

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

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)
)
)

Case No. 80469

Electronically Filed
Jul 21 2021 08:06 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

RESPONDENT'S APPENDIX

MARIO D. VALENCIA, ESQ.
Nevada Bar #006154
40 S. Stephanie St., Ste. 201
Henderson, Nevada 89012
(702) 384-7494

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

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

Counsel for Appellant

Counsel for Respondent

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on July 21, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON D. FORD
Nevada Attorney General

MARIO D. VALENCIA, ESQ.
Counsel for Appellant

TALEEN PANDUKHT
Chief Deputy District Attorney

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

TP/Haley Beza/ed

District Court
CLARK COUNTY, NEVADA

FILED
AUG 22 2019

CLERK OF COURT

7

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

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

Devon 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 GESTURE.

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

RA002

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. ^{there} ~~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 SETFORTH 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

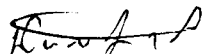
LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CLARK COUNTY DETENTION CENTER
RECORDS SUPPORT UNIT

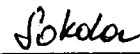
INMATE CORRESPONDENCE REQUEST

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 LAWYER FROM 01/14/19 - PRESENT

6 CF 11

RA006

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
-----------	------------	-------------	--------------------	------------	-------------------	--------------------	---------------------	--------------------	------------	-----

Video

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
-----------	------------	-------------	--------------------	------------	--------	-------------------	--------------------	---------------------	--------------------	----------

EXHIBIT A2

70F 11

RA007

EXHIBIT B**Avvo**(1)**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 & TIME →

7/29/2019 3:28 PM

* WITHIN 14-DAY PERIOD OF VERDICT
* NO REPLY

2000

Submit

EXHIBIT E1



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

REGIONAL JUSTICE CENTER
200 LEWIS AVENUE, 3rd 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

EXHIBIT C-2



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

REGIONAL JUSTICE CENTER
200 LEWIS AVENUE, 3rd 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

EXHIBIT G3



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

REGIONAL JUSTICE CENTER
200 LEWIS AVENUE, 3rd 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

Felony/Gross Misdemeanor

COURT MINUTES

October 07, 2019

C-18-337017-2 State of Nevada
 vs
 Devohn Marks

October 07, 2019 09:00 AM All Pending Motions

HEARD BY: Ellsworth, Carolyn COURTROOM: RJC Courtroom 16D

COURT CLERK: Natali, Andrea

RECORDER: Corcoran, Lara

REPORTER:

PARTIES PRESENT:

Devohn Marks Defendant

Lindsey Moors Attorney for Plaintiff

State of Nevada Plaintiff

JOURNAL ENTRIES

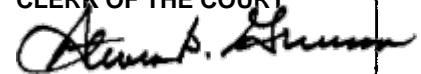
APPEARANCE CONTINUED: Benjamin Nadig, Esq. present for Mr. Nadig on behalf of Deft. who is present in custody.

SENTENCING ... DEFT.'S PRO PER MOTION TO DISMISS COUNSEL AND MOVE IN PRO SE ... FARETTA CANVASS

Upon Court's inquiry Deft. advised he still wanted to represent himself. Court proceeded with the Faretta Canvass of the Deft and questioned the Deft. regarding his understanding of the laws. COURT FINDS, no reason for the Deft. not to be able to represent himself on Sentencing. Mr. Nadig objected to the late filing of the notice of intent to seek criminal habitual treatment and argued that should not be considered at sentencing. Argument by Ms. Moors in support of criminal habitual treatment being considered. Deft. requested the sentencing be continued 30 days to allow him to prepare. Upon Court's further inquiry, Deft. reiterated he still wanted to represent himself and declined to have another court appointed attorney represent him. Mr. Nadig stated he would appear for the sentencing date. COURT ORDERED, motion GRANTED in that Jess Matsuda is REMOVED AS COUNSEL and Deft. is to proceed in Pro Se; FURTHER, Benjamin Nadig APPOINTED as standby counsel for Sentencing.

CUSTODY (COC-NDC)

11/4/19 - 9:00 AM - SENTENCING



1 **ORDR**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

5 **THE STATE OF NEVADA,**

6 **Plaintiff,**

7 **-vs-**

CASE NO: C-18-337017-2

8 **DEVOHN MARKS,**
9 **#2798254**

DEPT NO: V

10 **Defendant.**

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

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

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

28 //

//

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

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

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

18 DATED this 11/16 day of October, 2019.

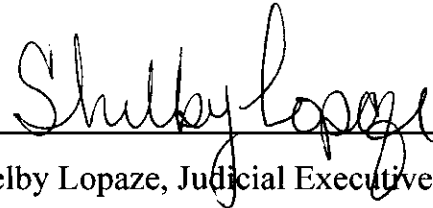
19
20 
21 DISTRICT JUDGE
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

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

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

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



Shelby Lopaze, Judicial Executive Assistant

AFFIRMATION

Pursuant to NRS 239B.030

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

_____/s/ Carolyn Ellsworth____ Date _____