

No. 80469

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**IN THE SUPREME COURT OF THE STATE OF NEVADA**

Electronically Filed  
Jun 22 2021 01:47 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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**DEVOHN MARKS,**

*Appellant,*

vs.

**THE STATE OF NEVADA,**

*Respondent.*

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Appeal

From the Eighth Judicial District Court, Clark County  
The Honorable Carolyn Ellsworth, District Court Judge

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**APPELLANT'S APPENDIX**  
**Volume 10**

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*Marks v. State*  
(just for Volume 10)

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

CASE#: C-18-337017-2

DEPT. V

**WEDNESDAY, JULY 03, 2019**

APPEARANCES:

For the Plaintiff:

LINDSEY MOORS  
NICOLE CANNIZZARO  
Chief Deputy District Attorneys

For the Defendant:

JESS MATSUDA, ESQ.

RECORDED BY: LARA CORCORAN, COURT RECORDER

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Las Vegas, Nevada, Wednesday, July 03, 2019

[Case called at 10:05 a.m.]

THE COURT: Page 3 is C337017; State of Nevada versus Devohn Marks.

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

MR. MATSUDA: Good morning, Your Honor, Jess Matsuda for Mr. Marks, who's present in custody.

MS. MOORS: Your Honor, if we could approach?

THE COURT: Sure.

[BENCH CONFERENCE - NOT RECORDED]

THE COURT: So, Mr. Marks?

THE DEFENDANT: Yes, ma'am.

THE COURT: Are you unhappy with your counsel?

THE DEFENDANT: Very unhappy.

THE COURT: And why is that?

THE DEFENDANT: He hasn't come to visit me not one time. We haven't discussed the strategy. But for whatever reason he feels he's ready to proceed to trial and he doesn't even have my side of the situation. My side of the story. I haven't discussed anything with him at all.

He also doesn't have my full discovery. There were search warrants that were served on my phone and I've been telling him since February that I don't have and he continuously will not bring them to me.

1 I just received my grand jury transcripts with my name on  
2 them today at calendar call; seven days, six days before trial. And I  
3 continuously tell him -- I've been telling him since February I wasn't  
4 served a Marcum notice. He's telling me that they don't have to serve  
5 me a Marcum notice. They don't have to apply to the Courts through  
6 written application to receive a court order to seal the notice when I know  
7 that that's not true. I know the law. I know what my rights are. And I  
8 wanted to exercise my rights.

9 If I'm going to go to trial, and I'm going to fight a case, then I  
10 want to be able to exercise each and every last one of my rights that I  
11 have as a Defendant. Point blank. Period.

12 THE COURT: Okay. What's the State's record you want to  
13 make on the Marcum notice?

14 MS. MOORS: Thank you, Your Honor. So, this is a case that  
15 I inherited from Mr. Giordani in our office. And as Your Honor knows,  
16 based on what you heard at the *Petrocelli* hearing, the Defendant was on  
17 parole for a prior robbery. Based on that, once he became a suspect in  
18 this case, it was our offices fear that because he was on parole for a  
19 similar type of case that he would flee.

20 So accordingly, Mr. Giordani filed for an application to have  
21 the Marcum notice under seal. He did that all in accordance with the  
22 Nevada Revised Statutes. It was done correctly. So I understand what  
23 the Defendant is saying where generally, yes, Marcum notices served in  
24 a situation like this where we have reason to believe someone might flee,  
25 we are entitled to do what we did. The laws were complied with and I

1 can tell you that Mr. Matsuda has looked into that to assure that that is  
2 the case.

3           So we are both of the position, both Mr. Matsuda and the  
4 State, that the laws were complied with. So I know this is something that  
5 has been raised several times by the Defendant. I'm sure it's frustrating  
6 to him, but I can assure both Your Honor and the Defendant that the  
7 statutes were complied with in terms of filing that Marcum notice under  
8 seal. So that's my record with regards to that particular issue.

9           It's also my understanding that the Defendant is housed, I  
10 believe, in High Desert because of that parole hold. And so what would  
11 be my request when we're talking about a jury trial would be to have him  
12 housed down here then Mr. Matsuda would have a lot more availability to  
13 go see him with regards to preparing for the trial.

14           I would also like to point out with regards to the grand jury  
15 transcripts. The way that this case came about is the first co-defendant  
16 that we charged who was part of the robbery, it was sent to the grand  
17 jury. We later realized that this Defendant was involved so it was a  
18 superseding indictment. So he essentially, in essence, had the first part  
19 of that indictment, or the first part of that grand jury transcript that didn't  
20 have his name on it, then the second one with both of their names  
21 essentially it's just that Defendant then testifying.

22           So, if he didn't have that second half, obviously, apologizes for  
23 that. But he was in possession of the 70 page document as opposed to I  
24 think the later 40 page transcript that was a subject of the superseding  
25 adding him to the underlying crime.

1 THE COURT: Okay; so are -- you're saying alleged  
2 accomplice --

3 MS. MOORS: Correct.

4 THE COURT: -- testified at the grand jury?

5 MS. MOORS: Correct. But it all became part of that so he,  
6 you know, the part that didn't have his name on it was later then  
7 incorporated into that second. So it's still relevant to his case as well.

8 THE COURT: Okay; Mr. Matsuda, did you review the Marcum  
9 notice issue?

10 MR. MATSUDA: I did, Your Honor.

11 THE COURT: And have you had the opportunity to discuss  
12 that with your client?

13 MR. MATSUDA: I have, Your Honor, and we discussed this --  
14 and this is all we discussed whenever I speak to Mr. Marks is this  
15 Marcum issue. I printed out the statutes for him. He went over with it.  
16 It's something that he just doesn't agree with.

17 The other -- in terms of being ready for trial, I'm prepared to go  
18 forward. Mr. Mark's just brings up, in my view, irrelevant motions that he  
19 wants filed. And that's all we talk about. There's nothing about his  
20 defenses or anything like that. It's just motions that have to be filed, and I  
21 don't think their relevant to the case.

22 THE COURT: That he wants to be --

23 MR. MATSUDA: That he wants --

24 THE COURT: -- filed and that --

25 MR. MATSUDA: Yes.



1 THE COURT: -- you feel are frivolous?

2 MR. MATSUDA: Correct.

3 THE COURT: Okay. So your lawyer has an obligation to only  
4 bring motions before the Court that are proper motions and not frivolous  
5 motions that aren't supported by the law. He has an ethical obligation to  
6 do that. So just because you disagree with him and want certain motions  
7 filed, if he doesn't believe that those are supported by the law, you can't  
8 bring those.

9 THE DEFENDANT: That's understandable, Your Honor, but  
10 the motions that I'm asking him to bring forth are supported by the law.  
11 And NRS 174.115 allows the Defendant to challenge the sufficiency of  
12 the evidence that was presented to the grand jury by pretrial habeas  
13 corpus. And he hasn't discussed any of that with me or asked me if I  
14 wanted to take that route at all throughout this whole process.

15 Now, an alleged accomplice implemented me in a crime and  
16 testified in front of me and in front of a [indiscernible] grand jury that  
17 indicted him, that's understandable. If the Marcum notice was sealed  
18 that's understandable. I asked my attorney to provide me with a copy of  
19 that written order. He hasn't provided me with a copy of that written  
20 order. If he simply provided me with a copy of that written order, then I  
21 wouldn't bring up the issue any more.

22 And based on the fact that they did say that they sealed the  
23 notice, as the Defendant I have the right to challenge the basis on which  
24 they sealed the notice. I would like to do that as well because they're  
25 saying that I was a flight risk because I'm on parole. I don't believe that

1 to be an adequate reason to withhold the notice so I feel as a defendant  
2 I'm entitled to that -- a copy of that written order so I can see myself that  
3 the notice was sealed. And if it was sealed I'd like to see why it was  
4 sealed. And if I see why it was sealed then I would be able to make a  
5 decision on whether or not I'd like to challenge that. I want to challenge  
6 the evidence before we go trial. He doesn't want to challenge any of the  
7 evidence. He's saying it's frivolous. I don't understand how challenging  
8 evidence is privileged before going to trial.

9 THE COURT: Well, challenging something on a -- that's a  
10 matter of law is different than challenging evidence at trial. So what  
11 you're talking about is trying to challenge whether or not the Marcum  
12 notice was properly sealed. And that is an issue that could be raised on  
13 appeal if you were convicted.

14 THE DEFENDANT: But there's other --

15 THE COURT: As far as a pretrial writ of habeas corpus, that  
16 has to be filed within 21 days.

17 THE DEFENDANT: He hasn't discussed that with me. He  
18 didn't inform me of that.

19 THE COURT: Don't talk when I'm talking. Okay? Because  
20 there's a record being kept so the court recorder won't be able to do a  
21 good transcript. When I'm done you can talk.

22 THE DEFENDANT: Yes ma'am.

23 THE COURT: So, as I said, there's a 21 day requirement  
24 from the date of your arraignment on the charges, or the filing of the  
25

1 transcript, whichever occurs later. And we would have made that clear at  
2 the time of your arraignment in court.

3 So, Mr. Matsuda, did you make a decision after review of the  
4 transcript as to whether there are any grounds to challenge the  
5 sufficiency of the evidence?

6 MR. MATSUDA: Yes, Your Honor.

7 THE COURT: Okay. So you considered that issue?

8 MR. MATSUDA: Yes, Your Honor.

9 THE COURT: So, the bringing of a writ of habeas corpus --  
10 you're shaking your head no, but your lawyer has indicated that he  
11 reviewed the transcript and made the decision that there wasn't sufficient  
12 grounds to bring a pretrial writ of habeas corpus; though the standard of  
13 proof required for either preliminary hearing, or a grand jury proceeding,  
14 is fairly low. It's slight or marginal evidence is required. And so if the  
15 State has that -- enough evidence, that evidence to beat that burden,  
16 which is slight or marginal evidence to connect you to this crime; to show  
17 that you committed this crime, slight or marginal, then that's sufficient.  
18 And if the State, you know, opposes the writ, and the court doesn't grant  
19 the writ.

20 In other words, I deny a writ of habeas corpus, a pretrial writ of  
21 habeas corpus, it's not appealable by you. And the legislature may  
22 change that to that being the state of the law many, many years ago.  
23 Okay?

24 So, your lawyer has considered that and that's why he didn't  
25 bring a writ, but part of the reason it's not appealable is because you

1 have a full trial. And that's the reason the legislature changed the law a  
2 long time ago, so it wasn't appealable because by, you know, if it's  
3 denied, because you still have a full trial, right? And the State still has to  
4 prove the case against you beyond a reasonable doubt. And that's a  
5 much higher burden than slight or marginal evidence. Do you  
6 understand that?

7 THE DEFENDANT: Yes ma'am.

8 THE COURT: Okay. Now you could talk.

9 THE DEFENDANT: All right. Now, I simply asked him to  
10 challenge the corroboration of the testimony of the accomplice pursuant  
11 to NRS 175.291. That would be a legitimate argument through writ of  
12 habeas corpus to determine whether or not the accomplice was  
13 sufficiently corroborated. And also they used file records to corroborate  
14 the testimony of the accomplice pursuant to NRS 52.015, subsection 1,  
15 we can challenge the authentication of the text messages that were  
16 presented to the grand jury in order to sustain the indictment.

17 THE COURT: But you can challenge that at trial as well.

18 THE DEFENDANT: But don't I have the right to challenge that  
19 at pretrial before it gets to trial? So we avoid unnecessary trials?

20 THE COURT: Again, you know, I didn't consider a pretrial or  
21 a writ of habeas corpus in this matter so I haven't read the grand jury  
22 transcripts. But your lawyer did and made a determination. And the time  
23 for that is now up. So, that's kind of water under the bridge.

24 THE DEFENDANT: He's made a determination without  
25 discussing it with me, his client. And he's saying that he's ready to

1 proceed to go to trial without discussing the strategy with me. How am I  
2 supposed to feel comfortable going to trial with a lawyer who hasn't come  
3 to discuss any type of strategy with me? I'm going into a trial blindsided.  
4 I'm blinded.

5 THE COURT: Okay. So just a minute. So your lawyer just  
6 indicated to me that part of the difficulty he's having in communicating  
7 with you is that you don't want to discuss a defense. You only want to  
8 discuss these pretrial motions that can't be filed. Aren't going to be filed.  
9 He needs you to discuss the defense with him.

10 THE DEFENDANT: I don't understand how I'm going to  
11 discuss a defense with my attorney when the only time I see him is for  
12 three minutes in court. He hasn't come to visit me to discuss anything  
13 other than that so the brief moments that I do have with him I bring up the  
14 Marcum notice because I still would like to note that they sealed the  
15 notice because I have a right to testify. I wanted to testify in front of the  
16 grand jury. We wouldn't be standing here right. I have evidence to  
17 present to the grand jury. Now if they said they sealed the notice I would  
18 like a copy of the written order from my attorney.

19 THE COURT: Again, that ship has sailed. So that's over and  
20 -- but the issue is preserved on appeal if there's to be any issue, but your  
21 lawyers looked at the issue already and determined that the State did  
22 comply with the law in this regard whether --

23 THE DEFENDANT: So he doesn't have to --

24 THE COURT: So, again, you can't address this at this point  
25 in time.

1 MR MATSUDA: And, Your Honor, I do have a receipt from my  
2 investigator that he did mail discovery on April 2<sup>nd</sup> of this year to Mr.  
3 Marks.

4 Additionally, we did discuss the issues that he raised about  
5 contesting the authenticity of the -- or the credibility of the witness at a  
6 grand jury. And I told him numerous times that that's what we can do  
7 during trial. We can attack his credibility if that's one of his defenses, we  
8 can do that at trial.

9 THE COURT: Of course, I think he was talking about  
10 corroboration and accomplice testimony. And you could do that as well  
11 at trial.

12 MR. MATSUDA: Correct.

13 THE DEFENDANT: I don't feel comfortable going forward  
14 with him as my attorney period. I don't. I'm not confident in his abilities.  
15 He hasn't come to visit me. I just don't feel comfortable with him. And I  
16 would like to be assigned new counsel.

17 THE COURT: Well, you don't get just the ability to choose  
18 your own counsel and your -- when counsels appointed.

19 THE DEFENDANT: That's understandable. But he's been  
20 ineffective and that's prejudiced my case thus far. If he hasn't -- how  
21 does he not discuss with me my rights to a pretrial writ of habeas within  
22 21 days? I never even knew about that because he didn't discuss that  
23 with me. There are rights that I have that I would've liked to exercise that  
24 he didn't disclose to me.

25 THE COURT: All right. Well, again, he's a competent lawyer.

1 And he's a good trial lawyer and I'm not going to remove him as counsel.

2 THE DEFENDANT: So I can't remove him as counsel  
3 understanding that he's yelled at me before and we've had  
4 misunderstandings on multiple different levels? And this is who's  
5 supposed to represent me at trial? The same person who I've had  
6 conflict and confrontation with prior to trial? And I'm supposed to feel  
7 comfortable going to trial with this man representing my life? I don't feel  
8 comfortable with him representing -- this is my life. This is my freedom.

9 THE COURT: Okay. Well you don't -- when you have  
10 appointed counsel there's -- you have a right to competent counsel. And  
11 it doesn't mean you have to like him, or, you know, get along with him.

12 THE DEFENDANT: That's understandable.

13 THE COURT: It just means --

14 THE DEFENDANT: That's understandable.

15 THE COURT: -- you have to -- you do need to talk to him so  
16 he can help you. But you don't get a choice of, gee, do I, you know, have  
17 a warm and fuzzy relationship with my lawyer. You don't get to do that.

18 If you paid for your lawyer you could shop around and find  
19 somebody that you thought was wonderful and you felt comfortable with.  
20 But here you don't have to feel comfortable. You just have to work with  
21 him so that he can give you the best possible defense available.

22 THE DEFENDANT: That's understandable. But does he or  
23 does he not have a duty to come and visit me and discuss and advise the  
24 strategy with me prior to trial?

25 THE COURT: He has -- my understanding is he's having

1 difficulty with you wanting to discuss your strategy at trial because all you  
2 want to talk about is this Marcum notice --

3 THE DEFENDANT: Your Honor, --

4 THE COURT: -- and other motions.

5 THE DEFENDANT: He hasn't had any difficulty discussing  
6 the strategy with me because he hasn't even attempted to discuss the  
7 strategy with me. And when I did attempt to discuss the strategy with him  
8 in the back he started yelling at me.

9 MS. MOORS: Your Honor, I would just -- if I could point out  
10 real briefly, per our discussion at the bench when we were talking about  
11 scheduling issues, I knew that routinely when people are housed in High  
12 Desert it's difficult for attorneys to actually go there to visit them. And so  
13 usually during the course of a trial we request to have them housed in the  
14 Clark County Detention Center.

15 And I understand that there are scheduling issues that would  
16 potentially allow us to maybe start picking a jury next week and then have  
17 a week off in the interim before starting that trial in which I would request  
18 that the Defendant be housed at Clark County Detention Center. And I  
19 think during that time that would provide Mr. Matsuda unlimited ability to  
20 speak with him obviously provided his other case load. And I think that  
21 that could potentially alleviate some of the concerns that have been  
22 raised. And we are in sort of a unique scheduling position with regards to  
23 this case.

24 THE COURT: Certainly I will endeavor to do that and try and  
25 see if the jail will keep him. I can't really control that.



1 MS. MOORS: Sure.

2 THE COURT: I mean I can say I would like for him to be  
3 housed in the interim a week from the time we pick the jury until after so  
4 that his lawyer could have easier access to him. But I can't --

5 MS. MOORS: Sure.

6 THE COURT: -- guarantee it because it depends on what  
7 happens with the jail. If there's an overcrowding situation and they need  
8 to move a person who's in custody at the prison facility back to the  
9 prison, then I can't hold him. But is there a possibility that counsel could  
10 have some time with him back in the holding cell before you take him  
11 back?

12 PROBATION OFFICER: Yes ma'am.

13 THE COURT: Okay. So we could do that and you could also  
14 chat with him. Did you get your discovery that the investigator mailed to  
15 you?

16 THE DEFENDANT: I got my discovery, but none of it has my  
17 name on it. The search warrants for the phone. Those are not my  
18 phone, the alleged accomplice's phone.

19 The grand jury transcripts that I have received were the ones  
20 with the alleged accomplices name on it. I just received the one with my  
21 name on it so now I have to go over those now. I just got them today.  
22 But I don't have my search warrants for my phone. I would like to go  
23 over those as well. I would like to go over every piece of evidence that I  
24 could possibly go over before I go trial.

25 THE COURT: Okay. Well why don't you go now and meet

1 with Mr. Matsuda and see, you know, express these issues with him and  
2 talk to him about these things because my plan is to start picking our jury  
3 on July 8<sup>th</sup> in the afternoon. Start at 1:00 or 1:30. Start picking the jury.  
4 We'll have -- that will give us four half days and then we'll have the jury  
5 come back for the trial to start on the 22<sup>nd</sup>.

6 THE DEFENDANT: So, Your Honor, the only time I will get a  
7 chance to discuss anything with him before jury selection is in the holding  
8 tank in the jail? Because, I mean, I already did that with him one time  
9 and I discussed this, I attempted to discuss the strategy with him. He told  
10 me I thought I was smarter than him and I thought I knew everything and  
11 he was yelling at me so we'll see how this goes in the back.

12 THE COURT: Okay. I'm just trying to give you yet another  
13 opportunity while you're here. You're both here in the same room. And  
14 the corrections officers are willing to let that happen so I think that's -- I  
15 appreciate that very much. So let's make that happen right now.

16 MR. MATSUDA: Thank you, Your Honor.

17 MS. MOORS: Thank you.

18 THE COURT: We'll recall it after you get done talking to him,  
19 we'll recall it.

20 [PAUSE IN PROCEEDINGS at 10:32 a.m.]

21 [MATTER RECALLED at 10:55 a.m.]

22 THE COURT: Recalling C337017, State of Nevada versus  
23 Devohn Marks. Okay, did you have a chance to meet? Was that  
24 helpful?

25 THE DEFENDANT: It was not.

1 MR. MATSUDA: We did, Your Honor, but --

2 THE COURT: It was not -- is he talking to you? Is he refusing  
3 to talk to you?

4 MR. MATSUDA: We talked about the case, our defenses, and  
5 we got into the pretrial motions again.

6 So, at this point I don't know. I'll submit it, Your Honor, but it's  
7 very hard to communicate with Mr. Marks about any type of defenses on  
8 this case.

9 THE DEFENDANT: Your Honor, I asked him questions  
10 specifically regarding the defense about my case. I asked him what his  
11 strategy was.

12 THE COURT: Don't tell me what you're talking about with  
13 your lawyer because then you waive your attorney-client privilege. You  
14 understand that? I thought you studied the law?

15 THE DEFENDANT: I didn't but I understand now.

16 THE COURT: Okay. So, you know, when you start doing --

17 THE DEFENDANT: Well --

18 THE COURT: -- that you waive it.

19 THE DEFENDANT: Well, no, we didn't come to any  
20 conclusions and I was attempting to discuss the strategy of our defense  
21 with him but we just not -- we just -- the communication is not -- he's not  
22 listening to anything I'm saying. He's just making sarcastic remarks and  
23 not taking anything that I'm saying for face value.

24 THE COURT: All right. Are you talking to him about -- I don't  
25 want to know any details, I'm just saying are you talking to him about the

1 strategy of your defense?

2 THE DEFENDANT: Yes ma'am.

3 THE COURT: Not revisiting --

4 THE DEFENDANT: Yes ma'am.

5 THE COURT: -- these pretrial motions?

6 THE DEFENDANT: Yes ma'am.

7 THE COURT: Okay.

8 THE DEFENDANT: I did revisit the pretrial motions after I  
9 discussed the defense. I was attempting to specifically speak about --

10 THE COURT: You wasted the time you had with --

11 THE DEFENDANT: -- the defense.

12 THE COURT: -- him revisiting that?

13 THE DEFENDANT: I didn't waste the time. It came up  
14 because he wasn't listening to me about my defense.

15 THE COURT: Do you feel, Mr. Matsuda, that you're ready to  
16 go on this case?

17 MR. MATSUDA: I am, Your Honor, it's just the  
18 communication with Mr. Marks.

19 THE DEFENDANT: I need all of my paperwork, Your Honor.  
20 I still don't have all of my paperwork. How can I proceed to trial without  
21 being able to review all of my paperwork? I don't have my --

22 THE COURT: Did you look at what paperwork he has to  
23 make sure it's what you last sent him?

24 MR. MATSUDA: I'm pretty sure he has everything that we  
25 sent. We updated the grand jury transcripts that has his name on it now.

1 The only other things that are outstanding are videos that I can't get --

2 THE DEFENDANT: It's search warrants from my phone that I  
3 have not received.

4 MR. MATSUDA: We sent everything we had to Mr. Marks  
5 back on April 2<sup>nd</sup>. If there's anything that was supplemented by the State  
6 -- I think it was only the grand jury transcripts that we have provided to  
7 Mr. Marks. But if he wants the search warrants I can resend it.

8 THE COURT: Oh, you sent those previously?

9 MR. MATSUDA: Whatever was contained in the file that we  
10 had at the time we sent.

11 THE DEFENDANT: They sent me Antwon Johnson's search  
12 warrants. Not Devohn Marks' search warrants. I want the search  
13 warrants for the number that pertains to Devohn Marks, not the number  
14 that pertain to Antwon Johnson.

15 THE COURT: Not having the benefit of reviewing the search  
16 warrants -- were there different search warrants?

17 MS. MOORS: Your Honor, there was a search warrant with  
18 regards to the accomplice and it might not say Devohn Marks name on  
19 the search warrant because it was my understanding that he either lost  
20 his phone and/or changed his number after this happened.

21 So as a past subscriber I'm not sure -- I don't have the file  
22 perfectly memorized in my head. I can point out that that is sort of, I  
23 guess, the least of the events connecting the Defendant to the crime.  
24 There's a multitude more evidence in Mr. Matsuda, and Ms. Cannizzario  
25 and myself were planning on doing a file review today so we can go

1 through all of that to see if anything is outstanding. I can't say that I've  
2 gone through everything within my possession, and I don't believe that  
3 Mr. Matsuda is missing anything, but I can have an affirmative answer  
4 after our file review which we were planning on doing today.

5 THE COURT: All right. So that means that on Monday if  
6 there's any issues after you've done that full file review as to anything  
7 that you don't have, and then bring that up when I see you in the  
8 afternoon.

9 MR. MATSUDA: Yes, Your Honor.

10 THE DEFENDANT: May I please say one more thing?

11 THE COURT: Yeah.

12 THE DEFENDANT: She stated that the search warrants were  
13 all the same. His phone was registered at T-Mobile. My phone is  
14 registered at Verizon. He said to [indiscernible] that he served two  
15 search warrants on Verizon. I don't have any search warrants pertaining  
16 to Verizon. I have T-Mobile search warrants. My search warrants are  
17 not titled or directed to Verizon. Nor do they have my number.

18 If the search warrants are specifically for Antwon Johnson's  
19 number and his phone company. My search warrants that I want to  
20 review are for my number and my name and my phone company.

21 THE COURT: Wouldn't you want to review the evidence that  
22 was obtained from the search warrant --

23 THE DEFENDANT: Yes.

24 THE COURT: -- rather than the search warrant itself?

25 THE DEFENDANT: Yeah I want to obtain --

1 THE COURT: I mean you certainly can do that but --

2 THE DEFENDANT: search warrants.

3 THE COURT: -- that would be a post-trial issue. Do you have  
4 evidence that your --

5 MS. MOORS: Well, Your Honor, essentially, I guess the -- if  
6 you would like an offer of proof with regards to what the cell -- all that the  
7 cell phone evidence is is to show that he was in contact, I want to say  
8 over thousand times with his co-conspirator during the month of October  
9 2018. That's all that there is.

10 And I would submit if you actually look then at the co-  
11 conspirators phone statements it would show, if presuming Mr. Marks  
12 remembers his cell phone number, that there were then on that side a  
13 thousand contacts. That's the extent of it. There's no -- we don't have  
14 the subject of the text conversations. We're not able to get that. It's  
15 purely the amount of times that they contacted each other which they  
16 would mirror each other with regards to the contact with Mr. Marks phone  
17 number.

18 THE COURT: All right. So I'll see you on Monday afternoon.

19 MS. MOORS: Okay.

20 THE COURT CLERK: 1:30.

21 ///

22 ///

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MS. MOORS: Thank you.

MR. MATSUDA: Thank you, Your Honor.

[Hearing concluded at 11:01 a.m.]

\* \* \* \* \*

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



---

Christine Erickson,  
Court Recorder/Transcriber



27  
**FILED**

JUL 05 2019

*Ch. & Blum*  
CLERK OF COURT

1 DEVONN MARKS #10721802

/In Propria Personam

2 Post Office Box 650 [HDSP]

3 Indian Springs, Nevada 89018

4  
5 IN THE Eighth JUDICIAL DISTRICT COURT OF THE

6 STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

7  
8 THE STATE OF NEVADA,

9 Plaintiff,

10 vs.

Case No. C-18-33707-2

11 DEVONN MARKS, #1798254,

Dept. No. V

12 Defendant.

Docket \_\_\_\_\_

13  
14 **MOTION TO WITHDRAW COUNSEL**

15 Date of Hearing: 6-24-19

16 Time of Hearing: 9:00AM

17 'ORAL ARGUMENT REQUESTED, Yes ☒ No \_\_\_\_\_"

18 **COMES NOW**, Defendant, DEVONN MARKS, proceeding in proper person.

19 moves this Honorable Court for an ORDER Granting him permission to withdraw his present counsel  
20 of record in the proceeding action, namely,

21 JESS MATSUUDA, ESQ

22 This Motion is made and based on all papers and pleadings on file with the Clerk of the Court  
23 which are hereby incorporated by this reference, the Points and Authorities herein, and attached  
24 Affidavit of Defendant.

25 **DATED:** this 24th day of JUNE, 20 19.

26 **BY:** DEVONN MARKS

#10721802

27 /In Propria Personam

28 C-18-337017-2

MWCN

Motion to Withdraw As Counsel

4847360

10 AA 022



PP  
DA  
AOR-CC

CLERK OF THE COURT

JUL - 5 2019

RECEIVED

1 **POINTS AND AUTHORITIES**

2 NRS 7.055 states in pertinent part:

- 3 1. An attorney who has been discharged by his client shall upon demand and payment of the fee  
4 due from the client, immediately deliver to the client all papers, documents, pleadings and items  
5 of tangible personal property which belong to or were prepared for that client.
- 6 2. . . If the court finds that an attorney has, without just cause, refused or neglected to obey its  
7 order given under this section, the court may, after notice and fine or imprison him until the  
8 contempt purged. If the court finds that the attorney has, without just cause, withheld the  
9 client's papers, documents, pleadings, or other property, the attorney is liable for costs and  
10 attorney's fees.

11 Counsel in the above-entitled case was court-appointed due to Defendant's indigence. Defendant  
12 does not owe counsel any fees.

13 **WHEREFORE**, Defendant prays this Honorable Court, Grant his Motion to Withdraw Counsel  
14 and that counsel deliver to Defendant all papers, documents, pleadings, discovery and any other  
15 tangible property which belong to or were prepared for the Defendant to allow Defendant the proper  
16 assistance that is needed to insure that justice is served.

17 **DATED:** this 24~~th~~ day of JUNE, 2019.

18 Respectfully submitted,

19 **BY:** DeJohn Marks

#1572180

20 /In Propria Personam  
21 Post Office Box 650 [HDSP]  
22 Indian Springs, Nevada 89018  
23  
24  
25  
26  
27  
28

NAME: DEVON MARKS, # 1072180

HIGH DESERT STATE PRISON  
P.O. BOX 650  
INDIAN SPRINGS, NEVADA 89018

DATE: 6-24-19

TO: JESS MATSUOKA, ESQ  
228 SOUTH FOURTH STREET, 3rd FLOOR  
LAS VEGAS, NV 89101

SUBJECT: TERMINATION OF COUNSEL/TRANSFER OF RECORDS

CASE NO.: C-18-337017-2

DEPT. NO.: V

CASE NAME: THE STATE V. DEVON MARKS

Please be advised that from this date forward, your authority as Attorney of Record in the above-stated action is hereby terminated. All of the professional relations of Attorney and Client do hereby cease.

Please enter your withdrawal from this action with the Court immediately.

Pursuant to NRS 7.055, I respectfully request that you deliver to me, forthwith, all documents, papers, pleadings and tangible personal property that is in your possession that relates to the above-named action.

Your prompt attention to this request is genuinely appreciated.

Respectfully,

Devon Marks

/////

/////

/////

**CERTIFICATE OF SERVICE BY MAILING**

I, DEVON MARKS, hereby certify, pursuant to NRCP 5(b), that on this 24th  
day of JUNE, 2019, I mailed a true and correct copy of the foregoing, "MOTION  
TO WITHDRAW COUSE"

by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,  
addressed as follows:

John Fiordani  
CHIEF DEPUTY DISTRICT ATTORNEY  
200 LEWIS AVENUE  
LAS VEGAS, NV 89105-2212

CC: FILE

DATED: this 24th day of JUNE, 2019.

DEVON MARKS

#1072180

/In Propria Personam  
Post Office box 650 [HDSP]  
Indian Springs, Nevada 89018  
IN FORMA PAUPERIS:

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding \_\_\_\_\_

Motion to Withdraw Counsel  
(Title of Document)

filed in District Court Case number C-18-337617-2

☒ Does not contain the social security number of any person.

-OR-

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

A. A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific law)

-or-

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

Devin Marks  
Signature

6-24-19  
Date

Devin Marks  
Print Name

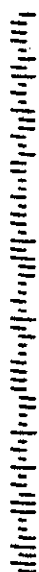
Motion To Dismiss Counsel  
Title

John Marks #1072180  
High Desert State Prison  
P.O. Box 650  
Indian Springs, NV 89070

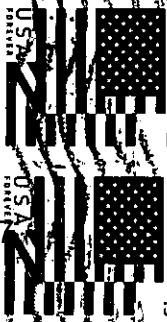
RECEIVED  
JUN 03 2019  
DISTRICT COURT ADMIN

Eighth Judicial District Court  
200 LEWIS AVENUE - 3rd Floor  
LAS VEGAS, NV 89155-1160

89101-630000



LAS VEGAS, NV 89070  
01 JUL 2019 PM 3:14



10 AA 027

HIGH DESERT STATE PRISON  
JUN 8 0 2019  
UNIT 8 C/D

District Court  
CLARK COUNTY, NEVADA

FILED  
AUG 22 2019

CLERK OF COURT

STATE OF NEVADA,

PLAINTIFF,

CASE NO: C-18-337017-2

DEPT. NO: V

VS.

DEVOTIN MARKS, #2798254

September 18, 2019  
9:00 AM

DEFENDANT.

NOTICE OF MOTION AND  
MOTION TO DISMISS COUNSEL AND MOVE  
IN PRO-SE

COMES NOW, THE DEFENDANT, DEVOTIN MARKS, APPEARING  
PRO-SE, SUBMITS THIS MOTION BASED ON THE FOLLOWING  
MEMORANDUM OF POINTS AND AUTHORITIES, THE PLEADINGS AND  
PAPERS ON FILE IN THIS, THE ATTACHED EXHIBITS HERETO, IF  
ANY, AND THE ORAL ARGUMENT ALLOWED BY THE COURT AT  
TIME OF HEARING.

RECEIVED

AUG 22 2019

CLERK OF THE COURT

DATED: AUGUST 19, 2019

BY: DEVOTIN MARKS #2798254

DEFENDANT, IN PRO-SE

*Devotin Marks*

10 AA 028

## NOTICE OF MOTION

YOU AND EACH OF YOU, WILL TAKE NOTICE THAT  
THE UNDERSIGNED WILL BRING THE FOREGOING MOTION ON  
FOR SETTING BEFORE THE ABOVE ENTITLED COURT, IN DEPARTMENT  
V THEREOF, ON THE \_\_\_\_ DAY OF \_\_\_\_, 2019 AT THE HOUR OF  
\_\_\_\_ O'CLOCK \_\_\_\_ M., OF SAID DAY, THE ABOVE MOTION TO  
DISMISS COUNSEL AND MOVE PRO-SE WILL BE HEARD IN  
DEPARTMENT \_\_\_\_ OF THE ABOVE ENTITLED COURT.

DATED: AUGUST. 19. 2019

BY: DEVON MARKS # 2798254

DEFENDANT, IN PRO-SE

*Wm. L. Marks*

## MEMORANDUM OF POINTS AND AUTHORITIES • LEGAL ARGUMENT.

• THE SIXTH AMENDMENT ENTITLES THE ACCUSED  
TO HAVE "EFFECTIVE ASSISTANCE" OF COUNSEL.

• A PARTY WHO'S COUNSEL IS UNABLE TO PROVIDE  
EFFECTIVE OR ADEQUATE ASSISTANCE IS NO BETTER  
THAN ONE WHO HAS NO COUNSEL AT ALL. AND  
ANY APPEALS WOULD BE FUTILE IN POSTURE.

EVITTS V. LUCEY 105 S. CT. 830 (1985)

10 AA 029



1 • While this right, of many others, form the  
2 Foundation of the accused's right to a  
3 Fair trial, the accused has been afforded  
4 additional rights, such as the right to conduct  
5 his or her own defense as necessary to  
6 a fair trial under the due process clause.

7  
8 The defendant humbly asks this honorable court  
9 to grant this motion to dismiss counsel and move  
10 to pro-se.

11  
12 The defendant has attempted to dismiss counsel  
13 both by "oral motion" in open court and by "written  
14 motion" prior to trial raising various claims of  
15 ineffective assistance of counsel. Both motions were  
16 denied by Judge Ellsworth of Dept. V.

17  
18 As a result, defendant was forced to stand  
19 trial with attorney, Jess Matsuda, as counsel. Even  
20 after making the courts aware that Matsuda had  
21 "failed to conduct a single visit," in order to discuss  
22 the facts of the case, go over discovery, and/or devise a  
23 strategy for trial. <sup>there</sup> ~~there~~ are "no visits" on record from  
24 01/14/19 (date of defendant's arrest) - present date.  
25 (see exhibit A1-A2) (attorney visitation log)

1 DEFENDANT ALSO RAISED CLAIM THAT MATSUDA  
2 WOULD NOT CONTACT HIS FAMILY MEMBERS BACK WHEN  
3 CONTACTED BY THEM. DEFENDANT IS INDIGENT AND SHOULD  
4 NOT HAVE TO PAY FOR ATTORNEY-CLIENT PHONECALLS. + HOWEVER,  
5 DEFENDANT WAS NOT AND ~~ACT B~~ HAS NOT BEEN ABLE TO  
6 GET THROUGH TO MATSUDA'S PHONE DUE TO THERE BEING  
7 NO AVAILABLE COLLECT CALLS ON MATSUDA'S OFFICE PHONE.  
8 IN ADDITION, MATSUDA HAS NOT RESPONDED TO ANY  
9 LETTERS OR EMAILS SENT BY/FROM THE DEFENDANT.  
10

11 MATSUDA ADAMANTLY REFUSED TO FILE ANY PRE-TRIAL  
12 MOTIONS OF MERIT, CHALLENGING THE EVIDENCE AGAINST  
13 THE DEFENDANT SUCH AS, "UNAUTHENTICATED TEXT MESSAGES",  
14 AND CHALLENGING "DEFECTS IN THE PROCEDURES", AS REQUESTED  
15 BY THE DEFENDANT, PURSUANT TO "PLEADINGS ON RECORD".  
16

17 AS A RESULT OF MATSUDA'S "DEFICIENT CONDUCT,"  
18 DEFENDANT LOST TRIAL. IF NOT FOR MATSUDA'S INEFFECTIVENESS  
19 THERE IS A STRONG PROBABILITY THAT THE OUTCOME OF  
20 DEFENDANT'S TRIAL WOULD HAVE BEEN DIFFERENT AND  
21 RESULTED IN A QUITTAL. MATSUDA'S INEFFECTIVENESS HAS  
22 ROLLED OVER TO DEFENDANT'S POST-TRIAL REMEDIES TO FILE  
23 MOTIONS BEING PREJUDICED. (SEE EXHIBIT B) (EMAIL TO MATSUDA)  
24 (SEE ALSO, EXHIBITS C-1, C-2 AND C-3) (POST-TRIAL PLEADINGS)  
25  
26

## CONCLUSION

DEFENDANT HAS ALREADY SUFFERED A LOST TRIAL DUE TO COUNSEL'S INEFFECTIVE ASSISTANCE AND NEGLECT OF DUTY. WITH JESS MATSUOKA ACTING AS COUNSEL OR STANDING COUNSEL, THE DEFENDANT'S POST-TRIAL REMEDIES AND APPEAL RIGHTS ARE IN DANGER. FOR REASONS SET FORTH HEREIN, SUPPORTED BY PLEADINGS ON RECORD AND PAPERS, AND EXHIBITS ATTACHED, THE DEFENDANT, DEVOTIN MARKS MOVES THIS HONORABLE COURT TO GRANT THIS MOTION TO DISMISS COUNSEL AND MOVE IN PRO-SE.

DATED THIS 19 DAY OF AUGUST, 2019  
I, DEVOTIN MARKS #2798254, do SOLEMNLY  
SWEAR, UNDER THE PENALTY OF PERJURY,  
THAT THE ABOVE MOTION TO DISMISS....  
IS ACCURATE, CORRECT, AND TRUE TO THE  
BEST OF MY KNOWLEDGE.

NRS 171.102 and NRS 208.165

RESPECTFULLY SUBMITTED,

*Devotin Marks*

DEFENDANT, IN PRO-SE

EXHIBIT A1

~~NT-5A-28-L~~  
NV-1H-17

SOP 06.00.00 - Page 9

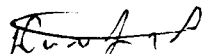
**LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
CLARK COUNTY DETENTION CENTER  
RECORDS SUPPORT UNIT**

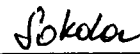
**INMATE CORRESPONDENCE REQUEST**

Inmate ID#: 2798254 Inmate Name: DECHON MARKS Floor/Housing Unit: NT 5A-28

QTY	TYPE OF RECORD	COST	QTY	TYPE OF RECORD	COST
<input type="checkbox"/>	LETTER OF INCARCERATION (UP TO 5 LODGINGS)	\$6.00	<input type="checkbox"/>	REPLACEMENT COPY OF TCR	\$0.50 PER PAGE
<input type="checkbox"/>	SCOPE RECORD	\$9.00	<input type="checkbox"/>	COPY OF PROPERTY SHEET	\$0.50 PER PAGE
<input type="checkbox"/>	SOCIAL SECURITY REINSTATEMENT FORM	\$6.00	<input checked="" type="checkbox"/>	VISITOR LOG	\$0.50 PER PAGE
<input type="checkbox"/>	ADDITIONAL COPIES (OF ABOVE)	\$0.29 PER PAGE	<input type="checkbox"/>	Attorney Visitation Log	
			<input type="checkbox"/>	MISC DOCUMENT:	\$0.50 PER PAGE

By signing below, I authorize the appropriate charge to be applied to my inmate trust account. If I do not have sufficient funds, an obligation will be applied to my account and any funds I receive will be deducted to pay for the debt. I understand that the *Social Security Reinstatement form and/or Letter of Incarceration* will be placed in my file and given to me upon my release from custody. *All other items will be sent to me along with a copy of this form.*

 8-7-19  
Inmate Signature / Date

 160412 8/7/19  
Module Officer P# / Date

..... Below to be completed by RSU ONLY .....

'COMPLIED WITH'  
E13178G  
P#/Initials  
08/09/19  
DATE

'TOTAL AMOUNT DUE'  
\$ 0.00

YOU HAVE NO VISITS FROM YOUR LAWYERS FROM 01/14/19 - PRESENT

# Visit History Inmate

Contact (Post May 2010)

1/14/2019 to 8/9/2019

LAST NAME	FIRST NAME	OFFENDER ID	BOOKING BEGIN DATE	START TIME	VISITOR LAST NAME	VISITOR FIRST NAME	VISITOR MIDDLE NAME	VISITOR BIRTH DATE	VISIT TYPE	REL
LAST NAME	FIRST NAME	OFFENDER ID	BOOKING BEGIN DATE	START TIME	STATUS	VISITOR LAST NAME	VISITOR FIRST NAME	VISITOR MIDDLE NAME	VISITOR BIRTH DATE	RELATION

## Video

EXHIBIT A2

7 OF 11

10 AA 034

EXHIBIT B**Avvo**(/)**Jess Matsuda**

★★★★★ (12 reviews)

Good afternoon,

Thank you for providing legal representation for myself concerning this very serious matter. I, Devohn Marks, am respectfully requesting a motion for a new trial based on the interest of justice and also a motion for a judgment of acquittal based on a lack of substantial evidence to sustain a verdict of guilty. I am respectfully requesting that these motions be filed before any deadline expires waiving my right to seek these motions.

Sincerely,

Devohn Marks

DATE &amp; TIME →

7/29/2019 3:28 PM

\* WITHIN 14-DAY PERIOD OF VERDICT  
\* NO REPLY

2000

**Submit**

10 AA 035

EXHIBIT E1



**EIGHTH JUDICIAL DISTRICT COURT  
CLERK OF THE COURT**

REGIONAL JUSTICE CENTER  
200 LEWIS AVENUE, 3<sup>rd</sup> FL.  
LAS VEGAS, NEVADA 89155-1160  
(702) 671-4554

Steven D. Grierson  
Clerk of the Court

Anntoinette Naumec-Miller  
Court Division Administrator

August 13, 2019

**Attorney:** JESS Y. MATSUDA  
520 S 4th ST STE 340  
Las Vegas NV 89101

**Case Number:** C-18-337017-2  
**Department:** Department 5

**Defendant:** Devohn Marks

Attached are pleadings received by the Office of the District Court Clerk which are being forwarded to your office pursuant to Rule 3.70.

**Pleadings: Extension Of Time To File Motion For New Trial And Motion For Judgment  
Of Acquittal**

**Rule 3.70. Papers which May Not be Filed**

Except as may be required by the provisions of NRS 34.730 to 34.830, inclusive, all motions, petitions, pleadings or other papers delivered to the clerk of the court by a defendant who has counsel of record will not be filed but must be marked with the date received and a copy forwarded to the attorney for such consideration as counsel deems appropriate. This rule does not apply to applications made pursuant to Rule 7.40(b)(2)(ii).

Cordially yours,  
DC Criminal Desk # 7  
Deputy Clerk of the Court

10 AA 036

EXHIBIT C-2



**EIGHTH JUDICIAL DISTRICT COURT  
CLERK OF THE COURT**

REGIONAL JUSTICE CENTER  
200 LEWIS AVENUE, 3<sup>rd</sup> FL.  
LAS VEGAS, NEVADA 89155-1160  
(702) 671-4554

Steven D. Grierson  
Clerk of the Court

Anntoinette Naumec-Miller  
Court Division Administrator

---

August 08, 2019

**Attorney:** JESS Y. MATSUDA  
520 S 4th ST STE 340  
Las Vegas NV 89101

**Case Number:** C-18-337017-2  
**Department:** Department 5

**Defendant:** Devohn Marks

Attached are pleadings received by the Office of the District Court Clerk which are being forwarded to your office pursuant to Rule 3.70.

**Pleadings: Motion For Judgment Of Acquittal**

**Rule 3.70. Papers which May Not be Filed**

Except as may be required by the provisions of NRS 34.730 to 34.830, inclusive, all motions, petitions, pleadings or other papers delivered to the clerk of the court by a defendant who has counsel of record will not be filed but must be marked with the date received and a copy forwarded to the attorney for such consideration as counsel deems appropriate. This rule does not apply to applications made pursuant to Rule 7.40(b)(2)(ii).

Cordially yours,  
DC Criminal Desk # 7  
Deputy Clerk of the Court

10 AA 037

10 CF 11



EXHIBIT G3



**EIGHTH JUDICIAL DISTRICT COURT  
CLERK OF THE COURT**

REGIONAL JUSTICE CENTER  
200 LEWIS AVENUE, 3<sup>rd</sup> FL.  
LAS VEGAS, NEVADA 89155-1160  
(702) 671-4554

Steven D. Grierson  
Clerk of the Court

Anntoinette Naumec-Miller  
Court Division Administrator

August 14, 2019

**Attorney:** JESS Y. MATSUDA  
520 S 4th ST STE 340  
Las Vegas NV 89101

**Case Number:** C-18-337017-2  
**Department:** Department 5

**Defendant:** Devohn Marks

Attached are pleadings received by the Office of the District Court Clerk which are being forwarded to your office pursuant to Rule 3.70.

Pleadings: **Motion For A New Trial**

**Rule 3.70. Papers which May Not be Filed**

Except as may be required by the provisions of NRS 34.730 to 34.830, inclusive, all motions, petitions, pleadings or other papers delivered to the clerk of the court by a defendant who has counsel of record will not be filed but must be marked with the date received and a copy forwarded to the attorney for such consideration as counsel deems appropriate. This rule does not apply to applications made pursuant to Rule 7.40(b)(2)(ii).

Cordially yours,

DC Criminal Desk # 7

Deputy Clerk of the Court

10 AA 038

DEVON MARKS #2798254

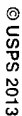
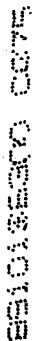
0000

330 S. Casino Center Blvd.

1A5 VEGAS, -1V 89101 0.15

COOZOKLE

CLERK OF THE COURT  
200 LEWIS AVE., 3RD FLOOR  
LAS VEGAS, NV 89155-1160



THIS ENVELOPE IS RECYCLABLE AND MADE WITH 30% POST CONSUMER CONTENT





1 RTRAN

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4  
5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7  
8 THE STATE OF NEVADA,  
9 Plaintiff,

CASE#: C-18-337017-2  
DEPT. V

10 vs.

11 DEVOHN MARKS,  
12 Defendant.

13  
14 BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE  
15 MONDAY, SEPTEMBER 16, 2019

16 **RECORDER'S TRANSCRIPT OF PROCEEDINGS:**  
17 **SENTENCING**

18 APPEARANCES:

19 For the State:

LINDSEY MOORS, ESQ.  
Deputy District Attorney

20  
21 For the Defendant:

JESS Y. MATSUDA, ESQ.

22  
23  
24  
25 RECORDED BY: GAIL REIGER, COURT RECORDER

10 AA 040

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MONDAY, SEPTEMBER 16, 2019 AT 10:46 A.M.

THE COURT: Page 28 is C337017, State of Nevada versus Devohn Marks. And this is the time set for sentencing. Are you ready to proceed?

MR. MATSUDA: No, Your Honor.

THE DEFENDANT: No.

THE COURT: All right. Why not?

MR. MATSUDA: I believe Mr. Marks has a motion that he filed.

THE DEFENDANT: Yes, ma'am, I have a motion to dismiss counsel and move to pro se.

THE COURT: You want to represent yourself at sentencing?

THE DEFENDANT: I want him off my case. I want him dismissed off my case.

THE COURT: You want to represent yourself at sentencing?

THE DEFENDANT: Yes, ma'am.

THE COURT: Are you --

THE DEFENDANT: I want to represent myself from this point forward, yes ma'am.

THE COURT: Well, after -- I can't remove him as counsel for the appeal at this point.

THE DEFENDANT: Well, I actually -- you said you can't -- I couldn't hear you.

THE COURT: You can't represent yourself on appeal.

1 THE DEFENDANT: Well, can I be appointed appellate  
2 counsel?

3 THE COURT: Not at -- not for sentencing at this point  
4 because it's -- today's the day.

5 THE DEFENDANT: So, what if my appeal is based on --

6 THE COURT: And you don't even -- and your motion isn't  
7 before me today.

8 THE DEFENDANT: It's on Wednesday, so can we continue  
9 sentencing until that motion is heard?

10 THE COURT: What's your reason for wanting to --

11 THE DEFENDANT: It's based on ineffective assistance, and I  
12 don't want him representing me at sentencing if he's been ineffective  
13 throughout this entire process. I have proof. I have exhibits attached to  
14 my motion to dismiss counsel proving that he hasn't conducted not one  
15 single attorney-client visit with me throughout my entire case. I have  
16 motions, pleadings on record that I've been trying to get him to file for  
17 me which are post-trial motions; Motion for a New Trial, Motion for a  
18 Judgment of Acquittal, along with other motions.

19 THE COURT: Well, but that would be a frivolous motion  
20 because --

21 THE DEFENDANT: It --

22 THE COURT: -- I mean, I heard the trial.

23 THE DEFENDANT: It's not a frivolous motion though. The  
24 case is based on an accomplice's testimony that's not corroborated in  
25 unauthenticated text messages. It's not a frivolous motion. And I still

1 want it to be submitted and then you can make a decision. And then if I  
2 decide to appeal your decision, then I can do that, but I would still like to  
3 be afforded an opportunity to submit my motions.

4 THE COURT: Well, they're not timely. You have to file a  
5 motion for a judgment of acquittal within seven days of a verdict.

6 THE DEFENDANT: I understand that. I have proof that I've  
7 contacted Matsuda within a 14-day period informing him that I want  
8 these motions filed. And I also understand that due to excusable  
9 neglect, I can still have these motions filed, and if you would like to deny  
10 them based on the untimely manner, then I can still appeal it to the  
11 Supreme Court and they can make a decision whether or not there's  
12 excusable neglect for these motions to still be heard.

13 I want to be afforded my rights and I want to be afforded the  
14 opportunity to have a fair -- I didn't have a fair trial. I tried to dismiss him  
15 before trial. I expressed to you that he didn't visit me; not one time.  
16 During trial he's not making any objections. I've been having this issue  
17 and I've been expressing this issue since before trial. The State did not  
18 prove their case beyond a reasonable doubt based on the Nevada law.

19 THE COURT: Well, I heard the trial and so I would make a  
20 decision on the motion

21 THE DEFENDANT: It -- I watched the same trial. I mean --

22 THE COURT: Don't talk while I'm talking. I listened to you.

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Right?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: Okay. So, we've got to have a record.  
2 THE DEFENDANT: Yes, ma'am.  
3 THE COURT: And it's really important --  
4 THE DEFENDANT: Yes, ma'am.  
5 THE COURT: -- for you to have a record. Okay. Are you  
6 done talking for now so I can talk?  
7 THE DEFENDANT: Yes, ma'am.  
8 THE COURT: Okay. So, in order for me to grant a motion for  
9 a judgment of acquittal after trial, I have to be able to find that there was  
10 absolutely no evidence upon which a reasonable jury could find you  
11 guilty. And I heard this trial and there was plenty of evidence and there  
12 was testimony, accomplice testimony that tended to connect you to the  
13 crime. I -- so, there was accomplice testimony, yes, but there was  
14 evidence that tended to connect you to the crime. It was separate and  
15 apart from the accomplice testimony. So, there is no way I would have  
16 granted such a motion.  
17 Counsel, did you not file a motion because you felt it was  
18 frivolous or --  
19 MR. MATSUDA: Yes, Your Honor.  
20 THE DEFENDANT: Well, Your Honor, like I said, I still should  
21 have the right and the opportunity to submit my motion so you can deny  
22 it on record so I can appeal it on record and send it to the Supreme  
23 Court and let them decide on it.  
24 THE COURT: Well, it's not --  
25 THE DEFENDANT: And what --

1 THE COURT: -- timely filed at this point.

2 THE DEFENDANT: Well, what about the motion for a new  
3 trial? I mean, the prosecutors engaged in prosecutorial misconduct  
4 multiple times throughout their closing argument and I have proof of that,  
5 which are exhibits attached to my motion. I just want my motion to be  
6 heard.

7 THE COURT: The motion has not been filed.

8 THE DEFENDANT: I just want my motions to be heard. I  
9 want my motions to be heard just like I wanted my motions to be heard  
10 before trial. I want my motions to be heard after trial. I have the  
11 opportunity to submit and file these motions for these specific reasons,  
12 and if they are denied, then they can be denied and I can appeal those  
13 motions. I have that opportunity. I have that right.

14 And if I -- if he -- if I have proof that he's ineffective -- what part  
15 of him not visiting me, not one time, throughout this entire case is  
16 effective assistance? He did not conduct not one single attorney-client  
17 visit throughout this entire process.

18 THE COURT: He --

19 THE DEFENDANT: How is he supposed to represent me  
20 properly if we haven't discussed the facts of the case? He failed to go  
21 and get my employment record. He could have went and got that from P  
22 and P.

23 The prosecutor said that my alibi was a curfew when a  
24 detective testified at my Grand Jury hearing that my alibi was my  
25 girlfriend, which was also incorrect because during the voluntary



1 statement I didn't give him an alibi for the time of the crime because he  
2 never asked me. I have proof of this. I don't want to get into detail, but I  
3 have proof of this, which are exhibits attached to my motion for a new  
4 trial.

5 Cannizzaro indicated that the military -- the generated military  
6 time of the phone records was actually call duration, stating to the jury  
7 that I have ten or 15-minute phone calls with my girlfriend when that's  
8 not what the record -- what the phone records reflected on the --  
9 throughout the PowerPoint. I have evidence of all of this that are  
10 attached to my motion for a new trial. I just want it submitted and heard;  
11 that's it. I don't -- I shouldn't have to get into the details because this is  
12 not the venue for that.

13 And I want to be respectful to the Court. I understand that a  
14 verdict came back. I understand the process. I want the process to  
15 respect me like I respect the process, point blank, period.

16 THE COURT: Okay.

17 THE DEFENDANT: He didn't come visit me, not one time,  
18 throughout my entire case. How does a person represent you at trial  
19 when you're fighting for your life when he doesn't visit you, not one time?

20 And the evidence -- the only evidence that would be  
21 misconstrued as having -- misconstrued as having any type of  
22 corroborative value are phone records that were unauthenticated. The  
23 phone experts testified at trial that they could not determine what the  
24 messages were about. They could not determine who authored the text  
25 messages.

1 THE COURT: That's not authentication.

2 THE DEFENDANT: Authentication is proving authorship --

3 THE COURT: The authentication of a --

4 THE DEFENDANT: -- of text messages.

5 THE COURT: Authentication of business records is just these  
6 are the records. Yes, they testified. The jury knew that that doesn't  
7 prove that you were in possession of the phone. It's circumstantial  
8 evidence, perhaps, that you were in possession of the phone. And your  
9 lawyer argued at trial that they hadn't proved that you were in  
10 possession of the phone because the -- you know, the argument was  
11 that somebody had stolen your phone and -- et cetera.

12 THE DEFENDANT: Your Honor, the Supreme Court already  
13 ruled on the authentication requirements for text messages in *Rodriguez*  
14 *versus State*.

15 THE COURT: Okay.

16 THE DEFENDANT: And they said that establishing the  
17 identity of the author of a text message is critical to authenticating. The  
18 State didn't present any evidence that I authored those text messages.  
19 They simply proved that the phone was in my name and they simply  
20 proved that the messages were sent by the user. They never identified  
21 me as the sender of the text messages.

22 And the accomplice that testified against me stated that he's  
23 never seen me in possession of a firearm, he never left outside of our  
24 apartment complexes with me, he barely knows me. He never identified  
25 me as one of the two guys, quote, unquote, that entered the bar and

1 pushed him on the ground and proceeded to commit the crime. How  
2 does the element of burglary get proven when you -- when the only  
3 witness identify me in this entire case did not identify me as one of  
4 people entering the bar? He never identified me with the firearm in my  
5 hand. He said he's never seen me with a firearm ever. He's never left  
6 outside of the apartment complexes with me. How do I plan to commit a  
7 robbery with somebody who I've never left outside of the apartment  
8 complexes with?

9 These are arguments that are in my motion for a new trial,  
10 supported by case law and supported by Nevada Revised Statute, that I  
11 want to have submitted and heard.

12 THE COURT: All right. We can continue his motion to -- you  
13 know, I can go through a *Faretta* canvass with him on Wednesday to  
14 see if, you know, he wants to represent himself at the sentencing on  
15 Wednesday, and that's the best I can do at this point. Did you not visit  
16 him in the jail?

17 MR. MATSUDA: I know we spoke numerous times when he  
18 was in court with us because he was -- originally when I got his case he  
19 was, I think, housed in High Desert. I know my investigator went to see  
20 him.

21 THE COURT: All right. When did you get out of High Desert?

22 THE DEFENDANT: I got remanded back down July 8<sup>th</sup> for  
23 jury selection. I was actually coming to trial from the holding tank.

24 THE COURT: Right, right, I remember that.

25 THE DEFENDANT: Yeah.

1 THE COURT: All right. Okay. But I was wondering how long  
2 were you at High Desert because the --

3 THE DEFENDANT: I was --

4 THE COURT: I think the documents you attached are just the  
5 jail.

6 THE DEFENDANT: No, I actually got the inmate  
7 correspondence form from the jail, but he didn't come visit me at all. His  
8 private investigator was not standing next to me representing me at trial.  
9 His private investigator wasn't present at trial at all; he was, so he should  
10 have come and contact me to discuss the facts of the case with me.

11 THE COURT: Yeah, but did you meet with his investigator at  
12 the prison?

13 THE DEFENDANT: I met with his investigator briefly.

14 THE COURT: Wait, hey, hey --

15 THE DEFENDANT: He did not come visit me.

16 THE COURT: -- hey, what did I tell you about not  
17 interrupting?

18 THE DEFENDANT: My apologies, Your Honor.

19 THE COURT: Just let me ask the questions and you answer.  
20 So, did his investigator come and visit you at the prison?

21 THE DEFENDANT: One time in eight months, yes, ma'am.

22 THE COURT: All right.

23 THE DEFENDANT: For 20 minutes.

24 THE COURT: Okay. So, we'll continue it till Wednesday and  
25 I'll go through a *Faretta* canvass to see if he wants to represent himself

1 at the sentencing.

2 THE COURT CLERK: September 18<sup>th</sup> --

3 THE DEFENDANT: Thank you.

4 THE COURT CLERK: -- 9 a.m.

5  
6 [Proceedings concluded at 10:57 a.m.]  
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21 ATTEST: I do hereby certify that I have truly and correctly transcribed  
22 the audio/video proceedings in the above-entitled case to the best of my  
23 ability.  
24  
25



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Trisha Garcia  
Court Transcriber



1 RTRAN

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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 MONDAY, OCTOBER 07, 2019

16 **RECORDER'S TRANSCRIPT OF PROCEEDINGS:**  
17 **FARETTA CANVASS; DEFENDANT'S PRO PER MOTION TO**  
18 **DISMISS COUNSEL AND MOVE IN PRO SE; SENTENCING**

19 APPEARANCES:

20 For the State:

LINDSEY MOORS, ESQ.  
Deputy District Attorney

22 For the Defendant:

BENJAMIN J. NADIG, ESQ.

23  
24  
25 RECORDED BY: LARA CORCORAN, COURT RECORDER

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MONDAY, OCTOBER 07, 2019 T 11:52 A.M.

THE COURT: Okay. Page 6 is C337017, State of Nevada versus Devohn Marks.

[Pause in proceedings at 10:53 a.m.]

[Proceedings recalled at 11:09 a.m.]

THE COURT: Page 6?

THE COURT CLERK: I believe so, Your Honor?

THE COURT RECORDER: It's page 6.

THE COURT: Okay. All right. Recalling page 6 which is C337017, State of Nevada versus Devohn Marks. Good morning, Mr. Marks.

THE DEFENDANT: Good morning, ma'am.

THE COURT: So, you still want to represent yourself?

THE DEFENDANT: Yes, ma'am.

THE COURT: All right. So, just a minute. We got to go through some questions here. Okay. So, you understand that you have the right to assistance of an attorney at all stages of a criminal proceeding?

THE DEFENDANT: Yes, ma'am.

THE COURT: And do you understand that criminal law is a very complex area, and it's very desirable that experience and professional training, you know, by somebody that has gone through law school is something that would help. Have you had any kind of legal training at all?

1 THE DEFENDANT: No, ma'am.

2 THE COURT: Do you realize that a lawyer that is in fact  
3 trained in the law has the -- and has the skill and experience from doing  
4 other cases is in a better position to conduct a defense of your case?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: All right. Do you know what the elements of  
7 the offenses are that you're charged with?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Okay. So, why don't you tell me what the  
10 elements of conspiracy to commit burglary are?

11 THE DEFENDANT: It is an agreement between two persons  
12 for an unlawful purpose; two people aiding and abetting each other to  
13 commit a crime in concert.

14 THE COURT: And in this particular case it's conspiracy to  
15 commit burglary. How about count two, the -- you're charged with  
16 burglary while in a possession of a deadly weapon.

17 THE DEFENDANT: Yes, ma'am, it is --

18 THE COURT: So, tell me the elements of that crime?

19 THE DEFENDANT: The entry of any store with the intent to  
20 commit a robbery or any felony or to obtain money or property by false  
21 pretense.

22 THE COURT: Okay. It could be any building; you understand  
23 that?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: And you've already told me what your



1 understanding of conspiracy is. So, do you know what the State will  
2 have to prove to convict you of robbery with use of a deadly weapon,  
3 victim over 60 years of age or older?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Tell me.

6 THE DEFENDANT: They have to prove that there was an  
7 unlawful taking of personal property from the person of another in his  
8 presence against his will by means of force or violence or fear of injury  
9 immediate or future to his person or property or the person or property of  
10 a member of his family or of anyone in his company at the time of the  
11 robbery.

12 THE COURT: Okay.

13 THE DEFENDANT: And the victim over 60 is, of course, a  
14 victim that is over the age of 60 years old.

15 THE COURT: And you're also charged with a count 7, battery  
16 with use of a deadly weapon victim 60 years of age or older, battery with  
17 use of a deadly weapon, felony. Now, you went through a trial; right?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: And so you discussed all of these elements  
20 with your lawyer beforehand?

21 THE DEFENDANT: No, ma'am.

22 THE COURT: Okay. So, you're not looking to represent  
23 yourself at a trial, but represent yourself at sentencing in this case; you  
24 understand that?

25 THE DEFENDANT: Yes, ma'am. I'm looking to represent

1 myself any further proceedings from this point forward.

2 THE COURT: Well, by Supreme Court rule you're not allowed  
3 to represent yourself on appeal; you understand that?

4 THE DEFENDANT: Understood, yes, ma'am.

5 THE COURT: So, your lawyer will still have to file the appeal  
6 in this case, but --

7 MR. NADIG: So, for the record Mr. Matsuda will be filing the  
8 notice if that's what you're saying, Your Honor.

9 THE COURT: That's required.

10 MR. NADIG: Okay.

11 THE COURT: Even -- there's a Supreme Court rule that says  
12 you can't -- a person cannot represent themselves pro se on appeal.  
13 And so for sentencing, however, the case law is clear that you can  
14 represent yourself at the sentencing although it's not ever advisable to  
15 go forward. Sentencing is, just like the trial, an essential part of the  
16 proceedings.

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Okay. And so you understand that you're  
19 going to need to address without assistance of counsel the possible  
20 range of punishment. Can you tell me what you know about that?

21 THE DEFENDANT: Well, it is my understanding that  
22 conspiracy to commit burglary can be punished by imprisonment in a  
23 county jail for not more than 364 days or by a fine not more than \$2,000  
24 or both by fine and imprisonment. Conspiracy to commit robbery is  
25 punishable by imprisonment in state prison for a minimal term of not less

1 than one year and a maximum term of not more than six years and may  
2 be further punished by a fine of not more than \$5,000.

3 Burglary while in possession of a deadly weapon is  
4 punishable by imprisonment in the state prison for a minimal term of two  
5 years and a maximum term of not more than 15 years, and may be  
6 further punished by a fine of not more than \$10,000.

7 Robbery with use of a deadly weapon is punishable by  
8 imprisonment in the state prison for a minimal term of not less than two  
9 years and a maximum term of not more than 15 years. With the use of  
10 deadly weapon is a consecutive minimal term of not less than one year  
11 and a maximum term of not more than 15 years in a victim -- older  
12 person is another consecutive minimal term of not less than one year  
13 and a maximum term of not more than 15 years.

14 And battery with use of a deadly weapon is punishable by  
15 imprisonment in the state prison for a minimal term of not less than two  
16 years and a maximum term of not more than ten years and may be  
17 further punished by a fine of not more than \$10,000. Of course, the --  
18 with the use of deadly weapon is a consecutive term of not less than one  
19 year and a maximum term of not more than ten years and a victim --  
20 older person is an additional consecutive sentence of not less than one  
21 year and not more than ten years in prison.

22 THE COURT: Okay. So, can the State ask for double  
23 enhancement penalty?

24 THE DEFENDANT: No, ma'am.

25 THE COURT: So, you're aware of that?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Okay. So, you understand that sentencing,  
3 right, is strictly up to the Court and you'll be having to argue for yourself  
4 regarding an appropriate sentence in this case?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Have you -- why is it that you want to represent  
7 yourself at sentencing?

8 THE DEFENDANT: Well, prior to trial I attempted to contact  
9 my lawyer both by telephone and by email. He failed to conduct any  
10 visits with me. He was completely ineffective. I made the Courts aware  
11 of this prior to going to trial. I attempted to dismiss him as counsel and  
12 be appointed substitute counsel in order to be represented by someone  
13 who would effectively argue my points and represent me and give me  
14 advice that would be in my best interest to no avail.

15 So, I also made the Courts aware that I was not prepared to  
16 proceed to trial due to the fact that my lawyer had failed to visit me at all,  
17 however, we proceeded to trial anyway. I was ultimately found guilty of  
18 all eight counts which I feel is an erroneous judgment. And at this point I  
19 feel like I would be the best defense for myself based on what has taken  
20 place prior to trial, during trial, and after trial with me attempting to file  
21 post-trial motions for a new trial and a post-trial motion for a judgment of  
22 acquittal.

23 I actually have an email in hand that I -- that prove that I've  
24 reached out to Matsuda informing him that I would like for him to file  
25 these motions or at least get in contact with me to discuss the merits of

1 my claims for these motions. It didn't happen.

2 I also sent in drafted motions of my own to the Courts that  
3 were within the 14 day period that were forwarded to Matsuda's office.  
4 He still didn't contact me. No motions were filed which basically  
5 involuntarily waived my rights for these motions to be heard in Court  
6 prior to be sentenced. And now I stand before you today willing and  
7 prepared to represent myself in order to properly file these motions and  
8 also represent myself for sentencing.

9 THE COURT: Okay. So -- so, mainly you're upset that he  
10 didn't -- and that was my understanding before trial as to why you  
11 wanted to dismiss him and get other counsel was because you felt like  
12 he should be filing certain motions pre-trial, and then, you know, after  
13 trial you wanted him to file for motion for a judgment of acquittal  
14 notwithstanding the verdict; is that correct?

15 THE DEFENDANT: And also for a motion for a new trial as  
16 well. And that wasn't the only reason I wanted to dismiss him. I mean,  
17 he didn't conduct a single contact visit with me throughout the entire  
18 time I was in custody awaiting trial. He didn't contact me by phone. He  
19 doesn't -- when I call his phone his office doesn't accept collect calls.  
20 So, I mean, I'm indigent. Of course he was appointed to me by the  
21 Courts. So, I couldn't pay for the phone calls to be able to contact him  
22 by phone. So, basically, throughout this entire process we had no  
23 contact other than being in Court during proceedings.

24 So, that was also a reason that I made the Courts aware of  
25 why I wanted to dismiss Matsuda as counsel because it was basically

1 like I didn't have assistance at all. We attempted to discuss the issues  
2 that I had and the holding tank to no avail. So, yeah, it just -- all that  
3 comulatively [sic] gave me reason to want to represent myself.

4 THE COURT: Well, you're referring when you say the holding  
5 tank that because you're complaining that you haven't been able to see  
6 your lawyer --

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: -- and there have been difficulties as I recall  
9 with the jail that I said, well, we'll make some time here for you to meet  
10 with your lawyer --

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: -- and you did. And Mr. Matsuda, as I recall,  
13 said that most of the time you spent in that visit was arguing with him  
14 again about these motions that he did not feel were appropriate to file;  
15 correct?

16 THE DEFENDANT: Well, Your Honor, we were actually in the  
17 pre-trial proceeding process. I was requesting for pre-trial motions to be  
18 filed pursuant to the conditions of those motions by law. I attempted to  
19 discuss that with him. I also informed him that I wasn't served a *Marcum*  
20 notice, I still haven't received a Court order, and I still haven't  
21 -- you know, he was still giving me discovery at jury selection that I  
22 hadn't seen prior to actually starting trial.

23 I did bring up the motions that I wanted filed, but as I stated  
24 previously, as a matter of law in the pre-trial proceeding process you're  
25 supposed to file pre-trial motions. I expressed the merit of my motions

1 which was the motion in limine to exclude the phone records based on  
2 the fact that they were without context or content, and at least challenge  
3 the authentication of the text messages in order to place the burden on  
4 the State to have to properly authenticate those text messages being  
5 authored by myself before they can used against me to prevent any  
6 unfair prejudice against me during trial.

7 I also requested within the 21 day period of my first  
8 appearance in District Court for Mr. Matsuda to file a pre-trial habeas  
9 corpus. I actually sent multiple letters to his office breaking down the  
10 entire situation to him. I didn't hear any response in order to challenge  
11 the sufficiency of the evidence to sustain the Indictment pursuant to  
12 NRS 174.155. I didn't hear anything back. By the time I got back to  
13 Court, the 21 days were up. And that involuntarily waived my right for  
14 that writ to be filed. And the only thing that was introduced at the grand  
15 jury hearing against me was an accomplice's testimony and a  
16 detective's testimony who basically spoke on these text messages that  
17 had not been authenticated by -- as being authored by myself. So, by  
18 law the accomplice's testimony alone is not enough to even show  
19 probable cause to hold a person for trial, and the Supreme Court ruled  
20 on that in *Ex Parte Hutchinson*.

21 So, yes, I did continue to discuss these motions with Matsuda  
22 even after he told me they were meritless because he hadn't explained  
23 to me why he believed that they were meritless or frivolous. He just  
24 simply told me, no, we're not filing it.

25 THE COURT: But we talked -- we talked about those in Court

1 as well, and I explained to you as well, my recollection serves me, that  
2 why it's true that you can't be convicted on the uncorroborated testimony  
3 of an accomplice alone, there must be other evidence which tends to  
4 connect you to the trial -- excuse me -- to the crime --

5 THE DEFENDANT: To the crime, yes, ma'am.

6 THE COURT: -- that's charged; that in fact there was through  
7 the phone records, and that the --

8 THE DEFENDANT: Well --

9 THE COURT: -- that the bar, if you will, the evidentiary bar  
10 before a grand jury is not proof beyond a reasonable doubt, but it is a  
11 very low bar and -- but that was met as Mr. Matsuda indicated. That he  
12 also indicated on the record that proper *Marcum* notice had been  
13 served. And so that -- he felt that the filing of such a writ would be  
14 frivolous.

15 THE DEFENDANT: Well, I would like to correct you on that,  
16 Your Honor. He stated that the *Marcum* notice was sealed. He didn't  
17 state that it was properly served. He stated that was -- it was sealed,  
18 and I requested for the Courts to assure that I was provided with a copy  
19 of the Court order which I am entitled to as a Defendant, you know, in a  
20 case. I'm entitled to all of the documentations that are being used  
21 against me. The State said that they sealed the notice.

22 THE COURT: Well, right, because the law provides that a  
23 *Marcum* notice can be sealed --

24 THE DEFENDANT: Absolutely.

25 THE COURT: -- if it would jeopardize the well-being of



1 anyone involved or further investigation, et cetera. So, if that was case  
2 then what Mr. Matsuda said was that his investigation revealed that it  
3 was proper -- it was handled properly.

4 THE DEFENDANT: Well, Your Honor, I reviewed the case  
5 summary, and pursuant to NRS 172.24 if the State is going to apply to  
6 withhold the notice, then they reply to the Courts through written  
7 application. And the Courts would then provide the State to provide  
8 sufficient evidence to show that I was a flight risk as they indicated.

9 The case summary and the Court minutes do not reflect any  
10 such hearings being held or any Court orders being ordered by the  
11 Courts, and I also asked for a copy of the Court order. If he would have  
12 provided me a copy of the Court order or if the State would have  
13 provided a copy of the Court order, then I would have left the *Marcum*  
14 issue alone. I understand that I have the right to testify before being  
15 indicted.

16 So, for me that right was very important before proceeding to  
17 trial because I could have done something to change the outcome of this  
18 case before we even made it to trial, but I wasn't afforded that right. And  
19 according to the independent evidence that you had spoke on just a  
20 minute ago, when considered independently from Johnson's testimony,  
21 when you eliminate Johnson's testimony from the entire case, those file  
22 records do not implicate me in this crime and they do not show that I'm  
23 one of the two masked suspects as the State alleged. The file records  
24 simply show that the phone was registered in my name and it simply  
25 shows that the phone was texting Johnson's phone, and that's what

1 authentication purposes are for, to prove that I was the person sending  
2 those messages to that phone. The State failed to provide that  
3 authentication. So, therefore, the State failed to prove beyond a  
4 reasonable doubt that those phone records connected me to any crime.

5 The phone experts testified that you could not determine the  
6 author of the text messages. They also testified that there were no  
7 contexts of the phone records. So, therefore, you could --

8 THE COURT: I -- I understand --

9 THE DEFENDANT: -- not determine --

10 THE COURT: -- I understand that. But that's not -- the  
11 requirement is merely that it tends to connect you. It doesn't have to --

12 THE DEFENDANT: So --

13 THE COURT: -- be independent evidence that you committed  
14 the crime. The jury had the right to determine that as a piece of  
15 circumstantial evidence of the case. So, I guess I'm concerned that the  
16 reason you want to represent yourself is that you believe then that you'll  
17 be able to file motions --

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: -- one of which the time limit has already run.  
20 And so you're not going to be able to file that. And I -- and Mr. Matsuda  
21 said he didn't file that -- such a motion because -- and I explained that to  
22 you as well the last time we were in Court that the criteria for filing and  
23 the Court granting of such a motion -- in other words, the jury found you  
24 guilty, that there wasn't any evidence that a reasonable jury could --  
25 would have come to that decision. That's the bar, you know, set. That's

1 a high bar for you to be able to present. Now, that's -- it's not  
2 impossible. I've had a case where I granted such a motion, but yours is  
3 not one of them --

4 THE DEFENDANT: Well, okay.

5 THE COURT: -- because there was sufficient evidence  
6 because there was accomplice testimony that was very detailed --

7 THE DEFENDANT: Well --

8 THE COURT: -- as well as the phone records which give --  
9 tend to connect you to the crime.

10 THE DEFENDANT: Well, you --

11 THE COURT: So -- plus there was also the additional  
12 evidence of prior bad acts of a similar nature.

13 THE DEFENDANT: Well, Your Honor, the accomplice  
14 testimony revealed that he had never seen me in possession of a gun.  
15 It also revealed that he was laying face down on the ground and didn't  
16 see the robbery so he never identified me as one of the two suspects  
17 that entered the bar. It also revealed that he never left the apartment  
18 complex with me.

19 THE COURT: Okay. That's all argument --

20 THE DEFENDANT: No, that's his testimony.

21 THE COURT: -- that your lawyer argued at the trial.

22 THE DEFENDANT: He did not.

23 THE COURT: But the jury did not believe that so --

24 MR. NADIG: Your Honor, just for the record this is all re-  
25 litigating the trial. This has nothing to do with sentencing.

1 THE COURT: I know, but I want to --

2 THE DEFENDANT: Absolutely. Well --

3 THE COURT: -- also make sure that he understands that  
4 what he's doing -- that he doesn't, I mean, feels that he can represent  
5 himself at this essential proceeding or part of the proceedings, that  
6 being at sentencing. You know, he's not going to be able to represent  
7 himself at an appeal, and he's -- I get the feeling like he's wanting to do  
8 this because he thinks that he's going to file all these motions that his  
9 lawyer refused to file because they were frivolous.

10 THE DEFENDANT: Well, they're not frivolous. I've already  
11 stated in open Court and expressed the prosecutorial misconduct that  
12 took place during closing argument that --

13 MR. NADIG: Well -- and that's -- and, Your Honor, here's the  
14 situation as there a number of things he's raising that are all writ issues  
15 in or direct appeal issues when you come to prosecutorial misconduct.

16 THE COURT: Yes.

17 MR. NADIG: Now, when it comes to sentencing, I think that  
18 this is all immaterial to sentencing. I -- to be fair, he knows more law  
19 than some of the lawyers I've seen practice in front of you, hopefully  
20 myself not included. But, you know, if he wants to take this route, you  
21 know, not advisable as it is. I think that he has met the standard under  
22 *Faretta*.

23 THE COURT: All right.

24 THE DEFENDANT: Well, Your Honor --

25 THE COURT: What about -- have you ever, you know, been

1 adjudged as by any Court or diagnosed as having -- being mentally ill?

2 THE DEFENDANT: No, ma'am.

3 THE COURT: Have you ever been found to be incompetent  
4 at any time by a Court?

5 THE DEFENDANT: No, ma'am.

6 THE COURT: Let's see -- okay. And what's your education  
7 background? Tell me.

8 THE DEFENDANT: Graduated high school, 12<sup>th</sup> grade.

9 THE COURT: Okay.

10 THE DEFENDANT: Some college.

11 THE COURT: And you've been studying at the law library?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Okay. And you've already told me about the  
14 range of punishment. Are you familiar with the *Stockmeier* decision?

15 THE DEFENDANT: No, ma'am.

16 THE COURT: Okay. So, you understand that you're going to  
17 need to look at your Pre-Sentence Investigation Report; you have that,  
18 right?

19 THE DEFENDANT: Yes, ma'am, I have it in here.

20 THE COURT: And that you'll need to point out to the Court  
21 anything you feel is wrong in that report --

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: -- and bring it to the Court's attention because  
24 if you don't do it you waive it; you understand that?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: Are you waiving your right to counsel  
2 voluntarily, knowingly, and with full appreciation and understanding of  
3 the potential consequences if you don't have counsel arguing on your  
4 behalf?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: In other words, I'm -- I'm certainly not going to  
7 punish you more harshly because you don't have a lawyer. It's just a  
8 matter of -- you may be less articulate than a lawyer could be also  
9 arguing on your behalf; do you understand that?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: All right. It appears -- I can't find any reason  
12 that -- to deny him his right to represent himself for sentencing. I don't --

13 MR. NADIG: Your Honor, the only thing I would do -- I know  
14 you are going to grant him the right to *Faretta* -- the only thing I would do  
15 on his behalf as a friend of the Court is object to the late filing of the  
16 violent habitual and say based on the fact that they filed that late, that  
17 should not be applicable to his sentence.

18 THE COURT: Okay. So, that's another question I had for  
19 you, sir. Do you -- do you want to go forward with sentencing now or do  
20 you want some time to --

21 THE DEFENDANT: I would like to request some time, Your  
22 Honor.

23 THE COURT: Okay. How much time do you need?

24 THE DEFENDANT: Thirty to 45 days.

25 THE COURT: Forty-five days?

1 THE DEFENDANT: Thirty to 45 days.

2 THE COURT: Okay. So, I can give you 30 days.

3 THE DEFENDANT: Thank you, Your Honor. So, at this point  
4 Matsuda is no longer on my case and I'm representing myself; right?

5 THE COURT: Right.

6 MR. NADIG: For purposes of sentencing however --

7 THE COURT: For sentencing only.

8 THE DEFENDANT: For purposes of sentencing.

9 THE COURT: He'll have to represent you on the appeal. The  
10 appeal time doesn't begin running until after the Judgment of Conviction  
11 has been entered.

12 MS. MOORS: And, Your Honor, actually I did need to  
13 mention this. I know we just heard Mr. Nadig object to the late filing of  
14 the notice of intent to seek nabitual. Was that within the *Faretta* canvass  
15 in terms of the penalty range? I don't know if he was canvassed on that  
16 range.

17 MR. NADIG: He was not canvassed as to the penalties for --  
18 sorry -- he was not canvassed as to the penalties for habitual criminal.

19 THE COURT: So, I don't know anything about your priors in  
20 detail. Do you know anything about habitual offender treatment?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Tell me what it is.

23 THE DEFENDANT: Well, it's three similar crimes, violent  
24 crimes of the same nature, three convictions of the similar crime or five  
25 felony convictions.

1 THE COURT: Well, that's sort of getting close to it, I suppose.  
2 But what about the penalties?

3 THE DEFENDANT: Well, yes, ma'am. I can actually be  
4 sentenced to 10 to 25 years on each count if adjudicated as a habitual  
5 or life in prison with the possibility of parole after ten years minimum or  
6 life without the possibility of parole.

7 THE COURT: And have you looked into, you know, what the  
8 State has to do as far as filing documents about their intent to seek  
9 habitual offender treatment?

10 THE DEFENDANT: No, ma'am. To my understanding I was  
11 supposed to receive some type of notice or documentation informing me  
12 that they were seeking the habitual against me that I not received, but I  
13 outside of that, no, ma'am.

14 MS. MOORS: Your Honor, I would just point out that that was  
15 filed -- Court's indulgence. I don't have the actual note in my file, but I  
16 know that it was filed either during trial or prior to trial and probably was  
17 probably was provided to Mr. Matsuda. That notice was filed  
18 electronically on July 26<sup>th</sup> or July 25<sup>th</sup> of 2019.

19 THE COURT: And when did we because I don't remember  
20 when we started the trial?

21 THE COURT CLERK: We started --

22 THE DEFENDANT: July 8<sup>th</sup> with jury selection and July 22<sup>nd</sup>  
23 was actual day -- the first day of trial.

24 THE COURT CLERK: Correct.

25 MS. MOORS: Correct, Your Honor. So, we ultimately then



1 closed on July 26<sup>th</sup>. So, it was filed on July 25<sup>th</sup> when we were in trial.

2 THE COURT CLERK: The trial ended July 26<sup>th</sup>.

3 THE COURT: Okay. And is that part of the reason you're  
4 seeking for this additional time to do more search?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: All right. You sure you want to do this without  
7 counsel? I mean, we could appoint different counsel if that's something  
8 that you would want.

9 THE DEFENDANT: Yeah, I can handle it, yes, ma'am.

10 THE COURT: Are you sure because probably Mr. Nadig  
11 would be happy to represent you.

12 MR. NADIG: I'm right here.

13 THE COURT CLERK: He's next on the line -- on the list.

14 THE DEFENDANT: No, I'm all right. I'll do it myself.

15 MR. NADIG: I don't mind doing it.

16 THE COURT: Okay. Because, again, you have a right to  
17 counsel at sentencing, and I don't want you to think that it's just you're --  
18 you're doing this just because you don't want Mr. Matsuda because that  
19 -- you can have Mr. Nadig represent you for sentencing.

20 THE DEFENDANT: I'm doing it because I don't want any  
21 Court appointed attorney representing me, and I feel that it would be  
22 best if I represent myself in my own life because I care about my life  
23 more than anybody else. So, I will prefer to represent myself and argue  
24 my own points and recommend my own sentence -- structure.

25 THE COURT: Okay. Well -- I mean, you know that you can

1 speak at your own sentencing and tell me anything you want; right?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Even if you're represented by a lawyer at  
4 sentencing, you still have the right, and I'll specifically ask you if you  
5 want to tell me anything or say anything and you'd have the opportunity  
6 to do that in full; you understand that?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: And you still want to represent yourself, no  
9 lawyer?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: All right.

12 MR. NADIG: And, Your Honor, I will either make sure that  
13 myself or Mr. Matsuda is present at the time of sentencing.

14 THE DEFENDANT: I will prefer that he be present and not  
15 Matsuda, yes.

16 MR. NADIG: I will make sure that myself is present at the  
17 time of sentencing.

18 THE DEFENDANT: Thank you.

19 THE COURT: All right. Here are the dates.

20 THE COURT CLERK: That will be November 4<sup>th</sup> at 9 a.m.,  
21 and so the motion is granted to dismiss counsel and we're moving per  
22 se on sentencing.

23 THE COURT: For sentencing, yes. I'll grant his request to  
24 represent himself at the time of sentencing. Mr. Nadig is going to act as  
25 standby counsel for that purpose.

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MS. MOORS: Thank you, Your Honor.

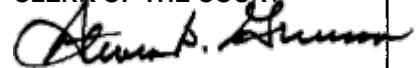
THE COURT: Thank you.

THE DEFENDANT: Thank you, Your Honor.

[Proceedings concluded at 11:40 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.

  
PATRICIA SLATTERY  
Court Transcriber



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 DENYING MOTION FOR APPOINTMENT OF ATTORNEY**

12 DATE OF HEARING: March 11, 2020  
13 TIME OF HEARING: 9:00 A.M.

14 THIS MATTER came on for hearing before the above entitled Court on the 11th day  
15 of March, 2020, the defendant, not being present as he is incarcerated, represented by JESS  
16 MATSUDA, ESQ., the plaintiff being represented by STEVEN B. WOLFSON, District  
17 Attorney, through ECKLEY KEACH, Deputy District Attorney, without hearing arguments  
18 from the parties, and good cause appearing,

19 IT IS HEREBY ORDERED that the Defendant's Motion for Appointment of  
20 Attorney shall be, and it is, DENIED. The defendant is already represented by appointed  
21 counsel, Jess Matsuda, Esq. and Mr. Matsuda has already filed the Notice of Appeal for the  
22 defendant's case.

23 DATED this 13<sup>th</sup> day of March, 2020.

24  
25   
26 DISTRICT JUDGE