Appendix A

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Gammell

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: July 30, 2018 CASE NUMBER: 2018SC245
Certiorari to the Court of Appeals, 2014CA2129 District Court, Arapahoe County, 2010CR2852	
Petitioner: Akinlabi Coleman, v. **Respondent:** The People of the State of Colorado.	Supreme Court Case No: 2018SC245
ORDER OF COURT	

Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals and after review of the record, briefs, and the judgment of said Court of Appeals,

IT IS ORDERED that said Petition for Writ of Certiorari shall be, and the same hereby is, DENIED.

BY THE COURT, EN BANC, JULY 30, 2018.

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14CA2129 Peo v Coleman 02-22-2018

COLORADO COURT OF APPEALS

Court of Appeals No. 14CA2129
Arapahoe County District Court No. 10CR2852
Honorable Elizabeth Beebe Volz, Judge

The People of the State of Colorado,

Plaintiff-Appellee,

v.

Akinlabi Coleman,

Defendant-Appellant.

JUDGMENT AND SENTENCE AFFIRMED

Division IV
Opinion by JUDGE J. JONES
Hawthorne and Davidson*, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)
Announced February 22, 2018

Cynthia H. Coffman, Attorney General, Joseph G. Michaels, Assistant Attorney General, Denver, Colorado, for Plaintiff-Appellee

Douglas K. Wilson, Colorado State Public Defender, Andrea R. Gammell, Deputy State Public Defender, Denver, Colorado, for Defendant-Appellant

*Sitting by assignment of the Chief Justice under provisions of Colo. Const. art. VI, § 5(3), and § 24-51-1105, C.R.S. 2017.

¶ 1 Defendant, Akinlabi Coleman, appeals the judgment of conviction and the sentence imposed. We affirm.

I. Background

¶ 2 G.S., the victim, left the marijuana dispensary where she worked and met Marvin Brown at a restaurant. They decided to drive G.S.'s car to a nearby Target parking lot to smoke marijuana. Mr. Brown knew that G.S. had about $6,000 and five pounds of marijuana in her car, and on the drive to Target Mr. Brown either texted or called someone to let that person know he was almost at the Target. While parked in the Target parking lot, a dark Nissan pulled up behind G.S.'s car, blocking it. Defendant (who was driving the Nissan) and two other men got out of the Nissan and surrounded G.S.'s car. Despite G.S.'s protests, Mr. Brown unlocked the car doors. Defendant threatened G.S. with a gun and demanded the money and marijuana. G.S. struggled and defendant hit her with the gun across her face. The three men went through the passenger compartment and trunk of G.S.'s car, taking the cash, the marijuana, and certain of G.S.'s personal items, including a purse, her green card, and her passport.

¶ 3 G.S. put the car in reverse and backed into the Nissan. She "threw [Mr. Brown] out of the car" and followed the Nissan as the robbers left. As she chased the Nissan, two of the robbers shot at her.

¶ 4 Police on patrol saw G.S. speeding out of a parking lot and running stop signs and lights. They eventually caught up to her, pulled her over, and listened to her story. G.S. told the police three men had robbed her at gunpoint and then shot at her as she pursued the Nissan. She also provided a telephone number associated with Mr. Brown. An officer entered the number into a database of victims, witnesses, and persons previously arrested. The database generated defendant's name and address. Within half an hour of the robbery, the police found a Nissan matching G.S.'s description at that address and watched as defendant placed a bag in the trunk and drove off, followed by two other vehicles.

¶ 5 Police stopped the three vehicles. They found G.S.'s purse and marijuana in the trunk of the black Nissan defendant had been driving. Searches of the other vehicles turned up more marijuana, but the police didn't recover any money or guns.

¶ 6 A jury convicted defendant of aggravated robbery, conspiracy to commit aggravated robbery, prohibited use of a weapon, and reckless driving. Following a bench trial, the district court adjudicated defendant a habitual offender. The court ultimately sentenced defendant on the two felony convictions to seventy-two years in the custody of the Department of Corrections (consecutive sentences of forty-eight years for the aggravated robbery conviction and twenty-four years for the conspiracy conviction).

II. Discussion

¶ 7 Defendant appeals both his felony convictions and his sentence. Regarding his convictions, he contends we should reverse them because the district court erred by giving the jury a so-called *Wells* instruction, and because it admitted unfairly prejudicial gang-affiliation evidence. He also challenges his sentence, arguing that the district court improperly imposed consecutive sentences in violation of section 18-1-408(3), C.R.S. 2017, and that the court's habitual criminal adjudications violated his right to a jury trial.

A. Issues Regarding Convictions

1. The *Wells* Instruction

¶ 8 The prosecution tendered an instruction telling the jurors that a person's exclusive possession of recently stolen property is a circumstance they could consider in deciding whether that person participated in the robbery. It tracked an instruction that the supreme court approved in *Wells v. People*, 197 Colo. 350, 592 P.2d 1321 (1979). Defense counsel objected to a part of the instruction (for a particular reason we'll get to below). The court overruled the objection. The *Wells* instruction the court gave the jury reads as follows:

> Exclusive possession of property recently stolen in an aggravated robbery, if not explained so to raise a reasonable doubt as to the defendant's guilt, is ordinarily a circumstance from which the jury may draw an inference and find, in the light of surrounding circumstances shown by the evidence in the case, that the person in possession participated in the robbery.
>
> You are not required to draw any conclusion from the exclusive, unexplained possession of recently stolen property, but you are permitted to infer, from the defendant's unexplained possession[,] that the defendant is guilty of aggravated robbery if, and only if, in your judgment such an inference is warranted by

the evidence as a whole. It is the exclusive province of the jury to determine whether the facts and circumstances shown by the evidence warrant any inference which the law permits the jury to draw from possession of recently stolen property. If the possession by the defendant of recently stolen property is consistent with his innocence, then the jury should acquit the defendant unless he has been proven guilty beyond a reasonable doubt by other evidence in the case.

"Recently" is a relative term which has no fixed meaning. Whether property may be considered as recently stolen depends upon all the facts and circumstances shown by the evidence. The longer the period of time since the aggravated robbery, the weaker is the inference which may be drawn from the possession.

The defendant's possession of recently stolen property does not shift the burden of proof. The burden of proof is always with the People to prove beyond a reasonable doubt every essential element of aggravated robbery. Before you may draw any inference from the defendant's unexplained possession of property stolen in an aggravated robbery, you must first find that the People have proved beyond a reasonable doubt that the crime of aggravated robbery did in fact occur. If the People have proved beyond a reasonable doubt that the crime of aggravated robbery did in fact occur, then, but only then, may the defendant's unexplained possession of property stolen in that aggravated robbery permit you to infer that the defendant participated in the aggravated robbery.

> In considering whether the defendant's possession of the recently stolen property has been satisfactorily explained, you must bear in mind that the defendant is not required to take the witness stand or to furnish an explanation. His possession may be satisfactorily explained by other facts and circumstances shown by the evidence independently of any testimony by the defendant himself. And even though the defendant's possession of the recently stolen property is unexplained, you cannot find him guilty if after a consideration of all of the evidence you have a reasonable doubt as to his guilt.

¶ 9 On appeal, defendant argues that the *Wells* instruction lowered the prosecution's burden of proof because at trial he disputed that the property in his possession was stolen property. We aren't persuaded.

a. Standard of Review and Preservation

¶ 10 We review jury instructions de novo to determine whether they accurately informed the jury of the governing law. *People v. Garcia*, 2017 COA 1, ¶ 7 (*cert. granted* Oct. 16, 2017). But as long as the instructions properly informed the jury of the law, we review a district court's decision to give a particular jury instruction for an abuse of discretion. *Day v. Johnson*, 255 P.3d 1064 (Colo. 2011). A court abuses its discretion in this context when its decision is

manifestly arbitrary, unreasonable, or unfair, or based on a misunderstanding or misapplication of the law. *People v. Manyik*, 2016 COA 42, ¶ 65.

¶ 11 To properly preserve an issue for appeal, a party must make a specific timely objection, *see, e.g.*, *People v. Ujaama*, 2012 COA 36, ¶ 37, that "alert[s] the trial court to a particular issue in order to give the court an opportunity to correct any error that could otherwise jeopardize a defendant's right to a fair trial," *People v. Pahl*, 169 P.3d 169, 183 (Colo. App. 2006). If a party fails to alert the trial court to the issue, we review for plain error. *People v. Houser*, 2013 COA 11, ¶ 75. In such a case, we reverse only if the error was obvious and so undermined the fundamental fairness of the trial itself as to cast serious doubt on the reliability of the judgment of conviction. *People v. Miller*, 113 P.3d 743, 750 (Colo. 2005); *see also People v. Garcia*, 28 P.3d 340, 344 (Colo. 2001). When a jury instruction is at issue, we reverse for plain error only if the erroneous instruction affected a substantial right and the record shows a reasonable possibility that the erroneous instruction contributed to the conviction. *Garcia*, 28 P.3d at 344.

¶ 12 The defendant asserts, and the People concede, that he preserved the issue via objection. But the parties' agreement as to preservation doesn't bind us. *See People v. Corral*, 174 P.3d 837, 839 (Colo. App. 2007).

¶ 13 We conclude that defendant didn't preserve the issue. At trial, defense counsel objected to the language of the prosecution's proposed *Wells* instruction by arguing that to allow the inference permitted by the instruction would, in a very particular way, lower the prosecution's burden of proving all elements of the crime of aggravated robbery. The exchange with the court went like this:

> [DEFENSE COUNSEL]: [T]he language that specifically I find problematic within the instruction itself is in paragraph 2 of the *Wells* instruction. It says you are not required to draw any conclusion from the exclusive, unexplained possession of recent[ly] stolen property, but you are permitted to infer from the defendant's unexplained possession that the defendant is guilty of aggravated robbery. If, and only if, [in] your judgment such an inference is warranted by the evidence as a whole.
>
> The issue that I see with that is the reference to the aggravated robbery, because it's one thing to have possession of stolen property, it's another thing to infer —

> [THE COURT]: We can change that language, I'm sure was put in there by me in terms of aggravated robbery. I'm sure you can change it to the crime charged.
>
> [DEFENSE COUNSEL]: And I still think that's problematic because aggravated robbery, the crime charged is — includes more elements than just stolen property, it includes use of force, threats, depending on the way it's charged, either use of a deadly weapon, and it seems to lower the People's burden with respect to the charge, the crime of aggravated robbery.

¶ 14 In other words, defense counsel's objection was based on the other elements of aggravated robbery, not on the stolen property element: counsel thought that a particular part of the instruction allowing the jurors to draw an inference that defendant was guilty of aggravated robbery based merely on his possession of recently stolen property went too far, short-changing the other elements of the offense. But for the first time on appeal, defendant argues the instruction was improper in its entirety — that is, shouldn't have been given at all — because defendant disputed that the property was actually stolen. Because defendant's argument on appeal differs from his counsel's objection at trial, he didn't preserve this

issue, and we review for plain error. *Hagos v. People*, 2012 CO 63, ¶ 14.

b. Applicable Law

¶ 15 Unexplained and exclusive possession of stolen property is a "circumstance from which the trier of fact may draw an inference that the person in possession participated in the crime." *People v. Milligan*, 714 P.2d 493, 495 (Colo. App. 1985). As noted, the supreme court approved language that should be used in such circumstances in *Wells*. That language ensures that the instruction clearly articulates that possession of stolen property doesn't shift the burden of proof, and that possession "merely affords the evidence its natural probative force, which the jury is free to accept or reject." 197 Colo. at 355-58, 592 P.2d at 1325-27.

c. Analysis

¶ 16 Defendant argues that the instruction as given directed the jury to presume that the property in defendant's possession was stolen and consequently lessened the prosecution's burden of proof. Though police found G.S.'s purse containing bags of marijuana in the back of defendant's car shortly after the robbery, he says that because his theory of defense was that G.S. participated in the

robbery to steal money from her boss, whether the purse and marijuana had actually been stolen was disputed.

¶ 17 We reject defendant's argument because it fails to account for all of the instructions the court gave the jury. "Jury instructions must be read and considered in their entirety." *People v. Hampton*, 758 P.2d 1344, 1356 (Colo. 1988). Considered comprehensively, other instructions and the full language of the *Wells* instruction itself precluded any possibility that the jury would presume the property was stolen by clarifying that the People had to first prove beyond a reasonable doubt that the property had in fact been stolen. In particular, the court instructed the jury that the charges against defendant weren't evidence; the prosecution had to prove every element of each charge beyond a reasonable doubt; defendant could be found guilty as a complicitor if the jury found, among other things, that "[t]he crime must have been committed" and "another person must have committed all or part of the crime"; and the elements of aggravated robbery included that defendant took something of value from another "by the use of force, threats, or intimidation." And, perhaps most importantly, the *Wells* instruction itself said, "Before you may draw any inference from the

defendant's unexplained possession of property stolen in an aggravated robbery, you must first find that the People have proved beyond a reasonable doubt that the crime of aggravated robbery did in fact occur. If the People have proved beyond a reasonable doubt that the crime of aggravated robbery did in fact occur, then, and only then, may the defendant's unexplained possession of property stolen in the aggravated robbery permit you to infer that the defendant participated in the aggravated robbery."

¶ 18 In other words, the court clearly instructed the jury that it couldn't draw an inference of defendant's participation unless it first found that the property had been stolen. We therefore conclude that the court didn't abuse its discretion in giving the *Wells* instruction.

¶ 19 Defendant's reliance on *People v. Collier*, 711 P.2d 695 (Colo. App. 1985), and *People v. Richards*, 795 P.2d 1343 (Colo. App. 1989), is misplaced.

¶ 20 In *Collier*, a division of this court held that the district court erred in giving a *Wells* instruction where the defendant had been found with a pair of nondescript pliers that couldn't be conclusively identified as those taken in a burglary that occurred more than a

month earlier. *Collier*, 711 P.2d at 696. In *Richards*, "it was a question of fact whether the allegedly stolen television set was ever in defendant's possession," so the *Wells* instruction could've "misled the jury into assuming that the defendant had possessed the stolen television set." *Richards*, 795 P.2d at 1346.

¶ 21 In both cases, the divisions determined that giving the *Wells* instruction where defendants disputed whether they *actually possessed* anything that had been stolen potentially relieved the prosecution of its obligation to prove the items were stolen beyond a reasonable doubt. *See Richards*, 795 P.2d at 1346; *Collier*, 711 P.2d at 697.

¶ 22 This case is different. The purse and marijuana found in defendant's possession indisputably belonged to G.S.: defendant didn't challenge his possession of those items or that they belonged to G.S. And, as discussed above, the jury must've first found that the purse and marijuana had been stolen because, as the *Wells* instruction directed, they were told that the prosecution had to prove, beyond a reasonable doubt, that the crime of aggravated robbery occurred before it could draw any inference from defendant's unexplained possession of stolen property.

¶ 23 Nevertheless, even if the court erred by giving the *Wells* instruction, we aren't convinced that the error casts serious doubt on the reliability of the conviction. *Hagos*, ¶ 14. The evidence against defendant was plentiful: he was caught driving a car matching the description both the victim and an eyewitness gave and bearing damage consistent with the victim's testimony that she had backed into it; the Nissan had G.S.'s purse and several bags of marijuana matching the victim's description in it; defendant's ex-girlfriend testified that defendant told her a detailed story of the robbery; defendant tested positive for gunshot residue when he was apprehended; and an eyewitness unconnected to any of the players corroborated the victim's account of being surrounded in the lot, robbed, and shot at.

¶ 24 Further, defense counsel argued defendant's inside job theory to the jury during opening and closing statements and pursued that theory through questioning of the witnesses. To convict defendant, the jury necessarily rejected it, and we perceive no role of the *Wells* instruction in influencing that decision. In the end, the case turned on witness credibility (as defense counsel argued).

2. Gang Affiliation Evidence

¶ 25 Defendant also contends that the court erred by denying his attorney's motions for mistrial and for a new trial based on testimony of gang affiliation. Because there wasn't any testimony indicating that defendant was affiliated with a gang, we conclude that the court didn't err.

a. Additional Background

¶ 26 The district court granted defendant's motion to exclude evidence that defendant was associated with a gang and that police officers involved in the case were members of the gang unit. But the prosecutors forgot to tell one of the testifying officers to avoid mentioning the gang unit. When the prosecutor asked Officer Jeffrey Longnecker (the officer who had pulled G.S. over) about his experience and training, he mentioned he was "in the gang unit."

> I was actually in the gang unit, so we were doing just routine basic routine patrol but in the gang unit you're actually out trying to find gang members, gather intelligence, that kind of thing. If something happens involving gang members we respond to help patrol, that type of thing.

He also testified that he put the phone number G.S. gave him into a database "to see if it had ever been used before by someone that

had been arrested or was a witness or a victim and it came back to an Akinlabi Coleman at 1905 Blackhawk, Apartment 309."

¶ 27 Defense counsel moved for a mistrial based on this testimony, arguing that the jury would infer from it that defendant was somehow involved in gang-related activity. The district court denied the motion. Later, a juror submitted the following question for Officer Longnecker, "Was the phone number (cell) previously associated with any other gang activity?" The court rejected the question.

¶ 28 After trial, defendant filed a motion for a new trial, under Crim. P. 33. As to the gang affiliation issue, the court denied the motion because the testimony "did not in any way implicate Mr. Coleman."

b. Preservation and Standard of Review

¶ 29 Defendant preserved the issue by timely moving for a mistrial and for a new trial.

¶ 30 The resolution of this issue turns on whether the court erred in allowing the testimony in question. We review a decision admitting evidence for an abuse of discretion. *People v. Harland*, 251 P.3d 515, 517 (Colo. App. 2010).

¶ 31 To the extent we need to separately assess the district court's ruling on defendant's mistrial and new trial motion, we also review such rulings for an abuse of discretion. *See Farrar v. People*, 208 P.3d 702, 706 (Colo. 2009) (new trial); *People v. Helms*, 2016 COA 90, ¶ 59 (mistrial).

c. Analysis

¶ 32 As Officer Longnecker's testimony made clear, his involvement in apprehending defendant had nothing to do with his membership in the gang unit. Though he said he was in the gang unit, he said he became involved in the case only because he saw G.S. driving fast. So his incidental reference to the word "gang" didn't indicate that defendant belonged to a gang. *See Pieramico v. People*, 173 Colo. 276, 281, 478 P.2d 304, 307 (1970) (mistrial wasn't required where a witness remarked that the defendant lived in the same motel as gang members); *cf. People v. Whittiker*, 181 P.3d 264, 273-74 (Colo. App. 2006) (mistrial wasn't required where references to the defendant's gang affiliation were innocuous).

¶ 33 Similarly, the officer's testimony about the telephone number database didn't indicate any gang affiliation (or prior criminal conduct) on defendant's part. The database comprised victims,

witnesses, and previous offenders. No testimony linked defendant to the previous offender category. *See People v. Cousins*, 181 P.3d 365, 373 (Colo. App. 2007) (an officer's testimony that he called the gang intervention unit to access its database of names may have suggested gang affiliation, but didn't indicate that the defendant was in a gang and didn't require a mistrial).

¶ 34 In short, the court didn't abuse its discretion by admitting Officer Longnecker's testimony or by denying defendant's motions for a mistrial or for a new trial.

B. Challenges to the Sentence

1. Consecutive Sentences

¶ 35 Defendant argues that his sentences for aggravated robbery and conspiracy to commit aggravated robbery must run concurrently because the convictions are based on identical evidence. We disagree.

a. Additional Background

¶ 36 The jury convicted defendant of two crimes of violence under section 18-1.3-406(1), C.R.S. 2017, aggravated robbery and conspiracy to commit aggravated robbery. Because the district court also adjudicated defendant a habitual offender, the court

imposed prison sentences of forty-eight years for the aggravated robbery and twenty-four years for the conspiracy to commit aggravated robbery. The prosecutor argued for consecutive sentences; defense counsel countered that because the convictions were based on identical evidence, the sentences must run concurrently under section 18-1-408(3). The court imposed concurrent terms while it researched the issue whether the habitual criminal statute trumps the consecutive sentencing requirement of the crime of violence statute. It later amended the mittimus to reflect its understanding that "the sentences must be consecutive" pursuant to section 18-1.3-406(1)(a).

b. Standard of Review and Preservation

¶ 37 We review a district court's application of sentencing statutes (a question of statutory interpretation) de novo. *Juhl v. People*, 172 P.3d 896, 902 (Colo. 2007); *People v. Espinoza*, 2017 COA 122, ¶ 21. But we review a district court's sentencing decisions, including its conclusion that convictions aren't based on identical evidence, for an abuse of discretion. *People v. Muckle*, 107 P.3d 380, 382-83 (Colo. 2005).

¶ 38 Defendant preserved the issue by arguing that section 18-1-408(3) required concurrent sentences because the convictions were based on identical evidence.

c. Applicable Law

¶ 39 In the absence of legislation to the contrary, sentencing courts "have the inherent power to order sentences for different convictions to be served either consecutively or concurrently." *Marquez v. People*, 2013 CO 58, ¶ 6. Section 18-1.3-406 requires that "a person convicted of two or more separate crimes of violence arising out of the same incident" be sentenced consecutively for such crimes. § 18-1.3-406(1)(a). But section 18-1-408(3) mandates concurrent sentences when a defendant is charged with separate counts "based on the same act or series of acts arising from the same criminal episode," § 18-1-408(2), when such counts "are supported by identical evidence," § 18-1-408(3). Our supreme court has established that the phrase "arising out of the same incident" in section 18-1.3-406(1)(a) means the same thing as "arising from the same criminal episode" in section 18-1-408(2)-(4). *Marquez*, ¶ 10.

¶ 40 So, multiple violent crimes against a single victim arising from the same criminal episode or incident *must* be sentenced

concurrently if supported by identical evidence. Multiple violent crimes arising from the same criminal episode or incident *not* supported by identical evidence *must* be sentenced consecutively. *See, e.g.*, *Juhl*, 172 P.3d at 899; *Qureshi v. Dist. Court*, 727 P.2d 45, 47 (Colo. 1986). The relevant question, then, is whether identical evidence supported the convictions. *See People v. Jurado*, 30 P.3d 769, 773 (Colo. App. 2001).

¶ 41 "[T]he test for identical evidence is an evidentiary test rather than an elemental test." *Juhl*, 172 P.3d at 901-02. This isn't "a strict analysis to determine if one particular fact is necessary to [prove] one conviction, but not the other, thereby making the evidence identical or not identical." *Id.* at 902. The supreme court and divisions of this court have "emphasized the importance of such factors as time, place, circumstances, and schematic wholeness." *Marquez*, ¶ 16; *see also People v. Glasser*, 293 P.3d 68, 79 (Colo. App. 2011).

d. Application

¶ 42 Defendant argues that the district court erred in concluding it was required to sentence him consecutively for the conspiracy to commit aggravated robbery and aggravated robbery convictions

because there was no evidence of conspiracy independent of the evidence used to prove his guilt of aggravated robbery.

¶ 43 The People, however, relying on *People v. Russom*, 107 P.3d 986 (Colo. App. 2004), and *People v. Osborne*, 973 P.2d 666 (Colo. App. 1998), argue that because the substantive offense of aggravated robbery and the offense of conspiracy to commit that substantive offense are separate and distinct crimes, the convictions were necessarily supported by different facts. But the supreme court made clear in *Juhl* that what matters for sentencing purposes is the evidence actually used to support the convictions rather than the elements required to convict. 172 P.3d at 902. And, in both *Osborne* and *Russom*, the court found that the evidence used to support the various convictions wasn't identical. *Russom*, 107 P.3d at 993 (the proof of the conspiracy charge came from a co-conspirator's testimony that he and the defendant entered into an agreement); *Osborne*, 973 P.2d at 673.

¶ 44 But the People also argue that separate evidence proved the conspiracy charge, and we find that argument persuasive. They point to evidence that Mr. Brown and G.S. communicated to arrange a meeting, that Mr. Brown persuaded her to drive to a

different meeting place (Target), and that Mr. Brown either texted or called someone on the way to Target. This evidence, which wasn't necessary to prove the robbery, supported an inference that defendant had conspired with others, including Mr. Brown, before the robbery occurred. *People v. Sweeney*, 78 P.3d 1133, 1138 (Colo. App. 2003) (the evidence supporting conspiracy included a description of the pre-robbery telephone conversations that detailed plans for the crimes and the prosecution emphasized this separate conspiracy evidence during closing argument); *People v. Zamora*, 13 P.3d 813, 818 (Colo. App. 2000) (the People provided different evidence where the defendant confessed that he and a co-conspirator agreed to rob a pawnshop).

¶ 45 Because the convictions weren't based on identical evidence, the court was required to impose consecutive sentences.

2. Habitual Criminal Counts

¶ 46 The district court adjudicated defendant on five habitual criminal counts following a bench trial. As a result, the court imposed mandatory sentences of four times the maximum of the presumptive sentencing ranges. Defendant argues that his Sixth Amendment right to a jury trial was violated because a judge, not a

jury, decided the habitual criminal counts. More specifically, he argues that in light of *Alleyne v. United States*, 570 U.S. 99 (2013), the prior conviction exception has no logical underpinnings. Because the prior conviction exception to the jury trial right remains good law in Colorado, we don't find error. *See People v. Parks*, 2015 COA 158, ¶¶ 28-29 (Colorado's habitual criminal procedures aren't unconstitutional); *People v. Poindexter*, 2013 COA 93, ¶ 73 (habitual criminal charges needn't be submitted to a jury); *People v. Moore*, 226 P.3d 1076, 1089-90 (Colo. App. 2009) (same); *People v. Benzor*, 100 P.3d 542, 544-45 (Colo. App. 2004) (same).

III. Conclusion

¶ 47 We affirm the judgment of conviction and sentence.

JUDGE HAWTHORNE and JUDGE DAVIDSON concur.