

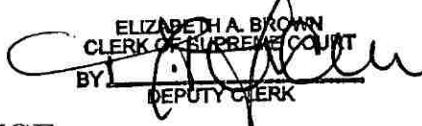
IN THE SUPREME COURT OF THE STATE OF NEVADA

CLYDE BUCKLEY, III,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 90051

FILED

MAR 04 2026

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of robbery with the use of a deadly weapon. Second Judicial District Court, Washoe County; Barry L. Breslow, Judge.

Appellant Clyde Buckley, III was convicted of robbery with the use of a deadly weapon arising from the violent theft of two handbags from a woman in a stairwell connected to a casino parking garage. The victim testified that she was assaulted and robbed by two men wearing face masks—one of whom held a handgun. Buckley testified that he went to the casino with an acquaintance to purchase cannabis, and that the acquaintance perpetrated the robbery in Buckley's presence but without Buckley's participation or prior knowledge. Buckley testified further that the acquaintance handed him one of the victim's bags and the two fled together.

Buckley first argues that insufficient evidence supported the deadly-weapon enhancement for the use of a firearm. In reviewing the sufficiency of the evidence, this court considers "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Origel-Candido v. State*, 114 Nev. 378, 381, 956 P.2d

1378, 1380 (1998) (internal quotation marks omitted). The use of a deadly weapon must be shown by sufficient evidence. *Davis v. State*, 110 Nev. 1107, 1116, 881 P.2d 657, 663 (1994). The victim testified that the robbers pointed a brown handgun at her face and that she then closed her eyes, expecting that she was about to be killed. While Buckley points to the victim's testimony that she later entertained doubt whether the gun may have been a toy, the victim nevertheless maintained at trial that the gun was real. The jury was presented with the victim's account and was properly positioned to weigh the victim's testimony, and "[i]t is not this court's function to reweigh conflicting testimony." *Id.* The record thus contains sufficient evidence for a trier of fact to find that Buckley used a deadly weapon in perpetrating the robbery. *See* NRS 193.165(6).

Buckley next argues that the district court erred in denying a motion to advise the jury to acquit him of the use of a deadly weapon. The court may advise the jury to acquit a defendant when it concludes that the evidence is insufficient to support a conviction. NRS 175.381(1). As stated above, sufficient evidence supported the jury's finding that Buckley was guilty of the use of a deadly weapon, and the district court therefore did not abuse its discretion in denying the motion for an instruction advising the jury to acquit. *See Middleton v. State*, 114 Nev. 1089, 1105, 968 P.2d 296, 307-08 (1998) (holding the district court did not abuse its discretion in refusing to grant an advisory instruction to acquit when sufficient evidence supported the charges).

Buckley next argues that a detective gave improper expert testimony. The detective testified, based on training and experience, that robbers generally use real firearms in perpetrating that offense. We review the district court's admission of evidence for an abuse of discretion.

McLellan v. State, 124 Nev. 263, 267, 182 P.3d 106, 109 (2008). Where a challenge is not preserved at trial, we review for plain error, that is, whether the error was clear and whether it affected the defendant's substantial rights. *Id.* Buckley has not shown that any error affected his substantial rights, given that the detective was thoroughly cross-examined on this testimony. Buckley therefore has failed to show plain error in this regard.

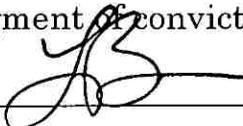
Buckley next argues that 9mm bullets recovered from his residence should have been excluded as either improper other act evidence or evidence that was more unfairly prejudicial than probative. Relevant evidence is generally admissible, NRS 48.015, unless the danger of unfair prejudice substantially outweighs the probative value of the evidence, NRS 48.035(3). Evidence of other crimes, wrongs, or acts may not be admitted to show a defendant's propensity to act similarly but may be admitted for other limited purposes. NRS 48.045(2). Evidence that Buckley possessed bullets at his home was relevant evidence, probative to determining that any gun used was a real firearm and not a toy, as the defense argued. As relevant evidence of the charged offense, the bullets were not evidence of some other crime, wrong, or act. *Cf. Commonwealth v. Daye*, 759 N.E.2d 313, 324-25 (Mass. 2001) (concluding that bullets were admissible "to show the possession by a defendant of an instrument capable of being used in the commission of the crime, without direct proof that that particular instrument was in fact the one used" (citation modified)). Nor did the bullets present a risk of unfair prejudice that substantially outweighed their probative value. Buckley's possession of the bullets was relevant to show he used a firearm during the robbery, and evidence that Buckley merely possessed bullets did not pose a risk of inflaming the passions of the

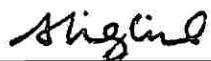
jury. Buckley has therefore failed to show that the district court abused its discretion in admitting the bullets.

Lastly, Buckley argues that it was error to conduct the proceedings without a court recorder present. The proceedings were recorded electronically, and a transcript was provided to facilitate appellate review. Failing to make a record “warrants reversal only if the appellant shows that the record’s missing portions are so significant that their absence precludes this court from conducting a meaningful review of the alleged errors that the appellant identified and the prejudicial effect of any error.” *Preciado v. State*, 130 Nev. 40, 43, 318 P.3d 176, 178 (2014) (addressing an unrecorded sidebar). We note that the transcriber who produced the transcripts of the trial proceedings from the recorded audio has sworn to the accuracy of the transcripts. Buckley does not identify anything material that was inaccurately recorded or omitted. As Buckley does not identify any prejudice to the appeal from the way the proceedings were recorded, he has failed to show that relief is warranted in this regard.¹ *See id.*

Having considered Buckley’s contentions and concluded that relief is not warranted, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Bell


_____, J.
Stiglich


_____, J.
Cadish

¹We nevertheless recognize the importance of having a court recorder present to ensure that the proceedings are recorded, particularly in felony criminal cases. Accurate records of lower court proceedings facilitate meaningful appellate review.

cc: Hon. Barry L. Breslow, District Judge
Washoe County Alternate Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk