CLERK
SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 76-0974

GREGORY JONES,
Appellant,

v.

COMMONWEALTH OF VIRGINIA,
Appellee.

JOINT APPENDIX

Stuart H. Held, Esq.
5701 Princess Anne Road
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)

27426

February 5, 1976

IN THE CIRCUIT COURT OF THE CITY OF PORTSMOUTH:

The Grand Jury charges that: on or about October 18, 19 75, in the City of Portsmouth Gregory Jones did rob Kevin Meek of U. S. currency having a value of about $200.00, by means of a pistol,

against the peace and dignity of the Commonwealth of Virginia.

Va. Code § 18.2-58

1

FEB 17 1976

PROCEEDINGS

VERDICT

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

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.....
Foreman.

THE CIRCUIT COURT

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

COMMONWEALTH OF VIRGINIA

v.

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

.....

INDICTMENT

...February.....Term, 19...76.....

.....Robbery.....

..... A TRUE BILL

.....
Foreman.

Witnesses:

Det. 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		$.....

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

February 5, 1976 27427

IN THE CIRCUIT COURT OF THE CITY OF PORTSMOUTH:

The Grand Jury charges that: on or about October 18, 19 75 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

3

FEB 17 1976

PROCEEDINGS

VERDICT

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

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Foreman.

THE CIRCUIT COURT

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

COMMONWEALTH OF VIRGINIA

v.

Gregory Jones

.....

INDICTMENT

February Term, 19 76

Display Firearm In Commission Of A Felony

..... A TRUE BILL

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 $.....

PROCEEDINGS

4

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

27428

February 5, 1976

IN THE CIRCUIT COURT OF THE CITY OF PORTSMOUTH:

The Grand Jury charges that: on or about October 18, 19 75, in the City of Portsmouth Gregory Jones maliciously caused bodily injury to Kevin Meek with intent to maim, disfigure, disable, and kill,

against the peace and dignity of the Commonwealth of Virginia.

Va. Code § 18.2-51

5

FEB 17 1976

PROCEEDINGS

VERDICT

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

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Foreman.

THE CIRCUIT COURT

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

COMMONWEALTH OF VIRGINIA

v.

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

.....

INDICTMENT

.....February....Term, 19...76.....

.....Maiming.....

..... A TRUE BILL

..... 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		$.....

PROCEEDINGS

EXAMINED BY MR. SHARPE:

Q State your name for the Court, Mr. Meek.

A Kevin Meek.

Q And where do you work, sir?

A I work at the Family Fish House on Turnpike Road which was the Fass Brothers Fish House at that time.

Q That time, I take you back to October 18, 1975, on or about that date, do you remember what occurred?

A Yes, sir.

Q Okay. And you had something unusual occur around that date, didn't you, sir?

A Yes, sir. We had a robbery.

Q All right, sir. And what - Where is this Fass Brothers, what street is that located on?

A It's on Turnpike Road.

Q City of Portsmouth?

A Yes, sir.

Q Okay. And what time of day did you have this robbery?

A Around 4:00 o'clock. It was between ten minutes of 4:00 and 4:15.

THE COURT: In the afternoon?

A Yes, sir.

MR. SHARPE:

Q And explain to the jury, is your restaurant open all hours or is it particular hours?

A No, sir, our hours are limited to around lunch time, we had closed at 2:00 o'clock and were due to reopen at 4:30 that evening.

Q So there wouldn't be anybody or very few people there?

A Yes, sir, no customers whatever.

Q Okay. And about that time tell the jury what you were doing.

A Saturday is our end of the week and I was working on our package preparing information for the home office. Since it was close to 4:00 o'clock I had to close out the front register, take a reading and count the money in the front register.

I left the office and went to the front of the restaurant. While at the front of the restaurant I received a phone call for some figures I had completed which I'd left in the office. I returned to the office.

When I returned to the office there were two men in the office. I was pulled in the office and forced to the floor and was then robbed.

Q Okay. You say there were two men there at that time?

A Yes, sir.

Q And you say you were robbed. When you were first pulled in the office, where did they put you?

A I was forced on the floor with my back to my lock safe and vault safe facing the two gentlemen.

Q You were facing them?

A Yes, sir, from the floor.

Q Was anyone else with you at that time?

A At this point, no, just the two robbers in the office.

Q Were any weapons there?

A One gentleman had a small handgun.

Q Do you know which one that was?

A This gentleman in the defendant's seat.

Q And what happened after they sat you down on the floor?

A When I was seated on the floor they said, "Give us the money." I said, "All right, I will."

Q You said what?

A I said, "I will." Apparently one, the other gentleman heard a noise in the hallway and

went out into the hallway. I then tried to -

Q Which one went out into the hallway, do you know?

A The other gentleman, not the one that's here.

Q Not the one that's here, you said? Let's get this straight. The person you are identifying, could you indicate where he's seated?

A He's seated next to counsel.

Q Mr. Gregory Jones?

A Yes, sir.

Q So Mr. Jones stayed in there with you?

A Yes, sir, during the entire robbery.

Q Okay. Where was the other man?

A The other man was in the office for a short time, went into the hallway, pulled another employee into the office. Before the robbery was completed he left the office and the store, apparently.

Q Okay. Who was this other employee?

A The other employee was Robert Atkins, a busboy at the store.

Q Was he in there with you when the robbery occurred?

A Yes, sir.

Q He was on the floor also?

A Yes, sir.

THE COURT: What was the busboy's name?

A Robert Atkins, sir.

THE COURT: Atkinson?

A Atkins.

MR. SHARPE:

Q All right, sir. Then you were on the floor with Mr. Jones in there and he had the gun. What happened after that?

A I explained that I had to open one safe in order to be able to open the second safe. We have two safes in the office, one a combination safe that had just been put in two days before. I did not know the combination to the safe. However, a sheet of paper with the combination was in the lock safe which is opened by a key.

Q Who had that key?

A I had that key.

Q Then what happened?

A They said, "Get it."

Q You said 'they said'. How many were in the room at this time? Were both of them there at this time?

A Yes. I was still alone. Robert Atkins

was not in the room at this time.

Q Then what happened?

A I took out a key ring. I had the key ring on me. There are about ten keys on the key ring. I was of course upset and flustered and unable to find the key quickly. I also turned around on my knees because the safe is a low safe; it's a two-drawer legal file with a lock on it. This is what I had to open.

While having my back turned to the gentlemen and still searching through the keys for the correct key, I was hit on the head.

Q You were searching through the keys - Were you nervous?

A Yes, sir, I was nervous and many of the keys are similar, plus there are ten to twelve keys on the key ring.

Q Is it safe to say you were fumbling with the keys?

A Yes, sir. I was not trying to slow down the robbery or prevent the robbery.

Q You were just scared?

A I was scared and company policy, my policy is if anything like this comes up, my life I want to preserve, not the money.

Q So what happened?

A As I was trying to get the key I was slugged over the head. Apparently Mr. Jones felt I was not moving fast enough.

Q Had you said anything to the man?

A No, just that I would get it and an explanation of how I would have to go about getting the money.

Q So you'd told them you didn't have the combination?

A I had to open the drawer safe to get the combination, then to open the combination safe.

Q And you made no moves toward them and they struck you?

MR. HELD: Judge, I object to the leading.

THE COURT: Sustain the objection. That's been constant. I've been waiting for an objection.

MR. SHARPE: Yes, sir.

Q Tell the jury what happened after you were hit.

A After I was hit I continued going through the keys and was able to find the key. About this time Robert Atkins was forced into the office and

also forced on the floor. He was on my right on the floor. I was unable to open the drawer safe -

Q Did you receive any injuries when you were hit on the head?

A Yes, sir, I did. I was bleeding at this time.

Q You weren't knocked unconscious?

A No, sir, I was not unconscious.

Q Then what happened?

THE COURT: Do you know who struck you?

A Yes, sir. Mr. Jones was the only one in the office at this point.

MR. SHARPE:

Q Where was the other man?

A The other man, after forcing Robert Atkins to the floor, had left the office again to stand out in the hallway, apparently. The door was not open but I assume that's what he did.

Q The door was shut behind him?

A The door has an automatic closer.

Q In the office was who?

A Mr. Jones, myself and Robert Atkins.

Q And you were trying to get the safe open?

A Yes, sir. I was able to get the lock

safe open, the drawer safe open, inside of which is a small lock box which does not have a lock on it. Inside this was the combination and a small amount of money. The robber saw the money and I handed it up. As I handed it up I explained I had to go through it for the combination to the safe. He then handed the combination, the sheet of paper with the combination on it back to me so I could then attempt to open the combination safe.

Q How much money was there, do you know, in that box?

A Approximately $200.00, I believe $218.00.

Q Did he hand - What did he hand back to you?

A Just the sheet of paper with the combination on it.

Q He didn't hand the money back?

A No, sir. He kept the money. He apparently dropped or sorted out several bills we found in the office later, not currency but bills or receipts for things we'd received in the store. Then I attempted to open the combination safe. I'd only worked this combination about twice, once that morning working from the paper and once on Friday, I believe. I made several attempts to open the safe, at least

three. I was unable to unlock it until Mr. Gregory left the office. As he left the office I was able to unlock it. However, I did not remove the safe top.

Q You said until he left the office; what happened then? How many times did you try to open the safe?

A I made at least three attempts at the combination.

Q Where was Gregory Jones when you were making these attempts?

A He was behind me. Excuse me. He was somewhat to the right and behind me.

Q Did you see him?

A To the right slightly, yes.

Q Did you comment to him while you were trying to open the safe?

A Not directly to Mr. Jones. Robert Atkins was rather upset and he kept pleading with me to open the safe and I kept explaining to Robert, "I'm trying, I'm trying." At the same time I was bleeding onto the safe and the blood was covering the numbers of the combination and I was unable to see them clearly.

Q After you failed the third time to get the safe open -

A Well, he left just as I got the combination to work and draw back the bolt -

Q Now, 'he', who is 'he'?

A Mr. Jones left the office. I went to reach for the phone. The phone was off the hook. I had a phone call still - I had a person still on the phone during the entire robbery.

Just as he left the office I went to reach for the phone. Bobby said, "Don't try anything." I waited ten seconds, picked up the phone and told my district manager I'd been robbed.

THE COURT: What happened to the other man?

A The other man had left after bringing Bobby Atkins into the office and gone back into the hallway.

THE COURT: You didn't see him any more?

A No, sir. He was not in the office when Mr. Jones received the money from me.

MR. SHARPE:

Q So you didn't see this lookout very long then?

A No, sir.

Q Okay. How long - I know it's difficult to estimate but can you estimate how long you were in that

room with Gregory Jones?

A About five to eight minutes, I believe.

Q Okay. And how many times did you get a look at Mr. Jones?

A Once when they pulled me into the office, when I sat facing him telling him I had the key, when I handed Mr. Jones the money, and I caught the back side look at him as he went out of the office; at least those three times, four times.

Q Okay. Did you get a good look at him?

A Yes, sir.

Q Could you describe what he was, looked like on that day, what he was wearing?

A He had a, what you would call a medium or mid-bush, short, not very wide. He had a heavier beard than he has now, like a mutton chop, somewhat heavier than now. He had a leather jacket, about mid-length, brown color, dark colored slacks.

Q So you got a good look at him?

A Yes, sir.

Q Now, you have identified the person that robbed you as the person sitting here at counsel table. Is there any doubt in your mind?

A No, sir, there's not.

Q You can identify him today as the

1 person?

2 A Yes, sir, I can.

3 Q Okay, sir. You said - I know you

4 told us you were hit on the head. What kind of

5 injury was this? Did you later go to the hospital?

6 A Yes, sir, I was later taken by one

7 of my employees to I believe it was Maryview or one

8 of the hospitals in Portsmouth and I received eight

9 stitches in my head plus a tetanus shot and was told

10 to go home and rest.

11 I was quite stiff that night and

12 unable to get to sleep. I also lost clothing because

13 of bleeding, and I had a watch torn off my arm when

14 they pulled me into the office.

15 Q Who pulled you into the office, do

16 you know?

17 A Mr. Jones was behind the - First the

18 other gentleman I was unable to identify; however, he

19 did help pull me into the office. Both of them did

20 pull.

21 Q And did you ever see the other man

22 with a gun?

23 A No, sir, I did not.

24 Q The only gun you saw was in the hand

25 of Gregory Jones?

A Yes, sir.

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

THE COURT: Whereabouts on your head were the stitches taken?

A On the left - excuse me - on the right rear temple.

CROSS EXAMINATION

EXAMINED BY MR. HELD:

Q Mr. Meek, you say that this whole thing took between five and eight minutes?

A Yes, sir.

Q All right. And the beginning was when you were pulled into your office?

A Yes, sir.

Q There were two men at that time?

A Yes, sir.

Q Both pulled you into the office?

A Yes, sir.

Q Did you suffer any injury at that time?

A Slight scrape to my back.

Q Were you scuffled around, though, knocked around?

A Would you -

Q Were you knocked around, jostled or

THE COURT: Very well. Commonwealth rests.

MR. HELD: Judge, I would have a motion to make.

THE COURT: All right, sir. We can slip into the conference room for the motion.

Ladies and gentlemen, we will take a short break now, give you a chance to stretch your legs a little bit and, as most of you are familiar with, don't move around with the witnesses or the lawyers involved or anything. Not that you would do anything wrong, but something might come out along the line that might cause a mistrial, so you all kind of stick to yourselves.

* * * * * * * *

IN CONFERENCE ROOM

PRESENT: The Court, Messrs. Held and Sharpe, Clerk Gartman, Sheriff Futrell, the defendant and the court reporter

* * * * * * * *

MR. HELD: Judge, I would move to strike the Commonwealth's evidence on displaying a pistol in a threatening manner while committing a felony. Judge, he's charged

with robbery and this section of the code is an unconstitutional provision in that part of robbery in this case is presenting a firearm. They have charged him with robbery and also charged him with displaying a firearm and I don't think - He's being tried for two things at the same time, although they are related, I think they're overlapping. He was robbed with a firearm, that's the evidence, and to try to convict him on a separate offense involving a firearm, Judge, would be double jeopardy.

MR. SHARPE: Your Honor, I think the statute is constitutional. I think the statute has a specific purpose, to prevent people from committing crimes of violence with weapons of this nature. A firearm is far more deadly than a club and if a man saw fit to use a firearm to rob someone, I think it's an acceptable purpose for the legislature to act upon and I don't think the crime is lesser included in any way or included one in the other.

THE COURT: Overrule the motion.

MR. HELD: Judge, we move to strike also on

felonious assault. I don't believe there's been any showing of any disfigurement to Mr. Meek. He got hit over the head with a gun, had some stitches in his head, but I don't think that's felonious assault.

THE COURT: You say he only got hit over the head with a gun?

I overrule your motion.

MR. HELD: Judge, that's all I have.

(Brief recess).

* * * * * * * *

IN COURTROOM

* * * * * * * *

THE COURT: All right, sir.

(Della Roberts called to witness stand by Mr. Held).

* * * * * * * *

DELLA J. ROBERTS, Witness called by Defense Counsel, having been first duly sworn, was examined and testified as follows:

* * * * * * * *

DIRECT EXAMINATION

EXAMINED BY MR. HELD:

Q Mrs. Roberts, would you please state

EXCEPTIONS TO INSTRUCTIONS

MR. HELD: The defendant objects and excepts to the granting of Instruction Number 3 of the Commonwealth in that the code section is unconstitutional and the fact of committing a robbery is double jeopardy and he's also charged with using a firearm in the commission of the robbery.

* * * * * * * *

March 29, 1976

COMMONWEALTH OF VIRGINIA	)	
v.	)	Upon an Indictment for Robbery Criminal Docket No. 27426 - March term, 1976
GREGORY JONES	)	

This day came the Attorney for the Commonwealth, and the accused. 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 thereupon, 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 the said Gregory Jones requested to be tried on Indictment Nos. 27426, 27427, and 27428 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 prisoner 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 the case, to-wit: Hiram Austen, Clyde Jordan, Irene Hanbury, Dorothy Parker, Teresa Conrad, Martin Kirk, Ernest Brown, William Greco, Geneva Eure, Lawrence Morris, Jr., Wilfred Bivens, and Daniel Lawson, 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 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 as charged in the indictment and fix his punishment at 10 years in

penitentiary. Lawrence R. Morris, Jr., Foreman. Date March 29, 1976"; and thereupon, the prisoner, by counsel, moved to set aside the jury's verdict as being contrary to the law and the evidence and grant him a new trial, which motion being fully heard, is overruled; 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 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 ten (10) years, the period by the jury in its verdict rendered; whereupon, 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 to the Court 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 Faye B. Chapman, 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.

Certified to State

* * * * * * * * * *

March 29, 1976

COMMONWEALTH OF VIRGINIA	)	Upon an Indictment for Display Firearm in Commission of Felony - Criminal Docket No. 27427 - March term, 1976
v.	)	
GREGORY JONES	)	

This day came the Attorney for the Commonwealth, and the accused, Gregory Jones, born on November 8, 1949, who stands indicted for display 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 thereupon, the said Gregory Jones tendered a plea of "Not Guilty" to display firearm in commission of felony as charged in the indictment, after private consultation and with the advice of his counsel, and the said Gregory Jones requested to be tried on Indictment No. 27426, 27427 and 27428 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 prisoner 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 the case, to-wit: Hiram Austen, Clyde Jordan, Irene Hanbury, Dorothy Parker, Teresa Conrad, Martin Kirk, Ernest Brown, William Greco, Geneva Eure, Lawrence Morris, Jr., Wilfred Bivens, and Daniel Lawson, 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 the jury having fully heard the evidence and argument of counsel, retired to their room to consult of their vertict, and after some time, returned into Court having found the following verdict: "We, the jury, find the defendant guilty as charged in the indictment and fix his punishment at 5 years in penitentiary. Lawrence Morris, Jr., Foreman. Date March 29, 1976".

and thereupon, the prisoner, by counsel, moved the Court to set aside the jurys verdict as being contrary to the law and the evidence and grant him a new trial, which motion being fully heard, is overruled; 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 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; whereupon, 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 to the Court 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 the said Gregory Jones 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 proceeding.

The Court certifies that it provided Faye B. Chapman, 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.

Certified to State

* * * * * * * * * *

March 29, 1976

COMMONWEALTH OF VIRGINIA	)	
		Upon an Indictment for Maiming
v.	)	Criminal Docket No. 27428 -
		March term, 1976
GREGORY JONES	)	

This day came the Attorney for the Commonwealth, and the accused, Gregory Jones, born on November 8, 1949, who stands indicted for maiming, 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 thereupon, the said Gregory Jones tendered a plea of "Not Guilty" to maiming as charged in the indictment, after private consultation and with the advice of his counsel, and the said Gregory Jones requested to be tried on Indictment No. 27426, 27427, and 27428 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 prisoner 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 thie case, to-wit: Hiram Austen, Clyde Jordan, Irene Hanbury, Dorothy Parker, Teresa Conrad, Martin Kirk, Ernest Brown, William Greco, Geneva Eure, Lawrence Morris, Jr., Wilfred Bivens, and Daniel Lawson, 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 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 of malicious wounding with the intent to maim, disfigure, disable or kill and fix his punishment at 5 years in penitentiary. Lawrence Morris, Jr., Foreman. Date

March 29, 1976"; and thereupon, the prisoner, by counsel, moved the Court to set aside the jurys verdict as being contrary to the law and the evidence and grant him a new trial, which motion being fully heard, is overruled; 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 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; whereupon, 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 to the Court 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 forbhwith 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 proceeding.

The Court certifies that it provided Faye B. Chapman, 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.

Certified to State

* * * * * * * * * *

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF PORTSMOUTH

COMMONWEALTH OF VIRGINIA	)	
	)	INDICTMENTS - 27.426
-vs-	)	27.427
	)	27.428
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 for robbery, felonious assault and displaying a firearm in the commission of a felony, imposed on each of the above indictments on March 29, 1976, and assigns as error the following:

1. The Court erred in overruling the defendant's motion to strike the Commonwealth's evidence on indictment number 27.427 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.

2. The Court erred in granting the instruction on the above for the same reasons as above.

3. The Court erred in overruling the defendant's motion to strike the Commonwealth's evidence on indictment number 27.428, felonious assault, as there was no evidence to sustain the allegations in the indictment.

4. 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.
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Post Office Box 1137
Portsmouth, Virginia 23705

SCHLITZ, LEVY
ND LIVESAY, LTD.
TTORNEYS AT LAW
ORTSMOUTH, VIRGINIA

I hereby certify that a true copy of the foregoing Notice of Appeal and Assignments of Error was mailed to Leo Sharpe, Esquire, Assistant Commonwealth's Attorney, P. O. Box 1417, Portsmouth, Virginia 23705 this 29th day of April, 1976.

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