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OVERWHELMING EVIDENCE OF GUILT

As described by the Tenth Circuit Court of Appeals, Paul Howell was shot and killed as he exited his Chevrolet Suburban by a young Black male wearing a white T-shirt with black trim, a black stocking cap and a red bandana over his face. *Jones v. Warrior*, 805 F.3d 1213, 1214-15 (10th Cir. 2015). As Mr. Howell's sister, Megan Tobey, and daughters ran from the vehicle into the home, someone yelled "Stop" and a second gunshot was fired. *Id*. at 1214.

Shortly after the murder, Jones' friend Christopher Jordan, who drove Jones to the Howell residence, arrived at the apartment of Ladell King. *Id*. at 1215-16. Jones arrived 15 or 20 minutes later driving Mr. Howell's Suburban and wearing a white T-shirt, stocking cap, gloves and red bandana. *Id*. at 1215. Jones warned Mr. King not to touch the Suburban and asked him to find someone to buy it. *Id*. Not only did Mr. King place Jones with the Suburban that night, but King's girlfriend and his neighbor saw Jones as well. *Id*. (Trial Tr. VII 138-44).

The next day, Jones and Mr. King were captured on surveillance video at the convenience store where police would discover Mr. Howell's Suburban two days after the murder. *Id*. Jones confessed to King that "as he walked up to Howell's Suburban, a young girl in the backseat waved at him, Howell's door opened, and the gun 'went off.' Trial Tr. Vol. 5 at 189-90." *Id*.

When police arrived at Jones' parents' house after learning of his involvement in the murder, Jones fled through a second story window. *Id*.

> In Jones' bedroom, detectives discovered a white T-shirt with black trim and a black stocking cap—items that matched both Tobey's description of the shooter's clothing and King's description of Jones' clothing shortly after the shooting. Officers also found a chrome-plated Raven .25-caliber semiautomatic pistol wrapped in a red bandana and hidden in the attic space above the ceiling of the closet of Jones' room. And hidden behind the cover of the doorbell chime, officers discovered a loaded .25-caliber magazine belonging to the gun they had just found. The gun matched Jones' girlfriend's description of one she saw in Jones' possession during the summer of 1999. Both the bullet found lodged in Howell's head and the bullet shot into the Suburban's dashboard matched the bullets and [were fired by] the gun found in Jones' bedroom.

Id. In addition to the Cutlass he shared with Jordan, Jones owned a Buick Regal that he took to a transmission shop on the day after the murder. The mechanic called police because he found .25 caliber ammunition, small knives, and a pantyhose with a knot in the top in the car (Tr. VIII 291-92).

An eyewitness who was at the Braum's restaurant that was visited by the Howell family immediately before the murder witnessed Mr. Jordan's car circle the Braum's parking lot and eventually back into a parking space. *Id*. at 1216. (Trial Tr. IV 88-92). This witness saw two young Black males in the car. *Id*. One of the men—the witness believed it was the driver—had corn rows, which is how Mr. Jordan wore his hair, and one of the men wore a white T-shirt. *Id*. The car left suddenly. *Id*.

Jordan and King testified against Jones, as did Jones' girlfriend, Analiese Presley. Jones wrote a threatening letter to Presley from jail when he learned she planned to testify for the State:

> So you're going to have to do something for me now really for your safety, not that I'm threatening you, but I got some stupid ass relatives, you know, so if they do call you to the stand, your best bet is to say you don't remember, unless you just don't care about me coming home. That's what you need to say because they can't arrest you or . . . charge you with nothing [sic] for saying that.

(State's Ex. 119). Presley testified that she was with Jones in the Cutlass in the summer of 1999 when she found a handgun resembling the murder weapon in the center console of the car (Trial Tr. IX 21-22). Jones admitted the gun was his, claiming he kept it for protection (Trial Tr. IX 21-22). Presley also found a red bandana in the car's glove box (Trial Tr. IX 27-28).

The Oklahoma Court of Criminal Appeals found "overwhelming" evidence of Jones' guilt. *Jones v. State*, 128 P.3d 521, 539, 541 (Okla. Crim. App. 2006); *id*. at 549 (Jones' trial attorneys "faced several difficult challenges: a co-defendant who directly implicated Jones, eyewitness identification, incriminating statements made by Jones after the crime, flight from police, damning physical evidence hidden in Jones' parents' home, and an interlocking web of other physical and testimonial evidence consistent with the State's theory."). The court further rejected Jones' argument that he did not get involved until he drove the Suburban the day after the murder: "The evidence in this case clearly showed that Jones' participation in the murder and robbery of Howell was more than simply an accessory after the fact." *Jones*, 128 P.3d at 539.

DNA TESTING CONFIRMS THE TRIAL EVIDENCE

In 2017, Jones filed a post-conviction application seeking to have the red bandana tested for DNA. A partial DNA profile was obtained from the bandana; the major component of the DNA profile matched Jones. The probability of randomly selecting an unrelated individual with the same DNA profile is approximately 1 in 1.3 billion in the U.S. Caucasian population; 1 in 110 million in the U.S. African American population; and 1 in 1 billion in the U.S. Hispanic population. Christopher Jordan was excluded as the major component of this profile.

Jones contends that the testing disproves the State's theory that the bandana was worn over the shooter's mouth because a presumptive test for saliva performed on the area of the bandana containing his DNA was negative. However, in a February 15, 2019 email from the lab which performed the testing to counsel for Jones and the State, the lab commented on Jones'] counsel's assertion that the testing "clarif[ied] the absence of saliva on the bandana". The lab replied,

> The report dated October 29, 2018 did state that 'presumptive testing for the presence of saliva was negative…' on the bandana. However, after discussing this with the reporting serologist on this case - there are several reasons the presumptive test could have been negative that do not necessarily mean saliva was not present. Of course, one explanation for the presumptive negative result is that there is no saliva on the item.

> Additionally, any saliva present may have broken down over time or the saliva could have been diluted below the sensitivity of our test. I just wanted to clarify that one point to be sure that the results we reported are not misleading.

An eyewitness to the murder saw a red bandana over the shooter's face. The murder weapon was found in attic space above Jones' closet, wrapped in a red bandana. This bandana contains Jones' DNA. The evidence overwhelmingly establishes Jones' guilt.

JONES' BEHAVIOR BEFORE AND AFTER THE MURDER

Jones claims to have been an engineering major at OU who was about to walk on the basketball team. However, a letter found in his bedroom, dated June 8, 1999, indicates that Jones was not eligible for financial aid because he did not complete the minimum number of hours in the fall of 1998 or spring of 1999. Jones also failed to maintain the minimum GPA.

Jones' commutation application says, "At the time of my trial I had no prior violent felony convictions. I had gotten into some trouble previously, but none of it was violent." While it is technically true that Jones did not have any violent *convictions* before his conviction for murdering Paul Howell, it is not at all true that he had not committed violent crimes. *See Jones v. State*, 132 P.3d 1, 3 (Okla. Crim. App. 2006) (op. on reh'g) ("Appellant's criminal history was replete with the use and threat of violence: armed robbery, carjackings, assault. The continuing-threat aggravator was further supported by the nature of the instant offense: Appellant's unabashed willingness to use deadly force, once again, to obtain property."); *Jones*, 128 P.3d at 550 ("In addition to the evidence showing the callous nature of the Howell murder and Jones' obvious disregard for human life, the State presented evidence that Jones had on at least three occasions taken property by force and by gunpoint.").

At the sentencing phase of Jones' trial, the jury learned of many of his other criminal and violent actions. These facts both confirmed the jury's guilty verdict and fully support their decision to sentence Jones to death. Jones had pled guilty, before the murder, to unlawful use of a fictitious name, false declaration to a pawnbroker, concealing stolen property, and larceny from a retailer. *Jones*, 128 P.3d at 549.

On March 11, 1998, Jones shoved an employee while stealing clothing from a Footlocker store in Quail Springs Mall (Trial Tr. XI 77-85).

On December 2, 1998, Jones led an Oklahoma City police officer on a high speed chase through a residential area at 3:30 in the morning (Trial Tr. XI 90-92, 101-02). In the vehicle, officers found three "spinners" from wheels and the bolts for them, a screwdriver, pliers, a flashlight, an electric screwdriver with torque bits, a speaker, some pieces of broken glass, and three pair of jersey gloves (Trial Tr. XI 95-99).

On March 3, 1999, Norman police officer Jason Wilson pulled Jones over at 1:30 a.m. in a white Honda (Trial Tr. XII 4-8, 11-12). After Jones' attempts to evade proved futile, Jones returned to the vehicle with police (Trial Tr. XII 6-8). Jones ignored a command not to open the car door, reached in, put his left hand under the seat and grabbed a loaded gun, trying to push it under the seat (Trial Tr. XII 8-9). Jones had gloves and pantyhose in his back pocket (Trial Tr. XII 9). The car was stolen (Trial Tr. XII 9). Jones told Analiese Presley that he and Isaiah Smith had found the keys to the Honda at Quail Springs Mall, then walked through the parking lot until they found the car (Trial Tr. XII 55-56).

On March 18, 1999, a Norman Police officer saw "a man [later determined to be Jones] dressed in dark clothing with a hood" in the parking lot of the Republic Bank in Norman near the ATM machine. Jones again attempted to run, but was apprehended after discarding with "a black semi-auto pistol (plastic water gun painted black), a brown cloth glove, and a blue full-face ski mask." The jury was not aware of this incident, as the State did not discover it in time to provide notice to the defense.

On July 9, 1999, Jones robbed a jewelry store at Quail Springs Mall with a gun (Trial Tr. XI 104-12, 150-52; Trial Tr. XII 14-18). Jones had pantyhose and a <u>red</u> bandana over his face (Trial Tr. XI 107-08). Jones stole gold chains worth approximately $15,000 (Trial Tr. XI 106-07, 111). Jones gave Analiese Presley three or four gold chains but then took them back (Trial Tr. XII 62-64).

On July 21, 1999, Jones stole a Lexus at gunpoint from the Hideaway Pizza on North Western Avenue (Trial Tr. XI 118-28, 134-35; Trial Tr. XII 58).

On July 22, 1999, Jones again stole a car at gunpoint from the same Hideaway Pizza (Trial Tr. XI 53-60, 134-35). Jones pled guilty to this carjacking (robbery with a firearm and possession of a firearm after former conviction of a felony) after his conviction for Paul Howell's murder.

While Jones was awaiting trial for Paul Howell's murder, he assisted his cellmate in assaulting a guard (Trial Tr. XII 69-77). The incident began when the cellmate pushed the guard, then Jones took the guard's radio and threw it in the toilet before also pushing and grabbing at the guard in an attempt to keep him from leaving the cell (Trial Tr. XII 69-74). Jones and his cellmate were subdued only after two other guards arrived (Trial Tr. XII 72-76).

JONES DOES NOT HAVE A CREDIBLE ALIBI

Jones claims his lawyers failed to present his family as alibi witnesses. However, this alibi was thoroughly investigated, and discredited. Jones' then-girlfriend, Analiese Presley, testified at trial that Jones told her he was somewhere "on the south side [of Oklahoma City]" when Paul Howell was murdered (Tr. IX 34-35). In his direct appeal, Jones alleged that his trial attorneys should have called his family members to testify that he was at home at the time of the murder. The Oklahoma Court of Criminal Appeals ordered an evidentiary hearing on this claim. At the hearing, the State proved that Jones' attorneys thoroughly investigated this possible alibi—including speaking with Jones' parents and sister, Jones himself, and a friend named B.C. whom Jones' parents said was also present—and chose not to raise it for two primary reasons (3/21/05 Tr. 176-85; 3/22/2005 Tr. 13-34). First, David McKenzie and Malcolm Savage both testified that Jones repeatedly told them his family was mistaken and he was <u>not</u> at home on the night of the murder (3/21/05 Tr. 179, 182-84; 3/22/05 Tr. 16-19, 34). Jones was "unequivocal that he was not at home with his parents, as his parents had described, with regard to the evening that Mr. Howell was murdered." (3/22/05 Tr. 18). Second, B.C. told Jones' attorneys' investigator that she was not at the Jones' house on the night of the murder (3/21/05 Tr. 177-82; 3/22/05 Tr. 14, 27-28). B.C. and Julius Jones agreed that the night they were both present at the house was the night before the murder (3/21/05 Tr. 179-84). In fact, B.C. even had a receipt from a trip to Kinko's that she and Jones' mother had made together on the day *before* the murder (3/22/05 Tr. 86-87).

The defense was also aware that Ms. Presley and other witnesses (to include Jordan, King, Owens, and McDonald) placed Jones outside of his parents' home that evening (3/21/05 Tr. 186-94; 3/22/05 Tr. 19-27). Mr. McKenzie was concerned that calling Jones' family to present the alibi "would burn the Joneses for second stage" when he hoped the family would testify credibly and convince the jury not to sentence his client to death (3/22/05 Tr. 15, 19).

The Oklahoma Court of Criminal Appeals discussed the above evidence, and noted that Jones himself did not testify at the hearing. *Jones*, 128 P.3d at 545-46. The court, therefore, concluded that counsels' decision not to present this alibi defense was a sound strategic one.

MS. TOBEY'S DESCRIPTION OF THE KILLER

Jones claims Megan Tobey's description of the shooter does not match him because, according to Jones, she described someone with long hair. Megan Tobey's exact testimony was:

> Q [Cross-examination] And I believe you testified that the person who shot your brother had something on their head; is that correct?
>
> A Yes.
>
> Q Okay. Can you tell the jury again what that was?
>
> A It was a black stocking cap.
>
> Q And can you show the jury how that was pulled down?
>
> A It was a tight-fitting hat and it covered his head and it came to the -- probably the top of his eyebrows. And it came above where his ear goes on about a half an inch to an inch.
>
> Q So it comes down to about his eyebrows and down around his ears; is that correct?
>
> A Well, no, behind his ears.
>
> Q It came behind his ears like right there? (Indicating)
>
> A I didn't see where it -- I didn't see behind him.
>
> Q And he had hair sticking out from the sides; is that correct?
>
> A Yes
>
> Q About a half an inch of hair on each side?
>
> A Above his -- where his ear connects to his head.

> Q So there was about a half an inch sticking out?
>
> A Yes.
>
> . . .
>
> Q [Re-direct] Ms. Tobey, do you know what corn roles [sic] are?
>
> A Yes. Braids?
>
> Q Yes. From what you could see of the gunman can you tell if he had corn roles [sic] or not?
>
> A No.
>
> Q No, he didn't or you couldn't tell?
>
> A The hat was covering his head. They [braids] weren't above his ears. There was just a small amount of hair sticking out about half an inch above his ears.
>
> Q So could you see braids or not?
>
> A No, I could not see braids.
>
> . . .
>
> Q [Re-cross]Ma'am, but you are sure that there was at least a half an inch of hair sticking out from underneath the cap?
>
> A Yes.

Megan Tobey testified that there was about half an inch of hair between the top of the shooter's ears and the bottom of his cap. She specifically denied seeing braids. As described by the Tenth Circuit, "Tobey could see 'about a half an inch to an inch' of the man's hair between his stocking cap and 'where his ear connect[ed] to his head.' Trial Tr. Vol. 4, at 117:4–5, 16. But she didn't see braids or corn rows." *Jones*, 805 F.3d at 1214.

THE WITNESSES TO WHOM MR. JORDAN ALLEGEDLY CONFESSED

Another of Jones' claims is that his trial attorneys failed to call two witnesses who were in jail at the same time as Jordan and to whom Jordan allegedly confessed. On direct appeal, Jones claimed counsel should have called Emmanuel Littlejohn to testify that Jordan said Jones was not involved in the murder at all. Jones learned about this potential evidence when he met Littlejohn in jail. 2/11/2003 *Rule 3.11 Motion to Supplement Direct Appeal Record with Attached Exhibits and/or for an Evidentiary Hearing* (OCCA No. D-2002-534) ("3.11"), Ex. 13. Littlejohn had been convicted of murder and sentenced to death, but the Oklahoma Court of Criminal Appeals reversed his death sentence. *Littlejohn v. State*, 989 P.2d 901 (Okla. Crim. App. 1998). Thus, Littlejohn was in the Oklahoma County Jail for his resentencing when Jones was awaiting his trial.

David McKenzie and Malcolm Savage thoroughly investigated this potential evidence and determined Littlejohn was not credible. 3.11, Ex. 7 at 3; 3.11, Ex. 8 at 2. In fact, Mr. McKenzie believed Littlejohn to be "pathological liar." 3.11, Ex. 9 at 3. Littlejohn even took a polygraph, which was inconclusive. 3.11, Ex. 7 at 3.

Littlejohn had other felony convictions aside from his murder conviction. *Littlejohn*, 85 P.3d at 296. By the time Petitioner's case went to trial, he had been sentenced to death. *Id.* at 290-291. Thus, as found by the OCCA, Littlejohn had nothing to lose. *Jones*, 128 P.3d at 546. There was also abundant information calling Littlejohn's mental health into question. *Littlejohn v. Royal*, 875 F.3d 548, 564 (10th Cir. 2017); *Littlejohn v. Trammell*, 704 F.3d 817, 861 (10th Cir. 2013); *Littlejohn v. Workman*, No. CIV-05-225-M, 2010 WL 2218230, at *33 (W.D. Okla. May 27, 2010) (unpublished); *Littlejohn v. State*, 989 P.2d 901, 904-07 (Okla. Crim. App. 1998).

Jones also claimed counsel should have called Christopher Berry, who was awaiting charges on (and later convicted of) first degree child abuse murder. Berry allegedly would have testified the he heard Jordan brag about shooting Mr. Howell. 2/25/2005 *Original Application for Post-Conviction Relief* (OCCA No. PCD-2002-630) at 27-31; *Jones*, slip op. at 10. According to Berry, he overheard Jordan brag to other inmates on a number of occasions that he shot Paul Howell.[1] 2/25/2005 *Appendix of Exhibits to Application for Post-Conviction Relief* (OCCA No. PCD-2002-630), Ex. 1. However, unlike Littlejohn, Berry implicated Jones when he stated that Jordan

[1] Although Mr. Berry gave post-conviction counsel the nickname of one of the men to whom Mr. Jordan allegedly confessed, Petitioner has never provided confirmation from that particular inmate, or any others.

told him his "partner in the case was charged with capital murder." 2/25/2005 *Appendix of Exhibits to Application for Post-Conviction Relief* (OCCA No. PCD-2002-630), Ex. 1. The Oklahoma Court of Criminal Appeals held that Berry also had credibility problems, and recognized that he implicated Jones in the murder. The Tenth Circuit also denied relief. *Jones*, 805 F.3d at 1218.

ALLEGED JUROR BIAS

Jones also contends that his trial was contaminated by racism. Both the trial court and the Oklahoma Court of Criminal Appeals have found otherwise. One of the questions in the trial judge's report is whether the defense raised race as an issue at trial. Judge Bass responded that "[t]here were no allegations as to race prejudice as to prosecution of the defendant or witnesses. Trial counsel did object to one victim impact statement as being racially prejudicial and the statement was redacted." The next question on the report is whether race "otherwise appear[ed] as an issue in the trial?" Judge Bass said it did not. In its mandatory sentence review, the Oklahoma Court of Criminal Appeals stated, "We find no evidence that race played any role in the jury's sentencing determination." *Jones*, 128 P.3d at 551.

Jones claims a juror harbored racial animus against him. Jones claimed in his direct appeal that Juror V.A. overheard Juror J.B. say, before second stage deliberations, that they should "place him in a box in the ground for what he has done." *Jones*, 128 P.3d at 535 n.3. Judge Bass and the parties questioned Juror V.A. at length and she made no allegation that Juror J.B., or any other juror, used a racial epithet to describe Petitioner (Trial Tr. XII 95-103; Trial Tr. XIII 73-77).

Then, in 2017, Jones filed a post-conviction application based on an allegation by Juror V.A. that she heard an unnamed juror (who must be Juror J.B. because she states that she went to the trial judge about this alleged incident) use a racial epithet. The Oklahoma Court of Criminal Appeals made the following findings:

> The only perceivable difference between Jones's original claim and his current claim is Juror V.A.'s new assertion that Juror J.B. made a racial epithet. Juror V.A.'s recollection of what was said by J.B. on February 27, 2002, was no doubt better on that day when she reported it to the trial court than it is now. Moreover, Juror V.A.'s concern with Juror J.B.'s alleged comment was obviously significant enough that she felt compelled to report it to the trial court. Thus, it is highly improbable that Juror V.A. neglected to add, during the trial court's investigation into the matter, that J.B. used a clearly offensive racial epithet or for that matter, failed to mention that another juror

> [assuming J.B. was no the juror referred to on Facebook] engaged in similar conduct.

Jones v. State, No. PCD-2017-1313 (Okla. Crim. App. Sept. 28, 2018) (unpublished).

An affidavit recently executed by V.A. indicates that she told the bailiff about the alleged comment and also reported it to the judge. V.A. also states that the comment was "said aloud in a group setting." At trial, Judge Bass questioned every juror—regarding V.A.'s report at that time—and none reported hearing a juror express any opinion as to the appropriate punishment. *Jones*, 128 P.3d at 535. Further, V.A. asserts that she "paraphrased" the comment, but utterly fails to explain why she omitted the racial epithet she now claims was used. This is particularly striking because V.A. states that she "felt this juror had a bias that needed to be brought to the court's attention" and that she "felt that there was racism on the jury[.]"

INFORMATION RELATED TO WITNESS CREDIBILITY

Jones claims that Ladell King and Kermit Lottie received consideration from the State for their testimony. Jones' jury was aware of almost all of this information. *Jones*, 128 P.3d at 541. There was one item—a letter to federal courts where Lottie had pending charges from a detective attempting to assist Lottie with his upcoming sentencing due to his assistance in Jones' case—that was not disclosed to the jury. *Id*. However, the jury was aware of the pending charges, and Lottie had testified to the same facts *before* federal charges were even filed, demonstrating that his testimony at trial was unaffected by those charges. *Id*. The Oklahoma Court of Criminal Appeals concluded the evidence against Jones was overwhelming and he "received a verdict worthy of confidence." *Id*. at 541-42.

Jones also claims that Christopher Jordan had a secret deal with the prosecution. Although Jordan is presently out of prison, he was sentenced to life imprisonment, with all but the first 30 years suspended. (Trial Tr. VIII 93-94). The jury was aware of his plea deal. (Trial Tr. VIII 93-95). Jones now claims that, "What I didn't know at the time [Jordan] testified against me was that Chris already had a secret deal with the prosecution to serve far less than 30 years in prison[.]" Christopher Jordan was released due to prison credits, a matter over which District Attorneys' Offices have no control. Paul Howell was murdered before the date on which the so-called 85% rule went into effect, so that Jordan was eligible for prison credits. 21 O.S. § 12.1, 13.1.

Finally, an affidavit by David McKenzie signed in 2008 but given to the Board in April states that he inadequately cross-examined Jordan. The Oklahoma Court of Criminal Appeals found otherwise:

> Counsel did cross-examine Jordan at length, pointing out inconsistencies in his story and otherwise attacking his credibility. Jones' arguments on appeal are nothing more than complaints about exactly how that impeachment should have been accomplished. Jordan admitted in guilt-stage cross-examination that many of the details he had previously given to police and his own attorney were false; Jones' defense counsel methodically went over many of these untruths. Jordan also admitted, on cross-examination, that he had previously lied about his involvement in this case to help himself out. In the punishment stage, trial counsel cross-examined Jordan again about his plea negotiations, and how he stood to gain from helping the State convict Jones. The fact that counsel did not ask every question Jones is now able to formulate on appeal is not proof of deficient performance.

Jones, 128 P.3d at 546-47.

All told, a total of 13 appellate judges have reviewed Jones' conviction and sentence. The Supreme Court has turned down 4 opportunities to review Jones' case. The evidence in this case speaks for itself.