

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEVOHN MARKS,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Docket No. 80469

Appeal from a Judgment of Conviction
Following a Jury Trial and Verdict
Eighth Judicial District Court, Clark County
The Honorable Carolyn Ellsworth, District Judge
Case No. C-18-337017-2

**APPELLANT'S APPENDIX
VOL. 1 OF 9**

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CERTIFICATE OF SERVICE

I hereby certify that on the 6 of November, 2020, I served this document on the following:

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AFFIRMATION

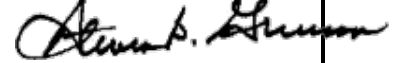
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/s/ Jess Matsuda

Jess Y. Matsuda, Esq.

11-6-20

Date



EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)
)
Plaintiff,)
)
vs.)
)
ANTWAIN KIRBY JOHNSON, DEVOHN)
MARKS,)
)
Defendants.)

GJ No. 17CGJ189AB
DC No. C337017

Taken at Las Vegas, Nevada
Thursday, January 10, 2019
8:28 a.m.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

SUPERSEDING INDICTMENT

Reported by: Danette L. Antonacci, C.C.R. No. 222

12:00 1 GRAND JURORS PRESENT ON JANUARY 10, 2019

2

3 KEITH NELSON, Foreperson

4 TAMA CLARK, Deputy Foreperson

12:00 5 JODI SHERROD, Secretary

6 GAIL ALCALAY, Assistant Secretary

7 MYRL LEE BOYDEN

8 STEVEN BROWN

9 ARTHUR ELLIOTT

12:00 10 CARLTON FOGG, JR.

11 TIMOTHY GRISWOLD

12 VERA HALL

13 MARCUS KNICKERBOCKER

14 OLGA LYLES

12:00 15 SHELLEY MYSZ

16 JOANN RODRIGUEZ

17 SCOTT SEXTON

18 TAY TOLLEFSEN

19

12:00 20 Also present at the request of the Grand Jury:

21 John Giordani, Chief Deputy District Attorney

22

23

24

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12:00

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INDEX OF WITNESSES

Examined

ANTWAINÉ JOHNSON

7

12:00

DAVID MILLER

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12:00

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20 - PHOTO LINE-UP	11

12:00

12:00 1 LAS VEGAS, NEVADA, JANUARY 10, 2019

2 * * * * *

3 DANETTE L. ANTONACCI,

4 having been first duly sworn to faithfully

12:00 5 and accurately transcribe the following

6 proceedings to the best of her ability.

7

8 MR. GIORDANI: Good morning ladies and

9 gentlemen. John Giordani on behalf of the State

08:28 10 presenting the case of State of Nevada versus Antwaine

11 Johnson and Devohn Marks on a superseding Indictment

12 under Grand Jury case number 17CGJ189AB. I've marked a

13 copy of the proposed superseding Indictment as Grand

14 Jury Exhibit Number 1A. So you're aware of what's going

08:28 15 on here, you previously indicted Mr. Antwaine Johnson on

16 this case. The charges now add in a defendant Devohn

17 Marks. I'll tell you the content and form of the

18 charges has not changed, it's all the same charges, it

19 just inserts Devohn Marks' name in as one of the

08:28 20 co-conspirators alleged. I've previously instructed you

21 on the law on this case. Does anyone require further

22 instruction on the law as it sits now?

23 A JUROR: No.

24 MR. GIORDANI: Okay. If at any time during

08:29 25 the course of this or prior to or during your

08:29 1 deliberation you need further instruction on the law
2 please let me know.

3 Is there anyone that was not present during
4 the last presentation?

08:29 5 A JUROR: No, everyone was here.

6 MR. GIORDANI: Seeing no hands. It appears
7 like everyone was present last time. If anyone needs
8 it, there is a copy of the transcript from last time
9 present and available for you.

08:29 10 With that I will bring in my first witness.
11 And I do have two witnesses today.

12 Remain standing, he's going to swear you
13 in.

14 For the record the witness is accompanied
08:29 15 by his attorney. Can you spell your name for the
16 record?

17 MR. WOOLDRIDGE: Of course. Nicholas
18 Wooldridge. That's spelled W-O-O-L-D-R-I-D-G-E. Thank
19 you.

08:30 20 MR. GIORDANI: Thank you.

21 THE FOREPERSON: Please raise your right
22 hand.

23 You do solemnly swear the testimony you are
24 about to give upon the investigation now pending before
08:30 25 this Grand Jury shall be the truth, the whole truth, and

08:30 1 nothing but the truth, so help you God?

2 THE WITNESS: Yes, I do.

3 THE FOREPERSON: Please be seated.

4 You are advised that you are here today to
08:30 5 give testimony in the investigation pertaining to the
6 offenses of conspiracy to commit burglary, burglary
7 while in possession of a deadly weapon, conspiracy to
8 commit robbery, robbery with use of a deadly
9 weapon-victim 60 years of age or older, robbery with use
08:30 10 of a deadly weapon, battery with use of a deadly
11 weapon-victim 60 years of age or older, battery with use
12 of a deadly weapon, involving Antwaine Johnson and
13 Devohn Marks.

14 Do you understand this advisement?

08:30 15 THE WITNESS: Yes, sir.

16 THE FOREPERSON: Please state your first
17 and last name and spell both slowly for the record.

18 THE WITNESS: First and last name is
19 Antwaine Johnson. Spelled A-N-T-W-A-I-N-E, Johnson,
08:31 20 J-O-H-N-S-O-N.

21 THE FOREPERSON: Thank you.

22 ANTWAINE JOHNSON,

23 having been first duly sworn by the Foreperson of the
24 Grand Jury to testify to the truth, the whole truth,
08:31 25 and nothing but the truth, testified as follows:

08:31

1

EXAMINATION

2

3

BY MR. GIORDANI:

4

Q. Mr. Johnson, you are aware and understand

08:31

5

that this Grand Jury has previously indicted you on this

6

particular case; correct?

7

A. Yes, sir.

8

Q. And you're here with your attorney today of

9

your own volition and you wish to testify in this

08:31

10

matter?

11

A. Yes, sir.

12

Q. And prior to your arrest on this case you

13

knew a person by the name of Devohn Marks; is that

14

correct?

08:31

15

A. Yes.

16

Q. All right. I want to get into the facts of

17

the case in a moment, but first let me talk to you about

18

what's gone on since your arrest and indictment.

19

Your attorney Mr. Wooldridge and I had a

08:31

20

conversation where you indicated you wanted to

21

essentially cooperate; is that correct?

22

A. Yes, sir.

23

Q. And you indicated or through your attorney

24

indicated that you were willing to meet with me and the

08:31

25

detective on this case, Detective Dave Miller; is that

08:31 1 correct?

2 A. That's correct.

3 Q. And a couple weeks ago or a week or so ago
4 we all met across the street and we discussed the facts

08:32 5 of the case. Do you remember that?

6 A. Yes, sir.

7 Q. And of course your attorney was present for
8 that?

9 Is that a yes?

08:32 10 A. Yes, sir.

11 Q. You understand as you sit here right now
12 you're a charged defendant, you're still charged after
13 you testify in this case and there's no formal agreement
14 entered into at this point; is that correct?

08:32 15 A. Yes, sir.

16 Q. And we also have an understanding that if
17 you testify here truthfully today and potentially
18 testify again in the future, your attorney and I are
19 going to negotiate in good faith in this case and come
08:32 20 to a potential resolution. Do you understand this?

21 A. Yes, sir.

22 Q. And you still wish to testify knowing that
23 you're still a charged defendant and there is no formal
24 agreement in place?

08:32 25 A. Yes, sir.

08:32 1 Q. All right. So let me talk to you about the
2 facts of the case. Do you admit in front of this Grand
3 Jury that you were involved in an armed robbery that
4 occurred to the Torrey Pines Pub?

08:32 5 A. Yes, sir.

6 Q. And that occurred back in October of last
7 year; correct?

8 A. Yes.

9 Q. Were you involved in that, in the planning
08:33 10 of that for several weeks prior to the actual commission
11 of the offense?

12 A. Yes, sir.

13 Q. How did that planning come about?

14 A. Well, I met Devohn, Chill, through my
08:33 15 apartment building. We knew each other through, before
16 the planning. Then we started planning. He told me
17 about a bar that he knew, he had a friend that worked
18 there, a girl, that she no longer worked there anymore
19 and he knows how to get in there and it was some money
08:33 20 that we maybe can get. And then we went with the
21 planning and started, you know, coming up with the ideas
22 to rob the bar.

23 Q. Okay. What did you have going on in your
24 life at the time? Were you working?

08:33 25 A. At the time I wasn't working. I just had

08:33 1 lost my job. I was doing security. My son mother kind
2 of made me, forced me to lose my job, you know, so I was
3 in a bad situation and I made a bad mistake of coming up
4 with this plan with the guy.

08:34 5 Q. I understand. Let me show you something
6 real quick before we move on. Showing you State's 20.
7 It's a two-page document. Showing you page 1 only. Do
8 you recognize that document?

9 A. Yes, sir.

08:34 10 Q. And is this basically a six pack photo
11 line-up that was conducted during that meeting with
12 Detective Miller where I was present and your attorney
13 was present?

14 A. Yes. Yes, sir.

08:34 15 Q. And there's six photographs on this page
16 and one of those is circled; correct?

17 A. Yes, sir.

18 Q. Is that the person you just referred to as
19 Chill or Devohn?

08:34 20 A. Yes, sir.

21 Q. Okay. I'm going to show the Grand Jury
22 that.

23 You indicated that you met Devohn at your
24 apartment complex; is that right?

08:35 25 A. Yes, sir.

08:35 1 Q. Did he live in the same apartment complex
2 as you?

3 A. Yes.

4 Q. And then he indicated to you that he knew a
08:35 5 way to get some money, he had a friend that worked there
6 at that bar; is that right?

7 A. Yes, sir.

8 Q. And you indicated that you guys started
9 coming up with this plan and there was a couple weeks
08:35 10 worth of planning; is that right?

11 A. Yes, sir.

12 Q. Can you generally describe to the grand
13 jurors what that plan entailed or what the plan was
14 ultimately?

08:35 15 A. The plan was for me just to go in the bar a
16 couple of times or a few times and kind of scope out the
17 bar and basically just see if it was money inside the
18 bar that I could visually see and once I seen that money
19 or something or once I seen that it was, you know, clear
08:35 20 and I was able to, we was able to rob the bar, to let
21 them know via text that it was okay to come in and rob
22 the bar.

23 Q. Okay. How many times would you estimate
24 that you went in and scoped the place out before the
08:36 25 actual robbery went down?

08:36 1 A. Maybe nine or ten times before it actually
2 happened.

3 Q. Was that over the course of a couple or
4 several weeks?

08:36 5 A. Yes. Yes, sir.

6 Q. Did you wear something specific
7 intentionally?

8 A. Yes, I did, sir.

9 Q. What?

08:36 10 A. I think I had an orange vest on.

11 Q. Why would you wear that?

12 A. That was part of the plan, to act like I
13 was coming from work, from the bar, headed to the bar
14 after I got off of work, that was part of the plan.

08:36 15 Q. Prior to the date of the robbery actually
16 happening, when you would go into the bar, was Devohn
17 ready to go or were you communicating with him from a
18 distance?

19 A. Yeah, they always, every time I go to the
08:36 20 bar he was always ready.

21 Q. You say they. Was there a third person
22 involved in the planning?

23 A. Yes, there was a second, another person
24 involved, but I don't really know his name right now.

08:37 25 Q. Can you describe him to the best of your

08:37 1 ability?

2 A. He's maybe 5'7", 5'8", probably about 5'8",
3 5'9"-ish, maybe 170, 180 pounds, black male, kind of
4 slim, athletic build. To my knowledge.

08:37 5 Q. How many times did you come into contact
6 with that guy?

7 A. Maybe about the same time I came in contact
8 with Chill, a little less than, a couple of times, a
9 little less. Maybe about nine or ten times I came in

08:37 10 contact with the guy.

11 Q. Was he though present for some of the
12 planning, actively involved in your plan?

13 A. Yes.

14 Q. Did you communicate with him through your
08:37 15 cell phone or just with Devohn?

16 A. No, just with Devohn.

17 Q. Okay. So was Devohn essentially your point
18 person and you would communicate solely with him about
19 what was going on in the bar?

08:38 20 A. Yes, sir.

21 Q. And you would do that through your cell
22 phone?

23 A. Yes, sir.

24 Q. What was your cell phone at the time?

08:38 25 A. I believe it was (424)375-1085.

08:38 1 Q. And off the top of your head do you know
2 Devohn's cell phone number?

3 A. No, I do not.

4 Q. All right. Did it have a 323 area code
08:38 5 that you recall?

6 A. Yes, sir.

7 Q. So were there times prior to the robbery
8 actually happening where you would go in and they were
9 ready to go, to rob the place?

08:38 10 A. Yes, sir.

11 Q. Why didn't it happen prior to the day it
12 actually happened?

13 A. I guess they was kind of ready for me to
14 see if I visually seen any money and I kept saying that
08:38 15 I didn't see any money and I guess they was waiting for
16 less people to be there so it would be more easier I
17 guess to rob the bar.

18 Q. Okay. Let's go to October 29th when it
19 actually happened.

08:38 20 A. Okay.

21 Q. That evening or I guess the early morning
22 hours of October 29th, did you go to that bar and sit
23 there and pose as a customer?

24 A. Yes, sir.

08:39 25 Q. Do you recall how long you were in that bar

08:39 1 prior to everything actually happening?

2 A. Maybe two to three hours.

3 Q. During the course of that two to three
4 hours, were you actively communicating with Devohn

08:39 5 through your cell phone?

6 A. Yes, sir.

7 Q. Was that through phone calls or text
8 messages?

9 A. Text messages.

08:39 10 Q. And where were you sitting in the bar when
11 you were doing that?

12 A. I kind of had view of the door and I think
13 the security camera had kind of view of the camera view
14 as well.

08:39 15 Q. While you were sitting there, were you kind
16 of gambling and talking to the bartender as though you
17 were a customer?

18 A. Yes, sir.

19 Q. Did you have any beers or --

08:39 20 A. Yes, sir.

21 Q. -- drinks?

22 A. I had a few beers and some water.

23 Q. Towards the time when it occurred, close in
24 time to when the robbery actually went down, were there

08:40 25 several essentially elderly folks as customers in the

08:40 1 bar?

2 A. Yes, I believe there was two elderly, a
3 woman and a man. I had a lot of contact with the
4 gentleman. We was talking, joking a lot with the
08:40 5 elderly guy.

6 Q. And eventually did you communicate with
7 Devohn that it was time?

8 A. Yes.

9 Q. Do you remember how you said that or how
08:40 10 you did that?

11 A. Well, they kept telling me is it a go and
12 they was kind of anxious to go, because like I said it
13 had been several weeks before we did it so I guess they
14 just, I kind of told them that I didn't really see any
08:40 15 money. So they mentioned, they said let's just go in
16 and do it, it was a hit and miss type thing. It was
17 like let's just go in and do it. So I eventually said
18 okay, you guys can come in. I said it's a go I think I
19 said.

08:40 20 Q. You said it's a go?

21 A. Yes.

22 Q. Was there a plan in place as to how they
23 were going to get into the bar?

24 A. Yes.

08:41 25 Q. How was that?

08:41 1 A. Well, I was supposed to, because I had
2 parked next to the side door which is the back entrance,
3 that's where I parked my car, so my thing was to just
4 go, once I said it was a go, just go out to the door
08:41 5 like I'm walking to my vehicle and they was to come in
6 and push me back in the bar and come in that way.

7 Q. That door that you planned on, was that a
8 door that was locked from the outside?

9 A. Yes, sir.

08:41 10 Q. So the only way for someone to enter that
11 door from outside is for it to be opened from the
12 inside?

13 A. Yes, sir.

14 Q. All right. And when you said it's a go,
08:41 15 did you get up from your stool and go to that door?

16 A. Yes, sir.

17 Q. Once you got up from your stool and opened
18 that door, describe what happens.

19 A. Once I opened the door, the two guys, they
08:41 20 charged me and pushed me on the ground real hard and
21 just told me to lay down, they had the guns pointed at
22 me so I just laid down and everything else I couldn't
23 really see because I was laying on the floor the whole
24 time till they left.

08:42 25 Q. Did you hear commotion?

08:42 1 A. Yeah, I heard a little bit telling people
2 to, I think he was, I just heard Devohn's voice telling
3 people to maybe give up their wallets, I don't really
4 know exactly what they were saying, I just know there
08:42 5 was a lot of commotion going on, stuff like that,
6 where's the money and stuff like that.

7 Q. And you indicated they both had guns; is
8 that right?

9 A. Yes, sir.

08:42 10 Q. Had you seen those guns previously?

11 A. No, sir.

12 Q. Had you seen either gun during the course
13 of the planning or any gun at all while you guys were
14 talking about it?

08:42 15 A. No, sir.

16 Q. When they eventually left the bar, what did
17 you do?

18 A. I actually stayed. I realized that they
19 hit the gentleman in the head for some reason, the older
08:42 20 gentleman I was talking to, they hit him in the head, so
21 I kind of told everybody to stay calm, everybody was
22 kind of shaken up, so I kind of helped. I asked for
23 towels and kind of put some towels over the elderly
24 guy's head.

08:42 25 Q. Was that part of the plan, bash an old guy

08:43 1 in the head?

2 A. No, that wasn't part of the plan. I didn't
3 like that at all. So that wasn't part of the plan to
4 hit anybody or hurt anybody or anything so. After that
08:43 5 I just stayed and gave a statement, my name and
6 everything.

7 Q. When you stayed and you gave a statement,
8 you were still acting as though you didn't know what was
9 going on and you were a victim; correct?

08:43 10 A. Yes, sir.

11 Q. And you had contact with police, when you
12 say I gave a statement, you actually gave a recorded
13 statement to law enforcement?

14 A. Yes.

08:43 15 Q. During that statement -- actually you gave
16 a couple statements, right?

17 A. I believe so. I wrote down a few -- yeah,
18 what happened.

19 Q. Initially they treated you like you were a
08:43 20 victim of the crime, right?

21 A. Yes, sir.

22 Q. And did it become apparent to you at some
23 point that they were suspecting you?

24 A. Yes, cause the investigator told me that it
08:43 25 looks like I was involved I guess from the footage he

08:43 1 seen.

2 Q. When he confronted you with that, did you
3 still maintain your story that you were not involved?

4 A. Yes, sir.

08:44 5 Q. And did you indicate to him that he could
6 look at your cell phone and you let him look at your
7 cell phone?

8 A. Yes, sir.

9 Q. Did he find anything important at that
08:44 10 point?

11 A. Not at that point, but he did --

12 Q. Why not?

13 A. Cause I had erased the texts, the text
14 messages out of my phone.

08:44 15 Q. When you say I erased the text messages, do
16 you mean communication with Devohn?

17 A. Yes, sir.

18 Q. And did you do that at some point in time
19 between the robbery occurring and before detectives
08:44 20 actually talked to you?

21 A. Yes, sir.

22 Q. And did Detective Miller actually confront
23 you with that and say basically I'm going to get your
24 phone records and if there's anything deleted off there
08:44 25 I'm going to find out?

08:44 1 A. Yes, sir.

2 Q. Do you remember that?

3 A. Yes, sir, I remember that.

4 Q. And you still maintained your story?

08:44 5 A. I still maintained my story.

6 Q. After, you were released from that scene,

7 correct, like you weren't arrested there?

8 A. No, sir.

9 Q. Afterward did you have communication with

08:44 10 Mr. Marks?

11 A. Yes.

12 Q. Or Devohn?

13 A. Yes, sir.

14 Q. How did you communicate that time?

08:45 15 A. Well, I actually seen him when I got home.

16 I guess they was hanging, he was hanging out with the

17 other guy next to his house because his house is not far

18 from mine and he kind of gave me the, we went to another

19 part of the building and he gave me the share of my

08:45 20 money and he told, me asked me what happened, I just

21 told him I made a statement to the police and that was

22 it.

23 Q. Okay. Now let's back up a second.

24 A. Okay.

08:45 25 Q. You saw them back at your apartment

08:45 1 complex?

2 A. Yes.

3 Q. Was this hours after the robbery?

4 A. Maybe like an hour after the robbery

08:45 5 happened.

6 Q. Was there a plan for you to meet there?

7 A. No, it wasn't a plan initially till I seen

8 him, then he told me let's meet there, in the other side

9 of the building.

08:45 10 Q. But the plan, all along you were going to

11 get a cut of this, you weren't doing it for free?

12 A. Yes.

13 Q. So you see them and then he tells you to go

14 back behind the building and you do that?

08:45 15 A. Yes, sir.

16 Q. And you said he gave you your cut?

17 A. Yes.

18 Q. How much was that?

19 A. It was only \$300.

08:46 20 Q. At that point in time did you know how much

21 they got from the bar?

22 A. No, I didn't.

23 Q. So he gives you your cut and you said you

24 told him I gave a statement under my name?

08:46 25 A. Yes, sir.

08:46 1 Q. Did he show any concern about you talking
2 to police or was that also part of the plan?

3 A. I think that was part of the plan, just to
4 stay and act like a victim.

08:46 5 Q. Since that date have you had communication
6 with him since that time you got the money from him?

7 A. No, sir.

8 Q. Have you seen him around your apartment?

9 A. Yes, I have been seeing him lately. He
08:46 10 still stays there so I have seen him.

11 Q. Have you talked to him about this case
12 since then?

13 A. No, sir.

14 Q. I would assume he doesn't know you're here
08:46 15 today?

16 A. No, sir.

17 Q. After that all happens, the detective made
18 contact with you again?

19 A. Yes, sir.

08:46 20 Q. And during that contact did he communicate
21 with you that he had gotten your records or not at that
22 point?

23 A. I believe, yes.

24 Q. Okay.

08:47 25 A. Yes.

08:47 1 Q. And then ultimately you were arrested. Was
2 that by Detective Miller or someone else?

3 A. Someone else arrested me.

4 Q. As you sit here today, again you understand
08:47 5 that you're still a charged defendant and once you leave
6 this room you're still going to be a charged defendant;
7 is that correct?

8 A. Yes, sir.

9 MR. GIORDANI: I have no further questions
08:47 10 for this witness. Do any of the grand jurors have
11 questions?

12 Seeing no hands.

13 THE FOREPERSON: By law, these proceedings
14 are secret and you are prohibited from disclosing to
08:47 15 anyone anything that has transpired before us, including
16 evidence and statements presented to the Grand Jury, any
17 event occurring or statement made in the presence of the
18 Grand Jury, and information obtained by the Grand Jury.

19 Failure to comply with this admonition is a
08:47 20 gross misdemeanor punishable by up to 364 days in the
21 Clark County Detention Center and a \$2,000 fine. In
22 addition, you may be held in contempt of court
23 punishable by an additional \$500 fine and 25 days in the
24 Clark County Detention Center.

08:47 25 Do you understand this admonition?

08:48 1 THE WITNESS: Yes, sir.

2 THE FOREPERSON: Thank you. You're

3 excused.

4 THE WITNESS: Thank you.

08:49 5 THE FOREPERSON: Please raise your right

6 hand.

7 You do solemnly swear the testimony you are

8 about to give upon the investigation now pending before

9 this Grand Jury shall be the truth, the whole truth, and

08:49 10 nothing but the truth, so help you God?

11 THE WITNESS: Yes, sir.

12 THE FOREPERSON: Please be seated.

13 THE WITNESS: Thank you.

14 THE FOREPERSON: You are advised that you

08:49 15 are here today to give testimony in the investigation

16 pertaining to the offenses of conspiracy to commit

17 burglary, burglary while in possession of a deadly

18 weapon, conspiracy to commit robbery, robbery with use

19 of a deadly weapon-victim 60 years of age or older,

08:49 20 robbery with use of a deadly weapon, battery with use of

21 a deadly-weapon victim 60 years of age or older, and

22 battery with use of a deadly weapon, involving Antwaine

23 Johnson and Devohn Marks.

24 Do you understand this advisement?

08:49 25 THE WITNESS: Yes, sir.

08:49 1 THE FOREPERSON: Please state your first
2 and last name and spell both slowly for the record.

3 THE WITNESS: My name is David Miller.
4 D-A-V-I-D, M-I-L-L-E-R.

08:49 5 THE FOREPERSON: Thank you.

6 DAVID MILLER,
7 having been first duly sworn by the Foreperson of the
8 Grand Jury to testify to the truth, the whole truth,
9 and nothing but the truth, testified as follows:

08:49 10
11 EXAMINATION

12
13 BY MR. GIORDANI:

14 Q. And sir, you're a detective with Metro;
08:49 15 correct?

16 A. Yes, sir.

17 Q. You testified previously on this case,
18 State versus Antwaine Johnson and Devohn Marks; is that
19 right?

08:50 20 A. Yes, sir.

21 Q. Last time you testified the only defendant
22 in front of the Grand Jury was Antwaine Johnson?

23 A. That's correct.

24 Q. Since that date did you develop a second
08:50 25 suspect?

08:50 1 A. Yes, sir.

2 Q. How did you go about developing that second
3 suspect?

4 A. It started with the phone records, Antwaine
08:50 5 Johnson's phone records. As I think I may have

6 previously mentioned, between 3:28, on the day of the
7 robbery, between 3:28 in the morning and 5:11 in the
8 morning, so between that time of the robbery, when we
9 looked at Antwaine's cell phone it didn't show any text

08:50 10 messages. I asked him that day if he deleted any text
11 messages. I suspected he might have. When we received
12 his phone records back it confirmed that in fact, I
13 think I originally said 118, upon closer review it was
14 117 text messages were deleted from Antwaine's phone and
08:50 15 those were all phone, to the exact same phone number
16 which was (323)427-1092 I believe.

17 Q. 3092?

18 A. 3092, that's correct, yes. And that number
19 a records check came back to a man named Devohn Marks.

08:51 20 So that was when I first began taking a look at Devohn
21 Marks.

22 Q. Okay. So you previously testified and laid
23 foundation as to how you got Mr. Johnson's cell phone
24 records.

08:51 25 A. Yes.

08:51 1 Q. Do you recall that?

2 A. Yes.

3 Q. And you indicated that you got those
4 records back, reviewed them and came up with what you've
08:51 5 just described as 117 or so text messages back and
6 forth?

7 A. That's correct.

8 Q. Now ultimately do you then basically do a
9 piggy back and obtain Devohn Marks' cell phone records
08:51 10 through Verizon Wireless for that 323 number in the same
11 manner in which you obtained Mr. Johnson's cell phone
12 records?

13 A. Yes, I did.

14 Q. Did you receive those records back and then
08:52 15 review those records?

16 A. I did.

17 Q. Those having been from a different cell
18 phone company, were those a little bit different in the
19 format form in which they came?

08:52 20 A. Yes.

21 Q. Ultimately were you able to essentially
22 decipher those and corroborate whether or not Mr. Marks'
23 cell phone records showed the same communications as
24 Mr. Johnson's records?

08:52 25 A. Yeah, they were the same basically. When I

08:52 1 said 117 on Antwaine's, I think his were 116. I'm not
2 sure of the technical differences between cell phone
3 companies, but yes, virtually the records matched.

4 Q. Okay. And again, without going into any
08:52 5 detail, did you have a confirmed form that you found
6 where Mr. Marks self reported that phone number as being
7 his phone number?

8 A. Correct.

9 Q. So you know that's Mr. Marks' phone or at
08:52 10 least he says through this form that it's his phone;
11 correct?

12 A. Correct.

13 Q. Okay. When you reviewed that, his phone
14 records, Mr. Marks, were you looking at content meaning
08:53 15 what was said in text messages or just text messages
16 going back and forth?

17 A. Right, just text messages back and forth,
18 you can't see text content.

19 Q. And were those text messages all within
08:53 20 that window right leading up to the robbery occurring?

21 A. That is correct.

22 Q. Did that further your belief or suspicion
23 that Mr. Marks' phone, or whoever was using it,
24 presumably Mr. Marks, was communicating with the
08:53 25 co-conspirator of this robbery just before the door was

08:53 1 open to allow the gunmen in?

2 A. That is correct.

3 Q. Knowing that and having Mr. Marks as a
4 suspect, did you and I communicate and throw around the
08:53 5 idea of potentially Mr. Johnson cooperating?

6 A. Correct.

7 Q. And his attorney talked to me about that
8 and I conveyed that information to you and ultimately
9 there was a meeting set up where all four of us were
08:54 10 present; is that right?

11 A. It is right.

12 Q. When you went into that meeting, you
13 already had Mr. Marks as a suspect?

14 A. Correct.

08:54 15 Q. And did you walk into that meeting with
16 this photo line-up that's up on the overhead already
17 prepared and ready to go?

18 A. I did.

19 Q. And during the course of that meeting where
08:54 20 Mr. Johnson conveyed what actually happened that night,
21 did you show him that photographic line-up?

22 A. I did.

23 Q. And did he circle the person in the
24 number 2 position?

08:54 25 A. Yes, he did.

08:54 1 Q. And who is that person?

2 A. That's Devohn Marks.

3 Q. Just for the record, did you have a third

4 suspect for a short period of time but essentially rule

08:54 5 him out?

6 A. Correct.

7 Q. What is that person's name?

8 A. Reuben Green I believe his name was.

9 Q. Why was that person a suspect?

08:54 10 A. Because when reviewing Devohn Marks' cell

11 phone records, I want to say about five hours before the

12 robbery I saw some contact between Devohn Marks and

13 Reuben Green and thought maybe just maybe he could be

14 involved. But all contact stopped with him around I

08:55 15 want to say 12:30 and the robbery happened around 5:14.

16 So I didn't know for sure but I thought maybe I'd show

17 Antwaine a photo line-up with Reuben Green's photograph

18 in there as well and just see if he recognized him or

19 not and he did not.

08:55 20 Q. Okay. And did you do that just outside the

21 Grand Jury room this morning?

22 A. I did.

23 Q. So as we sit now, Mr. Green has been

24 essentially ruled out by Mr. Johnson cause he was in a

08:55 25 photographic line-up and he didn't select him?

08:55 1 A. Correct.

2 Q. But Mr. Marks, did he have any hesitation
3 at all when he selected Mr. Marks as --

4 A. No.

08:55 5 Q. -- the gunman?

6 A. No, he did not.

7 Q. Prior to that meeting we had with
8 Mr. Johnson actually months ago, when you first
9 developed Mr. Marks as a suspect, go and make contact

08:56 10 with Mr. Marks yourself?

11 A. I did.

12 Q. And did you interview him?

13 A. I did.

14 Q. Was he in custody at the time?

08:56 15 A. Yes.

16 Q. Okay. Did you --

17 I'm going to ask the ladies and gentlemen

18 of the Grand Jury to disregard that, strike that

19 statement from the record. Can everyone follow that

08:56 20 admonition?

21 A JUROR: Uh-huh.

22 BY MR. GIORDANI:

23 Q. What I was trying to ask you is, was he
24 Mirandized when you interviewed him with regard to this
08:56 25 crime?

08:56 1 A. He was.

2 Q. Is that because he was in custody for
3 whatever that unrelated thing is?

4 A. Correct.

08:56 5 Q. So you Mirandized him on this robbery case
6 and did he agree to speak with you after Miranda?

7 A. He did.

8 Q. And did you confront him with records
9 related to his cell phone?

08:56 10 A. I did.

11 Q. What did he say about the robbery, if
12 anything?

13 A. He said he didn't do the robbery and he
14 said, of course I said what's all this contact between
08:57 15 you and this other guy, and he said oh, well my, I think
16 someone took my phone right around that time.

17 Q. Did he acknowledge to you that that was his
18 phone?

19 A. Yes, he actually gave me all the digits of
08:57 20 the phone correctly but the last four he transversed, if
21 that's the right word. He mixed up the last four
22 numbers of the phone number.

23 Q. And to be fair to Mr. Marks, did he
24 essentially give you an alibi or claim an alibi?

08:57 25 A. He said his girlfriend Destiny Dixon would

08:57 1 alibi him.

2 Q. Meaning say she knew where he was during
3 the time of the robbery?

4 A. Correct.

08:57 5 Q. And did you ultimately attempt to follow-up
6 on that alibi?

7 A. Yes, I spoke to Destiny Dixon.

8 Q. Without going into any detail as to what
9 she said, could she corroborate or give him the alibi
08:57 10 that he said she could?

11 A. No, she could not.

12 Q. Do you recall when that was, when that
13 interview was with Mr. Marks and Mrs. Dixon?

14 A. I believe it was November 15th. I believe.

08:58 15 Q. So this was just about a month after the
16 robbery occurred?

17 A. Yes, sir.

18 Q. All right. One last thing, Detective. In
19 reviewing both men's cell phone records, in addition to
08:58 20 the multiple communications right leading up to the
21 robbery, was there records of communications during the
22 weeks prior?

23 A. Yes. Antwaine's records that we retrieved
24 were all the way, for the whole month of October,
08:58 25 whereas Devohn's records were, I want to say just the

08:58 1 days around the robbery. So on Devohn's records, like
2 on the 28th and 29th, I think Antwaine and Devohn were
3 in contact with one another via text message over 250
4 times. When we had the full month of Antwaine's records
08:59 5 you could see that Antwaine and Devohn were in contact
6 with one another about 1,222 times. So the whole month
7 of October, starting back like around October 6th I
8 believe, we could see them in contact with one another.

9 Q. Was that consistent with what Mr. Johnson
08:59 10 told you during our meeting that they had been planning
11 this for quite some time and communicating through cell
12 phone?

13 A. That is correct.

14 MR. GIORDANI: All right. I have no
08:59 15 further questions for this witness. Do any of the grand
16 jurors have questions?

17 THE FOREPERSON: By law, these proceedings
18 are secret and you are prohibited from disclosing to
19 anyone anything that has transpired before us, including
08:59 20 evidence and statements presented to the Grand Jury, any
21 event occurring or statement made in the presence of the
22 Grand Jury, and information obtained by the Grand Jury.

23 Failure to comply with this admonition is a
24 gross misdemeanor punishable by up to 364 days in the
08:59 25 Clark County Detention Center and a \$2,000 fine. In

08:59 1 addition, you may be held in contempt of court
2 punishable by an additional \$500 fine and 25 days in the
3 Clark County Detention Center.

4 Do you understand this admonition?

09:00 5 THE WITNESS: Yes, sir.

6 THE FOREPERSON: Thank you. You're
7 excused.

8 THE WITNESS: All right. Have a good day.

9 MR. GIORDANI: All right. Ladies and
09:00 10 gentlemen, that concludes the testimony today. I'm
11 going to ask you to deliberate as to both Antwaine
12 Johnson and Devohn Marks. Before I leave the room does
13 anyone need further instruction on the law?

14 Seeing no hands. Thank you.

09:00 15 (At this time, all persons, other than
16 members of the Grand Jury, exit the room at 9:00 a.m.
17 and return at 9:02 a.m.)

18 THE FOREPERSON: Mr. District Attorney, by
19 a vote of 12 or more grand jurors a true bill has been
09:02 20 returned against defendants Antwaine Kirby Johnson and
21 Devohn Marks charging the crimes of conspiracy to commit
22 robbery, burglary while in possession of a deadly
23 weapon, conspiracy to commit robbery, robbery with use
24 of a deadly weapon-victim 60 years of age or older,
09:02 25 robbery with use of a deadly weapon, battery with use of

09:02 1 a deadly weapon-victim 60 years of age or older, and
2 battery with use of a deadly weapon, in Grand Jury case
3 number 17CGJ189AB. We instruct you to prepare an
4 Indictment in conformance with the proposed Indictment
09:03 5 previously submitted to us.

6 I want to correct the first count that I
7 said. I accidentally said conspiracy to commit robbery.
8 I meant to say conspiracy to commit burglary as the
9 first count mentioned.

09:03 10 MR. GIORDANI: Thank you.

11 (Proceedings concluded.)

12 --oo0oo--

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09:03

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REPORTER'S CERTIFICATE

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STATE OF NEVADA)
 : ss
4 **COUNTY OF CLARK**)

09:03

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I, Danette L. Antonacci, C.C.R. 222, do
hereby certify that I took down in Shorthand (Stenotype)
all of the proceedings had in the before-entitled matter
at the time and place indicated and thereafter said
shorthand notes were transcribed at and under my
direction and supervision and that the foregoing
transcript constitutes a full, true, and accurate record
of the proceedings had.

Dated at Las Vegas, Nevada,
January 21, 2019.

/s/ Danette L. Antonacci

Danette L. Antonacci, C.C.R. 222

09:03

1

AFFIRMATION

2

Pursuant to NRS 239B.030

3

4

The undersigned does hereby affirm that the
preceding TRANSCRIPT filed in GRAND JURY CASE NUMBER
17CGJ189AB:

09:03

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8

 X Does not contain the social security number of any
person,

9

09:03

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-OR-

11

 Contains the social security number of a person as
required by:

12

13

A. A specific state or federal law, to-
wit: NRS 656.250.

14

-OR-

09:03

15

B. For the administration of a public program
or for an application for a federal or
state grant.

16

17

18

/s/ Danette L. Antonacci

19

Signature

1-21-19

Date

09:03

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21

Danette L. Antonacci

22

Print Name

23

Official Court Reporter

24

Title

25

<p>A JUROR: [3] 5/22 6/4 33/20</p> <p>BY MR. GIORDANI: [3] 8/1 27/11 33/21</p> <p>MR. GIORDANI: [8] 5/6 5/23 6/5 6/19 25/8 36/13 37/8 38/9</p> <p>MR. WOOLDRIDGE: [1] 6/16</p> <p>THE FOREPERSON: [14]</p> <p>THE WITNESS: [11] 7/1 7/14 7/17 25/25 26/3 26/10 26/12 26/24 27/2 37/4 37/7</p> <p>\$</p> <p>\$2,000 [2] 25/21 36/25</p> <p>\$300 [1] 23/19</p> <p>\$500 [2] 25/23 37/2</p> <p>—</p> <p>--oo0oo [1] 38/12</p> <p>-ish [1] 14/3</p> <p>-OR [2] 40/10 40/14</p> <p>/</p> <p>/s [2] 39/17 40/18</p> <p>1</p> <p>1,222 [1] 36/6</p> <p>1-21-19 [1] 40/18</p> <p>10 [3] 1/14 2/1 5/1</p>	<p>1085 [1] 14/25</p> <p>1092 [1] 28/16</p> <p>116 [1] 30/1</p> <p>117 [3] 28/14 29/5 30/1</p> <p>118 [1] 28/13</p> <p>12 [1] 37/19</p> <p>12:30 [1] 32/15</p> <p>15th [1] 35/14</p> <p>170 [1] 14/3</p> <p>17CGJ189AB [4] 1/7 5/12 38/3 40/5</p> <p>180 [1] 14/3</p> <p>19 [1] 40/18</p> <p>1A [1] 5/14</p> <p>2</p> <p>20 [1] 11/6</p> <p>2019 [4] 1/14 2/1 5/1 39/15</p> <p>21 [1] 39/15</p> <p>222 [3] 1/25 39/6 39/18</p> <p>239B.030 [1] 40/2</p> <p>25 [2] 25/23 37/2</p> <p>250 [1] 36/3</p> <p>28th [1] 36/2</p> <p>29th [3] 15/18 15/22 36/2</p> <p>3</p> <p>3092 [2] 28/17 28/18</p> <p>323 [3] 15/4 28/16 29/10</p> <p>364 [2] 25/20 36/24</p> <p>375-1085 [1] 14/25</p> <p>3:28 [2] 28/6 28/7</p>	<p>4</p> <p>424 [1] 14/25</p> <p>427-1092 [1] 28/16</p> <p>5</p> <p>5'7 [1] 14/2</p> <p>5'8 [2] 14/2 14/2</p> <p>5'9 [1] 14/3</p> <p>5:11 [1] 28/7</p> <p>5:14 [1] 32/15</p> <p>6</p> <p>60 [6] 7/9 7/11 26/19 26/21 37/24 38/1</p> <p>656.250 [1] 40/13</p> <p>6th [1] 36/7</p> <p>8</p> <p>8:28 [1] 1/15</p> <p>9</p> <p>9:00 [1] 37/16</p> <p>9:02 [1] 37/17</p> <p>A</p> <p>A-N-T-W-A-I-N-E [1] 7/19</p> <p>a.m [3] 1/15 37/16 37/17</p> <p>ability [2] 5/6 14/1</p> <p>able [3] 12/20 12/20 29/21</p> <p>about [19]</p> <p>accidently [1] 38/7</p> <p>accompanied [1] 6/14</p> <p>accurate [1] 39/12</p>
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trying [1] 33/23	Verizon [1] 29/10	7/9 7/11 26/19
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upon [3] 6/24	walking [1] 18/5	31/19 35/2
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using [1] 30/23	water [1] 16/22	who [1] 32/1
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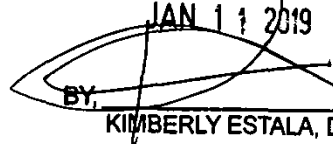
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ORIGINAL

1 **IND**

2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 JOHN GIORDANI
6 Chief Deputy District Attorney
7 Nevada Bar #012381
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

JAN 11 2019
BY 
KIMBERLY ESTALA, DEPUT

DISTRICT COURT
CLARK COUNTY, NEVADA

C-18-337017-2

IND
Indictment
4808264



9 THE STATE OF NEVADA,

10 Plaintiff,

CASE NO: C-18-337017-2

11 -vs-

DEPT NO: V

12 ANTWAINE JOHNSON, #8447208
13 DEVOHN MARKS, #2798254

SUPERSEDING
INDICTMENT

14 Defendant.

15 STATE OF NEVADA }
16 COUNTY OF CLARK } ss.

17 The Defendant above named, ANTWAINE KIRBY JOHNSON, DEVOHN MARKS,
18 accused by the Clark County Grand Jury of the crime(s) of CONSPIRACY TO COMMIT
19 BURGLARY (Gross Misdemeanor - NRS 205.060, 199.480 - NOC 50445); BURGLARY
20 WHILE IN POSSESSION OF A DEADLY WEAPON (Category B Felony - NRS 205.060 -
21 NOC 50426); CONSPIRACY TO COMMIT ROBBERY (Category B Felony - NRS 200.380,
22 199.480 - NOC 50147); ROBBERY WITH USE OF A DEADLY WEAPON, VICTIM 60
23 YEARS OF AGE OR OLDER (Category B Felony - NRS 200.380, 193.165, 193.167 - NOC
24 50143); ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS
25 200.380, 193.165 - NOC 50138); BATTERY WITH USE OF A DEADLY WEAPON,
26 VICTIM 60 YEARS OF AGE OR OLDER (Category B Felony - NRS 200.481, 193.167 -
27 NOC 50224) and BATTERY WITH USE OF A DEADLY WEAPON (Category B Felony -

1 NRS 200.481 - NOC 50223), committed at and within the County of Clark, State of Nevada,
2 on or about the 29th day of October, 2018, as follows:

3 COUNT 1 - CONSPIRACY TO COMMIT BURGLARY

4 did willfully and unlawfully conspire with each other and an unknown co-conspirator
5 to commit a burglary, by the conspirators committing the acts as set forth in Counts 2 and 4
6 through 9, said acts being incorporated by this reference as though fully set forth herein.

7 COUNT 2 - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

8 did willfully, unlawfully, and feloniously enter TORREY PINES PUB, owned or
9 occupied by GERALD FERONY and/or SHAYLENE BERNIER and/or MYER
10 GOLDSTEIN and/or KATHLEEN PETCOFF, located at 6374 W. Lake Mead, Clark County,
11 Nevada, with intent to commit a felony, to wit: robbery, while in possession of and/or gaining
12 possession of a firearm and/or pneumatic gun, a deadly weapon, during the commission of the
13 crime and/or before leaving the structure, the Defendant(s) being criminally liable under one
14 or more of the following principles of criminal liability, to wit: (1) by directly committing this
15 crime; and/or (2) by aiding or abetting in the commission of this crime, with the intent that this
16 crime be committed, by counseling, encouraging, hiring, commanding, inducing and/or
17 otherwise procuring the other to commit the crime, whereby Defendant ANTWAINE KIRBY
18 JOHNSON conspired with DEVOHN MARKS and an unknown co-conspirator to commit a
19 robbery upon the occupants and/or employees of the TORREY PINES PUB, thereafter,
20 Defendant ANTWAINE KIRBY JOHNSON entered the business with the intent to aid and
21 abet DEVOHN MARKS and AN UNKNOWN CO-CONSPIRATOR, thereafter DEVOHN
22 MARKS and AN UNKNOWN CO-CONSPIRATOR entered the business armed with
23 firearms and/or pneumatic guns to commit the said robbery; and/or (3) pursuant to a conspiracy
24 to commit this crime, with the intent that this crime be committed, Defendants acting in concert
25 throughout.

26 COUNT 3 - CONSPIRACY TO COMMIT ROBBERY

27 did willfully, unlawfully, and feloniously conspire with each other and an unknown
28 co-conspirator to commit a robbery, by the conspirators committing the acts as set forth in

1 Counts 4 through 9, said acts being incorporated by this reference as though fully set forth
2 herein.

3 COUNT 4 - ROBBERY WITH USE OF A DEADLY WEAPON, VICTIM 60 YEARS OF
4 AGE OR OLDER

5 did willfully, unlawfully, and feloniously take personal property, to wit: a wallet and
6 contents, from the person of GERALD FERONY, who is 60 years of age or older, or in his
7 presence, by means of force or violence, or fear of injury to, and without the consent and
8 against the will of GERALD FERONY, with use of a deadly weapon, to wit: a firearm and/or
9 pneumatic gun, the Defendant(s) being criminally liable under one or more of the following
10 principles of criminal liability, to wit: (1) by directly committing this crime; and/or (2) by
11 aiding or abetting in the commission of this crime, with the intent that this crime be committed,
12 by counseling, encouraging, hiring, commanding, inducing and/or otherwise procuring the
13 other to commit the crime, whereby Defendant ANTWAINE KIRBY JOHNSON scoped the
14 business out and/or opened a locked door to allow DEVOHN MARKS and AN UNKNOWN
15 CO-CONSPIRATOR entry to the business, thereafter DEVOHN MARKS and AN
16 UNKNOWN CO-CONSPIRATOR entered said business with firearms and/or pneumatic
17 guns, thereafter DEVOHN MARKS and AN UNKNOWN CO-CONSPIRATOR robbed the
18 said victim of the said property; and/or (3) pursuant to a conspiracy to commit this crime, with
19 the intent that this crime be committed, Defendants acting in concert throughout.

20 COUNT 5 - ROBBERY WITH USE OF A DEADLY WEAPON

21 did willfully, unlawfully, and feloniously take personal property, to wit: U.S. Currency,
22 from the person of SHAYLENE BERNIER, or in her presence, by means of force or violence,
23 or fear of injury to, and without the consent and against the will of SHAYLENE BERNIER,
24 with use of a deadly weapon, to wit: a firearm and/or pneumatic gun, the Defendant(s) being
25 criminally liable under one or more of the following principles of criminal liability, to wit: (1)
26 by directly committing this crime; and/or (2) by aiding or abetting in the commission of this
27 crime, with the intent that this crime be committed, by counseling, encouraging, hiring,
28 commanding, inducing and/or otherwise procuring the other to commit the crime, whereby

1 Defendant ANTWAINE KIRBY JOHNSON scoped the business out and/or opened a locked
2 door to allow DEVOHN MARKS and AN UNKNOWN CO-CONSPIRATOR entry to the
3 business, thereafter DEVOHN MARKS and AN UNKNOWN CO-CONSPIRATOR entered
4 said business with firearms and/or pneumatic guns, thereafter DEVOHN MARKS and AN
5 UNKNOWN CO-CONSPIRATOR robbed the said victim of the said property; and/or (3)
6 pursuant to a conspiracy to commit this crime, with the intent that this crime be committed,
7 Defendants acting in concert throughout.

8 COUNT 6 - ROBBERY WITH USE OF A DEADLY WEAPON

9 did willfully, unlawfully, and feloniously take personal property, to wit: a wallet and
10 contents, from the person of MYER GOLDSTEIN, or in his presence, by means of force or
11 violence, or fear of injury to, and without the consent and against the will of MYER
12 GOLDSTEIN, with use of a deadly weapon, to wit: a firearm and/or pneumatic gun, the
13 Defendant(s) being criminally liable under one or more of the following principles of criminal
14 liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the
15 commission of this crime, with the intent that this crime be committed, by counseling,
16 encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit
17 the crime, whereby Defendant ANTWAINE KIRBY JOHNSON scoped the business out
18 and/or opened a locked door to allow DEVOHN MARKS and AN UNKNOWN CO-
19 CONSPIRATOR entry to the business, thereafter DEVOHN MARKS and AN UNKNOWN
20 CO-CONSPIRATOR entered said business with firearms and/or pneumatic guns, thereafter
21 DEVOHN MARKS and AN UNKNOWN CO-CONSPIRATOR robbed the said victim of the
22 said property; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that
23 this crime be committed, Defendants acting in concert throughout.

24 COUNT 7 - BATTERY WITH USE OF A DEADLY WEAPON, VICTIM 60 YEARS OF
25 AGE OR OLDER

26 did willfully, unlawfully, and feloniously use force or violence upon the person of
27 another, to wit: GERALD FERONY, who is 60 years of age or older, with use of a deadly
28 weapon, to wit: a firearm and/or pneumatic gun, by a co-conspirator striking the said GERALD

1 FERONY in the head with said firearm and/or pneumatic gun, the Defendant(s) being
2 criminally liable under one or more of the following principles of criminal liability, to wit: (1)
3 by directly committing this crime; and/or (2) by aiding or abetting in the commission of this
4 crime, with the intent that this crime be committed, by counseling, encouraging, hiring,
5 commanding, inducing and/or otherwise procuring the other to commit the crime, whereby
6 Defendant ANTWAINE KIRBY JOHNSON scoped the business out and/or opened a locked
7 door to allow DEVOHN MARKS and AN UNKNOWN CO-CONSPIRATOR entry to the
8 business, thereafter DEVOHN MARKS and AN UNKNOWN CO-CONSPIRATOR entered
9 said business with firearms and/or pneumatic guns, thereafter DEVOHN MARKS and AN
10 UNKNOWN CO-CONSPIRATOR robbed the said victim of the said property, and during the
11 course of said robbery, DEVOHN MARKS or AN UNKNOWN CO-CONSPIRATOR struck
12 the said victim with the firearm and/or pneumatic gun; and/or (3) pursuant to a conspiracy to
13 commit this crime, with the intent that this crime be committed, Defendants acting in concert
14 throughout.

15 COUNT 8 - BATTERY WITH USE OF A DEADLY WEAPON

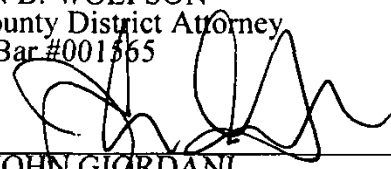
16 did willfully, unlawfully, and feloniously use force or violence upon the person of
17 another, to wit: MYER GOLDSTEIN, with use of a deadly weapon, to wit: a firearm and/or
18 pneumatic gun, by a co-conspirator striking the said MYER GOLDSTEIN in the head with
19 said firearm, the Defendant(s) being criminally liable under one or more of the following
20 principles of criminal liability, to wit: (1) by directly committing this crime; and/or (2) by
21 aiding or abetting in the commission of this crime, with the intent that this crime be committed,
22 by counseling, encouraging, hiring, commanding, inducing and/or otherwise procuring the
23 other to commit the crime, whereby Defendant ANTWAINE KIRBY JOHNSON scoped the
24 business out and/or opened a locked door to allow DEVOHN MARKS and AN UNKNOWN
25 CO-CONSPIRATOR entry to the business, thereafter DEVOHN MARKS and AN
26 UNKNOWN CO-CONSPIRATOR entered said business with firearms and/or pneumatic
27 guns, thereafter DEVOHN MARKS and AN UNKNOWN CO-CONSPIRATOR robbed the
28 said victim of the said property, and during the course of said robbery, DEVOHN MARKS or

1 AN UNKNOWN CO-CONSPIRATOR struck the said victim with the firearm and/or
2 pneumatic gun; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that
3 this crime be committed, Defendants acting in concert throughout.

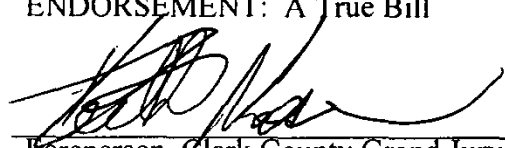
4 DATED this 10th day of January, 2019.

5 STEVEN B. WOLFSON
6 Clark County District Attorney
Nevada Bar #001565

7
8 BY


9 JOHN GIORDANI
Chief Deputy District Attorney
Nevada Bar #012381

10 ENDORSEMENT: A True Bill

11 
12 Foreperson, Clark County Grand Jury
13
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28

Names of Witnesses and testifying before the Grand Jury:

BERNIER, SHAYLENE – c/o CCDA, 200 Lewis Avenue, LV, NV 89101

BONNER, ROBERT – c/o CCDA, 200 Lewis Avenue, LV, NV 89101

FERONY, GERALD – c/o CCDA, 200 Lewis Avenue, LV, NV 89101

GOLDSTEIN, MYER – c/o CCDA, 200 Lewis Avenue, LV, NV 89101

JOHNSON, ANTWAINE – c/o CCDA, 200 Lewis Avenue, LV, NV 89101

MILLER, DAVID – LVMPD #6627

PETCOFF, KATHLEEN – c/o CCDA, 200 Lewis Avenue, LV, NV 89101

Additional Witnesses known to the District Attorney at time of filing the Indictment:

CUSTODIAN OF RECORDS - CCDC

CUSTODIAN OF RECORDS - LVMPD COMMUNICATIONS

CUSTODIAN OF RECORDS - LVMPD RECORDS

FERGUSON, WESTON – LVMPD #14938

FERNANDEZ, JOSEPH – LVMPD #15132

HANSHEW, JASON – LVMPD #9664

HUBBARD, WILL – LVMPD #5439

KING, CAITLIN – LVMPD #14372

ROSALES, JEZABEL – LVMPD #16122

SMITH, SAMUEL – LVMPD #6424

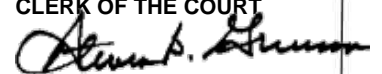
SOTELO, JANET – LVMPD #16236

TOMAINO, JOHNATHAN – LVMPD #16214

17CGJ189A-B/18F22039X/ed-GJ

LVMPD EV# 181000156355

(TK12)



MOT
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Clark County District Attorney
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JOHN GIORDANI
Chief Deputy District Attorney
Nevada Bar #012381
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

-vs-

DEVOHN MARKS,
#2798254

Defendant.

CASE NO: C-18-337017-2

DEPT NO: V

**STATE'S NOTICE OF MOTION
AND MOTION TO ADMIT EVIDENCE OF OTHER BAD ACTS**

DATE OF HEARING: FEBRUARY 20, 2019
TIME OF HEARING: 9:00 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through JOHN GIORDANI, Chief Deputy District Attorney, and files this Notice of Motion and Motion to Admit Evidence of Other Bad Acts.

This Motion is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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1 **THE CASE THE STATE SEEKS TO ADMIT TO PROVE IDENTITY**

2 **AND M.O. – C272989**

3 On February 3, 2011, Defendant Devohn Marks and several co-conspirators
4 participated in a takeover-style armed robbery of a local bar called Fred's Tavern. *See Exhibit*
5 *2*. According to Defendant himself, he and his co-conspirators made a plan to rob Fred's
6 Tavern. In the days leading up to the robbery, Defendant and his co-conspirators entered
7 Fred's Tavern and "cased the bar." They would enter the bar, look around, and then leave
8 without purchasing anything. On the day of the robbery, Defendant entered the bar while his
9 co-conspirators lied in wait outside. Defendant looked around for a few minutes and then left
10 the bar without purchasing anything. He conveyed the relevant information regarding how
11 many people were inside the bar to his co-conspirators. According to one of the victim's,
12 Defendant re-entered the bar about 5 minutes later with his co-conspirators, who robbed the
13 employees at gunpoint. After the robbery, Defendant and his co-conspirators fled in
14 Defendant's vehicle. An astute patrol officer spotted the vehicle and was able to stop it after a
15 short pursuit. Defendant and his co-conspirator's fled the vehicle on foot, and all but 1 were
16 apprehended after a foot pursuit. Defendant was identified by the two victims as one of the
17 robbers. He subsequently confessed to having been involved in the Fred's Tavern robbery,
18 along with the dozen or so preceding robberies.

19 **THE INSTANT CASE – C337017**

20 *While still on parole for the aforementioned robberies, Defendant committed the*
21 *robbery in the instant case.* The instant case is eerily similar to the robbery Defendant
22 confessed and ultimately pled guilty to in case C272989. Here, Defendant and his co-
23 conspirators (Antwain Johnson and an unknown co-conspirator) made a plan to rob the Torrey
24 Pines Pub. *See Exhibit 7*. Johnson was to case the bar and report back to Defendant via text
25 messages. For weeks leading up to the robbery, Johnson would enter the bar and case it, while
26 reporting to Defendant via text message. Ultimately, on the date of the robbery, Johnson
27 entered the bar, while Defendant and the unknown co-conspirator lied in wait outside. When
28 the time was right, Johnson exited the bar through an exit-only door, allowing Defendant and

1 the unknown co-conspirator to enter the bar. Defendant and the unknown co-conspirator were
2 wearing masks and gloves, and both were armed with firearms. Defendant violently pistol
3 whipped an elderly bar patron, and he and the unknown co-conspirator robbed the bar.

4 During the course of the robbery, Johnson acted as though he was a victim, and even
5 stuck around until police arrived. Det. David Miller quickly realized that Johnson was
6 involved, and obtained his phone records. Johnson's phone records showed hundreds of
7 communications with Defendant in the hours leading up to the robbery. Because Defendant
8 was wearing a mask and gloves, none of the victims can identify him, and there is no
9 physical evidence tying him to the scene.

10 ARGUMENT

11 I. EVIDENCE CONCERNING DEFENDANT'S PRIOR ROBBERY CONVICTION

12 IN CASE C272989 IS ADMISSIBLE PURSUANT TO NRS 48.045.

13 The State seeks to admit evidence concerning Defendant's prior Robbery pursuant to
14 NRS 48.045 as evidence of identity and any other valid non-propensity purpose.

15 **A. The Evidence is Admissible as Proof of Identity, Knowledge, Common Scheme or** 16 **Plan, M.O., and any other valid Non-Propensity Purpose**

17 Section 48.045(2) of the Nevada Revised Statutes provides:

18 Evidence of other crimes, wrongs or acts is not admissible to prove the character
19 of a person in order to show that he acted in conformity therewith. It may,
20 however, be admissible for other purposes, such as proof of motive, opportunity,
21 intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

22 Prior to admitting such evidence, the State must establish that (1) the prior act is
23 relevant to the crime charged; (2) the act is proven by clear and convincing evidence; and (3)
24 the evidence is more probative than prejudicial. Cipriano v. State, 111 Nev. 534, 541, 894
25 P.2d 347, 352 (1995), overruled on other grounds by State v. Sixth Judicial District Court, 114
26 Nev. 739, 964 P.2d 48 (1998). With regard to a determination of prejudice:

27 "Prejudicial" is not synonymous with "damaging." Rather, evidence is unduly
28 prejudicial...only if it "uniquely tends to evoke an emotional bias against the

1 defendant as an individual and...has very little effect on the issues” or if it invites
2 the jury to prejudge “a person or cause on the basis of extraneous factors.”
3 Painting a person faithfully is not, of itself, unfair.
4 People v. Johnson, 185 Cal.App.4th 520, 534 (2010). The admissibility of prior bad acts is
5 within the sound discretion of the trial court and will not be overturned on appeal unless the
6 decision is manifestly wrong. Canada v. State, 104 Nev. 288, 291-293, 756 P.2d 552, 554
7 (1988).
8 In Fields v. State, 125 Nev. 785, 220 P.3d 709 (2009), the Nevada Supreme Court
9 affirmed the District Court Judge’s determination to admit evidence that the Defendant owed
10 debts to the victim and that he had previously engaged in a conversation about killing a man
11 to whom he owed money. The Nevada Supreme Court agreed with the District Court’s
12 decision that such evidence was admissible as proof of motive, to disprove his contention that
13 he was just an innocent bystander to his wife’s scheme, and to prove identity.
14 Likewise in Ledbetter v. State, 122 Nev. 252, 262-263, 129 P.3d 671, 678-679 (2006),
15 the Supreme Court held that it was proper for the District Court to admit evidence of other bad
16 acts to establish the Defendant’s motive to repeatedly subject his stepdaughter to sexual
17 assaults. The bad act evidence in that case consisted of evidence that Defendant sexually
18 assaulted other young female members of his own family. In reaching its decision, the Court
19 noted that the evidence was relevant to motive, proven by clear and convincing evidence (due
20 to four (4) different witness’ testimony) and highly probative as it showed Defendant’s sexual
21 attraction to, and an obsession with, young female members of his family.
22 Most recently, in Bigpond v. State, 128 Nev. Adv. Op. 10, 270 P.3d 1244 (2012), the
23 Nevada Supreme Court affirmed the District Court’s decision to admit evidence of prior acts
24 of domestic violence pursuant to NRS 48.045(2). *In upholding the trial court’s decision, the*
25 *Court specifically acknowledged that evidence may be admitted pursuant to NRS 48.045 for*
26 *reasons other than those delineated in the statute.* The Court found that the evidence was
27 admissible because the history of domestic violence provided context to the relationship
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1 between the victim and Defendant and the victim's possible reasons for recanting her
2 testimony.

3 As to the identity exception, the Nevada Supreme Court has held that "evidence of other
4 crimes has strong probative value when there is sufficient evidence of similar characteristics
5 of conduct in each crime to show the perpetrator of the other crime and the perpetrator of the
6 crime for which the defendant has been charged is one and the same person." Mayes v. State,
7 95 Nev. 140, 142, 591 P.2d 250, 251 (1979). Difficulty in identifying the perpetrators, coupled
8 with a high degree of similarity between the crimes, makes evidence of other bad acts more
9 probative than prejudicial. Canada v. State, 104 Nev. at 293, 756 P.2d at 555 (emphasis
10 added). Furthermore, evidence admitted pursuant to the common scheme or plan exception is
11 admissible when it tends to prove the crimes charged by revealing that the defendant planned
12 to commit the crimes. Brinkley v. State, 101 Nev. 676, 679, 708 P.2d 1026, 1028 (1985).
13 "The remarkable similarity of the *modus operandi* in the testimony regarding the other crimes,
14 and their relative proximity in time to the charged offense establish the probative value of such
15 evidence." Williams v. State, 95 Nev. 830, 833, 603 P.2d 694, 697 (1979). Courts have
16 permitted the use of such evidence under NRS 48.045(2) in many similar cases.

17 For example, in Reed v. State, 95 Nev. 190, 591 P.2d 274 (1979), the defendant was
18 charged with Burglary. The victim testified that she was in her motel room at the Orbit Inn
19 Motel when she heard the window open, saw a hand reach in and turn the doorknob, and then
20 two men entered the room and took her purse and cup of change. In addition, the victim
21 testified that she thought the defendant was the man who stood at the door. A palm print and
22 a fingerprint from the point of entry matched the defendant. The Supreme Court held that the
23 admission of evidence concerning two other burglaries committed by the Defendant in the
24 same area and around the same time was properly permitted for the purpose of establishing
25 the Defendant's identity.

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1 Similarly, in Quiriconi v. State, 96 Nev. 766, 769, 616 P.2d 1111, 1113 (1980), wherein
2 the Defendant's trial on the charge of sexual assault took place nearly four (4) years after the
3 assault occurred, the Supreme Court upheld the admission of testimony from two (2) of his
4 previous victims that tended to establish his identity. Specifically, the Court noted that the
5 testimony of the victims as to the description of the car driven by Defendant, the manner in
6 which the Defendant identified himself as "Mike from California," the identity of the gun, and
7 the manner in which the Defendant approached them tended to establish the identity. In
8 addition, it specifically held that the District Court properly found that the probative value of
9 such evidence outweighed the claimed prejudicial effect.

10 Likewise, in Bolin v. State, 114 Nev. 503, 960 P.2d 784 (1998), overruled on other
11 grounds by, Richmond v. State, 118 Nev. 924, 934 59 P.3d 1249, 1256 (2002), the Defendant
12 stood trial on charges of first degree kidnapping with use of a deadly weapon, sexual assault
13 with use of a deadly weapon, and murder with use of a deadly weapon. After a *Petrocelli*
14 hearing the State was permitted to introduce evidence of the Defendant's prior rape and
15 kidnapping convictions which had occurred twenty years earlier. The Court upheld the
16 District Court's determination that such evidence was admissible to prove identity, plan,
17 similar *modus operandi*, and intent. It noted that there were sufficient similarities between
18 Bolin's 1975 rape and kidnapping convictions and the victim's murder to warrant the
19 admission of his prior bad act for the purposes of establishing identity. Those similarities
20 included: (1) in each case the victim was abducted late at night after finishing her shift at work
21 and the offenses carried through to the morning; (2) both victims were about the same height,
22 age, build, and hair color; (3) each victim was ambushed; (4) each victim was robbed of her
23 wedding ring and valuables; (4) the defendant used the victims' cars in commission of the
24 crimes in each case; and, (5) in each case the victim was subjected to a brutal attack after the
25 victims were taken to a remote location.

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1 Also, in Green v. State, 94 Nev. 731 (1978), the Nevada Supreme Court held that
2 evidence of a robbery allegedly committed by Defendant on the day before the robbery for
3 which he was being tried was admissible, over objection, as relevant to prove identity. The
4 Defense theory was “mistaken identity” and the State's evidence to prove identity was not
5 conclusive, as two of three eyewitnesses were unable positively to identify accused.

6 Additionally, in Canada v. State, 104 Nev. 288, 756 P.2d 552 (1988), two defendants
7 (Lester Canada and Michael Smith) were accused of jointly participating in two armed
8 robberies. They were tried together in separate jury trials for each robbery. Defendants
9 challenged their convictions as to the Sit ‘N Bull lounge robbery on the grounds that evidence
10 of the Charleston Heights robbery should not have been admitted to prove their identities
11 because such evidence was more prejudicial than probative. Their specific challenges to its
12 admission were premised upon (1) the witnesses’ less than definite identifications of the
13 suspects in the Sit ‘N Bull robbery; and, (2) the alleged absence of uniqueness in the *modus*
14 *operandi* exhibited in the two robberies. In upholding the District Court’s decision to admit
15 the evidence the Supreme Court noted, “Contrary to the assertions of Canada and Smith, the
16 difficulty in identifying the perpetrators of the Sit ‘N Bull robbery argues for, rather than
17 against, the admission of evidence of the Charleston Heights robbery.” Canada, 104 Nev. at
18 292, 756 P.2d at 554. Furthermore, the Court rejected the defendants’ arguments that there
19 was nothing unique about the two robberies and identified the following similarities: (1) both
20 robberies took place in deserted bars very late at night; (2) in each robbery, one of the suspects
21 entered alone and ordered a beer to allow him to case the bar; (3) in each robbery, at least one
22 of the suspects wore a mask; (4) in each robbery the suspects were armed with shotguns; and,
23 (5) “the *modus operandi* common to the two (2) robberies was unique in comparison with
24 other robberies in the manner in which the perpetrators savaged their victims.” Canada, 104
25 Nev. at 293, 756 at 555.

26 In the instant case, the State will not have an issue proving up the prior robbery.
27 Defendant confessed, pled guilty, and even wrote an apology letter to the victims. To be clear,
28 the State is not seeking to admit evidence of the dozen or so robberies Defendant was convicted

1 of – the State seeks to admit evidence of the one robbery in that series that is almost identical
2 to the robbery in the instant case. The State submits that the similarities between Defendant's
3 prior Robbery and the present case warrant the admission of evidence concerning the prior
4 case to establish Defendant's identity, common scheme or plan, and M.O. in the present case.
5 Given the fact that Defendant's defense is apparently going to be that he was not involved in
6 the Burglary/Robbery, the evidence is highly probative. The similarities between each case
7 are: (1) each time, Defendant participated in the offenses with two (2) other persons; (2) each
8 time, Defendant and his co-conspirators targeted bars as opposed to homes or victims on the
9 street; (3) each time, they extensively planned the robbery and cased the location for
10 information days, and the information was conveyed to people waiting outside; (4) each time,
11 they waited until an opportune time and then robbed the victims inside the bar; (5) in each
12 case, Defendant and his co-conspirators committed a takeover style robbery of a bar; (6) in
13 each case, one of the robbers jumped over the counter and stole money from the bar itself; and
14 (7) in each case, the employees/patrons of the bar were also robbed for their personal property.
15 The similarity between these offenses are significant, and highly probative to show the identity
16 of Defendant as one of the masked and gloved robbers.

17 Furthermore, the evidence is relevant and probative to knowledge, common scheme or
18 plan, M.O., and any other non-propensity purpose. Defendant's prior robbery demonstrates
19 that he possesses the knowledge to commit this type of takeover style robbery of a local bar,
20 that he has the knowledge to plan the robbery in advance, and to send someone in to case the
21 bar, that he has the patience to wait until an opportune time to rob the bar, and that he is
22 familiar with the security measures in place at local bars. In addition, the evidence is highly
23 probative of his unique Modus Operandi, as well as the common scheme and plan used to
24 commit the robbery.

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CONCLUSION

Based upon all of the foregoing, the State respectfully requests that its Motion *in Limine* to Admit Evidence of Other Bad Acts Pursuant to NRS 48.045 be granted.

DATED this 11th day of February, 2019.

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY



JOHN GIORDANI
Chief Deputy District Attorney
Nevada Bar #012381

CERTIFICATE OF ELECTRONIC TRANSMISSION

I hereby certify that service of Notice of Motion and Motion to Admit Evidence of Other Bad Acts was made this 11th day of February, 2019, by electronic transmission to:

JESS MATSUDA, ESQ.
jess@jesslaw.com

BY:



J. SERPA
Secretary for the District Attorney's Office

JG/js for ed/GCU

EXHIBIT 1

Dept. 12

JUSTICE COURT, LAS VEGAS TOWNSHIP

CLARK COUNTY, NEVADA

FILED

MAY 19 2011

CLERK OF COURT

STATE OF NEVADA,
Plaintiff,

vs.

MARKS, DEVOHN,
2798254 Defendant(s)

) District Court Case No.:

) Justice Court Case No.: 11F04191C

C-11-273034-3
I

5/24/11
1:30 PM

CERTIFICATE

I hereby certify the foregoing to be a full, true and correct copy of the proceedings as the same appear in the above case.

C-11-273034-3
CBO
Criminal Bindover
1421085



Dated this May 18, 2011

Diana L. Sullivan

Justice of the Peace, Las Vegas Township

CLERK OF THE COURT

RECEIVED
MAY 19 2011

JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA

STATE OF NEVADA,
Plaintiff,

vs.

MARKS, DEVOHN,
Defendant(s)

) District Court Case No.:
)
) Justice Court Case No.: 11F04191C
)
)
)
)
)

COMMITMENT and ORDER TO APPEAR

An Order having been made this day by me that **MARKS, DEVOHN** be held to answer before the Eighth Judicial District Court, upon the charge of **COUNT 1: CONSPIRACY TO COMMIT ROBBERY; COUNT 2 - 8 and 10 - 13: ROBBERY WITH USE OF A DEADLY WEAPON; COUNT 9: ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON** committed in said Township and County, on or between **DECEMBER 13, 2010**.

IT IS FURTHER ORDERED that the Sheriff of the County of Clark is hereby commanded to receive the above named defendant(s) into custody, and detain said defendant(s) until he/she can be legally discharged, and be committed to the custody of the Sheriff of said County, until bail is given in the sum of \$250,000.

IT IS FURTHER ORDERED that said defendant(s) is/are commanded to appear in the Eighth Judicial District Court, Regional Justice Center, Lower Level Arraignment Courtroom "A", Las Vegas, Nevada at 1:30PM on the 24TH day of MAY, 2011 for arraignment and further proceedings on the within charge(s).

Dated this May 18, 2011

Diana A. Sullivan

Justice of the Peace, Las Vegas Township

JUSTICE COURT, LAS VEGAS TOWNSHIP

STATE VS. MARKS, DEVOHN

CASE NO. 11F04191C

DATE, JUDGE
OFFICERS OF COURT
PRESENT

APPEARANCES - HEARING

CONTINUED TO:

APRIL 29, 2011 D. SULLIVAN S. NELSON, DA A. WEINSTOCK for D. WINDER, ESQ. G. DELUCCA, CR S. WESTBAY, CLK	TIME SET FOR STATUS CHECK NEGOTIATIONS DEFENDANT PRESENT IN COURT ** IN CUSTODY ** MOTION TO CONTINUE BY DEFENSE - NO OBJECTION BY STATE MOTION GRANTED MATTER PASSED FOR STATUS CHECK POSSIBLE NEGOTIATIONS RETURN DATE SET BY COURT DEFENDANT REMANDED TO THE CUSTODY OF THE SHERIFF	5/10/11 8AM #12 SW
MAY 10, 2011 P.DABNEY FOR D. SULLIVAN R. NELSON, DA A.WEINSTOCK, ESQ FOR D.WINDER, ESQ G.DELUCCA, CR S.WESTBAY, CLK	DEFENDANT PRESENT **IN CUSTODY** CONTINUED FOR STATUS CHECK ON NEGOTIATIONS (LAST CONTINUED FOR STATUS CHECK ON NEGOTIATIONS) DATE SET DEFENDANT REMANDED TO THE CUSTODY OF THE SHERIFF	05/17/11 8:00AM #12 MMP
MAY 17, 2011 D. SULLIVAN R.NELSON, DA A.WEINSTOCK, ESQ FOR D.WINDER, ESQ G.DELUCCA, CR S.WESTBAY, CLK	DEFENDANT PRESENT **IN CUSTODY** PER NEGOTIATIONS DEFENDANT UNCONDITIONALLY WAIVES THE RIGHT TO PRELIMINARY HEARING DEFENDANT BOUND OVER TO DISTRICT COURT AS CHARGED DEFENDANT TO APPEAR IN THE LOWER LEVEL ARRAIGNMENT COURTROOM A ALL COUNTS AND CASES TO RUN CONCURRENT RESTITUTION TO BE PAID IN CASES DATE SET DEFENDANT REMANDED TO THE CUSTODY OF THE SHERIFF	05/24/11 1:30PM DCA DISTRICT COURT MMP

JUSTICE COURT, LAS VEGAS TOWNSHIP

STATE VS. MARKS, DEVOHN

CASE NO. 11F04191C

DATE, JUDGE
OFFICERS OF COURT
PRESENT

APPEARANCES - HEARING

CONTINUED TO:

<p>MARCH 8, 2011 D. SULLIVAN J. VILLANI, DA D. WINDER, ESQ. APPOINTED G. DELUCCA, CR S. WESTBAY, CLK</p>	<p>TIME SET FOR 72 HOUR HEARING DEFENDANT PRESENT IN COURT *IN CUSTODY*</p> <p>COMPLAINT FILED IN OPEN COURT: COUNT 1 – CONSPIRACY TO COMMIT ROBBERY COUNTS 2, 3, 4, 5, 6, 7, 8, 10, 11, 12 & 13 – ROBBERY WITH USE OF A DEADLY WEAPON COUNT 9 – ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON</p> <p>INITIAL ARRAIGNMENT DEFENDANT ADVISED OF CHARGES/WAIVES READING OF COMPLAINT D. WINDER, ESQ. APPOINTED IN ABSENTIA TO REPRESENT DEFENDANT COURT TO NOTIFY D. WINDER RE-SET BAIL: 250,000/250,000 TOTAL PRELIMINARY HEARING SET</p> <p>DEFENDANT REMANDED TO THE CUSTODY OF THE SHERIFF</p>	<p>03/22/11 9:30AM #12</p> <p>DP</p>
<p>MARCH 22, 2011 D. SULLIVAN R. NELSON, DA D. WINDER, ESQ. G. DELUCCA, CR S. WESTBAY, CLK</p>	<p>TIME SET FOR PRELIMINARY HEARING DEFENDANT PRESENT IN COURT ** IN CUSTODY ** CONTINUED BY STIPULATION OF COUNSEL MATTER PASSED FOR STATUS CHECK NEGOTIATIONS RETURN DATE SET BY COURT</p> <p>DEFENDANT REMANDED TO THE CUSTODY OF THE SHERIFF</p>	<p>4/4/11 8AM #12</p> <p>sw</p>
<p>APRIL 04, 2011 D. SULLIVAN M. FLECK, DA D. WINDER, ESQ. G. DELUCCA, CR M. PROCTOR, CLK</p>	<p>TIME SET FOR STATUS CHECK ON NEGOTIATIONS DEFENDANT PRESENT IN COURT **IN CUSTODY** PASSED FOR STATUS CHECK ON NEGOTIATIONS DATE SET</p> <p>DEFENDANT REMANDED TO THE CUSTODY OF THE SHERIFF</p>	<p>04/22/11 8AM #12 (STATUS CHECK NEGOS;</p> <p>04/29/11 9:30 #12 (PRELIM HEARING)</p>
<p>APRIL 22, 2011 C.HAFEN FOR D. SULLIVAN R.NELSON, DA A.WEINSTOCK FOR D.WINDER, ESQ G.DELUCCA, CR S.WESTBAY, CLK</p>	<p>DEFENDANT PRESENT **IN CUSTODY** MOTION BY STATE TO VACATE AND RESET PRELIMINARY HEARING DATE OF 04/29/11-MOTION GRANTED CONTINUED FOR STATUS CHECK ON NEGOTIATIONS DATE SET</p> <p>DEFENDANT REMANDED TO THE CUSTODY OF THE SHERIFF</p>	<p>04/29/11 8:00AM #12 MMP</p>

1 JUSTICE COURT, LAS VEGAS TOWNSHIP

FILED IN OPEN COURT

MAR 0 2011

2 CLARK COUNTY, NEVADA

CLERK

3 THE STATE OF NEVADA,

4 Plaintiff,

CASE NO: 11F04191A-C

5 -vs-

DEPT NO: 12

6 CHRISTOPHER KITCHEN #2798253,
7 CORY CRUMBLE #2794360,
8 DEVOHN MARKS #2798254,

9 Defendants.

CRIMINAL COMPLAINT

10 The Defendants above named having committed the crimes of CONSPIRACY TO
11 COMMIT ROBBERY (Felony - NRS 199.480, 200.380); ROBBERY WITH USE OF A
12 DEADLY WEAPON (Felony - NRS 200.380, 193.165) and ATTEMPT ROBBERY WITH
13 USE OF A DEADLY WEAPON (Felony - NRS 200.380, 193.330, 193.165), in the manner
14 following, to-wit: That the said Defendants, on or between December 13, 2010 and January
15 16, 2011, at and within the County of Clark, State of Nevada,

16 COUNT 1 - CONSPIRACY TO COMMIT ROBBERY

17 Defendants did, on or between December 13, 2010 and January 16, 2011, then and
18 there meet with each other and between themselves, and each of them with the other,
19 wilfully, unlawfully, and feloniously conspire and agree to commit a crime, to-wit:
20 Robbery.

21 COUNT 2 - ROBBERY WITH USE OF A DEADLY WEAPON

22 Defendants did, on or about December 13, 2010, then and there wilfully, unlawfully,
23 and feloniously take personal property, to-wit: a money clip and lawful money of the United
24 States, from the person of STUART LEFF, or in his presence, by means of force or violence
25 or fear of injury to, and without the consent and against the will of the said STUART LEFF,
26 said Defendants using a deadly weapon, to-wit: a firearm, during the commission of said
27 crime; Defendants aiding or abetting each other in the commission of the crime by
28 accompanying each other to the crime scene and by entering into a course of conduct

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1 whereby Defendants CHRISTOPHER KITCHEN and CORY CRUMBLE approached
2 STUART LEFF, Defendant CHRISTOPHER KITCHEN or CORY CRUMBLE pointed a
3 firearm at STUART LEFF and told STUART LEFF not to move while Defendant
4 CHRISTOPHER KITCHEN or Defendant CORY CRUMBLE took STUART LEFF'S
5 property, Defendant DEVOHN MARKS acted as lookout and/or drove the getaway car,
6 Defendants offering counsel and encouragement to each other throughout.

7 COUNT 3 - ROBBERY WITH USE OF A DEADLY WEAPON

8 Defendants did, on or about December 13, 2010, then and there wilfully, unlawfully,
9 and feloniously take personal property, to-wit: lawful money of the United States, from the
10 person of ANOUK BOONSONG, or in his presence, by means of force or violence or fear of
11 injury to, and without the consent and against the will of the said ANOUK BOONSONG,
12 said Defendants using a deadly weapon, to-wit: a firearm, during the commission of said
13 crime; Defendants aiding or abetting each other in the commission of the crime by
14 accompanying each other to the crime scene and by entering into a course of conduct
15 whereby Defendant CHRISTOPHER KITCHEN or Defendant CORY CRUMBLE pointed a
16 firearm at ANOUK BOONSONG and demanded property, thereafter Defendant
17 CHRISTOPHER KITCHEN or Defendant CORY CRUMBLE took ANOUK
18 BOONSONG'S money, Defendant DEVOHN MARKS acted as lookout and/or drove the
19 getaway car, Defendants offering counsel and encouragement to each other throughout.

20 COUNT 4 - ROBBERY WITH USE OF A DEADLY WEAPON

21 Defendants did, on or about December 16, 2010, then and there wilfully, unlawfully,
22 and feloniously take personal property, to-wit: lawful money of the United States, from the
23 person of JAKE SUMILE, or in his presence, by means of force or violence or fear of injury
24 to, and without the consent and against the will of the said JAKE SUMILE, said Defendants
25 using a deadly weapon, to-wit: a firearm, during the commission of said crime; Defendants
26 aiding or abetting each other in the commission of the crime by accompanying each other to
27 the crime scene and by entering into a course of conduct whereby Defendant
28 CHRISTOPHER KITCHEN and/or Defendant CORY CRUMBLE approached JAKE

1 SUMILE and Defendant CHRISTOPHER KITCHEN or CORY CRUMBLE pointed the
2 firearm at JAKE SUMILE, thereafter Defendant CHRISTOPHER KITCHEN or Defendant
3 CORY CRUMBLE demanded and took JAKE SUMILE'S money, Defendant DEVOHN
4 MARKS acted as lookout and/or drove the getaway car, Defendants offering counsel and
5 encouragement to each other throughout.

6 COUNT 5 - ROBBERY WITH USE OF A DEADLY WEAPON

7 Defendants did, on or about December 16, 2010, then and there wilfully, unlawfully,
8 and feloniously take personal property, to-wit: lawful money of the United States, a wallet
9 and a cellular telephone, from the person of NICK LAM, or in his presence, by means of
10 force or violence or fear of injury to, and without the consent and against the will of the said
11 NICK LAM, said Defendants using a deadly weapon, to-wit: a firearm, during the
12 commission of said crime; Defendants aiding or abetting each other in the commission of the
13 crime by accompanying each other to the crime scene and by entering into a course of
14 conduct whereby Defendant CHRISTOPHER KITCHEN and Defendant CORY CRUMBLE
15 approached NICK LAM and Defendant CHRISTOPHER KITCHEN or Defendant CORY
16 CRUMBLE pointed a firearm at NICK LAM and took said property, Defendant DEVOHN
17 MARKS acted as lookout and/or drove the getaway car, Defendants offering counsel and
18 encouragement to each other throughout.

19 COUNT 6 - ROBBERY WITH USE OF A DEADLY WEAPON

20 Defendants did, on or about December 16, 2010, then and there wilfully, unlawfully,
21 and feloniously take personal property, to-wit: a wallet and contents, including lawful money
22 of the United States and credit cards, and a cellular telephone, from the person of MICHAEL
23 THOMAS, or in his presence, by means of force or violence or fear of injury to, and without
24 the consent and against the will of the said MICHAEL THOMAS, said Defendants using a
25 deadly weapon, to-wit: a firearm, during the commission of said crime; Defendants aiding or
26 abetting each other in the commission of the crime by accompanying each other to the crime
27 scene and by entering into a course of conduct whereby Defendant CHRISTOPHER
28 KITCHEN and Defendant CORY CRUMBLE approached MICHAEL THOMAS

1 Defendant CHRISTOPHER KITCHEN or CORY CRUMBLE pointed a firearm at
2 MICHAEL THOMAS and demanded property, thereafter Defendant CHRISTOPHER
3 KITCHEN and/or Defendant CORY CRUMBLE took MICHAEL THOMAS' property,
4 Defendant DEVOHN MARKS acted as lookout and/or drove the getaway car, Defendants
5 offering counsel and encouragement to each other throughout.

6 COUNT 7 - ROBBERY WITH USE OF A DEADLY WEAPON

7 Defendants did, on or about December 16, 2010, then and there wilfully, unlawfully,
8 and feloniously take personal property, to-wit: lawful money of the United States, from the
9 person of WAI KEUNG CHAN, or in his presence, by means of force or violence or fear of
10 injury to, and without the consent and against the will of the said WAI KEUNG CHAN, said
11 Defendants using a deadly weapon, to-wit: a firearm, during the commission of said crime;
12 Defendants aiding or abetting each other in the commission of the crime by accompanying
13 each other to the crime scene and by entering into a course of conduct whereby Defendant
14 CHRISTOPHER KITCHEN and Defendant CORY CRUMBLE approached WAI KEUNG
15 CHAN and Defendant CHRISTOPHER KITCHEN or CORY CRUMBLE pointed a firearm
16 at WAI KEUNG CHAN and demanded property, thereafter Defendant CHRISTOPHER
17 KITCHEN and/or Defendant CORY CRUMBLE took WAI KEUNG CHAN'S property,
18 Defendant DEVOHN MARKS acted as lookout and/or drove the getaway car, Defendants
19 offering counsel and encouragement to each other throughout.

20 COUNT 8 - ROBBERY WITH USE OF A DEADLY WEAPON

21 Defendants did, on or about December 16, 2010, then and there wilfully, unlawfully,
22 and feloniously take personal property, to-wit: a cellular telephone, from the person of
23 SHOTA NAGAMATSU, or in his presence, by means of force or violence or fear of injury
24 to, and without the consent and against the will of the said SHOTA NAGAMATSU, said
25 Defendants using a deadly weapon, to-wit: a firearm, during the commission of said crime;
26 Defendants aiding or abetting each other in the commission of the crime by accompanying
27 each other to the crime scene and by entering into a course of conduct whereby Defendant
28 CHRISTOPHER KITCHEN and/or Defendant CORY CRUMBLE approached SHOTA

SHOTA
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1 NAGAMATSU and Defendant CHRISTOPHER KITCHEN or CORY CRUMBLE pointed
2 a firearm at SHOTA NAGAMATSU and demanded property, thereafter Defendant
3 CHRISTOPHER KITCHEN and/or Defendant CORY CRUMBLE took SHOTA
4 NAGAMATSU'S property, Defendant DEVOHN MARKS acted as lookout and/or drove
5 the getaway car, Defendants offering counsel and encouragement to each other throughout.

6 COUNT 9 - ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON

7 Defendants did, on or about December 22, 2010, then and there wilfully, unlawfully
8 and feloniously attempt to take personal property, to-wit: miscellaneous items, from the
9 person of DUANE LOTZ, or in his presence, by means of force or violence, or fear of injury
10 to, and without the consent and against the will of the said DUANE LOTZ, Defendants using
11 a deadly weapon, to-wit: a firearm, during the commission of said crime; Defendants aiding
12 or abetting each other in the commission of the crime by accompanying each other to the
13 crime scene and by entering into a course of conduct whereby Defendant CHRISTOPHER
14 KITCHEN and Defendant CORY CRUMBLE approached DUANE LOTZ and Defendant
15 CHRISTOPHER KITCHEN or CORY CRUMBLE pointed a firearm at DUANE LOTZ
16 while Defendant CHRISTOPHER KITCHEN or CORY CRUMBLE went through DUANE
17 LOTZ'S pockets, Defendant DEVOHN MARKS acted as lookout and/or drove the getaway
18 car, Defendants offering counsel and encouragement to each other throughout.

19 COUNT 10 - ROBBERY WITH USE OF A DEADLY WEAPON

20 Defendants did, on or about December 22, 2010, then and there wilfully, unlawfully,
21 and feloniously take personal property, to-wit: a purse and contents, including keys, from the
22 person of KARLA VALLE, or in her presence, by means of force or violence or fear of
23 injury to, and without the consent and against the will of the said KARLA VALLE, said
24 Defendants using a deadly weapon, to-wit: a firearm, during the commission of said crime;
25 Defendants aiding or abetting each other in the commission of the crime by accompanying
26 each other to the crime scene and by entering into a course of conduct whereby Defendant
27 CHRISTOPHER KITCHEN and Defendant CORY CRUMBLE approached KARLA
28 VALLE and Defendant CHRISTOPHER KITCHEN and/or CORY CRUMBLE pointed a

1 firearm at KARLA VALLE and demanded property, thereafter Defendant CHRISTOPHER
2 KITCHEN and/or Defendant CORY CRUMBLE took KARLA VALLE'S property,
3 Defendant DEVOHN MARKS acted as lookout and/or drove the getaway car, Defendants
4 offering counsel and encouragement to each other throughout.

5 COUNT 11 - ROBBERY WITH USE OF A DEADLY WEAPON

6 Defendants did, on or about January 9, 2011, then and there wilfully, unlawfully, and
7 feloniously take personal property, to-wit: a cellular telephone, from the person of
8 MICHAEL AZCARRAGA, or in his presence, by means of force or violence or fear of
9 injury to, and without the consent and against the will of the said MICHAEL
10 AZCARRAGA, said Defendants using a deadly weapon, to-wit: a firearm, during the
11 commission of said crime; Defendants aiding or abetting each other in the commission of the
12 crime by accompanying each other to the crime scene and by entering into a course of
13 conduct whereby Defendant CHRISTOPHER KITCHEN or Defendant CORY CRUMBLE
14 approached MICHAEL AZCARRAGA and/or Defendant CHRISTOPHER KITCHEN or
15 CORY CRUMBLE pointed a firearm at MICHAEL AZCARRAGA and demanded property,
16 thereafter Defendant CHRISTOPHER KITCHEN and/or Defendant CORY CRUMBLE took
17 MICHAEL AZCARRAGA'S property, Defendant DEVOHN MARKS acted as lookout
18 and/or drove the getaway car, Defendants offering counsel and encouragement to each other
19 throughout.

20 COUNT 12 - ROBBERY WITH USE OF A DEADLY WEAPON

21 Defendants did, on or about January 9, 2011, then and there wilfully, unlawfully, and
22 feloniously take personal property, to-wit: lawful money of the United States, from the
23 person of VERNARDO MONTENEGRO, or in his presence, by means of force or violence
24 or fear of injury to, and without the consent and against the will of the said VERNARDO
25 MONTENEGRO, said Defendants using a deadly weapon, to-wit: a firearm, during the
26 commission of said crime; Defendants aiding or abetting each other in the commission of the
27 crime by accompanying each other to the crime scene and by entering into a course of
28 conduct whereby Defendant CHRISTOPHER KITCHEN or Defendant CORY CRUMBLE

1 pointed a firearm at VERNARDO MONTENEGRO and demanded property, thereafter
2 Defendant CHRISTOPHER KITCHEN or Defendant CORY CRUMBLE took VERNARDO
3 MONTENEGRO money, Defendant DEVOHN MARKS acted as lookout and/or drove the
4 getaway car, Defendants offering counsel and encouragement to each other throughout.

5 COUNT 13 - ROBBERY WITH USE OF A DEADLY WEAPON

6 Defendants did, on or about January 16, 2011, then and there wilfully, unlawfully,
7 and feloniously take personal property, to-wit: a wallet and contents, including lawful money
8 of the United States, credit cards and identification, from the person of VINCENT LEPORE,
9 or in his presence, by means of force or violence or fear of injury to, and without the consent
10 and against the will of the said VINCENT LEPORE, said Defendants using a deadly
11 weapon, to-wit: a firearm, during the commission of said crime; Defendants aiding or
12 abetting each other in the commission of the crime by accompanying each other to the crime
13 scene and by entering into a course of conduct whereby Defendant CHRISTOPHER
14 KITCHEN or Defendant CORY CRUMBLE pointed a firearm at VINCENT LEPORE and
15 demanded property, thereafter Defendant CHRISTOPHER KITCHEN or Defendant CORY
16 CRUMBLE took VINCENT LEPORE'S money, Defendant DEVOHN MARKS acted as
17 lookout and/or drove the getaway car, Defendants offering counsel and encouragement to
18 each other throughout.

19 All of which is contrary to the form, force and effect of Statutes in such cases made
20 and provided and against the peace and dignity of the State of Nevada. Said Complainant
21 makes this declaration subject to the penalty of perjury.

22
23
24 3/7/2011

25 11F04191A-C/jah
26 LVMPD EV# 1012132266; 1012132238;
27 1012163127; 1012163172; 1012163206;
28 1012163218; 1012163232; 1012221499;
1012222436; 1101093515; 1101093431;
1101163160
(TK12)

DATE OF ARREST: 3/5/10 TIME OF ARREST: 1400
INTAKE NAME (AKA, ALIAS, ETC.): MARKS, DEVON
First Middle Last
ID ESTAB BY: SCOPE

ADDRESS: 650 E. AZURE
Bldg./Apt. # City State ZIP
2072 NV 89030
PRESENT OR LAST PLACE OF EMPLOYMENT: N/A

DATE OF BIRTH: 10/19/91 RACE: B SEX: M HEIGHT: 6'1" WEIGHT: 172 BUIL: BLK EYES: BRO SOCIAL SECURITY #: 608-50-7333
SPEAK ENGLISH? Yes Dine No

LOCATION OF CRIME (# - Street - City - State - Zip): MULTIPLE LV NV 46805
CITIZEN ARREST: Y N LOCATION OF ARREST: 7C DC Sector/Beat PCN #

BKG. CODE CHARGE ORD / NRS # M GM F ARR TYPE EVENT NUMBER WARR / NCIC NUMBER LV JC DC OTHER COURT

5039 Rwdw NRS. 200.380 ☐ ☒ ☐ PC 10/213-2266 1F04191C ☐ ☒ ☐

5039 Rwdw NRS 200.380 ☐ ☒ ☐ PC 10/215-2238 ☐ ☒ ☐

5039 Rwdw NRS. 200.380 ☐ ☒ ☐ PC 10/216-3127 JC12 ☐ ☒ ☐

5039 Rwdw NRS. 200.380 ☐ ☒ ☐ PC 10/216-3172 ☐ ☒ ☐

5039 Rwdw NRS. 200.380 ☐ ☒ ☐ PC 10/216-3206 ☐ ☒ ☐

5039 Rwdw NRS. 200.380 ☐ ☒ ☐ PC 10/216-3218 ☐ ☒ ☐

ARREST TYPE: PC - PROBABLE CAUSE BS - BONDSMAN SURRENDER BW - BENCH WARRANT WA - WARRANT RM - REMAND GIJ - GRAND JURY IND.
Transporting Officer's Signature (Print Name) P # Agency
J. S. Beebe 6606 LVMPD
APPROVAL CONTROL # FOR ADDITIONAL CHARGES:

Time Stamp at Booking
03-05-11 15:07 DSD RECORD
FOR PROBABLE CAUSE/NCIC HIT ARREST SEE PAGE TWO FOR DETAILS.
BENCH WARRANT SERVED ON: ☐ JUDGE: 3/8 TIME: 8:00 AM
WARRANT SERVED ON: ☐ COURT: JUSTICE ☒ O.R. RELEASE ☐ PROBABLE CAUSE ☐ I.A.D. ☐

CONFIDENTIAL
03-05-11 12:03 DSD RECORD
JUDGE: DANAL SULLIVAN
JANAL SULLIVAN

CO-DEFIC

REB DOCK

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
TEMPORARY CUSTODY RECORD

Page 2 of 2
DATE OF ARREST: 3/5/11 TIME OF ARREST: 1400
INTEAKE NAME (AKA, ALIAS, ETC.): Last First Middle TRUE NAME Last First Middle
I.D. # 2748254 Event #: 101213-2216
I.D. ESTAB. BY: SLOPE

ADDRESS: 150 E. AZURE
BLDG./APT. # 2072 CITY NV STATE NV ZIP 89030
DATE OF BIRTH: 10/9/91 RACE B SEX M HEIGHT 6'1" WEIGHT 172 HAIR BLK EYES BRN SOCIAL SECURITY # 608-50-7333
LOCATION OF CRIME (# - Street - City - State - Zip) 4680 S DECATUR CC NV 89140
MULTIPLE LV NV CC Y (M) Y ARR TYPE: CCDC

BKG. CODE CHARGE ORD / NRS # M GM F ARR TYPE- EVENT NUMBER WARR / NCIC NUMBER LV JC DC OTHER
5039 Rwdw NRS. 200.380 0 0 0 101216-3252 11F04191C 0 0 0 0
5039 Rwdw NRS. 200.380 (ATTEMPT) 0 0 0 101222-1499 0 0 0 0
5039 Rwdw NRS. 200.380 0 0 0 101222-2436 JC 12 0 0 0 0
5039 Rwdw NRS. 200.380 0 0 0 110109-3515 0 0 0 0
5039 Rwdw NRS. 200.380 0 0 0 110109-3431 0 0 0 0
5039 Rwdw NRS. 200.380 0 0 0 110116-3160 0 0 0 0

*ARREST TYPE: PC - PROBABLE CAUSE BS - BONDSMAN SURRENDER BW - BENCH WARRANT WA - WARRANT RM - REMAND GJI - GRAND JURY IND.
Arresting Officer's Signature: [Signature] P # 15606 Agency: LVMPD
Transporting Officer's Signature: [Signature] (Print Name) N/A P # 1 Agency: [Signature]

Time Stamp
ARRESTING OFFICER'S SIGNATURE
APPROVAL CONTROL # FOR ADDITIONAL CHARGES: [Signature]

FOR PROBABLE CAUSE/NCIC HIT ARREST SEE PAGE TWO FOR DETAILS.
BENCH WARRANT SERVED ON
WARRANT SERVED ON
GRAND JURY INDICTMENT SERVED ON
TYPE OF I.D. FOR VERIFICATION
JUDGE: 0302.11 1203 DSD RECORDS
TIME: 8:00a.m.
COURT: JUSTICE
MUNICIPAL
JUVENILE
I.A.D.
STANDARD BAIL
O.R. RELEASE
PROBABLE CAUSE

P #:
LVMPD 22 (REV. 5-08)
(2) COURT - ORIGINAL
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**LAS VEGAS METROPOLITAN POLICE DEPARTMENT
ARREST REPORT**

1104191A.B.C/12

☐ City ☒ County ☒ Adult ☐ Juvenile Sector/Beat S1

ID/EVENT# 2798254	ARRESTEE'S NAME (Last) (First) (Middle) Marks Devohn		S.S.# 608-50-7333
ARRESTEE'S ADDRESS (Number, Street, City, State, Zip Code) 650 W. Azure apt# 2072, N. Las Vegas, NV 89030			
CHARGES: Robbery WDW (12 counts)			
OCCURRED:	DATE 12-13-11	DAY OF WEEK Monday	TIME 1410
LOCATION OF ARREST (Number, Street, City, State, Zip Code) CCDC 330 S. Casino Center, LV, NV 89101			
RACE B	SEX M	D.O.B. 10-09-91	HT. 6'1
		WT. 172	HAIR Bik
		EYES Bro	PLACE OF BIRTH CA

CIRCUMSTANCES OF ARREST:

On 02-04-11, Christopher Kitchen, Cory Crumble and Devohn Marks were all arrested after robbing Fred's Tavern bar located at 4680 S. Decatur under event# 110204-0995. All the suspects were interviewed and gave confessions to their involvement. After robbing the bar, they got into Devohn's gold Chevy Malibu bearing Nevada plates 969VGX and were stopped by LVMPD patrol officers before making it to their residence of 4717 Sand Creek #B, Las Vegas, NV 89103.

A search warrant was served on the Chevy Malibu at Quality Towing on 02-09-11. Items recovered include: \$100.00 in \$5.00 bills, Google cell phone, pink iPhone case, glove, green leafy substance (18.5 grams tested positive marijuana), black beanie, backpack and a wallet. A metal money clip with the initials "SHL" was photographed and left in the car.

There has been a robbery series in the Southwest part of Las Vegas since December of 2010. There have been 12 separate robberies with similar details to include: two thin black males in their early 20's wearing hoodies armed with a handgun robbing citizens in apartment complex parking lots. The suspect vehicle was described as a tan 4-door car with tinted windows and a possible license plate of 696--- or a combination thereof. The suspects would typically approach an Asian or white male in an apartment complex parking lot and get close enough to touch the gun to the victims head or neck and demand everything they had. The suspects usually stole money, wallets and cell phones. After one of the robberies, the suspects attempted to use the victim's credit cards on-line.

On 02-11-11 Ajibade, Olufumilayo, the registered owner of the car gave detectives permission to retrieve the money clip from the vehicle. The Chevy was repossessed by JD Byrider car sales and taken to 3024 Fremont. Your Affiant met with a manager at the car lot and was given permission to retrieve the money clip which was impounded.

Your Affiant researched the numerous crime reports within this series of robberies and found a victim whose name is Stuart Leff. Stuart was called and said his middle name is Herman and stated his money clip with initials "SHL" was stolen in the robbery that occurred to him under event# 101213-2266. That your Affiant composed a photo line-up containing: Devohn Marks, Cory Crumble, Christopher Kitchen, David Baker and Demonte Jackson, but unfortunately Stuart was not able to positively identify anyone.

On 02-12-11, your Affiant and Detective Beveridge met with Devohn Marks at CCDC and conducted an interview which was digitally recorded. Devohn was read his Miranda rights and agreed to speak with detectives. Devohn confessed to being involved in the series of robberies in the Southwest Las Vegas apartment complexes with Cory Crumble and Christopher Kitchen. Devohn said that because he had a car, he

ARRESTING OFFICER(S)	P#	APPROVED BY	CONNECTING RPTS. (Type or Event Number)
Det. J. Swanbeck	6606	Sgt. P. Gambini P#5846	

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LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION REPORT

ID/EVENT #: 2798253

was always the driver for the robberies. Devohn acknowledged that they knew it was wrong to rob people, but since none of them had jobs, they needed money for bills and food. Devohn would drive to an apartment complex parking lot and Chris and Cory would walk around to find someone to rob. Devohn said after Chris and Cory robbed people, they would split the money three ways. Chris and Cory would take turns using the gun in the robberies. Devohn remembers the day in December (12-16-10) when they robbed 5 people in one night. Devohn said he was sorry and was being accountable for his involvement. Devohn said that he lived in an apartment off Sand Creek Ave with Chris, Cory, David (Heavy Hands) and Demonte (Tay). Sand Creek is in the neighborhood where they were all arrested after the bar robbery under event# 110204-0995.

On 02-16-11, your Affiant and Detective Beveridge met with Christopher Kitchen at CCDC and conducted an interview which was digitally recorded. Christopher was read his Miranda rights and agreed to speak with detectives. Christopher also confessed to being involved in the apartment complex robbery series. Christopher said Devohn was always the driver and he and Cory Crumble would commit the robberies. Christopher was able to provide specific details about many of the robberies that only the persons involved would know, including the 5 robberies committed on 12-16-10. They frequently targeted white and Asian males. Christopher admitted to committing about 10-12 robberies with Cory and Devohn. Christopher also said he lived in an apartment on Sand Creek with Devohn, Cory, "Heavy Hands" and "Tay", but could not remember the address. Christopher was able to show detectives the apartment on a map, which was 4717 Sand Creek Ave. Christopher said the lease, power and gas was all in his name. Christopher also expressed his guilt and sorrow for committing all these robberies.

On 02-17-11, your Affiant and Detective Beveridge met with Cory Crumble at CCDC and conducted an interview which was digitally recorded. Cory was read his Miranda rights and agreed to speak with detectives. Cory confessed to committing approximately 12 robberies with Devohn and Christopher in the apartment complex parking lots, but had trouble remembering many details. He did say that Devohn was always the driver and that he and Christopher would take turns with using the gun to commit the robberies. Cory said they would split up the money. Cory also said he committed other robberies with "Heavy Hands" and "Tay". Cory stated he did not want to keep any stolen property that would link them to the robberies, so some of the property was sold while other property was thrown away. Cory also said he was sorry for his actions and was going to be accountable for his involvement.

Event# 101213-2266

5655 W. Rochelle Ave apt# 108

Victim: Leff, Stuart

On 12-13-10, Stuart Leff became the victim of robbery with a deadly weapon at his residence of 5655 W. Rochelle apt# 108, Las Vegas, NV 89103. Stuart was disabled and was outside his apartment door, trying to unlock it when he was approached from behind by two suspects. One suspect placed a handgun to the back of Stuart's head and told him not to move. The other suspect went into Stuart's pockets and took approximately \$2,100 in cash and a metal money clip with the initials "SHL". After taking Stuart's money, the suspects ran to a waiting tan 4-door vehicle with a possible license plate of 696--- or a combination thereof and left the area. The apartment groundskeeper, Marco Enamorado witnessed the vehicle. The suspects were described as 2 black male adults, 18-22 years old, 6'2, 160-170 lbs, thin build, with a black handgun. Even though Stuart could not positively identify the suspects in a photo lineup, he did verify the money clip recovered from Devohn Marks's Chevy Malibu did belong to him. This event is corroborated through the interviews with the suspects. Devohn said he saw a guy in the parking lot as they were driving away and remembers the large amount of money taken.

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LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION REPORT

ID/EVENT #: 2798253

Event# 101213-2238

5701 W. Rochelle Ave

Victim: Boonsong, Anouk

On 12-13-10, Anouk Boonsong became the victim of robbery with a deadly weapon at 5701 W. Rochelle Ave, Las Vegas, NV 89103. Anouk was sitting on a utility box in front of the apartment complex, when he was approached from behind by a black male adult. The suspect stated "give me everything you got". The suspect pointed a silver semi-auto handgun at Anouk. Anouk told the suspect that he did not have anything. Another black male, who was standing on the block wall behind Anouk, said "give him the \$20.00". This second suspect jumped down from the wall and took a twenty dollar bill from Anouk's front sweatshirt pocket. The second suspect pulled a black semi-auto handgun from his waistband and tried to take Anouk's cell phone. The suspect dropped the handgun and Anouk ran away. Anouk was afraid for his life. The suspects were described as 2 black male adults, 17-18 years old, 5'10, 130 lbs, thin build and wearing a black sweatshirt with graphics. One suspect had a goatee, a gap in his front teeth and tattoos on the side of his neck and the other suspect had a shaved haircut and was clean shaven. This event is corroborated through the interviews with the suspects. Christopher stated they robbed a guy that was sitting on a utility box.

Event# 101216-3127

5415 W. Harmon Ave

Victim: Sumile, Jake

On 12-16-10, Jake Sumile became the victim of robbery with a deadly weapon at 5415 W. Harmon Ave, Las Vegas, NV 89103. Jake was walking home from work when he noticed 2 black males walking behind him. Jake approached a pedestrian gate to the apartment complex and opened it for the suspects as he believed they lived there too. The suspects asked Jake for the time and Jake looked at his cell phone and told them. Jake continued to walk home and then the suspects ran up to him and placed the barrel of a black semi-auto handgun to the left side of Jake's head. The suspects demanded all Jake's money. Jake removed his wallet and opened it to allow the suspects to take \$6.00 in cash. Jake offered food to the suspects, but they refused. As the suspects walked away, Jake said God bless you. Jake described the suspects as 2 black male adults, 19-21 years old, 5'10-6'0, 160-175 lbs, thin build, wearing ball caps, dark hoodies with graphics and jeans. This event is corroborated through the interviews with the suspects. Christopher stated they robbed a guy that let them in a gate and then he said may God be with you when they were leaving.

Event# 101216-3172

5419 W. Tropicana Ave

Victim: Lam, Nick

On 12-16-10, Nick Lam became the victim of robbery with a deadly weapon at 5419 W. Tropicana Ave, Las Vegas, NV 89103. Nick parked his car in the middle of the apartment complex and began to walk to his apartment. Two black male adults ran up to Nick and placed a large frame black semi-auto handgun against the back of Nick's head. The suspects ordered Nick to lie on the ground and demanded his money, wallet and cell phone. Nick handed his wallet containing \$17.00 and his iPhone to the suspects and they ran northbound through the complex. Nick described the suspects as 2 black male adults, 18-21 years old, 5'8, 150 lbs, thin build, wearing black beanies and jeans. This event is corroborated through the interviews with the suspects. This event was one of the 5 that were committed on 12-16-11. Christopher also said they made a guy lie on the ground while they robbed him.

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LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION REPORT

ID/EVENT #: 2798253

Event# 101216-3206

5445 W. Reno Ave

Victim: Thomas, Michael

On 12-16-10, Michael Thomas became the victim of robbery with a deadly weapon at 5445 W. Reno Ave, Las Vegas, NV 89103. Michael parked his car in the apartment complex and opened the rear door to get some items out of the back seat. As he was doing this, Michael felt a gun barrel being pressed against his head. Michael turned around to see a black male adult holding a black semi-auto handgun to his head. The suspect said "give me everything", forcing Michael to give them his wallet containing his credit cards and \$2.00 and his T-Mobile Android cell phone. The suspects looked in the wallet and yelled "damn it". The suspects then took off running through the complex. The suspects were described as 2 black male adults, 20-25 years old, 5'10, 135 lbs, thin build, wearing black hoodies and dark jeans. This event is corroborated through the interviews with the suspects. The victim is 5'7 and 260 lbs. Christopher said he remembers robbing a "fat white guy" and thinks he was coming home from work. (Michael was wearing his work scrubs).

Event# 101216-3218

4391 Alexis Dr.

Victim: Chan, Wai Keung

On 12-16-10, Wai Chan became the victim of a robbery with a deadly weapon at the Bella Vita Apartments located at 4391 Alexis Dr. Las Vegas, NV 89103. Wai Chan was removing items from the trunk of his vehicle which was parked in the apartment complex parking lot. Wai was approached from behind by a black male adult who put a gun to his face and said "give me all your money". Wai complied and gave the suspects about \$18.00 and some coins. The suspects demanded all his money again and Wai showed them his empty pockets. Both suspects walked westbound through the complex. The suspects were described as 2 black male adults, 20-25 years old, 6'0, 130 lbs, thin build wearing dark clothing. This event is corroborated through the interviews with the suspects. This event was one of the 5 that were committed on 12-16-11. Also Christopher said they robbed an Asian guy that was going through his trunk.

Event# 101216-3232

5445 W. Reno Ave

Victim: Nagamatsu, Shota

On 12-16-10, Shota Nagamatsu became the victim of robbery with a deadly weapon at 5445 W. Reno Ave, Las Vegas, NV 89118. Shota walked out of his apartment to take out the trash and get his cell phone from his car. After getting cell phone from his car which was parked in the apartment complex parking lot, Shota was approached from behind by 2 black male adults. One of the suspects put a black semi-auto handgun to Shota's neck and demanded his money. Shota said he didn't have any money, so the suspects grabbed his Sanyo cell phone and left on foot. The suspects were described as 2 black male adults, 20's, 5'7-5'8, 125-130 lbs, thin build wearing dark shirts with graphic designs, black beanies and dark jeans. This event is corroborated through the interviews with the suspects. This event was one of the 5 that were committed on 12-16-11.

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CONTINUATION REPORT

ID/EVENT #: 2798253

Event# 101222-1499
4160 Sanderling Circle
Victim: Lotz, Duane

On 12-22-10, Duane Lotz became the victim of attempt robbery with a deadly weapon victim over 60 at 4160 Sanderling Circle, Las Vegas, NV 89103. Duane had just parked his car in his condo parking lot when he was approached from behind by 2 black male adults. One of the suspects pushed a gun into the back of Duane's head and said "give me all your money". The other suspect went through Duane's pockets, but only found identification, credit cards and keys. The suspects dropped Duane's property on the ground and took off running. The suspects were described as 2 black male adults, 18-22 years old, dressed all in black wearing a stocking cap.

Event# 101222-2436
3625 S. Decatur Blvd
Victim: Valle, Karla

On 12-22-10, Karla Valle became the victim of robbery with a deadly weapon at 3625 S. Decatur Blvd, Las Vegas, NV 89103. Karla parked her car in the apartment complex parking lot and realized she forgot her cell phone. As she returned to her car to retrieve her phone, she was approached by two black male adults. One of the suspects walked toward her while pointing a black semi-auto handgun at her face and stated "give me all you got". The second suspect was running toward Karla with a black semi-auto handgun in his hand. Karla handed the suspects her purse containing her wallet, \$130.00, credit cards, id's, T-mobile My Touch cell phone and T-mobile Slide cell phone. Karla was still holding her keys when the second suspect said to hurry up. The suspects then took Karla's keys and purse and ran towards the south part of the parking lot. Karla's family member saw a tan 4-door sedan with dark tinted windows leaving the apartment parking lot at high speeds after the robbery. Karla described the suspects as 2 black male adults, 18-20 years old, 5'10, 150 lbs, thin build, wearing black hoodies and jeans. This event is corroborated through the interviews with the suspects. Christopher stated they robbed a lady for her purse.

Event# 110109-3515
4400 S. Jones Blvd
Victim: Azcarraga, Michael

On 01-09-11, Michael Azcarraga became the victim of robbery with a deadly weapon at 4400 S. Jones Blvd, Las Vegas, NV 89103. Michael Azcarraga was walking to his friend's apartment after parking his car in the parking lot. When Micheal was knocking on Thomas Richard's apartment door, he was approached from behind by 2 black male adults. One suspect pointed a black semi-auto handgun at Michael's head and said "give me all your money". Michael grabbed the suspect's wrist and tried to move back, but the suspect pushed him against a wall and stated "don't even think about it". The suspect was still pointing the handgun at Michael, as they were now face to face. At this point, Thomas opened the front door to witness the scuffle. The suspects then said "give me everything you have" as the second suspect patted down Michael's pockets. Michael did not have a wallet, but the suspects did take his LG Envy cell phone and took off running. The suspects were described as 2 black male adults, 18-19 years old with thin builds. One suspect was 5'10 160 lbs and wearing a black sweatshirt and black pants, while the other was 6'1 145 lbs and wearing a gray sweatshirt and black jeans. This event is corroborated through the interviews with the suspects. Christopher stated they robbed a homosexual guy that was standing at his friend's door. The victim tried to grab the gun.

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VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION REPORT

ID/EVENT #: 2798253

Event# 110109-3431

4250 Arville St.

Victim: Montenegro, Vernardo

On 01-09-11, Vernardo Montenegro became the victim of robbery with a deadly weapon at 4250 Arville St. Las Vegas, NV 89103. Vernardo parked his car in the apartment complex parking lot and was walking towards his apartment when he was approached from behind by two black male adults. Even though Vernardo does not speak English and could not understand what the suspects were saying, he knew he was being robbed. One of the suspects stood behind Vernardo and placed the barrel of a handgun to the back of his head. The second suspect immediately searched Vernardo's pants pockets, taking his Sprint Palm cell phone, Coach wallet with \$4.00, id's and credit cards. Both suspects ran away through the apartment complex. The suspects were described as 2 black male adults, in their 20's, 5'10, thin build, with one wearing a white hooded sweatshirt.

Event# 110116-3160

7400 W. Flamingo Rd.

Victim: Lepore, Vincent

On 01-16-11, Vincent Lepore became the victim of robbery with a deadly weapon at 7400 W. Flamingo Rd. Las Vegas, NV 89147. Vincent parked his car in the apartment complex parking lot after grocery shopping. Vincent was carrying groceries to his apartment when he was approached from behind by 2 black male adults. One of the suspects placed the barrel of a handgun to the back of Vincent's neck and said "give me everything you got". The second suspect then took Vincent's wallet from his pocket. Vincent's wallet contained \$5,150.00, id's and credit cards. The suspects ran and got into a tan 4-door sedan that may have been a Toyota Camry. The suspects were described as 2 black male adults in their 20's, approx 6'0, thin build wearing dark clothing.

That within the timeframe of one month, there has been at least 12 different robberies in a small area within Southwest Las Vegas. The suspects were described as 2 black male adults, early 20's, thin build, wearing hoodies and armed with black semi-auto handguns robbing citizens in apartment complex parking lots. The suspect vehicle was described as a tan 4-door sedan with tinted windows and a possible plate of 696--- or a similar combination. The M.O. was similar in that the suspects would typically approach a white or Asian male from behind and get close enough to touch the barrel of the gun to the victims neck or head. The suspects demanded everything they had and usually stole money, wallets and cell phones.

After interviewing Christopher Kitchen, Cory Crumble and Devohn Marks, they all confessed to committing these apartment complex parking lot robberies. Each said they committed approximately 12 robberies with each other. Devohn was always the driver, and Christopher and Cory would get out and find the victims to rob. Christopher and Cory said they took turns using the gun to rob the citizens. They would typically walk around in an apartment complex parking lot and find someone going to their car or getting out of their car. Christopher and Cory would approach the victim point the gun at them and demand their money. They would usually take money and cell phones. The trio all said they needed the money for bills and food. Each said he was sorry and regretted their poor decisions. When asked about getting any property back to the victims, it was told that all the property was either sold or thrown away. A search warrant was served on their apartment and it is unknown if any property recovered belongs to any of the victims. That investigation is still on-going. There is enough evidence to prove Christopher Kitchen, Cory Crumble and Devohn Marks did in fact commit these additional 12 robberies with a deadly weapon.

RIM
IMAGE
LJ

Page 1 of 1

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
DECLARATION OF ARREST

I.D. #: 2798254

True Name: MARKS, DEVON

Date of Arrest: 03.05.11

Time of Arrest: 1400

OTHER CHARGES RECOMMENDED FOR CONSIDERATION:

CONSPIRACY

THE UNDERSIGNED MAKES THE FOLLOWING DECLARATIONS SUBJECT TO THE PENALTY FOR PERJURY AND SAYS: That I am a peace officer with LVMPD (Department); Clark County, Nevada, being so employed for a period of 8.5 years (months). That I learned the following facts and circumstances which lead me to believe that the above named subject committed (or was committing) the offense of RWDW (12 CTS) at the location of MULTIPLE (ADDRESS / CITY / STATE / ZIP) and that the offense occurred at approximately _____ hours on the _____ day of _____, in the county of ☒ Clark or ☐ City of Las Vegas, NV.

DETAILS FOR PROBABLE CAUSE:

PLEASE SEE ARREST REPORT FOR DETAILS PER LT. STEIBER.

Wherefore, Declarant prays that a finding be made by a magistrate that probable cause exists to hold said person for preliminary hearing (if charges are a felony or gross misdemeanor) or for trial (if charges are a misdemeanor).

Declarant must sign second page with original signature.

Declarant's Signature [Signature]

Print Declarant's Name J. SWANBERG

6606

RIM P.#
IMAGED
LJ

JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA

PRETRIAL SERVICES INFORMATION SHEET

CASE #
11F04191C

DEPT #
JC-12

REQUESTED BY:

NAME:
DEVOHN MARKS

ID #
2798254

CHARGES:

**11CTS-ROBBERY WITH A DEADLY WEAPON, ATT. ROBBERY WITH A DEADLY
WEAPON, CONSP ROBBERY
CURRENT BAIL: \$250,000**

**VERIFIED: ADDRESS: NOT INTERVIEWED,,,
WITH WHOM/HOW LONG: /**

**VERIFIED: EMPLOYMENT STATUS: /
LENGTH:**

VERIFIED: RELATIVES - LOCAL :

NOT LOCAL:

FELONY/GROSS MISDEMEANOR CONVICTIONS: 0

MISDEMEANOR CONVICTIONS: 0

FAIL TO APPEAR: 0

COMMENTS: ALSO I/C: 11F02291C 2CTS RWDW, BURG WDW, CONSP ROBB 03/31/11 JC-8;

RECOMMENDATION:

DATE: 03/21/2011

PRETRIAL SERVICES: Maritza Aguilar

CONFIDENTIAL

**RIM
AGED
SF**

PRETRIAL SERVICES INFORMATION SHEET

REQUESTED BY:

ID #
2798254

CHARGES:
ROBBERY WITH A DEADLY WEAPON 11CTS ATT. ROBBERY WITH A DEADLY WEAPON
CURRENT BAIL: SIC

VERIFIED: RELATIVES - LOCAL : **NOT LOCAL:**

ALSO IC: 11F02291C RWDW 2CTS, BURG WDW, CONS ROBB JC8;

RECOMMENDATION:

PRETRIAL SERVICES:

RI.
MADE
SE

EXHIBIT 2

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

ARREST REPORT

ENTERED
LAMS
S85178☐ City☒ County☒ Adult☐ Juvenile

Sector/Beat S1

ID/EVENT# 110204-0995	ARRESTEE'S NAME (Last, First, Middle) Marks, Devohn		S.S.#	
ARRESTEE'S ADDRESS (Number, Street, City, State, Zip Code) 650 E. Azure Ave apt# 2072, NLV, NV 89030				
CHARGES: RWDW, Burg w/ DW, Consp to commit Robbery, Consp to commit Burg				
OCURRED:	DATE 02-04-11	DAY OF WEEK Friday	TIME 0830	LOCATION OF ARREST (Number, Street, City, State, Zip Code) Elksprings/ Stober, LV, NV
RACE B	SEX M	D.O.B. 10-09-91	HT 6'1	WT 172
HAIR Blk		EYES Bro		PLACE OF BIRTH LA, CA

CIRCUMSTANCES OF ARREST

Officers involved:

J. Swanbeck	P# 6606	Case agent
E. Stout	P# 4550	Interviewed victims & suspect
S. Kavon	P# 4131	Interviewed suspect
D. Miller	P# 6627	Interviewed suspect
E. Laneve	P# 5612	Detective at scene
P. Walters	P# 7569	Reporting officer
J. Wert	P# 9301	Patrol
J. Dudley	P# 8875	Patrol
J. Albert	P# 13204	CSA
D. Carvouniaris	P# 12712	CSA

Victims:

Rossolo, John A. Jr.

O'Dell, Miriam

Suspect Vehicle:

2001 Gold Chevy Malibu 4-door, NV plate 969VGX
 RO: Ajibade, Olufumilayo 4350 Terrace Hill # 105, LV, NV 89103
 Towed from Stober/ Sandcreek, LV, NV 89103
 Towed via Quality stock# 641864

Property Recovered:

51	\$100 bills	\$5,100.00
89	\$20 bills	\$1780.00
42	\$10 bills	\$420.00
53	\$5 bills	\$265.00
62	\$1 bills	\$62.00
19	\$1 bills	\$19.00

Total \$7,646.00

Money was recovered after the robbery, photographed and returned to the owner

ARRESTING OFFICER(S)	P#	APPROVED BY	CONNECTING RPTS. (Type or Event Number)
Det. J. Swanbeck	6606	SGT. P. GAMBINI -5846	

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION REPORT

ID/Event Number: 110204-0995

Page 2 of 4

Body of Report:

On 02-03-11, at approximately 0755 hours, Freds Tavern Bar, located at 4680 S. Decatur Blvd was robbed in a take-over style robbery. An incident crime report was taken under event# 110204-0995.

That approximately 5 minutes before the robbery occurred, a black male adult wearing a black jacket and dark basketball shorts entered the business and walked around the inside of the bar for a moment before exiting the business. This suspect was later identified as Devohn Marks. Only two people were inside the business at this time. John Rossolo and Miriam Odell, who are two employees of Freds Tavern. Then three black male adults entered the business very quickly. The first suspect was wearing a gray hoodie, dark jeans, white shoes and was holding a black semi-auto handgun. He was later identified as Cory Crumble. The second suspect was wearing a dark hoodie, dark jeans, brown backpack and white shoes. He was later identified as Christopher Kitchen. The third suspect was wearing a dark hoodie, dark jeans and white shoes. He has not been identified yet. Cory entered the business and walked directly to John and Miriam. He pointed the handgun at them demanded John and Miriam to get on the ground. John and Miriam complied and laid face down on the floor. Christopher and the unknown suspect entered the business and jumped the counters to gain access to the cash drawers. Both Christopher and the unknown suspect opened the drawers and took cash. They then took the cell phones belonging to John and Miriam, who were still laying on the floor.

That John Rossolo called 911 and reported the robbery. As Rossolo was on the phone he observed four black male running behind his bar. Three of the black males were the ones that came into the bar to do the Robbery. The four black males ran to a beige or tan in color, four door, mid size vehicle. The black males entered the vehicle and drove off in a unknown direction. Rossolo then waited for Patrol Officers to respond to the bar.

That Officer Jivapong P# 9338 was in the area of the robbery and observed a gold Chevy Malibu bearing Nevada plates 969VGX driving Northbound on Decatur containing 5 occupants. Officer Jivapong followed the Chevy turn East on Twain and North on Stober. As Officer Jivapong attempted to conduct a vehicle stop, the Chevy Malibu accelerated quickly and all five suspects jumped from the moving vehicle. Officer Jivapong exited his vehicle and took the driver (Devohn Marks) into custody without incident. Another officer was able to jump into the suspect vehicle and place the gearshifter into park. Suspects Cory Crumble and Christopher Kitchen were sitting in the backseat. Cory Crumble fled away from police officers, but was taken into custody at Twain and Van Dyke. Christopher Kitchen was located hiding in a water heater closet by K9 Officer J. Ledogar P# 7411 and Officer Mills P# 7944. The brown backpack that Christopher was wearing was recovered next to the water heater closet. \$7,627 was recovered behind the water heater where Christopher was hiding and in the brown backpack Christopher was wearing. The remaining \$19.00 was recovered laying in the street. The other two suspects were able to get away. CSA responded and photographed the crime scenes.

The suspects vehicle is a gold 2001 Chevy Malibu bearing Nevada plate 969VGX. It is registered to Ajibade, Olufumilayo, who is Devohn Marks's mother. The vehicle was sealed and towed via Quality towing stock# 641864 pending a search warrant.

¹ Det. Stout was aware that Patrol Officers had detained several black males thought to be involved in the Robbery. Det. Stout took Rossolo to these locations to conduct one-on-one's. The first location Rossolo went to was at the intersection of Van Dyke and Twain. A black male stood to the rear of the patrol car. This black male was later identified as Cory Crumble. Rossolo stated that he could not positively identify Crumble. Rossolo stated that this subject was wearing similar clothing as on of the subjects that committed the Robbery.

Rossolo was then taken to Elk Springs and Van Dyke (south alley). A black male stood to the rear of the patrol car. This black male was later identified as Christopher Kitchen. Rossolo stated that he could not positively identify Kitchen. Rossolo stated that this subject was wearing similar clothing as on of the subjects that committed the Robbery.

Rossolo was then taken to Stober and Elk Springs. A black male stood to the rear of the patrol car. This black male was later identified as Devohn Marks. Rossolo positively identified Marks. Rossolo stated that this subject was the black male that "cased" the bar 5-10 minutes prior to the Robbery. This same black male later re-entered the bar and committed the Robbery. He believes that he was the one who jumped over the counter and took the money.

Rossolo was then transported back to Fred's Tavern. Det. Stout conducted a taped voluntary statement with Rossolo, documenting the incident and the one-on-ones.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION REPORT

ID/Event Number: 110204-0995

Page 3 of 4

Det. Stout then contacted Miriam Odell. Odell is employed at Fred's Tavern as the day shift bartender. Odell was present during the Robbery. Odell stated that her shift was beginning and was relieving the graveyard bartender (John Rossolo). During the transition Odell noticed a black male enter the bar. Odell thinks this occurred at approximately 0745 hours. The black male was described as wearing dark shirt, dark shorts, dark shoes and dark socks. The black male walked around the inside of the bar. The black male did not speak or purchase anything, he then walked out of the bar. A few minutes later the black male re-enters the bar and is now accompanied by two more black males. One of the black males was holding a small to mid-size semi-automatic handgun black in color. Odell was ordered to the ground. Odell observed two black males jump the counter and go the cash drawers. One of the black males then took her I-Phone out of rear pants pocket. The phone is described as having a pink in color "Coach" case with hearts on it. The black males then run out of the bar. Odell sees that Rossolo is calling the police and she waits to be contacted by Officers.

Patrol Officer A. Beza P# 8724, made contact with Odell. Officer Beza took Odell in her patrol vehicle to conduct on-on-ones with the subjects that were detained and thought to be involved in the Robbery. Odell was taken to the intersection of Van Dyke and Twain. A black male stood to the rear of the patrol car. This black male was later identified as Cory Crumble. Odell positively identified Crumble. Odell believes that this subject was involved in the Robbery but could not give specifics on what he did in the bar.

Odell was then taken to the intersection of Van Dyke and Elk Springs (south alley). A black male stood to the rear of the patrol car. This black male was later identified as Christopher Kitchen. Odell positively identified Kitchen. Odell believes that this subject was the person who carried the firearm and jumped over the counter.

Odell was then taken to the intersection of Stober and Elk Springs. A black male stood to the rear of the patrol car. This black male was later identified as Devohn Marks. Odell positively identified Marks. Odell believes that this subject was involved in the Robbery but could not give specifics on what he did in the bar.

Odell was then transported back to Fred's Tavern, by Officer Beza. Det. Stout conducted a taped voluntary statement with Odell, documenting the incident and the one-on-ones.

Det. Stout then spoke with the Manager of Fred's Tavern. The Manager believes that the subjects that robbed the bar have been casing the bar over the past few days. He pulled up video from a day prior showing the same suspects in the bar. The suspects did not buy anything and just walked around. The Manager will provide the detectives with all the video once he can get it down loaded.

That all three suspects were transported to the robbery office located at 4750 W. Oakey and placed in three separate interview rooms that were digitally recorded. Det. Dave Miller and Det. Scott Kavon conducted a digitally recorded interview with Christopher Kitchen at the robbery office. Det. Miller advised Mr. Kitchen of his Miranda rights to which he stated he understood. Mr. Kitchen agreed to speak with Det. Miller. The following is a summation of Mr. Kitchen's statement (not verbatim). The statement will be transcribed and made available to the court when necessary.

Mr. Kitchen said that he has basically been homeless for the last two years and that he did the robbery because he was in need of money and food. Mr. Kitchen indicated that he was sorry for his involvement in the crime and he said he would not commit another robbery in the future.

Mr. Kitchen said that he and four other males decided to do the robbery together, but he (Kitchen) chose the location (Fred's Tavern). Mr. Kitchen said that they all used a gold four door sedan but he didn't know who the owner was. Mr. Kitchen described the other four males as follows:

- 01) Driver: Unknown dark skinned Black male, 20's, 6'0", skinny build, wearing blue jeans, a black shirt, and a chain around his neck with a star emblem. Allegedly a friend of Cory's.
- 02) Passenger: Unknown Black male, approximately 19 years old, 5'9", skinny build, wearing a grey Echo shirt and blue jeans. Allegedly a friend of Cory's.
- 03) Cory: Black male, 20's, 6'0", skinny build, wearing a grey hooded sweatshirt and blue jeans. The suspect allegedly has a tattoo of his name (Cory) on his arm. Cory allegedly has a grey T-mobile cell phone (no flip).
- 04) B or D: Unknown Black male, 20's, 6'1", average build, wearing gloves, black sweat pants, a black hooded sweatshirt, and a black beanie. The suspect is allegedly nicknamed either "B" or "D" and owns a black pre paid

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION REPORT

ID/Event Number: 110204-0995

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cell phone (non flip). Mr. Kitchen allowed Det. Miller to look in his cell phone and he provided two possible phone numbers for this suspect: "D" 417-6638 and "B" 426-1271

Mr. Kitchen said that they arrived at Fred's Tavern and parked their vehicle on the side of the business. The driver then entered the business alone to see how many people were inside and to see if the business would be a good place to rob. The driver then exited the business and got back into the car. Cory showed Mr. Kitchen a black Glock 9mm handgun that they would use to commit the robbery. Mr. Kitchen said that he took the gun and checked to see if it was loaded because he didn't want anyone to get hurt. After ensuing it was unloaded, Mr. Kitchen gave the gun back to Cory. Mr. Kitchen allegedly never saw the gun again and was not certain which of the suspects used the gun inside the business.

Mr. Kitchen said that he, Cory, and B entered the business to commit the robbery. Mr. Kitchen said that the driver and another unknown Black male waited in the car. After entering the business, Mr. Kitchen immediately jumped the counter and started searching drawers for money. Mr. Kitchen heard Cory and/or B giving demands to a female and male employee, things like, "Be calm....hands up....don't move....this is a robbery." Mr. Kitchen said that he found a large amount of cash in a drawer and took it. Mr. Kitchen said that he was wearing a brown back pack during the robbery in case he needed it for money, but he just held the money in his hands instead.

Mr. Kitchen said he fled from the business with the money and Cory and B followed. They all got back into the car and drove away. Mr. Kitchen said that he noticed the police following them a short time later and they ultimately all got out of the car and ran away. Mr. Kitchen said that he lost his white Adidas while running. Mr. Kitchen then hid behind an unknown apartment inside a water heater closet. Mr. Kitchen hid the money behind the water heater but was ultimately caught by the police (he said he didn't want to get bitten by the police dogs).

Det. Miller showed Mr. Kitchen some surveillance pictures from the Fred's Tavern robbery. Mr. Kitchen identified himself wearing a brown back pack. Mr. Kitchen identified Cory as the male wearing a grey hooded sweatshirt. Mr. Kitchen identified "B" or "D" as the suspect wearing gloves.

That your Declarant conducted a digitally recorded interview with Devohn Marks and Cory Crumble at the robbery office in separate rooms. Your Declarant advised Devohn and Cory of their Miranda rights to which they both stated they understood. They both agreed to speak with detectives. The following is a summation of their statements (not verbatim). The statement will be transcribed and made available to the court when necessary.

Devohn stated the Chevy Malibu belongs to his mother. Devohn admitted they all planned this robbery and he was to be the driver. Devohn entered the bar to see how many people were inside. He relayed this info to the other three suspects carrying out the robbery. Devohn waited inside the car for Cory, Christopher and the third suspect to come running out after the robbery. Devohn said they all jumped into the car and he drove away. He said when the police officer was behind him, someone in the car told him to speed up and get away. Devohn said they all got out of the car and ran away. Devohn thought he did not really do anything wrong, so he stopped and laid down on the ground. Devohn was still wearing the same clothing as he did when he was scoping out the bar before the robbery. Devohn admitted he knew it was wrong and was sorry for taking part in the robbery. Devohn was told the Malibu was towed pending a search warrant and he admitted he had some marijuana in the trunk. Devohn said he knows the unknown suspect as "D" or Dion. Devohn wrote an apology letter explaining his feelings.

Cory Crumble stated they all met up earlier in the morning at "John's" house (somewhere around Sahara/Decatur). "John" gave them the gun and they all planned to rob a business because they needed money for bills. Cory explained the fifth suspect is a Durango high school student named Traymon. At first, Cory denied there was a gun involved, but after showing him the surveillance pictures, he confessed he was the suspect holding the gun during the robbery. Cory said he did not know what happened to the gun while he was running away from the police officer. Cory stated he tripped and fell, causing the gun to fall out of his waistband. Cory did not pick it up and does not know what happened to it. Cory knew what they did was wrong and felt sorry for it. Cory also wrote an apology letter expressing his feelings.

That Detective E. Laneve met with James Doucette, who is a representative of Freds Tavern and returned \$7,646.00 to him. That all three suspects were arrested for 2 counts of Robbery with Deadly Weapon as they robbed John Rossolo and Miriam Odell inside Freds Tavern using a black semi-auto handgun in a take-over style robbery. All three suspects were arrested for Burglary with firearm as they entered the business with the intent to commit a felony (robbery) while in possession of a handgun. All three suspects were arrested with Conspiracy to commit Robbery and Conspiracy to commit Burglary as they all planned out this robbery. They each had a specific job which was carried out accordingly. They were all transported to CCDC and booked accordingly.

From: Devohn Marks

110204-0995

{ THIS IS
NOT WHAT
I DO! }

first and for most I would like to
apologize to whoever was in the
Bar while this mistake occurred.

I wouldn't want to experience
what I caused you to experience
today. I'm deeply appalled at the
actions that took place today.

{ I Have
more to lose
than I do
to Gain
illegally }

THIS shouldn't have occurred But I
allowed it To proceed. I feel

Dumb for what happened because

I wasn't in ~~absolute~~ need of what
we tried to get away with.

I was Happy to know that no one
got hurt during this incident. I'm a yrs
old and have plans to do positive
things with my life and I feel
like what I attempted to doesn't
Back that up. So now I'm Here in
a position I never Dreamed of Being
in and all Because I chose to
make a major Bad Decision.

{ Take Responsibility 4 my Actions and only mine. } ^{anyone}

110204-0995

Even tho this letter isn't
going to take back what
occured I wish it was
that simple. Nuthin in life is
that simple except makin smart
decisions and now that Im in
the position Im in I realize
that money isn't worth going
through what Im goin through
rite now. One last time this
is my genuine appology that's
comming from my heart. As
a man I will deal with the
consequences But for the Record
A Big lesson has been learned.

ITS NOT WORTH LOOSING
YOUR FREEDOM, TRUST, RESPECT,

and LOVE.... That will from this
day on out be part of my mentality..

Sincerely, Devon Mark

EXHIBIT 3

ORIGINAL

60

1 GPA
2 DAVID ROGER
3 DISTRICT ATTORNEY
4 Nevada Bar #002781
5 ROY L. NELSON, III.
6 Chief Deputy District Attorney
7 Nevada Bar #007842
8 200 Lewis Avenue
9 Las Vegas, NV 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

JUN 08 2011

PHYLIS IRBY, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 DEVOHN MARKS,
12 #2798254

13 Defendant.

CASE NO: C-11-272989-3
DEPT NO: XVIII

C-11-272989-3
GPA
Guilty Plea Agreement
1465056



14 GUILTY PLEA AGREEMENT

15 I hereby agree to plead guilty to: COUNT 1 - CONSPIRACY TO COMMIT
16 ROBBERY (Category B Felony - NRS 199.480, 200.380) and COUNT 2 - ROBBERY
17 WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.380,193.165), as
18 more fully alleged in the charging document attached hereto as Exhibit "1".

19 I hereby also agree to plead guilty to: COUNT 1 - CONSPIRACY TO COMMIT
20 ROBBERY (Category B Felony - NRS 199.480, 200.380) and COUNT 2 - ROBBERY
21 WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.380,193.165) in
22 Case No. 11F04191A.

23 My decision to plead guilty is based upon the plea agreement in this case which is as
24 follows:

25 Both parties stipulate to a four (4) to twenty (20) year prison sentence. Both parties
26 agree that as to the robbery with use counts, both parties agree to recommend two (2) to ten
27 (10) years plus an equal and consecutive two (2) to ten (10) years. All cases and counts
28 will run concurrent. I agree to pay restitution for all counts and cases including those to be

Dismiss 11F09532C

RLN [Signature]

10
P:\WPDOCS\UNF\102\10229104.doc

1 dismissed. The State will not oppose dismissal of remaining counts in this case.

2 I agree to the forfeiture of any and all weapons or any interest in any weapons seized
3 and/or impounded in connection with the instant case and/or any other case negotiated in
4 whole or in part in conjunction with this plea agreement.

5 I understand and agree that, if I fail to interview with the Department of Parole and
6 Probation, fail to appear at any subsequent hearings in this case, or an independent
7 magistrate, by affidavit review, confirms probable cause against me for new criminal charges
8 including reckless driving or DUI, but excluding minor traffic violations, that the State will
9 have the unqualified right to argue for any legal sentence and term of confinement allowable
10 for the crime(s) to which I am pleading guilty, including the use of any prior convictions I
11 may have to increase my sentence as an habitual criminal to five (5) to twenty (20) years, life
12 without the possibility of parole, life with the possibility of parole after ten (10) years, or a
13 definite twenty-five (25) year term with the possibility of parole after ten (10) years.

14 Otherwise I am entitled to receive the benefits of these negotiations as stated in this
15 plea agreement.

16 CONSEQUENCES OF THE PLEA

17 I understand that by pleading guilty I admit the facts which support all the elements of
18 the offense(s) to which I now plead as set forth in Exhibit "1".

19 As to Count 1, I understand that as a consequence of my plea of guilty the Court
20 must sentence me to imprisonment in the Nevada Department of Corrections for a minimum
21 term of not less than ONE (1) year and a maximum term of not more than SIX (6) years.
22 The minimum term of imprisonment may not exceed forty percent (40%) of the maximum
23 term of imprisonment. I understand that I may also be fined up to \$5,000.00.

24 As to Count 2, I understand that as a consequence of my plea of guilty the Court
25 must sentence me to imprisonment in the Nevada Department of Corrections for a minimum
26 term of not less than TWO (2) years and a maximum term of not more than FIFTEEN (15)
27 years, plus a consecutive minimum term of not less than ONE (1) year and a maximum term
28 of not more than FIFTEEN (15) years for the use of the deadly weapon enhancement. The

1 minimum term of imprisonment may not exceed forty percent (40%) of the maximum term
2 of imprisonment. I understand that the law requires me to pay an Administrative
3 Assessment Fee.

4 I understand that, if appropriate, I will be ordered to make restitution to the victim of
5 the offense(s) to which I am pleading guilty and to the victim of any related offense which is
6 being dismissed or not prosecuted pursuant to this agreement. I will also be ordered to
7 reimburse the State of Nevada for any expenses related to my extradition, if any.

8 As to Count 1, I understand that I am eligible for probation for the offense(s) to
9 which I am pleading guilty. I understand that, except as otherwise provided by statute, the
10 question of whether I receive probation is in the discretion of the sentencing judge.

11 As to Count 2, I understand that I am not eligible for probation for the offense to
12 which I am pleading guilty.

13 I also understand that I must submit to blood and/or saliva tests under the Direction of
14 the Division of Parole and Probation to determine genetic markers and/or secretor status.

15 I further understand that if I am pleading guilty to charges of Burglary, Invasion of
16 the Home, Possession of a Controlled Substance with Intent to Sell, Sale of a Controlled
17 Substance, or Gaming Crimes, for which I have prior felony conviction(s), I will not be
18 eligible for probation and may receive a higher sentencing range.

19 I understand that if more than one sentence of imprisonment is imposed and I am
20 eligible to serve the sentences concurrently, the sentencing judge has the discretion to order
21 the sentences served concurrently or consecutively.

22 I also understand that information regarding charges not filed, dismissed charges, or
23 charges to be dismissed pursuant to this agreement may be considered by the judge at
24 sentencing.

25 I have not been promised or guaranteed any particular sentence by anyone. I know
26 that my sentence is to be determined by the Court within the limits prescribed by statute.

27 I understand that if my attorney or the State of Nevada or both recommend any
28 specific punishment to the Court, the Court is not obligated to accept the recommendation.

1 I understand that if the offense(s) to which I am pleading guilty was committed while
2 I was incarcerated on another charge or while I was on probation or parole that I am not
3 eligible for credit for time served toward the instant offense(s).

4 I understand that if I am not a United States citizen, any criminal conviction will
5 likely result in serious negative immigration consequences including but not limited to:

- 6 1. The removal from the United States through deportation;
- 7 2. An inability to reenter the United States;
- 8 3. The inability to gain United States citizenship or legal residency;
- 9 4. An inability to renew and/or retain any legal residency status; and/or
- 10 5. An indeterminate term of confinement, with the United States Federal
11 Government based on my conviction and immigration status.

12 Regardless of what I have been told by any attorney, no one can promise me that this
13 conviction will not result in negative immigration consequences and/or impact my ability to
14 become a United States citizen and/or a legal resident.

15 I understand that the Division of Parole and Probation will prepare a report for the
16 sentencing judge prior to sentencing. This report will include matters relevant to the issue of
17 sentencing, including my criminal history. This report may contain hearsay information
18 regarding my background and criminal history. My attorney and I will each have the
19 opportunity to comment on the information contained in the report at the time of sentencing.
20 Unless the District Attorney has specifically agreed otherwise, the District Attorney may
21 also comment on this report.

22 WAIVER OF RIGHTS

23 By entering my plea of guilty, I understand that I am waiving and forever giving up
24 the following rights and privileges:

- 25 1. The constitutional privilege against self-incrimination, including the
26 right to refuse to testify at trial, in which event the prosecution would
not be allowed to comment to the jury about my refusal to testify.
- 27 2. The constitutional right to a speedy and public trial by an impartial jury,
28 free of excessive pretrial publicity prejudicial to the defense, at which
trial I would be entitled to the assistance of an attorney, either appointed

1 or retained. At trial the State would bear the burden of proving beyond a
2 reasonable doubt each element of the offense(s) charged.

3 3. The constitutional right to confront and cross-examine any witnesses
4 who would testify against me.

5 4. The constitutional right to subpoena witnesses to testify on my behalf.

6 5. The constitutional right to testify in my own defense.

7 6. The right to appeal the conviction with the assistance of an attorney,
8 either appointed or retained, unless specifically reserved in writing and
9 agreed upon as provided in NRS 174.035(3). I understand this means I
10 am unconditionally waiving my right to a direct appeal of this
11 conviction, including any challenge based upon reasonable
12 constitutional, jurisdictional or other grounds that challenge the legality
13 of the proceedings as stated in NRS 177.015(4). However, I remain free
14 to challenge my conviction through other post-conviction remedies
15 including a habeas corpus petition pursuant to NRS Chapter 34.

16 VOLUNTARINESS OF PLEA

17 I have discussed the elements of all of the original charge(s) against me with my
18 attorney and I understand the nature of the charge(s) against me.

19 I understand that the State would have to prove each element of the charge(s) against
20 me at trial.

21 I have discussed with my attorney any possible defenses, defense strategies and
22 circumstances which might be in my favor.

23 All of the foregoing elements, consequences, rights, and waiver of rights have been
24 thoroughly explained to me by my attorney.

25 I believe that pleading guilty and accepting this plea bargain is in my best interest,
26 and that a trial would be contrary to my best interest.

27 I am signing this agreement voluntarily, after consultation with my attorney, and I am
28 not acting under duress or coercion or by virtue of any promises of leniency, except for those
set forth in this agreement.

I am not now under the influence of any intoxicating liquor, a controlled substance or
other drug which would in any manner impair my ability to comprehend or understand this
agreement or the proceedings surrounding my entry of this plea.

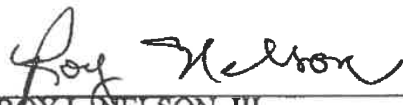
///

1 My attorney has answered all my questions regarding this guilty plea agreement and
2 its consequences to my satisfaction and I am satisfied with the services provided by my
3 attorney.

4 Dated this 9 ^{One} day of ~~May~~, 2011.

5
6 
7 DEVOHN MARKS
8 Defendant

9 AGREED TO BY:

10 
11 ROY L. NELSON, III.
12 Chief Deputy District Attorney
13 Nevada Bar #007842
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1 CERTIFICATE OF COUNSEL:

2 I, the undersigned, as the attorney for the Defendant named herein and as an officer of the
3 court hereby certify that:

- 4 1. I have fully explained to the Defendant the allegations contained in the
5 charge(s) to which guilty pleas are being entered.
6 2. I have advised the Defendant of the penalties for each charge and the
7 restitution that the Defendant may be ordered to pay.
8 3. I have inquired of Defendant facts concerning Defendant's immigration status
9 and explained to Defendant that if Defendant is not a United States citizen any
10 criminal conviction will most likely result in serious negative immigration
11 consequences including but not limited to:
12 a. The removal from the United States through deportation;
13 b. An inability to reenter the United States;
14 c. The inability to gain United States citizenship or legal residency;
15 d. An inability to renew and/or retain any legal residency status; and/or
16 e. An indeterminate term of confinement, by with United States Federal
17 Government based on the conviction and immigration status.

18 Moreover, I have explained that regardless of what Defendant may have been
19 told by any attorney, no one can promise Defendant that this conviction will
20 not result in negative immigration consequences and/or impact Defendant's
21 ability to become a United States citizen and/or legal resident.

- 22 4. All pleas of guilty offered by the Defendant pursuant to this agreement are
23 consistent with the facts known to me and are made with my advice to the
24 Defendant.
25 5. To the best of my knowledge and belief, the Defendant:
26 a. Is competent and understands the charges and the consequences of
27 pleading guilty as provided in this agreement,
28 b. Executed this agreement and will enter all guilty pleas pursuant hereto
voluntarily, and
c. Was not under the influence of intoxicating liquor, a controlled
substance or other drug at the time I consulted with the Defendant as
certified in paragraphs 1 and 2 above.

Dated: This 9 day of May, 2011.

J me

ATTORNEY FOR DEFENDANT

ckb


CLERK OF THE COURT

1 **INFO**
2 **DAVID ROGER**
3 **Clark County District Attorney**
4 **Nevada Bar #002781**
5 **ROY L. NELSON, III.**
6 **Chief Deputy District Attorney**
7 **Nevada Bar #007842**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

12 **I.A. 05/26/11** **DISTRICT COURT**
13 **10:30 AM** **CLARK COUNTY, NEVADA**
14 **PD**

15 **THE STATE OF NEVADA,**
16 **Plaintiff,**

17 **-vs-**

18 **DEVOHN MARKS,**
19 **#2798254**

20 **Defendant.**

Case No: C-11-272989-3
Dept No: XVIII

INFORMATION

21 **STATE OF NEVADA** }
22 **COUNTY OF CLARK** } ss.

23 **DAVID ROGER, District Attorney within and for the County of Clark, State of**
24 **Nevada, in the name and by the authority of the State of Nevada, informs the Court:**

25 **That DEVOHN MARKS, the Defendant(s) above named, having committed the**
26 **crimes of CONSPIRACY TO COMMIT ROBBERY (Category B Felony - NRS**
27 **199.480, 200.380) and ROBBERY WITH USE OF A DEADLY WEAPON (Category B**
28 **Felony - NRS 200.380,193.165), on or about the 4th day of February, 2011, within the**
County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such
cases made and provided, and against the peace and dignity of the State of Nevada,

COUNT 1 - CONSPIRACY TO COMMIT ROBBERY

Defendant and CHRISTOPHER KITCHEN and CORY CRUMBLE, did then and
there meet with each other and an unidentified male, and between themselves, and each of

C:\PROGRAM FILES\NEEVIA.COM\DOCUMENT CONVERTER\TEMP\1794167-2105:

EXHIBIT "1"

1 them with the other, wilfully, unlawfully, and feloniously conspire and agree to commit a
2 crime, to-wit: Robbery, and in furtherance of said conspiracy, Defendants did commit the
3 acts as set forth in Count 1, said acts being incorporated by this reference as though fully set
4 forth herein.

5 COUNT 2 - ROBBERY WITH USE OF A DEADLY WEAPON

6 did then and there willfully, unlawfully, and feloniously take personal property, to-
7 wit: lawful money of the United States and/or a cellular telephone, from the person of JOHN
8 ROSSOLO, and/or MIRIAM ODELL, or in their presence, by means of force or violence, or
9 fear of injury to, and without the consent and against the will of the said JOHN ROSSOLO,
10 and/or MIRIAM ODELL, said Defendant using a deadly weapon, to-wit: a a firearm, during
11 the commission of said crime, the said Defendant and CHRISTOPHER KITCHEN and
12 CORY CRUMBLE, aiding or abetting each other in the commission of the crime by
13 accompanying each other to the crime scene and by entering into a course of conduct
14 whereby defendant DEVOHN MARKS entered FRED'S TAVERN prior to the robbery to
15 determine how many people were inside; thereafter, defendant CHRISTOPHER KITCHEN
16 and/or CORY CRUMBLE and/or the unidentified male and/or DEVOHN MARKS entered
17 the bar, defendant CORY CRUMBLE pointed sad firearm at JOHN ROSSOLO and/or
18 MIRIAM ODELL and demanded that they get on the ground, defendant CHRISTOPHER
19 KITCHEN and/or the unidentified male and/or DEVOHN MARKS took money from the
20 cash register and/or a cellular telephone from JOHN ROSSOLO and/or MIRIAM ODELL,
21 defendant DEVOHN MARKS drove the getaway car and/or acted as lookout, the defendants
22 offering counsel and encouragement to each other throughout.

23
24 DAVID ROGER
25 DISTRICT ATTORNEY
26 Nevada Bar #002781

27 BY /s/ Roy L. Nelson, III
28 ROY L. NELSON, III.
Chief Deputy District Attorney
Nevada Bar #007842

1 Names of witnesses known to the District Attorney's Office at the time of filing this
2 Information are as follows:

3	<u>NAME</u>	<u>ADDRESS</u>
4	ALBERT, JOEL R	LVMPD #13204
5	CARVOUNIARIS, DANIELLE NI	LVMPD #12712
6	CRUMBLE, CORY	Address Unknown
7	CUSTODIAN OF RECORDS	CCDC
8	CUSTODIAN OF RECORDS	LVMPD COMMUNICATIONS
9	CUSTODIAN OF RECORDS	LVMPD RECORDS
10	DOUGHERTY, ED	DISTRICT ATTORNEY INVESTIGATOR
11	DUDLEY, JARVIS C	LVMPD #8875
12	HONAKER, JAMIE	DISTRICT ATTORNEY INVESTIGATOR
13	JIVAPONG, CHARLES	LVMPD #9338
14	KAVON, SCOTT J	LVMPD #4131
15	KITCHEN, CHRISTOPHER	Address Unknown
16	LANEVE, EDWARD J	LVMPD #5612
17	MILLER, DAVID D	LVMPD #6627
18	ORDELL, MIRIAM	7725 Littondale Dr, LVN 89139
19	ROSSOLO, JOHN A JR	Fred's Tavern, 4680 S Decatur, LVN 89103
20	STOUT, ERIC	LVMPD #4550
21	SWANBECK, JEFFREY S	LVMPD #6606
22	WALTER, PATRICK C	LVMPD #7569
23	WERT, JESSICA L	LVMPD #9301

24

25

26

27 DA#11F02291C/ckb
28 LVMPD EV#1102040995
(TK8)

EXHIBIT 4

ORIGINAL

FILED

AUG 16 2011

John T. Parrish
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DEVOHN MARKS
#2798254

Defendant.

CASE NO. C272989-3

DEPT. NO. XVIII

C-11-272989-3
JOC
Judgment of Conviction
1572573



JUDGMENT OF CONVICTION
(PLEA OF GUILTY)

The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crimes of COUNT 1 – CONSPIRACY TO COMMIT ROBBERY (Category B Felony), in violation of NRS 199.480, 200.380, and COUNT 2 – ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony), in violation of NRS 200.380, 193.165; thereafter, on the 27TH day of July, 2011, the Defendant was present in court for sentencing with his counsel, JOHN PARRIS, ESQ., and good cause appearing,

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in addition to the \$25.00 Administrative Assessment, and Indigent Defense Civil Assessment Fee of \$250.00, the Defendant is sentenced to the Nevada Department of Corrections (NDC) as follows: as to COUNT 1 - to a MAXIMUM of FORTY-EIGHT (48)

2

1 MONTHS with a MINIMUM Parole Eligibility of TWELVE (12) MONTHS; and as to
2 COUNT 2 – to a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a
3 MINIMUM Parole Eligibility of TWENTY-FOUR (24) MONTHS plus a CONSECUTIVE
4 term of ONE HUNDRED TWENTY (120) MONTHS MAXIMUM and TWENTY-FOUR
5 (24) MONTHS MINIMUM for Use of a Deadly Weapon, COUNT 2 to run
6 CONCURRENT with COUNT 1 and this Sentence to run CONCURRENT with Case
7 C273034; with ONE HUNDRED SEVENTY-THREE (173) DAYS Credit for Time
8 Served. As the Fee and Genetic Testing have been previously imposed, the Fee and
9 Testing in the current case are WAIVED.
10
11

12
13 DATED this 11th day of August, 2011

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16 
17 DAVID BARKER
18 DISTRICT JUDGE
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EXHIBIT 5

ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

JUN 09 2011

BY 
PHYLLIS KIRBY, DEPUTY

1 GPA
2 DAVID ROGER
3 DISTRICT ATTORNEY
4 Nevada Bar #002781
5 ROY L. NELSON, III.
6 Chief Deputy District Attorney
7 Nevada Bar #007842
8 200 Lewis Avenue
9 Las Vegas, NV 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,
9 Plaintiff,

10 -vs-

11 DEVOHN MARKS,
12 #2798254

13 Defendant.

CASE NO: C-11-273034-3
DEPT NO: I

C-11-273034-3
GPA
Guilty Plea Agreement
1484847



14 GUILTY PLEA AGREEMENT

15 I hereby agree to plead guilty to: COUNT 1 - CONSPIRACY TO COMMIT
16 ROBBERY (Category B Felony - NRS 199.480, 200.380) and COUNT 2 - ROBBERY
17 WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.380,193.165), as
18 more fully alleged in the charging document attached hereto as Exhibit "1".

19 I hereby also agree to plead guilty to: COUNT 1 - CONSPIRACY TO COMMIT
20 ROBBERY (Category B Felony - NRS 199.480, 200.380) and COUNT 2 - ROBBERY
21 WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.380,193.165) in
22 Case No. 11F02291C.

23 My decision to plead guilty is based upon the plea agreement in this case which is as
24 follows:

25 Both parties stipulate to a four (4) to twenty (20) year prison sentence. On the
26 robbery with use counts, both parties will recommend two (2) to ten (10) years plus an equal
27 and consecutive two (2) to ten (10) years, all cases and counts will run concurrent. I agree to
28 pay restitution for all counts and cases including those to be dismissed. The State will not

Dismiss 11F09532L

1 oppose dismissal of remaining counts in this case.

2 I agree to the forfeiture of any and all weapons or any interest in any weapons seized
3 and/or impounded in connection with the instant case and/or any other case negotiated in
4 whole or in part in conjunction with this plea agreement.

5 I understand and agree that, if I fail to interview with the Department of Parole and
6 Probation, fail to appear at any subsequent hearings in this case, or an independent
7 magistrate, by affidavit review, confirms probable cause against me for new criminal charges
8 including reckless driving or DUI, but excluding minor traffic violations, that the State will
9 have the unqualified right to argue for any legal sentence and term of confinement allowable
10 for the crime(s) to which I am pleading guilty, including the use of any prior convictions I
11 may have to increase my sentence as an habitual criminal to five (5) to twenty (20) years, life
12 without the possibility of parole, life with the possibility of parole after ten (10) years, or a
13 definite twenty-five (25) year term with the possibility of parole after ten (10) years.

14 Otherwise I am entitled to receive the benefits of these negotiations as stated in this
15 plea agreement.

16 CONSEQUENCES OF THE PLEA

17 I understand that by pleading guilty I admit the facts which support all the elements of
18 the offense(s) to which I now plead as set forth in Exhibit "1".

19 As to Count 1, I understand that as a consequence of my plea of guilty the Court
20 must sentence me to imprisonment in the Nevada Department of Corrections for a minimum
21 term of not less than ONE (1) year and a maximum term of not more than SIX (6) years.
22 The minimum term of imprisonment may not exceed forty percent (40%) of the maximum
23 term of imprisonment. I understand that I may also be fined up to \$5,000.00.

24 As to Count 2, I understand that as a consequence of my plea of guilty the Court
25 must sentence me to imprisonment in the Nevada Department of Corrections for a minimum
26 term of not less than TWO (2) years and a maximum term of not more than FIFTEEN (15)
27 years, plus a consecutive minimum term of not less than ONE (1) year and a maximum term
28 of not more than FIFTEEN (15) years for the use of the deadly weapon enhancement. The

1 minimum term of imprisonment may not exceed forty percent (40%) of the maximum term
2 of imprisonment. I understand that the law requires me to pay an Administrative
3 Assessment Fee.

4 I understand that, if appropriate, I will be ordered to make restitution to the victim of
5 the offense(s) to which I am pleading guilty and to the victim of any related offense which is
6 being dismissed or not prosecuted pursuant to this agreement. I will also be ordered to
7 reimburse the State of Nevada for any expenses related to my extradition, if any.

8 As to Count 1, I understand that I am eligible for probation for the offense(s) to which
9 I am pleading guilty. I understand that, except as otherwise provided by statute, the question
10 of whether I receive probation is in the discretion of the sentencing judge.

11 As to Count 2, I understand that I am not eligible for probation for the offense to which I am
12 pleading guilty.

13 I also understand that I must submit to blood and/or saliva tests under the Direction of
14 the Division of Parole and Probation to determine genetic markers and/or secretor status.

15 I further understand that if I am pleading guilty to charges of Burglary, Invasion of
16 the Home, Possession of a Controlled Substance with Intent to Sell, Sale of a Controlled
17 Substance, or Gaming Crimes, for which I have prior felony conviction(s), I will not be
18 eligible for probation and may receive a higher sentencing range.

19 I understand that if more than one sentence of imprisonment is imposed and I am
20 eligible to serve the sentences concurrently, the sentencing judge has the discretion to order
21 the sentences served concurrently or consecutively.

22 I also understand that information regarding charges not filed, dismissed charges, or
23 charges to be dismissed pursuant to this agreement may be considered by the judge at
24 sentencing.

25 I have not been promised or guaranteed any particular sentence by anyone. I know
26 that my sentence is to be determined by the Court within the limits prescribed by statute.

27 I understand that if my attorney or the State of Nevada or both recommend any
28 specific punishment to the Court, the Court is not obligated to accept the recommendation.

1 I understand that if the offense(s) to which I am pleading guilty was committed while
2 I was incarcerated on another charge or while I was on probation or parole that I am not
3 eligible for credit for time served toward the instant offense(s).

4 I understand that if I am not a United States citizen, any criminal conviction will
5 likely result in serious negative immigration consequences including but not limited to:

- 6 1. The removal from the United States through deportation;
- 7 2. An inability to reenter the United States;
- 8 3. The inability to gain United States citizenship or legal residency;
- 9 4. An inability to renew and/or retain any legal residency status; and/or
- 10 5. An indeterminate term of confinement, with the United States Federal
11 Government based on my conviction and immigration status.

12 Regardless of what I have been told by any attorney, no one can promise me that this
13 conviction will not result in negative immigration consequences and/or impact my ability to
14 become a United States citizen and/or a legal resident.

15 I understand that the Division of Parole and Probation will prepare a report for the
16 sentencing judge prior to sentencing. This report will include matters relevant to the issue of
17 sentencing, including my criminal history. This report may contain hearsay information
18 regarding my background and criminal history. My attorney and I will each have the
19 opportunity to comment on the information contained in the report at the time of sentencing.
20 Unless the District Attorney has specifically agreed otherwise, the District Attorney may
21 also comment on this report.

22 WAIVER OF RIGHTS

23 By entering my plea of guilty, I understand that I am waiving and forever giving up
24 the following rights and privileges:

- 25 1. The constitutional privilege against self-incrimination, including the
26 right to refuse to testify at trial, in which event the prosecution would
not be allowed to comment to the jury about my refusal to testify.
- 27 2. The constitutional right to a speedy and public trial by an impartial jury,
28 free of excessive pretrial publicity prejudicial to the defense, at which
trial I would be entitled to the assistance of an attorney, either appointed

1 or retained. At trial the State would bear the burden of proving beyond a
2 reasonable doubt each element of the offense(s) charged.

3 3. The constitutional right to confront and cross-examine any witnesses
4 who would testify against me.

5 4. The constitutional right to subpoena witnesses to testify on my behalf.

6 5. The constitutional right to testify in my own defense.

7 6. The right to appeal the conviction with the assistance of an attorney,
8 either appointed or retained, unless specifically reserved in writing and
9 agreed upon as provided in NRS 174.035(3). I understand this means I
10 am unconditionally waiving my right to a direct appeal of this
11 conviction, including any challenge based upon reasonable
12 constitutional, jurisdictional or other grounds that challenge the legality
13 of the proceedings as stated in NRS 177.015(4). However, I remain free
14 to challenge my conviction through other post-conviction remedies
15 including a habeas corpus petition pursuant to NRS Chapter 34.

16 VOLUNTARINESS OF PLEA

17 I have discussed the elements of all of the original charge(s) against me with my
18 attorney and I understand the nature of the charge(s) against me.

19 I understand that the State would have to prove each element of the charge(s) against
20 me at trial.

21 I have discussed with my attorney any possible defenses, defense strategies and
22 circumstances which might be in my favor.

23 All of the foregoing elements, consequences, rights, and waiver of rights have been
24 thoroughly explained to me by my attorney.

25 I believe that pleading guilty and accepting this plea bargain is in my best interest,
26 and that a trial would be contrary to my best interest.


27 I am signing this agreement voluntarily, after consultation with my attorney, and I am
28 not acting under duress or coercion or by virtue of any promises of leniency, except for those
set forth in this agreement.

I am not now under the influence of any intoxicating liquor, a controlled substance or
other drug which would in any manner impair my ability to comprehend or understand this
agreement or the proceedings surrounding my entry of this plea.

My attorney has answered all my questions regarding this guilty plea agreement and

1 its consequences to my satisfaction and I am satisfied with the services provided by my
2 attorney.

3 DATED this 9 day of ^{JUNE}~~May~~, 2011.

4
5 
6 DEVOHN MARKS
7 Defendant

8 AGREED TO BY:

9 
10 ROY L. NELSON, III.
11 Chief Deputy District Attorney
12 Nevada Bar #007842

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1 CERTIFICATE OF COUNSEL:

2 I, the undersigned, as the attorney for the Defendant named herein and as an officer of the
3 court hereby certify that:

- 4 1. I have fully explained to the Defendant the allegations contained in the
5 charge(s) to which guilty pleas are being entered.
6 2. I have advised the Defendant of the penalties for each charge and the
7 restitution that the Defendant may be ordered to pay.
8 3. I have inquired of Defendant facts concerning Defendant's immigration status
9 and explained to Defendant that if Defendant is not a United States citizen any
10 criminal conviction will most likely result in serious negative immigration
11 consequences including but not limited to:
12 a. The removal from the United States through deportation;
13 b. An inability to reenter the United States;
14 c. The inability to gain United States citizenship or legal residency;
15 d. An inability to renew and/or retain any legal residency status; and/or
16 e. An indeterminate term of confinement, by with United States Federal
17 Government based on the conviction and immigration status.

18 Moreover, I have explained that regardless of what Defendant may have been
19 told by any attorney, no one can promise Defendant that this conviction will
20 not result in negative immigration consequences and/or impact Defendant's
21 ability to become a United States citizen and/or legal resident.

- 22 4. All pleas of guilty offered by the Defendant pursuant to this agreement are
23 consistent with the facts known to me and are made with my advice to the
24 Defendant.
25 5. To the best of my knowledge and belief, the Defendant:
26 a. Is competent and understands the charges and the consequences of
27 pleading guilty as provided in this agreement,
28 b. Executed this agreement and will enter all guilty pleas pursuant hereto
voluntarily, and
c. Was not under the influence of intoxicating liquor, a controlled
substance or other drug at the time I consulted with the Defendant as
certified in paragraphs 1 and 2 above.

Dated: This 9 day of ^{June} May, 2011.


ATTORNEY FOR DEFENDANT

ckb


CLERK OF THE COURT

1 **INFO**
2 **DAVID ROGER**
3 **Clark County District Attorney**
4 **Nevada Bar #002781**
5 **ROY L. NELSON, III.**
6 **Chief Deputy District Attorney**
7 **Nevada Bar #007842**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

12 **I.A. 05/24/11**
13 **1:30 PM**
14 **PD**

DISTRICT COURT
CLARK COUNTY, NEVADA

15 **THE STATE OF NEVADA,**
16
17 **Plaintiff,**

18 **-vs-**

19 **DEVOHN MARKS,**
20 **#2798254**

21 **Defendant.**

Case No: C-11-273034-3
Dept No: I

INFORMATION

22 **STATE OF NEVADA** }
23 **COUNTY OF CLARK** } ss.

24 **DAVID ROGER, District Attorney within and for the County of Clark, State of**
25 **Nevada, in the name and by the authority of the State of Nevada, informs the Court:**

26 **That DEVOHN MARKS, the Defendant(s) above named, having committed the**
27 **crimes of CONSPIRACY TO COMMIT ROBBERY (Category B Felony - NRS**
28 **199.480, 200.380) and ROBBERY WITH USE OF A DEADLY WEAPON (Category B**
29 **Felony - NRS 200.380,193.165), on or between December 13, 2010 and January 16, 2011,**
30 **within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes**
31 **in such cases made and provided, and against the peace and dignity of the State of Nevada,**

32 **COUNT 1 - CONSPIRACY TO COMMIT ROBBERY**

33 **Defendant and CORY CRUMBLE and CHRISTOPHER KITCHEN, did then and**
34 **there meet with each other and between themselves, and each of them with the other,**

EXHIBIT "1"

1 wilfully, unlawfully, and feloniously conspire and agree to commit a crime, to-wit:
2 Robbery.

3 COUNT 2 - ROBBERY WITH USE OF A DEADLY WEAPON

4 Defendant and CORY CRUMBLE and CHRISTOPHER KITCHEN, did then and
5 there willfully, unlawfully, and feloniously take personal property, to-wit: a money clip and
6 lawful money of the United States, and/or a wallet and contents and a cellular telephone,
7 and/or credit cards, and/or miscellaneous items, and/or a purse and contents, including keys,
8 and/or identification, from the person of STUART LEFF, and/or ANOUK BOONSONG,
9 and/or JAKE SUMILE, and/or NICK LAM, and/or MICHAEL THOMAS, and/or WAI
10 KEUNG CHAN, and/or SHOTA NAGAMATSU, and/or DUANE LOTZ, and/or KARLA
11 VALLE, and/or MICHAEL AZCARRAGA, and/or VERNARDO MONTENEGRO, and/or
12 VINCENT LEPORE, or in their presence, by means of force or violence, or fear of injury to,
13 and without the consent and against the will of the said STUART LEFF, and/or ANOUK
14 BOONSONG, and/or JAKE SUMILE, and/or NICK LAM, and/or MICHAEL THOMAS,
15 and/or WAI KEUNG CHAN, and/or SHOTA NAGAMATSU, and/or DUANE LOTZ,
16 and/or KARLA VALLE, and/or MICHAEL AZCARRAGA, and/or VERNARDO
17 MONTENEGRO, and/or VINCENT LEPORE, said Defendant using a deadly weapon, to-
18 wit: a firearm, during the commission of said crime, by accompanying each other to the
19 crime scene and by entering into a course of conduct whereby Defendants CHRISTOPHER
20 KITCHEN and CORY CRUMBLE approached STUART LEFF, and/or ANOUK
21 BOONSONG, and/or JAKE SUMILE, and/or NICK LAM, and/or MICHAEL THOMAS,
22 and/or WAI KEUNG CHAN, and/or SHOTA NAGAMATSU, and/or DUANE LOTZ,
23 and/or KARLA VALLE, and/or MICHAEL AZCARRAGA, and/or VERNARDO
24 MONTENEGRO, and/or VINCENT LEPORE, Defendant CHRISTOPHER KITCHEN or
25 CORY CRUMBLE pointed a firearm at STUART LEFF, and/or ANOUK BOONSONG,
26 and/or JAKE SUMILE, and/or NICK LAM, and/or MICHAEL THOMAS, and/or WAI
27 KEUNG CHAN, and/or SHOTA NAGAMATSU, and/or DUANE LOTZ, and/or KARLA
28 VALLE, and/or MICHAEL AZCARRAGA, and/or VERNARDO MONTENEGRO, and/or

1 VINCENT LEPORE and told STUART LEFF; and/or ANOUK BOONSONG, and/or JAKE
2 SUMILE, and/or NICK LAM, and/or MICHAEL THOMAS, and/or WAI KEUNG CHAN,
3 and/or SHOTA NAGAMATSU, and/or DUANE LOTZ, and/or KARLA VALLE, and/or
4 MICHAEL AZCARRAGA, and/or VERNARDO MONTENEGRO, and/or VINCENT
5 LEPORE not to move while Defendant CHRISTOPHER KITCHEN or Defendant CORY
6 CRUMBLE took STUART LEFF, and/or ANOUK BOONSONG, and/or JAKE SUMILE,
7 and/or NICK LAM, and/or MICHAEL THOMAS, and/or WAI KEUNG CHAN, and/or
8 SHOTA NAGAMATSU, and/or DUANE LOTZ, and/or KARLA VALLE, and/or
9 MICHAEL AZCARRAGA, and/or VERNARDO MONTENEGRO, and/or VINCENT
10 LEPORE's property, Defendant DEVOHN MARKS acted as lookout and/or drove the
11 getaway car, Defendants offering counsel and encouragement to each other throughout.

12 DAVID ROGER
13 DISTRICT ATTORNEY
14 Nevada Bar #002781

15 BY /s/ Roy L. Nelson, III
16 ROY L. NELSON, III.
17 Chief Deputy District Attorney
Nevada Bar #007842

18 Names of witnesses known to the District Attorney's Office at the time of filing this
19 Information are as follows:

20	<u>NAME</u>	<u>ADDRESS</u>
21	AZCARRAGA, MICHAEL	4853 Willow Glen Dr, LVN 89147
22	BEVERIDGE, JUSTIN C	LVMPD #6707
23	BOONSONG, ANOUK	4250 Arville St #170, LVN 89103
24	CHAN, WAI KEUNG	4391 Alexis Dr #323, LVN 89103
25	CRUMBLE, CORY	5655 W Rochelle Ave #108, LVN 89103
26	CUSTODIAN OF RECORDS	CCDC
27	CUSTODIAN OF RECORDS	LVMPD COMMUNICATIONS
28	CUSTODIAN OF RECORDS	LVMPD RECORDS

1	DOUGHERTY, ED	DISTRICT ATTORNEY INVESTIGATOR
2	ENAMORADO, MARCO	5701 W Rochelle Ave, LVN 89103
3	GARCIA, ANNEL	8260 Broward Ln, LVN 89147
4	HONAKER, JAMIE	DISTRICT ATTORNEY INVESTIGATOR
5	KITCHEN, CHRISTOPHER	3639 Van Dyke Ave #D, LVN 89103
6	LAM, NICK	5419 W Tropicana Ave, #2505, LVN 89103
7	LEFF, STUART	5655 W Rochelle Ave #108, LVN 89103
8	LEPORE, VINCENT ARTHUR	3805 N Chadman Ln #1B, Muncie, IN 47304
9	LOTZ, DUANE	4160 Sanderling Cir #457, LVN 89134
10	MONTENEGRO, VERNARDO	4250 Arville St #228, LVN 89103
11	NAGAMATSU, SHOTA	5445 W Reno Ave #607, LVN 89103
12	RICHARDS, THOMAS	4400 S Jones Blvd #1122, LVN 89103
13	SUMILE, JAKE	5415 W Harmon Ave #1025, LVN 89103
14	SWANBECK, JEFFREY	LVMPD #6606
15	THOMAS, MICHAEL	5445 W Reno Ave #2214, LVN 89103
16	VALLE, KARLA	3625 S Decatur Blvd #1067, LVN 89103

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 25 DA#11F04191A/GCU: ckb
 26 LVMPD EV#1012132266; 1012132238;
 1012163127; 1012163172; 1012163206;
 1012163218; 1012163232; 1012221499;
 27 1012222436; 1101093515; 1101093434;
 1101163160
 28 (TK12)

EXHIBIT 6

ORIGINAL

FILED

MAY 02 2012

John J. Williams
CLERK OF COURT

JOCP

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

CASE NO. C273034-3

DEPT. NO. V

DEVOHN MARKS
#2798254

Defendant.

C-11-273034-3
AJOC
Amended Judgment of Conviction
1841714



AMENDED JUDGMENT OF CONVICTION
(PLEA OF GUILTY)

The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crimes of COUNT 1 – CONSPIRACY TO COMMIT ROBBERY (Category B Felony) in violation of NRS 199.480, 200.380; COUNT 2 – ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.165; thereafter, on the 25TH day of July, 2011, the Defendant was present in court for sentencing with counsel, and good cause appearing,

THE DEFENDANT WAS THEREBY ADJUDGED guilty of said offenses and, in addition to the \$25.00 Administrative Assessment Fee, \$2,287.00 Restitution Joint and Severally and \$150.00 DNA Analysis Fee including testing to determine genetic markers, the Defendant is sentenced to the Nevada Department of Corrections as

☐ Arraigned (before trial)

☐ Arraigned after diversion

☐ Arraigned before trial

☒ Guilty Plea with Sent. (before trial)

☐ Guilty Plea before/during trial

☐ Verdict or Disposition

Bench (Non-Jury) Trial

☐ Dismissed (during trial)

☐ Acquittal

☐ Guilty Plea with Sent. (during trial)

☐ Conviction

Jury Trial

☐ Dismissed (during trial)

☐ Acquittal

☐ Guilty Plea with Sent. (during trial)

☐ Conviction

1 follows: As to COUNT 1 – to a MAXIMUM of SIXTY (60) MONTHS with a MINIMUM
2 parole eligibility of TWELVE (12) MONTHS; as to COUNT 2 - to a MAXIMUM of ONE
3 HUNDRED TWENTY (120) MONTHS with a MINIMUM parole eligibility of TWENTY-
4 FOUR (24) MONTHS plus an EQUAL & CONSECUTIVE term of a MAXIMUM of ONE
5 HUNDRED TWENTY (120) MONTHS with a MINIMUM parole eligibility of TWENTY-
6 FOUR (24) MONTHS for the Use of a Deadly Weapon; Count 2 to run
7 CONCURRENT with Count 1 with ONE HUNDRED FORTY-TWO (142) days credit for
8 time served.
9

10
11 THEREAFTER, on the 25th Day of April, 2012, pursuant to Courts request to
12 correct restitution, the Defendant was present in court with his counsel DAN WINDER,
13 ESQ., and good cause appearing to amend the Judgment of Conviction.

14 IT IS HEREBY ORDERED; Restitution is amended as follows: \$9,797.00
15 TOTAL (\$2,250.00 payable to Stuart Leff, \$170.00 payable to Anouck Boonsong,
16 \$6.00 to Jake Sumile, \$667.00 payable to Nick Lam, \$402.00 payable to Michael
17 Thomas, \$18.00 to Wai Keung Chan, \$100.00 payable to Shota Nagamatsu, \$430.00
18 payable to Karla Valle, \$200.00 payable to Michael Azcarraga, \$404.00 payable to
19 Vernardo Montenegro, and \$5,150.00 payable to Vincent Lapoure) joint and severally
20 with Co-Defendants.
21
22

23
24 DATED this 27th day of April, 2012.

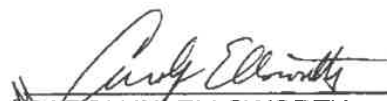
25
26 
27 CAROLYN ELLSWORTH
28 DISTRICT JUDGE

EXHIBIT 7

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
OFFICER'S REPORT

Event #: 181000156355

Torrey Pines Pub Robbery, Officer's Report # 1

SUBJECT

DIVISION REPORTING: ISD – Theft Crimes / Robbery Section

DIVISION OF OCCURRENCE: ISD – Theft Crimes / Robbery Section

DATE & TIME OCCURRED: 10-29-18 / 0514

LOCATION OF OCCURRENCE: 6374 W. Lake Mead., LV, NV 89108

Event # 181000156355:

On the morning of Monday, October 29th, 2018, at approximately 5:12 AM, Shaylene Bernier, DOB: 08-10-81, was bartending at the Torrey Pines Pub located at 6374 W. Lake Mead Blvd., Las Vegas, NV 89106. There were four customers inside the business later identified as Gerald Ferony, DOB: 11-11-47 (70 years old), Myer Goldstein, DOB: 05-10-68 (50 years old), Kathy Petcoff, DOB: 07-25-43 (75 years old), and Antwaine Johnson, DOB: 06-11-88 (30 years old). It should be noted that the bar was open for business (24/7) but the doors were all electronically locked. It is the type of establishment wherein the bartender must press a button to temporarily unlock the doors so someone outside the business can gain entry. It is a security feature common at such establishments to help prevent robberies, etc. Those *inside* the business can exit without assistance from the bartender by simply opening the doors.

Antwaine was sitting at a poker machine at the bar but got up to leave at approximately 5:14 AM. Antwaine accepted a bottle of water to go and then opened a door on the east side of the business to exit. While the door was open two suspects rushed toward Antwaine. The suspects were both wearing masks and gloves. The masks covered their entire faces with holes cut out for their eyes. Each suspect was holding a semi-automatic handgun, one silver, and the other black. One suspect kept the door from closing and the other suspect grabbed hold of Antwaine and pulled him back inside the bar and pushed him to the ground near the door. The suspects left Antwaine on the ground and proceeded to the bar where they pointed their guns at everyone and told them to put their hands up.

Date and Time of Report: 01-28-19 / 1500

Officer: Dave Miller

P#: 6627

Approved By: _____

Officer: _____

P#: _____

SIGNATURE: *D Miller* 6627

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION

Event #: 181000156355

The suspect with the black handgun went behind the bar and told Shaylene to open the cash drawers. Shaylene was in fear and complied with the suspect's orders. She opened two cash drawers and placed approximately \$2600.00 into a black trash bag for the suspect. While this was occurring, the suspect with the silver gun was keeping watch on the remaining three customers at the bar, Gerald, Myer, and Kathy. The suspect with the silver gun suddenly hit Gerald in the back of the head with the butt of his handgun. Gerald fell to the ground bleeding badly. The suspect with the silver gun then stole Gerald's wallet from the back of his pocket (containing miscellaneous ID and credit cards). Kathy simply declared that she didn't have anything and the suspects left her alone for the most part (one did sort of hit her in her shoulder, likely making demands, but she wasn't paying attention to what they were saying and was trying to ignore them). The suspect with the silver gun then stole Myer's wallet out of his back pocket (containing miscellaneous ID and credit cards). The suspect with the silver gun then suddenly struck Myer in the head with the butt of his handgun as well (minor injury only). Both suspects ran from the bar with the stolen goods. The suspects fled out the same side door and Shaylene called the police to report the incident.

The Las Vegas Metropolitan Police Department (LVMPD) received the call for help and dispatchers generated event # 181000156355. Several police officers were assigned to the call, to include Officer W. Ferguson, P# 14938, Officer J. Rosales, P# 16122, Officer J. Tomaino, P# 16214, Officer J. Sotelo, P# 16236, and Officer J. Fernandez, P# 15132. The officers arrived a short time later but were unable to locate the suspects. Gerald Ferony was bleeding badly from his head and was transported by AMR 108 to Mountain View Hospital where he received medical treatment to close a laceration (three staples). Detectives from the Robbery Section responded to assist with the investigation to include Det. Dave Miller, P# 6627, Det. Will Hubbard, P# 5439, Det. Sam Smith, P# 6424, Det. Jason Hanshew, P# 9664, and Sgt. Joe LePore, P# 6260. Crime Scene Analyst (CSA) King, P# 14372, responded as well to photograph the scene and look for potential evidence (latent prints, DNA, etc.).

The business was equipped with a video surveillance system that recorded the entire incident from several different angles. Det. Hubbard collected a copy of the video as evidence. The video clearly showed the suspects wearing gloves, so CSA King did not search for latent prints. CSA King did collect a sample of the blood found on the floor (presumably Gerald Ferony's blood). The following is an initial summary of the video surveillance:

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION**

Event #: 181000156355

- In the minutes leading up to the robbery, Antwaine Johnson was sitting at the bar and appeared to be playing video poker. His cell phone was in his hand and he occasionally touched the screen and/or glanced at it (function unknown...texting, internet, etc.?).
- At 5:12:50 AM, the two suspects entered the bar's parking lot by jumping over a wall just east of the business from a neighboring apartment complex. The suspects ran to a parked car located on the east side of the business about ten or fifteen yards from the side door which was locked/secured. The suspects crouched down behind the car and began watching the side door to the business. They never tried to see if the door was locked; they never tried to make entry; they simply waited and watched. The car they were hiding behind belonged to Antwaine Johnson. It was a white 2002 Chevrolet Monte Carlo bearing Nevada license plates 425-D75.
- At 5:13:13 AM, Antwaine was still at the bar and he looked at his cell phone one last time. He then got up, accepted a bottle of water for the road, and proceeded to the exit using the door on the east side of the business.
- At 5:14:03 AM, the suspects have been waiting outside behind Antwaine's car for approximately one minute. Antwaine opened the door to the business and the suspects rushed toward him. As previously described, one suspect grabbed the door to keep it from closing while the other suspect grabbed hold of Antwaine and pulled him back into the business. Antwaine went down on the floor near the doors and the suspects ran past him, leaving him there for the duration of the robbery. It should be noted that the robbery was occurring at the bar maybe 20 or 25 yards away from Antwaine's location on the floor next to the exit.
- At 5:15:40 AM, the robbery is complete and the suspects ran past Antwaine and out the same east door. The suspects ran away in a northerly direction out of the camera's view (presumably back over the wall into the same apartment complex).
- After the suspects left, Antwaine walked over and joined the other customers and helped Gerald place a towel on his injured head.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION

Event #: 181000156355

Suspect Descriptions Based on Video Surveillance and Witness Statements

Suspect # 1: Black male, possibly in his 20's or 30's, possibly around 5'10", possibly average build, wearing a black ski mask with holes for the eyes, a black hooded sweatshirt with a white rectangular tag on the back of the neck, black gloves, black pants, black shoes with some white trim, and armed with a black semi-auto handgun.

Suspect # 2: Black male, possibly in his 20's or 30's, possibly around 5'10", possibly average build, wearing a black ski mask with holes for the eyes, a black hooded sweatshirt, black pants, white socks, black shoes, and armed with a semi-auto handgun with a silver slide.

Suspect # 1
Black Gun



Suspect # 2
Silver Gun



LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION

Event #: 181000156355

Investigation:

Detectives involved with the investigation felt that Antwaine's actions were highly suspicious for the following reasons:

- Det. Miller had worked in the Robbery Section for approximately fourteen years. He was very familiar with similar business/bar robberies wherein customers had to be permitted entry via electronic door locks operated by employees inside. So how do robbery suspects typically defeat defensive measures like these? Det. Miller found it to be a very common method of operation for robbery suspects to first have an unmasked suspect enter such a business and pose as a normal customer. The poser then gets up to leave and opens the doors to the business to allow the robbery suspects entry at a pre-planned time. Most often, the poser will communicate with the suspects outside via cell phones so the timing will be right. Otherwise there would be masked suspects just standing outside a business for a lengthy period of time attracting unwanted attention which might lead to foiled plans and/or even an arrest. This method of operation is so common that detectives responding to such incidents will normally be at least a bit suspicious about the person who opened the door to allow the suspect's entry.
- In this case, the only person who opened the door for the suspects was Antwaine Johnson. So was Antwaine just an innocent customer who opened the wrong door at the wrong time? Or, was Antwaine the 'poser' providing intelligence to the suspects outside and then ultimately allowing them entry to commit the crime? Although the angle of the cameras were not good enough to show everything Antwaine was doing, the video surveillance did show him using his cell phone in one manner or another in the minutes leading up to the robbery. In fact, the surveillance showed the suspects approach the business with masks on their faces around the same times that Antwaine was using his cell phone. It was suspicious.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION

Event #: 181000156355

- There are several doors that one could use to exit the Torrey Pines Pub; there are back doors, a side door, and a front entrance. However, the front entrance is supposed to be the only doors used to gain entry. All the doors in the bar were locked at the time of the robbery. Any potential customers wanting entrance would have to go to the front doors where the bartender could see/vet them via video surveillance. If the bartender doesn't feel the potential customer is a threat, they can press a button to temporarily release the electronic locks and allow the customers inside. Then the doors shut and everything is once again secure. In other words, the front doors are really the most common/only doors used, just as the front doors to most any business are the most common doors used. The only other way for someone to gain entry into the bar, through any door, would be for someone already inside to manually open them by hand. So if potential robbery suspects wanted to enter the bar, they would have three options. Option One: They would need to use physical force to break into the bar. Option Two: They would need to have someone already inside the business helping them (a 'poser'). This person would need to open a select door for the suspects at a select time. Option Three: They would have to wait around outside the business in masks just hoping some innocent person would eventually open a door for them. But this option is problematic, as they would have to wait for an indeterminate amount of time hoping that nobody would see them and spoil their plans or call the police, etc. Also, in this particular case, if the suspects were using option three, they would likely have staged somewhere near the front doors of the business where all customers enter and most customers exit. The front doors are the obvious choice, otherwise they could be waiting for hours to get lucky. However, in this case, the suspects didn't stage anywhere near the front doors. Instead, they specifically staged next to the east exit (they had no view of the front doors or even most of the front parking lot). So in the end, it is clear that the suspects chose *option two*. Less than thirty seconds after the suspects jumped the wall to approach the business, Antwaine glanced at his phone and then stood up to leave. The suspects didn't even approach the side door and try to make entry. It would appear as though they clearly knew that the door was locked but that someone was about to open it....and not just any doors, but that specific side door. The car they specifically hid behind belonged to Antwaine. They just waited and watched.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION

Event #: 181000156355

- And they didn't have to wait long. The timing between Antwaine's actions and the suspects' actions seemed to correlate. About 60 seconds after the suspects got in place outside, Antwaine opened the side door to the business and the suspects rushed forth.
- The manner in which Antwaine opened the door seemed suspicious as well. He didn't push it open and let it close. The video showed him push it open and hold it open for an extended period of time with one arm. Even as the suspects were approaching him he continued to hold it open until they were nearly at the door and it was easy for one suspect to keep it open himself.
- One suspect did physically grab hold of Antwaine and pushed him back into the business and down to the ground. However, that is where their interaction stopped. The suspects literally left Antwaine right by the door unattended where he remained for the duration of the robbery. The distance between the side door and the bar (where all the other people were) was maybe 20 yards or so. It is a significant distance in terms of controlling someone. It should also be noted that Antwaine was on the ground under/behind tables and chairs that separated him from those in the bar area where the robbery was occurring. In other words, those at the bar during the robbery (including the suspects), would not even be able to really see Antwaine lying on the ground behind/under the tables and chairs. He was completely unsupervised (see picture below).

*** See Next Page ***

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION

Event #: 181000156355

A picture taken by Det. Miller on 10-31-18. Det. Miller took the picture standing in the same area that the suspect with the silver gun stood during the robbery. In the background of this picture, near the side door, the owner of the bar (Bob Bonner) is standing behind a table where Antwaine was lying on the ground during the robbery (see the arrow). Notice if Bob was lying on the ground behind/under all those tables and chairs he would be difficult to even see yet less control.



Actual still shot from video surveillance. Notice Antwaine on the ground concealed behind/under tables and chairs out of view of the suspects (blue arrow is Antwaine and red arrow is the suspect).



LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION

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There was clearly a discrepancy....the suspects treated Antwaine differently than everyone else in the bar. The suspects were aggressive, fast, and they were careful to maintain firm control over all the other victims. One suspect (black gun) dealt primarily with the bartender, but also helped keep watch over the other three patrons (Gerald, Myer, and Kathy). The other suspect (silver gun) primarily kept watch over the other three patrons, whom frankly, did not pose any obvious significant threat. Myer, Gary, and Kathy were 50, 71, and 75 years old, not in any obvious athletic shape, they offered zero resistance, and they were completely compliant the entire time. Nevertheless, the suspect with the silver gun stayed right on them like glue with the gun and even pistol whipped both males in the head (unprovoked) and stole both of their wallets. On the other hand, Antwaine was thin and trim, 30 years old, definitely the more significant threat, and they left him completely unattended. Furthermore, he is the only male that did not get searched, robbed, and hit in the head with a gun. If the suspects didn't know Antwaine, they would have had no way to know whether or not he was a plain clothes police officer, or a citizen carrying a firearm, a mixed martial artist, or just a really fast guy who could have run out of the business. Antwaine could easily have fled out the door of the business and screamed for help or just escaped (he was right by the door after all). But in the end, the suspects didn't appear to see Antwaine as a threat in any way, shape, or form. By all appearances, the suspects had inside information and Antwaine was the most probable person providing it.

- Speaking of inside information, it was Detective Miller's experience that suspects doing true take-over styled robberies will most often enter a business without any intel as to what is going on inside. Such suspects don't know for certain how many people they will need to control and whether or not any of those people are carrying weapons, etc. In this case, the bar may have been full of off duty cops armed to the teeth, or there may have been additional people in other parts of the bar (other rooms, the bathroom, the kitchen, the office, etc.). All these factors can pose a significant threat to suspects which is why they will typically enter such a business and run around like crazy to get a quick feel for the place and to locate everyone inside to control them. But in this case the suspects didn't bother to search the bar at all (the other rooms, the kitchen, the office, the bar, etc.). They didn't seem concerned about anyone other than the bartender and the three patrons at the bar. It was as though they knew there was nobody else in the business. Who else would have known that? Antwaine. As will be described below, Antwaine would state that he was in the bar from approximately 1:30 AM until the time he left at 5:14 AM. Furthermore, he had been patronizing the bar for the previous two weeks around

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION

Event #: 181000156355

similar times and so he knew the pattern of those who would be inside the business during that time period and on that morning.

Interviews:

Everyone in the bar was interviewed, but Antwaine (mostly for the reasons listed above) was the only person that seemed suspicious in the situation. Det. Miller, trying to see other angles, noticed several things that were in Antwaine's favor: He did seem to be pushed to the ground where he stayed throughout the robbery; he did wait for police after the robbery and participated in interviews; and he even offered some medical assistance to one of the injured victims. However, those are also all things a suspect posing as a victim might do, and the overall circumstances (as described above) just did not add up. There seemed to be definitive reasonable suspicion to believe that Antwaine helped the suspects commit the crime. For these reasons, Det. Miller conducted a digitally recorded interview with Antwaine to question him about his involvement. The interview will be transcribed and made available at LVMPD Records. The following is only a summary of the interview (not verbatim).

Det. Miller advised Antwaine of his Miranda rights. Antwaine said he understood his rights and he agreed to speak with Det. Miller. Antwaine said he had been visiting the bar for the last few weeks. He said he arrived that morning at approximately 1:30 AM and was only just leaving when the robbery occurred. Antwaine denied having anything to do with the robbery and he said he had not communicated with the suspects on his cell phone in any way. Antwaine could not provide much of a description of the suspects other than their race and sex (Black males). Antwaine provided his cell phone number as (424) 375-1085. He said it was the only phone he had. Antwaine allowed Det. Miller to look his recent texts which seemed to indicate the last text made was at approximately 3:28 AM that morning to his wife (dubbed "Love" on his phone). When asked, Antwaine said he did not delete any texts. Det. Miller told Antwaine that the video surveillance clearly showed him doing something on his phone in the minutes leading up to the robbery. Antwaine said he was just messing around on the internet and stuff and he showed Det. Miller something to do with ice cream that he'd searched on the internet. He explained that he and the bartender had been talking about ice cream at some point (later confirmed with Shaylene that such a conversation had occurred at some point). Det. Miller made it clear that there was good reason to believe that he had been communicating with suspects and that he was a suspect in the crime as well. Det. Miller asked Antwaine if he would participate in a polygraph examination for truthfulness. Antwaine refused to participate in a polygraph and said he would be needing a lawyer if the police wanted to go that route.

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LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION

Event #: 181000156355

Shortly after the interview, Antwaine asked to leave so he could pick up a child. Det. Miller allowed Antwaine to leave but noted his vehicle description, his license plate, and his vehicle identification number (white 2002 Chevrolet Monte Carlo, bearing Nevada license plates 425-D75). An hour later, Det. Miller went to the vehicle's registered address (7075 W. Gowan Rd.) and saw Antwaine and a child in the vehicle (seemingly a confirmation of his home address). During this time, Det. Miller also texted with Antwaine via phone number (424) 375-1085, which was further confirmation that it was in fact Antwaine's correct cell phone number.

Additional Suspicious Factors:

On 10-31-18, the owner of the bar, Bob Bonner, made Det. Miller aware of some additional suspicious circumstances. Det. Miller responded to the bar and spoke with Bob in person. Bob sat Det. Miller down at the same slot machine Antwaine was using in the minutes leading up to the crime. He then directed Det. Miller's attention to a video surveillance monitor that was hanging above the bar directly in front of the seat. The monitor displayed the live feed on the video surveillance camera filming the parking lot area on the side of the business. In other words, Antwaine could see exactly what was happening outside the business by merely glancing at the video monitor directly in front of him. See the below pictures:

Pictures taken by Det. Miller on 10-31-18 depicting what someone would see when sitting in the chair Antwaine chose to sit in (Bob pointing to monitor).



LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION

Event #: 181000156355

Close up view of monitor in question and what it showed.



Actual surveillance picture and what would have been visible on that same monitor on the morning of the crime....a monitor that was directly in front of Antwaine. Notice suspects crouching behind Antwaine's car....the one is watching and waiting for the side door to open (see the arrow).



Bob also pointed out Antwaine's behavior at the slot machine he was playing at the bar before the robbery. The video the police have begins at 5:05 AM and ends after the robbery. Bob pointed out that Antwaine was playing video poker from 5:05 until 5:13 when he got up and left. Some significant things can be observed during that time period: Antwaine is only acting like he is playing video poker. He actually is not playing anything at all and is just clicking buttons going from screen to screen. This is clear on the video surveillance and Bob (the owner of the business and slot machines...familiar with

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
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their operation) will testify to this. Antwaine looks at his cell phone several times during this time period. But at 5:13 AM, after the suspects have now staged outside the business, Antwaine glances at his phone one last time (as though he received a message), stands up and appears to glance at the surveillance monitor (at which time he would see the suspects staged and waiting by his car), and he presses some more buttons on the machine acting as though he is finishing up his game or cashing out....a game that he is faking (he does not cash out at all). He is then offered a water by the bartender and he leaves out the side door where the suspects are waiting.

Pen Register:

Based on the totality of the above described facts and circumstances, there was reasonable suspicion to believe that Antwaine Johnson was one of three suspects responsible for this robbery. As previously described, Antwaine was clearly using his cell phone in the minutes leading up to the robbery, and it was believed that he may have been texting the suspects outside the business to provide intelligence and to coordinate the exact time that the robbery would commence. Antwaine provided his cell phone number as (424) 375-1085. The number was further confirmed when Det. Miller texted with Antwaine via the same number in the hours after the robbery.

On November 6th, 2018, Det. Miller requested the court's authorization to initiate a pen register on Antwaine's cell phone number (424) 375-1085. Specifically, Det. Miller requested Antwaine's call/text and subscriber information for the month leading up to the robbery as well as the two weeks following the crime. Det. Miller felt the information would help prove or disprove Antwaine's involvement in the crime. If Antwaine was involved, the information would likely show a pattern of whom he regularly called and texted, and would possibly prove he was in fact texting with suspects in the moments leading up to the robbery. If that were the case, the information collected from a pen register would possibly provide additional phone numbers that could potentially lead to the identification of additional suspects. On the other hand, if Antwaine was not involved in the crime, the records would likely confirm that his last text message was at 3:28 AM, to his wife, just as Antwaine claimed.

The Pen Register was approved by Chief Deputy District Attorney Elizabeth Mercer, and then authorized by District Court Judge Tierra Jones. Det. Miller received Antwaine's phone records on November 13th, 2018. The following is a summary of Antwaine's call/text records in relationship with the robbery in question.

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The phone records cover the dates of October 1st, 2018, through November 8th, 2018. There is no subscriber information on the phone, likely because it is a pre-paid plan, however, Det. Miller physically saw the phone in Antwaine's possession on the date of the robbery and even conversed with him via the same phone/number on the same date (via text). There is no doubt it is the phone/number Antwaine was using on the date of the robbery.

During the described time period, Antwaine is in contact with two numbers that appear to be pertinent:

- (213) 400-7524: Between October 1st and November 8th, 2018, Antwaine is in contact with this number approximately 544 times. It is believed this is likely his wife (dubbed "Love" on his phone) because it is the only number that he texted at exactly 3:28 AM on the morning of the crime which correlates with what Det. Miller physically saw on Antwaine's phone.
- (323) 427-3092: Between October 1st and November 8th, 2018, and ending in the minutes after the robbery, Antwaine is in contact with this number approximately 1222 times. As previously stated, Det. Miller looked at Antwaine's phone on the morning of the robbery and there were **NO** texts/calls generated after 3:28 AM. In other words, by all appearances, at 3:28 AM Antwaine texted with his wife for the last time and then no other calls or texts were generated (and Antwaine denied deleting any). However, Antwaine's text/call records reveal a different story. **Antwaine lied.** The records show Antwaine texting with this number (323-427-3092) 117 times between 3:28 AM and 5:11 AM. At 5:11 AM, Antwaine received one last text from this number before the robbery suspects jumped the wall and entered the bar parking lot at 5:12 AM. The suspects then staged by Antwaine's car and waited. At 5:13 AM, Antwaine looked at his phone one last time, (presumably looking at the last text he had just received from suspects outside the business telling him they were on their way to the side door....which he also would have been able to confirm via the video surveillance monitor directly in front of him) and he then left the bar, opening the door for the suspects at 5:14 AM. After the robbery suspects left, Antwaine texted three more times with this number before the first police officers arrived at 5:19 AM. This number also tried to call Antwaine one additional time at approximately 7:30 AM (2 ½ hours after the robbery), but the call apparently did not go through. Then there is never another text or call to or from this number (Det. Miller would later learn the number was cancelled with Verizon that same day, after the robbery). So to summarize: Antwaine was in contact with this number via texts/calls 1222 times during the month of October, to include over a hundred texts leading up

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to the very moment the bar was robbed, then only a few more texts in the moments after the robbery but before police officers arrived, and then all contact ceased. Then when Antwain was interviewed and questioned about his involvement, all 117 texts from this number were got from his phone, and he denied deleting anything and stuck to the story that the last text/call was to his wife at 3:28 AM. Clearly Antwaine lied to Det. Miller and the number he was in contact with here is very significant, most probably belonging to one of the other principal robbery suspects. This all served as further confirmation that Antwaine played an active role in the robbery.

Jalen Fortune:

On November 15th, 2018, Det. Miller was made aware of the name Jalen Fortune, DOB: 06-22-03 (15 years old). Jalen was a student in the 8th grade at the South Academic School located at 4560 W. Harmon. Allegedly, on two occasions in November, 2018, Jalen confessed to being one of the suspects responsible for the Torrey Pines Pub robbery. The source of the information could not be confirmed. Det. Miller was initially very hesitant to believe such information because Jalen was only 15 years old and the suspects were said to *maybe* be in their 20's or 30's. However, the robbery never received a lot of media attention (Det. Miller never even released any information to the media), yet someone seemed to know something specifically about the 'Torrey Pines Pub' robbery. Also, the suspects were completely masked up during the robbery, and so the age of the suspects could not be certain. The only thing really certain was the suspects appeared to be Black males and they didn't have physical builds that led the victims to believe they were juveniles. For these reasons, Det. Miller felt he had to at least consider the lead about Jalen seriously, especially since he didn't know what Jalen's physical build was.

On November 15th, Det. Miller and Det. Sam Smith, responded to the South Academic School and attempted to interview Jalen. Det. Miller advised Jalen of his Juvenile Miranda rights. Jalen said he understood his rights and he did not want to speak about anything. He did not ask for a lawyer or a parent, he simply said he didn't want to speak. Before leaving, Det. Miller advised Jalen that he was the suspect in a "bar robbery" and that maybe he had some sort of excuse. Det. Miller asked Jalen to think things over and consider participating in an interview in the near future. Jalen didn't deny the allegations at all.

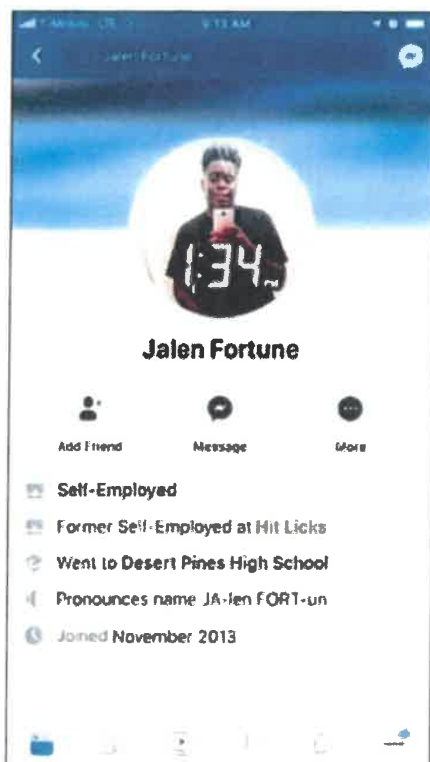
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Of particular interest, Det. Miller noticed that Jalen had a face that looked like a juvenile, but his physical build was large. He might have been somewhere around 5'10", and maybe 170 to 200 LBS. If he were wearing a mask someone could easily mistake him for an adult. Also, the school principal made Det. Miller aware that Jalen was absent on the date of the robbery (10-29-18), which was also suspicious.

Det. Miller then contacted Jalen's mother, Janeth Nickerson, at (702) 764-1473. Det. Miller told Janeth that Jalen was possibly responsible for a "bar robbery" and that he should consider cooperating with the investigation. Janeth said she would talk to him and let Det. Miller know. Janeth confirmed that Jalen's address was 4607 Lorna Pl., Las Vegas, NV 89107, and she said Jalen had a cell phone that suffered water damage one week earlier (so sometime around November 8th.....well after the robbery). She said his cell phone number as of one week ago was (702) 439-2320.

Det. Miller located Jalen's Facebook profile and felt his employment status was unique. He listed himself as "Former Self-Employed at Hit Licks." Hitting a Lick is common slang for committing a robbery.



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In the end (as of November 15th), there was not enough evidence to confirm Jalen's involvement in the robbery. However, the two tips on Jalen, his lack of cooperation with the police, his lack of a denial when so accused, his absence from school on the date of the crime, his "employment status" on Facebook (Hit Licks), and his physical build (that of an adult) all kept him on Det. Miller's radar. Det. Miller was interested to see whether or not there were any links between Antwaine, Jalen, and the subject using the (323) cell phone number.

Devohn Marks:

As described above, there is probable cause to believe that Antwaine Johnson played an active role in the robbery and is one of at least three suspects involved. The two masked suspects were still unidentified (as of November 15th). Also as described above, there is probable cause to believe that Antwaine was communicating with the suspects via cell phone/texts in the hours and minutes leading up to the robbery. The only number that Antwaine was texting with up until the time of the robbery was (323) 427-3092. He texted with the number at least 117 times before the robbery and then he deleted the text messages prior to being interviewed by police.

For these reasons Det. Miller drafted a search warrant to serve on Verizon Wireless regarding number (323) 427-3092. The warrant was verbally approved by Chief Deputy District Attorney Elizabeth Mercer, authorized by District Court Judge David Jones, and served on Verizon Wireless on November 15th, 2018. Verizon ultimately provided some data but not everything Det. Miller wanted because some of the verbiage in the search warrant was out of date (specifically regarding text messaging). Det. Miller made corrections and had a second search warrant signed by Judge Elizabeth Gonzalez on December 11th, 2018. It was served on Verizon on the same date.

Prior to receiving any information from Verizon Wireless, Det. Miller learned that the phone number in question was on file with Nevada Parole and Probation under the name of:

Devohn Marks

ID# 2798254

DOB: 10-09-91

Black male, 6'3", 198 LBS

Cell Phone: (323) 427-3092

Address: 7075 W. Gowan, # 2053, Las Vegas, NV

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The information was very interesting to Det. Miller because he was already familiar with the name Devohn Marks. Specifically, Det. Miller was involved in an investigation wherein Devohn was arrested for approximately fourteen robberies that occurred in 2011. Devohn was convicted and sentenced to time in prison but was released on parole in March of 2018. The majority of the robberies Devohn committed in 2011 were street robberies to citizens. However, one of the robberies was to a bar wherein Devohn entered the bar as a 'poser' to first gather intelligence before other suspects entered to carry out the crime (LVMPD Event # 110204-0995....Fred's Tavern). Although Devohn's former actions certainly don't prove his involvement in the Torrey Pines Pub robbery, they do show his tendencies, and they show his familiarity with committing such crimes, to include bar robberies wherein someone first enters the bar to 'pose' as a customer to gather intelligence (a very similar method of operation was used during the Torrey Pines Pub robbery). It would seem to be more than just a coincidence that Antwaine, who is suspected of being the 'poser' during the Torrey Pines Bar robbery, was in contact with Devohn's cell phone at least 117 times in the minutes leading up to the robbery. It was Det. Miller's suspicion that Devohn's cell phone records would likely place him near the Torrey Pines Pub on the date/time of the crime (via cell tower information). Records also revealed that Antwaine and Devohn lived in the same apartment complex which further linked them together and also seemed to be more than just a coincidence.

Devohn was arrested around November 7th, 2018, for possession of marijuana, which was a violation of his parole conditions (about nine days after the robbery). On November 15th, 2018, Det. Miller responded to CCDC where Devohn was still in custody. Det. Miller conducted a digitally recorded interview that will be transcribed and placed on file with the LVMPD Records Section. The following is only a summation of the interview (not verbatim).

Det. Miller advised Devohn of his Miranda rights. Devohn said he understood his rights and he agreed to speak with Det. Miller. In summary, Det. Miller accused Devohn of the bar robbery that occurred on October 29th. Devohn adamantly denied involvement or knowledge of the crime. Det. Miller then needed to determine three things: First, did Devohn link himself to phone number (323) 427-3092? Second, did Devohn link himself to Antwaine Johnson? Third, did Devohn have an alibi for the date and time of the crime?

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Regarding the phone number (323) 427-3092: Antwaine admitted the phone number in question was his (although he struggled to remember the number and he reversed the last four numbers a bit, whether intentionally or not), but he said that his phone was lost or stolen sometime around/before the date of the robbery. He said the suspect who stole his phone then began using it to 'call his people' (Devohn's contacts, friends, family, etc.).

Regarding the link to Antwaine Johnson: During the interview Devohn's story changed three times. First, Devohn adamantly claimed that he was not friends or associates with anybody at all in his apartment complex and he didn't know anyone named Antwaine. Det. Miller pushed the topic a bit more and finally showed Devohn a picture of Antwaine and he changed his tune a bit. Devohn said he didn't know him or associate with him but he did recognize his face from the apartment complex (Antwaine and Devohn did live in the same apartment complex). Det. Miller asked why they would have been in contact with one another over 1000 times during the month of October if they didn't know one another. Devohn denied they had been in contact that much (which is a lie, and the phone records prove it). Ultimately, Devohn changed his story a third time and said he did occasionally smoke weed with Antwaine but he still said they were not associates and they were not in contact "a lot." He also said they were not in contact at all on October 29th (although the phone records tell a different story).

Regarding an alibi: Regarding his whereabouts on the morning of October 29th, Devohn acted as though he remembered the date well, stating he was with his girlfriend, Destiny Dixon. He said Det. Miller could call Destiny at (951) 489-2160 to verify his story. He said he was never out at that hour of the morning because it would be a violation of his parole conditions.

Analysis of Devohn's Statements:

As previously described, Det. Miller conducted an interview with Antwaine Johnson on the morning of the robbery. During that interview, Det. Miller made it very clear to Antwaine that his cell phone records would be analyzed and would likely reveal his involvement in the crime. By all appearances, Antwaine had already made efforts to protect himself and his co-conspirators by deleting at least 117 text messages that led up to the moments of the robbery (messages to/from Devohn Marks' phone number 323-427-3092). So Antwaine was warned of this on 10-29-18, and the interview with Devohn didn't take place until 11-15-18. Antwaine had plenty of time to warn his co-conspirators (potentially Devohn) that cell phone records were going to be analyzed and used in the investigation. Therefore, Antwaine's co-conspirators (potentially Devohn) knew that it was only a matter of time before

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they were likely going to be identified. For this reason, they knew they needed to distance themselves from their cell phones and from Antwaine, and they knew they were going to need to come up with an alibi. In other words, Devohn had plenty of time to prepare some stories for a police interview. During the interview with Det. Miller, Devohn did just that: he had a convenient story distancing himself from his cell phone on the date of the robbery (claiming it had just been stolen); he made efforts to distance himself from Antwaine; and he seemed very familiar with the date of the crime and immediately had an alleged alibi. However, Devohn's stories really didn't add up based on the following points:

- Cell phones belonging to Antwaine and Devohn were texting one another 117 times in the minutes leading up to the robbery. It has already been established that Antwaine was in possession of his phone at the time of the robbery and is therefore responsible for those texts. So the question is whether or not Devohn was on the other end of those texts (was Devohn in possession of his cell phone during the robbery or not?). Clearly Devohn will say, "Well, yes, the records show my phone in contact with Antwaine, but that was not me....it was just some bad guy who took my phone and then started using it to text my friends, family, and contacts." So maybe Devohn will claim that Antwaine was just one of his friends/contacts that the bad guy called. But does that make sense? Through nearly nineteen years of police experience, Det. Miller knew that bad guys who stole phones didn't typically start contacting friends of the victim (especially frequently). First, it would only serve to notify the victim more quickly that their phone had been stolen (and then it would be shut off and become useless). And second, it would potentially give the victim intelligence about the suspect(s) and their location that could lead to their capture, identity, and arrest. Suspects who steal things typically want to distance themselves from their victims for these very reasons. Does Devohn really expect people to believe that his friends, family, and contacts would just go on having conversations with a suspect who stole his phone? If Devohn were to be believed, Antwaine texted with a bad guy that was using Devohn's stolen phone 117 times over a course of several hours. And keep in mind, Antwaine deleted all the texts just before the police interviewed him and he lied by telling the police that he hadn't received or deleted any texts at all. If Antwaine and Devohn were really friends and some stranger started texting Antwaine 117 times from Devohn's stolen phone, he would have had no reason to delete the texts. In fact, he likely would have notified Devohn or the authorities that Devohn's phone had been stolen and was being used by some stranger. Or in any case, Antwaine would have had no valid reason to lie to Det. Miller about deleting the texts. If this really had occurred, Antwaine would have corroborated Devohn's story. But he

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didn't. So no, Devohn's claim that a bad guy was using his stolen phone to call/text his friends and contacts doesn't make sense at all.

- So then maybe Devohn will say, "OK, no, Antwaine was not one of my friends or contacts, I don't even know the guy....the guy who stole my phone must just be friends with Antwaine and used my stolen phone to text with him 117 times." But that contradicts the phone records. The phone records don't just show Devohn and Antwaine in contact 117 times on the date of the robbery (when Devohn's phone was allegedly stolen), he was also in contact with Antwaine well over 1000 additional times during the month of October. There was a clear pattern of contact between these two. Remember, this was a guy that Devohn said he was not even friends or associates with....someone he barely knew....he allegedly didn't even know his name. He made several attempts to distance himself from Antwaine during the interview. Again, Devohn's statements were not reasonable.
- Also consider this: Devohn's story is he didn't even report his phone stolen for at least one day after it went missing, because he was afraid it was just lost and would turn up somewhere (like in his wife's car, etc.). But that doesn't follow his own story-line. He seemed to know that whomever had his phone was 'calling his people' (calling his contacts), and so that would infer that his friends and family somehow notified him (without a phone) that someone had stolen his phone and was using it to call them. But if he knew that, why would he wait so long to report it stolen?
- After the interview, Det. Miller contacted Devohn's girlfriend Destiny Dixon via phone. Det. Miller asked her if Devohn was with her on the morning of Monday October 29th, 2018, around 5:00 AM. Destiny did *NOT* prove to be Devohn's alibi after all. She said she had no recollection of Devohn's whereabouts on October 29th. Not only did she fail to provide an alibi for Devohn, her answer was also very telling. For example: Most people have a set schedule to some degree. They might wake up every morning at the same time to go to work, etc. In this case, Devohn is admittedly unemployed and he said he is always at home at that hour because it would otherwise be a violation of his parole. In other words, Devohn's set schedule is to be home every single morning. So one would think that Destiny would clearly know Devohn's whereabouts every morning, regardless of the date; there would be nothing to even try to remember *if* he were always home at that hour on a daily basis. But clearly, based on her answer, Devohn is not always home at that hour and she couldn't remember one way or the other regarding the specific

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date of the crime. Destiny also provided interesting information about Devohn's cell phone number. She is, after all, his girlfriend and roommate, so one would think she would know his number better than anyone else. And she provided the only number she allegedly had for him: (323) 427-3092 (the target number of interest). Det. Miller asked Destiny whether or not Devohn had recently lost his phone. Destiny began getting defensive, likely because she realized her answers could potentially conflict with Devohn's statements to police. She simply replied, "Well I don't know, you would have to ask Devohn, because that's his business." So Destiny further linked Devohn to the 323 number (target number), she did not validate Devohn's story about a lost/stolen phone, and she was not Devohn's alibi for the morning of October 29th.

So again, Devohn's apparent defense would be to *successfully* distance himself from his cell phone, from Antwaine, and from the crime scene by providing an alibi. However, he has failed to prove any point of that defense thus far. In the end, Devohn's excuses about a lost/stolen phone do not make sense and any reasonable person would likely agree. Likewise, Devohn cannot reasonably distance himself from a relationship with Antwaine. And finally, Devohn apparently has no alibi regarding his whereabouts, and nobody thus far has corroborated his story about a lost/stolen cell phone.

It would appear that both Antwaine and Devohn played roles in the Torrey Pines Pub robbery. Antwaine's role was clearly as the 'poser' inside the bar (he provided intelligence to the suspects outside and ultimately allowed them entry). Devohn's exact role could not initially be certain. He may have been one of the masked suspects; or he may have been a getaway driver; or he may have been the one that organized and/or helped plan and carry out the crime. Whatever Devohn's role, his involvement was becoming apparent and the investigation was on-going (and his cell phone records were still pending).

Antwaine Arrest and Interview:

The Clark County District Attorney's Office reviewed this case and issued warrants of arrest for Antwaine during the month of December, 2018. On Monday, December, 10th, 2018, Antwaine was arrested for the warrants and booked at the Clark County Detention Center. One of the officers involved in the arrest was Det. J. Winn, P# 8376. At the time of his arrest, Antwaine was in possession of an LG cell phone which was impounded as evidence by Det. Winn (at Det. Miller's request pending the service of a search warrant).

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Det. Dave Miller and Det. Eric Honea attempted to interview Antwaine at the jail on the same date. The interview was short because Antwaine asked for a lawyer. Det. Miller stopped all questioning and asked Antwaine to consider cooperating with the investigation. Det. Miller provided Antwaine with contact information and asked him to pass it along to his defense attorney. At one point, Antwaine asked something similar to, "Got any deals to offer me?" Det. Miller felt it was a telling question that an innocent person would not typically ask. Det. Miller informed Antwaine that he (Miller) was not opposed to a deal, but was not in a position to authorize deals. Det. Miller told Antwaine that any deal would have to be worked out between his defense attorney and the DA's office. The interview was recorded and will be on file with LVMPD Records.

Search Warrant on Antwaine Johnson's Cell Phone:

As previously described, Antwaine Johnson was arrested on December 10th, 2018, and the cell phone in his possession was impounded as evidence by Det. J. Winn, P# 8376. Also as previously described, there is probable cause to believe that Antwaine deleted at least 118 text messages from his cell phone and lied to Det. Miller. These were messages between Antwaine and Devohn Marks and they all occurred in the hours and moments that led up to the robbery. For these reasons, there was probable cause to believe that additional information related to the robbery would likely be on Antwaine's cell phone. Det. Miller is requested the court's authorization to conduct a search on Antwaine's cell phone in order to potentially recover the deleted text messages described herein, and in order to recover other data and pictures that might further describe the role Antwaine had in the crime, as well as potentially lead to the identification of additional suspects.

The warrant was approved and served by members of the LVMPD Computer Forensic Lab (CFL). Results were provided to Det. Miller at the beginning of January, 2019. Although the results are still be reviewed, in summary, nothing showing a link between Antwaine and other suspects (such as Devohn Marks) was located. The deleted text content could not be recovered. The CFL detective concluded that because of the great time lapse, the data on the phone may have been overwritten. This would later prove to be true after an additional interview with Antwaine (see below).

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Interview with Antwaine Johnson:

On Wednesday, January 2nd, 2019, Det. Miller conducted an interview with Antwaine Johnson at the Clark County District Attorney's Office in the presence of Deputy DA John Giordani, and Antwaine's attorney, Nicholas Wooldridge. In summary, Antwaine indicated his willingness to tell the truth about his involvement and knowledge of the Torrey Pines Pub robbery.

Antwaine said the suspect who planned the robbery was named "Chill." He said Chill lived at 7075 W. Gowan Rd., # 2053, Las Vegas, NV (only two buildings from where Antwaine lived.....same complex). Antwaine said he had been associating with "Chill" for at least one month before the robbery. Det. Miller already knew one of the suspects was likely Devohn Marks (based on cell phone records), and he also knew the Gowan address, specifically apartment # 2053, was where Devohn lived. For these reasons, Det. Miller suspected that "Chill" was actually Devohn Marks. Det. Miller allowed Antwaine to look at a photo line-up containing a picture of Devohn Marks mixed among the pictures of five other males that had a similar appearance. It should be noted that the purpose of the line-up was simply to confirm whether or not "Chill" was Devohn Marks. In other words, it was not a typical photo line-up interview wherein an officer reads a victim "Photo Line-Up Witness Instructions." In this case, Antwaine knew Devohn well, and showing him the line-up was just a way to further confirm Devohn's identity and to confirm Antwaine's level of truthfulness. After looking at the pictures briefly, Antwaine selected Devohn's picture and said it was the male he knew as "Chill." Antwaine circled the picture and signed his initials beneath it.

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Line-Up Shown to Antwaine

Las Vegas Metropolitan Police Department

Lineup ID: 45218

02 Jan 2019



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2



3



4



5



6

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Antwaine said he was struggling financially and Devohn mentioned the idea of robbing the Torrey Pines Pub. Specifically, Devohn allegedly knew a girl that once worked there and felt he had enough insider information to know there would be a good quantity of money inside. Antwaine needed money and so got on board with the plan. Antwaine said the other suspect involved was an associate of Devohn's, described as a Black male in his 20's with short hair, possibly around 5'8" or 5'9" with a slim build. Antwaine didn't know his name or any other information.

The plan was for Antwaine to enter the business wearing a construction styled vest as though he had just gotten off work or something. He would park his car on the side of the business to give him an excuse to leave out of the side doors because the front doors were locked electronically. He was to sit at the bar and provide Devohn (Chill) information about how many people were inside and whether or not there was a lot of money, etc. Antwaine would provide the information via text

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messages. Antwaine said they tried to implement the plan for a couple weeks but it just never worked out. On the date in question, he was texting with Devohn and they decided to just try the robbery even though he wasn't certain if there was a lot of money. Antwaine texted Devohn that it was a 'go' and he then left the bar expecting the suspects to be waiting outside the side door. He said Devohn and the other suspect were at the door and pushed him to the ground as pre-planned. Antwaine didn't see the rest of the robbery because he was laying on the ground. After the robbery was over, Antwaine deleted all his contact info and texts involving Devohn (explaining why all the text messages were deleted when Det. Miller looked at Antwaine's phone on the date of the robbery).

After leaving the crime scene, Antwaine went back to his apartment complex where he met with Devohn and the other suspect, and they gave him a cut of the money, totaling \$300.00. He said they discussed getting rid of their cell phones. Antwaine said Devohn and the other suspect did discard of their phones as far as he knew, but he kept his own phone but restored it to a new condition to delete all the content (explaining why the CFL could not recover any deleted text messages while serving the search warrant on Antwaine's phone). Antwaine confronted Devohn and said, "Why did you have to hit that old man?" Devohn identified himself as the suspect that struck the victim and said he did it because the victims wouldn't listen to his commands. This would indicate that Devohn was the suspect that pistol whipped both male victims and stole their wallets. This would also mean that the other unknown suspect was the one that was behind the counter stealing money from the cash register. It should be noted that Det. Miller saw Antwaine in person at the 7075 W. Gowan address at approximately 8:30 AM on the morning of the crime (10-29-18). Antwaine said the meeting where the stolen money was split up occurred shortly before that....he indicated that Det. Miller had actually just missed them all being together in the same apartment complex.

Det. Miller also allowed Antwaine an opportunity to look at the picture of Jalen Fortune. Jalen didn't seem to fit the description of the suspect being described by Antwaine (he was much younger in age), but for elimination purposes Det. Miller felt it would be important. After looking at the picture, Antwaine said he was certain it was not the other suspect and he had never seen the guy (Jalen) before.

In the end, Antwaine appeared to be truthful, and he was providing information that matched the known details and circumstances surrounding the crime. Det. Miller already suspected Devohn Marks' involvement in the crime (based on phone records, etc.), and Antwaine only further confirmed it.

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Devohn Marks Phone Records (regarding cell # 323-427-3092):

Det. Miller received the remaining phone records regarding Devohn Marks' cell phone records in the month of December, 2018. Det. Miller requested assistance from FBI Agent Jason Kennedy to analyze the records. Some of the initial findings are as follows based on observations made by either Det. Miller and/or Agent Kennedy:

- The cell phone was registered in the name of Devohn L. Marks.
- Unfortunately, Verizon Wireless does not record cell tower information for text messages. In other words, regarding text messaging, there is no way to use cell towers to determine where Devohn's cell phone was located around the time of the robbery when he was in contact with Antwaine.
- The text messages closely mirror and confirm the text messages visible on Antwaine Johnson's phone records. The records (regarding text messages) were only for October 28th through October 29th, 2018. Between those two days, Devohn and Antwaine were in contact via text approximately 281 times. On the morning of the crime, between 3:28 AM and 5:11 AM (the robbery happens at 5:14 AM), they were in contact via text 116 times (Antwaine's records showed 117 times.....so a minor technical anomaly). After the robbery, between 5:17 AM and 5:18 AM, they text three more times (mirrors Antwaine's records).
- The records show the account being closed sometime on 10-29-18 (similar to what Devohn reported.....but per Antwaine they planned to discard of their phones after the robbery so this makes perfect sense).
- On 10-29-18, approximately 3 ½ hours before the robbery, Devohn was in contact with a number linked to a man named Ruben Green (may or may not be pertinent to the investigation).
- Devohn's cell phone utilized a cell tower within blocks of the crime scene on the date of the robbery at 2:18 AM (approx. 3 hours before robbery). Specifically, Devohn received a call from Antwaine Johnson (424-375-1085). Keep in mind this does not include text messages, only calls, because cell tower data is not available for text messaging as previously described. Furthermore, Devohn's cell phone utilized a cell tower within blocks of his residence on the date of the robbery at 5:27 AM (approximately 10 minutes after the robbery was complete). One might ask if a suspect could travel between the bar and the residence in ten minutes. The answer is yes. The bar and the residence are approximately 3 miles apart; going the speed-limit it takes approximately 9 minutes to travel the distance via car (per Google Maps). So Devohn could have committed the robbery and made it back to his residence in enough time. The call at 5:27 AM was specifically from phone number (702) 443-4087 (it was *not* a completed call).

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION

Event #: 181000156355

At 7:47 AM (approx. 2 ½ hours after the robbery), there was a call of interest placed from Devohn's phone to Destiny Dixon's phone (951-489-2160). The duration of the call was 13 seconds (it was a completed call). This call also placed Devohn's phone near his residence. This is important because Devohn would have the police believe that someone stole his phone sometime before the robbery. So for Devohn to be believed, it means that some guy stole his phone and then used it to call his (Devohn's) girlfriend, Destiny Dixon, to have a chat after the robbery. It doesn't make sense and is not reasonable to believe. Also, when Det. Miller interviewed Destiny she did not corroborate that story at all and she provided the only number she allegedly had for Devohn (323-427-3092). She could have claimed that Devohn's phone had been stolen and whomever stole it was using it to call her. Instead, she said, "Well I don't know, you would have to ask Devohn, because that's his business."

- After the robbery, at 7:45 AM (so Antwaine was already released by police and on his way home or at home by that point), Antwaine used a different number, (562-341-9340) to text Devohn. At this point, Antwaine had already taken precautions and deleted Devohn's contact info from the phone he showed police (424-375-1085), and so he is clearly using a different number as a precaution to contact Devohn (likely around the time they were trying to meet up to split the stolen money). Det. Miller would later question Antwaine about this (on January 28th, 2019). Antwaine actually called Det. Miller from the 562 number and explained that he had two SIM cards for the same phone; one for # 424-375-1085 (the number Det. Miller was familiar with), and one for # 562-341-9340. Antwaine said that after Det. Miller looked at his phone on the morning of the crime (424-375-1085), he knew his phone records regarding that number would be reviewed. So he intentionally switched SIM cards to call Devohn after he left the bar (using the SIM card for # 562-341-9340). It was around that time that they arranged to meet to split the stolen money.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION

Event #: 181000156355

Antwaine Photo Line-Up (01-10-19):

As of January 10th, 2019, only two of the three suspects involved in the robbery were identified: Antwaine Johnson and Devohn Marks. In reviewing Devohn's cell phone records, Det. Miller noticed one phone number that Devohn was frequently in contact with approximately five hours before the robbery: (213) 716-3340. A records check with parole and probation linked the number to an active parolee named Ruben Green, ID# 1630669. Antwaine previously described the third robbery suspect as a Black male with short hair, possibly in his 20's, approximately 5'8" to 5'9", with a thin but 'cut' build. On paper, Ruben was approximately 6'2" to 6'3", 225 LBS. In short, Ruben didn't seem to fit the physical description of the third suspect as provided by Antwaine. Det. Miller wanted to be sure and met with Antwaine on January 10th, 2019 to show him another line-up. It was not a typical line-up involving "photo line-up witness instructions," because Antwaine had known the third suspect for approximately one month before the robbery. In other words, Antwaine clearly knew what the suspect looked like and would recognize him when he saw him again because they were associates. The line-up was simply a way to determine whether or not Ruben was the correct suspect and to help confirm Antwaine's truthfulness. Det. Miller showed Antwaine a line-up containing a picture of Ruben Green mixed among the pictures of five other males that had a similar appearance. Antwaine did not identify anyone but pointed out that the male in spot # 4 (not Ruben Green) was the only one that "sort of" resembled the third suspect. Ruben Green was essentially eliminated as a possible suspect at that time (pending any further developments).

Line-Up Shown to Antwaine (Ruben Green in spot # 3):



LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION

Event #: 181000156355

Conclusion:

Based on the totality of the above described facts and circumstances, there is probable cause to believe that two masked suspects entered the Torrey Pines Pub with intent to rob the employee and the patrons inside. The suspects put masks on their faces, gloves on their hands, and they entered the bar pointing guns and making demands. Using their guns, the suspects forced the bartender to provide cash from the registers, and they stole the wallets from two patrons. One suspect also struck two patrons in the head with a firearm causing a large laceration on one victim that required staples to close. One of the battered/robbed victims was 70 years old at the time of this incident. There is also probable cause to believe that the two suspects had assistance from someone inside the bar. The entire incident appeared to be well coordinated and timed. The suspects didn't enter the front of the business but instead went to a locked side door where they waited for one minute before a patron inside the bar (Antwaine Johnson) opened it for them. The actions of the suspects tend to meet the criminal elements of Robbery with a Deadly Weapon (bartender, Shaylene Bernier), Robbery with a Deadly Weapon (patron, Myer Goldstein), Robbery with a Deadly Weapon Victim Over 60 (patron, Gerald Ferony, 70 years old), Burglary with a Firearm, Battery with a Deadly Weapon Victim Over 60 (Gerald Ferony, pistol whipped), Battery with a Deadly Weapon (Myer Goldstein, pistol whipped), and Conspiracy to Commit Robbery.

Based on the totality of the above described facts and circumstances, there is probable cause to believe that Antwaine Johnson and Devohn Marks are two of the three suspects responsible for this crime. The probable cause is thoroughly detailed in the report above, and so the following is only a synopsis:

- Antwaine came to the bar and entered through the front doors like everyone else. It is the type of bar wherein the doors are electronically secured and the bartender must see who wants to enter and then temporarily disable the electronic locks to allow entry. As Antwaine looked like a normal customer and had been frequenting the bar in the weeks prior, the bartender allowed him to enter. However, it should be noted that Antwaine did not park in front of the bar near the front doors like most normal customers, but instead, he parked on the far east side of the business near a side door that is simply locked (the only way to open the side door is from the inside). Antwaine then walked all the way around to the front of the business to gain entry. *(He staged his car. It would later give him an excuse to say why he chose to exit via the side doors. His car also likely served as a marker for the suspects who hid behind Antwaine's car while waiting for the side door to open).*

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION

Event #: 181000156355

- Antwaine sat at a slot machine at the bar for several hours before the robbery. Video would later reveal that he was only 'acting' like he was playing video poker in the minutes leading up to the robbery. He was actually only pressing buttons going from screen to screen. *(Delay and timing until the suspects were in place.)*
- Antwaine was using his cell phone in the minutes leading up to the robbery (to be discussed further below).
- Antwaine sat at a specific bar stool placing him directly in front of a video surveillance monitor that provided a 'live feed' of the east side of the business where Antwaine's car was parked. *(He could see when the suspects were in place and appeared to glance at the monitor just before leaving).*
- Antwaine appeared to be communicating with someone via text and then the masked suspects jumped a wall and ran up to the bar and hid behind Antwaine's car near the east door. The suspects could have chosen any doors, but they chose the locked door on the east side of the business.....the door least likely to be used or opened. They didn't even try the door to see if it would open. They simply watched the door and waited because they seemed to know that it was about to be opened. And they didn't have to wait for much more than 60 seconds. Antwaine appeared to look at his phone one last time, then possibly at the video surveillance monitor (where he would have seen the suspects staged and waiting), and he casually said it was time to go. He acted like he was cashing out or something on the slot machine, but he was really just pressing buttons (still faking). He then walked to the side door where the suspects were prepared and waiting. The timing was absolutely perfect and could only occur if so planned. Antwaine opened the door and held it open for an extended period of time until the suspects reached him and could hold the door open themselves. One suspect grabbed the door to keep it open and the other grabbed Antwaine and seemingly pushed him to the ground inside the bar.
- The suspects then left Antwaine unsupervised by the door and went to the bar area approximately 20 yards away. They did not search Antwaine, they did not hurt Antwaine, and they did not steal anything from Antwaine. On the other hand, they kept vigilante watch over all the other patrons, robbing three, and striking two in the head with a gun.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION

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- By all appearances, police personnel felt that Antwaine had played a role in the robbery. Antwaine was interviewed that morning by police and he denied all involvement in the crime. He allowed police to look at his cell phone which revealed his last text was at 3:28 AM. Police suspected that he'd deleted text messages from his phone but Antwaine denied it. In truth, there appeared to already be probable cause to believe that Antwaine was involved in the crime, but Det. Miller decided to hold off on an arrest until he could see whether or not Antwaine's phone records would prove or disprove his statements. Det. Miller received Antwaine's phone records two weeks later which confirmed he'd been lying to police. In fact, Antwaine deleted at least 117 text messages to/from phone number (323) 427-3092, that occurred between 3:28 AM up until the minutes before and after the crime. It was a number that Antwaine had been communicating with frequently for nearly a month (1222 times), but then, shortly after the robbery, all contact would cease and the '323' number was disconnected.
- The number Antwaine was in contact with so frequently (323-427-3092), belonged to a man named Devohn Marks, DOB: 10-09-91. Devohn was paroled from prison in March of 2018 for fourteen robberies he committed in 2011. One of the robberies he committed in 2011 was to a bar wherein he first entered the business to gather intelligence before other suspects entered to carry out the crime *(similar to the method of operation that was used during the Torrey Pines Pub robbery)*.
- Devohn was interviewed and denied involvement with the robbery. Instead, he made efforts to distance himself from the crime by distancing himself from his cell phone and Antwaine in general. Devohn said his phone was stolen around the date of the robbery and used by an unknown suspect. Devohn also said he did not associate with Antwaine or frequently contact him (and did not even know his name), and only occasionally smoked weed with him. For reasons previously detailed in this report, his story was found unbelievable, primarily because phone records would reveal that there was an on-going pattern of contact between Antwaine and Devohn during the entire month of October, well before his phone was allegedly stolen. He and Antwaine lived in the same apartment complex and clearly were in contact with one another approximately 1222 times leading up to the moment the robbery occurred.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION

Event #: 181000156355

- Devohn said his alibi would be his girlfriend, Destiny. Det. Miller spoke with Destiny and she was not Devohn's alibi. In fact, she couldn't remember where Devohn was on the morning of the crime. Furthermore, she did not corroborate Devohn's story about losing his cell phone.
- In January of 2019, Antwaine was interviewed again in the presence of his attorney. He provided a full confession and explained his role in the robbery. The details he provided matched the details/circumstances surrounding the crime. In summary, Antwaine confirmed the majority of what police already suspected: *Antwaine said he was involved in the planning and commission of the robbery along with two other males; he said one of the other suspects was a man named "Chill" who lived in his apartment complex; he identified Chill in a photo line-up as Devohn Marks and he accurately provided Devohn's home address; Antwaine said the robbery was primarily Devohn's idea but he decided to help because he needed the money; Antwaine said Devohn was one of the masked suspects....specifically the suspect that pistol whipped two victims and stole wallets; Antwaine identified his own role as the 'inside man' who was acting like a customer; he said he sat in the bar gathering intelligence about the people inside, and about the amount of money he saw; he texted this information to Devohn who waited outside the business with the third suspect; Antwaine didn't know the third suspect personally, but he did see him several times before in the presence of Devohn; Antwaine admitted that he'd deleted all his text messages and contact information for Chill (Devohn) before the police arrived.....he said they all agreed to get rid of their phones after the crime, only instead of getting rid of his he just erased all the content and restored the device to a new condition. Antwaine agreed to testify against the other two suspect's if necessary.*
- Even before Antwaine's confession, Devohn Marks was believed to be one of the other suspects responsible for the robbery. His exact role was initially unknown, but phone records seemed to confirm his involvement. So Antwaine's confession in January of 2019 only served as further confirmation. Specifically, Antwaine's confession helped clarify Devohn's exact role. Devohn helped plan the robbery and was one of the masked suspects who carried out the crime (he was the suspect that allegedly pistol whipped two victims and stole their wallets).
- Devohn's cell phone records revealed some pertinent facts: Approximately 3 hours *before* the robbery his cell phone utilized a cell tower within blocks of the Torrey Pines Pub (placing his phone near the crime scene). Approximately 2 ½ hours *after* the robbery his cell phone utilized a cell tower near his apartment complex at 7075 W. Gowan Rd. (placing his phone near his

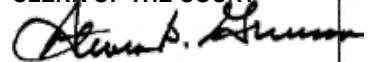
LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION

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home). This would have been around the time that the three suspects met to split up the stolen money (per Antwaine's statement). Furthermore, one of the numbers Devohn called after the robbery was to his girlfriend, Destiny Dixon. This tends to confirm that Devohn was still in possession of his cell phone making a call to his girlfriend.....which conflicts with his story that some bad guy had stolen his phone and was using it in his stead. Det. Miller later interviewed Destiny Dixon and she did not corroborate Devohn's story about a stolen phone.

The facts and circumstances detailed here within appear to be sufficiently strong to lead a prudent and cautious person to believe that Antwaine and Devohn played active roles in this robbery. Antwaine was the 'poser' acting like a customer inside the bar; he provided intelligence to the masked suspects outside the bar and then opened the door so they could enter to carry out the crime. Devohn was one of the masked suspects, allegedly the one that planned the robbery, and specifically the one that pistol whipped two victims and stole their wallets. The identity of the third suspects is not yet known.

The investigation is on-going.



OPPM

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DEVOHN MARKS, #2798254,

Defendant.

Case Nos. C-18-337017-2

Dep't No. V

Hearing Date 2/20/2019

Hearing Time 9:00 AM

**OPPOSITION TO STATE'S MOTION TO
ADMIT EVIDENCE OF OTHER ACTS**

Devon Marks, by and through his counsel Jess Matsuda, Esq., submits this Opposition to the State's Motion to Admit Evidence of Other Acts. Attached is a memorandum of points and authorities in support.

DATED this 15th Day of February, 2019.

/s/ Jess Matsuda

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Nevada Revised Statute 48.045(2) precludes the admission of evidence of character to demonstrate actions in conformity therewith. “A presumption of inadmissibility attaches to all prior bad act evidence.” *Bigpond*, 128 Nev. at ___, 270 P.3d at 1249 (quoting *Rosky v. State*, 121 Nev. 184, 195, 111 P.3d 690, 697 (2005)). To render admissible other bad acts pursuant to NRS 48.045(2), a Court must first hold a hearing at which the State must establish the bad acts by clear and convincing evidence and demonstrate that the evidence is relevant and not unduly prejudicial. *Petrocelli v. State*, 101 Nev. 46, 51-52, 692 P.2d 503, 507-08 (1985); see also *Bigpond v. State*, 128 Nev. ___, ___, 270 P.3d 1244, 1249-50 (2012). The State at the *Petrocelli* hearing must demonstrate: (1) the prior bad act is relevant to the crime charged for reasons other than propensity; (2) by clear and convincing evidence that the act occurred; and (3) the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice. *Bigpond*, 128 Nev. at ___, 270 P.3d at 1250.

///

The only effect the other acts will have is to prejudice Mr. Marks in the eyes of the jury; it is probative of neither motive, intent, lack of mistake, identity, or common plan or scheme. Without relevance, there is nothing to counterbalance the prejudicial effect of that evidence, and that is a result impermissible under Nevada law. For those reasons, this Court should deny the State's motion and refuse to admit at trial any evidence relating to the prior cases.

DATED this 15th day of February, 2019

/s/ Jess Matsuda

JESS MATSUDA

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228 South Fourth Street, 3rd Floor

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Attorney for Devohn Marks

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CERTIFICATE OF SERVICE

I hereby certify that I am a person competent to serve papers, that I am not a party to the above-entitled action, and that on the 15th day of February, 2019, I served the foregoing document on:

Steven B. Wolfson, Esq.
John Giordani, Esq.
Clark County District Attorney's Office
Attorneys for the State of Nevada

By e-mail to:
motions@clarkcountynvda.com

/s/ Alexis Bridges
ASSISTANT TO J. MATSUDA, ESQ.

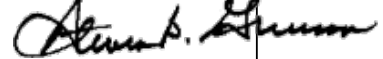
AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

/s/ Jess Matsuda
Jess Matsuda

02-15-19
Date



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA
7

8 THE STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 DEVOHN MARKS,

12 Defendant.

CASE NO. C-18-337017-2

DEPT. NO. V

13
14 BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

15 WEDNESDAY, FEBRUARY 20, 2019

16 **RECORDER'S TRANSCRIPT OF HEARING: STATE'S EX PARTE**
17 **MOTION FOR AN ORDER SHORTENING TIME ON STATE'S**
18 **MOTION TO ADMIT EVIDENCE OF OTHER BAD ACTS; CALENDAR**
19 **CALL**

20 APPEARANCES:

21 For the State:

JOHN L. GIORDANI, III., ESQ.
Chief Deputy District Attorney

22
23 For the Defendant:

JESS Y. MATSUDA, ESQ.

24
25 RECORDED BY: LARA CORCORAN, COURT RECORDER

1 Las Vegas, Nevada; Wednesday, February 20, 2019

2 [Hearing commenced at 10:51 a.m.]

3
4 THE COURT: Page 5 is C337017, State of Nevada versus
5 Devohn Marks.

6 MR. GIORDANI: Good morning, Your Honor, John Giordani
7 on behalf of the State.

8 MR. MATSUDA: Good morning, Your Honor, Jess Matsuda
9 for Mr. Marks, who is present in custody.

10 THE COURT: All right. So, the calendar shows this is State's
11 ex parte motion for an order shortening time. Actually, it's on the State's
12 motion to admit evidence of other bad acts. And I did get the response;
13 okay. So, so I've read all the papers and so here's my question to the
14 State: Are you seeking to -- because as I read it, you're seeking to
15 admit evidence from just one particular robbery; is that correct?

16 MR. GIORDANI: That is correct, Your Honor. The series was
17 14 different victims. The event I'm seeking to admit was the final in the
18 series that was a takeover-style bar robbery exactly like the instant case.
19 The others I wouldn't even try to mention, frankly, if you granted my
20 motion is that; obviously.

21 THE COURT: I'm sorry, the others you would try and --

22 MR. GIORDANI: I would not.

23 THE COURT: Would not try, oh yes.

24 MR. GIORDANI: No.

25 THE COURT: All right. Well, I basically -- I kind of need an

1 offer of proof as to how you believe you would prove up the prior robbery

2 --

3 MR. GIORDANI: Sure.

4 THE COURT: -- because --

5 MR. GIORDANI: Um --

6 THE COURT: -- obviously, I mean, this has -- that prior
7 robbery happened in 2011, so it's removed in time for quite a bit. Are --
8 what -- are you --

9 THE DEFENDANT: Sorry, ma'am. I'm just listening.

10 THE COURT: Yeah. Just --

11 THE DEFENDANT: My apologies.

12 THE COURT: All right. So, I would need to -- in order to do
13 an analysis, a proper analysis, I'd need to know kind of what you're
14 talking about. You -- toward the end of your papers you indicated what
15 the -- what the specific similarities were, but I don't -- I don't have
16 anything. So, obviously, we'd have to have some type of *Petrocelli*
17 hearing.

18 MR. GIORDANI: Understood.

19 THE COURT: I realize he pled guilty.

20 MR. GIORDANI: Right. Not only did he plead guilty, but he
21 confessed and he wrote an apology letter to the victim in that case.

22 THE COURT: Okay. What --

23 MR. GIORDANI: So, what I would intend to do at the
24 *Petrocelli* hearing is present the Detective who took the confession and
25 the letter. And then, if the motion was granted, or if the Court required

1 even at the hearing, I could present the victims from that particular case
2 at the hearing, to prove up by a preponderance of the evidence, that it
3 happened and that he is the one that did it.

4 THE COURT: Okay. So, again, that this -- so on page 9, you
5 say that there were two -- two other persons that participated in the
6 offense and the other -- in the prior robbery.

7 MR. GIORDANI: Yes. And --

8 THE COURT: That each time the Defendant and his co-
9 conspirators targeted bars as opposed to homes or victims, you're
10 saying that as to both cases --

11 MR. GIORDANI: Yes, Your Honor.

12 THE COURT: -- that you're seeking? That they extensively
13 planned the robbery and cased the location for the -- for information for
14 days?

15 MR. GIORDANI: Yes.

16 THE COURT: Okay. And how will you prove that up? Was
17 that part of the confession?

18 MR. GIORDANI: Yes.

19 THE COURT: Okay. And then they robbed the victims inside
20 the bar in both cases?

21 MR. GIORDANI: Yes.

22 THE COURT: And in each case, when you say a takeover-
23 style robbery at the bar, what do you mean?

24 MR. GIORDANI: These types of robberies are unique in that
25 the local bars that are open 24 hours a day, they all have very similar

1 security systems. And one of the security precautions that are in place
2 are that they lock the doors. They have cameras to the outside and that
3 they only allow patrons in. In both cases a person in the crew, being our
4 instant case and that prior case, posed as a customer; went inside,
5 staked it out, made sure there was no police officers sitting there, I
6 presume, and then allowed the others to gain entry through the locked
7 door. Because once you're inside, you can exit and open the door,
8 obviously.

9 THE COURT: I see. Okay.

10 MR. GIORDANI: The takeover-style robbery is -- it's basically
11 what it sounds like is, as opposed to a street lick where someone just
12 points a gun and says give me all -- give me your wallet and they toss it
13 at him and then it's done. This particular type of event starts with the
14 planning; starts with the stakeout person and then once they -- the
15 actual robbers enter the bar, everybody get down; start robbing people.

16 I think in the instant case, the Defendant, before he pistol-
17 whipped the old man, jumped the counter. I don't want to misquote, but
18 there was a person who jumped the counter in the prior case as well. I
19 don't have the specifics as to who it was, but the majority of the
20 information that I would be seeking to admit would be presented through
21 his own words. And that would include the planning portion. I believe
22 they say, yes, we -- one of us went in to stake it out; et cetera.

23 THE COURT: All right.

24 MR. GIORDANI: And then in this case, I would prove that up,
25 obviously, through witnesses.

1 THE COURT: Okay. All right. So, knowing that additional
2 information, Defense counsel, Mr. Matsuda?

3 MR. MATSUDA: And Your Honor, our stance is there is a
4 presumption of inadmissibility on all prior bad acts and if you -- if Your
5 Honor thinks that the hearing is warranted, we would request one so we
6 can challenge the admission of those facts.

7 THE COURT: All right. Well, if it plays out, as the State is
8 indicating, then I very well may, because identity is at issue in this case
9 is my understanding because the robbers were masked, so there's no
10 identification. So, identification is essential. And I realize that there's,
11 you know, a significant period of time, but I also understand that the
12 Defendant was incarcerated for most of that time.

13 MR. MATSUDA: Correct.

14 THE COURT: And so, that kind of foreshortens the periods
15 between. And the fact that, perhaps, he wasn't masked the first time is
16 further indication of why he might be masked this time. So, we'll have to
17 have a hearing, obviously, to see if the State has what they indicate they
18 have. But, that would be my inclination. I won't be able to make the
19 final analysis, obviously, until we have such a hearing.

20 MR. MATSUDA: Sure.

21 THE COURT: Where are we, let's see here.

22 MR. GIORDANI: I think before we go any further, Mr.
23 Matsuda was going to address the trial date.

24 MR. MATSUDA: Yes, Your Honor, I did speak to my client. I
25 was appointed on this case about three weeks ago and it is a lot of

1 discovery to go through. I did speak to my client about a continuance,
2 so that's what we would be requesting is to continue the matter for next
3 stack.

4 THE COURT: Refresh my recollection. How is it you ended
5 up getting --

6 MR. MATSUDA: I think the PD's office withdrew due to
7 conflict.

8 MR. GIORDANI: Yes.

9 MR. MATSUDA: And I was appointed in District Court. I think
10 it was about two or three weeks ago.

11 MR. GIORDANI: It was a three-week trial setting, so I don't
12 oppose the continuance. I understand it. I would have been ready to
13 go, but I don't oppose the continuance. And if the Court does grant it, I
14 would say we should probably just set the *Petrocelli* hearing out -- near
15 in time to the trial date, if Mr. Matsuda's okay with that, of course.

16 MR. MATSUDA: I have no objection to it.

17 THE DEFENDANT: Can I say something, Your Honor?

18 THE COURT: Okay. I mean, I want you to have, obviously, a
19 ruling on that motion before.

20 MR. MATSUDA: Sure.

21 THE COURT: Right. So, you can make decisions and trial
22 strategy. So --

23 MR. GIORDANI: Or we can do the hearing in a month and
24 then whatever the Court is inclined to do.

25 THE COURT RECORDER: Judge, can we go off the record

1 to do all this?

2 THE COURT: Sure. Let's go off -- well --

3 [Pause in hearing at 10:59 a.m.]

4 [Hearing resumed at 11:05 a.m.]

5 THE COURT: All right. We've come up with dates for
6 calendar call July 3rd. The trial to start July 8th, but I can tell you that
7 would -- with that date you'll have to definitely go to overflow.

8 MR. GIORDANI: Okay.

9 THE COURT: Because I'm only here those four days of that
10 week and you won't be able to get that trial done. And then I'll be gone
11 for a week.

12 MR. GIORDANI: All right.

13 THE COURT: So --

14 MR. GIORDANI: And did you want to set a *Petrocelli*
15 hearing?

16 THE COURT: Yes. So, we can have that all done. So, if you
17 can go to overflow you're ready to go completely. So, let's do that in --
18 want to go off the record again to schedule that?

19 THE COURT RECORDER: If you want to. Do you want to
20 just go --

21 [Hearing paused at 11:06 a.m.]

22 [Hearing resumed at 11:07 a.m.]

23 THE COURT: All right. So, we're back on the record and now
24 we have the *Petrocelli* hearing date, so give us the dates for that.

25 THE CLERK: Yes, Your Honor, May 17th 9:00 a.m. it's a

1 Friday *Petrocelli* hearing and the calendar call will be July 3rd, 9:00 a.m.,
2 Jury trial will be July 8th, 1:30.

3 MR. GIORDANI: Thank you.

4 THE COURT: And to save you the explanation for why no
5 motions for continuances, I'll just do it on my own motion because of the
6 *Petrocelli* hearing issue.

7 MR. GIORDANI: Thank you.

8 MR. MATSUDA: Thank you, Your Honor.

9 THE COURT: And vacate the trial date and --

10 THE DEFENDANT: My apologies again, Your Honor, for my
11 bodily gestures.

12 THE COURT: All right. Well, I -- you just --

13 THE DEFENDANT: Yeah, I was kind of excited and all that --

14 THE COURT: -- kept doing this and I thought you were trying
15 to get my attention.

16 THE DEFENDANT: Yeah. No, not at all.

17 THE COURT: Okay.

18 MR. GIORDANI: Thank you.

19 MR. MATSUDA: Thank you.

20 [Hearing concluded at 11:08 a.m.]

21 * * * * *

22 ATTEST: I do hereby certify that I have truly and correctly transcribed
23 the audio/video proceedings in the above-entitled case to the best of my
24 ability.

25 
Gail M. Reiger
Court Recorder/Transcriber

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FRIDAY, MAY 17, 2019 AT 9:01 A.M.

THE COURT: Good morning.

MS. MOORS: Good morning.

THE COURT: And this is State of Nevada versus Devohn Marks, case number C337017, and this is a -- the *Petrocelli* hearing on the State's motion to admit evidence of other bad acts.

MS. MOORS: Yes, Your Honor.

THE COURT: If you'll state your appearances for the record.

MS. MOORS: Lindsey Moors for the State.

MR. MATSUDA: And good morning, Your Honor, Jess Matsuda for Mr. Marks who is present.

THE COURT: All right. Go ahead, call your first witness.

MS. MOORS: Thank you, Your Honor. I have two witnesses, my first one being Miriam Byrd.

THE COURT MARSHAL: If you could just follow me up to the witness stand, ma'am. Please watch your step here as you take the stand. Once you're up here, please remain standing and raise your right hand, face the court clerk to be sworn in.

MIRIAM BYRD

[having been called as a witness and being first duly sworn,
testified as follows:]

THE COURT CLERK: Please be seated and please state and spell your first and last name.

THE WITNESS: Miriam Byrd, M-I-R-I-A-M B-Y-R-D.

1 THE COURT: You may proceed.

2 MS. MOORS: Thank you.

3 **DIRECT EXAMINATION**

4 BY MS. MOORS:

5 Q Good morning, Ms. Byrd.

6 A Good morning.

7 Q I want to direct your attention back to February 3rd of 2011.

8 A Mm-hmm.

9 Q Where were you working at that time?

10 A Fred's Tavern on --

11 Q And do -- oh.

12 A -- Decatur and Tropicana.

13 Q Is that located in Las Vegas, Clark County, Nevada?

14 A Yes.

15 Q And what did you do at Fred's Tavern?

16 A I was a bartender.

17 Q What was your customary shift?

18 A Eight to four.

19 Q Okay. And specifically February 3rd of 2011, do you
20 remember that date?

21 A Yes.

22 Q What do you remember that date as being?

23 A First of all, it was -- it was the Friday before Super Bowl
24 weekend and my daughter had cheer competition that next day, so I
25 remember it very vividly.

1 Q Okay. Where was that cheer competition at?
2 A Palm Springs, California.
3 Q So, on this particular day, if your shift starts at 8, what time
4 would you normally get to work?
5 A Seven forty-five to do the shift change.
6 Q And that would be taking over the shift from a bartender --
7 A Graveyard.
8 Q -- from the evening?
9 A Yes.
10 Q And did you do that on this date?
11 A Yes.
12 Q Do you remember who the bartender that you were taking
13 over for was?
14 A John [phonetic].
15 Q Okay. And did anything out of the ordinary happen that
16 morning?
17 A Well, it started out that when I counted down the drawer it was
18 \$7,777, and we were joking about well, it's going to be somebody's lucky
19 day, someone's going to hit the machines. And then we were -- he was
20 sitting on one side of the bar. I did the total shift change. I was sitting
21 on the other side and somebody walked in looking around. We thought
22 maybe he was looking for a friend of his.
23 Q Okay.
24 A Which --
25 Q Can you --

1 A -- isn't uncommon.

2 Q Can you describe for me what this -- do you remember any
3 characteristics of this person?

4 A It was a younger African -- it was a younger black man.

5 Q Okay. And did you have any conversation with this person?

6 A We asked him if we could help him, and he just said no, he
7 was just looking around.

8 Q Okay. And then did this person ultimately leave the
9 establishment?

10 A Yes, he looked around, I -- just, I guess, looking for his friend,
11 and then he left, and then four or five -- I can't remember how many
12 there was -- people came running in with guns in their hand and told us
13 on the floor, on the fucking floor, and me and John just looked at each
14 other like, it's 8 o'clock in the morning, what are you doing, and --

15 Q Can I stop you for just one sec?

16 A Uh-huh.

17 Q I'm going to sort of break it up a little bit.

18 A Yeah.

19 Q At this point in time was it just you and John that were in the
20 bar?

21 A Yes.

22 Q Okay. So, there were no other patrons.

23 A No.

24 Q All right. And then when these individuals came in, you said
25 you don't remember how many there were, do you remember, were they

1 male or female?

2 A They were all males.

3 Q Okay. Do you remember what ethnicity they were?

4 A Yes, they were African American.

5 Q Okay. And so you said that they gave orders. Did all of them
6 have weapons?

7 A Yes.

8 Q Okay. So, based on those orders then, what did you do?

9 A Laid on the floor.

10 Q Right. What happened while you were on the floor?

11 A When I was on the floor, they came and took my cell phone
12 out of my back pocket -- jumped over the bar, took my cell phone out of
13 my back pocket, and then went right to the cash drawers.

14 Q Okay. And did they ultimately take the cash from the cash
15 drawers?

16 A Yes.

17 Q What about your co-worker, was anything taken from him, do
18 you know?

19 A His cell phone was taken off of the bar.

20 Q Okay. And about -- once they take all these things, then what
21 happens next?

22 A Then they jump back over the bar, went out the front door,
23 and then they were parked out back and we had windows around the
24 building that -- so you could see the view of the city, and they left the
25 house phone there and so John got on the house phone and called the

1 police and said this was John at Fred's Tavern, I've just been robbed,
2 and they said can you give us a description, well, he was watching them
3 get into the tan car at the time --

4 Q Mm-hmm.

5 A -- and he gave a description of the car, and then the police
6 came.

7 Q Okay. So, ultimately, police became involved and they show
8 up at the tavern; is that right?

9 A Yes, yes.

10 Q At some point then were you ultimately taken by police to go
11 to various locations to do what we would be referring to as a show-up?

12 A Yes.

13 Q Did you ultimately go to three different locations?

14 A Yes.

15 Q And did you make identifications with regards to all three of
16 those individuals that you saw?

17 A Yes, I did.

18 Q And you believed that those three individuals were involved
19 with the robbery that you had just experienced.

20 A Yes.

21 Q Okay. Do you remember what your phone looked like?

22 A It was an iPhone and I had a -- it was a pink case that said
23 Coach on it.

24 Q Okay.

25 MS. MOORS: I have no further questions for this witness.

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THE COURT: Cross?

CROSS-EXAMINATION

BY MR. MATSUDA:

Q Good morning, Ms. Byrd.

A Hi.

Q How are you doing today?

A Fine, thank you.

Q Good. Thank you. Okay. So, going back to the night in question, this is how long ago?

A Ten years, 11 years? I'm not sure what the year was. I just remember the time.

Q Okay. So, it's kind of a while back?

A Yes, it was a while back.

Q And do you recall what happened that night pretty well, you think?

A Like it was yesterday, yeah.

Q Okay. Now, how many people were -- or how many people entered the bar?

A The first time? One.

Q Okay.

A And then after that it was four or five.

Q Four or five? Okay. And how long did that first person stay in the bar?

A I'd say maybe a minute, just looked all around.

Q And then the other gentlemen came in?

1 A Yes.

2 Q Okay.

3 A After he walked out, then they came in.

4 Q Now, did any of the perpetrators -- were they wearing masks?

5 A No, they were not.

6 Q Okay.

7 A They had hoodies on.

8 Q Okay.

9 A They had hoodies, but not masks.

10 Q So, nothing was --

11 A Covering their face.

12 Q -- covering their face?

13 A No.

14 Q Okay. Did it look like anybody was wearing gloves?

15 A Alls I saw was the gun.

16 Q Okay.

17 A I --

18 Q And how many of them had guns?

19 A All of them.

20 Q Okay. So, about four or five guns?

21 A Yes.

22 Q It was four or five people?

23 A [The witness nodded her head in the affirmative.]

24 Q Okay. Now, was anyone physically hurt?

25 A Not physically.

1 Q Okay. So, what I mean by that is, did anyone get attacked for
2 their items?

3 A No, no, we were both laying on the floor, and they just took
4 them out of my back pocket and took his off the bar.

5 Q Okay. Now, where did these four or five gentlemen enter?

6 A The very front door, which is on Decatur.

7 Q Very front door?

8 A Yeah.

9 Q Okay. And this is a bar; correct?

10 A Yes.

11 Q Okay. Thank you, ma'am, nothing further.

12 THE COURT: Any redirect?

13 MS. MOORS: Yeah, just really briefly.

14 **REDIRECT EXAMINATION**

15 BY MS. MOORS:

16 Q I forgot to ask you this before, but obviously I called you up to
17 the stand as Miriam Byrd, at this time back in 2011, was your name
18 Miriam Odell [phonetic]?

19 A Yes, it was.

20 Q Okay. So, that would have been the name that you reported
21 to police?

22 A Yes.

23 Q Okay. And I know Mr. Matsuda just asked you if anyone was
24 hurt, like physically injured as a result of taking their items, and you said
25 no; is that right?

1 A Not physically, yes.

2 Q Okay. At this point in time when you're on the ground and
3 these men have guns, did you feel that you were free to leave?

4 A No, not at all.

5 Q Okay. Did you feel that essentially your items -- like, you had
6 to give away your items for your safety?

7 A I didn't have a choice, yes.

8 Q Okay. All right.

9 MS. MOORS: I have no further questions.

10 THE COURT: Any recross?

11 MR. MATSUDA: Nothing further, Your Honor.

12 THE COURT: Thank you very much for your testimony,
13 ma'am.

14 THE WITNESS: Thank you.

15 THE COURT: Call your next witness.

16 MS. MOORS: Thank you, Your Honor. The State calls
17 Detective Jeffrey Swanbeck.

18 THE COURT MARSHAL: Detective, if you could please take
19 the witness stand. Remain standing and face the court clerk and be
20 sworn in.

21 THE WITNESS: Okay.

22 **JEFFREY SWANBECK**

23 [having been called as a witness and being first duly sworn,
24 testified as follows:]

25 THE COURT CLERK: Please be seated and please state and

1 spell your first and last name.

2 THE WITNESS: First name is Jeffrey, J-E-F-F-R-E-Y. Last
3 name is Swanbeck, S-W-A-N-B-E-C-K.

4 THE COURT: You may proceed.

5 MS. MOORS: Thank you.

6 **DIRECT EXAMINATION**

7 BY MS. MOORS:

8 Q Good morning, sir. I want to direct your attention back to
9 February 3rd of 2011.

10 A Okay.

11 Q At that point in time, how were you employed?

12 A I was a detective with Metro in the robbery section.

13 Q Okay. And, ultimately, did you become involved with the
14 investigation of a robbery that occurred at Fred's Tavern located at 4680
15 South Decatur Boulevard?

16 A Yes.

17 Q And, specifically, were you what would be referred to as the
18 case agent?

19 A I was.

20 Q Okay. How did you first become involved?

21 A We got a call that there was a robbery that happened at that
22 location. And we split up the assignments in our section according to
23 area command, and so it happened at Enterprise Area Command, so I
24 was up, that was my call. And so we were following it on the radio and
25 we understood that there was a quasi-pursuit and then all the suspects

1 bailed from the car, and it was pretty dynamic at first and so we headed
2 straight out there.

3 Q Okay. So, you essentially became involved the very same
4 day it happened.

5 A Yes.

6 Q Okay. Now, ultimately, when this happened, was it your
7 understanding that some show-ups were conducted?

8 A Yes.

9 Q And were you present at any of those show-ups?

10 A No.

11 Q Okay. What were you doing while those show-ups were
12 occurring?

13 A I was at the bar itself.

14 Q Okay. And was it your understanding that there were two
15 individuals that had been in the bar during the robbery?

16 A Two victims in the bar, yes.

17 Q Correct. And was it also your understanding that one of those
18 victims was a female named Miriam Odell?

19 A Yes.

20 Q Was it your understanding that she identified three different
21 people by virtue of those show-ups?

22 A Yes.

23 Q In further investigating the case, did you ultimately, I guess,
24 get to a point where you believed that a Devohn Marks might have been
25 involved?

1 A Yes.

2 Q And as the case agent for the case, did you ultimately speak
3 with Devohn Marks?

4 A I did.

5 Q When you spoke with him on the first occasion, did you advise
6 him of his *Miranda* rights?

7 A Yes.

8 Q And in speaking with him -- well, I guess, let me ask you this.
9 What led you to him?

10 A He was taken into custody where the vehicle was stopped.
11 Most of the guys bailed out of the car, but he stayed with the car.

12 Q And did you learn anything about the vehicle that these
13 individuals had driven away in?

14 A Yes, the vehicle belonged -- or was registered to Devohn's
15 mom.

16 Q Okay. So, Devohn Marks' mom.

17 A Yes.

18 Q Now, in speaking with Devohn Marks, is it your understanding
19 that individuals that have some sort of involvement with law enforcement
20 ultimately get an ID number that would be linked to their SCOPE?

21 A Yes.

22 Q And is it your understanding that that SCOPE number is
23 unique to an individual person?

24 A Yes.

25 Q And based on reviewing your case file and discussing

1 previously, was it your understanding that Devohn Marks' ID number
2 was 2798254?

3 A That sounds correct, yes.

4 Q Okay. Now, when you spoke with him the first time, after you
5 would have had advised him of *Miranda*, what did he tell you about the
6 robbery at Fred's Tavern?

7 A He gave a confession about his role in the robbery itself.

8 Q Okay. And what was his description of his role?

9 A It was him and a couple of his buddies. He was the driver. It
10 was his mom's car. You know, he was given permission to drive the car.
11 And so he was the driver. They all showed up in the parking lot together
12 in his car. He parked the car in the parking lot. He walked inside as a
13 patron, walked inside and he didn't say anything or do anything. In
14 robbery we would call it scoping out the bar. You know, just kind of got
15 a layout of what was there, how many people were there, and within a
16 few minutes he walked out and walked back to the car. That's where the
17 other guy -- he gave them permission, the intel that he gathered, and
18 then the other guys went ahead and went into the bar, committed the
19 robbery, ran back out to the car, and then they took off with Devohn as
20 the driver.

21 Q Okay. And then was it also your understanding that after Mr.
22 Marks pled guilty that he actually drafted a -- an apology letter with
23 regards to his involvement in the case?

24 A Yes, ma'am.

25 MS. MOORS: I have no further questions for this witness.

1 THE COURT: Cross?

2 MR. MATSUDA: Thank you, Your Honor.

3 **CROSS-EXAMINATION**

4 BY MR. MATSUDA:

5 Q Good morning, Detective.

6 A Hi.

7 Q Okay. You said that when you apprehended Mr. Marks he
8 was the only one left in the car?

9 A I believe he got out of the car and he stayed by the car. I think
10 he laid on the ground when officers showed up. He was not one of the
11 ones that took off.

12 Q Okay. And do you know what position he was seated in the
13 car?

14 A I believe he was the driver.

15 Q Okay. Now, you said something interesting about scoping out
16 the bar. Now, was that -- in how you described how this robbery went
17 down, is that kind of common how bar robberies go?

18 A It's not uncommon for one person to go in just to see how
19 many people are there, kind of get the layout. You know, if there's a
20 security guard, you know, standing right by the door, they might not want
21 to go and commit the robbery there. So, just to kind of get an idea and,
22 you know, it's smart on their part, to see how many people are in there.

23 Q Okay.

24 A So, it's not uncommon.

25 Q Okay. And you've obviously seen these types of robberies

1 before?

2 A Yes, sir.

3 Q Okay. Thank you, Detective, nothing further.

4 THE COURT: Any redirect?

5 **REDIRECT EXAMINATION**

6 BY MS. MOORS:

7 Q Sir, would you -- when you were in robbery how long were you
8 in robbery or are you still in?

9 A I was in robbery as a detective for three and a half years.

10 Q Three and a half years? Okay. And we were just discussing
11 this person coming ahead of time, like sort of casing the area. In this
12 particular robbery, would you describe it as sort of like a takedown
13 robbery, like a -- they're taking over the bar?

14 A Yeah, we would say it is a takeover. I mean, every -- the two
15 people that were in there were put on the ground. There was nobody
16 else in there. They ran in, you know, and grabbed the cash from the
17 drawers and ran out. So, yeah, that's what we'd consider a takeover.

18 Q Okay. And then what you discussed previously with what this
19 first individual who came in and was sort of scoping it out, Devohn
20 Marks, you discussed that person as being -- sort of casing the area?

21 A Yes, ma'am.

22 Q Okay.

23 MS. MOORS: I have no further questions.

24 THE COURT: Any recross?

25 MR. MATSUDA: Nothing further, Your Honor.

1 THE COURT: May this witness be excused?

2 MS. MOORS: Yes.

3 THE COURT: Thank you very much for your testimony.

4 THE WITNESS: Thank you.

5 THE COURT: Do you have any further witnesses?

6 MS. MOORS: I do not have any further witnesses, Your
7 Honor.

8 THE COURT: All right. So, argument. Did you want to have
9 argument now or --

10 MS. MOORS: Yes, Your Honor.

11 THE COURT: Okay.

12 MS. MOORS: So, Your Honor, this is a case where -- I'm sure
13 Your Honor had a chance to review the entire motion with the supporting
14 police reports and documentation. I think Mr. Giordani's motion was a
15 hundred and one pages.

16 But, essentially, the current case that's before Your Honor is
17 the same thing that Detective Swanbeck just discussed, and it's a
18 takeover type robbery where we have individuals that come into this
19 location and ultimately take control of it, and they use the assistance of
20 essentially a person that's casing the joint who, upon first blush, appears
21 to be an actual victim, this Antwaine individual.

22 And so this particular case, the one that -- not the one we're
23 discussing today, but the actual underlying case, is virtually identical to
24 the case that we're discussing today. And in the case that we're
25 discussing today, the Defendant, Devohn Marks, ultimately is, I guess,

1 the caser and not one of the primary assailants, and so he cases this
2 joint, ultimately two individuals come in with guns, they take all the
3 money, they get in the getaway car, self-admittedly of the Defendant that
4 it's his mother's. He was the driver, there's no doubt whether or not he
5 committed the previous crime, ultimately is caught, writes an apology
6 letter, gives a confession.

7 And what we have here, Your Honor, is in terms of the exact
8 reason why we would allow prior bad act evidence, is for any non-
9 propensity purpose; right? Motive, intent, lack of mistake, identity,
10 common plan or scheme. This individual literally just got paroled in
11 March of 2018 and is already out committing this exact same type of
12 crime in October of 2018.

13 But what he did this time is just what Officer Swanbeck said.
14 He got a little smarter. He wore gloves. He wore hoods over his face so
15 that literally we couldn't have someone like Miriam Odell identify him.
16 But what is another way to identify him? Showing that he did the exact
17 same type of crime with the exact same modus operandi eight years
18 prior.

19 And based on that, Your Honor, in terms of our standard of
20 clear and convincing evidence, I would submit that we've absolutely met
21 it, that it is more probative than prejudicial, and it should be allowed in
22 the trial in front of Your Honor.

23 THE COURT: All right. So, I think you've -- that there's not a
24 question that it's clear and convincing evidence that the other crime
25 occurred. The real focus of the inquiry at this point is --

1 MS. MOORS: Mm-hmm.

2 THE COURT: -- is it more prejudicial than probative in the
3 weighing that the Court has to do to --

4 MS. MOORS: Mm-hmm.

5 THE COURT: -- decide.

6 And so do you want to address that?

7 MR. MATSUDA: Yes, Your Honor. Thank you. And
8 obviously we are on the position that this is highly prejudicial to my
9 client. What we have here are two sets of robberies. Now, going back
10 into what Mr. Giordani's motion stated, this was about 12 or 13 -- I think
11 13 robberies in total?

12 MS. MOORS: I think it was 14, yes.

13 MR. MATSUDA: Fourteen robberies in total where most of
14 those robberies, if not all of them except for that Fred Tavern's robbery,
15 were done at an apartment complex style robberies. So, they weren't
16 hitting up 13, 14 types of bars and casing joints and showing this pattern
17 of this is what we do, this is how we commit crimes.

18 Mr. Marks pled to the Fred's Tavern robbery and he did -- he
19 was remorseful. He came out and said this is what happened. But all
20 the other robberies happened in an apartment complex. This is not bar
21 after bar after tavern after tavern. There are very vastly different
22 circumstances in each case where the first robbery, there were four
23 gentlemen, they didn't have gloves, they didn't have --

24 THE COURT: Okay. Wait a minute, wait, wait. I'm sorry to
25 interrupt you.

1 MR. MATSUDA: Nope, you're [indiscernible].

2 THE COURT: But -- so, the -- they're only seeking to put in
3 evidence of this one tavern robbery.

4 MR. MATSUDA: Right.

5 THE COURT: And so I don't know anything about those other
6 robberies.

7 MR. MATSUDA: And I just wanted to give the Court some
8 information. In Mr. Giordani's motion he did state that these were 14
9 robberies. So, it kind of sounded like these were all bar robberies to me.
10 I -- I'm not -- I just wanted to clear that up with the Court.

11 THE COURT: Okay. Yeah, I recall that. I didn't have a
12 chance to reread the motion. I read it, of course, at the time when --
13 before we set the *Petrocelli* hearing, and I can read it again of course.
14 But I do remember that there was some talk about multiple robberies,
15 but obviously --

16 MR. MATSUDA: Okay.

17 THE COURT: -- now they're not seeking to admit --

18 MR. MATSUDA: Right.

19 THE COURT: -- anything but this discreet robbery at Fred's
20 Tavern on February 3rd, 2011.

21 MR. MATSUDA: Right. And I totally understand. I just
22 wanted to make sure the Court was aware that we're --

23 THE COURT: Okay.

24 MR. MATSUDA: -- not talking about 14 bar robberies.

25 THE COURT: Right.

1 MR. MATSUDA: So, they're talking about the Fred's Tavern
2 bar robbery where four gentlemen, no masks --

3 THE COURT: Not gentlemen, but okay.

4 MR. MATSUDA: Four perpetrators --

5 THE COURT: Yes.

6 MR. MATSUDA: -- no masks, no guns, no one was hurt --
7 physically hurt. And I understand the emotional and traumatic
8 experience that went on, but when I asked Ms. Byrd about physically
9 hurt, I meant if anyone was pistol whipped or punched or physically
10 thrown to the ground, that type of action. Now, we don't have that in
11 Fred's Tavern.

12 We also don't have someone playing a victim. Now, in this
13 new case there's allegations that one of the co-defendants actually
14 opened a side door and pretended he was actually a victim as well. We
15 don't have that in Fred's Tavern.

16 We have three people in the new case; the Torrey Pines Pub
17 case. There's four or five in the Fred's Tavern case. Now, in all, what
18 we have here is, it's -- we have Detective Miller who's probably going to
19 be the case agent on this case who wrote his investigation report, got
20 the search warrants for the phone records and whatnot. Now, in his
21 investigation he's saying that this is a very common type of robbery. It's
22 very common to see these types of actions; casing a joint, robbing it in
23 this takeover style.

24 So, on one hand we have the case agent who's explaining
25 these are very common robberies, and then we have the State saying

1 these are very unique, because it's so unique we have to admit it where
2 this is the only evidence that we think the jury will convict Mr. Marks on
3 based on his prior bad act.

4 And that's what this rule of evidence is for is to preclude that
5 prejudicial effect by allowing someone's prior bad acts to convict them
6 on these new charges, which he wants to fight. So, because of that
7 [indiscernible] -- or we'll submit to the Court that we believe allowing the
8 prior bad act would be highly prejudicial and it's going to substantially
9 outweigh its probative value.

10 MS. MOORS: Your Honor, may I respond?

11 THE COURT: Yes, please.

12 MS. MOORS: So, I was just re-reviewing the motion, and I
13 wanted to point out specifically on page six, line seven in which it states
14 difficulty in identifying the perpetrators coupled with a high degree of
15 similarity between the crimes makes evidence of other bad acts more
16 probative than prejudicial. And that's *Canada v. State* 104 Nev. 293.

17 And I think that's what we have in the instant case, is there's
18 going to be some difficulty identifying the Defendant because, quite
19 frankly, he got smarter and better at robbing bars.

20 So, in this particular case they are very similar. Just because
21 there are types of crimes like a takeover type robbery or casing a joint,
22 just because those are, say, common in the criminal element within Las
23 Vegas doesn't mean that there aren't some unique traits that we see in
24 both of these.

25 So, both of these cases, the prior bad acts and the instant, are

1 bars. In both of them the individual patrons located at the bars are also
2 robbed of their personal items. In the case we just discussed today we
3 talked about two cell phones, and then there were also items in the
4 instant case that were stolen individually from the patrons. Furthermore,
5 Ms. Byrd indicated that they ended up jumping over the bar, going back
6 to where the money is located. That's exactly how they got to the
7 money in the other case.

8 And I would point out that while there is a slight difference in
9 the current case that they essentially had their case pose as a victim,
10 which, quite frankly, was kind of ingenious -- but he still served the exact
11 same purpose. And it's very well laid out in the actual police report for
12 this case because while he was sitting at this machine, quote, unquote,
13 playing video poker, he was truth in fact just pushing a button, and he
14 was located such that he could see the cameras so he knew when his
15 co-defendants, the Defendant and someone else, were coming, and that
16 he -- when he left he ultimately kept the door open longer than needed.

17 All of these different things show that while he was guised as
18 a victim, he was, quite frankly, a very good lookout and a case agent.
19 And, ultimately, it shows that Devohn Marks had been graduated from
20 being the case and the getaway driver to one of the main perpetrators.

21 And so, ultimately, in terms of it being probative, it's extremely
22 probative. Is it prejudicial? Yes, but that is not outweighed by its
23 probative value. And for those reasons, we do believe that it should be
24 admitted at trial.

25 THE COURT: Well, what were the facts in *Canada versus*

1 *State?* Because, you know, in that case it says difficulty -- you know,
2 your, you know, motion says difficulty in identifying the perpetrators
3 coupled with a high degree of similarity between the crimes makes
4 evidence of other bad acts more probative than prejudicial.

5 And there's a citation to the *Brinkley* case as well --

6 MS. MOORS: Mm-hmm.

7 THE COURT: -- talking about, again, remarkable similarity of
8 a modus operandi in the testimony regarding the other crimes and their
9 relative proximity in time to the charged offense.

10 Here we don't have proximity in time. We have a long time
11 between the two. So, we don't have proximity in time; right? So, where
12 are the similarities? I mean --

13 MS. MOORS: Well, I -- to be honest, Your Honor, I didn't
14 write this motion; it was Mr. Giordani. So, I don't know the facts of that
15 case, but I would point out there has to be at least some argument made
16 that there was no ability for a close proximity in time because he had
17 essentially been in prison until four months prior to this event. So, I
18 would argue proximity in time to when he is a free human being, we're
19 dealing with four months. I understand it's a longer time lapse, but I --
20 that has to be taken into consideration that he can't possibly commit
21 robberies while he's in prison.

22 THE COURT: Well, and yes, but I think really the focus on
23 proximity in time generally is that there's -- you know, there's identical
24 things happening right one after the other --

25 MS. MOORS: Mm-hmm.

1 THE COURT: -- so there's more of an inference that it's the --

2 MS. MOORS: Mm-hmm.

3 THE COURT: -- same person --

4 MS. MOORS: Sure.

5 THE COURT: -- potentially, as opposed to that, well, you
6 know, it's proximate by reason of the fact that the person was
7 incapacitated, you know, or in a controlled environment where they
8 couldn't be committing robberies for 11 years or -- not 11 years, but --

9 MS. MOORS: Sure.

10 THE COURT: -- you know, for a number of years.

11 So, I guess maybe what we should do is have you do some --
12 whether it's Mr. Giordani or whoever is assigned, but to do supplemental
13 briefing --

14 MS. MOORS: Okay.

15 THE COURT: -- to, you know, focus in on that because I
16 think, certainly, that this other case has been shown by clear and
17 convincing evidence that -- that's not the focus really here. It's whether
18 there's enough to say that it should come in, you know, because
19 obviously the danger of improperly putting, you know, in front of a jury
20 that somebody has already committed a robbery, you know, could be --
21 could cause a jury to wrongfully find someone guilty that didn't commit
22 the robbery if there isn't enough to really -- since your argument here is
23 you need it for identity; right?

24 MS. MOORS: Mm-hmm.

25 THE COURT: And, I mean, certainly there are appropriate

1 cases where you would do that. I had a case that as a prosecutor -- I
2 prosecuted where two robberies happened within a day or two, a week,
3 around that, of each other. They -- the robberies were of two different
4 Sizzler restaurants, but, you know, the same -- in one, the person who
5 committed the robbery was identified by someone as he was leaving.
6 The robbery I had was he was masked. And to be able to prove the
7 two --

8 MS. MOORS: Mm-hmm.

9 THE COURT: And -- but they were identical. The layout of
10 the restaurant was identical. They were proximately close in time. The
11 description of the person, his physical appearance, the role was
12 identical, et cetera, et cetera. So, clearly, that comes in because --

13 MS. MOORS: Mm-hmm.

14 THE COURT: -- the person's masked the second time. The
15 first time they were masked as well, but getting into the getaway car they
16 took the mask off and someone saw them, and he was a prior employee
17 and they ID'd him. So, identification was solid and you had, you know,
18 the second one --

19 MS. MOORS: Mm-hmm.

20 THE COURT: Everything was the same.

21 MS. MOORS: Mm-hmm.

22 THE COURT: But I don't know to what extent yours is the
23 same, so let's have some additional briefing on that; okay?

24 MS. MOORS: Okay. So, you -- just to be clear though, you
25 want supplemental briefing with regards to case law supporting

1 admission for identity and similarity between crimes?
2 THE COURT: Right.
3 MS. MOORS: Okay.
4 THE COURT: I mean, you're citing case --
5 MS. MOORS: Mm-hmm.
6 THE COURT: -- here, so let's evaluate the case. I mean, I
7 could read that as well, but really, you know, its --
8 MS. MOORS: Sure.
9 THE COURT: -- your arguments to be had.
10 When's our trial coming up on this? It is July?
11 MS. MOORS: I think it's the 8th, yeah.
12 THE COURT CLERK: It's July 8th.
13 THE COURT: Okay. So, how much time would you like to file
14 a supplemental; a couple weeks? Will that be long enough?
15 MS. MOORS: Yes, Your Honor, if we could get two weeks.
16 THE COURT: Okay. And -- wait.
17 Your response, Mr. Matsuda?
18 MR. MATSUDA: A couple weeks will be fine.
19 THE COURT: How much?
20 MR. MATSUDA: Two weeks.
21 THE COURT: Two weeks for a response?
22 THE COURT CLERK: So, two weeks each?
23 THE COURT: Yeah, is that going to put us too close to the
24 trial date?
25 THE COURT CLERK: The first two-week date would be May

1 31st, followed by June 14th.

2 THE COURT: Okay. Let me look at my -- okay. So, let's put
3 it on for argument then on June 24th. That will give me time to read
4 everything.

5 MS. MOORS: Okay.

6 THE COURT: All right.

7 MS. MOORS: Great. Thank you, Your Honor.

8 THE COURT: Thank you. And --

9 THE DEFENDANT: May I please address the Court, Your
10 Honor, before we're done?

11 THE COURT: Do you want him to address the Court?

12 MR. MATSUDA: I advised him not to, but he wants to.

13 THE COURT: Okay.

14 THE DEFENDANT: I want to address the Court, Your Honor.
15 Well, I spoke with my attorney about the *Marcum* notice that was
16 supposed to be served to me before I was indicted. He informed me
17 that the State sealed the motion. I asked him for a written order, a copy
18 of the written order because the courts are supposed issue a written
19 order to the District Attorney in order to withhold the notice from a
20 Defendant. I didn't get granted my right to testify in front of Grand Jury
21 before I was indicted, for one.

22 And also, I'm trying to figure out is it legal for the State to
23 admit my alleged accomplice as evidence against me at a Grand Jury
24 hearing and allow him to testify against me and in front of a jury that had
25 already returned a true bill against him. That would seem extremely

1 prejudicial on my behalf at that Grand Jury hearing.

2 THE COURT: Well, I'm -- yes, they could submit accomplice
3 testimony.

4 THE DEFENDANT: But would they be -- would he be able to
5 testify in front of the same Grand Jury that returned a true bill against
6 him? I mean, that would give birth to the -- to a pre-determination of
7 guilt. I mean, if you're already listening to somebody tell you about
8 somebody else and you're listening to somebody that you already know
9 you returned a true bill against, then how is that not unfair on my behalf?

10 And then also, his Grand Jury hearing was held on December
11 20th. Mine was on January 10th. So, my thing is I want to see why I
12 wasn't granted the right to testify before the Grand Jury. I need the
13 documents on that. I asked for the Grand Jury transcripts from January
14 10th; I still haven't received those. I asked for the search warrant from
15 my phones; I still haven't received those. I haven't received anything
16 that I've asked for. I haven't received any visit from my attorney. He
17 sent his private investigator to come see me, but I need to talk to him to
18 be able to get everything to -- so we can be on the same page as far as
19 defending myself.

20 THE COURT: Okay. So, counsel, are you -- have you
21 addressed your client's concerns?

22 MR. MATSUDA: I did. I just provided to him what I have with
23 me right now. I did reach out to Mr. Giordani about the *Marcum* notice
24 issues. I did provide Mr. Marks some additional discovery that I have. A
25 lot of discovery's on a disc. He is up in NDOC, so it is a little bit more

1 difficult for me to see Mr. Marks. I did send my investigator to relay any
2 information. So, that's where we are.

3 THE COURT: Okay.

4 THE DEFENDANT: He hasn't really addressed the *Marcum*
5 notice to me though. Like, he told me that they sealed it, but I need
6 paperwork on that. I need to see that for myself. I -- because I want to
7 file a motion for not being served a *Marcum* notice.

8 THE COURT: But your lawyer files motions.

9 THE DEFENDANT: Yeah, I understand that.

10 THE COURT: And he will decide what motions are
11 appropriate to file based upon the law. And I'm --

12 THE DEFENDANT: But isn't it his --

13 THE COURT: I'm not familiar with all the details of the case
14 because no motion has been brought before the Court on that, and I
15 wouldn't make a decision on that unless such a motion was brought.

16 THE DEFENDANT: I feel like this is a very important part of
17 the process as far as indicting me, so I don't see why he wouldn't want
18 to serve a -- I mean, file a motion on my behalf. He's saying that they
19 said that they sealed the -- because I was a flight risk. I'm on parole.
20 I'm a flight risk on parole.

21 I have the NRSs. NRS 2 -- 172.241, subsection 3 states that
22 in order for you to be a flight risk you have to have a failure to appear in
23 court for matters arising out of the subject matter of the proposed
24 indictment, either you're a fugitive from another jurisdiction, you have
25 local warrants or after due diligence they just can't contact you. None of

1 those apply to me. So, I'm trying to figure out how they consider me a
2 flight risk.

3 THE COURT: Well, your --

4 THE DEFENDANT: And I want to know where the written
5 order is from the courts.

6 THE COURT: All right. So, you need to talk to your lawyer
7 about that and then he can advise you on that.

8 THE DEFENDANT: When am I supposed to speak to him
9 though? I mean, because they're trying to take me to trial on a case
10 where --

11 THE COURT: Well, you --

12 THE DEFENDANT: -- I haven't even spoken to my lawyer.
13 It's been 90 days.

14 THE COURT: You're here today, so you can speak with him.

15 After I leave the bench you can speak with him for a little while
16 before they take him back. The officers are nodding their heads. That
17 would be great. So, this is a good opportunity and you don't have to
18 travel up to the prison.

19 THE DEFENDANT: And these --

20 THE COURT: So --

21 THE DEFENDANT: -- aren't the search warrants. I just want
22 to put that on record as well.

23 THE COURT: I don't know what you --

24 THE DEFENDANT: And also, regarding this case -- one more
25 thing regarding this case, Your Honor.

1 THE COURT: Yeah.

2 THE DEFENDANT: In this paperwork it said Detective Miller
3 states that a true takeover style robbery is when the suspects don't have
4 any intel as to what's going on inside of the business. The State's
5 argument is that this is a takeover style robbery to where they do have
6 intel. So, I'm trying to figure out why he was trying to figure out on
7 February 20th what exactly is a takeover style robbery because I haven't
8 received any documents or seen any documents specifically describing
9 what a takeover style robbery is.

10 THE COURT: I wasn't trying to figure that out, so --

11 THE DEFENDANT: Well, the detective that's interviewing --
12 that's investigating this case said that it -- a true takeover style robbery
13 is when they don't have any intel as to what is going on inside.

14 THE COURT: All right.

15 THE DEFENDANT: Giordani is saying that a takeover style
16 robbery is when they do. So, that's very contradicting, so can we -- can
17 they, like -- I want to know what a true takeover style robbery is.

18 THE COURT: I'm not giving you legal advice. I can't give you
19 legal advice. You need to talk to your lawyer. And your lawyer is here
20 and you are here and now is the opportunity for you to speak with him in
21 the holding cell because I'm going to be starting a trial at 10:30, but this
22 gives you opportunity to speak. Actually, you could do it right here in the
23 courtroom until I need to come back in and start my trial; okay? All right.

24 MR. MATSUDA: Thank you, Your Honor.

25 MS. MOORS: Thank you, Your Honor.

1 THE COURT CLERK: Judge, you want the next hearing on
2 your 9 o'clock calendar?

3 THE COURT: Yes.

4 THE COURT CLERK: Okay.

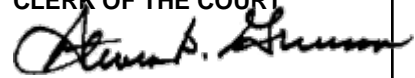
5 THE COURT: Thank you.

6
7 [Proceedings concluded at 9:39 a.m.]
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21 ATTEST: I do hereby certify that I have truly and correctly transcribed
22 the audio/video proceedings in the above-entitled case to the best of my
23 ability.
24
25



Trisha Garcia
Court Transcriber



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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

DEVOHN MARKS,
#2798254

Defendant.

CASE NO: C-18-337017-2

DEPT NO: V

STATE'S SUPPLEMENTAL MOTION TO ADMIT EVIDENCE OF OTHER BAD ACTS

DATE OF HEARING: JUNE 24, 2019
TIME OF HEARING: 9:00 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through LINDSEY MOORS, Deputy District Attorney, and files this State's Supplemental Motion to Admit Evidence of Other Bad Acts.

This Motion is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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1 **STATE’S MOTION TO ADMIT EVIDENCE OF OTHER BAD ACTS**

2 **FACTUAL BACKGROUND**

3 **THE PRIOR CASES – C272989 AND C273034**

4 In 2011, Devohn Marks (hereinafter “Defendant”), along with co-conspirators Corey
5 Crumble and Christopher Kitchen, participated in a massive armed robbery series in which at
6 least fourteen (14) victims were robbed at gunpoint. Defendant was linked to all of the crimes
7 when Detectives arrested him after a short vehicle pursuit following the last robbery in the
8 series. Defendant was subsequently interviewed, and confessed to his involvement in all of
9 the robberies. Defendant ultimately pled guilty to several counts including Conspiracy to
10 Commit Robbery and Robbery with Use of a Deadly Weapon in cases C272989 and C273034.
11 Defendant was sentenced to an aggregate prison term of four (4) to twenty (20) years in the
12 Nevada Department of Corrections.

13 **THE CASE THE STATE SEEKS TO ADMIT TO PROVE IDENTITY**

14 **AND M.O. – C272989**

15 On February 3, 2011, Defendant Devohn Marks and several co-conspirators
16 participated in a takeover-style armed robbery of a local bar called Fred’s Tavern. According
17 to Defendant himself, he and his co-conspirators made a plan to rob Fred’s Tavern. In the days
18 leading up to the robbery, Defendant and his co-conspirators entered Fred’s Tavern and “cased
19 the bar.” They would enter the bar, look around, and then leave without purchasing anything.
20 On the day of the robbery, Defendant entered the bar while his co-conspirators lied in wait
21 outside. Defendant looked around for a few minutes and then left the bar without purchasing
22 anything. He conveyed the relevant information regarding how many people were inside the
23 bar to his co-conspirators. According to one of the victim’s, Defendant re-entered the bar about
24 5 minutes later with his co-conspirators, who robbed the employees at gunpoint. After the
25 robbery, Defendant and his co-conspirators fled in Defendant’s vehicle. An astute patrol
26 officer spotted the vehicle and was able to stop it after a short pursuit. Defendant and his co-
27 conspirator’s fled the vehicle on foot, and all but 1 were apprehended after a foot pursuit.
28 Defendant was identified by the two victims as one of the robbers. He subsequently confessed

1 to having been involved in the Fred's Tavern robbery, along with the dozen or so preceding
2 robberies.

3 **THE INSTANT CASE – C337017**

4 ***While still on parole for the aforementioned robberies, Defendant committed the***
5 ***robbery in the instant case.*** The instant case is eerily similar to the robbery Defendant
6 confessed and ultimately pled guilty to in case C272989. Here, Defendant and his co-
7 conspirators (Antwain Johnson and an unknown co-conspirator) made a plan to rob the Torrey
8 Pines Pub. Johnson was to case the bar and report back to Defendant via text messages. For
9 weeks leading up to the robbery, Johnson would enter the bar and case it, while reporting to
10 Defendant via text message. Ultimately, on the date of the robbery, Johnson entered the bar,
11 while Defendant and the unknown co-conspirator lied in wait outside. When the time was
12 right, Johnson exited the bar through an exit-only door, allowing Defendant and the unknown
13 co-conspirator to enter the bar. Defendant and the unknown co-conspirator were wearing
14 masks and gloves, and both were armed with firearms. Defendant violently pistol whipped an
15 elderly bar patron, and he and the unknown co-conspirator robbed the bar.

16 During the course of the robbery, Johnson acted as though he was a victim, and even
17 stuck around until police arrived. Det. David Miller quickly realized that Johnson was
18 involved, and obtained his phone records. Johnson's phone records showed hundreds of
19 communications with Defendant in the hours leading up to the robbery. Because Defendant
20 was wearing a mask and gloves, none of the victims can identify him, and there is no physical
21 evidence tying him to the scene.

22 **ARGUMENT**

23
24 **I. EVIDENCE CONCERNING DEFENDANT'S PRIOR ROBBERY**
25 **CONVICTION IN CASE C272989 IS ADMISSIBLE PURSUANT TO**
26 **NRS 48.045.**

27 The State seeks to admit evidence concerning Defendant's prior Robbery pursuant to
28 NRS 48.045 as evidence of identity and any other valid non-propensity purpose.

1 **A. The Evidence is Admissible as Proof of Identity, Knowledge, Common Scheme or**
2 **Plan, M.O., and any other valid Non-Propensity Purpose**

3 Section 48.045(2) of the Nevada Revised Statutes provides:

4 Evidence of other crimes, wrongs or acts is not admissible to prove
5 the character of a person in order to show that he acted in
6 conformity therewith. It may, however, be admissible for other
7 purposes, such as proof of motive, opportunity, intent, preparation,
8 plan, knowledge, identity, or absence of mistake or accident.

9 Prior to admitting such evidence, the State must establish that (1) the prior act is
10 relevant to the crime charged; (2) the act is proven by clear and convincing evidence; and (3)
11 the evidence is more probative than prejudicial. Cipriano v. State, 111 Nev. 534, 541, 894
12 P.2d 347, 352 (1995), overruled on other grounds by State v. Sixth Judicial District Court, 114
13 Nev. 739, 964 P.2d 48 (1998).

14 A Petrocelli hearing was held in this case on May 17, 2019. At that hearing, this
15 honorably court agreed that the prior bad acts were relevant to the crime charged and that the
16 evidence presented had been proven to be so relevant through clear and convincing evidence.
17 This court did however want further briefing with regards to the prejudicial v. probative
18 inquiry in this process. With regard to a determination of prejudice:

19 “Prejudicial” is not synonymous with “damaging.” Rather,
20 evidence is unduly prejudicial...only if it “uniquely tends to evoke
21 an emotional bias against the defendant as an individual and...has
22 very little effect on the issues” or if it invites the jury to prejudice
23 “a person or cause on the basis of extraneous factors.” Painting a
24 person faithfully is not, of itself, unfair.

25 People v. Johnson, 185 Cal.App.4th 520, 534 (2010).

26 In addition to the prejudicial versus probative test, the State would like to point out that
27 in Bigpond v. State, 128 Nev. Adv. Op. 10, 270 P.3d 1244 (2012), the Nevada Supreme Court
28 affirmed the District Court’s decision to admit evidence of prior acts of domestic violence
pursuant to NRS 48.045(2). ***In upholding the trial court’s decision, the Court specifically
acknowledged that evidence may be admitted pursuant to NRS 48.045 for reasons other***

1 *than those delineated in the statute.* The Court found that the evidence was admissible
2 because the history of domestic violence provided context to the relationship between the
3 victim and Defendant and the victim's possible reasons for recanting her testimony.

4 In this case, the Defendant not only committed a similar type robbery in the instant case
5 as the one he had committed years, ago, but in so doing, he also changed the way the robbery
6 was conducted. The Defendant was identified by victim Miriam Odell in the previous robbery,
7 and testimony was given in the Petrocelli Hearing by Ms. Odell (now Byrd) as to those facts.
8 After having committed this previous take-over style of robbery that involved casing the
9 robbery location, the Defendant had not worn a mask. Now in the instant case, Defendant was
10 learned from the error of his ways in the previous robbery and has chosen to commit a takeover
11 style robbery that involved casing of the robbery location, but this time he wore a mask so as
12 to avoid being visually identified by any of these victims. Clearly a non-propensity purpose
13 that would be allowed under Bigpond to provide context to the current robbery and explain
14 why Defendant chose to use a mask.

15 Specifically, in argument in the Petrocelli hearing, the State pointed to Canada v. State,
16 104 Nev. At 293, 756 P.2d at 555. **Difficulty in identifying the perpetrators**, coupled with
17 a high degree of similarity between the crimes, makes evidence of other bad acts more
18 probative than prejudicial. Canada v. State, 104 Nev. at 293, 756 P.2d at 555 (emphasis
19 added). This honorable court has already found that the prior bad act evidence the State is
20 intending to admit is relevant to the crime and has been shown as such through clear and
21 convincing evidence as presented at the Petrocelli hearing. This Court wanted more factual
22 discussions with regards to similarity in crimes and more discussion of the Canada v. State
23 case.

24 The facts in Canada v. State, 104 Nev. 288, 756 P.2d 552 (1988), are very similar to
25 the instant case. In Canada, two defendants (Lester Canada and Michael Smith) were accused
26 of jointly participating in two armed robberies. Id. They were tried together in separate jury
27 trials for each robbery. Defendants challenged their convictions as to the Sit 'N Bull lounge
28 (the second case) robbery on the grounds that evidence of the Charleston Heights robbery (the

1 prior bad acts case) should not have been admitted to prove their identities **because such**
2 **evidence was more prejudicial than probative.** Their specific challenges to its admission
3 were premised upon (1) the witnesses' less than definite identifications of the suspects in the
4 Sit 'N Bull robbery (the second case); and, (2) the alleged absence of uniqueness in the *modus*
5 *operandi* exhibited in the two robberies. The very same arguments made by Mr. Matsuda in
6 the Petrocelli hearing in this case.

7 In upholding the District Court's decision to admit the evidence the Supreme Court
8 noted, "Contrary to the assertions of Canada and Smith, the difficulty in identifying the
9 perpetrators of the Sit 'N Bull robbery (the second case) argues for, rather than against, the
10 admission of evidence of the Charleston Heights robbery." Canada, 104 Nev. at 292, 756 P.2d
11 at 554.

12 Furthermore, the Court rejected the defendants' arguments that there was nothing
13 unique about the two robberies and identified the following similarities: (1) both robberies
14 took place in deserted bars very late at night; (2) in each robbery, one of the suspects entered
15 alone and ordered a beer to allow him to case the bar; (3) in each robbery, at least one of the
16 suspects wore a mask; (4) in each robbery the suspects were armed with shotguns; and, (5)
17 "the *modus operandi* common to the two (2) robberies was unique in comparison with other
18 robberies in the manner in which the perpetrators savaged their victims." Canada, 104 Nev.
19 at 293, 756 at 555.

20 The State submits that the similarities between Defendant's prior Robbery and the
21 present case warrant the admission of evidence concerning the prior case to establish
22 Defendant's identity. Given the fact that Defendant's defense is apparently going to be that
23 he was not involved in the Burglary/Robbery, the evidence is highly probative.

24 The similarities between each case are: (1) each time, Defendant participated in the
25 offenses with two other persons; (2) each time, Defendant and his co-conspirators targeted
26 bars as opposed to homes or victims on the street; (3) each time, they extensively planned the
27 robbery and cased the location for information days, and the information was conveyed to
28 people waiting outside; (4) each time, they waited until an opportune time and then robbed the

1 victims inside the bar; (5) in each case, Defendant and his co-conspirators committed a
2 takeover style robbery of a bar; (6) in each case, one of the robbers jumped over the counter
3 and stole money from the bar itself; and (7) in each case, the employees/patrons of the bar
4 were also robbed for their personal property. The similarity between these offenses are
5 significant, and highly probative to show the identity of Defendant as one of the masked and
6 gloved robbers.

7 Furthermore, as pointed out in Canada v. State, the inability of the victims in the instant
8 case to identify Defendant (because he wore a mask) points to allowing evidence of his prior
9 bad act robbery to show Defendant's identify in the instant case. Furthermore, the evidence
10 is relevant and probative to knowledge, common scheme or plan, M.O., and any other non-
11 propensity purpose. Defendant's prior robbery demonstrates that he possesses the knowledge
12 to commit this type of takeover style robbery of a local bar, that he has the knowledge to plan
13 the robbery in advance, and to send someone in to case the bar, that he has the patience to wait
14 until an opportune time to rob the bar, and that he is familiar with the security measures in
15 place at local bars. In addition, the evidence is highly probative of his unique Modus Operandi,
16 as well as the common scheme and plan used to commit the robbery.

17 Finally, evidence of this prior robbery would also be allowed under Bigpond to show
18 the Defendant learned from his mistake in the previous robbery. When Defendant committed
19 a very similar type of robbery against Ms. Odell (prior bad act robbery), he didn't wear a mask
20 and consequently was identified by Ms. Odell. In the instant matter, it was difficult if not
21 impossible for the robbery victims to identify the Defendant because he learned from his prior
22 bad acts and wore a mask so as to conceal his identity. This makes the issue of Defendant's
23 identity even more relevant and the admission of his prior bad acts are even more probative to
24 the instant case and consequently allowed under Canada v. State as well.

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1 **CONCLUSION**

2 Based upon all of the foregoing, the State respectfully requests that its Motion *in Limine*
3 to Admit Evidence of Other Bad Acts Pursuant to NRS 48.045 be granted.

4 DATED this 30th day of May, 2019.

5 STEVEN B. WOLFSON
6 Clark County District Attorney
7 Nevada Bar #001565

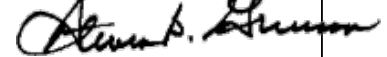
8 BY /s/ LINDSEY MOORS
9 LINDSEY MOORS
10 Deputy District Attorney
11 Nevada Bar #012232

12 **CERTIFICATE OF ELECTRONIC TRANSMISSION**

13 I hereby certify that service of State's Supplemental Motion to Admit Evidence of
14 Other Bad Acts was made this 30th day of May, 2019, by electronic transmission to:

15 JESS MATSUDA, ESQ.
16 jess@jesslaw.com

17
18 BY: /s/ J. MOSLEY
19 Secretary for the District Attorney's Office
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1 RTRAN

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5 DISTRICT COURT

6 CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,

8 Plaintiff,

9 vs.

10 DEVOHN MARKS,

11 Defendant.

CASE NO. C-18-337017-2

DEPT. V

12
13 BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

14 MONDAY, JUNE 24, 2019

15 **RECORDER'S TRANSCRIPT RE:**
16 **STATE'S MOTION TO ADMIT EVIDENCE OF OTHER BAD ACTS**

17 APPEARANCES:

18 For the State:

LINDSEY MOORS, ESQ.
Deputy District Attorney

19
20 For the Defendant:

JESS Y. MATSUDA, ESQ

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24
25 RECORDED BY: LARA CORCORAN, COURT RECORDER

1 LAS VEGAS, NEVADA, WEDNESDAY, FEBRUARY 19, 2020

2 * * * * *

3 [Hearing commenced at 11:33 a.m.]

4 THE COURT: Page 14 is C337017, State of Nevada versus Devohn
5 Marks.

6 MS. MOORS: Good morning, Your Honor. Lindsey Moors for the
7 State, and I believe this is Mr. Matsuda's case.

8 MR. MATSUDA: I'm sorry, Your Honor.

9 THE CORRECTIONS OFFICER: Marks, stand up.

10 THE COURT: All right, this is on the State's Motion to Admit
11 Evidence of Other Bad Acts. We had our evidentiary hearing. I gave -- I asked
12 for supplemental briefing. I received the State's. I didn't receive anything from
13 the Defense, so I assume that's because you didn't wish to do any additional
14 briefing.

15 MR. MATSUDA: Well, Ms. Moors from the State called me on Friday
16 I believe to let -- or ask me about my response. I didn't receive it until Friday. I
17 did have a chance to review the State's. I'm comfortable moving forward if the
18 Court would want me to. I know we have a calendar call coming up, and I'll
19 submit it to the Court on that.

20 THE COURT: Okay. Well, if you're prepared to -- if you'd like to
21 respond orally, that's fine.

22 MR. MATSUDA: Thank you. Your Honor.

23 THE COURT: Okay.

24 THE DEFENDANT: May I please make a statement?

25 THE COURT: All right, so go ahead and do that. Did you want to

1 respond to their supplemental briefing?

2 MR. MATSUDA: Yes, Your Honor. We still have the same position,
3 where we don't feel this case is so unique that they can prove identity from the
4 older case to this case. Again, pointing to Detective Miller's report about how
5 common these types of robberies are, we're talking about -- and the State is
6 alleging that there's a few codefendants. They case the joint. They go in. They
7 hold people at gun point, rob the place.

8 It's basically your plain vanilla robbery in types of businesses. There's
9 nothing extraordinary about these types of actions that can link my client to any
10 kind of MO that he's this master planner, and he's hitting all these business
11 establishments up in the same manner. What we're talking about is all the
12 elements you need for a typical business robbery, and that's what we have in
13 these cases. There's nothing extraordinary about these actions that can prove
14 that there's a MO out here and that these individual -- this individual or these
15 individuals are committing certain types of acts all the time and we can link them
16 to these acts.

17 THE COURT: Well, on the prior robbery and this robbery, were there
18 three people that committed the robbery?

19 MS. MOORS: Yes, Your Honor.

20 THE COURT: Okay. And let's see. And, of course, they were -- both
21 robberies were at bars; is that right?

22 MR. MATSUDA: Yes, Your Honor.

23 THE COURT: Okay. And the robberies in both cases were -- there
24 appears that there's evidence that the locations were cased for days before the
25 robbery; is that correct?

1 MS. MOORS: Yes.

2 THE COURT: Okay. And that in both cases the robbers waited until
3 the -- an opportune time to rob the bar, right, where there are fewer people in the
4 bar, etcetera. Isn't that the case in this --

5 MS. MOORS: That's correct, Your Honor.

6 THE COURT: Okay. And in each case one of the robbers jumps over
7 the counter and steals the money from the register, right?

8 MS. MOORS: Correct.

9 THE COURT: And in both cases also the employees or -- of -- or
10 patrons at the bar were robbed for their personal property as well, right?

11 MS. MOORS: Correct, Your Honor.

12 THE COURT: Okay. So I see those as the similarities. Now this -- in
13 the State's papers, the supplemental briefing, the State indicates that while their
14 -- it's a take-over style -- I really don't know what exactly that means, and so to
15 me using that term doesn't -- isn't helpful. What I need to focus on are the
16 similarities in a case, where in this second robbery everybody's masked and so
17 identification is an issue. And I know that there is a long time between these
18 robberies; however, there are many similarities and the Defendant in the case
19 was in custody, and so it's -- it happens very shortly after he is released from
20 prison.

21 And so all of those things to me, in looking at the additional case law
22 -- because I asked the State to give me some more information about *Canada*,
23 *Canada versus State* -- I think that there is sufficient information for the Court to,
24 doing that balancing analysis, find that it is -- you know I've already said it's
25 relevant. I've already said that the prior conviction and the testimony of that

1 witness is clear and convincing, and so now it's -- it's just is it more prejudicial
2 than probative. I think given all these similarities and the fact that identification is
3 an important part of this case because of the mask that I'm going to allow it. So
4 the prior conviction or the prior act will be admitted, and that's as I go through
5 and see what the similarities are. So I think these are unique, you know, in each
6 case.

7 MR. MATSUDA: Well and, Your Honor, our position is still the same.
8 It's --

9 THE COURT: You know it would be great if they were -- you know in
10 one case the guy was wearing a clown mask and in this case he's also wearing a
11 clown mask, but you don't really always get that kind of uniqueness, and I don't
12 think that that's required.

13 MR. MATSUDA: Yeah --

14 THE COURT: I think what it is is you do need and you need the issue
15 of, you know, when you have an identification issue where the robbers are
16 masked and gloved, then that weighs more heavily for admitting it than not
17 admitting it.

18 MR. MATSUDA: And our position is still the same, Your Honor. We
19 think that this is highly prejudicial. We feel that the jury will convict Mr. Marks
20 based on his prior conviction and not listen to the facts of this case.

21 Again, I want to point out Detective Miller, who's the lead case agent
22 on this, this case. He's saying that this is a very common, a common method of
23 robberies, and he's the lead detective. He's saying that this type of robbery is
24 very common, which defeats the State's argument saying that is a very unique --
25

1 or the style of robberies were so unique to this individual that we can say identity
2 because he's been doing this for --

3 THE COURT: Well, that's not the only evidence in the case, correct?

4 MR. MATSUDA: Correct, correct.

5 MS. MOORS: Correct, Your Honor.

6 THE COURT: I mean there is other evidence that would tend to link
7 him to this robbery. And so when it's -- when that's -- that's an additional factor
8 in my analysis that the jury is not likely -- if that was the only evidence, you know
9 -- well, first of all, I don't think the State would proceed on such a case, but, you
10 know, then that would be a whole different story, but we know that this is going to
11 be a case where the arguments -- I could hear them in my head. You know, this
12 isn't a case of whether or not there was a crime committed. We know that there
13 was a crime committed. It's just that this Defendant didn't do it. It's an identity
14 case. And that being the case, I think it is more probative than prejudicial, so I'm
15 going to allow the prior.

16 MS. MOORS: Thank you, Your Honor.

17 MR. MATSUDA: Thank you, Your Honor.

18 MS. MOORS: And then I think we still have a -- our calendar call for
19 next Wednesday if that's -- I'm reading that correctly.

20 THE COURT: That is correct; calendar call is still on for the 3rd.

21 THE COURT CLERK: Yeah. That's where we set them initially for all
22 the cases if you're wondering why they are all on Wednesday, so.

23 THE COURT: Right, yeah. Okay.

24 MS. MOORS: Great.

25 THE COURT: All right, see you then.

1 MS. MOORS: Thank you, Your Honor.

2 THE DEFENDANT: May I please make a statement before we're
3 done today?

4 THE COURT: I can't hear you. What?

5 THE DEFENDANT: I said may I please address the Court before we
6 conclude.

7 THE COURT: On what subject?

8 THE DEFENDANT: Regarding the *Marcum* notice. I've presented it
9 to the courts prior to now, and I'm doing it again. I was never served a *Marcum*
10 notice, so I was never afforded the right to testify in front of the grand jury before
11 being indicted. That's a critical part of the process and even being able to have
12 me where I am today that is a right of mine that was violated. NRS 172.241
13 gives the defendant the right to testify before being indicted for a reason because
14 I could have presented evidence that could have exonerated me from this case
15 and we wouldn't be standing here today. I never received a *Marcum* notice. I
16 didn't know anything about this case or this crime prior to being arrested. I was
17 arrested after being indicted, so I would like to exercise my right to testify before
18 the grand jury.

19 THE COURT: And you wanted to testify before the grand jury?

20 THE DEFENDANT: Absolutely.

21 THE COURT: Okay. Well, it's -- you have a lawyer and he can file an
22 appropriate motion if he feels that there's nothing before the Court on that. And, of
23 course, it's your right to testify at trial if you wish, but I don't have anything, any
24 motion pending at this point to rule concerning *Marcum* and notices and any of
25 that. I have no information on that, so speak with your counsel.

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MS. MOORS: Thank you.

THE COURT: Thank you.

[Proceedings concluded at 11:43 a.m.]

* * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

A handwritten signature in cursive script, appearing to read "Deloris Scott", written over a horizontal line.

Deloris Scott
Court Recorder/Transcriber