

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CRISTIAN ALEJANDRO GONZALES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 82610-COA

FILED

SEP 13 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY [Signature]
DEPUTY CLERK

ORDER OF AFFIRMANCE

Cristian Alejandro Gonzales appeals from a judgment of conviction, entered pursuant to a jury verdict, of driving under the influence of alcohol with two prior convictions within the last seven years. Sixth Judicial District Court, Humboldt County; Michael Montero, Judge.

Gonzales argues the district court abused its discretion by allowing a criminalist to testify after refusing to recognize her as an expert. A district court's determination on whether a witness is qualified as an expert as well as whether an expert witness's testimony will be admitted is reviewed for an abuse of discretion. *Mulder v. State*, 116 Nev. 1, 12-13, 992 P.2d 845, 852 (2000). The district court did not refuse to qualify the criminalist as an expert. Rather, the district court properly stated in front of the jury that it was "not qualifying someone as an expert." *See id.* at 13 n.2, 992 P.2d at 852 n.2 (providing that a court must not use terms such as "qualified as an expert" or "certified as an expert" when referring to a witness in the presence of the jury). And when Gonzales objected to the criminalist testifying as an expert, the district court overruled the objection and thereby indicated it was allowing the witness to testify as an expert. *See id.* ("The court should simply . . . sustain any objection to a request to

21-26360

permit the witness to testify as an expert.”). Accordingly, we conclude the district court did not abuse its discretion by allowing this testimony and Gonzales’ claim is without merit.

Gonzales also argues the district court erroneously enhanced his driving-under-the-influence (DUI) offense to a felony based on an invalid prior misdemeanor conviction.¹ Gonzales argues the record for the prior misdemeanor DUI conviction did not demonstrate a valid waiver of Gonzales’ right to counsel. “If the State seeks to use prior misdemeanor convictions to enhance a current offense to a felony, it must also make an affirmative showing of the constitutional validity of the prior convictions.” *Hobbs v. State*, 127 Nev. 234, 241, 251 P.3d 177, 181 (2011). “This includes demonstrating ‘either that counsel was present [during the prior misdemeanor proceedings] or that the right to counsel was validly waived, and that the spirit of constitutional principles was respected in the prior misdemeanor proceedings.’” *Id.* (alteration in original) (quoting *Dressler v. State*, 107 Nev. 686, 697, 819 P.2d 1288, 1295 (1991)).

The district court reviewed the documents submitted by the State and concluded that constitutional principles were respected with regard to Gonzales’ prior DUI conviction. The district court determined that Gonzales validly waived his right to counsel by initialing that his rights were explained by the judge and he had the opportunity to ask questions about his rights and the consequences of his plea. Because the record before the district court demonstrated Gonzales waived his right to counsel and the spirit of constitutional principles was respected in Gonzales’

¹Gonzales challenged the validity of his conviction in Union Township Justice Court case number CR00637. He does not challenge the validity of his other prior misdemeanor conviction.

misdemeanor DUI proceedings, we affirm the decision of the district court.
Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Michael Montero, District Judge
Humboldt County Public Defender
Attorney General/Carson City
Humboldt County District Attorney
Humboldt County Clerk