SUMMARY
April 8, 2021

2021COA45

No. 17CA0143, *People v. Hines* — Crimes — Human Trafficking for Sexual Servitude; Criminal Law — Jury Instructions — Modified Unanimity Instruction

The defendant was found guilty by a jury of human trafficking for sexual servitude, pimping, and pandering. On appeal, he argued that the district court erred by, among other things, failing to give a modified unanimity instruction, which was required because the prosecution presented evidence of two discrete acts, either one of which could have constituted the offense of trafficking.

Applying *People v. Archuleta*, 2020 CO 63M, a division of the court of appeals holds that the human trafficking offense was charged and tried as a continuing course of conduct constituting a single transaction. Accordingly, the division concludes that a modified unanimity instruction was not required. And because the

defendant's other contentions of error do not warrant reversal, the division affirms the judgment and sentence.

COLORADO COURT OF APPEALS **2021COA45**

Court of Appeals No. 17CA0143
Arapahoe County District Court No. 15CR601
Honorable F. Stephen Collins, Judge

The People of the State of Colorado,

Plaintiff-Appellee,

v.

Phillip Bradley Hines,

Defendant-Appellant.

JUDGMENT AND SENTENCE AFFIRMED

Division VII
Opinion by JUDGE HARRIS
Fox and Grove, JJ., concur

Announced April 8, 2021

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¶ 1 Defendant, Phillip Bradley Hines, appeals the judgment of conviction entered on jury verdicts finding him guilty of human trafficking for sexual servitude, pimping, and pandering, as well as his aggravated sentence.

¶ 2 Hines contends that the court erred by, among other things, failing to give a modified unanimity instruction on the human trafficking charge, which was required, he says, because the prosecution presented evidence of two discrete acts, either one of which could have constituted the offense of trafficking. Because we conclude that the human trafficking offense was charged and tried as a continuing course of conduct constituting a single transaction, we discern no instructional error. And because we discern no other errors warranting reversal, we affirm.

I. Background

¶ 3 Hines and the victim met shortly after the victim moved to Colorado in 2010 or 2011. They were "a couple at first." But "almost immediately," the victim also began to work as a prostitute for Hines. She gave him the money she earned "because that's what [she was] supposed to do." The victim testified at trial that she was not allowed to keep any of the money and that she had to

ask Hines for permission "for anything [she] got" because "he [was] the boss." She said Hines spent the money on drugs, alcohol, their hotel rooms, phones, and the victim's internet prostitution ads.

¶ 4 The victim testified that Hines soon became very abusive. He threatened her if she did not work. There "were quite a few incidents" where Hines dragged her around the room by her hair or hit her. The victim also testified that she and Hines did drugs together, but that he sometimes withheld drugs if she was not working.[1]

¶ 5 Another prostitute who knew the victim testified that the victim and Hines were just "a regular couple" at first. But then Hines started asking the victim about money or telling her to go "work the block or the track." She said that she saw the victim give Hines money after "dates," and that he spent it on drugs, hotel rooms, cigarettes, food, and other basic living expenses. She recalled Hines bragging "about how good of a ho [the victim] was." The other prostitute also testified that she "witnessed the aftermath" of Hines's violence toward the victim. On one occasion,

[1] The victim confirmed that "working" meant "exchanging sex for money and giving [Hines] the money."

she said that the victim came in her room and "[the victim's] face was really swollen," that Hines "shattered the whole side of [the victim's] face," and that she had to go into the victim's room to "help [the victim] clean up the blood off the wall."

¶ 6 During the summer or fall of 2014, the victim moved out of state because of Hines's violence toward her and because Hines had been arrested and incarcerated. But in December, after Hines was released to a halfway house, the victim contacted him again. He asked her to return to Colorado, telling her that he needed her help to pay for the halfway house, that he "love[d] [her]," and that "[t]hings w[ould] be different." She agreed because she "wanted to be around him" but also because she "[f]elt like [she] had no choice at the moment." Once back in Colorado, there was "no option [of her] not working."

¶ 7 Shortly after the victim's return, though, Hines became frustrated that she was not making enough money. So, Hines came up with a "solution" — the victim would work for another pimp, Durrell Bumphus, give Bumphus the money, and Bumphus would then give it to Hines. That plan was not successful, however, as Bumphus never gave Hines any money.

¶ 8 In January 2015, the victim was arrested in a prostitution sting and eventually implicated Hines during the investigation. Hines was charged with human trafficking for sexual servitude, pimping, and pandering. Hines's defense at trial was that he was the victim's boyfriend, not the victim's pimp, and he was unaware that she was a prostitute.

¶ 9 A jury convicted Hines on all charges. Because Hines was under confinement when he committed the offenses, the district court sentenced him in the aggravated range to a controlling term of twenty-four years.

¶ 10 On appeal, Hines contends that (1) the court erred by denying his motion to dismiss based on a violation of the Uniform Mandatory Disposition of Detainers Act (UMDDA), §§ 16-14-101 to -108, C.R.S. 2020; (2) the evidence was insufficient to support his human trafficking conviction; (3) the court erred by admitting certain evidence; (4) the court erred by failing to give the jury a modified unanimity instruction; and (5) the court improperly sentenced him in the aggravated range.

II. UMDDA

¶ 11 On August 24, 2015, Hines, who was represented by counsel, pleaded not guilty. A month later, acting pro se and without notifying his lawyer, Hines filed a request for disposition of his case under the UMDDA. The UMDDA's 182-day deadline for bringing Hines to trial was March 21, 2016. *See* § 16-14-104(1), C.R.S. 2020.

¶ 12 Trial was originally scheduled to begin on January 26, 2016. On January 19, defense counsel requested a continuance, Hines waived his speedy trial rights under section 18-1-405, C.R.S. 2020,[2] and the trial was rescheduled to April 19, 2016.

¶ 13 At a pretrial conference on April 11, the prosecutor requested a continuance based on the unavailability of the victim. Defense counsel asked that trial be reset within the speedy trial period, which was due to expire on July 19. The court granted the continuance request and reset the trial to May 24. At the end of the

[2] Colorado's speedy trial statute, section 18-1-405, C.R.S. 2020, applicable in all criminal cases, requires that a defendant be "brought to trial on the issues raised by the complaint, information, or indictment within six months from the date of the entry of a plea of not guilty."

hearing, defense counsel referenced the UMDDA for the first time and told the court that he would "file a written motion regarding that particular issue" before the new trial date.

¶ 14 Hines, through counsel, then filed a motion to dismiss for violation of the UMDDA. The district court denied the motion, concluding that Hines had properly initiated the statutory process on September 21, 2015, but that the UMDDA deadline had been tolled for good cause, first when defense counsel requested a continuance in January 2016, and again when the prosecution requested a continuance in April 2016.

¶ 15 On appeal, Hines argues that the district court erred by finding good cause for the April 11, 2016, continuance.

A. Legal Principles and Standard of Review

¶ 16 Under the UMDDA, "[a]ny person who is in the custody of the department of corrections . . . may request final disposition of any untried indictment, information, or criminal complaint pending against him in this state." § 16-14-102(1), C.R.S. 2020. The primary purpose of the UMDDA "is to provide a mechanism for prisoners to obtain speedy and final disposition of untried charges that are the subject of detainers." *People v. Adolf*, 2012 COA 60, ¶

10. The statute requires that an incarcerated defendant be brought to trial within 182 days after the court and the prosecuting official receive his request for final disposition of charges, unless that period is expressly waived or extended for good cause or by stipulation. § 16-14-104(1), (2). If the defendant is not tried by the UMDDA deadline, the court must dismiss the charges with prejudice. § 16-14-104(1).

¶ 17 We review de novo the district court's denial of a motion to dismiss for violation of the UMDDA, *People v. Yakas*, 2019 COA 117, ¶ 15, but we review for an abuse of discretion the district court's decision to grant a continuance for good cause, *see People v. Fleming*, 900 P.2d 19, 23 (Colo. 1995).

B. Discussion

¶ 18 To determine whether the district court correctly denied a motion to dismiss for failure to comply with the UMDDA, we examine the following factors: (1) whether the defendant invoked the protections of the UMDDA; (2) if the defendant did invoke the statute's protections, whether he was brought to trial within the prescribed 182-day period; and (3) if he was not brought to trial

within the prescribed period, whether that period was properly waived or extended. *People v. Roberts*, 2013 COA 50, ¶ 17.

¶ 19 Though the parties dispute whether Hines invoked the UMDDA and whether he was brought to trial by the deadline, we need not resolve those disputes, as the third factor is dispositive — whether the court abused its discretion in finding good cause to grant the prosecution's request for a continuance in April 2016, thereby extending the UMDDA deadline.

¶ 20 Hines says that while "[i]n a different case, good cause may exist to toll the limitations period so that the prosecution can locate and produce a material witness," good cause did not exist here because the prosecution did not exercise due diligence to secure the victim's presence for the April 2016 trial date.

¶ 21 The term "good cause" is "an amorphous term, difficult of precise delineation." *Id.* at ¶ 29. For that reason, whether the good cause standard has been satisfied depends on the facts of each case and is an inquiry left to the district court's discretion. *Id.* at ¶ 30. A district court abuses its discretion when its ruling is manifestly arbitrary, unreasonable, or unfair, or when it misapplies the law. *See, e.g.*, *People v. Dominguez*, 2019 COA 78, ¶ 13.

¶ 22 Because the UMDDA does not define "good cause," we look to principles derived from statutory speedy trial cases for guidance. *See Roberts*, ¶ 32 (in reviewing good cause, we apply speedy trial case law unless the speedy trial provisions conflict with those in the UMDDA); *see also People v. Swazo*, 199 Colo. 486, 489, 610 P.2d 1072, 1074 (1980) ("[T]he enunciated principles for one can be applied to the other[] unless the provisions conflict."). In *Roberts*, for example, the division applied the principle that a defendant's speedy trial period can be extended to protect his right to effective assistance of counsel in concluding that good cause existed for a continuance under the UMDDA. *Roberts*, ¶¶ 36-37.

¶ 23 Here, the parties agree that we can similarly import from the speedy trial statute the rule that a continuance requested by the prosecution extends the speedy trial deadline if the prosecution shows that evidence material to the state's case is unavailable, the prosecution has exercised due diligence to obtain the evidence, and the evidence is likely to be available at a later date. *People v. Valles*, 2013 COA 84, ¶ 30; *see also* § 18-1-405(6)(g)(I). Only the due diligence element is contested.

¶ 24 "Due diligence" is not defined in the speedy trial statute. In the context of newly discovered evidence, however, our supreme court has said that the "due diligence" requirement is satisfied when a party has made "reasonable efforts" to discover the evidence. *Aspen Skiing Co. v. Peer*, 804 P.2d 166, 173 (Colo. 1991).

¶ 25 At the April 11 hearing, the prosecutor explained that her office had "recently" been unable to locate the victim. She told the court that the victim had been cooperating with the prosecution and had been available for the January 2016 trial date. For that reason, the prosecutor had not placed her under a subpoena. Nonetheless, "based on the phone calls" between the victim and the prosecutor's office, the prosecutor believed that the victim "continues to remain cooperative."

¶ 26 Though the prosecutor's explanation could have been more thorough, we conclude that the district court did not abuse its broad discretion in finding "good cause" for the continuance, even if "good cause" required a showing of due diligence.[3] Based on the

[3] Hines did not raise the issue of due diligence at either of the two hearings in which the prosecution's continuance request was addressed. As a result, the court did not make specific findings

prosecutor's explanation, the court could reasonably have inferred that the prosecution had made recent attempts to find the victim at an address where she had previously been located; despite those efforts, the prosecution could not locate the victim; the prosecution had been in contact with the victim by telephone; and the prosecution had made efforts to determine that the victim was still a cooperating witness. *See Valles*, ¶ 39 (where witness had previously been cooperative, prosecutor's conduct in contacting witness's parents and commanding officer amounted to due diligence under speedy trial statute).

¶ 27 Hines relies almost exclusively on the fact that the prosecution had not subpoenaed the victim for trial. But the failure to subpoena a cooperating witness does not preclude a finding of due diligence. *See, e.g.*, *People v. Scialabba*, 55 P.3d 207, 209 (Colo. App. 2002).

¶ 28 In the alternative, Hines contends that even if a continuance had been necessary, the prosecution failed to justify a continuance past the UMDDA deadline (extended to April 19 by virtue of the

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regarding due diligence. Hines does not argue that the court's good cause findings are deficient.

January continuance) — in other words, the fact that the witness was not available on April 11 did not necessitate a continuance beyond the April 19 trial date because "there were still [eight] days remaining prior to the trial date in which to locate [the victim]." True, we separately review under the UMDDA whether the district court abused its discretion in "continuing the trial for as long as it did," *Roberts*, ¶ 39, but here, Hines did not object to continuing the trial date beyond the UMDDA deadline. Rather, defense counsel specifically requested only that the trial be reset within the statutory speedy trial period, and the district court obliged. In fact, at the April 11 hearing, defense counsel expressly delayed raising any UMDDA argument, indicating that he would address the issue in a later motion.

¶ 29 Thus, the decision to extend the UMDDA deadline for good cause and grant the prosecution's requested continuance past the originally tolled UMDDA deadline was not manifestly arbitrary, unreasonable, or unfair, or contrary to the law. *Dominguez*, ¶ 13. It follows that the district court did not err by denying Hines's motion to dismiss.

III. Sufficiency of the Evidence of Human Trafficking

¶ 30 Hines contends that the evidence was insufficient to support his conviction for human trafficking.

A. Standard of Review

¶ 31 We review de novo whether the evidence is sufficient to support a conviction. *Dempsey v. People*, 117 P.3d 800, 807 (Colo. 2005). When the sufficiency of the evidence is challenged on appeal, our task is to "determine whether any rational trier of fact might accept the evidence, taken as a whole and in the light most favorable to the prosecution, as sufficient to support a finding of guilt beyond a reasonable doubt." *People v. Rice*, 198 P.3d 1241, 1243 (Colo. App. 2008). In doing so, "[w]e must give the prosecution the benefit of every reasonable inference fairly drawn from the evidence." *Id.*

B. Discussion

¶ 32 "A person commits human trafficking for sexual servitude if the person knowingly sells, recruits, harbors, transports, transfers, isolates, entices, provides, receives, or obtains by any means another person *for the purpose of coercing* the person to engage in

commercial sexual activity." § 18-3-504(1)(a), C.R.S. 2020 (emphasis added).

¶ 33 Hines says the evidence did not show that his actions were "for the purpose of coercing" the victim to engage in commercial sexual activity because the victim "voluntarily and willingly" agreed to return to Colorado and to work as a prostitute for him and then for another pimp. That argument misapprehends the purpose of the statute. The proper focus of the trafficking statute is on the defendant's intent, not the victim's susceptibility to being trafficked. *Cf. People v. Margerum*, 2018 COA 52, ¶ 56 (under felony menacing statute, in determining whether defendant knowingly placed another person in fear of imminent serious bodily injury, "the proper focus is on the defendant's intent, not the victim's perception or reaction"), *aff'd on other grounds*, 2019 CO 100.

¶ 34 We therefore agree with the People that the phrase "for the purpose of coercing" should not be "construed to mean 'with the effect of'" coercing. *Colo. Ethics Watch v. City & Cnty. of Broomfield*, 203 P.3d 623, 625 (Colo. App. 2009). Rather, in this context, "for the purpose of" indicates "an anticipated result that is intended or desired." *Id.* To prove that Hines committed human trafficking,

then, the prosecution had to present sufficient evidence that he enticed or recruited the victim or transferred her to the other pimp with the intent of coercing her to engage in commercial sexual activity.

¶ 35 Under the human trafficking statute, "coercing" means inducing a person to act by using or threatening to use force against the person or by controlling or threatening to control the person's access to a controlled substance. § 18-3-502(2), C.R.S. 2020.

¶ 36 Accordingly, we review the evidence to determine whether it supports a finding beyond a reasonable doubt that Hines enticed, recruited, or transferred the victim with the intent to induce her (by using or threatening to use force or by controlling her access to drugs) to engage in prostitution. We conclude that the evidence supports such a finding.

¶ 37 A jury may properly infer intent from the defendant's conduct and the circumstances of the offense. *People v. Mandez*, 997 P.2d 1254, 1264 (Colo. App. 1999). The evidence at trial established the following:

- A pimp may recruit women to work for him by "boyfriending" them — "[b]ecoming this great guy. Showing that he cares about her . . . . That he's going to be there for her."
- Hines initially acted as though he and the victim were "a couple." When the victim later asked Hines why the relationship had changed, he responded, "You really think I would treat you like shit when I first met you? I couldn't get you if I treated you like that."
- Almost immediately after becoming romantically involved with Hines, the victim began working for him as a prostitute.
- The relationship became increasingly abusive. According to the victim, Hines would hit her "over anything," including how much money she earned on a given day.
- Hines "would drag [the victim] around the room naked by [her] hair," and on one occasion he hit her and broke her cheekbone.
- Hines supplied the victim with drugs, and during the time she knew him, the victim became addicted to heroin.
- Hines withheld drugs if the victim was not working enough or if she was too sick to work.

- When the victim returned to Colorado, she did not believe she could refuse Hines's request that she work as a prostitute to support him financially while he was in the halfway house.

¶ 38 On this evidence, a reasonable jury could find that Hines committed human trafficking. *See United States v. McMillian*, 777 F.3d 444, 447 (7th Cir. 2015) (evidence supported conviction for human trafficking under the substantially similar federal statute where defendant enticed the victims "by false promises of love and money," and used violence "for various infractions such as disobeying him"); *United States v. Mack*, 808 F.3d 1074, 1082 (6th Cir. 2015) (evidence was sufficient to support conviction for sex trafficking under the substantially similar federal statute where defendant coerced victims into prostitution by withholding drugs).

IV. Evidentiary Claims

¶ 39 Hines argues that the court erred by admitting (1) a photograph of him holding a gun; (2) a detective's testimony that he found a music video link titled "ImaPimp" on Hines's Facebook page; and (3) the victim's testimony that a photo showed "another girl that worked for" Hines. He says this evidence was irrelevant,

unduly prejudicial, and amounted to inadmissible character evidence.

A. Preservation and Standard of Review

¶ 40 We "may not reverse a trial court's decision to admit or exclude evidence absent a showing that the trial court abused its discretion." *People v. Welsh*, 80 P.3d 296, 304 (Colo. 2003). Hines preserved his challenge to testimony about the "ImaPimp" music video, and we will assume for purposes of our analysis that he also preserved his challenge to the testimony that a photo depicted "another girl" who worked for him.[4] Thus, we review any error in admitting that evidence under a harmless error standard. *People v. Short*, 2018 COA 47, ¶ 54. Under this standard, we will only reverse if the defendant can "establish a reasonable probability that the court's error contributed to his conviction." *Id.*

¶ 41 However, because defense counsel did not object to the photograph of Hines holding a gun, we review any error in

[4] Defense counsel objected to the victim's description of the photo as showing "another girl" who worked for Hines, and the court overruled the objection. The photo was not admitted into evidence, however, because the prosecution failed to lay the proper foundation.

admitting the photograph under a plain error standard. *Hagos v. People*, 2012 CO 63, ¶ 14. We reverse for plain error only if the error so undermined the fundamental fairness of the trial itself so as to cast serious doubt on the reliability of the judgment of conviction. *Id.*

B. Discussion

¶ 42 Evidence must be relevant to be admissible. CRE 402. Relevant evidence is evidence "having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." CRE 401. But even relevant evidence may be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice . . . ." CRE 403. "In deference to the trial court's discretion, we must assume the maximum probative value and the minimum unfair prejudice to be given the evidence." *Yusem v. People*, 210 P.3d 458, 467 (Colo. 2009). Evidence may also be excluded under CRE 404(b), which prohibits "[e]vidence of other crimes, wrongs, or acts . . . to prove the character of a person in order to show that he acted in conformity therewith."

¶ 43 First, the photograph depicting Hines holding a gun was not irrelevant or unduly prejudicial, as Hines contends. The photograph, which was part of a montage of photos posted on the victim's Facebook page, was introduced to show the nature and timing of the victim's relationship with Hines. Because the caption of the Facebook post read "thankful for moments like these," the photograph was relevant to establish that the victim had positive feelings toward Hines, which supported the testimony about pimps' use of the "boyfriending" technique. But because the photograph showed Hines with a gun, it was also relevant to establish the victim's knowledge of Hines's ability to use force against her.

¶ 44 Similarly, testimony that Hines had posted a video of a recording entitled "ImaPimp" on his Facebook page was admissible as direct evidence that Hines was a pimp.[5] True, as Hines points out, a witness testified that the word "pimp" is a common term used in rap music. But we disagree that this fact made the evidence

[5] "Any person who 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 any other person through prostitution commits pimping, which is a class 3 felony." § 18-7-206, C.R.S. 2020.

irrelevant or unduly prejudicial. One reasonable inference from the evidence is that Hines self-identified as a pimp. Another reasonable inference is that he is not a pimp but nonetheless wanted to showcase the video on his Facebook page because he enjoys rap music. It was up to the jury to decide which of those reasonable inferences to draw from the evidence. *See People v. Poe*, 2012 COA 166, ¶ 14 ("It is the fact finder's role to . . . determine the weight to give all parts of the evidence, and to resolve conflicts, inconsistencies, and disputes in the evidence."); *see also Dominguez*, ¶ 30 ("Evidence is not unfairly prejudicial 'simply because it damages the defendant's case' . . . ." (quoting *People v. Dist. Ct.*, 785 P.2d 141, 147 (Colo. 1990))).

¶ 45 As for the victim's testimony that a photo depicted Hines and "another girl that worked for [him]," even if we assume that the court erred in admitting that testimony, any error was harmless. In light of all the evidence indicating that Hines was the victim's pimp, there is not a reasonable probability that this brief reference to "another girl" contributed to his conviction. *See Short*, ¶ 59 (court's evidentiary error was harmless because it was not a close case); *see also People v. Casias*, 2012 COA 117, ¶ 81 (error in admitting Rule

404(b) evidence was harmless given the few references to the evidence and strength of the prosecution's case).

¶ 46 Thus, we find no reversible error in the admission of the contested evidence.

V. Modified Unanimity Instruction

¶ 47 Hines says that the court erred by denying his request for a special unanimity instruction because the prosecutor presented evidence of two discrete acts, either one of which could have constituted the offense of trafficking, and the jurors could reasonably have disagreed on which act he committed.

A. Standard of Review

¶ 48 We review de novo whether the court should have given a special unanimity instruction. *People v. Torres*, 224 P.3d 268, 278 (Colo. App. 2009). Because the issue is preserved, if the trial court committed error, we will reverse the conviction unless the error was harmless beyond a reasonable doubt. *People v. Allman*, 2012 COA 212, ¶ 39.

B. Discussion

¶ 49 A defendant has the right to a jury trial and a unanimous jury verdict. U.S. Const. amends. VI, XIV; Colo. Const. art. II, §§ 16, 25;

§ 16-10-108, C.R.S. 2020; *People v. Greer*, 262 P.3d 920, 925 (Colo. App. 2011). But unanimity is required "only with respect to the ultimate issue of the defendant's guilt or innocence of the crime charged and not with respect to alternative means by which the crime was committed." *People v. Archuleta*, 2020 CO 63M, ¶ 20 (quoting *People v. Taggart*, 621 P.2d 1375, 1387 n.5 (Colo. 1981)).

¶ 50 When, however, the prosecution presents evidence of multiple distinct acts, any one of which could constitute the offense charged, and the jury could reasonably disagree regarding which act was committed, the district court must either (1) require the prosecution to elect the transaction on which it relies for the conviction or (2) instruct the jury that it must unanimously agree that the defendant committed the same act or all of the acts. *Greer*, 262 P.3d at 925. But if the defendant is charged with crimes occurring in a single transaction or involving a continuing course of conduct, and the prosecution proceeds at trial on that basis, neither a prosecutorial election nor a modified unanimity instruction is required. *Id.*

¶ 51 We conclude that a modified unanimity instruction was not required here because the prosecution established that Hines had engaged in a continuing course of conduct constituting a single

criminal transaction. "[E]vidence that a defendant engages in a series of actions intended to secure the same objective supports the characterization of those actions as a continuing course of conduct rather than several distinct acts." *State v. Fiallo-Lopez*, 899 P.2d 1294, 1299 (Wash. Ct. App. 1995).

¶ 52 The prosecution charged Hines with a single count of human trafficking based on a series of discrete acts. Each of the discrete acts was committed by Hines with an intent to achieve the objective of inducing the victim to engage in commercial sexual activity for his benefit. *See Archuleta*, ¶ 31 (a modified unanimity instruction was not required where prosecution charged one count of child abuse resulting in death based on a series of discrete acts that, together, contributed to and caused the child's death); *see also Melina v. People*, 161 P.3d 635, 640-41 (Colo. 2007) (no unanimity instruction required where prosecution charged one count of criminal solicitation and evidence established a series of discrete acts showing the defendant's desire to have the victim killed).

¶ 53 Relying on similar principles, other courts have determined that pimping and trafficking offenses are "crimes of a continuous ongoing nature and are therefore not subject to the requirement the

jury must agree on the specific act or acts constituting the offense." *People v. Dell*, 283 Cal. Rptr. 361, 372 (Ct. App. 1991) (analyzing pimping and pandering offenses); *see also People v. Lewis*, 143 Cal. Rptr. 587, 591 (Ct. App. 1978) (deriving support from prostitution is an ongoing offense that occurs over a period of time); *Commonwealth v. Gonzalez*, 162 N.E.3d 1263, 1272-73 (Mass. App. Ct. 2021) (special unanimity instruction not required in prosecution for human trafficking and deriving support from prostitution, where evidence showed a continuing course of conduct rather than succession of clearly detached events); *State v. Gooden*, 754 P.2d 1000, 1002-03 (Wash. Ct. App. 1988) (crime of promoting prostitution involves a continuing course of conduct with a single objective and therefore no unanimity instruction is required).

¶ 54 Hines, though, points to the prosecutor's comments in closing argument, where she described two incidents of trafficking:

> In December of 2014, again, how do you know that he's recruiting her and enticing her? He recruits and entices her, ladies and gentlemen, to come back from Texas.
>
> . . . .
>
> And another way that you can find that Phillip Hines is guilty of human trafficking for the

> purposes of sexual servitude is something we've heard about a lot in this trial; selling, transferring or providing. All three words are in play when Phillip Hines arranges for [the victim] to go to Durrell Bumphus, the other pimp that you heard about in Fort Collins.

According to Hines, the prosecutor's comments demonstrate that the prosecution did not proceed at trial on the basis that the human trafficking charge involved a single criminal transaction.

¶ 55 A nearly identical issue arose in *Archuleta*, ¶ 10, where the prosecutor, during closing argument, explained to the jury that the offense of child abuse resulting in death "has some options sort of within it, so it could be one of these [methods of committing child abuse], two of these, all three." The supreme court determined that, "notwithstanding isolated comments by the prosecution to the contrary," the record reflected that the prosecution had tried the case as involving one pattern or transaction. *Id.* at ¶ 33.

¶ 56 The same is true here. The complaint charged Hines with one count of trafficking the victim between August 1, 2014, and January 5, 2015. *See People v. Leonard*, 175 Cal. Rptr. 3d 300, 324 (Ct. App. 2014) ("The language of the charging document, specifying that the acts of pandering took place over a specified period of time,

reflects that the prosecution intended to charge" a crime "of a continuous ongoing nature."). The prosecution presented evidence that, during the relevant period, Hines's actions with respect to the victim were all part of an effort or pattern of conduct to coerce her to engage in commercial sexual activity. And during closing argument, just before the challenged comments, the prosecutor emphasized, consistent with the charging document, that Hines had recruited, enticed, and obtained the victim "[t]hroughout the entire date range that's been charged." She argued that Hines's behavior "continues into the date range that human trafficking is concerned with, which is August 1 of 2014, going forward," and that Hines had committed all of the acts prohibited by the statute — "selling, recruiting [the victim], transferring her, enticing her" — for the single "purpose of coercing her to engage in prostitution."

¶ 57 Because the evidence established that Hines engaged in a single transaction of criminal conduct, a modified unanimity instruction was not required. *See People v. Dyer*, 2019 COA 161, ¶ 55 ("When the prosecution charges a continuing course of conduct, the jurors need only agree that the defendant engaged in a continuing course of conduct for which he or she is criminally liable

— they need not agree on the acts constituting that course of conduct.").

VI. Aggravated Sentence

¶ 58 Hines contends that the district court erred by imposing an aggravated sentence based on its own factual finding that Hines was under confinement at the time he committed the charged offenses.

A. Standard of Review

¶ 59 We review constitutional challenges to a sentence de novo. *Lopez v. People*, 113 P.3d 713, 720 (Colo. 2005).

B. Discussion

¶ 60 Under section 18-1.3-401(8)(a)(IV), C.R.S. 2020, the court must sentence a defendant in the aggravated range if the defendant committed the offense while under confinement in any correctional institution. *See People v. Triplett*, 2016 COA 87, ¶ 47 (halfway house is a form of community-based corrections).

¶ 61 "Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." *Blakely v. Washington*, 542 U.S. 296, 301

(2004) (quoting *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000)); *see also Lopez*, 113 P.3d at 719. The "prior-conviction exception extends to 'facts regarding prior convictions' that are contained in conclusive judicial records." *People v. Huber*, 139 P.3d 628, 633 (Colo. 2006).

¶ 62 Hines says that his status as "under confinement" in the halfway house had to be found by the jury at trial, not by the court at sentencing. He acknowledges that under *Huber*, the court can find not just the fact of a prior conviction, but also facts "regarding prior convictions." But he argues that custodial status is not a fact "regarding" or, as the district court found, "inextricably intertwined with," a prior conviction and, in any case, the fact of his confinement in a halfway house was not contained in a conclusive judicial record, but in a presentence investigation report.

¶ 63 A prior division of this court addressed a substantially similar claim in *People v. Montoya*, 141 P.3d 916 (Colo. App. 2006). There, the defendant argued his Sixth Amendment rights were violated when the district court aggravated his sentences "based on its findings of fact regarding his parole or probationary status that were neither charged, found by the jury, nor proved beyond a

reasonable doubt." *Id.* at 921. But the division concluded that "the fact that defendant was on parole or probation is inextricably linked to his prior conviction and thus falls within the prior conviction exception" under *Apprendi*, *Blakely*, and *Lopez*. *Id.* at 922.

¶ 64 We discern no principled distinction between being on parole and being in a halfway house — in both cases, the defendant has been released from prison to serve the remainder of his sentence in a less restrictive environment. If the fact that a defendant is on parole is a "necessary component of the conviction," so too is the fact that a defendant is in community corrections, as both facts concern a defendant's custodial status after a conviction. *See id.* at 923.

¶ 65 Therefore, we conclude that a defendant's status as "under confinement" in a halfway house is a fact that falls under the prior conviction exception and is exempt from the jury trial requirement under *Blakely*.

¶ 66 As for Hines's objection to the district court's reliance on the presentence report as the source of the information, we are unaware of any rule that precludes the district court from basing its

findings on undisputed facts in the report.[6] *See id.* at 922 (where defendant did not object to the presentence report's information concerning his parole or probationary status, he "conceded to the contents of the presentence report," and the court could properly rely on the information).

¶ 67 Neither case cited by Hines articulates such a rule. In *People v. Isaacks*, 133 P.3d 1190, 1192 (Colo. 2006), the supreme court held that the defendant's failure to object to the presentence report did not constitute a waiver of his right to a jury determination of aggravating facts. But here, Hines did not have a right to a jury determination regarding his status as "under confinement" in the halfway house. And in *People v. Cooper*, 104 P.3d 307, 311 (Colo. App. 2004), a division of this court held that the district court erred by relying for its habitual criminal adjudication on a presentence report from a different case that was not part of the court's own records and that contained information that could be subject to reasonable dispute. When Hines was sentenced in December 2016,

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[6] At the sentencing hearing, defense counsel objected to the court making a finding that Hines was under confinement in the halfway house, but he did not dispute that, at the relevant time, Hines was in a halfway house.

it was not subject to reasonable dispute (and was not disputed) that he had been confined in a halfway house two years earlier, while he was engaged in the charged conduct.

¶ 68 But even if the court should not have relied on the presentence report, other competent evidence established that Hines was under confinement at a halfway house in December 2014. At trial, a detective testified that he confirmed the victim's statement that Hines was in a halfway house by speaking with Hines's corrections officer.

¶ 69 Accordingly, the court did not err by finding that Hines was under confinement at the time of the offense and sentencing him in the aggravated range.

VII. Conclusion

¶ 70 The judgment and sentence are affirmed.

JUDGE FOX and JUDGE GROVE concur.