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| COURT OF APPEALS<br>STATE OF COLORADO<br><br>101 West Colfax Avenue, Suite 800<br>Denver, CO 80202 | |
| District Court of Pueblo County<br>Honorable Victor Reyes, Judge<br>Case No. 09CR1656 | |
| THE PEOPLE OF THE STATE OF COLORADO,<br><br>Plaintiff-Appellee,<br><br>v.<br><br>KELLY OSLUND,<br><br>Defendant-Appellant. | ▲ **COURT USE ONLY** ▲<br><br>Case No. 10CA2453 |
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| **PEOPLE'S ANSWER BRIEF** | |

## CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with C.A.R. 28(g).

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**For the party responding to the issue:**

It contains, under a separate heading, a statement of whether such party agrees with the opponent's statements concerning the standard of review and preservation for appeal, and if not, why not.

*/s/ Emmy A. Langley*

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## INTRODUCTION

The defendant, Kelly Oslund, appeals his conviction, after jury trial, for aggravated robbery. He also appeals his sentence, imposed after his guilty plea, for manslaughter. His claims should be denied.

## STATEMENT OF THE CASE AND FACTS

On the night of September 4, 2009, Justin Rien had a party at a motel and invited sisters Jessica and Lacy O'Brien (6/30/10, pp. 85, 151). Rien also invited Matthew Maez, the victim, and Maez's best friend, Lucas Maldonado (6/30/10, pp. 86, 152; 7/1/10, p. 70). After drinking for a while at the party, Jessica invited the defendant and his brother, Jayson Oslund, to come to the party (6/30/10, pp. 87, 153). When the party got "out of hand," they were all asked to leave the motel and the party resumed at Jessica and Lacy's father's house (6/30/10, pp. 88, 90, 154-55). After becoming intoxicated, Maez left Jessica and Lacy's father's house to ride home with Maldonado (6/30/10, pp. 93, 158). After bringing Maez outside, Maldonado went back inside the house to say goodbye and returned with Jessica (6/30/10, pp. 94, 158).

Maldonado did not see Maez so he and Jessica waited for him (6/30/10, p. 159). When Jessica heard noises coming from Jayson's car, she approached the car, and Maez jumped out of the car, ran into her, dropped some items, including a face plate from the car stereo, and then ran away (6/30/10, pp. 160-61; 7/2/10, p. 24). Jessica did not recognize Maez at the time (6/30/10, p. 161). Jessica screamed and the defendant and Jayson ran out of the house (6/30/10, pp. 98, 161). When Jessica told them what had happened, they set out to find the intruder, who they did not yet realize was Maez, in the direction that Jessica told him he had fled (6/30/10, p. 103; 162-63).

Approximately 25-30 minutes, the defendant and Jayson returned (6/30/10, p. 165). The brothers indicated that it was Maez who had broken into the car and that Jayson had punched Maez twice to get his property back (6/30/10, pp. 106). Jayson had blood on his hand and was carrying a stick or log (6/30/10, pp. 104, 109, 164). The defendant returned with items he had retrieved from Maez's pockets, including items from Jayson's car, and possibly Maez's wallet and watch (6/30/10, pp. 106-07, 137-40, 164).

Maldonado found Maez face down in a pile of mulch covered in blood and took him to the hospital (6/30/10, pp. 194, 196). Because of Maez's altercation with Jayson and Kelly, he suffered a brain bleed, which experts opined was caused from contact with a blunt object, and Maez eventually died from his injuries (6/30/10, pp. 13, 55, 57, 64, 68-71).

As a result, the defendant was charged with first degree murder—felony murder (F1) and aggravated robbery (F3) (v. 1, pp. 32-33). [1]

At trial, the defendant argued that his brother hit the victim with his fist, and that they retrieved their belongings the victim had taken from the car (6/29/10, pp. 16, 21-22). He also argued that the prosecutor should have investigated Rien's involvement more because, according to the defendant, Rien claimed that he had gotten in a fight that night (7/2/10, p. 184).

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[1] The defendant's brother, Jayson Oslund, was charged with first degree murder--after deliberation, first degree felony murder, and aggravated robbery. The jury subsequently found him guilty of first degree felony murder, and aggravated murder, and a division of this Court affirmed his conviction in a published opinion. *See People v. Oslund*, 2012 Colo. App. LEXIS 550, 2012 COA 62 (April 12, 2012).

After trial, the jury convicted the defendant of aggravated robbery (v. 1, p. 218; 7/6/10, p. 27), but could not reach an agreement regarding the felony murder count (v. 1, p. 219; 7/6/10, p. 27). Instead of proceeding to new trial on the felony murder count, the defendant chose to plead guilty to manslaughter (F4) (v. 1, pp. 222-28; 9/14/10, pp. 2-11). In exchange for his guilty plea, the felony murder count was dismissed (v. 1, p. 224). The defendant was later sentenced to 28 years in prison for aggravated robbery and 16 years in prison for manslaughter (v. 1, p. 237; 11/15/10, pp. 27-28). The sentences were ordered to run concurrently with each other (v. 1, p. 237; 11/15/10, p. 28). This appeal followed.

## SUMMARY OF THE ARGUMENT

The trial court did not err in refusing to instruct the jury on the affirmative defense of property, as the evidence presented at trial indicated that the theft was already completed when the defendant retrieved items from the victim. Accordingly, the trial court did not err in instructing the jury that proof of ownership of the property taken

from the person or presence of the victim is immaterial, because the theft was already completed and the victim exercised control over the property when the robbery occurred.

Remand may be necessary to resentence the defendant for his manslaughter conviction. However, the trial court did not err in sentencing the defendant to 28 years in prison for aggravated robbery.

## ARGUMENT

### I. The trial court did not err in declining to instruct the jury on the affirmative defense of defense-of-property because the evidence establishes that the theft was already completed when the defendant retrieved his belongings from the victim.

#### A. Standard of review and preservation of the issue.

The People agree with the defendant's standard of review in part. "It is a trial court's duty to instruct the jury on all matters of law." *See People v. Oslund*, 2012 Colo. App. LEXIS 550, *15, 2012 COA 62 (April 12, 2012) (*citing People v. Munsey*, 232 P.3d 113, 118 (Colo. App. 2009)). "A defendant is entitled to an affirmative defense instruction when he or she presents 'some credible evidence' on the issue addressed in the

instruction, so that a reasonable juror could find evidence to support each element of the defense." *Id.* (*citing O'Shaughnessy v. People*, 269 P.3d 1233, 1236 (2012)). A trial court's determination of whether an affirmative defense instruction should be provided to the jury is subject to de novo review. *Id.* at *16. The People agree that this issue is preserved, as defense counsel tendered a defense-of-property instruction and an accompanying theft instruction, but the instruction was denied (7/2/10, pp. 132-40; 151).

### B. Relevant facts.

**Lacy O'Brien** testified that after drinking at the motel party for a a while with Rien, Maldonado, Maez, and her sister, her sister called Jayson and the defendant, to ask them if they also wanted to come to the party (6/30/10, p. 87). Jessica and Kelly had had a relationship in the past (*id.* at 87). Lacy recalled that after listening to music for a while, the party got loud and they were all asked to leave the motel (*id.* at 88-89). Lacy remembered that everyone at the party was only drinking beer except for Maez, who was also drinking whiskey (*id.* at 88).

Lacy testified that the party resumed at her dad's house and that everyone continued to drink except for the defendant (*id.* at 90-92). She recalled that Maez became very drunk and that, as a result, Maldonado decided to take Maez home (*id.* at 93). She remembered that Maldonado stayed outside with the defendant for a few minutes but then returned to say goodbye (*id.* at 93-94). After saying goodbye, Maldonado walked outside with Jessica (*id.* at 94).

While Jessica went outside with Maldonado, Lacy testified that she stayed inside with the defendant and Jayson but that while she was sitting inside, her sister came running back, stating that somebody had broken into the brothers' car and had tackled her (*id.* at 98). She recalled that, after hearing this, the defendant and Jayson checked to make sure Jessica was OK, and then ran off (*id.*).

Lacy recalled that when Jayson and the defendant returned, Jayson was carrying "a log or some sort of stick" and had blood spatter on his hands (*id.* at 104, 109). The defendant told her that Jayson had hit Maez twice and that they took items from Maez's pockets (*id.* at 106).

**Jessica O'Brien** testified that when everyone at the motel party got to her father's house, everyone continued drinking, including Maez, who was drinking whiskey (*id.* at 157). When Maldonado told her that Maez wanted to go home, she testified that she walked Maldonado outside because she wanted to say goodbye to Maez, who was already outside (*id.* at 158-59). She remembered that they had not known where Maez was, so they stood outside for a little bit (*id.* at 159). She then saw someone in the car so she walked over and the person in the car tried to crawl out through the car window (*id.* at 160-61). When she went to grab the person, they both fell to the ground and "a deck of the car" came out of the person's pocket (*id.* at 161). She then alerted everyone that someone, whom she did not recognize as Maez, was stealing items from the car (*id.*). She testified that when she told Jayson and the defendant in which direction the intruder had fled, they ran down the street in that direction (*id.* at 162-63). Jessica testified that when she alerted everyone at the party that the brothers' car had been broken into, Maez had already run away (*id.* at 186). She testified that the only way that Kelly and Jayson knew which way to run was

because she told them which way to go (*id.* at 187). She recalled that when she told them where Maez had run, she could not, at that time, see Maez running on the street anymore (*id.* at 188).

Jessica further testified that when Jayson and the defendant returned, Jayson was carrying a stick and the defendant told her he took "what was his" from the intruder (*id.* at 164).

**Lucas Maldonado** testified that when he and Maez arrived at Jessica and Lacy's father's house, Maez was "a little messed up" from drinking (7/1/10, pp. 22-23). He stated that while at that house, he went into the garage to look at the father's motorcycle and that when he came back, Jessica told him that Maez had gone to Maldonado's car because he felt sick (*id.* at 24). He then decided to take Maez home and walked out with Jessica (*id.*). However, when they got to the car, Maldonado testified that Maez was not in his car (*id.*). As a result, Maldonado believed that Maez had walked to Maldonado's house, as it was only about a quarter mile away (*id.* at 24-25). After about ten minutes, Maldonado recalled that they heard a "pop" coming from another car (*id.* at 25). He testified that when they approached the car,

he knew right away that Maez was in the car but believed that Jessica did not know it was Maez (*id.*). He said that Maez then leaped out of the car window, fell on Jessica, and ran away (*id.* at 26). He testified that he helped Maez jump two fences to get away and left him near railroad tracks so he could go and get his car to pick him up (*id.* at 28). He did not want the others to know Maez was the intruder (*id.* at 34). He testified that after he went back and got his car, he saw Jayson and Kelly Oslund walking, and that Jayson had a big stick in his hand (*id.* at 30). Then, Maldonado tried to find Maez but he was not in the area he had left him (*id.* at 30-31). He testified that he then drove to find help to locate Maez (id. at 31). When he found Maez, Maez was not breathing, and he immediately took Maez to the hospital (*id.* at 33).

**Justin Rien** testified that when they were still at the motel room, he and Maldonado asked the Oslund brothers to leave because there was "tension" in the room (7/1/10, p. 114). He recalled that they did not "take it very well" (*id.* at 115). He recalled that after the party moved to the O'Briens's father's house, he went to look at the father's motorcycle and that when he was finished, Jessica came and told him

that people were chasing Maez (*id.* at 118-19). He testified that he and Maldonado went to find Maez, then split up, but he could not find Maez (*id.* at 120-21). He testified that when the Oslunds returned from chasing down Maez, Jayson returned with a stick, which was "pretty much a log" (*id.* at 122-23).

**During the jury instruction conference,** the defense submitted an instruction that stated:

> It is an affirmative defense to the crimes that defendant is charged with in this case that the defendant
>
> (1)Used reasonable and appropriate physical force upon another person
>
> (2)When and to the extent that he reasonably believed it necessary to prevent
>
> (3)What he reasonably believed to be an attempt by the other person to commit theft.
>
> In addition to proving all of the elements of the crime charged beyond a reasonable doubt, the prosecution also has the burden to disprove the affirmative defense beyond a reasonable doubt.
>
> After considering all the evidence, if you decide the prosecution has failed to disproved beyond a reasonable doubt any one or more elements of the affirmative defense, you must return a verdict of not guilty.

(env. 4; 7/2/10, p. 132). The court then stated:

> But the facts are that neither Kelly Oslund nor Jayson Oslund ever saw Mr. Maez in the vehicle. The evidence is that neither Kelly Oslund or Jayson Oslund saw Mr. Maez fleeing down the street. The evidence is that somebody goes to the backyard, says somebody was in your car, because the testimony from the person who saw the individual didn't indicate who was in the car. The evidence is that when they come out, he's nowhere around. The evidence is that Mr. Oslund's statement was that he didn't know whether or not anything was taken from his vehicle. The evidence is that they went down the street because looks like they were pointed in the general direction. And in looking at People v. Scearce, S-c-e-a-r-c-e, 87 P.3d 228, and quoting People v. Moseley, that was at 193 Colorado 256, unlike theft which involves a taking of anything of value of another, robbery involves the taking of anything of value from the person or presence of another. The current robbery statutes are intended to protect persons and not property. And that proof of ownership of the property taken is immaterial so long as the victim has sufficient control over it at the time of the taking.

(7/2/10, pp. 133-34). The court further noted that, "the basic public policy is that even rightful owners of property should not be permitted to use force to regain their property once it has been taken" (id. at 134). Defense counsel, however, argued that flight from a crime was part of a crime (id. at 136-39). Accordingly, the defense's proposed instruction

was denied (id. at 134, 140). The court also denied the defense's proposed theft instruction even though the defense argued, "there's been evidence of a theft, so the jury should understand what that charge is" (id. at 151).

### C. Analysis.

In *Oslund*, LEXIS 550 at *24, a division of this Court found that, in order to properly submit a defense of property instruction to the jury, a court must "determine whether a reasonable juror could have found that defendant acted to prevent an *attempt* to steal property from [the Oslunds's car]." (emphasis added). This Court went on to conclude, "the theft was completed when Maez not only exercised control of the property, but moved it away from an area within the defendant's control" and thus the defendant "could no longer prevent the theft." *Id.* at *24-25. Accordingly, this Court concluded that, even though the defendant and his brother were in "fresh pursuit" of Maez when they ran after him, the trial court did not err when it did not provide an instruction to the jury regarding defense of property. *Id.* at *25.

The evidence in *Oslund* was almost identical to the evidence here, as the testimony was based on the same incident. By the time the defendant and his brother were told of the trespass of their car and went running after Maez, the theft had already been completed. As Jessica testified, when she alerted everyone at the party that the car had been broken into, Maez had already run away and that the only way that Kelly and Jayson knew which way to run was because she told them which way to go. There was no evidence presented that contradicted Jessica O'Brien's testimony. Therefore, the theft was already completed when the defendant retrieved his property and he was thus not entitled to a defense of property instruction. *See Oslund,* LEXIS 550 at *24-25 ("we conclude that the theft was completed when Maez not only exercised control of the property, but moved it away from an area within defendant's control"). Notably, although defense counsel argued that Maez's flight from the car was part of the crime and therefore the defendant was permitted to run after Maez to retrieve his belongings, this Court has found otherwise. *See Id.* at *24-25 (fresh

pursuit does not entitle a defendant to a defense of property instruction when theft already completed). The trial court did not err.

## II. The trial court did not err in instructing the jury that "proof of ownership of the property taken from the person or presence of the victim is immaterial so long as the victim had sufficient control over it at the time of taking." The theft was already complete when the robbery occurred and thus original ownership of the property was irrelevant.

### A. Standard of review and preservation of the issue.

The People agree with the defendant's statement of preservation and proposed standard of review. The prosecution submitted an instruction, asking that the jury not consider whether the victim or defendant was the rightful owner of any property found in the victim's possession and the defense objected (env. 4, 7/2/10, pp. 144-150). After considering the arguments of both parties, the court chose to provide the jury with an instruction that informed the jury that proof of ownership of the property taken from the person or presence of the victim is immaterial, and noted that the defense's original objections

were still applicable (7/2/10, p. 148; v. 1, p. 212). Therefore, this issue is preserved.

The court reviews jury instructions de novo to determine whether the instructions as a whole accurately informed the jury of the governing law. *People v. Lucas*, 232 P.3d 155, 162 (Colo. App. 2009). However, the trial court has substantial discretion in formulating the jury instructions so long as they are correct statements of the law and fairly and adequately cover the issues presented. *People v. Pahl*, 169 P.3d 169, 183 (Colo. App. 2006).

### B. Relevant facts.

During the jury instruction conference, the prosecution submitted the following instruction:

> The jury, in its deliberations, shall not consider whether the victim or defendant was the rightful owner of any property found on the victim. The jury, during deliberations, shall consider whether the victim had sufficient control of any property at the time of the taking. Further, if the jury finds that the victim had sufficient control of any property, they shall consider whether the defendant took or attempted to take any such property by use of force from the person of the victim.

(env. 4; 7/2/10, pp. 144, 150). Defense counsel objected, stating, that the instruction improperly used the word, "victim" and also objected that since Maez was in flight from a crime, that the defendant was trying to get his property back to prevent theft (*id.* at 145). The prosecution responded, noting that when the defendant chased Maez, he did not know who had committed the crime (*id.* at 146-47). The court, as a result, decided to provide the jury with an instruction that stated, "Proof of ownership of the property taken from the person or presence of the victim is immaterial so long as the victim had sufficient control over it at the time of the taking" (v. 1, p. 212, "Instruction 15"; 7/2/10, p. 148).

**C. Analysis.**

Here, on appeal the defendant argues that trial court erred in submitting Instruction 15 to the jury because the victim was "committing a theft-in-progress and the court failed to instruct the jury on defense-of-property" (Opening Brief, p. 32). However, as argued in Issue I, the trial court did not err in declining to instruct the jury on defense of property. Furthermore, a division of this Court found that,

based on the evidence in Jayson Oslund's trial, the theft had already been completed when the robbery occurred as Maez "not only exercised control of the property, but moved it away from an area within defendant's control." *Oslund*, LEXIS 550 at *24. The evidence presented was essentially the same here. Jessica O'Brien testified that when the Oslunds ran after Maez, Maez had already run away from the car, that she could no longer see Maez, and that the only reason the defendant and his brother knew in which direction to run was because she told them (6/30/10, pp. 186-88). Therefore, ownership of the property was irrelevant, as the instruction correctly told the jury, because the robbery of Maez had occurred, the victim had control over the property, and thus the theft was already completed. *Oslund*, LEXIS 550 at *24. Accordingly, the trial court properly instructed the jury.

## III. The People agree that the trial court erred in determining the sentencing range for the defendant's manslaughter conviction. However, since the court determined that the defendant's sentence for manslaughter should run concurrently with the defendant's aggravated robbery sentence, the resentencing will not affect the total years of the defendant's prison sentence.

### A. Standard of review and preservation of the issue.

The People agree that this issue is not preserved. The People also agree that this Court reviews "the trial court's application of mandatory sentencing laws de novo." *People v. Torres*, 224 P.3d 268, 277 (Colo. App. 2009).

### B. Relevant facts.

During the defendant's providency hearing, the court began to advise the defendant regarding the sentencing range of manslaughter (9/14/10, p. 9). The following exchange occurred:

> **THE COURT**: The possible penalties are contained within paragraph four of the plea agreement which reads as follows: The Defendant understands that the possible sentences in this matter are a sentence within the presumptive range for a period of two years --

> **THE PROSECUTOR**: Your Honor, I believe that is inaccurate. Manslaughter is a crime of violence and as a crime of violence, that means it comes under the extraordinary risk statute, so it should read five to sixteen, not two to twelve.
>
> **DEFENSE COUNSEL**: We have reviewed that, and he understand[s] that.
>
> **THE COURT**: It is two to eight years. Do you understand that as the presumptive range. A fine of $2,000 up to $500,000 or both fine and imprisonment. If there are aggravating circumstances that could be as high as sixteen years, mitigating as low as one year, and three years of mandatory parole. What I am going to do in this matter is I am going to go ahead and, um, make those changes. If your client could initial those, please. Thank you. So do you understand that the sentence ranges are incorrect in the plea agreement?
>
> **THE DEFENDANT**: Yes.
>
> **THE COURT**: Do you have any questions as to the possible sentences?
>
> **THE DEFENDANT**: No, sir.

(9/14/10, p. 9). During the sentencing hearing, defense counsel admitted that the defendant was on probation when he robbed and caused the death of Maez (11/15/10, pp. 18, 21). The defendant was later sentenced to 16 years in prison for manslaughter (11/15/10, pp. 27-

28). His sentence was ordered to run concurrently with his 28-year aggravated robbery prison sentence (11/15/10, p. 28).

### C. Analysis.

Here, the defendant pleaded guilty to manslaughter (F4) (v. 1, p. 222). "A person commits manslaughter if: Such person recklessly causes the death of another person." § 18-3-104(1)(a), C.R.S. (2011). Manslaughter is a class-four felony, invoking an applicable presumptive sentencing range of two to six years in prison. § 18-1.3-401(1)(a)(V)(A), C.R.S. (2011). Therefore, since the defendant was on probation when he committed manslaughter, he was subject to a sentencing range of four to twelve years in prison. § 18-1.3-401(8)(a), C.R.S. (2011). Notably, manslaughter is not, contrary to the prosecutor's assertions, a mandatory crime of violence, and does not otherwise qualify as an extraordinary risk crime. § 18-1.3-406 (2)(a)(II), C.R.S. (2011); §18-1.3-401(10), C.R.S. (2011). Therefore, the court erred when it found that the defendant could be subject to a prison sentence of up to 16 years for his manslaughter conviction.

"Where a trial court misapprehends the scope of its discretion in imposing sentence, a remand is necessary for reconsideration of the sentence within the appropriate sentencing range." *People v. Linares-Guzman*, 195 P.3d 1130, 1137 (Colo. App. 2008) (*citing People v. Willcoxon*, 80 P.3d 817, 822 (Colo. App. 2002)). However, since the court ordered that the defendant's aggravated robbery sentence of 28 years run concurrently with his manslaughter sentence, resentencing the defendant for his manslaughter conviction will not change the total years of the defendant's prison sentence.

## IV. The trial court appropriately exercised its discretion in sentencing the defendant to 28 years in prison for aggravated robbery as the applicable sentencing range was ten to 32 years in prison.

### A. Standard of review and preservation of the issue.

The People agree that this issue was not preserved. The People also agree that a trial court has broad discretion over sentencing decisions, and those decisions will not be overturned absent an abuse of discretion. *Lopez v. People*, 113 P.3d 713, 720 (Colo. 2005). A court

abuses its sentencing discretion if the ruling is manifestly arbitrary, unreasonable, or unfair. *People v. Muckle*, 107 P.3d 380, 382 (Colo. 2005); *People v. Strean*, 74 P.3d 387, 391 (Colo. App. 2002).

**B. Application.**

Sentencing is, by its very nature, a discretionary decision requiring the weighing of many factors in order to strike a fair accommodation between the defendant's need for rehabilitation or corrective treatment and society's interest in safety and deterrence. *People v. Watkins*, 613 P.2d 633, 636-37 (Colo. 1980); *People v. Miller*, 829 P.2d 443, 446 (Colo. App. 1991); see also § 18-1-102.5, C.R.S. (2011). Accordingly, "A sentencing court abuses its discretion if it fails to consider 'the nature of the offense, the character and rehabilitative potential of the offender, the development of respect for the law and the deterrence of crime, and the protection of the public.'" *People v. Leske*, 957 P.2d 1030, 1043 (Colo. 1998).

In sum, if the sentence imposed is within the range required by law, is based on appropriate considerations as reflected in the record, and is factually supported by the circumstances of the case; an

appellate court must uphold the sentence. *People v. Fuller*, 791 P.2d 702, 708 (Colo. 1990); Lopez, 113 P.3d at 720.

In this case, at the sentencing hearing, defense counsel conceded that the defendant was on probation when Maez died (11/15/10, p. 21). Defense counsel, however, also pointed out that the defendant did not physically assault Maez (11/15/10, p. 22). The defendant spoke during the sentencing hearing, apologizing for his actions but also asserted that he was a victim of the incident (11/15/10, pp. 22-24).

After hearing the arguments of counsel and the statement of the defendant, the court sentenced the defendant to prison for 28 years on his aggravated robbery count (11/15/10, p. 27). The court, in making its determination, took into account the mitigating factor that the defendant made statements to police that proved to be consistent with the physical evidence (11/15/10, p. 25).

On appeal, the defendant concedes that the sentencing range for the defendant's aggravated robbery conviction is ten to 32 years because it is a class-three felony, an extraordinary risk crime, and the defendant was on probation during the commission of the robbery. See § § § § 18-

4-302(1)(c),(3); 18-1.3-401(1)(a)(V)(A); 18-1.3-401(1); 18-1.3-401(8)(a), C.R.S. (2011). Therefore, the court sentenced the defendant within the appropriate sentencing range.

The court's findings, although brief, were sufficient. *See Leske*, 957 P.2d at 1043 ("where the sentencing court finds several factors justifying a sentence in the aggravated range, only one of those factors need be legitimate to support the sentencing court's decision.") (citations omitted); *Fuller*, 791 P.2d at 708; *Lopez*, 113 P.3d at 720. The court considered the arguments of counsel, the defendant's statement, and the defendant's statement, including a mitigating factor that the defendant, in part, cooperated with the police during the investigation into Maez's murder. *Fuller*, 791 P.2d at 708. Notably, a court is not obligated to make specific findings on each sentencing factor. *People v. Preciado-Flores*, 66 P. 3d 155, 169 (Colo. App. 2002). Accordingly, the court did not abuse its discretion in sentencing the defendant to 28 years for aggravated robbery.

## CONCLUSION

For the foregoing reasons, the defendant's conviction and sentence for aggravated robbery should be affirmed. But, the case should be remanded for resentencing on manslaughter.

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## CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **PEOPLE'S ANSWER BRIEF** upon all parties herein by depositing copies of same in the United States mail, first-class postage prepaid, at Denver, Colorado, this 26th day of September, 2012 addressed as follows:

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