

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable John C. Hayes

Appellate Number 2017-000268

Trico Ladson,

Petitioner,

v.

The State of South Carolina,

Respondent.

APPENDIX

Respectfully Submitted,

William G. Yarborough, III
Attorney for Petitioner
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Greenville SC, 29601
Telephone (864) 331-1612
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STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Trico Ladson, #365992,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

2016-CP-23-2039

RETURN¹

FILED
2016 SEP 6 PM 11 53
CLERK OF COURT
JAMES H. HOSKINS
JUDGE

Respondent, making its Return to the Application for Post-Conviction Relief (PCR), filed on March 28, 2016, and the subsequent Amended Application for Post Conviction Relief filed on May 31, 2016 would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Greenville County. Applicant was indicted by the May 2015 term of the Greenville County Grand Jury for one count of Criminal Conspiracy nonviolent (2015-GS-23-3556), one count of Attempted Armed Robbery (2015-GS-23-3557), one count of Attempted Murder (2015-GS-23-3555). Applicant pleaded not guilty and was represented at trial by Kenneth C. Gibson, Esquire. At trial, applicant was convicted of conspiracy and attempted robbery. On November 4, 2015, the Honorable R. Scott Sprouse, sentenced Applicant to five years for conspiracy, and ten years for attempted robbery concurrent. Applicant received credit for 19 days served. All sentences are concurrent pursuant to Applicant's negotiated plea deal. Applicant did not appeal his plea or sentence.

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¹ Applicant is represented in this action by William G. Yarborough, Esquire.

II.

In his initial application for post-conviction relief, Applicant alleged ineffective assistance of counsel. In his amended application, filed May 31, 2016, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel.
 - a. Counsel denied Constitutional right to testify in his own defense.
 - b. Counsel failed to remedy severe factual inconsistencies in the victim's testimony.
 - c. Counsel's failure to use the victim's police statement to impeach him.
 - d. Counsel's failure to investigate and call witnesses.
2. Failure to file timely notice of appeal.

Respondent denies Applicant is entitled to relief on any of these claims and demands strict proof thereof. Applicant must specify any claims he intends to raise at the PCR trial. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at the evidentiary hearing. S.C. Code § 17-27-10 *et seq*; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing. Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, the transcript from Applicant's plea, and Applicant's records for the Department of Corrections. Respondent reserves the right to amend its return upon the receipt of other relevant records.

III.

Applicant claims ineffective assistance of counsel in his application. Respondent contends Applicant's counsel rendered adequate assistance and provided representation within

the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that “counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland, 80 L.E.2d 674). Second, counsel's deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Respondent submits that any allegation that trial counsel failed to file a direct appeal following Applicant's guilty plea is without merit. Counsel has a constitutionally imposed duty to consult a defendant about an appeal only when there is reason to think either that a rational defendant would want to appeal or that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. In making this determination, courts must take into account all the information counsel knew or should have known. One highly relevant factor will be whether the conviction follows a trial or a guilty plea, because a plea both reduces the scope of potentially appealable issues and may indicate that the defendant seeks an end to judicial proceedings. Even then, a court must consider such factors as whether the defendant received the sentence bargained for and whether the plea expressly reserved or waived some or all appeal rights. Roe v. Flores-Ortega, 120 S.Ct. 1029, 528 U.S. 470 (2000). The Respondent submits that the Applicant cannot satisfy the requirements set forth in the Roe test. However, the allegation of counsel's failure to advise the Applicant regarding the possibility of an appeal probably raises questions of fact that cannot be conclusively refuted by the record. As such, Respondent requests an evidentiary hearing to fully resolve this issue.

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STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

TRICO LADSON, 365992

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2016-CP-23-2039

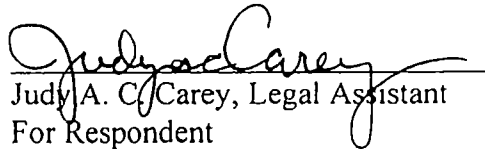
AFFIDAVIT OF SERVICE BY MAIL

FILED
CLERK
PAUL B. WICKHAM
S.C.
COURT
2016 SEP 6 PM 11 53

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

William G. Yarborough, III, Esquire
522 North Church Street
Greenville SC 29601

DATED this 26th day of August, 2016.


Judy A. C. Carey, Legal Assistant
For Respondent

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V.

Each and every allegation contained within the application that is not expressly admitted, qualified, or explained is hereby denied.

VI.

WHEREFORE, having made its Return, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of counsel.

Respectfully submitted,

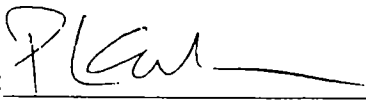
ALAN WILSON
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By: 
ATTORNEYS FOR RESPONDENT

August 26, 2016

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

TRICO A. LADSON,)
)
APPLICANT,)
)
-VS-)
)
STATE OF SOUTH CAROLINA,)
)
RESPONDENT.)
_____)

2016-CP-23-02039

TRANSCRIPT OF RECORD

DECEMBER 8, 2016
GREENVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE JOHN C. HAYES, III

A P P E A R A N C E S:

ATTORNEY FOR APPLICANT:

WILLIAM G. YARBOROUGH, III, ESQ.

ATTORNEY FOR RESPONDENT:

PATRICK SCHMECKPEPER
ASSISTANT ATTORNEY GENERAL

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

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1 **THE COURT:** Mr. Schmeckpeper.

2 **MR. SCHMECKPEPER:** Your Honor, may it please the Court?

3 **THE COURT:** Yes, sir.

4 **MR. SCHMECKPEPER:** This is Trico Ladson versus the
5 State of South Carolina, 2016-CP-23-2039. The Applicant was
6 indicted May 2015 for criminal conspiracy, attempted armed
7 robbery and attempted murder. He proceeded to trial,
8 represented by Ken Gibson where he was convicted of
9 conspiracy and attempted robbery. He was acquitted of
10 attempted murder.

11 On November 4th, 2015 Judge Sprouse sentenced the
12 Applicant to five years for conspiracy and ten years for
13 attempted robbery to run concurrently. All that time
14 suspended upon the service of two years and five years
15 probation. Your Honor, I would like to point out at this
16 time the Applicant maxes out in June 27th of next year.

17 **THE COURT:** All right. Mr. Yarborough.

18 **MR. YARBOROUGH:** Your Honor, if the Court please, I'd
19 like for you to address the Applicant and make sure the
20 Applicant understands that if he goes forward with this,
21 conceivably, he could be required to face these charges
22 again.

23 **THE COURT:** Okay.

24 **MR. YARBOROUGH:** I believe he maxes -- he maxes it out
25 in five months? 260

1 **MR. LADSON:** Yes, sir.

2 **MR. YARBOROUGH:** Five months. Okay.

3 **THE COURT:** All right. Well, Mr. Ladson, I can't tell
4 you what to do and nor can your attorney when you file an
5 application for post conviction relief. I will tell you
6 this. I don't know -- let me look real quick and see what
7 relief you requested.

8 **MR. YARBOROUGH:** Your Honor, his first request is that
9 -- he requested an appeal, State versus White. It was not
10 an appeal filed in the -- after his conviction. Mr. Gibson,
11 I think, has an opinion about that.

12 So that was initially, I mean, based on stuff that
13 happened after that we filed an attachment to the PCR. And
14 I think that Patrick and I have agreed that we're just going
15 -- if we get past the State v. White, we just go straight
16 into ineffective assistance of counsel, you know, just
17 generally.

18 **THE COURT:** All right. Well, Mr. Ladson, if -- if I
19 grant you an appeal, quite frankly, I don't know what that
20 would do to your sentence as far as maxing your time. But
21 if I grant you an appeal, the case against you is still
22 alive and until such time as an appellate court makes a
23 decision, everything is just like it is today, that is with
24 you incarcerated and this sentence.

25 Again, I don't know what happens when someone maxes out

1 while a case is on appeal. And if anyone in the room knows,
2 they can tell me 'cause I'd like to tell Mr. Ladson if I do
3 know.

4 But I can tell you this, if for some reason I were to
5 set aside this conviction and send you back for a new trial,
6 you'd be facing the original charges and the penalty that
7 goes with them. Armed robbery and attempted murder, you
8 would still have to face those charges, criminal conspiracy.

9 And so the fact that -- if I find that counsel was
10 ineffective and you get a new trial, that's what you'd get,
11 a new trial starting over again and you'd be facing the
12 maximums. Attempted armed robbery, is that twenty years?

13 **MR. YARBOROUGH:** Yes, sir.

14 **THE COURT:** You'd be looking at twenty years on
15 attempted armed robbery. Attempted murder, is that twenty
16 also?

17 **MR. YARBOROUGH:** Yes, sir. I think the attempted
18 murder was -- he was found not guilty on the attempted
19 murder. So ---

20 **THE COURT:** Well, he wouldn't have to go back on that
21 one then.

22 **MR. YARBOROUGH:** He would not go back on that one.

23 **THE COURT:** But you'd still be facing attempted armed
24 robbery and twenty years, and criminal conspiracy, twenty-
25 five years. Do you understand that?

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KENNETH GIBSON - DIRECT EXAMINATION BY MR. YARBOROUGH

1 MR. LADSON: Yes, sir.

2 **THE COURT:** All right. So do you want to go forward
3 with that knowing that knowledge or do you wish to -- what
4 do you want to do? I mean, you've got your application
5 pending and you can talk to Mr. Yarborough if you want to,
6 but I just need you to know that you're maxing out in five
7 months. You may end up with a longer sentence if it's sent
8 back and you're found guilty. So I don't know how much
9 headway you're making if you win. But that's your business,
10 not mine.

11 **MR. LADSON:** Yes, sir, I want to go forward with it.

12 **THE COURT:** Okay. All right. Then call your first
13 witness.

14 **MR. YARBOROUGH:** We'd call Mr. Gibson.

15 **MADAME CLERK:** Mr. Gibson, please place your left hand
16 on the Bible and raise your right hand.

17 Kenneth Gibson, being
18 duly sworn testified as follows;

19 **MADAME CLERK:** Thank you. You may be seated. And
20 please state your full name for the record.

21 **MR. YARBOROUGH:** Your Honor, could I have one minute?

22 THE COURT: Yes, sir.

23 (Pause)

24 **MR. YARBOROUGH:** Your Honor, could I address with Mr.

25. Gibson the issue of the State versus White ---

KENNETH GIBSON - DIRECT EXAMINATION BY MR. YARBOROUGH

1 **THE COURT:** Sure.

2 **MR. YARBOROUGH:** --- first? And then I'd like to have
3 an opportunity at that point to address something with my
4 client ---

5 **THE COURT:** Okay.

6 **MR. YARBOROUGH:** --- before we get to the ---

7 **THE COURT:** Okay.

8 **MR. YARBOROUGH:** --- to the second part of it if you
9 can understand my ---

10 **THE COURT:** That's fine. I'll allow you to go forward.
11 We don't have a jury, and I can keep track of it.

12 **MR. GIBSON:** Kenneth Clifton Gibson.

13 **Direct Examination by Mr. Yarborough:**

14 Q. Mr. Gibson, were you Mr. Ladson's lawyer?

15 A. Yes, sir.

16 Q. Okay. And I just want to focus at this moment on the
17 State versus White issue, the appeal.

18 A. Yes, sir.

19 Q. And it's my understanding in reading the transcripts
20 and everything that Mr. Ladson went to trial and you were
21 appointed to represent him?

22 A. Yes, sir, that is correct.

23 Q. Okay. And he was convicted at trial?

24 A. Yes, sir.

25 Q. But you won the major count of the attempted murder,

KENNETH GIBSON - DIRECT EXAMINATION BY MR. YARBOROUGH

1 but he was convicted of what?

2 A. Attempted armed robbery and conspiracy.

3 Q. Okay. And this was -- it was an unusual case?

4 A. I don't know if I'd say it was unusual. It was
5 basically a -- there was one witness, the victim, and that
6 was pretty much it. I mean, that was the basis of the case.
7 I mean, it was the victim's testimony.

8 Q. So just one person testified. And that guy was the
9 bookie or the ---

10 A. Yes, sir.

11 Q. --- number runner or whatever?

12 A. Yes.

13 Q. And he alleged he had been robbed?

14 A. Yes, sir.

15 Q. Okay. Now, after the case was over and he was
16 sentenced did you file a notice of appeal?

17 A. I did not.

18 Q. Okay. And you had ten days to do it and you didn't do
19 it.

20 A. (Affirmative nod).

21 Q. Can you tell the Court why you didn't do it?

22 A. Because normally on any appointed case I'll just file
23 the notice of appeal and send it -- send it down to OID and
24 let them take care of it. But in this particular case the
25 judge was extremely lenient on Trico's sentence. He gave --

KENNETH GIBSON - DIRECT EXAMINATION BY MR. YARBOROUGH

1 he could have given him up to twenty years. He gave him two
2 years and he put him on probation for a while.

3 I went down and talked to Trico. Because of that I
4 went down and talked to Trico, and I explained to him what
5 would happen on appeal. I said, you know, Trico, I'm
6 looking at, you know, I'm thinking back on the case, I think
7 it was a fairly clean case, but if there is something that,
8 you know, that the appellate court would feel like was an
9 issue, the only thing they're going to do is they're going
10 to send it back and we're going -- you're going to have to
11 try it again. And the same victim's going to come to court
12 and testify and it's going to be basically exactly the same
13 case. And if you get convicted the next time, the judge may
14 not be as lenient as he is now.

15 You know, I explained to him he was looking at two
16 years in prison, it was going to be eighty-five percent, but
17 after that he'd come out on probation. But if he went
18 forward on it and won on appeal he could come back and end
19 up getting a much more significant sentence.

20 I explained all that to Trico, asked him what he wanted
21 to do. Trico said, don't worry about it. I'm just going to
22 do the two years and -- and go on with it. And he thanked
23 me and that was it. And that's why I didn't file one.

24 Q. Okay. Thank you.

25 MR. YARBOROUGH: Just a second.

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KENNETH GIBSON - DIRECT EXAMINATION BY MR. YARBOROUGH

1 (Pause)

2 **MR. YARBOROUGH:** Your Honor, we're going to continue to
3 go forward with the application.

4 **THE COURT:** Okay.

5 Q. Let's go back to the beginning.

6 A. Yes, sir.

7 Q. You were appointed to represent Mr. Ladson?

8 A. Yes, sir.

9 Q. Okay. And was he in jail or was he out of jail or ---

10 A. He was out of jail.

11 Q. Okay. And so how many times do you think you met with
12 him?

13 A. I met with him at least three times. They were pretty
14 much all on bond cards. But he came in, we talked about
15 what his offer was. And he had a -- his offer in the case
16 was -- Chris Hodge offered that if he pled to a strong arm
17 robbery he could do an active YOA.

18 The first time he came he brought -- I don't remember
19 the name of the gentleman. I don't think it was his
20 biological father, but it was somebody who was basically a
21 father figure to him. He came in, we talked about what the
22 offer was. Trico was reluctant to do it. And we sort of
23 left it at that.

24 He came -- Chris bond carded him in again. We talked
25 about it again. And I think Chris finally bond carded him

KENNETH GIBSON - DIRECT EXAMINATION BY MR. YARBOROUGH

1 in a third time and we talked about it again. And we, you
2 know, we went through all the facts in the discovery and all
3 that other stuff.

4 But Trico's -- Trico's concern was pretty much always
5 whether -- he didn't think that the victim was going to show
6 up. So, you know, his questions was really about what the
7 evidence was. They were about, you know, you think he's
8 going to show? You know, what if he doesn't show? Or what
9 if he doesn't show up? Those kind of things.

10 Q. Okay.

11 A. But, you know, we talked at least three times about
12 that. And we talked at least a couple of more times by
13 phone where, you know, Chris had reached out to me and said,
14 hey, I'm going to put this on the docket, you know, what do
15 you want to do?

16 And I called him and we talked. And I was like,
17 listen, do you want to take this offer or, you know, do you
18 want to go to trial? And he decided he wanted to go to
19 trial.

20 Q. But he's always maintained his innocence?

21 A. Yes. Oh, absolutely. No, he's never -- never changed
22 that whatsoever.

23 Q. Okay. And did he bring in his father and uncle to meet
24 you prior to trial?

25 A. He brought them in at my request to possibly be

KENNETH GIBSON - DIRECT EXAMINATION BY MR. YARBOROUGH

1 witnesses in the case. What I was concerned about was ---

2 Q. Well, let's -- let's wait ---

3 A. Oh, I'm sorry.

4 Q. What were they going -- what would they be witnesses
5 about?

6 A. The allegations in the case -- well, the facts of the
7 case were -- the victim in the case, I can't remember his
8 name, but he was a -- he was a numbers runner.

9 Q. And that -- so that the Court ---

10 A. Oh. All right. So ---

11 Q. A numbers runner is a -- somebody like ---

12 A. Yeah, he sold ball tickets, like little -- like
13 basically illegal lottery tickets.

14 **THE COURT:** I know ball tickets. I was a city
15 solicitor in Rock Hill. There wasn't a person arrested that
16 didn't have ball tickets on them.

17 A. Yes, sir.

18 Q. Okay.

19 A. So he sold ball tickets. And he'd been selling them to
20 Trico's dad. He'd been selling them to Trico. What was
21 pretty much uncontested was that -- undisputed was that
22 Trico called him that day and said that, you know, he wanted
23 to buy some tickets.

24 Q. Right.

25 A. So he comes over -- the allegation's that Trico then

KENNETH GIBSON - DIRECT EXAMINATION BY MR. YARBOROUGH

1 went inside. And Trico confirmed this with me that, you
2 know, he went inside. And then after that Trico went back
3 outside. And when he went back outside a masked gentleman
4 came in from the woods that are next door to his house and
5 pointed a gun at -- at both of them. And that's when the
6 robbery happened.

7 What I was concerned about was that -- I was worried
8 that Chris might argue that -- or indicate that when he went
9 back inside he went back inside for the purpose of calling
10 somebody or contacting whoever this second party was, the
11 one who came out of the woods with a gun.

12 So what they were going to testify to, if they were
13 called, would be that basically he came in, he was talking
14 to his dad on the telephone and he didn't have any
15 conversation or contact with anyone else. She didn't go
16 that route. So I did not call them.

17 Another reason why I did not call them was because they
18 have -- they both have very significant records. And I was
19 afraid that them being as close relatives to him with those
20 kinds of records would rub off on the way the jury saw Trico
21 as well.

22 Q. Okay. When you say called -- when you were talking
23 about Chris, just for the record, you're talking about Chris
24 Hodge, the ---

25 A. Yes. I'm sorry.

KENNETH GIBSON - DIRECT EXAMINATION BY MR. YARBOROUGH

1 Q. --- Chris Hodge -- Chris Bjorndal Hodge, the
2 prosecutor?

3 A. Yes, sir.

4 Q. Okay. And did you -- did you meet with Trico's dad or
5 Trico's uncle before the trial?

6 A. You mean like before the day of trial?

7 Q. Or the day of the trial? Did you talk to them?

8 A. I talked to them briefly to confirm what they would
9 testify to if I called them to the stand.

10 Q. Okay. And they would have -- what was your
11 understanding of what their testimony would have been?

12 A. Would have been that Trico came into the house, that he
13 was on the phone talking to his father and that there wasn't
14 an opportunity for him to communicate with anyone else as
15 far as coordinating this robbery.

16 Q. Okay. So -- and did -- did he also talk about giving
17 him some money to buy the ball tickets?

18 A. I think -- yeah. I think the father had said something
19 about -- what it was I think Trico was calling his dad to
20 see if his dad -- and it's been a while. But I think Trico
21 was calling his dad to see if his dad wanted to get some
22 tickets. And they were coordinating as far as what kind of
23 tickets -- how many tickets his dad wanted and about how to
24 get the money for it.

25 Q. Okay. And the money was going to come from the uncle

KENNETH GIBSON - DIRECT EXAMINATION BY MR. YARBOROUGH

1 who's the other individual that's in the courtroom?

2 A. Yes, sir.

3 Q. Okay. And did -- did you tell them you were going to
4 call them as witnesses at the trial?

5 A. I told them it was a possibility.

6 Q. And do you not think that, and hindsight's 20/20, do
7 you not think that their testimony that they gave him money
8 and that Trico was going to buy the ball tickets from him
9 was consistent with what Trico had told you before?

10 A. Yeah, it was consistent with what he had told me
11 before.

12 Q. Okay. So perhaps that could have helped?

13 A. Given the result, it could have helped, yeah. Given
14 the result, I would have called them and called Trico and
15 whatever, but ---

16 Q. Okay. And that -- now, let's talk about Trico while we
17 ---

18 A. Okay. All right.

19 Q. Trico was always -- he was adamant about wanting to
20 tell his story?

21 A. No.

22 Q. No?

23 A. He was not adamant about wanting to tell his story.

24 Q. Okay. What would be your -- your version of it?

25 A. My version of it was that I was like -- that I spent a

KENNETH GIBSON - DIRECT EXAMINATION BY MR. YARBOROUGH

1 lot of time explaining -- making sure that Trico knew that
2 he may have to tell his story, that this is going to come
3 down -- this is very likely going to come down to a case of
4 he said/she said and it may very well be the case if he has
5 to take the stand.

6 Q. All right.

7 A. He never told me I want to get on the stand or anything
8 like that.

9 Q. Okay. So if he says he did, that's not your
10 recollection?

11 A. That's not my recollection.

12 Q. Okay. But, again, hindsight's 20/20, his testimony
13 could have helped?

14 A. Possibly. But the ---

15 Q. They had a -- they had a version of what really -- what
16 they said happened that day, ---

17 A. Yeah.

18 Q. --- the three of them did?

19 A. Yes.

20 Q. And they presented that to you?

21 A. Trico presented it to me. I confirmed the parts of it
22 that Trico had presented to me that the uncle and the father
23 could testify to with them.

24 Q. Okay. And did -- did you ever go visit where this
25 happened?

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1 A. No.

2 Q. Do you know anything about the area?

3 A. I looked it up on Google Maps and saw like an overhead
4 view of it. So I know what the terrain is like.

5 From what Trico was telling me also, I asked him about
6 it, and the houses are fairly spread out from -- you can
7 tell it also from the overhead view of the area. They
8 aren't real close to each other, which, quite frankly, which
9 I thought actually worked against us as opposed to for us.

10 But, yeah, I mean, no, I did not -- but to answer your
11 question, no, I did not go visit the area, but I am some --
12 a little -- somewhat familiar with it.

13 Q. Okay. Did you -- did you try to confirm whether or not
14 the phone calls were actually made by his uncle or his
15 father?

16 A. Other than talking to them and them confirming that
17 they were on the telephone, no.

18 Q. Okay.

19 A. I mean, if you're asking if I pulled like phone
20 records, ---

21 Q. Phone records.

22 A. No. No, I didn't pull -- quite frankly, I didn't think
23 it was really necessary either because Chris didn't have, I
24 mean, Ms. Hodge didn't have them. So if they got on the
25 stand and said they were on the phone, I mean, that was, you

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1 know, going to be the end of all of it.

2 Q. Right. And did you, I mean, when you pulled up on-line
3 did you notice that there were trees all around the property
4 out there? So it ---

5 A. On that -- yeah. Particularly on the side where they
6 said they came from.

7 Q. Right. And did you ever make the jury aware of that?

8 A. I think it was brought out that there were woods on the
9 side of that property.

10 Q. Okay. But would you -- would you say it would be
11 consistent that that could have been a place that a robbery
12 could have taken place?

13 A. Oh, absolutely. But see, this is the thing, though.
14 Again, it was my impression that that actually worked
15 against us as opposed to for us because basically what we
16 were, I mean, if we're talking about the woods, in order for
17 our story to work, then we have to have the jury believe
18 that there was some guy hanging out in these woods waiting
19 for, you know, some random person to drive up into his yard.

20 It worked -- our story works a whole lot better if it's
21 a -- if it's a congested area where everybody's around and
22 anybody who sees this guy driving up can say, okay, yeah,
23 I'm going to come up and, you know, I'm going to go over
24 there and rob him. But -- but like I say, I didn't make a
25 real big deal about the woods because, like I said, I didn't

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1 think it really worked for us.

2 Q. Okay. But it also could have been consistent with
3 somebody following ---

4 A. Yeah, I did. I pointed that out. I argued -- I argued
5 that to the jury that, you know, this was a guy who was
6 known in the community for selling ball tickets, that he was
7 known for, you know, carrying relatively large quantities
8 around, money around, and that someone could have seen him
9 drive down the street and then decided, you know, to rob
10 him.

11 Q. All right. And ball ticket sellers or however you --
12 number -- number runners, I guess, is the best way to call
13 them. Number runners usually follow a consistent pattern,
14 right? They go to the areas where they -- they sell to the
15 same people over and over again in the community?

16 A. Yes. Yeah.

17 Q. And so that would have been consistent with why -- why
18 he was down at the Ladson ...

19 A. Yes, which I think I argued to the jury.

20 Q. Did you ask Mr. Thomas if he thought he had been
21 followed? Mr. Thomas being the number runner.

22 A. I don't recall.

23 Q. Okay. Would -- would that have been something you
24 could have considered?

25 A. Yes.

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1 Q. You know, I know you feel like the outcome was good,
2 but ---

3 A. Not necessarily. No. I mean, I don't. I mean, you
4 know, regardless there's a loss. I mean, I think the
5 sentence was good, ---

6 Q. Right.

7 A. But ---

8 Q. Yeah, ---

9 A. Yeah, I mean, you know. But -- and so, you know, we
10 lost the case.

11 Q. Yeah. And, I mean, you know, I do it and you do it. I
12 mean, sometimes you wish you would have called witnesses
13 that you didn't call, right?

14 A. (Affirmative nod).

15 Q. And -- and that was a decision you made?

16 A. Um-hum (affirmative).

17 Q. And was that decision ---

18 A. Well, wait a minute. It was a recommendation I made to
19 Trico, one which Trico accepted.

20 Q. Okay.

21 A. And I'll tell you -- if you want, I'll tell you why I
22 made the recommendation to him.

23 Q. Okay.

24 A. Trico had two problems from my perspective. There were
25 two problems with Trico taking the stand. One, Trico had a

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1 prior conviction for false information to police.

2 Q. Right. Now, wasn't that a magistrate level offense? I
3 mean, ---

4 A. That doesn't matter. I mean, the problem for us is
5 that there was a situation where Trico was put in a -- and
6 he lied. So, you know, I'm not -- I'm not -- it's not the
7 -- it's not the seriousness of the offense, it's the type of
8 offense that I'm -- that I was more worried about.

9 The other thing is Trico had a hole in his testimony.
10 When Trico -- after this happened, this robbery, and Trico's
11 -- Trico's story to me was that, you know, the robbery
12 happened, after the robbery happened he ran down the street
13 with the guy, with the victim, and then that was it.

14 I mean, he -- I was like, well, where did you go? And
15 Trico couldn't tell me where he went. And -- and I was
16 like, so you were gone for like four or five hours and you
17 don't remember where you were? And he was like, no, I don't
18 remember where I was.

19 So, like I say, there's this huge hole in his story
20 that I was concerned that if that got out, that that would
21 make it less -- less believable because from my perspective
22 at the time that -- what I was thinking was that if I had
23 just been robbed, regardless of whether I stayed around and
24 waited for the cops or not, I'd know where I went during the
25 time-frame directly after it. But he couldn't tell me that.

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1 And I asked him repeatedly and he couldn't tell me.

2 Q. All right. Well, I mean, let me ask you this. And
3 you're dealing with Trico, I mean, did he -- he does act
4 somewhat -- he has some maturity issues?

5 A. Yes.

6 Q. It doesn't quite rise to the level of someone his age?

7 A. Yes, sir.

8 Q. And he has nervous habits and ...

9 A. Yes, sir.

10 Q. And did you discuss all that with him to try to focus
11 him in on what was going on with his case?

12 A. I don't think I did. Well, not in the context of, you
13 know, his maturity level or habits or anything like that.

14 Q. Looking at the trial transcript -- have you looked at
15 it?

16 A. Briefly.

17 Q. Okay.

18 A. Yes, sir.

19 Q. Did you have a plan of attack when you were going to
20 cross examine Mr. Thomas? Were you looking for or trying to
21 get any issues out of him or was it, I mean, ...

22 A. My plan of attack for Mr. -- for him was to try to have
23 him go over his story in as many different ways as possible
24 with the hopes of -- of trying to elicit as many
25 contradictions as I could.

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1 Q. Right.

2 A. Because basically it was, you know, it was his story
3 versus our story. I didn't have any evidence that proved
4 that -- proved that he was telling a lie. And I didn't
5 really have any really substantial evidence to prove that
6 Trico was telling the truth. So it was just a matter of
7 trying to, you know, create as many contradictions as
8 possible and hope that the jury upon looking at it as a
9 whole would say, okay, well, this is just not credible.

10 Q. Okay. I guess that's my -- my question is if you were
11 thinking of calling Trico or Trico's father or Trico's
12 uncle, ---

13 A. Um-hum (affirmative).

14 Q. --- couldn't you have asked Mr. Thomas if Trico's uncle
15 had called him over there that day?

16 A. I don't think it was his uncle that called him. I
17 think it was Trico that called him.

18 Q. But -- okay. But ask Trico if Trico called him?

19 A. Yeah. I don't -- I don't think that was in dispute,
20 though.

21 Q. But, I mean, if you had three witnesses -- you said it
22 was a he said/she said, and you had ---

23 A. Um-hum (affirmative).

24 Q. --- three witnesses that -- how the guy got there, and
25 it was for, I guess we'd call it legitimate purposes, I

KENNETH GIBSON - DIRECT EXAMINATION BY MR. YARBOROUGH

1 mean, you know, that's ---

2 A. Illegitimate purposes.

3 Q. --- that's the reach ---

4 A. Yeah.

5 Q. --- is it was legitimate purposes, but, you know, you
6 have three -- then all of a sudden you got three witnesses
7 against one. I mean, ---

8 A. On that issue they'd all be saying the same thing. I
9 mean, there was -- there was no -- as far as I recall, and
10 I'm, you know, like I say, it's been a while since I had
11 this trial and it's been a while since I really looked
12 through this record, but as far as I recall, there was
13 really no dispute as to why or how he got there. The
14 dispute happened, quite frankly, when they started disputing
15 -- when a dispute arose between what happened, it occurred
16 at about the moment the gunman got there.

17 Q. Okay.

18 A. Okay?

19 Q. Yeah. Okay. Now, ---

20 A. And that's when the stories ---

21 Q. We'll go ---

22 A. --- diverge.

23 Q. --- to there. The gunman gets there and there's this
24 altercation out there.

25 A. Yes, sir.

KENNETH GIBSON - DIRECT EXAMINATION BY MR. YARBOROUGH

1 Q. And Trico had told you at that point that he was trying
2 to help the guy that was the ball ticket seller, Mr. Thomas.

3 A. Yes, sir.

4 Q. And didn't you think it would have helped to allow
5 Trico to explain that he was trying to help him up?

6 A. Yeah, if I could have done it without the other --
7 without the other two things I was worried about,
8 absolutely.

9 Q. Okay. And did you -- did you talk to Trico about that?
10 I mean, the pros and cons of his testimony about trying to
11 help the guy?

12 A. We talked about the pros and cons of his testimony in
13 general. I don't recall specific. We went into specifics
14 about specific areas of it, of the testimony. But, you
15 know, we talked about the pros and cons of him testifying.

16 Q. Okay. And, I mean, Mr. Thomas really didn't know what
17 happened that day, right?

18 A. He -- he -- there were some -- there were a number of
19 inconsistencies in his story.

20 Q. And that -- I guess that's -- that's why I wonder if
21 you had made it -- you didn't even have to call Trico. You
22 could have called his uncle and father to testify about what
23 happened, right?

24 A. Well, his uncle and father didn't know what happened.
25 Once -- once the stories diverged, they had no idea about

KENNETH GIBSON - DIRECT EXAMINATION BY MR. YARBOROUGH

1 that ---

2 Q. Right. But they -- they at least were involved in --
3 it would have had to have been a conspiracy to -- if it
4 would have played out the way ...

5 A. Well, that's what they -- that's what he got convicted
6 of, conspiracy.

7 Q. Well, yeah, but it would -- but they would have had to
8 have been involved. And they were prepared to testify that
9 they weren't. That's what I'm trying to ---

10 A. Yeah, I see what you're saying. I don't know if that's
11 necessarily -- I don't know if I necessarily agree with
12 that, but, you know, in hindsight -- if what you're -- if
13 what you're asking me is if in hindsight I, you know,
14 particularly sitting here today being asked these questions,
15 if I wished I had called them? Absolutely. I would have,
16 you know, in hindsight I would have called all three of
17 them.

18 Q. Okay. And would you have tried to -- well, I guess
19 you've already said that you don't think the area helped
20 you?

21 A. Uh-uh (negative).

22 Q. Okay.

23 A. I think it worked against -- I think it was -- I think
24 it was -- I think it worked against us a lot.

25 Q. Okay. But sometimes in a case like that if you -- at

KENNETH GIBSON - DIRECT EXAMINATION BY MR. YARBOROUGH

1 least being able to show where the house was, ---

2 A. Um-hum (affirmative).

3 Q. --- I mean, it's helpful to the jury. Would you agree
4 with that?

5 A. Can be. But, I mean, I'm not sure if there was
6 anything in dispute about the house.

7 Q. Okay.

8 A. I mean, if you're asking -- if you're asking whether or
9 not a picture would have done a better job of helping the
10 jury create their own picture of what happened, then, yeah,
11 absolutely. But as far as elucidating any issue that was in
12 dispute, I don't think so.

13 Quite frankly, like I said, I think -- I think pictures
14 of the area worked against us because if I was on the jury,
15 the question that I would have had was, okay, if he didn't
16 have anything to do with this, where did this guy come from
17 and how did he know how to be there at that particular time?

18 Q. All right. But you knew why Trico was there. I mean,
19 it ---

20 A. Yeah, I knew why Trico was there. I'm talking about
21 the other guy.

22 Q. Right.

23 A. Yeah. I mean, like I say, there's no dispute about
24 what -- about Trico being there. The dispute was -- let me
25 -- I guess I'm not explaining this properly. You've got --

KENNETH GIBSON - DIRECT EXAMINATION BY MR. YARBOROUGH

1 you've got two theories of what happened, okay? You've
2 either got a theory of Trico called this guy over there and
3 coordinating with this masked bandit to approach the car at
4 the appropriate time and rob -- rob the victim in this case.
5 That's one theory.

6 The other theory is that Trico called this guy over
7 there and out of nowhere this guy shows up and robs the, you
8 know, robs them both, okay? The problem with the area, as
9 far as I was concerned, was the area was remote enough where
10 it made that second theory, the one where Trico's there and
11 this guy shows up, this random guy shows up, it made it much
12 more unlikely because it was a situation where you kind of
13 had to believe that a guy was, you know, laying in wait and
14 just laying in wait for anybody.

15 Q. But wouldn't that have been a great place to lay in
16 wait especially if they knew that the bookie comes out there
17 ---

18 A. Well, see, ---

19 Q. --- every other Wednesday or whatever the date?

20 A. But he didn't. There wasn't a regular -- there wasn't
21 a regular -- and I talked to Trico about that. There wasn't
22 a regular pattern of him coming out there and selling
23 tickets on a schedule.

24 He came when Trico called him or when one of them
25 called him. And it wasn't like an every day, or every week,

KENNETH GIBSON - DIRECT EXAMINATION BY MR. YARBOROUGH

1 or we'll see you at this time every whatever, that type of
2 thing. The only time -- he was only out there when one of
3 them called him.

4 So unless somebody knew that they were calling, he
5 wouldn't know to lay in wait or else he'd be laying in wait
6 for days or weeks, you know, hoping that this guy was going
7 to show up, which sort of seems unlikely.

8 Q. That opens up a whole window of possibilities because
9 you have people that were not involved with Trico that could
10 have heard that he was coming out there to get tickets.

11 A. But under the circumstances -- from my conversations
12 with Trico, the only people who knew that he was coming out
13 there was Trico, his uncle and his father. There was no --
14 there was no other conversation that Trico told me about
15 that he had had where he told anybody else that this
16 gentleman was coming out there to buy tickets.

17 Q. And then you had three witnesses that got him out
18 there, right?

19 A. Three witnesses that got him out there?

20 Q. Three witnesses that would have said that Trico wasn't
21 involved. Trico ---

22 A. Well, what they say is -- what they'd be able to say is
23 that when Trico went back into the house he didn't contact
24 anybody.

25 Q. Right. And there's -- you could have checked that out

KENNETH GIBSON - DIRECT EXAMINATION BY MR. YARBOROUGH

1 by the phone records?

2 A. I didn't -- yeah, but there was no dispute about the
3 phone records.

4 Q. Yeah, but -- but they would have had to call somebody
5 else, right?

6 A. Like who would have had to call somebody else? Like
7 Trico would have had to call somebody?

8 Q. The uncle, the father or Trico.

9 A. Possibly.

10 Q. And he always told you he didn't. And the uncle
11 substantiated that.

12 A. The uncle substantiated -- like I said, my -- and I
13 want to be -- I don't want it -- I'm not trying to be
14 difficult, but I want to be very precise as to what, you
15 know, what I can testify to. I can tell you that my
16 conversations with the uncle about what happened were very
17 limited, okay? And they were so ---

18 Q. Very what? I'm sorry.

19 A. Limited.

20 Q. Okay.

21 A. And they were limited solely to what happened when
22 Trico went back into the house. So I can't tell you whether
23 or not they could testify that he had nothing whatsoever to
24 do with this. And -- and, quite frankly, I can't really
25 think of any way they would be able to say he had absolutely

KENNETH GIBSON - DIRECT EXAMINATION BY MR. YARBOROUGH

1 nothing whatsoever to do with this.

2 But I can confirm to you that they would have been able
3 to testify that when he went back in the house he did not
4 have an opportunity or he did not contact anybody to have
5 them have someone come out ---

6 Q. Sure. And that would have helped. I mean, ...

7 A. Um ...

8 Q. How about this. It would have substantiated what your
9 client was saying.

10 A. Yes. It would have substantiated what the client would
11 say.

12 Q. Okay. Now, did -- Trico told you he tried to help Mr.
13 Thomas get up and ---

14 A. Yes.

15 Q. Okay. And ---

16 A. And I think I even asked Mr. Thomas that. And Mr.
17 Thomas said that that didn't happen.

18 Q. Well, I mean, it gets kind of convoluted in the -- in
19 the testimony going back between he and him. Was it -- it
20 was confusing.

21 A. Well, yeah. But there was a portion in the -- in the
22 transcript where -- where the -- where he's pretty clear
23 that it was Trico who -- who tried to hold him down and
24 Trico who had told him to give me the money.

25 Q. But Trico said he was picking him up?

KENNETH GIBSON - CROSS EXAMINATION BY MR. SCHMECKPEPER

1 A. Yes.

2 Q. And that would have been something you could have
3 presented to the jury?

4 A. I think I did -- I think I did argue that to the jury.
5 I just didn't have him testify to it.

6 Q. Okay.

7 **MR. YARBOROUGH:** Just a second.

8 (Pause)

9 **MR. YARBOROUGH:** I don't have any further questions.
10 Thank you, Your Honor.

11 **THE COURT:** Okay.

12 **Cross Examination by Mr. Schmeckpeper:**

13 Q. Afternoon, Mr. Gibson.

14 A. Afternoon.

15 Q. If you would, briefly describe to the Court your
16 background in criminal defense.

17 A. I've been a criminal defense lawyer for the past
18 fourteen, fifteen years. I've been practicing law since
19 '95. During that time-frame I've been on the contract for
20 probably the last six, seven years. And I did a bunch of
21 appointed work before that. I spent a short time in the
22 public defender's office on like an assistant contract.
23 I've probably handled hundreds of defendants, thousands of
24 warrants.

25 Q. So this wasn't your first felony case?

KENNETH GIBSON - CROSS EXAMINATION BY MR. SCHMECKPEPER

1 A. No.

2 Q. And do you have a copy of the transcript with you?

3 A. No. Not with me, no.

4 **MR. SCHMECKPEPER:** Your Honor, may I approach?

5 A. Thank you, Your Honor.

6 Q. And I'm not going to reference that right now, but ---

7 A. Okay.

8 Q. --- I'll call your attention to it later. I think the
9 first allegation that was raised was failure to file an
10 appeal. And correct me if I'm wrong. Your testimony was
11 that the Applicant initially asked you to file an appeal.

12 A. No.

13 Q. He never asked you to file an appeal?

14 A. No.

15 Q. And your practice, though, is to normally automatically
16 file one?

17 A. Yes. I generally file one whether they ask me to or
18 not.

19 Q. And in this case because of the sentence you felt it
20 was kind of lenient, you had talked to him, ---

21 A. Yes.

22 Q. --- and he expressly told you don't worry about it, and
23 ---

24 A. Yes.

25 Q. --- he'd serve the two years? But, otherwise, if he'd

KENNETH GIBSON - CROSS EXAMINATION BY MR. SCHMECKPEPER

1 asked you -- if he'd asked you to file an appeal at that
2 point what would you have done?

3 A. File an appeal. Quite frankly, filing an appeal is the
4 easiest thing in the world for me because then I just take
5 the whole file, I don't have to worry about keeping it. I
6 just ship it off to Indigent Defense and I never have to
7 worry about it again.

8 Q. And just to rehash a little bit. In terms of the two
9 witnesses, I think the Applicant's father and uncle, you
10 expressed concern with their criminal background?

11 A. Yes.

12 Q. And how useful did you think their testimony would be
13 at the time -- at the time you were trying this case?

14 A. It would only be useful to rebut an indication that he
15 had gone back into the house to coordinate with someone to
16 ---

17 Q. On the phone?

18 A. Yeah. Or even in the house.

19 Q. While we're talking about the phone, if you would turn
20 in your transcript to page 141. And correct me if I'm
21 wrong, David Weiner was the -- the last time I was in the
22 courtroom I called him David Weener, and he gave me a
23 strange look. David Weiner was the lead investigator in
24 this case?

25 A. Yes.

KENNETH GIBSON - CROSS EXAMINATION BY MR. SCHMECKPEPER

1 Q. And your cross examination of Mr. Weiner starting
2 around page 12 or page 141, line 12.

3 A. Yes.

4 Q. One of the first questions you asked him was whether or
5 not he believed that the phone was used to coordinate this
6 robbery.

7 A. Yes.

8 Q. And what was his response?

9 A. Just calling the victim to come bring ball tickets.
10 Wait a minute. Yeah, that's it.

11 Q. So did the State ever present any evidence that when
12 the Applicant went back inside to use the phone he was
13 coordinating the robbery?

14 A. No. That was not an avenue they pursued.

15 Q. And did you elicit that on cross examination from the
16 lead investigator?

17 A. Yes.

18 Q. So with that in mind how much more valuable would the
19 extra witnesses have been in corroborating with the lead
20 investigator in this?

21 A. Like I said, I didn't call them because I thought
22 they'd do more harm than good based upon where the case
23 went.

24 Q. And I think one of the other issues was failure to call
25 the Applicant as a witness?

KENNETH GIBSON - CROSS EXAMINATION BY MR. SCHMECKPEPER

1 A. Yes.

2 Q. And you testified it was your opinion and I think your
3 advice that he shouldn't testify due to the two problems.
4 And those were, I think, criminal record and ---

5 A. Yes.

6 Q. --- a pretty large -- pretty large hole in his story?

7 A. Yes.

8 Q. And I think the only question I have is whether or not
9 -- whose decision was it to actually testify?

10 A. His. It's always his decision. It's -- it's always
11 the defendant's decision.

12 Q. And did you tell him it was his decision?

13 A. Yeah. I think the judge told him as well.

14 Q. So it would be fair to say that the judge went through
15 a thorough colloquy explaining to the Applicant whose
16 decision it was whether or not to testify?

17 A. Yes.

18 **MR. SCHMECKPEPER:** I beg the Court's indulgence.

19 (Pause)

20 Q. I think you also touched on -- and maybe if you could
21 explore a little further. This wasn't every other Tuesday
22 the victim came by to sell ball tickets?

23 A. That was my -- no. It was -- it was not my
24 understanding this was a regular scheduled course of action.

25 Q. So in order for the -- for the other armed robber to

KENNETH GIBSON - CROSS EXAMINATION BY MR. SCHMECKPEPER

1 know the victim was going to be there, he would have had to
2 lie in wait for a pretty long time or somebody would had to
3 coordinate with him?

4 A. Yeah or he saw, you know, what we argued to the jury
5 was that, you know, there was someone who saw the victim
6 ride down the street, kind of figured out where he was going
7 and then, you know, went around and did it that way. But
8 ...

9 Q. And that's -- so there are three possibilities. You're
10 -- what you're saying today is at that time you didn't think
11 the lying in wait was really a viable option or something
12 that the jury ---

13 A. No.

14 Q. And you didn't want the jury thinking that somebody
15 coordinated with him. So your argument was the third
16 option?

17 A. Yes.

18 Q. I think the issue -- maturity issues came up -- just
19 out of curiosity, did you ever have any trouble
20 communicating with the Applicant?

21 A. Oh, no. He was competent. No, he -- yeah, if that's
22 what you're asking.

23 Q. If you'd had any problems communicating with the
24 Applicant or felt he didn't -- if he had problems
25 communicating with you what would you have done?

TRICO LADSON - DIRECT EXAMINATION BY MR. YARBOROUGH

1 A. I would have gotten the judge to sign an order ordering
2 a competency evaluation. And they would have taken him down
3 to Columbia and evaluated him. And then Columbia would have
4 come back and said no matter how messed up he was that he
5 was competent. So ...

6 **MR. SCHMECKPEPER:** I beg the Court's indulgence.

7 (Pause)

8 **MR. SCHMECKPEPER:** Your Honor, at this point I don't
9 have any more questions. I would ask that -- in that case I
10 can call him in my case in chief.

11 **THE COURT:** Okay. Thank you. You can step down and
12 stick around or just ---

13 A. Yes, sir.

14 **THE COURT:** Call your next witness.

15 **MR. YARBOROUGH:** I call Mr. Ladson.

16 **THE COURT:** All right.

17 **MADAME CLERK:** Mr. Ladson, please place your left hand
18 on the Bible and raise your right hand.

19 **Trico Ladson,** being duly
20 sworn testified as follows;

21 **MADAME CLERK:** Thank you. You may be seated. Please
22 state your full name for the record.

23 **MR. LADSON:** I'm Trico Ladson.

24 **Direct Examination by Mr. Yarborough:**

25 Q. Trico, are you presently incarcerated?

TRICO LADSON - DIRECT EXAMINATION BY MR. YARBOROUGH

1 A. Yes, sir.

2 Q. And how long have you been?

3 A. Thirteen months.

4 Q. Thirteen months. And how much longer do you have to
5 go?

6 A. June -- June 1st.

7 Q. All right. And you wanted to -- you heard Mr. Gibson
8 testify. What was your recollection about the appeal?

9 A. What you mean?

10 Q. Do you remember -- did you want to file a notice of
11 appeal?

12 A. Well, he advised me that if I did, you understand, if I
13 lose I can get more time.

14 Q. Okay. So at that point did you tell him you wanted to
15 have an appeal or not?

16 A. Well I told him no.

17 Q. Okay. Because you wanted to go ahead and get your
18 sentence over with?

19 A. Yes, sir.

20 Q. Okay. And where -- do you work every day?

21 A. Yes, sir.

22 Q. Where do you work?

23 A. Well, I only work now -- 'cause I'm about to get
24 another job. When I was working I was working in Industrial
25 Container.

TRICO LADSON - DIRECT EXAMINATION BY MR. YARBOROUGH

- 1 Q. Okay. You've done well since you've been in prison?
- 2 A. Yes, sir.
- 3 Q. Okay. And why did you want this PCR filed?
- 4 A. Because I got convicted for something I didn't do.
- 5 Q. Okay. Now, let's take you back to the -- to the trial.
- 6 Do you remember hearing the ball man testify at trial?
- 7 A. The ball man?
- 8 Q. The man selling the ball tickets. I'm sorry.
- 9 A. Yes, sir.
- 10 Q. Mr. Thomas.
- 11 A. Yes, sir.
- 12 Q. Okay. Did you agree with what he said?
- 13 A. No, sir.
- 14 Q. Okay. And did you tell Mr. Gibson that?
- 15 A. Yes, sir.
- 16 Q. Okay. And why did you not agree with what he said?
- 17 A. You talking about Leroy?
- 18 Q. Yeah.
- 19 A. Because he was lying.
- 20 Q. Okay. Well, tell the -- tell the Judge why he's lying.
- 21 This is your day. You -- you tell your story.
- 22 A. I called him the first time.
- 23 Q. You called who?
- 24 A. Leroy. I called Leroy the first time and he answered
- 25 the phone. I asked him was he going to come by. And he

TRICO LADSON - DIRECT EXAMINATION BY MR. YARBOROUGH

1 said, yeah, give me some time. And so by ---

2 Q. Did he come out there regularly?

3 A. Yes, sir. He came out there every week.

4 Q. Okay. So it was ---

5 A. But ---

6 Q. That was -- everybody knew that, that he came out every
7 week?

8 A. Yes, sir.

9 Q. Okay.

10 A. But when he did come out there, you know what I'm
11 saying, sometimes like -- like the ball tickets, like he'd
12 have like about a few of them on there. So I was trying to,
13 you know what I'm saying, be the first one to get them. So
14 I had called him. And he said he'll be out there.

15 So about a hour or two later I called him again. I
16 asked him was he coming out there. He said, yeah. But he
17 never said what time he was coming. So I was outside. I
18 was on the phone with my daddy when -- when he pulled up.

19 Q. When the ball ticket guy pulled up ---

20 A. Yes, sir.

21 Q. --- you were on your phone with your father, who's in
22 the courtroom today?

23 A. Yes, sir.

24 Q. And what were y'all talking about?

25 A. I had asked him did he want some ball tickets 'cause

TRICO LADSON - DIRECT EXAMINATION BY MR. YARBOROUGH

1 Leroy was pulling up. And so I went inside and got some --
2 got twenty dollars from my uncle.

3 Q. Now why did you go inside to get the twenty dollars
4 from your uncle?

5 A. To buy the ball tickets.

6 Q. But who told you to do that?

7 A. My daddy wanted some ball tickets just like me.

8 Q. Okay. So -- so y'all were getting these ball tickets
9 together?

10 A. Yes, sir.

11 Q. Okay. And did -- your father was on the phone?

12 A. Yes, sir.

13 Q. And did you tell him the guy was outside?

14 A. Yes, sir.

15 Q. Okay. Did -- at that point had you planned any type of
16 robbery?

17 A. No, sir.

18 Q. Okay. Did you tell Mr. Gibson all this?

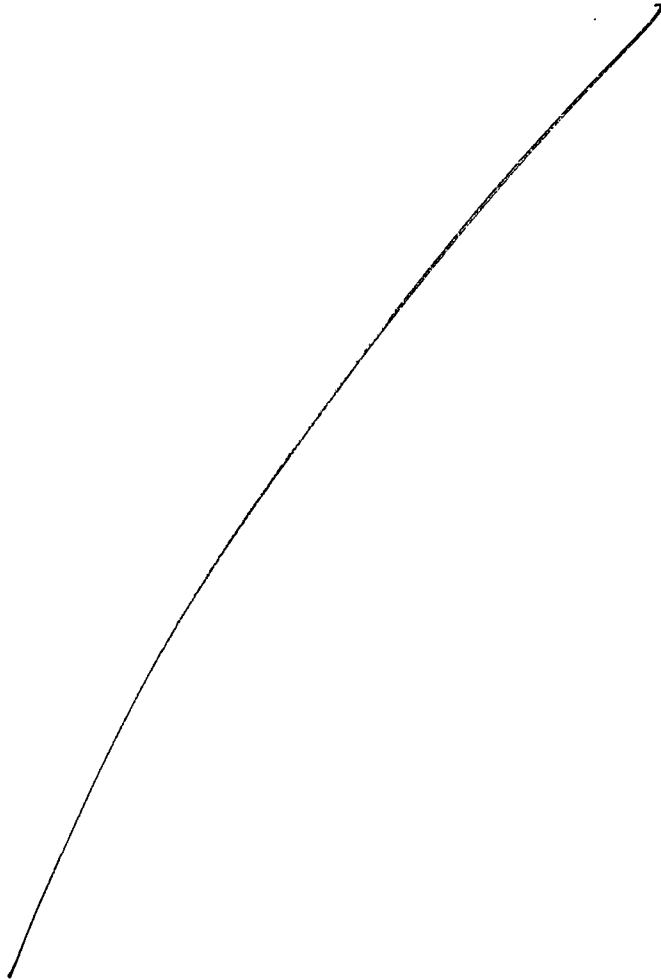
19 A. Yes, sir.

20 Q. Okay. And did you want to be able to tell the court
21 that?

22 A. When? Today or ---

23 Q. No, back at the trial.

24 A. Yes, sir. But, you know, when I got in the back, I
25 asked him, I said ---



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TRICO LADSON - DIRECT EXAMINATION BY MR. YARBOROUGH

1 Q. When you got back from where?

2 A. When I was in the holding cell in the back I asked him
3 what -- him saying -- do he think if he was me -- would he
4 get on the stand and testify if he was me? And he was
5 talking about his education and all this and that. And he
6 was like she could cross examine you and get you more time,
7 you know.

8 So I was like, you know, the first thing that came to
9 my head was my daughter because I just had a daughter. And
10 so I was like, okay, well, I'll just let you go ahead and,
11 you know what I'm saying?

12 Q. Did you want him to call your father and your uncle?

13 A. Yes, sir.

14 Q. Okay. And were they in the courtroom?

15 A. Yes, sir.

16 Q. Okay. And did you expect that they were going to
17 testify at trial ---

18 A. Yes, sir.

19 Q. --- even if you weren't going to testify?

20 A. Yes, sir.

21 Q. Okay. And did that happen?

22 A. No, sir.

23 Q. Okay. And you actually told the judge that -- that you
24 didn't want to testify, right?

25 A. Yes, sir.

TRICO LADSON - DIRECT EXAMINATION BY MR. YARBOROUGH

1 Q. Okay. Did you feel like you had been prepared to
2 testify?

3 A. No, sir.

4 Q. Okay. And, I mean, you say that, before the trial
5 started had Mr. Gibson gone over your testimony with you?

6 A. No, sir. When we came here he had me, my uncle, my
7 daddy, my mama, and my mama's husband, we was all in the --
8 in the back. And he was asking me how did my yard look, you
9 know what I'm saying? So I had to explain to him how my
10 yard looked 'cause he wasn't out -- he ain't never went out
11 there. And so, you know, I wasn't -- I wasn't prepared for
12 trial.

13 Q. Did you know you were going to trial that day?

14 A. Yes, sir.

15 Q. Okay. But were you -- were you concerned?

16 A. Kind of. I was a little bit concerned, but the main
17 thing I wasn't concerned because I was thinking, well, you
18 know, I ain't got no evidence, I mean, they don't have no
19 evidence on me. So I was, you know ...

20 Q. Okay. Do you -- do you feel like you made a mistake by
21 not testifying?

22 A. Yes, sir.

23 Q. Okay. And would you have told the truth that day?

24 A. Yes, sir.

25 Q. Okay. Did you tell Mr. Gibson that there were phone

TRICO LADSON - DIRECT EXAMINATION BY MR. YARBOROUGH

1 records that were available that could prove that there was
2 a call between your family and the -- and the -- Mr. Thomas?

3 A. Well, I told him I was on the phone with my dad.

4 Q. Okay. Did he ask about those phone records?

5 A. No, sir.

6 Q. Okay. Do you now think those phone records would have
7 helped your case?

8 A. Yes, sir.

9 Q. Do you wish that he would have gone out to the scene of
10 where this happened?

11 A. Yes, sir.

12 Q. Because you think there's -- the way the road's set up,
13 does it -- does it help your case?

14 A. Yes, sir.

15 Q. Okay. And why does it help your case?

16 A. Because right where the woods is, there's a road right
17 behind the woods. So he could easily just come through the
18 road and go straight through the woods and be in my yard.

19 Q. And when you say that, you're talking about if you were
20 following the ball ticket man, Mr. Thomas?

21 A. Yes, sir.

22 Q. Okay. And what you're saying is you think that would
23 be an excellent spot to -- may have had a robbery?

24 A. Yes, sir.

25 Q. Okay. Did you ever see this guy with the mask before?

TRICO LADSON - DIRECT EXAMINATION BY MR. YARBOROUGH

- 1 A. No, sir.
- 2 Q. Okay. Now how did he get involved?
- 3 A. He came out the woods.
- 4 Q. Okay. And did you tell Mr. Gibson that?
- 5 A. Yes, sir.
- 6 Q. Did you tell Mr. Gibson that you were trying to help
- 7 Mr. Thomas up after -- but didn't a gun go off?
- 8 A. Yes, sir. The gun had hit Leroy across the head and
- 9 then it shot through the window. And Leroy fell out the
- 10 truck. I tried to help him up and then he pushed me off.
- 11 Q. Okay. And was he hurt?
- 12 A. No, sir. I thought he was, but he wasn't.
- 13 Q. Okay. So you were trying to help him up and you
- 14 weren't sure how he was doing?
- 15 A. Yes, sir.
- 16 Q. Did your -- did your uncle come out at that point?
- 17 A. No, sir. He was still in the house.
- 18 Q. He was still in the house when all that happened?
- 19 A. Yes, sir.
- 20 Q. Okay. And -- but you had just gotten off the phone
- 21 with your dad?
- 22 A. Yes, sir.
- 23 Q. All right. Now, you know, why did you tell Mr. Gibson
- 24 you didn't want an appeal?
- 25 A. When he came to the -- the jailhouse?

TRICO LADSON - DIRECT EXAMINATION BY MR. YARBOROUGH

1 Q. Yeah.

2 A. He came, he said, I got one more thing to tell you that
3 I forgot. You can get an appeal. But he was like, you
4 won't get an appeal on the attempted -- attempted murder,
5 but it'd be on attempted armed robbery and conspiracy. But
6 if you lose, you can get more time. So ---

7 Q. And do you understand that?

8 A. Yes, sir.

9 Q. Do you want an appeal?

10 (Pause)

11 A. Yes, sir.

12 Q. Okay. It's not my answer. It's got to be your answer.
13 Do you want this Judge to grant your post conviction relief
14 application?

15 A. Yes, sir.

16 Q. Okay. Why? Why is the reason you wanted that to
17 happen?

18 A. Because I got convicted for something I didn't do and
19 didn't have nothing to do with.

20 Q. All right. And do you want to get out and go to work?

21 A. Yes, sir.

22 Q. Are you concerned what a conviction will do with your
23 ability to work?

24 A. Yes, sir.

25 Q. Have you had a good work record since you've been in

TRICO LADSON - DIRECT EXAMINATION BY MR. YARBOROUGH

1 prison?

2 A. Yes, sir.

3 Q. Are you going to -- do you think you're going to be
4 able to get a job?

5 A. Yes, sir.

6 Q. All right. Do you understand what's happening in here
7 today?

8 A. Yes, sir.

9 Q. Do you understand it better than you did back then?

10 A. Yes, sir.

11 Q. All right. Now, is there anything else you want to
12 tell us about why you think Mr. Gibson didn't do a good job?

13 A. I mean, he didn't really take his time on my case, you
14 know. 'Cause every time I kept talking to him, only thing
15 he was talking about was a plea. And I kept telling the
16 man, I'm not pleading to something I didn't do. Only thing
17 he was talking about was a YOA. And I wasn't trying to go
18 for that, you know. So I'm like, I'm innocent.

19 Q. Right. And so did you feel like he should have talked
20 to your witnesses?

21 A. Yes, sir.

22 Q. Do you feel like he should have prepared you to
23 testify?

24 A. Yes, sir.

25 Q. All right. Do you wish you would have filed an appeal?

TRICO LADSON - CROSS EXAMINATION BY MR. SCHMECKPEPER

1 A. Yes, sir.

2 Q. Okay. Is there anything else I'm missing?

3 A. No, sir.

4 Q. Thank you. Answer any questions.

5 **Cross Examination by Mr. Schmeckpeper:**

6 Q. Afternoon, Mr. Ladson.

7 A. Afternoon.

8 Q. And I'm kind of going to go in reverse order a little
9 bit. I think you just testified that you liked to have
10 filed -- right now you wished you had filed an appeal?

11 A. Yes, sir.

12 Q. But I'd like to clear up a little bit of your testimony
13 as to a conversation you had right after your trial. So you
14 said your attorney came in after your trial ---

15 A. Not the same day. He came in when I was in the County.

16 Q. County. But he came in when you were in the County and
17 talked to you about the possibility of filing an appeal?

18 A. Yes, sir.

19 Q. And he said -- and I think you said that he told you if
20 you lost the appeal you'd get more time? Are you sure it
21 wasn't that if you won the appeal you'd get more time?

22 A. If I lost the appeal I would get more time.

23 Q. So he told you if you lost the appeal you'd get more
24 time?

25 A. Yes.

TRICO LADSON - CROSS EXAMINATION BY MR. SCHMECKPEPER

1 Q. And then you said I don't want to appeal anymore?

2 A. Yeah.

3 Q. Do you have a transcript with you?

4 A. No, sir.

5 **MR. SCHMECKPEPER:** And, Your Honor, ---

6 **THE COURT:** Well, I don't think he can reach far enough
7 to get mine.

8 **MR. SCHMECKPEPER:** I can ---

9 **MR. YARBOROUGH:** I've got one too.

10 Q. One of your allegations is that you wish you had
11 testified?

12 A. Yes, sir.

13 Q. Did your counsel -- did your attorney -- did he ever
14 tell you you're not allowed to testify?

15 A. No, sir.

16 Q. What did he tell you?

17 A. He advised me -- he was like -- when I was in the back
18 he was talking about how I could get cross examined and I
19 could end up getting more time. So I was like -- 'cause I
20 asked him, I said do you think or if you was me would you --
21 would you testify? And he said, you know, he advised me not
22 to.

23 Q. Now if you could turn your attention to page 154.

24 Right around line 15. And my question is do you remember at
25 any point during the trial where the judge informed you

TRICO LADSON - CROSS EXAMINATION BY MR. SCHMECKPEPER

1 about your right to testify?

2 A. Say that again.

3 Q. Do you remember at any point during the trial when the
4 judge sent the jury back to the jury room and talked
5 directly to you about your right to testify?

6 A. Yes, sir.

7 Q. And I'm just going to read from the transcript. Do you
8 remember specifically the judge saying, it is left entirely
9 up to you whether or not to testify. You may talk to your
10 attorney, your family and friends, and anyone else, but the
11 final decision will be left entirely up to you. Do you
12 understand what I've explained to you? And what was your
13 response?

14 A. Yes, sir.

15 Q. Now, I understand you're saying your attorney may have
16 given you, you know, certain advice, but did you understand
17 that it was your choice whether or not to testify?

18 A. Yes, sir.

19 Q. You've also testified as to what your testimony would
20 have been at trial if you had of testified, right? And I
21 think you said you called the victim over to buy ball
22 tickets?

23 A. (Affirmative nod).

24 Q. And then when he got there you went inside to get money
25 from your uncle, and you went over to pay him, and I think

TRICO LADSON - CROSS EXAMINATION BY MR. SCHMECKPEPER

1 the gunman showed up and that you had nothing to do with it?

2 A. Yes, sir.

3 Q. And that you then tried to help the victim and you guys
4 ran off together?

5 A. Yes, sir.

6 Q. I think there was an altercation at some point between
7 you and the victim?

8 A. He fell out -- he fell out the truck. I tried to help
9 him up. He pushed me off. And he took off running. And we
10 both was running in the same direction. I seen him out the
11 corner of my eye. I tried to help him up again and he
12 started pulling my hair. And he was screaming help. So we
13 both went our separate ways.

14 Q. Now your attorney also went over reasons that he
15 wouldn't have testified if he were you. So I'm going to ask
16 you a couple of questions. First, did you have any prior
17 convictions?

18 A. Yeah. I had false info to the police, curfew violation
19 and disorderly conduct.

20 Q. And the next question is did your attorney ever ask you
21 where you went after you ran off?

22 A. Yes, sir.

23 Q. And what did you tell him?

24 A. I told him I couldn't remember.

25 Q. Do you remember?

TRICO LADSON - REDIRECT EXAMINATION BY MR. YARBOROUGH

1 A. Yeah. I went to my mama's house.

2 Q. Why did you tell your attorney that?

3 A. I don't know.

4 Q. Because if your attorney had had that information he
5 might have made a different decision.

6 A. He probably would have had the same decision.

7 Q. But why didn't you -- why didn't you tell your attorney
8 that?

9 A. I don't know.

10 MR. SCHMECKPEPER: Your Honor, I have no further
11 questions.

12 THE COURT: All right. Redirect.

13 MR. YARBOROUGH: Just a couple, Your Honor.

14 **Redirect Examination by Mr. Yarborough:**

15 Q. So let me understand this. There were -- there were
16 two altercations ---

17 A. Yes, sir.

18 Q. --- with you and ---

19 A. Leroy?

20 Q. Thomas.

21 A. Yes, sir.

22 Q. Okay. What was the first one?

23 A. He -- the gun had went off and he fell out of the
24 truck.

25 Q. Yeah. Now, whose gun was this?

TRICO LADSON - REDIRECT EXAMINATION BY MR. YARBOROUGH

1 A. The gun?

2 Q. Yeah. Did you -- how did you know a gun went off?

3 A. Because he -- he pointed it at me first and ---

4 Q. Who pointed ---

5 A. --- told me ---

6 Q. --- it at you?

7 A. The gunman. He pointed it at me first and told me to
8 back up. And he put it at Leroy's head. And Leroy started
9 laughing.

10 MR. SCHMECKPEPER: Your Honor, I would just object. I
11 think this is outside my scope of cross examination.

12 THE COURT: Well, I'll let him. It's his only chance
13 to present what he wants to present. So I'll allow Mr.
14 Yarborough to continue.

15 Q. Okay. And then -- okay. So the gun went off. And
16 then -- but I'm trying to figure out where he fell out of
17 the car.

18 A. As soon -- as soon as the gun had went off, he slid to
19 the seat and fell out. He was like head first and fell out.
20 And so I went over there and I tried to help him up. He
21 pushed me off and took off running.

22 Q. Okay. When you're saying he pushed you off, you're ---

23 A. Leroy.

24 Q. That's where you're talking about these two
25 altercations that the attorney general asked you about?

TRICO LADSON - REDIRECT EXAMINATION BY MR. YARBOROUGH

- 1 A. Yes, sir.
- 2 Q. Okay. So the first altercation is what?
- 3 A. Leroy had fell out the truck. And I tried to help him
- 4 up, and he pushed me off.
- 5 Q. Okay. And then what was the second altercation?
- 6 A. We both had ran down the street and Leroy had fell.
- 7 And I tried to go help him up, but he ended up pulling my
- 8 hair. And so I was telling him to let me go. And so he let
- 9 me go and he was screaming help. And we both went our
- 10 separate ways.
- 11 Q. Okay. And he asked you about going over to your mom's
- 12 house. Why didn't you tell him about the mom?
- 13 A. Being as I -- I don't remember.
- 14 Q. Were you -- were you scared?
- 15 A. I mean, I didn't know what he -- you know what I'm
- 16 saying? I didn't know what he was going to say, you know.
- 17 So I just didn't even ...
- 18 Q. All right. And he asked you about the appeal. Did you
- 19 understand what an appeal was?
- 20 A. Not really because I ain't never been in this type of
- 21 situation. So I really didn't ...
- 22 Q. But you've studied up on it now and you wished you
- 23 would have had one?
- 24 A. Yes, sir.
- 25 Q. And your -- now knowing everything you know do you wish

TRICO LADSON - REDIRECT EXAMINATION BY MR. YARBOROUGH

1 you would have testified?

2 A. Yes, sir.

3 Q. Okay. When the judge asked you -- I think y'all broke
4 for lunch and then he asked you about it. Did you
5 understand clearly what he was talking about when he asked
6 you about testifying?

7 A. A little bit. Not really.

8 Q. Well, let me ask you this. Did you think if you didn't
9 testify they were still going to call your uncle and your
10 dad?

11 A. Yes, sir.

12 Q. You still thought that was going to happen?

13 A. Yes, sir.

14 Q. And at no time did anybody tell you that that wasn't
15 going to happen?

16 A. No, sir.

17 Q. Okay. And if they would have testified would -- and
18 you would have seen Ms. Hodge cross examine them, would that
19 have changed your mind?

20 A. Yes, sir.

21 Q. Okay.

22 **MR. YARBOROUGH:** I don't think I have any further
23 questions, Your Honor.

24 **THE COURT:** All right.

25 **MR. SCHMECKPEPER:** Nothing, Your Honor.

LARRY LADSON - DIRECT EXAMINATION BY MR. YARBOROUGH

1 **THE COURT:** All right. You can step down and have a
2 seat with your attorney, Mr. Ladson.

3 **MR. YARBOROUGH:** I call Mr. Ladson.

4 **MADAME CLERK:** Please place your left hand on the Bible
5 and raise your right hand.

6 **Larry Ladson,** being duly
7 sworn testified as follows;

8 **MADAME CLERK:** Thank you. Please state your full name
9 for the record.

10 **MR. LADSON:** Larry Ladson.

11 **MADAME CLERK:** Thank you. You may be seated.

12 **Direct Examination by Mr. Yarborough:**

13 Q. State your name again for the record.

14 A. Larry Ladson.

15 Q. Larry, where are you from?

16 A. Simpsonville.

17 Q. And have you lived here all your life?

18 A. Yes, sir.

19 Q. Okay. And do you have a son?

20 A. Yes, Trico. I got two sons ---

21 Q. Two sons.

22 A. --- and a daughter.

23 Q. The one that you're here about today is Trico?

24 A. Yes, sir.

25 Q. Do you remember this -- this incident taking place a

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LARRY LADSON - DIRECT EXAMINATION BY MR. YARBOROUGH

1 couple of years ago?

2 A. Yes, sir.

3 Q. Do you remember -- did you go to the trial?

4 A. Yes, sir.

5 Q. Okay. And before trial did you talk to Mr. Gibson?

6 A. Yeah, I talked to him.

7 Q. And what did you tell him?

8 A. I told him about the situation that, I mean, when he
9 asked me if I'm going to stand up ---

10 **THE COURT:** Speak up a little louder.

11 Q. You got to speak up so ---

12 A. It's like -- well, when I had talked to him -- I didn't
13 talk to him long.

14 **MR. YARBOROUGH:** May I approach, Your Honor? I'm just
15 going to scoot this microphone down a little bit. That
16 might help.

17 A. I mean, I didn't talk to him long. When he asked me do
18 I want to testify and I was like, yeah.

19 Q. Okay. And why did you want to testify?

20 A. Because I was on the phone with my son ---

21 Q. And ---

22 A. --- when all this was going on.

23 Q. Okay. And what did you hear going on?

24 A. Well, when I had told my son to get twenty dollars from
25 my brother, Mike, to get some tickets, you know, and next

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LARRY LADSON - DIRECT EXAMINATION BY MR. YARBOROUGH

1 thing you know, you know, I mean, Trico was like somebody
2 trying to rob Leroy.

3 Q. You heard that?

4 A. Yeah.

5 Q. And did you tell Mr. Gibson that?

6 A. Yeah, I talked to Mr. Gibson about that.

7 Q. And did -- were you available to testify?

8 A. Yeah, I was available to testify.

9 Q. Okay. And did he tell you not to testify because you
10 had a bad record?

11 A. He said we didn't have to testify. He was like we was
12 good, he was good. He was going to take -- he was going to
13 handle that.

14 Q. Okay. But when you say handle that, what ---

15 A. That he was going to, you know, he was going to do it.
16 He was like he didn't need us.

17 Q. Right. And could you have testified to what happened
18 that day?

19 A. Yeah. Yes, sir.

20 Q. Okay. And you heard the altercation happen?

21 A. Yeah.

22 Q. All right. And you were on the phone?

23 A. I was on the phone with him.

24 Q. All right. Now let me ask you this. Your brother --
25 you had called your brother before that?

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LARRY LADSON - DIRECT EXAMINATION BY MR. YARBOROUGH

1 A. Well, I didn't talk to my brother. I talked to my son.

2 I told my son, get the money from my brother.

3 Q. Okay. But did you tell your -- you never told your
4 brother to give him the money? You just -- you told your
5 son to get the money from your brother?

6 A. Because sometimes we do that, like -- 'cause everybody
7 see Leroy Thomas when he come down. And every week, you
8 know, every two or three times a week when he do come, you
9 know, like if I'm not there, you know, might get the money
10 from my brother, you know what I'm saying, get my son to do
11 it. And then sometimes I might get it from my brother ---

12 Q. Right.

13 A. --- if I'm at home. But I ---

14 Q. And that's normal?

15 A. --- was at work. Yeah, that's normal.

16 Q. And that guy comes around ---

17 A. Every time.

18 Q. --- once a week? Every week?

19 A. Yeah, comes about two or three times out of the week.

20 Q. Two or three times?

21 A. Yeah. Every week.

22 Q. It's normal for him to come around there?

23 A. Yeah.

24 Q. When I'm talking about him, I'm talking about Mr.

25 Thomas, the ---

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LARRY LADSON - DIRECT EXAMINATION BY MR. YARBOROUGH

- 1 A. Yeah.
- 2 Q. --- ball ---
- 3 A. Mr. Thompson [sic]. Yeah, he come around every --
- 4 every week. Two, three times a week.
- 5 Q. And there's -- did you hear the gun go off?
- 6 A. Well, I had got off the phone with Trico.
- 7 Q. Right.
- 8 A. But he was telling me, he said, somebody trying to rob
- 9 -- rob Leroy.
- 10 Q. Okay. And at that point you got off the phone and ---
- 11 A. Yeah, because I had to go back to work.
- 12 Q. Okay.
- 13 A. I was working.
- 14 Q. All right. And that -- that was the last you heard of
- 15 it?
- 16 A. Yeah.
- 17 Q. Okay. And you were here at the courthouse?
- 18 A. Yes, sir.
- 19 Q. And you were prepared to testify?
- 20 A. Yeah.
- 21 Q. And at that point you knew that your son had not been
- 22 involved in the robbery?
- 23 A. Yeah. I already knew he wasn't involved with the
- 24 robbery.
- 25 Q. He's not that kind of boy, is he?

LARRY LADSON - DIRECT EXAMINATION BY MR. YARBOROUGH

- 1 A. No.
- 2 Q. Okay. He's a hard worker?
- 3 A. Yeah. When he work he work hard. He be the best one
- 4 on the job.
- 5 Q. Right. And were you involved in any kind of conspiracy
- 6 to rob this guy?
- 7 A. No. Me and Leroy, he was cool with the family. He was
- 8 always, you know, come over there, talk a little bit, laugh,
- 9 giggle. He was good to us and we was good to him.
- 10 Q. And it wouldn't be unusual for him to be down on -- in
- 11 y'all's little cul-de-sac, right? Your little area where
- 12 you live?
- 13 A. Uh-uh (negative) because he go all around. Everybody
- 14 see him when he comes.
- 15 Q. He goes all around ---
- 16 A. Yeah.
- 17 Q. --- that neighborhood?
- 18 A. Um-hum (affirmative).
- 19 Q. And so it would have been easy to have him followed or
- 20 whatever?
- 21 A. Yeah. Somebody could have followed him.
- 22 Q. Right. And most people -- most people know where his
- 23 ---
- 24 A. Everybody know ---
- 25 Q. --- his stops are?

LARRY LADSON - CROSS EXAMINATION BY MR. SCHMECKPEPER

1 A. --- he sells -- sells -- sells them a ticket.

2 Everybody know he sells tickets.

3 Q. Is there anything else you'd like to tell Judge Hayes
4 about this case?

5 A. Not really.

6 Q. Thank you. Answer any ---

7 **THE COURT:** Cross.

8 **Cross Examination by Mr. Schmeckpeper:**

9 Q. I've just got a couple of questions for you, Mr.
10 Ladson. I apologize if this is embarrassing. The
11 Applicant's attorney, your son's attorney testified that one
12 reason he didn't call you was your criminal background.
13 Could you tell the Court your criminal background for the
14 record?

15 A. Fighting and stuff like that.

16 Q. Do you know the specific charges?

17 A. Child support, fighting and pistol charges.

18 Q. And that's everything?

19 A. Shit, yeah.

20 Q. Now you testified at one point that you overheard the
21 altercation?

22 A. Yeah.

23 Q. So I want you to take me -- take me through this step
24 by step. You were on the phone with Trico?

25 A. Yeah.

LARRY LADSON - CROSS EXAMINATION BY MR. SCHMECKPEPER

- 1 Q. And you said, talk to your uncle because I know he
2 wants some tickets?
- 3 A. Yeah.
- 4 Q. And you were asking for him to get tickets for you too?
- 5 A. Yeah.
- 6 Q. And then what happened?
- 7 A. Because see, I wasn't there. See when Leroy come ---
- 8 Q. And where were you?
- 9 A. I was at work.
- 10 Q. Okay.
- 11 A. I work at IHOP.
- 12 Q. So then what happened?
- 13 A. What happened when I was talking to Trico? I was
14 telling him to tell my brother, Mike, to get me some money
15 so I can get some ball tickets.
- 16 Q. And then what happened after that?
- 17 A. And then Trico was like, you know, somebody trying to
18 rob Leroy.
- 19 Q. And then what happened after that?
- 20 A. After that I got off the phone with Trico.
- 21 Q. You got off the phone ---
- 22 A. I had to go back to work.
- 23 Q. So you got off the phone right after he said ---
- 24 A. Yeah.
- 25 Q. --- somebody trying to rob ---

LARRY LADSON - CROSS EXAMINATION BY MR. SCHMECKPEPER

1 A. Because see, I was working when he called and asked me
2 did I want some tickets. You know, you can't just sit there
3 and talk on the phone, you know, the whole time like that.
4 So I had to sneak and talk on the phone.

5 Q. Did you call the police?

6 A. Who? Me?

7 Q. Yeah.

8 A. No, I didn't call no police.

9 Q. You didn't call the police when Trico said someone
10 tried to rob Leroy?

11 A. No, I ain't call no police. I'm working.

12 Q. So you didn't call the police because you were working?

13 A. Uh-uh (negative). I don't know who called the police.

14 Q. And you said -- you testified that you told Trico's
15 attorney this?

16 A. Yeah.

17 Q. What did you tell Trico's attorney?

18 A. I told Trico's attorney that I was talking to Trico on
19 the phone when all this -- when all this went on.

20 Q. I want you to tell me exactly -- if you can remember,
21 tell me exactly what ---

22 A. Only thing that I remember is that, you know, Trico --
23 I was talking to Trico on the phone when he called Leroy.

24 He said Leroy was coming. When I was on the phone with

25 Trico and next thing you know, Trico said somebody trying to

LARRY LADSON - REDIRECT EXAMINATION BY MR. YARBOROUGH

1 rob Leroy.

2 Q. And you told all that to Trico's attorney?

3 A. Yeah.

4 **MR. SCHMECKPEPER:** I don't have any further questions,
5 Your Honor.

6 **Redirect Examination by Mr. Yarborough:**

7 Q. Do you know -- had Trico gotten those ball tickets?

8 A. Did he get the ball tickets?

9 Q. Yeah.

10 A. I didn't get no ball ticket. Didn't nobody get no ball
11 ticket.

12 Q. Okay. Because ---

13 A. Somebody tried to rob him.

14 Q. But you had made the money available to Trico at that
15 point?

16 A. Huh?

17 Q. You had made the money available to Trico at that
18 point?

19 A. Did I make the money?

20 Q. You made the money available through your -- through
21 your brother?

22 A. Yeah.

23 Q. Okay.

24 A. Yeah.

25 Q. And your brother was at the courthouse that day too?

MICHAEL LADSON - DIRECT EXAMINATION BY MR. YARBOROUGH

1 A. Yeah, he was there.

2 Q. Okay.

3 **MR. YARBOROUGH:** I don't have any further questions.

4 **THE COURT:** All right.

5 **MR. SCHMECKPEPER:** Your Honor, I would just request the
6 ability to do a full NCIC report on the witness and turn it
7 into the Court. I didn't know the witness was going to be
8 testifying. Based on the testimony I'd like to be able to
9 submit that.

10 **THE COURT:** Okay. That'd be fine. Thank you. You can
11 step down. Thank you. You can be excused if you like.

12 A. Okay.

13 **THE COURT:** Appreciate your time.

14 **MR. YARBOROUGH:** Your Honor, I'd call the other Mr.
15 Ladson.

16 **MADAME CLERK:** Please place your left hand on the Bible
17 and raise your right hand.

18 **Michael Ladson,** being
19 duly sworn testified as follows;

20 **MADAME CLERK:** Thank you. Please state your full name
21 for the record.

22 **MR. LADSON:** Michael Andrew Ladson.

23 **MADAME CLERK:** Ladson?

24 **MR. LADSON:** Yes.

25 **MADAME CLERK:** Okay. Thank you. You may be seated.

MICHAEL LADSON - DIRECT EXAMINATION BY MR. YARBOROUGH

1 **Direct Examination by Mr. Yarborough:**

2 Q. Mr. Ladson, will you state your name for the record?

3 A. Michael Andrew Ladson.

4 Q. Do you remember this -- this day that we've been
5 talking about in court today?

6 A. Yes.

7 Q. Okay. And where were you that day?

8 A. I was at home in the bedroom watching an old classic
9 karate movie.

10 Q. All right. And did your -- your brother call you?

11 A. No.

12 Q. Did Trico come see you?

13 A. Yes, sir.

14 Q. Okay. And what -- what did Trico ask you for?

15 A. For twenty dollars.

16 Q. He asked you for twenty dollars for what?

17 A. He didn't say what it -- what it was for. He just
18 asked me for twenty dollars and that I would get it back.
19 And that was it.

20 Q. Okay. And had you loaned him money before?

21 A. I've loaned my whole check before.

22 Q. Okay. And he always paid you back?

23 A. Yes, sir.

24 Q. All right. And that was right before you heard all
25 this altercation out in the yard?

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MICHAEL LADSON - DIRECT EXAMINATION BY MR. YARBOROUGH

- 1 A. Yes, sir.
- 2 Q. All right. Now, were you at the courthouse that day?
- 3 A. Yes, sir.
- 4 Q. And were you prepared to testify?
- 5 A. Yes.
- 6 Q. Had you talked to Mr. Gibson?
- 7 A. I talked to him.
- 8 Q. Had you told him that you had loaned Trico twenty
- 9 dollars right before this thing happened?
- 10 A. Yes, sir.
- 11 Q. Okay. And were you prepared to -- to tell the jury
- 12 that?
- 13 A. Yes.
- 14 Q. Okay. And is there any question about this?
- 15 A. No.
- 16 Q. Do you have a prior record?
- 17 A. I have plenty of records.
- 18 Q. A what?
- 19 A. I have a certain amount of records.
- 20 Q. Okay. And you're not -- you're not disputing that,
- 21 you're just -- you're here to tell us what happened that
- 22 day?
- 23 A. Yes.
- 24 Q. Okay. And were you prepared to tell Mr. Gibson that?
- 25 A. Yes, sir. 327

MICHAEL LADSON - DIRECT EXAMINATION BY MR. YARBOROUGH

1 Q. And did you wait at the courthouse?

2 A. I waited til the trial was over with.

3 Q. All right. And you had told Mr. Gibson you were here
4 and ready to testify that you had -- had loaned him twenty
5 dollars?

6 A. Yes, sir.

7 Q. Right before this happened?

8 A. Yes.

9 Q. All right. You're going to have to answer any of --
10 questions that the attorney general's going to ask you,
11 okay?

12 A. Ain't no problem.

13 Q. All right. I see you trying to get up.

14 **MR. SCHMECKPEPER:** I have no questions, Your Honor.

15 **THE COURT:** All right. You can step down. You can be
16 excused. We appreciate your time. Thank you.

17 **MR. YARBOROUGH:** Your Honor, can we approach?

18 **THE COURT:** Yes, sir.

19 (Whereupon a bench conference was held off the record)

20 (Whereupon the bench conference was ended)

21 **MR. YARBOROUGH:** I call Mr. Childress.

22 **THE COURT:** All right. Stop right there. There's a
23 Bible. Put your left ---

24 **MADAME CLERK:** Please -- I'm sorry.

25 **THE COURT:** No, you ---

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JAMES CHILDRESS - DIRECT EXAMINATION BY MR. YARBOROUGH

1 **MADAME CLERK:** I didn't mean -- please place your left
2 hand on the Bible and raise your right hand.

3 **James Childress,** being
4 duly sworn testified as follows;

5 **MADAME CLERK:** Thank you. Please state your full name
6 for the record.

7 **MR. CHILDRESS:** James Ellis Childress.

8 **MADAME CLERK:** Please spell your last name.

9 **MR. CHILDRESS:** C-h-i-l-d-r-e-s-s.

10 **MADAME CLERK:** Thank you very much. You may be seated.

11 **Direct Examination by Mr. Yarborough:**

12 Q. Mr. Childress, will you state your name for the record?

13 A. James Childress.

14 Q. And where are you from?

15 A. Greenville.

16 Q. And what ---

17 A. Simpsonville, actually now.

18 Q. What? Excuse me.

19 A. I actually reside at a Simpsonville address now.

20 Q. And what's your background? What did you work -- how
21 did you work? How were you employed before -- I guess
22 you're retirement now.

23 A. I'm a retired aerospace engineer.

24 Q. Okay. And did you become involved in this case
25 somehow?

JAMES CHILDRESS - DIRECT EXAMINATION BY MR. YARBOROUGH

1 A. I was the foreman on the jury that rendered this
2 verdict.

3 Q. Okay. Now, I've told you -- let's -- let's -- let me
4 back up before that. At some point after that verdict you
5 came in to see me, right?

6 A. Yes, sir.

7 Q. Okay. And I've always told you that what happened in
8 that jury room is none of my business, that was -- that's up
9 -- between y'all and -- you and the jury, right?

10 A. We've never discussed that.

11 Q. Okay. And you -- when you came to see me, I think,
12 would you say you were upset about what had happened?

13 A. I had serious questions about the validity of the
14 verdict.

15 Q. Okay. And so based on -- before you came to see me you
16 had actually done a tremendous amount of investigation in
17 this case, right?

18 A. I had done some. I had begun to wonder if justice had
19 been served after the end -- as the case -- as the trial
20 ended probably on two counts -- two counts come to mind.

21 One, the behavior as described by Mr. Thomas.

22 **MR. SCHMECKPEPER:** Your Honor, at this point I'd just
23 like to make an objection. I understand the witness was
24 there for the trial. I don't think his reflection of what
25 happened at the trial is going towards the ineffective

JAMES CHILDRESS - DIRECT EXAMINATION BY MR. YARBOROUGH

1 assistance of counsel when ---

2 **THE COURT:** Well, -- go ahead.

3 **MR. SCHMECKPEPER:** I feel like it gets dangerously
4 close to violating rule 606 in terms of commenting on
5 deliberations.

6 **THE COURT:** Well, I think as long as he sticks to
7 testifying as to what in his mind, but, I mean, he was the
8 foreman of the jury. And I haven't seen the verdict sheet,
9 but he signed unanimous verdicts. But I think he can
10 testify as to whatever he wants to today other than what
11 happened in the jury room as far as the deliberations.

12 Q. Just tell -- tell the Court -- and I know you've
13 developed some questions and stuff that concerns you. Can
14 you pull out the document you have with you.

15 A. Yes. I had prepared a document.

16 Q. Okay. Now, let's -- let's go ahead and -- when you
17 came to see me you told me -- you'd asked me to get a court
18 reporter or someone to take your deposition, isn't that
19 correct?

20 A. Yes, sir. I'm ---

21 Q. And I told you we didn't have -- have a case. And what
22 was the reasoning for that?

23 A. I'm terminally ill with cancer.

24 Q. And you were concerned that your testimony would not be
25 available?

JAMES CHILDRESS - DIRECT EXAMINATION BY MR. YARBOROUGH

1 A. I was concerned I wouldn't be here today.

2 Q. Okay. But you are here. And that's a good thing,
3 right?

4 A. Yes, sir.

5 Q. Okay. And the marvels of medicine have helped you get
6 better, right?

7 A. Yes, sir. Six months ago my physician sent me out to
8 the scheduler for -- to schedule hospice. And I looked at
9 the CT scan report as I was sitting there waiting for her to
10 do that and I discovered that my existing lesions were
11 actually shrinking.

12 So I asked to speak to the physician again, was
13 granted. And he agreed with me that we should continue the
14 treatment that I was getting because of the positive
15 response that the scan indicated. And as a result, I got
16 additional treatment instead of hospice. And that's why I'm
17 here today as well.

18 Q. Good. And so you were concerned about the -- about the
19 verdict. And I'd like for you to tell me what you did after
20 that. And you can, you know, relate your, you know, your
21 past experience as an aerospace engineer and what kind of
22 work you did, first, just so Judge Hayes will know where
23 that comes from.

24 A. Well, I held -- I held a senior position to manufacture
25 engineering to design engineering, quality engineering.

JAMES CHILDRESS - DIRECT EXAMINATION BY MR. YARBOROUGH

1 Retired after working at Boeing. Developed a 787 at -- in
2 Washington State as well as in North Charleston.

3 Q. So it's safe to say that you've had a very -- a good
4 career, right?

5 A. Very.

6 Q. And was this the first time you'd served on a jury?

7 A. Yes, sir.

8 Q. Okay. And based on that service tell us what you did.

9 A. I'm sorry, service in what?

10 Q. Based on your service on the jury, what did you do
11 after that?

12 A. You mean after the trial was over?

13 Q. Yes, sir.

14 A. Yes. Well, as I started to say earlier, what caused me
15 to start wondering if justice had been served was a couple
16 of things. One, it seemed that the behavior that was
17 described by the principal witness in this case described
18 behavior on the part of Mr. Ladson that was irrational.

19 Q. All right.

20 A. It was irrational because if he had done what Mr.
21 Thomas described as doing, it would have -- he would have
22 easily incriminated himself. And Mr. Thomas knew who he
23 was. He was in his own yard. Mr. Ladson was in his own
24 yard. And yet Mr. Thomas ---

25 Q. Did you get -- did you get to know Mr. Ladson?

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JAMES CHILDRESS - DIRECT EXAMINATION BY MR. YARBOROUGH

1 A. Since the trial?

2 Q. Yeah.

3 A. I went to visit him a number of times.

4 Q. Okay. And why did you do that?

5 A. At some point I just began to have such serious
6 reservations about it. And I wanted to hear -- whether I
7 might hear it from him, I suppose, although I had about
8 decided without talking to Mr. Ladson that if he had been --
9 had reasonable representation at trial that the State should
10 not have been able to convict him beyond a reasonable doubt,
11 at least as far as I'm concerned.

12 **MR. SCHMECKPEPER:** Your Honor, I object to that. I
13 think it's opinion -- opinion testimony as to counsel's
14 representation.

15 **THE COURT:** Well, I've got no question that's what it
16 is, but I'll take it for whatever value it may have.

17 Q. So tell us -- tell us what else you did. Did you call
18 Mr. Gibson?

19 A. I was unable to call him. I wrote him, I guess.

20 Q. Okay.

21 A. And then learned how I could talk to him by telephone.
22 And eventually I arranged a visit with him.

23 Q. Okay. And you went to see Mr. Gibson before or after
24 you got yourself a transcript?

25 A. Oh, I'm sorry. Mr. -- did you say Mr. ---

JAMES CHILDRESS - DIRECT EXAMINATION BY MR. YARBOROUGH

1 Q. Mr. -- we're on Ladson. You can stay on Ladson.

2 A. I'm not sure now whether I saw him -- I believe I got
3 the transcript. Yes, I ordered a partial transcript. I
4 ordered a transcript of the opening statements and direct
5 and cross examination of Mr. Thomas.

6 Q. Okay. And then did you go see Mr. Ladson and get his
7 version of what had happened?

8 A. I did.

9 Q. Okay. And what did -- when you -- did you go to the
10 scene afterwards?

11 A. Yes. I drove down there and drove up the driveway.
12 Found somebody else was living there now. And I also drove
13 around the environment down there. Before I drove down
14 there I might note that I went to the computer, opened
15 Google Earth and I discovered there was a nearby street down
16 there. And I wondered what was on that street. And I guess
17 that got my curiosity up particularly. And I drove down
18 there.

19 Q. Okay. And what did you discover when you got down
20 there?

21 A. There are two very interesting features of the
22 environment down there. One was mentioned at trial, one was
23 not. I thought the most significant feature -- I brought
24 some photographs that -- if I might ---

25 Q. I think ---

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JAMES CHILDRESS - DIRECT EXAMINATION BY MR. YARBOROUGH

1 A. --- refer to them. They are Google Earth photographs
2 that have been enlarged. They have a poor quality. This is
3 a photograph of William Circle. It might show the overview
4 -- see an overview first.

5 **THE COURT:** All right. Let's give them some sort of
6 number. Either put them an exhibit so they can be
7 referenced later.

8 Q. Let's go exhibit 1. And is this the overview you're
9 referring to?

10 A. That is. And there -- there are two that are virtually
11 identical.

12 **THE COURT:** Any objection?

13 **MR. SCHMECKPEPER:** No, Your Honor. I just ask that
14 they, I mean, maybe a little context of location.

15 **THE COURT:** All right. Well, I'll allow that one in.
16 You might want to get the court reporter to mark it.

17 **MR. YARBOROUGH:** Okay.

18 (Whereupon Plaintiff's exhibit 1 was marked and
19 admitted into evidence)

20 Q. You want to step down?

21 A. Yes, please.

22 Q. Let them pick you up -- so they -- you're going to have
23 to talk ---

24 A. Oh, I'm sorry.

25 Q. So talk -- talk to her and ---

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JAMES CHILDRESS - DIRECT EXAMINATION BY MR. YARBOROUGH

1 **THE COURT:** Yeah, I can hear you.

2 A. Okay. What we see here is Goldsmith Road. And this is
3 430 Goldsmith Road here. And this is the 430 Goldsmith
4 driveway, the long driveway. A little drive in here. And
5 the crime occurred -- the truck was parked alongside the
6 house and not headed into the house. There was some
7 confusion at trial about that, I think, the orientation of
8 the truck. It was parked alongside of the house.

9 And here we have Williams Circle. It comes off the
10 same -- Goldsmith Road, I believe, is over here.

11 **THE COURT:** All right. Keep your voice up, please,
12 sir.

13 A. Oh, pardon me. Bryson Elementary School is down here
14 just a short distance. So here we have Williams Circle,
15 comes up to here, takes a right turn here and comes back in
16 and comes into Goldsmith Road down here.

17 It's interesting that the folks who live in these
18 houses along this ledge of Williams Circle, they seem to
19 come out down here, comes and goes this way. And this one
20 house right here uses this end of Williams Circle for a
21 driveway.

22 And this can be missed this Williams Circle where it
23 intersects Gold -- Goldsmith can be missed easily because it
24 looks like the driveway to this house. It's very easy to
25 miss. And there's questions, perhaps, today as to whether

JAMES CHILDRESS - DIRECT EXAMINATION BY MR. YARBOROUGH

1 Mr. Thomas even knew it existed. And I certainly don't
2 think Mr. Gibson knew that Williams Circle existed.

3 Now, of course, the significance of Williams Circle is
4 -- and I failed to mention this -- there's another thing
5 that bothered me about -- at the trial, the outcome of the
6 trial. And that was that I was concerned about the
7 possibility of Mr. Thomas being followed.

8 And it seemed to me that that's the typical way to
9 attack somebody who's doing business out of his truck
10 window. And everybody in the community seems -- knew that
11 he carried around a large wad of cash. And there's no
12 telling how many -- how many people might have been
13 thinking, well, I'd like to follow him and rob him. It just
14 seemed to me that following the man is the way that this
15 robbery most likely occurred.

16 You know, somebody following him could -- let's say
17 they're coming in this way, was following from a respectful
18 distance, he sees Mr. Thomas turn into Goldsmith, pretty
19 much knows where he stops. They've probably followed him
20 before.

21 You know, if it was the first time the man had gone
22 here, it'd be one thing, but he's been here a number of
23 times. And there's no telling how many times somebody might
24 have followed him and discovered this stuff.

25 But he could have -- the robber could have driven up

JAMES CHILDRESS - DIRECT EXAMINATION BY MR. YARBOROUGH

1 here to Williams Circle, come down here while Mr. Thomas is
2 driving down here, by the time Mr. Thomas gets in position
3 here, a robber can be in position here fifty yards through
4 the woods.

5 And that's exactly, in my opinion, what a potential
6 robber is looking for, the ideal place to hide his vehicle.
7 He's got a mask, it easily hides his face. But bank robbers
8 or whatever kind of robbers, they're looking for a place to
9 hide their vehicle to make a get-away.

10 So as far as I'm concerned it happened either one of
11 two ways. Somebody lay in wait and conspired with Mr.
12 Ladson and lay in wait or somebody followed -- was following
13 Mr. Thomas here. And Mr. Ladson, perhaps, just called the
14 man to come and sell a ball ticket.

15 And here we got this man known to carry a wad of cash.
16 And apparently he's not even thinking -- the testimony shows
17 that Mr. Thomas is not even thinking about being robbed.

18 Q. All right.

19 A. He's not even thinking about being robbed.

20 Mr. Gibson goes through a very careful, I'd have to
21 admit, goes through steps right through how he might have
22 been robbed by someone following him. But the problem is,
23 Mr. Gibson doesn't know that the ideal parking space is here
24 because he didn't go out there. He didn't look at it on an
25 overview, I guess, or if he did he didn't realize what an

JAMES CHILDRESS - DIRECT EXAMINATION BY MR. YARBOROUGH

1 opportunity this was for somebody following.

2 Q. Okay. I know you brought some other pictures. You
3 want to ...

4 A. This is ---

5 **MR. YARBOROUGH:** Let's -- we'll mark that as Court's
6 exhibit -- Plaintiff's exhibit 2.

7 **THE COURT:** In without objection?

8 **MR. SCHMECKPEPER:** No objection, Your Honor.

9 (Whereupon Plaintiff's exhibit 2 was marked and
10 admitted into evidence)

11 A. So this is the section of William's Circle directly
12 opposite of Goldsmith, right here where I put this robber's
13 parking. And this is not a dividing line. This is
14 something that Google puts on where they have driven down
15 the street and they've got this little line -- it goes into
16 a street view. You always get this down the middle of the
17 street. It's not a dividing line. This is not even a lane
18 wide, perhaps, a legitimate lane wide.

19 Q. And why do you think that's important?

20 A. Well, it's because a vehicle here can't be seen by that
21 house down there or that house down there. Can't be seen --
22 be seen from any place around there.

23 Q. Okay.

24 A. Just completely outside of anybody there.

25 Q. Right. Two more pictures, two more blow-ups.

JAMES CHILDRESS - DIRECT EXAMINATION BY MR. YARBOROUGH

1 **MR. YARBOROUGH:** I'd move this as Plaintiff's 3.

2 A. This one ---

3 **THE COURT:** In without objection?

4 **MR. SCHMECKPEPER:** I just can't see it, Your Honor.

5 None.

6 (Whereupon Plaintiff's exhibit 3 was marked and
7 admitted into evidence)

8 A. This is intending to show how -- how you could drive
9 down Goldsmith. This Goldsmith, the road right in front of
10 it. And this is that house that's near -- this shows how
11 easily Goldsmith -- this looks like their driveway, so easy
12 to miss, don't even know it's there.

13 Of course, Mr. Gibson didn't go out there. And so he
14 didn't have a chance of discovering, I guess, unless he
15 looked on Google Earth or something and then he would have
16 seen what I'm telling these folks.

17 Q. The last one is number 4.

18 A. Let's see if -- this one have anything.

19 Q. I think that one's -- you already put that in.

20 A. This one just shows the white line. Let's don't --
21 probably doesn't show any purpose ---

22 Q. We won't put this one in. And, again, I think you told
23 the Court, but why do you think those -- those places are
24 notable, those -- the place where the car and the house ---

25 A. Yes. I mentioned there were two -- two features around

JAMES CHILDRESS - DIRECT EXAMINATION BY MR. YARBOROUGH

1 this residence that were notable. One was Williams Circle,
2 which interestingly enough was not mentioned at trial.

3 Q. Okay.

4 A. Not mentioned. The other feature was the driveway.
5 Now the driveway was mentioned at trial. And Mr. Thomas
6 made an interesting remark about this.

7 **MR. SCHMECKPEPER:** Your Honor, I apologize for
8 continuing to interrupt. I'm just a little nervous about
9 the witness mentioning things that went on at trial because
10 they -- he was the foreman of the jury. And I feel like
11 they get into the jury's deliberative process, which is
12 forbidden by rule 606.

13 **THE COURT:** Yeah. Well, it's a fine line for me, but
14 as long as he's testifying as to his mental thoughts, which
15 would be mental, but as long as he sticks to his view of
16 things rather than what was discussed, I think that it
17 wouldn't be in violation of the rule.

18 **MR. SCHMECKPEPER:** Thank you, Judge.

19 Q. So why did you think it was important?

20 A. The driveway was significant, although I think from a
21 robber's perspective, we probably all agreed that the
22 parking space, the parking so that the get-away car was
23 hidden is more important than the configuration of the
24 driveway.

25 But Mr. Thomas, on his testimony, testified that the --

JAMES CHILDRESS - DIRECT EXAMINATION BY MR. YARBOROUGH

1 without mentioning the Williams Circle or without mentioning
2 any possibility of a place to hide a vehicle, he mentioned
3 that the driveway was the only place where he was actually
4 vulnerable simply because of the configuration of the
5 driveway because it didn't provide for any exit or even a
6 circle to turn. You had to pull up, back up and in order to
7 get turned around to exit the driveway.

8 Q. Okay.

9 A. And so Mr. Thomas, who, I think, probably felt like
10 one defense for him would be to suddenly drive away if he
11 were ever -- if anybody ever made a robbery attempt on him.
12 He couldn't do so in this situation. And so he indicated he
13 felt particular vulnerable here.

14 And I'd be happy to share with you in the testimony
15 where he -- where he -- for example, when Mr. Gibson asked
16 him about the possibility being followed, spent a good deal
17 of time doing that, finally got Mr. Thomas to agree that he
18 could be robbed by someone following him and remarked that
19 when Mr. Gibson asked him could you be robbed, somebody
20 following you? And instead of admitting the possibility,
21 his first reaction was, but he called me there, as though
22 his calling him there he was somehow responsible for the
23 robbery and at the same time, of course, disregarding the
24 possibility he could be followed. So he didn't seem to --
25 to be aware that he was vulnerable by somebody following

JAMES CHILDRESS - DIRECT EXAMINATION BY MR. YARBOROUGH

1 him, which was astonishing to me.

2 Q. Did you -- in looking through the transcript could you
3 -- did you determine if Mr. Gibson's cross examination of
4 Mr. Thomas was coherent? Could you follow it?

5 A. Mr. Thomas' testimony was incoherent in many cases.

6 **MR. SCHMECKPEPER:** Your Honor, I'd just make the same
7 objection.

8 **THE COURT:** Okay. I overrule.

9 **MR. YARBOROUGH:** I'm going to -- and I won't beat ---

10 **THE COURT:** All right.

11 **MR. YARBOROUGH:** I'll run through that a little bit.

12 A. He -- he used personal pronouns instead of proper names
13 almost exclusively. Mr. Gibson even found himself involved
14 in the same sort of thing, using him, his and that sort of
15 thing rather than proper names. And it resulted in
16 considerable confusion. And I can provide a number of
17 examples from the transcript to demonstrate that.

18 Q. I want you to know that the Court's got the transcript
19 ---

20 **THE COURT:** I've got the transcript. And I can note
21 those.

22 Q. --- note what you said. And I think Judge Hayes will
23 look at it. Do you want to point him to any specific lines
24 that he might write down that he can look at?

25 **THE COURT:** Well, I'll be right candid with you. It

JAMES CHILDRESS - DIRECT EXAMINATION BY MR. YARBOROUGH

1 doesn't really matter. The jury has heard the case,
2 returned a verdict. Whether I get, you know, whether I
3 determine there's, you know, some problems with the use of
4 pronouns -- and that's one of my pet peeves, I'll be honest
5 with you. I agree with you. People forget that a pronoun
6 has to refer back to a noun. And you do get lost.

7 But I can't do anything about that testimony. It's in
8 the record. And the jury heard it and the jury returned a
9 verdict. So I'll be glad to listen to what you have to say,
10 but I don't need a whole recitation of it. I can pick that
11 up when I read the transcript.

12 A. I only mention it because I somehow wondered if Mr.
13 Gibson wasn't largely responsible for ensuring that the
14 witness testified with some clarity. And that's the only
15 reason that I bring it up.

16 Q. Okay. Now did -- Judge Hayes has the transcript. And
17 he's going to look at it. Is there ---

18 **THE COURT:** And I did major in English. So I'll read
19 it with that in mind.

20 Q. And is there anything that you would -- specifically
21 would like to tell the Court? I know I've skipped through
22 some of your testimony, but can you tell us some more about
23 what you're thinking?

24 A. Well, during the trial there were several cases where
25 there were questions that occurred to me that did not rise

JAMES CHILDRESS - DIRECT EXAMINATION BY MR. YARBOROUGH

1 to the level ---

2 MR. SCHMECKPEPER: Your Honor, I'd object.

3 MR. YARBOROUGH: That's -- that's ---

4 THE COURT: Yeah. I think that our rules prohibit you
5 going into the -- what happened in the jury room. I think
6 even to the extent if it's your, I hate to call it second
7 guessing yourself, but telling us what your mental processes
8 were.

9 Again, I don't want to be short or curt, but it doesn't
10 really matter because of what the, I mean, a unanimous
11 verdict was returned. And if a juror, you or any other
12 juror, had those questions, they would be proper to bring up
13 with the other jurors, not with the Court at this time.

14 A. I only brought them up because after I had the benefit
15 of a transcript I discovered that my questions did not
16 reflect well on the defense counsel. And that's why -- the
17 only reason that I bring it up now. These questions -- I
18 have about five questions. And all of them involved one way
19 or another the effectiveness of counsel.

20 Q. You want to tell us those five questions you have
21 without going into detail just so the Court can look at
22 them?

23 A. Yes. Yes, of course. The first one was the quality of
24 the testimony of Mr. Thomas.

25 Q. Okay.

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JAMES CHILDRESS - DIRECT EXAMINATION BY MR. YARBOROUGH

1 A. The second one was Mr. Thomas testified repeatedly that
2 after a gunman appeared he observed Mr. Ladson laughing or
3 smiling. The testimony appeared to be introduced in order
4 to show Mr. Ladson was privy to what was unfolding. I could
5 not recall Mr. Gibson getting the concurrence of Mr. Thomas
6 that Mr. Ladson laughed only after the appearance of the
7 robber in a Halloween mask and not after it became clear the
8 robber was not joking.

9 Q. Okay. And what -- what was -- that's three. What ---

10 A. On a couple of occasions or several occasions Mr.
11 Gibson noted discrepancies between Mr. Thomas' statements to
12 law enforcement and his testimony at trial. And, ---

13 Q. Okay. What was the last one?

14 A. --- four, Mr. Gibson suggested his client had Mr.
15 Thomas on the ground outside Mr. Thomas' truck after Mr.
16 Thomas hastily exited the truck on the passenger's side. My
17 recollection from Mr. Thomas' direct testimony was that he
18 shoved Mr. Ladson.

19 And I had questions about why Mr. Ladson [sic] had not
20 noted this. And in doing so he could have avoided
21 prejudicing his -- the Defendant, who he accused twice of
22 being -- rolling around on the ground with Mr. Thomas. And
23 Mr. Thomas simply said that he shoved him or in one case
24 shoved him down.

25 Q. All right. And you've -- you've looked at all this.

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1 Looked at the pictures, we've looked at everything. Is
2 there anything else you want the Court to know?

3 A. If you'll give me a moment I'll refer to my notes here
4 to see if there's something that -- I, of course, noted that
5 there were no -- nobody mentioned any telephone records.
6 And I thought that since it was a conspiracy charge that
7 surely somebody would have obtained the telephone records.

8 Q. Okay. And that didn't happen, right?

9 A. Apparently not. I haven't heard that it did.

10 Q. Okay.

11 A. It's worth noting, perhaps, that regarding the
12 testimony that Mr. Thomas -- Mr. Gibson's suggestion that
13 Mr. Thomas had on three occasions -- discrepancies between
14 the police report and the testimony at trial.

15 Q. And did you obtain the police report?

16 A. Yes, sir.

17 Q. And after you looked at it what did you think?

18 A. Well, ---

19 Q. I only want you to talk about what you thought after
20 you looked at the police report, not before, okay? So after
21 you looked at the police report what did you think? It
22 doesn't matter back then. You didn't have the police
23 report. What did you think after you looked at the police
24 report?

25 A. After I looked at the police report I -- when I looked

JAMES CHILDRESS - DIRECT EXAMINATION BY MR. YARBOROUGH

1 at it I discovered that two of the discrepancies that Mr.
2 Gibson had brought up at trial were apparent fabrications.

3 Q. Okay. And what were ---

4 A. Those two were. One case -- and we could refer to the
5 transcript. One case he referred to Mr. Thomas having --
6 having provided a statement to law enforcement that his
7 client, Mr. Ladson, was holding the door to prevent Mr.
8 Thomas exiting the truck. And in another occasion suggested
9 that the robber and Mr. Ladson were holding Mr. Thomas down
10 on the ground.

11 Q. Okay.

12 A. And neither one ---

13 Q. He'll look -- that's enough. He'll look at it. It's
14 in the record. I'll make sure -- if I can, I'll supplement
15 the record when I get a chance to put in the police report.

16 **THE COURT:** If he's got a copy, let's do it now.

17 **MR. YARBOROUGH:** I'll make this exhibit 4.

18 **THE COURT:** Any objection?

19 **MR. SCHMECKPEPER:** I'd like to look at it.

20 (Pause)

21 **MR. SCHMECKPEPER:** Your Honor, I just would object on
22 hearsay.

23 **THE COURT:** Well, I agree. It is hearsay. And I also
24 question authentication and foundation, but for whatever
25 it's worth, I'll let it in as an exhibit.

JAMES CHILDRESS - DIRECT EXAMINATION BY MR. YARBOROUGH

1 **MR. SCHMECKPEPER:** Thank you, Your Honor.

2 (Whereupon Plaintiff's exhibit 4 was marked and
3 admitted into evidence)

4 Q. All right. Is there anything else you would like the
5 Court to know?

6 A. I wondered if Mr. Gibson by making these suggestions
7 was trying to impeach the witness, which would have been a
8 great thing to do from defense counsel's standpoint. But I
9 was surprised that he'd fabricate these things to -- to
10 simply get a denial from the witness. It appeared that the
11 -- they were intended just to get a denial from Mr. Thomas
12 and that I as a juror was supposed to ---

13 **MR. SCHMECKPEPER:** Your Honor, ---

14 Q. You can't testify about what you as a juror was
15 supposed to do, okay?

16 A. Okay.

17 Q. I think -- you understand Judge Hayes is going to have
18 a transcript that he can look at?

19 A. Yes.

20 Q. Okay. And is there anything else -- I want you to have
21 your -- want you to be able to testify.

22 A. In connection with -- Mr. Gibson seems to, in my -- in
23 my opinion or my impression was that he was -- he made
24 statements that were prejudicial to his client.

25 Q. Well, I mean, Judge Hayes can look at all that in the

JAMES CHILDRESS - DIRECT EXAMINATION BY MR. YARBOROUGH

1 record. I think he can -- he can judge Mr. Gibson's
2 performance, okay? And I think that's -- he can look at
3 that, okay? But ...

4 A. Much of what I have -- anything else I have to say
5 about it would be based on the transcript.

6 Q. Okay.

7 A. And so if it's the position that we don't need to refer
8 to the transcript any further, ...

9 Q. Right. He's got the transcript and he can look at it.

10 A. I might note that, I'm guessing, that Mr. Ladson got
11 convicted as far as this juror's concerned because Mr.
12 Thomas testified that Mr. Ladson grabbed him outside the
13 truck.

14 **MR. SCHMECKPEPER:** Your Honor, I'd object. I think he
15 just ---

16 **THE COURT:** Well, ---

17 **MR. SCHMECKPEPER:** I think he's going ...

18 **THE COURT:** Yeah.

19 A. And that he chased him and that he grabbed him again.

20 Q. Okay. That's -- we -- I think that's clear in the
21 record that that's your opinion. The only other thing I
22 would ask, after you've done all this and looked at it are
23 you upset about your role in this?

24 A. Well, yes, because I allowed it to happen.

25 Q. Okay. And that's -- that's why you've gone and done

KENNETH GIBSON - DIRECT EXAMINATION BY MR. SCHMECKPEPER

1 all this research?

2 A. Yes.

3 Q. Okay. Answer any questions the attorney general may
4 have for you.

5 **MR. SCHMECKPEPER:** Your Honor, I don't have any
6 questions.

7 **THE COURT:** Okay. All right. We appreciate your time.
8 Thank you so much. You've done a lot of work. And
9 appreciate your coming. All right. Anything else from ...

10 **MR. YARBOROUGH:** No, sir, Your Honor.

11 **THE COURT:** All right. Anything on behalf of the
12 State?

13 **MR. SCHMECKPEPER:** Yes, Your Honor. The State calls
14 Kenneth Gibson in rebuttal.

15 **THE COURT:** All right. Well, let's -- okay. Let's go
16 ahead. Go ahead. You're still under oath.

17 **MR. GIBSON:** Yes, sir.

18 **Direct Examination by Mr. Schmeckpeper:**

19 Q. Hello again, Mr. Gibson.

20 A. Hello.

21 Q. I've just got a few questions for you that have come up
22 over the course of the hearing. The first one deals with
23 your communications with the Applicant, with Mr. Ladson,
24 Trico Ladson. Did he ever tell you that he went to his
25 mother's house after the incident?

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KENNETH GIBSON - DIRECT EXAMINATION BY MR. SCHMECKPEPER

1 A. No.

2 Q. Did you ever ask him where he went after the incident?

3 A. Yes.

4 Q. And what was his response?

5 A. That he didn't remember. And I was like, you don't
6 remember? And he was like, no, I don't remember.

7 Q. I'm not going to ask you to speculate as to what he was
8 thinking. Can you think of any reason why he wouldn't tell
9 you that?

10 A. No.

11 Q. If you had known he'd gone to his mother's house would
12 that -- would that have changed the calculation of what --
13 I'm not saying -- asking if that would have caused you to
14 put him on the stand, but would it have at least changed the
15 equation?

16 A. Yes.

17 Q. I think the Applicant's father, Mr. Ladson, the other
18 Mr. Ladson testified that he told you that while he was on
19 the phone with his son, the Applicant, the Applicant said,
20 oh, wait, Mr. Thomas is being robbed.

21 A. He did not tell me that. And Trico did not tell me
22 that.

23 Q. If either of them had told you that would that have
24 changed your -- would it have changed the equation of
25 whether or not to have him testify?

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KENNETH GIBSON - DIRECT EXAMINATION BY MR. SCHMECKPEPER

1 A. It would have spurred more inquiry from me as to where
2 that conversation went 'cause it, quite frankly, raises more
3 questions for me than anything else. Like if he told him
4 that, I mean, based upon what Trico told me, there really
5 wasn't -- it was sort of -- been sort of strange for him to
6 say that. And also, you know, if that was going on, why
7 didn't they call the cops or something like that? But, no,
8 he didn't tell me that.

9 Q. And just to clarify, the Applicant never told you, to
10 your recollection, that he went to his mother's house
11 following the event, instead he told you he didn't remember?

12 A. Correct.

13 Q. And his father never told you that on the phone he
14 heard the Applicant say, oh, no, the victim's being robbed?

15 A. Correct.

16 **MR. SCHMECKPEPER:** I beg the Court's indulgence.

17 (Pause)

18 Q. Did you explain to the Applicant that it was his
19 decision whether or not to testify?

20 A. Yes.

21 Q. Did you investigate this case?

22 A. Yes.

23 Q. What was your process in investigating this case?

24 A. I talked to Trico. He told me -- first, went through
25 all the discovery. Then I talked to Trico, and he told me

KENNETH GIBSON - DIRECT EXAMINATION BY MR. SCHMECKPEPER

1 what his side of it was.

2 Q. Was your investigation formed at least in part by what
3 Trico told you?

4 A. It was absolutely driven by what Trico told me ---

5 Q. So ---

6 A. --- because -- go ahead.

7 Q. And if he hadn't been forthright with you or if he'd
8 been dishonest or held anything back would that have
9 affected your investigation?

10 A. Yes. But basically he told me -- I asked him were
11 there any witnesses? He was like, no. I said, do you have
12 any idea anybody who could testify as to, you know, give
13 anything that would be, you know, helpful? And he was like,
14 no, not really.

15 We started -- as I started thinking through the case,
16 that's when I asked him about, you know, talked to his dad
17 on the telephone and his uncle on the telephone and when
18 they came up here to the courthouse about whether or not
19 they could confirm about, you know, Trico being on the
20 telephone and talking to his father.

21 But, you know, I investigated the case, but it really,
22 quite frankly, wasn't a whole lot to it. I mean, there was
23 basically two witnesses to the event, Trico and Mr. Thomas.

24 Q. There's been some testimony and, I think, some
25 allegations about your cross examination of the victim. If

KENNETH GIBSON - DIRECT EXAMINATION BY MR. SCHMECKPEPER

1 you could reiterate -- I think you testified earlier what
2 your strategy or plan of attack was in cross examining the
3 victim. What was that again?

4 A. To try to create as many inconsistencies in his
5 testimony as possible so that the jury wouldn't -- would not
6 believe that he was credible.

7 Q. And did you utilize the victim's statement in doing
8 that?

9 A. I did, yes.

10 Q. Did you introduce that statement into evidence?

11 A. No.

12 Q. Why not?

13 A. Because -- two reasons. One, I don't think it's
14 generally wise to have the jury looking at the juror's -- at
15 the victim's statement during deliberations. And if I had
16 of admitted it into evidence, they would have had it in the
17 back to look at.

18 The second reason is I didn't know exactly what we were
19 going to submit as far as evidence is concerned. And if I
20 had submitted the -- if I had submitted his statement as an
21 exhibit to the case, that would have taken away any ability
22 whatsoever for me to have last closing.

23 Q. I just want to step back for one moment to the
24 Applicant's testimony. I think -- and forgive me if I
25 mischaracterize it. You saw the Applicant testify as to

KENNETH GIBSON - CROSS EXAMINATION BY MR. YARBOROUGH

1 where he was. And this was during this hearing.

2 A. Yes.

3 Q. And his response as to why he didn't tell you the first
4 time.

5 A. Yes.

6 Q. And do you remember what his response was?

7 A. You mean today?

8 Q. Today. Why he didn't tell you ---

9 A. I think he said he didn't know.

10 Q. Do you think that would have been a good response at
11 trial?

12 A. You mean -- response ---

13 **THE COURT:** If he had of put him on the stand and asked
14 him that question when he told the jury he didn't know where
15 he was, do you think that would have been helpful or
16 hurtful?

17 A. I think that would have been hurtful.

18 **THE COURT:** Is that the question you were trying to
19 ask?

20 **MR. SCHMECKPEPER:** Yes, Your Honor. I have no further
21 questions.

22 **MR. YARBOROUGH:** Just a ...

23 **Cross Examination by Mr. Yarborough:**

24 Q. You've heard the witnesses testify today. Do you wish
25 you would have called them? 357

KENNETH GIBSON - CROSS EXAMINATION BY MR. YARBOROUGH

1 A. Say again.

2 Q. You've heard the -- both Mr. Ladsons testified today.

3 And do you wish you would have called them on that day?

4 A. That's sort of a double edged question. I mean, you
5 know, my analysis would be the same as far as calling them.

6 And if it was strictly based on my analysis, I'd probably
7 come to the exact same result.. But given that I'm here
8 answering these questions about why I didn't call them, I
9 wish I would have just called them.

10 Q. Okay. Is it fair that in trial a lot of times things
11 are just going quick and ---

12 A. Oh, absolutely.

13 Q. And both Mr. Ladsons, the father and the brother, they
14 speak somewhat slow, is that -- would you agree with that
15 ---

16 A. Yes, sir.

17 Q. --- in talking to them? And so trying to get to the
18 bottom of what their testimony would have been may have been
19 rushed at the time even if they were here?

20 A. I agree with that, yeah.

21 Q. And so perhaps now they would have been called. It
22 might not have, I mean, you never know. You might have had
23 four -- four witnesses against one instead of one -- one
24 witness, right?

25 A. Yes.

KENNETH GIBSON - CROSS EXAMINATION BY MR. YARBOROUGH

1 Q. Three witnesses against one, I guess.

2 A. Yes.

3 Q. He said/she said. Thank you. Thanks for your time.

4 A. Yes, sir.

5 **THE COURT:** You can step down ---

6 A. Thank you, Judge.

7 **THE COURT:** --- and have a seat. Is that everything?

8 **MR. SCHMECKPEPER:** That's it, Your Honor.

9 **MR. YARBOROUGH:** I don't think so, Your Honor.

10 **THE COURT:** All right.

11 (Hearing Ended at 3:44 pm)

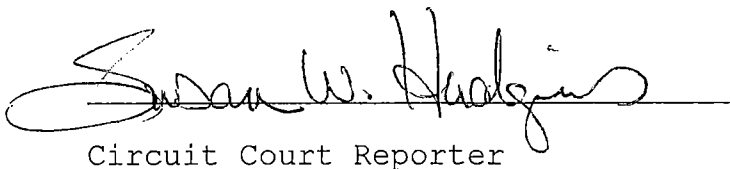
12 (End of Requested Transcript of Record)

Certificate of Reporter

I, The undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenville County, South Carolina, on the 8th day of December 2016.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

March 11, 2017


Circuit Court Reporter

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STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Trico Ladson,)
SCDC No. 365992,)
)
Applicant,)
)
vs.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C.A. No.: 2016-CP-23-2039

ORDER

FILED
2016 DEC 21 PM 10:40
CLERK
SOUTH CAROLINA

Applicant filed this application for Post-Conviction Relief March 28, 2016. This matter was heard December 8, 2016. Applicant was represented by William G. Yarborough, III, Esquire. The State was represented by Patrick Schmeckpeper, Esquire.

Applicant is currently incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. Applicant was indicted by the May 2015 term of the Greenville County Grand Jury for one count of Criminal Conspiracy nonviolent (2015-GS-23-3556), one count of Attempted Armed Robbery (2015-GS-23-3557), and one count of Attempted Murder (2015-GS-23-3555).

Applicant pleaded not guilty and was represented by Kenneth C. Gibson, Esquire. At trial, Applicant was convicted of conspiracy and attempted robbery. On November 4, 2015, the Honorable R. Scott Sprouse sentenced Applicant to five years for conspiracy, and ten years for attempted robbery with the sentences to run concurrently. These sentences were suspended upon the service of two years active time and five years probation. Applicant received credit for 19 days served. Applicant did not appeal his plea or sentence.

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In his initial application for post-conviction relief, the Applicant alleged ineffective assistance of counsel. In his amended application, filed May 31, 2016, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Counsel denied Constitutional right to testify in his own defense.
 - b. Counsel failed to remedy severe factual inconsistencies in the victim's testimony.
 - c. Counsel's failure to use the victim's police statement to impeach him.
 - d. Counsel's failure to investigate and call witnesses.
2. Failure to file timely notice of appeal.

In a post-conviction relief proceeding, Applicant bears the burden of proving the allegations in their application. *See Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant alleges ineffective assistance of counsel as a ground for relief. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Strickland*, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. *See Cherry v. State*, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." *Cherry v.*

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State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." *Johnson v. State*, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing *Strickland*, 466 U.S. at 688, 104 S. Ct. at 2052).

First, Applicant's allegation regarding trial counsel's failure to file a direct appeal is without merit. Counsel has a constitutionally imposed duty to consult a defendant about an appeal only when there is reason to think either that a rational defendant would want to appeal or that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. *Roe v. Flores-Ortega*, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036 (2000). One highly relevant factor will be whether the conviction follows a trial or a guilty plea, because a plea both reduces the scope of potential appealable issues and may indicate that the defendant seeks an end to judicial proceedings. *Id.*

Applicant's trial counsel testified that while he usually files a notice of intent to appeal after a jury trial, he did not in this case for several reasons. One reason was the leniency of the sentence imposed on Applicant. This reason was explained to Applicant and Applicant was, according to trial counsel's testimony, advised about the possible adverse consequences which could follow from a successful appeal, i.e. a retrial where the judge might not be so lenient in sentencing.

An additional reason, and perhaps a solely dispositive reason for trial counsel not filing a notice of intent to appeal was Applicant's choice to not pursue an appeal. Trial counsel testified

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that after Applicant was given the above set forth advice, Applicant told trial counsel "not to worry about it" and that he would just do his two years.

Additionally, while not dispositive of the appeal, is that trial counsel, a seasoned criminal litigator, testified that the trial was "clean," which the court interprets as being error-free.

Applicant, in an unusual bout of candor, for most post-conviction relief hearings, testified that after being told by trial counsel that he could receive a harsher upon retrial, he told trial counsel he did not want an appeal. Applicant testified that he "just wanted to serve" his "time."

Based on the above, the Court finds trial counsel was not ineffective for not filing a notice of intent to appeal in Applicant's case. Applicant is not entitled to belated appeal under *White v. State*.¹

Applicant called as a witness James Childress. Mr. Childress had been the foreman of the jury which convicted Applicant. While counsel and the Court had some difficulty in keeping Mr. Childress's testimony within the rubric of Rule 606 SCRE, his testimony focused on his post-trial concerns that Applicant had received a fair trial based on his individual investigation. In a nutshell, Mr. Childress's testimony was that trial counsel was ineffective (which is solely a legal matter for the court) in his representation of Applicant. Additionally, Mr. Childress testified to his opinion that there were flaws in the evidence and trial counsel's examination of witnesses was inadequate and not "grammatically sound."²

While the Court applauds Mr. Childress for his genuine concerns, hard word, and attempt to right what he believes to be wrong, his testimony is not relevant to the issue before the Court.

¹ *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974).

² The court must agree with this assertion.

364

JP/H

A juror's remorse, which here is truly sincere, is an insufficient reason to set aside a unanimous jury verdict. A juror, no matter how sincere and diligent cannot offer guidance to the court in its analysis of trial counsel's representation under the *Strickland* and *Cherry* standard.

The testimony offered by Mr. Childress is of no merit as to Applicant's claim and therefore is not factored into the Court's rulings herein.

Applicant asserts he was denied his right to testify. This claim is without merit. After the State rested, the trial judge advised Applicant that he had a right to testify and that the decision to exercise that right was solely Applicant's. (Trial Record p. 155, ll. 12-16). After the trial judge explained to Applicant his right to remain silent and his right to testify, the court recessed for lunch. After the lunch break, the trial judge inquired of Applicant as to his decision as to whether he would or would not testify. At this point trial counsel advised the court that Applicant would exercise his right to remain silent and this was confirmed by Applicant, under oath. (Trial Record p. 155, l. 13 through p. 156, l. 5).

Applicant is not entitled to post-conviction relief based on his allegations that he was denied his right to testify at his trial.

As to Applicant's general ground regarding counsel's alleged failure to bring out inconsistencies in the victim's testimony, Applicant has not presented any evidence to support this ground and, therefore, it is unproven.

Applicant alleges trial counsel was ineffective for failing to use the victim's police statement to impeach the victim. The only evidence presented on this issue was presented through the testimony of Mr. Childress. As set forth above, the Court cannot rely on Mr. Childress's

365

just #5

assessment of an attorney's competence. Applicant has failed to carry his burden of proof on this issue.

Applicant's final ground for post-conviction relief is that trial counsel failed to investigate and call witnesses.

Trial counsel testified that he met with Applicant at least three times prior to trial. Trial counsel testified that he relayed a possible Youthful Offender Act sentence offer, which Applicant rejected. Trial counsel testified that Applicant's confidence in prevailing at trial was based on his belief that the victim, a "numbers runner"³ would not show for trial.

Without reciting it in total, trial counsel testified extensively to what he learned about the evidence and possible witnesses. While trial counsel testified he did not visit the crime scene, he did review a Google map of the scene.

Trial counsel talked with Applicant's father, Larry Ladson, and Applicant's uncle, Michael Ladson. Neither were present at the scene. Both testified at the post-conviction relief hearing. Applicant's father testified that he was talking with Applicant when the robbery was taking place, stating "I heard somebody trying to rob Leroy."⁴ Applicant's uncle testified that Applicant came into his house asking to borrow twenty dollars, which he lent Applicant. Applicant's uncle testified after Applicant was given the twenty dollars, Applicant went outside and that he, Michael, heard an altercation.

Both Applicant's father and uncle were present at his trial and wanted to testify. Trial counsel testified he talked to both the father and the uncle. Trial counsel, after talking with the

³ A "numbers runner," in this case, is one who is a sort of wholesaler of a gambling device generally referred to as a "ball ticket."

⁴ Leroy was the victim.

364

Je H H

two, determined as witnesses at trial they "would do more harm than good." Trial counsel testified both had significant records which would "rub off" on Applicant.

Where counsel articulates valid reasons for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel. *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992); *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992). Where counsel articulates a strategy, it is measured under an objective standard of reasonableness. *Ingle v. State*, 348 S.C. 467, 506 S.E.2d 401 (2002).

I find trial counsel's strategy as to not putting Applicant's father and uncle on the stand to be an acceptable trial strategy.

Trial counsel testified he did not get any phone records to confirm Applicant's claim that he had called the numbers runner and talked with his father before and during the incident. Whether such records would or would not have been helpful is unknown, as Applicant did not place them into evidence at the post-conviction relief hearing. The Court cannot determine that trial counsel was ineffective for not procuring phone records absent an opportunity to review them. As to this issue, Applicant has failed to carry his burden of proof.

While the record reflects Applicant made his own decision not to testify, as noted above, trial counsel testified he did not think Applicant should testify due to his prior record (giving false information to police) and his inability to account for where he was for the four or five hours after the incident.

Trial counsel testified that Applicant was, as to maturity, "below age level" and that Applicant had nervous habits. However, trial counsel testified he did not question Applicant's competence and, if he had, he would have asked for a mental evaluation.

367

File #7

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2016CP2302039

Trico Ladson vs. South Carolina State Of

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy: ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this .

Court Reporter: _____

PRESIDING JUDGE - John C Hayes, III

This judgment was entered on the , and a copy mailed first class this , to attorneys of record or to parties (when appearing pro se) as follows:

William G. Yarborough III 522 North Church
Street Greenville, SC 29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

Patrick Lowell Schmeckpeper PO Box 11549
Columbia, SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

368

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

Jail ✓

COUNTY OF Greenville
STATE VS.
Trico Anthony Ladson

AKA:

Race: BLACK Sex: M Age: 22

DOB: -1993 SS#:

Address:

City, State, Zip: Greenville, SC 29601

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Conspiracy, (gs)

INDICTMENT/CASE#: 2015GS2303556

A/W#: 2013A2330210322

Date of Offense: 12/3/2013

S.C. Code §: 16-17-0410

CDR Code #: 0049

SENTENCE SHEET

X CONVICTED OF or ☐ PLEADS

in violation of § 16-17-0410 of the S.C. Code of Laws, bearing CDR Code # 0049

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Hodge, Kris

8245
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of 2 days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 5months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 19 Days TTS☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL		\$ 133.90

_____ days/hours Public Service Employment

Obtain GED ☒

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☒Random Drug/Alcohol testing ☒Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2752

Sentence Date: 1/4/15

Prob begins upm comp of any early rel prog.

369

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
CONSPIRACY

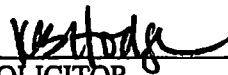
At a Court of General Sessions, convened on
County present upon their oath:

MAY 19 2015

the Grand Jurors of Greenville

That TRICO ANTHONY LADSON did in Greenville County, on or about the 3rd day of December 2013, willfully and unlawfully combine with an unidentified co-defendant for the purpose of accomplishing an unlawful object or a lawful object by unlawful means, to wit: Armed Robbery. This is in violation of §16-17-0410 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

BAR # 8245

370

WITNESSES

D A Hoover

Greenville County Sheriffs Office

12/13/2013

ARREST WARRANT NUMBER

2013A2330210322

ACTION OF GRAND JURY

TRUE BILL

Wayne Chapman
FOREMAN GRAND JURY

Representative of Grand Jury

VERDICT

guilty

James Caldwell
foreperson of Petit Jury

Date: Nov. 4, 2015

DOCKET NO. 2015-GS-23-

KBH

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

May

TERM 2015

THE STATE

vs.

TRICO ANTHONY LADSON

SH

Indictment for

✓
0049

CONSPIRACY

VIOLATION § 16-17-0410

ENTERED
ACCT.

REP

ARREST WARRANT

2013A2330210322

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Greenville

THE STATE
against

01-2013-181738

Trico Anthony Ladson

Address:

Greenville, SC 29601-

Phone:

SSN:

Sex: M

Race: B

Height: 5

10

Weight: 140

DL State: SC

DL #:

DOB: 1/1993

Agency ORI #: SC0230000

Prosecuting Agency: Greenville County Sheriff's Office

Prosecuting Officer: D A Hoover - 1029

Offense: Conspiracy / Criminal Conspiracy

Offense Code:

0049

Code/Ordinance Sec:

16-17-0410

This warrant is CERTIFIED FOR SERVICE in the

☐ County/☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant

on

TRICO ANTHONY LADSON
12-13-13

RETURN WARRANT TO:

Cagle

Greenville General Sessions

305 E. North Street

Greenville County Courthouse

Greenville, SC 29601-2120

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Greenville

Personally appeared before me the affiant D A Hoover

being duly sworn deposes and says that defendant Trico Anthony Ladson

did within this county and state on or about 12/3/2013

of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

Greenville

in the following particulars:

DESCRIPTION OF OFFENSE: Conspiracy / Criminal Conspiracy

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

The Affiant, an Investigator with the Greenville County Sheriff's Office, has a report of an Armed Robbery Attempt. The report states that an unknown black male, with a mask, armed with a handgun, along with another subject did attempt to take the victim's money at gun point. During the incident the masked subject shot at the victim with the handgun, striking his vehicle. As the victim tried to escape, the defendant did willingly continue to grab, contain, and fight the victim against his will to prevent his escape, while continuing to demand the money. Both subjects escaped with out any of the victim's property. The defendant was identified, as he was not masked, by photo line up as one of the perpetrators in this crime. The Affiant also has a written sworn statement from the victim showing how the victim personally knows the defendant. The way this crime was carried out shows planning and coordination on the part of the defendants. This offense occurred on Goldsmith Road in Greenville County SC.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Greenville

Affiant's Address 4 Mcgee Street

Greenville, SC 29601-

Affiant's Telephone (864)467-5287

COMPUTER ENTERED

(L.S.)

DEC 11 2013

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

GREENVILLE COUNTY
SHERIFF'S OFFICE

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 12/3/2013

defendant Trico Anthony Ladson

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Greenville

) as set forth below:

DESCRIPTION OF OFFENSE: Conspiracy / Criminal Conspiracy

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me
on 12/10/2013

Signature of Issuing Judge

Letonya T. Simmons

Judge Code: 5077

Judge's Address

Simpsonville, SC 29680-

Judge's Telephone

(864)963-3457

Issuing Court:

☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

AFFIDAVIT

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

273

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.

Trico Anthony Ladson

AKA:

Race: BLACK Sex: M Age: 22

DOB: -1993 SS#:

Address:

City, State, Zip: Greenville, SC 29601

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Attempted Armed Robbery

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015GS2303557

A/W#: 2013A2330210320

Date of Offense: 12/3/2013

S.C. Code §: 16-11-0330(B)

CDR Code #: 0026

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-0330(B) of the S.C. Code of Laws, bearing CDR Code # 0026

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Hodge, Kris

8245
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of 2 days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 5months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 19 Days TS☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCJA Surcharge)	\$5	\$ 5
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 133.90

_____ days/hours Public Service Employment

Obtain GED ☒

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☒Random Drug/Alcohol testing ☒Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: Johnson

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2752

Sentence Date: 11/14/15

prob begins upon comp of any early rel prog.

373

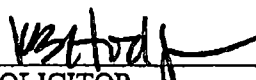
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ATTEMPTED ARMED ROBBERY

At a Court of General Sessions, convened on **MAY 19 2015** the Grand Jurors of Greenville
County present upon their oath:

That TRICO ANTHONY LADSON did in Greenville County, on or about the 3rd day of December, 2013, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, attempt to take by means of force or intimidation, goods or monies from the person or presence of Leroy Thomas. This is in violation of §16-11-0330 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

BAR # 8245

374

WITNESSES

D A Hoover

Greenville County Sheriffs Office

12/13/2013

ARREST WARRANT NUMBER

2013A2330210320

ACTION OF GRAND JURY

TRUE BILL

Wayne H. Anderson

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

guilty

James P. Anderson
Foreperson of Petit Jury

Date: *Nov. 4, 2015*

DOCKET NO. 2015-GS-23-

KBH

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

May

TERM 2015

THE STATE

vs.

TRICO ANTHONY LADSON

Indictment for

0026

ATTEMPTED ARMED ROBBERY

VIOLATION § 16-11-0330

ENTERED
ACCT.

003557

SH

ACP

ARREST WARRANT

2013A2330210320

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Greenville

THE STATE

against

Trico Anthony Ladson

Address:

Greenville, SC 29601-

Phone:

SSN:

Sex: M

Race: B

Height: 5 10

Weight: 140

DL State: SC

DL #:

DOB: /1993

Agency ORI #:

SC0230000

Prosecuting Agency:

Greenville County Sheriffs Office

Prosecuting Officer:

D A Hoover - 1029

Offense: Robbery / Attempted armed, or allegedly armed, robbery

Offense Code:

0026

Code/Ordinance Sec:

16-11-0330(B)

This warrant is

CERTIFIED FOR SERVICE

in the

☐ County/☐ Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant

on

Trico Anthony Ladson

12-13-13

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Greenville General Sessions

305 E. North Street

Greenville County Courthouse

Greenville, SC 29601-2120

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Greenville

Personally appeared before me the affiant

D A Hoover

who

being duly sworn deposes and says that defendant

Trico Anthony Ladson

did within this county and state on or about

12/ 3/2013

violate the criminal laws of the

State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Greenville

in the following particulars:

DESCRIPTION OF OFFENSE: Robbery / Attempted armed, or allegedly armed, robbery

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

The Affiant, an Investigator with the Greenville County Sheriff's Office, has a report of an Armed Robbery Attempt. The report states that an unknown black male, with a mask, armed with a handgun, along with another subject did attempt to take the victim's money at gun point. During the incident the masked subject shot at the victim with the handgun, striking his vehicle. As the victim tried to escape, the defendant did willingly continue to grab, contain, and fight the victim against his will to prevent his escape, while continuing to demand the money. Both subjects escaped with out any of the victim's property. The defendant was identified, as he was not masked, by photo line up as one of the perpetrators in this crime. The Affiant also has a written sworn statement from the victim showing how the victim personally knows the defendant. This offense occurred on Goldsmith Road in Greenville County SC.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Greenville

Affiant's Address

4 Mcgee Street

Greenville, SC 29601-

Affiant's Telephone

(864)467-5287

DEC 11 2013

ARREST WARRANT

GREENVILLE COUNTY
SHERIFF'S OFFICE

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 12/ 3/2013

defendant Trico Anthony Ladson

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Greenville

) as set forth below:

DESCRIPTION OF OFFENSE: Robbery / Attempted armed, or allegedly armed, robbery

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 12/10/2013

Signature of Issuing Judge

Letonya T. Simmons

Judge Code: 5077

Judge's Address

Simpsonville, SC 29680-

Judge's Telephone

(864)963-3457

Issuing Court:

☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2009
SOCA 518

ORIGINAL

AFFIDAVIT

5531
12-18-13Entered On
NCIC

376

WITNESSES

D A Hoover

Greenville County Sheriffs Office

12/13/2013

ARREST WARRANT NUMBER

2013A2330210321

ACTION OF GRAND JURY

TRUE BILL

Wayne Sheppardson

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Not guilty

James C. [Signature]

Foreperson of Petit Jury

Date: *Nov. 4, 2015*

DOCKET NO. 2015-GS-23-003555
KBH

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

May

TERM 2015

THE STATE

vs.

TRICO ANTHONY LADSON

SH

Indictment for

3410

ATTEMPTED MURDER

VIOLATION § 16-03-0029

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ATTEMPTED MURDER

At a Court of General Sessions, convened on **MAY 19 2015** the Grand Jurors of Greenville
County present upon their oath:

That TRICO ANTHONY LADSON did in Greenville County, on or about the 3rd day of December
2013, unlawfully, with malice aforethought, and with the intent to kill, attempt to kill Leroy Thomas.
This is in violation of § 16-03-0029 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



SOLICITOR BAR # 8245

378

ARREST WARRANT

2013A2330210321

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Greenville

THE STATE

01-2013-191738

against

Trico Anthony Ladson

Address:

Greenville, SC 29601-

Phone: SSN: Sex: M Race: B Height: 5 10 Weight: 140DL State: SC DL #: DOB: /1993 Agency ORI #: SC0230000Prosecuting Agency: Greenville County Sheriffs OfficeProsecuting Officer: D A Hoover - 1029Offense: Murder / Attempted MurderOffense Code: 3410Code/Ordinance Sec: 16-03-0029This warrant is CERTIFIED FOR SERVICE in the☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be

dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant Trico Ladsonon 12-13-13

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO: Cagle
 Greenville General Sessions
 305 E. North Street
 Greenville County Courthouse
 Greenville, SC 29601-2120

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Greenville

Personally appeared before me the affiant

D A Hoover

being duly sworn deposes and says that defendant

Trico Anthony Ladson

did within this county and state on or about

12/3/2013

State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Greenville

in the following particulars:

DESCRIPTION OF OFFENSE: Murder / Attempted Murder

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

The Affiant, an Investigator with the Greenville County Sheriff's Office, has a report of an Armed Robbery Attempt. The report states that an unknown black male, with a mask, armed with a handgun, along with another subject did attempt to take the victim's money at gun point. During the incident the masked subject shot at the victim with the handgun, striking the victim's vehicle. As the victim tried to escape, the defendant did willingly continue to grab, contain, and fight the victim against his will to prevent his escape, while continuing to demand the money. Both subjects escaped with out any of the victim's property. The defendant was identified, as he was not masked, by photo line up as one of the perpetrators in this crime. The Affiant also has a written sworn statement from the victim showing how the victim personally knows the defendant. This offense occurred on Goldsmith Road in Greenville County SC.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Greenville

Affiant's Address 4 McGee StreetGreenville, SC 29601-Affiant's Telephone (864)467-5287

COMPUTER ENTERED

DEC 11 2013

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

GREENVILLE COUNTY SHERIFF'S OFFICE

appearing from the above affidavit that there are reasonable grounds to believe that

on or about 12/3/2013defendant Trico Anthony Ladson

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Greenville

) as set forth below:

DESCRIPTION OF OFFENSE: Murder / Attempted Murder

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 12/10/2013

Signature of Issuing Judge (L.S.)

Letonya T. Simmons

Judge Code: 5077

Judge's Address

Simpsonville, SC 29680-Judge's Telephone (864)963-3457Issuing Court: ☒ Magistrate☐ Municipal☐ Circuit

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AFFIDAVIT

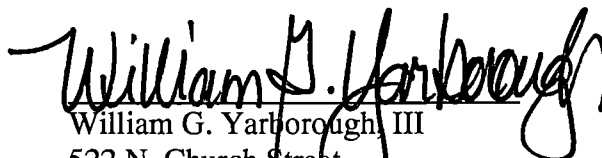
ORIGINAL

Form Approved by
 S.C. Attorney General
 April 21, 2003
 SCCA 518

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Appendix contains all material proposed to be included by the Petitioner and not any other material.

June 19th, 2017


William G. Yarborough, III
522 N. Church Street
Greenville, South Carolina 29601
(84) 331-1612
Attorney for Appellant

The Honorable Daniel E. Shearouse
Clerk of Court-SC Supreme Court
Post Office Box 11330
Columbia, SC 29211

J. Benjamin Aplin
Attorney General's Office
Post Office Box 11549
Columbia, SC 29211

Sworn to before me this 19
day of June, 2017



Notary Public for South Carolina

My commission expires: 3/20/24

THE STATE OF SOUTH CAROLINA
In the Supreme Court

POST CONVICTION RELIEF APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

John C. Hayes, III, Circuit Court Judge

Appellate Number 2017-000268

Trico Anthony Ladson, Petitioner,

v.

The State of South Carolina, Respondent.

RECEIVED
JUL 03 2017
S.C. SUPREME COURT

AFFIDAVIT OF SERVICE

I, Traci Trouton-Burr, certify on this date, June 28, 2017 I served 6 bound copies of the Petition for Writ of Certiorari, dated June 19, 2017 on The Honorable Daniel E. Shearouse, Clerk of Court-Supreme Court and Mr. DeShawn Mitchell, Assistant Attorney General by mailing it to him at his work address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows: (an unbound copy and the Appendix was originally filed on June 19, 2017. This filing is made in compliance with Rule 243 (d) SCACR.

The Honorable Daniel E. Shearouse
Clerk of Court-SC Supreme Court
Post Office Box 11330
Columbia, SC 29211

DeShawn Mitchell
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211

Respectfully submitted,



Traci Trouton-Burr

Paralegal to William G. Yarborough, Esquire

SWORN TO before this 28
Day of JUNE, 2017.



Notary Public for South Carolina

My Commission expires: 10/9/23