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EXAMINATION BY MR. FERGUSON:

Q Ladies and gentlemen of the jury, my name is James Ferguson. I am from Charlotte, North Carolina, where I practice law. Seated to my immediate left is Mr. Frank Ballance of Warrenton, North Carolina. We are two of the attorneys representing nine of the defendants in this case. Can all of you hear me now? The acoustics are kind of bad. If at anytime you cannot hear me just raise your hand and I will speak louder. The other young men you see seated in the box are the persons who are charged with these offenses. Now each one of these young men has entered a plea of not guilty to the charges against him. Do all of you understand that? I am going to ask you some questions, both as a group and individually. As attorney for the defendants in this case it is my roll and responsibility to assure that the jury which sits in this case is a fair and impartial one. And that is why I am going to ask you the questions. I do not want any of you to feel that we are prying into your personal lives or seeking to embarrass you in any way in the questions that we ask. WE simply feel that it is necessary in order for us to determine and for you to determine whether or not each one of you can be fair and impartial and I hope that

the answers that you give and responses that you make will be made in the same light that we ask you the questions. First of all, let me ask you if any of you have at anytime before served on a jury. I see that for most of you this is a new experience. As I go along if you don't understand the things that I am asking you raise your hand and help me clear it up. Sometimes we lawyers talk in terms people who are not in and out of court every day do not understand. I want you to be sure and understand everything I ask. Have any of you who are presently seated on the jury ever served as a witness in a trial, as a witness for the State in the trial of a criminal case? AS has been explained to you Mr. Stroud is the Assistant Solicitor for this District. The Solicitor is Mr. Allen Cobb. Are any of you personally acquainted with him or any member of the Solicitor's staff? Mr. Dale Johnson who is assisting in the trial of this case for the State is here from the State Attorney General's office in Raleigh. Are any of you personally acquainted with any of the Attorney General's staff in Raleigh? If you are would you indicate that to me by raising your hand? I take it that no one is. Several of the witnesses listed for you

by the State who might be called for the State are members of the Wilmington Police Force. Let me ask you if any of you feel that you would tend to take the words of a police officer over and above the word of a layman simply because it is a police officer testifying? That is, would you tend to more quickly believe a police officer than someone who was not an officer simply because he was an officer? Do you understand my question? Is there anyone who doesn't understand what I am asking you now? Do any of you have close associates who are police officers who visit regularly in your home or you in theirs?

A. (Juror 5) I have a brother who is a policeman in Washington, D. C.. He comes up twice a year.

Q. Anyone else? Do any of you know the police officer who shot and killed Steve Corbett who was mentioned to you by the State? If I am not mistaken his name is Jackie Shaw, one of the witnesses listed for the State. Do any of you know him? I'll take just a moment to explain something to you. Then I want to ask you some questions about it. As I say, the defendants have all entered pleas of not guilty. The Court has explained to you that the law presumes them to be innocent in that circumstance. Now is there anyone presently seated on the jury who feels

that the fact that these defendants have been charged means that they must have done something wrong otherwise they would not have been charged?

SOL. STROUD: Objection.

THE COURT: Objection sustained. (Exception No. —)

Q In the trial of a criminal case, as the Court will explain, a defendant is not required to prove anything at all. Is there anyone on the jury presently who feels that you would have to hear something from some or all of the defendants in the trial of this case?

SOL. STROUD: Objection. (Exception No. —)

THE COURT: OBJECTION sustained. Now, Mr. Ferguson, maybe I overlooked explaining to the jury. Members of the jury, the burden of proof is upon the State of North Carolina from the beginning to the close of the case. The burden of proof in the in the sense of ultimately proving or establishing the issues of the case. So The burden of proof is on the State. Such burden never shifts. The defendants who have not the burden of proof are not bound to disprove the State's case. For the State must fail if upon the whole evidence it fails to satisfy the jury beyond a reasonable doubt

that the defendants are guilty of every element of the offense charged against them in the bill of indictment.

Q Is there any member of the jury as it is presently constituted who is unable at this time to give to the defendants the presumption of innocence to which the law entitles him?

SOL. STROUD: Objection.

THE COURT: Well now, Mr. Ferguson, I have explained the law to them and will explain that to them again. You can ask them, of course, if they are willing to follow the instructions of the Court.

Q In spite of the fact, ladies and gentlemen of the jury, that it has been explained to you and will be explained to you again that the defendants are presumed to be innocent and not required to prove anything to you, those of you who now feel that in spite of that principle of law you still tend to believe the defendants have some guilt at this time would you indicate that to me by raising your hand?

SOL. STROUD: Objection.

THE COURT: Objection sustained. You must

confine the questioning of the jurors as to whether the jurors will follow the instructions

(Exception No. —)

of the court.

MR. FERGUSON: Your Honor, may I ask them will they follow the particular instructions?

THE COURT: Yes, indeed.

Q Those of you who have heard or read anything at all about the case indicate that to me by raising your hand. Would you hold your hands high so I can see them all? That is everyone on the jury. Mr. Dixon, did I see your hand?

A What was it you said?

Q I was asking whether or not you had heard or read anything at all about the case, the cases that are being tried now. Are you unable to hear what I am saying, sir?

A I can't hear too good; no, sir.

Q Mr. Dixon, do you feel that your hearing defect is such that you might not be able to hear all the evidence in the court if the witnesses were speaking in the tone of voice that I am speaking now?

A Well I wouldn't say that I could understand all of it.

Q Sir?

A I wouldn't say I could understand. I'll try to understand.

Q Have you been able to understand everything said in the court up to this point?

A Up until what you said just -

Q Have you read or heard anything at all about these

cases?

A No more than I read in the papers and see on the T V and stuff.

Q In addition to hearing or reading something about the case I would like to ask those members of the jury who have discussed the case, those of you who have talked about it yourselves, would you indicate that to me by raising your hand also?

SOL. STROUD: Objection, your Honor. I thought the Court had gone into all of this

THE COURT: What is the question?

MR. FERGUSON: Those who have discussed the case themselves I asked them to indicate that by raising their hands.

THE COURT: Objection overruled. Go ahead.

A (Juror 5) Do you mean before the court?

Q Yes. Some of you may not have understood what I am talking about. I understand you have not discussed the case since yesterday. The Court told you not to - I am talking about before Yesterday. Does everybody understand that? Before yesterday. How many of you have discussed the case just hold your hands high please. Mr. Croom, in discussing the case did you express any opinion regarding the guilt or innocence of the persons charged here?

SOL. STROUD: Objection.

A No, sir.

THE COURT: Overruled.

SOL. STROUD: Your Honor, I thought the Court had gone into that.

Q Did someone express such an opinion to you?

A No, sir.

Q Is there anything that you heard in connection with these cases that you presently feel might influence your verdict in this case?

A Well I heard right smart about it when it was going on.

Q Yes, sir. I am asking you now if anything you heard about the case might influence your verdict in the case they way you feel now.

A No.

Q Is there anything that you heard or read about it that you think that you would require some evidence from the defendants to overcome?

MR. JOHNSON: Objection.

THE COURT: Sustained. *(Exception No. 1)*

Q Do I understand, Mr. Croom, that you are a mail carrier?

A That is right.

Q That is ~~here in Burgaw or here in Pender County?~~

A Rocky Point.

I do not
~~Q~~ You belong to any clubs or organizations in the community?

~~A~~ No, sir.

~~Q~~ What is your church affiliation?

~~A~~ Do you mean what church I go to?

~~Q~~ Yes.

~~A~~ *I go to the*
Methodist Church.

~~Q~~ Have you or any member of *my* family, *has* ever been the victim of any kind of assault or damage to property?

~~A~~ No.

~~Q~~ In whatever you hear or read about these cases did you ever at anytime feel that you might favor the State in the trial of these cases over the defendants?

~~A~~ No, sir.

~~Q~~ Do you feel that it is your duty to convict these defendants?

~~A~~ No, sir.

SOL. STROUD: Object.

~~Q~~ Do you understand then that it is as much your duty to find the defendants not guilty if the State fails to prove its case beyond a reasonable doubt as it is to find them guilty if the State proves its case beyond a reasonable doubt?

MR. JOHNSON: Object.

THE COURT: Overruled.

~~Q~~ Sir?

A I didn't quite understand the question.

Q Do you understand, sir, that as a juror in the case if you were chosen to sit in this case that it would be as much your duty to find the defendants not guilty if the State failed to prove its case beyond a reasonable doubt as it would be to find them guilty if the State proved beyond a reasonable doubt that they were?

A Yes, sir.

~~Q Do you understand that?~~

~~A Yes, sir.~~

Q I am going to address these questions to all of the members of the panel at this time. It so happens in this case that 10 people are on trial together. All 10 of the defendants are on trial together. Do you understand that? Now will you as jurors in the case be able to look at each one of these defendants individually and the evidence as to each one of these defendants individually and base your verdict on the evidence as it relates to the particular defendants and not simply necessarily go the same way as to all of the defendants? In other words, would you be able to make distinctions in the evidence? Would all of you be able to do that? Is there anyone who feels that because there is a large number of persons charged, 10, that that fact

in and of itself is evidence of some guilt? In other words, do you feel that someone of them must have done something wrong since all of them are charged? Is there anyone who feels that way about it? Do you understand my question, Mr. Dixon?

A. Yes, sir.

~~Q.~~ Do you hear what ^{you are} I am saying?

~~A.~~ Yes, sir.

~~Q.~~ How do you feel about that, sir?

~~A.~~ Well I understand that all 10 of them if they are found guilty and all wouldn't. Some would be inclined to be watching the others. Is that the way you say? I mean, they all haven't done the same thing if they are found guilty.

~~Q.~~ Do you feel that you would have to treat all 10 of them the same way as to guilt or innocence?

~~A.~~ Well I guess so;

~~Q.~~ Sir?

~~A.~~ Well I guess so; guilty or not guilty. If one of them is not guilty they are not guilty. If one of them is guilty they are all guilty. Is that the way it is?

Q. It is not supposed to be the way it, but I am asking you if that is the way you feel about it?

THE COURT: Mr. Ferguson; there is no evidence

been presented in this case. Do you expect him to answer a question as to how he feels about each person at this stage of the trial? Is your question to treat each individual different? What is your question?

MR. FERGUSON: My question is whether or not he feels that whatever the evidence is as to one would have to be treated as evidence against all of them?

THE COURT: They are all charged with the same thing.

MR. FERGUSON: He will be called upon to make distinctions.

THE COURT: I don't understand your question.

Q ~~Mr. Dixon~~ do you understand that each one of these defendants has pleaded not guilty?

A ~~Yes, sir.~~

Q And further that they are all presumed now to be innocent? Do you understand that?

A Understand what now?

Q That they are all presumed to be innocent right now.

A That is right right now.

SOL. STROUD: Objection.

THE COURT: Overruled.

Q Now during the course of this trial the State is

going to present evidence. Do you understand that?

A Yes, sir.

~~Q I am asking you if you would be able to judge each person here individually, each one of these defendants individually in the light of the evidence presented by the State,~~

~~A I believe so; yes, sir.~~

Q You have some doubt about whether you could or not?

A Well I'll try.

Q Yes, sir; I understand you will. My question though is whether you as a juror feel now that you would be able to judge each person on trial here individually.

A Yes, sir.

Q Is there anyone presently seated on the jury who feels that he or she would have some difficulty judging each defendant individually in the trial of this case? Do you think you might or you think you might not? Would you raise your hand? Do all of you understand my question in that regard? Is there anyone who doesn't understand my question?

A (Juror #5) I'll be fair with you. I don't know whether I would or not because this is my first trip up here.

Q Do you have any feelings now, Mrs. Wagstaff, which causes you to feel one way or the other about any

of the defendants?

A. No, I do not.

Q. If the State failed to prove to you beyond a reasonable doubt that any of the defendants was guilty would you have any hesitancy whatsoever in finding them not guilty?

A. I don't know.

Q. Well you understand that, as the Court has already explained to you, the defendants don't have to prove anything? Do you understand that?

A. Yes.

~~Q.~~ The State has to prove its case beyond a reasonable doubt. Do you understand that?

~~A.~~ Yes.

~~Q.~~ If the State doesn't do that then a defendant is entitled to be found not guilty. Do you understand that?

~~A.~~ Yes.

Q. Now my question to you simply is if the State fails to prove beyond a reasonable doubt that each defendant is in fact guilty would you be able to find each defendant not guilty?

A. My answer is still I don't know.

SOL. STROUD: Your Honor, may I - we approach the bench?

(Conference at the bench.)

THE COURT: Members of the jury, we are going to take a short recess and let me caution you again not to discuss this case with anyone nor allow anyone to discuss it with you. Do not discuss it among yourselves. You members of the jury in the box, would you please retire to your room? Do you want any coco colas or soft drinks, coffee, whatever you want leave a message with the sheriff and he will get that for you.

Members of the jury, those prospective jurors in the courtroom, we are going to take about 10 minute recess. Let me caution you again. You are all prospective jurors and I am asking you not to talk about this case with anyone nor allow anyone to talk about it to you or in your presence. If anyone should try to do that you tell them you are maybe on this jury. You cannot talk to them about it. If they should insist on doing so take their names and let me have their names when you get back here.

(The Court recessed from 3:53 until 4:07 P M.)

EXAMINATION BY MR. FERGUSON Continues:

Q Mrs. Wagstaff, I want to see if we can understand and clear up what we were talking about. As I understand you, you indicated that you didn't know whether or not you could find the defendants not guilty if the State failed to prove its case beyond a reasonable doubt. Now do you know of some reason why you would be hesitant to find the defendants not guilty?

A If they are proven guilty I guess I could find them guilty, but I don't know yet.

Q I am asking you if they are not proven guilty if the State doesn't prove its case beyond a reasonable doubt would you be able to find them not guilty?

A Well if they are proven not guilty I could find them not guilty.

Q Do you feel that they have to prove themselves not guilty?

A Yes, they have got to be proven not guilty before I'd say they are not guilty. How do you expect me to feel?

THE COURT: Mr. Ferguson, I am going to instruct them as to the law. We have gone into all this.

MR. FERGUSON: May I approach the bench, your Honor?

THE COURT: As I have told the State and I have told you and all of you, I expect to charge them as to the law in this case and I don't think it is proper for either the State or the defendant to go into the law in this case or incompetent questions. You can ask her if she will follow the instructions of the Court. If she is not willing to follow the instructions of the Court then I will -

MR. FERGUSON: It is not my purpose to quibble or quarrel with the Court.

THE COURT: Let me ask this juror.

EXAMINATION BY THE COURT:

Q Ma'am, are you willing at this time and throughout this trial to follow the instructions of the Court?

A Yes.

EXAMINATION BY MR. FERGUSON Continues:

Q Mrs. WAGstaff, notwithstanding what you have just said and notwithstanding the fact that you would try to follow the law, do you still feel that it would be necessary for the defendants to prove that they are not guilty?

SOL. STROUD: Objection.

THE COURT: Objection sustained.

(Exception
No. —)

Q Do you have some feeling now, Mrs. Wagstaff, that they are guilty of what they are charged with?

THE COURT: Let me say this again, Mrs. Wagstaff and to all the jurors. The burden of proof is upon the State of North Carolina - Well let me start over again. In the charges embraced in the bills of indictment the defendants and each of them have come into court and through their counsel have entered a plea of not guilty. The plea of not guilty thus interposed raises in their behalf a presumption of innocence. That is, the defendants in this as in all criminal cases enters upon the trial presumed to be innocent and this presumption remains with the defendants and surrounds them throughout the trial and entitles them to an acquittal at your hands unless and until the State by competent evidence satisfies you and each of you of his guilt beyond a reasonable doubt. I have heretofore explained to you what reasonable doubt is. Now members of the jury, the burden of proof is upon the State of North Carolina from beginning to the close of the case. The burden of proof in the sense of ultimately proving or establishing the issue of the case is on the State. Such

burden never shifts. The defendants who have not the burden of proof are not bound to disprove the states case. For the State must fail if upon the whole evidence it fails to satisfy the jury beyond a reasonable doubt that the defendant is guilty of every element of the offense charged against him in the bill of indictment. Is there any misunderstanding at all about the law in this case as far as that is concerned? Proceed, Mr. Ferguson.

EXAMINATION BY MR. FERGUSON Continues:

Q Do you still feel, Mrs. Wagstaff, that the defendants would have to prove that they are not guilty?

SOL. STROUD: Objection.

THE COURT: Sustained. *(Exception No. —)*

MR. FERGUSON: Your Honor, I'd like to have her answer entered into the record.

THE COURT: Objection sustained. Motion denied. *(Exception No. —)*

Q If there are other members of the jury who after hearing what the Court has said feel that the defendants would have to prove to you that they are not guilty those of you who feel that way after hearing what the Court has said about the law, would you indicate that by raising your hand?

SOL. STROUD: Objection.

THE COURT: Sustained. *(Exception No. —)*

MR. FERGUSON: We'd like to have the responses recorded in the record.

THE COURT: Motion denied. *(Exemption No. —)*

Q Mr. Johnson, is that Bernice Johnson?

A Bunion Johnson.

Q You indicated that you work on a farm. Are you a tenant farmer?

A No, sir; I just works.

~~Q And the farm belongs to Mr. John Greer?~~

~~A John Farrior.~~

~~Q How long have you worked there?~~

~~A I have been over there going on 13 years.~~

~~Q You have never served on a jury before. Is that correct?~~

~~A No, sir.~~

~~Q Do you understand what these nine young men and one young lady are charged with?~~

~~A Yes.~~

~~Q Do you belong to any clubs or organizations in the community?~~

~~A No.~~

~~Q What is your church affiliation?~~

~~A How is that?~~

~~Q What church do you belong to?~~

~~A Willard Baptist Church.~~

Q Is Mr. Farrior or anyone that you work with said

anything about these cases?

A. He ain't never mentioned it to me.

Q. Do you feel that you would be able to make up your own mind about these cases?

A. I believe I would.

SOL. STROUD: Your Honor, may we approach the bench?

(Conference at the bench.)

Q. I understand then, Mr. Johnson, that you do not live on the farm where you work?

A. No, I sure don't.

~~Q. Sir?~~

~~A. No, I don't live on the farm,~~

~~Q. Where is the farm located that you work on?~~ *located*

~~A. About 3 miles and a half from Willard.~~

~~Q. Sir?~~

~~A. About 3 miles and a half from Willard.~~

~~Q. Three miles and a half from Willard where you live?~~

~~A. I don't live that far. The fellow I work with live that far, I believe, about a mile and a half down~~

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~~Q. Do you have children?~~ *2*

~~A. Have two. They is married,~~ *1*

~~Q. Both married and living in their own homes?~~

~~A. Yes.~~

~~Q. Now have you yourself discussed the case with anyone?~~ *not*

A ~~No. I haven't.~~

Q ~~Did you know what cases you were coming to court on when you got the notice to come serve on the jury?~~ *I was*

A ~~Sure didn't.~~

Q Now, Mr. Cobb, you indicated earlier that you are self employed. What kind of business are you employed in?

A Body shop.

Q ~~You own your own shop?~~ *I my*

A ~~Yes, just started.~~

Q Now I believe you indicated earlier this morning in response to questions by the Court that you had at one time formed an opinion about the cases. Do you recall that?

A Yes.

Q ~~Had you at one time formed an opinion about the cases?~~

A ~~At one time.~~

Q ~~Do you recall about when that was?~~

A ~~When I was working in Wilmington.~~

Q ~~Sir?~~

A ~~When I was working in Wilmington it was brought up right smart occasions.~~

Q ~~Now has anything occurred since the time you formed an opinion to cause you to change your opinion?~~ *me* *my*

A ~~No.~~

d
Q Have you, ^{not} in fact, changed ^{my} your opinion?

~~A No.~~

Q So you do presently have an opinion about these defendants?

A As much as I have heard about them.

Q And you feel that that opinion might influence you as a juror in this case?

A No, I'd have to hear the evidence.

Q Having the opinion that you have now do you feel it would require some evidence on the part of the defendants to overcome the present opinion that you have?

Q
SOL. STROUD: Objection.

THE COURT: Sustained. (*Exception No. —*)

MR. FERGUSON: I'd like to have his answer recorded in the record.

THE COURT: Motion denied. (*Exception No. —*)

Q The opinion that you have, Mr. Carter, would you consider it to be adverse to the defendants in this case?

A You will have to explain that.

THE COURT: I understood the juror to say he'd have to hear some evidence. Did you understand him to say that?

Q Do you want me to explain what I mean when I say "adverse to the defendant?"

Q
A Yes.

Q Against the defendants. Consider it to be an opinion against the defendants. Understand I am just asking for honest answers, anyway you feel about it is what we want to know.

A Yes, I do.

~~Q Sir?~~

~~A Yes.~~

Q And do you feel then that it would take some evidence on behalf of the defendants for you to overcome this opinion that you have?

SOL. STROUD: Objection.

THE COURT: Sustained. *(Exception No. —)*

MR. FERGUSON: We'd like to have his answer recorded in the record.

THE COURT: Motion denied. *(Exception No. —)*

Q Feeling as you do about the cases, Mr. Carter, if you were on trial would you want someone in the frame of mind that you are now in to sit on the jury in your case?

SOL. STROUD: Objection.

THE COURT: Objection sustained. I have told you gentlemen that I am not going to allow any hypothetical questions. *(Exception No. —)*

MR. FERGUSON: Your Honor, I am only trying to find out what the juror's state of mind is.

THE COURT: Objection sustained. *(Exception No. —)*

~~Q~~ ^{not} Would it be difficult for ^{me} you to be fair to the defendants having the opinion that you have about the case, ~~Mr. Carter~~?

~~A~~ No.

Q Are you able now to put the opinion that you have out of your mind?

~~A~~ It would take evidence.

^A It would take evidence for ^{me} you to put it out of ^{my} your mind?

~~A~~ Yes.

Q Without hearing some evidence in the case would it be difficult for you to find the defendants not guilty?

SOL. STROUD: Objection.

THE COURT: Overruled.

A Say that again.

Q Without hearing some evidence in the case would it be difficult for you to find the defendants not guilty?

A Yes.

~~Q~~ Sir?

~~A~~ Yes.

MR. FERGUSON: Challenge for cause.

EXAMINATION BY THE COURT:

Q Mr. Juror, you have heard me explain some law in

case, have you not?

A Yes, sir.

~~Q~~ Now you have talked about this case with some person or some persons?

~~A~~ Yes.

~~Q~~ I believe you said you worked over in Wilmington?

~~A~~ Yes.

Q What I want to ask you is whatever opinion you have formed can you disabuse what you have heard or what you have read from your mind and give to each of these defendants a fair and impartial trial based solely on the evidence as it comes from the witness stand right here?

A Yes, sir.

Q Are you telling me that you can disabuse your mind that you can wipe that out of your mind what you have heard and give to the defendants and each of them a fair and impartial trial based solely on the evidence?

A Yes, sir.

THE COURT: The Court finds that this is a fair and competent juror and overrule the motion.

(Evidentiary)
11/10/11

EXAMINATION BY MR. FERGUSON:

Q Do you feel, Mr. Carter, that it would take evidence from the defendants for you to disabuse your mind - ?

SOL. STROUD: Objection.

THE COURT: Sustained. *(Exception No. ---)*

MR. FERGUSON: I'd like to have his answer recorded.

THE COURT: Motion denied. *(Exception No. ---)*

Q If you heard no evidence regarding the defendants' guilt would you be able to find them not guilty?

A Yes.

~~Q Sir?~~

~~A Yes.~~

Q *Do not* Do you feel that it would be embarrassing to *me* you among *my* your friends and associates and people that you work with or come into contact with on a daily basis to render a verdict of not guilty should the State fail to prove its case?

~~A No.~~

Q At the time you formed an opinion, Mr. Carter, did you express that opinion to anyone, talk about it with anyone?

A Yes, at the time I was working it was brought up occasionally.

Q And did other people express opinions similarly to your?

A Yes.

SOL. STROUD: Object.

Q You are saying that you don't feel that would effect you a bit in the trial of this case honestly and truly?

A Not if the right evidence was brought up.

Q Not if the right evidence was presented. Do you feel that right evidence would have to come from the defendant?

SOL. STROUD: Object.

THE COURT: Sustained. *(Exception No. 1)*

Q When you say "the right evidence", Mr. Carter, what do you mean

A I mean proven to me from the witness stand.

Q Well I am asking you if you feel that the defendants have to prove they are not guilty in order for you to change the adverse opinion that you have.

SOL. STROUD: Objection.

THE COURT: Sustained. *(Exception No. 2)*

Q What clubs or organizations in the community do you now belong to or have you belonged to?

A Just the church. Advent Christian.

EXAMINATION BY THE COURT:

Q Mr. Juror, let me inquire one more time. Do I understand you to tell me that you could disabuse your mind of any opinion that you have heretofore had about the guilt or innocence of these defendants,

that is, wipe such opinion out of your mind altogether and give to these defendants an each of them a fair and impartial trial upon the evidence produced here from the witness stand? Do I understand you to say that?

A. To the best of my ability.

EXAMINATION BY MR. FERGUSON Continues:

Q Mr. Carter, do you understand that the mere fact that a person is charged with a crime is not evidence of any guilt?

SOL. STROUD: Objection.

THE COURT: I have already instructed the jury, gentlemen, the fact that a person has been indicted is no evidence of guilty. I have told the jury just as plain as I could. Let's move along. Let's move along.

Q Going back to you, Mr. Croom, you indicated earlier that you had formed an opinion about the case, did you not?

A Yes, sir.

Q Do you recall that this mornign?

A Yes.

Q When did you form your opinion about it?

A O, right after it happened.

Q Has anything occurred since the time you formed

that opinion to cause you to change your opinion?
Do you presently still have that opinion about it?

A No.

Q When did you cease having an opinion about it?
When did you stop having an opinion about it?

A I'd say right after when it was going on.

Q That is when ^I you formed an opinion?

~~A Yes.~~

Q ~~Now you are~~ ^{I am} saying that now you don't have an
opinion about it. ~~Is that right?~~

~~A Yes.~~

Q What happened to cause you not to have an opinion
about it anymore?

A Well just didn't talk about it anymore. People
just didn't talk.

Q ~~You~~ ^I haven't heard anybody talk about it lately?

~~A No, sir.~~

Q Once you found that the defendants who are being
tried here was the case that you were called upon
to come to court for, did that revive the opinion
which you once held bring it up again to your mind?

A The summons I got to come to court didn't mention
nobody's names.

Q Yes, sir. The opinion that you had, Mr. Croom,
would you consider it to be adverse to the defendant
in this case?

A Yes.

Q An opinion against the defendants in this case?

A No, I wasn't thinking about it.

~~Q Sir?~~

~~A No, I wasn't thinking about it at the time, no.~~

Q Do you feel now you can be absolutely fair?

A I can go by the evidence.

Q If after hearing the evidence in this case you felt that some or one or all of the defendants might be guilty but you were not satisfied in your mind that they were guilty beyond a reasonable doubt would you at that instance be able to find them not guilty?

A Yes, sir.

SOL. STROUD: Objection.

THE COURT: Objection sustained. I have instructed the jury, gentlemen, as to the proof required by the State of North Carolina before a defendant can be found guilty of any offense.

Let's move along, gentlemen, Let's move along.

~~Q Now, Mr. Groom, at the time you formed your opinion, did you have particular names of some of the defendants in mind?~~

~~A No, sir.~~

Q Mr. Atkins, I believe you stated you are a retired Civil Service worker and you were a carpenter at Camp Lejeune?

A That is right.

d
~~Q~~ How long have you been in a state of retirement?

d
A Four years.

~~Q~~ Do you belong to any clubs or organizations in the community?

~~A~~ I do not.

~~Q~~ Does your wife work outside the home?

~~A~~ Beg pardon?

yes *does*
~~Q~~ Does your wife work outside the home?

~~A~~ She is still working.

~~Q~~ What kind of work does she do?

~~A~~ She works at Camp Lejeune, Civil Service work.

d
~~Q~~ Do you feel closer to the State in the trial of this case than to the defendants? Did you understand your question?

~~A~~ No, sir.

~~Q~~ Do you feel closer to the State in the trial of this case than you do to the defendants?

~~A~~ Yes.

d *not*
~~Q~~ Do you tend now to favor the State in the trial of this case over the defendant?

~~A~~ No, sir.

d *not*
~~Q~~ Did you at anytime form an opinion about this case?

~~A~~ No, sir, I have not.

d
Q I want to see if I understood what you said earlier because you may not have understood me. When you said you felt closer to the State in the trial of

this case did you mean that you would be more inclined to go with the State than with the defendants in this case?

A No, sir; I would not be inclined to go with either one. I would be totally lead by the evidence as given to me from that chair from the State or the defendant.

Q I am going to address this one question to all the members of the jury. Have any of you or any member of your family ever been the victim of a damage to property? Has anyone ever damaged your property? Have any of you or any member of your family ever been the victim of any assault or attempted assault that you are aware of? Mrs. Wagstaff, do you belong to any clubs or organization in the community?

A Just the church.

~~Q What church is that, Ma'am?~~

That is
A Shiloh Baptist,

Q Mrs. Hall, what clubs or organizations are you associated with?

A Not any.

~~Q Tell me again, if you will, what kind of work do you do?~~

I am a
A Sales clerk in a store *in Wallace.*

~~Q In Wallace I believe you said?~~

~~A Yes.~~

Q Has anybody at the store there discussed this case with you?

A Well it's been talked about, not really discussed.

~~Q Been talked about?~~

~~A Been talked about but not been discussed.~~

~~Q Is there anything said to cause you to form an opinion about these defendants in the trial of this case?~~

~~A No, sir.~~

Q Mr. Dixon, what clubs or organizations do you belong to, sir?

A None.

Q You indicated earlier in response to the Court's questions that you had formed an opinion about these cases.

A Well I said there ought to be something did about it, ever who did all that damage, and I still, in my opinion, it should be, but I don't know who done it.

~~Q Do you tend to feel that any of these defendants did it?~~

~~A Sir?~~

Q Do you tend to feel that any of these defendants did it? Do you feel like any of these defendants did it?

A If they did it. I didn't see them. I mean I don't know who did it.

Q If the State doesn't prove to you that they did it you wouldn't have any hesitance about finding them not guilty, would you?

A If they are proven not guilty I'd go with them. If they are proved guilty, if the witnesses said they were guilty, I'd go by that. If they are proved not guilty I'd go by that.

~~Q If after the trial of this case, Mr. Dixon, you had heard the State's evidence, the witnesses presented by the State and nothing from the defendants~~

~~A Sir?~~

Q If you had heard the States evidence, the witnesses presented by the State in the trial of this case, and nothing from the defendants, and you were not convinced by what evidence the State presented that these defendants were, in fact, guilty beyond a reasonable doubt, would you be able to find them not guilty in that instance?

A If they were proven not guilty, I would.

Q Well you understand, don't you, that nobody is required to prove them not guilty? Do you understand that?

A Ever way the witness says that is what I'd go by.

Q Let me just ask you this, Mr. Dixon. I just want to be sure I understand your position on the matter. Have you at anytime ever had the opinion that anyone

of these persons charged is guilty?

A I don't know who was guilty. All I know is what I read in the paper. But who did it I don't know.

Q When you learned that these 10 persons were charged you did not conclude from that that they were guilty, did you?

SOL. STROUD: Objection.

A Well I don't know.

THE COURT: Overruled.

A If they got the guilty ones they were lucky. Somebody did it. I don't know who did it.

Q Well, Mr. Dixon, if after you heard the evidence in this case you were not satisfied beyond a reasonable doubt, no matter what your other feelings might be, if you weren't satisfied beyond a reasonable doubt, and even though you wanted to see the guilty ones caught and punished, would you be able to find these defendants not guilty?

A If they are proven not guilty. But if they weren't I would; yes, sir.

Q I am asking you if they weren't proven guilty, if the State didn't prove they were guilty beyond a reasonable doubt, would you be able to say not guilty?

A If they were proven not guilty by the witnesses and all I would; yes, sir.

Q In other words, some witness would have to prove that they weren't guilty?

A They'd have to prove it; yes, sir.

MR. FERGUSON: Challenge for cause.

EXAMINATION BY THE COURT:

Q Mr. Juror, I know you say you are hard of hearing, and I am wondering if you heard anything that I told you.

A Yes, sir; I have heard what you told me.

Q I told you that the burden is upon the State of North Carolina to prove a defendant's guilt beyond a reasonable doubt, did I not? Now, Mr. Juror, listen to me very carefully, will you? I don't believe you heard it all. I am going to give you some basic principles of law that apply in all criminal cases, all criminal cases. In the charges embraced in the bills of indictment the defendant comes into court and enters a plea of not guilty and the plea of not guilty thus interposed raises in behalf of the defendants the presumption of innocence. That is, the defendant in all criminal cases enters upon the trial presumed to be innocent and this presumption remains with the defendant and surrounds him throughout the trial and entitles him to an acquittal at your hands unless and until the State by competent evidence satisfies you of his

guilt beyond a reasonable doubt. In other words, Mr. Juror, the burden is on the State - the State - to prove the guilt of the defendants beyond a reasonable doubt. Now that burden is on the State from the beginning to the close of the case. That burden of proof in the sense of ultimately proving or establishing the issue of the case is on the State. Such burden never shifts. The defendant, who has not the burden of proof, is not bound to disprove the State's case. For the State must fail if upon the whole evidence it fails to satisfy the jury beyond a reasonable doubt that the defendant is guilty of every element of the offense charged against him in the bill of indictment. In other words, Mr. Juror, the burden of proof is always on the State. The defendant does not have to disprove the State's case. And the State must fail if it fails to satisfy the jury beyond a reasonable doubt that the defendant is guilty of every element of the offense charged against him. Now have I made it a little clearer?

A Yes, sir.

Q Now the question presented, as I recall, is if the State of North Carolina fails to satisfy you from the evidence and beyond a reasonable doubt of the guilty of either or all of these defendants, then

would you hesitate to find the defendants or each of them not guilty?

A If the State failed to prove they was guilty I'd say they were not guilty.

EXAMINATION BY MR. FERGUSON Continues:

Q You wouldn't be concerned about what your friends or associates or people you work with would say if you found him not guilty?

~~A I wouldn't do what now?~~

~~Q You wouldn't be concerned about what your friends and fellow employees and associates might say if you found them not guilty?~~

A No, sir; them people I am working with wouldn't have anything to do with this.

~~Q Did I ask you, sir, what clubs or organizations you belong to?~~

~~A What?~~

I do not belong to any

~~Q What clubs or organizations, do you belong to?~~

~~A I don't belong to any.~~

Q Mrs. Padgett, you are presently a housewife and you don't work outside your home. Is that correct?

A Yes.

M.U.
Q Have you ever worked outside your home?

~~A No, sir.~~

~~Q~~ ~~What kind of work does your husband do?~~

~~A~~ He works with Onslow County Garage in Jacksonville.

~~Q~~ ~~Do you have children?~~

~~A~~ Two boys.

~~Q~~ ~~What clubs or organizations in the community do you belong to?~~

~~A~~ None.

Q What about your husband?

A None.

~~Q~~ ~~Have you at anytime discussed these cases?~~

~~A~~ No, sir.

~~Q~~ ~~Has anyone ever expressed to you an opinion about them?~~

~~A~~ No, sir.

~~Q~~ ~~Have you ever formed an opinion about them?~~

~~A~~ No, sir.

Q Miss Simmons, you said you were a teacher's assistant?

A Right.

~~Q~~ ~~Is that in the public schools?~~

~~A~~ Yes.

~~Q~~ ~~How long have you worked in that capacity?~~

~~A~~ Four years.

~~Q~~ ~~What clubs or organizations do you belong to?~~

~~A~~ None.

Q You indicated that you had heard or read something about the cases. Did you form any opinion based

on that?

A No, I did not.

~~Q~~ Have you lived in Pender County all ^{my} your life?

~~A~~ Yes.

~~Q~~ You don't know of any reason why you could not sit with a completely fair and open mind about the cases?

~~A~~ None whatsoever.

Q Mr. Woodcock, how long have you been employed with France Neckwear in Wilmington?

A Around 4 years.

~~Q~~ ^{I was} You were working there then in February of 1971?

~~A~~ Right.

Q What do you do with France Neckwear?

A I am a cutter.

~~Q~~ ^{not at} Have you ^{at} anytime ever discussed any of the persons charged here?

~~A~~ No.

~~Q~~ ^{No has} Has anyone ever discussed these charges with you? ^{me}

~~A~~ No.

~~Q~~ ^{I am not} Are you familiar with the area in Wilmington where Mike's grocery is located, 5th and Ann?

~~A~~ No.

~~Q~~ ^{I do} Is there anything about the nature of the charges against these defendants that might cause you ^{me} to more readily to convict than you would if the charges

were otherwise?

~~A~~ No.

~~Q~~ And you say then that you never at anytime formed any opinion about these charges of these defendants?

~~A~~ Sure haven't.

~~Q~~ Would you be hesitant about finding the defendants not guilty if the State failed to prove their guilt?

~~A~~ Repeat that again, please.

~~Q~~ Would you ^{not} be hesitant about finding the defendants ~~guilty~~ not guilty - if the State failed to prove they were guilty?

~~A~~ No.

~~Q~~ Would you have any difficulty facing ^{not} your associates that you work with if that should happen?

~~A~~ None whatsoever.

Q What clubs or organizations do you belong to?

A Not anything except church.

Q Mrs. Mewborn, do you belong to any clubs or organizations in the community?

A Home makers Club.

~~Q~~ That is the only thing?

~~A~~ And the church.

~~Q~~ Before coming to court this week, had you ever heard the name of Allen Hall mentioned?

~~A~~ No.

~~Q~~ I believe you said you had been a resident of Pender County for all of your ^{I have} life?

~~A~~ No.

~~Q~~ How long have you been a resident?

~~A~~ Four years. I am a native of Pender County, but I have only lived here for four years.

~~Q~~ Prior to that, where were you living? *I was*

~~A~~ Goldsboro.

~~Q~~ How long did you live in Goldsboro? *about 16 years.*

~~A~~ About 16 years.

Q Mr. Flynn, what clubs or organizations, if any, do you belong to?

A Presbyterian Church, Masons.

~~Q~~ Presbyterian Church and Masons?

~~A~~ Yes.

~~Q~~ You say you are employed at General Electric. *I am* what do you do with them?

~~A~~ *I am a* Chemical operator.

~~Q~~ Do you have children? *3*

~~A~~ Three. *1*

Q These questions are directed to everyone and I want you to give me your honest answers about these questions. You have heard the attorneys for the State say that these charges grew out of racial disturbances in the City of Wilmington in February of 1971.

SOL. STROUD: May we approach the bench, your Honor?

(Conference at the bench.)

THE COURT: Members of the jury, we are going to take a recess until tomorrow morning. Let me caution you now to remember the instructions I gave you. That is, you are not to discuss this case with anyone or allow anyone to discuss it with you or in your presence. Do not discuss it among yourselves. This applies to all jurors. Do not discuss it with members of your family. And, members of the jury, if anything should appear in the press I would ask you not to read it about these cases. If anything should be over television I would ask you not to view it. If anything should be on the radio I would ask you not to hear it. When you return in the morning the jurors in the box return and go immediately to your room and remain there until the opening of the court and the other jurors please come to your seats that you have now or as near over this way as you can. Do you all think you can abide by these instructions? Members of the jury in the box, you go now. Do not linger in the hallway. Come back at 9:30 in the morning. All the other jurors go and come back tomorrow morning at 9:30.

MR. FERGUSON: I wanted to bring to the Court's attention that we have filed the affidavits of indigency. Also I have the affidavit of Mrs. Edwards that I would like to file, the court reporter in the case when it was tried last time.

THE COURT: We'll recess until 9:30 in the morning.

(The Court recessed at 5:13 P M.)

September 13, 1972

9:30 A M.

(Jurors who came in their names were called and the were sworn.)

THE COURT: Members of the jury, this group that came in this morning, I am going to excuse you until Friday morning at 9:30. Before doing so I want to caution you not to discuss these cases with anyone nor allow anyone to discuss them with you. You are all prospective jurors so I would ask you not to engage in conversation with anyone about these cases. If anyone should attempt to talk to you about these cases tell them you are prospective jurors and that you cannot talk to them about the cases. If they should insist on talking to you about the cases take their names and bring it to my attention Friday morning when you come in. I would ask you

not to read anything about this case if such should appear in the press. I would ask you not to listen or view anything if such should appear on television or radio and those of you now that came in this morning and come back Friday morning at 9:30, the jurors in the audience are there any among you who are ill or feel like you ought to be excused for any reason? Members of the jury, yesterday the Court instructed you as to the presumption of innocence and as to reasonable doubt and other basic principles of law and to be sure that you understood it and that I understood you answers I want to just briefly go over some of these principles again. The defendants in these cases, not only plead not guilty, but when they come into this court and are put upon trial they are presumed by the law itself to be innocent of the charges set forth in the bills of indictment. This presumption of innocence is a shield or protection which the law throws around every person accused of crime and this presumption of innocence surrounds an accused at all stages of his trial unless the State by competent evidence rebuts such presumption by satisfying the trial jurors beyond a reasonable doubt that the accused is guilty. The Court instructs you that it is the

duty of the jury to give each of the defendants the full benefit of the presumption of innocence that you cannot convict a particular defendant of the charge preferred by the State against a defendant unless the State satisfies you beyond a reasonable doubt from the testimony that such particular defendant is guilty of such charge. The Court instructs you that there is no burden upon the defendants. They do not have to offer testimony to satisfy you of their innocence. In other words, members of the jury, the burden rests upon the State in these cases to prove the guilt of a particular defendant beyond a reasonable doubt from the evidence before you can convict such defendant of the crime with which such defendant stands charged.

Now, members of the jury I do not know whether I asked you yesterday but I am going to ask you now. Will each of you and all of you follow the instructions of the Court? If so, please raise your hand.

(All hands raised) Do I see that every person on the jury raised their hand that you will follow the instructions of the Court?

You may proceed.

MR. FERGUSON: Thank you, your Honor.

EXAMINATION BY MR. FERGUSON:

Q Mr. Flynn, a moment ago when the Court asked if anybody had any reason not to serve you raised your hand. Do you have a reason?

A Yes, sir; I had a back operation about 2 months ago and sitting bothers me.

~~Q~~ Is ^I it bothering ^{me} you now?

~~A~~ Yes, sir.

~~Q~~ You have been here since when? ~~Since Monday?~~

~~A~~ Yes.

~~Q~~ Do you feel like you would have some difficulty sitting throughout the trial if this should be an extended trial?

~~A~~ Yes.

MR. FERGUSON: I'll ask the Court to consider that.

THE COURT: Mr. Juror, you spoke to me this morning about that and told me you had started taking medicine. If we have a recess and you can get up and walk around do you feel like you will be all right?

A I'll try it today.

Q Let me first ask you if anything has occurred since you left court on yesterday between then and today that has caused any of you to develop any feeling about the case or to change any answers that you gave us on yesterday. Yes, Mrs. Wagstaff.