

DISTRICT COURT, SUMMIT COUNTY, COLORADO
501 North Park Avenue
P.O. Box 269
Breckenridge, CO 80424

Appeal from
Silverthorne/Dillon/Keystone Municipal Court
Municipal Court Judge: Hon. Ronald Carlson
Municipal Court Case Number: 68272

Plaintiff-Appellee: The People of the Town of Silverthorne

Defendant-Appellant: Carols Esteban Tettamanti

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Case Number: 2025CV30234

ANSWER BRIEF

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.R.C.P. 10(a) and (d) and C.A.R. 28(a) and (b), including all formatting requirements set forth in these rules.

Specifically, the undersigned certifies that:

The brief complies with the applicable page limits set forth in C.R.C.P. 411 containing 25 pages.

The brief complies with the standard of review requirements set forth in C.A.R. 28(a)(7)(A).

For each issue raised, the brief contains a separate heading before the discussion of the issue, a concise statement of (i) the applicable standard of appellate review with citation to authority, and (ii) whether the issue was preserved and citation to the authority establishing the preservation of appeal.

I acknowledge that this brief may be stricken if it fails to comply with any of the requirements of the applicable rules.

HUNTLEY & ASSOCIATES, PC

By: s/ Mark Hurlbert
Mark Hurlbert (24606)

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INTRODUCTION

On October 15, 2025, the Defendant-Appellant, Carlos Tettamanti, appeared in the Silverthorne/Dillon Municipal Court to answer allegations he did not complete his sentence for an unleashed dog ticket. Specifically, the Defendant-Appellant did not complete an animal ordinance compliance class. During the hearing, the Defendant-Appellant repeatedly refused to answer the court's question of whether he was going to complete the class, stating he wanted to change his plea. Finally, to the direct questions posed by the court whether he was going to take the class, the Defendant-Appellant answered, "No, I'm here to change my plea." The court held the Defendant-Appellant in direct contempt and immediately sentenced him to three days in the county jail.

The Defendant-Appellant was sanctioned for telling the court to its face that he was not going to comply with a legal court order, which so severely undermined the court's credibility and ability to conduct business, the judge was left with no option but hold the Defendant-Appellant in contempt. The Municipal Court made the record it needed to make and allowed the Defendant-Appellant to offer mitigation.

The Municipal Court did not sentence the Defendant-Appellant for violating the terms of his sentence nor did the Municipal Court hold the Defendant-Appellant in indirect contempt. Finally, willfully telling a court that you are not going to comply with its order is not protected speech under the First Amendment.

STATEMENT OF THE CASE

A. August 21, 2024 Municipal Court Proceedings.

On August 21, 2024, the Defendant-Appellant appeared in Silverthorne/Dillon Municipal Court (the “Municipal Court”) for a violation of Silverthorne Colo., Municipal Code, Ord. § 2-2-6, Failure to Control a Pet Animal, citation number 68272. R. 3¹. On that date, Defendant-Appellant pled guilty to that crime and was sentenced to \$100 fine, \$50 in court costs and completion of an online “Animal Ordinance Compliance” class by October 16, 2024. R. 6.

Also on August 21, 2024, the Defendant-Appellant pled guilty to Silverthorne Municipal Code, Ord. 2-2-6, Failure to Control a Pet Animal, citation number 67831. The sentence was in conjunction with citation number 68272. R.6.

B. Municipal Proceedings leading to October 15, 2025 hearing.

On October 18, 2024, the Court issued an Order to Show Cause in citation number 68272, alleging the Defendant-Appellant failed to comply by not paying fines and costs assessed and failing to complete the educational class. R.8. The Defendant-Appellant was ordered to appear on November 20, 2024 at 9:00 a.m. R.8. On November 20, 2024, after the Defendant-Appellant failed to appear, the Court issued a bench warrant in the amount of \$500 for contempt of court. R.9. The warrant was for both citation number 67831 and 68272². R.9.

¹ To avoid confusion, the Plaintiff-Appellee adopts the Defendant-Appellant’s record pagination.

² It should be noted that the Silverthorne/Dillon Municipal Court assigns a case number to every case but then refers to the citation number in all pleadings. Therefore, citation number 68272 is the same case number 24-3178 as contained in the bond paperwork. The citation number is alternately referred to as the citation number and case number in orders. To avoid confusion, the Plaintiff-Appellee will refer to 68272 as the citation number.

On February 4, 2025, after being arrested on the Municipal Court's warrant, the Defendant-Appellant bonded out of the county jail and was given a court date of February 19, 2025. R. 10-12. The bond paperwork indicates he only bonded out on citation number 68272 and not both citations. R. 10.

The Defendant-Appellant appeared in court and agreed to a payment plan for the money he owed in citation number 68272. R.13.

On June 27, 2025, another Order to Show Cause was issued by the Court, again for non-payment of fines and costs and failure to complete the class. R. 15. This Order to Show Cause was sent via email to the Defendant-Appellant. The Defendant-Appellant was notified that he had to appear on July 16, 2025 or pay his fines and costs and complete the class. R. 14. If he did neither, the notice warned him that he could have a bench warrant for his arrest. R. 14. This Order to Show Cause was for citation number 68272. R. 15.

The Defendant-Appellant again failed to comply with the Municipal Court's order and another bench warrant was issued for his arrest. R. 16. On September 16, 2025, after being arrested on the Municipal Court's warrant, the Defendant-Appellant bonded out from the county jail and was instructed to appear on October 15, 2025. R. 17-18. Again, the Defendant-Appellant bonded only on citation number 68272. R. 17. At this point it appeared citation number 67831 and its requirements had fallen by the wayside.

On September 26, 2025, the Defendant-Appellant filed a Motion for Specific Discovery Pursuant to Crim. P. Rule 16(I)(D)(1) and (V)(B)(2) ("Motion for Specific Discovery") and a Motion Regarding Due Process and Lack of Procedural Compliance by the Municipal Court. ("Due Process Motion") R. 20-24. The Motion for Specific Discovery was granted in part and

denied in part. R. 30. The Due Process Motion was denied in its entirety. R. 31. On October 13, 2025, the Defendant-Appellant filed a Motion to Reconsider or Vacate Order Denying Defendant's "Motion Regarding Due Process Violations and Lack of Procedural Compliance," which was summarily denied. R. 32-39

C. October 15, 2025 Municipal Court Hearing.

The Defendant-Appellant appeared in Court on October 15, 2025. After summarizing the prior proceedings, the Court asked the Defendant-Appellant why he did not take the class and why he failed to appear. October 21 Municipal Court Hearing at 0:00-1:23, Unofficial Transcript p. 1:1-9.³ During the hearing, the Defendant-Appellant asked to change his plea. Hr'g Audio at 1:57, Unofficial Hr'g Tr. at p. 1:18. The judge informed the Defendant-Appellant, "Well, you're too late" in response to his request to change his plea. Hr'g Audio at 2:00, Unofficial Hr'g Tr at p. 1:19. Four separate times, the Court asked if the Defendant-Appellant was going to complete the class. Hr'g Audio at 1:23, 2:59, 3:05, 3:40, Unofficial Hr'g Tr. at p. 1:9, p. 2:15, p.2:19, p. 3:4-5. Only one time was the Defendant-Appellant remotely responsive when he answered the classes were on Saturday and he works on Saturday. Hr'g Audio at 3:01, Hr'g Unofficial Tr. at p. 2:16. The other times the Defendant-Appellant evaded the questions by indicating he wanted to change his plea or by not responding at all. Hr'g Audio at 1:23, 3:25, 3:50, Unofficial Hr'g Tr. p. 1:10-13, p. 2:20, p.3:6. The Defendant-Appellant also accused the Court of lying to him stating, "I have it in writing but you guys say something and then you do the opposite. Hr'g

³ The undersigned has reviewed the Defendant-Appellant's Unofficial Transcript of Proceedings October 15, 2025, compared it with the recorded record and find no errors or omissions. Therefore, we will cite to both the official recorded record and the unofficial transcript to aid the Court.

Audio at 4:04, Unofficial Hr’g Tr. p. 3:9-10. The judge asked a fifth time, “Are you going to do the class or not?” Hr’g Audio at 4:09, Unofficial Hr’g Tr. p.3:11. The Defendant-Appellant’s response is “No. I’m here to change my plea.” Hr’g Audio at 4:11, Unofficial Hr’g Tr. p. 3:12. After the Defendant-Appellant’s blatant refusal to follow the court’s direct order, the judge responded, “I’m finding you in direct contempt since you’re disobeying my order that I’m giving you here orally.” Hr’g Audio at 4:13, Unofficial Hr’g Tr. p. 3:13-14. He then asks the bailiff to take the Defendant-Appellant into custody and sentences the Defendant-Appellant to three days in jail. Hr’g Audio at 4:19, Unofficial Hr’g Tr. p.3:14-15. After some initial protest, the Defendant-Appellant then asks the court for mitigation by stating, “I have a son, I have sole custody of my son, what do I do? Can we postpone this outside the three days?” Hr’g Audio at 4:45, Unofficial Hr’g Tr. p. 4:3-4. The judge denies this request to postpone the sentence but allows him make phone calls to arrange for the care of his son. Hr’g Audio at 4:51, Unofficial Hr’g Tr. p. 3: 5.

On December 8, 2025, the Defendant-Appellant filed a Notice of Appeal, which was accepted by the Court on January 20, 2026.

SUMMARY OF ARGUMENT

The Defendant-Appellant was offensive to the authority and dignity of the Municipal Court when he repeatedly refused to answer the court’s direct questions about completing a court ordered class, repeatedly interrupting the court, implying the court was lying and finally, saying he would not follow a lawful court order in the span of four minutes and fifteen seconds.

Despite some confusion with the certified record, it is clear from the recorded transcript the judge was holding the Defendant-Appellant in direct contempt. The judge said, ““I’m

finding you in direct contempt since you're disobeying my order that I'm giving you here orally." Hr'g Audio at 4:13, Unofficial Hr'g Tr. p. 3:13-14. Therefore, the Defendant-Appellant's arguments about the court's sentencing the Defendant-Appellant to jail as a condition of the sentence or indirect contempt are not applicable.

The Defendant-Appellant's arguments with respect to constitutionally protected speech and lack of due process are without merit. Refusing to comply with a legal court order is not protected speech. Finally the Defendant-Appellant was afforded the appropriate due process for the situation.

ARGUMENT

II. The Defendant-Appellant was not punished for noncompliance with a sentence condition, but rather through direct contempt.⁴

A. Standard of Review and Preservation

Whether a court violates "separation of powers principles is a question of law" reviewed *de novo*. *People v. Reyes*, 409 P.3d 501, 506 (Colo. App. 2016).

The appellate courts "do not require 'talismanic language' to preserve particular arguments for appeal, but the trial court must be presented with an adequate opportunity to make findings of fact and conclusions of law on any issue" before appellate review. *People v. Melandez*, 102 P.3d 315 (Colo. 2004). There is nothing in the record that indicates the Defendant-Appellant preserved the issue of a procedural due process violation by the Municipal Court.

⁴ Defendant-Appellant's argument begins with II, rather than I. To keep consistency, the Plaintiff-Appellee will keep the same numbering structure.

B. The Municipal Court did not evade the procedural and substantive limitations of its probationary power by invoking contempt to punish noncompliance with a sentencing order but rather punished the Defendant-Appellant for openly stating he would not comply with the Municipal Court's order.

“In Colorado a municipal court judge ‘has all judicial powers relating to the operation of his court. . . .’ Section 13-10-112 C.R.S. 1973. One such power, implied by the need to maintain the order and decorum indispensable to judicial proceedings, is the contempt power. Like other inherent judicial powers, this power must be exercised with patience and self-restraint” *Thrap v. People*, 558 P.2d 576, 578 (Colo. 1977).

If the Defendant-Appellant was summarily sentenced to three days in jail because he did not complete the class ordered the by Municipal Court it would be problematic. As the Defendant-Appellant argued in their Opening Brief, if a defendant is sentenced for a violation of their sentence, the probation officer needs to provide notice, and a hearing must be held on the violations. *See* § C.R.S. 16-11-205 and C.R.S. § 16-11-206.

In this case, the Defendant-Appellant was held in direct contempt for stating he was not going to follow the Municipal Court's order. There was no finding by the Municipal Court that the Defendant-Appellant violated probation, but rather a finding of direct contempt. Since the Municipal Court was not relying on a violation of probation to sentence the Defendant-Appellant, he was not attempting to usurp the powers of the legislature. Rather, the Municipal Court was relying on his inherent power to find a person before him in contempt, which does not implicate the separation of powers doctrine.

III. There was sufficient evidence to hold the Defendant-Appellant in direct contempt.

A. Standard of Review and Preservation

The Court “review[s] the record denovo to determine whether the evidence was sufficient to sustain the contempt judgment. *People in Interest of K.P.*, 517 P.3d 70, 75 (Colo. App. 2022).

“[A] defendant effectively challenges the sufficiency of the evidence presented at trial by contesting that evidence at the trial and we perceive no purpose in requiring a party to pursue some other form of objection directed to the evidence as a whole.” *McCoy v. People*, 442 P.3d 379, 385 (Colo. 2019). In proceedings such as direct contempt, where there is no trial and evidence is not presented, preservation is still needed.

The appellate courts “do not require ‘talismanic language’ to preserve particular arguments for appeal. *People v. Melandez*, 102 P.3d 315 (Colo. 2004). The Defendant-Appellant’s protestations, “That’s it? What is this? What is this? What is this? Sir, this is not fair” and then asking if it is a court of record, would indicate he was wishing to preserve the issue of the sufficiency of evidence. Hr’g. Audio at 4:20, Unofficial Hr’g Tr. At p. 3: 16-17.

B. The Defendant-Appellant had the ability to comply with the court’s order while in court and unambiguously stated his intent to violate the court’s order.

“When a defendant challenges the sufficiency of the evidence, he or she is asserting that the prosecution has not proven every fact necessary to establish the crime at issue, and thus, it has not established that the defendant, in fact, committed a crime.” *McCoy* at 385.

When the Colorado Rules of Municipal Court are silent on a subject, “a municipal court ‘may proceed in any lawful manner not inconsistent with these rules or with any applicable law.’” *Paukovich v. County Court of Denver*, 615 P.2d 54 (Colo. App. 1980) *quoting* C.M.R.P. 257(b).⁵ Although C.R.C.P. Rule 107(a) and (b) may provide some guidance, it is not controlling.

“Contempt” is defined as “[d]isorderly or disruptive behavior, a breach of the peace, boisterous conduct or violent disturbance toward the court, or conduct that unreasonably interrupts the due course of judicial proceedings; behavior that obstructs the administration of justice; disobedience or resistance by any person to or interference with any lawful writ, process, or order of the court; or any other act or omission designated as contempt by the statutes or these rules.” C.R.C.P. 107(a)(1). “Direct Contempt” is “[c]ontempt that the court has seen or heard and is so extreme that no warning is necessary or that has been repeated despite the court's warning to desist.” C.R.C.P. 107(a)(2).

Unlike a criminal trial, sufficiency of the evidence for contempt can be very minimal. Four separate times, the Court asked if the Defendant-Appellant was going to complete the class. Hr’g Audio at 1:23, 2:59, 3:05, 3:40, Unofficial Hr’g Tr. at p. 1:9, p. 2:15, p.2:19, p. 3:4-5. Only one time following the Municipal Court’s questioning was the Defendant-Appellant responsive. He answered the classes were on Saturday and he works on Saturday. Hr’g Audio at 3:01, Hr’g Unofficial Tr. at p. 2:16. The other times the Defendant-Appellant evaded the Municipal Court’s questions by indicating he wanted to change his plea or not responding at all. Hr’g Audio at

⁵ C.M.R.P. Rule 257 was amended on January 6, 2022 and Section (b) which contains the material quoted in *Paukovich* is no longer in Rule 257. Yet, there is no caselaw since 2022 that overrules *Paukovich* and so it is still good law.

1:23, 3:25, 3:50, Unofficial Hr’g Tr. p. 1:10-13, p. 2:20, p.3:6. Finally on the fifth time, the Municipal Court asked, “Are you going to take the class or not?” Hr’g Audio at 4:09, Unofficial Hr’g Tr. p.3:11. The Defendant-Appellant’s response was “No.” Hr’g Audio at 4:11, Unofficial Hr’g Tr. p. 3:12. He directly told the Municipal Judge in open court that he would not obey a legal court order. Even if the order was unconstitutional, which it was not, the Defendant-Appellant was obligated to follow it. *In the Interest of K.P.*, 517 P.3d 70, 70. Therefore, the reasons why the Defendant-Appellant wishes to violate the Municipal Court’s order is irrelevant, only the fact that he is not going to follow the order is relevant. The Defendant-Appellant’s remedy was to agree to follow the court order and then file his motion as the Municipal Court indicated. Instead in the presence of the Municipal Court, he said he was going to disobey its order.

The Defendant-Appellant argues that he could not have complied with the court’s order to take the class because, “[i]n order to comply with that order, he would have to sign up for a future offering of the class and attend it through an outside agency.” *Appellant’s Opening Brief*, p. 11. However, the Municipal Court was not ordering the Defendant-Appellant to complete a class offered by a third party on the spot, but only to agree to take the class. The Municipal Court asks whether he was *going* to do the class: “so when are you going to do the class?” Hr’g Audio 2:59, Unofficial Hr’g Tr. At 2:15. The Municipal Court later asks the Defendant-Appellant, “Are you going to do the class?” Hr’g Audio 2:59, Unofficial Hr’g Tr. at p. 2:19 and “Are you going to do it or are you not going to do it?” Hr’g Audio 3:40, Unofficial Hr’g Tr. p. 3:4-5. Finally, the Municipal Court plainly asks, “Are you going to do the class or not?” Hr’g Audio 4:09, Unofficial Hr’g Tr. p. 3:11. At no time does the municipal court order the

Defendant-Appellant to do the class “now” or “right away” or “before you leave the courthouse.” He simply asks if he is going to do the class at some point in the future. The Defendant-Appellant could easily have agreed to do so.

The Defendant-Appellant also argues he was ambiguous in his intent not to comply with the municipal court’s order. *Appellant’s Opening Brief, p. 11*. That is true for the other four times the municipal court asks the Defendant-Appellant whether he is going to do the class, but not the final time. The Defendant-Appellant repeatedly indicates he wishes to change his plea without telling the municipal court that he is not going to take the class. Finally, when the court asks the Defendant-Appellant whether he is going to take the class, he answers “No.” Hr’g Audio at 4:09, Unofficial Hr’g Tr. p. 3:12. There is nothing more unambiguous than saying “no” to a direct question.

As outlined above, it does not matter what his reason for disobeying a court order, “with rare exceptions, a party cannot challenge a court order by violating it.” *In the Interest of K.P.*, at 72. If he truly believed he had a legal justification to change or withdraw his plea, he should have agreed to do the class and then filed a motion to change or withdraw his guilty plea. Instead, the Defendant-Appellant told the Municipal Court he was not going to follow his order.

The Defendant-Appellant also argues that since he violated a prior municipal court order (to do the class), his refusal is indirect rather than direct contempt. But as mentioned above the contempt does not come from the Defendant-Appellant’s not doing the class, but from him telling the municipal court to its face that he is not going to comply with the order to do the class. If the Defendant-Appellant had agreed to do the class in open court, then told someone outside of the courtroom that he had no intention of doing the class, that would have been indirect

contempt. But since he told the municipal court, while in courtroom, that he was not going to do the class in the most unambiguous of ways, he was held in direct contempt. *See* C.R.C.P. 107(a)(2).

IV. The Municipal Court did not abuse its discretion by summarily punishing the Defendant-Appellant, because his refusal to comply with a valid court order was offensive to the dignity and authority of the court.

A. Standard of Review and Preservation.

“A finding of contempt within the ... court’s discretion and may not be reversed absent an abuse of that discretion.” *In Interest of K.P.*, at 75. “A court abuses its discretion when its ruling is manifestly arbitrary, unreasonable, unfair or contrary to law.” *Id.*

The appellate courts “do not require ‘talismanic language’ to preserve particular arguments for appeal. *People v. Melandez*, 102 P.3d 315 (Colo. 2004). The Defendant-Appellant’s protestations, “That’s it? What is this? What is this? What is this? Sir, this is not fair” and then saying “This is fucked up, bro”, would indicate he was objecting to being held in contempt. Hr’g. Audio at 4:20, 4:44, Unofficial Hr’g Tr. at p. 3: 16-17, p. 4:1.

B. The Defendant-Appellant’s statement to the Municipal Court warranted summary punishment because it obstructed the administration of justice which was offensive to the dignity and authority of the municipal court.

“In Colorado a municipal court judge ‘has all judicial powers relating to the operation of his court. . . .’ Section 13-10-112 C.R.S. 1973. One such power, implied by the need to maintain the order and decorum indispensable to judicial proceedings, is the contempt power. Like other inherent judicial powers, this power must be exercised with patience and self-restraint” *Thrap v. People*, 558 P.2d 576, 578 (Colo. 1977).

“A judge's power, ‘to punish contempt committed in his presence is not designed to protect his own dignity or person, but to protect the rights of litigants and the public by ensuring that the administration of justice shall not be thwarted or obstructed.’” *Id.* at 578 citing *Losavio v. District Court*, 512 P.2d 266, 267 (Colo. 1973).

“Since the contempt power is rooted in the necessity to maintain the respectful atmosphere appropriate to efficient administration of justice, it should be invoked only when the judicial process has been seriously affronted or disrupted. Only then is there a need to vindicate the dignity and authority of the court or to reestablish the respect owed to it.” *Id.*

The facts of *Thrap* are instructive to the case at bar. In *Thrap*, during the arraignment, the defendant attempted to explain to the court about alleged police conduct in his case. *Id.* The court told him the arraignment was not the time to discuss such allegations. *Id.* The defendant became agitated, but at the judge’s insistence eventually entered a not guilty plea. *Id.* While still in the courtroom, but as he was leaving, he muttered something to his wife. *Id.* Later testimony indicated no one had heard the content of the comment even though others in the courtroom were focusing on him. *Id.* The judge ordered the defendant back to the podium and asked him what he said to his wife. *Id.* The defendant refused to repeat the comment to the judge and was held in contempt and handcuffed. *Id.*

The Supreme Court found that there was insufficient evidence to hold the defendant in contempt and found, “there was no evidence to support a finding that the defendant's remarks to his wife caused any obstruction of justice. The municipal judge's testimony that spectator attention was focused on the defendant does not prove an obstruction of justice.” *Id.* at 578.

In this case, unlike in *Thrap*, the Defendant-Appellant told the Municipal Court that he was disobeying the court’s order in open court in front of every other defendant and witness in attendance. By answering “no” when the municipal court asked him whether he was going to comply with the court’s order and implying the Municipal Court lied, he obstructed the orderly administration of justice.

V. The Municipal Court did not punish the Defendant-Appellant for constitutionally protected speech because refusing to comply with a valid court order is not protected speech under the First Amendment.

A. Standard of Review and Preservation.

The Supreme Court has “repeatedly held that an appellate court has an obligation to ‘make an independent examination of the whole record’ in order to make sure that ‘the judgment does not constitute a forbidden intrusion on the field of free expression.’ *Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 499 (1984) citing *New York Times Co. v. Sullivan*, 376 U.S. 254, 284–286 (1964). Although the undersigned could find no cases that directly

addressed the standard of review on a First Amendment Claim after a finding of contempt, *Bose* would indicate the review is de novo.⁶

“To preserve an issue for appellate review, a party must make a timely objection on the record and that objection must be ‘specific enough to draw the trial court attention to the asserted error.’” *Forgette v. People*, 524 P.3d 1, 5 (Colo. 2023) (quoting *People v. Tallent*, 495 P.3d 944, 948 (Colo. 2021)). “[M]erely calling an issue or fact to the court’s attention, without asking for relief, is insufficient to preserve an issue for review.” *Id.* at 6. In this case, the Defendant never brought it to the Municipal Court’s attention that his First Amendment rights were being violated. As outlined above, there does not need to be any talismanic language, but in this case there was no language objecting to his First Amendment rights being violated.

Since the Defendant-Appellant did not properly preserve his claim regarding the First Amendment, the next question is the consequences of that failure and whether he waived or forfeited any First Amendment objection. *See Phillips v. People*, 443 P.3d 1016 (Colo. 2019). “Waiver is the *intentional* relinquishment of a *known* right or privilege.” *Forgette* at 7. (*Emphasis in Original*). A waiver can be explicit or implied. *Id.* at 7. “The requirement of an intentional relinquishment of a known right or privilege also distinguishes a waiver from a forfeiture, which is ‘the failure to make the timely assertion of a right.’” *People v. Rediger*, 416 P.3d 893, 902 (Colo. 2018), *quoting United States v. Olano*, 507 U.S. 725, 733 (1993). There is

⁶ The Defendant-Appellant’s reliance on *Lewis v. Colorado Rockies Baseball Club, Ltd*, 941 P.2d 266 (Colo. 1997) is misplaced. In *Lewis*, the Supreme Court held the standard in determining “the First Amendment status of government property” is de novo. *Id.* at 271. The issue raised by the Defendant-Appellant does not involve the court determining the First Amendment status of government property. It is the Plaintiff-Appellee’s contention the standard of review remains the same, though.

significant difference between a waiver and a forfeiture because “a waiver extinguishes error, and therefore appellate review, but a forfeiture does not.” *Id* at 902. An appellate court can review a forfeited error under the plain error standard, but may not review a waiver. *Forgette* 524 P.3d at 7. There is nothing in the record that the Defendant-Appellant either explicitly or impliedly intended to relinquish his First Amendment rights. Therefore, it is the Plaintiff-Appellee’s contention this issue is reviewable.

B. The Defendant-Appellant’s refusal to follow the Municipal Court’s order was not constitutionally protected speech.

To determine whether the Municipal Court’s restriction on free speech is permissible, the reviewing court must undertake a three-step inquiry: 1) Whether the government is restricting protected speech; 2) Whether the courtroom is a public or non-public forum for First Amendment Purposes and 3) Whether the Municipal Court’s restriction of the Defendant-Appellant’s speech meets the standard for speech in a non-public forum. *People v. Aleem*, 149 P.3d 765, 774 (Colo. 2007).

Under the collateral bar rule, an individual subject to a court order issued by a court with subject matter and personal jurisdiction must obey that order until it is reversed, amended, or vacated. *Walker v. Birmingham*, 388U.S. 307 (1967). “[A]ll orders and judgments of courts must be complied with promptly. If a person to whom a court directs an order believes that order is incorrect the remedy is to appeal, but, absent a stay, he must comply promptly with the order pending appeal. Persons who make private determinations of the law and refuse to obey an order generally risk criminal contempt even if the order is ultimately ruled incorrect.” *Maness v. Meyers*, 419 U.S. 449 (1975). In this case, the Defendant-Appellant’s response should have been

to agree to the court order to complete the class and then collaterally attack his plea later. He cannot “make a private determination” not to obey a court order then claim it was free speech.

The Supreme Court has explained that, "as a general matter, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *United States v. Stevens*, 559 U.S. 460, 468 (2010) (internal quotation marks omitted). Notwithstanding the foregoing, the First Amendment's protections are not absolute, and the Court has approved government "restrictions upon the content of speech in a few limited areas, . . . including obscenity, defamation, fraud, incitement, and speech integral to criminal conduct." *Id.* (citations and internal quotation marks omitted). In this case, the Defendant-Appellant was punished not for his ideas or beliefs, but because he openly defied the Municipal Court by telling the judge that he was not going to comply with its order. Therefore, the Defendant-Appellant's saying he was going to defy the Municipal Court's order is not protected speech.

For First Amendment purposes, “a courtroom is a non-public forum.” *Aleem* at 775. “The type of forum where the speech occurs dictates the standard of review that applies to determine whether the government's restriction on that speech is permissible.” *Id.* at 775. “[T]he disruption created by expressive activity within a courtroom weighs heavily against the conclusion that a courtroom is a public forum.” *Id.* at 776.

“Speech in a non-public forum is subject to greater restriction than speech in public or designated public fora. Speech in a non-public forum can be restricted if two conditions are met: (1) the restrictions are reasonable and (2) the government is not suppressing the expression merely because the public official opposes the speaker's viewpoint.” *Id.* at 776. “Courtrooms

serve a very specific purpose as fora designated for the adjudication of civil and criminal matters.” *Id.* at 776. Therefore, “the court has an obligation to maintain courtroom decorum.” *Id.* at 776.

The Municipal Court’s response to a breach of the decorum was to find the Defendant-Appellant in contempt. This was a reasonable reaction to unprotected speech in a non-public forum.

C. The Defendant-Appellant’s refusal to follow the municipal court’s order was not viewpoint discrimination.

“At its most basic, the test for viewpoint discrimination is whether, within a relevant subject category, the government has singled out a subset of messages for disfavor based on the views expressed.” *Matal v. Tam*, 582 U.S. 218, 248 (2017).

“[T]he government violates the First Amendment when it denies access to a speaker solely to suppress the point of view he espouses on an otherwise includible subject.” *Cornelius v. NAACP Legal Def. & Educ. Fund*, 473 U.S. 788 (1985).

The Defendant-Appellant seems to be confusing the third prong of the *Aleem* test with viewpoint discrimination. There is no evidence the Municipal Court is discriminating against the Defendant-Appellant for his viewpoint in an otherwise includible subject. Telling a court you are not going to comply with its order is never an includible subject and would be punished the same way for everyone who does so.

VI. The Municipal Court provided sufficient and appropriate due process to the Defendant-Appellant during the contempt proceedings.

A. Standard of Review and Preservation

“A finding of contempt is within the ... court’s discretion and may not be reversed absent an abuse of that discretion.” *In Interest of K.P.*, at 75. “A court abuses its discretion when its ruling is manifestly arbitrary, unreasonable, unfair or contrary to law.” *Id.*

The appellate courts “do not require ‘talismanic language’ to preserve particular arguments for appeal. *People v. Melandez*, 102 P.3d 315 (Colo. 2004). The Defendant-Appellant’s protestations, “That’s it? What is this? What is this? What is this? Sir, this is not fair” and then saying “This is fucked up, bro”, would indicate he was objecting to being held in contempt. Hr’g Audio at 4:20, 4:44, Unofficial Hr’g Tr. at p. 3: 16-17, p. 4:1.

B. The Municipal Court provided sufficient and appropriate due process to the Defendant-Appellant before finding him in contempt and sentencing him to jail.

The United States and Colorado Constitutions guarantee “no person shall be deprived of life, liberty, or property without due process of law.” U.S. Const. amend. XIV; Colo. Const. Art. II, Section 25. Procedural due process requires fundamental fairness. *City & County of Denver v. Eggert*, 647 P.2d 216 (Colo. 1982).

When the Colorado Rules of Municipal Court are silent on a subject, “a municipal court ‘may proceed in any lawful manner not inconsistent with these rules or with any applicable law.’”

Paukovich v. County Court of Denver, 615 P.2d 54 (Colo. App. 1980) *quoting* C.M.C.R 257(b).

Although C.R.C.P. Rule 107(b) may provide some guidance, it is not controlling.

C.R.C.P. Rule 107(a)(2) states, “Direct Contempt: Contempt that the court has seen or heard and is so extreme that no warning is necessary or that has been repeated despite the court’s warning to desist.” Under C.R.C.P. Rule 107(b), “When a direct contempt is committed, it may be punished summarily. In such case an order shall be made on the record or in writing reciting the facts constituting the contempt, including a description of the person’s conduct, a finding that the conduct was so extreme that no warning was necessary or the person’s conduct was repeated after the court’s warning to desist, and a finding that the conduct is offensive to the authority and dignity of the court. Prior to the imposition of sanctions, the person shall have the right to make a statement in mitigation.”

C.R.C.P. 107(b) guides municipal courts in the due process needed when a defendant is held in direct contempt. Under C.R.C.P. 107(b), the court may give a warning or warnings, but for direct contempt, no hearing is needed if the conduct is in front of the court and is so extreme then no warning is necessary. C.R.C.P. 107(a)(2). In this case, after repeated attempts by the Municipal Court to get an answer on whether the Defendant-Appellant would follow the Municipal Court’s order and after implying the court was lying, the Defendant-Appellant stood up in open court and told the judge that he was not going to comply with the court’s order. The Defendant-Appellant’s actions are so extreme that if the Municipal Court did not take action, it would severely undermine the Municipal Court’s authority and ability to conduct its business. The Defendant-Appellant told the Municipal Court to its face, that no matter what intermediate sanctions the judge would impose, he was not willing to follow those orders. Therefore, the only

remedy left to the Municipal Court was to hold the Defendant-Appellant in direct contempt and sentence him to a term in the county jail. No more due process is needed when a person so openly and brazenly defies a legal court order.

Under C.R.C.P. 107 (b), “[p]rior to imposition of sanctions, the person shall have the right to make a statement in mitigation.” The Defendant-Appellant was allowed to make several statements after being found in contempt, but chose only one in mitigation. Hr’g Audio at 4:20, Unofficial Hr’g Tr. at p. 3: 16-22, p. 4:11. The Defendant-Appellant stated, “I have a son, I have sole custody of my son, what do I do? Can we postpone this outside the three days? Hr’g Audio at 4:45, Unofficial Hr’g Tr. p. 4:3-4. The Municipal Court heard the Defendant-Appellant, but was unmoved and told him he could make phone calls. Hr’g Audio at 4:51, Unofficial Hr’g Tr. at p. 4:5. The Defendant-Appellant in his Opening Brief argues he was not afforded the opportunity to be heard, but the above exchange shows the Defendant-Appellant was allowed to be heard, the Municipal Court was simply unmoved with Defendant-Appellant’s entreaties. *Appellant Opening Brief at 21.*

C.R.C.P. 107(b) further requires a court that finds a person in direct contempt to issue an order “on the record or in writing reciting the facts constituting contempt, including a description of the defendant’s conduct ...” The Defendant-Appellant argues the Municipal Court was deficient in its record. *Appellant Opening Brief at 21.* The Municipal Court made the record why he was holding the Defendant-Appellant in contempt: “I’m finding you in direct contempt since you’re disobeying my order that I’m giving you here orally.” Hr’g Audio at 4:13, Unofficial Hr’g Tr. at 3:13:14. It is unclear what further record is needed when a court is holding a person in direct contempt for openly defying a court order. The Municipal Court made the only record it

needed and could. It should be noted that although the Municipal Court found the Defendant-Appellant violated “my order that I’m giving here orally”, in reality the Defendant-Appellant was openly defying an order from the Municipal Court that was handed down on October 2, 2024. Throughout that time, the Defendant-Appellant was given multiple chances by the Municipal Court to complete the class, but did not take advantage of the Municipal Court’s grace. Even on the day he was held in direct contempt, the Municipal Court gave him multiple chances to obey its order from August 2024. The Defendant-Appellant was evasive until finally stating he was defying a year old Municipal Court order.

The Defendant-Appellant’s reliance on *A.M. v. A.C.*, 296 P.3d 1026 (Colo. 2013) is misplaced. The three factor *Eldridge* analysis was held to be “an appropriate tool to assess the question of ‘what process is due’ parties facing termination of parental rights.” *Id.* at 32. (quote marks in original).⁷ The Defendant-Appellant is not facing the termination of his parental rights, so *A.M.* and the three factor *Eldridge* test is not relevant to this case. What is instructive is C.R.C.P. 107 and general notions of due process as cited above.

The Defendant-Appellant’s actions on October 15, 2025 were so egregious the Municipal Court had no alternative than to hold him in direct contempt. The Municipal Court made the record it needed to make and gave the Defendant-Appellant a chance to mitigate his sentence—a chance the Defendant-Appellant largely ignored. The Defendant-Appellant was given the constitutionally appropriate due process for his actions.

⁷ The three factor *Eldridge* test is espoused in *Matthews v. Eldridge*, 424 U.S. 319, 335 (1976).

C. The Municipal Court found the Defendant-Appellant in direct contempt and not indirect contempt.

The Municipal Court clearly stated “I’m finding you in direct contempt since you’re disobeying my order that I am giving you here orally.” Hr’g Audio at 4:13, Unofficial Hr’g Tr. at p. 3:13-14. Since the Municipal Court was clear that he was finding the Defendant-Appellant in direct contempt and not indirect contempt, this section is wholly irrelevant.

CONCLUSION

While in open court and in front of the judge, the Defendant-Appellant defied a legal Municipal Court order. When asked a simple question, “Are you going to do your class or not?”, the Defendant-Appellant answered, “No.” He told the Municipal Court that he simply was not going to follow the court’s order. If the Municipal Court had let that outrage go, it would have severely undermined the function of the court. No order from the Municipal Court would have been safe from being violated with no consequences. The only option for the Municipal Court was to hold the Defendant-Appellant in contempt. The Municipal Court made the record it needed and provided the Defendant-Appellant with the chance to mitigate the sentence. For these, reasons the Town of Silverthorne respectfully asks this Court to uphold the Municipal Court’s contempt finding.

Respectfully submitted this 13th day of July, 2026.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **ANSWER BRIEF** was served via Colorado Courts E-Filing this 13TH day of July, 2026 on:

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