

IN THE SUPREME COURT OF THE STATE OF NEVADA

DALE LAWRENCE VOGELAAR,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 60227

FILED

OCT 08 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *Handwritten Signature*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of eluding a police officer. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

Appellant Dale Lawrence Vogelaar contends that this court should overrule O'Neill v. State, 123 Nev. 9, 16, 153 P.3d 38, 43 (2007), and require that the facts relied upon by the district court when considering whether to dismiss a count of habitual criminality be determined by a jury. See Apprendi v. New Jersey, 530 U.S. 466 (2000). We decline to do so. O'Neill considered each of the authorities Vogelaar relies upon and concluded they did not apply to NRS 207.010. See O'Neill, 123 Nev. at 11-15, 17 n.28, 153 P.3d at 40-42, 43 n.28. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

*Saitta*  
\_\_\_\_\_, J.  
Saitta

*Pickering*  
\_\_\_\_\_, J.  
Pickering

*Hardesty*  
\_\_\_\_\_, J.  
Hardesty

cc: Hon. Steven P. Elliott, District Judge  
Washoe County Public Defender  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk