

No.

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**In The Supreme Court Of The United States**

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Dominic A. Davis,  
Harlon B. Jordan,

*Petitioners,*

v.

United States of America,

*Respondent.*

On Petition for a Writ of Certiorari to the  
United States Court of Appeals for the Ninth Circuit

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**Joint Appendix**

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FILED

OCT 28 2020

**NOT FOR PUBLICATION**

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

HARLON B. JORDAN, AKA Harlan  
Brett Jordan,

Defendant-Appellant.

No. 17-15097

DC Nos. 2:16 cv-1448-RCJ  
2:06 cr-0239-RCJ

D Nev., Las Vegas

**O R D E R**

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

DOMINIC A. DAVIS, AKA Dominic  
Anthony Davis,

Defendant-Appellant.

No. 17-15100

DC Nos. 2:16 cv-1454-RCJ  
2:06 cr-0239-RCJ

D Nev., Las Vegas

Before: TASHIMA and HURWITZ, Circuit Judges, and MARSHALL,\*  
District Judge.

\* The Honorable Consuelo B. Marshall, United States District Judge for  
the Central District of California, sitting by designation.

Judge Hurwitz votes to deny the petition for rehearing en banc and Judges Tashima and Marshall so recommend. The full court has been advised of the petition for rehearing en banc and no judge of the court has requested a vote on en banc rehearing. *See* Fed. R. App. P. 35(f). The petition for rehearing en banc is **DENIED**.

821 Fed.Appx. 792

This case was not selected for publication in West's Federal Reporter. See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S.Ct. of App. 9th Cir. Rule 36-3. United States Court of Appeals, Ninth Circuit.

UNITED STATES of America, Plaintiff-Appellee,  
v.

Harlon B. JORDAN, aka Harlan

Brett Jordan, Defendant-Appellant.

United States of America, Plaintiff-Appellee,  
v.

Dominic A. Davis, aka Dominic

Anthony Davis, Defendant-Appellant.

No. 17-15097, No. 17-15100

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Submitted July 17, 2020 \* San Francisco, California

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FILED August 18, 2020

**Synopsis**

**Background:** Defendants convicted of bank robbery moved to vacate sentences. The United States District Court for the District of Nevada, Robert C. Jones, Senior District Judge, 2017 WL 58564, denied motions. Defendants appealed.

**[Holding:]** The Court of Appeals held that district court's alternative-theory instructional error at trial on bank robbery charges was harmless.

Affirmed.

**Procedural Posture(s):** Appellate Review; Post-Conviction Review.

West Headnotes (1)

[1] **Criminal Law**  Elements and incidents of offense; definitions

District court's alternative-theory instructional error at trial on bank robbery charges was harmless; properly instructed jury almost certainly would have convicted defendants of brandishing a firearm in relation to, and in furtherance of, a conspiracy to commit bank robbery, since jury found each of the defendants guilty of armed bank robbery, which required the jury to conclude either that each defendant personally employed a firearm during the robbery or aided and abetted a co-defendant in doing so. 18 U.S.C.A. § 924(c).

**Attorneys and Law Firms**

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Wendi L. Overmyer, Assistant Federal Public Defender, Federal Public Defender's Office Las Vegas, NV, for Defendant-Appellant

Appeals from the United States District Court for the District of Nevada, Robert Clive Jones, District Judge, Presiding, DC Nos. 2:16 cv-1448 RCJ, 2:06 cr-0239 RCJ, DC Nos. 2:16 cv-1454 RCJ

Before: TASHIMA and HURWITZ, Circuit Judges, and MARSHALL, \*\* District Judge.

**MEMORANDUM \*\*\***

In these consolidated appeals, Harlon Jordan and Dominic Davis appeal the order of the district court denying their motions under 28 U.S.C. § 2255 to set aside their 18 U.S.C. § 924(c) convictions in light of *United States v. Davis*, — U.S. —, 139 S. Ct. 2319, 204 L.Ed.2d 757 (2019). \*793 We have jurisdiction under 28 U.S.C. § 1291, we review de novo, *United States v. Aguirre-Ganceda*, 592 F.3d 1043, 1045 (9th Cir. 2010), and we affirm.

**1.** We reject the defendants' contention that the alternative-theory instructional error at issue should be evaluated under the modified categorical approach—reviewing only the

**APPENDIX B - 3a**

charging papers, jury instructions, and verdict to determine whether their convictions necessarily rested on a valid theory of guilt. Rather, “a reviewing court finding such error should ask whether the flaw in the instructions ‘had substantial and injurious effect or influence in determining the jury’s verdict.’” *Hedgpeth v. Pulido*, 555 U.S. 57, 58, 129 S.Ct. 530, 172 L.Ed.2d 388 (2008) (per curiam) (quoting *Brech v. Abrahamson*, 507 U.S. 619, 623, 113 S.Ct. 1710, 123 L.Ed.2d 353 (1993)). This prejudice inquiry “must encompass ‘the record as a whole.’” *Pulido v. Chrones*, 629 F.3d 1007, 1016 (9th Cir. 2010) (quoting *Hedgpeth*, 555 U.S. at 62 n.\*, 129 S.Ct. 530). The modified categorical approach applies “when a defendant was convicted of violating a divisible statute,” *Descamps v. United States*, 570 U.S. 254, 263, 133 S.Ct. 2276, 186 L.Ed.2d 438 (2013)—something that did not occur here. Accordingly, we review the error for harmlessness under *Hedgpeth*.

**2.** Under our case law, an alternative-theory instructional error is harmless if “we can discern with reasonable probability that the jury ... convicted [the defendants] on a valid ... theory,” or “it is reasonably probable that the jury would still have convicted the petitioner on the proper instructions.” *Babb v. Lozowsky*, 719 F.3d 1019, 1034 (9th Cir. 2013), *overruled on other grounds as stated in Moore v. Helling*, 763 F.3d 1011, 1021 (9th Cir. 2014); *see also Smith v. Baker*, 960 F.3d 522, 544 (9th Cir. 2020).<sup>1</sup>

Here, the instructional error was harmless because a properly instructed jury almost certainly would have convicted the defendants of the § 924(c) offense charged in Count 3. The jury found each of the defendants guilty of armed bank robbery, which required the jury to conclude either that each defendant personally employed a firearm during the robbery or aided and abetted a co-defendant in doing so. Thus, it is difficult to see how a jury could have failed to find each

defendant guilty on Count 3, especially in light of the district court’s *Pinkerton* instruction.<sup>2</sup>

The government’s theory of the case, as reflected in closing arguments, was that all three defendants personally participated in the robbery inside the bank; the evidence showed that these three masked robbers brandished weapons during the robbery. Kurt Myrie, who was charged with the same offenses as Davis and Jordan, pleaded guilty and testified for the defense that he committed the crime with two others, but not Jordan and Davis. The defense theory, based on Myrie’s testimony, was not that some of the robbers did not brandish weapons, but that Jordan and Davis were not involved at all. By finding Jordan and Davis guilty on Counts 1 and 2, the jury necessarily rejected Myrie’s testimony and the defense theory that Jordan \*794 and Davis were not personally involved in the robbery. Under these circumstances, we have no doubt that a properly instructed jury would have found the defendants guilty on the § 924(c) charge. Accordingly, the alternative-theory instructional error did not have “substantial and injurious effect or influence in determining the jury’s verdict.” *Hedgpeth*, 555 U.S. at 58, 129 S.Ct. 530 (quoting *Brech*, 507 U.S. at 623, 113 S.Ct. 1710).

**3.** As the defendants acknowledge, their contentions that federal armed bank robbery does not qualify as a crime of violence under the elements clause, 18 U.S.C. § 924(c)(3)(A), are foreclosed by *United States v. Watson*, 881 F.3d 782 (9th Cir. 2018) (per curiam).

## AFFIRMED.

### All Citations

821 Fed.Appx. 792

## Footnotes

- \* The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a) (2)(C).
- \*\* The Honorable Consuelo B. Marshall, United States District Judge for the Central District of California, sitting by designation.
- \*\*\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

## APPENDIX B - 4a

- 1 In light of *Neder v. United States*, 527 U.S. 1, 17, 19, 119 S.Ct. 1827, 144 L.Ed.2d 35 (1999), we reject the defendants' contention that applying harmless error review in this manner violates their Sixth Amendment right to trial by jury.
- 2 "Under *Pinkerton v. United States*, 328 U.S. 640, 647–48, 66 S.Ct. 1180, 90 L.Ed. 1489 (1946), a co-conspirator is vicariously liable for reasonably foreseeable substantive crimes committed by a co-conspirator in furtherance of the conspiracy." *United States v. Fonseca-Caro*, 114 F.3d 906, 907 (9th Cir. 1997) (per curiam).

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#### APPENDIX B - 5a

2017 WL 58564

Only the Westlaw citation is currently available.  
United States District Court, D. Nevada.

UNITED STATES of America, Plaintiff,  
v.

Kurt J. MYRIE et al., Defendants.

2:06-cr-00239-RCJ-PAL

|  
Signed 01/04/2017

## West Codenotes

### Recognized as Unconstitutional

18 U.S.C. § 924(e)(2)

### Attorneys and Law Firms

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### ORDER

ROBERT C. JONES, United States District Judge

\*1 A grand jury indicted Defendants Kurt Myrie, Dominic Davis, and Harlon Jordan of: (1) conspiracy to commit bank robbery; (2) armed bank robbery; (3) brandishing a firearm during, in relation to, and in furtherance of a conspiracy to commit bank robbery; and (4) brandishing a firearm during and in relation to a crime of violence (consolidated with Count 3). (Superseding Indictment, ECF No. 36). Myrie pled guilty to all counts, and a jury found Davis and Jordan guilty on all counts. All three Defendants appealed, and the Court of Appeals affirmed the convictions and sentences.

Defendants have filed habeas corpus motions under 28 U.S.C. § 2255. The Court finds that although the motions are

statutorily timely, they are both procedurally defaulted and without merit even assuming the defaults are excused.

A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of ... the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review ....

28 U.S.C. § 2255(f), (f)(3). Defendants filed their initial motions on June 21 and 22, 2016, which is within one year of June 26, 2015, the date on which the Supreme Court announced the rule of *Johnson v. United States (Johnson II)*, 135 S. Ct. 2551 (2015) upon which Defendants rely. The Supreme Court has made *Johnson II* retroactive on collateral review. *See Welch v. United States*, 136 S. Ct. 1257, 1268 (2016). The motions are therefore statutorily timely. They are procedurally defaulted, however, both because Defendants made no vagueness-type objections at or before sentencing and because they failed to appeal based on that issue.

Defendants argue they are actually innocent of the brandishing offense, which if true would excuse the default. *See Massaro v. United States*, 538 U.S. 500, 504 (2003); *United States v. Ratigan*, 351 F.3d 957, 962 (9th Cir. 2003). Specifically, they argue the bank robbery and conspiracy charged in Counts 1 and 2 that formed the basis for the brandishing offense in Count 4 were not “crime[s] of violence” under 18 U.S.C. § 924(c)(3) because the residual clause defining “crime of violence” is similar to the residual clause of § 924(e)(2), which the Supreme Court has struck down as unconstitutionally vague. *See Johnson II*, 135 S. Ct. at 2563. The definition of “crime of violence” applied to Defendants reads as follows, with the allegedly unconstitutionally vague residual clause emphasized:

(3) For purposes of this subsection the term “crime of violence” means an offense that is a felony and—

(A) has as an element the use, attempted use, or threatened use of physical force against the person of another, or

### APPENDIX C - 6a

(B) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

18 U.S.C. § 924(c)(3)(A)–(B) (emphasis added). The definition of “violent felony” at issue in *Johnson II* reads as follows, with the unconstitutionally vague residual clause emphasized:

**\*2** (B) the term “violent felony” means any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or carrying of a firearm, knife, or destructive device that would be punishable by imprisonment for such term if committed by an adult, that—

(i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or

(ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another.

*Id.* § 924(e)(2)(B)(i)–(ii) (emphasis added).

The two clauses are not identical, but even assuming for the sake of argument that the difference in language is not enough to rescue § 924(c)(3)(B) from constitutional infirmity, *Johnson II* is no aid to Defendants, because the physical-force clause of § 924(c)(3)(A) applies to bank robbery under § 2113(a). *See United States v. Wright*, 215 F.3d 1020, 1028 (9th Cir. 2000).<sup>1</sup> Although the Court of Appeals has not yet ruled directly as to whether *Johnson II* abrogated the rule that bank robbery categorically satisfies the physical-force clause,<sup>2</sup> the courts of appeals to do so and the district courts within this Circuit have uniformly ruled that it did not. *See United States v. McNeal*, 818 F.3d 141, 151–57 (4th Cir. 2016); *United States v. McBride*, 826 F.3d 293, 296 (6th Cir. 2016); *United*

*States v. Armour*, 840 F.3d 904, 909 (7th Cir. 2016); *Allen v. United States*, 836 F.3d 894, 894–95 (8th Cir. 2016); *In re Sams*, 830 F.3d 1234, 1238–39 (11th Cir. 2016); *United States v. McDuffy*, —F. Supp. 3d —, 2016 WL 3750655, at \*3 (D. Nev. 2016) (Du, J.); *United States v. Daniels*, No. 11-cr-470, 2016 WL 6680038, at \*2–3 (S.D. Cal. Nov. 14, 2016); *United States v. Gilbert*, No. 14-cr-634, 2016 WL 5807910, at \*1–2 & n.1 (S.D. Cal. Oct. 20, 2016); *United States v. Abdul-Samad*, No. 10-cr-2792, 2016 WL 5118456, at \*4–5 (S.D. Cal. Sept. 21, 2016); *United States v. Charles*, No. 3:06-cr-26, 2016 WL 4515923, at \*1 (D. Alaska Aug. 29, 2016); *United States v. Watson*, No. 14-cr-751, 2016 WL 866298, at \*6 (D. Haw. Mar. 2, 2016). The Court finds no basis to disagree.

Finally, the Court notes that Defendants' argument largely rests on the requirement under *Johnson v. United States (Johnson I)*, 559 U.S. 133 (2010) that physical force must be “violent,” and that the Court of Appeals has not addressed whether bank robbery under § 2113(a) is a categorical crime of violence under that standard. The Court agrees with the Courts of Appeal to have addressed the issue that bank robbery categorically satisfies *Johnson I*. *See, e.g., Armour*, 840 F.3d at 909.

## CONCLUSION

**\*3** IT IS HEREBY ORDERED that the Motions to Vacate, Set Aside, or Correct Sentence Under 28 U.S.C. § 2255 (ECF Nos. 212, 214, 216, 217, 218, 219, 224, 225) are DENIED.

IT IS FURTHER ORDERED that certificates of appealability are DENIED.

## All Citations

Not Reported in Fed. Supp., 2017 WL 58564

## Footnotes

<sup>1</sup> Although the Court of Appeals used the term “armed” in *Wright*, it did so not because only armed bank robbery under § 2113(d) qualified as a crime of violence but because the defendant in that case was challenging whether the offense of Using or Carrying a Firearm During a Crime of Violence, i.e., armed bank robbery, had been proved. The Court of Appeals' analysis, however, clearly reasoned that simple bank robbery under § 2113(a) qualified as a categorical crime of violence under the physical force clause of § 924(c)(3)(A). *See*

## APPENDIX C - 7a

*id.* (quoting 18 U.S.C. § 2113(a)) (“Armed bank robbery qualifies as a crime of violence because one of the elements of the offense is a taking ‘by force and violence, or by intimidation.’ ”). The quoted offense element is found in § 2113(a), i.e., simple bank robbery, without reference to subsection (d), which simply provides enhanced penalties for armed bank robbery. In any case, Defendants here were convicted of armed bank robbery.

- 2 The physical force clauses of §§ 924(c)(3)(A) and 924(e)(2)(B)(i) are identical.

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130 S.Ct. 2361

Supreme Court of the United States

Dominic A. DAVIS, aka Dominic  
Anthony Davis, petitioner,

v.

UNITED STATES.

No. 09-9479.

|

April 5, 2010.

Case below, 351 Fed.Appx. 248.

**Opinion**

Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

**All Citations**

559 U.S. 1057, 130 S.Ct. 2361 (Mem), 176 L.Ed.2d 575,  
78 USLW 3580

351 Fed.Appx. 248

This case was not selected for publication in the Federal Reporter. Not for Publication in West's Federal Reporter

See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also Ninth Circuit Rule 36-3. (Find CTA9 Rule 36-3)

United States Court of Appeals, Ninth Circuit.

UNITED STATES of America, Plaintiff-Appellee,

v.

Harlon B. JORDAN, Defendant-Appellant.

United States of America, Plaintiff-Appellee,

v.

Kurt J. Myrie, Defendant-Appellant.

United States of America, Plaintiff-Appellee,

v.

Dominic A. Davis, aka Dominic

Anthony Davis, Defendant-Appellant.

Nos. 08-10205, 08-10206, 08-10233.

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Submitted Nov. 2, 2009.\*

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Filed Nov. 5, 2009.

**Synopsis**

**Background:** Defendants were convicted in the United States District Court for the District of Nevada, Robert Clive Jones, Jr., of conspiracy to commit bank robbery, armed bank robbery, and brandishing a firearm during and in relation to a crime of violence. Defendants appealed.

**Holdings:** The Court of Appeals held that:

[1] denial of request for special verdict form to ascertain on which theory jury convicted defendants did not violate due process;

[2] brandishing of a firearm was a sentencing factor to be found by court rather than jury;

[3] any improper comments by prosecutor during closing argument were harmless;

[4] evidence was sufficient to establish that bank was Federal Deposit Insurance Corporation (FDIC) insured on date of robbery;

[5] imposing consecutive sentences for armed bank robbery and for carrying a firearm during commission of a crime of violence did not violate the Double Jeopardy Clause;

[6] basing an upward sentencing departure on hearsay evidence regarding defendant's past criminal conduct did not violate the Confrontation Clause; and

[7] increasing defendant's criminal history based on uncharged conduct did not violate due process or defendant's right to a jury trial.

Affirmed.

West Headnotes (8)

**[1] Constitutional Law**

→ Special verdicts

**Criminal Law**

→ Form of verdict

Denial of request for special verdict form to ascertain on which theory jury convicted defendants of conspiracy to commit bank robbery and armed bank robbery did not violate due process, where theory underlying the conviction made no practical difference. U.S.C.A. Const.Amend. 5.

Cases that cite this headnote

**[2] Jury**

→ Particular cases in general

**Sentencing and Punishment**

→ Use

Under statute increasing the mandatory minimum sentence for a crime of violence if the defendant brandished a firearm,

brandishing is a sentencing factor, not an element of the crime, and is properly found by the court rather than the jury. 18 U.S.C.A. § 924(c).

Cases that cite this headnote

**[3] Criminal Law**

☞ Comments on evidence or witnesses, or matters not sustained by evidence

Any improper comments made by prosecutor during closing argument in bank robbery trial were harmless beyond a reasonable doubt, as there was significant evidence against the defendants, who were caught red-handed with the money within minutes of the robbery.

Cases that cite this headnote

**[4] Banks and Banking**

☞ Prosecutions

Evidence was sufficient to establish that bank was Federal Deposit Insurance Corporation (FDIC) insured on the date of robbery, as required to support conviction under federal bank robbery statute, where insurance certificate was submitted, and bank employee testified that the branch was FDIC insured on the day of the robbery. 18 U.S.C.A. § 2113.

Cases that cite this headnote

**[5] Double Jeopardy**

☞ Sentencing Proceedings; Cumulative Punishment

Imposing consecutive sentences for armed bank robbery and for carrying a firearm during commission of a crime of violence did not violate the Double Jeopardy Clause. U.S.C.A. Const.Amend. 5; 18 U.S.C.A. §§ 924(c), 2113(d).

1 Cases that cite this headnote

**[6] Sentencing and Punishment**

☞ Use

Sentencing defendant under statute increasing the mandatory minimum sentence for a

crime of violence if the defendant brandished a firearm was warranted, where defendant clearly admitted at change of plea hearing that he pulled out his gun in a threatening manner. 18 U.S.C.A. § 924(c).

Cases that cite this headnote

**[7] Criminal Law**

☞ Out-of-court statements and hearsay in general

**Sentencing and Punishment**

☞ Hearsay

Basing an upward sentencing departure on hearsay evidence regarding defendant's past criminal conduct did not violate the Confrontation Clause, where the evidence presented had the requisite minimal indicia of reliability. U.S.C.A. Const.Amend. 6.

Cases that cite this headnote

**[8] Constitutional Law**

☞ Matters Considered in Sentencing

**Jury**

☞ Particular cases in general

**Sentencing and Punishment**

☞ Arrests, charges, or unadjudicated misconduct

Sentencing court did not violate due process or defendant's right to a jury trial by increasing his criminal history based on uncharged conduct, where there was significant proof of defendant's involvement in the uncharged robberies, including photographs depicting the defendant. U.S.C.A. Const.Amends. 5, 6.

Cases that cite this headnote

**Attorneys and Law Firms**

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Appeal from the United States District Court for the District of Nevada, Robert Clive Jones, District Judge, Presiding. D.C. No. 2:06-cr-00239-RCJ-PAL.

Before: HAWKINS and THOMAS, Circuit Judges, and KORMAN, \*\* District Judge.

### MEMORANDUM \*\*\*

**\*\*1** Defendants Dominic Davis (“Davis”), Harlon Jordan (“Jordan”), and Kurt Myrie (“Myrie”) appeal their convictions and Myrie his sentence for conspiracy to commit bank robbery, armed bank robbery, and brandishing a firearm during and in relation to a crime of violence, all arising in connection with the June 2006 robbery of the Colonial Bank in Las Vegas, Nevada. We affirm.

#### I. Appeal Nos. 08-10205 and 08-10233 (Defendants Davis and Jordan)

##### A. Special Verdict Forms

**[1]** The district court properly instructed the jury on the crimes charged and on the various theories of liability (e.g., substantive liability, aiding and abetting, *Pinkerton*<sup>1</sup>). The court did not abuse its discretion or violate due process by denying the request for a special verdict form to ascertain on which theory the jury convicted because the theory underlying the conviction made no practical difference. Moreover, contrary to defendants' suggestion, under the instructions given, the jury could not have convicted if it believed Myrie's testimony. Even under an aiding and abetting theory for Count 2, the jury would have to find that defendants directly facilitated or encouraged the use or carrying of a firearm in connection with the bank robbery, thus necessarily rejecting Myrie's testimony that the other defendants did not even know about the robbery until the police stopped the car and the contents of the trash bag were scattered.

**[2]** Nor did the district court need a special verdict form to determine whether the jury found the defendants brandished a firearm; “brandishing” is a sentencing

factor, not an element of the crime, and is properly found by the court rather than the jury. *See Harris v. United States*, 536 U.S. 545, 567-68, 122 S.Ct. 2406, 153 L.Ed.2d 524 (2002); *United States v. \*251 Washington*, 462 F.3d 1124, 1137-40 (9th Cir.2006).

##### B. Prosecutorial Misconduct

**[3]** With the exception of an isolated statement about stealing the sense of security from the bank tellers (to which the court sustained counsel's objection), the remaining statements in summation of the closing were not the sort of improper appeals to “make a statement,” “protect the community” or “preserve civil order” that we have found objectionable. *See United States v. Leon-Reyes*, 177 F.3d 816, 823 (9th Cir.1999). Rather, the prosecutor's closing argument was acceptable argument based on reasonable inferences from the evidence that the case against defendants was too strong to believe Myrie's testimony and, therefore, the jury should not let the defendants “off the hook.” *See United States v. Sullivan*, 522 F.3d 967, 982 (9th Cir.2008) (prosecutor has “considerable leeway” to strike hard blows based on evidence). In any event, even if the comments were improper, they were harmless beyond a reasonable doubt in light of the significant evidence against the defendants, who were caught red-handed with the money within minutes of the robbery. *United States v. Weatherspoon*, 410 F.3d 1142, 1151 (9th Cir.2005).

##### C. Evidence of Federal Insurance

**\*\*2 [4]** There was sufficient evidence that Colonial Bank was FDIC insured on the date of the robbery. In addition to submitting a 1998 insurance certificate, a bank employee testified that the branch was FDIC insured on the day of the robbery. *United States v. Ware*, 416 F.3d 1118, 1121 n. 2 (9th Cir.2005); *cf. United States v. Holloway*, 259 F.3d 1199, 1201-02 (9th Cir.2001) (where no witness testified that the credit union was insured at the time of the robbery).

#### II. Appeal No. 08-10206 (Defendant Myrie)

##### A. Double Jeopardy

**[5]** The district court did not err by sentencing Myrie for violations of both 18 U.S.C. § 2113(d) and 18 U.S.C. § 924(c). We have previously concluded that imposing consecutive sentences under both statutes does not violate

the Double Jeopardy Clause. *United States v. Browne*, 829 F.2d 760, 766-67 (9th Cir.1987).

#### B. "Brandishing" Under § 924(c)

[6] The district court did not clearly err in sentencing Myrie for brandishing a firearm based on his guilty plea and factual admissions during the plea colloquy. At the change of plea hearing, Myrie clearly admitted that "at the bank, [he] pulled out [his] gun in a threatening matter, [he] brandished the gun." *United States v. Beaudion*, 416 F.3d 965, 968 (9th Cir.2005) (a firearm is brandished if openly displayed for the purpose of intimidation).

#### C. Confrontation Clause

[7] The district court did not violate the Confrontation Clause by basing an upward departure on hearsay evidence regarding Myrie's past criminal conduct. As Myrie acknowledges, we have previously held that the Confrontation Clause does not apply to sentencing. *United States v. Littlesun*, 444 F.3d 1196, 1199-1200 (9th Cir.2006). The evidence presented to the court had the requisite "minimal indicia of reliability" and was, therefore, properly considered. *Id.*

#### D. Due Process and Reasonableness

[8] The district court did not violate due process or Myrie's right to a jury trial by increasing Myrie's

criminal history based on uncharged conduct. Judicial \*252 factfinding does not violate the Sixth Amendment under an advisory guideline system. *See United States v. Ameline*, 409 F.3d 1073, 1077-78 (9th Cir.2005) (en banc). The court did not violate due process by finding by clear and convincing evidence that Myrie had participated in three uncharged robberies, especially in light of the significant proof of Myrie's involvement (including robbery photographs depicting Myrie, which were independently reviewed by the sentencing judge).

The district court did not arbitrarily increase Myrie's criminal history, but appeared to follow the approach suggested by *United States v. Azure*, 536 F.3d 922, 932 (8th Cir.2008): "to assign hypothetical criminal history points to the conduct that did not result in convictions, and then determine what the appropriate criminal history category would be." Finally, to the extent Myrie claims his sentence is unreasonable, the district court adequately considered the sentencing factors in 18 U.S.C. § 3553(a) and adequately explained its reasons for imposing Myrie's sentence. *See United States v. Carty*, 520 F.3d 984 (9th Cir.2008) (en banc).

\*\*3 AFFIRMED.

#### All Citations

351 Fed.Appx. 248, 2009 WL 3651565

#### Footnotes

\* The panel unanimously finds this case suitable for decision without oral argument. *See Fed. R.App. P. 34(a)(2)*.

\*\* The Honorable Edward R. Korman, Senior United States District Judge for the Eastern District of New York, sitting by designation.

\*\*\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

1 *Pinkerton v. United States*, 328 U.S. 640, 66 S.Ct. 1180, 90 L.Ed. 1489 (1946).

## UNITED STATES DISTRICT COURT

District of NevadaUNITED STATES OF AMERICA  
v.**JUDGMENT IN A CRIMINAL CASE**

DOMINIC DAVIS

Case Number: 2:06-CR-239-RCJ-PAL  
USM Number: 41441-048THOMAS NAYLOR

Defendant's Attorney

**THE DEFENDANT:**

pleaded guilty to count(s) \_\_\_\_\_

pleaded nolo contendere to count(s) \_\_\_\_\_ which was accepted by the court.

was found guilty on count(s) ONE, TWO, & CONSOLIDATED COUNTS THREE & FOUR OF SUPERSEDING INDICTMENT after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<b>Title &amp; Section</b>	<b>Nature of Offense</b>	<b>Offense Ended</b>	<b>Count</b>
18 USC §§2113(a) & 371	Conspiracy to Commit Bank Robbery	06/15/2006	1
18 USC §§2113(a) & (d); and 18 USC § 2	Armed Bank Robbery; and Aiding and Abetting	06/15/2006	2
18 USC § 924(c)	Brandishing a Firearm during, in relation to, and In Furtherance of a Conspiracy to Commit Bank Robbery; and Brandishing a Firearm during and in relation to a crime of violence	06/15/2006	3 (Ct. 4 consolidated under Ct. 3)

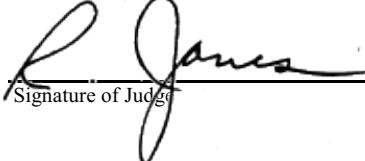
The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) \_\_\_\_\_

Count(s) All remaining  is  are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

APRIL 28, 2008  
Date of Imposition of Judgment

  
Signature of Judge

ROBERT C. JONES, UNITED STATES DISTRICT JUDGE  
Name and Title of Judge

May 7, 2008  
Date

DEFENDANT: DOMINIC DAVIS  
CASE NUMBER: 2:06-CR-239-RCJ-PAL**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: Two Hundred Nine (209) MONTHS\*

\*As to Count One: 60 MONTHS;

As to Count Two: 125 MONTHS; to be served concurrently to the sentence imposed as to Count One;

As to Count Three: 84 MONTHS; to be served consecutively to the sentence imposed as to Counts One and Two

The court makes the following recommendations to the Bureau of Prisons:

The Court recommends the defendant be allowed to serve his term of incarceration at the Terminal Island facility.

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at \_\_\_\_\_  a.m.  p.m. on \_\_\_\_\_.

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on \_\_\_\_\_.

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

**RETURN**

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

a \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: DOMINIC DAVIS  
CASE NUMBER: 2:06-CR-239-RCJ-PAL**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of : FIVE (5) YEARS\*

\*As to Count One: 3 years

As to Count Two: 5 years; Concurrent to the term of supervision imposed as to Counts One and Three

As to Count Three: 5 years; Concurrent to the term of supervision imposed as to Counts One and Two

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed 104 annually, as determined by the court.

The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)

The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)

The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)

The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

**STANDARD CONDITIONS OF SUPERVISION**

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: DOMINIC DAVIS  
CASE NUMBER: 2:06-CR-239-RCJ-PAL

### SPECIAL CONDITIONS OF SUPERVISION

1. **Possession of Weapons** - You shall not possess, have under your control, or have access to any firearm, explosive device, or other dangerous weapons, as defined by federal, state, or local law.
2. **Warrantless Search** - You shall submit to the search of your person, property, or automobile under your control by the Probation Officer, or any other authorized person under the immediate and personal supervision of the probation officer without a search warrant to ensure compliance with all conditions of release.
3. **Substance Abuse Treatment** - You shall participate in and successfully complete a substance abuse treatment program, which will include drug testing, outpatient counseling, or residential placement, as approved and directed by the probation officer. Further, you shall be required to contribute to the costs of services for such treatment, as approved and directed by the probation officer based upon your ability to pay
4. **Mental Health Treatment** - You shall participate in and successfully complete a mental health treatment program, which may include testing, evaluation, medication management, outpatient counseling or residential placement, as approved and directed by the probation officer. Further, you shall be required to contribute to the costs of services for such treatment, as approved and directed by the probation officer based upon your ability to pay.
5. **Access to Financial Information** - You shall provide the probation officer access to any requested financial information, including personal income tax returns, authorization for release of credit information, and any other business financial information in which you have a control or interest.
6. **Debt Obligations** - You shall be prohibited from incurring new credit charges, opening additional lines of credit, or negotiating or consummating any financial contracts without the approval of the probation officer.
7. **Report to Probation Officer After Release from Custody** - You shall report, in person, to the probation office in the district to which you are released within 72 hours of discharge from custody.

DEFENDANT: DOMINIC DAVIS  
CASE NUMBER: 2:06-CR-239-RCJ-PAL**CRIMINAL MONETARY PENALTIES**

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

<b>TOTALS</b>	<b><u>Assessment</u></b>	<b><u>Fine</u></b>	<b><u>Restitution</u></b>
	\$ 300.00	\$ N/A	\$ N/A

The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<b>Name of Payee</b>	<b><u>Total Loss*</u></b>	<b><u>Restitution Ordered</u></b>	<b><u>Priority or Percentage</u></b>
----------------------	---------------------------	-----------------------------------	--------------------------------------

<b>TOTALS</b>	\$ _____ 0	\$ _____ 0
---------------	------------	------------

Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived for the  fine  restitution.

the interest requirement for the  fine  restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: DOMINIC DAVIS  
CASE NUMBER: 2:06-CR-239-RCJ-PAL

## SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A  Lump sum payment of \$ 300.00 due immediately, balance due  
 not later than \_\_\_\_\_, or  
 in accordance  C,  D,  E, or  F below; or

B  Payment to begin immediately (may be combined with  C,  D, or  F below); or

C  Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or

D  Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E  Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F  Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several  
Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

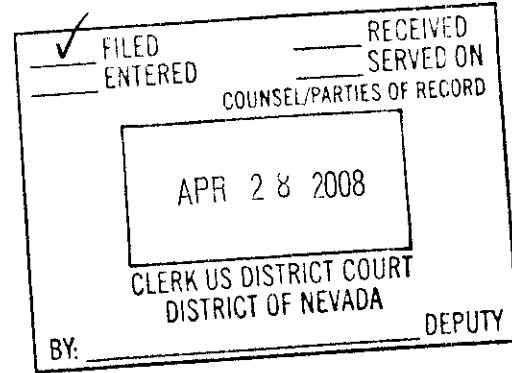
The defendant shall pay the cost of prosecution.

The defendant shall pay the following court cost(s):

X The defendant shall forfeit the defendant's interest in the following property to the United States:  
SEE ATTACHED FINAL ORDER OF FORFEITURE

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

**APPENDIX F - 19a**



UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

10 UNITED STATES OF AMERICA, )  
11 Plaintiff, )  
12 v. ) 2:06-CR-0239-RCJ (PAL)  
13 DOMINIC A. DAVIS, )  
14 Defendant )

15 FINAL ORDER OF FORFEITURE

16 WHEREAS, on January 7, 2008, the United States District Court for the District of Nevada  
17 entered a Preliminary Order of Forfeiture pursuant to 18 U.S.C. §§ 924(c) and 924(d), 21 U.S.C. § 853,  
18 and 28 U.S.C. § 2461(c), based upon the jury verdict finding defendant DOMINIC A. DAVIS guilty  
19 of certain criminal offenses, forfeiting specified property alleged in the superseding indictment and  
20 shown by the United States to have a nexus to the offenses to which defendant DOMINIC A. DAVIS  
21 was found guilty.

22 AND WHEREAS, the United States Marshals Service published the notice of the forfeiture  
23 and of the intent of the United States of America to dispose of the property in accordance with the law  
24 on January 24, 2008, January 28, 2008, and February 4, 2008, in the Las Vegas Review- Journal/Sun,  
25 further notifying all known third parties by personal service or by regular mail and certified mail return  
26 . . .

1 receipt requested, of their right to petition the Court within thirty (30) days for a hearing to adjudicate  
2 the validity of their alleged legal interest in the property;

3 AND WHEREAS, no petition was filed herein by or on behalf of any person or entity and the  
4 time for filing such petitions and claims has expired;

5 AND WHEREAS, no petitions are pending with regard to the assets named herein and the  
6 time for presenting such petitions has expired;

7 THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that all right,  
8 title, and interest in the property hereinafter described is condemned, forfeited, and vested in the  
9 United States of America and shall be disposed of according to law:

10 1. A Colt .45 caliber handgun bearing serial number 2065021;  
11 2. A Taurus .40 caliber handgun bearing serial number SLB10301D;  
12 3. A Taurus .38 caliber handgun bearing serial number UF17984; and  
13 4. Any ammunition found in and around said firearms.

14 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that any and all forfeited  
15 funds, including but not limited to, currency, currency equivalents, certificates of deposit, as well as  
16 any income derived as a result of the United States of America's management of any property forfeited  
17 herein, and the proceeds from the sale of any forfeited property shall be disposed of according to law.

18 DATED this 28th day of April, 2008.

19  
20   
21 UNITED STATES DISTRICT JUDGE  
22  
23  
24  
25  
26

## UNITED STATES DISTRICT COURT

District of Nevada

UNITED STATES OF AMERICA

V.

HARLON JORDAN

## JUDGMENT IN A CRIMINAL CASE

Case Number: 2:06-CR-239-RCJ-PALUSM Number: 41442-048LISA RASMUSSEN

Defendant's Attorney

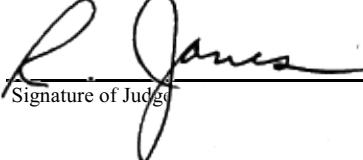
**THE DEFENDANT:** pleaded guilty to count(s) \_\_\_\_\_ pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.X was found guilty on count(s) ONE, TWO, AND CONSOLIDATED COUNTS THREE AND FOUR OF SUPERSEDING INDICTMENT  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<b>Title &amp; Section</b>	<b>Nature of Offense</b>	<b>Offense Ended</b>	<b>Count</b>
18 USC §§2113(a) & 371	Conspiracy to Commit Bank Robbery	06/15/2006	1
18 USC §§2113(a) & (d); and 18 USC § 2	Armed Bank Robbery; and Aiding and Abetting	06/15/2006	2
18 USC § 924(c)	Brandishing a Firearm during, in relation to, and In Furtherance of a Conspiracy to Commit Bank Robbery; and Brandishing a Firearm during and in relation to a crime of violence	06/15/2006	3 (Ct. 4 consolidated under Ct. 3)

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984. The defendant has been found not guilty on count(s) \_\_\_\_\_X Count(s) All remaining  is X are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

APRIL 21, 2008  
Date of Imposition of Judgment  
Signature of JudgeROBERT C. JONES, UNITED STATES DISTRICT JUDGE  
Name and Title of JudgeApril 30, 2008  
Date

DEFENDANT: HARLON JORDAN  
CASE NUMBER: 2:06-CR-239-RCJ-PAL**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: **One Hundred Ninety-Nine (199) MONTHS\***

\*As to Count One: 60 MONTHS;

As to Count Two: 115 MONTHS; to be served concurrently to the sentence imposed as to Count One;

As to Count Three: 84 MONTHS; to be served consecutively to the sentence imposed as to Counts One and Two

The court makes the following recommendations to the Bureau of Prisons:

**X** The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at \_\_\_\_\_  a.m.  p.m. on \_\_\_\_\_.

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on \_\_\_\_\_.

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

**RETURN**

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

a \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: HARLON JORDAN  
CASE NUMBER: 2:06-CR-239-RCJ-PAL**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of : FIVE (5) YEARS\*

\*As to Count One: 3 years

As to Count Two: 5 years; Concurrent to the term of supervision imposed as to Counts One and Three

As to Count Three: 5 years; Concurrent to the term of supervision imposed as to Counts One and Two

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed 104 annually, as determined by the court.

The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)

The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)

The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)

The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

**STANDARD CONDITIONS OF SUPERVISION**

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: HARLON JORDAN  
CASE NUMBER: 2:06-CR-239-RCJ-PAL

### SPECIAL CONDITIONS OF SUPERVISION

1. **Possession of Weapons** - You shall not possess, have under your control, or have access to any firearm, explosive device, or other dangerous weapons, as defined by federal, state, or local law.
2. **Warrantless Search** - You shall submit to the search of your person, property, or automobile under your control by the Probation Officer, or any other authorized person under the immediate and personal supervision of the probation officer without a search warrant to ensure compliance with all conditions of release.
3. **Access to Financial Information** - You shall provide the probation officer access to any requested financial information, including personal income tax returns, authorization for release of credit information, and any other business financial information in which you have a control or interest.
4. **Debt Obligations** - You shall be prohibited from incurring new credit charges, opening additional lines of credit, or negotiating or consummating any financial contracts without the approval of the probation officer.
5. **Life Skills** - You shall participate in and successfully complete a cognitive based life skills program, as approved and directed by the probation officer.
6. **Offender Employment Development Training** - You shall participate in and successfully complete an offender employment development program as approved and directed by the probation officer.
7. **Report to Probation Officer After Release from Custody** - You shall report, in person, to the probation office in the district to which you are released within 72 hours of discharge from custody.

DEFENDANT: HARLON JORDAN  
CASE NUMBER: 2:06-CR-239-RCJ-PAL**CRIMINAL MONETARY PENALTIES**

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

<b>TOTALS</b>	<b><u>Assessment</u></b>	<b><u>Fine</u></b>	<b><u>Restitution</u></b>
	\$ 300.00	\$ N/A	\$ N/A

The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<b>Name of Payee</b>	<b><u>Total Loss*</u></b>	<b><u>Restitution Ordered</u></b>	<b><u>Priority or Percentage</u></b>
----------------------	---------------------------	-----------------------------------	--------------------------------------

<b>TOTALS</b>	\$ _____ 0	\$ _____ 0
---------------	------------	------------

Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived for the  fine  restitution.

the interest requirement for the  fine  restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: HARLON JORDAN  
CASE NUMBER: 2:06-CR-239-RCJ-PAL

## SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A  Lump sum payment of \$ 300.00 due immediately, balance due  
 not later than \_\_\_\_\_, or  
 in accordance  C,  D,  E, or  F below; or

B  Payment to begin immediately (may be combined with  C,  D, or  F below); or

C  Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or

D  Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E  Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F  Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

The defendant shall pay the cost of prosecution.

The defendant shall pay the following court cost(s):

The defendant shall forfeit the defendant's interest in the following property to the United States:

SEE ATTACHED FINAL ORDER OF FORFEITURE

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

**APPENDIX G - 27a**

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DISTRICT OF NEVADA	
BY:	DEPUTY

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

UNITED STATES OF AMERICA, )  
Plaintiff, )  
v. ) 2:06-CR-0239-RCJ (PAL)  
HARLON B. JORDAN, )  
Defendant. )

**FINAL ORDER OF FORFEITURE**

WHEREAS, on January 7, 2008, the United States District Court for the District of Nevada entered a Preliminary Order of Forfeiture pursuant to 18 U.S.C. §§ 924(c) and 924(d), 21 U.S.C. § 853, and 28 U.S.C. § 2461(c), based upon the jury verdict finding defendant HARLON B. JORDAN guilty of certain criminal offenses, forfeiting specified property alleged in the superseding indictment and shown by the United States to have a nexus to the offenses to which defendant HARLON B. JORDAN was found guilty.

AND WHEREAS, the United States Marshals Service published the notice of the forfeiture and of the intent of the United States of America to dispose of the property in accordance with the law on January 24, 2008, January 28, 2008, and February 4, 2008, in the Las Vegas Review- Journal/Sun, further notifying all known third parties by personal service or by regular mail and certified mail return . . .

1 receipt requested, of their right to petition the Court within thirty (30) days for a hearing to adjudicate  
2 the validity of their alleged legal interest in the property;

3 AND WHEREAS, no petition was filed herein by or on behalf of any person or entity and the  
4 time for filing such petitions and claims has expired;

5 AND WHEREAS, no petitions are pending with regard to the assets named herein and the  
6 time for presenting such petitions has expired;

7 THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that all right,  
8 title, and interest in the property hereinafter described is condemned, forfeited, and vested in the  
9 United States of America and shall be disposed of according to law:

- 10 1. A Colt .45 caliber handgun bearing serial number 2065021;
- 11 2. A Taurus .40 caliber handgun bearing serial number SLB10301D;
- 12 3. A Taurus .38 caliber handgun bearing serial number UF17984; and
- 13 4. Any ammunition found in and around said firearms.

14 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that any and all forfeited  
15 funds, including but not limited to, currency, currency equivalents, certificates of deposit, as well as  
16 any income derived as a result of the United States of America's management of any property forfeited  
17 herein, and the proceeds from the sale of any forfeited property shall be disposed of according to law.

18 DATED this 21st day of April, 2008.

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UNITED STATES DISTRICT JUDGE

1/19/07	Page 1 of 1
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BY:	

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

UNITED STATES OF AMERICA, )  
Plaintiff, ) Case No. 2:06-cr-00239-RCJ-PAL  
v. )  
DOMINIC A. DAVIS and HARLON B. )  
JORDAN, )  
Defendants. )  
\_\_\_\_\_  
VERDICT

We, the jury in the above-entitled case, upon our oaths, do say:

## 1. That we find the Defendants

Dominic A. Davis \_\_\_\_\_ Not Guilty  Guilty  
Harlon B. Jordan \_\_\_\_\_ Not Guilty  Guilty

of the offense charged in Count One of the Indictment herein.

2. That we find the Defendants

Dominic A. Davis       Not Guilty       Guilty  
Harlon B. Jordan       Not Guilty       Guilty

of the offense charged in Count Two of the Indictment herein.

3. That we find the Defendants

Dominic A. Davis       Not Guilty       Guilty  
Harlon B. Jordan       Not Guilty       Guilty

of the offense charged in Count Three of the Indictment herein.

DATED this 19 day of December, 2007.

*Redacted*  
FOREPERSON

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5 UNITED STATES DISTRICT COURT  
6 DISTRICT OF NEVADA

\* \* \*

5 UNITED STATES OF AMERICA, )  
6 Plaintiff, )  
7 v. )  
8 )  
9 DOMINIC A. DAVIS and HARLON B. )  
10 JORDAN, )  
11 Defendants. )  
12 \_\_\_\_\_ )  
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2:04-cr-0308-RCJ (LRL)

JURY INSTRUCTIONS14 Members of the jury, now that you have heard all the evidence, it is my duty to  
15 instruct you on the law which applies in this case. A copy of these instructions will be  
16 available in the jury room for you to consult.17 It is your duty to find the facts from all the evidence in the case. To those facts you  
18 must apply the law as I give it to you. You must follow the law as I give it to you whether you  
19 agree with it or not. And you must not be influenced by any personal likes or dislikes,  
20 opinions, prejudices, or sympathy. That means that you must decide the case solely on the  
21 evidence before you. You will recall that you took an oath promising to do so at the beginning  
22 of the case.23 In following my instructions, you must follow all of them and not single out some  
24 and ignore others; they are all equally important. And you must not read into these instructions  
25 or into anything the court may have said or done any suggestion as to what verdict you should  
26 return -- that is a matter entirely up to you.

1           The Indictment is not evidence. The defendant has pled not guilty to the charge.  
2 The defendant is presumed to be innocent and does not have to testify or present any evidence  
3 to prove innocence. The government has the burden of proving every element of the charge  
4 beyond a reasonable doubt.

5           Proof beyond a reasonable doubt is proof that leaves you firmly convinced that the  
6 defendant is guilty. It is not required that the government prove guilt beyond all possible  
7 doubt.

8           A reasonable doubt is a doubt based upon reason and common sense and is not based  
9 purely on speculation. It may arise from a careful and impartial consideration of all the  
10 evidence, or from lack of evidence.

11           If after a careful and impartial consideration of all the evidence, you are not  
12 convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the  
13 defendant not guilty. On the other hand, if after a careful and impartial consideration of all the  
14 evidence, you are convinced beyond a reasonable doubt that the defendant is guilty, it is your  
15 duty to find the defendant guilty.

16           A defendant in a criminal case has a constitutional right not to testify. No  
17 presumption of guilt may be raised, and no inference of any kind may be drawn, from the fact  
18 that the defendant did not testify.

19           The evidence from which you are to decide what the facts are consists of:  
20           1. the sworn testimony of any witness;  
21           2. the exhibits which have been received into evidence; and  
22           3. any facts to which all the lawyers have stipulated.

23           The parties have agreed to certain facts that have been stated to you. You should  
24 therefore treat these facts as having been proved.

25           In reaching your verdict you may consider only the testimony and exhibits received  
26 into evidence. Certain things are not evidence and you may not consider them in

1 deciding what the facts are. I will list them for you:

- 2 1. Arguments and statements by lawyers are not evidence. The lawyers are not  
3 witnesses. What they have said in their opening statements, closing  
4 arguments and at other times is intended to help you interpret the evidence,  
5 but it is not evidence. If the facts as you remember them differ from the way  
6 the lawyers state them, your memory of them controls.
- 7 2. Questions and objections by lawyers are not evidence. Attorneys have a duty  
8 to their clients to object when they believe a question is improper under the  
9 rules of evidence. You should not be influenced by the question, the  
10 objection, or the court's ruling on it.
- 11 3. Testimony that has been excluded or stricken, or that you have been  
12 instructed to disregard, is not evidence and must not be considered. In  
13 addition some testimony and exhibits have been received only for a limited  
14 purpose; where I have given a limiting instruction, you must follow it.
- 15 4. Anything you may have seen or heard when the court was not in session is  
16 not evidence. You are to decide the case solely on the evidence received at  
17 the trial.

18 Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact,  
19 such as testimony by a witness about what that witness personally saw or heard or did.  
20 Circumstantial evidence is proof of one or more facts from which you could find another fact.  
21 You should consider both kinds of evidence. The law makes no distinction between the weight  
22 to be given to either direct or circumstantial evidence. It is for you to decide how much weight  
23 to give to any evidence.

24 In deciding the facts in this case, you may have to decide which testimony to believe  
25 and which testimony not to believe. You may believe everything a witness says, or  
26 part of it, or none of it.

In considering the testimony of any witness, you may take into account:

1. the opportunity and ability of the witness to see or hear or know the things testified to;
2. the witness's memory;
3. the witness's manner while testifying;
4. the witness's interest in the outcome of the case and any bias or prejudice;
5. whether other evidence contradicted the witness's testimony;
6. the reasonableness of the witness's testimony in light of all the evidence; and
7. any other factors that bear on believability.

10 The weight of the evidence as to a fact does not necessarily depend on the number  
11 of witnesses who testify.

12 You are here only to determine whether the defendant is guilty or not guilty of the  
13 charges in the indictment. Your determination must be made only from the evidence in the  
14 case. The defendant is not on trial for any conduct or offense not charged in the indictment.  
15 You should consider evidence about the acts, statements, and intentions of others, or evidence  
16 about other acts of the defendant, only as they relate to this charge against this defendant.

17 You have heard testimony from Kurt J. Myrie, a witness who pleaded guilty to a  
18 crime arising out of the same events for which the defendants are on trial. This guilty plea is  
19 not evidence against the defendants, and you may consider it only in determining this witness's  
20 believability.

21 For this reason, in evaluating the witness's testimony, you should consider the extent  
22 to which or whether the witness's testimony may have been influenced by this factor. In  
23 addition, you should examine the witness's testimony with greater caution than that of other  
24 witnesses.

1           A separate crime is charged against one or more of the defendants in each count.  
2 The charges have been joined for trial. You must decide the case of each defendant on each  
3 crime charged against that defendant separately. Your verdict on any count as to any defendant  
4 should not control your verdict on any other count or as to any other defendant.

5           All of the instructions apply to each defendant and to each count.  
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1       The case against codefendant Kurt J. Myrie has been disposed of and is no longer  
2 before you. Do not guess or speculate as to the reason for the disposition. The disposition  
3 should not influence your verdicts with reference to the remaining defendants, and you must  
4 base your verdicts solely on the evidence against the remaining defendants.

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1        You have heard testimony from persons who, because of education or experience,  
2 are permitted to state opinions and the reasons for their opinions.

3        Opinion testimony should be judged just like any other testimony. You may accept  
4 it or reject it, and give it as much weight as you think it deserves, considering the witness'  
5 education and experience, the reasons given for the opinion, and all the other evidence in the  
6 case.

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## THE INDICTMENT AND SPECIFIC ALLEGATIONS THEREOF:

## THE GRAND JURY CHARGES THAT:

**COUNT ONE**

## Conspiracy to Commit Bank Robbery

Beginning on a date unknown to the Grand Jury and continuing up to about June 15, 2006, in the State and Federal District of Nevada,

KURT J. MYRIE,  
DOMINIC A. DAVIS, and  
HARLON B. JORDAN,

the defendants herein, did knowingly, willfully, and unlawfully conspire and agree with each other to commit Bank Robbery, in violation of Title 18, United States Code, Sections 2113(a) and 371.

In furtherance of the conspiracy and to effect the objectives of the conspiracy, the following overt acts were committed, among others:

1) On or about June 15, 2006, Kurt J. Myrie, Dominic A. Davis and Harlon B. Jordan (“Defendants”) planned to commit a bank robbery at the Colonial Bank located at 7451 West Lake Mead Boulevard in Las Vegas, Nevada, and the deposits of which were then insured by the Federal Deposit Insurance Corporation.

2) On that same day, Kurt J. Myrie, Dominic A. Davis and Harlon B. Jordan arrived to the Colonial Bank in an Oldsmobile car. One of the three Defendant's parked the car in one of the bank's handicapped parking spaces. The Defendants exited the car wearing hooded-type shirts and wearing masks which covered part of their faces and entered the bank.

3) While inside the bank, the Defendants possessed and brandished handguns. One Defendant stood near the entrance door while the other two Defendants went behind the counter and demanded money from a bank teller. Intimidated and in fear for her life, the teller opened a teller drawer and removed approximately \$3,178.00 along with a hidden electronic tracking device. One of the Defendants took the money and electronic tracking device and all

1 three Defendants exited the bank.

2           4) After exiting the bank, the Defendants entered the Oldsmobile car and drove  
3 away. Shortly thereafter, Defendants abandoned the Oldsmobile car and entered into a  
4 Chrysler Pacifica car and drove away. Law enforcement officials detected the signal emanating  
5 from the electronic tracking device taken during the robbery and found the Defendants inside  
6 the Chrysler Pacifica. Additionally, law enforcement officials found inside the Chrysler  
7 Pacifica three loaded handguns, the electronic tracking device, hooded shirts, and  
8 approximately \$3,180.00. All of the above mentioned acts occurred in the state and federal  
9 district of Nevada.

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**COUNT TWO**

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Armed Bank Robbery, Aiding and Abetting

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On or about June 15, 2006, in the State and Federal District of Nevada,

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**KURT J. MYRIE,  
DOMINIC A. DAVIS, and  
HARLON B. JORDAN,**

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16 the defendants herein, aided and abetted by each other, did, by force, violence and intimidation,  
17 take from the person and presence of employees of Colonial Bank, 7451 West Lake Mead  
18 Boulevard in Las Vegas, Nevada, approximately three-thousand one-hundred and seventy-eight  
19 dollars (\$3,178.00) in United States Currency, belonging to and in the care, custody, control,  
20 management and possession of Colonial Bank, the deposits of which were then insured by the  
21 Federal Deposit Insurance Corporation, and in the course of committing said offense, the  
22 defendant did intentionally make a display of force that reasonably caused employees of  
23 Colonial Bank to fear bodily harm by the use of a dangerous weapon, to wit, a handgun, in  
24 violation of Title 18, United States Code, Sections 2113(a) and (d) and Title 18 United States  
25 Code, Section 2.

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### **COUNT THREE**

## Brandishing a Firearm During and in Relation to a Crime of Violence

On or about June 15, 2006, in the State and Federal District of Nevada,

KURT J. MYRIE,  
DOMINIC A. DAVIS, and  
HARLON B. JORDAN,

6 the defendants herein, during and in relation to a crime of violence, namely, conspiracy to  
7 commit bank robbery and armed bank robbery, as alleged in Count One and Two of this  
8 indictment, did knowingly possess, carry and brandish a firearm, namely, a handgun, all in  
9 violation of Title 18, United States Code, Section 924(c) and *Pinkerton v. United States*, 328  
10 U.S. 640, 66 S.Ct. 1180 (1946).

## **COUNT ONE**

## CONSPIRACY—ELEMENTS

The defendants are charged in Count 1 of the Indictment with conspiring to Commit Bank Robbery in violation of Section 371 and 2113 (a) of Title 18 of the United States Code. In order for the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, beginning on or about a date unknown, and ending on or about June 15, 2006, there was an agreement between two or more persons to commit at least one crime as charged in the indictment, namely bank robbery; and

Second, the defendant became a member of the conspiracy knowing of at least one of its objects and intending to help accomplish it; and

Third, one of the members of the conspiracy performed at least one overt act for the purpose of carrying out the conspiracy, with all of you agreeing on a particular overt act that you find was committed.

1 I shall discuss with you briefly the law relating to each of these elements.

2 A conspiracy is a kind of criminal partnership—an agreement of two or more persons  
3 to commit one or more crimes. The crime of conspiracy is the agreement to do something  
4 unlawful; it does not matter whether the crime agreed upon was committed.

5 For a conspiracy to have existed, it is not necessary that the conspirators made a  
6 formal agreement or that they agreed on every detail of the conspiracy. It is not enough,  
7 however, that they simply met, discussed matters of common interest, acted in similar ways,  
8 or perhaps helped one another. You must find that there was a plan to commit at least one of  
9 the crimes alleged in the indictment as an object of the conspiracy with all of you agreeing as  
10 to the particular crime which the conspirators agreed to commit.

11 One becomes a member of a conspiracy by willfully participating in the unlawful  
12 plan with the intent to advance or further some object or purpose of the conspiracy, even  
13 though the person does not have full knowledge of all the details of the conspiracy.  
14 Furthermore, one who willfully joins an existing conspiracy is as responsible for it as the  
15 originators. On the other hand, one who has no knowledge of a conspiracy, but happens to act  
16 in a way which furthers some object or purpose of the conspiracy, does not thereby become a  
17 conspirator. Similarly, a person does not become a conspirator merely by associating with one  
18 or more persons who are conspirators, nor merely by knowing that a conspiracy exists.

19 An overt act does not itself have to be unlawful. A lawful act may be an element of  
20 a conspiracy if it was done for the purpose of carrying out the conspiracy. The government is  
21 not required to prove that the defendant personally did one of the overt acts.

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**COUNT TWO**

**ARMED BANK ROBBERY (18 U.S.C. § 2113)**

The defendants are charged in Count 2 of the Indictment with armed bank robbery in violation of Section 2113 of Title 18 of the United States Code. In order for the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendants took money belonging to Colonial Bank:

Second, the defendants used force and violence, or intimidation in doing so;

Third, the deposits of the financial institution were then insured by the Federal Deposit Insurance Corporation; and

Fourth, the defendants intentionally made a display of force that reasonably caused the employees and customers of Colonial Bank to fear bodily harm by using a dangerous weapon, namely a handgun.

**COUNT TWO**

## **AIDING AND ABETTING - ARMED BANK ROBBERY**

A defendant may be found guilty of Armed Bank Robbery, Aiding and Abetting, even if the defendant personally did not commit the act or acts constituting the crime but aided and abetted in its commission. To prove a defendant guilty of aiding and abetting, the government must prove beyond a reasonable doubt:

First, Armed Bank Robbery was committed by someone:

Second, the defendant knowingly and intentionally aided, counseled, commanded, induced or procured that person to commit each element of Armed Bank Robbery; and

Third, the defendant acted before the crime was completed

It is not enough that the defendant merely associated with the person committing the crime, or unknowingly or unintentionally did things that were helpful to that person, or was present at the scene of the crime.

The evidence must show beyond a reasonable doubt that the defendant acted with the knowledge and intention of helping that person commit Armed Bank Robbery

The government is not required to prove precisely which defendant actually committed the crime and which defendant aided and abetted.

In order to find any defendant guilty of Count Two – Aiding and Abetting – of the Indictment, the jury must find beyond a reasonable doubt that the defendant directly facilitated or encouraged the use or carrying of a firearm. Mere knowledge that a firearm is to be used in a robbery is insufficient to create criminal liability under Count Two of the Indictment.

### **COUNT THREE**

**FIREARMS—USING OR CARRYING IN COMMISSION OF A CRIME OF  
VIOLENCE (18 U.S.C. § 924(c))**

The defendants are charged in Count 3 of the Indictment with using, carrying, brandishing a firearm during and in relation to a crime of violence in violation of Section 924(c) of Title 18 of the United States Code. In order for the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant committed the crime of Conspiracy to Commit Bank Robbery or Armed Bank Robbery as charged in Counts 1 and 2 of the indictment:

Second, the defendant knowingly used, carried, or brandished the firearm. 1

Third, the defendant used, carried, or brandished, the firearm during and in relation to the crime.

A defendant has "used" a firearm if he or she has actively employed the firearm in  
o Conspiracy to Commit Bank Robbery and Armed Bank Robbery, the crimes  
Use includes any of the following:

(1) brandishing or displaying a firearm;

(2) referring to a firearm in the offender's possession in order to bring about a change in the circumstances of the predicate offense;

(3) the silent but obvious and forceful presence of a firearm in plain view.

Carrying is not limited to carrying weapons directly on the person, but can include circumstances such as carrying in a vehicle. A defendant “carries” a firearm when he or she:

(1) knowingly possesses it; and

(2) holds, moves, conveys, or transports it in some manner.

A person possesses a firearm if the person knows of its presence and has the power to control it.

1 control of it, or knows of its presence and has the power and intention to control it.

2 A defendant takes such action "in relation to the crime" if the firearm facilitated or  
3 played a role in the crime.

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### **COUNT THREE**

**LIABILITY FOR SUBSTANTIVE OFFENSE COMMITTED BY CO-CONSPIRATOR  
(PINKERTON CHARGE)**

Each member of a conspiracy is responsible for the actions of the other conspirators performed during the course and in furtherance of the conspiracy. If one member of a conspiracy commits a crime in furtherance of a conspiracy, the other members have also, under the law, committed that crime.

Therefore, you may find the defendant guilty of the substantive offense of using or carrying a firearm in commission of a crime of violence as charged in Count 3 of the indictment if the government has proved each of the following elements beyond a reasonable doubt:

First, a person named in Count 1 of the indictment committed the crime of using or carrying a firearm in commission of a crime of violence as alleged in that count; Second, the person was a member of the conspiracy charged in Count 1 of the indictment:

Third, the person committed the crime of using or carrying a firearm in commission of a crime of violence in furtherance of the conspiracy;

Fourth, the defendant was a member of the same conspiracy at the time the offense charged in Count 3 was committed; and

Fifth, the offense fell within the scope of the unlawful agreement and could reasonably have been foreseen to be a necessary or natural consequence of the unlawful agreement.

1 **KNOWINGLY DEFINED:**

2 An act is done knowingly if the defendant is aware of the act and does not act  
3 through ignorance, mistake or accident. You may consider evidence of the defendant's words,  
4 acts, or omissions, along with all the other evidence, in deciding whether the defendant acted  
5 knowingly.

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1        When you begin your deliberations, you should elect one member of the jury as your  
2 foreperson. That person will preside over the deliberations and speak for you here in court.

3        You will then discuss the case with your fellow jurors to reach agreement if you can  
4 do so. Your verdict, whether guilty or not guilty, must be unanimous.

5        Each of you must decide the case for yourself, but you should do so only after you  
6 have considered all the evidence, discussed it fully with the other jurors, and listened to the  
7 views of your fellow jurors.

8        Do not be afraid to change your opinion if the discussion persuades you that you  
9 should. But do not come to a decision simply because other jurors think it is right.

10       It is important that you attempt to reach a unanimous verdict but, of course, only if  
11 each of you can do so after having made your own conscientious decision. Do not change an  
12 honest belief about the weight and effect of the evidence simply to reach a verdict.

13       Your verdict must be based solely on the evidence and on the law as I have given it  
14 to you in these instructions. However, nothing that I have said or done is intended to suggest  
15 what your verdict should be—that is entirely for you to decide.

16       Some of you have taken notes during the trial. Whether or not you took notes, you  
17 should rely on your own memory of what was said. Notes are only to assist your memory. You  
18 should not be overly influenced by the notes.

19       The punishment provided by law for this crime is for the court to decide. You may  
20 not consider punishment in deciding whether the government has proved its case against the  
21 defendant beyond a reasonable doubt.

22       A verdict form has been prepared for you. After you have reached unanimous  
23 agreement on a verdict, your foreperson will fill in the form that has been given to you, sign  
24 and date it and advise the bailiff that you are ready to return to the courtroom.

1        If it becomes necessary during your deliberations to communicate with me, you may  
2 send a note through the bailiff, signed by your foreperson or by one or more members of the  
3 jury. No member of the jury should ever attempt to communicate with me except by a signed  
4 writing, and I will respond to the jury concerning the case only in writing, or here in open court.  
5 If you send out a question, I will consult with the lawyers before answering it, which may take  
6 some time. You may continue your deliberations while waiting for the answer to any question.  
7 Remember that you are not to tell anyone—including me—how the jury stands, numerically  
8 or otherwise, on the question of the guilt of the defendant, until after you have reached a  
9 unanimous verdict or have been discharged.

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DATED this 19 day of Dec. 2007.

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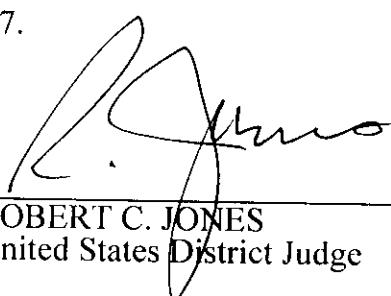
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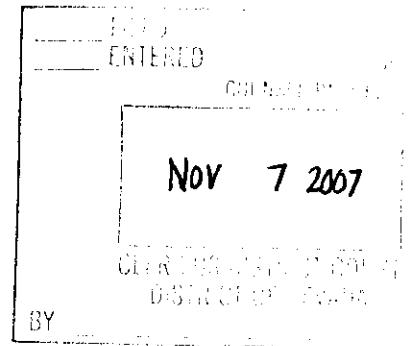
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ROBERT C. JONES  
United States District Judge



1 STEVEN W. MYHRE  
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5

6 **UNITED STATES DISTRICT COURT**  
7 **DISTRICT OF NEVADA**

8 -oOo-

9 UNITED STATES OF AMERICA, ) SUPERSEDING CRIMINAL INDICTMENT  
10 PLAINTIFF, ) 2:06-cr-239-RCJ (PAL)  
11 VS. ) VIOLATIONS:  
12 KURT J. MYRIE, ) 18 U.S.C. § 371 - Conspiracy to Commit  
13 DOMINIC A. DAVIS, and ) Bank Robbery  
14 HARLON B. JORDAN, ) 18 U.S.C. § 2113 (a) & (d) - Armed Bank  
15 DEFENDANTS. ) Robbery  
16 ) 18 U.S.C. § 2 - Aiding & Abetting  
17 ) 18 U.S.C. § 924(c) - Brandishing a Firearm  
18 ) During, In Relation To, and in Furtherance  
19 ) of Conspiracy to Commit, a Crime of  
20 ) Violence  
21 ) 18 U.S.C. § 924(c) - Brandishing a Firearm  
22 ) During and in Relation to a Crime of  
23 ) Violence  
24 ) Forfeiture Allegation.

25 **THE GRAND JURY CHARGES THAT:**

26 **COUNT ONE**

Conspiracy to Commit Bank Robbery

Beginning on a date unknown to the Grand Jury and continuing up to on or about  
June 15, 2006, in the State and Federal District of Nevada,

KURT J. MYRIE,  
DOMINIC A. DAVIS, and  
HARLON B. JORDAN,

the defendants herein, did knowingly, willfully, and unlawfully conspire and agree with each

1 other to commit bank robbery, in violation of Title 18, United States Code, Sections 2113(a)  
2 and 371.

3 In furtherance of the conspiracy and to effect the objectives of the conspiracy, the  
4 following overt acts were committed, among others:

5 1) On or about June 15, 2006, Kurt J. Myrie, Dominic A. Davis and Harlon  
6 B. Jordan ("Defendants") conspired to commit a bank robbery at the Colonial Bank located  
7 at 7451 West Lake Mead Boulevard in Las Vegas, Nevada, and the deposits of which were  
8 then insured by the Federal Deposit Insurance Corporation.

9 2) On that same day, Kurt J. Myrie, Dominic A. Davis and Harlon B.  
10 Jordan arrived to the Colonial Bank in an Oldsmobile car. One of the three Defendant's  
11 parked the car in one of the bank's handicapped parking spaces. The Defendants exited  
12 the car wearing hooded-type shirts and masks which covered part of their faces and entered  
13 the bank.

14 3) While inside the bank, the Defendant's possessed and brandished  
15 handguns. One Defendant stood near the entrance door while the other two Defendant's  
16 went behind the teller-counter and demanded money from a bank teller. Intimidated and in  
17 fear for her live, the teller opened a teller drawer and removed approximately \$3,178.00  
18 along with a hidden electronic tracking device. One of the Defendants took the money and  
19 electronic tracking device and all three Defendants exited the bank.

20 4) After exiting the bank, the Defendants entered the Oldsmobile car and  
21 drove away. Shortly thereafter, Defendant's abandoned the Oldsmobile car and entered into  
22 a Chrysler Pacifica car and drove away. Law enforcement officials detected the signal  
23 emanating from the electronic tracking device taken during the robbery and found the  
24 Defendants inside the Chrysler Pacifica. Additionally, law enforcement officials found inside  
25 the Chrysler Pacifica three loaded handguns, the electronic tracking device,  
26 . . .

1 hooded shirts, and approximately \$3,180.00. All in violation of Title 18, United States Code,  
2 Sections 2113(a) and 371.

3 **COUNT TWO**

4 Armed Bank Robbery, Aiding and Abetting

5 On or about June 15, 2006, in the State and Federal District of Nevada,

6 **KURT J. MYRIE,  
7 DOMINIC A. DAVIS, and  
HARLON B. JORDAN,**

8 the defendants herein, aided and abetted by each other, did, by force, violence and  
9 intimidation, take from the person and presence of employees of Colonial Bank, 7451 West  
10 Lake Mead Boulevard in Las Vegas, Nevada, approximately three-thousand one-hundred  
11 and seventy-eight dollars (\$3,178.00) in United States Currency, belonging to and in the  
12 care, custody, control, management and possession of Colonial Bank, the deposits of which  
13 were then insured by the Federal Deposit Insurance Corporation, and in the course of  
14 committing said offense, the defendant did intentionally make a display of force that  
15 reasonably caused employees of Colonial Bank to fear bodily harm by the use of a  
16 dangerous weapon, to wit, a handgun, in violation of Title 18, United States Code, Sections  
17 2113(a) and (d) and Title 18, United States Code, Section 2.

18 **COUNT THREE**

19 Brandishing a Firearm During, In Relation To, and  
20 In Furtherance of a Conspiracy to Commit Bank Robbery

21 On or about June 15, 2006, in the State and Federal District of Nevada,

22 **KURT J. MYRIE,  
23 DOMINIC A. DAVIS, and  
HARLON B. JORDAN,**

24 the defendants herein, did knowingly possess, carry and brandish a firearm, to wit: a  
25 handgun, during, in relation to, and in furtherance of a conspiracy to commit a crime of  
26 violence for which they may be prosecuted in a court of the United States, that is,

1 conspiracy to commit bank robbery as alleged in Count One of this Indictment and such was  
2 a reasonably foreseeable consequence of the conspiracy, all in violation of Title 18, United  
3 States Code, Section 924(c).

4 **COUNT FOUR**

5 Brandishing a Firearm During and in Relation to a Crime of Violence

6 On or about June 15, 2006, in the State and Federal District of Nevada,

7 **KURT J. MYRIE,  
DOMINIC A. DAVIS, and  
HARLON B. JORDAN,**

8 the defendants herein, during and in relation to a crime of violence, namely, conspiracy to  
9 commit bank robbery and armed bank robbery, as alleged in Count One and Count Two of  
10 this Indictment, did knowingly possess, carry and brandish a firearm, namely, a handgun,  
11 all in violation of Title 18, United States Code, Section 924(c).

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1 **FORFEITURE ALLEGATION**

2 As a result of the foregoing offense, the defendant shall forfeit to the United States  
3 all firearms and ammunition involved in the commission of the violation of Title 18, United  
4 States Code, Section 924(c)(1)(A)(ii), alleged in Counts Three and Four of this Indictment,  
5 including but not limited to the following:

6 1. a Colt .45 caliber handgun bearing serial number  
7 2065021,  
8 2. a Taurus .40 caliber handgun bearing serial number  
9 SLB10301D,  
10 3. a Taurus .38 caliber handgun bearing serial number  
11 UF17984, and  
12 4. any ammunition found in and around said firearms.

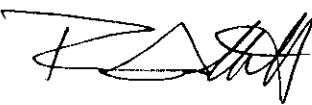
13 All in violation of Title 18, United States Code, Sections 922(g)(1) and 924(d), Title  
14 28, United States Code, Section 2461(c), and Title 21, United States Code, Section 853.

15 **DATED:** this 7 day of ~~October~~ <sup>November</sup> 2007.

16 **A TRUE BILL:**

17 /S/  
18 FOREPERSON OF THE GRAND JURY

19  
20 STEVEN W. MYHRE  
United States Attorney

21   
22 RAY GATTINELLA  
Assistant United States Attorney