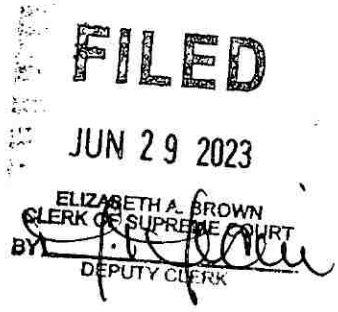
IN THE SUPREME COURT OF THE STATE OF NEVADA

JESUS PADILLA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 84985



ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, for first-degree murder. Second Judicial District Court, Washoe County; David A. Hardy, Judge.

The State charged appellant Jesus Padilla with open murder in violation of NRS 200.010 and NRS 200.030. At trial, the State argued that Padilla committed first-degree murder while Padilla argued that he was guilty only of second-degree murder because he lacked the necessary intent to commit first-degree murder. The jury returned a verdict finding Padilla guilty of first-degree murder and the district court entered judgment thereon. On appeal, Padilla argues that the district court's jury instructions reveal plain error because they lacked (1) the willfulness instruction from *Robey v. State*, 96 Nev. 459, 611 P.2d 209 (1980), and (2) a voluntary intoxication instruction. He did not seek either instruction at trial.

Because Padilla did not seek either instruction below, we may exercise our discretion to review for plain error. *See Green v. State*, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003) (citing NRS 178.602); *see also Flanagan v. State*, 112 Nev. 1409, 1423, 930 P.2d 691, 700 (1996) (explaining that the

failure to request an instruction precludes appellate review unless "the error is patently prejudicial and requires the court to act sua sponte to protect a defendant's right to a fair trial"). Plain error occurs where there is an error that is "so unmistakable that it is apparent from a casual inspection of the record," *Martinorellan v. State*, 131 Nev. 43, 49, 343 P.3d 590, 593 (2015), and "the error affected the defendant's substantial rights," *Flowers v. State*, 136 Nev. 1, 8, 456 P.3d 1037, 1045 (2020) (internal quotation marks omitted). Errors implicating a defendant's substantial rights are those causing "actual prejudice or a miscarriage of justice," *id.*, "when viewed in context of the trial as a whole," *Miller v. State*, 121 Nev. 92, 99, 110 P.3d 53, 58 (2005). The appellant bears the burden to demonstrate plain error. *See id.* We discern no such error here.

The district court was under no obligation to give the Robey *instruction sua sponte*

Padilla first contends that a *Robey* instruction on willfulness was necessary because the district court could not have properly instructed the jury on the concept of willfulness as applied to specific intent crimes otherwise. In particular, Padilla argues that the absence of the *Robey* instruction led the jury to equate the willfulness characteristic of specific intent "solely with 'the intent to kill' without qualifiers," and thus "lessened the [State's] burden of proof vis-à-vis premeditation and deliberation."

Contrary to Padilla's position, neither *Robey* nor its lineage impose a requirement that jury instructions for crimes prescribing willful mental states must include *Robey*'s definition of "willful." In fact, the caselaw on point that requires particular jury instructions—*Byford v. State*, 116 Nev. 215, 994 P.2d 700 (2000)—necessitates the "willfulness" instruction that the district court gave in Padilla's case. *See* 116 Nev. at 236, 994 P.2d at 714-15 (setting forth the "following instructions for

use . . . in cases where defendants are charged with first-degree murder," wherein "[w]illfulness is the intent to kill"). Accordingly, we conclude that the district court did not commit plain error by not giving a *Robey* instruction on willfulness on its own initiative.

The district court was under no obligation to sua sponte give a voluntary intoxication instruction

Padilla next contends that the district court's failure to instruct the jury sua sponte on voluntary intoxication and how it affects specific intent warrants reversal. Because the record was "chockful of [his] alcohol abuse," Padilla argues that the jury could not have properly evaluated whether he had the specific intent to commit first-degree murder without a voluntary intoxication instruction.

It is true that a defendant's voluntary intoxication can negate the element of specific intent for a particular crime. *See* NRS 193.220. Yet, Nevada caselaw places limits on a defendant's ability to obtain a voluntary intoxication instruction. Not only must a defendant typically request the specific jury instruction, *see Williams v. State*, 99 Nev. 530, 531, 665 P.2d 260, 261 (1983), but there must also be "some evidence in support of his defense theory of intoxication," *see Nevius v. State*, 101 Nev. 238, 249, 699 P.2d 1053, 1060 (1985) (citing *Williams*, 99 Nev. at 531, 665 P.2d at 261). Such evidence must show both "the defendant's consumption of intoxicants" and "the intoxicating effect of the substances imbibed and the resultant effect on the mental state pertinent to the proceedings." *See id.*

Here, as noted, Padilla did not request the instruction below. *See* 75A Am. Jur. 2d *Trial* § 1010 (2023) ("[T]he trial court is not obligated to determine on which theories to instruct the jury."). We are also not persuaded that counsel presented a "defense theory of intoxication" at trial that would necessitate such an instruction sua sponte. *See Nevius*, 101 Nev.

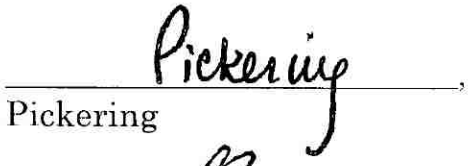
at 249, 699 P.2d at 1060. In particular, though the record shows Padilla's alcohol consumption, "the intoxicating effect of the substances imbibed and the resultant effect on [his] mental state" at the time of the crime is not so unmistakable from the record such that the district court should have offered a voluntary intoxication instruction sua sponte. *See id.* This case therefore differs from those where the court failed to give an instruction intrinsic to a defense theory actually presented and relied on at trial. *See, e.g.*, *United States v. Bear*, 439 F.3d 565, 568 (9th Cir. 2006) ("When a *defendant actually presents and relies upon a theory of defense at trial*, the judge must instruct the jury on that theory even where such an instruction was not requested." (emphasis added)).

Padilla's reliance on *Crawford v. State*'s holding that the district court is "ultimately responsible for [seeing] that the jury is otherwise fully and correctly instructed" does not change the result. *See* 121 Nev. 744, 754-55, 121 P.3d 582, 589 (2005). This mandate applied on facts where the theory on which the defendant's requested instruction was clearly advanced at trial but the requested instruction "invited further refinement by the State and the district court." *Id.* at 748, 754-55, 121 P.3d at 585, 589. Here, Padilla neither advanced a definitive defense theory of voluntary intoxication nor proposed an instruction that would have invited further refinement on that theory. Thus, *Crawford*'s directive does not compel the district court to sua sponte provide the instruction here. In fact, based upon the record, it appears that Padilla's failure to request the instruction may have been strategic. *See Jeremias v. State*, 134 Nev. 46, 51-52, 412 P.3d 43, 49-50 (2018) (observing no plain error where the defendant's "failure to object" to his family's exclusion from voir dire "could

reasonably be construed as intentional"). Accordingly, because Padilla has not met his burden to demonstrate plain error, we

ORDER the judgment of conviction AFFIRMED.

_____, J.
Cadish



_____, J.
Pickering

_____, J.
Bell

cc: Hon. David A. Hardy, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk