IN THE SUPREME COURT OF THE STATE OF NEVADA

MONTANA JOE MUNDAY, A/K/A MONTANA JOE MONDAY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86887



*ORDER OF AFFIRMANCE*

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of robbery with the use of a deadly weapon and two counts of battery with the use of a deadly weapon resulting in substantial bodily harm.[1] Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge. Appellant Montana Joe Munday raises three contentions on appeal.

First, Munday contends the district court abused its discretion by denying Munday's motion to sever the trial from that of the codefendant. "The decision to sever a joint trial is vested in the sound discretion of the district court and will not be reversed on appeal unless the appellant carries the heavy burden of showing that the trial judge abused his discretion." *Buff v. State*, 114 Nev. 1237, 1245, 970 P.2d 564, 569 (1998) (internal quotation marks omitted). To obtain relief, the defendant must show prejudice because "the joint trial compromised a specific trial right or prevented the jury from making a reliable judgment regarding guilt or innocence." *Marshall v. State*, 118 Nev. 642, 648, 56 P.3d 376, 380 (2002). Prejudice can arise when two defendants raise inconsistent or antagonistic

[1]Munday also pleaded guilty to one count of felon in possession of a firearm.

defenses, but such defenses are not prejudicial per se; rather, for defenses to be truly inconsistent, they "must be antagonistic to the point that they are mutually exclusive." *Rodriguez v. State*, 117 Nev. 800, 810, 32 P.3d 773, 779-80 (2001) (internal quotation marks omitted).

Munday did not present anything beyond speculation that Munday and the codefendant would present mutually-exclusive defenses. And the defense theories subsequently proffered at trial were not mutually exclusive. *See Marshall,* 118 Nev. at 646, 56 P.3d at 378 ("Defenses are mutually exclusive when the core of the codefendant's defense is so irreconcilable with the core of [the defendant's] own defense that the acceptance of the codefendant's theory by the jury precludes acquittal of the defendant." (alteration in original) (internal quotations omitted)). In particular, at trial, Munday conceded to shooting the victim, but argued that the initial shooting was in self-defense, and further argued that there was insufficient evidence of robbery. The codefendant's defense at trial was that there was insufficient evidence both that a robbery had taken place and that the codefendant's actions had placed the victim in fear of immediate bodily harm. These defenses are reconcilable and did not preclude the jury from acquitting both defendants. Moreover, Munday fails to argue that any specific trial right was compromised or to show that the jury was in any way prevented from making a reliable judgment as to Munday's guilt, especially given Munday's concessions and the overwhelming evidence presented by the State, which included testimony

from the victim and surveillance footage of the incident.[2] Therefore, the district court did not abuse its discretion in declining to sever the trials.

Second, Munday argues the district court erred in denying a motion to suppress Munday's statements to law enforcement. Munday's argument that he did not validly waive his right to counsel because he mentioned having an attorney in an unrelated case during the interrogation lacks merit because it was not an unambiguous request for counsel. *See Mendoza v. State*, 122 Nev. 267, 276, 130 P.3d 176, 181 (2006) ("The inquiry as to whether a waiver [of *Miranda* rights] is knowing and intelligent is a question of fact, which is reviewed for clear error."); *Harte v. State*, 116 Nev. 1054, 1066, 13 P.3d 420, 428 (2000) (To sufficiently invoke counsel pursuant to *Miranda*, "the suspect must unambiguously request counsel" to the extent "that a reasonable police officer [under] the circumstances would understand the statement to be a request for an attorney" (internal quotation marks omitted)).

Munday's argument that his statements to law enforcement were not voluntary because he was exhausted from using drugs also lacks merit. *See Passama v. State*, 103 Nev. 212, 213-14, 735 P.2d 321, 322-23 (1987) ("In order to be voluntary, a confession must be the product of a rational intellect and a free will," rather than "physical intimidation or psychological pressure[,]" and given without "compulsion or inducement."

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[2]To the extent Munday argues that he was unable to present his full theory of the defense without infringing upon his codefendant's rights, Munday makes only general assertions and fails to provide this court with sufficient relevant authority, argument, or citation to the record. Therefore, we need not address this contention. *Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) ("It is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court.").

(internal quotation marks omitted)); *Rosky v. State*, 121 Nev. 184, 190, 111 P.3d 690, 694 (2005) (providing that this court gives deference to factual findings concerning whether a confession is voluntary, but reviews legal determinations de novo). Under the totality of the circumstances, Munday's confession was voluntary. *See Chambers v. State*, 113 Nev. 974, 981, 944 P.2d 805, 809 (1997) (providing that this court looks to the totality of the circumstances to determine whether a defendant's will was overborne by government actions when the defendant confessed). The district court found, and the record supports, that Munday was an adult of reasonable intelligence; understood the situation and his rights; had previous experience with the justice system; was not detained or questioned for an unreasonable amount of time; appeared active and alert; and was provided with food, drinks, and cigarettes. *See Passama*, 103 Nev. at 214, 735 P.3d at 323 (outlining factors for courts to consider when considering the voluntariness of a confession under the totality of the circumstances). Thus, the district court did not err in determining that Munday's statements were voluntary, nor did the district court abuse its discretion by denying the motion to suppress. *See Steese v. State*, 114 Nev. 479, 488, 960 P.2d 321, 327 (1998) (holding that this court will not impose its judgment in place of the district court's so long as the district court's ruling is based on substantial evidence).

Third, Munday argues the district court erred by precluding Munday from cross-examining the victim on the victim's drug use since the incident, a 2019 misdemeanor drug conviction, and the victim's violent criminal history. We conclude that the district court did not abuse its discretion in limiting Munday's cross-examination of the victim. *See Mclellan v. State*, 124 Nev. 263, 267, 182 P.2d 106, 109 (2008) ("We review

a district court's decision to admit or exclude evidence for an abuse of discretion.").

As to the victim's subsequent drug use, Munday fails to establish how this information is relevant or would provide proper grounds to impeach the victim. *See* NRS 48.025 (stating that, to be admissible, evidence must be relevant); *Lobato v. State*, 120 Nev. 512, 518, 96 P.3d 765, 770 (2004) (describing proper grounds for impeachment). And even though the district court disallowed cross-examination on this topic, the victim addressed their subsequent drug use in response to a question from defense counsel about whether the victim was under the influence while testifying. In that respect, the victim stated, "I quit drinking and everything when I got shot."

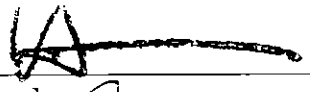
As to the victim's misdemeanor conviction, Munday argues that he should have been allowed to cross-examine the victim about the guilty plea because it bore directly on the victim's bias, motive, and interest in testifying for the State. But beyond the mere existence of a favorable outcome, Munday did not clearly assert that the victim was testifying against Munday in exchange for that favorable outcome or any good faith basis for such an assertion. *See Rippo v. State*, 134 Nev. 411, 432, 423 P.3d 1084, 1104 (noting that favorable dispositions of criminal cases alone "do not suffice to establish either explicit or tacit agreements between the State and . . . witnesses in exchange for their testimony"). Notably, the misdemeanor case was resolved independently of Munday's case and almost four years before Munday's trial.

As to the victim's criminal history, Munday argues that he should have been allowed to elicit testimony about the victim's violent past to show Munday's state of mind in relation to the self-defense claim. *See*

*Burgeon v. State*, 102 Nev. 43, 45-46, 714 P.2d 576, 578 (1986) ("When it is necessary to show the state of mind of the accused at the time of the commission of the offense for the purpose of establishing self-defense, specific acts which tend to show that the [victim] was a violent and dangerous person may be admitted, provided that the specific acts of violence of the [victim] were known to the accused or had been communicated to him."). Munday, however, offered no evidence that he knew the victim, much less that Munday was aware of any violent criminal history on the victim's part.

Having considered the issues raised by Munday and concluded that none warrant relief, we

ORDER the judgment of conviction AFFIRMED.



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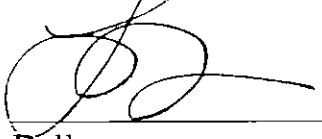

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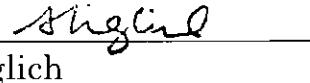

_____, J.
Stiglich

cc: Hon. Connie J. Steinheimer, District Judge
Law Office of Jeannie Hua
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk