

1969

## Volume 07 (Part 4 of 4)

Cuyahoga County Court of Common Pleas

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Q That was not a shotgun wound?

A No, I don't believe so.

But the examination of the slug would be a more certain way. It is a single entrance wound, and most shotgun wounds are multiple pellets.

Q Go ahead, Doctor.

A He had a second wound, produced by a separate bullet that went through his right side, in and out, no bullet was recovered. (Witness indicates.)

He had a third wound in the left leg, in and out (indicating).

And then he had a fourth, grazing wound on the left side. So he was struck by four separate bullets, of which one remained in the body, and was recovered.

He, incidentally, had no natural disease.

Q Now, were any of the wounds that you have just referred to shotgun wounds?

A They don't look like shotgun wounds, they look like some other kind of firearm was responsible.

Q All right, now was an internal examination made of that body?

A Yes, certainly.

Q Will you tell us what the findings were?

A Well, the wound that went through the chest was the fatal wound, as I mentioned before, there is no internal evidence of any natural disease.

He was a perfectly healthy young man, nothing else of any note was found. The usual materials were taken for laboratory analysis.

Q There was a laboratory examination made of this body?

A As we did in every one of them.

Q All right, did you bring any photographs in connection with the body of LeRoy Williams?

A I gave you a set yesterday, and I brought some more.

Q We have them already marked. Is that the number?

A Yes, 128570. May I make one addition? He had, on the back of his head, a sutured laceration that had -- in other words, he had sustained an injury sometime in the recent past, which had been stitched up, and I didn't mention that.

Q Okay, showing you Defendant's Exhibit SS, will you tell the Court and jury what that is?

A Yes, this is a photograph which shows a right upper chest and armpit region, also the chin and nose of Mr. Williams, bears his identification number and shows the entrance wound that I described previously.

Q And does this photograph fairly and accurately depict LeRoy Williams as he was that day?

A It does.

Q Defendant's Exhibit TT.

A This shows the wound, the entrance and exit wound in the left lower leg of Mr. Williams and bears his identification number.

Q Does that photograph fairly and accurately depict the subject as you saw him, as he was that day?

A Yes.

Q Defendant's Exhibit UU.

A Defendant's Exhibit UU, showing the upper right thigh, upper left thigh and the scrotum of Mr. Williams and shows the exit wound of the bullet that passed through his right thigh.

Q Does that fairly and accurately depict the situation as it was?

A Yes.

Q Defendant's Exhibit VV.



A Shows the graze wound that I described before, with a ruler in it, for measurement purposes, and also the identification number.

Q Defendant's Exhibit WW.

A Shows the upper part of the head, emphasizing the left side and shows a stitched-up laceration or tear from some time preceding his death.

Q All right, do VV and WW fairly and accurately depict this subject as he was on the 24th?

A Yes.

Q XX?

A XX is a photo, for identification after the face was washed off, showing his face sheet, with his identification, purely for identification. No injuries other than some superficial abrasions or scrapes on the forehead.

Q Does that photograph fairly and accurately depict the subject as he was that day?

A Yes.

Q I'm showing you Defendant's Exhibit YY, will you tell the Court and jury what that is?

A This is the picture of the deceased, taken at the Coroner's office prior to autopsy, showing him partially clothed in a robe and wearing one glove.

Q Does that fairly and accurately depict the subject as he was that day?

A It's a good photograph, accurate.

Q Yes, and Defendant's Exhibit ZZ?

A The same thing, from a different view, showing the glove, the robe, and the injury to his head, on one of our litters.

Q Also does this fairly and accurately depict the subject?

A Yes.

MR. FLEMING: Your Honor, we offer into evidence Defendant's Exhibits SS through ZZ.

MR. CORRIGAN: No objection.

THE COURT: They may be admitted.

(Defendant's Exhibits SS through ZZ, inclusive, received in evidence.)

MR. FLEMING: Now, will you go through these -- first of all, mark this as an additional exhibit.

(Defendant's Exhibit ZZ-1 was marked for marked for identification.)

Q (By Mr. Fleming) Now, Doctor, showing you what has been marked for identification purposes as Defendant's Exhibit ZZ-1, can you tell the Court and jury what that is?

A Yes. This is the entrance wound in the right thigh, bearing identification number, and this is a hand in there, apparently to steady it.

Q All right, and does that photograph fairly and accurately depict the subject?

A Yes, it does.

MR. FLEMING: We offer Exhibit ZZ-1 into evidence.

MR. CORRIGAN: No objection.

THE COURT: It will be admitted.

Q Show the jury and identify each photograph by letter, as you are going through them, and, for the record, where the wounds were?

A Yes. YY and ZZ are pictures of the decedent, on the cart, partially clothed, wearing the robe and glove that I described previously; also, a little bit of mucus

and blood in his nose.

Exhibit XX is a picture of the face of the decedent, purely for identification. Shows minor abrasions and scrapes on his forehead. No gunshot wounds.

Exhibit WW, a picture of the left side of the head to show a sutured or stitched-up laceration, incurred prior to death.

Exhibit SS, a picture of the shoulder and armpit region and face. Indicates the site of the entrance of the bullet that was responsible for death. This is the fatal injury.

Exhibit TT shows the lower leg and indicates the site of entrance and exit of a single missile -- bullet.

These two together, Exhibits ZZ and ZZ-1 and UU, show the site of entrance in the right thigh, and the site of exit on the middle of the right thigh, and the genitalia, hidden by the labels.

Exhibit VV indicates a graze wound on the left side.

Q (By Mr. Fleming) Now, Doctor, were there any shotgun wounds on this body?

A They don't look like it; they look like they were made by some other kind of firearms.

Q Were there any high-velocity wounds on that body?

A They do not look like high-velocity wounds.

Q How many different times, how many different shots

were there on this body?

A A total of four.

Q Okay. Showing you Defendant's Exhibit PP, will you tell the Court and jury what that is?

A A Xerox copy of an official document from our office, the Coroner's Office, Report of Autopsy, and which I previously described contains vital statistical data, listing all of these injuries, and the cause and manner of death.

Q And QQ?

A QQ is a Xerox copy of our official report of laboratory findings, which pertains to pertinent analyses carried out on the body of Mr. Williams.

Q And Exhibit RR?

A Exhibit RR is a Xerox copy of the X-ray report carried out on Mr. Williams and signed, again, by Dr. Benjamin Kaufman, who is our radiological consultant.

Q What does that X-ray report reveal?

A It indicates the positive findings of fractures of the right fourth and fifth ribs, as a result of the gunshot wound, with a bullet present in the chest cavity.

There were no bullets in the pelvis and nothing in the head.

Q Was there a bullet removed from the body?

A Yes. Removed by Dr. Hoffman.

Q Was that bullet then later transferred to the Scientific Identification Unit?

A I would think it would be. All the bullets were, in this particular case.

MR. FLEMING: We offer Defendant's Exhibits PP, QQ, and RR into evidence.

MR. CORRIGAN: No objection.

THE COURT: It may be admitted.

(Defendant's Exhibits PP, QQ, and RR were received in evidence.)

Q (By Mr. Fleming) Now, referring to Bernard Donald--no, that one previously.

Referring to Bernard Donald Johnson, did you make an examination of -- was an examination made of that body?

A Yes. Dr. Hoffman carried out that examination; I have his report here, and the other data.

Q When was that autopsy report?

A That was started at 11:30 in the morning, on the 24th of July.

Q All right, and what were the external findings with regard to that body?

A Bernard Donald Johnson was a 28-year-old colored man, 5 feet 8 inches tall, 142 pounds.

He showed external evidence of multiple gunshot wounds, produced by a variety of weapons, involving the head, trunk, and extremities, and also evidence of injury by fire after death.

Q All right, do your records reveal whether or not Bernard Donald Johnson, referred to in the autopsy report, is the Bernard Donald Johnson --

THE COURT:

"Donald," isn't it?

MR. FLEMING:

I am sorry.

Q (By Mr. Fleming) Donald.

A You mean he had two different names?

Q Yes.

A He came to us originally, when he arrived he came in "U. C. M.," unknown colored male.

The name is written in, in handwriting, "Bernard Donald," and written in, "Bernard Donald Johnson," so apparently the identification took a little time.

Q But Bernard Donald and Bernard Donald Johnson are one and the same person?

A Yes.

Q Tell us what your external examination revealed.

A May I say before I start, this is an extremely complicated situation. External examination from the -- shall we say for a moment there is evidence of burning, involving the head, trunk and extremities, and these were after death, and put that aside for the moment?

He had a ragged shotgun wound in the forehead. Then he had multiple different kinds of entrance and exit wounds involving his ear, a graze wound in his neck, his chest, his arms, his shoulder, front and back, and also the legs and thighs; so he has injuries really from the head down almost to his feet.

Q All right, and were these all shotgun wounds?

A Some were definitely shotgun wounds; others could have been produced by a variety of missiles and it's just so many different injuries and so many different types, that I think one cannot be dogmatic about the exact kind of gun responsible for them, except there were certainly shotgun wounds that entered his back.

Q All right, and about how many different -- did you number the amount of wounds contained on his body?

A You mean gunshot wounds you are talking about?



Q Yes, gunshot or shotgun.

A Well, there were 28 different individual holes, entrance and exit, if one considers a lot of shotgun perforations as one wound.

Now I spent a couple of hours last night trying to analyze these things and trying to group them. I think he had been shot somewhere between 8 and 11 times, if one says these are shotgun wounds that discharge several pellets with one firing: so he had been shot at least that minimal amount of times.

Q And maybe more?

A Possible.

Q What were your external findings with regard to that body? What does the autopsy report reveal?

A The autopsy report reveals 28 separate entrance and exit wounds in the head, trunk and extremities from firearms, missibles of one kind or another, plus certain scrapes and abrasions, minor injuries of that type, but the serious injuries were the gunshots.

Q Were any laboratory reports made of this body?

A Yes, we examined his blood and urine for alcohol as we did the others. We did a blood grouping -- all these cases were treated exactly the same.

Q What were your findings?

A At the time he died, Bernard Donald Johnson had no

alcohol in either his blood or his urine.

Q Okay, now, Doctor, showing you Defendant's Exhibit BBB, tell the Court and jury what that is?

A Yes, this is a picture, I believe it's --

THE COURT: Mr. Fleming,  
can you handle them in order?

MR. FLEMING: Aren't they in  
order? Oh, Exhibit AAA was the other body,  
LeRoy Williams.

THE COURT: Okay.

Q (By Mr. Fleming) Exhibit BBB.

A This is a photograph of the inside of the right thigh where I am indicating here of the knee region and shows a single entrance-type gunshot wound.

Q Maybe we can do it this way, showing you Defendant's Exhibits LLL, MMM, and NNN, will you look at these and tell us whether or not they fairly and accurately depict that subject as he was on the 24th?

A Yes, these pictures were taken prior to autopsy on one of our litters, showing him partially clothed and indicating heat damage to his clothing and other parts of his body, this includes Triple L, Triple M and Triple N.

Q Showing you Exhibits DDD, EEE, FFF, GGG, HHH, and JJJ, will you look at those and tell us whether or not they fairly and accurately depict that subject as he was on the 24th?

A Yes. These are excellent photographs.

MR. FLEMING: Your Honor, we offer into evidence Defendant's Exhibits EEB, through JJJ.

MR. CORRIGAN: No objections.

THE COURT: Admitted.

(Defendant's Exhibits EEB through JJJ, inclusive, were received in evidence.)

Q (By Mr. Fleming) Step down now, Doctor.

Will you go through the photographs and identify, for the record, the photographs as you mentioned them and show the jury the wounds that you referred to in your testimony?

A Yes. This is Exhibit Triple J, which shows the head, face, and neck of the decedent, shows the entrance shotgun wound in the forehead, and shows the damage produced by fire, damage produced after death.

This is Exhibit Triple H. It shows the right side of the face, neck, and chest, and shows several different bullet injuries, including damage to the ear, a graze

wound here, and individual entrance wound in the upper, right upper shoulder above the collarbone.

Exhibit Triple J shows the right arm and shoulder and indicates the site of the entrance of several different missiles which fractured his arm, producing serious but not fatal damage.

Triple F shows the left side of the face, upper chest, shoulder and upper arm, indicating again the site of multiple pellets' entrance, and damaged by heat.

Exhibit Triple E shows the back of the head, neck, and trunk, down to the buttock level, multiple entrance shotgun pellet wounds, and also exit wounds, and entrance wound of high-velocity; little, tiny pinpoint openings are the shotgun pellets. The others are other variety of missiles.

Triple B shows an entrance wound on the middle of the right thigh, that I indicated before (indicating).

And Exhibit Triple D shows again some entrance, defect in his left shoulder, and damaged by heat, and, again, the damage is postmortem, there is no evidence of vital reaction to it. This is a postmortem wound.

Q While you are down here, Doctor, showing you Defendant's Exhibit SSS-1 and SSS-2, now, will you tell the Court and jury what that is?

A Yes. Triple S-1 and Triple S-2 are Xerox copies

of diagrammatic sketches made by Dr. Hoffman to supplement the photographic documentation of the injuries and isolated them, and this is sort of a freehand summary of what the picture shows.

MR. FLEMING: We offer into evidence Exhibits SSS-1 and -2.

MR. CORRIGAN: No objection.

THE COURT: They will be admitted.

(Defendant's Exhibits SSS-1 and SSS-2 were received in evidence.)

MR. FLEMING: I will also offer RRR-1, which refers to Sidney Taylor, and RRR-2 and RRR-3; and Triple T-1, -2, and -3, which refer to Bernard Donald Johnson, or Bernard Donald.

MR. CORRIGAN: No objection.

THE COURT: They will be admitted.

(Defendant's Exhibits RRR-1, RRR-2, RRR-3, TTT-1, TTT-2, TTT-3, were received in evidence.)

A Do you want me to describe this?

Q (By Mr. Fleming) Yes.

A Triple T-1, -2, and -3, are again Xerox copies of

diagrammatic sketches made by Dr. Hoffman to indicate the bullet injuries and heat injury, made in the same way.

Exhibits Triple R-1 and -2 and -3 are freehand sketches made by me, in the case of Mr. Taylor, again to detail the site of entrance and exit of the missiles that struck him, made at the time of autopsy.

Q Thank you, Doctor.

MR. FLEMING:  
Triple C into evidence?

Did we offer

THE COURT:

No.

MR. FLEMING:  
this time.

We offer it at

MR. CORRIGAN:

No objection.

THE COURT:

Did you identify

it?

Q (By Mr. Fleming) Tell the Court and jury what that is?

A Triple C is a photograph of the left calf of Bernard Donald Johnson, contains the identification number, and shows the site of entrance and exit of a missile that passed through his calf.

MR. FLEMING:  
evidence Defendant's Exhibit Triple C.

We offer into

MR. CORRIGAN:

No objections.

THE COURT:

It will be

admitted.

(Defendant's Exhibit  
CCC was received in  
evidence.)

Q Showing your Defendant's Exhibit 000, will you tell the Court and jury what that is?

A Exhibit Triple O is the report of autopsy of Bernard Donald Johnson, again a Xerox copy of the original, official document in the files of the Cuyahoga County Coroner's office, which contains vital statistical data, measurements, a summary of injuries, a listing of anatomic diagnoses, and the cause and manner of death.

Q Defendant's Exhibit Triple P?

A Exhibit Triple P is the report of laboratory findings of Bernard Donald Johnson, and details certain chemical and analytic data that was established at the time of autopsy.

Q And what was the condition of his blood or urine with regard to alcohol?

A Blood and urine contained 0 per cent alcohol -- none at all.

Q Defendant's Exhibit Triple Q?

A Triple Q is the X-ray report in the case of Bernard Donald Johnson, read and interpreted by Dr. Benjamin Hoffman.

Q What does that X-ray report reveal?

A The X-ray of the head showed multiple large and small metallic fragments distributed rather uniformly but sparing the jaw region. The calvarium was shattered --



that's the roof of the skull, that was a shotgun wound in the head.

The chest shows multiple rounded metallic shots as well as three large bullets distributed mostly in the right hemithorax region, although some of the smaller shot is in the left side.

The right elbow shows a bullet and fragments as well as a fracture of the distal humerus -- the upper arm. The abdomen shows five large bullets on the left side. Multiple metallic shot is also present.

The pelvic film shows a well-formed bullet in the soft tissues of the right thigh. The right knee exhibits a bullet with its tract through the distal femur. The femur is the thigh bone.

Conclusion: Multiple metallic foreign bodies resembling shot and bullets.

Q All right, from your review of these records, can you tell us how close the weapon was that -- could you tell the distance of any of these shots?

A None of the photographs and the description doesn't say that the guns were close enough to the victim to have fouling and stifling on the body, so these could have been from 2 feet to 200 feet.

MR. FLEMING:

Thank you,

Doctor, you may inquire.

MR. CORRIGAN: Your Honor,  
Double Y and Double Z -- were they introduced  
in evidence?

THE COURT: He ends with  
Double R as far as I know --

MR. CORRIGAN: Double Y and  
Double Z were not?

THE COURT: They weren't  
testified to and weren't offered -- wait a  
minute, I am sorry, they were.

MR. CORRIGAN: They were intro-  
duced?

THE COURT: Yes.

MR. LAURIE: John, these two.

MR. CORRIGAN: Double H and  
Double R?

THE COURT: Yes.

MR. CORRIGAN: Yes?

MR. LAURIE: They have been  
entered, Judge?

THE COURT: Yes.

CROSS-EXAMINATION

BY MR. CORRIGAN:

- Q Doctor, you recall you were on the stand here earlier

this month?

A I certainly do.

Q And at which time I said, "The doctor doesn't know anything"?

A I haven't forgotten that.

Q Will you now accept my apology?

A The thing that worries me is that you might be right, that's what worries me.

Q Doctor, with regard to Sidney Taylor, you indicated that you found some damage to the body by fire?

A Correct.

Q I believe it was been testified here that in the vicinity of where Sidney Taylor's body was found, a fire had started somewhere around midnight.

What is the fact, sir, with regard to a live round of ammunition being set off in a fire and wounding a body that it might come in contact with?

MR. FLEMING: Objection.

MR. TOLLIVER: Objection.

THE COURT: I take it the question is, would the fire set off a live round of ammunition?

MR. CORRIGAN: Yes, sir.

MR. FLEMING: Objection.

THE COURT: Is that a matter

within your professional knowledge?

A THE WITNESS: Yes.

THE COURT: Overruled.

THE WITNESS: A fire can explode  
a bullet, certainly.

Q (By Mr. Corrigan) What is the fact, sir, as to the  
exploding of that bullet, causing a wound upon the body  
of a victim it could come in contact with?

A If a body were close enough to a speeding bullet,  
it would be struck and injured.

MR. CORRIGAN: No further  
questions of this witness.

MR. FLEMING: No further  
questions.

THE COURT: Doctor, you are  
excused.

(Witness excused.)

MR. LAURIE: Judge, we have  
one State's witness that we called in regard to  
that special matter we left open, for possible  
further testimony.

THE COURT: Are you ready  
with him?

MR. LAURIE: Yes.

THE COURT: Is it satisfactory

if he calls him?

MR. FLEMING:

No objections.

MR. TOLLIVER:

No objections.

MR. LAURIE:

Do you want to

get him?

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

DIRECT EXAMINATION

BY MR. LAURIE:

Q Your name, sir?

A Joseph McManamon.

Q Spell your last name.

A M-c capital M-a-n-a-m-o-n.

Q You are a policeman with the Cleveland Police Department?

A Yes, sir.

Q And were you employed as such on the date of July 23, 1968?

A I was, sir.

Q Were you working with a partner that day?

A Yes, sir, I was.

Q Who was he?

A Chester Szukalski.

Q And were you on foot or assigned to a vehicle?

A I was assigned to a vehicle.

Q What number vehicle?

A 591.

Q And did there come a time when you saw your way to answer an assignment to the area of Beulah and Lakeview, that particular day, July 23rd?

A I did, sir.

Q And approximately what time did you get in and about the streets I just mentioned?

A Approximately 8:30, in the evening.

Q As you approached Beulah and 123rd Street, sir, what if anything happened to your automobile?

A As we approached, we were sent to the corner of Beulah and East 123rd Street, when we were operating north on 123rd Street, so when we approached the corner, there was a tow truck parked on Beulah Avenue, and our car or wagon, 591, was put under fire from the right side, was shot.

Q Gunshot?

A Gunshot, yes, sir.

Q You say from the right side. Was your car struck from the right side?

A On the right side, sir.

Q Did you see where the firing came from?

A At the time when we first went under fire, we did not -- I seen it later.

Q Did you see anybody shooting at you?

A Yes, sir, I did.

Q Could you describe who was shooting at you?

A Yes.

Q Go ahead.

A I could describe. It was a negro, male, tall, I would say about 6-two, dressed in dark clothing, had a beard.

Q All right, and were you and/or your partner struck?

A Yes, sir.

Q By virtue of the gunfire you testified to?

A Yes, sir.

Q Where was your partner, in the car?

A My partner was to the right of me, in the passenger-- in the front seat.

Q Then, if you know, where was he struck?

A He was struck about the body.

Q Yes?

A The leg, and, I guess, once in the side and once in the right arm; all on the right side.

Q All on the right side?

A Yes.

Q And he was on the passenger side of the front seating portion of the car?

A Right, sir.



Q Now, Officer, before you got in that car that particular tour of duty that you and your partner started on July 23, 1968, what if anything did you do in regard to entering this car, if anything?

A Well, when, at 3:00 o'clock in the afternoon when we left on this tour of duty, we -- I looked over the wagon; it was a routine assignment, to look over the car that you are assigned to for the tour of duty, to make sure no dents or anything else in the car from the crew ahead of us.

Q Is this done on the switching of crews?

MR. FLEMING: I didn't hear.

THE COURT: To see if there were no dents from the crew preceding him.

Q (By Mr. Laurie) What was the physical condition of the outside of this vehicle, especially on the right side, car 591?

A It was routine. There was no apparent damage.

Q Did you look on the inside?

A Yes, sir, I did.

Q What did you do, as far as looking on the inside, inspection, before you took over that car?

A We -- I opened the rear doors, I swept it out, I swept out the rear of the wagon.

Q All right.

A And I checked it out.

Q What did you find by way of damaged parts on the inside, as to any general damage or if any bullet holes were in there?

MR. FLEMING:

Objection.

THE COURT:

What did you find?

A I found nothing, sir.

Q (By Mr. Laurie) All right, and then, sir, you proceeded to take this car out on your duty; is that right?

A Yes, sir.

Q And then, of course, as you testified, something happened to it by way of being shot at on 123rd and Beulah; is that right?

A Right, sir.

Q And as a result of this gunfire action against you and your partner and/or your car, did there come a time when you found yourself in the hospital as a result of this?

A Yes.

Q What hospital did you go to?

A Lakeside Hospital.

Q About what time did you go there?

A I would say about 9:30 or 9:15.

Q Did you receive some first aid or attention?

A Yes, sir.

Q Were you released?

A I was released.

Q Tell me, sir, did you go to work the next day, the 24th?

A I did, sir.

Q What district do you work out of?

A The Fifth District.

Q Is there where you picked up the car?

A Right, sir.

Q Then, sir, on the 24th of July, 1968, did you have an occasion to see Car 591 again?

A I did.

Q Where, and under what circumstances?

A It was parked in the garage, where it is always parked at the Fifth District Headquarters.

Q Did you make an inspection of the car, then?

A I looked at the car.

Q For what purpose did you make an inspection at this time, if any?

A Well, just to look at the car because I knew that was the car and it was all shot up, and we almost got killed the night before.

MR. FLEMING:

Objection.

THE COURT:

The latter

part of the answer will be stricken, the jury.

will disregard it.

Q (By Mr. Laurie) What observations did you make of the exterior of this car, the right side of this car, 591?

A I observed the bullet holes in the car.

Q Did you inspect or look at the inside?

A I did.

Q All right, what did you observe, if anything, on the 24th, on the inside of this Car 591?

A There were bullet holes on the inside of the car, too, there were some on the right side, of course, and then there was some in the front, way up by the driver's -- front passenger's side, and I think one in the floor.

I don't know exactly.

THE COURT: Do you have any further questions?

MR. LAURIE: No, I don't think so, Judge. That's all.

CROSS-EXAMINATION

BY MR. TOLLIVER:

Q Officer, did you make a police report about the matters that you have testified to here today?

A I made a police report about what took place on 123rd and Beulah, sir, yes, sir.

Q How many reports did you make?

Q How many reports did you make?

A I made one report -- I think I made a statement and a police report, departmental report.

Q When did you make your police report?

A I would say a few days after this incident.

Q When did you make the statement?

A At the same time, sir, a few days after.

Q So the statement you made was at the Detective Bureau?

A Yes, sir.

Q Then you made a police report that was a Form 1 or Form 10?

A Yes, sir.

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

A The last time I seen the statement?

Q Yes.

A The last time I seen that statement was -- about a week ago.

Q And where was this?

A At the Prosecutor's office.

Q With Mr. Laurie?

A No.

Q Mr. Corrigan?

A No, Mr. Garcia.

Q With Mr. Garcia?

A Yes.

Q That's Detective Garcia?

A Yes.

Q Mr. Laurie or Mr. Corrigan weren't present?

A No, sir.

Q Do you have that statement present now?

A I do not have it with me, no, sir.

MR. TOLLIVER: May we see the  
statement?

(Document handed to defense counsel  
by Prosecutor.)

Q (By Mr. Tolliver) At the time, were there two or one?

A One, sir.

Q I believe you said you made two.

A I believe I made a departmental report, it is routine.

I am quite sure I did, although it is a year ago, and I am  
not sure.

Q Do you know where that statement is now?

A I do not, sir.

Q Would you be able to get it?

A The departmental Form M?

Q Yes.

A I don't know, I suppose I could get it I don't know.

I really don't know where to start to get it.

MR. TOLLIVER: Give us a moment,

Judge?

THE COURT:

Yes.

MR. TOLLIVER:

Would you mark

this as Defendant's Exhibit?

(Defendant's Exhibit  
UUU marked for identification.)

Q (By Mr. Tolliver) Officer McManamon --

A Yes, sir.

Q -- in your report, did you say in there that you had gone back the next day and inspected the vehicle?

A No, I did not.

Q In this condition?

A No, I did not.

Q You didn't, did you?

A No, I did not, sir.

Q In your report, did you say that the man that you saw shooting at you was a colored man dressed in black, six feet two?

A No, sir.

Q You didn't put that in your report, did you?

A No, sir.

Q Now, as a police officer, don't you think it is important to have in the report a description of the person that you said shot at you?

A I would say if I was asked that question, yes, sir.

Q You mean you would have to be asked that, you wouldn't

say that as a policeman?

A Well, I don't know -- could be. I would say as a police officer it is important, yes.

Q But you didn't put that in your statement?

A I did not put it in.

Q Did you put in your report that you went through the wagon on the 24th day of July and looked at it and observed the bullet holes in it?

A No, I did not.

Q You didn't think that was important, either?

A At the time, it wasn't to me. I only did this out of routine.

Q Now --

A Because I was curious.

Q When was the first time you talked to somebody about the wagon and what the condition of it was?

A The day after, the day after I talked to police officers in my platoon, in the Fifth District, where the wagon was parked.

Q Did you testify before the Grand Jury?

A No, sir.

Q You didn't have to testify before the Grand Jury?

A No, sir, I wasn't called.

Q Your statement, all you said was that I fired six shots from my service revolver at one colored male standing



in the rear of the house located at 123rd Street?

A Yes.

Q Did you hit him?

A I don't know -- didn't appear to hit him.

Q Did you ever find out whether you hit him or not?

A No.

Q Did you try to find out?

A No, I didn't.

Q But in your particular statement, you never said anything about his height, or what he looked like or anything?

A No.

Q Just a colored male?

A Right, sir, in my statement, I said that.

Q But now, you remember that he was six feet two?

A No, I remembered then, but I didn't say it.

Q But you didn't put it in your statement?

A Right.

Q And you are telling this Judge and you are telling this jury that at no time did any detective or anybody else asked you to describe the person whom you say shot at the wagon and whom you shot at, is that what you are saying?

A I am not saying -- I am saying when they asked me to describe him, I said one colored male. That was

sufficient, evidently, for the description for the report.

Q They were satisfied with that, is that what you are telling us?

A Evidently, yes.

Q They never asked you what he was wearing or how tall he was or how close you were to him -- they didn't ask you that?

A No, they didn't.

Q Now, when was it first called to your attention that you were to recall about the bullet holes in the truck?

A When was it first called to my attention -- when I was supposed --

Q When you were to recall about the bullet holes in the truck?

MR. LAURIE:

Objection.

THE COURT:

Sustained.

Q (By Mr. Tolliver) Was it ever called to your attention that you were to remember the bullet holes in the truck?

A Not necessarily, no.

Q What do you mean "not necessarily"?

A Nobody indicated that I was supposed to recall about bullet holes at all.

Q Well, do you want to read this report?

A Yes, sir.

Q Showing you what has been marked for identification as Defendant's Exhibit Triple U, can you identify that?

A This report?

Q Yes.

MR. LAURIE: We have no objections in the Defendant's offering this exhibit as their exhibit, Judge.

THE COURT: We will take our break now, until a few minutes after 11.

Don't talk to anybody and don't let anybody talk to you about this matter while you are out of the court room.

(Short recess taken.)

- - -

Q Officer, when did you talk to someone in this case about your testimony?

A A week ago, on the 23rd and the 24th.

Q And at that time, were you told or asked to remember the bullet holes in the truck?

A No, I don't think I was.

Q Well, I believe you testified that you inspected the truck, did you not?

A I did, sir.

Q And at that time did you find any bullets imbedded in the truck?

A Did I find any bullets? No, sir, I did not find any bullets.

Q Just bullet holes?

A Bullet holes, yes, sir.

Q Now, when you made the statement (indicating) -- you made it on August the 2nd, is that right?

A Right, sir.

Q That was approximately nine or ten days later?

A After the shooting, yes.

Q After the shooting, is that right?

A Yes, I would say so.

Q Now, Officer, I noticed that there is some red underlining and there are some initials on that statement. Can you explain that?

A This initial apparently is Chester Szukalski, who made it, who was my partner that day.

"B. N." --

Q Who is "B. N."?

A I don't know. I couldn't imagine -- or is it "B. U."?

Q When were those initials put on there?

A I never seen these initials before, sir.

Q You never saw them?

A Not that I know of. At least, if I saw them I never paid attention to them.

Q So, as far as you are concerned, when this report was signed by you, those initials weren't on there?

A That I know of, no.

When I signed this report, this underlining and stuff, wasn't on it.

Q How about the red underlining?

A No, this was not done by me or --

Q So, when you signed this report, there was nothing but the typing that is on there, your signature?

A Right, sir.

Q And that was all?

A That's right.

Q How this underlining got on here, these initials, you don't know?

A That's right, sir.

Q Now, Officer, I believe you said you looked at this truck on the 24th -- or was it the 25th?

A 24th.

Q -- and you looked at it very thoroughly, didn't you?

A I looked at it thoroughly.

Q And you saw bullet holes in the truck?

A Yes, sir.

Q You found no bullets inside the truck, is that right?

A No, sir, I didn't.

Q Did you see any bullets imbedded in any portions of the truck, in the wood, or so forth?

A No, I didn't see any.

I seen holes but I didn't -- it just didn't occur to me to look for bullets imbedded.

Q Now, again, your statement does not reflect, does it, the description of the person you say you saw shooting at you?

A Just what I said -- all colored males, about 6 feet two.

Q But I said, this is not reflected in your statement?

A It isn't there.

Q And you made the statement about nine or ten days after the shooting?

A I guess so.

Q I believe you said there is another statement that you made?

A I think we made a statement, I'm not sure, but I think we made a statement, yes.

It's routine that all officers make a departmental statement, and I'm quite sure that I made one.

Q If the Court ordered you, would you be able to locate that statement?

A I just tried to.

Q Did you try?

A Yes. I just called the Fifth District, if they did have the statement in their possession, and they said they would look.

Q They said they would look?

A Yes. I guess it takes a while to look back.

Q If you get that statement, would you bring it back?

A I certainly will.

THE COURT: Report back to the prosecutor if you have it, sir.

THE WITNESS: All right, sir. I sure will.

MR. TOLLIVER: Judge, we wish to introduce this statement into the evidence and read it to the jury.

MR. LAURIE:

No objection.

THE COURT:

It may be admitted,  
and it may be read.

(Defendant's Exhibit  
UUU was received in  
evidence.)

MR. TOLLIVER:

(Reading)

"Criminal Investigation Bureau, August 2,  
1968, 11:40 a.m.

"The following is the statement of  
Patrolman Joseph P. McManamon, badge number 858,  
regarding the arrest of Fred Ahmed Evans, on the  
charge of murder of a police officer.

"Patrolman Joseph P. McManamon, badge 858:  
I am a duly appointed member of the Cleveland Police  
Department, and am assigned to the Fifth District,  
Basic Patrol.

"On Tuesday, July 23, 1968, while working  
mobile patrol 591, in company with Chester  
Szukalski, 1849, at about 8:15 p.m., responded to  
a radio assignment of a tow truck driver calling  
for assistance at East 123rd and Beulah Avenue.

"We arrived at the scene at about 8:20 p.m.,  
by driving north on East 123rd Street. I was  
driving. And at Beulah, we seen the stopped tow  
truck. The tow truck was facing west on Beulah



Avenue, at the corner of 123rd, on the east side of East 123rd Street.

"As we approached this tow truck, still in the mobile patrol, some person or persons opened fire on us, striking the right side of mobile patrol 591, wounding my partner, Patrolman Szukalski.

"I was unable to completely stop the mobile patrol, and both of us exited the mobile patrol by the driver's door while the mobile patrol was still in motion.

"I was grazed by gunfire on my right hand. The wagon was northbound on East 123rd Street and came to rest against the north curb of Beulah Avenue, directly in front of the tow truck. It had rolled about 10 feet after we got out.

"I managed to get behind a car, red color, make unknown, which was parked on Beulah Avenue, at the northwest corner of East 123rd Street. This car was parked facing west. At that time I returned fire, six shots from my service revolver, at one colored male who was standing at the rear of the house located on the southeast corner of Beulah and East 123rd Street.

"My partner crawled the other way on ~

123rd Street and was a little ways down 123rd Street.

"This colored male fired at me, behind the red car, with what appeared to be an automatic rifle or semiautomatic rifle. After about fifteen minutes the shooting slowed down and mobile patrol 592 came and conveyed both Patrolman Szukalski and myself to Lakeside Hospital.

"Question: Have you read the above statement and is it true?

"Yes."

Signed, "Joseph McManamon."

Q (By Mr. Tolliver) So, at the time that you say this firing was done, you weren't behind your truck at that time?

A Behind the wagon?

Q Yes.

A No. When the firing was done?

Q When you were shooting at this male.

A When I returned fire?

Q Yes.

A I wasn't behind the wagon at all.

Q You weren't behind the wagon?

A No, sir.

Q As I understand it, this is Beulah here (indicating)?

A Yes.

Q You were where, up here, (indicating)?

A No, sir.

Q Down in here (indicating)?

A That's it.

Q Here (indicating)?

A Yes, sir.

Q The person who you were shooting at was across the street?

A No, sir.

Q Where was he?

A He was in the southeast -- may I point it out?

Q Come down and show us.

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

A The person I was shooting at was here (indicating).

Q Here (indicating)?

A Right here (indicating).

Q Where were you?

A Here (indicating).

Q Over here (indicating)?

A Right.

Q You were behind a truck?

A A car.

Q A car of some kind, and he was over here (indicating)?

A Right. He was right here, sir, (indicating), at the corner, right.

Q You don't know whether you hit him or not?

A I don't know.

Q You may resume the stand.

(The witness resumed the stand.)

Q One last question. When you say "Criminal Investigation Bureau," what does that mean?

A That is, you know, the typing bureau where your criminal statements are taken.

Q Over in the Detective Bureau?

A Yes, sir.

Q All right. And at the particular time when you were typing out this statement, it was by Detective Krial? He was the typist, is that right?

A Yes, sir.

Q There were some other detectives around?

A I don't recall. I don't think there were, sir.

Q But Detective Krial was the one that took your statement?

A Yes, sir.

I don't know the detective that took it, but a

Q This was part of their investigation related to the arrest of this defendant?

A This is their assignment, yes, to take statements from any --

Q And they were taking a statement from you?

A Yes, sir.

Q You are telling us at the particular time you made no mention and nobody asked you to give a description of the person who shot at you?

A They -- they said, "Can you identify him?"

I said, "I don't think I can identify him. I can't identify him."

If they asked me point-blank if I can identify him, I'd say, "No, I couldn't. It was a colored male."

That much I can say, but if they brought him in front of me that day, I couldn't do it.

Q Officer, how long have you been on the Police Department?

A 14 years.

Q 14 years. And Car 591, is it still in the district?

A Yes, sir, I think it is. I'm sure it is.

Q Has it been operating since that time?

A You mean the same vehicle?

Q The same vehicle.

A I don't know about that. I would say it was repair-

able. It appeared to be repairable.

Q Have you had occasion to drive it since that time?

A No, sir, I never had occasion to be on that wagon again.

Q Have you seen it, other than on the 24th?

A Yes, I have.

Q You have seen it in operation since that time?

A Yes, sir I have.

MR. TOLLIVER: That's all.

MR. LAURIE: May we approach  
the bench a minute, Judge.

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

THE COURT: Any further  
questions?

MR. LAURIE: That's all, Officer.  
Thank you.

THE COURT: Just a minute.

Q (By Mr. Tolliver) I understood you to say, Officer  
McManamon, that the procedure is that every person who  
goes into a truck of this kind, you inspect it to see  
to it that it hasn't been damaged by persons from the  
other shift?

A Among other things. That, of course, because you're

liable for the damage that occurs during your tour of duty.

You also inspect the outside of a vehicle for dents or damages that may occur during the tour of duty prior to you taking over and, of course, equipment on the wagon.

We have a resuscitator and equipment that is necessary to inspect. Right, it is a routine and necessary thing.

Q So every time a person uses this truck, this is the routine that you go through?

A This is departmental routine, departmental rule.

Q The truck is swept out?

A I swept it out. It was dirty. It isn't necessary always, but I did sweep it out.

Q This is what police officers do?

A Yes. I would clean it up a little bit for people going to the hospital.

Q So then since the 24th of July of 1968, and I believe you said the truck is still in operation?

A I think it is. I am not assigned to the Fifth District now, so I don't know, but this truck was in operation after the shooting, if that's what you're trying to bring out. It was.

Q So then it would be then that many people go in and out of this particular truck or any other truck that would be used similar to this one, is that right?

A Many police officers.

Q Let me put it this way, a truck isn't assigned to just one shift, is it?

A No, sir, it isn't.

Q It is used by all the shifts, isn't it?

A Right, sir.

Q This would necessitate a lot of people coming in contact with the truck, would it not?

A If this truck was still in service.

Q And you are saying that it's still in service?

A It wasn't in service --

Q I'm saying after the 24th, assuming after the 24th --

A It wasn't in service right after the 24th. It was in service weeks after the 24th, but from the 23rd after I took it out, I think it was out of service for at least six or eight days. I'm not sure. Make it two weeks.

Q Assuming that after two weeks, the truck was back in service --

A Yes, sir.

Q It would be available for all three of the shifts?

A Absolutely right, sir.

Q Isn't the truck then parked at -- don't you have maintenance and what have you on the truck, maintenance crews?

A Yes, we bring them into 49th Street and 34th Street for maintenance, if need be, yes.



Q Of course, they would go over the truck and inspect it, too?

A I don't know that. I don't know if they would. It's available. It's at their disposal.

Q They would have to keep it serviced?

A I would think.

Q So many persons come in contact with the police vehicle, is that right?

A Right, many people.

Q Persons who operate it who are police officers?

A Yes.

Q The persons who are in the garage and service it?

A Yes, sir, I would suppose, yes.

Q It's hard to tell then if this truck has been in operation, you say about since about two weeks after the 23rd, which would be sometime about the second week in August, we'll say --

A Yes, sir.

Q -- how many people would have come in contact with it from that time?

A Yes, sir, many, many people.

Q Many?

A Many civilians and many police officers. We take many -- people to the hospitals, yes, sir.

Q All right. And, since you were the driver, I believe--

A Yes, sir, I was.

Q -- of the truck, I believe, can you tell us whether or not you made a detailed report, police report, detailing all of the damage and defects on this particular vehicle?

A I did not make a detailed report.

Q Were you ever requested to make one?

A I was not.

MR. TOLLIVER: That is all.

MR. LAURIE: Thank you, Officer.

(Witness excused.)

--

MR. LAURIE: I understand, Judge, may we have a ruling on the remaining exhibits?

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

THE COURT: All the exhibits that were identified and referred to yesterday, except 140, will be admitted into evidence.

MR. TOLLIVER: Note our exception, Judge.

THE COURT: You may have your exception.

MR. LAURIE: 141, 142. Then,

I believe, 178 through 189. Is that correct?

THE COURT:

That is right.

(State's Exhibits  
Nos. 141, 142, and  
178 through 189  
were received in  
evidence.)

MR. LAURIE:

Thank you.

That's all we have.

- - -

MR. TOLLIVER:

Miss Polinsky.

- - -

THEREUPON, the Defendant, further to maintain the issues on his part to be maintained, called as a witness LOTTIE POLINSKY, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. TOLLIVER:

Q Ma'am, would you state your name for the court, please.

A Miss Lottie Polinsky.

THE COURT: Lottie?

THE WITNESS: Lottie.

Capital L-o-t-t-i-e.

Q What is your business or occupation?

A Bookkeeper.

Q For whom?

A Royal Paper Box and Supply Company.

Q Would you please speak up. For what company?

A Royal Paper Box and Supply Company.

THE COURT: Royal Paper Box and  
Supply Company?

THE WITNESS: Yes, sir.

Q And you have been in that capacity how many years,  
ma'am?

A A little better than eight years.

Q Would you tell the Court and jury just what your duties are, as bookkeeper?

A Well, I take care of the accounts receivables, payable; pay people that come in to work as spot labor, take care of payroll - all the books.

Q Madam, would you also tell us what kind of business is this particular company engaged in?

A It's a wholesale paper jobbers.

Q What do you mean by that, ma'am?

A Well, we sell to merchants that use the paper for resale in their business --

Q I see.

A -- wrappings.

Q How many persons does this particular company employ?

A Seventeen.

Q Seventeen persons?

A Yes.

Q Where is it located?

A 1308 St. Clair.

Q 1308 St. Clair.

Now, madam, as a result of a subpoena -- are you here as a result of a subpoena?

A Yes, sir.

Q And as a result of that subpoena, did you bring certain records with you?

A Yes, I did.

Q Now, those records are of what particular individual?

A For Darrell Payne and Walter Banks.

Q Did those two persons work for your company?

A They worked as spot labors.

Q As spot laborers?

A Yes.

Q Now, can you describe to the jury what this Walter Banks looked like?

A Well, he was dark-skinned, and I'd say about maybe 5-nine, 5-ten, with bushy hair, and his mannerism was very polite. Actually, I did not work with the fellow.

Q I understand that. You were the bookkeeper?

A Yes.

Q And how old would you say he was?

A Oh, anywhere in the neighborhood of maybe twenty-two to twenty-five.

Q Now, did you have conversation with him about his age at any time?

A Well, I kidded him about being so young-looking, and he said, oh, he was married.

I said, "You look so young," and that was all.

Q Now, do you have the records showing when he worked?

A Yes.

Q When he worked for your company?

A Yes.

Q Would you produce those, please?

A Yes, I have them here (indicating).

Q Well, first of all, tell us the first day that this Walter --

A My record shows as November 12th.

Q November 12th --

A Right.

Q -- was the day he worked for your company?

A Right.

Q And what was the last day he worked for your company?

A The 25th of November.

THE COURT:

What year?

THE WITNESS:

1968.

THE COURT:

'68.

Q (By Mr. Tolliver) Now, about Darrell Payne, when did he work there?

A They both worked the same. They both said, they said they were cousins, and one did not work without the other.

Q They both worked together?

A Right.

Q Now, what caused him to terminate his employment

there, or was his employment terminated at your company?

A Well, he was.

Q- When I say "he," I am talking about Walter Banks.

A Yes. He came -- he was supposed to come in on the 26th to work and he didn't come at 8:00 o'clock, as time specified.

At about 10:00 o'clock he came in and he said he got a phone call --

MR. LAURIE:

Objection.

THE COURT:

Overruled.

A -- from Detroit.

Q (By Mr. Tolliver) Go ahead, ma'am. Complete your answer.

A That he got a phone call from Detroit, I don't remember whether he said it was his mother or grandmother had died. And I said, "Didn't you know that she was dying?"

He said, "No," that he didn't even know she was sick, and they seemed in a hurry. I paid them for the 25th, and he said he had to make either 10:30 or 10:35 -- I don't remember the exact time -- Greyhound bus, and they thanked me for paying them and left.



Q And you haven't seen them since?

A No.

Q Now, would you tell the Court and jury exactly what days these individuals worked between, I believe you said, the 11th --

A Between the 12th and 25th of November of '68.

Q What I mean by that, ma'am, did they work every day?

A Five days a week, Monday through Friday.

Q Five days a week Monday through Friday?

A Yes.

Q And how much did -- how much were they paid?

A They were paid by the day, one-sixty an hour.

Their average work day was 8 and sometimes 10. I can't say exactly without checking.

Q Now, ma'am, it's been testified to by that particular individual --

MR. CORRIGAN: Objection.

MR. LAURIE: Objection.

THE COURT: Well, who are you talking about?

MR. TOLLIVER: I am talking about --

MR. LAURIE: Objection.

May we approach the bench?

THE COURT: Who are you

inquiring about?

MR. TOLLIVER: Walter Banks,  
otherwise known as --

MR. CORRIGAN: Objection, your  
Honor.

MR. LAURIE: Objection.

MR. CORRIGAN: Your Honor,  
there is no Walter Banks appeared in this court  
room.

MR. TOLLIVER: The man said  
used an alias.

THE COURT: Come up, gentle-  
men. Come up.

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

THE COURT: The objection  
is overruled.

Q Now, Madam, it has been testified to by this indi-  
vidual who you are speaking of, Mr. Banks, that he worked  
for your company in May, June and up to November.

Now, do your records reflect that?

A My records do not show that. My records show as  
starting November 12 of 1968.

Q He also testified that he worked for you company on

July 21, 1968, which was a Sunday --

MR. CORRIGAN:                      Objection.

THE COURT:                      Well, you are  
not objecting to his statement it was a Sunday,  
are you?

MR. CORRIGAN:                      Withdraw the  
objection.

THE COURT:                      All right.

Q     Which was a Sunday. Do your records reflect that?

A     No.

Q     When you say that these persons worked five days a  
week, what days are you speaking of?

A     Monday through Friday.

Q     Now, the type of employment that he had, would it  
necessitate him to work on Sunday?

A     No.

MR. TOLLIVER:                      You may have the  
witness.

CROSS-EXAMINATION

BY MR. CORRIGAN:

Q     Ma'am, do you know where 12312 Auburndale is located  
in the City of Cleveland?

A     No, I don't.     It's on the east side but exactly  
where, I wouldn't know.

Q You don't know anything about a meeting at 12312  
Auburndale the morning of the 23rd of July, 1968 in the  
City of Cleveland?

A No.

MR. TOLLIVER: Objection.

MR. FLEMING: Objection.

THE COURT: Overruled.

Q Your answer, please?

A Well, that was during the riots, I believe.

THE COURT: No the question  
is do you know anything about a meeting on July  
the 23rd, 1968.

A No.

MR. CORRIGAN: Thank you, ma'am.

THE COURT: Anything further?

MR. TOLLIVER: No further  
questions, Judge.

THE COURT: You are excused.

MR. TOLLIVER: Thank you so  
much, Miss Polinsky.

(Witness excused.)

MR. TOLLIVER: Mr. Vondruska,  
please.

THEREUPON, the Defendant, further to maintain the issues on his part to be maintained, called as a witness LEO G. CHIMO, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FLEMING:

Q Mr. Chimo, will you state your name?

A Leo G. Chimo, C-h-i-m-o.

Q And you are an attorney-at-law?

A Yes, sir.

Q How long have you been an attorney?

A Since 1941.

Q What is your present occupation?

A Chief Clerk at Juvenile Court of Cuyahoga County.

Q Were you subpoenaed to come here today?

A Yes, sir.

Q And to bring certain records with you?

A Yes, sir.

Q Did you bring those records?

A Yes, sir.

Q What records are they?

A They are the official files and social records on one Walter Washington.

Q Otherwise known as Walter Banks?

A The only name that I know him by is what's on the file, as Walter Washington.

Q May I see those papers, please?

(The documents were handed to counsel.)

MR. FLEMING: Pardon me, a minute, your Honor. Might this be a good place for a recess?

I hate to keep the jury sitting here while we look through these papers.

MR. TOLLIVER: The records seem to be voluminous, Judge.

MR. FLEMING: There is quite a bit.

THE COURT: Fine. We will take our recess at this time until 1:15.

Again, don't talk to anybody about this case. Don't let anybody talk to you.

(Thereupon an adjournment was taken to 1:15 p.m. o'clock, April 30, 1969, at which time the following proceedings were had):

WEDNESDAY AFTERNOON SESSION, APRIL 30, 1969 1:30 P.M.

THE COURT: Be seated, please.

THEREUPON, LEO G. CHIMO, having been previously duly sworn, resumed the stand and testified further as follows:

DIRECT EXAMINATION (CONTINUED)

MR. FLEMING: If it please the Court.

Now, referring to the records that you brought with you from the Juvenile Court, you are the Chief Legal Officer of the Juvenile Court, is that right?

A I am Director of Legal Services and Chief Clerk under Judge Walter Whitlach, who is the Chief Administrator for the Court.

Q Did you bring with you File No. 245108?

A Yes, sir.

Q And is this the file of Walter Washington?

A Yes.

Q And what were the charges in that?

MR. CORRIGAN: Objection.

MR. FLEMING: Withdraw the question. Tell us what that file is.

MR. CORRIGAN: Objection.

THE COURT: Well, it is a file, obviously, of the Juvenile Court. Is there any problem about that?

MR. FLEMING: Yes, what is the nature of the file?

MR. CORRIGAN: Objection..

THE COURT: Well, counsel, come up here.

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

(Whereupon the following proceedings were held outside the hearing of the jury but on the record:)

THE COURT: This is a proposed stipulation: It is stipulated by and between counsel for the State and counsel for the Defendant that on March 25, 1969, Walter Washington was committed by the Juvenile Court of Cuyahoga County to the Ohio Youth Commission.

On March 27, 1969, the commitment was



stayed.

On April 12, 1969, he testified in this court room. On April 21, 1969, the commitment to the Ohio Youth Commission was again stayed.

On April 28, 1969, the cases of delinquency which had been pending against him, which were four in number, were dismissed by the Juvenile Court of Cuyahoga County.

As of today Walter Washington is a member of the United States Army.

(Whereupon the following proceedings were held within the presence and hearing of the jury):

THE COURT: Counsel for the State and counsel for the Defendant have agreed to a stipulation and Mrs. Kroman will now read the stipulation to the jury.

THE REPORTER: (Reading):

"It is stipulated by and between counsel for the State and counsel for the Defendant that on March 25, 1969, Walter Washington was committed by the Juvenile Court of Cuyahoga County to the Ohio Youth Commission.

"On March 27, 1969, the commitment was stayed.

"On April 12, 1969, he testified in this court room. On April 21, 1969, the commitment to the Ohio Youth Commission was again stayed.

"On April 28, 1969, the cases of delinquency which had been pending against him, which were four in number, were dismissed by the Juvenile Court of Cuyahoga County.

"As of today Walter Washington is a member of the United States Army."

THE COURT: Anything further from this witness?

MR. FLEMING: Nothing further.  
Thank you, Mr. Chimo.

( Witness excused.)

MR. TOLLIVER: Call Mr. Vondruska.

THE COURT: Be at rest, the witness is coming he is in the building.

- - -

THE COURT: Counsel, come up again, please.

(Whereupon discussion was held between Court and counsel, outside the hearing of the jury and off the record.)

THEREUPON, the Defendant, further to maintain the issues on his part to be maintained, called as a witness JOHN J. VONDRUSKA, JR., who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. TOLLIVER:

Q Will you state your name for the record, please?

A John J. Vondruska, Jr.

Q What is your particular profession or occupation?

A Deputy Clerk of the Common Pleas Court.

Q How long have you been in that capacity?

A 10 years.

Q Tell the Court and jury just what your duties are in that particular capacity?

A Well, I take -- help take care of the files and all the subpoenas and all the motions that come through our Court and various different duties.

Q All right, you are here as a result of a subpoena, sir?

A Yes, sir.

Q Were you told as a result of that subpoena to bring certain records with you?

A Yes, sir.

Q And what records did you bring?

A I have our files -- do you want me to mention the different names?

Q Yes.

A Okay, Curtis Carl Martin, Darryl Payne, Walter Brown and another Walter Brown with Roy Ogletree.

Q Could you hand them to me?

(Files given to defense counsel by the witness.)

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

THE COURT: All right.

MR. TOLLIVER: Would you mark these, please?

(Defendant's Exhibits WVW, WWW, XXX and YYY marked for identification.)

MR. CORRIGAN: May we approach the bench, please?

(Whereupon discussion was held between Court and counsel, outside the hearing of the jury, and off the record.)

(Whereupon the following proceedings were held outside the hearing of the jury:)

THE COURT: Exhibit WWW has

been identified by the witness in this case as Case No. 91417 of this Court. This is a case in which the State of Ohio was Plaintiff versus Walter Brown, and it shows on the file that there is a no bill entered by the Grand Jury as far as this case is concerned.

The record here further indicates from the Witness Washington, when he testified to the same fact. Any proffer or any testimony with reference to this Exhibit WWW will not be permitted.

Have the record show that Mr. Fleming contends this exhibit should be admitted into evidence or at least testimony pertaining should be admitted into evidence to corroborate the statement that was made by the Witness Washington on cross-examination.

MR. FLEMING: Can I say it this way, Judge, that the Defendant requests that evidence be permitted with regard to whatever transpired in connection with File No. 91417 on January 27, 1969, not in reality to corroborate what was stated by this witness when he testified in the Court, but in an effort to put into evidence on behalf of the

Defendant exactly what transpired in connection with this case so the jury would have the benefit of knowing by testimony from the Deputy Clerk of Court just what transpired.

(Whereupon further discussion was held between Court and counsel, outside the hearing of the jury, and off the record.)

(Whereupon the following proceedings were held outside the hearing of the jury:)

THE COURT: It is stipulated by and between counsel for the State and counsel for the Defendant that Case No. 91418 names Walter Brown, also known as Walter Washington as Defendant.

This case is one in which he was charged with arson. The records of this Court indicate that this case is still pending; however, Mr. Laurie states professionally that proceedings were had that have not as yet been put on the record, that transferred this case to Juvenile Court because the Defendant was a juvenile and this is one of the delinquency cases that was dismissed by the Juvenile Court on April 28, 1969.

(Whereupon the following proceedings were held in the presence of and in the hearing of

the jury:)

THE COURT: Still be at ease, folks. We are getting some results, so bear with us for a while.

(Whereupon further discussion was held between Court and counsel, outside the hearing of the jury, and off the record.)

(Whereupon the following proceedings were held within the presence of and hearing of the jury:)

THE COURT: You have a stipulation with reference to the proffered exhibit YYY.

Please read it to the jury.

THE REPORTER: (Reading):

"It is stipulated by and between counsel for the State and counsel for the Defendant that Case No. 91418 names Walter Brown, also known as Walter Washington as Defendant.

"This case is one in which he was charged with arson. The records of this Court indicate that this case is still pending; however, Mr. Laurie states professionally that proceedings were had that have not as yet been put on the record, that transferred this case to Juvenile Court

because the Defendant was a juvenile and this is one of the delinquency cases that was dismissed by the Juvenile Court on April 28, 1969."

(Whereupon further discussion was held between Court and counsel, outside the hearing of the jury and off the record.)

(Whereupon the following proceedings were held within the hearing and presence of the jury:)

THE COURT: Is there anything further of this witness?

MR. TOLLIVER: Nothing.

THE COURT: If you notice that the witness wanted to whisper something to me up here -- it seems like there is a lot of whispering going on, it was that he can't leave these records here.

He could be overruled in that respect, but it is not necessary that it be overruled.

Do you have the other three files?

MR. TOLLIVER: We gave them to him.

THE WITNESS: I have them.

THE COURT: Thank you.



MR. FLEMING:

Thank you.

THE COURT:

You are excused.

(Witness excused.)

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THEREUPON, the Defendant, further to maintain the issues on his part to be maintained, called as a witness JOSEPH MENGEL, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. TOLLIVER:

Q Officer, will you state your name, please?

A Lieutenant Joseph Mengel, Cleveland Police Department.

Q Will you spell your last name?

A M-e-n-g-e-l.

Q And what portion of the Cleveland Police Department are you connected with?

A Officer in charge of the General Records Division.

Q Of the Cleveland Police Department?

A Of the Cleveland Police Department.

Q You are here as a result of a subpoena?

A Yes, I am.

Q Were you told to bring certain records with you?

A Yes, I was.

Q What records were you told to bring?

A Any records or files pertaining to an individual by the name of Walter Brown or Walter Lee Washington, Jr.

Q Do you have those records with you?

A Yes, I have?

Q Could we have them, please?

MR. CORRIGAN: May we approach  
the bench?

MR. TOLLIVER: I will show them  
to you.

MR. LAURIE: Hold it. May we  
approach the bench, first?

THE COURT: Before he shows  
them to Mr. Tolliver?

MR. LAURIE: Yes.

THE COURT: All right.

(Whereupon discussion was held between  
Court and counsel, outside the hearing of the jury  
and off the record.)

THE COURT: Mr. Tolliver may  
see the records. Here is one of the sheets that  
he handed to me.

MR. TOLLIVER: Would you mark  
these, please?

(Defendant's Exhibits  
ZZZ and AAAA marked  
for identification.)

Q (By Mr. Tolliver) Officer, showing you what has been  
marked as Defendant's Exhibit ZZZ, can you identify that,

please?

A Yes, this is a form furnished by the Scientific Identification Bureau, pertaining to an individual's record and disposition of the charge.

Q What is that individual's name?

A His name is Walter Brown, alias Rashm Ali Bey.

Q Rashm Ali Bey?

A Rashm Ali Bey.

Q Showing you what has been marked as Defendant's Exhibit Quadruple A, can you tell us what that is, sir?

A This is an identification photo furnished by the Scientific Identification Bureau of the Cleveland Police Department of the subject.

Q And is that person's picture that you have just mentioned the same person whose name is mentioned on Defendant's Exhibit Triple Z?

MR. LAURIE: Objection.

THE COURT: Do you have any personal means of knowing that, Lieutenant?

THE WITNESS: No, sir, I haven't.

THE COURT: The objection is sustained.

-- Q (By Mr. Tolliver) Let me ask you this: Are these records kept under your supervision?

A All except the Scientific Identification Bureau, which is separate from the General Records Division.

Q I see, then whose supervision would that be under?

A Under the supervision of Captain Poelking.

Q So he would be the person who could identify the photos?

A Yes.

MR. LAURIE: Objection.

THE COURT: Overruled.

MR. TOLLIVER: That's all we went from this witness, thank you, Judge.

MR. GORRIGAN: Thank you, Judge.

MR. TOLLIVER: Leave those two exhibits.

THE COURT: There has been no offer of them.

MR. FLEMING: We are going to offer them at a later time as soon as we can connect it up.

THE COURT: All right, leave those, Officer.

(Witness excused.)

MR. TOLLIVER: Judge, may we approach the bench?

(Whereupon a conference was held between defense counsel and the Court, outside the hearing of the jury and off the record.)

THE COURT: We will take our afternoon recess, ladies and gentlemen, about 15 minutes.

Don't talk to anybody when you're outside the court room and don't let anybody talk to you.

(Short recess taken.)

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MR. FLEMING:

Mr. Butler.

- - -

THEREUPON, the Defendant, further to maintain the issues on his part to be maintained, called as a witness RODULPHUS BUTLER, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. TOLLIVER:

Q Will you state your name to the Court, please.

A Rodolphus Butler.

Q Are you married or single, sir?

A Married.

Q Do you have a family?

A Yes.

Q How many children do you have?

A Three.

Q Are you employed?

A Yes, sir.

Q Where are you employed?

A Royal Paper Box, 1308 East St. Clair.

Q How long have you been employed there?

A Five years.

Q And just what do you do there?

A Shipping clerk, mostly supervisor of warehouse.

Q You supervise the warehouse?

A Yes, sir.

Q How long have you been supervising the warehouse?

For that particular concern.

A About four years.

Q Now, sir, did there come a time in November where a person by the name of Walter Brown worked in the warehouse with you?

A Yes.

Q Now, did he work with you or under you?

A He worked under me. He did mostly pick up stock, stuff like that. He went out on the truck as a helper.

Q You were his supervisor?

A Yes.

Q It was testified -- just a minute.

Showing you what has been identified as Defense Exhibit Quadruple A, will you look at that, please, sir?

(Photograph handed to witness.)

A Yes.

Q Do you recognize the person on that picture?

A Yes.

Q Who is that person?

A Walter Panks.



Q Walter Banks?

A Yes.

MR. TOLLIVER: No further questions.

MR. CORRIGAN: No questions of this witness.

THE COURT: All right, you are excused then, Mr. Butler. Thank you.

THE WITNESS: Thank you.

(Witness excused.)

MR. TOLLIVER: Judge, at this time we'd like to offer Defendant's Quadruple A into evidence.

MR. CORRIGAN: May I see what is written on the back there, please?

(Photograph handed to Mr. Corrigan.)

MR. CORRIGAN: No objection.

THE COURT: It may be admitted.

(Defendant's Exhibit AAAA was received in evidence.)

THE COURT: Come up here.

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

MR. TOLLIVER: We are waiting for them to bring our witness, Judge. He should be here in a moment, Judge.

- - -

THEREUPON, the Defendant, further to maintain the issues on his part to be maintained, called as a witness JOSEPH TOCHIG, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. TOLLIVER:

Q Sir, will you state your name, please.

A Captain Joseph Tochig.

Q What is your business or occupation, sir?

A I'm a captain connected with the Fire Investigation Unit of the Fire Department.

Q How long have you been in that capacity?

A I've been with the unit about fourteen months.

Q How long have you been a fireman, sir?

A It will be 25 years in June.

Q You have been a captain how many years?

A Ten years this October.

Q Now, you are here as a result of a subpoena?

A Yes, sir.

Q And as a result of that subpoena, did you bring certain records with you?

A Yes, I did, sir.

Q What are those records, what do they reflect?

A There are two battalion chief's reports that they have to make out to the State.

One report is in conjunction with the fire at St. Mark's Presbyterian Church, 1391 East Boulevard.

The other is a report concerning fires at 11101-21 Superior Avenue.

Q Starting with the second one, sir, was there a fire at 11101-21?

MR. CORRIGAN: Objection.

THE COURT: Are these records made in the ordinary and usual procedure for keeping track of fires that the fire departments responds to?

THE WITNESS: Yes, your Honor.

It's the --

THE COURT: Do you have either a photostatic copy or the original of the record that was made?

THE WITNESS: This is a photostatic copy of the battalion chief's record.

THE COURT: Are these kept under

your supervision?

THE WITNESS: They are kept in the Fire Prevention Bureau's office.

THE COURT: Under your supervision?

THE WITNESS: Under the supervision of Chief Shengel.

THE COURT: The objection is overruled.

Q (By Mr. Tolliver) Sir, now will you tell us whether or not there was a fire at 11101-23, did you say?

A -21.

Q -21 Superior.

A According to this report I have in front of me, there was a fire.

Q When was that fire?

A 12:40 a.m. on July the 24th, 1968.

Q And tell us, Captain, was the building partially burned, totally burned, or what?

MR. CORRIGAN: Objection.

THE COURT: Well, you are really asking him, what do the records show.

Q What do the records show was the degree of injury or --

THE COURT: Do they show the extent of the damage?

THE WITNESS: If I may read from  
the remarks --

MR. CORRIGAN: No, sir.  
Objection.

MR. LAURIE: Objection.

THE COURT: The question is,  
do they show the extent of the damage to the building,  
as to whether the building was totally demolished --

THE WITNESS: Entire building  
destroyed completely.

Q (By Mr. Tolliver) Now, would that include the  
portion known as 11113 Superior?

A I would imagine so.

Q In other words, then, from 11101 to -21 was totally  
destroyed by fire, is that correct?

A This report so states.

MR. TOLLIVER: That is all we  
have.

MR. CORRIGAN: No questions of  
this witness.

MR. TOLLIVER: Just a minute.

Q (By Mr. Tolliver) I believe you also brought the  
records pertaining to St. Mark's Presbyterian Church?

A I did.

Q And does your record reflect any fire damage to that

particular building?

A It does.

Q And when did this church ---

A This fire occurred at 2:33 a.m.

Q And what date, sir?

A On September the 11th, 1968.

Q And as part of your investigation, were any charges brought against any individuals for that fire?

MR. LAURIE: Objection.

THE COURT: Sustained.

Q (By Mr. Tolliver) Is the name "Walter Washington" or "Walter Brown" mentioned in connection with that fire?

MR. CORRIGAN: Objection.

MR. LAURIE: Objection.

THE COURT: Sustained.

MR. TOLLIVER: That is all we have, Judge.

MR. CORRIGAN: No questions of this witness.

MR. TOLLIVER: Could we ask this question:

Q What extent of the damage does it show was done to the church?

A Battalion chief states "moderate damage to stairway, trim, interior, causing heavy smoke damage throughout."

Q. Is there an estimate in money as to how much damage was done?

A \$10,000.

Q \$10,000.

MR. TOLLIVER:

That is all.

MR. CORRIGAN:

No questions.

THE COURT:

All right, you are

excused, Captain.

(Witness excused.)

-- --

MR. FLEMING:

Mr. Singer.

-- --

THEREUPON, the Defendant, further to maintain the issues on his part to be maintained, called as a witness NATHAN SINGER, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. TOLLIVER:

Q Will you state your name to the Court, please.

A Nathan Singer.

Q What is your particular business or occupation, sir?

A I am the Commissioner of Building, for the City of Cleveland.

Q How long have you been in that capacity?

A As commissioner, for approximately nine years.

Q Now, you were subpoenaed to come to court today, sir?

A I was.

Q And were you asked to bring certain records with you?

A Yes, I was.

Q And are these records kept by you in the regular course of your employment?

A They are under my supervision, yes.

Q They are under your supervision?

A Yes, sir.

Q The records that you were asked to bring, do you have



them with you, sir?

A Yes, sir.

Q All right. Would you take them out?

(Witness complies.)

Q Now, those records, do they pertain to a particular building or structure?

A The subpoena, was it correct in its address?

I believe that the records I have are the records initially --

MR. LAURIE: Objection.

THE COURT: Overruled.

Q (By Mr. Tolliver) Can we see the records, please?

A Yes, sir.

(Documents handed to Mr. Tolliver.)

THE COURT: It isn't usual that you can bring a witness in that knows what you are asking for.

MR. LAURIE: That is why I am objecting to that. He is second-guessing.

THE COURT: I think he ought to be commended.

Q These are the correct records.

And tell us, Mr. Singer, what building or buildings, by address, do your records cover?

A The record covers 11101 to -13 Superior Avenue.

Q Now, sir, will you tell this Court and jury what is the condition of those buildings at this present time?

A The records I have before me is 11101 to -13 Superior, and that building is demolished.

Q When was that building demolished?

A As reported by Inspector Higgins, on August 4, 1968.

Q Can you tell the Court what caused this demolition?

A The declaration of the structure at the time of inspection, dated July the -- July the 25th, in which this structure was declared as an imminent hazard.

Q And then it was ordered that it be razed, is that correct?

A That's correct.

Q Now, has that structure been reconstructed?

A Not to my knowledge, sir.

Q In other words, you are saying then that that is a vacant lot out there now?

A To my knowledge, yes, sir.

Q Now, it has been testified to here by an individual that in November and December of 1968, that he was living at 11113 Superior.

According to your records, was that building in existence at that address at the particular time in 1968, -- December of 1968?

A The "he" you refer to, I imagine, is Mr. Evans.

Q No. Some other individual.

A I know of no one living in this structure on that particular date, since the building was demolished on August the 4th, 1968.

MR. TOLLIVER:

Nothing further.

MR. CORRIGAN:

No questions of this witness.

THE COURT:

Mr. Singer, you are excused. Thank you for coming.

(Witness excused.)

- - -

THE COURT:

Call your next witness, please.

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

THE COURT:

By virtue of the stipulations we talked about over at the side-bar, we worked too fast. What they have done is run out of witnesses for this afternoon, and I am sure that the arrangements can be made so that you will be transported from here sooner than 4:30.

But there are no further witnesses available.

It is necessary that we adjourn court at this time.

We will adjourn court until 9:15.

When you are out of the courtroom, don't talk with anybody about this case, don't let anybody talk to you about the case. Don't formulate or express any opinion about how the case should be decided until it is all over with, all the evidence is completed.

So we will adjourn court until 9:15 tomorrow morning.

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(Thereupon an adjournment was taken to 9:15 o'clock a.m., Thursday, May 1, 1969, at which time the following proceedings were had:)

- - -