
STATE OF WISCONSIN CLAIMS BOARD

CLAIM OF: VONAIRE WASHINGTON
CLAIM NO. 2021-017-CONV

Notice of Appeal Rights

This is a final decision of the Wisconsin Claims Board.

Any person aggrieved by this decision has a right to petition for judicial review in circuit court as provided in Wis. Stat. §§ 227.52 and 227.53. Any petition must be filed in court and served on the Board within 30 days of service of the decision. The time to file and serve a petition runs from the date the final decision is mailed. The petition shall name the Wisconsin Claims Board as the respondent.

Any person aggrieved may also file a petition for rehearing with the Board under Wis. Stat. § 227.49(1); that petition must be received by the Board within 20 days of the service of this decision.

This notice of appeal rights is provided pursuant to Wis. Stat. § 227.48.

DECISION

Background

This is a claim for Innocent Convict Compensation pursuant to Wis. Stat. § 775.05. The claim relates to Vonaire Washington's 1991 conviction for Armed Robbery as Party to a Crime. Washington spent approximately 11 years in prison and requests the maximum statutory reimbursement of \$25,000 and attorney's fees and costs in the amount of \$53,000. Washington also requests that the Claims Board recommend to the legislature additional compensation in the amount of \$149,922,000.

Claimant's Facts and Argument

Washington provided the following facts and arguments in support of this claim for compensation.

On July 15, 1990, the Jolly Skot Tavern in Milwaukee was robbed by three men shortly after 4 PM. Witnesses described one of the men as carrying a sawed-off shotgun and wearing a shower cap and a light blue jacket. Approximately 30 minutes later, a man (E.K.) was robbed by a suspect fitting the same description.

Washington alleges that on July 15, 1990, he and several other people were watching movies at a friend's house from 1 PM to 6 PM. Upon leaving the friend's house Washington's car would not start so he asked for a ride from two other men, Clifford Beasley and Leather Lobley. Shortly after they departed, police pulled them over and searched the vehicle, finding two shotguns inside a bag. The officers took Washington and the other men to the Jolly Skot Tavern to be viewed by witnesses of the robbery. Witnesses identified Washington as the man with the sawed-off shotgun from the robbery and he was taken into custody.

Washington alleges that he did not know there were weapons in the car. Lobley testified on behalf of Washington at the hearing before the Claims Board and stated that earlier in the evening before picking up Washington, he and Beasley saw a friend, Shorty G, walking with a duffle bag. Lobley said that Shorty G asked to put the bag in their car. Lobley stated that he took the bag to help out his friend and had no idea that there were guns in the bag.

Washington believes that both the vehicle stop and the impromptu lineup at the Jolly Skot Tavern were fatally flawed. He argues that police had no probable cause to stop and search the vehicle because they did so based on nothing but an anonymous tip that there were men with guns in a burgundy Mazda. He also argues that it was so dark inside the tavern where the lineup took place that witnesses could not have seen him well enough to accurately identify him as one of the perpetrators of the robbery.

Two days later, a man named James Johnson was arrested while in possession of personal property from three similar robberies, including the robbery of E.K. Both Washington and James Johnson were charged with the Jolly Skot Tavern Robbery. Washington points to the fact that James and his brother, Walker Johnson, were linked to a number of similar robberies involving the use of a sawed-off shotgun and a man wearing a shower cap, some of which occurred while Washington was in custody. Washington alleges that while he and James Johnson were in custody, he overheard James say that Walker Johnson was going to commit more robberies in order to confuse the police. Washington believes that James and Walker Johnson conspired together to blame him for the Jolly Skot robbery. He also believes that the strong resemblance between the Johnson brothers caused witnesses in the Jolly Skot and other robberies to misidentify the brothers. Washington contends that Walker Johnson was the man with the sawed-off shotgun in both the Jolly Skot Tavern robbery and the robbery of E.K.

Washington believes that the police were angry with him for exercising his right to counsel and notes that Lobley and Beasley, who did not exercise that right, were released after giving statements. He also alleges that the police were upset because a January 1990 robbery charge against Washington had been dismissed and that they falsified reports and manipulated evidence in retaliation. Washington alleges that the police and prosecutor concealed the fact that witnesses to the Jolly Skot Tavern robbery identified both Washington and James Johnson as the man holding the sawed-off shotgun. In addition, he alleges that the prosecutor knowingly withheld exculpatory evidence linking James and Walker Johnson to similar robberies that occurred that summer.

Washington maintained his innocence throughout his trial and post-conviction appeals. In July of 2000, Washington's conviction was set aside based on ineffective assistance of counsel and remanded for retrial. Washington refused a plea deal offered by the prosecutor and the charges against him were dropped in March 2001. Washington argues that prosecutors did not retry him because they knew they would not be able to secure a conviction.

Washington requests the statutory maximum compensation of \$25,000. He also requests recompense for \$53,000 of pre- and post-conviction attorney's fees which were paid by his father and grandmother, both of whom are now deceased. Finally, Washington requests that the board recommend to the legislature an additional award of \$149,922,000 because his wrongful conviction caused him great physical and mental suffering, destroyed his family relationships, and shattered his life into as many pieces.

DA's Response and Argument

The Milwaukee County District Attorney's Office deferred to the Claims Board to determine if any compensation to Washington was appropriate but provided the following facts regarding Washington's claim for compensation.

Washington's claim references charges brought in two robberies. In January 1990, Washington was charged with Armed Robbery as Party to a Crime with a habitual criminality enhancer for a robbery that occurred at Friendly Foods, Case No. 90CF900414. The DA notes that those charges were dismissed at the preliminary hearing stage because an eyewitness recanted their identification, another suspect was identified, and prosecutors found evidence supporting Washington's alibi.

In July 1990, Washington was charged with Armed Robbery as Party to a Crime and Felon in Possession of a Firearm with a habitual criminality enhancer for the Jolly Skot Tavern Robbery, Case No. 90CF902433. A jury trial took place in June 1991 and Washington was found guilty of all three felony charges and sentenced to prison. The

Wisconsin Court of Appeals upheld Washington's conviction in 1993 and again in 2000. The US District Court later set aside the conviction due to ineffective assistance of counsel and the US Court of Appeals upheld that decision.

The DA argues that its decision not to retry Washington was based on a candid assessment of retrying the case 11 years after the first trial, not because the DA believed that Washington was innocent. The DA notes that by 2001, only one citizen witness to the crime was still available and, because there were some issues related to her identification of Washington, the DA did not believe it could meet its burden of proof with only that witness. The DA states that if the prosecutor reviewing the case for retrial had any concerns that Washington was innocent, it would have been standard practice for her to note those concerns in the file and she did not do so. The DA notes that Washington would have received 11 years credit for time served if reconvicted, which likely also played a part in the decision not to retry the case.

The DA is satisfied that prosecutors handled both of these cases with the appropriate levels of discretion and dispatch. In the first case, charges were correctly dismissed when the nature of the evidence changed and in the second case, the State effectively convinced a jury of Washington's guilt. Although Washington's conviction was set aside after extensive post-conviction judicial review, the DA notes that no court ever made a determination that Washington was innocent of the charges for which he was convicted.

Discussion and Conclusion

Under the standards of Wis. Stat. § 775.05(3), the Claims Board must determine whether or not the evidence is clear and convincing that the petitioner was innocent of the crime for which he or she was imprisoned.

Washington's conviction was overturned based on ineffective assistance of counsel, not on any finding of innocence. The Claims Board has long held that a finding of ineffective assistance of counsel, without more, is insufficient to demonstrate that the evidence of innocence is clear and convincing.

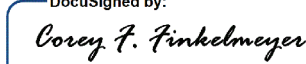
Washington presents the Claims Board with alternative theories attempting to link the crime to other individuals, however, the evidence supporting such theories is inconclusive and therefore does not present affirmative evidence of innocence. For example, an affidavit presented from Walker Johnson that was submitted to a Milwaukee County Circuit Court on November 12, 1998 in the case of James Johnson (Case No. F-902433) that stated that Washington was wrongfully convicted of the Jolly Scott Tavern robbery (see Walker Johnson Affidavit dated November 12, 1998), directly contradicts previous statements Walker Johnson made to investigators on August 28, 1990 (see Walker Johnson statement to TW Investigations dated August 28, 1990).

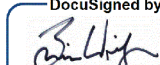
The veracity of the Walker Johnson affidavit was never evaluated by a court, and Walker Johnson's testimony was not referenced in the context of the DA's decision not to re-try the case, leaving the credibility of Walker Johnson's statements untested, and leaving the Board unable to conclude that Walker Johnson's statements represent clear and convincing evidence of Washington's innocence.

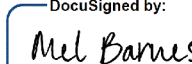
In addition, during the hearing before the Board, Washington cast some doubt on his own alibi, stating that the times he gave for watching movies with his friends were "vague" and that he could not be sure exactly where he was at the time of the robbery. Washington did not present any additional alibi witnesses to the Board at the hearing, but did submit as part of his written materials the alibi testimony of Gola Richardson that took place in 1992 in the context of the post-conviction proceedings regarding Washington's claim of ineffective assistance of counsel. The Board notes, however, that Ms. Richardson was only cross-examined by the state for purposes of determining whether she had been contacted and was available to testify at the time of Washington's initial trial, and not regarding the specifics of the testimony she would have given about Washington had she been called. See Trial Transcript, December 22, 1992, pages 40-50. Therefore, while the testimony was relevant to Washington's claim of ineffective assistance, insofar as it shows that the witness would have testified favorably to Washington, no determination of its veracity or the witness's credibility have been made, and the Board believes this also does not represent clear and convincing evidence of Washington's innocence.

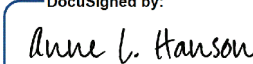

The Board is not required to take all evidence in the light most favorable to Washington, rather it must determine whether the evidence as it has been presented to it is clear and convincing that Washington was innocent of the crime for which he was imprisoned. Based on the facts and arguments presented above, the Board determines that it is not. Accordingly, the Board concludes that Washington is not entitled to compensation under Wis. Stat. § 775.05. Vote: 5-0.

Dated at Madison, Wisconsin this 14th day of June, 2023

DocuSigned by:

 BF5581201F4B43A...
 Corey Finkelmeier, Chair
 Representative of the Attorney General

DocuSigned by:

 B3662727B1D545C...
 Eric Wimberger
 Senate Finance Committee

DocuSigned by:

 DF46870179E3436...
 Mel Barnes
 Representative of the Governor

DocuSigned by:

 9C8FD2F019F84E0...
 Anne L. Hanson, Secretary
 Representative of the Secretary of
 Administration
 DocuSigned by:

 542FC46E5D0B459...
 Alex Dallman
 Assembly Finance Committee



TW INVESTIGATIONS, LTD.

P.O. BOX 10211 • MILWAUKEE, WISCONSIN 53210 • (414) 402-7070

STATEMENT

THOM WAGNER
PRIVATE DETECTIVE

LOCATION: MILWAUKEE COUNTY JAIL TWI FILE#: JOHNSON, J.
DATE: TUE 5/25/90 SS#: 393-52-4174
TIME: 3:00 PM DOB: 5/7 3/12/62
DL#: _____ PH#: _____
NAME: WALKER B. JOHNSON
ADDRESS: 1531 N. 28th MILWAUKEE, WI 53208
EMPLOYMENT: CROWN TEMP SERVICE T/T (NO LONGER)
I, Walker Johnson, wish to make the following statement:

ON 7/15/90, AT ABOUT 4:00 PM, I WAS
IN THE COMPANY OF TWO FRIENDS
BY THE NAMES OF VONAIRE WASH-
INGTON "T-BONE" AND GARY BLAINE
"G".

WE LEFT MY COUSIN'S HOME,
TERRON AND KIM SLOAN'S, AT 3611
W. GALENA ST., MILWAUKEE, WI. WHEN
WE LEFT THE HOUSE, WE ALSO
LEFT JAMES L. JOHNSON, MY
BROTHER THERE. AT THAT TIME,
THEY WERE HAVING A BAR-B-Q.

WASHINGTON, BLAINE AND MYSELF
HEADED FOR THE STORE, AND
THEN WE DECIDED TO GO SHOOT
SOME POOL AT JOLLY SCOT
TAVERN, 3822 W. LISBON AVE
MILWAUKEE, WI.

WASHINGTON SAID THAT SOME GU...

INITIALS: W.D.S.

PAGE 1 OF 3

WHO IS OFTEN AT THAT BAR OWL
HIM MONEY. I DONOT THINK THAT
GUY WAS AT THE BAR. BUT HIS
BROTHER WAS. AND SUDDENLY
WASHINGTON AND BLAIN HAD
DRAWN GUNS AND WERE DEMAND-
ING PEOPLE TO GET ON THE FLOOR
WASHINGTON TOLD ME TO HELP GET
THE MONEY, SO I WENT THROUGH
THE POCKETS OF TWO PEOPLE WHO
WERE LAYING ON THE FLOOR OF
THE BAR. I COLLECTED A
WALLET FROM ONE PERSON, AND
ABOUT \$3.00 FROM THE SECOND.
I DID NOT HAVE ANY GUY WITH
THE ROBBERY.

MY BROTHER, JAMES JOHNSON WAS
DEFINATELY NOT PRESENT AT THE
ROBBERY. PEOPLE MUST HAVE
SEEN ME, AND LATER MISTOOK

PAGE 2 OF 3

I, James Johnson have read, or had read to me the above statement,
consisting of 3 pages. I hereby confirm that this statement is true
and correct to the best of my knowledge; and that it was given of
my own free will; and that I am not under any form of duress or
coercion. W.J.

James Johnson
Signature

James Johnson
Name (print)

Rv:

Tom Hadden
Signature (Witness)

Tom Hadden
Name (print)

Ph:

THOM WAGNER
PRIVATE DETECTIVE

HIM FOR ME. AT ANY RATE,
I FULLY ADMIT THAT I ASSISTED
IN THE COMMISSION OF THE
ROBBERY. HOWEVER, I DID FEEL
THAT IF I DIDNT HELP WITH
THE ROBBERY, WASHINGTON MIGHT
HAVE GOTTEN MAD AT ME.

WELL MY BROTHER HAD NO KNOWLEDGE
THAT THERE WAS GOING TO BE
A ROBBERY, NOR WAS HE ANY WHERE
NEAR THE BAR AT THE TIME,
TO THE BEST OF MY KNOWLEDGE
HE WAS STILL AT THE BAR-B-QUE

AFTER THE ROBBERY, WASHINGTON,
BLAINE AND MYSELF FLEW ON
FOOT, TO A HOUSE NEAR N36ST &
W. BROWN. THE HOUSE BELONGED
TO A FRIEND OF WASHINGTON & BLAINE.
FROM THERE, I GOT A RIDE TO MY
GIRL'S HOUSE AT N. 25ST & BROWN

Walter Johnson -8-28-90

W.J

STATE OF WISCONSIN,

Plaintiff,

Case No. F-902433

-VS-

JAMES L. JOHNSON,

Defendant.

AFFIDAVIT OF WALKER JOHNSON

STATE OF WISCONSIN)
) SS.
COUNTY OF COLUMBIA)

I, Walker Johnson being duly sworn upon oath do depose and state that the following is true and correct under the penalty of perjury, state as follows, to-wit:

1. On July 15, 1990 at approximately 4:00 p.m., I, Walker Johnson, Gary Blaire and Brian Dorsey were at Jolly Scott Tavern, 3822 West Lisbon Avenue, Milwaukee, Wisconsin.

2. When at Jolly Scott Tavern, Brian Dorsey stated to I, Walker Johnson and Gary Blaire that some guy who often come's to the bar owed him money. At that time, Brian Dorsey and Gary Blaire had drawn guns and demanded people in the Tavern to get on the floor.

3. Brian Dorsey told I, Walker Johnson to help him collect money from persons in the Tavern, so I went through the pockets of two people who were laying on the floor. I collected a wallet from one person and about \$3.00 from the second.

4. I, Walker Johnson was not armed, and did not have a gun during the armed robbery.

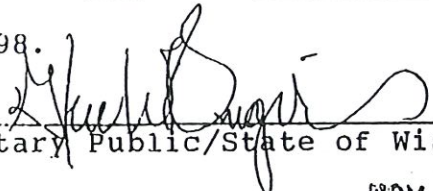
5. I, Walker Johnson state that my brother James L. Johnson was **not** at the Jolly Scott Tavern, he took **no** part in any armed robbery, **nor did Vonaire Washington,** as both James L. Johnson and **Vonaire Washington were wrongfully convicted of this armed robbery by a mistake in identification.**

6. I, Walker Johnson state under the penalty of perjury that James L. Johnson and Vonaire Washington **did not** commit any armed robbery on July 15, 1990, at the Jolly Scott Tavern, as it was I, Walker Johnson, Brian Dorsey and Gary Blaire.

Subscribed and sworn to before

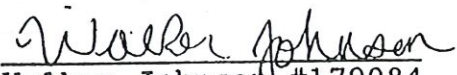
me this 12 day of Nov

1998.


Notary Public/State of Wisconsin

My Commission Expires: NOV 22 1998

Affiant,


Walker Johnson #179084
Columbia Correctional Inst.
Post Office Box 900
Portage, WI 53901

STATE OF WISCONSIN : CIRCUIT COURT : MILWAUKEE COUNTY

STATE OF WISCONSIN,

Plaintiff,

-vs-

Case No. F902433

VONAIRE WASHINGTON,

Defendant.

December 22, 1992

HONORABLE VICTOR MANIAN

Circuit Judge, presiding

| | |
|------------------------|----|
| <i>Dale Richardson</i> | 41 |
| <i>David Brown</i> | 50 |
| <i>Vonaire</i> | 58 |
| <i>A argument</i> | 76 |
| <i>T argument</i> | 87 |
| <i>ct</i> | 89 |

APPEARANCES:

DEANN HEARD, Assistant District Attorney,
appeared on behalf of the Plaintiff.

JOHN WASIELEWSKI, Attorney-at-Law,
appeared on behalf of the Defendant.

The Defendant appeared in person.

Hattie Mitchell - Court Reporter

1 TRANSCRIPT OF PROCEEDINGS

2 THE CLERK: State of Wisconsin versus
3 Vonairé Washington, case number F-902433. Charge,
4 armed robbery, party to a crime, two counts, felon
5 in possession of a firearm, and habitual
6 criminality.

7 MS. HEARD: The State appears by DeAnn
8 Heard.

9 MR. WASIELEWSKI: The defendant Vonairé
10 Washington is present in the courtroom in person
11 with his attorney, John Wasielewski.

12 THE COURT: Good afternoon.

13 MR. WASIELEWSKI: Good afternoon, Your
14 Honor. Your Honor, this is a continuation of a
15 hearing on postconviction motions filed on behalf of
16 Mr. Washington. When we were last in court last
17 month the trial counsel, Mr. Engle, who is present
18 in court today, was testifying and his testimony was
19 interrupted by the Court's calendar, and so we're
20 ready to resume with his testimony. I would ask him
21 to resume the stand.

22 THE COURT: Okay.

23
24 ISADORE ENGLE, called as a witness herein,
25 having been first duly sworn, testified on his oath

1 as follows:

2 THE CLERK: Please state your full name
3 and spell your last name.

4 THE WITNESS: Isadore, I-s-a-d-o-r-e
5 E-n-g-l-e.

6 THE CLERK: Thank you.

7 DIRECT EXAMINATION

8 BY MR. WASIELEWSKI:

9 Q Mr. Engle, your testimony was interrupted in the
10 middle, and I will try to take up where we left off.
11 I believe I was last asking you about questions with
12 regard to what has been marked as Exhibit 1. Could
13 that be given to the witness? Exhibit 1 is a bunch
14 of police reports. Do you have it Mr. Engle?

15 A I don't have it.

16 THE COURT: Were they left in the file?

17 THE CLERK: I'm looking for it, Judge.

18 THE WITNESS: Maybe this is it. Yes, I do
19 have it.

20 MR. WALESKI: You have Exhibit 1 with you.

21 THE CLERK: Is it marked as an exhibit?

22 THE WITNESS: Yes, it is.

23 Q I would direct your attention to page numbers in the
24 lower right hand corner; I would direct your
25 attention to the court's page 35 and 36.

1 A Yes.

2 MR. WASIELEWSKI: Judge, I honestly don't
3 remember how far I got here. I may be repeating. I
4 hope you bear with me.

5 THE COURT: Sure.

6 MR. WASIELEWSKI: I just don't remember
7 what we covered last time.

8 Q With regard to those two pages, those are the
9 statement of a witness by the name of Leotha Lobly
10 (phonetic); is that correct, Mr. Engle?

11 A Yes.

12 Q And that was taken by Detective Clifford Hudlet?

13 A Yes.

14 Q Now, in your preparing for this case, did you read
15 those two pages?

16 A I did but I couldn't make out too much of what it
17 said because the writing is bad.

18 Q And did you make any attempt in your preparation of
19 this case to contact Leotha Lobly or to interview
20 him?

21 A No, I did not.

22 Q Did you do anything to attempt to decipher the
23 handwriting that you find difficult to read?

24 A I deciphered it as best I could.

25 Q Do you feel you understand or were able to

1 understand the contents of that statement by Mr.
2 Lobly?
3 A Not very much.
4 Q Do you remember in the course of the trial that
5 evidence was introduced with regard to shotguns that
6 were found in the car at the time of Mr.
7 Washington's arrest?
8 A Yes, sir.
9 Q And that the shotguns were found inside that car
10 inside a large, blue gym bag?
11 A Yes.
12 Q I would like to direct your attention to page 36,
13 starting at the end of the sixth line of text, the
14 the last word of that line is "Shorty."
15 A I have it.
16 Q Can you read that sentence that starts with the word
17 "Shorty"?
18 A Shorty G. gave to them looks like C. keys, can't
19 read the next four words, it in his back seat.
20 Shorty G. followed, told them.
21 Q I want to focus on that seventh line, Shorty G. gave
22 that to them, you read, but you cannot make out the
23 next five words?
24 A That's right.
25 Q Could those words be large, blue gym bag?

1 A Could be.

2 Q Now, I'd like you to go down three lines from there,
3 and the middle of the line, there is a sentence that
4 starts with the word "on."

5 A "On the way to North 24th of West Brown they picked
6 up Vonaire Washington at North 24th and West Vine.
7 States that he--

8 Q Okay. That's far enough. Now, that location North
9 24th and West Vine, in your preparation for this
10 case, did you find any significance to that
11 location?

12 A I believe that was near the place where he was
13 supposed to have been staying.

14 Q The place where he was located, essentially his
15 alibi?

16 A Right.

17 Q So during your preparation for this case, assuming
18 that that statement does say that Shorty G. gave
19 this to them, a large blue gym bag, you never had
20 that information in your head when you prepared this
21 case; is that right?

22 A That's right.

23 Q And the guns that were found here were ultimately
24 introduced as evidence against Mr. Washington.

25 A That's right.

1 Q And they were introduced under the theory that they
2 were used in this robbery of the tavern?
3 A That's right. That was one of my arguments to the
4 jury, that they never connected up the guns to Mr.
5 Washington, even though I didn't know about this
6 Shorty.
7 Q And you're saying you didn't know, and you didn't
8 make any attempt to-- Strike that. Moving on then;
9 later in the trial there was a witness called, named
10 Edward Kid.
11 A Huh-huh.
12 Q Was that a yes?
13 A Yes.
14 Q And do you recall the gist of his testimony? I see
15 you paging through notes? Do you have any
16 recollection without looking at them, the gist of
17 his testimony?
18 A No. This is more than a year and-a-half ago.
19 Q So reviewing your notes, do you recall?
20 A My notes say Edward G. Kid property taken by James
21 Johnson did not implicate Vonaire Washington. The
22 lineup picked No. 2 as James Johnson with reference
23 to Edward Kid, and that was argued to the jury.
24 Q Now, this witness, Edward Kid, was telephoning about
25 a different robbery than the one Mr. Washington was

1 charged with committing; isn't that true?

2 A I don't remember.

3 Q Directing your attention, I would like to direct

4 your attention now to page 24 of Exhibit 1.

5 A My notes say that he was held up on July 15th, 1991.

6 Q Now, you didn't cross-examine Edward Kid; is that

7 correct?

8 A The transcript would show that. I don't remember.

9 Q Do you remember a Tom Wagner?

10 A Yes. He was the next witness.

11 Q And who was he?

12 A Licensed detective.

13 Q And was he retained by you?

14 A No.

15 Q Do you know who he was retained by?

16 A Mr. Plantinga.

17 Q And did he testify to a statement by Edward Kid?

18 A Yes.

19 Q And what was the gist of that statement?

20 A He talked to Edward Kid as to the identity of the

21 person who robbed him.

22 Q And didn't Tom Wagner in his testimony attribute a

23 statement to Mr. Kid that someone named Washington

24 had taken his property?

25 A Kid identified Johnson in the lineup.

1 Q I'm sorry. You said he identified Johnson in the
2 lineup?
3 A That's right.
4 Q You're talking about Mr. Kid?
5 A Right.
6 Q But when Mr. Wagner testified as to statement that
7 he had gotten from Mr. Kid, he stated that a person
8 named Washington, Kid told Wagner that a person
9 named Washington--
10 A The person who robbed him was Washington. Right?
11 Q And do you recall whether you cross-examined Mr.
12 Wagner on that point?
13 A I don't remember. The transcript would show. I
14 don't have a copy of the transcript.
15 Q I'm going to show you the transcript; this would be
16 the transcript from June 12, 1991, specifically Mr.
17 Wagner's testimony, which is pages 22 to 40. And it
18 indicates that your questioning came to pages 26 to
19 28, and 39 to 40.
20 A I read the testimony through page 29.
21 Q Now, you never asked Mr. Wagner if, when he
22 interviewed Mr. Kid, it was Mr. Wagner who suggested
23 the name Washington as the robber, did you?
24 A I asked what was Washington's first name. Nobody
25 seemed to know.

1 Q Right. But did you ask Wagner if he suggested the
2 name Washington to Mr. Kid when Mr. Wagner
3 interviewed Mr. Kid?
4 A No, I didn't.
5 Q Did you ask whether Mr. Washington's name appeared
6 anywhere in Mr. Wagner's report of his interview
7 with Mr. Kid?
8 A No.
9 Q Now, when it came time to present the defense case
10 on behalf of Mr. Washington, you called a total of
11 three witnesses, including Mr. Washington; isn't
12 that correct?
13 A That's correct.
14 Q And the first of those witnesses was the defendant
15 Vonaire Washington?
16 A Yes.
17 Q Before you called him to the stand, during the
18 preparation of the case or during the course of the
19 trial, did you ever sit down with Mr. Washington to
20 specifically discuss what would be asked of him to
21 prepare him for testifying?
22 A We discussed the entire case many times.
23 Q Did you give Mr. Washington any guidance in
24 particular about how to answer questions?
25 A I told him to tell the truth.

1 Q Did you specifically give him any guidance with
2 regard to listening to questions and answering only
3 what was asked?

4 A Yes, I did. As a matter of fact, at the trial
5 several times I had to say to him, Please answer the
6 question I asked you.

7 Q Now that happened several times in the course of the
8 testimony in front of the jury; isn't that right?

9 A That's right.

10 Q Did you ever, in your preparation with Mr.
11 Washington, advise him to listen carefully to
12 questions and answer only that question?

13 A Yes, I did. Told him many times, answer the
14 question I ask of you. Don't elaborate unless I ask
15 you to.

16 Q So when specifically did you discuss with Mr.
17 Washington about his testifying?

18 A Many times during the course of our consultations.
19 I don't have any specific dates if that's what you
20 want.

21 Q Now, I asked you if, when you were here last time in
22 November, whether you had any specific notes
23 relating to Mr. Washington's version of the facts of
24 the events of the date of this robbery. At that
25 time you weren't able to find any. Have you found

1 any since then?

2 A I looked for them, and I still haven't been able to
3 find them.

4 Q So you have nothing in your file documenting Mr.
5 Washington's version of the facts?

6 A Well, I have memorandums here and there, but not the
7 the original version that I had prepared.

8 Q Now, when Mr. Washington testified, his testimony by
9 the way is in that transcript in front of you that,
10 which is the transcript of June 12th, pages 85 to
11 97; that's direct testimony.

12 A 85 to 97? Right.

13 Q Right.

14 A Okay.

15 Q Now, I believe it's on page 86 or 87, Mr. Washington
16 tells that he was at a house on 24th Place.

17 A Yes.

18 Q And he lists all the people that were there with him
19 that day. Can you find the names of those people?

20 A Only Richardson, her sister Sharon Richardson, her
21 brother David Brown. That's the ones.

22 Q Continuing on, is there another name?

23 A I don't find it here.

24 Q Now, you testified in November that the only name
25 Mr. Washington told you is the name of an alibi

1 witness, was Gola Richardson?

2 A That's correct. For an alibi witness.

3 Q So now hearing the testimony in response to your

4 questions he names Sharon and David?

5 A This was brand new material.

6 Q So this is your testimony that this is the first

7 time you ever heard those names from Mr. Washington.

8 A Exactly.

9 Q And you didn't know these names at all prior to his

10 taking the stand and telling you in front of the

11 jury?

12 A That's correct.

13 Q When you heard these names, were you surprised?

14 A Yes.

15 Q Did you request a recess or an adjournment so that

16 you could discuss this information with Mr.

17 Washington?

18 A No.

19 Q You just continued on with your direct examination?

20 A Yes.

21 Q And you made-- Did you make any effort with Mr.

22 Washington after his testimony to find out where

23 these people he mentioned might be found?

24 A I asked him prior to the trial to give me the names

25 and addresses of all witnesses that were pertinent

1 to the trial. I asked him that many times. The
2 first time I got a list from him was the day we
3 started the trial, and I was very angry about it,
4 and I let him know about it.

5 Q Well, who was on that list?

6 A Sharon Richardson, Gola Richardson, Jerome Pickins,
7 David Brown, Sandra Bloo, Helen Washington, John
8 Williams, Leotha Lobly, Darryl Riggs, Lapage
9 Humphrey, Walter Lackridge, Shirley Dall, Clifford
10 Beasley, Harum Hook (all names phonetically).

11 Q Now, you just read those names from a written list
12 that you got from your file?

13 A Yes. That's the list he gave to me personally on
14 the day of the trial.

15 Q Is that dated anywhere?

16 A It's not dated, no.

17 Q Is that in your handwriting or his handwriting?

18 A His handwriting.

19 Q May I see that please?

20 A Certainly.

21 MR. WASIELEWSKI: I would ask that this be
22 marked as an exhibit.

23 Q It's your testimony that you received that--what's
24 about to be marked as, I believe, Exhibit 2; is that
25 correct?

1 THE COURT: That's what she's trying to
2 figure out. She needs to find her exhibit list.

3 MR. WASIELEWSKI: Maybe I should wait.
4 This is Exhibit 1, so it should be 2

5 THE COURT: Mark it Exhibit 2.

6 THE CLERK: I will.

7

8 (Whereupon Exhibit No. 2 was marked for
9 identification.)

10 Q I'm returning to you what's been marked as
11 Exhibit 2. So you're testifying that you received
12 this on the first day of trial.

13 A That's right.

14 Q Was that when you first met with Mr. Washington on
15 this, on that first day of trial? Did he give it to
16 you immediately at the beginning of the day?

17 A He gave it to me just before we started the trial.
18 That's right.

19 Q Did he indicate to you why he thought those fourteen
20 people named there might be important as witnesses
21 in this case?

22 A We didn't even have time to discuss it because the
23 trial started immediately thereafter.

24 Q Did you request an adjournment based on this
25 potentially new information or new witnesses?

1 A No, I didn't. Because I had been asking him for a
2 list of witnesses for months, and it certainly isn't
3 the Court's fault nor is it my fault if I don't get
4 this material when it's asked for. I can't blame
5 the Court and ask for a postponement when you don't
6 get the cooperation of your client.

7 Q Mr. Engle, I'm not asking you who's at fault. I'm
8 simply asking you if you did request an adjournment
9 or an opportunity to look into--

10 A Well, I'm telling you why I didn't request an
11 adjournment.

12 Q Now, of those names on that list, how many had you
13 heard prior to receiving it? And please tell which
14 ones.

15 A Just Gola Richardson.

16 Q What about Tarly Dall name?

17 A Tarly Dall was the attorney who represented him
18 before I represented him, and I talked to him.

19 Q So you knew who he was when you saw that list?

20 A Yes, but he was no witness. He was the attorney
21 representing him.

22 Q So aside from Gola Richardson and Tarly Dall, did
23 you know any of those other people on that list from
24 your discussions with Mr. Washington or your
25 investigation of the case?

1 A No.

2 Q Did you discuss those names with him at all during
3 the breaks in the course of the trial?

4 A No, I didn't.

5 Q Now, the trial proceeded and lasted for--was it
6 three days?

7 A I think it was three days.

8 Q Did you ever ask him if any of those potential
9 witnesses had phone numbers that Mr. Washington
10 could provide to you?

11 A I asked him to provide them at the trial if he could
12 do so and he did produce two of them. Namely, he
13 produced Sandra Bloe and he produced Jerome Pickins,
14 and I used both of them.

15 Q In other words, you left it to your client to try to
16 get those witnesses to court?

17 A There was no way I could have an opportunity to
18 contact them at that late time. I was busy trying
19 the case.

20 Q Now, Mr. Washington was in custody at the time of
21 the trial; is that right?

22 A That's right.

23 Q So his resources were limited to what a person in
24 custody would have as far as contacting people by
25 telephone or otherwise?

1 A That's right.

2 Q Now, when you prepared the alibi defense, Mr.

3 Washington did tell you that he was at the house at

4 1852 North 24th Place; is that correct?

5 A That's right.

6 Q And he told you that that was the home of Gola

7 Richardson?

8 A Right.

9 Q And it's your testimony that he never mentioned any

10 of the other persons on that list to you prior to

11 the morning of the first day of trial?

12 A That's right.

13 Q He never mentioned specifically David Brown or David

14 Richardson?

15 A That's right.

16 Q And he never mentioned Sharon Brown.

17 A Not until the day of the trial.

18 Q So when he described the events that occurred at

19 Gola Richardson's house while he was there, did he

20 describe these as being just he and Gola being there

21 and no one else?

22 A That's right.

23 Q And you have no notes with you in your file

24 indicating that you've written down what he told

25 you?

1 A No. I remember what he told me. I prepared the
2 Notice of Alibi, and I believe he signed it. And I
3 subpoenaed Gola Richardson on the 11th of June for
4 appearance on on the 13th, and the notice came back
5 from the sheriff's department that she left for a
6 week.

7 Q So you did attempt to use the sheriff to subpoena
8 Gola Richardson?

9 A Yes, I did.

10 Q Did you make any attempt to personally interview
11 Gola Richardson or to have anyone interview her on
12 your behalf?

13 A On many occasions. I told you during the last
14 hearing.

15 Q Forgive me if I'm covering ground that was covered.
16 I don't remember every question or answer from the
17 last hearing?

18 A I attempted to reach Gola Richardson and was greeted
19 at the door by a live-in boyfriend.

20 Q Did you determine the name of that person?

21 A Yes, I did. I have to look through the file.
22 Robert Jones identified himself as a live-in
23 boyfriend; said Gola Richardson was not home; that
24 he would advise her to contact me, which he failed
25 to do even though I left a calling card. I then

1 tried to reach her on two other occasions without
2 success. There was no phone on the premises.
3 Q So you visited her house on three occasions in an
4 attempt to speak to her?
5 A That's right.
6 Q Did you encounter anyone other than this Mr. Jones
7 you mentioned in any of those three visits?
8 A No. He was the only one.
9 Q Did you-- Did he answer the door on all three of
10 those occasions?
11 A I remember he answered on one occasion. I don't
12 remember what happened on the other occasions.
13 Q What was Mr. Jones' first name again, please?
14 A Robert.
15 Q Now, after testimony was closed, I understand it was
16 reopened so that your other two witnesses could be
17 called?
18 A That's right.
19 Q And the first one you called was Sandra Bloe?
20 A Right.
21 Q How long of a time did you have to speak with Sandra
22 Bloe, if you had any chance at all?
23 A Perhaps a half hour or so.
24 Q And during that half hour, did you have an
25 opportunity to interview her regarding the matters

1 you would be asking her about in her testimony?

2 A Yes.

3 Q Did you have that half hour because there happened

4 to be a break in the trial or because you asked time

5 to speak with her?

6 A I don't remember how it happened, but I remember

7 speaking with her during the trial.

8 Q With regard to Jerome Pickins, how long of an

9 opportunity did you have to speak with him?

10 A About a half hour, I would say.

11 Q And that too is during the course of the trial?

12 A Right.

13 Q And the date they testified was the first date you

14 ever met either of these two witnesses; is that

15 correct?

16 A Right. Both of these witnesses corroborated Mr.

17 Washington's testimony. Both of those witnesses had

18 two crime convictions, and apparently the jury chose

19 to disregard their evidence.

20 Q Now, after the trial ended, I understand that the

21 jury sent some notes back.

22 MR. WASIELEWSKI: I would like to have

23 these two items marked as exhibits. And for the

24 guidance of the Court, these are documents that are

25 attached to my motions.

1
2 (Whereupon Exhibits 3 and 4 were marked
3 for identification.)
4 Q I'm handing you now what have been marked as
5 Exhibits 3 and 4. I would like to start with
6 Exhibit 3, Mr. Engle. Do you recall seeing that
7 before?
8 A Possible.
9 Q It at least purports to be a note from the jury
10 requesting certain evidence or testimony. Are you
11 able to read this Exhibit 3?
12 A I can read this, mugshots of both defendants at time
13 of arrest and testimony of Jane Dornuf at
14 preliminary hearing; page 6, line 16; page 5, line
15 21; page 9, line 15; why was car containing Vonaire
16 Washington stopped by police; how many suspects were
17 taken to the bar for identification after the
18 robbery, and there is a notation, You'll have to
19 rely on your collective memories for this evidence.
20 Q At the upper right-hand corner there is a time
21 indicated, I believe.
22 A 3:05.
23 Q Do you recall whether or not either the Court or the
24 assistant district attorney you consulted with
25 regard to this note--

1 A I don't recall what the details were, but I know
2 that the Judge had a request from the jurors, and he
3 told them to rely on their own collective memories.
4 Q You know that because that's what's written on
5 Exhibit 3 or because you remember that?
6 A I remember that.
7 Q Was that done on the record in open Court?
8 A I believe it was.
9 Q Was that done after a consultation among the counsel
10 and the Court?
11 A Yes.
12 Q And do you recall whether you took a position with
13 regard to the--whether or not the--any of this
14 evidence should be given to the jury pursuant to the
15 request?
16 A You'd have to look at the transcript. I don't
17 remember.
18 Q So at that point, you don't know what position, if
19 any, you took either agreeing to or objecting to the
20 request?
21 A I can't remember, no.
22 Q Moving on to Exhibit 4.
23 A Yes. Request testimony of Jane Dornuf in regard to
24 identifying the suspects who were brought to tavern
25 two hours after robbery, and cross-examination, also

1 some testimony of James Davis.

2 Q Do you recall seeing this before?

3 A I remember that there was some question.

4 Q Do you recall if this Exhibit 4 request was made by

5 the jury before or after the Exhibit 3 request?

6 A I don't remember.

7 Q Do you remember if there was a hearing with the

8 Court and the assistant district attorney on whether

9 or not this request should be granted or denied?

10 A I can't remember.

11 Q Do you remember if you took a position or had a

12 position with regard to whether this request should

13 be granted or denied?

14 A I can't remember.

15 Q Do you remember if the request was granted or

16 denied?

17 A No, I can't.

18 MR. WASIELEWSKI: That concludes my

19 questions, Mr. Engle.

20 THE WITNESS: Shall I give these exhibits

21 to the Court?

22 THE COURT: Ms. Heard may have some

23 questions.

24

25

CROSS-EXAMINATION

1 BY MS. HEARD:
2 Q Mr. Engle, you said you've been practicing law since
3 1944?
4 A Right.
5 Q And about 95 percent of your practice currently is
6 in criminal defense work?
7 A Right.
8 Q With regards to your representation of Mr.
9 Washington, you were appointed after another lawyer
10 had been granted leave to withdraw; is that right?
11 A Right.
12 Q And I think you indicated in your testimony on
13 November 16th, Mr. Engle, that you either spoke in
14 person or by phone to Mr. Washington approximately
15 fourteen times prior to the June 10th trial date?
16 A I think that's right.
17 Q And I'm going from my notes, I believe you indicated
18 that approximately two or three of those
19 conversations were by phone.
20 A Right.
21 Q During the course of these fourteen meetings in
22 person or by phone with Mr. Washington, did you in
23 fact discuss with him what his defense would be with
24 regards to this case?
25 A Yes, I did.

1 Q And did you explain to him as you are his counsel
2 that you would need his assistance crafting a
3 defense?
4 A I did.
5 Q Did you request of him that any information that
6 would assist in that defense--
7 A I did.
8 Q Did you ask him to provide you with information as
9 to where he was or--for example, people who could
10 corroborate where he was.
11 A Yes.
12 Q It's your testimony today, and I believe it was on
13 November 16th, that you did not receive specific
14 names of individuals who could assist in that
15 defense from Mr. Washington; is that right?
16 A That's correct.
17 Q And it's also your testimony then that on the first
18 day of trial, being June 10th, you were presented
19 the list of witnesses that I believe was marked as
20 Exhibit 2; is that correct?
21 A That's right.
22 Q And Exhibit 2 consisted of fourteen different names
23 of individuals, as far as you know?
24 A Correct.
25 Q And on that list were there any phone numbers or

1 addresses or any way for you to contact these
2 individuals?
3 A Yes.
4 Q And other than the individual whose name you
5 identified as Tarly Dall, that you knew to be Mr.
6 Washington's prior lawyer, did you know personally
7 any of these other people?
8 A No.
9 Q Did you know whether these people resided in
10 Milwaukee or anywhere else?
11 A No.
12 Q At some point in time, you then attempted to contact
13 Gola Richardson; is that correct?
14 A That was at the beginning. That was the alibi
15 witness he provided for me with the address.
16 Q And you indicated that you went to the residence or
17 the address that was provided to you by Mr.
18 Washington?
19 A I did.
20 Q And that you were advised by a male who identified
21 himself as Robert Jones, I believe it was, that Ms.
22 Richardson was not there, but he would advise her to
23 contact you?
24 A Whatever the name was, yes.
25 Q And you left a business card or some kind of a

1 documentation for him to give to Ms. Richardson?

2 A Business card.

3 Q And you tried on two other occasions in person to

4 contact Ms. Richardson?

5 A I did.

6 Q And you were aware that she had no telephone; is

7 that correct?

8 A Right.

9 Q At some point in time then, you contacted the

10 Milwaukee County Sheriff's Department and asked them

11 to attempt to serve Ms. Richardson to testify at Mr.

12 Washington's trial?

13 A I did. I gave him a subpoena to serve.

14 Q And I believe it was your testimony that you were

15 advised that they had attempted to serve Ms.

16 Richardson, but she would be unavailable for one

17 week?

18 A This was the notation on the served subpoena, which

19 was returned to me and read, Subject is out of town

20 for a week.

21 Q With regards to Sandra Bloo then and Jerome Pickins,

22 you had no knowledge of these people prior to the

23 trial date when Mr. Washington advised you of their

24 existence?

25 A Right.

1 Q And do you recall that after the State had rested
2 and after both Defense had rested, we were in
3 chambers having the jury instruction conference when
4 a witness showed up?
5 A Yes.
6 Q And that witness was Sandra Bloe?
7 A Yes.
8 Q Do you recall that over the State's objection the
9 the Court allowed the testimony to be reopened and
10 that you were allowed to present that testimony to
11 the jury?
12 A Yes.
13 Q And correct me if I'm wrong, did the same thing
14 occur with Mr. Pickins?
15 A Yes.
16 Q We had closed testimony?
17 A Yes.
18 Q And the State again objected to reopening for a
19 second time?
20 A I don't remember if the State objected, but the
21 Court granted my request to have them testify.
22 Q And both Mr. Pickins and Ms. Bloe then testified to
23 your recollection consistent with the version of the
24 facts that Mr. Washington gave when he testified?
25 A Exactly.

1 Q With regards to Exhibit, I think it's No. 1, the
2 packet of police reports.
3 A Huh-huh.
4 Q Mr. Waslesski referred you to page 35 and 36, I
5 believe. That was a statement of a Leotha Lobly. I
6 would ask you to look at the pages that are, that
7 follow that, the statement of a Clifford Beasley.
8 Do you see those? One and two pages?
9 A Yes.
10 Q Not the first page or the face sheet, but the second
11 page of Mr. Beasley, are you able to read, I would
12 say the bottom half of the page, where it says
13 statement of prisoner?
14 MR. WASIELEWSKI: I'm sorry, what page are
15 we on, please?
16 MS. HEARD: I think you numbered it but I
17 can't read. It's the one you have, are looking at,
18 right there.
19 THE WITNESS: I can read pieces of it.
20 Q Okay. Let's go down five lines. Can you see where
21 it states, s-t-a-t-e-s?
22 A States after picking him up they were riding down
23 the street when somebody told him to pull over.
24 Q And you continue there?
25 A State subject that something is Washington came up--

1 Q Could it be later ID as Washington in parentheses?
2 A Yes.
3 Q Okay.
4 A --came up to the car, told the guy when asked loudly
5 if he could get--
6 Q Dropped maybe?
7 A --dropped around the the corner. Subject got in
8 carrying a something in red bag, a blue and red bag.
9 This subject said something me around the corner
10 because I got there. Stated he opened up bag and he
11 looked and saw a shotgun. Stated he tried to hurry.
12 Q Dropped guy off but--maybe--
13 A Right.
14 Q --police stopped them. Could that be?
15 A It looks like it. Police stopped them.
16 Q Had you ever made any contact with Clifford Beasley?
17 A No.
18 Q You were aware that Clifford Beasley and Leotha
19 Lobly were the two individuals who were arrested in
20 a car with Mr. Washington--
21 A Right.
22 Q --a couple of hours after the robbery of the Jolly
23 Scot Tavern?
24 A Right.
25 Q Those two individuals along with Mr. Washington were

1 taken back to the Jolly Scot Tavern?

2 A Right.

3 Q You recall that only Mr. Washington was identified

4 out of those three people?

5 A That's right.

6 Q Do you recall the cross-examination of Mr. Wagner as

7 a private investigator hired by Mr. Plantinga?

8 A Yes.

9 Q Do you recall specifically the information regarding

10 Mr. Kid having identified someone or indicated that

11 someone by the name of Washington had robbed him.

12 A Yes.

13 Q Do you remember my asking Mr. Wagner if he had a

14 memorandum or any notes that made reference to that?

15 A I don't remember.

16 Q Could you start with line 21 on page 33?

17 MR. WASIELEWSKI: For the record, could

18 you give the date of the transcript you're reading

19 from.

20 MS. HEARD: It's exhibit, did we mark this

21 as an exhibit? It's the same one you are referring

22 to, dated June 12, 1991, line 21, page 33 through

23 page 36.

24 THE WITNESS: I've read it.

25 Q With regards to whether or not Mr. Wagner had

1 generated any memorandum or reports as to his
2 conversations with Mr. Kid, isn't it correct that on
3 cross-examination he indicated that he did in fact
4 generate a report.

5 A Yes.

6 Q And isn't it also true on cross-examination that it
7 was, that Mr. Wagner testified that no where in that
8 report did it contain your client, Mr. Washington's
9 name or any reference to a Washington?

10 A That's right.

11 Q Did you then make a decision that you wouldn't go
12 any further into that information with Mr. Wagner?

13 A Yes.

14 Q Is that based, Mr. Engle, on the fact that you
15 believed that he had been sufficiently impeached?

16 A That's right.

17 Q Mr. Engle, would it be fair so say that during the
18 course of your representation with Mr. Washington
19 you had a rather tumultuous relationship?

20 A Very much so.

21 Q Were there points in time where Mr. Washington was
22 interested in having you excused or objecting aloud
23 to withdraw from his counsel?

24 A I asked him on two or three occasions to allow me to
25 withdraw, and he said, No, you're gonna finish this

1 thing for me.

2 Q Mr. Engle, do you recall, as a matter of fact at the
3 close of the trial with Mr. Washington and Mr.
4 Johnson, whether or not Mr. Washington expressed
5 displeasure with you at that point in time?

6 A No. He was very complimentary of me, telling me
7 what a great job I did on it until the verdict came,
8 and then he he became extremely unhappy. I might
9 also state, if this is helpful to both parties, that
10 I initiated two examinations as to his competency;
11 and one, this is by a psychiatrist examining him,
12 and one, polygraph expert who attempted to examine
13 him was unable to do so, and in the district
14 attorney's office then furnished an impartial one
15 because of time running short. And the polygraph
16 machine indicated he was not telling the truth.

17 Q With regards to the two examinations regarding
18 competency, those were not specifically with regards
19 to this case but another case that Mr. Washington
20 had pending at this same time; isn't that correct?

21 A One was as to the other case and one was as to this
22 case.

23 Q With regards to those examinations, were they done
24 by you at Mr. Washington's request?

25 A They were.

1 Q So it would be fair so say when Mr. Washington made
2 a request of you in your capacity as counsel, you
3 attempted to meet those requests as best as you
4 could?

5 A Always.

6 Q With regards to the list of witnesses that was
7 marked as Exhibit 2, had you had the opportunity to
8 receive that list prior to the day of the trial,
9 would you have attempted to contact those
10 individuals?

11 A Absolutely.

12 MS. HEARD: Judge, I don't have any
13 further questions.

14 THE COURT: Any redirect?

15 MR. WASIELEWSKI: Just briefly.

16 REDIRECT EXAMINATION

17 BY MR. WASIELEWSKI:

18 Q Mr. Engle, you were asked about your attempts to
19 have the sheriff serve Gola Richardson and you
20 produced something from your file; and I would like
21 to take a look at that, please.

22 A Okay.

23 Q Now, Mr. Engle, you stated that Mr. Washington did
24 tell you about the name of Gola Richardson?

25 A That's right.

1 Q And you stated that that name was included in the
2 Notice of Alibi?
3 A Right.
4 Q And do you know when that Notice of Alibi was filed?
5 A It was signed by Vonaire Washington indicating
6 approved by defendant.
7
8 (Whereupon Exhibit No. 5 was marked for
9 identification.)
10 Q Was there a date anywhere on it?
11 A My copy doesn't have the date.
12 Q Now, Notices of Alibi by statute must be filed--
13 A Wait a minute. It was April 22nd, 1991, at
14 2:25 p.m.
15 Q Okay. And the trial proceeded in the case on what
16 day?
17 A June.
18 Q Do you know the exact date?
19 A I think it was June 10th, but I'm not sure.
20 Q That's right. Now, when did you take this subpoena
21 to the sheriff to be served on Ms. Richardson? I'm
22 showing you what's been marked as Exhibit 5?
23 A I took it down there on the 11th and asked for them
24 to subpoena her for the 13th.
25 Q So you waited until the second day of trial before

1 you even took a subpoena to the sheriff to attempt
2 to achieve service through the sheriff of Gola
3 Richardson; isn't that right?
4 A I had no way of knowing what day I would need them.
5 You have the rest of what I gave you.
6 Q That's-- Yes. That's been marked as an exhibit
7 now, Mr. Engle?
8 A Okay.
9 Q Now, now you testified that Mr. Washington gave you
10 Exhibit 2, that hand-written list of witnesses on
11 the first day of trial, June 10th. Correct?
12 A Right.
13 Q And after that, the next day, the second day of
14 trial is when you went to the sheriff to attempt to
15 have Gola Richardson served with a subpoena; is that
16 correct?
17 A Right.
18 Q So at that same time you could have brought
19 subpoenas to the sheriff to be served on any or all
20 of those on that list, which is Exhibit 2; isn't
21 that true?
22 A No, it's not true. There were no addresses, and I
23 didn't know where any of the those people were.
24 Q But you testified you didn't ask Mr. Washington
25 anything about these witnesses?

1 A I was busy trying the case. I wasn't preparing for
2 a case. I had no time to do any of that.
3 Q Do you have that transcript of June 12th there, Mr.
4 Engle?
5 A Yes.
6 Q Now, in your response to questions from Ms. Heard,
7 she asked you about questions asked to this
8 investigator, Mr. Wagner?
9 A Huh-huh.
10 Q And in the course of that examination, you indicated
11 that she brought out the fact that your client's
12 name, Vonaire Washington, did not appear anywhere in
13 Mr. Wagner's report; isn't that correct?
14 A That's right.
15 Q But she brought that out only after you had had an
16 opportunity to question Mr. Wagner, and you did not
17 bring that out in your cross-examination; isn't that
18 correct?
19 A I brought out the fact that he didn't have the first
20 name of Mr. Washington.
21 Q You brought out that you did not have Mr.
22 Washington's first name?
23 A Yes.
24 Q But after you were done with your cross-examination
25 of Mr. Wagner, it was only then that Ms. Heard

1 brought out that this investigator didn't have any
2 where in his report your client's name, Washington.
3 A I think that's right.
4 Q Now, you testified that you had a competency
5 evaluation done on Mr. Washington; isn't that right?
6 A I did. Two of them.
7 Q Two different examinations?
8 A Yes. First he asked one on the abusive child, and
9 then he said, No, that wasn't what I wanted. It was
10 on this one here. So I had a second one done.
11 Q Isn't it true that Mr. Washington's actual request
12 was for some psychological counseling or help?
13 A No.
14 Q Isn't it true that Mr. Washington advised you that
15 he felt a great deal of stress, and that that's what
16 he felt led to the incident that resulted in the
17 charge of child abuse?
18 A Yes, he said that.
19 Q So isn't it correct that he wanted some kind of
20 evaluation and help and not a competency evaluation?
21 A No, that isn't what he wanted.
22 Q Did you have any question that Mr. Washington was
23 able to help you prepare for trial?
24 A There was some question in my mind, that's why I
25 asked for the psychiatric examination.

1 Q So you asked for it based on your own belief?

2 A No. He asked for it and I concurred.

3 MR. WASIELEWSKI: Thank you.

4 THE WITNESS: I'll give the two exhibits

5 back.

6 MR. WASIELEWSKI: The transcript I will

7 take. That's not been marked as an exhibit.

8 THE COURT: Oh, okay.

9 THE COURT: You'd better leave the

10 exhibits here this time.

11 MR. WASIELEWSKI: I'll give the exhibits

12 to the clerk.

13 MS. HEARD: I have no further questions.

14 THE CLERK: We're missing the list of

15 witnesses.

16 THE WITNESS: You gave it back to me, yes.

17 THE CLERK: Thank you.

18 MR. WASIELEWSKI: Ms. Heard and I don't

19 object to Mr. Engle leaving.

20 THE COURT: Fine.

21

22 Whereupon GOLA RICHARSON, called as a

23 witness herein, having been first duly sworn,

24 testify on her oath as follows:

25 THE CLERK: Ma'am, please state your full

1 name and spell your last name.

2 THE WITNESS: Gola Richardson,

3 R-i-c-h-a-r-d-s-o-n.

4 THE COURT: How do you spell your first
5 name.

6 THE WITNESS: G-o-l-a.

7 THE COURT: G-o-l-a?

8 THE WITNESS: Huh-huh.

9 DIRECT EXAMINATION

10 BY MR. WASIELEWSKI:

11 Q Ms. Richardson, I would like to direct your
12 attention to July 1990. Where did you live at that
13 time?

14 A 1852 North 24th Place.

15 Q And you continue to reside there today?

16 A Yes, I do.

17 Q And have you resided there continuously from July of
18 1990 to the present?

19 A Yes, I have.

20 Q Now, back at that time in July of 1990, did you know
21 a person named Vonaire Washington?

22 A Yes.

23 Q How long had you known him at that point?

24 A Maybe a year.

25 Q Did you have any contact with him on that date?

1 A Yes, I did.

2 Q When did you first have contact with him on that

3 date?

4 A When he came to my house that afternoon.

5 MS. HEARD: I never heard the date.

6 THE COURT: I didn't either.

7 Q I direct your attention specifically to July 15th of

8 1990; do you remember that date?

9 A July--

10 Q July 15th of 1990.

11 A The day he came to my house?

12 THE COURT: He's asking you if you

13 remember that that's the date?

14 THE WITNESS: No. I don't remember the

15 date, no.

16 Q Do you remember, well, had Mr. Washington been to

17 your house in the past?

18 A Yes, he had.

19 Q I would like to direct your attention to the most

20 recent time you saw him at your house.

21 A I can't recall no dates.

22 Q Do you remember what happened on the last day you

23 saw him?

24 A Yes, I do.

25 Q Do you know why that was the last time you saw him?

1 A Yes, I do.

2 Q Why was that?

3 A Because he was incarcerated after that day.

4 Q So on this last day you saw him. Where were you

5 when you saw him first?

6 A At my home.

7 Q And what time was it when you first saw him that

8 day?

9 A One that afternoon.

10 Q Do you recall who, if anyone else, was at your home

11 at that time?

12 A Yes.

13 Q Who was there?

14 A Me, my sister, my brother, and a friend down the

15 street.

16 Q What are the full names of those people?

17 A Sharon Brown, David Brown, Jerome Pickins.

18 Q And one of those is your brother?

19 A Yes.

20 Q Which one is that?

21 A David Brown.

22 Q And one of those is your sister?

23 A Sharon Brown.

24 Q And how long did Mr. Washington remain with you that

25 afternoon?

1 A Until six, six-thirty, seven.

2 Q Are you sure of the time or unsure?

3 A I'm sure. Pretty sure.

4 Q What did you do during that time.

5 MS. HEARD: Judge, I'm just going to
6 object. I don't understand how this is relevant
7 to--

8 THE COURT: I'm not sure either. She
9 testified at the trial, didn't she?

10 MR. WASIELEWSKI: No, she didn't. The
11 point of this testimony, Your Honor, is that there
12 was an alibi witness available that Mr. Engle failed
13 to have produced at trial and testify at trial.

14 MS. HEARD: Well, Judge, I guess it
15 doesn't-- My position is I don't really, I don't
16 know that it matters what she said if Mr. Engle
17 wasn't able to secure her. I guess if he asked
18 questions about whether she, for example, she got
19 the business card or that kind of thing.

20 THE COURT: I'm not going to retry the
21 case.

22 MR. WASIELEWSKI: Well, Judge, the point
23 that I'm trying to make here is that this is an
24 Ineffective Assistance of Counsel Motion and I have
25 to show two things: I have to show that Mr. Engle's

1 performance was below the standard of a reasonable
2 attorney, and I believe it was in his failure to
3 produce this witness, and I am going to ask her
4 questions about her availability.

5 But I also have to show that there was
6 harm or prejudice because of that ineffective
7 performance. If I don't establish that Ms.
8 Richardson is an alibi witness, then the fact that
9 she wasn't produced at trial shows no prejudice.

10 MS. HEARD: I don't know though, Judge,
11 that you have to get into the details that she would
12 testify to. I understand that he's indicated that
13 that was an alibi witness. Mr. Engle submitted a
14 Notice of Alibi that indicates that.

15 I think what we have to address is whether
16 or not she was available and whether his efforts
17 were reasonable to secure her as an alibi witness.
18 I don't think it matters for purposes of this
19 hearing what it is she would have said.

20 THE COURT: I agree. I don't think that
21 getting into the details of what her testimony would
22 have been are relevant other than the broad
23 parameters that you already have established, that
24 she was home, that he was there, and there were
25 other witnesses, and they were there until 6:30 in

1 the evening.

2 MR. WASIELEWSKI: Well, if the Court will

3 indulge me, I would just ask a few more questions.

4 THE COURT: Go ahead, if it will make you

5 feel more comfortable.

6 BY MR. WASIELEWSKI:

7 Q Was Mr. Washington continuously there between the

8 time you indicated he arrived and the time he left?

9 A Yes.

10 Q Do you recall any time when you weren't with him?

11 A No.

12 Q Do you recall what you did that afternoon?

13 A Watched television.

14 Q Do you recall anything unusual happening outside of

15 your house in your neighborhood that afternoon?

16 A Yes.

17 Q What happened?

18 A There was a gun fired down the street. Someone was

19 shooting that day.

20 Q Do you know how it was that Mr. Washington left your

21 place, whether it was on foot or in a car?

22 A Yes. Because his car didn't start that day.

23 Q So do you know how he did leave if his car wouldn't

24 start?

25 A He left walking.

1 Q Did you see him go out?
2 A Pardon me.
3 Q Did you see him leave and go out?
4 A Did I see him leave walking?
5 Q Right.
6 A Yes.
7 Q Did you see him walking beyond your front door or--
8 A He said he was going to walk around the corner to
9 see if he could get a ride to start his car.
10 Q Now, moving you up a year, I would like to direct
11 your attention to June of 1991. Were you living at
12 that same address?
13 A Yes.
14 Q Were you in Milwaukee continuously in the month of
15 June or were there times when you left?
16 A Well, I left and went to Atlanta, but that was at
17 the end of June until August, right before school
18 started, the end of August.
19 Q During that time, did you have occasion to sit in
20 the courtroom and hear testimony from a Mr. Engle?
21 A No.
22 Q Were you in the courtroom when another witness
23 testified?

24 THE COURT: He means today.

25 THE WITNESS: Today. Oh, yes.

1 Q Had you ever seen that man before other than in this
2 courtroom?
3 A No.
4 Q Did you ever receive anything that was left at your
5 house with the name of Isadore Engle on it?
6 A No.
7 Q Did you hear Mr. Engle testify that he went to your
8 house and that the door was answered by a person
9 named Robert Jones?
10 A Yes.
11 Q Do you know who Robert Jones is?
12 A No.
13 Q Did you have a telephone number, or telephone, in
14 June of 1991?
15 A No.
16 Q Did anyone ever attempt to contact you or did anyone
17 successfully contact you prior to June 13th, 1991,
18 regarding possibly being a witness in the case?
19 A No.
20 MR. WASIELEWSKI: I have no further
21 questions.
22 CROSS-EXAMINATION
23 BY MS. HEARD:
24 Q Ms. Richardson, are you aware as to whether or not
25 anyone that was residing or visiting at your

1 residence in June of 1991 used the name Robert
2 Jones?
3 A Maybe. Me and my sister, we live together, so I
4 don't know. I don't know a Robert Jones.
5 Q You don't know anyone named Robert Jones?
6 A No.
7 Q And you don't, it's your testimony that you left
8 town in June but it wasn't until the end of June?
9 A Right. It was the end of June.
10 Q So it couldn't have been around June 11th or
11 June 13th?
12 A No.
13 Q And you heard the testimony then of Mr. Engle--
14 A Right.
15 Q --that the sheriff's department attempted to serve
16 you with a subpoena?
17 A Right.
18 Q But that a black male, no name given, indicated that
19 you had left town and you would be gone for a week?
20 A Right.
21 Q Do you know who that person was?
22 A No.
23 Q Did anyone at all advise you that someone from the
24 sheriff's department had been to your house?
25 A No.

1 MS. HEARD: I don't have any further
2 questions.

3 MR. WASIELEWSKI: I have nothing further
4 of this witness, Judge.

5 THE COURT: Okay. Thank you.

6 MR. WASIELEWSKI: Judge, I would request a
7 five minutes recess, please.

8 THE COURT: Okay. It's Christmas,
9 everyone feels generous. Let's make it ten minutes.

10 MR. WASIELEWSKI: Okay.

11 (Recess taken.)

12 THE COURT: Are you ready to proceed, Mr.
13 Wasielewski?

14 MR. WASIELEWSKI: Yes. I would call David
15 Brown.

16
17 DAVID BROWN, called as a witness herein,
18 having been first duly sworn, testify on his oath as
19 follows:

20 THE CLERK: Sir, please state your full
21 name and spell your last name?

22 THE WITNESS: David L. Brown, B-r-o-w-n.

23 DIRECT EXAMINATION

24 BY MR. WASIELEWSKI:

25 Q Mr. Brown, I would like to direct your attention and

1 your memory back to a date July 15th, 1990. Where
2 were you living on that date?
3 A 1852 North 24th Place.
4 Q Who were you living with there?
5 A Pardon me.
6 Q Who were you living with there?
7 A Two of my sisters, Sharon Brown and Gola Richardson.
8 Q On July 15th, 1990, do you recall whether you were
9 home?
10 A Yes, I was.
11 Q Do you know the person seated next to me?
12 A Yes. Washington.
13 Q Vonair Washington?
14 A Right.
15 Q Did you know him back on July 15th of 1990?
16 A I met him that year when he first started seeing my
17 sister.
18 Q You knew him a year before then?
19 A I met him that year when he first started seeing my
20 sister. He used to come over to the house a couple
21 of times.
22 Q Did he have occasion to come over to the house on
23 that date, July 15th of 1990?
24 A Well, I was upstairs watching TV. When I come
25 downstairs--

1 Q Please, listen to the question, and please try to
2 answer the question.
3 A Okay.
4 Q Do you recall when he came over to your house on
5 July 15th, 1990?
6 A Yes. He was there.
7 Q Do you recall what time it was when he arrived?
8 A I don't know when he arrived. All I know is when I
9 saw him.
10 Q When did you first see him on that day?
11 A Around noon, twelve or one o'clock in the afternoon.
12 Q Who else was home at that time?
13 A My sister Gola.
14 Q Anyone else?
15 A My sister Sharon.
16 Q Was anybody else present when you first saw Mr.
17 Washington?
18 A Jerome Pickins stay down the street. He come down
19 later on about five or six minutes after I come
20 downstairs.
21 Q You stated you were upstairs?
22 A Yes.
23 Q Is that all one house or is this two units and a
24 duplex?
25 A It's two units up and down. It's not a duplex.

1 Q It's a one-family house.

2 Q And you lived upstairs at the time?

3 A Yes.

4 Q And your sisters, do they live upstairs or

5 downstairs?

6 A Me and Gola stayed upstairs, and my older sister

7 Sharon, she stayed downstairs.

8 Q So what did you do that afternoon?

9 A Well, I was upstairs watching TV. I come down and

10 Washington and Gola was on the sofa watching TV; and

11 me, Vonaire, and Jerome, we was sitting on the front

12 porch. It was raining.

13 Q How long were you with Mr. Washington on that day.

14 A He stayed all that afternoon, say about four or five

15 o'clock that afternoon, that evening, until about

16 one o'clock that afternoon.

17 Q You stated there was a time you were out on the

18 porch?

19 A Yes.

20 Q And he was with you, Mr. Washington?

21 A Yes.

22 Q And someone else was with you or no?

23 A Jerome Pickins.

24 Q And while the three of you were out there, did

25 anything unusual happen?

1 A Other than it was raining that day, it was shooting
2 down the street.
3 Q Would you be able to describe that shooting if I
4 were to ask you?
5 MS. HEARD: Judge, I'm going to object.
6 THE WITNESS: Yes.
7 MR. WASIELEWSKI: I'm not going to ask him
8 to describe it.
9 MS. HEARD: I just object to this line of
10 questioning.
11 BY MR. WASIELEWSKI:
12 Q Did you see how Mr. Washington left?
13 A He left walking.
14 Q Now, I would like to bring you up a year, about a
15 year, to a date in June, specifically the days of
16 June 10th through the 13th. Were you, where were
17 you living at this time?
18 A 1852 North 24th Place.
19 Q And were you living there continuously since July of
20 1990, or were there--
21 A I was, I was living there up until about a couple of
22 months ago. I moved from my mother.
23 Q You're talking about a couple of months before
24 today's date here in court?
25 A Right.

1 Q Did anyone attempt to contact you regarding the
2 possibility of being a witness in the case?
3 A I talked to one guy last year in the summer, before
4 the trial, before his case, I don't know which one,
5 what it was, but he talked to me on front porch
6 about what happened that day, and I told him, but he
7 never tried to contact me or anything about coming
8 to court.
9 Q Was that person--
10 A He was an investigator for some attorney, that's all
11 he said.
12 Q Do you remember his name?
13 A No, I don't.
14 Q Would you know it if you heard it?
15 A No, I wouldn't.
16 Q Did you see a gentleman testify earlier today, Mr.
17 Isadore Engle?
18 A Yes.
19 Q Was it him?
20 A No.
21 Q Other than that person you talked about, did anyone
22 contact you?
23 A No.
24 Q Did you ever receive any notes or written message?
25 A No.

1 Q You indicated your sister, Sharon, lives--
2 A Eighteen--
3 Q --lives with you?
4 A Yes.
5 Q Was she present with you on July 15th, 1990?
6 A Yes. She was in the house; she never come out on
7 the porch with us.
8 Q And did she live there last summer in June.
9 A Yes.
10 Q Did she live there continuously?
11 A Yes. She been staying there all the time.
12 Q Where is she today?
13 A She had a few days to serve at the House of
14 Correction.
15 Q So that's where she is right now?
16 A Right.
17 MR. WASIELEWSKI: Thank you, Mr. Brown.
18 CROSS-EXAMINATION
19 BY MS. HEARD:
20 Q Prior to today's date, Mr. Brown, you've never seen
21 Mr. Engle, the attorney that testified earlier?
22 A No, I haven't.
23 Q So you never talked to him at the residence of 1852
24 North 24th Street or Place and told him that you
25 were Robert Jones?

1 A No.

2 Q Do you know anyone by the name of Robert Jones?

3 A No, I don't.

4 Q Did you ever talk to any Milwaukee County Sheriff's

5 deputies who came to your house at 1852 North 24th

6 Place?

7 A I talked to one guy who said he was an investigator

8 for an attorney, and he asked me about the incident

9 that day, and I told him.

10 Q But never like a deputy sheriff in the uniforms that

11 these people are wearing?

12 A No.

13 Q To your knowledge, back in July of 1990 and through

14 June of 1991, were there any other black males that

15 lived at the residence besides you?

16 A My sister has a boyfriend. Maybe somebody came to

17 the door. He had a reason not to tell them his real

18 name or something and told them whatever, but other

19 than that, I don't know anybody else who would stay

20 there.

21 Q And you don't know anybody that you can think of

22 named Robert Jones?

23 A No, I don't.

24 MS. HEARD: Okay. No further questions.

25 MR. WASIELEWSKI: Nothing further.

1 THE COURT: Thank you.

2 MR. WASIELEWSKI: Defense calls Vonaire
3 Washington.

4
5 VONAIRE WASHINGTON, called as a witness
6 herein, having been first duly sworn, testified on
7 his oath as follows:

8 THE CLERK: Sir, please state your full
9 name and spell both names.

10 THE WITNESS: My name is Vonaire
11 Washington, V-o-n-a-i-r-e, Washington,
12 W-a-s-h-i-n-g-t-o-n.

13 THE CLERK: Thank you.

14 DIRECT EXAMINATION

15 BY MR. WASIELEWSKI:

16 Q Mr. Washington, in July of 1990 you came to be
17 charged with armed robbery in the case that this
18 hearing is about; is that right?

19 A Yes, sir.

20 Q Now, were you able to hire your own attorney at the
21 beginning?

22 A Yes, I was.

23 Q And which attorney was that?

24 A Mr. Tarly Dall.

25 Q Was that attorney able to continue to represent you

1 until the conclusion of the case?

2 A No, sir.

3 Q What happened?

4 A I believe he lost his license to practice law.

5 Q And did you obtain another attorney after that?

6 A Yes, sir.

7 Q Were you able to hire that other attorney?

8 A No.

9 Q Why is that?

10 A I was indigent.

11 Q So this other attorney then was appointed to

12 represent you?

13 A Yes, sir.

14 Q Do you recall when that was?

15 A February 1991.

16 Q And that attorney was Isadore Engle?

17 A Yes, sir.

18 Q Are those are the only two attorneys who represented

19 you in this case prior to my taking over the case?

20 A Yes, sir.

21 Q With regard to Mr. Engle, did he, well, when he

22 first took over your case, were you in custody?

23 A Yes, sir.

24 Q Where were you in custody at the time?

25 A In the Milwaukee County Jail.

1 Q Did he come to see you in the jail?
2 A Yes, sir.
3 Q How many occasions to the best of your memory?
4 A Once.
5 Q I'm sorry?
6 A Once.
7 Q And how long were you in the county jail while Mr.
8 Engle represented you?
9 A For about two weeks.
10 Q And then where were you?
11 A In the House of Correction.
12 Q You remained in custody?
13 A Yes, sir.
14 Q Did you remain in custody up until the trial date?
15 A Yes, sir.
16 Q How long were you out at the House of Corrections
17 while Mr. Engle represented you?
18 A About five or six months.
19 Q And during that time, how many times do you remember
20 Mr. Engle coming to visit you, if any?
21 A Once.
22 Q I'm sorry, I couldn't hear you?
23 A Once.
24 Q Now, during the whole time Mr. Engle represented
25 you, how many times did you have occasion, if at

1 Q all, to speak with him by telephone?
2 A None.
3 Q You never spoke with him by telephone?
4 A No.
5 Q Did you ever attempt to speak with him by telephone?
6 A Yes, sir.
7 Q On how many occasions?
8 A About fifteen, twenty times.
9 Q Did you hear Mr. Engle testify?
10 A Yes, sir.
11 Q Did you hear him name off fourteen or fifteen dates
12 that he claims to have had contact with you?
13 A Yes, sir.
14 Q Is it correct that he had contact with you fifteen
15 or fourteen times while he represented you?
16 A No, sir.
17 Q How many times in total did he have contact with
18 you?
19 A Four or five times.
20 Q You said there was one time at the jail and one time
21 at the House of Correction.
22 A Yes, sir.
23 Q When were the other two or three times?
24 A That was when I was going to court for the other
25 case, child abuse case.

1 Q So you're counting contacts with him when you went
2 to court?
3 A Yes, sir.
4 Q Now, when you met with him, on any of these
5 occasions, did you tell him about where you were and
6 what you did on July 15th of 1990?
7 A Yes, sir.
8 Q And where did you tell him you were?
9 A I told him I was at 1852 North 24th Place.
10 Q And who did you tell them was with you?
11 A Gola Richardson, David Brown, Sharon Brown, and
12 Jerome Pickins.
13 Q Do you recall when you told Mr. Engle this? You
14 told him in person or--
15 A I told him in person.
16 Q Do you remember where you were?
17 A I was in the county jail.
18 Q Do you recall whether Mr. Engle was making any notes
19 while you were speaking to him?
20 A I don't recall.
21 Q Were you able to-- You told him these things while
22 you were in the county jail, you said?
23 A Yes, sir.
24 Q So that was during the first two weeks that Mr.
25 Engle represented you?

1 A Yes, sir.

2 MR. WASIELEWSKI: There is a document

3 which has been marked as Exhibit 2; is that

4 available?

5 Q Mr. Washington, do you now have Exhibit 2 in front

6 of you?

7 A Yes.

8 Q Did you write that?

9 A Yes, I wrote the names down.

10 Q And the numbers?

11 A No. The numbers are not my handwriting. Just 11,

12 12, 13, and 14 there.

13 Q When did you write the names down?

14 A I believe it was June 10th.

15 Q That's the first day of your trial?

16 A Yes, sir.

17 Q You're talking about 1991?

18 A Yes, sir.

19 Q Why did you write them down?

20 A Mr. Engle asked me to.

21 Q Was this the first time that you told him

22 specifically of the names on there, not all of them

23 specifically, Gola Richardson, David Brown, or

24 Sharon Brown?

25 A No.

1 Q Or Jerome Pickins?

2 A No.

3 Q Those names, are those names or are those not names

4 that you told Mr. Engle about.

5 A Yes, they are. They're names that I told him about

6 before.

7 Q Did you ask Mr. Engle to contact the names that I

8 just named: Mr. Brown, Ms. Brown, Ms. Richardson,

9 Mr. Pickins?

10 A Yes, sir.

11 Q And did he indicate that he would do so or did he

12 not?

13 A He did not.

14 Q Now, Mr. Pickins ended up coming to court to testify

15 for you during the course of your trial.

16 A Yes.

17 Q Did you have anything to do with him showing up here

18 to testify?

19 A Yes, I asked him to.

20 Q How did you do that?

21 A I saw him in the House of Correction, and I

22 recognized him as the person that I was with that

23 day--

24 Q And you asked him to come to court when you saw him

25 in the House of Correction or at some later time?

1 A That day. I asked him to come to court.
2 Q Did you contact him again at all, as the trial date
3 approached?
4 A Yes.
5 Q How did you make that contact?
6 A On three-way, on the telephone.
7 Q How did does the three-way work?
8 A Well, I have to call my family members collect and
9 then they called him.
10 Q And then you, your family member, and the third
11 party are all on the line together?
12 A Yes, sir.
13 Q And through this mechanism you contacted Mr.
14 Pickins?
15 A Yes, sir.
16 Q Do you recall what day you did that?
17 A No. It was--
18 Q Do you recall whether or not it was--
19 A I think it was the first or second day of trial.
20 Q With regard to Ms. Bloe, did you contact her in that
21 same way or in some other way?
22 A I contacted her on the phone also.
23 Q Did you ask Mr. Engle to contact these witnesses or
24 to subpoena them on your behalf?
25 A Yes, sir.

1 Q When did you first do that?

2 A It was in February of '91.

3 Q Did Mr. Engle agree to do that or did he not agree?

4 A He said he would investigate.

5 Q Now, when you gave Mr. Engle these names of

6 witnesses, I'm talking about the ones we've been

7 talking about, Sharon Brown, David Brown, and Jerome

8 Pickins, Sandra Bloer, and Gola Richardson.

9 A Yes.

10 Q Did you give Mr. Engle addresses and phone numbers

11 of these witnesses as well as their names?

12 A Yes.

13 Q And do you recall whether or not Mr. Engle wrote

14 those down at the time you gave it to him?

15 A I don't recall.

16 Q Did you hear Mr. Engle testify that he requested a

17 competency evaluation be done for you based on your

18 request?

19 A Yes, sir.

20 Q Did you want him to request a competency evaluation?

21 A Yes, but only on one of the cases.

22 Q Which one of the cases?

23 A On the physical abuse case.

24 Q Then why, what did you expect to get out of this

25 competency evaluation?

1 A I expected it to justify my reasons for doing it. I
2 felt I wasn't entirely responsible.
3 Q But did you request any kind of a competency
4 evaluation or any kind of psychological or
5 psychiatric evaluation with regard to this robbery
6 case?
7 A No.
8 Q Was one performed anyway?
9 A Yes. Well, as soon as the officer came there he
10 told me which case that the examination was
11 pertaining to and I told him that it was pertaining
12 to wrong case.
13 Q Now, you testified at your trial. Correct?
14 A Yes, sir.
15 Q Before you testified, did you have a conference with
16 Mr. Engle--
17 A No, sir.
18 Q --to discuss what your testimony would be?
19 A No, sir.
20 Q Did he ever tell you what questions he intended to
21 ask you?
22 A No, sir.
23 Q Did he ever give you any advice on how you should
24 respond to questions?
25 A No, sir.

1 Q Did he ever give you any guidance as to what you
2 might expect from your sitting in the witness stand?
3 A No, sir.
4 Q Was there any time when you asked the Court to give
5 you a different attorney other than Mr. Engle?
6 A Yes, sir.
7 Q When did that occur?
8 A Before the trial started.
9 Q And what was your reason for requesting a different
10 attorney?
11 A First of all, he didn't investigate the alibi, and
12 we had disagreed about a motion he said he was going
13 to file.
14 Q You wanted him to file it, or you didn't want him to
15 file it?
16 A I wanted him to file a motion.
17 Q What motion was that?
18 A To suppress the identification.
19 Q And did you discuss that issue of suppression of
20 identification with Mr. Engle before the trial
21 started?
22 A Yes, sir.
23 Q Do you recall when that was?
24 A It was the day that he had me sign a Notice of
25 Alibi.

1 Q Did he explain to you whether or not he, did he tell
2 you whether or not he intended to file a motion to
3 suppress the identification?
4 A Yes. He said he wouldn't.
5 Q I'm sorry. He would or would not?
6 A He said he wouldn't.
7 Q Other than his failure to investigate and his
8 failure to file a motion, was there any other reason
9 you wanted a different attorney?
10 A Yes. Because he had asked for the psychiatric
11 examination on the wrong case.
12 Q And your request for an attorney was denied?
13 A Yes.
14 Q Did you make this request directly to the Court?
15 A Yes, sir.
16 Q Mr. Engle indicated that at the end of the case,
17 when the case went to the jury, you indicated you
18 were satisfied with his representation; is that a
19 correct statement?
20 A No, sir.
21 Q What was your opinion of his representation at that
22 point?
23 A Well, he wasn't, he wouldn't talk to me. He
24 wouldn't, he disregarded everything I said. He
25 wouldn't pay any attention to me.

1 Q You indicated you were able to reach two witnesses,
2 Sandra Bloe and Jerome Pickins on three-way telephone
3 telephone conference and have them come to court.
4 Did you make any attempt to contact the witnesses
5 Sharon Brown and David Brown or Gola Richardson?
6 A Yes.
7 Q Were you successful?
8 A They didn't have a phone.
9 Q They, I'm sorry?
10 A They didn't have any phone.

11 MR. WASIELEWSKI: Nothing further.

12 CROSS-EXAMINATION

13 BY MS. HEARD:

14 Q Mr. Washington, you heard Mr. Engle testify back at
15 the first hearing date that we had on November 16th
16 that he met with you on February 6, February 7th,
17 February 11, February 13th, February 23rd, March
18 2nd, 6, and 15th, April 11th, 14th, and 22nd, May
19 15th, excuse me, May 14th, June 4th, June 7th. Is
20 it your testimony that that is not true? Mr. Engle
21 is incorrect?

22 A The only days that I can recall is one day in
23 February, one day when he came to the House of
24 Correction. I'm not sure what month it was and the
25 only other time I saw him when I was going to court

1 Q for the physical abuse case, and we didn't discuss
2 matters with regard to the armed robbery case.
3 Q So if Mr. Engle testified that he he saw you at
4 least fourteen times, he's incorrect?
5 A Yes. That's incorrect.
6 Q With regards to your Notice of Alibi, you indicate
7 that you signed or Mr. Engle had you sign a Notice
8 of Alibi in April; is that right?
9 A Yes.
10 Q And on that Notice of Alibi was the name of Gola
11 Richardson; is that right?
12 A Yes.
13 Q Was that the only name that was on that Notice of
14 Alibi?
15 A Yes. But he said he was going to amend it. He was
16 going to take it home and add the, he was going to
17 change the time because my time approximation was, I
18 wasn't sure of the time, but he said he was going to
19 add the name of the witnesses, and he was going to
20 amend the time.
21 Q How did he get the name of Gola Richardson, he being
22 Mr. Engle?
23 A I told him.
24 Q And the exhibit that's marked as No. 2, that has
25 fourteen names on there, that is your handwriting;

1 and those are additional names that you had given to
2 Mr. Engle in writing on the day of trial; is that
3 right?
4 A No. Some of this, the numbers, the entire thing is
5 not my handwriting.
6 Q But the the fourteen names that are listed as
7 witnesses, that's your handwriting?
8 A Yes, ma'am.
9 Q And it's your testimony that you gave Mr. Engle
10 those names prior to the June 10th day, which was
11 the first day of trial?
12 A Not all of them.
13 Q And he didn't act on them?
14 A Not all of them.
15 Q It's your testimony you gave him more than Gola
16 Richardson's name though; is that right?
17 A Yes, ma'am.
18 Q Now, you signed off on the alibi, and at the time
19 that you signed you say the only name on there was
20 Gola Richardson, and you believe Mr. Engle was going
21 to amend or change the time frame on that Notice of
22 Alibi?
23 A Yes. He said he was going to have me sign it. Then
24 he was going back to his office to amend it, rather
25 than going to amend it and coming back out there and

1 have me sign it again.

2 Q And it's your testimony that at that point in time
3 you had given him all of these, or at least a
4 portion of these other people's names, who could
5 alibi you on the date in question?

6 A Yes, ma'am.

7 Q And did he tell you he was going to add that to this
8 piece of paper also?

9 A He said that he was going to add five names. He was
10 going to add four, which is a total of five.

11 Q On Exhibit 2, which is the piece of paper that you
12 indicate you wrote the names but not necessarily
13 some of the numbers, you say that you did that on
14 the day of trial because Mr. Engle asked you to?

15 A Yes, ma'am.

16 Q Did you, did he ask you to give him any information
17 so that he could contact those people?

18 A Yes, ma'am.

19 Q And did you do that?

20 A No. He was rather busy, and he never did get around
21 to it.

22 Q You didn't write it then on a piece of paper, for
23 example, phone numbers where these people could be
24 reached or addresses?

25 A No ma'am.

1 MS. HEARD: I don't have any further
2 questions of this witness.

3 REDIRECT EXAMINATION

4 BY MR. WASIELEWSKI:

5 Q Mr. Washington, with regard to Exhibit 2, you said
6 Mr. Engle requested that you make a list of
7 witnesses?

8 A Yes.

9 Q And you say he also requested addresses and phone
10 numbers or he didn't?

11 A I assume he already had them. I gave it to him
12 before.

13 Q Did he indicate a reason why he wanted a list of
14 witness on the first day of trial?

15 A No. He asked me to write them down, so that he
16 could-- He asked me to write them down again.

17 Q When the trial began, do you recall whether a list
18 of witnesses was read to the jury?

19 A No.

20 THE COURT: Were all the people whose
21 names were on Exhibit 2 going to be alibi witnesses?

22 THE WITNESS: No.

23 Q Specifically, which of those names, just so it's
24 clear on point two, did you believe were alibi
25 witnesses or witnesses that would support your

1 alibi? MS. 43722 12-1-76 11:15 AM

2 A Just Gola Richardson, Sharon Richardson, David

3 Brown, and Sandra Bloo. 11:20 AM

4 Q Any others?

5 A Jerome Pickins. 11:22 AM

6 Q Any others?

7 A Leatha Lobly. Lapage Humphrey.

8 Q I'm sorry?

9 A Lapage Humphrey. 11:23 AM

10 THE COURT: Were they all at the house

11 too? 11:24 AM

12 THE WITNESS: No.

13 Q Which of those witnesses that you just named lived

14 at the house at 1852 North 24th Place?

15 A Sharon Richardson, Gola Richardson and David Brown.

16 MR. WASIELEWSKI: Nothing further.

17 THE COURT: I guess I don't understand.

18 How are those other people going to be alibi

19 witnesses?

20 THE WITNESS: Well, the four that lived

21 there were the the four that I just named. Jerome

22 Pickins had came over after a while. These other

23 people, him, Michael Cook and Lapage Humphrey, that

24 were involved in the shootout down the street.

25 THE COURT: Thank you.

1 MR. WASIELEWSKI: I have no further
2 testimony to present, Your Honor.

3 THE COURT: The petitioner rests?

4 MR. WASIELEWSKI: With regard to evidence,
5 yes.

6 THE COURT: Does the State intend to offer
7 any testimony?

8 MS. HEARD: No.

9 MR. WASIELEWSKI: Judge, addressing the
10 motions for the purposes of argument, my first
11 motion is based on ineffective assistance of
12 counsel. I believe the standard has been set forth
13 on numerous cases.

14 And I believe basically, as I indicated
15 during the course of this hearing, I believe I must
16 establish two things: One is that Mr. Engle's
17 performance fell below the reasonable standard of
18 performance of a reasonably competent criminal
19 defense attorney.

20 And I also have to show that, as a result
21 of that substandard performance, Mr. Washington was
22 subjected to prejudice. The prejudice prong doesn't
23 mean that the outcome must have been different, but
24 only that it may have. The substandard performance
25 may have affected the outcome, or phrased another

1 way, the Court says that it may give rise to a
2 question of the reliability of the result of a
3 trial.

4 The testimony here may have been muddled,
5 but I think this comes down to two main points here
6 with regard to the witnesses: lack of investigation
7 and the lack of producing witnesses here.

8 First of all, with regard to Leatha Lobly.
9 What happened here, Judge, is when Mr. Washington
10 was stopped and arrested, in the hour or two after
11 this robbery occurred, he was with Leatha Lobly and
12 he was with Clifford Beasley. Leatha Lobly stated to
13 Officer Hudlet--or Detective Hudlet--in a statement
14 which I cross-examined Mr. Engle about, that's in
15 Exhibit 1, pages 35 and 36. He stated that somebody
16 named Shorty G. approached the car before they had
17 any contact with Mr. Washington and Mr. Lobly stated
18 that Shorty G. handed a gym bag over which turned
19 out to contain these shotguns.

20 And these shotguns were introduced against
21 Mr. Washington at trial, and Mr. Lobly was
22 apparently never contacted, never subpoenaed, never
23 interviewed. In fact, Mr. Engle testified he didn't
24 even bother because he didn't understand the
25 handwriting of Leatha Lobly's statement.

1 I'm sure Ms. Heard will point out, if I
2 don't, that the other occupant in the the car that
3 was arrested along with Mr. Washington, Clifford
4 Beasley, had a slightly different version, where he
5 attributes this bag, I believe, to Mr. Washington, I
6 believe. Ms. Heard brought that out, or tried to,
7 in her cross-examination of Mr. Engle, but this
8 isn't a motion for ineffective prosecution.

9 It's a motion for ineffective assistance
10 of defense counsel, and I believe that not figuring
11 out what the witness's statement was, right off the
12 bat, is substandard performance. He never took any
13 actions to try to decipher this statement, and I
14 think I could read it, Judge. I think if you look
15 at it, you'll be able to read it. And you'll see
16 that this is an exculpatory statement of a witness
17 that was never interviewed, never subpoenaed, never
18 testified, and the jury heard nothing about it.

19 Why Mr. Beasley wasn't called by the
20 prosecution, there is nothing in the record to
21 indicate. Maybe Ms. Heard has an opinion about
22 that, maybe she doesn't, but there is no evidence as
23 to not really raising that question. I think that
24 in itself was ineffective assistance of counsel.

25 But I also think perhaps even more

1 detrimental to Mr. Washington's defense was the
2 failure, almost completely, to investigate and
3 present an alibi defense.

4 Mr. Washington did testify in his own
5 behalf, and if you look at the testimony on the
6 transcript of June 12th, you'll see that he
7 testified for, I think, about fifteen pages. And
8 within the first page or two all those names of
9 those alibi witnesses came forth.

10 And I find it's completely impossible that
11 Mr. Engle never heard these names before; that all
12 of a sudden they're there on the witness stand; this
13 whole thing came up for the first time. I think
14 that's just unbelievable, incredible testimony, and
15 I'm asking this Court to so find.

16 Everything here points to a lack of
17 investigation. Mr. Engle says that he knocked on
18 the door three times trying to find Gola Richardson,
19 and yet two of the other alibi witnesses who
20 testified today lived at that very same address. He
21 never encountered any of them either.

22 He encountered some man by the name of
23 Robert Jones. But I find it absurd that Mr.
24 Washington told Mr. Engle the name of Gola
25 Richardson and stopped right there without saying

1 there were two other persons who also lived there,
2 who were also present on the date of this robbery
3 and who also can verify the alibi.

4 What was or wasn't an alibi defense
5 presented, Judge, was presented only due to the
6 efforts of Mr. Washington. He told you how he
7 contacted Jerome Pickins by telephone on the
8 three-way conference call and how he also contacted
9 Sandra Bloe.

10 Ms. Bloe can only verify the alibi
11 peripherally, Judge. She told the jury how she
12 loaned Mr. Washington her car in the early afternoon
13 so he could go over to Ms. Richardson's house, and
14 how she paged him in the later afternoon. And Mr.
15 Washington called her and the car didn't work. She
16 wasn't actually present to actually verify the
17 alibi. I don't understand that. The only person
18 who testified to that effect was Mr. Pickins.

19 Mr. Washington told the jury about Gola
20 Richardson; he told the jury about David Brown. He
21 told the jury about Sharon Brown, who we've heard
22 today, even though we didn't hear from her, was also
23 living there and was available and is in this county
24 in custody right now. So the jury would necessarily
25 wonder, if these three people were there, why didn't

1 we hear from them.

2 Well, Judge, the reason we didn't hear
3 from them was because Mr. Engle was ineffective in
4 finding them; and Mr. Engle was ineffective in
5 failing to even attempt to subpoena them; and he was
6 ineffective in presenting their testimony. He
7 didn't present their testimony.

8 Even the testimony he did present from the
9 two witnesses that Mr. Washington got to court to
10 his own on accord, if the Court looks at the
11 testimony there, and particularly the direct
12 examination by Mr. Engle, the testimony takes
13 roughly three pages for each witness. And I think
14 the nature of the question shows that the questions
15 were asked with little or no insight into where this
16 testimony was actually going, because, I submit to
17 this Court, Mr. Engle didn't know where these
18 witnesses were going to go with their testimony
19 because he didn't prepare. He said he had a half an
20 hour with regard to each of them. I believe that's
21 perhaps an optimistic recollection of how much time
22 he spent preparing for those witnesses, and I think
23 that's clear if you read the transcript.

24 Looking at how Mr. Engle-- Well, Mr.
25 Engle can see at least by April, when he filed the

1 Notice of Alibi, he was aware of Ms. Gola Richardson
2 potential use as an alibi witness. So what does he
3 do? Well, he claims he went three times to this
4 house but never found her. But then to top it all
5 off, he sent the subpoena out to her. And look when
6 he did he it, Judge. This trial ran from June 10th
7 to June 13th; and it was on the second day of trial,
8 if you'll notice Exhibit 5, that subpoena was sent
9 to Gola Richardson, and it's date stamp, June 11,
10 the second day of trial. That's when he first took
11 this subpoena to be served by the sheriff.

12 Mr. Engle wasn't on top of this case. He
13 was nowhere near prepared to try it. He testified
14 when he got this witness list, he made no attempt to
15 get more time. He made no request for an
16 adjournment. He didn't even present to the Court
17 the problem he felt he faced being unprepared.

18 He wants to put the blame for that on Mr.
19 Washington, but I just don't think that flies, Your
20 Honor. I think Mr. Engle testified as best he could
21 to make himself look prepared. But even his own
22 admissions, being unable to read the police report
23 and certainly the only subpoena he filed for service
24 on the second day of trial, nothing here shows any
25 preparation. The fifteen contacts with Mr.

1 Washington, if that were true, would be truly
2 remarkable, Judge, over a four-month period, all in
3 person.

4 I think Mr. Washington has been wronged by
5 the way his defense was conducted, and I'm asking
6 this Court to set aside the judgment of conviction,
7 vacate it, and reschedule this case for a new trial
8 or a new jury with new defense counsel, be it me or
9 some other counsel, Your Honor.

10 THE COURT: Ms. Heard?

11 MS. HEARD: Judge, I don't think that
12 defense has met their burden here. What they're
13 asking us to do is just to totally disregard
14 everything that Mr. Engle has told you and to not
15 give credence to any of it. The defense suggests
16 that Mr. Engle didn't meet, in fact, with Mr.
17 Washington on these fourteen or fifteen occasions
18 where Mr. Engle indicated he did and that the
19 majority of them were in person with two or three of
20 them being by phone.

21 It's interesting that Mr. Engle files a
22 Notice of Alibi, only includes Ms. Richardson's
23 name. Mr. Washington signs off on that, but Mr.
24 Washington's explanation of that is that he gave Mr.
25 Engle these other names back in April when he filed

1 this Notice of Alibi, and Mr. Engle was going to
2 amend it and then file it with the Court.
3 I don't find it hard to believe, or
4 impossible, that Mr. Engle indicates that he went to
5 the residence three times; first time being met by
6 an individual who identified himself as Robert
7 Jones. No one at the residence knows who Robert
8 Jones is, although they indicate there may have been
9 someone there who could have answered the door and
10 talked to Mr. Engle. That information was never
11 forwarded to Ms. Richardson, although Mr. Engle
12 indicates he left a card.

13 He went back on two other cases, that he
14 couldn't make contact with her. He indicates there
15 was no phone at the residence; Mr. Washington has
16 testified to and Ms. Richardson as corroborated.

17 Mr. Engle indicates that the list that we
18 marked as Exhibit 2 was something he received from
19 this defendant on the day of trial. The defendant
20 indicates that is because Mr. Engle requested it on
21 the day of trial. That to me would be impossible if
22 he saw him fourteen or fifteen times and filed a
23 Notice of Alibi for an experienced defense counsel
24 to ask on the day of trial, for a witness list on
25 the day of trial that included fourteen or fifteen

1 people with no names--or addresses--which in effect
2 means he has no way to contact these people. That
3 is not logical and doesn't make sense.
4 I don't think that there is any problem
5 with the way that Mr. Engle did subpoena Ms.
6 Richardson. He subpoenaed her and curiously enough
7 when Milwaukee County Sheriff's Department go to
8 serve that subpoena, they encounter a black male, no
9 identity given, and he indicates Ms. Richardson
10 would not be available for a week. I guess we're to
11 disbelieve that as we are to disbelieve this person.
12 Robert Jones never made contact with Mr. Engle
13 either. I don't know what purpose Mr. Engle would
14 have in coming to this Court, in saying these things
15 if, in fact, they weren't true. There can be--
16 Counsel has alluded to other strategic
17 things that he's taken issue with; for example, the
18 investigator, Mr. Wagner, and the direct examination
19 of the two alibi witnesses who were presented and
20 those are that-- Judge, that's strategic
21 differences. He is, with hindsight by Mr.
22 Wasielewski, that he may have conducted differently
23 or that I may have conducted differently on
24 cross-examination or direct examination that is not
25 the standard, and that doesn't give rise to

1 ineffective assistance of counsel claim or a finding
2 by this Court that Mr. Engle should be found
3 ineffective.

4 As to prejudice, there has been no deficit
5 performance that I can concede on Mr. Engle's part
6 that in any way prejudiced Mr. Washington's defense.
7 His defense, it appears from day one, when he spoke
8 to Mr. Engle was that he wasn't there. And he had
9 an alibi and attempts were made.

10 I, of course, didn't know about these
11 fourteen or fifteen witnesses, but an alibi defense
12 was put on and was presented to a jury. The jury
13 listened to all the testimony, and the jury
14 determined that--obviously they didn't believe that
15 or Mr. Washington's version of the facts, and he was
16 found guilty.

17 I don't think there has been a showing of
18 substantial deficiency in Mr. Engle's representation
19 of the case, nor do I see where there has been any
20 prejudice to this defendant. I don't believe that
21 the defendant has met his burden, and I would ask
22 that you deny his motion.

23 THE COURT: Anything else, Mr.
24 Wasielewski?

25 MR. WASIELEWSKI: Yes. One hotly

1 contested point is how often did Mr. Engle meet with
2 Mr. Washington. And however many times it was
3 Judge, in my practice, I couldn't survive if I
4 didn't write down the facts. I can't say what all
5 defense attorneys do or have to, to competently
6 represent clients, but I find it astonishing that he
7 wasn't able to produce any notes, although I asked
8 him repeatedly today and on November 15th to show me
9 what notes do you have with regards to Mr.
10 Washington's version of what happened on the date of
11 this offense. Mr. Washington-- I just can't
12 believe that any lawyer could fail to write that
13 down, fail to make a record of that; and Mr. Engle
14 did fail.

15 With regard to these contacts with Ms.
16 Richardson's house and some man there and his
17 attempts to contact her, I think by testifying that
18 he went out there to try and find her-- Well,
19 that's commendable if it's true. But I think part
20 of being a competent defense attorney includes using
21 the resources that are available to a defense
22 attorney, not just your own legs and your own brain.

23 Anybody who handles cases by appointment
24 through the Public Defender, and Mr. Engle was
25 appointed, has the option to request the assistance

1 of an investigator. And this investigator can do
2 the leg work and can spare the attorney the
3 difficulty of getting in the car and driving all
4 over town, looking for these people. And Mr. Engle
5 testified on November 16th that at the never did
6 that. And he also never availed himself of the
7 assistance of the sheriff until the second day of
8 trial, and then only with regard to one witness.

9 I just don't think you can look at the big
10 picture here and say that this alibi was properly
11 investigated, properly noted as given to him by Mr.
12 Washington, or properly presented to the jury.

13 And that was Mr. Washington's defense. It
14 was alibi, it was also identification. The two go
15 hand-in-hand very often, and I think they did in
16 this case, but the jury didn't hear the alibi. It
17 was left to the very limited and inadequately
18 prepared testimony of the the two witnesses that Mr.
19 Washington himself produced. And I find it almost
20 ironic, the possibility that Mr. Washington through
21 his own efforts, by getting these two witnesses
22 here, that Ms. Heard would have to say that's good
23 enough. That was an alibi defense.

24 I don't think you can barely say that. I
25 think you have to have doubts, and I urge you to

1 find that the result of this trial is not reliable
2 because of Mr. Engle's lack of performance in
3 defending Mr. Washington.

4 THE COURT: Well, I guess at the outset I
5 would make the observation, at least, that I think a
6 defendant has some responsibility for his own
7 defense. If he can find witnesses, if he can
8 provide names and addresses, if he can contact
9 witnesses, that's certainly what any defendant it
10 would seem to me would do. It seems a logical
11 appropriate function for a defendant.

12 Mr. Engle testified that he saw or
13 conferred with the defendant on numerous occasions.
14 I didn't count them all. Was it fourteen, starting
15 February 6, all the way through the first day of
16 trial? Some of those were in person and some were
17 by telephone, he testified, both at the House of
18 Correction and the county jail. He didn't have any
19 records to substantiate those conferences. At least
20 he couldn't find them. He testified that he got the
21 the, he didn't get the names of the Browns until the
22 day of trial. He considered a motion to suppress
23 the identification, but after looking through the
24 discovery, he determined that the identification
25 procedure was done on the scene and was part of what

1 he referred to as the res gestae, and that there was
2 no point in bringing a motion. Was a matter of
3 strategy.

4 He did bring a motion to sever this
5 defendant from his co-defendant, Mr. Johnson, which
6 I assume was unsuccessful because they were tried
7 together. He pointed out that one of the witnesses
8 had identified the defendant by voice in the police
9 lineup, that Washington was never in the lineup, and
10 therefore his testimony was not credible. He
11 pointed out that Jane Dornuf's testimony, the woman
12 who was one of the victims of the robbery, was
13 different at trial than the statement she made to
14 the police, and he made that argument to the jury.

15 But it gets down to his efforts in
16 locating the witnesses and what he did about that.
17 Mr. Engle, who's been practicing law since 1944 and
18 says that 95 percent of his practice is in the
19 criminal area; represented hundreds of people
20 accused of felonies; stated that the only name he
21 had was Gola Richardson and that he named her in the
22 alibi; that he attempted to locate her, in fact,
23 went to the house on three occasions, and one
24 occasion someone came to the door and gave him a
25 phony name apparently.

1 And then the sheriff's department tried to
2 subpoena her. The sheriff's deputy got the same,
3 got a response similar to his; that is, that she
4 wasn't there and she wouldn't be available for that
5 week.

6 Mr. Engle testified that he asked Mr.
7 Washington for the names of those witnesses
8 repeatedly and didn't get it until the date of
9 trial.

10 He knew Tarly Dall, but whatever testimony
11 he could give in the case was limited at best and
12 probably not relevant.

13 It seems to me kind of odd that the
14 defendant himself located Mr. Pickins, apparently
15 by--almost by coincidence. They had been running
16 into each other at the House of Correction, and it
17 was there that he asked to testify.

18 Mr. Engle testified that he talked to
19 Sandra Bloe and Jerome Pickins before they
20 testified, spent a little time, and he said was a
21 half hour a piece. I suppose an experienced
22 criminal attorney wouldn't need any more than that
23 if the testimony was going to be in the nature of an
24 alibi.

25 That's all contrasted against the

1 defendant's testimony that he gave the names of all
2 of these witnesses to Mr. Engle when they first met
3 in the county jail and several times after that.
4 Mr. Washington confirms the fact that he and Mr.
5 Engle met at least on two occasions while he was in
6 custody.

7 There is no dispute that apparently Mr.
8 Engle and Mr. Washington were not on the best of
9 terms, that they apparently had some differences of
10 opinion as to how the case should be handled. Mr.
11 Engle claims that it was, he was impatient and
12 frustrated with Mr. Washington's lack of
13 cooperation. Mr. Washington claims he was
14 frustrated and upset because of Mr. Engle's lack of
15 interest in the case. In any event, it came down to
16 whether Mr. Engle's representation fell below the
17 standard required in a criminal case.

18 Point out, parenthetically, subpoenaing
19 witnesses, the subpoena that he sent out to Sharon
20 Richardson-- Was it on the second day of trial?
21 --unfortunately is not an unusual way of proceeding
22 in these criminal cases. They often get adjourned
23 so often that in order not to frustrate the
24 witnesses, the attorneys don't subpoena them until
25 they're actually going to be able to testify and

1 that they really are needed, so they don't end up
2 coming down here two or three times, sometimes often
3 only to be told to go home and they would be
4 notified of the next trial date.

5 That's a sad commentary on some of the
6 crowded calendars that the courts are working under,
7 but it happens more often than we like where we have
8 several cases scheduled and ultimately one of those
9 goes on and some of the others have to be adjourned.
10 And rather than subpoenaing all of the witnesses for
11 those cases, both the police officers and the
12 civilian witnesses, the attorneys wait until the
13 last minute, or even the prosecution has the
14 witnesses often just standing by rather than coming
15 down here, and the defense very often waits until
16 the case actually gets started before they try to
17 subpoena the witnesses because they know it's going
18 to take a day or so for the State to put in its
19 case. So I don't find that particularly unusual.

20 The two witnesses that did appear after
21 the testimony was closed were allowed to testify
22 because Mr. Engle convinced the Court that that was
23 the defendant's alibi defense. He indicated he was
24 going to put in an alibi; and I agree with the
25 State, he didn't put in an alibi, and that was his

1 primary focus on the case.

2 I don't know. I'm not sure what else Mr.
3 Engle could have done. Perhaps he could have hired
4 an investigator and have him go out there, but he
5 went out there three times himself. Being an old
6 kind of lawyer, I suppose he wanted to do it himself
7 and tried to find the witnesses for the alibi. At
8 least one whose name he had and was unsuccessful,
9 and as was pointed out even the sheriff's department
10 was unsuccessful in getting her subpoenaed.

11 I'm satisfied that the defendant in this
12 case got a fair trial, that the the legal assistance
13 that he received from Mr. Engle under all the
14 circumstances was not inefficient, that his
15 performance did not fall below the standard of a
16 reasonably competent attorney in this community, or
17 an average attorney in this community, and therefore
18 that the problem of the ineffective assistance of
19 counsel argument, in my view, has not been met.

20 The second prong, the defendant's
21 position, was that he had an alibi; and the alibi
22 was presented to the jury. Whether it was done
23 through his own efforts or with the assistance of
24 his attorney, seems to me, is not critical. He was
25 able to present that alibi; and therefore, it

1 appears to me that the second prong also fails.

2 On that basis, therefore, the motion is
3 denied. Do you want to leave these motions in the
4 file for appeal purposes?

5 MR. WASLESKI: I would ask that they be
6 made a part of the file.

7 THE CLERK: They will be filed in the
8 Clerk of Court's office. They won't necessarily
9 stay with the Court's file.

10 MR. WASLESKI: I understand. Just so
11 there is no confusion, I don't recall if there were
12 physical exhibits in the file, could these be
13 labeled as motion exhibits so they're not confused
14 with any trial exhibits that may also be in the
15 case?

16 THE COURT: Sure.

17 MR. WASLESKI: I have two other motions on
18 file, Your Honor. One is in regard to severance,
19 and I'm going to be very brief on this one, Your
20 Honor.

21 There came a point in the trial here, I
22 think, where the positions of the two defendants,
23 Mr. Washington and Mr. Johnson, became adverse. And
24 I think one of those was, came out when the
25 investigator, Mr. Wagner, testified, and Mr.

1 Plantinga, Mr. Johnson's lawyer, asked this
2 investigator, Tom Wagner, about the statement of a
3 witness named Kid. And Mr. Kid apparently indicated
4 someone had gave the name of Washington. And I
5 think here it is clearly an attempt by Mr. Johnson,
6 his attorney, to implicate Mr. Washington; and I
7 think at that point a severance motion would have
8 been appropriate and should have been granted, so
9 that Mr. Washington would not be facing a dual
10 burden that was favoring the State and his
11 co-defendant's counsel.

12 I'd also point out, although it's not
13 sufficient by itself, and it's worth considering,
14 but in addition to this, Mr. Johnson's defense,
15 frankly, which is also a different alibi, a
16 factually different alibi, defense really quite
17 completely disintegrated here when one of his alibi
18 witnesses was placed on the robbery scene by one of
19 the victims, and therefore impeached, devastated.

20 And that, plus the fact that some stolen
21 property was recovered from Mr. Johnson, his guilt
22 was so overwhelming, I fear Mr. Washington may have
23 suffered by association to be tried together with
24 Mr. Johnson. And therefore, I think a severance
25 motion should have been granted and a severed trial

1 should now be granted, and I'm so asking this Court
2 to do so.

3 THE COURT: As I recall the testimony of
4 the private investigator, that, it seems to me, that
5 that information about Mr. Washington came out
6 inadvertently.

7 MS. HEARD: That was my recollection,
8 Judge, and I asked him to produce the document. He
9 produced a two page memorandum. I haven't looked at
10 it. It's in the file somewhere, but as I recall,
11 when he introduced the document and I read the
12 document, no where in that document was Mr.
13 Washington's name contained.

14 Also there came a point in time in the
15 trial when Mr. Kid was then called, and Mr.
16 Washington and Mr. Johnson were in court, and Mr.
17 Kid was very clear as to who the person was who he
18 had made reference to. It was Mr. Johnson, and it
19 was not Mr. Washington.

20 THE COURT: At the time that the Motion to
21 Sever was made when the trial began, it appeared
22 that they each had different alibis and that the
23 witnesses that the State was going to present and
24 the testimony that they were going to give would
25 have been the same if there had been two trials or

1 one trial. Witnesses were the same, the
2 circumstances were the same. There seemed to me to
3 be no legal basis for a severance at that point.

4 Sometime during the trial, there might
5 have been some testimony that was different for each
6 defendant, but it didn't, looking at all of the
7 testimony and the way that the trial progressed,
8 that that was a sufficient basis to sever the trial.
9 Obviously, once the trial is in progress, it's very
10 difficult to sever it.

11 It seemed to me that, as we went along,
12 the basis for severance was not there. Therefore,
13 the motion is denied.

14 MR. WASLESKI: Judge, my last motion, I
15 frankly scratched my head over what motion might be
16 appropriate and what remedy might be appropriate, it
17 concerns these two exhibits, Exhibits 3 and 4, which
18 apparently are notes when the jury requested some
19 additional evidence or requesting certain exhibit
20 evidence, an exhibit be provided.

21 And when I saw these in the information
22 that I got from the clerk's office and compared them
23 to what I find in the transcript, I could find
24 nothing in the transcript to indicate that these two
25 notes, that either of these two notes were ever

1 discussed on the record, among counsel, or that the
2 Judge made any ruling with respect to them on the
3 record.

4 One of them has what may well be your
5 handwriting, and perhaps you can enlighten us all
6 here, that indicates that some of the evidence, a
7 time was drawn around with regard to Exhibit 3, and
8 a note was written that the jury members would have
9 to rely on their collective memory with regard to
10 the evidence.

11 In any event, as I indicated in argument
12 to one of the previous motions, that was not only an
13 alibi case but an identification case, and I think
14 just about everything that the jurors asked for here
15 concerns identification.

16 Jane Dornuf's testimony at the preliminary
17 hearing and her testimony at trial; Jane Dornuf was
18 one of the robbery victims.

19 They wanted, the jurors wanted to know why
20 the car containing Mr. Washington was stopped. That
21 was apparently never explained to them to their
22 satisfaction.

23 And finally how many suspects were taken
24 to the bar for identification after the robbery. I
25 suspect that question came up because while police

1 reports indicate three suspects were brought back, a
2 number of the witnesses testified that there were
3 two; and the jurors wanted that discrepancy somehow
4 cleared up, if in fact, it could be.

5 I submit that this information, with the
6 possible accepting of the explanation of why Mr.
7 Washington was stopped, could have been provided to
8 the jury; and I would also believe that the law
9 requires that before a decision is made counsel
10 should be consulted.

11 Mr. Engle can't tell, couldn't tell us
12 whether or not, with regard to Exhibit 3 his best
13 recollection was vague, but he thought perhaps there
14 was some consultation. He had no recollection
15 whatsoever with regard to Exhibit 4.

16 And I just don't think it's proper that
17 requests from the jury should be handled without the
18 input of counsel. And I think that taints the
19 jury's deliberation and the jury's verdict, and I
20 would therefore request that the jury's verdict be
21 vacated, and the case set for a new trial.

22 THE COURT: I don't recall what's in the
23 transcript and what was put on the record. The
24 handwriting on the side of the note from the jury on
25 Exhibit 3 is mine.

1 In the event that this case is reviewed by
2 someone who hasn't ever tried a jury trial or it's
3 been a long time since he or she tried one, in a
4 busy court such as the courts of Milwaukee County,
5 we don't have the luxury of sitting around after the
6 jury is sent out to deliberate waiting for the
7 verdict.

8 The attorneys are very busy. They've got
9 other obligations; the Court has got other cases.
10 So once the jury begins to deliberate, the lawyers
11 leave. Usually they leave a telephone number where
12 they can be reached in the event that there is a
13 verdict or a question. The Court proceeds with the
14 rest of the calendar on another case.

15 So when a question comes from a jury, the
16 usual practice of the Court is to contact the
17 lawyers at the numbers where they said they would be
18 and to have a telephone conference and discuss the
19 question and discuss the response. I assume that
20 was done in this case.

21 It's not done on the record because it's a
22 telephone call that's usually taken by the Court
23 right in the courtroom after the Court is able to
24 locate the two attorneys. Sometimes that takes a
25 few minutes. Sometimes it takes close to an hour.

1 So we're busy doing other things while the clerk is
2 trying to locate the attorneys. The jury in the
3 meantime is sitting back there in the jury room
4 twiddling their thumbs waiting for a response.

5 So as soon as we get the lawyers on the
6 phone, we don't have speaker-phone capabilities in
7 the courtroom. We just don't have the facilities to
8 do that on the record. The lawyers would rather do
9 it that way than to have to come back to the
10 courtroom to put it on the record.

11 Whatever response is given to the jury is
12 done by the Court. The Court writes the answer and
13 sends the note back to the jury room with the
14 Court's written answer.

15 I don't recall what happened with the jury
16 in Exhibit 4. We may have read that testimony. I
17 don't know what the transcript shows. It would be
18 the testimony of Jane Dornuf.

19 MR. WASLESKI: The transcript is void as
20 to any indication as to how any of these were
21 handled. That's the reason for filing this motion.
22 There is simply nothing as postconviction counsel, I
23 can see except what you're holding there, Exhibits 3
24 and 4, and then nothing in the transcript.

25 I would also ask before we rule on this to

1 see if Ms. Heard can answer anything, since she was
2 present at the trial regarding either of those
3 exhibits.

4 MS. HEARD: I recall talking about them.
5 I don't remember if we did it in person or if we did
6 it by phone. I specifically recall Exhibit 3 and
7 the Court deciding or discussing with us the
8 appropriate answer. And I recall myself agreeing
9 with them, relying on their collective memories. I
10 don't remember--

11 THE COURT: I'm sure that's the response
12 that the attorneys asked that we give the jury, that
13 they rely on their collective memories.

14 MS. HEARD: I don't recall what we did
15 with Exhibit 4, but I was either present in person
16 or by phone, and I'm never in agreement, ever; I've
17 never agreed to read anyone's testimony back. My
18 position is it's prejudicial because the person is
19 not there and the inflections are different. So I
20 would have to say more than likely I requested the
21 same thing, they rely on their collective memories.

22 THE COURT: They may have reached a
23 verdict before they got the response. By the time
24 we tracked down the lawyers, in this case there were
25 three of them, it's hard enough tracking down two,

1 they may have reached a verdict.

2 I don't remember either, but in any event,
3 I think the lawyers were aware of the questions, and
4 they certainly were aware of that at the conclusion
5 of the trial and the verdicts were reached, and no
6 one had any objection.

7 And therefore I would have to assume, and
8 I will find, that everything was done regularly and
9 properly and defendant wasn't prejudiced.

10 MR. WASLESKI: That concludes my three
11 motions that I wanted to present, Your Honor. Thank
12 you.

13 THE COURT: I think you got a sufficient
14 basis for having them reviewed, if that's what your
15 intentions are.

16 MR. WASLESKI: I would also ask to present
17 a written order pursuant to your ruling today for
18 your signature, and I will present it to Ms. Heard
19 before I present it to you.

20 THE COURT: Okay. Present to Ms. Heard so
21 that she can just approve it as to form.

22 (End of Proceedings)
23
24
25

STATE OF WISCONSIN)

MILWAUKEE COUNTY) ss.

I, Hattie M. Mitchell, do hereby certify that I am a Registered Professional Reporter, that as such I recorded the foregoing proceedings, later transcribed same, and that it is true and correct to the best of my abilities.

Dated this 12th day of July, 1993, at Milwaukee,
Wisconsin.

Hattie Mitchell