

PAGE COUNT OF 50 PAGES

1970.

~~Q~~ And how long did ^H he remain in your ^{ed my} employ?

~~A~~ Through March 22 of 1971.

~~Q~~ And in what capacity did he serve with your Corporation?

~~A~~ He was a service man for the Corporation.

~~Q~~ Service man?

~~A~~ Yes, he tended the chinchilla herd that we had. He made deliveries, took care of the herdroom and more of the physical operations of the operation.

~~Q~~ In February of '71 and as a result of his responsibilities with the Corporation, ~~did~~ Mr. Robinson ^{did} drive the van that ^I you have described?

~~A~~ Yes, he did.

~~Q~~ And did anyone else drive the van during this time?

~~A~~ I drove it at times during this period, but predominantly he had this van. I'd let him take it home at night, and actually it was in his possession.

~~Q~~ You let him take it home at night?

~~A~~ Yes.

~~Q~~ And then it would be used during the day for business purposes?

~~A~~ Yes, it would.

Q Mr. Weiss, I hand you what has been marked and

admitted into evidence as State's Exhibit number "35", "36" and "37" and ask if you would examine those and identify the photographs if you can, please, sir.

A. These are the photographs of the ~~Chevrolet Corvair van.~~

~~Q. What Chevrolet Corvair van?~~

A. The '64 Corvair van that I owned.

~~Q. Would you show those individually to the defense counsel and then to the jury, please?~~

~~A. Can you see them?~~

MR. FERGUSON: Yes.

~~Q. And to the jury, please?~~

(Witness holds Exhibits up before the jury.)

Q. Thank you. I hand you what has been marked and admitted into evidence as State's Exhibit number "41" and ask if you can identify that photograph, please.

MR. HUNEVOL: Objection.

THE COURT: overruled. (*Exhibit No. —*)

A. This is a photograph of John Robinson.

Q. Would you display that to the defense table, please?

And would you also display it to the jury? Thank you. Mr. Weiss, let me refer you again to the

photographs of the van that you have described, please, sir. Now how do you know that that is the white Corvair van that was owned by your Corporation in February of 1971?

SOL. JOHNSON: Objection.

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

A Well there are several tell-tale features here that tell me it is the van. The window is broken on it which was broken in an accident. It did have side curtains in it. These were the same side curtains as existed at that time. The right rear end was damaged here. This occurred in that accident. The right door handle is missing and was also missing at that time. The hub caps are the same. And they are special hub caps. They won't stocked to fit that van. I have seen this van subsequent to this time, and it is the same van.

Q You have seen the van subsequent to the time? How long did you keep the van before it went out of your possession?

A I don't know the exact dates. I do have them here. I sold the van on June 8th of 1971, but I still have title to the van. The van has never been completely paid for.

Q And was there anything peculiar about the motor of

the van that you recall?

MR. FERGUSON: Object to the leading.

THE COURT: Overruled. Don't lead him.

(Exemption No. 1)

~~A Peculiar about the motor?~~

~~Q Yes, sir.~~

A Not that I can recollect. Not at the time. At the time it was in my possession I know we overhauled the carberator on it. Other than that I don't know of anything peculiar.

~~Q Did you work on the motor yourself?~~

~~A Yes, I did.~~

~~Q When did you last see the van?~~

~~A Last see the van?~~

~~Q Yes, sir: the last time you saw it?~~

~~A Last Saturday.~~

Q And who was with you at that time?

A You were and Det. Brown.

~~Q Where was the van?~~

~~A It was parked on a lot in the middle of the block.~~

~~Q Was the van in essentially the same condition that it was in in the photographs?~~

~~A Yes, I'd say so.~~

~~Q Was the van that you saw this past Saturday, was that the van that you owned in February of 1971?~~

~~A Yes, it is.~~

~~Q~~ ~~Or that the Corporation owed?~~

~~A~~ Yes.

~~Q~~ Now, Mr. Weiss, ^{MI} do you know a Mrs. Decker?

~~A~~ Yes, I do.

~~Q~~ Is she here in the courtroom today?

~~A~~ Yes, she is.

~~Q~~ Would you point her out, please?

~~A~~ It is the lady sitting in the front row back there.

(Pointing)

~~Q~~ How long have you known her?

~~A~~ I'd say approximately 2 [✓] to 2 and a half years.

~~Q~~ How did you ^{I came} come to know her, if I may ask?

~~A~~ Through acquaintance with her husband.

~~Q~~ Did she ever have any dealings with you in relation to the chinchilla farm?

MR. FERGUSON: Objection.

THE COURT: Overruled. (Exception No. —)

~~A~~ Only to the extent that I did give her husband a chinchilla at one time, and they were raising it as a pet.

~~Q~~ Did she ^{she did} ever come to ^{my} your place of business?

~~A~~ Yes, she has ^{1 on} one or two occasions.

~~Q~~ Do you recognize any other person in the courtroom at this time?

MR. BALLANCE: Objection.

THE COURT: Overruled. (Exception No. —)

(Witness surveys the courtroom.)

A I think I recognize the gentleman back here in the clerical collar.

MR. BALLANCE: Objection.

THE COURT: Overruled. (Exception No. —)

SOL. STROUD: I'd like the record to show he indicated the defendant Benjamin Chavis, your Honor.

THE COURT: All right.

Q Do you recall where you might recognize him from?

MR. BALLANCE: Objection.

THE COURT: Overruled. (Exception No. —)

A I think that he had been in the chinchilla ranch for a few minutes back in early, I'd say, the latter part of 1970 or the early part of '71.

MR. BALLANCE: Move to strike what he things.

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

Q Do you know if he was with anyone at that time?

MR. BALLANCE: Objection.

THE COURT: Overruled. (Exception No. —)

A I don't know. I think he came in alone at that time just there for a short period of time.

MR. BALLANCE: Move to strike what he thinks.

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

~~Q~~ ~~Do you recall whether~~ John Robinson was present at that time?

~~A~~ ~~Yes, He was.~~

Q Now this accident that you have referred to that the van was involved in, when was that, if you recall?

MR. BALLANCE: Objection.

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

A I don't know the exact date, but I'd say it was in the latter part of February of 1971.

Q Do you know who was driving the van at that time?

A John Robinson was driving the van.

SOL. STROUD: Your Honor, the State has not further questions of this witness at this time. We might like to recall him at a later time.

THE COURT: All right.

CROSS EXAMINATION BY MR. BECTON:

MR. BECTON: Mr. Stroud, would you please pass down the exhibits of the van?

SOL. STROUD: Do you want the photograph of John Robinson?

MR. BECTON: No.

~~Q Mr. Weiss, when was it you said John Robinson first came to work with you?~~ ^{me} ↓

~~A It was either in the latter part of October or the first part of November of 1970.~~

~~Q Do you recall what date?~~ ^{not}

~~A Not exact date, no.~~

~~Q Do you recall what he had on at the time he came to work for you the first time?~~ ^{not}

~~A No, not exactly, no.~~

~~Q Now, Mr. Robinson used your van to come to work and to go home from work. Is that correct?~~ ^{my}

~~A That is correct.~~

~~Q And he used your van in November, December, January, February and March to go home from work and to come to work?~~ ^{my}

~~A That is correct.~~

~~Q Mr. Weiss, did you take the pictures that have been introduced in evidence as State's Exhibits "35", "36", and "37"?~~ ^{not}

~~A No, I didn't.~~

~~Q Do you know who took them?~~ ^{not}

~~A No~~

~~Q Were you present when they were taken?~~ ^{I was not}

~~A No, I wasn't.~~

Q Mr. Weiss, I think you said you saw the young man in clerical collar at your place in December of 1970.

A About that time. I don't know the exact date. It was just for a few minutes.

~~Q Did you have occasion to talk to him?~~

~~A~~ Other than let's say to say hello or something like that there was no conversation that I remember at all. I'll say this. A gentleman that looks like him. I won't say it's exactly him. I would say a gentleman who appears and looks very much like him came into the business. At that time he was a friend of John Robinson.

Q Did this person that came in that looks pretty much like Ben Chavis have a conversation with John Robinson?

A I think at that time they went into the back where the chinchillas were, and they had a conversation back there.

Q How long was this person in your presence?

A Just going in and coming out, I would say

~~Q~~ ^A ~~Do you recall whether or not he had~~ ^{not think} a clerical clothes on?

~~A I don't think so.~~

~~Q~~ ^I Do ^{not} you recall what he had on?

~~A~~ No, I don't. He was well dressed. That is all
I know.

~~Q~~ ^I Do ^{not} you recall how he got to ^{my} your chinchilla farm?

~~A~~ No, I don't.

~~Q~~ Do you recall whether or not anyone else was with
him?

~~A~~ He was alone.

Q During December of 1970, do you recall anyone else
coming out to your chinchilla farm to talk to Johnny
Robinson?

A It's possible. Several people did come and talk
to him for just a short occasion, 5 or 10 minutes.

Q During January of 1971, do you recall any person com-
ing out to your chinchilla farm to talk to John
Robinson?

A I'd say here again it is possible, but I can't
specifically state. There were several occasions,
but I can't give you exact dates.

~~Q~~ ^I Can ^{not} you describe any person who came to ^{my} your chin-
chilla far in January 1971 to talk to John Robin-
son?

~~A~~ NO.

~~Q~~ This person that you think is Ben Chavis that came
out there in December of 1970, ^I did ^{not} you have an

occasion to see him at a subsequent time later than that?

~~A~~ Not to my knowledge, no.

~~Q~~ ^{not} Do you recall whether or not ^{not} you had seen that person prior to December of 1970?

~~A~~ No.

~~Q~~ Now have you seen Ben Chavis during the trial of this case this week?

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

~~Q~~ Have you been shown photographs of him?

~~A~~ Yes.

~~Q~~ Who showed you those photographs?

~~A~~ Mr. Stroud showed me photographs. He showed me a number of photographs and I picked his out of a number of photographs of different people.

~~Q~~ When were these ^{were} shown to ^{the} you?

~~A~~ Approximately I'd say 2 or 3 weeks ago.

Q Were there any names or numbers on any of the photographs that you were shown?

A There could have been on the backs of the photographs, but there was nothing on the face of the photograph itself.

Q Do you recall the type of clothing Ben Chavis had on on the photograph that you saw?

A Yes, I don't know exactly how to describe it. It was a photograph of I think it was in a funeral procession. That was one photograph. Then there was an individual photograph.

Q How many photographs did you see of Ben Chavis?

A I can only recognize two.

~~Q~~ An individual photograph and one in a funeral procession?

~~A~~ Yes.

Q Do you recall whether or not you saw more than one photograph of any other person?

A There were a number of photographs there, yes.

Q I am asking if you saw more than one photograph of any other one person?

A Well if I did I couldn't recognize who they are because I didn't recognize any of the other people in them.

Q Who was present at the time you were shown these photographs by Mr. Stroud?

A It was either DET. Brown or Det. Fredlaw.

~~Q~~ Did you contact Mr. Stroud and Mr. Fredlaw or did they contact ^{me} you first? *contacted*

~~A~~ They contacted me.

Q Do you recall what conversation, if any, you had

with them prior to the time they showed you the photographs?

A Well they asked me at that time they asked me what I knew about John Robinson and whether he had worked for me and the basic general information.

~~Q~~ ^H Did ~~not~~ ^{me} ask you anything about Ben Chavis?

~~A No, not to my recollection.~~

Q No further questions.

MR. HUNEVOL: I have no questions.

THE COURT: Anything further for the State?

SOL. STROUD: No further questions with the right to recall him please.

THE COURT: Stand aside.

MR. BECTON: If the Court please, we would move to stroke Mr. Weiss's testimony with reference to identification because it was based on the photographs.

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

REBA HOWARD DECKER, called as a witness for the State, being duly sworn, testified as follows:

DIRECT EXAMINATION (BY SOL. STROUD:)

~~Q~~ ^{by} ^{is} Would you state your full name, please, Ma'am?

~~A~~ [✓] Reba Howard Decker.

~~Q~~ ^{I am} ~~And are you a resident of Wilmington, Mrs. Decker?~~

~~A~~ ~~Yes, sir.~~

~~Q~~ ~~And where are you employed, please, Ma'am?~~

~~A~~ I am not now *employed.*

~~Q~~ ~~Where were you employed in February of 1971?~~ *I was*

~~A~~ *employed at*
J. M. Fields.

~~Q~~ ~~What is that?~~

~~A~~ It is a department store on Oleander Drive.

~~Q~~ In Wilmington?

~~A~~ Yes, it is.

THE COURT: Can you members of the jury hear this lady? If you can't at anytime raise your hand.

JUROR 10; If you would lift the microphone just slightly.

~~Q~~ ¹ ~~Now in February 1971 did you know Mr. Merton Weiss?~~

~~A~~ Yes, sir.

~~Q~~ ~~How long had you known him?~~

~~A~~ Well I have known him almost three years I would say *up to now.*

~~Q~~ ~~That is three years up to now?~~

~~A~~ Yes.

~~Q~~ ~~And how long did you know Mr. Weiss?~~

~~A~~ My husband had at one time planned to start a chin-

chilla ranch in our back - we had a large room we didn't use, and he had thought to start a chinchilla ranch, and he stopped by and talked to Mr. Weiss.

~~Q~~ ^I And had you been by Mr. Weiss's place of business prior to or during February of 1971?

~~A~~ Yes, sir.

~~Q~~ ^{I was} Were you familiar with ^{some} any of his employees?

~~A~~ Yes, I was. I had met John Robinson in the parking lot. I think it was Fields. I am not positive. My husband stopped and talked to him, and he introduced me.

~~Q~~ ~~This had been sometime prior?~~

~~A~~ That is before - I'd say maybe January or December, somewhere along then.

Q Are you familiar with any of the vehicles that were used in connection with the chinchilla ranch?

A John Robinson was in the van then when I met him the first time.

~~Q~~ ~~Can you recall anything about the van?~~

~~A~~ ^{I knew} Just that it is a white Corvair van.

~~Q~~ In February of 1971 ^I do you recall when Mike's Grocery store burned?

~~A~~ Yes, sir.

Q Add do you recall calling Mr. WEISS in connection with the matter?

A Yes, I did.

MR. FERGUSON: Objection to the leading.

THE COURT: Objection sustained.

MR. FERGUSON: Move to strike.

THE COURT: Objection overruled. *(Exemption No. 1)* Mr. Solicitor, do not lead the witness.

SOL., STROUD: Yes, sir. your Honor.

Q Do you recall when you called Mr. Weiss in relation to when Mike's Grocery store burned?

A Well the first time we called I didn't call. My husband called.

MR. BECTON: Objection.

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

~~Q Did you call at another time?~~

A And then I called myself one time.

Q Called who?

A And called Mr. Merton - Mr. Weiss. Excuse me. And told him that.

MR. FERGUSON: Object.

THE COURT: Objection sustained as to what she told him.

Q What did you tell him?

MR. FERGUSON: Object.

THE COURT: Objection sustained as to what she told him.

SOL. STROUD: May we approach the bench?

THE COURT: Yes, sir.

(Conference at the bench.)

THE COURT: I'll withdraw my ruling. Objection overruled. (*Exception No. —*)

Q What, if anything, did you say to Mr. Weiss in this telephone conversation?

MR. BECTON: Objection.

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

A I called him and told him that I had seen John Robinson in Fields buying bullets and had seen him in the store buying bullets.

MR. BECTON: Move to strike.

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

Q Did you say anything to him at that time? Did you say anything else to him at that time in relation to that incident?

A I think I told him what kind they were and that the van was out front.

MR. BECTON: Objection; move to strike.

Q What?

A That the van was out front.

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

Q Do you recall when that was in relation to when Mike's Grocery store burned that you called Mr. Weiss?

A I can't say for sure. It was either -

MR. BALLANCE: Objection.

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

A It was either the night before Mike's burned or the day before that.

Q Now when did you see John Robinson at Fields?

A It's been so long. I can tell you how I think I saw him.

MR. BALLANCE: Object.

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

A I had the courtesy desk at the front door, and I would see people coming in and going out because one door was in and the other was out. And I think John Robinson walked by the courtesy desk going to the front to pay for the bullets and the shotgun shells and that is when I saw him, when he walked by the desk. You can pay for the bullets and shotgun shells and whatever back in the back, but a lot of times to keep from having to register the am-

union they would come through the front.

MR. BECTON: Objection; motion to strike.

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

MR. BECTON: May I be heard, your Honor? May I approach the bench?

THE COURT: Yes, sir.

(Conference at the bench.)

Q Let me ask you this, please, Ma'am. At the time you think you saw John Robinson, did you see anyone else with him?

A There was someone with him.

~~Q What was his race, please?~~

A He was a black .

~~THE COURT: Ma'am, I can't hear.~~

~~A He was black.~~

MR. BALLANCE: Move to strike the answer, your Honor.

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

~~Q~~ ^{*not*} Could you identify him?

~~A No, I couldn't.~~

Q Do you recall when you saw him in relation to when you called Mr. Weiss and told him about it?

A It was either later on that night or the next day, the best I remember.

Q Later on that night or the next day that you called Mr. WEISS?

A Yes, and told him that I had seen John Robinson.

Q Have no further questions of this witness.

THE COURT: Are you tendering her for cross examination?

SOL. STROUD: Yes, sir.

CROSS EXAMINATION BY MR. BECTON:

~~Q Mrs. Decker, in February of 1971, do you know where the bullets and shotgun shells were in Fields store?~~

~~A Do you mean did they sell them?~~

~~Q Do you know where they were -- well, do they sell them?~~

~~A Yes, I know where they were.~~

~~Q Where were they, Mrs. Decker?~~

~~A They are in the Sporting Goods Department. When you go in the store it would be on the lefthand side almost to the back.~~

~~Q Almost to the back?~~

~~A Yes.~~

~~Q And where were you sitting in February of 1971?~~

~~A I was sitting between the in door and the out door.~~

~~Q Sort of a lobby there between the outside and the~~

~~inside of the store?~~

A Well you go in the front door and the desk is right beside the front door. The out door is around the corner and out.

Q Do you know how far it is from your desk where you were seated to the bullet counter?

A Like from front to back. I mean, it is all the way to the back of the store.

Q Can you pick out an object in the court? Is it from you to the back of the court?

A It is much further than that.

Q In fact, you can't see from your desk to the bullet place, can you?

A No, sir.

Q Where was your desk in relation to where the cash register was in the front of the store?

A Beside it.

Q ~~How many~~ ^{We had 6 or 7} cash registers, did you have?

A ~~I would say 6 or 7.~~

Q ~~How are there~~ ^{is a} cash registers there at the rear of the store where the bullets are sold?

A ~~Yes, it is,~~ but it is not always attended.

Q ~~I didn't understand you.~~

A ~~There is, but it is not always attended.~~

Q ~~Do~~ ^{not} you know who was on duty that night to attend to the cash register there in the back of the store?

A ~~No, I don't.~~

Q ~~Do~~ ^{not} you know the cashiers that were at the front of the store?

A ~~No, not~~ at that time. They change so fast.

Q ~~Do~~ ^{not} you recall what cashier's aisle Johnny Robinson came through when he was leaving the store?

A ~~No, I don't.~~

Q I believe you said there were several cashiers' aisles?

A There is. There are 6 or 7 up there.

Q ~~About what hour was this?~~

A I came to work at 6. I noticed the van out front. So it must have been somewhere 6 or 6:30 because I would have been through with any money, counting the money and getting ready.

Q ~~What were the store hours?~~

A The store hours, the open at 9 and close at 10 ^{at night.}

Q ~~10 at night?~~

A ~~Yes.~~

Q ~~Do you recall what day of the week this was?~~

A ~~That John Robinson was in there?~~

Q ~~Yes.~~

John Robinson was there.
A It was either Thursday or Friday

Q Is it usually the case that Thursday and Fridays during February 1971 that the store was pretty busy?

A Not really because the Christmas rush, all the stuff coming back, is usually there by then and there is not really a lot of buying, not in February.

Q Do you recall how many cashiers were on duty?

A I don't recall. There is usually 3 or 4.

Q How far were you from Johnny Robinson at the time you say you first saw him?

A Well I would say as far as from me to the table. See. There is a desk in front of me and there is an aisle that goes right in front of it and he walked through that way.

Q And he walked by your desk after he had passed the cash register?

A No.

Q Or before?

A Before because I noticed I wouldn't have known that he had any ammunition if he had walked by afterwards because it would have been in a bag. I would have had to have seen it in his hands to know what it was.

I am
Q ~~Are you saying then that your~~ desk is between the bullet counter and the cashiers register?

~~A~~ Yes, ^{He} he would have gone right by me. He could have gone through the shoe department and come the other way, but I wouldn't have seen him that way.

Q How many times did you say you had met Johnny Robinson prior to February 1971?

A I met him in the parking lot that time that my husband introduced me. I had seen him in the truck maybe twice on the road, you know, go by.

~~Q~~ Just passing by? And -

~~A~~ And I think, if I am not wrong, I had seen him one time at the ranch.

~~Q~~ Now ^{at} the time you saw him when ^{my} your husband introduced him to you, ~~do you recall how long you stayed~~ in his presence?

~~A~~ Maybe 10 minutes. They just talked.

Q What about the time you saw him in the truck passing by?

A That was just going by.

~~Q~~ I believe you mentioned one additional time.

~~A~~ I think I saw him at the ranch one time.

Q Do you recall how long you saw him there?

A Just a minute. He was in and out.

~~THE COURT: I didn't hear that last.~~

~~A~~ He was just in and out, just walking through, just a minute.

I was
Q ~~Mrs. Decker, were you shown any pictures of Johnny Robinson?~~

A ~~Was I shown any? Yes, I was.~~

Q ~~Do you recall when you were shown these pictures?~~

A ~~Before I came in here,~~

~~Today?~~

today
A ~~Today.~~

I not
Q ~~Had you seen any pictures of Johnny Robinson prior to today?~~

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

Q ~~Who showed you the pictures of Johnny Robinson?~~

A ~~Mr. Stroud.~~

Q ~~When was the first time you talked to Mr. Stroud about this man?~~

was
A ~~Saturday, last Saturday.~~

I was not
Q ~~Were you shown any photographs at that time?~~

A ~~No.~~

Q ~~Who was present at the meeting last Saturday with Mr. Stroud and you?~~

A ~~Det. Brown and Mr. Weiss, my husband and my father.~~

Q ~~Do you recall what, if anything, they said with reference to Johnny Robinson?~~

SOL. JOHNSON: We object.

THE COURT: Sustained. *(Sustained)*

Q Did you talk to anyone, any detectives or anyone concerning Johnny Robinson prior to Saturday when you talked to Mr. Stroud?

A I talked to Det. Brown 2 or 3 weeks ago.

Q Did Det. Brown say anything with reference to Johnny Robinson to you at that time?

SOL. JOHNSON: Objection.

THE COURT: Sustained. *(Sustained)*

Q Mrs. Decker, how many people came into Fields and bought ammunition during the time you were there in 1971?

A I wouldn't know. I wasn't back there.

Q How many people came up to the cash register while you were there with bullets and shells?

A There was, I know there were several incidents that happened because they'd have to send them to the back, the cashiers that knew that they had to be registered, but if you got one that didn't know it had to be registered you went on through.

~~Q~~ ^{not} Did you call anyone with reference to anyone else buying shells and bullets?

~~A~~ No, I didn't know anyone else. I mean I might have known them, but I was concerned for Mr. Weiss. I was afraid Mr. Weiss would be involved because of his truck.

MR. BALLANCE: Objection; move to strike.

THE COURT: Motion denied. *(Exception No. 7)*

Q *I* Did you see Johnny Robinson drive the truck up to Fields?

A ~~No, I didn't.~~

Q It was in the parking lot when you got there?

A ~~Yes, sir.~~

Q ~~Do you recall whether or not anyone was in it at that time?~~ *I don't think.*

A ~~I don't think so.~~

Q ~~And you only saw one person in the store with Johnny Robinson?~~

A ~~Yes, there was only one person with him that I remember.~~

Q Nothing further.

THE COURT: Mr. Hunevol?

MR. HUNEVOL: I have no question.

THE COURT: Anything further for the State?

SOL. STROUD: No, sir, your Honor. At this time the State would like to recall Mr. Weiss.

MERTON WEISS, recalled by the State, already being duly sworn, testified as follows:

REDIRECT EXAMINATION BY SOL. STROUD:

Q ~~Mr. Weiss,~~ do you recall Mrs. Decker's calling you? *Mrs.*

~~A Yes, I do.~~

~~Q~~ Do you recall what she told you at that time? ^{me}

~~A Yes.~~

Q What did she say?

MR. BECTON: Objection; move to strike

THE COURT: Members of the jury, any statement that Mrs. Decker may have made to Mr. Weiss is offered by the State for the purpose of corroborating the witness, Mrs. Decker, if you, the jury, find that it does corroborate Mrs. Decker and for no other purpose. It is not substantive evidence. *(Exclusion No. —)*

~~Q~~ Do you recall when Mike's Grocery store burned in 1971?

~~A Yes, I do.~~

Q Do you recall when she called you in relation to that time?

A I would say it was within a day either way of that.

Q And where -

MR. BALLANCE: Move to strike that.

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

Q Where were you when you talked with her?

A I don't remember exactly whether I was at home or at the ranch.

~~A~~ ^Q Do you recall the conversation?

~~A~~ Yes, I do.

~~Q~~ What was said?

~~A~~ She called me and told me that she had seen John Robinson in J. M. Fields and that he had purchased some .22 caliber shells and some shotgun ammunition, and I think this was on Friday night.

MR. BALLANCE: Objection.

A That this occurred.

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

Q Did she say anything about your van?

A Yes, she said the van was pulled up out in front. She had seen it pulled up out in front.

SOL. STROUD: No further questions of this witness.

RE-CROSS EXAMINATION BY MR. BECTON:

Q Mr. Weiss, what is the first - when was the first time you talked with Mr. Stroud and Detectives concerning this case?

A The first time a gentleman - I don't remember where he was from - the S B I if I am not mistaken - came to see me. This must be all of 5 or 6 months ago.

Q At that time did you tell Mr. Stroud or any of those present about the conversation Mrs. Decker had with you?

A No. Mr. Stroud wasn't present at that time.

Q Who was present?

A Just this gentleman either from the F B I or the S B I.

~~Q~~ And you didn't tell him about the conversation Mrs. Decker had with ^{me,} you?

~~A~~ Not to my knowledge.

~~Q~~ When was the first time you talked to Mr. Stroud?

~~A~~ ^{was} About a month ago.

~~Q~~ At that time did you tell him about the conversation that you had with Mrs. Decker?

~~A~~ Yes.

Q Who was present at that meeting?

A I think it was Det. Brown. It was either Det. Brown or Det. Fredlaw. I think it was Det. Brown.

MR. BECTON: No further questions.

MR. HUNEVOL: I have no questions.

SOL. STROUD: May Mr. WEISS and Mrs. Decker be excused, your Honor?

THE COURT: Yes.

SOL. STROUD: May we approach the bench?

(Conference at the bench.)

THE COURT: Members of the jury, we'll take a recess for lunch until 2:15. May I again caution you not to discuss these cases among yourselves. Do not permit anyone to discuss it with you or in your presence. Remember the admonition the Court has previously given you not to discuss these cases. Do not read, view or listen to any reports from the press, radio or television about this trial, if such should appear. You go now, Members of the jury, and come back at 2:15.

(The Court recessed from 12:44 until 2:30 P M.)

(The jury came into the jurybox.)

SOL. STROUD: May it please the Court, the State will call Mr. Smith.

FRED H. SMITH, called as a witness for the State, being duly sworn, testified as follows:

DIRECT EXAMINATION BY SOL. STROUD:

Q If you will speak into the microphone, please, sir.

A Yes, sir.

MR. FERGUSON: May we approach the bench?

THE COURT: Yes, sir.

(Conference at the bench.)

~~Q~~ ^{by 10} Would you state your full name to the Court, please, sir?

~~A~~ Fred H. Smith.

~~Q~~ Where do you reside?

~~A~~ Wilmington, 611 Dock Street.

~~Q~~ How old are you, Mr. Smith?

~~A~~ ^{I was} 78 last March.

~~Q~~ You live at 611 Dock Street?

~~A~~ Yes, sir, in the upper apartment.

~~Q~~ What type of dwelling do you have there?

~~A~~ ^{It is a} A frame building.

~~Q~~ How many stories ^{with 2} ~~stories~~ ^{stories}?

~~A~~ Two.

~~Q~~ Now you say you live upstairs?

~~A~~ Yes, sir. Been there 22 years.

~~Q~~ Do you have a porch on the upstairs?

~~A~~ Yes, sir.

~~Q~~ Facing what street?

~~A~~ Facing Dock Street.

~~Q~~ Now were you ^{I was} you say you were living in that house February of 1971?

~~A~~ Yes, sir.

~~Q~~ And, Mr. Smith, do you recall in February when Mike's Grocery store was burned?

~~A~~ Nighty well.

~~Q Do you recall where you were on the evening prior to Mike's Grocery store being burned?~~

~~A~~ On Friday night, February 5th, I was sitting in my livingroom with my pajamas on fixing to go to bed between 9 and 10, and there is a vacant lot across the street in front of our house, and I heard this noise coming across the street.

~~Q What kind of noise did you hear?~~

~~A~~ *I heard*
~~Well~~ loud talking and just general noise. And I went out on the porch, that is the upper porch, to see what it was all about. And they got near the sidewalk on the opposite side of the street and one of them says -

Q Excuse me. Who got to the sidewalk on the other side of the street?

A I said whoever was coming across the lot.

Q Did you see some people coming across the lot?

A Yes, I think there were two.

MR. FERGUSON: Motion to strike.

THE COURT: Motion denied. (*Exception No. 1*)

Q Where did those two go that you saw.

A Well they came right on across, but one of them says -

MR. FERGUSON: Objection.

MR. HUNEVOL: Objection.

THE COURT: Overruled. (Exception No. —)

A SAID: "There was one of them now. Let him have it."

MR. FERGUSON: Move to strike.

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

~~Q And then what?~~

A Then I began to reach for my screen door. Then I heard a gun shot. Then I jumped into the living-room, and I took hold of the wooden door and slammed it to and went down to the floor.

MR. FERGUSON: Move to strike.

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

Q Now when you were out on your porch before you came back inside, did you leave your door open?

MR. FERGUSON: Objection. (Exception No. —)

A Yes, sir; the wooden door.

~~Q Did you have lights on in the inside of your~~

~~A Yes, sir, in the livingroom.~~

Q Now you fell to the floor. What, if anything, occurred, please, sir?

MR. HARMON: Objection.

THE COURT: Overruled. (Exception No. —)

A Well I didn't go back on the porch. I just crawled back toward the diningroom and I said to my wife,

which was back in the kitchen at that time. I says,
"I like to have got shot."

MR. FERGUSON: Move to strike.

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

Q At the time you fell to the floor, did you observe anything?

MR. FERGUSON: Objection.

THE COURT: Overruled. (Exemption No. —)

A No, sir.

Q When did you next go on the outside of your house there on the porch?

A When the police came.

MR. FERGUSON: Objection.

THE COURT: Overruled. (Exemption No. —)

Q When was that?

A Right after - just a few minutes.

Q What, if anything, did you observe about the outside of your house at that time?

MR. FERGUSON: Objection.

THE COURT: Overruled. (Exemption No. —)

A We began to count the shot holes in the weather boarding and the screen door frame and the porch column, and we found one hole in the corner of the livingroom ceiling.

MR. FERGUSON: Move to strike the testimony.

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

Q Do you recall how many gun shot holes you found?

A Nine.

MR. FERGUSON: Objection.

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

Q Would you describe your screen door then, please?

MR. FERGUSON: Objection.

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

A Well just regular screen door, and the two shots went into the frame on the lefthand side.

Q The condition that you have described as to your house, was it that way prior to that Friday evening?

A No, sir.

MR. FERGUSON: Objection.

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

MR. FERGUSON: Move to strike.

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

Q You say it hasn't changed since you went out there and counted the gunshot holes?

MR. FERGUSON: Objection.

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

A No, sir .

MR. FERGUSON: Motion to strike.

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

(Conference at the bench.)

THE COURT: Members of the jury, the questions and answers of the witness, Mr. Smith, is offered by the State and admitted by the Court and will be considered by you for the purpose of corroborating the witness, Jerome Mitchell, if you, the jury, find that it does corroborate the witness, Jerome Mitchell, and for no other purpose. It is not substantive evidence. That is for each question and each answer of this witness.

(State's Exhibits "42", "43", and "44 marked for identification.)

Q Mr. Smith, I hand you what has been marked for identification as State's Exhibits number "42" and ask if you can identify this, please, sir.

MR. FERGUSON: Objection.

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

A That is the weatherboarding of the front of the front of the house between this window and the screen door over here and here is the window.

~~MR. FERGUSON: I can't hear.~~

~~A This is the window over here and here is the weather boarding and the screen door.~~

MR. BALLANCE: Move to strike.

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

Q Is this a fair and accurate representation of the weatherboarding as you have described it as it was on the evening of February 5, 1971, after the incidents that you have testified about?

A Yes, sir.

MR. FERGUSON: Objection; we would like to lodge an objection between the question and the answer. (Exception No. —)

THE COURT: All right.

A Yes, sir.

MR. FERGUSON: If it will facilitate any matters we would like to have instruction to the Solicitor and the witness to -

THE COURT: Allow counsel time to object.

Q Now, Mr. Smith, I hand you what has been marked for identification as State's Exhibit number "43", and ask if you can identify that, please, sir.

MR. FERGUSON: Objection.

THE COURT: Overruled. (Exception No. —)

A That is the front screen door into the livingroom.

Q ~~Now is~~ ^This photograph ^{is} a fair and accurate representation?

A ~~It is~~

Q Of the exterior of your house as it was on the evening of February 5, 1971, after the incident, you have testified to?

A It is -

MR. FERGUSON: Objectin.

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

Q Now, Mr. Smith, lastly I hand you what has been marked for identification as Stat'e Exhibit number "44", and ask you if you can identify that, please, sir.

Q I think that is inside of the livingroom.

Q Would you look at it again, please, sir?

MR. BALLANCE: Objection.

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

A No, that is the front screen door.

MR. FERGUSON: Move to strike.

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

Q Is this photograph a fair and accurate representation of your screen door as it was on the evening of February 5, 1971, after the incident you have testified to?

A Yes, sir.

MR. FERGUSON: Objection.

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

Q SOL. STROUD: May it please the Court, State would offer these three photographs into evidence as State's Exhibits number "42", "43" and "44".

MR. FERGUSON: Objection. *(Exception No. —)*

THE COURT: Members of the jury, State's Exhibits "42", "43" and "44" are offered by the State and recieved in evidence for the purpose of illustrating and explaining the testimony of the witness if you, the jury, finds that it does illustrate and explain the testimony of the witness. It is not substantive evidence.

Q Now, Mr. Smith, I hand you State's Exhibit number "44". Pardon me. "42". Can you point out the gun shot holes on there that you have testified to?

A Yes, sir.

MR. FERGUSON: Objecton. *(Exception No. —)*

THE COURT: Members of the jury, this testimony is offered by the State and admitted by the Court and will be considered by you for the purpose of corroborating the witness, Jerome Mitchell, if you, the jury, find that it does corroborate and for no other prupose. It is not substantive evidence.

Q Would you point them out please, sir?

A Yes, sir.

Q If you will hold it up first of all so the jury can see it and if you will point it out to them.

A The can't see the holes.

Q Would you point to them, please, sir?

A Yes. There is 1, 2, 3, 4, 5 holes; 5 holes in the weatherboarding.

Q Would you point that out to the defense counsel, please?

A That is the front of the house, the weatherboarding. There is hole 1, 2, 3, 4, 5; 5 holes right there together.

MR. FERGUSON: Move to strike.

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

Q Mr. Smith, I hand you what has been admitted into evidence as State's Exhibit number "44", and ask if you can point out the holes in the screen door there that you have testified to.

MR. FERGUSON: Objection.

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

A There is the frame of the screen door. There is the hole on the top and one on the bottom.

Q Would you point that tout to defense counsel please?

MR. FERGUSON: Move to strike.

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

A That is it. That is the screen door with two holes in the framing, shot holes.

MR. FERGUSON: Move to strike.

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

SOL. STROUD: May I pass these among the jury?

THE COURT: Yes, sir.

MR. FERGUSON: Object. (Exemption No. —)

THE COURT: All this testimony is offered by the State and received by the Court for the purpose of illustrating and explaining - to corroborate the testimony of Jerome Mitchell, if you, the jury, finds that it does corroborate the witness and for no other purpose.

(The Exhibits were passed to the jury.)

Q Mr. Smith, I have just one last question, please, sir. Are you familiar with your general neighborhood around where you live?

A Yes, sir.

Q How far is your house from the intersection of 6th and Nun Street?

MR. FERGUSON: Objection.

THE COURT: Overruled. (Exemption No. —)

A 6th and Nun? It is about 3 blocks; 3 or 4 blocks.

SOL. STROUD: State has no further questions.

MR. HUNEVOL: At this time I would like to request that instruction.

THE COURT: Members of the jury, you will not consider the testimony of Mr. Smith as to the defendant Ann Shephard. Members of the jury, as I have previously told you you will consider - Strike that. As I have told you the testimony of Mr. Smith in its entirety is offered by the State, admitted by the Court and will be considered by you for the purpose of corroborating Jerome Mitchell, if you, the jury, finds it does corroborate Jerome Mitchell and for no other purpose. It is not substantive evidence. Are you tendering the witness for cross examination?

SOL. STROUD: Yes, sir.

MR. FERGUSON: Your Honor, before we begin I move to strike the testimony of the witness.

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

CROSS EXAMINATION BY MR. FERGUSON:

~~Q~~ ~~What time did you say this incident occurred, Mr. Smith?~~

~~A~~ ~~What time?~~ Between 9 and 10 o'clock.

~~Q~~ On Friday ¹ ~~February~~ ^{night} 5th?

~~A~~ Friday night; yes, sir.

~~Q~~ ^I Did you ever see the people you say were shooting at the house?

~~A~~ Did I ever see them before?

~~Q~~ Did you see them that night?

~~A~~ Yes, sir, I saw them that night.

~~Q~~ ^I Did you ^{not} identify any of them?

~~A~~ No, sir.

~~Q~~ Nothing further.

MR. HUNEVOL: No questions, your Honor.

THE COURT: Anything further for the State?

SOL. STROUD: No, sir.

MR. FERGUSON: We renew our motion.

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

SOL. STROUD: May the witness be excused?

THE COURT: Yes, sir.

SOL. STROUD: Your Honor, the State would call Mrs. Watts.

MR. FERGUSON: We'll show the same objection to this witness as to the previous witness. I understand we'll be able to insert our reasons into the record. *(Exception No. —)*

THE COURT: All right.

MR. FERGUSON: If your Honor please, may we approach the bench for a moment?

THE COURT: Yes, sir.

(Conference at the bench.)

MRS. MARY REBECCA WATTS, called as a witness for the State, being duly sworn, testified as follows:

DIRECT EXAMINATION BY SOL. STROUD:

Q Would you state your full name for the Court, please?

MR. FERGUSON: Object. (*Exemption No. ---*)

A Mrs. Mary Rebecca Watts.

Q ~~Are you a~~ ^{I am a} resident of Wilmington, Mrs. Watts?

A ~~Yes, I am.~~

Q ~~Were you a~~ ^{I was} resident there on February of 1971?

A ~~Yes, sir.~~

Q Mrs. Watts, do you recall when Mike's Grocery store building burned?

MR. HARMON: Objection.

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

A I heard of it, but I don't remember just when it was.

MR. HARMON: Objection; motion to strike.

THE COURT: Objection overruled; motion to strike denied. (*Exemption No. ---*)

Q Mrs. Watts, do you recall where you were on the evening of Friday, February 5, 1971, the evening prior to the burning of Mike's Grocery store?

MR. HARMON: Objection.

THE COURT: Overruled. *(Deception No. 1)*

~~A February 5th?~~

~~Q 1971.~~

A We had been to a movie and we were coming home, and we were coming up 6th Street.

Q Who is we?

A My husband and I.

MR. HARMON: Objection: move to strike.

THE COURT: Motion denied. *(Deception No. 2)*

~~Q Go ahead, please, Ma'am.~~

A And we came on up and all of a sudden we got to 6th and Nun and we started hearing bang bang and boom boom, you know.

MR. HARMON: Objection: motion to strike.

THE COURT: Objection overruled: motion to strike denied. *(Deception No. 3)*

A Just like that.

Q What occurred then?

MR. HARMON: Objection.

THE COURT: Overruled. *(Deception No. 4)*

A I knew something was happening. So I - my husband

told me to get down on the floor.

MR. HARMON: Motion to strike what her husband said.

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

A I said, "Let's get out of here. Something is happening." He went on up to 5th and Castle. The police were there. I was hurt and I was bleeding and all, and they took me on to the hospital.

MR. HARMON: Motion to strike. *(Exception No. —)*

A Then I was in shock. Right then, you know.

THE COURT: Just a minute. Let me see you.

(Conference at the bench.)

THE COURT: Now members of the jury, the testimony of Mrs. Watts was offered by the State, admitted by the Court and will be considered by you for the purpose of corroborating Allen Hall if you, the jury, find it does corroborate Allen Hall and for no other purpose. It is not substantive evidence. The Court further instructs you that you will not consider this testimony as to the defendant, Ann Shephard. All right. Go ahead.

Q Now, Mrs. Watts, had you been somewhere on 6th Street prior to going to 6th and Nun?

MR. HARMON: Objection.

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

A No, sir.

Q Where had you come from?

MR. HARMON: Objection.

THE COURT: Overruled. (Exception No. —)

A We had been to the movie. We were coming home and on 6th and Orange we were coming up that way. We come on up. My husband had to see about some tractors or something. And we come on up.

MR. HARMON: Objection; move to strike.

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

Q What kind of business was your husband in at the time?

MR. HARMON: Objection.

THE COURT: Overruled. (Exception No. —)

A They tear down houses and things.

Q You say he had some tractors at 6th and Orange Street?

MR. HARMON: Objection.

THE COURT: Overruled. (Exception No. —)

A Yes, sir.

Q After you went by 6th and Orange you then went where?

MR. HARMON: Object. (Exception No. —)

A We come on up. When we got to 6th and Nun all that happened.

MR. HARMON: Motion to strike.

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

Q What did the bang bang, boom boom sound like?

MR. HARMON: Objection.

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

A It sounded like shots and the back rear window was busted out as we were getting on out of there. I was in shock, but I knew something bad was going on.

MR. HARMON: Motion to strike.

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

Q Before this occurred as you were approaching Nun Street, did you observe anything there at 6th and Nun Street?

MR. HARMON: Objection.

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

A I seen something white, but I bumped my head. I don't remember seeing anything else.

MR. HARMON: Objection.

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

Q Do you recall what it looked like?

A Big round barrel, cement.

MR. HARMON: Objection.

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

MR. HARMON: Motion to strike.

THE COURT: Denied. *(Objection No. 1)*

Q Where did your husband stop after this?

MR. HARMON: Objection.

THE COURT: Overruled. *(Objection No. 2)*

A We went to 5th and Castle. We were looking for help. We seen the police car there. They looked, and I said, "I am hurt." I was bleeding. They led us to the hospital.

MR. HARMON: Objection to time.

THE COURT: Motion to strike denied. *10/1/68*

A They led us to the hospital.

Q What kind of car were you in?

MR. HARMON: Objection.

THE COURT: Overruled. *(Objection No. 3)*

A 1960 blue Comet.

~~Q Was it your husband's car?~~

~~A Yes, sir.~~

~~Q Who was driving the car?~~

A My husband was driving. I can't drive. I don't have a license.

Q Where were you seated in the car?

MR. HARMON: Objection.

THE COURT: Overruled. *(Objection No. 4)*

A I was sitting on the other side of the driver. He was driving. I was on the other side.

Q Anyone else in the car?

MR. HARMON: Objection.

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

A No, sir; there wasn't anyone else in the car.

Q What type of injury did you sustain?

MR. HARMON: Objection.

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

A It hurt my finger. I had some things on my eyes where the glass was trying to get into my eyes. It didn't quite get into them.

MR. HARMON: Motion to strike.

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

Q Would you describe the damage to your car, please?

MR. HARMON: Objection.

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

A The back rear window was busted out where a bullet had gone through, and it went right straight up into the middle of us, you know, up into the roof, and his window was all busted out, and glass all over where you could see the glass.

MR. HARMON: Objection; motion to strike.

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

A We had to get new windows put in and everything.

Q Now can you describe about how many gunshots you heard there?

MR. HARMON: Objection.

THE COURT: Overruled. (Exception No. —)

A I heard it was several, 3 or 4 or 5. I know it was a lot of them.

MR. HARMON: Objection; motion to strike.

THE COURT: Motion to strike denied. (Exception No. —)
(State's Exhibit "44" and "45" marked for identification.)

Q Mrs. Watts, I hand you what has been marked for identification as State's Exhibit number "44" and ask if you can identify that, please, Ma'am.

MR. HARMON: Objection.

THE COURT: Overruled. (Exception No. —)

A Yes, sir; that is our car that we had, Comet, 1969, blue Comet.

MR. HARMON: Objection; motion to strike,

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

Q Does that photograph fairly and accurately portray your vehicle after it was damaged on the evening of February 5, 1971?

A Yes, sir.

MR. HARMON: Object.

THE COURT: Overruled. (Exception No. —)