

District Court, Jefferson County, Colorado 100 Jefferson County Parkway, Golden, CO 80401	DATE FILED January 15, 2025 6:29 AM FILING ID: 1E4B644230535 CASE NUMBER: 2022CR3360 <div style="text-align: center;">□ COURT USE ONLY □</div>
THE PEOPLE OF THE STATE OF COLORADO v. DESIREE GONZALEZ Defendant	
MEGAN A. RING, Colorado State Public Defender Sarah Varty, # 45186 Deputy Public Defender Golden Regional Public Defenders 560 Golden Ridge Road, #100, Golden, CO 80401 Phone: (303) 279-7841 Fax: (303) 279-3082 E-mail: sarah.varty@coloradodefenders.us District Court, Jefferson County, Colorado 100 Jefferson County Parkway, Golden, CO 80401	
<p style="text-align: center;">MOTION TO SEVER & FOR A SEPARATE TRIAL ON THE VIOLATION OF PROTECTION ORDER COUNTS (4,5,6,8,10,11,12,14)</p>	

Ms. Gonzalez is charged by complaint and information in the above captioned case with several counts of retaliation against an elected official stemming from alleged emails sent to the members of the Lakewood City Council, the city manager, and the mayor. Ms. Gonzalez is further charged with several counts of violation of a protection order for allegedly having a weapon in violation of the terms of the protection order. Ms. Gonzalez moves for a separate trial to a separate jury on the alleged protection order violation counts. As grounds, Ms. Gonzalez states the following:

I. FACTUAL BASIS:

1. On December 14, 2022, Ms. Gonzalez was charged with three counts of retaliation against an elected official, pursuant to C.R.S. 18-6-615(1.5)¹. The complaint alleges that on December 6, 2022, she sent several emails to Lakewood's mayor and two city council members. The supporting affidavit alleges that the emails were perceived as threatening in nature by the recipients.
2. The same day that Ms. Gonzalez was charged, the court entered mandatory protection orders listing all members of the Lakewood City Council, the city manager, and the mayor as protected parties. The protection order prohibited Ms. Gonzalez from possessing a firearm or other weapon.
3. On January 5, 2023, almost a month after the alleged emails were sent, Ms. Gonzalez was contacted by Lakewood Police when her neighbor, Garrett Piatt, claimed she flashed a gun while he was inside his home and Ms. Gonzalez was in her yard. Later, Mr. Piatt claimed his wife told him she also saw Ms. Gonzalez with a gun.² Lakewood police responded to Ms. Gonzalez's home. They searched her person, her car, and her home. No gun was recovered. Officers did report locating a taser.
4. There is no indication or allegation that Ms. Gonzalez flashed a gun at an alleged victim of the retaliation counts. There is no indication or allegation that Ms. Gonzalez even attempted to contact, directly or indirectly, the listed victims of the retaliation counts.

II. LAW & ANALYSIS:

1. Colorado Rule of Criminal Procedure 8 and its statutory analog, C.R.S. § 18-1-408, deal with the joinder of defendants and offenses in a single prosecution. Crim. P. 8; C.R.S. § 18-1-408. In the instant case, mandatory joinder does not apply. See Crim. P. 8(1); C.R.S. § 18-1-408(2). Instead, the prosecution elected to join the cases pursuant to

¹ On January 11, 2023, the prosecution added seven counts of retaliation against an elected official listing the remaining city council members as victims. Later, three of the retaliation counts were dismissed at the request of the listed victims.

² It does not appear that police ever directly spoke with Mr. Piatt's wife about this alleged gun sighting.

the permissive joinder section of the rule and statute. *See Id.* at (2) and (4).

2. Section two of the rule and part four of the statute essentially requires that the two or more offenses being joined be of the “same or similar character” Crim. P. 8(2) or be based on, “the same act or series of acts arising from the same criminal episode.” C.R.S. § 18-1-408(4); *see also* Crim. P. 13; *Ruark v. People*, 406 P.2d 91 (1965); *People v. Taylor*, 804 P.2d 196 (Colo. App. 1990);
3. When determining whether more than one alleged offense arises from the same criminal episode the court should consider, “whether the physical acts were committed simultaneously or in close sequence, whether they occurred in the same place or closely related places, and whether they formed a part of a schematic whole.” *People v. Garcia*, 735 P.2d 897. When the offenses at issue occurred at different times, in different places, involve different listed victims, and the surrounding circumstances are different the offenses should not be joined in a single criminal prosecution. *Id.* at 898; *see also People v. McGregor*, 635 P.2d 912 (Colo. App. 1981). Instead, “disconnected and independent felonies might not be properly joined. *See White v. People* 45 P. 539 at 292-98 (Colo. App. 1896).
4. Here, the original charged offenses of retaliation against an elected official and the subsequently charged offenses of violation of a protection order are not of the same or similar character, are not connected other than tangentially, and do not constitute parts of a common scheme or plan. The offenses occurred over a month apart and are not alleged to have been committed at the same location. While the protection order alleged to have been violated by Ms. Gonzalez was imposed to protect the listed victims of the retaliation, there is no allegation that they were somehow victimized by the allegation that Ms. Gonzalez possessed a taser a month later. The surrounding circumstances are completely different and the evidence, as provided by the prosecution, is not overlapping. Therefore, these offenses have been impermissibly joined. Moreover, the trying of all these counts in one trial to one jury will result in significant prejudice to Ms. Gonzalez. *See People v. McCrary*, 549 P.2d 1320 (1976).

5. Even if this Court finds that the offenses meet the requirements of permissive joinder, Colorado Rule of Criminal Procedure 14, and its statutory analog, C.R.S. § 18-1-408(4) recognize the right of the accused to relief from joinder, where prejudice will result:

If it appears that a defendant . . . is **prejudiced by a joinder of offenses** in any . . . information, or by such joinder for trial together, the court may order an election or **separate trials** of counts . . . or provide whatever other relief justice requires.

Crim. P. 14.

6. The purpose of severance is to promote a fair determination of guilt or innocence and to protect the defendant's trial rights. *See People v. Horne*, 619 P.2d 53 (Colo. 1980); *see also People v. Fullerton*, 525 P.2d 1166 (1974).
7. The decision to sever counts is left to the sound discretion of the trial court. *People v. Rosa*, 928 P.2d 1365 (Colo. App. 1996). If a defendant demonstrates that he will suffer actual prejudice as a result of the joinder of counts, it is an abuse of discretion for the court to refuse him separate trials. *People v. Pickett*, 571 P.2d 1078 (Colo. 1977); *See Rosa*, 928 P.2d at 1373. Prejudice often arises when a jury will not be able to separate the facts and legal principles applicable to each offense. *Id.*
8. Here, as outlined above, the alleged violation of the protection order has nothing to do with the alleged retaliation counts. This is not a situation in which a protection order enters to protect a listed victim of a violent or threatening act, and later the accused contacts the listed victim, harasses them or even causes further physical harm. Instead, here, the alleged violation is wholly apart from the original charged offenses. If a jury is permitted to hear evidence of the later alleged protection order violation Ms. Gonzalez will be prejudiced by the danger that the jury will use that evidence to convict her of the original retaliation counts.
9. Ms. Gonzalez will be prejudiced if a jury is asked to consider all of the counts at the same time. Evidence of one is not admissible in the other as *res gestae* or as proper similar transaction evidence pursuant

to C.R.E 404(b). Instead, the jury will be asked to separate the two counts and will be left confused and misled as to their duty.

10. Trial of these charges to the same jury will cause irreparable damage to Ms. Gonzalez' right to a fair trial in violation of the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution, and Article II, §§ 16, 18, and 25 of the Colorado Constitution.

WHEREFORE, Ms. Gonzalez moves for a separate trial to a separate jury on the counts alleging she violated the protection order. In the alternative, Ms. Gonzalez moves for a hearing on this motion.

Dated: January 15, 2025

MEGAN A. RING
COLORADO STATE PUBLIC DEFENDER

/s/ Sarah Varty

Sarah Varty
Deputy State Public Defender

Certificate of Service

I hereby certify that on January 15, 2025, I served the foregoing document via Colorado Courts E-Filing to the court and opposing counsel. s/s Sarah Varty