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THE STATE OF OHIO,)
)
) SS:
COUNTY OF CUYAHOGA.)

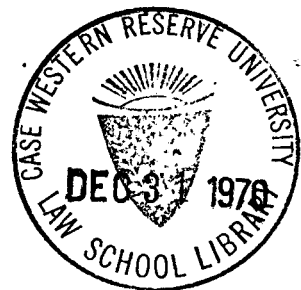
MONDAY SESSION
April 28, 1969
McMONAGLE, J.

IN THE COURT OF COMMON PLEAS
(Criminal Branch)

THE STATE OF OHIO,)
)
) Plaintiff)
)
) vs.)
)
) FRED AIMED EVANS,)
)
) Defendant)

No. 90,257

K.F.
224
E957
1969



115459

I N D E X

<u>WITNESSES:</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Herbert Dregalla		3026	3034	3037
(Recalled)		3082	3038 3085	3093
Leonard Szalkiewicz	3042			
Anthony Sherbinski	3035	3060	3063	
Sam Levy	3065			
Thomas J. Smith	3095			
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Robert Shankland	3165	3188	3212	3222
Donald Kuchar	3225			
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<u>Motion to Suppress</u>				
Fred Evans	3249	3252		
Motion to suppress overruled			3253	

MONDAY MORNING SESSION, APRIL 28, 1969 9:15 A.M.

THE COURT: Is Captain Dregalla
here?

MR. LAURIE: Yes, I think
he's right outside.

THE COURT: Do you have any
further questions?

MR. FLEMING: Yes.

THE COURT: We disposed of
the other item last Saturday afternoon.

MR. FLEMING: Yes. He had
another report. Do you have the Form-1?

MR. LAURIE: I don't have it.
All we've got is what we gave you.

THEREUPON, HERBERT DREGALLA, having been previously duly sworn, resumed the stand and testified further as follows:

CROSS-EXAMINATION (CONT'D)

BY MR. FLEMING:

Q Captain, I believe you told us Saturday when you were on the stand that you made a Form 1 report to your superiors?

A Yes, sir.

Q Did you bring that Form 1 report with you today?

A No, I don't have it today, sir.

Q Will you bring it after you get off the stand? Will you bring the Form 1 report back and turn it over to the Prosecutors?

A Yes, sir, I will.

Q So that we may see it. Thank you.

Now, in this report that you made to your superiors about what you observed and about your participation in this incident, at any time did you say in that report that this was a spontaneous eruption of violence?

A I didn't use those words.

Q What words did you use?

A I'd have to refer to the complete report. I wouldn't be able to tell you exactly what words I used. I described

it essentially as I described it here in the report.

Now, the exact words, you'd have to wait until I got the report. I don't recall exactly.

MR. LAURIE: I've got the report here (indicating).

MR. FLEMING: I'm talking about the Form 1 report, not the Prosecutor's statement.

MR. LAURIE: This is not the Prosecutor's statement, anyway. It's his report.

Q (By Mr. Fleming) At any time in that report that you made to your superiors, did you indicate that Cleveland did not have a riot but that this was a short-lived rash of fire bombing and looting carried out entirely by teenage gangs and those professional thieves that every major city has in its midst?

A I don't recall a statement of that kind in my report. That's not in my report.

Q It's not in your report?

A No.

Q Is it in any report that you participated in?

A I have no --

MR. LAURIE: Objection.

THE COURT: Sustained.

Q Well, do you know?

A He said there are only two reports, the Form 1 and the other one.

Q Well, my understanding, Captain, is that you participated in a report that was made by Chief Blackwell who was Chief of Police at the time and Captain Sperber, who was Chief of the Detective Bureau at the time, is that correct?

A I participated in no such report of that kind except to contribute my information, as I said, in my report to the department.

Q Well, do you know of your own knowledge whether or not information that you contributed to your superiors helped to make up this report?

A I assume that they'd use it somewhat in their report and in some way. I have no knowledge of what hearing it had on the report finally, though.

Q I see.

A If there is such a report, I know not what report you're speaking of.

Q Are you tell us, Captain, that you don't know that Chief Blackwell and Captain Sperber made a report about this incident and that this report was later turned over to the Grand Jury and made a part of the Grand Jury?

MR. LAURIE:

Objection.

Q -- Grand Jury report? Are you telling us that?

MR. LAURIE:

Objection.

THE COURT:

The objection

is sustained.

Q Now, did you testify, Captain, to the Grand Jury?

A Yes, I did.

Q When was that?

A I don't know exactly the date. When the policemen were called in to testify, I was one of the policemen that was before the Grand Jury.

Q I see. Now, on the date, I believe, of the 23rd, I believe you told us that you were the highest ranking officer on the scene?

A Yes, sir.

Q And I believe on that day, well, the 23rd, as we have indicated, the chief of police was Chief Blackwell at that time?

A Yes, sir.

Q Now, do you know of your own knowledge whether or not police officers were prohibited from carrying their own personal high-velocity weapons at that time?

A Prohibited?

Q Yes.

A I know of no recent order relative to that. The only thing I can recall is one by ex-Chief Wagner, who gave permission to use these weapons, and this was never rescinded, to my knowledge.

Q In other words, you were of the opinion, on the 23rd of July, 1968, that it was permissible for the officers who were under your command to carry their own personal high-velocity weapons to the scene?

A I would assume that they had permission because this order had never been rescinded from back in 1966, or whenever the order came out.

Q I see. And you knew of no other order which pro-

hibited police officers from carrying these kinds of weapons to a crime scene?

A No, I have no knowledge of that.

Q Did you see any of the officers, who were under your command, present on this scene with their own personal high-velocity weapons?

A Just the one that I told about here, Saturday, and that was Patrolman Wood, I believe, who had his own weapon that he reported to me at the scene, and I told him to stand by with it.

Q In this general area where you were, had immediate supervision, did you see any Thompson submachine guns in that area?

A I didn't, personally, because, like I said, I was quite busy running to the radio and supervising things on the corner there and in the area. I personally didn't see one, no.

Q Do you know, of your own personal knowledge, Captain, whether or not police officers were specifically prohibited from imbibing in alcohol while they were on duty on the 23rd of July, 1968?

A They are prohibited from imbibing on any date while on duty.

Q While on duty?

A Yes, sir.

Q With regard to the Lakeview Tavern, I believe you indicated that you didn't know of anyone that was injured or shot in that building, but that you heard someone claimed--

A Later.

Q -- some time later that they had been shot there?

A Yes.

Q Was an investigation made, under your supervision, to determine whether or not anyone was abused in that building?

A These people were taken to the Sixth District, and at that point they were questioned and proper reports were made at that point.

The Detective Bureau also had a hand in the investigation at that point.

Q You didn't participate in that investigation?

A No, sir, I did not.

Q You had no knowledge of the conclusions that were made with regard to the investigation?

A I have no knowledge at this time, no.

Q Okay. Can you bring that Form 1 report over this morning some time?

A Yes, sir, I can.

Q Okay. Now, just one or two other questions, officer.

Lieutenant Jones - I believe you indicated that

his body was recovered while you were present?

A Yes, sir.

Q And I believe there's been some testimony that Lieutenant Jones had borrowed a high-velocity weapon that belonged to another patrolman.

Was that weapon recovered?

A I have no knowledge of that.

Q Do you know whether or not a carbine was found under his body?

A I have no knowledge of that.

I wasn't with his body where they picked him up. Patrolmen brought him to the corner. That's my first knowledge, outside of seeing him lying on the sidewalk, face down.

MR. FLEMING:

You may inquire.

REDIRECT EXAMINATION

BY MR. LAURIE:

Q Captain, a Thompson submachine gun that Mr. Fleming referred to, is that a police-issued weapon?

A Yes, we have such a weapon that is available.

(State's Exhibit No.
243 was marked for
identification.)

Q Captain, showing you State's Exhibit 243, can you

tell us what that exhibit is?

A This is a statement made to the detectives, July 23rd.

Q Relative to the information you had as to, pertaining to what transpired out there?

A Yes, sir.

MR. LAURIE: At this time, in your Honor, I'd like to offer into evidence State's Exhibit 243.

MR. TOLLIVER: Objection.

THE COURT: Sustained. It will be refused.

(State's Exhibit No. 243 was rejected.)

MR. LAURIE: May it be incorporated in its entirety, Judge?

THE COURT: It may be.

Q (By Mr. Laurie) Captain, the alleged report that Mr. Fleming referred to, do you know whether or not that is a mayor's report that he is referring to?

MR. TOLLIVER: Objection.

THE COURT: He says he doesn't really know anything about it.

MR. LAURIE: All right.

THE COURT: Objection sustained.

Q Let me ask you these questions. Was the mayor of Cleveland out there where the bullets were flying, on the

night of July 23, 1968, when you were out there?

A I saw nobody higher than myself.

Q Was the Safety Director McManamon out there when the bullets were hot?

A No, sir. I conferred with him by radio only. I have no knowledge that he was in the vicinity.

Q And tell me whether or not, if you know whether Captain Sperber was out there where the bullets were hot?

A No, sir, I have no knowledge of that.

Q Can you tell me whether or not the then-Chief Blackwell was out in the Glenville -- or, rather, in the Lakeview - Auburndale area where the shooting occurred?

A I have no knowledge of Chief Blackwell's actions that night, sir.

Q Then, Captain, as far as you know, if any of these gentlemen I have named to you made any kind of report, it would be hearsay information, wouldn't it?

MR. TOLLIVER: Objection.

THE COURT: Sustained.

MR. LAURIE: That's all.

RE-CROSS-EXAMINATION

BY MR. FLEMING:

Q Captain, Saturday you told us that you were aware that Chief Blackwell and Captain Sperber made a report and that you assumed that the information you imparted to them was placed in that report.

Do you recall that testimony?

A I don't recall just exactly that in so many words as that, no. I recall that the information that I sent in was sent in to the Detective Bureau and I assume that they would make an investigation of all these correlated decisions.

Yes, I would assume that it would be done. I have no knowledge of any report that came out of it.

Q I believe you told us that you didn't read the report after it was made?

A I don't know. I have no knowledge of this report. I couldn't read it. I have no knowledge of such a report.

Q You have no knowledge of a police report that was presented to the Grand Jury with regard to this incident --

MR. LAURIE: Objection.

THE COURT: The objection
will be sustained.

Mr. Fleming, you have gone into this

subject quite thoroughly.

MR. FLEMING: He reopened it on direct examination.

THE COURT: He didn't reopen it to the extent of this report, if there was one. As far as this witness is concerned, he said he has no knowledge of it.

MR. FLEMING: Well, all right. I have no further questions, but I would like to reserve the right to further examine the Captain after we see his Form 1 report.

REDIRECT EXAMINATION

BY MR. LAURIE:

Q Captain, to clear up this question of his that he asked you about a spontaneous something-or-other.

From your appraisal of it as the senior officer in this area on July 23, 1968, that we refer to in the Auburndale and Dakeview area, of all the activity you saw there, what is your opinion as to whether this was a spontaneous eruption of any nature?

A I can't say what this was here because I've been in the Police Department 26 years and I've never seen anything as horrible as this --

MR. FLEMING: Objection.

THE COURT: The latter part will be stricken. The jury will disregard it. His answer is he can't say just what it is will stand.

Q Is this your complete answer to the question, as far as you --

A No, it isn't.

Q May I have the rest?

A This scene -- this thing that I went through there and seen policemen being shot --

MR. FLEMING: Objection. It's not responsive.

THE COURT: Proceed. I consider what he said thus far as being responsive except for the matter I ordered stricken.

MR. FLEMING: He is getting ready to talk about what happened to policemen.

THE COURT: There was no objection to the question.

MR. FLEMING: I am objecting to the whole question now.

THE COURT: Not when the answer is halfway in. Proceed with the answer.

A To see policemen gunned down in the street in such a

fashion as this, it was something that I had never gone through in 26 years on the Police Department, prior --

MR. FLEMING: Objection.

THE COURT: This part
is objectionable.

Apparently, the question is your opinion as to what kind of incident it was.

Can you substantially answer as best you can?

A It seemed to me, frankly, this was an operation against the police. That was my opinion.

MR. TOLLIVER: Objection.

MR. FLEMING: Objection.

THE COURT: Overruled.

Q Captain, isn't it a fact that a Thompson submachine gun is not a high-velocity weapon?

MR. TOLLIVER: Objection.

THE COURT: As to the form
of the question, sustained.

Q If you know. Can you tell us?

A I'm not too well acquainted with the ins and outs of the firearm power of the Thompson machine gun. It's a 45-caliber, apparently, and more than that, I can't say, I can't say as to velocity and so forth.

MR. LAURIE: All right.

Thank you, Captain.

THE COURT:

Anything further?

MR. FLEMING:

I will reserve

the right to any further cross-examination until
after we see the Form 1 report, your Honor.

THE COURT:

You are excused.

(Witness excused.)

MR. LAURIE:

Patrolman

Szalkiewicz.

- - -

THEREUPON, the State of Ohio, further to maintain the issues on its part to be maintained, called as a witness LEONARD SZALKIEWICZ, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LAURIE:

Q May we have your name, sir, and please spell your last name.

A Leonard Szalkiewicz. S-z-a-l-k-i-e-w-i-c-z.

Q Your occupation?

A Patrolman, City of Cleveland.

Q How long have you been a policeman for the City of Cleveland?

A About five and a half years.

Q In July of 1968, were you working in that particular month?

A Yes, sir.

Q How about July 23rd, were you working on that day?

A Yes, sir.

Q And what district do you work out of?

A Fourth District.

Q What area of Cleveland?

A East side of Cleveland.

Q Were you working alone or with somebody else?

A I was working with another patrolman, Patrolman Hernandez.

Q You want to take a stab at spelling that?

A Hernandez. H-e-r-n-a-n-d-e-z.

Q And what time did you and your partner start working?

A 4:00 p.m.

Q Until what time?

A Till midnight.

Q How were you dressed that particular day?

A I had on a police uniform, short-sleeved shirt.

Q Police uniform, consisting of badge, cap, so forth?

A Cap, revolver. Right.

Q Was your partner dressed in similar manner?

A The same.

Q Did you report for duty on that day, you and him?

A Yes.

Q Were you on foot or in an automobile?

A We were assigned to Zone Car 414.

Q Can you describe what kind of an automobile that is?

A It is a '64 Ford station wagon, black and white in color, with a red dome light.

Q "Cleveland Police" on it?

A Yes, sir.

Q Did there come a time when you were assigned, or did you respond to a call to go to Lakeview and Auburndale area?

A Yes, sir. About 8:40 p.m., that evening.

Q Under what conditions did you go there?

A We were at a detail at John Adams High School, East 116th and Corlett, when we heard the call for more assistance needed in the vicinity of Lakeview and Auburndale.

So we proceeded to the scene. We arrived within maybe ten minutes or so.

Q About what time did you get this call?

A About 8:40.

Q You arrived about 8:50?

A Roughly.

Q What route did you take, Officer?

A I'm not sure, really; I'm not too familiar with the area. He was driving that day.

Q Did you get on Lakeview Avenue at all?

A Yes, sir.

Q From what main artery did you get onto Lakeview?

You don't remember that?

A I'm not sure.

Q Once you got onto Lakeview, where did you go, what direction?

A We approached the scene. We abandoned our car near

the area.

Q Maybe, perhaps if you will come to the map, perhaps we can take it from that point.

(Witness left the stand and went to the map.)

Take this position here, maybe, Officer.

This has been identified as an aerial photograph of Lakeview, Moulton, south, north, east, and west (indicating). Will you take it from there and tell us where you arrived in the area?

A Well, we abandoned our vehicle somewhere in this area (indicating).

Q That is south of the Auburndale and Lakeview corner?

A Yes. We proceeded to the scene on foot in this direction, this way (indicating), north on Lakeview.

Q First, how was your car equipped for weapons?

A We had a shotgun in the rack, which I took out when we abandoned the vehicle, and we had a box of ammunition in the back of the vehicle.

Q Box of what kind of ammo?

A 38-caliber ammunition, shotgun shells, tear gas.

Q When you say "a box," you mean a carton or small box?

A No, this is a box maybe 3 feet long by a foot and a half wide.

Q How much ammo did you have in there?

A There's a box of 38-caliber ammunition. I think it contains -- yes, a hundred rounds, perhaps.

Q All right. How many shotgun shells?

A About a dozen shotgun shells.

Q All right. You, of course, -- you had your side-arm, too?

A Right.

Q You and your partner did.

Now, you abandoned your car in that area. You went on foot to what area?

A By this Lakeview Tavern, at Lakeview and Auburndale (indicating), where there were about, oh, thirty policemen standing by this area here (indicating).

Q Indicating on Lakeview and Auburndale corner.

All right.

A So I saw a car parked in the intersection of -- on Auburndale (indicating), and I saw two patrolmen under the back of this auto.

One of the patrolmen I knew was Patrolman Smith. His shirt was soaking with blood. And they were pinned down.

So it seemed that no one could see around the corner where the shots seemed to be coming from, roughly 12312 or 12314 Auburndale (indicating).

There's a police car parked just north of Auburndale

in the -- on Lakeview (indicating), so I dashed across the street in a pause. There was no shooting at that particular moment, to try to observe where the shots were being fired from.

And at that time, maybe I was there perhaps two minutes, when I was shot in the right upper arm.

Q When you were shot, where were you?

A I was behind the police car, roughly in this position here (indicating). This area in here (indicating).

Q And you were shot when you were in the street?

A Yes, sir.

Q In your arm, you say?

A Yes, right here (indicating).

Q Was it a through-and-through shot?

A No; it's still there.

Q Still in there?

A Yes.

Q Then, after you were shot, then what did you either do or observe after that?

A Well, after about a couple more minutes, a patrol wagon, police patrol wagon was backed partially into the intersection (indicating), and at that time I saw an opportunity to get to safety, where I could have my arm treated.

So at that time, when the wagon was halfway --

it was backing near this abandoned auto with these two wounded policemen under it, I ran alongside of the wagon, then to safety, out on Lakeview, where I was taken to a hospital.

Q Did you fire your weapon while you were in the area?

A No, I did not.

Q You said you had the shotgun?

A Yes.

Q What did you do with the shotgun?

A I gave it to Patrolman Christ, from the Fourth District.

I was taken to another police car, where I was directed to Huren Road Hospital.

Q You want to take the stand?

(Witness resumed the stand.)

Q How long did you remain at the hospital, Officer?

A Oh, until about 1:00 a.m. in the morning.

Q All right, then you were released?

A Right.

Q Then, did you return to work then, subsequently?

A Eight days after being injured.

MR. LAURIE:

That's all

I have.

MR. TOLLIVER:

No questions,

Judge.

THE COURT:

You are excused.

(Witness excused.)

- - -

MR. LAURIE:

Sergeant Levy.

Patrolman Sherbinski, instead, Judge.

THE COURT:

I see you were

overruled.

- - -

THEREUPON, the State of Ohio, further to maintain the issues on its part to be maintained, called as a witness ANTHONY SHERBINSKI, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LAURIE:

Q Sir, may we have your name and spell your last name for the record?

A Anthony Sherbinski, S-h-e-r-b-i-n-s-k-i.

Q Your occupation, sir?

A I am a policeman with the Cleveland Police Department.

Q How long have you been so employed?

A I will complete 18 years June 1, 1961 -- '69.

Q You mean next year?

A No, coming June, I'll complete 18 years, '69.

Q Directing your attention to July, 1968, were you working as a police officer then?

A I was, sir.

Q On July the 23rd, 1968, were you on duty?

A I was, sir.

Q What time did you start your tour of duty, Officer?

A I started at 4:00 o'clock in the afternoon.

Q That would carry you generally to what time?

A Midnight.

Q What district?

A Downtown district, the Third District.

Q That is the main station?

A Central Station.

Q And how were you dressed for duty that particular evening?

A In uniform.

Q Summer uniform, police uniform?

A That's correct, sir.

Q Did you work along or with someone else?

A I worked with a partner.

Q His name?

A Patrolman Horgan.

Q Did you answer roll call together then?

A That's right.

Q You proceeded on your policeman's duties of the evening then?

A That's right, sir.

Q And did there come a time that you received a call or were required to go to the area of Lakeview and Auburn-dale that night?

A That's correct, sir.

Q About what time and under what circumstances?

A We received an all car broadcast or any car to go to

the area to help policemen in trouble, shooting involved, and I called police radio and they assigned me to go to Auburndale and Lakeview.

Q You were clear to make the run?

A Through radio, police radio, sir.

Q Did you indicate about what time this was?

A This was approximately 8:45.

Q Where were you at the time, Officer?

A On East -- when I first received the call, it was East 24th and Euclid.

Q Then in what direction did you go in answering this call?

A We went east out Euclid.

Q Euclid?

A Euclid to Lakeview and then we went north on Lakeview.

Q Now, Officer, if you will, sir, step down to the aerial photograph and take us on this map the way you approached the area.

(The witness left the stand and went to the map.)

Q If you would stand on the far side of the map, describe how you entered the area, from what direction.

A We came north on Lakeview to within, I'd say, half a block. There's a little turn in the road, just a little bend. We left our car right there and we went through

the back yard. We came out about here (indicating).

I crossed the street. I reported to Captain Dregalla that our car, which was Car 306 at that time, my partner and I are at his disposal and he acknowledged and my next assignment was to go into the tavern, which was told to me by Captain Dregalla, to -- with 8 or 9 other officers and to make sure that there was nobody in the tavern.

Q As you approached the area -- may I interrupt a moment -- did you hear any gunfire?

A Constantly.

Q From what direction and what type, if you recall?

A It sounded like a heavy -- Heavy rifle fire and it came from all directions. It seemed like it was all over.

Q When you got to this area (indicating), you saw some police officers, Captain Dregalla, and he gave you orders to go where, in the tavern?

A Into the tavern and bring the people out for their own safety.

Q What did you do pursuant to that order?

A I went into the tavern with 8 or 9 other officers and we told people to leave the tavern through the front door.

Q And what type of weapon did you and your fellow officers have when you went in that tavern, if you recall?

A I had a service revolver, a .38 Smith & Wesson, and a shotgun.

Q All right. And did the people come out then after the officers went in?

A That's correct, sir.

Q And did you give any of them a hard time?

A No, sir.

MR. TOLLIVER: Objection.

MR. FLEMING: Objection.

THE COURT: Sustained.

Q Tell us anything unusual happen getting these people out of the tavern?

A At this -- this was about -- this was about five to nine.

Q Speak louder.

A This was about five to nine and I do believe there was still a little bit of daylight yet. We went into the tavern and told all the people to leave.

After this, I walked out of the tavern and I told Captain Dregalla that -- well, I observed a little bit first and I noticed the gunfire was coming from up Auburndale (indicating) and I told Captain Dregalla I was going to go back into the tavern and see if there's a vantage point.

So I inspected the tavern on the bottom floor and

then I went upstairs and talked to two tenants that occupied two particular suites there.

I knocked on their door and asked permission. I identified myself, asked permission to enter the apartment, which they acknowledged and they were very scared and they asked me what should they do and I told them --

MR. TOLLIVER: Objection to
all this conversation, Judge.

THE COURT: Overruled.

Q Go ahead, Officer. They said they were scared and you said something?

A Yes, they said they were very scared and what should they do and I told them well, the best thing they can do is go into the bathroom, lay on the floor and don't answer the door until a police officer knocks on the door.

I think this will be about the safest part of the house for you. In which they complied.

I went into the second apartment and a woman told me the same thing. She was very scared. After requesting her to turn off the lights, she went into the bathroom and I tried to observe the area from a window and a door, which I opened the door.

I went promptly downstairs and told Captain Dregalla about the vantage point I had.

I then returned -- Captain Dregalla said, "Did you notice any bodies or anything there?"

I said, "No, sir, but I will go back again and see what I can see," and then a young officer went with me then.

Q Where did you go and what did you do?

A We went up the stairs and I went out. There's a little porch (indicating). It's hidden by the trees here (indicating) but there's a little porch here that comes almost up against this building here (indicating). It's on the second floor.

I walked out onto the porch. As I walked out onto the porch, I held the shotgun just like I am holding this stick here (indicating).

MR. LAURIE: May the record show that the shotgun is at an angle pointing upward in front of him, Judge, with his right hand lower than his left hand?

THE COURT: It may so show.

MR. TOLLIVER: Port arm.

MR. LAURIE: Port arm. Thanks.

Q Go ahead.

A As I walked down the porch, I turned to the left and slowly swept the area, looking down on the ground all the time and at this position, when my back was facing-- facing this direction here (indicating), it would be on a northwest direction, I do believe it's northwest.

My back, all the gunfire started up to flash all around me and at this time I noticed a stinging sensation in my arm and then everything got sort of hazy.

I do believe I dropped the shotgun and the flashlight I held in my hand.

Q Which arm was hit?

A It was hit in my left arm (indicating).

Q How did the path -- how did the bullet's path go through your arm?

A The bullet entered at the wrist here (indicating) and came out just past the elbow here (indicating).

Q Go in front of the jury box and show them how it went in and where it came out.

(The witness went to the jury box.)

A The bullet went in through the wrist here (indicating) and it came out along the elbow here (indicating). It went through the bone, all the way through the bone.

Q All right, Officer. You want to take the stand, sir?

A All right.

(The witness resumed the stand.)

Q Now, Officer, you indicated that you were shot -- how soon after you got on the porch, were you shot?

A Within about -- I can only approximate it, at about two minutes, possibly less.

Q All right. And then you say you dropped your flashlight and rifle and what did you do? Did you fall?

Did you walk or run?

A I dropped the shotgun, sir.

Q Shotgun. Did you say flashlight, too?

A And flashlight.

Q Then did you leave the porch or what?

A At this time, the burning sensation in the arm sort of blocked out all thoughts, I guess, and at this moment I couldn't correctly tell you exactly what really happened.

Q Where did you next find yourself that you remembered after being shot?

A I -- the next time I found myself, I do believe was in the hospital.

Q You don't recall coming out of the building at all?

A It's -- I can and yet it's -- it's not really a remembering. It's sort of like a dream.

Q Tell us about that dream, if you can.

MR. FLEMING: Objection.

THE COURT: Sustained.

Q All right. You found yourself in the hospital.

What hospital?

A Lakeside Hospital.

Q How long did you stay there?

A 21 days.

Q Have you returned to work now, Officer?

A No, sir.

Q Why haven't you returned to work?

A Well, I'm going to undergo another operation in June.

Q On your arm?

A For some correction on some muscle transplants.

Q Does that arm still bother you?

A Yes, sir.

MR. LAURIE: All right, Officer.

Thank you very much.

CROSS-EXAMINATION

BY MR. TOLLIVER:

Q Officer, at the time that you talked about the Lakeview Tavern, who was with you when you went into the tavern?

A Sir, I'm not -- a policeman on the Cleveland Police Department and there were a group of men from all over the districts that were around and I didn't recognize anybody but Don Milla, who later went up on the porch with me.

Q And I believe you testified that the purpose of your going into the tavern was to get the people out, is that correct?

A At first, yes, that's right, sir.

Q Were there any persons arrested from the tavern?

A This I am not aware of, sir.

Q You didn't arrest anybody?

A No, sir.

Q Are you aware of the fact that persons were arrested and placed into what we call the paddy wagon and taken to the Fifth District?

A There could have been, sir.

Q It didn't happen in your presence, is that what you are telling us?

A It never happened, as far as I was concerned, from the tavern, as far as I know.

Q All right. So then your purpose for telling the people to come out was for their own protection?

A That's right, sir.

Q And while you were in there --

A Pardon?

Q Pardon me. While you were in the tavern, you didn't see any crime committed by any persons in the tavern, did you?

A Are you referring to the tavern as a whole building or just the business part?

Q Well, let me put it this way. You went into the tavern. This is the tavern here, is it not (indicating)?

A That's correct.

Q You ordered the persons to come out?

A That were on the first floor of the tavern.

Q That were on the first floor of the tavern?

A That's right.

Q Did you see anybody on the first floor of the tavern commit any crime while you were in there?

A Not to my recollection, sir.

Q All right. And from what you could see, this was a public place, was it not?

A That's correct.

Q All right. So then you went up to the second floor,

is that right?

A There's a stairway leading up.

Q You went into two apartments?

A I went up to a landing and knocked on the door of two apartments, that's correct.

Q You didn't arrest anybody up there, did you?

A No, sir.

Q Then you went out on the landing and this is when you were injured, is that correct?

A That's right.

Q Now, you made a statement, did you not, Officer, pertaining to your involvement and what you did that day, a police statement on a Form 10?

A That's right, sir.

Q When is the last time you have seen that statement?

A Saturday.

Q This last past Saturday?

A That's right.

Q Where did you see it?

A I seen it in the -- I do believe there's a room downstairs, on the second floor.

Q In the prosecutor's office?

A It could have been, yes.

MR. TOLLIVER: Do you have that statement?

(Mr. Laurie handed the statement to Mr. Tolliver.)

MR. TOLLIVER: Give us just a moment, Judge.

No further questions, Judge.

REDIRECT EXAMINATION

(State's Exhibit No. 244 was marked for identification.)

BY MR. LAURIE:

Q Officer, handing you what has been marked as State's Exhibit 244, is this the statement, in your testimony, that you made?

(Document handed to witness.)

A Yes, sir.

MR. LAURIE: Thank you.

At this time, I would like to offer into evidence

State's Exhibit 244, Judge.

MR. TOLLIVER:

Objection.

THE COURT:

The objection will be sustained. It will be refused.

(State's Exhibit No. 244 was rejected.)

MR. LAURIE:

May it be incorporated in the record completely, Judge?

THE COURT:

It may be.

MR. LAURIE:

That is all.

Thank you.

(Witness excused.)

MR. LAURIE:

Sergeant Sam Levy.

THEREUPON, the State of Ohio, further to maintain the issues on its part to be maintained, called as a witness SAM LEVY, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LAURIE:

Q Your name, sir?

A Sam Levy,

Q Spell your last name.

A L-e-v-y.

Q What is your occupation, sir?

A Sergeant, Cleveland Police Department.

Q And how long have you been on the police force, Officer?

A Twenty-seven years this summer.

Q Sergeant, how long?

A Twenty-seven years this summer.

Q Total service longer than twenty-seven?

A No. I should --

Q You went in as a sergeant?

A No. I was a patrolman for, let's see, I made sergeant almost twelve years, so I was a patrolman about fifteen years.

Q The rest. All right, Officer.

Directing your attention to July the 23rd, 1968,
were you working as a police officer on that day?

A Yes, sir, I was.

Q What time did you start to work as a police officer?

A About 3:00 o'clock that afternoon.

Q That would take you normally to about what time?

A 11:00 p.m.

Q What district did you work out of?

A Fifth District.

Q Is that on the east side?

A Yes, sir.

Q Is this up around Carnegie - 105th area?

A Yes, sir.

Q Did you report for duty that particular afternoon?

A Yes, sir.

Q Were you working alone or with another officer?

A I was with another officer.

Q His name, sir?

A Sergeant Tom Moran.

Q Moran?

A Yes, sir.

Q Were you assigned on foot or in a vehicle?

A In a vehicle.

Q What type of a vehicle?

A It was a Ford, black-and-white car.

Q Police car?

A Yes, sir.

Q Was it duly marked as a police car?

A Yes, sir.

Q What type of weaponry or ammo did you have in that vehicle?

A I just had my sidearm, a 38-caliber special police revolver.

Q No shotgun?

A No¹/₂, sir.

Q No high-powered weapons?

A No, sir.

Q This is the extent of your weapons and ammo then, other than what you had on your person?

A Yes, sir.

Q How about your partner?

A Likewise. He had a .38 gun.

Q How were you and your partner dressed?

A In a complete police uniform.

Q Full summer uniform?

A Yes, sir.

Q Then did you go out on your job, then, after roll call?

A Yes, sir.

Q All right. And did there come a time when you received a call, or answer to a call to go to Lakeview and Auburndale area?

A Yes, sir.

Q About what time was this?

A Approximately 8:25.

Q And under what circumstances did you get notice of this?

A There was a radio broadcast over the air, and it said, "I am a tow truck operator; I am being shot at, I am at Beulah, vicinity of Beulah and Lakeview Road."

Upon hearing that, we -- at that point we were at about 118th and Euclid, going westward on Euclid.

Q You immediately took off for that area?

A We spun the car around and went in that direction.

Q About what time would you say you arrived in and about the area?

A About five, seven minutes later.

Q All right, and then what direction did you take to go into the area?

A We went east on Euclid Avenue, to Lakeview, and then we went north on Lakeview to -- to approximately in the area of 1395 Lakeview, which the broadcast indicated, following that first broadcast.

Q Now, Officer, at this point would you mind stepping

down, if you will, to the aerial photograph, and point out the area at which you arrived.

(Witness left the stand and went to the map.)

Q Stand to one side, Sergeant. This is an aerial photograph and, if you will stand on one side here, Officer, so the jury can see you better, tell us how you arrived, on here?

A We came down Lakeview, this northerly direction (indicating).

Q Please keep your voice up.

A We came down Lakeview in a northerly direction. There were three or four police cars parked in the center of the street. There were cars parked along the curb.

Therefore, they parked in the center. We parked behind them. It was about this area (indicating), maybe about eight houses, ten houses from the corner here (indicating).

And Sergeant Moran and I got out of the car and we could hear reports of pistol shots and from the north, from this corner here (indicating), this area here.

But we had heard a broadcast there was shots being fired from 1395 Lakeview, which was on the east side of the street. Instinctively, we ran to the back of the buildings over here (indicating), in other words, to get around the back, and we saw some patrolmen already here

on the sidewalk (indicating).

So we wanted to surround whatever was going on, get to it from the backyard. We went to the backyard.

We went about five houses in the northerly direction -- five apartment houses -- when there was a colored lady on the fire escape came and she was yelling to the children, "Come on in," because of the commotion.

I asked her -- I asked her -- I said, "Missus, what's your address here?"

She said something like 1435 or -25. Then we knew we had to go farther down. So we went down a few more houses.

We came to a tall fence. We decided we can't scale that fence, we better get back to the sidewalk and then continue down on Lakeview.

We got down -- there was a couple of patrolmen here (indicating), and there was a colored man standing in this doorway (indicating), and he said to me, "Sergeant, good luck to you."

I didn't understand what he meant, whether he was sarcastic or whether he just meant --

MR. TOLLIVER:

Objection, Judge.

THE COURT:

The observation

as to what he didn't know is sustained.

A I didn't know what he meant. He said, "Good luck to you, Officer."

MR. TOLLIVER: Objection.

THE COURT: The part

about "good luck to you, Officer," will stand.

A So I continued on. When I got about here (indicating), near the corner, there was a patrolman kneeling behind some bushes here (indicating) trying to keep out of sight, right on this side of the street.

Q You are indicating, for the record, in front of the second building from Moulton and Lakeview?

A Yes. There were some hedges. He said, "They're shooting from behind this house" (indicating).

Q Indicating now this first house on Lakeview and Auburndale on the northeast corner?

A Right.

Q Then --

A He said, "The shots are coming from back of this house," so I said, "Okay."

So I then cautiously -- I leaned against the building. I walked along the building. I walked in this vestibule (indicating), so I'd be out of sight and I snuck along the building here (indicating).

My intention would be to go up this driveway and come around the back so I could get a better view of the

back yard here (indicating).

Well, I went up this driveway (indicating). I only went about 7 feet when I noticed some empty cartridges and casings and I took a quick glance at it, and I figured that there must be some action here, too.

Just as I thought of that --

Q May I interrupt for a moment? 12312, you are pointing at, right?

A Yes.

Q The driveway you are referring to is just east of the tavern?

A That's right. Just as the thought came to my mind, I got hit in my arm and in my chest (indicating).

Q At this point, was the arm wound through and through?

A Through and through.

Q How about the chest, left chest?

A Through and through.

Q What type of weapon hit you?

MR. TOLLIVER: Objection.

Q What type of missile?

MR. TOLLIVER: Objection.

THE COURT: The objection

is sustained.

Q As a police officer, did you recognize the type of missile that went through your arm and chest.

MR. FLEMING: Objection.

MR. TOLLIVER: Objection.

THE COURT: I'm sorry?

Q As a police officer, did you recognize the type of missile that hit your left arm and left chest?

MR. TOLLIVER: Objection.

MR. FLEMING: Objection.

THE COURT: Based upon your experience, do you have an opinion as to what type of missile it was that hit you?

First, do you have an opinion?

THE WITNESS: As far as I can say from my experience and seeing other bullet wounds and so on, this was from a high-speed --

MR. FLEMING: Objection.

THE COURT: He stated he has an opinion as to the size of the missile. You may inquire.

Q Go ahead.

A This was of a large caliber --

MR. TOLLIVER: Objection.

THE COURT: Overruled.

A Large caliber projectile (indicating) and this smaller, probably in the area of a .38 bullet wound, .38

caliber.

Q All right. Go ahead.

A When I got hit there, it spun me around. I then got hit in the elbow and in the hip.

Q What type of wound did you get in the elbow?

A I still got two bullets in the hip.

Q First the elbow.

A I don't know. It was through and through. The whole thing was ripped open.

Q What about the hip?

A I got hit in the hip and I still have two bullets.

They are probably 25 -- .22 caliber to .32 caliber because they smashed the bone and therefore, they are out of shape.

It's pretty difficult to judge them.

Q 1 Now, this makes one, two, three, a fourth you described, four wounds so far, right?

A Yes, sir.

Q These occurred while you were in the driveway?

A In the driveway.

Q You were facing 12312?

A I had been spun --

Q Or you were facing this area (indicating)?

A I was facing there when I got hit in the chest and arm. It spun me around. While I was coming around,

I got hit in here (indicating) and in the hip (indicating).

Q Now, did you notice the direction of fire, whether it was only from 12312 or elsewhere at that time?

A I could only assume it was coming only from there.

Q All right. Go ahead.

A I started running out of the drive and as I come out, I seen Lieutenant Joseph fall and -- and he said, "I'm hit."

When I saw him fall, I figured that I was in a cross-fire then. Apparently, he got hit from here (indicating) and I was getting hit from here (indicating). If I go where he is, I'll get cut in half, so I dove in the street.

Q In front of where, 12312 or the tavern?

A Right here (indicating), yes.

Q In front of the tavern?

A There was a car there.

Q What did you do then?

A I crawled under the car.

Q For cover?

A Yes, sir.

Q Was the fire heavy at this point?

A Yes, it was pretty good. I got hit twice under the car.

Q Where were you hit twice under the car?

A This leg and thigh (indicating) and this ankle (indi-

cating).

Q That makes about what, six wounds?

A Seven.

Q You had seven altogether?

A Yes.

Q The rest, other than what you described, the shots you got in the driveway, do I take it you got the rest while you were trying to take cover?

A Yes, sir.

Q Were you in full uniform at that time when you got hit?

A Yes, sir.

Q What type of weapon did you have?

A I had a .38 revolver.

Q Did you get any shots off?

A No.

Q Not a one?

A No.

Q Now you are in the street. All right, what happened?

Would you be more comfortable sitting on the chair at this point?

A Yes, sir.

(Witness resumed the stand.)

MR. FLEMING: Your Honor, may we approach the bench?

(Thereupon a discussion was had between the Court and counsel, outside the hearing of the jury, and off the record.)

Q Now, Officer, I believe when you were down here at the map, you indicated that you were struck several times as you were taking cover under a vehicle in front of the Lakeview Tavern.

Can you describe that any further, other than what you have testified to, or not?

A No, sir.

Q All right, and when you were under the vehicle, what next happened, if anything, other than being fired upon, as you indicated?

A I lay there about twenty minutes, and suddenly two officers dashed to the front of the car where I lay.

I laid under the radiator, practically, you know, and further back under it, and they came to me, and I said, "What the heck are you guys doing here?"

One was Patrolman Rowell, and the other was Patrolman Smith. And they said, "We come to get you."

I said, "You're crazy, you're going to get killed, too. You'll never get out of here," because they hit the car seventy times while I laid under the car.

And there was constant fire at the car and, where I lay, and Smitty -- Smith laid by me, and Rowell, too; and while we were laying there, Smith gets hit and he screams, "I can't breathe."

So Rowell and I tried to get him. See, he was out pretty much exposed. We tried to get him under the car, and I couldn't do too much. My arms were bleeding and hurting and we just inched him over a little bit, out of the line of fire; and then they threw tear gas, the police department, to try to smoke somebody out of one of the houses, and we were catching it.

The wind was blowing our way, and we were having trouble enough breathing, and this was only making it worse. So we yelled, "Cut the tear gas," but there was a cloud of tear gas, and Rowell picked himself up. He saw

that we couldn't do anything.

In the cloud of gas, he ran, but he got shot in the back somewhere; but Smitty and I lay there for an hour and a half. Smitty lay there for another hour, in other words. They couldn't get to us.

Q Is this the reason you laid there an hour and a half?

A Yes.

Q Were you able to help yourself in any way?

A I had all I could do to keep myself from bleeding --

Q Incidentally, this is a wound that we see on this left arm?

A Yes.

Q Will you lift that up?

(Witness complies.)

Q And which is the entrance, do you recall?

A Well, I assume --

Q Anyway, --

A The entrance (indicating), and exit there (indicating). One is the entrance and the other one is the exit.

Q What about your hand?

A The nerves are shot, and the muscle; it's all withered (indicating). This finger is dead altogether. This one side is half dead, and there's no feeling here (indicating).

I can't even open. This muscle (indicating) is

atrophied.

Q And how about your other wounds? They give you any trouble?

A Well, I have a little trouble in my chest. I've got it in the lung and I have an atrophied right leg.

I go to therapy two or three times a week. I'm also told to swim, if I can, and to revive the muscle and the nerve.

Q How many operations did you go through?

A I don't know. I was in surgery until 4:00 o'clock that morning.

Q I see. And I take it, you are still under medication --

A Yes.

Q -- and hospital care?

A Yes, sir.

Q And I take it, Officer, that you have not returned to work yet?

A No, sir.

Q All right, Officer.

After you laid on the ground there for approximately an hour and a half, then did there come a time when you were removed, Officer?

A Yes, sir. I heard the captain yell, "Knock out all the lights." The tavern was lit up, you know, the

outside, and the street lights, and the police shot out the lights, and the next thing you know, somebody was dragging me along the ground for about twenty-five, thirty feet, by the legs, and so on, pulling me along the ground.

And then he lifted me into a Brinks truck and they took me to the hospital.

Q Did you later learn the report of your condition that was made?

A Much later. I was out pretty good.

Q What was that?

MR. FLEMING: Objection.

A I was critical.

MR. TOLLIVER: Objection.

THE COURT: The objection is sustained.

Q (By Mr. Laurie) All right. And then, of course, you stayed in the hospital for how long after that?

A Almost a month.

THE COURT: We will take our morning break at this time.

Observe the admonitions I have been giving you.

(Thereupon a recess was had.)

THE COURT: Be seated, please.

- - -

THEREUPON, HERBERT DREGALLA, having been previously duly sworn, resumed the stand and testified further as follows:

MR. LAURIE: Judge, I recall the Captain momentarily.

THE COURT: That's quite satisfactory.

MR. LAURIE: For the purpose of getting Mr. Fleming a report he wanted from him or something or other.

RE-CROSS-EXAMINATION (CONT'D)

BY MR. FLEMING:

Q If it please the Court, Captain, did you bring the Form 1 report?

A Yes, sir, I have a copy of the report.

Q May I see it, please?

A Yes, sir.

(Document handed to defense counsel by the witness.)

(Document returned to witness by defense counsel.)

Q (By Mr. Fleming) Thank you, Captain.

Now, do I understand, Captain, that you did not make any other report, other than the two reports that you have shown us this morning?

A That is it, yes, sir.

MR. FLEMING:
this as Defendant's Exhibit V?

Would you mark

(Defendant's Exhibit
V marked for identification.)

Q (By Mr. Fleming) Do I understand that you did not participate in making of any report, other than two reports that you made this morning?

A That's correct.

Q Other than the information that you imparted to Captain Sperber and Chief Blackwell to make up this general report?

A I sent my report through police channels and had no control over where they went from that point on.

Q Now, Officer, I believe that you have indicated on a number of occasions, you were the highest-ranking police officer on the scene?

A Yes, sir.

Q Is that correct?

A Yes.

Q At any time in any report that you ever made, did

you indicate that there was proof that the police were lured into a trap?

A Any of my reports did I indicate that?

Q Yes.

A No, I did not.

Q At any time did you indicate in any reports that you ever made that there was any tangible proof that this shooting was the result of any plot?

A There is no information in my report about such things.

Q I am showing you what has been marked as Defendant's Exhibit V, titled "Chronological report of events from 2:30 p.m. Tuesday, July 23, to 8:30 a.m. Sunday, July 28, on the Glenville area disturbance," will you look at it?

Have you ever seen that report before?

A No, I have not.

Q You have no knowledge whatsoever that the Chief of Police and Captain Sperber participated together in making that report?

MR. CORRIGAN: Objection.

THE COURT: Sustained.

Q (By Mr. Fleming) You have no knowledge whatsoever of that report?

A No, this is my first recollection of the details of such a report. I was not in charge of any investigation in connection with this report.

THE COURT: Do you have any other questions?

MR. FLEMING: He isn't through looking at it.

THE COURT: He says he has no knowledge of this report.

THE WITNESS: I have no knowledge of it.

Q (By Mr. Fleming) I believe your testimony is that from your investigation there was no tangible proof that this shooting was the result of any plot in so far as you knew?

A Any investigation?

Q Yes.

A I made no investigation of the incident there -- I had a part in the incident itself. I made no investigation of the causes or the circumstances of this.

MR. FLEMING: You may inquire.

REDIRECT EXAMINATION

BY MR. LAURIE:

Q Officer, Mr. Fleming has inquired about whether your reports, the ones that you made, indicated anything about a plot, and if I were to tell you that we had testimony in this case by Mr. Walter Beach that on July 23, 1968, in

the early part of that afternoon, there was a high-level meeting at City Hall with the City officials where in there is testimony that the City officials indeed had information from an informer that weapons were being accumulated at this area and some kind of kickoff was supposed to happen on July 24, 1968 --

MR. TOLLIVER: Objection, he didn't testify to that.

MR. LAURIE: He certainly did.

THE COURT: Proceed with your question.

Q (By Mr. Laurie) Were you ever advised from City Hall about this particular information before your men went out there and fell like flies on Auburndale and Lakeview?

MR. TOLLIVER: Objection.

MR. FLEMING: Objection, and we move that the jury be instructed --

THE COURT: The jury is not to be concerned with questions not answered, and the objection is sustained.

You have nothing before you at all.

Q (By Mr. Laurie) In regard to the cross-examination of Mr. Fleming, pertaining to any plan or design, did you get any information as a superior officer in this district about such a situation in that district in the early hours

of July 23, 1968?

A No, sir, I did not.

MR. FLEMING: Objection.

MR. TOLLIVER: Objection.

THE COURT: Sustained, the

jury will disregard the answer.

Q (By Mr. Laurie) Mr. Fleming asked you not once but several times about some circumstances of a plan of attack.

Did you ever hear of any plan of attack before you went out there by any other superior officer?

MR. FLEMING: Objection.

THE COURT: Sustained.

MR. LAURIE: Any time before your men went out there and died, as you say, from gunshot wounds all over the street, up to that very moment, did you hear about any kind of a high-level meeting at City Hall?!

MR. FLEMING: Objection.

MR. TOLLIVER: Objection.

MR. LAURIE: In the early hours of the afternoon of July 23, 1968?

MR. FLEMING: Objection.

THE COURT: Sustained.

MR. LAURIE: Would you mark this exhibit, please?

(State's Exhibit 245
marked for identi-
fication.)

Q (By Mr. Laurie) I hand you State's Exhibit 245,
which you were requested to bring by the defense. Is
this the report that you termed as your Form -- what was
it -- 1?

A Form 1, sir.

Q Your Form 1, requested by Mr. Fleming to bring this?

A Yes, sir, it is.

Q And this is the report that you testified you made
in addition to your statement to the officials?

A Yes, sir.

Q And which was reflected, I guess, on State's Exhibit
243, is that right, sir?

A Yes, sir.

Q From your recollection, is there substantially the
same information on each of these exhibits?

A Yes, sir.

MR. FLEMING: Objection.

MR. TOLLIVER: Objection to
that.

THE COURT: Sustained; the
jury will disregard the question and answer.

Q (By Mr. Laurie) Is there anything different in one
exhibit than the other?

MR. FLEMING: Objection.

THE COURT: Sustained.

MR. LAURIE: To your knowledge?

Well, I offer into evidence, your Honor, State's Exhibit 245, the Form 1 he has just testified to, and I reoffer into evidence State's Exhibit 243 again.

MR. FLEMING: Objection.

THE COURT: The original statement of the Captain?

MR. FLEMING: We have no objections, provided that Defendant's Exhibit Z is permitted to go into evidence.

MR. LAURIE: Defendant's Exhibit Z was not made by this defendant; Mayor Stokes made it.

MR. TOLLIVER: We don't care who made it.

THE COURT: We understand you are objecting to Exhibits 243 and 245, is that your position?

MR. TOLLIVER: Yes, sir.

THE COURT: He has offered Exhibit 245 and reoffered Exhibit 243. Do you object?

MR. FLEMING: Just a minute.

THE COURT: We are considering Exhibits 243 and 245, what is your position?

MR. TOLLIVER: Objection.

THE COURT: The objection is sustained. They will be refused.

Then he asked to reoffer Exhibit 243. What is your position?

MR. TOLLIVER: Objection.

THE COURT: The objection is sustained.

(State's Exhibit 245 rejected and State's Exhibit 243 rejected on the reoffer.)

MR. LAURIE: May I again, for the record, respectfully ask the Court that Exhibit 245, the Form 1, be incorporated in the proceedings of this trial?

THE COURT: It may be.

Q (By Mr. Laurie) Captain, did there come a time in line of your duty as a superior officer on this riot in the Glenville area, to make a report relating to the subject matter of a valor award nomination for one of your men?

A Yes, sir, I did.

MR. FLEMING: Objection.

THE COURT: I'm sorry, I didn't understand the beginning. Please read it.

(Question and answer read by reporter.)

THE COURT: Objection sustained.

Q (By Mr. Laurie) In addition to the two reports that you were requested by the defense to bring in, that you actually made, Captain, did you make another report, you, yourself?

A Yes, I made a report at some later date -- I don't recall the date in particular -- commending my men --

MR. FLEMING: Objection

THE COURT: The answer is he did make a report. The balance will be stricken.

MR. LAURIE: The subject matter of that report is what, without giving us the details, merely the subject matter?

MR. TOLLIVER: Objection.

THE COURT: The objection is sustained.

MR. LAURIE: Would you mark this, please?

(State's Exhibit 246
marked for identi-
fication.)

Q (By Mr. Laurie) Handing you what has been marked
as State's Exhibit 246, can you just merely identify
this exhibit, if you will, sir?

A Yes, sir, this is my report.

Q Of what?

MR. FLEMING: Objection,
unless we see it.

THE COURT: Sustained.

MR. TOLLIVER: Could we see it?

MR. LAURIE: Yes, be glad to.

(Document handed to defense counsel
by the Prosecutor.)

MR. LAURIE: Handing you
again, Captain, State's Exhibit 246, what is
the subject matter of this report?

MR. FLEMING: Objection.

THE COURT: The objection
is sustained.

MR. LAURIE: Okay. That's
all.

RE-CROSS-EXAMINATION

BY MR. FLEMING:

Q Captain, a few moments ago, you said you made no other reports other than the two. Are there any more reports that you made?

A You were speaking before of reports pertaining to this incident. At the time, those were the reports I made. I made two.

Q Captain, can you tell us whether or not this is the report that Chief Blackwell and Captain Sperber made and gave to the safety director of the City of Cleveland? Can you tell us?

MR. LAURIE: Objection.

THE COURT: Sustained.

Mr. Fleming, we have gone through that, and this witness said he never saw it before and he says he has no knowledge or connection with that. That is his testimony here.

MR. FLEMING: All right,
nothing further, your Honor.

MR. LAURIE: Thank you, Captain.
(Witness excused.)

MR. LAURIE: I think Sergeant
Levy was on the stand, Judge.

MR. FLEMING: We don't have any
further questions of Sergeant Levy.

MR. LAURIE: All right.
Have them bring in Patrolman Smith, if you will,
Sergeant.

THEREUPON, the State of Ohio, further to maintain the issues on its part to be maintained, called as a witness THOMAS J. SMITH, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LAURIE:

Q I am going to ask you a few questions, sir. Please give your statements to the jury, and keep your voice up as loud as you can.

And give us your full name, and spell your last name, sir.

A Patrolman Thomas J. Smith. S-m-i-t-h. Badge number 1232.

Q Mr. Smith, directing your attention to July 23, 1968, what was your employment?

A At the time I was stationed at the Fifth District; my assignment was the use of motor scooter 5S2.

Q When, I take it, you were employed with the Cleveland Police Department at the time?

A That's correct, sir.

Q And at that time, sir, how long had you worked for the Cleveland Police Department?

A Would have been four and a half years.

Q Assigned to what district?

A Fifth.

Q And is this on the east side?

A Yes, sir.

Q Go back to that particular day, July 23, 1968.

What time did your tour of duty start?

A 3:00 o'clock.

Q And that would have taken --

A 3:00 p.m.

Q That would take you to 11:00?

A 3:00 to 11:00.

Q How were you dressed at that time, Officer?

A In full uniform.

Q Consisting of what, sir?

A Dark blue pants and long-sleeved shirt, because my wife lacked to iron a short-sleeved shirt that day.

Q Did you have your officer's cap on, and shield?

A I was wearing a white helmet.

Q And a badge?

A And a badge.

Q And what type of weapon did you carry?

A And I was carrying a Smith and Wesson, model 10.

Q Sidearm?

A Sidearm, .38.

Q And were you working on a scooter?

A Yes.

Q Was this a police scooter?

A A police scooter.

Q And did there come a time when you responded to go to the area of Lakeview and Auburndale, July 23, 1968?

A Repeat that, please.

Q Did there come a time, on July 23, 1968, did you respond to some call to go to Lakeview and Auburndale area, in the City of Cleveland?

A At approximately 7:00 to 7:30, in that area of time, I heard the broadcast that there were men, five men with carbines, at Auburndale, and Auburndale and Lakeview.

Q About what time, Officer, did you hear this call?

A It was at approximately 7:00 to 7:30.

Q I'm sorry, I didn't hear you -- and as a result of this, did you do anything?

A At the time, I was at the Fifth District.

Q All right, what did you do then after hearing the call of men with carbines?

A I went up 107th Street to Euclid, and Euclid to Lakeview.

Q You made a left off of Euclid into Lakeview?

A That's correct.

Q Then you proceeded north on Lakeview?

A That's correct.

Q Were you on your scooter?

A Yes, sir.

Q In full uniform, with your police helmet on?

A Yes, sir.

Q I am going to take you to an aerial map, sir, and perhaps you could point out to the jury the way you entered that particular area.

Do you recognize the map, first, as being Lakeview, Moulton, Auburndale, north and south, and I believe Euclid is down here somewhere (indicating).

Are you oriented, yet?

A Let me see it.

Q I will pull you back a little further.

Do you recognize the map?

A Let's see.

Q This is Lakeview. Let me use your stick and I will help you out; as far as it has been testified, this is Lakeview, running north and south (indicating)?

This is Auburndale over here, and this is Moulton?

A Correct.

Q Now, --

A Correct.

Q Do you see?

A I am oriented.

Q Are you oriented?

A Yes, sir.

Q Are you all right, in this position?

A Yes.

Q Will you tell the jury, you entered from Euclid and Lakeview, then you went in a northerly direction on Lakeview?

A I came -- this is south, correct?

Q Right.

A Is that right?

Q Fine.

A I came down to the corner near here, let's see -- the tavern.

Q It has been identified as the tavern on this corner, and the market and some apartments east of the tavern.

A All right. Here is a mail pickup box (indicating).

Q Yes?

A And the mailbox on the corner here (indicating).
When I came down, I was -- the captain's car was approximately here (indicating), 551, Captain Dregalla's.

Q All right.

A I pulled up approximately here (indicating).

Q All right, indicating a short distance from the corner of Auburndale and Lakeview. All right, you parked

your scooter there?

A Yes, sir.

Q Then, what did you do? Leave your scooter?

A I left it parked right along the curb, approximately here (indicating).

Q Do you recall approximately how many officers you may have seen in the area, other than the captain's car?

A The captain's car was here (indicating).

Q All right.

A Police officers around the corner, there were numerous ones, Captain Dregalla here (indicating); and at the time, Sergeant Elmer Joseph was out, lying in the street, right along here (indicating).

Q Indicating around the corner of Lakeview and Auburndale?

A Right. Right alongside of these mailboxes here (indicating).

Q All right, and were you armed at this point, when you left your scooter?

A Yes, sir.

Q What did you have by way of weapons?

A What I had was a model 10 38-caliber.

Q Sidearm?

A Sidearm.

Q All right.

A Service revolver.

Q When you approached the area and parked your scooter there, did you notice any gunfire?

A When I was there, I noticed a lot of gunfire. Some seemed to be semiautomatic and seemed to be automatic.

Q All right, and now you approached the corner, I take it; is that right, sir? The corner of Lakeview and Auburndale?

A Yes. It seemed as though that the fire was more concentrated from here (indicating), at the tavern, and here (indicating).

Q East of the tavern?

A Although there were shots that seemed to be coming from the area in and around here (indicating).

Q Indicating the corner of -- the northeast corner, and swinging around, you say?

A Yes.

Q Across Lakeview?

A Yes. Seemed to be coming from a lot of directions.

Q The same type of gunfire you earlier identified?

A A large weapon of .38 or 30-caliber.

Q And now you are at the corner, what did you do if anything while you were at the corner, other than observe these things?

A Well, there was a little bit of confusion, to say the least. The lieutenant was lying here (indicating).

Q Lieutenant --

A Elmer Joseph.

Q All right.

A At the time he was lying there, he was bleeding. Myself and Patrolman Michael -- Mike and I got him out. We pulled him from here (indicating), behind these mail-boxes, and there was a lot of shooting going on at the time. Some of this nicked my heels, on these shoes that I am wearing (indicating).

Q We dragged him to the side here, to the protection of the building.

Q This was the lieutenant --

A Lieutenant Elmer Joseph.

Q After you did this, Officer, what next did you do, if anything?

A Well, it seemed at this point that firing from the other areas had ceased or at least slackened. More of the concentrated fire was coming from approximately here (indicating), this apartment, and mostly out of the front of the tavern here (indicating).

Q All right. Indicating, when you said "this apartment," is that 12312, just east of the tavern?

A That's correct.

Q All right, proceed, Officer.

A Well, there was a -- the tow truck, which was the

original start of the --

MR. TOLLIVER: Objection.

MR. LAURIE: Well, what next
did you do?

THE COURT: Proceed and tell
what he, himself, saw.

Q (By Mr. Laurie) Yes. You said you pulled
Lieutenant Jones out and --

A No, sir.

Q I'm sorry.

THE COURT: "Joseph," he said.

Q (By Mr. Laurie) Joseph. And then you observed
this firing, and then what did you do or participate in?

A What did I do then?

I went from the point of here (indicating) -- we seen
Sergeant Sam Levy was out here behind the truck, a car,
rather, and he was hit approximately the middle of the
street here.

Q You are indicating Auburndale, in front of the
tavern?

A In front of the tavern, right about here (indicating).

Q All right, what was he doing down there?

Did you notice his condition?

A Well, Sergeant Levy had been hit twice or so by
then, and I seen him, myself, get hit twice.

Q Did you see the direction of that fire at the time?

A It was coming from the tavern itself.

Q All right, and proceed.

A At this point, trying to reconnoiter the area to see where the concentration of the fire was coming from, I went from this part here (indicating) of the building (indicating), here, across here (indicating).

Q You are indicating, for the record, -- sorry to interrupt -- the second house from Moulton and Lakeview.

Go ahead.

A Between these two houses back here (indicating).

Q The first and second house. All right.

A That's correct. And about here I got bit by a dog.

Q Of all things.

A Of all things.

Q Go ahead, Officer.

A I rounded the back of them (indicating), then I went -- let's see, the direction would be east on Moulton, across here (indicating).

Q You are indicating going right to the corner.

Now --

A To this privet hedge.

Q The northeast corner of Auburndale. All right.

A At that point there was -- I don't recall the exact

number of zone cars and station wagons that was hit, but they were in here (indicating), in the general vicinity of the intersection here.

Q Of Auburndale and Lakeview?

A Correct.

Q All right, proceed, Officer.

A Numerous men of the department were down behind them, and I was trying to reconnoiter the area to see where the concentration of fire was, because the captain was here, the lieutenant was down, already wounded, and so was the sergeant here (indicating).

So, in order to get information to the captain --

Q Yes?

A -- I started this route across here (indicating), at Moulton, across behind the cover of these cars that were in the intersection here (indicating).

Q All right?

A And up to a point of along this hedge. I jumped behind this hedge and got up so far here (indicating), where I could see the heavy concentration of fire was coming from the tavern and some from the upper story, but the heavy concentration of fire was coming out of the tavern and some from this apartment building here (indicating).

Q 12312?

A That's correct.

Q After you made this observation from the hedge in front of this house on the corner of Auburndale and Lakeview, what next did you do, Officer, if anything after seeing this?

A Well, I retraced almost the same route back, lacking the dark.

Q All right.

A To this point (indicating).

Q You are in front of the second house from Moulton and Lakeview, now?

A Right, using the house as cover.

Q All right, proceed.

A I went across, back to the Lieutenant or the Captain, Captain Dregalla, and gave him what information I had seen.

Q Of your observations of the line of gunfire?

A And where the concentration was coming from.

Q After you reported to the Captain that information, Officer, what next did you do?

A Well, that took most of about 40 -- 30 to 40 minutes.

Q To do what, Officer?

A To do all this, to make this circuitous route and retrace it.

Q All right, your travels -- now you are back with the Captain with the report. Did you do and see anything

at that point?

A Just a moment.

Q Could I help you?

A No, you can't.

Q Are you all right now?

A Fine. Continue.

Q Go ahead, continue -- you were back with the Captain, now, after making your report to him?

A Yes.

Q Will you explain to the jury what next took place in your presence or what you may have done?

A At that point, this is when I seen Sergeant Sam Levy already wounded.

Q All right.

A Sergeant Levy was wounded, lying behind a car. While I was standing at the corner here with the Captain, he went to his car, to his own car, 551, to get additional help.

Q And equipment?

A And equipment.

MR. TOLLIVER: Objection to
the leady of the witness.

THE COURT: Overruled; proceed.

Q (By Mr. Laurie) Proceed, then, after seeing the Captain make or go to the car for these requests, did you see or do anything after that, Officer?

A Well, at that point, I went from the corner and ran out under the fire to the Sergeant.

Q While the firing was going on?

A That's why I am in this wheelchair.

Q Did you reach the Sergeant?

A I did.

Q Were you able to touch him or retrieve him in any manner?

A I was trying to move him into what is known as the fireman's carry, to try and remove him from there.

Q What happened at that moment?

A I got out, after I moved him, and he said -- I can't remember his exact words, "Leave me here and get out; save yourself," or some words to that effect. I was all right at that time.

Q All right.

A I got up, I seen one gun muzzle of a rifle from the building.

Q Which building, Officer?

A The tavern, the front.

Q All right, go ahead.

A I fired about one or two shots at them; they were firing at me.

Q All right, then what happened?

A I ducked down behind the car with Sam, Sergeant Sam

Levy, to try to move him into position to carry him again.

When I stood up the second time, to see how clear it was, I was hit with a flesh wound or what seemed to be a flesh wound at the time, in my left shoulder, and immediately after that, I was hit with a second shot in the left shoulder which went in and across the back (indicating), and lodged in my right shoulder.

Q Striking your spine?

A Passing by the spine, either the velocity of the bullet, either shattered a piece of spine, but not the spinal cord itself.

Q All right, now when this bullet went from your shoulder, across your spine area and lodged itself somewhere in the right side, you say, or the other side?

A The other side.

Q And what effect was that on your body at that time?

A Well, I fell to the ground and I couldn't move to carry myself, pull myself back in.

Q Did this shot cause your body to become immobilized or somewhat paralyzed?

A I was paralyzed, all but above my -- from my neck up was about all I could move.

Q All right, Officer; then after receiving this wound, you say you fell near Sergeant Levy?

A Right.

Q And tell me, was firing still coming at you when you were dropped in this manner?

A It was.

Q Were you struck again?

A Twice. I got a piece of shrapnel from a bullet in the right chest; it was very minor, and a ricochet caught the right side of my face (indicating), this scar, the white scar.

Q Go ahead.

A And the bullet lodged at the hinge on my right jaw.

Q This was after you hit the ground?

A This was after I was on the ground.

Q Now, you were next to Sergeant Levy, and as you indicated paralyzed from the neck down.

Could you move at all or what transpired on the ground as best you can recall?

A At that point I was you might say dazed.

Q Turn around so the jury can see you -- is this locked?

A One moment.

Q All right, now you indicated that you were now on the ground as a result of this back wound and the other wounds you got?

A I was lying facedown.

Q Was Sergeant Levy near you?

A Right next to me.

Q And in relation to the car, where were you and Sergeant Levy?

A Behind it.

Q Could you move?

A Not behind the car, in relation to being in the rear of the trunk, but on the north side of the car.

Q All right, could you move at all at this point to take cover?

A I couldn't crawl nor drag myself in at the time.

Q What, if anything, was done with you by anybody else at this point?

A At that point, Patrolman Rowell --

Q Rowell?

A Ernest Rowell, came to our assistance, and helped cover me and dragged me back in for more cover.

Q Under the car?

A More so behind the car and under.

Q Was Sergeant Levy trying to help you, too?

A He was in no condition to help.

Q And were you bleeding at the time, sir?

A Yes, sir.

Q Did you lose much blood there?

A They said at the hospital I lost from three to four pints of blood.

Q Now, when Patrolman Rowell did attempt to rescue you and/or Sergeant Levy, what happened when he attempted this and was the fire still going on?

A From what I can recall at this point, he removed my gun belt and helped me easier to breathe and to help make it easier for me to breathe.

Because of the paralysis and the spine it made it difficult to breathe.

Q Incidentally, have you had that problem since?

A Well, yes.

Q All right, and continue, then, what did he do with the gun belt?

A Well, he loosened it and used my pistol, which he later lost.

Q All right, what happened to Patrolman Rowell when he was attempting to come to your aid?

A He was wounded in the buttocks.

Q From what direction of fire would you say he got it or were you able to see?

A I wasn't able to see; it was getting dark then, it was approximately 8:30, between 8:30 and 9:00.

Q And I take it, when you were shot, it was daylight?

A It was going on dusk, it was bright when we arrived there but it --

Q May I help you?

A No, thank you. It was going on dusk at the time, and by the time this had all transpired, it was between 8:30 and 9:00.

Q All right, Officer, after you noticed Officer Rowell also was fired upon and hit, did he drop where you and Sergeant were, too, or what happened to him as far as you can recall?

A When he came in to assist us, to drag us more into cover of the car, he fell to the ground and partially covered me with himself.

Q I see, was the firing still coming at you, Officer, at this time?

A Yes.

Q All right, now how long would you say you laid there before you were taken out, Officer?

A As we can rightly figure it, it was approximately 40 minutes to an hour.

Q Do you have any recollection of being removed from there?

A In a very dazed sense, yes.

Q Then, when you came to a clearer sense or knowledge of where you were, did you find yourself somewhere else?

A At the time when I -- the next recollection was being moved by a zone -- by one of the station wagons of the department, to the hospital.

Q Which hospital did they take you to then, Officer?

A I am trying to recall the name of it -- St. -- Euclid --

MR. LAURIE: Lakeside Hospital?

A Lakeside was the secondary hospital.

THE COURT: Huron Road?

MR. LAURIE: Euclid-Glenville?

MR. TOLLIVER: Forest City?

THE WITNESS: Forest City

is the hospital for the emergency treatment.

Q (By Mr. Laurie) You received emergency treatment there?

A Yes, at Forest City.

Q Were you then removed to some other hospital or what?

A After the treatment, emergency treatment at the ward, the emergency ward there, then I was removed to Lakeside Hospital.

Q How long did you stay at Lakeside?

A I was in Lakeside emergency ward -- I don't know how long; I was a little bit dazed. The only thing that kept me apparently between passing out and being awake at this point was the fact that I knew that I was allergic to penicillin and its effects and I had to keep trying to keep myself awake or apparently from going under so that I could let them know.

Q That you were allergic to penicillin?

A Yes, sir.

Q Then, did you stay there for a length of time, sir?

A Approximately a month and a half to two months.

Q Did you undergo an operation or several operations?

A I was operated on -- they performed a laminectomy on my spine to take me -- to take the disintegrated bones from my spine and also they took the piece of shrapnel from my right chest and a bullet out of my -- at the hinge of my jaw.

Q All right, and then were you removed to some other hospital?

A After the surgery and all of the various operations were completed, I was then removed to the VA Hospital for rehabilitation.

Q Have you been there since, Officer?

A Yes.

Q What is the prognosis of your case?

MR. TOLLIVER: Objection.

MR. FLEMING: Objection.

THE COURT: Sustained.

Q (By Mr. Laurie) Have you been able to move about other than in a wheelchair since July 23, 1968, Officer?

A Have I been able to move other than?

Q Yes.

A No, sir.

MR. LAURIE: Thank you, it's all yours.

MR. TOLLIVER: We have no questions, Judge.

THE COURT: All right, you are excused.

(Witness excused.)

THE COURT: We will recess for lunch until 1:15. Again, don't talk to anybody and don't let anybody talk to you about this matter.

(Thereupon, a recess was taken to reconvene at 1:15 p.m., Monday, April 28, 1969, at which time the following proceedings were had):

MONDAY AFTERNOON SESSION, APRIL 28, 1969 - 1:20 p.m.

MR. LAURIE:

Detective Stoiker,

THEREUPON, the State of Ohio, further to maintain the issues on its part to be maintained, called as a witness FRANK STOIKER, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LAURIE:

Q Your name, sir?

A Frank Stoiker.

Q Last name is spelled?

A S-t-o-i-k-e-r.

Q Your occupation?

A Detective.

Q How long?

A Three years.

Q Cleveland police force?

A Yes.

Q And what phase of the detective -- police department are you assigned to?

A General duty in the Detective Bureau.

Q General duty in the Detective Bureau.

Directing to your attention the date of July 23rd, the latter hours of that day, or early hours of July 24th, 1968, were you working as a detective in the Cleveland Police Department?

A Yes, I was.

Q Was there a time, on the late hours of July the 23rd, 1968, that you were called to go into the Lakeview Avenue area in Cleveland, Ohio?

A Yes.

Q And under what circumstances did you go into that area?

A We were ordered into the area a little after 9:00 o'clock that evening.

Q And how did you receive your assignment?

A From the Detective Bureau.

Q Where were you when you received the assignment?

A At the Detective Bureau.

Q What was your assignment?

A To go into the area in company with Detectives Delaney and Murphy.

Q And this was about 9:00 p.m., July the 23rd?

A We arrived a little after 9:00.

Q You mean, out in the area?

A Out in the area.

Q What time had you started to work that day?

A 4:00 in the afternoon.

Q And you were downtown in the Detective Bureau in the afternoon?

A Yes.

Q And the assignment, was that to you or others with you?

A To all of us, to go into the area.

Q All right, and how many were there now?

A Three of us.

Q They were, again, who?

A Detectives Delaney, Murphy, and myself.

Q And tell me, did your assignment call for going with any special type of weapons?

A Right. We were handed out weapons at the Detective Bureau.

Q From what department?

A The main office at the Detective Bureau.

Q You have a supply of them?

A Well, we have a gun case.

Q Who handed these out?

A The sergeant on duty.

Q What kind of weapons did they hand you three officers to go out there?

A I believe, Murphy and Delaney had rifles, and I had

a machine gun.

Q And what kind of a machine gun did you have?

A Thompson sub.

Q What caliber machine gun is that?

A That's a 45-caliber.

Q And what type of velocity gun is that?

A It's a low-velocity weapon.

MR. TOLLIVER: Objection.

THE COURT: Overruled.

Q (By Mr. Laurie) Low-velocity weapon?

A Yes.

Q All right, and the others had rifles, you said?

A Yes.

Q Do you recall what type of rifles or-not?

A No, I don't recall.

Q Then, how did you get out there?

A We went out in one of the detective cars.

Q Did you have any other ammo or weapons with you, other than the three you mentioned?

A My service revolver.

Q How about the supply of ammo, what kind of supply of ammo were you issued?

A 45-caliber.

Q How much?

A A box.

Q A box consists of about how many?

A About 50 rounds.

Q All right, and you went in an unmarked car?

A Unmarked car.

Q Proceeded then to go into the Glenville area?

A Yes.

Q What route did you take to get up there?

A We went out Euclid and we made the left turn at Lakeview and Euclid and stopped the car at Wade Park and Lakeview.

Q And this brought you to about what time?—

A A little after 9:00.

Q Will you step down to the aerial photograph, Officer, and direct us to the way you entered into the area.

(Witness left the stand and went to the map.)

Q This is an aerial photograph of Lakeview, Moulton, Auburndale Avenue (indicating).

Would you please stand to one side.

A Wade Park is up here (indicating).

Q You want to take one side, then, and describe how you got in there and what you observed or heard as you came in the area?

A Well, Wade Park runs parallel with Moulton (indicating), and we parked the car at Wade Park and

Lakeview and got behind the houses here (indicating),
because of the fire coming from Auburndale (indicating).

I came behind the houses here (indicating), and
I ended up on Moulton, the three of us.

Q For the record, you say the houses on the west side of Lakeview?

A Lakeview just south of Moulton. I came out on Moulton and I stationed myself approximately here (indicating).

Q What caused you to go behind the houses to get over here (indicating)?

A Well, I didn't know where the fire was coming from, and I wasn't going to take a chance and walk down the sidewalk.

So we all three of us took the back yards.

Q This is shortly after 9:00?

A Shortly after 9:00.

Q What was the activity, if anything, around Auburndale and Lakeview, by way of officers or whatever?

A Well, there were several officers on the scene and several disabled autos here (indicating) shot up, and there was a police car -- several police cars shot up at the time (indicating).

Right here, approximately, was a police car.

Q Now you get yourself back on the vicinity of Moulton and Lakeview with your two fellow officers?

A Yes.

Q And had you used your guns at this point?

A No.

Q Then what did you do?

A I stationed myself here (indicating) and Delaney and Murphy and myself, I got separated from them and that's when I teamed up with Detective Shankland who happened to be in the area at the time.

We stayed there until approximately, oh, 12:00 o'clock (indicating).

Q In and around this corner?

A Around that corner.

Q When you are around here (indicating), did you see any activity of gunplay around here (indicating)?

A Well, there were two wounded policemen laying face up in the middle of the street.

Q Did you later learn who they were?

A No.

Q All right.

A After they were removed and the firing quieted, then we went north on Lakeview where firing had broken out at 1395.

Q When you got to this corner (indicating), where was the firing coming from?

A I couldn't observe where it was coming.

Q That general area?

A It was around this building here (indicating).

Q East of the tavern, 12312?

A Right.

Q Did you observe what type of gunfire that you heard?

A Well, I couldn't tell at the time. There was several shots being fired and I couldn't tell.

Q Your direction, you mean?

A Well, in the direction of this area (indicating). I couldn't go out into Auburndale. No one could at the time.

Q Why?

A For fear of getting shot.

Q Gunfire was heavy?

A Heavy enough to get shot.

Q So you held back, as it were, on this corner (indicating)?

A I stayed on this corner.

Q Then you met Detective Shankland there?

A Shankland.

Q Do you recall what type of weapon he had?

A Thompson sub.

Q Machine gun same as yours, 45?

A 45.

Q Did you or Detective Shankland fire your weapon when you were on this northeast corner --

A No.

Q -- of Lakeview and Auburndale?

A As long as I was with Detective Shankland, he didn't fire his weapon.

Q Did you?

A No.

Q Then you say you stayed at this point to a time when you started proceeding to go north on Lakeview?

A Well, we heard that there were shots being fired from 1395 Lakeview, so we went down and we stationed ourselves in front of the house at 1395.

Q Did you observe firing from that house?

A Yes, there was firing.

Q What direction was the firing coming from?

A Towards the front of the house.

Q Into Lakeview?

A Into Lakeview.

Q Were police officers scattered along --

A The entire house was surrounded by police officers.

Q Did you do any firing at this location?

A No.

Q Did Detective Shankland do any firing with his sub-machine gun at this location, in your observation?

A No.

Q All right. How long did you stay in and about 1395 and make these observations?

A We were there around 45 minutes. The house was burning

at the time.

Q All right. Can you tell us of any activity by way of either policemen or snipers that may have gone on while you were watching that house?

A Well, there were men in the house. We know that.

Q Yes?

A But that's all, as far as firing.

Q Other than firing?

A Firing.

Q And what did you take cover when you were observing that house?

A Behind several cars in the middle of the street (indicating).

Q Then you stayed there with Detective Shankland for a time. Then what happened?

A Well, someone called from across the street at 1384 here (indicating) that there was a Black Nationalist wanted to surrender.

Q All right. Did you respond to that?

A Yes.

Q And approximately what time would this be?

A It was a little before 1:00.

Q When you first heard the announcement?

A The announcement.

Q Did you do anything after you heard this?

A Well, in company with Sergeant Hines, Patrolman Hicks and Patrolman Cullin and Shankland and myself, we stationed ourselves on the side of the house.

Q You say Hines, Shankland, yourself?

A Patrolman Cullen and Patrolman Hicks.

Q And what next transpired, if anything?

A Well, we surrounded the house and we yelled back to tell him to come out with his hands up in the air. A short time later, the side door on the house opened up (indicating).

Q You are referring to 1384?

A 1384.

Q The side door -- is that the front or rear of the house?

A It's toward the rear of the house (indicating).

Q That opened up?

A That opened up.

Q Who, if anybody, came out of that door?

A Evans came out, with his hands above his head.

Q How was he dressed?

A He had no shirt on, bare-chested, and trousers and sandals on.

Q What next took place when you observed this?

A He was placed against the house by Patrolman Cullins and Patrolman Hicks, and searched.

As he turned around, I told him he was under arrest.

Q What else did you do?

A I advised him of his constitutional rights.

Q What did he do, or you do, after that?

A He asked me, he says, "How many of my men died?"

Q What did you say?

A I said, "Three or four."

Q What did he say?

A He said, "They died for a good cause."

Q And after hearing this, did you have any further

conversation with him at this point or not?

A Well, I asked him how many men he had in the area. He said, "Around seventeen."

Q All right. Then -- incidentally, how did he appear to you, when he was talking?

A He talked freely.

Q I mean, what was his appearance, if you can describe it?

A Well --

MR. FLEMING: May the record show a continuing objection?

THE COURT: I heard that, but I hadn't heard any previous objection.

MR. FLEMING: To this whole line of questioning.

THE COURT: From now on?

MR. FLEMING: Yes.

THE COURT: You may have a continuing objection.

Q (By Mr. Laurie) How did he appear?

A He appeared calm.

Q Did you have any further conversation with him at this point?

A At that point, I took him to the car and placed him in the back of 513, which was disabled.

Q Was Stoker --

A Shankland.

Q I'm sorry. I always get you two mixed around.
Detective Shankland - was he there at the time?

A Well, he came by as I started to take Evans to
the car.

Q What if anything did Detective Shankland say to him,
in your presence?

A He asked Evans if he had been apprised of his
rights.

MR. FLEMING: Objection.

THE COURT: Overruled.

Q Go ahead.

A If he had been apprised of his rights. And
Evans said he had.

Q Then what happened?

A Well, at that point I took him to the car and
placed him in the back of the car.

Shankland, in the meantime, started going up into
the house at 1384, to possibly look for more Black
Nationalists up on the third floor.

MR. FLEMING: Objection.

THE COURT: Well, the purpose
for which he went will be excluded.

He did go inside the house.

Q (By Mr. Laurie) Did you do anything with Mr. Evans?

A I put him in the back of the police car with a uniformed man, and at the time I was shutting the door I said, "Where is your gun?"

He said, "In the bushes."

MR. FLEMING:

Objection.

THE COURT:

Overruled.

Q All right, go ahead.

A I made a quick check of the bushes and didn't look too good, because I was in a hurry to get back up with Shankland up on the third floor.

Q You had left Mr. Evans under supervision of another officer?

A Right.

Q Then you proceeded to go where?

A I went back up to the third floor of 1384.

Q Now, was your partner there - Shankland?

A Yes.

Q All right. Now, when you got upstairs, where did you go in the house?

A We went up to the attic, third floor.

Q What did you observe or do up there?

A Well, the entrance to the attic, we observed a raincoat laying on the floor, with several loose shells on it, and a package of tinfoil, and some smoked cigarette

butts laying on the floor and two carbine clips, 30-round clips, in the middle of the floor, and both of the attic windows, the front and rear, were partially opened.

Q All right. And after you made this observation, did you do anything else up in the attic?

A Well, we made a search of the attic and finding no one up there, Shankland stopped to call our SIU for photos and I returned downstairs back to the car and opened the back door of the car again and I said, "Where's your gun," to Evans.

He said, "In the bushes underneath the front window."

Q All right. Will you take the stand at this point?

(The witness resumed the stand.)

Q Again learned about where he had placed his gun and did you do something after you heard this information from Mr. Evans?

A Well, I went back right underneath the window and I did find the gun with a bandoleer and a black shirt with red piping on it and a tiki doll laying in the bushes underneath the front -- underneath the front of the house.

Q Can you describe how you found these items? That is, in what condition or form?

A They were wrapped up.

Q In what?

A In that shirt.

Q The shirt you described?

A Right.

Q All right. And what kind of a gun was it?

A It was a carbine, 30-caliber carbine.

Q Did you pick the carbine up?

A Well, it had a 30-round clip in it and I picked it up and I ejected -- I pulled the clip out first. Then I ejected the shell that was in the chamber.

Q Was a shell in the chamber of the weapon?

A Yes, a shell was in the chamber of the weapon.

Q Did you put back the 30-round clip?

A No, I put the shell into the clip and then put the clip back into the gun.

Q Oh, I see. All right. Incidentally, after you found these items, what did you do with them?

A Shankland called -- Detective Shankland called our SIU and they were later processed, photographed and processed downtown and --

Q And what happened to the items upstairs?

A They were taken downtown by our SIU.

Q And what part did Detective Shankland play in so far as you know with the various exhibits that you said you either observed or found?

A Well --

MR. FLEMING: Objection.

THE COURT: What is it that

you observed Detective Shankland doing, this is the question.

A Well, he stayed upstairs on the third floor with our SIU.

Q And did Shankland take any things away?

A I don't know.

Q To your knowledge?

A I don't know.

Q All right. The man that you saw coming out of the house at 1384 Lakeview Avenue, is he in the court house this afternoon?

A Yes, he is.

Q Where is he?

A Directly behind Mr. Fleming.

MR. LAURIE: May the record show he is identifying the defendant in this case, your Honor?

THE COURT: It may so show.

Q Showing you what has been marked State's Exhibit 190 can you identify that exhibit?

A Yes, this is the weapon that we found under the window.

Q As per instructions of Defendant Evans?

MR. TOLLIVER: Objection.

THE COURT: Sustained.

Q Well, what caused you to find this particular Exhibit 190 under the window?

MR. FLEMING: Objection.

THE COURT: Sustained.

Q Before you found this, you had spoken to somebody?

A Yes, sir.

Q Who did you speak to?

A Evans.

MR. FLEMING: Objection.

THE COURT: Overruled.

Q What did Evans tell you just before you found this?

MR. FLEMING: Objection.

THE COURT: Sustained.

Q Did you receive some instruction from Mr. Evans?

THE COURT: He's already testified as to that, Mr. Laurie. I assume that was one of the reasons for the objection.

MR. LAURIE: I want to lock it up tight.

MR. FLEMING: Objection to those remarks.

MR. TOLLIVER: Objection.

THE COURT: The remarks will be stricken. The jury will disregard it.

Q Showing you State's Exhibit 157, what can you tell us about that exhibit?

A This is the clip that was in the gun.

Q 190?

A Of 190.

Q As you found it?

A As I found it.

Q With the bullets in it?

A Right.

Q And the bullets that you said you took out of the chamber, what do you mean in the chamber of this gun?

A Well, on a carbine, before you can take a bullet out of a chamber, you have to take the clip out because if you take one out, another one goes in from the clip, so you've got to remove the clip and pull the bolt back (indicating) and that will eject the shell if there is any in the chamber.

Q Did that freely come out?

A It freely came out.

Q Then you said you inserted in here 00

A I inserted it back in the clip and put it back in the weapon.

Q How about State's Exhibit 41, this one here?

A This was also found on the scene with the gun.

THE COURT: What exhibit number
on that clip?

THE WITNESS: 157, your Honor.

Q Showing you State's Exhibit 201-A.

A This is the shirt.

Q What shirt, Officer?

A That was found in the bushes with the gun.

Q All right. And showing you State's Exhibits 22, 23 and 24, can you tell us anything about those three exhibits?

A These are the 30-round clips that were found in the attic.

Q All right. At 1384?

A Yes.

Q July 23, 1968?

A Yes.

Q Incidentally, all these exhibits pertaining to the shirt, belt and gun, ammo, found as you testified in the early hours of July 24, 1968?

A Yes.

Q How about this little item here 9- we better mark it.

(State's Exhibit No. 247 was marked for identification.)

Q Showing you State's Exhibit 247, can you identify it, sir?

A This is the tiki doll that --

Q I'm sure the jury can't hear.

A This is the tiki doll that was also with the weapon.

Q And the shirt?

A Yes.

Q The belt?

A Yes, the belt.

Q As you found them in the bushes on July the 24th, 1968?

A Yes.

Q Showing you State's Exhibit 122, Officer, can you identify that exhibit?

A This is the weapon as it laid in the bushes in front of the house at 1384 Lakeview.

Q Was that photograph taken either under or in your company at the time?

A It was taken after I had found it.

Q Detective Shankland was there at the time.

Q This is the photograph you officers ordered to be done, along with the attic?

A Right.

MR. TOLLIVER: Objection, Judge.

THE COURT: The objection is sustained.

Q (By Mr. Laurie) Did you order photographs taken of these items?

A Yes, we did.

Q Does this photograph depict that which you found in the bushes on the morning of July 24, 1968, at 1384?

MR. TOLLIVER: Objection.

MR. FLEMING: Objection.

THE COURT: Overruled.

A Yes, it does.

Q Thank you. Showing you State's Exhibit 123, sir, can you identify this exhibit?

A This is the front of the house, the front porch, at 1384 Lakeview.

Q What house?

A 1384 Lakeview. And directly under the front porch is the weapon and the shirt and the various articles as they laid there.

Q Is that the physical condition of the appearance of the items you mentioned, as you saw them on July 24th, 1968?

A Yes.

Q Showing you State's Exhibit 126, can you identify this exhibit, sir?

A These are the shells that were laying on the rain-coat, at the head of the stairs, at the top of the stairs.

MR. FLEMING: May we see these exhibits?

THE COURT: You haven't seen them?

MR. LAURIE: They are all marked. You must have seen them.

THE COURT: Permit them to see them again.

MR. TOLLIVER: I can't remember them.

MR. LAURIE: I will permit them

to see them again.

(Exhibits handed to defense counsel.)

Q (By Mr. Laurie) I think we are on State's Exhibit 126, Officer. You were saying, that is what?

A These are the loose shells that were on top of the raincoat, and the tinfoil which at the time, which we suspected of being marijuana.

MR. TOLLIVER: Objection.

THE COURT: Yes. That will be stricken. The jury will disregard the remark.

Your statement, these are the shells and tinfoil ontop of the raincoat, may remain.

Q Does this depict the items you say you saw in the attic of 1384, as you observed them on the morning of July 24, 1968?

A Yes.

Q Showing you State's Exhibit 124, can you identify that exhibit?

A These are the two clips in the middle of the floor, the 30-round clips in the middle of the attic at 1384 Lakeview.

Q As you saw them that morning, when you made the observation of the other items?

A Yes.

Q And State's Exhibit 125?

A The cigarette butts on the floor of the attic, on the steps going up, as we observed them on that particular night.

Q All right.

THE COURT: Mr. Laurie, what was the number on that front porch picture?

MR. LAURIE: The first photo was outside, 122. The second photo is 123, of the front porch as at 1384.

THE COURT: All right.

Q (By Mr. Laurie) After you made these observations and findings, what next took place, as far as you know, Officer?

A We returned to the car, and Evans was later transported downtown.

Q You stayed at the scene?

A Yes, I did.

Q Up to this point, Detective, had you fired your sub-machine gun at all?

A No.

Q As far as you know, in the presence of Detective Shankland, did he up to this point fire his submachine gun at all?

MR. FLEMING: Objection.

THE COURT: I didn't hear that.

I didn't understand that Detective Shankland had a submachine gun.

MR. FLEMING: He had a machine gun, but he wasn't with this officer all the time.

Q (By Mr. Laurie) Up to this time, as long as he was in your presence, up to this time, as long as he was in your sight or near you, had he fired his machine gun?

MR. TOLLIVER: Objection.

THE COURT: Overruled.

A No.

MR. LAURIE: All right.

That's all I have of this witness.

CROSS-EXAMINATION

BY MR. TOLLIVER:

Q Detective Stoiker, I understood you to say that the machine gun, the Thompson sub, is a low-velocity weapon?

A Yes, it is.

Q How did you come to that conclusion? What is that based on?

A From the caliber of the gun.

The distance traveled per feet determines whether it is a high-velocity or low-velocity. A particular

45-caliber is a low-velocity weapon.

Q Simply because it is 45 caliber?

A Simply because it is.

Q Is this something that you know, personally, or is this something that was told to you? Or is it an opinion that you have?

A Well, it's -- I know.

Q All right. Well, at any rate, you saw the defendant that night; is that correct?

A Yes.

Q Now, when he came down, it's been testified to, I believe by a previous officer, that he had a robe of some type on.

As a matter of fact, he was bare-chested, wasn't he?

A He was bare-chested.

Q He didn't have anything on?

A Not from the waist up.

Q From the waist up, I mean.

A Right.

Q Further, it was testified to by another police officer, I believe it was Patrolman Starr, that he surrendered to two black officers and, in fact, he surrendered to you and your partner? Is that right? To you and Detective Shankland and Sergeant Heintz and Patrolman Hicks and Patrolman Cullins - all four of you are --

A Five.

Q -- the five of you are white officers?

A Yes.

Q There were no negro officers in this group?

A No.

Q The five of you arrested him?

A Yes.

Q All right. Now, I believe you testified that he asked you how many of his men were killed?

A Yes.

Q And you told him three or four?

A Three or four.

Q And you said that he said to you that they died for a good cause?

A Yes.

Q Now, didn't he prior to saying that say to you, "That's too bad. They died for a good cause"?

A No.

Q Well, you are sure of that?

A Yes.

Q Well, calling your attention, Officer, to the 7th day of August, there was a preliminary hearing over in Cleveland Municipal Court, was there not?

A Yes.

Q For Fred Ahmed Evans?

A Yes.

Q And you testified at that hearing, did you not?

A Yes.

Q And do you recall now at that time Judge Miller was presiding, is that right?

A Yes.

Q And Mr. Laurie was representing the State?

A That's right.

Q And there was a person taking down the testimony, a transcript, the court stenographer, such as Mrs. Bourne is doing right now?

A Yes.

Q And you testified thusly, Mr. Laurie asked you:

"I want to take this back one step. It was yourself and who else, by the way of officers?"

And you answered, "Shankland, Sergeant Hines, Patrolmens Cullins and Hicks."

Is that what you said?

A Yes, I did.

Q All right.

"After you gave instruction to this person to give to this man who wanted to give himself up, where did you see him come out of?"

Your answer was, "He came out the side door," is that correct?

A Yes, he did.

Q All right.

"Of this address?"

"Answer: Yes."

Do you remember that?

A Yes.

Q Then he asked you: "Incidentally, this is also in that area in the City of Cleveland, State of Ohio?

"Answer: Yes."

Is that right?

A Yes.

Q "Tell us immediately what was next done or said."

"We immediately searched Evans and advised him of his rights."

Do you remember that?

A Yes, sir.

Q "We again questioned him if he was aware of his rights and he said he was."

Is that correct?

A That's right.

Q "He then turned to us and said, 'How many of my men are dead?'"

Do you remember that?

A Yes.

Q "Answer: We said three or four."

Do you remember that?

A I said three or four.

Q You said three or four. That's right.

"He said, 'That's too bad. They died for a good cause.'"

Do you remember saying that?

A I don't recall the "That's too bad" part of it, but I do recall "They died for a good cause."

Q Now, are you testifying from memory or did you make a police report couched in this --

A Statement is what I made.

Q You did make a statement?

A Yes, I did.

Q But this, of course, was on the -- when is the last time you saw the statement. -- first of all, let me withdraw that.

When did you make the statement, Detective?

A I don't recall, the day after or couple of days.

Q Couple to three days after?

A Yes.

Q When is the last time you have seen that statement?

A About four weeks ago.

Q About four weeks ago. So then I can take it to say that on August the 7th your memory was better than it is now?

A No.

Q You wouldn't say so?

A My memory is as good today as it was on August 7th.

Q Then you don't recall saying, "He said 'That's too bad. They died for a good cause.'"

A I don't recall ever saying, "That's too bad."

Q Well, this is what the record says.

A That may be what the record says, but I still say I don't recall saying "That's too bad."

Q At the time, Mr. Laurie was present, wasn't he?

A Yes.

Q Then the next thing:

"At this time I asked him how many men he had in the area. He said seventeen," is that right?

A That's right.

Q All of this is correct from your memory except he said, "That's too bad," is that right?

A That's right.

Q At the time that you talked to Mr. Evans and put him in the car, this is when you asked him where was his gun and he told you where it was, is that right?

A The first time he was placed in the car I asked him.

Q And he told you where it was, didn't he?

A Yes, he did.

Q All right. And you couldn't find it and I guess you asked him again?

A Well, I couldn't find it because I didn't give it too good a look that time. I was more interested in getting upstairs with Detective Shankland.

Q I understand. So the next time you asked, he gave it to you more directly and you were able to find it?

A That's right.

Q Did you learn, Officer, that the owner of this house was a man by the name of James Turpin?

A Yes.

Q And did you learn that he, too, was a police officer, a special police officer --

A Yes.

Q -- a guard at the Workhouse?

A Yes.

Q Is that right?

A Yes.

Q And, in fact, I believe you had coffee in his kitchen, didn't you?

A No, I didn't.

Q Well, you talked to him, didn't you?

A I didn't talk to him.

Q You never talked to him?

A No.

Q Well, did you ever ask him how long -- you didn't ask him how long the defendant had been in his house?

A I had no conversation at all with Mr. Turpin.

Q None at all?

A None at all.

Q All right. So then you went up in the attic, is that right?

A Yes.

Q Now, showing you State's Exhibit 126, that shows some loose shells that were found up in the attic, is that right?

A Yes.

Q And this is a picture of the weapon that you found, is that correct (indicating)?

A Yes, it is.

Q That is State's Exhibit 122. Now, Officer, you searched the attic, did you not?

A Searched --

THE COURT:

Searched what?

MR. TOLLIVER:

The attic.

A I searched the attic for men.

Q For men? Well, did you search the attic for anything else, other than men?

A No, sir.

Q Well, then, when this picture was taken, were you present?

A No.

Q Can you tell us what exactly was up in the attic?

A The raincoat, with the shells, the clip, and the cigarette butts on the stairs.

Q All right. Now, all of these shells here (indicating) are live shells, are they not?

A Yes.

Q There were no empty shells found up there, were there?

A Not to my knowledge.

Q All right. Now, this weapon, when it is fired it discharges an empty shell?

A It ejects.

Q That's right, it ejects an empty shell?

A Yes.

Q So you found no empty shells on that third floor? Is that right?

A I didn't, no.

Q So then, from what you could see, there was no evidence that there had been any firing from that attic?

A No.

Q The weapon that you found was wrapped in this garment (indicating), was it not?

A Yes.

Q Underneath the bush?

A Yes.

Q And I think you said the windows were partially open?

A Yes, they were.

Q Of course, this being in July, there wouldn't be anything unusual about that?

A No.

Q All right. As I understand it, on the second floor there is a porch, isn't there - if you can recall?

A Yes, there is. Yes, there is.

Q And the porch -- and so, therefore, the attic window would be over the porch, wouldn't it?

A Yes, it would be.

Q And this weapon was underneath the bush, under the porch; is that right?

A Yes.

Q And it was underneath the bush?

A Not underneath the bush; laying in the bush.

Q It was in the bush?

A In the bush.

Q And the defendant told you that's where it was?

A Yes.

Q That's how you found it?

A That's right.

Q And at the time the defendant came out, he had no weapon, did he?

A No.

Q So there was no evidence then from which you could say that the weapon was up in the attic with the defendant?

MR. LAURIE: Objection.

THE COURT: Overruled.

A No.

Q (By Mr. Tolliver) That's right?

A That's right.

Q Now, the defendant was cooperative, wasn't he?

A Yes.

Q And when he said he wanted -- when they said he wanted to surrender, you told him to come out, he didn't give you any problem at all, did he?

A None.

Q Now, Officer, how many statements did you make?

A Just the one.

Q That is your regular police statement?

A Yes.

Q Do you have that with you?

A No, I don't.

MR. TOLLIVER: Do you have it?

MR. LAURIE: That's it.

(Document handed to defense counsel by Mr. Laurie.)

MR. TOLLIVER: Would you mark
this, ma'am.

(Defendant's Exhibit
AA was marked for
identification.)

Q (By Mr. Tolliver) Showing you, Officer, what has
been identified as Defendant's Exhibit AA, can you identify
that, please?

A This is my statement.

Q So, now, the conversation that you have related to
the Court, that you had with the defendant, comes from
your memory, does it not, because you didn't encouch the
exact conversation in your statement, did you?

A It's not in the statement; it comes from my
memory.

Q It comes from your memory?

A Right.

Q Now, Officer, what are you assigned to?

A General duty.

Q General duty?

A Yes.

Q Were you in that same capacity on the 23rd?

A I was in the robbery squad.

Q You were in the robbery squad?

This causes you to have to make many investigations,

does it not?

A Yes.

Q How many investigations would you say that you have been involved in since July the 23rd, '68?

A Seventy or eighty.

Q At least. Maybe more?

A Maybe more.

Q How many persons would that cause you to come in contact with?

A Several hundred.

Q Several hundred.

This is part of your duty as a police officer, is it not?

A Yes, it is.

Q So, when I asked you whether or not, on the 23rd day of July, he said, "That's too bad, they died for a good cause," you were going directly by memory?

A Yes.

Q Because what was said, you didn't put in your statement; is that correct?

A That's correct.

Q And notwithstanding the fact that you have been in seventy or eighty investigations and talked to several hundred people, are you saying at this time you didn't make that statement, or you don't remember saying that on

the 7th day of August?

A I don't remember saying it.

MR. TOLLIVER:

That's all we have,

Judge. Thank you.

REDIRECT EXAMINATION

BY MR. LAURIE:

Q Those seventy or eighty investigations, Officer, you have had since the time of this situation in Glenville, in any one of those occasions were three officers killed?

MR. FLEMING:

Objection.

MR. TOLLIVER:

Objection.

THE COURT:

Sustained.

Q Ten people or more wounded, on one occasion?

MR. FLEMING:

Objection.

MR. TOLLIVER:

Objection.

THE COURT:

Sustained.

MR. FLEMING:

The prosecutor

knows that is wrong.

MR. LAURIE:

That is your

opinion.

THE COURT:

Just a minute.

MR. LAURIE:

That is your

opinion.

MR. TOLLIVER:

It sure is.

THE COURT:

Just a minute,

gentlemen.

MR. LAURIE:

Please mark this:

(State's Exhibit No.
248 was marked for
identification.)

Q (By Mr. Laurie) 248, is that the statement you indicated to Mr. Tolliver you made?

A Yes, it is.

MR. LAURIE:

May Exhibit 248

be offered into evidence, your Honor?

MR. FLEMING:

No objection.

THE COURT:

It may be

admitted.

(State's Exhibit No.
248, also marked
Defendant's Exhibit
AA, was received in
evidence.)

MR. LAURIE:

Thanks a lot.

MR. TOLLIVER:

Do you want to

read it to the jury?

MR. LAURIE:

No, I'll let you

read it; I'm a little hoarse.

THE COURT:

Just a minute.

Are you finished with your redirect?

MR. LAURIE:

Yes. Go ahead,

Mr. Tolliver.

MR. TOLLIVER: May I read this to
the Jury?

THE COURT: Yes, you may.

MR. TOLLIVER:

(Reading):

"The following"-- this is entitled "Criminal Investigation Bureau, July 25, 1968, 12:47 a.m.

"The following is the statement of Detective Frank Stoiker regarding the arrest of Fred Ahmed Evans on the charge of murder of a police officer.

"Detective Frank Stoiker. I am a duly-appointed member of the Cleveland Police Department and am assigned to the Detective Bureau.

"Approximately 1:00 o'clock, a.m., July 24, 1968, after Fred Ahmed Evans had been arrested and placed in a police car, No. 513, I questioned this male after advising him of his Constitutional rights and he stated that his rifle is in the bushes at the front of the house that he had come out of, which we later learned was 1384 Lakeview.

"I made a search of the front yard and directly under the attic window in front of the front porch in the bushes I found a 30-caliber military carbine with a loaded 30-shot clip attached to this weapon; one live shell in the chamber. Also a bandoleer loaded with numerous 30-caliber shells, live; also a

black robe.

"This property was photographed by SIU and later taken to the Detective Bureau.

"Question: Have you read the above statement and is it true?

"Answer: Yes."

Signed "Frank Stoiker, Badge No. 880."

Is that right, sir?

THE WITNESS: That's correct.

MR. TOLLIVER: No further questions, Judge.

MR. LAURIE: Thank you, Mr. Tolliver.

MR. TOLLIVER: You're welcome, Mr. Laurie.

MR. LAURIE: That's all.

(Witness excused.)

MR. LAURIE: Detective Shankland.

THEREUPON, the State of Ohio, further to maintain the issues on its part to be maintained, called as a witness ROBERT SHANKLAND, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LAURIE:

Q Your name, sir, and spell your last name?

A Robert Shankland, S-h-a-n-k-l-a-n-d.

Q You will have to speak twice as loud if we are all going to hear you, sir.

What is your occupation?

A Detective Bureau, Cleveland Police Department.

Q May I have that again, sir?

A Detective Bureau, Cleveland Police Department.

Q And how long have you been in the Detective Bureau, sir?

A Detective Bureau since 1958.

Q And directing your attention to July the 23rd, 1968, were you working as a detective for the Cleveland Police Department?

A I was.

Q Did you have an occasion to go into the Glenville Auburndale area that night or early the next morning?

A I did.

Q What time did you go there?

A We responded to an original assignment about 8:30 p.m.

Q What was the assignment?

A We were in the Northern Ohio Food Terminal, 40th and Woodland, checking the Terminal. We heard a radio broadcast, a help or assistance at Lakeview and Auburndale, from a police officer who claimed he was under fire and needed assistance.

Q Were you with someone?

A Detective Granger was my partner.

Q You were in an unmarked car?

A Yes.

Q This was around 8:30?

A 8:30 p.m.

Q Did you proceed directly to the area?

A No, sir.

Q What did you do?

A We returned to the Detective Bureau to pick up heavy equipment as the officers were requesting rifles as they were under rifle fire and couldn't do anything with the arms that they had at their disposal on the scene.

Q Did you come down to Central then?

A Yes, sir.

Q What, if anything, did you pick up there?

A My partner picked up a high-power rifle and I picked up a machine gun.

Q Your partner had the rifle and you had a machine gun?

A That's right.

Q How many boxes of ammo did you pick up, if you picked up any?

A I think he took a box of -- one box of ammunition for the rifle and I got two clips and a box for the machine gun.

Q Just one box for the machine gun?

A One box and two clips, 30-round clips and an extra box.

Q All right. Did you pick up any other personnel?

A No, sir.

Q Then you proceeded where?

A Directly to the scene.

Q About what time did you leave Central?

A I would say it would be 8:45, 8:50.

Q Then what route did you take to get up there?

A I don't recall the exact route as I was loading the weapons en route, filling the clips and filling the rifle and my partner was doing the driving.

He took the back roads due to the fact that the main arteries were clogged up with rush-hour traffic and persons in the area. We went through back areas.

Q Where did you finally get to?

A We were somewhere on the end of Lakeview. I would say we ended up maybe 150 feet from the Lakeview Tavern, south of the Lakeview Tavern.

Q Could you step to the aerial photograph now and take it from that point, sir?

(The witness left the stand and went to the map.)

Q Will you get on the far end so we can all see, Officer?

A We had been down about here (indicating).

Q Which way did you go?

A We first left the car here (indicating), walked from here (indicating) up to here (indicating).

Q Take your weapon with you?

A Yes, sir.

Q Did you notice -- hear anything on your way to the corner?

A We could hear sporadic rifle, pistol fire from this area here (indicating) and this area down here (indicating).

Q You indicated the intersection of Lakeview and Auburndale and somewhere in front of 1395?

A Yes, sir, down in here someplace (indicating). We didn't know where.

Q Now, had you fired your weapon yet?

A No.

Q Your partner fire his?

A No.

Q Where did you go?

A We got to this point here (indicating). We were instructed by officers not to proceed any farther due to the fact that the rifle fire coming from this location here (indicating) was hitting anybody in here (indicating).

We saw three officers laying in the street here at this point (indicating). We didn't know whether they were dead, wounded or what they were, but they were here.

My partner then took up a position here (indicating) with the rifle, somewhere here. I, in turn, proceeded through yards back over a fence or two (indicating). You can't see them, but there are fences here (indicating).

Down in through this alley to a position here (indicating), where I could attempt --

Q That alley you referred to, is that between house number one and two, at Moulton?

A It's not an alley; it's a sidewalk.

Q All right.

A And I took up a position here (indicating).

Q That is your position?

A That's right.

Q What did you do at that position?

A We attempted to see where the shots were coming from, from this area (indicating). There didn't appear to be any more firing from here (indicating), but they were firing from down here (indicating).

Q For the record, the first "here" you said, is that about 12312?

A Yes.

Q And this "here," the other "here," you mentioned, is that 1395 Lakeview?

A Yes.

Q Then proceed.

A I met with Detective Stoiker in this alleyway (indicating), we teamed up and crossed back through the yard.

Q Are you identifying going over Moulton now?

A Yes, we crossed over Moulton here (indicating).

Q All right.

A And then we, in fact, we stopped and proceeded up here to the corner of Moulton and Lakeview for a while, to see if we could see any shooting. It seemed to be right here (indicating).

There was a shot-up police car, abandoned. I think there was a wagon hit this pole here (indicating). It was abandoned across the street, lengthwise this way (indicating). I met some officers here (indicating).

Q "Here" again, is that Lakeview and Moulton?

A Lakeview and Moulton.

They told us there had been shooting from here (indicating), and they thought from this house, also (indicating).

Q That is the second house from Auburndale and Lakeview?

A They thought there had been shots coming from this house, earlier.

As I said, the shooting was coming from here (indicating), 1395 -- shooting now coming from 1395, so we proceeded back down to Moulton, through the rear yard, over into and back up onto Lakeview (indicating), and there were police cars parked along here (indicating).

And we took up positions on Lakeview, behind some police cars parked along here (indicating). There was sniper fire coming from 1395.

Q Had you done any firing yet out of your gun?

A No, sir.

Q The other officer hadn't fired his gun yet --

A Detective Stoiker --

Q -- who was with you?

A Detective Stoiker was there with me, at this time. To my knowledge, he hadn't fired.

Q What did you do after you observed the gunfire coming from 1395?

A Tried to get into a position right up here (indicating). There were several officers, uniformed men, also, who were telling this man to surrender.

He was coming out of the attic, which would be like a third floor, the firing was. It lasted for some time. It got dark while we were there.

Q You heard some officers asking him to respond?

A Yes, several times.

Q Did you hear anything?

A Whoever was doing the shooting was hollering, "Go to hell."

Q Go ahead.

A Then, from this point here (indicating), the house-- there had been enough firing, for some reason the house was on fire, I guess it was an electrical fire, and was burning.

I thought he would come out, but, whoever was shooting didn't come out.

We then proceeded across the street, 1384, and we were right behind this tree (indicating). We thought maybe he would come out or we would be in position if he should come out, or through this position here (indicating).

And from here, now, it was maybe 12:30 - 1:00 a.m.

Q What happened if anything about 12:30 - 1:00 a.m.?

A Somebody hollered, -- there's a store in front here (indicating), with a house here (indicating), two floors.

A man on the second floor hollered that there was a Black Nationalist in this house that wanted to surrender.

Q After you heard this, what did you do -- or Stoiker do?

A Detective Stoiker and I and some uniformed officers proceeded down this driveway (indicating), and there's a door here (indicating), in the side of this house, the first floor.

We expected this man to have his Black Nationalist surrender through this door (indicating).

Q Did someone come through the door?

A Yes.

Q Who came through the door?

A The defendant, Fred Evans.

Q Turn around and identify him to the jury.

A This is Fred Evans (indicating).

MR. LAURIE: May the record show he is identifying the defendant?

THE COURT: It may so show.

Q (By Mr. Laurie) As he came through the door, what happened --

First of all, how was he dressed? Tell the Court and jury.

A He had on dark-colored pants. He had no -- naked from his waist up, no hat. I don't know if he had shoes on or not.

Q Then what happened, then, as he came out of the door?

A Well, I was in a position back here (indicating), probably on the other side of this driveway.

Q Are you saying, some distance away from the door?

A Maybe about 20 feet.

Q Then what did you observe?

A He came out of the door, and somebody told him to face the house and put his hands against the side of the house.

Q Some police officers were with him?

A Some police officers that were right at the door.

Q Some conversation took place?

A Yes. He put his hands on top of the door, and they appeared to shake him down or frisk him.

Q At that time, what happened?

A He was told then to turn around, which he did, and then I approached Detective Stoiker, who was talking to the defendant.

Q What did you say in the defendant's presence, if anything, to Detective Stoiker?

A I said, "Frank," meaning Detective Stoiker, "did you give him his rights," meaning his Constitutional rights.

He said, "I just did."

Q Did you say anything to the defendant then?

A I said, "Do you understand your rights?"

He said, "Yes."

Q Who is "he"?

A Referring to the defendant.

Q All right.

A I said, "Do you understand?"

He said, "Yes."

I said, "Do you have any questions?"

He said, "No."

Q What was next done or said? Proceed.

A Then I asked the defendant, "Were you shooting?"

He said, "I was until my gun jammed."

MR. FLEMING: Objection.

THE COURT: Overruled.

Q Let's have that answer again.

A He said, "I was until my gun jammed."

Q All right. Proceed.

A And then I asked him, "Where is your gun now?"

And he stated, "It's in the bushes in the front of

the house."

Q What did you do then?

A Then I discussed with Detective Stoiker securing the prisoner, immediately, to get him to some area where he would be safe and Detective Stoiker moved him out to a abandoned station wagon. I think it was right about here (indicating). I went into the house.

Q You are referring out on Lakeview?

A He went out the driveway to Lakeview Avenue.

Q Then where did you go?

A Into the house to use the telephone.

Q You want to take the stand?

(The witness resumed the stand.)

Q What did you do at the telephone?

A I went and notified the Detective Bureau Command Post that the defendant had been arrested and was being conveyed down to the Central Police Station and to have somebody meet the car at the garage and convey him directly upstairs.

MR. TOLLIVER: I didn't hear.

A Notified the Bureau that he was being conveyed directly to Central Police Station, have somebody meet him there and convey him upstairs to the Bureau.

Q Then did you go out or stay in the house or go somewhere?

A At this point, I was in a position where I was

watching the attic steps and in case there was anybody else additional in the attic, that they couldn't get down until we had a chance to search the attic.

Q Did you go up there?

A I did later when Detective Stoiker came upstairs.

Q Then both of you went upstairs?

A Yes, sir.

Q What did you observe in the attic of 1384, if anything?

A The stairs went up, turned, went up again. It was a small attic. The stairway, there were several cigarette butts, matches.

At the top of the stairs was a yellow raincoat. I would say maybe a 12-year old child's raincoat. The name "Turpin" was written on the inside. It was laying inside up.

There were a numerous number of 30-caliber carbine ammunition spread on the coat. There was a tinfoil wrapper containing a green substance which I believed to be marijuana --

MR. FLEMING: Objection.

MR. TOLLIVER: Objection.

THE COURT: What you believe

will be stricken. The jury will disregard it.

Q What appeared to be a green substance in the tinfoil.

And what else along with the tinfoil?

A Two small cigarettes wrapped in yellow paper and on the floor, in the center --

Q Compared to the usual cigarettes, how did they appear?

MR. TOLLIVER: Objection.

MR. FLEMING: Objection.

THE COURT: Describe this cigarette.

THE WITNESS: Two of them.

They were the normal length of cigarette, very small in dimension. Both ends being closed and secured.

Q All right. Then what else did you observe up there?

A In the center of the attic floor was two 30-round carbine clips.

Q Did you notice anything else in the attic?

A No.

Q Or make any other observations?

A The window in the front and rear of the attic were both open.

Q Incidentally, does that window in the front, is there a top of the second floor porch that is close to that window?

A Yes, maybe two feet down, foot and a half down, the porch would run out 12 feet.

Q And how did you make that search? Were there electrical

lights up in that attic?

A Yes, there was electric lights.

Q What about the attic, other than what you observed, was it a cleaned-out attic as opposed to an attic with whatever --

A It was an attic. They had some things stored up, like any other attic, storm windows, or anything like that.

Q How much of a search did you make of the attic?

A A thorough search.

Q Pardon?

A We conducted a thorough search.

Q Then after discovering this property, you and your partner, what did you do about it, if anything?

MR. FLEMING: I didn't hear.

THE COURT: He said after

discovering the property, what, if anything,

did they do about it?

A Well, we called the Detective Bureau again and requested a lab team meet us there as soon as possible.

Q To take pictures?

A Take pictures.

Q At your supervision?

A Yes.

Q Under your supervision?

A Yes.

Q Were pictures taken?

A Yes, sir.

Q After pictures were taken, then what was done?

A The property was turned over to the laboratory men on the scene and the things and property in the attic were turned over.

Q Then did you stay in the attic or did there come a time when you left?

A Well, at that time, Detective Stoiker stated that he hadn't found the weapon yet in front of the house and would I go down with him and we would make another search, which we did.

We found an M-1 carbine and several other items in the front of the house, right at the edge of the roof, like out the window, over the roof, straight down in the bushes.

Q What did you observe there in the bushes?

A There was a robe wrapped up and on unwrapping the rope, there was an M-1 military carbine with a 30-round clip in the same. Bandoleer with several other items in the bandoleer and a tiki.

Q Was that property touched by you or your partner at that time?

A I didn't handle it at that time.

Q Detective Stoiker mentioned that he checked to see

if it was loaded.

A I believe he did check to see if the gun was loaded.

Q Were pictures taken before it was moved?

A Yes, sir.

Q By SIU?

A Yes, sir.

Q Under your direction or your partner's?

A Yes, sir.

Q After this was all done, then what happened to the property?

A That property there was conveyed personally to the lab unit at Central Police Station, by myself.

Q And now I'd like to show you a few exhibits, Officer. Showing you State's Exhibit 190, can you identify that exhibit?

A Yes. That's the carbine which carries 30-caliber, which was recovered in the bushes in front of the house, with a 30-round clip, wrapped in this robe (indicating).

Q Let's take one at a time.

157, can you identify that item?

A This is the clip that was in this gun.

Q All right. Is that the 30-round clip that you say that was in the gun?

A Yes, this is the one that came from the gun.

Q All right. And also, State's Exhibit 41, this item here, can you identify it?

A This is the ammunition pouch that was part of the -- wrapped also in that robe.

Q Found in the bushes?

A In the bushes.

Q State's Exhibit 247?

A This is the doll that was wrapped up, also.

Q All right. State's Exhibit 201-A?

A This is the robe that everything was wrapped in.

Q When, you mean "everything," you identified the gun --

A All this (indicating).

Q The tiki and --

A And the belt and the pouch and the rifle.

Q All these items were wrapped around in State's Exhibit 201-A.

Where did you find this bundle?

A Right against the stone -- the bricks in front of the house, on the ground, behind some little bushes.

Q 1384?

A Lakeview Avenue.

Q City of Cleveland?

A Yes.

Q Cuyahoga County, State of Ohio?

A That's right.

Q Up in the attic, you mentioned a few things.

Before I get into that, showing you State's Exhibits 122 and 123, can you identify those two exhibits?

A Yes. This is the front of 1384.

Q That is 123, you are showing us. That is what?

A The front.

Q Don't show the jury yet; they are not in yet.

A This is the front yard of 1384 Lakeview, the bushes, showing the items as they were recovered.

Q Are you talking about these items?

A All this (indicating).

Q The tiki, gun, and so forth?

A Yes.

Q And what is that picture?

A This is a picture --

Q That is 122.

A This is a picture -- it was unwrapped and found there, including the pouch and --

Q These pictures show the exhibits as you saw them, at 1384, on the morning of July 24, 1968?

A Yes.

Q Up in the attic, you said you saw a few items. Now I'd like to show you State's Exhibits 22, 23, and 24, in relation to that testimony.

A These were the items, the clip recovered -- these three clips were recovered in the attic.

Q 22 and 23?

A Yes.

Q The attic of 1384?

A Lakeview Avenue.

Q And State's Exhibit --

MR. LAURIE:

Judge, it's erased.

I think it's 132.

Q (By Mr. Laurie) Can you identify this exhibit?

A This is a cigarette.

Q So the jury can hear you.

A It's a cigarette recovered from the raincoat, of the attic at 1384 Lakeview.

Q How about the other items in the same pocket?

A This is a tinfoil wrapper containing a green substance which was also recovered from the raincoat, at 1384 Lakeview.

Q Showing you State's Exhibits 20 and 21, will you tell us what they are?

A They are boxes of 30-round M-1 carbine ammunition that were recovered in the ammunition pouch here (indicating).

Q State's Exhibit 41?

A That's right. In front of 1384.

Q All right. And now one box --

A One is empty and one is a full box.

Q These are 30-caliber?

A 30-caliber M-1 hollow soft-point ammunition.

Q How much is there in this box?

A There should be fifty.

Q All right. Now, showing you State's Exhibit 110, can you tell us what those are?

A These are two 15-round carbine rifle clips. One contains tracer ammunition and one contains tracer and hollow-point ammunition, which was recovered in this pouch.

pouch (indicating).

Q In State's Exhibit 41?

A In this (indicating).

Q Handing you what has been marked as State's Exhibit 124, can you identify this exhibit?

A It's the attic of 1384 Lakeview, showing the two clips as they were recovered in the center of the floor.

Q And how about State's Exhibit 126?

A That's the raincoat, yellow child's raincoat, with the name "Turpin" on it, that was recovered at the top or as it was found at the top of the stairway at 1384 Lakeview.

Q How about State's Exhibit 125?

A This is a picture of the second section of the stairway going to the attic.

You come up, turn, go up again. The second section, showing the cigarette butts as they were found on the stairway.

Q Do these three photographs, 125, 126, and 124, depict the actual condition of the stairway at 1384 and the items that you described that you saw on the morning of July 24, 1968?

A That's correct.

MR. LAURIE:
of this witness.

That's all we have

MR. FLEMING:
Court.

If it please the

CROSS-EXAMINATION

BY MR. FLEMING:

Q Officer, did you make a statement relating these events, as to what you have testified?

A Yes, sir.

Q When was the last time you saw that statement?

A During the preliminary hearing at the Central Police Station. I don't recall the --

Q Did you testify at the preliminary hearing?

A No. I was scheduled to, but I didn't.

Q You haven't seen that statement since that time?

A No, sir.

Q Then the events to which you testified here today are from your memory?

A That's right.

Q As best you recall these items?

A Yes, sir.

Q Do you know whether or not there is a statement that you made, a police report about these events?

A A statement or police report?

Q A statement.

A Statement. There should be, yes.

Q Did you make a police report?

A No, sir.

Q Just the statement?

A Yes, sir.

MR. FLEMING: May I see it?

MR. CORRIGAN: / He said he testified
from his memory.

MR. FLEMING: Do you have the
statement?

(Document handed to Mr. Fleming by Mr. Laurie.)

THE COURT: Ladies and gentlemen,
the defense may take a few minutes to read it.
We will take our recess.

Don't talk to anybody about this case.
Don't let anybody talk to you about the case.

(Thereupon a recess was had.)

- - -

THE COURT:

Be seated, please.

Mr. Fleming?

CROSS-EXAMINATION (Cont'd.)

BY MR. FLEMING:

Q May it please the Court, now, Officer, I believe you indicated that as you testified, you testified from memory?

A Yes, sir.

Q And the reason that these statements are made, these police statements, is so that when you get to court, you can relate the events as they actually happened, isn't that true?

A The statement is made for police record purposes.

Q Yes, you and I have worked on many cases together haven't we?

A Pardon me?

Q You and I have worked on many, many cases together, haven't we?

A Yes, sir.

Q The reasons these statements are made is so that you can refresh your recollection, so that you can sufficiently state under oath what happened, isn't that true?

A Normally, yes.

Q Now, with regard to the police and police involvement

in this incident, there is a special radio call with regard to a policeman in trouble, isn't there?

A They relay it just that way.

Q Yes, and the radio call known as a policeman in trouble is a high-priority call on a police radio, isn't it?

A Normally, yes, sir.

Q When a person is involved in the investigation, especially a detective or a police officer, well in any investigation, you relate fully and in detail just what transpired and this is done, even to a greater length, when a policeman is involved, isn't it?

A Normally, yes, sir.

Q Now, in this case, you have testified that when you talked to the defendant, Ahmed Evans, that he told you that he placed a gun somewhere, you recall that testimony?

A Yes, sir.

Q And you testified in detail that you heard an explanation of some rights given to Ahmed Evans before he -- before he told you where this gun was, do you recall that?

A That I testified -- that I heard them given his rights.

Q I withdraw that. You testified that you approached Ahmed Evans and requested of him as to whether or not he had been advised of his rights, and that Ahmed Evans said

that they had been and that the person you were with, Frank Stoiker, Detective Stoiker indicated that he had advised him of such rights, is that right?

A Detective Stoiker advised him, and the defendant indicated he had understood them.

Q Now, it wasn't until the 25th of July that you or Detective Stoiker together reduced your investigation of this matter to writing, isn't that the fact?

A I don't know exactly how long it was afterwards, possibly.

Q Well, showing you Detective Frank Stoiker's statement, which is now marked for identification purposes as State's Exhibit 248 and Defendant's Exhibit AA, now you and Detective Stoiker were present together in the police statement room when this statement was made, weren't you?

A I would say no; I didn't witness this statement.

MR. FLEMING: Would you mark this, please?

(Defendant's Exhibit BB marked for identification.)

Q (By Mr. Fleming) Now, referring to Defendant's Exhibit AA, this reveals that Detective Stoiker made the statement.

Now up here where it says July 25, 1968, 12:47 a.m., that means that when the statement was started, doesn't it?

A Yes, sir.

Q Down here, where it says Krial, Detective, that means that Detective Krial was the stenographer who typed that statement, isn't that true?

A Yes, sir.

Q And here, where it gives his number and says 12:55 a.m., that means this statement was completed 8 minutes after it was started, is that true?

A Yes, sir.

Q Now, referring again to Defendant's Exhibit BB, up here where it says 12:25 a.m., that means that your statement started on the same day, in the same room, at 12:25, doesn't it?

A Yes.

Q And it means that Detective Krial was the same stenographer who took your statement that took Detective Frank Stoiker's statement, doesn't it?

A Yes.

Q And it means where it says here 12:45, that your statement was completed at 12:45 a.m., doesn't it?

A That is right.

Q And you signed that and Detective Stoiker signed it as a witness, didn't he?

A Yes, sir.

Q So 20 minutes later at 12:47, was when Detective

Stoiker's statement was begun, isn't that a fact?

A Yes, sir.

Q So would it be fair to assume from those facts and circumstances that when both of these statements were made, you were present in the room?

A No.

Q Well, you left the room before 12:47?

A If I had been present, when this statement was made, I would have signed it as a witness, the same as Detective Stoiker signed mine.

Q Well, will you look at Detective Stoiker's statement?

A Yes, sir.

Q Now, does it say anything here about the defendant's telling Detective Stoiker anything about where a gun was --

MR. LAURIE:

Objection.

THE COURT:

Are you talking

about Exhibit AA or BB?

MR. FLEMING:

AA, your Honor,

which is in evidence.

THE COURT:

Objection sustained.

THE WITNESS:

I beg your pardon?

MR. FLEMING:

The Court sustained

the objection.

THE WITNESS:

Oh, excuse me.

Q (By Mr. Fleming) Then, referring to your statement,

Defendant's Exhibit BB, is there any indication in that statement that the defendant told you where a gun was?

A Yes, there is.

Q Where is that, Officer?

A (Witness indicates). "At this time I approached Evans, and asked him, 'Were you shooting,' and he replied, 'Yes, my gun jammed.' I then asked where is the gun now, is it still in the attic, he said, 'No, it should be in the bushes in the front of the house.'"

Q Is that substantially the statement as it was made to you on the 23rd of July?

A Substantially, yes, sir.

Q All right. Now, did you make a search or an effort to try to find the gun in the attic?

A We made a search of the attic, and we went to search for additional weapons at that time, yes.

Q Did you make an effort to determine whether or not any gun had been fired from the attic?

A How would you determine this?

Q Well, did you find any expended shells in the attic?

A I, personally, didn't find any, no.

Q Well, you were the first detective up in the attic, weren't you?

A Detective Stoiker and I were, yes, sir.

Q Well, actually, you went there before Detective Stoiker, didn't you?

A I didn't enter the attic, no; just as far as the stairway.

Q But you went to the front --

A As far as the stairway.

Q And you remained on the steps until Detective Stoiker came there?

A The entrance to the stairway, until Detective Stoiker returned.

Q So, nobody else went up there before you did? Isn't that a fact?

MR. LAURIE:

Objection.

THE COURT:

Overruled.

A There was a lapse of time of approximately ten minutes between the time the defendant exited the side door and the time I was able to secure the stairwell.

What took place during that ten minutes, I would have no knowledge.

Q At any rate, when you went to the stairwell, you didn't leave it until someone came to assist you, and you finally went into the attic, did you?

A That is right.

Q Because you wanted to make certain if anyone was up there that they couldn't get out?

A Yes, sir.

Q Now, when you went to the attic, well, you know how these carbines operate, don't you?

A Yes, sir.

Q And you know that as a carbine is fired, that from the side, the expended shell is ejected from the side?

A Yes, sir.

Q Now, did you find any evidence of any expended shells in that attic?

A I found no evidence of the rifle being fired inside the window, so that there would be expended shells -- it might have been fired outside and, of course, they would be outside, we wouldn't find them.

Q I am showing you Defendant's Exhibit S. Now, does this photograph fairly and accurately depict 1384 Lakeview as it existed on the 23rd day of July?

A I would assume this is a daylight photograph. We were there at night, but it is pretty much that same house.

Q Does this photograph fairly and accurately depict the window, that is the attic window of that house?

A Yes, sir.

Q Now, is this the window, in your earlier testimony, that you indicated was opened partially?

A Yes, sir.

Q And where is the other window that you said there were two windows and both were partially opened?

A There was a window on the other end of the house, on the back, in the same position.

Q Now, is there any porch or area-way on the top of this room?

A There is a large roof area there, yes.

Q Did you make an examination of that roof for any evidence in this case?

A I did not, no.

Q Did you supervise or direct the scientific investigation unit to make such an examination?

A I don't know if they examined that area out there or not. I couldn't say.

Q But while you were there, no such examination was made?

A I don't know.

Q Now, before the gun was found, didn't you relate to your partner that you thought that it was possible that a gun may have been thrown from this window (indicating)?

A The defendant told us there was.

Q The defendant told you that what was?

A That the gun was in the bushes.

Q He didn't tell you it was thrown from any window, did he?

A He said it was in the bushes, under the window.

Q In the bushes, under the window?

A Indicated this window in the front of the house, in the bushes in the front of the house.

Q And where was the defendant when he told you that the gun was in the bushes, under the attic window?

A He didn't say "under the attic window." He said "under the window."

Q In the location where you found this gun, is there any window anywhere near there?

A It was found right here in the bushes in the front (indicating).

Q Yes. There is a porch there, isn't there?

A Yes.

Q And this porch and the porch on the first floor all extend out from the house to a great extent, don't they?

A (Witness nods.)

Q And where you found this gun and these clips, they were laying there in a neat condition, weren't they?

A Yes, fairly neat.

Q But when you first made your examination, you made it on the premise that this gun had been thrown from the window, didn't you?

A Thrown, or else rolled down from the porch and dropped off the porch, and fall straight down into the bushes.

Q Didn't you have the conversation with Mr. Turpin, in which Mr. Turpin told you that this defendant, when he entered his home, did not have a weapon?

A The opposite. Mr. Turpin told me, when he saw the defendant, he had a rifle.

Q Didn't Mr. Turpin tell you that when the defendant came into his house, that he did not have a weapon?

A Mr. Turpin, when he heard the defendant kicking in the side door, he locked his door and he never saw him.

Q Are you telling us then that Mr. Turpin didn't tell you that, earlier, before 8:30, this defendant had come to his house to surrender?

A He did not indicate any time.

Q And didn't he tell you that he, personally, Mr. Turpin, on at least five or six occasions, had made an effort to communicate with the police department to let them know, from before 8:30, that this defendant was there? Didn't he tell you that?

A He stated that he did make an attempt to call the Fifth District, or the Sixth District Headquarters -- I don't recall which one -- to tell them there was somebody in his attic.

Q Yes, and didn't he tell you that when this defendant came down to the second floor, where he lived, to tell him that he wanted to surrender, to stop the shooting, this man had no weapon?

A He never opened the door. He said he assured him --

Q That's what you are saying?

A He related he didn't open the door; he pounded on the door and spoke to him through the door.

Q Did you relate anything in this conversation about your conversation with Mr. Turpin about the defendant?

A I don't know; I didn't read the complete statement; I don't know if there is anything further down or not.

Q Do you want to read it?

(Exhibit handed to witness.)

MR. FLEMING: Would you mark this as an exhibit?

(Defendant's Exhibit
CC marked for identification.)

Q (By Mr. Fleming) Now, do you relate anywhere in your statement that you had had a conversation with Mr. Turpin and Mr. Turpin revealed to you that this defendant was up in his attic from approximately 8:30?

A No, just the paragraph here: "Learned the person who originally notified us of this male's presence to be Joseph Turpin, who stated that Fred Ahmed Evans had forcibly broken and entered his home and taken refuge in his attic."

Q Did you make any indication in your statement as to whether or not Mr. Turpin said this defendant had a weapon or did not have a weapon?

A There is no indication there.

Q All right, you are telling us now that Mr. Turpin told you that when the defendant came in his house, he

had a weapon, is that what you are saying to us now?

A No.

Q All right, showing you Defendant's Exhibit BB, now does this fairly and accurately depict the rear of the Turpin house as it existed on the 23rd of July, 1968?

A I was never back to the rear; I wouldn't know.

Q Well, if this is 1384, does this fairly and accurately depict the second window that is open?

A If this is 1384, this would be the window, yes.

Q Now, when you say you mentioned your conversation with Turpin and that Turpin told you that he came into the house and that he had called the police station a number of times to let the police know that the defendant was there at his home, isn't that true?

A To let them know that somebody was there.

Q And isn't it a fact that Mr. Turpin further revealed to you that after he couldn't -- after he got to the police radio and that there was no response, that he called his superintendent -- now Mr. Turpin was a special police officer, wasn't he, the Mr. Turpin that you talked to that owned that house?

A I don't know if he was.

Q Do you know that he is a special police officer who works for the City at the Workhouse as a guard?

A He mentioned that he did work as a Workhouse guard.

Q Yes, and didn't he reveal to you that after he couldn't contact the police so that they responded to his calling, that he called Mr. Speath who was the superintendent of the Workhouse, to solicit his efforts to get the police out there from about 8:30 up until the time you arrived?

A I don't recall him making that statement, no.

Q You don't recall him making any mention to you of the fact that he had contacted the superintendent of the Workhouse in an effort to get the police to his house?

A No, sir, I don't recall that.

Q You didn't make any mention of that in your statement, because you weren't aware of it?

A I wasn't aware of it.

MR. LAURIE:

Objection.

Q (By Mr. Fleming) Now, I believe the testimony has been that this is 1384 Lakeview. Now the window that you indicated was the attic window in the front, was about the middle of the house at this location, the uppermost window, isn't that correct?

A Yes.

Q And at 1384, this uppermost window here, is the other window that you refer to as being partially open, is that correct?

A Yes, sir.

Q Now, from the examinations made by you and members of the Scientific Investigation Unit, was there any evidence that any weapon had been fired from either of these windows?

A I would have to say I found no evidence that a weapon had been fired.

Q Now, I believe you indicated that you started your investigation on this case at about what time, did you say, about nine o'clock?

A 8:30 we started.

Q And your immediate response was to go to the Detective Bureau, get some heavier equipment, I believe that's the way you said it?

A Yes, sir.

Q And what was the nature of the message that you received over the radio at 8:30?

A It was from Detective Bennett, I believe. He seemed to be urgently requesting rifles at the scene, and while he is speaking, you could hear heavy rifle fire coming from around it and he stated --

Q In other words --

MR. LAURIE: Go ahead.

THE WITNESS: They stated that they were under fire, pinned down and several

officers had been shot and believed some of them were dead and requested that they get assistance; and they couldn't handle the situation where they were.

Q In other words, the first message you referred about any activity in this area was to bring high-velocity weapons?

A Requesting high-velocity weapons and requesting rifles.

Q Yes, and how many other police officers were at the Detective Bureau collecting machine guns and high-velocity rifles when you arrived there?

A None.

Q Well, you obtained a machine gun?

A Yes, sir.

Q And you, with your partner Granger obtained a high-velocity rifle, I believe you told us?

A Yes, sir.

Q So he was there?

A Yes, sir.

Q Now, were you and Granger the only persons who went to this place, where they keep these rifles over in the police station?

A Office personnel were there at the time we were there.

Q Where they distributed the high-velocity weapons at that time?

A The Sergeant in charge was.

Q Who was that?

A Lusk.

Q How many submachine guns were distributed while you were there?

A One.

Q Just the one you received?

A Yes.

Q How many high-velocity weapons were distributed while you were there?

A One rifle.

Q After you left there and went out on the scene, did you see any officers, other than yourself, with high-velocity weapons?

A No, sir.

Q Did you see any other officers with submachine guns?

A Yes, sir.

Q How many other officers did you see with submachine guns?

A Stoiker.

Q Was that all?

A Yes.

Q I beg your pardon?

A Yes, sir.

Q Did you see any police officers with their own, personal, high-velocity weapons on the scene?

A This I couldn't say. I didn't pay any attention to what weapons anybody had.

Q About how many rifles did you see on the scene?

A I couldn't tell. I couldn't say if they were rifles or shotguns, I would have no way of knowing.

Q At any rate, while you were out there, you and Sergeant Stoiker -- or, Detective Stoiker, didn't fire at any time?

A We found no specific target.

Q Reason to fire?

A Yes.

Q When you found this gun, the rifle, and the shells, in the bushes, you didn't find them; you were just present when they were found; is that correct?

A Detective Stoiker made the discovery.

Q Yes, but you were present when he discovered them, isn't that correct?

A Yes, sir.

Q I believe you testified that Detective Stoiker came up to you while you were upstairs in the attic and told you that he hadn't been able to locate a gun, or shells? Do you recall that testimony?

A Yes. On his first search.

Q That you came down from the attic in an effort to help him find the gun?

A Yes.

Q And you and he looked in the bushes together, and eventually located the gun?

A He located the gun.

Q And pointed it out to you?

A Yes, sir.

Q When he pointed it out to you, I believe you indicated it was wrapped in this dashiki, and that all of these things were in the dashiki, and they were in the bushes?

A It was wrapped around it (indicating).

Q Well, can you -- where is the exhibit picture?

Does this photograph fairly and accurately depict the manner in which you first saw these items, and this weapon, in the bushes?

A No, sir.

Q Will you put all this equipment in the same position it was and as it was when you first saw it?

A (Witness complies.)

MR. LAURIE: I suggest you don't put the clip in the gun.

SERGEANT JOYCE: It has got shells in it.

MR. FLEMING: If it please the Court, may we have them bring in the gun?

THE COURT: He was going to put the clip in the gun, and the suggestion was that he not put a loaded clip in the gun.

Q (By Mr. Fleming) Will you bring it down here, Officer, so that everybody can see it.

A (Indicating) These things were all in the pouch.

Q You don't have to put those in the pouch; we want to see how it was wrapped.

A Where do you want it?

Q Right in front of the jury.

A (Witness indicates.) About like that.

Q And then, I take it from this photograph, that what was done before you took that picture, was, it was opened up and spread out to take State's Exhibit 122; is that correct?

A Well, I had the lab man on the scene, the photographer who did the opening and the photographing, and how he decided --

Q All right, you may resume the stand.

Now, at the time that you arrested the defendant, he voluntarily surrendered to you and your partner, didn't he?

A Yes.

Q And from the information that you obtained from Mr. Turpin, who was the owner of the house, didn't he reveal that this man hadn't given him any problem whatsoever there at the house while he was making an effort to surrender to the police?

A Mr. Turpin stated to me that he had been under the bed with his family until the time the defendant knocked on the door and stated he wanted admitted.

Q Yes, but didn't he tell you and, from the information he gave you, that this man hadn't given him any trouble all the time he was waiting in his house to surrender to the police?

A He didn't break into his apartment, no, to my knowledge; apparently he didn't give him any trouble.

Q And he cooperated with you after you arrived, didn't he?

A The defendant?

Q Yes.

A He cooperated, yes, sir.

MR. FLEMING: We offer
Defendant's Exhibit BB into evidence, your Honor.

MR. LAURIE: You finished?

MR. FLEMING: Yes, sir.

REDIRECT EXAMINATION

BY MR. LAURIE:

Q Mr. Fleming asked a few selected questions and answers about your conversation with Mr. Turpin.

Will you give us the full conversation as you recall it to be, between you and Mr. Turpin, starting from the very beginning of your recollection of talking to him?

MR. FLEMING: Objection to the term "selected."

THE COURT: Overruled.

A After the defendant had been arrested, I used Mr. Turpin's telephone, which was mounted right next to his kitchen door, where you could look down the hall at the attic steps which were there, and I could use his phone and watch the attic steps at the same time.

During that period of time, Mr. Turpin said, "Do you want a cup of coffee?"

And I was soaking wet, because we had been in the rain for about an hour before that and I was cold, and I said, "Yes."

And while I was waiting for Detective Stoiker to come back and the lab team arrive, he related to me that he had been out in his front yard, he had a store or something that -- I believe a store, another building in front of his house, which I believe is the store, of some kind -- he had been in the yard, between his driveway and that store.

He told me that he had seen several men running north on Lakeview and that he -- they were carrying rifles; that he looked down Lakeview and he recognized the defendant, Fred Evans, immediately; as he related to me, Evans had been in the Workhouse and he was a Workhouse

guard. During the time that he was in the Workhouse, he had become friendly with Evans and he knew him by sight.

He said he saw the defendant run down to -- is that Beulah, the first street?

Q Yes,

A -- and turn west on Beulah, then he heard several shots being fired.

He then stated that a woman, apparently it is a woman who lived in the corner house, told him, "My God, they are shooting at the tow truck driver."

Mr. Turpin ran home, he has two small boys, I think both boys may be twelve or thirteen years old -- they were out playing, and he grabbed them and pushed them into the house, ran up to the second floor, went into his house, got his family together, stuck them under the bed, and bolted the door.

He then said the shooting subsided a little bit, and he went out to look out the back window to see what was happening, and at that time he saw Fred Evans again.

I had never been in the backyard, but he states there is a fence back there, and he looked out the window and saw the defendant climbing over the fence, carrying a rifle.

A few seconds later, he heard a pounding on his side.

door, on his driveway, and figured it had to be the defendant. He ran back into his apartment at this time.

The downstairs, the first floor occupants were home -- I don't know who they were -- came upstairs and asked could they come in to take refuge in his apartment. He took them in, closed his door and bolted the door.

A few seconds later he heard the door being smashed, the first floor one, somebody ran up the stairs and pounded on his door and asked to be admitted.

He told them no, he wasn't going to let them in, and at that time he heard a shuffling and somebody ran up the attic steps.

He stayed under the bed for a half hour or 45 minutes, however long it was, and he came back out again and attempted to call the police. He attempted to call the District Headquarters, he said.

Then he went back in the bedroom and looked around. He heard more shooting in the street. He heard events taking place, and then, he then said he saw fire burning. He tried to call again and he couldn't reach the police, and he said at that time he went out to his front porch, on the second floor, and at this time is when he saw Detective Stoiker and myself and a couple of other officers in the yard, and he shouted down to us that the defendant was up there.

Just prior to that, though, he said the defendant had come down and pounded on his door again and said, would he get the police for him, and said he wanted to surrender.

And at this time, Mr. Turpin said at that time he came out on the porch and called us, and he said the defendant did want to surrender, and we instructed him to have the defendant come down the steps and out the side door with his hands up, which he did.

MR. LAURIE: Would you mark
this as State's Exhibit, please?

(State's Exhibit 249
marked for identifi-
cation.)

Q (By Mr. Laurie) Handing you State's Exhibit 249, is
this the statement that Mr. Tolliver questioned you about,
that you have indicated that you had --

MR. TOLLIVER: For the record,
it was Mr. Fleming.

MR. LAURIE: What?

THE COURT: They are having
a problem. You called Mr. Fleming Mr. Tolliver,
and Mr. Tolliver Mr. Fleming, and the other one
objected.

MR. LAURIE: I'm sorry.

THE WITNESS: This is the
statement.

Q (By Mr. Laurie) This is the statement that you
told one of the defendants' lawyer that you had made out,
is that right?

A Yes, sir.

Q MR. LAURIE: At this time,
your Honor, I would like to offer into evidence
State's Exhibit 249.

MR. TOLLIVER: No objection

and it is also Defendant's Exhibit BB.

THE COURT:

Received.

(Defendant's Exhibit BB and State's Exhibit 249 received in evidence.)

MR. LAURIE:

Being that I

still have a sore throat, maybe Mr. Fleming would like to read this one.

MR. FLEMING:

Be glad to.

MR. LAURIE:

Thank you,

Charlie.

MR. FLEMING:

That's okay.

"The following is the statement of Detective Robert Shankland, regarding the arrest of Fred Ahmed Evans, on the charge of murder of a police officer.

"Detective Robert Shankland: I am a duly-appointed member of the Cleveland Police Department, and am assigned to the Detective Bureau.

"Approximately 1:00 a.m., July 24, 1968, while assigned to car 64H, in company with Detective Granger, and assigned to the Lakeview area by the Detective Bureau. While in a yard at 1384 Lakeview, taking refuge from rifle fire coming from 1395 Lakeview, with Sergeant Heinz, and two

uniformed officers, my attention was directed to a colored male, who was calling from the second floor porch of 1384. This colored male stated that a man had taken refuge in his attic after forcing entry into his house and wished to surrender to the police.

"He was directed to inform this male to come out the side door of the house with his hands up. At this point I took a station approximately 15 feet from the doorway, where I could view the uniformed officers and the man as he emerged from the building.

"As he came out, I recognized him immediately as Fred Ahmed Evans. I saw the uniform officers place Evans' hands against the side of the house and search his person for weapons.

"At this time I approached Evans, and asked him 'Were you shooting,' and he replied yes, my gun jammed. I then asked where is the gun now, is it still in the attic, he said no, it should be in the bushes in the front of the house. I then asked is there anyone else in the attic, and he replied no, and then in company with Detective Frank Stoiker we went

to the attic, of this home and searched it for additional person and weapons.

"Upon entering the attic, found directly at the top of the stairs, on the floor below a rear window, was a spread out yellow raincoat, with numerous 30 caliber carbine live cartridges on it, hollow point, and a tinfoil package containing an unknown substance which I suspected to be marijuana, and a yellow cigarette suspected of being marijuana.

"About two-thirds of the way across the attic towards the front of the house, on the floor, was found two 30 shot carbine clips. Also noticed the front attic window was partially open.

"On viewing through this window, noticed the roof of the second floor porch extending out about 15 feet. Instructed Detective Frank Stoiker to search the area below this porch for weapons that might have been thrown through this window.

"Returned to the ground level below the window, where Detective Stoiker directed my attention to a 30 caliber military carbine, with a loaded 30 shot clip attached to the

weapon in the firing position, also a bandolier, which contained numerous boxes of 30 caliber ammunition, and what appeared to be a colored robe, the type worn by the muslim set, and a tiki necklace. Caused the property found on the ground in front of the home, and the property found in the attic to be photographed and then conveyed personally to the Scientific Identification Unit for examination.

"Learned the person who originally notified us of this male's presence to be Joseph Turpin, who stated that Fred Ahmed Evans had forcibly broken and entered his home and taken refuge in his attic.

"Question: Have you read the above statement and is it true?

"Answer: Yes.

"Signed: Robert Shankland, Detective 1040.

"Detective Stoiker will corroborate the statement of Detective Shankland.

"Signed Frank Stoiker, 880."

MR. LAURIE: Thank you.

MR. FLEMING: That's okay.

MR. LAURIE: That's all

of this witness, Judge.

- - -

RE-CROSS-EXAMINATION

BY MR. FLEMING:

Q Now, Officer, didn't you bring it to the attention of the police that the defendant had been in Mr. Joseph Turpin's home, Officer Turpin's -- you bring that to the attention of your other police officers, fellow officers?

A Yes.

Q Do you know of your own knowledge whether or not a statement detailing exactly what he observed and what he saw the defendant do was made by Mr. Joseph Turpin?

A I don't really know.

Q Well do you know of your own knowledge that Joseph Turpin made a statement to Mr. Laurie?

A No.

Q You have no knowledge of that?

A To my own knowledge, I don't know.

Q So far as you know from your police records do you know whether or not Joseph Turpin, the person we have been talking about, made a statement to the police at all?

MR. LAURIE:

Objection to

that last question.

THE COURT: The question is, does he know?

MR. FLEMING: Thank you, your Honor, do you know whether or not Joseph Turpin made a detailed statement relating to the events that he observed, whatever they were, whatever it was he saw and heard and did on July 23, 1968?

THE WITNESS: I must only assume that he did.

Q (By Mr. Fleming) Yes, and when is the last time that you saw Joseph Turpin?

A July 24th.

Q You haven't seen him after that?

A No, sir.

Q Have you had any discussions about your conversations and your activities as they regard Joseph Turpin with Mr. Laurie?

A I did at one time, I believe.

Q Yes, and at that time, did Mr. Laurie have with him a statement that he had taken from Joseph Turpin?

A I didn't see any.

Q All right, but you related to him the events that you have related to us, under oath today?

A I don't recall all conversations that took place at

that time. I know we did discuss it.

Q You know you discussed it?

A Yes, sir.

Q Now, at about 9:00 o'clock, when you -- well, did you hear at any time that night over your police radio that there was a man located at 1384 Lakeview Road who wanted to surrender?

A I had no radio contact from 9:00 o'clock until early morning.

MR. FLEMING:

You may inquire.

MR. LAURIE:

Thank you, Officer,

you are excused.

(Witness excused.)

MR. LAURIE:

Patrolman Kuchar.

THEREUPON, the State of Ohio, further to maintain the issues on its part to be maintained, called as a witness DONALD KUCHAR, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LAURIE:

Q State your name, sir.

A Patrolman Donald Kuchar.

Q Spell your last name.

A K-u-c-h-a-r.

Q And you are with the Cleveland Police Department?

A That is right.

Q For how long, sir?

A 11 years.

Q In what district?

A Accident Investigation Unit.

Q Where does that work out of?

A Well, I am assigned to the Third District Accident Car and I work downtown.

Q Directing your attention to the date of July 23, of the early hours of July 24, 1968, were you working as a police officer for the City of Cleveland?

A Yes, I was.

Q And were you dressed in the usual, summer police

outfit at that time?

A Yes, I was.

Q Were you working alone or with someone else?

A I was with another patrolman.

Q Keep your voice up and tell us who you were working with?

A Daniel Balogh.

Q Can you spell that name?

A B-a-l-o-g-h.

Q Thank you. And what time did your tour of duty start?

A 3 p.m.

Q And that generally carries you to 11?

A That is right.

Q Did there come a time in the early hours of the morning of July 24, 1968, where you found yourself in the area of Lakeview and Auburndale Avenue?

A Repeat that, please.

Q Did you go to Lakeview and Auburndale Avenues on the 24th of July, 1968?

A I did.

Q When was it?

A Some time after 8 p.m. on July 23rd.

Q I see, and under what circumstances did you go there?

A Well, I had an occasion to hear a broadcast from a police tow truck that they were being shot at, and at

this time, I was with Patrolman Balogh and we were sitting in 341 down behind the traffic office, and we responded to this broadcast.

Q From downtown?

A Yes.

Q And what time did you arrive at the area?

A I don't know, some time after 8 p.m.

Q Were you in a police vehicle?

A Yes.

Q One of these marked vehicles?

A It was a black and white police car, 341.

Q How were you equipped with weapons and ammo?

A We both had issued police revolvers and the car was equipped with a police sawed-off shotgun.

Q Where did it take you in this area, when you first arrived there?

A Well, we received instructions not to go into the immediate area, so I stopped -- I was driving and I stopped the police car at Lakeview and Superior.

Q And then, did you go on foot the rest of the way?

A Yes, I did.

Q Did you take your weapon with you?

A I removed two canisters of tear gas from the trunk and I had my side arm and Patrolman Balogh, who was not driving, took the shotgun.

Q What direction did you go on foot?

A We went south on Lakeview, along the east side of the street.

Q Will you step down at this aerial photograph and take us to that point, sir, if you will?

You say you came off Superior?

A Parked the police car at the southwest corner of Superior and Lakeview.

Q Take this side -- this is Lakeview, Beulah and so forth.

A The corner where I parked the police car, I don't believe is on this photograph, somewhere in this vicinity down here (indicating).

Q You went on foot the rest of the way?

A Yes, they got several parked cars down this side, and a special policeman said to be careful, they were shooting -- shots were being fired this way (indicating) so I used these parked cars for cover; and my partner and I worked our way down and somewhere about this vicinity (indicating).

Q At this point, did you hear any gunshots?

A Yes, I did; I heard them immediately from this area (indicating).

Q What type of gunshots did you hear?

A They sounded like semi-rapid fire gunshots.

Q Could you tell at the first point where they were coming from, then?

A Well, all I know, they were coming from down here (indicating).

Q Further south on Lakeview?

A Right.

Q Then you say you proceeded, you passed Beulah two or three houses, you say?

A I continued on, Patrolman Balogh and I --

Q Keep your voice up.

A Were working our way this way, along these parked autos, and I had his movements in sight -- we were covering each other, working our way down; and somewhere in this vicinity here (indicating) a policeman came by with another policeman over his shoulder and I asked him who that was, and he said, "This is Golonka; he is dead."

Q This was about a couple of houses south, on Beulah -- on Lakeview? Is that right -- where you saw this?

A Right.

Q All right.

A South of Beulah. And on the east side of Lakeview.

Q And after seeing your fellow officer dead, on another officer's shoulder, what did you do?

A Well, I remained in the cover of these parked automobiles, and then another patrolman came out and said that he had shot two assailants and he was out of ammunition, could he have our shotgun.

Q For the record, you indicated in this area (indicating), would that be of 1391?

A Approximately here (indicating).

I believe I was using the parked autos for cover, and I was watching down the driveway to see if any --

Q How about some activity at this point (indicating)? Did you hear any gun activity?

A Constant gunfire.

Q Now, coming from where, if you observed it?

A It appeared to be coming from back here (indicating).

Q Indicating, for the record, behind 1395.

All right, go ahead, Officer.

A At this point then, my partner went with the other patrolman, and I lost contact with him, and somebody asked

for tear gas, and somewhere in this area I handed two cannisters of gas to another policeman.

Q So you are out of business with tear gas?

A Yes.

Q When this other officer asked for ammo, what kind of ammo did you give him?

A My partner went with him, to the back, so I don't know what exchange they had in ammunition; I didn't give him anything, myself.

Q So now you had your service revolver, with some .38 bullets?

A It was loaded with six shots, plus I have a belt that holds eight shots.

Q Six and eight.

All right, now, after observing your partner go back there, what did you do or observe at this point, after you saw your buddy go back there?

Did I cut you off, your line of thought?

You indicated that someone asked for ammo, your partner and some other officer went behind this building -- I believe that's where I cut you off.

And you heard some firing coming from there?

A I ran to the front of the building for a while and determined it was safe to go back there, and I went back here (indicating), and several officers were crouched --

this building had not been burned yet, and several officers were crouched on the back porch of this (indicating).

Q You mentioned -91, for the record, had not been burned?

A Had not.

Q All right, go ahead.

A And someone said a sniper may have been firing from this back porch here (indicating).

Q Behind 1391 and 1395?

A That is right.

Q All right, go ahead.

A I remained crouched back there for quite a while. It became dark and we stayed in this vicinity. Police officers were coming this way (indicating) and trying to secure this area.

We felt that everything was contained to this side of us, that nothing was behind us, and I remember it began to rain and I went into this apartment building, and I believe there is a kitchen window and someone said that three assailants were laying there, under the bushes.

And I went to the window to try to look to see if I could see where they were. When I got to the window, I could see that two -- I could make out two forms, which appeared to be close to the foundation of the house.

There were some garbage cans behind the house at

1395, and at this time I could not make out the third one; and then I stayed back there, and someone, several officers tried to get into the house, and the house was on fire.

And then when the house was burning, I was able to, due to the illumination, I could make out the form of the third male lying in these bushes, over under this kitchen window (indicating).

Q Behind 1395?

A That is right.

Q All right.

A Then I came around the front and I believe there was a fire alarm box right here (indicating), and we wanted to make sure no one was left in this apartment building and we wanted to make sure that an alarm was turned in.

We knew the fire department was up at the corner, we could see the flames from where we were at; I felt everything was secure, so then I went to the police cars to try to get 341, which I had left at Lakeview and Superior.

Q While you were back here, behind -91 and -95, did you hear any voices inside?

A When I was in front, I wasn't able to determine where it was coming from, but I heard someone scream, "Ali, Ali," and one of the policemen in this area, in the front, said, "Give yourself up, come on out," and then

there was a profane reply.

Q To the officer's request?

A Yes.

Q All right. Then you say, now, you got yourself back on Superior Avenue?

A Yes. I went -- I figured that, I thought the place was secure, so I went down and got the police car and thought we would bring it up and get it closer to the scene.

Q Did you bring it up?

A Yes, I did.

Q Take the stand at this point.

Now, Officer, where did you bring your police vehicle, after you picked it up on Superior?

A Well, I drove south on Lakeview and stopped with the right wheel to the curb, just north of Beulah Avenue.

Q All right, and what did you then do? Did you park it there?

A I parked the car and I stepped out and I intended to stay in the vicinity, because I didn't receive any instructions to leave yet; and at this time I heard someone say that they had a suspect in one of the police cars near the house that was burning.

Q And had you fired your weapon to this point at all?

A No.

Q All right, and when you heard that there was a suspect, what did you do, if anything?

A Well, I was curious and I wanted to see what they had, and I started towards this car that was pointed out to me, by one of the policemen, as containing the suspect, and at the same time, as I started toward it, they requested 341 -- we were one of the few cars that could move, that was drivable; a lot of the police cars at the scene were not drivable, and they overheated from being parked so long with their radios on, and they said, "341, we have a prisoner for you."

Q This was at the scene?

Keep your voice up.

A This was a voice that came from the scene, as it were, where this police car was parked with the suspect in it.

Q The suspect was already in the car?

A He was in the back seat.

Q And I take it, you did say that he was on the south side of Lakeview, in a car on the south side of Lakeview?

A The car was parked with the left wheel toward the curb, the car that the suspect was in was parked south of Beulah, facing north.

Q About how far south of Beulah?

A It was almost opposite the house that was burning.

Q All right, and now, when you approached, you did say you approached this car, to make some observations?

A That is right.

Q Tell the jury what observations you made, or what you heard at this point?

MR. FLEMING: I didn't hear the last part.

THE COURT: What observations he made and what did he hear at this point.

MR. FLEMING: Objection.

THE COURT: Well, come up, counsel.

(Thereupon a discussion was had between the Court and counsel, outside the hearing of the jury, and off the record.)

THE COURT: Will counsel, Mr. Evans, and the court reporter come into chambers.

(Thereupon the following proceedings were had in chambers, outside the hearing of the jury:)

VOIR DIRE EXAMINATION OF DONALD KUCHAR

BY MR. LAURIE:

Q Officer, I think we were at a point where you were approaching this car, with the suspect in the car; is that right?

A Right.

Q And the suspect, did you identify or know who he was in there?

A At this time, no.

Q Did you later learn his name?

A I learned his name from him.

Q What was his name?

A Fred Evans.

Q And who else was in the car?

A There were two police officers in the front seat.

Q All right, and what did you either observe or hear at this time, as you were approaching the car?

A Well, as I got to the car, they were informing him of his rights concerning custodial interrogation, and the conversation continued and --

Q What did he say in regard to whether he understood

his rights or not?

A Well, when they informed him of his rights, they said that they wanted to make sure that he understood, and he said, "I know my rights better than you."

Q Then did you hear some conversation from then on?

A Yes, I did.

Q From the defendant?

A Yes.

MR. LAURIE: Do you want me to go further, Judge?

THE COURT: No.

Do you want to ask him some questions on voir dire?

MR. FLEMING: Yes.

BY MR. FLEMING:

Q Officer, you said -- what car were you in when you pulled back on the scene?

A You mean when I moved the car?

Q Yes.

A Down the street?

Q Yes.

A The same car we arrived in earlier.

Q What car was the defendant in?

A I don't know the number of the car. The left rear

window was smashed out of the car.

Q Who was with the defendant?

A In the back seat?

Q Yes.

A No one.

Q He was sitting by himself?

A Yes. It was a station wagon.

Q Do you know Amos Floyd, Patrolman Amos Floyd?

A No.

Q Did you see any black police officers with the defendant?

A I don't recall if they -- I can't --

Q You say that they were explaining his rights?

Who were you talking about?

A Two police officers in the front seat.

Q Who were they?

A I don't know.

Q Were they in uniform?

A Yes.

Q And where were you when you heard them explaining to him his rights?

A I was standing at the left rear door of the station wagon.

Q Had they been explaining him his rights as you came to the scene, or did they start after you got there?

A As I came, I recall that they were in the beginning of explaining him his rights.

Q Tell us exactly what they were saying, that you heard?

A They told him that they wanted to inform him of his rights concerning custodial interrogation.

They told him he had a right to an attorney, had a right to an attorney appointed or retained, had a right to an attorney before or during this questioning, and that anything he said may be used against him, and that he had a right to remain silent.

And they asked him if he understood this, and he knew this.

Q And that's when he said, "I know my rights better than you"?

A Yes.

Q But he didn't say anything until they completed all this?

A No.

Q And you came on the scene just in time to hear all this?

A Yes.

Q Now, when did you -- what did you hear?

MR. LAURIE: Objection at this point. This is voir dire as to whether the warnings were given.

THE COURT: Just a minute, the objection is overruled. He may answer.

THE WITNESS: I don't understand the question

Q (By Mr. Fleming) What did you hear him say?

A Mr. Evans or --

Q Yes.

A He said, "I know my rights better than you do; I understand this."

Q What else?

A He continued to talk and he said, "This should have never happened; we were on our way to Pittsburgh."

And I heard someone from the crowd had said, "Take this prisoner to the Detective Bureau and book him."

And I wasn't aware of his identity at this time. I had never met Mr. Evans, and so we -- there were two other patrolmen -- Hicks and Balogh took him -- and I was driving 341, and we went to the police car and thought it was better to get away from the scene as fast as possible.

Our microphones were ripped out of the police car; we had no communications at all. We put the prisoner into the police car; I drove he sat in the back seat between two patrolmen.

I proceeded north on Lakeview and west on Superior and went right to Central Station, parked the police car down in what we call the hole, and we were met by two plainclothes men at the elevator and took the prisoner upstairs to the Detective Bureau.

Q Then all you heard the defendant say then, other than, "I know my rights better than you," or, "This shouldn't have happened; we were on our way to Pittsburgh"?

A No, he was conversing all the way downtown in the police car.

Q What did he say?

A He stated this -- he stated that he didn't want anybody to think he was yellow, that the reason he gave

himself up was because his carbine jammed, and if it hadn't jammed, he would still be shooting at the police; and he said he felt the police were responsible for his being -- I'm not sure if he said his Afro shop, some place they rented, they were evicted from -- and he felt the police were responsible for this, and I asked him if he -- I asked him if he was a drug addict in the police car on the way downtown and he said he wasn't; but he said, "I smoke a little marijuana," and I asked him how recently had he smoked marijuana; and he said, "I had some this afternoon," and it was a short trip downtown and by this time we were at the Central Station.

We put him on the elevator and he said this was just the beginning. He said that the white man has pushed the colored man too far and has caused them to live in bad conditions, something to this effect.

Q Did you make a statement in which you related all these events that you are telling us about?

A In summary, I did. I was at the scene from 8, a little after 8 until a little after 1, and the statement that I made was a 1-page statement.

I couldn't -- I didn't incorporate everything that was -- that occurred or that I saw occur in this 1-page statement.

Q When is the first time you told anybody all these

things you are telling us now?

A Oh, when I gave my statement, they asked me when they took my statement, what my part in this was and I stated then what it was.

Q And that's in your statement?

A Yes, roughly.

Q Do you have your statement now?

A No, I don't.

MR. FLEMING: Your Honor, may we have an in camera inspection of this statement?

MR. LAURIE: Objection, we haven't gotten to the cross-examination yet. They want to try three lawsuits before we get through with one.

All we have back here is the question of the warnings.

MR. FLEMING: I feel under the Wade case that we are entitled to an in camera inspection of this statement. We had a long conversation about these statements in an effort to get through all this in the motions before.

THE COURT: Do you have the statement here?

MR. LAURIE: At this point,

Judge, I have got the statement but --

THE COURT: We had the same thing precisely on the preliminary hearing and you brought out the statement at that time.

I don't see any reason at this point --

MR. LAURIE: I don't think it is proper at this point, not that I'm not going to give him the statement, but we are here mainly to find out --

THE COURT: I understand, but the determination is up to me as to whether this is admissible and as to whether any statement bears --

MR. CORRIGAN: The statement verifies everything the man said. Let's give it to them and double-barrel them twice.

MR. FLEMING: Your Honor, we asked for an in camera inspection.

THE COURT: Come into the inner chambers, just the lawyers.

(Whereupon a discussion was held between Court and counsel, outside the hearing of the jury, and off the record.)

MR. FLEMING: Just one or two further questions. That is all.

THE COURT: Go ahead.

MR. FLEMING: Thank you, your Honor.

VOIR DIRE EXAMINATION (continued)

BY MR. FLEMING:

Q Officer, you said that when you came upon the scene that you heard two officers advising this man of his rights?

A Yes.

Q These were police officers?

A Yes.

Q In uniform?

A Yes.

Q Have you ever seen either one of these officers since then?

A I don't know if I have. I can't describe them.

Q Now, you said that Patrolman Balogh was with you?

A Balogh was with me when we went downtown. I moved the car up, myself. He remained in the vicinity of the house and the fire alarm, somewhere in that vicinity.

I went, myself, down to Lakeview and Superior to

get the police car.

Q Yes. And then when you left the defendant, you say Balogh was with you?

A He was in the back seat of the police car.

Q Who else was with you?

A Patrolman Hicks.

Q Patrolman Hicks?

A Yes. The defendant was sitting between the two of them, in the back seat.

Q Who was in the front seat with you?

A I was alone. I was alone in the front seat. I was the driver.

Q Was Balogh and Hicks the two officers that you saw give him his rights?

A No, I don't believe -- no, because Balogh -- later, these two officers were in this car when we removed the suspect, and Balogh was standing with me.

I located him when I parked the car, he was in the vicinity. I said, "They want us to take a prisoner downtown."

I mean, I can't position Balogh, whether he was 6 feet to my right, or 8 feet; I remember yelling for him, "Dan, they want us to take a prisoner downtown."

Q The only reason you were asking these questions was because you heard him given his rights?

A You mean about the narcotics?

Q Yes.

A I was curious, for one thing, as a policeman; I felt that I could ask him these questions.

Q Why did you feel that you could ask him these questions?

A Because I felt that he was informed of his rights.

MR. FLEMING: Nothing further,
except --

THE COURT: Do you have
anything further?

MR. CORRIGAN: Nothing further,
your Honor.

MR. LAURIE: No.

THE COURT: All right.

- - -

THEREUPON, the defendant, FRED AHMED EVANS, to maintain the issues on his part to be maintained on the motion to suppress, offered himself as a witness and testified in his own behalf as follows:

DIRECT EXAMINATION

BY MR. TOLLIVER:

Q For the defendant, for the record, will you state your name, please.

A Fred Ahmed Evans.

Q Yes. Now, you heard this officer testify as to conversations you were supposed to have had with him on your way downtown from the scene to the police station?

A Yes.

Q And you heard him say something to the effect that your gun jammed; that you smoked marijuana; you heard him say that, didn't you?

A Yes.

Q You also heard him say that two police officers, who were in uniform, whose names he does not know, gave you your constitutional rights?

A Yes, I heard him say that.

Q Now, I want, for the record, for the Court, and from you, as to whether or not this is true, what this

officer just said?

MR. LAURIE:

Objection.

MR. TOLLIVER:

Do you want me to
take it question by question?

THE COURT:

No, I will permit
the question in the form in which you put it.

A This officer said he was going to drive me to the
lake and blow my brains out and drop me in.

MR. CORRIGAN:

Objection.

A The one seated to my left said that if there was
any shooting while we were en route he was going to stick
my head out the window. This is what was said.

Q (By Mr. Tolliver) At any time, did you tell him
you smoke reefers?

A No, sir.

Q Did you tell him at any time that you would have
shot more policemen if your gun hadn't jammed?

A No, I did not.

Q Did you tell him that you didn't want to appear to
be yellow but you gave yourself up because your gun jammed?

A No. When I saw this officer, he was threatening
me; when he came up, there was shotguns in my face
and there was rifles pointed at my head, when I saw him;
and the conversation was about who were going to kill me,
that's what the conversation was, and that's what the

conversation was until I got downtown to the station.

And this officer, he was driving, he said that, "We are going to take you to the lake and blow your such-and-such brains out and drop you in."

The officer sitting next to me, to my right, said, "If there's any shooting while we're en route to the station, I'm going to stick your black head out the window," and that was the conversation.

Q All right. Now, tell us what if anything you said from the time that this officer had you in the automobile all the way down to the police station, what was said by you?

A I told them that we were on our way to Pittsburgh, which was true -- at least, that was our plan. And I think that was in response to something, I don't know, but that's all I told him - that we were on our way to Pittsburgh, that we had prepared to leave to Pittsburgh. I told him that.

Q Did you make any other statement, other than that?

A No, I didn't.

CROSS-EXAMINATION

BY MR. CORRIGAN:

Q Do you recall what route you took downtown?

A Yes, I do.

Q What was that route?

A Superior, and we stopped at, I believe, 79th Street, I believe, and Superior somewhere. There was a group of officers there and I think that there had been some shooting there.

I remember we stopped and some officer came over and he asked if we needed any assistance and he said no and continued on.

Q What was the route that you took downtown?

A Superior Avenue.

Q Superior to where?

A I beg pardon?

Q You took Superior to where?

A I suppose to 21st Street.

Q To 21st Street?

A Yes.

Q What time of night or day was this?

A I believe it was about 1:00 o'clock in the morning.

Q About 1:00 o'clock in the morning?

A 1:00 or close to 2:00, in that vicinity.

Q And you were in the presence of the three officers?

A I was.

Q All of whom were armed?

A Yes.

Q Did any of them blow your brains out?

A No.

Q Did any of them shoot you?

A No.

Q Did any of them abuse you?

A Yes, my hands were very uncomfortable --

THE COURT: We went through that before. I heard his testimony before.

MR. CORRIGAN: No other cross-examination.

THE COURT: I guess Sergeant Ungvary had it released. That is all the questioning?

MR. CORRIGAN: That is all.

THE COURT: We will proceed with the testimony.

The motion to suppress is overruled.

(Thereupon proceedings were resumed in the presence of the jury as follows:)

(Thereupon Donald Kuchar, having been previously duly sworn, resumed the stand and

testified further as follows:)

DIRECT EXAMINATION (CONTINUED)

BY MR. LAURIE:

Q Now, Officer, we were at a point where you were approaching this vehicle where the suspect was in the car, which you said you later learned to be Ahmed Evans, is that right?

A Right.

Q Is he in the court room this afternoon?

A Yes, he is.

Q Where is he?

A Sitting over there (indicating), with the green sunglasses on and the dark --

MR. LAURIE: May the record show he is identifying the defendant?

THE COURT: Yes, it may so show.

Q Proceed now and tell us what did you observe or hear at the police car?

MR. FLEMING: Objection.

THE COURT: The objection is overruled.

(Thereupon a discussion was had between the Court and counsel, outside the hearing of the

jury, and off the record.)

Q What did you hear?

A There was a -- the defendant was in the back seat of this police car and there were two police officers in the front seat.

Q Keep your voice up?

A And I had parked 341 just north of Beulah Avenue and started out of our police car and started over towards this car with the defendant -- which the defendant was sitting in and someone yelled "341, we have a prisoner for you," and we were one of the few police cars that could move, so as I approached the car ---

Q Keep your voice up.

A I wanted to see what the defendant looked like and I went up close to the car and two officers who were informing him of his rights --

Q After this then, what did you hear after they informed him of his rights?

A He said that he knew his rights.

Q Then proceed.

A And he said that he didn't know why all this happened. They were on their way to Pittsburgh.

Q Then what?

A I located my partner and we got connected with Patrolman Hicks. We took the defendant out of the police

car he was sitting in and took him over to our car, put him in the back seat.

Patrolman Kicks and Patrolman Balogh, and I was driving.

Q. Did you take him downtown?

A. Yes, we did.

Q. On the way downtown, did you have some conversation with the defendant?

MR. FLEMING: Objection.

THE COURT: Overruled.

A. Yes, I did.

Q. What did you say and what did he say?

A. He said that he didn't want anybody to think that he was yellow; that he would still be shooting, he wouldn't have given himself up except that his carbine jammed and he said that it seemed that the police were always bothering him; that this group that he was involved with, that they had rented a store or rented a place and that they were thrown out of it.

He seemed to think that the police had something to do with this.

And I asked him if he was a drug addict and he said he wasn't and he said he smoked some marijuana and I said -- well, I asked him how recently he had smoked some marijuana and he said this afternoon and then we arrived at the

Central Station and he conversed with us.

We took him up to the Detective Bureau.

Q On the way downtown, did he say anything else to you that you recall at this moment?

MR. FLEMING: Objection.

THE COURT: Overruled.

A On the elevator he stated that --

MR. FLEMING: Objection.

MR. TOLLIVER: Objection.

THE COURT: Here, we will suspend at this time until tomorrow morning, 9:15.

Counsel remain for a moment.

Ladies and gentlemen, we will adjourn until 9:15 tomorrow morning. Once again while you are out of the court room, observe the admonition previously given you. Don't let anybody talk to you about the case and don't talk to anybody about the case.

(Thereupon the following proceedings were had in the absence of the jury):

THE COURT: We have had some previous voir dire examination with reference to what transpired on the elevator and at that time, the other officer, Balogh --

MR. CORRIGAN: Watters.

MR. TOLLIVER: Watters.

THE COURT: That's right.

He started to give some testimony with reference to that and at that time the matter --

MR. LAURIE: Your Honor, to make things easier, I hope --

THE COURT: What do you say?

MR. LAURIE: I won't pursue that phase of it. I will stop with this witness at the point where they got into the garage, sometime tomorrow. Then we won't need to go into that question again.

---THE COURT: All right. We will be back in the morning.

Can you give us any idea how many more witnesses you have?

MR. LAURIE: Your Honor, we feel that when we have a little more direct with this man that may be the State's last witness and then we will need a little time, I presume, Judge, to lay out the exhibits to offer the exhibits in.

THE COURT: Would you want

to get down, say at 8:00 o'clock, and start laying out the exhibits?

MR. LAURIE: Not really, Judge.
I mean I will if you suggest it.

THE COURT: We have a
sentencing at 7:45 --

MR. TOLLIVER: Judge, you want
to get into that other matter?

THE COURT: Yes. We will
conclude with this witness and then we will go
to the offering of the exhibits in the morning.

We won't make it at 7:45. Counsel,
come back in chambers.

(Thereupon an adjournment was had
to 9:15 o'clock, a.m., Tuesday, April 29, 1969,
at which time the following proceedings were had):

THE STATE OF OHIO,)
)
)
COUNTY OF CUYAHOGA.)

SS:

TUESDAY SESSION
APRIL 29, 1969
McMONAGLE, J.

IN THE COURT OF COMMON PLEAS
(Criminal Branch)

THE STATE OF OHIO,)
)
PLAINTIFF)
)
VS.)
)
FRED AHMED EVANS,)
)
DEFENDANT)

No. 90,257

I N D E X

WITNESSES:

<u>State's:</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Donald Kuchar	3260	3263	3277	
Gerald Seger			3433	3436

Defendant's:

Dr. Lester Adelson 3440

- - -

Offering of State's Exhibits

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Stipulation - Defendant's re Walter Washington

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- - -

MOTIONS:

Defendant's:

Re: Mistrial	3376
Overruled	3385
Re: Dismiss 1st, 3rd and 5th counts	3385
Overruled	3400
Re: Dismiss 2nd, 4th and 6th counts	3400
Overruled	3411
Re: Dismiss 7th count	3412
Overruled	3430

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TUESDAY MORNING SESSION, APRIL 29, 1969

THEREUPON, the witness DONALD KUCHAR,
having been previously duly sworn, resumed the
stand and testified further as follows:

DIRECT EXAMINATION (continued)

BY MR. LAURIE:

Q Officer Kuchar, to refresh your memory as to where
we left off, I will read the last question and answer.
Pick it up from there.

I believe I asked you, with relation to your conversa-
tion with Mr. Evans: "What did you say and what did he
say?"

"Answer: He said that he didn't want anybody to
think that he was yellow; that he would still be shooting"

MR. FLEMING: Objection.

THE COURT: Overruled.

Either Mr. Laurie can do it or the reporter can do
it, to read the last few questions.

Proceed.

MR. TOLLIVER: All right, Judge.

Q "Answer: He said that he didn't want anybody to
think that he was yellow; that he would still be shooting,

he wouldn't have given himself up except that his carbine jammed, and he said that it seemed that the police were always bothering him; that this group that he was involved with, that they had rented a store or rented a place, and that they were thrown out of it.

"He seemed to think that the police had something to do with this.

"And I asked him if he was a drug addict, and he said he wasn't and he said he smoked some marijuana, and I said -- well, I asked him how recently he had smoked some marijuana, and he said this afternoon. And then we arrived at the Central Station and he conversed with us."

THE COURT: Just a minute.

That has either been withdrawn or excluded.

MR. LAURIE: Well, he hasn't

said anything. He just arrived at the Central Station. Then I'm going to take the next question.

Q "On the way downtown, did he say anything else to you that you recall at this moment?"

At this point there was some objection thereafter.

Do you recall?

A Yes.

Q Now, my question to you again this morning would be, excluding whatever was said after you got into the station, up to the point you got in there, on the way downtown,

did he say anything else to you, other than what you testified?

A Well, he said that he didn't want anybody to think that he was yellow --

MR. FLEMING: Objection.

MR. TOLLIVER: Objection.

THE COURT: The question is, is there anything you recall he said in addition to what you have testified to?

A He said he'd still be shooting at the police --

MR. FLEMING: Objection.

MR. TOLLIVER: Objection.

Q (By Mr. Laurie) This is additional --

THE COURT: Let me see that.

MR. LAURIE: Your Honor, read this question (indicating). That is additional.

(Transcript of yesterday's testimony was handed to the Court.)

MR. LAURIE: They're confusing as to "in camera" proceedings.

MR. TOLLIVER: Objection. That is not proper.

THE COURT: All right.

Proceed with your question as to what the additional information --

Q (By Mr. Laurie) What additional information, if any, did he give you?

A He said that he'd still be shooting at the police --

MR. FLEMING: Objection.

MR. TOLLIVER: Objection.

THE COURT: Overruled.

A -- if his carbine hadn't jammed.

MR. LAURIE: All right, that's all I have.

CROSS-EXAMINATION

BY MR. TOLLIVER:

Q Officer Kuchar, when you first saw the defendant, where was it?

A He was sitting in the back of a police car.

Q Were there policemen in the car?

A Yes.

Q Was one of them a black policeman?

A I don't know.

Q You don't know?

A No.

Q Wasn't one of the police officers, that was sitting in the back of the car, a black policeman by the name of Amos Floyd?

A I didn't see a policeman sitting in the back of the car.

Q Did you see a policeman in the car, with the defendant?

A I saw two policemen in the front seat.

Q Was one of them a black policeman?

A I don't know.

Q Now, you knew, did you not, that you had no right to question this defendant unless his Constitutional rights had been previously explained to him, is that right?

MR. LAURIE: Objection.

THE COURT: Overruled.

Q Is that right?

A We have been instructed to always inform the suspect of his rights concerning custodial interrogation.

Q And he was in custody at that time, wasn't he?

A Yes.

Q Now, did you, before you asked him these questions give him his Constitutional rights?

A No.

Q Now, I believe you started this off by saying you heard two other officers giving him his Constitutional rights?

A Yes, sir.

Q Were these plainclothes men or uniformed men?

A They were uniformed men.

Q Who were they?

A I don't know.

Q You don't know?

A No.

Q Did you ever find out who they were?

A No.

Q Was one of them a black police officer?

A I don't know.

Q Were they the same two police officers that were in the car when you walked up there with the defendant?

A Yes.

Q If I were to tell you that one of those police officers was a black officer by the name of Amos Floyd, who testified that he did not give the defendant his Constitutional rights while he was in the car with him, would that change your testimony?

MR. LAURIE: Objection.

THE COURT: Come up, gentlemen.

(Thereupon a discussion was had between the Court and counsel, outside the hearing of the jury, and off the record.)

THE COURT: Be at ease for a few moments.

Counsel, come back in chambers.

(Thereupon a discussion was had between the Court and counsel in chambers, outside the hearing of the jury, and off the record.)

MR. TOLLIVER: Mrs. Bourne, would you please read back the question?

(The question was read by the reporter.)

A No.

Q You still say that two -- the two uniformed officers that were in the car with the defendant at the time that you approached the car, were the two officers that gave him his Constitutional rights?

A Yes.

Q Now, notwithstanding the fact that the previous question that I asked you concerning one of the officers who was in the car at that time --

MR. LAURIE: Objection.

THE COURT: Overruled.

MR. LAURIE: At that time?

THE COURT: Overruled.

MR. TOLLIVER: He said he was.

THE COURT: I don't know

whether you completed a question. You made something in the nature of a statement.

Q All right. Notwithstanding the fact that I previously asked you that one of the officers in that car, Amos Floyd, specifically said that he did not give the Constitutional rights to that defendant, your answer still remains the same?

A Yes.

Q So now, you are also telling us that you can't remember the names of these officers whom you say gave the defendant his Constitutional rights?

A I never knew their names.

Q Now, on the way downtown is when you then started asking him these questions?

A Yes.

Q Although you admit that you did not give him his Constitutional rights?

A Yes.

Q And you don't know the names of the officers who you said did?

A Yes.

Q Now, you were in the front seat?

A On the way down?

Q Yes.

A Driving, yes.

Q You were driving?

A Right.

Q There were two other officers in the back seat, is that right?

A Right.

Q Who were they?

A Patrolman Balogh and Patrolman Hicks.

Q And you were the one that was asking the questions?

A Yes.

Q Although you were driving?

A Yes.

Q Did Patrolman Hicks or Balog ask him any questions?

A I don't recall if he did or not. He seemed to be conversing with me.

Q They didn't ask him any questions?

A I don't recall that they did, no.

Q You were driving and you were asking all the questions?

A Right.

Q And he was sitting in the back?

A Right.