

No. 21-857

In the Supreme Court of the United States

MARCUS DEANGELO JONES,
PETITIONER,

v.

DEWAYNE HENDRIX,
WARDEN

ON A WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE EIGHTH CIRCUIT

JOINT APPENDIX

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Petition for Writ of Certiorari Filed Dec. 7, 2021
Certiorari Granted May 16, 2022

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The following opinions, judgments and orders have been omitted in printing this joint appendix because they appear on the following pages in the appendix to the Petition for a Writ of Certiorari:

Jones v. Hendrix, No. 20-1286 (8th Cir. Aug. 6, 2021) (opinion affirming district court’s dismissal of petition for habeas corpus for lack of jurisdiction)..... 1a

Jones v. Hendrix, No. 2:19-CV-00096-JTR (E.D. Ark. Jan. 24, 2020) (memorandum opinion dismissing petition for habeas corpus for lack of jurisdiction)..... 14a

**General Docket
United States Court Of Appeals
for the Eighth Circuit**

No. 20-1286

Marcus Deangelo Jones,
Plaintiff-Appellant,

v.

DeWayne Hendrix, Warden,
Defendant-Appellee.

Appeal from U.S. District Court for the
Eastern District of Arkansas - Helena

Date Filed	Docket Text
02/11/2020	Prisoner case docketed. * * *
02/11/2020	Originating court document filed consisting of notice of appeal, Memorandum and Opinion 1/24/20, Judgment 1/24/20, docket entries. * * *
* * *	
03/06/2020	PRO SE BRIEF FILED - APPELLANT BRIEF filed by Mr. Marcus Deangelo Jones. w/service by USCA8 03/06/2020. * * *

04/06/2020	APPELLEE brief of Mr. Dewayne Hendrix submitted for review. * * *
04/06/2020	BRIEF FILED - APPELLEE BRIEF filed by Mr. Dewayne Hendrix. * * *
04/23/2020	DOCUMENT FILED - request for a copy of reply brief filed by Mr. Marcus Deangelo Jones. w/service by USCA8 04/23/2020. * * *
04/23/2020	PRO SE BRIEF FILED - APPELLANT REPLY BRIEF filed by Mr. Marcus Deangelo Jones. w/service 04/23/2020. * * *
* * *	
08/28/2020	<p>JUDGE ORDER:Federal prisoner Marcus Jones appeals the District Court's order dismissing without prejudice for lack of jurisdiction his 28 U.S.C. Section 2241 habeas petition. The court has reviewed the briefs filed by the parties, and it is hereby ordered that the clerk appoint Mr. Jeremy B. Lowrey under the provisions of the Criminal Justice Act to represent Jones. Additional briefing is ordered on the following issues:</p> <p>1. Whether Rehaif constitutes "a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that</p>

	<p>was previously unavailable.” See 28 U.S.C. § 2255(h)(2);</p> <p>2. If the answer to the first question is “no,” does that render § 2255 inadequate or ineffective, see § 2255(e), such that Jones may file a motion for relief based on Rehaif pursuant to 28 U.S.C. § 2241?</p> <p>3. If the answer to either of the above questions is “yes,” is Jones entitled to relief? * * *</p>
09/01/2020	<p>APPEARANCE filed by Jeremy B. Lowrey for Appellant Mr. Marcus Deangelo Jones w/ service 09/01/2020. * * *</p>
09/04/2020	<p>28(j) citation filed by Appellant Mr. Marcus Deangelo Jones w/service 09/04/2020. Appellant now has appointed counsel and his pro se filing will no longer be considered. * * *</p>
09/08/2020	<p>METHOD of appendix preparation filed by Appellant Mr. Marcus Deangelo Jones - Separate Appendix - w/service 09/08/2020. * * *</p>
09/08/2020	<p>Certificate of transcript filed by Appellant Mr. Marcus Deangelo Jones. No Transcript. * * *</p>
09/25/2020	<p>MOTION for extension of time to file brief until 10/30/2020, filed by Attorney Mr. Jeremy B. Lowrey for</p>

	Appellant Mr. Marcus Deangelo Jones w/service 09/25/2020. * * *
09/25/2020	CLERK ORDER:Granting [4959524-2]motion for extension of time to file brief filed by Mr. Jeremy B. Lowrey. Brief of Marcus Deangelo Jones due 10/30/2020. * * *
10/30/2020	RECORD FILED - ORIGINAL FILE, 1 volumes, Comments: Original District Court File. * * *
10/30/2020	RECORD FILED - TRIAL TRANSCRIPT, 2 volumes, Comments: USDC / WMJC - District Court documents #53 and #54. * * *
10/30/2020	RECORD FILED - SENTENCING TRANS, 1 volumes, Comments: Original Transcript. * * *
10/30/2020	APPELLANT brief of Mr. Marcus Deangelo Jones submitted for review. * * *
10/30/2020	Addendum of APPELLANT submitted for review by Mr. Marcus Deangelo Jones. * * *
11/02/2020	Brief deficiency notice sent to counsel, Attorney Mr. Jeremy B. Lowrey for Appellant Mr. Marcus Deangelo Jones. * * *
11/02/2020	ADDENDUM of APPELLANT FILED by Appellant Mr. Marcus Deangelo Jones , w/service 11/02/2020. * * *

11/02/2020	RECORD FILED - APLNT/PET APPENDIX, 1 volumes, Comments: 3 Copies. * * *
11/05/2020	APPELLANT brief of Mr. Marcus Deangelo Jones submitted for review. * * *
11/05/2020	BRIEF FILED - APPELLANT BRIEF filed by Mr. Marcus Deangelo Jones. w/service 11/05/2020. * * *
* * *	
12/07/2020	SUPPLEMENTAL brief of Mr. DeWayne Hendrix submitted for review. * * *
12/08/2020	Brief deficiency notice sent to counsel, Attorney Ms. Jamie Goss Dempsey for Appellee Mr. DeWayne Hendrix. * * *
12/09/2020	APPELLEE brief of Mr. DeWayne Hendrix submitted for review. * * *
12/09/2020	BRIEF FILED - APPELLEE BRIEF filed by Mr. DeWayne Hendrix. * * *
* * *	
12/23/2020	REPLY brief of Mr. Marcus Deangelo Jones submitted for review. * * *
12/23/2020	BRIEF FILED - APPELLANT REPLY BRIEF filed by Mr. Marcus Deangelo Jones. w/service 12/23/2020. * * *
* * *	
03/12/2021	SET FOR ARGUMENT - CASE PLACED ON CALENDAR - <i>for Argument via Videoconference on Friday, April 16, 2021.</i> To be heard

	before Judges Raymond W. Gruender, Duane Benton and Bobby E. Shepherd in Division III. * * *
03/15/2021	APPEARANCE filed by Stephanie Mazzanti for Appellee Mr. DeWayne Hendrix w/ service 03/15/2021. * * *
03/16/2021	ARGUMENT RESPONSE/APPEARANCE FORM filed by Mr. Jeremy B. Lowrey for Mr. Marcus Deangelo Jones. * * *
03/16/2021	ARGUMENT RESPONSE/APPEARANCE FORM filed by Ms. Stephanie Mazzanti for Mr. DeWayne Hendrix. * * *
04/16/2021	ARGUED & SUBMITTED Via Videoconference to Judges Raymond W. Gruender, Duane Benton, Bobby E. Shepherd on 04/16/2021. Mr. Jeremy B. Lowrey for Appellant Mr. Marcus Deangelo Jones. Ms. Stephanie Mazzanti for Appellee Mr. DeWayne Hendrix. Rebuttal by Mr. Jeremy B. Lowrey for Mr. Marcus Deangelo Jones. RECORDED. * * *
08/06/2021	OPINION FILED - THE COURT: Raymond W. Gruender, Duane Benton and Bobby E. Shepherd. AUTHORIZING JUDGE:Raymond W. Gruender (PUBLISHED). * * *

08/06/2021	JUDGMENT FILED - The judgment of the Originating Court is AFFIRMED in accordance with the opinion RAYMOND W. GRUENDER, DUANE BENTON and BOBBY E. SHEPHERD Hrg Apr 2021. * * *
09/28/2021	MANDATE ISSUED. * * *
	* * *
10/29/2021	Supreme Court Letter extending time to file cert petition until 12/09/2021. * * *
	* * *
12/09/2021	U.S. Supreme Court Notice of Cert filed in the Supreme Court on 12/07/2021, case No. 21-857. * * *
05/16/2022	SUPREME COURT order filed granting cert petition. Order filed on 05/16/2022 in case No. 21-857. * * *

**U.S. District Court
Eastern District of Arkansas
(Delta Division)**

**CIVIL DOCKET FOR
CASE #: 2:19-cv-00096-JTR**

Marcus DeAngelo Jones, Plaintiff,

v.

Dewayne Hendrix, *Warden*, Defendant

Date Filed	#	Docket Text
07/29/2019	<u>1</u>	PETITION for Writ of Habeas Corpus filed by Marcus DeAngelo Jones. * * * Additional attachment added on 7/30/2019: # <u>1</u> Main Document – Correct. * * *
07/29/2019	<u>2</u>	AFFIDAVIT or Declaration by Marcus DeAngelo Jones. * * *
07/29/2019	<u>3</u>	MOTION to Expedite Proceedings by Marcus DeAngelo Jones. * * *
07/30/2019	<u>4</u>	NOTICE OF DOCKET CORRECTION re <u>1</u> Petition for

		Writ of Habeas Corpus. CORRECTION: The original document was submitted in error – wrong image file. The correct document was added to <u>1</u> and hereto for service/review by the parties. * * *
07/31/2019	<u>5</u>	ORDER directing the Clerk of Court to send Jones an Application to Proceed Without Prepayment of Fees and Affidavit; directing Jones to, on or before 9/3/2019, either: 1) file the completed Application, including the Certificate of Prisoner Accounts; or 2) pay the \$5 filing fee, in full, if he wishes to continue with this action. Service of the Petition is not appropriate at this time. Signed by Magistrate Judge J. Thomas Ray on 7/31/2019. * * *
08/08/2019	<u>6</u>	MOTION for Leave to Amend/Supplement <u>1</u> Petition for Writ of Habeas Corpus by Marcus DeAngelo Jones. (Attachment: # <u>1</u> Amended Petition). * * *
08/09/2019	<u>7</u>	MOTION for Leave to Proceed in forma pauperis by Marcus DeAngelo Jones. * * *

09/03/2019	<u>8</u>	ORDER denying <u>3</u> Petitioner Jones's Motion to Expedite Proceedings; granting <u>7</u> Petitioner Jones's Motion for Leave to Proceed In Forma Pauperis; denying <u>6</u> Petitioner Jones's Motion for Leave to Amend his Petition for Writ of Habeas Corpus; directing the Clerk to serve a copy of <u>1</u> § 2241 Petition, <u>2</u> Mr. Jones's Affidavit, and this Order, on Respondent and the US Attorney by regular mail; directing Respondent to file the specified Response within 21 days of service; and directing Mr. Jones to file a Reply to the Response within 30 days after the date the Response is filed Jones. Signed by Magistrate Judge J. Thomas Ray on 9/3/2019. * * *
09/10/2019	<u>9</u>	SECOND MOTION to Amend <u>1</u> Petition for Writ of Habeas Corpus by Marcus DeAngelo Jones. * * *
09/16/2019	<u>10</u>	PARTIAL OBJECTIONS to <u>8</u> Order by Marcus DeAngelo Jones. * * *
09/25/2019	<u>11</u>	MOTION to Dismiss <i>Habeas Petition</i> by Dewayne Hendrix. * * *

09/26/2019	<u>12</u>	NOTICE, CONSENT AND REFERENCE to a Magistrate Judge forwarded by the Clerk of Court. * * *
09/27/2019	<u>13</u>	ORDER denying <u>9</u> Mr. Jones's Second Motion for Leave to Amend. Signed by Magistrate Judge J. Thomas Ray on 9/27/2019. * * *
09/30/2019	<u>14</u>	ORDER: The deadline for Mr. Jones to file a Response to <u>11</u> Respondent's Motion to Dismiss is 10/30/2019. Signed by Magistrate Judge J. Thomas Ray on 09/30/2019. * * *
10/10/2019	<u>15</u>	RESPONSE in Opposition to <u>11</u> Motion to Dismiss filed by Marcus DeAngelo Jones. * * *
10/16/2019	<u>16</u>	ORDER directing the Respondent to submit, under seal, a copy of the Presentence Investigation Report prepared in connection with Petitioner's conviction in United States v. Jones, Western District of Missouri, Case No. 2:00-CR--04010-SRB. Signed by Magistrate Judge J. Thomas Ray on 10/16/2019. * * *
10/16/2019	<u>17</u>	CONSENT to Jurisdiction by U.S. Magistrate Judge. Case reassigned to Magistrate Judge

		J. Thomas Ray. Signed by Judge Kristine G. Baker on 10/16/2019. * * *
10/17/2019	18	SEALED Document. * * *
11/15/2019	<u>19</u>	MOTION for Leave to Supplement Authority re <u>1</u> Petition for Writ of Habeas Corpus by Marcus DeAngelo Jones. (Attachments: # <u>1</u> Supplement and Amendment to Habeas Petition). * * *
11/15/2019	<u>20</u>	ORDER granting <u>19</u> Petitioner Jones's Motion for Leave to Supplement Authority in support of his Petition for Habeas Corpus. Signed by Magistrate Judge J. Thomas Ray on 11/19/2019. * * *
01/24/2020	<u>21</u>	MEMORANDUM OPINION granting <u>11</u> Respondent Dewayne Hendrix's Motion to Dismiss; and dismissing <u>1</u> Petitioner Marcus DeAngelo Jones's § 2241 habeas Petition. Signed by Magistrate Judge J. Thomas Ray on 1/24/2020. * * *
01/24/2020	<u>22</u>	JUDGMENT: Consistent with <u>21</u> Memorandum Opinion that was entered on this day. It is considered, ordered, and adjudged that this 28 U.S.C. § 2241 action is dismissed

		without prejudice. Signed by Magistrate Judge J. Thomas Ray on 1/24/2020. * * *
01/24/2020		NOTICE OF DOCKET CORRECTION re <u>21</u> Order. CORRECTION: The docket text was modified to correct the description of the document filed as “MEMORANDUM OPINION” as marked on the document. * * *
02/04/2020	<u>23</u>	NOTICE OF APPEAL as to <u>21</u> Memorandum Opinion, <u>22</u> Judgment by Marcus DeAngelo Jones. * * *
02/07/2020	<u>24</u>	NOTIFICATION OF APPEAL and NOA SUPPLEMENT as to <u>23</u> Notice of Appeal re <u>21</u> Memorandum Opinion, <u>22</u> Judgment. * * *
02/11/2020	<u>25</u>	USCA Docketing Letter and Briefing Schedule as to <u>23</u> Notice of Appeal filed by Marcus DeAngelo Jones. USCA Case Number 20-1286. * * *
08/06/2021	<u>26</u>	OPINION of USCA as to <u>23</u> Notice of Appeal filed by Marcus DeAngelo Jones. * * *
08/06/2021	<u>27</u>	USCA JUDGMENT as to <u>23</u> Notice of Appeal filed by Marcus DeAngelo Jones: It is hereby ordered and adjudged that the

		judgment of the district court in this cause is affirmed in accordance with the opinion of this Court. * * *
09/28/2021	<u>28</u>	MANDATE of USCA in accordance with the opinion and judgment of 08/06/2021 as to <u>23</u> Notice of Appeal filed by Marcus DeAngelo Jones. * * *
12/10/2021	<u>29</u>	Letter from Clerk, USCA: The Petition for Writ of Certiorari has been filed in USCA Case Number 20-1286. * * *
01/05/2022	<u>30</u>	Mail Returned Undeliverable as to Marcus DeAngelo Jones re <u>29</u> Letter. * * *
05/17/2022	<u>31</u>	Letter from USCA Clerk: Supreme Court order filed granting certiorari in USCA Case Number 20-1286. * * *

**FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS
JUL 29 2019
JAMES W. McCORMACK, CLERK
BY: /s/ DEP CLERK**

UNITED STATES DISTRICT COURT
for the
DISTRICT OF ARKANSAS

<u>MARCUS DEANGELO JONES</u>)	
<i>Petitioner</i>)	
)	
v.	)	Case No.
	)	<u>2:19-cv-00096-</u>
	)	<u>KGB-JTR</u>
	)	<i>(Supplied by</i>
	)	<i>Clerk of Court)</i>
)	
<u>DEWAYNE HENDRIX, (Warden)</u>)	
<i>Respondent</i>)	
<i>(name of warden or authorized</i>		
<i>person having custody of</i>		
<i>petitioner)</i>		

**PETITION FOR A WRIT OF HABEAS CORPUS
UNDER 28 U.S.C. § 2241**

* * *

10. Motion under 28 U.S.C. § 2255

In this petition, are you challenging the validity of your conviction or sentence as imposed?

Yes No

If "Yes," answer the following:

- (a) Have you already filed a motion under 28 U.S.C. § 2255 that challenged this conviction or sentence?

Yes No

If "Yes," provide:

(1) Name of court: U.S. District Court Western District of Missouri

(2) Case number: 02-0775 and 07-4142

(3) Date of filing: in 2000 and in 2007

(4) Result: Denied and later reversed on Appeal, and denied

(5) Date of result: 1/29/ 2003 and then 1/31/2008

(6) Issues raised: Multiple Claims of ineffective Assistance of Counsel and sufficiency of proof

- (b) Have you ever filed a motion in a United States Court of Appeals under 28 U.S.C. § 2244(b)(3)(A), seeking permission to file a second or successive Section 2255 motion to challenge this conviction or sentence?

Yes No

Not related to the issue presented in this petition

* * *

(c) Explain why the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to challenge your conviction or sentence:

(1) §2255 is inadequate or ineffective to allow me to assert my innocence of the crime I am illegally held in custody, where I did not violate and act of Congress in light of Rahaif v. United States, No. 17-9560 Supreme Court Decided June 21, 2019, a new interpretation of Statutory law. See, Rahaif, Slip Opinion at pages 3-7;

(2). The Supreme Courts Decision in Rahaif v. United States, for which my claim is based, is not a Constitutional case, but clearly a Statutory

(Continue on Attached page 1)

* * *

ATTACHED PAGE 1

CONTINUATION OF PAGE 6 PARAGRAPH 10(c)
OF APPLICATION

INTERPRETATION so I cannot invoke it by means of a Second or Successive 2255 motion, Because the Second or Successive review is limited to New Rules of Constitutional Law. I am not relying on a new rule of Constitutional law. The Rehaif decision was not issued until June 21, 2019, well over 10 years after the filing of my first 2255 motion, so I could not have invoked it in the first 2255 or on my Direct Appeal, which was decided in 2001. I was never afforded a meaningful forum of review to incorporate the new interpretation of the Statutory law, explaining Congress intent and

what the Statute meant when it was enacted. I will be denied a opportunity to be heard if not considered because of an inadequacy in 2255;

(3). The Decision of the United States Supreme Court on a matter of Statutory interpretation as announced in Rehaif, interpreting Congresses intent in writing the criminal statute, and altering the range of conduct or class of person that the law punishes. is retroactive. I was charged with in an indictment and convicted for a non existant [sic] crime. My conviction and punishment were for an act that the law did not punish or make criminal. The Decision by the Supreme Court interpreting an act of congress applies retroactively; AND

(4). I am factually innocent of the offense of conviction in light of a New statutory Interpretation by the United States Supreme Court, inaddition [sic] to new facts not previously available or considered by the petit Jury or the Court in a merits determination, for which the indictment in this case ommitted [sic] a material element of the offense, which deprived my of notice of the crime charged, and as such in light of the Supreme Court ruling and evidence, the jury on the record convicted me of innocent possession of a firearm. It is more likely than not that no reasonable juror would haver [sic] convicted my for “knowingly” being a felon in possession of a firarm [sic], in light of the Statutory interpretation and facts presented herein.

Ergo, I pray that the Court would find that the remedy under 2255 is inadequate or ineffective in this case.

* * *

Grounds for Your Challenge in This Petition

13. State every ground (reason) that supports your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: I AM IN CUSTODY IN VIOLATION OF THE LAWS AND CONSTITUTION BASED ON A INDICTMENT WHICH FAILS TO CHARGE A MATERIAL ELEMENT OF A FEDERAL OFFENSE. I AM FACTUALLY INNOCENT OF THE OFFENSE OF CONVICTION FOR BEING A FELON IN POSSESSION OF A FIREARM IN LIGHT OF A NEW STATUTORY INTERPRETATION BY THE SUPREME COURT AN NEW FACTS, WHICH MAKES MY CONTINUED INCARCERATION FOR A NON-EXISTANT [sic] OFFENSE.

(a) Supporting facts (*Be brief. Do not cite cases or law.*):

In Counts One and Three of the indictment charged me with being a felon in possession of a firearm. The elements set forth in the indictment fail to allege or put me or the Court on notice, “expressly” or through words or import that I acted “knowingly” in either possessing a firearm, or that I “knew” I belonged to the category of person barred from possessing a firearm.

(CONTINUE [sic] OF ATTACHED PAGES 2-3)

(b) Did you present Ground One in all appeals that were available to you?

Yes No

ATTACHED PAGE 2

CONTINUATION OF PARAGRAPH 13(a) GROUND ONE FACTS

Declaration of M. Jones Para. 2, Exhibit #A).

The indictment fail to allege elements of the scienter that are required or contained in the statute that describes the offense. The citation of the statute did not provide me with notice and did not ensure that the grand jury considered and found all the elements of the offense.

I did not have knowledge of my status as a convicted felon that prohibited the possession of the firearm was illegal. I was not informed that I could not do so by a state Judge who entered the judgment. I believed that my record was automatically expunged upon the completion of the sentence and probation. Further based on the information provided to my by the Cheif [sic] Law Enforcement Officer, Callaway County sheriff, and the Liscenced [sic] Dealer, with other evidence demonstrating that I lacked knowledge or that I lacked the necessary intent or State of mind required to violate the Law. This Evidence Consist of:

1. I di dnot [sic] change my name. My Name is marcus DeAngelo Jones and not Marcus DeAngelo Lee, pursuant to an order issued by the Memphis and

Shelby County Juvenile Court in 1978. See (Declaration of M. Jones, para. 8, Exhibit #D pgs. 1-3, State Court Order and Letters from the Tennessee Vital Records); Also See (Decl. Of M. Jones Para. 6-9)

2. I did not know of the existance [sic] of the prior convictions until my arrest in December of 1999, when the Arresting Officers informed my that I had prior conviction, which made my possession of the Firearm illegal. (See (Decl. Of M. Jones, para. 10).

3. I did not complete or sign the Firearms Application until both the Firearms Dealer and the Sheriff of Callaway County, conducted the Criminal background Checks, and informed me whether I had prior convictions or whether I could possess a firearm. Because I believed that my record was expunged. (Dec. of M. Jones para. 11, Exhibit #E pgs. 1-6, Trial Testimony Excerpt).

4. I was never informed by a State Judge that My State Guilty plea would prohibit me from possessing a firearm. (Decl. Of M. Jones Para. 19, Exhibit #F, excerpt of guilty plea Transcript)

5. I never concealed the firearm, but in good faith notified Law enforcement, that I was in possession of the Firearm. Because, I believed that my possession of the firearm was legal, lawful and did not violate any laws. (Decl. of M. Jones, Para. 4-5, Exhibit B pgs. 1-7, Tesimony [sic] of Officer M. Buckner of the Columbia Police Department)

6. The Pawnshop Owner Larry O'Neal, testified that he sold me the firearm after he and the sheriff conducted a Criminal background Check and alleged

that I passed the Background Check that was done on my True Social security Number XXX-XX-XXXX, as reflected in [sic] his Testimony and verified by my identification as provided to the Agencies. See (Decl. of

ATTACHED PAGE 3

CONTINUATION OF FACT ON GROUND ONE

M. Jones, Para. 15, Exhibit #B pgs. 8-17, at pgs. 11-12, Excerpt of Larry O'Neal, Firearms Dealer; and Exhibit #C pg. 1)

7. I discovered, that I was mislead [sic] and lied to by the Pawshop [sic] Owner and Callaway County Sherif [sic], who conducted the background checks, at the tim eof [sic] my arrest. (Decl. of M. Jones para. 15-16)

8. The evidence that was obtained after my trial through the Freedom of Information Act, shows, that the Criminal Background Checks were done under my true name: Marcus DeAngelo Jones, and my True Social security number XXX-XX-XXXX, and It informed the Pawnshop dealer and the Callaway County Sheriff of other names used and of prior convictions. See (Decl. of M. Jones, para. 15, Exhibit #C pgs. 2-13, Criminal background Checks)

9. These Reports and my actions affirmed my Trial Testimony and belief that I did not knowingly possess a firearm with knowledge of my status.

10. Based on the evidence and the actions of the Sheriff and other persons involved, negates the "Knowing" requirement to establish a material element of the offense. I possessed a sincere belief that

my prior record had been expunged, no longer existed and that I could [sic] lawfully possess a firearm in any event. (Decl. of M. Jones para. 4-18)

11. The Trial Courts instruction to the petit jury on the Felon in Possession Count(s) only required the Government to prove the existence of a prior conviction and “NOT that I knew I belong to the relevant category of persons barred from possessing a firearm. See (Decl. Of M. Jones, para. 3, Exhibit #E pgs. 7-8, Excerpt of Jury Instructions by Court)

12. In light of the facts and evidence I am convicted for the innocent possession of a firearm as charged. My Continued incarceration on the 327 month sentence for the innocent possession of a firearm a non-existent [sic] offense in light of the Subsequent Statutory interpretation, new facts, show that my custody violates the laws and the Constitution that if uncorrected would result in a miscarriage of justice.

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS
JUL 29 2019
JAMES W. McCORMACK, CLERK
BY: /s/ DEP CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
ARKANSAS

MARCUS DEANGELO JONES, A/k/A
MARCUS DEANGELO LEE,

Petitioner,

vs.

Case No. 2:19-cv-
00096-KGB-JTR

DEWAYNE HENDRIX, Warden,

Respondent.

AFFIDAVIT OR DECLARATION OF
MARCUS DEANGELO JONES

I Marcus Deangelo Jones a/k/a Marcus Deangelo Lee, do hereby depsoe [sic], declare and State the following:

1. I am the Petitioner in this Case. I am over the age of 18 years of age. I have been in the Custody of

the Federal Bureau of Prisons since 2001. I am fully competent and have personal knowledge of the facts in this Affidavit/Declaration.

2. I am currently serving a 330 month aggregated sentence to be followed by 5 years of Supervised release. The larger and relevant sentence is a 327 month sentence for being a felon in possession of a firearm in violation of 18 U.S.C. §922(g); 924(e); and making a false Statement in Connection with the purchase of a firearm in violation of 18 U.S.C. § 922(a)(6) and 924(a). See (Exhibit #A pg.s 1-3, Indictment)

3. I plead not guilty to the charges and proceeded to trial. I was not put on notice by the indictment or the Court that the Government was required to prove that I “knowingly” violated the statute concerning my status and the Court did not require the Government to prove a “Knowing” violation of the law in giving the jury instructions. See (Exhibit #E pgs. 7-8, Jury Instruction except [sic] of the Trial Transcript).

4. Whenever I was stopped by the Police and was in possession of the Firearm. I notified the Police of my Possession. Because I did not believe that my possession of the firearm violated any laws. See (Exhibit #B pgs.1-7. Trial Transcript Excerpt of Testimony of Officer M. Buckner).

5. On 8-16-99, I was stopped by Police Officer Buckner and other Officers of the Columbia Police Department. I did not coceal [sic] the firearm, because I thought my actions were legal. Again on 10/9/99, I

informed the Officer of my possession of the firearm, during an act of self-defense.

6. I never changed my name with the intent to deceive anyone. My name change was out of my control.

7. In 1978, the State Juvenil [sic] Court ordered my name to be changed from Marcus DeAngelo Lee to "Marcus Deangelo Jones". (Exhibit #D pg. 3).

8. The Tennessee Department of Health Vital Record Division did not issue a New birth Certificate or Execute the name change until 1999. See (Exhibit #D pgs. 1-2)

9. I had no control over my name change that was ordered in 1978. I had no knowledge of that order. I was only 3 years old at that time.

10. I had no knowledge of the existence of my prior conviction until I was informed that they existed at the time of my arrest at my place of employment by Officer Ben White of the Clombia [sic] Police Department.

11. When I went to inquire about the purchase of the Firearm, I informed the Pawnshop Owner that, my prior conviction were suppose to have been expunged when we discussed a question on the firearms application in which I wrote a yes on the firarms [sic] form. I was then told, not to complete the form, and go through the background check, and if the prior convictions were expunged the background check would not show the conviction and I could purchase the weapon, but If the prior convictions exist that I

could not purchase the weapon. See (Exhibit #E pgs. 3-6)

12. I provided the Pawnshop Owner and the Sheriff's Office a copy of My State Identification containing my Social Security number.

13. Both the Pawnshop Owner and Sheriff's Department conducted background checks and informed me that I could legally and lawfully possess a firearm.

14. The Pawshop [sic] Owner and sheriff informed me that I was no longer a convicted felon, and I believed the Law Enforcement Officer.

15. I was mislead [sic] by the Sheriff of the Callaway County, Missouri Sheriff's Department. I did not obtain a copy of the Criminal Background checks until the years of 2005 and 2003 from the Freedom of Information Acts.

16. The records reflects that The pawnshop Owner and sheriff conducted the Criminal Background checks with my Social security [sic] Number and it reveiled [sic] that I have a prior criminal record. (Exhibit #C pgs.1-13).

17. I relied on the affirmation of the Callaway County Sheriff, the Chief Law Enforcement Officer of the County in which I lived, responsible for enforcing the law. If I sould [sic] not believe the Police/Sheriff who could I believe.

18. If the Sheriff told me that I could not possess a firearm. I would not have possessed that firearm.

19. Even in considering my case from hindsight, the State Court Judge, Prosecutor, or Lawyer never informed me that by pleading guilty to the State charged in 1995, that those convictions would prohibit me from possessing a firearm. I had no knowledge that a conviction for non-violent crimes prohibited the possession of a firearm.

I declare under the penalty of perjury pursuant [sic] to 28 U.S.C. 1746, that the above statements are true and correct.

Executed on this 26 day of July, at Forrest City, Arkansas.

/s/ Marcus DeAngelo Jones
Signature of Affiant
Marcus DeAngelo Jones

**FILED
JAN 16, 2008
PAT BRUNE, CLK.
U.S. DISTRICT COURT
WEST DISTRICT OF MISSOURI
RJ**

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

UNITED STATES OF AMERICA,	) Case No.
	) 00-4010-CR-
Plaintiff,	) C-SOW
)
)
	) Jefferson
	) City,
	) Missouri
	) July 24, 2000
v.)
)
MARCUS DEANGELO JONES,)
)
Defendant.)

**VOLUME I
TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE
SCOTT O. WRIGHT
UNITED STATES DISTRICT JUDGE
and A JURY**

APPEARANCES:

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* * *

[I-151]

PAUL REED, PLAINTIFF'S WITNESS, SWORN

MR. GONZALEZ: Judge, before I start questioning this witness, may Mr. Hendricks and I approach?

THE COURT: All right.

BENCH CONFERENCE

MR. GONZALEZ: Judge, I'm -- I told Mr. Hendricks and I just wanted to let the Court know that I'm going to keep this individual. He's just going to testify as to the prior felony convictions that the defendant admitted to him. I'm not going to get into the fact that he's been convicted recently in this particular court, but just about those and the fact he also reviewed certified records of his convictions, the informations and also the certified records

[I-152]

of his confinement. And I'm using him just for the -- just to show that that was done and that he's been convicted of more than one felony. I'm not going to get into each felony. I'm not going to get into the fact of what they were, just that they were numerous ones. And because the defendant is going to testify, I imagine I'll be able to ask him about them anyway, but I want to stay away from the character of the felonies and just get into it. So, to that end I want to at least lead him so that he wouldn't volunteer any information.

THE COURT: What do you say to that?

MR. HENDRICKS: Your Honor, again I would object under 403 as being unduly prejudicial. The statute only requires one conviction and here we're talking about adding multiple convictions.

MR. GONZALEZ: The defendant won't stipulate to one of them. How do I know when he testifies that he's not going to say that one of those --

THE COURT: Well, overruled. Go ahead.

END OF BENCH CONFERENCE

DIRECT EXAMINATION

BY MR. GONZALEZ:

Q. Would you tell the jury your occupation?

A. I'm a federal probation officer.

Q. Okay. And are you assigned here in Jefferson City?

[I-153]

A. I am.

Q. Do you know Marcus Deangelo Jones, also known as Marcus Deangelo Lee?

A. Yes.

Q. Okay. Have you had an opportunity to interview him on occasion?

A. Yes.

Q. And in regards --

MR. HENDRICKS: Your Honor, may I make a preliminary *voir dire* question?

VOIR DIRE EXAMINATION

BY MR. HENDRICKS:

Q. Was he accompanied by an attorney when you interviewed him?

A. He was not.

Q. Okay.

MR. HENDRICKS: May I approach, Your Honor?

THE COURT: All right.

BENCH CONFERENCE

MR. HENDRICKS: I would object to any of his testimony on the basis that he had an attorney and his attorney was not present. I don't think he was *Mirandized*.

MR. GONZALEZ: Well, he doesn't have to be *Mirandized*. Defendants' attorneys are always

given an opportunity to do that and the fact that Mr. Hendricks wasn't

[I-154]

there has little or nothing to do with this. I mean the defendant didn't ask for him. Mr. Hendricks wasn't there and Mr. Hendricks --

THE COURT: Well, overruled. Go ahead. Go ahead.

END OF BENCH CONFERENCE

CONTINUATION OF DIRECT EXAMINATION

BY MR. GONZALEZ:

Q. Before I ask you about the interview, did you have a chance to -- I'm going to hand you what's been marked Government's Exhibit #6, which has various types of documents. And I'm going to ask, do those certified records look familiar to you and are those similar to ones that you examined as to Mr. Lee or Mr. Jones?

A. Yes, they are similar and they do -- I have seen some of these documents before.

Q. Okay. And are some of them -- can you tell the jury what some of them are and how it relates to your determination as to whether Mr. Jones or Mr. Lee has prior convictions?

A. We obtain copies of certified documents and other documents from various law enforcement agencies and court -- circuit courts across the area and county in order to determine the extent and verify criminal records and criminal history.

Q. Okay. And in your determination, do you have to make a determination as to whether Mr. Jones was convicted of any

[I-155]

prior felonies?

A. Yes, I do.

Q. Okay. And using the certified records that you received from court and also did you receive certified records from the Department of Corrections in Tennessee?

A. Yes.

Q. Okay. Were you able to determine whether prior to 1999 he had been convicted of a felony?

A. I was.

Q. Okay. And what was your determination?

A. That he was convicted of a felony on several occasions.

Q. Okay. And did you also determine that he was -- he actually served a sentence in excess of one year on one or more occasions?

A. I was able to do so.

Q. In your investigation, did you come to find that Mr. Jones also used another name, Mr. Lee?

A. Yes, I did.

Q. And are those convictions under which name?

A. The convictions I've -- I'll have to take a look at my records to -- they're under Marcus Deangelo Lee.

Q. And in what state?

A. In Tennessee is -- if I may continue to look here.
That's it, in Tennessee.

MR. GONZALEZ: Judge, I don't believe I have any

[I-156]

further questions of this witness at this time, other than I would move into evidence the exhibit which I handed him. I don't intend on showing that to the jury at all, but the next witness is going to need it in order to testify.

MR. HENDRICKS: No objection.

THE COURT: All right. Be admitted. Any questions of this witness?

MR. HENDRICKS: Yes.

CROSS-EXAMINATION

BY MR. HENDRICKS:

Q. Officer, in doing your background check, did you have an occasion to determine the legal name of Mr. Jones?

A. I did not.

Q. Okay. Have you ever seen his birth certificate?

A. I'll have to resort to my records again, if I might? I do have a certificate of his birth.

Q. And what does that -- is that a document from the state of Tennessee?

A. It is.

Q. And does that indicate that his true name or his birth certificate is the name of Marcus Deangelo Jones?

A. It does.

Q. And, Officer, one other question. In running your records in the normal procedure, do you normally do that through some type of identification number?

[I-157]

A. We generally do it in a number of identifiers, both names, Social Security numbers, dates of birth.

Q. Okay. And as far as the convictions that you have detected in the state of Tennessee, did they contain a Social Security number?

A. I will once again have to refer to my records.

Q. Sure. This may save some time. These are documents that I have been supplied with from the U.S. Attorney's Office and that is a judgment from the state of Tennessee.

A. Uh-huh.

Q. Does that indicate what Social Security number is on that?

A. It does.

Q. And what is that Social Security number?

A. It appears to be XXX-XX-XX [redacted], I have a difficulty making out the number, but XX [redacted].

Q. Okay. This is another judgment and I'm going to ask you in that does that indicate what Social Security number was used?

A. Yes. This one has a different Social Security number, XXX-XX-XXXX [redacted].

Q. Okay. I'm sorry. Are you sure you read that correctly?

A. If this was the one you just handed me. XXX-XX-XXXX [redacted].

Q. Okay. And that was the same as the one that I've handed you previously?

[I-158]

A. I'm not certain. I thought that the numbers might have been different. It's difficult for me to make this out but it looks very similar. I mean it's -- the last X [redacted] is difficult to make it. It might have said X [redacted] or X [redacted]. I'm not sure.

Q. But it would definitely be similar?

A. Yes, it is.

MR. HENDRICKS: That's all the questions I have.

MR. GONZALEZ: I have nothing further at this time, Judge. Since the witness is in the building, I'd ask that he not be excused. We may call him back later.

THE COURT: All right.

MR. HENDRICKS: Your Honor, just a second. May I?

THE COURT: Yeah.

CROSS-EXAMINATION CONTINUES

BY MR. HENDRICKS:

Q. In your file, do you have a printout of his Social Security record?

A. Of his Social Security -- I have his --

Q. Income?

A. Of his Social Security Administration record for the last five years, I believe it is.

Q. Yes, uh-huh. Do you have that?

A. I may have that with me. I'm not certain it's in this.

Q. Is it something that you normally obtain to verify a

[I-159]

person's employment?

A. Yes, it is.

Q. Do you have that?

A. I do.

Q. And what name is that in?

A. It's in Marcus -- it actually says M.D. Lee.

Q. And what is the Social Security number on that?

A. Same as before. It was XXX-XX-XXXX [redacted].

MR. HENDRICKS: Okay. That's all the questions I have.

MR. GONZALEZ: Just a couple.

REDIRECT EXAMINATION

BY MR. GONZALEZ:

Q. In your interview of Mr. Jones, did he -- did the records show that he ever had a Fulton address? Fulton, Missouri.

A. Correct. Did not mention a Fulton address to me.

Q. Okay.

MR. GONZALEZ: Thank you. I have nothing further.

MR. HENDRICKS: Nothing further on that. I have no objection to this witness being excused.

THE COURT: All right.

MR. GONZALEZ: Thank you, sir.

* * *

[I-185]

BEN WHITE, PLAINTIFF'S WITNESS, SWORN
DIRECT EXAMINATION

BY MR. GONZALEZ:

Q. Tell the jury your name and spell your last name, please.

A. It's Dan White, W-H-I-T-E.

Q. How are you employed?

A. I'm a police officer with the city of Columbia, Missouri.

Q. How long have you been so employed?

A. Twenty-one years.

Q. Are you familiar and were you involved in the arrest of the defendant, Mr. Jones?

A. Yes, sir, I was.

Q. And do you recall what that date was?

[I-186]

A. Yeah, it was December 21 of '99.

Q. Can you tell the jury where it was that -- where he was when he was arrested?

A. He was working at the Amoco gas station at the corner of Rangeline just north of Lakeview here in Columbia.

Q. There in Columbia, right? You're in Jeff City.

A. There in Columbia, Missouri. Yes, sir. It was about 35 miles up the road.

Q. Once you placed him under arrest, were you by yourself?

A. No. Sgts. Piester, Hammond and Gregory and myself arrested Jones.

Q. Where was he taken after he was placed under arrest?

A. Put him in a police car and we drove him to the Columbia Police Department.

Q. Where was he taken then?

A. Well, I took him to the booking room there at the police department so that I could fingerprint and take his picture.

Q. Now, can you tell the jury what it is that you do when you fingerprint?

A. Yeah. You just, oh, it just takes a few minutes. Your roll their fingerprints onto a print card. Stick their fingers on ink and then roll it on a piece of paper.

Q. I'm going to show you what's been marked Government's Exhibit #7 and there's an Exhibit #7 from this packet, and ask is this familiar to you?

[I-187]

A. Yes, that looks like one of the print cards that I rolled from the defendant.

Q. Okay. And when you say one of the print cards, is it the procedure that you do more than one?

A. Yes, sir. This is the local police department's copy and then there would have been an FBI copy also.

Q. Okay. One remains there and one is sent off then?

A. Yes, sir.

Q. And how is it that you recognize this particular one?

A. Well, it's got my signature on it.

Q. Okay. And does that mean that you're the person that inked, that you rolled them basically?

A. Yes, sir.

Q. Okay. And does he also -- is he also told to sign that?

A. Yes.

Q. And did he sign it?

A. Yes, he did sign it, Marcus Jones.

Q. And is there another name on that?

A. Well, at the top the records clerk would have typed or written his name at the top here.

Q. Okay. Okay. And that's a different name though?

A. Marcus Lee, yes.

Q. And did he, meaning Mr. Jones or Mr. Lee, write his name Marcus Jones in your presence?

A. Yes. This is his signature. This was done sometime

[I-188]

later by the records people.

Q. Okay. And you, of course, signed it yourself, correct?

A. Yes, sir.

Q. That's actually Exhibit #7 to Government's Exhibit #6, correct?

A. Yes.

Q. When you placed Mr. Jones under arrest, did you at some point read him his *Miranda* rights?

A. Yes. When we got to the police station, I told him his *Miranda* rights while I was booking him.

Q. Okay. And could you tell the jury what those *Miranda* rights were as you told them to him?

A. Yes. I just told him that he had the right to remain silent and anything he said could be used later against him in court. He had the right to a lawyer and have that lawyer present before questioning. If he can't afford a lawyer, many times they'll appoint

him one. And then I asked him if he understood his rights and he said he did. I asked him if I could ask him some questions and he said he would --

MR. HENDRICKS: Your Honor, may I renew a previous objection to this testimony.

THE COURT: All right. Overruled. Yeah.

BY MR. GONZALEZ:

Q. He indicated that he understood those rights and chose to make a statement?

[I-189]

A. Yes, sir, he did.

Q. And can you indicate -- did you ask him questions or did he make a statement or please tell the jury what happened?

A. Yes. First of all, I asked him about an incident where he stopped by the police and a handgun was found in his car, and he said that that was him and that -- and that he had applied for and received a permit to purchase a handgun from the Callaway County Sheriff's Department, and he went ahead and bought a pistol from a pawnshop there in Fulton, Missouri.

Q. Did he indicate anything else?

A. Yeah. He said that he used the name Marcus Jones. He said that -- I mean he admitted that he had been to prison several times under the name of Lee in the State of Tennessee. He told me he knew he

wasn't supposed to have a handgun, but that that was the least of his worries.

Q. And when you indicate the person you arrested and that made that statement, you're talking about the defendant Mr. Jones, or Mr. Lee, as the case may be?

A. Yes. He's at the counsel table in a long-sleeve tan shirt.

MR. GONZALEZ: Okay. Judge, I don't believe I have any further questions of this witness at this time.

MR. HENDRICKS: Your Honor, no questions.

THE COURT: All right.

[I-190]

MR. GONZALEZ: May the witness be excused?

THE COURT: You may step down.

MR. GONZALEZ: May the witness be excused?

THE COURT: Yes.

MR. HENDRICKS: Yes.

* * *

**FILED
JAN 16, 2008
PAT BRUNE, CLK.
U.S. DISTRICT COURT
WEST DISTRICT OF MISSOURI
RJ**

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

UNITED STATES OF AMERICA,	) Case No.
	) 00-4010-CR-
	) C-SOW
Plaintiff,)
)
	) Jefferson
	) City,
	) Missouri
	) July 25, 2000
v.)
)
MARCUS DEANGELO JONES,)
)
Defendant.)

**VOLUME II
TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE
SCOTT O. WRIGHT
UNITED STATES DISTRICT JUDGE
and A JURY**

APPEARANCES:

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* * *

[II-212]

MARCUS JONES, DEFENDANT, SWORN:
DIRECT EXAMINATION

* * *

[II-216]

BY MR. HENDRICKS:

Q. You went into the pawnshop?

A. Yes, sir.

Q. And did you, at that time, fill out an application to purchase the gun?

A. Well, yeah. I filled it out. Well, I didn't fill it all the way out, but I filled some parts out and then he told me to leave, he going do a check, and he'll call me and to come back, put down a down payment.

Q. Okay. I'm going to hand you what the state has previously introduced as -- or the Government has introduced as #4 and show you what is a firearms transaction record. Are you familiar with that document?

[II-217]

A. Yes, sir.

Q. And what is that document?

A. This is the form that I was -- filled half -- I filled out some of here.

Q. Okay. What part of the document did you fill out?

A. Practically, I filled out like from 1 through, I think there's I or 5I or, I don't know, 5 -- you know or L.

Q. Okay. Mr. Jones, in this document under 9C it asks if you'd ever been -- well, let me start first. At the time that you filled this out, where were you residing?

A. 229 Sycamore, Fulton, Missouri.

Q. Okay. And also at the time you filled out that document, there's a question there that asks if you'd ever been convicted of a felony in which you served more than a year or had a penalty of more than a year. Were you familiar with that question?

A. Yes, sir.

Q. And did you answer that question when you filled it out?

A. I had wrote a cursive yes, and he -- the pawnshop owner looked at me because he had questioned me before I had picked up the form about felonies. And I told him, well, I had been arrested and been incarcerated in the state of Tennessee. But I pled to some statute were they said I'm not pleading guilty because I'm guilty, but because of the circumstances and the offer that they was offering me.

[II-218]

Q. Is that, I mean, is that -- I know no one's familiar with it, but there is such a plea to where you actually enter a plea without actually saying that you're guilty, is that what you're saying?

A. Yes, sir.

Q. And did you understand anything as far as what you would [sic] received as punishment for that?

A. Yes, I mean, I had to do a jail sentence, but the jail sentence that I would have normally get for the crime, the state dropped it or -- well, gave me the lowest that they could possibly give me and told me that in like five years from that day, that it could be possible that my record would be wiped clean.

Q. Okay. Are you, at the time that you filled out that application, did you, were you aware that you had been convicted of a felony?

A. Yeah.

Q. Okay.

A. And I had wrote also in this 9C, it was a cursive yes.

Q. Okay.

A. I did not put this circle there. That's when he was like, well, you been -- I was like, well, you know, he said I'm just going to run it anyway just to see what happened because I was explaining to him how the plea agreement and stuff went and he said, well, if you've been convicted, it's

[II-219]

going to come back when I run it through this nationwide check, it's going to come back that you've been convicted anyway if you've been convicted. So, I was like, all right, and he said, I'll call you and let you know, so.

Q. Okay. What Social Security number did you use?

A. XXX-XX-XXXX [redacted].

Q. Okay. And is that the one that you'd used previously when you were under the -- using the name of Lee?

A. Yes, sir.

Q. And were you advised what happened as far as that record check was concerned?

A. Yes, sir.

Q. And what happened? I mean, did they --

A. He called me back on my cellular phone and told me that I'd been approved, that if I want the gun, that I need to come down there because he don't hold it. He wasn't going to hold it until I had all the money, that if I just come and put a down payment, and as of the down payment, I brung him some items. And I think like \$25 cash and a couple of items. And he was like, okay, now you need to go out fill out an application at the Callaway County Sheriff's Department and see if give you a permit.

Q. Okay. Did you fill out an application for the Callaway County Sheriff's Department?

A. I don't think I filled it out, but I was talking to a

[II-220]

woman. I gave the clerk my IDs and was talking to her through a glass.

Q. And did -- you went to the Sheriff's Department and you requested that you be issued a permit.

A. Uh-huh.

Q. And what name did you use on that?

A. Marcus Deangelo Jones.

Q. And did you use the same Social Security number?

A. Yes, sir.

Q. And do you know the result? Were you issued a permit to have a weapon?

A. Yes, sir. Because three days -- they told me to come back in like three days, or just call in three days

that they would have the results or whatever back from the permit.

Q. And did you go back in three days?

A. Yeah, I called first to see what was going on.

Q. And were you issued the permit?

A. Yes, he told me to bring \$10 and pick up my permit.

Q. And did you do that?

A. Yes, sir.

Q. And did you the possession of the gun?

A. Yes, sir.

Q. You had previously been convicted of crimes, is that correct?

A. Yes, sir.

[II-221]

Q. And those all happened in the state of Tennessee?

A. Yes, sir.

Q. And those were several years ago?

A. Yeah, like in '95.

Q. Okay. And at least, it was your understanding that once you'd finish your probation, that that was it?

A. Yeah. Well, once I finished the time that they sentenced me to, that like so many years afterwards, the day I was convicted that it would be, you know, probably can be expunged from my record.

Q. Okay. And did you do anything to expunge your record?

A. Well, when I moved up here, I didn't -- I never just checked to see nothing about it, because I thought it would be automatically done. I didn't never know that I had to go file some papers or get an attorney to go into court and speak with a judge, and I thought it would be automatically done because -- through the agreement.

Q. Mr. Jones, I've asked you some questions, and of course, you've sat through these proceedings for the last day or so. Is there anything else that you feel that's important to your case that you want to tell the jury?

MR. GONZALEZ: Judge, I'm going to object. He's got an attorney. The attorney can ask him questions. I mean, he can't just sit up there and [sic] give a story, an endless story.

[II-222]

THE COURT: Well, overruled. I'll let him tell it.

THE WITNESS: Well, first, when I went in to fill out this application, the store owner, he never, he looked at the -- I think it's 9C. And that right there he just overlooked and like well, if you've been convicted of it, it's still on your record, the machine, the computer will pick it up. And the second question he asked me was about my Social Security number. And he only asked me about one number on there because he had my ID in front of me, you know. He was like, well, is this a X [redacted] or a

X [redacted]. He said that's the only -- he was like, well, apparently the way he said it that was the only number that he just looked at when he had my ID in his hand, because, you know, he read off my ID. And I was like, that's a X. [redacted] And he was like okay. And he marked a X [redacted] up over the X [redacted], up over whatever he thought was a X [redacted] rather. And he took my IDs and did the same thing on that and he asked me did I have any more IDs and I gave him my Social Security card.

BY MR. HENDRICKS:

Q. Had you lost your IDs at any point in time?

A. My car was, like, broke into that night or either the next morning because I had left my driver's license, Social Security, my whole wallet and my checkbook in my car and somebody broke into my car and stole it all.

Q. You had to get new identification?

[II-223]

A. Yes, sir.

Q. Did you have to get a new driver's license?

A. Yes, sir.

Q. Did you use the same Social Security number?

A. No, because at that time, my mom, she had told me, she was like, you shouldn't have got your Social Security number printed on your ID because, you know, people can get your Social Security number and do anything with it. And so, when I went and

got new ID I told them not to put my Social Security number on my ID, but to give me an identification number.

Q. Okay. Is there anything else you want to tell the jury?

A. As far as the -- no, because this practically the way it happened that day.

Q. Okay.

MR. HENDRICKS: Thank you, Your Honor.

MR. GONZALEZ: Thank you.

CROSS-EXAMINATION

BY MR. GONZALEZ:

Q. I'll call you -- Mr. Jones, when you first got a Social Security number, you got your Social Security number under the name Lee, correct?

A. I guess it was issued to me when I was born.

Q. And it was under the name Lee, correct?

A. Uh-huh.

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Q. Okay. You've got to say yes or --

A. Yes, sir.

Q. You don't have to say sir. You can just say yes or no.

A. All right.

Q. And your-date of birth is?

A. 7/1/76.

Q. When did you move to Columbia?

A. November '99, I mean, '98. November '98.

Q. Did you move to Columbia before or after you lived in Fulton?

A. I moved to Columbia first.

Q. Okay. And then you moved to Fulton?

A. Uh-huh.

Q. When did you move to Fulton?

A. July the -- about the 1st. Well, in June they had processed the application, it got approved, and about July 1st, 2nd, somewhere up in there.

Q. Of? What year?

A. '99.

Q. All right. What had you been doing and where had you been living in Tennessee prior to moving here?

A. Well, --

Q. When I say here, I mean Columbia.

A. Well, I had, like I said, I had been in a little trouble, so, my mom, she had moved up to Columbia. I had work release

[II-225]

in this place called Adult Offender Center. I was on work release and my mom moved up to Missouri and when I had come home, I had moved up here to be closer to my family, --

Q. Okay.

A. -- my mother.

Q. To be brief, you'd been in jail for a period of time, right, before you moved up here?

A. Uh-huh. Yes, sir.

Q. Okay. And, in fact, you were serving a three-year sentence in jail in Tennessee, correct?

A. Uh-huh.

Q. Okay. You're going to have to say yes.

A. Yeah.

Q. Okay. And it'd be fair to say that you've served -- oh, by the way, did you bring that agreement that you told the jury about with you -- that agreement between you and the Government in Tennessee, so that they can see what that agreement said? Did you bring that with you?

A. Well, how can I bring it with me?

Q. Well, don't you have a copy of it?

A. No.

Q. Okay. And tell the jury, how many times have you actually been convicted of felonies in Tennessee and done at least one year in jail?

A. Well, I only been -- well, I got convicted in, like '95

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of some charges, I can't say how many, but it was more than one charge.

Q. Okay. And did you --

A. And I got one sentence. I only been incarcerated one time. I got one sentence and that was it.

Q. Okay.

A. And that was, like I said, under the plea agreement, they got the charges and put them all into one charge and gave me one sentence.

Q. Okay. I'm going to show you what's been marked Government's Exhibit #6-A, which are sections of your judgments and this is #6-A. I'm going to show you another copy of it that's actually highlighted so that you can follow along when I'm asking questions. It's an exact copy of that. I'm going to ask you questions about this. On the very first sheet, at the very top where it says Social Security number --

A. First sheet.

Q. -- on the face sheet that you're looking at.

A. Yeah.

Q. Read that Social Security number to me.

A. XXX-XXXX [redacted]. XXX-XX-XXXX [redacted].

Q. Okay. And is that your Social Security number?

A. No.

Q. Look all the way at the bottom where it says 5/30/97, is

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that your signature?

A. Uh-huh.

Q. I'm sorry. Is that going to be a yes or no?

A. Yes, sir.

Q. All right. Now, look all the way up on the top again where it says, "Pled guilty," do you see where it says that?

A. Yeah.

Q. Look to the right of that, what does it say the charge is?

A. Felony escape.

Q. And if you look down to the next green mark, does it say how much you did in the workhouse?

A. One year.

Q. Look at the next page. Who's [sic] name is that on the top left-hand side?

A. Marcus Lee.

Q. Is that your name?

A. Uh-huh. Yes, sir.

Q. Okay. Look at the Social Security number, is that your Social Security number?

A. Yeah.

Q. Okay. And tell the jury what that is.

A. XXX-XX-XXXX [redacted].

Q. Okay. And does that say that you pled guilty at the next phase?

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A. Yeah.

Q. And does it say what you pled guilty to?

A. Burglary of a vehicle.

Q. And does it say that that's a felony, Class E?

A. Uh-huh.

Q. Okay. I'm sorry. You're going to have to say yes or no so it's clear.

A. Yes.

Q. I'm sorry, sir?

A. Yes.

Q. And you see where it says how much time you did in the workhouse, what does that say?

A. One year.

Q. And on the date on the bottom is that 8/16/95, or on the top 8/11/95, right?

A. Yeah.

Q. Now, turn to the next page. Whose name is that on the top left-hand side where it says Marcus D. Lee?

A. Huh?

Q. Where it says at the top, whose name is that?

A. Marcus D. Lee.

Q. Yeah, is that you?

A. I mean, you see it, yeah.

Q. Okay. And look over to the right. See the Social Security number?

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A. Yeah.

Q. Okay. Is that your Social Security number?

A. Uh-huh.

Q. Okay. I'm sorry, sir, but you're going to --

A. Yes. Yes.

Q. Okay. Then it says, "Pled guilty" there, does it not, next?

A. Uh-huh.

Q. Okay. And it says December 11, 1995, correct?

A. Uh-huh.

Q. Okay. And what offense does that say it was?

A. What, who?

Q. What offense does it say? Just to the right of that where it says, "Indictment, Class E felony," what's the offense that you pled guilty to?

A. Possession of a weapon.

Q. Okay. Of a deadly weapon, it says, right?

A. Yeah.

Q. All right. Now then, on the a little bit further down it says, "Workhouse"?

A. Uh-huh.

Q. How much time did you do?

A. One year.

Q. All right. And that's dated -- and that's your signature on the bottom, correct?

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A. Uh-huh.

Q. Look at the next page.

A. Uh-huh.

Q. That's your name on the top where it says Marcus D. Lee?

A. It's my name, my Social Security number, and the crime is a possession of a controlled substance, unlawful possession of a controlled substance. And I received a three-year sentence on that and the date is, I think, 12/11.

Q. Okay. And it shows that you pled guilty and you got three years at the workhouse, correct?

A. Uh-huh.

Q. All right. And look at the next one.

A. Yes, that's my name and my Social Security number. I pled guilty to unlawful possession of a controlled substance and I received three -- a three-year sentence on it, and also, --

Q. And that's your signature.

A. -- August, September 11, and this is my signature. But also --

Q. And it says Class B felony on the top, correct?

A. Uh-huh. And also, they got all these charges and they all was combined in one sentence, one three-year sentence.

Q. Right. And --

A. With --

Q. -- but there were five of them, correct? Five felony --

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separate felonies, not including your escape?

A. Yes, sir. There were five felonies ran concurrent to make one three-year sentence upon the plea agreement that I agreed to.

Q. Okay. And I'm sorry. Do you have that plea agreement with you? I thought I asked you about that?

A. Well, I'm quite sure that you can get it because you're the Government.

Q. I'm asking -- I'm sorry. The question is do you have it and can you show it to me?

A. I don't have access to that type of stuff.

MR. GONZALEZ: I move into evidence Government's Exhibit #6-A at this time, Judge.

MR. HENDRICKS: Your Honor, I have no objection.

THE COURT: All right. Be admitted.

BY MR. GONZALEZ:

Q. You're well aware and you don't disagree that you've been convicted of at least five felonies, correct?

A. Yes, I've been convicted.

Q. Of at least five felonies, correct?

A. Yeah.

* * *

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IN THE PRESENCE OF THE JURY

THE COURT: Okay. Well, please be seated. Okay. I'm going to give each of you a copy of these instructions and you can follow me along as I read them. Okay. All right. Instruction No. 1. Members of the jury, the instructions I gave you at the beginning of the trial, during the trial, remain in effect and I'll give you some additional instructions. You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others because all are important. This is true even though some of those I gave you at the beginning of the trial and during the trial are not repeated here. The instructions I'm about to give you now, as well as those I gave you earlier or in writing, will be available to you in the jury room. I emphasize, however, that this does not mean that they are more important than my earlier instructions. Again, all instructions, whenever given, whether in writing or not, must be followed. Instruction No. 2,

It is your duty to find from the evidence what the facts are. You will then apply

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the laws I give it to you just to those facts. You must follow my instructions on the law even if you thought the law was different or should be different. Do not allow sympathy or practice to influence you. The law demands from you a just verdict, unaffected by anything except the evidence, your common sense, and the law as I give it to you. Instruction No. 3. Your decision on the facts of this case should not be determined by the number of witnesses testifying for or against a party. You should consider all the facts and circumstances in evidence to determine which of the witnesses you choose to believe or not believe. You may find that the testimony of a smaller number of witnesses on one side is more credible than the testimony of a greater number of witnesses on the other side. Instruction No. 4. The Indictment is but a formal method of accusing a defendant of a crime. It is not evidence of any kind against the defendant. Defendant Jones has pleaded not guilty to this Indictment, and therefore, denies that he is guilty of the charges. Instruction No. 5. I think you better turn that thing up just a little bit now because it's beginning to get kind of warm in here. Just a little bit. Instruction No. 5. The charges in this case are as follows: the Indictment in this case, charges the defendant with three different crimes. Under Counts I and III, the

Indictment charges that the defendant, Marcus Deangelo Jones, also known as Marcus

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Deangelo Lee, committed the crime of felon in possession of a firearm. Count I has alleged to have occurred on or about October 9, 1999, and Count III has alleged to have occurred on or about August 18, 1999. Under Count II, the Indictment charges on or about August 18, 1999, defendant, Marcus Deangelo Jones, aka Marcus Deangelo Lee, committed the crime of making a false statement in the acquisition of a firearm. The defendant has pleaded not guilty to each of these charges. As I told you at the beginning of the trial, an Indictment is simply an accusation. It is not evidence of anything. To the contrary, the defendant is presumed to be innocent. Thus, the defendant, even though charged, begins the trial with no evidence against him. The presumption of evidence alone is sufficient to find -- the presumption of innocence alone is sufficient to find the defendant not guilty and can be overcome only if the Government proves, beyond a reasonable doubt, each essential element of the crime charged. Keep in mind that each count charges a separate crime. You must consider each count separately and return a separate verdict on each count. Instruction No. 6. The Indictment charges that the offense alleged in each count of the Indictment was committed on or about a certain date. Although it is necessary for the Government to prove beyond a reasonable doubt that the offense was committed on a date

reasonably near the date alleged in the Indictment, it is not

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necessary for the Government to prove if the offense was committed precisely of the date charged. Instruction No. 7. A reasonable doubt is a doubt based upon reason and common sense and not the mere possibility of innocence. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such convincing character that a reasonable person would not hesitate to rely and act upon it. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt. Instruction No. 8. You've heard testimony from persons described as experts. Persons who by knowledge, skill, training, and education and experience having become expert in some field may state their opinions on matters in that field and may also state the reasons for their opinion. Expert testimony should be considered just like any other testimony. You may accept or reject it and give it as much weight as you think it deserves, considering the witness's education and experience, the soundness of the reasons given for the opinion, the acceptability of the methods used, and all other evidence in the case. Instruction No. 9. The law recognizes several kinds of possession. A person may have actual possession or constructive possession. A person may have sole or joint possession. A person who

knowingly has direct physical control over a thing at a given time is then in actual

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possession of it. A person, although not in actual possession, has both the power and the intention at a given time to exercise dominion or control over a thing, either directly or through another person or persons, is then in constructive possession of it. If one person alone has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession of a thing, possession is joint. Whenever the word possession has been used in these instructions, it includes actual as well as constructive possession, and also sole as well as joint possession. Instruction No. 10. For you to find the defendant guilty of any count charged, the Government must prove all the essential elements beyond a reasonable doubt as to that count. Otherwise, you must find the defendant not guilty of that count. Instruction No. 11. You've heard testimony that the defendant made a statement to Ben White of the Columbia Police Department. It is for you to decide first whether the defendant made the statement, and second, if so, how much weight you should give to it. In making these two decisions, you should consider all the evidence, including the circumstances under which the statement may have been made. Instruction No. 12. The crime of being a felon in possession of a firearm, as charged in Counts I and III of the

Indictment, has three essential elements, which are, one, the defendant had been convicted of

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a crime punishable by imprisonment for a term exceeding one year. Two, the defendant, therefore, knowingly possessed a firearm, that is a Makarov .9mm pistol. And three, the firearm was transported across state line at some time prior to the defendant's possession of it. You're instructed that burglary of a motor vehicle, unlawful possession with intent to sell cocaine, escape from incarceration, unlawful a possession of a deadly weapon, and the sale of cocaine are each crimes punishable by imprisonment for more than one year. If you found beyond a reasonable doubt that the firearm was manufactured in a place other than Missouri, and that the defendant possessed the firearm in the state of Missouri, then you may, but are not required to find that it was transported across the state line. The term firearm means any weapon, including a starter gun, which will or is designed to or may be readily converted to expel a projectile by the action of explosive. The term interstate commerce includes the movement of a firearm between any place in one state and any place in another state. It's not necessary for the Government to prove that the defendant knew that the firearm had been moved in interstate commerce before the defendant possessed it. Only that he made such movement. Instruction No. 13. The crime of making a false statement in the acquisition of a firearm, as charged in Count II of

the Indictment, has three essential elements, which are, one, the

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seller was a licensed firearms dealer; two, in connection with buying a firearm, the defendant made a false or fictitious statement; and, three, defendant knew the statement was false or fictitious; and fourth, the false or fictitious statement was intended or likely to deceive the seller into believing that the firearm could be lawfully sold to the defendant. A statement is false or fictitious if it is untrue when made or used and was then known to be untrue by the person making or using it. The false statement is likely to deceive if the nature of the statement, considering all the surrounding circumstances at the time, would probably mislead or deceive a reasonable person of ordinary prudence. The alleged false or fictitious and material statements made are one, the defendant was not convicted of a felony; and two, defendant's name. You may find defendant guilty if you unanimously agree -- if you unanimously find both of the statements false and material. You may also find the defendant guilty if you find that only one statement is false and material. But in that case, you must unanimously agree which statement is false and material. Instruction No. 14. In conducting your deliberations and returning your verdict, there are certain rules you must follow. I shall list those rules for you now. First, when you go to the jury room, you must select one

of your members as your foreperson. That person will preside over your discussions and speak for you

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here in court. Second, it is your duty as jurors to discuss this case with one another in the jury room. You should try to reach an agreement, if you can do so without violence to individual judgment, because a verdict, whether guilty or not guilty, must be unanimous. Each of you must make your own conscientious decision but only after you have considered all the evidence, discussed it fully with your fellow jurors and listened to the views of your fellow jurors. Do not be afraid to change your opinions if the discussion persuades you that you should, but do not come to a decision simply because other jurors think it's right or simply to reach a verdict. Third, if the defendant's found guilty, the sentence to be imposed is my responsibility. You may not consider punishment in any way in deciding whether the Government has proved its case beyond a reasonable doubt. Fourth, if you need to communicate with me during your deliberations, you may send a note to me through the marshal or bailiff, signed by one or more jurors. I'll respond as soon as possible either in writing or in open court. Remember that you should not tell anyone, including me, how your votes stand numerically. Fifth, your verdict must be based solely on the evidence and on the law which I've given to you in my instruction. The verdict, whether guilty or not guilty, must be

unanimous. Nothing I have said or done is intended to suggest what your verdict should be. That's

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entirely for you to decide. Finally, the verdict form is simply written notice of a decision that you reach in this case. And I'll read the form in just a minute. You will take this form to the jury room and when each of you are agreed on the verdicts, the foreperson will fill in the form, sign and date it, advise the marshal or bailiff that you are ready to return to the courtroom. In Count I, we, the jury, in the above-styled case find the defendant, Marcus Deangelo Jones, a blank line guilty or not guilty, of the offense and you fill in the proper verdict -- of the offense of felon in possession of a firearm as charged in Count I of the Indictment. Count II. We, the jury, in the above-styled case, find the defendant, Marcus Deangelo Jones, blank line, you fill in guilty or not guilty, of the offense of making a false statement in the acquisition of a firearm as charged in Count II of the Indictment. Count III. We, the jury, in the above-styled case find the defendant, Marcus Deangelo Jones, blank line, guilty or not guilty, in the offense of a felon in possession of a firearm as charged in Count III of the Indictment. There's a line for your foreperson to sign and the date. Now, the instructions I've been reading from are marked "Original" and the verdict form is marked "Original" and you got a copy in your packet. But you only return your verdict on the verdict form here that's marked

“Original.” You’ll take this -- the original instructions back with you,

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also, along with the copies you have and just return your verdicts on the one that’s marked “Original.” All right.

* * *

FILED
JUL 25, 2000
PAT BRUNE, CLK.
U.S. DISTRICT COURT
WEST DISTRICT OF MISSOURI

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

UNITED STATES OF AMERICA,)
)
) Plaintiff,)
)
v.) No. 00-04010-)
) 01-CR-C-)
) SOW)
)
MARCUS DEANGELO JONES,)
)
) a/k/a “Marcus Deangelo Lee”)
)
) Defendant.)

VERDICT FORM

COUNT ONE

We the jury in the above-styled case find the
defendant **MARCUS DEANGELO JONES**
Guilty

(Guilty/Not Guilty)
of the offense of felon in possession of a firearm, as
charged in Count 1 of the Indictment.

COUNT TWO

We the jury in the above-styled case find the
defendant **MARCUS DEANGELO JONES**

Guilty

(Guilty/Not Guilty)

of the offense of making a false statement in the
aquisition [sic] of a firearm, as charged in Count 2 of
the Indictment.

COUNT THREE

We the jury in the above-styled case find the
defendant **MARCUS DEANGELO JONES**

Guilty

(Guilty/Not Guilty)

of the offense of felon in possession of a firearm, as
charged in Count 3 of the Indictment.

7-25-2000

Date

/s/ Robert Schwaller

FOREPERSON OF THE JURY