

PAGE COUNT OF 50 PAGES

you went in July?

A. Because I went in July also.

~~Q. You went in July also?~~

~~A. Yes, sir.~~

~~Q. When you went to trial on these matters in June you entered a guilty plea. You entered two guilty pleas, didn't you?~~

~~A. That is correct.~~

~~Q. Did you enter any guilty plea to first degree murder which carried the death penalty?~~

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

Q. You entered a plea to a lesser charge, didn't you?

A. Yes, I did.

SOL. STROUD: Objection.

THE COURT: Overruled.

Q. That is second degree murder. Isn't that correct?

A. That is correct.

~~Q. What was your sentence for that second degree murder charge that you pleaded guilty to?~~

~~A. ^{was} 30 years.~~

~~Q. ^{I was} Were you sentenced as a youthful offender?~~

~~A. That is right.~~

Q. And you knew that as a youthful offender you would be eligible for immediate parole?

A. No, I didn't know that.

SOL. STROUD: Object.

THE COURT: Overruled.

~~Q~~ You know it now?

~~A~~ Yes.

~~Q~~ How did you plead; guilty to armed robbery?

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

~~Q~~ You entered a plea of guilty to a lesser offense than that. Is that correct?

~~A~~ That is correct.

~~Q~~ You entered a plea of common law robbery?

~~A~~ That is correct.

Q You knew that carried a maximum penalty of 10 instead of 30 you were faced with. Is that correct?

SOL. STROUD: Objection.

THE COURT: Overruled.

A Yes, that is correct, sir.

~~Q~~ What kind of sentence did you get on that?

~~A~~ 2 to 5.

Q So then by pleading guilty to second degree murder you escaped the death penalty. Is that correct?

SOL. STROUD: Objection.

THE COURT: Sustained. (Exception No. —)

Q By pleading guilty to common law robbery you knocked off at 25 years of what you possibly could have

gotten. Isn't that correct?

SOL. STROUD: Objection.

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

SOL. STROUD: May we approach the bench, your Honor?

(Conference at the bench.)

Q ~~Now when~~ you went to court in June and pleaded guilty to the charges ^{you} mentioned * 2

A ~~That is correct.~~

Q ~~You were~~ ^{I was} not sentenced at that time, were you?

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

Q Were you brought here for a trial when these matters first were scheduled for Pender County on June 5?

SOL. STROUD: Objection.

Q Of this year?

A No, I wan't.

THE COURT: Wll Objection sustained. (*Exemption No. --*)

Q ~~Your~~ ^{my} sentence was deferred until June 26. Isn't that correct?

A ~~That is correct.~~

Q ~~And, in fact, you did not~~ ^{I was} you were not sentenced on June 25, but it was later in July. Is that correct?

A ~~That is correct.~~

I haven't the slightest idea of *I made my*
Q ~~Now what date in July did you make your statement?~~

A ~~I haven't the slightest idea.~~

Q ~~(What date in July were you sentenced?)~~ ^{I was}

A I don't recall.

Q Do you want to recall?

A Not necessarily.

Q ~~Do you recall whether you made the statement before~~ ^I
~~or after you were sentenced?~~ ^{I was}

A ~~O, I recall I made it after.~~

Q ~~How long after?~~

A ~~It~~ ^{after;} Could have been a few days; could have been longer.

Q Going back now to the time that you made your initial statement in February, between February and July, did you learn anymore about what you say occurred at the church?

A No, I didn't need to.

Q You just felt it would be more convenient to wait until after July before making the second statement?

A It was just the possibility that I was charged at the time. I didn't want to get involved in - well accomodate them with anything.

THE COURT: Excuse me just one second.

(The Court conferred with S B I Agent.)

Q ~~What was your answer?~~

A I just said it was just the fact that I didn't want

to get involved with anything at the time.

~~Q~~ You didn't want to get involved at that time?

A I thought maybe it would involve me.

~~Q~~ Thought maybe it would involve you?

~~A~~ that is correct.

Q Did you at some point change your mind about whether it would involve you or not?

~~A~~ Well I got to the stage after I had been sentenced it didn't matter whether it did or not.

~~JUROR:~~ I can't hear him.

A I said I got to the stage where it didn't matter whether I did or not after I was sentenced.

Q Do I understand that you are saying when you made your statement in July you didn't care about yourself?

A Well I - not on those basis.

~~Q~~ Not on what basis?

~~A~~ Well, the way you are referring to it.

Q But now as long as you felt that it mattered, then you weren't going to say anything. Is that right?

A Well not necessarily the way you are referring to it. It is just simply that I had charges on me at the time.

~~Q~~ You had what?

~~A~~ I had charges on myself at the time, and I didn't

want to get involved in any of this.

Q Well you made a statement back in February about what you said occurred on the 5th of February, 1971.

A I understand this, but I also understand that I don't see no way possible that it involves me.

Q You see some way possible that the statement you made about the 6th of February in some way involves you?

A No, just the fact that I have been there.

Q Well then your position was the same in February of '72, wasn't it?

A Not necessarily.

Q Was it different?

A Well my reasons.

Q What are your reasons?

A Well I just explained them to you.

Q ~~You said you didn't want to make a statement in February because you thought it might involve you.~~ ^{me}

A ~~That is correct.~~

Q ~~And you made one in July because it didn't matter.~~

A ~~That is correct.~~

Q Now I am asking you if the statement you made in July involved you in any way?

A Not necessarily. The fact about it at the time, all of it involved me. Like I told you before, I charged with conspiracy myself.

Q Does that have anything to do with either the 5th of 6th of February?

A Not necessarily.

Q The fact of the matter is it does not involve anything that you said about the 5th and 6th of February.

A The fact of the matter is I just didn't want to tell them anything at that time.

Q ~~NOW I'll ask you if~~ ^T the statement that you made that involved you in a conspiracy wasn't, ^{was} ~~in fact,~~ made back in February; February 18, 1972.

A ~~The statement that involved me in conspiracy?~~

Q ~~Yes, sir.~~

A ~~Of course, it was.~~

Q Well didn't you just tell the jury you didn't want to involve yourself in February?

A That is correct.

Q But you say you didn't want to involve yourself in February, but you involved yourself anyway?

A That is correct. I didn't see -

Q I can't hear what you are saying.

A I say I didn't say it in that manner.

Q What manner did you say it in?

SOL. STROUD: Objection.

THE COURT: Overruled.

A It is just a possibility I said I didn't want to involve myself because I had my own charges; but after they brought the charges on me there was nothing I could do about it.

Q Are you saying that the charges were brought against you in July rather than in February?

A Well I guess they was brought on me as soon as I made the statement.

~~Q When was that?~~

~~A In February.~~

~~Q So then when you made the statement in July you weren't involving yourself anymore, were you?~~

~~A I don't understand.~~

Q You weren't involving yourself in any conspiracy when you made your statement in July, were you?

A Well I felt that there was no way possible that I could be.

~~Q You felt that it was no way possible that you could be?~~

~~A That is right,~~ after I thought about it for a while.

~~Q~~ Before you made any statement in July you took some time to think about it and see whether or not it was going to involve ^{me} you. ~~Is that correct?~~

~~A That is correct.~~

Q But now you didn't think about that in February?

A Well just say I had already thought about it?

Q When?

A ~~Before time.~~

Q ~~Before what?~~

A ~~Before they spoke to me,~~

Q ~~Before they approached you?~~ *me*

A ~~Yes.~~

Q ~~Now he approached you?~~

A ~~Well Mr. Walden, he approached me first.~~

Q ~~Mr. Walden?~~

A ~~That is right.~~

Q ~~Is that ^{is} Mr. William Walden with the Alcoholic Tobacco Firearms Division of the Treasury Department?~~

A ~~That is correct.~~

Q ~~Who else approached you?~~

A ~~He is the only one at that time.~~

Q ~~When did ^{he} he approach ^{ed me} you?~~

A ~~In February of '72.~~

Q So you had already thought about it before you were approached in February of '72?

A I didn't make no statement at that time. I just talked to him, and I had a few days to think about it.

Q ~~You didn't make any statement when he first talked to ^{me} you?~~

~~A~~ No, I just talked to him.

Q How long did you talk to him?

A I can't exactly say.

Q Was it as long as an hour?

A I can't say.

~~Q~~ ~~Where were you~~ ^{when I} first talked to Mr. Walden?

~~A~~ I stated that I was in Cherry Hospital.

~~Q~~ ~~You were in Cherry Hospital?~~

~~A~~ ~~That is right.~~

~~Q~~ ~~What were you doing in Cherry Hospital?~~ ^{I was in}

~~A~~ For observation.

~~Q~~ ~~What kind of observation?~~

~~A~~ ^{for} Mental observation. ^X

~~Q~~ ~~For mental observation?~~

~~A~~ ~~That is correct.~~

~~Q~~ ~~Were you sent there under court order for mental observation?~~

~~A~~ No, I was sent by my attorneys.

~~Q~~ ^{my} Your attorneys sent ^{me} you for mental observation?

~~A~~ ~~That is correct.~~

~~Q~~ ~~How long did you stay there?~~

A I was there on a 60 day observation, but I stayed approximately two weeks over time.

~~Q~~ ~~You stayed overtime?~~

~~A~~ Until the other defendants - well, we all was there

at the time they carried all of us back at the same time.

Q Go back to February 5, 1971, were you an escapee at that time?

A February what?

SOL. STROUD: Object.

THE COURT: Overruled.

Q February 5th, 1971.

~~A Was I an escapee at that time?~~

~~Q Yes.~~

A Yes, I was as a matter of fact.

Q And on February 6th were you an escapee?

SOL. STROUD: Objection.

THE COURT: Overruled.

A Yes, I was.

~~Q Where were you an escapee from?~~

~~A Training School.~~

~~Q Where was the Training school that you escaped from?~~

~~A In Hoffman, North Carolina.~~

Q Where is that?

A I just told you in Hoffman, North Carolina.

~~Q Where is Hoffman located?~~

~~A I don't know, Mr. Ferguson.~~

Q How far is it from Wilmington?

A I don't have the slightest idea, Mr. Ferguson.

Q How did you get from Hoffman back to Wilmington?

SOL. STROUD: Your Honor, I object.

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

Q What occasioned your going to Hoffman Training School.

THE COURT: Just a minute.

(The Court confers with S B I Agent.)

THE COURT: All right.

Q Did you say you were in training school on a vacation?

SOL. STROUD: Objection.

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

Q Didn't you say you were in training school on a vacation?

SOL. STROUD: Objection.

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

Q What did you say you were in training school for?

SOL. STROUD: Objection.

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

Q What were you serving a sentence for?

SOL. STROUD: Objection.

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

Q How long were you there? When did you escape?

THE COURT: The last one "how long were you in training school?" whisper to the Reporter.

A Five. (Whispered)

Q I'd like to know the date you went and the date you escaped.

A November 9 I went in '68. Left in March 21. (Whispered)

Q Like to know why you were there?

A Trespassing. (Whispered)

Q Like to know how you got from training school back to Wilmington.

A Hitchhiked. (Whispered.)

Q You can go back on the stand. Now whenever it was that you left training school it was before your period of time that was up. Isn't that correct?

SOL. STROUD: Objection.

THE COURT: Sustained. (Exception No. —)

Q Did you ever go back to training school to finish your time out?

SOL. STROUD: Objection.

THE COURT: Sustained. (Exception No. —)

Q Have you been in training school since February 5, 1971?

SOL. STROUD: Objection.

THE COURT: Sustained. (Exception No. —)

Q Now at the time you were picked up on these murder and robbery charges you were still an escapee, were you not?

SOL. JOHNSON: Objection.

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

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

A (Whispered) Yes.

Q Whenever that was that you escaped from this school up in Hoffman, that is not the only time that you escaped from a penal institution, is it?

SOL. STROUD: Objection.

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

MR. FERGUSON: Like to get his answer in the record.

THE COURT: Go down and whisper it.

A (Whispered) Yes.

Q Stay down there for a moment. I'll ask you what other penal institutions did you escape from.

SOL. STROUD: Objection.

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

A (Whispered) None.

Q Like to know what you were doing in that penal institution.

SOL. STROUD: Objection.

THE COURT: Sustained. (Exception No. —)

A (Whispered) Been in none.

Q Like to know when you went.

SOL. STROUD: Objection.

THE COURT: Sustained. (Exception No. —)

A (Whispered) Never went.

Q Want to know how long you stayed.

SOL. STROUD: Objection.

THE COURT: Sustained. (Exception No. —)

A (Whispered) Never did stay.

Q Want to know where the institution was located.

SOL. STROUD: Objection.

THE COURT: Sustained. (Exception No. —)

A (Whispered) Don't know.

Q Would like to know how you got from there back to
Wilmington if that is where you went.

SOL. STROUD: Objection.

THE COURT: Sustained. (Exception No. —)

A (Whispered) Didn't never went there.

Q You may go back up. As a matter of fact, you es-
caped from the New Hanover County jail before,
hadn't you?

SOL. STROUD: Objection.

THE COURT: Sustained. (Exception No. —)

MR. FERGUSON: I'd like to have that in the record.

(Whispered) No.

Q I'd like to know when you did that.

SOL. STROUD: Objection.

THE COURT: Sustained. (Exception No. —)

A (Whispered) I didn't.

Q I'd like to know whether you were ever picked back up for escaping.

SOL. STROUD: Objection.

THE COURT: Sustained. (Exception No. —)

A (Whispered) No.

Q You may go back up. The fact of the matter is the reason you were in maximum security over in Jacksonville was that every penal institution you have been before you had escaped from somehow or other. Isn't that correct?

SOL. STROUD: Objection.

THE COURT: Sustained. (Exception No. —)

Q Now that maximum security is a place where they put people where they figure to be a danger to the community and have to put them in security custody, don't you?

SOL. STROUD: Objection.

THE COURT: Sustained. (Exception No. —)

~~Q~~ ^{It is} Now if I understand what you said you talked with Mr. Walden some few days before the 18th of February.

~~A~~ That is correct.

~~Q~~ You talked to him there in Goldsboro?

~~A~~ That is correct.

~~Q~~ In the mental institution?

~~A~~ That is correct.

Q And you say you decided not to make any statement the first day you talked to him. Is that correct?

A Well I told you that I conversated with him and I told him what I knew, but no statement was made at that time.

Q How do you conversate with somebody and tell them what you know but you didn't make a statement?

A There wasn't no written statement made at that time.

~~Q~~ You didn't make a written statement at that time, but you ^{I am} are saying you told him what you ^I knew?

~~A~~ That is correct.

~~Q~~ ^I Did you ^{not} tell him what you knew about Saturday?

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

~~Q~~ ^I Did you tell him what you knew about Friday?

~~A~~ That is what I told him about.

~~Q~~ ^I Did you tell him everything you knew about Friday?

~~A~~ That is correct.

~~Q~~ All right. Now did you talk to him at anytime

~~between that time and the 18th, the first time
you talked to him on the 12th?~~

~~A I didn't understand your question.~~

~~Q~~ ^{not} Did you talk to Mr. Walden anytime between the
initial date that you talked to him and the 18th
of February, 1972?

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

~~Q~~ ^{not} Did you talk to any other law enforcement officers
such as detectives or Mr. Stroud, Mr. Johnson or
anybody ~~between these two dates?~~

~~A~~ Between the time that I first talked to Mr. Walden?

~~Q~~ And the 18th of February, 18th of February, 1972.

~~A~~ No, I only talked to Mr. Walden. He never came
back between - until the 18th.

~~Q~~ ^{had -} Now had you sent for Mr. Walden to come talk to
^{me.}
you?

~~A~~ No, sir.

Q Do you know what the occasion was for him to come
talk to you?

SOL. STROUD: Object.

THE COURT: Overruled.

A No, sir; not exactly.

Q Well you knew Allen Hall sent him down there because
you all were old friends, didn't you?

SOL. STROUD: Objection.

THE COURT: Overruled.

A We was old friends, but I didn't know he sent him.

Q You found later that he did?

A Not exactly. I wouldn't say I know now.

~~Q Not exactly, but you kind of figure he did?~~

~~A I don't even know now he sent him.~~

Q You don't know now, but all of a sudden you looked up and there was Mr. Walden?

A There he was.

Q ~~Now~~ you don't know how long you talked to him on that first occasion?

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

~~Q He~~ Did he make any notes?

~~A Yes, he did. I don't recall.~~

Q He did. You don't recall? I don't understand that. You don't recall whetehr he did or not?

A I say if he did, I don't recall.

Q ~~I see.~~ Now ^p prior to the 18th of February, ^l had you ^{not} ever seen the Solicitor over there, Mr. Stroud?

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

~~Q~~ ^l Hadn't never talked to him before the 18th?

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

~~Q~~ ^l Did you know Mr. Brown here? ^l Did you ^{not} talk to him

before the 18th?

A ~~No, I haven't.~~ I have seen him. Never talked to him.

Q You had a few run-ins with him before?

A What do you mean by a few run-ins?

A Law enforcement encounters.

SOL. STROUD: Objection.

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

A No, I -

Q Now when you all talked over there on the 18th of February 1972, where in the hospital were you?

A In one of the offices.

Q ~~One of the offices?~~

A ~~That is correct.~~

Q ~~Do you know~~ (whose office you ^{I was} were in?)

A ~~No,~~ I haven't the slightest idea.

Q You stayed over there 60 days. You got pretty familiar with the surroundings, didn't you?

SOL. STROUD: Objection, your Honor.

THE COURT: Overruled.

A No, sir; I ~~definitely~~ -

Q ~~Definitely~~ did not?

A ~~NO,~~ sir.

Q Who all was in that office over there on the 18th when you decided to talk?

A There was Mr. Walden, ~~Det. Brown~~ -

~~Q~~ This gentleman seated here on the end of the table;
Mr. Brown?

A ~~That is correct.~~

~~Q~~ ~~Who else was there?~~

~~A~~ Mr. STroud,

~~Q~~ ~~Mr. J. T. Stroud, Jr., the Assistant Solicitor over~~
there?

~~A~~ D. L. Monroe.

~~Q~~ ~~Who?~~

~~A~~ ~~D. L. Monroe.~~

~~Q~~ Is that Det. Monroe with the Wilmington Police
Department?

A ~~That is correct.~~

~~Q~~ ~~You knew him before the 18th, didn't you?~~

A ~~Yes.~~

Q As a matter of fact, you were pretty well acquainted
with the Police Department over in the New Hanover
County, weren't you?

SOL. STROUD: Objection.

THE COURT: Overruled.

Q Had you?

A What you mean "pretty well acquainted"?

Q You knew all these folks. You knew Mr. Brown. You

new Mr. Monroe.

A. Everyday thing.

~~Q. Everyday thing? Right?~~

~~A. Right.~~

~~Q. Who else was over there?~~

~~A. Allen Hall *was there.*~~

Q. Your old friend, Allen, came back down there to talk with you. Is that right?

A. Yes.

Q. And all of you all sitting around in the room there conversating. Is that what you call it?

~~A. A few questions being asked and a few answers was~~
~~Q. being given, you know.~~

~~Q. Do you recall anybody else being there?~~

A. ^a Hospital man was there.

~~Q. What hospital man?~~

A. The man at the hospital.

Q. They have more than one man in the hospital, didn't they?

A. I just said one.

Q. What man at the hospital?

A. I don't know him.

~~Q. Just a man?~~

~~A. Yes.~~

Q What was he doing there? What was his purpose there?

A He was just sitting there.

~~Q Did you say you were over there for mental observation?~~

~~A Yes.~~

~~Q The hospital man was over there observing you?~~

~~A I didn't know why ^{the hospital man.} he was there.~~

~~Q Who else was there?~~

~~A That is all I can recall ^{was there.}~~

Q All of y'all sitting around together in this office over there. Is that right?

A Yes, something like that.

~~Q Something like that.~~

~~A Yes.~~

Q You say a few questions were asked?

SOL. STROUD: Objection to the repetition.

THE COURT: I believe you have already asked him that.

MR. FERGUSON: I was trying to pick up where we were, your Honor. He was telling me about the hospital man.

Q Now you said you had had some time to think before you made your statement. When had you been doing your thinking?

SOL. STROUD: Objection.

THE COURT: Overruled.

A All along.

Q All along when? When did you first start thinking?

SOL. STROUD: Objection.

A Ever since I was in jail.

~~Q Ever since you were in jail?~~

~~A That is right.~~

~~Q When were you put in jail?~~

~~A August 27, '71.~~

~~Q From August 27?~~

~~A That is correct.~~

~~Q Until February 18 you were just thinking. Is that right?~~

~~A Still is.~~

Q About how you can get out of jail?

A No, not necessarily.

Q But that was part of it?

A Huh?

Q That was part of it, wasn't it?

A Evidently was. I wouldn't say it wasn't.

Q And that is the part of your thinking now, isn't it?

A You know thoughts like that stay in a man's mind, you know.

Q You think about that a lot when you are in jail, don't you?

A Never supposed to give up hope.

Q ~~So you still got hope?~~

A I will always have hope.

Q That you can get out of jail?

A Yes.

Q Now when you are in jail you do whatever you think you can to get out of jail?

SOL. STROUD: Objection.

A Not necessarily.

THE COURT: Objection sustained. *(Sustained No.)*

Q As a matter of fact, you will escape sometimes to get out, won't you?

SOL. JOHNSON: Objection.

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

Q Now you have done all this thinking and so on February 18 you decided you'd give them a statement to take down, a statement to write down. Is that right?

A I just gave them the same thing I went over with them a few days before. He just put it in a statement that day. I didn't tell him to write nothing down.

Q Now did you make your statement before Allen Hall

made his or was it vice versa?

A Well I talked to Mr. Walden, like I said, before the 18th. I told you the day the statement was made Allen Hall was present, but I told them the same thing the 18th that I told them before the 18th.

Q I am talking about on the 18th when you all went in the room in this office, did you make your statement to Mr. Walden before Hall made his?

A I don't recall.

Q ~~Did~~ ^{did} Hall make his before ^I you made yours? ^(minutes)

A I can't recall.

~~Q~~ ^{I don't know} How long were ^{I was} you in the office over there?

A ~~Uuh?~~

~~Q How long were you in the office?~~

A This I don't know either.

~~Q~~ ^{I want} (What time did you go to the office?)

A I can't really say.

Q Mr. Mitchell, why are you having a lapse of memory as to the 18th?

SOL. STROUD: Objection.

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

Q You sat up there a few minutes ago and told Mr. Stroud what time you went to a church in '71. You can't tell me what time you went to an office in

'72. Isn't that right?

A. That is correct. I mean like do you remember everything you don't want to remember?

~~Q How is that?~~

~~A Do you remember everything you don't want to remember?~~

Q Is there something you don't want to remember?

THE COURT: Well answer his questions.

Q Is there something you don't want to remember?

SOL. STROUD: Objection.

THE COURT: Objection sustained. (*Exception taken*)

Q Well there is something you don't want to remember.

Is that right?

SOL. STROUD: Objection.

THE COURT: Objection sustained. (*Exception taken*)

~~Q~~ You don't know what time you went to the office there, add you don't know what time you left. Is that correct?

~~A That is correct.~~

Q Did you have a lunch break while you were there?

~~SOL. STROUD: Object. I withdraw the objection.~~

A. I guess if I was there at lunchtime I guess I did, if I was there when lunchtime came, I had a lunch break.

Q Did you have a dinner break?

A Well if I was there for dinner I had a dinner break.
Just don't recall.

Q Did you have a breakfast break?

A Well if I was there for breakfast, I had a break-
fast break also.

Q ~~So if you were~~ there all day long you broke for
breakfast, lunch and dinner and talked in between.
~~Is that right?~~

A ~~Correct.~~

Q ~~And out of all that time you never mentioned Sat-~~
urday, February 6. ~~Is that right?~~

A ~~That is correct.~~

Q ~~Well you did~~ tell them what time you left the church
on Saturday morning, didn't you?

A ~~I definitely did.~~

Q ~~Sir?~~

A ~~I definitely did.~~

Q ~~What time did you tell them you left the church on~~
Saturday morning?

A ~~I told them it was around~~ 7:30 or 8 o'clock.

Q ~~Are you sure that is what you told them?~~

A ~~That is right.~~

Q ~~Now~~ ^{I was} at the time you were making this statement
you knew all of the defendants, all the persons on
trial by name, ~~did you not?~~

A. ~~That is correct.~~

Q. I am referring to the statement ^{of} you made on February 18, 1972.

A. ~~That is correct.~~

Q. Now did you tell Mr. Walden and Mr. Stroud and the others assembled there that Wayne Moore went with you up on Doct Street?

A. Yes, I did. I didn't tell Mr. Stroud and all of them at this time, the 18th. The statement was made around March 2. Mr. Walden brought the statement back so that I could read over it and sign, and the things that wasn't in it at that time I made corrections there in his presence. He made corrections on his statement.

Q. ^{He} Did ^{not} he leave a copy of the statement with you? ^{me.}

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

Q. Do you know now what corrections you made?

A. Well I corrected possibly that he left out some of the people that I named, and he made corrections on his statement and a number of other things.

Q. When you made ^{my} your statement on the 18th, ^{of} did you tell Mr. Walden anything that Marvin Patrick did on Friday night?

A. ~~Yes, I did.~~

Q. Call him by name?

A Well it wasn't in the statement that way. I called him by name, yes.

Q Do I understand you are saying you called him by name while you all sat there and talked, but -

A That is correct.

Q But in the statement it didn't come out that way.

A I called him by name, and I called him by nickname.

Q Did you tell Mr. Walden that, Mr. Stroud and the others assembled there, anything that Connie Tyndall did by name on Friday night?

A When I made correction Mr. Stroud and the others was not there. I was talking to Mr. Walden at the time. He made corrections. Everything that was wrong on his statement.

Q What I am asking you is when you all were talking there on the 18th, did you tell these gentlemen assembled there anything that Connie Tyndall did, saying that Connie Tyndall did that. Connie Tyndall had a shotgun or Connie Tyndall did whatever you say he did?

A On Friday night?

Q Yes, sir.

A I stated the fact that I had seen Connie Tyndall.

Q Did you tell them ^{some} anything about Joe Wright on Fri-

day night?

A. ~~Yes, I did.~~ I stated the fact that I had seen him with a shotgun and a pistol *on Friday night.*

Q. ~~On Friday night?~~

A. ~~That is correct.~~

Q. *I* Did you tell him ~~anything~~ that *I* you saw Reginald Epps do a Friday night?

A. ~~Yes, I did.~~ I stated the fact that I had seen him at the church go to a rifle and that he went around Dock Street *etc.*

Q. ~~On Friday night?~~

A. ~~That is right.~~

Q. *I am* ~~Are you saying he went around to Dock Street with you along with some other people?~~

A. ~~Quite a few other people.~~

Q. Did you tell him anything that James McKoy did on Friday night?

A. ~~On Friday night?~~

Q. ~~Yes, sir.~~

A. Not as I recall, just the fact that I had seen him and that he went as far as to around to Ann Street with us and that he stayed there on the porch there.

Q. ~~On Friday night?~~

A. ~~Right.~~

Q ~~I~~ Did you ^{not} tell him anything that Jerry Jacobs did on Friday night?

A ~~No, I didn't;~~ Just the fact that I had seen him there.

Q ~~Did you tell them anything you saw Willie Vereen do there at the church on Friday night?~~

A ~~I stated to the fact that I had seen Willie Earl at the church on Friday night.~~

Q You told him that? And I am sure you told him what you said Ben Chavis did on Friday night.

A That is correct.

Q ~~Now~~ When you made the corrections after Mr. Walden came back, ^I did you ^{not} initial the corrections?

A ~~No, sir,~~

Q ~~I~~ Did you ^{not} initial each page of the statement?

A ~~No, sir.~~ Like I said, the statement that I made and I read over and we talked for a while, and I had already signed the statement, and we was talking later on before he left. I told him about some mistakes that he had made in the statement. He also stated the fact that he had this statement typed up himself and so I stated the fact that some of the things was left out and some of the things was wrong on the statement, and after I had already signed the statement he made corrections on his statement.

~~Q~~ ~~So do I understand that you went ahead and signed~~
the statement without making the corrections?

~~A~~ ~~That is correct.~~ I signed the statement and I was
talking to him and before he left I just - before
the conversation was over I told him about the errors.

Q Well now he gave you an opportunity to read the
statement before you signed it?

A Well I just said that I read the statement, Mr.
Ferguson, and when I finished reading the statement
we was talking and before he left I told him about
the possibility of what was left out and what was
wrong with the statement. He corrected it at that
time, but on his statement.

Q Well now when he gave you the statement didn't he
tell you that he wanted you to read it over to see
if it was what you had said on the 18th?

A That is correct.

Q And didn't he tell you he wanted you to be sure
that was what you said before you signed it?

A I wouldn't say he said it like that. I would say
he said to look over the statement and to see if
everything is right. I wouldn't say that he said
look over it before I signed it because if he would
have I probably wouldn't have signed it.

Q In other words, you are saying it didn't matter whether it was correct before you signed it or not.

A Well the possibilities - how should I know it should be corrected? I didn't know the circumstances. All corrections is supposed to be made before a person signed it. I thought he could make corrections even though my initials are on it.

Q You knew you were putting your name on something you had read and you might have to testify?

A Well, of course, I made corrections before he left.

Q You wouldn't want to sign your name to a false statement, do you?

A Well it wouldn't be false. Like I told you, I told him before he left.

(Defendant's Exhibit "4" marked for identification.)

Q I show you what has been marked and identified as defendant's Exhibit "4" and ask you to take a moment and look at that and I'll ask you if that is a copy of the statemetn which you signed?

A Yes, sir.

MR. FERGUSON: Your Honor, at this time before we continue with the corss examination of this witness I would move the Court that if there is

another statement which has some additions on it that we be furnished with it at this time.

THE COURT: Is there another statement signed by this defendant with any notations on it?

SOL. STROUD: No, sir.

THE COURT: Proceed.

Q Now there are some handwritten items there. One on the first page, one or two on the second page. I'd like for you to look at those and see if those are the corrections you are talking about made by Mr. Walden to the best of your recollection.

SOL. JOHNSON: Your Honor, now that Mr. Ferguson has given him the exhibit, would you have Mr. Ferguson return to his seat?

THE COURT: Mr. Ferguson, will you direct your questions from counsel table if you have another copy of the exhibit?

Q Have you had a chance to look at it?

A Yes, sir.

Q Now at the bottom of each page on that statement there appears the letters "J M" See that? Down there ⁱⁿ the righthand corner?

A Yes, sir.

Q Do you see?

A Yes, sir.

~~Q~~ Do you know what that is?

~~A~~ Yes, sir.

~~Q~~ What is *that's*

~~A~~ My initials.

~~Q~~ Your initials?

~~A~~ That is right.

~~Q~~ So you did *initial ed* each page?

~~A~~ Yes, the copy he brought for me to sign.

~~Q~~ I am saying you initialed each page of the copy that he brought there for you to sign.

~~A~~ Correct. If it is like that I did.

Q And you initialed the pages to acknowledge you were aware of the corrections, changes, additions, alterations what-have-you that have been made. Is that right?

A Repeat yourself. I didn't understand you.

Q You initialed each page in order to acknowledge that you were aware of the changes, additions, alterations or what-have-you.

SOL. STROUD: Objection, your Honor.

Q That had been made on the statement. Is that right?

THE COURT: Overruled.

A Like I said, Mr. Ferguson, before he brought the statement to me and I read over the statement and I signed the statement and while we was talking and

finished talking I told him about what was left out of the statement, what was wrong with the statement. He made corrections, not on the statement that I had, not on the statement that I signed, but on the statement that he had.

Q Now, Mr. Mitchell, I'd like for you to answer my questions.

A Well I just answered it the best I could.

MR. FERGUSON: Your Honor, would you direct the witness to answer my question?

THE COURT: Mr. Ferguson, the witness said he had answered your question to the best of his ability.

Q In other words, you don't have the ability to tell me your initial on the bottom of those pages is an acknowledgment you had accepted the corrections, additions, alterations and changes that had been made that that statement. Is that what you are telling me?

A Mr. Ferguson, I didn't say that this here was the paper that the changes were made on. You asked me was these the changes that he made in the statement.

Q Is there some other paper that some changes were made on?

A I can't say this is the paper or not. I see quite

a few changes.

SOL. STROUD: Objection.

A I just stated there was another paper.

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

MR. FERGUSON: We just moved for any other paper.

THE COURT: The State said there was no other paper that the witness signed where any changes were made.

Q What are your initials doing down at the bottom of each page?

SOL. STROUD: Objection. *(Exhibit No. 1)*

THE COURT: Sustained. He's already answered that, Mr. Ferguson.

MR. FERGUSON: Your Honor, I'd like to have the answer read back.

THE COURT: All right. Answer it again. What was the question?

Q What was your initials down at the bottom of each page of that statement?

THE COURT: Answer the question.

A Like I stated before, he brought me the statement. I read it and I signed it after I -

Q You are not anymore answering my question than the man in the moon.

SOL. STROUD: Objection.

THE COURT: Objection sustained.

(Exception No. —)

A I answered your question.

Q Well do I understand that you initialed each page and then signed the last page and then Mr. WALDEN made some corrections?

A Let me see. (Looks at exhibit.) I didn't see no initial on this page not initialed.

Q That is a great discovery. Look at the first page.

SOL. STROUD: Object to comments of defense counsel.

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

A I see my initial on the first two pages and my name on the last sheet.

MR. FERGUSON: Your honor, we'd like to approach the bench for a minute.

(Conference at the bench.)

MR. FERGUSON: Your Honor, we move that the original statement be produced.

SOL. STROUD: I thought that was what we just talked about at the bench.

THE COURT: That was discussed at the bench.

MR. FERGUSON: Yes, sir.

SOL. JOHNSON: WE object to any further comment.

MR. FERGUSON: Well I'd like to come back to the bench.

THE COURT: All right.

(Conference at the bench.)

MR. FERGUSON: Your Honor, may we request some ruling on our motion?

EXAMINATION BY THE COURT:

Q Mr. Mitchell, that statement that you have in your hand, that is Defendants Exhibit "4". Look on the back page and tell me is that your signature?

A Yes, sir.

Q ~~Now is that~~ ^{is} a copy of the statement that you signed for Mr. Walden?

A ~~Yes, sir.~~ The only thing I stated is the fact that you said did I initial each page, and I told you my initial wasn't on one of the pages. I didn't say I initialed each page.

THE COURT: What ruling do you want to be made?

MR. FERGUSON: I want you to make a ruling on our motion to have the original statement produced and have it for us for the purpose of this cross examination.

THE COURT: The Court understand that this is a copy of the original statement and the original

statement is not available.

MR. FERGUSON: Your Honor, we'll have to make exceptions to that. That is not an exact copy.

THE COURT: Do you know where the original is, Mr. Solicitor?

SOL. STROUD: I don't have it. I can try to find the original. I thought we discussed all this at the bench. *(Exception No. —)*

THE COURT: Motion denied. Go ahead.

Q Now what I am trying to find out from you is whether or not there is some other statement than the one you have there with some more writing on it.

A This is the only statement, written statement that I have made concerning Friday night, Mr. Ferguson.

Q And to the best of your knowledge does that statement contain all the corrections and additions on it that you gave Mr. Walden?

A Well I can't say because he made quite a few corrections and I don't understand this. I see some writing on it. I don't know what it is.

~~Q Did you read ^{a few of} the corrections ^{you} asked the gentleman to make?~~ *Mr. Walden*

~~A Did I read the corrections that Mr. Walden made?~~

~~Q That you told him to make, yes.~~

~~A Well a few of them.~~

Q Well now without this girating over here, why had you read a few and not read all of them?

A I read a few of them.

Q Why didn't you read all of them?

A Because if I didn't read them, Mr. Ferguson, I had a reason for it.

Q Tell us which few you read.

A About the fact that he only mentioned some of the defendants' names that were there when I told him I had seen all of them on Friday night.

Q That is not on that statement there that you have there, is it?

A Huh?

Q That is not on that statement you have there?

A Just a few of the names on this statement. I mean I don't see where a correction has been made on here.

MR. FERGUSON: If your Honor please, we move at this time for an opportunity to voir dire Mr. Walden before we cross examine this witness further.

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

(The jury retired from the courtroom.)

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

FENDER COUNTY

STATE OF NORTH CAROLINA)

-vs-

BENJAMIN FRANKLIN CHAVIS)
MARVIN PATRICK)
CONNIE TYNALL)
JERRY JACOBS)
WILLIE EARL VEREEN)
JAMES MCKOY)
REGINALD EPPS)
WAYNE MOORE)
JOE WRIGHT)
ANN SHEPHARD)

TRANSCRIPT OF TESTIMONY

Burgaw, North Carolina

September 11, 1972.

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

Appearances:

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

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

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

Josephine L. Seila,
Official Court Reporter,
P O Box 718
Selma, North Carolina 27576.

Transcript of Testimony

State's-Witnesses

William S. Walden

Merton Weiss

Reba Howard Decker

Mary Rebecca Watts

Rev. James R. Jones

T. D. Love

William H. Butler, Jr.

Mike Poulos

Lela McKeithan

Mrs. Henrietta Jackson

J. F. Bloomer

THE COURT: Gentlemen, let's find out all of the questions you want so that we can move along in this matter.

MR. FERGUSON: We'd like to call Mr. William S. Walden to the stand.

THE COURT: You can ask this witness whatever questions you wish to ask now.

MR. FERGUSON: My position is this, your Honor. May I be heard?

THE COURT: Yes, sir.

MR. FERGUSON: This witness has stated that there is some statement that he signed and that Mr. Walden entered some corrections and additions to that statement. Now I assume that is the original of the statement that he signed. I don't know that. We have moved the Court and asked the State to produce for us the original of the statement. The State contends that it does not have the original. If Mr. Walden was the one who made that statement I think we are entitled to inquire of him where that statement is containing the corrections and additions. We can't find that out from this witness. That is why we move the Court

question Mr. Walden about the statement where he entered the corrections, dictated by the witness.

SOL. STROUD: Your Honor, if Mr. Ferguson will recall Jerome Mitchell's testimony, Jerome Mitchell testified that after he signed a statement in conversation with Mr. Walden that he mentioned to Mr. Walden that there were some names of some of the defendants left out of the statement as having been there on Friday night; that Mr. Walden wrote some notes on a statement but not on the statement that he signed and that he did not sign anything after that question.

(To witness) Is that what you testified to?

A. That is correct.

SOL. STROUD: I have given them as they requested a statement that he signed. Any other notes made by Mr. Bill Walden on any statement that he had not signed they are not entitled to, and I am going to argue very vehemently they don't get it because that is not a statement of this defendant. They are certainly entitled to his statement, and they got it. They have continually implied that the State is withholding information.

MR. FERGUSON: Yes, sir.

SOL. STROUD: They are not entitled to have information concerning notes that Mr. Walden made who is an investigating officer or notes that I made as Solicitor for the State. Any notes that were made concerning this that are not official reports they are not entitled to have.

MR. FERGUSON: Now, if your Honor please, I certainly do take the position that the State is withholding from us, and I don't know what the reason - I take that position. When we asked for the statement the State has given us this consisting of 3 pages from this. That copy was made. This statement has been cut on the side here. A page has been cut on the bottom.

SOL. STROUD: Your Honor, let me tell you why the pages were cut, if I may.

THE COURT: Let's hear one at the time.

MR. FERGUSON: So whatever it is here is not a copy of the original statement. Now we didn't have any problem with that when we received the statement a few days ago, but when this

witness takes the stand just as his predecessor, Mr. Hall, did and says he made all this additions and told the officer to put the additions in there, and in one instance told Mr. Stroud to prepare it and looked at the additions and adopted them as their own, I think it is withholding something for the State to now contend that is nothing but investigator's notes when everything put down there was dictated here by the witness. I don't understand what the State is hiding. I'd like to know.

THE COURT: Well now, Mr. Ferguson, he said that he read some of the notations but not all. Now, as I understand, I am reading here from Stansburg. He says he has not seen but a few of these notations, and going back to this other statement, as you said while ago, they are not statements where they are simply notations on. I haven't seen what Mr. Walden had got. I am reading the law that we all go by.

MR. FERGUSON: Neither have I seen it. The only way for justice is for someone to see it. MY point is this. He said Mr. Walden showed him that statement with those corrections, and he

accepted it. Whether or not he read them all, that is up to him. Once he accepts it as his statement I submit to the Court we are entitled to examine about prior inconsistent statements,

The mere fact that -

THE COURT: Evidence of statements by the witness inconsistent with his testimony.

MR. FERGUSON: Yes, sir.

THE COURT: A statement is made by him. You have got it here. You can cross examine him about any inconsistencies, but anything of a notation on the side of a statement for the use of whoever is talking to him, how can that be a statement of the witness, Mr. Ferguson?

MR. FERGUSON: I respectfully submit if we do not have the statement he gave Mr. Walden we do not have the statement. Either he gave the statement to Mr. Walden, or he did not. If he did it was part of the statement he made the corrections and additions. I feel we have a right to know what the corrections and additions were at that time in order to cross examine him and determine whether or not his statements are consistent with the testimony. What the

State is trying to do here is to say the mere fact Mr. Walden wrote it on there takes it out of the realm of being as testimony. At the same time the witness is saying he wrote down what he wrote down.

THE COURT: Are you getting ready to ask him if a notation - I haven't seen it. I don't know what it is. I'll assume it is a notation on the side of a statement or a notation - Are you getting ready to ask this witness if that notation is something he never seen?

MR. FERGUSON: He also said he looked at a few of them. At least to those we ought to know.

THE COURT: He said one of them was the fact that he did not include all the defendants.

MR. FERGUSON: If that is true, then fine. If it is not true, we have a right to look at that statement and see whether or not he gave him the corrections on that statement. I think the Court should at least order that statement and have it be brought in in order to understand what that statement is. This witness will be in the same position Allen Hall was to sit up there and say anything he pleases. Say, "I told Mr. Stroud to write

it down."

THE COURT: I told you I examined the notations the Solicitor made on Allen Hall, which only the Solicitor could interpret. They are short notations on the side of a copy that wasn't signed or initialed by anybody, and to say that would be a statement of Allen Hall which was never signed, never read, that was short-hand abbreviations of statement and things of that kind, how could that be the statement of Allen Hall or anyone else?

MR. FERGUSON: I am willing to concede there was no statement. Allen Hall sat on the witness stand and said that statement existed. It is impossible for us to impeach his statement if we don't know. This witness told of additions that he dictated to the Solicitor; that the Solicitor wrote them down; that he looked at them, adopted them as his own. We have no means whatsoever to cross examine Allen Hall about that statement. If what Allen Hall was referring to was a statement Mr. Stroud made some notations on his own on, then Allen Hall was lying, perjuring himself. If no such