18

The victim reported her rape to the police later that morning. DNA testing revealed the defendant's DNA on the victim's underwear and on vaginal swabs taken during a SANE exam. TR 11/15/16, pp 94-96; TR 11/16/16, pp 150-53.

As part of its case, the prosecution called M.D., a man who had been in the Larimer County correctional facility at the same time as the defendant. M.D. testified that on multiple occasions the defendant had bragged to him about raping the victim.

It was defendant's theory of the case that the victim was lying about the rape because she didn't want the guy she was dating at the time to find out she had cheated on him. It was defendant's further contention that the victim was not asleep or significantly impaired when the defendant entered her room, and that the sex was consensual. TR 11/17/16, pp 28-35.

SUMMARY OF THE ARGUMENT

Defendant's right to confront the witnesses against him was not violated by the trial court's decision to limit the cross-examination of M.D., the jailhouse witness. Although the trial court would not permit cross-examination into the potential or actual penalties M.D. faced for his Escape charge, defense counsel was still permitted to explore M.D.'s motive for testifying by questioning him about (1) his original felony

charge, (2) his plea down to a misdemeanor offense, *and* (3) the fact that he agreed to testify truthfully if called as a witness in any pending cases. Defendant's ability to cross-examine the witness was not severely limited.

The trial court did not abuse its discretion in admitting the victim's testimony concerning the text message to her roommate and a mistrial was not warranted. The contents of the text message referenced the victim's then-existing mental state, and served to rehabilitate the victim after defense counsel thoroughly attacked her credibility. Moreover, defense counsel had opened the door to the contents of the text messages. Further, the court did not abuse its discretion in admitting M.D.'s testimony that defendant told him he had given the victim a date-rape drug. The testimony was relevant and even assuming the trial court erred, it was not plain error.

ARGUMENT

I. Defendant's right to confrontation was not violated.

A. Standard of Review/Preservation

The People agree that a trial court's decisions to determine the scope of cross-examination are reviewed for an abuse of discretion. *People v. Quintana*, 882 P.2d 1366, 1371 (Colo. 1994); *People v. Davis*, 312 P.3d 193, 198 (Colo. App. 2010). A trial court has broad discretion in controlling the scope of cross-examination. *People v. Ibarra*, 849 P.2d 33, 38 (Colo. 1993); *Merritt v. People*, 842 P.2d 162, 166 (Colo. 1992). Unless the trial court restricts cross-examination to such an extent as to constitute a denial of the right to confrontation, the scope and limits of cross-examination are within the sound discretion of the trial court. *People v. Knight*, 167 P.3d 147, 152 (Colo. App. 2006). Whether the limit placed on cross-examination infringed on defendant's confrontation rights is reviewed *de novo*. *Merritt*, 842 P.2d at 166-67.

The People also agree the issue is preserved, but disagree that it was preserved on constitutional grounds. At trial, defense counsel asserted he was permitted to inquire into the terms of a prosecution

witness' plea agreement, as it pertained to any terms relevant to this case. TR 11/16/16, p 115: 5-11. He did not, however, assert that any constitutional right was implicated. Therefore, defendant's claim that the trial court violated his constitutional right to confrontation is unpreserved. *See People v. Campos*, 2015 COA 47, ¶ 29; *People v. Wilson*, 2014 COA 114, ¶¶ 30-31.

Constitutional errors not preserved by an objection are reviewed for plain error. *Hagos v. People*, 2012 CO 63, ¶ 14. Plain errors are obvious, substantial, and so undermine the fundamental fairness of the trial itself so as to cast serious doubt on the reliability of the judgment of conviction. *Id.*

B. Relevant Facts

The prosecution called M.D. as a witness in the case. M.D. was a convicted felon who was incarcerated in the Larimer County detention facility with the defendant in February 2016. M.D. testified that the defendant had bragged to him about sexually assaulting the victim in this case. According to M.D.'s testimony, defendant had identified the victim and her roommate by name. He told M.D. that he had sex with

the victim after giving her a "roofie," and described the sexual assault as a "dead fuck" because the victim was completely out of it. Defendant further complained that the victim wasn't conscious enough to perform oral sex on him. Defendant told M.D. that he got angry about this, started yelling, and broke some liquor bottles as he left the apartment. TR 11/16/16, pp 108-10. M.D.'s testimony corroborated that defendant shared a ride with the victim's roommate in the early hours of the morning, and that defendant had entered the women's apartment. *Id.*, pp 109-11.

M.D. testified that he never saw any police reports related to this case, and that he had called his lawyer because "it [was] the right thing to do." He indicated that he did not believe in hurting women, children, or the elderly, and that he hoped someone would do the same for his children if something ever happened to them. *Id.*, pp 111-12.

M.D. testified that he had not come forward in order to receive a benefit in any of his pending matters, and that he was not promised anything in exchange for his testimony. M.D. and Detective Shutters both testified that when M.D. spoke with law enforcement about the

case, he was advised that no promises would be made concerning his own cases. *Id.*, pp 113, 175.

On cross-examination, defense counsel asked M.D. if he had been in the Larimer County detention center because he had been charged with a Class 3 felony escape. The prosecutor objected. The court held a bench conference and the following exchange occurred:

> **[Defense Counsel]:** Your Honor, [M.D.] was given a plea bargain on those charges, which is what I am asking. *As part of the plea bargain, he agreed to testify truthfully in any future proceedings, including this one.* He received a plea bargain on that case. He testified in this case. *And I think I am allowed to inquire into that as well as the charges he faced which were reduced by the Prosecution.*
>
> **[Prosecutor]:** I didn't know where he was going given the questions prior to that. *I agree that [defense counsel] can question on what his charges were, what he pled to, and whether or not there were any promises made to him for that* disposition. But if he gets a very narrow scope –
>
> [. . .]
>
> **[Defense Counsel]:** Now, as far as the narrow scope, I do plan on asking him if he knows what the possible penalty was for the charges he faced while in custody that he pled down from.
>
> **[Court]:** So the original charge?

> **[Defense Counsel]:** Yes, that he pled up to 24 years, and he pled down to 6 months.
>
> **[Prosecutor]:** Judge, I think that's beyond the scope. *I think he can say you were charged with a Class 3 felony and you pled to a Class 2 misdemeanor.* But I don't think inquiring about the time, I think that would be used for improper purposes. *So I think the scope should be narrowed to the charge and the plea.*
>
> **[Court]:** I would agree.

Id., pp 115-16 (emphasis added).

Defense counsel then questioned M.D. about whether he was in the detention center because he was charged with a class 3 felony escape. M.D. confirmed that he was. Defense counsel asked him about the fact that he had been charged with the escape offense in November 2015, spoken to the prosecutor in *this* case in February 2016, and afterwards entered a plea agreement which brought his felony charge down to a misdemeanor in April 2016. Defense counsel asked M.D. if, as part of his plea bargain, he had agreed to "testify truthfully in any pending case in which [he was] called as a witness." M.D. confirmed this was part of his plea agreement. *Id.*, pp 117-18.

As part of his closing argument, defense counsel attacked M.D.'s credibility by stating:

> You heard what [M.D.] had to say on the stand. At the time [he] volunteered to tell the district attorney about [the defendant's] sudden confession, he was facing a Class 3 felony escape, a Class 3 felony. After talking to the district attorney, he got a plea bargain that dropped his charge down to a Class 3 misdemeanor. I guess [M.D.] finally found a way to escape without having to break out.

TR 11/17/16, p 25:2-9. Defense counsel suggested that M.D. was lying, and that he might have actually read the police reports, the defendant's notes, or something in the newspaper. *Id.*, p 25:10-14.

C. Authority & Analysis

Defendant argues that the trial court reversibly erred because it limited the scope of cross-examination to "the fact of an original felony charge and a misdemeanor plea." He asserts the jury should have been informed of the actual sentence received and what kind of sentence M.D. originally faced. OB, pp 19-20. Although the trial court would not permit inquiry into potential or actual penalties, it did permit defense counsel to question M.D. about (1) his original felony charge, (2) his plea

down to a misdemeanor offense, and (3) the fact that he agreed to testify truthfully if called as a witness in any pending cases as part of the plea agreement. Defendant's ability to cross-examine the witness was not severely limited. Therefore, defendant's contention fails.

The right of a defendant to confront witnesses against him is guaranteed by the Sixth Amendment of the U.S. Constitution and article II, section 16 of the Colorado Constitution. *Kinney v. People*, 187 P.3d 548, 558-59 (Colo. 2008). The primary interest secured by this right is the right of cross-examination. *Id.* at 559 (citing *Davis v. Alaska*, 415 U.S. 308, 315 (1974)). "However, the scope and duration of cross-examination is controlled by the trial court, and judges have wide latitude under the Confrontation Clause to impose reasonable limits on cross-examination because of concerns of harassment, prejudice, repetition, or marginal relevance." *Id.*, *see also Merritt v. People*, 842 P.2d 162, 166 (Colo. 1992).

Exposure of a witness's motivation for testifying is a "proper and important function of the constitutionally protected right of cross-examination." *Delaware v. Van Arsdall*, 475 U.S. 673, 678-79 (1986).

However, a trial court is not prohibited from imposing *any* limits on defense counsel's inquiry into potential bias. Rather, it may not *completely* prohibit or *severely limit* inquiry into that potential bias. *See Van Arsdall*, 475 U.S. at 679; *Kinney*, 187 P.3d at 559; *Merritt*, 842 P.2d at 167. A constitutional violation only occurs if the defendant was prohibited from "engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness, which leaves the jury with a significantly different impression of the witness's credibility." *People v. Houser*, 2013 COA 11, ¶ 59 (internal quotations omitted).

Here, the defendant was not prohibited or severely limited in his ability to inquire about M.D.'s potential biases or motive for testifying at trial. The court gave defense counsel the opportunity to question M.D. about pleading down from his initial felony charge to a misdemeanor offense. He was also permitted to question M.D. about whether he completed the plea agreement in his own case *after* he had spoken to the district attorney in this case, thereby suggesting an ulterior motive for testifying. Moreover, the witness acknowledged that

as part of his plea agreement, he had promised to testify truthfully in any future proceedings in which he was called as a witness.

Defense counsel's cross-examination highlighted the witness's potential motive and bias to the jury. Knowing the potential penalty of the original charge, or the actual penalty imposed, would not have left the jury with a significantly different impression of the witness's credibility because they had already heard testimony about the terms of the plea deal, and understood the alleged benefit of his bargain. *Houser*, ¶¶59-60. The jury was given sufficient information from the cross-examination to understand why M.D. might have been biased, and to infer that he was testifying as a result of a promise, hope, or expectation of leniency. *See Davis*, 415 U.S. at 318; *People v. King*, 498 P.2d 1142, 1144-45 (Colo. 1972).

In support of his argument, defendant compares this case to *People v. Houser*, 2013 COA 11. However, unlike here, the trial court in *Houser* limited cross-examination to such an extent that it left the jury with the impression that the witness had merely pled guilty to the original charges, and not that she had pled to a lesser charge after

speaking with law enforcement. As such, defense counsel's cross-examination would have appeared as "a speculative and baseless line of attack." *Houser*, ¶61 (quoting *Davis*, 415 U.S. at 318). There was nothing permitted in cross-examination to suggest that the witness testified based on a promise or expectation of leniency. *Id.*, ¶ 62.

Conversely, here, cross-examination was not limited in such a way that the jury wouldn't have understood the reasonable inference being argued – the witness received leniency because he agreed to testify in the pending proceedings. *See People v. Collins*, 730 P.2d 293, 300 (Colo. 1986) (no error when the jury had facts from which it could appropriately draw inferences relating to witness's reliability); *People v. Gilbert*, 12 P.3d 331, 339 (Colo. App. 2000) (if a jury is fully informed as to the original charge brought against the witness, as well as the charge to which the witness later pleaded guilty in exchange for testimony, the jury has been provided with adequate facts from which it can appropriately draw inferences related to bias and motive).

Defendant was not denied his confrontation rights simply because the jury did not know the potential penalty M.D. faced for the original

charge. *See Collins*, 730 P.2d at 299-300 (it was not error for the trial court to exclude inquiry into potential penalties as being irrelevant); *People v. Montoya*, 942 P.2d 1287, 1293 (Colo. App. 1996) (defendant is not denied his right to cross-examination if the trial court refuses to allow evidence concerning the difference in the range of possible penalties between the original charge and the charge actually sustained). Moreover, it was not an abuse of discretion for the trial court to limit cross-examination to exclude the marginally relevant information concerning actual punishment imposed. *Kinney*, 187 P.3d at 559; *Gilbert*, 12 P.3d at 339.

Even assuming *arguendo* that the trial court abused its discretion in prohibiting defendant from cross-examining the witness as to the actual penalty imposed, this error cannot be said to have so undermined the fundamental fairness of the trial so as to cast serious doubt on the reliability of the judgment of conviction. *Hagos*, ¶ 14. Defendant is entitled to a fair trial, but not a perfect one. *Van Arsdall*, 475 U.S. at 681. The defendant was not denied the opportunity to cross-examine M.D. The jury learned that he was a convicted felon and that he

received a favorable plea bargain reducing his class 3 felony to a misdemeanor.

Defendant's theory of the case was that the victim was not asleep at the time the defendant entered the apartment and that she had consensual sex with him. She then fabricated the rape because she didn't want her boyfriend to find out she cheated on him. TR 11/17/16, p 30:8-21. M.D.'s testimony was not the only evidence refuting defendant's version of events, and significant points of the witness's testimony were corroborated by the testimony of other witnesses.

- Testimony demonstrated the victim was severely intoxicated by the time she went home. TR 11/15/16, pp 84-85, 145-48, 153-54, 160, 179-80.
- The victim was placed in her bed by her friends and "immediately passed out." When her friends left 30-40 minutes later, she was still asleep. *Id.*, pp 148-49, 163-64.
- The victim's roommate testified that she shared a ride home with the defendant and he followed her into the apartment.

The victim was still asleep at that time. *Id.*, pp, 182-84; EX, pp 55-62.

- The victim testified that she woke up to the defendant penetrating her and she was still very drunk. *Id.*, pp 90-94, 187.
- The victim testified that when she pushed the defendant off of her, he got angry, yelled lewd and derogatory things, and broke a bunch of liquor bottles as he left. The victim's roommate heard the sound of breaking glass when she woke up to the victim yelling. Id., pp 92-93, 187-88. Photographs and video of the broken bottles were admitted into evidence. EX 16, pp 14-15.
- Defendant's DNA was found on the victim's underwear and vaginal swabs. TR 11/16/16, pp 150-53.
- Text message records revealed that the victim had not communicated with the defendant since the day they exchanged telephone numbers, two days prior to the rape. None

of the text messages invited defendant to meet up with the victim or to come to her apartment. *Id.*, pp 169-70.

Moreover, defendant was not completely prohibited or significantly limited in cross-examining M.D., such that the jury would not have understood the basis for defense counsel's argument about the witness's motive. *Cf. Van Arsdall*, 475 U.S. at 679 (trial court erred because it prohibited *all* inquiry into bias as a result of State's dismissal of pending public drunkenness charge) (emphasis in original); *Merritt*, 842 P.2d at 167-68 (complete prohibition on cross-examination concerning "use immunity" prevented defendant from exploring bias of witnesses); *People v. Bowman*, 669 P.2d 1369, 1376 (Colo. 1983) (trial court's ruling was erroneous because it prohibited *all* inquiry into charges, preventing any exploration of motive for testifying). Defendant was permitted to cross-examine the witness about his plea agreement that brought his conviction down from a felony to a misdemeanor. The witness admitted he entered into the plea agreement *after* speaking with the prosecutor assigned to this case, and he admitted that part of

that plea agreement was to testify truthfully in any future pending proceedings.

The trial court did not abuse its discretion in slightly limiting the cross-examination of the witness, and the defendant was not denied his right to confrontation. Reversal is not warranted.

II. The trial court did not abuse its discretion in admitting the victim's text message or M.D.'s testimony into evidence. A mistrial was not warranted.[1]

A. Standard of Review

The People agree that a trial court's evidentiary rulings are reviewed for an abuse of discretion. *Yusem v. People*, 210 P.3d 458, 463 (Colo. 2009). An evidentiary ruling will not be reversed unless it is manifestly arbitrary, unreasonable or unfair. *Yusem*, 210 P.3d at 463; *see People v. Rhea*, 2014 COA 60, ¶58.

The People also agree that the trial court's denial of a motion for mistrial is reviewed for an abuse of discretion. *People v. Santana*, 255 P.3d 1126, 1130 (Colo. 2011). Because a mistrial is the most drastic of

---

[1] Defendant's Arguments II and III.

remedies, one is warranted only when the prejudice to the accused is too substantial to be remedied by other means. *People v. Mersman*, 148 P.3d 199, 203 (Colo. App. 2006). A trial court abuses its discretion when its decision is manifestly arbitrary, unreasonable, or unfair, or based on an erroneous understanding or application of law. *People v. Johnson*, 2017 COA 11, ¶ 39; *People v. Houser*, 2013 COA 11, ¶ 57. The trial court is in the best position to evaluate any adverse effect of an improper statement, so it has considerable discretion in whether to grant a mistrial. *People v. Van Meter*, 2018 COA 13, ¶9.

B. Preservation

The People agree the defendant objected to admission of the victim's testimony about the contents of a text message pursuant to CRE 403 and CRE 701. TR 11/15/16, pp 135-37. When the trial court overruled defense counsel's objection to admission, defense counsel moved for a mistrial. TR 11/15/16, p 138:2-19. Non-constitutional trial errors preserved by an objection are reviewed for harmless error. *Hagos*, ¶ 12; *People v. Salas*, 2017 COA 63, ¶10; *People v. Pernell*, 2014 COA 157, ¶26. Reversal is required only if the error "substantially

influenced the verdict or affected the fairness of the trial proceedings." *Hagos*, ¶ 12.

People also agree that no objection was made to the admission of M.D.'s testimony regarding the defendant's giving the victim a "roofie." Therefore, plain error review would be appropriate. *Hagos*, ¶ 14.[2]

C. The trial court did not err in allowing the prosecution to ask the victim about her text messages and it properly denied the defendant's request for a mistrial.

1. Relevant Facts

Defendant's theory of the case was that (1) the victim was not asleep at the time defendant entered the home, and (2) she chose to have consensual sex with him when he came into her room. On cross-examination, defense counsel attempted to undermine the credibility of the victim by asking her questions about her state of mind and her

---

[2] To the extent defendant argues that the court violated his right to a fair trial by admitting the evidence challenged on appeal, such alleged evidentiary errors are not reviewed as constitutional error. *Yusem v. People*, 210 P.3d 458, 469 n. 16 (Colo. 2009) (erroneous admission of evidence is not reviewed for constitutional error); *see also People v. Zapata*, 2016 COA 75M, ¶ 38.

memory of the events. He thoroughly questioned the victim on her memory and her level of cognizance. He asked her about when she went to sleep, if she remembered anything after she arrived home, and if she was still intoxicated when she woke up to the defendant raping her. He attempted to undermine the credibility of the victim's story by repeatedly inquiring about her level of intoxication and juxtaposing it against her assertion that she was able to fight the defendant off of her. TR 11/15/16, pp 123-29.

Defense counsel then proceeded to cross-examine the victim on the communications she had with her roommate immediately after the rape. He highlighted that the victim did not clearly recall whether she immediately told her roommate that she had been raped. Further, he attempted to obtain her agreement that when she texted her roommate to ask if they should call the police, it was in reference to the defendant breaking liquor bottles on the way out the door, and not about the rape.

The following exchange occurred:

> **[Defense Counsel]**: Okay. And after you spoke with [K.M.], you each went back into your separate bedrooms, correct?

[Victim]: Yep.

[Defense Counsel]: And this is when you finally told [K.M.] that [the defendant] raped you in that text, correct?

[Victim]: Yeah.

[Defense Counsel]: Really? Isn't it true that the actual wording of your text was something different; that you actually texted Should I call the cops on this guy about breaking the bottles?

[Victim]: I don't remember.

[Defense Counsel]: Okay. You never actually texted [K.M.] to tell her that [the defendant] assaulted you?

[Victim]: I don't remember.

[Defense Counsel]: Do you remember Detective Shutters asking you to turn over your phone after you alleged this incident occurred?

[Victim]: Yeah.

[. . .]

[Defense Counsel]: Did Detective Shutters ever inform you whether he was able to retrieve the texts from your phone or not?

[Victim]: Yeah.

[Defense Counsel]: Okay. After [the defendant] left, after you spoke to [K.M.], after you texted [her], did you call the police and tell them you had been sexually assaulted?

[Victim]: Yes, the next morning.

TR 11/15/16, pp 128-29.

Defense counsel continued to question the victim on her level of physical and mental impairment leading up to and after the sexual assault with the purpose of discrediting the victim's assertion that she was drunk and asleep when the rape occurred, and that she was still in an impaired state after the rape occurred. *Id.*, pp 130-32.

On re-direct examination, the prosecutor clarified with the victim that she was "having difficulty putting together various pieces of information" on the morning after the rape. *Id.*, p 134:13-22. The prosecutor then asked the following questions:

> **[Prosecutor]:** [S.W.], [defense counsel] asked you about some text messages that you sent to [K.M.] after the defendant left. *Did you send a text message to [K.M.] saying Should I call the cops on that guy?*
>
> **[Victim]:** Yeah.
>
> **[Prosecutor]:** Okay. *Do you recall sending a text message to [K.M.] immediately or thereafter saying, I honestly feel like I got roofied.*
>
> **[Defense Counsel]:** Objection, Your Honor. Could we approach?

Id., pp 135-36.

Defense counsel asserted there was no evidence in the drug testing that the victim had been "roofied." The prosecutor responded that defense counsel had opened the door by cross-examining the victim about the text messages she sent to her roommate, and the jury "deserves to hear all of the text messages she sent to [K.M.]." The prosecutor also noted that M.D. would be testifying to the fact that defendant told him he had "roofied" the victim. *Id.*, p 136:5-17.

Defense counsel argued that it was improper opinion testimony, as well as prejudicial pursuant to CRE 403. The prosecutor disagreed, arguing that defense counsel had conducted extensive cross-examination concerning text messages that the victim "did or did not send," and the text message provided context for the victim's state of mind. *Id.*, pp 136-37.

The court overruled the objection and found that:

- Defense counsel had opened the door "in terms of text messages that this witness said to her roommate immediately after;"

- Defense counsel opened the door to the context of the text messages between the victim and her roommate; and
- The unfair prejudice did not outweigh the relevance.

The court offered to give a limiting instruction to the jury. Defense counsel responded that, based on the court's ruling, he had to make a motion for a mistrial. TR 11/15/16, p 138:2-5.

The prosecutor responded that the evidence had only come in after defense counsel cross-examined the victim concerning the text messages. She further noted that the contents of the text did not accuse the defendant of giving her a date-rape drug. Rather, they indicated the victim *felt* as though she had been "roofied." The prosecutor argued that defense counsel had cross-examined the victim on her state of mind and what actions she took or didn't take. The second text message was probative of the victim's mental state, and her condition at the time the text messages were sent. Id., p 138:7-18.

The court denied the mistrial based on his previous ruling that defense counsel opened the door in asking about the text messages between the victim and her roommate. *Id.*, p 138:19-24.

The court provided a limiting instruction as follows: "In regard to the text message concerning the roofie -- the statement concerning roofie, the jury is directed to not take that as a statement of truth as to whether or not [the victim] was or was not roofied." Id., p 139: 12-21.

2. Authority & Analysis

The defendant argues that the trial court erred in allowing the prosecutor to elicit testimony regarding the victim's text message indicating she felt like she got "roofied." Specifically, he alleges the testimony was highly prejudicial and should have been excluded pursuant to CRE 403. OB, pp 25, 37, 41. He further asserts that this was testimony of an uncharged crime for which no limiting instruction could cure the prejudice. OB, p 26. This contention fails.

Under the circumstances of this case, the trial court acted within its discretion. As the prosecutor argued, the text was probative of the victim's state of mind. *See* CRE 803(3). Further, prior consistent statements may be used for rehabilitation when a witness' credibility has been attacked. *See People v. Eppens*, 979 P.2d 14, 21 (Colo. 1999); *People v. Banks*, 2012 COA 157, ¶¶35-36. Moreover, the testimony was

admissible because the defense "opened the door" by introducing other statements made "at the same time, under the same circumstances, and concerning the same event." *People v. Robinson*, 874 P.2d 453, 462 (Colo. App.1993); *see also People v. Heredia-Cobos*, 2017 COA 130, ¶ 20, *cert denied*, 17SC814 (Colo. Apr. 9, 2018); *People v. Hise*, 738 P.2d 13, 16 (Colo. App. 1986). Allowing admission of the additional statements prevents one party from gaining and maintaining an unfair advantage by selectively presenting facts that, without elaboration or context, which would create an incorrect or misleading impression. *Venalonzo v. People*, 2017 CO 9, ¶ 44.

Contrary to defendant's argument, the text message was not inadmissible and irrelevant. The contents of the text message did not contain allegations of uncharged conduct, but rather referenced the victim's then-existing mental state. *See* CRE 803(3); *People v. Garcia*, 2012 COA 79, ¶ 62, 296 P.3d 285 (appellate court may affirm based on any ground supported by the record). The text message indicated only that the victim *felt* like she had been "roofied." She did not testify that the defendant had drugged her, or that she thought that he had done

so. TR 11/15/16, pp 135, 138. Her then existing mental state affected her clarity in recalling the series of events, as well as her decision-making about reporting. TR 11/15/16, pp 92, 94, 96, 106.

Moreover, the statement was admissible to rehabilitate the victim after defense counsel thoroughly attacked her credibility. *Eppens*, 979 P.2d at 21. The victim was subject to cross-examination, and the substance of the text message was consistent with the victim's testimony that her mental faculties were impaired during, and immediately after, the rape. Further, the contents of the text message refuted defendant's defense of consent – specifically, his assertion that the victim was more lucid then she was admitting, had willingly had sex with him, and later fabricated the rape story because she didn't want her boyfriend to find out she cheated on him. TR 11/15/16, pp 124-25, 130-31; TR 11/17/16, pp 28-30, 34; *see Gibbens*, 905 P.2d 604, 667 (Colo. 1995) (an appellate court must afford the evidence the maximum probative value attributable by a reasonable fact finding and the minimum unfair prejudice to be reasonably expected).

The prosecution did not pursue the line of inquiry until the cross-examination, and the victim's testimony was permissible because defense counsel had opened the door to the text messages. The victim's testimony, on both direct examination and cross-examination, was about the contents of text messages she sent to her roommate "at the same time, under the same circumstances, and concerning the same event." *Robinson*, 874 P.2d at 462. As the trial court noted in its ruling, the messages were sent in close sequence from the victim's bedroom shortly after her rape (at the same time and under the same circumstances) and demonstrated the context of the rape and what actions the victim considered taking in response (concerning the same event). TR 11/15/16, pp 128-29, 135-38.

Moreover, defense counsel had cross-examined the victim on the first text message in an effort to discredit her, and to demonstrate what he perceived as inconsistencies in her story. The prosecution was permitted to rebut the adverse inference urged by the selective statement introduced. *See People v. Tenorio*, 590 P.2d 952, 958 (Colo. 1979) (prosecutor had a right to explain or rebut any adverse inferences

which might have resulted from opening the door on cross-examination); *People v. Rollins*, 892 P.2d 866, 873-74 (defense counsel strategy to discredit victims that caused evidence to be admitted cannot be claimed as error on appeal); *People v. Tyler*, 745 P.2d 257, 259 (Colo. App. 1987) (holding that where impeachment is general in nature, including the implication that the victim's story was "fabricated or contrived," it was proper to give the jury access to all the relevant facts, including the victim's entire report to police detailing her story).

Further, the trial court provided a limiting instruction that the jury was not to consider the statement about the "roofie" as evidence that the victim had, in fact, been drugged. TR 11/15/16, p 139: 12-21; *see People v. Lopez*, 129 P.3d 1061, 1066 (Colo. App. 2005) (limiting instruction would alleviate concern for potential unfair prejudice).

The trial court did not abuse its discretion in admitting the victim's testimony because the content of the text message was both admissible and relevant. Nor did it err in denying the defendant's motion for a mistrial. The defendant asserts that the trial court's refusal to grant a mistrial was a gross abuse of discretion. He contends

that the limiting instruction was ineffective and did not inform the jury the text was only admitted to show the victim's state of mind. He argues that the jury did not learn that drug testing had not revealed the victim had been "roofied." However, defense counsel did not request the jury be so advised as part of the limiting instruction.

The trial court was in the best position to gauge the effect of this evidence on the jury, and it acted well within is discretion in denying the motion for mistrial and in providing a limiting instruction. *People v. Ned*, 923 P.2d 271, 276 (Colo. App. 1996); *People v. Conley*, 804 P.2d 240, 245 (Colo. App. 1990). Even assuming any error occurred, a single-sentence text message, in the context of the overwhelming evidence against the defendant, could not reasonably be said to have "substantially influenced the verdict or affected the fairness of the trial proceedings." *Hagos*, ¶ 12.

D. M.D.'s testimony was properly admitted at trial.

1. Relevant Facts

Defendant was charged with sexual assault (physically helpless). The elements of the offense are as follows:

1. That the defendant,
2. In the State of Colorado, at or about the date and place charged,
3. Knowingly,
4. Inflicted sexual penetration on a person,
5. Who was physically helpless, and
6. The defendant knew the person was physically helpless and had not consented.

CF, p 30; *see also* COLJI-Crim, 3-4:09 (2017). A person is "physically helpless" if they are unconscious, asleep, or otherwise unable to indicate willingness to act. CF, p 36; COLJI-Crim, F:278. It was the prosecution's theory that the victim was physically helpless because she

was highly intoxicated and asleep at the time of the assault. TR 11/15/16, pp 63-65.

The defendant met M.D. while in custody at the Larimer County detention facility. M.D. testified at trial that the defendant bragged to him about this case on a few separate occasions. As part of his testimony, M.D. made the following statements:

> On a few different occasions [the defendant] told me that he had had sex with [the victim]. That she did not know that he had given her a roofie, which is, I guess, a date rape drug, I guess I would call it. Or I shouldn't say I guess. That's what it is.

TR 11/16/16, p 108:19-23.

> On one occasion he described the woman as a dead fuck. He said that he tried to get her to do oral sex, and she couldn't do it because she was out of it. He got angry, and that is when the whole anger thing started.
>
> And there was an altercation, yelling an – throughout the house and some liquor bottles were broken. And, you know, after all that stuff he had left. He said that it was kind of a joke really that she couldn't perform the way he wanted her to perform, and he couldn't get his penis hard because of the fact she was a dead fuck. And I apologize for my profanity.

Id., p 109-10. The prosecutor asked M.D. to clarify whether the victim knew what was going on at the time. He responded that defendant "said basically the roofie had kept her from knowing what was going on." *Id.*, p 110:7-10. Defense counsel did not object to this testimony.

On cross-examination, defense counsel brought up M.D.'s testimony about the "roofie" in an attempt to undermine his credibility. The following exchange occurred:

> **[Defense Counsel]:** Thank you. Now, [M.D.], you said that [defendant] told you that he used a roofie on [the victim]?
>
> **[Witness]:** Yes, sir.
>
> **[Defense Counsel]:** According to what you say, he actually told you that he gave [the victim] a roofie when he went into her room when he got to their apartment, correct?
>
> **[Witness]:** Is that what I said?
>
> **[Defense Counsel]:** I am asking you, sir. You are the one that has the story.
>
> **[Prosecutor]:** Objection, Your Honor.
>
> **[Defense Counsel]:** I'm sorry. I'm sorry.
>
> **[Court]:** Sustained.
>
> **[Witness]:** When he gave her the roofie, I have no idea. Maybe I misspoke and said he gave her the roofie at the time. What I meant to say was

> that he gave her the roofie and then he ended up going into her room. I have no idea when he gave her the roofie, sir.
>
> [. . .]
>
> **[Defense Counsel]:** [M.D.], do you remember telling Detective Shutters that [defendant] said he had given [the victim] a roofie when he went into her room when he first got into the apartment?
>
> **[Witness]:** Yes.
>
> **[Defense Counsel]:** You do remember telling him that?
>
> **[Witness]:** Yes.

TR. 11/16/16, pp 118, 120.

As part of his closing argument, defense counsel argued that M.D. was not a credible witness specifically because he had originally told the Detective that defendant drugged the victim at her apartment, but changed his story at trial to indicate that the defendant had drugged the victim earlier in the night. Defense counsel pointed out there was no evidence putting the defendant and the victim together earlier in the night:

> *The main thing to take away from his testimony is that he got the supposed facts wrong.* He says he got the information straight from the horse's

> mouth from a confession from [defendant]. But the information he told you was wrong.
>
> *You heard that he told Detective Shutters that [defendant] drugged [victim] at her apartment.* But when confronted with the fact that [the victim] didn't go home with [the defendant], *in court he suddenly remembered he drugged her when they were out at the bars earlier in the evening.* Well, that doesn't work either because several witnesses told you they never saw [defendant] with [victim]. [. . .]

TR 11/17/16, pp 25-26 (emphasis added).

2. The testimony was relevant and not unduly prejudicial.

Defendant asserts that M.D.'s testimony was irrelevant because there was no charge or claim that a date rape drug was used as part of the sexual assault. OB, p 30. Even if relevant, it is defendant's contention that the relevance was substantially outweighed by prejudice, and served only to inflame the passions of the jury. OB, pp 30, 32-33.

As part of its case, the prosecution was required to prove that the victim was physically helpless, and that the defendant knew her condition at the time of the assault. Whether a victim consented has

been recognized as a material fact pertaining to both the *actus reus* and the *mens rea* of the crime of sexual assault. *See People v. Everett*, 250 P.3d 649, 655 (Colo. App. 2010); *People v. Martinez*, 36 P.3d 154, 159 (Colo. App. 2001). Defendant's knowledge and intent was a material element because it was "the other side of the coin" of consent. *People v. Martinez*, 36 P.3d 154, 159 (Colo. App. 2001). M.D.'s testimony was logically relevant to disproving consent and showed the defendant was conscious of guilt, and by further inference, that he committed the crime charged. *See People v. Acosta*, 2014 COA 82, ¶ 59; *People v. Eggert*, 923 P.2d 230, 234 (Colo. App. 1995).

Here, M.D.'s testimony showed that the defendant knowingly raped a physically helpless victim. *Acosta*, ¶ 59 (conduct inconsistent with a party's position at trial will usually be relevant to rebut the position). Defendant's admissions to M.D. related to the facts and circumstances of the sexual assault, and connected him to the charged crime. The statements were relevant regardless of whether defendant *actually* gave the victim a "roofie." The fact that defendant *told* another person that he "roofied" the victim and had sex with her was relevant

and probative evidence of the sexual assault, and also demonstrated that defendant possessed consciousness of guilt. His bragging supported the inference that defendant had sex with the victim knowing she was unconscious and unable to consent. *Cf. People v. Durre*, 713 P.2d 1344, 1346 (Colo. App. 1985) (admission that directly connect defendant with the crime charged indicate consciousness of guilt). The trial court did not abuse its discretion in permitting the testimony.

Even assuming *arguendo* that admission of the statement was improper, plain error did not occur. The testimony elicited by the prosecution that defendant bragged that he had roofied the victim cannot be said to have been so substantially prejudicial as to cast serious doubt on the reliability of the judgment of conviction. *Hagos*, ¶ 14. The evidence was admitted alongside other properly admitted admissions by the defendant that were equally serious. *Cf. People v. Buell*, 2017 COA 148, ¶43 (improperly admitted evidence has less of an impact on a verdict when the court admits it alongside properly admitted evidence of more serious acts).

Significantly, defense counsel did not object, which supports the conclusion that the statement was not overly damaging, and defense counsel was able to suggest M.D.'s testimony about the "roofie" showed he got the facts wrong and was not credible. Further, the jury was instructed that they were not to be influenced by sympathy, bias or prejudice in reaching their decision. CF, p 18. It is presumed that jurors follow the instructions that they receive. *People v. Ibarra*, 849 P.2d 33, 39–40 (Colo. 1993) (absent any showing of jury bias, the jury is presumed to have "understood and heeded the trial court's instructions"). Moreover, any error alleged was not so inflammatory or prejudicial that the jury could not put it into perspective. This conclusion is supported by the fact that the defendant was acquitted as to the other charge. *See People v. Barnum*, 217 P.3d 908, 910 (Colo. App. 2009) (acquittal on other charges alleged to occur on the same day, no reasonable probability that improper evidence contributed to conviction). The defendant's claim fails.

CONCLUSION

For the foregoing reasons and authorities, defendant's conviction should be affirmed.

PHILIP J. WEISER
Attorney General

/s/ Jennifer L. Carty
JENNIFER L. CARTY, 48991*
Assistant Attorney General
Attorneys for Plaintiff-Appellee
*Counsel of Record

AG FILE: DOCUMENT2

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **ANSWER BRIEF** upon **CYNTHIA A. HARVEY** and all parties herein via Colorado Courts E-filing System (CCES) on January 29, 2019.

/s/ Tiffiny Kallina

Word Count Certification: 5,359

COURT OF APPEALS, STATE OF COLORADO 2 East 14th Avenue Denver, CO 80203 Larimer County District Court Honorable Julie Kunce Field, Judge Case Number: 15CR1466 PLAINTIFF-APPELLEE: PEOPLE OF THE STATE OF COLORADO vs DEFENDANT-APPELLANT: CHAYCE AARON ANDERSON Attorney for Defendant/Appellant: Harvey Law Firm Cynthia A. Harvey, Reg. No. 38511(ADC) PO Box 158 Castle Rock, CO 80104 Phone: 720-242-6543/ Fax: 720-889-9703 email: charvey@harveylawfirm.net	▲ COURT USE ONLY ▲ Case Number: 17CA469
REPLY BRIEF	

APPENDIX F

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

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

xIt contains 5,359 words (principal brief does not exceed 9,500 words; reply brief does not exceed 5,700 words).

The opening 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).

x**For each issue raised by the appellant**, the brief contains under a separate heading before the discussion of the issue, a concise statement: (1) of the applicable standard of appellate review with citation to authority; and (2) whether the issue was preserved, and, if preserved, the precise location in the record where the issue was raised and where the court ruled, not to an entire document.

☐**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.

Cynthia Harvey

Digitally signed by Cynthia Harvey
DN: cn=Cynthia Harvey, o=Harvey Law Firm, ou, email=charvey@harveylawfirm.net, c=US
Date: 2019.02.21 15:36:29 -07'00'

Signature of attorney or party

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules

Constitutional Provisions

ARGUMENT

I. Whether the district court reversibly erred when it improperly limited the scope of cross-examination of the jailhouse informant thereby denying Mr. Anderson his constitutional right to confrontation.

The Answer asserts Mr. Anderson's claim the trial court violated his constitutional right to confrontation is unpreserved. This argument is flawed and the Answer's reliance on *People v. Campos*, 2015 COA 47, 29 and *People v. Wilson*, 2014 COA 114, 30-31 is misplaced. See, A.B., p. 8.

In *Campos*, defense counsel argued that pursuant to CRE 608(b), on re-cross, he should be allowed to question whether the witness, Martinez, had a social security number and whether he was required to give a social security number when he went to work at a specific company because the questions would provide relevant testimony to impeach Martinez's credibility as to specific instances of conduct probative of the witness's character for truthfulness. The court did not allow the questions.

On appeal, counsel argued the trial court violated Campos' right to confrontation. The Division determined the Confrontation Clause issue raised on appeal was not preserved and reviewed for plain error. It then found counsel had already extensively impeached Martinez' credibility during initial cross-examination and that precluding responses to those two questions about social

security numbers did not excessively limit defense counsel's ability to cross-examine regarding credibility. Further, and unlike the prohibited questions and counsel's argument for allowing the questions in the instant case, the excluded questions didn't relate to the *witnesses' bias, prejudice, or motive for testifying*, areas the supreme court has noted are particularly important to a defendant's confrontation rights. Thus, there was no abuse of discretion and no violation of Campos' Confrontation Clause rights. *Campos*, 2015 COA 47, ¶¶ 29-31, ¶¶ 34-39 (emphasis added).

Additionally, in *Wilson*, also pursuant to CRE 608(b) defense counsel wanted to cross-examine A.M., a witness to the assault Wilson was charged with, as to whether she provided truthful answers to the detective regarding a prior arrest for narcotics and what the narcotics were, and further, to ask the detective whether the witness was entirely forthcoming in her answers. The trial court did not allow the questions.

On appeal, counsel raised a confrontation violation issue. The Division found counsel preserved a CRE 608(b) objection but not a Confrontation Clause violation. The Division confined its analysis to the proposed cross-examination of A.M. The Division determined A.M.'s arrest on another occasion did not result in a pending charge but instead raised a collateral issue, and held the court did not

abuse its discretion in prohibiting the questions regarding the narcotics arrest. *Wilson*, 2014 COA 114, ¶¶ 25-31, ¶ 34, ¶¶ 37-39.

The proposed cross-examination of A.M., unlike the instant case, was not within the category of cross-examination for which the Colorado Supreme Court has ruled "[T]he trial court should allow broad cross-examination regarding a witness's motive for testifying when the witness has a pending case and his or her testimony against the defendant might be influenced by a promise of, or hope or expectation of, immunity or leniency with respect to the pending charges against him, as a consideration for testifying against the defendant." *Wilson*, 2014 COA 114, ¶ 37, quoting, *Kinney v. People*, 187 P.3d 548, 559 (Colo. 2008)(emphasis in original, internal quotation marks omitted).

Here, the questions counsel wished to ask the jail house informant in this case about the details of the plea agreement, including the greatly reduced sentencing, from maximum 24 years to maximum six months, went directly to the sort of cross-examination the right to confrontation protects and counsel's argument in support of proposed questioning was sufficient to alert the court as to the confrontation violation and preserve the issue. There was no claim related to CRE 608(b), the arguments were directly tied to concerns the Confrontation Clause are meant to protect.

An accused's right to confront the witnesses against him is guaranteed by the Confrontation Clauses of the United States and Colorado Constitutions. U.S. Const. Amends. VI, XIV; Colo. Const. art. II, § 16. The purpose behind this right is to, *inter alia,* "prevent conviction by [e]x parte affidavits" and to afford an accused an opportunity to cross-examine the witnesses against him. *People v. Bastardo,* 554 P.2d 297, 300 (Colo. 1976); *People v. Dement,* 661 P.2d 675, 679 (Colo. 1983); *Crawford v. Washington,* 541 U.S. 36, 50 (2004). "Accordingly, we must protect the most obvious manifestation of that right - the opportunity for cross-examination." *People v. Fry,* 92 P.3d 970, 975 (Colo. 2004).

People v. Houser, 2013 COA 11, ¶¶ 58-63, *reh'g denied* (Apr. 18, 2013), *cert. denied,* 13SC350, 2014 WL 4403023 (Colo. Sept. 8, 2014) provides useful analysis, and is fully set forth in the Opening at pages 16-17.

And where, as here, questioning designed to show a prototypical form of bias is precluded, and the jury was not provided information as to the original charges, the reduced charges, including the actual penalty Delano was subject to and the sentence he received, the defendant's Confrontation Rights have been violated and the error is reversible. See, *Houser*, ¶¶ 58-63.

At trial, the prosecution called a jailhouse witness, Delano, to testify regarding statements Mr. Anderson allegedly made to Delano regarding this case.

As in *Houser*, above, Delano received significant leniency in the charges and sentencing range for the offense he ultimately pled guilty to. Part of his plea deal required he testify in this case.

Delano testified he had multiple felony convictions, and was not in jail at the time he testified. He was previously incarcerated at Larimer County detention facility where he met Mr. Anderson. [R. Tr, 11/16/16, pp. 105:12-107:11].

Delano testified Mr. Anderson told him he had sex with S.W. and had given her a date rape drug. Mr. Anderson told him he had sex with S.W. and S.W. didn't know it. He said Mr. Anderson used profanity when he described the sex, that Mr. Anderson tried to get S.W. to do oral sex and got angry when she couldn't. Mr. Anderson yelled and broke some liquor bottles when he left.

Delano said he was not promised anything for providing information. [R. Tr, 11/16/16, pp. 108:5-113:20].

Counsel asked if Delano was in Larimer County detention when he had conversations with Mr. Anderson, and he asked if he was there because he was charged with a class three felony escape. The prosecutor objected and the parties approached. Defense counsel argued Delano was given a plea bargain on those charges and as part of the bargain Delano agreed to testify in future proceedings, including this one. The prosecutor argued counsel could only ask what the original

charge was, what the plea was, and whether he was promised anything insisting the scope was very narrow. The court agreed. [R. Tr, 11/16/16, pp. 114:5-115:18].

Defense counsel argued he wanted to ask Delano about the original range of up to 24 years and the plea of a maximum of six months. The prosecutor argued only the charge and plea were permissible. The court sustained the objection. [R. Tr, 11/16/16, pp. 115:19-116:25].

The proposed questions went to the heart of Mr. Anderson's Confrontation rights, because the questioning was meant to elicit answers that went to whether Delano had any particular motive for testifying such that his testimony might be influenced by a promise of, or hope or expectation of, immunity or leniency with respect to the pending charges against him, as a consideration for testifying against Mr. Anderson. This is exactly the type of questioning for which trial courts should allow broad cross-examination and is at the center of what the Confrontation Clause is meant to protect.

Here, counsel's basis for the desired questions, to show Delano's plea agreement, including testifying against Mr. Anderson, resulted in a sentence risk reduction of 24 years down to a maximum of 6 months, surely could provide a potential motive or bias on the basis of a hope for leniency for entering the agreement and testifying against Mr. Anderson, and was sufficient to preserve the

Confrontation violation. There was no CRE 608(b) argument, nor any relevancy arguments. The proposed testimony, and argument for allowing the questions, goes to the heart of the Confrontation Clause and was sufficient to alert the court.

The jury was not informed during questioning of the length of time Delano originally faced, or his ultimate sentence, amounting to benefit of a decreased risk of approximately 23 ½ years exposure. Here again, the proposed questions regarding this significantly reduced sentencing exposure, go to the heart of the Confrontation Clause, the jury was denied the information and Mr. Anderson's constitutional right to confrontation was violated.

Here, the court reversibly erred by limiting cross-examination to solely the fact of an original felony charge and a misdemeanor plea. The jury was not informed the actual sentence received, nor the extent of the sentence Delano originally faced, which was up to 24 years in the Department of Corrections. Delano was the prosecution's star witness, and his credibility or lack thereof key. The evidence against Mr. Anderson was not substantial and Delano's testimony was critical to either corroborating or calling into doubt the testimony of S.W. His motive for providing this testimony was also critical and Mr. Anderson was unable to cross-examine him as to this motive.

Further, just as in *Houser*, there was a wide disparity in the charges, his ultimate plea deal provided significant lenience in that he did not face any time in the Department of Corrections and would not have or face an additional felony conviction. Thus, and as with *Houser*, it is reasonable that Delano's testimony "might [have] be[en] influenced by a promise of, or hope or expectation of, immunity or leniency." *Houser*, ¶ 62; quoting, *People v. King*, 494 P.2d 1142, 1144-45 (Colo. 1972).

Additionally, the Answer's claim at pages 16 to 17 that sufficient cross-examination was allowed is flawed and its reliance on *People v. Gilbert*, 12 P.3d 331, 339 (Colo. App. 2000) is misplaced. In *Gilbert*, and unlike here, defense counsel sought, and the court declined, to provide the jury with a limiting instruction at the conclusion of the trial describing in detail all of the portions of the plea agreement entered into by a witness who testified regarding 404(b) other bad acts, but it did provide limiting instructions regarding the purpose of the 404(b) testimony. The Division upheld the decision.

The Division specifically found that counsel engaged in specific and extensive cross-examination, including the plea agreement and reduced sentence, and it entered the actual plea agreement into evidence. Counsel also did not ask for the limiting instruction at the time of the witnesses' testimony. The other

witness testified she had not been charged with murder or robbery, and the court also submitted defendant's theory of the case instruction to the jury which specifically noted witnesses received beneficial treatment, reduced charges and sentences, and one was charged with nothing at all. *Gilbert*, 12 P.3d at 338-339.

Thus, the Division found the jury had been provided adequate information. *Id.* at 339. Here, the jury was not informed of the reduction in Delano's sentence, from a possible 24 years to a maximum of 6 months, the testimony by Delano was not limited for 404(b) purposes, the plea agreement itself was not admitted, and the court limited the scope of cross-examination regarding the actual sentence and the actual reduction. The jury was not provided testimony as to the actual punishment.

The Answer's reliance on *People v. Collins*, 730 P.2d 293, 299-300 (Colo. 1986) is also misplaced. See, A.B., pp. 16-17. In *Collins*, unlike here, the jury was provided information the witness received a reduced charge along with a deferred sentence and two years of probation. The only information the court did not allow was defense counsel's question of what sentence the original charge provided. *Id.* at 299-300.

Further, and as noted in *Houser* discussed extensively in the Opening, when a jury is provided adequate facts to be "fully informed as to the original charge brought against a prosecution witness as well as the charge to which the witness

later pleaded guilty in exchange for his or her testimony, *and the jury also hears about the penalty actually received"* the Confrontation Clause is satisfied. (emphasis added). *Houser*, at ¶ 60; citing, *People v. McKinney*, 80 P.3d 823, 829 (Colo. App. 2003)(Confrontation rights not violated when the jury is informed of the original charges, the charges to which the witness pled guilty, *and the penalty imposed.*), *rev'd on other grounds*, 99 P.3d 1038 (Colo. 2004)(emphasis added); quoting, *People v. Montoya*, 942 P.2d 1287, 1293 (Colo. App. 1996). Here, the court did not allow either questions revealing the original sentencing range, 24 years, or the resulting maximum punishment Delano was actually subject to as the result of his plea, six months.

And, the error is not harmless. If a reasonable possibility exists that the error contributed to the verdict, then the error is not harmless beyond a reasonable doubt. *People v. Owens*, 183 P.3d 568, 575 (Colo. App. 2007); citing, *Chapman v. California,* 386 U.S. 18, 24, 87 S.Ct. 824, 828, 17 L.Ed.2d 705 (1967); *People v. Jurado,* 30 P.3d 769, 772 (Colo. App. 2001).

As the result of this error, Mr. Anderson's constitutional right to confrontation was violated and the error is reversible. Further, even if the Court finds the constitutional error is not preserved, Mr. Anderson's constitutional right to confrontation was violated and the error is plain. The testimony counsel sought

to elicit goes to the heart of Delano's potential bias and motive to testify against Mr. Anderson, based upon hope of leniency which he received in the form of a sentencing risk reduction of more than 23 years. This testimony also is of the sort where courts should exercise broad discretion in cross-examination.

"[T]he trial court should allow broad cross-examination regarding a witness's motive for testifying when the witness has a pending case and his or her testimony against the defendant might be influenced by a promise of, or hope or expectation of, immunity or leniency with respect to the pending charges against him, as a consideration for testifying against the defendant." *Wilson*, 2014 COA 114, ¶ 37; quoting, *Kinney v. People*, 187 P.3d 548, 559 (Colo. 2008)(emphasis in original, internal quotation marks omitted).

Here, and unlike the Answer's assertion that to show reversible error a prohibition of all inquiry into bias is necessary (A.B., pp. 20-21) the proposed testimony relates to a prototypical form of bias and the court's error in precluding it is obvious, substantial, and undermines the fundamental fairness of the trial itself, casting serious doubt on the reliability of the judgment of conviction. See, *Hagos v. People*, 2012 CO 63, ¶ 14.

Other than the alleged victim, her roommate and their friends, all of whom had been drinking, Delano provided a significant portion of testimony against Mr.

Anderson and Delano's credibility at trial, along with his potential bias, motive or hope for leniency affecting his bias, was key. The court's exclusion of the proposed testimony was error, even if subject to plain error analysis. This Court should reverse Mr. Anderson's conviction and remand his case for a new trial.

II. Whether the district court reversibly erred in admitting highly prejudicial and irrelevant evidence describing uncharged, worse crimes. A mistrial was warranted. [1]

Evidence is not admissible if it is not relevant. CRE 402. To be relevant, evidence must have a tendency to make the existence of any fact of consequence to determination of the action more or less probable than it would be without the evidence. CRE 401.

Where the probative value of logically relevant evidence is substantially outweighed by the danger of unfair prejudice, a trial court may exclude it. CRE 403. Although CRE 403 favors admission of relevant evidence, "the rule is an important tool to exclude matters of scant or cumulative probative force." *People v. McClelland*, 350 P.3d 976,983-84 (Colo. App. 2015); quoting, *Yusem v. People*, 210 P.3d 458, 467 (Colo. 2009) (internal quotation marks and alterations omitted).

[1] Issues II and III from the Opening for ease of review as they are combined in the Answer.

Evidence is unfairly prejudicial if it has an undue tendency to suggest a decision using an improper basis, *commonly but not necessarily an emotional one*, such as sympathy, hatred, contempt, retribution, or horror. *McClelland*, 350 P.3d at 984 (emphasis added); citing, *People v. Herrera*, 2012 COA 13, 41, 272 P.3d 1158, 1166 (citing, *Masters v. People*, 58 P.3d 979, 1001 (Colo. 2002)).

Generally, instructing the jurors to disregard erroneously admitted evidence is a sufficient remedy. *People v. Johnson*, 2017 COA 11,¶ 42; citing, *People v. Lahr*, 2013 COA 57, ¶ 25. Yet, no curative instruction will suffice when inadmissible evidence "is so highly prejudicial . . . it is conceivable that but for its exposure, the jury may not have found the defendant guilty." *Johnson*, 2017 COA at ¶ 42; citing, *People v. Everett*, 250 P.3d 649, 663 (Colo. App. 2010) (quoting, *People v. Goldsberry*, 181 Colo. 406, 410, 509 P.2d 801, 803 (1973)).

While a mistrial is a drastic remedy, it is warranted "where the prejudice to the defendant is too substantial to be remedied by other means." *People v. St. James,* 75 P.3d. 1122, 1125(Colo. App. 2002).

1. Improper admission of text message

The Answer asserts the court properly admitted the text message and provided an adequate limiting instruction. This argument is flawed. [A.B., pp. 29-34].

During redirect examination, the prosecutor asked S.W. to reveal she sent a text to K.M., shortly after Mr. Anderson left the apartment, that she felt roofied. This portrayed Mr. Anderson in the most sinister light possible and injected inadmissible and irrelevant evidence into the trial.

This evidence is not relative to any fact of consequence and it is not relevant, thus its admission error. Further, any possible probative value is outweighed by undue prejudice in suggesting a decision based on improper emotions of hatred, contempt, horror or retribution of Mr. Anderson. The prosecutor elicited testimony of worse, uncharged crime and no limiting instruction could cure this harm. Further, a mistrial was warranted because the prejudice to Mr. Anderson was too severe to be remedied by other means.

During trial, S.W. testified she met Mr. Anderson on campus at CSU the first week of school on her way to class. [R. Tr, 11/15/16, pp. 77:2-81:6].

S.W. went out drinking with friends. S.W.'s friends took her home and she went to bed about 1 a.m. About 3:30 a.m., she woke up to find Mr. Anderson on top of her engaged in sexual intercourse with her without her consent. S.W. said she was passed out and couldn't consent. Eventually, S.W. pushed him off, he became angry, and shouted and broke glass bottles as he left. S.W. got up to call for K.M. and saw Mr. Anderson leave. [R. Tr, 11/15/16, pp. 82:2-94:3].

During cross-examination, defense counsel asked S.W. when she finally told K.M. that Mr. Anderson raped her. S.W. said she told her in a text. Counsel asked if the text to K.M. only mentioned the breaking bottles and did not mention rape. S.W. didn't remember. S.W. did not call the police until later in the day. [R. Tr, 11/15/16, pp. 127:7-131:4].

During redirect examination, the prosecution asked if S.W. sent a text to K.M. saying S.W. felt like she got roofied. Defense counsel objected and the parties approached for a bench conference. [R. Tr, 11/15/16, pp. 135:18-136:3].

The court overruled the objection, finding defense counsel opened the door and offered to provide a limiting instruction to the jury not to take the text as for the truth of whether or not S.W. was roofied. Defense counsel then made a motion for mistrial. The prosecution argued the text message was to show S.W.'s mental state. The court denied the motion for mistrial. [R. Tr, 11/15/16, pp. 137:15-138:24].

Defense counsel then, based on the court's ruling requested a limiting instruction. The court provided a limiting instruction over the prosecution's objection, but did not later provide a written instruction. [R. Tr, 11/15/16, pp. 138:25-139:21;11/16/16, pp. 211:2-219:9;11/17/16, p. 3:6-16 ; CF, pp. 17-40].

That the court provided a limiting instruction after it allowed the testimony, telling the jury they were not to consider the text to determine the truth of whether S.W. was or was not roofied, did not cure the harm. The instruction also did not inform the jury the text was solely to show S.W.'s state of mind, the basis the prosecution used to argue for its admissibility. There was no substantiation based on any testing that S.W. was roofied, and during the bench conference, the prosecution provided none. Further, the jury did not hear that S.W. was not roofied because the bench conference where counsel pointed this out to the court was outside their hearing.

The contested issue was whether or not S.W. consented to sexual intercourse, or whether S.W. was passed out and unable to consent. There was no allegation S.W. was given any date rape drug. Mr. Anderson was not charged with using a date rape drug. The prosecution did not contest there was no evidence of any date rape drug. The only potential use for this evidence would be to cast Mr. Anderson in the most sinister light possible encouraging a jury verdict based on emotion, including hatred, retribution or disgust with Mr. Anderson.

A date rape drug would show that a person targeted and then drugged someone with the intent to rape the drugged person and could reasonably result in inflaming the passions of the jury leading to decisions resulting from hatred, horror

or retribution. The later testimony by Delano, claiming Mr. Anderson told Delano he roofied S.W., would only exacerbate the harm. That S.W. had been drinking was undisputed, but there was no basis to suggest she had been roofied.

Additionally, defense counsel asked about only one text during his cross-examination of S.W., and his cross-examination on this one text was minimal. Counsel did not open the door to this line of questioning by the prosecution, S.W. was not roofied, and the court's decision otherwise was error.

The Answer's reliance on *Venalonzo v. People,* 2017 CO 9, to argue defense counsel opened the door is misplaced. [A.B., pp. 29-30]. Counsel did not open the door to testimony involving date rape drugs when he asked merely about one text regarding whether S.W. accused Mr. Anderson of rape or only of breaking bottles in a text to her roommate K.M. The question on this text was minimal, and it was undisputed no drugs were involved. The text by S.W. that she felt like she got roofied clearly infers Mr. Anderson is the one who roofied her and it does not provide information that would be necessary to preclude one party from gaining or maintaining an unfair advantage by selectively presenting facts that without elaboration or context create an incorrect or misleading impression. *Venalonzo v. People*, 2017 CO 9, ¶ 44.

In fact, the text about S.W. feeling like she got roofied is evidence that would create an incorrect or misleading impression with the jury that Mr. Anderson targeted S.W. by secretly giving her a date rape drug when the record establishes no evidence of drugs and no basis to any claim of date rape drugs were involved. Therefore, when inadmissible evidence of Mr. Anderson targeting S.W. by the use of a date rape drug is introduced to the jury, the limiting instruction could not alleviate concern for potential unfair prejudice. The Answer's argument otherwise is flawed. [A.B., p. 33]. This evidence could do nothing but inflame the jury's passions against Mr. Anderson.

No curative instruction will suffice when inadmissible evidence "is so highly prejudicial . . . it is conceivable that but for its exposure, the jury may not have found the defendant guilty." *People v. Johnson*, 2017 COA 11, ¶ 42; citing, *People v. Everett*, 250 P.3d 649, 663 (Colo. App. 2010) (quoting, *People v. Goldsberry*, 181 Colo. 406, 410, 509 P.2d 801, 803 (1973)). Thus the error is not harmless because it substantially influenced the verdict or affected the fairness of the trial proceedings. *Hagos*, ¶ 12.

Additionally, a mistrial is warranted because the prejudice to Mr. Anderson was too substantial to be remedied by the limiting instruction provided and by allowing this testimony injecting highly prejudicial and inadmissible testimony of

date rape drugs, Mr. Anderson was deprived his right to a fair trial. See, *People v. Harlan* 8 P.3d 448 (Colo. 2000) ("Every individual, whether detested or revered, is entitled to a fair trial.") There are some contexts in which the risk that the jury will not, or cannot, follow instructions is so great, and the consequences of failure so vital to the defendant, that the practical and human limitations of the jury system cannot be ignored. *People v. Goldsberry*, 181 Colo. 406, 410, 509 P.2d 801, 803 (Colo. 1973); citing, *Bruton v. United States*, 391 U.S. 123 (1968). The trial court's refusal to grant the mistrial under these circumstances constituted a gross abuse of discretion and was reversible error. *See People v. Abbott*, 690 P.2d 1263, 1269 (Colo.1984).

Therefore, this Court should reverse Mr. Anderson's conviction and remand for a new trial.

2. Improper admission of date rape drug statement

The Answer asserts Delano's testimony about the use of date rape drugs was properly admitted and not plain error. This argument is flawed. [See, A.B., pp. 39-42].

The primary issue at trial was whether S.W. consented to sexual intercourse with Mr. Anderson or whether S.W. was passed out and unable to consent, from drinking she participated in that evening. There was no claim, charge, or other

evidence that any date rape drug was used and the prosecution did not contest this. Any testimony regarding date rape drugs or being roofied was irrelevant. Even if it has any slight relevancy, that relevance was outweighed by substantial prejudice.

Further, the error is substantial and obvious. The error undermines the fundamental fairness of the trial and casts serious doubt on the reliability of the judgment of conviction, the error is reversible.

During the trial, a jailhouse witness, Delano, testified for the prosecution. Delano testified he had multiple felony convictions. He was incarcerated at Larimer County detention facility where he met Mr. Anderson. [R. Tr, 11/16/16, pp. 105:12-107:11].

Delano testified Mr. Anderson talked to him about the facts in this case and said Mr. Anderson told him he had sex with S.W. and had given her a date rape drug. He testified Mr. Anderson told him he had sex with S.W. and S.W. didn't know it. He said Mr. Anderson used profanity when he described the sex, that Mr. Anderson tried to get S.W. to do oral sex and got angry when she couldn't, because she was out of it, so there was yelling and some liquor bottles were broken and then Mr. Anderson left.

Delano said Mr. Anderson got angry about the oral sex, went into the kitchen, grabbed two liquor bottles and smashed them together so glass was all

over the floor and ground outside. He said Mr. Anderson met both S.W. and K.M. at a bar, S.W. and K.M. were roommates, both S.W. and K.M. rode in a Silver Mine Sub delivery car with Mr. Anderson and the delivery driver back to the apartment from the bar. [R. Tr, 11/16/16, pp. 108:5-113:20].

During cross-examination, Delano also testified that Mr. Anderson said he gave S.W. a roofie when he went into her room at the apartment. He then said he didn't know when Mr. Anderson gave her the roofie but that he did and then he ended up going into her room. Finally, Delano testified he remembered telling the Detective Mr. Anderson gave S.W. a roofie when he went into her room after he got to the apartment. [R. Tr, 11/16/16, pp. 118:6-120:25].

There was no substantiation based on any testing that S.W. was roofied, and during the bench conference, the prosecution provided none. This testimony was highly prejudicial.

Additionally, the prosecution argued against providing any limiting instruction at all. Further, the jury did not hear that S.W. was not roofied because the bench conference where counsel pointed this out to the court was outside their hearing.

The contested issue was whether or not S.W. consented to sexual intercourse, or whether S.W. was passed out and unable to consent. There was no

allegation S.W. was given any date rape drug. Mr. Anderson was not charged with using a date rape drug. The only potential use for this evidence would be to cast Mr. Anderson in the most sinister light possible encouraging a jury verdict based on emotion, including hatred, retribution or disgust with Mr. Anderson.

The Answer's reliance on *People v. Acosta*, 2014 COA 82, ¶ 59 is misplaced. [A.B., p. 40]. In *Acosta*, an issue on appeal was whether lay testimony by a witness that Acosta "looked guilty" was admissible, and after having concluded the testimony was proper lay testimony, whether it was relevant and not unduly prejudicial. The Division determined guilty looking related to consciousness of guilt and was thus, admissible and not substantially outweighed by undue prejudice. The Division determined the testimony would be easily understood by jurors based on common experiences in everyday life, she was not stating Acosta was actually guilty, and she explained further his appearance was similar to that of a small child caught doing something wrong. *Acosta*, ¶¶ 59-62, ¶ 64, ¶ 68.

Here, however, Delano's testimony Mr. Anderson gave S.W. a date rape drug was not testimony of Delano's observation relative to Mr. Anderson's appearance and behavior at the time of the alleged charged acts. Rather, it was a claim by Delano alleging Mr. Anderson made a statement to him that he gave S.W.

a date rape drug. And, it is not a behavior like looking guilty as in the disputed testimony analyzed in *Acosta*, above. This statement does not go to show consciousness of guilt where, as here, there is no claim or support for the existence of or use of any date rape drug. Further, a date rape drug claim is also unduly prejudicial.

A date rape drug would show that a person targeted and then drugged someone with the intent to rape the drugged person and could reasonably result in inflaming the passions of the jury leading to decisions resulting from hatred, horror or retribution. This is precisely what Delano testified Mr. Anderson said he did, though no substantiation exists that any date rape drugs, or any drugs, were involved or given to S.W.

That S.W. had been drinking was undisputed, but there was no basis to suggest she had been roofied. By eliciting this testimony, the prosecution portrayed, wrongfully, Mr. Anderson in as sinister a manner as possible and did so with no basis for the assertion or suggestion any date rape drug was ever used. Further, because no evidence existed that date rape drugs were involved, the evidence is not relevant, its probative value, if any, substantially outweighed by its substantial prejudice, and, there is no legitimate use for alleged untruthful statements of Mr. Anderson about date rape drugs.

Eliciting inadmissible testimony, by introducing Delano's testimony Mr. Anderson told him he gave S.W. a date rape drug, where it is undisputed no date rape drug was involved, is obvious and substantial error. The error cast serious doubt on the fairness of Mr. Anderson's conviction because it is likely the jury may have convicted Mr. Anderson, deciding their verdict, based on emotions caused by testimony he used date rape drugs, such as hatred, contempt, retribution or horror. As such, Mr. Anderson was denied his constitutional right to a fair trial with an impartial jury.

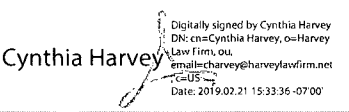
The error in admission of Delano's testimony injecting date rape drugs into the trial, undermines the fundamental fairness of the trial and casts serious doubt on the reliability of Mr. Anderson's convictions. Therefore, this Court should reverse Mr. Anderson's conviction and remand for a new trial.

CONCLUSION

For the reasons set forth above, Mr. Anderson's conviction should be reversed and his case remanded for a new trial, or such other relief this Court deems appropriate.

Respectfully submitted, 21st day of February, 2019.

Harvey Law Firm

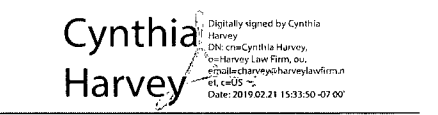


Cynthia A. Harvey, Reg. No. 38511
Attorney for Defendant-Appellant

CERTIFICATE OF MAILING

I hereby certify that on the 21st day of February, 2019, a true and correct copy of the foregoing **REPLY BRIEF** was served via the ICCES online filing system, to all parties in this action as follows:

Colorado Department of Law, Appellate Division
Ralph L. Carr Colorado Judicial Center
ATTN: Jennifer L. Carty, Esq.
1300 Broadway, 9th Floor
Denver, CO 80203



DISTRICT COURT, LARIMER (FT COLLINS) COUNTY, COLORADO Court Address: 201 Laporte Avenue, Suite 100, Fort Collins, CO, 80521	DATE FILED: February 24, 2017 11:49 AM
The People of the State of Colorado v. CHAYCE AARON ANDERSON	⚠ COURT USE ONLY ⚠
	Case Number: 2015CR1466 Division: 3B Courtroom:

Order: Motion to File Without Payment of Filing Fee/Waive Other Costs Owed to the State and Supporting Financial Affidavit

The motion/proposed order attached hereto: APPROVED.

The Court finds that Defendant is indigent and eligible for appointment of appellate counsel for his direct appeal.

Issue Date: 2/24/2017

JULIE KUNCE FIELD
District Court Judge

APPENDIX G

FILED IN COMBINED COURTS
LARIMER COUNTY, CO

2017 FEB 23 PM 1:42

☐Supreme Court ☐Court of Appeals ☐Denver Juvenile Court ☐Denver Probate Court ☐County Court ☑District Court Larimer County, Colorado
Court Address: 201 La Porte Avenue
Fort Collins, CO 80521-2761 (970)494-3500

Plaintiff/Petitioner: PEOPLE OF THE STATE OF COLORADO
v.
Defendant/Respondent: CHAYCE AARON ANDERSON
The Honorable District Court Judge; JULIE K FIELDS residing.
Attorney or Party Without Attorney: (Name & Address)
J. Andrew Taylor (Alternative Defense Counsel)

Phone Number:
Atty. Reg. #:

▲ COURT USE ONLY ▲

Case Number: D0352015CR001466
Courtroom: 3B

MOTION TO: ☑FILE WITHOUT PAYMENT OF FILING FEE ☑WAIVE OTHER COSTS OWED TO THE STATE AND SUPPORTING FINANCIAL AFFIDAVIT

I, Chayce Aaron Andersen respectfully move the Court for an order to waive the following filing fee(s): ☑complaint ☑petition ☑answer ☑response ☑motion to modify ☑other: To Be Decided and as grounds state that I am without funds, have no adequate funds available, and have a meritorious claim. (35(B)) Reconsiderations, Normal Criminal Appeal Process, (35(c)) Cruel and Unusual Punishment Motions, and reserve the right to file additional motions, TBD at later date.

All items must be fully completed. Print or type neatly. If an item does not apply, please write "N/A"

I would also respectively request at least 3 additional JDF 205 forms for the CO Court of Appeals, CO Supreme Court, and CO Federal District Court. If these courts use seperate forms, then please disregard this note, or I can file my motions & complaints at a later date.

Thank You!
Chayce A.

Name of Applicant

Last Name	First Name	MI
ANDERSON	CHAYCE	A

Street Address (Include Apt. # if applicable): 2405 MIDPOINT DRIVE (Larimer County Detention Center (L.C.D.C.)
City: FORT COLLINS State: CO Zip Code: 80524
☐Own ☐Rent Home Phone #: N/A Currently Incarcerated since 08/29/2015.

Social Security #	Driver's Lic. # & State (Do not know #'s)	Date of Birth
522-85-3300	CDL Permit + D.L. Colorado	03/11/1992

Most Recent Employer: Recycled Materials Company Incorporated (R.M.C.I.)
Work Address: Denver International Airport → Crushing Plant
Work Phone #: ( ) N/A
Dates Employed: N/A (Approximately 600 days since last employment)
Hours/Week: 70/wk Pay Rate: $ 30.50 ☑Weekly ☐Bi-weekly ☐Monthly ☐Annual ☐Other: N/A

Name of Other Responsible Party(Spouse, Partner, Parent, Other Persons in Household)

Last Name	First Name	MI
NONE / N/A	NONE / N/A	N/A

Street Address (Include Apt. # if applicable): Not applicable N/A
City: N/A State: N/A Zip Code: N/A
☐Own ☐Rent Home Phone #: N/A

Social Security #	Driver's Lic. # & State	Date of Birth
N/A	N/A	N/A

Most Recent Employer: N/A
Work Address: N/A
Work Phone #: ( ) N/A
Dates Employed: N/A

Hours/Week: N/A Pay Rate: $ N/A ☐Weekly ☐Bi-weekly ☐Monthly ☐Annual ☐Other: N/A

Marital Status: ☒Single ☐Married ☐Partner in a Civil Union ☐Divorced/Civil Union Dissolved ☐Separated ☐Widowed

Number in Household: (including yourself) 1

Identify Members:

Name	Age	Relationship
Chayce Aaron Anderson	24	Self
N/A	N/A	N/A

Gross Monthly Income (See Information on page 3)		**Monthly Expenses (See Information on Page 3)**	
Self (wages, salary, commission)	$ 0.00	Rent or Mortgage	$ 0.00
Spouse/Partner, Other Household Members	$ 0.00	Groceries	$ 0.00
Parents (if same household)	$ 0.00 / N/A	Utilities	$ 0.00
Unemployment Benefits	$ 0.00	Clothing	$ 0.00
Social Security/Retirement Funds	$ 0.00	Maintenance/Alimony and/or Child Support	$ 0.00
Maintenance/Alimony	$ 0.00	Medical/Dental	$ 0.00
Other Income (identify) N/A	$ 0.00	Other Expenses (identify) N/A	$ 0.00
Other Income (identify) N/A	$ 0.00	Other Expenses (identify) N/A	$ 0.00
Total Income	$ 0.00	**Total Expenses**	$ 0.00
Cash on Hand (Cash you are carrying or which is stored at home, etc.)	$ 0.00	**Credit Cards**: (Show type and balance owed) Type: Ø N/A Balance $ 0.00 N/A Type: Ø N/A Balance $ 0.00 N/A	
Checking Account Balance	$ 0.00	Name/Address of Bank: None → Not Applicable	
Savings Account Balance	$ 0.00	Name/Address of Bank: None → Not Applicable	
Stocks, Bonds, or other Investments Held Balance	$ 0.00	Diesel Truck / BELLCO CREDIT Type of Investment / Name/Location of Company/Corporation Assets seized and auctioned to the highest bidder. Zero Monetary Value paid to Creditor	
Vehicles Owned (Autos, boats, recreational vehicles, etc.) - Estimate Value	$ 0.00	Year N/A Model N/A License Plate N/A Year N/A Model N/A License Plate N/A	
House(s) or other Property Estimate Value	$ 0.00	Amount owed $ N/A Year Purchased N/A	

IF ADDITIONAL SPACE IS NEEDED TO PROVIDE COMPLETE INFORMATION, ATTACH A SEPARATE PAGE.

negative 29,500 → truck Loan negative 30,000 or more in college Debt. = 60,000 in debt

CHOICE TOWING

I swear under penalty of perjury that all information provided is true and complete. In addition, if requested I will provide three (3) months of bank statements and pay stubs or other comparable proof of income status. I authorize the Court to make any necessary contacts to verify the information.

Signature: [signature] Date: 02/14/17

District Court, Larimer County, State of Colorado Court Address: 201 LaPorte Ave., Suite 100 Fort Collins, CO 80521-2761	DATE FILED: June 24, 2016 9:33 AM
PEOPLE OF THE STATE OF COLORADO, v. CHAYCE ANDERSON, Defendant.	▲ COURT USE ONLY ▲ Case No: 15 CR 1466 Ctrm: 3B

ORDER RE: APPOINTMENT OF ALTERNATE DEFENSE COUNSEL

It is ordered that J. Andrew Taylor, Attorney at Law (Reg. No. 28855) is hereby appointed to represent the Defendant in the above-captioned case.

The reason for the appointment of alternate defense counsel is: Public Defender conflict.

SO ORDERED THIS 24th day of June, 2016.

By the Court:

Julie Kunce Field
District Court Judge

RID:D0352015CR001466-000102

District Court, Larimer County, State of Colorado
Case#:D0352015CR001466 Div/Room: 3B
JUDGMENT OF CONVICTION, SENTENCE Amended

The People of the State of Colorado vs. ANDERSON, CHAYCE AARON
DOB 3/11/1992

AKA: ANDERSON, CHAYCE AARON
AKA: ANDERSON, CHAYCE AARON
AKA: ANDERSON, CHAYCE AARON
AKA: ANDERSON, CHAYCE AARON
AKA: ANDERSON, CHAYCE

DATE FILED: February 24, 2017

The Defendant was sentenced on: 2/03/2017
People represented by...: BOXBERGER,CARA
Defendant represented by: TAYLOR,ANDY
UPON DEFENDANT'S CONVICTION this date of: 11/17/2016
The defendant was found guilty after trial of:
Count # 1 Charge: SEX ASSAULT-VICTIM HELPLESS
C.R.S # 18-3-402(1)(h) Class: F3
Date of offense(s): 8/28/2015 to 8/28/2015 Date of finding(s):11/17/2016

IT IS THE JUDGMENT/SENTENCE OF THIS COURT that the defendant be sentenced to THE CUSTODY OF THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF CORRECTIONS

Department of Corrections	4.00 YRS-LF	COUNT 1
Credit for Time Served	526.00 DAYS	COUNT 1

PAROLE- 20YRS TO LIFE
REGISTER AS A SEX OFFENDER /DMM
The Court has NO recommendation as to the Regimented Inmate Training Program

Sex Offender Status: DEF FD NOT SVP MUST REG SXOF

Assessed	Balance
$ 6,673.42	$ 6,673.42

THEREFORE, IT IS ORDERED the Sheriff of LARIMER COUNTY shall convey the DEFENDANT to the following department TO BE RECEIVED AND KEPT ACCORDING TO LAW COLORADO STATE DEPARTMENT OF CORRECTIONS DIAGNOSTIC CENTER

ADDITIONAL REQUIREMENTS

JUDGMENT OF CONVICTION IS NOW ENTERED, IT IS FURTHER ORDERED OR RECOMMENDED:

DATE 2/24/17 NPT 2/3/17 JUDGE/MAGISTRATE
JULIE KUNCE FIELD

CERTIFICATE OF SHERIFF
I CERTIFY THAT I EXECUTED THIS ORDER AS DIRECTED
DATE _____
SHERIFF _____
BY DEPUTY _____

CERTIFIED TO BE A FULL, TRUE AND CORRECT
COPY OF THE ORIGINAL IN CUSTODY OF
LARIMER COUNTY
COMBINED COURTS, COLORADO
BY _____ 10/16/18
DEPUTY CLERK DATE

Eighth Judicial District COLORADO COURTS

EXHIBIT A