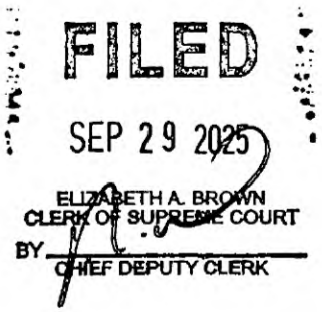
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAMES MICHAEL PLUMMER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 89195-COA



ORDER OF AFFIRMANCE

James Michael Plummer appeals from a judgment of conviction, entered pursuant to a jury verdict, of possession of a schedule I controlled substance less than 14 grams. Second Judicial District Court, Washoe County; Lynne K. Jones, Chief Judge.

Plummer argues the district court erred by not *sua sponte* severing his trial from that of his codefendant, K. Williams.[1] Specifically, Plummer contends severance was required because he and Williams had antagonistic defenses. Because Plummer did not seek to sever his trial from Williams' trial, we review for plain error. *See Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48-49 (2018). To demonstrate plain error, an appellant must show there was an error, the error is plain or clear under current law

[1]Plummer and Williams were jointly charged with trafficking in a schedule I controlled substance, 400 grams or more (methamphetamine), and trafficking in a schedule I controlled substance, 100 grams or more but less than 400 grams (heroin). Williams was convicted while Plummer was acquitted on these counts. Both Plummer and Williams were also individually charged with possession of a schedule I controlled substance less than 14 grams. Both Plummer and Williams were convicted on these counts. Plummer possessed heroin while Williams possessed methamphetamine.

from a casual inspection of the record, and the error affected appellant's substantial rights. *Id.* at 50, 412 P.3d at 48.

A district court may sever a joint trial if the joinder appears prejudicial to the defendant. NRS 174.165(1). Severance on the basis of inconsistent defenses will be warranted where "the defendants [have] conflicting and irreconcilable defenses and there is danger that the jury will unjustifiably infer that this conflict alone demonstrates that both are guilty." *Jones v. State*, 111 Nev. 848, 854, 899 P.2d 544, 547 (1995) (alteration in original) (internal quotation marks omitted). But "the [inconsistent-defense] doctrine is a very limited one," *id.*, and "mutually antagonistic defenses are not prejudicial *per se*," *Marshall v. State*, 118 Nev. 642, 647, 56 P.3d 376, 379 (2002) (cleaned up). To show prejudice, a defendant must demonstrate that joinder with a codefendant "compromised a specific trial right or prevented the jury from making a reliable judgment regarding guilt or innocence." *Id.* at 648, 56 P.3d at 380; *see also Rowland v. State*, 118 Nev. 31, 45, 39 P.3d 114, 122-23 (2002) (providing that "defenses must be antagonistic to the point that they are mutually exclusive before they are to be considered prejudicial" and that "defenses become 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" (internal quotation marks omitted)).

Plummer contends he and Williams had irreconcilably antagonistic defenses because Plummer's defense to the trafficking charges was that he did not know there were drugs in the bags he carried from a hotel room to a taxicab while Williams told law enforcement that the bags containing the drugs were his and not Plummer's. Plummer argues that

his defense was antagonistic to Williams' defense because it "demand[ed] the jury find Williams culpable."

When law enforcement stopped the taxicab with Plummer and Williams inside it, they found over five pounds of methamphetamine and nearly 12 ounces of heroin in the bags. In addition, an eighth of an ounce of methamphetamine was found in Williams' pocket while a "personal small quantity use amount" of heroin was found in Plummer's pocket. Plummer testified in his own defense during trial that, while he was a longtime heroin addict, he did not know the bags contained drugs. Sergeant Krush testified that, after officers found the drugs in the taxicab, Williams told him that he would like to take responsibility for the drugs and asked that Plummer not be charged for them. Williams' defense at trial was that he was holding the bags for M. Bridges,[2] that he himself did not know what was in them, and that his statements to law enforcement about the bags and drugs being his were taken out of context. Because both Plummer and Williams denied knowing the bags contained drugs without implicating the other, their defenses were not conflicting or irreconcilable. Further, because Plummer was acquitted of the drug trafficking counts and was instead convicted only

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[2]Bridges testified on Williams' behalf at trial. He explained that Williams was like an older brother to him and that, because Bridges was homeless and was afraid of having his things stolen, he would often give Williams things to hold for him. Bridges testified Williams would always return those items in the same condition in which they were given to him, implying that Williams would not know what the items he was holding were. Bridges explained that around the time of the offenses, he stole a bag containing five pounds of methamphetamine and 12 ounces of heroin from a man named D.J. and gave the bag, along with two bags of clothing, to Williams to hold for him. Bridges explained that he did not tell Williams what was in the bag containing the drugs and intended to retrieve the bag within a couple of weeks.

of the possession count, to which he conceded guilt, Plummer failed to demonstrate prejudice. Therefore, we conclude Plummer has not shown plain error based on the district court's failure to *sua sponte* sever Plummer's trial from Williams' trial.

Plummer also argues the district court erred by admitting other act evidence in the form of Plummer's 2013 felony conviction for heroin possession. Even assuming, without deciding, the district court erred in this regard, we conclude that any error was harmless because overwhelming evidence of Plummer's guilt, including his concession that he possessed the heroin found in his pocket by law enforcement, supported his conviction. *See Randolph v. State*, 136 Nev. 659, 668, 477 P.3d 342, 351 (2020) (applying harmless error review where the district court improperly admits other act evidence); *Hubbard v. State*, 134 Nev. 450, 459, 422 P.3d 1260, 1267 (2018) ("An error is harmless and not reversible if it did not have a substantial and injurious effect or influence in determining the jury's verdict."); *see also* NRS 178.598 ("Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded."). Therefore, we

ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Bulla

_____, J.
Gibbons

_____, J.
Westbrook

cc: Hon. Lynne K. Jones, Chief Judge
Ristenpart Law
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk