

COURT OF APPEALS, STATE OF COLORADO 2 East 14th Avenue, Denver, CO 80203	DATE FILED: September 13, 2019 3:51 PM FILING ID: C72E333077ECD CASE NUMBER: 2017CA2326
El Paso County District Court Honorable Jann P Dubois Case Number(s): 16CR3829	
THE PEOPLE OF THE STATE OF COLORADO Plaintiff-Appellee v. ADAM LOEHR Defendant-Appellant	COURT USE ONLY
Patrick R. Henson (ADC-Retained Counsel) Henson Law, LLC P.O. Box 40399 Denver, CO 80204 Phone Number: 303-997-6216 E-mail: patrick@hensonlawllc.com Atty.Reg.: #42576	Case Number 17CA2326
REPLY BRIEF	

CERTIFICATE OF COMPLIANCE

This brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with C.A.R. 28(g).

☒ It contains 5,700 words or less. Specifically, the reply brief contains 1,367 words, not including certificate of service page, the table of contents and authorities, and this certificate of compliance page.

☒ It does not exceed 18 pages.

The brief complies with C.A.R. 28(k).

☐ For the party raising the issue: N/A

It contains under a separate heading (1) a concise statement of the applicable standard of appellate review with citation to authority; and (2) a citation to the precise location in the record (R. , p.), not to an entire document, where the issue was raised and ruled on.

☐ For the party responding to the issue:

It contains, under a separate heading, a statement of whether such party agrees with the opponent'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 and C.A.R. 32.

/S/ Patrick R. Henson
Signature of Attorney of Party

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INTRODUCTION

Other than the issues briefly addressed below, Mr. Loehr stands on the arguments set forth in his opening brief which he incorporates by reference herein.

ARGUMENT

I. The trial court abused its discretion and reversibly erred when it allowed the government to introduce into evidence a warrant for Mr. Loehr's arrest arising out of another case because (1) the prosecution failed to prove that Mr. Loehr knew about the warrant in the other case (2) without evidence that Mr. Loehr knew about the warrant's existence, it was mere speculation to assert that Mr. Loehr provided police with a false name to avoid the consequences of the bench warrant and (3) the government relied extensively on the speculative warrant evidence to convict Mr. Loehr of the criminal impersonation and attempt to influence a public servant charges.

In the opening brief, Mr. Loehr—relying on *People v. Perry*, 68 P.3d 472, 475 (Colo. App. 2002)—argued that the prosecution failed to prove that Mr. Loehr knew about the warrant in the other case and, without evidence that Mr. Loehr knew about the warrant's existence, the warrant was inadmissible and the government could not assert that Mr. Loehr provided police officers with a false name to gain a benefit for himself or to influence a public servant's decision or action. *Perry*, 68 P.3d at 475; C.R.S. § 18-5-113; C.R.S. § 18-8-306.

In its answer brief, the government argues that the prosecutor introduced evidence that demonstrated Mr. Loehr had knowledge of the existence of the warrant by noting that the warrant was for Mr. Loehr's alleged failure to appear for a hearing (AB, p 12). The government's argument lacks merit.

Simply put, the fact that the warrant issued as a result of Mr. Loehr's alleged failure to appear for a hearing does not demonstrate that Mr. Loehr knew about the warrant. There is nothing inherent about a failure to appear warrant that results in the defendant receiving actual or constructive knowledge of the warrant.

Without introducing evidence that Mr. Loehr knew about the warrant, the warrant constituted inadmissible evidence. Indeed, in Mr. Loehr's case, the government—as in *Perry, supra*—introduced Mr. Loehr's warrant into evidence in the hopes that the jury would infer that Mr. Loehr was aware of the warrant's existence, which was impermissible. *Perry*, 68 P.3d at 475. Moreover, without proof of Mr. Loehr's knowledge of the warrant, pursuant to *Perry, supra*, the government could not assert that Mr. Loehr provided police officers with a false name to attempt to influence a public servant or to “gain a benefit for himself” because such an assertion—without proof of Mr. Loehr's knowledge of the warrant—was mere speculation. C.R.S. § 18-5-113; C.R.S. § 18-8-306; *Perry*, 68 P.3d at 475; *see also* C.R.E. 402-403.

Next, the government argues—without explanation—that *People v. Perry* “was wrongly decided and should not be followed by this Court.” (AB, p 12). While it is true that one division of the court of appeals is not bound by opinions from other divisions, this Court gives “considerable deference” to precedent established by another division. *People v. Rediger*, 411 P.3d 907, 912 (Colo. App.

2015) (*rev'd on other grounds by People v. Rediger*, 416 P.3d 893 (Colo. 2018); see also *People v. Smoots*, 396 P.3d 53, 57 (Colo. App. 2013) (same). Without any explanation or argument as to why *People v. Perry* “was wrongly decided and should not be followed by this Court,” this Court should afford deference to that division’s opinion and reverse Mr. Loehr’s criminal impersonation and attempt to influence a public servant convictions.

Lastly, the government argues that the trial court’s evidentiary error was harmless. Again, the government is incorrect.

On the last day of trial, April 27, 2017, the government made the following statements during closing arguments:

- “Attempt to Influence a Public Servant....We heard testimony that there was a warrant open and that he’s been on the lam for almost seven years. If he gave him a fake name and he was released, Eric Holmes or Eric Edwards would have to deal with it and he could flee, just like he did in Washington state.” (TR. 4/27/17, p29:4,21-25);
- “And if the officers had found an extraditable warrant, the defendant would have been held on that warrant from Washington. And let me be very clear about this...this is not a warrant that you don’t know you have. This is a warrant for an FTA...and any police conduct with that name, his real name, could subject him to that warrant. He didn’t want to go back to Washington.” (TR. 4/27/17, p30:14-22);

- “Criminal Impersonation....what the officers were thinking is immaterial and irrelevant to what the defendant was thinking in that he had an open warrant and he had drugs on him.” (TR. 4/27/17, p32);
- “What’s important is that that warrant was active when they found the drugs, and when he was giving these false names to avoid prosecution in this case.” (TR. 4/27/17, p33:1-3);
- “So he gave false or fictitious identities, in particular Eric Holmes in this circumstance, because that is – under that identity he was performing that act to gain a benefit or to injury [sic] another person. So his benefit was to avoid prosecution, to avoid getting picked up on a warrant.” (TR. 4/27/17, p46:7-11);
- “[Defense counsel] said that if we don’t have the warrant, we don’t have the charges. Well, that’s simply not true, because that is an additional motivation for his actions. It’s not the only motivation, there can be many motivating factors. A warrant is just one of them. And that does prove that he tried to influence Officer Taylor....What matters is that he knew about it because he failed to appear at court, and he’s been avoiding that warrant for seven years.” (TR. 4/27/17, p51:11-20); and
- “You have to determine what the intent was, and all of the surrounding circumstances indicate that he was intending to get out of the warrant and out of these charges. And he’s absolutely guilty on all charges.” (TR. 4/27/17, p52:7-10).

Thus, the government repeatedly argued that the jury could infer that Mr. Loehr was aware of the warrant's existence, and, therefore, Mr. Loehr was attempting to provide a false identity to avoid the consequences of that warrant. Because the government relied extensively on the existence of the warrant—speculative evidence—to convict Mr. Loehr of criminal impersonation and attempt to influence a public servant, a reasonable probability exists that the court's erroneous evidentiary ruling contributed to Mr. Loehr's conviction.” *People v. Short*, 425 P.3d 1208, 1222 (Colo. App. 2018) (holding that “Under the nonconstitutional harmless error test, the defendant must establish a reasonable probability that the court's error contributed to his conviction.”). Put another way, the trial court's erroneous evidentiary ruling sufficiently undermined confidence in the outcome of the case warranting reversal of Mr. Loehr's convictions. *Id.*

II. The trial court violated Mr. Loehr's due process rights and reversibly erred when it denied Mr. Loehr's motion for judgment of acquittal on the criminal impersonation charge because the government failed to prove—as required by clear precedent—that (1) the defendant gave a false name and (2) that use of the name would result in a benefit to the defendant.

Mr. Loehr stands on the arguments raised in Argument II of his answer brief which he incorporates by reference herein. Specifically, Mr. Loehr asserts that, because—pursuant to *People v. Johnson*, 30 P.3d 718, 721 (Colo. App. 2000); *People v. Shaw*, 616 P.2d 185, 186 (Colo. App. 1980)—the government failed to prove that, by providing false names to police, Mr. Loehr would receive a benefit,

there was insufficient evidence for the jury to convict Mr. Loehr of criminal impersonation. *See also* C.R.S. § 18-5-113.

CONCLUSION

For the reasons and authorities presented in the opening brief and in Argument I above, Mr. Loehr respectfully requests that this Court reverse his criminal impersonation and attempt to influence a public servant convictions. For the reasons and authorities presented in the opening brief and in Argument II above, Mr. Loehr respectfully requests that this Court reverse his criminal impersonation conviction.

Respectfully submitted,

/s/ Patrick R. Henson
Patrick R. Henson

CERTIFICATE OF SERVICE

I certify that I have duly served the within REPLY BRIEF upon all parties below in open court and/or via U.S. Mail and/or via ICCES electronic service this 13th day of September 2019.

Colorado Department of Law
Appellate Division
Majid Yazdi
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 10th Floor
Denver, Colorado 80203

/s/ Patrick Henson
Henson Law, LLC