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Q Were ^B both buildings ^{were} locked before you gained entrance?

A ~~Yes, sir.~~

Q ~~Now that was Mr. Williams H. Butler that admitted~~
~~you. Is that correct?~~

A ~~Yes, sir.~~

Q ~~And during the time that you ^{June} were searching both the church and the Rev. Templeton's house and while pieces of evidence were being found they were photographed?~~

A ~~Yes, sir.~~

Q ~~And collected?~~

A ~~That is correct.~~

SOL. STROUD: Your Honor, this is all the questions I have. I presume we are in a voir dire at this time. I didn't know.

THE COURT: Do you gentlemen want to ask any questions of this witness?

CROSS EXAMINATION BY MR. FERGUSON:

Q ~~LT. Corbett, was Monday February 3~~ ^{was} ~~the first time~~
~~you had gone there to the church?~~

A ~~Gone to that church?~~

Q ~~Yes, sir.~~

A ~~Yes, sir.~~

~~Q~~ Who secured the search warrants that you say you had?

~~A~~ Sarg. J. F. Bloomer.

~~Q~~ Sarg. J. F. Bloomer?

~~A~~ Yes, sir.

Q Do you have a copy of that search warrant now?

A The Solicitor has it.

MR. FERGUSON: I'd like to see a copy of it please.

(Sol. Stroud handed paper writing to Mr. Ferguson.)

~~Q~~ Do I understand that you advised Mr. Bryant that you had a warrant to search the church?

~~A~~ Yes, sir.

Q Do I further understand that you also advised Mr. Butler that you had a warrant to search Rev. Templeton's house?

A I don't recall that I advised him about Mr. Templeton's house, but I recall telling him I had a warrant to search the church.

~~Q~~ Now at the time you advised him of this I believe that you were being backed up by an armored car, *isn't it?*

~~Or what do you call it? A P D?~~

~~A~~ A P C, yes, sir.

~~Q And that was clearly an Army vehicle, Police vehicle
of some type?~~

~~A It was a National Guard vehicle.~~

~~Q And there were other policemen on the scene there
also?~~

~~A That is correct.~~

~~Q ^{There were 6 to 8.} Approximately how many policemen would you say were
on the scene?~~

~~A Six to eight.~~

~~Q ^T Six to eight policemen. Were they dressed in police
uniforms?~~

~~A Yes, sir.~~

~~Q Were they armed?~~

~~A Yes, sir.~~

~~Q How were they armed?~~

~~A With their side arms and I am sure one or two had
shotguns. Yes, sir; several shotguns.~~

~~Q And was there an armored tank somewhere in the area?~~

~~A ^{Yes} No, sir; there was no tank as I know a tank; just
two armored personnel carriers which you can close
up.~~

~~Q Would you describe those personnel carriers to me,
please?~~

~~A An armored personnel carrier can be completely closed~~

down by hatches and has a tread like a caterpillar tractor or tank and runs on that tread and has hatches that can open up. The driver can look out or close it down.

Q The same kind of vehicles that is used in the Army for active impact when you are getting ready to attack something?

A I have seen pictures; yes, sir. I have never been in one.

Q ~~I haven't either~~ but it looks something like a look,
tank?

A ~~Yes, sir.~~

Q ~~Where were these two A P C's located?~~ *One of the* *was*

A ~~One was in the column that I was in.~~

Q ~~Where was that?~~

A ~~It came off of 8th Street down to Nun and the other one was out in this intersection or in this area here of 5th and Nun.~~

Q ~~And these vehicles were clearly visible then from both the church and Rev. Templeton's house. Is that correct?~~

A ~~Yes, sir.~~

Q And they were trained on the church and Rev. Templeton's house. Is that correct?

A No, sir; one was pointing in the westwardly direction

toward 6th Street and the one that I was behind was headed down this way. (Indicating on diagram.)

Q Do you know what equipment these machines had on them or in them?

A I do not know what they had in them. I saw nothing in the way of weapons on the outside of them.

~~Q Do you know what the people who were in there had?~~

~~A They had what appeared to me to be M-1 rifles.~~

~~Q Did they also have (machine guns?)~~

~~A I did not see any~~

~~Q You saw several M-1 weapons?~~

~~A Yes, sir:~~

~~Q Do you know how many people were in each A P C vehicle?~~

~~A No, sir: I do not: but there were several. I can give you an estimate. That would be all it would be.~~

~~Q And I believe you said you yourself were dressed with flack vest and a raincoat?~~

~~A Yes, sir.~~

Q And you were looking very official out there that day, weren't you?

SOL. STROUD: Objection to that.

MR. FERGUSON: Withdraw that question.

~~Q Did anyone go up to the church with you?~~

~~A Yes, sir: Lt. Todd~~

~~Q~~ Excuse me. How was ^{he} dressed?

~~A~~ The same way I was.

~~Q~~ Who else ^(m) was with you?

~~A~~ Sarg. Bass

~~Q~~ How was he dressed?

~~A~~ The same way.

~~Q~~ Those were the only two who went up with you?

~~A~~ There was three officers and the Colonel from the National Guard. There was a Major from the National Guard and several other Guardsmen.

~~Q~~ Who went up with you?

~~A~~ Yes, sir.

Q And would you describe how the Colonel and his men were dressed, attired and equipped?

A They had on normal Army fatigues. The officers had on sidearms or pistols, .45's; and the other Guardsmen that were on the steps had their M-1 rifles.

Q Now it wouldn't have made one bit of difference what Mr. Bryant said about you all going in that church, would it?

SOL. STROUD: Objection.

THE COURT: Sustained. *(Accepts the...)*

Q It wouldn't have made one bit of difference what

Mr. Butler said about you going into Rev. Templeton's house.

SOL. STROUD: Objection.

THE COURT: Sustained. (*Exception*)

Q At the time you and the others went to search the church and Rev. Templeton's house you were under the impression that at least one of the defendants in this action, Rev. Ben Chavis, and other persons had been using the church and Rev. Templeton's house as a meeting place, were you not?

A Yes, sir.

Q ~~And your purpose in going there was to search for weapons or other things which you thought might be in the church. Is that correct?~~

A ~~Yes, sir.~~

Q ~~And you were under the impression that Rev. Chavis and the other persons who might have been using the church during the past week had made use of these weapons?~~

A ~~Yes, sir.~~

Q ~~On various occasions. Is that correct?~~

A ~~Yes, sir.~~

Q And your search was in effect directed against these people. Is that correct?

A It was to search the two buildings on Nun Street

for these things.

Q That you felt had been used by these people.

A They had been used by someone; yes, sir. I couldn't say who.

MR. FERGUSON: We have no further questions of this witness.

THE COURT: Mr. Hunevol, do you have any questions?

MR. HUNEVOL: No questions, your Honor.

SOL. STROUD: I'd like for the purpose of the voir dire to put up Mr. Bryant.

H. C. BRYANT, called as a witness on behalf of the State, being duly sworn, testified as follows in the absence of the jury:

DIRECT EXAMINATION (BY SOL. STROUD):

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

A ~~H. C. Bryant.~~

Q ~~In February of 1971 where were you living?~~

A ~~On South 7th Street in the three hundred block diagonally across from the church.~~

Q ~~And you were a member of Gregory Congregational Church at that time. Is that correct?~~

A ~~Yes, sir, I was.~~

Q ~~And you had a key to the church?~~

A ~~Yes, I did.~~



Q ~~Because you were~~ ^{was} the member that lived closest to the church?

A ~~That is right.~~

Q On the morning of Monday, February 8, 1971, did you observe the National Guard and police officers come into the area of the church there?

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

Q And as a result of observing that did you go to the church?

A ~~Yes, I went over and I approached Mr. Corbett and told him it was not necessary to break the doors down or anything. We had the key right there.~~

Q He told you he had a search warrant. Is that right?

A ~~Yes, to serve on any member of the church.~~

Q What did you tell him at that time?

A I would accept the warrant for Rev. Templeton. I think it was in Rev. Templeton's name.

Q Did you tell him that there was no need for a search warrant?

A ~~Yes, I did.~~

MR. FERGUSON: Object. ^(Templeton name)

Q What was your answer, please?

A Yes, I did.

Q And you opened the door. You had a key to the church

with you at that time. Is that right?

A Yes.

Q ~~And you~~ opened the door to the church?

A ~~Yes, I did.~~

Q ~~And you were~~ ^{I was} present while the church was searched.

A ~~Yes, sir, I was.~~

Q ~~And later I believe~~ ^{W. H.} Mr. Butler came up who was
Chairman of the Board of Trustees of the church.

~~Is that right?~~

A ~~That is right.~~

Q ~~Mr. W. H. Butler.~~

A ~~That is right.~~

Q ~~And I believe~~ ^{he} he had a key to Rev. Templeton's house.

A ~~That is true.~~

Q ~~And he~~ ^{he} opened the door for the search of Rev. Templeton's house.

A ~~That is right.~~

Q ~~Were you~~ ^{I was} present during the search of that building
also?

A ~~Yes, I was.~~

Q ~~Was anyone~~ ^{was} in either building at the time you opened
the doors?

A ~~No, sir.~~

Q How long had you known - he is now Capt. Corbett.

He is now Lt. Corbett - at the time? How long

had you known him?

A Since he was a patrolman.

~~Q~~ And that had been several years?

~~A~~ Several years.

Q Would you observe the defendants over here, please, sir? On that side of the courtroom over there. Any of those young men members of Gregory Congregational Church?

A Not to my knowledge, no.

~~Q~~ How long have you been a member of the church there

~~A~~ Approximately 10 years.

~~Q~~ I have no further questions.

THE COURT: Mr. Ferguson, do you have any questions of this witness?

CROSS EXAMINATION BY MR. FERGUSON:

~~Q~~ Were you under the impression when you went out there,

~~Mr. Bryant~~ that they were about to break into the church?

~~A~~ I was under that impression.

~~Q~~ And you were offering them the key to avoid that.

Is that correct?

~~A~~ That is true.

Q I have no further questions.

MR. HUNEVOL: I have no questions.

REDIRECT EXAMINATION BY SOL. STROUD:

Q You had no objection to them searching the church or Rev. Templeton's house at that time, did you?

A I did not have a key to Rev. Templeton's house. I did have one to the church. I didn't mind them searching at all.

~~Q~~ And you told them there was no need for a search warrant.

~~A~~ That is right.

Q At the time that you came up to the church, did you see any tools in the possession of any law enforcement officers or National Guardsmen that might be used to break down the doors of the church?

MR. FERGUSON: Objection.

THE COURT: Overruled. *(Says to witness)*

Q Such as an axe or -

A No, not visibly, no.

Q I have no further questions.

RECROSS EXAMINATION BY MR. FERGUSON:

Q Did you have any doubt in your mind about whether they were prepared to break in that church or not?

A I wouldn't say they were going to break into it. I figured they would get into it some kind of way.

Q No further questions.

THE COURT: Anything further for the State?
Is there anything for the defendant on the voir
dire?

MR. FERGUSON: If your Honor Please, we do have
a couple of matters we'd like to recall Lt.
Corbett to the stand for, just a couple of other
questions.

JACK H. CORBETT, recalled, having already been duly sworn,
testified as follows:

RECROSS EXAMINATION (BY MR. FERGUSON:)

Q I'll show you two paper writings, Capt. Corbett,
and ask you to familiarize yourself with them and
tell me whether or not you recognize what they are.

A Yes, sir.

Q ~~And would you identify them separately, please?~~

A ~~Yes, sir:~~ It is an affidavit to obtain a search
warrant. One is State versus Eugene Templeton,
609 Nun and State versis Eugene Templeton, 607 Nun.

Q ~~What was the address of the parsonage on Nun Street?~~

A ~~was~~ 607.

Q ~~What was the address of Gregory Congregational Church?~~

A ~~was~~ 609.

Q Do I understand then that you have affidavits for,
two affidavits, one for searching the premises of

the parsonage, Rev. Templeton's residence, and another for searching of the church, Gregory Congregational Church, located at 607 and 609 Nun Street?

A Yes, sir; and the search warrant is on the back of each.

Q ~~So you had two affidavits and two search warrants. Is that correct?~~

A ~~That is correct.~~

MR. FERGUSON: I'd like to have these marked and identified.

SOL. JOHNSON: Would you let the record reflect that is for voir dire only?

THE COURT: Let the record reflect that this a voir dire hearing and Exhibit is on voir dire, all of this in the absence of the jury.

(Defendant's Exhibits "7" and "8" marked for identification.)

Q For purposes of the record affidavit and warrant for 607 Nun Street is Defendant's Exhibit "7". Affidavit for 609 Nun Street is Defendant's Exhibit "8".

MR. FERGUSON: We would like to introduce the same into the record for purposes of the voir dire.

THE COURT: All right.

Q Looking again at Defendant's Exhibit "7" and "8" for purposes of this voir dire hearing, Capt. Corbett, are those the two warrants you had with you on the morning of February 8, 1971, when you went to the church and parsonage at 607 and 609 Nun Street?

A Yes, sir.

Q MR. FERGUSON: We have nothing further, if Your Honor please.

THE COURT: Anything further, Mr. Hunevol?

MR. HUNEVOL: No, sir.

THE COURT: Anything further for the State?

SOL. STROUD: No, sir.

THE COURT: There is nothing further on the voir dire?

MR. FERGUSON: No further evidence. We'd like to be heard.

THE COURT: All right.

MR. FERGUSON: If your Honor please, we would at this time move to suppress any further testimony relating to anything found or observed inside of Gregory Congregational Church or inside of the residence at 609 or 607 Nun Street on the morning of February 8, 1971. We would further move to suppress any evidence, files or otherwise that was obtained as a result

of the search of the church, Gregory Congregational Church, and the adjacent residence or parsonage and we would further move to suppress any testimony based upon that search of those premises. We would argue to the Court that the search of the church and the search of the premises was a search carried out pursuant to the affidavits and search warrants which we have introduced into evidence records on this voir dire. We would argue to the Court that both warrants are invalid under standards previously established by the U. S. Supreme Court, particularly in the case of Spinella vs. U S, which has set out the standards for warrants and other cases subsequent to that. The language of the warrants show that the affidavits to the warrants did not have sufficient basis for obtaining the warrants. There was no probable cause for the issuance of either warrant. The warrants were to be executed or were issued on or about the 8th or were to be executed on the 8th. They relate to events which allegedly occurred as far back as the third or fourth, all the way back to the third, fourth and second of February. The person who obtained the warrants

does not state anywhere in the affidavit that he had any personal knowledge or any reliable information of any weapons or anything of the sort being in the church at the time the warrants were obtained on the 8th of February. We might note that the warrants were obtained by the affiants to the warrants was James F. Bloomer of the Wilmington Police Department and he never at any point in this warrant states that he knows of any illegal material or evidence of crime being obtained in the church at the time this warrant was obtained. So we would argue that the warrants themselves are invalid. I think we may need to deal with another point here also, your Honor. Well, two other points and, of course, this matter came up this morning rather unexpectedly. We don't have all the citations we would present to the Court, but we think there is some relevant law we could show to the Court. Number 1, I feel the State ^{alleging} is / this is a Consent Search because Mr. Bryant said he opened the door for them and at some point said they didn't need a warrant. I think that here the principle established in - I don't have it right now - establishes the principle that where police officers go to a particular place with a warrant

and shows an array of authority that mere acquiescence to that cannot be considered consent under the circumstances. I think that is precisely the situation you have here where Capt. Corbett, Lt. Todd, several other members of the Wilmington Police Department went up to the church along with the Colonel from the National Guard with an A P C here and an A P C there and men in the A P C armed with weapons and flack jackets, raincoats, just a total array of authority so that almost anyone walking up to them having anything at all to do with the church would, of course, acquiesce and say, "Please come in.", which is exactly what Mr. Bryant did under the circumstances because he knew that no matter what he said that entry was going to be gained to the church premises anyhow. We would argue to the Court that this could not under any circumstances be considered a consent search. If it was a search carried out pursuant to the warrant, carried out that morning, the State has not shown there was any effort to obtain consent. Capt. Corbett's words were, "We have a search warrant to search the church." And at that apparently Mr. Bryant said he didn't need the warrant. We move to the next point I think we must talk about. Again, if given opportunity

we could show some relevant law to the Court. I think here that the relevant law will show that Fourth Amendment law which is what we are dealing with here is to be construed in light of the circumstances and it is a protection; it is a personal protection. It protects persons from the unreasonable search of their persons and places where they might be occupied. It determines whether or not a particular defendant has standards to challenge the search depends in each instance on the person against whom the search is directed. According to the testimony from the stand by Capt. Corbett, he said that he and his fellow officers knew that Rev. Chavis and other persons had been using the church during the week for various kinds of meetings and that they suspected that they had some weapons or dangerous devices there in the church and that was the purpose of the church search to see whether or not these things were there. The search was not conducted against the members of Gregory Congregational Church, not against the Trustees of Gregory Congregational Church, but against those persons the police suspected have been using the church for meetings and had been using the place to house dangerous weapons. Those are the persons

against whom the search it directed, as it turns out now, that search was directed not only to Rev. Chavis, but against each one of these defendants seated here. And I would argue to the Court that under these circumstances each of the defendants, and particularly Rev. Chavis, whether it was known to him at that time who he was, do have standing to object to the searches and the only case I can call to mind right now is Jones vs. U S. I could get it and show it to the Court. It is a case decided by the U S Supreme Court which deals with that very question. I will submit to the Court that under the circumstances the defendants do have standing to object to the search and do so object.

MR. HUNEVOL: I make the same motion.

THE COURT: It is 10 minutes after one and our lunch time starts at 1 o'clock. Let the jury come in. Everyone just remain here.

(The jury returned to the jurybox.)

THE COURT: Members of the jury, we are going to take a recess until 2:30. May I again caution you not to discuss these cases with anyone nor allow anyone to discuss them with you or in your presence. Do not discuss them among yourselves. Now again I instruct you not to read

any account of this trial if such should appear in the Press. Do not view or listen to any account over the television if such should appear. Do not listen to any account of this trial on the radio if such should appear. You go now, members of the jury, and come back at 2:30.

(The jury retired from the courtroom.)

THE COURT: I am repeating the order. No photographs to be taken in or about the courthouse or don the courthouse grounds; no photographs to be taken of any witness anywhere and no photographs to be taken of the jury anywhere. Also no television is to be taken anywhere on the premises of the courthouse or the courthouse lawn and no television to be taken of any witness in this trial or the jury. Take a recess until 2:30.

(The Court recessed from 1:13 until 2:30 P M.)

THE COURT: Let the jury come in. No, keep the jury out.

SOL. JOHNSON: We contend, recalling what Mr. W. H. Butler, Chairman of the Board of Trustees of Gregory Congregational Church, concerning February 6, 1971, when he went to Gregory

Congregational Church and he approached and went into the church and he saw the people and saw the defendant Ben Chavis who he saw the first time in his life. He told Ben Chavis that what they were doing at the church was wrong and he asked them to leave. We contend these defendants were trespassers. Mr. Butler testified as did Mr. Bryant none of these defendants are members of Gregory Congregational Church nor had been members of Gregory Congregational Church; that they have no standing whatsoever to object.

THE COURT: The Court finds as a fact that W. R. Butler, Chairman of the Board of Trustees of the Gregory Congregational Church went to the church on February 6, 1971, and saw numerous persons milling around the church and several in the church; that he met the defendant Chavis in the church and told the defendant Chavis that what they were doing was wrong and asked them to leave the church.

The Court further finds as a fact that none of the defendants were members of the Gregory Congregational Church on February 6, 1971, or at any subsequent time.

The Court further finds as a fact that the church officials had - that Mr. Butler nor any of the church

officials had given any authority to the defendants to hold any meeting that week.

The Court further finds as a fact that Mr. Butler returned to the area of the church on Sunday February 7 and that persons were still about the church.

The Court further finds as a fact that Capt. Corbett along with other officers and a detachment of the National Guard went to the Gregory Congregational Church on Monday, February 8, 1971, and upon arriving at the front door of the church Mr. Bryant, H. C. Bryant, a member of the Gregory Congregational Church, approached Capt. Corbett and told him that there was no need for a search warrant and then unlocked the doors to the church and accompanied the police officers and National Guard officers as they searched the church; that Mr. Bryant had known Capt. Corbett for several years.

The Court further finds as a fact that Mr. Butler, Chairman of the Board of Trustees, opened the parsonage and allowed the officers to search the parsonage.

The Court further finds that no one was at the church or the parsonage when the same was entered by the officers.

The Court further finds as a fact that Rev. Templeton, the possessor of the parsonage, was not there and that he is not a defendant in the trial of these cases.

The Court further finds that no member of the of the Gregory Congregational Church is a defendant in these cases.

The Court finds and concludes that the evidence obtained from the search of the church and the parsonage on February 8th is lawful and competent evidence in these cases. The motion to suppress is denied. Call the jury.

MR. FERGUSON: If your Honor please, let us note our exception to each and every finding of fact and conclusion of law, and we move for a mistrial at this point because of the prejudicial evidence that has gone before the jury regarding armored vehicles outside of the church; soldiers.

THE COURT: Motion denied. *(Disruption heard)*

JACK H. CORBETT, returned to the witness stand, and continued testifying as follows:

DIRECT EXAMINATION BY SOL. STROUD Continues:

Q Capt. Corbett, after you approached the Gregory,

Congregational Church on that Monday, February 8, 1971, did a member of that church approach you?

MR. FERGUSON: Object.

MR. HUNEVOL: Object.

THE COURT: Overruled. *(Sighs)*

A Yes, sir.

Q ~~Who was that?~~ *Who was that?*

A ~~Mr. H. C. Bryant.~~ *Mr. H. C. Bryant.*

Q ~~Do you see him here in the courtroom?~~ *Do you see him here in the courtroom?*

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

Q ~~Would you point him out, please, sir?~~ *Would you point him out, please, sir?*

A ~~Yes, sir; he is the gentleman sitting in the second row on this side with the glasses and brown suit.~~ *Yes, sir; he is the gentleman sitting in the second row on this side with the glasses and brown suit.*

Q Mr. Bryant, would you stand up just a moment, please, sir?

(Man stands.)

Q What, if anything, did he say to you at that time, please?

MR. FERGUSON: Objection.

MR. HUNEVOL: Objection.

THE COURT: Overruled. *(Sighs)*

A He called me by name and said, "Mr. Corbett, you can go in. There is no one in the church." I told him we had a search warrant. He said, "There is no need for it. I'll open the door and go in." And

we went in.

Q Did he have his key to the church?

A Yes, sir.

MR. FERGUSON: Object; motion to strike the previous answer.

THE COURT: Objection overruled; motion to strike denied. ~~(Sustained)~~

SOL. STROUD: May we approach the bench?

(Conference at the bench.)

THE COURT: Members of the jury, the Court reverses itself and sustains the objection of the defendants as to what Mr. Bryant said. You will disabuse your minds of that. Dismiss it from your minds as if you had never heard it. Do not consider for any purpose the testimony of what Mr. Bryant said.

Q As a result of what Mr. Bryant said to you, what, if anything, did he do, please, sir?

A He opened it.

MR. FERGUSON: Objection.

THE COURT: Overruled. ~~(Sustained No.)~~

A He opened the church door and we went in.

~~Q~~ Was the church door ^{was} locked?

~~A~~ Yes, sir.

~~Q~~ Did he have a key to the church door?

~~A~~ Yes, sir.

Q Who entered the church at this time?

MR. FERGUSON: Objection.

MR. HUNEVOL: Objection.

THE COURT: Overruled. *(Exception denied)*

A Myself, Mr. Bryant, Colonel with the National Guard whose name I do not recall, Lt. L. S. Todd, Sarg. Bass and possibly one or two other Guardsmen.

MR. HUNEVOL: Move to strike.

MR. FERGUSON: Move to strike.

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

Q Was anyone in the church at this time?

MR. FERGUSON: Objection.

THE COURT: Overruled. *(Exception denied)*

A No, sir.

Q Upon entering the church what, if anything, did you do?

MR. FERGUSON: Object.

MR. HUNEVOL: Object.

THE COURT: Overruled. *(Exception denied)*

A We checked out and searched the main assembly room or where the congregation sits.

Q Sanctuary?

A Sanctuary; yes, sir.

MR. FERGUSON: Move to strike.

MR. HUNEVOL: Move to strike.

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

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

MR. FERGUSON: Objection.

THE COURT: Overruled. *(Exception taken)*

A In the foyer of the church as you enter is a room to your right, and we then went into that room.

MR. FERGUSON: Move to strike.

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

A We then went up a narrow flight of stairs to a loft or attic part of the church that faces Nun Street.

MR. FERGUSON: Move to strike.

MR. HUNEVOL: Move to strike.

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

Q What, if anything, did you find up there, please, sir?

MR. FERGUSON: Objection.

MR. HUNEVOL: Objection.

THE COURT: Overruled. *(Exception taken)*

A We found either 5 or 6 metal chairs in a semicircle facing the windows that looked out onto Nun Street; and there were several empty .22 caliber shells on the floor there.

MR. FERGUSON: Move to strike.

MR. HUNEVOL: Move to strike.

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

Q And what was the position of the windows that those

chairs were facing, please?

MR. FERGUSON: Move to strike.

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

MR. HUNEVOL: Move to strike.

Q Capt. Corbett, I hand you what has been admitted in evidence as State's Exhibit number "6" and ask if you can identify that, please.

MR. FERGUSON: Objection.

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

A That is the picture of Gregory Congregational Church and the parsonage next door to it.

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

~~A This is the church and this is the parsonage.~~

~~(State's Exhibit "59" marked for identification.)~~

Q Capt. Corbett, I hand you what has been marked for identification as State's Exhibit number "59" and ask if you can identify that, please, sir.

MR. FERGUSON: Object.

MR. HUNEVOL: Object.

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

A Yes, sir; that is the loft in the attic part of the Congregational Church, Gregory Congregational Church, with the windows open facing out on Nun Street. That is the metal chairs that we saw up there in the semicircle.

MR. HUNEVOL: Motion to strike.

THE COURT: Denied. *(Signature)*

Q Is this photograph an accurate representation of the loft or belfry area of the church as you observed it on Monday, February 8, 1971, as you went in the church?

MR. FERGUSON: Objection.

THE COURT: Overruled. *(Signature)*

A Yes, sir; it is.

MR. FERGUSON: Move to strike.

THE COURT: Motion to strike denied. *(Signature)*

SOL. STROUD: The State moves this be admitted in evidence as State's Exhibit number "59".

MR. FERGUSON: Object. *(Signature)*

THE COURT: Members of the jury, State's Exhibit "59" is offered and received in evidence to explain and illustrate the testimony of the witness if you, the jury, finds that it does explain and illustrate the testimony of the witness and for no other purpose. It is not substantive evidence.

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

THE COURT: Yes, sir.

MR. FERGUSON: Objection. *(Signature)*

THE COURT: Objection overruled. *(Exception No. 1)*
(State's Exhibit "59" passed to the jury.)

Q Capt. Corbett, after being in the belfry or loft area, where did you then proceed?

MR. FERGUSON: Objection.

MR. HUNEVOL: Objection.

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

A We then went to the back down the steps and out the front and around to the rear to a basement area.

MR. HUNEVOL: Move to strike.

MR. FERGUSON: Move to strike.

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

Q Into the basement area of what?

A Gregory Church.

Q Did you go into the basement area?

MR. FERGUSON: Objection.

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

A Yes, sir.

Q And what, if anything, did you observe there, please, sir?

MR. FERGUSON: Objection.

MR. HUNEVOL: Objection.

THE COURT: Overruled. *(Exception No. 5)*

A As you enter a wooden door on your right, there is a window that had been boarded up and the board

had been knocked out; and on the left is a window that had been boarded up with the board knocked out. As you go into the door there is a sandy floor. There is a heating unit on your right, I would estimate, some 5 or 6 feet from the wall; and on your right was a chair, metal chair, what I would describe as an old type kitchen chair and leaning back against the heating element or heating unit. On your left was a stove, white enamel stove, with a blanket laying over the top of it. On the ground I observed several shotgun shells, empty revolver shells and shell box or two, empty boxes, and ammunition.

MR. FERGUSON: Move to strike.

MR. HUNEVOL: Move to strike.

THE COURT: Motion to strike denied. *(Skeptical)*

Q As a result of your observation did you then have contact with some other officers?

MR. FERGUSON: Objection.

MR. HUNEVOL: Objection.

THE COURT: Overruled. *(Skeptical)*

A Yes, sir; we did not touch anything and we called for a photograph and a search officer to collect and preserve the evidence.

MR. FERGUSON: Move to strike.

MR. HUNEVOL: Move to strike.

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

Q Who were they?

MR. FERGUSON: Objection.

THE COURT: Overruled. (Exemption No. —)

A Lt. Turner and Sarg. T. C. Hobbs.

MR. FERGUSON: Move to strike.

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

Q Both of the Wilmington Police Department?

A Yes, sir.

MR. FERGUSON: Objection.

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

A Yes, sir.

Q Now, Capt. Corbett, did you have occasion to then proceed at sometime after that to Rev. Templeton's house next door to Gregory Congregational Church?

MR. FERGUSON: Objection.

MR. HUNEVOL: Objection.

THE COURT: Overruled. (Exemption No. —)

A Yes, sir.

Q And was that building locked?

MR. FERGUSON: Objection.

THE COURT: Overruled. (Exemption No. —)

A Yes, sir.

Q And who opened that building?

MR. FERGUSON: Objection.

THE COURT: Overruled. *(Exception Made)*

A We had to wait some time. It seems like to me approximately 30 minutes until we could locate someone with a key. Mr. Butler - a Mr. Butler, who identified himself as one of the Trustees of the church, came to the scene and opened the door for us.

MR. FERGUSON: Move to strike.

MR. HUNEVOL: Move to strike.

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

Q Now with regard to Rev. Templeton's house did it - was the search officer and the photographer, were they -

A Would you repeat the question?

Q The Search Officer and the officer who they had to go into that house?

MR. FERGUSON: objection.

THE COURT: overruled. *(Exception Made)*

A Yes, sir; after we had gone in and looked around them to come to the parsonage also.

MR. FERGUSON: Motion to strike.

MR. HUNEVOL: Motion to strike.

THE COURT: Motion denied. *(Exception Made)*

Q After you went in to look, was anything touched

prior to the search officer and the photographer coming in there?

MR. FERGUSON: Objection.

THE COURT: Overruled. (Exception Not)

A. No, sir.

MR. HUNEVOL: Move to strike.

THE COURT: Motion denied. (Exception Not)

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

MR. FERGUSON: We would move to strike his testimony.

THE COURT: Motion denied. (Exception Not)

MR. FERGUSON: No questions.

MR. HUNEVOL: Request limiting instructions as to Shephard.

MR. COURT: Motion denied. (Exception Not)

MR. HUNEVOL: Move to strike the entire testimony.

THE COURT: Motion denied (Exception Not)

MR. HUNEVOL: I have no questions.

SOL. STROUD: State calls Lt. Turner, your Honor.

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

PENDER COUNTY

STATE OF NORTH CAROLINA

-vs-

GENJAMIN FRANKLIN CHAVIS

MARVIN PATRICK

CONNIE TYNDALE

JERRY JACOBS

WILLIE EARL VEREEN

JAMES MCKOY

REGINALD EPPS

WAYNE MOORE

JOE WRIGHT

ANN SHEPARD

TRANSCRIPT OF TESTIMONY

DAVID TURNER, called as a witness on behalf of the State,
being duly sworn, testified as follows:

DIRECT EXAMINATION BY SOL. STROUD:

Q ^{Jan} You are Lt. David Turner from the Wilmington Police
Department?

A Yes, sir.

Q You previously testified in this case?

A Yes, sir, I have.

Q ^{On} Lt. Turner, in February, more specifically February 8,
^{Jan} Monday, 1971, you were a Sargeant with the Wilmington
Police Department. Is that correct?

A That is correct, yes, sir.

Q And you had responsibilities as photographer with
the Record and Identification Division of the Wil-
mington Police Department?

A Yes, sir.

Q On that day did you have occasion to go along with
Sarg. T. C. Hobbs of the Wilmington Police Depart-
ment to the Gregory Congregational Church and the
parsonage of that church located next door?

MR. FERGUSON: Objection.

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

A Yes, sir; I did.

Q What was your occasion for going there at that time?

MR. FERGUSON: Objection.

MR. HUNEVOL: Objection.

THE COURT: Overruled. (Exception No. —)

A. I was asked to go make photographs.

MR. FERGUSON: Move to strike.

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

Q. Did you make a photograph of the belfry area that was admitted into evidence as State's Exhibit number "59"?

MR. FERGUSON: Objection.

THE COURT: Overruled. (Exception No. —)

A. Yes, sir; I did.

MR. HUNEVOL: Move to 1strike.

THE COURT: Denied. (Exception No. —)

Q. Now on that Monday did you have occasion to go into the basement of the church?

MR. FERGUSON: Objection.

THE COURT: Overruled. (Exception No. —)

A. Yes, sir; I did.

Q. Describe what you observed in the basement of the church.

MR. FERGUSON: Objection.

THE COURT: Overruled. (Exception No. —)

A. As we went in the door of the basement, which would be on the rear of the Gregory Congregational Church,

as Capt. Corbett previously stated, to the right was a heating plant with a dining room type metal chair leaning back against the heating plant and facing an open window. On the left was the stove that was covered with a blanket just below an open window. Down in the center part of the basement was located two saw horses with plywood boards laying across them. About a half way down and on the left of the basement was a pile of 2 by 4's laying in front of an open window. Down under the steps or porch part of the church and in the basement was located a piece of galvanized metal with several sticks of dynamite laying in it. About 8 or 10 feet from the entrance to the basement and on the right or west side of the building was located an open window with a wooden door blocking the open window. There was indication in the sand - There was no concrete or wood floor. It was sand or dirt. There was indication that there had been a lot of traffic, people on foot in and out of the building. Photographs was also made of this.

MR. FERGUSON: Move to strike.

MR. HUNEVOL: Move to strike.

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

Q. Now what procedure would you and Sarg. Hobbs use

when you were searching the basement and also over in Rev. Templeton's house?

MR. FERGUSON: Objection.

MR. HUNEVOL: Objection.

THE COURT: Overruled. (Exception No. —)

A. In the basement we used a counterclockwise search pattern. As we went in the door we started to our right and we worked all the way down that wall across the front and back down the other side.

MR. FERGUSON: Move to strike.

MR. HUNEVOL: Move to strike.

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

Q. After you photographed items what, if anything, did Sarg. Hobbs do?

MR. FERGUSON: Objection.

THE COURT: Overruled. (Exception No. —)

A. Sarg. Hobbs gathered this evidence, made a note of what it was, where it was taken from.

MR. FERGUSON: Move to strike.

MR. HUNEVOL: Move to strike.

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

Q. Now, Sarg., on that Monday did you observe the dynamite in the basement of the church?

MR. FERGUSON: Objection.

THE COURT: Overruled. (Exception No. —)

~~Q~~ Pardon?

A No, sir; I did not.

MR. FERGUSON: Move to strike.

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

~~Q~~ Did you photograph the area of the basement down there?

~~A~~ Yes, sir, Mr. Stroud, if I might - The lighting was very poor in this basement. Nor up near the front where the dynamite was located was dark, completely black. I photographed all down the side of the building and when we came to the open space underneath the porch I just set the camera on footage and shot. I did not see what was under there. I could not see. It was dark. Then we went on down the other side photographing.

MR. FERGUSON: Move to strike this, your Honor.

MR. HUNEVOL: Move to strike.

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

Q Now then, Lt. Turner, I hand you what has been received into evidence as State's Exhibit number "13" and ask if you can identify that.

A Yes, sir.

MR. FERGUSON: Object.

THE COURT: Overruled. (Exception No. —)

A Of Gregory Congregational Church and part of the

rear of the parsonage next door to it.

Q Is that a fair and accurate representation of the rear of the church as you observed it on February 8, 1971?

MR. FERGUSON: Object.

THE COURT: Overruled. (Exception No. —)

A Yes, sir; it is.

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

~~A~~ (Holding Exhibit so jury can see.) The Brick building is the rear of the Gregory Congregational Church. The white building with the asbestos shingles is the rear of the parsonage.

(State's Exhibit "60", "61", "62", "63", "64", "65" and "66" marked for identification.)

Q Lt. Turner, first of all let me hand you all of these photographs. If you will examine them, I'd like to ask you a question then. Lt. Turner, have you examined the photographs?

A Yes, sir.

Q With the exception of the photograph that is marked for identification as State's Exhibit number "61", did you take these photographs?

A All of the others I did; yes, sir.

MR. FERGUSON: Objection.

THE COURT: Overruled. (Exception No. —)

~~Q~~ You did?

~~A~~ Yes, sir?

Q What means were you using?

MR. FERGUSON: Objection.

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

~~A~~ What type equipment?

~~Q~~ Yes, sir?

A I was using 4 inch by 5 inch graphic camera, police equipment.

Q Did you have a flash attachment?

MR. FERGUSON: Objection.

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

A Flash attachment. Rapid camera with a bulb type flash attachment.

Q Lt. Turner, I hand you what has been marked for identification as State's Exhibit number "60" and ask if you can identify that, please, sir.

MR. FERGUSON: Objection. We'd like to voir dire this witness on the photographs.

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

A Yes, sir; I can.

~~Q~~ Please do so. What is it?

~~A~~ This is a photograph that was taken in the basement of Gregory Congregational Church just to the right of the entrance of the basement showing the portions

of the heating plant, the chair that was previously mentioned facing the open window.

MR. FERGUSON: Move to strike.

MR. HUNEVOL: Move to strike.

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

Q Is that photograph a fair and accurate representation of that area of the basement of the church as you found it on Monday, February 8, 1971?

MR. FERGUSON: Objection.

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

A Yes, sir; it is.

Q I hand you what has been marked for identification as State's Exhibit number "61" and ask if you can identify that, please, sir.

MR. HUNEVOL: Objection.

MR. FERGLSON: Object.

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

A Yes, sir. That is a photograph showing the rear window which is located just to the right of the entrance to the basement.

MR. FERGUSON: Move to strike.

MR. HUNEVOL: Move to strike.

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

A Showing the same chair that was in the other photograph; also showing several shotgun shells laying

on the floor and a wine bottle.

MR. FERGUSON: Move to strike.

MR. HUNEVOL: Move to strike.

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

Q *J* You did not take this photograph?

A ~~No, sir.~~

Q That is the only one of the photographs that you did not take? *J*

A ~~Yes, sir.~~

Q Is that photograph a fair and accurate representation of that area of the basement of the church as you found it on Monday, February 8, 1971?

MR. FERGUSON: Objection.

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

A Yes, sir; it is.

MR. FERGUSON: Move to strike.

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

Q I hand you what has been marked for identification as State's Exhibit number "62" and ask you if you can identify that.

MR. FERGUSON: Objection.

MR. HUNEVOL: Objection.

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

A Yes, sir. This is a window located on the west side of the church in the basement portion of the church,

one that I mentioned earlier showing the door, wooden door, that was laying up blocking the window.

MR. FERGUSON: Move to strike.

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

MR. HUNEVOL: Move to strike.

Q Is that photograph a fair and accurate representation of the area around that window as you have described as you found it on the day of Monday, February 8, 1971?

A Yes, sir.

MR. FERGUSON: Objection.

MR. HUNEVOL: Objection.

THE COURT: Overruled. (Exception No. —)

MR. FERGUSON: Move to strike.

MR. HUNEVOL: Move to strike his answer.

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

Q I hand you what has been marked for identification as State's Exhibit number "63" and ask you if you can identify that, please, sir.

MR. FERGUSON: Object to that.

MR. HUNEVOL: Objection.

THE COURT: Overruled. (Exception No. —)

A Yes, sir; this is on the left side of the basement as you come in from the entrance showing the rear window on that side with the stove that I mentioned

earlier with the blanket laying over it.

MR. FERGUSON: Move to strike.

MR. HUNEVOL: Move to strike.

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

Q Is that photograph a fair and accurate representation of that area of the basement of Gregory Congregational Church?

MR. HUNEVOL: Objection. (Exemption No. —)

Q As you found it on the 8th day of February of 1971?

MR. FERGUSON: Object.

THE COURT: Overruled. (Exemption No. —)

A Yes, sir; it is.

MR. FERGUSON: Move to strike.

MR. HUNEVOL: Move to strike.

THE COURT: Denied. (Exemption No. —)

Q I hand you what has been marked for identification as State's Exhibit number "64" and ask if you can identify that, please.

MR. FERGUSON: Objection.

MR. HUNEVOL: Objection.

THE COURT: Overruled. (Exemption No. —)

A Yes, sir; this is a window located in the basement of the Gregory Congregational Church on the east side of the building. The window that I mentioned earlier with the two by four's laying in front of it.

MR. FERGUSON: Move to strike.

THE COURT: Motion to strike denied. (Exception)

Q Is that photograph a fair and accurate representation of the area surrounding that window in the basement of Gregory Congregational Church as you found it on the 8th day of February of 1971?

MR. FERGUSON: Objection.

MR. HUNEVOL: Objection.

THE COURT: Overruled. (Exception No. —)

A Yes, sir; it is.

MR. FERGUSON: Move to strike.

MR. HUNEVOL: Motion to strike.

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

Q I hand you what has been marked for identification as State's Exhibit number "65" and ask if you can identify that, please.

MR. FERGUSON: Objection.

MR. HUNEVOL: Objection.

THE COURT: Overruled. (Exception No. —)

A Yes, sir; this is the portion of the basement of the Gregory Congregational Church that I mentioned earlier showing the work benches with the plywood on top of it.

MR. FERGUSON: Move to strike.

MR. HUNEVOL: Move to strike.

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

Q Is that photograph a fair and accurate representation of that area of the basement of Gregory Congregational Church as you found it on the 8th day of February of 1971?

MR. FERGUSON: Objection.

MR. HUNEVOL: Objection.

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

A Yes, sir; it is.

MR. FERGUSON: Motion to strike.

MR. HUNEVOL: Move to strike.

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

Q And finally I hand you what has been marked for identification as State's Exhibit number "66" and ask if you can identify that, please.

MR. FERGUSON: Object.

MR. HUNEVOL: Object.

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

A Yes, sir; this is the photograph that I mentioned earlier that I took of the part of the building under part of the basement underneath the porch or steps part, the part that I stated was real dark. This is a photograph of that area.

MR. FERGUSON: Move to strike.

MR. HUNEVOL: Move to strike.

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

~~Q~~ ^I Could you see any items that were in that area?

~~A~~ Can I now?

~~Q~~ Could you then when you took the photograph? ↙

~~A~~ No, sir.

Q So you can't testify it was a fair and accurate representation of what you saw.

A I didn't see anything.

~~Q~~ ^I You took the photograph?

~~A~~ Yes, sir.

Q Did you develop the photograph?

A Yes, sir.

MR. FERGUSON: Object.

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

Q Is that the photograph that you developed and say you took it?

MR. FERGUSON: Objection; move to strike that.

MR. HUNEVOL: Objection; move to strike.

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

SOL. STROUD: May it please the Court, the State moves that these photographs be admitted into evidence as State's Exhibit number "60", "61", "62", "63", "64", "65", and "66".

MR. FERGUSON: Objection. *(Exception No. —)*
THE COURT: Members of the jury, States Exhibits

number "60", "61", "62", "63", "64", and "65"

is offered by the State and received in evidence for the purpose of illustrating and explaining the testimony of the witness if you, the jury, find it does illustrate and explain the testimony of the witness and for no other purpose. These photographs are not substantive evidence.

Q Now, Lt. Turner, using State's Exhibit "13" which I have already shown you, can you show from the rear of the church the window that you are talking about where you found the chair propped in front of the heating unit?

~~A Yes, sir. It is this window here.~~

~~Q Would you point that to all of the jurors so they can see it?~~

~~A~~ (Indicating) It is this window here. It is located on what would be the northwest corner of the church.

Q And how about the window where you found the door and the chair where the door was propped up against the window?

A That would be the window on the side just around the corner from the other window on the west, what would be the west side of the church.

MR. BALLANCE: Object.

THE COURT: Overruled. (Exception No. —)

MR. BALLANCE: Move to strike.

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

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

THE COURT: Yes, sir. Members of the jury State's "60" is offered by the State and received in evidence for the purpose of illustrating and explaining the testimony of the witness if you, the jury find that it does illustrate and explain the testimony and for no other purpose. It is not substantive evidence. State's Exhibit number "61" is offered by the State and received in evidence for the purpose of illustrating and explaining the testimony of the witness and for no other purpose. It is not substantive evidence. State's Exhibit number "62" is offered and received in evidence for the purpose of illustrating and explaining the testimony of the witness and for no other purpose. It is not substantive evidence. State's Exhibit number "63" is offered by the State and received in evidence for the purpose of illustrating and explaining the testimony of the witness and for no other purpose. It is not substantive evidence. State's Exhibit number "64" is offered by the State and received in evidence for the purpose of illustrating and explaining