

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. 9 OF 9**

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CERTIFICATE OF SERVICE

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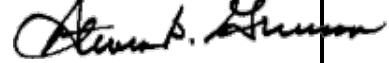
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Jess Y. Matsuda, Esq.

11-6-20

Date



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,)
)
Plaintiff,)
)
vs.)
)
DEVOHN MARKS,)
)
Defendant.)

CASE NO. C-18-337017-2
DEPT NO. V

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

FRIDAY, JULY 26, 2019

JURY TRIAL - DAY 8

APPEARANCES:

FOR THE STATE:

NICOLE J. CANNIZZARO, ESQ.
Chief Deputy District Attorney
LINDSEY MOORS, ESQ.
Deputy District Attorney

FOR THE DEFENDANT:

JESS Y. MATSUDA, ESQ.

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1 **LAS VEGAS, CLARK COUNTY, NEVADA, JULY 26 15, 2019, 9:06 A.M.**

2 * * * * *

3 (Outside the presence of the jury.)

4 THE COURT: ...go ahead and put the instructions --
5 or do you want to do that -- let's just do the testimony
6 because we've got the jury, then we'll put them on a short
7 break after everybody's done. And then we'll put the
8 instructions on the record.

9 MS. MOORS: Yeah, whatever the Court's pleasure.

10 THE COURT: As I say, we're ready to go. Is your --
11 is your detective here and everything?

12 MS. MOORS: I believe so.

13 THE MARSHAL: Yes, he is.

14 MS. MOORS: Okay. Then, yes, he is.

15 THE MARSHAL: He's right outside.

16 THE COURT: All right. Let's do that then. But we
17 are ready to go.

18 (Jury reconvened at 9:07 a.m.)

19 THE COURT: Thank you. Please be seated. And the
20 record will reflect that this is the continuation of State of
21 Nevada versus Devohn Marks, Case Number C-337017.

22 The record will reflect the presence of Mr. Marks
23 with his counsel, the prosecutors are present, as are all
24 officers of the court. And we have all 12 members of the jury,
25 as well as the three alternates.

JD Reporting, Inc.

1 Good morning, ladies and gentlemen.

2 THE JURY: Good morning.

3 THE COURT: And the State may call your first witness
4 for your rebuttal case.

5 MS. MOORS: Thank you, Your Honor. The State will
6 call Detective Dave Miller.

7 **DAVID MILLER**

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

10 THE CLERK: Can you please state your full name,
11 spelling your first and last name for the record.

12 THE WITNESS: My name is David Miller, D-a-v-i-d
13 M-i-l-l-e-r.

14 THE COURT: You may proceed.

15 MS. MOORS: Thank you.

16 DIRECT EXAMINATION

17 BY MS. MOORS:

18 Q Good morning, Detective Miller.

19 A Good morning.

20 Q I -- I know we had talked previously, when you
21 testified before about a case involving Devohn Marks; is that
22 correct?

23 A Yes.

24 Q Now, ultimately, we have discussed this previously,
25 but the defendant testified yesterday and was talking about a

1 conversation that he had with you on November 15th of 2018. Do
2 you recall having that conversation?

3 A Yes.

4 Q Now, when you have a conversation or you're
5 interviewing a witness or a suspect or anyone like that, is
6 that something that's customarily audio recorded?

7 A Yes.

8 Q And in this case, was that statement audio recorded?

9 A Yes, ma'am.

10 Q And as a result of that being audio recorded, does
11 that ultimately then give us what we would call a transcript of
12 that interview?

13 A Yes, ma'am.

14 Q And is that something that happened in this
15 particular case?

16 A Yes, ma'am.

17 Q So to be clear, when you were speaking with the
18 defendant, you -- you read him his Miranda; is that right?

19 A Yes, ma'am.

20 Q And he indicated that he understood his Miranda, and
21 he agreed to waive it and that he was going to speak with you;
22 is that correct?

23 A Yes.

24 Q Now since -- let me ask you this. As a detective,
25 how many voluntary interviews of defendants would you say that

1 you've conducted?

2 A Oh, wow. Again, I don't keep -- I mean, hundreds and
3 hundreds, maybe in the thousands.

4 Q Okay. So quite a few?

5 A Yes.

6 Q All right. So just to give you a frame of reference,
7 I'm looking at this statement on page 11, and it ultimately
8 looks like you indicated you were speaking with Mr. Marks about
9 whether or not there were kids in his home; is that correct?

10 A Yes.

11 Q And specifically he indicated that the kids came out
12 on the 26th or the 27th, if he was not mistaken; is that right?

13 A Yeah. Somewhere right in there, yeah.

14 Q Now, did you have a chance when you were speaking
15 with him to also speak with him about his phone number?

16 A Yes.

17 Q Did he indicate to you that on this date, so on this
18 November 15th date, he had a new number?

19 A Yes. One beginning with area code (702).

20 Q Okay. And fair to say that his prior number had a
21 different area code?

22 A Correct.

23 Q Okay. Now, did he indicate to you why he had gotten
24 this new number?

25 A He said his phone was lost or stolen around the date

1 of the crime.

2 Q Okay. Now, specifically, when you talked to him
3 about this phone number, were you ultimately able to -- I know
4 we had talked about this a couple days ago, but you had learned
5 that a particular number that Antwaine Johnson had been
6 contacting -- you saw the frequency of this contact. You
7 learned that that number was linked to Devohn Marks; is that
8 correct?

9 A Correct.

10 Q And so ultimately when he told you his old phone
11 number, did he tell you that same number we were discussing?

12 A He did in this sense: His number was -- the real
13 number is (323) 427-3092. He said -- he seemed to struggle
14 remembering it exactly. He said something like (323) 427 --
15 and he said all the right numbers, 3092, except I think he
16 reversed them or something, to my --

17 Q Okay. So towards the end, he might have superimposed
18 some numbers?

19 A Something like that, yes.

20 Q All right. Now when you were speaking with him, did
21 you also talk to him about where he lived?

22 A Yes.

23 Q And did he tell you where he lived?

24 A He did.

25 Q Was this an apartment complex on Gowan, specifically

1 the Bloom Apartments?

2 A Yeah, 7075 West Gowan. And he specifically gave his
3 apartment number that matches his DMV, 2053.

4 Q Okay. So that was -- establishes where he lived.
5 Did you further ask him specifically if he knows anyone in the
6 complex?

7 A Yes.

8 Q And was his answer that, "I don't know anybody in my
9 apartment complex. I just moved in there"?

10 A Yes, his -- I mean, throughout the interview --
11 depends on what point of the interview we're talking about.
12 His -- his answers changed throughout the interview.

13 Q Okay. So I'm essentially just going through this
14 interview to ask you some further questions. Did he
15 ultimately -- I guess, did you make him aware that he was
16 potentially a suspect in this robbery that occurred at
17 5:15 a.m. on the 29th of October?

18 A Yes.

19 Q And did he tell you that he has a 10:00 p.m. curfew
20 since he's been out of prison, that he can't leave the house
21 until 6:00 a.m., and that he's been working different jobs
22 since he got out of prison?

23 A That's my recollection.

24 Q Was he very adamant about this curfew?

25 A Yes.

1 Q Did he, in fact, say, "I never miss this curfew. You
2 know, there's no way I could have committed this robbery
3 because it was during the time of that curfew"?

4 A In so many words. I -- I remember him saying he
5 would have been home at that time because he's always home at
6 that time.

7 Q Okay. Now, did you then further question him and --
8 and just so you're aware, I'm literally reading from this
9 voluntary statement. "And you're telling me you don't have any
10 friends there at all?" Does that sound like a question you
11 asked?

12 A Yes.

13 Q And his answer was, "I don't have any friends in that
14 apartment. I don't even associate with anyone in that
15 apartment or know anybody in those apartments"?

16 A Yeah. He was very adamant.

17 Q Okay. Now, furthermore -- I'm still looking at this
18 exact same interview. You questioned him, "So I can't link you
19 to anybody in that apartment complex?" Is that correct?

20 A Yes.

21 Q And then his answer was, "You can't link me to anyone
22 in that apartment complex." Is that correct?

23 A That sounds right.

24 Q Furthermore, you stated, "You don't even know
25 anyone's name?" Is that correct?

1 A Correct.

2 Q And his answer was, "I don't know anyone's name. I
3 don't know nobody in that apartment complex. I go home to my
4 girlfriend and then I leave." Is that correct?

5 A That sounds correct.

6 Q Okay. Now we were talking about this old phone
7 number, right. And so he had an old phone number with one area
8 code, and this new number with a (702) area code.

9 Did he also indicate, ultimately, that, "I changed my
10 number because people had been contacting my family members"?
11 Is that correct?

12 A Yes, that is correct.

13 Q And this was when he was sort of talking about this
14 lost phone incident?

15 A Right.

16 Q So he essentially indicated to you the reason why he
17 canceled this phone was that he had lost it, and someone had
18 been contacting his family members?

19 A Correct.

20 Q Okay. Now, furthermore, when you were discussing
21 when he lost it, did he ultimately say to you, "I'm not going
22 to say I lost it on the 27th. I lost it around the 27th. I
23 didn't realize. I was going to report my phone stolen, but I
24 didn't know if I lost it. I went to the gym. I go to the gym
25 all the time at my apartments. So when I was working out, I

1 was getting ready to leave. I don't know exactly which date it
2 was. I can't -- that's what I'm telling you. I can't tell you
3 exact dates. I don't keep track of dates and all of that
4 stuff. I lost my cell phone. I went home. I told my
5 girlfriend, 'Well, I'm not going to report it stolen because I
6 don't know if it's going to pop up. Maybe I left it in your
7 car.' Because she doesn't get off work until 6:00. Once I
8 realized it was stolen, I reported it stolen. My phone's been
9 reported stolen and I told my people, 'Don't call that number.'
10 They kept calling that number."

11 Is that a fair representation of his answer to you
12 during this interview?

13 A That's -- that sounds accurate.

14 Q Okay. Now any time -- at any time during this
15 interview, did he indicate that on this -- on or around this
16 date that he lost his phone, that on that particular date he
17 had been smoking weed in Antwaine Johnson's car?

18 A On that specific day?

19 Q Yes.

20 A No.

21 Q Okay. Now, at any time in this interview, did he
22 say, "You know, I don't remember when I lost my phone, but it
23 was for sure the Friday before Halloween"?

24 A No.

25 Q Okay. Now at one point, did you ultimately ask

1 him -- and I'm quoting -- "Oh, how long did you wait to report
2 your phone stolen"?

3 A That sounds like something, yes.

4 Q And, ultimately, did he answer, "Because I waited for
5 one day. I waited for my girlfriend to get home"? Does that
6 sound correct?

7 A That sounds right.

8 Q Now, as we get further into this interview,
9 ultimately, did you ask him a question indicating, "I think I
10 can link -- I will tell you this much. We can link you to
11 someone that lives in your apartment complex"?

12 A Correct.

13 Q Does that sound correct?

14 And, ultimately, did he further say, "You cannot
15 because I don't associate with anybody that lives in my
16 apartment"?

17 A That sounds correct.

18 Q And did you further question him, stating, "So if
19 I -- let's say I had a picture of you talking with someone in
20 your apartment complex more than once," was that a question you
21 would have asked?

22 A Yes.

23 Q And did he indicate, "Well, can I see the picture"?

24 A Yes.

25 Q And further on in this discussion about the picture,

1 did he ultimately state to you, "You have pictures of me. You
2 probably have pictures of me talking to a lot of people I don't
3 associate with"?

4 A That sounds right.

5 Q And did you ask him, "Well, one time would be one
6 thing, but more than once"? Does that sound correct?

7 A Yes.

8 Q And did he answer, "No one knows me in that apartment
9 complex"?

10 A Yes.

11 Q Now, did he go on to say, "I come out of my
12 apartment. I take my trash out. I go back to my apartment. I
13 come out of my apartment. I go to my office. I pay rent. I
14 go back to my apartment. I come out of my apartment. I go to
15 the gym. I've spoken to people. I go back into my apartment,
16 pointblank, period. I don't associate with nobody. I
17 associate with my girlfriend. I associate with my mother"?
18 Would that have been his answer?

19 A That sounds right.

20 Q Now, when you were speaking with him, did he, again,
21 reiterate and state, "And I turned the phone off. I changed
22 the number because people were contacting my family members"?
23 Is that correct?

24 A That sounds correct.

25 Q At this point in time when you're speaking with him,

1 did you already have the phone records of Antwaine Johnson?

2 A I believe -- yes, I did. Yeah.

3 Q Okay. So, I mean, obvious -- you knew that there had
4 been a -- what was the amount of contact again during the month
5 of October?

6 A 1,222 times.

7 Q And that was between Antwaine Johnson's phone and the
8 phone linked to Devohn Marks?

9 A To -- yes, that's correct.

10 Q And that started at the beginning of October?

11 A Yeah, somewhere near the beginning. I don't know --
12 remember the exact date. Maybe October 5th or somewhere in
13 there.

14 Q Okay. So it continued throughout the entire month of
15 October?

16 A Yes.

17 Q It didn't just start on the 26th or the 27th?

18 A No.

19 Q Okay. Now, ultimately when you're speaking with him,
20 did you show him this photograph of Antwaine Johnson?

21 A I did.

22 Q And was his answer to you, "Okay. Well I don't know
23 him. I've seen his face. I don't know him. I say he lives
24 right up the street from me. He lives in the apartments with
25 me"? Is that correct?

1 A That is what he said, yes.

2 Q And did you ultimately confront him about the fact
3 that they had been in contact over a thousand times?

4 A Yes.

5 Q And was his answer, quote/unquote, That's a fucking
6 lie?

7 A That is what he said.

8 Q And further on, did he specifically state, "I haven't
9 contacted that -- him over 1,000 times"?

10 A That sounds correct.

11 Q Now, as you're still talking to him about Antwaine
12 Johnson, did he ultimately -- did you confront him with the
13 fact that he had essentially changed his story about knowing
14 this person?

15 A Yes.

16 Q And was his answer, "No. What the fuck am I changing
17 my story for? I told you I don't associate with that cat"?

18 A That sounds correct.

19 Q Did you further ask him, "So for the record, you
20 don't associate with Antwaine? You know that that face is
21 Antwaine's; right"? Is that a question you'd have asked?

22 A That sounds correct.

23 Q And was his answer, "Absolutely"?

24 A Yes.

25 Q And then did you ask him, "So you don't associate

1 with this guy"? Is that correct?

2 A Yes.

3 Q Did he answer, "I don't associate with Antwaine"?

4 A Correct.

5 Q Did you then ask him, "He's not your friend"?

6 A Yes.

7 Q Did he then answer, "He's not my friend"?

8 A Correct.

9 Q And then did you say, "He's not someone you regularly
10 contact"?

11 A Yes.

12 Q Did he answer, "He -- we smoke weed. I smoke weed
13 with Antwaine. I don't associate with Antwaine"?

14 A That is what he said.

15 Q Okay. Now, when you went into this interview, Devohn
16 Marks was a suspect; is that correct?

17 A Yes.

18 Q And why was he a suspect?

19 A Because of the timing -- the frequency of the contact
20 on the night of the crime and, specifically, to include the
21 timing.

22 Q Okay. In terms of the timing with conversing with
23 Antwaine Johnson?

24 A Yeah, and the time -- I mean, the timing in
25 comparison to the actual robbery itself.

1 Q Okay.

2 A Yes.

3 Q And now in -- in your discussion with him, did his
4 answers throughout the course of this interview, did they
5 surprise you?

6 A Well, yes and no. I mean, going into that interview,
7 I kind of had an expectation of what I might -- might be
8 hearing because keep -- keep in mind, I knew going into this
9 interview that Antwaine was well aware of the course of -- of
10 the direction of my investigation. I told him just two weeks
11 earlier, "Look, buddy. I'm going to be looking at all your
12 phone records, your -- I'm going to find out. We're going to
13 get to the bottom of this." I told him that.

14 So point being, I knew that Antwaine would have
15 plenty opportunity to speak to his coconspirators to give them
16 that same warning. And so going into the interview, I expected
17 him to do a few things.

18 Q Okay. And what did you expect him to do?

19 A To distance himself from Antwaine, to distance
20 himself from his own cell phone, and to probably try to
21 distance himself from the crime via some sort of alibi.

22 Q And in truth and fact, did he provide you with all
23 three of those things that you were expecting?

24 A Yes.

25 MS. MOORS: Court's indulgence. I have no further

1 questions for this witness.

2 THE COURT: Cross.

3 MR. MATSUDA: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. MATSUDA:

6 Q Good morning, Detective.

7 A Good morning, sir.

8 Q So it sounds like you already thought Mr. Marks was
9 guilty of this crime.

10 A No, I didn't know that for sure or he would have been
11 in custody. I definitely -- he was a focus of the
12 investigation, and that is -- that is certain.

13 Q Okay. Now, at some point during your interview with
14 Mr. Marks, he did, in fact, tell you that he either lost or his
15 phone was stolen?

16 A Yes, he did.

17 Q Okay. But he couldn't remember the exact date?

18 A Correct.

19 Q Okay. Now, you've asked him if he knew a guy named
20 Antwaine from his apartment complex?

21 A Yes.

22 Q And he consistently said no; is that correct?

23 A At the beginning of the interview, yes.

24 Q Okay. And not until you actually showed a picture of
25 this guy --

1 A Correct.

2 Q -- and then he said, "Yeah, I know the face."

3 A Correct.

4 Q Okay. So the name Antwaine he didn't know, but he
5 knew the face; is that correct?

6 A Apparently he did know the face. That's what he told
7 me.

8 Q Okay. But just by saying his name Antwaine, Antwaine
9 Johnson?

10 A At the beginning, I'm not even sure if I -- I'm
11 almost positive I didn't say the name Antwaine, actually, until
12 mid-interview. It was really just whether or not he knew
13 anybody or associated with anyone in his complex, and he was
14 adamant that he did not.

15 Q Okay. And he was adamant throughout that he didn't
16 know or associate with him?

17 A With anyone, period. It was later in the interview
18 we got to the name Antwaine.

19 Q Okay. So consistently he said he didn't associate or
20 he didn't know anyone in the apartment complex?

21 A Yes.

22 Q And when you brought up Antwaine's name, he said he
23 didn't associate or he wasn't a friend of Antwaine's?

24 A He stuck to the same story that he was at the
25 beginning, that he didn't associate with anybody, period.

1 Q Okay. Now, he mentioned that he lost or his phone
2 was stolen at some point; right?

3 A Yes.

4 Q And through your investigation, did you find out that
5 that phone number was ultimately terminated?

6 A It was terminated shortly after the robbery.

7 Q But it was terminated?

8 A Yes.

9 Q And that was through -- was it Verizon?

10 A Verizon --

11 Q Or was it T-Mobile?

12 A -- T -- Antwaine -- yeah, Verizon, that's correct,
13 yes.

14 Q And what was the date that he said he either lost or
15 the phone was stolen?

16 A He said it was approximately -- he changed. I mean,
17 he changed several times throughout. At one point he said he
18 just doesn't know. At one point he said the 27th. At one
19 point, I gave him an example and said, "What if you lost it
20 on -- what if it was reported stolen on November 2nd?" I gave
21 him lots of dates. He didn't seem to really know.

22 Q Okay. So he didn't really know when it was lost or
23 stolen; right?

24 A Correct.

25 Q Did you -- through your investigation, did you

1 calculate how many messages were sent from the time he either
2 said it was lost or stolen to the night of the robbery?

3 A Well, again, I don't -- I don't know exactly when it
4 was stolen. He said, for instance -- I gave him the example of
5 November 2nd, which is after the robbery obviously, and he said
6 if it was -- if he had reported it stolen November 2nd, then he
7 would have noticed that it was stolen the day before, being the
8 1st. So that being -- if that's his example, then it would
9 be -- the robbery happened on the 29th, then it would be the
10 28th. I know that he and Antwaine contacted each other a
11 little over 200 times between the 28th and the 29th, I believe.
12 200 times, somewhere in there.

13 Q Okay. But he did terminate his phone on the 29th?

14 A Yes, after the robbery.

15 Q Okay. So if he did lose -- and you said so he didn't
16 remember if it was the 1st or the 2nd that he terminated his
17 phone?

18 A He didn't remember the exact date.

19 Q Okay. But he did, in fact, terminate it on the 29th?

20 A He did terminate it on the 29th.

21 Q Okay. So assuming -- we'll go with the 26th or 27th.
22 Did you calculate the number of times messages were sent
23 between the 26th to the 29th?

24 A The only time I calculated, again based on the
25 example I just gave you, is he said that he -- if he reported

1 it -- whatever day he reported it stolen on, that it was the
2 day before. So, again, the answer is sort of, yes, it would
3 have been the 28th, based on what he said, and therefore it was
4 around 200 or a little over 200 texts between himself and
5 Antwaine.

6 MR. MATSUDA: Okay. I think that is it. Nothing
7 further. Thank you, Your Honor.

8 THE COURT: Redirect?

9 MS. MOORS: Yeah, just briefly.

10 REDIRECT EXAMINATION

11 BY MS. MOORS:

12 Q When you were -- when you were speaking with the
13 defendant, did he ultimately give you the number for his
14 girlfriend, Destiny Dixon?

15 A Yes.

16 Q And in looking at those Verizon records, could you
17 see some contact between his number and that number for Destiny
18 Dixon?

19 A Yes.

20 Q Now, specifically the day of the robbery, after the
21 robbery occurred, was there an incoming phone number from
22 Destiny Dixon to his phone number?

23 A I believe it was his phone number. I think -- it was
24 one or the other. Yeah, they -- they had contact with each
25 other around 7:47 that morning, after the robbery but before he

1 canceled the number.

2 Q Okay. And so this would have been after, according
3 to him, he told her on Friday that his phone was lost or
4 stolen; correct?

5 A I don't know the exact day, but, yeah, he -- he had
6 said that he told her it was stolen when he realized it was
7 stolen, is what he said.

8 Q And, yet, there was some sort of contact between the
9 two of them after that date?

10 A Correct.

11 MS. MOORS: No further questions.

12 MR. MATSUDA: Real briefly.

13 RECROSS-EXAMINATION

14 BY MR. MATSUDA:

15 Q And, Detective, when you say that they contacted each
16 other, you don't know for sure that it was this person
17 contacting this person? You're talking about numbers; correct?

18 A What I mean, the phone numbers. I could see the
19 phone numbers in contact with one another.

20 MR. MATSUDA: Thank you. Nothing further.

21 THE COURT: Any questions from the jury? I see no
22 hands.

23 May the witness be excused?

24 MS. MOORS: Yes, Your Honor.

25 THE COURT: Thank you for your testimony.

1 THE WITNESS: Thank you. Have a good day.

2 THE COURT: You too.

3 Do you have any further witnesses?

4 MS. MOORS: Your Honor, the State has no further
5 rebuttal witnesses and would rest our rebuttal case at this
6 time.

7 THE COURT: And so the State has rested its rebuttal
8 case. The defense does not have surrebuttal?

9 MR. MATSUDA: We do not, Your Honor.

10 THE COURT: Okay. So, ladies and gentlemen, I'm
11 going to give you a brief break here so that you can use the
12 restroom before we go into the next phase which will be
13 instructing you. I have to read the jury instructions to you,
14 and that can be a little lengthy because I have to read them,
15 and then we'll go right into the argument. So we're going to
16 take about a ten-minute recess now.

17 And so, ladies and gentlemen, during this recess, it
18 is your duty not to converse among yourselves or with anyone
19 else on any subject connected with the trial; or to read,
20 watch, or listen to any report of or commentary on the trial by
21 any person connected with the trial, or by any medium of
22 information, including, without limitation, newspaper,
23 television, radio, or Internet. You're not to form or express
24 an opinion on any subject connected with this case until it's
25 finally submitted to you.

1 I'll see you in ten minutes.

2 (Jury recessed at 9:30 a.m.)

3 THE COURT: And the record will reflect that the jury
4 has departed the courtroom.

5 And so are counsel familiar with the Court's proposed
6 jury instructions which have been numbered 1 through 34?

7 MS. MOORS: Yes, Your Honor.

8 THE COURT: Defense?

9 MR. MATSUDA: Yes, Your Honor.

10 THE COURT: Okay. And does the State object to the
11 giving of any of these instructions?

12 MS. MOORS: The State does not, Your Honor.

13 THE COURT: Does the State --

14 MR. MATSUDA: Defense does not, Your Honor.

15 THE COURT: Okay. And does the State have any
16 additional instructions proposed?

17 MS. MOORS: I -- the State does not, Your Honor.

18 THE COURT: Okay. And the defense has already
19 indicated that it does not object to the giving of instructions
20 1 through 34; correct, Mr. Matsuda?

21 MR. MATSUDA: That is correct, Your Honor.

22 THE COURT: And do you have any additional
23 instructions to propose?

24 MR. MATSUDA: We do not, Your Honor.

25 THE COURT: Okay. And do either or both counsel

1 request that the jury be instructed before argument?

2 MS. MOORS: I would request that, yes, Your Honor.

3 MR. MATSUDA: Defense would, Your Honor.

4 THE COURT: Okay. And, also, you're familiar with
5 the verdict form. You have that as well?

6 MS. MOORS: Yes, Your Honor.

7 THE COURT: Okay. And it appears to be in order; is
8 that correct?

9 MS. MOORS: Yes, Your Honor.

10 MR. MATSUDA: Yes, Your Honor.

11 THE COURT: All right. So this is your opportunity
12 also to use the restroom before we launch into the final part
13 of the trial.

14 MS. MOORS: Final stretch.

15 THE COURT: All right. We'll be in recess.

16 MS. MOORS: Thank you.

17 (Proceedings recessed at 9:32 a.m., until 9:46 a.m.)

18 (Jury reconvened at 9:47 a.m.)

19 THE COURT: Thank you. Please be seated. And the
20 record will reflect that we are back within the presence of all
21 12 members of the jury, as well as the three alternates.
22 Mr. Marks is present with his counsel. The prosecutors are
23 present, as are all officers of the court.

24 And, ladies and gentlemen, I'm about to read you the
25 jury instructions. So obviously maybe it would be more

1 congenial if I would just kind of informally explain them to
2 you. However, these jury instructions that have been prepared
3 for you are very important. They were prepared by me, together
4 with counsel. And so the wording of them is important, and
5 that's the reason I have to read them to you.

6 You don't need to take notes because you will have
7 these jury instructions with you when you go to deliberate the
8 case. So just -- please, just listen so you can understand
9 them as they're being read to you.

10 (Reading of jury instructions not transcribed.)

11 THE COURT: And, State, you may begin your closing.

12 **CLOSING ARGUMENT FOR THE STATE**

13 MS. CANNIZZARO: Ladies and gentlemen of the jury, on
14 Monday, my cocounsel, Ms. Moors, told you that this case was a
15 story about three men, three different stories of their
16 involvement with this particular case. But what this case is
17 really a story about is a story that the evidence is telling,
18 the story that the evidence is bringing to light, and that
19 story is what ultimately leads us to the three stories of the
20 unknown coconspirator, Mr. Johnson, and Mr. Marks.

21 In this case, the State must prove two things. In
22 every case, we have to prove, one, that a crime was committed.
23 And, two, that the defendant is the person who committed it.
24 Those are the two things that the State has to demonstrate in
25 any criminal case, and that's no different with this case.

1 In every case, you are likely to also hear -- and
2 we've heard in this particular case -- two types of evidence:
3 direct evidence and circumstantial evidence.

4 Direct evidence is evidence of something that someone
5 observed or was involved in. For example, when Shaylene is
6 here in the courtroom talking what happened during the robbery,
7 that's direct evidence. It's eyewitness testimony of something
8 that she saw happen, something that she was a part of.

9 Circumstantial evidence is evidence that, when summed
10 together, leads you to a particular conclusion. For example,
11 cell phone records may be circumstantial evidence that two
12 people had contact with one another or that they were in the
13 area where a crime was committed.

14 Earlier this week -- this may have been last week
15 when we were -- or two weeks ago, rather, when we picked a
16 jury, the judge also talked about an example using direct and
17 circumstantial evidence. Perhaps -- and this is sort of -- I'm
18 paraphrasing, but perhaps when you walk out of this courtroom,
19 you go outside and you see that it's raining. You can see
20 raindrops falling from the sky. As you walk and hurry to your
21 car, you feel the wet raindrops on your hand, and you can feel
22 that the ground is a little bit slicker because there's water
23 on the ground. That's direct evidence that it's raining.

24 If, however, when you leave this courtroom, you walk
25 outside. You see clouds in the sky, and it feels a little bit

1 humid. And you get home, it's a little bit dark. You go
2 inside and you take a nap. And when you wake up, you see that
3 there are water droplets on your windows. Water is running
4 through the gutters in the street. The grass is wet. You can
5 reasonably infer from all of those facts and circumstances that
6 while you were asleep, it rained.

7 The important thing about both direct and
8 circumstantial evidence is that the law makes no difference.
9 You treat them both the same. One is not more reliable or more
10 weighty than the other. That's up to you to determine. But
11 the law makes no difference between direct and circumstantial
12 evidence.

13 The other thing to keep in mind is that in this
14 particular case, and in every case, we're talking about just
15 the guilt of the defendant. So whether or not the defendant,
16 in your mind, after reviewing all the evidence, is guilty or
17 not guilty, we're just concerned with Mr. Marks. So even
18 though there may be other individuals who may be guilty, your
19 question is just about Mr. Marks.

20 And there are a few things mentioned in these
21 instructions about what you cannot consider. So statements,
22 arguments, opinions of counsel are not evidence in the case.
23 What I'm saying to you during this argument and what
24 Mr. Matsuda will say during his argument, as brilliant as it
25 may be, is not evidence in the case.

1 You can't speculate to be true any insinuations by a
2 question that was asked, and your verdict must not be
3 influenced by sympathy, prejudice, or public opinion. In your
4 deliberations, you also may not consider or discuss the subject
5 of punishment. That's a subject that relies -- that lies
6 solely with the Court.

7 So let's talk a little bit about the crimes
8 committed. And in this particular case, ladies and gentlemen
9 of the jury, I would submit to you that there is not a lot of
10 doubt that these crimes occurred. But I want to walk through
11 each of the elements of the crimes with you so that we've
12 covered these.

13 One of the crimes that you've heard mentioned is
14 burglary. So what is burglary? Burglary is any person who, by
15 day or night, enters any room or building with the intent to
16 commit a felony therein. With the crime of burglary, what
17 you're looking for is whether or not there's that intent. And
18 in this particular case, the intent is entry with the intent to
19 commit a felony, and both battery with use of a deadly weapon
20 and robbery with use of a deadly weapon are felonies.

21 It is not necessary, of course, that a felony
22 actually occur. Although, I would submit to you that in this
23 particular case, there is evidence that these felonies did
24 occur inside of that building. And, of course, going into the
25 business is not a reason why a burglary wouldn't exist. What

1 you're focused on with respect to the crime of burglary is the
2 entry being made with that criminal intent. That's where the
3 crime of burglary occurs.

4 Robbery is another crime that has been charged in
5 this particular case. And so robbery is the unlawful taking of
6 personal property from the person of another or in their
7 presence with use of force or violence against their will. If
8 there's fear of injury, that's also a type of force or
9 violence. So if you think about it, robbery is if you take
10 property from somebody because you hit them in the head with a
11 gun; that would be a robbery. It's taking property from
12 someone else against their will by using force or violence.
13 Similarly, threatening somebody with a firearm would also be a
14 robbery.

15 Threat of force or fear of injury has to be used to
16 either obtain or retain the possession of the property, prevent
17 or overcome the resistance to the taking of the property, or to
18 escape with that property. So if the force or fear of violence
19 or fear of injury is used for one of these three purposes, then
20 it's a robbery.

21 The value of the property taken is immaterial. So if
22 it is \$1 or it is \$100, that is not an element of the crime of
23 robbery. It's simply the personal property of someone else.
24 And the focus, of course, is using the threat of force or
25 intimidation. You don't need to actually prove fear. It would

1 be sufficient if a reasonable person would also feel fear or
2 would also feel that threat of force or intimidation.

3 Battery with use of a deadly weapon is the unlawful
4 use of force or violence. So any sort of force or violence
5 that is used against the person of another and, in this
6 particular case, using a deadly weapon. So hitting someone
7 would be a force, would be violent. Hitting another person
8 would be the person of another, and using a deadly weapon,
9 which is what we're going to talk about next, is really the
10 crux of that particular inquiry.

11 A deadly weapon is an instrument that is like -- that
12 will or is likely to cause substantial bodily harm or, given
13 its use or threatened use, is readily capable of causing
14 substantial bodily harm or death. And in this particular case,
15 the instructions that the judge just read indicate that a
16 firearm is, in fact, a deadly weapon. So if a firearm was
17 used, a firearm is a deadly weapon, and that's how that element
18 is met.

19 The important thing about this particular provision
20 is that the State does not need to actually produce the firearm
21 at trial if you find that there is evidence that the weapon was
22 used during the commission of a crime.

23 Conspiracy. There are two counts that include a
24 conspiracy: conspiracy to commit burglary and conspiracy to
25 commit robbery. So what is a conspiracy? It's an agreement by

1 two or more people to commit a crime. They must intend to
2 commit or aid in the commission of that crime, and the crime is
3 complete upon agreement. So it's not necessary that the crime
4 actually occur. Where there's that agreement between the
5 parties, that's a conspiracy.

6 It is not necessary to prove an actual meeting. So
7 they don't have to physically sit down with one another and
8 take minutes and write notes and plan it all out on a piece of
9 paper. You can infer that from the circumstances.

10 And similarly to that, you've also heard that aiding
11 and abetting is part of your instructions as well. So what is
12 aiding and abetting? Aiding and abetting is knowingly, with
13 intent, someone who aids, promotes, encourage, or instigates
14 the commission -- sorry, by act or advice or by both, the
15 commission of a crime. So when somebody is participating,
16 they're aiding in some form or fashion in the commission of
17 that crime. They're participating in it.

18 That's aiding and abetting, and the State is not
19 required to prove directly who committed or who aided and
20 abetted. So if individuals are working together to commit a
21 crime, you don't have to prove that each and every person, as
22 part of that particular crime, did each and every element. It
23 is sufficient that they were participating in the crime.
24 That's the crux of aiding and abetting, of course with the
25 intent.

1 So there are three types of liability, and that's
2 where this comes in. One, you can be directly liable for
3 committing a crime. If I were to punch Ms. Moors, that would
4 be a direct commission of a crime, a battery, use of force or
5 violence against the person of another.

6 If Ms. Moors and I were to make an agreement that she
7 was going to punch Mr. Matsuda and I was going to be there with
8 her to drive her there, that would be a conspiracy. And if I
9 was there encouraging her and maybe I held Mr. Matsuda down
10 while she punched him, that would be aiding and abetting.

11 So let's talk about the specific counts. Count 1 is
12 conspiracy to commit burglary. We heard evidence in this
13 particular case that the video surveillance has shown that
14 Antwaine Johnson was sitting at the bar here at the Torrey
15 Pines Pub on October 29th of 2019. And while he's sitting
16 here, he's actually picking up his phone. And you can see him
17 glance at his phone, text on his phone. And Detective Miller
18 testified that he, in fact, saw that when he reviewed the video
19 surveillance as well.

20 We also know that when Mr. Johnson goes to leave the
21 bar, he actually holds the door open. He walks out of that bar
22 through a locked exit which is not readily available to the
23 public and which no one would be able to just enter into absent
24 his opening up the door. And what's more is that when you
25 watch the video surveillance, which we've watched multiple

1 times and which Detective Miller also testified about, he
2 actually holds the door as if someone were coming in behind him
3 and sort of swings it open a little bit, despite the fact that
4 every person who is in the bar is actually sitting at the bar
5 when he leaves. And after he does that, two individuals come
6 running in, covered in masks, gloves, wearing all black
7 clothing, carrying firearms.

8 In this particular case, there is evidence that
9 there's a conspiracy because these two individuals would never
10 have known to come into that door, to that bar, unless
11 Mr. Johnson was giving them information about how he was going
12 to leave and where he would leave that door open for them to be
13 able to come back in.

14 Count 2 is burglary while in possession of a
15 firearm -- or, excuse me, a deadly weapon, which is a firearm.
16 And this is for the Torrey Pines Pub on Lake Mead. And it's a
17 building that at the time is occupied -- and you'll see this in
18 the instructions, as well, for this charge, occupied by
19 Shaylene, Gerald or Jerry, Myer, and Kathleen or Kathy.

20 What we know from the video surveillance is that when
21 these two individuals enter, they don't just sort of walk in
22 the door, right. They don't saunter in and say, "Hey, what's
23 up? We're here to have a drink." They come running into that
24 bar, they are both armed with firearms, and they immediately go
25 to each of the patrons. What that tells us is that when they

1 entered, they had every intention of committing a felony
2 therein, specifically robbery because they have the guns and
3 are asking for money.

4 Conspiracy to commit robbery. Similarly, we know,
5 again, that Mr. Johnson was giving information. He allows them
6 into the bar through a locked door. And, of course, with
7 respect to the robbery, how do we know that they conspired to
8 commit a robbery? Well, when they come into the door, they're
9 armed with the guns. They immediately run over to the patrons.
10 One of those patrons is Gerald Ferony, or Jerry, and Mr. Ferony
11 testifies that he is over the age of 60. I believe he said 70.
12 He was 70 -- just shy of 71 at the time that this particular
13 crime occurs. And we know that when they approach him, they
14 actually hold out their guns. They're demanding money. They
15 ask him where his wallet is, and we know that that wallet is
16 ultimately taken out of his pocket. That is a robbery. It's
17 force or violence used in order to overcome and take that
18 property from Mr. Ferony's pocket.

19 Similarly, Counts 5 and 6 are robbery with use of a
20 deadly weapon. However, this pertains to the victims Shaylene
21 and Myer. They're not over 60. And we know that when Myer is
22 first approached by these individuals in the bar, he, like
23 everyone else, is sort of putting his hands up. We know that
24 they're pointing firearms at him. They're demanding his
25 property.

1 We know that when Shaylene is ultimately asked to go
2 behind the bar to both cash registers, the cooler, and the
3 slot -- the slot drawer, that those guns are used to tell her,
4 as well, to give over the money. And that she, in fact, does
5 that by taking the cash out of those drawers and placing it
6 into the plastic bag.

7 We can also see in the portion of the video where
8 they reach into Myer's pocket and remove his wallet as well,
9 which he testified was in his back pocket, and they sort of
10 went in and took it from him while they had their guns drawn.

11 Count 7 is battery with use of a deadly weapon, again
12 victim 60 age -- 60 years of age or older. This is, again,
13 relating to Mr. Ferony. And we know that while he's at the
14 bar, he's approached, and he's hit from behind in the back of
15 the head. And he testified that it was definitely metal, and
16 we know that the individual who was with him had a gun in their
17 hand. So when Mr. Ferony gets hit in the head, and he
18 ultimately has to have three staples placed in the back of his
19 head, he identifies this as a metal object. And you can see
20 this in the video as well, where he's actually hit. That's
21 battery with use of a deadly weapon, victim 60 years of age or
22 older.

23 Count 8 is battery with use of a deadly weapon. And
24 this relates to Myer. He, of course, was also sitting at the
25 bar. And you can see from the angles of the video that he is

1 approached from behind, and he is hit in the back of the head.
2 Now, he didn't have to go to the hospital and get staples like
3 Mr. Ferony, but, again, a battery is a use of force or violence
4 against another. It doesn't require that, you know, he has to
5 go to the hospital and get staples. So when he's hit with that
6 gun as well, that's a battery with use of a deadly weapon.

7 Ladies and gentlemen of the jury, I would submit to
8 you that the real inquiry in this case is not whether or not
9 those crimes occurred. The video surveillance and the
10 testimony from everyone in that bar demonstrates that a robbery
11 took place and that those batteries took place as well. And,
12 furthermore, that the individuals involved were working
13 together in order to do that.

14 I would submit to you that the crux of this crime is
15 whether or not the defendant is the person who committed those
16 crimes. And so the story at this point relies upon the
17 evidence, and, like any story, the timeline is important. So
18 let's walk through that.

19 When the story begins, Officers Ferguson and Tomaino
20 are called out to the Torrey Pines Pub at 6374 West Lake Mead.
21 They're told that a robbery has just occurred, and they
22 immediately get there. They think they're going to find the
23 suspects because they're just down the street. And, surely, if
24 they had run out of the door and gone down the street, they
25 would have been able to find them. But they don't, right, and

1 these officers appear on scene. What that means is that it
2 triggers an investigation. And that investigation is into who
3 it is that could have committed these crimes. Who are these
4 suspects since they were not found on scene?

5 The investigation begins. And, of course, we heard
6 from Detective Miller that he is called out to the scene as
7 well. But before that, both Officers Ferguson and Tomaino
8 notice that Antwaine Johnson is the only person who was not
9 robbed. Now, Kathy Petcoff was pushed around, but she
10 indicated that she told them she didn't have any property.
11 Mr. Johnson was simply pushed into the building and left on the
12 floor.

13 That immediately leads them to start asking some
14 additional questions, and it's discovered that Mr. Johnson
15 actually was the person who opened up the door and let them
16 into the bar. This is starting to make Mr. Johnson seem a
17 little suspicious, and those officers testified to that. He
18 escapes from this uninjured. He is the most capable and able
19 individual that is sitting in that bar at that point in time.
20 He is left far away from the other patrons of the bar. He's
21 left with his phone.

22 Potentially, he could have run out the door to alert
23 someone that a robbery was occurring. He could have stood up.
24 Maybe he even had a gun. They didn't know because they never
25 even checked. And if you walk into a bar and there's this

1 person here who is the most capable, most able, but you leave
2 him feet, multiple feet away -- and I believe Detective Miller
3 testified at least from the witness stand to the door of the
4 courtroom. He's that far away from the other individuals.
5 He's starting to look suspicious.

6 And that's important because that's where this
7 investigation starts to really take shape. They pass this
8 information along to Detective Miller. Detective Miller
9 arrives and he watches the video surveillance. And sure
10 enough, he notes those same things. Antwaine was on his phone.
11 He let the suspects in. He holds that door open. He's far
12 away from the actual robbery. And the suspects, more
13 importantly, knew exactly when to come into the bar.

14 We watched video of the parking lot. Those two
15 individuals come over the wall prior to Antwaine coming and
16 opening up the door. It's not as though they were waiting for
17 someone to open up the door and simply took advantage of the
18 situation. They knew to hop the fence from the apartment
19 complex that's adjacent to the Torrey Pines Pub parking lot,
20 and then they knew to hide behind a car. And if you watch the
21 video again, you'll also notice that they signal to one another
22 just before Antwaine walks out the door.

23 So what does Detective Miller do? As part of his
24 investigation, he says, this guy, Mr. Johnson, you know, he's
25 got to know something about this. I just don't think we have

1 all these coincidences and he's not involved. In my training
2 and experience, someone was giving those guys, on the outside,
3 inside information, and Mr. Johnson is the most likely person.
4 So he interviews Antwaine, and Antwaine denies being part of
5 the robbery. He denies holding the door open. He is asked
6 multiple times if he's sure there was no texting between him
7 and the suspects, and he told you he denied it. He denies
8 having contact with anyone outside of the bar, and he denies
9 being part of the robbery even after Detective Miller tells
10 him, "Hey, look, we're going to go ahead and get some phone
11 records." He denies that. He says, "No, I'm not involved.
12 There's no way. I'm not involved in the robbery. Look. I'll
13 show you my phone." And when he shows his phone, he has a call
14 from 3:28 a.m., and he says, "That is the last" -- or, excuse
15 me, a text. "That's the last thing that I did on my phone. No
16 one else has contacted me. I haven't contacted anyone else
17 since 3:28 a.m., two hours, approximately, before the robbery."

18 But Detective Miller doesn't stop the investigation
19 there. He doesn't say, "Well, Mr. Johnson said he's not
20 involved, and despite the fact that there's this evidence that
21 leads me to believe that he is, he said he's not, so let's all
22 go home." Detective Miller continues his investigation.

23 He requests Antwaine's phone records. The phone
24 number that's associated with Antwaine is (424) 375-1085. And
25 what he's looking for is any contact with any number after

1 3:28 a.m. and maybe even some contact before that. He doesn't
2 know what he's going to get from those records, but he thinks
3 these phone records are the key to starting to unlock this
4 investigation. Because at this point, the only thing he has is
5 suspicious activity by Mr. Johnson and a complete denial.

6 A few days later, another important thing happens as
7 part of this investigation, and that's when Bob Bonner calls
8 Detective Miller and says, "If you're sitting in Antwaine's
9 seat, you can see the video surveillance cameras outside. You
10 can see the feed. He saws those individuals come over the wall
11 and hide by the car. He knew when to go out and open up the
12 door. He knew that the timing would be right. He sat in that
13 seat for that reason."

14 And what else do we know about that? We know that
15 Antwaine was sitting right in front of that gaming machine. He
16 wasn't playing those games. And you can watch the video
17 surveillance. You'll see he's sort of clicking through the
18 screens. He's not playing. He's not gambling. So when
19 Detective Miller gets these phone records, he, in fact, sees
20 that there is a 3:28 a.m. text from Mr. Johnson to a number who
21 he identified as being his girlfriend or his baby's -- his
22 baby's mom, his girl, the girl he was talking to.

23 So given Antwaine's story, Detective Miller would
24 expect that the next cell communication to Mr. Johnson's phone
25 is going to be after 6:00 a.m. Because, remember,

1 Detective Miller arrives on scene, he said, around or shortly
2 after 6:00 a.m. And he talked to Antwaine and Antwaine showed
3 him his phone, and there were no other communications after
4 3:28 a.m. So if Antwaine's story checks out, when
5 Detective Miller looks at those phone records, he's not going
6 to see any communications until after 6:00 a.m. The problem
7 with that is -- the problem with that is, that this right here,
8 that's a text at 3:39, 3:39 a.m.

9 Mr. Johnson had to have done something with some text
10 messages or some kind of communication, and then
11 Detective Miller starts to look into those phone records. And
12 what does he find as he starts to go through those phone
13 records? One number keeps coming up. One number is, in fact,
14 the only number that is in contact with Mr. Johnson from the
15 time of 3:28 a.m. until the time of the robbery. One number.
16 Just one. This one. (323) 427-3092.

17 You have the cell phone records. They're evidence in
18 this case. I would encourage members of the jury to look at
19 that because you will see the only number that is contact with
20 Mr. Johnson is this number. And, furthermore, what's important
21 about this is, it's not just that this is the only number
22 that's in contact with him during that period of time, but they
23 are texting each other, like 10:58, 10:58, 10:58, 10:59, 10:59,
24 11:00, 11:00, 11:00, 11:00, 11:00, 11:00. These are people who
25 are texting each other constantly.

1 What does that tell Detective Miller? That tells him
2 that his suspicions about Antwaine Johnson having text somebody
3 and giving inside information had to be true. They had to be
4 right. He had to have something that was going on with whoever
5 had this number because this kind of consistent text messaging
6 with one number, that was deleted from the phone before he
7 showed his phone to the detective, has to indicate there's
8 something else going on here.

9 And you'll see that those text messages come in right
10 after that 3:28 a.m. text message. And, remember, with these
11 T-Mobile records, they're in UTC time. And you'll see that, so
12 you have to adjust by seven hours.

13 So two numbers are, of course, in contact leading up
14 to the robbery -- let me go back to that; just one second -- at
15 5:09, 5:10, 5:10, 5:10, 5:11. And the next thing that happens
16 is, at 5:12 a.m., those suspects climb over that wall.

17 We can see them come over the wall. We can see them
18 crouch behind, interestingly enough, Mr. Johnson's car, which
19 is also parked conveniently right next to that same door that
20 they end up going into. And what's -- what's more interesting
21 is that as they're sitting here, crouched down, hiding,
22 because, of course, you know, if somebody were to come into
23 that parking lot or walk by, you wouldn't want to be standing
24 out there in gloves and a mask, holding a gun, like, hey,
25 probably going to go commit a robbery, might walk into this

1 bar, watch out.

2 They're hiding. They knew to hide there. But they
3 also knew exactly when to move from there so that they could
4 run towards the door. And when you watch that video, you'll
5 see them kind of tap each other, move over to the other car,
6 and then run into the door. And, again, those two numbers,
7 they're in contact right before that.

8 So what does Detective Miller know? He knows that
9 Antwaine is involved at this point. The evidence is telling
10 him, despite Antwaine's protestations to the contrary, that he
11 is involved in this crime. He also knows that there had to
12 have been inside information provided to the suspects because
13 there's no way that those two individuals would have known to
14 hide in that parking lot in that way.

15 What else does the evidence tell Detective Miller?
16 Well, that the only number that's in contact between them,
17 between the time of that last text that was shown to him and
18 the robbery, is this particular number, and that this number
19 stops contacting Antwaine minutes after the robbery. There's
20 some last-minute text messages, and then it's silent.

21 So that number was involved in the robbery. Because
22 if that number continues to text Antwaine after the robbery has
23 occurred and the police are on scene -- and Antwaine's probably
24 going to get interviewed because at that point, hey, he's a
25 victim of a robbery, and he was there and he watched the whole

1 thing. Probably wouldn't be prudent -- probably wouldn't be a
2 good plan to be texting with your coconspirators, "Hey, sitting
3 here with the detective. They're asking me about you." Right?

4 So he deletes the texts and that number goes silent.
5 So despite the fact that there's consistent text messages
6 almost every -- every minute while he's in that bar leading up
7 to the robbery, that number stops. Miller then does a check to
8 figure out whose number is this number. And he finds out that
9 this particular number, this (323) 427-3092 number, is the
10 defendant's number, the number that he uses, the phone that's
11 registered to him.

12 Detective Miller says, "Well, let's take a look and
13 see if that number has ever been in contact with this number
14 before." The first contact is on October 6th of 2018. And
15 you'll see it's a call between the two numbers. It's sort of
16 singular in this particular set of lines. It's an abnormal
17 completion. And they're after -- what the records start to
18 show is that there's that contact, then there's a few more.
19 And then all of a sudden, there's a number of days where the
20 same kind of thing is happening, right. Constant text
21 messaging. Constant phone calls. They're constantly in
22 communication with one another. 1,222 times later, right,
23 Detective Miller is starting to get from this evidence that
24 these two numbers have something in common. They have to know
25 each other. And not just know each other but, like, texting

1 each other 1,222 times in less than a month. He immediately
2 starts to suspect the defendant is involved.

3 So what does Detective Miller do? He knows that
4 Antwaine was in contact, of course, with those suspects.
5 That's the only contact. Contact ceases. And this robbery
6 triggers something with Detective Miller. He says, "You know
7 what? This is very similar to another crime that I have been
8 involved in, the 2011 robbery," which we've heard a little bit
9 from [sic], right. The thing about this is -- and you have
10 instructions on this -- that this evidence is admitted not to
11 show that because the defendant committed a robbery in 2011, he
12 committed this robbery. It's used to show the fact that this
13 particular robbery is so similar in nature that it helps to
14 identify who was involved in this crime.

15 You have an instruction on how to use this evidence,
16 and it must be proven by plain, clear, and convincing evidence.
17 I would submit to you that the witnesses and the fact the
18 defendant confessed to that are certainly evidence that's clear
19 and convincing. And it, of course, must only be used for
20 motive, opportunity, intent, preparation, plan, knowledge,
21 identity, or absence of mistake or accident. In this
22 particular case, it helps to identify the suspect, the suspect
23 that Detective Miller is looking for. But that's not what he's
24 relying on, right. The evidence is driving him to this point.

25 The story that the evidence is telling

1 Detective Miller, as it starts to unfold, is telling him the
2 next thing I should do is talk to the defendant. So he does.
3 On November 15th of 2018, he talks to the defendant. This is
4 prior to his December interview with Antwaine. Why is that
5 important? That's important because at this point, Antwaine is
6 still adamant that he doesn't know the defendant. Not only
7 does he not know the defendant, he wasn't involved in this
8 robbery. Not only that, but he didn't have any other text or
9 calls except after, you know, 3:28 a.m.

10 But Miller interviews the defendant based on the
11 evidence. And those phone records and that video surveillance
12 tends to link him towards this point where he's, like, you
13 know, I'm going to talk to the defendant. So he does. And
14 what did Detective Miller say today? "Well, I anticipated that
15 he would say he lost his phone or he didn't have it or someone
16 took it or someone else was using it. Somehow he's going to
17 distance himself from that phone." Defendant says, sure
18 enough, "I lost my phone." First he says the 27th. "I'm not
19 going to say I lost it on the 27th. I lost it around the 27th.
20 I don't know exactly. I can't tell you those exact dates. I
21 don't keep track of that kind of stuff. It was maybe the
22 26th or the 27th."

23 Again, Detective Miller says, if I'm correct in my
24 experience and training, if he's involved, he's probably going
25 to try and distance himself from anyone who also might be

1 involved in this crime. Ask him if he knows anyone in his
2 apartment complex because he knows the defendant and Antwaine
3 live at the same apartment complex. And, sure enough, "I don't
4 know anybody in my apartment complex. I just moved here. I
5 don't have any friends in that apartment. I don't even
6 associate with anybody in that apartment or know anybody in
7 those apartments. You can't link me to anybody in that
8 apartment complex. You cannot link me because I don't
9 associate with anybody that lives in that apartment. What I'm
10 trying to explain to you is I don't associate with nobody at
11 those apartment complex. No one knows me in that apartment
12 complex. I don't associate with nobody."

13 I don't know how many times the defendant could have
14 possibly said he didn't know anybody at that apartment complex.
15 Today Detective Miller told you the defendant told him the only
16 thing he's doing: trash, dog, girlfriend, work, home, the end,
17 pointblank, period. He doesn't know anybody. At this point,
18 Detective Miller is asking a question about whether or not he
19 just knows anybody, like at all. And he says, "Nope, nope,
20 nope, nope, nope, nope, nope, nope, nope, nope, nope, you can't
21 even link me to anybody there."

22 When he then is asked, "Do you know Antwaine?" Fine,
23 he knows him by Fame. Antwaine knows him by Chill.
24 Understandable. "Who the fuck is Antwaine?" He says that a
25 few times. "I don't even know an Antwaine." He says that a

1 few times.

2 Fine. But then Detective Miller shows him a
3 photograph. "Do you know this guy? His name is Antwaine. You
4 might not know him as Antwaine. His name is Antwaine. Do you
5 know this guy? Do you know this guy?"

6 Well, now the story is a little bit different. "I
7 don't know him. I've seen his face. I don't know him. I'd
8 say he lives up the street from me. He lives in the apartments
9 with me."

10 "So don't know anybody in the apartment complex?"

11 "Well, now, like, I don't really know him. I just
12 know he lives there."

13 He's asked if he's been in contact with him: "I
14 ain't been in contact with that man no damn thousand times. I
15 don't even know him like that. We haven't contacted over a
16 thousand times. I told you I don't associate with him. I
17 don't associate with Antwaine. He's not my friend. I only
18 associate with my girlfriend and my mom. That's it. The end.
19 I don't associate with Antwaine."

20 When you show him the picture, all of a sudden,
21 "Well, I know he lives in the apartment complex. I don't have
22 anything to do with him. I didn't text him a thousand times.
23 I didn't text him 1,222 times. I don't contact him a lot.
24 No."

25 Here's what he also doesn't say, that Destiny went to

1 pick up the kids. They were going to be gone for the weekend.
2 She was going to wait the weekend. Maybe he lost the phone
3 and, you know, it was going to show up in a few days. And
4 she'll be back on Monday with the kids, and that's when they
5 would find it. What he does say: "I lost my cell phone. I
6 went home. I told my girlfriend 'Maybe I lost it in your car.'
7 She doesn't get off work until 6:00. So I waited one day. I
8 waited for her to get home, and that's when I reported it
9 stolen. It was one day. I reported it stolen." Not like this
10 whole weekend thing about how she's going to go pick up the
11 kids, right.

12 So -- but at this point -- despite the weekend and
13 some of the other things that have been testified to recently,
14 at this point, Detective Miller knows that his explanation of
15 knowing Antwaine is contradictory to the evidence. Even if he
16 lost his phone on the 26th, 26th of October, that number has
17 been in contact with Antwaine the 6th, the 15th, the 19th, the
18 20th, the 21st, the 22nd, the 23rd. It has been in constant
19 contact with Antwaine. So what Detective Miller knows is that
20 the defendant -- the defendant -- that doesn't match the
21 evidence, what he's telling -- what he's telling
22 Detective Miller. And he knows whoever Antwaine is in contact
23 with, he's one of the suspects.

24 So, again, that's the number. That's the number that
25 continues to be in contact. On December 10th of 2018, Antwaine

1 is finally arrested at his apartment complex, right. And he
2 speaks for a second time with Detective Miller. But at this
3 point, Detective Miller tells him, "Look, we have phone
4 records. We know you were calling someone. Who were you
5 calling?" Antwaine says, "No, I wasn't involved. I wasn't
6 involved. I don't know the defendant."

7 He's asked, "Do you know this guy?"

8 "No, I don't know him."

9 Antwaine is still adamant that he is not involved.
10 Well, what did he testify to? "Look, at this point, they have
11 the records, and so I get an attorney and we're going to have a
12 conversation," right.

13 In the meantime, Detective Miller also makes a
14 request for the defendant's phone records. The interesting
15 thing about the defendant's phone records -- again, the
16 evidence in this case is starting to tell a full story here.
17 The raw data shows similar contacts with Antwaine's number,
18 right.

19 The analysis of the location data also shows three --
20 three important things: Number one, the defendant's phone is
21 primarily and regularly in contact with the tower that would
22 have service to that particular apartment complex. And
23 Detective Basilotta, yesterday, testified that when you start
24 to look at how far that tower is from that apartment
25 complex...about a half mile which would indicate very strong

1 service. Additionally, with the number of times that that
2 particular sector map is hitting that exact same location,
3 that -- whatever's in that particular area is consistently
4 getting service from that tower in the consistent and same
5 manner, right.

6 For the 2:18 a.m. call to Antwaine, however, it's not
7 like the phone was still at that place and it just accidentally
8 called up Antwaine, right. The phone is near the pub. The
9 phone moves. And immediately after, the phone doesn't go
10 somewhere else. The phone doesn't go to another house or
11 another place or another -- you know, let's go meet up
12 somewhere. It goes back to the apartment complex in that exact
13 same sector, right. And we -- we saw some of this. And
14 there's some -- there's one time where there's a phone call out
15 here at -- a couple phone calls that are out there. We would
16 expect to see that. People use their phone and make phones
17 calls.

18 The important parts are this right here, this dark
19 circle, which Detective Basilotta testified is going to
20 indicate a lot of contact, that's primarily where that phone
21 is. And, of course, when you flip through these records,
22 you'll see that. And we saw that when Detective Basilotta
23 testified. This tower, this sector that encompasses the 7075
24 West Gowan address is consistently hitting that phone in that
25 particular way.

1 What we also know is that there's also this 2:18 a.m.
2 phone call where that phone is hitting a tower that is within a
3 half a mile of the Torrey Pines Pub which also indicates that
4 that's a really strong signal for that particular location.

5 And when the robbery is complete, that phone immediately goes
6 back up to the 7075 West Gowan address. And the interesting
7 thing about that is there are multiple contacts between the
8 phone and that cell tower that give it that darker red color,
9 right. And Detective Basilotta testified about that. Because
10 of the way the program works, you're seeing multiple overlays
11 of that same red sector. It's going to appear darker. And if
12 you clip through each one of them separately, you'll see that.

13 And all these numbers -- nine, nine, ten, ten, two --
14 when you click on each one of those, they'll expand and show
15 you the number of things that are happening. That indicates --
16 the evidence indicates that that phone is being used repeatedly
17 within that same tower location, the same tower location that
18 phone is at most of the time.

19 So Antwaine then asks to speak with Detective Miller,
20 and he does what's called a proffer. We talked a little bit
21 about a proffer. It is not, at the point in time when Antwaine
22 decides to sit down with Detective Miller, a promise of
23 anything, right. It's information gathering. Detective Miller
24 testified, "This is where I'm going to get some information,
25 and then I'm going to keep doing an investigation and determine

1 whether or not there would even be anything after that," right.

2 What the interesting thing about this is, that
3 Antwaine then starts to tell him information that matches what
4 he already knows. He deleted the text messages. He gave the
5 heads up to the suspect. He had been in the bar before; same
6 time, right. We know that Shaylene remembers seeing him in
7 that same bar during her graveyard shift, right, a few times
8 before that. He also gives that information. And
9 additionally, he adds a few details.

10 He was supposed to give a fake number to detectives.
11 He sort of screwed that up. Accidentally gave a real number,
12 told the defendant about it, and, of course, we then later
13 learn that the defendant's number is subsequently disconnected
14 that same day. He was supposed to give a fake number. He
15 accidentally gives the real thing.

16 He was -- no one was supposed to get hurt. And
17 that's interesting because what Antwaine says is that when he
18 talks to the defendant and confronts him about this and says,
19 "No one was supposed to get hurt. It was supposed to just be,
20 like, come in, get the cash, and we kind of separated and you
21 hit that old guy," he says, "Well, he was mouthing off."

22 Now, I recall Mr. Ferony's testimony. And he, I
23 would submit to the members of the jury, likes to have
24 conversations and maybe even punch back a little, right. So
25 does that make sense? And he also mentions he gets about \$200

1 from the robbery, so he does admit that he gets cash from it,
2 right, uses it to go -- he said two or \$300. Uses it to go get
3 groceries and take care of his kids.

4 So you have an instruction on accomplice testimony.
5 There must be some corroboration, right. We can't say, "Well,
6 here's an accomplice and they're just going to tell you the
7 story again, that's it"; right? That's what this instruction
8 says. It has to tend to connect the defendant with the crime.
9 But the corroboration doesn't have to exist for every single
10 element or every single fact. It's enough if the accomplice,
11 when they're testifying, has evidence that tends to corroborate
12 what they're saying. If the circumstances and evidence tend to
13 connect the defendant to the crime, then that constitutes
14 corroboration.

15 In this particular case, I would submit to you that
16 there is corroboration, right. We've just discussed all of the
17 evidence that Defendant Miller was looking at prior to Antwaine
18 confirming that the defendant was involved. All the evidence
19 is pointing to the defendant. All of the evidence is saying
20 that he's the person who's texting Antwaine, and all of the
21 evidence is indicating he was in the area at the time of the
22 robbery.

23 So with accomplice testimony, of course, we can't
24 just show opportunity. I would submit to you those cell phone
25 records don't just show that the defendant happened to be in

1 the area. They show that they're in communication. They show
2 that they're -- they're actually planning this thing out,
3 right. And we know from the circumstances of how this robbery
4 happens someone was getting inside information to outside.

5 Mere presence, of course, is not enough. It wouldn't
6 be enough if he was just standing outside of the bar when
7 police arrived. It would have to be something connecting him
8 to the crime, which, in this case, there's quite a bit.

9 The inducement does not, of course, necessarily
10 destroy or impair the credibility of a witness. So the
11 credibility of witnesses is up to you, the jury.

12 Defendant committed the crimes, and I think that the
13 evidence is telling the story of how it is that he did. Before
14 he gives the proffer, before Antwaine gives the proffer,
15 defendant is linked to these crimes. The video surveillance
16 says that these people were working together, his phone
17 records, the defendant's phone records, his location data,
18 right. His own statements about not even knowing Antwaine
19 despite the fact that, even if you assume he lost his phone,
20 he's in contact with Antwaine a number of times before the --
21 before he loses his phone. So this is not tending to indicate
22 that the defendant is not involved. And, additionally, we know
23 that this is eerily similar to another crime which tends to
24 identify the defendant. What Antwaine's proffer does, what his
25 testimony does, is it clarifies the exact role that the

1 defendant played in this crime.

2 So what about his stolen phone? His phone was
3 missing or stolen, he testified, by potentially maybe Antwaine
4 now, which is not something he shared with the detective, on,
5 let's say, the 26th. He told Destiny when she left. His
6 testimony is she knew, his girlfriend, the girl he lives with,
7 the girl that moved from California to live here with him, the
8 girl whose kids he's going to help take care of, she's the
9 first person, she knows. For sure, he told her face to face;
10 she knows. That phone; stolen, misplaced, whatever. Her
11 number, (951) 489-2610, is interesting because when you look at
12 the call records from the 26th of October, which is what we
13 have from the defendants, a much limited -- more limited
14 record. The 26th of October through the 29th of October, there
15 are 34 phone calls with Destiny.

16 Now, if the defendant really lost or misplaced his
17 phone on the 26th, we would not expect to necessarily see that
18 they're calling each other on the 26th a number of times. If
19 it was the 27th, would we expect to see them calling each other
20 a number of times on the 27th? Those records show that as
21 well, and I would encourage you to take a look at those, or the
22 28th when they're also calling one another, or the 29th. If
23 she knows that phone is missing, why is she calling him and why
24 is he calling her unless that phone is not stolen or missing,
25 right.

1 The records -- the evidence in this case is telling a
2 story about what happened. And when you look, you can see
3 these are phone calls. This is the 27th and these are phone
4 calls that are lasting -- it's 845. That's in seconds. So if
5 you divide by 60, it's about 15 minutes. So either Destiny is
6 having a conversation with someone for 15 minutes, knowing the
7 phone is stolen, who she's going to talk to a number of times,
8 or she's talking to the defendant because the phone is not
9 stolen.

10 So what about his contacts with Antwaine prior to the
11 phone being stolen? Interesting thing about this is that
12 Shaylene remembers seeing Antwaine at the bar, right, and he
13 says, "Part of the plan -- part of our plan together was that
14 we were going to go to the bar a number of times. I was going
15 to let them know what was going on. I was going to feed them
16 information so we could make a determination what's the best
17 day to go to the bar. We were looking for where there weren't
18 that many people in the bar." She works the graveyard shift.
19 She remembers seeing him. He says, "I'm at the bar about the
20 same time," right, "graveyard shift."

21 When you go through these records that Mr. Basilotta
22 testified to, showing the number of contacts between one
23 another, what you'll also see in these records -- and this is
24 October 19 -- these records have been adjusted. They're all in
25 local time: 1:25 a.m., 1:26 a.m., 1:27 a.m., 1:29 a.m.,

1 1:30 a.m., 1:30, 1:30, 1:31, 1:31. Going into the 20th, again
2 we see at 23:58, which is 11 -- almost midnight. And then
3 going into midnight, 00:01, right. This is someone who is
4 consistently texting. This is going into the 21st, early
5 morning, or the 21st even further in the morning, or the 22nd.
6 That happens on the 22nd also. Texts between these two numbers
7 consistently at the same rate that we're seeing the night of
8 the robbery, back and forth, constant with one another during
9 the time frame in which Antwaine is saying, "The days leading
10 up to the robbery, we were at the bar. I was getting
11 information." These records are telling a story that the
12 defendant is involved in this crime. The 25th going into the
13 26th, they're texting at midnight. They're texting well into
14 the morning over and over and over again.

15 So in this case, you have the evidence to review, and
16 you've also heard from a number of witnesses. And you have an
17 instruction on the credibility and believability of witnesses.
18 And it says, "The credibility or believability of a witness
19 should be determined by his manner upon the stand, his
20 relationship to the parties, his fears, motives, interests or
21 feelings, his opportunity to observe the matter to which he
22 testified, the reasonableness of his statements, and the
23 strength or weakness of his recollections." That is your job
24 as the jury, is to evaluate the credibility of the witnesses
25 who have testified, and that's all the witnesses.

1 So let's talk about reasonable doubt. And this is a
2 reasonable doubt instruction. I'm just going to read it. It's
3 typed on here, but it's in your instructions. I'll read it
4 verbatim.

5 "A reasonable doubt is one based on reason. It is
6 not mere possible doubt but is such a doubt as would govern or
7 control a person in the more weighty affairs of life. If the
8 minds of the jurors, after the entire comparison and
9 consideration of all the evidence, are in such a condition that
10 they can say they feel an abiding conviction of the truth of
11 the charge, there is not a reasonable doubt. Doubt, to be
12 reasonable, must be actual, not mere possibility or
13 speculation."

14 One of the other things that we did is we took some
15 time to talk with each and every one of you during jury
16 selection. And one of the reasons why is because when you come
17 into this courtroom, when you come into this courtroom as
18 reasonable men and women with your experiences, you don't come
19 in and sit in this box and check your common sense at the door,
20 right. You bring that with you. Your common sense, as
21 reasonable men and women, is with you as you sit here and
22 evaluate the evidence.

23 So, ladies and gentlemen of the jury, I ask you:
24 Does it make sense that Antwaine was in contact with the
25 defendant 1,222 times, and the defendant just doesn't know him?

1 Does it make sense that Antwaine was in contact with him
2 multiple times over during the evening hours of the graveyard
3 shift the night of the robbery before allowing for someone to
4 come into that bar and rob the place? Does it make sense that
5 after Antwaine told the defendant that he had been asked by the
6 police about his phone number and they mentioned records, that,
7 all of a sudden, that phone number gets disconnected? Does it
8 make sense that the only thing that's deleted from Antwaine's
9 cell phone is the defendant's records? Does it make sense that
10 even prior to that, they're having multiple contact with one
11 another? Or does it make sense that the defendant was involved
12 in this robbery because the evidence is saying that he is? Or
13 did his phone get stolen, and this person picked up the phone
14 and just decided to continue to text his number and call his
15 girlfriend and have phone calls with her and continued to
16 maintain that contact with the one person who for sure knew
17 that phone was stolen?

18 Ladies and gentlemen of the jury, when evaluating the
19 evidence and the witnesses in this particular case, we ask you
20 that you return a verdict of guilty of conspiracy to commit
21 burglary; guilty of burglary while in possession of a deadly
22 weapon; guilty of conspiracy to commit robbery; guilty of
23 robbery with use of a deadly weapon, victim 60 years of age or
24 older; guilty of robbery with use of a deadly weapon; guilty of
25 robbery with use of a deadly weapon; and guilty of battery with

1 use of a deadly weapon, victim 60 years of age or older; and
2 guilty of battery with use of a deadly weapon.

3 Thank you.

4 THE COURT: Thank you.

5 Mr. Matsuda.

6 MR. MATSUDA: Thank you, Your Honor.

7 **CLOSING ARGUMENT FOR THE DEFENSE**

8 MR. MATSUDA: Good morning, ladies and gentlemen. So
9 like the State was saying, the reason why we took so much time
10 in the jury selection process is because we wanted to choose
11 all of you that could be impartial and could keep an open mind
12 until all the evidence is presented to you so you can make an
13 informed decision. So we're at this point.

14 Remember, this is the State's case to prove. They
15 must prove to you beyond a reasonable doubt each and every
16 element. Now, we're not here to contest that a robbery or
17 burglary took place because we saw the video. It's clear that
18 something happened. This is a case of whodunit. The State's
19 alleging that Devohn Marks was part of this conspiracy, part of
20 this robbery, so they must prove to you beyond a reasonable
21 doubt that Mr. Marks was involved, right.

22 We have fall guy. Now, this is going to be a theme
23 in my closing because Mr. Marks is the fall guy. He has the
24 background. He has the past. He's the perfect guy to blame
25 this on.

1 We heard from the witnesses involved in the -- or at
2 the bar. We have Ms. Bernier, Mr. Ferony, Ms. Petcoff,
3 Mr. Goldstein, and Antwaine himself. He was, in fact, a
4 witness. Even though he admitted he was part of planning this
5 robbery and he was there when it went down, he witnessed what
6 happened.

7 Under Mr. Goldstein, I put five-ten, five-eleven.
8 Why is that important? Because Mr. Goldstein is the only
9 witness who could physically describe the two suspects. What's
10 more interesting about that is Mr. Goldstein himself is
11 five-ten. Now, Mr. Marks is six-three. Five-ten to six-three
12 is a huge difference. If you're five-five and someone's
13 five-ten, you're going to notice that difference. Even if
14 you're sitting down, if you're five-three and someone walks by
15 that's five-eight, you're going to know that person's
16 substantially taller than you.

17 Mr. Goldstein said the two suspects were five-ten,
18 five-eleven. Mr. Marks is six-three. So that's four or
19 five inches' difference. That's a huge difference. And
20 Mr. Goldstein is the only one that could physically describe
21 the two suspects. Everyone else didn't have a description
22 because the suspects were dressed in all black, they had ski
23 masks, and they had gloves. No one else could give any sort of
24 physical description.

25 And what did Antwaine say? He was pushed in as part

1 of the plan, he said, and his face was on the ground so he
2 didn't see what was going on. He was involved in the planning
3 of this robbery. We saw him on the video. We heard him admit
4 to this. But when he was in the bar, he let two people in that
5 were wearing ski masks and gloves, so he couldn't even describe
6 them. He's a witness to what happened. Even though he was
7 involved in it, he couldn't describe who was in it.

8 Detective Miller. Now, he testified that Mr. Marks
9 changed his story. But did he really? If you listened to what
10 Mr. Marks said on the stand and what Detective Miller stated
11 that Mr. Marks said in his interview, it's substantially the
12 same thing. He got a few days wrong, but they're asking him
13 for what he did prior to his interview without a calendar in
14 hand. Without his phone, he's trying to ask Mr. Marks to
15 remember what exactly -- what date these things happened.

16 His definition of "associate" and "friend." Now,
17 that's a very subjective term. It's going to have a different
18 meaning to everyone. I don't associate with that guy. I'm not
19 that guy's friend. If that doesn't match up with
20 Detective Miller's definition, then he's lying. It's a very
21 subjective term. I think, individually, we're all going to
22 have a different definition of who our friend -- who our
23 friends are or who we associate with.

24 He doesn't know Antwaine because he didn't know
25 Antwaine by "Antwaine." He knew him as Fame. So when the

1 State is up here saying he's lying, he's lying, he's lying he
2 didn't know an Antwaine, he knew Antwaine as Fame. And when he
3 saw his picture, he said, "Yeah, I don't know him as Antwaine."
4 But he still says, "I don't associate or I'm not friends with
5 him." Because what? What do we know about Mr. Marks? He did
6 prison time. He just got out. He was on parole. He doesn't
7 want to know anybody, especially not someone that
8 Detective Miller is asking about. So he says he doesn't know
9 him. He doesn't know him like that. He doesn't hang out with
10 him.

11 Even Mr. Johnson on the stand said, "Yeah, we didn't
12 hang out. We weren't friends like that. We smoked weed
13 together. We smoked weed in my car." Mr. Johnson didn't know
14 if Mr. Marks had a girlfriend, if he had a kid, if he had a
15 job. They didn't know each other like that. So everyone's
16 definition of "associate" or "friend" is totally different.

17 Now, he did, in fact, tell the detective that his
18 phone was lost or stolen. And his phone was, in fact,
19 terminated on the 29th. So when Detective Miller is up here
20 saying that he was changing his story, what exactly did he
21 change? Because throughout the interview and throughout his
22 testimony on the stand, it was very similar. He'd gotten a few
23 days wrong, but he was trying to remember, off the top of his
24 head, without a calendar in hand, without a phone in hand to
25 verify what days, times, or dates.

1 Today Detective Miller testified that 200 messages
2 were -- were sent from the time -- if it's the 26th or 27th
3 until the 29th when the phone was terminated, 200 messages were
4 sent. Mr. Marks' testimony is he lost or his phone was stolen
5 on the 26th or 27th. Detective Miller is saying there's 200
6 messages sent from the time he lost his phone to the time it
7 was actually deactivated. And this is when Mr. Johnson,
8 according to his admissions, was planning this -- planning this
9 robbery.

10 What do we know about Antwaine Johnson? Well, we've
11 got to look at his credibility; right? He signs an agreement
12 to testify -- and that's Number 9, that's Jury Instruction
13 Number 9. He's getting a benefit from this testimony. He has
14 motive to lie.

15 Indictment to newfound benevolence. When he got on
16 the stand, he said, "I'm trying to start a new chapter in my
17 life, do the right thing. That's why I'm testifying." Is that
18 true, or is he getting a benefit for his testimony? Because,
19 unequivocally, he's the only guy we can identify as a
20 participant in this robbery. He's on video. He identifies
21 himself on video. He says, "I was part of planning this." So
22 he's the only person that we can unequivocally state was
23 involved in this robbery. But now he's telling a story to get
24 a benefit for his story.

25 We know he lied to officers after the robbery

1 occurred because he posed as a victim. We know he lied to
2 detectives, saying, "I didn't have any part of this. I just
3 got off of work." He wore his vest. Told him he came from a
4 job. "I didn't have nothing to do with this." Only until he's
5 indicted: "Oh, I'm going to be truthful with you now, but let
6 me get a deal first. I'll tell you what really went down as
7 long as I don't get into that much trouble. What's the benefit
8 to me?" He's not a good Samaritan. He's getting a benefit for
9 his testimony.

10 He blames his ex for his financial struggles. Now,
11 another motive for Mr. Johnson is he was struggling
12 financially, right. Remember, he said his ex dropped off his
13 daughter and that it made him lose his job. So he's blaming
14 his ex for his financial struggles. So what does he do? He
15 plans a robbery. That's the person we're dealing with. He
16 loses his job. He just gets his kid. He decides to rob
17 somebody -- or rob a place. He couldn't provide for his
18 daughter so he wants to make a quick buck.

19 He didn't know Mr. Marks too well, and he testifies
20 he wasn't friends. So there we have the definition of
21 "associate" or "friend." Everyone has a different definition
22 of this. Even Mr. Johnson is saying, "We weren't friends like
23 that. We smoked together. Doesn't mean we're cool. We
24 weren't associates. I didn't know if he had a girlfriend. I
25 didn't know he had kids or a job. We just smoked in my car."

1 Remember the fact that he said they always smoked in his car
2 because that's very important.

3 Also in the fact that he doesn't identify a third
4 suspect. And why is that important? Again, because Mr. Marks
5 is the fall guy. He has the background. Mr. Johnson knows his
6 background. He says he can't identify the third suspect,
7 five-eight, five-nine, five-ten, five-eleven, black male adult.
8 He named 10 million people as potential suspects. Why doesn't
9 he know this third suspect that he was conspiring with?
10 Because, remember, he's the -- remember, he's the only one that
11 we can positively identify that was involved -- based on his
12 admission and the video, he conspired with this unknown
13 coconspirator, but he can't even give us a name or a
14 description. Why is that? Who is he trying to protect?

15 Again, he's testifying to help himself. He doesn't
16 come up here and say, "I feel bad about the victims. You know,
17 they shouldn't have to be put through that. Now that I am
18 starting a new chapter in my life, I feel really bad about what
19 happened." He got up there and said, "I'm doing this for
20 myself. I'm trying to help myself." He's doing the right
21 thing to help himself because he's the only one we can actually
22 point at and say, "You were involved in the planning and
23 commission of this robbery."

24 He knew Mr. Marks did prison time. Now, this is very
25 important. You heard Mr. Johnson on the stand, as well as

1 Mr. Marks. He knew he did prison time for a crime similar to
2 this. He knows how to switch out SIM cards, and they all smoke
3 in his car where Mr. Marks said he -- that's the last time he
4 remembers he had his phone. Fall guy. He can't identify a
5 third suspect, but he has some communication with Mr. Marks,
6 and he knows Mr. Marks has a background. He's the perfect fall
7 guy. Because, remember, we're basing who this number he was
8 texting with through Mr. Johnson. And I'll clarify that when
9 we get to the phone data part. But Mr. Johnson's testimony is,
10 "I was contacting Mr. Marks," and that's how they're connecting
11 these numbers together.

12 All the witnesses, charts, and data we -- literally
13 hours of cell phone information that we went over, probably
14 more information than anyone ever wanted to know about cell
15 phones, but none of those experts, none of those witnesses, can
16 conclusively state who was sending or receiving those text
17 messages. We know numbers that were in communication, but who
18 was actually receiving and who was actually sending those text
19 messages are totally different. It's a very big distinction,
20 and not one of those experts could unequivocally state who was
21 sending those messages, who was receiving those messages.

22 Location of device; not person. All those red little
23 dots, those pins on the map, that's where the device itself is,
24 not the person associated with the phone. Again, we're using
25 Mr. Johnson's testimony, saying "I was texting Mr. Marks," but

1 what do we know about Mr. Johnson and his motives? We know
2 that that number at some point was associated with Mr. Marks
3 because his name was on the account. But who was sending the
4 messages, who was receiving it, if Mr. Marks lost his phone?
5 Name on account does not equal sender. Again, we cannot
6 conclusively state who was sending messages, who was receiving
7 messages. Where the device is compared to where a person is is
8 totally different. And we submit to you that is reasonable
9 doubt.

10 Devohn Marks, you heard him take the stand. He was
11 working. He wasn't financially struggling like Mr. Johnson.
12 He knew Mr. Johnson from the apartment complex. He knew him as
13 Fame. But, again, there's this definition of "friend" and
14 "associate." Now, the State would want you to believe that
15 when Mr. Marks tells Detective Miller he doesn't know this guy,
16 it's a consciousness of guilt. But we'll submit to you, ladies
17 and gentlemen, it's not consciousness of guilt. He made his
18 mistakes, he paid his price, and he did his time. If you're on
19 parole for doing seven years and a detective is questioning
20 you, he's going to say, "I don't know this guy."

21 The State wants you to believe, no, he's trying to
22 hide something. Both men said they didn't really know each
23 other. He didn't want anything to do with Mr. Johnson, so he
24 says, "I don't know him like that." We can't confuse his
25 definition with Detective Miller's definition because once he

1 saw a picture, he did say, "Yeah, I know him. I know him as
2 Fame, not as Antwaine."

3 Six-three, four to five inches taller than the
4 eyewitness description. Now, that's huge. Again, five-ten to
5 six-three. It's a very, very big discrepancy. Even if you're
6 sitting on a stool and someone's five inches taller than you,
7 you're going to notice that.

8 Mr. Marks testified he has no pass code on his phone.
9 It was an older iPhone model. He didn't have the fingerprint
10 ID or the facial recognition software. He had the pass code,
11 four or five digits you enter to unlock your phone. He
12 disabled that because his girlfriend didn't like a pass code on
13 his phone, so he disables it. What does that mean? Anyone can
14 access this phone. He lost the phone sometime around 10/26 or
15 10/27, and Detective Miller says, "Well, he actually terminated
16 it on 10/29." So these dates that he referenced in his
17 interview with Detective Miller, he didn't change his story.
18 He was just a few days off.

19 The State wants you to believe that through
20 Detective Miller's testimony and Devohn Marks' testimony, they
21 were totally different, and he lied the whole time. But think
22 back to what Detective Miller stated about his interview with
23 Mr. Marks and recall Mr. Marks' testimony. They were the same
24 thing. Just because people have a different definition of a
25 word doesn't mean they're lying. Everyone is going to have a

1 different definition of "friend" or "associate." And he got a
2 few dates wrong. It wasn't weeks or months off. It was
3 literally a day or two.

4 I think the State went over this jury instruction,
5 but it is very important, the credibility of a witness. "The
6 credibility or believability of a witness should be determined
7 by his or her manner on the stand, his or her relationship to
8 the parties, his or her fears, motives, interests or feelings,
9 his or her opportunity to have observed the matter to which he
10 or she is testifying to, the reasonableness of his or her
11 statements, and the strength or weakness of his or her
12 recollections."

13 Now this is the most important part: "If you believe
14 that a witness has lied about any material fact in the case,
15 you may disregard the entire testimony of that witness or any
16 portion thereof if it's not supported or proved by other
17 evidence."

18 Now, again, a lot of the State's case is based on
19 Mr. Johnson's testimony, saying he's the guy that I was texting
20 when we know that Mr. Johnson has a motive to lie. He has an
21 agreement to testify to help himself. He was the one that was
22 struggling financially. He was the one that lost his job. And
23 he's the one that can't identify a third suspect, where he was
24 the one that planned this robbery.

25 Now, remember, his testimony was he cased this joint

1 for about two weeks. He was in there once or twice a week,
2 right, or he went there about eight, nine, ten times. So he
3 had a lot invested in this robbery that he planned, and he was
4 up here saying he didn't know who that third person was.
5 Common sense would dictate he did know who that third person
6 was, and he doesn't want to say who it is.

7 But you notice he had some contact with Mr. Marks,
8 and he knows Mr. Marks' background. Why not throw him under
9 the bus, and I won't say anything about the third guy that I
10 don't even know his name, I can't describe him.

11 Reasonable doubt in this case. Motives of Antwaine
12 Johnson. Lost his phone in his car. He's struggling
13 financially. Protecting actual coconspirators. Cell phone
14 data. Location of device, not person sending. Again, we do
15 not -- we can't conclusively state who was sending, receiving
16 these messages. We know that Devohn's name was on an account,
17 but we don't know who was actually sending these messages or
18 receiving them.

19 Physical description of Devohn Marks. Again,
20 five inches is a big difference in height. Five-eight,
21 six-one, six-two. You're going to notice that difference,
22 especially with Mr. Goldstein being five-ten. Seeing the
23 suspects, he said, "They're about my height."

24 State's closing. Now, Ms. Cannizzaro came up here
25 and said the story begins, right, and it does. It begins with

1 Mr. Johnson and it ends with Mr. Johnson because we're really
2 basing a lot of this case on what this guy has to say. Again,
3 he has the motives to lie. He was financially struggling. And
4 we're believing his testimony about who he was texting, who he
5 was calling.

6 The State's going to present their -- or they did
7 present their phone records to back up whose name was on the
8 account at a certain time, but we're relying on Mr. Johnson's
9 testimony, saying, "He was the guy I was texting."

10 Now, I'm pretty much done with my closing. I'm
11 assuming Ms. Moors is going to get up here next and basically
12 say whatever I said was hogwash, in a nicer way. She's going
13 to say, "Mr. Matsuda says, defense counsel says." Now, when
14 she says this, I want you to keep in mind: Replace that with
15 what has the evidence shown and what has the evidence not shown
16 us? What have we learned throughout this trial? Because they
17 promised you that they would prove this case beyond a
18 reasonable doubt. So remember what evidence they're using and
19 whose statements and testimony they're relying on.

20 How would the defense counter their arguments?
21 Because the counter-arguments to their arguments is what we
22 call reasonable doubt. And, remember, the State must prove to
23 you each and every element of the case beyond a reasonable
24 doubt.

25 Now, we're not here to say that a robbery or a

1 burglary did not happen. We're disputing the fact that
2 Mr. Marks conspired with Mr. Johnson, and we're disputing the
3 fact that it was Mr. Marks at all. It was obvious that a crime
4 occurred on those videos, but this is a case of whodunit, not
5 if a crime was committed. And we submit to you that Mr. Marks
6 had nothing to do with this. The State has not proven their
7 case beyond a reasonable doubt, and we're asking that you
8 return a verdict of not guilty.

9 Thank you.

10 THE COURT: Okay. State, final argument.

11 **REBUTTAL ARGUMENT FOR THE STATE**

12 MS. MOORS: All right. Admit what you can't deny;
13 deny what you can't admit. This is essentially the story that
14 you heard. But I want to talk more about this and I'm going to
15 be brief, but here's the gist of it, okay.

16 You heard from the defendant. You heard from
17 Antwaine. What would they have you believe? All right. So we
18 have Antwaine, and then we have the defendant. All right.
19 Along the lines of admit what you can't deny and deny what you
20 can't admit; absolutely. At the beginning, he denied
21 involvement. Denied. Deleted text messages.

22 Now, I'm going to get really quickly into what the
23 defense would have you believe, that Antwaine is a criminal
24 mastermind. Antwaine equals the brain. If you believe what
25 defense has postulated to you, it's the fact that Antwaine is

1 smart enough to have essentially planned this robbery with
2 Devohn throughout the entire course of October. As the phone
3 records were pointed out, their numerous contacts were always
4 when he was in the bar, graveyard.

5 He was then smart enough to somehow steal the phone
6 from Mr. Marks on the Friday before and then somehow give it to
7 his buddy and then somehow have that buddy help him rob this
8 bar that he'd been casing. But what I think is really
9 interesting about this is he posed as victim. He thought he
10 was never going to have his phone records called into question;
11 right? He's the victim. That was the whole gist of it. So if
12 he's going to pose as a victim, then, quite frankly, why does
13 he care what phone numbers will show as him contacting on that
14 evening? Why would he even need to steal the phone? He's the
15 victim. He should have -- his phone records should have never
16 been subpoenaed, but they were.

17 Okay. What do we hear more from the defendant?
18 Well, we know that he is a four-time convicted felon. Now, I'm
19 not saying this to say he's a bad guy. You have an instruction
20 to that effect. Why I am saying this is, one, you can use
21 those prior convictions in terms of assessing his credibility.
22 Is he honest? Is he not?

23 Two, you heard about what we would call a prior bad
24 act. Now, this prior bad act is really interesting because the
25 defendant got up there and said, "Yes, I told Antwaine that I

1 had been convicted of robbery." Specifically, he was asked,
2 "Did you tell him the details of robbery?"

3 "No, never got into the details. He knew that I was
4 a convicted felon, but we never got into the details."

5 Back to this criminal mastermind. He didn't know
6 anything about those prior robberies and yet somehow was able
7 to orchestrate a robbery that involved casing, a robbery that
8 involved -- that was essentially a take-over style, a robbery
9 that had two individual patrons personally robbed, because he's
10 a genius. Ladies and gentlemen, we heard from Antwaine. I
11 would submit to you he is not a genius; no offense intended.
12 But that's what defendant would have you believe.

13 Okay. Now what can we use this bad act for? It's
14 like what Ms. Cannizzaro said. We're not saying that he's a
15 bad guy or that because he committed robbery, he committed this
16 robbery. What we can use it for -- we had this acronym in law
17 school, and it was MIMIC. You can use it for motive, intent,
18 mistake, identity, or common scheme or plan. In this case, we
19 are submitting that it's proof of identity. It is a very
20 similar-type crime. It's so similar enough that
21 Detective Miller goes back and thinks about this crime and sees
22 that he was actually involved in a similar-type crime that the
23 defendant ultimately confessed to being involved in.

24 But what's interesting even more about that is in
25 terms of identity. So we heard about the previous crime. We

1 heard that it was a very similar-type crime, but,
2 unfortunately, the armed robbers didn't cover their faces. We
3 also heard that the defendant was identified and confessed to
4 being the caser and getaway driver. Well, what's interesting
5 in terms of identity? Look at this case that we have before
6 us. Defendant's getting smarter. He's now grown up. He's not
7 just the caser. He gets Antwaine to case for him, Fang or Fame
8 or whatever his name was, the dumbass down the road that he
9 smokes pot with. Not his associate, not his friend, even
10 though they contacted each other a thousand times. He gets him
11 to be the one who will have his face shown. He's learned from
12 his prior experience. He's now one of the main actors. He
13 covers his face. He goes in and does the exact same type of
14 robbery that he did seven years prior.

15 Well, let's talk about a little thing -- a little --
16 a couple of things that Mr. Matsuda was talking about, right,
17 the fall guy. We like, sorry, key phrases. They make us happy
18 as lawyers. But what did he first say? Man, it is really
19 important to think about Myer Goldstein. He's five-ten,
20 five-eleven. For sure when he's sitting down, he's going to
21 absolutely know how tall someone is behind him when they're
22 there for two minutes, and he thinks he's going to get his head
23 blown off. Totally. Right?

24 Okay. Right now as I stand before you, I am most
25 likely six foot with heels. I am five-eight without them. Not

1 that big of a distinction. We're not talking about André the
2 Giant versus Theon from Game of Thrones, okay. Absolutely that
3 could be expected.

4 What I would also point out is you have the video and
5 evidence, and you'll get to watch it. But when you see
6 Shaylene Bernier in that, she is terrified. Well, literally,
7 she never gets up above here because she's worried her head's
8 going to get shot off, and that's why we don't commit armed
9 robberies because people can die. No one died in this case,
10 thank God. But in terms of if they said it's five-ten or
11 five-eleven, and he's actually six-one, you know, smoking gun,
12 not the smoking gun Mr. Matsuda would have you believe. He's
13 not a fall guy. He's the guy.

14 But let's talk a little more about the differences
15 between these two stories. Back to him being the brain, right,
16 that Antwaine is this brilliant individual. Okay. So we heard
17 from Detective Miller and Mr. Matsuda essentially said, "You
18 know, he didn't really change his story. He didn't get a
19 couple dates right." What has the defendant had the benefit of
20 doing -- which he is entitled to be here. He's been here the
21 entire trial. He's on trial; he's entitled to be here. But
22 he's gotten to hear every single person testify. And I think
23 he said, when Ms. Cannizzaro asked him, "You know, you never
24 once mentioned the Friday before Halloween to
25 Detective Miller."

1 "I get that you can't remember the day, right. I
2 don't even know what today's number is. I think it's a Friday.
3 Totally fine. But never once, literally a month after this,
4 did you say, 'For sure I lost my phone on the Friday before
5 Halloween.' You never said it."

6 And his response was, "Well, I've dealing with this
7 case. I've been -- I've been remembering." Let me ask you
8 this: If something happened to you on the Friday -- or anyone
9 the Friday before Halloween and it was very substantial and you
10 were questioned about it a month later, common sense would tell
11 us that we would know a little bit better closer in time as
12 opposed to July -- July 26th, right. That's commonsensical.

13 But what else did we hear from Antwaine? So he had
14 previously been a security guard, right. He does not have any
15 prior felonies. No priors. No, he's not a Good Samaritan. He
16 didn't just come forward and confess it, ultimately. But what
17 I think is really important that Mr. Matsuda just talked about
18 is we explained to you what a proffer was. So before he's even
19 spoken to, right, it's an agreement between the district
20 attorney and the defendant, saying, "Hey, show me what you got,
21 like you don't have to be fearful of me prosecuting you, but I
22 want to see if there's any truth to what you're telling me.
23 And the only way that I can assure that you're being truthful
24 is to promise you I won't punish you." So this is before any
25 agreement has been made that all of this information comes out.

1 And what I would also point out is what Mr. Matsuda
2 talked about: What is Antwaine's motive to lie? If you recall
3 on direct, Ms. Cannizzaro asked him, "As a result of your
4 testimony and you -- you've also entered into a negotiation
5 with the State, with the State of Nevada." And he says, "Yes."
6 Now, the agreement was he is, one, pleading to robbery. Two,
7 the State retains the right to argue. What that means is
8 whoever will be sentencing on that date can argue for any
9 lawful punishment, including prison time, whatever we deem
10 appropriate. Three, that part of that agreement is that he
11 testify truthfully.

12 You heard in one of the instructions -- and I know
13 that there were so many, it's voluminous, but you're going to
14 have copies of them -- that he has not been sentenced. We have
15 not yet made that argument or determined if he testified
16 truthfully. So what's his motive? His motive is to tell the
17 truth. There's not a motive to lie, to hide this third
18 coconspirator that is his friend, I guess. There is not a
19 motive to lie.

20 What about defendant's motive? Well, I tell you
21 what. We've talked a lot about stories. The defendant would
22 have you believe he is the unluckiest man in the world,
23 essentially. He wants you to believe, one, he had this phone
24 number registered to him, Verizon; two, that he had it the
25 entire month of October up until the Friday, right, the

1 26th before Halloween. During that month, he contacted
2 Antwaine 1,222 times, where there was contact between the two.
3 He would have you believe that when it was either stolen or
4 lost, whoever stole or found that phone then continues to text
5 Antwaine, continues to talk to his girlfriend 34 times back and
6 forth; they were calling each other, not to mention she's the
7 only for-sure one that he unequivocally stated "I lost my
8 phone."

9 He would have you believe that that other person was
10 just contacting his girlfriend, contacting Antwaine, all of
11 these things, and then fortuitously he noticed the day of the
12 robbery, and then he said, "Okay, I'm going to go ahead and I'm
13 going to disconnect it."

14 But what else did the defendant say about the phone?
15 Back to the commonsense argument. "I once thought I lost my
16 phone and I'd already ordered a new one and it turns out it was
17 under my car seat." You don't wait a weekend to report your
18 phone stolen. You certainly don't wait a weekend to report
19 your phone stolen if there's no pass code because you have a
20 psycho girlfriend who wants to get into your phone. So anyone
21 could get into it, could charge things to it, might have access
22 to the Apple store, all of these variety of things. You don't
23 wait a weekend. You don't. Common sense tells us you don't.

24 But what else would the defendant have you believe?
25 This whole silly argument about associate versus friend

1 versus -- I mean, whatever. Call it what you want. He would
2 have you -- how do I spell that, defendant. Why am I
3 struggling? I apologize for my handwriting.

4 All right. What would he have you believe? He would
5 have you believe -- and there were a couple definitions of
6 "associate" or "friend." Whatever. I don't care. Honest
7 answer: Ms. Cannizzaro and myself are friends. We have never
8 once texted each other 1,222 times in a month, and we're legit
9 good friends. Think back to who you've texted that many times,
10 texted or called, any one-month period. Doesn't matter what
11 you call him. Call him the bogeyman; call him your friend;
12 call him your sister; don't care. You're talking to that
13 person.

14 What else would the defendant have you believe?
15 Well, he actually admitted, if you recall -- admit what you
16 can't deny; deny what you can't admit. He stood up here and
17 said, "Yeah, I lied and said I didn't know anyone in that -- in
18 that complex because I was being accused of a robbery I didn't
19 do." You also heard him say he was on parole. He would have
20 you believe that someone that is on parole and innocent would
21 lie if they were accused of a crime. I tell you this right
22 now; he wants to tell the truth and nothing but the truth. He
23 admitted he lied because he was being accused of a crime.

24 Now, let's see here. Oh, I thought this was also
25 interesting too. He indicated, the defendant, that he was not

1 struggling, not financially struggling. He actually made it
2 sound like it's super easy to get a job with four prior felony
3 convictions. And then Mr. Matsuda pointed that out, you know,
4 Antwaine was struggling. Yeah, he admitted it. He was
5 struggling. And when he was asked what he used \$200 for, \$200
6 and now a robbery conviction: Groceries and gas. I don't
7 remember how to spell it, so I'm just going to say it:
8 Groceries and gas. But, no, he's a criminal mastermind that's
9 going to pose the defendant as the fall guy. That makes a ton
10 of sense.

11 Okay. And I apologize. I have to be able to get all
12 of this out, and I'm trying to hurry. Let's see here.

13 What else did we hear about from Antwaine? Well, we
14 heard about this 2:18 phone call, 2:18 a.m. on the day of the
15 robbery. Now, again, if you would believe the defendant's
16 story, that's, again, to this other unknown coconspirator that
17 is part of this criminal mastermind with Antwaine, it lasted
18 for 33 minutes just so he could hear what was going on inside
19 the bar. And you heard from Mr. Basilotta that the location of
20 that call was pinged off a tower that was a half a mile from
21 the pub. Whoever had that phone, which it was the defendant,
22 was talking -- actually, I guess listening to what was going on
23 inside the bar at that point in time.

24 And this brings me to what Mr. Matsuda was talking
25 about in terms of cell phones, right. You can't conclusively

1 say who was on the phone. Totally get it, right. I understand
2 that statement. But I want to point you back to what
3 Ms. Cannizzaro said about direct versus circumstantial
4 evidence. We talked about rain, blah, blah. Did it rain? Did
5 it not rain? Let's say we are outside and it's the morning
6 after, and there is rain everywhere, right, or there's water
7 everywhere, on the grass, on the floor. It -- for all intent
8 and purposes, it looks like it rained. Could, technically, the
9 fire department have come out in the middle of the night and
10 practiced using their hoses? Could they have? Yeah, of
11 course, they could have. Does that make any sense? I mean,
12 maybe if you lived near a practice spot for fire fighters,
13 sure. But, no, that is not a reasonable interpretation. That
14 is not reasonable, that.

15 Okay. When we're talking about the circumstantial
16 evidence that you treat the same as direct evidence, that
17 circumstantial evidence, the evidence of the 1,222 different
18 contacts, the continuing contact, even after when defendant
19 claimed his phone was stolen, between Antwaine and the
20 defendant and the 34 calls, again, with the girlfriend, right.
21 She's somehow, I guess, in on this eight-way criminal
22 mastermind plan. That doesn't make sense.

23 I'm trying to get through everything. Let's see
24 here. But I just want to talk briefly about some of the
25 instructions that Ms. Cannizzaro mentioned. You'll have a copy

1 of all of them. Very briefly, Instruction 7 and 22 are
2 regarding conspiracy and aiding and abetting. Essentially, in
3 the law, it doesn't -- we didn't have to show you which one of
4 the two masked men the defendant was because the law treats
5 them the same. So the actions of one is the actions of all.
6 So don't let that be a worry, if that was potentially a worry
7 in your mind.

8 We already talked about the bad acts, and that's
9 Instruction 21, to tell you how to be able to use that
10 information. Ms. Cannizzaro -- and, actually, I thought it was
11 interesting that Mr. Matsuda also talked about the credibility
12 of witnesses. And he said that's an important instruction, and
13 it is, because, ultimately, that is what you are here to do, to
14 decide who is credible. As much as any of us would want to
15 think that what we are saying is testimony or facts, it's not.
16 It's our interpretation of those facts to kind of help you
17 interpret them.

18 So the credibility of a witness is 100 percent up to
19 you. And I ask you: Who do you trust of these two
20 individuals? And you might not trust either of them. I don't
21 think I'd invite either over for dinner personally. But this
22 individual, Antwaine, never been in trouble, down on his luck.
23 Good people make bad decisions all the time. Taking
24 accountability for it? He's still getting a robbery conviction
25 where we can argue for any lawful punishment. This guy,

1 four-time prior felon. Ultimately, he had committed a crime
2 previously so similar that it literally reminded the detective
3 of it. Okay. He's in contact with Antwaine those amounts of
4 times, the 1,222; that even just in that period of the text
5 messages that were deleted by Antwaine from 3:18 to when the
6 robbery occurred, over 200 times.

7 He's also -- we have all the phone records. This
8 number the defendant would have you believe is stolen is in
9 contact with his girlfriend 34 times, which would have been in
10 the time period he is alleging it was stolen. Does that make
11 any remote sense?

12 And I would also point you, if you want -- I know
13 visual things are helpful. And I don't know if this is
14 helpful, but one of our exhibits, Exhibit 71, is the phone
15 records, and they're divided in yellow and green. So you can
16 literally see the level of contact and when they were
17 contacting each other, Antwaine and the defendant. So that's
18 super helpful, and we would request that you also look at that
19 as well.

20 And back to what Detective Miller said. You know,
21 whether you think that Antwaine -- or the defendant changed his
22 story a lot or didn't change it, he did exactly what that
23 detective thought he would do. One, he distanced himself from
24 Antwaine. "I don't know anyone in that apartment complex." I
25 don't care if you knew him as Skooby-Doo, he said "I do not,"

1 emphatically, "don't know anyone in that apartment complex."
2 So to say that you don't know someone in that apartment complex
3 when you've contacted them that many times, that, I would
4 submit, is a lie.

5 And you have an instruction that says if you find
6 that a witness has lied, you can disregard their entire
7 testimony. So keep that in mind when you're reviewing the
8 instructions and you're also reviewing the evidence. But just
9 like Detective Miller said, he tried to distance himself from
10 Antwaine, he tried to distance himself from the phone, and he
11 tried to provide an alibi, which brings me to another point.

12 If you recall, when the defendant was testifying, he
13 said, "I didn't -- I didn't have a curfew. Like, parole, like,
14 waived that for me because I have a job." Whereas, when I was
15 questioning Detective Miller earlier, he said that that was
16 essentially defendant's alibi. He emphatically said, "I have
17 to be home from 10:00 to 6:00 because I always comply with my
18 parole curfew." The alibi didn't pan out.

19 I think I've maybe covered everything, but if you'd
20 just humor me for one second.

21 But, essentially, ladies and gentlemen, it goes back
22 to what I said at the beginning and what Ms. Cannizzaro just
23 reiterated and what Mr. Matsuda even joined in on, the theme,
24 right. You're here for the story of what happened. I would
25 say the unidentified coconspirator, his story is the story of

1 the luckiest man in the world. Unfortunately, we have not
2 caught him yet. Antwaine, the story of a guy who ultimately
3 comes clean -- don't want him as my neighbor. I know I'm
4 probably not going to go, you know, smoke weed with the guy.
5 We're not going to be weed-smoking buddies. We will most
6 likely not be friends. I'm not saying he's a good guy, but you
7 heard from him. You heard all of it. Where's the motive to
8 lie? There is no motive to lie. Where is the motive to lie
9 here? Huge. Huge.

10 And the story that ultimately was told throughout the
11 entire course of this trial is the story of the evidence. And
12 we are confident that when all of you go back into that jury
13 deliberation room and you're able to review that story, that
14 story that's provided by the evidence, you will come to the
15 only reasonable conclusion, and that is that the defendant is
16 guilty of all eight crimes for which we have alleged. And
17 that, ultimately, that is his story.

18 Thank you.

19 THE COURT: Thank you. I'd ask the clerk now to
20 swear the officers; take charge of the jury.

21 (The clerk swears officers to take charge of the jury.)

22 THE COURT: Thank you.

23 So, ladies and gentlemen, the 12 jurors will
24 accompany my marshal. The remaining three alternates will
25 accompany my judicial executive assistant, and the clerk will

1 be getting the exhibits together, as well as the jury
2 instructions to give to you. Those will be brought to you by
3 the marshal into the jury deliberation room.

4 And you'll also be provided with a computer, laptop
5 computer. If you want to review the videos or the records, any
6 of the evidence that was admitted in the case in digital
7 format, you may do that. And we're going to train the marshal
8 how to instruct you on how to play the video. You'll recall
9 that there was the video that was admitted and it's got the
10 player, so we'll make sure that the marshal can instruct you,
11 if you want look at those, that you'll know how to do that on
12 your own.

13 Please keep in mind, of course, the marshal is not
14 permitted to talk to you about this case in any way. And
15 you've been instructed about that, so please don't ask him
16 anything about it. He would only show you how to operate the
17 machine. That would be it.

18 All right. I will see you when you've completed your
19 deliberations.

20 (Jury recessed to deliberate at 12:07 p.m.)

21 THE COURT: The record will reflect that the jury and
22 the alternates have departed the courtroom.

23 I wanted to make a quick record about a couple typos
24 I found while I was reading the instructions. I corrected
25 those as I read them and then corrected them on the documents

1 themselves, so -- and initialed those.

2 So we're talking about Instruction Number 3, the
3 third page of exhibit -- or Instruction Number 3 on line 26.
4 We had intended to eliminate all of the parenthetical "s" on
5 "defendants." And so I read it as "defendant" and have changed
6 it on this page, as well as the following page of that same
7 instruction, and at -- well, it's somewhere between line 13 and
8 line 14. It's kind of not completely lined up identically on
9 the numbers, but it's, again, the same correction, from
10 "defendants," the plural, to "defendant," and that's how I read
11 it.

12 And, finally, I found just a -- full-on couple of
13 typos on Instruction Number 22 at line 3. It should have said
14 that "each person did every act." That's how I read it. But
15 the actual instruction said "each personal." So I corrected
16 that typo, initialed it, as in at line 11 where it said "with
17 criminal intent aids." It should have said "aids, promotes,
18 encourages," but it just said "aid," singular, so I added the
19 "s." I read it that way, as plural, and initialed it, so the
20 jury will have the corrected instructions as I read them to the
21 jury.

22 And if you'll please now give your telephone numbers
23 to the clerk so she can reach you.

24 (Proceedings recessed at 12:10 p.m., until 2:30 p.m.)

25 (Jury reconvened at 2:30 p.m.)

1 THE COURT: We are back on the record in C-337017,
2 State of Nevada versus Devohn Marks. Mr. Marks is present with
3 his attorney, Mr. Matsuda, deputy district attorneys on behalf
4 of the State.

5 Do both parties stipulate to the presence of our
6 jury?

7 MS. MOORS: Yes, Your Honor.

8 MR. MATSUDA: Yes, Your Honor.

9 THE COURT: Ladies and gentlemen of the jury, has the
10 jury selected a foreperson?

11 JURY FOREPERSON: Yes.

12 THE COURT: And who is that person?

13 JURY FOREPERSON: Me.

14 THE COURT: Okay. And, Mr. Foreperson, has the jury
15 reached a verdict?

16 JURY FOREPERSON: Yes, we have.

17 THE COURT: If you could please hand the verdict form
18 to the marshal. The clerk will now read the verdict.

19 THE CLERK: District Court, Clark County, Nevada.
20 State of Nevada, plaintiff, versus Devohn Marks, defendant.
21 Case Number C-18-337017-2. Department 5. Verdict:

22 We, the jury, in the above-entitled case find the
23 defendant, Devohn Marks, as follows:

24 Count 1, Conspiracy to commit burglary; guilty of
25 conspiracy to commit burglary.

1 Count 2, Burglary while in possession of a deadly
2 weapon; guilty of burglary while in possession of a deadly
3 weapon.

4 Count 3, Conspiracy to commit robbery; guilty of
5 conspiracy to commit robbery.

6 Count 4, Robbery with use of a deadly weapon, victim
7 60 years of age or older; guilty of robbery with the use of a
8 deadly weapon, victim 60 years of age or older.

9 Count 5, Robbery with use of a deadly weapon; guilty
10 of robbery with use of a deadly weapon.

11 Count 6, Robbery with use of a deadly weapon; guilty
12 of robbery with the use of a deadly weapon.

13 Count 7, Battery with use of a deadly weapon, victim
14 60 years of age or older; guilty of battery with use of a
15 deadly weapon, victim 60 years of age or older.

16 Count 8, Battery with use of a deadly weapon; guilty
17 of battery with use of a deadly weapon.

18 Dated this 26th day of July, 2019. Signed,
19 foreperson.

20 Is this your -- ladies and gentlemen of the jury, is
21 this the verdict as read?

22 THE JURY: Yes.

23 THE CLERK: So say you one, so say you all?

24 THE JURY: Yes.

25 THE COURT: Does either side desire to have the jury

1 polled?

2 MR. MATSUDA: No, Your Honor.

3 MS. MOORS: No, Your Honor.

4 THE COURT: Okay. You may be seated, Mr. Matsuda,
5 Mr. Marks.

6 Ladies and gentlemen of the jury, on behalf of
7 Judge Ellsworth and the Eighth Judicial District Court and all
8 of the members of -- these attorneys, we would like to thank
9 you so much for participating in jury service. The right to a
10 jury trial is a right that's provided in the constitution that
11 we can't provide without our citizens like you being willing to
12 come in and serve. So we want to thank you so much for being
13 willing to come in and give us your time, give us your full
14 attention and all the attention that you paid to this matter.
15 We really, really appreciate it, and thank you so much.

16 And I know the question may arise now as to whether
17 or not you can talk to anybody about your jury service. The
18 admonishment is now lifted. You are free to talk to anyone in
19 regard to your jury service. However, you don't have to talk
20 to anyone if you do not wish to talk to anyone. That is
21 strictly up to you whether or not you talk to anyone about your
22 jury service.

23 We're now going to excuse you, and you guys will be
24 sent down to jury services on the third floor where you will be
25 paid for your jury service, and you will be released from jury

1 duty. Sometimes the attorneys like to come down and get your
2 opinions, your impressions on how -- the things you liked, the
3 things you didn't like. It's completely up to you whether or
4 not you want to talk to them. If you want to talk to them, you
5 can talk to them and answer their questions. If you do not,
6 you are free to leave and excused from your service in this
7 case.

8 Thank you very much for your service.

9 (Jury discharged from service at 2:34 p.m.)

10 THE COURT: Okay. May the record reflect we are
11 outside the presence of our jury. This matter needs to be
12 referred to the Division of Parole and Probation. It's set
13 over for sentencing on...

14 THE CLERK: September 16th, 9:00 a.m.

15 MS. MOORS: And, Your Honor, I would at this point
16 request that the defendant be remanded without bail. I think
17 he does have bail at this point, but given the fact that he is
18 violent-and-habitual eligible and given the fact that he has
19 now been found guilty of all eight charges, I would request
20 that he be remanded without bail.

21 THE COURT: Mr. Matsuda?

22 / / /

23 / / /

24 / / /

25 MR. MATSUDA: I'll submit, Your Honor.

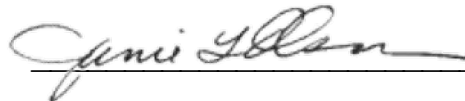
1 THE COURT: Okay. He will be remanded to custody
2 without bail pending sentencing in this case.

3 Thank you very much.

4 (Proceedings concluded 2:35 p.m.)

5 -oOo-

6 ATTEST: I do hereby certify that I have truly and correctly
7 transcribed the audio/video proceedings in the above-entitled
8 case.

9
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11 Janie L. Olsen
12 Transcriber
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<p>BY MR. MATSUDA: [2] 18/5 23/14</p> <p>BY MS. MOORS: [2] 4/17 22/11</p> <p>JURY FOREPERSON: [3] 93/11 93/13 93/16</p> <p>MR. MATSUDA: [16] 18/3 22/6 23/12 23/20 24/9 25/9 25/14 25/21 25/24 26/3 26/10 63/6 63/8 93/8 95/2 96/25</p> <p>MS. CANNIZZARO: [1] 27/13</p> <p>MS. MOORS: [22] 3/9 3/12 3/14 4/5 4/15 17/25 22/9 23/11 23/24 24/4 25/7 25/12 25/17 26/2 26/6 26/9 26/14 26/16 76/12 93/7 95/3 96/15</p> <p>THE CLERK: [4] 4/10 93/19 94/23 96/14</p> <p>THE COURT: [42] 3/4 3/10 3/16 3/19 4/3 4/14 18/2 22/8 23/21 23/25 24/2 24/7 24/10 25/3 25/8 25/10 25/13 25/15 25/18 25/22 25/25 26/4 26/7 26/11 26/15 26/19 27/11 63/4 76/10 90/19 90/22 91/21 93/1 93/9 93/12 93/14 93/17 94/25 95/4 96/10 96/21 97/1</p> <p>THE JURY: [3] 4/2 94/22 94/24</p> <p>THE MARSHAL: [2] 3/13 3/15</p> <p>THE WITNESS: [2] 4/12 24/1</p> <hr/> <p>\$</p> <p>\$1 [1] 31/22</p> <p>\$100 [1] 31/22</p> <p>\$200 [3] 55/25 85/5 85/5</p> <p>\$300 [1] 56/2</p> <hr/> <p>'</p> <p>'Don't [1] 11/9</p> <p>'For [1] 81/4</p> <p>'Maybe [1] 51/6</p> <p>'Well [1] 11/5</p> <hr/> <p>-</p> <p>-oOo [1] 97/5</p> <hr/> <p>.</p> <p>...go [1] 3/4</p> <hr/> <p>0</p> <p>00:01 [1] 60/3</p> <hr/> <p>1</p> <p>1 is [1] 34/11</p> <p>1,000 [1] 15/9</p> <p>1,222 [9] 14/6 46/22 47/1 50/23 61/25 83/2</p>	<p>84/8 86/17 88/4</p> 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<p>2:30 p.m [1] 92/24</p> <p>2:34 p.m [1] 96/9</p> <p>2:35 p.m [1] 97/4</p> <p>2nd [3] 20/20 21/5 21/6</p> <p>2nd that [1] 21/16</p> <hr/> <p>3</p> <p>3092 [4] 7/13 7/15 43/16 46/9</p> <p>323 [4] 7/13 7/14 43/16 46/9</p> <p>33 [1] 85/18</p> <p>337017 [2] 3/21 93/1</p> <p>34 [6] 25/6 25/20 58/15 83/5 86/20 88/9</p> <p>375-1085 [1] 41/24</p> <p>3:18 [1] 88/5</p> <p>3:28 a.m [8] 41/14 41/17 42/1 42/20 43/4 43/15 44/10 48/9</p> <p>3:39 [1] 43/8</p> <p>3:39 a.m [1] 43/8</p> <hr/> <p>4</p> <p>424 [1] 41/24</p> <p>427 [1] 7/14</p> <p>427-3092 [3] 7/13 43/16 46/9</p> <p>489-2610 [1] 58/11</p> <hr/> <p>5</p> <p>5 and [1] 36/19</p> <p>5:09 [1] 44/15</p> <p>5:10 [3] 44/15 44/15 44/15</p> <p>5:11 [1] 44/15</p> <p>5:12 a.m [1] 44/16</p> <p>5:15 a.m [1] 8/17</p> <p>5th [1] 14/12</p> <hr/> <p>6</p> <p>6 are [1] 36/19</p> <p>60 [12] 36/11 36/21 37/12 37/12 37/21 59/5 62/23 63/1 94/7 94/8 94/14 94/15</p> <p>6374 [1] 38/20</p>	<p>6:00 [2] 11/7 51/7</p> <p>6:00 a.m [4] 8/21 42/25 43/2 43/6</p> <p>6:00 because [1] 89/17</p> <p>6th [2] 46/14 51/17</p> <hr/> <p>7</p> <p>7 and [1] 87/1</p> <p>7 is [1] 37/11</p> <p>70 [2] 36/11 36/12</p> <p>702 [2] 6/19 10/8</p> <p>7075 [3] 8/2 53/23 54/6</p> <p>71 [2] 36/12 88/14</p> <p>7:47 that [1] 22/25</p> <hr/> <p>8</p> <p>8 is [1] 37/23</p> <p>845 [1] 59/4</p> <hr/> <p>9</p> <p>951 [1] 58/11</p> <p>9:00 a.m [1] 96/14</p> <p>9:06 A.M [1] 3/1</p> <p>9:07 a.m [1] 3/18</p> <p>9:30 a.m [1] 25/2</p> <p>9:32 a.m [1] 26/17</p> <p>9:46 a.m [1] 26/17</p> <p>9:47 [1] 26/18</p> <hr/> <p>A</p> <p>a.m [30] 3/1 3/18 8/17 8/21 25/2 26/17 26/17 26/18 41/14 41/17 42/1 42/20 42/25 43/2 43/4 43/6 43/8 43/15 44/10 44/16 48/9 53/6 54/1 59/25 59/25 59/25 59/25 60/1 85/14 96/14</p> <p>abetted [1] 33/20</p> <p>abetting [7] 33/11 33/12 33/12 33/18 33/24 34/10 87/2</p> <p>abiding [1] 61/10</p> <p>able [10] 7/3 34/23 35/13 38/25 39/18 40/1 78/6 85/11 87/9 90/13</p> <p>abnormal [1] 46/16</p> <p>about [107]</p> <p>above [3] 80/7 93/22 97/7</p> <p>above-entitled [2] 93/22 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VER

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

JUL 26 2019

BY: Shannon M. Emmons
SHANNON M. EMMONS, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

C-18-337017-2
VER
Verdict
4851943



THE STATE OF NEVADA,
Plaintiff,

-vs-

DEVOHN MARKS,
Defendant.

CASE NO: C-18-337017-2

DEPT NO: V

VERDICT

We, the jury in the above entitled case, find the Defendant DEVOHN MARKS, as follows:

COUNT 1 – CONSPIRACY TO COMMIT BURGLARY

(please check the appropriate box, select only one)

- ☒ Guilty of Conspiracy to Commit Burglary
☐ Not Guilty

COUNT 2 – BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

(please check the appropriate box, select only one)

- ☒ Guilty of Burglary While in Possession of a Deadly Weapon
☐ Guilty of Burglary
☐ Not Guilty

///
///
///

1 **COUNT 3** – CONSPIRACY TO COMMIT ROBBERY

2 *(please check the appropriate box, select only one)*

- 3 ☒ Guilty of Conspiracy to Commit Robbery
4 ☐ Not Guilty

5
6 **COUNT 4** – ROBBERY WITH USE OF A DEADLY WEAPON, VICTIM 60 YEARS OF AGE OR OLDER

7 *(please check the appropriate box, select only one)*

- 8 ☒ Guilty of Robbery with Use of a Deadly Weapon, Victim 60 years of age or older
9 ☐ Guilty of Robbery with Use of a Deadly Weapon
10 ☐ Guilty of Robbery, Victim 60 years of age or older
11 ☐ Guilty of Robbery
12 ☐ Not Guilty

13
14 **COUNT 5** – ROBBERY WITH USE OF A DEADLY WEAPON

15 *(please check the appropriate box, select only one)*

- 16 ☒ Guilty of Robbery with Use of a Deadly Weapon
17 ☐ Guilty of Robbery
18 ☐ Not Guilty

19
20 **COUNT 6** – ROBBERY WITH USE OF A DEADLY WEAPON

21 *(please check the appropriate box, select only one)*

- 22 ☒ Guilty of Robbery with Use of a Deadly Weapon
23 ☐ Guilty of Robbery
24 ☐ Not Guilty

25 ///

26 ///

27 ///

28 ///

1 **COUNT 7** – BATTERY WITH USE OF A DEADLY WEAPON, VICTIM 60 YEARS OF
2 AGE OR OLDER

3 *(please check the appropriate box, select only one)*

- 4 ☒ Guilty of Battery with Use of a Deadly Weapon, Victim 60 years of
5 age or older
6 ☐ Guilty of Battery with a Deadly Weapon
7 ☐ Not Guilty

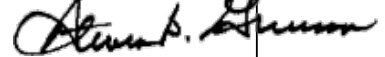
8 **COUNT 8** – BATTERY WITH USE OF A DEADLY WEAPON

9 *(please check the appropriate box, select only one)*

- 10 ☒ Guilty of Battery with Use of a Deadly Weapon
11 ☐ Not Guilty
12
13

14 DATED this 26 day of July, 2019

15 
16
17 FOREPERSON



1 RTRAN

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3
4
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. V
)
)

13
14 BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE
15 WEDNESDAY, DECEMBER 18, 2019

16 **RECORDER'S TRANSCRIPT OF HEARING RE:**
17 **DEFENDANT'S PRO PER MOTIONS AND SENTENCING**

18 APPEARANCES:

19 For the State: LINDSEY MOORS, ESQ.
Deputy District Attorney

20 For the Defendant: Pro Per
21 BEN NADIG, ESQ.
22 Standby Counsel
23
24
25

RECORDED BY: LARA CORCORAN, COURT RECORDER

1 Las Vegas, Nevada; Wednesday, December 18, 2019

2
3 [Proceedings began at 10:57 a.m.]

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

6 MS. MOORS: Good morning, Your Honor, Lindsey Moors for
7 the State.

8 THE COURT: Good morning. So, Mr. Marks this is your pro
9 per motion for judgment of acquittal as well as your motion for a new trial
10 and do you have anything to add to your papers? I've read them.

11 MR. NADIG: Did you read his response to the State as well,
12 Your Honor?

13 THE COURT: Yes.

14 MR. NADIG: Okay.

15 THE DEFENDANT: No, ma'am, at this point there's nothing to
16 add. But there is something I would like to present to Your Honor that I
17 had just received. It was actually part of my discovery. I had just
18 received from Matsuda like last week. It was -- now I understand that
19 this is a hearing for me to argue my motion and I'm prepared to argue.
20 But I just felt the need and the severity to present this to you because I
21 don't know if you got a chance to see this. But I remember I had made
22 multiple -- I raised multiple issues regarding a Marcum notice.

23 And I understand we're past that point, so I'm not going to,
24 you know, go in depth into that issue. But I remember the State had
25 argued that they sealed the notice. And I was arguing that I had never,

1 you know, received any motion or copy of a motion, order, or anything
2 like that. And when I got my documents from Matsuda's office it was
3 actually two copies of a motion that says the State's motion for
4 determination of adequate cause to withhold notice pursuant to NRS
5 172.241 subsection 3. And I noticed that there was no file stamp on it.

6 The case number says A-17-760797-P which would indicate
7 that that case number is from 2017 which is not my case number.
8 There's a co-Defendant, there's a second defendant on this motion
9 named Ruben Green [phonetic] who is not a part of my case. The date
10 of the hearing says that it was January 11th, 2019 and the time of the
11 hearing was 11 a.m. However my grand jury indictment hearing
12 occurred on January 10th of 2019, so the State to have dated this
13 hearing to have been heard the day after the actual Grand Jury
14 occurred, the days aren't adding up.

15 And then it says that this motion was drafted on July 9th 2019
16 and I actually wanted to send it up there to you so you could actually
17 visually see if yourself. Because, I mean, if there was no seal of the
18 notice and if there wasn't an adequate motion filed in regard to the
19 sealing of a notice but the State argued on record that they sealed the
20 notice, I mean, that's extreme prosecutorial misconduct.

21 I mean, I've raised multiple issues that I wasn't served a
22 Marcum notice for this specific reason to have a motion filed to dismiss
23 the indictment based on the lack of notice. And the State's response to
24 that was that they sealed the notice. And nowhere in my case summary
25 in the index is there a hearing regarding the withholding of the notice.

1 But I have it right here where it's actually a motion signed by Giordani
2 with everything that I explained to you and if you would like to take a
3 look at it before we proceed with this hearing and I can argue my motion.

4 THE COURT: Well it doesn't sound like it's your case. Is your
5 name anywhere on it?

6 THE DEFENDANT: My name is on it --

7 MR. NADIG: He's the --

8 THE DEFENDANT: May name is on it.

9 MR. NADIG: He's the A defendant on it.

10 THE CLERK: That A case number is that generic Grand Jury
11 return case number that they --

12 THE DEFENDANT: That's why I wanted you to take a look at
13 it yourself so you can actually see it up close.

14 THE COURT: Okay, wait. Five people can't talk to me at one
15 time. Okay so my clerk is saying that the A case number is the generic -
16 -

17 THE CLERK: Grand Jury --

18 THE COURT: -- Grand Jury --

19 THE CLERK: -- case number that kind of just tracks the whole
20 history of every indictment case from that Grand Jury.

21 MS. MOORS: Right. And Your Honor, I -- this has been an
22 issue and it's already been handled and it's not ripe for even argument
23 today. But just for everyone's edification we proceeded to the Grand
24 Jury. We filed motion to have the Marcum notice served under seal
25 because he was on parole for robbery, we had reason to believe he

1 would flee. This was all done correctly. Mr. Matsuda looked into that.
2 The name be mentioned a Ruben Green, if you recall from the trial there
3 were actually three defendants. We didn't know that third one. We
4 believe that Ruben Green was the third one. Turns out we did not have
5 enough to actually indict him that's why the name was affiliated with it
6 was well as Devohn Marks as well Antwaine Johnson. So and in terms
7 of the date difference that would have been the return date which is
8 actually the day after the Grand Jury presentation.

9 THE COURT: All right. So the indictment is always returned
10 after the jury considers it. Then there's a separate date when the
11 Foreperson comes to return the true bill.

12 THE DEFENDANT: Well I understand that, Your Honor,
13 however it says that the date of the hearing for the courts to make
14 determination if there is adequate cause to withhold the notice is
15 January 11th, 2019. And this motion says that it was drafted on July 9th,
16 2019, which is six months after the Grand Jury hearing took place. So I
17 don't understand how the State applied to the courts through written
18 application the day after the Grand Jury hearing occurred to withhold the
19 notice.

20 Yeah, I mean, I wanted you to take a look at it personally so
21 you could actually see what I highlighted so you could see what I'm
22 speaking on. And I've never received this document up until last week.

23 MS. MOORS: And, Your Honor, I'm looking at a copy of it. It
24 was just dated wrong. If you look at the front of the State's motion for
25 determination of adequate cause to withhold notice, it's dated January

1 11th for where the argument would be happening. And then later on the
2 second date, where it autofills, what I'm thinking is, is when this was
3 printed by Mr. Matsuda if that autofill hadn't been filled out sometimes it
4 will adjust to the date -- today's date. Because that was during trial, I --
5 this was not served by Mr. Giordani on the 9th, because I was on the
6 case on the 9th. Mr. Giordani was not even involved on the case on July
7 9th. So I think that's where the confusion is coming from.

8 THE DEFENDANT: Nah.

9 MR. NADIG: And I can approach and show you, Your Honor,
10 if you --

11 THE COURT: Okay. Thank you.

12 MR. NADIG: It's the third page is where the date for Mr.
13 Giordani --

14 MS. MOORS: And we can obviously double check it by
15 looking when it was filed in Odyssey.

16 THE CLERK: It was filed Jan 9th --

17 MS. MOORS: January 9th.

18 THE CLERK: -- on that case --

19 THE DEFENDANT: It doesn't reflect that in my case
20 summary, Your Honor.

21 THE COURT: All right.

22 THE DEFENDANT: There is no hearing in my case summary
23 regarding withholding of a notice.

24 THE COURT: There was a hearing. You weren't privy to it
25 because it's -- because that's the whole purpose of such a hearing.

1 THE DEFENDANT: Well at any point will I be able to receive
2 the copy of that motion of the official document?

3 THE CLERK: I'm --

4 THE COURT: You already did. This is basically it. Do you
5 want this back?

6 THE DEFENDANT: Well yeah I would like back. There's no
7 file stamp on that, so there's no file stamp on it and the dates are
8 incorrect. So if the State did file something properly with the proper date
9 on it I would like a copy of it please.

10 THE CLERK: Well, Your Honor, that -- these A cases are
11 considered sealed cases, so I'm hesitant to print anything from it. But I
12 can print it for you and show it to you, Your Honor.

13 THE COURT: No, I don't need it. I can see it. I was --

14 THE CLERK: I know they're sealed. I mean, I just handled --

15 THE COURT: It was handled by Judge Bell I believe so --
16 wasn't it? Or another district court judge who have heard the --

17 THE CLERK: Judge Bell heard it. I have the minutes here
18 from it. They're just generic.

19 THE COURT: Okay, so -- all right. Thank you.

20 THE DEFENDANT: All right. Thank you, Your Honor, I'm
21 ready to proceed.

22 THE COURT: Did the -- and you didn't want to add anything
23 else, right?

24 THE DEFENDANT: No, Your Honor, I'm ready to proceed.

25 THE COURT: And did the State wish to either add anything or

1 address anything, because we continued it last time so you could read
2 his lengthy --

3 MS. MOORS: We do, Your Honor. I had a chance to read it.
4 I would stand by my opposition. He just reiterates his original motion
5 and doesn't actually counter the arguments that we presented, so I don't
6 have any oral argument.

7 THE COURT: So many of the arguments that you make, Mr.
8 Marks, are -- or arguments properly made on appeal.

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Which will be I'm sure addressed on appeal.
11 And so you should speak with your appellate counsel about that.

12 MR. NADIG: Your Honor, as a point of clarification. I --

13 THE RECORDER: Mr. Nadig, grab the mic from him.

14 MR. NADIG: As a point of clarification am I being appointed
15 or have I been appointed as the appellate counsel on this matter?

16 THE COURT: No.

17 MR. NADIG: Okay.

18 THE COURT: No, Mr. Matsuda is still on as appellate
19 counsel. He can't -- so if wants to make some motion before the
20 Supreme Court for a change of appellate counsel I suppose he could do
21 that, but I don't -- I think Mr. Matsuda is capable of filing the appeal. He
22 was trial counsel. And I mean, he's familiar with the case and what
23 occurred and so there's not any reason for me to change that. As --

24 MR. NADIG: Your Honor, for the record I may discuss that
25 with Mr. Matsuda and --

1 THE COURT: Okay.

2 MR. NADIG: -- if I do, with your permission, substitute in if he
3 requests that I do so.

4 THE COURT: If he feels that he --

5 MR. NADIG: That's there's such a conflict --

6 THE COURT: -- can't work with Mr. Marks that that has
7 broken down. But the thing was, and Mr. Marks knows this, that the
8 Supreme Court rules do not allow him to represent himself --

9 MR. NADIG: Correct.

10 THE COURT: -- on appeal.

11 MR. NADIG: Yes.

12 THE COURT: He has to have appellate counsel.

13 MR. NADIG: Yes and he is aware of that. We've discussed
14 that. I was under the impression that I had been appointed. But I'll
15 discuss with Mr. Matsuda, because I have a feeling that he's going to
16 want --

17 THE COURT: I don't think we did that.

18 THE CLERK: I thought he was just standby on this, Your
19 Honor.

20 MR. NADIG: Okay, but in any situation I'll speak to Mr.
21 Matsuda. And if so I will put motion on to ask permission from Your
22 Honor.

23 THE COURT: Okay, so -- I suppose until the notice of appeal
24 is filed you could do that.

25 MR. NADIG: Yes.

1 THE COURT: All right.

2 THE DEFENDANT: Your Honor, I would like to make that
3 request here in open court to substitute my appellate counsel. So the
4 Defendant would like to have that done. I just wanted to make the
5 courts aware of that.

6 MS. MOORS: I would just point out that we're not in appeal
7 angst. We haven't been sentenced yet.

8 MR. NADIG: Correct.

9 THE DEFENDANT: Absolutely.

10 THE COURT: Appropriate motion will be filed if that's
11 necessary. All right, so you're -- all of your appellate issues that you've
12 raised in this are not appropriate for this motion. You've also raised
13 ineffective assistance of counsel, which is not appropriate for a motion
14 for judgment of acquittal or new trial. So basically the standard is would
15 a reasonable jury have -- would there have been sufficient evidence for
16 a reasonable jury to convict you under the reasonable doubt standard.
17 And that -- I heard the trial and I believe that there was.

18 So many of the arguments that you raise about that the
19 documents, the text messages were not authenticated, they were -- the
20 documents, the evidence that was received was properly authenticated.
21 You seem to confuse or be confused about the fact that there were no --
22 there's no content to the text messages, but that was clearly addressed
23 during trial. You don't get the content, they don't keep the content. And
24 the purpose of the text messages was merely the contact between the
25 phones.

1 You've also argued well that doesn't prove that you were the
2 person on the other end of that phone. That's what you're -- and your
3 counsel argued that at trial. And so those arguments were made and
4 you argued that again that I should not have allowed the prior bad act.
5 That's an appellate argument to be made on appeal and -- because I've
6 already ruled on that, so the step is to address that on appeal. That can
7 be raised in your direct appeal.

8 So none of those are grounds and there was sufficient
9 evidence. So your motion for judgment on -- of acquittal is denied as is
10 your motion for a new trial. Are you ready to proceed to sentencing?

11 THE DEFENDANT: Nah, can we set it out please?

12 THE COURT: Pardon me?

13 THE DEFENDANT: Can we set out sentencing so I can
14 properly prepare. I was prepared to argue my motion. I thought we was
15 coming her for me to argue my motion, but I mean, I guess I didn't get a
16 chance to argue any of the grounds.

17 THE COURT: Have you had -- you've had the presentence
18 investigation report for some time now.

19 THE DEFENDANT: I have had it. I have had it.

20 THE COURT: We've continued this many times. And it was
21 on the calendar and set for sentencing as well.

22 THE DEFENDANT: It was.

23 THE COURT: So we're going to proceed.

24 THE DEFENDANT: All right, let's do it.

25 THE COURT: All right, so by reason of the jury's verdict of

1 guilty --

2 THE RECORDER: Mr. Nadig, can you please take the mic.
3 I'm sorry, Judge.

4 THE COURT: As to Count 1, conspiracy to commit a burglary,
5 a gross misdemeanor, Count 2, burglary while in possession of a deadly
6 weapon, Count 3, conspiracy to commit robbery, Count 4 robbery with
7 use of a deadly weapon, victim over 60 years of age or older, Count 5
8 and Count 6, robbery with use of a deadly weapon, Count 7, battery with
9 use of a deadly weapon, victim 60 years of age or older, and Count 8,
10 battery with use of a deadly weapon, I hereby adjudge you guilty of
11 those offenses. And State.

12 MS. MOORS: Yes, Your Honor. So I first wanted to make the
13 record that if you recall there was some potential issue with regards to
14 the timeliness of the filing of the notice of intent to seek habitual. At this
15 point in time to avoid any appellate issues, I'm going to strike that notice.
16 I will not be arguing under that. But I wanted to make the Court aware
17 that I was wishing strike that notice.

18 In terms of sentencing, Your Honor, with this many counts I
19 went through and looked at what Parole and Probation recommended.
20 And I have to say that I agree with them. So with regards to Count 1,
21 obviously that was a gross misdemeanor. They recommended 364
22 days. That would be concurrent to Count 2, which -- in which they
23 recommended a 4 to 14. Count 3 they recommended a 2 to 6. All of
24 these are concurrent. Count 4 would have been our first robbery with
25 deadly weapon. They recommend a 4 to 15 as well as a consecutive 4

1 to 15 for the weapon enhancement. So now we're sort of getting to the
2 actual final number. If you add those two together that would be an 8 to
3 30.

4 Then on Count 5 they recommended a 4 to 15 on the robbery
5 count as well as a 4 to 15 on the enhancement, obviously legally,
6 definitionally consecutive. That gets us to another 8 to 30 for that count.
7 With regards to Count 6 they also recommend a 4 to 15 on the
8 underlying charge as well as a, you know, obviously consecutive 4 to 15
9 on the enhancement, which would be another 8 to 15.

10 Then we get to Count 7 where they recommend a 3 to 10 on
11 the underlying charge as well as a 3 to 10 on the enhancement. That
12 was concurrent, so it would sort of be eaten up by the other counts.
13 With regards to Count 8 they recommend also a 3 to 10 concurrent. The
14 next sum of that, Your Honor, in terms of addition would be a 24 to 90
15 and that's what the State would be recommending based on what Your
16 Honor heard throughout the course of this trial obviously the prior --

17 THE COURT: 24 --

18 MS. MOORS: Correct, Your Honor.

19 THE COURT: -- aggregate?

20 MS. MOORS: Yeah, so it's -- because there were three
21 counts with 4 as the bottom but plus each consecutive enhancement, so
22 8 times 3 is 24.

23 MR. NADIG: So 288 months.

24 MS. MOORS: Oh, yes correct. I'm talking about years, Your
25 Honor, I apologize.

1 THE COURT: Okay. Well, all right and so do -- you're not
2 putting the enhancement as part of the aggregate are you? Because
3 you can't do that.

4 MS. MOORS: Okay, so then -- correct.

5 THE COURT: It doesn't --

6 MS. MOORS: Correct, so then what I am requesting, what I
7 am requesting Your Honor, would be a 12 to 45 in terms of years as well
8 as a consecutive 12 to 45 for an aggregate. I was trying to just do the
9 math of a 24 to 90 is where that's coming from.

10 THE COURT: Okay. Well you -- I'm sorry, you may have lost
11 me on the going through it so quickly --

12 MS. MOORS: Sure, --

13 THE COURT: But --

14 MS. MOORS: --and essentially what I'm asking for, Your
15 Honor, and I was just going through what each count that they had
16 recommended.

17 THE COURT: Right.

18 MS. MOORS: But I guess the gist of the argument is all of the
19 counts, like Counts 1, 2, and 3 would run concurrent. Then when we get
20 to Count 4 that's the first one where we ultimately have a 48 to I guess
21 180.

22 THE COURT: Uh-huh.

23 MS. MOORS: And a consecutive 48 to 180 for that count.
24 And then from there the same would be true for Count 5 and Count 6, so
25 it would be a 48 to 180 consecutive to a 48 to 180 for the enhancement.

1 And then getting onto Count 7 or to Count 6, I apologize, would be the
2 same thing, would be a 48 to 180 for the underlying as well as a 48 to
3 180 for the enhancement.

4 MR. NADIG: So it would 144 months to 560 months, is what
5 you're asking for?

6 MS. MOORS: I --

7 MR. NADIG: 12 to 45?

8 MS. MOORS: Correct, with a consecutive 12 to 45. Sorry,
9 when it gets that high my brain struggles with the months.

10 THE COURT: All right. So, Mr. Marks, you're -- you wanted
11 to represent yourself on your sentencing.

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: So I've adjudged you guilty. This is your
14 opportunity to say anything you would like concerning your sentence.

15 MS. MOORS: Do you want me to come back, because I
16 actually have a reason for what --

17 THE COURT: Oh, I'm sorry.

18 MS. MOORS: Oh, it's okay. That was just the numbers which
19 I know is --

20 THE COURT: Good, I was kind of thinking well you're not
21 really telling me why but --

22 MS. MOORS: Yeah, yeah, I know I did the numbers at first,
23 Your Honor. And I apologize. I know I went through them fast. I've just
24 been here so many times in anticipation of this argument I had the
25 numbers there. And I virtually have them memorized, so I apologize.

1 The reason why I agree with Parole and Probation is what I
2 wanted to get into is we're looking at an individual that, as Your Honor
3 heard through the bad acts motion, had committed a very similar type
4 crime. It seems like not close in proximity. The only reason it wasn't
5 close in proximity is because he had been in prison for that crime. And
6 he essentially had graduated from being the casing agent to sort of a
7 primary operator. He was not even out of prison not even a year, he
8 was still on parole and quite frankly that's why this argument has been
9 going on about the Marcum notice is, you know, we didn't want to serve
10 him Marcum when he's on parole for robbery committing another similar
11 type of robbery.

12 And so while I indicated previously, you know, we are striking
13 the notice of intent to seek habitual this is a repetitive type of thing for
14 this individual. He has two prior robbery with deadly weapon
15 convictions. He's now here accused and convicted of three separate
16 robbery with deadly weapon convictions.

17 You know, you heard the testimony. You saw what happened
18 with the pistol whipping of the older patron in terms of the amount of
19 blood that was there, the fact that the ultimate -- the bar tender, she had
20 to switch her shift because she was so terrified. We got to see the video
21 of literally -- I don't know, as a female working late night at a bar, how
22 more terrified you could be. I don't think you could be.

23 And obviously as the State we were super happy that no one
24 got hurt I mean, this was ripe for someone moves wrong, someone get
25 shot, someone gets killed. This was the most terrifying night of all of

1 those individual's lives.

2 And the problem is this is all he knows. This is what he has
3 been doing since he has been -- I guess I don't know his age, but it's
4 been going on for a really long time, Your Honor. And in terms of
5 thinking about the safety of the community and the proper punishment,
6 he has earned this amount of time.

7 We saw through the testimony of his accomplice. We heard
8 how he was approached, how they talked about it, how they'd been
9 planning it for months. We saw the amount of communication to exceed
10 two hundred times in the month of October, two hundred times. This
11 was planned out. This was methodical, meticulous and it had no regard
12 for the safety or the mental wellbeing, the health of anyone within that
13 bar. And they are all super lucky that they didn't get shot.

14 And I don't know -- like I said I don't know a scarier position
15 that I could imagine as a female then that. And that's why we're asking
16 for what I discussed the aggregate in terms of a 48 to 180, consecutive
17 to a 48 to 180 on the several counts for the ultimate total of the 12 years
18 to 45, consecutive to the 12 years to 45 years on the enhancement. For
19 the protection of community and it's commiserate with what the
20 Defendant actually did based on his history and based on ultimately
21 what would be fair and just based out of all of the facts that came out
22 through the course of the trial, Your Honor. So that's why we are asking
23 for that and we are agreeing with the recommendations made by Parole
24 and Probation.

25 THE COURT: All right. So, Mr. Marks.

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: What would you like to say?

3 THE DEFENDANT: First and foremost, Your Honor, as the
4 State addressed to this court on the fifth day of trial when questioned if
5 they offered me any plea agreements I have presumed completely
6 innocent this entire time and I stand here before you today maintaining
7 my complete innocence in this case. I understand that a verdict was
8 returned from a jury. I understand that is the process of the court of law.

9 And first I would like to offer my recommendation of a
10 sentence and then I'll explain, in the same format as the State did, why I
11 feel that the Defendant is -- why this sentence is reasonable for Mr.
12 Marks. So for Count --

13 THE COURT: And that's you. You don't need to refer --

14 THE DEFENDANT: Me, okay.

15 THE COURT: -- to yourself in the third person.

16 THE DEFENDANT: Yes, ma'am. Yes, ma'am. You know,
17 I'm used to doing it in motions so that's how I talk in a court of law. All
18 right, well Count 1, the defense will -- I would like to recommend 364
19 days. Count 2, I would like to recommend 24 to 120 months. For Count
20 3, I would like to recommend 24 to 72 months. Count 4, I would like to
21 recommend 32 to 80 months with a consecutive 32 to 80 months with
22 another consecutive 32 to 80 months for the weapons enhancement and
23 the elderly enhancement. For Count 5, I would like to recommend 36 to
24 120 month with a consecutive 36 to 120 months for the weapons
25 enhancement. For Count 6, I would like to recommend 36 to 120

1 months with a consecutive 36 to 120 months for the weapons
2 enhancement. For Count 7, I would also like to recommend 36 to 120
3 months with a consecutive 36 to 120 months for the weapons
4 enhancement. For Count 8, I would like to represent -- I mean, I would
5 like to recommend 36 to 120 months.

6 And, Your Honor, I'm recommended that all of these counts be
7 ran concurrent for a total of total 6 to 20 years in the Nevada Department
8 of Corrections.

9 And the reason why I'm recommending this sentence, Your
10 Honor, is because well the State argued that I'm -- this is all I know. The
11 only reason why it's been so long of a gap is because I served nearly 8
12 years in prison. Your Honor, first and foremost I committed the crimes in
13 2011. I was found guilty, but I wasn't -- I plead guilty to those crimes in
14 2011. I admitted my role in those crimes when I plead guilty to those
15 crimes and I did my time for that. I paid my dues to society for those
16 crimes, Your Honor.

17 Prior to being arrested for those crimes I actually was in
18 college playing football. I graduated from high school. I went to college.
19 I completed two semesters of college, so I didn't just -- I wasn't just
20 running around. I don't have an extensive juvenile record. I wasn't just
21 running around committing crimes, robbing people, robbing
22 establishments. Like I said, I graduated from high school. I actually
23 attended college immediately after graduating from high school,
24 completed two semesters.

25 Ultimately, you know, I ran into some financial struggles. I ran

1 into some personal, you know, some mental issues as far as my
2 upbringing with my parents, you know, the environment that I grew up in.
3 And I fell into a state where, you know, I was pretty much lost. I was 18.
4 I was young, fresh into adulthood, no real assistance from my parents. I
5 was by myself, so you know, it doesn't justify my actions that I
6 committed in 2011 but that is the truth about what occurred back then.

7 Furthermore, if you read the parole report from when was I
8 released from prison, I actually obtained employment. I maintained
9 employment the entire time I was on parole which was fulltime. I
10 completed 13 groups of substance abuse class. That was 13 weeks. I
11 did -- I don't have a substance abuse problem at all. However, it was a
12 part of my parole stipulation, I mean, a part of my parole -- how would I
13 say it. This is what they wanted me to agree to so I completed it. I did
14 everything that Parole and Probation asked of me to do.

15 Like I said, I was out there living my life. I had a job. I
16 maintained employment. And any time I left a job it was to go to a job
17 that was paying me more money. I didn't quit. I didn't stop working. I
18 did not start committing crimes. I was actually employed -- on the
19 morning when they arrested me I was on my way to work where I was
20 working maintenance technician in apartment complexes through a temp
21 agency, getting paid \$13 an hour, getting ready to get promotion to \$15
22 an hour.

23 My then girlfriend that I was living with works for Amazon
24 through human resources; I didn't have any reason to commit any
25 crimes, Your Honor. I was not in a bad position. I had the support that I

1 did need to maintain, you know, a positive lifestyle and that's what I was
2 doing.

3 As far as the police report as you can see the only time my
4 name comes into this crime is because my phone was in contact with
5 somebody's phone. There was no evidence placing me, the Defendant,
6 at the scene of any crime. There was no evidence proving that I had
7 entered into --

8 THE COURT: Well there was --

9 THE DEFENDANT: -- an agreement.

10 THE COURT: -- the testimony of the person --

11 THE DEFENDANT: There was the testimony of the
12 accomplice.

13 THE COURT: Yes.

14 THE DEFENDANT: But pursuant NRS 175.291 his testimony
15 has to be corroborated by other independent evidence linking me to a
16 crime.

17 THE COURT: And it was through the phone records.

18 THE DEFENDANT: The phone records, Your Honor, showed
19 that I know this person. Without context those phone records can't be --
20 can't even be proven in and of itself to have anything to do with the
21 crime.

22 THE COURT: Well I don't want to argue that again, but I'm
23 just --

24 THE DEFENDANT: Yeah, absolutely.

25 THE COURT: Okay.

1 THE DEFENDANT: Well my issue is, Your Honor, my
2 argument is that the victims never positively identified me. You can say
3 okay because they wore ski masks. I'm maintaining my innocence. I did
4 not wear a ski mask. I did not commit this crime. The victims identified
5 the suspects as being 5'10". I'm 6'3" in height. That's a 5 inch
6 difference. That would exclude me from the accusation that I committed
7 this crime.

8 The accomplice did testify. He testified that he never left
9 apartment complexes with me. He's testified that he's never seen me in
10 position -- in possession of a firearm. And he's testified to multiple
11 different things that pertain to this case that would exclude me from the
12 accusation that I committed this crime. He also admitted that he was
13 only testifying to get himself out of trouble.

14 I'm also asking that the -- I be sentenced to this time because
15 I mean, Mr. Johnson walked out this courtroom on probation and he
16 admitted that he committed this same crime. Now regardless to what
17 the roles of these crimes are, just like they told me in 2011 when I was
18 just the getaway driver and they gave me 4 to 20 years for just driving
19 the car. I'm equally liable to that crime as any other defendant in the
20 crime. So if Johnson gets probation and he admits that he participated
21 in this crime without him opening that door these suspects don't walk
22 into this bar. He's just as equally liable for this crime as I am at this point
23 in these proceedings. So for him to get probation I feel like it's only
24 reasonable that Mr. -- that I receive the time that I'm recommending
25 which adds up to 6 to 20 years.

1 I'm 28 years old. In 6 years I'll be 33. I don't have any kids.
2 For me personally I want to start a family. I've been doing everything
3 that I need to do to better myself. And although like I said I'm
4 maintaining my innocence this has been a severe and profound learning
5 experience for me. And, you know, I'm going to continue to fight and I'm
6 going to continue to grow as a person and build by character.

7 So I mean, at this point there's really not much more for me to
8 say. I've recommended my sentence structure. I've explained that I'm
9 not a menace. This is not what I do. There are other things that I have
10 done in my life. I made a mistake when I was 19 years old. I did the
11 time for it. I came home. I complied with my parole. I did everything
12 they asked me to do. I maintained employment. So it's never issue
13 whether or not I'm willing to work or not, because I worked the entire 10
14 months I was released from jail, fulltime, the entire time. So that's not at
15 issue.

16 THE COURT: Let me ask you about something that's in PSI --

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: -- on page 6. It's talking about when you were
19 in prison for your other case. It says that while you were incarcerated
20 that you received several major disciplinary referrals for gang activities,
21 assault, and use of intoxicants.

22 THE DEFENDANT: Yes, ma'am. When I was in prison, Your
23 Honor, I was involved in racial riot and I was found guilty of that racial
24 riot. I was involved in a number of fist fights with individuals. As you can
25 imagine I'm in prison. I'm young. I'm still learning myself. I'm still

1 learning life. I did get into some things when I was in prison. I'm not
2 proud of it. I'm not trying to justify it. But I learned from those mistakes
3 and I learned from those decisions. And I was punished for those
4 decisions while I was in prison.

5 The only reason why I said that I have the gang activity and
6 the assaults and the batteries is because of mainly that race riot that I
7 didn't start it was a whole unit disturbance with multiple people involved.
8 I got caught up in the middle of it. I did what I did protecting myself and
9 made the decision that I made for whatever reason I made it for at that
10 time. As I stated just previously I learned from that mistake.

11 As far as use of intoxicants I consumed spice one time my
12 entire incarceration and I actually passed out and I had to be taken to a
13 hospital. This was after I had received a 2 year dump, so you know, I
14 was a little depressed. I thought I was going home to see my grandma
15 to my family. I didn't. So yes I did indulge in, you know, consuming
16 some Spice. And I had a bad episode with that. And that was only time.
17 The whole time I never been caught with any use of intoxicants. I did do
18 a number of months in the hole as anybody else would that's
19 incarcerated for nearly 8 years in Nevada Department of Corrections.
20 Like I said, I went from 19 to 26, so yeah I did make decisions and I'm
21 not justifying it, but that explains what you read on page 6.

22 THE COURT: Thank you. All right, anything else?

23 THE DEFENDANT: No, ma'am, that's pretty much it.

24 THE COURT: Okay, so I guess sometimes we lose sight
25 when talking about putting some in prison in years. You know, we only

1 have -- it's like death is optional. It's not. We only have a set amount on
2 this planet. And men, you know, their life expectancy these days is
3 around 83 if they're lucky, you know. And so when you're talking about
4 putting somebody in prison for 45 years that's already 27 --

5 THE DEFENDANT: 28.

6 THE COURT: -- 28 years old, that's a long time. And so the
7 purpose of putting someone in prison obviously is to protect the
8 community, to act as a deterrent, and to hopefully rehabilitate someone.

9 Now when Mr. Marks was in prison before he happened to
10 spend the time that he was in prison during the time when his brain was
11 developing. Which isn't necessarily a good thing, you know. I mean,
12 because men's brains aren't fully formed until they're 26. So all that time
13 that his brain is forming and he's trying to learn how to and his brain is
14 evolving so it can make those executive functioning decisions to make
15 good decisions, he's in a situation probably that doesn't encourage
16 necessarily good decision making.

17 For all the -- and that's not to fault the prison system
18 necessarily or those who try and make it better. It's just not a good
19 situation. He's in with regular population for most of the time when he
20 wasn't segregated and so you tend to learn bad things and -- which may
21 lead to further bad decision making. So now the choice is okay what
22 would be an appropriate sentence to protect the community and realize
23 those goals that I've talked about. And so that's what I'm trying to do.

24 And I've tried to in considering the enhancement provision
25 when I consider enhancement provision I'm supposed to consider

1 several things, you know, the nature of the crime. Which I admit the
2 nature of the crime of course is very serious. I mean, it wasn't -- it was
3 not only an armed robbery that frightened everybody except the one lady
4 who seemed to be focusing on her poker --

5 MS. MOORS: Right.

6 THE COURT: -- more than anything else. But, you know,
7 there was pistol whipping going on and I mean, it was a very horrendous
8 scene. So obviously a very serious crime, masked gunmen, you know,
9 weapons, fear, physical violence, all of that. And of course the fact that
10 it's a conspiracy makes it more important. That's why we can punish
11 conspiracy separately. So I consider that.

12 I also consider that the age of the Defendant, his prior criminal
13 record. He, you know, has four prior felony convictions, although
14 essentially those were -- he served all time for those at same time. And
15 so I take that into consideration, that although he has four prior felony
16 convictions he went to prison one time for those.

17 I consider his background as well, that he, you know, was --
18 his childhood was less than what we'd all hope for. He's bounced
19 between the homes of his mother, his father, his grandmother, moved
20 around so that he was never at the same school for more than a year
21 and want's able to settle down make those connections that we always
22 going to be positive connections for kids as opposed to negative ones.
23 His -- he was beaten as a child and that he -- it's really frankly he's to be
24 commended that he -- under all of those situations that he completed
25 high school and graduated and that then he was able to attend a

1 community college. It's too bad that he didn't stay that course and try
2 and get a further -- you know, further education which would have
3 certainly assisted him. And instead found himself in prison because of
4 these other crimes, which is disturbing obviously that they're similar in
5 nature to the current crime.

6 So all these things I do take into account. Also I just want to
7 note for the record that it's not clear to me whether or not P&P thinks
8 that there is a dual enhancement when you have a use of deadly
9 weapon and a victim over 60. But obviously --

10 MS. MOORS: Correct.

11 THE COURT: -- we cannot have a dual enhancement.

12 MS. MOORS: Correct.

13 THE COURT: The law only provides for one but they're
14 recommending enhancements for both of those. So I don't know
15 whether that -- that's what it seems like they're doing and I recognize
16 that that's --

17 MS. MOORS: Of course.

18 THE COURT: -- not proper.

19 MS. MOORS: And I would not ask for that.

20 THE COURT: Okay. So as to Count 1, conspiracy to commit
21 burglary you're hereby sentenced to 364 days in the Clark County
22 Detention Center. Before I -- I'm going to circle back. I have to impose
23 the \$25 Administrative Assessment Fee and the \$3 DNA Collection Fee,
24 the DNA Analysis Fee is waived; that was previously taken. It kind of --
25 that seems so inconsequential to the rest of the sentencing that I

1 overlooked it.

2 So as I say, Count 1, 364 days in the Clark County Detention
3 Center. Count 2, burglary while in possession of a deadly weapon.
4 You're hereby sentenced to a minimum term of 48 months, a maximum
5 term of 120 months. Okay. As to count --

6 THE CLERK: How will that run, Your Honor?

7 THE COURT: That runs concurrently with his 364 days in
8 CCDC. As to Count 3, the conspiracy to commit robbery, that's a
9 minimum term of 24 months, a maximum term of 72 months. That runs
10 concurrently with Count 2.

11 Count 3 -- excuse me, Count 4, robbery with use of a deadly
12 weapon, victim 60 years of age or older. That is a minimum term of 48
13 months, a maximum term of 120 months. That runs consecutively with
14 Count 3. There's an enhancement of -- the enhancement penalty is 24
15 to 60 months. The enhancements required by law to run consecutively
16 to the underlying sentence of 48 to 120.

17 MS. MOORS: And, Your Honor, does it -- this is just a point of
18 clarification, do we need to state on the record which enhancement you
19 are --

20 THE CLERK: I was going to ask that as well --

21 MS. MOORS: -- are doing it under?

22 THE COURT: Yes, I'm going -- it doesn't really matter to me.
23 It's -- he was found guilty of both. I can only impose one and so it's for
24 the victim over 60. It's for both actually. I'm only allowed to enhanced it
25 once but --

1 MS. MOORS: But it's for --
2 THE COURT: -- the jury found both.
3 MS. MOORS: Okay.
4 THE COURT: And so it's one enhancement is all that's
5 allowed.
6 MS. MOORS: Okay.
7 THE COURT: So it doesn't really -- I don't think I need to
8 choose.
9 MS. MOORS: I just didn't know, Your Honor.
10 THE COURT: I don't think I do.
11 Count 5 -- so Count 4 runs consecutively to Count 3. Did I say
12 that already?
13 MS. MOORS: You did, Your Honor,
14 THE DEFENDANT: You did, Your Honor.
15 THE COURT: Count 5, is a minimum term of 48 month, a
16 maximum term of 120 months. And the enhancement is likewise 24 to
17 60.
18 THE CLERK: And the count runs?
19 THE COURT: The count runs consecutively to Count 4.
20 THE CLERK: And it's a consecutive enhancement pursuant
21 to statute?
22 THE COURT: Exactly.
23 THE COURT: And Count 6 is robbery with use of a deadly
24 weapon. That's a minimum of 48 months, a maximum of 120 months.
25 And the enhancement, which is required to be consecutive to the

1 underlying sentence, is 24 to 60. That runs consecutively --

2 THE CLERK: The count --

3 THE COURT: Count 6 runs consecutively to Count 5.

4 THE CLERK: Thank you.

5 THE COURT: Count 7, battery with use of a deadly weapon,
6 victim 60 years of age or older is a minimum term of 36 months, a
7 maximum term of 120 months. There's an enhancement of 24 to 60
8 because the victim is over 60. That runs concurrently with Count 6.

9 Count 8 is battery with use of a deadly weapon. That's a
10 minimum of 36, a maximum of 120 and that runs concurrently with Count
11 7. So I believe, if I was keeping track correctly, that's -- essentially four
12 consecutive sentences of 48 to 120, but I have to pronounce the
13 aggregate. Is that --

14 THE CLERK: I'm looking, Your Honor. So 4 was a
15 consecutive with 3, 5 was consecutive with 4, 6 was consecutive with 5,
16 and you did not say on 7.

17 THE COURT: 7 is concurrent with 6. I thought I did say it but
18 I didn't

19 THE CLERK: You did on the enhancement. And then the --
20 that's the --

21 THE COURT: Do that's right,4?

22 THE CLERK: That's the -- I only got 4, 5, 6.

23 MS. MOORS: So I guess the net sum would be 4, 5, and 6
24 added up together.

25 THE CLERK: That's all I got were consecutive, Your Honor.

1 THE COURT: Okay, so 190 -- the aggregate is a 192 -- just
2 doing my math one more time -- to 480 month.
3 THE CLERK: 190 to 480.
4 THE COURT: 192.
5 THE CLERK: Oh, I'm sorry.
6 THE COURT: to 480.
7 THE CLERK: I wasn't sure if you were saying too as in also.
8 Thank you.
9 THE COURT: And what's his credit now?
10 MS. MOORS: Court's indulgence. His credit is 179.
11 THE COURT: Do you think that's correct, Mr. Marks, 179
12 days? It seems like you've been in --
13 MR. NADIG: He's been in since January 14th.
14 THE DEFENDANT: January 14.
15 THE COURT: Yeah. That can't be right -
16 MS. MOORS: Your Honor, it is correct. Because if you look
17 at the PSI --
18 THE COURT: He was on -- was he on parole?
19 MS. MOORS: Correct.
20 THE DEFENDANT: My parole actually --
21 THE RECORDER: If you're going to speak you gotta hold that
22 up.
23 THE COURT: But his -- let me see because we've got the
24 date I think --
25 MS. MOORS: Yes, Your Honor, so if you look --

1 THE COURT: -- when his parole --

2 MS. MOORS: -- with regards to he was given 85 credit -- 85
3 days as of the date of the preparation of the PSI, which I believe was in
4 September or August 29th. And then I literally just added the days from
5 then until now. So I -- it is 179.

6 THE COURT: But he gets from the time he expired his parole.
7 That's what we need to figure out.

8 MS. MOORS: Right and so what that -- that's what they are
9 talking about in the credit, Your Honor. So the 114 to the 201 he was
10 just in custody on this case. Then he was taken -- that's why there's a
11 break because he was not out of custody. That was for his parole hold
12 indicating that he was released on 7/13. That's when he started then
13 accruing credit again on this case. That's why the number is 85 in the
14 PSI and then I've added the dates from how long we've continued it.

15 THE COURT: Okay so the -- he expired his parole you're
16 saying on --

17 MS. MOORS: It would have been the 13th or the 12th of July.

18 THE COURT: Of July. Okay. Is that right? You expired your
19 parole.

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Because when you're on parole you don't get
22 you don't get the credit. So as soon as you expire the parole then you
23 get to accrue credit.

24 THE CLERK: So July 12th through today is a 160 days.

25 MS. MOORS: Well it's July 13th actually.

1 THE CLERK: Okay, sorry, you said -- I was giving the 2th
2 because you said either or -- 159.

3 MS. MOORS: So that's 159 plus his original 19. So I actually
4 gave him an extra day.

5 THE COURT: And oh, restitution, let's see here. What do we
6 have for restitution recommendation? Let's see the restitution, so
7 there's an order in judgment of restitution to Torrey Pines Pub, let's see,
8 in the amount of \$250 because that was the deductible.

9 MS. MOORS: \$250, Your Honor?

10 THE COURT: Right, so the insurance paid all but the \$250
11 deductible. And so that's what I'm imposing for the -- it's the dugout --
12 it's Torrey Pines Pub doing business as the Dugout Lounge. Or not it's
13 just the reverse of that. It's the Dugout Lounge Inc. doing business as
14 Torrey Pines Pub. And that's \$250. And that's the only restitution I
15 believe.

16 MS. MOORS: Yes Your Honor, if I --

17 THE COURT: Everybody else did not respond.

18 MS. MOORS: -- if I can just inquire.

19 THE CLERK: Joint and several?

20 THE COURT: It's joint and several with the co-Defendant
21 Antwaine Johnson. Yes.

22 MS. MOORS: And, Your Honor, with regards to the overall
23 aggregate, am I correct in that it's a -- essentially the total is a 144 to
24 360 with a consecutive 72 to 180?

25 THE COURT: No, it's --

1 THE CLERK: You said 1 --
2 THE COURT: --192 to 480 --
3 THE DEFENDANT: 80.
4 THE COURT: -- months. The -- when you do the aggregate
5 you're not supposed to include in the aggregate those enhancement
6 penalties.
7 MS. MOORS: Right, no I understand that.
8 THE COURT: Yeah.
9 MS. MOORS: I guess I'm -- then I -- I thought that there were
10 3 counts that were consecutive to each other.
11 MR. NADIG: There were four.
12 THE COURT: Four.
13 MS. MOORS: There were four, okay.
14 MR. NADIG: It's a 16 to 40 with a consecutive 8 to 20.
15 MS. MOORS: Okay. I got it. I'm like --
16 MR. NADIG: I'm telling Lindsey. I didn't want that on the
17 record. I was just telling Lindsey.
18 MS. MOORS: Okay, so then I --
19 MR. NADIG: I turned it off.
20 MS. MOORS: I guess I must have missed -- was Count 3
21 consecutive to Count 4 or concurrent?
22 THE COURT: Go back and see where --
23 THE CLERK: No, 3 was concurrent to 2, 4 was consecutive to
24 3.
25 THE COURT: Right, the conspiracy was concurrent.

1 MS. MOORS: So 4 was consecutive, 5 was consecutive, 6
2 was consecutive and then where's the other consecutive?
3 THE CLERK: I think that's where I had 3 as well.
4 THE COURT: All right.
5 THE CLERK: Because I think 7 might be --
6 THE COURT: Well all right, so -- the first count is -- oh Count
7 2. Maybe I wrote that wrong. That's why I was asking everybody to
8 keep track.
9 MS. MOORS: I --
10 THE COURT: It's all right. It's all right. Okay, so Count 3 is
11 the first one -- no Count 3 is concurrent. Count 4, okay that's
12 consecutive to Count 3, okay. But 48 to 120 is the first count, right,
13 that's the largest before -- because Count 3 has less time and it's
14 running concurrent with Count 2, right.
15 MS. MOORS: Okay, so then it --
16 THE COURT: So that's the first count of 48 to 120. Then
17 Count 4 --
18 MS. MOORS: But that Count 4 is consecutive to Count 3.
19 THE COURT: -- is consecutive. Okay, so that's -- then Count
20 4 is consecutive, Count 5 is consecutive and Count 6 is consecutive.
21 That means there's --
22 MS. MOORS: So we would essentially be adding 3, 4, 5, and
23 6.
24 THE COURT: There's four counts each of -- that run
25 consecutive to each other.

1 MS. MOORS: And those counts are 3, 4, 5, and 6.
2 THE COURT: Yes. But because Count 3 is less time than
3 Count 2, everything --
4 MS. MOORS: Oh, I see. I see.
5 THE COURT: Okay.
6 MS. MOORS: I do see. Sorry about that.
7 THE COURT: That's all right. It's usually Mr. Giordani that
8 confuses me on these.
9 MS. MOORS: Yeah, it's -- the number --
10 MR. NADIG: He has a gift, Your Honor.
11 THE COURT: He does.
12 MS. MOORS: So I think I understand. I just -- we essentially
13 have four counts of 48 on the base for the base of 192.
14 THE COURT: Yes.
15 MS. MOORS: And then they all were -- they were similar in
16 that they all ended in 120 and then with regards to the enhancement
17 there was obviously no enhancement on Count 2, but then all of the
18 enhancements were 24 to 60 on the three other counts.
19 THE COURT: Yes.
20 MS. MOORS: Okay, then I do understand. I apologize, Your
21 Honor.
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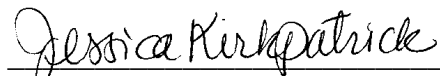
THE COURT: All right. Thank you.

MS. MOORS: Thank you.

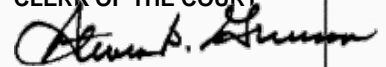
[Proceeding concluded at 11:51 a.m.]

* * * * *

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.



Jessica Kirkpatrick
Court Recorder/Transcriber



1 JOCF

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5 THE STATE OF NEVADA,

6 *Plaintiff,*

7 -VS-

CASE NO: C-18-337017-2

8 DEVOHN MARKS
9 #2798254

DEPT NO: V

10 *Defendant.*

11 JUDGMENT OF CONVICTION AND RESTITUTION
12 (JURY TRIAL)

13 The defendant previously entered a plea of not guilty to the crimes of COUNT 1-
14 CONSPIRACY TO COMMIT BURGLARY (a Gross Misdemeanor) in violation of NRS
15 205.060, 199.480; COUNT 2 - BURGLARY WHILE IN POSSESSION OF A DEADLY
16 WEAPON (a Category B Felony) in violation of NRS 205.060; COUNT 3 -
17 CONSPIRACY TO COMMIT ROBBERY (a Category B Felony) in violation of NRS
18 200.380, 199.480; COUNT 4 - ROBBERY WITH USE OF A DEADLY WEAPON,
19 VICTIM 60 YEARS OF AGE OR OLDER (a Category B Felony) in violation of NRS
20 200.380, 193.165, 193.167; COUNTS 5 and 6- ROBBERY WITH USE OF A DEADLY
21 WEAPON (a Category B Felony) in violation of NRS 200.380, 193.165; COUNT 7 -
22 BATTERY WITH USE OF A DEADLY WEAPON, VICTIM 60 YEARS OF AGE OR
23 OLDER (a Category B Felony) in violation of NRS 200.481, 193.167; COUNT 8 -
24 BATTERY WITH USE OF A DEADLY WEAPON (a Category B Felony) in violation of
25 NRS 200.481; and the matter having been tried before a jury and the defendant having been
26 found guilty of the crimes of COUNT 1- CONSPIRACY TO COMMIT BURGLARY (a
27 Gross Misdemeanor) in violation of NRS 205.060, 199.480; COUNT 2 - BURGLARY

28 //

Jury Trial
<input type="checkbox"/> Dismissed (during trial)
<input type="checkbox"/> Acquittal
<input type="checkbox"/> Guilty Plea with Sent. (during trial)
<input checked="" type="checkbox"/> Conviction

T:\PRISON JOC\SIC-18-337017-2 (DEVOHN MARKS) JOCF.DOC

1 WHILE IN POSSESSION OF A DEADLY WEAPON (a Category B Felony) in violation of
2 NRS 205.060; COUNT 3 – CONSPIRACY TO COMMIT ROBBERY (a Category B
3 Felony) in violation of NRS 200.380, 199.480; COUNT 4 - ROBBERY WITH USE OF A
4 DEADLY WEAPON, VICTIM 60 YEARS OF AGE OR OLDER (a Category B Felony) in
5 violation of NRS 200.380, 193.165, 193.167; COUNTS 5 and 6 - ROBBERY WITH USE
6 OF A DEADLY WEAPON (a Category B Felony) in violation of NRS 200.380, 193.165;
7 COUNT 7 - BATTERY WITH USE OF A DEADLY WEAPON, VICTIM 60 YEARS OF
8 AGE OR OLDER (a Category B Felony) in violation of NRS 200.481, 193.167; COUNT 8 –
9 BATTERY WITH USE OF A DEADLY WEAPON (a Category B Felony) in violation of
10 NRS 200.481. Thereafter, on the 18th day of December, 2019, the defendant was present in
11 court for sentencing without counsel, IN PROPER PERSON, and good cause appearing,

12 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in
13 addition to the \$25.00 Administrative Assessment Fee, the \$3.00 DNA Collection Fee,¹ and
14 an Order and Judgment of Restitution in the amount of \$250.00 payable to and in favor of
15 the Dugout Lounge Inc. dba Torrey Pines Pub payable jointly and severally with the co-
16 defendant, the defendant is sentenced to the Nevada Department of Corrections as follows:
17 **COUNT 1** – THREE HUNDRED SIXTY FOUR (364) DAYS in the Clark County
18 Detention Center (CCDC); **COUNT 2** - a MAXIMUM of ONE HUNDRED TWENTY
19 (120) MONTHS and a MINIMUM of FORTY EIGHT (48) MONTHS, CONCURRENT
20 with COUNT 1; **COUNT 3** – a MAXIMUM of SEVENTY TWO (72) MONTHS and a
21 MINIMUM of TWENTY FOUR (24) MONTHS, CONCURRENT with COUNT 2;
22 **COUNT 4** – a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS and a
23 MINIMUM of FORTY EIGHT (48) MONTHS plus a CONSECUTIVE term of a
24 MAXIMUM of SIXTY (60) MONTHS and a MINIMUM of TWENTY FOUR (24)
25 MONTHS for both enhancements, CONSECUTIVE to COUNT 3; **COUNT 5** - a

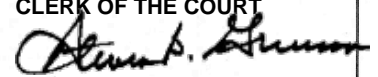
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27 _____
28 ¹ The \$150.00 DNA Analysis Fee is WAIVED.

1 MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS and a MINIMUM of FORTY
2 EIGHT (48) MONTHS plus a CONSECUTIVE term of a MAXIMUM of SIXTY (60)
3 MONTHS and a MINIMUM of TWENTY FOUR (24) MONTHS for the deadly weapon
4 enhancement, CONSECUTIVE to COUNT 4; **COUNT 6** - a MAXIMUM of ONE
5 HUNDRED TWENTY (120) MONTHS and a MINIMUM of FORTY EIGHT (48)
6 MONTHS plus a CONSECUTIVE term of a MAXIMUM of SIXTY (60) MONTHS and a
7 MINIMUM of TWENTY FOUR (24) MONTHS for the deadly weapon enhancement,
8 CONSECUTIVE to COUNT 5; **COUNT 7** - a MAXIMUM of ONE HUNDRED TWENTY
9 (120) MONTHS and a MINIMUM of THIRTY SIX (36) MONTHS plus a CONSECUTIVE
10 term of a MAXIMUM of SIXTY (60) MONTHS and a MINIMUM of TWENTY FOUR
11 (24) MONTHS for the victim 60 years of age or older enhancement, CONCURRENT with
12 COUNT 6; and **COUNT 8** - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS
13 and a MINIMUM of THIRTY SIX (36) MONTHS, CONCURRENT with COUNT 7; with
14 ONE HUNDRED SEVENTY NINE (179) DAYS credit for time served. The
15 AGGREGATE TOTAL sentence is a MAXIMUM of FOUR HUNDRED EIGHTY (480)
16 MONTHS and a MINIMUM of ONE HUNDRED NINETY TWO (192) MONTHS.

17 DATED this 20 day of December, 2019.

18
19 FOR 
CAROLYN ELLSWORTH
DISTRICT JUDGE 



1 **NOASC**
2 JESS Y. MATSUDA, ESQ.
3 Nevada Bar No. 10929
4 **MATSUDA & ASSOCIATES, LTD.**
5 228 South 4th Street, Suite 300
6 Las Vegas, NV 89101
7 Tel. (702) 383-0506
8 Fax. (702) 825-2688
9 jess@jesslaw.com
10 Attorney for Devohn Marks

6 **IN THE EIGHTH JUDICIAL DISTRICT COURT**
7 **CLARK COUNTY, NEVADA**

8 THE STATE OF NEVADA,

9 Plaintiff,

Case No.
Dep't No.

C-18-337017-2
V

10 *vs.*

11 DEVOHN MARKS, #2798254,

12 Defendant.

NOTICE OF APPEAL

14 Notice is hereby given that Devhon Marks, defendant in the above-entitled action,
15 appeals to the Supreme Court of Nevada from the Judgment of Conviction filed December
16 23, 2019.

18 DATED this 17th day of January, 2020.

19 /s/ Jess Matsuda

20 JESS Y. MATSUDA, ESQ.
21 Nevada Bar No. 10929
22 **MATSUDA & ASSOCIATES, LTD.**
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28 Attorney for Devohn Marks

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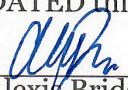
CERTIFICATE OF SERVICE

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 January 17, 2020, I served the foregoing document on:

Steven B. Wolfson, Esq.
Steven S. Owens, Esq.
Clark County District Attorney's Office

200 Lewis Avenue
Las Vegas, NV 89155
Via e-mail: motions@clarkcountyda.com

DATED this 17 of January, 2020.



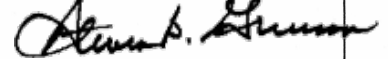
Alexis Bridges
An Employee of Matsuda & Associates, Ltd.

AFFIRMATION

Pursuant to NRS 239B.030, this document contains no social security numbers.

/s/ Jess Matsuda
Jess Y. Matsuda, Esq.

01-17-20
Date



1 JOCP

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5 THE STATE OF NEVADA,

6 *Plaintiff,*

7 -vs-

8 DEVOHN MARKS
9 #2798254

10 *Defendant.*

CASE NO: C-18-337017-2

DEPT NO: V

11
12 **AMENDED JUDGMENT OF CONVICTION AND RESTITUTION- *nunc pro tunc***
13 (JURY TRIAL)

14 The defendant previously entered a plea of not guilty to the crimes of COUNT 1-
15 CONSPIRACY TO COMMIT BURGLARY (a Gross Misdemeanor) in violation of NRS
16 205.060, 199.480; COUNT 2 - BURGLARY WHILE IN POSSESSION OF A DEADLY
17 WEAPON (a Category B Felony) in violation of NRS 205.060; COUNT 3 -
18 CONSPIRACY TO COMMIT ROBBERY (a Category B Felony) in violation of NRS
19 200.380, 199.480; COUNT 4 - ROBBERY WITH USE OF A DEADLY WEAPON,
20 VICTIM 60 YEARS OF AGE OR OLDER (a Category B Felony) in violation of NRS
21 200.380, 193.165, 193.167; COUNTS 5 and 6- ROBBERY WITH USE OF A DEADLY
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25 BATTERY WITH USE OF A DEADLY WEAPON (a Category B Felony) in violation of
26 NRS 200.481; and the matter having been tried before a jury and the defendant having been
27 found guilty of the crimes of COUNT 1- CONSPIRACY TO COMMIT BURGLARY (a
28 Gross Misdemeanor) in violation of NRS 205.060, 199.480; COUNT 2 - BURGLARY

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T:\PRISON JOCS\C-18-337017-2 (DEVOHN MARKS) AJOC.P.DOC

1 WHILE IN POSSESSION OF A DEADLY WEAPON (a Category B Felony) in violation of
2 NRS 205.060; COUNT 3 – CONSPIRACY TO COMMIT ROBBERY (a Category B
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5 violation of NRS 200.380, 193.165, 193.167; COUNTS 5 and 6 - ROBBERY WITH USE
6 OF A DEADLY WEAPON (a Category B Felony) in violation of NRS 200.380, 193.165;
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8 AGE OR OLDER (a Category B Felony) in violation of NRS 200.481, 193.167; COUNT 8 –
9 BATTERY WITH USE OF A DEADLY WEAPON (a Category B Felony) in violation of
10 NRS 200.481. Thereafter, on the 18th day of December, 2019, the defendant was present in
11 court for sentencing without counsel, IN PROPER PERSON, and good cause appearing,

12 THE DEFENDANT WAS ADJUDGED guilty of said offenses and, in addition to the
13 \$25.00 Administrative Assessment Fee, the \$3.00 DNA Collection Fee,¹ and an Order and
14 Judgment of Restitution in the amount of \$250.00 payable to and in favor of the Dugout
15 Lounge Inc. dba Torrey Pines Pub payable jointly and severally with the co-defendant, the
16 defendant was sentenced to the Nevada Department of Corrections as follows: **COUNT 1 –**
17 **THREE HUNDRED SIXTY FOUR (364) DAYS** in the Clark County Detention Center
18 **(CCDC); COUNT 2 - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS** and a
19 **MINIMUM of FORTY EIGHT (48) MONTHS, CONCURRENT with COUNT 1; COUNT**
20 **3 – a MAXIMUM of SEVENTY TWO (72) MONTHS** and a **MINIMUM of TWENTY**
21 **FOUR (24) MONTHS, CONCURRENT with COUNT 2; COUNT 4 – a MAXIMUM of**
22 **ONE HUNDRED TWENTY (120) MONTHS** and a **MINIMUM of FORTY EIGHT (48)**
23 **MONTHS plus a CONSECUTIVE term of a MAXIMUM of SIXTY (60) MONTHS** and a
24 **MINIMUM of TWENTY FOUR (24) MONTHS** for both enhancements, **CONSECUTIVE**
25 **to COUNT 3; COUNT 5 - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS**

26 //

27 _____
28 ¹ The \$150.00 DNA Analysis Fee was WAIVED.

1 and a MINIMUM of FORTY EIGHT (48) MONTHS plus a CONSECUTIVE term of a
2 MAXIMUM of SIXTY (60) MONTHS and a MINIMUM of TWENTY FOUR (24)
3 MONTHS for the deadly weapon enhancement, CONSECUTIVE to COUNT 4; **COUNT 6**
4 – a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS and a MINIMUM of
5 FORTY EIGHT (48) MONTHS plus a CONSECUTIVE term of a MAXIMUM of SIXTY
6 (60) MONTHS and a MINIMUM of TWENTY FOUR (24) MONTHS for the deadly
7 weapon enhancement, CONSECUTIVE to COUNT 5; **COUNT 7** - a MAXIMUM of ONE
8 HUNDRED TWENTY (120) MONTHS and a MINIMUM of THIRTY SIX (36) MONTHS
9 plus a CONSECUTIVE term of a MAXIMUM of SIXTY (60) MONTHS and a MINIMUM
10 of TWENTY FOUR (24) MONTHS for the victim 60 years of age or older enhancement,
11 CONCURRENT with COUNT 6; and **COUNT 8** - a MAXIMUM of ONE HUNDRED
12 TWENTY (120) MONTHS and a MINIMUM of THIRTY SIX (36) MONTHS,
13 CONCURRENT with COUNT 7; with ONE HUNDRED SEVENTY NINE (179) DAYS
14 credit for time served. The AGGREGATE TOTAL sentence is a MAXIMUM of SIX
15 HUNDRED SIXTY (660) MONTHS and a MINIMUM of TWO HUNDRED SIXTY FOUR
16 (264) MONTHS.

17 This is a *nunc pro tunc* order insofar as it identifies the correct aggregate sentence as
18 required by NRS 176.035(7). The Judgment of Conviction incorrectly listed an aggregate
19 sentence of a maximum of four hundred eighty (480) months and a minimum of one hundred
20 ninety two (192) months. The correct aggregate sentence as reflected in this Amended
21 Judgment of Conviction is a MAXIMUM of SIX HUNDRED SIXTY (660) MONTHS and a
22 MINIMUM of TWO HUNDRED SIXTY FOUR (264) MONTHS.

23 DATED this 13th day of March, 2020.

24 
25 CAROLYN ELLSWORTH
26 DISTRICT JUDGE
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