IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN D. WILLIAMS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54724

FILED

NOV 08 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of vehicular homicide. Seventh Judicial District Court, White Pine County; Dan L. Papez, Judge. Appellant John Williams raises two issues.

First, Williams claims that the district court erred in concluding that the State was required to prove Williams' prior DUI convictions in its case-in-chief. We disagree. The clear statutory language of NRS 484.37955 (now codified as 484C.130 and 484C.440) establishes the separate crime of vehicular homicide, an element of which is the prior commission of at least three DUI-related offenses. Thus, we reject Williams' contention on appeal that vehicular homicide is simply a sentencing enhancement of NRS 484.3795—DUI causing death or substantial bodily harm (now codified as 484C.430). We similarly reject Williams' argument that the prior-offenses element could have been bifurcated from the other elements of the crime and proved at a separate proceeding. See U.S. v. Barker, 1 F.3d 957, 959 (9th Cir. 1993)

(disapproving bifurcation of prior-felony-conviction element from other elements in felon-in-possession trial); cf. Brown v. State, 114 Nev. 1118, 1126, 967 P.2d 1126, 1131 (1998) (requiring severance of felon-in-possession count in multi-count indictment to limit danger of prejudice when proving prior convictions). Further, even if bifurcation of elements were required, Williams would fail to show prejudice as he stipulated to his convictions and the jury heard only that he "was convicted of three prior offenses." See Edwards v. State, 122 Nev. 378, 381, 132 P.3d 581, 583 (2006) (holding that district court abused its discretion in refusing defendant's offer to stipulate to prior convictions where proof of convictions was required in State's case-in-chief).

Second, Williams argues that the district court unfairly limited his closing argument when it ruled that he could not attack a State expert's testimony without first recalling the expert. Williams' claim is meritless. A state trooper was qualified as an expert in accident reconstruction and testified to how he calculated Williams' acceleration before the crash. Williams asserted that the trooper had made an error and requested that the district court permit him to perform the calculations anew for the jury in his closing without having to confront the trooper with his errors. The district court ruled that Williams could not make a recalculation in his closing argument and instead invited him to call the trooper in his case-in-chief and confront him with the asserted error at that time. Williams declined to do so, and we conclude that the district court did not abuse its discretion. See Glover v. Dist. Ct., 125 Nev. ___, ___, 220 P.3d 684, 693 (2009).

Having considered Williams' claims and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

_____, J.
Hardesty

_____, J.
Douglas

_____, J.
Pickering

cc: Hon. Dan L. Papez, District Judge
White Pine Co. Clerk
Attorney General/Carson City
State Public Defender/Carson City
State Public Defender/Ely
White Pine County District Attorney