

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICARDO IRIVE A/K/A RICARDO
IRIVE AVALOS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56848

FILED

NOV 18 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

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.

First, appellant Ricardo Irive asserts that insufficient evidence supports his conviction for robbery with the use of a deadly weapon because the State failed to prove that he knew his co-offender used a deadly weapon. We disagree because the evidence, when viewed in the light most favorable to the State, is sufficient to support the conviction beyond a reasonable doubt. 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 Irive and his co-offender approached the victims outside of the pawnshop and demanded money. When the victims did not comply, the co-offender said he had a gun and would shoot them if they ran, and lifted up his shirt to reveal the handle of a gun tucked into his waistband. Irive then pulled the necklace off of one victim's neck and punched him in the jaw. Irive hit the victim a second

time and took his wallet. He and his co-offender then left the scene of the robbery together. From this evidence a juror could reasonably infer that Irive knew of the use of the gun by his co-offender and was thus subject to the deadly weapon enhancement.¹ See NRS 193.165(1); Brooks, 124 Nev. at 210 n.27, 180 P.3d at 661 n.27 (an unarmed offender uses a deadly weapon if he takes a victim's property while a co-offender holds the victim at gunpoint (citing Anderson v. State, 95 Nev. 625, 630, 600 P.2d 241, 244 (1979))).

Second, Irive contends that the prosecutor committed misconduct during rebuttal closing argument by improperly attempting 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

Third, Irive alleges that the district court erred at sentencing because it imposed a harsher sentence due to his failure to take responsibility for his actions. Our review of the record does not indicate that the district court's sentencing determination was based on Irive's

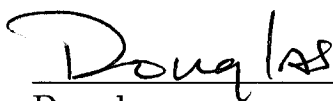
¹Irive does not contest that he was liable as a principal for the robbery or that his co-offender was armed with and used a deadly weapon in the commission of the robbery. See Brooks v. State, 124 Nev. 203, 210, 180 P.3d 657, 661 (2008).

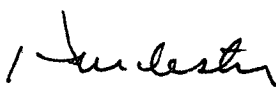
²Irive also asserts that this statement improperly disparaged the defense. Because he provides no cogent argument or citation to authority in support of this assertion, we decline to address it. See Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987).

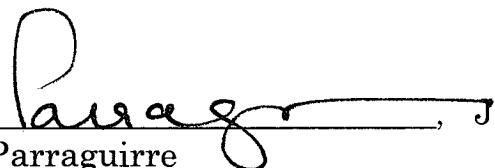
failure to admit culpability. And Irive concedes that the record does not support his contention. Accordingly, this claim lacks merit.

Fourth, Irive contends that the district court erred by allowing a police officer to testify about the content of a 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 Irive has 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 Irive has failed to demonstrate any error in this regard and we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Douglas


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. David B. Barker, District Judge
Law Office of Jeannie N. Hua, Inc.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

³Irive 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.