

THE WILMINGTON TEN CASE

Probable Cause Hearing & 1st Jury Selection

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION

STATE OF NORTH CAROLINA

vs.

ORIGINAL TRANSCRIPT OF
PROBABLE CAUSE HEARING

TOMMY ATWOOD, JAMES BUNTING,
BENJAMIN F. CHAVIS, CARNELL E.
FLOWERS, JERRY JACOBS (Alias
Scarface), JAMES MCKOY, MARVIN
PATRICK, ANN SHEPHERD, CONNIE
TINDALL, WILLIE E. VEREEN, and
MICHAEL PETERSON,
Defendants

Appearing for
Defendants Atwood, Jacobs,
and Peterson

Frank W. Balance, Jr., Esq.
Attorney at Law
Warrenton, North Carolina

Appearing for
Defendants Bunting,
Chavis, Tindall and
Vereen

James. E. Ferguson, II, Esq.
Attorney at Law
237 W. Trade Street
Charlotte, N. C.

Appearing for
Defendants Flowers,
McKoy, Patrick

John H. Harmon, Esq.
Broad Street
New Bern, N. C.

Appearing for
Defendant Shepherd

M. P. Hunoval, Esq.
Attorney at Law
Wilmington, N. C.

Date of Hearing:

Thursday, March 30, 1972

Judge Presiding:

Gilbert H. Burnett
Chief District Court Judge

Solicitor:

James Stroud

Judge Burnett: If there is anyone in the Courtroom under 16 years of age, please hold up your hand. I understand, I have been getting information from time to time that some adult Black male is trying to get our school children to pack the Courtroom today. I just want to make an observation, if these are the children, I think his project has completely flopped. We have seven children here under 16, we've got thousands of children in the school. It is for his information - if this happened - it is for his information, it is unlawful for any child under 16 to miss school unless they have some very good reason such as sickness. Also, if this happened, for his information - now, if he is from out of State, I assume he is not familiar with our laws and I am trying to be fair to him - it is unlawful to encourage a child under 16 to "skip" school. We call it "Contributing to the Delinquency of Minors." Now, I mention this in all fairness, if this is being done, I suggest he stop it and any other further activities. He might check with his attorneys, he has some very competent attorneys, here in the Courtroom today. He might check with them to get familiar with North Carolina laws, because if there is evidence they are tampering with our children - and we love our children here in this county, black or white - and we don't want them skipping school.

Mr. Tom Jervay, some years ago, heard my first civil rights case about 1963, when I was judge for a couple of years, and Mr. Tom Jervay wrote an article, if I recall correctly, he said, "If you are moving for the rights of the Blacks, that's one thing, but do not skip school." This was good advice then and it still holds true. Do not skip school to come down to Court to hear cases.

Now, what I am going to do is, I'm going to give you a chance to go back to school. Now, any children under 16 who are found in the vicinity

of the Courthouse, or within the area, after about thirty minutes, a petition will be taken out against you and you will be brought to Juvenile Court. Now, I am trying to be fair with you. You need your education. So, if you are brought into Juvenile Court, you will be dealt with up there for being unlawfully absent from school.

Now, do you have a way to get back to school? All right, I'll see you later.

(Children leave the courtroom.)

This young man goes to Leland and said they got out yesterday for the Easter holidays.

Incidentally, any of the others who are in school, there may be an attendance counselor here later in the day checking students so you may be cited to the office at the school you attend. Of course, under the law, it is up to you, but I just mention it. Frankly, I talked to Dr. Bellamy.

We are going to take a short recess. Now, remember, please be quiet. I am just trying to advise you because we have three other courts going now. If you are noisy in the court or out of the court, you are apt to be brought into one of the courts for contempt. Be real quiet, please. Take about a 20 minute break.

Incidentally, there will be no picture taking. I understand there are some cameras in the Courtroom. Do not take pictures during court.

(Defendants brought into Courtroom at 11:00 A. M.)

Judge Burnett: I know it is crowded in here. We have the air-conditioning on. I know you will get tired of standing. As long as you are quiet you can stay, if you get noisy, only the ones seated can stay.

Mr. Stroud: If it please the Court, the State is calling cases against all these defendants here today who are charged with various acts arising out of disturbances we had here in February of 1971. There is one defendant who is not here and that is Jerry Jacobs, who is represented by Mr. George Sperry. Mr. Sperry had to be out of town today, so his case was continued and this was with the Court's permission. The cases here today are for preliminary hearing and that reason only.

Judge Burnett: Do the defendants desire a preliminary hearing?

All Attorneys: Yes, sir.

Judge Burnett: All of them?

All Attorneys: Yes, sir.

SERGEANT BLOOMER, first being duly sworn, was examined and testified as follows:

Mr. Stroud: If it please the Court, it has been agreed upon with the defense attorneys that all the evidence will be presented at one time. There are several incidents covered during a period of four days which the defendants are charged. As the witnesses testify to each offense, the defense attorneys will have the right to cross-examine them to that incident and then the State will have the right to continue direct examination as to the next incident. And if it please the Court, as we get to each incident, I will state to the Court which incident it is and who is charged. The incident on which evidence will first be heard your Honor is with regard to two cases - one against Marvin Patrick and also against Ben Chavis for assault on emergency personnel.

Mr. Ferguson: If it please the Court, we agree with this procedure with the understanding that as each incident is related to the court that only facts re-

lating to that incident will be relevant at that time and also counsel for defendants will have the opportunity to examine the witness with regard to each specific incident as to that incident. We make this stipulation only for the purpose of this preliminary hearing.

DIRECT EXAMINATION (By Mr. Stroud)

Q You are Sgt. Bloomer of the Wilmington Police Department?

A Yes, Sir.

Q Sgt. Bloomer, on the 6th day of February, 1971, did you have occasion to be in the vicinity of 6th or 5th and Nun Street?

A Yes, sir.

Q What time of day or night was this?

A This was approximately 9:30 p.m.

Q And what was the occasion for being in that vicinity at that time?

A I was patrolling this area, noticed a lit object fall in the yard behind the residence at the southeast corner of Fifth and Nun.

Q What, if anything, did you do at that time?

A Detective Brown and myself drove to that area to attempt to put that object out.

Q What occurred at the time you arrived at this area?

A As soon as we drove up next to this object, we began to draw fire from up Nun Street.

Q Gun fire?

A Yes, sir.

Q What, if anything, did you do at that time?

A As soon as we got out of the vehicle, we started answering the fire.

Q You were firing back?

Sgt. Bloomer - Direct Exam. by Mr. Stroud

A Yes, sir.

Q Did you observe, other than the sounds of the gun fire, did you observe the gun fire?

A Yes, sir. You could see flashes from the intersection of Sixth and Nun and the middle of the block between Fifth and Sixth on the north side of the street and also objects were striking the vehicle.

Q Now during what time interval did this occur or continue?

A For approximately ten minutes.

Q And then what, if anything, did you do?

A We backed - after the object was put out - we backed out of the intersection and across Fifth Street and took up a position on the northeast corner of Fifth and Nun.

Q Now, could you identify any of the persons or parties who were firing?

A Could not.

Q In what direction was the firing coming from?

A It was coming from Sixth and Nun and Gregory Congregational Church and this area.

Q Toward what area?

A Toward Fifth and Nun.

Q Who was in this area?

A I was in this area along with Detective Brown, Sergeant Jenes, Sergeant Monroe, Detective Henry. There were several officers.

Q On the evening of the 6th of February, 1971, was there declared a state of emergency in the City of Wilmington?

Mr. Ferguson: OBJECTION

The Court: OVERRULED, if he knows.

A Yes, sir. There was a curfew.

Q During this time you and the other officers were serving as emergency personnel, is that correct?

A That's correct.

Mr. Ferguson: OBJECTION to his leading.

The Court: SUSTAINED. Don't lead.

Q Were any of the police officers wounded as a result of this?

A Yes, sir. Sgt. Jenes was struck in the upper left leg.

Q I have no further questions. Your witness.

* * * * *

CROSS EXAMINATION (By Mr. Ferguson)

Q What were the lighting conditions in the area, Sgt. Bloomer?

A They were very dark. The street lights had been shot out.

Q What was the farthest distance you could see from the point you were?

A Approximately quarter of a block.

Q Approximately what distance from you were the flashes of fire that you could see?

A From between half a block and a full block away.

Q You stated there were several officers there in the vicinity, where were these officers placed in relation to yourself?

A My car was on Nun Street facing in an eastwardly direction. There was a car ahead of mine, across from me, facing south in a driveway, kind of protecting the car I was in. Then there was another car on Fifth Street just south of the intersection.

Q I'm having a little difficulty picturing this in my mind. Could you go to the board behind you and draw a diagram and show where you were and

where the cars were. Will you do that?

Mr. Stroud: At this time, the State would like to interpose an objection.

This matter is here only for preliminary hearing. We are not trying the man. We are just trying to find out if there is enough evidence to be bound over to Superior Court.

The Court: OVERRULED

(Sgt. Bloomer draws a diagram on the board.)

Q Where would Sixth Street be?

A It would be east. Sixth Street, if this were longer, it would be up here.

Q While you are there, will you show us which car you indicated as your car?

A Number One, the lower car.

Q The one lower on the diagram?

A Yes.

Q Point out, if you will, where the area was you said you saw the fire.

A This block would be longer. It is out of proportion. But from half way up the street, from this side and all the way up the street near the intersection of Sixth and Nun. That's where the flashes appeared to be coming from.

Q Were you able to tell how many people were across Sixth Street?

A No, sir.

Q There are houses located on either side of Nun Street and Sixth Street, is that right?

A There are.

Q How many police officers altogether were there in the area with you, if you know?

A Possibly eight or nine. That's an estimate.

Q Were they all members of the Wilmington City Police?

A They were. There may have been some other officers there from other organizations. I am not positive. There may have been one or two other officers from other organizations there.

Q You made no arrests that night, is that true?

A Did not.

Q That's all the questions I have.

The Court: All three of you represent all these men?

Mr. Ferguson: No, your Honor. Perhaps for the purpose of the record we ought to clarify the representation at this point.

The Court: All right. Mr. Ferguson, who do you represent?

Mr. Ferguson: Benjamin Chavis, Connie Tindall, Willie Vereen and James Bunting.

Mr. Harmon: I represent Carnell Flowers, James McKoy and Marvin Patrick.

Mr. Balance: I represent Tommy Atwood, Jerry Jacobs, Michael Peterson.

Mr. Hunoval: If the Court pleases, I represent Ann Shepherd.

Mr. Balance: I notice my client Jerry Jacobs has an alias and I move to strike that from the record.

Mr. Stroud: If it please the Court, the alias was put in there to distinguish the two Jerry Jacobs who were being charged.

The Court: What is the alias?

Mr. Stroud: Scarface.

The Court: We'll strike that for now.

CROSS EXAMINATION (By Mr. Balance)

Q Mr. Bloomer, will you give me your first name, please?

A James F.

Q Now, you say this incident occurred approximately 9:00 P.M., on what day?

A Shortly after 9:30 P.M. on February 6th

Q Can you tell us what time you went to work that day?

A Yes, sir, I went to work at twelve noon.

Q Is that your regular shift?

A No.

Q Had you worked previous to that?

Mr. Stroud: OBJECTION. I don't see how his hours of work are relevant.

The Court: OVERRULED

Q What shift had you worked prior to this?

A This was the first shift that day - twelve to twelve.

Q Did you get off at twelve that night?

A No, I worked over.

Q What time did you get off?

A Three or four in the morning.

Q Do you know which one?

A It would be a guess that long ago.

The Court: What did you say? I didn't understand you.

A It would be a guess sometime between three and four.

Q How long have you been with the police force in Wilmington?

A Fifteen years.

Q Have you had experience prior to coming to Wilmington?

A Not in police work, no.

Q I have no further questions.

Mr. Stroud: Your Honor, I object to any cross examination by Mr. Hunoval.

His client is not charged in this particular incident.

The Court: Is there any particular reason you want to cross examine him at this time?

Mr. Hunoval: Your Honor, what the State of North Carolina is alleging is a conspiracy of certain transactions that happened over approximately a 70 or 80 hour period. I don't know when they happened, and I think I should be entitled to try to find out whether there was anything or whether there was any involvement on the part of my client, or alleged involvement, on this particular evening. I make a motion for severance of my client from all these others. If the Solicitor will go along with that I will not cross examine him.

Mr. Stroud: As to his client, she is not charged with conspiracy over a 72 or 80 hour period. She is charged with conspiracy some three or four evenings after this incident occurred.

Mr. Hunoval: I believe it said the conspiracy happened between the 7th and 9th of February, 1972. The 7th, 8th and 9th. That sounds like a three day period to me.

Mr. Stroud: Well, this is on the 6th, Mr. Hunoval.

The Court: I'm going to overrule the objection and let's see what he has.

CROSS EXAMINATION (By Mr. Hunoval)

Q You said you got out there about 9:30. How long did you stay?

A I was on the scene in the area of Fifth and Nun until shortly after ten o'clock.

Q Roughly about half an hour. Did you ever get any closer to Sixth and Nun after 9:30?

A Did not. That was as close as we had been.

Q Was your station, your duty station, during the course of that evening at Fifth and Nun? Is that where you stayed most of the evening?

A No. I was on regular duty as far as that goes. The reason we were there was we saw this object and went to investigate.

Q You didn't get any closer than a block to the church the rest of the evening?

A That's correct.

Q No further questions.

CROSS EXAMINATION (By Mr. Ferguson).

Q During this period of time you were down there, were there various vehicles going in and out of the area? On Sixth Street and Nun Street and Fifth Street? Vehicles were passing by?

A Very, very few did. I didn't see but one or two and they were none of our vehicles.

The Court: Let's stop the conversation and stop moving about. Either stay in the Courtroom or stay out. When people move about the Courtroom it brings about confusion. Anyone else want to leave? All right, let's keep it still. Mr. Sheriff, will you have someone stand at the door? I don't want anybody else coming in. I'm not going to have them going out and coming in. If any of you want to go out, now is your chance.

The Court: All right. Excuse me. Go ahead.

Mr. Ferguson: You were not able to identify these persons who were driving these vehicles as they passed by, were you?

A Let me say this, some of these intersections had been blocked off. There shouldn't have been any vehicles in the area unless they moved the barricades.

Q Where were the barricades located?

A The best I recall they surrounded this area.

Q When you say "surrounded the area", do you mean they were at certain intersections?

A Yes, sir. There are a lot of intersections around this area.

Q Do you know which intersections road blocks were erected at?

A I couldn't give you each specific intersection.

Q You do know some cars passed through the road blocks that were set up.

A That's correct.

Q That's all.

CROSS EXAMINATION (By Mr. Harmon)

Q Was it reported to the Wilmington Police Department that white people were riding by the church in cars firing on the church? Was that true?

Mr. Stroud: OBJECTION

The Court: Repeat your question.

Q Was it reported to the Wilmington Police Department on this occasion, white people were riding by the church firing on the church?

A I have no knowledge of such a report, sir.

Q You have no knowledge?

A No, sir.

Q What time did Sergeant Jenes get shot?

A Right at 10:00 P.M. Approximately 10:00 P.M.

Q That's all.

ALLEN HALL, first being duly sworn, was examined and testified as follows

DIRECT EXAMINATION (By Mr. Stroud)

Q You are Allen Hall.

A Right.

Q How old are you, Allen?

A Eighteen.

Q Where are you presently residing?

A The Lumberton Camp.

Q With the Department of Correction?

A Right.

Q What are you serving time for?

A I am serving time for arson, participating in a riot and assault on emergency personnel.

Q Occurring of February of last year?

A Right.

Q Allen, on the 6th day of February, 1971, in that evening, were you in the area of Gregory Congregational Church located on Nun Street?

A Before I answer the question, I would like to make a statement.

Mr. Hunoval: OBJECTION to any statement he would make. It is not in response to the question of the Solicitor.

The Court: I don't know what the statement is yet. Why are you objecting?

Mr. Hunoval: I don't think he is entitled to a free reign. He might make a statement about the weather. He might make a statement about my client. I think he ought to respond to the question of the solicitor.

The Court: Go ahead.

Q Allen, were you at the Gregory Congregational Church on the 6th day of February, 1971?

A Yes, I was.

Q Was Ben Chavis at the church?

A Yes, he was.

Q Was Marvin Patrick at the church?

Mr. Ferguson: OBJECTION to his leading, your Honor.

The Court: SUSTAINED

A Yes.

Q Did you leave the church any time during the time you were there?

A Yes, sir.

Q Who did you leave with?

A Myself, Marvin Patrick and Ben Chavis.

Q Where did you go at this time?

A We were going to Fifth and Nun.

Q Why were you going to Fifth and Nun, if you know?

A We were going to- - -

Mr. Ferguson: OBJECTION

The Court: What was the question.

Q Why were you going to Fifth and Nun, if you know?

A Myself, Ben Chavis and Marvin Patrick- - -

Mr. Ferguson: I am trying to understand the Solicitor's question. Whether

it was why he was going or why was somebody else going.

Mr. Stroud: I'll withdraw the question.

Q Was anyone with you when you went to Fifth and Nun Streets?

A Yes, sir.

Q Who?

A Reverend Ben Chavis and Marvin Patrick.

Q Did you actually get to Fifth and Nun?

A No, sir.

Q You were going in that direction.

A Right.

Q Why were you going in that direction, if you know?

A We were going to get this white man out of that apartment place.

Q What apartment building?

A The apartment at Fifth and Nun.

Q Whose idea was it to go get him?

A Reverend Chavis's.

Q Did you have any type of weapon at that time?

A Yes.

Q What type of weapon did you have?

A A pistol?

Q Did the other two - Chavis and Patrick - have a weapon?

A Yes, sir.

Q What kind of weapons did they have?

A A pistol and a shotgun.

Q Which one had which?

A Chavis had a pistol and Marvin Patrick had a shotgun.

Q When you left the church going toward Fifth and Nun, where did you go?

A We went up there. We got as far as the intersection where they had the street blocked off at.

Q The intersection of Sixth and Nun?

A Right.

Q Where did Marvin Patrick go?

A Marvin Patrick got up there - middle ways of the driveway.

Q In what block?

A Sixth and Nun.

Q Between Sixth and Fifth?

A Right.

Q Where did Ben Chavis go, if you know?

A Myself and Ben Chavis had gone to the road where the barricades were.

Q What kind of barricades were they?

A Concrete.

Q Concrete pipe?

A Yes.

Q Did you see the police cars come in there?

A Yes.

Q What happened when the police cars came in there?

A Whenever the police cars came in there then Marvin Patrick began to shoot. Then we started shooting, then they started shooting back at us.

Q Who did? Who started shooting back at you?

A The Police Department.

Q Where were you shooting? In what direction?

A Towards Fifth Street. In the direction of the police cars.

Q Did you see Ben Chavis fire his pistol? .

A Yes, sir.

Mr. Ferguson: OBJECTION to this leading.

The Court: He said he shot him. He is asking him in which direction.

Mr. Ferguson: He is constantly asking him "Did Ben Chavis do this?",

"Did Ben Chavis do that?" It calls for a yes or no answer.

The Court: Let's don't lead.

Q In which direction did Ben Chavis fire, if you know?

A Towards Fifth and Nun.

Q In which direction did Marvin Patrick fire, if you know?

A Towards Fifth and Nun.

Q How long had you stayed there in the street at this time, if you know?

A I stayed around fifteen minutes.

Q Then where did you go?

A Back to the church.

Q Who went with you?

A Reverend Chavis and Chili.

Q Marvin Patrick?

A Right.

Q I have no further questions of this particular incident.

* * * * *

CROSS EXAMINATION (By Mr. Ferguson)

Q How old are you, Mr. Hall?

A Eighteen.

Q Eighteen?

A Right.

Mr. Allen Hall - Cross Exam. by Mr. Ferguson

Q How far did you go in school?

A Ninth year.

Q Was that here in New Hanover County?

A Right.

Q You, at one time, were charged with- - -

Mr. Stroud: OBJECTION

Mr. Ferguson: I think I can question the witness regarding previous convictions.

Mr. Stroud: He can question him regarding his previous convictions not what he has been charged with.

Mr. Ferguson: I think I can question him as to whether or not he was charged with these offenses to show interest on the part of the witness.

The Court: Let me see some law.

Mr. Ferguson: Your Honor, this is a material witness for the State who is testifying against the defendants, Defendant Chavis, in this case. He is in a sense a co-defendant. I am questioning him now about his interest in the case. The United States Supreme Court ruled, less than two weeks ago, that a person, a co-defendant who takes the witness stand can be questioned regarding any promises he may have been made or any dealings that he may have had with the prosecutor. I am simply laying the ground for this.

The Court: Let me read the case.

Mr. Ferguson: It came out in the Advanced Sheets, your Honor, I am not sure I have them with me.

Mr. Stroud: If it please the Court, the State will withdraw the Objection.

The Court: Go ahead.

Q Now, in connection with this incident you testified to, you were charged with assault on the same emergency personnel Rev. Chavis is now charged with, were you not?

A Yes, I was.

Q When were you first charged with this offense?

A I was charged with this whenever I was picked up.

Q When was that?

A I was picked up in May.

Q May of '71?

A Right.

Q Now, did you at that time give any statement to the arresting officer or to the Prosecutor or anyone connected with the State?

Mr. Stroud: OBJECTION

A No, sir.

Q Were you placed in jail at the time you were picked up in May?

A Yes, sir.

Q Do you recall what your bond was?

Mr. Stroud: OBJECTION

The Court: What has the bond got to do with it?

A My bond was set at \$7200.

Mr. Ferguson: I want to know in order to determine whether or not any bond arrangements were made to induce this witness to give testimony in this case. I have a right to inquire into all the circumstances surrounding the arrest of this man in order to determine whether or not there has been any inducement, promises or anything of that sort. The only way I know to inquire about it is to ask about the circumstances- - -

The Court: He said \$7200. Isn't that what he said?

Mr. Stroud: If he is questioning him as to any deals, promises or threatening, why doesn't he ask him has he been promised or threatened or promised anything?

Mr. Ferguson: Because I am sure what the answer would be, Mr. Stroud.

The Court: I am going to overrule this objection. Let's get more to the issue.

Q You were placed in jail under what bond?

A \$7200.

Mr. Stroud: OBJECTION

Q Were you able to make that bond?

A No, I was not.

Q How long did you remain in jail?

A I remained in jail until January of '72.

Q January, 1972?

A Yes, sir.

Q Now, what police officers have you talked with regarding your testimony that you are giving today?

A What do you mean? Have I discussed it with them?

Q I want to know which police officers you talked to between May, 1971, and today.

Q I haven't talked to them since I got picked up.

Q You are saying now you haven't talked to any police officer since you got picked up?

A Detective Brown and Detective Monroe.

Q When did you first talk to Detective Brown?

A I can't quite remember the date.

Q Can you approximate the date?

A No, sir.

Q You have no idea in this world when you talked to him?

A I know I talked to him before I was tried.

Q When were you tried?

A I was tried in January.

Q Was that the first time you were tried? Did you make an appearance in District Court?

A Yes, I did.

Q When did you make that appearance?

A In June.

Q In June?

A Right.

Q Did you talk to Detective Brown prior to that time?

A No, I did not.

Q Did you talk to Detective Monroe prior to June?

A Whenever they came to the jail, I talked to them then.

Q Was that before you went to trial in District Court?

A Right.

Q Did you give them any statement at that time?

A Yes, sir.

Q Did you sign any statement you gave them?

A Yes, sir.

Q Have you seen that statement since the time you gave it?

Mr. Stroud: OBJECTION The State will stipulate that he has been

questioned by Detective Brown, Detective Monroe and myself several times, both before June and since that time, and as recently as last Friday.

Mr. Ferguson: Your Honor, we are not calling upon the Solicitor to testify in this case. Allen Hall has taken the stand and is the witness in this case. We, as defendants, are entitled to inquire into all the facts and circumstances relating to any statements made by this witness as to when he made them, what he said when he made them, in order that we might determine whether or not there are any inconsistencies in these statements during this whole period of time. Now, the State seeks to put this witness on the stand, have him say what the State wants him to say and then deny us the right to cross examine him.

The Court: Go ahead.

Q Now, did you give a written statement prior to June of 1971?

A Yes, I did.

Q To whom did you give that statement?

A I gave it to Detective Brown and Detective Monroe.

Q In that statement did you relate all the things that you have related today on the witness stand?

A That's right.

Q Did you at any time after June of 1971 make another written statement regarding this incident?

A Yes, sir.

Q To whom did you make that statement?

The Court: Excuse me, will you please make room to let the lady take the little baby out, please? Go ahead.

Q You said you made another statement after June of '71 regarding this same incident - assault on emergency personnel, is that correct?

A I only talked to them about it last Friday.

Q Between the first time you talked to Mr. Brown and gave him a written statement, did you after that time make any other written statements in connection with this matter, this charge of assault on emergency personnel?

A Yes, I did.

Q When did you give him another written statement?

A I went over with him, but he never did talk with me on Friday.

Q Are you saying you didn't talk to him any time between June of '71 and this past Friday?

A I talked to him several times before that.

Q Do you know how many different occasions you talked to him?

A I would say several times.

Q Sir?

A I said several times.

Q Several times?

A Yes, sir.

Q Did you give him a written statement each time you talked to him?

A Yes, sir.

Q He wrote down what you said and you signed what you said each time you talked to him.

A Right.

Q You say to your knowledge Mr. Brown has at least seven or eight different statements that you have given him, is that correct?

A No, sir. He wanted to know definitely was I telling the truth about it.

And I told him I was telling the truth about it.

Q He had some doubts about whether or not you were telling the truth about it?

Mr. Stroud: OBJECTION

A No, sir.

The Court: SUSTAINED. Go on.

Q Then why was it necessary for him to talk to you seven or eight different times to find out whether you were telling the truth?

Mr. Stroud: OBJECTION

The Court: SUSTAINED Let's move along.

Q Each time he talked to you he was questioning you to find out if you were telling the truth about that incident, did he not?

A No, sir.

Q On what did you base your statement that he was questioning you to determine whether or not you were telling the truth to determine if you were definite? Were you indefinite the first time? The first time you talked to him.

A No, sir. The first time that I talked to him, I didn't really realize the situation the people was in.

Q So, are you saying you told him something different the next time you talked to him from what you told him the first time?

A No, what I am saying is that I told him the truth.

Q When?

A Every time. I told him the truth.

Q You said the first time you talked to him you didn't realize the condition the people here were in, is that correct?

A Right.

Q So, whatever statement you made at that time, you made it without realizing that. So, after you realized the condition the people were in, did you make a different statement to him?

A No, sir, what I mean is, I didn't realize the way the people were in. I didn't realize that- - -

Q I am asking you whether you made a different statement, I am not asking you what you realized about the people. Did you make a different statement the second time from what it was the first time?

A No, sir, but I just told them all of it.

Q When, the second time?

A I told them every bit of it.

Q When?

Mr. Stroud: OBJECTION

The Court: Let's move along.

Mr. Ferguson: Your Honor, I am merely trying to find out what transpired.

Q Are you saying the first time that you didn't tell him everything, is that correct?

Mr. Stroud: Your Honor, he has testified each time he told them, he has told them the truth. I don't know what more he can testify.

Mr. Ferguson: Your Honor, he has just testified that he told them everything at some subsequent time that he didn't tell them the first time. I want to know what the difference is between the two times.

Q What did you tell them the first time?

A The difference is, the first time, like- - -

Q My question is: What did you tell them the first time?

A I told them the whole truth that - what went on at the church.

Q So, you are saying everything you included in your written statement the first time you talked to him included everything that went on at the church, is that correct?

A Yes, sir.

Q Now, did you tell him anything in addition to that the second time you talked to him?

A I told him the same thing.

Q You sat down and told him the same thing seven or eight different times?

A Right.

Q Now, Mr. Hall, I want to know how many written statements have you signed about this incident?

A Every time that I have signed, every time I would make a written statement, I would sign it.

Q Well, I am trying to find out how many written statements you made.

A Two.

Mr. Stroud: Can we keep the noise down in the Courtroom after his response to the questions.

The Court: I advised you that if you keep quiet you can stay in here even though it is sort of crowded. But if you keep mumbling, you'll have to leave the Courtroom. I'm trying to be perfectly fair. If you want to hear it, be quiet.

Q At this time, your Honor, I would like to move the Court that counsel for the defendants be given all the written statements that this witness has made in order that we may cross examine him. I am still not clear on how many he made. At one time he said there were seven or eight,

now, he says there are two. I don't know how many there are. He said he gave them to the police officers. I am requesting at this time that we be given those statements.

Mr. Stroud: OBJECTION The State objects, Your Honor. He is entitled to cross examine him on what he has testified to. We will be glad, once they file a Bill of Particulars to furnish any statements he needs, but I don't see how this is relevant to this particular hearing. We are here to determine if there is sufficient evidence to go to Superior Court.

The Court: Do you contend there is law to back you up. That you are entitled to these statements now.

Mr. Ferguson: Yes, sir, the law--

The Court: Show me the law.

Mr. Ferguson: The law is very clear that we have the right to cross examine the witness on any statements that he might have made. We, as the defendants, have never had an opportunity to see those statements. They are in the custody of the Police Department. If we would effectively be able to cross examine this witness regarding any inconsistencies that he may have made, we need to have those statements. It seems strange to me that he made seven or eight different statements, if he did, we are entitled to see them in order to cross examine the witness.

The Court: He objects to it, so I have to decide upon it solely upon the law. Show me some law.

Mr. Ferguson: (Cases cited) Pointer vs. Texas - Right to cross examine witnesses.

Sixth Amendment says he has the right to counsel.

Griffin vs. Illinois says he has the right to effective counsel.

Recess for lunch. Defendants back in courtroom at 1:40 p.m.

Mr. Ferguson: During the lunch recess, we went to the library and we got certain cases which we would like to bring to the attention of the Court at this time that we are entitled to see the statements made by the testifying witness to police officers. First let me cite POINTER v. TEXAS 380 US 400 13 L 2d Decided by the Court in 1965. COLEMAN v. ALABAMA 399 US 26 L 2d 387 Decided by the Court in 1970.

GILES v. MARYLAND 386 US 17 L 2d 737 Decided by the Court in 1967.

PIPER v. ASHBURN 243 NC 51 (89 SE 2d 762)

STATE vs. HART 239 NC 709 (80 SE 2d 901)

Mr. Ferguson: We submit to the Court that under the circumstances here a witness offered by the State is on the stand and his testimony has been illicit upon cross examination that witness has, on several previous occasions, made statements to police where that witness, by his own testimony, has said - at one time he said one thing and another time he said another, crossing back and forth as to what he said. So counsel for the defendants are unable to determine in fact what he did say without production of the writings that he said he made. And in order for us to effectively assist and represent the persons we are here to represent we must have access to those paper writings in order to effectively confront, to effectively represent our clients. If we have the right to show that he is impeachable by inconsistent statements, we have the right to have those statements he made and without those statements we cannot protect the rights of our clients to cross examine, confront

and impeach. That is all we are asking here. We submit to the Court all these cases, taken alone, or taken together, more than substantially support that proposition. We offer them to the court in support of our motion that the State produce at this time the writings that the witness himself stated that he made.

Mr. Stroud: First of all, your Honor, Mr. Ferguson has cited on behalf of his motion, the Poirier case. The State is in no way at this point, or will it ever seek to prevent each of these defendants through their attorneys to confront the witnesses against them in this manner. Nor will the State in any way seek to deny them the right to cross examine any witnesses that stand against them. They have that very right here today. Allen Hall was on the stand testifying when the court recessed. Confrontation was present, the right to cross examine was present. He also cites the Coleman case which stands for the proposition he says that the defendant is entitled to aid and counsel at a preliminary hearing. Certainly the State will not deny him that right. He is entitled to aid of counsel and he has that counsel; very able counsel, I might add. In the Giles case, Mr. Ferguson states that case stands for the proposition that the prosecution has the duty to disclose any weaknesses in the prosecutor's case to the defendants. Now, he may correct me if I am wrong, but that case deals with a trial rather than a preliminary hearing and I can assure the court that if the State has any duty to convey to the defendants' attorneys any weaknesses in the State's case that the State will do that before trial in Superior Court. Again, I reiterate this is merely a preliminary hearing. I don't think any of these cases, taken separately or together, entitle them to enable them to now get written statements that Allen Hall made and cross examine him as to these statements. If there are

weaknesses in the State's case, the State will convey these weaknesses to the defendants before trial. Again, we are here only for the purpose of determining whether there is probable cause that crimes were committed and that these defendants committed the crimes. It is not a trial. It certainly is a critical stage, but it is not a trial. They have every right to cross examine, and they have every right to cross examine this witness and any other witnesses the State may produce. We are not trying to keep them from that, but I don't think they are entitled, at this point, and I don't think they produced the law that his Honor requested showing that there is a requirement for the State of North Carolina at this preliminary hearing or any other preliminary hearing to give to them statements made by a State's witness, who is testifying at a preliminary hearing, so they can cross examine him about those statements. Now, Mr. Ferguson also in his argument to his Honor stated that Allen Hall said he made one statement at one time and a different statement at another time. As I recall his testimony he did not say that. He did not say he said one thing at one time and a different thing at another time. He just said he was talked to several times and he made two written statements and that he told the truth each time. They are certainly entitled to cross examine him further about these statements, but I don't think there is any obligation that the State at this time, either voluntarily or involuntarily be forced to produce to them the statements.

The Court: May I have the cases.

Mr. Ferguson approaches bench.

The Court: As to the Pointer case.

As I read this case, it says here that "The defendants" (there were two of them. They were laymen, that is, they were not lawyers, who were de-

defendants in a preliminary hearing such as this. They did not have attorneys at the preliminary hearing. You can read it again and see if I am wrong. At the stage we are, they did not have attorneys. There was a witness who took the stand and testified, his testimony was taken down. It was written down. And that witness moved, left Texas, left the area, and was not returning. Later, at the trial - as you know, this is a preliminary hearing - at the trial of the matter later, the State put in the statement the witness had made on the stand, the witness was not there. They read the statement into the testimony, which meant that the defendants, who had attorneys at the time of the trial of the matter, they could not cross examine the statement. The court found the men guilty. It was affirmed and here it was reversed. You are exactly right. It was reversed; the court saying that they had the right of cross examination. In other words, the court says, if at this hearing he doesn't have an attorney and a witness makes a statement which is written down and it comes to trial and the witness is not there for cross examination, you cannot introduce the testimony at the hearing. That's the way I read this case. You may want to check it later, but that's the way I read this.

As to the case Coleman vs. Alabama. It says, and what you say is exactly right, "A preliminary hearing is a critical stage of the State's criminal process of which the accused has a Constitutional right to assistance of counsel." And it goes on to state that the State must furnish it, if he doesn't have it. It is exactly right. It is a critical stage and he is entitled to counsel and, of course, it says you have the right to cross examine. There may be something about documents but I didn't see it in that case. But you are right. It is a critical stage and he is entitled to the right to have an attorney and he has a good one.

As to GILES vs MARYLAND, I believe you stated that the State was under the duty to give the evidence to the defendants, or something along that line. In this case, the petitioner had been convicted of rape. He had been through a trial, and I see no mention of a preliminary hearing whatsoever. He had been through a trial and had been convicted of rape and he wanted a Post Conviction Hearing, a hearing after the trial. The Court said at the original trial, counsel for the defendants testified - the attorneys in the trial testified at the Post Conviction proceeding that he had seen the prosecutor's file, the State's file, before trial, including the police report. That since the reports were not produced (apparently at the trial), it is pure speculation to conclude that the trial counsel had in fact seen the reports now before us." Here some reports had been brought before the Supreme Court. This was a five to four decision, a very close decision, but it is still the law.

Justice Brennan joined by Justice Warren and Douglas, and this was concurred in by two others, he expressed the view that under the circumstances, it was not necessary to decide the Constitutional question of whether it was the Prosecution's duty, the State's duty, the extent of all evidence that was admissible and useful to the defense, but the case should be remanded (sent back) for consideration by the Maryland Court of Appeals, whether it should order an inquiry to determine whether at the original trial of the case, the prosecution allowed false evidence to go uncorrected in violation of the Fourteenth Amendment, since certain police records, which were not part of the record, apparently did not come out at that trial but were brought before the Supreme Court at its request; whether they contained certain matters relating to the credibility of the prosecution's witnesses and also whether one of the petitioners actually had intercourse with the victim

I don't think this case is on that point. Although it does deal with records. You can see the difference..

(I don't mind your talking real quiet, but please, don't pop your gum. I know it is distracting to the people around you, please, don't pop it.)

In the PIPER v. ASHBURN - that's what is called a civil case not a criminal case and here we have a criminal case. In this case, it is an action to recover damages for injuries resulting from an automobile accident. And the court says that a witness may be impeached by proof that on other occasions (And I might mention here, that in civil cases, you don't have a preliminary hearing like you do in criminal. In civil cases, there is no such thing as a preliminary hearing.) In any event, the court said, "A witness may be impeached upon proof that on other occasions he has made statements inconsistent with his testimony on present trial, which statements may have been made orally, either informally or in the course of witnesses' testimony at a former trial or hearing, or they may have been in writing."

In other words, it appears that if the defendant can show inconsistent statements, he can show it, but it says nothing here about forcing the State to give him statements.

Let's see what it says about STATE vs. HART. This was a criminal case - Manslaughter - and the Court said: "A party to an action or proceeding, either civil or criminal, may illicit from an opposing witness on cross examination particular facts having a logical tendency to show that the witness is biased against him or his cause, or that the witness is interested adversely to him in the outcome of the litigation." It further says: "That a witness for the prosecution in criminal cases may be compelled to disclose on cross examination that he has brought or is preparing to bring a civil

action for damages against the accused based on the acts involved in the criminal case." Then it says further, "Cross examination of opposing witness to show his bias or interest is a substantial legal right which trial judges at the trial, not at a preliminary hearing, can neither abrogate nor abridge to prejudice of cross examining parties."

I still see nothing saying that in the preliminary hearing the State has to disclose or present written statements. I'll hear you further if you like.

Mr. Ferguson: Your Honor seems to be looking for a case that says the State has to give us the statements. We don't have a case that states exactly that, but we do have a case here that says if the State has statements, the State is required to turn these over to the defendants. That's what Giles v. Maryland says.

The Court: I don't read that in it. You show me. I will be glad to look at it, if you show me where it is.

(Mr. Ferguson approaches bench)

The Court: He is going to get another case.

Recess for 15 minutes. (Defendants taken upstairs.)

(Out at 2:50 back at 3:20 P. M.)

The Court: I have looked over this case, Mr. Ferguson, this is very similar to another U. S. Supreme Court case. In this particular case, it says here, that "Mr. Brady was convicted in Maryland in a State court, it was a trial." Again, it was not a preliminary hearing. "On a charge of murder in the first degree, committed in the course of a robbery; had been sentenced to death; that he learned of an extra judicial confession of his accomplice - tried separately - admitting that he - that the actual homicide was done by the accomplice and this confession had been suppressed by the prosecution

notwithstanding the accomplice's extra judicial statement. This came back after a post conviction hearing and it says here, "Prior to petitioner's trial, counsel - defense counsel - had requested; he had requested, this is important, had not been ordered - the Court had not ordered, he had requested the prosecution to allow him to examine defendant Bobbitt's extra judicial statements. Several of the statements were shown to him, but one dated July 9, 1958, in which Bobbitt admitted the actual homicide was withheld by the prosecution and did not come to the petitioner's notice until after he had been tried, convicted and sentenced. And after his sentence had been confirmed. This is very much like another U. S. Supreme Court Case, which says that "If a request is made of the prosecution to give information and the prosecution gives the information indicating this is all the information and withholds some, it is deceitful."

This is a good law, a perfectly good law.

The case we are involved in, a request has been made and denied.

No court ordered the statements in the case that I was reading or in any of the others.

Of course, I don't know how these will come out. I think what he is trying to avoid is cross examination on the statements.

Mr. Stroud: I have stated to the defense counsel that these statements will be made available to him. I don't think the court has the jurisdiction to order the State, at this time, to produce the statements so the witness can be cross-examined on those statements. The Court has the right to do it, but I don't think there's a law requiring it.

Mr. Ferguson: Relative to the defendants, if after five minutes he comes off the stand and gives a statement which does not assist us in helping our

defendants at this critical state of the hearing. We are saying, we need the statements now, while this witness is on the stand so we can effectively cross examine him now. Now, the last case I handed to your Honor, BRADY vs. MARYLAND, I see that a request was made. Defendants are entitled to it. We made a request as early as we could because we made it as soon as we found out that there were such statements in existence. Prior to today, we did not know about them.

In COLEMAN vs. ALABAMA, the Court says "One of the functions of counsel in a preliminary hearing is to cross examine witnesses, to bring out possible inconsistencies in the evidence, to bring out weaknesses in the case, the same as at the trial itself. This is precisely the situation we are in now. The State, I believe, would concede that we are entitled to the statements, but the State does not want to give them to us now when we need them most.

The Court: Of course, if you request them and he gives them, that's one thing. As far as the court ordering them, I have to see the law. I don't see any law to do it, so I'll deny your motion. If there is probable cause in one or more cases, he said he will give them to you at the trial.

Bring the witness back, please.

* * * * *

(Allen Hall back on witness stand)

Q If I understand your previous testimony correctly, you made one statement prior to June, 1970, is that correct?

A Yes, it is.

Q That was the first written statement that you made.

A That's right.

Q Will you relate to the Court what you said in that statement?

A I related to them what happened at the church.

Q With regard to these charges here - assault on emergency personnel - what did you say in that statement about Ben Chavis? What he did.

A I told that I went to the church, about the cops pulling in between the house and from where - and from the position where we were.

Q What else did you tell them?

A I told them about the burning of Mike's Grocery.

Q Did you tell them at that time you went outside of the church with a gun?

A Yes, I did.

Q Did you tell them what kind of gun you had?

A Yes, I did.

Q What kind of gun was it?

A A 38.

Q 38 pistol?

A Right.

Q Did you tell them Ben Chavis went outside the church with a gun?

A Yes, I did.

Q Did you tell them what kind of gun he had?

A It was a pistol.

Q What kind of pistol?

A I won't really say what kind of pistol it was.

Q You don't know what kind it was?

A I'd say a 45.

Q Do you know it was a 45?

A Well, I only know from what he said it was.

Q From what he said it was? So, you didn't actually get a good look at it, is that right?

A I got a good look at it. Like I know with a 45 you have to load it, you use a magazine, it has a clip, I mean hammer on the top of it.

Q Now, did you tell Mr. Brown or Mr. Monroe that's what he had when you talked to them the first time?

A Yes, I did.

Q That's in your statement?

A Right.

Q What time did you tell them you left the church?

A On which occasion? On the Friday night?

Q The occasion we're talking about was February 6th. We're talking about the occasion you just got through testifying about.

A Well, I couldn't say exactly what time.

Q So, you didn't tell them what time you left, is that right?

A Right.

Q Did you tell them how long you stayed out of the church?

A Out of the church?

Q Outside of the church.

A No.

Q Did you tell them how long you had been in the church?

A No, sir.

Q Did not?

A No, sir.

Q How long had you been in the church on that date?

A I had been there ever since that Friday.

Q You had been in the church since Friday?

A Right.

Q Had you left the church at all since Friday?

A Only going out to do certain things.

Q How long did you remain away from the church before going back?

Mr. Stroud: OBJECTION I don't see where this is relevant to this particular charge as to when he was out of the church - - -

The Court: Does it pertain to these two cases?

Mr. Ferguson: Yes, sir. That's what I am talking about. He said he left the church some time on the 6th with Chavis and Patrick.

The Court: OVERRULED

A I couldn't say definitely what time it was because I didn't even have a watch.

Q All right. Now at or about nine o'clock on the 6th, how long had you been in the church since the last time you had been outside the church?

A I would say around 45 minutes.

Q Had either Ben Chavis or Mr. Patrick been with you when you had been outside before this last time?

A Yes. Because the time we came back to the church, we came back together.

Q Just the three of you?

A Right. And all of us were in the church together.

Q Approximately how many people were there in the church immediately before you say the three of you went out towards Fifth and Nun Street?

A I couldn't really say, I would say maybe around 45 or more because some was in the house and some was at the church.

Q You said you left from the church, right?

A Right.

Q I'm talking about how many people were in the church.

A I would say around 45 in that vicinity.

Q Did you tell Mr. Brown and Mr. Monroe that in your first statement?

A No, I did not.

Q Now, when you made your first statement to them, did you have a lawyer at that time?

A No, sir.

Q Were you offered a lawyer by the State at that time?

A Yes, sir.

Q Did you get a lawyer any time before you made your statement?

A I refused one.

Q Do you recall how long you talked to the police officers at the time you made your first statement?

A No, sir.

Q Was it as long as ten minutes?

A It was longer than ten minutes. I can't recall how long.

Q Was it as long as an hour?

A I can't really say how long it was.

Q You have no idea how long it was?

A Maybe if I had looked at the time when I started and looked at the time I stopped, I could tell you. Since I don't have a watch, I can't tell you what time it was.

Q How long had you been in jail before you talked with them the first time?

A I had been in jail four days - three days.

Q Did you ask for a police officer to come to your cell to talk to you?

A No, sir.

Q They came there and told you they wanted to question you, is that right?

A Yes, sir.

Q Did you think it would make it easier on you if you made some statements to them at that time?

A I felt I had nothing to hide.

Q Did you think it would make it easier on you if you went and told them something at that time?

A Yes, sir, the truth.

Q You thought it would make it easier on you to tell them something at that time.

A Right.

Q That's the reason you told them something. You thought it would make it easier on you.

A What I told them was the truth.

Q That's not my question. You thought it would make it easier on you if you told them something, whether it was the truth, or false or whatever.

A I know I had to live with myself and I wasn't going to let anybody suffer for something I had done.

Mr. Stroud: OBJECTION to the commotion in the Courtroom, there is no excuse for that.

The Court: I don't want to clear the Courtroom. I feel you have a perfect right to be here at this trial, but you must be quiet. Go ahead.

Q Did you get the impression from the officers who were there, it would be easier for you or better for you, if you went ahead and made the statement?

A No, sir, because I made up my own mind.

Q Did you make it up while they were there or before they came?

A I made it up really before they came.

Q When did you make it up?

A Whenever I got busted.

Q You made up your mind when you got busted, is that right?

A Yes.

Q It was being busted that helped make you make up your mind.

A No, the night before I got picked up, it had been running through my mind it was no way to live - by ducking.

Q It was no way to what?

A No way to live by ducking. Ducking from the cops. If I was man enough to commit the crime, I'm man enough to pull the time for it.

Q It took you from February until May to realize that?

A From February until May?

Q Yes.

A I didn't know there was a warrant out on me until after February.

Q You never made any effort to tell the police anything before you knew there was a warrant out for you, did you?

A No, sir.

Q You didn't think you had to be man enough before a warrant was issued, is that right?

A No, sir.

Mr. Stroud: OBJECTION to this line of questioning. Certainly he is entitled to question him about any promises made to him or any threats, P-43

but I think this is going pretty far afield for the purpose of a preliminary hearing. This is not a trial.

Mr. Ferguson: The witness already testified he made the statement he thought it would be easier for him. I think that's a matter of interest- - -

Mr. Stroud: I think he is answering your questions quite frankly, but go ahead, let's move along.

Q Was it the fact of your arrest that made you decide that you ought to make statements to them?

A No, sir. What decided me was my own conscience because I had to live with my own conscience.

Q Was your conscience functioning at any time before- - -

Mr. Stroud: OBJECTION He is using the same line of questioning.

The Court: SUSTAINED

Q Now, at the time you were arrested, you were charged with arson, were you not?

A Yes, sir.

Q You were charged with arson under the statute carrying 30 years, were you not?

A Yes, sir.

Q You were charged with assault on emergency personnel?

A Yes, sir.

Q You knew at the time you were arrested you were faced with charges carrying approximately 37 to 40 years, were you not?

A No, sir, not until I came down here for a trial.

Q You didn't know that before you came to trial?

A Here in District Court.

Q You didn't know it before then?

A I knew arson carried up to life. I didn't know how much time I could get for burning a store and a house..

Q How much time did you think you could get when you were making the statement?

Mr. Stroud: OBJECTION.

The Court: SUSTAINED

Q When you came to District Court, did you plead at that time?

A No, sir.

Q You have a preliminary hearing?

A I waived it.

Q You waived the preliminary hearing?

A Yes, sir.

Q Did you have a lawyer at that time?

A No, sir.

Q Was there any change made in your bond at that time?

Mr. Stroud: OBJECTION

The Court: SUSTAINED

Q When did you first get a lawyer?

A In October.

Q Did you ask for a lawyer at that time?

A No, sir. The judge felt it would be wise that I should have a lawyer.

Q Between the time you made the statement in June or before June, and October, did you make any other statements?

A I can't say a written statement because I only made two written statements.

Q Did you make any oral statements?

A Yes, sir.

Q As a matter of fact, you were questioned repeatedly by police officers during that period of time, were you not?

A No, sir, I wouldn't say repeatedly.

Q Was it several times?

A I have talked to them several times.

Q Did you ever ask for them to come to you?

A Yes, sir.

Q On what occasion?

Mr. Stroud: OBJECTION

The Court: OVERRULED

Q On what occasions did you ask for police officers to come to you?

A Because of some things I had to get off my chest.

Q I am asking you, when did you ask for a police officer to come to you?

A While I was up in jail.

Q You were up in jail from May until now, weren't you? When did you ask for the police officer to come up?

A I say in June.

Q Is that the only occasion?

A No, sir.

Q When else did you ask for them to come?

A I can't exactly say.

Q How many times did you ask for them to come?

A Five or six times.

Q You say that you wanted to get something off of your chest, is that to

say you wanted to tell them something you hadn't told them before?

A Yes, sir.

Q And that was on each of these five or six occasions, each time you wanted to tell them something you hadn't told them before?

A Yes, sir.

Q So, then do I understand each time you talked to the police officers you told them something different from what you told them before or something in addition to what you had told them before?

A I told them a section of it at a time.

Q You told them a section at a time?

A Right.

Q You had five or six sections?

The Court: All right, I don't want anyone complaining when it gets to the point to clearing the Courtroom. I don't want anyone to complain.

Q When you talked to them the first time, did you know everything that happened?

A Yes, sir.

Q Then you could have told them everything that one time, couldn't you?

A Yes, sir.

Q You chose for some reason to tell them a section at a time, is that right?

A Yes, sir.

Q What was the first section?

A Well, like, when they asked me the question, like, how was I involved, I told them.

Q Well, if you sent for them, they didn't need to ask you any questions,

did they?

A You asked me after they came to see me the first time, did I send for them.

Q Yes.

A And I told you I sent for them.

Q You sent for them on every occasion after the first time?

A Yes, sir.

Q All right, now, did they question you any time other than the first time?

A Yes, sir.

Q When they came to you, each time would you make a statement to them before they questioned you?

A Like an oral statement.

Q You would make a statement, then they would question you, is that what you are saying?

A No, sir. What I am saying is they would ask me what did I want. So, I told them there was something very important I would like to talk to them about.

Q Did you tell them what it was?

A Yes, sir.

Q Now, did you talk to them about the assault on the police officers at any time other than the first time you talked to them?

A Repeat that again.

Q You understand that the charges you are testifying about now are the charges on assault of emergency personnel, do you not?

A Right.

Q You said, if I understand you correctly, the first time you talked to the

police officers, you told them about this offense on this night, is that correct?

A Yes.

Q Did you tell them anything about this particular offense any time other than the first time you talked to them about it?

A No, sir.

Q So, the first time you talked to them was the only time you said anything about the shooting incident on February 6th, is that right?

A Yes, sir.

Q When you went to court on these charges you pleaded guilty, did you not?

A Yes, sir.

Q How much time did you get?

Mr. Stroud: OBJECTION

The Court: SUSTAINED

Q Did you know before you pleaded guilty how much time you were going to get?

Mr. Stroud: OBJECTION

The Court: SUSTAINED

Q Were you told by anyone how much time you were going to get?

Mr. Stroud: OBJECTION

The Court: SUSTAINED

Q Going now to the night of February 6, 1971, as I recall your direct testimony, you said that you and Mr. Patrick and Reverend Chavis were going down the street to some apartment to get some white man, is that correct?

A Yes, sir.

Q What apartment were you going to get the white man?

A To the apartment on Fifth and Nun.

Q Apartment on what?

A Fifth and Nun.

Q On the corner of Fifth and Nun?

A Right.

Q When did you first discover that there was a white man in that apartment?

Mr. Stroud: OBJECTION

The Court: OVERRULED

A We discovered it was a white man in the apartment from what Reverend Chavis had told us.

Q Did you ever see the white man in the apartment?

A No, sir.

Q Was there more than one apartment in the building?

A Yes, sir.

Q How many apartments were in the building?

A I can't really say how many apartments are in the building.

Q You say Reverend Chavis told you a white man was in the apartment?

A Yes, sir.

Q When did he tell you that?

A He told us that on Saturday.

Q Saturday evening? Saturday morning?

A That Saturday night.

Q Sir?

A That Saturday night.

Q Had Reverend Chavis left the church?