

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARK RICHARD TRIANA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54818

FILED

JUN 09 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 felony DUI. Second Judicial District Court, Washoe County; Robert E. Estes, Judge.

Appellant Mark Richard Triana contends that the district court erred in refusing to instruct the jury that it must unanimously agree on a specific theory of impairment under NRS 484.379(1) (now codified as NRS 484C.110). The district court instructed the jurors that while they may diverge on the theory underlying the element of alcohol impairment, they must unanimously find that the State had proven this element beyond a reasonable doubt. We conclude that this instruction correctly stated the law. See Evans v. State, 113 Nev. 885, 895, 944 P.2d 253, 259 (1997) (concluding that an instruction requiring a unanimous theory of guilt is only required where theories involve important differences in mens rea); Richardson v. U.S., 526 U.S. 813, 817 (1999) (concluding that unanimity in the theory supporting an element of a crime is not necessary, as long as all jurors found that the State proved that element beyond a reasonable doubt). Thus, the district court did not abuse its discretion in

refusing Triana's proffered instruction. See Jackson v. State, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001).

Accordingly, having considered Triana's contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

cc: Third Judicial District Court Dept. 3, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk