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A The annex is a one-story building. It has a long table in there and a kitchen that is more like a Sunday School house.

~~Q Where is it located?~~

~~A On 7th and Nun.~~

~~Q Would you point out on the diagram where the annex is, please?~~

~~A The annex would be right here facing 7th and Nun.~~

Q And would you point out on State's Exhibit number 2 where the annex is, please?

A This right here is the annex.

Q If you will, show that to the defense table.

A And this is the playground. (To defense table) This right here.

MR. FERGUSON: Your Honor, we object to another picture.

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

(State's Exhibit 33 marked for identification.)

Q I hand you what has been marked for identification as State's Exhibit number 38 and ask if you can identify that, please.

MR. FERGUSON: Objection.

MR. HUNEVOL: Objection.

THE COURT: Overruled. (Exception No. —)

A Yes, sir; this is a photo of the annex.

Q Is that photograph a fair and accurate representation of the annex as it was on February 5 and 6, 1971?

MR. FERGUSON: Objection.

THE COURT: Overruled. *(Objection No. ---)*

A Yes, sir.

SOL. STROUD: May it please the Court, the State would move that this photograph be admitted into evidence as State's Exhibit number 38.

MR. FERGUSON: Objection.

THE COURT: Members of the jury, State's Exhibit 38 is offered by the State and received for the purpose of illustrating and explaining the testimony of the witness if you, the jury, find that it does explain and illustrate the testimony of the witness. It is received for no other purpose. It is not substantive evidence. *(Objection No. ---)*

SOL. STROUD: May I pass it to the jury, your Honor?

THE COURT: Yes, sir.

(State's Exhibit 38 passed to the jury.)

~~Q Mr. Hall, would you point out the defendants which~~

~~went to the annex on this Saturday, please?~~

~~MR. FERGUSON: Your Honor, may we approach the bench?~~

~~THE COURT: Yes, sir.~~

~~(Conference at the bench.)~~

Q Would you name the defendants that went to the annex, please?

MR. FERGUSON: Objection.

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

~~A Connie Tyndall, James McKoy.~~

~~Q You don't have to point them out. Just name them if you will.~~

~~A Willie Vereen, Jerry Jacobs, Ben Chavis, Wayne Moore, Joe Wright, Marvin Patrick, Reginald Epps, Ann Shepard, *Connie Tyndall & James McKoy.*~~

Q What occurred at the annex on that Saturday, please?

MR. FERGUSON: Objection.

MR. HUNEVOL: Objection.

THE COURT: Just a minute. Would you name those persons again, please?

A Connie Tyndall, James McKoy, Willie Vereen, Jerry Jacobs, Ben Chavis, Wayne Moore, Joe Wright, Marvin Patrick, and Ann Shepard and Reginald Epps.

MR. FERGUSON: Move to strike the after thought.

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

Q What, if anything, occurred at the annex building, please?

MR. HUNEVOL: Object.

THE COURT: Overruled. *(Reption No. -)*

A Chavis and all of us was making firebombs and Chavis then said that Rev. Templeton and his wife was getting scared, and he said that if they tried to make a phone call to the Sheriffs Department, Police Department or to anyone concerning what was happening at the church for us to kill them.

MR. FERGUSON: Objection; move to strike.

MR. HUNEVOL: Objection; move to strike.

THE COURT: Motion to strike denied. Members of the jury, you will consider this testimony only as to the defendant Chavis. *(Reption No. -)*

Q And what, if anything, was said or done at that time?

~~A Then~~

MR. HUNEVOL: Objection.

THE COURT: Overruled. *(Reption No. -)*

A Then after we made the firebombs Chavis told us to take them and move them into another room because the gas heater was on in that room where we were making firebombs which was the largest room. Then we moved the firebombs into the other room. Then

Chavis told us to come on the outside and to shoot in the car.

Q Who went out?

MR. FERGUSON: Move to strike.

MR. HUNEVOL: Move to strike.

THE COURT: Overruled; motion denied. (Exemption No. ---)

Q Who went outside?

MR. FERGUSON: Objection.

THE COURT: Overruled.

A All of the defendants.

Q Were there any other people besides the defendants present at the annex?

~~A Yes, sir.~~

~~Q Who were some of them?~~

A George Kirby, Annie Mclean, Benjamin Wonce, Tom Houston, Dentry Walker, Patricia Walker. That is all that I remember right now.

~~Q Who (went on the outside of the annex?)~~

A All of us. All of the defendants and the rest of them.

Q What, if anything, occurred outside the annex?

A Well we was throwing bricks and rocks into the car windows that come by there on 7th Street.

MR. FERGUSON: Move to strike.

THE COURT: Motion denied. (Exemption No. ---)

A And Marvin Patrick had a shotgun and so there was this red car coming with this lady and baby in it, and I was walking down 7th Street towards south, and the car was coming from south going north, and so as the car was coming up about where Marvin Patrick was I was just getting in front of him. He had the gun aimed fixing to shoot in the car. When I walked in front of him he dropped the gun and shot in the pavement. Then he got mad and started cussing at me and asked me what in the Hell did I walk in front of him for whenever I knowed damn well he supposed to be shooting in that car if it wouldn't stop.

MR. FERGUSON: Objection; move to strike.

MR. HUNEVOL: Move to strike.

THE COURT: Motion denied. Members of the jury, you will consider this testimony only as to the defendant Patrick. (Exception No. --)

Q What, if anything, occurred then?

MR. FERGUSON: Objection.

THE COURT: Overruled. (Exception No. --)

A Then Chavis told us to come on and let's go to the Community Center which used to be, I think, run by Tom Houston and Ann Shepard.

MR. FERGUSON: Object; move to strike what he thinks.

THE COURT: Objection sustained as to what he thought. Motion to strike allowed.

~~Q~~ Did you know the place he was talking about?

~~A~~ Yes, sir.

~~Q~~ Where is it located?

~~A~~ It is located on 11th Street.

~~Q~~ Where on 11th Street?

~~A~~ Between Ann and Castle.

~~Q~~ Describe the building.

~~A~~ The building is more like fixed more like a small diner. Well, you have a grill, a small grill, you know. *It is*

~~Q~~ One-story or two-story?

~~A~~ One-story.

Q What, if anything occurred then?

MR. FERGUSON: Objection.

THE COURT: Overruled. *(Exception No. ...)*

A Then after Chavis told us to come on and let's go to the Community Center then we ^{all} went over there.

~~Q~~ Who went over there?

~~A~~ All of us.

~~Q~~ All of who?

A The defendants and the rest of us.

Q What, if anything, did you have in your possession at that time?

MR. FERGUSON: Object to the leading here.

THE COURT: Overruled. (Exception No. —)

A I had a pistol.

Q And what about the defendants?

A All of them had guns.

Q MR. FERGUSON: Move to strike. Object to the leading.

MR. HUNEVOL: Move to strike.

THE COURT: Overruled; motion to strike denied.

Q Did Ann Shepard have a gun? (Exception No. —)

A Yes, sir.

MR. HUNEVOL: Object; move to strike.

THE COURT: Motion overruled; motion to strike denied. (Exception No. —)

~~Q How did you get (to the Community Center?)~~

A We walked. We went through Williston High School going through the walkways of Williston and around Williston High School and Gregory Elementary School, going across there.

~~Q It was~~ Approximately what time of day was this?

A 4:30 or 4 o'clock.

~~Q~~ And where did you go?

A Then we went to the Community Center and that is whenever the door was locked and Chavis told us to break it in.

Q Who broke it in?

MR. FERGUSON: Object.

THE COURT: Overruled. *(Exemption No. —)*

A Marvin Patrick and Connie Tyndall.

MR. FERGUSON: Motion to strike.

THE COURT: Motion denied. Members of the jury, you will consider this testimony only as to the defendant Chavis, Tyndall and Patrick. *(Exemption No. —)*

~~Q~~ What, if anything, occurred then, please?

A After we had broke into the Community Center, Chavis then told the girls that were with us to go in the back in the other room and so we were sitting in there and Chavis said, "It's too much." Said, "We don't have no cover to shoot at the cars or policemen here because it is just glass windows all around in the front of it." So then Chavis said, "Well they are not using that old hospital back there which is a community hospital." He said, "Let's go see if there is a place in there that we can get in where we can store the guns whenever they come down."

Q Where is this?

MR. FERGUSON: Move to strike.

MR. HUNEVOL: Move to strike.

THE COURT: Overruled; motion denied. (Exception No. —)

Q Where is the old Community Hospital located?

MR. HUNEVOL: Objection.

THE COURT: Overruled. (Exception No. —)

A The Community Hospital is located behind the Community Center.

Q And what, if anything, occurred then, please?

MR. FERGUSON: Objection.

MR. HUNEVOL: Objection.

THE COURT: Overruled. (Exception No. —)

A Then we got an iron pipe about this long.

Q Who did?

MR. HUNEVOL: Objection.

THE COURT: Overruled. (Exception No. —)

A Chavis: then all of us would take turns trying and trying to open the door.

MR. FERGUSON: Objection.

THE COURT: Overruled. (Exception No. —)

Q Who was there?

MR. HUNEVOL: Objection.

A All of the defendants except Ann Shepard.

THE COURT: Overruled. (Exception No. —)

Q Where was she?

A She was in the Community Center with a gun.

MR. HUNEVOL: Objection; motion to strike.

THE COURT: Objection overruled; motion to strike denied. *(Exception No. —)*

Q What, if anything, occurred then, please?

MR. HUNEVOL: Objection.

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

MR. FERGUSON: Object.

A We broke in the basement of the Community Hospital and so Chavis said that this looked like a good enough place to put the guns at because the cops wouldn't come looking back here for guns.

MR. HUNEVOL: Move to strike.

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

Q Then what?

A And then he said, "Come on. Let's go back to the Community Center."

MR. HUNEVOL: Objection.

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

MR. HUNEVOL: Move to strike.

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

Q Then what happened, if anything?

MR. HUNEVOL: Object.

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

A Then we came back to the Community Center and Chavis said, well, for all of us to go back to the church but split up; either go in 2's, 3's or one go this way or one go that way. He said, "If you can take the guns and sort of slide the barrel down in the leg of your pants where the cops couldn't see it. Pull your sweater or shirt over ti. Do that, but if you couldn't do that, sort of walk where they wouldn't notice and hurry back."

MR. FERGUSON: Motion to strike.

MR. HUNEVOL: Move to strike.

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

Q Then what occurred if anything?

MR. FERGUSON: Objection.

MR. HUNEVOL: Objection.

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

A Then that is whenever Ann Ashpeard asked anyone did they bring any of the gas with them.

MR. HUNEVOL: Objection; move to strike.

THE COURT: Overruled; motion denied. (*Exception No. —*)

Q Then what, if anything?

A Well then -

MR. HUNEVOL: Objection.

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

A Well then after we said no, then we started looking at the gun what she had.

MR. FERGUSON: Move to strike.

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

A Then we found out, you know, knowed what kind of gun it was, but we hadn't had a real close good look at the gun, what she had then to know whether it was the same gun that she had on Friday night in the church.

MR. HUNEVOL: Objection; move to strike.

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

Q What kind of gun was it?

A It was a .22 pellet pistol.

MR. HUNEVOL: Objection to the answer; move to strike.

THE COURT: Overruled; motion to strike denied.

A used a gas cylinder. *(Exception No. —)*

MR. HUNEVOL: Move to strike that.

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

Q What, if anything, occurred then, please?

MR. HUNEVOL: Objection.

MR. FERGUSON: Objection.

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

A Then we started leaving the Community Center.

Q When? Who?

A All of the defendants.

Q Were there others with you at this time besides these defendants?

MR. FERGUSON: Objection.

MR. HUNEVOL: Objection.

THE COURT: Overruled. (Exception No. —)

A Yes, sir.

Q What, did they do?

MR. FERGUSON: Object.

THE COURT: Overruled. (Exception No. —)

A They left too, and this here girl came up that -

MR. BALLANCE: Objection.

A To get her brother.

MR. BALLANCE: Motion to strike.

THE COURT: Objection sustained as to what the girl did.

A I then went on Castle Street.

~~Q And then what did you do?~~

~~A Then I met up with John Robinson on Castle and Dentry Walker.~~

Q And then what did you do?

MR. HUNEVOL: Objection.

THE COURT: Overruled. (Exception No. —)

A Then I went back to the church.

Q ~~And this was on what night?~~ *Saturday*

A ~~Saturday.~~

Q ~~What time did you get back to the church?~~ *at*

A ~~7 o'clock.~~

Q Is that the point that you were testifying about yesterday?

A Yes, sir.

MR. FERGUSON: Object.

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

Q When you came back from Castle as to that Saturday evening and went into the area of the church, where did you go?

MR. HUNEVOL: Objection.

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

A I went into the church.

Q And were there any people there at that time?

A Yes, sir.

MR. HUNEVOL: Objection.

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

Q ~~How many people?~~

A ~~Approximately 75 people.~~

Q When you left in the afternoon to go to the Community Center up on 11th Street, where did you leave from?

MR. HUNEVOL: Objection.

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

A Left from the Annex.

Q And you returned to the church?

MR. HUNEVOL: Objection.

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

A Yes.

Q Do you recall where you were on Thursday, February 11?

A Yes, sir.

MR. FERGUSON: Objection; move to strike.

MR. HUNEVOL: Objection; move to strike the answer.

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

Q Where were you?

MR. FERGUSON: Objection.

MR. HUNEVOL: Objection.

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

A I was at the funeral of Steve Corbett.

MR. FERGUSON: Objection; move to strike.

MR. HUNEVOL: Move to strike.

THE COURT: Overruled; motion to strike denied. *(Exception No. —)*

Q Where was that?

A We marched from Jordan's Funeral Home to the church on Campbell Street, if I am not mistaken.

MR. FERGUSON: Move to trike.

MR. HUNEVOL: Move to strike.

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

Q When you were at Jordans Funeral Home did you see -
who did you see?

MR. HUNEVOL: Objection.

THE COURT: Overruled. *(Exemption No. —)*

A All of the defendants.

Q ~~Were~~ ^{there} ~~there~~ any other people there at that time?

A ~~Yes, sir.~~

Q How many?

A Approximately 200 or more.

MR. FERGUSON: Move to strike, and object to
this all as being totally irrelevant.

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

Q And what occurred there at Jordans Funeral Home?

MR. FERGUSON: Objection.

MR. HUNEVOL: Objection.

THE COURT: Objection sustained.

A Well -

THE COURT: Just a minute.

MR. FERGUSON: Objection. He's got some more
pictures over there.

(State's Exhibits 39 and 40 marked for identi-
fication.)

THE COURT: Objection to the display of the pictures is sustained.

MR. FERGUSON: Your Honor, may we approach the bench?

(Conference at the bench.)

Q I hand you what has been marked for identification as State's Exhibit number 39 and ask if you can identify that, please.

A Yes, sir.

MR. FERGUSON: Objection.

MR. HUNEVOL: Objection.

THE COURT: Overruled. *(Objection Overruled)*

Q What is it?

A This is a photo at Steve Corbett funeral

MR. HUNEVOL: Objection; move to strike.

THE COURT: Overruled; motion to strike denied.

A Of myself -

MR. FERGUSON: Objection. *(Objection Overruled)*

A Myself and Ben Chavis, Ben Chavis's uncle, a black Panther and Kenneth Holmes.

MR. FERGUSON: Objection; move to strike.

MR. HUNEVOL: Objection; move to strike.

THE COURT: Objection sustained as to -

(Conference at the bench.)

THE COURT: Members of the jury, you will not

consider the answer of the witness. You will disabuse your mind of his answer of what you heard. Just dismiss it from your mind as if you had never heard it. You will not consider it for any purpose.

(Conference at the bench.)

THE COURT: Members of the jury, we are going to take a recess a little earlier today for lunch. May I caution you again not to discuss this case with anyone nor allow anyone to discuss it with you not in your presence. Do not discuss it among yourselves until you have the case for your deliberation. We will take a recess until 2 o'clock. You come back, members of the jury, at 2 o'clock.

(The jury retired from the courtroom.)

(The Court recessed from 12:10 until 2 P M.)

(The following transpired in the absence of the jury.)

MR. FERGUSON: We have a motion, if your Honor please.

THE COURT: All right.

MR. FERGUSON: If your Honor please, we wish

at this time to place into the record our motion for mistrial which we offered to make immediately after the State had the witness identify State's Exhibit 39. In support of the motion we would show that prior to the statement questioning the witness with regard to the identification of the photograph we advised the attorneys for the State that we would object to it because it was our information the photograph purported to show pictures that were taken of one of the defendants, Ben Chavis, and other persons on February 11, approximately a week after the alleged conspiracy here is alleged to have taken place. After we had objected to it and advised the State and the Court of our objection and the reasons therefore the State had the witness Allen Hall identify the photograph and had him go further and identify the defendant Ben Chavis as being on the photograph, defendant Ben Chavis's uncle, himself; that is, Allen Hall, and someone identified as a Black Panther. All of this was done in the hearing of the jury. We submit to the Court that the reference by the witness to a Black Panther on the photograph

and there is no identification of any Black Panther or anything of the sort on the photograph, is prejudicial. We would further urge the Court that the description of the photograph showing the witness Allen Hall and Benjamin Chavis was prejudicial to the jury because this is totally irrelevant to an alleged conspiracy charge, a burning charge, on February 5 and 6. It was done for no other purpose we contend than to inflame and prejudice the minds of the jury, and we would argue to the Court that the impression upon the jury's mind as a result of having heard the witness describe everything that was in the photograph is so prejudicial as to be impossible to erase from the minds of the jury, and the only possible cure at this point would be a mistrial. We would further at this time move for a mistrial based upon all previous errors committed during the trial including the jury selection procedures and presenting of evidence.

THE COURT: Do you wish to be heard?

SOL. STROUD: No, sit.

MR. HUNEVOL: I'd like to concur in that motion on behalf of Mrs. Shepard and state that I

cannot see how the prejudicial value of the introduction or attempted introduction before the jury could be outweighed by the probative value of something that happened 5 or 6 days after my client was purportedly charged with being an accessory before the fact of the burning of Mike's. That is it, your Honor.

THE COURT: Motion denied. Let the jury come in. *(Exhibit No. —)*

(The jury came into the jurybox.)

ALLEN HALL, returned to the witness stand, having already been duly sworn, testified as follows:

DIRECT EXAMINATION BY SOL. STROUD Continues:

Q Mr. Hall, on February 11 of this year, did you write a letter to the defendant, Ann Shepard?

A Yes, sir.

~~MR. HUNEVOL: I didn't hear that question.~~

~~THE COURT: Read the question and answer back to counsel, please.~~

~~(The Court Reporter read the last question and answer.)~~

MR. HUNEVOL: Move to strike.

THE COURT: Motion allowed.

SOL. STROUD: That is all the questions the

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September

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

PENDER COUNTY

STATE OF NORTH CAROLINA)

-vs-)

BENJAMIN FRANKLIN CHAVIS)

MARVIN PATRICK)

CONNIE TYNDALL)

JERRY JACOBS)

WILLIE EARL VEREEN)

JAMES MCKOY)

REGINALD EPPS)

WAYNE MOORE)

JOE WRIGHT)

ANN SHEPARD)

TRANSCRIPT OF TESTIMONY

Burgaw, North Carolina

September 11, 1972.

Before: Robert M. Martin, Judge Presiding,
and a jury.

Appearances:

JAMES T. STROUD: Assistant Solicitor and DALE JOHNSON,
Assistant Attorney General, representing the
State of North Carolina.

JAMES FERGUSON and CHARLES BECTON, Esqs., of Charlotte,
N. C., FRANK BALLANCE, Esq., of Warrenton, N. C.,
JOHN HARMON, Esq., of New Bern, N. C., of counsel
attorneys at law, representing the defendants
Chavis, Patrick, Tyndall, Jacobs, Vereen, McKoy,
Epps, Moore and Wright.

MATHIAS P. HUNEVOL, Esq., of counsel, attorney at law,
representing the defendant Shepard.

Josephine L. Seila,
Official Court Reporter,
P O Box 718
Selma, N. C. 27576.

VOLUME II (Continued) Section B

TRANSCRIPT OF TESTIMONY

State's Witness - Allen Hall.

State has of this witness, your Honor.

THE COURT: Are you tendering this witness for cross examination?

SOL. STROUD: Yes, sir.

CROSS EXAMINATION (BY MR. FERGUSON)

~~Q Allen Hall, where were at 10:15 on Saturday before February 6?~~

~~A Repeat that please.~~

Q Where were you at 10:15 A M on Saturday before February 6?

SOL. STROUD: Objection.

THE COURT: Overruled.

A I couldn't say for sure.

~~Q Where were you at 5 o'clock on February 6?~~

A Before 5 o'clock I was at the Gregory Congregational Church.

~~Q At 5 o'clock.~~

~~A O, no, sir.~~

~~Q Where were you? Let's go back to 5 o'clock on Saturday before.~~

A I don't know right offhand *where I was at 5 o'clock on Saturday before.*

Q Where were you at 3 o'clock on the previous day, on Friday, January 29?

SOL. STROUD: Objection.

THE COURT: Overruled.

A I couldn't say right offhand.

Q Where were you on March 30, 1972, at 10 o'clock?

SOL. STROUD: Objection.

THE COURT: Overruled.

A I was in prison.

~~Q You were in prison?~~

~~A Yes, sir.~~

Q That is where you think you were?

SOL. STROUD: Objection.

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

Q Weren't you at Wilmington at court on March 30, 1972?

~~A March 30?~~

~~Q Yes?~~

A I went there from prison to the preliminary hearing.

Q But you didn't know when it was just now. Is that correct?

A You asked me where was I at on March 30.

~~Q Yes, I asked you.~~

~~A Which I was in prison.~~

Q Where were you at 7 o'clock on Sunday, January 31, 1971?

SOL. STROUD: Objection.

THE COURT: Objection sustained. *(Exemption No. 1)*

~~Q Now how old did you say you are?~~

~~A ¹⁸ 18.~~

~~Q When is your birthday?~~

~~A December 1, 1953.~~

~~Q So you just turned 18 this past December. Is that correct?~~

~~A Yes, sir.~~

~~Q And you went to the 9th grade in school. Is that right?~~

~~A Yes, sir.~~

~~Q Were you kicked out or did you drop out?~~

~~SOL. STROUD: Objection.~~

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

~~Q What stopped you from going to school?~~

~~SOL. STROUD: Objection.~~

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

~~Q What is your I Q?~~

~~SOL. STROUD: Objection.~~

~~THE COURT: I didn't hear the question.~~

~~Q What is your I Q?~~

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

~~Q Is it more than 82?~~

~~SOL. STROUD: Objection.~~

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

~~Q When was the last time you were in a mental insti-~~

tution?

SOL. STROUD: Objection.

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

Q In January of this year were you not at Cherry Hospital?

SOL. STROUD: Objection.

~~THE COURT: What is the question?~~

~~Q In January of this year were you not at Cherry Hospital in Goldsboro, North Carolina?~~

~~SOL. STROUD: Objection.~~

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

MR. FERGUSON: I would like to have the answers in the record, the answer to this question and my previous question.

THE COURT: I believe I will reverse myself on this question and let him answer. Overruled. Go ahead.

A No, sir.

~~Q You were not?~~

~~A No, sir.~~

Q Were you in Cherry Hospital in October of last year?

SOL. STROUD: Objection.

THE COURT: Overruled.

~~Q October, 1971?~~

I was in Cherry Hospital in October of 1976
A ~~Yes, sir.~~

Q ~~You went there for a mental examination, did you not?~~

A ~~No, sir.~~

Q ~~You didn't go for a mental examination?~~

A ~~No, sir.~~

Q Did you get a mental examination while you were there?

SOL. STROUD: Objection.

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

Q Were you examined by a psychiatrist while you were there?

SOL. STROUD: Objection.

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

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

A (whispered to Court Reporter) No.

Q How long did you stay there?

SOL. STROUD: Objection.

Q How long did you stay at Cherry Hospital?

THE COURT: Overruled.

A 50 days.

Q Were you there on vacation? You say you didn't go for a mental examination..

SOL. STROUD: Objection.

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

II I was not
~~Q~~ Where were you employed on February 5, 1971?

~~A~~ Not anywhere.

I was not
~~Q~~ Were you attending school at that time?

~~A~~ No, sir.

I was not
~~Q~~ Were you attending school in March of 1971?

~~A~~ No, sir.

Q I believe you stated that on one or both of the assault charges that were against you that that had happened at school. Is that correct?

A Yes, sir.

I was not
~~Q~~ You were not in attendance at school at the time that happened?

~~A~~ No, sir.

Q What school did it take place at?

MR. JOHNSON: Objection.

THE COURT: Overruled.

A New Hanover High School.

Q Have you never been a student at New Hanover High School?

~~A~~ No, sir.

~~Q~~ One of the assaults was with a deadly weapon, was it not?

~~A~~ Yes, sir.

Q ~~And~~ ^T that was on a teacher, was it not?

A ~~Yes, sir.~~

Q ~~Was that~~ ^{the} teacher ^{was} white or black?

A ~~White.~~

Q ~~What was the~~ weapon you used?

A ~~I~~ I threw a soda bottle.

Q ~~I~~ Threw a soda bottle and hit her in the head with it?

A ~~Yes, sir.~~

Q ~~You~~ also assaulted a student there?

A ~~Yes, sir.~~

Q ~~Was that~~ ^{the} student ^{was} white, or black?

A ~~White.~~

Q ~~Have you~~ ever at anytime in ^{your} life attended New Hanover High School?

A ~~No, sir.~~

Q Have you ever attended any high school?

SOL. STROUD: Object.

THE COURT: Overruled,

A No, sir.

Q I'll refer you now to State's Exhibit 35.

MR. FERGUSON: For purposes of my cross examining may we have the State's Exhibit?

Q When is the first time you saw that Exhibit, the picture?

A No, sir.

Q When is the first time you saw it?

SOL. STROUD: Your Honor, could we have Mr. Ferguson take his seat?

THE COURT: He has a right to do that.

A I can't remember right offhand, Mr. Ferguson.

Q ~~You don't remember when you first saw it? Had you seen it before you came to court today?~~

A ~~Yes, sir.~~

Q Had it been as long as 6 months ago?

A I couldn't say right offhand, Mr. Ferguson.

Q ~~You don't have any idea when you saw it before; don't remember the date?~~

A ~~No, sir.~~

Q ~~Who was the first showed it to you?~~ (me.)

A Mr. Stroud.

Q ~~Now you say that the van you saw, you saw back in 1971, February of '71. Is that correct?~~

A ~~Yes, sir.~~

Q ~~Had you ^{not} seen it since then?~~

A ~~No, sir.~~

Q ~~What peculiar marks are on this van to let you know it is the same van?~~

A Well the reason I say it is the same van is because

of the curtains that was hanging in the back and on the driver's side. If you show the other picture it is where the two stickers was at on the driver's side. Like I said yesterday, there wasn't no stickers on the passenger's side. That is why I say it is the same van.

Q You say it is the same because someone showed you a white van.

A No, sir.

Q Didn't it have curtains in the back?

A The curtains just like this one and stickers on the sides.

Q What stickers do you see on State's Exhibit 35?

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

~~Q Where are any stickers markers on that picture there?~~

~~A There ain't any stickers on this side of the van. There is only one on the driver's side.~~

Q You don't know whether that van in State's Exhibit 36 and the van in State's Exhibit 37 are the same van.

A I can only tell by the color of the van and the way the curtains are hanging.

Q Any white van you see with curtains hanging in the back you say was the same van you saw back in February of '71. Is that correct?

A No, sir. *of Iowa*

~~Q Now you were born and raised in Wilmington. Is that correct?~~

~~A Yes, sir.~~

Q ~~Lived there all your life?~~ *there* *114*

~~A Yes, sir.~~

~~Q Where do you live?~~

~~A I live with my mother and my guardian.~~

~~Q What street?~~

SOL. STROUD: Objection.

THE COURT: Overruled.

A 5515 Market Street where my guardian lives.

~~Q How far is that from Gregoary Congretational Church?~~

A *That is* Five miles or more *↗*

~~Q What was the number of Market Street you said you lived?~~

lived at
A 5515 Market Street.

~~Q 5515?~~

~~A Yes, sir.~~

~~Q Is that the only address you lived at in Wilmington?~~ *l*

~~A No, sir.~~

~~Q Where else did you live?~~

~~A I lived at
4745 Shaw Drive.~~

~~Q Where is that?~~

~~A Weavers Acres.~~

~~Q How far is that from the church?~~

~~A That is
Approximately 7 miles from the church.~~

~~Q Where were you living on February 5, 1971? I was living~~

~~A on
Market Street.~~

~~Q On Market Street?~~

~~A Yes, sir.~~

~~Q You said you attended St. Marys School.~~

~~A Yes, sir.~~

~~Q And St. Marys Church?~~

~~A Yes, sir.~~

~~Q How often did you go to school there?~~

~~A I went up until the 4th grade.~~

~~Q I was not
Were you attending St. Marys Church during February
of 1971?~~

~~A No, sir.~~

~~Q When was the last time you attended St. Marys
Church? was~~

~~A Just before Father Jones came.~~

~~Q When was that?~~

~~A If I am not mistaken, in '69.~~

I did not
~~Q~~ You never attended there after Father Jones came?

~~A~~ Not regularly.

some
~~Q~~ Did you attend there at all since Father Jones was there?

~~A~~ Yes, sir.

~~Q~~ How often?

~~A~~ Once or twice me and him have talked.

I
~~Q~~ You have talked with him? *once.*

~~A~~ Yes, sir.

~~Q~~ On how many occasions?

~~A~~ Once.

I not
~~Q~~ Have you talked with him since February 1971?

~~A~~ No, sir.

I not
~~Q~~ Have you seen him since then?

~~A~~ No, sir.

I
~~Q~~ Haven't seen him at all?

~~A~~ No, sir.

I not
~~Q~~ Had you ever been in and around Gregory Congregational Church at anytime before February 5, 1971?

~~A~~ No, sir.

I
~~Q~~ Had you ever been in an around 6th Street and Ann Street and Nun Street before that time?

~~A~~ Yes, sir.

~~Q~~ When were those occasions?

~~A~~ Before then.

Q All before then?

A Yes, sir.

Q Had you been there quite often

A On some of the weekends.

I
~~Q~~ Used to go around there on the weekends?

~~A~~ Yes, sir.

~~Q~~ Were you going to church?

~~A~~ I didn't go to Gregory Congregational. I was on Nun and on 6th Street sometimes.

~~Q~~ On Nun and 6th Street sometimes? Were you pretty familiar with that area? Is that right?

I am
~~A~~ Not too familiar with *it that area.*

~~Q~~ You weren't familiar with it? You weren't familiar with it and you had been there several times?

~~A~~ Well I was just familiar with the places and the streets, the places where I was going and on Ann Street. I never knew whatsoever at 6th and Ann: and 13th and Ann I mostly was.

I have been
~~Q~~ Were you ever on Nun Street before?

~~A~~ Yes, sir.

I have been
~~Q~~ Were you ever on Ann Street before February 5, 1971?

~~A~~ Yes, sir.

I was
~~Q~~ Were you ever on 5th Street before?

~~A~~ Yes, sir.

~~Q~~ You were familiar with all those streets? Were

I was
~~you ever~~ on 7th Street before?

~~A Yes, sir.~~

I had
~~Q So you had~~ been in and around that area before February 5, 1971. ~~Is that correct?~~

~~A Yes, sir, a few times.~~

~~Q Now can you describe~~ the house on the southeast corner of 8th Street and Nun?

~~A If I am not mistaken it is~~ a two-story house.

~~Q What~~ (about the house next to that?)

~~A I am not sure.~~

(about
~~Q The one next to that?~~

~~A I am not sure.~~

(about
~~Q The one next to that?~~

~~A I am not sure.~~

~~Q Now you have talked about the testimony that you~~ *was* were going to give here in court before today, *have* you not? Or before coming to court here two weeks ago?

~~A Yes, sir.~~

~~Q Who did you talk with about it?~~

~~A I have talked to the Solicitor.~~

~~Q Mr. Stroud?~~

~~A Yes, sir.~~

Several
~~Q On how many~~ different occasions?

~~A Several.~~

Q How many?

A Several.

Q More than 5?

A Several.

Q More than 10?

A Several.

Q More than 15?

A Several.

Q More than 20?

SOL. STROUD: Objection, your Honor.

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

Q You have talked to him so many times you can't even remember. Isn't that correct?

A Several times.

Q Did the Solicitor tell you to say several in answer to these questions?

SOL. STROUD: Objection.

THE COURT: Overruled.

A No, sir.

~~Q Who else did you talk to (about this case?)~~

talked to
A The Solicitor and the Detectives *↗*

~~Q What Detectives?~~

talked to
A Detective Brown,

~~Q Any others?~~

~~A Yes, sir.~~

↓

~~Q Who else?~~

A ~~+~~ Detective Fredlaw.

~~Q How many times did you talk to Detective Brown?~~

A ~~Several times.~~

~~Q How many times did you talk to Detective Fredlaw?~~

A ~~Several times.~~

Q Did you talk to Detective Brown more than 5 times?

A Several.

Q Did you talk to him more than 10?

SOL. STROUD: Objection.

THE COURT: Overruled.

A Several.

Q Did you talk to him more than 15?

A Several.

Q Did you talk to him more than 20?

A Several.

SOL. STROUD: Objection.

Q You have talked to him so many times you don't remember.

A Several times.

~~Q How many times did you talk to Det. Fredlaw?~~

A ~~Several times.~~

Q Did you talk to him more than 5?

A Several times.

Q More than 10?

A Several.

SOL. STROUD: Objection.

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

~~Q~~ You don't know ^{exactly} how many times you talked to him.

Is that correct?

~~A~~ Not exactly.

~~Q~~ Did you talk to any other Detective about this matter?

~~A~~ Yes, sir.

~~Q~~ Who else?

~~A~~ I talked to Detective Monroe.

~~Q~~ How many times did you talk to Detective Monroe?

~~A~~ Several times.

Q Did you talk to him more than 5 times?

A Several times.

~~Q~~ (When was the last time you talked to Detective Monore about it?) ^{was}

~~A~~ I don't quite remember

~~Q~~ When was the last time you talked to Mr. Stroud about it? ^{was}

~~A~~ Before I came to court.

~~Q~~ Before you came to court?

~~A~~ Yes, sir.

Q Today?

A At the beginning.

Q ~~You haven't~~ ^{I have} talked to Mr. Stroud at all since you came to court?

A ~~Yes, sir: I have talked with him.~~

Q ~~You~~ have talked to him about your ^{my} testimony in this trial, haven't you?

A ~~Yes, sir.~~

Q ~~You~~ have talked to Detective Brown about your ^{my} testimony in this matter, haven't you?

A ~~Yes, sir.~~

Q ~~You~~ have talked to Detective Fredlaw about your ^{my} testimony in this matter, haven't you?

A ~~Yes, sir.~~

Q I am talking about since you have been up here in the courtroom since two weeks ago. Isn't that correct?

A Yes, sir.

Q ~~The fact of the matter is you have~~ ^{not} talked to him about it about every day, haven't you?

A ~~No, sir.~~

Q ~~When was~~ ^T the last time you talked to Mr. Stroud about it? ^{was}

A Just before I came to court.

~~Q Are you saying just before you came to court today?~~

~~A Like me and Mr. Stroud have been over my statements together and me and him have got together - we have talked about the case, and we have talked about the case since the trial have started.~~

~~Q You have talked about it quite a bit before. Isn't that correct?~~

~~A Yes, sir.~~

~~Q And you have had copies of the statements that you have made. Isn't that correct?~~

~~A I have read them.~~

~~Q And you have a copy of the preliminary hearing transcript, haven't you?~~

~~A I have read it.~~

~~Q You have a copy up in the prison where you are being kept now, isn't that correct?~~

~~A No, sir.~~

~~Q You have never seen a copy of it in the prison?~~

~~A No, sir.~~

~~Q You have never seen a copy of the statement since you have been in prison?~~

~~A Only the one that - no, sir; not in prison.~~

~~Q You have never seen one since you have been in prison?~~

~~A Not in prison.~~

Q Have you seen it anywhere else other than in prison?

A Like I said, with Mr. Stroud I have read my statement and the transcript.

Q ~~You made several different statements about this matter,~~ haven't you?

A I only made two statements.

~~Q You made two statements?~~

~~A Yes, sir.~~

Q ~~You didn't make a statement to these detectives and Mr. Stroud when you talked to them all those several times?~~

~~A No, sir.~~

~~Q What would you call a statement?~~

A I said we discussed, we talked about my statement.

~~Q You talked about your statements?~~

~~A Yes, sir.~~

Q ~~When did you make your first statement?~~ *I made my*

A ~~It was whenever I first talked to the detectives back in June.~~

~~Q Back in June of this year?~~

~~A~~ *of '71.*

Q ~~Now at that time did you know everything that you have testified here during the last two days?~~

~~A Yes, sir.~~

Q
~~Q~~ You knew that?

~~A~~ Yes, sir.

~~Q~~ You knew ever detail at that point?

~~A~~ Yes, sir.

~~Q~~ Now at that time was it your intention to tell them what happened at the church on February 5 and 6, 1971?

~~A~~ Only - I only told them what I did.

~~Q~~ I asked you ^{*it was my*} was it your purpose to tell them what you knew or what you observed at the church on February 5 and 6, 1971.

~~A~~ Yes, sir.

~~Q~~ It was ^{*my*} your purpose to do that. ^{*I not*} Now did you do that?

~~A~~ Not on my first statement.

~~Q~~ You did not?

~~A~~ No, sir.

~~Q~~ Was there anything ^{*some*} to prevent you from doing that ^{*me*} at that time?

~~A~~ I was worried about my family.

~~Q~~ You were worried about your family?

~~A~~ Yes, sir, I was concerned about them.

~~Q~~ So you are saying that out of concern for your family you told something less than the whole truth. Is that correct?

~~A~~ I told the truth, but I just didn't put nobody

else into it.

Q ~~You didn't put anybody else into it in your first statement?~~ ^{my}

~~A No, sir.~~

Q ~~You only told what you did. Is that correct?~~

~~A Yes, sir.~~

Q Now I'll show you what I'd like to have marked as Defendant's Exhibit 1.

(Defendant's Exhibit "1" marked for identification.)

Q I show you what has been marked and identified as Defendant's Exhibit "1" and ask you if you have seen that before.

A Yes, sir.

Q ~~Does it show a date?~~ ^{of}

~~A Yes, sir.~~

Q ~~What date is that?~~

~~A May 30, 1971.~~

Q ~~Do you recognize what that statement is?~~

~~A Yes, sir.~~

Q ~~What is it?~~

~~A ^{It is} A case against me for arson.~~

~~Q ^{Case against you for arson?}~~

~~A Yes, sir.~~

Q That is what that statement is? ~~Didn't you sign it?~~

~~A Yes, sir.~~

Q ^{found} Did you know what you ~~were~~ signing?

~~A Yes, sir.~~

Q ^{found} Did you read it before you signed it?

~~A Yes, sir.~~

Q Read it now.

A "I was at the Gregory Congregational Church, me and Ben Chavis and four other boys, one boy by the name of Chili planned to burn down Mike's Grocery Saturday 6th and Ann, and me and Chavis and four others went back of the church where firebombs were kept. Me and Chavis passed out 8 firebombs to the other boys and then me and Chavis walked up to 6th and Nun Street to see if the coast was clear. Everything look O K so we went back to the church where the other boys were waiting. We all walked out the back door of the church down a small path that come out between two houses in front of Mike's Grocery. Me and Chavis stood ~~at~~ look-out while the other 4 boys threw 8 firebombs into Mike's Grocery. Chavis then told all of us boys to go back to the church. Wh en we left the store was

on fire. This statement is the truth, and I was advised of my rights."

Q Was that statement the truth?

A Some of the things in here they must have misunderstood me about, Mr. Ferguson, because -

Q My question is was the statement the truth?

A Yes, sir.

~~Q But you say some things they misunderstand?~~

~~A Yes, sir.~~

~~Q Did you read it before you signed it?~~

~~A Yes, sir.~~

~~Q Didn't you tell them they misunderstood you?~~

~~A No, sir.~~

Q Didn't they give you a chance to change it?

A Well, you say -

THE COURT: had you finished your answer?

~~Q ^{I am} Are you saying the statement was the truth?~~

~~A Yes, sir.~~

Q Why do you keep looking at the Solicitor's table when I am asking you questions?

A No reason.

~~Q ^{I am not} Are you looking for something over there?~~

~~A No, sir.~~

~~Q ^{not} Did you tell the detective that you threw firebombs,~~

three firebombs, at that grocery store in this statement?

~~A. No, sir.~~

~~Q. Did you tell them while you were talking to them that you threw three firebombs at the church?~~ *I was not*

~~A. No, sir.~~

~~Q. In this statement you told them Chili planned to burn down Mike's Grocery. Isn't that correct?~~ *I*

~~A. Yes, sir.~~

Q. And today and yesterday you told the jury that Chavis planned it. Isn't that correct?

A. No, sir.

~~Q. That is not correct? You didn't tell them that?~~ *I*

~~A. No, sir.~~ If you would read the transcript, I told who all planned to burn down Mike's Grocery.

Q. You told us that you planned to burn it down.

A. No, sir; I said it will show you when you ask me who planned to burn down Mike's Grocery.

Q. I am asking you if during the past two days the plan to burn the grocery was Ben Chavis's idea.

A. Yes, sir.

~~Q. And if in the statement you told them it was Chili's idea to burn down the grocery? Isn't that correct?~~ *I*

~~Marvin Patrick? Sir?~~

~~A. Yes, sir.~~

Q So in one of them you were lying, weren't you?

A No, sir.

~~Q You were telling the truth about both of them?~~

~~A~~ I say either they misunderstand me because at everytime whenever we was talking there was like so many questions asked all at once and in the time had passed and you sort of forget some of the things. It takes time to think of them.

~~Q~~ ^{I have} You have forgotten some of the things in May of 1973?

~~A~~ Yes, sir.

Q Yes, sir; whenever you want to say things that you rather forget than remember you just put it in your mind and say, "i'm going to try my best to forget because I don't want to remember." So you are saying when you talked to them the first time in May you were trying to forget?

A Yes, sir.

~~Q~~ And sometime after that you ^ldecided to try to remember. ~~Is that correct?~~

~~A~~ Yes, sir.

~~Q~~ ^{NEI} Did you have ^{any} some help in remembering?

~~A~~ No, sir.

~~Q~~ Didn't have any help at all?

~~A~~ No, sir.

~~Q~~ Now you say that ^T the first time you ^I talked to them ^I you were only telling them about what you did?

~~A~~ Yes, sir.

Q Did you give them some statement prior to May 30, 1971, telling them what you did?

A My first statement that I gave was what I have did.

~~Q~~ Are you saying that you gave another written statement in addition to this one before this one?

~~A~~ I only gave two written statements.

Q Was one of them before this?

A No, sir.

~~Q~~ Well is there any other written statement that you gave them where you are saying what you did other than this one?

~~A~~ I gave them the statement what I had did, my participation in what I had did at the church and about that I did shoot officers and firemen and what I did in burning Mike's Grocery.

^I Did you tell the jury just a minute ago that this was ^{Mike's} your case of arson?

~~A~~ Yes, sir.

^I ~~Q~~ Did you sign some other statement showing what you did about shooting a policeman or shooting at a policeman at Mike's Grocery or anywhere else? ^I

~~A~~ No, sir.

~~Q~~ So ^T this is the only statement you gave them at that time. ~~Is that correct?~~

~~A~~ Yes, sir.

Q Then what did you mean when you said you gave them statement showing what you did?

A Whenever they first questioned me I only told them about my activities in the church. I didn't bring anyone else's name up there because I was afraid of what might happen to my family if I told them what Ben Chavis and them had did.

Q Did anybody write that down to your knowledge?

A I am not sure.

~~Q~~ Did you sign it?

~~A~~ I signed a statement what I had confessed to.

~~Q~~ ^{was T} What that in June of '71?

~~A~~ Yes, sir.

~~Q~~ So ^T that was after you made the statement here on May 30 then. ~~Is that correct?~~

~~A~~ Yes, sir.

~~Q~~ Who was ^T (present at the time you made that other statement showing what you did?)

A Mr. Brown, Det. Monroe and Det. Bloomer, if I am not mistaken ^{were}

~~Q~~ ^{not} Do you have any idea where that statement is today?

~~A~~ No, sir.