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~~Q~~ When you first arrived what was the condition of Mike's Grocery?

~~A~~ it was burning pretty good when we got there. Fire was coming out of the building. It had already engulfed most of the inside of it, and it was breaking through the store, coming to the outside of the building.

Q What happened after that?

MR. HUNEVOL: Objection.

MR. BECTON: Objection.

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

~~A~~ After we saw the flames?

~~Q~~ Yes, sir.

~~A~~ That is when we took our lines off of our pumps and set it up. We had the firemen to go around the side of Mike's Grocery right in this area right in here (indicating) and put water on the fire and also some water on the church over here to keep it from catching on fire.

Q What happened after that?

MR. HUNEVOL: Objection.

MR. BECTON: Objecton.

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

A After that they took one line, one two and a half inch, and put two inch and a half inch lines on the

two half, and they took this two inch and a halves and went back of Mike's over here to these two houses right here, but this house right here next to Mike's was the only one involved in the fire at that time when we took the inch and a half fire shooter, and they used two inch and a halves to fight the fire and use two anda half inch line over in this area to keep this one from catching on fire and also to continue putting water on Mike's Grocery.

Q Describe, if you will, upon arriving there at this time what was the condition of the first house beside Mike's Grocery on 6th Street.

A When we first arrived?

MR. FERGUSON: Object. *(The place is...)*

Q Not at this time. You are talking about the firemen going around.

MR. FERGUSON: Object.

THE COURT: Overruled. *(The place is...)*

A Mike's had pretty well burned then. We saw that we couldn't save it. It wasn't any use to keep two lines there. So we had to come around and protect surrounding area, being this house right here. (Indicating) We took the line and went back

over in here and started putting water on it on this side right in here.

Q What happened then?

MR. HUNEVOL: Objection.

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

A Then I was at the pumper. I stayed at the pumper the whole time. As far as me knowing what happened after they took the lines back there and that house caught on fire, I am not sure because I wasn't in a position to see exactly what was going on.

~~Q~~ During this period of time that you ^{*was*} were there, did you see any law enforcement officers?

~~A~~ Yes, sir; I did.

~~Q~~ Where did you see law enforcement officers?

~~A~~ I saw law enforcement officers in this area and this area, like going into this area right in here and over here, and there was some back over in this area here right back of - It's a little alleyway that comes down there and I am sure there was law enforcement officers in that area. (Indicating)

Q How long did you stay there that evening, Mr. Rhodes, approximately?

~~A~~ Do you mean ^{*T*} the whole time we stayed at this fire?

~~Q~~ Yes.

~~A~~ I'd ^{*was*} say maybe 5 hours. ←

Q What was the condition of the two homes beside Mike's Grocery when you left?

MR. BECTON: Object.

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

A Sir, I never did see those two buildings. All I could see the flames coming from the buildings. As far as me going back there seeing, I didn't see them because I was at the pump.

~~Q Did you ever actually leave your pumper station?~~

~~A No, sir; I couldn't because we didn't have a whole lot of water from our hydrant coming through our line into our intake, and I was having to use all the water I could get without creating a collapse on the line. That kept me at the pumper all the time trying to get them all the water that I could supplied.~~

Q What, if anything, did you find on the fire truck?

MR. BECTON: Objection.

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

A I found buckshot.

~~Q Where was that, Mr. Rhodes?~~

~~A That was on top of the canvas on our pumper that we have to keep over our hose.~~

MR. BECTON: Move to strike.

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

Q During the course of the evening you were there, did you observe any law enforcement officers fire any weapon?

MR. BALLANCE: Object.

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

A No, sir.

SOL. STROUD: Your Honor, we have no more questions of this witness.

MR. BALLANCE: Your Honor, we move to strike the entire testimony of this witness.

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

MR. BALLANCE: We have no questions.

MR. HUNEVOL: I have no questions, your Honor.

J. D. BENTON, called as a witness on behalf of the State, being duly sworn, testified as follows:

DIRECT EXAMINATION (BY SOL. JOHNSON)

~~Q State your name, please, sir.~~

~~A~~ J. D. Benton.

~~Q~~ *(I am)* You are with the Wilmington Fire Department?

~~A~~ Yes, sir.

~~Q~~ How long have you been with the Wilmington Fire Department?

~~A~~ Since August 4, '70.

Q Did you have the occasion to go to Mike's Grocery on the corner of 6th and Ann Street on February 6, 1971?

MR. BALLANCE: Objection.

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

A Yes, sir.

Q Approximately what time was that when you went there?

MR. BALLANCE: Objection.

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

A I was off duty that day. And I was called in approximately 11 o'clock. I was at the scene approximately 11:30.

Q Upon arriving there what, if anything, did you observe?

MR. HUNEVOL: Object.

MR. BALLANCE: Objection.

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

A I observed that Mike's Store here was burned. *(Pointing)* real bad. It was quite a bit of fire, and I came in. I road with the Chief. I came in. I got - I was at the nozzle on the 6th Street side.

Q What were you doing in the nozzle? Where were you spraying water?

MR. HUNEVOL: Object.

THE COURT: Overruled. (Exception No. —)

A We were spraying water into Mike's store.

Q How long did you take to spray?

MR. BALLANCE: Object.

THE COURT: Overruled. (Exception No. —)

A About 45 minutes, I'd say.

Q Upon arriving there approximately how many firemen did you see there?

MR. BALLANCE: Objection.

THE COURT: Overruled. (Exception No. —)

A I do not have the count, but there were quite a few firemen there.

Q How about fire trucks?

MR. BALLANCE: Objection.

THE COURT: Overruled. (Exception No. —)

Q What, if anything, did you do then?

MR. BALLANCE: Objection.

THE COURT: Overruled. (Exception No. —)

A These houses, this one and this one, when this one here caught we had to keep water down anyway to try to save it. This house here we tried to keep it from catching fire.

Q How did you do that?

A ~~We taken a line from 6th Street, came back between~~

~~these houses which is a tin garage. This is a wooded area here.~~

~~THE COURT: I can't hear you, sir.~~

A Well, taken a line, come back between these houses here down 6th Street and then in this area here. there is a tin garage and back in this area here is a wooded area and which we tried to proceed with a line into this house here after this house caught here.

Q What, if anything, occurred back in that area while you were there?

MR. HUNEVOL: Object.

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

~~A Would you repeat that?~~

~~Q What, if anything occurred while you were in the area back near the tin garage?~~

~~MR. HUNEVOL: Object.~~

~~THE COURT: Overruled.~~

A There was shooting back there.

Q What, if anything, did you do then?

MR. BALLANCE: Object.

MR. HUNEVOL: Objection.

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

A Well, we went in the house.

THE COURT: Just a minute. Just wait a minute when he asks you questions.

MR. HUNEVOL: Your Honor, I move to strike that former answer.

THE COURT: Motion denied; Objection is overruled. (Exception No. —)

Q What, if anything, did you do after that?

MR. HUNEVOL: Object.

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

A Do you mean whenever we went to the back of the house?

Q Yes.

A We went in the house, and we were forced out.

Q Which house are you referring to, Mr. Benton?

A I am referring to this house next to Mike's house on the 6th Street side.

MR. BALLANCE: Move to strike.

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

Q How did you make entrance into that house?

MR. BALLANCE: Object.

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

A We made entrance in this house through the back. We could not go in the front. We went in through the back.

~~Q~~ Was that house on fire when you went into it?

~~A~~ There was just a small portion of this house that was on fire. We went in to extinguish it.

Q Where was the fire?

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

A It was on the front end of the house.

MR. BALLANCE: Motion to strike.

THE COURT: Denied. (Exception No. —)

Q While you were in the house, being the first house on the side of Mike's Grocery - ?

MR. BALLANCE: Objection.

THE COURT: Overruled. (Exception No. —)

A We was in there and we heard gunfire. We was in the house and we had to come out.

MR. HUNEVOL: Move to strike.

THE COURT: Denied. (Exception No. —)

Q How many other persons were din that house beside yourself?

MR. BALLANCE: Object.

THE COURT: Overruled. (Exception No. —)

A I don't know, but there was, more than myself, I would say at least maybe 4 or 5.

~~Q~~ Were they firemen?

~~A~~ Yes, sir.

MR. BALLANCE: Move to strike.

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

Q Where did you go to once you left that house besides Mike's Grocery?

MR. BALLANCE: Object.

THE COURT: Overruled. (Exception No. —)

A We left the house, pulled back in this area where tin garage was.

Q What, if anything, occurred then?

MR. HUNEVOL: Objection.

THE COURT: Overruled. (Exception No. —)

A We had to stay back in that area and do the best we could with what we had with our hose so that we could try to save this house.

MR. BALLANCE: Move to strike.

THE COURT: Denied. (Exception No. —)

Q What, if anything, did you do?

MR. HUNEVOL: Objection.

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

A We kept water on the house.

Q What about the third house at that time, Mr. Benton? What was its condition?

MR. BALLANCE: Object.

THE COURT: Overruled. (Exception No. —)

A The third house - that is the second two-story house - that third house was not on fire at the time.

~~Q What occurred then, Mr. Benton?~~

~~A Well this second house it was burning and then the next house to it, which was a two-story house, it caught fire.~~

MR. BALLANCE: Move to strike.

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

Q What happened then?

MR. HUNEVOL: Objection.

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

A This second house - I mean, we were still back there with our lines and we forced actually several times out; and so whenever they started shooting we couldn't stay.

~~MR. HUNEVOL: Move to strike.~~

~~MR. BECTON: Move to strike.~~

~~THE COURT: Sir?~~

~~A Whenever they were shooting we couldn't stay.~~

~~MR. HUNEVOL: Motion to strike.~~

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

~~MR. BECTON: Move to strike.~~

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

Q How many firemen were back in that area you say the shooting occurred?

MR. HUNEVOL: Objection.

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

A I do not know exactly how many by number.

Q Do you know how many lines with hoses you had at that time?

A We had one and there was one further down the second and third house.

~~Q What happened then, Mr. Benton?~~

~~A~~ Well I stayed right there at the second house mostly. At the first house next to the grocery store, that is where I stayed at.

Q Did you hear any further gunfire during the evening after that?

MR. HUNEVOL: Object.

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

A No, I didn't.

Q And approximately what time did you leave, Mr. Benton?

MR. BALLANCE: Object.

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

A I left whenever everything was over and we taken up the hose. I would say I was there from 11:30

to - I'd say about 3 hours roughly.

MR. BALLANCE: Move to strike.

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

Q Could you tell where the gunfire was coming from;
in what direction?

MR. HUNEVOL: Objection.

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

A Yes, sir; the gunfire was coming back south right
in this area here (Pointing)

MR. HUNEVOL: Move to strike.

MR. BECTON: Move to strike.

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

A And then back of the house back in this area here.
(Pointing)

MR. HUNEVOL: Move to strike.

MR. BECTON: Move to strike.

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

SOL. JOHNSON: That is all the questions we
have of this witness.

MR. BECTON: We move to strike the witness's
testimony.

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

CROSS EXAMINATION BY MR. BECTON:

~~Q~~ Did I understand you were off duty; you got a call
at home around 11 o'clock? *I was*

~~A~~ That is right.

~~Q~~ Got to Mike's around 11:30 Saturday night? *somewhere around*

~~A~~ Somewhere around that area.

~~Q~~ No further questions.

MR. HUNEVOL: Request limited instructions
for Mrs. Shephard.

THE COURT: Motion denied. *(Shephard...)*

MR. HUNEVOL: Move to strike entire testimony.

THE COURT: Motion denied. *(Deny...)* Everybody else re-

main here and remain seated. Members of the
jury, we are going to take about a 12 minute
recess. You retire to your room.

(The jury retired to the juryroom.)

(The Court recessed from 11:25 until 11:50 A.M.)

THE COURT: Now, ladies and gentlemen, because
of the noise it is so hard to hear in this
courtroom, I am going to ask no one leave the
courtroom until recess which will be approxi-
mately 1 o'clock. If anyone must leave I
want you to leave now. And, Mr. Sheriff, I
don't want anyone coming in until the recess.

It is so hard to hear, any noise prevents us from hearing the witnesses. Let the jury come in please.

(The jury returns to the courtroom.)

R. C. JORDAN, called as a witness on behalf of the State,

being duly sworn, testified as follows:

DIRECT EXAMINATION (BY SOL. JOHNSON:)

~~Q State your name, please, sir.~~

~~A R. C. Jordan.~~

~~Q By whom are you employed, ^{key} sir?~~

~~A Wilmington Fire Department.~~

~~Q How long have you been with the Wilmington City Fire Department?~~

~~A Five years and five months.~~

~~Q And did you have the occasion to go to 6th Street and Ann Street on February 6, 1971?~~

~~A I did.~~

MR. BALLANCE: Object.

THE COURT: Objection overruled. ^(obj. overruled) When the

~~Solicitor asks a question, wait just a moment~~

~~until I can hear and pass on any objection~~

~~that might be imposed.~~

~~Q ^{I was} Were you working with the Fire Department during that period of time, during the month of February,~~

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~~A Yes, sir.~~

Q Approximately what time did you have the occasion to go to 6th and Ann Street?

MR. BALLANCE: Objection.

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

A Roughly around 11 P.M. I was off duty.

~~Q You were off duty?~~

~~A Yes, sir.~~

~~Q Approximately what time? You say about 11 P.M. is when you arrived there?~~ *It was*

~~A Yes, sir.~~

Q What, if anything, did you observe upon arriving at 6th and Ann Street?

MR. HUNEVOL: Object.

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

A Well Mike's Grocery was almost burned completely down. This house here was smoking, and this house here was smoking, and we were trying to keep this house cool, keep from catching on fire, and also this one the best we could. (Indicating on diagram.)

Q How do you do that?

MR. BALLANCE: Motion to strike.

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

MR. BALLANCE: Object. (*Exception No. —*)

A. We had hoses at this corner here and water curtain between this house and the store.

~~Q. What is that?~~

A water curtain
A. It is a hose that you set up - a hose that you set up between two buildings of fire and another object keeping the fire cool, keeping the fire from spreading to another building for protection.

Q. What happened then?

MR. HUNEVOL: Objection.

MR. BECTON: Objection.

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

A. This here store burned completely down, and we were keeping this house here - this house had caught. It was a tin garage in this area. We came in this side here with a couple of lines, and this house here finished burning down, and this house here caught, and there was quite a bit of shooting. We had to retreat out as much as 2 or 3 times.

MR. HUNEVOL: Move to strike.

MR. BECTON: Move to strike.

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

A. Finally after we caught these two houses the shooting stopped. The third house had caught fire, which is a two-story house. We made our way through

the bushes and trees in the back of this house to extinguish the fire.

MR. HUNEVOL: Move to strike.

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

Q Where were you when you heard this shooting you referred to?

MR. BALLANCE: Object.

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

A Up, down Mike's Grocery on Ann Street and also behind the garage and also in this area here. We were extinguishing fire in these two houses.

MR. HUNEVOL: Motion to strike.

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

Q Could you tell from what direction the firing and shooting was coming?

MR. HUNEVOL: Object.

MR. BECTON: Object.

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

A It was in the vicinity of the south side over in this area coming down. Seemed it was Ann Street, but while we was back here it seemed to be coming from the bushes and trees.

MR. HUNEVOL: Move to strike.

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

Q Why did you go to that general vicinity on that

Saturday night?

MR. BALLANCE: Objection.

THE COURT: Overruled. (Exception No. —)

A I was called in.

Q What, if anything, did you observe on Ann Street upon arriving there?

MR. BALLANCE: Objection.

THE COURT: Overruled. (Exception No. —)

A Mike's Grocery was burned almost completely down when I got there.

Q I am talking about the street itself.

MR. HUNEVOL: Objection.

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

A Well not really a whole lot: just pumpers and a lot of people, firemen and law enforcement.

Q How were you dressed?

MR. BALLANCE: Object.

THE COURT: Overruled. (Exception No. —)

A I was in full fire fighting gear.

MR. BALLANCE: Motion to strike.

THE COURT: Denied. (Exception No. —)

Q What were your responsibilities or what actually did you do that night?

MR. BALLANCE: Object.

THE COURT: Overruled. (Exception No. —)

A I was handling the hose.

Q Did you see any law enforcement officers there that night?

A ~~Yes, sir.~~

Q Where did you see them?

MR. HUNEVOL: Object.

THE COURT: Overruled. (Sustained No.)

A They was here on Ann Street and back in here, and they also came back there with us to give us as much cover as they could.

MR. FERGUSON: Move to strike the response.

THE COURT: Motion to strike is denied. (Sustained No.)

MR. HUNEVOL: Move to strike.

THE COURT: Motion denied. (Sustained No.)

Q Approximately how many firemen went with you back of Mike's Grocery and behind Mrs. Lela McKeithan's home here.

MR. HUNEVOL: Object.

THE COURT: Overruled. (Sustained No.)

A I'd say there are probably 8 or 10 altogether back there.

Q Were any law enforcement officers with you?

A Yes, sir.

MR. HUNEVOL: Object; move to strike.

THE COURT: Overruled. (Sustained No.)

Q Approximately how many law enforcement officers were with you?

MR. HUNEVOL: Object.

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

A I'd say roughly half dozen.

MR. HUNEVOL: Move to strike.

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

Q Approximately how long all told did the firemen stay behind Mike's Grocery and Mrs. Lela McKeithan's house?

MR. BALLANCE: Objection.

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

A Until it was completed?

~~Q Yes, sir.~~

~~A It was roughly somewhere up to 2: 2:30; 3 o'clock.~~

Q What total amount of time would that have been you spent back there?

~~A You mean altogether?~~

~~Q Yes, altogether.~~

A I'd say about three hours.

~~Q How long altogether did you stay at Mike's Grocery vicinity?~~

~~A About three hours and a half.~~

Q While you were in the tin garage or what, if any-

thing did you hear?

MR. HUNEVOL: Objection.

MR. BECTON: Objection.

THE COURT: Overruled. (Exemption No. —)

~~A. What did I hear?~~

~~Q. Yes, sir.~~

A. There was a little bit of shooting going on.

MR. HUNEVOL: Move to strike.

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

Q. Did you hear any objects hitting around you?

MR. FERGUSON: Object to the leading.

THE COURT: Objection sustained as to the leading.

A. Sounded like there was some pellets were shot hitting the trees timber.

MR. FERGUSON: Motion to strike.

THE COURT: Denied. (Exemption No. —)

Q. When you last observed this area what, if anything, did you observe about Mike's Grocery store?

MR. BALLANCE: Object.

THE COURT: Overruled. (Exemption No. —)

A. It was burned completely down.

Q. What about the wood frame house right immediately beside it?

A It was burned completely down and the next two houses.

Q What, if anything did you observe about the third home away from Mike's Grocery on 6th Street?

MR. HUNEVOL: Objection.

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

A Well it caught fire. The third house had caught afire, but we went in the back of it and extinguished the fire out. The shooting had stopped at -

MR. BALLANCE: Motion to strike.

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

Q What portion was burning in the third house?

A Up around under the eaves of it on the front portion, I'd say, on the left front side of it.

SOL. JOHNSON: Your Honor, that is all we have of this witness.

MR. HARMON: We'd like to move to strike all the testimony.

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

MR. HARMON: Have no questions.

MR. HUNEVOL: Request limited instructions.

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

MR. HUNEVOL: Move to strike all testimony.

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

MR. HUNEVOL: No questions.

SOL. STROUD: State will call Stanley Outlaw,
your Honor.

ERNEST STANLEY OUTLAW, called as a witness on behalf
of the State, being duly sworn, testified as follows:

DIRECT EXAMINATION (BY SOL. STROUD:)

~~Q~~ State your name to the Court, please.

~~A~~ Ernest Stanley Outlaw.

~~THE COURT: What is the last name?~~

~~A~~ Outlaw.

~~Q~~ Are you a member of the Wilmington City Fire Department?

~~A~~ Yes, sir.

~~Q~~ How long have you been a member of the Fire Department there, please?

~~A~~ Been two years in December.

~~Q~~ On February the 6th, the evening of February 6, Saturday, 1971, were you on duty as a Wilmington Fireman?

~~A~~ Yes, sir.

~~Q~~ On that evening, did you have occasion to answer a fire alarm of Mike's Grocery store at 6th and Ann Street?

~~A~~ Yes, sir.

~~Q~~ Where were situated when you received the alarm?

~~A~~ I was at headquarters, 4th and Dock.

~~Q~~ And how did you get to the intersection of 6th

and Ann?

A I was assigned to number 5 Company. We followed number 7 in.

Q ~~You~~^{We} were the second pumper truck in?

A ~~Yes, sir.~~

Q Upon arriving there what, if anything, did you observe with regard to Mike's Grocery store?

MR. BALLANCE: Objection.

THE COURT: Overruled. (Exception taken)

MR. HUNEVOL: Objection.

THE COURT: Overruled. (Exception taken)

A The fire at the time I got there was just beginning to break out of the windows at Mike's Grocery. So we set up two lines up in the street between the church and Mike's.

Q Now at the time that you arrived in that area what, if anything, did you hear?

MR. BALLANCE: Objection.

MR. BECTON: Objection.

THE COURT: Overruled. (Exception taken)

A Sounded like had gunfire coming from the south, small caliber, and a few shotgun blasts sounded like.

MR. HUNEVOL: Move to strike.

MR. BECTON: Move to strike.

THE COURT: Motion denied. (Exception taken)

Q Now were you in full fire fighting gear at this time?

MR. BALLANCE: Object.

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

Q When you came in on the second truck did the truck have sirens or lights on it?

MR. BALLANCE: Object.

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

A No, sir.

Q Do you know why?

MR. HUNEVOL: Objection.

MR. BECTON: Objection.

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

A I would imagine -

MR. HUNEVOL: Objection.

MR. BECTON: Objection.

THE COURT: Objection sustained as to what he imagines.

Q After you arrived there and observed the fire and heard the gunshots, what, if anything, did you do?

MR. HUNEVOL: Objection.

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

A Well when we first set up we had to pull back. Our officers had us to pull back to the pumper because of the gunfire. Then later on we went

back down into the street and tried to save the exposures around Mike's because it was too late to save Mike's.

MR. HUNEVOL: Motion to strike.

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

Q And then what were your responsibilities on this particular evening?

A Nozzle man; hose man.

~~Q~~ You were managing the nozzle?

~~A~~ Yes, sir.

Q During that evening did you have occasion to go between the houses on Ann Street there?

MR. BECTON: Objection.

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

A Yes, sir; we went up in the alley behind the house directly behind Mike's and went to the tin garage and from -

~~Q~~ Would you point out on the diagram where you went to, please?

~~A~~ (Pointing) We came up this alley right here, and there was some fire in the front of the house directly beside Mike's. Our Lieutenant had us to go up into the house. There was gunfire. We had to pull back out into the garage.

MR. HUNEVOL: Move to strike.

MR. BECTON: Move to strike.

THE COURT: Motion to strike denied. *(Exemption No. 1)*

Q When you went with the crew into that one-story house next to Mike's, where did the crew go in the house?

MR. BALLANCE: Objection.

MR. BECTON: Objection.

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

A Crew went to the front room where the fire was in the attic, and I stayed at the back door.

Q Now during the time that you were at the back door, what, if anything, did you hear?

MR. HUNEVOL: Object.

MR. BECTON: Object.

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

A I heard gunfire and it sounded like pellets or small caliber shells hitting the side of the house, and I heard somebody yell, "They are shooting again." I passed the word on up, and we pulled out.

MR. HUNEVOL: Move to strike.

MR. BECTON: Move to strike.

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

Q Could you tell from what area the gunfire was coming?

MR. HUNEVOL: Objection.

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

A It sounded like it was coming from - there is some brush and woods behind the third house. It sounded like it was coming from that direction.

MR. HUNEVOL: Motion to strike.

MR. BECTON: Motion to strike.

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

Q When you pulled out of the first house as the result of receiving gunfire, where did you go?

MR. BALLANCE: Objection.

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

A There is a fence right beside it. We went over into that and into the garage.

~~Q Into what garage?~~

~~A There is a garage, tin garage right around this area, and we pulled out and most of us went into that and the fence beside that.~~

~~THE COURT: Sir?~~

~~A There is a fence and a stone wall right here, a real low stone wall, and we pulled out behind that.~~

MR. BECTON: Move to strike.

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

Q What, if anything, did you do during the time that you were in the tin garage area?

MR. HUNEVOL: Objection.

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

A We tried to fight the fire the best we could from there.

Q And why did you fight the fire from the tin garage area as opposed to some other location?

MR. HUNEVOL: Objection.

MR. BECTON: Objection.

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

A We had better cover there from the gunfire.

MR. HUNEVOL: Move to strike.

MR. BECTON: Move to strike.

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

Q During the time that you were in the tin garage area, what, if anything, did you hear while you were attempting to fight the fire in those houses?

MR. HUNEVOL: Objection.

MR. BECTON: Objection.

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

A Sounded like maybe a .22, small arms fire.

MR. HUNEVOL: Move to strike.

MR. BECTON: Move to strike.

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

Q From the same area that you have described before?

MR. HUNEVOL: Object.

THE COURT: Overruled. (Exception No. —)

A Yes, sir.

Q After sometime did the gunfire subside?

A Yes, sir.

MR. BALLANCE: Object.

THE COURT: Overruled. (Exception No. —)

Q What, if anything, were you able to do at that time?

MR. BALLANCE: Object.

THE COURT: Overruled. (Exception No. —)

A At that time this house had almost completely been destroyed, and this one was right far gone. The fire had spread into the third one, the best I could tell; and two other firemen and I took a 2 and a half inch hose and did the best we could on the first two houses; and the rest of the crew went on to the third one.

Q There was no more gunfire after that?

A No, sir.

MR. BALLANCE: Object.

THE COURT: Overruled. (Exception No. —)

Q How long all told were you there fighting the fire at Mike's store?

MR. BALLANCE: Object.

THE COURT: Overruled. (Exception No. —)

A I'd say 4 to 5 hours.

SOL. STROUD: The State has no further questions of this witness. Tender him for cross examination.

MR. HARMON: Move to strike all testimony of the witness.

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

MR. HARMON: No questions.

MR. HUNEVOL: Your Honor, request limiting instructions.

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

MR. HUNEVOL: Move to strike all testimony of the witness.

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

SOL. STROUD: State will now call Lt. Eason of the Wilmington Fire Department, your Honor.

MR. FERGUSON: We object to the testimony of this witness.

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

THOMAS D. EASON, called as a witness on behalf of the State, being duly sworn, testified as follows;

DIRECT EXAMINATION BY SOL. STROUD:

Q — State your name, please, sir.

~~A~~ Thomas D. Eason.

~~Q~~ And are you ^{I am} a Lieutenant with the Wilmington Fire Department?

~~A~~ Yes, sir.

~~Q~~ How long have you been a member of the Wilmington Fire Department, please, sir?

~~A~~ December 16 will be twenty years.

~~Q~~ During what time of that have you been a Lieutenant?

~~A~~ Approximately five years.

~~Q~~ Now, ^{I was} were you on duty on the evening of February 6 which was a Saturday, 1971?

~~A~~ Yes, sir.

~~Q~~ Where were you on duty, please?

~~A~~ Fourth and Dock, headquarters.

~~Q~~ On that particular evening did an alarm ^{did} come in with regard to a fire at Mike's Grocery store at 6th and Ann?

~~A~~ Yes, sir.

~~Q~~ Did you go with other firemen to answer the alarm?

MR. BALLANCE: Objection.

THE COURT: Overruled. (Exception No. —)

~~A~~ Yes, sir; I was in charge of number 5 Company that night.

~~Q~~ How did you get there? Were you in a car or on a

truck?

A I was in a truck number 5 Company; came down 4th; caught a plug at 5th and Ann and laid the line to Mike's Grocery.

~~Q Would you point out where 5th and Ann is on the diagram, please?~~

~~A (Points) Cut a plug here and laid a line up in here. We were right behind number 7 Company.~~

Q Now at the time you arrived in that area and were laying lines down Ann Street, what, if anything, did you hear?

MR. HUNEVOL: Objection.

MR. BECTON: Objection.

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

A We heard gunfire from this area in here.

MR. HUNEVOL: Move to strike.

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

Q And as a result of hearing the gunfire what, if anything, occurred? What, if anything, happened?

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

A I didn't understand.

Q As the result of hearing the gunfire, what, if anything, did you do?

MR. HUNEVOL: Objection.

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

A The store was pretty well on the way here burning; and we had two lines laid here. Capt. was on one line. I was on this line in here. Wasn't much we could do. We couldn't get to the corner. We were throwing water on this store here; and if we could have got around this corner, I believe we could have saved part of the store.

MR. BALLANCE: Motion to strike.

MR. BECTON: Move to strike.

THE COURT: Motion to strike d-nied. *(Exception No. —)*

Q What was your answer, please, sir? What did you just say?

MR. BALLANCE: Object.

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

A I said I believe if we could have got around here and got a line in here that we could have saved part of the store. I mean, it would have been probably total loss, but been something left; and this house would have been left.

MR. BECTON: Motion to strike.

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

Q Why did you not go around on the 6th Street side of Mike's Grocery?

MR. HUNEVOL: Objection.

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

A Because there was gunfire coming from this area in here by that time.

~~Q Now at the time that you were there,~~ Upon arriving I did you have occasion to observe police officers on the east side of 6th Street across from Mike's?

~~A Yes, sir.~~

Q What, if anything, did you observe about them at that time?

MR. HUNEVOL: Objection.

THE COURT: Overruled. *(objection overruled)*

A Well at that time as soon as we got there and were letting our lines up I seen the boy that was shot laying here. (Indicating on the diagram)

~~Q You saw what?~~

~~A~~ The boy that had been shot. Police officer was leaning over him. And, of course, we asked for police protection back in here; and I believe there was a few policemen in this area.

MR. HUNEVOL: Move to strike.

MR. BALLANCE: Move to strike.

THE COURT: motion denied. *(objection overruled)*

~~Q~~ Now ^Q During the course of the evening did you have occasion to go between the house on Ann Street there?

~~A~~ Yes, sir; ^A we came in through here through this shed; and we got our lines in this first house.

In fact, the fire was just starting in this house. We were tearing the ceiling out and practically had the fire out; and about that time some shots were hitting the house.

MR. HUNEVOL: Move to strike.

MR. BECTON: Move to strike.

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

A And one of the men hollered that they were shooting at us in the house. So I told my men to "Let's get out."

MR. HUNEVOL: Move to strike.

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

A So we came to the back of this house and there was firing in these clumps of bushes over here; went in the shed and we left our line in there, hose, and pulled it from the shed the best we could. For a period of time we threw water from this shed as best we could on this house. (Indicating)

MR. BECTON: Move to strike.

THE COURT: Denied. (Exception No. —)

Q And later during this time did the gunfire subside?

MR. HUNEVOL: Objection.

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

A It did subside a little bit. Now I heard the shooting.

In fact, I heard it the whole time I was there back in this area. It did stop enough so we could get in here and get a little water on this house, the second house, and finally get in the third house and stopped it. Went in the upstairs and stopped the fire.

MR. HUNEVOL: Move to strike.

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

Q ~~Were you~~ ^{*in*} in full fire fighting gear at this time,

~~-Lt.?~~

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

Q Lt., I hand you what has been admitted into evidence as State's Exhibit number "25", and ask if you can identify that, please, sir.

MR. BALLANCE: Objection.

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

A Yes, sir.

Q What is it?

MR. BALLANCE: Objection.

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

A This is a picture of part of my Company here, and this is part of number 7 Company right in here.

Q ~~At what~~ ^{*The*} location?*is*

~~A~~ At Mike's Grocery. *←*

Q Is that a fair and accurate representation of the fire at Mike's Grocery on the evening of Saturday, February 6, 1971?

A Yes, sir.

MR. BALLANCE: Object.

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

Q Would you show that photograph to the jury, please?

MR. BALLANCE: Objection.

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

Q And to the defense table, please?

MR. BALLANCE: Objection.

THE COURT: Overruled.

SOL. STROUD: State has no further questions of this witness, your Honor. Tender him for cross examination.

MR. HARMON: Move to strike all the testimony of the witness.

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

MR. HARMON: No questions.

MR. HUNEVOL: Request limiting instructions as to Mrs. Shephard.

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

MR. HUNEVOL: Move to strike everything.

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

SOL. STROUD: Your Honor, may the firemen called here to testify this morning be excused?

THE COURT: Yes, sir.

SOL. STROUD: May it please the Court, the State will call Capt. Corbett to the stand.

JACK H. CORBETT, called as a witness on behalf of the

State, being duly sworn, testified as follows:

DIRECT EXAMINATION (BY SOL. STROUD:)

~~Q~~ State your name to the Court, please.

~~A~~ Hack H. Corbett.

~~Q~~ You are a resident of Wilmington?

~~A~~ Yes, sir.

MR. FERGUSON: Let the record show we object to the testimony of this witness.

THE COURT: Objection overruled. *(Explains Mr. —)*

~~Q~~ Are you a member of the Wilmington Police Department?

~~A~~ Yes, sir.

~~Q~~ What is your position?

~~A~~ I am a Captain in charge of Planning and Training.

~~Q~~ And how long have you been a member of the Wilmington Police Department?

~~A~~ This coming November the 23d will be 23 years.

Q Capt. Corbett, were you on duty on the morning of Monday, February 8, 1971?

A Yes, sir.

MR. HUNEVOL: Objection.

MR. BECTON: Objection.

THE COURT: Overruled. *(Exception taken)*

A Yes, sir.

Q And on that morning did you have occasion to go to the Gregory Congregational Church between 6th and 7th on Nun Street?

MR. HUNEVOL: Objection.

MR. BECTON: Objection.

THE COURT: Overruled. *(Exception taken)*

A Yes, sir.

Q And what was your occasion for going to the Gregory Congregational Church on that particular morning, please, sir?

MR. BALLANCE: Objection.

MR. BECTON: Objection.

THE COURT: Overruled. *(Exception taken)*

A We were going there to search for any persons that may be there or any other physical evidence that may be there.

MR. HUNEVOL: Move to strike.

THE COURT: Motion to strike denied. *(Exception taken)*

Q Who went at this time?

MR. HUNEVOL: Object.

THE COURT: Overruled. *(Sustained)*

A I was. I may need to clarify this. At that time I was Lieutenant in charge of a shift at Police Headquarters Patrol Division. Lt. L. S. Todd was the officer in charge of that particular shift at that particular time, but he and I and Sarg. Bass who was Field Sarg., along with members of the N. C. National Guard went to the church.

MR. BALLANCE: Move to strike.

MR. BECTON: Move to strike.

THE COURT: Motion denied. *(Sustained)*

Q And how did you approach the church?

MR. BALLANCE: Object.

MR. HUNEVOL: Object.

THE COURT: Overruled. *(Sustained)*

A Lt. Todd, Sarg. Bass and myself met elements of the N. C. National Guard in the 2 hundred block of Ann, 9th and Ann, where we had a conference with the Colonel who is Commander of the National Guard. At that time he advised us of his -

MR. BALLANCE: Objection.

MR. HUNEVOL: Objection.

THE COURT: Objection sustained.

Q As a result of what he advised what occurred?

A As a result of what I saw, half of his men proceeded west on Ann Street and turned south on 6th. The car that I was in was following the A P C that the Colonel was in.

Q What is an A P C?

MR. HUNEVOL: Objection; move to strike that former testimony.

THE COURT: Motion denied. *(Sustained)*

A It is an armoured personnel carrier.

MR. BALLANCE: Move to strike.

MR. BECTON: Move to strike.

THE COURT: Motion denied. *(Sustained)*

Q ~~Go ahead please.~~

A And we turned south on 8th Street and proceeded two blocks to Nun and then turned westward to Nun Street to the intersection of 7th and Nun where we were temporarily stopped due to the fact there was storm drain tile, wire fence in the intersection.

Q Would you show the intersection?

MR. HUNEVOL: Move to strike. Object to the question.

THE COURT: Motion denied. *(Sustained)*

Q Would you show the intersection on the diagram and where the National Guard came in?

A Yes, sir.

MR. HUNEVOL: Object.

THE COURT: Overruled. *(Exception No. 7)*

A We were approaching from this way and the storm drain tile and the fence and debris was in this section on this side of the intersection.

MR. HUNEVOL: Move to strike.

MR. BALLANCE: Move to strike.

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

Q Now let me ask you at this time. Were there other members of the Wilmington Police Department present with the National Guard at this time?

MR. FERGUSON: Objection.

MR. HUNEVOL: Objection.

THE COURT: Overruled. *(Exception No. 7)*

A Yes, sir; they were following in a car behind us.

Q And how were you attired at this time?

MR. FERGUSON: Objection.

MR. HUNEVOL: Objection.

THE COURT: Overruled. *(Exception No. 7)*

A I was in my regular police uniform with a U. S. Marine Corps flack jacket over it and a rain coat.

MR. FERGUSON: Move to strike that, Judge.

MR. HUNEVOL: Move to strike.

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

Q What, if any kind of head gear did you have?

MR. HUNEVOL: Objection.

MR. FERGUSON: Object.

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

A I don't recall.

Q Now how about the National Guardsmen? How were they attired, please?

MR. FERGUSON: Objection.

MR. HUNEVOL: Objection.

THE COURT: Sustained.

Q Did you clear the intersection there at 6th and Nun Street?

MR. FERGUSON: Objection.

MR. HUNEVOL: Objection.

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

MR. FERGUSON: To the form of the question.

A At 7th and Nun. Yes, sir; we did. The A P C carrier came to the left and pushed some of the tile out of the way. We ran up on this curb slightly and came in here and stopped right in this area here.

MR. FERGUSON: Move to strike.

MR. HUNEVOL: Move to strike.

THE COURT: Motion denied. *(Exception No. 3)*

Q What, if anything, occurred at that time?

MR. HUNEVOL: Object.

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

A. Prior to our entering while we were there, there was a National Guardsman with a hand P A system that was advising the people -

MR. BALLANCE: Objection.

THE COURT: Objection sustained.

A. He was making announcement -

MR. FERGUSON: Object; move to strike.

THE COURT: Motion to strike allowed.

A. We got out of the vehicle that I was in. The National Guard dismounted from their vehicle and we approached Gregory Church.

MR. FERGUSON: Move to strike.

MR. HUNEVOL: Move to strike.

THE COURT: Motion to strike denied. *(Exception No. 2)*

Q. What, if anything, occurred at that time?

MR. FERGUSON: Object.

MR. HUNEVOL: Object.

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

A. We started up to the front of the steps. At that time a colored male approached from 7th Street and came up to me and told me -

MR. FERGUSON: Objection.

MR. HUNEVOL: Objection.

THE COURT: Members of the jury, would you retire to your room, please?

(The jury retired from the courtroom.)

DIRECT EXAMINATION BY SOL. STROUD:

Q Did the gentleman identify himself?

MR. HUNEVOL: Objection.

THE COURT: Overruled. *(Skeptical sound)*

~~A Yes, sir.~~

~~Q As whom?~~

A He said that he was Mr. Bryant and that he was connected with the church.

~~Q Did he call you by name?~~

~~A Yes, sir; he called me Lt. Corbett or Mr. Corbett. Excuse me. Mr. Corbett.~~

~~Q What did he say?~~

~~A I told him that we wanted to go into the church and that we had a search warrant; and he says, "YOU don't need a search warrant, Mr. Corbett. You are welcome to come in. I have a key." At that time *Mr. Bryant* he unlocked the door and we went in.~~

~~Q He unlocked the door?~~

~~A Yes, sir.~~

~~Q That was Mr. Bryant?~~

~~A Yes, sir.~~

~~Q~~ Is ^Hhe here in the courtroom now?

~~A~~ Yes, ^Ksir.

~~Q~~ Can you point him out, please?

~~A~~ He is back over here on the right wearing a pair of glasses, wearing a brown suit, sitting in the last center section.

~~Q~~ And ^Aafter Mr. Bryant opened the door to the church, then what, ~~if anything, occurred?~~

~~A~~ Lt. Todd, myself, Lt. Bass, the Colonel with the National Guard, Mr. Bryant - there was quite a few newsmen around, newspaper people, T V people taking pictures. We did not allow them into the church. we went into the sanctuary part of the church. We made a cursory search of the sanctuary. We went back to the vestibule. As you enter the front door to the right you enter the vestibule and to the right is a small room. We then went into this small room; looked about in there; went up a narrow flight of stairs. Just one person could get up these steps at the time; and went up to a belfry section of the front of Gregory Church. On our arrival in there there was a small room that I would say about 10 feet long and about 4 feet wide or 5 feet wide; and there was approximately 5 or 6 chairs in a semicircle facing the window that opened out onto

Nun Street or the 6 hundred block of Nun Street.

Q Let me stop here at this point. As a result of your search of the church you found several items of physical evidence. Is that correct?

A We observed them; yes, sir; found them.

~~Q Both in the church and in the basement of the church.~~

~~A Yes, sir.~~

~~Q And you also searched Rev Templeton's house. Is that correct?~~

~~A Yes, sir.~~

~~Q And who gave you entrance or admitted you into Rev. Templeton's house?~~

~~A A Mr. Butler who identified himself as one of the members of Gregory Church.~~

~~Q And he opened the door for you to go in?~~

~~A Yes, sir.~~

~~Q And as a result of going into Rev. Templeton's house you found several items of physical evidence also.~~

~~Is that correct?~~

~~A That is correct.~~

~~Q And was there anyone in the church or in Rev. Templeton's house during any of this time that you went in?~~

~~A No, sir; other than us.~~