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SUMMARY
September 17, 2026

2026 COA 69

No. 24CA1428, *People v. Chilleen* — Crimes — DUI — Prior Convictions; Criminal Procedure — Relief From Prejudicial Joinder — Bifurcation

This case involves a defendant's motion to bifurcate the charge of felony driving under the influence (DUI), which requires proof of prior DUI convictions, from other charged offenses. A division of the court of appeals considers two interrelated issues: whether a trial court abuses its discretion by denying a pretrial motion to bifurcate and whether subsequent prejudice during trial warrants reversal. The division concludes that the court properly exercised its discretion not to bifurcate before trial and that events during trial did not render that decision improper. Nevertheless, the division also concludes that when the prosecution attempts to use prior conviction evidence for an improper purpose (such as to show propensity), a limiting instruction is insufficient on its own to guard

against unfair prejudice. Instead, when a trial court chooses to deny a pretrial motion to bifurcate the charge of felony DUI, it must carefully safeguard the trial to ensure that evidence of the defendant's prior convictions is not used for an improper purpose. Finally, the division concludes there was no actual prejudice in this case based on overwhelming evidence of the defendant's guilt. Accordingly, the division affirms the defendant's convictions.

Court of Appeals No. 24CA1428
Montezuma County District Court No. 21CR398
Honorable Todd Jay Plewe, Judge

The People of the State of Colorado,

Plaintiff-Appellee,

v.

Scott Edward Chilleen,

Defendant-Appellant.

JUDGMENT AFFIRMED

Division VII
Opinion by JUDGE PAWAR
Sullivan and Meirink, JJ., concur

Announced September 17, 2026

Philip J. Weiser, Attorney General, Yaried A. Hailu, Assistant Attorney General
Fellow, Denver, Colorado, for Plaintiff-Appellee

Recht Kornfield, P.C., Beale C. Tejada, Denver, Colorado, for Defendant-
Appellant

¶ 1 Defendant, Scott Edward Chilleen, appeals the judgment of conviction entered after a jury found him guilty of vehicular homicide, leaving the scene of an accident resulting in serious bodily injury and death, vehicular assault, felony driving under the influence (DUI), and safety belt violations. Among other things, he challenges the trial court's denial of his motion to bifurcate the felony DUI charge from the other charges. We affirm.

I. Background

¶ 2 Chilleen was traveling in his pickup truck with Mary Murphy and Houston Davis when a rollover accident occurred. Murphy was ejected from the vehicle's front passenger side and killed. Davis, who was found in the back seat, survived with a broken neck. Chilleen was found walking away from the scene along a county road two hours after the accident. He told police that he was walking home to get help and that he didn't call 911 because he did not have phone service, although responding officers were able to make and receive calls at the scene of the accident. Chilleen initially said that Murphy had been driving, he had been in the passenger seat, and Davis had been in the back seat. Conversely,

Davis was adamant that Chilleen had been driving. Chilleen's blood alcohol content was over the legal limit.

¶ 3 The prosecution charged Chilleen with multiple offenses, including felony DUI based on three prior DUI convictions.

¶ 4 Before trial, Chilleen moved to bifurcate the DUI charge from the remaining counts, arguing that evidence of his prior DUI convictions — a required element to prove felony DUI — would be inherently prejudicial at trial. The trial court denied the motion and ruled that it would issue a limiting jury instruction to alleviate any possible prejudice.

¶ 5 At trial, Chilleen argued in opening and closing that Davis was driving the truck on the night of the accident. He relied primarily on DNA evidence recovered from the vehicle's shifter and steering wheel that strongly matched Davis's DNA and excluded Chilleen as a contributor.

¶ 6 The prosecutor began closing argument by sharing a fable illustrating that it is in a scorpion's "nature" to sting, even if doing so results in self-harm. When he asserted that Chilleen "gets drunk" and is "no stranger to drunk driving," defense counsel objected to improper propensity arguments. The trial court

overruled the objection. The prosecutor also argued, without objection, that Chilleen was a liar and a thrice-convicted drunk driver.

¶ 7 The jury found Chilleen guilty as charged.

¶ 8 Chilleen filed two motions for a new trial. In the first motion, he argued that the prosecutor abused the court's denial of the motion to bifurcate by making improper arguments regarding his prior convictions during closing. In the second motion, he asserted that he was entitled to a new trial based on newly discovered evidence. The court denied both motions.

¶ 9 Chilleen appeals the court's denial of his pretrial motion to bifurcate and both motions for a new trial.

¶ 10 We conclude that the trial court properly exercised its discretion to deny Chilleen's pretrial motion to bifurcate the felony DUI charge. Next, because Chilleen cannot establish actual prejudice, we affirm the court's denial of his post-trial motion regarding bifurcation. Finally, we conclude the trial court did not err by denying Chilleen's post-trial motion for a new trial based on new evidence. Accordingly, we affirm Chilleen's convictions.

II. Standard of Review

¶ 11 We review a trial court’s rulings on motions to bifurcate and motions for a new trial for an abuse of discretion. *People v. Harris*, 2016 COA 159, ¶ 74; *People v. Johnson*, 2017 COA 11, ¶ 39. A court abuses its discretion when its decision is manifestly arbitrary, unreasonable, or unfair, or if it is based on an erroneous understanding or application of the law. *Harris*, ¶ 74.

III. Pretrial Motion to Bifurcate the Charges

A. Applicable Law

¶ 12 Pursuant to Crim. P. 14, a trial court has authority to bifurcate charges in a case to avoid prejudice resulting from joinder. For purposes of this rule, a defendant may demonstrate they are entitled to relief by showing that joinder “caused actual prejudice and that the jury was not able to separate the facts and legal principles applicable to each case.” *Buell v. People*, 2019 CO 27, ¶ 31 (citation omitted).

¶ 13 In *People v. Kembel*, 2023 CO 5, ¶ 38, the supreme court determined that a trial court may not bifurcate *the elements* of a single charge, including the question of a defendant’s prior convictions in a felony DUI case. *Kembel* recognized the inherent

potential for prejudice when evidence of a defendant’s prior DUI convictions is presented to the jury in a unitary trial. *Id.* at ¶ 49. But it found “that potential can be largely neutralized through limiting jury instructions,” and, therefore, any prejudice inherent in this evidence is not so unfair as to warrant bifurcation. *Id.* at ¶¶ 49, 55.

B. Discussion

¶ 14 The Attorney General asserts that *Kembel* has spoken on the issue before us and we need only follow its holding, which forbids bifurcation of whole counts or charges in the felony DUI context. We don’t read *Kembel* so broadly. To the contrary, *Kembel* only addresses, and prohibits, bifurcating the prior DUI *element* from the other elements of felony DUI. *See id.* at ¶¶ 45-48, 59 (noting that its “hands [were] tied by the legislature’s intent” to treat felony DUI as a distinct offense, based on issues not at play when bifurcating charges or counts in their entirety). Indeed, *Kembel* recognizes that Crim. P. 14 “authorizes the trial court to order separate trials ‘of counts’” to avoid prejudice. *Kembel*, ¶¶ 38-39 (acknowledging that “a distinction between the bifurcation of different substantive offenses and the bifurcation of the elements of a specific

substantive offense” had been previously drawn (citing *People v. Fullerton*, 525 P.2d 1166, 1168 (Colo. 1974))).

¶ 15 In any event, the trial court denied Chilleen’s pretrial bifurcation motion and we conclude it properly exercised its discretion in doing so. Chilleen’s argument focuses on the alleged prejudice that resulted from the court’s pretrial decision and the prosecutor’s misconduct.¹ But the question of whether error occurred in the first instance — in relation to the pretrial motion — is separate from whether prejudice subsequently resulted from the court’s decision. *See Hagos v. People*, 2012 CO 63, ¶ 9 (articulating the various standards of reversal for an error in criminal proceedings). We determine prejudice with the benefit of hindsight, based on what occurred at trial. However, we must evaluate a court’s pretrial ruling on a defendant’s motion to bifurcate based on the circumstances confronting the court at the time. *See People v. Ahuero*, 2017 CO 90, ¶ 11.

¹ Chilleen does not raise prosecutorial misconduct as a separate issue, nor does he challenge the admission of evidence related to his prior convictions for the proper purpose of proving the elements of felony DUI.

¶ 16 The trial court considered Chilleen’s motion from its pretrial vantage point — before any evidence or argument was presented — and ruled that a limiting instruction would ensure that the jury did not consider evidence of Chilleen’s prior DUI convictions for an improper purpose. Indeed, in *Kembel*, the supreme court recognized that an appropriate limiting instruction can serve this purpose. See *Kembel*, ¶ 52. And we must presume jurors follow the instructions that they receive. *People v. Flockhart*, 2013 CO 42, ¶ 28. Accordingly, we discern no abuse of discretion in the trial court’s pretrial decision on bifurcation.

IV. Motion for a New Trial Based on the Failure to Bifurcate

¶ 17 Chilleen also asserts that the trial court should have granted his post-trial motion for a new trial based on the failure to bifurcate because he was unfairly prejudiced by the prosecution’s exploitation of the evidence of his prior convictions during closing argument. In essence, Chilleen argues that, even if the court’s pretrial decision not to bifurcate was correct, he nevertheless suffered actual prejudice because the jury was not able to separate the facts applicable to each separate count and the limiting instruction was insufficient to cure the improper closing argument.

¶ 18 We accept, for purposes of argument, that the trial court erred by overruling Chilleen’s objections to prosecutorial misconduct and allowing the prosecutor to suggest that Chilleen had a propensity to commit DUI. Nevertheless, we conclude the court properly denied Chilleen’s motion for a new trial because he did not show prejudice from the error. *See* C.A.R. 35(c) (appellate court may disregard any error not affecting a party’s substantial rights).²

¶ 19 Recall that Chilleen’s defense rested on the premise that he was not the driver on the night of the incident. There was no dispute that he was one of the people in the truck. Overwhelming

² Although Chilleen does not raise the issue of prosecutorial misconduct, we conclude the prosecutor’s improper arguments were harmless for the same reason. *See People v. Trujillo*, 2018 COA 12, ¶ 37 (prosecutorial misconduct is harmless when there is no reasonable probability that it contributed to the defendant’s conviction).

evidence further showed that only Murphy and Davis were with him, and therefore one of these three individuals was driving.³

¶ 20 Notwithstanding the presence of Davis’s DNA on the steering wheel and gear shifter, overwhelming evidence further showed that neither he nor Murphy was the driver. *See, e.g., People v. Mendenhall*, 2015 COA 107M, ¶¶ 70, 81 (assessing whether evidence of defendant’s guilt was overwhelming when determining whether error was harmless). Davis was found face down in the back seat, in a pool of blood from a visible head injury. The accident reconstruction expert testified that the presence of blood throughout the back seat — including a pool behind the driver’s seat and across the back seats, ceiling, and passenger door — and the fact that no blood was found in the front of the vehicle suggested that the bleeding person was seated in the back. He

³ We recognize that Davis commented to police at the scene that he “was trying to help [his] brother out,” and in opening statements, defense counsel suggested this meant that four people had been in the vehicle. But no other evidence suggested that anyone other than Chilleen, Davis, and Murphy were in Chilleen’s truck that night. Davis testified consistently with his statements to police that the three of them were going to restaurants after work, as they often did, being the only three employees of the ranch. Davis further testified that he had a good relationship with Chilleen and referred to him as “brother” in text messages.

further testified that the accident involved a lateral rollover, meaning the vehicle rolled at least once on its side, and at the time of the accident, all passengers would have been moving in the same direction (that is, to the side).

¶ 21 As for Murphy, her hair was found on the truck's passenger side B-pillar (the vertical support between the front and back doors). An expert forensic pathologist testified that this was consistent with a passenger hitting their head on that part of the vehicle before being ejected. An expert in accident reconstruction further testified that the location of Murphy's hair made it "very likely" that she was sitting in the front passenger seat and was ejected through the front passenger window. Police also found Murphy's belongings on the floorboard of that seat, including her purse, cell phone, wallet, and makeup.

¶ 22 Viewing this evidence together, we conclude a reasonable jury could conclude only that Davis was riding in the back seat and Murphy was in the front passenger seat. Therefore, they could not have been driving. That leaves Chilleen as the only possible driver.

¶ 23 In addition to this overwhelming evidence, strong evidence showed that Chilleen was not truthful with police on the night of

the incident. He initially told police he was going to get help, even though he was found walking more than two hours after the accident, two and a half miles away. He said he did not have cell service, even though multiple officers were making phone calls from the scene of the accident. He then changed his story, saying his phone battery was almost dead. And he repeatedly said that Murphy was driving, even though he later claimed it was Davis. A responding police officer also testified that Chilleen had no visible injuries and only debris in his clothing and hair, suggesting he had not been in the back seat, where there was so much blood.

¶ 24 Though the Attorney General argues otherwise, we conclude that the mere inclusion of a limiting instruction is not always enough *on its own* to alleviate the risk of prejudice inherent in evidence of a defendant's prior convictions. *See Kembel*, ¶ 53 (recognizing that no limiting instruction can completely eliminate potential prejudice). The jury was instructed that it could not use evidence of Chilleen's prior convictions for any purpose other than to show that he had been previously convicted. And, as recognized in *Kembel*, such an instruction can be an effective prophylactic measure against the misuse of prior conviction evidence. But for

the instruction to serve its purpose, the trial court must protect the guardrails it put into place.⁴ *See id.* (evidence may be unfairly prejudicial when it has an adverse effect beyond proving the fact or issue that justified its admission); *see also Linnebur v. People*, 2020 CO 79M, ¶¶ 52, 54 (Márquez, J., dissenting) (admitting evidence of a defendant’s prior convictions “invites” the risk of unfairness and begs the warning to “be careful what you wish for”), *abrogated on other grounds by People v. Crabtree*, 2024 CO 40M. This may entail, for example, instructing the jury to disregard a prosecutor’s attempt to misuse prior conviction evidence for propensity purposes during closing argument.

¶ 25 To the extent the trial court did not sufficiently protect the guardrails against unfair prejudice in this case, we conclude that any prejudice was outweighed by the overwhelming (and properly admitted) evidence of Chilleen’s guilt.⁵ Therefore, the trial court

⁴ As recognized in *Kembel*, a limiting instruction can also be more effective by “specifically stat[ing] that evidence offered to establish any prior conviction included in the element of prior convictions cannot influence the jury’s findings as to the other elements of felony DUI.” *People v. Kembel*, 2023 CO 5, ¶ 52.

⁵ For the same reason, we do not address Chilleen’s other arguments as to why the limiting instruction in this case was insufficient.

properly denied Chilleen’s motion for a new trial based on the failure to bifurcate and prosecutorial misconduct. *See People v. Dyer*, 2019 COA 161, ¶ 39 (we may affirm on any ground supported by the record).

V. Motion for a New Trial Based on Newly Discovered Evidence

¶ 26 Finally, Chilleen asserts the trial court erred by denying his motion for a new trial based on newly discovered evidence. We disagree.

¶ 27 Motions for a new trial based on newly discovered evidence are regarded with disfavor. *See Farrar v. People*, 208 P.3d 702, 706 (Colo. 2009). To succeed, a defendant must show, among other things, that the new evidence was discovered after the trial and that the defense was diligent in its efforts to discover the evidence before and during trial. *People v. Gutierrez*, 622 P.2d 547, 559-60 (Colo. 1981). Evidence is not newly discovered when the defense was aware of the information before trial but simply failed to introduce it. *Cf. Farrar*, 208 P.3d at 706 (evidence is newly discovered “only if it was both unknown to the defendant and his counsel in time to be meaningfully confronted at trial and unknowable through the exercise of due diligence”).

¶ 28 As part of the prosecution’s case, Davis testified that he had frequently driven Chilleen’s truck to haul horses and that the last time he drove it was “[p]robably the day before” the accident. In his motion for a new trial, Chilleen argued that this testimony was unexpected, and it led Chilleen to investigate photos taken from the interlock device⁶ on his vehicle after trial. The photos showed that the last time Davis drove Chilleen’s vehicle was three days before the accident. And according to an expert opinion the defense subsequently obtained, the presence of Davis’s DNA on the truck’s gear shifter and steering wheel made it more likely that he was the driver on the night of the accident.

¶ 29 Chilleen argues that Davis’s first-time disclosure at trial triggered a chain of investigation that led to defense counsel’s decision to obtain the interlock records and related expert opinion. But even if we accept that the defense could not have anticipated Davis’s testimony through pre-trial investigation, Chilleen could

⁶ An interlock device is a vehicle-installed breathalyzer that prevents a vehicle from starting if it detects alcohol in the driver’s breath. According to Chilleen’s motion, the device on his vehicle captured pictures of the driver using the device, as well as the date and time of the test and its results.

have obtained the interlock records and related expert opinion with or without it. Indeed, the DNA evidence linking Davis to the driver's seat was the crux of Chilleen's defense. He was therefore aware that whether Davis had recently driven his vehicle was bound to be an issue at trial. He was likewise aware of the interlock device on his vehicle, having removed it the morning before the accident.

¶ 30 Because the evidence Chilleen claims is new was within his knowledge and available to the defense before trial, we conclude he has not met his burden under *Gutierrez*. While he asserts that the trial court improperly siloed each new piece of information and concluded that trial testimony was not "evidence discovered after trial," these arguments do not warrant a different result. Because the trial court properly denied Chilleen's motion for a new trial based on newly discovered evidence, he is not entitled to relief.

VI. Disposition

¶ 31 The judgment is affirmed.

JUDGE SULLIVAN and JUDGE MEIRINK concur.