

IN THE SUPREME COURT OF THE STATE OF NEVADA

LENORA DENISE NEWMAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46221

FILED

MAR 24 2006

JANET M. ELSON
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count each of burglary, conspiracy to commit robbery, and robbery with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge. The district court sentenced appellant Lenora Denise Newman to serve two concurrent prison terms of 24 to 72 months and a concurrent prison term of 24 to 120 months with an equal and consecutive prison term for the use of a deadly weapon.

Newman contends that there was insufficient evidence to sustain her conviction. In particular, Newman argues that the only evidence connecting her to the robbery was the victim's testimony that he recognized her voice. Newman argues that the voice identification was inherently unreliable because (1) it was a cross-racial identification; (2) the victim was dazed from being hit over the head during the robbery; and (3) the victim failed to identify Newman as the perpetrator in his 9-1-1 call and his written police statement. Our review of the record on appeal reveals sufficient evidence to establish guilt beyond a reasonable doubt as

determined by a rational trier of fact.¹ In particular, we note that the voice identification was unequivocal and corroborated by other circumstantial evidence, including police officer testimony and the surveillance videotape. The jury could reasonably infer from the evidence presented that Newman and her co-defendant agreed to and did, in fact, burglarize and rob the bar with the use of a deadly weapon. It is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict.²

Newman also contends that the prosecutor engaged in misconduct in rebuttal closing argument by shifting the burden of proof to the defense. Specifically, Newman argues that the prosecutor shifted the burden of proof to the defense in rebuttal closing argument by stating that the defense failed to request a voice identification lineup and, likewise, failed to ask the investigating officer whether the victim told him that Newman's codefendant made a telephone call before the robbery. We conclude that Newman's contention lacks merit. The prosecutor's remarks were a fair response to arguments made by defense counsel that the police investigation was deficient and the victim's testimony was suspect.³

¹See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980); see also Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).


²See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

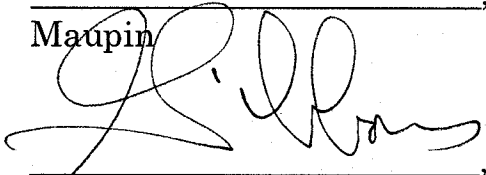
³Cf. Lisle v. State, 113 Nev. 679, 706-07, 941 P.2d 459, 477 (1997) (State did not improperly shift burden of proof when it made general remarks about lack of expert witnesses to point out that defendant failed to substantiate his claim of abuse as a mitigator).

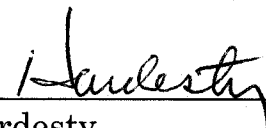
Moreover, when defense counsel objected, the trial court reiterated to the jury that the defense had no burden of proof. We therefore conclude that the prosecutor's comments did not impermissibly shift the burden of proof.

Having considered Newman's arguments and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Maupin


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. Sally L. Loehrer, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk