

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 56809

FILED

JUL 14 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *H. Maersal*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of first-degree kidnapping, conspiracy to commit robbery, and robbery. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

While the 17-year-old victim was using a pay phone outside a North Las Vegas casino, appellant Rosa D. Loya approached her in Loya's SUV and asked her for directions. Loya became insistent that the victim accompany her in the SUV to show Loya the way to Loya's destination. Because Loya appeared desperate and the victim did not believe that anything bad would happen, the victim relented and climbed into the SUV. Upon approaching Loya's purported destination, the victim asked Loya to stop the SUV so that she could get out. Instead, Loya continued driving. After the victim again asked Loya to stop the SUV, Loya's codefendant, who had been hiding in the back seat, grabbed the victim around her neck and demanded the victim's gold jewelry that she was wearing and her purse. Upon discovering that the victim's jewelry was not real gold, Loya eventually stopped the SUV and the codefendant pushed the victim out of the SUV. Loya raises three claims on appeal.

First, Loya argues that insufficient evidence supports the convictions. After reviewing the evidence in the light most favorable to the prosecution, we conclude that any rational juror would have found all of the essential elements of first-degree kidnapping, see NRS 200.310, conspiracy to commit robbery, see NRS 199.480; NRS 200.380, and robbery, see NRS 200.380, beyond a reasonable doubt, despite Loya's claim that the victim's inconsistent testimony rendered her incredible. Rose v. State, 123 Nev. 194, 202, 163 P.3d 408, 414 (2007) (quoting Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998)). The mere existence of conflicting testimony does not make the evidence insufficient. See Gaxiola v. State, 121 Nev. 638, 650, 119 P.3d 1225, 1233 (2005) ("The jury determines the weight and credibility to give conflicting testimony.").


Second, Loya contends that the district court erred by denying her motion for mistrial based on the prosecutor's argument in rebuttal that the defense "never said these—conspiracy didn't occur, kidnapping didn't occur." Loya objected, arguing that the prosecutor engaged in improper burden shifting, and moved for a mistrial. We conclude that the district court did not abuse its discretion in denying Loya's motion for mistrial. See Randolph v. State, 117 Nev. 970, 981, 36 P.3d 424, 431 (2001) ("Denial of a motion for mistrial is within the district court's sound discretion, and this court will not overturn a denial absent a clear showing of abuse."). We conclude that the challenged comment was improper but that the error was harmless given the overwhelming evidence of guilt. Valdez v. State, 124 Nev. 97, 196 P.3d 465 (2008).

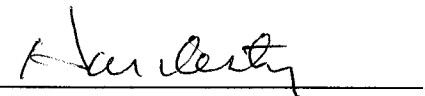
Third, Loya asserts that the prosecutor committed misconduct during rebuttal argument by countering her closing argument that the

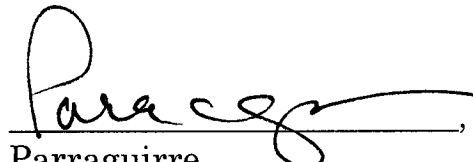
victim's "sighing" during her testimony suggested that she was not naïve and should not be believed was rather an indication that the victim was frustrated. Loya objected, arguing that the prosecutor engaged in improper vouching for the victim. The district court cautioned the prosecutor that he cannot personally vouch for the witness but may comment on her demeanor. See Lisle v. State, 113 Nev. 540, 553, 937 P.2d 473, 481 (1997) (observing that prosecution cannot vouch for credibility of its witness). To the extent the challenged comment constituted improper vouching, we conclude that the error did not affect Loya's substantial rights considering the evidence supporting the convictions. See NRS 178.598; Knipes v. State, 124 Nev. 927, 935, 192 P.3d 1178, 1183 (2008).

Having considered Loya's claims and concluded that no relief is warranted, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Saitta


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Donald M. Mosley, District Judge
Bellon & Maningo, Ltd.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk