

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 52212

STATE OF IDAHO,	)	
	)	Filed: September 15, 2026
Plaintiff-Respondent,	)	
	)	Melanie Gagnepain, Clerk
v.	)	
	)	THIS IS AN UNPUBLISHED
BRADEN PHILIP LANE,	)	OPINION AND SHALL NOT
	)	BE CITED AS AUTHORITY
Defendant-Appellant.	)	
		)

Appeal from the District Court of the First Judicial District, State of Idaho, Kootenai County. Hon. John T. Mitchell, District Judge.

Judgment of conviction for felony excessive driving under the influence with a sentencing enhancement, reversed and case remanded.

Erik R. Lehtinen, State Appellate Public Defender; Jenny C. Swinford, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Raúl R. Labrador, Attorney General; Kale D. Gans, Deputy Attorney General, Boise, for respondent.

TRIBE, Chief Judge

Braden Philip Lane appeals from his judgment of conviction for felony excessive driving under the influence (DUI) with a sentencing enhancement. We reverse and remand.

I.

FACTUAL AND PROCEDURAL BACKGROUND

An officer responded to a report of a head-on collision. The officer contacted Lane, who had been driving one of the vehicles involved in the collision. The officer observed that Lane showed signs consistent with alcohol impairment, including a strong odor of alcohol, red and watery eyes, and slurred speech. Lane provided two breath samples, which resulted in breath alcohol concentration (BAC) levels of .217 and .227. The State charged Lane with excessive DUI, alleging he was “under the influence of alcohol with an alcohol concentration of .20 or more,

to-wit: .217/.227 as shown by an analysis of his breath.” The State also alleged that Lane was subject to a sentencing enhancement based on two prior DUI convictions.

The case proceeded to a bifurcated jury trial. In the first phase of the trial, the jury was instructed that, to find Lane guilty of excessive DUI, the State was required to prove he drove a vehicle “while having an alcohol concentration of 0.20 or more as shown by analysis of [his] breath” or “while under the influence of alcohol and/or an intoxicating substance.” The jury found Lane guilty of excessive DUI (Idaho Code §§ 18-8004C(2), -8004).

In the second phase of the trial for the sentencing enhancement, the jury was instructed to decide whether Lane pled guilty to or was found guilty of two or more DUI violations within the last ten years. The State offered, and the district court admitted without objection, three exhibits that the State represented were self-authenticating: (1) the information in the instant case; (2) the judgment of conviction and law enforcement citation for Lane’s 2016 DUI offense; and (3) the judgment of conviction and law enforcement citation for Lane’s 2019 DUI offense. The jury found that Lane had two prior DUI convictions within the last ten years, elevating the offense to a felony. Lane appeals.

II.

STANDARD OF REVIEW

Whether the jury has been properly instructed is a question of law over which we exercise free review. *State v. Severson*, 147 Idaho 694, 710, 215 P.3d 414, 430 (2009). When reviewing jury instructions, we ask whether the instructions as a whole, and not individually, fairly and accurately reflect applicable law. *State v. Bowman*, 124 Idaho 936, 942, 866 P.2d 193, 199 (Ct. App. 1993).

III.

ANALYSIS

Lane raises three issues on appeal. First, Lane argues the district court committed fundamental error by improperly instructing the jury on the essential elements of excessive DUI. Second, Lane argues the district court committed fundamental error by creating a fatal variance between the information and the jury instruction on the BAC element for excessive DUI. Third, Lane challenges the sufficiency of the evidence supporting the sentencing enhancement.

A. Jury Instruction Error

Lane argues the district court committed fundamental error by instructing the jury that it could find him guilty of excessive DUI without finding he had a BAC of 0.20 or more, as required by I.C. § 18-8004C(1) and alleged in the information. Specifically, although I.C. § 18-8004C(1) defines excessive DUI as driving with an alcohol concentration of 0.20 or more--and Lane was charged only under that theory--the jury was instructed that it could find Lane guilty if it found he drove “while having an alcohol concentration of 0.20 or more as shown by analysis of [his] breath” or “while under the influence of alcohol and/or an intoxicating substance.” The State concedes this error.

At the jury instructions conference, Lane did not object to the district court’s use of the instruction. Generally, issues not raised below may not be considered for the first time on appeal. *State v. Fodge*, 121 Idaho 192, 195, 824 P.2d 123, 126 (1992). However, when a defendant alleges that a constitutional error occurred at trial and the alleged error was not followed by a contemporaneous objection, the claim of error must be reviewed under the fundamental error doctrine. *State v. Miller*, 165 Idaho 115, 119, 443 P.3d 129, 133 (2019). In order to obtain relief under the fundamental error doctrine, the defendant must demonstrate three things. First, the defendant must show that one or more of the defendant’s unwaived constitutional rights were violated. *Id.* Second, the error must be clear and obvious, meaning the record must demonstrate evidence of the error and evidence as to whether or not trial counsel made a tactical decision in failing to object. *Id.* Third, the defendant must demonstrate that the error affected the defendant’s substantial rights, which means the error identified in the first and second prongs of the test actually affected the outcome of the trial. *Id.* at 119-20, 443 P.3d at 133-34.

Idaho Code § 18-8004C(1) defines excessive DUI as driving with an alcohol concentration of 0.20 or more. Here, Lane was charged with driving with a BAC of 0.20 or more. Nevertheless, the district court instructed the jury that it could find Lane guilty if it found he drove “while having an alcohol concentration of 0.20 or more as shown by analysis of [his] breath” or “while under the influence of alcohol and/or an intoxicating substance.” This instruction allowed the jury to find Lane guilty without finding an essential statutory element of the charged offense. The State concedes that the district court committed fundamental error by instructing the jury that Lane could be found guilty of excessive DUI without a finding that he had a BAC of 0.20 or more, as alleged

in the information and required by the statute. As a result, the State agrees that this Court should reverse and remand for a new trial.¹

B. Sentencing Enhancement

Lane argues the State failed to present sufficient evidence identifying him as the person previously convicted of the qualifying DUI offenses and, therefore, the sentencing enhancement should be vacated. Although the State agrees the district court erred by admitting the information as evidence of Lane's identity, the State argues the additional admitted evidence was sufficient and that the proper remedy is reversal and remand for a new bifurcated trial.

When prior convictions are used to enhance a penalty, the State must prove the identity of the defendant as the person previously convicted beyond a reasonable doubt. *State v. Lawyer*, 150 Idaho 170, 173, 244 P.3d 1256, 1259 (Ct. App. 2010). Identity may be established through a combination of personal and nonpersonal identifying evidence. *Id.* at 174, 244 P.3d at 1260.

During the second phase of the trial, the State admitted a certified copy of the information in this case, along with certified judgments of conviction and associated citations reflecting Lane's prior DUI convictions. When asked whether there was an objection, trial counsel responded, "No legal objection." The judgments of conviction identified the offender as "Braden Philip Lane," reflected that he resided in Kootenai County, and showed prior convictions for misdemeanor DUI in 2016 and misdemeanor excessive DUI in 2019. The citations in those cases further identified Lane as: "Last Name: Lane" "MI: Philip" and "First Name: Braden" with a height of 5'9", weighing approximately 160 pounds, and having black hair and blue eyes. The information identified Lane's birth date. The State concedes the district court erred by admitting the information as evidence of Lane's identity. However, "a reviewing court must consider all of the evidence admitted by the trial court," regardless of whether that evidence was admitted erroneously. *McDaniel v. Brown*, 558 U.S. 120, 131 (2010).

Appellate review of the sufficiency of the evidence is limited in scope. A finding of guilt will not be overturned on appeal where there is substantial evidence upon which a reasonable trier of fact could have found that the prosecution sustained its burden of proving the essential elements

¹ Because the instructional error requiring reversal and remand is dispositive, we do not address Lane's fatal variance argument regarding the jury instruction.

of a crime beyond a reasonable doubt. *State v. Herrera-Brito*, 131 Idaho 383, 385, 957 P.2d 1099, 1101 (Ct. App. 1998); *State v. Knutson*, 121 Idaho 101, 104, 822 P.2d 998, 1001 (Ct. App. 1991). We will not substitute our view for that of the trier of fact as to the credibility of the witnesses, the weight to be given to the testimony, and the reasonable inferences to be drawn from the evidence. *Knutson*, 121 Idaho at 104, 822 P.2d at 1001; *State v. Decker*, 108 Idaho 683, 684, 701 P.2d 303, 304 (Ct. App. 1985). Moreover, we will consider the evidence in the light most favorable to the prosecution. *Herrera-Brito*, 131 Idaho at 385, 957 P.2d at 1101; *Knutson*, 121 Idaho at 104, 822 P.2d at 1001. Viewing the evidence admitted at trial in light most favorable to the prosecution, and without reweighing the evidence or assessing witness capability, a reasonable jury could conclude Lane was the same person previously convicted of those qualifying DUI offenses. Accordingly, Lane has failed to demonstrate evidentiary insufficiency entitling him to an acquittal on the sentencing enhancement. Because the evidence was sufficient, retrial is not barred by double jeopardy principals. *See Burks v. United States*, 437 U.S. 1, 15 (1978).

Finally, Lane argues that the sentencing enhancement finding should be vacated without a new trial. However, we remand for a new trial because the erroneous admission of the information as evidence of Lane's date of birth was trial error as opposed to evidentiary insufficiency. We have recently addressed this issue in *State v. Hanning*, 177 Idaho 63, 584 P.3d 63 (Ct. App. 2026). The proper remedy in such cases is to vacate and allow further proceedings on the sentencing enhancement. *Id.* at 69, 584 P.3d at 69; *see also State v. Miller*, 172 Idaho 381, 385, 533 P.3d 290, 294 (2023).

As discussed above, the district court's instructional error independently requires reversal of Lane's excessive DUI judgment of conviction. Because retrial is not barred and the sentencing enhancement was adjudicated in the same bifurcated proceeding, the proper remedy is to vacate the sentencing enhancement and remand for a new bifurcated trial for both the excessive DUI and the sentencing enhancement.

IV. CONCLUSION

The district court's instructional error requires reversal of Lane's excessive DUI judgment of conviction, and the erroneous admission of the information requires retrial of the sentencing enhancement. Because the evidence was otherwise sufficient to support the sentencing

enhancement and both issues were adjudicated in the same bifurcated proceeding, we reverse and remand Lane's judgment of conviction for excessive DUI with a sentencing enhancement for a new bifurcated trial.

Judge FLEMING and Judge PETTY, **CONCUR.**