

Deadlocked jury brings second mistrial for ex-Sheriff Maketa

By: **Lance Benzel** (/author/Lance+Benzel) • February 5, 2018 • Updated: Today at 6:32 am



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A partial mistrial was declared Monday for ex-El Paso County Sheriff Terry Maketa after a jury acquitted him of two misdemeanors and failed to reach verdicts on two felonies.

It was the second mistrial for Maketa in six months, and one juror said he narrowly avoided being branded a felon. The woman, who asked that her name not be published, said the panel was divided 10-2 for conviction on the most serious counts - extortion and conspiracy to commit extortion.

"There was a lot of evidence," she said in brief comments on her way into a parking garage.

Several other jurors walking beside her declined to comment but didn't dispute her assessment of how the jury split on the unresolved counts. The forewoman at Maketa's first trial previously told the newspaper that a lone holdout kept him from being convicted of the same charges.

But Maketa, 53, a three-term sheriff who left office under a cloud of allegations, left court smiling alongside his wife and attorneys.

"We're very pleased with the outcome," the once-prominent El Paso County Republican said without stopping for further questions.

The special prosecutors who tried the case told a judge they hadn't yet decided whether to take Maketa to trial a third time. His charges revolved around claims that he abused his power in office to punish disloyalty within his ranks.

In further comments outside the courthouse, lead prosecutor Mark Hurlbert said his team needed to consult with the county Sheriff's Office and fellow prosecutors on "whether we think we can prove this case."

"It shows that these are complex charges, that these are tough charges. But certainly these are not frivolous charges, because two juries deliberated for over 21 hours on these charges," he said.

Hurlbert is an assistant district attorney in the 18th Judicial District comprising Arapahoe, Lincoln, Douglas and Elbert counties. The office was assigned the case after 4th Judicial District Attorney Dan May recused his office in a bid to avoid the appearance of impropriety. An El Paso County prosecutor was among the witnesses who testified against Maketa, setting up a potential conflict.

Under Colorado law, there is no limit to retrying a felony case after a mistrial.

This retrial began Jan. 23 and spanned two days of jury selection and five days of trial.

The jurors first signaled trouble Thursday morning, indicating they had reached an "impasse" on the felony counts after 11 hours of deliberation. Two hours later, about 4:30 p.m., they made it official, returning not-guilty verdicts on two charges of official misconduct and leaving the most serious charges unresolved.

In acquitting Maketa of official misconduct, the jury determined that he committed no crimes in seeking potentially career-ending sanctions against two deputies, Sgt. Emory "Ray" Gerhart and former Cmdr. James "Jim" Reid.

The conspiracy counts alleged that Maketa threatened to terminate a \$5 million contract unless a private jail health care contractor fired a woman who had crossed him. According to prosecutors, that woman, Wendy Habert, was targeted after refusing to help Maketa's chosen successor, then-Undersheriff Paula Presley, mount a run for sheriff. Prosecutors say Maketa was also angered after she reported a jail commander for sexual harassment.

Phil Dubois, a Colorado Springs defense attorney unaffiliated with the case, said prosecutors are likely to seek out jurors for guidance on their next steps. "If they get an answer like they got last time - 11-to-1 for conviction - they might feel like they have to try it again," he said.

Retired Denver criminal defense attorney Phil Cherner, also unaffiliated with the Maketa case, said reports of a 10-2 split this time could be enough to spur them onward.

"If I was a betting man, I would say they're going to go forward based on the gravity of charges and the notoriety of case and fact that they came close twice," said Cherner.

The likelihood of a plea bargain, Cherner said, "isn't great."

"There's always some chance they'll reach a resolution. But as an outside observer, I've got to think it's kind of small after all this litigation."

Maketa was represented by Denver attorneys Pamela Mackey and David Kaplan, who declined to comment.