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he was crouched down behind it and I went to his side with him. At this time there was flames, flickering up in these two windows of Mike's Gro-dery which was there at the time.

MR. BALLANCE: Move to strike.

MR. HUNEVOL: Move to strike.

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

Q As you were coming into the area there down Ann Street and onto 6th, did you hear anything?

MR. BALLANCE: Object.

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

A Yes, sir; I heard gunfire.

MR. HUNEVOL: Move to strike.

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

Q Could you tell it from the sounds where the gunfire was coming from?

MR. BALLANCE: Object.

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

A It sounded as though it was coming - we were walking down here (indicating) and it sounded as though it were coming from back in this area.

MR. BALLANCE: Move to strike.

MR. HUNEVOL: Move to strike.

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

Q When you arrived in the area where Officer DAVID Gurganus was located, what, if anything, occurred; or what, if anything, did you observe at that time?

MR. BALLANCE: Objection.

MR. HUNEVOL: Objection.

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

A When I arrived there, stated I went to this area. I saw a subject at this time in between one of these houses here. I don't know which alley it was, but there was a subject standing over here looking in the direction that we were, a black male.

MR. FERGUSON: Move to strike.

MR. HUNEVOL: Move to strike.

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

~~Q And during the time that you were with Officer Gurganus~~

~~THE COURT: Sir, I didn't hear.~~

Q During the time that you were with Officer Gurganus did you hear any other gunfire?

MR. FERGUSON: Objection.

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

MR. HUNEVOL: Objection.

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

A There was some sporadic gunfire.

MR. HUNEVOL: Move to strike.

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

Q During this time did you observe any other people in the block there in your vicinity?

MR. HUNEVOL: Objection.

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

Q On Friday night?

A On Friday night?

MR. BALLANCE: Objection.

Q When you were there with Officer Gurganus.

THE COURT: Are you asking Friday night?

Q Pardon me. I am asking about Friday night, February 5, 1971.

MR. FERGUSON: We object; move to strike.

THE COURT: Members of the jury, the testimony of this witness is offered by the State, admitted by the Court and will be considered by you for the purpose of corroborating the witness Allen Hall, if you, the jury, find that it does corroborate him and for no other purpose. It is not substantive evidence. *(Exception No. —)*

Q We are talking about Friday night. Is that correct?

A Yes, sir; Friday night.

Q Did you see anyone come into that area; any civilian come into that area during the time that you were

there?

MR. FERGUSON: Object. He is leading.

THE COURT: Overruled. Don't lead him. (Exception No. ---)

A Yes, sir; there were some more police officers and there was 1959 Pontiac that came from 6th and Nun. (pointing) Came north and parked about right here right in front of this, what was the Jackson residence. At this time there was somemore sporadic gunfire and a man, black male, stepped out of this car, and I and Officer Gurganus hollered at him to get down, and then some children came to the window in the front door of this house here and yelled, said, "Daddy, get down. They are shooting."

MR. FERGUSON: We move to stroke.

MR. HUNEVOL: Move to strike.

THE COURT: Motion sustained as to what the children said.

MR. HUNEVOL: As for instructions.

THE COURT: Members of the jury, do not consider the statement as to that the children said.

A At this time this man crouched down and ran into this house here and just moments later we pulled back to Ann Street.

MR. HUNEVOL: Move to strike.

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

Q When you pulled back to Ann Street what was the condition as to the fire at Mike's on this Friday night?

A It was out at this time.

~~Q~~ Later in the evening on Friday, February 5, 1971,

I did you have occasion to be in the area of 5th and Nun Street?

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

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

MR. FERGUSON: Objection.

MR. HUNEVOL: Object.

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

A I was there for the purpose of assisting three other officers in erecting barricades to barricade Nun Street from 5th.

MR. HUNEVOL: Move to strike.

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

Q What was the purpose of the barricades?

MR. HUNEVOL: Object.

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

MR. BALLANCE: Objection.

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

A We had been ordered to barricade the area two blocks each direction from the area of 6th and Nun, this area we had received the gunfire from.

MR. FERGUSON: Move to strike.

MR. HUNEVOL: Move to strike.

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

Q Now at the time that you were there with the group putting up barricades what, if anything, occurred or what, if anything, did you observe, please?

MR. FERGUSON: Objection.

MR. HUNEVOL: Objection.

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

~~A We came, took our trucks that we had the barricades in, came across -~~

~~Q Would you keep your voice up?~~

A Yes, sir. We came across 5th Street; parked the vehicle here; drug the barricades out the back of it. I went to this corner here to this house here (Indicating) and crouched down in this position right here, and I parked my partner I was working with that night; and a Lt. I was working with and a Sarg. started erecting barricades across here and also set out some flambeaus. Immediately drew gunfire from down this area here, and when we drew the gunfire my partner and I returned the fire back in this direction, and it was at this time that during this gunfire I could see other flashes coming from

the area of the church here on the porch of this Gregory Church.

MR. HUNEVOL: Move to strike.

MR. FERGUSON: Move to stroke.

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

Q What do you mean by muzzle flashes?

A There was a flash and a report like from a shotgun.
I would say it was a shotgun.

MR. FERGUSON: Move to stroke.

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

Q What type of gunfire were you received on this occasion from that area?

MR. BECTON: Objection.

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

A It was small arms fire such as a .22. The projectiles were coming past us in the street, and also you could hear shot raining down around us in that area.

MR. FERGUSON: Move to strike.

MR. HUNEVOL: Move to strike.

THE COURT: Motion to strike denied. *(Exception No. —)* Members of the jury, the testimony as to gunfire and the direction in which it was coming is offered by the State and admitted by the Court and will be considered by you for the purpose of

corroborating the witness Hall if you, the jury find it does corroborate him and for no other purpose. It is not substantive evidence.

~~Q Then what, if anything occurred on that particular occasion?~~

A On that particular occasion as soon as the barricades and flambeaus were erected and lit, the Lt. ordered us back into the truck, and we continued on around a two-block area around 6th and Nun to set out more barricades.

MR. FERGUSON: We move to strike.

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

Q Now on Saturday morning, February the 6th, 1971, did you have occasion to be in the area of 6th and Nun Street?

A Yes, sir; I did.

MR. BALLANCE: Objection.

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

~~Q What?~~

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

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

MR. BALLANCE: Object.

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

A This was about 30 minutes after daylight, sunrise. We were ordered to go back out and remove these

barricades which we had placed out the night before. And on this occasion Officer Gurganus and another officer and myself were back up here, which would be the next street going south from Nun. We parked our vehicle at 6th and Church and along with about 3 or 4 more officers we came down the sidewalk here. At this time while we were coming down the sidewalk toward 6th and Nun the Lt., Sarg. and I think a couple more uniformed privates were back up in this area picking up the barricades that we had out back up here. (Indicating) We came down to this intersection here. At this time we observed approximately six black males, I'd say 14 to 17 years old, milling around on this corner. There was utility pole here, and I think there was a car parked over there, and they were in and around this area, and they at this time were carrying weapons.

MR. FERGUSON: Move to strike.

MR. HUNEVOL: Move to strike.

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

- A. These weapons looked to be of .22 caliber weapons, rifles. Appeared to be one small shotgun, single barrel shotgun. We came on down to this side right here of this house right here on the sidewalk.

These blacks started moving back in up and around these utility poles. And in this little alley here one came up on the porch of this house and got behind the corner post of the porch. At this time I was standing about right here on the corner. Looked up toward this church, and I observed three black males, adults, standing on this porch. One of them I recognized to be Benjamin Chavis, and he looked directly towards me and then turned as I would have been on his left. He looked like this (indicating), and then turned and shoved the other two males in through the door of the church. At this time we again were ordered to pull back to the truck, and we did so.

MR. FERGUSON: Move to strike.

MR. HUNEVOL: We move to strike.

THE COURT: Members of the jury, the answer to the last question you will consider only as to the defendant Ben Chavis. You will not consider that testimony as evidence against any other defendants. *(Exception No. —)*

~~Q — Now, Officer Chipps,~~ On that Saturday evening of February 6, 1971, did you have occasion to be in the vicinity of Mike's Grocery store at 6th and Nun Street?

~~A 6th and Ann.~~

~~Q 6th and Ann. Pardon.~~

~~A Yes, Sir.~~

~~Q What was your occasion for being there at that time,
please?~~

~~A Another fire call had come in, and we were sent to
this area.~~

~~Q Where did you arrive in this area?~~

~~A At this time I was a block north of Ann Street which
would be Orange Street; would be the street that
parallels Ann Street a block north; parked my vehicle
here (indicating) and walked down to the north side
of this church here. And at this time I got there
there was a pretty good sized fire going over there
in this building. This was just shortly after 10
o'clock. There were some more officers arrived there
about the same time. Officer Shaw and Williams and
Officer Wollak were there with me at the time.
When we got here they crossed this street here across
6th Street, and then Officer Shaw and Williams
crossed Ann Street to the southeast corner over here.~~

~~Q Let me ask you this at this point, if I may. The
fire there at Mike's, where was the fire located
at Mike's when you first observed it?~~

A It was blazing out this side here (pointing) because it had this side of the street all in here brightly illuminated at this time.

MR. FERGUSON: Move to strike.

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

Q At the time you came into the area coming down 6th Street, as you have described, did you hear anything?

A Yes, sir; there was gunfire coming from this area back in here up in here.

MR. FERGUSON: Move to strike.

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

Q What, if anything, occurred as you go ahead and testify, as you were coming across there onto the corner of 6th and Ann and before I interrupted you.

MR. FERGUSON: Objection.

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

A I remained over here with somemore officers. Officer Shaw and Williams crossed the street. Officer Shaw got up on the porch of this house here, and Officer Williams went back here somewhere and I lost sight of him. Officer Wollak, I believe he stayed right over here on this corner for a while and then later on he crossed over the street also. Officer

Shaw though was going down from porch to porch here. And when he got on the porch of this house here I heard a gunshot, what sounded like a gunshot, and then moments later I observed Officer Williams and Shaw dragging a subject up the sidewalk here around to this side and lay him down on the sidewalk here. Just moments later a patrol car came and this subject was removed from the sidewalk.

MR. FERGUSON: Move to strike.

MR. HUNEVOL: Move to strike.

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

Q During the time that you observed Officer Williams coming back with Officer Shaw back around to the corner there dragging the subject you have described, what, if anything, did Officer Williams have in his possession?

MR. FERGUSON: Objection.

MR. HUNEVOL: Objection.

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

A He had two weapons in his possession, One was the shotgun that was issued by the Department, and the other was another type long weapon.

MR. HUNEVOL: Move to strike.

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

Q ~~Now~~ at this time ¹ did you see any firemen in the area?

A ~~Yes, sir, there were firemen here.~~ They were up

in and around this area here and in between these houses and alleyways and so forth in here; and the firetruck was out here somewhere parked. There were more policemen there. Church is an "L" shape here, and there were more policemen and firemen standing here. (pointing) They had the pumps going on the church, and they were directing water toward the blaze on this store and this house.

Q During the time that you were there, did you remain in the area of the church there at the north side of the church?

A On a couple of occasions I came down the back side of this church and there is an alleyway right here, driveway like, runs back out to the street, and we had officers over here and officers over here; and at times I would come to here, look through here at these officers and then go back to my position here; keep checking the back of this church here.

Q During this time did you hear anything?

MR. FERGUSON: Objection.

THE COURT: Overruled. (Exception No. —)

MR. HUNEVOL: Objection.

THE COURT: Overruled. (Exception No. —)

A Yes, sir. On one occasion when I was coming through there I was almost to the corner of this church here; and behind this church there is a garage, a tin garage, utility shed like, and then there is another one right back over here with space approximately 20 feet, I'd say, between the two buildings and from behind this building, this garage that paralleled with the church here. I could hear someone running; hear running footsteps in the leaves back there; and two figures emerged from behind this building into this clearing between the two buildings; and I could tell that they were black males. At this time I said, "I am a police officer. Hold it." And at this time they turned around and ran back through the wooded area back in there, which is a radio station over here and a cleared lot back in here, a few trees, leaves and things back in there. They turned, and as they turned tan, ran back, they had something long - appeared to be firearms in their hands hanging down by their side, when they crouched down and ran back - holding beside of them.

MR. FERGUSON: Move to strike.

MR. HUNEVOL: Move to strike.

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

SOL. STBOUD: The State has not further questions of this witness, your Honor. Tender him for cross examination.

MR. BECTON: If it please the Court, we move to strike Mr. Chipps's entire testimony.

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

CROSS EXAMINATION BY MR. BECTON:

Q Did I understand you to say you went to Mike's Grocery on Friday night, saw flames coming out the upstairs apartment of Mike's Grocery?

A This is true.

Q What window did you say flames were coming out of?

A I don't think they were coming out. I think I said they were flickering in this area right in here.
(Indicating.)

~~Q What time of day or night was this?~~

~~A This was right at 7 P M.~~

Q And did I understand you to say that later on that Friday night you were putting up barricades at 5th and Nun?

A This was Friday night about 12 o'clock.

~~Q And it was Saturday morning when you went to remove the barricades?~~

~~A~~ Yes, sir; this is true.

Q What time was it Saturday morning when you went and removed the barricades?

A It was in the neighborhood of around 6:30, maybe quarter to 7. It was good daylight. It was about 30 minutes after sunrise, I'd say.

~~Q~~ Is that the time ^{it} you say you saw young blacks milling around the corner of 6th and Nun?

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

~~Q~~ Where were you at the time ^{it} you say you saw these young blacks milling around the corner of 6th and Nun?

~~A~~ I was coming up this sidewalk over here (indicating) up about in this area here.

Q How far from these young blacks would you say you were at the closest point to them?

A Diagonally from one point of the street to the other. They were right over here. I was right over here.

(Pointing) 70 feet maybe.

~~Q~~ Can you describe what anyone of those young blacks had on?

~~A~~ No, sir; I can't. They were wearing slacks and shirts. Some of them had what looked like sweat shirts on. Weather was kind of cool about this

time of year; cold weather clothes.

~~Q~~ ^{I was} Were you looking at them face to face?

~~A~~ Yes, sir.

~~Q~~ ^I Did you recognize any of them?

~~A~~ No, sir.

~~Q~~ At that time, is that when you say you saw Ben Chavis?

~~A~~ Yes, sir.

~~Q~~ Where was it you say you saw Ben Chavis?

~~A~~ He was on the porch of this church, Gregory Church, which is right about here. (Pointing) I was right about here.

Q Do you have an estimate as to how far it is from the corner you say you were to the porch of Gregory Church at the time you say you saw Ben Chavis?

A I'd say probably 150 to 175 feet.

~~Q~~ How many people, if anybody, was ^I with Ben Chavis at the time you say you saw him?

~~A~~ ^{There were} Two more adults, black males.

~~Q~~ ^I Did you recognize them?

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

~~Q~~ ^I Do you recall what they had on?

~~A~~ No, sir.

~~Q~~ Do you recall what Ben Chavis had on?

~~A~~ He had on dark clothing. This is all I know.

Q Describe the other two males that Ben Chavis was with at that time, if you can.

A They were approximately maybe 6 feet tall, 175 or 180 pounds. If I recall correctly their hair still was similar to yours; median afro.

~~Q~~ ^{not} Can you describe their facial features?

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

~~Q~~ Did they have beards?

~~A~~ I don't recall that they did ^{have beards.}

~~Q~~ Were they ^{not} wearing hats?

~~A~~ No, sir, they were not wearing hats.

Q Had you had an occasion prior to this to see Ben Chavis?

A He had been pointed out to me on different occasions on the street by other officers.

~~Q~~ Did you finish? Had you finished your answer?

~~A~~ Yes, sir, I said other officers had pointed him out to me on the street.

~~Q~~ ^{I cannot} Will you tell me who pointed out Ben Chavis and when this was?

~~A~~ No, sir, I cannot.

~~Q~~ At the time Ben Chavis was pointed out to ^{me} you by other officers do you recall how far away from him you ^{not} were at that time?

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

~~Q~~ On how many occasions had Ben Chavis ^{had} been pointed out to ^{me} you by other officers?

~~A~~ I would have to say several, ^{times} maybe 3, 4, 5 times.

Q Do you recall whether or not it had been within that week or the week of February 5th?

A It had been the dates prior to this morning that I saw him at the church.

Q Now do you recall the weather that day?

A The morning that I saw him?

Q The Saturday morning, 6th.

A It was clear and rather cool that morning. They sky was very clear that morning.

Q And again can you tell me what time it was?

A It was around 6:30 or quarter to 7. It was after sunrise.

Q No further questions.

THE COURT: Mr. Hunevol?

MR. HUNEVOL: I would like to request limiting instructions on corroboration as far as Miss Shephard is concerned, your Honor.

THE COURT: Members of the jury, I have previously instructed you the testimony as to the defendant Ben Chavis is to be considered by you only as to the defendant Ben Chavis and not

to be considered by you as evidence against any of the other defendants.

MR. HUNEVOL: Your Honor, I would move to strike all testimony as regards Mrs. Shephard, and I have no questions of Mr. Shipps.

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

MR. FERGUSON: We renew our motion.

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

of the jury, the Court observes it has been raining pretty hard. I think it is slacking up now so we can go to lunch. We will take a recess until 2 o'clock. Let me caution you again not to discuss this case with anyone now allow anyone to discuss it with you or in your presence and do not discuss it among yourselves. Members of the jury, do not read any account in any newspaper of this trial if such should appear. Do not view any television reports of this trial if such should appear nor listen to any radio accounts of this trial if such should appear. You go now, members of the jury, and come back at 2 o'clock.

(The jury retired from the courtroom.)

(The Court recessed from 1 until 1:55 P M.)

THE COURT: The Court during the recess between the hours of 1 o'clock and 2 o'clock while in chambers was informed by a State Highway Patrolman that there was a person who had been in the courtroom during the morning session had taken numerous pictures on the outside of the courtroom of witnesses leaving the courthouse who had testified on this morning, namely, Mr. Mike Poulos, Mrs. James Jackson, Mrs. Lela McKeithan; that when this matter was reported the Court ordered the State Highway Patrolmen and the S B I Agents to inform this person not to take anymore pictures around the courthouse square, on the premises, in the courthouse and not to take any pictures anywhere of any witnesses or any jurors; that thereafter approximately 3- minutes thereafter S B I Agents Slaughter and Twiddy and Federal Agent A T H Agent Walden informed the Court in chambers that this person had just a few minutes theretofore taken pictures of each of these persons, took pictures of the following persons; 2 pictures of Federal Agent Walden and 2 pictures of New Hanover County Deputy Sheriff Mike Robinson, State Highway Patrolman Bron who was

taking the following witnesses: Mrs. Lela McKeithan, Mr. Mike Poulos and Mrs. James Jackson. Thereupon, the Court ordered the officers to bring the person into chambers who had taken these pictures which was immediately done, and the Court inquired of his name and learned that his name was Mark Douglas Smith who stated that he was of Greensboro, represented the African World and did not know that he was supposed to not take pictures except in the courtroom, saying that he was advised by a Sheriff Deputy that he could not take them in the courtroom; that the Court asked him if he would leave the film with the officers, and he said that some of the shots were of others than the aforementioned witnesses and that whereupon the Court informed him that the pictures would be returned to him except for those which were of witnesses and other participants of this trial. Thereupon, he voluntarily gave the film to S B I Agent Slaughter who informed him that he would return the photographs to him as soon as they were developed except those witnesses which were to be handed to the Court. Whereupon, Mr. Frank Ballance and other defense

attorneys came in about that time and said they had just been spoken to by a group downstairs which the Court is informed were the defendants as to what was happening and that whereupon the Court explained to Mr. Ballance and other defense attorneys what had happened and also explained to them that Mr. Smith wanted to take pictures of the defendants and the Court told him that he would take this matter up with the defense counsel as to whether or not they would agree that their clients be photographed, but in any event that they could not be any pictures taken in the courthouse or on the courthouse grounds of any person during the progress of this trial. The Court further informed Mr. Ballance and Mr. Smith and others that a further announcement would be made when court reconvened. The Court further informed Mr. Smith that the Court had made several orders during the preceding weeks that no photographs be taken and realized that he was not in attendance and may not have heard the order; the Court further advised Mr. Ballance that he would be allowed to be present when the films were

developed and returned to the Court and before the same were to be released. The Court orders now that no photographs are to be taken of any person or any object or of anything in the courtroom or in the courthouse or on the courthouse square during the progress of this trial. The Court further orders that no one bring or have in his possession any camera of any kind, sort or description in the courthouse or on the courthouse square during the progress of this trial. The Court further orders that no picture is to be made of any witness in this trial at any place during the progress of this trial. The Court further orders that no juror or jury be photographed at any place during the progress of this trial.

Now if anyone has any cameras with them I want you to remove them from the courtroom, and Mr. Sheriff, tomorrow morning if anybody brings any camera with them on the courthouse grounds I want the camera removed.

MR. FERGUSON: We would like to note an exception to that portion of the order which bars cameras being in an around the square and the court-

house on the grounds, that this constitutes a denial of the defendants to a public trial.

THE COURT: Now, Mr. Ferguson, I was asked just a while ago as to whether pictures could be taken of the defendants. And I told them that the matter is for you gentlemen to decide as to whether or not that you would allow that to be done. But in any event that no picture is to be taken on the courthouse property. That includes the courthouse and the courthouse square. Now as to whether they are to be photographed elsewhere is a matter for you to decide.

MR. FERGUSON: Yes, sir; your Honor, we would like to note that during the progress of the trial film of the courtroom personnel and parties involved with the trial have been taken on the courthouse grounds and shown publicly on television prior to today.

THE COURT: This includes television also, Mr. Ferguson. No television pictures are to be made on the courthouse square and no television pictures are to be made of any witness in this trial at any place or any juror at any place.

MR. BALLANCE: Your Honor, at this time the defendants would like to move the Court for a mistrial on the basis that prior to the noon recess and at the time that police Officer Chipps was called by the State as a witness, Juror number 1 seated in the jurybox in the presence of the other jurors stated aloud that he knew this officer and that that remark was audible and was heard by the remainder of the jury and for that reason we move the Court for mistrial.

(Exception No. 1)
THE COURT: Motion denied. Call the jury in, Sheriff.

(The jury came into the jurybox.)

SOL. STROUD: State will call Officer Gurganus.

DAVID GURGANUS, called as a witness for the State, being duly sworn, testified as follows:

DIRECT EXAMINATION (BY SOL. STROUD:)

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

A David Gurganus.

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

A Yes, sir, I am.

Q ~~How long have you been an officer of the Wilmington~~

Police Department?

A Almost 13 years.

Q Now ^{I was} you were a member of the Wilmington Police Department on February 5, 1971. Is that correct?

A Yes, sir. I was.

Q On the evening of Friday, February 5, 1971, did you have occasion to be in the vicinity of 6th and Ann Street?

MR. BALLANCE: Objection.

THE COURT: Overruled. (Exception No. —)

A Yes, sir; I did.

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

MR. HUNEVOL: Object.

MR. FERGUSON: Object.

THE COURT: Overruled. (Exception No. —)

A Another officer and myself were on routine patrol duty and as we approached the intersection of 6th and Orange we observed a fire in the plaza between the sidewalk and the street at the corner of 6th and Ann.

MR. HUNEVOL: Move to strike.

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

MR. FERGUSON: Move to strike.

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

Q Now would you indicate on the diagram please where you observed the fire?

A (Pointing) The fire that we observed was the sidewalk here, of course, next to the buildings; and there is a dirt plaza between there and the curbing and it was in the plaza right adjacent to what was then Mike's Grocery.

Q Perhaps on the larger diagram of Mike's, could you point out there where you observed the object?

A Right in the area because there was a telephone pole right here; it was just a little bit south of the telephone pole.

Q Upon observing that fire, what did you do?

MR. FERGUSON: Objection.

MR. HUNEVOL: Objection.

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

A When we first observed it we were at 6th and Orange. We proceeded south on 6th Street to Mike's and parked right beside it.

MR. HUNEVOL: Move to strike.

MR. FERGUSON: Move to strike.

THE COURT: Denied. *(Exception No. 8)*

Q And what occurred then?

MR. HUNEVOL: Objection.

MR. FERGUSON: Objection.

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

A The other officer and myself got out of the patrol car, and I took a fire extinguisher, extinguished the plaza that was burning.

MR. FERGUSON: Motion to strike.

MR. HUNEVOL: Motion to strike.

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

A The other officer went over to Mike's. Right at the edge of Mike's there was a bottle that had contained some type of flammable liquid that had burned out there. There was no flame there. It was hot. I picked the one up in the plaza. The other officer - I don't know what happened to the one that was up against Mike's. At that time we observed that there were flames in the upstairs portion of Mike's Grocery which were apartments. The curtains at that time were ablaze. We could see we had no way to reach this area so I went to the patrol car and called for the Fire Department.

~~THE COURT: Just a minute.~~

~~JUROR 9: Your Honor, we seem to be having music again.~~

~~THE COURT: I'll cut this amplifier off. You~~

~~Speak up louder.~~

MR. FERGUSON: We move to strike the response of the witness.

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

MR. HUNEVOL: I move to strike that, too.

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

Q Now the object that was in the plaza that was burning, what was that?

MR. FERGUSON: Objection.

MR. HUNEVOL: Objection.

THE COURT: Overruled. (Exception No. —)

A It was a flat pint bottle of the type that would normally contain some type of alcoholic beverage such as wine or whiskey; that type of flat bottle.

MR. FERGUSON: Move to strike.

MR. HUNEVOL: Move to strike.

THE COURT: Denied. (Exception No. —)

Q Now what ⁱⁿ window upstairs, if you know, were the curtains burning?

MR. FERGUSON: Objection.

MR. HUNEVOL: Objection.

THE COURT: Overruled. (Exception No. —)

A This window and this window were both the curtains were blazing up in both of these windows.

MR. FERGUSON: Move to strike it.

MR. HUNEVOL: Motion to strike.

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

Q After calling for the Fire Department, what, if anything, did you do?

MR. FERGUSON: Objection.

MR. HUNEVOL: Objection.

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

A I proceeded south on 6th on foot. The other officer *Cecil Gurganus* went west across 6th Street.

Q ~~Who was the other officer?~~

A ~~Officer Cecil Gurganus.~~ I had went south on 6th approximately a quarter of a block. There was a civilian car there. I stopped by the front fender of this car.

Q Would you point that out on the diagram, please?

A (Points) The car was about maybe in this area or just a little - right in this area there.

MR. FERGUSON: Move to strike the answer.

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

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

MR. FERGUSON: Objection.

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

A I observed a subject which was across the street and still farther south of me silhouetted in the light from a window that was to his rear. I observed this subject with some type of handgun in his right hand. I could not tell what caliber weapon it was, only that it was a hand gun. He was clearly silhouetted at the window from the building behind him.

MR. FERGUSON: Move to strike.

MR. HUNEVOL: Move to strike.

THE COURT: Denied. *(Exception taken)*

Q What, if anything, did you observe him do with his hand?

MR. FERGUSON: Object.

MR. HUNEVOL: Object.

THE COURT: Overruled. *(Exception taken)*

A I crouched down behind the fender of the car, and everytime I would attempt to move on three different occasions this subject would come around and lay the pistol down across the railing of the house that he was adjacent to and fire several quick rounds at me.

MR. FERGUSON: Move to strike.

MR. HUNEVOL: Move to strike.

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

A This occurred on three different occasions. At that time Officer Cecil Gurganus and myself were the only two officers there. I got down in the plaza on the dirt and crawled a little bit farther south to another utility pole that was in the edge of some bushes there. The subject again appeared in the same location and I could plainly see him. At this time he was still shooting at the car in the direction of the car and Mike's Grocery, and at this time I returned fire.

Q With what?

MR. FERGUSON: Move to strike.

MR. HUNEVOL: Move to strike.

THE COURT: Motion to strike is denied. *(Supter M.)*

MR. FERGUSON: Objection.

MR. HUNEVOL: Objection.

THE COURT: Overruled. *(Supter M.)*

A At that time I was carrying a .12 guage semi-automatic Remington shotgun that was issued by the Department.

MR. FERGUSON: Move to strike.

MR. HUNEVOL: Move to strike.

THE COURT: Motion denied. *(Supter M.)*

Q Upon returning fire, what, if anything, occurred?

MR. FERGUSON: Object.

MR. HUNEVOL: Object.

THE COURT: Overruled. (*Sustained*)

- A There was a burst of gunfire, small arms fire, and occasionally you could hear reports from weapons that sounded louder, larger caliber. I could not tell just exactly where they were coming from. I went back north still crawling to the cover of the civilian car that was sitting that I had first been crouched behind.

MR. FERGUSON: Not to strike.

MR. HUNEVOL: Move to strike.

THE COURT: Denied. (*Sustained*)

- A I also observed across the street to the rear of these houses through a vacant lot figures that were running and moving. I could not tell who. They were moving in the direction of Nun Street which they would have been coming from 6th - beg pardon - from Ann Street towards Nun. They were to the rear of those houses. I could view them through the vacant lot, but I could not tell who they were.

MR. FERGUSON: Motion to strike.

MR. HUNEVOL: Motion to strike.

THE COURT: Denied. (*Sustained*)

Q Would you point out on the diagram approximately where the individual was that you identified as shooting at you?

MR. FERGUSON: Objection.

MR. HUNEVOL: Objection.

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

A (Points) He was between these houses here. The best I recall this house is a one-story dwelling and the other two are two-story or more, and he was between this second and third building.

MR. FERGUSON: Move to strike.

MR. HUNEVOL: Move to strike.

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

Q Would you point out the area on there where you observed the figures running towards Nun Street?

MR. FERGUSON: Objection.

MR. HUNEVOL: Objection.

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

A They were in this area coming from - I don't know where they were coming from. I could see them through - There is a vacant space in here. I don't know exactly how wide it is. There is a vacant space. The figures were coming in this direction going south.

MR. FERGUSON: Object; move to strike.

MR. HUNEVOL: Move to strike.

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

Q Now, Officer Gurganus, when you first came into the area on that Friday evening, did you hear any gunfire prior to the time that you observed this young man pointing a handgun at you?

MR. FERGUSON: Objection.

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

MR. HUNEVOL: Objection.

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

A I had heard gunfire throughout the area for about the length of time that I was in there. This was just after dark.

MR. FERGUSON: Motion to strike.

MR. HUNEVOL: Motion to strike.

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

Q What type of gunfire, if you know.

MR. FERGUSON: Object.

MR. HUNEVOL: Object.

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

A Again, it sounded like a small caliber weapon and occasionally you could hear the report of a weapon that sounded like it was of larger caliber;

possibly shotgun, mostly small arms, possibly .22.

MR. FERGUSON: Motion to strike.

MR. HUNEVOL: Motion to strike.

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

Q Now at the time you moved back to the area of the car after you returned fire at this individual that you have testified about, did any other officer come in your area?

MR. FERGUSON: Objection.

MR. HUNEVOL: Objection.

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

A Yes, sir; they did.

MR. FERGUSON: Motion to strike.

MR. HUNEVOL: Motion to strike.

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

✓ Q Who?

A Officer Chipps, Officer E. R. Dawson, Officer W. E. Wollak. I believe there were other officers. Officer J. M. Shaw. That is all I can recall off-hand. There were several other officers

MR. FERGUSON: Move to strike.

MR. HUNEVOL: Move to strike.

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

Q During any of this time did you see the firemen

in the area of Mike's Grocery store?

MR. FERGUSON: Objection.

MR. HUNEVOL: Objection.

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

A Did I see what?

Q Did you see firemen in the area of Mike's Grocery store on 6th and Anpi?

MR. FERGUSON: Object.

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

A Yes, sir; I did.

MR. HUNEVOL: Move to strike.

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

Q After returning to the car there, being there with Officer Chipps and the other officers you have testified about, what, if anything, occurred then, please?

MR. FERGUSON: Objection.

MR. HUNEVOL: Objection.

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

A A civilian car came north on 6th and parked about here across the street. A colored male got out of the car. Some people in one of these houses - I do not know which house - some young children were hollering at him.

MR. FERGUSON: Object.

THE COURT: Objection sustained as to what the children said.

A He crossed the street and crouched down and ran into one of these houses.

MR. FERGUSON: Move to strike.

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

Q Was there any gunfire?

MR. FERGUSON: Object to the leading.

THE COURT: Objection to leading overruled. *(Sustained No. —)*

Don't lead him.

MR. FERGUSON: Object on other grounds.

A Yes, there was.

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

Q Then what, if anything, occurred.

MR. FERGUSON: Object.

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

A About this time I observed an elderly colored female, possibly in her late 70's, that apparently did not realize what was going on or what was happening.

MR. FERGUSON: Object.

MR. HUNEVOL: Objection.

THE COURT: Don't state what she realized.

A She was walking north through this block on 6th,
and Officer Cecil Gurganus was attempting to get
her out of the area where the gunfire was going on.

MR. FERGUSON: Move to strike.

MR. BECTONE MOVE TO STRIKE.

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

Q Then what, if anything, occurred, please?

MR. FERGUSON: Objection.

MR. HUNEVOL: Objection.

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

A We then started gradually, all of the officers,
gradually started pulling back out of the area and
firing up into the air. We pulled back to where
my patrol car was; got behind the wheel and backed
up north on 6th. The other cars, there was one that
was heading west on Ann, he backed up towards 7th,
and the rest of the cars pulled out, and we pulled
on out of the area.

MR. FERGUSON: Move to strike.

MR. HUNEVOL: Move to strike.

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

Q At the time you returned in the vicinity of Mike's
Grocery store what was the condition as to the
fire at Mike's at that time?

MR. FERGUSON: Objection.

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

A I could see no visible flames at this time.

SOL. STROUD: I have no further questions of this witness. Tender him for cross examination.

CROSS EXAMINATION BY MR. BALLANCE:

~~Q Officer Gurganus, what time did you arrive at the area that you described as 6th and Ann on the evening you are talking about?~~

~~A It was approximately 6:45 or 7 P M.~~

~~Q And now what evening was this that you are referring to?~~

~~A This was on a Friday.~~

~~Q What date?~~

~~A The 5th of February, 1971.~~

~~Q And it was 1971?~~

~~A That is correct.~~

~~Q Who was with you at that time?~~

~~A Officer Cecil Gurganus.~~

~~Q Who was driving the car?~~

~~A Cecil was driving it. *the car.*~~

~~Q Now for what period of time did you remain at this intersection that you were talking about?~~

~~A At the intersection for a very short period; possibly~~

1 or 2 minutes.

Q How long did you remain in the area of 6th and Ann on this particular occasion?

A At 6th and Ann, the intersection on the corner 3 or 4 minutes.

Q ~~Does~~ ^{Does not} this 3 or 4 minutes include all of the events that you have described?

A ~~No, sir, it does not.~~ These events occurred in the 3 hundred block of South 6th which is from, say, half way or more in the block.

Q Just tell us what time it was that you were there. For what period of time were you there during the incidents that you have described.

A Do you mean in the area?

Q That is correct. In the area of 6th and Ann between 6th and Ann and 6th and Nun.

A Possibly as long as - not more than 45 minutes.

Q At the end of this 45 minutes ~~are you saying that~~ you left the area?

A ~~After this period of time, yes, sir.~~ Not completely out of the area. We went back to Orange Street; or our particular patrol unit went back to Orange Street.

Q Did you also state that another patrol vehicle came

up into the area during the time that you were there ?

A Two other patrol vehicles came up in the area.

Q Who else did you say you saw in this area? Well, let me ask you this. Strike that question. Did you state that you saw a fireman or fire truck in the area?

MR. HUNEVOL: Objection.

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

A No, sir; I did not.

Q Did you, in fact, see a fireman or fire truck at this time?

A No, sir; I did not.

MR. BALLANCE: No further questions.

MR. HUNEVOL: I have no questions.

THE COURT: Anything further from the State?

SOL. STROUD: No, sir.

MR. FERGUSON: Your Honor, we move to strike the testimony of that witness. *(Exception No. —)*

MR. HUNEVOL: Your Honor, I make the same motion and request limiting instructions as to Shephard. *(Exception No. —)*

SOL. STROUD: State calls Fireman David Boswell, your Honor.

DAVID NURMAN BOSWELL, called as a witness for the State,

being duly sworn, testified as follows:

DIRECT EXAMINATION (BY SOL. STROUD:)

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

~~A David Nurman Boswell.~~

~~Q Mr. Boswell, are you a member of the Wilmington
Fire Department?~~

~~A Yes, I am.~~

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

~~A Two and a half years.~~

~~Q You were a fireman with the Wilmington Fire Depart-
ment on Friday, the 5th of February, 1971?~~

~~A Yes, I was.~~

Q Now on that evening, the evening of Friday, the
5th of February, 1971, did you have occasion to go
into the vicinity of 6th and Ann Street?

MR. HUNEVOL: Objection.

MR. FERGUSON: Objection.

THE COURT: Overruled. (Scribble)

A Yes, I did.

THE COURT: What date is this?

SOL. STROUD: Friday, the 5th, your Honor, of
February, 1971.

Q Did you go into that vicinity as a fireman?

MR. FERGUSON: Objection.

MR. HUNEVOL: Objection.

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

A (Pointing) We received the alarm. We come down 5th Street on the left on up and went to 6th and Ann; and when we received an alarm fire at Mike's Grocery we spotted our pumps right here. I was riding number "7". We spotted right here. As we got there the Chief ordered a ladder to be raised on the 6th Street side of the building on the corner which would be this window here. We raised the ladder, and I was the nozzle man.

~~Q What does that mean?~~

~~A~~ I was the first man on the hose. I was working the nozzle putting the water on the fire. I went up the ladder first, and as I got up just about to the top I heard "pop" coming from down 6th Street right about Nun about three-quarters of the block, I would say, right in here. I looked down there, and I seen flashes, multiple flashes, I would think, like light, and heard more pops. I took the hose and busted out this window and jumped into the fire and extinguished the fire around my feet. By that

time another fireman behind me assisted me on the hose, come in behind me, and we sprayed water throughout the corner. It was the corner of the room where the fire was; sprayed water and extinguished. It was very dark in there. We didn't look around there much. We didn't try to find the origin of the fire; tried to get it out.

MR. FERGUSON: Move to strike.

MR. HUNEVOL: Move to strike.

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

Q Did anyone come into the room during the time you were there?

MR. FERGUSON: Objection.

MR. HUNEVOL: Objection.

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

A Walter Glen, the fireman behind me. He came in with me, and I think there were a couple more.

MR. FERGUSON: Move to strike.

MR. HUNEVOL: Move to strike.

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

Q Did an officer come in there?

A An officer came in later on to make his surveillance of the place.

MR. FERGUSON: Move to strike.

MR. HUNEVOL: Move to strike.

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

Q Now these pops that you are talking about, what did they sound like?

MR. FERGUSON: Objection.

MR. HUNEVOL: Objection.

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

A Sounded like gunfire to me.

MR. FERGUSON: Move to strike.

MR. HUNEVOL: Move to strike.

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

Q And when you observed what you described as muzzle flashes, could you tell in what area they were in?

MR. FERGUSON: Object; move to strike?

MR. HUNEVOL: Objection.

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

A They were coming in here going south on Nun Street: coming here from both sides right here from both sides all the way back. (Indicating)

MR. FERGUSON: Move to strike.

MR. HUNEVOL: Move to strike.

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

Q Before you went up into the upstairs area of Mike's there, what could you see up there, if anything?

MR. FERGUSON: Objection.

MR. HUNEVOL: Objection.

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

A As I say, I got off the truck here and spotted right here and we run around here, looked up more fire, went in this direction back towards 5th Street, and we seen right up in this window here a flickering. That is why the Chief Officer in charge ordered this ladder to go up there. There was a fire. Fire wasn't big. It was enough to get up high, to get to that window. The floor was 2 and a half feet, I guess from the floor after you could see the flickering.

MR. FERGUSON: Move to strike.

MR. HUNEVOL: Move to strike.

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

Q What did you do after you extinguished the fire?

MR. FERGUSON: Objection.

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

A Absolutely nothing. We weren't interested in finding the start of the fire. We were there briefly. Officer came up, checked it out. We left, came back, put the ladder on the truck securely and we left the scene.

MR. FERGUSON: Move to strike.

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

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

MR. FERGUSON: Your Honor, we move to strike the testimony of that witness.

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

CROSS EXAMINATION BY MR. FERGUSON:

Q Mr. Boswell, what time did you go to put out this fire?

A Approximately 6:45.

Q How long were you over there?

A I would say we were running so much at that time it would be hard to estimate. Not more than 30 minutes. Wasn't there long at all because the fire wasn't too large. Excuse me. Because the fire wasn't too large. We didn't stay. We done our job and left.

~~Q~~ ^{*Did*} Did you go there in response to an alarm or call or something of that sort?

~~A~~ Yes, sir: ^{*1*} we were dispatched. f

~~Q~~ How many trucks went?

~~A~~ Two pumpers. ^{*→*}