IN THE SUPREME COURT OF THE STATE OF NEVADA

ROSA D. LOYA A/K/A ROSA DELIA MUNOZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56791

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of conspiracy to commit robbery and robbery with the use of a deadly weapon. Eighth Judicial District Court, Clark County; David B. Barker, Judge.

Appellant Rosa D. Loya first contends that insufficient evidence supports her convictions because the evidence did not show that she conspired with her codefendant or that she knew about the use of a deadly weapon by her co-offender. We conclude that the evidence, when viewed in the light most favorable to the State, is sufficient to support the conspiracy and robbery convictions beyond a reasonable doubt, but is insufficient to support the deadly weapon enhancement. See Jackson v. Virginia, 443 U.S. 307, 319 (1979); Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).

The jury heard testimony that Loya, her boyfriend Ricardo Avalos, and a man called Chucky went to a pawnshop together. The three arrived in a red Suburban and parked in front of the store. The two victims arrived at the pawnshop a few minutes later. They each noticed a

red Suburban parked very close to the entrance. The victims went inside the store and got in line behind Loya and Avalos.

According to the testimony of the responding police officer, surveillance video from the pawn store—which was viewed by the jury—showed the following sequence of events. A few minutes after the victims entered the store, Loya[1] left the store and appeared to be talking on a cell phone. Someone then moved a dark colored SUV from its parking spot. Loya walked through the parking lot and reentered the store. A male then exited a dark colored SUV, appeared to be talking on a cell phone, and entered the store behind Loya. Loya stood somewhere behind the victims and looked over her shoulder at the person who came in behind her. Avalos either pointed or signaled towards the front door, and the other male left the store, having been inside only for a few moments. Loya spoke to Avalos for a few seconds then left. She then stood by the hood of the SUV with the other male. Avalos left the store about a minute later heading in the same direction. He stood at the SUV for about 30 seconds. The two males then began walking while the car moved again. The jury heard testimony that the victims subsequently left the store and noticed that the red Suburban was no longer parked in front of the store. Avalos and Chucky waited for the victims to leave the store, walked through the parking lot, and approached the victims. Avalos demanded one victim's money, hit him twice in the face, and took his necklace and money. Chucky told the other victim that if he ran he would shoot him, pulled up his shirt, and displayed the handle of a gun tucked into his waistband. The assailants ran to a red truck and got into the passenger side. One victim saw Loya in the driver's seat. The next day, Loya was captured on

[1]Avalos identified the woman on the surveillance video as Loya.

the store's security camera pawning the necklace that was taken during the robbery.

Although some of the officer's testimony regarding the contents of the video is vague, the jury was able to watch the video and observe the movements and activities of Loya, Avalos, Chucky, and the victims. Because she has failed to provide this court with the surveillance video or seek transmission of the original exhibit, see NRAP 10(b); NRAP 30, Loya has failed to demonstrate that a rational juror could not reasonably infer that she committed conspiracy to commit robbery and robbery based on the evidence presented. See NRS 199.480; NRS 200.380(1); Thomas v. State, 114 Nev. 1127, 1143, 967 P.2d 1111, 1122 (1998) (defining conspiracy); Garner v. State, 116 Nev. 770, 780, 6 P.3d 1013, 1020 (1998) ("Evidence of a coordinated series of acts furthering the underlying offense is sufficient to infer the existence of an agreement and support a conspiracy conviction."), overruled on other grounds by Sharma v. State, 118 Nev. 648, 56 P.3d 868 (2002); Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981) (it is for the finder of fact to determine the weight and credibility to give to conflicting testimony).

However, we agree with Loya that the evidence was insufficient to support the deadly weapon enhancement. Even when viewed in the light most favorable to the State, no evidence showed that Loya knew Chucky had a gun. See Brooks v. State, 124 Nev. 203, 210, 180 P.3d 657, 661 (2008) (an unarmed offender is subject to a deadly weapon enhancement if he or she, among other things, had knowledge of the use of a deadly weapon). During the course of the robbery—which occurred at night in an indirectly-lit parking lot—Loya was at least 20 feet away in the getaway vehicle. The victims testified that Chucky's gun was not visible until he pulled up his shirt and he never pulled the gun out from the waistband of his pants. And, one victim's testimony indicated that

Chucky was facing away from the red Suburban when he displayed the gun. Accordingly, we conclude that the evidence is insufficient to demonstrate, beyond a reasonable doubt, that Loya knew about the use of a deadly weapon and we reverse the deadly weapon enhancement.

Second, Loya contends that the district court erred by granting the State's motion to admit evidence that she pawned the victim's necklace the day after the robbery because it was not relevant, did not show motive or absence of mistake or accident, and was more prejudicial than probative. After conducting a hearing pursuant to Petrocelli v. State, 101 Nev. 46, 692 P.2d 503 (1985), the district court admitted evidence of the bad act, in part, to show Loya's motive for the conspiracy and robbery, and we conclude that Loya has failed to demonstrate that the district court abused its discretion, see Ford v. State, 122 Nev. 796, 806, 138 P.3d 500, 507 (2006) (reviewing the admission of prior bad acts for an abuse of discretion); see also NRS 48.045(2).

Third, Loya contends that the prosecutor engaged in misconduct during rebuttal closing argument by making an improper attempt to clarify reasonable doubt. We conclude that the prosecutor's comment was a correct statement of the reasonable doubt standard and did not improperly attempt to clarify or elaborate upon the definition of reasonable doubt. See NRS 175.211(1); Daniel v. State, 119 Nev. 498, 521-22, 78 P.3d 890, 905-06 (2003).[2]

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[2]Loya also contends that the prosecutor committed misconduct by (1) pointing out the respective ages of Loya and Avalos and attempting to argue that Loya should know better because she is older, (2) disparaging the defense, (3) introducing his personal knowledge, and (4) misstating the evidence. Loya provides no cogent argument or citation to authority in support of these contentions. Accordingly, we do not address them. See Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987).

Fourth, Loya contends that the district court erred by allowing the responding police officer to testify about the content of the surveillance video because his testimony contained speculation.[3] Although the officer's testimony is replete with phrases indicating that he may have been speculating about the events on the video, because Loya failed to provide the video for our review, we are unable to determine if he was in fact speculating or if the events he was describing were clear from the video and he was merely using those phrases to describe what he saw. Accordingly, we conclude that Loya has failed to demonstrate any error in this regard and we

ORDER the judgment of conviction AFFIRMED IN PART, REVERSE the deadly weapon enhancement, and REMAND this matter to the district court for proceedings consistent with this order.

_____, J.
Saitta

_____, J.
Hardesty

_____, J.
Parraguirre

cc: Hon. David B. Barker, District Judge
Bellon & Maningo, Ltd.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

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[3]Loya also asserts that the officer's testimony was improper expert testimony. Again, this assertion is not supported by any cogent argument or citation to authority. Therefore, we do not address it. See id.