

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MAURILIO DE JESUS-DIAZ,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 66244

**FILED**

**APR 15 2015**

TRABIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of domestic violence, third offense, a category C felony as defined by NRS 33.018 and NRS 200.485 (battery constituting domestic violence, third offense). Fourth Judicial District Court, Elko County; Nancy L. Porter, Judge.

First, appellant Maurilio De Jesus-Diaz claims that the district court erred by denying his motion to strike a prior misdemeanor domestic battery conviction because the State failed to prove that he validly waived his right to counsel.

“In order to establish the validity of a prior misdemeanor conviction offered for enhancement purposes, the State must affirmatively show either that counsel was present or that the right to counsel was validly waived, and that the spirit of constitutional principles was respected” in the prior misdemeanor proceedings. *Picetti v. State*, 124 Nev. 782, 789, 192 P.3d 704, 708-09 (2008) (internal quotation marks omitted). This court reviews the totality of the circumstances to determine whether the waiver of counsel was valid. *See id.* at 790, 192 P.3d at 709.

The district court concluded that De Jesus-Diaz validly waived his right to counsel during the misdemeanor proceedings in 2011. While De Jesus-Diaz initialed both the waiver of counsel line on the waiver of rights form and the line asking to be represented by counsel, the district court concluded that the colloquy between De Jesus-Diaz and the justice court cured the defect in the waiver of rights form. During the colloquy, De Jesus-Diaz was informed several times of his right to be represented by counsel. He was asked whether he understood the rights presented in the video shown in the court and was asked “especially your right to have counsel represent you?” He was also informed by the justice court that “You have the right to have an attorney represent you whether you can afford it or not?” He was later informed, “at any time while you’re going through that form, if you decide to change your plea and you want to have an attorney represent you and go to trial, you just let me know, and we’ll take care of that, okay?” Finally, he was asked, “And you understand that you do have the right to have an attorney represent you if you want . . . And you still want to go ahead and plead guilty?” De Jesus-Diaz answered these questions in the affirmative.

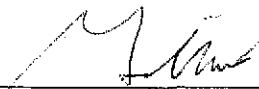
We conclude that the record on appeal supports the decision of the district court. While De Jesus-Diaz filled in the waiver of rights form incorrectly and the justice court never specifically asked him if he was waiving his right to an attorney, it was clear, based on the totality of the circumstances, that De Jesus-Diaz understood that he had the right to an attorney and chose to plead guilty without the help of counsel. We conclude that the spirit of constitutional principles was respected, and the district court did not err in denying De Jesus-Diaz’s motion to strike.


Second, De Jesus-Diaz argues that the district court erred by allowing the State to ask the prospective jurors about the possession of marijuana. Specifically, he claims that the State should not have been allowed to ask a hypothetical question regarding whether the jurors would be able to convict someone for possession of marijuana if they did not agree with the law. “[T]he scope of voir dire examination is within the sound discretion of the district court and the court’s determination is accorded considerable latitude on appeal.” *Stephens v. State*, 127 Nev. \_\_\_, \_\_\_, 262 P.3d 727, 735 (2011) (citing *Cunningham v. State*, 94 Nev. 128, 130, 575 P.2d 936, 937-38 (1978)).

The district court overruled De Jesus-Diaz’s objection finding that the State was “merely asking for more detail than the question that the Court asked” and cautioned the State to be careful. Further, the State made it clear to the jury that De Jesus-Diaz was not on trial for possession of marijuana. We conclude that the district court did not abuse its discretion by allowing this questioning of the prospective jurors. See NRS 175.031.

Having considered De Jesus-Diaz’s contentions and concluded that he is not entitled to relief, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

cc: Hon. Nancy L. Porter, District Judge  
Elko County Public Defender  
Attorney General/Carson City  
Elko County District Attorney  
Elko County Clerk