ADVANCE SHEET HEADNOTE
November 10, 2025

2025 CO 61

No. 25SA193, *People v. West*—Disqualification of a Prosecutor—Special Circumstances Justifying Disqualification—Appearance of Impropriety Insufficient—§ 20-1-107, C.R.S. (2025)—*People v. Loper*, 241 P.3d 543 (Colo. 2010)—*People v. Kent*, 2020 CO 85, 476 P.3d 756.

In this interlocutory appeal brought by the People, the supreme court reverses the district court's order disqualifying both the individual prosecutor in this case and his entire office. The supreme court concludes that the district court misapplied the law, and thus abused its discretion, in granting the defense's motion for a special prosecutor.

Although the district court articulated the correct legal standard, its ensuing actions reflect that it applied the wrong one. The district court incorrectly focused almost exclusively on the appearance of impropriety engendered by an improper comment made by the prosecutor to the victim's family in the hallway outside the courtroom. But appearance of impropriety ceased constituting sufficient grounds to disqualify a prosecutor in Colorado more than two decades ago. True, the district court also stated that the prosecutor's comment went beyond the

appearance of impropriety and implicated impropriety itself. But impropriety, without more, falls short of the governing standard as well. The district court never found that the comment constituted an extreme circumstance that rendered it unlikely that the defendant would receive a fair trial. Nor could the court have made such a finding on the record before it. Because the defendant did not demonstrate, through actual facts and evidence in the record, that the comment in question was an extreme circumstance that impugned the likelihood of his receiving a fair trial, he failed to satisfy his burden on his motion for a special prosecutor.

Accordingly, the district court's disqualification order is reversed, and the matter is remanded to the district court for further proceedings consistent with this opinion.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2025 CO 61

Supreme Court Case No. 25SA193
Interlocutory Appeal from the District Court
El Paso County District Court Case No. 24CR3128
Honorable David A. Gilbert, Judge

Plaintiff-Appellant:

The People of the State of Colorado,

v.

Defendant-Appellee:

Rocky Wayne West.

Order Reversed
en banc
November 10, 2025

Attorneys for Plaintiff-Appellant:
Michael J. Allen, District Attorney, Fourth Judicial District
Doyle Baker, Senior Deputy District Attorney
Colorado Springs, Colorado

Attorneys for Defendant-Appellee:
Megan A. Ring, Public Defender
Jennifer Charlier Cox, Supervising Deputy Public Defender
Rachel Armstrong, Deputy Public Defender
Colorado Springs, Colorado

JUSTICE SAMOUR delivered the Opinion of the Court, in which **CHIEF JUSTICE MÁRQUEZ**, **JUSTICE BOATRIGHT**, **JUSTICE HOOD**, and **JUSTICE BERKENKOTTER** joined.
JUSTICE GABRIEL concurred in part and dissented in part.
JUSTICE HART did not participate.

JUSTICE SAMOUR delivered the Opinion of the Court.

¶1 They say that actions speak louder than words. That time-honored adage certainly rings true in this interlocutory appeal. In granting the defense's motion to appoint a special prosecutor, the district court uttered the correct legal standard, but its actions reflect that it applied the wrong one.

¶2 We now conclude that the district court misapplied the law, and thus abused its discretion, in disqualifying both the prosecutor assigned to this case and the entire district attorney's office for the Fourth Judicial District. Because the defense failed to satisfy its burden of showing actual facts and evidence in the record amounting to extreme circumstances that would render it unlikely that Rocky Wayne West would receive a fair trial, Colorado law required the court to deny the motion for a special prosecutor. Accordingly, we reverse the disqualification order and remand the case for further proceedings consistent with this opinion.

I. Facts and Procedural History

¶3 The People have charged West with first degree murder. In one of the first court appearances, the defense raised concerns about West's competency. The district court ordered a competency evaluation by the Colorado Mental Health Hospital in Pueblo ("CMHHIP"), and CMHHIP subsequently conducted an evaluation. A psychologist at CMHHIP then submitted a report opining that West

was competent. The defense objected and requested a hearing. Additionally, it filed an evaluation report prepared by a privately retained psychologist who had found West incompetent. Following an evidentiary hearing during which the dueling expert opinions were presented, the court concluded that West was competent.

¶4 Approximately two months later, the defense again raised the issue of competency, asking the court to order a second competency evaluation. Over the People's objection, the court ordered another evaluation by CMHHIP. At the end of this court appearance, the primary prosecutor assigned to the case ("the prosecutor") met with the victim's family in the hallway outside the courtroom. West's attorneys, all members of the Colorado State Public Defender's Office, exited the courtroom while that meeting was in progress. As they walked past the prosecutor, they overheard him make a statement to the victim's family to the effect of: The public defenders are "trying to get [West] out so he can stab more people and hopefully the next people he stabs are public defenders."

¶5 The primary defense attorney assigned to the case ("defense counsel") emailed the prosecutor hours later to inform him that she and her colleagues had heard his improper comment. She noted that she and the prosecutor had experienced a "decent working relationship" for some years. Further, she acknowledged her belief that the improper comment was the result of the

prosecutor's frustration over the defense's request for a second competency evaluation. She added that she knew the prosecutor would never advocate for someone to physically assault her and her colleagues for doing their jobs. Still, she expressed significant concern about the improper comment: "[H]onestly [it] freaks me out a little because I am already aware that this is a family who has suffered a traumatic and horrible loss." She thus asked the prosecutor to contact the victim's family to make clear that West's attorneys were just doing their jobs and that acting violently toward them was unacceptable.

¶6 The prosecutor promptly responded. He apologized for his comment, made clear that he didn't want anyone to be stabbed, and confirmed that he uttered the malediction out of frustration and anger based on the order requiring a second competency evaluation just a couple of months after the court found that West was competent. He then promised to inform the victim's family that his comment was not meant to suggest that West's defense counsel deserved to be harmed.

¶7 About an hour later, the prosecutor sent a follow-up email to defense counsel, informing her that he had contacted the victim's family and explained that he wasn't "condoning violence against anyone, and certainly not against you or members of your office, who I clarified were just doing their jobs." He then reported that all of the victim's family members with whom he had spoken had "made it clear" to him that they understood he was not advocating violence.

¶8 Eleven days after the email exchange between the prosecutor and defense counsel, West's attorneys filed a motion for a special prosecutor. They argued that several actions by the prosecutor throughout the pendency of the case, including his improper comment to the victim's family in the hallway outside the courtroom, reflected that he was biased and that a special prosecutor was necessary for their client to receive a fair trial.[1]

¶9 The People opposed the motion, emphasizing that the prosecutor had made an improper "off-handed remark to blow off steam," not a comment reflecting "genuine animus," and had immediately apologized for his conduct. The prosecutor is "human, not unfair," asserted the People, and the regrettable comment was "an intemperate but fleeting expression of frustration" due to the continuing delays caused by the defense's requests to have West evaluated for competency.

¶10 After holding a hearing, the district court orally granted the defense's motion. The court disqualified both the prosecutor and his entire office (the office of the District Attorney in the Fourth Judicial District). Consequently, it ordered the appointment of a special prosecutor. The People then filed this interlocutory

[1] The district court rejected all of the contentions in the motion save for the one grounded in the prosecutor's improper comment. The People's interlocutory appeal is accordingly limited to that comment.

appeal pursuant to section 20-1-107(3), C.R.S. (2025), and section 16-12-102(2), C.R.S. (2025).

¶11 Before analyzing the merits of the People's interlocutory appeal, there are two important housekeeping matters we must address. First, we need to ensure we have jurisdiction. Second, we must identify the standard of review.

II. Jurisdiction

¶12 Section 20-1-107(3) allows the People to file an interlocutory appeal from a district court's order disqualifying a district attorney. Such an appeal must be filed in this court "pursuant to section 16-12-102(2)." § 20-1-107(3). Reciprocally, section 16-12-102(2) states that the People may file an interlocutory appeal in this court "from a ruling on a motion to disqualify a district attorney pursuant to section 20-1-107." Thus, under both statutes, we have jurisdiction over this interlocutory appeal.

III. Standard of Review

¶13 An appellate court reviews an order disqualifying a prosecutor for an abuse of discretion. *People v. Espinoza*, 195 P.3d 1122, 1127 (Colo. App. 2008). Likewise, a ruling disqualifying an entire district attorney's office is subject to review for an abuse of discretion. *People v. Kent*, 2020 CO 85, ¶ 28, 476 P.3d 762, 768. A trial court abuses its discretion when its decision is "manifestly arbitrary, unreasonable, or unfair," or based on a misapplication of the law. *Id.* (noting that when a trial court

"grants a motion to disqualify a prosecuting office based on a misapplication of the law, it abuses its discretion").

IV. Analysis

¶14 As usual, the launch point of our analysis is the law—specifically, the Colorado statute controlling motions to disqualify district attorneys (section 20-1-107) and our jurisprudence interpreting it. Against this backdrop, we examine the district court's order, addressing first the disqualification of the prosecutor and then the disqualification of his office. We ultimately conclude that the district court abused its discretion by misapplying the law on both fronts.

A. Colorado Law on Motions to Disqualify District Attorneys

¶15 The office of district attorney in this state was created by the Colorado Constitution. Colo. Const. art. VI, § 13. Our General Assembly has recognized that it is vested by the state constitution with the exclusive authority to prescribe the duties of the office of district attorney. § 20-1-107(1). Relatedly, our General Assembly has declared that it is "necessary to protect the independence of persons duly elected to the office of district attorney." *Id.* To that end, our General Assembly has enacted section 20-1-107. *Id.*

¶16 Under section 20-1-107(2), there are only three available grounds for a court to disqualify a district attorney in a particular case: (1) at the district attorney's own request; (2) following the court's determination that the district attorney has

a personal or financial interest in the case; or (3) upon a finding by the court that "special circumstances exist that would render it unlikely that the defendant would receive a fair trial." Only the third category is implicated here.

¶17 The pivotal question when a defendant asserts that special circumstances require the district attorney's disqualification is whether the defendant would be likely to receive a fair trial without the appointment of a special prosecutor. *People v. Loper*, 241 P.3d 543, 546 (Colo. 2010). A defendant moving for disqualification under the special circumstances prong has the burden of showing that disqualification is necessary because otherwise a fair trial would be unlikely. *Id.* To satisfy this burden, a defendant must rely on "actual facts and evidence in the record supporting the contention." *Id.* Mere hypothetical information cannot suffice. *Id.*

¶18 We have not attempted to formulate an exhaustive list of special circumstances that would render it unlikely that a defendant would receive a fair trial. *Id.* This would be a fool's errand, as trying to predict every possible relevant scenario would be as fruitful as trying to carry water in a sieve. *See Kent*, ¶ 20, 476 P.3d at 766 (comparing the task to nailing Jell-O to the wall). Nevertheless, our case law on the special circumstances prong is not without value. *Id.* Our jurisprudence teaches that the special circumstances asserted "must be extreme to justify disqualifying the district attorney." *Loper*, 241 P.3d at 546. Indeed, even

potential wrongdoing by the prosecutor does not automatically amount to a special circumstance requiring disqualification. *See People v. Jimenez*, 217 P.3d 841, 857–58 (Colo. App. 2008) (disagreeing that disqualification was required based on allegations that investigators and prosecutors in the district attorney's office had violated the federal confidentiality statute and were thus exposed to criminal liability).

¶19 Notably, although we have reviewed plenty of section 20-1-107(2) orders during the last two decades, we have determined that there were special circumstances sufficiently extreme to justify disqualification in only two cases: *People v. Chavez*, 139 P.3d 649 (Colo. 2006), and *People v. Arellano*, 2020 CO 84, 476 P.3d 364. In *Chavez*, the district attorney had previously represented the defendant in a substantially related matter and had received confidential communications regarding the pending case. 139 P.3d at 654. More recently, in *Arellano*, a murder case, an employee of the district attorney's office was married to (although separated from) the victim at the time of the crime and was a potentially significant witness in the case because she possessed (and had already provided to the district attorney's office) information tending to undermine Arellano's claim of self-defense. ¶ 3, 476 P.3d at 365. In both cases, we concluded that there were extreme circumstances that made it unlikely the defendant would receive a fair trial without the appointment of a special prosecutor. *Chavez*,

139 P.3d at 654; *Arellano*, ¶ 34, 476 P.3d at 370. Outside of these extreme factual scenarios, however, we have uniformly reversed orders of disqualification issued pursuant to section 20-1-107(2) based on the "special circumstances" criterion.

¶20 Of particular relevance here, we have declined to find special circumstances justifying disqualification in cases where the primary concern was the appearance of impropriety but the facts and the record had no bearing on the defendant's likelihood of obtaining a fair trial. In *People in Interest of N.R.*, 139 P.3d 671, 675 (Colo. 2006), we made clear that the 2002 amendment to section 20-1-107(2) did away with the "appearance of impropriety" standard our case law had previously endorsed. We explained that following the 2002 amendment, a district attorney may only be disqualified pursuant to one of the three grounds identified in section 20-1-107(2). *Id.* at 676. We ultimately concluded that there were no special circumstances warranting disqualification where the district attorney had previously received substantial support for his political campaign from the victim's family and had thereafter reversed his predecessor's decision not to prosecute the case. *Id.* at 678. That the district attorney seemed indebted to the victim's family, arguably giving rise to an appearance of impropriety, was of no import to our decision because it had no bearing on whether it was likely N.R. would receive a fair trial. *Id.*

¶21 *N.R.* is not alone; it has lots of company. In *Loper*, for example, where the victim's mother was a probation officer in the judicial district in which the case was pending, we reversed the district court's order disqualifying the prosecuting office notwithstanding concerns about the appearance of impropriety. 241 P.3d at 544. We acknowledged that the probation officer had been involved in the incident, had provided the most important information presented at the preliminary hearing, and "may have influenced the district attorney in bringing the charges against Loper." *Id.* at 544–45, 547. We reasoned, however, that even if the probation officer had affected the decision to charge Loper, "this influence [did] not jeopardize the likelihood that Loper [would] receive a fair trial." *Id.* at 547. That these circumstances may have left "a bad smell" was of no moment. *Id.*; *see also People v. Kendrick*, 2017 CO 82, ¶¶ 46–47, 396 P.3d 1124, 1132 (reversing the section 20-1-107(2) disqualification order because it was based on the court's "lingering concern that . . . there clearly [was] *at least an appearance* that the defendant would not receive a fair trial"); *People v. Perez*, 201 P.3d 1220, 1232 (Colo. 2009) (concluding that it was error to disqualify the prosecuting office based on appearance concerns where one of the prosecutors had previously represented the defendant); *Dunlap v. People*, 173 P.3d 1054, 1094 (Colo. 2007) (rejecting Dunlap's contention that his allegation—that the district attorney's office had committed a

crime by stealing his medical records—created an appearance of impropriety and thus required the office's disqualification).

¶22 Although the circumstances in these cases may well have cast doubt on the district attorney's "motives and strategies," they fell short of the special circumstances standard in section 20-1-107(2) because "they [did] not play a part in whether [the] defendant [would] receive a fair trial." *Loper*, 241 P.3d at 547. Such circumstances arguably satisfied the old "appearance of impropriety" standard, but they missed the mark under the amended standard.

¶23 In sum, our case law establishes that the disqualification of a district attorney is a "drastic remedy" that should be available only in "narrow circumstances." *Kent*, ¶ 39, 476 P.3d at 770 (quoting *Loper*, 241 P.3d at 547). Section 20-1-107(2) imposes a heavy burden on defendants because otherwise they would have the "unfettered option of disqualifying a prosecutor." *Id.* (quoting *Loper*, 241 P.3d at 547–48). Were we to use a less rigorous metric, it would risk putting a strain on the system and causing significant problems. *Id.*

B. The District Court Abused Its Discretion Because It Misapplied the Law

¶24 At the outset, we want to be clear that we, as a court, vigorously denounce the prosecutor's comment. There is absolutely no place for that type of rhetoric in our bar. Regardless of the level of frustration and anger the prosecutor felt after

the judge ordered a second CMHHIP evaluation, his statement is unacceptable and indefensible.[2]

¶25 But the question for us isn't whether the prosecutor's comment was improper. Indeed, there is no dispute about that: The People themselves condemn the statement as reprehensible. The question for us is whether the comment justified disqualifying both the prosecutor and his entire office. To answer, we consider the district court's ruling, focusing first on the disqualification of the prosecutor and then on the disqualification of his office.

1. The Disqualification of the Prosecutor

¶26 The court stated right off the bat that the "appearance of impropriety" standard no longer applies to motions to disqualify district attorneys. Were it otherwise, said the court, "it would be an easier issue" because, in its view, the improper comment gave rise to "the appearance of unethical conduct" and thus "the appearance of impropriety." Then, relying on our jurisprudence, the court noted that "the party moving to disqualify the district attorney based on special

[2] Any criticism about this opinion sending the wrong message is misplaced. Our rebuke of the prosecutor's comment could not be stronger. However, we must vigilantly guard against the temptation to alter our legal analysis based on the passions excited by the shocking and outrageous nature of the prosecutor's comment. If the Office of Attorney Regulation Counsel perceives that the prosecutor's comment violated the Colorado Rules of Professional Conduct, it is up to that office to take appropriate action.

circumstances bears the burden of showing that absent disqualification, they will not receive a fair trial." Continuing, the court observed that the special circumstances "must be extreme." The court then reiterated that "a mere appearance of impropriety is insufficient."

¶27 The court was spot-on in reciting the governing legal standard. But its ensuing actions demonstrate that it applied a different standard. The court did just what it recognized it couldn't do: It granted the motion to disqualify based largely on its concerns regarding the appearance of impropriety.

¶28 Early on in its ruling, the court framed the issue as whether, "*looking at it from the citizen's point of view, [an] ordinary person's point of view*, does [the prosecutor's comment] *raise the specter* that someone would not be able to get a fair trial if the prosecutor . . . appears to be acting beyond their mandate to . . . do justice [and] make sharp arguments when necessary"? (Emphases added.) The court then answered: "[C]learly, in my mind, *this raises an appearance of impropriety*." (Emphasis added.) This smoking gun in the record establishes that the court applied the wrong legal standard.

¶29 Other parts of the record corroborate our reading of the trial court's ruling. The court identified "[t]he problem" in this case as follows: "[N]ow *everything can be looked at through this prism* of what this Court considers an outrageous statement . . . ." (Emphasis added.) Moments later, the court stressed that "[t]he

problem is [that] an unusually outrageous, shocking statement . . . was made that unfortunately changes . . . *the public's view [or] the legal system's view"* about whether this case could be properly prosecuted without granting the defense's motion. (Emphasis added.) And shortly thereafter, the court indicated that this case will "always [be] *seen through the prism*" of the prosecutor's comment. (Emphasis added.)[3]

¶30 Thus, after concluding that the prosecutor's comment created an appearance of impropriety, the court conveyed, in no uncertain terms, that its chief concern was how this would look to the public, how it would be perceived by the legal system, and the prism the case would be seen through in the future. Unfortunately, the court's observations, while valid, were misdirected. As the court itself recognized, appearance of impropriety is no longer the standard. *See N.R.*, 139 P.3d at 675. It hasn't been for almost a quarter of a century—since the 2002 amendment to section 20-1-107(2). *Id.*

¶31 West contends, however, that the district court said that this was "beyond an appearance of impropriety"; it was "impropriety itself." Fair enough. It is true that although the court focused almost exclusively on appearances, it did also say

[3] To safeguard against the risk of inaccurately rewriting or paraphrasing the court's comments, we use actual quotes. Far from being cherry-picked, these quotes constitute the bulk of the ruling.

that the prosecutor's comment constituted impropriety. But this argument has no legs either.

¶32 The presence of actual impropriety (as opposed to the mere appearance of impropriety) is neither here nor there; again, the fundamental inquiry is whether special circumstances exist that are so extreme that they make it unlikely that the defendant will receive a fair trial. In the instant matter, though, the court's analysis stopped at the impropriety of the prosecutor's comment. The court did not say why that impropriety rendered it unlikely that West would receive a fair trial. Under our precedents, the failure to bridge this analytical gap is fatal.

¶33 And, to the extent the court used the word "extreme" in its actual application of the law, it did so only once and only to describe the outrageous nature of the prosecutor's comment. Hence, that part of the court's analysis suffers from the same shortcoming: The failure to explain why the circumstances of this case were so extreme as to render it unlikely that West would receive a fair trial.

¶34 West nevertheless pushes back, contending that (1) the prosecutor's comment "is evidence of clear animus and bias" and (2) the court must have recognized as much. We are unpersuaded.

¶35 Our decision in *Kent*, ¶ 35, 476 P.3d at 769, is instructive on this point. In *Kent*, where the elected district attorney prosecuted his judicial district's elected coroner, we vacated a disqualification order that was grounded in concerns about

the prosecutor's animus and bias that far exceed in gravity those present here. In granting the motion to disqualify there, the district court was reasonably worried that the case was "significantly different than most" other cases and that there was "something personal about the case" for the district attorney. *Id.* at ¶ 4, 476 P.3d at 764.

¶36 First, Kent had made a comment to the district attorney in the hallway of the courthouse that the district attorney found threatening. *Id.* at ¶ 7, 476 P.3d at 764. Second, Kent had thereafter made threatening comments directed at the district attorney during a contentious interaction with a legal administrative assistant at the district attorney's office. *Id.* at ¶ 8, 476 P.3d at 764–65. Third, the district attorney had responded by asking the Colorado Bureau of Investigation to investigate Kent because he believed Kent was unstable and may have committed a crime while visiting his office. *Id.* at ¶ 8, 476 P.3d at 765. Fourth, the district attorney had then told Kent's counsel that if Kent didn't accept the plea bargain offer on the table, "things would get really bad," and that people who had threatened the district attorney in the past had ended up with felony convictions. *Id.* at ¶ 9, 476 P.3d at 765. Fifth, at the district attorney's urging, the grand jury had reconvened, and a second true bill had added a perjury charge against Kent. *Id.* at ¶ 10, 476 P.3d at 765. Sixth, without notifying Kent or his counsel, the district attorney had lodged a complaint against Kent with the Department of Regulatory

Agencies ("DORA"), and he'd asked DORA to share any information it uncovered in its investigation of Kent. *Id.* at ¶ 12, 476 P.3d at 765. And last, the district attorney had recently moved to quash two subpoenas duces tecum served by Kent, and in the court's view, those subpoenas were appropriate and sought information that should have been disclosed pursuant to Crim. P. 16 without any prompting. *Id.* at ¶ 13, 476 P.3d at 765.

¶37 We acknowledged that these circumstances may have "cast doubt" on the district attorney's "motives and strategies." *Id.* at ¶ 5, 476 P.3d at 764 (quoting *Loper*, 241 P.3d at 547). And we perceived that the district court was understandably apprehensive about the same. *Id.* at ¶ 35, 476 P.3d at 769. Indeed, the district court had pointed out in its disqualification order that the DORA complaint reflected that the district attorney "was seeking to penalize Kent above and beyond the criminal prosecution." *Id.* Along the same lines, the district court had questioned the district attorney's ability to be fair in the case given his animus and bias. *Id.*

¶38 We nevertheless concluded that the circumstances that led the court "to harbor suspicions" about the district attorney's "motives and strategies" did not warrant disqualification because they didn't "render it unlikely that the defendant would receive a fair trial." *Id.*; *see also Loper*, 241 P.3d at 547 (same). And because

Kent had failed to meet his burden, we reversed the disqualification order. *Kent*, ¶¶ 38, 40, 476 P.3d at 769–70.

¶39 The district court's speculation in this case about whether the prosecutor would be able to be fair moving forward is of the same ilk as that involved in *Kent*. Specifically, the court *wondered* whether the prosecutor would be able to fairly plea bargain with West. It indicated that it needed to ensure that the prosecutor would operate "in a reasonable and appropriate way, so that going forward it cannot be said that the District Attorney's Office had . . . made such an . . . outrageous presentation here that they couldn't back off, . . . couldn't negotiate, . . . and that they were overly zealous potentially in certain steps that were taken . . . ."

¶40 Even overlooking the fact that these remarks, too, are arguably related to appearances and thus misaligned, they fall flat. Just as in *Kent*, the court's speculation, while understandable, cannot suffice to warrant disqualification under the special circumstances prong. That it's possible a prosecutor will treat a defendant unfairly in plea negotiations in the future doesn't show that the defendant will likely be deprived of a fair trial. Thus, like Kent, West failed to make the requisite showing to prevail on his motion for disqualification.

¶41 We stress that the district court here made no finding of actual animus, bias, or inability to be fair (including in plea negotiations). At most, it surmised that the prosecutor might be unfair moving forward in this case.

¶42 Perhaps more compellingly, any concerns of animus, bias, or unfairness are allayed by the judge's candid remarks regarding the prosecutor's character. Although the judge was appropriately critical of the prosecutor's improper comment, he spoke highly of the prosecutor's disposition:

> I know [the prosecutor] as a very good man, and a very good person, and someone I've always found in the past to be anchored firmly to the notion of what's fair and what's not fair, someone who has offered many excellent opportunities to people who deserve excellent opportunities, and a man who also has firmly and . . . earnestly prosecuted people who deserve to be prosecuted and in prison. So he does both things, and he is someone who shows himself to be very good at what he does.

¶43 These tell-tale statements in no way reflect concern that the prosecutor would harbor animus or act in a biased or unfair manner in future dealings with West. In a similar vein, while the court believed that the prosecutor was "more than upset, more than frustrated, [and] more than angry" when he made the improper comment, it viewed the comment as "impulsive," which suggests to us that the court did not consider the comment reflective of animus, bias, or an inability or unwillingness to be fair.

¶44 In short, the circumstances in this case fell woefully short of being so extreme as to render it unlikely that West would receive a fair trial. In ruling otherwise, the district court abused its discretion by misapplying the law.

2. The Disqualification of the Prosecutor's Office

¶45 Having disqualified the prosecutor, the district court proceeded to disqualify the entire district attorney's office in the Fourth Judicial District. In doing so, it repeated its earlier misstep: It focused on appearances. The court reasoned that it had to disqualify the prosecutor's office because the prosecutor was "a higher-up supervisor" there, and his office would "be seen" in the same light as the prosecutor. But because West similarly made no showing that he was unlikely to receive a fair trial, he failed to satisfy his burden as to this aspect of his motion for a special prosecutor. In finding otherwise, the district court misapplied the law and thus abused its discretion.

V. Conclusion

¶46 For the foregoing reasons, we reverse the district court's order disqualifying the prosecutor and his entire office. We remand the case for further proceedings consistent with this opinion.

JUSTICE GABRIEL concurred in part and dissented in part.

JUSTICE GABRIEL, concurring in part and dissenting in part.

¶47 I fully agree with the majority's conclusion that the district court erred in disqualifying the Fourth Judicial District Attorney's Office from prosecuting Rocky Wayne West. I cannot, however, agree with the majority's determination that the district court abused its discretion in disqualifying the primary prosecutor assigned to this case (the "prosecutor"). Unlike the majority, I believe that the district court applied the appropriate legal standard and acted well within its discretion in disqualifying the prosecutor, given his outrageous conduct in this case. In my view, the prosecutor's comments reflected extreme animus toward West and West's counsel and necessarily implicated West's right to receive a fair trial from a prosecutor who is motivated to do justice and not just win, which is an ethical obligation of every prosecutor. *See Berger v. United States*, 295 U.S. 78, 88 (1935) (stating that a prosecutor "is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done"); *Domingo-Gomez v. People*, 125 P.3d 1043, 1049 (Colo. 2005) ("The prosecutor's actions during a criminal trial must always comport with the sovereign's goal that justice be done in every case and not necessarily that the prosecution 'win.'").

¶48 For these reasons, and because I believe that the majority's decision sends the wrong message regarding the kind of conduct that is acceptable from any attorney, much less a representative of the People of this state, I respectfully concur in part and dissent in part.

I. Factual Background

¶49 The majority adequately sets forth the pertinent facts, particularly regarding the prosecutor's conduct. As the majority observes, after West's counsel raised the issue of competency for a second time and the district court, over the People's objection, ordered a second competency evaluation, the prosecutor met with the victim's family in the hallway and stated that West's public defenders were "trying to get [West] out so he can stab more people and hopefully the next people he stabs are public defenders." Maj. op. ¶ 4.

¶50 Because my analysis of the question before us turns on the applicable standard of review, I briefly highlight the portions of the district court's ruling that are central to my analysis.

¶51 As the majority concedes in the very first paragraph of its opinion, *id.* at ¶ 1, the district court began its ruling by reciting the correct legal standard. Relying on our recent opinion in *People v. Chapman*, 2025 CO 19, __ P.3d __ (per curiam), the district court correctly observed that in order to disqualify a district attorney based on "special circumstances" under section 20-1-107(2), C.R.S. (2025), the

moving party may not rely on the appearance of impropriety. Rather, the movant must show that absent disqualification, the defendant will not receive a fair trial. The district court further opined, again indisputably correctly, that the special circumstances must be "extreme."

¶52 The district court then proceeded to explain why, on the facts of this case, that standard was satisfied here. The court began by noting that the prosecutor's outrageous comments "raise[d] the specter that someone would not be able to get a fair trial if the prosecutor is acting beyond—appears to be acting beyond their mandate to . . . do justice . . . ." The court then explained that in this case, it is possible that the District Attorney's Office might find itself in a position to negotiate a disposition, rather than proceed to trial. The court noted that in that circumstance, one would expect the District Attorney's Office to be able to "do what's right and fair and appropriate for the community, for victims of crime, and for anyone else who has an interest here." This, however, would require the Office to be able to exercise reasonable discretion and to maintain a reasonable ability to weigh the pros and cons of going to trial versus entering into a disposition.

¶53 As the court put it:

> And so we need to make sure that the arm of the Prosecution is still operating in a reasonable and appropriate way so that going forward it cannot be said that the District Attorney's Office had . . . made such an . . . outrageous presentation here that they couldn't back off. They couldn't change. They couldn't negotiate. They couldn't discuss, and that they were overly zealous potentially in certain steps that were

> taken, which may only seem overzealous in light of the extreme statement that was made by [the prosecutor]. So that creates a problem.

¶54 The problem, the court went on, "is an unusually outrageous, shocking statement" that, in the court's view, changed the public's view as to whether the District Attorney's Office was the proper entity to address this case. The court thus concluded:

> And [the prosecutor] got mad, and he said something that I believe can't be taken back to the extent that we will be able to have a case that is not always seen through the prism of, well, maybe if he gets out, he'll kill a few public defenders. That will show you. And he didn't say that, but that was the import of what was going on there. And, to me, that's shocking. It's beyond an appearance of impropriety. It is impropriety itself. And it is extreme in the manner of the *Chapman* case, in my opinion.

¶55 Accordingly, the district court disqualified both the prosecutor and the Fourth Judicial District Attorney's Office.

¶56 The People then filed the present interlocutory appeal.

II. Analysis

¶57 I begin by setting out the applicable legal principles. I then apply those principles to the facts before us.

A. Applicable Legal Principles

¶58 District courts are afforded "broad discretion" to determine whether to disqualify a prosecutor, and we review a district court's decision to do so for an abuse of discretion. *Chapman*, ¶ 6. Accordingly, we will not overturn a district

court's decision to disqualify a prosecutor unless the court's decision was manifestly arbitrary, unreasonable, unfair, or premised on a misapplication of the law. *Id.*

¶59 Section 20-1-107(2) provides that a motion to disqualify a prosecutor shall not be granted unless, as pertinent here, "the court finds that . . . special circumstances exist that would render it unlikely that the defendant would receive a fair trial."

¶60 The party seeking to disqualify a prosecutor based on such "special circumstances" thus "bears the burden of showing that, absent disqualification, they will not receive a fair trial." *Chapman*, ¶ 8. Moreover, we have observed that "the special circumstances must be 'extreme,' and a mere appearance of impropriety is insufficient." *People v. Arellano*, 2020 CO 84, ¶ 25, 476 P.3d 364, 368 (quoting *People v. Loper*, 241 P.3d 543, 546 (Colo. 2010)).

¶61 Having thus set out the governing legal principles, I turn to the issue now before us.

B. Application

¶62 As the foregoing makes clear—and as the majority concedes, Maj. op. ¶¶ 1, 27—the district court correctly recited the applicable legal standards. Specifically, the court correctly observed that an appearance of impropriety is insufficient. It also correctly observed that the party moving to disqualify a prosecutor must

show that absent disqualification, the movant would not receive a fair trial. And it correctly observed that the special circumstances at issue must be extreme.

¶63 The court then proceeded to explain, in detail and with extensive factual findings, all of which are amply supported by the record, why this standard was satisfied here. In particular, the court noted the extreme, shocking, and outrageous nature of the comments made by the prosecutor. The court further explained how, in light of those comments, there are serious questions as to whether the prosecutor would be able to exercise reasonable discretion going forward in this case. The court then discussed how the prosecutor's ethical duty to do justice, which is necessarily informed by public perception of the court system, has been irreparably undermined due to the prosecutor's conduct. And the court ended by finding that the conduct at issue was "beyond an appearance of impropriety. It [was] impropriety itself. And it is extreme in the manner of the *Chapman* case . . . ."

¶64 I cannot agree with my colleagues in the majority that such findings and conclusions were manifestly arbitrary, unreasonable, or unfair. Nor can I agree that the district court in any way misapplied the law. The court recited the applicable legal principles almost verbatim from our opinion in *Chapman*, and the court then explained why, absent the prosecutor's disqualification, West would not receive a fair trial in this case.

¶65 I am not persuaded otherwise by the majority's view that although the district court uttered the correct legal standard, its actions reflected that it applied the wrong one. Maj. op. ¶ 1. For the reasons set forth above, the district court uttered the correct standard and applied it to the undisputed facts before it.

¶66 To conclude otherwise, the majority goes to great lengths to reinterpret what the district court actually said. For example, despite the court's express statement that it was finding more than a mere appearance of impropriety, the majority opines that the court had, in fact, granted the disqualification motion based on its concerns regarding the appearance of impropriety. *Id.* at ¶ 27. In support of this determination, the majority quotes the portion of the district court's ruling in which the court said that the prosecutor's conduct raised an appearance of impropriety. *Id.* at ¶ 28. The majority even describes this statement as a "smoking gun in the record establish[ing] that the court applied the wrong legal standard." *Id.* In so concluding, however, the majority cherry picks a quote that, when taken out of context, tends to support its opinion but then deems it of no import that the district court repeatedly recognized that an appearance of impropriety is *not* enough, ultimately finding, "It's *beyond* an appearance of impropriety. It is impropriety itself. And it is extreme in the manner of the *Chapman* case . . . ." (Emphasis added.) *See* Maj. op. ¶ 32.

¶67 The majority cannot have it both ways. It cannot say, on the one hand, that the district court applied the wrong legal standard by applying an appearance of impropriety test and then conclude, on the other hand, that the district court's language showing, explicitly, that it did not do so does not matter. Nor can the majority elide the district court's findings as to why the prosecutor's conduct rendered it unlikely that West would receive a fair trial and then say that the court did not provide that explanation. *See id.* The district court said what it said, and I do not believe that it is appropriate for the majority to recharacterize what that court said to reach the result that the majority would have reached were it deciding this case in the first instance. As we all agree, our review here is not de novo.

¶68 In addition, I am concerned about the message that the majority opinion conveys regarding what trial courts may demand of the attorneys who appear before them.

¶69 The district court properly recognized that it could not condone the "outrageous" and "shocking" comments made by the prosecutor in this case, which, among other things, advocated violence against public defenders. Such comments, even if said in anger or frustration, manifestly reflect the prosecutor's inordinate focus on winning this case, rather than ensuring that justice is done. And because, as the district court recognized, such comments cannot be successfully retracted, if allowed to stand without consequence, they undermine

public confidence in our court system and, thus, establish that it is unlikely that West will receive a fair trial. *See Chapman*, ¶ 8.

¶70 Although, to be sure, the majority denounces the prosecutor's comments, Maj. op. ¶ 24, in reversing the district court's disqualification order, the majority allows the prosecutor's conduct to stand without any consequence. To me, this sends a mixed, and unfortunate, message.

III. Conclusion

¶71 For these reasons, although I agree with the majority's determination that the district court erred in disqualifying the Fourth Judicial District Attorney's Office, I believe that the court acted well within its broad discretion in disqualifying the prosecutor, based on the prosecutor's outrageous statements in this case and the effect that his conduct would necessarily have on West's ability to receive a fair trial, both from West's perspective and from that of the public, whose confidence in our courts is indispensable to our system of justice.

¶72 Accordingly, I respectfully concur in part in and dissent in part from the majority's opinion.