SUMMARY
October 19, 2023

**2023COA96**

**No. 20CA1960, *Peo v Price* — Crimes — Patronizing a Prostituted Child — Pimping of a Child — Colorado Organized Crime Control Act — Enterprise; Constitutional Law — Colorado Constitution — Article II — Equal Protection**

As a matter of first impression, a division of the court of appeals considers whether the defendant's convictions for patronizing a prostituted child and pimping of a child violate his right to equal protection as applied to him. The division concludes there is no as-applied equal protection violation because the patronizing statute criminalizes different conduct than the pimping of a child statute. The division further concludes that the defendant's conviction under the Colorado Organized Crime Control Act must be reversed, based on the holding in *McDonald v. People*, 2021 CO 64. Because the prosecution presented sufficient evidence of an enterprise under the law that existed at the time of trial to

sustain the conviction, Price may be retried on the COCCA charge. The judgment is affirmed in all other respects.

COLORADO COURT OF APPEALS **2023COA96**

---

Court of Appeals No. 20CA1960
Douglas County District Court No. 17CR381
Honorable Theresa Slade, Judge

---

The People of the State of Colorado,

Plaintiff-Appellee,

v.

Chauncey Scott Price,

Defendant-Appellant.

---

JUDGMENT AFFIRMED IN PART AND REVERSED IN PART,
AND CASE REMANDED WITH DIRECTIONS

Division V
Opinion by JUDGE FREYRE
Yun and Kuhn, JJ., concur

Announced October 19, 2023

---

Philip J. Weiser, Attorney General, Trina K. Kissel, Senior Assistant Attorney General, Denver, Colorado, for Plaintiff-Appellee

Lauretta A. Martin Neff, Alternate Defense Counsel, Palisade, Colorado, for Defendant-Appellant

¶ 1 In this criminal case, Chauncey Scott Price appeals his conviction for violating the Colorado Organized Crime Control Act (COCCA) and fourteen other convictions related to human trafficking and forgery. As a matter of first impression, we consider and reject his argument that, as applied to him, the patronizing a prostituted child statute violates his right to equal protection. We conclude that the patronizing statute criminalizes different conduct than the pimping of a child statute and discern no equal protection violation in Price's being convicted of both crimes. But we agree that the trial court erroneously instructed the jury on the definition of "enterprise" based on *McDonald v. People*, 2021 CO 64, which our supreme court decided following the trial. We therefore reverse the COCCA conviction. Because the prosecution presented sufficient evidence of an enterprise under the overruled definition, we remand for a new trial on the COCCA charge. We affirm the remaining convictions.

## I. Background

¶ 2 The trial evidence established the following facts.

¶ 3 In 2016, Price met twenty-five-year-old C.M. through his girlfriend, J.B. C.M. had a history of prostitution and drug

addiction. Price, J.B., and C.M. discussed C.M. working as a prostitute to pay rent. Price and C.M. agreed that Price would drive C.M. to meet clients and provide C.M. with protection in exchange for 60% of C.M.'s earnings. C.M. advertised her services online and Price drove her to calls and supplied her with drugs. Sometimes, Price's associate, Michael Hughes, also known as "Tiny" or "T", would drive C.M. to calls.

¶ 4 This arrangement worked for a time, and C.M. considered Price "like a best friend." However, their relationship soured when C.M.'s sister stole electronics from Price. Price blamed C.M., and he stopped honoring their pay arrangement because he expected her to repay him for the stolen property. C.M. told Price she would repay him so that he would not hurt her.

¶ 5 Eventually, C.M. told Price that she did not want to work as a prostitute anymore. Price physically assaulted her and knocked her unconscious. Their relationship ended.

¶ 6 In 2016, J.B. also introduced Price to twenty-year-old T.C., who worked as a prostitute. As with C.M., Price drove T.C. to client calls and provided protection in exchange for 50% of T.C.'s earnings.

¶ 7 In January 2017, T.C.'s friend, seventeen-year-old G.G., made a similar arrangement with Price. After working with Price for a couple of weeks, T.C. and G.G. traveled to Texas to prostitute themselves and work at strip clubs. After T.C. returned to Colorado, she asked Price to drive her to the airport to pick up G.G. Price then drove T.C. and G.G. to a hotel where T.C. attempted to set up prostitution calls for herself and G.G.

¶ 8 A few days later, Price drove T.C. to a call at a truck stop. G.G. accompanied them. The call turned out to be a police sting and all three were arrested.

¶ 9 At trial, T.C. testified that she could not recall whether Price had driven G.G. to any prostitution calls. G.G. initially stated during an investigative interview that she had never done any calls with Price. At trial, however, G.G. testified that Price had taken her on one call with T.C. and that she had given her earnings from the call to T.C., who then gave them to Price.

¶ 10 Investigators contacted C.M. in response to a tip about possible human trafficking. C.M. said she had seen Price and Hughes make counterfeit money in a hotel room. She described how they used chemicals and a microwave to "wash[] the face off

the bills so they could reprint the new faces of hundreds and fifties onto $1 bills." She told the investigators that Price and Hughes shared the counterfeit money and spent it at various Target stores in Colorado. Sometimes Price and Hughes would spend the money themselves, or they would recruit other people to spend it while they waited in the parking lot. C.M. testified that Price had her pass counterfeit money at Target stores to repay him for the property her sister stole.

¶ 11 The testimony of several Target loss prevention employees established the following:

- On June 4, 2016, Price and Hughes each bought gift cards using counterfeit $50 bills. They drove away in a black car. The transaction and parking lot were captured on surveillance video.
- On June 8, 2016, Hughes was arrested for trying to pass counterfeit money at a Target store. Price managed to buy gift cards using counterfeit $50 bills and drove away in a black car. The transaction and parking lot were captured on surveillance video.

- In November 2016, Price and Hughes bought a vacuum cleaner with two counterfeit $50 bills. The transaction was captured on surveillance video. Later that day, a Target loss prevention officer at a different store recognized Price and Hughes from prior suspicious activity. When Hughes tried to purchase gift cards with eight $100 bills, the officer and the head cashier intervened and stopped the transaction. The cashier returned the money to Hughes and Price, and Hughes left in a black car.

¶ 12 A jury convicted Price of one count of violating COCCA through a pattern of racketeering activity, human trafficking for sexual servitude (G.G.), human trafficking for sexual servitude (C.M.), pimping of a child (G.G.), patronizing a prostituted child (G.G.), pandering of a child (G.G.), two counts of pimping (C.M. and T.C.), three counts of forgery, possession of a forged instrument, possession of a forgery device, and theft. The court adjudicated him a habitual criminal and sentenced him to 304 years to life in the custody of the Department of Corrections (DOC).

## II. COCCA Violation

¶ 13 Price challenges his COCCA conviction on two grounds. First, he contends that the evidence introduced at trial was insufficient to support the conviction. His contention is premised on the holding in *McDonald*, 2021 CO 64, decided after the trial in this case. Under *McDonald*, to establish an "associated-in-fact enterprise," the prosecutor must prove an ongoing organization of associates who functioned as a continuing unit that existed separately from the pattern of racketeering conduct in which it engaged. *Id.* at ¶ 45. According to Price, the prosecutor presented insufficient evidence of such an organization. Second, Price contends that the trial court plainly erred by failing to properly instruct the jury on the meaning of an associated-in-fact enterprise as articulated in *McDonald*. Plain error must be obvious and substantial and so undermine the fundamental fairness of the proceedings as to cast serious doubt on the reliability of the judgment of conviction. *People v. Hagos*, 2012 CO 63, ¶ 14.

¶ 14 While recognizing that the trial court didn't have the benefit of *McDonald* when instructing the jury, we agree that the court plainly erred. The error here was obvious at the time of appeal because

intervening authority from a higher court overruled the prior precedent the trial court followed at the time of trial. *See Scott v. People*, 2017 CO 16, ¶¶ 16-17 (noting the general rule that such errors are not obvious subject to limited exceptions like intervening authority from a higher court overruling prior precedent). And the error here was substantial and undermined the fundamental fairness of the trial, casting serious doubt on the reliability of the judgment of conviction, because there was a reasonable possibility that application of the prior precedent, which *McDonald* overruled by changing the entire framework required for a COCCA enterprise — a central element of Price's conviction — contributed to his conviction. *See id.* at ¶¶ 15, 18; *see also People v. Luna*, 2020 COA 123M, ¶ 20 (finding substantial error in contradictory self-defense jury instructions where self-defense was central to the case).

¶ 15 Nevertheless, we conclude that the evidence was sufficient to convict Price of violating COCCA under the previous definition of "enterprise" articulated in *People v. James*, 40 P.3d 36 (Colo. App. 2001), *overruled by McDonald*, 2021 CO 64, and thus, the prosecutor may retry him on that charge. *McDonald*, ¶¶ 63-68. Therefore, we need not address his jury instruction argument.

### A. Standard of Review and Applicable Law

¶ 16 We review the record de novo to determine whether the evidence before the jury was sufficient in quantity and quality to sustain a conviction. *McCoy v. People*, 2019 CO 44, ¶ 63. Our review examines the relevant direct and circumstantial evidence as a whole to analyze whether the evidence is substantial and sufficient for a reasonable mind to find the defendant guilty beyond a reasonable doubt. *Id.*

¶ 17 Evidence sufficient for a criminal conviction means more than a modicum of relevant evidence — not mere guesses, speculation, or conjecture. *People v. Sprouse*, 983 P.2d 771, 778 (Colo. 1999). However, we view the evidence in the light most favorable to the prosecution, giving it the benefit of every reasonable inference fairly drawn from the evidence. *McCoy*, ¶ 63; *Clark v. People*, 232 P.3d 1287, 1292 (Colo. 2010).

¶ 18 As relevant here, section 18-17-104(3), C.R.S. 2023, makes it "unlawful for any person employed by, or associated with, any enterprise to knowingly conduct or participate, directly or indirectly, in such enterprise through a pattern of racketeering activity."

¶ 19 COCCA defines an "enterprise" as "any individual, sole proprietorship, partnership, corporation, trust, or other legal entity or any chartered union, association, or group of individuals, associated in fact although not a legal entity, and shall include illicit as well as licit enterprises and governmental as well as other entities." § 18-17-103(2), C.R.S. 2023. At issue here is the category "group of individuals, associated in fact." COCCA does not define that phrase. But in *James*, a division of this court rejected the argument that such an association or "enterprise" under COCCA must be an ongoing organization operating as a continuing unit, and must be separate and apart from the pattern of racketeering activity — all of which are required in a federal prosecution under the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961-1968. *James*, 40 P.3d at 47-48.

B. Additional Facts

¶ 20 The trial court instructed the jury on the definition of "enterprise" consistent with the statute and model jury instruction at the time. COLJI-Crim. F:125 (2019). The instruction read:

> "Enterprise" means any individual, association, or group of individuals, associated

> in fact although not a legal entity, and shall include illicit as well as licit enterprises.

¶ 21 Price did not object to the instruction or argue that the prosecution was required to prove an associated-in-fact enterprise as defined under RICO, or that it had failed to do so.

¶ 22 During the pendency of this appeal, the Colorado Supreme Court decided *McDonald*, which expressly overruled *James* and held that (1) proof of a COCCA associated-in-fact enterprise requires proof of the aforementioned attributes applicable in RICO prosecutions and (2) the jury must be instructed on those "structural features." *McDonald*, ¶¶ 44-46, 53, 59.

C. Analysis

¶ 23 The prosecution presented substantial evidence establishing that Price and his associates operated over a period of months, and that the associates repeatedly joined Price in planning and committing several predicate crimes — forgery and prostitution. *See* § 18-17-103(5)(b)(I), (IV), (VI) (identifying the crimes committed in this case as racketeering activity).

¶ 24 Regarding prostitution, the prosecution presented evidence that

- Price had agreements with C.M., T.C., and G.G. to share their profits in exchange for his assistance with their prostitution services;
- Price paid to advertise C.M.'s, T.C.'s, and G.G.'s prostitution services;
- Price provided for C.M.'s, T.C.'s, and G.G.'s basic living needs, including room and board, he paid T.C.'s phone activation fee, and he provided C.M. with drugs;
- Price drove C.M., T.C., and G.G. to meet clients and provided physical protection during their calls;
- J.B. served as the organization's "bottom girl"[1] and recruited women to prostitute for Price;
- Hughes sometimes drove C.M. to calls and collected her earnings;

[1] "The bottom [girl] is the individual who is responsible for (1) organizing the other prostitutes, (2) recruiting new women to join the pimp's group of prostitutes, (3) collecting money and posting advertisements for the prostitutes, and (4) doing whatever else the pimp delegates. In other words, the bottom is a pimp's 'main girl that makes the money' and tells other women what to do." *United States v. Walker*, 73 F.4th 915, 918 (11th Cir. 2023).

- Price's associate, Hughes, a.k.a. "T", would sometimes drive C.M. to calls and book hotel rooms for which Price would pay.

¶ 25 Regarding forgery, the prosecution presented evidence that

- Price and Hughes created counterfeit money in hotel rooms or at Price's apartment;
- Price and Hughes passed the counterfeit money either personally or had associates pass the money to various Target stores in Colorado from June 2016 to January 2017; and
- the associates were paid from the profits of the forgery.

¶ 26 To be sure, the prosecution attempted to establish an enterprise by offering Hughes a deal to plead guilty to conspiracy to commit pimping, but at Price's trial Hughes testified that he only accepted the deal because it was the best one his attorney could get, and he expressly denied participating in any prostitution activities. However, it is the jury's job, not ours, to resolve conflicting evidence and to determine the credibility and weight of the evidence. *People v. Poe*, 2012 COA 166, ¶ 14.

¶ 27 Reviewing the evidence in the light most favorable to the prosecution, we conclude that sufficient evidence supports the jury's verdict under the standard that applied at the time of trial. *See James*, 40 P.3d at 47-48 (concluding that an associated-in-fact enterprise need not have any structure or relationship among the associates); *People v. Cerrone*, 867 P.2d 143, 149 (Colo. App. 1993) (noting that the enterprise need not exist beyond the pattern of racketeering activity), *overruled by McDonald*, ¶¶ 4, 47.

¶ 28 Price also contends that the evidence was insufficient under the *McDonald* standard, and he asks us to apply that standard on appeal. However, like the supreme court in *McDonald*, ¶ 67, we decline to speculate on whether the jury would have found Price guilty if it had been instructed in accordance with *McDonald*'s requirements. The prosecution did not have notice of those requirements, and it cannot be held responsible for failing to muster evidence sufficient to satisfy them. *Id.*

¶ 29 Based on our de novo review of the record, we conclude that the prosecution produced sufficient evidence to support a conviction under the then-applicable standard and that, therefore,

Price may be retried on the COCCA charge. *Id.* at ¶¶ 62-63. We do not further address Price's alleged instructional error.

## III. Severance

¶ 30 Price next contends that *if* we reverse his COCCA conviction and *if* the prosecutor chooses not to retry the case, his human trafficking/prostitution and forgery charges should be reversed, severed, and tried separately. Price characterizes this issue as a "likely event," yet its conditional nature renders his entire contention a hypothetical situation that calls for an advisory opinion. Because we are "not empowered to give advisory opinions based on hypothetical fact situations," *Tippett v. Johnson*, 742 P.2d 314, 315 (Colo. 1987), we decline his invitation to address his hypothetical. *See Galvan v. People*, 2020 CO 82, ¶ 49.

## IV. Merger and Double Jeopardy

¶ 31 Price next contends that his conviction for possession of a forged instrument should merge with his other forgery convictions. We disagree.

### A. Standard of Review and Applicable Law

¶ 32 We review de novo whether a conviction violates double jeopardy. *Reyna-Abarca v. People*, 2017 CO 15, ¶¶ 48-50. We

review unpreserved double jeopardy claims for plain error. *Id.* at ¶ 46. Plain error must be obvious and substantial and so undermine the fundamental fairness of the proceedings as to cast serious doubt on the reliability of the judgment of conviction. *Hagos*, ¶ 14.

¶ 33 The Double Jeopardy Clauses of the United States and Colorado Constitutions protect an accused from being twice placed in jeopardy for the same crime. U.S. Const. amends. V, XIV; Colo. Const. art. II, § 18. Double jeopardy rights are violated when, as relevant here, a defendant is convicted of a greater offense and a lesser included offense. *Reyna-Abarca*, ¶ 81. An offense is a "lesser included offense of another offense if the elements of the lesser offense are a subset of the elements of the greater offense, such that the lesser offense contains only elements that are also included in the elements of the greater offense." *Id.* at ¶ 3.

¶ 34 Separate convictions do not violate double jeopardy, however, if the evidence shows distinct and separate offenses. *Quintano v. People*, 105 P.3d 585, 591 (Colo. 2005). To discern whether the evidence was sufficient to support distinct and separate offenses, "we look to all the evidence introduced at trial." *Id.* at 592. Factors

relevant to whether the conduct qualified as "factually distinct offenses" include the "time and location of the events, the defendant's intent, and whether the People presented the acts as legally separable," *People v. Wagner*, 2018 COA 68, ¶ 13 (quoting *Woellhaf v. People*, 105 P.3d 209, 218-19 (Colo. 2005)), as well as whether the acts "were the product of new volitional departures, or were separated by intervening events," *Woellhaf*, 105 P.3d at 219.

B. Additional Facts

¶ 35 The jury convicted Price of three counts of forgery and one count of possession of a forged instrument.

¶ 36 A person commits forgery if "with intent to defraud, the person falsely makes, completes, alters, or utters a written instrument that is or purports to be, or that is calculated to become or to represent if completed: (a) Part of an issue of money . . . issued by a government or government agency." § 18-5-102(1)(c), C.R.S. 2023.

¶ 37 A person commits possession of a forged instrument "when, with knowledge that it is forged and with intent to use to defraud, such person possesses any forged instrument of a kind described in section 18-5-102." § 18-5-105, C.R.S. 2023. A forged instrument is defined as "a written instrument that is or purports to be, or that

is calculated to become or to represent if completed: (a) Part of an issue of money . . . issued by a government or government agency." § 18-5-102(1)(a).

¶ 38 At trial, the prosecutor produced evidence of Price's conduct between January 2016 and January 2017. Testimony by various Target employees and C.M. established that

- on June 4, 2016, Price and Hughes individually purchased items at Target using counterfeit money;
- on June 8, 2016, Price successfully purchased items at Target using counterfeit money while Hughes was caught and arrested for trying to use counterfeit money;
- on November 25, 2016, Price purchased a vacuum cleaner at Target using counterfeit money;
- on November 25, 2016, Hughes attempted to purchase items at another Target using counterfeit money while Price watched; and
- Price tasked C.M. with purchasing gift cards from Target using counterfeit money.

¶ 39 Based on this evidence, the prosecutor argued that Price was

guilty of the forgery charges as either a principal, by passing the counterfeit money himself, or as a complicitor, by tasking others, such as Hughes and C.M., to pass the money for him. The prosecutor also argued that Price was guilty of possession of a forged instrument any time he possessed the counterfeit money with the intent to use it.

¶ 40 During closing arguments, the prosecutor explained each element of the forgery crimes and said the jury needed to reach a unanimous verdict on each charge. The prosecutor said the jury could convict Price either by finding that he committed all of the alleged acts, or alternatively, by finding that he committed the same criminal act for each charge.

¶ 41 Each verdict form contained a unanimity interrogatory instructing the jury that it could either find that Price committed "ALL of the acts described by the evidence" or find that Price committed "AT LEAST ONE act described by the evidence," which "is a different act than any other act(s) for which [the jury] ha[d] found [Price] guilty." The jury found that all the acts were proved on each forgery verdict form and on the possession verdict form.

### C. Analysis

¶ 42 We conclude that factually distinct conduct supports each of Price's forgery convictions.

¶ 43 The evidence established at least six instances, on different days, at different locations and involving different actors, where Price, or an associate at his direction, possessed counterfeit money, had the intent to use it, and passed it (albeit sometimes unsuccessfully) at various Target stores. *See Quintano*, 105 P.3d at 591. Moreover, the prosecutor presented these acts as legally separable, arguing that Price could be guilty of forgery as a principal when he passed counterfeit money himself, or as a complicitor when associates passed it for him.

¶ 44 Additionally, the prosecutor argued that Price could be guilty of the possession charge any time he possessed counterfeit money with the intent to use it. *See Wagner*, ¶ 13.

¶ 45 The jury unanimously found that all of the acts were proved beyond a reasonable doubt. The verdict form did not assign particular acts to particular charges, so nothing in the record shows that the instances on which the jury relied to convict Price of the three forgery charges should merge with the instance on which it

relied to convict him of the possession charge. Because distinct and separate evidence supported each conviction, we reject Price's contention that his convictions were based on the same conduct such that merger is required and double jeopardy was violated.

## V. As-Applied Equal Protection Challenge

¶ 46 Price next contends that his conviction for patronizing a prostituted child must be vacated because it violates his state constitutional right to equal protection of the laws. He argues that the patronizing statute violates equal protection as applied to his conduct because it prohibits essentially the same conduct as the pimping statute but carries a much higher sentence. We disagree.

### A. Preservation and Standard of Review

¶ 47 The parties agree this issue is unpreserved. We may exercise our discretion to address unpreserved as-applied challenges to the constitutionality of a statute, but "only where doing so would clearly further judicial economy." *People v. Mountjoy*, 2016 COA 86, ¶ 35 (quoting *People v. Houser*, 2013 COA 11, ¶ 35), *aff'd on other grounds*, 2018 CO 92M. The existence of a sufficient record for review is one basis upon which divisions of this court have exercised their discretion to do so. *Id.* We conclude there is a

sufficient record for review here, and we exercise our discretion to address this challenge. We review de novo whether two statutes prohibit the same or different conduct, *People v. Curtis*, 2021 COA 103, ¶ 32, and we only reverse unpreserved constitutional errors for plain error, *Hagos*, ¶ 14.

B. Applicable Law

¶ 48 "Colorado's [state constitutional guarantee] is violated where two criminal statutes proscribe identical conduct, yet one punishes that conduct more harshly." *Dean v. People*, 2016 CO 14, ¶ 14. "[C]riminal legislation is not," however, "invalidated simply because a particular act may violate more than one statutory provision." *People v. Maloy*, 2020 COA 71, ¶ 14 (quoting *People v. Onesimo Romero*, 746 P.2d 534, 537 (Colo. 1987)).

¶ 49 When evaluating an as-applied equal protection challenge, "we consider whether . . . the relevant statutes, or specific subsections of the statutes, punish identical conduct, and whether a reasonable distinction can be drawn between the conduct punished by the two statutes." *Id.* (quoting *People v. Trujillo*, 2015 COA 22, ¶ 21); *accord People v. Tarr*, 2022 COA 23, ¶ 59 (*cert. granted* Mar. 27, 2023); *see People v. Campbell*, 58 P.3d 1080, 1084 (Colo. App. 2002) ("[T]he

particular facts, not rigid application of the strict elements test . . . define[s] the equal protection analysis . . . ."), *aff'd*, 73 P.3d 11 (Colo. 2003).

¶ 50 "To establish a reasonable distinction between two statutes for purposes of equal protection, the statutory classifications of crimes must be 'based on differences that are real in fact and reasonably related to the general purposes of criminal legislation.'" *Tarr*, ¶ 59 (quoting *People v. Brockelman*, 862 P.2d 1040, 1041 (Colo. App. 1993)). To overcome a state constitutional equal protection challenge, "the statutory classification must turn on 'reasonably intelligible standards of criminal culpability,' and any definition of a crime must be 'sufficiently coherent and discrete that a person of average intelligence can reasonably distinguish it from conduct proscribed by other offenses.'" *People v. Griego*, 2018 CO 5, ¶ 36 (quoting *People v. Marcy*, 628 P.2d 69, 80-81 (Colo. 1981)).

C. Analysis

¶ 51 Pimping of a child is a class 3 felony with a presumptive sentence of four to twelve years in the custody of the DOC. § 18-7-405, C.R.S. 2023. Patronizing is also a class 3 felony, *see* § 18-7-406(2), C.R.S. 2023, but is also punishable under the Colorado Sex

Offender Lifetime Supervision Act of 1998 (SOLSA), and therefore carries a sentence of four years to life in the custody of the DOC. §§ 18-1.3-1003(5)(a)(X), -1004(1)(a), C.R.S. 2023. Under the SOLSA sentencing scheme, a defendant is eligible for release at the bottom of the sentencing range (in Price's case, four years) but may, at the parole board's discretion, remain imprisoned indefinitely.

¶ 52 When analyzing an equal protection claim, Colorado courts "compare[] the relative severity of sentences by reference to the maximum possible period of incarceration, not the timing of parole eligibility." *Dean*, ¶ 10. Under this approach, a sentence that could potentially leave an offender in prison for life (patronizing) is necessarily harsher than a sentence with a maximum twelve-year end date (pimping).

1. Patronizing

¶ 53 Price was convicted of patronizing a prostituted child under section 18-7-406(1)(a), which criminalizes "[e]ngag[ing] in an act which is prostitution of a child or by a child, as defined in section 18-7-401(6) or (7)," C.R.S. 2023. During closing argument, the prosecutor explained that prostitution "by a child" means a child under the age of eighteen performing an act of prostitution, whereas

"of a child" means inducing that same child to perform an act of prostitution. The prosecutor relied on evidence of Price's relationship with G.G. and argued that there were two ways Price could be found guilty of patronizing — either as a principal "because he helped arrange or offered to arrange situations in which [G.G.] could make money through prostitution," or as a complicitor by driving G.G. to calls where she committed prostitution with another person.

¶ 54 Based on the evidence introduced at trial, Price's conduct falls under both "prostitution of a child" and "by a child." It constituted "prostitution by a child" because Price acted as a complicitor driving G.G. to meet clients who responded to her ads. *See* § 18-7-401(6)). And his conduct constituted "prostitution of a child" because Price induced G.G. to perform sexual acts with third persons, or induced her to allow others to perform such acts, by coercion, threat, or intimidation, or in exchange for money or other thing of value. *See* § 18-7-401(7).

2. Pimping

¶ 55 A person commits pimping of a child (a class 3 felony) if the person "knowingly lives on or is supported or maintained in whole

or in part by money or other thing of value earned, received, procured, or realized by a child through prostitution." § 18-7-405.

¶ 56 Pimping prohibits substantially different conduct than patronizing. It prohibits knowingly supporting oneself with money or things of value earned through child prostitution. Thus, a defendant's conduct is criminal regardless of how the child is engaged in prostitution, and the statute does not require that a defendant interact with the child at all.

¶ 57 By contrast, and as applied to Price, patronizing requires the child to perform, offer, or agree to perform certain sexual acts. And it requires that the inducement be by coercion, threat, or intimidation, or in exchange for money or other thing of value.

¶ 58 Here, the prosecutor relied on different evidence than that related to patronizing to argue that Price committed pimping. During closing, the prosecutor argued that Price used the money he obtained through prostitution to pay his rent and to buy basic living needs such as gas and items for his apartment.

¶ 59 Because pimping does not penalize the same or more culpable conduct proscribed by the harsher patronizing statute, we conclude that Price's conviction for patronizing does not violate equal

protection as applied to him. *See Maloy*, ¶¶ 23-34 (finding no equal protection violation where defendant was convicted of patronizing a prostituted child as well as soliciting for child prostitution because, as applied to the defendant, soliciting did not proscribe and assign a more lenient sentence to the same or similar conduct as patronizing).

## VI. Remaining Sufficiency Arguments

¶ 60 Price last contends that insufficient evidence supports his pandering of a child conviction, his possession of a forgery device conviction, and his habitual criminal sentence enhancer. We disagree.

### A. Standard of Review

¶ 61 We review the record de novo on both preserved and unpreserved sufficiency of the evidence claims. *McCoy*, ¶ 2. Using the substantial evidence test, we consider whether the direct and circumstantial evidence, viewed as a whole and in the light most favorable to the prosecution, could support a reasonable trier of fact's conclusion that the defendant is guilty of the offense beyond a reasonable doubt. *Clark*, 232 P.3d at 1291-92. It does not matter that the reviewing court might have reached a different conclusion

than the fact finder, so long as there is a logical connection between the facts established and the conclusion inferred. *Id.*

B. Pandering of a Child

¶ 62 As relevant here, a person commits pandering of a child when, for money or other thing of value, he knowingly arranges or offers to arrange a situation in which a child may be prostituted. § 18-7-403(1)(b), C.R.S. 2023. "The crime is arranging the situation, regardless of whether a child ultimately engages in prostitution or is even present in the scenario." *Maloy*, ¶ 26.

¶ 63 The prosecution presented evidence that Price knowingly arranged situations for T.C. and G.G. to engage in prostitution in exchange for a portion of their pay:

- Price picked G.G. up from the airport when she returned from Texas and dropped her and T.C. off at a hotel where they attempted to prostitute themselves. Though they were ultimately unsuccessful in obtaining client calls, T.C. testified that Price expected to receive half of their profits for the day.
- Price paid to activate G.G.'s phone so that she could use it to set up prostitution calls.

- T.C. posted ads online to prostitute herself and G.G., and Price paid for the ads. He also helped create and review the ads before T.C. posted them. Price also waited with them at their apartment to arrange calls.
- Hughes testified that Price posted ads for T.C. and G.G. and that "he would drive them out to calls and then collect the money for whatever they were doing."
- In the days before they were arrested, Price drove G.G. to calls. G.G. gave T.C. the money she earned from the calls because she was told that half of the money would go to Price. G.G. saw T.C. give Price the money.

¶ 64 We conclude this evidence is sufficient to support Price's pandering conviction and are not otherwise persuaded by his assertion that "T.C. was adamant that she operated independently from Price to market herself and G.G." "We will not set aside a conviction for lack of evidence because a conclusion different from that reached by the jury might be reached on the same evidence." *People v. Fuller*, 791 P.2d 702, 706 (Colo. 1990); *see also Clark*, 232 P.3d at 1291-92.

### C. Possession of a Forgery Device

¶ 65 A person commits possession of a forgery device if he

> possesses any tools, photographic equipment, printing equipment, or any other device adapted, designed, or commonly used for committing or facilitating the commission of an offense involving the unauthorized manufacture, printing, embossing, or magnetic encoding of a financial transaction device or the altering or addition of any uniform product codes, optical characters, or holographic images to a financial transaction device, and intends to use the thing possessed, or knows that some person intends to use the thing possessed, in the commission of such an offense.

§ 18-5-706(1), C.R.S. 2023.

¶ 66 J.B. testified that Hughes brought a printer to her and Price's apartment on multiple occasions to print counterfeit money. Hughes testified about his process for "washing" the bills and reprinting them using a laser jet printer. He confirmed that Price was sometimes present when he made the counterfeit money. And C.M. testified that Price and Hughes used a printer in a hotel room and that Price taught Hughes how to make counterfeit money with it. We conclude this evidence sufficiently supports Price's conviction for possession of a forgery device.

¶ 67 We are not persuaded otherwise by Price's assertion that only Hughes performed the counterfeiting. The evidence showed that they both used the printer and that Price intended Hughes to use it to produce counterfeit bills later used to purchase gift cards and merchandise.

D. Habitual Criminal

¶ 68 Price contends that the prosecution presented insufficient evidence to establish that his prior felony convictions arose from separate and distinct criminal episodes. We are not persuaded.

¶ 69 Under section 18-1.3-801(1.5), C.R.S. 2023, a defendant may be adjudged a habitual criminal if the defendant "has been twice previously convicted upon charges separately brought and tried, and arising out of separate and distinct criminal episodes." "Where the charges against the defendant[] were separately brought and would have been tried separately but for the defendant['s] decisions to enter guilty pleas, the convictions thereby obtained satisfy the definition of predicate felonies in the habitual criminal statute." *Gimmy v. People*, 645 P.2d 262, 267 (Colo. 1982).

¶ 70 The prosecution presented authenticated copies of Price's prior felony convictions showing the following:

- In 2011, Price committed two pawnbroker violations (case numbers 11CR1666 and 11CR4410). The violations occurred on different days (May 23 and June 15) and at different locations. The cases were filed in different jurisdictions (Arapahoe and Denver) and resolved in separate dispositions.
- In 2011, Price committed attempted second degree burglary. The burglary occurred on a different day and in a different city than the pawnbroker violations. The case was resolved in a separate disposition than the prior pawnbroker felonies.
- In 2012, Price committed second degree burglary in Denver. The case was filed in Denver and was resolved in a separate disposition than the prior felonies.

¶ 71 An authenticated copy of the record of former convictions and judgments of any court of record is prima facie evidence of such convictions and may be used to establish those prior convictions. § 18-1.3-802, C.R.S. 2023.

¶ 72 We conclude that the admitted evidence, when viewed as a whole and in the light most favorable to the prosecution, sufficiently

established that Price's prior felonies were "separately brought and tried."

¶ 73 We are not persuaded otherwise by Price's arguments that his habitual criminal sentence should be vacated because his cross-examination focused on whether the acts were part of a single crime spree and that one of the prosecution's witnesses could not confirm whether the incidents arose from separate and distinct episodes. The court acts as the fact finder in sentencing proceedings, and there was sufficient evidence for the court to conclude that the offenses were distinct. Where, as here, the charges were separately brought and would have been tried separately but for Price's decision to enter guilty pleas, his "convictions thereby obtained satisfy the definition of predicate felonies in the habitual criminal statute." *Gimmy*, 645 P.2d at 267.

¶ 74 Accordingly, we discern no error in the court's adjudication of Price as a habitual criminal.

## VII. Disposition

¶ 75 The COCCA conviction is reversed, and the case is remanded for a new trial. The judgment is affirmed in all other respects.

JUDGE YUN and JUDGE KUHN concur.