

STATE V. TAYLOR

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STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
JOHN R. TAYLOR,
Defendant-Appellant.

NO. 31,400

COURT OF APPEALS OF NEW MEXICO

February 28, 2012

APPEAL FROM THE DISTRICT COURT OF CHAVES COUNTY, Steven L. Bell,
District Judge

COUNSEL

Gary K. King, Attorney General, Andrew S. Montgomery, Assistant Attorney General,
Santa Fe, NM, for Appellee

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JUDGES

JAMES J. WECHSLER, Judge. WE CONCUR: MICHAEL D. BUSTAMANTE, Judge,
LINDA M. VANZI, Judge

AUTHOR: JAMES J. WECHSLER

MEMORANDUM OPINION

WECHSLER, Judge.

Defendant appeals his convictions for homicide by vehicle (reckless driving), driving while intoxicated (DWI), homicide by vehicle (DWI), knowingly leaving the scene of an

accident (death or great bodily harm), and failure to give immediate notice of an accident. [RP 194] In a third notice of proposed summary disposition, we proposed to reverse and to vacate Defendant's convictions for homicide by vehicle (reckless driving) and DWI because both of those convictions violated Defendant's right to be free from double jeopardy. We proposed to affirm Defendant's remaining convictions for the reasons set forth in our first and second notices of proposed summary disposition. The State has filed a memorandum in response to our third notice indicating that it does not oppose our proposal to remand to the district court to vacate the homicide by vehicle (reckless driving) and the DWI convictions.

Defendant has filed a memorandum in response to our third notice again requesting that this Court vacate both his homicide by vehicle (reckless driving) and his homicide by vehicle (DWI) convictions and remand for entry of a general verdict of homicide by vehicle without specifying the theory under which he was convicted. [3MIO 1] We decline to do so.

As discussed in our third notice, even though homicide by vehicle (DWI) and homicide by vehicle (reckless driving) are both third degree felonies, our Court has previously indicated that the Legislature intended the homicide by vehicle (DWI) conviction to stand. See *State v. House*, 2001-NMCA-011, ¶ 16, 130 N.M. 418, 25 P.3d 257 (recognizing that as between homicide (DWI) and homicide (reckless driving) "the Legislature viewed DWI-related violations as the graver or more serious offense [and therefore] the district court appropriately retained the DWI-related convictions"). Thus, we remand so that the district court can vacate Defendant's conviction for homicide by vehicle (reckless driving). Defendant agrees with our proposal to remand so that the district court can vacate his conviction for DWI. [3MIO 2]

Therefore, for the reasons set forth in our third notice of proposed summary disposition, we reverse Defendant's convictions for homicide by vehicle (reckless driving) and DWI and remand so that those convictions may be vacated. For the reasons set forth in our first, second, and third notices of proposed summary disposition, we affirm the remainder of Defendant's convictions.

IT IS SO ORDERED.

JAMES J. WECHSLER, Judge

WE CONCUR:

MICHAEL D. BUSTAMANTE, Judge

LINDA M. VANZI, Judge