The summaries of the Colorado Court of Appeals published opinions constitute no part of the opinion of the division but have been prepared by the division for the convenience of the reader. The summaries may not be cited or relied upon as they are not the official language of the division. Any discrepancy between the language in the summary and in the opinion should be resolved in favor of the language in the opinion.

SUMMARY
September 3, 2026

2026 COA 66

No. 24CA1018, *People v. Jargowsky* — Criminal Law — Searches and Seizures — Court Orders for the Production of Records — Out-of-State Businesses

A division of the court of appeals addresses a novel issue: whether a Colorado court has authority to order the production of electronic records from an out-of-state business. The division holds that section 16-3-301.1, C.R.S. 2026, authorizes the court to order the production of such records. The division further concludes that, under the circumstances of this case, citing the wrong statutory authority did not invalidate the search warrants and the jurisdictional limitation in section 16-3-305(1.5), C.R.S. 2026, was inapplicable to a search warrant authorized by section 16-3-301.1.

Additionally, the division holds that the district court did not err by admitting hearsay evidence, permitting two witnesses to give expert testimony without being endorsed as experts, admitting a

video recording containing statements by an undercover police officer who did not testify at trial, and denying the defendant's proposed affirmative defense instructions on mistake of fact and mistake of law. Accordingly, the division affirms the judgment.

COLORADO COURT OF APPEALS **2026 COA 66**

Court of Appeals No. 24CA1018
El Paso County District Court No. 22CR3241
Honorable David A. Gilbert, Judge

The People of the State of Colorado,

Plaintiff-Appellee,

v.

Mischa Jargowsky,

Defendant-Appellant.

JUDGMENT AFFIRMED

Division V
Opinion by JUDGE YUN
Lipinsky and Schutz, JJ., concur

Announced September 3, 2026

Philip J. Weiser, Attorney General, Brittany Limes Zehner, Senior Assistant Attorney General and Assistant Solicitor General, Denver, Colorado, for Plaintiff-Appellee

Haddon, Morgan and Foreman, P.C., Jeffrey S. Pagliuca, Adam Mueller, Denver, Colorado, for Defendant-Appellant

¶ 1 Mischa Jargowsky appeals the judgment of conviction entered after a jury found her guilty of three counts of money laundering and one count of engaging in a pattern of racketeering activity in violation of the Colorado Organized Crime Control Act (COCCA), §§ 18-17-101 to -109, C.R.S. 2026.

¶ 2 On appeal, Jargowsky contends that the district court erred by (1) denying her motions to suppress records obtained through search warrants issued to business and financial institutions; (2) admitting hearsay evidence; (3) permitting two witnesses to give expert testimony without being endorsed as experts; (4) admitting a video recording containing statements by an undercover police officer who did not testify at trial; and (5) denying her proposed affirmative defense instructions on mistake of fact and mistake of law. She also contends that the cumulative effect of these errors deprived her of a fair trial.

¶ 3 In considering Jargowsky's contentions, we address a novel issue: whether a Colorado court has authority to order the production of electronic records from an out-of-state business. We hold that section 16-3-301.1, C.R.S. 2026, authorizes the court to order the production of such records. We also conclude that, under the circumstances of this case, citing the wrong statutory authority did not invalidate the search warrants and that the jurisdictional limitation in section 16-3-305(1.5), C.R.S. 2026, was inapplicable to a search warrant authorized by section 16-3-301.1.

¶ 4 We disagree with Jargowsky's remaining contentions and therefore affirm the judgment.

I. Background

¶ 5 Jargowsky and her husband owned Top Dollar Pawn, LLC (Top Dollar), which operated two pawnshops in Colorado Springs and two in Pueblo. Jargowsky's son managed the Colorado Springs pawnshops, while Jargowsky managed one of the pawnshops in Pueblo near U.S. Highway 50 (the Highway 50 pawnshop).

¶ 6 In 2019, retail crime investigators from Home Depot, Walmart, and Target reported to the Colorado Springs Police Department (CSPD) that Top Dollar was selling an unusually high volume of new, in box items[1] on eBay. CSPD detectives visited Top Dollar and other pawnshops in the area, observing that Top Dollar had a

[1] "New, in box" refers to personal property purchased (or stolen) from a retailer that is subsequently offered for resale without having been removed from the box.

"much greater amount of new in box items compared to any other pawn shop." Specifically, as CSPD Detective Christopher Mace testified at trial, "a typical Top Dollar Pawn store" had "60% to 70% new in box items on display," while "another typical pawn store would have 5% new and in box items on display, maybe less than that." Detective Mace also observed that Top Dollar was "selling mostly new, in box items" on its eBay account and that many of those items matched the descriptions of items reportedly stolen from retail stores in the Colorado Springs area.

¶ 7 As the investigation continued, CSPD obtained search warrants for Jargowsky's and Top Dollar's business and financial records, installed surveillance cameras to monitor Top Dollar's stores, and conducted "controlled sales" in which undercover officers sold items to Top Dollar under circumstances suggesting that the items had been stolen. In total, CSPD identified twenty-seven "completed circles" of money laundering — instances where law enforcement tracked a stolen or (in the case of the controlled sales) apparently stolen item from the time Top Dollar purchased it to the time Top Dollar resold it on eBay. Two transactions are relevant here:

- In November 2021, a witness sold a Home Depot in box Milwaukee impact wrench at the Highway 50 pawnshop. Two months later, in January 2022, law enforcement purchased the same wrench from Top Dollar on eBay for approximately $65 less than its retail price at Home Depot. The witness testified that, from 2020 to 2022, she sold many stolen items to the Highway 50 pawnshop because "they'd pawn it for [her] in the box like it was," while other pawnshops would not.
- In February 2022, an undercover officer attempted to sell sixteen Home Depot chainsaws to the Highway 50 pawnshop. The interaction was recorded on video. In the video, the officer equivocated about how he had obtained the chainsaws, saying that he "didn't buy these" and did not "pay for them" but that he "own[ed]" them and "just [wanted to] sell them." Jargowsky at first questioned whether the chainsaws were "legit" but ultimately agreed to buy four of them. Law enforcement later purchased two of these chainsaws from Top Dollar on eBay for approximately $10 less than their retail price at Home Depot.

¶ 8 The People charged Jargowsky with twenty-seven counts of money laundering, one count of theft (later dismissed), and one count of engaging in a pattern of racketeering activity under COCCA. Jargowsky's theory of defense was that Top Dollar lawfully purchased and resold the items and that she took reasonable measures to verify that the items had not been stolen, was not involved in the eBay transactions, and was unaware of other Top Dollar employees purchasing and reselling stolen items.

¶ 9 The jury found Jargowsky guilty of the racketeering charge and three counts of money laundering related to the two transactions described above. The district court sentenced her to eight years in community corrections.

II. Search Warrants

¶ 10 Jargowsky contends that the district court lacked authority to order the production of records located either outside Colorado or within Colorado but outside El Paso County, and therefore that it erred by denying her motions to suppress. We are not persuaded.

A. Additional Facts

¶ 11 Based on affidavits establishing probable cause executed by Detective Mace, the district court issued search warrants for the production of records from ten businesses and banks located outside Colorado — namely, eBay (California); Fidelity & Guaranty Life Insurance Company (Iowa); JP Morgan Chase (Louisiana); PayPal (California); Intuit (Delaware); WorldPay (Ohio); USAA Federal Savings Bank (Texas); Community Banks of Colorado, a division of NBH Bank (Missouri); TD Ameritrade (Nebraska); and Advancial Federal Credit Union (Texas) — and six located within Colorado but outside El Paso County — namely, Pueblo Bank and Trust (Pueblo); Sunflower Bank (Denver); Pueblo Government Agencies Federal Credit Union (Pueblo); Canyon Title (Denver); Title One of Colorado (Lakewood); and Land Title (Denver). In his affidavits, Detective Mace asserted that "pursuant to the Stored Communications Act, Title 18 USC 2703(c), specific and articulable facts have been shown to reasonably believe the target . . . service provider . . . for which records are being sought is of relevant interest in the offense shown."

¶ 12 Jargowsky moved to suppress the records obtained as a result of the search warrants, arguing that the Stored Communications Act did not apply and that "Colorado judges do not have extraterritorial jurisdiction." The People conceded that the Stored

Communications Act was not the source of authority for the district court to issue the warrants, but they maintained that Colorado law still authorized the warrants. In denying Jargowsky's motions to suppress, the court found that section 16-3-301.1 authorized it to order the production of records "in the actual or constructive control of a business entity." The court concluded that the statutory definition of "business entity" appears to encompass all the businesses subject to the warrants in this case and rejected the argument that the warrants were invalid because they cited an inapplicable statute.

B. Governing Law and Standard of Review

¶ 13 Both the United States and Colorado Constitutions guarantee the right to be free from unreasonable searches and seizures. U.S. Const. amend. IV; Colo. Const. art. II, § 7. "In general, to comply with the reasonableness requirement, the federal and state constitutions require a police officer to obtain a warrant before conducting a search." *People v. King*, 292 P.3d 959, 961 (Colo. App. 2011). A search warrant is valid only if it is issued by a neutral and detached magistrate with the authority to issue it. *People v. Trujillo*, 712 P.2d 1079, 1080 (Colo. App. 1985); *United States v. Baker*, 894 F.2d 1144, 1146 (10th Cir. 1990). In Colorado, "[a] search warrant . . . may be issued by any judge of a court of record." § 16-3-301(1), C.R.S. 2026.

¶ 14 Under section 16-3-301.1, "[a] court may order the production of records . . . in the actual or constructive control of a business entity . . . [t]hat would be material evidence in a subsequent criminal prosecution." § 16-3-301.1(2)(e). "Actual or constructive control" means the records are "maintained or stored in any form or format . . . under the custody or control of the business entity . . . in Colorado or elsewhere." § 16-3-301.1(11)(a). "The Colorado criminal investigator or peace officer granted the order need not have authorization to execute a search warrant in the jurisdiction in which the business entity is located." § 16-3-301.1(5)(a).

¶ 15 A "[b]usiness entity" is defined as

> a corporation or other entity that is subject to the provisions of title 7, C.R.S.; a foreign corporation qualified to do business in this state pursuant to article 115 of title 7, C.R.S., specifically including a federally chartered or authorized financial institution; a corporation or other entity that is subject to the provisions of title 11, C.R.S.; or a sole proprietorship or other association or group of individuals doing business in the state.

§ 16-3-301.1(11)(b).

¶ 16 "A trial court's suppression order presents a mixed question of law and fact." *People v. Soron*, 2026 CO 3, ¶ 20. "Accordingly, on review, we accept the court's findings of historic fact if those findings are supported by competent evidence, but we assess the legal significance of the facts de novo." *Id.* If error occurred, we must reverse unless the error was harmless beyond a reasonable doubt. *People v. Alemayehu*, 2021 COA 69, ¶ 59.

C. Out-of-State Records

¶ 17 Jargowsky argues that section 16-3-301.1 does not authorize a Colorado court to order the production of records held by a business entity in another state because "the Colorado General Assembly has no authority to unilaterally enact a statute governing conduct occurring in a different state." In the alternative, she argues that, even if the district court had authority to order the production of out-of-state records under section 16-3-301.1, the court did not make sufficient factual findings to establish "that any of the searched companies actually qualified as 'business entities'" under the statute. We address each contention in turn.[2]

¶ 18 First, Jargowsky relies on four cases — *People v. Arellano-Avila*, 20 P.3d 1191 (Colo. 2001); *United States v. Westfall*, 142 F.4th 1208 (9th Cir. 2025); *Baker*, 894 F.2d 1144; and *United States v. Krueger*, 809 F.3d 1109 (10th Cir. 2015) — to support her argument that, "absent some compact, uniform act, or explicit grant of federal authority, Colorado courts have no authority outside of the state." But those cases do not stand for that broad proposition and do not apply to the situation here.

¶ 19 *Arellano-Avila* concerned a Colorado court's authority under Crim. P. 15 to "order a deposition of a person outside of its jurisdiction" — specifically, a Mexican citizen residing in Mexico. 20 P.3d at 1192. The court held that "a Colorado court may not procure the testimony of parties outside its jurisdiction" without "an

[2] At oral argument, Jargowsky's counsel asserted that, even if the district court had authority to order the production of out-of-state records under section 16-3-301.1, C.R.S. 2026, certain specific procedural requirements of that statute were not complied with in this case. But Jargowsky's counsel did not raise this argument in the briefs on appeal, and we do not consider arguments raised for the first time at oral argument. *See Bumbal v. Smith*, 165 P.3d 844, 847-48 (Colo. App. 2007).

explicit grant of authority." *Id.* at 1193. This case, in contrast, concerns the production of documents pursuant to the explicit grant of authority in section 16-3-301.1.

¶ 20 *Westfall* concerned the authority of a Montana district court under the Stored Communications Act to issue a warrant to obtain electronic communications records stored in California. 142 F.4th at 1215. Here, in contrast, the parties agree that the Stored Communications Act was not the source of authority for the challenged search warrants.

¶ 21 In *Baker*, the Tenth Circuit Court of Appeals held that the La Plata County District Court acted beyond its authority by issuing a search warrant for property located on Southern Ute tribal lands. 894 F.2d at 1146. In reaching this conclusion, the court reasoned that "[s]tates have no authority over Indians in Indian country unless it is expressly conferred by Congress." *Id.* (quoting *Cheyenne-Arapaho Tribes v. Oklahoma*, 618 F.2d 665, 668 (10th Cir. 1980)). This case, in contrast, does not involve a Colorado court exercising jurisdiction over physical property on tribal lands.

¶ 22 Finally, *Krueger* involved a violation of Fed. R. Crim. P. 41, "which generally limits a federal magistrate judge's warrant-issuing authority to the district where he or she sits." 809 F.3d at 1110-11. That rule of procedure is not at issue in this case.

¶ 23 More fundamentally, and contrary to Jargowsky's argument, Colorado has the authority to regulate entities that conduct business *within* its borders. *See, e.g.*, § 13-1-124(1)(a), C.R.S. 2026 ("[A]ny person, whether or not a resident of the state of Colorado," who transacts any business within Colorado, "submits such person . . . to the jurisdiction of the courts of this state concerning any cause of action arising" therefrom.); § 7-90-801(1), (4), C.R.S. 2026 ("A foreign entity shall not transact business or conduct activities in this state except in compliance with" certain enumerated rules.). By choosing to do business in Colorado, these entities are subject to Colorado state law, including the requirement to produce records pursuant to section 16-3-301.1, even if they are headquartered elsewhere.

¶ 24 We thus reject Jargowsky's argument that the Colorado General Assembly exceeded its authority by enacting section 16-3-301.1.

¶ 25 Second, Jargowsky argues that the district court did not make sufficient factual findings that eBay; Fidelity & Guaranty Life

Insurance Company; JP Morgan Chase; PayPal; Intuit; WorldPay; USAA Federal Savings Bank; Community Banks of Colorado, a division of NBH Bank; TD Ameritrade; and Advancial Federal Credit Union qualify as "business entities" under section 16-3-301.1(11)(b). Notably, Jargowsky does not address the statutory definition or claim that any of these businesses and banks actually fall outside its scope.

¶ 26 The statute defines "business entity" to include "a foreign corporation qualified to do business in this state pursuant to article 115 of title 7, C.R.S., specifically including a federally chartered or authorized financial institution." § 16-3-301.1(11)(b). Section 7-115-101, C.R.S. 2026, states that "[p]art 8 of article 90 of this title, providing for the transaction of business or the conduct of activities by foreign entities, applies to foreign corporations." In turn, section 7-90-801(1) provides that "[a] foreign entity shall not transact business or conduct activities in this state except in compliance with this part 8 and not until its statement of foreign entity authority is filed in the records of the secretary of state."

¶ 27 We may take judicial notice of an adjudicative fact that is "not subject to reasonable dispute" and is "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." CRE 201(b). "[U]ndisputed matters of public record" are suitable for judicial notice. *Guy v. Whitsitt*, 2020 COA 93, ¶ 27 n.11; *see also Peña v. Am. Fam. Mut. Ins. Co.*, 2018 COA 56, ¶ 14 (a court may take judicial notice of public records); *People in Interest of T.M.*, 240 P.3d 542, 545 n.1 (Colo. App. 2010) (a court may take judicial notice of an administrative agency's public records (citing *People v. Stanley,* 170 P.3d 782, 793-94 (Colo. App. 2007))). The public records of the Colorado Secretary of State show that eBay, Fidelity & Guaranty Life Insurance, JP Morgan Chase, PayPal, Intuit, WorldPay, and TD Ameritrade were all registered as foreign corporations in Colorado at the time the search warrants were issued. USAA Federal Savings Bank is a federally chartered savings association; Advancial Federal Credit Union is a federally chartered credit union; and Community Banks of Colorado, a division of NBH Bank, is a Colorado corporation.[3]

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[3] Eight of these entities are listed on the Colorado Secretary of State's website. Colo. Sec'y of State, *Summary Record for eBay Commerce Inc.*, https://perma.cc/D5QD-LU9Q; Colo. Sec'y of State, *Summary Record for Fidelity & Guaranty Life Insurance Company*, https://perma.cc/B577-4VBC; Colo. Sec'y of State, *Summary*

¶ 28 We thus conclude that the district court did not clearly err by determining that the definition of “business entity” in section 16-3-301.1(11)(b) encompasses the businesses subject to the warrants for the production of records in this case.

D. Out-of-County Records

¶ 29 Jargowsky also contends that section 16-3-305(1.5) barred the district court from ordering the production of records located within Colorado but outside El Paso County. Section 16-3-305(1.5) provides that, with certain exceptions, “a search warrant shall be directed to any officer authorized by law to execute it *in the county*

Record for J.P. Morgan Chase National Corporate Services, Inc., https://perma.cc/V53Z-8JL3; Colo. Sec’y of State, *Summary Record for PayPal, Inc.*, https://perma.cc/CZJ4-AXNU; Colo. Sec’y of State, *Summary Record for Intuit Inc.*, https://perma.cc/E6EK-BEFA; Colo. Sec’y of State, *Summary Record for Worldpay Integrated Payments Solutions, LLC*, https://perma.cc/Z3JH-3VVL; Colo. Sec’y of State, *Summary Record for TD Ameritrade, Inc.*, https://perma.cc/PTT7-C4PN; Colo. Sec’y of State, *Summary Record for Community Banks of Colorado, a division of NBH Bank*, https://perma.cc/2J6R-6QKF. USAA Federal Savings Bank is a federally chartered savings association as listed on the website of the Office of the Comptroller of the Currency, *Federal Savings Associations Active As of 6/30/2026*, https://perma.cc/6GSL-YBAW. Advancial Federal Credit Union is a federally chartered credit union as listed on the website of the National Credit Union Administration, *Credit Union Locator*, https://perma.cc/C4SS-64NH.

wherein the property is located." (Emphasis added.) The warrants in this case were directed to Detective Mace of CSPD, in El Paso County, while the records were held by financial institutions and companies in Pueblo, Denver, and Lakewood.

¶ 30 However, the context of section 16-3-305(1.5) demonstrates that it governs physical searches of persons, property, and locations, not searches of electronically stored records. *See* § 16-3-305(1) (discussing concerns "[w]hen law enforcement enters a dwelling" and the risks associated with "no-knock entries"); § 16-3-305(3), (4) (setting forth procedures for "the search of a person or for the search of any motor vehicle, aircraft, or other object which is mobile or capable of being transported"); § 16-3-305(7) (setting forth procedures for "the search of a dwelling," including the requirement to "[w]ear and activate a body-worn camera").

¶ 31 In contrast, section 16-3-301.1, the relevant statute here, contains no similar jurisdictional limit. To the contrary, section 16-3-301.1(5)(a) provides that "[a] court order for the production of records may be granted to a Colorado criminal investigator or peace officer whose affidavit supports the issuance of the order" and that "[t]he Colorado criminal investigator or peace officer granted the order need not have authorization to execute a search warrant in the jurisdiction in which the business entity is located."

E. Citation of Stored Communications Act

¶ 32 Finally, to the extent Jargowsky argues on appeal that Detective Mace's citation of the Stored Communications Act in his probable cause affidavit invalidates the warrants, we agree with the district court that Jargowsky cited no authority

> suggest[ing] that failure to include in the warrant affidavit or the warrant itself the correct legal authority that would support the warrant invalidates the warrant. These warrants for production of records contained the requirements necessary for their approval including an affidavit supporting probable cause to provide the records, the items to be provided and all other specifics outlined in [section] 16-3-301.1. The alleged reliance on the federal electronics communication statute does not invalidate a warrant that complies with Colorado [l]aw for the procurement of financial records.

¶ 33 For all of these reasons, we conclude that the district court did not err by denying Jargowsky's motions to suppress.

III. Hearsay

¶ 34 Jargowsky contends that the district court erred by admitting hearsay evidence. She specifically challenges Detective Mace's testimony about (1) statements made to him by retail store crime investigators; (2) documents generated from the online database LeadsOnline, which compiles pawnshop transaction data for law enforcement; and (3) screenshots he took of eBay records. We conclude that the district court did not err or, alternatively, that any error was harmless.

A. Governing Law and Standard of Review

¶ 35 Hearsay is "a statement other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." CRE 801(c). A "statement" is "an oral or written assertion" or "nonverbal conduct of a person, if it is intended by the person to be communicative." CRE 801(a). A "declarant" is "a person who makes a statement." CRE 801(b). Hearsay is inadmissible unless it falls under a statutory or enumerated exception. CRE 802.

¶ 36 We review a district court's evidentiary decisions for an abuse of discretion. *People v. Elmarr*, 2015 CO 53, ¶ 20. A court abuses its discretion when its decision is manifestly arbitrary, unreasonable, or unfair, or when it is based on a misapprehension of the law. *Id.* If the district court abused its discretion regarding a preserved, nonconstitutional issue, we must consider whether the error was harmless. *Campbell v. People*, 2019 CO 66, ¶ 22. Under this standard, reversal is required only if the error affected the parties' substantial rights. *Hagos v. People*, 2012 CO 63, ¶ 12; *see also* C.A.R. 35(c) ("The appellate court may disregard any error or defect not affecting the substantial rights of the parties."). Thus, we will reverse only if the error substantially influenced the verdict or impaired the fairness of the trial. *Hagos*, ¶ 12.

B. Statements by Retail Crime Investigators

¶ 37 When asked why he "start[ed] investigating" Top Dollar, Detective Mace answered that "organized retail crime investigators from Home Depot, Walmart and Target" alerted him that Top Dollar was "taking in what appeared to be a much greater [than] normal amount of new, in box items, and then selling them on E-Bay." Jargowsky's attorney raised a hearsay objection, and the district court overruled it, explaining that the evidence was being admitted "for the limited purpose of allowing [the jury] to understand what brought this detective into this investigation" and not for "the truthfulness" of the statements by the retail crime investigators.

¶ 38 "An out-of-court statement offered, not for the truth of the matter it asserts, but solely to show its effect on the listener, is not hearsay." *People v. Robinson*, 226 P.3d 1145, 1151 (Colo. App. 2009). Because, as the district court explained, the out-of-court statements by the retail crime investigators were admitted only to show why Detective Mace began investigating Top Dollar, the court did not err by ruling that the statements were not hearsay.

C. LeadsOnline Records

¶ 39 Detective Mace described LeadsOnline as "a company that represents the vast majority of pawn shops in the country for them to be able to report . . . their pawns and receipted property to police departments." Defense counsel objected to the admission of LeadsOnline records on the basis that "police records are not admissible in criminal cases." The district court overruled the objection, admitting the records as both business records under CRE 803(6) and public records under CRE 803(8).

¶ 40 We may affirm a district court's evidentiary ruling on any ground supported by the record. *People v. Tran*, 2020 COA 99,

¶ 43. The record shows the following sequence of events: (1) Top Dollar employees entered sale information "into the computer system at the Top Dollar pawn store"; (2) LeadsOnline collected the information; and (3) Detective Mace obtained reports from LeadsOnline. Because Jargowsky was one of the owners of Top Dollar, managed the Highway 50 pawnshop, and was in charge of the Highway 50 pawnshop employees who created the LeadsOnline records, the records are properly attributed to Jargowsky as statements of a party opponent under CRE 801(d)(2)(D). A statement offered against an opposing party, made "by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship," is not hearsay. CRE 801(d)(2)(D); *see* Fed. R. Evid. 801(d)(2)(D) (substantively identical to Colorado rule); *United States v. Young,* 736 F.2d 565, 567 (10th Cir. 1983) (per curiam) (upholding the admission of the corporate employee's statements against the vice president of the corporation under Fed. R. Evid. 801(d)(2)(D) where testimony showed that the employee reported directly and regularly to the vice president as part of his employment responsibilities), *rev'd on other grounds*, 470 U.S. 1 (1985); *United States v. Paxson*, 861 F.2d 730, 734 (D.C. Cir. 1988) (upholding admission of a corporate employee's statement against the president of a closely held corporation under Fed. R. Evid. 801(d)(2)(D) where the employee reported directly to the president and the president owned the majority of the stock). Thus, the district court did not abuse its discretion by admitting the LeadsOnline records.

D. eBay Screenshots

¶ 41 Detective Mace testified that CSPD purchased items from Top Dollar on eBay and that he took screenshots of the purchase confirmations. These screenshots were admitted into evidence over defense counsel's objection.

¶ 42 We conclude that the screenshots were not hearsay because (1) they included statements by agents of a party opponent, *see* CRE 801(d)(2)(D); (2) they contained computer-generated data not made by a "declarant," *see* CRE 801(b); and (3) they contained statements that were not offered for their truth, *see* CRE 801(c).

¶ 43 First, the Top Dollar descriptions and prices qualify as statements by agents of a party opponent because the eBay listings were created by employees managed by Jargowsky at the Highway 50 pawnshop in the course of their employment. *See Young,* 736 F.2d at 567; *Paxson*, 861 F.2d at 734. Second, information such as the date and time of the order placement is computer generated and thus not a statement of any declarant. *See People v. Abad*, 2021 COA 6, ¶ 54 ("Information automatically generated by machines is not hearsay because no 'person' or 'declarant' made a 'statement' within the meaning of CRE 801."). Finally, any remaining information in the screenshots was not introduced for the truth of the matter asserted, but simply to provide context for the eBay transactions. We thus discern no abuse of discretion in the admission of the screenshots.

E. Additional Contentions

¶ 44 Jargowsky also contends that the district court erred by admitting hearsay from four other witnesses — two detectives, a Home Depot employee, and a Walmart employee. But she does not identify the specific evidence she challenges or explain the basis for her challenges, instead referencing "out-of-court statements" and "various embedded hearsay statements" in general terms. Because these arguments are insufficiently developed to permit appellate review, we do not address them. *See People v. Stone*, 2021 COA 104, ¶ 52 (appellate courts do not address undeveloped arguments).

F. Harmless Error

¶ 45 Finally, any error in the admission of the LeadsOnline records or eBay screenshots would be harmless for the following reasons:

- The theft charge was dismissed, and Jargowsky was acquitted of the money laundering charges except where the evidence showed that she personally participated in the purchase of stolen or apparently stolen items. We see no reasonable probability that the admission of the LeadsOnline records or eBay screenshots substantially influenced the verdict on the counts for which Jargowsky was convicted.
- The LeadsOnline records appear to duplicate information found in Top Dollar receipts, the admission of which Jargowsky did not challenge.
- Detective Mace testified regarding CSPD's purchase of items from Top Dollar on eBay, so any hearsay statements related to those transactions were cumulative of properly admitted evidence.

¶ 46 We thus conclude that any error did not substantially influence the verdict or impair the fairness of the trial. *See Hagos*, ¶ 12.

IV. Retail Theft Testimony

¶ 47 Jargowsky contends that the district court erred by allowing two witnesses — a senior manager for Walmart (the manager) and a retail crime investigator for Home Depot (the investigator) — to provide expert testimony about retail theft without being endorsed as experts. We conclude that any error was harmless.

A. Additional Facts

¶ 48 Over defense counsel's objection, the manager testified about the "amount of retail theft loss . . . experienced by Walmart"; the absence of a "way to track the amount of items that have left the store through retail theft"; the presence of "a serial number" on most Walmart items; Walmart's policy regarding retail theft, including reporting theft to law enforcement; and his understanding of "what's happening in Colorado Springs as far as retail theft" from Walmart.

¶ 49 Over defense counsel's objection, the investigator testified that Home Depot experienced "[o]ver five million dollars a year" in retail theft losses and that banning shoplifters from the store was not an effective means of keeping them out.

B. Governing Law and Standard of Review

¶ 50 To determine whether testimony is lay testimony under CRE 701 or expert testimony under CRE 702, the district court must look to the basis for the opinion. *Venalonzo v. People*, 2017 CO 9, ¶ 23. "If the witness provides testimony that could be expected to be based on an ordinary person's experiences or knowledge, then the witness is offering lay testimony." *Id.* "If, on the other hand, the witness provides testimony that could not be offered without specialized experiences, knowledge, or training, then the witness is offering expert testimony." *Id.* The question is "not whether a witness draws on her personal experiences to inform her testimony," as all witnesses rely on personal experiences when testifying, *id.* at ¶ 22, but rather "whether ordinary citizens can be expected to know certain information or to have had certain experiences," *id.* (quoting *People v. Rincon*, 140 P.3d 976, 982 (Colo. App. 2005)).

¶ 51 We review a district court's evidentiary decisions for an abuse of discretion. *Elmarr*, ¶ 20. If error occurred, we will reverse only if the error substantially influenced the verdict or impaired the fairness of the trial. *Hagos*, ¶ 12.

C. Discussion

¶ 52 Assuming without deciding that some of the challenged testimony could be construed as expert testimony, we cannot say that the admission of such testimony substantially influenced the verdict or impaired the fairness of the trial. Jargowsky herself characterizes the challenged testimony as "irrelevant" to the issues at trial, and she does not argue that any part of it was prejudicial. Indeed, as discussed above, the theft charge was dismissed, and Jargowsky was acquitted of all money laundering charges apart from those concerning the transactions in which she personally participated. As with her contentions regarding hearsay, Jargowsky draws no connection between any of the challenged evidence and her convictions. We thus agree with the People that any error was harmless.

V. Confrontation Clause

¶ 53 Jargowsky contends that, because the undercover police officer who sold her the chainsaws did not testify at trial, the district court violated her right to confrontation by admitting a video recording of the transaction. We disagree.

A. Governing Law and Standard of Review

¶ 54 A defendant in a criminal case has a constitutional right to confront witnesses against her. *See* U.S. Const. amends. VI, XIV; Colo. Const. art. II, § 16. The Confrontation Clause bars the admission of testimonial statements of a witness who does not appear at trial and was not previously subject to cross-examination. *Crawford v. Washington*, 541 U.S. 36, 53-54 (2004); *People v. Fry*, 92 P.3d 970, 976 (Colo. 2004) (adopting *Crawford*'s Confrontation Clause analysis for purposes of the Colorado Constitution); *see also Nicholls v. People*, 2017 CO 71, ¶ 31 ("Colorado's Confrontation Clause [is] commensurate with the federal Confrontation Clause.").

¶ 55 A testimonial statement is one made "under circumstances that would lead an objective witness reasonably to believe that the statement would be available for use at a later trial." *Nicholls*, ¶ 22 (citing *Crawford*, 541 U.S. at 51-53).

¶ 56 The Confrontation Clause "does not bar the use of testimonial statements for purposes other than establishing the truth of the matter asserted." *Crawford*, 541 U.S. at 59 n.9; *see also Robinson*, 226 P.3d at 1151 ("[T]he admission of nonhearsay does not implicate a defendant's confrontation rights.").

¶ 57 "We review a possible Confrontation Clause violation de novo." *People v. Hernandez*, 2021 CO 45, ¶ 18. Violation of a defendant's confrontation rights is a constitutional error that requires reversal unless the error was harmless beyond a reasonable doubt. *People v. Couillard*, 131 P.3d 1146, 1153 (Colo. App. 2005).

B. Discussion

¶ 58 In the video of the transaction involving the chainsaws, the undercover officer made statements suggesting that the chainsaws might have been stolen, including that he "didn't buy these" and did not "pay for them." Jargowsky argues that the admission of the officer's statements violated her confrontation rights because she "was never able to cross examine" him and "the jury was never able to evaluate his credibility."

¶ 59 But the officer's statements about the provenance of the chainsaws were not offered for their truth. Instead, the statements were offered to show that Jargowsky had reason to suspect the chainsaws were stolen yet chose to buy them anyway — that is, their effect on the listener. Because the Confrontation Clause "does not bar the use of testimonial statements for purposes other than establishing the truth of the matter asserted," *Crawford*, 541 U.S. at 59 n.9, the admission of the officer's statements did not violate Jargowsky's confrontation rights.

¶ 60 Accordingly, the district court did not err by admitting the video recording.

VI. Affirmative Defenses

¶ 61 Jargowsky contends that the district court erred by denying her counsel's proposed affirmative defense instructions on mistake of fact and mistake of law. We disagree.

A. Governing Law and Standard of Review

¶ 62 Colorado generally recognizes "two types of defenses in criminal cases: (1) affirmative defenses and (2) traverses." *Pearson v. People*, 2022 CO 4, ¶ 17. "An affirmative defense essentially admits the defendant's commission of the elements of the charged act but seeks to justify, excuse, or mitigate the commission of the act." *Roberts v. People*, 2017 CO 76, ¶ 20. "A traverse, in contrast, effectively refutes the possibility that the defendant committed the charged offense by negating one or more elements of that offense." *Id.* at ¶ 21. "[A] defendant who presents evidence that negates one or more elements of the charged offense 'is not entitled to an affirmative defense instruction.'" *Pearson*, ¶ 19 (quoting *Roberts*, ¶ 22).

¶ 63 "We review de novo the question of whether a trial court accurately instructed the jury on the law." *Martinez v. People*, 2024 CO 48, ¶ 10 (citation omitted). "If an instruction impermissibly lowered the prosecution's burden and the defendant objected, we will reverse unless we find that the error was harmless beyond a reasonable doubt." *Id.*

B. Discussion

¶ 64 Jargowsky argues that she was entitled to a mistake of fact affirmative defense instruction based on evidence that she told law enforcement after her arrest that she did not "receive anything stolen" and would not "knowingly take a stolen item." She argues that she was entitled to a mistake of law affirmative defense instruction because she claimed that police officers who visited Top Dollar never told her she was doing something illegal and one officer "approved the way the pawn shop was run and had no problem with how the store was operating."

¶ 65 A COCCA violation under section 18-17-104(3), C.R.S. 2026, requires, as relevant here, that the defendant "*knowingly* conduct or participate, directly or indirectly, in [an] enterprise through a pattern of racketeering activity." (Emphasis added.) A money laundering violation under section 18-5-309(1)(a)(II), C.R.S. 2026, requires that the defendant

> [c]onduct[] or attempt[] to conduct a financial transaction that involves money or any other thing of value that he or she *knows or believes* to be the proceeds, in any form, of a criminal offense . . . [w]ith *knowledge or a belief* that the transaction is designed in whole or in part to . . . [c]onceal or disguise the nature, location, source, ownership, or control of the proceeds of a criminal offense . . . or . . . [a]void a transaction reporting requirement under federal law.

(Emphasis added.) Jargowsky's statement to law enforcement that she would not "knowingly take a stolen item" was evidence that tended to negate the required mental state for both offenses. Accordingly, this evidence did not warrant a mistake of fact affirmative defense instruction. *See Pearson*, ¶ 19; *People v. Nelson*, 2014 COA 165, ¶ 52 (no error in rejecting the defendant's proposed mistake of fact affirmative defense instruction where the defense "merely negated the mental state of the charged offense" (citing *People v. Walden*, 224 P.3d 369, 378-79 (Colo. App. 2009))).

¶ 66 Nor was Jargowsky entitled to a mistake of law affirmative defense instruction. Under section 18-1-504(2), C.R.S. 2026, a person may be relieved of criminal liability for conduct "because [s]he engages in that conduct under a mistaken belief that it does not, as a matter of law, constitute an offense" only if the conduct is permitted by one or more of (a) a binding statute or ordinance; (b) an administrative regulation, order, or official grant of permission; or (c) "[a]n official written interpretation of the statute or law relating to the offense, made or issued by a public servant, agency, or body legally charged or empowered with the responsibility of administering, enforcing, or interpreting a statute, ordinance, regulation, order, or law." Jargowsky's claim that law enforcement expressly or implicitly assured her that she was not doing anything improper does not fall within any of these categories.

¶ 67 Accordingly, the district court did not err by declining to give Jargowsky's proposed instructions.

VII. Cumulative Error

¶ 68 Finally, Jargowsky contends that, even if the individual errors do not require reversal, their cumulative prejudicial impact does. "For reversal to occur based on cumulative error, a reviewing court must identify multiple errors that collectively prejudice the substantial rights of the defendant, even if any single error does not." *Howard-Walker v. People*, 2019 CO 69, ¶ 25. We have assumed two errors — the admission of the LeadsOnline and eBay records and the purported expert testimony — and concluded they do not warrant reversal. We further conclude that these assumed errors, even when viewed in combination, did not substantially prejudice Jargowsky's right to a fair trial. *See People v. Martinez*, 2020 COA 141, ¶ 89 (concluding that, even though the court identified two errors, there was no reversible cumulative error because those errors did not substantially prejudice the defendant's right to a fair trial).

VIII. Disposition

¶ 69 We affirm the judgment.

JUDGE LIPINSKY and JUDGE SCHUTZ concur.