

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,  
Appellant,  
vs.  
DAVID WAYNE SANTIAGO,  
Respondent.

No. 42459

**FILED**

SEP 21 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. R. [Signature]*  
CHIEF DEPUTY CLERK

This is a State's appeal from a district court order granting respondent David Wayne Santiago's motion to suppress a prior conviction. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

The State contends that the district court erred in granting Santiago's motion to suppress his 1996 misdemeanor conviction for driving while under the influence (DUI). In particular, the State contends that the district court erred by finding that the court records contained an ambiguous waiver of the right to counsel. We disagree.

To establish the validity of a prior misdemeanor conviction, 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."<sup>1</sup> In cases where the defendant was not represented by counsel, the State has the burden to present evidence showing that the defendant validly waived counsel.<sup>2</sup> If the State meets its evidentiary

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<sup>1</sup>See Dressler v. State, 107 Nev. 686, 697, 819 P.2d 1288, 1295 (1991).


<sup>2</sup>See Davenport v. State, 112 Nev. 475, 478, 915 P.2d 878, 880 (1996).

burden by proffering court records showing a waiver of the right to counsel, the evidentiary burden then shifts to the defendant to overcome the presumption of regularity given to the court records.<sup>3</sup> The sentencing court may not imply a constitutional deficiency from a silent record.<sup>4</sup>

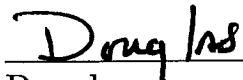
In this case, the district court suppressed the evidence of the 1996 DUI conviction, finding that the municipal court records were ambiguous. The district court's findings are supported by substantial evidence. In particular, like in Bonds v. State,<sup>5</sup> the court records proffered by the State contain a facial ambiguity with regard to the circumstances surrounding the waiver of the right to counsel. Accordingly, the district court did not err in granting Santiago's motion to suppress.

Having considered the State's contention and concluded that it lacks merit, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Douglas

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<sup>3</sup>Id.

<sup>4</sup>Dressler, 107 Nev. at 693, 819 P.2d at 1292.

<sup>5</sup>105 Nev. 827, 784 P.2d 1 (1989).

cc: Hon. Brent T. Adams, District Judge  
Attorney General Brian Sandoval/Carson City  
Washoe County District Attorney Richard A. Gammick  
Larry K. Dunn & Associates  
Washoe District Court Clerk