

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEVOHN MARKS,
Appellant,
v.
THE STATE OF NEVADA,
Respondent.

Electronically Filed
Dec 03 2020 08:08 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No. 80469

RESPONDENT'S APPENDIX

JESS Y. MATSUDA, ESQ.
Nevada Bar #010929
Matsuda & Associates, LTD.
228 South 4th Street, Third Floor
Las Vegas, Nevada 89101
(702) 383-0506

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
Office of the Clark County District Attorney
Regional Justice Center
200 Lewis Avenue
Post Office Box 552212
Las Vegas, Nevada 89155-2212
(702) 671-2500
State of Nevada

AARON D. FORD
Nevada Attorney General
Nevada Bar #0007704
100 North Carson Street
Carson City, Nevada 89701-4717
(775) 684-1265

Counsel for Appellant

Counsel for Respondent

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on December 3, 2020. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON D. FORD
Nevada Attorney General

JESS Y. MATSUDA, ESQ.
Counsel for Appellant

TALEEN PANDUKHT
Chief Deputy District Attorney

BY /s/ E. Davis
Employee, District Attorney's Office

TP/Seleste Wyse/ed



1 **ORDR**

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 **ORDER GRANTING STATE'S SUPPLEMENTAL MOTION TO ADMIT**
12 **EVIDENCE OF OTHER BAD ACTS**

13 DATE OF HEARING: June 24, 2019
14 TIME OF HEARING: 9:00 A.M.

15 THIS MATTER came on for hearing before the above entitled Court on the 20th day
16 of February, 2019, the defendant was present, represented by JESS MATSUDA, ESQ., the
17 plaintiff was represented by STEVEN B. WOLFSON, District Attorney, through JOHN
18 GIORDANI, Deputy District Attorney. The Court continued the matter for a Petrocelli
19 Hearing. Thereafter, on the 17th day of May, 2019, the defendant was present, represented
20 by JESS MATSUDA, ESQ., the plaintiff was represented by STEVEN B. WOLFSON,
21 District Attorney, through LINDSEY MOORS, Deputy District Attorney. After testimony,
22 the Court agreed that the prior bad acts were relevant to the crime charged and that the
23 evidence presented had been proven relevant through clear and convincing evidence. The
24 Court set a briefing schedule for supplemental briefing on whether the prior bad act was
25 more prejudicial than probative and set the matter for argument. Thereafter, on the 24th day
26 of July, 2019, the defendant being present, represented by JESS MATSUDA, ESQ., the
27 plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through

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1 LINDSEY MOORS, Deputy District Attorney, and the Court having heard the arguments of
2 counsel and good cause appearing therefor,

3 IT IS HEREBY ORDERED that the State's Supplemental Motion to Admit Evidence
4 of Other Bad Acts shall be, and is, GRANTED. The Court finds that the prior case is similar
5 to the instant case. In both cases, three people committed the robberies in bars. There is
6 evidence in both cases that the locations were cased for days before the robberies occurred.
7 In both cases, the robbers waited for the opportune time to rob, specifically when the bars
8 had fewer occupants. In each case, one robber jumped over the counter to steal money from
9 the register. Additionally, in both cases, employees and patrons of the bar were robbed of
10 personal property.

11 Identification is an important part of the instant case because the accused robbers
12 were wearing masks. In *Canada v. State*, the Supreme Court held that difficulty in
13 identifying the perpetrators, coupled with a high degree of similarity between the crimes,
14 makes evidence of other bad acts more probative than prejudicial. 104 Nev. 288, 293
15 (1988). Because identity is an issue, the crimes are similar, and there is evidence in this case
16 other than the prior bad act, the prior conviction is more probative than prejudicial.
17 Therefore, the prior conviction will be allowed to show motive, intent, or identity.

18 DATED this 11th day of October, 2019.

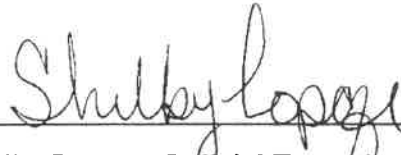
19
20 
21 DISTRICT JUDGE
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on or about the date filed she served the foregoing Order by faxing, mailing, or electronically serving a copy as listed below:

STEVEN B. WOLFSON
Lindsey Moors, Esq.
Clark County District Attorney

Devohn Marks #2798254
CCDC
330 S Casino Center Blvd
Las Vegas, NV 89101
Defendant

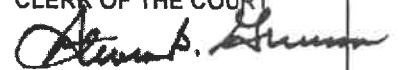

Shelby Lopaze, Judicial Executive Assistant

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Order filed in District Court case number C337017 **DOES NOT** contain the social security number of any person.

/s/ Carolyn Ellsworth Date _____



1 AJOCP

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
12 **SECOND AMENDED JUDGMENT OF CONVICTION AND RESTITUTION**
(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

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<input type="checkbox"/> Note Prosec (before trial)	<input type="checkbox"/> Bench (Non-Jury) Trial
<input type="checkbox"/> Dismissed (after diversion)	<input type="checkbox"/> Dismissed (during trial)
<input type="checkbox"/> Dismissed (before trial)	<input type="checkbox"/> Acquittal
<input type="checkbox"/> Guilty Plea with Sent (before trial)	<input type="checkbox"/> Guilty Plea with Sent. (during trial)
<input type="checkbox"/> Transferred (before/during trial)	<input type="checkbox"/> Conviction
<input checked="" type="checkbox"/> Other Manner of Disposition	

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 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 THEREAFTER, the Court received a letter from the Nevada Department of
18 Corrections stating that the aggregate sentence listed in the Amended Judgment of
19 Conviction is incorrect, and on the 15th day of June, 2020, the defendant appeared via
20 Bluejeans, IN PROPER PERSON, and the Court finding it necessary to correct the aggregate
21 sentence as required by NRS 176.035(7),

22 IT IS HEREBY ORDERED that the correct aggregate sentence is a MAXIMUM of
23 SIX HUNDRED TWELVE (612) MONTHS and a MINIMUM of TWO HUNDRED
24 FORTY (240) MONTHS.

25 DATED this 16th day of June, 2020.

26 
27 CAROLYN ELLSWORTH
28 DISTRICT JUDGE