JULIUS DARIUS JONES

"WHAT IS BETTER: UNCOMFORTABLE TRUTH OR COMFORTABLE LIES? EVERY TRUTH IS A KINDNESS, EVEN IF IT MAKES OTHERS UNCOMFORTABLE. EVERY UNTRUTH IS AN UNKINDNESS, EVEN IF IT MAKES OTHERS COMFORTABLE."

-Glennon Doyle, *Untamed*

I. INTRODUCTION.

The truth is that Julius Jones murdered Paul Howell. And while that murder is the worst thing Jones ever did, it was also part of a pattern of unlawful behavior that began in 1995 and continues to this day. Jones and his defense team have told many half-truths, lies by omission, and outright falsehoods. But the evidence tells an incontrovertible truth; a truth that has been reaffirmed these many years by every court which has considered the entirety of the evidence. Julius Jones is not entitled, by virtue of his lies and manipulations, to executive clemency.

II. THE COURTS HAVE CAREFULLLY CONSIDERED EVERY CLAIM JONES HAS PRESENTED, AND WOULD CONSIDER HIS ALLEGED INNOCENCE IF HE HAD NOT CHOSEN TO BYPASS THEM IN FAVOR OF A MEDIA CAMPAIGN.

At Jones's commutation hearing, his attorneys discussed at length their view of the appellate process and made it sound nearly impossible to obtain relief from a death sentence. This discussion was quite misleading. As Justice Scalia wrote:

> The reality is that any innocent defendant is infinitely better off appealing a death sentence than a sentence of life imprisonment. (Which, again, Justice BREYER acknowledges: "[C]ourts (or State Governors) are 130 times more likely to exonerate a defendant where a death sentence is at issue," post, at 2757.) The capital convict will obtain endless legal assistance from the abolition lobby (and legal favoritism

> from abolitionist judges), while the lifer languishes unnoticed behind bars.

Glossip v. Gross, 576 U.S. 863, 895, 135 S. Ct. 2726, 2747, 192 L. Ed. 2d 761 (2015) (Scalia, J., concurring); *see also Kansas v. Marsh*, 548 U.S. 163, 198, 126 S. Ct. 2516, 2538, 165 L. Ed. 2d 429 (2006) (Scalia, J., concurring) ("As a consequence of the sensitivity of the criminal justice system to the due-process rights of defendants sentenced to death, almost two-thirds of all death sentences are overturned.").

This heightened sensitivity in capital cases is also true in Oklahoma, where between January 1, 1996 and March 1, 2016, the Oklahoma Court of Criminal Appeals reversed or modified approximately 29 percent of the capital cases it reviewed. *See Coddington v. State*, 2011 OK CR 17, ¶ 21, 254 P.3d 684, 698 (in capital cases, "the Court should conduct a thorough and painstaking review of each claim"). And the Tenth Circuit Court of Appeals very closely scrutinizes every capital case it reviews, and reverses many. *See, e.g., Harris v. Sharp*, 941 F.3d 962 (10th Cir. 2019) (remanded for an evidentiary hearing), *cert. denied*, 141 S. Ct. 124, 207 L. Ed. 2d 1073 (2020); *Smith v. Sharp*, 935 F.3d 1064 (10th Cir. 2019) (reversed), *cert. denied*, 141 S. Ct. 186, 207 L. Ed. 2d 1116 (2020); *Murphy v. Royal*, 875 F.3d 896 (10th Cir. 2017) (reversed), *aff'd sub nom. Sharp v. Murphy*, 140 S. Ct. 2412, 207 L. Ed. 2d 1043 (2020); *Stouffer v. Trammell*, 738 F.3d 1205 (10th Cir. 2013) (remanded for an evidentiary hearing); *Browning v. Trammell*, 717 F.3d 1092 (10th Cir. 2013) (reversed); *Littlejohn v. Trammell*, 704 F.3d 817 (10th Cir. 2013) (remanded for an evidentiary hearing); *Williams v. Trammell*, 539 F. App'x 844 (10th Cir. 2013) (reversed); *Hooks v. Workman*, 689 F.3d 1148 (10th Cir. 2012) (reversed); *Phillips v. Workman*, 604

F.3d 1202 (10th Cir. 2010) (reversed); *accord Jones v. Workman*, 98 F. Supp. 3d 1179 (W.D. Okla. 2015) (reversed), *vacated and remanded sub nom. Jones v. Royal*, No. 15-6086, 2017 WL 4875552 (10th Cir. Mar. 30, 2017) (district court judgment reversed because Jones died during the pendency of the State's appeal); *Fitzgerald v. Trammell*, No. 03-CV-531-GKF-TLW, 2013 WL 5537387 (N.D. Okla. Oct. 7, 2013) (reversed).

Yet, not only have four courts repeatedly denied Jones's requests for relief, he has never even attempted to present his claim of alleged innocence to any court. The Oklahoma Court of Criminal Appeals will always consider a claim of factual innocence. *Slaughter v. State*, 2005 OK CR 6, ¶¶ 4, 6, 108 P.3d 1052, 1054 ("We fully recognize innocence claims are the Post–Conviction Procedure Act's foundation."); *see also Wirtz v. State*, No. PC-2021-722 (Okl. Cr. Sept. 16, 2021) (unpublished) (reiterating that "[t]his Court's rules and cases do not procedurally bar the raising of actual innocence claims in a post-conviction application."). That Jones has chosen to bypass the courts and "litigate" his alleged innocence in the court of public opinion speaks volumes as to the reliability of his supposed evidence.

> The trial "is the main event at which a defendant's rights are to be determined," "and not simply a tryout on the road to appellate review[.]"

Davila v. Davis, 137 S. Ct. 2058, 2066, 198 L. Ed. 2d 603 (2017) (internal citations omitted). Julius Jones received a fair trial, with a jury and trial court who personally evaluated the credibility of the witnesses based on their facial expressions, tone of voice, body language, and other intangibles, the importance of which cannot be overstated.

The accuracy of the jury's decisions, and fairness of Jones's trial, were then determined by appellate courts who reviewed the entire record, read all of the transcripts, looked at photographs of all of the evidence, and carefully considered the arguments of both sides. Respectfully, a two-hour hearing in which only advocates—and not sworn witnesses—speak must not be allowed to take the place of the rigorous, time-honored processes of our criminal justice system.

Below is a list of the numerous issues the courts have reviewed in Jones's case. Jones has received fair process at every stage, beginning with his trial to the present day.

DIRECT APPEAL

In his direct appeal to the Oklahoma Court of Criminal Appeals (OCCA), Jones presented propositions of error challenging:

- the method of jury selection;
- the trial court's removal of a juror who could not consider the death penalty;
- the trial court's refusal to remove jurors who received hang-up calls, one whose home was burglarized, and one who shook the hand of Jordan's attorney (Jordan's attorney did not tell the juror why he was present in the courtroom, left the courtroom after the incident, and did not return);
- the trial court's refusal to remove a juror who allegedly engaged in premature deliberations;[1]
- the search of his parents' home;
- the sufficiency of the evidence to support his convictions;
- the failure of the trial court to submit jury instructions regarding voluntary statements made by Jones to Jordan and King, to explain that confessions must be corroborated, to give the jury the option of convicting him of

[1] This claim has evolved into a claim of racial bias which is addressed below.

accessory after the fact, and to provide "a version of the non-unanimous instruction";

- evidence of, and an instruction regarding, his flight from police;

- the admission in first stage of other crimes evidence (Lottie's use of the term "carjacking", Detective Flowers' testimony regarding the gang activities in the area where Jones left the Suburban, Jordan's reference to Jones getting out of jail before the murder, the prosecutor's use of the word "escape" to describe Jones's flight from his parents' home, and King's testimony that "Jones and Jordan told him they had a 'hookup' on some cars and asked him if he knew anyone who would buy them");

- the prosecution's failure to disclose evidence (a letter written to a federal court—before whom Lottie faced charges—by Detective Tony Fike describing Lottie's cooperation, a pending charge faced by King, and the fact that a package of cigarettes found in the Suburban belonged to a friend of Paul Howell);

- his inability to present evidence that an FBI examiner—who testified that all of the bullets recovered in this case would have come from the same source of lead at the manufacturer (as would up to three million other boxes of ammunition)—committed perjury on another occasion;

- an alleged double jeopardy violation from his convictions for conspiracy and felony murder;

- his absence from certain court proceedings;

- alleged prosecutorial misconduct ("improper display of emotion, improper personal opinion, misstating evidence, misleading comments, arguing guilt by association, speculation, going outside the record, inflammatory demonstration, arguing that Jones committed unadjudicated crimes without a reliable basis, evoking emotional response, misstatement of applicable law and improper argument);

- alleged ineffective assistance of trial counsel (failing to present alibi witnesses, for which Jones received a 3-day evidentiary hearing), the failure to present Emmanuel Littlejohn's testimony that Jordan allegedly confessed that Jones was not involved in the murder, the failure to thoroughly cross-examine Jordan, the failure to object to Kathleen Lundy's lead comparison testimony, advising Jones not to testify, inadequately cross-examining Dr.

Lapsi regarding his ability to identify Jones as the person who stole his car, failing to emphasize differences between the Hideaway carjackings and the murder, failing to establish that the robbery of the jewelry store at Quail Springs Mall was merely a larceny, presenting mental health evidence in mitigation, failing to introduce letters from Jones to Presley, failing to present Jones's siblings' testimony in mitigation, and an allegation that his three trial attorneys were unqualified);

- to the continuing threat aggravator (it is unconstitutional, the State should not be able to rely on unadjudicated offenses, and the evidence did not support the jury's finding);

- alleged insufficiency of the evidence to support the great risk of death aggravator;

- alleged error in the admission of victim impact testimony;

- a boilerplate argument asking the OCCA to reconsider settled legal issues;

- cumulative error; and

- an argument that his sentence was impacted by the alleged errors, by the fact that two jurors had family or friends who were victims of violent crime, and Jones's allegation that the shooting "was an accident".

The OCCA affirmed Jones's convictions and sentences. The court made the following noteworthy findings:

- Jones's 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's parents' home, and an interlocking web of other physical and testimonial evidence consistent with the State's theory." *Jones v. State*, 128 P.3d 521, 549 (Okla. Crim. App. 2006).

- "The evidence in this case clearly showed that Jones's participation in the murder and robbery of Howell was more than simply an accessory after the fact." *Id.* at 539.

- "In addition to the evidence showing the callous nature of the Howell murder and Jones's obvious disregard for human life, the State presented evidence

that Jones had on at least three occasions taken property by force and by gunpoint." *Id*. at 550.

- "Appellant's criminal history was replete with the use and threat of violence: armed robbery, carjackings, assault. The continuing-threat aggravator[2] was further supported by the nature of the instant offense: Appellant's unabashed willingness to use deadly force, once again, to obtain property." *Jones v. State*, 132 P.3d 1, 3 (Okla. Crim. App. 2006) (op. on reh'g).[3]

The U.S. Supreme Court declined to review Jones's case.

FIRST POST-CONVICTION APPLICATION

In his first post-conviction application, Jones argued that appellate counsel was ineffective for:

- not making sufficient effort to interview jurors after trial;
- failing to discover evidence that suggested a juror did not fully disclose his prior contacts with the judicial system in *voir dire* or, alternatively, that the State failed to disclose information regarding this juror;
- failing to present the testimony of Christopher Berry, a witness in front of whom Jordan allegedly confessed to shooting Paul Howell;
- failing to call Jones's friend, James Lawson, at sentencing;
- failing to argue that trial counsels' performances were hampered by budget constraints;
- failing to argue "structural" defects in Oklahoma's capital sentencing process (prosecutorial discretion to seek the death penalty, allowing the State to

[2] The jury found the existence of two aggravating circumstances: that Jones created a great risk of death to more than one person and that there exists a probability that he will commit criminal acts of violence that constitute a continuing threat to society.

[3] The Attorney General's Office presented this Board with an appendix in support of its letter protesting Jones's commutation application that was more than 800 pages long. That appendix included court opinions and large portions of the trial transcripts. Because the appendix to this clemency packet is limited to 150 pages, the State's appendix will focus on including materials that are outside the trial and appellate record. However, the State will gladly provide any information upon request.

allege aggravating circumstances after preliminary hearing, having the same jury decide guilt and punishment, and not requiring the jury to find that aggravating circumstances outweigh mitigating circumstances beyond a reasonable doubt; and

- cumulative error.

The OCCA denied relief, specifically finding Christopher Berry not credible, and noting that "Berry's affidavit suggests that Jordan admitted Petitioner was involved in the murder, while according to [Emmanuel] Littlejohn, Jordan denied that Petitioner had any involvement. *Jones v. State*, No. PCD-2002-630 (Okl. Cr. Nov. 5, 2007) (unpublished). Jones did not seek Supreme Court review.

FEDERAL HABEAS PETITION

In his federal habeas petition, filed in the United States District Court for the Western District of Oklahoma, Jones raised the following claims:

- trial counsel were ineffective for: (1) failing to show the jury his hair was too short to match Megan Tobey's description of the shooter; (2) failing to argue King, rather than Jones, was likely the person seen with Jordan looking for Suburbans earlier on the day of the murder; (3) failing to present the testimony of Emmanuel Littlejohn and Christopher Berry; and (4) failing to adequately cross-examine Jordan;

- trial counsel were ineffective for failing to get the evidence obtained from his parents' home suppressed;

- prosecutorial misconduct as argued on direct appeal;

- the trial court improperly removed a juror for cause;

- he was absent from some court proceedings;

- appellate counsel was ineffective for: (1) failing to discover that a juror had undisclosed contacts with the legal system; (2) failing to discover the potential testimony of Christopher Berry; and (3) failing to challenge the

absence of a requirement that jurors find beyond a reasonable doubt that aggravating circumstance outweigh mitigating circumstances;

- the failure of the trial court to define life without parole; and
- the continuing threat aggravator is unconstitutional.

The district court denied relief on all grounds. Of particular note, the court found that, "The length of [Jones's] hair compared to Mr. Jordan's is not a persuasive showing of actual innocence. . . . [And] even if accepted, do[es] not persuasively show [Jones] is actually innocent of the crimes in light of the amount of evidence pointing to his guilt." *Jones v. Trammell*, No. CIV-07-1290-D, 2013 WL 2257106, at *5 (W.D. Okla. May 22, 2013), *aff'd*, 773 F.3d 68 (10th Cir. 2014), *withdrawn from bound volume, reh'g granted, judgment vacated*, 777 F.3d 1099 (10th Cir. 2015), *and on reh'g sub nom. Jones v. Warrior*, 805 F.3d 1213 (10th Cir. 2015), *and aff'd sub nom. Jones v. Warrior*, 805 F.3d 1213 (10th Cir. 2015).

TENTH CIRCUIT COURT OF APPEALS

Jones received a certificate of appealability in the Tenth Circuit on only one ground—that trial counsel were ineffective in failing to present the testimony of Emmanuel Littlejohn and Christopher Berry. The Tenth Circuit denied relief. *Jones v. Warrior*, 805 F.3d 1213 (10th Cir. 2015). Of note, the court's reading of Megan Tobey's testimony contradicts Jones's repeated assertions that Ms. Tobey was describing Christopher Jordan rather than Jones: "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." *Id*. at 1214. The Supreme Court denied Jones's petition for a writ of certiorari.

SECOND POST-CONVICTION APPLICATION

In his second post-conviction application, filed after Jones had unsuccessfully pursued all avenues for federal habeas relief, he argued that a study published in *The Report of the Oklahoma Death Penalty Review Commission* establishes racial bias in Oklahoma's capital sentencing scheme. The OCCA refused to consider the claim because it could have been raised earlier. The Supreme Court denied Jones's petition for a writ of certiorari.

THIRD POST-CONVICTION APPLICATION

In his third post-conviction application, Jones claimed to have discovered new evidence that one of the jurors in his case used a racial epithet to refer to Jones. This claim was also barred by the OCCA, although the court made some comments regarding the claim that will be discussed later. The Supreme Court denied Jones's petition for a writ of certiorari.

All told, because of changes in the composition of the OCCA, a total of 13 appellate judges have reviewed Jones's conviction and sentence. This includes 9 OCCA judges, District Judge Timothy DeGuisti, and 3 Tenth Circuit Judges. The Supreme Court has turned down 4 opportunities to review Jones's case.

III. JULIUS JONES MURDERED PAUL HOWELL.

Julius Jones shot and killed Paul Howell at approximately 9:30 p.m. on Wednesday, July 28, 1999, and stole Mr. Howell's GMC Suburban (Tr. IV 102-04, 129, 134-36). The following day, Jones was on surveillance video at the convenience store where he dumped

Mr. Howell's Suburban (Tr. IV 223-25; Appendix at 11). Jones and Ladell King then drove to a nearby body shop, owned by Kermit Lottie, and tried to sell the Suburban, but Mr. Lottie declined (Tr. V 45-52, 75-81).[4]

Police then tracked down Mr. King, who informed them—and later testified at trial—that Jones drove Mr. Howell's Suburban to Mr. King's apartment between 9:30 and 10:30 p.m. on Wednesday, July 28 (Tr. V 135-49, 164). Jones fled his parents' home when police arrived (Tr. VII 148-50, 176-86). Officers eventually found Mr. Jones at the home of Laymon Jordan, the brother of Mr. Jones's accomplice Christopher Jordan (Tr. VII 195-98).

[4] Mr. Jones argues that Mr. King and Mr. Lottie lied about his involvement in the murder. In fact, Mr. Lottie said nothing at all about Mr. Jones, other than that he had never met Mr. Jones (Tr. V 85). As set forth above, Mr. Lottie simply testified that Mr. King approached him about purchasing a Suburban and he declined. It is unclear why Mr. Jones believes this testimony to be untruthful. In fact, Mr. Jones now admits, in his commutation application, that he went to Mr. Lottie's shop with Mr. King after they dropped the Suburban off. Thus, although Mr. Lottie did benefit from his testimony, Mr. Jones admits that said testimony was truthful. Further, Mr. Lottie provided the same testimony at the January 12, 2000 preliminary hearing before he was charged in federal court in July of 2000 (P.H. Tr. II 244-53; Tr. VI 44).

Regarding Mr. King, Mr. Jones provides evidence of Mr. King's *possible motive* to testify falsely, but no evidence that he actually did so. As will be explained, Mr. King's testimony was corroborated by a number of other witnesses, the videotape of Mr. Jones at the convenience store, the gun used to murder Mr. Howell which was found in Mr. Jones's home, and the DNA found on the red bandanna that was wrapped around that gun. As for Mr. King's sentence for bogus checks, it was established at Mr. Jones's trial that he did not receive a benefit in exchange for his testimony against Mr. Jones (Tr. VI 16-17, 233-36). In fact, the Assistant District Attorney handling the bogus check charge was not even aware of Mr. King's testimony until the middle of Mr. Jones's trial, and she testified that the disposition of that case was unrelated to Mr. King's testimony (Tr. VI 74-85). The same is true of Mr. King's defense attorney in the bogus checks case (Tr. VI 13-15).

Christopher Jordan testified at Mr. Jones's trial in exchange for a plea bargain.[5] In light of Mr. Jones's assertion that Mr. Jordan lied when he testified that Mr. Jones shot Paul Howell, this packet will discuss Mr. Jordan's testimony only to the extent that it was corroborated. The corroboration was abundant.

In the summer of 1999, Mr. Jones and Mr. Jordan were the best of friends (Tr. IX 14). The two were always together and, although each had his own car, Mr. Jones frequently used Mr. Jordan's orange/bronze Cutlass (Tr. V 101-04; Tr. VIII 105-06, 114, 127; Tr. IX 14-18). Mr. Jones's girlfriend at the time, Analiese Presley, was in the Cutlass alone with him before the murder of Mr. Howell and found a red bandanna and a small chrome gun therein (Tr. IX 21-28). Mr. Jones admitted the gun was his (Tr. IX 26). That Mr. Jones—as opposed to Mr. Jordan—owned the gun was further corroborated by a box of .25 caliber ammunition found in Mr. Jones's car after the murder (Tr. VIII 253, 287-91; Appendix at 15). Also in Jones's car was a knotted piece of women's hosiery, which will become significant later (Appendix at 15). In a frightening display of consciousness of guilt, after his arrest, Mr. Jones wrote two letters to Ms. Presley from jail, threatening her and advising her to lie and claim she did not remember anything (Appendix at 16-17; Tr. IX 44-48, 56-69). In particular, Mr. Jones warned Ms. Presley not to say that he was doing anything illegal (Appendix at 17; Tr. IX 69).

[5] Jones's repeated claims of a "secret deal" are demonstrably false. Mr. Jordan was released after serving thirty years, according to the Department of Corrections' formula for calculating time served; a matter over which the District Attorney's Office has absolutely no say (Appendix 12-14).

Around the same time Ms. Presley saw the gun, Mr. Jones, Mr. Jordan, and Mr. King began having discussions about stealing and selling a car (Tr. V 216-24; Tr. VIII 146-69, 214-15, 232-35). It was decided that they should steal a GMC product because they were easier to dispose of than foreign cars—like the Lexus and Mercedes Jones had stolen in the week before the murder (discussed more below) (Tr. V 218-19; Tr. VIII 147). A vehicle that came with keys would bring more money than one that was hotwired (Tr. VIII 150).

On July 28, Mr. Jordan and Mr. Jones drove to Edmond in the Cutlass to look for a Suburban to steal (Tr. VIII 129-30, 146-47). Mr. Jordan was driving (Tr. VIII 163). Mr. Jones saw Paul Howell's Suburban on Broadway and instructed Mr. Jordan to follow it (Tr. VIII 155-57). Mr. Howell, his sister Megan Tobey, and his two daughters had just finished shopping for school supplies at Target and decided to drive through Braum's (Tr. IV 97-101). Mr. Jordan pulled into Braum's and drove around the parking lot before finally backing into a space from which he could see the exits (Tr. VIII 156-58).

A man named Michael Peterson just happened to be sitting on the curb at Braum's with his wife when he saw Mr. Jordan's Cutlass circle the parking lot a couple of times before backing into a parking space from which both exits were visible (Tr. IV 88-90). The car stayed in the parking space with its motor running, before leaving in a hurry after a few minutes (Tr. IV 89-90). There were two young, black males in their early 20s in the car (Tr. IV 91).[6] One of the men had corn rows and one was wearing a white shirt (Tr. IV 91).

[6] Although Jones's team has suggested Mr. King accompanied Mr. Jordan at the time of the murder, Mr. King has an alibi (Tr. V 266-76; Tr. VII 138-43). And this completely disinterested

Mr. Peterson believed the man with corn rows was the driver (Appendix 18; Tr. IV 91, 376). Mr. Jordan had corn rows at that time (Tr. VIII 163).

Mr. Jordan followed the Suburban until Mr. Howell pulled into his parents' neighborhood, at which time Mr. Jones got out of the Cutlass (Tr. VIII 160-64). Mr. Jones had a chrome .25 caliber handgun and was wearing gloves, a stocking cap, and a red bandanna around his neck (Tr. VIII 118-19, 159, 164, 168-69). Mr. Jones ran up to the Suburban and shot Mr. Howell, who had opened the car door to get out (Tr. IV 104; Tr. VIII 164). Mr. Jones had the gun pressed against Mr. Howell's head when he fired (Tr. VIII 51, 82; Appendix at 3).

The gunshot was the first sign Ms. Tobey had of trouble; there was no noise—such as a demand for the keys—that preceded it (Tr. IV 106). She turned to see a black male wearing a white t-shirt with blue trim, a black stocking cap, and a red bandanna over his face (Tr. IV 104, 108, 116, 136-38). Ms. Tobey grabbed Mr. Howell's daughters and ran into the house, but not before Mr. Jones fired a second shot (Tr. IV 104-05).

In the meantime, Mr. Jones drove the Suburban to Mr. King's apartment, arriving there after Mr. Jordan arrived in the Cutlass (Tr. V 141-46; Tr. VIII 165). Mr. Jones, who advised Mr. King not to touch the Suburban, was wearing a wave cap, white t-shirt, gloves, and a red bandanna around his neck (Tr. V 148, 158-62). Mr. King's girlfriend, Vickson McDonald, saw Mr. Jones, Mr. Jordan, and the Suburban in the parking lot of her apartment

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witness's description does not match Mr. King, who was thirty years old at the time of the murder, whereas the witness saw someone "young, approximately early twenties." (Appendix at 18; Tr. V 97).

at around 10:00 p.m. on July 28 (Tr. VII 138-44, 150). Gordon Owens—a neighbor of Mr. King who had known him for only about six months—also saw Mr. Jones and the Suburban at approximately 10:30 p.m. on July 28 (Tr. V 266-70).

A receipt found in the Cutlass, bearing Jones's thumbprint and dated July 28, further confirmed Mr. Jones's presence in that car on the day of the murder (Tr. IX 168-74; Appendix at 19).

When police searched the home of Mr. Jones's parents, they found the murder weapon—a chrome .25 caliber handgun confirmed by ballistics testing to have fired the bullet that killed Paul Howell—wrapped in a red bandanna (Tr. VII 272-77; Tr. IX 195; Appendix at 6).[7] These items were in the attic right by an opening that could be accessed in the ceiling of Mr. Jones's closet (Tr. VII 271-73, 232, 271-73; Tr. VIII 232-37). There was also a white t-shirt with black trim and a black stocking cap in Mr. Jones's bedroom (Tr. VIII 245; Appendix at 7).

The magazine for the gun, with five bullets inside, was found in the doorbell chime, but only after an officer removed the chime's housing unit (Tr. VII 259; Tr. VIII 240;

[7] Jones's recent assertion that this ballistics evidence is "junk science" is beyond absurd. For the last twenty-two years, Jones has admitted this gun was the murder weapon, but claimed Mr. Jordan hid it to frame Jones. Now that he has changed his theory, Jones offers no explanation for why Jordan would attempt to frame him with a gun that wasn't the murder weapon. Nor, setting aside the "framing" theory, has Jones explained why he had a .25 caliber gun (the same caliber as the murder weapon)—wrapped in a red bandana—in his attic; nor why the magazine—which was missing 2 bullets, the same number as had been fired in the murder—was removed and hidden in the doorbell chime of his home; nor why he just happened to have .25 caliber bullets in his car. The defense team is haphazardly throwing out ludicrous theories in an attempt to confuse this Board and the public. This Board should view everything Jones and his supporters say with extreme skepticism.

Appendix at 7-8). The gun could hold a total of seven bullets (Tr. IX 187-88). Mr. Jones fired two bullets at the Howell residence (Tr. IV 104-05, 138, 177, 200).

It was on the strength of this evidence that the jury was convinced of Mr. Jones's guilt beyond a reasonable doubt. And there was evidence of which the jury was not aware.

In July of 2017, Mr. Jones hired a lab, Bode, to test the red bandanna for DNA. The lab obtained a partial DNA profile (Appendix at 20-21). This profile was consistent with a mixture of at least three individuals (Appendix at 21). However, the major contributor to the DNA profile on the bandanna was found to match Mr. Jones (Appendix at 21). "The probability of randomly selecting an unrelated individual with this DNA profile at 7 of 21 loci tested is approximately: 1 in 1.3 billion in the US Caucasian population[,] 1 in 110 million in the US African American population[, and] 1 in 1 billion in the US Hispanic population[.]" (Appendix at 21). Mr. Jordan, on the other hand, was excluded as a possible contributor of the major component, and no conclusions could be drawn regarding the minor alleles (Appendix at 21).

Obviously, this evidence is extremely damning. Thus, Ms. Bass told this Board at Jones's commutation hearing that the results obtained <u>by the lab Jones chose</u> are "below the threshold of reliability that the FBI's Quality Assurance Standards established for determining whether or not there's a match." (9/13/2021 Recording at 2:43:01-2:43:21, 3:16:20-3:16:55). This is false, as established by the attached letter from an eminently qualified DNA expert. Dr. Dwight Adams was a "Member of the original research team for the FBI that developed DNA procedures", "Former member and Chief of the DNA Analysis Unit, FBI", "Former Director of the FBI Laboratory", and "Member of the DNA

Advisory Board that developed the FBI's quality assurance standards for DNA". (Appendix at 22-23). Dr. Adams asserts that "the requirements necessary to upload a profile into CODIS [to which Ms. Bass had also referred] . . . ha[ve] no bearing on the facts of this case" because this case involves a direct comparison of two DNA samples. (Appendix at 22). Dr. Adams says that Ms. Bass's statement regarding the FBI's Quality Assurance Standards "is not true." (Appendix at 22).

"It is up to the laboratory to determine what their procedures will allow in making determinations of a match and how DNA loci will be interpreted. If the laboratory has established guidelines (which Bode does) for calling all seven loci and how they treat the two partial loci statistically, then it is acceptable in QAS [the FBI's Quality Assurance Standards]." (Appendix at 22) (second alteration added). Thus, Ms. Bass gave false information to this Board.

Finally, Dr. Adams agrees that "Jones cannot be excluded as the major contributor for the DNA profile on the bandana. Statistically speaking, a five loci interpretation or a seven loci interpretation are both very rare events." (Appendix at 22). Neither Dr. Adams nor Jones's expert, Dr. Shapiro, disagree with Bode's finding that the odds of randomly selecting someone unrelated to Jones with the same profile as that on the bandanna are 1 in 110 million African Americans.

The evidence leads to only one conclusion: Julius Jones murdered Paul Howell.

IV. THE MURDER OF PAUL HOWELL WAS THE CULMINATION OF AN ESCALATING COURSE OF CRIMINAL CONDUCT.

Mr. Jones has arrests dating all the way back to 1995, when he was fifteen years old (Appendix at 45).[8] On March 11, 1998, Mr. Jones was caught stealing from a Footlocker store at Quail Springs Mall (Tr. XI 79-89). Mr. Jones pushed the store clerk when confronted about the theft, but was apprehended before he could get away (Tr. XI 81, 86).

In 1998, Mr. Jones pled guilty to unlawful use of a fictitious name in an application for an ID. Although he received a deferred sentence, that sentence was later accelerated.

On December 2, 1998, Mr. Jones was driving a car with an inoperable tag light (Tr. XI 91, 101-02). When officers attempted to pull the car over, Mr. Jones fled at speeds up to 50 miles per hour in a residential area before eventually stopping (Tr. XI 92-93). In the car were items that led the officers to suspect Mr. Jones and his passenger had been stealing (Appendix at 24-33). These included gloves, a screwdriver with torque bits, a flashlight, pliers, wheel caps and bolts thereto, broken pieces of automobile glass, and a speaker box (Tr. XI 95-98). The passenger admitted to police that the two men had stolen "spinners" and the speaker box from a car (Appendix at 28-33). According to the passenger, Mr. Jones had stolen from other vehicles a few nights earlier (Appendix at 30). Although this account is hearsay, what is significant is the sheer volume of evidence—detailed below—that confirms Mr. Jones's habit of stealing. In fact, between January of 1998 and July of 1999, Mr. Jones pawned no fewer than twenty different items like stereos, jewelry, cell phones, and video games (Appendix at 34-44, 48).

[8] By contrast, Christopher Jordan had only one arrest, in 1999, before the murder of Paul Howell (Appendix at 45-47). He also had one curfew violation in 1997 (Appendix at 47).

On December 8, 1998, a CD player was stolen from Wal-Mart in the Village. Mr. Jones pawned this CD player on December 9, 1998. The signature on the pawn slip was verified by a document examiner as that of Mr. Jones. Mr. Jones pled guilty to false declaration to a pawn broker and concealing stolen property.

On the day after the CD player was stolen from Wal-Mart, Mr. Jones stole four pagers from a Target store. Mr. Jones pled guilty to larceny of merchandise from a retailer.

On January 17, 1999, Mr. Jones was caught stealing two shirts from Dillard's. Undeterred, just two days later, Mr. Jones was caught stealing several items from Wal-Mart in Norman. Mr. Jones was also caught stealing pliers and bolt cutters in January of 1999 (Tr. XI 163).

In February of 1999, a man visiting Quail Springs Mall set his keys down, but they were taken and his car was stolen. In March, Mr. Jones was arrested in this stolen car, and was found to be in possession of a loaded .380 caliber handgun which was on the driver's side floorboard (Tr. XII 5-9; Appendix at 49). Although Mr. Jones has claimed that he purchased the car with no knowledge that it was stolen, he accelerated and made a quick turn as soon as the officer started to follow him (Tr. XII 6). Mr. Jones then parked and abandoned the car (Tr. XII 7). Not only do Mr. Jones's actions belie his claim of innocent ownership, but he told Ms. Presley that he and the friend from whom he later claimed to have purchased the car had taken it from Quail Springs Mall after finding the keys (Tr. XII 55-56).

When Mr. Jones was arrested in this stolen car, he had in his pocket a pair of gloves and a pair of women's pantyhose (Tr. XII 9). Also in the car were a kicker box with

speakers, two lug wrenches, approximately 200 CDs, a floor jack, and a number of other items such as a drill, screwdrivers, stereo wires, and a wire stripper (Appendix at 50). Perhaps most significantly, there was an 18" gold necklace (Appendix at 50). Eugene Chambers told police that Mr. Jones stole gold chains from a jewelry store in Quail Springs Mall, and also stole from a jewelry store at Crossroads Mall (Appendix at 52-53). **Mr. Jones indeed pawned a chain on November 7, 1998 (Appendix at 35).**

Mr. Chambers further told police that Mr. Jones stole CDs, that he and Mr. Jones stole from cars and stores, and that Mr. Jones was "'really into' stereo equipment." (Appendix at 52-53).[9] Mr. Chambers invoked the Fifth Amendment when called to testify against Mr. Jones and denied his prior statements (Tr. XII 40-47). Mr. Chambers' coach testified, outside the presence of the jury, that he brought Mr. Chambers to court (Tr. XII 83). The coach saw someone stand up, try to make eye contact with Mr. Chambers, and clinch their fists over their heart (Tr. XII 83-85). The coach believed the person was attempting to influence Mr. Chambers' testimony (Tr. XII 83-87).

On March 18, 1999, an officer was on patrol on Lindsey Street in Norman when he saw Mr. Jones walking from the area of the ATM of a bank at approximately 3:30 a.m. (Appendix at 54-56; Tr. XI 162). When Mr. Jones saw the officer, he ducked down behind a bush, then ran away when the officer braked his car (Appendix at 54-55). The officer pursued in his car until Mr. Jones reached an apartment complex (Appendix at 54-55).

[9] Mr. Jordan also told police that he and Mr. Jones stole CDs (Appendix at 51). And both Mr. Jordan and Mr. Chambers identified the same individual as the man to whom they sold the CDs (Appendix at 51-53).

Another officer joined the foot pursuit and they eventually apprehended Mr. Jones (Appendix at 54-55). During the chase, Mr. Jones discarded a pair of gloves, face mask, and plastic water gun that had been painted black (Appendix at 54-56). The prosecutors learned about this incident too late to use it at trial (Tr. XI 161-63).

On July 9, 1999, Mark Merchant was working at his jewelry store in Quail Springs Mall (Tr. XI 104-05). Mr. Jones came in that morning and robbed Mr. Merchant at gunpoint (Tr. XI 105-07). Mr. Jones was wearing a pantyhose over his head and a **red** bandanna over his face (Tr. XI 107-08). Mr. Jones specifically demanded gold chains and took approximately $15,000 worth (Tr. XI 106-11).

Although Mr. Merchant could not identify Mr. Jones, Mr. Jordan testified that Mr. Jones took the Cutlass the day of the robbery and came back with gold chains, stating that he had robbed a jewelry store at Quail Springs Mall (Tr. XI 150-52). Another individual partially corroborated Mr. Jordan, testifying that he saw a goldish color, older model Monte Carlo speed out of the parking lot at the time of the robbery (Tr. XII 14-16). According to Mr. Jordan, Mr. Jones pawned many of the chains, wore one, and gave one to Ms. Presley (Tr. XI 152). Ms. Presley confirmed that Mr. Jones gave her three or four gold chains, but then took them back (Tr. XII 62-64). **Pawn slips prove that Mr. Jones pawned several gold chains in July of 1999 (Appendix at 34, 36, 48).**

On July 21, 1999, Dr. Vernon Hoffman and some friends visited the Hideaway Pizza location on Western Avenue in Oklahoma City (Tr. XI 118-20). When they exited the restaurant, Mr. Jones pointed a gun at Dr. Hoffman and told him to get in his Lexus and drive (Tr. XI 119-21). Dr. Hoffman's friends were already in the car (Tr. XI 121). Mr.

Jones forced Dr. Hoffman into the car and backed out, but Dr. Hoffman and his friends escaped (Tr. XI 121-22). Mr. Jones wore a blue and white bandanna (Tr. XI 124). The car was recovered three months later, but the victims' personal belongings had been stolen (Tr. XI 128). Dr. Hoffman could not identify the robber, but Mr. Jordan drove Mr. Jones to the restaurant and witnessed the robbery (Tr. XI 129, 134-38). In addition, Mr. Jones told Ms. Presley that he had a Lexus, and that he had acquired it with Mr. Jordan (Tr. XII 58-60; Appendix at 57-58). Ms. Presley assumed Mr. Jones and Mr. Jordan had stolen the Lexus (Tr. XII 59-60). She further admitted that although Mr. Jones seldom worked, he often had money (Tr. XII 60-62).

On the day after Dr. Hoffman was carjacked, Dr. Anand Lapsi and three friends ate dinner at the same Hideaway Pizza location on Western Avenue in Oklahoma City (Tr. XI 53-55). When the diners exited the restaurant, Mr. Jones pointed a gun at Dr. Lapsi and stole his Mercedes (Tr. XI 57-60). Mr. Jones was wearing a blue bandanna over his face (Tr. IX 60). Dr. Lapsi positively identified Mr. Jones as the person who robbed him (Tr. XI 62-67). Further, although she did not testify at Mr. Jones's murder trial, one of the witnesses positively identified Mr. Jones, with 85% certainty, in a photo lineup. And Mr. Jordan tied Mr. Jones to this crime, as well (Tr. XI 134-35, 145-48). But there was even more evidence which conclusively establishes that Mr. Jones committed this carjacking.

An employee of the apartment complex in Norman in which Mr. Jones lived noticed a Mercedes—which was out of place for the complex—parked near Mr. Jones's apartment (Appendix at 60). The employee called police when he noticed that the word "Mercedes" was misspelled on the paper tag (Appendix at 60). A handwriting expert determined that

Mr. Jones had probably prepared this fake paper tag for the vehicle (Appendix at 61-62). Another employee of Mr. Jones's apartment complex actually saw Mr. Jones drive the car (Appendix at 59). The Mercedes was determined to be the one that was stolen from Dr. Lapsi. In fact, the key to the ignition was found in the Cutlass (Tr. XI 66-67, 72-75).

Mr. Jones pled guilty to robbery with a firearm and possession of a firearm. On his plea paperwork, he admitted: "On July 22, 1999 I took from Anand Lapsi a Mercedez [sic] Benz with a firearm while in Oklahoma County." (Appendix at 63). Ironically, Mr. Jones misspelled "Mercedes" in his plea paperwork, just as he had on the paper tag he forged (Appendix at 61-63).

Further, in a letter to Analiese Presley after his arrest for killing Paul Howell, Mr. Jones admitted that he had been doing "stupid 'Shit'" for which he "should or could be dead or locked-up for the rest of [his] life." (Appendix at 116). The sorts of petty crimes to which Mr. Jones appears willing to admit to having engaged in, like the false ID conviction, are not the sort that anyone would contend should result in life imprisonment or the death penalty. However, the evidence is clear that Mr. Jones is guilty of so much more. Despite his current protestations that he has never been violent, it is incredibly clear that he has engaged in numerous criminal acts of violence.

And Mr. Jones's refusal to respect the rules and laws of society did not end with Paul Howell's murder. During a discussion outside the presence of the jury at his trial, Mr. Jones was mouthing and gesturing at the prosecutor in a way that she felt was threatening (Tr. XII 110-11). Mr. Jones denied it, but the court reporter confirmed that she saw him mouthing something (Tr. XII 111).

In October of 1999, Mr. Jones helped his cellmate assault a jail officer (Appendix at 64-66; Tr. XII 70-77). Although Mr. Jones's cellmate began the altercation, Mr. Jones grabbed the officer's arm to prevent him from securing the cellmate (Appendix at 64-66). After the officer pushed Mr. Jones away, Mr. Jones and his cellmate continued to try to grab the officer until another officer intervened (Appendix at 64-66). Mr. Jones also threw the officer's radio in the toilet so he could not call for help (Tr. XII 73).

In March of 2001, Mr. Jones was involved in a large, gang-related fight with other inmates (Appendix at 67-75). And while he was in the county jail, he wrote a number of letters to Analiese Presley referring to wearing red, which is the color of the blood gang (Appendix at 108-09, 111-13). Since being transferred to the Department of Corrections (DOC), Mr. Jones has gotten gang tattoos and been documented as part of a security threat group (Appendix at 108-10).

In November of 2017, a cell phone was discovered in the cell of another inmate (Appendix at 117).[10] When the prison examined the contacts that had been made using that phone, it became apparent that Mr. Jones was one of the individuals who used the phone. Specifically, the contacts in the phone included Dorsheitha Freeman (the mother of Mr. Jones's child), Mr. Jones's father (Anthony Jones, who was labeled as "Popz" in the contact list), Mr. Jones's sister (Antoinette Jones), Mr. Jones's former girlfriend ("Ana Pressley" who was listed as "Poch" in the contact list), Mr. Jones's friend (Eugene

[10] This exhibit is being used with permission from the Department of Corrections, after redactions were made at their request.

Chambers) who is a convicted felon, and Mr. Jones's mother (Madeline Jones, who was listed as "Ma" in the contact list) (Appendix at 117).

Finally, Mr. Jones has a number of misconducts, including four since he submitted his commutation application (Appendix at 76-107). He has repeatedly possessed cell phones or cell phone paraphernalia (Appendix at 100-07, 117). He tested positive for benzodiazepines in April of this year (Appendix at 80-97).

The State received some very serious allegations about Mr. Jones this year, which have—thus far—been partially corroborated (Appendix at 114-15). And it has recently been discovered that he has been using other inmates' PIN numbers to place phone calls (Appendix at 76-79).

* * *

That Mr. Jones chose a life of crime is undeniable. Mr. Jordan provided evidence of the two Hideaway carjackings and the jewelry store robbery. But his testimony as to those events was corroborated by pawn slips, Ms. Presley, the testimony of Dr. Lapsi, **and Mr. Jones's plea of guilty to one of the carjackings**, among other things. And Mr. Jordan had nothing to do with the other crimes discussed above, or Jones's continued refusal to follow the rules of DOC while confined in Oklahoma's highest security prison unit. Instead, the evidence of those crimes and misconducts comes primarily from people who witnessed Mr. Jones commit them, and he was arrested at the scene for many of the crimes. Mr. Jones is the victim of his own choices, not an innocent man set up by Christopher Jordan and Ladell King.

V. MR. JONES'S ALLEGED ALIBI IS UNTRUE.

Mr. Jones claims he was at home with his family at the time of Paul Howell's murder. This is another blatant falsehood. As described above, three people saw Mr. Jones with Mr. Howell's Suburban at Mr. King's apartment at around 10:00 p.m. And the two individuals whom Jones's family have claimed were with them that night—B.C. and S.C.—both said they were not present (Appendix 118; 3/22/2005 Tr. 81-105). In addition, Jones repeatedly told his attorneys that he was not at home (3/21/2005 Tr. 179-80, 184-85, 196-97; 3/22/2005 Tr. 16-18, 30-34). Like B.C., Jones said he, his family, B.C. and S.C. were at the Jones home on the night *before* the murder (3/21/2005 Tr. 179, 196). He was "unequivocal" that "his family was mistaken about which night it was." (3/21/2005 Tr. 196; 3/22/2005 Tr. 18).

Further, despite making various statements to Ms. Presley in an attempt to distance himself from the murder, Mr. Jones tellingly never claimed to her that he was home on the night of the murder. Rather, Ms. Presley told police that Mr. Jones told her that he and Mr. Jordan were "'on the South Side and uh, we were just suppose[d] to take the car to it's [sic] destination.'" (Appendix at 119). Although Mr. Jones now claims Christopher Jordan murdered Mr. Howell, he told Ms. Presley that "'[i]t was two other guys.'" (Appendix at 119). The evidence proves that Mr. Jones and Mr. Jordan were present at the scene of the murder when it happened and that, therefore, Mr. Jones did not tell Ms. Presley the truth about his whereabouts. However, Mr. Jones **did not** tell Ms. Presley that he was at home. There is no logical explanation for this omission if, in fact, Mr. Jones had been at home.

Finally, that Mr. Jones did not testify at the evidentiary hearing speaks volumes. And contrary to his repeated assertions, he was given every opportunity to testify, both at trial and at this hearing. At trial, the following colloquy occurred:

> THE COURT: All right. You understand that your right to testify is a personal decision of your own. Of course you can have the advice of counsel, Mr. McKenzie and Mr. McKenzie's co-counsel in this matter, but when it comes right down to it, it is your personal decision whether to testify or not testify on your own behalf. Have you determined with the assistance of your counsel not to testify?
>
> THE DEFENDANT: Yes, sir.
>
> THE COURT: Is that a free and personal decision of your own?
>
> THE DEFENDANT: Yes, sir.
>
> THE COURT: Has Mr. McKenzie or any of his co-counsel or anybody in the Public Defender's office, associated with the Public Defender's office, have they put any pressure on you, coerced you, made you any promises or benefits or anything to either to testify or not to testify?
>
> THE DEFENDANT: No, sir.
>
> THE COURT: This is a choice of your own free will?
>
> THE DEFENDANT: Yes, sir.
>
> THE COURT: With advice of counsel.
>
> THE DEFENDANT: Yes, sir.

(Tr. IX 218-19). Although there is no similar record at the evidentiary hearing, there is no doubt Mr. Jones could have testified had he chosen to do so.

* * *

The state district court found that Mr. Jones's attorneys "took the only reasonable, professional and ethical step and chose not to present evidence of an alibi defense." Perhaps more significantly to Mr. Jones's proclamation of innocence, the court stated, "it would stand to reason that if [Mr. Jones] could explain his whereabouts on the night of the murder he would have told his lawyers and would not have chosen to remain silent as to any alibi concerning his whereabouts." Finally, the court concluded that, in light of the State's witnesses who saw Mr. Jones on the night of the murder, "[t]he presentation of the alibi defense would not have caused the jury to reach a different conclusion." The presence of Mr. Jones's DNA on the red bandanna only further supports this conclusion. Mr. Jones's claim that he was at home at the time of the murder is false.

VI. MS. TOBEY'S DESCRIPTION OF THE SHOOTER'S HAIR IS NOT INCONSISTENT WITH MR. JONES.

Mr. Jones claims that Ms. Tobey's description of the hair of the man who killed her brother is more consistent with Mr. Jordan than with him. Mr. Jones is incorrect.

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.

(Tr. IV 116-19).

Ms. 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. Ms. Tobey's statement that the shooter had half an inch of hair *visible* beneath his cap is not the same as saying that the shooter had hair reaching half an inch *from* his head, as Mr. Jones implies. It is also worth noting that Mr. Jordan had sideburns, Mr. Jones did not, and Ms. Tobey made no mention of sideburns.

This claim has been evaluated by courts, under the guise of ineffective assistance of counsel. As explained above, the Tenth Circuit Court of Appeals understood Ms. Tobey to be describing the amount of hair visible below the cap. Ms. Tobey's testimony is in no way inconsistent with the fact that Mr. Jones shot Paul Howell.

VII. JONES'S WITNESSES ARE NOT CREDIBLE.

Jones has identified four individuals to whom Mr. Jordan allegedly made admissions which Jones claims exculpate him. Each of these witnesses has the same three problems, which distinguish them from the felons upon which the State was admittedly forced (by Jones's choice of friends) to rely: (1) they are not credible; (2) they know no

details of the murder; and (3) they were not corroborated. Emmanuel Littlejohn is a "pathological liar" and convicted capital murderer. Christopher Berry scalded a child to death. Roderick Wesley is a violent criminal with antisocial personality disorder—who appears to have made a lot of money from coming forward. And Geary Birdine has a lengthy criminal history.[11] In addition, Mr. Birdine's statement is quite incredible. He claims, in Jones's Appendix 98 to his commutation application, that Mr. Jordan told him and about one hundred other people that he was setting Mr. Jones up.

Mr. Jordan, Mr. King, and Mr. Lottie gave detailed testimony (and in the cases of Mr. King and Mr. Lottie, that testimony did not materially change from the moment they were contacted by police through Jones's trial). Jones's four witnesses are extremely vague. They provide no details which can be investigated or compared to the facts of the murder. In fact, Mr. Berry appears to admit that Mr. Jones was involved in the murder (Appendix at 120-21). And the State's witnesses were corroborated in a myriad of ways, described above. There is simply nothing to corroborate Jones's witnesses.

It is unfortunate, but hardly surprising, that some of the people who had information regarding Mr. Jones's murder of Paul Howell were convicted criminals. However, they did not provide the only evidence of Mr. Jones's guilt. Ms. Jones was convicted—among other reasons—because the murder weapon was hidden in his home, he had bullets in his car of the same caliber as those that killed Mr. Howell, he admitted to his girlfriend that

11 https://www.oscn.net/dockets/Results.aspx?db=oklahoma&number=&lname=birdine&fname=geary&mname=&DoBMin=&DoBMax=&partytype=&apct=&dcct=&FiledDateL=&FiledDateH=&ClosedDateL=&ClosedDateH=&iLC=&iLCType=&iYear=&iNumber=&citation=.

the gun was his, he owned a red bandanna, he had in his bedroom a stocking cap and a white t-shirt with dark trim like that described by Ms. Tobey, he was seen by two witnesses other than Mr. King with the Suburban the night of the murder, he is on surveillance video where the Suburban was ditched, etc. And the jury that convicted him did not know about the DNA, and they did not know (when they returned their guilty verdict) that Jones had carjacked two other cars in the week or so before the murder. To call this a case with overwhelming evidence of guilt is an understatement.

VIII. THERE IS NO CREDIBLE EVIDENCE THAT A JUROR USED A RACIAL EPITHET.

Mr. Jones claims one of the jurors said "'they should just take the n***** out and shoot him behind the jail.'". This claim is based on an affidavit from another juror, V.A. (although this juror's initials are now V.C, this packet uses her initials from the time of trial). V.A. reported to the trial judge, during trial, that another juror—the same one she now alleges used a racial epithet—had engaged in premature deliberations. V.A. was specifically asked the day after this alleged incident occurred to relay the exact words used by this other juror. V.A. did not report that this other juror used a racial epithet (Tr. XIII 75). No other juror heard this alleged comment, although it was allegedly made in a group setting (Tr. XIII 29-48). And the bailiff has signed an affidavit confirming V.A. did not report this to her, as V.A. claims to have done (Appendix at 122).

This information is simply not credible, and it may well be the result of improper tactics on the part of the defense. Jones's investigators harassed another former juror, who was very ill (Appendix 123-34). They exploited his Catholic faith to attempt to get him to

make statements favorable to Mr. Jones, asking him if he would be comfortable standing before God having voted for the death penalty (Appendix 123). These tactics cast grave doubt on all of Mr. Jones's supposed evidence.

IX. THE MANY MISSTATEMENTS, HALF TRUTHS, AND OUTRIGHT FALSEHOODS TOLD BY JONES AND HIS TEAM.

It is not the regular practice of this office to accuse people of lying, and we do not now do so lightly. However, there is concrete proof that so many of the things Jones and his team have told this Board, and the public, are lies by omission, half-truths, and outright falsehoods. It is unfair to the Howell family, and the People of the State of Oklahoma, to allow our justice system to be perverted by such dishonesty. Below are a few examples.

Amanda Bass told this Board that the State has never proven the allegations of Julius Jones's crimes, which it used in the sentencing phase of the murder trial, in any court (9/13/2021 Recording at 2:38:08). Of course, the evidence of those crimes was presented to the jury which sentenced Mr. Jones to death. Moreover, Julius Jones pled guilty to robbery with a firearm and possession of a firearm after former felony conviction. These crimes were proven in court.

Ms. Bass told this Board that Jones's alibi defense was not presented "because lead counsel delegated the decision over whether or not to investigate and present that alibi to an investigator who, by his own account, was unreliable and incompetent." (9/13/2021 Recording at 2:44:22). The truth is that Jones's trial investigator spoke with two potential witnesses and told trial counsel those witnesses contradicted Jones's family's account. But counsel in no way "delegated the decision over whether or not to investigate and present

that alibi" to their investigator. Instead, counsel met with Jones's family multiple times, and spoke with Jones himself (3/21/2005 Tr. 179-80, 184-85, 196-97; 3/22/2005 Tr. 15-18, 30-34). Jones repeatedly and adamantly agreed with the witnesses with whom the "incompetent" investigator spoke that he was not at home on the night Paul Howell was murdered (3/21/2005 Tr. 179-80, 184-85, 196-97; 3/22/2005 Tr. 16-18, 30-34).

Ms. Bass stated that Kermit Lottie "didn't disclose to the jury that it was he and Ladell King, not Julius, who discussed getting quote GMC products . . . ." (9/13/2021 Recording at 2:50:29). While this is technically true, it is misleadingly incomplete: Mr. Lottie did tell the jury that he had never met Mr. Jones (Tr. V 85). Thus, the jury was well aware that Mr. Jones had not had discussions with Mr. Lottie regarding stolen cars.

Ms. Bass claimed that DOC made "an attempt to write Mr. Jones up so that he would not be able to appear before you to speak on his own behalf." (9/13/2021 Recording at 3:17:45). Yet, Ms. Bass has known for months that Jones would not be able to appear at the hearing, misconducts notwithstanding, because he was being held at Oklahoma State Penitentiary. This Board had sent a letter to Jones's attorneys in April of 2021 with that information. Ms. Bass also accused DOC of lying about Jones's infractions. But it is hardly a stretch to believe that Jones had a cell phone charger in his cell given his history of possessing cell phones (Appendix 100-07, 117). And Mr. Jones did not even deny using other inmates' PIN numbers to make telephone calls (Appendix 76-79). Finally, it is incredible to think that DOC falsified the urinalysis results.

Michael Lieberman told this Board that non-capital post-conviction applicants get more process than capital defendants (9/13/2021 Recording at 3:20:11). Perhaps this is a

matter of interpretation, but it is important to note that capital post-conviction applicants are entitled to counsel. Non-capital post-conviction applicants rarely have counsel. It is true that there is no time limit for non-capital applications, as there is in capital cases. However, the capital applicants have counsel who review the record, conduct an extra-record investigation and submit a brief in every capital case. The State disagrees that this constitutes less process than that available in non-capital cases.

Mr. Lieberman further stated that "the Supreme Court grants review in less than 1% of cases that are brought up to them every term." (9/13/2021 Recording at 3:21:35). In fact, while it is a very low number, the Supreme Court grants review in approximately 2.8% of cases. And that includes pro se petitions. "Focusing only on attorney-submitted petitions [as in all four of Jones's petitions], the success rate is closer to 6%[.]" https://supremecourtpress.com/chance_of_success.html. Again, the State does not contest that the Supreme Court chooses to review very, very few cases. But this exaggeration by Jones's team is emblematic of their behavior throughout these proceedings.

Ms. Bass claimed that the State "struck [using peremptory challenges during jury selection] Black jurors on the basis of them having prior convictions." (9/13/2021 Recording at 3:28:46). This is, again, untrue. The State used a peremptory challenge against three black jurors: one who was mildly opposed to the death penalty, was sleeping during voir dire, and was smiling at Mr. Jones; one who was also sleeping and failed to disclose her criminal cases; and one who also failed to disclose his criminal case (Tr. III 207-08, 210-11).

The defense provided this Board, as Appendix 86 to the commutation application, with a "Newsview Archive" regarding the two Hideaway Pizza carjackings. The State has never seen this document before, and has no idea where it came from or who generated it. In any event, it contains false information and misleading information. It states that both the Lexus and the Mercedes were found at Jones's apartment complex. The Mercedes was, but the Lexus was found in Midwest City. It also states that fingerprints found on the Lexus and Mercedes do not match Jones. The State is unaware whether prints were recovered from the Lexus. It is accurate that Jones's prints did not match prints recovered from the Mercedes. However, the unsourced quotation on Jones's Appendix 86—"it eliminates [Jones] as far as possibly being a suspect" is simply false. Jones was charged for, and convicted of, this robbery on the basis of the overwhelming evidence of his guilt and his plea of guilty. He was hardly eliminated as a suspect.

Regarding this same guilty plea, Ms. Bass implied that Jones entered the plea, at least in part, because he was represented by "yet another inexperienced lawyer". (9/13/2021 Recording at 3:14:49). The whole truth is that, according to Jones's Appendix 87 to his commutation application, he was represented by both Blake Beleer (who had been an attorney for three years, although he did not have much criminal experience) and Tim Wilson "who was the number two lawyer in the Public Defender's Office at the time and had worked there since the 1980's".

Mr. Jones told this Board, in Appendix 111 to his commutation application, that he had just finished his second semester of summer school when Mr. Howell was murdered. This is patently untrue. The fact is that, although Mr. Jones did well in high school, he had

abandoned academic pursuits by the summer of 1999. Mr. Jones entered the University of Oklahoma in the Fall of 1998. That semester, his grades were: F, S, D, U, and C (Appendix at 134). In the Spring of 1999, Mr. Jones withdrew from all of his classes and he never completed another class (Appendix at 134). Mr. Jones was denied financial aid, and was administratively withdrawn in August of 1999 with a cumulative GPA of 0.80 (Appendix at 134-35).

Jones's team is now telling the public that he is about to be "torture[d]" by the Department of Corrections.[12] But their assertions that he is going to be sleep-deprived by bright lights 24/7, and that he will be moved one cell closer to the execution chamber each week are completely untrue. Mr. Jones will only be moved twice—once from his cell to an observation cell, and once to the execution chamber—unless another move becomes necessary for security reasons (Appendix at 137). And although the lights will remain on at all times, they will be dimmed at night (Appendix at 137).

Finally, Ms. Bass stated that, "Had the jury heard this evidence of Julius's innocence we know, because at least three jurors have said so in sworn affidavits, that it would have made a difference." (9/13/2021 Recording at 2:54:07). No such affidavits have been provided to this Board, or the State. The State is only aware of two juror affidavits which were provided to the OCCA in 2005, and the 2018 affidavit of V.A. regarding another juror's alleged racial bias. Juror M.N. said only that defense witnesses "would be considered along with the other testimony." 2/25/2005 Appendix of Exhibits to

[12] https://drive.google.com/file/d/1WEjAeM4A0LrLwpXB1MhRBCljfvBdfRD4/view, at 30:30-31:07, 31:54-31:56.

Application for Post-Conviction Relief (OCCA No. PCD-2002-630), Exhibit 4. C.W. stated, "If a credible alibi witness would have been presented, it might have made a difference in the case" and "if a witness said that the co-defendant, Mr. Christopher Jordan, who testified against Mr. Jones, was bragging about being the actual shooter, it might have made a difference in the penalty phase of the case." 2/25/2005 Appendix of Exhibits to Application for Post-Conviction Relief (OCCA No. PCD-2002-630), Exhibit 5 (emphasis added). And Juror V.A., whose affidavit was Appendix 29 to Jones's commutation application, reaffirmed her belief that Jones is guilty. Nevertheless, this lie about the jurors was posted on the Justice for Julius Twitter page on October 13, 2021.[13]

This is but a small sample of the half-truths, lies by omission, and outright falsehoods the Jones team has presented to the public and this Board in the last three years. They are hoping to create enough confusion and public outrage to sway this Board. But the evidence is clear. Julius Jones murdered Paul Howell. He is a violent individual who cares nothing for laws or rules when they get in his way. As he himself has said, "when I want somethin', I go get it!" (Appendix 136). This Board should not reward Jones and his team for their malfeasance.

Rachel Howell, Paul Howell's daughter, was an eyewitness to the murder of her father. She, her mother, and Paul's brother Bill have written letters to this Board explaining the damage inflicted by Julius Jones, both in 1999 and with his actions today (Appendix 139-43). There is no doubt that Jones has the right to seek clemency, and to raise any

[13] https://twitter.com/justice4julius/status/1448319373341507589/photo/1.

claims he has in a court of law. But the way he has chosen to pursue commutation/clemency, and his continued refusal to accept responsibility for his actions, has a real cost. He has claimed to care about the Howell family, in Appendix 111 to his commutation application. But his reckless disregard for the truth, and his decision to turn the Howell family's worst nightmare into a television drama, belie that claim.

William Shakespeare wrote, in *The Tempest*, that "What's past is prologue." Julius Jones's past is one of selfishness, greed, and violence. His actions today—particularly his refusal to accept responsibility to the great detriment of the Howell family—show he has not changed. He has acknowledged that he has difficulty refraining from violence (Appendix at 112). And there is every reason to believe that, if moved to a less secure place of confinement or released, he will be a danger—as the jury found beyond a reasonable doubt he would be. Julius Jones is not entitled to clemency.

Respectfully submitted,

JOHN M. O'CONNOR
ATTORNEY GENERAL OF OKLAHOMA

JENNIFER L. CRABB, OBA #20546
ASSISTANT ATTORNEY GENERAL
313 NE 21st Street
Oklahoma City, OK 73105
(405) 522-4395
(405) 522-4534 (FAX)

ATTORNEYS FOR STATE