

61857-1

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No. 61857-1-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Appellant,

v.

ERIN CHAMBERS,

Respondent.

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR KING COUNTY

REPLY BRIEF OF APPELLANT

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A. ARGUMENT

1. THE STATE DID NOT PRESENT
SUFFICIENT EVIDENCE TO PROVE EACH
ELEMENT OF THE CHARGE OF DRIVING
UNDER THE INFLUENCE

In State v. Roswell, the Court held a prior conviction is an element of the offense if the prior conviction elevates the offense from a misdemeanor to a felony. 165 Wn.2d 186, 194, 196 P.3d 705 (2008). RCW 46.61.502 provides the crime of driving under the influence is a felony if the defendant has four prior qualifying offenses as defined in RCW 46.61.5055(13). Where it is an element of the felony offense, Roswell concluded, a party is not entitled to a bifurcated proceeding on a recidivist element. 165 Wn.2d at 199.

Consistent with Roswell and the Sixth and Fourteenth Amendments to the United States Constitution, Ms. Chambers has argued the State was required to prove the prior offense element, as it would any other element, by proof beyond reasonable doubt to a jury. Alternatively, Ms. Chambers has argued that even if the trial judge and not the jury is the finder fact on the prior offense element, that element must still be proved beyond reasonable

doubt. Because the State did not offer such evidence here, Ms. Chamber's conviction must be dismissed.

In response, the State asks this Court to ignore the directives of Roswell and affirm what amounts to a bifurcated trial on the proof of the prior conviction element of felony DUI. Brief of Respondent at 12-16 (Arguing trial court properly determined "relevance" of prior conviction as part of its "'gatekeeper' function"). But the State does not stop there. The State argues further that in making the determination of whether the element is proved, a trial court is merely making a determination on the admissibility of evidence, and thus need not find the element has been proved beyond a reasonable doubt. But even the elimination of the State's burden of proof is not the end of the State's reply. The State goes one step further to contend that appellate review of the sufficiency of the State's proof of the element hinges upon whether the defendant raised an objection at trial. Brief of Respondent at 16.

None of the State's contentions is consistent with the conclusion of Roswell that the a recidivist element is a matter for the jury alone to decide. Indeed, the State's argument on this point does not mention Roswell. Instead, State offers forth a house of cards predicated on the contention that the "equivalency" Ms.

Chambers's prior offense was simply a legal matter for the judge to resolve pursuant to rules of evidentiary admission. Because it is posits that is merely an evidentiary issue, the State contends Ms. Chambers was required to object to the relevancy of the State's evidence. Because Ms. Chambers did not object to the relevance of the evidence, the State contends she cannot challenge the lack of proof of the equivalency of the prior offenses.

But the sufficiency of the proof an element is not resolved by the admissibility of the evidence the State offers to prove the element.. By the State's logic all sufficiency challenges can be reduced to simply a question of evidentiary admission, and thus appellate review must begin with determining whether an objection was raised below. As the State's argument goes, if evidence of lack of consent in a rape case is admitted without objection the defendant cannot claim on appeal the evidence is insufficient to prove the element. The State erroneously conflates relevancy with sufficiency. Evidence may well be relevant and properly admitted and yet still fall short of proving an element beyond a reasonable doubt.

Beyond that fallacy, the State's argument ignores the fundamentally different burdens in establishing the admissibility of evidence and proving an element of the offense. The admission of evidence is a discretionary decision by a trial judge and is not predicated upon proof beyond a reasonable doubt. By contrast, the State must prove each element of an offense beyond a reasonable doubt. Thus, even if the relevancy of evidence were the same as the evidence's sufficiency as proof of an element, that determination must be made beyond a reasonable doubt, it was not in this case.

Finally predicating the State's obligation to prove an element beyond a reasonable doubt upon defendant's objection relieves the State of its burden of proof.

Because it is an element of her offense, the jury alone had to determine whether the State proved the element, and the State was not entitled to the bifurcated trial it received. Roswell, 165 Wn.2d at 199. But even setting aside the jury requirement of the Sixth Amendment, the Fourteenth Amendment still requires proof beyond a reasonable doubt. United States v. Gaudin, 515 U.S. 506, 510, 115 S.Ct. 2310, 132 L.Ed.2d 444 (1995); In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970). It was not enough

that the state prove Ms. Chambers four prior convictions for one crime or another, nor was it enough that the State prove she had four prior convictions for offense titled "Driving under the Influence" or some other similar title. Instead RCW 46.61.5055(6) requires proof that a person has four prior offenses of either the designated sections of RCW 46.61 or an equivalent local statute. For convictions from other states, the statute requires the State prove the out-of-state offense would have been an offense in Washington. The State understood that when it charged Ms. Chambers as the Information properly alleged Ms. Chambers had committed the offense of driving under the influence and had "at least four prior offenses, as defined in RCW 46.61.5055(13)(a), within ten years." CP 70. Whether it proved it to a judge or jury, the State was required to prove that element beyond a reasonable doubt. The State did not do so.

2. INSTRUCTION 9 RELIEVES THE STATE OF
ITS BURDEN OF PROOF

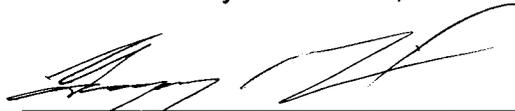
Because her argument in reply addressing the proof required to prove the recidivist element of the offense is also to Ms. Chamber's instructional claim she does not repeat here.

While Ms. Chambers did not propose the “to convict” ultimately provided by the court to the jury, the State nonetheless contends she invited the error in this case. Brief of Respondent at 21-22. The State does not cite a single case in which a party was deemed to have invited an error contained in an instruction she did not propose. Because she did not propose the erroneous instruction, Ms. Chambers did not invite the error.

B. CONCLUSION

The Court must reverse Ms. Chambers’s conviction.

Respectfully submitted this 15th day of October, 2009.



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Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 15TH DAY OF OCTOBER, 2009, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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