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

SUMMARY
November 19, 2026

2026 COA 83

No. 25CA0190, *People v. Hurtado* — Crimes — Motor Vehicle Theft in the First Degree — Elements — Prior Convictions; Constitutional Law — Equal Protection

A division of the court of appeals considers, for the first time, whether a statute's use of a defendant's prior convictions as an element of an offense, as opposed to a sentence-enhancing factor, violates the Equal Protection Clauses of the United States and Colorado Constitutions. The division concludes that the power to make such designations lies solely with the legislature and that a defendant's equal protection rights are not violated when the legislature opts to treat distinct offenses differently.

COLORADO COURT OF APPEALS **2026 COA 83**

Court of Appeals No. 25CA0190
Adams County District Court No. 23CR2312
Honorable Brett Martin, Judge

The People of the State of Colorado,

Plaintiff-Appellee,

v.

Rudy Levi Hurtado,

Defendant-Appellant.

JUDGMENT AFFIRMED

Division III
Opinion by JUDGE DUNN
Schutz and Brenton, JJ., concur

Announced November 19, 2026

Philip J. Weiser, Attorney General, Josiah Beamish, Assistant Attorney General, Denver, Colorado, for Plaintiff-Appellee

Lindsey Parlin, Alternate Defense Counsel, Denver, Colorado, for Defendant-Appellant

¶ 1 Defendant, Rudy Levi Hurtado, appeals his first degree motor vehicle theft conviction on equal protection grounds. We reject Hurtado's equal protection challenge and affirm the judgment of conviction.

I. Background

¶ 2 Police officers arrested Hurtado for possession of a stolen vehicle. The prosecution charged Hurtado with first degree motor vehicle theft under section 18-4-409(2), C.R.S. 2026, the elements of which include proof of two prior convictions involving motor vehicle theft or unauthorized use of a motor vehicle.

¶ 3 Hurtado moved to bifurcate "the prior convictions element." He argued that evidence of the prior convictions was "highly prejudicial" and violated his right to equal protection. The trial court denied the bifurcation request.

¶ 4 Before the prior convictions were introduced at trial, the court instructed the jury that "[t]he evidence that you hear regarding . . . Hurtado's past convictions can be used to prove that element and that element alone." It emphasized that "the only thing you can consider" the prior conviction evidence for is whether Hurtado "actually had prior convictions for motor vehicle theft."

¶ 5 The jury found Hurtado guilty as charged, and the court sentenced him to twelve years in community corrections.

II. Equal Protection

¶ 6 Hurtado argues that the first degree motor vehicle theft statute violates his right to equal protection because it makes prior convictions an element of the offense, which is different from other criminal offenses that treat prior convictions as sentence enhancers. We are unpersuaded.

¶ 7 The United States and Colorado Constitutions guarantee that no person shall be denied equal protection of the law. U.S. Const. amend. XIV; Colo. Const. art. II, § 25. The Equal Protection Clauses are intended to assure like treatment for "similarly situated" persons. *Dean v. People*, 2016 CO 14, ¶ 11. A "threshold question" in equal protection challenges is "whether the classes allegedly created by the statute at issue are similarly situated." *People v. Lawrence*, 2026 CO 39, ¶ 31. If a person alleging disparate treatment is not similarly situated to a person in the compared class, "[a]n equal protection challenge will generally fail." *Id.*; *see also People v. Walker*, 75 P.3d 722, 723 (Colo. App. 2002) (holding that an issue "does not fall within traditional concepts of

equal protection" when "the offenses implicated are different and therefore persons charged under them are not 'similarly situated'" (citation omitted)).

¶ 8 We review the constitutionality of a statute de novo and presume the statute to be constitutional. *People v. Castillo*, 2022 COA 20, ¶ 16. The party asserting that a statute is unconstitutional must prove that the statute is unconstitutional beyond a reasonable doubt. *People v. Mojica-Simental*, 73 P.3d 15, 18 (Colo. 2003).

¶ 9 Hurtado contends that the motor vehicle statute violates equal protection because it includes prior convictions as an element of the crime when another criminal statute — the cruelty to animals statute — treats a prior conviction for the same offense as a sentence enhancer. *See* § 18-9-202(2)(b), C.R.S. 2026. Hurtado maintains that "there is no legitimate legislative purpose to distinguish these two situations or these two defendants."

¶ 10 But Hurtado doesn't contest the fact that the two statutes have different elements and proscribe entirely different conduct. *Compare* § 18-4-409(2) (outlining the elements of first degree motor vehicle theft), *with* § 18-9-202(1) (enumerating the elements of the

offenses of cruelty to animals, aggravated cruelty to animals, and cruelty to a service animal). Thus, Hurtado cannot claim that the two statutes "proscribe identical conduct." *Dean*, ¶ 14; *see Campbell v. People*, 73 P.3d 11, 14 (Colo. 2003) (holding that "equal protection is satisfied" when the statutes at issue proscribe different conduct).

¶ 11 Hurtado's real grievance seems to be with the legislature's decision to make the fact of prior convictions an element of first degree motor vehicle theft rather than a sentence enhancer. But the legislature alone has the "power to define criminal conduct and to establish the legal components of criminal liability." *People v. Ceus*, 2026 CO 59, ¶ 47 (citation omitted); *see* Colo. Const. art. V, § 1. "Subject to constitutional constraints, it is the legislature's prerogative to designate a fact in a statutory scheme either an element of the offense or a sentence enhancer." *Caswell v. People*, 2023 CO 50, ¶ 20. Exercising that prerogative, the legislature designated the fact of prior convictions as an element of first degree motor vehicle theft. *See* § 18-4-409(2); *see also Gorostieta v. People*, 2022 CO 41, ¶ 19 (recognizing that the existence of a prior felony

conviction is an element of the crime of possession of a weapon by a previous offender).

¶ 12 Hurtado points out that there is a risk of unfairness in designating the fact of a prior conviction as an element of a crime rather than a sentence enhancer. After all, elements of a crime must be proved to the jury, but a court decides the fact of a prior conviction for sentence enhancement purposes. *See Erlinger v. United States*, 602 U.S. 821, 839 (2024); *Caswell*, ¶¶ 20, 52.[1] That's a valid concern. But it's not one the Equal Protection Clauses are meant to remedy. Equal protection concerns the differential treatment of similarly situated individuals. *See Lawrence*, ¶ 31. A defendant charged with first degree motor vehicle theft is not similarly situated to a defendant charged with animal cruelty. *See People v. Black*, 915 P.2d 1257, 1260 (Colo. 1996) ("[P]ersons who commit different crimes and different combinations of crimes are not similarly situated."). And the legislative choice to treat the fact of prior convictions differently in

[1] To the extent Hurtado suggests that a jury never decides sentence enhancers, that is not correct. *See Caswell v. People*, 2023 CO 50, ¶¶ 35-36, 38.

two separate statutes addressing different crimes doesn't violate Hurtado's equal protection rights.

¶ 13 Because Hurtado failed to make the threshold showing that similarly situated individuals are treated differently, his equal protection challenge fails.

III. Disposition

¶ 14 The judgment is affirmed.

JUDGE SCHUTZ and JUDGE BRENTON concur.