

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN NIGEL PETTWAY,

No. 37492

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

**FILED**

**JUN 05 2001**

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a bench trial, of driving under the influence of alcohol ("DUI"), third offense. The district court sentenced appellant to serve 12 to 36 months in prison.

The district court enhanced appellant's sentence, pursuant to NRS 484.3792(1)(c), after hearing evidence from both appellant and the State regarding the constitutionality of appellant's prior, uncounseled misdemeanor DUI conviction.

At the hearing, appellant argued that his prior misdemeanor DUI conviction was constitutionally infirm because he did not waive his right to counsel. Appellant proffered documentary evidence of the infirmity of his conviction; namely, his municipal court waiver-of-rights form wherein appellant had handwritten the word "no" next to the question that read: "Do you freely and voluntarily waive your rights."

To rebut appellant's contention that he did not validly waive his right to counsel, the State proffered testimony from Judge Wilford Ernest Teurman, the judge that presided over appellant's prior misdemeanor DUI trial. Judge Teurman testified that, during appellant's arraignment on the

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misdemeanor DUI charge, he advised appellant of his right to counsel, and appellant responded that he would provide his own attorney. On the day of trial, however, appellant appeared without counsel. Judge Teurman testified that he then asked appellant if he wanted to continue the matter until his attorney could be present, and appellant responded that he wanted to "go forward." Appellant represented himself at his trial and was convicted of the misdemeanor DUI charge.

Appellant's sole contention is that the district court erred in utilizing the uncounseled misdemeanor DUI conviction to enhance his sentence to a felony because appellant's misdemeanor conviction was constitutionally infirm, as there was insufficient evidence that appellant waived his right to counsel. Specifically, appellant argues that the district court erred in relying on Judge Tuerman's testimony because the State should not have been allowed to "impeach" its own court records by presenting witness testimony on the issue of appellant's waiver of the right to counsel. We conclude that appellant's contention lacks merit.

This court has held that where the State seeks to utilize a prior, uncounseled misdemeanor DUI conviction to enhance a subsequent DUI conviction, the State must proffer evidence that "the defendant validly waived the right to counsel and that the spirit of constitutional principles was respected."<sup>1</sup> In presenting evidence that a defendant validly waived counsel, the State is not limited to court records, but

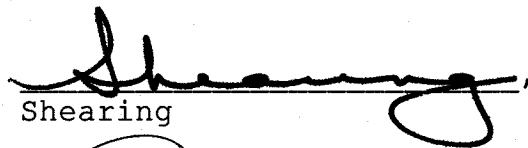
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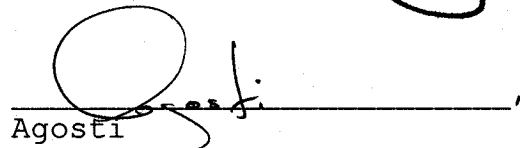
<sup>1</sup>Davenport v. United States, 112 Nev. 475, 478, 915 P.2d 878, 880 (1996) (citing Dressler v. State, 107 Nev. 686, 693, 819 P.2d 1288, 1293 (1991)).

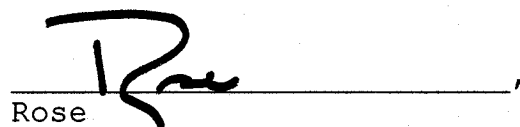
additionally may present witness testimony that the district court finds relevant and admissible.<sup>2</sup>

Here, we conclude that the district court did not err in using appellant's prior, uncounseled misdemeanor DUI to enhance his sentence to a felony. There was sufficient evidence, namely the testimony of Judge Teurman, in support of a finding that appellant's prior conviction was constitutionally sound, as appellant validly waived his right to counsel. Having considered appellant's contention and concluded that it lacks merit, we

ORDER the judgment of the district court AFFIRMED.

  
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Shearing J.

  
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Agosti J.

  
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Rose J.

cc: Hon. Archie E. Blake, District Judge  
Attorney General  
Churchill County District Attorney  
Robert V. Bogan  
Churchill County Clerk

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<sup>2</sup>See People v. Knickerbocker, 523 N.Y.S.2d 227, 228 (App. Div. 1988) (holding that judge's testimony that defendant waived right to counsel was sufficient evidence of such waiver); King v. State, 804 S.W.2d 360, 362 (Ark. 1991) (evidence of waiver of right to counsel noted on certified docket sheet was sufficient evidence of waiver); see also English v. State, 116 Nev. \_\_\_, 9 P.3d 60 (2000) (noting that evidence of valid waiver of right to counsel included two pages of handwritten notes of the municipal court's proceedings).