

PAGE COUNT OF 50 PAGES

essence of a criminal conspiracy; thus the conspiracy is the crime and not its execution.

⁵ As soon as the union of wills for the unlawful purpose is perfected, the offense of conspiracy is completed, and no overt act is necessary to complete the crime of conspiracy. ⁶

A conspiracy must exist, if it does exist at all, between two or more persons, because one cannot conspire with himself.

I also instruct you that a felonious or criminal intent is necessary and essential to support a conviction for the crime of conspiracy as is charged in each of these cases. There must be a common design and purpose to commit the unlawful act charged as forming the basis of the conspiracy. If there was no felonious or criminal intent in the minds of the defendants, then there could be no criminal conspiracy. A felonious or criminal intent, as applied to the crime of conspiracy as charged in these cases, is an intent which exists where a man knowingly and willfully enters into an agreement, understanding, combination or confederation with another person or persons to willfully and maliciously assault emergency personnel in an area within the immediate vicinity of which a riot is imminent.

It is not necessary that a person, to be crimi-

nally liable, be acquainted with all of the others engaged in the conspiracy; although to hold one liable as a participant it must be shown beyond a reasonable doubt, that he did some act or made some agreement showing his intention to be a participant.

It is not necessary to constitute a conspiracy that the parties should have come together and agreed in express terms to unite for a common object. A mutual implied understanding is sufficient, so far as the combination or conspiracy is concerned, to constitute the offense. However, there can be no conspiracy without an agreement or understanding, as neither the fact that two or more persons at the same time intend to do the same or similar act, nor the fact that one knows of the intention of another or others to do a particular act, nor a mere uncommunicated intention to conspire, is sufficient for a conspiracy.

I instruct you that if you find from the evidence, beyond a reasonable doubt, that there was an agreement to do the unlawful acts charged by the State, but you also find that some of the defendants but not all of them were parties to the agreement, then you may find guilty only those who actually were parties to the agreement and return a verdict of not guilty as to the others.

I also instruct you that if you find from the

evidence that any of the defendants did not participate in the unlawful agreement or agreements charged by the State then you must find them not guilty, even though you find that they knew about the agreement.

There can be no conspiracy without an agreement or understanding, as neither the fact that two or more persons at the same time, intended to do the same or similar acts, nor the fact that one knows of the intention of another or others to do ^{particular} a/ act, nor a mere uncommunicated intention to conspire is sufficient for a conspiracy. I instruct you also that a conspirator is responsible for the acts of his confederate in promoting the object of a conspiracy. In other words, members of the jury, any act done by a party to an unlawful conspiracy, in furtherance of, and naturally flowing from, which is connected with, and grows out of the common design, is the act of each and all of the conspirators. One who enters into a criminal conspiracy to accomplish some unlawful purpose forfeits his independence and jeopardizes his liberty, for, by agreeing with another or others to do an unlawful thing, he thereby places his safety and security in the hands of every member of the conspiracy. The acts and declaration of each conspirator, done or uttered in furtherance of the common, illegal, design, are admissible in evidence against all. Every-

one who enters into a common purpose or design is equally deemed in law a party to every act which had before been done by the others, and a party to every act which may afterwards be done by any of the others, in furtherance of such common design. Any act, members of the jury, done by a party to an unlawful conspiracy, in furtherance of, and naturally flowing from, which is connected with, and grows out of the common design, is the act of each and all of the conspirators.

(It is the fundamental rule of law that one cannot be guilty of a conspiracy based upon acts done or declarations made before the conspiracy begins. It is also a fundamental rule of law that one cannot be guilty of a conspiracy based on acts done or declarations made after the conspiracy has ended.)

(Before the act began) In order for a person to be convicted of the crime of conspiracy as charged in these bills of indictment, the State must prove beyond a reasonable doubt, members of the jury, first that such defendant entered the unlawful conspiracy with at least one other person named in the bills of indictment; and two, that the purpose for which the conspiracy existed and was formed was to unlawfully, willfully and feloniously assault law enforcement officers and firemen, constituting emergency personnel, with

and through the use of dangerous weapons in an area within the immediate vicinity of which a riot was imminent.

The crime of conspiracy is complete as to each participant from the time he enters into it knowing of unlawful objectives. Carrying out the unlawful crime is a separate offense.

I further instruct you that in determining whether or not a defendant, or any other person, was a party to or member or participant in an unlawful conspiracy, must be established, and if it is established, by evidence as to his own conduct, what he himself said or did. I also instruct you that when and if a conspiracy is established that everything said, done, or written by anyone of the conspirators, in execution of the common purpose, is deemed to have been said, done or written by each and all of them.

Hence, a statement by one conspirator is not admissible against the others, and you will not consider it as such, unless you find that the statement itself was in furtherance of the common design; and it is not enough that the main statement, although made while the conspiracy was in progress, if there was one in progress, was merely a narrative of the past act done in furtherance of the common object.

Now, members of the jury, the defendants Chavis,

Patrick, Tyndall, Jacobs, Vereen, McKoy, Epps, Moore and Wright are also charged in bills of indictment numbers 1655, 1658, 1661, 1664, 1667, 1670, 1673, 1676 and 1679 with a violation of the following Section of the General Statutes, Section 14-49 and the pertinent part thereof reads as follows: "Any person who willfully and maliciously damages or attempts to damage any real or personal property of any kind or nature belonging to another by any explosive or incendiary device or material is guilty of a felony."

The word "willfully", members of the jury, means intentional, without just cause or excuse, unjustifiably and wrongfully.

The word "willfully", as used in the Statute, is something more than an intention to do a thing. It implies the doing of the act purposely and deliberately, indicating a purpose to do it without authority, careless whether he has the right or not, in violation of law, and it is this which makes the criminal intent without which one cannot be brought within the meaning of a criminal statute.

The word "maliciously", as used in this Statute, connotes a feeling of animosity, hatred, or ill will toward the owner, the possessor or the occupant.

The word "property" is defined in the Statute

a
as real or personal property of any kind or nature.

Members of the jury, the Court will use the term "aiding and abetting" and it is necessary that that term or that phrase be defined to you, and I instruct you that where two or more persons aid or abet each other in the commission of a crime, both being present, both are principals and are equally guilty. A person aids or abets in the commission of a crime within the meaning of this rule when he shares in the criminal intent of the actual perpetrator, and renders assistance or encouragement to him, in the perpetration of the crime. In order for one to aid and abet the commission of a crime, he must do something that will incite, encourage or assist the actual perpetrator in its commission. Mere presence, even with the intention of assistance, cannot be said to have incited, encouraged or aided the perpetrator unless the intention to assist was in some way communicated to him. A person aids when, being present at the time and place, he does some act to render aid to the actual perpetrator of the crime, though he takes no direct share in its commission. An abettor is one who gives aid and comfort or either commands, advises, instigates or encourages another to commit a crime. A person who, by being present, by word or conduct, incites another to commit a criminal act, or who so far participates in the commission of the offense, as to be present to the knowledge of the person actually committing the crime for the purpose of assistance if necessary, is an

a

aider and abettor, when two or more persons aid and abet each other in the commission of a crime and all are present when the crime is committed, they are all principals and are equally guilty.

So, members of the jury, in order for a person to be convicted of the crime charged in these bills of indictment, that is, where these defendants are charged with the malicious damage and burning to personal and real property owned by Mr. Mike Poulos, to wit, Mike's Grocery store building and the contents thereof, located at 302 South Sixth Street, Wilmington, North Carolina, by the use of firebombs, they being explosive or incendiary devices. So, members of the jury, in order for a person to be convicted of the crime charged in the bills of indictment which I just read to you, that is, in bills of indictment numbers 1655, 1658, 1661, 1664, 1667, 1670, 1673, 1676 and 1679, the State must prove from the evidence and beyond a reasonable doubt, first, that such defendant willfully and maliciously injured and damaged real or personal property belonging to another person by the use of an explosive or incendiary device.

Now, members of the jury, coming now to bill of indictment -

SOLICITOR STROUD: Your Honor, may we approach the bench?

THE COURT: Yes, sir.

(Conference at the bench.)

THE COURT: Members of the jury, before going to something else, before going to the bills of indictment, the Court failed to define for you what is meant by explosive incendiary device or material set forth in 14-50.1; and I shall do so at this time. ⁷As used in this Article explosive or incendiary device or material means nitroglycerine, dynamite, gunpowder, other high explosive, incendiary bomb or grenade, other destructive incendiary device, or any other destructive incendiary or explosive device, compound, or formulation; any instrument or substance capable of being used for destructive explosive or incendiary purposes against persons or property, when the circumstances indicate some probability that such instrument or substance will be so used; or an explosive or incendiary part or ingredient in any instrument or substance included above, when the circumstances indicate some probability that such part or ingredient will be so used. ⁸

Now, members of the jury, taking up bill of indictment 13168, wherein Ann Shephard is charged with unlawfully, willfully, feloniously become an accessory before the fact of the unlawful, willful malicious damage of the burning of Mike's Grocery store building located on Sixth and Ann Street in Wilmington, owned and occupied by Mike Poulos, by the use of incendiary device, i.e., firebombs, by Benjamin Chavis, Marvin Patrick, Connie

Tyndall, Jerry Jacobs, James McKoy, Willie Earl Vereen, Allen Hall, Reginald Epps, Joe Wright, Wayne Moore, by counselling, inciting and inducing and encouraging the said parties on the 6th day of February, 1971, did unlawfully, willfully, maliciously and feloniously burn said store building and with incendiary devices, against the form of the Statute in such case made and provided and against the peace and dignity of the State.

Members of the jury, the Court instructs you that General Statutes 14-5 provides in substance that it is unlawful for any person to counsel, procure or command any other person to commit any felony, whether the same be a felony at common law or by virtue of any statute.

There are several elements that must concur in order to justify the conviction of one as an accessory before the fact.

1. That he advised and agreed or urged the parties or in some way aided them to commit the offense;

2. That he was not present when the offense was committed;

3. That the principal committed the crime, the guilt of the principals must in all cases be alleged and proved in order to warrant the conviction of the accessory. The guilt of the principal must be established to the same degree of certainty as if he himself were on

trial; that is, beyond a reasonable doubt. It is incumbent upon the State in this case to satisfy the jury from the evidence and beyond a reasonable doubt that either one or more of the co-defendants of the defendant Ann Shephard did unlawfully, willfully, maliciously and feloniously damage and burn Mike's Grocery Store located at Sixth and Ann Street in Wilmington, owned and occupied by Mike Poulos, by the use of incendiary devices, that is, by way of firebombs. In order to justify the conviction of the defendant as an accessory before the fact, the State is required in this case to satisfy the jury from the evidence beyond a reasonable doubt that one or more of the defendant's co-defendants did unlawfully, willfully and maliciously and feloniously damage and burn Mike's Grocery store building, owned by Mike Poulos, by the use of incendiary devices.

"Counsel" means advice given by one person to another in regard to a proposed line of conduct, claim or contention. The words "counsel" and "advice" may be and frequently are used in criminal law to describe the offense of a person who, not actually doing the felonious act, by his will contributed to it or procured it to be done. "Command" means to order or control another.

"Procure" means to cause to bring about or to induce. The concept of accessory before the fact presupposes some

arrangement with respect to the commission of the crime in question. To render one guilty as an accessory before the fact to a felony he must counsel, incite, induce, procure or encourage the commission of the crime, so as to, participate therein by word or act. It is not necessary that he shall be the originator of the designs to commit the crime. It is sufficient if, with knowledge that another intends to commit a crime, he encourages and incites him to carry out his design.

9. So, members of the jury, in order for the defendant to be convicted of the crime of accessory before the fact, the State must, as charged in this bill of indictment, the State must prove from the evidence and beyond a reasonable doubt that one of Ann Shephard's co-defendants willfully, maliciously - one or more of her co-defendants - willfully, maliciously injured and damaged real or personal property belonging to another person by the use of an explosive or incendiary device 10

Members of the jury, an "alibi", which actually means elsewhere, is not, properly speaking, a defense within any accurate meaning of the word defense, but is merely a fact which may be used to call in question the identify of the person charged or the entire basis of the prosecution.

The burden of proving an alibi, however, does not rest upon the defendant; the burden of proof never rests upon the defendant to show his innocence or to

disprove the facts necessary to establish a crime with which he is charged. The defendant's presence at and participation in the crime charged are affirmative material facts that the prosecution must show beyond a reasonable doubt to sustain a conviction. For the defendant to say he was not there is not an affirmative proposition. ^{//} It is a denial of the existence of a material fact in the case; therefore, a defendant's evidence of an alibi is to be considered by you like any other evidence where in the defendant tries to refute or disprove the evidence of the State. ¹² And if upon consideration of all the evidence in the case, including the defendant's evidence in respect to an alibi, there arises in your mind a reasonable doubt as to the defendant's guilt, or either or them, he should be acquitted.

Now, members of the jury, the State of North Carolina says and contends that you and each of you ought to be satisfied of the defendant's guilt of each charge - Strike that "of each charge".

The State contends that you and each of you ought to be satisfied the defendants are guilty and in each bill of indictment as charged in each bill.

Members of the jury, the defendants and each of them, that is, defendants Chavis, Patrick Tyndall, Jacobs, Vereen, McKoy, Epps, Moore, Wright and Shephard contend that you ought not to find him guilty of any crime; that

you ought to return a verdict of not guilty as to him on each of the bills of indictment.

Members of the jury, I have not given you all of the contentions of the parties. This case has been well tried and ably argued to you, and the parties have stated to you their contentions in the matter. I instruct you that the law makes it your duty to properly consider all proper contentions made by counsel for the defendant and counsel for the State and consider any other contentions that arises in your minds, growing out of the evidence in the case or lack of evidence in the case, whether it has been called to your attention by the Court or not.

Members of the jury, in passing upon the testimony of the witnesses, the jury ought to take into consideration the intelligence manifested by the witness while on the witness stand, the fairness or want of fairness; the reasonableness or the unreasonableness; his interest, if any, in the results of the action, his bias or his prejudice, if any ; his means of knowing the facts to which he testified and give to each witness such weight as to you he seems entitled to receive. You may believe all a witness has said or none of what a witness has said. You may believe a part of what a witness has said and not believe another part of what a witness has said. You are the sole judges of the testimony and the evidence.

Members of the jury, this is not a question of

sympathy for anyone, nor is it a question of prejudice against anyone. You are the sworn jurors with a duty to perform, and that duty is to take the evidence as it came from the mouths of the sworn witnesses and take the law as given to you by the Court and find a verdict in this case that speaks the truth.

The Court has no opinion as to what your verdict should or should not be, and I again instruct you that any ruling that the Court has made on the evidence or any statement it has made in its charge, or any other phase of the duty of the Presiding Judge, should not be considered by you as any expression of opinion as to what your verdict should or should not be, because the Court has no opinion and, if it did have, it would not be proper for the Court to express it.

Now, members of the jury, I instruct you that as to charge number 1653 wherein Benjamin Franklin Chavis is charged with conspiracy to assault emergency personnel, I instruct you that you may return one of two verdicts. You may find the defendant Benjamin Franklin Chavis guilty of conspiracy to assault emergency personnel as the Court has defined that term to you, or you may find the defendant not guilty, just as you find the facts to warrant from all the evidence in the case, applying thereto the law as given to you by the Court.

The State contends as to this charge that you ought to find the defendant guilty as charged.

The defendant contends that you ought not to find him guilty of any offense.

Now, members of the jury, as to case number 1653, I instruct you that if you find from the evidence and beyond a reasonable doubt, the burden being on the State to so satisfy you, that on the 6th day of February, 1971, the defendant Benjamin Franklin Chavis and two or more of his codefendants - Strike that. One or more of his codefendants did unlawfully, willfully and feloniously combine, conspire, confederate and plan together among themselves, each with the other and with each other, to unlawfully, willfully and feloniously assault law enforcement officers and firemen constituting emergency personnel, with and through the use of dangerous weapons, to wit, firearms in the area of South Sixth Street, Wilmington, North Carolina, and within the immediate vicinity of which a riot was imminent, then in that event, it would be your duty to return a verdict against the defendant of guilty as charged in the bill of indictment number 1653.

If you fail to so find, it would be your duty to return a verdict of not guilty. Of, if upon a fair and impartial consideration of all the evidence and circumstances in the case you have a reasonable doubt as to his guilty, it would

be your duty to give him the benefit of the doubt and acquit him.

Now, members of the jury, taking up bill of indictment number 1656, wherein Marvin Patrick is charged with conspiracy to assault emergency personnel, I instruct you, members of the jury, as to this charge, that is, the charge in case number 1656 that you may return one of two verdicts. You may find the defendant guilty of conspiracy to assault emergency personnel or not guilty, just as you find the facts to warrant from all the evidence in the case, applying thereto the law as given you by the Court.

The State contends as to this charge that you ought to find the defendant guilty as charged. The defendant contends you ought not to find him guilty of any offense.

Members of the jury, as to this case number 1656, I instruct you if you find from the evidence and beyond a reasonable doubt, the burden being on the State to so satisfy you that on 6th day of February, 1971, the defendant Marvin Patrick and one or more of his co-defendants did unlawfully, willfully and feloniously combine, conspire, confederate and plan together among themselves, each with the other, and with each other to unlawfully, willfully and feloniously assault law enforcement officers and firemen constituting emergency personnel with and

through the use of dangerous weapons, to wit, firearms, in the area of South Sixth Street in Wilmington, North Carolina, and within the immediate vicinity of which a riot was imminent, then in that event, it would be your duty to return a verdict of guilty as charged in the bill of indictment number 1656.

If you fail to, so find, it would be your duty to return a verdict of not guilty; or if upon a fair and impartial consideration of all the evidence ^{and circumstances} in the case you have a reasonable doubt as to his guilt, it would be your duty to give him the benefit of the doubt and acquit him.

Members of the jury, taking up bill of indictment number 1659 wherein Connie Tyndall was charged with conspiracy to assault emergency personnel, I instruct you, members of the jury, as to this charge, that is, the charge in case number 1659, that you may return one of two verdicts. You may find the defendant guilty of conspiring to assault emergency personnel or not guilty just as you find the facts to warrant from all the evidence in the case, applying thereto the law as given you by the Court.

The State contends as to this charge that you ought to find the defendant guilty as charged. The defendant contends that you ought not to find him guilty of any offense.

Now, members of the jury, as to this case number 1659, I instruct you that if you find from the evidence and beyond a reasonable doubt, the burden being on the State to so satisfy you, that on the 6th day of February, 1971, the defendant Connie Tyndall and one or more of his co-defendants did unlawfully, willfully, feloniously combine, conspire, confederate and plan together among themselves, each with the other and with each other to unlawfully, willfully and feloniously assault law enforcement officers and firemen constituting emergency personnel with and through the use of dangerous weapons, to wit, firearms in the area of South Sixth Street, Wilmington, North Carolina, and within the immediate vicinity of which a riot was imminent, then in that event, it would be your duty to return a verdict against the defendant of guilty as charged in the bill of indictment number 1659. If you fail to so find, it would be your duty to return a verdict of not guilty.

If upon a fair and impartial consideration of all the evidence and circumstances in the case you have reasonable a/doubt as to his guilt, it would be your duty to give him the benefit of that doubt and acquit him .

Members of the jury, taking up bill of indictment 1662, wherein Jerry Jacobs was charged with conspiring to assault emergency personnel, I instruct you, members of the jury, as to this charge, that is, the charge in

case number 1659 that you may return one of two verdicts. You may find the defendant guilty of conspiring to assault emergency personnel or not guilty, just as you find the facts to warrant from all the evidence in the case, applying thereto the law as given you by the Court.

The State contends as to this charge that you ought to find the defendant guilty as charged. The defendant contends you ought not to find him guilty of any offense.

Now, members of the jury, as to case number 1652, I instruct you that if you find from the evidence and beyond a reasonable doubt, the burden being upon the State to so satisfy you, that on the 6th day of February, 1971, the defendant Jerry Jacobs and one or more of his co-defendants did unlawfully, willfully and feloniously combine, conspire, confederate, plan together among themselves, each with the other, and with each other to unlawfully, willfully, feloniously assault law enforcement officers and firemen constituting emergency personnel, with and through the use of dangerous weapons, to wit, firearms, in the area of South 6th Street, Wilmington, North Carolina, and within an immediate vicinity of which a riot was imminent, then in that event it would be your duty to return a verdict of guilty against the defendant as charged in the bill of indictment 1662.

If you fail to so find, it would be your duty to return a verdict of not guilty. Or, if upon a fair and impartial consideration of all the evidence and circumstances in the case, you have a reasonable doubt as to his guilty in this case, it would be your duty to give him the benefit of the doubt and acquit him.

Now, members of the jury, taking up case number 1665, wherein Willie Earl Vereen is charged with conspiring to assault emergency personnel, I instruct you, members of the jury, as to this charge, that is, the charge in case number 1665 that you may return one of two verdicts, You may find the defendant guilty of conspiring to assault emergency personnel or not guilty, just as you find the facts to warrant from all the evidence in the case, applying thereto the law as given you by the Court.

The State contends as to this charge that you ought to find the defendant guilty as charged. The defendant contends you ought not to find him guilty of any offense.

13 Now, members of the jury, as to this case, that is, case number 1665, I instruct you that if you find from the evidence and beyond a reasonable doubt, the burden being upon the State to so satisfy you that on the 6th day of February, 1971, the defendant, Benjamin Franklin Chavis, and one or more of his co-defendants did unlawfully, willfully and feloniously combine, conspire, confederate

and plan together among themselves each with the other and with each otehr to unlawfully, willfully and feloniously assault law enforcement officers and firemen constituting emergency personnel, with and through the use of dangerous weapons, to wit, firearms in the area of South 6th Street, Wilmington, North Carolina, and within the immediate vicinity of which a riot was imminent, then in that event it would be your duty to return a verdict of guilty against the defendant as charged in the till of indictment number 1665.¹⁴

If you fail to so find, it would be your duty to return a verdict of not guilty; or, if upon a fair and impartial consideration of all the evidence and circumstances in the case you have a reasonable doubt as to his guilt, it would be your duty to give him the benefit of the doubt and to acquit him.

Strike that last m-andate, please.

Members of the jury, in case number 1665, Willie Earl Vereen is charged with conspiring to assault emergency personnel, I instruct you that as to this charge it is the case number 1665, that you may return one of two verdicts. You may find the defendant guilty of conspiring to assault emergency personnel or you may find him not guilty, must as you find the facts to warrant from all the evidence in the case, applying the law as given you by the Court.

The State contends in this charge that you ought

a

to find the defendant guilty as charged. The defendant contends that you ought not to find him guilty of any offense.

a

Now, members of the jury, as to the case number 1665, I instruct you that if you find from the evidence and beyond a reasonable doubt, the burden being on the State to so satisfy you, that on the 6th day of February, 1971, Willie Earl Vereen and one or more of his co-defendants did unlawfully, willfully, feloniously combine, conspire, confederate and plan together among themselves, each with the other and with each other to unlawfully, willfully and feloniously assault law enforcement officers and firemen constituting emergency personnel with and through the use of dangerous weapons, to wit, firearms, in the area of South 6th Street of Wilmington, North Carolina, and within the immediate vicinity of which a riot was imminent, then in that event it would be your duty to return a verdict of guilty against the defendant in bill of indictment 1665.

a

If you fail to so find, it would be your duty to return a verdict of not guilty; or if upon a fair and impartial consideration of all the evidence and circumstances in the case you have a reasonable doubt as to his guilty, it would be your duty to give him the benefit of the doubt and acquit him.

Members of the jury, taking up case number 1668 wherein James McKoy is charged with conspiring to assault emergency personnel, I instruct you as to this charge, that is charge 1668, that you may return one of two verdicts. You may find the defendant guilty of conspiring to assault emergency personnel or not guilty just as you find the facts to warrant from all the evidence in the case, applying thereto the law as given you by the Court.

The State contends as to this charge you ought to find the defendant guilty as charged. The defendant contends you ought not to find him guilty of any offense.

Members of the jury, as to this case, that is case number 1668, I instruct you that if you find from the evidence and beyond a reasonable doubt, the burden being on the State to so satisfy you, that on the 6th day of February, 1971, the defendant James McKoy and one or more of his co-defendants did unlawfully, willfully, feloniously combine, conspire, confederate and plan together among themselves, each with the other and with each other to unlawfully, willfully and feloniously assault law enforcement officers and firemen constituting emergency personnel with and through the use of dangerous weapons, to wit, firearms, in the area of South 6th Street, Wilmington, North Carolina, and within the immediate vicinity of which a riot was imminent, then in that event it would be your

duty to return a verdict of guilty against the defendant as charged in the bill of indictment 1668. If you fail to so find, it would be your duty to return a verdict of not guilty; or if, upon a fair and impartial consideration of all the evidence and circumstances in the case you have a reasonable doubt as to his guilt, it would be your duty to give him the benefit of the doubt and acquit him.

Members of the jury, taking up case number 1671 wherein Reginald Epps was charged *with* conspiring to assault emergency personnel, I instruct you, members of the jury, as to this charge, that is, 1671 you may return one of two verdicts. You may find the defendant guilty of conspiring to assault emergency personnel or not guilty just as you find the facts to warrant from all the evidence in the case, applying thereto the law as given you by the Court.

The State contends as to this charge you ought to find the defendant guilty as charged. The defendant contends you ought not to find him guilty of any offense.

Members of the jury, as to case number 1671 I instruct you that if you find from the evidence and beyond a reasonable doubt, the burden being on the State to so satisfy you, that on the 6th day of February, 1971, the defendant REginald Epps and one or more of his co-defendants, ^{did} unlawfully, willfully, feloniously combine, conspire, confederate and plan together among themselves

each with the other and with each other to unlawfully, willfully and feloniously assault law enforcement officers and firemen constituting emergency personnel with and through the use of dangerous weapons, to wit, firearms, in the area of South 6th Street, Wilmington, North Carolina, and within the immediate vicinity of which a riot is imminent, then in that event it would be your duty to return a verdict of guilty as charged against the defendant as charged in the bill of indictment 1671.

If you fail to so find, it would be your duty to return a verdict of not guilty; or if, upon a fair and impartial consideration of all the evidence and circumstances in the case you have a reasonable doubt as to his guilt, it would be your duty to give him the benefit of the doubt and acquit him.

Members of the jury, taking up bill of indictment number 1674 wherein Wayne Moore is charged with conspiring to assault emergency personnel, I instruct you, members of the jury, as to this charge, that is, the charge in case number 1674, members of the jury, that is 1674, you may return one of two verdicts. You may find the defendant guilty of conspiring to assault emergency personnel or not guilty just as you find the facts to warrant from all the evidence in the case, applying thereto the law as given you by the Court.

The State contends as to this charge you ought to find the defendant guilty as charged. The defendant contends you ought not to find him guilty of any offense.

Now, members of the jury, as to case number 1674, I instruct you that if you find from the evidence and beyond a reasonable doubt, the burden being upon the State to so satisfy you, that on the 6th day of February, 1971, the defendant Wayne Moore and one or more of his co-defendants did unlawfully, willfully, feloniously combine, conspire, confederate and plan together among themselves, each with the other and with each other to unlawfully, willfully and feloniously assault law enforcement officers and firemen constituting emergency personnel with and through the use of dangerous weapons, to wit, firearms, in the area of South 6th Street, Wilmington, North Carolina, and within the immediate vicinity of which a riot was imminent, then in that event it would be your duty to return a verdict against the defendant of guilty as charged in the bill of indictment number 1674.

If you fail to so find to so find, it would be your duty to return a verdict of not guilty; or if upon a fair and impartial consideration of all the evidence and circumstances in the case you have a reasonable doubt as to his guilt, it would be your duty to give him the benefit of the doubt and acquit him.

Members of the jury, taking up case number 1677 wherein Joe Wright was charged with conspiring to assault emergency personnel, the Court instructs you that as to this charge, that is, the charge in case number 1677, that you may return one of two verdicts. You may find the defendant guilty of conspiring to assault emergency personnel as charged in the bill of indictment or not guilty just as you find the facts to warrant from all the evidence in the case, applying thereto the law as given you by the Court.

The State contends as to this charge that you ought to find the defendant guilty as charged. The defendant contends that you ought not to find him guilty of any offense.

Members of the jury, as to case number 1677, I instruct you that if you find from the evidence and beyond a reasonable doubt, the burden being on the State to so satisfy you, that on the 6th day of February, 1971, the defendant Joe Wright and one or more of his co-defendants did unlawfully, willfully, feloniously combine, conspire, confederate and plan together among themselves, each with the other and with each other to unlawfully, willfully, feloniously assault law enforcement officers and firemen constituting emergency personnel with and through the use of dangerous weapons, to wit, firearms, in the area of South 6th Street, Wilmington, North Caro-

lina, and within the immediate vicinity of which a riot was imminent, then in that event it would be your duty to return a verdict of guilty against the defendant as charged in the bill of indictment number 1677.

If you fail to so find, it would be your duty to return a verdict of not guilty. Or, if, upon a fair and impartial consideration of all the facts and circumstances in the case you have a reasonable doubt as to his guilt, it would be your duty to give him the benefit of such doubt and acquit him.

Members of the jury, we'll take about a 10 minute recess.

(The Court recessed from 4:10 until 4:30 P M.)

Now, members of the jury, taking up case number 1655, wherein Benjamin Franklin Chavis is charged with burning property with an incendiary device, I instruct you, members of the jury, as to this charge, that is, the charge in case number 1655, that you may return one of two verdicts. You may find the defendant guilty of willfully and maliciously damaging real or personal property belonging to another by the use of an explosive or incendiary device, as charged in the bill of indictment, or not guilty, just as you find the facts to warrant from all the evidence in the case, applying thereto the law as given you by the Court.

The State contends, as to this charge, that you

ought to find the defendant guilty as charged. The defendant contends that you ought not to find him guilty of any offense.

Now, members of the jury as to this case, that is, case number 1655, I instruct you that if you find from the evidence and beyond a reasonable doubt, the burden being upon the State to so satisfy you, that on the 6th day of Ebruary, 1971, the defendant, BEnjamin Franklin Chavis, did willfully and maliciously damage and burn the personal and real property, to wit, Mike's Grocery Store building and personal property situated therein, located at 302 South 6th Street in Wilmington, North Carolina, and belonging to and owned by Mike Poulos, through and by the use of bottles filled with gasoline and ignited by the use of a wick and thrown against and into such building, and that such a mixture and bottles used in such a manner as an explosive or incendiary device, or that the defendant was aiding and abetting one or more of his co-defendants in willfully and maliciously damaging and burning the real and personal property belonging to Mike Poulos through and by the use of an explosive or incendiary device, and you so find from the evidence and beyond a reasonable doubt, then and in that event it would be your duty to return a verdict of guilty as charged in the bill of indictment number 1655.

If you fail to so find, it would be your duty to

return a verdict of not guilty. Or, if upon a fair and impartial consideration of all the evidence and circumstances in the case, you have a reasonable doubt as to his guilt, it would be your duty to give him the benefit of such doubt and acquit him.

Members of the jury, taking up case number 1650 wherein Marvin Patrick is charged with burning property with incendiary device, I instruct you, members of the jury, as to this charge, that is the charge in case number 1658, that you may return one of two verdicts. You may find the defendant guilty of willfully and maliciously damaging real or personal property belonging to another by the use of an explosive or incendiary device as charged in the bill of indictment or not guilty just as you find the facts to warrant from all the evidence in the case, applying thereto the law as given you by the Court.

The State contends as to this charge that you ought to find the defendant guilty as charged. The defendant contends that you ought not to find him guilty of any offense.

Members of the jury as to this case number 1658, I instruct you that if you find from the evidence and beyond a reasonable doubt, the burden being upon the State to so satisfy you, that on the 6th day of February, 1971, the defendant, Marvin Patrick, did willfully and maliciously

damage and burn the personal and real property, to wit, Mike's Grocery Store building and personal property situated thereon, located at 302 South 6th Street in Wilmington, North Carolina, and belonging to and owned by Mike Poulos, through and by the use of bottles filled with gasoline and ignited by the use of a wick and thrown against and into such building and that such a mixture in bottles used in such a manner as an explosive or incendiary device, or that the defendant was aiding and abetting one or more of his co-defendants in willfully and maliciously damaging and burning the real and personal property belonging to Mike Poulos through and by the use of an explosive or incendiary device, and you so find beyond a reasonable doubt, and then, and in that event, it would be your duty to return a verdict of guilty as charged in the bill of indictment number 1658.

If you fail to so find, it would be your duty to return a verdict of not guilty. Or, if upon a fair and impartial consideration of all the facts and circumstances in the case you have a reasonable doubt as to his guilt, it would be your duty to give him the benefit of such doubt and acquit him.

Members of the jury, taking up case number 1661, Connie Tyndall was charged with burning property with an incendiary device, I instruct you, members of the jury, as to this charge, that is the charge in case number 1661,

that you may return one of two verdicts. You may find the defendant guilty of willfully and maliciously damaging real or personal property belonging to another by the use of an explosive or incendiary device as charged in the bill of indictment or not guilty, just as you find the facts to warrant from all the evidence in the case, applying thereto the law as given you by the Court.

The State contends as to this charge that you ought to find the defendant guilty as charged. The defendant contends you ought not to find him guilty of any offense.

¹⁵ Members of the jury, as to this case, case number 1661, I instruct you that if you find from the evidence and beyond a reasonable doubt, the burden being upon the State to so satisfy you, that on the 6th day of February, 1971, the defendant, Benjamin Franklin Chavis, did willfully and maliciously - ¹⁶Strike that. The defendant Connie Tyndall, did willfully and maliciously damage and burn the personal and real property, to wit, Mike's Grocery Store building and personal property situated therein, located at 302 South 6th Street, Wilmington, North Carolina, and belonging to and owned by Mike Poulos, through and by the use of bottles filled with gasoline and ignited by the use of a wick and thrown against and into such building and that such a mixture in bottles used in such a

manner as an explosive or incendiary device or that the defendant was aiding and abetting one or more of his co-defendants in willfully and maliciously damaging and burning the real and personal property belonging to Mike Poulos through and by the use of an explosive or incendiary device, and you so find from the evidence and beyond a reasonable doubt, then and in that event it will be your duty to return a verdict of guilty as charged in the bill of indictment number 1661.

If you fail to so find, it would be your duty to return a verdict of not guilty. Or, if upon a fair and impartial consideration of all the evidence and circumstances in the case you have a reasonable doubt as to his guilt, it will be your duty to give him the benefit of such doubt and acquit him.

Members of the jury, taking up case number 1664 wherein Jerry Jacobs is charged with burning property with an incendiary device, I instruct you that as to this charge, that is the charge in case number 1664, that you may return one of two verdicts. You may find the defendant guilty of willfully and maliciously damaging real or personal property belonging to another by the use of an explosive or incendiary device as charged in the bill of indictment or not guilty just as you find the facts to warrant from all the evidence in the case, applying there-

to the law as given you by the Court.

The State contends as to this charge that you ought to find the defendant guilty as charged. The defendant contends that you ought not to find him guilty of any offense.

Now, members of the jury, as to this case number 1664, I instruct you that if you find from the evidence and beyond a reasonable doubt, the burden being upon the State to so satisfy you, that on the 6th day of February, 1971, the defendant Jerry Jacobs did willfully and maliciously damage and burn the personal and real property, to wit, Mike's Grocery Store building and personal property situated therein, located at 302 South 6th Street, Wilmington, North Carolina, and belonging to and owned by Mike Poulos, through and by the use of bottles filled with gasoline and ignited by the use of a wick and thrown against and into such building and that such a mixture in bottles used in such a manner as an explosive or incendiary device, or that the defendant was aiding and abetting one or more of his co-defendants in willfully and maliciously damaging and burning the real and personal property belonging to Mike Poulos through and by the use of an explosive or incendiary device, and you so find from the evidence and beyond a reasonable doubt, then and in that event it would be your duty to return a verdict of guilty as charged in

the bill of indictment number 1664.

If you fail to so find, it would be your duty to return a verdict of not guilty. Or, if upon a fair and impartial consideration of all the evidence and circumstances in the case you have a reasonable doubt as to his guilt, it would be your duty to give him the benefit of such doubt and acquit him.

Now, members of the jury, taking up case number 1667 wherein Willie Earl Vereen is charged with burning property with an incendiary device, I instruct you as to this charge, that is the charge in case number 1667, that you may return one of two verdicts, You may find the defendant guilty of willfully and maliciously damaging real or personal property belonging to another by the use of an explosive or incendiary device as charged in the bill of indictment or not guilty just as you find the facts to warrant from all the evidence in the case applying thereto the law as given you by the Court.

The State contends as to this charge that you ought to find the defendant guilty as charged. The defendant contends that you ought not to find him guilty of any offense.

Members of the jury, as to this case, that is the case number 1667, I instruct you that if you find from the evidence and beyond a reasonable doubt, the

burden being upon the State to so satisfy you, that on the 6th day of February, 1971, the defendant, Willie Earl Vereen, did willfully and maliciously damage and burn the real and personal property, to wit, Mike's Grocery Store building and personal property situated therein, located at 302 South 6th Street, Wilmington, North Carolina, and belonging to and owned by Mike Poulos, through and by the use of a wick and thrown against and into such building and that such a mixture and bottles used in such a manner as an explosive or incendiary device, or that the defendant was aiding and abetting one or more of his co-defendants in willfully and maliciously damaging and burning the real and personal property belonging to Mike Poulos through and by the use of an explosive or incendiary device, and you so find from the evidence and beyond a reasonable doubt, then and in that event it would be your duty to return a verdict of guilty as charged in the bill of indictment number 1667.

If you fail to so find, it would be your duty to return a verdict of not guilty. Or, if upon a fair and impartial consideration of all the facts and circumstances in the case you have a reasonable doubt as to his guilt, it would be your duty to give him the benefit of such doubt and acquit him.

Now, members of the jury, taking up case number 1670, wherein James McKoy is charged with burning property with incendiary device, I instruct you as to this charge, that is the charge in case number 1670 that you may return one of two verdicts. You may find the defendant guilty of willfully and maliciously damaging real or personal property belonging to another by the use of explosive or incendiary device as charged in the bill of indictment or not guilty just as you find the facts to warrant from all the evidence in the case, applying thereto the law as given you by the Court.

The State contends as to this charge that you ought to find the defendant guilty as charged. The defendant contends you ought not to find him guilty of any offense.

Now, members of the jury, as to this case, that is case number 1670, I instruct you that if you find from the evidence and beyond a reasonable doubt, the burden being upon the State to so satisfy you, that on the 6th day of February, 1971, the defendant James McKoy did willfully and maliciously damage and burn the personal and real property, to wit, Mike's Grocery Store building and the personal property situated therein, located at 302 South 6th Street in Wilmington, North Carolina, and belonging to and owned by Mike Poulos, through and by

the use of bottles filled with gasoline and ignited by the use of a wick and thrown against and into such building and that such a mixture in bottles used in such a manner as an explosive or incendiary device, or that the defendant was aiding and abetting one or more of his co-defendants in willfully and maliciously damaging and burning the real or personal property belonging to Miek Poulos through and by the use of an explosive or incendiary device, and you so find from the evidence and beyond a reasonable doubt, then and in that event it would be your duty to return a verdict of guilty as charged in the bill of indictment number 1670.

If you fail to so find, it would be your duty to return a verdict of not guilty. Or, if upon a fair and impartial consideration of all the circumstances in the case you have a reasonable doubt as to his guilt, it would be your duty to give him the Benefit of such doubt and acquit him.

Now, members of the jury, taking up case number 1673, wherein REGinald Epps is charged with burning a building with incendiary device, I instruct you that as to this charge, that is the charge in case number 1673, that you may return one of two verdicts. You may find the defendant guilty of willfully and maliciously damaging real or personal property belonging to another by the use of an explosive or incendiary device, as charged in the bill of indictment or not guilty just as you find the facts

to warrant from all the evidence in the case, applying thereto the law as given you by the Court.

The State contends as to this charge that you ought to find the defendant guilty as charged. The defendant contends that you ought not to find him guilty of any offense.

Now, members of the jury, as to this case, that is case number 1673, I instruct you that if you find from the evidence and beyond a reasonable doubt, the burden being upon the State to so satisfy you, that on the 6th day of February, 1971, the defendant, REGINA D EPPS, did willfully and maliciously damage and burn the personal or real property, to wit, Mike's Grocery Store building and personal property situated therein, located at 302 South 6th Street in Wilmington, North Carolina, and belonging to and owned by Mike Poulos, through and by the use of bottles filled with gasoline and ignited by the use of a wick and thrown against and into such building and that such a mixture and bottles used in such a manner as an explosive or incendiary device, or that the defendant was aiding and abetting one or more of his co-defendants in willfully and maliciously damaging and burning the real and personal property belonging to Mike Poulos through and by the use of an explosive or incendiary device, and you so find from the evidence and beyond a reasonable doubt, then and in that event it would be your duty to return a verdict of

guilty as charged in the bill of indictment number 1673.

If you fail to so find, it would be your duty to return a verdict of not guilty. Or, if upon a fair and impartial consideration of all the evidence and circumstances in the case you have a reasonable doubt as to his guilt, it will be your duty to give him the benefit of such doubt and acquit him.

Members of the jury, taking up case number 1676, wherein Wayne Moore is charged with burning a building with incendiary device, I instruct you as to this charge, that is the charge in case number 1676, that you may return one of two verdicts. You may find the defendant guilty of willfully and maliciously damaging real or personal property belonging to another by the use of an explosive or incendiary device as charged in the bill of indictment or not guilty, just as you find the facts to warrant from all the evidence in the case, applying thereto the law as given to you by the Court.

The State contends as to this charge you ought to find the defendant guilty as charged. The defendant contends you ought not to find him guilty of any offense.

Members of the jury, as to this case, case number 1676, I charge you - instruct you that if you find from the evidence and beyond a reasonable doubt, the burden being upon the State to so satisfy you, that on

the 6th day of February, 1971, the defendant Wayne Moore, did willfully and maliciously damage and burn the personal and real property, to wit, Mikes' Grocery Store building and personal property situated therein, located at 302 South 6th Street in Wilmington, North Carolina, and belonging to and owned by Mike Poulos, through and by the use of bottles filled with gasoline and ignited by the use of a wick and thrown against and into such building and that such a mixture in bottles used in such a manner as an explosive or incendiary device or that the defendant was aiding and abetting one or more of his co-defendants in willfully and maliciously damaging and burning the real and personal property belonging to Mike Poulos through and by the use of an explosive or incendiary device, and you so find from the evidence and beyond a reasonable doubt, then and in that event it would be your duty to return a verdict of guilty as charged in the bill of indictment number 1676.

If you fail to so find, it will be your duty to return a verdict of not guilty. Or, if upon a fair and impartial consideration of all the facts and circumstances in the case you have a reasonable doubt as to his guilt, it would be your duty to give him the benefit of such doubt and acquit him.

Now, members of the jury taking up case number 1679, wherein Joe Wright is charged with burning a building

with incendiary device, I instruct you that as to this charge, that is the charge in case number 1679, that you may return one of two verdicts. You may find the defendant guilty of willfully and maliciously damaging real or personal property belonging to another by the use of an explosive or incendiary device as charged in the bill of indictment or not guilty, just as you find the facts to warrant from all the evidence in the case, applying thereto the law as given you by the Court.

The State contends as to this charge that you ought to find the defendant guilty as charged. The defendant contends you ought not to find him guilty of any offense.

Members of the jury, as to this case number 1679, I instruct you that if you find from the evidence and beyond a reasonable doubt, the burden being upon the State to so satisfy you that on the 6th day of February, 1971, the defendant, Joe Wright, did willfully and maliciously damage and burn the personal and real property, to wit, Mike's Grocery Store building and the personal property situated therein located at 302 South 6th Street in Wilmington, North Carolina, and belonging to and owned by Mike Poulos through and by the use of bottles filled with gasoline and ignited by the use of a wick and thrown against and into such building and that such a mixture in bottles

a
ined in such a manner as an explosive or incendiary device or that the defendant was aiding and abetting one or more of his co-defendants in willfully and maliciously damaging and burning the real and personal property belonging to Mike Poulos, through and by the use of an explosive or incendiary device and you so find from the evidence and beyond a reasonable doubt, then and in that event it would be your duty to return a verdict of guilty as charged in the bill of indictment number 1679.

a
If you fail to so find, it would be your duty to return a verdict of not guilty. Or, if upon a fair and impartial consideration of all the circumstances in the case you have a reasonable doubt as to his guilt, it would be your duty to give him the benefit of such doubt and acquit him.

Members of the jury, takin up case number 13168, wherein Ann Shephard is charged with being an accessory before the fact of the unlawful, willful, malicious damaging and burning of Mike's Grocery Store building owned and occupied by Mike Poulos, by the use of incendiary devices.

c
14 The Court charges you that if you find from the evidence and beyond a reasonable doubt that on or about the 6th day of February, 1971, that the defendant Chavis, Patrick, Tyndall, Jacobs, Vereen, McKoy, Epps, Moore and

Wright, either one or more of said defendants, did willfully and maliciously damage real or personal property belonging to another by the use of explosive and incendiary device, that is if you find that either one or more of said defendants did willfully, maliciously damage and burn the personal or real property of Mike's Grocery Store building and the personal property situated therein, located at 302 South 6th Street, Wilmington, North Carolina, and belonging to and owned by Mike Poulos, through and by the use of bottles filled with gasoline and ignited by the use of a wick and thrown into such building, and such mixture and bottles used in such a manner as explosive or incendiary device, and that before the crime was committed the defendant Ann Shephard said that what they were doing was all right, that they had to show those crackers that they meant business, and that in so doing Ann Shephard counselled, procured, commanded or knowingly aided either one or more of the co-defendants to commit the offense of willfully and maliciously damaging real or personal property belonging to another by the use of explosive and incendiary device, it would be your duty to return a verdict of guilty as charged of being an accessory before the fact to the offense of willfully and maliciously damaging real and personal property belonging to another by the use of explosive and incendiary device. 15

However, if you do not so find or have a reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty.

Now, members of the jury, the verdict of the jury does not become a verdict unless it is unanimously agreed to by all 12 of you ladies and gentlemen.

Now may I see you gentlemen?

(Conference at the bench.)

THE COURT: Members of the jury, would you step to your room just about 5 minutes, please?

(The jury retired to the juryroom.)

THE COURT: Now let me ask the question Are there any further contentions either in law or in fact by the State?

SOL. STROUD: The only thing we would want added would be the part that you are getting ready to go into about that the verdict, whether their verdict be guilty or not guilty, must be the verdict of all 12.

THE COURT: Any further contentions by the State?

SOL. STROUD: No, sir.

THE COURT: Are there any other contentions either in law or in fact by the defendants?

MR. FERGUSON: Yes, your Honor, on behalf of the defendants we would request that the Court give

instruction with reference to prior inconsistent statements as bearing upon the credibility of the witnesses.

THE COURT: Yes, sir.

MR. FERGUSON: We would also ask the Court to give instructions of prior convictions bearing upon the credibility of the witnesses Allen Hall, Jerome Mitchell and ERic Junious.

THE COURT: All right.

MR. FERGUSON: And we would request the Court for a special instruction with reference to the rebuttal evidence that was presented by the State to the effect that said evidence is rebuttal to the testimony presented by Ann Shephard and not as to the other nine defendants whom we represent.

THE COURT: I don't know about that. Does the State have anything it wants to say about that?

SOL. STROUD: Well, your Honor, it is also rebuttal of Benjamin Wonce's testimony as to Ann Shephard and also -

THE COURT: Is that one of the witnesses who testified that only two of the defendants were in the church on Saturday night?

MR. FERGUSON: As I recall that testimony was

elicited either by Mr. Hunevol or by cross examination by the State. My recollection is we did not cross examine either of the two witnesses. The only witness presented by Mr. Hunevol we cross examined at all was Mr. Taylor.

THE COURT: Is there anything else?

MR. FERGUSON: If your Honor please, I do have a couple of other points I would like to raise. I think they are included in the handwritten paper we gave to the Court. We would request the Court for an instruction to the effect that by law the witness, Eric Junious is an infant and that the testimony of an infant is to be viewed with great caution.

THE COURT: Do you have any authority on that?

MR. FERGUSON: Yes, sir; I have some authority, but I do not have a North Carolina case.

THE COURT: Anything else?

MR. FERGUSON: One other thing, Judge. We would like to ask the Court for an instruction with reference to specific interest or bias of the witness Allen Hall and Jerome Mitchell and particularly that these witnesses may under the evidence elicited in the case, these witness may have testified with hope of benefit or reward; and if that is the case then such should

be taken into consideration in weighing the credibility or noncredibility or at least if the jury should find that they did so that that is a fact to be taken into consideration in weighing the credibility of those witness's testimony.

THE COURT: Let me see you gentlemen up here just a minute.

(Conference at the bench.)

THE COURT: All right, Mr. Hunevol.

MR. HUNEVOL: Your Honor, I'd like to join Mr. Ferguson's motion as far as the instruction of inconsistent statements, the instruction as to interest as regards credibility, the instruction as to criminal convictions as applies to credibility. I would also like to request that your Honor further instruct the jury as regards Ann Shephard as you did in the prior 18 indictments to the effect that questions are to be resolved in favor of the defendant, the last sentence that you instructed each of the previous 18 people - the jury as regards the previous 18 indictment. I do not believe you instructed this jury as to Ann Shephard. Another thing, the last instruction I would like your Honor

in your recounting the facts, I believe you stated that Ann Shephard said that there were never any guns in the church.

THE COURT: Did I say that?

MR. HUNEVOL: I believe you said that, and I believe that Ann Shephard did say on Friday night when Chili Patrick broke into the church she did identify weapons in the church, however, was unable to determine who had the weapons.

THE COURT: That was on Friday night?

MR. HUNEVOL: That is the only fact I would like for you to change.

MR. FERGUSON: I think we have to respectfully object to references to Marvin Patrick breaking in the church and in reference to him or any of the other defendants possessing weapons at that time.

MR. HUNEVOL: I don't think she said about any of the other defendants or any of the defendants having weapons. She said she did see weapons in the church.

THE COURT: Do you object to that? "She did see weapons in the church."?

MR. FERGUSON: Yes, sir; we object to an instruction on that at this point, if your Honor please.

While the jury is out I think we may as well insert into the record the handwritten request for instructions I gave to the Court.

THE COURT: Let the record show that prior to conducting the charge that the defendants tendered written request for instructions.

(The jury returned to the jurybox.)

THE COURT: Members of the jury, the Court instructs you that evidence has been received with regard to reputation - Strike that. Members of the jury, the witness Allen Hall and Jerome Mitchell and Eric Junious have each testified that he has been convicted of crime. The Court recalls that Allen Hall testified that he had been convicted of -

MR. FERGUSON: Your Honor, as I recall it, engaging in a riot, assault with a deadly weapon, simple assault.

SOL. STROUD: And assault on emergency personnel.

THE COURT: And the defendant Mitchell testified that he had been convicted of murder and armed robbery, and the defendant Eric Junious testified that he had been convicted of armed robbery.

You may consider this evidence for one purpose only. If in considering the nature of the crime you believe that this bears on the truth-