

No. 28736 - State of West Virginia v. Lloyd Mitchell Dews

Maynard, Justice, dissenting:

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OF WEST VIRGINIA

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I would affirm the appellant's conviction for third offense DUI. The majority reverses the conviction based syllabus point 3 of *State v. Nichols*, 208 W.Va. 432, 541 S.E.2d 310 (1999), which says that a trial court must exclude evidence of a prior conviction constituting a status element of the offense if stipulated to by the defendant. I dissented in *Nichols*, and I dissent in the instant case for the same reason. The only basis underlying the majority's holding in *Nichols* is its mistaken belief that jurors are unable to correctly use evidence of prior convictions.

In the instant case, there is ample evidence for a jury to find beyond a reasonable doubt that the appellant drove a vehicle in this State while under the influence of alcohol. As a result, the majority's fear that the jurors found the appellant guilty of DUI because they knew of his two prior DUI convictions is unfounded.

Accordingly, I dissent.