

No. 85955

IN THE NEVADA SUPREME COURT

Electronically Filed
May 30 2023 06:17 PM
Elizabeth A. Brown
Clerk of Supreme Court

Adrian Powell,

Appellant,

v.

State of Nevada

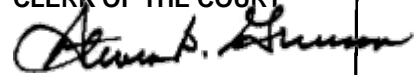
Respondents.

On Appeal from the Order Denying Petition
for Writ of Habeas Corpus
Eighth Judicial District, Clark County (A-21-839265-W)
Honorable Ronald J. Israel, District Court Judge

Joint Appendix
Volume 2 of 4

Anthony P. Sgro, Esq.
Nevada Bar No. 3811
Sgro & Roger
*Colleen Savage, Esq.
Nevada Bar No. 14947
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Las Vegas, Nevada 89101
(702) 384-9800
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csavage@sgroandroger.com

*Counsel for Adrian Powell



NWEW
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
MICHAEL R. DICKERSON
Deputy District Attorney
Nevada Bar #013476
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

CASE NO: C-17-327767-1/2

DEPT NO: I

LARENZO PINKEY, aka,
Lorenzo Pinkney, #8295438
ADRIAN POWELL, #8387748

Defendants.

STATE'S SUPPLEMENTAL NOTICE OF WITNESSES AND/OR EXPERT
WITNESSES
[NRS 174.234]

TO: LARENZO PINKEY, aka, Lorenzo Pinkney and ADRIAN POWELL,
Defendants; and

TO: BENJAMIN DURHAM ESQ. and MICHAEL KANE ESQ., Counsel of Record:
YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF
NEVADA intends to call the following witnesses and/or expert witnesses in its case in chief:

***Indicates additional witnesses and/or modifications**

AKE, PAUL - LVMPD #8100

ANDERSON, JORDAN - LVMPD #15109

AOYAMA, KATHRYN - LVMPD P#8025 (or designee): LATENT PRINT
EXAMINER - Expert in the science and techniques of fingerprint comparison, and
comparisons done in this case and any reports prepared therefrom.

AREVALO, BRYANT - LVMPD #15771

1 BALINT, RYAN - LVMPD #15912

2 *BARKER, KEVIN, LVMPD #6452 and/or designee; LVMPD Detective and
3 Computer Forensic Examiner; he is an expert in the analysis of cellular site information data,
4 including being an expert in the operations of the various cellular phone companies, including
5 familiarity with the types of records and data kept by the cellular phone companies,
6 interpreting the records provided by cellular phone companies, including the interpretation of
7 the times provided in the records including the time zone of the reported times contained within
8 the records; he is also an expert in the operation of cell towers and location of cell towers for
9 each phone company, including knowledge of cell tower generation of calls and the ability to
10 determine the location where generated based on that knowledge, including the generation of
11 maps documenting the location of cell towers as well as the location of a cellular phone making
12 calls generated through a particular cell tower. He will testify as to the cell tower information,
13 cellular phone company records in this case, and any mapping done in the instant case.

14 *BASILOTTA, EUGENIO, LVMPD #8447; LVMPD Detective; he is an expert in the
15 analysis of cellular site information data, including being an expert in the operations of the
16 various cellular phone companies, including familiarity with the types of records and data kept
17 by the cellular phone companies, interpreting the records provided by cellular phone
18 companies, including the interpretation of the times provided in the records including the time
19 zone of the reported times contained within the records; he is also an expert in the operation
20 of cell towers and location of cell towers for each phone company, including knowledge of
21 cell tower generation of calls and the ability to determine the location where generated based
22 on that knowledge, including the generation of maps documenting the location of cell towers
23 as well as the location of a cellular phone making calls generated through a particular cell
24 tower. He will testify as to the cell tower information, cellular phone company records in this
25 case, and any mapping done in the instant case.

26 *BEATTY, JAMES, LVMPD #8642; he is an expert in the analysis of cellular site
27 information data, including being an expert in the operations of the various cellular phone
28 companies, including familiarity with the types of records and data kept by the cellular phone

1 companies, interpreting the records provided by cellular phone companies, including the
2 interpretation of the times provided in the records including the time zone of the reported times
3 contained within the records; he is also an expert in the operation of cell towers and location
4 of cell towers for each phone company, including knowledge of cell tower generation of calls
5 and the ability to determine the location where generated based on that knowledge, including
6 the generation of maps documenting the location of cell towers as well as the location of a
7 cellular phone making calls generated through a particular cell tower. He will testify as to the
8 cell tower information, cellular phone company records in this case, and any mapping done in
9 the instant case.

10 BEHYMER, AARON - LVMPD #15768

11 BOBBITT, TIFFANIE - c/o CCDA, 200 Lewis Avenue, LV, NV 89101

12 BREWER, DOROTHEA - LVMPD #15720

13 CHAVARRIA-VALENZUELA, JOSE - PEPES TACOS - 2490 FREMONT ST., LV

14 NV

15 COLLINS, MAURICE - LVMPD #4719

16 CORBETT, JAMES - LVMPD #6410

17 CRUZ, RAYMUNDO - LVMPD #15656

18 CUSTODIAN OF RECORDS - CCDC

19 CUSTODIAN OF RECORDS - LVMPD COMMUNICATIONS

20 CUSTODIAN OF RECORDS - LVMPD PHOTO LAB

21 CUSTODIAN OF RECORDS - LVMPD RECORDS

22 FLETCHER, STEPHANIE - LVMPD P#6650 (or designee): CRIME SCENE

23 ANALYST: Expert in the identification, documentation, collection and preservation of
24 evidence and is expected to testify as an expert to the identification, documentation, collection
25 and preservation of the evidence in this case.

26 GARLEY, MATTHEW - LVMPD #15652

27 GASPAR, MYRIAM - PEPES TACOS - 2490 FREMONT ST., LV NV

28 ///

1 GAUTHIER, KELLIE - LVMPD P#8691 (or designee): Expert in the field of DNA
2 extractions, comparisons, analysis, and the identification of bodily fluids and is expected to
3 testify thereto.

4 GONZALEZ, KATHLEEN - 1580 LAVANTE AVE, LV NV

5 GRACIANO, SELINA - 4721 ARIZONA AVE, LV NV

6 *GROVEMAN, LEAH, LVMPD #15822; is employed as a Forensic Scientist with the
7 Las Vegas Metropolitan Police Department. She will testify as an expert as to the procedures,
8 techniques and science employed in DNA analysis, all procedures employed in this case and
9 reports provided.

10 HERNANDEZ, VICTOR - LVMPD #15018

11 HESSING-RODRIGUEZ, YENEIR - WALGREENS - 4470 E. BONANZA RD. LV
12 NV

13 JOHNSON, TIFFANY - 7918 MILTON AVE, WHITTIER, CA

14 *KERN, JOHN, FBI Information Technology Forensic Examiner; Will testify as an
15 expert in the area of cellular phones, including but not limited to, cellular system technology
16 including cell tower generation of calls and ability to determine the location where generated,
17 collection and handling of cellular phones for evidentiary purposes, and the examination,
18 preservation, retrieval and analysis of cellular call and text records/data, photos and/or video
19 and/or any other data kept on a cellular phone. Further, this expert will testify to the results of
20 any and all examinations performed on the cellular phones in this case.

21 LEAVITT, SETH - LVMPD #13457

22 LEON, RUTH - DA INVESTIGATOR

23 MILLS, PADILLA - LVMPD #15850

24 ORAT, DARLENE - WALGREENS - 4470 E BONANZA RD. LV NV

25 PANDULLO, TULLIO - LVMPD #7884

26 PERKINS, SHANNISE - 6500 VEGAS DR., #2025, LV NV

27 RAFFERTY, ROBER - LVMPD #8918

28 RENHARD, LOUISE - LVMPD #5223

1 RENHARD, LOUISE - LVMPD P#5223 (or designee): CRIME SCENE ANALYST:
2 Expert in the identification, documentation, collection and preservation of evidence and is
3 expected to testify as an expert to the identification, documentation, collection and
4 preservation of the evidence in this case.

5 SCHUMMER, DAVID - LVMPD #7457

6 SCHWARTZ - LVMPD #15120

7 SCOTT, JEFFREY - LVMPD P#9618 (or designee): CRIME SCENE ANALYST:
8 Expert in the identification, documentation, collection and preservation of evidence and is
9 expected to testify as an expert to the identification, documentation, collection and
10 preservation of the evidence in this case.

11 SERENA, LANCE - LVMPD #15888

12 SHINE, RAYNETTA - 3474 ALGIERS DR #2204, LV NV

13 SPEAS, WILLIAM - LVMPD P#5228 (or designee): CRIME SCENE ANALYST:
14 Expert in the identification, documentation, collection and preservation of evidence and is
15 expected to testify as an expert to the identification, documentation, collection and
16 preservation of the evidence in this case.

17 THOMAS, KRISTINA - LVMPD P#13574 (or designee): CRIME SCENE
18 ANALYST: Expert in the identification, documentation, collection and preservation of
19 evidence and is expected to testify as an expert to the identification, documentation, collection
20 and preservation of the evidence in this case.

21 TICANO, T. - LVMPD #6804

22 TOMMER, KYLE - LVMPD #5780

23 VALLEJO-RODRIGUEZ, ANTONIO - 4421 AAVERY PARK AVE, LV NV

24 WATKINS, DENZEL - 6500 VEGAS DR., LV NV

25 These witnesses are in addition to those witnesses endorsed on the Information or
26 Indictment and any other witness for which a separate Notice of Witnesses and/or Expert
27 Witnesses has been filed.

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1 The substance of each expert witness' testimony and copy of all reports made by or at
2 the direction of the expert witness has been provided in discovery.

3 A copy of each expert witness' curriculum vitae, if available, is attached hereto.
4

5 STEVEN B. WOLFSON
6 Clark County District Attorney
7 Nevada Bar #001565

8 BY /s/ MICHAEL R. DICKERSON
9 MICHAEL R. DICKERSON
10 Deputy District Attorney
11 Nevada Bar #013476

12 CERTIFICATE OF ELECTRONIC TRANSMISSION

13 I hereby certify that service of the above and foregoing was made this 5th day of
14 January, 2018, by electronic transmission to:

15 BENJAMIN DURHAM
16 bdurham@vegasdefense.com

17 MICHAEL KANE
18 mike@the702firm.com

19 BY /s/ J. MOSLEY
20 Secretary for the District Attorney's Office
21
22
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28

CURRICULUM VITAE



John E. Kern

Federal Bureau of Investigation
Computer Analysis Response Team
1787 W. Lake Mead Blvd.
Las Vegas, NV 89106

PROFESSIONAL EXPERIENCE

Feb, 2013 - present

Information Technology Specialist – Forensic Examiner (ITS FE)
U.S. Department of Justice
Federal Bureau of Investigation
Las Vegas, NV

Serve as a digital evidence forensic examiner supporting approximately 150 Special Agents in the FBI Las Vegas Division. Perform forensic acquisition and examination of physical evidence under a documented quality assurance program that includes annual proficiency testing, peer administrative/technical reviews and adherence to standard operating procedures.

Conduct forensic examinations on computer/digital evidence, conduct research and development activities, performs search and seizure operations. Serve as Las Vegas Division CART Coordinator to ensure that FBI digital evidence operations and services are being conducted or provided in accordance with FBI policies and standard operating procedures. Also member of FBI Forensic Audio Video Image Analysis Unit (FAVIAU) Field Audio Video Program (FAVP) as an Forensic Examiner Trainee (FAVP FET) for training & certification to conduct audio and video forensic tasks in the field.

Feb, 2009 to Jun, 2010

Senior Consultant Business Operations
Verizon Corporate Services Group
Basking Ridge, NJ

Provided expertise to establish Verizon Corporate Business Continuity (BC) program. Worked with existing business unit BC organizations to analyze and document best internal/external practices and standards in all business continuity disciplines then define path to enterprise consistent transformation. Partnered with Corporate Safety to create an enterprise Public Health Emergencies and Infection Control Program. Adapted U.S. OSHA Hierarchy of Controls and four stage Occupational Risk Pyramid for Pandemic influenza for enterprise wide Verizon recommendations and requirements.

Jan, 2008 to Feb, 2009

Consulting
Califon, NJ

Provided network operations, process/organizational design, maintenance, and resilience expertise for response to Sprint core network outsourcing RFI/RFP for Nokia Siemens Networks. Provided review and analysis of existing Sprint network operations, maintenance, and provisioning processes, metrics, organizations, and methodologies. Participated on team that developed, documented, and defended integration and consolidation of Sprint work into Nokia Siemens Network organization and processes. Response included multi-stage evolution of processes through automation and workflow improvements. Developed and documented Business Continuity strategies and philosophies for the continued operation of Nokia Siemens Networks Global Network Solutions Centers in Chennai, India; Lisbon, Portugal; and Overland Park, Kansas.

Oct, 1975 to Nov, 2007
Retired

Network Services AVP
AT&T
Bedminster, NJ

Assignments of increasing scope, scale, and responsibility as an individual contributor, leader, and manager with Network Infrastructure Support, Business Continuity, Resilience Engineering, Incident Response, Continuity of Operations, and Continuity of Government. Expertise includes complex information technology, wireline/wireless telecommunications networks/services, and mission critical network enterprises. Led merger related integration of global business continuity strategies, plans and capabilities for AT&T-TCG, SBC-AT&T, and AT&T-BellSouth/Cingular acquisitions. Business Continuity, Disaster Recovery, Organizational Resilience, Logistics Design/Deployment, Program/Project Management, and Incident Command Professional with extensive experience consulting with senior corporate executives, local/state/federal government officials, high value customers, law enforcement, and media on infrastructure and network initiatives of international scope. Recognized by U.S. government as Business Continuity & Disaster Recovery subject matter expert including serving as an expert witness to the U.S. Congress House Committee on Government Reform in 2004 regarding learnings from the recovery after the World Trade Center attacks in 2001.

EDUCATION

Dec, 1994	Colorado State University Fort Collins, CO Master of Business Administration – Business Management
Dec, 1989	Franklin University Columbus, OH Bachelor of Science – Business Administration
May, 1986	Prairie State College Chicago Heights, IL Associate of Arts – Computer Science

FORENSIC EXAMINATION / TESTIMONY EXPERIENCE

Analyzed a large amount of digital media in support of a wide variety of cases since 2013. Participated in the execution of numerous search warrants/search and seizure operations, and field examinations & reviews.

PROFESSIONAL TRAINING

September, 2017	<i>FBI FAVP Forensic Examiner Capstone class, Quantico, VA (5 Days)</i>
August, 2017	<i>FBI FAVP Forensic Audio Enhancement with iZotope class,, Quantico, VA (2 Days)</i>
March, 2017	<i>FBI (Blackbag Technologies) macOS Essential Forensic Techniques I, Stafford, VA. (5 Days)</i>
January, 2017	<i>FBI Introduction to macOS Forensic Essentials (1 Day Self-Paced)</i>
August, 2016	<i>FBI FAVP (Salient Sciences) Accelerated DAC School and CARDINAL Mini Lab Audio/Video Training, Durham, NC. (2 Days)</i>
August, 2016	<i>FBI FAVP (Salient Sciences) - Video Focus for Forensic Audio and Video Analyst, Durham, NC. (3 Days)</i>
July, 2016	<i>FBI UNIX Forensics Training, Houston, TX. (5 Days)</i>
June, 2016	<i>FBI FAVP (Resolution Video) Introduction to FFmpeg. Quantico, VA. (2 Days)</i>

June, 2016	<i>FBI FAVP (Resolution Video) Adobe Premiere for Forensic Video Analysis, Quantico, VA. (3 Days)</i>
June, 2016	<i>FBI FAVP Criminal Investigative Division's Digital Imaging & Video Recovery, Silicon Valley, CA. (3 Days)</i>
May, 2016	<i>FBI FAVP Digital CCTV Technology (1 Day Self-Paced)</i>
May, 2016	<i>FBI FAVP Digital Video Technology. (1 Day Self-Paced)</i>
July, 2015	<i>FBI CART iOS Devices for Forensic Examiners (iPhAT/iPEX). (1 Day Self-Paced)</i>
July, 2015	<i>FBI CART Basic Mobile Devices. Linthicum, MD. (5 Days)</i>
June, 2015	<i>FBI CART Linux Command Line. Stafford, VA (3 Days)</i>
May, 2015	<i>FBI CART File System Research Paper. (Self-Paced)</i>
April, 2015	<i>FBI CART Exam Competency Test. (Self-Paced)</i>
January, 2015	<i>FBI CART AD Lab for Mac. (1 Day Self-Paced)</i>
December, 2014	<i>FBI CART Practicals. Stafford, VA. (5 days)</i>
May, 2014	<i>FBI CART File Systems Basic. Stafford, VA. (4 days)</i>
December, 2013	<i>SANS Windows Forensic Analysis. Orange, CA. (6 days)</i>
September, 2013	<i>SANS Introduction to Information Security. Las Vegas, NV (5 days)</i>
June, 2013	<i>FBI CART Intermediate Web Artifacts. Linthicum, MD. (3 days)</i>
May, 2013	<i>FBI CART Intermediate Operating System (OS) Artifacts. Philadelphia, PA. (3 days)</i>
April, 2013	<i>FBI CART Basic Tools. San Diego, CA. (3 days)</i>
March, 2013	<i>FBI CART Digital Extraction Technician. Stafford, VA. (7 days)</i>

PROFESSIONAL CERTIFICATIONS

March, 2017	Macintosh Forensic Examiner Certification – Federal Bureau of Investigation
October, 2016	Unix Exam Certification – Federal Bureau of Investigation
August, 2015	Cell Phone & GPS Forensic Certification – Federal Bureau of Investigation
August, 2015	Network + Certification – CompTIA
July, 2015	Linux Command Line Certification – Federal Bureau of Investigation
June, 2015	Mac Basic Certification – Federal Bureau of Investigation
June, 2015	CART Windows Intel (WinTel) Computer Forensic Examiner – Federal Bureau of Investigation
December, 2014	AccessData Certified Examiner (ACE) – AccessData Corporation
November, 2014	A+ Certification – CompTIA
April, 2014	GIAC Certified Forensic Examiner (GCFE) – Global Information Assurance Certification
February, 2014	GIAC Information Security Fundamentals (GISF) – Global Information Assurance Certification
March, 2013	CART Technician – Federal Bureau of Investigation
March, 2015	Information Technology Infrastructure Library v3 Foundation Certified, APM Group Limited.
June, 2009	Certified Business Resilience Auditor (CBRA) – Business Resilience Consortium International
September, 2005	Certified Business Continuity Professional (CBCP) – Disaster Recovery Institute.
May, 1979	Certificate – Computer Console Operator – Prairie State College



DETECTIVE KEVIN C. BARKER P#6452

Las Vegas Metropolitan Police Department

400 S. Martin Luther King Blvd.

Las Vegas, NV 89106

Office (702) 828-1506

Email k6452b@lvmpd.com

CURRICULUM VITAE

CURRENT EMPLOYMENT

- Detective and Computer Forensic Examiner, Las Vegas Metropolitan Police Department, Secret Service Electronic Crimes Task Force
- Employed with LVMPD since 1999
- Acquired over 2,600 hours of police specific training along with more than 800 hours of documented Instructor time. Additionally, acquired more than 461 hours in areas relevant to conducting examinations on electronic storage devices and associated techniques.

EDUCATION CURRICULUM

- Nevada POST Certification
 - Basic Certificate, Las Vegas Metropolitan Police Department, 1999
 - Intermediate Certificate, Las Vegas Metropolitan Police Department, 2009
 - Advanced Certificate, Las Vegas Metropolitan Police Department, 2009
 - Instructor Certificate, Las Vegas Metropolitan Police Department, 2012
- University of Phoenix
 - Bachelor's Degree in Business Administration, 2009
 - Bachelor's Degree in Business Management, 2009
 - Master's Degree in Business Management, 2011
- Wilmington University
 - Master's Degree in Information Assurance
 - Currently Enrolled
 - Anticipate Graduating in 2019

- **Walden University**
 - PhD Program in Public Policy and Administration with an emphasis in Organizational Management and Leadership
 - Doctoral Candidate
 - Final Review Process for Published Dissertation
 - Anticipate Graduating in 2017
- **Basic Evidence Recovery Training (BCERT)**
 - United States Secret Service's National Computer Forensics Institute
 - Hoover Alabama, April-May 2016
 - Over 190-hour training curriculum

CERTIFICATIONS

- ACE- AccessData Certified Examiner January 2016
- Magnet Certified Forensics Examiner September 2016
- CCLO- Cellebrite Certified Logical Operator October 2016
- CCPA- Cellebrite Certified Physical Analyst October 2016

COMPUTER FORENSIC TRAINING

- **AccessData Advanced Forensics**
 - By Syntricate, December 2015
- **Windows Operating System Forensics**
 - By Syntricate, January 2016
- **Windows Forensics Registry**
 - By Syntricate, January 2016
- **Computer Forensics and the Cloud**
 - By Syntricate, February 2016
- **Advanced FTK**
 - By Syntricate, February 2016
- **Forensic Fundamentals**
 - By Syntricate, February 2016
- **Access Data Boot Camp**
 - By Syntricate, March 2016
- **Applied Decryption**
 - By Syntricate, March 2016
- **Basic Computer Evidence Recovery Training**

- By the United States Secret Service at The National Computer Forensics Institute; Hoover, Alabama April 4 – May 6, 2016
- Magnet Forensics Computer Essentials Course
 - By Magnet Forensics; Las Vegas, NV, September 2016
- Cellebrite Certified Logical Operator Course
 - By Cellebrite; Las Vegas, NV, October 2016
- Cellebrite Certified Physical Analyst Course
 - By Cellebrite; Las Vegas, NV, October 2016
- Miscellaneous Online Video Training Courses in Computer Forensics
 - By Syntricate/Access Data, December 2015 – June 2016

Las Vegas Metropolitan Police Department
Forensic Laboratory

CURRICULUM VITAE

Date: 07/05/2017

Name: Leah Groveman P#: 15822 Classification: Forensic Scientist II

Current Discipline of Assignment: Biology/DNA

EXPERIENCE IN THE FOLLOWING DISCIPLINE(S)			
Controlled Substances		Toxicology/Blood Alcohol	
Toolmarks		Toxicology/Breath Alcohol	
Trace Evidence		Toxicology/Drugs	
Arson Analysis		Firearms	
Latent Prints		Crime Scene Investigations	
Serology	X	Clandestine Laboratory Response Team	
Document Examination		DNA Analysis	X
Quality Assurance		Technical Support / DNA	
EDUCATION			
Institution	Dates Attended	Major	Degree Completed
George Washington University	08/2001-05/2003	Forensic Molecular Biology	M.F.S.
Maryville College	08/1997-05/2001	Biochemistry	B.A.
ADDITIONAL TRAINING / SEMINARS			
Course / Seminar	Location	Dates	
STRmix Training Workshop - ESR	Las Vegas, NV	04/2017	
Firearms for Forensic Scientists	LVMPD Forensics Lab	09/2016	
Quality Assurance Standards Auditor Training	FBI Virtual Academy	08-09/2016	
Internal Auditor Training	LVMPD Forensics Lab	06/2016	
Ethics in Forensic Science - West Virginia University	Online Course	05-06/2016	
CJIS Security Awareness Training	LVMPD	04/2016	

Las Vegas Metropolitan Police Department
Forensic Laboratory

National Institute of Justice – DNA Grantees Meeting	Arlington, VA	07/2007		
California Association of Criminalists 108 th Semi-Annual Seminar	Temecula, CA	10/2006		
American Academy of Forensic Sciences 56 th Annual Meeting	Dallas, TX	02/2004		
American Academy of Forensic Sciences 55 th Annual Meeting	Chicago, IL	02/2003		
Mid-Atlantic Association of Forensic Scientists Annual Meeting	Frederick, MD	04/2002		
COURTROOM EXPERIENCE				
<i>Court</i>	<i>Discipline</i>	<i>Number of Times</i>		
None				
EMPLOYMENT HISTORY				
<i>Employer</i>	<i>Job Title</i>	<i>Date</i>		
Las Vegas Metropolitan Police Department	Forensic Scientist II	04/2016-present		
Life Science Technologies	Forensic DNA Validation Contractor, part-time	07/2014-08/2015 (intermittent)		
Armed Forces DNA Identification Laboratory	Forensic DNA Contractor, part-time	05/2010-09/2011		
Armed Forces DNA Identification Laboratory	Forensic Scientist II	12/2006-10/2007		
Armed Forces DNA Identification Laboratory	Forensic Scientist I	01/2006-12/2006		
Orchid Cellmark	DNA Analyst II	01/2004-04/2005		
Orchid Cellmark	DNA Analyst I	06/2003-12/2003		
PROFESSIONAL AFFILIATIONS				
<i>Organization</i>	<i>Date(s)</i>			
American Academy of Forensic Sciences, Trainee Affiliate – Criminalistics	2004			
American Academy of Forensic Sciences, Student Affiliate – Criminalistics	2003			
PUBLICATIONS / PRESENTATIONS				
Research Assistant - Foran, David R. "In Search of the Boston Strangler: Genetic Evidence from the Exhumation of Mary Sullivan." Med Sci Law 44 (2004): 47-54. Print. 2002				

Las Vegas Metropolitan Police Department
Forensic Laboratory

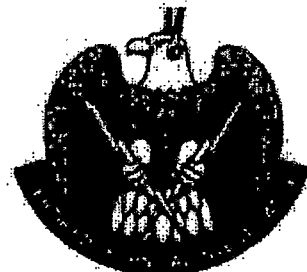
OTHER QUALIFICATIONS	
Forensic Lab Overview Presentation – College of Southern Nevada	06/2017
LVMPD Forensic Lab Representative – Career Fair – Foothills High School	11/2016
Teacher – Spring Forensics Course for Homeschoolers – Covenant Life School	03-04/2011
Teaching Assistant – Forensic Biology Graduate Course – George Washington Univ.	2002-2003
Intern – World Trade Center victim identification – Bode Technology Group	01-03/2002

The Curriculum Vitae Of:

E. "Gino" Basilotta

**Currently Employed By:
Las Vegas Metropolitan Police Department**

Updated: September 2013



Curriculum Vitae of E. "Gino" Basilotta

INTRODUCTION and SUMMARY:

Detective Eugenio "Gino" Basilotta is employed by the Las Vegas Metropolitan Police Department (LVMPD) and is currently assigned to the Organized Crime Bureau's Technical and Surveillance Section (TASS). The Organized Crime Bureau is a part of the Homeland Security Division of Metro Police.

Gino also has experience as an Accident Investigator for almost 3 ½ years working for LVMPD's Traffic Division. Prior to that, he worked for Bolden Area Command and for the Sheriff's Mobile Crime Saturation Team focusing on the highest crime areas in Las Vegas. Gino began his career with LVMPD in August 2004 and has been employed by the Las Vegas Metropolitan Police Department for 9 years as of this writing.

Prior to joining The Las Vegas Metropolitan Police Department, Gino spent 20 years in the private sector working with various computer technologies including specific expertise with Hospitality and Gaming Systems from 1993 until 2004. He worked in the corporate Information Technology departments with Hilton Gaming and Venetian. While employed, he opened 3 casinos – 2 with Hilton gaming (one in South America) and the Venetian Casino in Las Vegas, Nevada. Gino was also a Sales Director for a large Hospitality Technology Company managing West Coast Major Casino Accounts. Gino started his 'computer' career as an installer/technician in the 1980's during the personal computer genesis involved with IBM and Apple computer products. Gino has an Undergraduate degree in Management Information Systems (Business Administration) from The University of Arizona, in Tucson.

Currently Gino is a member in good standing with the National Technical Investigators Association and holds a Certified Technical Investigator Status.

**Detective, Technical and Surveillance Section (T.A.S.S.)
Las Vegas Metropolitan Police, Organized Crime Division
November 2010 to Present**

Gino has worked in this unit Since November of 2010. The Technical and Surveillance Section is responsible for providing technical and surveillance support to the department's commitment to the investigation of all crimes and the suppression and prevention of terrorist acts. This is accomplished through the provisioning of a myriad of electronic surveillance & technical solutions. The technical and surveillance functions support is provided to all department sections and task forces conducting criminal investigations.

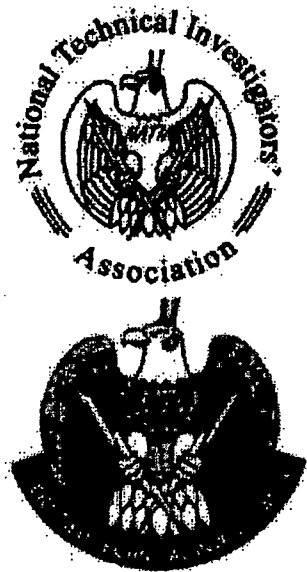
TASS Unit Goals:

- Provide electronic surveillance support
- Provide physical surveillance support
- Provide technical support for barricade and/or hostage situations
- Conduct audio/video enhancements
- Provide anti-terrorism and counter-terrorism support
- Facilitate Pen Register implementation
- Facilitate Precision Location
- Facilitate Title III implementation

Gino is currently a Member of NATIA, (National Technical Investigators Association). Membership in NATIA is restricted to full time employees of Law Enforcement agencies who are actively engaged in technical surveillance, communications, and specialized support of law enforcement or intelligence activities. These individuals must represent Municipal, County, State, Federal and Military involved in the application of electronic surveillance technologies.

Gino currently holds a "Certified Technical Investigator" (CTI) certification from NATIA. CTI certification is awarded to NATIA members who have undergone extensive specialized training and have passed a rigorous examination in technical electronic surveillance techniques, procedures, equipment, and related issues. Continued advanced education is required.

During Gino's time in TASS, he has worked with many different technologies, including GPS Tracking, Cell Phone technologies, Wire Taps (Title IIIs), Pen Registers, Audio and Video Surveillance, and more proprietary technologies used within the unit, requiring a commitment to non-disclosure and OPSEC / Privacy policies.



One of Gino's main responsibilities is the maintenance and operation of the Pen Registers installed department wide by detectives and investigators. This involves handling and the provisioning of lawful Pen Register orders filed to the court by investigators.

Gino also serves on the SWAT callout resource team within TASS. TASS is deployed to active crime scenes involving Hostage and/or Barricaded suspects. TASS deploys technology to aid SWAT and Negotiators in their critical decision making processes.

Gino developed a POST certified Pen Register class which he currently teaches for LVMPD Police Detectives and other agencies. This class educates detectives on the latest technologies used by criminals to avoid law enforcement and the procedures to obtain Pen Registers and Title III's. Gino also teaches this Pen Class in the "New Detective School" and the "Advanced Investigators School" which are offered yearly to LVMPD qualified officers and detectives.

Gino testified on record to Nevada Senator's, supporting the passage of Nevada Senate Bill 268, in April 2013. The bill was nicknamed the "Kelsey Smith Act". This involved giving real world examples on how law enforcement has used cellular phone techniques in the location of missing or endangered persons. The Bill received support and has since passed and will come into effect October 2013. Gino testified on record to Nevada Senator's with regards to Assembly Bill 313. This was involving the proposal of language modification for NRS 179.530. This involved citing real world examples involving Law Enforcement and the use of Pen Registers.

**Traffic Investigator / Motor Officer, Traffic Bureau
Las Vegas Metropolitan Police, Patrol Division
May 2007 to November 2010**

Gino was assigned to the Traffic Section from May 2007 until November 2011 with his duties including DUI enforcement, accident/fatal investigation and handling calls for the valley wide Las Vegas area. Gino's goal, while in traffic, was to reduce traffic deaths and injuries by improving driving environments through education and enforcement of traffic laws. In addition, Gino's approach was to work high crime areas, to contribute to reduction in crime. Gino immediately obtained his Drug Recognition Expert certification to aid in identifying drug impaired drivers.

His work experience included setting up DUI checkpoints, Accident Investigation, Fatal Investigation, Hit and Run, and various other Traffic Enforcement Duties. His Certifications included:

- Drug Recognition Expert

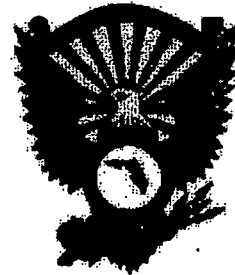
Curriculum Vitae of E. "Gino" Basilotta

- RADAR,
- HGN (Horizontal Gaze Nystagmus),
- PBT (Portable Breath Testing Device),
- Intoxilyzer 5000 Breath Machine (used during booking)

While in traffic, Gino investigated over 500 accidents over a 3 ½ year period including close to 100 DUI arrests. Basilotta has also testified many times in court and has much experience regarding testifying for DUI's.

Basilotta attended classes for Accident Investigation, DUI Detection, Standardized Field Sobriety Testing, Mobile Field Force/Tactics, Incident Command Systems, National Incident Management Systems, and Excited Delirium. Basilotta attended Metro's 160 hour Motorcycle Safety course which is known to be one of the most challenging in the United States and is based on Northwestern University's techniques.

Gino obtained a D.R.E. (Drug Recognition Expert) status on July 2007 by the National Highway Traffic Safety Administration. This certification allows D.R.E.'s to evaluate individuals and accurately categorize them as users of a particular type of drug. Less than 1% of Las Vegas Metropolitan Police officers held this certification at the time.



DEGREES, EXPERIENCE AND CERTIFICATIONS

DEGREES

High School Diploma, 1984
Valley High School, Las Vegas, Nevada

BSBA, Business Administration, Management Information Systems, 1991
University of Arizona, Tucson, Arizona

LAW ENFORCEMENT TIMELINE:

November 2010 to Present

Detective, Organized Crime Bureau,
Technical and Surveillance Section

April 2007 to November 2010

Investigator, Traffic Division

January 2005 to March 2007

Patrol, Bolden Area Command
Mobile Saturation Crime Team
Problem Solving Unit
Community Oriented Policing

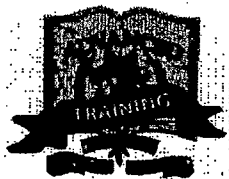
CERTIFICATIONS OBTAINED:



Drug Recognition Expert, May 2007



Certified Technical Investigator, March 2011,
Expiration, February 17th, 2014
Certification Number 2-021711



Certified Instructor, Advanced Training
Las Vegas Metropolitan Police Department

LAW ENFORCEMENT RELATED TRAINING

January 21st, 2011



Orion GPS Tracking Devices
COBHAM

February 2011



CESP 102
Covert Electronic Surveillance Program
Federal Law Enforcement Training Center,
Glynco, Georgia

August 2011



FBI DA/IS Conference
Surveillance, Intercepts and related
Technologies

August 29th – 30th, 2012



Pen-Link CIA
Pen Registers / Title IIIs
Lincoln, Nebraska

June 2012



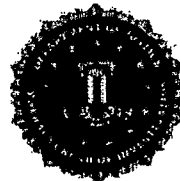
Cellular Phone Training

August 27th – 28th, 2013



Pen-Link CIA
Pen Registers / Title IIIs
Lincoln, Nebraska

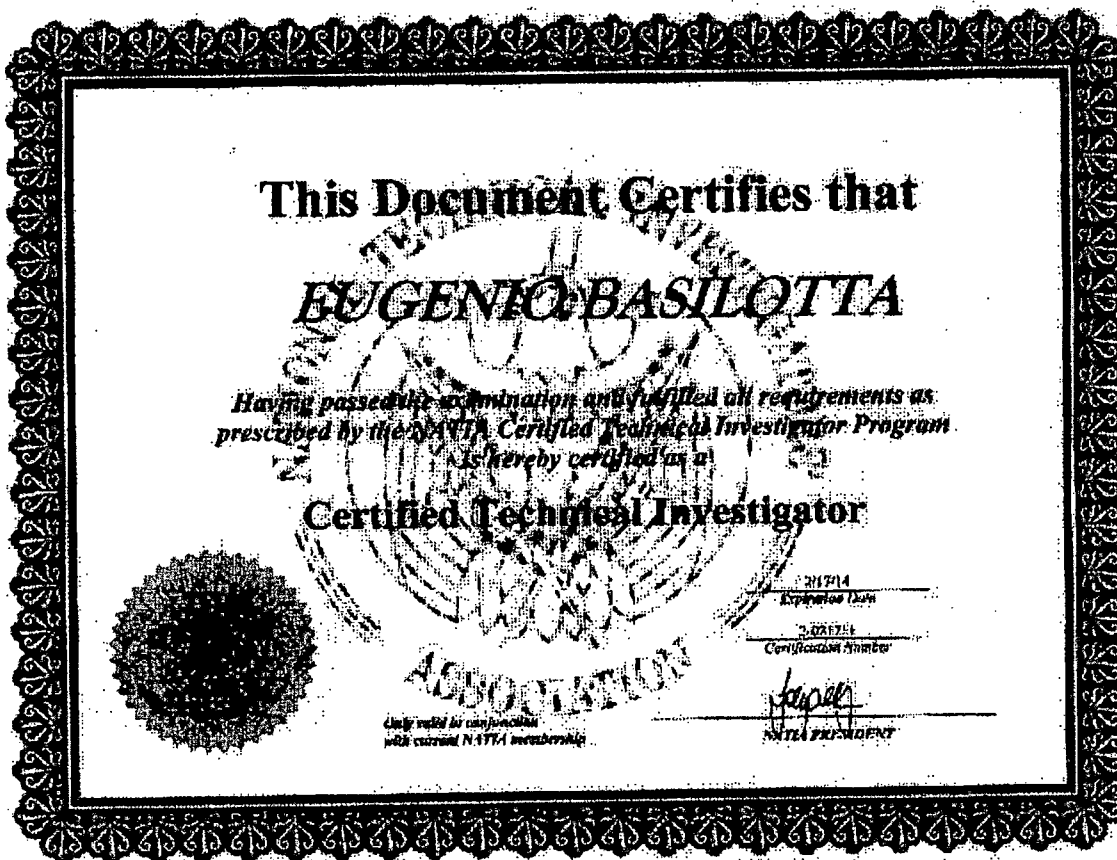
September 9th – 10th 2013



NDCAC – US DOJ/FBI
(National Domestic Communications
Assistance Center)
FBI CAST – PPP (Project Pin Point)
Project Pin Point (PPP) is a geo-spatial intelligence tool
developed in 2004 by a Special Agent on the FBI's Violent
Crimes Task Force in Philadelphia. The tool was initially
intended for fugitive apprehension, but evolved to include
historical cell site analysis, informant development, and targeting
capabilities for intelligence related functions. It is now used by
most FBI field offices.

MISCELLANEOUS SUPPORTING DOCUMENTATION

Curriculum Vitae of E. "Gino" Basilotta



COBHI

Orion Training Course

The most important thing we build is trust

Congratulations to

Gino Basilotta

Las Vegas Metropolitan Police Dept.

for successfully completing an Orion training course on

Orion GPS Tracking Devices


Instructor

Jan 21, 2011
Las Vegas, NV

CIA

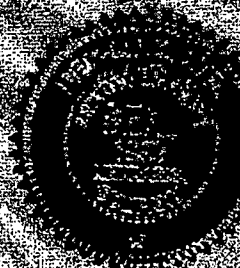
*This certificate hereby notes that
Gino Basilotta
successfully completed Pen Link CIA Training at the
CIA Technology & Training event on August 29th, 2012*

In witness whereof

PEN LINK



P. Louis Papp, President



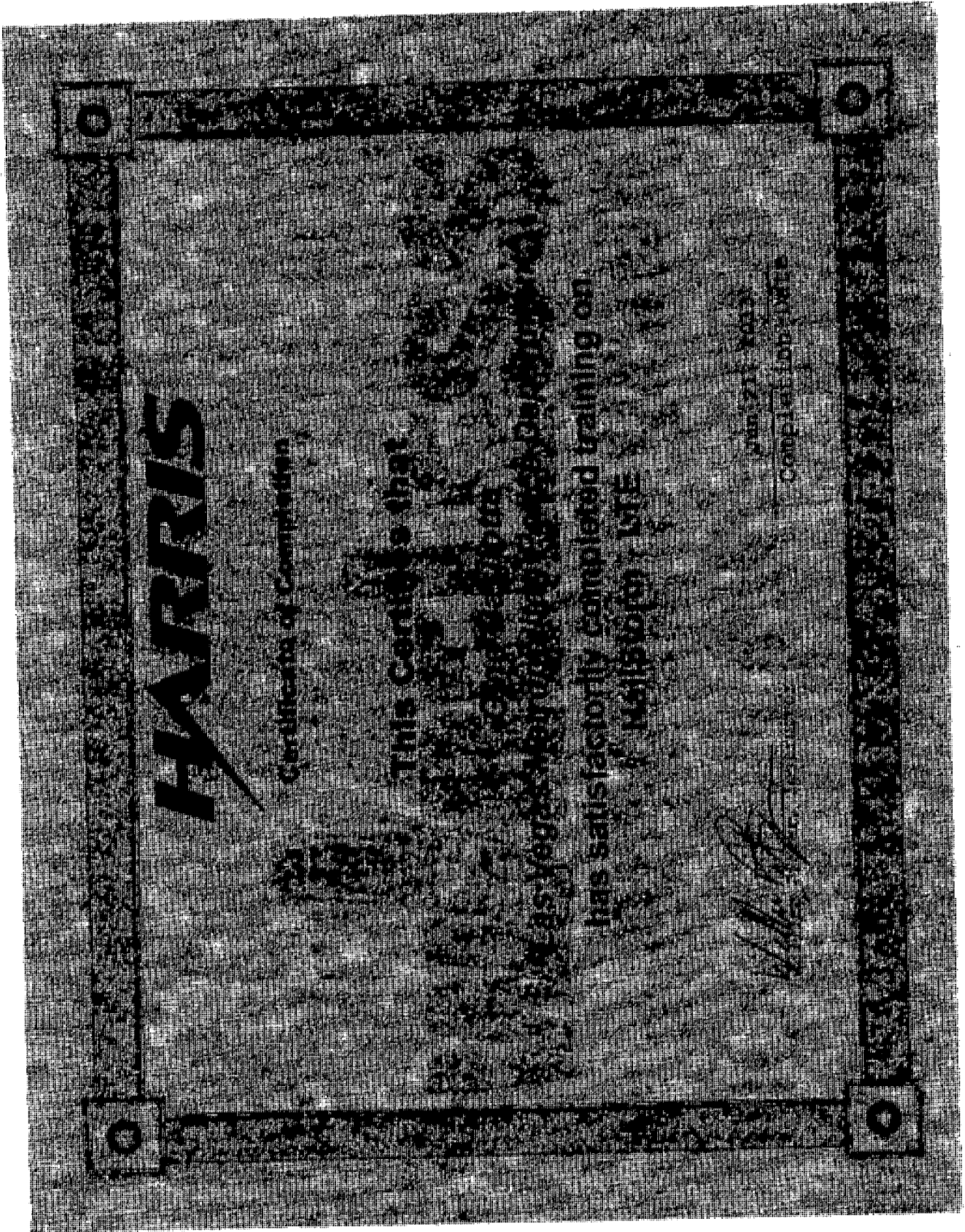
CIA

This certificate notes that
Gino Basiletti
successfully completed Pen Link CIA Training at the
CIA Technology & Training event on August 2nd, 2013.

In witness whereof

PEN LINK





Curriculum Vitae of E. "Gino" Basilotta

**National Domestic Communications
Assistance Center**

Certificate of Completion

Is hereby presented to:

Eugenio Basilotta
Las Vegas Metro Police Department

On this 10th day of September 2013

**For participating in FBI CAST PPP
held on September 09 - 10, 2013
in Fredericksburg, Virginia**


Interim Director of the National Domestic Communications Assistance Center

Felony/Gross Misdemeanor

COURT MINUTES

January 08, 2018

C-17-327767-2 State of Nevada
vs
Adrian Powell

January 08, 2018 09:00 AM Status Check: Reset Trial Date

HEARD BY: Cory, Kenneth COURTROOM: RJC Courtroom 16A

COURT CLERK: Tucker, Michele

RECORDER: Lizotte, Lisa

REPORTER:

PARTIES PRESENT:

Adrian Powell Defendant

Matthew Cox, ESQ Attorney for Defendant

Noreen C. Demonte Attorney for Plaintiff

State of Nevada Plaintiff

JOURNAL ENTRIES

Defendant Powell PRESENT, IN CUSTODY.

Mr. Cox advised he was appearing on behalf of Mr. Durham and Mr. Kane who are requesting a continuance until Wednesday. COURT SO ORDERED.

CUSTODY

CONTINUED TO: 1/10/18 9:00 AM

Felony/Gross Misdemeanor

COURT MINUTES

January 10, 2018

C-17-327767-2 State of Nevada
vs
Adrian Powell

January 10, 2018 09:00 AM Status Check: Reset Trial Date

HEARD BY: Cory, Kenneth COURTROOM: RJC Courtroom 16A

COURT CLERK: Pannullo, Haly

RECORDER: Lizotte, Lisa

REPORTER:

PARTIES PRESENT:

Adrian Powell	Defendant
Bryan A. Schwartz	Attorney for Plaintiff
Michael C Kane	Attorney for Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

Benjamin Durham, Esq., present on behalf of Co-Defendant.

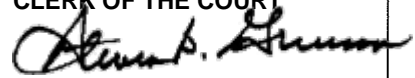
Mr. Durham advised trial can be set in ordinary course; however, the Defendant previously invoked. Upon Court's inquiry, Defendant, Mr. Powell stated he is willing to waive. COURT ORDERED, trial dates VACATED and RESET.

CUSTODY

07/25/18 8:45 AM CALENDAR CALL

07/30/18 1:30 PM JURY TRIAL

CLERK'S NOTE: Counsel notified via email regarding Grand Jury Transcripts having been filed on 01/10/18. hvp/01/10/18



MICHAEL C. KANE, ESQ.
Nevada Bar No. 10096
THE702FIRM
400 S. 7th Street, Suite 400, Box 10
Las Vegas, Nevada 89101
Telephone: (702) 776-3333
Facsimile: (702) 505-9787
E-Mail brad@the702firm.com
mike@the702firm.com
Attorney for Defendant

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

v.

ADRIAN POWELL,

Defendant.

Case No: C-17-327767-2
Dept. No.: I

**JOINDER TO PETITION FOR
WRIT OF HABEAS CORPUS**

COMES NOW, Defendant, ADRIAN POWELL, by and through his attorney of record,
MICHAEL C. KANE, ESQ., of THE702FIRM, respectfully submits this, his Joinder to Benjamin
C. Durham, Esq.'s, Petition for Writ of Habeas Corpus filed on December 13, 2017 on behalf of
the Co-Defendant, Lorenzo Pinkney.

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CERTIFICATE OF SERVICE

I hereby certify that on the 12 day of January, 2018, I caused service of a true and correct copy of the foregoing **JOINDER TO PETITION FOR WRIT OF HABEAS CORPUS** to be made by the Eighth Judicial District Court's Wiznet eservice program, upon all parties registered to use this service, in accordance with the Clark County District Court's Administrative Order No. 14-2, issued 5/9/14:

motions@clarkcountyda.com

Benjamin C. Durham, Esq.
601 S. 10th Street, Ste. 101
Las Vegas, Nevada 89101
bdurham@vegasdefense.com

I further certify that any parties listed below are not registered to use Wiznet and service was made by depositing the same in the United States Mail in Las Vegas, Nevada, postage prepaid, addressed as follows:

NONE.



An Employee of THE702FIRM

Felony/Gross Misdemeanor

COURT MINUTES

January 29, 2018

C-17-327767-2 State of Nevada
 vs
 Adrian Powell

January 29, 2018 09:00 AM Defendant's Joinder to Petition for Writ of Habeas Corpus

HEARD BY: Cory, Kenneth COURTROOM: RJC Courtroom 16A

COURT CLERK: Tucker, Michele

RECORDER: Lizotte, Lisa

REPORTER:

PARTIES PRESENT:

Adrian Powell	Defendant
Michael C Kane	Attorney for Defendant
Michael Dickerson	Attorney for Plaintiff
State of Nevada	Plaintiff

JOURNAL ENTRIES

Defendant Powell PRESENT, IN CUSTODY.

Mr Dickerson argued the State objection to Defendant Powell's joinder as it constitutes an untimely petition for writ of habeas corpus and there would be no jurisdiction to hear the matter. Mr. Kane, argued the facts are the same. Mr. Dickerson advised the facts are not the problem, its a procedural bar to his filing of any petition for any writ of habeas corpus. Statements by the Court as to Medbury and jury question. Mr. Durham argued whether the movement had any independent significance, which there was not. Second factor is the risk of danger substantially exceeds, do not believe it went above and beyond. Mr. Dickerson argued Mendoza. Further arguments by counsel. COURT ORDERED, Matter CONTINUED FOR CHAMBERS DECISION.

CUSTODY

2/22/18 9:00 AM DECISION (PETITION FOR WRIT OF HABEAS CORPUS)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 22, 2018

C-17-327767-2 State of Nevada
vs
Adrian Powell

February 22, 2018

Decision

HEARD BY: Cory, Kenneth

COURTROOM: RJC Courtroom 16A

COURT CLERK: Michele Tucker

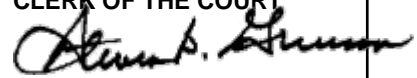
RECORDER: Lisa Lizotte

JOURNAL ENTRIES

COURT ORDERS, Defendant Powell s Joinder DENIED for lack of jurisdiction because Defendant s Joinder was untimely.

State to prepare the Order.

CLERK'S NOTE: The above minute order has been distributed to: Deputy District Attorney Michael Dickerson, Esq. (michael.dickerson@clarkcountyda.com) and Michael Kane, Esq. (mike@the702firm.com). /mlt



NWEW
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JOHN GIORDANI
Chief Deputy District Attorney
Nevada Bar #02381
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

LARENZO PINKEY, aka,
Lorenzo Pinkney, #8295438
ADRIAN POWELL, #8387748

Defendants.

CASE NO: C-17-327767-1/2

DEPT NO: I

**STATE'S SECOND SUPPLEMENTAL NOTICE OF WITNESSES AND/OR
EXPERT WITNESSES
[NRS 174.234]**

TO: LARENZO PINKEY, aka, Lorenzo Pinkney and ADRIAN POWELL,
Defendants; and

TO: BENJAMIN DURHAM ESQ. and MICHAEL KANE ESQ., Counsel of Record:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF
NEVADA intends to call the following witnesses and/or expert witnesses in its case in chief:

***Indicates additional witnesses and/or modifications**

AKE, PAUL - LVMPD #8100

ANDERSON, JORDAN - LVMPD #15109

AOYAMA, KATHRYN - LVMPD P#8025 (or designee): LATENT PRINT
EXAMINER - Expert in the science and techniques of fingerprint comparison, and
comparisons done in this case and any reports prepared therefrom.

AREVALO, BRYANT - LVMPD #15771

1 BALINT, RYAN - LVMPD #15912

2 BARKER, KEVIN, LVMPD #6452 and/or designee; LVMPD Detective and Computer
3 Forensic Examiner; he is an expert in the analysis of cellular site information data, including
4 being an expert in the operations of the various cellular phone companies, including familiarity
5 with the types of records and data kept by the cellular phone companies, interpreting the
6 records provided by cellular phone companies, including the interpretation of the times
7 provided in the records including the time zone of the reported times contained within the
8 records; he is also an expert in the operation of cell towers and location of cell towers for each
9 phone company, including knowledge of cell tower generation of calls and the ability to
10 determine the location where generated based on that knowledge, including the generation of
11 maps documenting the location of cell towers as well as the location of a cellular phone making
12 calls generated through a particular cell tower. He will testify as to the cell tower information,
13 cellular phone company records in this case, and any mapping done in the instant case.

14 BASILOTTA, EUGENIO, LVMPD #8447; LVMPD Detective; he is an expert in the
15 analysis of cellular site information data, including being an expert in the operations of the
16 various cellular phone companies, including familiarity with the types of records and data kept
17 by the cellular phone companies, interpreting the records provided by cellular phone
18 companies, including the interpretation of the times provided in the records including the time
19 zone of the reported times contained within the records; he is also an expert in the operation
20 of cell towers and location of cell towers for each phone company, including knowledge of
21 cell tower generation of calls and the ability to determine the location where generated based
22 on that knowledge, including the generation of maps documenting the location of cell towers
23 as well as the location of a cellular phone making calls generated through a particular cell
24 tower. He will testify as to the cell tower information, cellular phone company records in this
25 case, and any mapping done in the instant case.

26 BEATTY, JAMES, LVMPD #8642; he is an expert in the analysis of cellular site
27 information data, including being an expert in the operations of the various cellular phone
28 companies, including familiarity with the types of records and data kept by the cellular phone

1 companies, interpreting the records provided by cellular phone companies, including the
2 interpretation of the times provided in the records including the time zone of the reported times
3 contained within the records; he is also an expert in the operation of cell towers and location
4 of cell towers for each phone company, including knowledge of cell tower generation of calls
5 and the ability to determine the location where generated based on that knowledge, including
6 the generation of maps documenting the location of cell towers as well as the location of a
7 cellular phone making calls generated through a particular cell tower. He will testify as to the
8 cell tower information, cellular phone company records in this case, and any mapping done in
9 the instant case.

10 BEHYMER, AARON - LVMPD #15768

11 BOBBITT, TIFFANIE - c/o CCDA, 200 Lewis Avenue, LV, NV 89101

12 BREWER, DOROTHEA - LVMPD #15720

13 CHAVARRIA-VALENZUELA, JOSE - PEPES TACOS - 2490 FREMONT ST., LV
14 NV

15 COLLINS, MAURICE - LVMPD #4719

16 CORBETT, JAMES - LVMPD #6410

17 CRUZ, RAYMUNDO - LVMPD #15656

18 CUSTODIAN OF RECORDS - CCDC

19 CUSTODIAN OF RECORDS - LVMPD COMMUNICATIONS

20 CUSTODIAN OF RECORDS - LVMPD PHOTO LAB

21 CUSTODIAN OF RECORDS - LVMPD RECORDS

22 *CUSTODIAN OF RECORDS – PEPE’S TACOS, 2490 Fremont St., Las Vegas, NV

23 *CUSTODIAN OF RECORDS – WALGREENS, 4470 E Bonanza Rd, Las Vegas, NV

24 FLETCHER, STEPHANIE - LVMPD P#6650 (or designee): CRIME SCENE

25 ANALYST: Expert in the identification, documentation, collection and preservation of
26 evidence and is expected to testify as an expert to the identification, documentation, collection
27 and preservation of the evidence in this case.

28 GARLEY, MATTHEW - LVMPD #15652

1 GASPAR, MYRIAM - PEPES TACOS - 2490 FREMONT ST., LV NV
2 GAUTHIER, KELLIE - LVMPD P#8691 (or designee): Expert in the field of DNA
3 extractions, comparisons, analysis, and the identification of bodily fluids and is expected to
4 testify thereto.
5 GONZALEZ, KATHLEEN - 1580 LAVANTE AVE, LV NV
6 GRACIANO, SELENA - 4721 ARIZONA AVE, LV NV
7 GROVEMAN, LEAH, LVMPD #15822; is employed as a Forensic Scientist with the
8 Las Vegas Metropolitan Police Department. She will testify as an expert as to the procedures,
9 techniques and science employed in DNA analysis, all procedures employed in this case and
10 reports provided.
11 HERNANDEZ, VICTOR - LVMPD #15018
12 HESSING-RODRIGUEZ, YENEIR - WALGREENS - 4470 E. BONANZA RD. LV
13 NV
14 JOHNSON, TIFFANY - 7918 MILTON AVE, WHITTIER, CA
15 KERN, JOHN, FBI Information Technology Forensic Examiner; Will testify as an
16 expert in the area of cellular phones, including but not limited to, cellular system technology
17 including cell tower generation of calls and ability to determine the location where generated,
18 collection and handling of cellular phones for evidentiary purposes, and the examination,
19 preservation, retrieval and analysis of cellular call and text records/data, photos and/or video
20 and/or any other data kept on a cellular phone. Further, this expert will testify to the results of
21 any and all examinations performed on the cellular phones in this case.
22 LEAVITT, SETH - LVMPD #13457
23 LEON, RUTH - DA INVESTIGATOR
24 *MANGIONE, MICHAEL – LVMPD #13727
25 MILLS, PADILLA - LVMPD #15850
26 *MOON, RIC - DA INVESTIGATOR
27 ORAT, DARLENE - WALGREENS - 4470 E BONANZA RD. LV NV
28 PANDULLO, TULLIO - LVMPD #7884

1 PERKINS, SHANNISE - 6500 VEGAS DR., #2025, LV NV
2 RAFFERTY, ROBER - LVMPD #8918
3 RENHARD, LOUISE - LVMPD #5223
4 RENHARD, LOUISE - LVMPD P#5223 (or designee): CRIME SCENE ANALYST:
5 Expert in the identification, documentation, collection and preservation of evidence and is
6 expected to testify as an expert to the identification, documentation, collection and
7 preservation of the evidence in this case.

8 SCHUMMER, DAVID - LVMPD #7457
9 SCHWARTZ - LVMPD #15120

10 SCOTT, JEFFREY - LVMPD P#9618 (or designee): CRIME SCENE ANALYST:
11 Expert in the identification, documentation, collection and preservation of evidence and is
12 expected to testify as an expert to the identification, documentation, collection and
13 preservation of the evidence in this case.

14 SERENA, LANCE - LVMPD #15888
15 SHINE, RAYNETTA - 3474 ALGIERS DR #2204, LV NV
16 SPEAS, WILLIAM - LVMPD P#5228 (or designee): CRIME SCENE ANALYST:
17 Expert in the identification, documentation, collection and preservation of evidence and is
18 expected to testify as an expert to the identification, documentation, collection and
19 preservation of the evidence in this case.

20 THOMAS, KRISTINA - LVMPD P#13574 (or designee): CRIME SCENE
21 ANALYST: Expert in the identification, documentation, collection and preservation of
22 evidence and is expected to testify as an expert to the identification, documentation, collection
23 and preservation of the evidence in this case.

24 TICANO, T. - LVMPD #6804
25 TOMMER, KYLE - LVMPD #5780
26 VALLEJO-RODRIGUEZ, ANTONIO - 4421 AAVERY PARK AVE, LV NV
27 WATKINS, DENZEL - 6500 VEGAS DR., LV NV

28 ///

These witnesses are in addition to those witnesses endorsed on the Information or Indictment and any other witness for which a separate Notice of Witnesses and/or Expert Witnesses has been filed.

The substance of each expert witness' testimony and copy of all reports made by or at the direction of the expert witness has been provided in discovery.

A copy of each expert witness' curriculum vitae, if available, is attached hereto.

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

BY /s/ John Giordani
JOHN GIORDANI
Chief Deputy District Attorney
Nevada Bar #012381

CERTIFICATE OF ELECTRONIC TRANSMISSION

I hereby certify that service of the above and foregoing was made this 7th day of June, 2018, by electronic transmission to:

BENJAMIN DURHAM
bdurham@vegasdefense.com

MICHAEL KANE
mike@the702firm.com

BY /s/ S. JOHNSON
Secretary for the District Attorney's Office

17F17626A-B/saj/GCU

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****July 25, 2018**

C-17-327767-2 State of Nevada
 vs
 Adrian Powell

July 25, 2018 9:30 AM Calendar Call

HEARD BY: Israel, Ronald J.

COURTROOM: RJC Courtroom 15C

COURT CLERK: April Watkins
Michaela Tapia/mt

RECORDER: Judy Chappell

PARTIES	Giordani, John	Attorney for Plaintiff
PRESENT:	Kane, Michael C	Attorney for Defendant
	Powell, Adrian	Defendant
	State of Nevada	Plaintiff
	Pinkey, Lorenzo	Co-Defendant
	Durham, Benjamin C.	Attorney for Co-Defendant

JOURNAL ENTRIES

- Upon Court's inquiry, State advised ready for trial but noted he had discussed continuing the matter with defense counsel and was not opposed to a continuance. Mr. Durham advised he needed additional time to investigate and requested matter be continued 90 days. Mr. Kane stated Deft. Powell was indicating he was objecting to the continuance. Colloquy regarding discovery received by Mr. Durham. Statement by Deft. Powell. Mr. Kane stated he had informed Deft. Powell it was in his best interest to allow the Court to reset the trial. Court warned Deft. Powell he would have a difficult time arguing ineffective assistance of counsel as Co-Deft. Pinkey's counsel indicated he was not ready for trial. Deft. Powell confirmed he would like to go forward. **MATTER TRAILED. MATTER RECALLED.** All parties present as before. **COURT ORDERED, trial date VACATED and RESET.** Colloquy regarding trial schedules and jury pool.

CUSTODY

7/30/18 11:00 AM JURY TRIAL

PRINT DATE: 08/01/2018

Page 1 of 1

Minutes Date: July 25, 2018

ORIGINAL

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

JUL 30 2018

BY Kathy Klein
KATHY KLEIN, DEPUTY

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**

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

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

Defendant(s).

CASE NO: C-17-327767-12

DEPT NO: XXVIII

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 ///

C-17-327767-2
AIND
Amended Indictment
4767524

APP000285



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.

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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.

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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 26th day of July, 2018.

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

19
20 BY


21 MICHAEL R. DICKERSON
22 Deputy District Attorney
23 Nevada Bar #013476
24
25
26
27

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

Felony/Gross Misdemeanor

COURT MINUTES

July 30, 2018

C-17-327767-2 State of Nevada
 vs
 Adrian Powell

July 30, 2018 12:30 PM Jury Trial

HEARD BY: Israel, Ronald J. COURTROOM: RJC Courtroom 15C

COURT CLERK: Klein, Kathy

RECORDER: Chappell, Judy

REPORTER:

PARTIES PRESENT:

Adrian Powell	Defendant
John Giordani	Attorney for Defendant, Plaintiff
Michael C Kane	Attorney for Defendant
Michael Dickerson	Attorney for Plaintiff
State of Nevada	Plaintiff

JOURNAL ENTRIES

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY: Colloquy regarding a prospective juror with medical issues and a doctor appointment. Counsel agreed to excuse the juror prior to bringing the prospective jury into the courtroom. State noted they agreed to dismiss the original count 10 and provided an Amended Indictment. Amended Indictment, FILED IN OPEN COURT. Deft. rejected the State's offer and proceeded to trial. Mr. Durham requested the jail calls recently provided be excluded as being untimely. State noted they had provided other jail calls previously, However these are the latest jail calls from 07/12/18 to current, they had just received them last night and the State had not reviewed them. Court stated the jail calls could go on, timeliness is not a factor and Deft's are aware their calls are recorded, COURT ORDERED, Deft's Oral Motion to Exclude the Jail Calls, DENIED.

PROSPECTIVE JURY PANEL PRESENT: Voir Dire.

CUSTODY

07/31/18 11:00 AM JURY TRIAL

ORIGINAL

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

JUL 31 2018

BY, Kathy Klein
KATHY KLEIN, DEPUTY

GPA
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JOHN GIORDANI
Chief Deputy District Attorney
Nevada Bar #012381
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

ADRIAN POWELL, #8387748
Defendant.

CASE NO: C-17-327767-2

DEPT NO: XXVIII

GUILTY PLEA AGREEMENT

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

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

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

C-17-327767-2
GPA
Guilty Plea Agreement
4767626

APP000293

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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 the
17 maximum term of imprisonment. I understand that I am not eligible for probation for the
18 offense to which I am pleading guilty.

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.

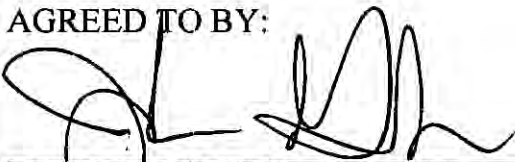
7 I am not now under the influence of any intoxicating liquor, a controlled substance or
8 other drug which would in any manner impair my ability to comprehend or understand this
9 agreement or the proceedings surrounding my entry of this plea.

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 ADRIAN POWELL
Defendant

16 AGREED TO BY:

17 
18

19 JOHN GIORDANI
Chief Deputy District Attorney
20 Nevada Bar #012381
21
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28

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 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 4. 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-17-327767-2

11 -vs-

DEPT NO: XXVIII

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

**AMENDED
INDICTMENT**

15 Defendant(s).

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 ///

APP000301

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.

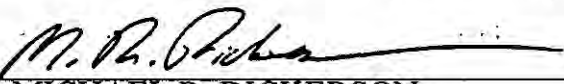
4 COUNT 14 - ROBBERY WITH USE OF A DEADLY WEAPON

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)

Felony/Gross Misdemeanor

COURT MINUTES

July 31, 2018

C-17-327767-2 State of Nevada
vs
Adrian Powell

July 31, 2018 11:00 AM Jury Trial

HEARD BY: Israel, Ronald J. COURTROOM: RJC Courtroom 15C

COURT CLERK: Klein, Kathy

RECORDER: Chappell, Judy

REPORTER:

PARTIES PRESENT:

Adrian Powell	Defendant
John Giordani	Attorney for Defendant, Plaintiff
Michael C Kane	Attorney for Defendant
Michael Dickerson	Attorney for Plaintiff
State of Nevada	Plaintiff

JOURNAL ENTRIES

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY: Negotiations.

Deft. present, in custody. Plea Entered: Counsel stated the NEGOTIATIONS as contained in the Guilty Plea Agreement, FILED IN OPEN COURT. Amended Indictment, FILED IN OPEN COURT. The State is not seeking life sentences on any of the charges. Pursuant to negotiations COURT ORDERED, Guilty Plea Agreement, AMENDED BY INTERLINEATION TO REFLECT, on page 1, line 22 & 23; Counsel deleted- Count 12, Unlawful Taking of Vehicle (F). Upon Court's inquiry, the State noted the range of each count and Deft. understood the minimum and maximums of each range. DEFENDANT POWELL ARRAIGNED AND PLED GUILTY TO;

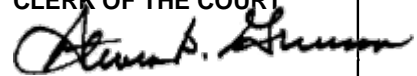
COUNTS 1 AND 8 - CONSPIRACY TO COMMIT ROBBERY (F)
COUNTS 2 AND 9 - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (F)
COUNTS 3 AND 13 - FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON (F)
COUNTS 4,5,6,7,10,11 AND 14 - ROBBERY WITH USE OF A DEADLY WEAPON (F)

Court ACCEPTED plea and, ORDERED, matter referred to the Division of Parole and Probation (P&P) for a Presentence Investigative (PSI) Report and set for SENTENCING. COURT FURTHER ORDERED, Deft. REMANDED into Custody.

PROSPECTIVE JURY PRESENT: Court informed the prospective jury the Deft's had agreed to the negotiations and excused the jury. Exhibits returned to the State.

CUSTODY

09/12/18 9:30 AM SENTENCING - (Counts 1-11 & 13 & 14)



MEMO

THE702FIRM

BRADLEY J. MYERS, Esq.

Nevada Bar No. 8857

MICHAEL C. KANE, Esq.

Nevada Bar No. 10096

THE702FIRM

400 S. 7th Street, #400

Las Vegas, Nevada 89101

Telephone: (702) 776-3333

Facsimile: (702) 505-9787

E-Mail: mike@the702firm.com

Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

ADRIAN POWELL,

Defendant.

Case No.: C-17-327767-2

Dept. No.: XXVIII

Sentencing Date: 9/26/2018

Sentencing Time: 9:30

DEFENDANT'S SENTENCING MEMORANDUM

COMES NOW Defendant, ADRIAN POWELL, by and through his attorneys of record, MICHAEL C. KANE, ESQ. of THE702FIRM, and submits this document to aid this Honorable Court in its determination of sentence in the above-captioned case. Although the case at bar may appear, on first review, to be clear-cut, the defense wishes to focus the Court's attention on several issues that support a minimum sentence.

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I.

STATEMENT OF FACTS

Adrian Powell was charged with Conspiracy to Commit Robbery, Burglary While in Possession of a Deadly Weapon, First Degree Kidnapping, First Degree Kidnapping with Use of a Deadly Weapon, and Robbery with Use of a Deadly Weapon. As this Court is aware after one day of Voire Dire Adrian Powell accepted responsibility for his actions and plead guilty to the above-mentioned charges with the understanding he would be at the mercy of this Courts sentencing.

The charges that Adrian Powell plead guilty to arose from two robberies, one at Pepes Tacos and one at Walgreens. IT is important to note that no one was physically injured and the kidnapping charges arose out of the movement of the employees from one position of the store to another in an attempt to take money.

Based upon the facts of the case as well as set forth below, Powell is requesting that this Court consider a term of 6-15 consecutive with all counts based upon the nature of the crimes, Adrian's remorse and reflection as well as his chance for rehabilitation and after release a productive citizen.

III.

THE DEFENDANT AND HIS ACTIONS

Adrian is 24 years old. He has a 10-month baby in which he anticipates being the best Father possible maintaining a relationship while incarcerated and upon his anticipated release. As can be seen through his letters of support from his family he has a strong support from his family members. The Court should take time to examine Adrian's own letter addressing the Court. The letter is eloquently written in near perfect penmanship. Adrian asks the Court to understand that Adrian wrote this not in an attempt to pull wool over the Court's eyes for a reduced sentence but instead to

1 show the Court how he has truly changed and strives to continue to change and how he will use his
2 time incarcerated to be a fully functional adult and citizen when he is released. Adrian has spent
3 the last year in CCDC reflecting on the bad choices he has made and how and what he can do to
4 never make the same choices and actions to find himself in trouble with the law. Indeed, Adrian
5 possess the personality and skills to make it once released from prison. He is educated, speaks well,
6 writes well, and is very intelligent. He will receive even more education and training while
7 incarcerated and will opt to participate in any and all programs while in prison. Given the
8 opportunity to be released while he is still relatively young will certainly decrease his odds of
9 recidivism and grant him the opportunity to be an active participant in his child's life. This Court
10 should note that the letters are from friends, family members.

11
12
13 Taking the above into consideration as well as the fact that Adrian is accepting responsibility
14 and has pled guilty to all charges a minimum term of 6-15 years is appropriate in this case. The
15 numerous letters provided on Adrian's behalf have shown great importance as to why an extended
16 prison term would not be the answer for Adrian.

17
18 Adrian offers a letter from his Mother Valencia Guidroz with attached OSHA certificates.

19 **Ex. 1.**

20 Adrian offers a letter from his child's mother Daria Perkins. **Ex. 2.**

21 Adrian offers a handwritten letter from himself. **Ex. 3.**

22 Adrian offers a letter from his Father. **Ex. 4. (Will be supplemented upon receipt)**

23
24 As set forth in these letters, written by friends, family, who have known him for years on
25 end tend to show that Adrian should receive a sentence of 6-15 years.

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IV.

CONCLUSION

Whereby, Adrian respectfully requests this Court sentence Adrian to a fair term.

DATED this 25 day of September, 2018.

Respectfully Submitted,

THE702FIRM

By 

MICHAEL C. KANE, ESQ

Nevada Bar No. 11109

400 S. 7th, Suite 400

Las Vegas, NV 89101

T: (702) 776-3333

F: (702) 505-9787

mike@the702firm.com

Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of September, 2018, the undersigned served the foregoing **DEFENDANT'S SENTENCING MEMORANDUM** on the State of Nevada in this matter via facsimile or email transmission to:

District Attorney's Office
John Giordani, Chief Deputy District Attorney
F: (702) 477-2952
John.Giordani@clarkcountyda.com



An Employee of THE702FIRM

Felony/Gross Misdemeanor

COURT MINUTES

September 26, 2018

C-17-327767-2 State of Nevada
 vs
 Adrian Powell

September 26, 2018 09:30 AM Sentencing

HEARD BY: Israel, Ronald J. COURTROOM: RJC Courtroom 15C

COURT CLERK: Klein, Kathy

RECORDER: Chappell, Judy

REPORTER:

PARTIES PRESENT:

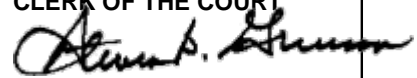
Adrian Powell	Defendant
Michael C Kane	Attorney for Defendant
Michael Dickerson	Attorney for Plaintiff
State of Nevada	Plaintiff

JOURNAL ENTRIES

Deft. POWELL present, in custody. State had no objection to the Co-Deft's Motion to Continue Trial.
COURT ORDERED, Sentencing CONTINUED, and set with Co-Deft.

CUSTODY

10/24/18 9:30 AM SENTENCING (With Co-Deft. Pinkey)



MEMO

THE702FIRM

BRADLEY J. MYERS, Esq.

Nevada Bar No. 8857

MICHAEL C. KANE, Esq.

Nevada Bar No. 10096

THE702FIRM

400 S. 7th Street, #400

Las Vegas, Nevada 89101

Telephone: (702) 776-3333

Facsimile: (702) 505-9787

E-Mail: mike@the702firm.com

Attorneys for Defendant

DISTRICT COURT

CLARK COUNTY NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

ADRIAN POWELL,

Defendant.

Case No.: C-17-327767-2

Dept. No.: XXVIII

Sentencing Date: 10/31/2018

Sentencing Time: 9:00AM

SUPPLEMENT TO DEFENDANT'S SENTENCING MEMORANDUM

COMES NOW Defendant, ADRIAN POWELL, by and through his attorneys of record,
MICHAEL C. KANE, ESQ. of THE702FIRM, and hereby supplements this document to aid this
Honorable Court in its determination of sentence in the above-captioned case.

///

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///

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1 Adrian offers a letter from his step-sister Kiana Denmore. **Ex. 5.**

2 Adrian offers a letter from his step-mother Shaunda Scott-Powell. **Ex. 6.**

3 DATED this 2 day of October, 2018.

4
5 Respectfully Submitted,

6 **THE702FIRM**

7
8
9 By 

10 MICHAEL C. KANE, ESQ

11 Nevada Bar No. 11109

12 400 S. 7th, Suite 400

13 Las Vegas, NV 89101

14 T: (702) 776-3333

15 F: (702) 505-9787

16 mike@the702firm.com

17 Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of October, 2018, the undersigned served the foregoing
SUPPLEMENT TO DEFENDANT'S SENTENCING MEMORANDUM on the State of
Nevada in this matter via facsimile or email transmission to:

District Attorney's Office
John Giordani, Chief Deputy District Attorney
F: (702) 477-2952
John.Giordani@clarkcountyda.com



An Employee of THE702FIRM

Dear Your Honor,

I am to urge leniency on the sentencing of my step-brother Adrian Powell.

I grew up with Adrian since I was the age of 5. We grew up in the urban area of South Los Angeles, California. Our parents kept us at the same schools until High School. Many odds were against us. But, I've managed to graduate from a 4-year University and currently working full-time at the #1 Media Entertainment Company in America.

Unfortunately, my brother Adrian has made a mistake that led him to miss the birth of his only son that was born last year while he was incarcerated. We grew up in a Christian religious household, and we're blessed to have had both our parents present in our home.

Adrian values the importance of family, and wants to change his life around for the better of his son that will be 1 year old in October.

I am aware of the reoccurring mistake that my brother has made, in which our entire family is saddened by what has happened, and our prayers go out to the victims that were involved. We certainly do not approve of what he has done, and in no way condone his actions.

The perception that you might have of Adrian is misjudged. I am more than capable of describing to you the image of Adrian that I know. He has always been family-oriented, protective, and respectful. I've never felt in danger being at home with him. We became baptized the same year, and built a relationship with Jesus Christ.

Adrian has made mistakes by associating with the wrong crowd that doesn't have his best interests. He has become a victim of being a "product of his environment."

Since being incarcerated he has missed out on the birth of his only child. My nephew turns 1 in October. Please don't allow my nephew to be without his father for 16 years of his life.

Adrian loves his son and has been improving on bettering himself while being incarcerated. I've noticed a change, he's reading the Bible, attending church, and being more proactive. I can reassure you after being released from prison; Adrian will receive the full support from our family to keep him on the right path for the sake of his son.

I ask if you can please give him hope to be reunited with his baby for the first time.

Thank you for considering this request for leniency.

Sincerely,

Kiana Denmore

September 25, 2018

Clark County Detention Center
330 S Casino Blvd
Las Vegas, CNV 89101

Dear you're Honor,

I am writing on behalf of my step-son Adrian Powell who is appearing before your court due to robbery charges and to plea for leniency in your sentencing so that he may be able to come out sooner because his only son and family are depending on him. Adrian is a good son, brother, and father. He's loving, caring, and smart, graduated from high school. He's sympathetic to everyone, and has a good heart.

I love my son he is not a bad person he was under strong influence of his peers beginning when he was a teenager and made bad decisions that he wouldn't normally do. I realize that this is not his first arrest and he's made mistakes in the past as a young adult and needs to take responsibility for his own actions. Adrian is feeling deeply remorseful for any wrongdoing. This situation with Adrian has been horrible, humiliating, and forever life changing for all of us. I truly believe in the power of God will turn things around for my son. Since Adrian has been incarcerated he has been studying the bible, and found the importance of a relationship with God. He's reading books and learning life skills such as decision making to better himself. Unfortunately, his son was born before he went to jail and he's very disappointed about that. He wants to be a good father, and most importantly a good man.

Adrian has family who loves him very much, and we will provide all the support he needs physically, and spiritually to help rehabilitate him when he's released and comes home so he can focus on moving forward with his life for his son, getting a trade, and find employment. We will do everything in our power to make sure that he stays motivated, moves forward to success, and stay on the right path so that he doesn't ever disappoints his son or family and return to prison ever again.

Thank you for taking time to read my letter. I hope this information proves to be helpful to your decision.

Sincerely,

Shaunda Scott-Powell

Felony/Gross Misdemeanor

COURT MINUTES

October 31, 2018

C-17-327767-2 State of Nevada
 vs
 Adrian Powell

October 31, 2018 09:30 AM Sentencing

HEARD BY: Israel, Ronald J. COURTROOM: RJC Courtroom 15C

COURT CLERK: Thomas, Kathy

RECORDER: Chappell, Judy

REPORTER:

PARTIES PRESENT:

Adrian Powell	Defendant
John Giordani	Attorney for Defendant, Plaintiff
Michael C Kane	Attorney for Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

Deft. POWELL present, in custody, together with Co-Deft. PINKEY. Mr. Durham noted the Deft. had concerns about his plea and Mr. Durham may need to file to a motion to withdraw the Deft's plea.; Further the Deft. requested another attorney be appointed. Mr. Kane concurred. Court noted the Deft. and Co-Deft. Pinkey had contingent Guilty Plea Agreements. State noted the Guilty Plea Agreements were accepted during day one of trial and the State made the negotiations clear to the Deft's. Colloquy regarding appointing new counsel. State requested the transcript for the entry of plea heard on 07/31/18. State noted they had agreed not to file the reports and witness statements at the time of the plea. However, State requested to file them under seal at this time. Report and statements provided to the Court and marked as an exhibit under seal, (See worksheet). Upon oral request, COURT ORDERED, Defense Counsel, WITHDRAWN. COURT FURTHER ORDERED, Matter SET for Confirmation of Counsel for both Deft. and Co-Deft. and a status check regarding Deft's status of plea.

CUSTODY

11/07/18 9:00 AM CONFIRMATION OF COUNSEL...STATUS CHECK: STATUS OF PLEA

CLERK'S NOTE: Court Clerk emailed Drew Christiansen regarding appointing counsel. kk 10/31/18.

Felony/Gross Misdemeanor

COURT MINUTES

November 07, 2018

C-17-327767-2 State of Nevada
vs
Adrian Powell

November 07, 2018 09:00 AM All Pending Motions (11/07/18)

HEARD BY: Israel, Ronald J. COURTROOM: RJC Courtroom 15C

COURT CLERK: Thomas, Kathy

RECORDER: Chappell, Judy

REPORTER:

PARTIES PRESENT:

Adrian Powell	Defendant
Frank R. LoGripio	Attorney for Plaintiff
Monique A. McNeill	Attorney for Defendant
State of Nevada	Plaintiff

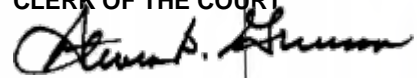
JOURNAL ENTRIES

CONFIRMATION OF COUNSEL- MCNEILL...STATUS CHECK: STATUS OF PLEA

Deft. POWELL present, in custody. Co-Deft. Pinkey, present in custody with counsel. Ms. McNeill confirmed as counsel. COURT ORDERED, Briefing schedule: Deft's Brief by 12/04/18, State's Opposition by 01/09/19, Deft's Reply by 01/16/19 and hearing regarding withdrawal of plea SET. Deft. to remain in custody.

CUSTODY

01/23/19 9:00 AM HEARING RE: WITHDRAWAL OF PLEA



1 **MOT**

2 MONIQUE A. MCNEILL, ESQ.
3 Nevada Bar No. 9862
4 325 S. Third Street
5 Suite 200
6 Las Vegas, Nevada 89101
7 Telephone: (702) 497-9734
8 Attorney for Defendant

9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 THE STATE OF NEVADA,
12
13 Plaintiff,
14
15 vs.

CASE NO.: C-17-327767-2

DEPT. NO.: 28

Date:

16 ADRIAN POWELL,
17
18 Defendant.

Time:

19 **MOTION TO WITHDRAW GUILTY PLEA**

20 **COMES NOW** the Defendant, by and through his attorney of record, MONIQUE
21 MCNEILL, Esq., and respectfully submits the above-titled Motion. This Motion is based upon
22 the following Memorandum of Points and Authorities, the pleadings and papers on file herein,
23 and argument of Counsel at the time set for hearing this matter.

24 DATED this 10th day of January, 2019.

/s/ MONIQUE MCNEILL

By: _____
MONIQUE MCNEILL, ESQ.
Nevada Bar No. 9862
Attorney for Defendant

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. BACKGROUND**

3 On July 31, 2018, Defendant pleaded guilty to two counts of Conspiracy to Commit
4 Robbery and two counts of Burglary While in Possession of a Firearm, two counts of First Degree
5 Kidnapping with a Deadly Weapon, and seven counts of Robbery with Use of a Deadly Weapon.
6 The entry of plea took place on the second day of trial. On the date of his sentencing, Mr. Powell
7 indicated a desire to withdraw his guilty plea and current defense counsel was appointed
8 accordingly.

9 Mr. Powell contends that he entered his guilty plea without first being given the
10 opportunity to review a full and complete copy of his discovery. Additionally, his attorney did
11 not go through the discovery with him, never discussed the defense that the attorney was going
12 to present to the jury, did not have substantial contact with Mr. Powell before trial, and failed to
13 give well-educated advice regarding the soundness of the plea negotiations. Mr. Powell's attorney
14 told him that he was going to spend the rest of his life in prison unless he took the deal, and further
15 informed Mr. Powell that the deal was a good deal because of the State agreeing not to file charges
16 on multiple cases in which the police suspected Mr. Powell and his co-defendant. However, not
17 only had Mr. Powell never seen discovery from those incidents, but the attorney did not even have
18 the discovery from those events and did not have any idea about the strength of those cases. But
19 for counsel's failure to adequately prepare his client for trial, and his counsel's failure to give well
20 researched and advice founded on actual due diligence, Mr. Powell would not have entered the
21 plea. Mr. Powell's contentions are listed in the attached affidavit. See Exhibit A. This Court can
22 see from the attached jail records that prior counsel had very limited contact with Mr. Powell over
23 the course of his representation. See Exhibit B.

1 A review of the discovery provided regarding the uncharged acts indicates that there is no
2 evidence that connects Mr. Powell to those cases. According to counsel for the co-defendant, the
3 discovery on those incidents was not even provided to counsel until AFTER the defendants
4 entered their pleas, despite the State using the incidents as leverage. The discovery lists police
5 reports and witness statements for ten different metro event numbers. Those reports and witness
6 statements show that the descriptions of the perpetrators varies between the events, and that in
7 almost all of those occurrences, the suspects had their faces and hands covered. There is no
8 mention of any processing of any fingerprints or DNA. It should be noted that in the instant case,
9 the Metro crime lab did process Mr. Powell's DNA and compared to samples recovered in the
10 instant case. It stands to reason that if there had been DNA collected in the uncharged cases,
11 Metro could have processed it at the same time. There is no forensic evidence tying Mr. Powell
12 to those uncharged incidents. As it stands, there is not enough evidence to even charge Mr. Powell
13 in those cases, so it was a grave error for his attorney to use those cases to inform Mr. Powell as
14 to the nature of the plea offer.

15 II. ARGUMENT

16 In Nevada, a district court may grant a defendant's pre-conviction motion to withdraw a
17 guilty plea for any "substantial reason" if it is "fair and just." *Woods v. State*, 114 Nev. 468, 475,
18 958 P. 2d 91, 95 (1998) (citing *State v. District Court*, 85 Nev. 381, 385, 455 P.2d 923, 926
19 (1969)). *See also Stevenson v. State*, 131 Nev. ___, ___, 354 P.3d 1277, 1281 (2015). To determine
20 whether the defendant advances a substantial, fair, and just reason to withdraw a guilty plea, the
21 district court must consider the totality of the circumstances surrounding the defendant's plea.
22 *Woods*, 114 Nev. at 475, 958 P. 2d at 95-96 (1998). In *Stevenson v. State*, the Nevada Supreme
23 Court noted that fair and just reasons include reasons such as a defendant establishing that there
24

1 are “circumstances which might lead a jury to refuse to convict, notwithstanding technical guilt,”
2 or the defendants becoming aware of some collateral consequences. *Id.*

3 A criminal defendant may withdraw his guilty plea if, under the totality of the
4 circumstances, the court finds that he did not enter that plea voluntarily, knowingly, and
5 intelligently. *Woods*, 114 Nev. at 475, 958 P.2d at 95-96 (1998); *Crawford v. State*, 117 Nev.
6 718, 722, 30 P. 3d 1123, 1125-26 (2001); *Baal v. State*, 106 Nev. 69, 787 P.2d 391 (1990). The
7 guidelines for voluntariness of guilty pleas require that the record affirmatively show that the
8 defendant entered his plea understandingly and voluntarily. See *Heffley v. Warden*, 89 Nev. 573,
9 574, 516 P.2d 1403, 1404 (1973). A “knowing” plea is one entered into with a full understanding
10 of the nature of the charge and all the consequences of the plea. *Boykin v. Alabama*, 395 US 238
11 (1969). Here, Mr. Powell’s plea was not knowing, as he did not have a full understanding of the
12 nature of the charges against him due to counsel’s failure to provide Mr. Powell with a review of
13 the discovery and a discussion regarding potential defenses. Additionally, counsel advised Mr.
14 Powell regarding incidents that counsel had never even seen discovery regarding. Because Mr.
15 Powell’s attorney did not provide meaningful communication, the plea is not knowing. Because
16 Mr. Powell’s counsel himself was uneducated regarding the evidence being used to broker a deal,
17 the plea was not knowing. This is one fair and just reason this Court should allow Mr. Powell to
18 withdraw his plea.

19 Furthermore, a plea agreement is construed according to what the defendant reasonably
20 understood when he entered the plea. *Statz v. State*, 113 Nev. 987, 993, 944 P.2d 813, 817 (1997);
21 *Sullivan v. State*, 115 Nev. 383, 387, 990 P.2d 1258, 1260 (1999). The defendant’s reasonable
22 understanding is distinguishable from the mere subjective belief of defendant as to any potential
23 sentence, or hope of leniency, unsupported by a promise from the State or an indication by the
24 court. See *Rouse v. State*, 91 Nev. 677, 541 P. 2d 643 (1975). Mr. Powell reasonably understood

1 that counsel informed him that he was going to serve approximately six to fifteen years in prison.
2 This was not based on any offer from the State, but was communicated to Mr. Powell at the time
3 counsel discussed the plea negotiations with Mr. Powell on the second day of trial.

4 A defendant who enters a guilty plea based on the advice of counsel may refute the guilty
5 plea by demonstrating the ineffectiveness of counsel's performance violated the defendant's right
6 to counsel guaranteed under the Sixth Amendment to the United States Constitution. *Nollette v.*
7 *State*, 118 Nev. 341, 348-349, 46 P.3d 87, 92 (2002); *Strickland v. Washington*, 466 U.S. 668,
8 687-88 (1984). A defendant must substantiate their claim of ineffective assistance of counsel by
9 showing counsel's performance fell below an objective standard of reasonableness, and a
10 reasonable probability exists that, but for counsel's erroneous advice, the defendant would not
11 have pled guilty. *Id.*; *Warden v. Lyons*, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984); *Hill v.*
12 *Lockhart*, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985).

13 Prior counsel's performance did not meet objective standards regarding criminal
14 representation. In 2007, the Nevada Supreme Court convened a commission on the state of
15 indigent defense in Nevada. See Exhibit C. As part of that commission, the committee came up
16 with recommended standards of performance, which provide a guideline for this Court to
17 measure counsel's performance. Those standards indicate that counsel should engage in a
18 continuing interactive dialogue with the client concerning all matters that might reasonably be
19 expected to have a material impact on the case, such as the development of a defense theory,
20 presentation of the defense case, potential agreed-upon dispositions of the case. Mr. Powell's
21 attorney did not meet this standard, and certainly communicating in person with a client two
22 times before a felony jury trial on a life sentence case cannot be reasonable.

23 The standards also indicate that "under no circumstances should defense counsel recommend to
24 a defendant acceptance of a plea unless appropriate investigation and study of the case has

1 been completed, including an analysis of controlling law and the evidence likely
2 to be introduced at trial.” ADKT 411. Mr. Powell’s counsel had done none of that. His
3 representation certainly fell below an objective standard of reasonableness. And, but for
4 counsel using uninvestigated uncharged bad acts to make assurances that this plea was the best
5 outcome, Mr. Powell would not have entered this plea.

6 In this case, Mr. Powell’s plea was the product of ineffective assistance of counsel, which
7 lead to him accepting a plea that was based on assurance that were later discovered to be untrue
8 and unfounded. His counsel made him assurances about the sentence he would receive, telling
9 him it was all but a given, despite what the guilty plea agreement states, and his counsel coerced
10 the plea by informing Mr. Powell there were ten other uncharged cases looming over his head.
11 His counsel’s performance was deficient in keeping his client informed at every step of the
12 proceedings, and was based on a lack of understanding regarding the true nature of the plea
13 negotiations.

14 15 III. CONCLUSION

16 In light of the foregoing, Defendant respectfully requests that this Honorable Court grant
17 his Motion to Withdraw Guilty Plea.

18
19 DATED this 11th day of Janaury, 2019.

20 /s/ MONIQUE A. MCNEILL

21 By: _____
22 MONIQUE MCNEILL, ESQ.
23 Nevada Bar No. 9862
24 Attorney for Defendant

1
2 **CERTIFICATE OF SERVICE**

3 **IT IS HEREBY CERTIFIED** by the undersigned that on the 14th day of January, 2019,

4 I served a true and correct copy of the foregoing **MOTION** to the parties listed on the attached
5 service list via one or more of the methods of service described below as indicated next to the
6 name of the served individual or entity by a checked box:

7 **VIA U.S. MAIL:** by placing a true copy thereof enclosed in a sealed envelope with postage
thereon fully prepaid, in the United States mail at Las Vegas, Nevada.

8 **VIA FACSIMILE:** by transmitting to a facsimile machine maintained by the attorney or the
party who has filed a written consent for such manner of service.

9 **BY PERSONAL SERVICE:** by personally hand-delivering or causing to be hand delivered by
such designated individual whose particular duties include delivery of such on behalf of the firm,
10 addressed to the individual(s) listed, signed by such individual or his/her representative accepting
on his/her behalf. A receipt of copy signed and dated by such an individual confirming delivery
of the document will be maintained with the document and is attached.

11 **BY E-MAIL:** by transmitting a copy of the document in the format to be used for attachments to
12 the electronic-mail address designated by the attorney or the party who has filed a written consent
for such manner of service.

13
14 **BY:** /s/ MONIQUE MCNEILL, Esq.
15
16
17
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21
22
23
24

SERVICE LIST

ATTORNEYS OF RECORD	PARTIES REPRESENTED	METHOD OF SERVICE
PDMotions@clarkcountyda.com	State of Nevada	<input type="checkbox"/> Personal service <input checked="" type="checkbox"/> Email service <input type="checkbox"/> Fax service <input type="checkbox"/> Mail service

ADDITIONAL INDIVIDUALS	PARTIES REPRESENTED	METHOD OF SERVICE
	N/A	<input type="checkbox"/> Personal service <input type="checkbox"/> Email service <input type="checkbox"/> Fax service <input type="checkbox"/> Mail service

AFFIDAVIT

ADRIAN POWELL makes the following declaration:

1. Prior to trial, my attorney had only visited me twice at the Clark County Detention Center, and only spoke to me on the phone a few times.
2. During the first visit with my attorney, he told me that he was going to "get me home." That led me to believe he felt that the case was winnable. He never sat down with me and provided full discovery on my case.
3. My attorney did not go through the discovery with me. In fact, my attorney did not provide me with all the discovery in the case. In fact, I have never seen the discovery regarding the uncharged incidents in which the State alleges that I am a person of interest. The only discovery I received was at my second preliminary hearing setting, and never received anything after that, until the bailiff handed me a DNA report the second day of trial.
4. My attorney did not show me the results from the DNA processing until we had already started jury selection. My attorney gave the Marshall the paperwork with the results, and had him provide it me. He never explained to me what any of it meant.
5. Prior to trial, I did not know anything about how my attorney was going to defend the case. At no point, did he discuss the discovery with me, or discuss the theory of defense at trial.
6. My attorney told me that I was going to spend the rest of my life in prison if I did not take the deal. He told me that it was this deal or the rest of my life. This was said to me as we were in the middle of trial. At that point., I was unaware of how he was going to defend me at trial. I did not know the entirety of the evidence against me and was scared. He told me that were it not for the uncharged cases, I could have been offered a 3-8 year sentence.
7. My attorney told me that regardless of what the Guilty Plea Agreement said, I was going to get a sentence of six to fifteen years.

- 1 8. At sentencing, when I told my attorney I was scared that I was not going to get the six to
2 fifteen years he promised me, he became angry.
- 3 9. The advice my attorney gave me about taking the plea involved the uncharged cases listed
4 in my guilty plea agreement; however, he misled me about the strength of the evidence in
5 those cases. In fact, I have since learned that he had not actually reviewed the discovery
6 regarding those cases until September, months after he advised me that those cases not
7 being filed against me was beneficial to me. I have since reviewed that discovery and it is
8 clear that the evidence in those charges is not strong and I do not believe should have been
9 used to pressure me into this plea.
- 10 10. My attorney never went through the PSI with me, but instead handed it to me and left the
11 visiting room. Prior to my interview, he told me not to tell the PSI writer that I had a
12 substance abuse problem, and not to let the PSI writer see my tattoos, but instead to try to
13 make the PSI writer think I was a "scholar and a student."
- 14 11. At sentencing, my co-defendant told me that his attorney had advised him about the lack of
15 evidence in the uncharged cases.
- 16 12. I declare under penalty of perjury that the foregoing is true and correct. (NRS 53.045).

17
18 EXECUTED this 7TH day of January, 2018.
19
20

21
22 

23 _____
ADRIAN POWELL
24
25
26
27
28

NT-7B-14-4

NT

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

INMATE CORRESPONDENCE REQUEST

Inmate ID#:

8387748

Floor:

7B

Inmate Name:

Powell, Adrian

Housing

Unit:

14-4

QTY	TYPE OF RECORD	COST	QTY	TYPE OF RECORD	COST
<input type="checkbox"/>	LETTER OF INCARCERATION (UP TO 5 LODGINGS)	\$6.00	<input type="checkbox"/>	REPLACEMENT COPY OF TCR	\$0.50 PER PAGE
<input type="checkbox"/>	SCOPE RECORD	\$9.00	<input type="checkbox"/>	COPY OF PROPERTY SHEET	\$0.50 PER PAGE
<input type="checkbox"/>	SOCIAL SECURITY REINSTATEMENT FORM	\$6.00	<input checked="" type="checkbox"/>	VISITOR LOG	\$0.50 PER PAGE
<input type="checkbox"/>	1 ADDITIONAL COPY (OF ABOVE ONLY)	\$0.29 PER PAGE	<input type="checkbox"/>	INMATE KITES/ MISC DOCUMENT	\$0.50 PER PAGE

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

C.R. 7.11.18

Inmate Signature / Date

T. Glover 16703 7/11/18

Officer Signature & P# / Date

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

'COMPLIED WITH'

M9288

P#/INIT

7/16/18

DATE

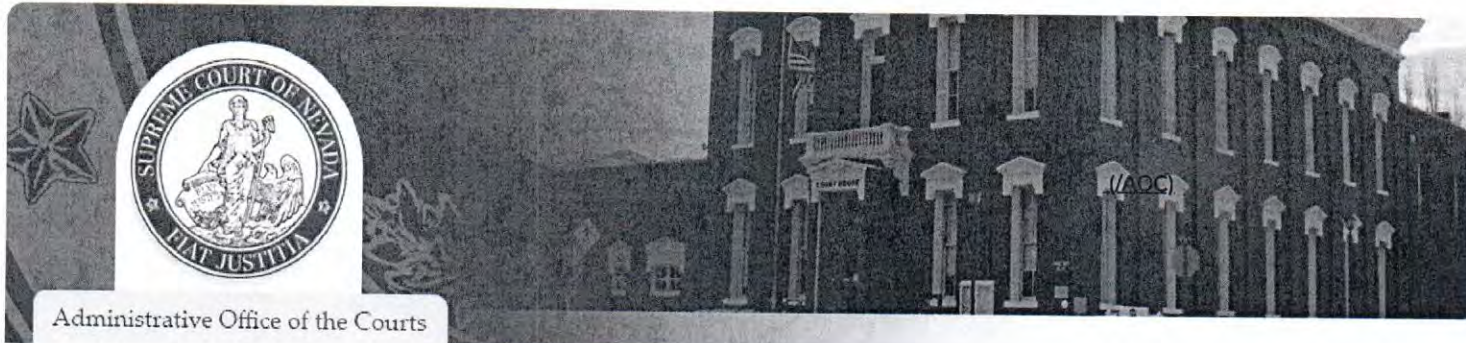
'TOTAL AMOUNT DUE'

\$ 50¢

ATTENTION: I am stating that I want the copy of my visits with my lawyer not my regular visits. It should be free if not then you may charge me.

Visits With Visitor										
(Contact Only after May 2010, Non-Contact in Renovo)										
ID Number : '0008387748' , Start Date : '28-SEP-2017' , End Date : '16-JUL-2018'										

	Current Housing	Inmate Last Name	Inmate First Name	Offender ID	Start Date/Time	End Date/Time	Visit Type	Relation Type	Visitor Last name	Visitor First name	Visitor Middle name
1	LVMPD-NT-7B-14-U	POWELL	ADRIAN	0008387748	06-Oct-17 09:00:00	06-Oct-17 09:30:00	LEG	INV	LAWSON	ROBERT	
2	LVMPD-NT-7B-14-U	POWELL	ADRIAN	0008387748	13-Oct-17 08:00:00	13-Oct-17 08:05:00	LEG	INV	LAWSON	ROBERT	
3	LVMPD-NT-7B-14-U	POWELL	ADRIAN	0008387748	17-Oct-17 13:00:00	17-Oct-17 13:30:00	LEG	ATT	KANE	MICHAEL	
4	LVMPD-NT-7B-14-U	POWELL	ADRIAN	0008387748	08-Nov-17 13:00:00	08-Nov-17 13:05:00	LEG	INV	LAWSON	ROBERT	
5	LVMPD-NT-7B-14-U	POWELL	ADRIAN	0008387748	08-Feb-18 13:00:00	08-Feb-18 13:30:00	LEG	INV	CAMPBELL	SKYE	
6	LVMPD-NT-7B-14-U	POWELL	ADRIAN	0008387748	26-Apr-18 13:30:00	26-Apr-18 14:00:00	LEG	INV	CAMPBELL	SKYE	



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Commission on Indigent Defense Overview

In 2007, the Nevada Supreme Court convened the Indigent Defense Commission (IDC) under the Chairmanship of Justice Michael Cherry to examine and make recommendations regarding the delivery of indigent defense services in Nevada.

The Commission filed its initial report with the Court in November of 2007.

On January 4, 2008, the Court issued its first ADKT 411 Order which contained performance standards, a requirement to remove judges from the appointment of counsel process, and also recommended that all rural counties use the State Public Defender's Office. Additionally, the Order required all jurisdictions to file a plan for the appointment of counsel and made real the voluntary request from Clark and Washoe Counties to conduct weighted caseload studies in order to determine appropriate public defender caseloads. The Order also established a definition of 'indigent' to be used when appointing counsel.

In response to this initial Order, several groups including the district attorneys, rural judges, and counties, filed objections with the Court; a hearing was held in March 2008 and resulted in an Order on March 21, 2008. This Order required that new members be added to the IDC, the performance standards be reconsidered, and the Rural Subcommittee be reconstituted to re-examine the issues in Rural Nevada.

During this interim period, the District Attorneys and Defense Bar worked with the IDC to revise the performance standards, and the Rural Subcommittee reconvened and developed new, refined recommendations. Clark and Washoe Counties, together with cities in urban jurisdictions, formulated and began to implement plans to remove judges from the process of appointment for conflict counsel, and reformed their contract attorney systems.

In 2014, the Indigent Defense Commission's Rural Subcommittee completed its tasks of gathering and analyzing data pertaining to the number and scope of public defender appointments across the State. Early in the winter of 2014, the Rural Subcommittee used this data to present its "Rural Subcommittee Report on the Status of Indigent Defense in the 15 Rural Counties and Recommendations to Improve Service to Indigent Defendants" to the Nevada Supreme Court.

On July 23, 2015, history was made when the Nevada Supreme Court signed ADKT 0411 and adopted and/or endorsed 4 of the Rural Subcommittee's recommendations. This banned the use of strictly flat fee contracts in the delivery of indigent defense services, placed rural death penalty cases and appeals in the hands of the State Public Defender's Office, and encouraged the implementation of an Indigent Defense Board.

QUICK LINKS

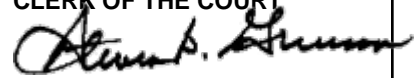
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[Commission Members \(/AOC/Committees_and_Commissions/Indigent_Defense/Commission_Members/\)](#)

[Documents and Forms \(/AOC/Templates/documents.aspx?folderID=8936\)](#)

[Meeting Recordings \(/AOC/Committees_and_Commissions/Indigent_Defense/Meeting_Recordings/\)](#)

[Archived News \(/AOC/Committees_and_Commissions/Indigent_Defense/Archived_News/\)](#)



OPPS

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JOHN GIORDANI
Chief Deputy District Attorney
Nevada Bar #012381
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

ADRIAN POWELL,
#8387748

Defendant.

CASE NO: C-17-327767-2

DEPT NO: XXVIII

**STATE'S OPPOSITION TO DEFENDANT'S MOTION
TO WITHDRAW GUILTY PLEA**

DATE OF HEARING: 2/25/2019
TIME OF HEARING: 9:00 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through JOHN GIORDANI, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion To Withdraw Guilty Plea.

This Opposition is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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APP000335

1 **PROCEDURAL HISTORY**

2 On November 8, 2017, Indictment returned in the District Court charging Defendants
3 Lorenzo Pinkey aka, Lorenzo Pinkney, and Adrian Powell with two (2) counts of Conspiracy
4 To Commit Robbery (Category B Felony - NRS 200.380, 199.480), two (2) counts of Burglary
5 While In Possession Of A Deadly Weapon (Category B Felony - NRS 205.060), three (3)
6 counts of First Degree Kidnapping With Use Of A Deadly Weapon (Category A Felony - NRS
7 200.310, 200.320, 193.165), seven (7) counts of Robbery With Use Of A Deadly Weapon
8 (Category B Felony - NRS 200.380, 193.165) and one (1) count of Unlawful Taking Of
9 Vehicle (Gross Misdemeanor - NRS 205.2715). All charges stemmed from robberies that
10 occurred at a Pepe's Tacos restaurant and a Walgreens store in Las Vegas, Nevada on
11 September 28, 2017.

12 On November 13, 2017, Defendants Pinkney and Powell were arraigned on the
13 aforementioned charges in the District Court. The case ultimately proceeded to jury trial on
14 July 30, 2018. Voir Dire commenced On Monday, July 30, 2018. Court concluded for the day,
15 and the parties returned the following day to resume jury selection. That morning, the parties
16 negotiated for hours, and the State ultimately agreed to allow the Defendants to plead guilty
17 pursuant to the Guilty Plea Agreement discussed below. The Defendants pled guilty, the jury
18 was discharged, and a sentencing date was set for September 12, 2018. Prior to sentencing,
19 the Defendants filed Motions to withdraw their guilty pleas. The State opposes as follows.

20 **FACTUAL BACKGROUND**

21 The evidence in this case was overwhelming. The following is a summary of the
22 victims' testimony from the Grand Jury presentation, as well as a summary of the forensic
23 evidence (DNA AND FINGERPRINTS) and the circumstantial evidence that would have been
24 presented at trial.

25 **A. Testimony of Jose Chavarria**

26 Jose Alfredo Chavarria Valenzuela was working as a cook at Pepe's Tacos located at 2490
27 Fremont Street, Las Vegas, Nevada on September 28, 2017. (RT1 at 32-33). At
28 approximately 2:40 AM, Chavarria was in kitchen area when two gunmen entered the

1 restaurant. (RT1 at 35). Chavarria ran toward the back refrigerator where his co-worker was
2 located, when one of the gunman jumped the counter, followed Chavarria and pointed a gun
3 at him. (RT1 at 35). The gunman told Chavarria to get on the ground and that he “wanted the
4 money.” Id. The gunman then forced Chavarria at gunpoint from the back of the store to the
5 front cash registers. (RT1 35-36). At the cash registers, the gunman began jabbing Chavarria
6 in his side, but Chavarria was unable to open the till because he did not have the correct
7 passcode. (RT1 at 36). The second gunman then retrieved Chavarria’s coworker from the
8 back of the store and forced her to open the cash registers at the front of the store. (RT1 at
9 37). One of the gunmen then took Chavarria to the second cash register, threw him on the
10 ground, and pointed a gun to Chavarria’s head. Id. The gunmen took the money from the
11 cash registers, but did not take any property from Chavarria. (RT1 at 37-38).

12 **B. Testimony of Yenir Hessing**

13 Yenir Hessing works as the shift lead at the Walgreens located at 4470 East Bonanza,
14 Las Vegas, Nevada. (RT1 at 7). On September 28, 2017, Hessing was working the graveyard
15 shift with four other Walgreens employees when, at approximately 4:05 AM, two masked
16 gunmen entered the store. (RT1 at 8-10).

17 Hessing was stocking the shelves in the food aisle when one of the gunmen pointed a gun
18 to her stomach, demanded she move to the front of the store. (RT1 at 10). The food aisle is
19 located near the store’s photo section, away from the registers and store entrance. (RT1 at
20 14:2-6). While pushing her to the front of the store, the gunman told Hessing to go to the cash
21 registers in the front of the store, passing the cash register in the photo section. (RT 14:4-6).
22 As gunman pushed Hessing, he told her this is “not a game and I’m going to kill you.” (RT1
23 at 10).

24 At the front of the store, the gunman told her to open the three cash registers, which Hessing
25 did. Id. At that moment, another Walgreens employee, Tifnie Bobbitt was returning from
26 lunch and, upon seeing Bobbitt, the gunman ordered her the front of the store too. Id. Hessing
27 testified that the gunman was “swearing and saying like really bad things ... grabbed both of
28 us and he asked me where is the big money, where is the safe, and I tell him it was in the

1 office.” (RT1 at 10:12-15). The gunman then used the gun to again push Hessing, this time
2 toward the office located at the back of the store. (RT1 at 10).

3 While the gunman pushed Hessing toward the back of the store, Hessing saw down an aisle
4 that the Walgreen’s pharmacist, Darlene Orat, was being held up by another gunman in the
5 pharmacy. (RT at 9, 12). As the gunman pushed Hessing toward the back office at gunpoint,
6 he told Hessing “I’m going to kill you.” (RT1 at 14:15). Hessing responded to the gunman,
7 telling him “please don’t hurt me, I’m nine weeks pregnant, don’t do anything to me.” (RT1 at
8 15-17). To which the gunman responded “I don’t give a [fuck] I’m going to kill you if you do
9 the wrong code or ... try to call [police].” (RT1 at 14:17-19).

10 Upon reaching the back office, which is behind two doors that each have a different pin
11 code, Hessing entered the code and the gunman forced Hessing and Bobbitt into the office.
12 (RT1 at 15-16). The door to the office closed behind them, leaving Hessing, Bobbitt and the
13 gunman isolated from the rest of the store. (RT1 at 17-18). In the office, the gunman began
14 hitting Hessing in the ribs with the gun and demanding that she open the safe. (RT at 17).
15 Hessing opened the first of two safes and the gunman grabbed everything. Id. The gunman
16 then demanded Hessing open the second safe, which she did. The gunman grabbed the
17 contents from the second safe and fled from the office. Id.

18 **C. Testimony of Tifnie Bobbitt.**

19 Tifnie Bobbit was working as a cashier at the Walgreens located at 4470 East Bonanza,
20 Las Vegas, Nevada, on September 28, 2017. (RT2 at 8). Around 4:00 AM, Bobbitt was
21 headed to breakroom to take her lunch break when she heard a man “say the F word.” (RT2
22 9-10:1). Bobbitt looked over to see the man crouching and walking behind Tenir Hessing.
23 (RT2 at 10). Bobbitt entered the code to the breakroom, entered the room and approached the
24 seconded code-locked door to the office, which she knocked on to alert the Walgreen’s
25 manager. (RT2 10-11). Bobbitt’s manager left and did not return, so Bobbitt, thinking the
26 situation was taken care of, walked out of the breakroom into the store. (RT2at 11). At that
27 moment, the gunman saw her and yelled at her “Where the fuck do you think you’re going,
28 bitch?” ((RT2 at 11:21-24). The gunman then ordered Bobbitt to the front of the store where

1 Hessing was opening the cash registers for the gunman. (RT2 at 13). From there, the gunman
2 forced Bobbit and Hessing from the front of the store to the back office, pushing Bobbitt while
3 telling the women they were walking too slowly. (RT2 at 13-14). At the breakroom door,
4 they enter the code and enter the breakroom. (RT2 at 14). From there, Hessing entered the
5 code to the office door and the gunman forced the women into the office. (RT2 at 14-15). In
6 the office, the gunman “kept jabbing the gun” into Hessing’s side as he was forcing her to
7 open the safes. (RT2 at 15). Once the safes were open, the gunman took the money from the
8 safes and fled. Id.

9 **D. Evidence in addition to Grand Jury Testimony**

10 Both of these armed robberies were captured on video surveillance. In addition, the
11 Defendants used Mr. Pinkney’s girlfriend’s vehicle. After the Walgreen’s event, they crashed
12 the vehicle while fleeing. Defendant’s Pinkney and Powell fled the wrecked vehicle on foot,
13 leaving a trail of US Currency, a mask, and the proceeds of the robberies in their wake. Mr.
14 Powell’s DNA was on the red mask that he dropped when fleeing from Walgreen’s, and Mr.
15 Pinkney’s fingerprints were on the prescription bottles from the Walgreen’s robbery. They
16 were apprehended a short time later wearing the same clothing they wore during the robberies.

17 **ARGUMENT**

18 **I. DEFENDANT’S PLEA WAS KNOWINGLY AND VOLUNTARILY**
19 **ENTERED AND HE HAS NOT ESTABLISHED A SUBSTANTIAL**
20 **REASON WARRANTING WITHDRAWAL OF HIS PLEA.**

21 **A. THERE IS NOT A SUBSTANTIAL, FAIR, AND JUST REASON TO**
22 **ALLOW DEFENDANT TO WITHDRAW HIS GUILTY PLEA**

23 “[A] motion to withdraw a plea of guilty...may be made only before sentence is
24 imposed or imposition of sentence is suspended” unless it is necessary “to correct manifest
25 injustice.” N.R.S. 176.165; Baal v. State, 106 Nev. 69, 72, 787 P.2d 391, 394 (1990). The
26 district court may grant a motion made prior to sentencing or adjudication of guilty for any
27 substantial reason that is fair and just. State v. District Court, 85 Nev. 381, 385, 455 P.2d 923,
28 926 (1969).

1 However, in determining whether a Defendant has “advanced a substantial, fair, and
2 just reason to withdraw a [guilty] plea, the District Court must consider the totality of the
3 circumstances to determine whether the defendant entered the plea voluntarily, knowingly,
4 and intelligently.” Crawford v. State, 117 Nev. 718, 722, 30 P.3d 1123, 1125-26 (2001). A
5 Court “has a duty to review the entire record to determine whether the plea was valid ... [and]
6 may not simply review the plea canvass in a vacuum.” Mitchell v. State, 109 Nev. 137, 141,
7 848 P.2d 1060, 1062 (1993). Nonetheless, a defendant has no right to withdraw his plea simply
8 because he makes his motion prior to sentencing or because the State failed to establish actual
9 prejudice. See, Hubbard v. State, 110 Nev. 671, 675-76, 877 P.2d 519, 521 (1994).

10 In determining whether a guilty plea was knowingly and voluntarily entered, the Court
11 reviews the totality of the circumstances surrounding the plea. Bryant v. State, 102 Nev. 268,
12 271, 721 P.2d 364, 367 (1986)(*superseded by statute*). However, a guilty plea is
13 presumptively valid. Wilson v. State, 99 Nev. 362, 373, 664 P.2d 328, 334 (1983). In
14 addition, when a guilty plea is accepted by the trial court after proper canvassing as to whether
15 the defendant knowingly and intelligently entered his plea, such plea will be deemed properly
16 accepted. Baal v. State, 106 Nev. 69, 72, 787 P.2d 391, 394 (1990).

17 If a proper canvass is conducted, the record will reflect the following: “(1) the defendant
18 knowingly waived his privilege against self-incrimination, the right to trial by jury, and the
19 right to confront his accusers; (2) the plea was voluntary, was not coerced, and was not the
20 result of a promise of leniency; (3) the defendant understood the consequences of his plea and
21 the range of punishment; and (4) the defendant understood the nature of the charge, i.e., the
22 elements of the crime.” Wilson v. State, 99 Nev. 362, 366, 664 P.2d 328, 330 (1983).
23 However, the failure to conduct a ritualistic oral canvass does not require that the plea be
24 invalidated. State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000).

25 In the instant case, Defendant signed a written Guilty Plea Agreement, wherein he
26 acknowledged that he fully understood the entirety of the agreement, had all of his questions
27 answered, and was knowingly and voluntarily entering his guilty pleas. Defendant further
28

1 acknowledged in his signed Guilty Plea Agreement all of the rights he was giving up by
2 entering the agreement:

3 I understand that I am waiving and **forever giving up** the following rights and
4 privileges: 1. The constitutional privilege against self-incrimination...2. The
5 constitutional right to a speedy and public trial by an impartial jury...3. The
6 constitutional right to confront and cross-examine any witnesses who would
7 testify against me...I have discussed the elements of the original charge(s)
8 against me with my attorney and I understand the nature of the charge(s) against
9 me.... I have discussed with my attorney any possible defenses, defense
10 strategies and circumstances which might be in my favor... All of the foregoing
11 elements, consequences, rights, and waiver of rights have been thoroughly
12 explained to me by my attorney. I believe that pleading guilty and accepting
13 this plea bargain is in my best interest, and that trial would be contrary to my
14 best interest. I am signing this agreement voluntarily...and I am not acting under
duress or coercion or by virtue of any promise of leniency, except for those set
forth in this agreement...My attorney has answered all my questions regarding
this guilty plea agreement and its consequences to my satisfaction and I am
satisfied with the services provided by my attorney (GPA pp. 5-6).

15 In addition to the actual GPA, the Court discussed the terms of the agreement with both
16 Defendants extensively on the second day of trial. Specifically, on Monday, July 30, 2018, the
17 Court and the State began the voir dire process. The following morning on Tuesday, July 31,
18 2018, the State and defense attorneys negotiated the case before voir dire resumed. Pursuant
19 to the guilty plea agreements, both Defendants essentially “pled to the sheet,” and in exchange,
20 the State agreed to not seek Life in prison, and agreed to not file charges on ten (10) additional
21 robbery events. Because the jury trial had already commenced, the Court conducted an
22 extremely thorough plea canvass on both Defendants, and ultimately accepted their guilty
23 pleas as freely, knowingly, and voluntarily entered. See Recorder’s Transcript of Plea Canvass
24 of Pinkney and Powell attached hereto as Exhibit 1.

25 After Mr. Durham placed the negotiations on the record, the Court’s plea canvass
26 began with Defendant Pinkney:

27 THE COURT: Okay. I’m going to do these one at a time and very, hopefully,
28 carefully. Let’s start off, Mr. Pinkey –

1 ...
2 DEFENDANT PINKNEY: [Defendant spells True Name]
3 THE COURT: And how old are you?
4 DEFENDANT PINKNEY: I'm 22, Your Honor.
5 THE COURT: How far did you go in school?
6 DEFENDANT PINKNEY: I never got my high school diploma or I never got
7 a GED, but I'm planning on getting that.
8 THE COURT: Do you have any sort of learning disability of any kind?
9 DEFENDANT PINKNEY: Yes, I grew up with a learning disability. I had an
10 IEP, and I grew up with a lot like behavior, my behavior. I got the information
11 on that too. Benjamin, he got status on the stuff, stating that type of stuff.
12 THE COURT: Okay, do you read, write and understand the English language?
13 DEFENDANT PINKNEY: Yes.
14 THE COURT: And is English your primary language?
15 DEFENDANT PINKNEY: Yes, sir.
16 THE COURT: Have you been treated recently for any mental illness or
17 addiction of any kind?
18 DEFENDANT PINKNEY: I have in the past, but not recently.
19 THE COURT: Okay. Has anyone ever suggested to you that you be treated for
20 mental illness or an emotional condition?
21 DEFENDANT PINKNEY: Well, yeah, but – and no. I say yeah and no. It's a
22 yeah on the mental affect, it has been where they wanted me to get treated, but
23 I just hadn't.
24 THE COURT: Okay. Are you currently under the influence of any drug,
25 medication, or alcoholic beverage?
26 DEFENDANT PINKNEY: No, sir.
27 THE COURT: Have you been on any medication during your time in jail?
28 DEFENDANT PINKNEY: No, sir.
THE COURT: Have you received a copy of the indictment – or the guilty plea
agreement?
DEFENDANT PINKNEY: Yes, I have.
THE COURT: Have you discussed this case with your attorney?

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DEFENDANT PINKNEY: Yes.

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

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

THE COURT: Okay. And as to the guilty plea agreement, are you pleading guilty to Counts ... [Court lists counts in the Indictment]

DEFENDANT PINKNEY: Yes, I do.

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

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

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

DEFENDANT PINKNEY: Yes.

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

DEFENDANT PINKNEY: Yes.

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

DEFENDANT PINKNEY: Yes, he did.

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

DEFENDANT PINKNEY: No, Your Honor.

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

DEFENDANT PINKNEY: Pleading guilty.

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

DEFENDANT PINKNEY: Yes.

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

DEFENDANT PINKNEY: Yes, I am, sir.

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

DEFENDANT PINKNEY: No, sir.

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

3 DEFENDANT PINKNEY: No.

4 THE COURT: And do you understand that as part of the guilty plea
5 agreement, although you are not admitting to these crimes, that the State will
6 be allowed to argue these crimes as I'm about to list for you at the time of
7 sentencing? ... [Court then lists ten armed robbery dates, locations, and event
8 numbers, which are also contained on page 2 of the guilty plea agreement].

9 DEFENDANT PINKNEY: Yes.

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

11 DEFENDANT PINKNEY: Yes, I am.

12 ... [Court showed Defendant his signature on the guilty plea agreement]

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

15 DEFENDANT PINKNEY: Yes.

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

18 DEFENDANT PINKNEY: Yes, I did, sir.

19 THE COURT: Do you understand the constitutional rights you're giving up by
20 [] entering a guilty plea agreement?

21 DEFENDANT PINKNEY: Yes, sir.

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

25 DEFENDANT PINKNEY: Yes, sir.

26 ... [Parties recite the range of punishment for each and every count to which
27 Defendant pled]

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

DEFENDANT PINKNEY: Yes, sir.

... [Colloquy regarding the maximum punishment for all counts]

MR. GIORDANI: As long as both Mr. Pinkney and Mr. Powell understand the
range for each count...[a]nd then also they understand sentencing is
completely up to the Court, and if the Court can either run the counts
concurrent or run the counts consecutive.

1 THE COURT: Okay. ... So you understand the individual range of
2 punishments on each of the counts?

3 ...

4 DEFENDANT PINKNEY: Yes, sir.

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

7 DEFENDANT PINKNEY: Yes, sir.

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

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

11 ...

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

13 DEFENDANT PINKNEY: I committed – I went to an establishment, and I
14 committed two robberies – two more robberies – sir.

15 THE COURT: What were the establishments?

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

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

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

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

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

27 THE COURT: Sure.

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

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

3 THE COURT: Okay.

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

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

9 DEFENDANT PINKNEY: Yes.

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

12 DEFENDANT PINKNEY: No, sir.

13 THE COURT: All right. Thank you.

14 MR. DURHAM: Thank you.

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

17 Reporter's Transcript, pp. 3-12.

18 After the foregoing plea canvass of Mr. Pinkney, the Court then went on to canvass Mr.
19 Powell, as thoroughly as it had Mr. Pinkney:

20
21 THE COURT: ... Mr. Powell, how old are you?

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

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

24 DEFENDANT POWELL: I graduated high school.

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

26 DEFENDANT POWELL: No, Your Honor.

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

28 DEFENDANT POWELL: Yes, Your Honor.

THE COURT: And is English your primary language?

1 DEFENDANT POWELL: Yes, Your Honor?

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

4 DEFENDANT POWELL: No, Your Honor.

5 THE COURT: Has anyone ever suggested you should be treated for mental
6 health?

7 DEFENDANT POWELL: No, Your Honor.

8 THE COURT: Are you currently under the influence of any drug, medication,
9 or alcohol?

10 DEFENDANT POWELL: No, Your Honor.

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

12 DEFENDANT POWELL: Yes, Your Honor.

13 THE COURT: What medication?

14 DEFENDANT POWELL: Remeron.

15 THE COURT: What is – what type of medication is that?

16 DEFENDANT POWELL: It treats depression.

17 **THE COURT: How do you feel today?**

18 **DEFENDANT POWELL: I feel excellent, Your Honor.**

19 THE COURT: Do you understand what's happening?

20 DEFENDANT POWELL: Yes, Your Honor.

21 THE COURT: Does the medication affect your ability to understand what's
22 going on today?

23 DEFENDANT POWELL: No, Your Honor.

24 THE COURT: Are you under any other effects of the medication?

25 DEFENDANT POWELL: No, Your Honor.

26 THE COURT: Have you received a copy of the guilty plea agreement?

27 DEFENDANT POWELL: Yes, Your Honor.

28 THE COURT: Did you read the guilty plea agreement?

DEFENDANT POWELL: Yes, Your Honor.

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

2 DEFENDANT POWELL: Yes, Your Honor.

3 THE COURT: Are you satisfied with the representation and advice given to
4 you by your attorney?

5 DEFENDANT POWELL: Yes, Your Honor.

6 THE COURT: As to the charges in the guilty plea agreement, how do you
7 plead?

8 DEFENDANT POWELL: I plead guilty, Your Honor.

9 THE COURT: [Are you] making this plea freely and voluntarily?

10 DEFENDANT POWELL: Yes, Your Honor.

11 **THE COURT: Has anyone forced or threatened you or anyone close to
12 you to get you to enter this plea?**

13 **DEFENDANT POWELL: No, Your Honor.**

14 **THE COURT: Has anyone made any promises other than what's in the
15 guilty plea agreement to get you to enter this plea?**

16 **DEFENDANT POWELL: No, Your Honor.**

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

19 DEFENDANT POWELL: Yes, Your Honor.

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

22 DEFENDANT POWELL: Yes, Your Honor.

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

26 DEFENDANT POWELL: Yes, Your Honor.

27 ... [Court lists ten additional robberies by date, location, and event number.]

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

DEFENDANT POWELL: Yes, Your Honor.

**THE COURT: Did you understand everything contained in this
agreement?**

DEFENDANT POWELL: Yes, Your Honor.

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

3 DEFENDANT POWELL: Yes, Your Honor.

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

7 DEFENDANT POWELL: Yes, Your Honor.

8 THE COURT: And again, do you understand the range of punishment?

9 DEFENDANT POWELL: Yes, Your Honor.

10 THE COURT: Well, we're going to go through and put these on the record, so
11 it's clear.

12 ... [Parties recite penalty range for each and every count to which Defendant
13 pled.]

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

15 DEFENDANT POWELL: Yes, Your Honor.

16 **THE COURT: Do you understand sentencing is entirely up to me?**

17 **DEFENDANT POWELL: Yes, Your Honor.**

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

21 **DEFENDANT POWELL: Yes, Your Honor.**

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

24 **DEFENDANT POWELL: Yes, Your Honor.**

25 THE COURT: [] What is it that you did on the 28th of September to cause you
26 to plead guilty?

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

...

THE COURT: You went into those establishments and committed armed
robberies?

DEFENDANT POWELL: Yes, Your Honor.

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

3 **DEFENDANT POWELL:** No, Your Honor.

4 **THE COURT:** Anything I left out?

5 **MR. GIORDANI:** No.

6 **THE COURT:** Okay. And also for the record, you had approximately two
7 **hours to discuss all of this – maybe longer than that now – with your**
8 **attorney before accepting this?**

9 **DEFENDANT POWELL:** Yes, Your Honor.

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

12 **DEFENDANT POWELL:** Yes, Your Honor.

13 **THE COURT:** Okay. The Court finds the Defendant's plea of guilty is freely
14 and voluntarily made and the Defendant understands the nature and
15 consequences of his plea and, therefore, accepts the plea of guilty.

16 Reporter's Transcript, pp. 15-20.

17 As this Court can see, there is absolutely no basis to allow either Defendant to withdraw
18 this guilty pleas. The Court conducted an extremely thorough plea canvass of both Defendants,
19 and they both responded appropriately and intelligently throughout. Mr. Pinkney was
20 repeatedly asked, out of an abundance of caution, whether he understood the deal, whether he
21 had enough time to talk to his lawyer, and whether he had any questions. Never once did he
22 respond inappropriately to a question, or raise any concerns. Likewise, Mr. Powell responded
23 appropriately to all questions, indicated he had ample time to talk to his lawyer, and went so
24 far as to say he felt "excellent" during his plea canvass. That's because he knew he was getting
25 a beneficial deal when he avoided ten additional robbery cases for pleading guilty to the
26 charges he would have been convicted of by a jury anyway.

27 At the time these deals were entered into, a jury was in the hallway, and the State was
28 entirely prepared to go complete the trial. In fact, the trial had already begun, as the pleas were
29 entered on the second day of jury selection. These Defendants begged for negotiations, and,
30 notwithstanding the fact that the State was confident in the outcome if the case proceeded to

1 trial, the State entered into the deals. The Defendants received a large benefit that incentivized
2 them to take the deals. Specifically, they avoided being charged with dozens of additional
3 counts – many of which included potential Life sentences. Those charges were discussed in
4 detail, and neither Defendant ever once raised a concern or objection to those charges being
5 referenced. The reason for that is simple. **The Defendants themselves knew they committed**
6 **the crimes, understood their exposure, and chose to avoid it.** Now, after the jury was
7 discharged, the State released all its witnesses from subpoena, halted any investigation into
8 the additional offenses, and sent the files to P&P for PSI's to be completed, the Defendants
9 claim that their pleas were not knowingly and voluntarily entered. The record completely
10 contradicts their claims, and the Motion should be denied.

11 Defendant has not set forth any valid basis whatsoever to withdraw his plea.
12 Defendant's Motion rests upon three general claims: 1) the evidence in the ten additional cases
13 was not tested in court, 2) the Defendant did not have an opportunity to review discovery on
14 the ten related cases, and 3) trial counsel was ineffective in advising Defendant to take the
15 plea. *See* Defendant's Motion to Withdraw Guilty Plea, pp. 2-3. Clearly, these claims do not
16 provide a **substantial reason that is both fair and just** warranting withdrawal of a guilty plea
17 – for several reasons. First, the State notes that the ineffective assistance of counsel claim will
18 be addressed in section B, *infra*. As to the first two claims – that the ten related robberies had
19 not been litigated and that they did not review discovery – those claims are nonsensical.
20 Everyone in the room knew that those charges had not been filed, but that they could have
21 been filed after the jury's verdict on the instant charges. That was the entire nature of the
22 agreement. Trial counsel could not have known whether the Defendants committed those ten
23 additional events – only the Defendants themselves knew whether they did. And obviously,
24 since they took the instant plea deal – they did commit those offenses and sought to limit their
25 liability. The alternative for them would have been to complete the trial, run the risk of getting
26 convicted of all counts in the instant case anyway, and then have more exposure on the back
27 end when the State proceeded on the ten additional events. Clearly, they wanted to limit their
28 exposure, as they knew they were going to be convicted on the instant charges, and chose to

1 avoid the chance of being convicted on dozens of additional charges. Again, the trial was
2 already underway. Had the Defendants believed that they were innocent of the ten additional
3 events – they could have finished the trial on the instant charges, and took their chances on the
4 additional charges. They chose not to do so. And, based upon the plea canvass and the GPA
5 itself, they chose to do so strategically. They cannot now withdraw their pleas on a whim. Nor
6 can they withdraw their pleas based on a second opinion from a different attorney, or even
7 cold feet. The legal standard for withdrawal of a guilty plea is a “**substantial reason that is**
8 **both fair and just**” – not “cold feet” or “a second opinion.”

9 While the State need not set forth actual prejudice, Hubbard, 110 Nev. at 675-76, 877
10 P.2d at 521, the State would take this opportunity to address the broader implications of
11 allowing a defendant such as this to withdraw his plea based on nothing more than a whim.
12 As this Court can see, there are no issues with the Guilty Plea Agreement, no issues with the
13 plea canvass, and absolutely no reason to believe that anything else was going on behind the
14 scenes that may render this guilty plea questionable. As such, allowing this Defendant to
15 withdraw his plea would render plea agreements and plea canvasses meaningless. If those
16 things are done perfectly, and there is nothing outside those records that creates a question as
17 to the voluntary and knowing nature of the guilty plea, why would any party – State or Defense
18 – ever enter into a guilty plea, knowing it can be withdrawn for no good reason? When the
19 guilty pleas were entered in this case, the Court discharged the jury, the State released dozens
20 of witnesses from subpoena, did not file additional charges related to the ten robbery events
21 (per the agreement), and sent its file to Parole & Probation for a PSI. In a perfect world with
22 unlimited prosecutorial resources, the State would continue to investigate and build the
23 strength of their case up until the moment the defendant is sentenced, but as this Court is
24 aware, that is simply not possible in the real world. Allowing Defendant’s to withdraw their
25 pleas on a whim would change the entire fabric of the justice system. That is why the law
26 requires a **substantial reason that is both fair and just** before a Defendant is allowed to
27 withdraw his plea. No such reason was given here.

1 As to Defendant's claim that they had not received discovery on the ten additional
2 cases, that claim fails as well. Most importantly, there is no right to pre-indictment discovery,
3 so there was no "discovery" to begin with. In addition, as outlined thoroughly above, the
4 Defendants themselves knew whether they committed the ten additional events, and the
5 strength of the evidence in those cases is irrelevant. They chose to take the deal that ensured
6 them the least exposure, and they did so. While the new attorney may personally believe that
7 the evidence in the additional cases was not as strong as the evidence in the instant case, that
8 is not a basis to allow them to withdraw their guilty pleas. They pled guilty to the charges in
9 the instant case, not the ten additional cases. Again, this is not a substantial reason that is both
10 fair and just. Allowing the Defendants to withdraw their pleas would be unfair and unjust.

11 **B. DEFENDANT'S TRIAL COUNSEL WAS EFFECTIVE, AND GAVE HIM**
12 **SOUND ADVICE PRIOR TO HIS ENTRY OF PLEA**

13 To the extent that a motion to withdraw plea is premised upon an allegation of
14 ineffective assistance of counsel, to succeed a Defendant must establish that: (1) counsel's
15 performance was deficient because it fell below an objective standard of reasonableness
16 measured by prevailing professional norms; and, (2) counsel's deficient performance
17 prejudiced the defendant. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Riley v.
18 State, 110 Nev. 638, 646, 878 P.2d 272, 277-78 (1995). The Court may consider both prongs
19 in any order and need not consider them both when a defendant's showing on either prong is
20 insufficient. Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996). A defendant
21 demonstrates that Counsel's performance was deficient when he can establish that counsel
22 made errors so grave that counsel was not functioning as the counsel guaranteed by the Sixth
23 Amendment. Strickland v. Washington, supra, 466 U.S. at 687. To satisfy the prejudice prong
24 of the Strickland standard, Defendant must establish a reasonable probability that but for
25 counsel's errors, the defendant would not have pleaded guilty and would have insisted on
26 going to trial. Reeves v. State, 113 Nev. 959, 960, 944 P.2d 795, 796 (1997). A reasonable
27 probability means a probability sufficient to undermine confidence in the outcome of the
28 proceeding. Kirksey v. State, supra, 112 Nev. at 988.

1 “A fair assessment of attorney performance requires that every effort be made to
2 eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's
3 challenged conduct, and to evaluate the conduct from counsel's perspective at the time.”
4 *Kirksey v. State*, *supra*, 112 Nev. at 987-988 (citing *Strickland v. Washington*, *supra*, 466 U.S.
5 at 689). Moreover, “[t]he role of a court presented with allegations of ineffective counsel ‘is
6 not to pass upon the merits of the action not taken but to determine whether, under the
7 particular facts and circumstances of the case, trial counsel failed to render reasonably
8 effective assistance...’” *Donovan v. State*, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978)(citing
9 *Cooper v. Fitzharris*, 551 F.2d 1162, 1166 (9th Cir. 1977)). Trial counsel is not obligated not
10 make every conceivable motion regardless of the possibility of success in order to protect
11 himself from claims of ineffectiveness. *Id.* Thus, the Court starts with a presumption that
12 counsel offered effective assistance of counsel and then evaluates whether Defendant
13 demonstrated that counsel was ineffective. *See, Means v. State*, 120 Nev. 1001, 1012, 103
14 P.3d 25, 33 (2004). Counsel’s strategy decisions are "tactical" decisions and will be "virtually
15 unchallengeable absent extraordinary circumstances." *Doleman v. State*, *supra*, 112 Nev. at
16 846; *see also, Howard v. State*, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990); *State v. Meeker*,
17 693 P.2d 911, 917 (Ariz. 1984). “[W]hile the client may make decisions regarding the ultimate
18 objectives of representation, the trial lawyer alone is entrusted with decisions regarding legal
19 tactics... He, not the client, has the immediate-and ultimate-responsibility of deciding if and
20 when to object, which witnesses, if any, to call, and what defenses to develop.” *Rhyne v. State*,
21 118 Nev. 1, 8, 38 P.3d 163, 167 (2002).

22 In the instant case, trial counsel’s performance was not deficient, nor did it prejudice
23 Defendant in any way. While the new attorney on the case, may have done things differently,
24 or sought a different outcome, the reality of the situation was simple – trial counsel knew his
25 client was going to be convicted if the trial was completed, knew there were ten additional
26 events that could be filed thereafter, and he sought a negotiation at Defendant’s request. The
27 State was inclined to finish the trial, but relented and agreed to the negotiation. Trial counsel’s
28 performance was entirely reasonable. Indeed, “[a] fair assessment of attorney performance

1 requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct
2 the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's
3 perspective at the time.” Kirksey v. State, *supra*, 112 Nev. at 987-988 (citing Strickland v.
4 Washington, *supra*, 466 U.S. at 689). In fact, the alternative would have been to proceed to
5 verdict on the instant charges, and take their chances with the dozens of additional charges.
6 Out of those two options, any reasonable attorney would have advised their client to limit their
7 exposure, as trial counsel did here. As to the prejudice prong of the Strickland analysis, the
8 same reasoning applies. Defendant did not suffer any prejudice based upon his counsel’s
9 performance, he simply had two options, and took the better of the two.

10 CONCLUSION

11
12 In light of the foregoing, the State respectfully requests that this Honorable Court
13 DENY Defendant’s Motion to Withdraw Guilty Plea.

14 DATED this 5th day of February, 2019.

15 Respectfully submitted,

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

18
19 BY /s// JOHN GIORDANI
20 JOHN GIORDANI
Chief Deputy District Attorney
Nevada Bar #012381

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CERTIFICATE OF ELECTRONIC TRANSMISSION

I hereby certify that service of the above and foregoing was made this 5th day of February, 2019, by electronic transmission to:

MONIQUE MCNEILL
Monique.mcneill@yahoo.com

BY /s// E. DEL PADRE
E. DEL PADRE
Secretary for the District Attorney's Office

JG/ed/GCU



RTRAN

**DISTRICT COURT
CLARK COUNTY, NEVADA**

STATE OF NEVADA,

Plaintiff,

CASE#: C-17-327767-1

DEPT. XXVIII

vs.

ADRIAN POWELL,

Defendant.

BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE
MONDAY, FEBRUARY 25, 2019

***RECORDER'S TRANSCRIPT OF HEARING
WITHDRAWAL OF PLEA***

APPEARANCES:

For the State:

LEAH BRADLEY, ESQ.

For the Defendant:

NO APPEARANCE

RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER
TRANSCRIBED BY: JUDY CHAPPELL, COURT RECORDER

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Las Vegas, Nevada, Monday, February 25, 2019

[Case called at 10:04 a.m.]

THE COURT: Mr. Gaffney here? Ms. McNeill here?

MS. BRADLEY: Judge, on those, I don't know if they're going to be appearing because I received a notification from our specialty team deputy on those two cases that all three of them were requesting that the case be continued so Judge Israel could hear the – the specific motion because I believe he has some familiarity with –

THE COURT: All right.

MS. BRADLEY: -- this case. So I don't know if they felt they didn't have to appear because of that.

THE COURT: I wish they would have told me because I reviewed these over the weekend.

MS. BRADLEY: Oh, I'm sorry, Judge.

THE COURT: All right. Page 8 and 9, 8 is Pikney and 9 is Powell, will be continued for two weeks.

THE LAW CLERK: No, to the 27th.

THE COURT: To the 27th?

THE LAW CLERK: Uh-huh.

THE CLERK: So March – March, right?

THE COURT: March?

THE LAW CLERK: This week, like the 27th.

THE CLERK: Tomorrow?

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THE LAW CLERK: Wednesday.

THE CLERK: Okay.

February 27th at 9 a.m.

[Hearing concluded at 10:05 a.m.]

* * * * *

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



Judy Chappell
Court Recorder/Transcriber

C-17-327767-2 State of Nevada
 vs
 Adrian Powell

February 25, 2019 09:00 AM Hearing Re: Withdrawal of Plea

HEARD BY: Villani, Michael COURTROOM: RJC Courtroom 11A

COURT CLERK: Black, Olivia

RECORDER: Georgilas, Cynthia

REPORTER:

PARTIES PRESENT:

Adrian Powell Defendant

JOURNAL ENTRIES

Haley Jaramelo appearing on behalf of the State in accordance with Nevada Supreme Court Rule 49.5 under the supervision of Chief Deputy District Attorney, Leah Beverly.

Ms. McNeill not present. At the request of the State, COURT ORDERED, matter CONTINUED.

CUSTODY

CONTINUED TO: 02/27/19 9:00 AM (DEPT 28)



1 RTRAN

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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

Felony/Gross Misdemeanor

COURT MINUTES

February 27, 2019

C-17-327767-2 State of Nevada
 vs
 Adrian Powell

February 27, 2019 09:00 AM Hearing Re: Withdrawal of Plea

HEARD BY: Israel, Ronald J. COURTROOM: RJC Courtroom 15C

COURT CLERK: Thomas, Kathy

RECORDER: Chappell, Judy

REPORTER:

PARTIES PRESENT:

Adrian Powell Defendant

John Giordani Attorney for Defendant, Plaintiff

Monique A. McNeill Attorney for Defendant

State of Nevada Plaintiff

JOURNAL ENTRIES

Deft. POWELL present, in custody. Court noted the Court read all the pleadings. Ms. McNeill argued and requested an evidentiary hearing with prior counsel. State argued and briefed the Court of the Deft's canvaass and plea with the transcript. Court finds no grounds under Strikland v. Washington to substantiate in-effective assistance, Deft. knowingly and voluntarily accepted the plea and over the all the circumstances, COURT ORDERED, Motion to withdrawal of Plea, DENIED. Court directed the State to prepare the order. At the request of Counsel, COURT ORDERED, a Status Check be set regarding the outcome of the Co-Deft's Motion to Withdraw Plea.

CUSTODY

04/08/19 9:00 AM STATUS CHECK: OUTCOME OF CO-DEFT'S EVIDENTIARY HEARING

Felony/Gross Misdemeanor

COURT MINUTES

April 10, 2019

C-17-327767-2 State of Nevada
 vs
 Adrian Powell

April 10, 2019 09:00 AM Status Check Re: Outcome of Co-Def't's Evidentiary Hearing

HEARD BY: Israel, Ronald J. COURTROOM: RJC Courtroom 15C

COURT CLERK: Thomas, Kathy

RECORDER: Chappell, Judy

REPORTER:

PARTIES PRESENT:

Adrian Powell Defendant

John Giordani Attorney for Defendant, Plaintiff

Monique A. McNeill Attorney for Defendant

State of Nevada Plaintiff

JOURNAL ENTRIES

Deft. POWELL present, in custody. Co-Deft. present with counsel. Court noted Deft. Powell's motion to withdraw plea was denied earlier and the hearing for the Co-Deft's motion is set for 04/24/19. COURT ORDERED, Status Check Re: outcome of Co-Deft's Evidentiary Hearing, SET in chambers. State noted he would contact counsel with the sentencing date following the Co-Deft's hearing. Ms. McNeill and Deft. would not need to appear to the Co-Deft's Hearing. Ms. McNeill agreed.

04/24/19 (CHAMBERS) STATUS CHECK RE: OUTCOME OF CO-DEFT'S EVIDENTIARY HEARING

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 24, 2019

C-17-327767-2 State of Nevada
vs
Adrian Powell

April 24, 2019

Chambers

Status Check

**Status Check Re:
Outcome of Co-Def't's
Evidentiary Hearing**

HEARD BY: Israel, Ronald J.

COURTROOM: RJC Courtroom 15C

COURT CLERK: Kathy Thomas

RECORDER: Judy Chappell

PARTIES

PRESENT: Giordani, John
State of Nevada

Deputy District Attorney
Plaintiff

JOURNAL ENTRIES

- Deft. POWELL not present, in custody. Matter scheduled for chambers. Co-Def't's Motion to Withdraw Plea was denied and set for sentencing and therefore; COURT ORDERED, Matter SET for sentencing with the Co-Def't.

CUSTODY

05/22/19 9:00 AM SENTENCING

CLERK'S NOTE: A copy of this minute order was placed in the attorney folder(s) of: Monique McNeill, Esq. kt 04/24/19.

PRINT DATE: 04/24/2019

Page 1 of 1

Minutes Date: April 24, 2019

APP000383



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

Felony/Gross Misdemeanor

COURT MINUTES

May 22, 2019

C-17-327767-2 State of Nevada
 vs
 Adrian Powell

May 22, 2019 09:00 AM Sentencing

HEARD BY: Israel, Ronald J. COURTROOM: RJC Courtroom 15C

COURT CLERK: Thomas, Kathy

RECORDER: Chappell, Judy

REPORTER:

PARTIES PRESENT:

Adrian Powell Defendant

John Giordani Attorney for Defendant, Plaintiff

Monique A. McNeill Attorney for Defendant

State of Nevada Plaintiff

JOURNAL ENTRIES

Deft. POWELL, present, in custody. State provided charts used with State's arguments; Marked as State's exhibit (See Worksheet). Argument by the State. Statement by Deft. and Argument by Ms. McNeill. Court stated findings. DEFT POWELL ADJUDGED GUILTY of COUNTS 1 and 8 CONSPIRACY TO COMMIT ROBBERY (F), COUNTS 2 and 9 BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (F), COUNTS 3 and 13 FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON (F) and COUNTS 4, 5, 6, 7, 10, 11 and 14 - ROBBERY WITH USE OF A DEADLY WEAPON (F). COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, a \$150.00 DNA Analysis fee and testing WAIVED, having been previously submitted, \$3.00 DNA Collection fee and Restitution in the Total Amount of \$3,942.00 Jointly and Severally with Co-Deft. (Payable to; \$1,100.00 to Pepe's Tacos; \$2,342.00 to Rebel Oil Co; \$500.00 to Roberto's on Rainbow). Deft. SENTENCED to

COUNT 1 - a MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM Parole Eligibility of TWELVE (12) MONTHS, as to,

COUNT 2 - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS, CONCURRENT with COUNT 1, as to,

COUNT 3 - a MAXIMUM of FIFTEEN (15) YEARS with a MINIMUM Parole Eligibility of FIVE (5) YEARS plus a CONSECUTIVE term of NINETY-SIX (96) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS for the Use of a Deadly Weapon, CONCURRENT with COUNT 2, as to,

COUNT 4 - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS plus a CONSECUTIVE term of NINETY-SIX (96) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS for the Use of a Deadly Weapon, CONCURRENT with COUNT 3; as to,

COUNT 5 - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS plus a CONSECUTIVE term of NINETY-SIX (96) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS for the Use of a Deadly Weapon,

CONCURRENT with COUNT 4; as to,

COUNT 6 - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS plus a CONSECUTIVE term of NINETY-SIX (96) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS for the Use of a Deadly Weapon, CONCURRENT with COUNT 5; as to,

COUNT 7 - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS plus a CONSECUTIVE term of NINETY-SIX (96) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS for the Use of a Deadly Weapon, CONCURRENT with COUNT 6; as to,

COUNT 8 - a MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM Parole Eligibility of TWELVE (12) MONTHS, CONCURRENT with COUNT 7; as to,

COUNT 9 - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS, CONCURRENT with COUNT 8; as to,

COUNT 10 - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS plus a CONSECUTIVE term of NINETY-SIX (96) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS for the Use of a Deadly Weapon, CONCURRENT with COUNT 7; as to,

COUNT 11 - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS plus a CONSECUTIVE term of NINETY-SIX (96) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS for the Use of a Deadly Weapon, CONCURRENT with COUNT 10; as to,

COUNT 13 - a MAXIMUM of FIFTEEN (15) YEARS with a MINIMUM Parole Eligibility of FIVE (5) YEARS plus a CONSECUTIVE term of NINETY-SIX (96) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS for the Use of a Deadly Weapon, CONSECUTIVE to COUNT 3; and

COUNT 14 - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS plus a CONSECUTIVE term of NINETY-SIX (96) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS for the Use of a Deadly Weapon, CONCURRENT with COUNT 11;

with SIX HUNDRED TWO (602) DAYS credit for time served.

The AGGREGATE TOTAL sentence is FIVE HUNDRED FIFTY-TWO (552) MONTHS MAXIMUM with a MINIMUM PAROLE ELIGIBILITY OF ONE HUNDRED NINETY-TWO (192) MONTHS.

NDC

Steven D. Grierson

1 JOCP

2
3
4 DISTRICT COURT

5 CLARK COUNTY, NEVADA

6
7 THE STATE OF NEVADA,

8 Plaintiff,

CASE NO. C-17-327767-2

9 -VS-

DEPT. NO. XXVIII

10
11 ADRIAN POWELL
#8387748

12 Defendant.

13 JUDGMENT OF CONVICTION

14 (PLEA OF GUILTY)

15
16
17 The Defendant previously appeared before the Court with counsel and entered a plea of
18 guilty to the crimes of COUNTS 1 and 8 – CONSPIRACY TO COMMIT ROBBERY
19 (Category B Felony) in violation of NRS 200.380, 199.480; COUNTS 2 and 9 – BURGLARY
20 WHILE IN POSSESSION OF A DEADLY WEAPON (Category B Felony) in violation of
21 NRS 205.060; COUNTS 3 and 13 – FIRST DEGREE KIDNAPPING WITH USE OF A
22 DEADLY WEAPON (Category A Felony) in violation of NRS 200.310, 200.320, 193.165; and
23 COUNTS 4, 5, 6, 7, 10, 11 and 14 - ROBBERY WITH USE OF A DEADLY WEAPON
24 (Category B Felony) in violation of NRS 200.380, 193.165; thereafter, on the 22nd day May,
25 2019, the Defendant was present in Court for sentencing with counsel MONIQUE A.
26 MCNEILL, ESQ., and good cause appearing,
27
28

<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	

John
JB

APP000410

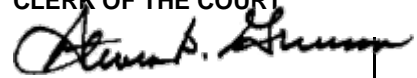
1 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in addition
2 to the \$25.00 Administrative Assessment and \$3,942.00 Restitution payable jointly and
3 severally with Co-Defendant (\$1,100.00 Pepe's Tacos; \$2,342.00 to Rebel Oil Co; \$500.00 to
4 Roberto's on Rainbow) plus \$3.00 DNA Collection Fee, the Defendant is sentenced to the
5 Nevada Department of Corrections (NDC) as follows: **COUNT 1** - a MAXIMUM of FORTY-
6 EIGHT (48) MONTHS with a MINIMUM Parole Eligibility of TWELVE (12) MONTHS;
7 **COUNT 2** - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a
8 MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS, CONCURRENT with COUNT
9 1; **COUNT 3** - a MAXIMUM of FIFTEEN (15) YEARS with a MINIMUM Parole Eligibility
10 of FIVE (5) YEARS plus a CONSECUTIVE term of NINETY-SIX (96) MONTHS with a
11 MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS for the Use of a Deadly
12 Weapon, CONCURRENT with COUNT 2; **COUNT 4** - a MAXIMUM of ONE HUNDRED
13 TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36)
14 MONTHS plus a CONSECUTIVE term of NINETY-SIX (96) MONTHS with a MINIMUM
15 Parole Eligibility of THIRTY-SIX (36) MONTHS for the Use of a Deadly Weapon,
16 CONCURRENT with COUNT 3; **COUNT 5** - a MAXIMUM of ONE HUNDRED TWENTY
17 (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS plus a
18 CONSECUTIVE term of NINETY-SIX (96) MONTHS with a MINIMUM Parole Eligibility of
19 THIRTY-SIX (36) MONTHS for the Use of a Deadly Weapon, CONCURRENT with COUNT
20 4; **COUNT 6** - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a
21 MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS plus a CONSECUTIVE term of
22 NINETY-SIX (96) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36)
23 MONTHS for the Use of a Deadly Weapon, CONCURRENT with COUNT 5; **COUNT 7** - a
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1 MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole
2 Eligibility of THIRTY-SIX (36) MONTHS plus a CONSECUTIVE term of NINETY-SIX (96)
3 MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS for the Use of
4 a Deadly Weapon, CONCURRENT with COUNT 6; **COUNT 8** - a MAXIMUM of FORTY-
5 EIGHT (48) MONTHS with a MINIMUM Parole Eligibility of TWELVE (12) MONTHS,
6 CONCURRENT with COUNT 7; **COUNT 9** - a MAXIMUM of ONE HUNDRED TWENTY
7 (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS,
8 CONCURRENT with COUNT 8; **COUNT 10** - a MAXIMUM of ONE HUNDRED TWENTY
9 (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS plus a
10 CONSECUTIVE term of NINETY-SIX (96) MONTHS with a MINIMUM Parole Eligibility of
11 THIRTY-SIX (36) MONTHS for the Use of a Deadly Weapon, CONCURRENT with COUNT
12 7; **COUNT 11** - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a
13 MINIMUM Parole Eligibility of THIRTY-SIX (36) MONTHS plus a CONSECUTIVE term of
14 NINETY-SIX (96) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36)
15 MONTHS for the Use of a Deadly Weapon, CONCURRENT with COUNT 10; **COUNT 13** - a
16 MAXIMUM of FIFTEEN (15) YEARS with a MINIMUM Parole Eligibility of FIVE (5)
17 YEARS plus a CONSECUTIVE term of NINETY-SIX (96) MONTHS with a MINIMUM
18 Parole Eligibility of THIRTY-SIX (36) MONTHS for the Use of a Deadly Weapon,
19 CONSECUTIVE to COUNT 3; and **COUNT 14** - a MAXIMUM of ONE HUNDRED
20 TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36)
21 MONTHS plus a CONSECUTIVE term of NINETY-SIX (96) MONTHS with a MINIMUM
22 Parole Eligibility of THIRTY-SIX (36) MONTHS for the Use of a Deadly Weapon,
23 CONCURRENT with COUNT 11; with SIX HUNDRED TWO (602) DAYS credit for time
24
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1 served. As the \$150.00 DNA Analysis Fee and Genetic Testing have been previously imposed,
2 the Fee and Testing in the current case are WAIVED. The AGGREGATE TOTAL sentence is
3 FIVE HUNDRED FIFTY-TWO (552) MONTHS MAXIMUM with a MINIMUM PAROLE
4 ELIGIBILITY OF ONE HUNDRED NINETY-TWO (192) MONTHS.
5

6 DATED this 23 day of May, 2019.

7
8 
9 RONALD J. ISRAEL
10 DISTRICT COURT JUDGE
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1 **REQT**
2 **MONIQUE A. MCNEILL, ESQ.**
3 Nevada Bar No. 009862
4 P.O. Box 2451
5 Las Vegas, Nevada 89125
6 Phone: (702) 497-9734
7 Email: monique.mcneill@yahoo.com
8 Counsel for ADRIAN POWELL

6 **DISTRICT COURT**
7
8 **CLARK COUNTY, NEVADA**

9 THE STATE OF NEVADA,)

10 Plaintiff,)

11 vs.)

12 ADRIAN POWELL,)

13 Defendant.)

CASE NO: C-17-327767-2

DEPT. NO: XXVIII

DATE: _____

TIME: _____

15
16 **REQUEST FOR TRANSCRIPTS**

17 **TO: JUDY CHAPPELL, court recorder**

18 **ADRIAN POWELL, defendant above named, by and through his Attorney, MONIQUE A.**
19 **MCNEILL, ESQ., requests preparation of transcripts of the proceedings before the district court, as**
20 **follows:**

21 **Dates of Proceedings: 2/25/2019**

22 **5/22/2019**

23 **This notice requests a transcript of only those portions of the District Court proceedings**
24 **which counsel reasonably and in good faith believes are necessary to determine whether appellate**
25 **issues are present.**

26 **///**

27 **///**

28 **///**

1 I recognize that I must personally serve a copy of this form on the above-named court
2 recorder and that the above-named reporter shall have ten (10) days from receipt of this notice to
3 prepare and submit to the district court the rough draft transcripts requested herein.

4 DATED this 21st Day of June, 2019.

5
6 By: /s/ Monique A. McNeill, Esq.
7 **MONIQUE A. MCNEILL, ESQ.**
8 Nevada Bar No. 009862
9 P.O. Box 2451
10 Las Vegas, Nevada 89125
11 Phone: (702) 49-9734
12 Email: monique.mcneill@yahoo.com

13 **CERTIFICATE OF SERVICE**

14 I certify that on the 25th day of June, 2019, I sent a copy of this Request for Transcript to
15 the court recorder, Judy Chappell, at chappellj@clarkcountycourts.us

16 

17 **MONIQUE A. MCNEILL, ESQ.**
18 Nevada Bar No. 009862
19 P.O. Box 2451
20 Las Vegas, Nevada 89125
21 Phone: (702) 49-9734
22 Email: monique.mcneill@yahoo.com
23
24
25
26
27
28

IN THE SUPREME COURT OF THE STATE OF NEVADA

ADRIAN POWELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 79037
District Court Case No. C327767

FILED

JUN 16 2020

Elizabeth A. Brown
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court to conduct an evidentiary hearing on Powell's presentence motion to withdraw his guilty plea."

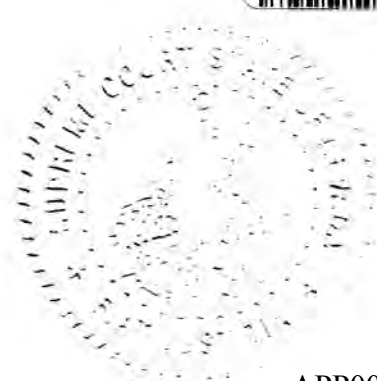
Judgment, as quoted above, entered this 11 day of May, 2020.

IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
June 05, 2020.

Elizabeth A. Brown, Supreme Court Clerk

By: Danielle Friend
Chief Assistant Clerk

C-17-327767-2
CCJR
NV Supreme Court Clerks Certificate/Judgm
4918089



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ADRIAN POWELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 79037-COA

FILED

MAY 11 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Adrian Powell appeals from a judgment of conviction, pursuant to a guilty plea, of two counts each of conspiracy to commit robbery, burglary while in possession of a deadly weapon, and first-degree kidnapping with the use of a deadly weapon, and seven counts of robbery with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

Powell claims the district court erred by denying his presentence motion to withdraw his guilty plea without first conducting an evidentiary hearing. A defendant may move to withdraw a guilty plea before sentencing, NRS 176.165, and "a district court may grant a defendant's motion to withdraw his guilty plea before sentencing for any reason where permitting withdrawal would be fair and just," *Stevenson v. State*, 131 Nev. 598, 604, 354 P.3d 1277, 1281 (2015). Courts should not focus exclusively on whether the plea was knowingly, voluntarily, and intelligently pleaded. *Id.* at 603, 354 P.3d at 1281. Nor should courts generally consider the guilt or innocence of the defendant. *See Hargrove v. State*, 100 Nev. 498, 503, 686 P.2d 222, 226 (1984).

Ineffective assistance of counsel could be a fair and just reason for withdrawing a guilty plea. *See Stevenson*, 131 Nev. at 604, 354 P.3d at

1281. A defendant is entitled to an evidentiary hearing on a claim of ineffective assistance of counsel only if he asserts specific factual allegations that are not belied by the record and, if true, would entitle him to relief. *Hargrove*, 100 Nev. at 502-03, 686 P.2d at 225.

As Powell points out on appeal, he claimed counsel was ineffective for advising him to enter a guilty plea when part of the purported benefit was the State foregoing filing new charges but neither counsel nor Powell fully understood the nature of the new charges. Powell further claimed that, because he has since learned there was no evidence linking him to the new charges, he would not have pleaded guilty but would have insisted on going to trial. Powell's claims, if true and not belied by the record, entitled him to relief. *See Kirksey v. State*, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996) (setting forth the deficiency and prejudice prongs of the test for ineffective assistance of counsel). The record does not belie Powell's claims. We therefore conclude the district court erred by denying this claim without first conducting an evidentiary hearing.

Powell also points out that he claimed counsel advised him he would receive a sentence of approximately 6 to 15 years, and this untrue assurance led him into accepting the guilty plea. Powell's claim, if true and not belied by the record, entitled him to relief. *See id.* The record does not belie Powell's claim. We therefore conclude the district court erred by denying this claim without first conducting an evidentiary hearing.


Finally, Powell claims the district court should have conducted an evidentiary hearing regarding whether or not he understood the nature of the pending trial. None of Powell's claims, either below or in this court, are particularly well pleaded, but it does not appear that Powell raised this

underlying claim below. We therefore conclude the district court did not err by not conducting an evidentiary hearing on this issue.

For the foregoing reasons, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court to conduct an evidentiary hearing on Powell's presentence motion to withdraw his guilty plea.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Ronald J. Israel, District Judge
Monique A. McNeill
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

¹Although not raised in the appeal, we note the district court applied the wrong standard for presentence motions to withdraw a guilty plea. The district court reviewed Powell's motion for whether his guilty plea was knowingly and voluntarily entered instead of for whether there was a fair and just reason to grant withdrawal.

CERTIFIED COPY

This document is a full, true and correct copy of the original on file and of record in my office.

DATE: June 5, 2020

Supreme Court Clerk, State of Nevada

By [Signature] Deputy

APP000420

IN THE SUPREME COURT OF THE STATE OF NEVADA

ADRIAN POWELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 79037
District Court Case No. C327767

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: June 05, 2020

Elizabeth A. Brown, Clerk of Court

By: Danielle Friend
Chief Assistant Clerk

cc (without enclosures):
Hon. Ronald J. Israel, District Judge
Monique A. McNeill
Clark County District Attorney

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on JUN 16 2020.

HEATHER UNGERMANN
Deputy District Court Clerk

RECEIVED
APPEALS

JUN 16 2020

CLERK OF THE COURT

Felony/Gross Misdemeanor

COURT MINUTES

June 29, 2020

C-17-327767-2 State of Nevada
 vs
 Adrian Powell

June 29, 2020 01:45 PM Further Proceedings RE: Court of Appeals' Order of Reversal
and Remand

HEARD BY: Israel, Ronald J. COURTROOM: RJC Courtroom 15C

COURT CLERK: Thomas, Kathy

RECORDER: Chappell, Judy

REPORTER:

PARTIES PRESENT:

Dena I. Rinetti Attorney for Plaintiff

Monique A. McNeill Attorney for Defendant

State of Nevada Plaintiff

JOURNAL ENTRIES

Deft. POWELL not present, in custody in the Nevada Department of Corrections (NDC). Deft. was not transported. Upon Court's inquiry, Ms. McNeill stated Mr. Michael Kane was prior counsel. State noted the Deft. could appear via video from the prison and counsel prepare and transport order for video from the prison. COURT ORDERED, Matter SET for hearing.

NDC

08/13/2020 1:15PM HEARING RE: APPEAL/REMAND- DENIAL OF WITHDRAWAL OF
GUILTY PLEA



1 RTRAN

2
3
4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 STATE OF NEVADA,

CASE#: C-17-327767-2

9 Plaintiff,

DEPT. XXVIII

10 vs.

11 ADRIAN POWELL,

12 Defendant.

13
14 BEFORE THE HONORABLE RONALD J. ISRAEL, DISTRICT COURT JUDGE
15 THURSDAY, AUGUST 13, 2020

16 **RECORDER'S TRANSCRIPT OF HEARING**
17 **HEARING RE: APPEAL REMAND-DENIAL OF**
18 **WITHDRAWAL OF GUILTY PLEA**

19 APPEARANCES:

20 For the State:

JOHN L. GIORDANI III, ESQ.
Chief Deputy District Attorney
(via Bluejeans)

22 For the Defendant:

MONIQUE A. MCNEILL, ESQ.

24
25 RECORDED BY: JUDY CHAPPELL, COURT RECORDER

1 Las Vegas, Nevada, Thursday, August 13, 2020

2
3 [Case called at 1:21 p.m.]

4
5 THE COURT: 327767, Powell.

6 Counsel, state your appearance for the record.

7 MS. MCNEILL: Monique McNeill, Bar Number 9862, on
8 behalf of Mr. Powell, who is joining us via video from Southern Desert
9 Correctional Facility.

10 MR. GIORDANI: Good afternoon, John Giordani on behalf of
11 the State.

12 THE COURT: Okay. And who's testifying?

13 MS. MCNEILL: Michael Kane.

14 THE COURT: Okay. This is on remand so we can have a
15 hearing.

16 State.

17 MR. GIORDANI: I'm sorry, Your Honor, you cut out.

18 THE COURT: Oh, I just -- before we get started, is there
19 anything you want to say?

20 MR. GIORDANI: Not much other than in looking at the [audio
21 cut out] it appears that things that we're to discuss are the claim that
22 Mr. Kane was ineffective for advising Mr. Powell to enter a plea when
23 part of the purported benefit was the State foregoing filing new charges.

24 And then the other claim is that he claimed Counsel advised
25 him would receive a sentence of approximately 6 to 15 years and this

1 untrue assurance led him into accepting the guilt. I believe that's what the
2 remand was limited to.

3 MS. MCNEILL: That's correct. My questions are focused only
4 to those two issues.

5 THE COURT: Okay. And before Ms. McNeill -- is that
6 correct?

7 MS. MCNEILL: Yes.

8 THE COURT: Okay. Is your client going to be waiving his
9 right to -- regarding attorney-client privilege?

10 MS. MCNEILL: Well, Judge, I don't think that Mr. Powell is
11 going to be testifying because the affidavit that we submitted is part of
12 the record. So.

13 THE COURT: But if he's basing his ineffective assistance, we
14 need to inquire of the whole purpose that Mr. Kane is here as to
15 discussions which are --

16 MS. MCNEILL: Sure.

17 THE COURT: -- generally protected by attorney-client.

18 MS. MCNEILL: Correct and --

19 THE COURT: And my understanding is if you're making that,
20 you have waive attorney-client privilege.

21 MS. MCNEILL: That is correct, Judge, and I know Mr. Powell
22 and I discussed this a long time ago when I first did the motion.

23 Mr. Powell, you understand that they're going to ask Mr. Kane
24 questions about his conversations with you and so attorney-client
25 privilege is waived between you and Mr. Kane for the purposes of this

1 hearing --

2 THE DEFENDANT: Yes, ma'am.

3 MS. MCNEILL: -- today. Okay.

4 THE COURT: So and because it was a while ago, do you
5 have any questions you'd like to ask your attorney outside the presence
6 of us? In other words, you are going to be waiving your attorney-client
7 privilege. Mr. Kane is going to be talking about conversations you and he
8 had that normally would be confidential, private, and would not be
9 allowed to be discussed. But you fully understand you're waiving that
10 privilege, correct?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: All right. And did you want to ask your attorney
13 any questions? Because apparently you may not have been able to talk
14 to her. We'll -- we could take a break.

15 THE DEFENDANT: Is there -- is there a possible, is there a
16 possibility she can come see me or I can get a video conference with
17 her?

18 THE COURT: Well --

19 MS. MCNEILL: No, he means right now, Adrian, before we
20 start the hearing.

21 THE DEFENDANT: Okay. No, I'm okay.

22 MS. MCNEILL: Okay.

23 THE DEFENDANT: No, I'm okay. I just need to know my
24 next court date.

25 THE COURT: Okay. Call -- it's Mr. Kane. Who's calling

1 Mr. Kane?

2 MS. MCNEILL: I'll call Mr. Kane, Judge. Before we begin,
3 Mr. Giordani and I, just to sort of streamline things because I know that
4 some of these dates might not be in Mr. Kane's head. We did -- we have
5 a stipulation to some dates.

6 THE COURT: Go ahead.

7 MS. MCNEILL: So we are stipulating that the day Mr. Kane
8 was appointed was November 13th, 2017. That the first day of trial in this
9 case was July 30th, 2018. And then based on an email I received from
10 co-defendant's attorney, Ben Durham, that the discovery on the
11 uncharged cases was received September 11th, 2018. I believe
12 Mr. Giordani is stipulating to that date.

13 THE COURT: Is that correct?

14 MR. GIORDANI: I'm stipulating to those dates, but just so
15 we're clear, Your Honor, the discovery referenced just now by
16 Ms. McNeill was the same packet that was provided to Your Honor prior
17 to sentencing. And I think we'll get into this during the hearing, but there
18 was discovery shown prior to that date. Just the packet is what we're
19 discussing. The packet was received on September 11th, 2018.

20 MS. MCNEILL: Right.

21 THE COURT: All right.

22 MS. MCNEILL: And that's on the uncharged cases,
23 not -- we're not saying that's the discovery in total on the charged cases.

24 MR. GIORDANI: Right.

25 THE COURT: Okay, fine.

1 Go ahead and swear Mr. Kane in.

2 **MICHAEL KANE**

3 [having been called as a witness and being first duly affirmed,
4 testified, via bluejeans, as follows:]

5 THE CLERK: Please state your name for the record.

6 THE WITNESS: Michael Kane.

7 THE COURT: Okay, just one second. The packet that --
8 Will you tell you Sandy? Or, okay, go ahead.

9 That I had with the remand and everything that's supposed to
10 be on the bench. That's --

11 Did you get -- okay, thank you.

12 Okay, go ahead.

13 MS. MCNEILL: Thank you, Judge.

14 **DIRECT EXAMINATION**

15 BY MS. MCNEILL:

16 Q Mr. Kane, you heard the dates that we discussed which were
17 that trial began July 30, 2018, correct?

18 A I did.

19 Q Okay. Prior to that date, well actually can you explain to us
20 when you told -- discussed the deal with Mr. Powell? The deal to which
21 he pled. Sorry that was a bad question.

22 A Okay. I believe it was the second day of trial during jury
23 selection. At that time, Mr. Giordani approached myself and co-counsel,
24 Roy Nelson, with an offer. And that is the first time that I told him of the
25 deal. Then we went into the back and discussed it.

1 Q Okay. And part of the leverage that the State was offering for
2 that deal was that they would not file some charges on a series of other
3 criminal offenses, correct?

4 A No. I have a problem with the term leverage. That wasn't
5 really a consideration for Mr. Powell during our discussions. It was more
6 just a benefit of not having to go through that.

7 Q Okay. So you never had a --

8 A Yes, we definitely had a conversation about that -- about the
9 ten, some of the ten other cases that were out there.

10 Q Okay. Did you see then not filing charges on those cases as a
11 benefit to taking the deal? Or did you -- what were your conversations in
12 that regard?

13 A Yeah, it was definitely a benefit.

14 Q Okay. Prior to having a conversation about the deal, had you
15 seen the discovery on the uncharged cases?

16 A So I don't remember when exactly when I first became aware
17 of the potential filing the other cases. It was during a private hearing and
18 we discussed this. Said, hey, you know what, they had mentioned,
19 before the hearing, they had mentioned that they may have him on ten
20 other cases. Sometime -- well after the offer and after we had a
21 discussion with Mr. Powell, he asked, if I remember correctly, he asked
22 me and Roy to see what they had. Because he adamantly denied, he's
23 like, I don't care about those cases.

24 THE DEFENDANT: This dude cracks me up.

25 THE WITNESS: So at that point, we went up to -- it was either

1 Mr. Giordani's office or somebody else's office in the DA, and they had,
2 we saw photos, we saw there was a police board, like a picture of the
3 police board that had, you know, the events circled with lines. Yeah, I
4 mean, yeah, that's when I first, I believe it's when I first saw.

5 BY MS. MCNEILL:

6 Q Okay, but when you -- the day that you told him what the deal
7 was, the second day of trial, and you mentioned that they weren't going
8 to file charges on those cases, had you actually reviewed the police
9 reports in those cases that they were willing to not file charges on?

10 A I don't believe so, no.

11 Q Okay. So we had a stipulation that Ben Durham said that that
12 discovery was received September 11, 2018. Does that sound accurate
13 to you as to about the timeframe that you also received that discovery on
14 those uncharged cases?

15 A I have no reason to dispute that.

16 Q Okay. And that's after Mr. Powell entered the plea, correct?

17 A Right.

18 Q So you had a dispute with me over the term leverage, but you
19 would agree that you said it was one of the benefits of taking the deal
20 would be that those charges would not get filed.

21 A Correct.

22 Q Would you agree with me that it would be important to know if
23 the State could have actually proceeded with filing those charges against
24 Mr. Powell and that would require reviewing the discovery?

25 A No.

1 Q Okay. So you do not believe you needed to know if the State
2 would have ever actually been able to file those charges.

3 A No, I do not believe so.

4 Q Okay. When you were discussing the deal with Mr. Powell,
5 did you tell him that you were going to get him a 6-to-15-year sentence?

6 A Never.

7 Q You never told him that.

8 A Nope.

9 Q Okay. Did you tell him that if it weren't for the uncharged
10 cases, you could have gotten the 3 to 8?

11 A No.

12 Q How much contact have you had with Mr. Powell prior to the
13 start of the trial?

14 A Okay. So I reviewed -- I went back today. I looked at it for
15 about an hour and I looked at the original Motion to Withdraw and the
16 attached visits which candidly didn't seem right to me. So I looked at
17 Rob Lawson's billing records which showed that he had been there eight
18 times. And I believe I had been there at least two, if not three times. The
19 communication that we had was he had my cell phone number and with
20 the direct bill line that he called quite frequently usually always at the
21 same time. And so we did discuss things over the phone as well.

22 Q Okay. Do you have any recollection of how many phone
23 calls?

24 A Between Mr. Powell, his mom, it's either his girlfriend or
25 fiancée, and his dad --

1 Q Well let's just narrow it to Mr. Powell.

2 A So for Mr. Powell, how many times he called or how many
3 times we actually spoke? I mean, he called --

4 Q How many times you actually spoke?

5 A Okay. We probably spoke 15 plus times [indiscernible due to
6 interruption by inmate] --

7 THE DEFENDANT: Oh, really?

8 THE COURT: Mr. Powell, this isn't your chance to speak.
9 Please remain quiet. If you have to talk or would like to talk to your
10 attorney, then you can tell me and we'll take a break and you can talk to
11 your attorney.

12 MS. MCNEILL: Thank you, Judge.

13 THE DEFENDANT: Okay. Can I talk to my attorney?

14 THE COURT: If you want to take a break and talk to your
15 attorney, sure. Is that -- do you want to do it now? Or --

16 THE DEFENDANT: Yes, sir.

17 THE COURT: -- wait and --

18 MS. MCNEILL: Judge, I'll do it --

19 THE DEFENDANT: Just afterwards.

20 MS. MCNEILL: Mr. Powell, just relax.

21 If we do it now, maybe we can cut down the interruptions if he
22 can get his question out.

23 THE DEFENDANT: Okay.

24 THE COURT: All right. We'll take a break.

25 MS. MCNEILL: Thank you, Judge.

1 MR. GIORDANI: Do you want me to log off?
2 THE COURT: You're going -- can you, usually they have a
3 number to call.
4 MS. MCNEILL: They do to CCDC. I don't know about to -- is
5 there an officer in the room?
6 THE DEFENDANT: Yeah.
7 THE COURT RECORDER: You know what? I can do --
8 THE DEFENDANT: Yes.
9 THE COURT RECORDER: I can do that conference, like I did
10 yesterday.
11 MS. MCNEILL: Oh, okay.
12 THE COURT: All right.
13 THE DEFENDANT: I didn't --
14 MS. MCNEILL: I'll trust the tech woman to make it happen.
15 THE COURT: Okay.
16 THE COURT RECORDER: Mr. Giordani, I'm going to
17 just -- I'm going to mute you for a while so you can't hear the
18 conversation, if you want to stay on.
19 MR. GIORDANI: Okay.
20 THE COURT: All right. And I'll step out.
21 MS. MCNEILL: Thank you, Judge.
22 THE WITNESS: I think you probably need to mute me too.
23 THE COURT RECORDER: Oh, yeah, you too. Thanks.
24 MS. MCNEILL: Yeah.
25 THE COURT RECORDER: Thanks for the reminder of that.

1 THE WITNESS: Thank you.

2 [Proceeding recessed at 1:37 p.m.]

3 [Proceeding resumed at 1:49 p.m.]

4 **DIRECT EXAMINATION CONTINUED**

5 BY MS. MCNEILL:

6 Q Thank you. Mr. Kane, I just have one last question. So you
7 indicated that you didn't believe that you used the uncharged cases as
8 leverage or incentive to take the deal even though you did discuss it as
9 part of the reason. What was the reason that you advised Mr. Powell to
10 take the deal?

11 A I don't believe I advised him to take the deal. Ultimately it's up
12 to him whether he wants to proceed with trial or not as explained to him
13 what the possible -- possibilities were going through trial as opposed to
14 taking this which the offer was. And he decided to -- that he wanted to
15 accept the deal as opposed to going to trial. Roy and I were fully capable
16 and ready to proceed with trial. It was our turn to conduct voir dire which
17 we had prepared for. We got the deal, we explained it to him. He made
18 the decision that he wanted to take it.

19 Q Okay. But as part of explaining to a client what the deal is
20 from the State, it's not part of your practice to give your opinion on
21 whether or not you think it's a deal a client should consider.

22 A Yeah it is part. That's true.

23 Q Okay. So what was the reason you thought he might consider
24 this deal?

25 A I don't remember the specifics, but knowing what the charges

1 were and knowing what the evidence was against him, I thought that this
2 deal, probably would have given him my opinion that this deal was better
3 than a jury coming back and, you know, convicting him on all the
4 charges.

5 Q Okay.

6 MS. MCNEILL: No further questions, Judge.

7 THE COURT: Cross. State.

8 MR. GIORDANI: Thank you.

9 **CROSS-EXAMINATION**

10 BY MR. GIORDANI:

11 Q Mr. Kane, do you recall first of your preparation for the trial
12 that there was both [audio cut out] evidence between Mr. Powell and
13 Mr. Pinkney to the robberies that were [audio cut out] of the trial?

14 A I'm sorry. You broke up.

15 Q Do you recall in your preparation for trial, that there was DNA
16 and fingerprint evidence linking Mr. Powell and Mr. Pinkney to the
17 charges for which they were going to trial?

18 A Yes.

19 Q You indicated on direct examination that you took issue with
20 the claim part of the leverage was that the State was going to file
21 additional charges for ten prior incidents. Do you recall that?

22 A Yes.

23 Q Can you explain why you took issue with that, a little more
24 depth?

25 A Because it wasn't -- it was, it wasn't like that those, it was

1 never presented that had we not had these ten other alleged cases
2 where we believe that Mr. Powell was a part of, that the deal was going
3 to get any better. Because it was just, listen, we're going to -- we'll just
4 close these other ten files. Wasn't like had these not been there, you
5 know, this is a whole different -- whole different offer.

6 Q Okay. Ultimately, we were all sitting in trial having already
7 completed the State's portion of jury selection when we first conveyed an
8 offer to you. Is that right?

9 A Yes, the second day.

10 Q Okay, correct. And prior to that, you had prepared and
11 reviewed the evidence on the trial [audio cut out] for trial, correct?

12 A Correct.

13 Q And you enlisted the assistance of Mr. Roy Nelson, attorney.

14 A Yes.

15 Q And you previously mentioned Rob. Who is that?

16 A You broke up. Did you say Rob Lawson?

17 Q Yes.

18 A He's a private investigator that we hired on this case as well.

19 MR. GIORDANI: Okay. And, Your Honor, may I just request
20 that the prison mute their microphone until Mr. Powell has something to
21 say because I'm getting a lot of feedback.

22 THE COURT: Okay. But I'm not getting it here unless.

23 MS. MCNEILL: I think that may be what's cutting him out.

24 THE COURT: But, yeah, go ahead and mute him. If --

25 THE CLERK: I get it too.

1 THE COURT: We will take a break before so you can -- if
2 there was, if you want to talk to them. If he wants to talk to you.

3 So okay. Go ahead.

4 MR. GIORDANI: Thank you, Your Honor.

5 BY MR. GIORDANI:

6 Q Mr. Kane, you indicated that Robert Lawson was an
7 investigator enlisted by you and that he visited Mr. Powell or billed for
8 business eight different times? Is that correct?

9 A Yeah, from what I could tell by looking at his billing today.

10 Q And you also indicated he and his family had my cell phone
11 number. You're referring to Mr. Powell himself, correct?

12 A Correct.

13 Q And you had multiple conversations with Mr. Powell leading up
14 to trial. Is that right?

15 A That's correct.

16 Q I'm not sure if you're familiar with Mr. Powell's affidavit, but I
17 want to ask you a couple of questions about allegations he made in the
18 affidavit.

19 A Sure.

20 Q Paragraph 1 says: Prior to trial, my attorney had only visited
21 me twice at the Clark County Detention Center and only spoke to me on
22 the phone a few times.

23 Is that true or false?

24 A False.

25 Q He also indicated: My attorney did not go through the

1 discovery with me.

2 Is that true or false?

3 A That is also false and I can expand on that, if you'd like me to.

4 Q Please, go.

5 A He was very, I mean, he was obviously very active in this case
6 and so he would, when we would go see him, either Rob or I, he would
7 have notes for us. And even underline certain things and he'd want us to
8 either look at or discuss in which we did. When we brought to his
9 attention the DNA evidence, he said, I don't have it. And this is well
10 before the start of trial. We called Rob and like, hey, could you drop him
11 off the DNA evidence, which he did. He would have -- he wanted to talk
12 to us about alibi witnesses, you know, that we checked out. He wanted,
13 whenever we would -- whenever I would explain something to him, he
14 would then request that I call his mom or call his, I think it was his
15 fiancée, I don't -- his fiancée, girlfriend, or wife. Call them and explain it
16 to them. So there was always tell him, and then tell the family members.
17 And so.

18 Q So the claim that you did not go through the discovery with
19 him is false?

20 A Correct.

21 Q He also claims: My attorney did not show me the results from
22 the DNA processing until we had already started jury selection.

23 True or false?

24 A False.

25 Q He also claims: At no point did my attorney discuss the

1 discovery with me or discuss the theory of defense at trial.

2 Is that true or false?

3 A That is false.

4 Q And if any point you want to expound, please -- please do.

5 There's also a --

6 A Yeah --

7 Q Oh, go ahead.

8 A It goes back to what I was talking about with the alibi. You
9 know, part of the issue when we were talking about defenses was this
10 case, it was a tough case for him. And so, you know, going through the
11 evidence and talking to him, I would and then I know I did, and then I'm
12 almost a hundred percent sure Rob Lawson did as well, but if you asked
13 him, well, listen, what's missing? What should we look for? Your alibi
14 witness, you know, whatever. And so, we did discuss the defenses
15 leading up to trial. We discussed the defenses for -- not the defenses
16 specifically, but the facts of the case and the evidence in the back room
17 right there where they, where they keep the defendants for, had it was
18 well over 30 minutes from what I recall. And I want to be conservative on
19 that and it could have been even longer going through the evidence, the
20 date, yeah, before he took it. I don't, yeah, that's all I got on that.

21 Q He also claimed in his affidavit: My attorney told me that
22 regardless of what the guilty plea agreement said, I was going to get a
23 sentence of 6 to 15 years.

24 Is that true or false?

25 A No, and that's, you know, when I was reading that today,

1 that's the one I took the most offense of, out of all of them. And that's
2 because very early on in my career, I forgot how it came about, but one
3 of my mentors, Josh Tomshek, he says, listen, you can never promise a
4 sentence. Just like in civil cases, you can never promise a client that
5 they're going to get X amount of money out of a settlement. Never have
6 done it on any of my cases, either criminal or civil. And so, yeah, that
7 absolutely did not take place. I've never promised a sentence. And
8 going further, you go -- I went over the Guilty Plea Agreement with him as
9 well as the sentencing memo multiple times. He -- we cannot guarantee
10 you a sentence. You cannot be guaranteed a sentence. This is the
11 sentencing range that you're looking at. The discretion's up to the Judge.
12 We'll do our best. We're going to get a sentencing memo for you which
13 we did. And we'll argue like hell for you, but, no, did not tell him that.

14 Q Okay. There's one more claim: The advice my attorney gave
15 me about taking the plea involved the uncharged cases listed on Guilty
16 Plea Agreement. However, he misled me about the strength of the
17 evidence in those cases.

18 Is that true or false?

19 A That's false.

20 Q And you had said previously that not -- the State not filing
21 those additional charges was a benefit, for lack of a better term. Did you
22 want to expound on that?

23 A So he -- it never really, those cases never really mattered with
24 Mr. Powell anyway because just adamantly denied, laughs to whatever.
25 So it was never -- it was never, I guess, he never made it appear that he

1 was worried about those, even if they charged him in fact, he probably.
2 But the fact of the matter is, based on the prior offers or his lack thereof
3 and the way that it was presented by yourself and co-counsel at the time
4 of trial, that this is the offer and you know what, we'll throw in, we got
5 these ten other cases we think he's involved in. We'll just throw those in.
6 And so it wasn't like, yeah, so.

7 Q Understood. The evidence in the case we actually went to
8 trial on or began to go to trial on, would you agree that it was really
9 strong, for lack of a better term?

10 A Yeah, it was, I mean, yes, it was going to be a tough case
11 from the defense in the sense that, you know, there really weren't a lot of
12 defenses. I mean, Roy -- Roy and I, well a couple of weeks at least
13 before the trial, and this is not the first time I reviewed the file, I viewed it
14 multiple times over the course, you know, discussed a lot of, you know,
15 what are we going to do because Mr. Powell didn't, he made it clear that
16 he wasn't going to take anything unless it was really, really low. So, you
17 know, we went through it. What can we attack? What are the defenses?
18 And there was a lot -- there really wasn't a lot there, so.

19 Q With regard to the claim in the motion that neither counsel nor
20 Powell fully understood the nature of those uncharged crimes, with
21 regard to that claim, did you think according to your interactions with
22 Mr. Powell that those uncharged acts or the dismissal of those uncharged
23 acts are the thing that caused him to take this deal? Or was it the
24 strength of the evidence in the case we're going to trial on?

25 MS. MCNEILL: Well, Judge, --

1 THE WITNESS: No, I --

2 MS. MCNEILL: -- I'm going to object to speculation unless it's
3 actually something that was discussed.

4 THE COURT: Well, I'll sustain the objection as if -- unless it
5 was discussed. But if it was discussed, it's, I guess, overruled. So let's
6 ask him.

7 MS. MCNEILL: Okay, foundation was my objection too.

8 MR. GIORDANI: Yeah, that was a poor question. I'm sorry.

9 THE COURT: All right.

10 BY MR. GIORDANI:

11 Q Based on your discussions with Mr. Powell, was the main
12 thrust of the deal the fact that the State was taking life off the table? Or
13 was the main thrust of the deal that these uncharged acts would not be
14 filed?

15 A That life was coming off the table.

16 Q Okay. And you previously indicated you didn't believe that
17 seeing the full discovery file on the uncharged acts was necessary in
18 your calculus. Why is that?

19 A Well, in my opinion, when I -- because that was the deal that
20 we were going to get. In fact, I believe there was discussion that, you
21 know, it just wasn't going to get any better. You made -- you guys made
22 it very clear that, you know, based on the evidence that you had that
23 there, that's the only deal you're going get is life off the table. And we'll
24 sweeten it by throwing these other cases out that we think we have him
25 in. So, and that's how we presented it. Roy and I presented it to him is

1 like, I'm saying it, almost every case. The deals, they're willing to do X.
2 We're fully prepared to go to trial. This is what you could be looking at
3 should you lose and should you be convicted on all accounts. And let us
4 know what you want to do.

5 Q Understood. One last little area of questioning and I'll be
6 done. Do you recall while we had the jury in the hallway on the second
7 day of jury selection and prior to the deals being entered, you,
8 Mr. Nelson, and Mr. Durham and my co-counsel and I sitting out in the
9 ante room discussing the negotiation for an extended period of time?

10 A Yes. Yes.

11 Q You were shown photographs in the detective's wall on the
12 quote Jumping Jack Robbery series which included our trial and then ten
13 uncharged acts, right?

14 A Yeah, I don't know what it was called but there -- ten, allegedly
15 ten uncharged acts that were --

16 Q Right. And you were shown some discovery on those other
17 uncharged acts like photographs -- still shots of photographs from
18 surveillance videos in the uncharged cases, correct?

19 A Correct.

20 Q And we kind of pointed out, look, you can see the shoes are
21 the exact same in some of the events and the way they all jumped, the
22 MO is the same. Do you recall those conversations?

23 A I don't recall specifics. I recall that -- that you guys, the DA's
24 office, you know, thought they had evidence to file.

25 Q Okay. And you recall going through some of it or at least

1 having some understanding of there are ten other events that are
2 potentially related and potentially could be charged after this trial occurs,
3 correct?

4 A Yeah, that's correct. And then, in fact, after that discussion,
5 we -- Mr. Powell and, I don't know Pinkney or Pikney, they wanted to
6 have a conversation with all the attorneys together. And so we went
7 back for an extended period of time. And I forgot about Ben, but with
8 Ben, co-defendant, Mr. Powell, Mr. Nelson.

9 MR. GIORDANI: All right. Thank you, Mr. Kane.

10 And, Judge, I will pass the witness.

11 MS. MCNEILL: Thank you, Judge. Just briefly.

12 **REDIRECT EXAMINATION**

13 BY MS. MCNEILL:

14 Q Mr. Kane, how many criminal jury trials have you done? At
15 the time --

16 A That would have been my --

17 Q I'm sorry.

18 A That would have been my first criminal jury trial.

19 Q Okay. What was your theory of defense?

20 A Our theory of defense was to, if I remember correctly, was
21 to -- we thought our best shot was to see what we could go as far as
22 getting some of them kicked out. Tried to attack, I don't know, like
23 witness credibility on the IDs. Look at see if the State, you know, didn't
24 set the right foundation on the videos oo the surveillance videos. I didn't
25 go back and look at my trial binder, but, I mean, what we were planning

1 on doing, I had, you know, the case law printed out, the statutes,
2 anything that we're yeah.

3 Q And so you said you brought Roy Nelson on. Was Roy going
4 to be considered first chair or second chair?

5 A He was going to be considered first chair, I believe. I was
6 planning on doing the voir dire. I was going to do at least one witness.
7 But.

8 Q And what made you pick Roy Nelson to be -- to assist you with
9 the case?

10 A Well he's an ex, I believe, Chief Deputy District Attorney. He's
11 been doing criminal work as, I don't know how many trials he's done, but
12 it's got to be more than 20 or 30, if not a hundred jury trials. During that
13 time, I actually, I called my buddy, Josh Tomsheck, first. He was in a
14 murder trial at the time so he could not do it. So I called Roy and Roy
15 agreed to it, to assist.

16 Q Did Roy have any contact with Mr. Powell prior to the start of
17 the trial?

18 A He did.

19 Q He did. Okay. So when you said you visited two or three
20 times, how many of those meetings was Roy in?

21 A One.

22 Q Okay. And so you indicated that you believed you visited him
23 two to three times and that would have been in the months between
24 November 2017 and July of 2018, correct?

25 A Yes.

1 Q Okay, and so it sounds like you had --

2 A I believe that's correct.

3 Q Sorry I may have cut you off. Sounds like you had your
4 investigator do the bulk of the client contact. What kinds of -- did, did Mr.
5 Lawson provide any type of advice about the discovery?

6 A No. So, no I didn't have him do the bulk of the client contact.
7 What had happened, and Mr. Powell knew this because I discussed this
8 with him, is I had twins that were born in March -- March 1st, and then
9 subsequently died three weeks later. And so I was working from home
10 for a period of two months and that's when we were discussing things
11 over the phone. It wasn't a matter of Mr. Lawson doing the heavy work.

12 Q Okay. You indicated that this was going to be your first
13 criminal jury trial. Would you say that you sort of deferred to Mr. Nelson
14 since he was more seasoned?

15 A No. I've conducted, at that time, at least 20 civil jury trials
16 myself. Well recognized by most of the District Court judges here in town
17 and have been for many years. Very good at cross-examination, every
18 aspect of trial really. And so it was more of having his experience with,
19 you know, if a specific issue would come up with let's say a little nuance
20 or of criminal law and so that he would be -- just to make sure if I didn't
21 know something that he was there. I mean, Roy's also very, very, very,
22 good criminal defense attorney and so I wanted somebody there just like
23 I did my first civil trial with somebody else, so.

24 Q Mr. Kane, were you aware that during this time period
25 Mr. Nelson was suffering from some serious substance abuse problems?

1 A I was not aware of that.

2 MR. GIORDANI: And, Judge, I would just object and ask to
3 strike that from the record unless there's some evidence of that or
4 foundation laid.

5 THE COURT: Counsel, --

6 MS. MCNEILL: Judge, I'll withdraw the question. I think it'll --

7 THE COURT: All right. I'm sustaining the --

8 MS. MCNEILL: Kind of germane on post-conviction.

9 THE COURT: -- objection. I mean, that's -- unless there's
10 clear evidence of that.

11 MS. MCNEILL: Well, they can leave that to post-conviction,
12 Judge. I'll withdraw it.

13 BY MS. MCNEILL:

14 Q Mr. Kane, you indicated that part of your discussion with
15 Mr. Powell in discussing the deal was to talk about the sentencing range
16 that he was facing by entering his plea, correct?

17 A That's correct.

18 Q What sentencing range did you tell him you believed might be
19 likely, based on the charges to which he was pleading?

20 A You know I don't remember what charges he pled to. I'm --

21 Q Well, to refresh your recollection, --

22 A -- sorry I don't remember, but.

23 Q -- it was two counts of conspiracy to commit robbery, two
24 counts of burglary with a firearm, two counts of first-degree kidnapping
25 with a deadly weapon, seven counts of robbery with use of a deadly

1 weapon.

2 A Yeah, I don't remember the range that I would have given him.

3 Q Okay. No more question --

4 A I would have told him the specific ranges on each. I don't
5 know if I did that specifically or if Roy did. Or we both did.

6 Q Okay.

7 MS. MCNEILL: Northing further, Judge.

8 THE COURT: Okay, I've got to ask and both of you can
9 address this. On the remand, you talked about, on page 2, the first
10 sentence. But the second one: Powell further claimed that because he
11 has since learned there was no evidence linking him to the new charges,
12 he would not have pleaded guilty but would have insisted on going to
13 trial.

14 There was a little bit of testimony about these other charges
15 and the evidence, but I think certainly the Supreme Court is relying on, I
16 guess, the affidavit. So what's that about? Do you see where the --

17 MS. MCNEILL: Well, Judge, I think that that is Mr. Powell's
18 contentions and then certainly the State can argue that now --

19 THE COURT: Well, all right, but --

20 MS. MCNEILL: -- they think the record belies that.

21 THE COURT: -- shouldn't somebody inquire as to whether or
22 not that's -- I mean, that's --

23 MS. MCNEILL: Well, I guess --

24 THE COURT: -- supposedly the substance of this hearing is
25 whether or not his claim would affect going to trial. And so, I --

1 MS. MCNEILL: Well, I mean, I don't know that he can answer
2 that unless Mr. Powell told him that. That's --

3 THE COURT: Well, right. Did they discuss it, I guess is my
4 question.

5 MS. MCNEILL: Mr. Kane, did you hear the Judge's question?
6 Did you discuss, but for those uncharged cases being filed, Mr. Powell
7 would have gone to trial?

8 MR. KANE: No.

9 MS. MCNEILL: Okay.

10 THE COURT: Does that bring up any questions for the State?

11 MR. GIORDANI: Yes, Your Honor, briefly.

12 THE COURT: Go ahead.

13 MR. GIORDANI: Mister --

14 Thank you.

15 **RECROSS EXAMINATION**

16 BY MR. GIORDANI:

17 Q Mr. Kane, I previously asked you about where the unfilled
18 charges kind of came in to your calculus? And I believe that your
19 response was something to the effect it was a minor kind of an added
20 bonus to the deal. Is that an accurate statement or can you expound a
21 little bit?

22 A The -- listen, the deal, it just, we told them we don't know if
23 they're going to charge you with these. They've been, would they have
24 been talking about it for a while. They -- we don't know what evidence,
25 but this is the deal and they're going to throw that in. And so it was just

1 a -- it was a bonus. It wasn't like the deciding factor, okay, now I'm going
2 to take it. And because -- yeah.

3 Q And based upon your conversations with Mr. Powell, did he
4 enter this deal where he basically pled to the sheet, but got the benefit of
5 life being taken off the table because it was essentially a foregone
6 conclusion that he was going to be found guilty at trial? Or --

7 MS. MCNEILL: Well, objection --

8 MR. GIORDANI: -- likely found guilty?

9 MS. MCNEILL: -- you don't know what a jury's going to do.

10 THE COURT: Well, I think he's only asking for the
11 discussions. Is that -- if you limit it to the discussions, I'll allow it.
12 Obviously --

13 MR. GIORDANI: Yes.

14 THE COURT: -- it would be a speculation, but on the other
15 hand, the discussions regarding that are relevant.

16 THE WITNESS: Right. So when we went back there,
17 obviously I don't remember specifics of what, but I do remember that
18 we're in there, Mr. Powell and Mr. Pinkney are, you know, they're upset
19 with the deal. We're explaining it to them. They had a lot of questions
20 about it that we answered. And most specifically what they were. You
21 wanted, like I said, it was like 30 minutes, but it could have well been an
22 hour and a half that we discussed the deal. And it wasn't a lot of time
23 spent on those ten other cases. Most of it was spent on, you know, just
24 not a lot there for him. Didn't look good that, you know, yeah. I mean, I
25 don't remember exactly what we talked about, but we spoke, Roy and I,

1 and Ben, at one point, for a very long time.

2 MS. MCNEILL: And, Judge, if I --

3 MR. GIORDANI: And if you recall --

4 MS. MCNEILL: Oh, sorry, John. I forgot it was --

5 MR. GIORDANI: Oh, I'm sorry.

6 MS. MCNEILL: -- your turn. Sorry.

7 MR. GIORDANI: All right.

8 BY MR. GIORDANI:

9 Q And if you recall, Mr. Kane, at the time of trial, Mr. Powell had
10 previously been convicted of a robbery and an attempted robbery in a
11 prior felony case, correct?

12 A Yes, in California, if I remember right.

13 Q And, therefore, it would have been, I guess, admissible as
14 impeachment had he taken the stand at trial.

15 A Yeah.

16 MR. GIORDANI: Okay, I have no further questions, Judge.

17 THE COURT: Defense.

18 MS. MCNEILL: Just -- just briefly.

19 **REDIRECT EXAMINATION**

20 BY MS. MCNEILL:

21 Q As Mr. Giordani said, Mr. Powell basically pled to the sheet,
22 including the two first-degree kidnapping counts. Are you familiar with
23 the Supreme Court case law on first-degree kidnapping as being
24 incidental to the robbery and did you think that perhaps you could get
25 those counts kicked by the jury or later on an appeal?

1 A Yeah, so you're talking about the *Wright* case, I believe, and
2 that was -- we did discuss it and that was one of the things that we
3 discussed with Ben and Roy beforehand. And, you know, understand
4 that this was kind of unusual, I guess, the not have an offer from the
5 District Attorney's office before -- before voir dire. And so it was unusual
6 that we, listen, once we get -- when we got the offer too, Roy and I
7 discussed, and Ben, we were all, you know, kind of confused and pissed
8 for like, what he, it's not an offer. So this was explained to them, but it
9 was prefaced with the understanding that the evidence is so bad against
10 them and their defenses were, if they had minimal, if anything, that they
11 weren't, it wasn't going -- we didn't believe it was going to get any better
12 for them even with what you described the Supreme Court, their opinion
13 in the *Wright* case. So.

14 Q Okay.

15 A They weren't made -- the offer was not going to get better.
16 And they made that clear that the offer was going away at the jury
17 selection. So.

18 Q So it sounds like you had some time pressure on the offer?

19 A No, it wasn't time pressure in the sense that, I mean,
20 Judge Israel was very patient with us and we had -- they said, it was our
21 turn, we were just going to start jury selection so I'm sure we could have
22 continued it, but. Or told the Judge, I guess, we could have requested,
23 hey, he wants to think about it. Let the jury go for the day.

24 Q Okay, did -- did you ask for more time to talk about the offer
25 because previously when you testified, you made it sound like you just

1 had this 30-minute time period that you were talking in the back of the
2 room while the jury's waiting. Do you think that's the best setting to talk
3 to a client about an offer?

4 A No, no. I guess you misunderstood what I was getting at
5 when I said conservatively 30 minutes. I think it was more -- it was more
6 like hours. And getting to the point where we were just going -- we talked
7 about just sending the jury home, if I remember correctly, with the DA's
8 office. They -- so it wasn't the, when I said 30 minutes it was not, I did
9 not want it to be intended that, hey, this was a quick conversation in the
10 back. It was more to show -- we were back there for a while. And we
11 were back and forth talking to Ben, you know, and then going back in.
12 They wanted to talk together, the co-defendants, they wanted to talk with
13 all the attorneys. So, I mean, it was, it was some time. And understand,
14 throughout the course of the case and we -- he discussed the sentences,
15 the charges, so he knew what he was looking at. This wasn't like it was
16 the first time that he understood. So.

17 MS. MCNEILL: All right. Judge, I have nothing further.

18 THE COURT: All right. Thank you. Any other witnesses?

19 MS. MCNEILL: No, Your Honor.

20 THE COURT: I'm going to -- did you want to talk to your client
21 because I want to pull *Strickland*. I have one marked up with lots of good
22 quotes so I need to review it.

23 MS. MCNEILL: Sure, Judge. If you want to take a break, I
24 can --

25 THE COURT: And did you want --

1 MS. MCNEILL: -- see if he has any questions.

2 THE COURT: -- to talk with him? So.

3 MS. MCNEILL: Sure.

4 THE COURT: All right. We'll do that again.

5 MR. KANE: Your Honor, am I dismissed?

6 THE COURT: Yes, sorry.

7 MR. KANE: Thank you.

8 [Hearing trailed at 2:24 p.m.]

9 [Hearing resumed at 2:42 p.m.]

10 THE COURT: You may be seated.

11 Are we on?

12 THE COURT RECORDER: Uh-huh.

13 THE COURT: Okay. Argument. Defense.

14 MS. MCNEILL: Judge, I think I'm just going to submit. I know
15 Your Honor watched the hearing, you listened to it, I know you're well
16 briefed. Mr. Kane's testimony was what it was. Your Honor was able to
17 observe him, his demeanor. You can evaluate his credibility. And so I'm
18 going to submit, Judge.

19 THE COURT: State.

20 MR. GIORDANI: I will submit as well, Your Honor.

21 THE COURT: Wow.

22 MS. MCNEILL: Easier than you thought.

23 THE COURT: Thank you.

24 All right, first of all, I did find Mr. Kane's testimony to be
25 credible. And certainly his testimony is in direct conflict with Mr. Powell's

1 affidavit, specifically regarding the points that are important to this
2 hearing. The easiest one is, and I don't know if I quoted, yeah, here: I
3 never told Mr. Powell he would receive 6 to 15.

4 That is on page 2, the second part of the remand. And
5 Mr. Kane specifically, well, I'm not a -- I can't write as fast so I, but I wrote
6 never told Mr. Powell he would receive 6 to 15. Mr. Kane's testimony, as
7 I said, was credible. I did -- I do acknowledge that this was his first jury
8 trial, excuse me, criminal jury trial, however, my recollection from the
9 very, from the beginnings of it was that he was certainly a competent trial
10 lawyer.

11 In any event, some of the other points -- oh, Mr. Kane testified
12 that he did, in fact, go over the discovery. And when I say discovery
13 about this case, with the defendant. And he went over the Guilty Plea
14 Agreement several times with the defendant and his testimony was that
15 the ten additional, the ten uncharged cases, and again I think it's a quote,
16 but: those cases never mattered in this case.

17 We will -- the State, apparently: we will throw in those other
18 cases.

19 The discussions were, the main thrust was taking life off the
20 table. As far as, as I said, the second part of the remand, the 6 to 15,
21 Mr. Kane was clear that he learned early in his career, notwithstanding
22 that there was or he does significant civil and I think now, although I don't
23 know, more criminal. In any event that he would not tell a client that
24 whether, again, whether it's civil where getting a million dollars or in this
25 case, I can get you 6 to 15. In fact, he specifically refuted that statement.

1 And so regarding the first part, and so therefore, again, if in fact that was
2 never stated to the defendant, there certainly can't be any ineffective
3 assistance of counsel on that point. So let's go to the first paragraph,
4 and I'm reading from the remand: As Powell points out on appeal, he
5 claimed counsel was ineffective for advising him to enter into a guilty plea
6 when part of the purported benefit was the State foregoing filing new
7 charges, but neither counsel nor Powell fully understood the nature of the
8 new charges.

9 I think what that may be saying is understood the evidence of
10 the new charges because the next line: Powell further claimed that
11 because he has since learned, there was no evidence linking him to the
12 new charges, he would not have pleaded guilty but would have assisted
13 on going to trial.

14 Once again, that appears to be belied by Mr. Kane's testimony
15 when he, although it is clear he didn't have all of the discovery on those
16 additional uncharged ten cases, that it was Mr. Kane's motive or his
17 objective to get life, the possibility of -- a sentence of life off the table.
18 They did discuss, according to Mr. Kane, the possibility of these ten
19 charges and apparently some of the, some of the evidence that existed
20 or allegedly tied Mr. Powell to those additional uncharged crimes. We
21 have nothing in the record or today regarding whether or not, as in Mr.
22 Powell's affidavit, that there's no evidence, and again that's what they
23 said, there's no evidence linking Mr. Powell to the new charges. And I
24 believe the questioning and/or there was something about similar shoes
25 and yes, the individuals, and I did review the original motion, which I'm

1 sure you have, to withdraw the guilty plea.

2 And the affidavit, the argument in the opposition was made
3 that certainly Mr. Powell would know whether or not any of those
4 uncharged cases had anything to do with him. And apparently Mr. Kane
5 didn't feel that that was, and again I can't remember his, let me see if I
6 have his -- I believe he said I don't believe it mattered. But that's in the
7 transcript, so.

8 So once again at the third sentence: Powell's claim, if true,
9 and not belied by the record, entitled him to relief.

10 And given the testimony today and the almost, well, several
11 contradictory -- contradicted points by Mr. Kane of Mr. Powell's affidavit,
12 it certainly appears that there was no ineffective assistance of counsel.
13 The *Strickland* and the subsequent cases talk about the fact that it isn't
14 the perfect lawyer and I'm just kind of summing it up, They don't use that
15 wording. But it isn't, a perfect lawyer that the standard is held to,
16 but -- and, I'm trying to get the exact quote from the case, but in any
17 event, the lawyer has to do an adequate job -- okay, the proper standard,
18 the attorney performance is that of a reasonably effective assistance
19 considering all the circumstances.

20 With regard to the required showing of prejudice, the proper
21 standard requires the defendant to show that there is a reasonable
22 probability that but for counsel's unprofessional errors, the result of the
23 proceeding would have been different.

24 Now that tangentially applies because here we have just an
25 issue of Mr. Powell requesting to withdraw his plea and that is a different

1 standard for his being able to do that. But the reason for him claiming to
2 be doing that is the ineffective assistance. Ineffective assistance of
3 counsel could be a fair and just reason for withdrawing a guilty plea. I do
4 not find ineffective assistance of counsel. The fact that the defendant
5 basically pled to the charges is one factor to be considered, but the
6 advantage that the reason for the plea was, pursuant to Mr. Kane, to take
7 life off the table. Mr. Kane, and just to make sure I got all of these in my
8 notes, went over the Guilty Plea Agreement several times and he stated
9 those cases never mattered in this case. We will throw in the other cases
10 and that was speaking of what the, I guess, the District Attorney in his
11 mind that I think he said something that he only considered it, well you'll
12 get these cases thrown in.

13 So, again, in the remand, Powell's claim of true and not
14 belied by the record entitled him to relief. But now with the evidentiary
15 hearing and again the fact that I do not see any ineffective assistance of
16 counsel and, I guess, certainly the Appeals Court had the record. I
17 thought I said, the -- at the time, it wouldn't be fair or that I base my
18 decision on the standard. But I certainly acknowledge that the standard
19 is permitting withdrawal would be fair and just. And in this case, this
20 hearing, I don't see any grounds to permit, if you will, or refute that -- no,
21 not refute, to, that there was no reason under the fair and just standard to
22 allow the withdrawal of the plea.

23 So I think I covered everything. So that is for the remand and
24 the State needs to get a copy of all this and present the order. They
25 can -- I like it when they pass it by you and I may edit it or change it or

1 whatever, just like we do in civil cases. I may not have addressed
2 everything given the time and given the fact that I don't have all of the
3 cases in front of me, but I think that covers it.

4 MR. GIORDANI: Thank you, Your Honor.

5 MS. MCNEILL: Thank you, Judge.

6 So Mr. Giordani, just email me that order when it's done and
7 I'll say okay or not and then we'll get it to the Judge.

8 MR. GIORDANI: Will do.

9 MS. MCNEILL: Thank you.

10 THE COURT: All right.

11 MS. MCNEILL: Thank you, Judge.

12 THE COURT: Thank you.

13 MR. GIORDANI: Thank you.

14 MS. MCNEILL: Be safe everybody.

15 THE COURT: Yes, you too.

16
17 [Hearing concluded at 2:59 p.m.]

18 * * * * *

19
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