

**PAGE COUNT OF 50 PAGES**

statement existed, this witness would be doing the same thing, and the only way we can get to the bottom is to examine them about that statement.

THE COURT: This witness said he did not sign anything but this one statement.

MR. FERGUSON: What harm is it for us to see the statement. I think we need to point out to this jury whether or not there is a statement. The Solicitor walks up to the bench and says this and this. I think this is a gross miscarriage of justice.

THE COURT: Examining statement and examining a witness about a notation the Solicitor made is something else.

MR. FERGUSON: We are examining him about the statement that the Solicitor made and he copied down and Walden, too. That is the statement of the recorded recollections of the witness, and that is what we are asking for. This typewriter types it down. That doesn't make it the typewriter's statement

SOL. STROUD: Your Honor, all I want to say is just as I have stated before that the witness

testified that any notations made by Mr. Walden were made on a statement that he had not signed and therefore it could not possibly be part of his statement.

MR. FERGUSON: That is not what I understood,

THE COURT: Does anybody else have anything to say?

MR. BALLANCE: Yes, sir, your Honor. It seems to me that what this witness said was that when Mr. Walden brought the statement in to him he first signed the statement. He first read the statement and then he and Mr. Walden started talking and then he signed the statement, and then before they stopped talking he told Mr. Walden what was left out of the statement. Now if that is the truth and he further says that Mr. Walden then made the corrections.

THE COURT: Did you understand he made the corrections on the statement that he signed?

MR. BALLANCE: Yes, sir; that is what he said.

THE COURT: I asked was there any such statement in existence. I understood there was not; or is there?

MR. FERGUSON: That is why we are seeking to hear Mr. Walden.

MR. BALLANCE: And then the Solicitor comes up and says he does not know where the original statement is. It would obviously appear to me - I don't know about anybody else - that the State of North Carolina through the Solicitor is covering up something that they don't want us to have to give us an opportunity to impeach this witness who may or may not be telling the truth. I think in the interest of justice we are entitled to find out now where the original statement is so that we can look at it before this witness gets off the witness stand, before we finish our cross examination. I think we are entitled to it.

THE COURT: We will all take a few minutes recess.

(The Court recessed from 3:30 until 3:45 P.M.)

MR. BECFON:

I had one comment to make shortly before recess in reference to what Mr. Ferguson and Mr. Ballance just talked about. My point is simply this. The jury has already heard what the witnesses have testified as to what was on the amendments. The State is not hurt in any way by giving us those statements. There is abso-

lutely no way they can be damaged. In fact, if what he said is on the statement helps their case, it corroborates it, they should be running over here, if what they say is correct. I was thinking about it during the recess. Why won't they give us that statement? It would knock us off our feet if it is a correct statement. It would knock us out. I wanted to raise the question of why we can't get those statement.

THE COURT: Mr. Ferguson asked to be allowed to question one of your witnesses.

SOL. STROUD: May I say something? I want really to get this matter clarified. The State is not trying to hide anything from the defendants. Certainly under law the defendants are entitled to have certain information which the State has furnished what they requested. When we were asked about the original I said I didn't know where the statement was. They went on to say that the State was trying to hide something. Why wouldn't the State know where the original statement is? I was not there when the statement was signed. I have never until about 5 minutes ago seen the original statement.

Everything that I have had has been like as

in evidence here that the witness testified about, and that is a copy. Now I did not know where the original statement was. I assumed that Mr. Walden had the statement. Mr. Walden has presented the original statement to me, and I have it here. They are welcome to look at the original statement. When I said that I didn't know where the statement was, I wasn't trying to hide anything from the defendants. Now I'll be glad for them to examine Mr. Walden or anybody else that they want to.

THE COURT: All right. Come around, Mr. Walden.

MR. FERGUSON: May we see the original, your Honor?

(Mr. Ferguson is handed a paper writing.)

WILLIAM S. WALDEN, called as a witness by the defendants, being duly sworn, testified as follows: (In the absence of the jury.)

EXAMINATION BY MR. FERGUSON:

~~Q~~ ~~Mr. Walden, for the record state your full name,~~  
~~please.~~

*Ans.* William S. Walden.

~~Q~~ ~~What is your position, sir?~~

~~A~~ I am a Special Agent with Alcohol, Tobacco and

Firearms, U. S. Treasury Department.

~~Q~~ How long have you held that position?

~~A~~ Nine years.

~~Q~~ Are you assigned to any particular area of the State of N. C. in connection with your work?

~~A~~ My home office is Raleigh, North Carolina. I work out from there.

Q Now have you had some special assignment for investigating the charges that are on trial here now?

A We have the jurisdiction to enforce the Gun Control Act of 1968 which involves bombs, incendiary.

~~Q~~ In that connection did you participate in the investigation of the charges against the defendants on trial here today?

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

~~Q~~ In connection with your investigation, Mr. Walden, did you have occasion to interview State's witness Jerome Mithhell?

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

~~Q~~ When was the first time that you interviewed him, sir?

~~A~~ The first time <sup>I interviewed him</sup> was in February of '72.

~~Q~~ Do you recall the date in February?

~~A~~ No, sir; I do not have that right offhand.

Q Do you have notes which would reflect that date?

A It is doubtful at this time.

Q When you say doubtful at this time, are you suggesting that you would be able to come up with a date?

A I am not trying to hide it from you. I don't know whether it is actually available or not.

~~Q Do you recall who was present at the time you initially interviewed Jerome Mitchell?~~

~~A W. C. Brown, Det. D. L. Monroe and myself and an official of the Cherry Hospital, I believe his name was Allen.~~

~~Q Now where were you when you conducted this initial interview, Mr. <sup>Walden</sup> Walden?~~

A At Cherry Hospital.

Q At that time was Jerome Mitchell confined there or there for some observation to the best of your knowledge?

A He was there.

~~Q Now did you make any written notes of that initial interview?~~

~~A I took some brief notes, yes, Sir.~~

~~Q During the initial interview did the witness Jerome Mitchell sign any statement, any written statement, after you had talked with him?~~



~~A Are you talking about the first -?~~

~~Q The first time you talked with him at Cherry Hos-  
pital.~~

~~A No, sir; I don't recall that he did.~~

~~Q Now do you recall - strike that. After interviewing  
him on this initial occasion, did you have occasion  
to interview him again?~~

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

~~Q And when was that, sir?~~

~~A I believe this was March the second or third; second  
I believe.~~

~~Q <sup>I was</sup> Were you present when the witness was interviewed  
on February 13, 1972, at Cherry Hospital in Golds-  
boro?~~

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

~~Q Now <sup>I</sup> at that time did you make notes of what the  
witness was saying?~~

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

~~Q And did you have those notes that you took put into  
the form of a statement?~~

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

Q I'll show you a paper writing consisting of 1, 2,  
3, 4 typewritten pages and ask you to familiarize  
yourself with that, please.

(Hands paper writing to witness.)

Q Are you familiar with that document?

A I have seen it; yes, sir.

~~Q What is that?~~

~~A That is a statement.~~

Q <sup>T</sup> Is that the statement of Jerome Mitchell that <sup>d</sup> you took on February 18, 1972?

~~A Yes, sir; it is.~~

~~Q And <sup>T</sup> that is the original of the statement. Is that correct?~~

~~A Yes, sir; this is the original.~~

~~Q Where <sup>T</sup> has that original <sup>has</sup> been since it came into <sup>my</sup> your possession?~~

~~A It has been (in the custody of our office.)~~

Q ~~Well let me just back up for a moment. Is <sup>T</sup> that the document that you just produced a few minutes ago and gave to Mr. Stroud?~~

~~A Yes, sir; it is.~~

~~Q When did it first come into your possession?~~

~~A I have had it since it was signed except for the brief time it was being renewed.~~

~~Q When was that statement typed up, if you know?~~

~~A It was typed up prior to March 2. The exact day I cannot tell you.~~

~~Q Now was <sup>T</sup> that statement <sup>was</sup> made up from the notes that~~

*I* you yourself took during the interview?

~~A Yes, sir; it was.~~

~~Q Now~~ *T* the fourth page of that statement indicates that it was signed before <sup>*M.C.*</sup> you on March 2, 1972. ~~is that correct?~~

~~A Yes, sir.~~

~~Q Was it signed in your presence?~~

~~A Yes, sir; it was.~~

~~Q And who (signed it in your presence?)~~

~~A Jerome Mitchell.~~

~~Q Is Jerome Mitchell in the courtroom?~~

~~A Yes, he is.~~

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

~~A He is sitting next to Allen Hall right behind Mr.~~

~~Brown~~ *in*

~~Q In the black shirt?~~

~~A~~ *the* Black shirt and red pants; yes, sir.

~~Q Is that the same Jerome Mitchell who was just testifying on the witness stand to the best of your knowledge?~~

~~A Right prior to the recess; yes, sir.~~

~~Q Now at the time strike that. Who else was present, Mr. Walden, at the time this statement was signed?~~

~~A At the time the statement was signed?~~

~~Q Yes, sir.~~

A Mr. Allen who witnessed the signature.

~~Q How did you give Jerome Mitchell an opportunity to read over the statement prior to his signing it?~~

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

~~Q And did you ask him to read it before he signed it?~~

~~A I asked him to read it and see if that was what he said.~~

~~Q Did he read it?~~

~~A Yes, sir.~~

~~Q And after he read it, did he offer to make any corrections or additions, alterations, changes to the statement?~~

~~A After he read it?~~

~~Q Yes, sir.~~

~~A Not before he signed it, no, sir.~~

~~Q After he read it and before he signed it he made no alterations, changes or additions. Is that correct?~~

~~A No, sir.~~

~~Q And did you give him full opportunity to do that before he signed it?~~

~~A He could have.~~

~~Q Sir?~~

~~A He could have; yes, sir.~~

~~Q~~ You gave him the opportunity to do it if he had chosen to do so. ~~Is that correct?~~

~~A~~ Yes.

~~Q~~ Now when he signed the statement where did he initially sign the statement? Where did he sign the statement when he signed it?

~~A~~ he signed it on the back page.

~~Q~~ Subsequent to signing the statement did he give you any alterations, corrections, changes or additions to be made to the statement?

~~A~~ Subsequent to signing it?

~~A~~ Yes, sir.

~~A~~ No, sir; he did not.

~~Q~~ At anytime after that did he give you any changes or alterations to be made to that statement?

~~A~~ Not as changes as such; no, sir. We discussed some other things later.

~~Q~~ Did you make any notations <sup>not</sup> yourself on that statement?

~~A~~ No, sir; not on this statement.

~~Q~~ How many copies of that statement did you have in your presence at the time you presented it to him for his signature?

~~A~~ Mr. Ferguson, we routinely make 6 or 7 statements.

I am not sure which number it was at that time,  
6 or 7 copies, I mean.

Q An original and 7 copies?

A 6 or 7; it depends on who the secretary is.

Q *I* Did ~~you~~ have the copies with <sup>me</sup> ~~you~~ at the time you *I*  
presented the original to be signed?

A ~~Yes, I did.~~

Q ~~Did he sign any copies of the statement?~~

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

Q *I* ~~Do you~~ <sup>not</sup> recall how many copies he signed?

A ~~No, sir; I do not.~~

Q ~~Now~~ <sup>not</sup> did you make any notations of what he said  
onto the original of the statement?

A ~~Are you referring to this statement here, the  
original?~~

Q ~~Yes, sir.~~

A ~~No, sir; I have not.~~

Q ~~Did you make any notations onto the copy?~~

A ~~I do not recall making any notations on any of the  
copies.~~

Q ~~On any of the copies?~~

A ~~No, sir; I do not recall making any notations on any  
of the copies.~~

Q Now did the witness dictate to you any statement

of corrections or additions or alterations or changes to be made in the signed statement that he gave you?

A He did not dictate; no, sir. We discussed other incidentes that happened and mentioned other people's names.

Q Did you put the things that he said in written form?

A I made some notes at that time.

~~Q And where are (those notes?)~~

~~A I do not have, no, sir. Those notes. Those notes have been destroyed.~~

~~Q Those notes have been destroyed?~~

~~A Yes, sir, they have.~~

~~Q Now on the original statement that was signed <sup>f</sup> did you have the witness initial each page?~~

~~A On the original one?~~

~~Q Yes, sir.~~

~~A Every page but the last page.~~

~~Q Every page except the last page which he signed?~~

~~A That is correct.~~

~~Q What was your purpose in having him initial each page? <sup>The</sup> was~~

~~A To show that he had read it.~~

~~Q And did he read the pages and then initial it?~~

~~Is that the way you went about it?~~

~~A~~ No, sir; *Q* As I recall he signed the last page, and I asked him to go back and initial the pages if he had read them.

~~Q~~ Now *(how long did you keep the notes that you made,)* ~~Mr. Walden?~~ *I kept*

~~A~~ I have no idea of knowing, ~~Mr. Ferguson.~~ *I*

~~Q~~ Do you *not* know when they were destroyed?

~~A~~ No, sir; *T* this is a routine matter. We make notes and they are no longer any value to us we tear them up and destroy them.

~~Q~~ Am I to understand that the notes that you made were of no value in connection with your investigation of this case?

~~A~~ I said after they were no longer of any value to us.

~~Q~~ Do you recall when they became of no value to you? *I*

~~A~~ Yes, sir.

~~Q~~ When was that?

~~A~~ After I relaid the information which I had in the notes to Mr. Stroud.

~~Q~~ And do you *not* recall approximately when that was?

~~A~~ No, sir, I do not.

~~Q~~ Is there any reason why you did not put the ad- *I*

*ry*



ditional notes that you had into a written statement to be signed by this witness?

~~A Yes, sir, there is.~~

~~Q Will you tell us what that is?~~

A I relaid this information to Mr. Stroud. Mr. Stroud and some of the detectives here said they would look into the matter themselves. I let it drop at that.

Q How did you relay that information to Mr. Stroud?

~~A I talked to him.~~

~~Q In person?~~

~~A Yes, sir.~~

~~Q But you don't recall the date that you talkd to him?~~

~~A No, sir. It was in or around the same period. I do not recall whether it was that day or the next day.~~

Q Let me just clear up one point, if I may, Mr. Walden. How many times in February did you talk with the witness Jerome Mitchell?

A Two I believe, Mr. Ferguson. I assume they were all - I am pretty sure both times were in February.

~~Q One of them would have been before the 13th?~~

~~A Yes, sir, it should have been.~~

~~Q And then on the 13th?~~

*One time*

Shortly before the 18th and then on the 18th;

~~yes, sir.~~

~~Q When you talk with him on the 18th who was present?~~

~~A~~ On the 18th would be Mr. Stroud, Mr. Monroe, Mr. Brown, Allen Hall and one or more of the officials at the hospital there. *were present.* They changed from time to time.

~~Q~~ *I not* Now do you have any otehr written statement or notes of statements what were made to *me* you by the witness Jerome Mitchell?

~~A Do I have any other statement?~~

~~Q Yes, sir.~~

~~A No, sir. Do I have any other notes? No, sir.~~

MR. FERGUSON: I have no further questions.

THE COURT: Mr. Solicitor?

SOL. STROUD: No, sir; I have no questions.

Your Honor, there is one other matter I'd like to clarify if I may.

THE COURT: Yes, indeed.

SOL. STROUD: The defense has referred to the manner in which they received this matter. I apologized to them at the time I gave it to them, at the time that they asked for this statement,

and I accomodated them by giving them this statement that Jerome Mitchell had signed. This was the only copy I had. I had made several notations. The handwriting that is on the statement in places is my handwriting. I had made notations on the side of this statement and down at the bottom in some places that were my own notes; not any part of Jerome Mitchells statement, but were notes that I had placed on the statement. So in order to accomodate them, to let them have a copy and being the only copy I had I took scissors and cut off the handwritten portions that were in the margin of the statement. That is why on page 3 of the statement the initial of Jerome Mitchell is not there because around that initial were some handwritten notations that I had made. So I just cut off all of the handwritten notations that I had made. That is why the statement is in the condition it is. I don't want the defense to get the impression by using scissors on that statement I was trying to hide anything from them because I wasn't.

THE COURT: Is not the statement that has been identified as the original and Defendant's "4" exactly the same thing except for the initials on the third page?

SOL. STROUD: And there are a couple of little handwritten notes that I put in there that could not be scissored out.

THE COURT: Is there any question about that, Mr. Ferguson? Do you want to take these two and look at them, your Exhibit number 4 which is the copy that you have and the statement that Mr. Walden says is the original statement? Do you want to compare them?

MR. FERGUSON: If your Honor please, for purposes of voir dire examination we would like to have the original of the statement marked and identified as Defendant's Exhibit "5". (Defendant's Exhibit "5" marked for identification.)

THE COURT: Anything further, Mr. Ferguson?

MR. FERGUSON: Just one moment. If your Honor please, we would move to strike the testimony of the witness Jerome Mitchell and would ask that a bench warrant be issued for him for

perjury on the grounds that he has lied recording material facts involved in this case.

THE COURT: Motion denied. *Ex. D. L. 11/11/11* Are you through with those?

MR. FERGUSON: For right now.

(Hands Defendant's Exhibits "4" and "5" to the Court.)

THE COURT: Anything else?

MR. FERGUSON: We have no further evidence, your Honor.

THE COURT: On the voir dire the Court finds as a fact that Jerome Mitchell signed a statement, Defendant's Exhibit number "5", which is the original statement on the 2nd day of March before Mr. William S. Walden, Special Investigator for Alcohol, Tobacco, Firearms Division of the U. S. Government; that each page of the four pages were initialed except the last page by Jerome Mitchell; that this Defendant's Exhibit number "5", statement of Jerome Mitchell Q has been in the possession of Mr. Walden since it was signed; that 6 or 7 copies were signed at the same time by Jerome Mitchell; that Jerome Mitchell made no additions, changes, or deletions to said statement, but that at the time, that is, after he

signed the statement that he informed Mr. Walden of certain other matters that took place and gave him several names; that these were made on notes taken by Mr. Walden and were not inserted on any copy of the statement of Jerome Mitchell; that thereafter he talked with Mr. Stroud, Assistant Solicitor of this Judicial District, and furnished Mr. Stroud with this information, this additional information, that had been given to him by Jerome Mitchell after Jerome Mitchell had signed the statement, Defendants Exhibit "5"; and that after having advised Mr. Stroud, the Solicitor, of this additional information and these additional names he then destroyed his notes which was routine with his Department after having given this information to Mr. Stroud.

The Court further finds as a fact that the Solicitor for this District, Mr. Stroud, had a copy of Defendant's Exhibit number "5" on which he made certain personal notes which was not any statement of Jerome Mitchell; that when the defendant asked for a copy of this statement Mr. Stroud, the Solicitor, in order to accommodate the defendants and having only one copy of statement, furnished the defendants his copy, but before doing so he

cut off or removed certain personal notes that he, the Solicitor, Mr. Stroud, had made on said copy and gave the typewritten copy to counsel for the defendants; that the initial on each page as above referred to was placed at the bottom of the first, second and third pages of the original statement, Defendant's Exhibit number "5"; that the copy of the statement which Mr. Stroud gave to Defendants' counsel shows the initials on page 1, 2, but does not show the initial on page 3. Mr. Stroud informed the Court that the reason, and the Court finds as a fact, that the reason the initials does not appear on page 3 is because that part where the initial was inserted had certain personal notations made by Mr. Stroud and not a statement of Mr. Mitchell, and in removing or cutting off his personal notes he cut off the initials on that page of Jerome Mitchell.

LET THE JURY COME IN.

MR. FERGUSON: We would like for the record to show that we except to each and every finding of fact. *(Exception taken)*

(The jury returned to the jurybox.)

THE COURT: Mr. Mitchell, will you return to the stand?

THE COURT: Mr. Hunevol, on your motion, let the record show that I allowed Mrs. Shephard to be excused for medical reasons this afternoon.

MR. HUNEVOL: Thank you, your Honor.

JEROME MITCHELL, witness for the State, being duly sworn, returned to the witness stand, testified as follows:

CROSS EXAMINATION BY MR. FERGUSON Continues:

Q MR. FERGUSON: If your Honor Please, may I see the Exhibits?

Q Mr. Mitchell, I'll show you a copy of what has been marked and identified as Defendant's Exhibit "5" in the absence of the jury. I ask you to look at that.

SOL. STROUD: Your Honor, may we approach the bench?

THE COURT: Yes, sir.

(Conference at the bench.)

Q Have you had an opportunity to look at that?

~~A Yes, sir.~~

Q Do you recognize what that is?

~~A Yes, sir.~~

Q What is that?

~~A~~ <sup>It is</sup> The statement that I made on February 18.



~~Q~~ ~~Now~~ <sup>T</sup> that is the original of the statement that <sup>of</sup> you made. ~~Is that correct?~~

~~A~~ ~~It is correct.~~

MR. FERGUSON: If your Honor please, in order that the record may be straight, we'd like to have this marked and identified as Defendant's Exhibit "5".

THE COURT: Has it already been marked?

MR. FERGUSON: Yes, sir.

Q Now is that statement the original of Defendant's Exhibit "4"?

A Yes, sir.

Q Now having examined -

A Except date on it.

Q Just take a minute and examine both statements if you would page by page.

(Defendant examines exhibits.)

A Yes, sir, only except the date.

Q What is the differences?

A Out statement it is February 5, and the original it is February 5. That is all the difference.

Q What date do you have reference to? Are you talking about the second paragraph on the first page?

A Correct.

Q What is the difference in the dates?

A On the original statement it is dated February 4.  
Ours it is February 5.

~~Q~~ Now by "mine" <sup>I am</sup> are you talking about Defendant's  
Exhibit "4"?

~~A~~ That is right.

~~Q~~ And you recognize that that is a copy of the state-  
ment that Mr. Stroud gave to <sup>me</sup> ~~me~~. <sup>Yes</sup> Is that correct?

~~A~~ Right.

Q Now on the copy right at the second paragraph -  
I am sorry - the third paragraph on Defendants'  
Exhibit "4", do you notice some difference in the  
margin there, in the lefthand margin?

A Yes, sir.

~~Q~~ Is that a handwritten notation?

~~A~~ Yes, sir.

Q All right, sir. If you will turn on over to page  
2, the third paragraph on the page, are there some  
handwritten notations there?

A Yes, sir.

Q And on the fourth page - I'm sorry - in the fourth  
paragraph on that page you notice some handwritten  
notations there?

A Yes, sir.

Q And on the third page referring you to the last

paragraph on the page do you notice some handwritten insertions there?

A Yes, sir.

Q And those are the differences in the copy - well, Defendant's Exhibit "4" which is a copy and Defendant's Exhibit "5" which is the original. Is that correct?

A Yes, sir.

Q Now referring you to the original, Defendant's Exhibit "5", what has been marked as Defendant's Exhibit "5", are there any handwritten notations on there whatsoever?

A No, sir; just my initial and name.

Q Now on the original, Defendant's Exhibit "5", I'll refer you to the bottom margin, bottom righthand margin, of each page and ask if your initial appears there on each of the first three pages.

A Yes, sir.

Q And referring you to the last page I'll ask you if a full signature appears there?

A Yes, sir.

Q Now just above your signature I'll ask you if the following does not appear. "I have read this statement consisting of 4 pages and have been given the opportunity to make any additions or corrections that

I feel necessary. This statement is true and correct to the best of my knowledge." Does that appear there?

A Yes, sir.

Q On that original ~~does~~ <sup>it</sup> anything appear between that statement which ~~you~~ <sup>you</sup> just read and your ~~signature~~ <sup>signature</sup>?

A ~~No, sir.~~

Q ~~When was that statement~~ <sup>was</sup> signed by ~~you~~ <sup>me on</sup>?

A ~~the~~ Second day of March.

Q ~~Of what year?~~

A '72.

Q ~~Was it witnessed by someone?~~

A ~~Yes, sir.~~ Mr. Allen.

Q ~~Mr. Allen?~~

A ~~Yes, sir.~~

Q ~~Now who is Mr. Allen's~~

A One of the attendants at ~~the hospital.~~

Q ~~At Cherry Hospital where you were?~~ <sup>was,</sup>

A ~~Yes, sir.~~

Q ~~Now did you read the statement before you signed it?~~

A ~~Yes, sir.~~

Q ~~Did you initial each page as you read it?~~ <sup>not</sup>

A ~~No, sir;~~ I read the statement and I initialed the back of it, and then I initialed the rest of the paper.

~~Q~~ Now <sup>T</sup> that is the statement <sup>d</sup> you signed on March 2 and that is the statement which you made to Mr. Walden, Mr. STroud, Mr. Brown and Mr. Monroe on February 18, 1972, ~~is it not?~~

~~A~~ Yes, sir.

~~Q~~ Now did Mr. Walden ~~strike that.~~ Was Mr. W. S. Walden <sup>was</sup> present at the time you signed the statement?

~~A~~ Yes, sir.

~~Q~~ And the fourth page of the statement indicates that that statement was subscribed and sworn to on the second day of March, 1972. ~~Is that correct?~~

~~A~~ Yes, sir.

~~Q~~ Before Mr. Walden? ~~Is that correct?~~

~~A~~ Yes, sir.

~~Q~~ And witnessed by Mr. Allen?

~~A~~ Yes, sir.

~~Q~~ Now did Mr. Walden, ~~in fact,~~ <sup>did</sup> give you <sup>me</sup> an opportunity to make any additions or corrections that you felt necessary as appeared there in that last paragraph?

~~A~~ I stated that he did.

Q And did you make any additions or corrections to that statement?

A We only talked after I had signed the statement.

Q I am going to ask you to answer my question yes or no. Did you make any corrections or additions to that statement?

A We talked about the statement after I signed it, and he took notes.

Q I am going to ask you again to answer my question yes or not.

SOL. JOHNSON: Objection.

Q Did you make any additions or corrections to that statement?

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

Q Are there any additions or corrections that appear anywhere on that original statement?

SOL. STROUD: Objection.

THE COURT: Overruled.

SOL. STROUD: He's already answered the question.

~~Q What was your answer?~~

A No, sir.

~~Q Now you said <sup>me</sup> no copy of that statement was left with you at the time you signed it. Is that correct?~~

~~A That is correct.~~

~~Q (How many copies of the statement <sup>f</sup> did you sign?)~~

~~A I can't recall~~ ↗

~~Q On any of the copies of the statement that you signed~~ ↗ ~~Strike that.~~ Did you sign some copies

of the statement?

~~A Well, yes, sir.~~

~~Q~~ But you don't know how many you signed. Is that correct?

~~A That is correct.~~

~~Q Did you sign (more than one copy?)~~

~~A I can't say if I signed.~~

~~Q~~ Do you know how many copies Mr. Walden had with him when he came there?

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

Q Now I'll ask you if on any of the copies of the statement, which you either signed or did not sign, were there any corrections or additions made onto any of the copies that Mr. Walden had with him?

A No, sir.

Q Now you told the jury before the recess that we had that Mr. Walden made corrections or additions on some copy of that statement, didn't you?

A I stated to the fact that Mr. Walden was there, and after I signed the statement that I had read that he made corrections or took notes and he had other statements with him.

~~Q Well you said he had other statements with him?~~

~~A I stated the fact that I didn't make no correction~~

on the statement that I signed.

Q Did he make some corrections on some other statement that you gave him?

A I stated he didn't make no corrections at that time on no statement there.

Q What other statements did he have with him when he came there, Jerome Mitchell?

SOL. STROUD: Objection.

A I don't know.

Q Had you given him any other statement than the one he presented to <sup>me</sup> you to sign?

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

Q Did he present to you any other statement to sign there?

SOL. STROUD: Object. Can Mr. Ferguson lower his voice, please?

MR. FERGUSON: Your Honor, this is cross examination. I object to the Solicitor constantly telling me to lower my voice.

THE COURT: Lower your voice a little. *(Cup her hand)*

Q The only statement you have given him that he typed up and brought for you <sup>me</sup> to sign is that statement you have ~~there~~ in your <sup>my</sup> hand right now, isn't it?

~~A That is correct.~~



Q Do you deny that you told this jury before the recess that he made some corrections and changes on a statement that he had there?

SOL. STROUD: Objection. He has already answered the question.

THE COURT: Haven't you already asked him that?

MR. FERGUSON: No, sir.

THE COURT: Go ahead.

A I explained what I meant to you.

~~Q I ask you do you deny that.~~

~~A Yes, I deny it.~~

Q You deny that you told the jury that?

A Because I explained it to you.

~~Q Now~~ Since March 2, 1972, <sup>do</sup> have you <sup>not</sup> been presented with any other statement regarding the activities at Gregory Congregational Church on the 5th and 6th of February, 1971, to be signed by you? <sup>me</sup>

~~A No, sir.~~

~~Q~~ Have you <sup>not</sup> signed any other statement regarding the activities of the Gregory Congregational Church on February 5 and 6, 1971, other than the statement you have <sup>in</sup> there in <sup>my</sup> your hand now that has been marked as Defendant's Exhibit "5" for the purposes of this trial?

~~A No, sir.~~

Q All right, sir. I'll ask you to look at that statement. Is there anywhere in that statement that you mentioned the name of Wayne Moore as going with you to Dock Street on Friday evening, February 5, 1971?

SOL. JOHNSON: Objection.

THE COURT: Overruled.

A No, sir.

Q Continue looking at it if you please. Is there anywhere in that statement where you said that you saw Joe Wright on Friday February 5 in the evening at Gregory Congregational Church with a shotgun and a pistol?

A No, sir.

~~Q I'll ask you if there is anywhere in that statement where you said that Reginald Epps went with you to Dock Street with a shotgun or bricks or what-have-you?~~ *no place*

~~A No, sir.~~

~~Q I'll ask you if anywhere in that statement you mentioned the name of Marvin Patrick, Chili, as having led a group of boys up on Castle Street on the evening of February 5, 1971?~~ *did not*

~~A No, sir.~~

~~Q I'll ask you if it isn't true that the only time you mentioned Marvin Patrick's name in that state-~~ *it is*

ment was where you said you saw him come in the front door after you heard some shooting, and he took his shirt off and you saw that he was shot in the chest. ~~Isn't that correct? I am referring you to the second paragraph on page 2.~~

~~A Yes, sir.~~

~~Q Sir?~~

~~A Yes, sir; that is right.~~

~~Q You are saying that is correct that is the only time in this statement you mentioned his name?~~

~~A That is correct.~~

~~Q I'll ask you if on a strike that. I'll ask you if anywhere in that statement you mentioned that you saw Connie Tyndall at Gregory Congregational Church on the evening of February 5, 1971.~~ *February 6, 1971*

~~A No, sir.~~

~~Q Or February 6, 1971.~~

~~A No, sir.~~

~~Q I'll ask you if anywhere in that statement you mentioned the name of Wayne Moore that you had seen him on February 5 or 6, 1971.~~ *of Ted...*

~~A No, sir.~~

~~Q I'll ask you if anywhere in that statement you mentioned that you had seen Willie Vereen on the night of~~ *I did not mention*

February 5, 1971, or at anytime on February 6, 1971.

~~A~~ No, sir.

~~Q~~ Is there <sup>no</sup> anywhere in that statement where you say <sup>I</sup> you saw James McKoy on February 5 and 6, 1971?

~~A~~ No, sir.

~~Q~~ Is there <sup>no</sup> anywhere in that statement where you mentioned <sup>I</sup> at all that you saw Joe Wright on February 5 and 6, 1971?

~~A~~ No, sir.

Q I'll ask you if you didn't state at that time in Paragraph 3 on page 1 of your statement "I heard Ben pick out some cats, 7 or 8 of them, to go to Castle Street. The only one I knew in this group was Nathaniel Ross." Doesn't that appear there?

A Yes, sir.

~~Q~~ Didn't you <sup>I did</sup> sign that as being the truth?

~~A~~ Yes, sir.

Q Now you told this jury that you told them that you left the church about 7:30 or 8 o'clock on Saturday morning. Isn't that correct?

A That is correct.

Q And I asked you if you were sure that was the time you left the church. Isn't that correct?

A That is correct. <sup>I said yes.</sup>

~~Q And you said yes. Isn't that right?~~

~~A Yes, sir.~~

Q I refer you to the second paragraph on page 2 and ask you to read it and ask you to tell the jury what time you told these officers or what time you stated in this signed, sworn statement that you left Gregory Congregational Church on Saturday, February 6.

A 5 A M.

~~Q In the morning?~~

~~A That is correct.~~

Q I'll ask you if anywhere in that statement you signed there is any statement to the effect that you ever came back to Gregory Congregational Church on February 6, 1971.

A No, sir.

Q Was this statement that you looked at, read and signed a lie?

SOL. STROUD: Objection.

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

Q Now you lied to this jury when you told them that Mr. Walden inserted some names on a copy that he had there, didn't you?

SOL. STROUD: Objection.

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

*I did know*

~~Q Now you knew Wayne Moore on February 18, 1972, didn't you?~~

~~A That is correct.~~

~~Q AS a matter of fact, you told this jury you had known him since 1970 and met him on Castle Street.~~

~~A That is correct.~~

~~Q That would have been about 2 years before you signed this statement. Isn't that correct?~~

~~A Yes, sir.~~

~~Q So you knew his name on February 18, didn't you?~~

~~A Yes, sir.~~

~~Q You knew his name on March 2, didn't you?~~

~~A Yes, sir.~~

Q And you signed a statement and now you are telling the jury something Wayne Moore did and you didn't mention his name in the statement?

A Well I told him about it.

Q You don't know why he didn't put it in there, do you?

A Well -

SOL. STROUD: Objection.

THE COURT: Overruled.

A Because they left something out. It is not my concern when I told them about it.

Q It is not your concern what you signed, Jerome Mitchell?

A Well aft I told them about it.

Q After you told them about it, did you see to it that you signed it before you put your initial on every back and your name on the back page?

SOL. STROUD: Objection.

THE COURT: Go ahead.

A Like I told you there was no correction made in the statement.

THE COURT: Gentlemen, I have got a long distance call here. You may step down. I want to see you all just one minute.

(Conference at the bench.)

THE COURT: Members of the jury, we are going to take a recess until tomorrow morning. Let me instruct you again not to discuss these cases with anyone nor allow anyone to discuss it with you nor in your presence. Do not discuss it among yourselves until the argument and charge of the Court and you have the matter for your deliberation. I'll ask you not to read any account of this trial if such should appear in any paper. I would ask you also

not to view any television account of this trial if such should appear nor listen to any radio account of this trial if such should appear. Members of the jury, let me ask you again not to linger in the hallways or on the grounds as you leave, but go immediately to your destination. When you return in the morning please come immediately to your jury-room and there remain until the opening of court. You go now, members of the jury, and come back tomorrow morning at 9:30. Everyone else remain here.

(The jury was dismissed from the courtroom.)

(The Court recessed at 4:57 P M.)

October 4, 1972

9:40 A M.

THE COURT: Let the jury come in.

(The jury came into the jurybox.)

JEROME MITCHELL, witness for the State, returned to the witness, already duly sworn, testified as follows:

CROSS EXAMINATION BY MR. FERGUSON Continues:

Q As I recall it, Mr. Jackobs, - Mr. Mitchell, just before we recessed on yesterday I was asking you about the written statement that you made. Do you



recall that?

A Yes, sir.

Q I'll refer you again to Defendant's Exhibit "4" and "5" and ask you, directing your attention to the second paragraph on the first page, and I'll ask you if you mentioned the name of Jerry Jacobs in that paragraph?

A Yes, sir; on the first page.

~~Q Would you tell the jury what you said about Jerry Jacobs on that first page?~~

~~A I said I seen him on Friday night.~~

~~Q Where did you say you saw him?~~

~~A Outside the church.~~

~~Q Did you say you saw him with any weapons?~~

~~A No, sir.~~

~~Q Did you mention anything in that paragraph other than the fact that you saw Jerry Jacobs?~~

~~A No, sir.~~

~~Q Take a moment and look at the rest of your statement. Now is the name Jerry Jacobs mentioned anywhere else in that statement?~~

~~A No, sir.~~

Q You didn't say one solitary thing about Jerry Jacobs having any guns, did you?

A Well, like I told you before, Mr. Ferguson, when

Mr. STroud and Mr. WALden came up and Mr. Brown - like we talked about the case. I made the statement, and before that time, before the 18th when I made the statement, when I talked to Mr. Walden, and I told him the same thing that I told him on the 18th that I have testified here in court about Friday night, and he took notes on a pad, and he said he would tell Mr. Stroud about it.

Q My question to you was did you in that statement say one single solitary thing about Jerry Jacobs other than that you saw him when you got to the church?

~~A In the statement?~~

~~Q Yes, sir.~~

A No, sir.

~~Q What time was it you say you got to the church on Friday?~~

~~A It was about 7.~~

~~Q (What time did you go up on Dock Street?)~~

~~A I can't quite remember.~~

Q Do you know how long you had been at the church before you went up there?

A Could have been approximately an hour or better.

Q All right, sir. That would have been 8 o'clock.

How long did you stay up there?

A 15 or 20 minutes at the most.

Q So you would have gotten back approximately 8:20.  
Is that correct?

A Couldn't say.

~~Q And when you got back who did you see at the church?~~

~~A~~ When I got back from Dock Street I went inside the church. I seen Ann Shephard, and at that time Marvin Patrick was there, and I seen Reginald Epps, Wayne Moore and the rest of the defendants.

Q Now how long had you been in the church when you got back from Dock Street before you saw Marvin Patrick got shot?

A Could have been 25 or 30 minutes. I am not sure.

Q Now you say Chavis was in the church at that time?

A Not at the time that he was shot. I said he came over to the church.

Q You don't know where Rev. Chavis was when you went up on Dock Street. Is that right?

A Well when we left he was out in the yard between the church and Templeton's house.

~~Q~~ Was <sup>he</sup> ~~he~~ in the yard when you got back?

~~A~~ No, he wasn't. I didn't go directly around at the back.



~~Q You didn't what?~~

~~A I didn't go directly around to the back when I got back. I can't say.~~

Q Now was Allen Hall in the church when you got back?

A Well I seen Allen that night, as I stated before. If he was in there at that time, he probably was, but I say I didn't recognize him.

~~Q You said he was probably in there, but you didn't recognize him?~~

~~A I stated the fact that I had seen him that night, but at this time you refer to that Chili got shot, well, like I said, he probably was there, but I didn't recognize him.~~

Q What made you say he probably was there?

A Well I just said if he was there he was there, but I just didn't recognize him, Mr. Ferguson.

Q I asked you did you see him there?

~~A Well I just answered your question.~~

~~Q What is the answer? Are you saying no, you didn't see him?~~

A I said I didn't recognize him.

Q You had known for about 16 years, hadn't you?

A I answered your question.

Q Did you see the man at the church when you came

back?

SOL. STROUD: Objection.

THE COURT: Overruled.

A I said I didn't recognize him in the church.

~~Q~~ <sup>So</sup> you said you didn't see him in the church when  
<sup>you</sup> came back?

~~A~~ I said that.

Q Why did you want to tell the jury you probably saw  
him? You don't want to say anything inconsistent  
with what he said. Isn't that right?

SOL. JOHNSON: Objection.

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

Q Did you see him in the church anymore after that  
Friday night?

A Probably have. There is a lot of people there.  
I wasn't looking for no particular person.

~~Q~~ You weren't?

~~A~~ There was quite a few people there.

Q I asked you did you see Allen Hall in the church  
anymore after that, Jerome Mitchell. Why didn't  
you answer my question?

SOL. JOHNSON: Objection.

A I answered your question.

~~Q~~ Did <sup>you</sup> see the man after that?

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

Q You didn't see him in the church anymore after that?  
You spent the night in the church, didn't you?

A Yes.

Q What time was it when you say you observed Marvin  
Patrick come in the church?

A I don't know. I can't say exactly what time.  
Could have been about 10; 11. It could have been  
later than that.

~~Q 12?~~

A *It* Could have been *12.*

Q One?

A Possible.

Q Two?

A Possible, too.

SOL. STROUD: Object.

THE COURT: Overruled.

Q Now you lost all concept of time since you have been  
under cross examination. Is that right?

A Not exactly.

Q Well you told Mr. Stroud the time on everything  
he asked you about, didn't you?

A I told him approximately.

Q So you are saying that Marvin Patrick got shot at  
approximately 10 o'clock or 2 o'clock. Is that  
right?

A It could have been.

Q Now when you first came to the church you saw Allen Hall at that time, did you not?

A ~~When I first came to the church?~~

Q Yes, sir.

A Well I stated the fact that when I came to the church I seen the defendant and I later seen Allen Hall, yes.

Q You saw him later? You didn't see him when you first came there?

A Well it was later, *a few minutes later.*

Q ~~How much later?~~

A ~~A few minutes.~~

Q ~~Now where was he <sup>at</sup> when you first saw him?~~

A ~~He was on the outside. Then he came on the inside of the church.~~

Q Well are you saying you saw him when he came on the inside of the church?

A Yes, and he was on the outside around the porch also.

Q ~~Just trying to find out where the man was <sup>at</sup> when you first saw him, ~~Jerome Mitchell.~~~~

A ~~He was on the porch on the outside, Mr. Ferguson.~~

Q ~~He was on the porch when you first saw him. Is~~

~~that what you are saying?~~

~~A~~ Right.

Q Now if I understand you that would have been about 5:30.

A I said I got around to the church about 7 o'clock.

Q You got there around 7 when you saw him on the porch?

A Not immediately I didn't see him. I said it was a few minutes later after I was there.

Q What do you call a few minutes? 5 minutes? 10 minutes? 15 minutes? What do you call a few minutes?

SOL. STROUD: Objection.

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

A It wasn't that long.

Q You don't know what a few minutes is?

SOL. JOHNSON: Objection.

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

Q Do you know what a few minutes is?

SOL. JOHNSON: Object.

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

Q What is a few minutes?

SOL. STROUD: Object.

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



~~Q~~ When you first saw him <sup>did</sup> you talk to him?

~~A~~ Spoke to him. That is about all.

Q What did you say? "Hi, Big Al."?

A Can't recall. Could have.

~~Q~~ You don't know what you said to the man, your long time friend?

~~A~~ I don't know exactly what I said. I could have said, "Hi, Big Al."

SOL. STROUD: Objection.

Q Did you had conversation other than that?

A That is all.

~~Q~~ (How long did you talk to him?)

~~A~~ I don't exactly know.

~~Q~~ You don't remember anything you said to him other than hello?

~~A~~ No.

~~Q~~ You don't?

~~A~~ Definitely don't.

~~Q~~ Do you know how long you talked to him?

~~A~~ Well don't recall that. It wasn't long.

~~Q~~ Did you talk with anyone else?

~~A~~ Talked to quite a few people that night. I can't recall who they was specifically.

Q You can't recall anybody specifically but your

longtime friend, Allen Hall. Is that right?

A Not exactly if you put it that way.

Q Now you were in hiding from the police at this time, were you not?

A No, I wasn't.

SOL. JOHNSON: Objection.

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

Q Are you saying you had escaped from a reform school and you didn't care whether you ran into the police or not?

SOL. JOHNSON: Object.

THE COURT: Sustained. (Exception No. —)

Q What was your address on February 5, 1971?

SOL. JOHNSON: Objection.

THE COURT: Sustained. (Exception No. —)

~~A February 5? 1509 East Plaza.~~

~~Q East Plaza?~~

~~A That is correct.~~

Q How long had you lived at that address?

SOL. STROUD: Objection.

THE COURT: Overruled.

A Quite sometime.

~~Q How long had you lived at that address?~~

~~A A few years.~~

~~A~~ How many I don't know.

Q Now other than inside of the church there when you saw Allen Hall did you see him anywhere else?

A I stated the fact that I had seen him on the outside of the church, Mr. Ferguson.

~~Q~~ ~~When was that was~~

~~A~~ When I first came to the church and a while after.

Q When you first came to the church he was on the porch. Isn't that what you said?

A Well I didn't see him when I first came. I said it was a while after when I was going into the church I recognized him.

Q At that time he was on the porch, wasn't he?

A He could have been.

Q I am not asking you whether he could have been on the porch. I am asking you whether he was on the porch.

A Yes, sir.

~~Q~~ ~~He was on the porch?~~

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

~~Q~~ ~~Then he came inside the church?~~

~~A~~ Not immediately, but he came in.

~~Q~~ (When did he <sup>came</sup> come in?)

~~A~~ I can't exactly say.

Q How long did he stay in there when he came in?

A I can't exactly say how long he stayed in.

Q I am asking you other than at that point, did you see Allen Hall Friday night?

A I could have.

Q I am not asking you whether you could have seen the man, Jerome Mitchell. I am asking you if you saw him.

A I said I could have.

~~Q Did you see him?~~

~~A I can't recall~~ *if I saw him.*

Q Are you sitting up here telling this Court whether you can't recall seeing Allen Hall anymore that night?

A I am. Can't say for certain if I did or if I didn't. There is quite a few people around there.

~~Q If you saw him you don't know where else you saw him. Is that right?~~

~~A That is right, until I recall.~~

~~Q What are you talking about?~~

~~A Just can't think about where I seen him at if I did right at the time.~~

Q *T* So the only time you recall now is when you went there, saw him on the porch and later saw him come into the church?

A ~~That is right.~~