IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. RAYMALL A. JAMESON, JR., Appellant.	No. 39774-9-II UNPUBLISHED OPINION

Hunt, J. — Raymall A. Jameson, Jr. appeals his felony driving under the influence (DUI) jury conviction, asking us to reverse and to dismiss the felony DUI and to remand for entry of a gross misdemeanor DUI conviction. He argues that (1) the State failed to prove he committed one of the four prior DUI convictions required for a felony DUI conviction, and (2) his trial counsel rendered ineffective assistance in failing to move either for bifurcation of trial or for a stipulation that removed prior DUI convictions from the jury's consideration. We affirm.

FACTS

I. Felony Driving under the Influence

Around noon on June 20, 2009, Washington State Patrol Officer Sherry A. Murphy sat in her patrol car on the shoulder of northbound Interstate 5, filling out an affidavit from her previous traffic stop. In her rearview mirror she saw a full-sized white van crossing the fog line and coming right at her. As the van came closer, she could hear the noise it made traveling on the

"rumble strip" separating the shoulder from the travelled portion of the road. Verbatim Report of Proceedings (VRP) at 19. The van's driver, later identified as Raymall A. Jameson, Jr., swerved the van back into his lane of travel in time to avoid colliding with Murphy's patrol car.

After waiting for a break in traffic, Murphy maneuvered her patrol car to follow about three or four cars behind Jameson's van. She did not immediately try to stop the van because the shoulder of the upcoming section of Interstate 5 was dangerous. Jameson crossed over the fog line two more times and then drifted into the left lane, causing the driver in the left lane to jerk his car onto the interior shoulder and slam on his brakes. Murphy activated her lights, but Jameson did not stop his van; instead, he continued northbound, drifting back into his lane of travel. Murphy activated her siren, and Jameson pulled over.

Murphy approached Jameson's vehicle from the passenger side and motioned for him to put the window down. Using the automatic door opener, Jameson unlocked the passenger side door of his van and instructed Murphy to open the door herself. When she opened the door, she immediately detected the odor of intoxicants, and two beer cans fell out of the van door, one of which began spraying underneath the vehicle. When Murphy asked Jameson for his license and registration, he fumbled with papers for awhile and then threw them at her, telling her that she could get the papers herself but that he did not have a license.

Jameson had bloodshot droopy eyes, a flushed face, and slurred speech. He was verbally abusive and experiencing mood swings. After Jameson failed a field sobriety test, Murphy arrested him for DUI and put him in the back of her patrol car. When she discovered that the courts had previously revoked Jameson's license and required his vehicle to have an ignition-

interlock device,[1] she inspected the van and found a partially consumed bottle of gin but no ignition-interlock device.

When Jameson refused a breath test at the Lewis County jail, Murphy obtained a search warrant to draw a sample of Jameson's blood. Jameson's blood sample, taken about three hours after his arrest, revealed a blood alcohol level of .11.[2]

II. Procedural Facts

Alleging that Jameson had four prior DUI convictions, the State charged Raymall A. Jameson, Jr.[3] with felony driving under the influence (RCW 46.61.502(1), (6)),[4] count I; first degree driving while license revoked (RCW 46.20.342(1)(a)), count II; and driving without an ignition interlock device (RCW 46.20.740(2)), count III. Jameson did not move to sever the charges or to bifurcate the trial into phases.

In addition to testimony about the DUI arrest on June 20, 2009, the arresting officers

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[1] An ignition-interlock device connects to a vehicle's ignition system and requires the driver to blow into a tube to start the vehicle. If the device detects alcohol, it does not start the vehicle. *See* VRP at 46.

[2] RCW 46.61.502 provides:

> (1) A person is guilty of driving while under the influence of intoxicating liquor or any drug if the person drives a vehicle within this state:
> (a) And the person has, within two hours after driving, an alcohol concentration of 0.08 or higher as shown by analysis of the person's breath or blood made under RCW 46.61.506;

[3] Jameson is also known as Raymell Arthur Curtis and some of his prior convictions use that name.

[4] RCW 46.61.502(6) provides:

> It is a class C felony punishable under chapter 9.94A RCW, . . . if: (a) The person has four or more prior offenses within ten years as defined in RCW 46.61.5055.

associated with Jameson's 2001, 2002, and 2007 DUI arrests testified and identified Jameson as the person previously cited and convicted of three of his prior DUI convictions. But neither the arresting officer nor any other individual associated with Jameson's 1999 conviction testified. The State also presented individual certified court documents for his prior DUI convictions. Jameson objected to the certified copies from Tacoma Municipal Court for the 2007 conviction because there was no court supervisor to testify that these documents were court records:

> Counsel for Jameson: Well, I think someone needs to identify them, he's got someone to come in and identify them.
> The Court: Is someone going to come in and do that?
> The State: No.
> The Court: They're certified copies, objection overruled, they will be admitted as [Exhibit] 6.

VRP at 141.

For the same reason, Jameson also objected to the certified copies of a docket report from King County District Court, Seattle Division for Jameson's 1999 DUI conviction[5]:

> Counsel for Jameson: Again, is somebody going to come in and identify it?
> The State: No.
> The Court: Be admitted as [Exhibit] 7.

VRP at 142.

A Pierce County District Court supervisor testified and identified the certified copies of documents for Jameson's 2002 and 2001 DUI convictions. The trial court admitted these without objection.

During closing argument, the State reviewed the documents from the various courts and from the Department of Licensing. The jury convicted Jameson of all three counts, including a

[5] The certified court docket included Jameson's driver's license number and birth date.

special verdict finding four prior DUI convictions for count I. The trial court sentenced Jameson to 54 months of confinement for felony DUI, count I; 365 days for first degree driving while license revoked, count II; and 90 days for driving without an ignition interlock device, count III.

Jameson appeals.

ANALYSIS

I. Prior DUI—Challenge to Identification for First Time on Appeal

Jameson argues that his felony DUI conviction violated his constitutional right of due process because there is insufficient evidence to support it. Specifically, he argues that the State failed to prove that he committed the 1999 DUI conviction because the State presented as evidence only a certified copy of the King County District Court docket (Exhibit 7) without further identifying him as the Jameson named in Exhibit 7.

The State responds that, because Jameson did not specifically object at trial that the documents lacked information identifying him, he has failed to preserve this issue for subsequent appeal.[6] Agreeing with the State that Jameson failed to preserve this issue for appeal, we also hold that the identifying information on the documents was sufficient in light of Jameson's failure to challenge, which would have put the State on notice to provide additional documentation.

A. Failure To Preserve

A party may assign error in the appellate court only on the specific ground of the evidentiary objection made at trial. *State v. Guloy*, 104 Wn.2d 412, 422, 705 P.2d 1182 (1985)

[6] As the State correctly notes, at trial, Jameson objected to this evidence only on other grounds, namely that there was no court supervisor to testify that the document was a court record. He never objected that the document did not identify him as the person who had committed the prior DUI.

cert denied, 475 U.S. 1010 (1986). Non-specific objections made at trial or objections made without articulating the basis are inadequate to preserve appellate review. *Guloy*, 104 Wn.2d at 422 (citing *State v. Boast*, 87 Wn.2d 447, 553 P.2d 1322 (1976)). Our courts have "'steadfastly adhered to the rule that a litigant cannot remain silent as to claimed error during trial and later, for the first time, urge objections thereto on appeal.'" *Guloy*, 104 Wn.2d at 422 (quoting *Bellevue Sch. Dist. No. 405 v. Lee*, 70 Wn.2d 947, 950, 425 P.2d 902 (1967)).

ER 103(a)(1) provides that, in order to assign error to admission of evidence, the party must make a timely objection and state "the specific ground of objection, if the specific ground was not apparent from the context." Consistent with ER 103(a)(1), Division One of our court has held that a defendant waived an objection that evidence did not establish one of his prior convictions because he could have objected below but failed to do so. *State v. Gray*, 134 Wn. App. 547, 557-58, 138 P.3d 1123 (2006), *review denied*, 160 Wn.2d 1008 (2007). Jameson neither objected when the State moved to admit the documents nor argued in closing that the State had failed to prove any element of the offense, let alone that the State had failed to prove that it was in fact this same Raymall A. Jameson who had been convicted of the four prior DUIs.[7]

Normally, we will not review an issue raised for the first time on appeal and, therefore, would not further consider Jameson's challenge to the sufficiency of the State's proof that he committed the prior DUIs for which the State produced evidence at trial without this specific

[7] Jameson does not address in his brief of appellant or in a reply brief whether he has waived this issue on appeal when, at trial, (1) he objected to the admission of Exhibit 7 solely on the ground that no supervisor from the court that had issued the documents was present to establish the documents but (2) he made no objection or argument that the document failed to identify him as the DUI perpetrator or that the State's evidence was insufficient.

objection. RAP 2.5. Here, however, in addition to holding that Jameson failed to preserve this issue for appeal, we address his underlying challenge to the sufficiency of the evidence in the interests of judicial economy.[8]

B. Sufficient Evidence

Jameson argues that (1) to prove felony DUI charges, the State must show at least four DUI convictions; (2) the State did not sufficiently prove he committed a fourth DUI, namely the 1999 DUI conviction, because the only evidence it presented was a certified copy of the King County District Court docket (Exhibit 7); and (3) this evidence failed to identify him as the perpetrator of this DUI. This argument fails.

Evidence is sufficient to support a conviction when viewed in the light most favorable to the State, any rational trier of fact could find the essential elements of the crime beyond a reasonable doubt. *State v. Colquitt*, 133 Wn. App. 789, 796, 137 P.3d 892 (2006). A claim of insufficiency admits the truth of the State's evidence and all reasonable inferences drawn therefrom. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992) (citing *State v. Theroff*, 25 Wn. App. 590, 593, 608 P.2d 1254, *aff'd*, 95 Wn.2d 385 (1980)). Circumstantial evidence is as reliable as direct evidence. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980) (citing *State v. Gosby*, 85 Wn.2d 758, 539 P.2d 680 (1975)). We defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Walton*, 64 Wn. App. 410, 415-16, 824 P.2d 533 (citing *State v. Longuskie*, 59 Wn. App. 838, 844, 801 P.2d 1004 (1990)), *review denied*, 119 Wn.2d 1011 (1992).

[8] In other words, by addressing the substantive issue on direct appeal, we avoid the potential of having to address this issue in a later personal restraint petition.

The due process clause of the Fourteenth Amendment requires the State to prove every element of an offense beyond a reasonable doubt. U.S. Const. amend. XIV; *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970). In criminal trials, the State has the burden of establishing, beyond a reasonable doubt, the identity of the accused as the person who committed the offense. *State v. Huber*, 129 Wn. App. 499, 501, 119 P.3d 388 (2005). Because many people share identical names, "the State must do more than authenticate and admit the document; it also must show beyond a reasonable doubt 'that the person named therein is the same person on trial.'" *Huber*, 129 Wn. App. at 502 (quoting *State v. Kelly*, 52 Wn.2d 676, 678, 328 P.2d 362 (1958)). As we have previously noted, the State can meet its burden in a variety of ways "[d]epending on the circumstances," including using booking photographs, fingerprints, eyewitness identification, or "distinctive personal information." *Huber*, 129 Wn. App. at 503.

The State's evidence accomplished these objectives by showing that defendant on trial here was, in fact, the same Raymall Jameson convicted of the 1999 DUI in King County. Although the certified copy of the King County court docket that the State offered in evidence did not contain signatures or fingerprints, it did contain identifying information such as Jameson's August 8, 1957 date of birth,[9] his driver's license number, and his physical description as a five feet seven inches tall, black male, weighing 190 pounds, with brown eyes and black hair, all of which matched Jameson's identifying information associated with his trial in the instant case.[10]

[9] This docket also listed an alternate date of birth of August 8, 1956, and Titus Tool as Jameson's employer in 1999.

[10] In contrast, there was no similar identifying evidence in the two cases on which Jameson relies (and, in which the defendants timely challenged at trial the lack of identifying evidence). In *State v. Harkness*, the State offered *no* evidence tending to show that Harkness was the same person

We hold that Exhibit 7 sufficiently identified Jameson as the person who was convicted of the 1999 DUI in King County and, therefore, that the State provided sufficient evidence of this fourth DUI to support Jameson's conviction below for felony DUI.

II. Effective Assistance of Counsel

Jameson next argues that his trial counsel rendered ineffective assistance in failing (1) to move to bifurcate the trial into substantive crime and elevation of the DUI to felony components, or, (2) in the alternative, to seek removal of his prior offenses from the jury's consideration while deliberating their verdicts on the substantive counts. He analogizes his counsel's failure to move for bifurcation to failure to object to inadmissible evidence. The State responds that Jameson cannot show that his trial counsel's performance was deficient because Jameson cannot show the trial court would have granted a motion to bifurcate or would have accepted a stipulation. Again, we agree with the State.

To establish ineffective assistance, Jameson must show that (1) his trial "counsel's representation was deficient, i.e., it fell below an objective standard of reasonableness based on consideration of all the circumstances"; and (2) his trial "counsel's deficient representation prejudiced [Jameson's case], i.e. there is a reasonable probability that, except for counsel's unprofessional errors, the result of the proceeding would have been different." *State v. McFarland*, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995) (citing *State v. Thomas*, 109 Wn.2d

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named in the certified copy of a prior Okanogan County judgment. *State v. Harkness*, 1 Wn.2d 530, 96 P.2d 460 (1939). Similarly, in *Huber*, the State's "proof" consisted of only the same name, which we held was not sufficient to prove that the Wayne Huber on trial was the same Wayne Huber named in the documents admitted in evidence to prove the court order that he was accused of having violated when he failed to appear.

222, 225-26, 743 P.2d 816 (1987) (quoting *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984))). If either element of the test is not satisfied, the inquiry ends. *State v. Hendrickson*, 129 Wn.2d 61, 78, 917 P.2d 563 (1996).

Jameson argues that (1) "[c]ourts have long recognized that prior convictions are inherently prejudicial, and increase the likelihood of erroneous conviction based on propensity";[11] (2) thus, his attorney lacked a legitimate reason not to move for bifurcation of the trial or to stipulate to the prior offenses, thereby removing them from jury consideration; (3) because a trial court has broad discretion to bifurcate a trial where necessary to avoid prejudice to the accused, it is likely the trial court would have granted such a motion here;[12] and (4) removing such highly prejudicial evidence from jury consideration would have created a reasonable possibility that the jury would have reached a different decision. *See* Br. of Appellant at 15 (citing *State v. Reichenbach*, 153 Wn.2d 126, 130, 101 P.3d 80 (2004)).

Jameson fails to acknowledge the distinction between the use of unfairly prejudicial propensity evidence under ER 404(b) and the statutory requirement to prove a prior conviction as an element of a crime. Although a court must accept a defendant's stipulation to a prior conviction in order to prevent the details and evidence that led to that prior conviction from reaching the jury, the court need not shield the jury from all reference to the prior offense. *Old Chief v. United States*, 519 U.S. 172, 191 n.10, 117 S. Ct. 644, 136 L. Ed. 2d 574 (1997). But

[11] Br. of Appellant at 11 (citing *State v. Hardy*, 133 Wn.2d 701, 946 P.2d 1175 (1997); *State v. Calegar*, 133 Wn.2d 718, 947 P.2d 235 (1997); *State v. Young*, 129 Wn. App. 468, 119 P.3d 870 (2005)).

[12] *See* Br. of Appellant at 13 (citing *State v. Monschke*, 133 Wn. App. 313, 334-35, 135 P.3d 966 (2006), *review denied*, 159 Wn.2d 1010 (2007)).

because of the "crucial role that elements, even prior conviction elements, play in the determination of guilt," "a defendant cannot stipulate to the existence of an element and remove it completely" from the jury's consideration. *State v. Roswell*, 165 Wn.2d 186, 195, 196 P.3d 705 (2008) (citing *State v. Gladden*, 116 Wn. App. 561, 566, 66 P.3d 1095 (2003)). Here, to convict Jameson of felony DUI, the State had to prove the elements of four prior DUI offenses within the preceding ten years.[13] In contrast to *Old Chief*, where a prior offense could be sanitized by presenting its existence generically as a serious offense, here, the felony charge required the State to present the jury with specific prior DUI convictions. *Old Chief*, 519 U.S. at 191.

Although Jameson correctly notes that the trial court has broad discretion to control the order and manner of trial proceedings, he overlooks that bifurcated trials "'are not favored,'" and he overestimates the likelihood that the trial court would have deemed bifurcation appropriate here.[14] Br. of Appellant at 9 (citing *Monschke*, 133 Wn. App. 313, 335, 135 P.3d 966 (2006) (quoting *State v. Kelley*, 64 Wn. App. 755, 762, 828 P.2d 1106 (1992)), *review denied*, 159 Wn.2d 1010 (2007)). Because counsel does not render ineffective assistance by refraining from strategies that reasonably appear unlikely to succeed, Jameson fails to establish the deficient

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[13] RCW 46.61.502(6) provides:

> It is a class C felony punishable under chapter 9.94A RCW,.. . . if: (a) The person has four or more prior offenses within ten years as defined in RCW 46.61.5055.

[14] In *Monschke*, we offered examples of appropriate bifurcation, stating:

> [B]ifurcation is appropriate where the defendant argues insanity and a second inconsistent defense. Bifurcation is inappropriate if a unitary trial would not significantly prejudice the defendant or if there is a substantial overlap between evidence relevant to the proposed separate proceedings.

Monschke, 133 Wn. App. at 335 (citations omitted).

performance prong of the ineffective assistance of counsel test.[15] *McFarland*, 127 Wn.2d at 334 n.2. Thus, we need not address the prejudice prong of the test.

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Hunt, J.

We concur:

Penoyar, C.J.

Johanson, J.

[15] *See also* the Washington Supreme Court's recent unanimous decision according great deference to trial counsel's strategies later challenged on appeal as grounds for having rendered ineffective assistance. *State v. Grier*, 171 Wn.2d 17, 32, 246 P.3d 1260 (2011) (ineffective assistance challenge, based on failure to request a lesser included offense instruction, "without merit," contrary to our unanimous holding below in *State v. Grier*, 150 Wn. App. 619, 643, 645, 208 P.3d 1221 (2009)). The *Grier* Court stated:

> *Strickland* begins with a strong presumption that counsel's performance was reasonable. To rebut this presumption, the defendant bears the burden of establishing the absence of any *conceivable* legitimate tactic explaining counsel's performance.

Grier, 171 Wn.2d at 42 (emphasis in original) (internal citations and quotation marks omitted)).