

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown
Clerk of Supreme Court

LORENZO PINKNEY

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

S.Ct. No. 83336

D.C. No. A-19-806862-W

APPELLANT'S APPENDIX, VOLUME II

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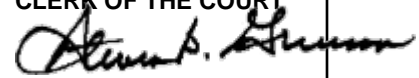
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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

LARENZO PINKNEY,

Defendant.

CASE NO: C-17-327767-1

DEPT NO: I

PETITION FOR WRIT OF HABEAS CORPUS

TO: The Honorable Judge of the Eighth Judicial District Court of the State of Nevada, in and
for the County of Clark:

The Petition of LARENZO PINKNEY submitted by BENJAMIN DURHAM, counsel for
the above-captioned individual, respectfully affirms:

1. That petitioner is a duly qualified, practicing and licensed attorney in the City of
Las Vegas, County of Clark and State of Nevada;
2. That petitioner makes the present application for a Writ of Habeas Corpus on
behalf of his client;
3. That the imprisonment and restrain of Petitioner's above-captioned client is
unlawful in that:
 - a. Counts 3, 10, and 14 of the Indictment (First Degree Kidnapping) must be
dismissed because the alleged conduct was incidental to the accompanying
charges of Robbery with a Deadly Weapon

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PLEASE TAKE NOTICE that Defendant will bring the foregoing PETITION FOR WRIT OF HABEAS CORPUS on for hearing in Department I of this Court on the 03 day of January 2018, at 9 a.m., or as soon thereafter as counsel may be heard.

By: /s/ Benjamin Durham
Benjamin C. Durham
Attorney for Defendant

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BENJAMIN DURHAM makes the following declaration:

1. I am the attorney duly licensed to practice law in the State of Nevada; I am the counsel for the Defendant in the instant matter;
2. That I am familiar with the facts and circumstances of this case;
3. That I have read the above and foregoing Petition, know the contents thereof, and that the same is true of my own knowledge, except as to those matters therein stated upon information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct. (NRS 53.045).

EXECUTED this 12th day of December, 2017.

By: /s/ *Benjamin Durham*

BENJAMIN DURHAM

1 **MEMORANDUM OF POINTS AND AUTHORITIES**
2 **IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS**

3 **BACKGROUND**

4 On November 8, 2017, an Indictment was filed against Lorenzo Pinkney and Adrian
5 Powell, accusing them of multiple crimes related to 2 robberies that occurred on September 28,
6 2017. One robbery occurred at a Pepe's Tacos restaurant and the other at a Walgreen's
7 pharmacy. The grand jury heard testimony from multiple witnesses. There are 3 witnesses
8 relevant to this petition: Jose Chavarria (count 3), Yeneir Hessing (count 10), and Tifnie Bobbitt
9 (count 14).
10

11 **Jose Chavarria – count 3**

12 Mr. Chavarria was working as a cook at Pepe's Tacos located on Fremont Street during
13 the early morning hours of September 28, 2017, when two masked individuals entered the
14 restaurant and jumped the counter. *Grand Jury Transcript "GJT" vol 1 pg 34*. One of the
15 suspects aimed a gun at Mr. Chavarria and told him that he wanted the money. The suspect told
16 Mr. Chavarria to go forward to the cash registers and wanted him to open the registers. *GJT vol 1*
17 *pg 35*. Mr. Chavarria complied and went from the back area to the registers but was unable to
18 open them. *GJT vol 1 pg 36*. The suspect told Mr. Chavarria to get on the ground but Mr.
19 Chavarria only "bent down" and put his hands up. *GJT vol 1 pg 37*. The suspects eventually fled
20 with money from the register.
21
22

23 **Yeneir Hessing – count 10**

24 On September 28, 2017, Ms. Hessing was working as a graveyard shift manager at
25 Walgreen's located in the area of Bonanza and Lamb. At approximately 4am, she was putting
26 away product in the food aisle when somebody with a mask and gun approached her and told her
27 to go up front. *GJT vol 1 pg 10*. She testified at the grand jury that the suspect was "like
28

1 pushing me with the gun to the front” and asked her to open the cash register. *Id.* The distance
2 from the food aisle to the register was not too far, maybe 30 feet. *GJT vol 1 pg 13.*

3 From the cash registers, the suspect took Ms. Hessing to the office, which required a code
4 to open the door. *GJT vol 1 pg 15.* The office contained a safe. Ms. Hessing opened the safe and
5 the suspect took money. *GJT vol 1 pg 18.* After taking money, the suspect opened the office
6 door and ran. *GJT vol 1 pg 19.*

8 **Tifnie Bobbitt – count 14**

9 Ms. Bobbitt was also working graveyard at Walgreen’s at the time of the robbery. *GJT*
10 *vol 2 pg 9.* She was near the break room when she saw a person crouching and walking behind
11 the store manager, Yeneir Hessing. *GJT vol 2 pg 10.* She only saw one suspect in the store. *Id.*
12 She proceeded to knock on the manager’s door to alert her that something was going on but did
13 not receive a response. As she was walking back to the break room to finish her lunch, a suspect
14 yelled at her and wanted her to help open the cash registers. *GJT vol 2 pg 12.* Ms. Bobbit was
15 unsure whether the suspect ever pointed a gun at her. *GJT vol 2 pg 13.*

17 After obtaining money from the registers, Ms. Bobbit (and Ms. Hessing) were directed to
18 the office area by the suspect. *GJT vol 2 pg 14.* After retrieving money from the office safe, the
19 suspect left the store. *GJT vol 2 pg 16.*

21 **ARGUMENT**

22
23 **Insufficient evidence of first-degree kidnapping was presented to the grand jury.**
24 **The testimony established that the victims’ movement was clearly incidental to the robbery.**

25 Kidnapping and robbery are separate and distinct crimes. When a kidnapping charge is
26 valid on its face but incidental to the commission of a robbery, then the kidnapping charge must
27 be dismissed. *Wright v. State of Nevada*, 94 Nev. 415, 417, 581 P.2d 442, 443-44 (1978); *see*
28

1 e.g., *Jefferson v. State of Nevada*, 95 Nev. 577, 579-80, 599 P.2d 1043 (1979); *Beets v. State of*
2 *Nevada*, 107 Nev. 957, 821 P.2d 1044 (1991). Mere asportation of the alleged victim is not
3 enough to support a kidnapping claim when there is another associated offense. Rather, the
4 movement of the alleged victim must be over and above that required to complete the associated
5 charged crime. *Jefferson*, 95 Nev. at 579-80.

7 In *Wright*, the defendant was charged with the crimes of kidnapping and robbery. In that
8 case, three males entered a lobby motel and pulled guns on the night clerk and the auditor. After
9 emptying the cash register behind the counter, the two victims were told to walk to a back office,
10 a distance of about 20 to 40 feet. One of the victims was subsequently taken back to the lobby to
11 open a safe. Upon his return to the back office, he and the clerk were told to lie face down on the
12 floor and they were taped hand and foot. They were threatened while lying on the floor. The
13 robbers then left. The incident lasted 3-5 minutes.

15 In its decision to set aside the kidnapping charge, the Court explained:

16 “... under a literal reading of NRS 200.310 [robbery statute], it is difficult to conceive
17 how any robbery could be accomplished without committing the crime of kidnap: the
18 “forcible taking” necessary to commit robbery under NRS 200.380 necessarily involves
19 some form of “confinement” under NRS 200.310... If, indeed, the movement of the
20 victim is incidental to the robbery and does not substantially increase the risk of harm
21 over and above that necessarily present in the crime of robbery itself, it would be
22 unreasonable to believe that the legislature intended a double punishment.” *Id.*, 94 Nev.
23 at 417; *see also*, *Sparks v. State*, 96 Nev. 26, 604 P.2d 802 (1980).

22 Given the facts in *Wright*, the Court concluded that the movement of the victims was
23 incidental to the robbery and without an increase in danger to them, and that their detention was
24 only for a short period of time necessary to consummate the robbery. 94 Nev. at 418.

26 ///

1 The facts here are similar to *Wright* except that the victims in this case were not
2 restrained and bound. As in *Wright*, the victims were moved short distances in order to
3 accomplish the robbery – Mr. Chavarria was moved from the kitchen to the register, and Ms.
4 Bobbitt and Ms. Hessing were moved to the register and then to the office safe. The testimony of
5 these witnesses regarding their movement is clearly similar to the facts in *Wright* because the
6 movement was purely incidental to the robbery and did not go above and beyond that which was
7 required to consummate the crime.
8

9 In *Mendoza v. State*, the Nevada Supreme Court further clarified the law regarding dual
10 convictions for robbery and kidnapping. 130 P.3d 176 (Nev. 2006). Movement...incidental to
11 an underlying offense where...movement is inherent, as a general matter, will not expose a
12 defendant to dual criminal liability under the kidnapping statutes. *Id.* at 180. Movement must
13 stand alone with independent significance from the act of robbery itself, create a risk of danger
14 substantially exceeding that necessarily present in the crime of robbery, or involve movement
15 substantially in excess of that necessary to its completion. *Id.* at 181.
16

17 Here, it is clear that the movement of the robbery victims was only incidental to
18 accomplish the taking of money from the cash register and from the safe. There was no
19 increased danger above that necessarily present during a robbery, and the movement was not
20 excessive in order to complete the robbery.
21

22 CONCLUSION

23 The Nevada Supreme Court has held that moving a victim from one room inside a house
24 to another room in search of valuables during the commission of a robbery is insufficient, by
25 itself, to sustain convictions for both kidnapping and robbery. *Gonzalez v. State*, 354 P.3d 654
26 (Nev. 2015) (*citing Wright v. State*, *supra*). Because no evidence of a kidnapping, standing
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1 alone, was elicited before the grand jury, Lorenzo Pinkney respectfully requests that the Writ
2 issue and Counts 3, 10, and 14 of the Indictment be dismissed.

3
4 DATED this 12th day of December, 2017.

5
6 By: /s/ Benjamin Durham
7 Benjamin C. Durham
8 *Attorney for Defendant*
9
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18 **CERTIFICATE OF SERVICE**

19 THE UNDERSIGNED HEREBY CERTIFIES that on the 13th day of December, 2017,
20 he served a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS
21 CORPUS via efileing to the Clark County District Attorney's Office at the following address:

22 motions@clarkcountyda.com
23

24 By /s/ Benjamin Durham
25 On behalf of Benjamin Durham Law Firm
26
27
28

● ORIGINAL ●

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

JUL 31 2018

BY, Kathy Klein
KATHY KLEIN, DEPUTY

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

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

12 LARENZO PINKEY, aka,
13 Lorenzo Pinkney, #8295438

14 Defendant.

CASE NO: C-17-327767-1

DEPT NO: XXVIII

15 GUILTY PLEA AGREEMENT

16 I hereby agree to plead guilty to: CTS 1 & 8 - CONSPIRACY TO COMMIT
17 ROBBERY (Category B Felony - NRS 200.380, 199.480 - NOC 50147); CTS 2 & 9 -
18 BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (Category B Felony
19 - NRS 205.060 - NOC 50426); CTS 3 & 13 - FIRST DEGREE KIDNAPPING WITH USE
20 OF A DEADLY WEAPON (Category A Felony - NRS 200.310, 200.320, 193.165 - NOC
21 50055); CTS - 4, 5, 6, 7, 10, 11 & 14 - ROBBERY WITH USE OF A DEADLY WEAPON
22 (Category B Felony - NRS 200.380, 193.165 - NOC 50138) and CT 12 - UNLAWFUL
23 TAKING OF VEHICLE (Gross Misdemeanor - NRS 205.2715 - NOC 50567), as more
24 fully alleged in the charging document attached hereto as Exhibit "1".

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

27 The Defendants agree to plead guilty to all counts in the Amended Indictment. The
28 State will maintain the full right to argue, including for consecutive time between the counts,

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GPA
Guilty Plea Agreement
4767523



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1 however, the State agrees to not seek a Life sentence on any count. The State retains the full
2 right to argue the facts and circumstances, but agrees to not file charges, for the following
3 events:

4 1. LVMPD Event No. 170605-0220: Armed robbery at 7-Eleven located at 4800 West
5 Washington, Las Vegas, Clark County, Nevada, on June 5, 2017.

6 2. LVMPD Event No. 170614-0524: Armed robbery at Roberto's/Mangos located at 6650
7 Vegas Drive, Las Vegas, Clark County, Nevada, on June 14, 2017.

8 3. LVMPD Event No. 170618-0989: Armed robbery at Pepe's Tacos located at 1401
9 North Decatur, Las Vegas, Clark County, Nevada, on June 18, 2017.

10 4. LVMPD Event No. 170701-0545: Armed robbery at Roberto's located at 2685 South
11 Eastern Avenue, Las Vegas, Clark County, Nevada, on July 1, 2017.

12 5. LVMPD Event No. 170812-3809: Armed robbery at Pizza Bakery located at 6475 West
13 Charleston Boulevard, Las Vegas, Clark County, Nevada, on August 12, 2017.

14 6. LVMPD Event No. 170817-0241: Armed robbery at Terrible Herbst located at 6380
15 West Charleston Boulevard, Las Vegas, Clark County, Nevada, on August 17, 2017.

16 7. LVMPD Event No. 170817-0470: Armed robbery at Rebel located at 6400 West Lake
17 Mead Boulevard, Las Vegas, Clark County, Nevada, on August 17, 2017.

18 8. LVMPD Event No. 170824-0521: Armed robbery at Roberto's located at 6820 West
19 Flamingo Road, Las Vegas, Clark County, Nevada, on August 24, 2017.

20 9. LVMPD Event No. 170824-0645: Armed robbery at Roberto's located at 907 North
21 Rainbow Boulevard, Las Vegas, Clark County, Nevada, on August 24, 2017.

22 10. LVMPD Event No. 170825-0589: Armed robbery at Pepe's Tacos located at 1401
23 North Decatur, Las Vegas, Clark County, Nevada, on August 25, 2017.

24 The Defendants agree to take no position at sentencing regarding the aforementioned
25 ten (10) armed-robbery events.

26 This Agreement is contingent upon the co-defendant's acceptance and adjudication on
27 his respective Agreement.

28 //

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

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

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

15 CONSEQUENCES OF THE PLEA

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

18 **As to Counts 1 & 8** - I understand that as a consequence of my plea of guilty the Court
19 must sentence me to imprisonment in the Nevada Department of Corrections for a minimum
20 term of not less than one (1) year and a maximum term of not more than six (6) years. The
21 minimum term of imprisonment may not exceed forty percent (40%) of the maximum term of
22 imprisonment. I understand that I may also be fined up to \$5,000.00. I understand that I am
23 eligible for probation for the offense(s) to which I am pleading guilty. I understand that, except
24 as otherwise provided by statute, the question of whether I receive probation is in the discretion
25 of the sentencing judge.

26 **As to Counts 2 & 9** - I understand that as a consequence of my plea of guilty the Court
27 must sentence me to imprisonment in the Nevada Department of Corrections for a minimum
28 term of not less than two (2) years and a maximum term of not more than fifteen (15) years.

1 The minimum term of imprisonment may not exceed forty percent (40%) of the maximum
2 term of imprisonment. I understand that I may also be fined up to \$10,000.00. I understand
3 that I am eligible for probation for the offense(s) to which I am pleading guilty. I understand
4 that, except as otherwise provided by statute, the question of whether I receive probation is in
5 the discretion of the sentencing judge.

6 As to Counts 3 & 13 - I understand that as a consequence of my plea of guilty the Court
7 must sentence me to imprisonment in the Nevada State Prison for Life with the possibility of
8 parole with eligibility for parole beginning at five (5) years; OR a definite term of fifteen (15)
9 years with eligibility for parole beginning at five (5) years plus a consecutive term of one (1)
10 to fifteen (15) years for the deadly weapon enhancement. I understand that I am not eligible
11 for probation for the offense to which I am pleading guilty.

12 As to Counts 4, 5, 6, 7, 10, 11 & 14 - I understand that as a consequence of my plea of
13 guilty the Court must sentence me to imprisonment in the Nevada Department of Corrections
14 for a minimum term of not less than two (2) years and a maximum term of not more than
15 fifteen (15) years plus a consecutive term of one (1) to fifteen (15) years for the deadly weapon
16 enhancement. The minimum term of imprisonment may not exceed forty percent (40%) of
17 the maximum term of imprisonment. I understand that I am not eligible for probation for the
18 offense to which I am pleading guilty. As to count 12, the maximum punishment
is 364 days in CCDC. *[Signature]*

19 I understand that the law requires me to pay an Administrative Assessment Fee.

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

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

26 I understand that if I am pleading guilty to charges of Burglary, Invasion of the Home,
27 Possession of a Controlled Substance with Intent to Sell, Sale of a Controlled Substance, or
28 Gaming Crimes, for which I have prior felony conviction(s), I will not be eligible for probation

1 and may receive a higher sentencing range.

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

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

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

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

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

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

- 16 1. The removal from the United States through deportation;
- 17 2. An inability to reenter the United States;
- 18 3. The inability to gain United States citizenship or legal residency;
- 19 4. An inability to renew and/or retain any legal residency status; and/or
- 20 5. An indeterminate term of confinement, with the United States Federal
21 Government based on my conviction and immigration status.

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

25 I understand that the Division of Parole and Probation will prepare a report for the
26 sentencing judge prior to sentencing. This report will include matters relevant to the issue of
27 sentencing, including my criminal history. This report may contain hearsay information
28 regarding my background and criminal history. My attorney and I will each have the

1 opportunity to comment on the information contained in the report at the time of sentencing.
2 Unless the District Attorney has specifically agreed otherwise, the District Attorney may also
3 comment on this report.

4 WAIVER OF RIGHTS

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

- 7 1. The constitutional privilege against self-incrimination, including the right
8 to refuse to testify at trial, in which event the prosecution would not be
9 allowed to comment to the jury about my refusal to testify.
- 10 2. The constitutional right to a speedy and public trial by an impartial jury,
11 free of excessive pretrial publicity prejudicial to the defense, at which
12 trial I would be entitled to the assistance of an attorney, either appointed
13 or retained. At trial the State would bear the burden of proving beyond
14 a reasonable doubt each element of the offense(s) charged.
- 15 3. The constitutional right to confront and cross-examine any witnesses who
16 would testify against me.
- 17 4. The constitutional right to subpoena witnesses to testify on my behalf.
- 18 5. The constitutional right to testify in my own defense.
- 19 6. The right to appeal the conviction with the assistance of an attorney,
20 either appointed or retained, unless specifically reserved in writing and
21 agreed upon as provided in NRS 174.035(3). I understand this means I
22 am unconditionally waiving my right to a direct appeal of this conviction,
23 including any challenge based upon reasonable constitutional,
24 jurisdictional or other grounds that challenge the legality of the
25 proceedings as stated in NRS 177.015(4). However, I remain free to
26 challenge my conviction through other post-conviction remedies
27 including a habeas corpus petition pursuant to NRS Chapter 34.

21 VOLUNTARINESS OF PLEA

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

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

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

28 All of the foregoing elements, consequences, rights, and waiver of rights have been

1 thoroughly explained to me by my attorney.


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

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

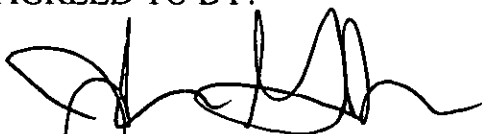
7 I am not now under the influence of any intoxicating liquor, a controlled substance or
8 other drug which would in any manner impair my ability to comprehend or understand this
9 agreement or the proceedings surrounding my entry of this plea.

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

12 DATED this 31 day of July, 2018.

13
14 
15 LARENZO PINKNEY, aka,
16 Lorenzo Pinkney
Defendant

17 AGREED TO BY:

18 

19 JOHN GIORDANI
20 Chief Deputy District Attorney
Nevada Bar #012381

1 CERTIFICATE OF COUNSEL:

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

- 4 1. I have fully explained to the Defendant the allegations contained in the
5 charge(s) to which guilty pleas are being entered.
- 6 2. I have advised the Defendant of the penalties for each charge and the restitution
7 that the Defendant may be ordered to pay.
- 8 3. I have inquired of Defendant facts concerning Defendant's immigration status
9 and explained to Defendant that if Defendant is not a United States citizen any
10 criminal conviction will most likely result in serious negative immigration
11 consequences including but not limited to:
 - 12 a. The removal from the United States through deportation;
 - 13 b. An inability to reenter the United States;
 - 14 c. The inability to gain United States citizenship or legal residency;
 - 15 d. An inability to renew and/or retain any legal residency status; and/or
 - 16 e. An indeterminate term of confinement, by with United States Federal
17 Government based on the conviction and immigration status.
- 18 4. Moreover, I have explained that regardless of what Defendant may have been
19 told by any attorney, no one can promise Defendant that this conviction will not
20 result in negative immigration consequences and/or impact Defendant's ability
21 to become a United States citizen and/or legal resident.
- 22 5. All pleas of guilty offered by the Defendant pursuant to this agreement are
23 consistent with the facts known to me and are made with my advice to the
24 Defendant.
- 25 5. To the best of my knowledge and belief, the Defendant:
 - 26 a. Is competent and understands the charges and the consequences of
27 pleading guilty as provided in this agreement,
 - 28 b. Executed this agreement and will enter all guilty pleas pursuant hereto
voluntarily, and
 - c. Was not under the influence of intoxicating liquor, a controlled
substance or other drug at the time I consulted with the Defendant as
certified in paragraphs 1 and 2 above.

Dated: This 31 day of July, 2018.


ATTORNEY FOR DEFENDANT

ed/GCU

1 **AIND**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 MICHAEL R. DICKERSON
6 Deputy District Attorney
7 Nevada Bar #013476
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

CASE NO: C-17-327767-1

11 -vs-

DEPT NO: XXVIII

12 **LARENZO PINKEY, aka,**
13 **Lorenzo Pinkney, #8295438**
14 **ADRIAN POWELL #8387748**

Defendant(s).

AMENDED
INDICTMENT

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

17 The Defendant(s) above named, LARENZO PINKEY, aka, Lorenzo Pinkney and
18 ADRIAN POWELL, accused by the Clark County Grand Jury of the crime(s) of
19 **CONSPIRACY TO COMMIT ROBBERY (Category B Felony - NRS 200.380, 199.480 -**
20 **NOC 50147); BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON**
21 **(Category B Felony - NRS 205.060 - NOC 50426); FIRST DEGREE KIDNAPPING**
22 **WITH USE OF A DEADLY WEAPON (Category A Felony - NRS 200.310, 200.320,**
23 **193.165 - NOC 50055); ROBBERY WITH USE OF A DEADLY WEAPON (Category B**
24 **Felony - NRS 200.380, 193.165 - NOC 50138) and UNLAWFUL TAKING OF VEHICLE**
25 **(Gross Misdemeanor - NRS 205.2715 - NOC 50567), committed at and within the County**
26 of Clark, State of Nevada, on or about the 28th day of September, 2017, as follows:

27 ///

28 ///

1 COUNT 1 - CONSPIRACY TO COMMIT ROBBERY

2 Defendants LARENZO PINKEY, aka, Lorenzo Pinkney and ADRIAN POWELL did
3 willfully, unlawfully, and feloniously conspire with each other to commit a robbery, by the
4 Defendants committing the acts as set forth in Counts 4, 5, 6 and 7, said acts being incorporated
5 by this reference as though fully set forth herein.

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

7 Defendants LARENZO PINKEY, aka, Lorenzo Pinkney and ADRIAN POWELL did
8 willfully, unlawfully, and feloniously enter, with intent to commit a felony, to wit: robbery,
9 that certain business occupied by PEPE'S TACOS, located at 2490 Fremont Street, Las Vegas,
10 Clark County, Nevada, while possessing and/or gaining possession of a handgun and/or
11 pneumatic gun, a deadly weapon, during the commission of the crime and/or before leaving
12 the structure; the Defendant(s) being criminally liable under one or more of the following
13 principles of criminal liability, to wit: (1) by directly committing this crime; and/or (2) by
14 aiding or abetting in the commission of this crime, with the intent that this crime be committed,
15 by counseling, encouraging, hiring, commanding, inducing and/or otherwise procuring the
16 other to commit the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the
17 intent that this crime be committed, Defendants aiding or abetting and/or conspiring by
18 Defendants acting in concert throughout.

19 COUNT 3 - FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON

20 Defendants LARENZO PINKEY, aka, Lorenzo Pinkney and ADRIAN POWELL did
21 willfully, unlawfully, and feloniously, seize, confine, inveigle, entice, decoy, abduct, conceal,
22 kidnap, or carry away JOSE CHAVARRIA, a human being, with the intent to hold or detain
23 the said JOSE CHAVARRIA against his will, and without his consent, for the purpose of
24 committing robbery, with use of a deadly weapon, to wit: a handgun and/or pneumatic gun;
25 the Defendant(s) being criminally liable under one or more of the following principles of
26 criminal liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or abetting
27 in the commission of this crime, with the intent that this crime be committed, by counseling,
28 encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit

1 the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this
2 crime be committed, Defendants aiding or abetting and/or conspiring by Defendants acting in
3 concert throughout.

4 COUNT 4 - ROBBERY WITH USE OF A DEADLY WEAPON

5 Defendants LARENZO PINKEY, aka, Lorenzo Pinkney and ADRIAN POWELL did
6 willfully, unlawfully, and feloniously take personal property, to wit: a necklace, from the
7 person of ANTONIO VALLEJO, or in his presence, by means of force or violence, or fear of
8 injury to, and without the consent and against the will of ANTONIO VALLEJO, with use of
9 a deadly weapon, to wit: a handgun and/or pneumatic gun; the Defendant(s) being criminally
10 liable under one or more of the following principles of criminal liability, to wit: (1) by directly
11 committing this crime; and/or (2) by aiding or abetting in the commission of this crime, with
12 the intent that this crime be committed, by counseling, encouraging, hiring, commanding,
13 inducing and/or otherwise procuring the other to commit the crime; and/or (3) pursuant to a
14 conspiracy to commit this crime, with the intent that this crime be committed, Defendants
15 aiding or abetting and/or conspiring by Defendants acting in concert throughout.

16 COUNT 5 - ROBBERY WITH USE OF A DEADLY WEAPON

17 Defendants LARENZO PINKEY, aka, Lorenzo Pinkney and ADRIAN POWEL did
18 willfully, unlawfully, and feloniously take personal property, to wit: a purse and contents, from
19 the person of SELENA GRACIANO, or in her presence, by means of force or violence, or
20 fear of injury to, and without the consent and against the will of SELENA GRACIANO, with
21 use of a deadly weapon, to wit: a handgun and/or pneumatic gun; the Defendant(s) being
22 criminally liable under one or more of the following principles of criminal liability, to wit: (1)
23 by directly committing this crime; and/or (2) by aiding or abetting in the commission of this
24 crime, with the intent that this crime be committed, by counseling, encouraging, hiring,
25 commanding, inducing and/or otherwise procuring the other to commit the crime; and/or (3)
26 pursuant to a conspiracy to commit this crime, with the intent that this crime be committed,
27 Defendants aiding or abetting and/or conspiring by Defendants acting in concert throughout.

28 ///

1 COUNT 6 - ROBBERY WITH USE OF A DEADLY WEAPON

2 Defendants LARENZO PINKEY, aka, Lorenzo Pinkney and ADRIAN POWELL did
3 willfully, unlawfully, and feloniously take personal property, to wit: U.S. Currency, from the
4 person of MYRIAM GASPAR, or in her presence, by means of force or violence, or fear of
5 injury to, and without the consent and against the will of MYRIAM GASPAR, with use of a
6 deadly weapon, to wit: a handgun and/or pneumatic gun; the Defendant(s) being criminally
7 liable under one or more of the following principles of criminal liability, to wit: (1) by directly
8 committing this crime; and/or (2) by aiding or abetting in the commission of this crime, with
9 the intent that this crime be committed, by counseling, encouraging, hiring, commanding,
10 inducing and/or otherwise procuring the other to commit the crime; and/or (3) pursuant to a
11 conspiracy to commit this crime, with the intent that this crime be committed, Defendants
12 aiding or abetting and/or conspiring by Defendants acting in concert throughout.

13 COUNT 7 - ROBBERY WITH USE OF A DEADLY WEAPON

14 Defendants LARENZO PINKEY, aka, Lorenzo Pinkney and ADRIAN POWELL did
15 willfully, unlawfully, and feloniously take personal property, to wit: U.S. Currency, from the
16 person of JOSE CHAVARRIA, or in his presence, by means of force or violence, or fear of
17 injury to, and without the consent and against the will of JOSE CHAVARRIA, with use of a
18 deadly weapon, to wit: a handgun and/or pneumatic gun; the Defendant(s) being criminally
19 liable under one or more of the following principles of criminal liability, to wit: (1) by directly
20 committing this crime; and/or (2) by aiding or abetting in the commission of this crime, with
21 the intent that this crime be committed, by counseling, encouraging, hiring, commanding,
22 inducing and/or otherwise procuring the other to commit the crime; and/or (3) pursuant to a
23 conspiracy to commit this crime, with the intent that this crime be committed, Defendants
24 aiding or abetting and/or conspiring by Defendants acting in concert throughout.

25 COUNT 8 - CONSPIRACY TO COMMIT ROBBERY

26 Defendants LARENZO PINKEY, aka, Lorenzo Pinkney and ADRIAN POWELL did
27 willfully, unlawfully, and feloniously conspire with each other to commit a robbery, by the
28 Defendants committing the acts as set forth in Counts 11 and 12, said acts being incorporated

1 by this reference as though fully set forth herein.

2 COUNT 9 - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

3 Defendants LARENZO PINKEY, aka, Lorenzo Pinkney and ADRIAN POWELL did
4 willfully, unlawfully, and feloniously enter, with intent to commit a felony, to wit: robbery,
5 that certain business occupied by WALGREENS, located at 4470 East Bonanza Road, Las
6 Vegas, Clark County, Nevada, while possessing and/or gaining possession of a handgun and/or
7 pneumatic gun, a deadly weapon, during the commission of the crime and/or before leaving
8 the structure; the Defendant(s) being criminally liable under one or more of the following
9 principles of criminal liability, to wit: (1) by directly committing this crime; and/or (2) by
10 aiding or abetting in the commission of this crime, with the intent that this crime be committed,
11 by counseling, encouraging, hiring, commanding, inducing and/or otherwise procuring the
12 other to commit the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the
13 intent that this crime be committed, Defendants aiding or abetting and/or conspiring by
14 Defendants acting in concert throughout.

15 COUNT 10 - ROBBERY WITH USE OF A DEADLY WEAPON

16 Defendants LARENZO PINKEY, aka, Lorenzo Pinkney and ADRIAN POWELL did
17 willfully, unlawfully, and feloniously take personal property, to wit: U.S. Currency, from the
18 person of YENEIR HESSING, or in his presence, by means of force or violence, or fear of
19 injury to, and without the consent and against the will of YENEIR HESSING, with use of a
20 deadly weapon, to wit: a handgun and/or pneumatic gun; the Defendant(s) being criminally
21 liable under one or more of the following principles of criminal liability, to wit: (1) by directly
22 committing this crime; and/or (2) by aiding or abetting in the commission of this crime, with
23 the intent that this crime be committed, by counseling, encouraging, hiring, commanding,
24 inducing and/or otherwise procuring the other to commit the crime; and/or (3) pursuant to a
25 conspiracy to commit this crime, with the intent that this crime be committed, Defendants
26 aiding or abetting and/or conspiring by Defendants acting in concert throughout.

27 ///

28 ///

1 COUNT 11 - ROBBERY WITH USE OF A DEADLY WEAPON

2 Defendants LARENZO PINKEY, aka, Lorenzo Pinkney and ADRIAN POWELL did
3 willfully, unlawfully, and feloniously take personal property, to wit: U.S. Currency and/or
4 pharmaceuticals and/or a necklace with dolphin pendant, from the person of DARLENE
5 ORAT, or in her presence, by means of force or violence, or fear of injury to, and without the
6 consent and against the will of DARLENE ORAT, with use of a deadly weapon, to wit: a
7 handgun and/or pneumatic gun; the Defendant(s) being criminally liable under one or more
8 of the following principles of criminal liability, to wit: (1) by directly committing this crime;
9 and/or (2) by aiding or abetting in the commission of this crime, with the intent that this crime
10 be committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise
11 procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this
12 crime, with the intent that this crime be committed, Defendants aiding or abetting and/or
13 conspiring by Defendants acting in concert throughout.

14 COUNT 12 - UNLAWFUL TAKING OF VEHICLE

15 Defendant LARENZO PINKEY, aka, Lorenzo Pinkney did willfully, unlawfully,
16 without the consent of the owner, and without intent to permanently deprive the owner thereof,
17 take, carry, or drive away the vehicle of another, to wit: a 2006 Chrysler, bearing Nevada
18 Temporary Tag No. 368-336, belonging to RAYNETTA SHINE.

19 COUNT 13 - FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON

20 Defendants LARENZO PINKEY, aka, Lorenzo Pinkney and ADRIAN POWELL did
21 willfully, unlawfully, and feloniously, seize, confine, inveigle, entice, decoy, abduct, conceal,
22 kidnap, or carry away TIFNIE BOBBITT, a human being, with the intent to hold or detain the
23 said TIFNIE BOBBITT against her will, and without her consent, for the purpose of
24 committing robbery, with use of a deadly weapon, to wit: a handgun and/or pneumatic gun;
25 the Defendant(s) being criminally liable under one or more of the following principles of
26 criminal liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or abetting
27 in the commission of this crime, with the intent that this crime be committed, by counseling,
28 encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit

1 the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this
2 crime be committed, Defendants aiding or abetting and/or conspiring by Defendants acting in
3 concert throughout.

4 COUNT 14 - ROBBERY WITH USE OF A DEADLY WEAPON

5 Defendants LARENZO PINKEY, aka, Lorenzo Pinkney and ADRIAN POWELL did
6 willfully, unlawfully, and feloniously take personal property, to wit: U.S. Currency, from the
7 person of TIFNIE BOBBITT, or in her presence, by means of force or violence, or fear of
8 injury to, and without the consent and against the will of TIFNIE BOBBITT, with use of a
9 deadly weapon, to wit: a handgun and/or pneumatic gun; the Defendant(s) being criminally
10 liable under one or more of the following principles of criminal liability, to wit: (1) by directly
11 committing this crime; and/or (2) by aiding or abetting in the commission of this crime, with
12 the intent that this crime be committed, by counseling, encouraging, hiring, commanding,
13 inducing and/or otherwise procuring the other to commit the crime; and/or (3) pursuant to a
14 conspiracy to commit this crime, with the intent that this crime be committed, Defendants
15 aiding or abetting and/or conspiring by Defendants acting in concert throughout.

16 DATED this ____ day of July, 2018.

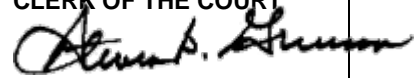
17 STEVEN B. WOLFSON
18 Clark County District Attorney
19 Nevada Bar #001565

20 BY



21 MICHAEL R. DICKERSON
22 Deputy District Attorney
23 Nevada Bar #013476
24
25
26

27 17AGJ106A-B/17F17626A-B/jm/L2
28 LVMPD EV# 1709280314; 1709280495
(TK8)



1 RTRAN

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5 STATE OF NEVADA,

6 Plaintiff,

7 vs.

8 LARENZO PINKEY,
9 aka Lorenzo Pinkney, and
10 ADRIAN POWELL,

11 Defendants.
12

CASE NO. C-17-327767-1, 2

DEPT. XXVIII

13 BEFORE THE HONORABLE RONALD J. ISRAEL, DISTRICT COURT JUDGE

14 TUESDAY, JULY 31, 2018

15 **RECORDER'S TRANSCRIPT OF**
16 **JURY TRIAL - DAY 2**
17 **GUILTY PLEA AGREEMENTS**

18 APPEARANCES:

19 For the Plaintiff:

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

22 For Defendant Pinkney:

BENJAMIN DURHAM, ESQ.

23 For Defendant Powell:

MICHAEL KANE, ESQ.

24
25 RECORDED BY JUDY CHAPPELL, COURT RECORDER

1 Tuesday, July 31, 2018 - Las Vegas, Nevada

2 [Proceedings begin at 1: 41 p.m.]

3 [Out of the presence of the Jury]

4
5 THE MARSHAL: Remain seated. Come to order. The trial again is in
6 session.

7 THE COURT: Okay. Case C327767, State of Nevada versus Lorenzo
8 Pinkney and Adrian Powell. Let the record reflect Defendants are present.

9 Counsel, state your appearance.

10 MR. DURHAM: Ben Durham on behalf of Mr. Pinkney, Your Honor. He's
11 present in custody.

12 MR. KANE: Michael Kane on behalf of Mr. Powell.

13 MR. GIORDANI: John Giordani and Mike Dickerson on behalf of the State.

14 THE COURT: Okay. It's my understanding that the Defendants have
15 decided to accept a guilty plea agreement?

16 MR. DURHAM: That's correct, Your Honor. I can state briefly the
17 substance of the negotiations, and I believe they're identical as to both.

18 MR. GIORDANI: Yes.

19 MR. DURHAM: Mister -- regarding Mr. Pinkney and Mr. Powell, they'll be
20 entering guilty pleas to the counts as charged in the amended indictment. The
21 State at the time of sentencing retains the full right to argue; however, they agree
22 not to seek a life sentence on any of the counts that the Defendants are pleading
23 guilty to.

24 The State will agree not to file charges on the ten separate event
25 numbers that are listed on page 2 of the plea agreement, but the State does retain

1 the right to argue the facts and circumstances surrounding those events. The
2 Defense will take no position at sentencing regarding those event numbers. These
3 agreements are contingent upon Mr. Pinkney and Mr. Powell entering guilty pleas
4 in this case.

5 MR. GIORDANI: And following through to sentencing and adjudication.

6 THE COURT: Okay. I'm going to do these one at a time and very,
7 hopefully, carefully. Let's start off, Mr. Pinkey --

8 MR. DURHAM: Your Honor, for the record, his last name is Pinkney, with
9 an N.

10 THE COURT: Oh.

11 MR. DURHAM: I'm guessing there was a typo along the way.

12 THE COURT: Pinkney? Okay. Then tell me how --

13 MR. DURHAM: Pinkney.

14 THE COURT: Tell me how it actually is spelled.

15 MR. DURHAM: Under the AKA in the caption, that's the correct spelling.

16 THE COURT: Oh. P-I-N-K-N-E-Y, Pinkney. Did I say that right this time?

17 MR. DURHAM: Yes, thank you.

18 THE COURT: Okay. Well, let's make it easy. Sir, state your full name and
19 spell it.

20 DEFENDANT PINKEY: Lorenzo Pinkney, L-A-R-E-N-Z-O; last name
21 Pinkney, P-I-N-K-N-E-Y.

22 THE COURT: And how old are you?

23 DEFENDANT PINKNEY: I'm 22, Your Honor.

24 THE COURT: How far did you go in school?

25 DEFENDANT PINKNEY: I never got my high school diploma or I never

1 got a GED, but I'm planning on getting that.

2 THE COURT: Do you have any sort of learning disability of any kind?

3 DEFENDANT PINKNEY: Yes, I grew up with a learning disability. I had
4 an IEP, and I grew up with a lot like behavior, like my behavior. I got the
5 information on that, too. Benjamin, he got status on that stuff, stating that type of
6 stuff.

7 THE COURT: Okay. Do you read, write and understand the English
8 language?

9 DEFENDANT PINKNEY: Yes.

10 THE COURT: And English your primary language?

11 DEFENDANT PINKNEY: Yes, sir.

12 THE COURT: Have you been treated recently for any mental illness or
13 addiction of any kind?

14 DEFENDANT PINKNEY: I have in the past, but not recently.

15 THE COURT: Okay. Has anyone ever suggested to you that be treated for
16 mental illness or an emotional condition?

17 DEFENDANT PINKNEY: Well, yeah, but -- and no. I say yeah and no.
18 It's a yeah on the -- on the mental affect, it has been where they wanted me to get
19 treated, but I just hadn't.

20 THE COURT: Okay. Are you currently under the influence of any drug,
21 medication or alcoholic beverage?

22 DEFENDANT PINKNEY: No, sir.

23 THE COURT: Have you been on any medication during your time in jail?

24 DEFENDANT PINKNEY: No, sir.

25 THE COURT: Have you received a copy of the indictment -- or the guilty

1 plea agreement?

2 DEFENDANT PINKNEY: Yes, I have.

3 THE COURT: Have you discussed this case with your attorney?

4 DEFENDANT PINKNEY: Yes.

5 THE COURT: Are you satisfied with his representation and the advice
6 given to you by your attorney?

7 DEFENDANT PINKNEY: Yes, I have. Or, yes, I am. Sorry.

8 THE COURT: Okay. And as to the guilty plea agreement, are you
9 pleading guilty to Counts 1 through 8, conspiracy to commit robbery --

10 MR. GIORDANI: No, 1 and 8.

11 THE COURT: Oh, 1 and 8, sorry, conspiracy to commit robbery. Counts 2
12 and 9, burglary while in possession of a deadly weapon, and Counts 3 and 13, first
13 degree kidnapping with the use of a deadly weapon, and Counts 4, 5, 6, 7, 10, 11
14 and 14, robbery with the use of a deadly weapon, and Count 12, unlawful taking of
15 a vehicle?

16 DEFENDANT PINKNEY: Yes, I do.

17 THE COURT: And do you understand all the -- have you read a copy of
18 the guilty plea agreement?

19 DEFENDANT PINKNEY: Yes, I read over it, sir.

20 THE COURT: And do you understand everything contained in the guilty
21 plea agreement?

22 DEFENDANT PINKNEY: Yes.

23 THE COURT: And you had an opportunity to discuss this with your
24 attorney?

25 DEFENDANT PINKNEY: Yes.

1 THE COURT: And if you had any questions, did he answer your
2 questions?

3 DEFENDANT PINKNEY: Yes, he did.

4 THE COURT: Do you have any questions of me regarding that at this
5 time?

6 DEFENDANT PINKNEY: No, Your Honor.

7 THE COURT: And as to the charges in the guilty plea agreement that I
8 just discussed, how are you -- or how are you pleading?

9 DEFENDANT PINKNEY: Pleading guilty.

10 THE COURT: And is it because in truth and in fact you committed the
11 charges listed in the guilty plea agreement?

12 DEFENDANT PINKNEY: Yes.

13 THE COURT: Are you making this plea freely and voluntarily?

14 DEFENDANT PINKNEY: Yes, I am, sir.

15 THE COURT: Has anyone forced or threatened you or anyone close to
16 you to get you to enter this plea?

17 DEFENDANT PINKNEY: No, sir.

18 THE COURT: Has anyone made any promises other than what's stated in
19 the guilty plea agreement to get you to answer this guilty plea agreement?

20 DEFENDANT PINKNEY: No.

21 THE COURT: And do you understand that as a part of the guilty plea
22 agreement, although you are not admitting to these crimes, that the State will be
23 allowed to argue these crimes as I'm about to list for you at the time of sentencing?
24 And I'll go through these each, so you understand. They're all contained on page 2
25 of the guilty plea agreement.

1 That, one, an armed robbery at 7-Eleven located 4800 West
2 Washington on June 5th; two armed robbery at Roberto's located at 6650
3 Las [sic] -- in Las Vegas on June 14th; three, an armed robbery at Pepe's Taco,
4 1401 North Decatur on June 18th; four, an armed robbery at Roberto's located at
5 2685 Eastern on July 1st; five, an armed robbery at Pizza Bakery located at 6475
6 West Charleston on August 12th.

7 Six, an armed robbery at Terrible Herbst's located at 6380 West
8 Charleston on August 17th; seven, an armed robbery at Rebel located at 6400
9 West Lake Mead on August 17th; eight, an armed robbery at Roberto's located at
10 6820 West Flamingo on August 24th; nine, an armed robbery at Roberto's located
11 at 907 North Rainbow on August 24th; ten, an armed robbery at Pepe's Taco
12 located at 1401 North Decatur on August 25th.

13 Do you understand by signing this guilty plea agreement, you're not
14 admitting to these additional ten robberies, however, the State will be allowed to
15 use those at time of sentencing? Do you understand that?

16 DEFENDANT PINKNEY: Yes.

17 THE COURT: And you're agreeable to the same? You're agreeable to
18 that?

19 DEFENDANT PINKNEY: Yes, I am.

20 THE COURT: Okay. And I'm showing you a copy -- actually, the original --

21 THE CLERK: It's a copy. I have the original.

22 THE COURT: Okay. I'm showing you -- it's the wrong one. All right.
23 That's the right one, yes. The original of the guilty plea agreement, and on page 7,
24 is this your signature?

25 DEFENDANT PINKNEY: Yes, it is.

1 THE COURT: Okay. Before you signed it, again, did you read and discuss
2 it with your attorney?

3 DEFENDANT PINKNEY: Yes.

4 THE COURT: And again, just to be clear, did you understand everything
5 contained in the guilty plea agreement?

6 DEFENDANT PINKNEY: Yes, I did, sir.

7 THE COURT: Do you understand that the constitutional rights you're
8 giving up by -- do you understand that there are constitutional rights you are giving
9 up by entering a guilty plea agreement?

10 DEFENDANT PINKNEY: Yes, sir.

11 THE COURT: And do you understand that you have a right to appeal on
12 reasonable constitutional, jurisdictional or other grounds that challenge the legality
13 of the proceedings?

14 DEFENDANT PINKNEY: Yes, sir.

15 THE COURT: What's the range of punishment on this?

16 MR. GIORDANI: It's different for the different counts.

17 MR. DURHAM: Do you want me to state that or --

18 MR. GIORDANI: I can --

19 THE COURT: Yeah, go ahead and state the range.

20 MR. DURHAM: Your Honor, on Counts of 1 and 8, the sentencing range is
21 1 to 6 years in the Nevada Department of Corrections. On the Counts of 2 and 9,
22 burglary while in possession of a deadly weapon, the potential sentence is 2 to 15
23 years in the Nevada Department of Corrections. First degree kidnapping with use
24 of a deadly weapon, the potential sentence as set forth in the plea agreement is
25 5 to life or 5 to 15, with an equal -- I'm sorry, with a consecutive 1 to 15 for the

1 deadly weapon enhancement.

2 On the robbery counts, the potential sentence is 2 to 15 years, plus a
3 consecutive 1 to 15. And the unlawful taking of a vehicle is a gross misdemeanor,
4 with a sentence of up to 364 days in the Clark County Detention Center.
5 I've -- for the record, I've explained to my client that the minimum possible
6 sentence in this case that he could receive is six years on the bottom end.

7 THE COURT: And the maximum ?

8 MR. DURHAM: The maximum is a lot. We -- we didn't calculate that.

9 THE COURT: Because of the multiple counts?

10 MR. DURHAM: Correct.

11 THE COURT: Do you understand the range of punishment?

12 DEFENDANT PINKNEY: Yes, sir.

13 THE COURT: Okay. I think we better put that on max range in there.

14 MR. GIORDANI: If I may, Your Honor?

15 THE COURT: Go ahead.

16 MR. GIORDANI: As long as both Mr. Pinkney and Mr. Powell understand
17 the range for each count --

18 THE COURT: Okay.

19 MR. GIORDANI: -- as just described by Mr. Durham as set forth.

20 THE COURT: Okay.

21 MR. GIORDANI: And then also they understand sentencing is completely
22 up to the Court, and if the Court can count -- either run the counts concurrent or
23 run the counts consecutive.

24 THE COURT: Okay. That's the next sentences of my script, even though
25 I've got all this memorized. So you understand the individual range of punishments

1 on each of the counts?

2 DEFENDANT PINKNEY: I wasn't told the maximum, but I understand.

3 THE COURT: No, the range for each of the counts.

4 DEFENDANT PINKNEY: Yes, sir.

5 THE COURT: And do you understand that sentencing is entirely up to me?

6 DEFENDANT PINKNEY: Yes, sir.

7 THE COURT: I can -- it's at my discretion. And do you understand that the
8 counts can be run consecutively or concurrently? Once again, that's up to me.

9 DEFENDANT PINKNEY: Yes, sir.

10 THE COURT: And no one is in an position to promise you probation,
11 leniency or any special treatment; do you understand that?

12 DEFENDANT PINKNEY: Oh, yeah, I understand that, sir.

13 THE COURT: And in the -- do I need to restate the information, what
14 exactly he did?

15 MR. DURHAM: Your Honor, pursuant to the plea agreement, we will be
16 willing to stipulate to the factual basis as set forth in the amended indictment.
17 From our perspective, it wouldn't be necessary.

18 THE COURT: Do you want me to go through it?

19 MR. GIORDANI: Or he could just say it in his own words. I mean, it
20 encompasses two events over the course of like three hours, so --

21 THE COURT: Okay. What is it you did on or about -- where's the date?

22 MR. DURHAM: December 28th, 2017, Your Honor.

23 THE COURT: Thank you. What is it that you did to cause you to plead
24 guilty?

25 DEFENDANT PINKNEY: I committed -- I went to an establishment, and I

1 committed two robberies, two more robberies, sir.

2 THE COURT: What were the establishments?

3 DEFENDANT PINKNEY: It was a Pepe's, and another one was
4 Walgreen's, sir.

5 THE COURT: All right. Do you have any questions you'd like to ask me or
6 your attorney before I accept this plea?

7 DEFENDANT PINKNEY: No, sir. Not questions, sir, no.

8 THE COURT: The Court finds the Defendant's plea of guilty is freely and
9 voluntarily made, and the Defendant understands the nature of the offenses and
10 the consequences of his plea and, therefore, accepts the guilty plea. The matter is
11 referred to Parole & Probation for a PSI report.

12 MR. GIORDANI: Your Honor, before you move on, can I ask one more
13 thing of the Court?

14 THE COURT: Sure.

15 MR. GIORDANI: Just with regard to your first few questions of Mr.
16 Pinkney where he indicated he had an IEP, a learning program, learning disabilities
17 growing up, can we just be clear on the record that Mr. Pinkney had sufficient time
18 with his attorney -- it's been a couple hours, I think, since we broke and started
19 really getting into the meat of this -- understood fully both the written words and,
20 you know, the conversations that he had with his attorney.

21 MR. DURHAM: Your Honor, I signed the certificate of counsel, which
22 indicates that I believe he's fully competent to enter the plea; that I went over it with
23 him.

24 THE COURT: Okay.

25 MR. DURHAM: And so I would just ask the Court to adopt that as part of

1 the plea agreement.

2 THE COURT: That's fine, and I certainly think I've asked him three times at
3 least now if he had any questions regarding this, and he's advised me that he does
4 not. And you had plenty of time, for the record, to go over this with your attorney
5 since it's now 1:30 and you first met with him approximately 11:00 a.m., correct?

6 DEFENDANT PINKNEY: Yes.

7 THE COURT: You had plenty of time to discuss this?

8 DEFENDANT PINKNEY: Yes, sir.

9 THE COURT: And once again, you have no questions regarding the
10 agreement?

11 DEFENDANT PINKNEY: No, sir.

12 THE COURT: All right. Thank you.

13 MR. DURHAM: Thank you.

14 THE COURT: I find it's freely and voluntarily entered into. The Defendant
15 is remanded. Okay. Now --

16 MR. DURHAM: Sorry, Your Honor, I didn't get the sentencing date.

17 THE CLERK: Do we want to do it together?

18 MR. GIORDANI: Yeah.

19 MR. DURHAM: Yeah.

20 MR. GIORDANI: Can we have 90?

21 THE CLERK: You want 90 days?

22 MR. GIORDANI: Yeah.

23 THE CLERK: Okay. Let me see what we've got here. 90 days would be
24 the end of October. We can do October -- how about October 22nd? It's not quite
25 90, but --

1 MR. GIORDANI: That works. October 22nd?

2 THE CLERK: 22nd, and sentencings are at 9:30.

3 THE COURT: Okay. Mr. Powell. Are you ready, counsel?

4 DEFENDANT POWELL: Yes, Your Honor.

5 [Court and Clerk confer]

6 THE COURT: Is Mr. Powell pleading also to the taking of the --

7 THE CLERK: Oh, okay. That's what I -- they just handed me this, so --

8 THE COURT: Okay.

9 THE CLERK: I need that on the original, though.

10 MR. DURHAM: Yeah.

11 THE COURT: Yeah.

12 THE CLERK: So we need to --

13 MR. KANE: Here are the originals.

14 THE CLERK: Yeah, and initial it.

15 MR. GIORDANI: And Madam Clerk, Mr. Powell has indicated he wants

16 about 50 days for sentencing. We're fine with that. We just --

17 THE CLERK: Oh, a different date?

18 MR. GIORDANI: I have a couple days to work around it. If you can get us

19 a 50-day date, and I'll tell you if that works.

20 THE CLERK: Okay.

21 MR. GIORDANI: Same date for both, I guess, if that's okay with Mister --

22 THE CLERK: Oh, you want the same day for both?

23 MR. GIORDANI: Yes. So forget what I said about 90 and just give us 50,

24 if you don't mind.

25 THE CLERK: Okay. Bless you.

1 MR. DICKERSON: Thank you.

2 THE CLERK: 50 days is going to be -- we can go to -- too October 1st,
3 looks like, or does that sound good?

4 MR. GIORDANI: No. September 1st?

5 THE CLERK: No. 50 days, September -- okay. They have it our further.
6 Okay. So you want September? Let me see what it looks like then. How about
7 September 12th?

8 MR. GIORDANI: That works.

9 MR. DURHAM: Thank you, Madam Clerk.

10 THE CLERK: Is that good?

11 MR. GIORDANI: Yes.

12 MR. DURHAM: Yes.

13 THE CLERK: September 12th, and that's 9:30.

14 [Court and Clerk confer]

15 MR. KANE: An, Judge, just for the record, they are identical other than,
16 obviously, the Defendants' names.

17 THE CLERK: The interlineation --

18 MR. GIORDANI: That's correct. We struck lines 22, 23, unlawful taking of
19 a vehicle, he was never charged with that. Mr. Powell's never charged with that.

20 MR. DICKERSON: Both Defense counsel and myself have initialed the
21 interlineation on the first page, Your Honor.

22 THE COURT: Okay. Fine. Mr. Powell, will you state and spell your name
23 for the record.

24 DEFENDANT POWELL: Adrian Powell, A-D-R-I-A-N, P-O-W-E-L-L.

25 THE COURT: And --

1 MR. KANE: I'll come over here.

2 [Court and Court Recorder confer]

3 THE COURT: Sure. Okay. Mr. Powell, how hold are you?

4 DEFENDANT POWELL: I'm 23 years old. I'll be 24 on Thursday.

5 THE COURT: How far did you go in school?

6 DEFENDANT POWELL: I graduated high school.

7 THE COURT: And do you have any learning disability?

8 DEFENDANT POWELL: No, Your Honor.

9 THE COURT: Do you read, write and understand the English language?

10 DEFENDANT POWELL: Yes, Your Honor.

11 THE COURT: And is English your primary language?

12 DEFENDANT POWELL: Yes, Your Honor.

13 THE COURT: Have you been treated recently for any mental illness or

14 addiction of any kind?

15 DEFENDANT POWELL: No, Your Honor.

16 THE COURT: Has anyone ever suggested you should be treated for

17 mental health?

18 DEFENDANT POWELL: No, Your Honor.

19 THE COURT: Are you currently under the influence of any drug,

20 medication or alcohol?

21 DEFENDANT POWELL: No, Your Honor.

22 THE COURT: Have you been on any medication during your stay in jail?

23 DEFENDANT POWELL: Yes, Your Honor.

24 THE COURT: What medication?

25 DEFENDANT POWELL: Remeron.

1 THE COURT: What is -- what type of medication is that?
2 DEFENDANT POWELL: It treats depression.
3 THE COURT: How do you feel today?
4 DEFENDANT POWELL: I feel excellent, Your Honor.
5 THE COURT: Do you understand what's happening?
6 DEFENDANT POWELL: Yes, Your Honor.
7 THE COURT: Does the medication affect your ability to understand what's
8 going on today?
9 DEFENDANT POWELL: No, Your Honor.
10 THE COURT: Are you under any other effects of the medication?
11 DEFENDANT POWELL: No, Your Honor.
12 THE COURT: Have you received a copy of the guilty plea agreement?
13 DEFENDANT POWELL: Yes, Your Honor.
14 THE COURT: Did you read the guilty plea agreement?
15 DEFENDANT POWELL: Yes, Your Honor.
16 THE COURT: Did you understand everything in the guilty plea agreement?
17 DEFENDANT POWELL: Yes, Your Honor.
18 THE COURT: Have you discussed this case with your attorney?
19 DEFENDANT POWELL: Yes, Your Honor.
20 THE COURT: Are you satisfied with the representation and advice given
21 to you by your attorney?
22 DEFENDANT POWELL: Yes, Your Honor.
23 THE COURT: As to the charges in the guilty plea agreement, how do you
24 plead?
25 DEFENDANT POWELL: I plead guilty, Your Honor.

1 THE COURT: I'm making this plea freely and voluntarily?

2 DEFENDANT POWELL: Yes, Your Honor.

3 THE COURT: Has anyone forced or threatened you or anyone close to
4 you to get you to enter this plea?

5 DEFENDANT POWELL: No, Your Honor.

6 THE COURT: Has anyone made any promises other than what's in the
7 guilty plea agreement to get you to enter the plea?

8 DEFENDANT POWELL: No, Your Honor.

9 THE COURT: I have before me the guilty plea agreement, and I'm going to
10 hold this up, on page 7, is this your signature?

11 DEFENDANT POWELL: Yes, Your Honor.

12 THE COURT: Did you understand everything contained in the guilty plea
13 agreement?

14 DEFENDANT POWELL: Yes, Your Honor.

15 THE COURT: And do you understand that as part of the guilty plea
16 agreement, although you are not pleading guilty to these alleged offenses, the
17 State will be allowed to argue then at the time of sentencing?

18 DEFENDANT POWELL: Yes, Your Honor.

19 THE COURT: And I'm going to go through, again, all ten of these because
20 the State will be allowed to discuss them at the time of sentencing. Number one,
21 an armed robbery at 7-Eleven located on 4800 West Washington on June 5th.
22 Number two, an armed robbery at Roberto's located at 6650 Vegas Drive on
23 June 14th; armed robbery at Pepe's Taco located at 1401 North Decatur on June
24 18th; an armed robbery at Roberto's located at 2685 South Eastern on July 1st; an
25 armed robbery at Pizza Bakery located 6475 West Charleston on August 12th; an

1 armed robbery at Terrible Herbst's located at 6380 West Charleston on
2 August 17th; an armed robbery at Rebel located at 6400 West Lake Mead on
3 August 17; an armed robbery at Roberto's located at 6820 West Flamingo on
4 August 24th; an armed robbery at Roberto's located at 907 North Rainbow on
5 August 24th; an armed robbery at Pepe's Tacos located at 1401 North Decatur on
6 August 25th. All of those were in 2017.

7 Do you understand that all of those may be argued at the time of
8 sentencing, although you're not pleading guilty to those charges?

9 DEFENDANT POWELL: Yes, Your Honor.

10 THE COURT: So I don't know if I asked you, before you sign this plea
11 agreement, did you read it and discuss it with your attorney?

12 DEFENDANT POWELL: Yes, Your Honor.

13 THE COURT: Do you understand everything contained in this agreement?

14 DEFENDANT POWELL: Yes, Your Honor.

15 THE COURT: You understand that there are certain constitutional rights
16 that you're giving up by entering the guilty plea agreement?

17 DEFENDANT POWELL: Yes, Your Honor.

18 THE COURT: You understand that you have a right to appeal on
19 reasonable constitutional, jurisdictional or other grounds that challenge the legality
20 of the proceedings?

21 DEFENDANT POWELL: Yes, Your Honor.

22 THE COURT: And, again, do you understand the range of punishment?
23 And counsel --

24 DEFENDANT POWELL: Yes, Your Honor.

25 THE COURT: Well, we're going to go through and put these on the record,

1 so it's clear.

2 MR. KANE: That's Counts 1 and 8, Your Honor. They carry with it a 1 to 6
3 range; Counts 2 and 9, 2 to 15. Counts 3 and 13, 5 to life or 5 to 15, plus a
4 consecutive term of 1 to 15 for deadly weapon enhancement. Counts 4, 5, 6, 7,
5 10, 11 and 14, they're 2 to 15; a term of 1 to 15 for use of deadly weapon
6 enhancement.

7 THE COURT: Do you understand the range for each of those counts?

8 DEFENDANT POWELL: Yes, Your Honor.

9 THE COURT: Do you understand that sentencing is entirely up to me?

10 DEFENDANT POWELL: Yes, Your Honor.

11 THE COURT: And do you understand that, again, it's up to me as to
12 whether any or whether all of those counts run consecutively or concurrently?

13 DEFENDANT POWELL: Yes, Your Honor.

14 THE COURT: And no one is in a position to promise you leniency or
15 special treatment of any kind?

16 DEFENDANT POWELL: Yes, Your Honor.

17 THE COURT: In the information in the indictment, it says -- or what is it
18 that you did on the 28th of September to cause you to plead guilty?

19 DEFENDANT POWELL: I went into two establishments, Your Honor, and I
20 committed the armed robbery.

21 THE COURT: And those establishments a -- is this Roberto's --

22 MR. KANE: Pepe's -- Pepe's and Walgreen's.

23 THE COURT: Pepe's and Walgreen's. Thank you. Pepe's and
24 Walgreen's?

25 DEFENDANT POWELL: Yes, Your Honor.

1 THE COURT: You went in those establishments and committed the
2 armed robberies?

3 DEFENDANT POWELL: Yes, Your Honor.

4 THE COURT: And do you have any questions you'd like to ask me or your
5 attorney before I accept this plea?

6 DEFENDANT POWELL: No, Your Honor.

7 THE COURT: Anything that I left out?

8 MR. GIORDANI: No.

9 THE COURT: Okay. And also for the record, you had approximately two
10 hours to discuss all of this -- maybe longer than that now -- with your attorney
11 before accepting this?

12 DEFENDANT POWELL: Yes, Your Honor.

13 THE COURT: And without telling me what they were, your attorney
14 answered all your questions regarding the guilty plea agreement?

15 DEFENDANT POWELL: Yes, Your Honor.

16 THE COURT: Okay. The Court finds the Defendant's plea of guilty is
17 freely and voluntarily made and the Defendant understands the nature of the
18 offenses and the consequences of his plea and, therefore, accepts the plea of
19 guilty. The matter is referred to Department of Parole & Probation for a PSI.
20 What's the date for sentencing?

21 THE CLERK: September 12th at 9:30.

22 THE COURT: Defendant is remanded into custody. So what I'm going to
23 do after the Defendants leave is bring them in, release them. You guys all want to
24 talk to them, you're free to do so. Anything else?

25 MR. GIORDANI: No, Your Honor. Thank you.

1 MR. DURHAM: No. Thank you, Your Honor.

2 THE COURT: All right. Thank you. And counsel and you guys were
3 extremely professional, and I appreciate that, so --

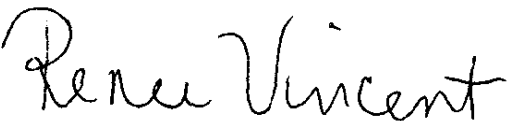
4 MR. DICKERSON: Thank Your Honor. Thank you for your patience today.

5 THE COURT: No problem.

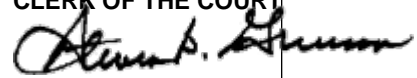
6 MR. KANE: Thank you, Judge.

7 [Proceeding concluded at 1:47 a.m.]
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17 ATTEST: I do hereby certify that I have truly and correctly transcribed the
18 audio-visual recording of the proceeding in the above entitled case to the
19 best of my ability.

20 
21

22 _____
23 Renee Vincent, Court Recorder/Transcriber
24
25



MOT

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Attorney for Lorenzo Pinkney

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

LARENZO PINKNEY, aka,
Lorenzo Pinkey,

Defendant.

CASE NO.: C-17-327767-1

DEPT NO.: XXVIII

Date of Hearing: 2/25/2019

Time of Hearing: 9:00 a.m.

DEFENDANT LARENZO PINKNEY'S
MOTION TO WITHDRAW GUILTY PLEA

COMES NOW, Defendant LARENZO PINKNEY, by and through his attorney, LUCAS J. GAFFNEY, ESQ., and hereby moves the Honorable Court for an order allowing Defendant to withdraw his guilty plea in this matter. This motion is made and based on the following Memorandum of Points and Authorities, the attached exhibits, all papers and pleadings on file herein, and any oral argument that may be entertained in this matter.

Dated this 30th day of January, 2019.

RESPECTFULLY SUBMITTED BY:

/s/ Lucas Gaffney
LUCAS J. GAFFNEY, ESQ.
Nevada Bar No. 12373

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

STATEMENT OF RELEVANT FACTS

On November 8, 2017, the State of Nevada (State) filed a Superseding Indictment that charged the defendant, Lorenzo Pinkney (Pinkney), and co-defendant Adrian Powell (Powell), with the following offenses:

- Count 1 – Conspiracy to Commit Robbery.
- Count 2 – Burglary While in Possession of a Deadly Weapon.
- Count 3 – First Degree Kidnapping With Use of a Deadly Weapon.
- Count 4 – Robbery With Use of a Deadly Weapon.
- Count 5 – Robbery With Use of a Deadly Weapon.
- Count 6 – Robbery With Use of a Deadly Weapon.
- Count 7 – Robbery With Use of a Deadly Weapon.
- Count 8 – Conspiracy to Commit Robbery.
- Count 9 – Burglary While in Possession of a Deadly Weapon.
- Count 10 – First Degree Kidnapping With Use of a Deadly Weapon.
- Count 11 – Robbery With Use of a Deadly Weapon.
- Count 12 – Robbery With Use of a Deadly Weapon.
- Count 13 – Unlawful Taking of a Vehicle.
- Count 14 – First Degree Kidnapping With Use of a Deadly Weapon.
- Count 15 – Robbery With Use of a Deadly Weapon.

Trial began on July 30, 2018. The following day, counsel for the defendants informed the Court that their respective clients had decided to enter into a negotiation with the State to resolve the case in lieu of trial. Pursuant to the negotiation, the defendants pleaded guilty to an Amended Information, that charged them with the following offenses:

- Count 1 – Conspiracy to Commit Robbery.
- Count 2 – Burglary While in Possession of a Deadly Weapon.
- Count 3 – First Degree Kidnapping With Use of a Deadly Weapon.

- Count 4 – Robbery With Use of a Deadly Weapon.
- Count 5 – Robbery With Use of a Deadly Weapon.
- Count 6 – Robbery With Use of a Deadly Weapon.
- Count 7 – Robbery With Use of a Deadly Weapon.
- Count 8 – Conspiracy to Commit Robbery.
- Count 9 – Burglary While in Possession of a Deadly Weapon.
- Count 10 – Robbery With Use of a Deadly Weapon.
- Count 11 – Robbery With Use of a Deadly Weapon.
- Count 12 – Unlawful Taking of a Vehicle.
- Count 13 – First Degree Kidnapping With Use of a Deadly Weapon.
- Count 14 – Robbery With Use of a Deadly Weapon.

The negotiations contemplated that the State would maintain the full right to argue, including for consecutive time between the counts, but agreed not to seek a Life sentence on any count. Additionally, the State retained the full right to argue the facts and circumstances, but agreed not to file charges for the following Las Vegas Metropolitan Police Department (LVMPD) event numbers:

1. LVMPD Event No. 170605-0220: Armed robbery at 7-Eleven located at 4800 West Washington, Las Vegas, Clark County, Nevada, on June 5, 2017.
2. LVMPD Event No. 170614-0524: Armed robbery at Roberto's/Mangos located at 6650 Vegas Drive, Las Vegas, Clark County, Nevada, on June 14, 2017.
3. LVMPD Event No. 170618-0989: Armed robbery at Pepe's Tacos located at 1401 North Decatur, Las Vegas, Clark County, Nevada, on June 18, 2017.
4. LVMPD Event No. 170701-0545: Armed robbery at Roberto's located at 2685 South Eastern Avenue, Las Vegas, Clark County, Nevada, on July 1, 2017.
5. LVMPD Event No. 170812-3809: Armed robbery at Pizza Bakery located at 6475 West Charleston Boulevard, Las Vegas, Clark County, Nevada, on August 12, 2017.
6. LVMPD Event No. 170817-0241: Armed robbery at Terrible Herbst located at 63 80 West Charleston Boulevard, Las Vegas, Clark County, Nevada, on August 17, 2017.

1 7. LVMPD Event No. 170817-0470: Armed robbery at Rebel located at 6400 West Lake Mead
2 Boulevard, Las Vegas, Clark County, Nevada, on August 17, 2017.

3 8. LVMPD Event No. 170824-0521: Armed robbery at Roberto's located at 6820 West
4 Flamingo Road, Las Vegas, Clark County, Nevada, on August 24, 2017.

5 9. LVMPD Event No. 170824-0645: Armed robbery at Roberto's located at 907 North Rainbow
6 Boulevard, Las Vegas, Clark County, Nevada, on August 24, 2017.

7 10. LVMPD Event No. 170825-0589: Armed robbery at Pepe's Tacos located at 1401 North
8 Decatur, Las Vegas, Clark County, Nevada, on August 25, 2017.

9 The defendants agreed their guilty pleas were contingent on both of them entering into the
10 plea agreement, and further agreed to take no position at sentencing regarding the aforementioned
11 event numbers.

12 During Pinkney's plea canvass, he informed the Court he was twenty-two (22) years old
13 and had not completed high school or obtained his General Education Development certification
14 (GED). *See* Transcript of Trial, Day 2 (TT), pages 3-4, attached hereto as Exhibit A. Pinkney
15 also informed the Court that he had grown up with a learning disability, which resulted in him
16 taking Individualized Education Program classes (IEP), also known as special education classes.
17 TT 4. Pinkney also indicated he had been treated for a mental illness in the past but was not
18 currently receiving any treatment. TT 4. The Court inquired if anyone had suggested Pinkney
19 obtain treatment for mental illness or an emotional condition, to which Pinkney replied: "It's a
20 yeah on the -- on the mental affect, it has been where they wanted me to get treated, but I just
21 hadn't." TT 4. The Court then inquired whether Pinkney had taken any medication during his
22 time in custody, to which he replied "No." TT 4.

23 The Court continued the plea canvass and Pinkney indicated, among other things, that he
24 had discussed the case and the plea agreement with his attorney, understood everything in his
25 plea agreement, and was entering into the plea agreement freely and voluntarily. TT 5-6, 8.
26 Pinkney also indicated he understood that he was not pleading guilty to the offenses alleged under
27 the LVMPD event numbers, but that the State would be allowed to use them to support its
28 sentencing recommendation. TT 7. Pinkney further indicated he understood the sentencing ranges

1 for the respective counts, which were read to him in open court. TT 8-9. Counsel represented to
2 the Court that although he had informed Pinkney the minimum sentence he could receive was six
3 (6) years, he had not told Pinkney the maximum punishment the Court could impose. TT 9.
4 Pinkney confirmed he had not been told the maximum punishment he could receive, but he
5 understood the sentencing ranges for the individual counts. TT 10. Pinkney further indicated he
6 understood that the counts could be run concurrently or consecutively. TT 9-10. Before
7 concluding the canvass, the following exchange took place:

8
9 MR. GIORDANI: Just with regard to your first few questions of Mr. Pinkney where
10 he indicated he had an IEP, a learning program, learning disabilities growing up, can
11 we just be clear on the record that Mr. Pinkney had sufficient time with his attorney -
12 - it's been a couple hours, I think, since we broke and started really getting into the
13 meat of this -- understood fully both the written words and, you know, the
14 conversations that he had with his attorney.

15
16 MR. DURHAM: Your Honor, I signed the certificate of counsel, which indicates that
17 I believe he's fully competent to enter the plea; that I went over it with him.

18
19 THE COURT: Okay.

20
21 MR. DURHAM: And so I would just ask the Court to adopt that as part of the plea
22 agreement.

23
24 THE COURT: That's fine, and I certainly think I've asked him three times at least
25 now if he had any questions regarding this, and he's advised me that he does not. And
26 you had plenty of time, for the record, to go over this with your attorney since it's now
27 1:30 and you first met with him approximately 11:00 a.m., correct?

28
29 DEFENDANT PINKNEY: Yes.

30
31 THE COURT: You had plenty of time to discuss this?

32
33 DEFENDANT PINKNEY: Yes, sir.

34
35 THE COURT: And once again, you have no questions regarding the agreement?

36
37 DEFENDANT PINKNEY: No, sir.

38
39 THE COURT: All right. Thank you.

40
41 MR. DURHAM: Thank you.

1 THE COURT: I find it's freely and voluntarily entered into. The Defendant is
2 remanded.

3 TT 11-12.

4 II.

5 **LEGAL ARGUMENT**

6
7 The district court must allow Pinkney to withdraw his guilty plea because it was not
8 entered knowingly and voluntarily.

9 Nevada Revised Statute § 176.165 provides:

10 Except as otherwise provided in this section, a motion to withdraw a plea of guilty,
11 guilty but mentally ill or nolo contendere may be made only before sentence is
12 imposed or imposition of sentence is suspended. To correct manifest injustice, the
13 court after sentence may set aside the judgment of conviction and permit the
defendant to withdraw the plea.

14 Defendant Pinkney is timely moving the Court to allow him to withdraw his plea pursuant
15 to NRS 176.165 as he has not been sentenced in this matter.

16 In moving to withdraw a guilty plea, a defendant bears “the burden to prove that ‘the plea
17 was not entered knowingly or voluntarily.’” Rubio v. State, 124 Nev. 1032, 1038, 194 P.3d 1224,
18 1229 (2008) *quoting* Barajas v. State, 115 Nev. 440, 442, 991 P.2d 474, 475 (1999). In Rubio,
19 the Nevada Supreme Court held that “[t]o determine the validity of the guilty plea, we require
20 the district court to look beyond the plea canvass to the entire record and the totality of the
21 circumstances.” Rubio v. State, 124 Nev. 1032, 1038 (2008). In other words, a district court may
22 not simply review the plea canvass in a vacuum, conclude that it indicates that the defendant
23 understood what he was doing, and use that conclusion as the sole basis for denying a motion to
24 withdraw a guilty plea. Mitchell v. State, 109 Nev. 137, 141, 848 P.2d 1060, 1062 (1993).

25 District courts may grant a motion to withdraw a guilty plea prior to sentencing for any
26 substantial, fair, and just reason. Crawford v. State, 117 Nev. 718, 721-22, 30 P.3d 1123, 1125-
28

1 26 (2001). “Accordingly, Nevada trial courts must apply a more relaxed standard to presentence
2 motions to withdraw guilty pleas than to post-sentencing motions.” Molina v. State, 120 Nev.
3 185, 191, 87 P.3d 533, 537 (2004). To determine whether the defendant advanced a substantial,
4 fair, and just reason to withdraw a plea, the district court must consider the totality of the
5 circumstances to determine whether the defendant entered the plea voluntarily, knowingly, and
6 intelligently. Crawford, 117 Nev. at 721-22 (2001). A plea of guilty must be the result of an
7 informed and voluntary decision, not the product of coercion. *see* Smith v. State, 110 Nev. 1009,
8 1010, 879 P.2d 60, 61 (1994).

10 A defendant who pleads guilty upon the advice of counsel may attack the validity of the
11 guilty plea by showing that he received ineffective assistance of counsel under the Sixth
12 Amendment to the United States Constitution.” Molina, 120 Nev. at 190 (2004). To establish
13 prejudice in the context of a challenge to a guilty plea based upon an assertion of ineffective
14 assistance of counsel, a defendant must “demonstrate a reasonable probability that, but for
15 counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.” Id.

17 A defense attorney’s failure to conduct an adequate investigation denies his client his
18 Sixth Amendment right to the effective assistance of counsel. Strickland v. Washington, 466
19 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *also see* Warner v. State, 102 Nev. 635, 638,
20 729 P.2d 1359, 1361 (1986).

21 The United States Supreme Court has found that mental illness itself is not a unitary
22 concept. Indiana v. Edwards, 554 U.S. 164, 175, 128 S. Ct. 2379, 2381 (2008). It varies in
23 degree. Id. It can vary over time. It interferes with an individual's functioning at different times
24 in different ways. Id.

26 A judge is required to investigate the defendant's mental state if there are
27 indications at the plea hearing or later of an impairment that made him
28 incompetent to plead. The fact that a defendant seems competent when
answering the judge's questions at the plea hearing should not be

conclusive; mental diseases, or mental impairments brought on by psychotropic drugs, might alter the premises of a person's thinking rather than the articulation of his thoughts or his outward appearance or manner...

Even in a discussion with someone who believes he's Napoleon, you might find his speech lucid and (given the irrational premise) logical, and his affect normal.

United States v. Hardimon, 700 F.3d 940, 943 (7th Cir. 2012).

Here, the Court must allow Pinkney to withdraw his plea because it was not entered knowingly and voluntarily.

First, Pinkney's mental health ailments prevented him from fully understanding the direct consequences of his plea. Pinkney has an extensive psychiatric history. Records obtained from the Social Security Administration (SSA) reveal that Pinkney's past diagnoses include a significant learning disability, Post Traumatic Stress Disorder (PTSD), and Attention Deficit Hyperactivity Disorder (ADHD). *See* Exhibit A, bates numbers 5-6.¹ These ailments impaired Pinkney's ability to understand the complex terms contained in his guilty plea agreement.

The SSA records reveal that during a 2012 psychological evaluation, the psychologist described Pinkney as having a "deficient IQ" and "mild mental retardation." Exhibit A, bates 4-7. The psychologist noted that Pinkney's intellect was "capable only to very early elementary levels academically." *Id.* A 2016 psychological evaluation noted Pinkney demonstrated "moderate-to-severe impairment on more complex attentional tasks also involving mental flexibility in shifting sets," and that his intellectual functioning was estimated to be in the "borderline range." Exhibit A, bates 8-9. The psychologist also indicated that Pinkney presented with signs of cognitive/short-term memory weakness (Exhibit A, bates 9) and that he showed a "Markedly Limited" ability to understand and remember detailed instructions, and to maintain

¹ Pinkney has received disability benefits for his mental health issues since 2004. For the sake of brevity, counsel has only provided a portion of Pinkney's mental health records which summarize his ailments for the Court.

1 attention and concentration for extended periods. Exhibit A, bates 10. Notably, due to his learning
2 disabilities, Pinkney attended special education classes until he dropped out of school in the ninth
3 grade. Exhibit A, bates 1.

4 Pinkney did not understand numerous aspects of the plea agreement due to his limited
5 cognitive abilities and deficient legal advice. Specifically, Pinkney did not understand the overall
6 sentencing structure, or the application of concurrent and consecutive sentences. Although the
7 Court noted Pinkney had approximately two hours to discuss the plea agreement with his
8 attorney, counsel took less than fifteen (15) minutes to explain the entire plea agreement and
9 resulting consequences. During that time, counsel did not adequately inform Pinkney regarding
10 the possible outcomes at sentencing. Based on counsel's advice, Pinkney firmly believed he
11 would receive a sentence of six (6) to fifteen (15) years based on his lack of criminal history.
12 Additionally, Pinkney did not understand that the term "Right to Argue," meant the State could
13 argue for any legal sentence not precluded by the parties' agreement. He did not understand the
14 State could ask for a sentence far in excess of 6 to 15 years. It was not until after Pinkney entered
15 his plea that he learned the Court could impose a sentence beyond what he believed possible.
16

17 During the plea canvass, Pinkney indicated he read and understood the plea agreement.
18 Pinkney only did so because his attorney and co-defendant convinced him he would spend the
19 rest of his life in prison if he did not accept the negotiation. To avoid a guaranteed life sentence,
20 Pinkney misrepresented to the Court that he understood everything in the plea agreement. In
21 reality, due to a combination of his cognitive impairments and deficient legal advice, Pinkney did
22 not fully read or understand the terms in the plea agreement. Had Pinkney possessed a full
23 understanding of the terms and direct consequences of his guilty plea, he would have rejected the
24 State's offer and proceeded with trial.
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1 Additionally, Pinkney was induced to enter a guilty plea by his attorney's unreasonable
2 advice to accept the negotiation in order to avoid prosecution of the uncharged LVMPD events.
3 Pinkney's attorney did not receive discovery related to the events until after Pinkney entered his
4 plea. And after Pinkney had agreed to take no position at sentencing regarding the events. Upon
5 reviewing the discovery, it became apparent that counsel misrepresented the strength of the
6 State's case. The discovery revealed that none of witnesses identified Pinkney as a suspect, and
7 no forensic evidence connected Pinkney to the events. Had counsel adequately investigated the
8 events and properly advised Pinkney regarding the strength of the evidence against him, Pinkney
9 would have rejected the State's offer and proceeded with trial.
10

11 A defendant has the right to make a reasonably informed decision whether to accept a
12 plea offer. *See Hill v. Lockhart*, 474 U.S. 52, 56-57, 106 S.Ct. 366, 369, 88 L.Ed.2d 203 (1985)
13 (voluntariness of guilty plea depends on adequacy of counsel's advice); *Von Moltke v. Gillies*,
14 332 U.S. 708, 721, 68 S.Ct. 316, 322, 92 L.Ed. 309 (1948) ("Prior to trial an accused is entitled
15 to rely upon his counsel to make an independent examination of the facts, circumstances,
16 pleadings and laws involved and then to offer his informed opinion as to what plea should be
17 entered."). A defendant's knowledge of the comparative sentence exposure between standing
18 trial and accepting a plea offer will often be crucial to the decision whether to plead guilty. *United*
19 *States v. Day*, 969 F.2d 39, 43 (3d Cir. 1992). Defense counsel's mischaracterization of possible
20 sentence could constitute fair and just reason for withdrawal of plea. *United States v. Davis*, 428
21 F.3d 802 (9th Cir. 2005). An affirmative misrepresentation by counsel as to the consequences of
22 a conviction is objectively unreasonable and satisfies the first prong of *Strickland*. *See Rubio*,
23 124 Nev. at 1042 (2008).
24
25

26 Based on the totality of the circumstances, it is evident that Pinkney did not understand
27 the direct consequences of his guilty plea, and therefore did not enter his plea knowingly and
28

1 voluntarily. Pinkney's cognitive impairments combined with counsel's ineffective assistance
2 resulted in Pinkney failing to comprehend the sentencing structure, the term "Right to Argue,"
3 and the strength of the evidence supporting the uncharged events at the time he entered his guilty
4 plea. As such, this Court must allow him to withdraw his guilty plea.

5
6 **III.**

7 **CONCLUSION**

8 Pinkney submits that he did not enter his plea knowingly and intelligently due to his
9 mental health ailments and the actions of his attorney. Based on the foregoing facts and legal
10 argument, Pinkney respectfully requests an order allowing him to withdraw his guilty plea and
11 proceed to trial. In the alternative, Pinkney requests an evidentiary hearing in order to develop
12 the facts as alleged herein.

13 Dated this 30th day of January, 2019.

14 GAFFNEY LAW

15
16 /s/ Lucas Gaffney

17 LUCAS J. GAFFNEY, ESQ.

18 Nevada Bar No. 12373

19 1050 Indigo Drive, Suite 120

20 Las Vegas, Nevada 89145

21 Telephone: (702) 742-2055

22 Facsimile: (702) 920-8838
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of January, 2019, I served a true and correct copy of the foregoing Defendant Lorenzo Pinkney's Motion to Withdraw Guilty Plea on the following:

STEVEN B. WOLFSON
Clark County District Attorney
200 Lewis Avenue
Las Vegas, Nevada 89101
PDMotions@clarkcountynvda.com

JOHN GIORDANI
Chief Deputy District Attorney
200 Lewis Avenue
Las Vegas, Nevada 89101
Motions@clarkcountynvda.com

/s/ Lucas Gaffney
An employee of GAFFNEY LAW

EXHIBIT A

Mark D. Pierce, Ph.D., Clinical Psychologist
DYNASTY MEDICAL GROUP
44439 N 17th St W. Ste 105
Lancaster CA 93534
(661) 940-5125

February 29, 2012

DEPARTMENT OF SOCIAL SERVICES
Disability And Adult Programs Division
Los Angeles, North Branch
P.O. Box 54800
Los Angeles, CA 90054-0800

RE: **Lorenzo Pinkney**
SSN: [REDACTED]
ATTN: **A. Son**

The following is a summary report of the **PSYCHOLOGICAL EVALUATION** performed at this medical facility at the request of your department.

TESTS ADMINISTERED:

Complete Psychological Evaluation
Mental Status Exam

Wechsler Intelligence Scale for Children-Fourth Edition (WISC-IV)
Wide Range Achievement Test-IV (WRAT-IV)*
Vineland Adaptive Behavior Scale*

*The WRAT-IV is added for reported history of all day special education placement, in the absence of school records.

*The VABS is added to measure adaptive deficits, in light of apparent developmental delay.

GENERAL OBSERVATIONS:

The claimant is a 15-year-9-month-old, African-American male who arrived on time for the appointment. The claimant was brought to the clinic by his mother. The claimant's mother provided a somewhat limited insight historical record.

The claimant's posture, gait, and mannerisms were within normal range, except that he presented as cognitively slowed. The claimant was fairly dressed in clean but baggy clothing. He is taken back alone initially, as his mother completes the Patient History, with mother being interviewed subsequently.

PRESENTING COMPLAINTS:

This claimant has been diagnosed with ADHD but cannot take medications because of his having a heart condition which continues to be under evaluation, and is not yet treated. Of likely greater significance, this teen has the extreme trauma history of having been shot in the face at age 7 when a peer was playing with a gun by him, which broke his jaw. Since then he has been "jittery with noises and is always worried that something bad is going to happen", clearly showing posttraumatic adjustment. He is reportedly only a part day special education student, for mathematics and English as a 9th grader, with his today showing extreme challenges both with I.Q. and achievement testing, which does appear to be well motivated. He is a behavior problem at school, will not pull his pants up or take his cap off during the day, with history of suspensions, both in and out of school and full school expulsions, with his having attended an extreme 22 schools to

PAGE 2
RE: Lorenzo Pinkney
SSN: [REDACTED]

present.

REVIEW OF MEDICAL RECORDS

There are no records available for review today.

PAST MEDICAL HISTORY:

Medical history is significant for an undiagnosed heart condition preventing him from taking psychiatric medications, and he was accidentally shot in the face at age 7, sustaining a broken jaw.

CURRENT MEDICATIONS

The claimant is not currently taking prescription medication.

DEVELOPMENTAL HISTORY

The mother reports no complications with the birth or pregnancy. The claimant sat at 3 months, stood at 9 months, walked at 9 months and was toilet-trained by 2 years. First 'mama-papa' speech was heard at 10 months, identification speech emerged by 1 year, with short, 2-3-word sentences by 1 year.

PAST PSYCHIATRIC OR PSYCHOLOGICAL HISTORY:

The claimant has never been psychiatrically hospitalized. He reportedly has an open door policy for accessing counseling at school, without benefit of needed professional counseling and medication management.

PERSONAL HISTORY:

SOCIAL: The claimant was born in Long Beach, CA. He resides with his single mother, 6-year-old brother, and 5-year-old sister. Dad is not in his life, while mom has history of SLD and diagnosed ADHD, herself.

EDUCATION: The claimant is described as only a part day special education student as a 9th grader with special services from 2nd grade.

LEGAL: The claimant apparently was not arrested for reportedly breaking into a classroom at school in the middle of the day on a nonschool day.

CURRENT LEVEL OF FUNCTIONING

At the present time, the claimant goes to school everyday. In addition to attending school, the claimant enjoys watching TV and listening to music.

The claimant also goes outside the home to shop, attend sports events, go to movies, and visit friends.

The claimant can use eating utensils appropriately. He can dress and bathe himself and can use the bathroom independently.

PAGE 3
RE: Lorenzo Pinkney
SSN: [REDACTED]

The mother reports the claimant helps out at home by taking out the trash, feeding the pets, cleaning his room, and sweeping, "when I make him".

The claimant is described as getting along "excellent" with family and "fair" with friends ("He treats them like they don't matter").

The claimant relies on family members for transportation. He is able to handle small amounts of spending money independently.

Mother concludes, "I have problems getting him to stay on task. He always talks back and tries to talk his way out of stuff."

MENTAL STATUS EXAMINATION:

ATTITUDE AND BEHAVIOR: The claimant was alert, responsive, and cooperative during the evaluation, though shows quite challenged cognitive capacities. His general attitude was characterized by fair effort, interest, and compliance. Clothing, grooming, and hygiene were adequate.

INTELLECTUAL FUNCTIONING: The claimant is estimated to be functioning within the well deficient intellectual range, based on intake interview and the history obtained.

MOOD AND AFFECT: The claimant's mood and affect were under-modulated, and consistent with depressive and anxious, posttraumatic adjustment. Mother endorsed mood and/or behavioral problems included: "nervous and poor habits." "He always thinks something bad is going to happen. He will do good, but just for a period of time." At home he acts up and at school there are teacher complaints, fights, suspensions and history of expulsion. He adds, "I fight if somebody tries to mess with me." When asked directly how he typically feels, the claimant responded, "I feel pissed at having to do the work at school 'cause I can't do the work. At home I feel good." He indicates having "no" friends; "but that's no problem." This youngster appears to suffer from fairly severe, unresolved posttraumatic adjustment from having been shot at age 7, with reported hypervigilance, attention deficits and significant acting out behavior as described. There was no indication of psychotic, suicidal or homicidal ideation or behavior noted during the contact period.

SPEECH: The claimant's speech is mildly dysarthric. Verbal response time was slowed. The claimant's tone is under-modulated.

CONCENTRATION/ATTENTION SPAN: The claimant's concentration and attention span were deficient. Formal measures of attention and concentration (WISC-4 Working Memory and Processing Speed Composite) are higher deficient and mild to moderately deficient range, respectively, commensurate with overall I.Q. composite scores.

INSIGHT AND JUDGMENT: Insight and judgment were mildly deficient and mild to moderately deficient, respectively. When asked what an apple and banana have in common, the claimant said, "You eat." When asked, "What would you do if you saw thick smoke coming from your neighbor's house?" he responded, "Call 911."

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RE: Lorenzo Pinkney
SSN: [REDACTED]

TEST RESULTS:

The claimant was administered the: Wechsler Intelligence Scale for Children-IV, Wide Range Achievement Test-IV, and Vineland Adaptive Behavior Scales.

The results are as follows:

WECHSLER INTELLIGENCE SCALE FOR CHILDREN-IV (WISC-IV):

The claimant was administered the WISC-IV, obtaining the following subtest scale scores.

<u>Verbal</u> <u>Comprehension</u>		<u>Perceptual</u> <u>Reasoning</u>		<u>Working</u> <u>Memory</u>		<u>Processing</u> <u>Speed</u>	
Similarities	4	Block Design	2	Digit Span	4	Coding	1
Vocabulary	2	Picture Concepts	2	Letter Number Sequencing	4	Symbol Search	1
Comprehension	1	Matrix Reasoning	3				
<u>V C Composite</u>		<u>P R Comp</u>		<u>W M Comp</u>		<u>P S Comp</u>	<u>Full</u> <u>Scale</u>
55		53		65		50	48

The claimant's performance is extremely limited, from the mild to mostly mild to moderately deficient range. The full scale I.Q. is in the moderately deficient range, while this claimant is estimated to show lower, mild developmental delays overall.

WIDE RANGE ACHIEVEMENT TEST (WRAT) - IV:

The claimant was administered the Wide Range Achievement Test-IV. The results are as follows:

DOMAIN	Raw Score	Standard Score	Grade Equivalence
Word Reading	24	64	1.8
Sentence Comprehension	3	55	K.6
Spelling	20	62	1.4
Math Computation	21	63	2.2
Reading Composite	119	59	N/A

The claimant shows very limited capacity with language-related achievement screening, with Reading, Sentence Comprehension and Spelling scores from the lower mild to mild to moderately deficient range. Mathematical achievement is also lower mildly deficient range. This is *not* a profile of diagnosable learning disorder for language-related or mathematics achievement, for obtained WRAT-IV standard scores paralleling, to rising somewhat higher than his tested low I.Q. scores, and are best subsumed under the primary mild mental retardation diagnosis. Notably, he is capable only to very early elementary levels academically.

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RE: Lorenzo Pinkney
SSN: [REDACTED]

VINELAND ADAPTIVE BEHAVIOR SCALES: INTERVIEW EDITION:

The claimant was administered the Vineland Adaptive Behavior Scales.

The claimant achieved the following scores:

Domain	Raw Score	Standard Score	Adaptive Level
Communication	67	20	Severely to profoundly deficient
Daily Living Skills	109	33	Severely deficient
Socialization	55	22	Severely to profoundly deficient
Adaptive Composite		22	Severely to profoundly deficient

Overall, mother rates extreme, severely to profound adaptive deficits across the board, which seems to be an overestimate of the level of actual challenge for this troubled teen.

Given fair, estimated typical effort and rapport, the following diagnostic and prognostic impressions are estimated reliable and valid and appear to accurately represent the claimant's abilities and functional level at this time.

DIAGNOSTIC IMPRESSIONS:

Given the test results and clinical data, the claimant is diagnosed as:

AXIS I: Posttraumatic stress disorder (severe, unresolved, from sustaining a GSW at age 7, thought to underlie additional behavior disorders below, the claimant has attended 22 schools, untreated).

Disruptive behavior disorder, not otherwise specified (estimated pre-conduct disordered aggression as well as oppositional-defiance at school, also not treated).

AXIS II: Mild mental retardation (moderately deficient I.Q. testing, lower mildly deficient achievement screening against severe to profound adaptive deficits per mother).

AXIS III: Sustained GSW to the face at age 7, resulting in a broken jaw and a still undiagnosed/untreated heart condition.

Deferred to the appropriate specialists.

PROGNOSTIC IMPRESSIONS:

This claimant appears to require aggressive psychiatric intervention for what today is diagnosed as an untreated, severe PTSD adjustment from his having been shot in the face as a 7-year-old. He

PAGE 6
RE: **Lorenzo Pinkney**
SSN: [REDACTED]

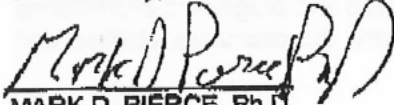
shows classic hypervigilance, "always worried that something bad is going to happen", with likely underreported nightmares and flashbacks. This condition has expanded into extreme disruptive behavior, oppositional-defiance and aggression in the classroom, with serious potential for delinquent behavior if not aggressively intervened upon soon. Mother reports that he cannot take ADHD medications for an undiagnosed heart condition, while he makes a severe psychiatric presentation per his history, compounded by very likely high familial instability for his having attended 22 schools to present. He presents as well mentally retarded, with commensurate adaptive deficits such that he likely requires a highly structured school environment, possibly of the non-public variety, where he could obtain the aggressive mental health services that he seems to require.

The claimant shows related, quite challenged social skills with this examiner.

The claimant can follow simple one and two part instructions. However, he appears unable to reason sufficiently to avoid typical, age-related hazards, by the generally challenged testing effort obtained today.

Thank you for the opportunity of assisting in this interesting consultation.

Submitted by,



MARK D. PIERCE, Ph.D.
Clinical Psychologist
CA License Exp. 06/13

CASE ANALYSIS	SSN: [REDACTED]
	Name: LARENZO ISAAH PINKNEY
	Date: October 14, 2016

FROM: MS. MOORE/V80	CEMOOR
NAME: LARENZO ISAAH PINKNEY	DATE OF BIRTH: [REDACTED]
SSN: [REDACTED]	AGE: 20 SEX: M
CASE NUMBER: 1185340	HEIGHT: 70 IN WEIGHT: 153 LB
AOD 05/25/2014	EDUCATION: 11
CASE FILING DATE	CASE LEVEL: PH
DATE LAST INSURED: 00/00/0000	CASE TITLE: T16
PRIOR DENIAL DATE 00/00/0000	CASE TYPE:
PP CONTROLLING DATE 00/00/0000	PP/AGE22: 00/00/0000

T16 Age 18 Redet

****PH CASE****

ALLEGATIONS:

ADHD; Learning problems;, Condition Changed Start Date 01/2014, Condition Changed Description WELL H E BEEN HAVING HEADACHES ALMOST EVERYDAY. LORENZO W AS SHOT IN THE FACE AT 7 YEARS OLD, New Conditions Start Date 02/2016, New Conditions Description UN CONTROLLABLE OUT BRAKES

SOURCES:

CHERRY MEDICAL CLINIC report received 09/21/2016

DISCUSSION OF EVIDENCE AND ISSUES INVOLVED

SIGNIFICANT OBJECTIVE FINDINGS:

CPD: MET 112.05C. FUNCTIONING BELOW GRADE LEVEL. HX OF ADHD BUT NOT ON MEDS. DEFFICIENT IQ SCORES PER 2/2012 YOCE: WISC IV- VC 55, PR 53, WM 65, PS 50, FIQ 48.
GIVEN: MEETS LISTING 112.05C.

CDR: CASE RETURNED FROM FO AFTER CASE WAS CLOSED FOR FTC. 2014 MEOR NOTES CT IS NOT IN TX WITH PSYCHIATRIST OR PSYCHOLOGIST. HE HAS NO PEDIATRICIAN OR PCP. ATTENDING MISSION VIEW CHARTER HS. 4/14

IEP NOTES HE IS ELIGIBLE UNDER SLD. FUNCTIONING ACADEMICALLY BELOW GRADE LEVEL. NO PROBLEMS NOTED IN MOTOR SKILLS, COMMUNICATION, SOCIAL INTERACTION, ADAPTIVE SKILLS. NO MEDICAL PROBLEMS NOTED.

DETERMINATION: INSUFFICIENT EVIDENCE 2/2 WAU. THIS IS THE 2ND TIME CT'S WHEREABOUTS ARE UNKNOWN.

CASE RETURNED ON 03/18/16 AFTER THE CASE WAS CLOSED TO W AU FOR THE 2ND TIME. THE CLAIM, IS NOW BEING CLOSED FOR FTC. THE UPDATED ADDRESS WAS RECEIVED AND A CE WAS SCHEDULED BUT THE CLAIMANT FAILED TO KEEP THE EXAM AGAIN. DUE PROCESS 2 CALLS AND LETTERS SENT TO THE CLAIMANT AND MOTHER W/O RESPONSE. RETURNED MAIL HAS BEEN RECEIVED BUT UNABLE TO ENTER INTO SYSTEM 2/2 BARCODE ISSUES.

YMC REC INSUFFICIENT EVIDENCE 2/2 FAILURE TO COOPERATE WITH A CONSULTATIVE EXAM. NO EVIDENCE AVAILABLE FOR REVIEW.
GIVEN: IE.

PH: CHERRY MEDICAL CLINIC 9/7/16 MSE: the clmt was able to state his full name, age, and date of birth. His thinking was coherent, though concrete. The clmt's speech was clear and understandable. Response time was average. No psychomotor retardation was noted. The clmt's mood was withdrawn. Affect was constricted. Current symptoms of depression and anxiety were reported. Present suicidal ideation was denied. No unusual perceptual experiences were reported. Signs of paranoia were evident during the exam. The clmt could repeat 4 digits forward and 3 digits backwards. He could recall the names of 2 out of 3 familiar objects after an interval of 5 minutes and an interference task. The clmt could provide general details regarding his daily activities. Remote memory appeared grossly intact. The clmt demonstrated a mildly diminished attention span in responding interview questions and following test instructions. During performance tasks, the clmt lacked persistence as he tended to give up easily when challenged. The clmt knew how many months there are in a year but could not identify the direction in which the sun rises. He could name the current president of the United States and the last president. The clmt's legal history suggests a proneness to lapses in impulse control and judgment. When asked, what is the thing to do if he was the first person in a movie theater to see smoke and fire, the patient responded, "Yell for help." When asked, how he would find his way out if he was lost in the forest during the daytime, the patient responded, "Yell for help."
TESTING: WAIS 4- VERBAL COMP 74, PR 77, WM 71, PS 84, FSIQ IS 82. WMS4- AUDITORY MEMORY 75, VISUAL MEMORY 76, VISUAL WORKING MEMORY IS 73, INTERMEDIATE MEMORY IS 72, DEALYED MEMORY IS 72.

TRAILS- Trails A was completed in 38 seconds, which is in the non-impaired range. On Trails B, the clmt made repeated errors. He was able to correct some of the initial errors with feedback but ultimately gave up at 115 seconds, having completing less than half of the task. Results indicate no signs of impairment on simple tasks requiring sustained

attention or visual-tracking ability, and moderate-to-severe impairment on more complex attentional tasks also involving mental flexibility in shifting sets.

DX: Axis I: Conduct Disorder, NOS, given the clmt's legal/school district juvenile disciplinary history. Learning Disorder, NOS, by report. Depressive Disorder, NOS, given the report of chronic depressed mood, sadness over losses, anhedonia, pessimism about the future, irritability, constriction of interests and restriction of daily activities. Axis II: Intellectual functioning is estimated to be in the Borderline Range. Antisocial/paranoid Traits, given the clmt's legal history. Axis III: Deferred to the appropriate medical specialist.

MSS: The clmt would be able to learn a simple, repetitive nonverbal task but may have moderate limitations in performing detailed, varied, or complex tasks. His ability to sustain attention and concentration for extended periods of time may be moderately diminished, due to cognitive and emotional factors. During testing, the clmt demonstrated mild to moderately diminished attention, concentration, persistence, and pace in completing tasks. From a psychological perspective, the clmt presents with signs of cognitive/short-term memory weakness, depressive/anxiety symptoms, and proneness to engage in impulsive, antisocial behaviors, which may result to moderate limitations in ability to manage customary work stress and persist for a regular workday. Given test results and current activities of daily living, the clmt appears capable of following a routine but may have moderate limitations in organizing for high level tasks. Given his dysphoria, test behavior, and school dropout record, the clmt may have difficulty persisting despite obstacles. The effects of any medical conditions upon work functioning should be evaluated by the appropriate medical specialist. The clmt would be able to work independently on basic tasks. Given his dysphoria, irritability, and preference for social isolation, the clmt may have mild limitations in sustaining cooperative relationships with co-workers and supervisors. He may function most optimally in a semi-isolated work setting. The clmt relates in a cooperative manner with supportive authority figures, as demonstrated by his behavior with this evaluator. The clmt appears technically capable for the self-management of funds, given test results, though he would benefit from continued assistance, due to impulse control/judgment problems.

QUESTIONS/RECOMMENDATIONS: less than SRT?

10/12/16 Y less than SRT. gfjohnsonmd

☒ THESE FINDINGS COMPLETE THE MEDICAL PORTION OF THE DISABILITY DETERMINATION

SIGNATURE: G. Johnson MD	SPECIALTY: 37	OFFICE Covina
		DATE October 12, 2016

MENTAL RESIDUAL FUNCTIONAL CAPACITY ASSESSMENT**NAME**

LARENZO ISAAH PINKNEY

SOCIAL SECURITY NUMBER

[REDACTED]

CATEGORIES (From 1C of the PRTF)

12.02, 12.04, 12.08

ASSESSMENT IS FOR:☒ Current Evaluation☐ 12 Months After Onset:☐ Date Last Insured:☐ Other: to**I. SUMMARY CONCLUSIONS**

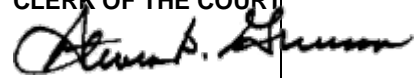
This section is for recording summary conclusions derived from the evidence in file. Each mental activity is to be evaluated within the context of the individual's capacity to sustain that activity over a normal workday and workweek, on an ongoing basis. Detailed explanation of the degree of limitation for each category (A through D), as well as any other assessment information you deem appropriate, is to be recorded in Section III (Functional Capacity Assessment).

If rating category 5 is checked for any of the following items, you MUST specify in Section II the evidence that is needed to make the assessment. If you conclude that the record is so inadequately documented that no accurate functional capacity assessment can be made, indicate in Section II what development is necessary, but DO NOT COMPLETE SECTION III.

	Not Significantly Limited	Moderately Limited	Markedly Limited	No Evidence of Limitation in this Category	Not Ratable on Available Evidence
A. UNDERSTANDING AND MEMORY					
1. The ability to remember locations and work-like procedures.	1. <input checked="" type="checkbox"/>	2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>	5. <input type="checkbox"/>
2. The ability to understand and remember very short and simple instructions.	1. <input checked="" type="checkbox"/>	2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>	5. <input type="checkbox"/>
3. The ability to understand and remember detailed instructions.	1. <input type="checkbox"/>	2. <input type="checkbox"/>	3. <input checked="" type="checkbox"/>	4. <input type="checkbox"/>	5. <input type="checkbox"/>
B. SUSTAINED CONCENTRATION AND PERSISTENCE					
4. The ability to carry out very short and simple instructions.	1. <input checked="" type="checkbox"/>	2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>	5. <input type="checkbox"/>
5. The ability to carry out detailed instructions.	1. <input type="checkbox"/>	2. <input checked="" type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>	5. <input type="checkbox"/>
6. The ability to maintain attention and concentration for extended periods.	1. <input type="checkbox"/>	2. <input type="checkbox"/>	3. <input checked="" type="checkbox"/>	4. <input type="checkbox"/>	5. <input type="checkbox"/>
7. The ability to perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances.	1. <input type="checkbox"/>	2. <input checked="" type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>	5. <input type="checkbox"/>
8. The ability to sustain an ordinary routine without special supervision.	1. <input checked="" type="checkbox"/>	2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>	5. <input type="checkbox"/>
9. The ability to work in coordination with or proximity to others without being distracted by them.	1. <input checked="" type="checkbox"/>	2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>	5. <input type="checkbox"/>
10. The ability to make simple work-related decisions.	1. <input checked="" type="checkbox"/>	2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>	5. <input type="checkbox"/>

	Not Significantly Limited	Moderately Limited	Markedly Limited	No Evidence of Limitation in this Category	Not Ratable on Available Evidence
Continued--- <u>SUSTAINED CONCENTRATION AND PERSISTENCE</u>					
11. The ability to complete a normal workday and workweek without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods.	1. <input type="checkbox"/>	2. <input checked="" type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>	5. <input type="checkbox"/>
C. <u>SOCIAL INTERACTION</u>					
12. The ability to interact appropriately with the general public.	1. <input type="checkbox"/>	2. <input type="checkbox"/>	3. <input checked="" type="checkbox"/>	4. <input type="checkbox"/>	5. <input type="checkbox"/>
13. The ability to ask simple questions or request assistance.	1. <input checked="" type="checkbox"/>	2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>	5. <input type="checkbox"/>
14. The ability to accept instructions and respond appropriately to criticism from supervisors.	1. <input type="checkbox"/>	2. <input checked="" type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>	5. <input type="checkbox"/>
15. The ability to get along with coworkers or peers without distracting them or exhibiting behavioral extremes.	1. <input checked="" type="checkbox"/>	2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>	5. <input type="checkbox"/>
16. The ability to maintain socially appropriate behavior and to adhere to basic standards of neatness and cleanliness.	1. <input checked="" type="checkbox"/>	2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>	5. <input type="checkbox"/>
D. <u>ADAPTATION</u>					
17. The ability to respond appropriately to changes in the work setting.	1. <input type="checkbox"/>	2. <input type="checkbox"/>	3. <input checked="" type="checkbox"/>	4. <input type="checkbox"/>	5. <input type="checkbox"/>
18. The ability to be aware of normal hazards and take appropriate precautions.	1. <input checked="" type="checkbox"/>	2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>	5. <input type="checkbox"/>
19. The ability to travel in unfamiliar places or use public transportation.	1. <input checked="" type="checkbox"/>	2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>	5. <input type="checkbox"/>
20. The ability to set realistic goals or make plans independently of others.	1. <input checked="" type="checkbox"/>	2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>	5. <input type="checkbox"/>
II. REMARKS: If you checked box 5 for any of the preceding items or if any documentation deficiencies were identified, you MUST specify what additional documentation is needed. Cite the item number(s), as well as any other specific deficiency, and indicate the development to be undertaken.					

Continued on Page 3



1 RTRAN

2
3
4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 STATE OF NEVADA,

9 Plaintiff,

CASE#: C-17-327767-1&2

DEPT. XXVIII

10 vs.

11 LARENZO PINKEY,
12 ADRIAN POWELL,

13 Defendant.

14 BEFORE THE HONORABLE RONALD J. ISRAEL, DISTRICT COURT JUDGE
15 WEDNESDAY, FEBRUARY 27, 2019

16 **RECORDER'S TRANSCRIPT OF HEARING**
17 **HEARING RE: WITHDRAWAL OF PLEA**

18 APPEARANCES:

19 For the State:

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

22 For the Defendant,
23 Lorenzo Pinkey:

LUCAS J. GAFFNEY, ESQ.

24 Adrian Powell:

MONIQUE A. MCNEILL, ESQ.

25 RECORDED BY: JUDY CHAPPELL, COURT RECORDER

1 Las Vegas, Nevada, Wednesday, February 27, 2019

2
3 [Case called at 10:48 a.m.]

4
5 THE COURT: Okay, 327767-1 & 2, Mr. Pinkey and
6 Mr. Powell.

7 Counsel, state –

8 MS. MCNEILL: Good morning, Your Honor.

9 THE COURT: -- your appearance.

10 MS. MCNEILL: Monique McNeill, Bar Number 9862, on
11 behalf of Mr. Powell.

12 MR. GAFFNEY: Lucas Gaffney, appearing on behalf of
13 Mr. Pikney, who's present and in custody.

14 MR. GIORDANI: John Giordani on behalf of the State. Good
15 morning.

16 THE COURT: Good morning. Okay, let's start with – this is
17 Mr. Powell's motion to withdraw his guilty plea.

18 MS. MCNEILL: Yes, Your Honor. I would ask –

19 THE COURT: I've read this, but –

20 MS. MCNEILL: Okay.

21 THE COURT: -- if you have anything to add.

22 MS. MCNEILL: I would – I think it's important and I think that
23 Mr. Gaffney probably concurs because these deals were contingent, the
24 outcomes do affect each other, that it's probably the most prudent to
25 have an evidentiary hearing with prior Counsel testifies to what he actual

1 told Mr. Powell with regards to the substance of the negotiations. One of
2 the most concerning pieces of information is the fact that the State was
3 indicating that they would not file charges in those other cases as a point
4 of leverage in the offer that he pled to.

5 I know the State seems to indicate that Mr. Powell knows
6 whether or not he committed those crimes but that's not how it works
7 when you advise a client as to whether or not they should take a deal.
8 What you have to do is tell the client what the evidence is against you
9 and that controls whether or not it makes --

10 THE COURT: Well that's regarding the charges. He wasn't
11 charged. And we -- that's --

12 MS. MCNEILL: But it --

13 THE COURT: -- in their opposition and you didn't file a reply --

14 MS. MCNEILL: Well, Your Honor, --

15 THE COURT: -- that I saw, but.

16 MS. MCNEILL: -- if -- if -- if they're saying we won't file the
17 charges on that if you plead to this, the attorney needs to know whether
18 or not they'd actually be able to file those charges. You have to review
19 the discovery. If you don't review the discovery, you don't know if they're
20 actually giving you anything. I reviewed that discovery and I can tell you I
21 don't believe they'll ever be able to file those charges. And the lawyer
22 who told him you should take this deal because they're not going to file
23 charges in these other cases, did not review that discovery.

24 THE COURT: Anything else?

25 MS. MCNEILL: No, Your Honor, but I think it's important that

1 the prior Counsel come in and testify about what he specifically told
2 Mr. Powell with regards to those other cases with regard to the deal that
3 he was offered.

4 THE COURT: State.

5 MR. GIORDANI: Could I just respond after Mr. Gaffney's
6 gone so just respond one time? Or.

7 MR. GAFFNEY: Sure.

8 THE COURT: Well, I'm doing these separately.

9 MR. GIORDANI: Okay. As to Mr. Powell, Your Honor,
10 number one I think the motion is both belied by the record and
11 unsupported by what Your Honor likely recalls.

12 So to set the scene for this thing and with respect –
13 respectfully to Ms. McNeill and to Mr. Gaffney, they weren't in the room
14 when all this happened. This was Day 2 of jury selection in a trial in
15 which 30 witnesses were prepared to testify. Every indication was that
16 we were going to verdict and then the defense approached the State on
17 Day 2 of jury selection and asked us for a deal. Being confident in the
18 case, being that we already started and invested a lot of time and effort
19 into preparing for the trial, which again was multiple victims, we weren't
20 inclined to deal it. But they're clients indicated to them or the attorneys
21 indicated to us that they would entertain any offer we would give and
22 bring it back to their clients to see if they wanted it.

23 We took hours, with the jury in the hallway, hours to come to
24 this agreement. Those ten additional events were a potential. Everyone
25 in the room knew that. We discussed that in front of Your Honor. We

1 weren't saying that we were for sure going to file them. They didn't
2 believe we were for sure going to file them. The real benefit of the deal
3 was taking the life tail off the table and the opportunity to plead straight
4 up, because they were going to be convicted anyway, and come in at
5 sentencing and say, Judge, we accepted responsibility for this. We didn't
6 put the Court through a week long or two-week long trial. We didn't put a
7 jury through a two-week long trial. That was the big benefit to them.

8 While I understand that the ten additional counts appear to be
9 serious because they are obviously very serious offenses, the end the
10 day, what this was, was two options. Finish the trial out, get convicted,
11 face the potential of a life tail and then the opportunity – or the potential
12 that these additional charges would be filed. Again, there was no
13 guarantee and none was ever represented that those additional charges
14 would be filed.

15 I would also note, during the plea canvas, if we're just arguing
16 Mr. Powell right now, he told this Court he felt excellent. He went out of
17 his way to do that. And that's because he knew he was getting out from
18 under the life tail. He was very familiar with the evidence. They had
19 prepared for trial just like we had so they knew the writing was on the
20 wall. Everything in that plea canvas, and I would submit to Your Honor
21 without trying to flatter you in any way, it was extra thorough because of
22 stakes. Because we were halfway through trial and we informed the
23 Court, we don't want this coming back. They want to do, let's do an extra
24 thorough plea canvas. And you do.

25 So now that we're here after we've released all these

1 witnesses, stopped any investigation on the additional charges and they
2 want to withdraw their plea, I think frankly it's buyer's remorse. They got
3 their PSI, they realize that they're -- P&P is recommending a substantial
4 amount of prison time and they're trying to get out of it. But that's not a
5 substantial reason that is both fair and just. That's what's required by the
6 law and none was given here.

7 THE COURT: Reply.

8 MS. MCNEILL: And, Your Honor, it's one thing for the State
9 to say, well, they were told X, Y, and Z. He doesn't know what the lawyer
10 told him. Additionally, they agreed --

11 THE COURT: Well, regarding the ten potential, that I believe
12 is on the record --

13 MR. GIORDANI: Oh, it was.

14 MS. MCNEILL: Well --

15 THE COURT: -- that -- that wasn't --

16 MS. MCNEILL: -- we don't know if his lawyer said, you should
17 take this because otherwise you're going to get these ten additional
18 cases coming at you. We also don't know what he's --

19 THE COURT: Isn't that the case in every case? We don't
20 know. We don't ever know.

21 MS. MCNEILL: But we need to know when a defendant says
22 this is what happened to me.

23 THE COURT: So you're arguing that in every single case, we
24 need to have -- and I'm talking every single case, we need to have a
25 hearing to find out what was discussed in confidence, otherwise it's not

1 knowing and voluntary?

2 MS. MCNEILL: No, Your Honor --

3 THE COURT: But that's not --

4 MS. MCNEILL: -- what I'm --

5 THE COURT: -- what the case --

6 MS. MCNEILL: -- what I'm --

7 THE COURT: -- says.

8 MS. MCNEILL: -- what I'm saying is it's ineffective for a
9 lawyer to tell a client they should take a deal when they don't know the
10 substance of the deal they're telling our client to take. If I tell a client, you
11 should take this deal because of these other cases, and I don't know
12 what those cases are, that's ineffective. It would be ineffective of me to
13 tell a client to take a deal when I don't know the substance of the
14 discovery of the case. And for Mr. Giordani to say that my client was
15 aware, he never had all of his discovery in this case. His lawyer never
16 provided it to him.

17 So you can't say he knew what the substance of the
18 negotiations were, if one of the parts of the negotiations was these
19 additional cases going away and no one even knew what those cases
20 contained except for the State. Additionally, they didn't actually take life
21 off the table. Your Honor can still sentence them to life. And going to
22 trial, they could have won those kidnapping counts. The Supreme Court
23 could have reversed those kidnapping counts.

24 I generally myself don't find the kidnapping charges to be that
25 much leverage because the Supreme Court kicks those back frequently.

1 So to say we took like off the table and so that we need to know did he
2 tell him, hey, I might be able to beat these kidnapping counts. Did he tell
3 him, hey, the Supreme Court might reverse these.

4 So we don't have to do this in every case, but in a motion to
5 withdraw a guilty plea where what the attorney told the client, because
6 when he enters his plea, it's yes, I – he told me this, yes, I agree to that,
7 is based on what the lawyer told him. And we don't know what he told
8 him. But we do know that now he stands here and saying, hey, this may
9 be wasn't – I wasn't advised well. And I don't believe he was based on
10 my review of the case. It's ineffective to tell –

11 THE COURT: All right. Thank you.

12 MS. MCNEILL: -- a client to take a deal.

13 THE COURT: Anything else? All right. Anything else?

14 MS. MCNEILL: No, Your Honor.

15 THE COURT: Okay, well, first, for ineffective we need to look
16 at *Strickland*, and the burden is on the defendant must substantiate the
17 claim that there was ineffective assistance. And it's not – is, you seem to
18 be arguing, well, it's not the best thing, it's not what I would have done,
19 et cetera. It's basically, for lack of better, what a reasonable defense
20 attorney would do. And I see no grounds, if you will, under *Strickland* to
21 substantiate the ineffective assistance. The fact that, certainly, even in
22 court we discuss those cases weren't filed. It was only that they wouldn't
23 be.

24 So I don't see, other than mere speculation, that somehow
25 that would affect the decision and the voluntariness, and that's what

1 we're here about, whether the voluntary and knowingly entered into the
2 plea. And I, well, I didn't recall, but I did review the actual canvas where
3 your client said that, I believe, I don't want to go -- take the time to go to
4 the page, but he says something about I'm excellent. And we -- I inquired
5 extensively, the best I could that he was knowingly and voluntarily
6 making this plea and that he was aware of all the consequences, not the
7 least which he signed the guilty plea agreement that sets forth
8 everything.

9 And although, yes, I certainly have allowed for a hearing, I
10 don't think either the Supreme Court or the State Supreme Court requires
11 that in every case we do this when a defendant decides that, oh, they're
12 no longer satisfied with their plea. And I think that the overall, and I
13 forget how the State Supreme Court worded this, the overall
14 circumstances show that the plea was entered knowingly and voluntarily.

15 And therefore I'm denying the motion for Mr. Powell to
16 withdraw his guilty plea. State will have to prepare an order.

17 THE COURT: Mr. Pinkey. Am I saying that correct? Yes,
18 Mr. Pinkey.

19 Go ahead.

20 MR. GAFFNEY: Thank you, Judge. And Your Honor, I
21 understand the --

22 THE COURT: And I know this one's --

23 MR. GAFFNEY: -- Court's ruling. I'm not --

24 THE COURT: -- different based on different --

25 MR. GAFFNEY: -- quarreling with the Court's findings.

1 However, I would join in Ms. McNeill's request for an evidentiary hearing.
2 You know, what's – essentially what we're –

3 THE COURT: Your client, there's different facts.

4 MR. GAFFNEY: Right. Well, and what I'm referring to is with
5 the uncharged robberies. I think that is important that we know what trial
6 Counsel told Mr. Pikney in regard to the evidence of the uncharged act
7 that induced him to enter into the plea. We don't know what that
8 conversation – what happened during that conversation and therefore
9 what weight Mr. Pikney would have given that benefit in his plea
10 agreement.

11 And I'll just – I'll submit it for – on that issue because I
12 understand the Court's ruling on that.

13 THE COURT: Oh.

14 MR. GAFFNEY: And Mr. Pikney he is in a different situation
15 than Mr. Powell in that he has these mental health issues. He's a young
16 man, he's 22 years old. He has a ninth grade education. He's never got
17 his GED. He has a significant learning disability. Suffers from PTSD,
18 ADHD, and all of these mental health ailments that he suffers from
19 culminated in him not being able to understand certain aspects of his
20 plea agreement which I laid out in the motion.

21 When I first spoke to him, he told me that he didn't understand
22 any of it. And then when I started kind of drilling down to figure out what
23 exactly precisely did he not understand, he didn't understand the
24 sentencing structure. He believed that he was going to get – he
25 understands that the Court now is the ultimate arbiter of what sentence

1 he's going to get. Back then he thought that he was going to get a 6 to
2 15 based on his Counsel's advice and that by entering into the
3 negotiation, he was taking what he thought was a guaranteed life
4 sentence off the table. And, to me, that makes zero sense that he would
5 choose not to go to trial, be convicted of 15 counts, but instead plead
6 guilty to 14 counts and expect his situation to change.

7 The one thing that Mr. Pikney was not told was that the Court
8 has a discretion to impose the sentence. You're the final arbiter of what
9 his sentence is going to be. So if he goes through –

10 THE COURT: Even though that's part of the canvas.

11 MR. GAFFNEY: Well, true. But at the time –

12 THE COURT: So you're arguing which I understand that he
13 doesn't understand that.

14 MR. GAFFNEY: Correct.

15 THE COURT: And that's substantially different than the
16 co-defendant. He has allegedly a learning disability.

17 MR. GAFFNEY: Well, and I, Your Honor, submitted as
18 exhibits to my motion –

19 THE COURT: Yeah, read all of that.

20 MR. GAFFNEY: -- paperwork from the Social Security
21 Administration to show that he's been suffering from these ailments since
22 2004. One thing I didn't include is that when you're getting disabilities
23 from the Social Security Administration, you have to go in every year and
24 be reevaluated by a psychologist or a psychiatrist in order to continue
25 receiving those benefits. So it wasn't a situation where he's diagnosed

1 back in 2004 and he just continues to receive benefits to the present day.
2 He was diagnosed and reaffirmed to have those issues every year by a
3 different, well, I believe a different psychologist or psychiatrist.

4 And, Your Honor, I –

5 THE COURT: All right. You didn't attach those.

6 MR. GAFFNEY: I have plenty of paperwork I can, –

7 THE COURT: Okay.

8 MR. GAFFNEY: -- I can submit to the Court, if you'd like.

9 THE COURT: All right.

10 MR. GAFFNEY: And so, you know, essentially, Your Honor,
11 it's a situation where in this plea agreement there's these complex
12 concepts. He understands simple concepts. The more complex the
13 concept, the more difficult it is for him to comprehend. There were
14 certain things about the plea agreement, like the sentencing structure,
15 how the State could go about recommending their sentence that he
16 simply didn't understand and didn't figure out until after he'd entered his
17 plea. You know, he knows what his plea agreement contemplates now
18 but we really talking about is what he understood on that day that he
19 entered his plea agreement. And he simply didn't understand the direct
20 consequences. And so without knowing the direct consequences, he
21 couldn't have entered a knowing, voluntary, or intelligent plea.

22 And, Your Honor, I would submit to you that that's a fair and
23 just reason to allow him to withdraw his plea.

24 THE COURT: Okay. State.

25 MR. GIORDANI: My argument is similar as it was – or as my

1 argument for Mr. Powell, but there's a couple of things to add here.
2 Number one, what Mr. Gaffney attached to his motion were assessments
3 of the defendant from 2012, and I believe, 2016. This all occurred last
4 year. So while those assessments have the big buzz words, the big
5 scary words that he's got borderline intelligence and all these things, the
6 reality of the situation is those don't reflect his mind state at the time of
7 the plea.

8 Now when this plea canvas went down, it was different from
9 Mr. Powell's. During the course of this plea canvas, you asked him
10 multiple times whether he understood what was contained in the guilty
11 plea agreement. He said, yes, I did, sir. Yes, sir. Multiple times.

12 Then we go back and I jump in and say, as long as both
13 Mr. Pikney and Mr. Powell understand the range for each count and they
14 also understand sentencing is completely up to the Court, and if the
15 Court can either run the counts concurrent or run the counts consecutive.

16 Your Honor says, okay, so you understand the individual
17 range of punishment. Yes – or yes, sir.

18 And then you say, I can, it's at my discretion and do you
19 understand that the counts can be run consecutively or concurrently.
20 Once again, that's up to me. Yes, sir.

21 Then we go on further in the plea canvas and the Court says
22 to the State, anything else – or I jump in and I ask, Your Honor, before
23 you move on, can I ask one more thing. And you allow me to and I say
24 just with regard to your first few questions of Mr. Pikney where he
25 indicated he had an IEP or Individualized Education Plan, a learning

1 program, can we just be clear on the record that Mr. Pikney had sufficient
2 time with his attorney. It's been a couple of hours – and again that was
3 with a jury in the hallway – since we broke and started really getting into
4 the negotiations. And that he understands that.

5 And Mr. Durham jumps in, he mentions he signed the
6 Certificate of Counsel, that his belief at the time was that Mr. Pikney was
7 fully competent and understood.

8 And you then ask him again, you say, that's fine, I certainly
9 think I've asked him three times at least now if you have requests – or
10 questions regarding this, and you ask him again and he says yes.

11 Okay, that's what happens during the plea canvas. I think you
12 can tell by my conduct that this was a big deal at the time. We wanted to
13 make very clear that we don't release all these witnesses and have to do
14 this all over again sometime down the road. That was done in the record.

15 Then after Mr. Gaffney comes on the case, Mr. Pikney is sent
16 to competency court and those aren't attached to this motion because he
17 was found competent by two separate doctors, after the fact. So we
18 have a window of competence and understanding of the system and how
19 it works at least that we can narrow it down. I mean, we have his words
20 on the day of and I understand we don't look at these in a vacuum, but
21 then we also have two doctors, two court-ordered doctors saying he's
22 competent and understands what's going on, after the fact.

23 So unless he had just a spike of incompetence on that day,
24 which is highly unlikely based upon what he said in the record, then there
25 was no issue here. And this is the same argument as it was to

1 Mr. Powell.

2 MR. GAFFNEY: Well, Judge, first of all, the standard for
3 competency is a much lower bar than, I mean, that's the *Dusky* standard.
4 And just because he doesn't meet the *Dusky* standard doesn't mean that
5 he understood and voluntarily entered a plea. You can see by the
6 records I've attached that he's been suffering from these ailments for
7 quite a while. These are ailments that cause cognitive disabilities, that is,
8 that he has difficulty processing information. I'm not a trained
9 professional, mental health professional. Mr. Durham's not a trained
10 mental health professional. I can't look at Mr. Pikney and say, yeah, this
11 guy's competent. Even after I interact with him for, you know, 30 minutes
12 to an hour, I can't say whether or not he's competent. That's something
13 that we have to rely on the mental health professionals for. So I didn't
14 attach the competency –

15 THE COURT: So, what – what is it you're asking for?

16 MR. GAFFNEY: Well –

17 THE COURT: If you're asking for a hearing and you want to
18 call the prior attorney, but you're saying what difference does it make,
19 he's not a competent –

20 MR. GAFFNEY: Oh, no, that's not what I'm saying. What
21 I'm – what I'm submitting to the Court is that Mr. Pikney has told me that
22 his mental health issues were affecting his ability to understand what was
23 going on. That's what I'm relying on, in addition to all of this mental
24 health history to show that he actually has these diagnosed ailments.
25 And so in an evidentiary hearing, what I would ask Counsel is, were you

1 aware of these issues? What did you do to make sure that he
2 understood what he was pleading to and that this was a knowing,
3 intelligent, and voluntary plea? You know, the discussions he had with
4 him about the sentencing structure and the discussions he had with him
5 in terms of whether he believed – what did he say to Mr. Pikney to make
6 Mr. Pikney believe that he was guaranteed to get a life sentence going
7 forward with trial as opposed to pleading to 14 out of these 15 counts.
8 Where essentially he's still in the position because you're the one who
9 decides whether or not he gets a life sentence.

10 The records I attached from 2012 and 2016, I attached them
11 because they were the most recent and a lot of what I have are sort of
12 these summaries. Judge, if you'd like to see the rest of the paperwork,
13 I'd be happy to submit it to you.

14 THE COURT: Well, is the evaluation that – was it done at
15 Lakes, his competency.

16 MR. GAFFNEY: I think –

17 MR. GIORDANI: I have the --

18 THE COURT: There's –

19 MR. GAFFNEY: -- it was done at CCDC by two psychologists
20 or psychiatrists. I have the –

21 THE COURT: Quite frankly, the – well, I don't even think, my
22 recollection is it wasn't –

23 MR. GAFFNEY: It's completely two different standards as to
24 what they're trying to determine and what we're trying to determine.
25 They're just trying to determine whether or not he can assist Counsel in

1 his defense, whether he understands –

2 THE COURT: No, I get that.

3 MR. GAFFNEY: -- what's going on in terms of the --

4 THE COURT: I wasn't --

5 MR. GAFFNEY: -- proceedings.

6 THE COURT: -- I was –

7 MR. GAFFNEY: Oh.

8 THE COURT: The person, let's see now, oh, the evaluation
9 you gave me was from a clinical psychologist. I wasn't sure –

10 MR. GAFFNEY: Oh, --

11 THE COURT: -- that was the case.

12 MR. GAFFNEY: -- those are all from California, I believe.

13 MR. GIORDANI: Yes, I have the --

14 THE COURT: Yeah.

15 MR. GIORDANI: -- actual comp evals here.

16 THE COURT: Yeah. I'll review those. Okay, anything else?
17 You can approach.

18 MR. GAFFNEY: No, Your Honor, I think – I'd submit it on that.

19 THE COURT: All right. I'm going to allow the hearing on
20 Mr. Pinkey for the limited purpose. This isn't for your first, if you will,
21 argument that regarding the discovery on 10 or whatever number of
22 cases that were never even charged, but on whether or not –

23 Who was the prior attorney? I forgot.

24 MR. GAFFNEY: Benjamin –

25 MR. GIORDANI: Ben –

1 MR. GAFFNEY: -- Durham.

2 MR. GIORDANI: -- Durham.

3 THE COURT: Whether he advised him of the -- properly
4 advised him regarding the negotiations. So we'll have that in 30 days.

5 MR. GAFFNEY: Thank you, Judge.

6 THE CLERK: Okay. You want -- and how long do you think
7 that'll be?

8 THE COURT: It'll take over --

9 MR. GIORDANI: I'd say an --

10 THE COURT: -- an hour.

11 MR. GIORDANI: -- an hour max.

12 THE CLERK: So we're looking at March --

13 MR. GIORDANI: Nope? Longer?

14 MR. GAFFNEY: Hope not.

15 MR. GIORDANI: Oh, okay.

16 THE CLERK: Let's see. Let's do March -- we already have
17 one March 27th. We're going to have to go a little further. How about
18 April 3rd at 10:30?

19 MR. GIORDANI: Have the Court's brief indulgence. That
20 works for me.

21 That work for you?

22 MR. GAFFNEY: I'm sorry, what time?

23 MR. GIORDANI: 10:30.

24 MR. GAFFNEY: 8:30?

25 MR. GIORDANI: 10:30.

1 MR. GAFFNEY: 10:30.

2 THE CLERK: No, 10 –

3 THE COURT: No, 10:30 it would be.

4 MR. GAFFNEY: That will work. April 3rd?

5 THE CLERK: Yes.

6 MR. GAFFNEY: 10:30?

7 MR. GIORDANI: And I will have Mr. Durham here.

8 Your Honor, based on the contingent nature of the deal, can
9 we set a status check on Mr. Powell that date – or, I guess, the following
10 day so –

11 THE CLERK: Well, it would have to be the following week
12 because we don't have another criminal –

13 THE COURT: Sure, following week.

14 MR. GIORDANI: Okay.

15 THE CLERK: Okay, so Mr. Powell we'll just put them both
16 together then?

17 THE COURT: Status check.

18 THE CLERK: For status checks?

19 MR. GIORDANI: Sure.

20 THE CLERK: That would be April 8th at 9 a.m.

21 MR. GAFFNEY: And, Judge, just to clarify, the evidentiary
22 hearing is going to be focused on whether Counsel knew about his
23 mental health issues and the conversations they had regarding the –

24 THE COURT: Whether he knowingly and voluntarily accepted
25 it, whether he was apprised of it. And I suppose Mr. – and I wasn't, sorry,

1 whether prior Counsel, at least in his opinion, felt that he understood it.
2 Since you've given your opinion now that you think he now understands
3 it, I'm sure when it goes, you know, you've already said that he's not
4 even qualified to do that, to give an opinion as to his –

5 MR. GAFFNEY: Oh, sure, well he has no formal training in
6 psychology that I'm aware of.

7 THE COURT: So I, again, but all right, that's what it'll be
8 about.

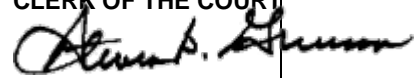
9 MR. GIORDANI: Thank you.

10
11 [Hearing concluded at 11:14 a.m.]

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

22 
23 _____
24 Judy Chappell
25 Court Recorder/Transcriber



RTRAN

**DISTRICT COURT
CLARK COUNTY, NEVADA**

STATE OF NEVADA,

Plaintiff,

CASE#: C-17-327767-1 & 2

DEPT. XXVIII

vs.

LARENZO PINKEY, aka
Lorenzo Pinkney, and
ADRIAN POWELL,

Defendant.

BEFORE THE HONORABLE RONALD J. ISRAEL, DISTRICT COURT JUDGE
WEDNESDAY, MAY 22, 2019

***RECORDER'S TRANSCRIPT OF HEARING
SENTENCING***

APPEARANCES:

For the State:

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

For the Defendant,
Lorenzo Pinkey:
Adrian Powell:

LUCAS J. GAFFNEY, ESQ.
MONIQUE A. MCNEILL, ESQ.

RECORDED BY: JUDY CHAPPELL, COURT RECORDER

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Las Vegas, Nevada, Wednesday, May 22, 2019

[Case called at 9:33 a.m.]

THE COURT: C327767, 1 and 2.

Counsel, this is the time set for sentencing. Let's start with Pinkey. Are you ready to go?

MR. GAFFNEY: Yes, Your Honor.

THE COURT: Or Penkey.

MR. GAFFNEY: Pinkney.

THE COURT: And let the record reflect both defendants are present, in custody.

State.

MR. GIORDANI: Yes, Your Honor. May I approach –

THE COURT: Go ahead.

MR. GIORDANI: -- before we start.

THE COURT: I think – oh, okay, no I don't have that.

MR. GIORDANI: Yeah, you wouldn't have that, Your Honor. What that is, is just a chart to kind of follow along with where I'm going with my argument because there are so many counts.

MR. GAFFNEY: And I did receive that, Your Honor.

MR. GIORDANI: Yes, I –

MS. MCNEILL: I did as well, Your Honor.

THE COURT: So, Your Honor is probably very aware of the facts of the two robberies in the instant case, but I just want to refresh the Court's memory. On the two events in which the defendants ultimately proceeded to trial, but then pled guilty on Day 2 of trial while we had a

1 jury in the hallway, those were two of a twelve-event series. The
2 investigation originated as a robbery series to several different
3 businesses, ten of which at the time of trial had not been filed upon.

4 This case proceeded first because they were caught
5 red-handed fleeing the scene. They left a trail of DNA and fingerprints
6 behind along with cash and the items they stole from the businesses as
7 well as the victims' personal property who were in the businesses
8 working at the time. So those cases came in first. Subsequently the
9 detectives linked them to these ten other incidents. And they did so by
10 means of video surveillance from each and every one of the stores.
11 Similar M.O.s, they called it the Jumping Jack series because the
12 defendants would jump the counters and do takeover-style robberies of
13 these different businesses. They were all close in time over a
14 several-month period and generally within the same jurisdictional
15 bounds. Those – all of those events were extremely violent, but what I
16 want to do is just provide those other ten as background for what I'm
17 going to get into. Because I think the sentence that I'm asking for of 20
18 to 60 years is appropriate for what they did on the two charges – or the
19 two cases in which they proceeded to trial ultimately.

20 Ultimately my recommendation is going to be a 10-to-30-year
21 term on each, Count 3 and Count 13, to run consecutively. In that
22 diagram I provided to the Court, the two highlighted charges are what I'm
23 asking to run consecutive. We did agree to not seek a life tail on any
24 accounts pursuant to the negotiation. And I'm not doing that, I'm asking
25 for a 5 to 15 on the underlying first-degree kidnapping with a consecutive

1 5 to 15 for the deadly weapon on Count 3. And the same thing on Count
2 13, running consecutive to Count 3 with the remainder of the 14 or so
3 counts running concurrent.

4 In preparation for a trial like this, obviously the State speaks to
5 their witnesses and schedules them and gets a summary of what
6 occurred during the course of the robbery. And because we got so far
7 along in this case and we were actually in trial, I was able to do that. And
8 I can represent to the Court that these victims in these two separate
9 businesses were absolutely terrified. The majority of them were female
10 and they were roughed up by one of both of the defendants in each of
11 the events. One of the women was pregnant at the time and she begged
12 and pleaded that they not shoot her. And when she did so – or she told
13 them, I'm pregnant, please don't shoot me, please don't shoot me. And
14 they said, I don't give a fuck, bitch, get behind the register and give me
15 the money. That conduct is extremely egregious and that wasn't the only
16 time where they threatened women who were working at these two
17 stores with deadly force.

18 Ultimately, after they commit these two robberies close in time
19 where there are, I believe, four victims at the Pepe's Tacos and three
20 victims at the Walgreen's, they flee that scene in a vehicle they had
21 borrowed from Mr. Pinkney's girlfriend at the time. They high centered
22 that vehicle, meaning they crashed that vehicle very nearby as they're
23 fleeing and then they return to the scene to get that vehicle and to
24 recover what's arguably the cash and property from the stores in another
25 vehicle. Well by the time they do that, the officers are there investigating

1 the robbery and they very quickly spot them and pull them over. Inside
2 the vehicle they're pulled over is a large wad of cash and the defendants
3 and a couple other individuals.

4 I understand that Mr. Powell has two prior felonies, violence
5 related. Mr. Pinkney does not. But I don't think that they should be
6 treated differently when it comes to sentencing here. Typically I would
7 ask for more time for the convicted felon, but I think that their conduct
8 was so egregious that they should be treated equally when it comes to
9 sentencing. I understand it's not an insignificant amount of time I'm
10 asking for, it's quite a lot of time I'm asking for, but had this case
11 proceeded to trial, I think that's where we would have ended up. And
12 not to mention the ten other robberies with multiple victims per robbery
13 that would have been filed upon had they rejected the deal that we
14 ultimately made.

15 So I respectfully would ask the Court to sentence them on
16 those charges as I set forth in the sentencing chart that I provided to the
17 Court.

18 THE COURT: Thank you.

19 Mr. Pinkey, before your attorney speaks on your behalf, is
20 there anything you want to say?

21 DEFENDANT PINKNEY: Yes, sir, it is

22 THE COURT: Go ahead.

23 DEFENDANT PINKNEY: I want to take this time to tell the
24 Court I am very sorry for my actions and not just to court, to the victims
25 as well. On September 28th, 2017, I made a mistake. Not just any

1 mistake, one of the biggest mistakes in my life. I am 22 years old and I
2 will be 23 on the 25th of this month. I have four young children. This is
3 my first time ever getting in trouble like this. I understand that there's
4 consequences for my action. This time I am given today, I will take it to
5 better myself for my family and most importantly my kids. I want to
6 apologize to my mother, Earline Fullilove, for putting her through so much
7 stress growing up. She raised me as a single parent and did her best to
8 provide for me.

9 I want to say this once again I truly apologize to all the victims
10 on this case and I know it don't matter how many times I say this, it will
11 never be right what I did. I would just ask the judge that can you show
12 me leniency this being my first felony.

13 Thank you for letting me speak, Your Honor.

14 THE COURT: Thank you.

15 MR. GAFFNEY: Thank you, Judge. Did the Court receive my
16 sentencing memorandum and the letter –

17 THE COURT: Yes.

18 MR. GAFFNEY: -- from Mr. Pinkney's mother?

19 THE COURT: Yes.

20 MR. GAFFNEY: Okay. So Your Honor, in the sentencing
21 memorandum, I had recommended a sentence of 6 to 15 years. That's
22 actually incorrect. It should be 6 to 18 years. It would essentially be a
23 5-to-15-year sentence on Count 3, the first-degree kidnapping. And a
24 consecutive sentence of 1 to 3. You add those together, you come up
25 with a 6-to-18 year sentence. And then running all the other 13 counts

1 concurrent to that for the 6 to 18.

2 And, you know, just like the State is, it feels like they are
3 asking for a lot of time. I know that a 6 to 18 year sentence may seem
4 like I'm asking the Court to go in the opposite direction and do a lot for
5 Mr. Pinkney. And I believe that that's also warranted in this case. One of
6 the things that I've laid out in the sentencing memorandum was the
7 trauma that Mr. Pinkney has been through as a child. And I think that
8 that's relevant here because you can see that the – there's a causal
9 effect to the traumatic events that he experienced and where he's at
10 today. At 7 years old, he's shot in the face with a .22 caliber firearm by a
11 friend. That was the origin of the PTSD that he still suffers from, as he
12 stands before the Court today. At 17 or 18 years old, he witnessed his
13 brother commit suicide. By my calculation, that's one year before a
14 significant amount of his substance abuse occurred. And so they do
15 have connections – what happened to him in his past has connections
16 with him today.

17 And when you take those and you couple them with the
18 mental health afflictions, which I know the Court's already familiar with
19 through our previous litigation, he has significant diagnoses. He's got
20 schizophrenia, bipolarism, ADHD, significant learning disabilities,
21 schizoaffective disorder. And what all those things do is create a
22 situation where he has very significant impulse control problems. And he
23 also does not appreciate the – how his actions affect other people or the
24 consequences he may face because of them. And then when you also
25 tie that into the substance abuse history that he has where he starts

1 ingesting marijuana at age 14 in order to self-medicate these symptoms
2 he has from his mental health issues. In 2013 is when the death of his
3 brother occurred and then according to the PSI, a year later, he begins
4 experiencing with cocaine and Xanax. And again those are
5 self-medicating to try to stave off the symptoms of his mental health
6 issues. And it also explains his affinity for Xanax because that's the kind
7 of drug I think a doctor would prescribe to treat the sort of systems he
8 has. It treats – it's a benzodiazepine. It treats anxiety, depression,
9 things of that nature.

10 And so, Judge, what I'm trying to convey is that this is a case
11 that was Mr. Pinkney's actions were fueled by his mental health issues
12 and also by his substance abuse issues. And obviously when he was
13 living in California before he came out to Las Vegas and got involved in
14 these offenses, he had started drug abuse – or he started abusing drugs.
15 When he was, I think, 19 years old, you see that he has a misdemeanor
16 battery, DV. But that's different than what happened when he comes out
17 to Las Vegas. Once he isolates himself from his mother and the support
18 system and the family he has out in California and he comes out to
19 Las Vegas, his substance abuse issues kick into overdrive and that's
20 where you start to see the daily consumption of the Xanax, the cocaine,
21 and the alcohol.

22 And so what I'm suggesting to the Court is that when
23 Mr. Pinkney committed these offenses, he was not in his right state of
24 mind. He was impaired by his mental health issues. He's impaired by
25 these substance abuse issues. And if given the chance, I think that he is

1 redeemable. If he receives treatment for his substance abuse, if he
2 receives treatment for his mental health issues, he can be a productive
3 citizen. He can be a good parent. He hasn't had an opportunity to – well
4 he hasn't received any treatment for those kinds of ailments and I don't
5 think he's going to receive the kind of treatment he needs for those
6 ailments within the NDOC. I know they have programs that are similar to
7 what our psychologist suggested in the diversionary programs, but
8 they're not – they're not as extensive as what he could receive on the
9 outside. And so that was one of the reasons why I'm suggesting a
10 minimum sentence. So he serves his time. Obviously there has to be
11 consequences for his actions. He can't put all of his actions at the feet of
12 his substance abuse issues and his mental health issues. So he knows
13 he has to serve some time for those.

14 But what I'm asking the Court to do is to give him a lenient
15 sentence so he can get out, start the next chapter of his life, get the kind
16 of counseling he needs for mental health and substance abuse treatment
17 and then move on. He is a different person than what you see when you
18 read these reports. This is Mr. Pinkney at his rock bottom working with
19 an impaired mentality. This is not him at his best.

20 And just – as far as the nature of the offense, there's only a
21 couple of things I'd want to point out. And one was that when
22 the – Mr. Pinkney and Mr. Powell fled from the scene and the police were
23 recovering all these items of evidence, one of the things that they
24 recovered was a BB gun. And so what I'm submitting to the Court was
25 that this wasn't an actual firearm used in the robbery. I know that the

1 victims' fear that they felt would have been very real and would have
2 been very traumatic. However, this is a situation where Mr. Pinkney went
3 into these stores, not intending to shoot anybody, and he couldn't have
4 shot anybody even if he had that intention. And as you heard from him
5 today and as you can read in Mr. – in Dr. Pacult's report, he does
6 understand the trauma that he's caused to the victims here. And, yeah,
7 there are a lot of victims. And, like I said, he understands there's going
8 to have to be consequences for his actions.

9 So, Your Honor, you know, one of the flaws in our criminal
10 justice system is that we have these kinds of defendants who maybe
11 legally don't meet the standard of being incompetent, but they have a
12 variety of mental health issues that impair their impulse control and their
13 intent to commit these crimes. And unfortunately, what we have in
14 Nevada is a one-size-fits-all approach. What really Mr. Pinkney needs is
15 treatment, maybe in some kind of institution or an asylum. But what we
16 have is the NDOC. And so, you know, unfortunately, that's just one of
17 the flaws that we have to work around and again that's why I'm
18 suggesting to the Court to impose a 6-to-18-year sentence and allow
19 Mr. Pinkney to get out, to get the treatment he needs and to start the next
20 chapter of his life.

21 And, Judge, with that, I'll submit it.

22 THE COURT: Thank you. His statement tends to belie all the
23 medical or psychological reports. It was eloquent and his – his IQ
24 deficiency certainly doesn't appear to be borne out. But he doesn't have
25 the priors like his co-defendant.

1 I hereby adjudicate you guilty of – let's go through all of these.
2 Counts 1 and 8, conspiracy to commit robbery. Counts 2 and
3 9, burglary while in possession of a deadly weapon. Counts 3 and 13,
4 first-degree kidnapping with the use of a deadly weapon. Counts 4, 5, 6,
5 7, 10, 11, and 14, robbery with the use of a deadly weapon. Count 12,
6 unlawful taking of a vehicle is a gross misdemeanor.

7 I assess you the \$25 administrative assessment, DNA of 150.
8 DNA administrative assessment of \$3.

9 On Count 1, conspiracy to commit robbery, I sentence you to
10 12 to 48 months in the Nevada Department of Corrections.

11 On Count 2, burglary while in possession of a deadly weapon,
12 I sentence you to 24 to 120 in the Nevada Department of Corrections.
13 That's concurrent to Count 1.

14 On Count 3, I sentence you to 60 to 180 in the Nevada
15 Department of Corrections, with a consecutive enhancement since you
16 used a weapon and put people in fear of their lives. That's 12 to 60
17 consecutive.

18 On Counts 5, 6, 7, 10, 11, and, woops, and 14, those will run
19 concurrent to Count 4.

20 On Count 4, I sentence you to 24 to 120 in the Nevada
21 Department of Corrections. That's consecutive to Count 3, with the
22 enhancement of 12 to 120 for the use of the weapons.

23 The aggregate – and I want to make –

24 THE CLERK: Um –

25 THE COURT: What's that?

1 THE CLERK: You didn't get Count 12 –
2 THE COURT: I missed –
3 THE CLERK: -- and also –
4 THE COURT: Oh, Count 12 is the – isn't that the –
5 THE CLERK: It's the gross misdemeanor.
6 THE COURT: Yeah, the gross misdemeanor, 364 days in
7 Clark County Detention Center.
8 THE CLERK: And that's concurrent?
9 THE COURT: Concurrent.
10 THE CLERK: And then also Count 3. You did the
11 enhancement, but you didn't say if it's concurrent –
12 THE COURT: That's –
13 THE CLERK: -- or consecutive.
14 THE COURT: -- consecutive, yes. So –
15 THE CLERK: To what?
16 THE COURT: It's consecutive to Count 2.
17 THE CLERK: Okay.
18 THE COURT: So the aggregate is 11 years, which is 132
19 months on the bottom end and 600 months on the top end.
20 THE CLERK: And then you also had Count 13 that you
21 didn't state –
22 THE COURT: Count 13 is – I thought I said Count 13.
23 THE CLERK: It's the same as 3.
24 THE COURT: Count 13 is the first-degree kidnapping and
25 that's concurrent to Count 3. And I sentence you to 60 to 180 on Count

1 13 with the enhancement of 12 to 60.

2 THE CLERK: Okay.

3 THE COURT: And assuming I added all this up, again, it's
4 132 months and 600.

5 Does everybody have that?

6 MR. GIORDANI: Well, yes, Your honor, except for on Counts
7 5, 6, --

8 THE COURT: 7, --

9 THE CLERK: 7, --

10 MR. GIORDANI: -- 7 --

11 THE CLERK: -- 10, --

12 THE COURT: -- 10, --

13 THE CLERK: -- 11 --

14 THE COURT: --11, and 14 --

15 THE CLERK: -- 14.

16 THE COURT: -- yeah.

17 MR. GIORDANI: Yeah, what -- what was the sentence for
18 those? I understand those are running --

19 THE COURT: Oh, sorry, you're right. Those are --

20 THE CLERK: The same as 4.

21 THE COURT: Where's 4? Same as Count 4, 24 to 120 --

22 MR. GIORDANI: Okay.

23 THE COURT: -- and with the enhancement for the use of a
24 deadly weapon, 12 to 120. But they're to run concurrent to Count 4.

25 MR. GIORDANI: Okay. And then Count 9 was a different

1 charge so –

2 THE CLERK: Yes.

3 MR. GIORDANI: -- I know that runs concurrent, but I didn't
4 get the actual sentence on Count 9.

5 THE COURT: Oh, okay.

6 MR. GIORDANI: Or Count 8, actually.

7 THE CLERK: And 8, yeah.

8 THE COURT: Yeah, you're right. I don't know how –

9 Count 8 was conspiracy to commit robbery, 12 to 48. That's
10 concurrent with Count 1. And Count 9 is burglary while in possession, 36
11 to 120, and that's also concurrent with Count 3.

12 THE CLERK: Count 3?

13 THE COURT: Yeah. So are they – woops, where is the other
14 conspiracy? Isn't there another?

15 THE CLERK: Count 9 is the same as Count 2. It should be
16 burglary while in possession.

17 THE COURT: Okay, so that should come out.

18 So it's Count 2, 24 to 120 is – Count 3, 60 to 180, minimum of
19 5 years. The consecutive enhancement, 12 to 60. Those are
20 consecutive to each other. Count 4, 24 to 120, is two years on the
21 minimum with the enhancement of 12 to 120. And that's consecutive to
22 the other to – to 3.

23 MR. GIORDANI: Okay, so, Your Honor, I'm sorry. So if
24 that's – your intent was 132 or 11 years –

25 THE COURT: Correct.

1 MR. GIORDANI: -- on the bottom.

2 THE COURT: Yes.

3 MR. GIORDANI: I'm showing the only consecutive counts are
4 3 and 4. So that would make 9 on the bottom.

5 THE COURT: Well, okay, no. Here, do you want to see my
6 chart, Counsel?

7 MR. GIORDANI: Sure.

8 Sorry.

9 THE COURT: No, this is -- when they get the -- and I, I admit
10 this was difficult but that's what.

11 Okay, so Count 2 is -- Count 1 doesn't, you know, that's
12 concurrent to all the others Count 2 counts 24 to 120 is two years.
13 That's the first one, if you will.

14 MR. GIORDANI: Okay. You got 60 to 180 plus 12 to 60.

15 THE COURT: Right.

16 MR. GIORDANI: And that's con --

17 THE COURT: Consecutive to Count 2. Then Count 4 is 24 to
18 120, is consecutive to Count 3 and with the 120 -- or with the 12 to 120
19 enhancement.

20 MR. GIORDANI: Oh, so 2, 3 and 4 are consecutive.

21 THE COURT: Correct.

22 MR. GIORDANI: Okay.

23 THE COURT: And the rest are all concurrent with, if you will --

24 MR. GIORDANI: Okay.

25 MR. GAFFNEY: Okay.

1 MR. GIORDANI: Thank you. And there is –
2 THE COURT: All right. Does that make –
3 MR. GIORDANI: Yes, Your Honor, there is a restitution.
4 THE COURT: Oh, yeah, it did say –
5 MR. GIORDANI: 3,942 total.
6 THE COURT: And that goes to various defendants.
7 MR. GIORDANI: Victims as set forth in the PSI.
8 THE COURT: Okay, that will be ordered, 3942.
9 MR. GIORDANI: And I believe he's entitled to –
10 THE COURT: Credit for time served?
11 MR. GIORDANI: 602 days.
12 MR. GAFFNEY: And that's, I think, joint and several.
13 MR. GIORDANI: Correct.
14 MR. GAFFNEY: Right. The restitution.
15 THE COURT: Correct. Joint and several. And 602?
16 MR. GIORDANI: Yes, Your Honor.
17 MR. GAFFNEY: Yes, Your Honor.
18 THE COURT: Okay. Thank you.
19 All right. Mr. Powell.
20 State.
21 MR. GIORDANI: I would submit on my prior argument. Just
22 noting that this defendant has two prior felony convictions. His were
23 violent in nature. It was an attempt robbery and a robbery out of
24 California in 2013. Violated parole in 2017, and then committed the
25 instant offenses two months later in September of 2017. So this is not

1 this defendant's first rodeo.

2 I would submit it on everything I stated earlier.

3 THE COURT: Mr. Powell, before your attorney speaks on
4 your behalf, is there anything you'd like to say?

5 DEFENDANT POWELL: Yes, Your Honor. I want to start by
6 apologizing to the victims first. And I want to apologize to my son
7 because he's my heart, he's my everything. I want to apologize to my
8 family for even put them in this position. I mean it, for them to have to
9 go through this with me in the situation that I'm in right now.

10 I want to start by saying this is really not the person I am. I
11 know my background doesn't show of much of who I am, but they don't
12 really know who you really are until they have a conversation with you.
13 They never actually had a conversation with me so they don't really know
14 how intelligent I really am.

15 Honestly, Your Honor, I feel like in this situation, I made a
16 mistake. I did something I wasn't supposed to do. I'm taking full
17 responsibility for my actions. That's why I pled guilty to what I pled guilty
18 to because I felt like I need to take responsibility for my actions. As a
19 man, stand up, take full responsibility for what I've done. All I ask you,
20 Your Honor, is in your heart, could you please show me some leniency.
21 My son is one years old. I never actually touched him. I don't know what
22 it feels like to be a father, but I do know in the situation that I'm in right
23 now that he's going to have to do without me for a while. At the end of
24 the day, I do want to be his dad. I want to be his male role model in his
25 life. I do want to be some – I want him to grow to be somebody in this

1 crazy world that we live in. I know what I did wasn't correct. I know what
2 I did is – there's, you can't justify none of that, period. But at the end of
3 the day, Your Honor, I just ask for leniency because of the simple fact I
4 made a mistake. I read in the Bible, I'm not sure if you read the Bible or
5 not, but me I read in the Bible, 1 Corinthians, chapter 13, verse 11: when
6 I was a child, I thought as a child, I acted as a child, but when I became a
7 man, I put all the childish things away.

8 I felt like this time that I've been in CCDC, these two years
9 that I've been here, I haven't been in no type of trouble, no situations,
10 period, because the simple fact I feel like I'm growing up. I'm becoming a
11 better man. I know that I've got to go sit down for a minute, I'll have to
12 get away, I'm going to be away from my family for a while. But I'm fine
13 myself. I've forgiven myself for letting myself get too deep in this
14 situation and get too hard into the lifestyle that's really not me. I'm
15 starting to find out who I really am. I had to apologize to myself because
16 at the end of the day, I don't blame nobody for what I've done. I blame
17 myself. Because in this situation, like I said earlier, can't nobody do
18 anything for me but me. Can't nobody help me but me. I'm in here with
19 me. My family always had my back. They're always going to be there.
20 They crying in the court right now. I know why, but I'm going to hold my
21 head up high, my head up high no matter what you give me, Your Honor.
22 But I ask for leniency because I do want to be a father and I do want to
23 be a male role – a male role model in my son's life. Not even just in his
24 life, in society period. I have a woman, I do. I love her to death and I
25 want to be there to be her man as well as be there to be my son's father.

1 And all I ask for leniency in the court today, Your Honor. Thank you.

2 THE COURT: Thank you.

3 MS. MCNEILL: Thank you.

4 THE COURT: Counsel.

5 MS. MCNEILL: Thank you, Your Honor. Mr. Powell
6 understands the – what his actions caused in the victims' lives and fear
7 that they were in that day. And I have never heard him minimize that. I
8 have sometimes clients who don't quite grasp the position that their
9 actions put other people in, but Mr. Powell has had two years to think
10 about what happened to the people that were the victims in this case as
11 well as his family who now suffers as yet another victim because they are
12 now being deprived of a son and a father and a love one. And so he
13 would not minimize in any way what his actions caused to other people
14 outside of himself.

15 However, as an advocate for Mr. Powell, this is probably one
16 of the most difficult cases that I've had in a while because it's an example
17 of the system going wrong at pretty much every stage. I understand that
18 he has two prior felonies. Those are from one case. He was 19 years
19 old when he got that arrest. What's interesting is that Mr. Powell is a little
20 bit different from Mr. Pinkney in that he's educated. He's articulate. He
21 stands before you with certificates that were sent to the Court showing
22 that when he got out of prison, he was able to turn his life around. He
23 was getting OSHA certified. He was working. He was fathering a child.
24 He was doing all of the things that we would want someone to do when
25 they were out of prison. And so Mr. Powell is certainly capable of being

1 the member of society that we would want him to be. What he didn't tell
2 the Court because you say, how did you end up here. And
3 that's – Mr. Powell, just as Mr. Pinkney, has a substance abuse problem.
4 And while it's not an excuse, he fell back into that and made terrible
5 decisions, went back to behaviors that he was familiar with from when he
6 was 19 and we end up here before the Court today.

7 I would like to remind the Court of a few things. One, yes, the
8 State agreed not to file charges on those other counts. However, as
9 you're familiar from the motion to withdraw the plea, after I reviewed the
10 discovery in that case and that's part of the reason that we filed the
11 motion to withdraw the plea, there was nothing tying him to those
12 incidents. They were never going to be able to identify him or
13 Mr. Pinkney as somebody who was involved in those incidents. The
14 surveillance showed that the people in those crimes had their faces
15 covered and had their hands covered. And so I don't know that we
16 should hold those against Mr. Powell when, yes, he agreed to this deal in
17 exchange for the State not filing charges, but that was because of advice
18 he was given from counsel who gave him that advice not having
19 reviewed the discovery in those cases. I believe that if counsel had
20 reviewed that discovery, he would not have advised him to take this deal.

21 Despite that, despite the fact that I believe that this deal was
22 not equitable and was not fair, Mr. Powell took it knowing that. He pled
23 to almost every single charge that he was charged with to avoid going to
24 trial. To avoid having to have the victims come in and relive this. At no
25 point did he actually want to go to trial. He just wanted a deal. The only

1 deal that the State came with was during jury selection which was
2 basically plead to the sheet. And because he wanted to take
3 responsibility, because he didn't want to go through a jury trial, because
4 he didn't want to put the victims through that, because everyone in his life
5 said you have to take responsibility for your actions, he pled to a deal
6 that most counsel probably not have advised him to take.

7 And so he stands before this Court with the State asking to
8 put him in prison for 20 years, at 24 years old. And he has taken
9 responsibility for that. I'm asking the Court to sentence him to a total of
10 72 to 210 months, similar to Mr. Gaffney did. I understand that it seems
11 like that's a slap on the wrist, but it's 6 years of his life at 24 years old
12 that he will be spending in prison having to think every day about what he
13 did, having to think about every day that he is going to miss out on the
14 entirety of his child's life. The first six years of his child's life.

15 That we are in a situation where at any point had the system
16 worked the way that it was supposed to work, perhaps we wouldn't have
17 been here. And that Mr. Powell wants this court to see that is not the
18 person who is listed in this PSI. He is not the person who is listed in the
19 police report. And he's capable of much, much more than all of that.
20 And he can certainly do that when he gets out of prison in six years of
21 which is no small amount of time. He's asking Your Honor to be lenient
22 with him based on the fact that he knows better, he can do better and he
23 will do better in his future.

24 THE COURT: Thank you.

25 I hereby adjudicate you guilty of Counts 1 and 8, conspiracy to

1 commit robbery. Counts 2 and 9, burglary while in possession of a
2 deadly weapon. Counts 3 and 13, first-degree kidnapping with the use of
3 a deadly weapon. Counts 4, 5, 6, 7, 10, 11, and 14, robbery with the use
4 of a deadly weapon.

5 As you said, given Mr. Powell's priors, he certainly should
6 have learned from that incarceration. But given the fact that there – the
7 subsequent ten or the additional ten, however you want to characterize it,
8 not even taking that into account, this was, these were violent robberies
9 with the use of a deadly weapon putting dozens of people, changing the
10 lives of dozens of people. I would not be at all surprised that they're in
11 counseling for a significant period of time if not for the rest of their lives
12 having a gun pointed at them and told them, being told that if they do
13 something, they could be killed.

14 I'm going along with Parole and Probation's sentencing on this
15 and therefore Count 1, 12 to 48 months in the Nevada Department of
16 Corrections.

17 Count 2, burglary while in possession of a deadly weapon, 36
18 to 120, that's to run concurrent.

19 Count 3, first-degree kidnapping with the use of a deadly
20 weapon, that's 5 to 15, along with the enhancement of 36 to 96. The
21 enhancement, sorry, the enhancement is consecutive and that is
22 concurrent with Count 2. I said the enhancement was 36 to 96, yes.

23 Count 4, robbery with the use of a deadly weapon, 36 to 120,
24 plus the enhancement of the use of the gun, that's 36 to 96. That's
25 concurrent with Count 3.

1 Count 5, robbery with the use of a deadly weapon, 36 to 120,
2 plus the use of the deadly weapon, the gun, 36 to 96. That's
3 consecutive, that's the enhancement is consecutive. Count 5 is
4 concurrent with Count 4.

5 Count 6, robbery with use of a deadly weapon 36 to 120. The
6 use of the gun, it's consecutive 36 to 96. Count 6 is concurrent with
7 Count 5.

8 Count 7, robbery with use of a deadly weapon 36 to 120. Use
9 of the deadly weapon is consecutive, 36 to 96. Count 7 is concurrent
10 with Count 6.

11 Count 8, conspiracy to commit robbery, 12 to 48. That's
12 concurrent with Count 7.

13 Count 9, burglary while in possession of a deadly weapon, 36
14 to 120. That's concurrent with Count 8.

15 Count 10, robbery with the use of a deadly weapon, 36 to 120.
16 The use of the gun is 36 to 96. That's consecutive. Count 10 is
17 concurrent with Count 9.

18 Count 11, robbery with the use of a deadly weapon, 36 to 120.
19 Use of the gun, it's consecutive to 36 to 96. Count 11 is concurrent with
20 Count 10.

21 Count 13, first-degree kidnapping with the use of a deadly
22 weapon, that's 5 to 15. Use of the deadly weapon is 36 to 96, that's
23 consecutive. And Count 13 is consecutive to Count 3.

24 Count 14, robbery with the use of a deadly weapon, 36 to 120.
25 The enhancement 36 to 96. Count 14 is concurrent with Count 13.

1 That totals on the bottom end, it's 16 years and on the top end
2 for the aggregate, I had it written down. What's the – anybody add –

3 THE CLERK: I have 192 months with 552 months total.

4 THE COURT: 552?

5 THE CLERK: In months.

6 THE COURT: In months. Okay. \$3,942 joint and several
7 restitution to the multiple defendants. Credit for time served –

8 MR. GIORDANI: 602.

9 THE COURT: 602.

10 MR. GIORDANI: Can I get that top end number again please.

11 THE CLERK: One ninety – oh, 552. Five hundred and fifty
12 two months. It's 192 for –

13 THE COURT: I'm going along with Parole and Probations on
14 that and although I don't think they did an aggregate. No.

15 MR. GIORDANI: So 16 to 46 years aggregate?

16 THE CLERK: Yes.

17 THE COURT: Yes.

18 MR. GIORDANI: Thank you, Your Honor.

19 THE COURT: All right. Thank you.

20 [Hearing concluded at 10:13 a.m.]

21 * * * * *

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

24 
25 Judy Chappell
Court Recorder/Transcriber

Steven D. Grierson

JOCP

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-VS-

LARENZO PINKEY aka
Lorenzo Pinkney
#8295438

Defendant.

CASE NO. C-17-327767-1

DEPT. NO. XXVIII

JUDGMENT OF CONVICTION

(PLEA OF GUILTY)

The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crimes of COUNTS 1 and 8 – CONSPIRACY TO COMMIT ROBBERY (Category B Felony) in violation of NRS 200.380, 199.480; COUNTS 2 and 9 – BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (Category B Felony) in violation of NRS 205.060; COUNTS 3 and 13 – FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON (Category A Felony) in violation of NRS 200.310, 200.320, 193.165; COUNTS 4, 5, 6, 7, 10, 11 and 14 - ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.165; and COUNT 12 – UNLAWFUL

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

AA321

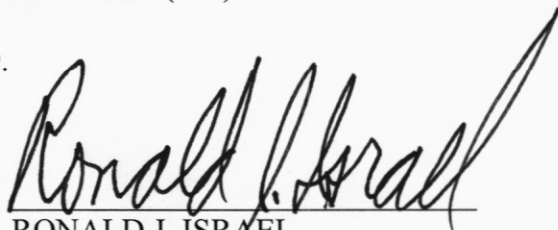
1 TAKING OF VEHICLE (Gross Misdemeanor) in violation of NRS 205.2715; thereafter, on the
2 22nd day May, 2019, the Defendant was present in Court for sentencing with counsel LUCAS
3 GAFFNEY, ESQ., and good cause appearing,

4
5 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in addition
6 to the \$25.00 Administrative Assessment, \$3,942.00 Restitution payable jointly and severally
7 with Co-Defendant (\$1,100.00 Pepe's Tacos; \$2,342.00 to Rebel Oil Co; \$500.00 to
8 Roberto's on Rainbow) and \$150.00 DNA Analysis Fee including testing to determine genetic
9 markers plus \$3.00 DNA Collection Fee, the Defendant is sentenced to the Nevada
10 Department of Corrections (NDC) as follows: **COUNT 1** - a MAXIMUM of FORTY-EIGHT
11 (48) MONTHS with a MINIMUM Parole Eligibility of TWELVE (12) MONTHS; **COUNT 2**
12 – a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole
13 Eligibility of TWENTY-FOUR (24) MONTHS, CONCURRENT with COUNT 1; **COUNT 3**
14 – a MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM Parole
15 Eligibility of SIXTY (60) MONTHS plus a CONSECUTIVE term of SIXTY (60) MONTHS
16 with a MINIMUM Parole Eligibility of TWELVE (12) MONTHS for the Use of a Deadly
17 Weapon, CONSECUTIVE to COUNT 2; **COUNT 4** – a MAXIMUM of ONE HUNDRED
18 TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of TWENTY-FOUR (24)
19 MONTHS plus a CONSECUTIVE term of ONE HUNDRED TWENTY (120) MONTHS
20 with a MINIMUM Parole Eligibility of TWELVE (12) MONTHS for the Use of a Deadly
21 Weapon, CONSECUTIVE to COUNT 3; **COUNT 5** – a MAXIMUM of ONE HUNDRED
22 TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of TWENTY-FOUR (24)
23 MONTHS plus a CONSECUTIVE term of ONE HUNDRED TWENTY (120) MONTHS
24 with a MINIMUM Parole Eligibility of TWELVE (12) MONTHS for the Use of a Deadly
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1 Weapon, CONCURRENT with COUNT 4; **COUNT 6** – a MAXIMUM of ONE HUNDRED
2 TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of TWENTY-FOUR (24)
3 MONTHS plus a CONSECUTIVE term of ONE HUNDRED TWENTY (120) MONTHS
4 with a MINIMUM Parole Eligibility of TWELVE (12) MONTHS for the Use of a Deadly
5 Weapon, CONCURRENT with COUNT 5; **COUNT 7** – a MAXIMUM of ONE HUNDRED
6 TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of TWENTY-FOUR (24)
7 MONTHS plus a CONSECUTIVE term of ONE HUNDRED TWENTY (120) MONTHS
8 with a MINIMUM Parole Eligibility of TWELVE (12) MONTHS for the Use of a Deadly
9 Weapon, CONCURRENT with COUNT 6; **COUNT 8** - a MAXIMUM of FORTY-EIGHT
10 (48) MONTHS with a MINIMUM Parole Eligibility of TWELVE (12) MONTHS,
11 CONCURRENT with COUNT 1; **COUNT 9** – a MAXIMUM of ONE HUNDRED
12 TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36)
13 MONTHS, CONCURRENT with COUNT 3; **COUNT 10** – a MAXIMUM of ONE
14 HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of TWENTY-
15 FOUR (24) MONTHS plus a CONSECUTIVE term of ONE HUNDRED TWENTY (120)
16 MONTHS with a MINIMUM Parole Eligibility of TWELVE (12) MONTHS for the Use of a
17 Deadly Weapon, CONCURRENT with COUNT 7; **COUNT 11** – a MAXIMUM of ONE
18 HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of TWENTY-
19 FOUR (24) MONTHS plus a CONSECUTIVE term of ONE HUNDRED TWENTY (120)
20 MONTHS with a MINIMUM Parole Eligibility of TWELVE (12) MONTHS for the Use of a
21 Deadly Weapon, CONCURRENT with COUNT 10; **COUNT 12** – THREE HUNDRED
22 SIXTY-FOUR DAYS (364) in the Clark County Detention Center (CCDC), CONCURRENT
23 with COUNT 11; **COUNT 13** – a MAXIMUM of ONE HUNDRED EIGHTY (180)
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1 MONTHS with a MINIMUM Parole Eligibility of SIXTY (60) MONTHS plus a
2 CONSECUTIVE term of SIXTY (60) MONTHS with a MINIMUM Parole Eligibility of
3 TWELVE (12) MONTHS for the Use of a Deadly Weapon, CONCURRENT with COUNT 3;
4 and **COUNT 14** – a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a
5 MINIMUM Parole Eligibility of TWENTY-FOUR (24) MONTHS plus a CONSECUTIVE
6 term of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of
7 TWELVE (12) MONTHS for the Use of a Deadly Weapon, CONCURRENT with COUNT
8 11; with SIX HUNDRED TWO (602) DAYS credit for time served. The AGGREGATE
9 TOTAL sentence is SIX HUNDRED (600) MONTHS MAXIMUM with a MINIMUM
10 PAROLE ELIGIBILITY OF ONE HUNDRED THIRTY-TWO (132) MONTHS.
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12

13 DATED this 23 day of May, 2019.

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15 
16 RONALD J. ISRAEL
17 DISTRICT COURT JUDGE
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