CLERK
SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

# Supreme Court of Virginia

AT RICHMOND

RECORD NO. 76-1372

GREGORY JONES,
*Appellant,*

*v.*

COMMONWEALTH OF VIRGINIA,
*Appellee.*

## APPENDIX

Stuart H. Held, Esq.
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Virginia Beach, Virginia 23462
*Counsel for Appellant*

Andrew P. Miller
Attorney General
Jim L. Chin
Assistant Attorney General
Supreme Court Building
Richmond, Virginia
*Counsel for Appellee*

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COMMONWEALTH OF VIRGINIA )
) To-Wit:
CITY OF PORTSMOUTH )

27490

March 4, 1976

IN THE CIRCUIT COURT OF THE CITY OF PORTSMOUTH:

The Grand Jury charges that: on or about October 27, 1975, in the City of Portsmouth Gregory Jones did rob Hilda White of U. S. currency having a value of about $195.00, by means of a pistol,

against the peace and dignity of the Commonwealth of Virginia.

Va. Code § 18.2-58

A COPY, TESTE: WALTER M. EDMONDS, CLERK OF THE CIRCUIT COURT OF THE CITY OF PORTSMOUTH, VIRGINIA

Iris P. Hullard D. C.

Docket ..... File .....

COMMONWEALTH OF VIRGINIA

v.

.....Gregory Jones.....

.....

INDICTMENT

.....March.....Term, 1976.....

.....Robbery.....

..... A TRUE BILL

L. B. Warner

..... Foreman.

Witnesses:

Det. W. L. Ewing

.....

p. d.

STATEMENT OF COSTS

| | |
|---|---|
| Fine . . . . . | $..... |
| Clerk . . . . . | $..... |
| Com. Atty. . . . . | ..... |
| Witnesses . . . . . | ..... |
| Sgt. . . . . | ..... |
| Court Reporter. . . | ..... |
| Atty. (Appt.) . . . | ..... |
| Jury . . . . . | ..... |
| D. M. V. . . . . | ..... |
| Abstracts . . . . . | ..... |
| Warrant . . . . . | ..... |
| Municipal Ct. Fee. . | ..... |
| Atty. (Lower Ct.). . | ..... |
| Total Costs | $..... |
| Total Fine & Costs | $..... |

VERDICT

We, the jury, find the defendant .....

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Foreman.

COMMONWEALTH OF VIRGINIA )
) To-Wit:
CITY OF PORTSMOUTH )

March 4, 1976 27491

IN THE CIRCUIT COURT OF THE CITY OF PORTSMOUTH:

The Grand Jury charges that: on or about October 27, 1975, in the City of Portsmouth Gregory Jones did use and attempt to use and display a firearm in a threatening manner while committing robbery, a felony,

against the peace and dignity of the Commonwealth of Virginia.

Va. Code § 18.2-53.1

A COPY, TESTE: WALTER M. EDMONDS, CLERK OF THE CIRCUIT COURT OF THE CITY OF PORTSMOUTH, VIRGINIA

BY Iris P. Halland D. C.

Docket ..... File .....

COMMONWEALTH OF VIRGINIA

v.

Gregory Jones

INDICTMENT

March Term, 19 76

Displaying fire in commission/ of felony

A TRUE BILL

L. B. Warren

Foreman.

Witnesses:

Det. W. L. Ewing

p. d.

Fine . . . . . $.....

Clerk . . . . . $.....

Com. Atty. . . . . .....

Witnesses . . . . . .....

Sgt. . . . . .....

Court Reporter. . . . .....

Atty. (Appt.) . . . . .....

Jury . . . . . .....

D. M. V. . . . . .....

Abstracts . . . . . .....

Warrant . . . . . .....

Municipal Ct. Fee. . . .....

Atty. (Lower Ct.). . . .....

Total Costs $.....

Total Fine & Costs $.....

VERDICT

We, the jury, find the defendant .....

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Foreman.

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* * * * * * * * * *

THE COURT: The case this morning is Commonwealth vs. Gregory Jones. Is the Commonwealth ready?

MR. SHARPE: Commonwealth is ready, Your Honor.

MR. HELD: Defense is ready, Your Honor. I have a preliminary motion to make. I would like to take it up in chambers.

THE COURT: All right. Let's go back in chambers.

IN THE CONFERENCE ROOM

(Present: The Court, Mr. Sharpe, Mr. Held, and the defendant.)

MR. HELD: If Your Honor, please, Mr. Jones is arrested and indicted for robbery, and also, under Section 18.2-53.1, displaying a pistol in the commission of a felony.

Our motion would be as to the constitutionality of Section 18.2-53.1,

in that he is also indicted for robbery, Section 18.2-58, the robbery statute, which states among other things that if a person commits robbery by the threat of presenting a firearm or other deadly weapon or instrumentality, he shall be guilty of a felony and shall be punished by confinement in the penitentiary for life or any term not less than five years. It's double jeopardy.

It shall be unlawful for any person to use or display such weapon in a threatening manner while committing a felony. You indicted him for using a gun in commission of a robbery, which the robbery statute specifically says in part of that statute, and you are also trying him for using that gun, and certainly the punishment is severe; and I would ask that the Court rule on the constitutionality of 18.2-58.

THE COURT: I overrule your motion. I think the statute has been passed and ruled on all over the country these days. I don't find any merit to your motion.

MR. HELD: Note our exception.

* * * * * * * * *

IN THE COURTROOM

(Court Reporter sworn.)

(Defendant arraigned on Indictment Number 27,490.)

CLERK OF COURT: How say you, guilty or not guilty?

DEFENDANT: Not guilty.

CLERK OF COURT: Do you wish to be tried by the Court or a jury?

DEFENDANT: Jury.

(Defendant arraigned on Indictment Number 27,491.)

CLERK OF COURT: How say you, guilty or not guilty?

DEFENDANT: Not guilty.

CLERK OF COURT: Do you wish to be tried by the Court or by a jury?

DEFENDANT: The jury.

***

***

HILDA WHITE, Witness called by Attorney for the Commonwealth, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

EXAMINED BY MR. SHARPE:

Q Mrs. White, please state your name for the jury.

A Hilda White.

Q Where do you work?

A Ward's Baking Company.

Q Where is that?

A 3708 George Washington Highway, Portsmouth.

Q Portsmouth?

A Yes.

Q And I would like to take you back to on or about October 27, 1975, and ask you, during that period of time, did something unusual happen?

A Yes. It was about five p.m. when this black male come in. There was two customers and my husband and little boy in the store, and he walked by the snack cake shelf to the end of it and came back almost to the other end and picked up a package of Pecan Spins.

Q Is there anything unusual about that date that makes it stick out in your mind?

A Nothing other than the robbery.

Q What was it like outside that day?

A Well, it was the first Monday that the time had changed to Eastern Standard Time, and it was relatively -- it wasn't completely dark -- but it was getting dark, and there was kind of an overcast sky because it looked like it was going to rain.

Q Now, you were telling us that this person came in and was looking at what kind of item?

A We have a shelf that has nothing but small snack cakes on it, and he went to the opposite end of the store and then just walked back up to the other end, and about halfway or midway, he picked up a package of Pecan Spins, a small one.

Q And then what happened?

A He brought them to the counter and laid them on the counter, and I said, "Would that be all?" and he didn't say anything.

I proceeded to pick them up, and whenever the drawer came open, he said, "I'll take all the bills in the drawer", and in disbelief, I turned around and just stared right at him, and all I saw was a small -- I don't know much about guns -- but I know it was a small

1 revolver because I could see the bullets in the chamber;
2 and he said, "Give me the bills out of the drawer."
3 Q Do you know how much was in that drawer
4 at that time?
5 A The length of time that I had been
6 there -- because I'm only a part-time employee -- I
7 would say it was around between one hundred eighty and
8 two hundred dollars.
9 Q And what happened? Where did he have
10 this revolver?
11 A In his left hand.
12 Q In his left hand?
13 A In his left hand, and he didn't put his
14 hand on the counter because he had laid the package of
15 Pecan Spins on the counter, and when I looked him right
16 in the face, all I could see was the revolver laying on
17 the counter like this -- I mean, in his hand.
18 Q You say you looked at him in the face?
19 A Just directly.
20 Q And he said, "Hand over the bills"; is
21 that what you said?
22 A "Give me the bills out of the drawer."
23 Q How did he say this -- in what tone of
24 voice?
25 A It was a rather low tone, not a harsh or

1 not a real deep voice, but just as if he didn't want
2 the other people in the store to hear it.
3 Q Did you hand over this money?
4 A Yes, I did.
5 Q And then, after you handed over the money,
6 what happened?
7 A He went on out the door, which was maybe
8 three feet.
9 Q Three feet?
10 A Uh-huh.
11 Q After he went out the door, what did you
12 do then?
13 A I just squealed out in the store that I
14 had been robbed.
15 Q Who was in the store?
16 A My husband and little boy and two girls
17 that shop in there and their sisters.
18 Q What did they do while this robbery was
19 going on?
20 A One of the girls was getting her bread
21 and another one was looking at some new -- it's like a
22 donut, but it's called a Dunkin' Stick -- and she had
23 picked a package up, and both of them had their backs to
24 me.
25 Q And your husband?

A He was getting some Graham Crackers off the shelf for my little boy. He had his back to me, too.

Q Was there anybody else in the store other than them?

A My son.

Q Your little son?

A Uh-huh.

Q He was with his father, you say?

A Yes.

Q Did you hear anything after the man left the store?

A I'd say within a minute, I heard tires squealing and they seemed to be in the area between the bread store and the bank.

Q And do you know the person who robbed you? Did you get a good chance to see his face?

A Yes.

Q Can you tell the jury if he is in the courtroom at this time?

A Yes, sir.

Q Would you point him out for the jury, please?

A Gregory Jones.

Q Would you tell the jury what he looked like on that day he robbed you?

A He was about six foot tall, about, I'd say, one hundred seventy-five to one hundred eighty pounds; he had a small goatee with a light beard and a mustache.

Q Is this the description you gave the police?

A Yes. He also wore denim pants that were on the light side, and in the leg of each one -- one leg was bleached out "High" and the other leg was bleached out "Noon" -- and they were splattered with kind of an orange paint.

Q Is there any doubt in your mind as to who this person is?

A No, sir.

MR. SHARPE: Answer Mr. Held's questions.

CROSS-EXAMINATION

EXAMINED BY MR. HELD:

Q Mrs. White, you say there were two customers in the store and your husband and a small boy. Was it your son?

A Yes.

Q How old is he?

A Seven.

Q I believe you told me before -- do you remember testifying in the preliminary hearing on this

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June 17, 1976

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF PORTSMOUTH HELD ON THE 17TH DAY OF JUNE, 1976

| | | |
|---|---|---|
| COMMONWEALTH OF VIRGINIA | ) | |
| v. | ) | Upon an Indictment for Robbery Criminal Docket No. 27490 - June term, 1976 |
| GREGORY JONES | ) | |

This day came the Attorney for the Commonwealth, and the prisoner, Gregory Jones, born on November 8, 1949, who stands indicted for robbery, was led to the bar in custody of the jailer of this Court, and came also Stuart H. Held, attorney for the said Gregory Jones, said attorney being of the prisoner's own choosing, and upon being arraigned, the said Gregory Jones tendered a plea of "Not Guilty" to robbery as charged in the indictment, after private consultation and with the advice of his counsel, and thereupon the prisoner, by counsel, requested to be tried on Indictment Nos. 27490 and 27491 at the same time, and from a list furnished the Sheriff of this city by the Clerk of this Court, a panel of twenty jurors free from exceptions was completed, and from said panel the Attorney for the Commonwealth and the accused each erased four, each erasing one name alternately, the Attorney for the Commonwealth erasing the first name and the remaining twelve constituted the jury for the trial of this case, to-wit: Mrs. Juanita Brinson, Emmett Copeland, Mrs. Gerry Davis, Earl Evans, Edward Hodges, Allen Keene, Thomas Allen, Grover C. Tayloe, George D. Coleman, Lawrence Kincaid, Alvin S. Kornegay, Sr., and Robert Mero, who being duly sworn the truth of and upon the premises to speak, the witnesses having been sworn, excluded from the Courtroom, called singularly, and testified; and thereupon, the jury having fully heard the evidence and argument of counsel, retired to their room to consult of their verdict, and after some time returned into Court having found the following verdict: "We, the jury, find the defendant Guilty Punishment 5 years Penitentiary. R. R. Mero,

Foreman. Date June 17, 1976"; and thereupon, it being demanded of the said Gregory Jones, if anything for himself, he had or knew to say, why the Court here should not now proceed to pronounce judgment against him according to law, and nothing further being offered or alleged in delay of judgment, it is ordered that the said Gregory Jones be confined in the State Penitentiary for the term of five (5) years, the period by the jury in its verdict rendered; and thereupon, the Court advised the said Gregory Jones that he has a right to apply for an appeal from this conviction to the Supreme Court of Virginia and was also advised that counsel would be appointed for that purpose if requested; and it appearing that the said Gregory Jones has been held in the jail of this city 49 days, awaiting the trial of this case, it is ordered that he be credited with the time so spent by him upon his sentence aforesaid. And the Clerk of this Court is directed to forthwith transmit a copy of this order to the Superintendent of the State Penitentiary in Richmond, Virginia.

And the prisoner, Gregory Jones, is remanded to jail.

The Court certifies that the prisoner and his counsel were present in person at every stage of the proceedings.

The Court certifies that it provided Leslie F. Jolly, a Court Reporter, to record verbatim the evidence and incidents of trial and doth further order that the expense of reporting and recording the same shall be paid by the Commonwealth of Virginia, and the charges therefor have been taxed as a part of the costs of this case. * * * * * * * * * *

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A COPY, TESTE: [illegible]
COURT OF THE [illegible]

BY Beth Scott [illegible] D. C.

June 17, 1976

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF PORTSMOUTH HELD ON THE 17TH DAY OF JUNE, 1976

| | | |
|---|---|---|
| COMMONWEALTH OF VIRGINIA | ) | |
| v. | ) | Upon an Indictment for Displaying Firearm in Commission of Felony Criminal Docket No. 27491 - June term, 1976 |
| GREGORY JONES | ) | |

This day came the Attorney for the Commonwealth, and the prisoner, Gregory Jones, born on November 8, 1949, who stands indicted for displaying firearm in commission of felony, was led to the bar in custody of the jailer of this Court, and came also Stuart H. Held, attorney for the said Gregory Jones, said attorney being of the prisoner's own choosing, and upon being arraigned, the said Gregory Jones tendered a plea of "Not Guilty" to displaying a firearm in the commission of a felony as charged in the indictment, after private consultation and with the advice of his counsel, and thereupon, the prisoner, by counsel, requested to be tried on Indictment Nos. 27490 and 27491 at the same time, and from a list furnished the Sheriff of this city by the Clerk of this Court, a panel of twenty jurors free from exceptions was completed, and from said panel the Attorney for the Commonwealth and the accused each erased four, each erasing one name alternately, the Attorney for the Commonwealth erasing the first name and the remaining twelve constituted the jury for the trial of this case, to-wit: Mrs. Juanita Brinson, Emmett Copeland, Mrs. Gerry Davis, Earl Evans, Edward Hodges, Allen Keene, Thomas Allen, Grover C. Tayloe, George D. Coleman, Lawrence Kincaid, Alvin S. Kornegay, Sr., and Robert Mero, who being duly sworn the truth of and upon the premises to speak, the witnesses having been sworn, excluded from the Courtroom, called singularly, and testified; and thereupon, the jury having fully heard the evidence and argument of counsel, retired to their room to consult of their verdict, and after some time returned into Court having found the following verdict: "We, the jury, find the

defendant Guilty Punishment 5 years Penitentiary. R. R. Mero, Foreman. Date June 17, 1976"; and thereupon, it being demanded of the said Gregory Jones, if anything for himself, he had or knew to say, why the Court here should not now proceed to pronounce judgment against him according to law, and nothing further being offered or alleged in delay of judgment, it is ordered that the said Gregory Jones be confined in the State Penitentiary for the term of five (5) years, the period by the jury in its verdict rendered; and thereupon, the Court advised the said Gregory Jones that he has a right to apply for an appeal from this conviction to the Supreme Court of Virginia and was also advised that counsel would be appointed for that purpose if requested; and it appearing that the said Gregory Jones has been held in the jail of this city no days, awaiting the trial of this case, it is ordered that he be credited with no time spent by him upon his sentence aforesaid. And the Clerk of this Court is directed to forthwith transmit a copy of this order to the Superintendent of the State Penitentiary in Richmond, Virginia.

And the prisoner, Gregory Jones, is remanded to jail.

The Court certifies that the prisoner and his counsel were present in person at every stage of the proceedings.

The Court certifies that it provided Leslie F. Jolly, a Court Reporter, to record verbatim the evidence and incidents of trial and doth further order that the expense of reporting and recording the same shall be paid by the Commonwealth of Virginia, and the charges therefor have been taxed as a part of the costs of this case.

* * * * * * * * * * *



A COPY, TESTE
COURT OF

BY Beth Scott

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF PORTSMOUTH

| | | |
|---|---|---|
| COMMONWEALTH OF VIRGINIA | ) | |
| | ) | |
| -vs- | ) | INDICTMENTS - 27490 |
| | ) | 27591 |
| GREGORY JONES | ) | |
| | ) | |
| Defendant | ) | |

NOTICE OF APPEAL AND ASSIGNMENT OF ERROR

GREGORY JONES, by counsel, hereby gives notice of appeal to the Supreme Court of Virginia from the judgments of conviction of robbery and displaying a firearm in the commission of a felony, imposed on each of the above indictments on June 17, 1976, and assigns as error the following:

1. The Court erred in overruling the defendant's motion to quash indictment number 27490, charging him with displaying a firearm in the commission of a felony as the defendant was also charged under indictment number 27491 with armed robbery and with the same elements existing in both indictments the defendant would have been placed in double jeopardy and his rights violated.

2. The Court erred in overruling the defendant's motion to strike the Commonwealth's evidence on indictment number 27490, wherein the defendant was charged with displaying a firearm in the commission of a felony as the defendant was also charged with robbery and with the same elements existing in both indictments, the defendant was placed in double jeopardy.

3. The Court erred in granting the Commonwealth an instruction under indictment number 27490 displaying a firearm, for the same reasons as above.

4. The Court erred in overruling the defendant's motion to strike the Commonwealth's evidence on indictment number 27491 armed robbery, as there was reasonable doubt as to the proof of said allegation.

5. The Court erred in not granting to the defendant instruction number 9, in that said instruction was a reasonable doubt instruction per-

S HLITZ, LEVY
NG LIVESAY, LTD
TTORNEYS AT LAW
ORTSMOUTH, VIRGINIA

taining to eye witness identification.

6. The Court erred in refusing to grant the defendant instruction number 10, as it also dealt with reasonable doubt pertaining to eye witness identification and in the case at hand there was no corroborating evidence on the behalf of the Commonwealth other than the complaining witness and it was vital to the defendant's case that instruction number 10, which dealt with eye witness identification be granted.

7. The Court erred in overruling the defendant's motion to set the verdicts aside as being contrary to the law and evidence and order a new trial.

GREGORY JONES

By _____
Of Counsel

Stuart H. Held, p.d.
SCHLITZ, LEVY AND LIVESAY, LTD.
Post Office Box 1137
Portsmouth, Virginia 23705

I hereby certify that a true copy of the foregoing Notice of Appeal and Assignment of Error was mailed to Leo Sharpe, Esquire, Assistant Commonwealth's Attorney, P. O. Box 1417, Portsmouth, Virginia 23705 this 17th day of July, 1976.

_____