

Volume I of III

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County

Deadra L. Jefferson, Circuit Court Judge

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S C Supreme Court

JOHN HENRY WARD,

PETITIONER,

V

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
 COUNTY OF CHARLESTON)

COPY

STATE OF SOUTH CAROLINA)
)
 vs.) TRANSCRIPT OF RECORD
) 03-GS-10-5895
 JOHN HENRY WARD, JUNIOR, AND) 03-GS-10-5894
 TREMAYNE R. WASHINGTON,)
)
 DEFENDANTS)

June 6 - 9, 2005
 Charleston, South Carolina

B E F O R E.

THE HONORABLE ROGER YOUNG, JUDGE, and a jury

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1 (WHERUPON, the following proceedings were held
2 before the court on Monday, June 6, 2005, in the presence
3 of the jury panel)

4 THE COURT All right Welcome, ladies and
5 gentlemen My name is Roger Young I'm one of the
6 resident circuit judges here in Charleston I welcome
7 you Earlier today, you were qualified as jurors by Judge
8 Nicholson He's going to be doing civil court In fact,
9 I think we have two other terms of civil court going on
10 this week I'm doing general sessions court, which is
11 criminal court So I'm going to be drawing your jury
12 first for a trial we're about to begin. And then those of
13 you that are not picked to serve on this jury, well, we
14 will split y'all into two different panels and you will go
15 to Judge Nicholson's courtroom and Judge Goode's courtroom
16 and they will draw a jury for their trial which will begin
17 probably after lunch.

18 But this process that we're going through right
19 now is called voir dire We're basically going to ask you
20 some questions They asked you questions earlier and that
21 was to determine whether or not you were qualified to be a
22 juror and all of you are, so congratulations. Right now,
23 we have to ask you some personal questions, not in the
24 sense that we're trying to get a lot of your private
25 information out of you, but they're personal to this case

1 So we will need to ask you some questions and ask you to
2 respond to them

3 Basically, what we're trying to do is we're
4 trying to find 12 people that don't know anything about
5 this case They don't know any of the parties or the
6 witnesses and they come in with no preconceived ideas of
7 what the outcome ought to be So that's really what the
8 purpose of these questions are So please keep that in
9 mind

10 If at any time I ask you a question that you
11 feel like is private that you don't want to stand up in
12 front of a group of people and answer, you're welcome to
13 come down here and talk to me We'll have to do it in
14 front of the court reporter so she can take down what is
15 being said But if you're uncomfortable with answering a
16 question by standing up, don't hesitate to just come on up
17 here and talk to me about it

18 Now, the case that we're going to draw a jury
19 for is -- actually, we're going to be trying two
20 defendants in one case. The defendants in this first case
21 is the State versus John Henry Ward, Jr , and we also have
22 the State versus Tremayne Rashaad Washington. Now, both
23 of these gentlemen have been indicted for the crime of
24 murder of one Jamie Simmons who died as a result of an
25 incident on or about May the 11th, 2003 This occurred

1 out on Toogoodoo Road, which is in Charleston County. I
2 need to ask first if there is any member of the jury panel
3 that knows anything at all about this incident? If so,
4 please stand.

5 All right If you would, ma'am, you in the
6 purple, would you state your name and your number, please

7 THE JUROR Susan Smith, 216

8 THE COURT And what is your familiarity with
9 this?

10 THE JUROR John Ward is my cousin

11 THE COURT Mr Ward is your cousin?

12 THE JUROR Uh-huh.

13 THE COURT. Then I will not be allowing you to
14 serve on this jury But if you will just be seated, we
15 will put you down to serve in one of the other cases that
16 is going on

17 Yes, ma'am, your name and number?

18 THE JUROR My name is Tonya Johnson and I live
19 probably about a mile or two from where the incident
20 happened at. And I'm familiar with the young man that
21 died, his father

22 THE COURT Okay Then I won't be allowing you
23 to serve on this jury But if you would, be seated and we
24 will have you serve on another jury

25 What was your number again?

1 THE JUROR 220

2 THE COURT All right Thank you

3 Anyone else?

4 (There was no response from the jury panel.)

5 THE COURT Now, the two defendants in this case
6 that have been indicted for this crime, as I told you
7 earlier, the first one is Mr John Henry Ward, Jr This
8 is Mr Ward right here

9 Mr Ward, would you stand and face the jury
10 panel?

11 (Defendant Ward stood)

12 THE COURT: All right, Mr Ward

13 Is there anyone in this jury panel that is
14 related by blood or marriage or acquainted in any way with
15 Mr John Henry Ward, Jr? If so, please stand.

16 (There was no response from the jury panel.)

17 THE COURT All right. I find none.

18 Now, they are -- Mr Ward is represented by
19 Miss Martha Kent Jenkinson and Mr Beattie Butler, that's
20 these two folks standing right there Is there any member
21 of the jury panel who is related by blood or marriage or
22 acquainted in any way with either Miss Jenkinson or Mr
23 Butler or, perhaps, you have been represented by them in
24 the past? If so, please stand.

25 (There was no response from the jury panel.)

1 THE COURT All right I find none

2 Now, the State of South Carolina will be
3 prosecuting this case and the prosecution is handled by
4 the Ninth Judicial Circuit Solicitor's Office Mr. Bruce
5 Durant is this gentleman right here standing before you
6 and he will be representing the State.

7 Is there any member of the jury panel related by
8 blood or marriage or acquainted in any way with
9 Mr Durant? If so, please stand?

10 (There was no response from the jury panel.)

11 THE COURT All right I find none

12 Now, the other gentleman who is the defendant in
13 this case is Mr Tremayne Rashaad Washington

14 Mr Washington, would you stand and face the
15 jury panel, please?

16 (Defendant Washington stood.)

17 THE COURT Is there any member of the jury
18 panel who is related by blood or marriage or acquainted in
19 any way with Mr Washington? If so, please stand

20 (There was no response from the jury panel.)

21 THE COURT All right I find none.

22 You may be seated

23 He is represented by Mr Runyon, William Runyon,
24 also a member of the Charleston Bar Is there any member
25 of the jury panel who is related by blood or marriage or

1 acquainted in any way with Mr Runyon or, perhaps, you
2 have been represented by him in the past? If so, please
3 stand

4 Yes, sir, your name and number?

5 THE JUROR Thirty-four, Luther Cook

6 THE COURT What is your acquaintance with
7 Mr Runyon?

8 THE JUROR Prior law enforcement and Mr Runyon
9 was the public defender for Charleston County, I believe,
10 during the time

11 THE COURT All right The fact that you've had
12 this acquaintance in the past, would it affect your
13 ability to serve as a fair and impartial juror either for
14 or against the State or either for or against either of
15 the defendants?

16 THE JUROR No, it would not

17 THE COURT Yes, ma'am, your name and number?

18 THE JUROR Martha Ameika, No 5 I know
19 Mr Runyon because I work with his wife

20 THE COURT All right The fact that you know
21 him and work with his wife, would it affect your ability
22 to serve as a fair and impartial juror either for or
23 against the State or for or against either of the
24 defendants?

25 THE JUROR No

1 THE COURT Thank you

2 Anyone else?

3 (There was no response from the jury panel.)

4 THE COURT. Now, I am going to read you a list
5 of potential witnesses who may be called or may not be
6 called, but I need to go ahead and list all of the
7 possible witnesses in the case and ask if you are related
8 by blood or marriage or acquainted in any way with any of
9 these witnesses

10 When I call the name, would you please stand?

11 Jermaine Heyward, H-E-Y-W-A-R-D?

12 I find none

13 Roy Cantrell?

14 I find none

15 Roosevelt Campbell?

16 I find none

17 Officer B Hawks with the Charleston County

18 Sheriff's Department, that would be Brian Hawks?

19 I find none

20 Deputy Don Frichtl, F-R-I-C-H-T-L, also with the
21 Charleston County Sheriff's Office?

22 Did I pronounce that too terribly much off?

23 MR. DURANT It's Frichtl, Your Honor

24 THE COURT Anyone for Deputy Frichtl?

25 All right I find none

1 Jesse Perrigo, P-E-R-R-I-G-O?
2 I find none
3 Ricky Bernard Holmes?
4 I find none.
5 Marcus Moultrie?
6 I find none
7 Johnny Buncumb?
8 I find none
9 Clifford Bernard Robinson?
10 I find none
11 Kenneth Sanders?
12 I find none.
13 Kevin Dunmeyer?
14 I'm sorry, yes, ma'am, your name and number?
15 THE JUROR Caroline Washington, 187
16 THE COURT And were you standing for Kenneth
17 Sanders?
18 THE JUROR Robinson
19 THE COURT Oh, for Clifford Bernard Robinson?
20 THE JUROR Yes, sir
21 THE COURT What is your acquaintance with Mr
22 Robinson?
23 THE JUROR Just went to school with him
24 THE COURT You went to school with him?
25 THE JUROR Right

1 THE COURT High school?

2 THE JUROR High school

3 THE COURT I hate to ask you your age, but how
4 long ago was that?

5 THE JUROR About 20 years ago.

6 THE COURT Okay The fact that you know him
7 and if he is called as a witness in this case, would it
8 affect your ability to serve as a fair and impartial juror
9 in the case?

10 THE JUROR No, sir

11 THE COURT All right Thank you.

12 Anyone else?

13 (There was no response from the jury panel)

14 THE COURT All right I think we called

15 Kenneth Sanders Kevin Dunmeyer?

16 I find none.

17 Antonio Washington?

18 I find none

19 James Murphy?

20 I find none

21 Anthony Ward?

22 I find none

23 Tron Brisbane, T-R-O-N, Brisbane?

24 I find none

25 Denode Heyward, D-E-N-O-D-E?

1 I find none
2 Catrell Douglas?
3 I find none
4 Denise Moultrie?
5 I find none
6 Shirley Ward?
7 I find none
8 Mike Anderson of the Charleston County Sheriff's
9 Office? This is Mr Anderson right here
10 All right. I find none
11 William "Billy" Crews with the Sheriff's Office
12 for Charleston County?
13 MR. DURANT He's standing in the back, Your
14 Honor
15 THE COURT He's back there
16 Shawn James with Charleston County Sheriff's
17 Office?
18 I find none
19 Paul McManigal of the Charleston County
20 Sheriff's Office?
21 I find none
22 Dennis Wenger, W-E-N-G-E-R?
23 I find none
24 Mike Ringley of the Charleston County Sheriff's
25 Office?

1 I find none
2 Dan DeFreese with State Law Enforcement?
3 I find none
4 Jennifer Stoner, also with SLED?
5 I find none
6 Ben Moore with SLED?
7 I find none
8 Dr Erin Presnell, E-R-I-N? Presnell is spelled
9 P-R-E-S-N-E-L-L
10 Yes, sir, your name and number?
11 THE JUROR. A friend of the family
12 THE COURT Pardon?
13 THE JUROR. Just a friend I've known for a
14 while
15 THE COURT And what is your name and number?
16 THE JUROR Ryan Scott, 164
17 THE COURT All right If you're seated as a
18 juror and Dr Presnell is called as a witness, would it
19 affect your ability to serve as a fair and impartial
20 juror?
21 THE JUROR No, Your Honor
22 THE COURT. All right
23 Anyone else?
24 Deborah Garrison?
25 I find none.

1 Clark E Green?

2 I find none

3 Is there any member of the jury panel who has a
4 family member or close friend who is or was formerly
5 incarcerated in the State penitentiary? If so, please
6 stand

7 Yes, ma'am, your name and number?

8 THE JUROR Edwina L Dunbar, 167

9 THE COURT. And could you tell us the
10 relationship to the person?

11 THE JUROR. I have a cousin that's at Lieber, if
12 that's what you're talking about

13 THE COURT Would that affect your ability to
14 serve as a fair and impartial juror in this case?

15 THE JUROR. No, sir

16 THE COURT. Anyone else?

17 Yes, ma'am, your name and number?

18 THE JUROR. My name is Patricia Coleman, Juror
19 32 I had a nephew that was incarcerated

20 THE COURT All right Would it affect your
21 ability to serve as a fair and impartial juror in this
22 case?

23 THE JUROR No, sir, Your Honor

24 THE COURT Thank you

25 Anyone else?

1 THE JUROR Linda Poplin, 142 I have a nephew
2 that is incarcerated

3 THE COURT Would it affect your ability to
4 serve as a fair and impartial juror?

5 THE JUROR No, sir

6 THE COURT Thank you

7 Anyone else?

8 (There was no response from the jury panel.)

9 THE COURT All right Any member of the jury
10 panel have a family member or a close friend who is being
11 or was formerly prosecuted by the Ninth Circuit
12 Solicitor's Office? If so, please stand.

13 (There was no response from the jury panel)

14 THE COURT I find none

15 Any member of the jury panel have any religious
16 or personal beliefs that would interfere with your sitting
17 in judgment of others in a criminal case? If so, please
18 stand

19 Yes, sir, your name and number?

20 THE JUROR Randal Rasmussen, No. 145 I'm a
21 Jehovah Witness and I would not be able to serve

22 THE COURT I will excuse you then from serving
23 on this case I would ask that you remain, though, and
24 we'll see if you can't serve on a civil case. Could you
25 give us your number again?

1 THE JUROR 145

2 THE COURT Thank you

3 Anyone else?

4 THE JUROR Your Honor?

5 THE COURT Oh, I'm sorry

6 THE JUROR 125. I'm not certain if it's a
7 death penalty case, but I'm not certain I could convict
8 someone if it were going to --

9 THE COURT This is not a death penalty case
10 All right

11 Anyone else? All right Thank you

12 Has any member of the jury panel or immediate
13 member of your family had a bad experience with a
14 policeman or a law enforcement officer which would affect
15 your ability to serve as a fair and impartial juror? If
16 so, please stand

17 (There was no response from the jury panel)

18 THE COURT. I find none

19 Any member of the jury panel a former member of
20 law enforcement in any capacity? If so, please stand.

21 Yes, sir, your name and number again?

22 THE JUROR 34, Luther Cook

23 THE COURT Okay And in what capacity did you
24 serve in law enforcement?

25 THE JUROR Thirty-four years U S Department of

1 Justice drug enforcement and in Charleston for nine years

2 THE COURT All right, sir Thank you

3 Any member of the jury panel or any of your
4 close personal friends employed by any law enforcement
5 agencies? If so, please stand.

6 Yes, ma'am, your name and number?

7 THE JUROR Leslie Godwin, 65.

8 THE COURT All right

9 THE JUROR: And Fletcher King is my cousin and
10 he's employed with the North Charleston Police Department

11 THE COURT: Okay Would it affect your ability
12 to serve as a juror in this case?

13 THE JUROR: No

14 THE COURT Thank you

15 THE JUROR Yes, I'm an acquaintance of Mr. Gene
16 Hammick and Jimmy Picklin I've lived across the street
17 from them for approximately five years They work for
18 Charleston

19 THE COURT Could you give us your name and
20 number?

21 THE JUROR Paul Murphy, 129

22 THE COURT Would this affect your ability to
23 serve as a fair and impartial juror in this case?

24 THE JUROR No, sir

25 THE COURT Yes, ma'am?

1 THE JUROR Wendy Sheppard, No 231 And I have
2 a cousin who's a DEA for the State

3 THE COURT All right Would it affect your
4 ability to serve as a fair and impartial juror in this
5 case?

6 THE JUROR No, sir

7 THE COURT Yes, ma'am?

8 THE JUROR Juror 32, Patricia Coleman I have
9 a nephew that serves with the juvenile detention center in
10 Columbia

11 THE COURT Would it affect your ability to
12 serve as a juror in this case?

13 THE JUROR No, sir, it would not

14 THE COURT Thank you

15 Yes, ma'am?

16 THE JUROR Kelly Messier, 118 My brother is
17 with the DeKalb County Police Department in Atlanta.

18 THE COURT. Would it affect your ability to
19 serve as a fair and impartial juror?

20 THE JUROR No, sir

21 THE COURT Thank you

22 Yes, sir?

23 THE JUROR: John Atherton, No. 8 I have a
24 first cousin that he's a police officer with the city
25 police department

1 THE COURT Would it affect your ability to
2 serve as a fair and impartial juror in this case?

3 THE JUROR No.

4 THE COURT Thank you

5 Yes, sir?

6 THE JUROR Richard Fisher, No 55.

7 Brother-in-law is a Mt Pleasant police officer

8 THE COURT All right Would it affect your
9 ability to serve as a fair and impartial juror in this
10 case?

11 THE JUROR No, sir.

12 THE COURT Thank you.

13 Yes, ma'am?

14 THE JUROR Evon Daise, Juror 41. My brother
15 was a former correction officer at Lieber

16 THE COURT. Would it affect your ability to
17 serve as a fair and impartial juror in this case?

18 THE JUROR No, sir.

19 THE COURT Thank you.

20 Anyone else?

21 THE JUROR Just to play it safe Juror 167,
22 Edwina L Dunbar I grew up in downtown Charleston, so I
23 know a couple of North Charleston police officers.

24 THE COURT Would it affect your ability to
25 serve as a fair and impartial juror

1 THE JUROR No.

2 THE COURT Thank you

3 Is there any member of the jury panel or any of
4 your immediate family members affiliated with any victims'
5 right organizations or organizations which promote law
6 enforcement, such as Citizens Against Violent Crimes,
7 known as CAVE, People Against Rape or any other kind of
8 organization like that? If so, please stand

9 (There was no response from the jury panel)

10 THE COURT I find none

11 Any member of the jury panel ever been -- either
12 you or an immediate family member or friend ever been a
13 victim of a violent crime? If so, please stand.

14 Yes, ma'am?

15 THE JUROR Clara Singleton, 171. I had a niece
16 that was just murdered in October of last year

17 THE COURT October of 2004?

18 THE JUROR Yes

19 THE COURT All right Would the fact that you
20 have had such an incident in your family in recent past,
21 would that affect your ability to serve as a fair and
22 impartial juror in this case either for or against the
23 plaintiff -- or the State or for or against either of the
24 defendants?

25 THE JUROR I think it might would

1 THE COURT I'm sorry?

2 THE JUROR I feel like it would.

3 THE COURT I will excuse you then from service
4 on this case, but I'll ask that you be seated and we'll
5 probably have you seated on one of the civil cases then
6 Thank you

7 THE JUROR Kathryn Norton, 133 A close friend
8 of mine was brutally murdered and it was awhile ago, but
9 it's still very real to me

10 THE COURT Would it affect your ability to
11 serve as a fair and impartial juror in this case?

12 THE JUROR It possibly would

13 THE COURT I will excuse you from service on
14 this case and ask you to be seated so we will put you on
15 one of our civil Could you give us your number again,
16 please?

17 THE JUROR 133

18 THE COURT Thank you

19 Yes, ma'am, your name and number?

20 THE JUROR I'm Linda Ward, No 185. My father
21 was held up at gunpoint And he wanted to shoot him, but
22 he wouldn't go into the back of the shop He said no, if
23 you're going to shoot me, you have to shoot me out front
24 and he left But he sold the shop for half of what it was
25 worth

1 THE COURT Do you think that would affect your
2 ability to serve as a fair and impartial juror in this
3 case?

4 THE JUROR Possibility

5 THE COURT You think it would?

6 THE JUROR Uh-huh

7 THE COURT I will excuse you from service on
8 this case and ask you that you be seated and we will seat
9 you on a civil case Your number again, ma'am?

10 THE JUROR I'm 185

11 THE COURT Yes, sir?

12 THE JUROR: Cordaro Mitchell, I don't know my
13 number.

14 THE COURT What was your name again?

15 THE JUROR Cordaro Mitchell.

16 THE COURT Mitchell, okay

17 THE JUROR I'm not sure of my number

18 THE COURT I'm sorry, could you speak up? You
19 said your name was Darryl Mitchell?

20 THE JUROR Cordaro

21 THE COURT Okay Tell me again

22 THE JUROR I got a close relative murdered

23 THE COURT All right And how long ago was
24 this?

25 THE JUROR 2003

1 THE COURT And would it affect your ability to
2 serve as a fair and impartial juror in this case?

3 THE JUROR Possibility

4 THE COURT All right I will excuse you from
5 service on this case then and we will put you on the jury
6 panel for the civil cases

7 Yes, ma'am, your name and number?

8 THE JUROR Deborah Clowers, 207. May I come
9 up?

10 THE COURT Yes, ma'am

11 Y'all can come on up If the lawyers want to
12 come up, you can

13 (WHEREUPON, a bench conference was held in the
14 presence of the jury but out of the hearing of
15 the jury)

16 THE COURT Yes, ma'am? Tell me your name and
17 number again?

18 THE JUROR Deborah Clowers, 207

19 THE COURT. Okay

20 THE JUROR I was in an abusive relationship
21 where I was beat the heck out of and so violent crimes,
22 I'm afraid that I would hang them Sorry

23 THE COURT So you think you would not be able
24 to be a fair and impartial juror?

25 THE JUROR I don't think I would be fair

1 THE COURT We will excuse you from this jury
2 and ask that you be seated and we'll put you on one of the
3 civil cases

4 THE JUROR All right.

5 THE COURT Thank you for coming forward
6 Anyone else?

7 Yes, ma'am, your name and number?

8 THE JUROR Carolyn Washington, 187.

9 THE COURT Did you want to come up?

10 THE JUROR I don't know any of the guys that
11 are here, but the guy that was murdered was my nephew's
12 friend So I don't think I would be able to

13 THE COURT· You think it would cause you not to
14 be able to be a fair and impartial juror?

15 THE JUROR Right.

16 THE COURT Okay. Well, I appreciate you coming
17 forward. We will excuse you from this case, but we will
18 put you on a civil trial Thank you.

19 Anyone else?

20 Yes, sir, your name and number?

21 THE JUROR Richard Lewis, 222 My sister was
22 murdered by a dope dealer, a crack head

23 THE COURT· Do you think it would affect your
24 ability to serve as a fair and impartial juror in this
25 case?

1 THE JUROR Yes, it would

2 THE COURT I will excuse you from service on
3 this jury then

4 Anyone else?

5 Could you give us your name and number again,
6 that last gentleman?

7 THE JUROR Richard Lewis, 222

8 THE COURT Thank you.

9 Is there any member of the jury panel, do you
10 have any kind of opinions or experiences or feelings about
11 homicides which would render it difficult for you to serve
12 on a jury in which the defendant is charged with homicide
13 and you haven't already answered this question previously
14 or been excused from service because of a prior incident?
15 But if you have some kind of an opinion or feeling because
16 based on experience or it's just your opinion that you
17 don't feel you could be a fair and impartial juror, would
18 you please stand?

19 (There was no response from the jury panel.)

20 THE COURT All right I find none

21 Is there any member of the jury panel that is
22 aware of any publicity regarding this case? If so, please
23 stand

24 (There was no response from the jury panel)

25 THE COURT All right. I find none

1 Is there anyone that knows or works with the
2 victim, Jamie Simmons, or his family and you haven't
3 already stood up in response to a previous question?

4 (There was no response from the jury panel.)

5 THE COURT All right I find none

6 Is there anyone that knows anything at all about
7 the facts of this case now that you've heard a little bit
8 more about it, does it refresh your memory at all?

9 (There was no response from the jury panel.)

10 THE COURT All right. I find none.

11 Is there any member of the jury panel who has
12 ever been to the Club Diamante which is located on
13 Toogoodoo Road in Ravenel, Meggett area?

14 (There was no response from the jury panel)

15 THE COURT I find none

16 Any member of the jury panel ever lived in the
17 Hollywood, Ravenel, Meggett or Young's Island area? If
18 so, please stand

19 Okay I'm just going to ask you to state your
20 name and your jury number All right

21 We'll start with you Yes, ma'am?

22 THE JUROR Clara Singleton, 171

23 THE COURT Thank you

24 Yes, ma'am?

25 THE JUROR Elaine Shaw, 165

1 THE COURT All right Thank you.
2 Yes, sir?
3 THE JUROR. Eugene Singleton, 172.
4 THE COURT Yes, sir?
5 THE JUROR Arthur Matthews, 110.
6 THE COURT Thank you
7 THE JUROR I wasn't quite sure if you said
8 Young's Island or John's Island
9 THE COURT. Young's, Hollywood, Ravenel or
10 Meggett
11 THE JUROR Okay
12 THE COURT Yes, ma'am?
13 THE JUROR Carolyn Washington, 187.
14 THE COURT. Thank you
15 THE JUROR Evon Daise, 41.
16 THE JUROR Ricky Williams, 152.
17 THE COURT Thank you
18 THE JUROR John Atherton, No. 8.
19 THE COURT Thank you
20 Any member of the jury panel have any friends or
21 relatives that live in the Cherry Hill Road area and you
22 haven't already responded to a previous question or been
23 excused?
24 (There was no response from the jury panel)
25 THE COURT I find none

1 Any member of the jury panel have any friends or
2 relatives that live in the Petersfield Road area and you
3 have not already responded to a previous question?

4 (There was no response from the jury panel.)

5 THE COURT All right I find none

6 Now, earlier, when you were in jury
7 qualification, there was a question about whether or not
8 you had ever been convicted of a crime that involved your
9 time of punishment could have exceeded one year That
10 would disqualify you from serving on a jury But in this
11 case, I would just ask if there's any member of the jury
12 panel that has ever been accused of a crime and may or may
13 not have resulted in a conviction, you may have been found
14 not guilty? If you have, would you please stand. And if
15 you would prefer to come forward and tell me about just
16 what it was basically and what the disposition of it was
17 you can come up front for me If that applies to anyone,
18 please stand. All right

19 THE JUROR. Your Honor, does that apply to
20 traffic violations?

21 THE COURT. I'm sorry, anything other than just
22 traffic tickets, parking tickets, that sort of thing

23 (There was no response from the jury panel)

24 THE COURT. All right I find none

25 Is there any member of the jury panel ever been

1 a witness in a civil trial or a criminal trial? If so,
2 please stand

3 THE JUROR. Criminal

4 THE COURT All right Yes, sir, your name and
5 number?

6 THE JUROR Luther Cook, 34

7 THE COURT You were a witness in what kind of
8 case?

9 THE JUROR Any kind of drug case you want to
10 name.

11 THE COURT All right Thank you.

12 Anyone else?

13 THE JUROR Gerald Gaeta, 213 I was hired as a
14 professional expert witness for the City of Chesapeake.
15 It never went to trial, but spent time with the attorneys
16 It was a contract breach violation.

17 THE COURT. All right Thank you

18 Anyone else?

19 (There was no response from the jury panel.)

20 THE COURT Has any member of the jury panel
21 ever been an eyewitness to a crime? If so, please stand

22 (There was no response from the jury panel.)

23 THE COURT. I find none

24 THE JUROR Same thing, Judge?

25 THE COURT I'm sorry?

1 THE JUROR Same circumstances

2 THE COURT Okay Thank you. Again, just your
3 name and number for the record?

4 THE JUROR Luther Cook, 34.

5 THE COURT Thank you

6 Any member of the jury panel even been employed
7 by Charleston County?

8 (There was no response from the jury panel.)

9 THE COURT All right. I find none.

10 THE JUROR Your Honor, does that include school
11 teacher for Charleston County?

12 THE COURT Yeah, I guess it would

13 THE JUROR Okay

14 THE COURT Okay Let's go ahead and just start
15 with you Just give us your name and number

16 THE JUROR Debbie Brigman, 205

17 THE COURT You're a school teacher?

18 THE JUROR I am, for 31 years

19 THE COURT Okay Thank you

20 THE JUROR Deborah Gwinn, 216, school teacher

21 THE COURT All right. Thank you.

22 THE JUROR Merle Tamsberg, 234 I was an
23 administrator.

24 THE COURT Thank you

25 THE JUROR Kerry Sullivan, 232

1 THE COURT All right Thank you.

2 Yes, sir?

3 THE JUROR Lawrence White, 196, Charleston
4 County RMC

5 THE COURT All right

6 Yes, ma'am?

7 THE JUROR Martha Ameika, No 5, school
8 librarian for 15 years

9 THE JUROR Alicia Bowles, 204, school teacher

10 THE JUROR Kim Kirkman, No 98, guidance
11 counselor for Berkeley County

12 THE COURT All right Thank you.

13 Let me ask you now if the consumption of alcohol
14 is a factor in a case, would anyone on the jury panel have
15 any opinions about alcohol consumption that would affect
16 your ability to serve as a fair and impartial jury in the
17 case? For instance, if the fact came out there was
18 alcohol consumed as part of an incident that took place,
19 would you have an opinion about that such that you feel
20 like you would not be able to be a fair and impartial
21 juror? If so, please stand.

22 (There was no response from the jury panel)

23 THE COURT. I find none.

24 Is there any member of the jury panel, you or an
25 immediate family member own a gun or have you ever used a

1 gun? If so, please stand

2 Okay. All I'm going to ask is that you give us
3 your name and your juror number And if for some reason
4 you feel like the fact that you own a gun would keep you
5 from being a fair and impartial juror, let me know at that
6 time, otherwise, just tell me your name and your juror
7 number We'll just start over here on this side of the
8 room and work our way across I think that lady back in
9 the corner.

10 THE JUROR Leslie Godwin, 65

11 THE COURT Also, if there's any member of the
12 jury panel that has already been excused by me, you can go
13 ahead and sit down

14 THE JUROR Arthur Matthews, 110

15 THE JUROR Luther Cook, 34.

16 THE JUROR. Kirk Carter, 97

17 THE JUROR Michael Groshon, 215

18 THE JUROR Denise Corriher, 208

19 THE JUROR Shana Caporossi, 27

20 THE JUROR John Meyers, 119

21 THE JUROR Elaine Shaw, 165

22 THE JUROR Styles Bee, 13

23 THE JUROR Deborah Gwinn, 216

24 THE JUROR Leanne Wojtkowski, 239

25 THE JUROR. Linda Poplin, 142.

1 * THE JUROR Merle Tamsberg, 234
2 THE JUROR Lorrie Darling, 42
3 THE JUROR Margaret Smith, 230
4 THE JUROR Larcie Hunter, 219
5 THE JUROR Kelly Messier, 118
6 THE JUROR Lawrence White, 196
7 THE JUROR Wessie Mitchell, 125
8 THE JUROR Wright Tramount, 235.
9 THE JUROR Crystal Avant, No 10
10 THE JUROR Edwina L Dunbar, 167.
11 THE JUROR Jacquelyn Johnson, 90
12 THE JUROR Robert Lasseter, 104.
13 THE JUROR James Gardner, 63.
14 THE JUROR Paul Murphy, 129
15 THE JUROR Ryan Scott, 164
16 THE JUROR Robert McCoy, 114
17 THE COURT Thank you
18 Anyone else?
19 (There was no response from the jury panel)
20 THE COURT All right Is there any member of
21 the jury panel that knows of any reason whatsoever why
22 they feel like they could not be a fair and impartial
23 juror in this case and you haven't already responded to
24 some form of that question before or you haven't already
25 been excused? If you feel like you could not be a fair

1 and impartial juror, I would ask that you please stand.

2 (There was no response from the jury panel.)

3 THE COURT All right I find none

4 I think that covered all of your questions. Was
5 there anything that I left out from the State?

6 MR DURANT: No, sir

7 THE COURT From the defense?

8 MISS JENKINSON No, sir

9 THE CLERK Ladies and gentlemen, when I call
10 your name and jury number, would you please gather your
11 personal belongings and come forward, stand in front of
12 the podium, turn and face the audience

13 Juror No 27, Shana Caporossi

14 (Whereupon, Shana Caporossi, a white female,
15 came forward)

16 THE CLERK What say you for the State?

17 MR DURANT- Please present Ms Caporossi.

18 THE CLERK What say you for the Defendant
19 Washington?

20 MR RUNYON Swear the jury, please

21 THE CLERK: What say you for the Defendant Ward?

22 MISS JENKINSON Beg the Court's indulgence

23 Please seat the juror

24 THE CLERK- Ma'am, you have been selected for
25 the trial of this case Please have a seat in the jury

1 box

2 Juror No 239, Leanne Wojtkowski.

3 (Whereupon, Leanne Wojtkowski, a female, came
4 forward.)

5 THE CLERK. What say you for the State?

6 MR DURANT Please present Ms Wojtkowski.

7 THE CLERK. What say you for Defendant
8 Washington?

9 MR RUNYON Swear the juror, please

10 THE CLERK What say you for Defendant Ward?

11 MISS JENKINSON Please seat the juror

12 THE CLERK Ma'am, you have been selected for
13 the trial of this case Please have a seat in the jury
14 box

15 Juror No 41, Evon Daise

16 (Whereupon, Evon Daise, a black female, came
17 forward)

18 THE CLERK What say you for the State?

19 MR DURANT Please present Ms Daise

20 THE CLERK. What say you for Defendant
21 Washington?

22 MR RUNYON Please excuse the juror from this
23 case

24 THE CLERK. Ma'am, you have been excused from
25 the trial of this case Please have a seat back in the

1 audience

2 Juror No 91, Noel Johnson

3 (Whereupon, Noel Johnson, a white male, came
4 forward.)

5 THE CLERK What say you for the State?

6 MR DURANT Please present Mr Johnson

7 THE CLERK: What say you for Defendant
8 Washington?

9 MR. RUNYON. Swear the juror, please.

10 THE CLERK What say you for the Defendant Ward?

11 MISS JENKINSON Please seat Mr. Johnson

12 THE CLERK Sir, you have been selected for the
13 trial of this case Please have a seat in the jury box

14 Juror No 167, Edwina Dunbar

15 (Whereupon, Edwina Dunbar, a black female, came
16 forward)

17 THE CLERK What say you for the State?

18 MR DURANT Please excuse Ms Dunbar from the
19 trial of this case

20 THE CLERK. Ma'am, you've been excused from the
21 trial of this case Please have a seat back in the
22 audience

23 Juror No 235, Chris Tramount Wright

24 (Whereupon, Chris Tramount Wright, a white male,
25 came forward)

1 THE CLERK What say you for the State?

2 MR DURANT Please excuse Mr Wright from the

3 trial of this case

4 THE CLERK Sir, you've been excused from the

5 trial of this case Please have a seat back in the

6 audience

7 Juror No 65, Leslie Godwin

8 (Whereupon, Leslie Godwin, a black female, came

9 forward)

10 THE CLERK What say you for the State?

11 MR DURANT Please present Ms Godwin

12 THE CLERK What say you for Defendant

13 Washington?

14 MR RUNYON. Swear the juror, please

15 THE CLERK What say you for the Defendant Ward?

16 MISS JENKINSON. Please excuse the juror.

17 THE CLERK Ma'am, you've been excused from the

18 trial of this case Please have a seat back in the

19 audience

20 Juror No 104, Robert Lasseter, Jr.

21 (Whereupon, Robert Lasseter, Jr., a white male,

22 came forward)

23 THE CLERK What say you for the State?

24 MR DURANT: Please present Mr Lasseter

25 THE CLERK What say you for Defendant

1 Washington?

2 MR RUNYON Swear the juror, please, Mr Clerk

3 THE CLERK What say you for Defendant Ward?

4 MISS JENKINSON Please seat Mr Lasseter

5 THE CLERK Sir, you've been selected for the

6 trial of this case Please have a seat in the jury box

7 Juror No 62, James Gandy, III.

8 (Whereupon, James Gandy, a white male, came

9 forward)

10 THE CLERK What say you for the State?

11 MR DURANT. Please excuse Mr Gandy from the

12 trial of this case

13 THE CLERK Sir, you've been excused from the

14 trial of this case Please have a seat back in the

15 audience.

16 Juror No 98, Kim Kirkland

17 (Whereupon, Kim Kirkland, a white female, came

18 forward)

19 THE CLERK: What say you for the State?

20 MR DURANT. Please present Ms Kirkland.

21 THE CLERK What say you for Defendant

22 Washington?

23 MR RUNYON: Please excuse the juror

24 THE CLERK: Ma'am, you've been excused from the

25 trial of this case Please have a seat back out in the

1 audience

2 Juror No 177, Janie Sutton, a black female,
3 came forward)

4 THE CLERK What say you for the State?

5 MR DURANT Please present Ms Sutton

6 THE CLERK What say you for Defendant
7 Washington?

8 MR RUNYON Swear the juror, please, Mr Clerk.

9 THE CLERK What say you for Defendant Ward?

10 MISS JENKINSON Please seat Ms Sutton

11 THE CLERK Ma'am, you've been selected for the
12 trial of this case Please have a seat in the jury box

13 Juror No 216, Deborah Gwinn

14 (Whereupon, Deborah Gwinn, a female, came
15 forward)

16 THE CLERK What say you for the State?

17 MR DURANT Please present Ms Gwinn

18 THE CLERK What say you for Defendant
19 Washington?

20 MR RUNYON. Please excuse this juror, Mr.
21 Clerk.

22 THE CLERK Ma'am, you've been excused from the
23 trial of this case Please have a seat back in the
24 audience

25 Juror No 164, Ryan Scott.

1 (Whereupon, Ryan Scott, a white male, came
2 forward)

3 THE CLERK What say you for the State?

4 MR DURANT Please present Mr. Scott

5 THE CLERK What say you for Defendant
6 Washington?

7 MR RUNYON Excuse the juror, please, Mr
8 Clerk

9 THE CLERK Sir, you've been excused from the
10 trial of this case. Please have a seat back in the
11 audience

12 Juror No 49, Jon Doyle.

13 (Whereupon, Jon Doyle, a white male, came
14 forward)

15 THE CLERK What say you for the State?

16 MR DURANT Please present Mr Doyle.

17 THE CLERK What say you for Defendant
18 Washington?

19 MR RUNYON Swear the juror, please, Mr Clerk

20 THE CLERK What say you for Defendant Ward?

21 MISS JENKINSON Please seat Mr Ward

22 THE CLERK Sir, you've been selected for the
23 trial of this case Please have a seat in the jury box

24 Juror No 63, James Gardner, II

25 (Whereupon, James Gardner, II, a white male,

1 came forward)

2 THE CLERK What say you for the State?

3 MR DURANT Please present Mr Gardner.

4 THE CLERK What say you for Defendant

5 Washington?

6 MR RUNYON. Please excuse the juror in this

7 case

8 THE CLERK Sir, you've been excused from the

9 trial of this case Please have a seat back in the

10 audience.

11 Juror No. 195, Elanor Whitcomb.

12 (Whereupon, Elanor Whitcomb, a white female,

13 came forward)

14 THE CLERK What say you for the State?

15 MR DURANT Please present Ms. Whitcomb

16 THE CLERK What say you for Defendant

17 Washington?

18 MR RUNYON: Swear the juror, please, Mr Clerk

19 THE CLERK What say you for Defendant Ward?

20 MISS JENKINSON. Please seat Ms Whitcomb.

21 THE CLERK Ma'am, you've been selected for the

22 trial of this case Please have a seat in the jury box

23 Juror No 129, Paul Murphy

24 (Whereupon, Paul Murphy, a white male, came

25 forward)

1 THE CLERK What say you for the State?

2 MR DURANT Please present Mr Murphy

3 THE CLERK What say you for Defendant

4 Washington?

5 MR RUNYON Please excuse the juror in this

6 case

7 THE CLERK Sir, you've been excused from the

8 trial of this case Please have a seat back out in the

9 audience

10 Juror No 172, Eugene Singleton.

11 (Whereupon, Eugene Singleton, a black male, came

12 forward)

13 THE CLERK What say you for the State?

14 MR. DURANT Please excuse the juror from the

15 trial of this case.

16 THE CLERK Sir, you've been excused from the

17 trial of this case Please have a seat back out in the

18 audience

19 Juror No 125, Wessie Mitchell

20 (Whereupon, Wessie Mitchell, a white female,

21 came forward)

22 THE CLERK. What say you for the State?

23 MR DURANT Please present Ms Mitchell

24 THE CLERK: What say you for Defendant

25 Washington?

1 MR RUNYON Please excuse the juror in this
2 case

3 THE CLERK Ma'am, you've been excused from the
4 trial of this case Please have a seat back in the
5 audience

6 Juror No 68, Ronald Gorick
7 (Whereupon, Ronald Gorick, a white male, came
8 forward)

9 THE CLERK What say you for the State?

10 MR DURANT Please present Mr Gorick

11 THE CLERK What say you for Defendant
12 Washington?

13 MR RUNYON Swear the juror, please, Mr Clerk

14 THE CLERK What say you for Defendant Ward?

15 MISS JENKINSON. Please seat the juror

16 THE CLERK: Sir, you've been selected for the
17 trial of this case Please have a seat in the jury box

18 Juror No 110, Arthur Matthews

19 (Whereupon, Arthur Matthews, a black male, came
20 forward)

21 THE CLERK What say you for the State?

22 MR DURANT Please excuse Mr Matthews from the
23 trial of this case?

24 THE CLERK Sir, you've been excused from the
25 trial of this case Please have a seat back in the

1 audience

2 Juror No 138, Mark Pantsari

3 (Whereupon, Mark Pantsari, a while male, came

4 forward)

5 THE CLERK What say you for the State?

6 MR DURANT Please present Mr Pantsari

7 THE CLERK What say you for Defendant

8 Washington?

9 MR RUNYON Swear the juror, please, Mr Clerk

10 THE CLERK What say you for Defendant Ward?

11 MISS JENKINSON. Please seat Mr Pantsari.

12 THE CLERK. Sir, you've been selected for the

13 trial of this case Please have a seat in the jury box

14 Juror No 196, Lawrence White

15 (Whereupon, Lawrence White, a white male, came

16 forward)

17 THE CLERK What say you for the State?

18 MR DURANT. Please present Mr White

19 THE CLERK What say you for Defendant

20 Washington?

21 MR. RUNYON Swear the juror, please, Mr Clerk

22 THE CLERK : What say you for Defendant Ward?

23 MISS JENKINSON. Please seat Mr White

24 THE CLERK Sir, you've been selected for the

25 trial of this case Please have a seat in the jury box

1 Juror No 165, Elaine Shaw
2 (Whereupon, Elaine Shaw, a white female, came
3 forward)
4 THE CLERK What say you for the State?
5 MR DURANT Please present Ms Shaw
6 THE CLERK What say you for Defendant
7 Washington?
8 MR RUNYON Please swear the juror, Mr Clerk
9 THE CLERK What say you for Defendant Ward?
10 MISS JENKINSON Please excuse Ms. Shaw
11 THE CLERK. Ma'am, you've been excused from the
12 trial of this case Please have a seat back in the
13 audience
14 Juror No 118, Kelly Messier
15 (Whereupon, Kelly Messier, a white female, came
16 forward)
17 THE CLERK What say you for the State?
18 MR DURANT Please present Mr. Messier
19 THE CLERK What say you for Defendant
20 Washington?
21 MR RUNYON Swear the juror, please, Mr Clerk
22 THE CLERK. What say you for Defendant Ward?
23 MISS JENKINSON Please excuse Ms Messier.
24 THE CLERK Ma'am, you've been excused from the
25 trial of this case Please have a seat back in the

1 audience

2 Juror No 33, Mary Cook

3 (Whereupon, Mary Cook, a white female, came

4 forward)

5 THE CLERK What say you for the State?

6 MR. DURANT. Please present Ms. Cook.

7 THE CLERK What say you for Defendant

8 Washington?

9 MR. RUNYON Swear the juror, please, Mr Clerk

10 THE CLERK What say you for Defendant Ward?

11 MISS JENKINSON Please seat Ms Cook

12 THE CLERK Ma'am, you've been selected for the

13 trial of this case. Please have a seat in the jury box

14 Juror No 202, Gretchen Beissel

15 (Whereupon, Gretchen Beissel, a white female,

16 came forward)

17 THE CLERK. What say you for the State?

18 MR. DURANT Please present Ms Beissel.

19 THE CLERK What say you for Defendant

20 Washington?

21 MR. RUNYON Swear the juror, please, Mr Clerk.

22 THE CLERK What say you for Defendant Ward?

23 MISS JENKINSON Please excuse Ms Beissel

24 THE CLERK Ma'am, you've been excused from the

25 trial of this case Please have a seat back in the

1 audience

2 Juror No 223, Sara Lyle

3 (Whereupon, Sara Lyle, a white female, came
4 forward)

5 THE CLERK What say you for the State?

6 MR DURANT Please present Ms. Lyle.

7 THE CLERK What say you for Defendant
8 Washington?

9 MR RUNYON Swear the juror, please, Mr Clerk

10 THE CLERK What say you for Defendant Ward?

11 MISS JENKINSON Please seat Ms Lyle

12 THE CLERK. Ma'am, you've been selected for the
13 trial of this case. Please have a seat back in the jury
14 box

15 THE CLERK Your Honor, those are our 12 jurors
16 Two alternates?

17 THE COURT Two alternates

18 THE CLERK. Strikes are two and one

19 Juror No 119, John Meyers, Jr

20 (Whereupon, John Meyers, Jr , a white male, came
21 forward)

22 THE CLERK What say you for the State?

23 MR DURANT Please present Mr. Meyers.

24 THE CLERK: What say you for Defendant
25 Washington?

1 MR RUNYON Swear the juror, please, Mr Clerk

2 THE CLERK What say you for Defendant Ward?

3 MISS JENKINSON Please seat Mr Meyers

4 THE CLERK: Sir, you've been selected for the

5 trial of this case Please have a seat in the jury box

6 Juror No 221, Marcia Jones

7 (Whereupon, Marcia Jones, a white female, came

8 forward)

9 THE CLERK What say you for the State?

10 MR DURANT Please present Ms. Jones.

11 THE CLERK What say you for Defendant

12 Washington?

13 MR RUNYON Please excuse the juror, Mr Clerk

14 THE CLERK Ma'am, you've been excused from the

15 trial of this case Please have a seat back in the

16 audience

17 Juror No. 3, Philip Aldous

18 (Whereupon, Philip Aldous, a white male, came

19 forward)

20 THE CLERK What say you for the State?

21 MR DURANT Please present the juror

22 THE CLERK What say you for Defendant

23 Washington?

24 MR RUNYON Swear the juror, please, Mr Clerk

25 THE CLERK What say you for Defendant Ward?

1 MISS JENKINSON. Please seat Mr Aldous

2 THE CLERK Sir, you've been selected for the
3 trial of this case Please have a seat in the jury box

4 Your Honor, the jury has been selected

5 THE COURT Anything from the State?

6 MR DURANT No, sir

7 THE COURT From Mr. Washington?

8 MR RUNYON. Nothing on behalf of Defendant
9 Washington

10 THE COURT Mr. Ward?

11 MISS JENKINSON. No, sir

12 THE COURT Well, ladies and gentlemen, then,
13 you are the jury for this case, which we will begin after
14 lunch Right now, it's 12 30 I'm going to send you back
15 to the jury room right now, where you will report back
16 to -- I will ask that you report back at 2:00 where
17 they're going to take you right now You're not sworn yet
18 and you haven't heard any testimony yet, but you do know a
19 little bit about the case based on what we've told you
20 So I will tell you now for the first time, and you'll hear
21 this many times throughout the trial, do not begin
22 deliberations or discussions about the case in any form
23 It's not proper for you to begin to make up your mind or
24 discuss the case until all of the evidence has been in at
25 the end of the trial and I have charged you on the law

1 So at this time, I will send you back with the
2 bailliff, ask that you report back there at 2.00 When you
3 get back, spend a few minutes getting to know each other
4 and I would like to have y'all chose a foreperson amongst
5 yourselves Any one of you can be the foreperson except
6 the two alternates So we will see you back at 2 00.
7 Thank you very much

8 (WHEREUPON, the following proceedings were held
9 outside the presence of the jury)

10 THE COURT. Now, the rest of you folks, I'm
11 going to send you to lunch as well Judge Nicholson is
12 hearing some motions in the case that he's going to hear,
13 so he's not going to be ready for you right now I'd ask
14 that you report back to the jury assembly room where you
15 were at earlier this morning at 2 15 and they should be
16 ready for you So try and get back in there before 2:15
17 Hopefully, at 2 15, they will be ready for you Thank you
18 for your patience

19 (WHEREUPON, the jury panel was excused)

20 THE COURT. Yes, sir, Mr Runyon?

21 MR RUNYON. Judge, housekeeping matter,
22 essentially, it's a housekeeping matter My client has
23 been on bond for a substantial period of time Mr Ward
24 has some fine lawyers who can argue his case I think
25 he's on bond, also. We ask that -- Mr. Washington's bond

1 is a property bond in the clerk's office and we would ask
2 that Mr Ward be allowed to remain on bond throughout the
3 trial

4 THE COURT What is the State's position?

5 MR. DURANT: I have no position in regards to
6 that, Your Honor

7 MISS JENKINSON Mr Ward is on satellite
8 monitoring I have also spoken to Larry Ballor, who is
9 his bondsman He agrees to stay on the bond during the
10 trial if the Court sees fit. When this case was heard
11 against Mr. Ward in December, he also stayed on bond and
12 reported to court each morning We ask that you allow him
13 to stay on bond.

14 MR RUNYON Mr Washington, likewise, is on a
15 monitor, don't think it's a satellite, but it's a monitor
16 And he -- frankly, he testified in the last case He was
17 not called as the defendant, but he testified in the last
18 case

19 THE COURT. Does the State have any position on
20 Mr Ward?

21 MR DURANT Not as long as Mr. Ballor agrees to
22 stay on the bond I talked to Mr. Ballor, which was like
23 Thursday or Friday of last week, he was talking to me
24 about going off of Mr Ward's bond

25 THE COURT As long as the people that posted

1 bond are willing to stay on, they can stay on during the
2 trial But I want a verification before we leave as to
3 whether or not they will stay on the bond All right.

4 MISS JENKINSON Yes, sir

5 THE COURT Have the defendants been presented
6 with the indictments? Are there any challenges to the
7 sufficiency from the indictments?

8 MR RUNYON: None from Defendant Washington,
9 Judge

10 THE COURT. Mr Ward?

11 MISS JENKINSON No, sir

12 THE COURT Have they both been arraigned and
13 pled not guilty?

14 MR RUNYON: Plead not guilty and waives
15 arraignment

16 THE COURT: Waive arraignment?

17 MISS JENKINSON Mr Ward waives arraignment,
18 yes, sir

19 THE COURT. Is there anything that we need to
20 take up before we --

21 MR DURANT Your Honor, we have a Jackson V
22 Denno, actually, as to both of the defendants in this
23 case I don't know what you want to do in terms of taking
24 that up The Jackson V Denno of Mr Ward was heard in the
25 previous trial I don't know Obviously, it's a

1 different matter at this point and I'm sure they would
2 probably want to go back and do that again unless it's
3 waived by the defendants

4 MR BUTLER Does the statement offer the same
5 testimony against Mr. Ward in this trial?

6 MR DURANT It would be the same testimony with
7 regard to Mr Ward Now, in terms of the substance of the
8 actual statement, that is something we're probably going
9 to have to deal with in terms of proving it at a later
10 time But in terms of the testimony concerning the
11 admissibility of the statement, it would be the same.

12 MR. BUTLER I understand But the substance of
13 Mr Ward's statement, if anything, will be less because
14 there aren't any other statements?

15 MR DURANT Correct There are not any other
16 statements which I'm aware Like I said, there may be
17 some redactions to making mention to Mr Runyon's client
18 out of it or things of that nature, but as to Mr Ward, it
19 will remain the same

20 MR BUTLER I don't think we can waive a Denno
21 hearing, but I will not object to his having that portion
22 of the transcript in the previous trial made part of the
23 record and my position would be the same as it was then
24 I think I had some objection, but I would not object to
25 handling it that way I assume the testimony would be the

1 same, so my questions would be the same There's no
2 reason to go over it again

3 MR DURANT The testimony would be the same as
4 regards to me, but I do not have a copy of that portion of
5 the transcript. So if you would be willing to present
6 that to the Court as a Court's Exhibit, that would be
7 fine

8 MR BUTLER We can do that

9 THE COURT I'm not aware of it I would have
10 to look at it If you're willing to stipulate to that,
11 that's fine

12 MR BUTLER That's fine

13 MR. RUNYON I don't necessarily and for very
14 simple reasons And let's state them one at a time. If
15 they want to introduce something that he testified to at a
16 prior trial that we were not party to, by virtue of being
17 able to cross-examine, I would object

18 MR BUTLER Just to make it easy, just part of
19 the record for the Judge's purposes of determining whether
20 or not his statement was taken voluntarily, not into
21 evidence

22 MR RUNYON Okay

23 And then the second thing, Judge, is my friend
24 and adversary over here has indicated that he wants to try
25 to place into record some statements of Mr Ward, I

1 believe, redacted And, frankly, we do have -- we want a
2 continuing objection to that

3 THE COURT By redacted, you mean he took them
4 back?

5 MR. RUNYON No, sir, redacted by virtue of
6 taking something out

7 THE COURT. Oh, scratching something out?

8 MR. RUNYON. Yes, sir My objection to that
9 is -- to their admissibility, quite frankly, is very
10 simple We don't get a chance to cross-examine that
11 statement, number one Number two, while the courts have
12 allowed that and I know there are cases that can go both
13 ways, but the simple fact is, Judge, it doesn't matter if
14 you redact it Everybody knows who we're talking about
15 because the flow of the case is going to show that
16 Mr Ward, Mr Washington and another gentleman will
17 testify were all in the truck, so it's not -- you know,
18 this jury over here, they're not dumb They're pretty
19 intelligent folks So they will be able to figure out who
20 Mr Ward is talking about If we can't cross-examine
21 that, we have a continuing objection

22 THE COURT I guess I need to take a look at
23 them then.

24 Do you plan on putting that up today?

25 MR. DURANT No, sir, that would probably, in

1 all likelihood, be around Wednesday or so. I have already
2 provided both counsel with -- I've done like -- they're
3 like -- he gave like three different statements, one
4 unsigned and two that are signed I think everybody
5 agrees that the first unsigned statement is not
6 incriminatory to Mr Runyon's client at all

7 We agreed on that

8 MR RUNYON I think so, Judge He didn't
9 mention my client's name, so I'm not unhappy with that
10 one

11 MR DURANT As to the remaining two statements
12 that were given by Mr Ward, then I prepared various
13 redacted versions of those two We prepared two versions
14 of one and three versions of another Basically, in some
15 of them -- and just to categorize these in broad matter,
16 some of them leave out the fact of whose truck they were
17 in, who owned the truck they were in, that Mr Washington
18 was in the truck, that Mr Washington fired a weapon.
19 Although, I think by the time this comes up in the trial,
20 there will be ample evidence in the record, including from
21 Mr Washington himself, that he owned the truck and that
22 he was in the truck. So I'm thinking by the time we
23 actually get to that point, the only thing that would need
24 to be redacted out of Mr Ward's statement is any mention
25 of him seeing anyone in the truck with a gun

1 And so I think, yes, that's an issue that needs
2 to be addressed by the Court And I will provide the
3 Court with the same versions that I have done with
4 regards -- that I have given to co-counsel But I think
5 we will probably need to resolve that issue when we get to
6 it.

7 THE COURT Okay All right We'll see you
8 back --

9 MR DURANT· I also have some statements from
10 Mr Runyon's client that we will probably need to do a
11 Jackson V Denno on as well, you know, just talking about
12 the written statement that was given to Detective Crews

13 THE COURT Okay We'll take those up when you
14 get to that point

15 Now, before we go to lunch, I want them -- I
16 want the bond issue resolved.

17 MR RUNYON Call Mrs Washington out in the
18 hall, if you would, please She's the bondsman

19 THE COURT Or they can stay here for lunch.

20 MR RUNYON I have the bonds person right here

21 THE COURT They're not going to walk out of the
22 courthouse without knowing they're on bond.

23 MISS JENKINSON· Your Honor, I will have to call
24 Mr Ballor again, but he told me at the end of last week
25 that he would be willing to stay on the bond That issue

1 may have been that Mr Ward owed him some money and he
2 went in and paid the money, so I will need to check

3 MR DURANT That was the issue, he told me, was
4 a payment situation

5 THE COURT Well, if he's not willing to stay
6 on, then we need to know that. If he's willing to stay
7 on, we need to know that, too.

8 MR RUNYON This is Ms Deborah Washington, the
9 mother of Mr Washington, but also the owner of a
10 substantial piece of property that has been accepted by
11 the Court and clerk for his bond and she is the bonds
12 person And if the Court would like to put her under oath
13 so she can tell you that she is going to continue on that
14 bond

15 THE COURT Raise your right hand.

16 Deborah Washington, after first being duly
17 sworn, testified as follows.

18 THE COURT Would you state your name for the
19 record?

20 MRS WASHINGTON Mrs Deborah Cassandra Johnson
21 Washington

22 THE COURT. All right. Now, you have put up
23 property for bond for Mr. Washington?

24 MRS. WASHINGTON Yes, I have

25 THE COURT And you're willing to stay on the

1 bond during the trial?

2 MRS WASHINGTON Yes.

3 THE COURT. Thank you That's all I need to
4 know

5 Anything else?

6 MR DURANT. Just so I'm sure we are on the same
7 wavelength as to the Jackson V Denno with regards to
8 Mr. Washington, we will deal with that at the time I call
9 the witness, is that correct?

10 THE COURT You know, if we can work it in by
11 the end of the day tomorrow if you're going to do it the
12 first thing Wednesday, that might work as well

13 MR DURANT That will be fine It will be
14 awhile before that comes up as well

15 MISS JENKINSON One thing, Your Honor, I would
16 ask that the witnesses be sequestered. I do have an
17 expert that I would like to stay in the courtroom, but,
18 otherwise, we ask that the other witnesses be excluded
19 from staying in the courtroom until they testify

20 MR RUNYON I join in that motion, Your Honor

21 MR DURANT Just fact witnesses or --

22 THE COURT: Well, you can keep your
23 investigating officer, but other than that, all of the
24 witnesses --

25 MR DURANT. How about my SLED people, do you

1 have a problem with that?

2 MR RUNYON I don't have any problem with SLED

3 MISS JENKINSON No, Your Honor

4 THE COURT Okay

5 MISS JENKINSON. Mr Butler is checking with my
6 office They were supposed to send an affidavit from
7 Mr. Ballor this morning

8 THE COURT. All right Let the clerk's office
9 know If he's willing to stay on, then he can leave. If
10 not, he needs to stay

11 MISS JENKINSON Thank you, Your Honor

12 THE COURT All right.

13 (WHEREUPON, a lunch recess was taken.)

14 THE COURT State's Exhibits 1 through 74 were
15 marked in a prior trial The same numbers will remain
16 The State will move them in as we go. There were no
17 Defendant's exhibits marked for this trial The ones for
18 the last trial will be remarked if they are to be used at
19 all

20 All right We got everybody?

21 THE BAILIFF Everybody is here.

22 THE COURT. Okay Bring the jury in

23 MR DURANT Your Honor, I just wanted to put on
24 the record --

25 THE COURT: Just one moment.

1 MR DURANT The court reporter wanted me to put
2 on the record we had previously had marked as exhibits
3 State's 1 through 74 from a previous proceeding in this
4 case We will be dealing with the admissibility of those
5 exhibits as we go along

6 THE COURT. All right. They're premarked then?

7 MR DURANT Premarked

8 THE COURT. Okay

9 (WHEREUPON, State's Exhibits Nos. 1 THROUGH 74
10 were marked for identification only.)

11 (WHEREUPON, the following proceedings were held
12 in the presence of the jury)

13 THE COURT Juror 196, your name, sir?

14 THE FOREPERSON. Lawrence White

15 THE COURT: All right Mr. White, you're the
16 foreperson for the jury.

17 All right Ladies and gentlemen, before we
18 begin, we will need to put you under oath If you would,
19 stand and raise your right hand while the clerk
20 administers the oath

21 (WHEREUPON, the jury was duly sworn by the clerk
22 of court.)

23 THE COURT All right Folks, before we begin,
24 I'm going to kind of give you some opening remarks just to
25 tell you about how this trial will proceed, a little bit

1 about what it's about, kind of some of the rules that we
2 have to go by so it will help you understand maybe and
3 follow the testimony along a little bit and understand
4 some of the things we do and why we do them.

5 Now, this case here, as I told you at the
6 beginning of the jury qualification, both of these
7 defendants have been charged by the State of South
8 Carolina with murdering one Jamie Simmons on or about
9 May 11th, 2003 That is set forth in these indictments

10 Now, you will see these documents again back in
11 the jury room, but I want to bring it to your attention
12 right now the indictments are not evidence These are
13 simply the charging instruments We have to have
14 jurisdiction over the case. And the way we get that is
15 the State presents the case to the grand jury and the
16 grand jury decides whether or not to true bill the case
17 And if so, they present it in the form of an indictment
18 That's just simply how we get jurisdiction over the case
19 It's important when you get these back later on that these
20 are not evidence.

21 The evidence that you're going to hear in this
22 case is going to come from that witness stand right there
23 You're going to see people get up and testify. You might
24 see some documents, you might see some photographs But
25 that's what evidence is When the lawyers get up and ask

1 questions, that's not evidence When the lawyers get up
2 and make their opening argument or their closing
3 statement, that's not evidence The evidence that you're
4 going to hear comes from that witness stand and the
5 documents and the photographs that I tell you -- that I
6 allow you to see

7 Now, you and I, we have different roles in this
8 courtroom. I am the judge of the law in the case But
9 you folks are judges as well You are the judges of the
10 jury And whatever you folks decide are the facts of the
11 case, we are bound by that However, you are bound by the
12 law as I charge you on it at the end of the trial So we
13 each have different roles, but yours is just probably the
14 most important role in the courtroom

15 Now, this case is going to last several days so
16 it's going to be important that you pay attention and
17 listen carefully to all of the witnesses This is an
18 important case to both the State and to each of the
19 defendants And they're entitled to have a jury of people
20 drawn out of the community, have no interest in the
21 outcome of the case prior to coming in here But, most
22 importantly, they're willing to sit and listen and after
23 they've heard all of the testimony and charged on the law,
24 only then can they begin to make up their minds So the
25 oath that you just took places you under that burden

1 Now, I also have the job, in addition to
2 charging you on the law at the end of the case, I have to
3 conduct the trial Each side is entitled to a fair trial
4 Both the State of South Carolina and the defendants are
5 entitled to a fair trial So it's my job to make sure
6 that both sides get that fair trial

7 Now, how do I do that? Well, sometimes, it's
8 just a matter of making sure that everybody does things in
9 the proper order But, occasionally, you will hear that I
10 have to make rulings on evidence matters Usually, that's
11 precipitated by one of the lawyers saying I object

12 Now, we're not trying to keep anything from you
13 What we do have to do, though, is make sure that we follow
14 the rules of evidence as laid down by the State of South
15 Carolina And so sometimes before you can hear legally
16 competent evidence, I have to determine whether or not it
17 is legally competent evidence. So when a lawyers stands
18 up and objects, you really shouldn't read anything into
19 that, they're just doing their job Both sides will
20 probably do that throughout the trial They're just doing
21 their job. I'm doing mine when I have to rule on that

22 Sometimes when a lawyers says I object, I can
23 rule right then Sometimes, they may have to, you know,
24 tell me something before we go any further about it and so
25 it may be necessary for them to come up here just so we're

1 out of your ear shot to tell me a little bit about it and
2 sometimes I can rule right then But sometimes, it's
3 necessary for me to hear what a witness is going to say or
4 look at a document in more depth and ask them follow-up
5 questions and that sort of thing, so it's necessary for me
6 to send you out of the room so I can hear it first.

7 Again, the idea is not to keep anything from
8 you, but just to make sure that I have done my job in
9 making sure that you're only hearing legally competent
10 evidence Because at the end of the trial, whatever you
11 decide, we're bound by your factual determinations.
12 Realistically, the only way there can ever be any kind of
13 a finding that there was an error in the trial would be on
14 my job If I either kept you from hearing something that
15 you should have been able to hear or vice versa or,
16 perhaps, I instructed you on the law incorrectly There
17 are only things that I do wrong that we can ever have an
18 appellate court find that there was a mistake in this
19 trial. So I'm just trying to do my job and you're just
20 trying to do yours

21 Now, as I told you, there might be times when we
22 have to have y'all go out so that I can hear some kind of
23 testimony or hear some arguments from the lawyers Every
24 time we leave or break for the day or even break to use
25 the restroom or take a cigarette break or something like

1 that, it will be necessary for me to charge you or remind
2 you of your oath that you're not to begin deliberations or
3 discussions about the case until the end of the trial
4 And that's very important because one side gets to go
5 first and the other side has to respond So you can't
6 make up your mind at the beginning of the trial You have
7 to wait until you hear all of the evidence Because we're
8 not asking you to come into this courtroom and leave your
9 common sense at the door You all have lived long enough
10 to realize that most situations, there are two sides to
11 every story and you have to hear all of it before you can
12 begin to make up your mind So that's all I'm basically
13 reminding you to do is hold off your judgment until the
14 end of the trial and I will tell you when you can begin to
15 deliberate and discuss the case

16 When you go home at night, it's important that
17 you tell your spouse or family members, whoever is asking
18 you about the case, you can basically just say, look, I
19 got picked for a jury, but it's very important that I not
20 discuss this with you Something like that can cause us
21 to have to redo the trial at a later date and that gets
22 expensive and time consuming and wastes your time for
23 having to be here So it's important that you follow
24 those rules as well.

25 Now, I will tell you, a lot of times, I find

1 that most of y'all have never been involved in a trial
2 before You may have served on jury duty, but most of you
3 probably have not or maybe you've been on a jury in like a
4 magistrate's court for a traffic case or something like
5 that So I will tell you a little bit about who some of
6 these people are in the courtroom You're probably
7 wondering what do all these people do

8 Well, these folks right over here, you see these
9 two gentlemen sitting beside you, they may be with us
10 throughout the trial, but very often, they switch off
11 They are our bailiffs Their job, basically, is to make
12 sure that whatever you need, you can get If you have any
13 questions at all during the trial, you direct it to them
14 and they'll bring it to my attention If there's
15 something that you need or, perhaps, you need to take a
16 break before I call for a break. And I usually try to
17 take a break about every hour and a half or so just to
18 give you a chance to stretch your legs Sometimes, if we
19 take a long break, you can go outside and smoke a
20 cigarette or just get some fresh air But that's what
21 their job is, to make sure that you folks get what you
22 need

23 This lady right here is the court reporter
24 She's taking down every word that is being said all
25 throughout the trial. This is a court of record So,

1 again, if there's any kind of appeal from anything, we've
2 got to know what was said so she's taking down every
3 single word that's being said throughout this trial.

4 This lady sitting to my right, she's my law
5 clerk. She's basically my lawyer She's a member of the
6 Bar, graduated from law school about this time last year.
7 She's now a lawyer, passed the Bar exam She's my lawyer
8 And she sits here and if sometimes I need some research
9 done, she can do it for me. Sometimes, she's preparing
10 stuff for other cases or handling some administrative
11 stuff, but that's her job In fact, I remind her that she
12 has just one function in her job and that's to make me
13 look good She has no other function in her job other
14 than to make me look good And she really does a good
15 job Not that she necessarily makes me look good, but she
16 handles a lot of things and it takes a lot of burden from
17 me so I can be here in court So from time to time, you
18 may see her actually get up and leave while we're doing
19 something She doesn't do it in a disruptive manner, but,
20 very often, she is having to take care of something else
21 for me

22 This gentleman over here, the
23 distinguished-looking man with the mustache, is one of the
24 deputy clerks And Mike processes all the paperwork -- or
25 Scott, excuse me Scott processes all of the paperwork

1 throughout the trial There's a lot of paperwork that
2 goes on during a trial But he makes sure that things get
3 done as they're supposed to get done

4 The rest of the folks are, of course, you met
5 this morning the lawyers and the defendants. You will see
6 witnesses coming in and out throughout the trial.

7 So that's basically who the players are

8 Now, how do we conduct the trial? Well, we're
9 going to start here in a minute by having the lawyers make
10 their opening statements to you Now, I will tell you
11 that opening statements are not evidence. All right.
12 Again, I will remind you, anything that the lawyers say,
13 they're not witnesses, they are just going to give you a
14 brief overview of what they anticipate you will hear in
15 the form of evidence throughout the trial. They're not to
16 argue at this point about evidence They're just going to
17 kind of give you a preview so that when you hear
18 something, you're getting to know a little bit more about
19 the case and it will help you follow the testimony along a
20 little bit better

21 After the lawyers make their opening statements,
22 we will begin then with the testimony from the witnesses
23 After we hear all of the witnesses' testimony, at the end
24 of the trial, we will have closing arguments, which the
25 lawyers are going to get up and try to summarize what

1 you've then heard I will charge you on the law that you
2 are to apply to the facts as you find them and you all
3 will retire to the jury room to render a verdict

4 Now, this is a criminal case, as I told you
5 And the State of South Carolina has accused Mr Ward and
6 Mr Washington of committing murder Now, the State,
7 because they brought the charge, has the duty of proving
8 that charge They have to prove that charge beyond a
9 reasonable doubt

10 Now, what does that mean? Well, some of y'all
11 may have heard of different charges If you've served on
12 a civil trial, there, the burden of proof is what we
13 called a preponderance of the evidence And that's not a
14 very high burden of proof Basically, it means whatever
15 the side is trying to prove is more likely true than not
16 true But there is a much higher burden of proof in a
17 criminal case and that is what we call beyond a reasonable
18 doubt. And proof beyond a reasonable doubt is proof
19 basically that leaves you firmly convinced of the
20 defendant's guilt

21 Now, there are very few things in this world
22 that we know with an absolute certainty But in a
23 criminal case, the law doesn't require that the State
24 prove or overcome every possible doubt After you have
25 heard all of the evidence, if you are firmly convinced

1 that the defendants are guilty of the crime charged, then
2 you must find them guilty. On the other hand, if you find
3 that there is a real possibility that the defendants are
4 not guilty, then you must give them the benefit of the
5 doubt and find them not guilty.

6 This burden stays with the State throughout the
7 trial. The defendants are not required to prove their
8 innocence. They are not required to prove anything. They
9 can sit there throughout the trial and not put up the
10 first bit of evidence. They have no burden of proof in a
11 criminal trial. The burden is entirely on the State and
12 it stays with the State throughout the trial.

13 So having said that, I have now given you a
14 brief overview of the case, a brief overview of the law as
15 far as the burden of proof goes. At the end of the trial,
16 I will give you a much more detailed charge on what the
17 elements of the crime of murder is, go back over with you
18 reasonable doubt and some other charges that apply as
19 things may come up throughout the trial. So we will see
20 each other throughout the next several days.

21 At this time, the State, because they have the
22 burden of proof, has the opportunity to make the first
23 opening statement.

24 /* Mr. Durant, if you are ready, you may begin,
25 sir.

1 MR DURANT Thank you, Your Honor
2 Good afternoon, Mr Foreman, ladies and
3 gentlemen. I had an opportunity to meet you briefly. My
4 name is Bruce Durant, I'm a senior assistant solicitor in
5 Charleston I am the prosecutor in this case and it is my
6 honor and privilege to represent the State of South
7 Carolina in this trial against the defendants, Tremayne
8 Washington and John Henry Ward, who, as you have heard,
9 has been charged with murder Sitting with me throughout
10 the case is Mike Anderson. He is a detective with the
11 Charleston County Sheriff's Office He's the case agent
12 You will see me consulting with him from time to time and
13 Mr Matt Casy seated here in the front row with the red
14 tie and the blue blazer He's my investigator and general
15 right-hand man

16 We are here this afternoon because Jamie Simmons
17 is dead And Jamie Simmons was a 20-year-old kid And he
18 died in the early morning hours of May the 11th, 2003,
19 from a lethal combination of alcohol, testosterone and
20 guns, which happens quite often in our society But the
21 real sad thing, the truly sad thing about this case is
22 that Jamie Simmons was not drinking alcohol. And Jamie
23 Simmons was not beating his chest and Jamie Simmons was
24 not in a squabble with anybody that night and Jamie
25 Simmons didn't have a gun because Jamie Simmons was an

1 innocent bystander that got caught between two groups that
2 did have a problem with alcohol and testosterone and guns

3 By all accounts, Jamie was not a drinker, was
4 not a drug user, was not a gang banger He enjoyed art,
5 he enjoyed music He did not have a beef out there with
6 anybody that night, had not even been at the club that
7 night until right before he was killed He was truly in
8 the wrong place at the wrong time and now he's dead. And
9 he's dead at the hands of Tremayne Washington and he's
10 dead at the hands of John Henry Ward Because they were
11 drinking and they were beating their chest and they did
12 have something to prove that night

13 The story begins on May the 11th, 2003, at a
14 little juke joint out on Toogoodoo Road in the Hollywood
15 community called Club Diamante's or Toby's. It was a
16 Saturday night going into a Sunday morning It was a
17 popular watering hole at the time and, of course, quite
18 crowded that time of the night I don't believe it is
19 even open any more, but at that time, it was And the
20 problem started inside when a fellow named Keith Richards
21 got jealous with his girlfriend, Shaquinta Pinckney,
22 because she was dancing with a guy name Raulo. Well,
23 that's not that big of a deal, but Keith Richards was from
24 a place called Petersfield in the Hollywood area Raulo
25 was associated with another area called Cherry Hill, South

1 Carolina

2 That fight inside got broken up relatively
3 quickly, but very soon after that, it got moved outside
4 Despite the fact there was a deputy sheriff at the scene,
5 it soon turned into a Malay between the Petersfield folks
6 on one side and the Cherry Hill folks on the other And I
7 don't know if any of y'all are familiar with that area,
8 but Petersfield and Cherry Hill get along like oil and
9 water, which is to say they don't They're like the
10 Hatfields and McCoys. They're like North Korea and South
11 Korea with Highway 162 being the neutral divider

12 Well, a fellow named Kevin Dunmeyer, who is from
13 Cherry Hill, was trying to steer Raulo out of the club and
14 get him out of there in his Suburban, but Keith Richards
15 and a gang of his fellows from Petersfield were not happy
16 about that So a confrontation starts out by Dunmeyer's
17 Suburban with Dunmeyer trying to get Raulo out of there,
18 Petersfield people trying to prevent it. A bunch of
19 Petersfield people go out to Dunmeyer, who ends up being
20 chased down Toogoodoo Road, chased by a bunch of folks
21 from Petersfield John Henry Ward is Petersfield His
22 good friend, Mr Tremayne Washington, although Tremayne
23 Washington was not born in Petersfield, he's good friends
24 with John Ward and he hangs out in Petersfield all the
25 time and is tight with the Petersfield crowd

1 Kevin Dunmeyer is chased down Toogoodoo Road
2 toward Baptist Hill About this time, another Cherry Hill
3 guy shows up on the scene named Antonio Washington or
4 Ton-Ton in his lime green Cadillac He goes down
5 Toogoodoo Road to pick up Dunmeyer who is being chased by
6 Petersfield And according to some testimony, he's trying
7 the run Petersfield folks over in the road. He picks up
8 Dunmeyer and turns around and comes back in front of the
9 club And just before he picks up Dunmeyer, apparently,
10 Jamie Simmons shows up on the scene Jamie Simmons hadn't
11 been in the club He's a security guard at Kiawah.

12 He's driving down the road from the Edisto side
13 and is flagged down by his cousin, Marcus Moultrie, in the
14 road He stops, Marcus talks to him briefly through the
15 window of the car about Jamie getting Marcus a job out at
16 Kiawah. They agree they're going to go talk at the Waffle
17 House, so Jamie pulls his car over to the side of the road
18 in front of Marcus' car and waits for Marcus so they can
19 go to the Waffle House together

20 Well, about this time, Ton-Ton comes back down
21 the road with Dunmeyer in the car And instead of just
22 driving on through, he stops When he stops, he gets out
23 of the car and he provokes another altercation with the
24 Petersfield people Some people say that the people in
25 that Cadillac were throwing bottles at the folks from

1 Petersfield at that time. Well, Petersfield folks go
2 after Ton-Ton and Dunmeyer in the green Cadillac, so the
3 Cadillac takes off toward Toogoodoo Road toward Hollywood

4 And about this time, we have a Dodge club cab
5 pickup truck owned by Tremayne Washington And in that
6 Dodge pickup truck are Tremayne Washington, who is sitting
7 in the back seat, because it's a club cab, and John Henry
8 Ward, who was sitting in the front passenger seat and a
9 third guy, Catrell Douglas, who is driving the truck. And
10 just so you'll know, because they'll be referred to both
11 ways throughout the trial, Catrell, the driver, also goes
12 by the name of Trell Mr Washington, Tremayne
13 Washington, also goes by the nickname of Fiend And
14 Mr Ward goes by the nickname of Mix

15 So about this time, the Cadillac takes off down
16 the road The truck occupied by those three gentlemen
17 pull out onto Toogoodoo Road from the parking lot and the
18 volley of gunfire erupts from the passenger side of that
19 truck in the direction of the Cadillac, presumably, from a
20 Ruger P89 semi-automatic pistol that is owned by Tremayne
21 Washington, in which is kept in the center console of
22 Tremayne Washington's truck After that initial volley of
23 shots right there in the parking lot as the truck is
24 pulling out after the Cadillac, it pulls out after the
25 Cadillac chasing the Cadillac down the road in an ongoing

1 gun battle

2 Well, when the smoke is cleared, Jamie Simmons
3 is on the ground beside his car A bullet has gone
4 through his left arm into his left chest, through his left
5 lung, through his aorta, through his venial cava, through
6 his esophagus, through his right lung and lodged in his
7 right pectunulus muscle and he bleeds out and dies before
8 they can get him to the hospital

9 An autopsy is performed at the Medical
10 University during which a 9-millimeter projectile was
11 removed from Jamie's body, which is turned over to the
12 sheriff's office

13 The sheriff's office crime scene unit searches
14 the scene out there around the club, both visually and
15 with a metal detector, and locates two 9-millimeter shell
16 casings right there in the parking lot on the edge of
17 Toogoodoo Road where gunfire was seen coming from that
18 truck They find three 40-caliber shell casings down
19 Toogoodoo Road down toward Coon Club Road. And you will
20 see some of these when we start getting into diagrams and
21 things like that, okay, but that's in the direction that
22 the Cadillac went to And then they find one 25-caliber
23 shell casing in the parking lot right out in front of the
24 club

25 Four to five hours after the shooting, they

1 locate Mr Washington's truck parked behind a house on
2 Brewer Road in the Petersfield area They search the
3 truck They find an empty holster They find an empty
4 9-millimeter magazine. They find a full 9-millimeter
5 magazine They find a single unfired brass-jacketed
6 9-millimeter bullet in the ashtray and they find a single
7 spent 9-millimeter shell casing lodged in the hood vent,
8 the little vents on the hood where air comes in They do
9 not find the pistol nor do they ever find the pistol

10 The evidence is sent to SLED firearms
11 identification, who conclude that Jamie Simmons, number
12 one, was killed by a 9-millimeter projectile Number two,
13 that the rifling characteristics on that projectile were
14 consistent with a Ruger P89 pistol as well as some other
15 pistols, such as the one owned by Tremayne Washington.
16 That it was not fired by a revolver That it was not a
17 25-caliber or a 45-caliber projectile. That the unfired
18 9-millimeter bullet in the ashtray -- or found in the
19 ashtray of the truck was the same type of bullet that
20 killed Jamie Simmons. And that the shell casing found in
21 the hood vent of the truck and the two located at the
22 scene in the parking lot were all fired by the same
23 9-millimeter weapon.

24 Now, it's not the State's position that Tremayne
25 Washington and John Henry Ward intended to kill Jamie

1 Simmons I think the evidence will be clear to you that
2 there was no intent to kill -- for them to kill Jamie
3 Simmons There was simply no reason for them to But
4 they were trying to kill those folks in that Cadillac
5 They were trying to kill those folks from Cherry Hill or
6 maim them or severely injury them

7 You see, ladies and gentlemen, when that's the
8 case, the law doesn't excuse poor marksmanship It's not
9 a defense to murder When they fired that weapon at
10 someone with malice in their heart and malice in their
11 mind, that murder is complete when that trigger is pulled
12 It makes no difference where the bullet goes And it also
13 doesn't make a difference which one of them pulled the
14 trigger because they were in this thing together, ladies
15 and gentlemen. They were friends They were Petersfield
16 Their honor had been impugned. They were going to settle
17 a score And to paraphrase something Mr Washington was
18 overheard to say that night, some bitch was going to die
19 out there that night Unfortunately, it was Jamie

20 Simmons

21 THE COURT Mr Runyon?

22 MR. RUNYON. Mr Foreman, ladies and gentlemen
23 of the jury, on a bitterly cold day, March 12th, 1942, in
24 a coal minor's house in Pike County, Kentucky, I was born
25 And my grandfather, my paternal grandfather was married to

1 a very nice lady who was my grandmother and her name
2 was -- her maiden name was Polly Hatfield I am a member
3 of the clan So I would suggest that if we're going to
4 talk about the Hatfields and McCoys and how my family
5 defended their honor a hundred more years ago, I will be
6 more than happy to discuss that with Mr Durant

7 What we're here today to discuss is the State
8 being able to prove to you that Mr Jamie Simmons, the
9 innocent victim that he was, died at the hands of my
10 client, Tremayne Washington They're going to have to
11 prove not only that the projectile that killed him came
12 from my client's gun, and I think their theory is that
13 Mr Ward fired that gun, but that Mr Washington had
14 something to do with that response by Mr Ward under their
15 theory of the case

16 Now, you're going to hear -- Mr Durant has
17 given you this long position about what happened that
18 night You don't have any evidence before you I'm not
19 going to talk a long time except to tell you that I want
20 you to listen to the evidence, particularly, the physical
21 evidence You're going to hear about a lot of people
22 doing a lot of shooting that night, which we shouldn't
23 have in our community No one is suggesting that But
24 the State has got to prove beyond a reasonable doubt that
25 Mr Tremayne Washington had something to do with Mr. Ward

1 firing the fatal shot And they've also got to prove that
2 Mr Ward fired the fatal shot All we can ask of you as a
3 defendant is that you give the case your undivided
4 attention and that you listen to all of the evidence. And
5 at the close of the State's case, we'll be able to discuss
6 that with you more fully

7 I want to thank you for allowing us to intrude
8 upon your busy time and day I'm really not upset with my
9 friend, Mr Durant, for maybe impugning my family back in
10 Kentucky I will discuss that with him later

11 For the time being now, we're going to sit down
12 We're going to try this case based on the evidence the
13 State produces, not based on emotion, based on the cold
14 hard facts as produced by the State. Then we'll be back
15 to talk with you later and, hopefully, be able to narrow
16 this down to what the real salient facts are so that you
17 can then make a decision as to whether or not the State
18 can prove their case Thank you very much

19 THE COURT Miss Jenkinson

20 MISS JENKINSON: Thank you, Your Honor, may it
21 please the Court?

22 The solicitor gave you a very detailed opening
23 just a little bit ago And you notice he did not tell you
24 that you would hear any evidence that John Ward fired a
25 weapon that night And the reason that he didn't say that

1 is because there is no evidence that John Ward fired a gun
2 that night And the reason there is no evidence of that
3 is that he did not fire the weapon on May 11th, 2003.

4 It was like a war zone out there, which may
5 sound crazy to you because you've heard this is a
6 nightclub on a Saturday night at 3 00 a m. in the morning
7 It's not what you usually consider a war zone But there
8 were guns going off everywhere It was so bad that the
9 officer who responded to the scene because of a fight had
10 to leave He left until he could get backup and came back
11 as soon as he could He was acting very wisely and he did
12 come back as soon as he could

13 You will hear about shell casings that were
14 found at the scene They came from several different
15 types of guns And you will also hear testimony from
16 people who were out there that night People who also
17 could have wound up dead

18 These same people were out there running,
19 dodging bullets and hoping to take shelter from the
20 gunfire Some of these same people were firing weapons
21 themselves Things were happening really fast John Ward
22 was out there that night and he was scared, too. You will
23 see the video from the deputy's car who responded out
24 there and you will see how fast things really happened

25 That deputy was out there and he can't tell you

1 what happened He saw just how scary it really was And
2 it is a tragedy It's a tragedy that Jamie Simmons wound
3 up dead He was an innocent bystander The problem that
4 we are faced with and that you are faced with is we don't
5 know how things happened You're in the position where
6 you have to decide And even the people who were out
7 there don't know There are lots of different stories,
8 people out there drinking and have having a good time
9 until things got crazy Things turned ugly.

10 People were trying to leave and cars were trying
11 to get out of the parking lot as soon as they could.
12 There were cars all along the side of the road on
13 Toogoodoo Road And people were running in the ditches to
14 get to their cars These same people that you will hear
15 from have certain biases and prejudices They want to
16 protect themselves. They don't want to be sitting where
17 John Ward is sitting today Ask yourself about their
18 motivations and what they have to protect Ask yourself
19 do they really know what happened out there that night.

20 This will become evident to you when you hear
21 the very different versions of what happened And,
22 unfortunately, there is no guarantee that people will tell
23 the truth in this courtroom And there is no guarantee
24 that a witness will be credible And these are the people
25 you will be depending on People who are trying to take

1 cover, people who have been drinking, people who have
2 criminal records and people who don't want to be charged
3 themselves

4 As you heard, there is no gun If we had that
5 gun, it may make things easier for you, but we don't have
6 it

7 And I would also like you to consider that
8 although John Ward and Tremayne Washington are both here
9 on trial today, they are not being tried together I ask
10 you to listen carefully to the evidence as to each one of
11 them and consider them separately What happened at Club
12 Diamante is terrible. A lot of people out there were
13 acting and living dangerously The police had to blame
14 somebody for what happened and that's why John Ward is
15 here today

16 THE COURT: Mr Durant, call your first witness.

17 MR DURANT: Thank you, Your Honor, the State
18 would call Don Frichtl

19 DON FRICHTL,
20 being first duly sworn, testified as follows

21 THE CLERK Please be seated Please state your
22 full name to the Court and spell your last

23 THE WITNESS Don Frichtl, F-R-I-C-H-T-L

24 DIRECT EXAMINATION

25 BY MR DURANT:

D FRICHTL - DIRECT EX BY MR DURANT

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1 Q Could you tell the jury where you're currently
2 employed?

3 A Currently, I'm employed with the sheriff's
4 office in the capacity working in this courtroom

5 Q And you're courtroom security, is that correct?

6 A Correct, sir

7 Q How long have you been with the sheriff's
8 office?

9 A Since 1999

10 Q And what were you doing with the sheriff's
11 office in May of 2003?

12 A May of 2003, I was assigned to the uniform
13 patrol working the south district of Charleston County

14 Q Does the south district of Charleston County
15 include the area of 6619 Toogoodoo Road?

16 A It does

17 Q And that is in Charleston County, correct?

18 A Yes, sir

19 Q What business is located at that address?

20 A Club Diamante It was a local bar.

21 Q What part of the county is that located in?

22 A It would be the Hollywood and Meggett area

23 Q Did you have occasion to be dispatched to Club
24 Diamante's on the morning of May the 11th of 2003?

25 A Yes, sir, I have -- I did

D FRICHTL - DIRECT EX BY MR DURANT

93

1 Q On how many times occasions?

2 A Twice

3 Q And what was the first time for?

4 A The first time, I believe, was around the
5 midnight hour and it was for some patrons that were in the
6 parking lot that were not going into the business

7 Q By way of history, has the sheriff's office had
8 problems out at that location in the past?

9 A Several times

10 Q How long were you on patrol in the south
11 district?

12 A I was on patrol pretty much when I started my
13 job in 1999, pretty much predominantly in the south
14 district

15 Q Up until the time that you started working
16 courtroom security?

17 A Until last month, yes, sir

18 Q Okay So you're familiar with the Petersfield,
19 Cherry Hill area, things of that nature, is that correct?

20 A Yes, sir

21 Q In your experience, is there any bad blood
22 between those two areas?

23 A There's a lot of bad blood between Cherry Hill
24 and Petersfield and Pineland areas, all around, yes, sir

25 Q Now, the second time you were dispatched out

D FRICHTL - DIRECT EX BY MR DURANT

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1 there that morning, what was that in reference to?

2 A The second time I went out there, it was in
3 reference to a subject that was being unruly out in front
4 of the club and said something about throwing bottles in
5 the parking lot

6 Q Do you recall what time you actually arrived out
7 at the club a second time?

8 A I believe I was dispatched at 2.27 and arrived
9 at 2 47

10 Q So about a quarter til 3.00 is when you got out
11 there on the scene?

12 A Correct, sir

13 Q And what did you do upon arriving out there at
14 2 47?

15 A I met with the head bouncer, Mr Buncumb, whom
16 I'm familiar with from prior occasions, and he had the
17 gentleman that was unruly out in front of the club I
18 knew I was the only one on patrol in that area, so I
19 talked to the subject and had him leave the property
20 without any problem And I stayed around

21 Q Why did you stay around?

22 A Mr Buncumb asked me to stick around He said
23 he was about to close the club and that he wanted me to
24 stay in the parking lot if I possibly could

25 Q What happened after that?

D FRICHTL - DIRECT EX BY MR DURANT

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1 A I stayed there and they decided to go ahead and
2 close the club down right around 3 00.

3 Q What happened as the club was cleared out?

4 A As they opened the door, the patrons all exited
5 the establishment rather quickly I noticed that there
6 were two groups that ran out into the street and engaged
7 in a fight

8 Q And what area of the street?

9 A Directly in front of the club, which would have
10 been right out in the middle of Toogoodoo Road

11 Q What did you do to attempt to restore order?

12 A There was several groups of approximately 20 or
13 more and they were fighting in the streets, so I was
14 outnumbered, so I went ahead and activated my blue lights
15 A lot of times when we're out in the rural areas at night,
16 activating your blue lights, kind of let them know your
17 presence is there. They usually may overlook you as
18 they're walking out of the club and not see you standing
19 around So I wanted to let them know that the police were
20 there and I activated the blue lights and used my PA
21 system.

22 Q Did any of that have any affect?

23 A No, sir

24 Q Did you attempt to physically intervene?

25 A No, sir

1 Q Why not?

2 A I was way outnumbered and I knew I was the only
3 person there Sometimes being a good witness is a good
4 way to restore order and see what's going on as well as if
5 I become injured out there trying to restrain one person
6 That's how a lot of officers get injured is going out
7 there getting in the middle of these groups and being
8 outnumbered, then I'm a victim.

9 Q Do you remember seeing a dark blue Suburban out
10 there that night?

11 A I did

12 Q And what was going on around that Suburban?

13 A The Suburban appeared to be the central location
14 of where the altercation was occurring.

15 MR DURANT Your Honor, for the Court's
16 purposes, I previously had marked a series of photographs
17 starting with State's Exhibit No 7 and running up through
18 State's Exhibit No 48, which I've shared with defense
19 counsel I believe they agreed we can admit these without
20 objection I wanted to make sure

21 THE COURT Any objection to 1 through 48?

22 MR DURANT. Seven through 48.

23 MISS JENKINSON No, sir.

24 THE COURT Any objection?

25 MR RUNYON: Other than to preserve the right to

D FRICHTL - DIRECT EX BY MR DURANT

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1 move to strike it if it's is not proven to be relevant, no
2 objection, Judge

3 THE COURT: All right They're admitted then
4 (WHEREUPON, State's Exhibits Nos 7 through 48
5 were admitted into evidence)

6 BY MR DURANT

7 Q I hand you what's now marked as State's Exhibits
8 26 and 24 in evidence Is that the vehicle you observed
9 out there that night?

10 A It is, sir.

11 Q Where was it parked in reference to the club?

12 A It was parked on the opposite side of the road
13 of the club facing Baptist Hill

14 Q And what could you see going on around that
15 vehicle?

16 A That was pretty much where the central location
17 of people fighting, getting in and out of the vehicle and
18 running around and just fighting in the street

19 Q Now, it was around this time that the
20 altercation was going on at that Suburban that you turned
21 on your lights?

22 A Correct

23 Q Do you remember seeing a green Cadillac out
24 there at all that night?

25 A I did

1 Q What do you remember seeing the green Cadillac
2 doing?

3 A The green Cadillac -- during the altercation,
4 there was one subject I saw running toward Baptist Hill
5 and I saw a green Cadillac drive towards Baptist Hill.
6 But I lost visual of one guy running towards the Baptist
7 Hill way, the green Cadillac went down that direction.

8 Q Did you say it proceeded again after it went
9 down the direction you saw the individual being chased?

10 A Yeah, after I saw him running that way and
11 another group of people running after him, I saw the green
12 Cadillac circle back and come back right in front of the
13 club. And that's where it stopped

14 Q And referring your attention to State's No 11
15 in evidence, do you recognize that photograph?

16 A Yes, sir, that's the Cadillac.

17 Q Now, what happened after the Cadillac came back
18 to the area of the club?

19 A When the Cadillac came back in front of the
20 club, it stopped for a short amount of time and subjects
21 were jumping in and out of the car and yelling at each
22 other and screaming from the Cadillac.

23 Q And what happened after that?

24 A Then I heard a small collision from behind me
25 and the Cadillac peeled out and took off down the street

D FRICHTL - DIRECT EX BY MR DURANT

99

1 and that's when I heard some shots

2 Q When you say took off down the street, was it
3 going -- how fast was it going?

4 A It was going at a high rate -- it squealed its
5 tires

6 Q Okay What happened after the Caddy sped off
7 down the road -- which way was it going at this time?

8 A It was going towards 165, which is the opposite
9 direction of Baptist Hill

10 Q Which would be toward the Hollywood side?

11 A Correct

12 Q Okay Now, what did you say you heard when the
13 Caddy took off down Toogoodoo Road?

14 A I heard a large volley of rounds being fired

15 Q Gunshots?

16 A Yes, sir

17 Q Which direction did you hear those gunshots?

18 A In the direction that the Caddy went in

19 Q And were they close or distance gunshots?

20 A They were directly in front of me

21 Q Could you see where the gunshots were coming
22 from?

23 A No, sir

24 Q Why not?

25 A I had a lot of patrons out there and a lot of

D FRICHTL - DIRECT EX BY MR DURANT

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1 vehicles that were obscuring my view

2 Q Do you recall how many shots you heard?

3 A I can't recall it

4 Q What did you do when you heard the gunfire?

5 A Immediately, I radioed for backup and advised
6 them shots were fired and ran to the rear of my patrol
7 vehicle over my trunk and drew my service weapon.

8 Q And I guess running to the rear of your vehicle,
9 what were you trying to do at that point?

10 A I was trying to create cover I didn't know
11 where the shots were coming from, who was firing, I just
12 knew a general direction, so that's when I pulled my
13 weapon to make sure that the --

14 Q Put the vehicle between you --

15 A Put the vehicle in front of me

16 Q -- and where you heard the shots coming from?

17 A My major concern was my lights. And I know
18 people have a tendency to shoot toward lights, so I went
19 over in an area that was more unlit.

20 Q Were you wearing gloves that night?

21 A Yes, sir

22 Q What kind of gloves?

23 A They were black leather service gloves

24 Q Did you hear any other gunshots?

25 A Yes, I did

D FRICHTL - DIRECT EX BY MR DURANT

101

1 Q Whereabouts?

2 A I heard them in the distance behind me

3 Q This is after you were behind your car?

4 A Yes, sir

5 Q Looking over the car?

6 A Yes, sir

7 Q Did those shots appear close or distant?

8 A Appeared distant

9 Q What did you do when you heard the shots?

10 A When I heard the shots, I didn't know what the

11 nature of the altercation was, all I knew is rounds were

12 going in front of me and behind me which made me wonder if

13 I was in crossfire So that's when I retreated to my

14 vehicle and advised headquarters that I was leaving the

15 scene

16 Q Where did you go?

17 A I exited towards 165 to Highway 165 and

18 Toogoodoo Road at the intersection

19 Q Did you stop on the way?

20 A Yes, sir, I did

21 Q Why did you stop?

22 A I had a subject stop me along side the road and

23 say that somebody had been shot

24 Q Were you able to stop and render aid at that

25 time?

D FRICHTL - DIRECT EX BY MR DURANT

102

1 A I stopped I got out of the vehicle with the
2 intention to find out more information on the victim and
3 try to render aid And I had to return to the vehicle

4 Q Now, you actually left the scene at that point?

5 A I had attempted to leave the scene, but when I
6 got stopped, I exited the vehicle and tried to see where
7 the victim might have been And I believe at that point,
8 I heard another volley of rounds I don't recall

9 Q You got back in the car at that time?

10 A I got right back in my car and left the scene

11 Q Where did you go at that point -- by that time
12 somebody had been shot, though, correct?

13 A Right, absolutely That's when I went to 165
14 and Toogoodoo Road and waited for backup

15 Q How long were you up at 165 and Toogoodoo Road?

16 A A matter of minutes

17 Q And did you return to the scene after that?

18 A I did

19 Q What did you find upon returning to the club?

20 A As soon as I had one person that could watch my
21 back while I tried to render aid, I found the victim lying
22 on his back with his feet facing the roadway with a bullet
23 wound.

24 Q Did he appear to be alive to you?

25 A Clinging, maybe.

D FRICHTL - DIRECT EX BY MR DURANT

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1 Q Did you attempt to render aid at that time,
2 first aid or anything?

3 A I did I tried my best to do first aid and CPR

4 Q Were you still wearing your gloves at that time?

5 A Oh, yes, sir

6 Q Do you remember whether or not you held the
7 victim's hands?

8 A Don't necessarily recall holding his hands, but
9 I'm sure it's something I would do probably to check for a
10 pulse I know and I know I tried to comfort him, I'm sure
11 Tried to get his name.

12 Q He wasn't able to respond to you?

13 A No, sir I was asking other people his name and
14 trying to talk to him I'm sure I grabbed his hands at
15 any given time

16 Q How long did it take EMS to arrive, if you
17 recall?

18 A Probably a matter of five, ten minutes, I'm not
19 100 percent sure.

20 Q Now, did your car have a video camera in it that
21 night?

22 A It did, sir

23 Q And how was your video camera activated?

24 A In our patrol vehicles, once you hit your blue
25 lights, the video camera automatically engages so

1 everything is recorded

2 Q And did it so engage that night?

3 A It did I didn't activate my body mike because
4 I wasn't thinking about the video camera being on I was
5 just activating the blue lights

6 Q And what has previously been marked as State's
7 Exhibit 49, I ask if you recognize this videotape?

8 A That's the videotape from my police cruiser

9 Q Does that fairly and accurately depict the
10 events that went on out there that night, at least, as it
11 appeared in front of your video camera?

12 A It does

13 MR DURANT Your Honor, at this time, we would
14 offer State's 49 into evidence. Also, if there's no
15 objection from counsel, I previously had the first 20
16 minutes of that video transferred to a DVD-type format for
17 ease of presentation to the jury, which has been marked as
18 State's Exhibit 49A I would offer both of them into
19 evidence at this time if there's no objection

20 MR RUNYON: Defendant Washington has no
21 objection

22 MISS JENKINSON No objection

23 THE COURT: All right They're admitted

24 (WHEREUPON, State's Exhibits Nos 49 and 49 A
25 were admitted into evidence)

D FRICHTL - DIRECT EX BY MR DURANT

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1 THE COURT. Do you want to publish them at this
2 time?

3 MR DURANT I would like to publish them and
4 show it to the jury It may take just a second to get it
5 up, if the Court will be patient with me

6 BY MR DURANT:

7 Q If you would, tell people what's going on as the
8 tape plays.

9 A Okay I had just activated my blue lights, I
10 saw the crowd starting to fight. Unfortunately, my
11 vehicle is facing the front of the club Directly on the
12 left side of the screen is the front door to the business
13 And my vehicle is right in front of the front door
14 Behind my vehicle is Toogoodoo Road. Okay And to the
15 right of my vehicle, on the right side of the screen would
16 be Baptist Hill Road and on the left side of the screen
17 would be 165

18 I'm watching the altercation And at one point,
19 you're going to see everybody kind of look to your right
20 And then watch -- while they're watching the subject run
21 to the right, get into the Cadillac or, apparently, get
22 into the Cadillac and drive back in front of the business
23 And you will see everybody look to the left side, on the
24 jury's left And then you're going to see some people
25 start ducking That's when the shots were being fired.

1 So right now, they're watching, I believe, the
2 Cadillac pull in front of the club right here and they're
3 watching them argue out of the Cadillac

4 I don't know how long the altercation was around
5 the Cadillac The shots were fired At that point, that
6 was the first volley of rounds or a volley of rounds I
7 heard. At that time, I'm around the rear of my car. And
8 I believe I just heard another round being fired from
9 behind me and that's when I went back into my patrol
10 vehicle and started to back out and was radioing for
11 backup You can see the front door And there were
12 patrons to my rear, I was having trouble backing the
13 cruiser out

14 Q Was that van there present at the time and that
15 Cadillac right there present at the time of the shooting?

16 A Yes, sir, it was In fact, the green Cadillac
17 was just beyond that white Caddy Right about there is
18 where the Cadillac altercation was occurring

19 Q Okay

20 A That's where I got flagged down You won't see
21 me exit my vehicle, I ran around the rear I didn't even
22 see where the victim was or anything I ran back to the
23 vehicle. I believe I heard more shots being fired The
24 victim was already shot at that time I was advising --
25 when you saw me on the radio, I was telling headquarters

D FRICHTL - DIRECT EX BY MR DURANT

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1 that we had a victim and I needed units there as quickly
2 as possible

3 Right now, I'm leaving the scene. But if you
4 notice, I'm not driving really fast The reason is is
5 because I saw the Cadillac drive this way and I was
6 actually looking around to see if I had seen any tire
7 marks or any skid marks or a quick turn or somewhere where
8 it might have gone and heading back towards 165 to
9 rendezvous with my backup unit

10 Q Is this the intersection you referred to as
11 where you waited?

12 A Correct, sir I don't believe you're going to
13 see my backup unit I believe I pulled out in front of
14 him when he was coming up so he would know exactly where
15 the altercation was and where the victim might be

16 Q Is this the point you backed up in the road?

17 A Correct My backup was coming. I saw his
18 lights in the distance and I went ahead and pulled out

19 Q What is that building in the background?

20 A That is Club Diamante

21 Q And you appear in the video now?

22 A Yes, I'm running up to the victim I was asking
23 somebody where the victim was and they pointed me in the
24 direction

25 Q So you were gone about five minutes from the

1 time of the shooting, is that correct?

2 A Yes, sir

3 Q This GEO Tracker where the cursor is, was that
4 present when you were leaving?

5 A No, that was the direct path that I traveled
6 when I was leaving the scene

7 Q Do you know where that car was?

8 A It was right behind the victim's vehicle.

9 Q Parked on the side of the road?

10 A Yes, sir

11 Q Whose vehicle is this?

12 A That's the victim's vehicle

13 Q Who is this over here, is that you?

14 A That's me I'm checking vitals and doing CPR
15 and first aid

16 Q And you did that until when?

17 A Until I got relief from the fire department My
18 major concern at the scene was that I couldn't get down
19 there and get over the victim and do CPR and first aid
20 It was a hostile crowd You will see some other physical
21 altercations on the far side of the screen Right now, I
22 needed a person there to stand by to make sure that I
23 wasn't going to get injured trying to help somebody else

24 MR. DURANT I believe that's all we need to see
25 right now

D FRICHTL - DIRECT EX BY MR DURANT

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1 Do we have an easel? Maybe I can put it up next
2 to this May the witness step down, Your Honor?

3 THE COURT Yes, sir

4 BY MR DURANT

5 Q Would you step down, Officer Frichtl?

6 (Officer Frichtl exited the witness stand.)

7 And this is a laser pointer right there. If you
8 would, I need you to stand back from where the jury is so
9 they can see as I ask questions of you

10 MR DURANT Your Honor, we have previously
11 marked this diagram as State's Exhibit No 6 I believe
12 we offered it into evidence if there's no objection from
13 defense counsel

14 MR RUNYON None from Defendant Washington,
15 Your Honor

16 MISS JENKINSON No objection, Your Honor.

17 THE COURT Okay It's admitted

18 MR DURANT Thank you, Your Honor

19 (WHEREUPON, State's Exhibit No. 6 was admitted
20 into evidence)

21 BY MR DURANT.

22 Q Now, could you tell the jury where -- well,
23 here, we'll use that since we have it

24 Could you show the jury where your car was
25 parked that night?

1 A The car was parked right there

2 Q Okay And that truck in front of you would be
3 the same truck we just saw in that video, is that correct?

4 A Correct, sir

5 Q Where was the blue Suburban that you saw that
6 this fight kind of started around?

7 A The blue Suburban was parked approximately right
8 about there

9 Q And you said you saw someone chased by a crowd
10 Which direction was that person chased?

11 A Running toward Baptist Hill Road, which is this
12 way

13 Q Back that way?

14 A Yes

15 Q And the Cadillac that you said you saw, which
16 way did you see the Cadillac go?

17 A The Cadillac was going this way toward Baptist
18 Hill Road in the same direction I saw him run

19 Q And, subsequently, you saw the Cadillac coming
20 from which direction?

21 A It came back from that same direction it just
22 went

23 Q What did it do when it came back?

24 A It stopped right about here

25 Q Okay And, apparently, there was another little

D FRICHTL - DIRECT EX BY MR DURANT

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1 altercation out there at that time?

2 A Correct And the other white Cadillac was right
3 about here that you saw in the video

4 Q Where were you at the time?

5 A I was standing right here trying to hold onto my
6 PA system, microphone

7 Q Now, what happened -- what direction did you
8 hear the gunshots?

9 A From around in this area

10 Q And what did you do when you heard the gunshots?

11 A That's when I circled to the rear of my car over
12 the trunk I was standing right about there

13 Q And that's where you were until we saw you leave
14 on the video there?

15 A Yes, sir

16 Q Now, that GEO Tracker that we saw in the roadway
17 on the way back, where was that parked at the time you
18 left?

19 A When I left, it was along side the ditch in the
20 grass right there

21 Q Okay And what is the vehicle right in front of
22 that?

23 A That would be the victim's vehicle

24 Q That's where you were flagged down as you were
25 leaving initially?

1 A I was flagged down right about here
2 (indicating)

3 Q Now, when you returned to the scene, where did
4 you find the victim's body or where was the victim lying?

5 A The victim was laying directly to the right side
6 of his vehicle.

7 Q In that same orientation with his feet kind of
8 toward the car?

9 A Yes, sir

10 Q And when you left, you went which way?

11 A When I left, I went out this way going toward --

12 Q That's where we saw you waiting for backup, is
13 that correct?

14 A Uh-huh

15 MR DURANT Thank you, you can resume your
16 seat Would you please answer any questions that defense
17 counsel may have for you?

18 CROSS-EXAMINATION

19 BY MR. RUNYON

20 Q Good afternoon, Mr Frichtl

21 A How are you doing, sir?

22 Q How are you doing? Deputy Frichtl, did you see
23 a pickup truck leave out of the parking lot and pursue
24 after the green Cadillac?

25 A No, sir, I didn't

D FRICHTL - CROSS-EX BY MR. RUNYON

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1 Q Did you hear a vehicle pursue after the green
2 Cadillac?

3 A I didn't pay attention to that.

4 Q So that you had no -- you had a view to see
5 that, though, couldn't you?

6 A Might have, I'm not --

7 Q But, certainly, when you got your vehicle on the
8 road and you went towards 165 or using the country
9 parlance of going up to Hollywood or back down to Baptist
10 Hill, you're going up the highway, right?

11 A Correct.

12 Q You had no vehicles on that roadway in front of
13 you at any time until you got to 165 and were waiting for
14 backup?

15 A Correct.

16 Q Okay Now, when you came past the area where
17 the victim was, there's a road sign there; isn't there?

18 A I believe so

19 Q Okay And on your video or the video of your
20 camera in your car, there's a person flagging you down I
21 think they used their left hand, if I remember But,
22 anyway, they were flagging you down?

23 A Yes, sir

24 Q Might have been the right hand, but my
25 impression is the left hand Flagged you down, a young

1 man in kind of a bluish sweatshirt?

2 A Yes, sir

3 Q Flagged you down saying somebody was hurt,
4 somebody was shot, something something?

5 A Right

6 Q And that was at precisely 3 16 25 on your video
7 camera, take my word for it?

8 A Okay.

9 Q Not asking you to remember that precisely. So
10 the victim was down at that point and time, correct?

11 A Correct

12 Q All right. And you didn't see the pickup truck
13 firing any shots or doing anything at any time from the
14 time you were at the club until the time you got back?

15 A I didn't see anybody firing at the time, but I
16 heard the shots

17 Q Okay Now, you worked out in the south end of
18 the county?

19 A Yes, sir

20 Q Petersfield, Cherry Hill, Pineland, Willtown
21 Road, Parker's Ferry, all that area?

22 A That is correct

23 Q Edisto And you have been on those roads,
24 particularly, Toogoodoo Road there, around that club in
25 inclement weather, isn't that correct?

D FRICHTL - CROSS-EX BY MR RUNYON

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1 A Yes, sir

2 Q When it's raining, in other words?

3 A Yes, sir

4 Q Inclement is a big word they teach you in law
5 school, but you've been there when it's raining?

6 A Yes, sir

7 Q The water runs off that road, doesn't it?

8 A I'm sure it does

9 Q Well, to get right to the point, the victim was
10 lying here, head towards the ditch, drainage ditch,
11 correct?

12 A Correct

13 Q And in your video, these cars are kind of parked
14 on a slant, correct?

15 A Correct, on a slope

16 Q On a slope, right?

17 A I'm sure It might be a slope

18 Q Whatever you want to call it?

19 A Right next to a ditch, yes, sir

20 Q And the victim was lying below grade, correct,
21 for lack of a better expression?

22 A I can't be 100 percent I know the victim was
23 on the ground.

24 Q Okay So you at no time saw any pickup truck
25 from whence shots were fired or anyone doing any -- you

1 just didn't see that?

2 A No, sir, there was just too many vehicles in
3 between me

4 Q And there were too many shots being fired, quite
5 frankly, or trying to locate them in the dark, who was
6 firing it, where, when, what and how?

7 A Right

8 Q Okay Now, this dirt and gravel parking lot,
9 there were cars parked in there, trucks, everything else?

10 A Yes, sir

11 Q Okay And you being the only officer on the
12 scene, you attempted to maintain a presence, yet at the
13 same time, be there when backup got there, correct?

14 A Right

15 Q Okay And so that's when you backed your police
16 car up, sheriff's, deputy's car up and came out on this
17 road and went down this way and didn't see anything in
18 front of you, including the green car?

19 A No, sir, no, they had already left long before
20 that

21 Q And did you see any vehicles pursue after that?

22 A I wasn't paying attention to pursuing vehicles
23 My focus was on the green Cadillac where the altercation
24 had just occurred

25 Q So the green Cadillac was here in this

D FRICHTL - CROSS-EX BY MR RUNYON

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1 neighborhood?

2 A Correct

3 Q Were there any vehicles around the green
4 Cadillac when the altercation was occurring?

5 A There were vehicles all through that area I
6 just saw people jumping out of the car and into the car
7 and yelling back and forth I didn't know who they were
8 yelling to or what.

9 Q Okay.

10 A My vision was too obscured to see who they were
11 yelling at

12 Q And then the green Cadillac takes off down the
13 road?

14 A Correct.

15 Q And -- but at 3 16 25 when you start down the
16 road, sometime between 3.13 44 on your video, take my word
17 for it?

18 A Okay

19 Q And 3-16 25, the victim is down on the ground?

20 A Okay

21 Q So that's when you were flagged, correct?

22 A Correct

23 Q And then you proceeded on down the road, never
24 saw any trucks or anything of that sort?

25 A No, sir

1 Q Do you know, based on your investigation or
2 based on your presence there, whether or not shots were
3 fired after the green Cadillac went on down the road from
4 any direction?

5 A I believe I heard rounds after -- after that

6 Q Okay You don't know where they came from?

7 A No idea

8 Q Okay Green Cadillac Now, my client is
9 Mr Tremayne Washington right there Let me take this
10 down so you can see

11 Stand up, Mr Washington

12 (Defendant Washington stood)

13 Do you recall ever seeing him that night?

14 A No, I do not

15 Q Sit down, Mr Washington

16 MR DURANT: I have no further questions of this
17 witness, Your Honor

18 THE COURT Miss Jenkinson

19 MISS JENKINSON: Thank you, Your Honor

20 CROSS-EXAMINATION

21 BY MISS JENKINSON

22 Q Good afternoon, Deputy Frichtl

23 A Good afternoon

24 Q I have a diagram as well and I would like it if
25 you could come down and point out a few things on my

D FRICHTL - DIRECT EX BY MISS JENKINSON

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1 diagram

2 A Sure

3 Q It doesn't have the cars in it, but I would like
4 for you to point out where your car was for me and place
5 one of these stickers on it

6 A Right about here

7 Q I'm going to have you initial it so we can tell
8 it's yours

9 A Right here

10 Q And you came around the side of your car -- if
11 this was your car, you came around the side when you heard
12 the shots?

13 A Yes, I went around the rear

14 Q You heard the first shots come from the
15 direction of the green Cadillac?

16 A I heard it coming from this direction, yes.

17 Q Towards Hollywood?

18 A Towards Hollywood

19 Q And then you heard shots come from the other
20 direction behind you?

21 A Yes, ma'am

22 Q And that is towards Baptist Hill?

23 A Correct

24 Q The people in the video, they were in front of
25 your car around the club?

1 A Right

2 Q In this area?

3 A Yes

4 Q When you left going towards Hollywood, you were
5 flagged down and you saw the victim?

6 A Correct

7 Q Could you place a sticker where the victim was
8 located? I believe this is a ditch, correct?

9 A Correct I believe the victim was in this area
10 Actually, it's in between the two -- in the area right in
11 here

12 Q Had he fallen into the ditch?

13 A Into the ditch? I don't believe so From what
14 I saw and remember on the video, I think he was right on
15 the side of the ditch where I was on, pretty steep ground

16 Q Could you tell if his body was lying in a slant?

17 A I don't recall

18 Q And it was by his car?

19 A Yes, ma'am

20 Q I believe that is all I have for you to mark I
21 just have one more question, I believe Could you put
22 your initials on that, too?

23 A Yes, sir

24 Q And that's where the victim was You stopped,
25 you saw the victim and you heard more shots?

D FRICHTL - DIRECT EX BY MISS JENKINSON

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1 A I believe so because something made me run to my
2 car again

3 Q That's why you had to leave and get backup?

4 A Yes, sir.

5 Q Do you know which direction they came from?

6 A Behind me

7 Q Behind you?

8 A Yes, ma'am

9 MISS JENKINSON That's all I have, Deputy

10 Frichtl Thank you

11 THE COURT Redirect, Mr Durant?

12 REDIRECT EXAMINATION

13 BY MR DURANT

14 Q That's just an approximate location of where the
15 victim's body was?

16 A Oh, yes, sir

17 Q And it's safe to say there were lots of vehicles
18 out there at that time, is that correct?

19 A Yes, sir, lots

20 Q There were a lot of people out there at that
21 time, is that correct?

22 A Yes, sir

23 Q Just a couple questions that have arisen from
24 your testimony with regard to what Mr Runyon asked you as
25 well You're out there pretty close to that building at

1 that time, is that correct?

2 A Yes, sir

3 Q I'm going to speed this up a little bit to get
4 it up to the shooting, which, I believe, is about 15:20
5 You testified previously this appears to be when the
6 Cadillac was coming back down the road?

7 A Yes, sir, that's when everybody is watching.

8 Q Is it safe to say that's when the gunfire
9 started, right?

10 A Yes, sir

11 Q 3 15 21?

12 A Yes, sir

13 Q Also, it would be pretty safe to say that
14 gunfire occurred back to the left-hand side from the
15 direction you said it was coming from?

16 A Oh, yes, sir

17 Q And did you see that guy running there? What
18 was that?

19 A Probably more gunfire

20 Q Same direction?

21 A Same direction

22 Q Okay You back up from that point At the time
23 of the gunfire, your car was up there and you were to the
24 left-hand side of your car, is that correct?

25 A Right

D FRICHTL - REDIRECT EX BY MR DURANT

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1 Q And that van, I believe you said, was there
2 before?

3 A Yes, sir

4 Q Those people out there as well, is that correct?

5 A Yes, sir

6 Q That Cadillac was there?

7 A Yes, sir.

8 Q And those people were out of the Cadillac?

9 A Yes, sir

10 Q So it would be pretty safe to say that you
11 couldn't see what was happening back on the other side of
12 that Cadillac?

13 A No, sir, all I had a view was of the green
14 Cadillac

15 Q Okay What is this vehicle over here?

16 A That's the GEO Tracker

17 Q And what's that right there?

18 A That's the road sign

19 Q Can you see what that is right over there, that
20 this guy is standing over?

21 A No, sir, but I assume it's the victim

22 Q That's the area you found the victim in when you
23 came, right?

24 A Yes, sir.

25 Q You turned That's where you were flagged down

1 just past that vehicle, right?

2 A Okay, sir, yes

3 Q Okay By this time, it's been a full minute
4 after the shooting, is that correct, actually a minute and
5 some seconds?

6 A Yes, sir

7 Q For whatever vehicles were out on that road or
8 turned out on that road before you actually got out on the
9 roadway, is that correct?

10 A Yes, sir

11 MR DURANT I don't believe I have any further
12 questions at this time

13 THE COURT Mr Runyon, any recross?

14 RECROSS-EXAMINATION

15 BY MR RUNYON

16 Q That vehicle that was in front of was on the
17 roadway -- do you see the taillights in your tape, that
18 you were starting down the road before you were flagged
19 down?

20 A Okay

21 MR DURANT Would you like me to play it again,
22 Bill?

23 MR RUNYON. Sure

24 MR DURANT Can I speed it up?

25 MR RUNYON Sure

D. FRICHTL - RECROSS-EX BY MR RUNYON

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1 BY MR RUNYON.

2 Q Here's where you're backing out You've got
3 your blue light flashing and gunshots and whatever you --
4 people just kind of milling around, right?

5 A Right, I had people from behind me

6 Q Right there where that man is crossing, see
7 that, that's a car, isn't it?

8 A Yes, sir.

9 Q Is that car the green Cadillac?

10 A I don't believe so That had left long before I
11 could even back out

12 Q So that's an automobile going down the road in
13 the same direction as the green Cadillac?

14 A Correct

15 Q You saw the pickup truck or anything like that
16 going down the road toward the green Cadillac?

17 A No, there were vehicles coming and I was having
18 trouble backing up There were vehicles already headed in
19 that direction

20 Q The vehicles coming down -- remember my
21 directions, country directions, down Toogoodoo Road toward
22 Baptist Hill and you were going to head up toward
23 Hollywood?

24 A Correct

25 Q I'm only worried about asking you questions

1 about the vehicles going up towards Hollywood?

2 A Correct

3 Q And you saw the green Cadillac go towards
4 Hollywood?

5 A Right

6 Q And when you got out on the road just prior to
7 being flagged, you saw that automobile on the roadway
8 ahead of you?

9 A I believe --

10 Q Going up to Hollywood?

11 A Going up to Hollywood, but there was a vehicle
12 that was probably obscuring my ability to back out on the
13 highway

14 Q Okay. And that vehicle would have been a
15 vehicle that came from behind the club, so to speak, from
16 down Baptist Hill side?

17 A Came from down the way

18 Q Okay. We're in good shape on our directions
19 now

20 MR RUNYON. No further questions, Judge

21 THE COURT Miss Jenkinson?

22 MISS JENKINSON Thank you, Your Honor. I
23 apologize, I would first like to get the diagram marked
24 for ID only as Defendant's 1.

25 (WHEREUPON, Defendant's Exhibit No 1 was marked

1 for identification only)

2 RECROSS-EXAMINATION

3 BY MISS JENKINSON

4 Q Deputy Frichtl, I have a couple questions about
5 this same spot

6 MISS JENKINSON Mr Durant, if you would play
7 it for me?

8 MR DURANT Tell me when you want me to stop

9 MISS JENKINSON Okay

10 BY MISS JENKINSON

11 Q Deputy Frichtl, is that a car on the right of
12 the screen in front of that sign?

13 A I believe so, yes

14 Q And it's parked at a slant?

15 A Yes, ma'am

16 Q Because there's a ditch right there?

17 A Yes, ma'am

18 Q And the victim's body was found on the other
19 side of his car, the Honda?

20 A Right

21 Q It was parked along the road on that side?

22 A Right

23 Q So his car would have been parked at a slant as
24 well?

25 A Probably.

1 Q Because there's a ditch there?

2 A Yes, ma'am

3 MISS JENKINSON Thank you That's all I have

4 THE COURT You may step down Thank you.

5 All right Ladies and gentlemen, we're going to

6 take a break right now I will send you to the jury room

7 I will remind you do not begin deliberations or

8 discussions on the case. If you want to take a smoke

9 break or go downstairs and get some fresh air, the bailiff

10 will escort you downstairs. We will see you back about at

11 4.00, top of the hour

12 (WHEREUPON, the following proceedings were held

13 outside the presence of the jury)

14 (WHEREUPON, a recess transpired)

15 THE COURT Ready for the next witness?

16 MR. DURANT. Yes, Your Honor.

17 THE COURT. All right Bring the jury back

18 (WHEREUPON, the following proceedings were held

19 in the presence of the jury)

20 THE BAILIFF The jury is all present, Your

21 Honor

22 THE COURT All right Mr Durant, call your

23 next witness

24 MR. DURANT. The State would call Kevin

25 Dunmeyer

1 KEVIN DUNMEYER,
2 being first duly sworn, testified as follows.

3 THE CLERK. Please be seated If you would,
4 please state your full name to the Court and spell your
5 last

6 THE WITNESS. Kevin T Dunmeyer,
7 D-U-N-M-E-Y-E-R

8 DIRECT EXAMINATION

9 BY MR DURANT:

10 Q How old are you, Mr Dunmeyer?

11 A Say it again

12 Q How old are you?

13 A Thirty-two.

14 Q And where are you currently employed?

15 A Easy Auto Sales

16 Q What do you do for Easy Auto Sales?

17 A Mostly, I pretty much manage the lot, wholesale,
18 purchase cars, things of that nature

19 Q You're a mechanic?

20 A Yes, sir

21 Q Did you used to teach mechanics?

22 A Yes, sir, Baptist Hill High School

23 THE COURT. Could you speak up, please? When
24 you respond, kind of lean forward

25 MR DURANT If you would speak into the

1 microphone so the jurors can hear you

2 BY MR DURANT

3 Q Where did you grow up?

4 A In Hollywood

5 Q What part of Hollywood?

6 A Cherry Hill

7 Q You're considered a Cherry Hill guy?

8 A Yes, sir

9 Q Were you at Club Diamante on May 11th, 2003?

10 A Yes, sir

11 Q What time did you get there?

12 A Between like 10 45, 11 15, right in that area

13 Q You didn't actually work at the club, did you?

14 A No, sir

15 Q Did you go to the club with anyone?

16 A No, sir

17 Q Were you drinking that night?

18 A Yes, sir

19 Q What were you drinking?

20 A Vodka.

21 Q Were you intoxicated?

22 A No, sir, I had just arrived

23 Q Did anything happen inside the club that night?

24 A There was an altercation between one of my

25 cousins and a guy from the Petersfield area.

K DUNMEYER - DIRECT EX BY MR DURANT

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1 Q Okay Who is your cousin?

2 A Raulo

3 Q And his real name is?

4 A He's like a distant cousin, I just moved back

5 down As far as his real name, I don't recall

6 Q Would it be John Campbell?

7 A Yes, sir.

8 Q He goes by the nickname Raulo?

9 A Yes, sir

10 Q He had a squabble with whom?

11 A Keith Richards.

12 Q That was where?

13 A On the inside

14 Q On the inside of the club?

15 A Yes, sir.

16 Q Where in the club?

17 A Mostly off to the left of the dance floor.

18 Q And where is Keith Richards from?

19 A Petersfield

20 Q Do you know what the cause of the fight was or

21 the squabble between them?

22 A At the time of the incident, no, I didn't

23 Q Okay So Raulo was a distant cousin of yours?

24 A Yes, sir

25 Q What happened after the problem inside the club?

1 A I was about to leave and he pretty much asked me
2 for a ride

3 Q And what did you tell him?

4 A I told him sure

5 Q When you say he, you're talking about who?

6 A Raulo

7 Q What did you tell him?

8 A I said pretty much, you know, leave it alone, go
9 ahead and leave, that type of thing He said I would
10 leave if I had a ride And I said well, I'm leaving
11 anyway, I will give him a ride home

12 Q What did you do?

13 A I walked outside I proceeded to my vehicle, I
14 opened the door on the passenger side to let him in And
15 then I saw guys coming towards my car, to my truck

16 Q Do you remember the police already being out
17 there that night?

18 A Yes, sir, to my right as I was leaving

19 Q What kind of a vehicle were you driving?

20 A Blue Suburban

21 Q Where was your Suburban parked?

22 A Directly across the street in the front of the
23 club

24 Q Referring your attention to State's Exhibit No
25 24, which is depicted on the scene, do you recognize that

K DUNMEYER - DIRECT EX BY MR DURANT

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1 vehicle?

2 A Yes, sir

3 Q And that is your vehicle?

4 A Yes, sir

5 Q Referring to State's Exhibit No 6, where did
6 you park your -- you've seen this before, have you not,
7 sir?

8 A Yes, sir

9 Q Okay That being Club Diamante, could you tell
10 the jury where you had your vehicle parked?

11 A In this area.

12 Q Okay It was pointed toward the Baptist side or
13 Hollywood?

14 A Yes, sir, Baptist Hill

15 Q Now, what happened after you came out and put
16 Raulo in your truck? What happened after you came and put
17 Raulo in your truck?

18 A Raulo's brother, we went to school together, he
19 was telling me some things were going on in the club
20 Raulo just got into something with his brother and they
21 were pretty much arguing back and forth He was telling
22 his brother I don't have anything to do with that You
23 know, they were pretty much arguing back and forth I
24 went to enter my vehicle through the driver's door As I
25 walked and I -- I -- pretty much something told me to turn

1 around and when I turned around it was a gang of guys at
2 my door

3 Q A gang of guys at your door Where was this
4 gang of guys from?

5 A Petersfield area

6 Q Do you know Tremayne Washington, right here?

7 A Not personally I've seen him, not personally

8 Q What name do you know him by?

9 A Fiend

10 Q Do you remember seeing him there that night?

11 A On the inside

12 Q How about this fellow over here, what's his
13 name?

14 A John Ward

15 Q What name do you know him by?

16 A Mix.

17 Q And do you know -- you said you saw them on the
18 inside?

19 A Yes, sir, on the inside

20 Q Do you know whether or not they were together on
21 the outside of the club as well?

22 A I couldn't -- I didn't see them on the outside

23 Q Do you remember telling that to Detective Hawks
24 that they were together outside around your car?

25 MR RUNYON Objection, Your Honor, leading

K DUNMEYER - DIRECT EX BY MR DURANT

135

1 THE COURT Please rephrase

2 BY MR DURANT

3 Q Do you remember talking to Detective Brian Hawks
4 that night?

5 A Yes, sir

6 Q That morning?

7 A Yes, sir

8 Q Do you remember telling him who was out there
9 around your car?

10 A Yes, sir

11 Q And do you remember telling him -- who did you
12 tell him was out there around your car?

13 A I told him I saw the guy, Keith Richardson,
14 Fred -- Fred, I forgot Fred's last name I saw those two
15 It was a gang of guys around, I couldn't really pick out
16 who exactly was there, but it was like a gang of them.

17 Q Okay But you acknowledge talking to Detective
18 Hawks that morning?

19 A Yes, sir

20 Q And telling Detective Hawks who was around your
21 vehicle?

22 A Yes, sir.

23 Q But you deny telling Detective Hawks that these
24 two were around your vehicle?

25 A Well, I think what he asked me was, you know, as

1 far as who were -- you know, pretty much who was out
2 there, who was together And I told him who I actually
3 saw together on the inside But anything as far as on the
4 outside, it was just people that was directly in front of
5 me.

6 Q Okay Anybody take a swing at you?

7 A Yes, sir

8 Q Who took a swing at you?

9 A Keith Richardson and the other guy, Fred

10 Q And what happened after Keith took a swing at
11 you?

12 A Keith took a swing at me I lunged back I
13 braced back, didn't land I grabbed him -- when I grabbed
14 him, he was struck behind by Kenneth Sanders, that's his
15 name, Kenneth Sanders

16 Q Does Kenneth go by another name?

17 A Fred

18 Q Where did Fred hit you?

19 A Like behind me on the shoulder, the right
20 shoulder

21 Q What happened after Fred hit you?

22 A I backed up At that time, I didn't proceed in
23 the vehicle, I just took off running down towards Baptist
24 Hill area because I had a cousin that stayed not too far
25 down the street

K DUNMEYER - DIRECT EX BY MR DURANT

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1 Q So you took off running?

2 A Yes, sir

3 Q Were you being chased?

4 A Yes, sir

5 Q By whom?

6 A The same crowd that was standing outside my
7 vehicle

8 Q Where did you go?

9 A This guy name Jesse Brooks, who lives down the
10 street, maybe like an eighth of a mile down the street

11 Q What happened then?

12 A As I was approaching the house, I didn't get
13 exactly to the house yet, Antonio Washington said he
14 wanted to get in because you got a gang of guys running
15 behind you And I told him take me back --

16 Q Who is on Antonio Washington?

17 A Ton-Ton.

18 Q Ton-Ton is his nickname?

19 A Yes, sir.

20 Q Where is Ton-Ton from?

21 A Cherry Hill

22 Q So he and you are from the same area?

23 A Yes, sir

24 Q What was Ton-Ton driving?

25 A A green Cadillac.

K DUNMEYER - DIRECT EX BY MR DURANT

138

1 MR DURANT Would you put up State's Exhibit

2 No. 11?

3 BY MR DURANT

4 Q Drawing your attention to State's No 11, do you
5 recognize that vehicle?

6 A Yes, sir

7 Q Whose vehicle is that?

8 A Antonio Washington.

9 Q Is that the vehicle that he picked you up in
10 that evening?

11 A Yes, sir

12 Q Thank you Now, what happened when you say you
13 were chased? Referring back to State's Exhibit No 6
14 again, which direction were you chased?

15 A I was being chased toward Baptist Hill in this
16 area.

17 Q Okay. And what happened when Ton-Ton picked you
18 up in his car?

19 A I told him to take me back to the police because
20 I remember seeing a police officer as I exited the club,
21 so I wanted him to take me back so I could make a report

22 Q Make a report about what?

23 A About being struck and, I guess, you know, what
24 I saw

25 Q Were you pretty angry?

K DUNMEYER - DIRECT EX BY MR DURANT

139

1 A Very much so

2 Q People out there pretty angry that night?

3 A At that point, I really didn't know what was
4 going on other than just giving somebody a ride home

5 Q Who else was in the car besides Ton-Ton?

6 A A guy I really don't even know his name. I
7 don't know his first name The only thing I know him by
8 is Chain.

9 Q Where was Chain?

10 A On the passenger front seat

11 Q Who was driving?

12 A Ton-Ton

13 Q And where were you?

14 A In the back seat passenger's side.

15 Q Now, where did -- after he picked y'all up,
16 where did y'all go?

17 A We headed back towards -- I told him to take me
18 back to the police that was on our side of the club.

19 Q So y'all returned to the club area?

20 A Yes, sir

21 Q This would be going back towards --

22 A Back toward the club

23 Q Now, what did y'all do when you got back to the
24 area of the club?

25 A Well, as we were approaching, you could still

1 see guys in the street The police car was still there,
2 so I told him to just take me back and I was going to talk
3 to the police As we were approaching, you could see gun
4 flashes down the street and then you started hearing a
5 bunch of gunfire

6 Q Now, you say you saw gunfire from down the
7 street Had y'all stopped by that time?

8 A We were about to stop Because the traffic was
9 there, we couldn't really move

10 Q Traffic in the road?

11 A Traffic in the road, people in the road

12 Q And you say you saw a gunfire?

13 A Yes, sir, I saw a gunfire

14 Q Where did you see gunfire?

15 A It was maybe in the distance maybe about another
16 hundred yards

17 Q And referring back to State's Exhibit No. 6
18 again, tell the jury where Ton-Ton's car was when y'all
19 came to a stop

20 A When we came to a stop, we were like right in
21 this area We had approached the front of the club and my
22 truck was still there

23 Q Was your truck still there at the time?

24 A The truck was still there

25 Q Okay And you saw gunfire where?

K DUNMEYER - DIRECT EX BY MR DURANT

141

1 A Up the street a ways, a good ways

2 Q Okay And there's a road that goes back up to
3 the right, is that correct?

4 A Exactly

5 Q Do you know what the name of that road is?

6 A Coon Club Road.

7 Q Is that the area that you saw the flashes from?

8 A Yes, sir

9 Q You indicated you heard some gunfire, where did
10 you hear the gunfire coming from?

11 A From my right

12 Q Now, which area would that be that you actually
13 heard gunfire?

14 A We were right in this area right here We came
15 to a complete stop -- my truck was right here right in
16 this area right here We came to a complete stop right in
17 here I could see up here, but I could hear a lot of
18 gunfire

19 Q Over to the right-hand side --

20 A To my right

21 Q -- of your car? What did you do when you heard
22 gunfire?

23 A When I saw the flashes and heard the sound, I
24 got down in the seat and Ton-Ton also got down in the
25 seat We pretty much all got down together

1 Q And what did y'all do after you ducked down?

2 A When he ducked down, he pretty much stepped on
3 the gas

4 Q Y'all got out of there pretty quickly, right?

5 A Pretty quickly.

6 Q In other words, you weren't just lingering down
7 the road?

8 A No

9 Q Where did y'all go?

10 A He headed toward Hollywood and he said he was
11 going home, but I -- because I thought my truck would have
12 still been there, I said I still want to go back and talk
13 to the police, so I told him to take me back to the
14 police

15 Q Did Ton-Ton want to go back?

16 A No, he didn't really want to, but he was willing
17 to take me back

18 Q So he took you anyway?

19 A Yeah

20 Q How long was this after the shooting that you
21 actually returned back to the club?

22 A It was just a matter of a trip around the
23 Toogoodoo Road, down 162, back to Baptist Hill Road and
24 back the circle

25 Q Okay. Five minutes?

K DUNMEYER - DIRECT EX BY MR DURANT

143

1 A If that

2 Q Was your Suburban still there when you returned?

3 A No, my Suburban was not there

4 Q Do you know a fellow named Anthony Ward?

5 A Yes, sir

6 Q Do you remember seeing him out there that night?

7 A Yes, sir, in the crowd

8 Q In what crowd?

9 A In the Petersfield I remember him because
10 we're related

11 Q Pardon me?

12 A We're related, so I know him by face

13 Q Okay And you had seen him where?

14 A In the crowd, outside

15 Q Okay He was part of the Petersfield crowd?

16 A Yes, sir

17 Q He lives in the Petersfield area, from the
18 Petersfield area?

19 A Yes, sir

20 Q Was he out there when you returned later with
21 Ton-Ton?

22 A Yes, sir.

23 Q Do you know what Anthony Ward's nickname is?

24 A Cabbage

25 Q Was he one of the ones that had been chasing you

1 earlier in the evening?

2 A Well, when I turned around -- I was pretty much
3 focused on the two that was -- the one that was in front
4 of me and the one that was behind me is now in front of me
5 and I just took off But he was pretty much outside with
6 them at the time

7 Q Now, did you talk to the police out there that
8 night?

9 A Yes, sir

10 Q Do you recall who you talked to?

11 A I spoke with Officer Sheppard and Detective
12 Hawks and it was another officer

13 Q Do you recall giving a written statement to a
14 Detective Antonio?

15 A Yes, sir.

16 Q Did you tell the police the truth in that
17 statement?

18 A No, sir

19 Q What did you not tell the truth about?

20 A I told them Fred, Kenneth Sanders, had a gun,
21 which I never saw him with a gun But it was pretty much
22 because of the incident, what happened I just stopped
23 there on the way from work, stopped to get a drink going
24 home and then this happens And it was pretty much every
25 time something happens nothing is ever done So the

K DUNMEYER - DIRECT EX BY MR. DURANT

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1 police were at the point they didn't want to hear anything
2 about the assault because I never knew anything about as
3 far as someone being shot So they never really
4 wanted -- pretty much, they weren't concerned about what
5 went on with me.

6 Q Because they were more concerned about the guy
7 that was dead?

8 A Exactly

9 Q Ton-Ton have a gun?

10 A No, sir

11 Q Chain have a gun?

12 A No, sir

13 Q Did you have a gun?

14 A No, sir

15 Q Did anybody in your car shoot a gun?

16 A In my truck?

17 Q In your car, in Ton-Ton's car?

18 A Oh, no, sir

19 Q How did you end up getting home that night?

20 A Officer Sheppard

21 MR DURANT Court's indulgence for just one
22 moment

23 Please answer any questions defense counsel may
24 have for you

25 CROSS-EXAMINATION

1 BY MR RUNYON

2 Q Good afternoon, Mr Dunmeyer

3 A How are you?

4 Q Good to see you again Mr Dunmeyer, you said
5 Mr Sanders had a gun?

6 A Yes, sir

7 Q Do you know what kind?

8 A No, I said -- that was a lie I told the police
9 that he did, but he actually didn't I didn't --

10 Q Go ahead

11 A I never saw him with a gun

12 Q So you never saw any guns that night?

13 A The only thing I saw was flashes and heard
14 sound

15 Q The flashes were down the road coming from the
16 direction of the Coon Club?

17 A Exactly

18 Q And then somewhere over from your right?

19 A To my right As we were approaching, you could
20 hear -- I mean, it what a well-defined sound It was
21 right to my right You could hear it

22 Q Okay

23 MR RUNYON. No more questions, Judge

24 THE COURT: Miss Jenkinson

25 MISS JENKINSON Thank you, Your Honor

K DUNMEYER - CROSS-EX BY MISS JENKINSON

147

1 CROSS-EXAMINATION

2 BY MISS JENKINSON

3 Q Good afternoon, Mr Dunmeyer

4 A How are you?

5 Q The solicitor asked you about Anthony Ward?

6 A Yes, ma'am

7 Q That's Cabbage?

8 A Yes, ma'am

9 Q This isn't Anthony Ward?

10 A No, ma'am

11 Q That is John Ward?

12 A Exactly

13 Q And when you referred to Anthony Ward with the
14 group of guys that were fighting with you, you were
15 talking about Cabbage?

16 A Yes, ma'am.

17 Q In those group of people that were around, you
18 didn't see John Ward?

19 A No, ma'am It was a group of guys You know, I
20 was mainly concerned with the two that were in front of me
21 at the time As far as anyone else, no, I didn't see
22 anyone else

23 Q And you didn't see John Ward outside of the
24 club?

25 A No, ma'am I didn't see anyone else You know,

1 there were people out there, but for me to pick and say
2 this one or that one, I couldn't tell you that

3 Q John Ward didn't chase you down the street?

4 A I never looked behind me

5 Q Was Anthony Ward chasing you?

6 A I never looked behind me.

7 Q John Ward wasn't around your truck?

8 A Only ones I saw was the two that was in front of
9 me -- the Fred Sanders -- well, Kenneth Sanders, Keith
10 Richards and that was it It was a group of guys, whoever
11 the group of guys, I can't tell you I saw them when I
12 didn't see. I saw a group of guys I didn't see John
13 Ward, I didn't see him outside.

14 Q You only saw him inside the club that night?

15 A Yes, ma'am, he was with normally -- normally,
16 when they were together, they're pretty much together So
17 when we talked, whatever, they were together

18 Q Now, you were talking about the gunfire that you
19 saw and you heard, there was a lot of gunfire out there
20 that night?

21 A Yes, ma'am

22 Q Mr Dunmeyer, I'm going to have you come down
23 and look at this diagram, if you don't mind

24 A (Witness stepped down from the witness stand)

25 Q This is the club If you would please show the

K DUNMEYER - CROSS-EX. BY MISS JENKINSON

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1 jury which way you ran?

2 A I ran this direction

3 Q Okay And Ton-Ton picked you up in the green
4 Cadillac?

5 A Yes, ma'am He picked me up maybe a quarter
6 mile down the street.

7 Q A quarter mile down the street? And when you
8 came back --

9 A Not a quarter mile, it's not that far Maybe
10 like -- it's less than an eighth

11 Q When you came back towards the club, where did
12 the car stop?

13 A The car stopped not directly in front, but maybe
14 like right in there

15 Q If you could put a sticker where your car was?

16 A Where my car was?

17 Q Or where the green Cadillac was?

18 A Right here.

19 Q It was in the roadway?

20 A Yes, ma'am

21 Q If you would put your initials on that for me

22 A (Witness complies)

23 Q And if you could put another sticker where your
24 car is, your Suburban?

25 A (Witness complies.)

1 Q And when the Cadillac is here at this point,
2 that's when you heard the gunshots?

3 A You could see it in this area, you could see it
4 from right here because we were like -- it was not really
5 like a dead stop, it was like we were creeping. As the
6 creep was going, we saw the flashes, then that's when we
7 heard all of the fire coming from this area

8 Q You saw the muzzle fire from here?

9 A Yes, ma'am

10 Q And flashes back --

11 A No, I saw muzzle fire here and I heard it over
12 here

13 Q Back behind you. Okay How tall are you,
14 Mr Dunmeyer?

15 A Six-six

16 Q I'm going to get you to mark one more place,
17 about where you saw the muzzle fire?

18 A I don't know, about as far as where the chart to
19 wherever Coon Club Road is

20 Q This is Coon Club Road?

21 A In this area

22 Q I'm going to have you initial that

23 A This is Coon Club Road?

24 MR DURANT That doesn't show Coon Club Road

25 THE WITNESS. I don't know

K DUNMEYER - CROSS-EX BY MISS JENKINSON

151

1 MR DURANT That doesn't show Coon Club Road

2 BY MISS JENKINSON

3 Q Is this about how far down the road you saw the
4 fire?

5 A I don't know what this is

6 Q That's okay How many yards do you think it
7 was?

8 A Maybe between 80 -- I don't know, maybe 60 to
9 100 yards

10 Q I'm going to show you one more diagram. This
11 one is different Mr Dunmeyer, I'm going to have you use
12 this pointer and just show the jury on this one I want
13 you to show me -- this is Toogoodoo Road running this way
14 I want you to show me where the Cadillac stopped

15 A The Cadillac stopped --

16 Q Mash that red thing on there

17 A The Cadillac was right where it says -- the
18 green area The Cadillac should have been in here

19 Q Show me where you saw the gunfire?

20 A You have to move it to your left.

21 Q That's Coon Club Road that way?

22 A Coon Club Road should have been down in here

23 Q Okay

24 A This is a driveway here, Coon Club Road is here

25 Q You see the name Coon Club Road up there?

1 A Yeah, but that doesn't show me the actual
2 driveway Coon Club has a sign But right in here where
3 the road turns off, there were people all of the way down
4 the street So right at the end of that street, there was
5 a turnoff and you could see -- because it has a street
6 light down there and you can see it

7 Q If you could move the diagram to the left a
8 little bit, show me where you heard the shots?

9 A Well, I was -- we were in this area right here
10 creeping slow, coming this way, and we could hear the
11 muzzle fire good right in here, right in this grassy area
12 here

13 Q You heard several shots?

14 A A lot of shots

15 Q Lots of shots

16 MISS JENKINSON Thank you, Mr Dunmeyer, that's
17 all I have.

18 MR. DURANT Just one question.

19 REDIRECT EXAMINATION

20 BY MR DURANT

21 Q You mentioned, I think, when they were talking
22 about seeing Mr Ward, Mr Washington or one of them,
23 outside, inside and you said something about you saw them
24 inside and you said when they are together, they're pretty
25 much together What do you mean by that?

K DUNMEYER - REDIRECT EX BY MR DURANT

153

1 A It's pretty much not saying -- like, normally,
2 everybody pretty much where we live at are pretty together
3 in groups When you go out, you tend to see them as
4 groups

5 Q And you hang out with the Cherry Hill group?

6 A I mean, it's not like we hang out, it's like a
7 different age now

8 Q And were the Petersfield group hanging out with
9 the Petersfield folks inside?

10 A Pretty much

11 Q And no question that Mr Ward is from
12 Petersfield, right?

13 A Yes, sir

14 Q And that his friend, Mr Washington, hangs out
15 with the Petersfield crowd?

16 A Well, just like I say, my first time ever seeing
17 him was with John Ward

18 Q Okay.

19 MR DURANT Thank you

20 THE COURT Mr Runyon?

21 RECROSS-EXAMINATION

22 BY MR RUNYON

23 Q You saw them together that night inside the
24 club?

25 A Yes, sir

K DUNMEYER - RECROSS-EX BY MR RUNYON

154

1 Q Never outside the club?

2 A Never outside

3 MR RUNYON No further questions

4 THE COURT Miss Jenkinson?

5 MISS JENKINSON. No more questions, thank you

6 THE COURT You may step down

7 Call your next witness

8 MR DURANT James Murphy

9 THE COURT: Folks, whenever we are waiting for a
10 another witness to come, if you want to stand and stretch
11 and get the blood circulating, you're welcome to

12 MR DURANT I'd ask that Mr. Dunmeyer be
13 excused if there's no objection

14 THE COURT Any objection?

15 MR. RUNYON No objection from Defendant
16 Washington.

17 THE COURT Any objection to the witness being
18 excused?

19 MISS JENKINSON. No, sir

20 THE COURT He's excused

21 JAMES MURPHY,
22 being first duly sworn, testified as follows

23 THE CLERK Please be seated Please state your
24 full name to the Court and spell your last

25 THE WITNESS James Murphy, M-U-R-P-H-Y.

J MURPHY - DIRECT EX BY MR DURANT

155

1 DIRECT EXAMINATION

2 BY MR DURANT

3 Q How old are you, Mr Murphy?

4 A Twenty-six

5 Q Where do you live?

6 A Hollywood

7 Q What part of Hollywood?

8 A On Highway 162

9 Q And is it in the Petersfield part of Hollywood?

10 A No

11 Q Is it in the Cherry Hill part of Hollywood?

12 A No

13 Q What part of Hollywood do you live in?

14 A Pineland

15 Q Pineland?

16 A Uh-huh

17 Q You were raised in that area?

18 A Yes

19 Q Went to school in that area?

20 A Yes

21 Q Are you married?

22 A Yes

23 Q Do you have any kids?

24 A Yes

25 Q And you also have had some previous problems

1 with the law, correct?

2 A Yes

3 Q I believe you were convicted of failing to stop
4 for a blue light, possession of a stolen auto and grand
5 larceny in 1998, is that correct?

6 A Yes, sir

7 Q And using a vehicle without permission in 2001?

8 A Yes

9 Q Are you currently on probation or parole?

10 A No

11 Q Do you have any charges currently pending?

12 A No

13 Q Do you know the victim in the case?

14 A Yes

15 Q And how do you know him?

16 A Cousin.

17 Q And cousin to you or cousin to your wife?

18 A My wife

19 Q Do you know this fellow?

20 A Yes

21 Q What's his name?

22 A John Ward.

23 Q What nickname does he go by?

24 A Mix

25 Q And what's your relationship with him?

J MURPHY - DIRECT EX BY MR. DURANT

157

1 A Cousin

2 Q He's a cousin?

3 A Yes

4 Q How about -- can you see this fellow over here?

5 A Yes

6 Q What's his name?

7 A Tremayne, I think, Washington.

8 Q What name did you know him by?

9 A Friend

10 Q How do you know him?

11 A Just being around there

12 Q He's around where?

13 A Hollywood and Petersfield area

14 Q Does he hang around with anybody in the

15 Petersfield area?

16 A (Witness nods head)

17 Q Who is that?

18 A Cabbage and a couple other people

19 Q How about that defendant, does he hang around

20 him a good bit?

21 A I think so

22 Q That defendant, Mr John Henry Ward, correct?

23 A Yes

24 Q Is that true?

25 A Hum?

1 Q Is that true?

2 A What?

3 Q He being John Henry ward, is that true?

4 A Yes

5 Q Were you at Club Diamante on May 11th --

6 A Yes

7 Q -- 2003? How did you get to the club?

8 A Drive my own car

9 Q And did you see anything happen inside the club
10 that night?

11 A Yes, there was an argument

12 Q Between who?

13 A Keith and his girlfriend

14 Q And do you know what the argument was about?

15 A Not really.

16 Q Keith is from where?

17 A Petersfield

18 Q Was he fighting with somebody inside the club?

19 A Him and his girlfriend had started fighting

20 Q Could you see if he was fighting anybody else?

21 A I think he was fighting with someone else, too

22 Q Did you know who that person was?

23 A I think his name was John Heyward.

24 Q Do you know where that person was from?

25 A Rantowles

J MURPHY - DIRECT EX BY MR DURANT

159

1 Q Okay What happened after the fight inside the
2 club?

3 A They went outside

4 Q Did you go outside, too?

5 A Yes

6 Q Where did you go outside?

7 A Like on the side of the building

8 Q Do you remember a police officer being out there
9 that night?

10 A Yes

11 Q Where were you standing outside the building?

12 A Like almost by the door

13 Q Okay Do you know Kevin Dunmeyer?

14 A Yes

15 Q Do you remember seeing Kevin out there that
16 night?

17 A Yes

18 Q Where is Kevin from?

19 A Cherry Hill

20 Q And what was Kevin doing?

21 A He was doing something by his truck

22 Q What kind of truck was he driving?

23 A A Suburban

24 Q What color?

25 A Dark blue

1 Q Where was his truck parked?

2 A Right across in front of the club.

3 Q What was going on over there around his truck?

4 A Arguing and shaking the truck

5 Q Who was shaking the truck?

6 A A bunch of people

7 Q Where were these people from?

8 A Petersfield.

9 Q And do you remember seeing anybody in this
10 courtroom out there around that truck?

11 A Yes

12 Q Who?

13 A Fiend and Mix, John

14 Q What were they doing out around his truck?

15 A They were like standing up by it, you know,
16 around it, then Fiend headed back towards his truck side

17 Q So you originally saw Fiend out around
18 Dunmeyer's truck, right?

19 A Yes

20 Q And then he ran back over to where his truck
21 was?

22 A Uh-huh

23 Q What did he say when he ran back over to his
24 truck?

25 A Someone going to die tonight

J MURPHY - DIRECT EX BY MR DURANT

161

1 Q Some what was going to die tonight?

2 A Some bitch was going to die tonight

3 Q But he and Mr Ward were out there together

4 around Mr. Dunmeyer's Suburban, is that correct?

5 A (Witness nods head)

6 Q What happened with Mr Dunmeyer?

7 A He started running

8 Q Where did he run?

9 A Towards Baptist Hill.

10 Q Toward the Baptist Hill side?

11 A Yes

12 Q Was he being chased?

13 A Yes

14 Q By who?

15 A I couldn't tell you who

16 Q I know exact names, but what group?

17 A Some people from Petersfield

18 Q What happened after he was chased up the road?

19 A Then the person in the Cadillac went behind him

20 Q Do you know who that person in the Cadillac was?

21 A Yes

22 Q Who?

23 A Antonio Washington

24 Q What name does he go by?

25 A Ton-Ton

1 Q What kind of vehicle does he drive?

2 A Cadillac

3 Q I'm showing you what has previously been marked
4 as State's 11 You've seen this photograph before?

5 A Yes, sir

6 Q That's Ton-Ton's car, is that correct?

7 A Yes

8 Q And referring to State's Exhibit No 24, do you
9 recognize that truck?

10 A Yes

11 Q That's whose truck?

12 A Dunmeyer's

13 Q Now, what happened after the car went up the way
14 Dunmeyer had run, the green Cadillac?

15 A Then he turned around and came back and that's
16 when Ton-Ton started to jump out his car

17 Q Okay And do you know who was in the Cadillac
18 at that time?

19 A I knew it was Kevin and Ton-Ton

20 Q Okay Those are the only two you could see?

21 A Yeah

22 Q And at this time, I guess it was heading back
23 toward the Hollywood side?

24 A Yes.

25 Q What happened when it stopped in the area of the

J MURPHY - DIRECT EX BY MR DURANT

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1 club?

2 A He jumped out and start asking him what's up.

3 Q Who jumped out?

4 A Ton-Ton

5 Q And he started doing what?

6 A Holding his hands up and saying what's up

7 Q Okay Let's go into that a little bit further

8 Was he being friendly?

9 A No

10 Q Was he cursing people?

11 A I can't remember if he was cursing anyone

12 Q In other words, he wasn't -- did he stop his car
13 just to wish everyone a good night before he went home?

14 A No

15 Q Then what was he doing?

16 A You know, he was like telling them if he want to
17 start something with him, come on

18 Q He was provoking stuff?

19 A Yeah

20 Q Right?

21 A Yeah.

22 Q With who?

23 A People from Petersfield

24 Q What happened after he got out of his car and
25 started provoking folks from Petersfield?

1 A Then he took off and another truck went behind
2 him

3 Q He took off which way?

4 A Towards Hollywood

5 Q And the truck took off behind him?

6 A Yeah

7 Q Where did that truck come from?

8 A Down the side of the club.

9 Q Which side of the club?

10 A On the right side

11 Q Okay Do you know who that truck belonged to?

12 A Yes

13 Q Who did that truck belong to?

14 A Tremayne

15 Q Tremayne being this fellow here?

16 A Yes.

17 Q What kind of truck was it?

18 A A Dodge

19 Q I know that is kind of bright, but that's

20 State's Exhibit 14

21 MR DURANT Could you go to State's 15, please?

22 BY MR DURANT.

23 Q Do you recognize that truck?

24 A Yes

25 Q Whose truck is that?

J MURPHY - DIRECT EX BY MR DURANT

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1 A Tremayne's
2 Q Now --
3 MR DURANT You can kill that
4 BY MR DURANT
5 Q You saw that truck come from where?
6 A From the side of the club.
7 Q And what did it do when he pulled up to the
8 road?
9 A It started going toward Hollywood side and
10 started shooting
11 Q What direction was it shooting?
12 A Toward Hollywood side.
13 Q Which is the direction -- in relation to the
14 Cadillac, where did the Cadillac go?
15 A Toward Hollywood
16 Q And did the truck appear to be shooting at the
17 Cadillac, if you can tell? If you can't tell, that's
18 fine
19 A I really can't tell
20 Q What did it do after -- where did you see the
21 shots coming from the truck?
22 A I really can't tell a number on it
23 Q You could tell before, couldn't you?
24 A It was like I couldn't tell if it was the back
25 or the front It sped off.

1 Q Was it the passenger side or the driver's side?

2 A The passenger side

3 Q Okay. And which side of the truck were you on
4 when the shots started?

5 A Passenger side

6 Q And how far away were you from the truck when
7 the shots started?

8 A About 10 feet

9 Q And how do you know who was in the truck?

10 A Because I was by it, a couple feet from it.

11 Q And when they got in the truck -- you were close
12 when they got in the truck?

13 A Not too close when they got in the truck.

14 Q Who did you see in the truck?

15 A John, Fiend and Catrell

16 Q Where was John Ward?

17 A The passenger

18 Q Front seat passenger or rear seat passenger?

19 A Front

20 Q Where was Tremayne Washington?

21 A Back passenger

22 Q And where was Catrell or Trell?

23 A Driving

24 Q Now, did you see Jamie Simmons out there around
25 the time that you saw gunfire coming from this truck?

J MURPHY - DIRECT EX BY MR DURANT

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- 1 A Yes
- 2 Q Where was he in relation to where you were
- 3 standing at the time?
- 4 A Like in the front, like across the ditch in
- 5 front of my car.
- 6 Q In front of the car Was he in -- if you would,
- 7 were you close to him as I am to you now?
- 8 A Yeah, about that, that distance right there.
- 9 Q Okay And how close were you to the truck when
- 10 the truck started shooting?
- 11 A Like three cars away, the third car
- 12 Q Maybe?
- 13 A Something like that
- 14 Q About this far?
- 15 A No, a little -- yeah, about that.
- 16 Q Okay What happened with Jamie when the gunfire
- 17 came from the truck?
- 18 A That's when he started -- that's when he fell
- 19 Q Could you see where he fell?
- 20 A Yes
- 21 Q Could you describe to the jury what you saw?
- 22 A All I saw when -- he fell over on his face and
- 23 he turned himself back over.
- 24 Q So he fell down face first?
- 25 A Yeah.

1 Q And he was able to turn himself over?

2 A Turn himself over

3 Q Where was he in relation to where his car was?

4 A He was on the passenger side of his car

5 Q He was outside the car at that time?

6 A Yes

7 Q Now, when the truck came out of the parking lot
8 or came out of the parking lot, which way did the truck
9 turn?

10 A Towards Hollywood

11 Q And which way was that in relation to the
12 Cadillac?

13 A The same way

14 Q What did it appear to you the truck was doing?

15 A It looked like it had been chasing him.

16 Q Did you continue to hear gunshots after the
17 truck went down the road after the Cadillac?

18 A Yes

19 Q Did you go to check on Jamie?

20 A Yes

21 Q Tell the jury about that

22 A When I went over there, he took one deep breath
23 and his eyes started rolling up in his head and that was
24 it

25 Q How much longer did you stay out there that

J MURPHY - DIRECT EX BY MR. DURANT

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1 night?

2 A Probably about 10, 15 minutes

3 Q Did you talk to any police that night?

4 A No

5 Q Had the ambulance gotten there when you left --
6 before you left?

7 A No

8 Q Where did you go?

9 A I went to my mom's -- I went to my wife's
10 mother -- grandmother's house and sat there for a minute

11 Q Now, if you would, I'm going to have you go
12 through some of this again. You've seen this, referring
13 to State's Exhibit No. 6 You've seen this diagram
14 before, have you not?

15 A Yes

16 Q Okay Would you tell the jury where you were
17 standing when you first came out of the club?

18 A Right up in here

19 Q Okay And where was the squabble over at
20 Dunmeyer's car?

21 A Right over here

22 Q And that's where you initially saw the
23 defendants in this case over by his car?

24 A Uh-huh

25 Q Now, you said at some point you saw Fiend walk

1 to his truck and he said something, correct?

2 A He ran from over here going towards the truck

3 Q Okay. And what did he say?

4 A Some bitch going to die tonight

5 Q And where was his truck parked?

6 A Somewhere back there

7 Q On this side of the club?

8 A On this side

9 Q Okay. Now, I believe, you said Dunmeyer was
10 chased which way?

11 A Toward this way

12 Q Where did you see Ton-Ton go? Where did you
13 first see Ton-Ton's Cadillac?

14 A Towards his way

15 Q Where were you when Ton-Ton came back down the
16 road?

17 A I was over here

18 Q This is kind of a line between the grass lot and
19 the gravel lot, is that correct?

20 A Yes

21 Q Where was your car parked?

22 A Right over here

23 Q Okay So where did you see the truck pull out
24 at?

25 A Right over here

J. MURPHY - DIRECT EX BY MR DURANT

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1 Q Right kind of at the back end of that Tracker,
2 this car right here?

3 A Yes

4 Q Okay And where was the truck when you saw the
5 gunfire?

6 A It started up in here, then followed

7 Q Continued as it went after the car?

8 A Uh-huh

9 Q So it started before it even got out of the
10 parking lot?

11 A As soon as they were pulling off

12 Q Okay By that time, which way had the Cadillac
13 gone?

14 A Towards Hollywood

15 Q Now, where were you when the actual gunfire
16 erupted from the truck?

17 A I was still on the other side of my car

18 Q On the other side of your car?

19 A Yes

20 Q Where was your car parked in relation to Jamie's
21 car?

22 A Like almost toward the -- right across from
23 Jamie

24 Q Okay Now, when you say right across from
25 Jamie, if this is Jamie's car right here?

1 A Right here

2 Q And you were in kind of the grass lot?

3 A Uh-huh

4 Q Okay I forgot to ask you, Trell was in the
5 truck, too?

6 A Yes

7 Q Are you related to Trell?

8 A Not really, I don't think so.

9 Q Okay. Now, moving on to the next day,
10 May 12th, do you remember talking to Detective Crews
11 that day?

12 A Yes

13 Q And do you remember giving him a statement?

14 A Yes

15 Q Did you tell him the whole truth about what
16 happened that night?

17 A No

18 Q What did you lie about?

19 A Two names

20 Q What two names did you lie about?

21 A Keith and Kenneth

22 Q And you substituted Keith and Kenneth for who?

23 A Trell and John

24 Q John Ward?

25 A Yes

J MURPHY - DIRECT EX BY MR. DURANT

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1 Q John Ward, your cousin, John Ward, right?

2 A Yes

3 Q Do you remember giving another statement to a
4 Detective Sheppard about -- on May the 27th?

5 A Yes

6 Q About 15 days later?

7 A Yes

8 Q How did that come about?

9 A I just, you know, wanted to tell them the truth

10 Q You went to them voluntarily?

11 A Yes

12 Q At that time, did you tell them who was in the
13 truck?

14 A Yes

15 Q Who did you tell them was in the truck?

16 A Fiend, Trell and John.

17 Q Was that the truth?

18 A Yes

19 Q Is what you told the jury today the truth?

20 A Yes

21 MR DURANT. Court's indulgence

22 BY MR DURANT

23 Q Just one other question Do you recall what
24 Fiend looked like back then?

25 A He had a long goatee.

1 Q He had a long goatee at the time?

2 A Uh-huh

3 Q But other than that, he looked pretty much the
4 same?

5 A (Witness nods head)

6 MR DURANT Nothing further Please answer any
7 questions that defense counsel may have for you

8 CROSS-EXAMINATION

9 BY MR RUNYON

10 Q Mr Murphy, I'm a little bit confused The
11 older I get, the easier it is for me to get confused,
12 okay, so bear with me

13 Previous statements that you made were not
14 accurate, were they, to the police?

15 A First one?

16 Q The first one.

17 A Yes

18 Q That was accurate?

19 A Just the name switch up on it.

20 Q The names were switched So it really wasn't
21 accurate. You gave the police the wrong names, didn't
22 you?

23 A Yes

24 Q And you knew you were giving them the wrong
25 names, correct?

J MURPHY - CROSS-EX BY MR RUNYON

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1 A Yeah

2 Q Now, Mr Murphy, let me go over this because I
3 have to make it clear for me in my head You were outside
4 of the club that night?

5 A Yes

6 Q And you saw some people rocking over across the
7 street, across the street -- and I'm referring right now
8 to State's Exhibit No 6. So they were across the street
9 And you saw some people rocking John Dunmeyer's car,
10 correct?

11 A Yes

12 Q And you say that one of those people, at least,
13 one of those people was Tremayne Washington, is that
14 correct?

15 A Yes

16 Q And I understand you to say that he then left
17 rocking Mr Dunmeyer's car and went back over to the
18 parking lot where his car was, is that correct, what your
19 position is?

20 A Yes

21 Q And you said he said something about some bitch
22 is going to die tonight?

23 A Yes

24 Q Did he go back over to Dunmeyer's car from the
25 parking lot?

1 A Not to my knowledge

2 Q Okay So you never said he then went back over
3 to Kevin's truck? Did you say that?

4 A He went there

5 Q He went to his car?

6 A He went to the truck and he came -- and went
7 back towards his car, the truck

8 Q Came back over to Kevin's?

9 A No, he went to Kevin's truck When he leaves
10 Kevin's truck, he was coming back to his car.

11 Q When he came back to the car -- or, actually, he
12 was in the truck, he wasn't in a car, wasn't it?

13 A Truck, yeah

14 Q When he went back to his truck, did he then come
15 back over to Kevin Dunmeyer's truck?

16 A I didn't see him go back over there.

17 Q You didn't see him What did you see him do?

18 A I saw when he ran over to Kevin's truck and
19 coming back towards his truck

20 Q That's all you saw, him coming back over towards
21 his truck?

22 A Uh-huh

23 Q Now, what did you do at that point and time?

24 Did you go inside, did you talk to somebody, what did you
25 do?

1 A Some people had locked the door and you couldn't
2 go back inside

3 Q What did you do?

4 A I walked towards my car

5 Q You walked toward your car So you're back was
6 to where Kevin Dunmeyer's car was?

7 A Not at first

8 Q Not at first But I mean when you turned to go
9 back to your car -- when you went to your car, did you
10 turn your back to them?

11 A Yes

12 Q Okay Now, you saw Mr Tremayne Washington's
13 truck?

14 A Yes

15 Q With people in it, is that correct?

16 A Yes.

17 Q Okay Who was in it?

18 A John, Trell and Fiend

19 Q So Fiend, Mr Washington, as you call him --
20 Fiend is kind of a street name, right?

21 A Yeah.

22 Q And he was, what, driving the truck?

23 A No, he wasn't driving

24 Q Where was he?

25 A In the back on the passenger's side

1 Q He was back on the passenger side, in the back
2 or in the front?

3 A In the back seat on the passenger seat side.

4 Q In the back seat on the passenger side You say
5 gunfire came from that truck?

6 A Yes

7 Q How many guns were fired?

8 A I didn't count them

9 Q Well, was it one gun?

10 A One gun

11 Q One gun?

12 A Yeah

13 Q Do you know where it came from in that truck?

14 A Not really.

15 Q Okay And when did that gunfire start?

16 A As soon as they pulled out -- as soon as they
17 pulled out going towards the Hollywood side.

18 Q As soon as they pulled out going to the
19 Hollywood side. That would be going up the road toward
20 Hollywood?

21 A Yes

22 Q Now, you say Jamie Simmons, you saw him go down?

23 A Yes

24 Q All right And he went, what, face down?

25 A He went face down and then turned himself over

J MURPHY - CROSS-EX BY MR RUNYON

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1 Q You say he went face down, how did that happen?

2 A It was like, he twist and just fell

3 Q Okay Did you see whether -- let's assume this

4 is Mr Simmons' car And up that way is Hollywood?

5 A Uh-huh

6 Q Okay And Mr Simmons was standing where in

7 relationship to his car?

8 A On the passenger side

9 Q Standing on the passenger side Back towards
10 the car door or how?

11 A Like standing like right toward the door like
12 this

13 Q Right before the door, so this is the hood of
14 the car right here?

15 A Uh-huh

16 Q And he's kind of standing here, right?

17 A Yes, right by the mirror

18 Q Which way was he facing?

19 A He was facing his car door

20 Q He was facing his car door?

21 A Yes.

22 Q That's when you say you saw him go down?

23 A All I saw when he went down

24 Q He went down?

25 A Yes

1 Q You don't know where the shot came from that hit
2 him?

3 A No

4 Q And you don't know whether that shot came from
5 that truck or not, do you?

6 A No, sir

7 Q Do you know whether or not that shot hit him and
8 he went down before the truck started out in the road or
9 after the truck started out on the road?

10 A Once the truck started and I saw the shooting,
11 that's when I saw him fell

12 Q Were other people out there shooting that night?

13 A It sounded -- yeah, yeah.

14 Q So there were a lot of people shooting?

15 A That's the way it sound to me

16 Q Lots of guns? Is that correct?

17 A Yes

18 Q Did you see Tremayne Washington fire a gun at
19 anybody?

20 A No

21 Q Now, where -- you went to Club Diamante or
22 Toby's several times, didn't you?

23 A Yes.

24 Q Where Mr Simmons was was below the grade of the
25 road, the ditch bank?

J MURPHY - CROSS-EX BY MR RUNYON

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1 A Yes

2 Q Okay So he was kind of lying downhill with his
3 head toward the ditch, correct?

4 A Yes

5 Q He was standing kind of below the hood of his
6 car or what have you before he got shot, correct? Because
7 he was standing downhill of the car, right?

8 A Not too far down

9 Q Not too far down, but he was standing downhill
10 of the car, right?

11 A A little bit

12 Q Going towards the ditch, is that correct?

13 A Yeah, towards the ditch

14 Q Okay Now, Mr Washington went back -- went to
15 his car after rocking Kevin Dunmeyer's car, would that be
16 a fair statement?

17 A Yes.

18 Q He got right in Kevin Dunmeyer's face and rocked
19 his car, didn't he?

20 A I didn't say that

21 Q Well, what side of the car was he on?

22 A On the passenger -- I mean, the driver's side

23 Q He was on the driver's side?

24 A That's what I saw

25 Q This was Kevin Dunmeyer's car?

1 A Yeah

2 Q Was Kevin Dunmeyer in the driver seat?

3 A No, I think it was John in the driver's seat.

4 Q You think John -- John who?

5 A Campbell

6 Q John Campbell, you think he was. Where was
7 Kevin at the time that Mr Washington was sitting there
8 looking at him in the face and rocking his car?

9 A I ain't too sure either on that

10 Q You don't know if he was there at all?

11 A He was over there

12 Q He was over there?

13 A He wasn't in the truck, I don't think

14 MR RUNYON: No further questions, Judge

15 THE COURT: Miss Jenkinson or Mr Butler?

16 CROSS-EXAMINATION

17 BY MR. BUTLER

18 Q Good afternoon, James

19 A Hi

20 Q I want you to clarify for me something you said
21 on direct When Mr Durant was asking you about who was
22 shaking the Suburban, did you say that was Mr Washington
23 and Mr. Ward or just Mr Washington?

24 A I don't really know who was shaking it They
25 was over there

J MURPHY - CROSS-EX BY MR BUTLER

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1 Q Okay Your testimony today is that John was
2 over there?

3 A He was over there, but I didn't see, you know,
4 if they were really --

5 Q You didn't see him shaking the car?

6 A No

7 Q Because -- let's go through the number of times
8 you've been able to tell the story You gave two
9 different statements to law enforcement, right?

10 A Yes

11 Q You've testified prior under oath in an earlier
12 proceeding in December, remember that?

13 A Yes

14 Q And you've never said that John was shaking the
15 car, have you?

16 A No

17 Q And you've never said that John was involved in
18 a fight with anybody, have you?

19 A No

20 Q And you've never said that John was threatening
21 anybody, have you?

22 A No

23 Q You heard some people making threats and beefing
24 back and forth, right?

25 A Yes.

1 Q But not John Ward?

2 A Yes

3 Q And you would remember that if that happened,
4 wouldn't you?

5 A Yes

6 Q You would tell us if you heard that or saw that,
7 wouldn't you?

8 A Yes

9 Q And the reason that you're not is because you
10 didn't?

11 A Right

12 Q John didn't threaten anybody?

13 A I didn't see him threaten nobody

14 Q Wasn't fighting with anybody?

15 A No

16 Q Wasn't beefing with anybody? Wasn't shaking
17 anybody's car?

18 A No

19 Q I just wanted to make sure we're clear And you
20 had an opportunity to speak to police a second time
21 because you wanted to correct some things in your
22 statement, right?

23 A Yes

24 Q Because you wanted to make sure they knew the
25 truth And even then, you didn't have John fighting

1 anybody, did you?

2 A No

3 Q Or threatening anybody?

4 A No

5 Q Or shaking anybody's car?

6 A No

7 Q Okay When Jamie was shot, he fell in the
8 ditch, right?

9 A Yes

10 Q And as you told Mr. Runyon, there were a bunch
11 of people shooting out there You don't know who, but
12 there were a bunch of different gunshots?

13 A Yeah

14 Q From different locations?

15 A Yeah

16 Q One of which was from Ton-Ton's car?

17 A I think so, I'm ain't sure

18 Q You think so, you're just not sure? Clarify,
19 please, what you just said

20 A I don't remember

21 Q You don't remember But you are sure that there
22 were many people shooting?

23 A Yes, it was many people shooting

24 Q Referring -- let me refer you to Defendant's
25 Exhibit 1 for ID and just show me -- you can stay right

1 there Show me again where you were standing when you saw
2 Jamie fall?

3 A This part over here I was standing right there
4 by my car

5 Q Show me exactly, as best you can

6 A Right up here

7 Q Okay

8 MR BUTLER Beg the Court's indulgence for one
9 moment.

10 BY MR BUTLER

11 Q Referring back to Defendant's 1, put this red
12 sticker where you were standing when the shots were fired,
13 as best you can

14 A This part right here.

15 Q That's the little ditch right there?

16 A I would have been right there My car was
17 parked somewhere over there

18 Q Would you initial that red dot, please?

19 A (Witness complies)

20 Q Thank you

21 MR BUTLER Beg the Court's indulgence

22 BY MR BUTLER

23 Q How tall are you?

24 A About six-one, six-two

25 Q If I understand -- you are about six-one,

J MURPHY - CROSS-EX BY MR BUTLER

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1 six-two?

2 A Yeah

3 Q If I understand your testimony correctly, when
4 Jamie went down, he was standing toward the rear of his
5 car facing the road, facing his car?

6 A He was facing his car

7 Q And how was he standing?

8 A Something like this right here.

9 Q His arms down by his side?

10 A Yeah I'm not to sure if they were down by his
11 side or up like this right here But I know he was
12 standing this way here

13 Q You don't know if they were by his side or if he
14 was holding them up?

15 A No, I don't remember.

16 Q But he would have been facing Toogoodoo Road?

17 A Uh-huh.

18 Q And the truck would have been to his left?

19 A Yes

20 MR BUTLER That's all I have, thank you

21 THE COURT Redirect?

22 MR DURANT Just a couple

23 REDIRECT EXAMINATION

24 BY MR DURANT

25 Q Previously, you said you didn't remember --

1 other than the passenger side of the truck, you didn't
2 remember where --

3 MR BUTLER I object. This is beyond the scope
4 of my cross, for sure

5 THE COURT I don't know what his question is
6 yet

7 MR DURANT It has to do with your client's
8 involvement

9 MR BUTLER: May we approach?

10 THE COURT: The question is not of belief, the
11 question as I see it, it might not be under the scope I
12 don't know where we got beyond that

13 MR. BUTLER May we approach?

14 THE COURT Yes

15 (Whereupon, a bench conference was held in the
16 presence of the jury but outside the hearing of
17 the jury)

18 BY MR DURANT

19 Q Now, in the second statement that you gave to
20 Detective Sheppard on the 27th of May, do you recall
21 that?

22 A Yes

23 Q And Mr. Butler had asked you earlier in the
24 night about other people shooting out there that night,
25 right?

J MURPHY - REDIRECT EX BY MR DURANT

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1 A Yes

2 Q Do you recall telling the detective at that time
3 that Ton-Ton had shot a weapon out there earlier that
4 night when they were chasing Dunmeyer?

5 A Yes

6 Q And that it sounded like a 22?

7 A Yes

8 Q And you remember telling him that?

9 A Yes

10 Q And then further in statements, you don't
11 mention anything about any other shots being fired again
12 until the truck goes after the Cadillac, is that correct?

13 A Yes

14 Q And as those shots were fired from the passenger
15 side of that truck, that's when Jamie went down, correct?

16 A Yeah

17 Q And at the time that you heard those shots and
18 saw those shots coming from the truck, those were the only
19 shots that you heard at the time that Jamie went down, is
20 that correct?

21 A Yes.

22 Q And you knew who was in the truck?

23 A Yes

24 Q And you told Detective Sheppard who was in the
25 truck, correct?

1 A Yes

2 Q And who did you tell him was driving?

3 A Trell

4 Q And who did you tell him was the front seat
5 passenger?

6 A John

7 Q And who did you tell him was the back seat
8 passenger?

9 A Tremayne.

10 MR DURANT Nothing further.

11 THE COURT- Mr Runyon?

12 RECROSS-EXAMINATION

13 BY MR RUNYON

14 Q Now, y'all have gotten me more confused than
15 ever before. There were either lots of shots going on
16 that night are there weren't?

17 A There was

18 Q There was?

19 A Yes.

20 Q There's no question about that?

21 A There was a lot of shots

22 Q Just prior to Jamie going down and around the
23 time Jamie went down, correct?

24 A Yes.

25 Q Now, let's -- we've seen these diagrams and what

J MURPHY - RECROSS-EX BY MR RUNYON

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1 have you, but let's assume that this is the parking lot
2 where Mr Washington's truck is parked

3 A All right

4 Q You're right by your car where it was parked,
5 that would be a good example of how things were set up
6 that night, weren't they?

7 A Yes

8 Q And the club is back over there where Mr Durant
9 is sitting Would that be a fair assessment of what was
10 going on that night?

11 A Yes

12 Q And you heard a bunch of gunshots?

13 A After

14 Q After what?

15 A After the truck pulled out and everything
16 started

17 Q After the truck pulled out, you heard a bunch of
18 gunshots?

19 A Yes

20 Q Jamie had gone down?

21 A Everybody start shooting after that

22 Q And that's when everyone start shooting after
23 that?

24 A Yes

25 Q Now, I'm in the truck, okay. And I'm in the

1 passenger side of the truck You would have had a clear
2 view of me pointing that gun out the window shooting down
3 that road, wouldn't you?

4 A Not really

5 Q Not really?

6 A No

7 Q Why not?

8 A Because if I wasn't -- I wasn't paying attention
9 to who was shooting out of the truck when it was going
10 down the road because after it started shooting, I didn't
11 stand up and be looking around.

12 Q Well, then they weren't shooting when they were
13 in the parking lot when you had a direct view of them?

14 A Yes

15 Q They were?

16 A No, when he came from behind the club and he get
17 towards the road, he ain't never stop, he just keep going

18 Q When did the shooting start from the truck?

19 A As soon as it hit the pavement of the road, as
20 soon as it turned

21 Q As soon as it turned --

22 A It started shooting

23 Q It started shooting down the road, is that your
24 testimony?

25 A They start shooting. I don't know if it been

J MURPHY - RECROSS-EX BY MR RUNYON

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1 down the road or here

2 Q Well, they hit the road --

3 A They turned, hit the road and that's when they
4 started shooting

5 Q That's when somebody started shooting from the
6 passenger side?

7 A Yes, sir

8 Q Front seat?

9 A I don't know if it was the front seat or not.

10 Q Now, you don't know which area of the truck the
11 shots came from?

12 A All I know it come from the passenger side of
13 the truck

14 Q Passenger side of the truck While they were
15 heading down the road? Is that correct?

16 A Yes

17 Q Okay First time you saw a shot from that truck
18 going down the road?

19 A As soon as they turned out, the truck started
20 shooting

21 Q Right And Jamie Simmons had already gone down?

22 A Yes

23 Q Okay

24 MR RUNYON. No further questions

25 THE COURT. Mr. Butler?

1 MR BUTLER Nothing further

2 THE COURT You may step down

3 Ladies and gentlemen, we're going to recess then
4 for the evening I'm going to ask that you report back to
5 the jury room tomorrow morning by about 9-20, 9 25. We'll
6 start back promptly at 9 30

7 Again, as I told you before when we left for
8 lunch, it's not proper for you to go and talk about the
9 case, begin to make a decision, discuss the facts in any
10 way with anyone. There may be some press coverage about
11 this case. And I would just remind you that under your
12 oath, you're not to watch any of that press coverage If
13 there's anything in the newspapers in the morning, you're
14 not to read it

15 -- Anything that you need to know to make a
16 decision in the case we are going to provide you with in
17 this courtroom There are lots of reasons why you
18 shouldn't read about the case during the trial You can
19 save the newspapers and read them later or copy them to a
20 VCR You won't be on TV, they don't direct the cameras
21 that way so don't think you're going to see yourselves on
22 TV But it's important that you not watch coverage
23 because sometimes things get edited out and they're taken
24 out of context

25 You're going to know everything that you need to

1 know about this case from that witness stand right there
2 So that's the main reason why I leave you with that
3 admonition and ask that you respect it If you have any
4 family member asking you about the case tonight, just tell
5 them the Judge said I can tell you I got picked for this
6 case, but I really can't talk to you about it until the
7 case is over They should respect that

8 Again, it causes a lot of problems if you don't
9 do that and we have to try the case again later It just
10 wastes everybody's time So please, bear that in mind.
11 We will see you tomorrow at 9 30 Thank you for your
12 patience today

13 (WHEREUPON, the following proceedings were held
14 outside the presence of the jury)

15 THE COURT: Anything that we need to take up
16 before we break?

17 MR DURANT I don't believe I have anything at
18 this time, Your Honor

19 MR RUNYON: It's too early for my directed
20 verdict motion.

21 THE COURT. All right Well, I will have the
22 bailiff or the deputy open the courtroom about 8 45,
23 quarter til 9 00, so you can set up in the morning

24 MR DURANT: That will be fine Appreciate
25 that

1 (WHEREUPON, the court was in recess for the
2 afternoon of Monday, June 6, 2005)

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1 (WHEREUPON, the following proceedings were held
2 before the Court on Tuesday, June 7, 2005,
3 outside the presence of the jury)

4 MR BUTLER May it please the Court We have
5 one brief evidentiary issue, if we can take it up before
6 the jury gets here Do you want to do it now?

7 THE COURT: Sure

8 MR BUTLER Judge, in Mr Durant's opening
9 statement, he made some elusions to the fact that the
10 victim was not someone who went to the club a lot, was not
11 involved in certain activities And I remember that from
12 the previous trial and I should have brought it up then
13 Any testimony about the character of the victim would be
14 inadmissible as character evidence under 404(a) The only
15 time that character evidence is admissible to a victim
16 under 404(a)(2) is to rebut a charge by the defense that
17 the victim was the initial aggressor in a self-defense
18 case This isn't a self-defense case and we haven't put
19 up any evidence that he was the aggressor All parties
20 agree he was an innocent bystander and any evidence as to
21 his character would be inadmissible, so we would move to
22 exclude any testimony to that fact

23 THE COURT: Mr Durant?

24 MR DURANT Just briefly, in response to that,
25 Your Honor, there's certainly not a lot of testimony

1 regarding that, a little bit from his cousin. I think it
2 is relevant to the case to establish that he was not out
3 there that night He was not at the club. He was not a
4 party to the dispute that went on in the club or the
5 dispute that went on outside the club

6 THE COURT He was just driving by?

7 MR DURANT That he was just driving by And,
8 also, given the fact that there is some GSR results in
9 this case that indicated he had lead particles on his hand
10 from which the defense, although they didn't in the first
11 case, could certainly argue that he may have had a weapon
12 or handled a weapon or something like that I think it's
13 very critical to the State's case to establish that he
14 just happened by this thing He was not a party of this
15 controversy and had not been in the club drinking, had not
16 been in a fight with anybody and just happened to be in
17 the wrong place at the wrong time And, besides, it's in
18 no way prejudicial to either one of the defendants

19 MR. BUTLER Everything he did that night was
20 just fine. Was he involved in a fight that night? No
21 Was he drinking that night? No Was he part of either of
22 these two sides that night? No But in general, he
23 wasn't a drinker, he wasn't a partier He didn't go to
24 the clubs. He was a good guy He was working security
25 Those general traits or characteristics were not

1 admissible and at some point -- we're not going to, but if
2 at some point we try to claim that he was involved, then
3 maybe it would be different as far as the gunshot residue
4 We're not claiming that he fired a weapon or had a weapon
5 If somehow that comes up, then they can use the evidence
6 in question to rebut it We're not claiming that What
7 he did that night, I have no problem with, but --

8 THE COURT He doesn't plan on offering anything
9 other than that night, what he did He was driving by and
10 he hadn't been in I think that he hadn't been inside the
11 establishment and he had not been involved in any of the
12 activities that were going on where people were looked
13 like loitering around outside That's acceptable

14 MR BUTLER That's fine No problem with that

15 THE COURT What about the gunshot residue?

16 MR. BUTLER Excuse me?

17 THE COURT Didn't you say you had gunshot --

18 MR DURANT. It's not gunshot residue There
19 are lead particles, which is one of the components of
20 gunshot residue, was found on his hands And that was the
21 only reason that I needed to get in the fact that, you
22 know, he had just happened across the scene No one out
23 there indicated that he had had a weapon.

24 MR BUTLER All of that's fine

25 MR. DURANT. The police officer who had handled

1 a weapon did -- you know, held his hands and was trying to
2 administer aid I feel pretty certain that's probably how
3 the lead particles got transferred to him I don't know
4 what Mr Runyon's position is

5 MR RUNYON. Well, first of all, Judge, I didn't
6 really have a Dog in this fight I agree with
7 Mr. Beattie I'm not disputing that He didn't just
8 happen by He parked his vehicle there I think under
9 all of the circumstances, the victim, the deceased, was
10 probably going to go over to the club and see some people
11 It's a legitimate club

12 THE COURT Do you have any evidence to
13 establish that?

14 MR RUNYON Other than the fact that he parked
15 his car and was outside his car and what have you The
16 simple fact of the matter is, if they're going to start
17 going into gunshot residue and how it may have gotten
18 there, then that opens the door to discuss whether or not
19 he may have had his hand on a gun that day, that night,
20 who knows

21 THE COURT If you decide that opens that door,
22 then that also opens the door for the prosecution to be
23 able to rebut

24 MR RUNYON No, Judge, that's not what I'm
25 saying. What I'm saying is he said they're going to

1 offer -- they could offer testimony as to how the lead
2 particles got on his hand because of this Deputy
3 Frichtl's -- remember he had those gloves on He held his
4 hand May have held his hand, tended to him or what have
5 you, so they're offering an explanation how it got there
6 You know, that's their bale of twigs If they go there,
7 we get the opportunity talk about that, not to say he's a
8 bad guy

9 THE COURT Because he wasn't?

10 MR. RUNYON. If he's going to offer testimony
11 that says he had lead particles on his hand, which is one
12 component from handling a weapon, and they got there from
13 Deputy Frichtl's gloves, then we have the right to argue
14 that he may have been handling a gun that night

15 THE COURT You can argue that, but I suppose
16 then that the State would be free to go into offering
17 evidence of his peaceable character Because you would be
18 offer -- it would be in by the prosecution to rebut
19 something that you put at an issue

20 MR. DURANT And that's precisely why I think
21 it's relevant in this case, Your Honor, because I don't
22 know what they may argue. But, I mean, they certainly --

23 THE COURT Well, you can't bring it up during
24 your direct, but if they go into it and start suggesting
25 that he may have been handling a gun earlier, then I

1 suppose that opens up the door to other evidence of his
2 peaceable character

3 MR DURANT I understand that, Your Honor, but
4 he's going to go into it on his closing argument

5 MR RUNYON I didn't say that We haven't got
6 to closing Judge, I've been -- humorously to a certain
7 extent because we try to maintain a sense of humor the
8 older I get I've been optimistic that we might not have
9 to make a closing argument But be that as it may, Judge,
10 I just think that if they bring the stuff up and they try
11 to explain how the lead got there and all of those things
12 through their experts then we have an opportunity to ask
13 questions about that

14 THE COURT: You certainly will
15 Anything else?

16 MR DURANT I wanted to make sure the Jackson V
17 Denno with Ward, the defense had a copy of that transcript
18 that they were going to make a part of the Court's record
19 I do not have a copy of that transcript, so I just wanted
20 to make sure that it was made a Court's Exhibit

21 MR BUTLER I have a copy. I found it It's
22 the only copy that we have If I can have one of our
23 clerk's run off a copy, I will be able to make that a part
24 of the record. Do you plan to get to this today?

25 MR DURANT Possibly late this afternoon, but

1 maybe not until tomorrow

2 THE COURT How are we doing on jurors?

3 THE BAILIFF: The jury is present

4 THE COURT: Are we ready then?

5 MR DURANT Yes, sir, Your Honor

6 THE COURT: Okay Bring the jury in

7 (WHEREUPON, the following proceedings were held
8 in the presence of the jury)

9 (The court received a note from the jury)

10 THE COURT:- Thank you All right. Are you
11 ready?

12 MR DURANT Yes, sir, Your Honor

13 THE COURT: Call your next witness

14 MR DURANT The State would call Jesse Perrigo

15 JESSE PERRIGO,

16 being first duly sworn, testified as follows

17 THE CLERK: Please be seated If you would
18 please state your full name to the Court and spell your
19 last.

20 THE WITNESS Jesse Perrigo, P-E-R-R-I-G-O

21 DIRECT EXAMINATION

22 BY MR DURANT

23 Q How old are you, Mr Perrigo?

24 A Twenty-two.

25 Q And you are here today pursuant to a subpoena,

1 is that correct?

2 A Correct

3 Q What do you currently do for a living? Are you
4 working?

5 A Yes, and I'm also a student

6 Q Where are you a student?

7 A At Bethune Cookman College in Daytona Beach,
8 Florida.

9 Q What are you studying at Bethune Cookman?

10 A Computer information

11 Q What year are you?

12 A I'm a junior

13 Q Where were you raised?

14 A I was raised in Hollywood, South Carolina

15 Q And what part of Hollywood?

16 A Petersfield

17 Q Do you know this fellow here?

18 A Yes, I do

19 Q What's his name?

20 A John Ward

21 Q What's his nickname?

22 A Mix

23 Q Are you related to him?

24 A Yes, I am

25 Q What's the relationship?

J PERRIGO - DIRECT EX BY MR. DURANT

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1 A Cousin

2 Q This other fellow here, can you see him?

3 A Yeah

4 Q Do you know him?

5 A Yes, I do

6 Q What's his name?

7 A His name is Fiend

8 Q Is he from Petersfield?

9 A No

10 Q Does he have friends in Petersfield?

11 A Yes

12 Q Have you seen him in Petersfield on prior

13 occasions?

14 A Yes

15 Q And do you know what his relationship is with

16 John Ward?

17 A Friend

18 Q You're not related to Fiend, though, are you?

19 A No

20 Q Do you know Catrell Douglas?

21 A Yes

22 Q Where is Catrell from?

23 A Petersfield

24 Q How do you know Catrell?

25 A He's from Petersfield

1 Q Just being from the neighborhood?

2 A Uh-huh

3 Q Now, going back to May 11th of 2003, were you at
4 the Club Diamante that morning?

5 A Yes

6 Q What time did you get there and who did you go
7 with?

8 A I got there about 11 00, 12 00. And I rode with
9 Denode Heyward.

10 Q How did y'all go, whose car?

11 A We rode in Denode's car.

12 Q What kind of car did he have at that time?

13 A A Delta

14 Q That's a Delta 88?

15 A Yes, sir

16 Q Do you know a fellow named Cabbage or Anthony
17 Ward?

18 A Yes

19 Q Did he go with you?

20 A No, we met him out there.

21 Q Met him out where?

22 A At the club

23 Q Where is Anthony Ward from?

24 A Petersfield

25 Q Did you see anything happen inside the club that

J PERRIGO - DIRECT EX BY MR DURANT

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1 night?

2 A Well, an argument broke out, a fight, and it
3 continued outside

4 Q Okay. Did you actually see the fight inside?

5 A No

6 Q Do you know where inside it occurred?

7 A It was on the dance floor

8 Q And what happened when it moved outside?

9 A It was by Dunmeyer's truck

10 Q Okay. Do you know Keith Richards?

11 A Yes

12 Q Was Keith Richards out there?

13 A Yes, he was

14 Q Where is Keith Richards from?

15 A Petersfield

16 Q And do you know whether or not Keith Richards
17 was involved in a dispute that occurred in the club?

18 A Yes

19 Q And you said something about Dunmeyer's truck,
20 is that correct?

21 A Yes, sir.

22 Q Do you know Kevin Dunmeyer?

23 A Yes

24 Q If I show you State's Exhibit No 24, is that
25 Kevin Dunmeyer's truck?

1 A Yes, it is

2 Q What was going on out at Kevin Dunmeyer's truck?

3 A I guess the fellow that was in the confrontation
4 ran inside the truck

5 Q The fellow that was in the confrontation with
6 who?

7 A Keith

8 Q Okay He was in Dunmeyer's truck, is that
9 correct?

10 A Correct.

11 Q And what was Keith doing?

12 A Trying to get in the truck.

13 Q And who was with Keith?

14 A A lot of people

15 Q And where were those people from?

16 A Petersfield

17 Q And whose truck was that?

18 A Kevin's

19 Q And where is Kevin from?

20 A Cherry Hill

21 Q Where was his Suburban at?

22 A It was directly in front of the club

23 Q On the same side of the road of the club or the
24 opposite side of the road?

25 A Opposite side

J PERRIGO - DIRECT EX BY MR. DURANT

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1 Q Now, what happened as the Petersfield people
2 were trying to fight Kevin Dunmeyer?

3 A Well, after that, they were arguing. Then some
4 blows were thrown and Kevin took off and started running

5 Q Where did Kevin run to?

6 A Towards the Baptist Hill side

7 Q And was anyone chasing him?

8 A Yes

9 Q And I know you don't know any names, but who was
10 chasing him?

11 A I don't know

12 Q All right Petersfield people or Cherry Hill?

13 A Yes

14 Q Do you know Ton-Ton?

15 A Yes

16 Q Where is Ton-Ton from?

17 A Cherry Hill

18 Q And what was Ton-Ton driving at the time?

19 A A green Cadillac

20 Q And I will show you what has previously been
21 marked State's Exhibit No 11 Have you seen that
22 Cadillac before?

23 A Correct

24 Q Whose Cadillac was that?

25 A Ton-Ton

1 Q What did you see that Cadillac do that night?

2 A It was up and down the road

3 Q Okay Now, did you see the Cadillac about the
4 time that Dunmeyer was getting chased up the road?

5 A Yes.

6 Q What did you see the Cadillac do?

7 A It was trying to hit people

8 Q Trying to hit people from where?

9 A Where they were standing from Petersfield

10 Q Made the people from Petersfield rather annoyed,
11 didn't it? Did it make the people from Petersfield's
12 annoyed?

13 MR. RUNYON Objection, he's asking for a
14 conclusion

15 THE COURT Sustained

16 BY MR DURANT.

17 Q Where did you see the car go?

18 A First it went down toward Baptist Hill side and
19 came back up and went back to the Hollywood side

20 Q What happened when it came back toward the
21 Hollywood side?

22 A I'm not sure At that point in time, shots were
23 fired and I started running.

24 Q Okay Now -- and this was about the time --
25 where were you heading when the shots were fired?

J PERRIGO - DIRECT EX BY MR DURANT

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1 A Well, when the first shots were fired, I was
2 still standing by Dunmeyer's truck a little bit, then I
3 took off towards where we were parked at

4 Q Where were y'all parked?

5 A We were parked on the curve by the tree

6 Q Okay Now, were y'all parked on the same side
7 of the road as the club or the other side of the road?

8 A The other side.

9 Q And were y'all parked down toward Coon Club Road
10 side or the Hollywood side or over toward the Baptist Hill
11 side?

12 A The Hollywood side

13 Q Okay. Now, did you see where any gunshots were
14 coming from that night?

15 A Well, the first ones, no When I ducked and I
16 hid behind the car and I glanced up, I saw it coming from
17 the truck.

18 Q And what truck did you see gunfire coming from?

19 A A gray truck.

20 Q And whose gray truck was that?

21 A Friend.

22 Q And where was the gray truck when you saw the
23 gunfire coming from it?

24 A On the side of the club

25 Q And where did you see the gunfire coming from

1 the truck?

2 A The passenger side of the car

3 Q Could you tell whether it was the front
4 passenger or the rear passenger?

5 A No

6 Q Now, do you know Jamie Simmons?

7 A Yes

8 Q Do you remember seeing Jamie out there that
9 night?

10 A Not until he got shot

11 Q How close were you to Jamie when he got shot?

12 A Ten or 12 feet

13 Q Okay And stop me when --

14 A Okay

15 Q All right About that far. What did Jamie do
16 when he saw the gunfire come from the truck?

17 A When I glanced up and saw the gunfire from the
18 truck, I ducked back down When I looked back up, the
19 truck was going down the road and then I heard a moaning
20 sound, crying

21 Q We'll get back to the moaning sound in a second
22 Where did the truck go?

23 A Toward the Hollywood side

24 Q And did -- where did the Cadillac go?

25 A Hollywood side

J PERRIGO - DIRECT EX BY MR. DURANT

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1 Q And do you remember seeing Jamie go down to the
2 ground?

3 A Yes

4 Q And was that before or after you saw the gunfire
5 coming from the truck?

6 A After

7 Q Where was Jamie when he went down?

8 A He was by the ditch

9 Q Was he near his car? Do you know what kind of
10 car he drove?

11 A Yes, he got a Honda

12 Q Did you hear any shooting continue after the
13 truck and the Cadillac went down the road?

14 A Yes

15 Q From which direction?

16 A I'm not sure

17 Q I mean, was it coming from the Hollywood side or
18 the Baptist Hill side, if you know? If you don't know,
19 that's fine?

20 A I don't know

21 Q By that time, Jamie was already down?

22 A Correct

23 Q Did you go over to where Jamie was?

24 A Yes, but at first, I didn't because I thought
25 they were playing a game because other people were

1 standing over there as well

2 Q And what did you do when you did actually go
3 over there where Jamie was?

4 A I called to him He didn't answer me. And
5 that's when I stopped the police

6 Q And what do you mean you stopped the police?

7 A Because the police was going toward Hollywood
8 side

9 Q Okay I just want to show you a couple things,
10 if I could Referring to State's Exhibit No. 6, if you
11 have to get up to point, you've see this diagram before,
12 have you not, sir? This is State's Exhibit No. 6?

13 A Yes.

14 Q Could you tell the jury on this diagram where
15 Denode's car was parked?

16 A It was further up

17 Q It would be on this side of the road as opposed
18 to that side of the road?

19 A Correct

20 Q Now, where were you when you saw gunfire coming
21 from the truck?

22 A Right here

23 Q Okay The front end of Jamie's car?

24 A Correct

25 Q And where was Jamie at that time?

J PERRIGO - DIRECT EX BY MR DURANT

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1 A Well, when I saw Jamie go down, he was at the
2 front of the ditch

3 Q Okay And where was the truck that you observed
4 the gunfire coming from?

5 A From the side of the club

6 Q And where was the truck when you actually saw
7 the gunfire coming from it?

8 A This side by the club

9 Q So it started shooting before it left the
10 parking lot?

11 A Correct

12 Q And what did the truck do after it started
13 shooting?

14 A It went towards the Hollywood side

15 Q So it pulled out and went this way?

16 A Correct

17 Q Was that -- where was the Cadillac?

18 A The Cadillac was already on the road

19 Q Okay. So the Cadillac was in front of the
20 truck?

21 A Yes

22 Q Did it look like the truck was chasing the
23 Cadillac?

24 A I can't say

25 Q Referring to State's Exhibit No 49, I'm going

1 to fast forward this a little bit You see this person
2 here Let me play that a little bit further. Do you know
3 who that is?

4 A Yes, I do

5 Q Who is that?

6 A That's me

7 Q Okay That was in reference to State's Exhibit

8 No 49

9 MR DURANT That's all I need

10 BY MR DURANT.

11 Q Also, I would like you to take a look at State's
12 Exhibit 14 and 15 in evidence and see if you recognize
13 that vehicle?

14 A Yes, I do

15 Q And whose vehicle is that?

16 A That's Fiend's

17 Q And is that the vehicle that you observed that
18 night?

19 A Correct

20 Q And is that the vehicle that you observed
21 gunfire coming from that night?

22 A Correct

23 Q It would be the passenger side, you said,
24 correct?

25 A Correct

J PERRIGO - DIRECT EX BY MR DURANT

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1 Q And you didn't remember front or back?

2 A That's right

3 Q How much longer did you stay out there that
4 night?

5 A Until the ambulance came to pick him up

6 Q How did you leave?

7 A With Denode

8 Q Who else left with you and Denode?

9 A Cabbage and Anthony Mac

10 Q Did Tremayne Washington leave with you?

11 A No

12 MR DURANT Court's indulgence.

13 BY MR DURANT.

14 Q Had you seen Jamie Simmons that night prior to
15 the time he was shot?

16 A No

17 Q Do you know where he came from?

18 A No, I don't I heard where he came from, but

19 Q Had you seen him in the club that night?

20 A No

21 MR. DURANT Please answer any questions the
22 defense may have for you

23 CROSS-EXAMINATION

24 BY MR RUNYON

25 Q Mr Perrigo

1 A Yes

2 Q You work?

3 A Yes

4 Q You go to college?

5 A Yes, sir

6 Q You're a pretty good fellow, right?

7 A Yes, sir

8 Q And you were at the club that night You went
9 down there to have fun?

10 A Correct

11 Q Dance, correct?

12 A Correct

13 Q And the people in that club were there for the
14 same thing, correct?

15 A Correct

16 Q All right Now, there was an incident that
17 night between some people?

18 A Correct

19 Q But most of the people down there were -- they
20 come down there on a Saturday night and have some fun and
21 relax for the week, right?

22 A Correct

23 Q And then they go to church on Sunday morning,
24 right?

25 A That's right

J PERRIGO - CROSS-EX BY MR RUNON

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1 Q Now, let me ask you about -- do you have a
2 nickname?

3 A No

4 Q Okay Is it uncommon in the community for
5 particularly young men to have nicknames?

6 A Correct

7 Q So it's not uncommon for them to have nicknames?

8 A Right

9 Q And that doesn't connect to anything
10 particularly, it's just some nickname they picked up from
11 friends or school or whatever, right?

12 A Right

13 Q Okay As a matter of fact, Mr Ward, I think,
14 is Mix?

15 A Correct

16 Q And you don't know where Mr Washington got the
17 nickname Flend?

18 A No, I don't

19 Q All right Now, this gray truck, referring to
20 State's Exhibit No 15, is a big pickup truck, right?

21 A Correct

22 Q And from your vantage point, you could not see
23 which window was down or if either window was down or what
24 have you?

25 A No

1 Q So you don't know where gunfire came from in
2 that truck?

3 A No, I don't

4 Q Now, prior to your leaving the immediate area of
5 the front of the club, you heard gunfire?

6 A Correct

7 Q And so you decided well, I'm going to leave
8 This is not fun any more, right?

9 A Correct

10 Q So you're starting down the road towards the
11 car, up towards -- actually, you're not going down the
12 road, you're going up the road towards the Hollywood side
13 toward Coon Club Road?

14 A Correct

15 Q And there's more gunfire?

16 A Correct.

17 Q Lots of gunfire?

18 A Correct

19 Q Not all the gunfire coming from the gray truck?

20 A Correct

21 Q You duck down behind the car?

22 A Correct

23 Q At some point in time -- and this is all
24 happening real fast?

25 A Uh-huh

J PERRIGO - CROSS-EX BY MR RUNON

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1 Q Is that correct?

2 A Correct

3 Q Okay At some point in time, you're aware of
4 the fact that Mr Simmons is hit and goes down?

5 A Correct

6 Q Okay Now, when -- did you see him just before
7 he got shot?

8 A No

9 Q So you don't know which direction he was facing?

10 A No, I don't.

11 Q When he went down, did he go face down, face up,
12 on the back, what?

13 A He was on his back

14 Q He was on his back?

15 A Uh-huh.

16 Q Now, where you were -- and you were by his car,
17 correct?

18 A Correct

19 Q Because you had crouched down by it?

20 A Yes

21 Q As the State's Exhibit reflects and is common
22 with secondary roads in South Carolina, you don't have a
23 shoulder of that road, do you?

24 A Say that again.

25 Q You don't have a shoulder, in other words,

1 there's no level pavement or anything?

2 A No

3 Q As a matter of fact, when you pull off to park,
4 you're parking at a slant, right?

5 A Yes

6 Q So you were kind of down behind the car in some
7 fashion?

8 A Correct

9 Q And you were kind of downhill?

10 A Right

11 Q Correct?

12 A Uh-huh

13 Q Okay. And as it relates to the automobiles in
14 the immediate vicinity -- and there were lots of cars
15 coming and going at that point in time when the shooting
16 started, wasn't there?

17 A Yes

18 Q In enormous amounts, number of people hopping in
19 their vehicles and start getting away, getting out of the
20 area?

21 A Correct

22 Q And by the way, go back to something I asked you
23 before, you've gone to that club before?

24 A Correct

25 Q On numerous occasions?

J. PERRIGO - CROSS-EX BY MR RUNON

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1 A Correct

2 Q And dance and have a beer, have a good time?

3 A Correct

4 Q And then you go home, correct?

5 A Correct

6 Q Now, prior to -- by the way, did you see who was
7 in this truck?

8 A No.

9 Q Okay When you were outside, did you see
10 Mr Ward or Mr. Washington out there at all?

11 A I saw them at one point

12 Q And where were they?

13 A They were just coming out of the club

14 Q They were just coming out the club Was that
15 before or after the shooting starting?

16 A That was before

17 Q Before the shooting started And then the
18 shooting started?

19 A Yes

20 Q And you don't know where they were?

21 A No, I don't

22 Q They were coming out of the front of the club
23 and they weren't fighting with anybody, were they?

24 A No

25 MR RUNYON No further questions of this

1 witness at this time, Judge

2 THE COURT: Miss Jenkinson?

3 CROSS-EXAMINATION

4 BY MISS JENKINSON

5 Q Good morning, Mr Perrigo

6 A Good morning

7 Q You testified just a little bit ago that you
8 were standing near Jamie's car?

9 A Correct

10 Q Were you at the front of the car?

11 A Yes

12 Q Which way were you facing, towards the club?

13 A Correct

14 Q Now, the night of the incident, you gave a
15 statement to the police, is that correct?

16 A Correct.

17 Q Do you remember telling them you heard the shots
18 behind you?

19 A Yes, ma'am

20 Q So you were facing the club and you heard the
21 shots behind you?

22 A Well, I was -- actually, when I came out the
23 car, I rotated. I didn't stay in one spot. I rotated
24 around

25 Q And you were telling the police the truth that

1 night?

2 A Yes

3 Q When you saw Jamie on the ground, he was near
4 the ditch?

5 A Correct

6 Q Had he fallen into the ditch?

7 A He was like halfway

8 Q Half in and half out of the ditch?

9 A Yes

10 Q Okay How tall are you?

11 A I'm 5'4, 5'3

12 Q This is just a different diagram of Toogoodoo
13 Road and Club Diamante?

14 A Correct

15 Q I'm going to have you take one of these stickers
16 and I want you to mark where you were standing

17 A (Witness complies)

18 Q And you had come from Kevin Dunmeyer's car over
19 here and ran across the road over here?

20 A Correct.

21 Q And just point to me where you saw the truck?

22 A Coming out the club right here

23 Q Thank you Mr Perrigo, I'm going to show you
24 one more diagram Okay This is just a pointer You can
25 mash that right there. And if you could show me and show

1 the jury where you were standing?

2 A Okay When everything started, after the
3 gunshots, right here I started running toward the car
4 over here

5 Q After the gunshots, you ran over there?

6 A Yes

7 Q And you were in front of that car?

8 A Yes, right there.

9 Q And show me where you saw the car, the truck?

10 A The truck was coming out right here. Actually,
11 it was parked like right there

12 Q Okay Thank you.

13 MISS JENKINSON Beg the Court's indulgence
14 That's all I have

15 THE COURT Redirect?

16 REDIRECT EXAMINATION

17 BY MR DURANT

18 Q You've got something marked as a ditch and
19 something marked as a ditch, is that correct? Two words
20 that say ditch?

21 A Correct

22 Q There's not a ditch in between there, is there?

23 A No

24 Q Jamie wasn't standing in the ditch, was he?

25 A I don't know where he was standing at

J PERRIGO - REDIRECT EX BY MR DURANT

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1 Q I mean, was he standing in the ditch or not?
2 You say before he was in front of his car or back behind
3 his car and out to the side and that he fell halfway into
4 the ditch is what you testified to?

5 A Correct It was a lot of people standing out
6 there When I saw Jamie go down, he wasn't just standing
7 straight up When I saw him go down, he was halfway to
8 the ground already.

9 Q Did he fall into the ditch?

10 A Yes, he was in front of the ditch right there
11 straight like that

12 Q So if he fell into the ditch, that means he
13 wasn't in the ditch when he started falling, right?

14 MISS JENKINSON Objection, Your Honor.

15 THE COURT Overruled

16 BY MR DURANT.

17 Q Correct?

18 A Correct

19 Q So he fell into the ditch?

20 A Correct

21 Q And he wasn't in the ditch at the time he was
22 shot?

23 A I'm not sure if he was or not because it's not a
24 big ditch

25 Q It's not a big ditch, it's just a little dip?

1 A (Indicating)

2 Q But he fell into the ditch after he was shot?

3 You're sure about that?

4 A He was in there

5 Q That's where he ended up?

6 A Yes

7 Q And he fell into that, you just testified?

8 A That's right

9 Q Okay Now, you said you first were in front of
10 the club, I believe, in terms of what Mr Runyon was
11 asking you, when you first heard gunfire and you started
12 running down toward the car, is that correct?

13 A Correct

14 Q Now, after you heard that initial gunfire, did
15 you see Jamie after that?

16 A No

17 Q I mean, not right at that time, but at some
18 point after you started running, did you see Jamie?

19 A I didn't see Jamie more than Jamie was standing
20 there I didn't know it was Jamie until --

21 Q I understand that But the point is, sir, you
22 saw Jamie up and alive and ambulating after you heard the
23 first gunshots, right, when you started running?

24 A I don't understand what you're trying to ask me

25 Q Okay You said you were in the front of the

1 club, correct?

2 A Correct

3 Q Somewhere in this area?

4 A Yes, sir

5 Q Okay Now, you heard gunshots?

6 A Correct

7 Q And you started running, presumably, towards

8 your car, right?

9 A Correct

10 Q You said when you got in this area, you heard

11 more gunshots?

12 A Correct

13 Q And you looked and saw gunfire coming from the

14 truck, correct?

15 A Correct

16 Q At that time, Jamie was alive, right?

17 A Right

18 Q Okay. So he certainly wasn't hit by this

19 gunfire that you -- first made your run?

20 MR RUNYON That's coming from a conclusion on

21 the part of the witness that he can't make

22 THE COURT Sustained

23 BY MR DURANT

24 Q Some period of time had passed and elapsed then,

25 had it not?

1 A Yes It wasn't that much

2 Q Okay.

3 MR DURANT No further questions. Thank you,

4 sir

5 THE COURT Recross?

6 RECROSS-EXAMINATION

7 BY MR RUNYON

8 Q Mr Perrigo, you say you saw the gray truck pull
9 out from beside the --

10 A Club

11 Q Club

12 A Correct

13 Q When did you see the gunfire from the truck?

14 A As soon as it backed up and started to go
15 forward, I saw the gunfire.

16 Q So you saw the gunfire -- the truck pulls out?

17 A Correct

18 Q And then backs up?

19 A Yes

20 Q So it's somewhere back here?

21 A Yes

22 Q Somewhere back here and that's when you saw the
23 gunfire?

24 A Yes, sir

25 Q And you're sure about that?

J PERRIGO - RECROSS-EX BY MR RUNYON

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1 A Yes.

2 Q Okay There's no question about that?

3 A No

4 Q And when you were kind of crouching down behind
5 the -- actually, Jamie's car?

6 A Yeah

7 Q You saw Jamie?

8 A All right. I didn't actually see -- I didn't
9 know -- there was a bunch of people standing there. I
10 don't know it was Jamie until he started falling to the
11 ground and I walked up on him

12 Q So you didn't see whether or not he was standing
13 up straight or crouching down or what happened?

14 A No, I didn't see that

15 Q Okay But the gunfire from the truck came from
16 back in the parking lot?

17 A Yes, when I saw it

18 Q That's when you saw it And there was no other
19 gunfire from that truck after it pulled up, got to the
20 highway and went on down the road that you saw?

21 A I don't know As soon as I saw the first one, I
22 ducked down and that was it. I didn't come back up until
23 it was gone

24 Q Okay

25 MR RUNYON No further questions, Judge.

1 MISS JENKINSON No questions, thank you.

2 THE COURT You may step down

3 MR DURANT I ask that Mr Perrigo be excused
4 if there's no objection

5 MR RUNYON No objection, Judge

6 MISS JENKINSON No objection

7 THE COURT You may be excused

8 Call your next witness

9 MR DURANT Marcus Moultrie

10 MARCUS MOULTRIE,

11 being first duly sworn, testified as follows

12 THE CLERK. Please be seated Please state your
13 full name to the Court and spell your last

14 THE WITNESS Marcus Aaron Moultrie,

15 M-O-U-L-T-R-I-E

16 DIRECT EXAMINATION

17 BY MR DURANT

18 Q How old are you, Marcus?

19 A Twenty-two.

20 Q Where are you employed?

21 A Holset

22 Q What does Holset do?

23 A Manufacture turbo engines

24 Q What do you do at Holset?

25 A I'm an associate.

M MOULTRIE - DIRECT EX BY MR DURANT

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- 1 Q Where do you live?
- 2 A 4551 Petersfield Road
- 3 Q I'm assuming that would be in Petersfield,
- 4 right?
- 5 A Yes, sir
- 6 Q Do you know Jamie Simmons?
- 7 A Yes, sir
- 8 Q How do you know Jamie?
- 9 A Jamie is my cousin
- 10 Q Now, were you at the Club Diamante in the early
- 11 morning of May the 11th, 2003?
- 12 A Yes, sir
- 13 Q Did you go to that club a good bit?
- 14 A No, sir
- 15 Q How many times had you been in that club before
- 16 that night?
- 17 A One or two
- 18 Q Had you ever seen Jamie out at that club before?
- 19 A No, sir.
- 20 Q Did you see Jamie at the club that night?
- 21 A No, sir
- 22 Q You had been in the club earlier?
- 23 A Yes, sir
- 24 Q Tell me what happened as you were leaving the
- 25 club that night

1 A As I was leaving the club, Jamie came from
2 Edisto way I flagged him down in front of the club and I
3 was asking him about a job

4 Q Okay Now, before you saw him coming down the
5 road, what was going on outside the club?

6 A A fight broke out.

7 Q Do you know anything about that fight and why it
8 was started?

9 A No, sir

10 Q Did you see where the fight took place?

11 A On the left-hand side of the club in the middle
12 of the road

13 Q And what exactly did you see?

14 A Some guys chasing one guy down the road

15 Q It was about this time that Jamie showed up?

16 A Yes, sir

17 Q Tell me what happened when Jamie showed up

18 A We spoke for a minute I told him that I needed
19 to leave and go talk some place else

20 Q What were y'all going to talk about?

21 A The job

22 Q And what job was that?

23 A A job on Kiawah Island.

24 Q Where did Jamie work?

25 A On Kiawah Island

M. MOULTRIE - DIRECT EX BY MR DURANT

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1 Q What did he do out on Kiawah Island?

2 A He was a security guard

3 Q Who did you go to the club with that night?

4 A My brother

5 Q What is your brother's name?

6 A Corey Moultrie.

7 Q How did y'all get to the club that night?

8 A I drove my vehicle

9 Q What vehicle were you driving at the time?

10 A GEO Tracker

11 Q What color?

12 A Light green

13 Q Where did you park your GEO Tracker?

14 A On the side of the road in front of the
15 curbside.

16 Q On the club side of the road or the other side?

17 A Club side of the road

18 Q Facing which direction, Baptist Hill or
19 Hollywood side?

20 A Facing Hollywood side

21 Q Do you remember seeing the Suburban out there
22 that night?

23 A Yes, sir

24 Q Do you know who that Suburban belonged to?

25 A Kevin Dunmeyer

1 Q And where was the Suburban in relation to the
2 fight that you had seen?

3 A The Suburban was parked on the opposite side of
4 where I was parked, but in front of the CPW and the fence
5 area

6 Q Now, could you tell who was fighting -- did you
7 see any folks that were fighting out there?

8 A No, sir

9 Q Could you tell where the folks that were
10 fighting were from?

11 A No, sir

12 Q Now, when Jamie came down the road and you spoke
13 to him, was he in his car or out of his car?

14 A He was inside

15 Q Where did you agree to meet with him?

16 A At the Waffle House on 17.

17 Q What did he do when y'all had that conversation?

18 A He pulled over on the side of the road

19 Q What kind of car was he driving?

20 A A blue Honda

21 Q Where did he park his Honda?

22 A In front of mine, in the front of my car

23 Q And did you leave immediately?

24 A No, I was waiting on my brother

25 Q Where was your brother?

M MOULTRIE - DIRECT EX. BY MR DURANT

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- 1 A He was off somewhere
- 2 Q He hadn't gotten back to the car?
- 3 A Yes, sir
- 4 Q What did Jamie do? Did he stay in his car?
- 5 A I believe he got out and talked to someone.
- 6 Q Now, what did you do when -- after you talked to
- 7 Jamie in the roadway, where did you go?
- 8 A In my vehicle
- 9 Q You were sitting in your vehicle?
- 10 A Yes, sir
- 11 Q What happened while you were sitting in your
- 12 vehicle?
- 13 A While I was sitting in my vehicle, I heard some
- 14 shots broke out
- 15 Q What direction did you hear the shots?
- 16 A I heard it from behind my car
- 17 Q What did you do when you first heard the
- 18 gunshots?
- 19 A I immediately got out my vehicle and laid on the
- 20 floor
- 21 Q On the floor or on the ground?
- 22 A On the ground
- 23 Q After the gunfire stopped, what did do you?
- 24 A I got up and got in my car By that time, my
- 25 brother came and he told me that somebody had got shot

1 Q Okay Did you move your car?

2 A Yes, I did

3 Q Why did you move your car?

4 A I was about to leave

5 Q Okay Why didn't you leave?

6 A Hum?

7 Q Why didn't you leave? You said you were about
8 to leave, why didn't you leave?

9 A We stayed to see who got shot

10 Q So you were leaving before your brother actually
11 got to the car?

12 A Yes, sir

13 Q Now, after you stopped, did you observe anything
14 unusual about your car?

15 A Yeah, I noticed I had a hole through my
16 windshield

17 Q When your brother stopped you, what did you do?

18 A We went over to Jamie to see what was going on

19 Q Where did you stop your car at that time?

20 A In the middle of the road on the side of his
21 car, I believe.

22 Q Where was Jamie?

23 A He was on the other side near the ditch

24 Q And what was his condition when you went over to
25 see him?

M MOULTRIE - DIRECT EX BY MR DURANT

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1 A He was -- he was -- he was face up with his eyes

2 open He seemed to be conscious

3 Q Did you try to talk to him?

4 A Yes, sir

5 Q Did he respond to you?

6 A No, sir

7 Q Now, how long did you end up staying out there
8 that night?

9 A All night, until the next morning

10 Q In fact, your car kind of got roped off inside
11 the crime scene, is that correct?

12 A Yes, sir

13 Q You -- and just to be clear, you never saw where
14 any of the gunfire came from, is that correct?

15 A No, sir

16 Q Do you know John Ward?

17 A Yes, sir

18 Q What name do you know him by?

19 A Mix

20 Q Do you know where John Ward is from?

21 A From Petersfield

22 Q And how about Tremayne Washington, do you know
23 him?

24 A Up until now, yes, I do now, but back then, no

25 Q Did you know his nickname back then?

1 A I knew they called him Fiend

2 Q How did you know of Fiend back then?

3 A I saw him in the neighborhood, around the way

4 Q He used to hang out in Petersfield a lot?

5 A Yes, sir

6 Q Do you know who he used to hang out with?

7 A Mix

8 Q You also knew Catrell Douglas?

9 A Yes, sir.

10 Q Do you know what kind of vehicle Fiend owned at
11 the time?

12 A No, sir

13 Q Just a couple more questions You've observed
14 State's Exhibit No 6 before, have you not?

15 A Yes, sir.

16 Q Could you point to the jury where your vehicle
17 is on this diagram?

18 A That is my vehicle right here.

19 Q Okay And is that where your vehicle was parked
20 at the time the shooting started?

21 A Yes, sir

22 Q After the shooting started, where did you move
23 your vehicle to?

24 A On this side of the road next to Jamie's car

25 Q And where did you observe Jamie when you stopped

M MOULTRIE - DIRECT EX BY MR DURANT

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1 and got out of your car?

2 A On the top of the ditch, on the top of the ditch
3 bank

4 Q Okay Referring to State's 49A, now, you've
5 seen this video before, have you not?

6 A Yes, sir.

7 Q Whose vehicle is that right there?

8 A That's my vehicle

9 Q That's where it was parked at the time of the
10 shooting?

11 A Yes, sir

12 Q Who is that?

13 A I have no idea I can't see too good

14 Q Okay Do you know if that's you or not? If you
15 don't, that's fine?

16 A I have no idea

17 Q And this is later after the police return to the
18 scene Okay Now, whose vehicle is that right there?

19 A That's mine

20 Q That's where you moved it?

21 A Yes, sir

22 Q After the shooting?

23 A Yes, sir

24 Q And whose vehicle is that right there?

25 A That's Jamie's vehicle

1 Q Do you see where this officer is?

2 A Yes, sir

3 Q Is that roughly in the same location you
4 remember seeing Jamie that night on the ground?

5 A Yes, sir

6 Q Thank you I did want to show you a couple of
7 pictures and see if you could recognize them This is
8 referring to State's Exhibit No. 29 What does that
9 depict? Whose car is that on the left?

10 A My car is on the left

11 Q And whose car on the right?

12 A Jamie's car is on the right

13 Q And that's where your car was parked after you
14 moved it, is that correct?

15 A Yes, sir

16 Q And was your car in that position at the time of
17 the shooting?

18 A No, sir

19 Q Where was your car at the time of the shooting?

20 A Behind Jamie's car on the side of the road
21 behind the sign

22 Q That's the rear of your car?

23 A Yes, sir

24 Q What is that?

25 A It's a bullet hole

M MOULTRIE - DIRECT EX BY MR DURANT

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1 Q Was that bullet hole there before that night?

2 A No, sir

3 Q What is that? This is referring to State's
4 Exhibit No 32?

5 A A bullet hole through the rear

6 Q That's just a close-up of the same bullet hole?

7 A Yes, sir

8 Q Now, referring to State's Exhibit No. 33 What
9 is that?

10 A That's the bullet hole through my headrest.

11 Q That would be State's Exhibit No 34. What does
12 that depict?

13 A A close-up of the bullet hole through my
14 headrest

15 Q And finally, State's Exhibit No 35?

16 A That's a bullet hole through the windshield.

17 Q Any of that damage to your car prior to arriving
18 at the club that night?

19 A No, sir

20 Q Were those holes in your car at the time you got
21 in your car that night and were waiting for your brother?

22 A Yes, sir

23 Q That hole was in your car at the time you were
24 waiting for your brother?

25 A Oh, no, sir

1 Q Okay In other words, were those -- that bullet
2 hole in your car prior to hearing those gunshots behind
3 you?

4 A No, sir

5 MR DURANT Would you please answer any
6 questions that defense counsel may have for you

7 CROSS-EXAMINATION

8 BY MR RUNYON

9 Q Mr Moultrie, you owned your Tracker at the
10 time?

11 A Yes, sir

12 Q And you don't need a running board or anything
13 to get into the Tracker, do you?

14 A No, sir

15 Q It's fairly low to the ground?

16 A Yes, sir.

17 Q It's not elevated by big tires or anything?

18 A No, sir

19 Q All right Now, you'd been to the Club Diamante
20 or Toby's at that time a couple times?

21 A Yes, sir

22 Q And people go there and have a good time on
23 Friday and Saturday night, right?

24 A Right

25 Q And it's not a bad place to go, is it?

M MOULTRIE - CROSS-EX BY MR RUNYON

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1 A No, sir

2 Q Okay So you went there You were going to
3 have maybe a beer or two, maybe dance or just congregate
4 with some people you know, correct?

5 A Correct

6 Q And you ran into your cousin?

7 A Correct

8 Q And y'all talked about a job or what have you
9 and then you were going to go some place else, but you
10 were looking for your brother?

11 A I was waiting on my brother

12 Q Okay Now, what happened was that -- you were
13 waiting on your brother What happened was a lot of
14 gunfire started?

15 A Yes, sir

16 Q Okay And then you got out of your car and laid
17 on the ground, quite frankly?

18 A Correct

19 Q When were you aware that your cousin had been
20 shot?

21 A After my brother came

22 Q Okay Did you ever see a gray truck of any
23 kind?

24 A No, sir

25 Q All right Was there gunfire coming from behind

1 you?

2 A Yes, sir

3 Q Was there gunfire coming up in front of you, do
4 you recall?

5 A I can't recall that

6 Q Okay Can you recall specifically where any of
7 the gunfire was coming from?

8 A No, sir, I could hear it

9 Q You just could hear gunfire kind of all around
10 you, right?

11 A Yes, sir

12 Q By the way, do you have a nickname?

13 A Hank O

14 Q Beg your pardon?

15 A Hank O

16 Q Angle?

17 A Hank O

18 Q Hank O, okay And you picked that up in high
19 school or something?

20 A My brother gave it to me

21 Q Your brother gave it to So people get these
22 nicknames and they kind of stick with them, right?

23 A Correct

24 Q So just because you have a nickname doesn't mean
25 you're a bad person?

M MOULTRIE - CROSS-EX BY MR RUNYON

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1 A I wouldn't say so

2 Q Because you've got a nickname, correct?

3 A Yes

4 Q And you're a pretty good guy?

5 A Yes

6 Q Did you see Mr Tremayne Washington that night
7 at any time?

8 A No, sir

9 MR RUNYON I have no further questions, Judge.

10 CROSS-EXAMINATION

11 BY MISS JENKINSON

12 Q Mr Moultrie, these are the same pictures that
13 were shown on the overhead I'm showing you the back of
14 your car, is that correct?

15 A Yes, ma'am

16 Q And that's a bullet hole?

17 A Yes, ma'am

18 Q And that's below the back window of your car?

19 A Yes, ma'am

20 Q And tell the jury what that is

21 A That's a bullet hole through my headrest

22 Q That's at the top of your headrest?

23 A Kind of in the middle of the headrest

24 Q About where your head would be?

25 A Yes, ma'am

1 Q Which one -- what is that?

2 A A bullet hole through the windshield

3 Q And that's above the steering wheel?

4 A Like right in the middle of the steering wheel,
5 correct

6 MISS JENKINSON Thank you, Mr Moultrie
7 That's all I have

8 THE COURT Redirect?

9 MR. DURANT No, sir

10 THE COURT You may step down Thank you
11 Call your next witness

12 MR DURANT. The State would call John Buncumb
13 JOHN BUNCUMB,

14 being first duly sworn, testified as follows.

15 THE CLERK Please be seated Please state your
16 full name to the Court and spell your last.

17 THE WITNESS Johnny Buncumb, B-U-N-C-U-M-B

18 DIRECT EXAMINATION

19 BY MR DURANT

20 Q How old are you, Mr. Buncumb?

21 A Thirty-eight

22 Q Could you tell the jury what you do for a
23 living?

24 A I'm a correction officer at Lieber Correctional
25 Institution on death row

J BUNCUMB - DIRECT EX BY MR DURANT

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1 Q How long have you been with the corrections
2 department?

3 A Ten and a half years

4 Q What is your current rank and position?

5 A Lieutenant

6 Q Do you also have a business that you run on the
7 side?

8 A Yes, sir, a security business

9 Q What's the name of your security business?

10 A Maximum Security

11 Q As part of your business you own, did you have a
12 contract with the Club Diamante on Toogoodoo Road?

13 A Yes, sir

14 Q In May of 2003?

15 A Yes, sir

16 Q And you contracted with Club Diamante for what
17 purpose?

18 A To provide security for his nightclub

19 Q Did you happen to be at the nightclub on
20 May 11th, 2003?

21 A Yes, sir

22 Q Did anything happen inside the club that night
23 of which you were aware?

24 A We had a fight on the inside of the club

25 Q And what happened after the fight inside the

1 club?

2 A It spilled over to the outside

3 Q Now, do you remember whether there were any
4 police out there that night?

5 A Yes One, Deputy Frichtl He showed up twice
6 or three times that night

7 Q Okay And do you know why he showed up?

8 A We called him earlier because we had a
9 disturbance earlier and he came and said he would be back

10 Q Was he present at the time the club closed?

11 A Yes, sir

12 Q When did you close the club in relation to that
13 problem that had been inside?

14 A Maybe, 2 00, 2 30, something like that

15 Q Was that about the same time that the fight
16 spilled outside?

17 A Yes, sir

18 Q Were you outside at the time?

19 A Yes, sir

20 Q Tell me what you observed seeing outside

21 A I observed two large groups of men fighting

22 Q And you're not from that area?

23 A No, sir

24 Q Do you know who the groups were?

25 A No, sir, not at the time

J BUNCUMB - DIRECT EX BY MR DURANT

251

1 Q Now, do you remember seeing a blue Suburban out
2 there?

3 A Yes, sir

4 Q Where was that blue Suburban at?

5 A Parked across the street from the nightclub.

6 Q What do you remember happening out around the
7 blue Suburban?

8 A I remember guys came in the Suburban fighting,
9 one guy trying to get inside and another large male came
10 up trying to help him get in the truck And he ended up
11 getting chased down to the Baptist Hill direction of
12 Toogoodoo Road

13 Q Okay Have you seen these two folks today?
14 Stand up if you want

15 A Yes, yes, sir

16 Q Have you seen either one of them before?

17 A Yes, sir.

18 Q Where?

19 A At the club

20 Q Which one did you see?

21 A I seen the one with the glasses right there

22 Q Okay.

23 A He used to have a long beard

24 Q Pardon me?

25 A He used to have a long beard

1 Q He used to have a long beard?

2 A Yes, sir

3 Q In May of 2003?

4 A Yes, sir.

5 Q Where did you see him at?

6 A Outside the nightclub

7 Q Where outside?

8 A And inside the nightclub

9 Q You saw him inside the nightclub?

10 A Yeah

11 Q Did you see him outside the nightclub when there
12 was a problem across the street?

13 A Yes, sir.

14 Q Where did you see him?

15 A Near that Suburban

16 Q What was he doing over at the Suburban?

17 A Trying to get at Dunmeyer, the driver, one of
18 the drivers

19 Q And what did you see him do after Dunmeyer was
20 chased down the road?

21 A He came back and got into that Dodge truck

22 Q What Dodge truck?

23 A 1500 series Dodge truck

24 Q I will show you what's -- first of all, I show
25 you what's been previously marked as State's Exhibit No

J BUNCUMB - DIRECT EX BY MR DURANT

253

1 24?

2 A That's the Suburban that was parked across the
3 street

4 Q Okay. And that's the Suburban that you observed
5 the Defendant Washington trying to get in, is that
6 correct?

7 A No, that's the suburban that Dunmeyer was trying
8 to get into

9 Q Dunmeyer was trying to get into Did you see
10 the Defendant Washington anywhere around that truck?

11 A Yes, sir

12 Q What was he doing?

13 A Trying to get to Dunmeyer

14 Q Okay. And I show you what's previously been
15 marked State's Exhibit 14 and 15 in evidence Ask you do
16 you recognize that truck?

17 A Yes, that's the 1500 series truck

18 Q Is that the truck you observed Defendant
19 Washington get into?

20 A Yes, sir.

21 Q Where did you observe him get in that truck?

22 A On the side of the nightclub

23 Q What part of the truck did you observe him get
24 into?

25 A The rear

1 Q Does that truck have a back seat?

2 A Yes, sir

3 Q And he got in the back seat?

4 A Passenger side back seat

5 Q Okay Could you see anybody else that was in
6 that truck?

7 A No, sir

8 Q Now, do you recall -- referring you to State's
9 Exhibit No 11?

10 A Yes, sir

11 Q Do you recall seeing that vehicle out there that
12 night?

13 A That's the Cadillac that initially went down
14 Toogoodoo Road and came back

15 Q Okay Went down Toogoodoo Road which way?

16 A Baptist Hill way

17 Q And did you see it later?

18 A Yes, it came back

19 Q What happened when it came back?

20 A It stopped near the front of the nightclub

21 Q What happened when the car stopped?

22 A When the car stopped, some guys got out making
23 some noise, some more ruckus and tried to go off down the
24 road and couldn't The 1500 series pulled out, fishtailed
25 down the road and started shooting.

J BUNCUMB - DIRECT EX BY MR DURANT

255

1 Q Where did you observe gunfire coming from the --

2 A The front passenger side

3 Q And where did you observe the truck when you saw
4 the gunfire coming from the front passenger side?

5 A It was on the opposite lane of Toogoodoo Road

6 Q Okay. Could you tell where the gunfire was
7 being directed toward?

8 A Toward the parking area of the nightclub

9 Q Where was it being directed in relation to where
10 the Cadillac was?

11 A The direction of the Cadillac was -- the truck
12 was on the side of the Cadillac, basically, off the left
13 rear

14 Q Now, you mentioned earlier seeing Mr Washington
15 over there by the Suburban And did you hear him say
16 anything that night?

17 A Yeah, he said we will handle that

18 Q When did he say that?

19 A After Dunmeyer gone down the road

20 Q After Dunmeyer was chased down the road?

21 A When he was chased down the road

22 Q Was he saying that to anybody in particular?

23 A No, he was just talking

24 Q That was before or after you saw him get in the
25 truck?

1 A Before

2 Q What did it appear to you that the truck was
3 shooting at?

4 A The Cadillac

5 Q And what happened after you saw the truck
6 shooting at the Cadillac?

7 A The Cadillac sped off down Toogoodoo Road.

8 Q And --

9 A The truck went behind it.

10 Q And did you continue hearing gunshots?

11 A Yes, sir, several

12 Q From which direction?

13 A Down Toogoodoo, several shots

14 Q After all of the shooting had stopped, did you
15 hear any shooting other than what you observed in the area
16 of the Cadillac and the truck?

17 A Not after that, no Since they went down the
18 road and the shots were fired in the distance, no more

19 Q Okay. Could you tell whether the folks in the
20 Cadillac were shooting as well?

21 A I couldn't tell

22 Q You couldn't tell?

23 A No, sir

24 Q What happened after all of the shooting ended?

25 A People started saying that someone got hit

J BUNCUMB - DIRECT EX BY MR DURANT

257

1 Q And what did you do when you heard that?

2 A I went and checked to see who it was and what
3 happened

4 Q What did you observe?

5 A The victim laying on the ground

6 Q Where was he on the ground?

7 A He was face up almost in the parking area.

8 Q Okay Referring to State's Exhibit No 6 in
9 evidence, could you point out to the jury where the victim
10 was when you observed him?

11 A Okay This is the ditch When I seen him, he
12 was on this side of the ditch

13 Q Okay Did he appear to be alive to you at that
14 time?

15 A No, sir

16 Q Now, where you observed the victim afterwards,
17 where was that in relation to the direction you observed
18 the people in the truck shooting?

19 A Same direction

20 Q Did you own a weapon at the time?

21 A Yes, sir

22 Q And what kind?

23 A 9-millimeter High Point

24 Q And did you have that weapon out there that
25 night?

1 A I had it in my possession, but not on me I had
2 it inside a safe in my vehicle

3 Q So you had the safe inside your vehicle?

4 A Yes, sir

5 Q That's where you -- that's where you kept your
6 weapon that night?

7 A Yes, sir

8 Q At any time during this shooting incident did
9 you have your weapon out?

10 A No, sir

11 Q I will hand you what's been marked previously as
12 State's Exhibit 52 and 53 for identification purposes only
13 and ask if that is your weapon?

14 A Yes, sir

15 Q Okay Specifically, did you fire your weapon on
16 that night?

17 A No, sir

18 Q You subsequently met with Detective Hawks with
19 the Charleston County Sheriff's Office, is that correct?

20 A Yes, sir

21 Q What did he do with your gun?

22 A He took it, he confiscated it.

23 Q And also the ammunition?

24 A Yes, sir, and my clothes.

25 Q And your clothes?

J BUNCUMB - DIRECT EX BY MR DURANT

259

1 A Uh-huh

2 Q And what else did he do that night?

3 A He gave me a lead test on my hands

4 Q On your hands?

5 A Uh-huh

6 Q Do you know who was in the Cadillac that night?

7 A No, not at that time Like I said, Ton-Ton --

8 Q If you don't know at the time, then we don't

9 want to know

10 A Okay.

11 MR DURANT. Court's indulgence for just a

12 moment

13 BY MR. DURANT

14 Q Correct me if I'm wrong, I believe in one of
15 your statements you had mentioned that you had heard that
16 a guy named Fred was driving the truck?

17 A Yes, sir

18 Q Did you actually see the guy who was driving the
19 truck?

20 A No, sir

21 Q Where did that name Fred come from?

22 A Everybody was calling his name at the club.

23 Q Okay.

24 MR DURANT. Would you please answer anything
25 defense counsel may have for you

1 CROSS-EXAMINATION

2 BY MR RUNYON

3 Q All right Now, Mr Buncumb, just bear with me,
4 please I wasn't out there that night and I'm kind of
5 slow All of these folks are smarter than I am, okay?

6 A Yes, sir.

7 Q You didn't have to agree with me so quickly
8 Now, referring to State's Exhibit No 6, the green
9 Cadillac was stopped approximately where, sir?

10 A Can I? Approximately here

11 Q Approximately right here?

12 A Is that the dirt gravel parking lot?

13 Q Yes, sir

14 A The Cadillac was probably about right here.

15 Q So the Cadillac was adjacent or parallel with
16 the GEO Tracker?

17 A Yes, sir

18 Q Okay Now, the truck -- as I understand your
19 testimony, you need to correct me if I'm wrong, the truck
20 came out of the parking lot, correct?

21 A Yes, sir

22 Q Went over into the opposing lane of traffic?

23 A Yes, sir

24 Q And fired at the Cadillac?

25 A Yes, sir

J BUNCUMB - CROSS-EX BY MR RUNYON

261

1 Q Okay Then the Cadillac sped away and the truck
2 went after it?

3 A Yes, sir

4 Q Prior to the truck coming out into the roadway,
5 were there any gunshots in the area?

6 A No, sir

7 Q Absolutely no gunshots?

8 A No, sir

9 Q And after the truck fired at the green Cadillac,
10 other than the gunshots going down the road, there were no
11 other gunshots?

12 A No, sir

13 Q And there were no gunshots, absolutely no
14 gunshots from the parking lot?

15 A No, sir

16 Q And so the gray truck had gunfire coming from it
17 from somebody?

18 A Yes, sir

19 Q Towards the Cadillac, okay, which was right
20 almost side by side with the GEO Tracker?

21 A Yes, sir

22 Q That's what you recall this whole situation?

23 A Yes, sir

24 Q Other than that gunfire, there was absolutely no
25 other gunfire?

1 A No, sir

2 Q Okay Now, Lieutenant, you do this security
3 work as an extra job?

4 A Yes, sir

5 Q The taxpayers don't pay you enough, right?

6 A Yes, sir

7 Q That's right Now, Toby's Place or the Club
8 Diamante is a club where people come to dance and have
9 some fun and maybe drink a couple of drinks and what have
10 you?

11 A Yes, sir

12 Q And most of the people come there are from the
13 area, from the Charleston area, from the south end of the
14 county area, correct?

15 A Yes, sir

16 Q Okay And people come there And how long have
17 you been doing security work there?

18 A Approximately six months

19 Q At that point and time, approximately six
20 months?

21 A Yes, sir

22 Q And, by the way, did you have to get approval
23 for doing this security work from your superiors or your
24 employer?

25 A Yes, sir

J BUNCUMB - CROSS-EX BY MR RUNYON

263

1 Q So, basically, you have to submit -- correct me
2 if I'm wrong, you have to submit to your employer where
3 you will be doing these extra jobs?

4 A No, sir

5 Q You didn't submit that to the Department of
6 Corrections?

7 A No, I don't have to do it directly where I'm
8 going to be It's just they know that I do it

9 Q Okay So they knew you were doing security
10 work?

11 A Right

12 Q And you're there to provide security in case
13 somebody doesn't act proper?

14 A Yes, sir.

15 Q But other than that, Toby's Place and Club
16 Diamante or however it's referred to, was not at the point
17 and time necessarily a real bad place, was it?

18 A Sir?

19 Q It wasn't a bad place, was it?

20 A No, sir

21 Q And now, did you come to know some of the people
22 who would frequent Club Diamante on a regular basis?

23 A Yes, sir

24 Q Did many of them have nicknames not related to
25 their name?

1 A Yes, sir

2 Q It's not uncommon, is it?

3 A No, sir

4 Q And until the fire came from the truck, there
5 was absolutely no other gunfire in the area?

6 A No, sir

7 MR RUNYON: No further questions, Judge

8 CROSS-EXAMINATION

9 BY MISS JENKINSON

10 Q Good morning, Mr Buncumb

11 A Good morning

12 Q You talked to the police the night after this
13 happened?

14 A Yes, sir -- yes, ma'am

15 Q And you wanted to let them know what happened
16 and they wanted to know from you what happened?

17 A Yes, ma'am

18 Q And you gave them a statement?

19 A Yes, ma'am

20 Q And you wrote it out in your own handwriting?

21 A Yes, ma'am

22 Q And you wanted to be as accurate as you could?

23 A Yes, ma'am

24 Q And tell them exactly what you saw?

25 A Yes, ma'am

J BUNCUMB - CROSS-EX BY MISS JENKINSON

265

1 Q And that's what you did?

2 A Yes, ma'am

3 Q And you wanted to put as much information as you
4 could in that statement, didn't you?

5 A Yes, ma'am

6 Q Do you remember in that statement you said that
7 the fire -- the shots came from the passenger side?

8 A Yes, ma'am.

9 Q But you didn't specify front or back?

10 A Yes, ma'am

11 Q That's correct?

12 A Correct

13 Q And then four days later, the police came to you
14 again?

15 A Yes, ma'am.

16 Q And they typed out a statement for you?

17 A Yes, ma'am.

18 Q And at that point, you told them that it came
19 from the front or the back?

20 A I don't recall

21 Q And you were aware that night this is a
22 four-door truck?

23 A Yes, ma'am

24 Q I'm going to be referring to Defendant's 1.
25 This is a different diagram of the club and Toogoodoo

1 Road I'm going to have you take one of these stickers
2 and place where you were standing

3 A (Witness complies)

4 Q And I'm going to have you initial that sticker
5 so we'll know that was you

6 A (Witness complies.) This is the front door,
7 right?

8 Q This is the front door And you were standing
9 here by the road?

10 A The police car right here, yeah, that's right

11 Q There was a police car here. And you saw the
12 truck along Toogoodoo Road?

13 A Yes, ma'am, just like this (indicating)

14 Q Okay Thank you Do you remember in your
15 second statement to police that you told them that the
16 truck was over by Dunmeyer's SUV?

17 A Yes, ma'am

18 Q And that was across the street?

19 A Yes, ma'am

20 Q Across Toogoodoo Road?

21 A Yes, ma'am

22 Q Mr Buncumb, I'm going to refer to one more
23 diagram Point out to the jury where you were standing

24 A Right there

25 Q If we can move the diagram over towards the

J BUNCUMB - CROSS-EX BY MISS JENKINSON

267

1 club He's going to move it for you And where were you
2 standing? That's the club, correct?

3 A Go up Where is the -- no, I was in the front
4 door of the club

5 Q That's the front door?

6 A Keep going up Am I doing it?

7 Q No There we go See that red dot?

8 A No

9 Q Are you having a hard time seeing it?

10 A Uh-huh I was on -- where am I at?

11 Q Would it help you if you got closer?

12 A I can go over there and touch it for you

13 Q You can get up

14 A (The witness exits the witness stand)

15 Q You're standing by the front door of the club?

16 A (Indicating) Right near the police car

17 Q Right by the police car?

18 A Yes, ma'am

19 Q And you only saw shots from the road?

20 A Yes, ma'am

21 Q You saw muzzle fire?

22 A Yes, ma'am

23 Q How tall are you?

24 A 6-foot one

25 Q One more thing to clarify, Mr. Buncumb?

1 A Yes, ma'am

2 Q In your second statement, you didn't specify
3 whether it was front or back, you said passenger side; is
4 that correct?

5 A Yes, ma'am

6 Q And that was five -- May 14th of 2003?

7 A Yes, ma'am

8 MISS JENKINSON Thank you

9 THE COURT. Is that all of your questions?

10 MISS JENKINSON. Yes, sir

11 THE COURT Redirect?

12 MR DURANT No, sir

13 THE COURT: You may step down

14 MR DURANT I'd ask that Lieutenant Buncumb be
15 excused if there's no objection.

16 THE COURT: Any objection?

17 MR RUNYON None from Defendant Washington

18 MISS JENKINSON No objection

19 THE COURT Ladies and gentlemen, let's take a
20 break right now We'll go ahead and send you back to the
21 jury room Again, remember, don't begin deliberations or
22 discussions We'll take about a 15-minute break, so if
23 anybody needs to go downstairs and take a smoke break or
24 get some fresh air, the bailiffs will escort you
25 downstairs. See you back in a few minutes.

1 (WHEREUPON, the following proceedings were held
2 outside the presence of the jury)

3 THE COURT All right Bring the jury in
4 (WHEREUPON, the following proceedings were held
5 in the presence of the jury)

6 THE COURT Call your next witness.

7 MR DURANT The State would call Kenneth
8 Sanders.

9 KENNETH SANDERS,
10 being first duly sworn, testified as follows:

11 THE CLERK. Please be seated If you would,
12 state your full name to the Court and spell your last.

13 THE WITNESS Kenneth Terrell Sanders,
14 S-A-N-D-E-R-S

15 DIRECT EXAMINATION

16 BY MR. DURANT

17 Q How old are you, Mr Sanders?

18 A Twenty-three

19 Q And are you known by any other names besides
20 Kenneth Sanders?

21 A Fred

22 Q Is that what most of your friends and associates
23 call you is Fred?

24 A Yes, sir

25 Q Where are you from, Mr Sanders?

K SANDERS - DIRECT EX BY MR DURANT

270

1 A Petersfield

2 Q Are you employed?

3 A Yes, I am

4 Q Where do you work?

5 A I work at Cummins Engine Company

6 Q How long have you been working at Cummins?

7 A Going on six years now

8 Q What do you do for Cummins?

9 A I'm a materials handler

10 Q And you have been convicted of a crime in the
11 court of general sessions, have you not?

12 A Yes, I have

13 Q You were convicted of pointing and presenting a
14 firearm, I believe, in March of this year?

15 A Yes, I have

16 Q Are you currently on probation or parole?

17 A No

18 Q Do you have charges pending in the court of
19 general sessions at this time?

20 A No.

21 Q Do you know this fellow here?

22 A Yes, I do

23 Q What's his name?

24 A John Ward.

25 Q And what name do you know him by?

K SANDERS - DIRECT EX BY MR DURANT

271

1 A Mix

2 Q Where's he from?

3 A Petersfield

4 Q How long have you known Mix?

5 A All my life

6 Q Friends with him?

7 A Yeah

8 Q Do you know this other fellow over here?

9 A Yeah

10 Q What's his name?

11 A I know him as Fiend

12 Q And how do you know Fiend?

13 A I met him in 2000, 2001, somewhere around that

14 time

15 Q And where did you meet him?

16 A I met him --

17 Q He's not from Petersfield?

18 A I met him in Petersfield

19 Q Who's he friends with?

20 A He's friends with Mix.

21 Q Is he in the Petersfield area quite a bit?

22 A Yeah

23 Q Do you know Catrell Douglas?

24 A Yes

25 Q How do you know Catrell?

1 A My cousin

2 Q And do you know Jamie Simmons?

3 A Yeah

4 Q How do you know Jamie?

5 A I grew up with him

6 Q Now, were you at Club Diamante on May 11th?

7 A Yes, I was

8 Q Of 2003?

9 A Yes, I was

10 Q How did you get there?

11 A I rode with my cousin, Bujuan (phonetical) and
12 his cousin Keith

13 Q Bujuan?

14 A Yes

15 Q And Keith?

16 A Yes.

17 Q They're related to you as well?

18 A Yeah

19 Q Where do they live?

20 A They live in Petersfield off of Alford Road

21 Q And Alford Road runs off of Petersfield?

22 A Yeah

23 Q Do you know where Brewer Road is?

24 A Yeah, it's a fork between Alford and Brewer
25 It's a dirt road.

K SANDERS - DIRECT EX BY MR DURANT

273

1 Q But Alford and Brewer are right next to each
2 other?

3 A Yeah

4 Q How did y'all get to the club that night?

5 A Bujuan drove his Cherokee He had a black Jeep
6 Cherokee at the time

7 Q Where did y'all park the Cherokee?

8 A Right across from the club on the CPW Compound,
9 parked right in the driveway

10 Q What time was it when y'all got to the club, if
11 you recall?

12 A About 11 30

13 Q Were there a lot of people out there that night?

14 A Yeah

15 Q Did you go to that club frequently?

16 A Twice a month

17 Q What did you do inside the club?

18 A When I first got to the club, I went and sit
19 down to the bar, got a drink

20 Q What happened inside the club regarding your
21 brother, Keith?

22 A Well, we was standing on the dance floor and him
23 and his girlfriend got into an argument

24 Q Do you know his girlfriend's name?

25 A Yeah, Shaquinta

K SANDERS - DIRECT EX BY MR DURANT

274

1 Q And do you know whether Keith and Shaquinta have
2 any children together?

3 A Yeah, they have a little girl together

4 Q And what was Shaquinta doing that got Keith
5 angry?

6 A She was dancing with this guy.

7 Q Okay Now, where is -- Keith, you said is from
8 Petersfield, right?

9 A Yeah.

10 Q Do you know who the guy was she was dancing
11 with?

12 A Yeah, he was from Cherry Hill

13 Q Now, what happened after Keith got into an
14 argument with Shaquinta?

15 A He grabbed her and she swung and hit him in the
16 mouth

17 Q And what happened when she hit Keith in the
18 mouth?

19 A Knocked his crown out his mouth

20 Q And what happened after that?

21 A Him and me and his brother, Arthur, broke them
22 apart Then the time we broke them apart, the guy, Raulo,
23 came and punched Keith

24 Q Now, is Raulo the same person that was dancing
25 with Shaquinta?

K SANDERS - DIRECT EX BY MR DURANT

275

1 A Yeah

2 Q Was he the one you said was from Cherry Hill?

3 A Yes

4 Q What happened after he punched Keith?

5 A Well, when he punched Keith, he run out the club
6 and Keith ran behind him

7 Q And what did you do?

8 A At that time when the fight broke out, they
9 turned the lights on in the club and I walked outside
10 going to the truck

11 Q Now, what did you see when you got outside?

12 A When I got outside, Raulo was inside Kevin
13 Dunmeyer's truck

14 Q Where was Kevin Dunmeyer's truck?

15 A It was parked right across from my cousin,
16 Duwaun's truck

17 THE COURT REPORTER I'm sorry Say the name
18 again, please

19 MR DURANT Bujuan I'm not sure how it's
20 spelled, maybe B-U-J-U-A-N

21 BY MR DURANT

22 Q What kind of truck did Kevin have, Kevin
23 Dunmeyer?

24 A Bluish-colored Suburban.

25 Q Is that depicted in State's Exhibit No 24?

1 A Yes, sir

2 Q Where is Kevin Dunmeyer from?

3 A Cherry Hill

4 Q And tell the jury what happened over there
5 around Dunmeyer's vehicle?

6 A I was walking to the truck and Arthur and Kevin
7 were trying to keep Keith from getting to Raulo, from
8 fighting him And I walked over there --

9 Q Where was Raulo at that time?

10 A He was sitting in the driver's seat of Kevin's
11 truck

12 Q And keep going.

13 A And I walked over and I grabbed Keith and I tell
14 him to calm down And at that time, Raulo stuck his head
15 out the truck and said something to Keith and Keith ran
16 over and punched him

17 Q Keith ran over and punched Raulo?

18 A Yeah.

19 Q What happened after Keith punched Raulo?

20 A Kevin started getting upset and he tried to
21 fight Keith He started running up trying to get Keith

22 Q So Kevin started -- Kevin being Kevin who now?

23 A Dunmeyer

24 Q Started going after Keith?

25 A Yeah

K SANDERS - DIRECT EX BY MR DURANT

277

1 Q And what happened when Kevin started going after
2 Keith?

3 A I pushed him and after I pushed him, he started
4 getting even worse and he tried to get out more and I
5 punched him

6 Q So you punched --

7 A Kevin Dunmeyer

8 Q -- Dunmeyer?

9 A Yeah

10 Q What did Dunmeyer do after you punched him?

11 A He ran, he ran away

12 Q Which way did he run?

13 A He ran toward Baptist Hill Road

14 Q Did you chase him?

15 A Yeah

16 Q How far did you chase him?

17 A Few feet, I didn't chase him for far

18 Q What did you do then?

19 A I stopped and a friend of mine, my girlfriend at
20 the time, was waiting on me She was waiting to go home
21 I was about to leave

22 Q Do you know Antonio Washington?

23 A Yeah.

24 Q What name do you know him by?

25 A Ton-Ton

1 Q And what kind of car was he driving at the time?

2 A Green Fleetwood

3 Q And do you recall -- the green Fleetwood, would
4 that be the one that's depicted in State's Exhibit No. 11?

5 A Yeah

6 Q Do you recall seeing that car out there --

7 A Yeah

8 Q -- around that time Tell the jury about that
9 and what went on with that?

10 A Well, the green Fleetwood was coming from the
11 other side where Kevin ran and Keith was like -- he picked
12 up Kevin from down the road

13 Q Who picked up Kevin down the road?

14 A Ton-Ton

15 Q Okay And what happened after he picked up on
16 Ton-Ton -- I mean Kevin?

17 A The car rode down past us and it stopped a
18 couple feet from where we were

19 Q So it came back in y'all's direction?

20 A Yeah

21 Q And it stopped What happened after it stopped?

22 A Ton-Ton got out of the car and started cursing
23 towards us and saying gestures and stuff like that

24 Q Gestures, what kind of gestures?

25 A Just cussing and throwing up his hand

K SANDERS - DIRECT EX BY MR. DURANT

279

1 Q And what did you do when he did that?

2 A I started to go toward his car and I swung at
3 him. He got in the car, I swung at him And he drove off
4 and the car hit me and I fell to the ground

5 Q Okay And where did you fall to the ground at?

6 A I fell on the ground right in front of the club
7 and hurt my knee

8 Q Were you in the road or --

9 A Yeah, in the road

10 Q Now, what happened after he knocked you down?

11 A My cousin, Keith, came and picked me up

12 Q And what did you do?

13 A We were walking back to Bojuan's truck

14 Q What happened to the Cadillac after that?

15 A It stopped again

16 Q Where did it stop this time?

17 A Like right in front of like the parking lot, the
18 second parking lot is in that area

19 Q Okay. Now, just to kind of orient the jury as
20 to where some of these things are going on, could you show
21 the jury where Bojuan's truck was parked?

22 A Bojuan's truck would be right here, back in
23 here

24 Q And where was Dunmeyer's Suburban?

25 A It was right here

K SANDERS - DIRECT EX BY MR DURANT

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1 Q And when Ton-Ton came -- after he picked up
2 Dunmeyer and stopped in front of the car, where did he
3 stop his car?

4 A He stopped over on this side over here

5 Q Right in front of the club?

6 A Yeah.

7 Q And that's where you went out and tried to punch
8 him?

9 A Yeah

10 Q And got knocked down?

11 A Yeah

12 Q And then where did you go?

13 A I was walking back from here to Bojuan's truck.

14 Q And where did the Cadillac go?

15 A It just drove up and stopped like up in this
16 area right here

17 Q Okay. Now, what happened when the Cadillac
18 stopped in that area?

19 A When the Cadillac stopped, they downed the
20 window and people start throwing bottles out the car.

21 Q Could you tell who they were throwing bottles
22 at?

23 A No, not really At that point, I was just ready
24 to go I didn't want to get involved.

25 Q Now, could you tell who was in the Cadillac

K SANDERS - DIRECT EX BY MR DURANT

281

1 besides Ton-Ton?

2 A No

3 Q Do you know whether Dunmeyer was in the
4 Cadillac?

5 A I heard he was in there, but I didn't know for
6 sure.

7 Q But you couldn't see him?

8 A No

9 Q Okay You said you knew Fiend, right?

10 A Yeah

11 Q Do you know what kind of vehicle he was driving
12 at that time?

13 A Yeah, he had a Dodge Ram pickup

14 Q And if you will refer to State's Exhibit, I
15 think, 14 and 15 in front of you Do you recognize that?

16 A Yeah

17 Q Whose pickup truck is that?

18 A That's Fiend's truck

19 Q Did you see that truck out there at the time the
20 Cadillac came back down the road?

21 A Yeah

22 Q And stopped the second -- first of all, where
23 did the Cadillac stop the second time?

24 A The second time, it stopped up here

25 Q And where did you see Fiend's truck at that

K SANDERS - DIRECT EX BY MR DURANT

282

1 time?

2 A He was in like on the side of the road in the
3 parking lot I can't remember if it was the grass lot or
4 what, but in the parking lot

5 Q He was in the parking lot, which way was the
6 truck facing?

7 A Toward the road

8 Q Toward Toogoodoo Road?

9 A Yeah

10 Q Okay Was somebody in the truck at the time?

11 A Yeah, the driver's door was open and when the
12 driver's door opened, Cabbage got in the truck and went to
13 his --

14 Q Go ahead

15 A Cabbage got out of the truck and the driver's
16 door was open He went to his cousin's car and John was
17 in the front seat and Fiend was in the back seat

18 Q Okay. John being John Ward and Fiend being
19 Mr Washington?

20 A Yeah

21 Q And this was about the time that the Cadillac
22 stopped?

23 A Yeah

24 Q Now, what did you do after the Cadillac stopped
25 and started throwing the bottles?

K SANDERS - DIRECT EX BY MR DURANT

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1 A I just went to the Bujuan's truck and the girls
2 I was going to leave with, they were still out there and
3 they were about to leave, too, so

4 Q And what happened next?

5 A That's when I heard a gun go off I heard cars
6 squealing out

7 Q Okay What did you do when you heard the gun go
8 off?

9 A I jumped in Bujuan's truck, laid down on the
10 seat

11 Q Okay Did you see where any of the gunfire came
12 from that night?

13 A No

14 Q Could you tell which direction the gunfire was
15 coming from?

16 A Yeah, it was coming from behind me from the
17 Hollywood side.

18 Q Okay. And when you say behind you from the
19 Hollywood side, can I assume from that fact that you
20 weren't facing --

21 A No

22 Q -- the Cadillac or the truck at that time?

23 A No.

24 Q Now, what did you do after the shooting stopped?

25 A After the shooting stop, Bujuan cranked his

1 truck up and we were about to drive off

2 Q Do you know where the Cadillac went?

3 A No

4 Q Do you know where Fiend's truck went?

5 A No

6 Q And what happened after Bujuan cranked his truck
7 up?

8 A We were about to leave and go back to
9 Petersfield so I can get my car and that's when Marcus run
10 across the road and told me that Jamie had got shot.

11 Q Where was Bojuan's truck at the time?

12 A We were driving in front of the club, right
13 about to pass Marcus' truck.

14 Q Where did Bujuan stop his truck?

15 A I think right by Jamie's car or right in front
16 of it, somewhere in that area

17 Q Right in that area?

18 A Yeah

19 Q And he was driving a Jeep at the time?

20 A Yeah

21 Q Do you recognize this vehicle right there?

22 A Yeah, that's Bojuan's Cherokee

23 Q That was the vehicle y'all were in that night?

24 A Yeah.

25 Q Is that correct?

K SANDERS - DIRECT EX BY MR DURANT

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1 A Yeah

2 Q Okay

3 MR DURANT That's all

4 BY MR DURANT

5 Q When you were stopped by Marcus, you said he
6 stopped you, what did you observe?

7 A I walked over to the ditch by the embankment and
8 Jamie was laying there on the ground And I went and I
9 grabbed his hand to check to see if he was breathing. I
10 couldn't really tell it was him, he had already started to
11 swell up

12 Q Okay. Now, when y'all left, who did you leave
13 with?

14 A I left with Eujuan

15 Q And where did you go?

16 A We went back to his house, his mother's house

17 Q Now, that would be on Alford Road, is that
18 correct?

19 A Yeah

20 Q Do you recall seeing these two fellows later on
21 that evening?

22 A Yeah. About ten minutes after we pulled out, we
23 were standing up talking, the truck came up

24 Q And was Mr. Ward in the truck?

25 A Yeah

1 Q And was Mr Washington in the truck?

2 A Yeah

3 Q What did you do when they pulled up or what did
4 they do when they pulled up?

5 A He got out the truck and I walked over to Mix
6 I knew him and Jamie were good friends. I grab his hand
7 and was like Jamie got shot at the club, I think he's
8 dead, I'm not sure

9 Q And what did Mix do?

10 A He started to cry and fell to the ground

11 Q Did you end up going back around to the club?

12 A Yeah

13 Q Why?

14 A After I left from Bujuan house, I went to my
15 house and, like I said, I had a friend waiting on me. My
16 cousin, Leroy, came up and said somebody was calling me
17 and Keith's name to the club

18 Q Calling your name to the club meaning what?

19 A Saying that we had something to do with what
20 happened out there with the shooting

21 Q So what did you do?

22 A I went to the club and I gave my statement of
23 what I saw.

24 Q Okay Who did you go back with?

25 A It was me, my cousin, Leroy, and Keith and his

K SANDERS - DIRECT EX BY MR DURANT

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1 brother, Arthur

2 Q And you talked to the police that night?

3 A Yeah, I talked to the police and that was it.

4 Q Did you see Jamie Simmons in a beef with anybody
5 at the club that night?

6 A No.

7 Q Did you see him inside the club that night?

8 A No

9 Q Had you ever seen Jamie at the club before?

10 A No, he wasn't the club type

11 Q Now, after you went back to the scene and talked
12 to the police, where did you go?

13 A After that, we went back to Keith's mother's
14 house

15 Q Back on Alford Road?

16 A Yeah.

17 Q And do you remember receiving a phone call later
18 that morning?

19 A Yeah.

20 Q From whom?

21 A From Fiend

22 Q Do you recall what time in the morning that was?

23 A Naw, it was probably about 8 30, 9 00, somewhere
24 about that time

25 Q What did Fiend want?

1 A He wanted me to say I was driving his truck.

2 Q Tell who you were driving the truck?

3 A Tell the police I was driving the truck.

4 Q And what did you tell him?

5 A I told him no

6 Q Any time that night did you handle a gun?

7 A No

8 Q Did you fire a gun?

9 A No

10 Q Did you own a gun at the time?

11 A No

12 Q Did Bujuan have a gun?

13 A No

14 Q Did Keith have a gun?

15 A No

16 Q Did you see anybody shooting a gun that night?

17 A No.

18 Q You just heard gunshots?

19 A Yeah

20 Q Do you know why people would be calling your
21 name as being involved in the shooting?

22 A Yeah, at the time, we used to do a lot of
23 racing. And my friend, Mike, had a truck just like Fiend
24 and I used to drive that truck that looked like Fiend's
25 truck and I used to be with them so.

K SANDERS - DIRECT EX BY MR DURANT

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1 Q But you didn't drive Fiend's truck that night?

2 A No

3 Q Did you drive your friend's truck that had a
4 truck that looked like Fiend's truck?

5 A No, he wasn't even out there

6 Q Do you know whether or not Fiend owned a gun at
7 the time?

8 A No, I don't know whether he owned one or not.

9 Q Okay.

10 MR DURANT Please answer any questions defense
11 counsel may have for you

12 CROSS-EXAMINATION

13 BY MR. RUNYON

14 Q Mr. Sanders, you indicated at the time you would
15 go to the club about twice a month, right?

16 A Yeah.

17 Q And I take that you were working at the time,
18 where were you working?

19 A I was working at Cummins

20 Q So I take it that you would go to the club about
21 twice a month because it kind of coincided with payday,
22 right?

23 A No, not really.

24 Q Not really? You just made a habit of going over
25 there a couple times a month because it's a place in the

1 neighborhood to go, isn't it? Strike that

2 In the south end of the county in the country
3 being in the neighborhood is a little different than in
4 the city, isn't it?

5 A Yeah

6 Q The neighborhood can be a whole bunch of square
7 miles, can't it?

8 A Uh-huh.

9 Q So with that explanation, Club Diamante was in
10 the neighborhood?

11 A Yeah

12 Q Okay So you'd go over there a couple times a
13 month, have a beer, have a drink, maybe dance and then go
14 on home, right?

15 A Yeah

16 Q And on the night in question, you only heard
17 four gunshots?

18 A Yeah, about four.

19 Q All right There were no other gunshots other
20 than those four?

21 A Not really When I heard the first one, I ran
22 to the truck And I heard a couple more after that, I
23 closed the door and put my head down.

24 Q All right And your recollection is you saw
25 Mr Washington's truck not in the dirt and gravel parking

K. SANDERS - CROSS-EX. BY MR. RUNYON

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1 lot, but back here in the grass?

2 A No, up in this area up here

3 Q Where now?

4 A It's two sides of the parking lot It's the
5 gravel side up here and then there's a dirt side He was
6 up in here like in between where you can park off the
7 road

8 Q Okay And did you see the parking lot -- I
9 mean, did you see the truck -- anybody get in the truck?

10 A No, I didn't see nobody in the truck

11 Q You just saw the truck door open?

12 A Yeah

13 Q Okay And Cabbage had gotten out?

14 A Yeah

15 Q And you talked to Mr Washington that morning?

16 A Uh-huh

17 Q And did he -- and the conversation, did he ask
18 you to tell people you were driving the truck or did he
19 ask you if you were driving your truck?

20 A No, he said would I tell the police or would I
21 tell the police that they were driving my truck

22 Q But in actuality, on that evening, you saw
23 Cabbage getting out of the driver's side?

24 A Yeah

25 Q So at least one of the persons was driving the

1 truck that night?

2 A Uh-huh

3 Q Cabbage was?

4 A Yeah

5 Q Okay That's basically all you know because you
6 didn't see anything, you don't know who fired the shot or
7 shots?

8 A No

9 MR. RUNYON No further questions, Judge.

10 CROSS-EXAMINATION

11 BY MISS JENKINSON

12 Q Mr. Sanders, do you remember testifying that you
13 saw John Ward in the gray truck earlier that night, way
14 before?

15 A Yeah

16 Q Before the shooting?

17 A Yeah

18 MISS JENKINSON- That's all I have Thank you
19 THE COURT Redirect?

20 MR DURANT Just a couple

21 REDIRECT EXAMINATION

22 BY MR DURANT

23 Q Now, you say you saw the truck pull up and you
24 saw Cabbage get out of the truck?

25 A Yeah

K SANDERS - REDIRECT EX BY MR DURANT

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1 Q Is that correct?

2 A Yeah

3 Q What did Cabbage do?

4 A His cousin, Bujuan, was there, he went over to
5 his cousin's car and he rode with them

6 Q So you didn't see Cabbage get back in the truck?

7 A No

8 Q Now, when Cabbage got out of the truck and left
9 the door open, did you see who was in the truck?

10 A Yeah

11 Q And it was these two fellows, right?

12 A Yeah

13 Q Okay And that is right before you turned to
14 walk back to the Jeep?

15 A Yeah

16 Q And was that right before you heard a gunshot?

17 A Yeah

18 MR DURANT I have nothing else

19 THE COURT Anything on recross?

20 MR RUNYON None from Defendant Washington

21 MISS JENKINSON No, Your Honor

22 MR DURANT I ask that Mr Sanders be excused
23 if there's no objection

24 MR RUNYON No objection from defendant
25 Washington.

1 MISS JENKINSON No objection

2 THE COURT He's excused

3 MR DURANT The State would call Ricky Holmes

4 RICKY HOLMES,

5 being first duly sworn, testified as follows

6 THE CLERK Please be seated Please state your
7 full name to the Court and spell your last

8 THE WITNESS Ricky Bernard Holmes, H-O-L-M-E-S

9 MR DURANT Mr Holmes, as we go forward, I
10 would like you to stay forward and speak into the
11 microphone if you would so the jury can hear what you have
12 to say

13 DIRECT EXAMINATION

14 BY MR DURANT

15 Q How old are you?

16 A Thirty-four

17 Q And where were you born and raised?

18 A Charleston

19 Q What part of Charleston?

20 A Adam's Run

21 Q And what part of Adam's Run, Parker's Ferry
22 area?

23 A Parker's Ferry

24 Q That's not considered part of Petersfield or
25 Cherry Hill?

R HOLMES - DIRECT EX BY MR DURANT

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1 A No, sir

2 Q Where did you go to high school?

3 A Baptist Hill High School

4 Q Did you graduate?

5 A No, sir

6 Q How far did you go in high school?

7 A Eleventh grade

8 Q Do you know some of the Petersfield, Cherry Hill
9 crowd from going to high school at Baptist Hill?

10 A Yes, sir

11 Q Did you ever observe any problems between those
12 two groups?

13 A No, sir

14 Q Never in all of the time you lived out there,
15 right?

16 A Yes, sir

17 Q Okay. You've had some problems with the law?

18 A Yes, sir

19 Q You were convicted of possession of cocaine in
20 '96 and distributing cocaine in 2003, is that correct?

21 A Yes, sir.

22 Q You're currently on probation?

23 A Yes, sir

24 Q Were you at the Club Diamante on the morning of
25 May 11th, 2003?

1 A Yes, sir

2 Q Do you recall what time you got to the club?

3 A About 12 00, 12 30

4 Q Who did you go with?

5 A I catch a ride out there

6 Q You weren't driving your own vehicle at the

7 time?

8 A I don't have a license

9 Q Did you go inside the club?

10 A Yes, sir

11 Q What happened inside the club that you saw?

12 A When I got inside, everybody just be like

13 standing around mingling And a fight break out between a

14 guy and a girl, but they quiet that down right quick.

15 Q And what happened after they quieted that down?

16 A Another fight break out

17 Q Okay And do you know who that fight was

18 between?

19 A I didn't know who the fight was between

20 Q Okay And what happened after that fight broke

21 out?

22 A After they stop fighting, everybody who was to

23 the back of the club start coming to the front of the

24 club So since I was close to the door, I got out before

25 anybody came up

R HOLMES - DIRECT EX BY MR DURANT

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1 Q Okay And where did you go when you went
2 outside the club?

3 A Right in the front

4 Q And do you remember seeing a blue Suburban out
5 there that night?

6 A Yes, sir

7 Q Where was that blue Suburban?

8 A Parked right across from the club.

9 Q Who owns that Suburban?

10 A Kevin Dunmeyer

11 Q And what happened over at the Suburban?

12 A When he got out, you know, a group of fellows
13 went over there to him, but you know, they didn't get a
14 chance to fight him because he was running so fast, so
15 they couldn't even catch him

16 Q Do you know who was chasing him?

17 A Not really

18 Q Not names, but do you know where the people that
19 were chasing him from?

20 A No

21 Q It wasn't the Petersfield people?

22 A It was just like a group of fellows, I didn't
23 really know.

24 Q Where is Keith Richards from?

25 A I don't know who Keith Richards is

1 Q Okay Which way did Dunmeyer get chased?

2 A Going toward Toogoodoo, headed towards the
3 school way, Baptist Hill

4 Q And do you know Ton-Ton?

5 A I know of him, but, you know, not personally

6 Q I'm not saying he was a personal friend, do you
7 know who he is?

8 A I know who he is

9 Q Do you know what he was driving?

10 A A lime green and black Cadillac.

11 Q Do you remember seeing him out there that night?

12 A Yeah, he was out there

13 Q And what did you see him do?

14 A He went down the road, picked Dunmeyer up and
15 came back and stopped in front of the club.

16 Q What happened when he stopped in front of the
17 club?

18 A You know, he jumped out the car and started
19 saying, you know, some things, you know

20 Q Was he asking how they were doing that night?

21 A Hum?

22 Q Was he asking them how they were doing that
23 night?

24 A No

25 Q Was he being combative, was he being

R HOLMES - DIRECT EX BY MR. DURANT

299

1 belligerent, trying to fight somebody?

2 A By the way he was talking, you know, he been
3 ready for like anything, you know

4 Q Okay. Now, what happened when he stopped and
5 started running his mouth?

6 A He was running his mouth, running his mouth, you
7 know, some fellow try to grab ahold of him, but he had the
8 front door car open and he was able to get back in.

9 Q And what happened after he got back in the car?

10 A You know, he pulled off

11 Q And which way was he driving?

12 A He was headed back toward this way, going toward
13 like the store side road, the Hess side

14 Q The Hollywood side or the Baptist Hill side?

15 A Yeah, going toward the Hollywood side

16 Q Okay Referring to State's Exhibit 14 and 15,
17 did you see that truck out there that night?

18 A Yes, sir

19 Q Do you know who that truck belonged to?

20 A No, sir.

21 Q Where did you see that truck?

22 A It was sitting in the parking lot

23 Q Whereabouts in the parking lot, referring to
24 State's Exhibit No 6?

25 A Right here

1 Q Okay And which direction was it facing?

2 A Facing the road

3 Q Were there people in the truck at the time?

4 A It was tinted, you couldn't tell who was in the
5 truck at the time

6 Q And where was the Cadillac at the time that you
7 saw the truck?

8 A The Cadillac was on the road

9 Q And heading which direction?

10 A Hollywood side

11 Q Okay Where were you at the time?

12 A I was standing about right here

13 Q Okay Now, what happened next?

14 A After that, you know, when he took off down the
15 road, that's when all of the gunfire started.

16 Q When who took off down the road?

17 A The green Cadillac

18 Q Okay And where all did you see gunfire?

19 A Hum?

20 Q Where did you see gunfire coming from?

21 A Gunfire was coming from everybody, the Cadillac,
22 the truck, from behind me, all over

23 Q Okay What did the truck do?

24 A The truck just be like sitting there in the
25 parking lot, you know

R HOLMES - DIRECT EX BY MR DURANT

301

1 Q Where was the truck when you saw gunfire coming
2 from it?

3 A It was coming like from the right passenger side
4 window

5 Q Could you tell whether it was the front
6 passenger side or the back passenger side?

7 A It was nighttime, you could tell where the fire
8 was coming from.

9 Q I know, but could you tell whether it was the
10 front or the back passenger -- that's a club cab, correct?

11 A Yeah.

12 Q And it's got a front seat and a back seat; is
13 that correct?

14 A It was coming from the front

15 Q Okay. It was coming from the front passenger
16 seat?

17 A Yeah.

18 Q Okay Could you tell where -- what the truck
19 was shooting at? Could you tell what the truck was
20 shooting at?

21 A It was shooting like behind the Cadillac because
22 the Cadillac was shooting up toward the truck.

23 Q Okay. Kind of in a gun battle with each other?

24 A Well, if you want to say it like that.

25 Q Is that what it looked like to you?

1 A It looked like it was a shoot-out.

2 Q And where did they go? Where did the two
3 vehicles go?

4 A The same direction

5 Q Both went out toward the Hollywood side?

6 A Yes, sir

7 Q Did you continue to hear shooting as they went
8 down the road?

9 A You still could hear shooting going down that
10 way Like I say, I was standing in the front and I hear
11 shooting come from the opposite way, too

12 Q The Baptist Hill side?

13 A Yeah.

14 Q Did that shooting sound close or distant?

15 A It sound like a little far, distant away.

16 Q What happened after all of the shooting had
17 stopped?

18 A After all of the shooting had stopped, you know,
19 people were parked further down, they were running coming
20 up toward the club and someone was screaming someone got
21 hit

22 Q Did you go down that way?

23 A Yeah, I walked down that way

24 Q Did you see the fellow that got hit?

25 A Yes, sir

R HOLMES - DIRECT EX BY MR DURANT

303

1 Q Did you know him?

2 A Yeah, I know him

3 Q That was Jamie Simmons?

4 A Yes, sir

5 Q Did he appear to be alive at the time that you
6 saw him?

7 A Not really.

8 Q And where did you see Jamie Simmons?

9 A He was laying like right on the side of the
10 ditch area

11 Q Do you know what kind of car he was driving at
12 the time?

13 A It was a Honda

14 Q Do you recall what color it was?

15 A Like bluish gray.

16 Q Where was he in relation to his car?

17 A Hum?

18 Q Where was he in relation to his car?

19 A He was laying like right in the front of the
20 car The ditch was here, the car was parked on the side
21 of the road and he was laying just like that,
22 (Indicating)

23 Q So he was on the passenger side of his car or
24 the driver's side?

25 A The passenger side

1 Q Now, do you remember giving a statement to the
2 police in this case on May the 18th, is that correct, of
3 2003?

4 A Yes, sir.

5 Q Do you remember telling the police you believed
6 a man name Fred was driving the truck?

7 A I didn't know at that time That's what
8 everybody was saying, so I just went with it, so I don't
9 know who really was driving the truck

10 Q So you didn't see who was driving the truck?

11 A No, I just heard

12 Q Just heard You didn't see anybody in the
13 truck?

14 A No, sir

15 Q And you didn't know who the truck belonged to --

16 A No, sir

17 Q -- at the time?

18 A No, sir

19 Q You just remember where you saw gunfire coming
20 from?

21 A Yes, sir

22 Q Do you know Fred?

23 A No, sir

24 Q Do you know Kenneth Sanders?

25 A No, sir

R HOLMES - DIRECT EX BY MR DURANT

305

1 MR DURANT Would you please answer any
2 questions that the defense may have for you.

3 CROSS-EXAMINATION

4 BY MR RUNYON

5 Q Good afternoon, Mr Holmes You live down in
6 Parker's Ferry?

7 A Yes, sir.

8 Q About where in Parker's Ferry?

9 A Mitchell Road

10 Q Beg your pardon?

11 A Where in Parker's Ferry?

12 Q Yes, sir.

13 A Mitchell Road

14 Q Mitchell Road Now, let's talk about geography
15 You've lived down there all of your life, haven't you?

16 A Yes, sir

17 Q You've got Parker's Ferry, you've got Adam's
18 run, you've got Willtown area?

19 A Yes, sir

20 Q Petersfield, Cherry Hill, correct?

21 A Correct

22 Q And Hollywood and Ravenel and all these folks go
23 to school together?

24 A Yes, sir

25 Q So the designation of these various areas is

1 kind of like where people live versus any kind of sinister
2 connotation, right?

3 A Somewhat

4 Q As a matter of fact, a lot of people from Cherry
5 Hill and Petersfield go to church down at Parker's Ferry,
6 right?

7 A I wouldn't know that, I don't go to church

8 Q I'm sorry I wasn't trying to embarrass you
9 All right On the night in question, you heard gunfire
10 erupt from the green Cadillac, from the gray truck and
11 from other -- in the general vicinity, correct?

12 A Yes, sir

13 Q All right So there wasn't just gunfire from
14 the truck and there wasn't just gunfire from the green
15 Cadillac?

16 A Yes, sir

17 Q Okay And you have no idea of how the deceased
18 was shot, do you, sir?

19 A No, sir

20 Q And after -- when you were interviewed by the
21 police, you told the police what you knew and what you
22 heard to the best of your ability, right?

23 A Yes, sir

24 MR. RUNYON. No further questions, Judge

25 CROSS-EXAMINATION

R HOLMES - CROSS-EX. BY MISS JENKINSON

307

1 BY MISS JENKINSON

2 Q Mr Holmes, you just told Mr Runyon that you
3 gave the police information you knew to the best of your
4 ability, is that correct?

5 A Yes, sir -- I mean, yes, ma'am

6 Q And you gave them a statement a couple of days
7 after the incident, correct?

8 A Yes, ma'am

9 Q And you didn't tell them that it was from the
10 front passenger side of the truck, you said it was from
11 the passenger side, correct?

12 A Say it again

13 Q You told the police that the shots from the
14 truck came from the passenger side, correct?

15 A Yes, sir -- I mean, yes, ma'am.

16 Q That's okay I'm going to show you what's been
17 marked Defendant's Exhibit 1 This is the club over here
18 I would like you to take one of these stickers and place
19 one where you were standing that night

20 A (Witness complies)

21 Q You were in front of the club near the police
22 car?

23 A Yes, ma'am

24 Q I'm going to have you put your initials on that
25 sticker

1 A (Witness complies)

2 Q Thank you, Mr Holmes Mr Holmes, how tall are
3 you?

4 A 6-foot

5 Q 6 feet tall?

6 A Yes, ma'am

7 Q I'm going to show you one more diagram I'm
8 going to have you come down here It will be a lot easier
9 for you, if you don't mind

10 (The witness exits the witness stand)

11 Q I ask you to use this pointer and show the jury
12 where you were standing on this diagram

13 A (Indicating)

14 Q In front of the club?

15 A (Indicating)

16 Q And where did you see the truck?

17 A The truck was parked about right in this area

18 Q Thank you

19 (The witness resumed the witness stand.)

20 Q Mr Holmes, the truck has tinted windows?

21 A Yes, ma'am

22 Q You couldn't see who was in there?

23 A No, ma'am

24 Q You said on your direct testimony that there was
25 gunfire coming from all over?

R HOLMES - CROSS-EX BY MISS JENKINSON

309

1 A Yes, ma'am

2 Q And at one point, you heard gunfire from behind
3 you?

4 A Yes, ma'am

5 Q You were facing Toogoodoo Road and heard it
6 behind you?

7 A I mean standing in front of the club, the road
8 like right back that way

9 Q Toward Baptist Hill?

10 A Yeah, the houses around there

11 MISS JENKINSON. That's all I have Thank you

12 THE COURT Redirect?

13 MR DURANT No, sir

14 THE COURT You may step down

15 MR DURANT I'd ask that Mr Holmes be excused

16 MR RUNYON No objection from Defendant

17 Washington

18 MISS JENKINSON No objection

19 THE COURT The witness is excused

20 Call your next witness

21 MR DURANT Your Honor, the State would call

22 Tron Brisban

23 TRON BRISBAN,

24 being first duly sworn, testified as follows.

25 THE CLERK Please be seated State your full

1 name to the Court and spell your last

2 THE WITNESS Tron Brisban, B-R-I-S-B-A-N.

3 DIRECT EXAMINATION

4 BY MR DURANT

5 Q How old are you, Mr Brisban?

6 A Nineteen

7 Q Where are you from?

8 A Hollywood

9 Q What part of Hollywood?

10 A Petersfield

11 Q How far did you go in school?

12 A Tenth grade

13 Q Are you currently employed?

14 A L & M Electric

15 Q How long have you been with L & M now?

16 A About four months.

17 Q What do you do for them?

18 A Wire houses

19 Q Were you at the Club Diamante on May the 11th,
20 2003?

21 A Yes

22 Q And who did you go to the club with?

23 A My brother and two of my friends

24 Q What is your brother's name?

25 A Ablee (phonetical)

T BRISBAN - DIRECT EX BY MR DURANT

311

1 Q Ablee Brisban?

2 A Yes

3 Q What were the two friends?

4 A Chris and Sharon

5 Q Whose car did y'all go in?

6 A My sister's

7 Q And what was the make and model of that car?

8 A It's a '91 Honda Accord

9 Q What color?

10 A Gray

11 Q Who was driving?

12 A My brother

13 Q Where did y'all park the car when y'all got to

14 the club?

15 A On the opposite side of the club, like almost

16 by -- across from the Coon Club Road

17 Q Now, what happened that night as the club

18 emptied out?

19 A A fight broke out outside the club

20 Q Do you know who the fight was between?

21 A No

22 Q Were you part of the fight?

23 A No.

24 Q And just referring to, briefly, State's

25 Exhibit 6, this is the club, Toogoodoo Road Could you

1 show the jury just where y'all had your Honda parked?

2 A On the opposite side of the road

3 Q On the opposite side of the road?

4 A Yeah

5 Q Now, you were walking to your -- when you were
6 walking to your car?

7 A Yeah

8 Q Who were you with?

9 A My brother

10 Q This was after the club had let out, is that
11 correct?

12 A Yeah.

13 Q Did you see -- do you know John Ward?

14 A Yes

15 Q How do you know John Ward?

16 A He's my cousin.

17 Q Where did you see John when you were walking to
18 your car?

19 A He was sitting down in the truck, the passenger
20 side

21 Q In whose truck?

22 A The gray Dodge truck

23 Q Do you know who that truck belonged to?

24 A No, I know they call him Fiend

25 Q Okay He was in the front passenger seat?

T BRISBAN - DIRECT EX BY MR DURANT

313

1 A Yeah

2 Q Is this the truck you saw him in depicted in
3 State's 14 and 15?

4 A Yes

5 Q Where was that truck parked when you saw John
6 and referring back again to State's Exhibit No 6?

7 A Outside the parking lot, about somewhere in
8 here

9 Q Okay Could you see anybody else that was in
10 the truck?

11 A No

12 Q Now, do you know Ton-Ton?

13 A Yes

14 Q And do you know Ton-Ton's real name?

15 A No

16 Q Do you know what Ton-Ton was -- the kind of car
17 Ton-Ton drove at the time?

18 A A green Cadillac

19 Q Okay. And referring you to State's Exhibit No
20 11, do you recognize that vehicle?

21 A Yes.

22 Q Whose car is that?

23 A Ton-Ton

24 Q And did you see Ton-Ton driving that car that
25 night?

T BRISBAN - DIRECT EX BY MR DURANT

314

1 A Yes

2 Q Now, tell the jury what happened to y'all when
3 y'all were going home

4 A When we left the club, we ran in the ditch by, I
5 think, Harry Street

6 Q Why did y'all run into a ditch?

7 A Trying to get out the way

8 Q Trying to get out the way of what?

9 A All of the shooting and everything.

10 Q All of the shooting between what?

11 A I couldn't -- I don't know -- I saw the Dodge
12 pickup and the Cadillac riding behind, like back to back

13 Q Okay In other words, you saw this car?

14 A Yeah

15 Q And this truck?

16 A Yes

17 Q Okay. They passed y'all's car?

18 A Yes

19 Q Left side, right side?

20 A Left

21 Q Which of those vehicles was in front?

22 A The Cadillac was in the front

23 Q Okay And what were they doing as they went by?

24 A Just heard a bunch of shooting

25 Q Okay Where was y'all's car when you heard the

T BRISBAN - DIRECT EX BY MR DURANT

315

1 shooting?

2 A Passing Coon Club Road

3 Q And Coon Club Road, referring --

4 (Counsel reviews exhibits)

5 Q I hand you what's previously been marked as
6 State's Exhibit No 55 for identification purposes at this
7 time

8 MR DURANT I believe I would offer it as
9 evidence if there's no objection

10 MR RUNYON None from Defendant Washington,
11 Judge

12 MISS JENKINSON No objection

13 THE COURT Admitted

14 (WHEREUPON, State's Exhibit No. 55 was admitted
15 into evidence)

16 BY MR DURANT

17 Q Does State's 55 depict where Coon Club Road is?

18 A Right there

19 Q And where would the club be, Club Diamante?

20 A That's upside down, isn't it? The club would be
21 right there somewhere

22 Q Isn't the club on the same side of the road as
23 Coon Club Road?

24 A Yes

25 Q So it wouldn't be on the opposite side -- this

1 is Toogoodoo Road here?

2 A Yeah

3 Q Okay So that's Coon Club Road basically going
4 off to the right Where did y'all run into a ditch?

5 A On Harry Street

6 Q And where is Harry Street in relation to what we
7 just saw on that map?

8 A That's past Wilson Road to the right-hand side

9 Q Is it just a little bit further up Toogoodoo?

10 A Yeah

11 Q And why did y'all run into a ditch?

12 A Trying to get off the road

13 Q Did you continue to hear gunshots after you ran
14 into the ditch?

15 A Yes

16 Q From what direction?

17 A Like almost by Hollywood Manor coming back

18 Q The same direction the truck and the car had
19 gone?

20 A Yes.

21 Q Did it appear to you that the truck was chasing
22 the car?

23 A Yes.

24 Q How did you end up getting home that night?

25 A Walked

T BRISBAN - DIRECT EX BY MR DURANT

317

1 Q Did anyone in your vehicle have a weapon that
2 night?

3 A No

4 Q Did anyone in your vehicle fire a weapon that
5 night?

6 A No

7 Q Could you tell where any of the gunfire was
8 coming from, from the Cadillac or the truck?

9 A No

10 Q Do you know who was driving the Cadillac?

11 A Ton-Ton

12 Q How do you know that?

13 A I saw him before we left the club

14 Q And just want to show you a couple pictures, if
15 I could, and I'll be done This would be State's Exhibit
16 No 7 Do you recognize that area? Let me give you a
17 little close-up in State's Exhibit 8 and see if you
18 recognize it?

19 A Yes

20 Q What is that?

21 A My sister's Honda

22 Q Is that where y'all ran into the ditch that
23 night?

24 A Yes

25 Q And what is this road over here?

T BRISBAN - DIRECT EX BY MR DURANT

318

1 A Harry Street

2 Q And what is this road right here?

3 A Toogoodoo

4 Q Okay

5 MR DURANT Court's indulgence

6 Thank you Could you answer any questions that
7 the defense may have for you.

8 CROSS-EXAMINATION

9 BY MR RUNYON

10 Q Mr Brisban, was there other gunfire other than
11 from the green Cadillac and the gray truck that you heard?

12 A By the way it sounded

13 Q By the way it sounded?

14 A Yes

15 Q You didn't see that, did you, sir?

16 A No

17 Q But that was back by the club?

18 A Yes

19 Q And when did that start, roughly, before you
20 left?

21 A About 15 minutes

22 Q Okay So it was intermittent gunfire --

23 A Yes

24 Q -- until you finally left?

25 A Yes

T BRISBAN - CROSS-EX BY MR RUNYON

319

1 MR. RUNYON No further questions

2 CROSS-EXAMINATION

3 BY MISS JENKINSON

4 Q Mr. Brisban, you were down Toogoodoo Road when
5 you heard the shooting?

6 A Yes.

7 Q And you saw the green Cadillac and the Dodge
8 truck?

9 A Yes

10 Q And you didn't see who was in those cars?

11 A No

12 Q You saw John Ward in the truck earlier that
13 night?

14 A Yes, before we left

15 Q Not during the shooting?

16 A No

17 MISS JENKINSON That's all I have.

18 MR DURANT I have one left

19 REDIRECT EXAMINATION

20 BY MR DURANT

21 Q You saw John Ward in the front passenger seat of
22 the truck as you were walking to the car to leave?

23 A Yes

24 Q And y'all got in your car and left?

25 A Yes

T BRISBAN - REDIRECT EX BY MR DURANT

320

1 Q And then you saw the truck and the Cadillac
2 again when it came by you shooting?

3 A Yes.

4 MR DURANT: Thank you

5 MR RUNYON No questions

6 THE COURT Recross, Miss Jenkinson?

7 MISS JENKINSON No, Your Honor

8 THE COURT You may step down, thank you.

9 Do you want to have him excused?

10 MR. DURANT Yes

11 MR. RUNYON No objection, Judge

12 MISS JENKINSON No objection

13 THE COURT. Ladies and gentlemen, we'll take a
14 break for lunch right now It's 12.30 I'd ask you be
15 back in the jury room by about ten minutes until 2:00, and
16 we will start promptly at 2 00 Again, don't begin
17 deliberations or discussions on the case. We'll see you
18 Have a nice lunch

19 (WHEREUPON, the following proceedings were held
20 outside the presence of the jury.)

21 MR. DURANT As far as scheduling, Anthony Ward
22 is up pretty soon We've got two short witnesses,
23 Jermaine Heyward and Shirley Ward And then we're going
24 to have to deal with the issue of Mr Green.

25 THE COURT Which one is he?

1 MR DURANT Clark Green is the one that the
2 public defender was raising conflict on Although, in
3 discussions with them, you know, they have no objection to
4 a redacted version of the testimony coming in, so we're
5 probably going to have to do something in camera at the
6 time before he testifies

7 THE COURT. And Mr Runyon is about to tell us
8 he is not going to be bound by that

9 MR RUNYON: With all due respect to co-counsel
10 over here, I've got the statement And under the
11 circumstances, it may not be necessary, but as a practical
12 matter, I respectfully decline to be involved in the
13 agreement between the State and co-counsel about
14 Mr Ward's defense insofar as restricting me on
15 cross-examination, if it becomes necessary

16 THE COURT My concern on this is not that there
17 is any limitation on your cross-examination, but the
18 concern has always been does Miss Jenkinson go into
19 something on cross-examination that would involve her
20 prior representation when she goes to impeach, if she felt
21 like that was necessary That's the only real reason why
22 a conflict would come into play So if they were to agree
23 they were not going to go into that, there's nothing that
24 prohibits you from going into that

25 MR. RUNYON. My point is that not going into the

1 actual conflict, but going into the facts which might
2 precipitate their having to go into the conflict

3 THE COURT I don't have any idea what this
4 testimony would be about or how it would relate to her
5 previous representation, so I guess you're probably right,
6 we would need to take it up in camera and see where we go

7 MR DURANT I think the only part of the actual
8 written statement that's objected to by the public
9 defender's office is probably being raised, quite frankly,
10 more as -- just so the Court will know, I will provide you
11 with a copy of the statement, if Your Honor doesn't mind
12 Everybody else has a copy, so it's not like I'm giving you
13 something everybody else doesn't have

14 It would be on the second page, one, two, three,
15 four, five, six lines up, starting with Mr. Washington
16 also told

17 MR BUTLER Any mention of the co-defendants?

18 THE COURT If he was going to testify, why does
19 this statement need come in unless it's to impeach him on
20 something?

21 MR DURANT What, Mr Washington's statement?

22 THE COURT Who is the statement of?

23 MR DURANT This is Mr Clark Green testifying
24 as to what Washington told him

25 THE COURT How do we get into this statement?

1 MR DURANT Well, as to Mr Washington --

2 THE COURT Certainly, Mr Green can testify as
3 to what Mr Washington told him, right?

4 MR DURANT Right

5 THE COURT: What's the problem with the public
6 defender's office's representation?

7 MR DURANT Number one, my position on that is
8 it's not prohibited by the rulings And number two, it's
9 not prohibited by the case law pursuant to that case I
10 gave them In cases when there's concurrent
11 representation, number one, there has to be some
12 showing -- number one, Mr. Green is out of the picture.
13 Mr. Green is not represented by the public defender's
14 office He is not a current client of their office.

15 They have no continuing duty with regard to
16 Mr Green other than to not reveal any privileged
17 information. But they have no continuing duty of loyalty
18 to him other than not to raise any privileged information

19 When dealing with situations such as this, in
20 Rule 1 9, when the prior representation was on something
21 that is not the same or substantially related matter,
22 which this is certainly not, I think she represented him
23 in 2003 on something she can't even remember what they
24 represented him on And if that's the case, the case law
25 has basically said there has to be some actual showing of

1 prejudice The Court is not just going to presume
2 prejudice or presume a conflict of those circumstances.

3 From what Martha has told me, number one, she
4 doesn't even remember what she represented him on and she
5 doesn't remember specifically any confidential information
6 that was provided to her by Mr Green And thirdly, if
7 you read those cases in the ALR article, they kind of
8 indicate the rule says that even if she had privileged
9 information, she just couldn't bring it up in
10 cross-examination Well, number one, it doesn't appear
11 she has any privileged information And, number two, the
12 case law says it can be taken care of by having Mr Butler
13 cross-examine the witness.

14 MR BUTLER Judge, if I could There are two
15 problems with the testimony as contemplated. Your
16 question to Mr Durant was how does the statement come in
17 I think we're asking you to look at the statement only
18 because we think it in some way can reflect what the
19 testimony will be

20 THE COURT Okay

21 MR BUTLER There are two problems and they're
22 separate The only reason I proposed redaction is I think
23 redaction would solve both of them from our point of view
24 And I admit, they don't solve the problem from Mr
25 Runyon's point of view

1 Aside from the -- I'll table the conflict issue
2 for the moment The other problem is a Bruton problem,
3 meaning, they can admit Mr Washington's statement to
4 Mr Green against Mr Washington as an admission, okay.
5 However, I don't get to cross-examine Mr Washington if
6 he's going to invoke his Fifth Amendment privilege Much
7 of that is solved because I got to cross-examine him in
8 the first trial and my understanding is that the State
9 plans to admit that testimony as -- prior testimony that
10 was subject to cross, whatever that exception to the
11 hearsay rule is.

12 The difference is, I didn't get to cross him on
13 this statement because the State did not admit this
14 statement, the statement that they now plan to get through
15 Mr Green, in the first trial

16 THE COURT Well, you wouldn't be trying to put
17 in this statement, would you?

18 MR DURANT No, sir I want to put in so much
19 of that statement as Mr Washington admits being in the
20 truck and firing a weapon

21 MR BUTLER We're getting confused We're
22 talking about the written statement I didn't get to
23 cross Mr Washington on the statement that he allegedly
24 made to Mr Green because that was not put into evidence
25 in the first trial I got to cross him about a bunch of

1 other stuff, so there's no confrontation problem --
2 there's no confrontation problem in admitting other things
3 against Mr Washington that may implicate Mr Ward and not
4 violate Mr Ward's confrontation right because I got to
5 confront Mr Washington at length in the first trial.
6 However, I didn't get to confront him about what he told
7 Mr. Green because the State didn't introduce the statement
8 that Mr Green makes against Mr. Washington -- didn't
9 admit it against Mr Ward I understand what their
10 position is. Nine-tenths of this is inculpatory towards
11 Mr. Washington and very little of it against Mr Ward.
12 That's why if you take out any reference to co-defendants,
13 I don't have a problem with the conflict because Martha
14 nor I or anybody from our office has to cross that witness
15 and I don't have any confrontation problem because it's
16 all admitted against only Mr Washington, not me

17 Now, I know that creates a problem from
18 Mr Runyon and I'll let him speak to that And I'm not
19 saying that this -- the redaction would even touch on his
20 problem, probably creates a problem But that's the only
21 reason I brought up redacting is because it would solve
22 both of those problems But even if the conflict problem
23 is resolved, there's still the Bruton issue and the
24 confrontation issue, which is separate.

25 MR RUNYON Judge, just so I can throw in this

1 little wrinkle, you know, everybody is talking about what
2 obligation they have or don't have and what have you, you
3 know, Mr. Green, the witness, has the right to assert
4 privilege against Mr. Ward's counsel and that sort of
5 thing And I raise that very candidly because if Mr.
6 Green says he raises his attorney/client privilege and
7 doesn't want his lawyer on that side doing anything, we
8 might be at the -- where we were when we first started
9 discussing this with Mr Durant saying well, we're not
10 going to present Mr Washington or perhaps -- I mean,
11 Mr. Green or, perhaps, a possibility of some mistrial
12 occurring

13 Now, the other thing, Judge, is that, of course,
14 this whole thing could be obliterated when Mr Green
15 testifies because I think it's one of the seven mysteries
16 of the world what Mr Green may, in fact, testify to at
17 this stage in the game

18 MR DURANT. That may be true.

19 MR. RUNYON. But I think one thing in an effort
20 to keep his testimony out against my client, I would
21 respectfully assert that the Court has to make an inquiry
22 of Mr Green as to whether or not he wants anybody that
23 has ever represented him -- even if he has a perceived --
24 I mean, he has the paramount right to object to any lawyer
25 that has represented him in the past taking any quote,

1 adversarial role, unquote

2 THE COURT All right I will look at the
3 statement and we will decide -- go from that point But I
4 haven't had a chance to look at this My first impression
5 is Mr Clark, if he comes -- or Clark Green, if he comes
6 in and testifies, he gets to testify and he's subject to
7 cross-examination This document doesn't come in in any
8 way unless it's to -- he gives an inconsistent statement
9 and then you can come in and impeach him, but the State
10 just doesn't come in and put this document in --

11 MR RUNYON· I agree

12 THE COURT -- to bolster his testimony So I'm
13 not sure what the point is -- until we get to somebody
14 needing to impeach him because he made a prior
15 inconsistent statement what we would be doing any
16 redacting for because we wouldn't be putting this into
17 evidence The witness is here to testify

18 MR BUTLER The problem is, we shouldn't be
19 even referencing the written statement What would be
20 redacted would be parts of his testimony. When he
21 testifies what Mr. Washington told him in a trial with
22 co-defendants where I can't cross-examine
23 Mr. Washington -- I mean, 'he's going to repeat what
24 Mr Washington told him I can't cross Mr Washington
25 unless he takes the stand The only reason that we would

1 even contemplate introducing things that Mr Washington
2 said against Mr Ward is because there was a former trial
3 where I got to cross-examine Mr Washington That's the
4 only reason that we can even contemplate having this
5 discussion, otherwise it's a Bruton problem

6 Bruton problem being that you have admissions
7 that could be admissible in separate trials against
8 co-defendants, but when you try them together, if the
9 statements implicate the other person, then it creates a
10 confrontation issue with respect to one of the
11 co-defendants That's why you have to redact or excise
12 portions of the witness' testimony so that they don't name
13 the person who is not being able to cross-examine the
14 witness I got to cross Mr Washington, but not about the
15 statement because they didn't introduce it But he didn't
16 testify, Mr. Green didn't testify, is an easier way to put
17 it

18 MR DURANT But even more simple than that,
19 it's really not a Bruton problem in the classic sense of a
20 Bruton problem. It's a hearsay What Mr Washington says
21 with regard to who was in the truck with him or who in the
22 truck may have fired a weapon is pure and simple hearsay
23 against your client Mr Washington being in the truck
24 and admitting firing a weapon to a co-defendant is an
25 admission against his interest, his penal interest, and is

1 an exception to the hearsay rule

2 So -- and we've had these noninculpatory versus
3 inculpatory, you know, statements before, so my position
4 on that would be he's not entitled by the rules of
5 evidence to get up and make -- you know, trying to put the
6 blame on somebody else, but anything that he said that is
7 against his own penal interest, such as being in that
8 truck and firing that pistol, then that's an admission
9 against his interest --

10 MR BUTLER I have no problem with that, it's
11 when he says -- when he says that Mr. Ward or anybody that
12 could be taken to be Mr Ward was also shooting, that
13 wouldn't come in against Mr Washington's interest and
14 that's Crawford versus Washington Once he starts talking
15 about things that other people did and I can't
16 cross-examine him on what he said Mr. Ward or his
17 co-defendants did, that creates the confrontation problem
18 I'm talking about If all Mr. Green says is
19 Mr. Washington told me he was shooting the gun, that he
20 was in the truck, there is no confrontation issue You --

21 MR DURANT We're arguing the same side here,
22 okay, I agree with you

23 MR. BUTLER: Okay

24 MR DURANT I'm just saying as to your client,
25 it would be hearsay, him saying that anybody else was

1 involved in it would be hearsay because it's an out of
2 court statement offered to prove the truth against your
3 client As to his client saying that I was in the truck
4 shooting a weapon was an admission against his interest

5 MR BUTLER So if it's hearsay against my
6 client, that's why it can't come in

7 MR. DURANT I'm not trying to put it in I'm
8 trying to put in an admission that he made as to him being
9 in the truck and him shooting the weapon

10 MR RUNYON Now that these two have got it all
11 straight, Judge, I still maintain if he puts Mr Green on
12 the stand and he says my client said X, Y and Z about the
13 incident, I am not limited -- and this is where they've
14 got a problem, I'm not limited in saying -- because the
15 statement would indicate he talks about other people, in
16 saying what did he say, was he the only one in the truck,
17 was he -- you know, and things of that sort And I
18 shouldn't be limited

19 I mean, if you're going to limit my client's
20 ability to defend himself, then I would ask for a
21 mistrial I think we've got every right to ask those
22 questions and so based on -- to test Mr Green's
23 credibility and recollection as to what my client said
24 about the incident And once that happens, Mr Beattie is
25 going to be on us like what was on 526 yesterday, at least

1 the odor of saying it And so I think we're getting into
2 some dangerous waters But if we get into some dangerous
3 waters, we've just all got to swim in it

4 MR DURANT And the only thing I would disagree
5 with, I don't think Mr Runyon has the right to get in
6 inadmissibility hearsay as a matter of right on
7 cross-examination

8 MR RUNYON. Wait a minute, Judge, we might as
9 well talk about that now He puts a witness on the stand
10 who supposedly tells stuff that my client said and I have
11 a right -- I didn't get a chance to chose how this case
12 was going to be called I have a right to defend him and
13 ask that witness what did he really say, you know For
14 example, in the statement, he's going to say my client
15 acknowledges firing a 357 Magnum, which ain't even
16 involved in this case, at least, we haven't heard yet
17 I've got a right to say then who did -- who did
18 Mr Washington say was firing the 9-millimeter, because
19 they're going to put in evidence that he owned the
20 9-millimeter And I've got a right to ask that.

21 MR DURANT And the answer to that is
22 Mr Washington didn't say anybody was firing that
23 9-millimeter.

24 MR RUNYON Well, let's say what Mr. Green
25 says

1 MR DURANT At least, that's not what he said
2 in the statement

3 MR RUNYON: Well, Mr Green is --

4 MR DURANT And if you're asking Mr Green what
5 Mr Washington said about somebody else, why is that not
6 hearsay? If you're offering it to prove that somebody
7 else in the truck was shooting a weapon, why is it not
8 hearsay?

9 MR RUNYON My client's statement, who was
10 standing there in the incident --

11 MR DURANT. It's not hearsay?

12 MR RUNYON I'm sorry, we're supposed to be
13 arguing to the Judge

14 I don't think it's hearsay, Judge, because
15 Mr Green is testifying as to what my client said

16 THE COURT But only -- he only wanted to get in
17 the part about that is the exception of the hearsay rule,
18 that is whatever he says is against his penal interest

19 MR RUNYON I understand that, Judge, but I
20 have a right for full cross-examination to test his
21 credibility

22 MR DURANT. I don't have the case, Your Honor,
23 but there's a case that deals specifically with that, and
24 basically says that the inculpatory matters come in, but
25 the noninculpatory matters don't because they're excepted

1 by the hearsay rule Because a lot of times -- a lot of
2 times, a statement, especially a statement from a
3 co-defendant, will have inculpatory and noninculpatory
4 elements to it And our court has already dealt with that
5 issue and, basically, said the inculpatory elements are
6 admissible against the person that made the statement as
7 an admission against interest, but the noninculpatory
8 elements of it, i e , the things that he said against
9 other persons could not come in because they are hearsay
10 as to those folks and there is a confrontation issue
11 So --

12 MR. RUNYON The confrontation is Mr Ward's and
13 Mr. Butler's and Miss Jenkinson's My issue is being able
14 to cross-examine that man who gets up there and tries to
15 put inculpatory stuff -- I mean, we might as well go ahead
16 and just end this all, from my point of view, by saying,
17 Judge, I think I know what's going to happen when they put
18 Mr Green on the stand before it's all over with and I
19 think we might as well go ahead and move for the Court --
20 too soon, of course, but move the Court to consider a
21 mistrial because we've got a right to defend ourselves
22 And the State knows that

23 THE COURT Okay I'll give it some thought
24 Let's get back on track

25 Let's bring the jury in

1 (WHEREUPON, the following proceedings were held
2 in the presence of the jury)

3 THE COURT All right Welcome back Let's get
4 back on track

5 Mr Durant call your next witness

6 MR DURANT The State would call Jermaine
7 Heyward

8 JERMAINE HEYWARD,
9 being first duly sworn, testified as follows

10 THE CLERK Please be seated. Please state your
11 full name to the Court and spell your last

12 THE WITNESS Jermaine Heyward, H-E-Y-W-A-R-D

13 DIRECT EXAMINATION

14 BY MR DURANT

15 Q How old are you, Mr Heyward?

16 A Twenty years old

17 Q And are you currently a student?

18 A Yes, I am

19 Q Where do you go to school?

20 A South Carolina State University

21 Q What year are you at South Carolina State?

22 A This is my second and a half year.

23 Q Do you know the defendant in the case, John
24 Ward?

25 A Yes, I do

1 Q And do you know the defendant in this case,
2 Tremayne Washington?

3 A Yes, I do

4 Q And how do you know them, sir?

5 A Friends of the family

6 Q Are you related to either one of them?

7 A Yes, one of them

8 Q Which one?

9 A John Ward

10 Q And they are friends of the family?

11 A Yeah

12 Q Are they friends with each other, John and
13 Tremayne?

14 A Yeah

15 Q Now, you recall the shooting at the Club
16 Diamante on May 11th, 2003, is that correct?

17 A No, I wasn't there

18 Q I know you weren't there, but you remember when
19 it happened, right?

20 A The following day

21 Q Okay And -- but you weren't at the club that
22 night?

23 A No

24 Q The next day -- where did you stay that night?

25 A That night that everything happened at the club?

J HEYWARD - DIRECT EX BY MR DURANT

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1 Q The night of the shooting, where were you?

2 A I stayed home

3 Q And where is home?

4 A Hollywood, South Carolina, Scott White Road.

5 Q And what part of Hollywood is that in?

6 A They call it the Pineland area

7 Q Pineland?

8 A Yeah.

9 Q Who all lives at that house?

10 A Me, my father, my brothers -- at the time, it
11 was me, my father and my brothers

12 Q Who are your brothers?

13 A Damon, Denode, Tyron

14 Q Denode who?

15 A Heyward

16 Q Okay Now, when you woke up on the Sunday, May,
17 11th, who all was at your house? Did somebody spend the
18 night at your house that doesn't usually spend the night
19 at your house?

20 A It was me, Denode, Anthony Ward, and Tremayne
21 Washington He does sleep down there

22 Q Pardon me?

23 A He sleep down there

24 Q Every now and then?

25 A Every now and then

1 Q Not every night Okay Who, Tremayne does?

2 A Yeah

3 Q Okay And, obviously, Denode lives there, so he
4 stays there all the time?

5 A Yeah

6 Q How about, what's Anthony Ward's nickname?

7 A Cabbage

8 Q Does Cabbage stay there very often?

9 A Once in a blue moon

10 Q Okay And Tremayne stays there occasionally
11 too?

12 A Sometimes

13 Q But on this particular morning, May the 11th,
14 Cabbage and Tremayne were there when you woke up; is that
15 correct?

16 A Correct.

17 Q Did you see them come in the night before?

18 A No, no, I didn't.

19 Q And when you woke up -- what were they doing
20 when you woke up?

21 A Everybody was getting ready to go to
22 Petersfield

23 Q Why were they going to Petersfield?

24 A There was a call saying that we needed to come
25 down there

J HEYWARD - DIRECT EX BY MR DURANT

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1 Q And without saying who called or why, why did
2 y'all have to go to Petersfield?

3 A They say a lot of cops and stuff were back
4 there, to come down there and see what was going on

5 Q And did you go to Petersfield?

6 A Yes, sir, I went to Petersfield

7 Q Who all went to Petersfield?

8 A Me, Denode, Tremayne, Anthony

9 Q And how did y'all get to Petersfield?

10 A My brother's car

11 Q That would be Denode's car?

12 A Correct

13 Q What kind of car does Denode have?

14 A A Delta 88.

15 Q And prior to y'all leaving to go to Petersfield,
16 you indicated in a previous hearing that you saw
17 Mr. Washington doing something What was that?

18 A In the kitchen, he was just washing his hands

19 Q That morning before y'all went over to
20 Petersfield?

21 A Yeah, just before we went over to Petersfield

22 Q Okay He was washing his hands that morning?

23 A Yeah

24 Q Is that unusual?

25 A No, everybody wash their hands

1 Q Okay Then why did you come in and testify last
2 time about him washing his hands?

3 A Because you all called me to come in -- you all
4 called me on the phone and asked me about it.

5 Q I didn't call you

6 A Someone called me on the phone I don't know
7 who it was

8 Q Now, let me see if that refreshes your
9 recollection as to what you said when you testified at the
10 previous hearing

11 MR. DURANT Let's just mark this for
12 identification, please

13 (WHEREUPON, State's Exhibit No 75 was marked
14 for identification only)

15 BY MR DURANT

16 Q Mr Heyward, I hand you what's now been marked
17 as State's Exhibit No 75 for identification purposes
18 only Have you had an opportunity to review this?

19 A Yeah.

20 Q Okay. And this was the transcript at a previous
21 hearing, is that correct?

22 A (Witness nods head)

23 Q You need to say yes or no?

24 A Oh, yeah

25 Q That you testified at?

J HEYWARD - DIRECT EX BY MR DURANT

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1 A Uh-huh

2 Q And that you testified at under oath, correct?

3 A Correct

4 Q And do you recall being asked here what was

5 Tremayne Washington doing?

6 A Yeah

7 Q And answer was?

8 A Washing his hands in the kitchen

9 Q And you were asked the question what was he
10 washing his hands with?

11 A I said bleach

12 Q Bleach Okay Now, that's what I was asking
13 about, sir, does he normally wash his hands with bleach?

14 A I couldn't tell you, sir I don't be around him
15 to wash his hands every time.

16 Q Now, where did y'all go over to Petersfield?

17 A To my aunt's house

18 Q Who is your aunt?

19 A Nelly Pinkney

20 Q Nelly Pinkney?

21 A Uh-huh

22 Q And did you go over to Shirley Ward's house that
23 day, too?

24 A No, after we got back there, it was cops all
25 across the place, so -- I mean, I didn't move from my car

1 Cops came and sat me in the car and started talking to me

2 Q Okay Did you know what kind of vehicle
3 Tremayne Washington had at the time?

4 A I knew it was --

5 Q Was driving at the time?

6 A He owned a Dodge truck

7 Q Did you see that Dodge truck anywhere out there
8 that morning?

9 A I ain't see the truck, no.

10 Q Okay Where did Nelly Pinkney -- Nelly is your
11 aunt, is that correct?

12 A Correct

13 Q And where does Nelly live in relation to Shirley
14 Ward? Do you know Shirley ward?

15 A Correct, I know her

16 Q Where do they live in relation to each other?

17 A Like right across from each other.

18 Q Okay What road do they live on?

19 A I think it's Brewer Road

20 Q Brewer Road?

21 A Uh-huh

22 Q Do you know where Alford Road is?

23 A No, I don't.

24 Q If you don't know, that's fine. Okay.

25 MR DURANT: Court's indulgence

J HEYWARD - DIRECT EX BY MR DURANT

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1 BY MR DURANT

2 Q Now, just one other question Did you see what
3 was behind Shirley Ward's house that morning when y'all
4 went out there?

5 A No, I never made it from --

6 Q You never left the car you were in?

7 A Got out of the car, stand up, officer came and
8 picked me up -- sat me in the front seat of his police
9 car

10 Q Okay

11 MR DURANT I don't have any further questions
12 Please answer any questions defense counsel may have

13 CROSS-EXAMINATION

14 BY MR RUNYON

15 Q Mr Heyward, you weren't at the club?

16 A No

17 Q And you woke up the next morning?

18 A Yeah

19 Q And Cabbage was there, along with your siblings,
20 your brothers?

21 A Uh-huh

22 Q And Tremayne Washington was there?

23 A (Witness nods head.)

24 Q You've got to answer out.

25 A Oh, yes

1 Q And y'all got up, everybody was getting ready to
2 go to Petersfield?

3 A Correct

4 Q And was everybody getting ready washing,
5 brushing their teeth, whatever you do when you get up in
6 the morning?

7 A Yes

8 Q How many bathrooms in that house?

9 A Two.

10 Q Two Were they occupied at the time
11 Mr Washington, if you recall, was at the kitchen sink?

12 A Yeah, kitchen

13 Q So he was using the kitchen sink?

14 A Yes

15 MR RUNYON No further questions.

16 MISS JENKINSON I don't have any questions for
17 this witness

18 THE COURT Redirect?

19 MR DURANT. No, sir

20 THE COURT. You may step down

21 MR DURANT I'd ask that Mr Heyward be
22 excused

23 MR RUNYON No objection

24 MISS JENKINSON No objection

25 THE COURT: The witness is excused

1 MR DURANT The State would call Shirley Ward

2 SHIRLEY WARD,

3 being first duly sworn, testified as follows.

4 THE CLERK Please be seated State your full
5 name to the Court and spell your last

6 THE WITNESS Shirley Ward, W-A-R-D

7 DIRECT EXAMINATION

8 BY MR DURANT:

9 Q Good afternoon, Mrs Ward. How are you today?

10 A Hello

11 Q Could you please tell the ladies and gentlemen
12 on the jury where you live?

13 A A place called Petersfield

14 Q And where in Petersfield do you live?

15 A Hollywood

16 Q And what is your address?

17 A 4520C Brewer Road

18 Q And Brewer Road, is that a paved road or a dirt
19 road?

20 A Dirt road

21 Q And what road does Brewer Road run off of?

22 A What road it run off?

23 Q Yeah, there's a turn off of a paved road to get
24 onto Brewer Road, what is that paved road?

25 A The paved road is --

- 1 Q Pardon me?
- 2 A The paved road, I turn off the paved road.
- 3 Q Yes, ma'am Do you know what the paved road is?
- 4 A No, Brewer Road
- 5 Q Brewer Road is not a paved road?
- 6 A I don't know the name of the road.
- 7 Q Okay Let me show you what's been previously
- 8 marked as State's Exhibit No 13 in evidence and ask if
- 9 you recognize that?
- 10 A Yes, that's my house
- 11 Q Okay
- 12 MR DURANT Can we show that on the screen?
- 13 Q That address is 4520 Brewer Road?
- 14 A 4520C
- 15 Q 4520C Brewer Road?
- 16 A Uh-huh
- 17 Q Do you know a lady named Nelly Pinkney?
- 18 A If I what?
- 19 Q Do you know a lady named Nelly Pinkney?
- 20 A Yeah, she's my sister-in-law
- 21 Q Where does Nelly live in relation to your house?
- 22 A Not too far from me.
- 23 Q When you say not too far from you, we're talking
- 24 next door basically, right?
- 25 A Uh-huh

S WARD - DIRECT EX BY MR DURANT

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1 Q As a matter of fact, that's State's Exhibit No
2 13 there And that's your house, correct?

3 A Yes

4 Q And if you're sitting there looking at your
5 house, does Nelly live to your left or right?

6 A Left

7 Q Who is this fellow right over here?

8 A My nephew

9 Q What's his name?

10 A John Ward

11 Q Does John live with you?

12 A No

13 Q Now, going back to May 11th of 2003, which was a
14 Sunday morning, I believe, do you remember seeing
15 something unusual out back behind your house?

16 A I see a truck behind my house

17 Q Okay. And I'd like you to look at State's
18 Exhibit No 14 and State's Exhibit No 15 Is that how
19 that truck was behind your house that morning?

20 A Yes

21 Q Do y'all usually park back there?

22 A No, nobody don't park behind there

23 Q Did you give anybody permission to park that
24 truck back there?

25 A No

1 Q Do you know why that truck was parked back
2 there?

3 A No

4 Q Do you know who that truck belonged to?

5 A No

6 Q Do you know Tremayne Washington?

7 A I heard of him, I don't know him.

8 Q But you didn't really know him?

9 A No.

10 MR. DURANT Thank you, ma'am Could you please
11 answer any questions that the defense counsel may have for
12 you?

13 MR RUNYON I have no questions of this
14 witness, Your Honor

15 MISS JENKINSON. No questions, thank you

16 THE COURT All right You may step down.

17 Thank you

18 MR DURANT I'd ask that Mrs Ward be excused,
19 Your Honor.

20 MR RUNYON No objection, Judge

21 MISS JENKINSON. No objection

22 THE COURT The witness is excused

23 Call your next witness

24 MR DURANT The State would call Anthony Ward

25 ANTHONY WARD,

1 being first duly sworn, testified as follows

2 THE CLERK Please be seated Please state your
3 full name to the Court and spell your last

4 THE WITNESS Anthony Lamar Ward

5 DIRECT EXAMINATION

6 BY MR DURANT

7 Q How old are you, Mr Ward?

8 A Twenty

9 Q And what is your nickname?

10 A Cabbage.

11 Q How far did you go in school?

12 A Eleventh.

13 Q Where did you go to school?

14 A Baptist Hill

15 Q And where are you currently living?

16 A Petersfield

17 Q And I mean where are you living right now with
18 that uniform on?

19 A Turbeville

20 Q Correctional institute, right?

21 A Uh-huh

22 Q By way of prior record, you've been convicted of
23 possession of a stolen motor vehicle, breaking into a car
24 and possession of burglary tools in 2003, is that right?

25 A Yes, sir

1 Q And you have been convicted of two counts of
2 possession of cocaine and grand larceny in 2004, is that
3 correct?

4 A Yes, sir

5 Q You're currently serving a youthful offender
6 sentence at Turbeville?

7 A Yes, sir

8 Q Now, before then, you lived in Petersfield,
9 right?

10 A Yes, sir

11 Q Were you born and raised in Petersfield? Born
12 and raised in the Petersfield area, sir?

13 A Yes, sir

14 Q Do you know John Henry Ward?

15 A Yes, sir

16 Q What name do you know John Henry Ward by?

17 A Mix

18 Q And this is John Henry ward over here seated at
19 counsel table?

20 A (Witness nods head)

21 Q Is that correct, sir? You need to answer yes or
22 no?

23 A Yes, sir

24 Q Do you know the other fellow over here at
25 counsel table?

A WARD - DIRECT EX BY MR DURANT

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1 A Yes, sir

2 Q Who is that?

3 A Friend

4 Q And what is your relationship with Friend and
5 John Ward, Mix?

6 A Family, close friend

7 Q And where is Mix from?

8 A Petersfield

9 Q Do you know Catrell Douglas?

10 A Yes, sir

11 Q Where is he from?

12 A Petersfield

13 Q And now Friend, he's not from Petersfield, right?

14 A Hum?

15 Q Friend is not from Petersfield, right?

16 A No

17 Q Does he hang around in Petersfield a good bit?

18 A Yeah

19 Q He's like an honorary Petersfield guy, isn't he?

20 A Whatever you want to call it

21 Q And Petersfield is a pretty close-knit little
22 community, isn't it?

23 A Somewhat.

24 Q And, as a matter of fact, show the jury right
25 now what you've got on your forearms?

1 A It's under one of my handcuffs

2 Q You can put both of them up

3 A I can't put both of them

4 Q Put them up as far as you can You can stand

5 up Stand up, sir Raise your right hand That says

6 what? What does it say?

7 A Peters

8 Q What does the other hand say?

9 A Field

10 Q Petersfield All right Do you remember being

11 at the Club Diamante on May 11th, 2003, Cabbage?

12 A Yes, sir

13 Q How did you get to the club?

14 A Tremayne

15 Q And in what vehicle?

16 A Truck

17 Q What kind of truck did Tremayne have at the

18 time?

19 A Dodge

20 Q What color?

21 A Gray, silver

22 Q And I'm showing you what's previously 14 and 15

23 in evidence Do you recognize that vehicle?

24 A Yes, sir

25 Q And whose truck is that?

A. WARD - DIRECT EX BY MR DURANT

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1 A Tremayne

2 Q Now, did anything happen inside the club that
3 night?

4 A Yeah, a little altercation, a little commotion

5 Q Pardon me, I couldn't understand?

6 A A commotion

7 Q A commotion?

8 A Yes, sir

9 Q Do you know who the commotion was between?

10 A Um, Keith Richards, Laquinta, I don't know the
11 last name

12 Q Some girl?

13 A Yeah

14 Q Do you know what Keith and the girl were
15 fighting about?

16 A I can't remember

17 Q Okay Do you know a fellow named Raulo?

18 A Yeah, heard of him some

19 Q Was he in the club that night?

20 A Yeah.

21 Q Was he in any kind of -- get in any kind of
22 altercation with Keith?

23 A Yeah, uh-huh.

24 Q Where is Raulo from?

25 A I couldn't tell you

1 Q What happened after that little commotion in the
2 club?

3 A Well, the party went on for a few more minutes,
4 then later outside

5 Q Now, did you go outside, too?

6 A Yes, sir

7 Q Did you see Kevin Dunmeyer out there?

8 A Yes, sir

9 Q What was Kevin Dunmeyer doing?

10 A He was over by the truck arguing, fussing back
11 and forth.

12 Q Which truck?

13 A His Suburban, I think

14 Q His truck?

15 A Yeah

16 Q That would be this one right here in State's 24?

17 A Yes, sir

18 Q That's Kevin's Suburban?

19 A Yeah

20 Q What was going on over there?

21 A Arguing and fussing back and forth

22 Q Do you know what that was about?

23 A Not really.

24 Q Did you see Raulo out there?

25 A He was in the truck.

A WARD - DIRECT EX BY MR DURANT

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1 Q Okay And where is Kevin Dunmeyer from?

2 A Cherry Hill

3 Q Were you involved in that altercation at all?

4 A No, sir

5 Q So what happened next? Do you know Ton-Ton?

6 A Yes, sir

7 Q Do you remember seeing Ton-Ton out there that
8 night?

9 A Yes, sir

10 Q Where did you see Ton-Ton?

11 A He was driving his Cadillac

12 Q And where did you see him driving his Cadillac?

13 A In the front of the club direction

14 Q Looking at State's 11, do you recognize that?

15 A Yes, sir

16 Q Whose Cadillac is that?

17 A Ton-Ton

18 Q And what did you see Ton-Ton doing that evening?

19 A He was trying to hit people with his car that
20 night

21 Q Hit what people?

22 A People who were in the street that night

23 Q And the people in the street were from where?

24 A Everywhere, all over

25 Q Okay

1 A Uh-huh

2 Q But mostly from where?

3 A I can't tell you that I can't remember
4 everybody's face

5 Q I don't want names Where were they from?

6 A Everywhere

7 Q Do you want to lift your arms again?

8 A No, sir

9 Q Ton-Ton was trying to hit people out in the
10 street, right?

11 A Yes, sir

12 Q With his car?

13 A Yes, sir

14 Q You had no idea who those people are?

15 A I can't recall, I can't remember right now

16 Q It's very fuzzy

17 A Very fuzzy

18 Q So what happened after these people confronted
19 Dunmeyer out there at his car?

20 A Could you repeat that?

21 Q What happened after these people confronted
22 Dunmeyer at his car? What did Dunmeyer do?

23 A He -- it was a little scuffle and then he
24 started running

25 Q Where did he run?

A WARD - DIRECT EX BY MR DURANT

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1 A He was running toward the school

2 Q Baptist Hill way?

3 A Yes, sir

4 Q And what did Ton-Ton do?

5 A He been trying to hit people with the car and
6 trying to get Kevin Dunmeyer, I guess

7 Q Okay Did he go down where Kevin Dunmeyer was?

8 A Yeah, sure

9 Q What did he do?

10 A Pick him up

11 Q And what did he do after he picked him up?

12 A He came back through trying to hit people with
13 the car

14 Q Were you one of the ones he tried to hit with
15 the car?

16 A You could say that because I was in the street

17 Q You were out there in the general vicinity,
18 right?

19 A I was on the street that night

20 Q Now, what happened after Ton-Ton comes by and --
21 with Dunmeyer and tries to hit you and the other people
22 out there in the road?

23 A He stopped the car and tried to get out to talk
24 trash, so people started running up to his car and stuff
25 He hopped back in the car.

1 Q What did he do when he got out of his car?

2 A Talk, talk trash

3 Q He was trying to stir things up, wasn't he?

4 A Uh-huh

5 Q And it worked, didn't it?

6 A I ain't -- I couldn't tell you, I don't know I
7 guess so, I don't know

8 Q What happened when he got out and did that?

9 A Someone came up, started choking him on the side
10 of his car

11 Q And that person would be?

12 A Kenneth Sanders

13 Q Okay Where is Kenneth Sanders from?

14 A Petersfield

15 Q And what happened when Kenneth tried to get at
16 him through the window?

17 A Then Ton-Ton step on the gas and start dragging
18 him with the car

19 Q And what happened to Kenneth?

20 A He let go

21 Q Did he get knocked down?

22 A Yeah, he fell

23 Q And what happened then?

24 A Ton-Ton speed off.

25 Q Did you see Tremayne's truck out there around

1 that time?

2 A No, not that I recall

3 Q No way, right?

4 A Not that I recall

5 Q Do you remember meeting with Investigator Matt
6 Casey at the Turbeville Correctional Institute in November
7 of 2004?

8 A Yes, sir

9 Q And do you remember telling him that you saw the
10 truck going after the Cadillac?

11 A Not that I recall

12 Q Do you deny making that statement?

13 A Hum?

14 Q Do you deny making that statement?

15 A I don't recall saying any of that

16 Q Now, what happened after the car took off down
17 Toogoodoo, the Cadillac?

18 A That's when shooting started

19 Q And could you tell who was shooting?

20 A No

21 Q Could you tell which direction the shooting was
22 coming from?

23 A No, sir

24 Q What did you do when the shooting started?

25 A Run and duck

1 Q And where did you duck at?

2 A Hum?

3 Q Where were you when you were ducking, were you
4 in the parking lot?

5 A No, I been in the street

6 Q You were still out in the street?

7 A Uh-huh

8 Q Now, what happened after the shooting stopped?

9 A I started running and ducking, that's when I
10 trip over a body.

11 Q And where did you trip over that body?

12 A On the side of the street

13 Q On the club side or the other side?

14 A On the club side

15 Q Okay And did you see who it was you tripped
16 over?

17 A I saw the body, but at the time I didn't
18 recognize the body

19 Q Okay Why didn't you recognize the body?

20 A Because I ain't stop and look I look back and
21 see the body and keep going

22 Q Did you return to where the body was later?

23 A Yes, sir

24 Q And did you recognize who the body was then?

25 A Yes, sir.

1 Q And who was it?

2 A Jamie Simmons

3 Q Did you know Jamie, too?

4 A Yes, sir

5 Q Was he from the Petersfield area, too?

6 A He was raised in Petersfield, but then he end up
7 moving

8 Q Okay And you went back and saw who it was.

9 Was he still alive?

10 A No, sir

11 Q Now, how long did you stay around there that
12 night?

13 A Until the police got there

14 Q You didn't talk to the police that -- did you
15 talk to the police that night?

16 A Yeah, yes, sir.

17 Q You didn't give them a statement or anything,
18 right?

19 A No, sir

20 Q How did it come up that you were talking to the
21 policeman?

22 A Ton-Ton and Dunmeyer were pointing fingers at
23 me

24 Q Accusing you of what?

25 A Being involved in the incident that happened

1 Q And did a police officer talk to you?

2 A Yes, sir

3 Q And what did the police officer do?

4 A Slam me on the car that night, asked me about my
5 name, color of my eyes, height, birthday and stuff.

6 Q Just found out who you were and where you lived
7 and things like that?

8 A Factors, yes, sir

9 Q And then you left?

10 A Yes, sir

11 Q Who did you leave with?

12 A Denode Heyward.

13 Q Denode Heyward is Jermaine Heyward's brother?

14 A Yes, sir

15 Q Who else left in that car?

16 A Jessie Perrigo

17 Q Jessie Perrigo?

18 A Yes, sir

19 Q Where did y'all go when you left the club?

20 A We went to Denode Heyward's house

21 Q Did Tremayne leave from club with y'all?

22 A No

23 Q And where does Denode live?

24 A Pineland.

25 Q Do you know whether Denode is related to

1 Tremayne?

2 A Not as I know of

3 Q Now, later that evening -- so y'all went back to
4 Denode's house?

5 A Yes, sir

6 Q And later that evening, did y'all get a call
7 from somebody?

8 A Yes, sir.

9 Q And who did that call come from?

10 A Tremayne

11 Q Tremayne being who?

12 A Friend

13 Q This fellow right here?

14 A Yes, sir

15 Q What did Tremayne want?

16 A He wanted us to come pick him up

17 Q And where did y'all have to go pick him up?

18 A Petersfield

19 Q And how far -- whereabouts in Petersfield?

20 A Off of Ethel Post Office Road

21 Q Okay Do you know where Brewer Road is?

22 A Yes, sir

23 Q Do you know where, I think it's Alford Road?

24 A Yes, sir

25 Q They branch right there together off of what

1 road?

2 A That's not Ethel, is it?

3 Q Ethel Post Office Road? Ethel Post Office Road
4 is the paved one?

5 A Yes, sir

6 Q And Alford or Brewer are paved or dirt?

7 A Dirt, yes, sir.

8 Q So when y'all picked up Tremayne, it was on
9 Ethel Post Office Road?

10 A Yes, sir

11 Q And about what time of the day was this or
12 morning was this?

13 A It was early morning hours

14 Q How long was that after the shooting?

15 A I would say probably about an hour

16 Q About an hour after the shooting?

17 A Uh-huh

18 Q Was he with anybody at the time?

19 A No, not that I recall

20 Q At the time you picked him up, I mean, he wasn't
21 with anybody?

22 A No, sir

23 Q Where was his truck?

24 A I couldn't tell you

25 Q Did you ask him where his truck was?

A WARD - DIRECT EX BY MR DURANT

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1 A Yes, sir

2 Q What did he say?

3 A Don't worry about it

4 Q Now, where did y'all go after you picked
5 Tremayne up?

6 A Back to Denode's house.

7 Q In Pineland?

8 A Pineland

9 Q And how far away is Pineland?

10 A About five, ten minutes

11 Q Okay Now, the next morning, when y'all woke
12 up, what happened?

13 A The phone was ringing and everything Come to
14 find out it was mom, aunt, everybody calling

15 Q Okay. That would be -- what are their names?

16 A Nelly Pinkney.

17 Q Nelly Pinkney calling?

18 A Uh-huh

19 Q What did Nelly want?

20 A She said we need to come over there and explain
21 to her why all of these police are in her yard and stuff

22 Q She was probably pretty upset about that, wasn't
23 she?

24 A Yes, sir

25 Q So who all went over there?

1 A Me, Denode, Tremayne and Jermaine.

2 Q Okay And when you got over there, what did you
3 see?

4 A Tremayne's truck was on the wrecker

5 Q Do you know where it was before they put it on
6 the wrecker?

7 A They were pulling it from behind Oliver Ward's
8 house

9 Q Where does Oliver live in relation to where
10 Nelly Pinkney lives?

11 A Next door

12 Q Okay Do you know if Oliver Ward is any
13 relation to the defendant, John Ward?

14 A Yes, sir

15 Q What is that relationship?

16 A Uncle

17 MR. DURANT Would you please answer any
18 questions that defense counsel may have for you, Mr Ward?

19 THE WITNESS Yes, sir

20 MR RUNYON No questions of this witness, Your
21 Honor

22 MISS JENKINSON. I don't have any questions for
23 him

24 THE COURT You may step down

25 MR DURANT May we approach?

1 (WHEREUPON, a bench conference was held in the
2 presence of the jury but outside the hearing of
3 the jury)

4 THE COURT We will go ahead and take a break at
5 this time Again, don't begin deliberations or
6 discussions about the case

7 (WHEREUPON, the following proceedings were held
8 outside the presence of the jury)

9 THE COURT All right Tell me again what the
10 scenario is

11 MR DURANT Scenario, as I understand it, is
12 they go looking for Catrell Douglas He is not home. His
13 mother, Denise Moultrie, is there She asks him when he
14 comes home later why the police are looking for him and he
15 admits to her that he was in the truck I'm not sure he
16 says I was in the truck and John Ward was shooting or
17 anything like that. He admits being in the truck that was
18 involved in this incident

19 THE COURT. Okay

20 MR DURANT He, obviously, testified that --
21 previously that he was in the truck and that John Ward was
22 doing the shooting Now, during cross-examination, of
23 course, Mr Butler raised the implication with the jury
24 that he only made up that story because of trying to save
25 himself with the police after he was arrested Because he

1 originally told the police -- he originally told the
2 police he didn't know nothing about nothing And then he
3 admitted being in the truck and then, finally, he admitted
4 being in the truck and John Henry Ward shooting Beattie,
5 of course, as a good lawyer would do, raised the
6 implication to the jury that he only told the police that
7 to save himself a potential life sentence

8 THE COURT Uh-huh

9 MR DURANT. From the police

10 Well, I think the fact that he told his mom that
11 he was in the truck prior to him even being arrested,
12 certainly falls within the clear ambit of the rule.
13 Because the rule says to express -- to -- consistent with
14 declarant's testimony at trial, it is offered to rebut an
15 expressed or implied charge of declarant of a recent
16 fabrication or improper influence or motive provided,
17 however, that the statement must have been made before the
18 alleged fabrication or before the alleged improper
19 influence or motive arose Well, according to his
20 cross-examination, the improper influence or motive arose
21 when the police were questioning him

22 MR BUTLER That is only part of the cross

23 MR DURANT. And the statement to his mother was
24 before that

25 MR. BUTLER That's only part of the cross. The

1 rest of it -- all of that definitely go to his bias and I
2 asked him about that But other things that go to his
3 bias are he's in the car, his role in the incident, the
4 fact that he's there and that he didn't tell anybody. So,
5 sure, all of these things go to his bias But the
6 underlying fact that most gives rise to his bias is his
7 alleged involvement in the incident, the fact that he is
8 there. So the fact that when his mother tells him oh, the
9 cops were coming by looking for you, what's that all
10 about He says oh, well, there was this thing that
11 happened, but I wasn't shooting, somebody else was, that's
12 not prior to his motive to fabrication, it's afterwards
13 because it's after the incident

14 The notes to the rules say, subsection B, which
15 is what Mr. Durant just read is consistent -- excuse me,
16 subsection B is the federal rule modified by adding the
17 phrase provided however, which Mr Durant read, this
18 modification is taken from the U S Supreme Court's
19 interpretation of the rules in Tongue versus United States
20 and similar to limitation previously contained in the case
21 law Prior consistent statement is admissible only where
22 it was made prior to the declarant's relation to the
23 cause

24 His relation to the cause, the co-defendant's
25 relation to the cause is the incident itself And I can

1 think of an example It's difficult to come up with an
2 example because if I'm a co-defendant, you're talking a
3 murder, so, sure, almost everything they would say would
4 be applicable But the rule isn't just in contemplation
5 of co-defendants in criminal cases But I can think of a
6 situation where it would apply and it wouldn't be after
7 the incident

8 Let's imagine that a co-defendant says yes, my
9 defendant killed a person and he told me months ago he was
10 going to kill him Okay And I then cross him the exact
11 same way that I would cross Mr Douglas and say, look, you
12 don't want to be charged, you don't want to go to prison,
13 but he told his mama well before the murder happened Ward
14 told me he was going to kill this person Well, then it
15 would be prior to the incident and then it would come in
16 But his relation to the cause, his relation to the cause
17 is the crime itself It's not the fact that he's charged
18 That's part of it But he has a motive to misrepresent
19 from the beginning, from the time that the incident
20 happens That's his relation to the cause.

21 And what else would he tell his mother? His
22 mother says the cops are looking for you, what's going on
23 Kids do it all the time Okay, I got in trouble, but I
24 was just in the car Someone else did it And most of
25 the time that would go to the weight not the

1 admissibility, except it's going to be offered by the
2 State as a prior consistent statement It's hearsay. -
3 It's hearsay coming from his mother what her son told them
4 and it doesn't fall under the rule His relation to the
5 cause is the crime.

6 THE COURT It's not coming up on your cross or
7 his redirect?

8 MR BUTLER It's going to come on his redirect
9 But I'm going to cross him the exact same way I did the
10 last time, I know it's going to come up

11 And the second issue is the procedural one. The
12 reason we didn't reach this the last time is because
13 Mr Douglas' mother was in the courtroom at the time that
14 her son testified So the judge in the last trial
15 precluded her from testifying because there was a
16 sequestration order It's no different now, the fact that
17 it's a different trial It wouldn't matter that she's not
18 in here for his testimony this time She knows what he
19 testified to under oath If it was improper for her to be
20 in here last time -- to testify after being here last
21 time, it's improper for her to be able to testify now

22 THE COURT What's your position on that?

23 MR DURANT My position on that is that she has
24 not been present during the testimony in this case And
25 my position on that is I talked to the lady before the

1 last trial and was told the same thing, that her -- you
2 know, she had talked to him when the police came by and
3 that's what he told her I can't say that he said, like I
4 said, I was in the car and anybody was shooting and John
5 Ward was shooting because I don't recall that But from
6 what she told me from the recollection of my conversation
7 with her, I asked him why the cops were by here, he
8 said -- he told me -- I remember him saying -- her saying
9 because he told me he was in the truck with them And --
10 or in the truck And I told him to keep his mouth shut
11 That's all I remember

12 Now, getting back to his first point the
13 relation to the cause, if that's not the most tortious
14 analysis of relation to the cause that I've ever seen
15 The rule says what the rule says, Judge And the rule
16 says that if the prior consistent statement was made
17 before he had the reason to lie, then it's not hearsay
18 And my position, quite simply, is that before he was
19 arrested, before he was being questioned by the cops,
20 before there was any implication by Mr Butler that he was
21 saying what he said just to prevent getting a life
22 sentence, then that was before the motivation to lie or he
23 had the reason to lie And you know, quite frankly, I
24 can't even envision a circumstance that he's talking
25 about It always comes up in cases where the cross

1 examiner is alleging that the witness changed his
2 testimony to gain -- to curry some favor, so on and so
3 forth

4 MR BUTLER It always comes up and most of the
5 time you don't get it State versus Saltz is a great
6 example of where the defense should have been able to do
7 it and were not able to and the State was able to do it
8 and wasn't A case out of Richland County, State versus
9 Saltz, S-A-L-T-Z, I think Mr Durant is giving you more
10 information that I even know because I haven't spoken to
11 the mother, but if she says the cops are looking for you,
12 that's his motive to lie His motive to lie comes from
13 the police looking for him because of his involvement in
14 this incident

15 THE COURT Well, what would be his motive to
16 lie to his mother? I can see a motive to lie to the
17 police, but what would be his motive to lie to his mother?

18 MR BUTLER The same as it would be to anybody
19 else It might be that he was guilty of a crime Even
20 more so to his mother, she's his mother Just the same
21 reason that kids lie to their parents all the time, yeah,
22 I got in trouble, but Johnny did it, it was Johnny's idea
23 He made me do it I just happened to be there It
24 happens all the time

25 Once he knows that -- especially, once he knows

1 that the police are looking for him, that gives him all
2 the more reason to lie Now, Mr Durant -- I might have
3 misunderstood him, I thought he was saying -- if all she's
4 going to say he told me he was in the truck, then I don't
5 have any problem with that I thought she was going to
6 say he told me that John was the shooter

7 MR DURANT I'm not -- you know, you can ask
8 her, you know, I don't know I honestly don't know It's
9 been a long time since I talked to her

10 MR BUTLER Well, your redirect of Catrell
11 Douglas, didn't you tell your mom John was the shooter,
12 that's the testimony that I'm concerned about it

13 MR DURANT We can ask her, she's right
14 outside I mean, I'll make her available

15 THE COURT All right Do you want to put her
16 on the stand?

17 MR BUTLER Perhaps, if we put her on the
18 stand, it will make it easier

19 DENISE MOULTRIE,
20 being first duly sworn, testified as follows.

21 THE CLERK. Please state your full name for the
22 Court and spell your last

23 THE WITNESS My name is Denise Yvonne Moultrie,
24 M-O-U-L-T-R-I-E

25 DIRECT EXAMINATION

D MOULTRIE - DIRECT EX BY MR DURANT

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1 BY MR DURANT

2 Q Good afternoon, Ms Moultrie I need to ask you
3 a few questions You are Catrell Douglas' mother, is that
4 correct?

5 A Yes

6 Q Where do you reside?

7 A 4607 Petersfield Road in Hollywood.

8 Q And who lives there with you? Does Catrell live
9 there with you?

10 A My husband, my daughter and my other son.

11 Q And Catrell was living there with you in May of
12 2003?

13 A Yes

14 Q You recall the incident where Jamie Simmons was
15 killed at the Club Diamante, is that correct?

16 A Yes

17 Q That occurred on May 11th, 2003?

18 A Yes

19 Q Do you recall how you found out about that?

20 A It was the -- I think the night of the incident,
21 my husband came home and told me about it

22 Q Now, about a week or so after the shooting --

23 A Yes

24 Q -- do you recall the police coming by your
25 house?

1 A Not a week

2 Q Hum?

3 A Not a week, sir

4 Q Well --

5 A Two weeks later

6 Q It was two weeks later?

7 A Yes.

8 Q Okay. Couple weeks afterwards?

9 A Yes

10 Q You recall the police coming by your house?

11 A Yes.

12 Q Were you home at the house?

13 A The first time, second time, no

14 Q But you found out the police had been by your
15 house?

16 A Yes.

17 Q Did you ask Catrell why the police were by the
18 house? Was Catrell at the house when the police came by?

19 A I think he was I was at work

20 Q Okay.

21 A Yes, sir

22 Q And did -- I mean, Catrell was there, though,
23 right?

24 A Yes

25 Q What did you ask Catrell?

D MOULTRIE - DIRECT EX BY MR DURANT

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1 A I asked my son what were they there for

2 Q And what did he say?

3 A He said they wanted to question him about the
4 incident at the club

5 Q And what else do you remember about the
6 conversation?

7 A I asked my son about the incident at the club

8 Q And what do you remember him telling you?

9 A I told my son -- my husband and I heard rumors
10 about him driving the truck And I came and asked my son
11 were you driving the truck and he told me yes

12 Q And what did you tell him?

13 A Right then, I got so scared, as I am right now,
14 and I told him well, Trel -- I told my son being that they
15 already had two people in the situation, I told my son,
16 oh, don't say nothing because if you don't say anything,
17 you might not be involved because they have the two
18 people And I was scared and he was scared We never had
19 any trouble in our home with any of my sons

20 Q Okay That's all you remember him actually
21 telling you about the incident himself is that he was
22 driving the truck?

23 A He was driving the truck.

24 Q He didn't tell you anything else to your
25 recollection?

D MOULTRIE - DIRECT EX BY MR DURANT

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1 A I further asked him, I said, Trel, who shot the
2 gun in the truck they said a shooting was coming from that
3 you were driving He said John

4 MR DURANT. Do you have any questions?

5 MR BUTLER I have no questions

6 THE COURT All right Ma'am, you can step
7 down We will need you to go on back outside and wait for
8 us to call you again.

9 THE WITNESS. Thank you

10 THE COURT Okay

11 MR. BUTLER. Judge, the case is State versus
12 Saltz, 346 SC 114 I don't have any further argument It
13 just clarifies that the State would seek to make use of
14 that testimony, but it doesn't change my position at all
15 He knows the police are looking for him He knows two
16 people have already been arrested. His mother says, you
17 know, we're hearing that you were driving, tell us what
18 happened The motive for him to distance himself from the
19 shooting is his involvement from the beginning

20 It's the same rationale -- I will argue by
21 analogy, it's the same rationale that the U S Supreme
22 Court has adopted in Crawford versus Washington
23 Inculpatory statements made by codefendants that
24 ultimately end up being used to exonerate themselves are
25 not inherently reliable So prior to Crawford versus

1 Washington when the State would allow an exception to the
2 hearsay rule under the guise of statement against penal
3 interest, yeah, I was there, but the other guy had the
4 gun, it's not inherently reliable anymore It's the same
5 thing Anybody that's thrown into the mix from the
6 beginning has a motive to distance themselves from it to
7 the extent that they can He knows that his mother knows
8 he was in the car He admits to that but says someone
9 else was shooting And it's hearsay

10 MR DURANT How can he relate this to Crawford
11 versus Washington when both Catrell Douglas and the mom
12 are here for him to cross-examine?

13 MR. BUTLER. I'm not saying it's a
14 confrontational problem I'm using --

15 MR DURANT That's what Washington --

16 THE COURT He's using the rationale behind it

17 MR DURANT But, I mean, the fact of the matter
18 is he's got both of them here to cross-examine

19 MR. BUTLER. I'm not saying it's a confrontation
20 problem.

21 MR DURANT. And the rule says what the rule
22 says, Your Honor, by the plain language

23 THE COURT. Okay I want to look at that case
24 We'll take a break and come back in a few minutes

25 (WHEREUPON, a recess transpired.)

1 THE COURT All right Let me ask you this. On
2 your prior consistent statement, do you want to get out
3 that he told -- that Catrell told his mother that he was
4 in the car and that John Ward was the shooter or just that
5 he was in the car?

6 MR DURANT I think probably both is what she
7 said You know, and as I said, I don't view -- it's
8 certainly not a confrontational issue because both of the
9 witnesses are here and subject to cross examination
10 regarding the statement So I don't believe it's a
11 confrontational issue or anything in regards to that.

12 THE COURT Is John or Catrell going to testify
13 that John Ward was the shooter?

14 MR DURANT Yes, Catrell Douglas is going to
15 testify that John Ward was the shooter. And, of course,
16 Beattie can cross-examine to raise the implication that he
17 said that because -- to save his rear end, which any good
18 lawyer would do, of course

19 And it would be at that point, you know, that
20 I'm arguing that he is -- looking to the case cited by Mr
21 Butler, it would appear to meet the requirements

22 THE COURT Mr Butler, your contention -- or,
23 at least, on cross, you contend to suggest that he has
24 made this statement up or you're just attempting to
25 discredit what he said? He made it up after they got in

1 trouble?

2 MR BUTLER I'm agreeing after he got in
3 trouble, but getting in trouble isn't so narrow as to --
4 he's making it up because he's involved and he knows he's
5 involved. He knows he's involved from the beginning
6 because he's in the truck and because his mama tells him
7 the cops have been calling out here wanting to know what
8 happened I don't care about the statement that he was in
9 the truck, that doesn't bother me at all, that's not
10 really even disputed.

11 He's going to testify that Ward was the shooter
12 They wouldn't be able to call his mama to say he told me
13 Ward was the shooter unless I implied that he made a
14 allegation of recent fabrication, which I am doing, but
15 the motive for his fabricating is not being charged His
16 motive for fabricating is his involvement and his
17 potential to be charged Actually, when he talks to the
18 State and to the police, he's still not being charged.
19 The police are talking to him, they're investigating him
20 His mom is asking him what happened They're asking him
21 what happened He's not even charged when he talks to the
22 police

23 What gives rise to his motive to lie is his
24 involvement And I'm not saying it's a confrontation
25 issue, but I'm saying in Crawford, the Supreme Court has

1 recognized the inherent unreliability of codefendants when
2 they implicate themselves, I was in the car, but shift the
3 majority of the blame to someone else, someone else was
4 shooting

5 So it seems clear to me that the when you -- the
6 reason I cite the Saltz case is because it makes the
7 distinction between cross-examining somebody on a prior
8 inconsistent statement and making allegations for recent
9 fabrication But it goes on to cite, the language that I
10 quoted from the comments, it says the statement has to be
11 made prior to the person's relation to the cause. It's
12 their relation to the cause that gives them the motive to
13 lie What else --

14 THE COURT It puts that language in, but it
15 also -- it says that was the prior rule prior to the
16 rules And then it said -- because if you look on,
17 goodness, I guess on the case, it would be page 23 under
18 the second headnote where it cites Burns versus Clay
19 citing the old rule as being relation to the cause The
20 next sentence says the State relies on these pre South
21 Carolina rule of evidence cases and rule 801(d)(1)(b)
22 change th rule by implication It doesn't have the word
23 to this cause, although I think it's in another case or
24 maybe it's later on in this case, they do says that it's
25 in the notes --

1 MR BUTLER Right, it's in the notes

2 THE COURT -- words to the cause It's saying
3 the same thing that at the time that he made the alleged
4 prior consistent statement, did he have a motive to make
5 it up

6 MR BUTLER Right

7 THE COURT So it's the same principle

8 MR BUTLER Right

9 THE COURT I'm inclined to say well, at that
10 time he made that statement, he was making it to his
11 mother, he was not -- at that time he had not been
12 questioned by the police He was making the statement to
13 his mother, who is a nongovernmental witness I don't
14 know that he would have had a motive to lie to his mother
15 at that time.

16 So if you just go in and attempt to discredit
17 him, that doesn't give him the right to come back and
18 attempt to bring in a prior consistent statement
19 However, if you suggest recent fabrication, then it does
20 implicate 801(d)(1)(b) And if we get to that point --
21 again, I will have to listen to what you have to say to
22 know at that point whether or not it triggers that rule
23 If it does trigger it, I'm inclined to say -- because I
24 don't like to allow somebody in making an exculpatory --
25 it implicates them, but it really implicates a

1 codefendant, I might very well say the State is limited to
2 only bringing in that portion of a prior consistent
3 statement which says he was in the truck or he said he was
4 in the truck, not the part in which he says Catrell told
5 me that he was the shooter -- or that John Ward was the
6 shooter

7 MR. BUTLER And factoring in your analysis at
8 this point is that his mother is questioning him
9 knowing -- and both parties knowing that the police have
10 been calling.

11 THE COURT I understand that

12 MR. BUTLER And so --

13 THE COURT At that point, I don't know why -- I
14 can see a reason why you could say yeah, he would lie to
15 his mother because that's what kids do when they get in
16 trouble, they lie to their mother, they lie to their
17 parents, but I'm not sure that's not casting too wide of a
18 net to suggest that he would have had a motive at that
19 point to lie because he still implicated himself in a
20 felony by saying I was in that truck, I was driving that
21 truck.

22 MR. BUTLER Right, but that's exactly what
23 Crawford stands for We're not going to allow the State
24 to now say it's inherently reliable that someone
25 implicates themselves in a crime and let that then extend

1 to everything they say about everybody else And before
2 he says it's not a confrontation issue, I know it's not a
3 confrontation issue

4 THE COURT And I'm not arguing that either, but
5 that's why I'm saying if we do allow -- if we get to the
6 point where it triggers the rule which allows him to bring
7 in the prior consistent statement, I'm probably going to
8 limit it to just being where he implicates himself being
9 in the car

10 MR BUTLER. Okay I want to make sure I'm
11 clear Even if the rule is implicated, all that will come
12 in is that Catrell was in the car, not that John was the
13 shooter?

14 THE COURT Not that John was the shooter

15 MR. BUTLER: We don't have a problem.

16 MR DURANT Well, Your Honor, if I may be heard
17 on that, that's the whole point of the thing Number one,
18 there's no reason

19 THE COURT It couldn't have been the whole
20 point of the thing because prior to bringing her up in
21 here, you said I don't know what she said And you were
22 willing to live with the fact that she was just going to
23 say John was in the car

24 MR. DURANT I understand --

25 THE COURT Or Catrell was in the car

1 MR DURANT I understand that, Your Honor, but
2 she said what she said And by the rule, it is not
3 hearsay And by the rule, it is clearly relevant And by
4 the rule, there is no reason to keep it out. And it's
5 certainly no reason to keep it out by virtue of Crawford
6 because that's a confrontation case And he's got both of
7 these people here and he can cross-examine them until the
8 cows come home That's basically limiting my case for no
9 justifiable reason in the rules of evidence.

10 MR BUTLER We have the other issue, too, which
11 it was limited last time You know, he got to put up his
12 full case last time without that testimony because of the
13 sequestration issue And there's that separate basis to
14 appeal to, that's out there, too My understanding is if
15 the rule -- no matter what I do in cross, if the rule is
16 triggered and I open the door, all that opened the door is
17 he was in the car, not John was the shooter.

18 MR DURANT So you're not going to argue or by
19 implication or infer by your cross-examination that he is
20 saying that John Ward was the shooter just because the
21 fact that he was charged with murder and by saying this
22 that he would get rid of a murder charge and maybe even be
23 able to go home?

24 MR. BUTLER Yes

25 MR DURANT Okay.

1 MR BUTLER Yes, I'm implying that

2 MR DURANT Exactly You're implying that he
3 made up that entire statement to curry favor with the
4 State when he was talking to the police officers

5 MR. BUTLER: I'm implying that amongst other
6 things Yes, that his motive to lie is he doesn't want to
7 go to prison for 30 years to life Yes, his motive to lie
8 is that he does want to avoid a murder conviction. But
9 all of that stems from the fact that he is in the car.
10 All of that stems from the fact that he's involved He's
11 been involved from the beginning If it was somebody that
12 wasn't involved, the situation would be different, but
13 what gives rise to his bias is his involvement and the
14 consequences thereof, some of which are the fact that he's
15 charged Some of which are he could be looking at prison
16 time

17 So yes, I do plan to go into that unless Your
18 Honor tells me that doing so will open the door to the
19 other statement My understanding was if the rule was
20 triggered at all, what I would open the door to is just
21 the fact that he told his mama he was in the car, not that
22 he implicated John If so, I'm ready If not, then I
23 need to regroup. But that was my understanding of what
24 Your Honor was saying

25 THE COURT. That's what I'm going to limit it

1 to, if it gets triggered at all

2 All right Are you ready to call then Catrell?

3 MR DURANT I'm not sure where we are I'm not
4 sure just what went on here, but I'm ready to call him

5 THE COURT All right If you call Catrell, you
6 can exam him as you want

7 MR DURANT It's not going to have any affect
8 on my direct examination?

9 THE COURT It shouldn't from what I'm hearing
10 The question is after he finishes his cross --

11 MR DURANT Cross-examination.

12 THE COURT If he just goes after him like a
13 normal cross-examination, challenges his credibility, that
14 doesn't implicate 801(d)(1)(b) All right. But if he,
15 throughout that course, suggests recent fabrication
16 triggering 801(d)(1)(b), I intend -- if you want to then
17 bring in the prior inconsistent statement to his mother
18 limiting it to the statement that he made to his mother
19 about being in the car, him being the driver of the car,
20 not then about -- let me think this thing through out
21 loud

22 MR DURANT See, that's the whole issue.

23 THE COURT You're going to bring the mother in
24 at that point -- what I don't like is to bring the mother
25 in and testify that another person said this and it

1 implicates Mr Ward

2 MR DURANT. Well, I understand that But prior
3 to that happening, the person declaring it would have been
4 on the stand and be subject to his cross-examination and
5 the person to whom the declaration was made to would have
6 been on the stand and subject to cross-examination

7 MR BUTLER. It's not a cross-examination issue,
8 it's a bolstering issue It's not about cross The rule
9 is not about cross. The rule is about impermissible
10 bolstering to let someone get up to say what the witness
11 just testified to, oh, by the way, they told me the same
12 thing That's what the case is about In Saltz, all of
13 these people testified and they could cross It's not a
14 cross issue, it's a bolstering issue

15 I want to make sure that I understand I keep
16 thinking I understand and that it's exactly where I want
17 to be and then Mr Durant gets up and says something
18 different I don't mind if the rule is implicated and all
19 that comes in is she said Catrell told me he was in the
20 car, that's fine What I'm worried about is yeah, and he
21 told me John was the shooter, after Catrell has just said
22 John was the shooter If the only thing that's implicated
23 by my cross by bringing in this rule is that he has told
24 his mom he was driving the car, I'm not concerned about it
25 at all, which is my understanding of Your Honor's ruling

1 MR DURANT By this rule -- by this case he
2 cited -- I'm reading from this case --

3 THE COURT Yeah, but --

4 MR DURANT Saltz 801(d)(1)(b), Thus, in order
5 for a prior consistent statement to be admissible pursuant
6 to this rule, the following elements must be present.
7 Number one, that the declarant must testify and be subject
8 to cross-examination Mr Douglas will be subject to
9 cross-examination and testify.

10 The deposing party must have explicitly or
11 implicitly accused declarant, explicitly or implicitly
12 accused the declarant of recently fabricating the
13 statement or of acting under improper influence or motive
14 Mr Butler -- let me finish, please, sir. Mr. Butler, in
15 his cross-examination of Catrell Douglas before, as a good
16 lawyer would do, brought out the fact you understand you
17 were charged with murder, do you not, sir Do you
18 understand that the minimum that you can get for a murder
19 conviction is 30 years in the penitentiary? Yes, sir Do
20 you realize that's a day-to-day 30 years that you get in
21 the penitentiary? You don't get any parole or anything
22 like that from the 30 years and that's the best you can
23 expect Do you understand that, Mr Douglas? Yes, I
24 understand that Do you understand that you can get up to
25 life in prison, Mr. Douglas? Yes, I understand that And

1 you are hoping by testifying today as the State wants you
2 to testify that you're going to get a deal, now, aren't
3 you? Yes, sir, Mr Butler, that's what I'm hoping to do
4 Now, by that line of cross-examination, what has he done
5 but imply to this jury that he has gotten and -- taken
6 that stand and said what he said to curry favor with the
7 State and to get a deal with the State

8 MR. BUTLER. All of that is right, I agree with
9 that

10 MR DURANT. If I may finish, please, sir.
11 Number three, the statement must be consistent with the
12 declarant's testimony. His statement to his mother, I was
13 in the truck, John was the shooter is consistent with his
14 testimony

15 Number four, the statement must have been made
16 prior to the alleged fabrication or prior to the existence
17 of the alleged improper influence or motive His whole
18 cross-examination goes to the fact that the improper
19 influence or motive is to avoid a life sentence or 30
20 years in prison, which only arose after he was arrested
21 and was questioned by the police officers And the rule
22 says what the rule says, Your Honor

23 MR BUTLER I don't mean to interrupt, except
24 that I don't want to go on arguing about things that we
25 don't dispute. Yes, that cross-examination is exactly

1 what that's designed to do, which is what I understood why
2 Your Honor was saying if the rule is implicated We're at
3 the starting point We're beginning, we're beginning the
4 discussion with the premise that the rule is implicated
5 By the rule, I'm talking about 801(d)(1)(b)

6 The only one of those things that could be at
7 issue is not whether or not the rule is implicated, but if
8 it is implicated, what can come into rebut it. My
9 argument is that the statement he makes to his mother
10 after the crime happens, after people know that he's
11 driving the truck, after he knows that the police are
12 looking for him is not made prior to his motive to lie
13 His motive to lie, his relationship to the cause What
14 else could the cause be other than the underlying
15 incident? It's not his arrest because the statements that
16 are made to the police are prior to his arrest So I'm
17 agreeing with three-fourths of what he says.

18 If I do the cross-examination that way, that is
19 what is implicated The question and the only question is
20 a statement that he makes to his mother after the crime
21 when he knows that the police are looking for him because
22 he was in the car from where shots came is prior to his
23 motive to lie. And my argument is the underlying crime,
24 which is the cause to which he is related, which gives him
25 the motive to lie. That's why he lies to the police He

1 lies to the police because he was involved in a crime. If
2 he asks anybody on the street if they asked him, hey, did
3 you have something to do with this, he's going to say no
4 people who are involved in crimes rarely admit it It's
5 the crime which gives him the motive to lie

6 THE COURT Well, he did admit he was involved
7 in a crime if he admitted that he drove the car

8 MR BUTLER. Well, he initially denies that,
9 too. When he first talks to the police, he says I don't
10 know anything about anything

11 THE COURT Prior to that, he said that to his
12 mother

13 MR BUTLER: And I don't have any problem with
14 his mother The problem I have is the implication that
15 he -- they're bolstering his testimony by the fact he told
16 his mama that John was the shooter when he says that after
17 the crime happens

18 THE COURT All right. Mr Durant is right. If
19 one statements gets in, they both get in So I want to
20 make sure that you understand I have changed what I said
21 earlier.

22 MR BUTLER: Okay

23 THE COURT If you trigger 801(d)(1)(b), he gets
24 to bring in Catrell's mother saying Catrell told me he was
25 the driver of the truck, and two, that Catrell said Johnny

1 was the killer, assuming that Catrell says that on direct

2 MR DURANT I understand, Your Honor

3 THE COURT All right

4 MR BUTLER I understand, Your Honor I don't
5 think it's going to be implicated because I'm going to
6 change my cross then

7 THE COURT Okay

8 MR BUTLER. And what I want to do is make as
9 part of the record, usually, something is not preserved
10 unless I went ahead and did it and this probably won't
11 change anything But I want to make part of the record my
12 cross-examination of Catrell last time and I'm not going
13 to do it this time

14 THE COURT So you're making basically a proffer
15 as to what your cross-examination would be?

16 MR BUTLER Yes, sir

17 THE COURT Because you --

18 MR BUTLER. Yes, sir, I'm going to do it
19 differently because I don't want his mother to testify I
20 have no idea whether that would preserve the issue, but I
21 figure I might as well try

22 THE COURT. Okay

23 MR BUTLER. Will Your Honor make a ruling with
24 respect to the sequestration issue?

25 THE COURT Tell me what happened at the

1 previous trial again She came in unaware that there was
2 a sequestration order and nobody knew she was in here?

3 MR DURANT No, sir, Your Honor, she wasn't
4 even listed as a witness last time The issue came up
5 during his cross-examination of Catrell Douglas, as a
6 matter of fact. And so she was not on the witness list
7 and she was not subject to the sequestration order It's
8 not a question of her violating it, she wasn't on the
9 witness list

10 MR BUTLER: I wasn't saying she did anything
11 wrong

12 MR DURANT Then the issue came up and I called
13 her And the Judge wouldn't allow me to call her because
14 she wasn't on the witness list and because she had been in
15 the courtroom during some of the testimony

16 MR BUTLER The reason was because she had been
17 present during the testimony He said that resolved it
18 And we didn't argue the issue that we have just gone
19 through

20 THE COURT Judge Dennis did allow her to
21 testify?

22 MR BUTLER Did not allow her to testify.

23 MR DURANT He did not allow her to testify
24 because, like I said, number one, there was a
25 sequestration order and she had sat in the courtroom

1 because not to, like he said, to violate any order because
2 it wasn't anticipated calling her as a witness.

3 THE COURT I understand Okay.

4 MR DURANT She was -- you know, I only
5 attempted to call her as a witness to rebut a claim of
6 recent fabrication made by defense counsel on
7 cross-examination of Catrell Douglas

8 MR BUTLER. As Mr Durant points out, it was so
9 obvious that would have been the cross, I'm not so sure
10 why she wouldn't have been on the witness list, but that's
11 neither here nor there She was present to hear her son
12 testify And Judge Dennis said -- I remember his exact
13 quote, Well, that resolves it, we don't need to argue
14 about the hearsay issue If she was here, she can't
15 testify She heard her son's testimony. So if it would
16 have been tainted then, it's just as tainted now because
17 she still heard testimony in the prior trial So I would
18 move to exclude her from testifying under that basis as
19 well and appeal to rule 4B, which gives some kind of
20 defense to the prior judge's ruling I'm not even sure if
21 that's binding on Your Honor, but if I need to appeal the
22 case, it is

23 MR DURANT And my argument to that is, you
24 know, there's a sequestration order in this case, she's
25 adhered scrupulously to the sequestration order and I see

1 no basis in bearing this to keep her testimony out of the
2 case It may not be necessary to call her at all, Your
3 Honor

4 THE COURT. Well, for the record, while she
5 might have violated the sequestration order in the
6 previous trial and Judge Dennis didn't allow her, she has
7 abided by it in this trial, I would allow her to testify
8 if she were called, but it doesn't sound like she's going
9 to be called at this point So it's for the record.

10 MR BUTLER And I'm not complaining -- I want
11 to make sure all parties are aware, the Saltz case makes a
12 distinction between making an allegation of recent
13 fabrication and cross-examining somebody on a prior
14 inconsistent statement, meaning just crossing on a prior
15 inconsistent statement doesn't trigger the rule. That's
16 what I'm going to do now

17 MR DURANT. I understand that. And, I mean, he
18 gave you two or three that you can pick from, right? I
19 have no problem with that

20 THE COURT Okay

21 MR BUTLER: My objection for the record is
22 based on right to confront, right to cross, State and
23 Federal constitution and offered as proffer made part of
24 the record testimony of Catrell Douglas from the last
25 trial before the Honorable Dennis

1 THE COURT I think you've made a good record

2 MR BUTLER Thank you

3 MR DURANT Your Honor, I will prepare to call
4 Mr Douglas, Catrell Douglas And I'm not sure how long
5 this will take, but it may pretty much take us the rest of
6 the day

7 THE COURT The jury is all back now?

8 THE BAILIFF Yes

9 THE COURT Okay Bring them in
10 (WHEREUPON, the following proceedings were held
11 in the presence of the jury)

12 THE COURT We're back and the State will call
13 their next witness

14 MR. DURANT Thank you, Your Honor, the State
15 would call Catrell Douglas

16 CATRELL DOUGLAS,
17 being first duly sworn, testified as follows

18 THE CLERK Please be seated Please state your
19 full name to the Court and spell your last.

20 THE WITNESS My full name is Catrell Donta
21 Douglas, last name is D-O-U-G-L-A-S

22 DIRECT EXAMINATION

23 BY MR DURANT

24 Q How old are you, Mr Douglas?

25 A Twenty-two years old

C DOUGLAS - DIRECT EX BY MR DURANT

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1 Q Where do you live?

2 A Petersfield Road

3 Q Who do you live with?

4 A My parents

5 Q And what are your parents' names?

6 A Denise Moultrie and Gerald Moultrie

7 Q How long have you lived in the Hollywood area?

8 A All of my life

9 Q Are you currently working?

10 A Yes, sir

11 Q Where do you work?

12 A Sandersville Construction

13 Q Prior to this present incident, have you ever
14 been in trouble with the law before?

15 A No, sir

16 Q And you are in trouble now, are you not?

17 A Yes, sir.

18 Q You have been charged with murder in this case?

19 A Yes, sir

20 Q And that charge is still pending against you?

21 A Yes, sir

22 Q Tell this jury what I have promised you in
23 exchange for your testimony today

24 A You haven't promised me anything

25 Q What is your -- is your attorney in the

C DOUGLAS - DIRECT EX BY MR DURANT

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1 courtroom?

2 A Yes, sir

3 THE COURT Could you lean forward and speak
4 into the microphone, please?

5 THE WITNESS Yes, sir

6 BY MR DURANT.

7 Q Is your attorney in the courtroom today?

8 A Yes, sir

9 Q That would be your attorney sitting on the front
10 row here?

11 A Yes, sir

12 Q Mr Holmes?

13 A Yes, sir

14 Q Has Mr Holmes promised you anything in exchange
15 for your testimony?

16 A No, sir

17 Q Do you know Tremayne Washington?

18 A Yes, sir

19 Q What name do you know him by?

20 A Friend

21 Q How do you know him?

22 A By being in the neighborhood

23 Q Is he from Hollywood?

24 A No, sir

25 Q Does he spend much time in Hollywood?

C DOUGLAS - DIRECT EX BY MR. DURANT

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- 1 A Spent a little time there
- 2 Q Do you know who he's friends with in Hollywood?
- 3 A Not really, sir.
- 4 Q How long did you know Fiend prior to this
- 5 incident in May of 2003?
- 6 A Maybe a couple of months.
- 7 Q Now, what is your relationship with -- do you
- 8 know this fellow?
- 9 A Yes, sir.
- 10 Q What is your relationship with him?
- 11 A Friends
- 12 Q How long have you known Mr Ward?
- 13 A Several years
- 14 Q What name do you know him by?
- 15 A Mix.
- 16 Q And you're how old again?
- 17 A Twenty-two.
- 18 Q Are you older or younger?
- 19 A Younger
- 20 Q How much younger?
- 21 A Maybe three or four years
- 22 Q What is John Ward's nickname?
- 23 A Mix
- 24 Q Do you know what type of vehicle Fiend owned
- 25 back in May of 2003?

1 A Yes, sir

2 Q What kind?

3 A Green Dodge Ram

4 Q And I would like you to take a look at State's
5 Exhibits 14 and 15 and ask if you recognize that vehicle?

6 A Yes, sir

7 Q And whose vehicle is that?

8 A Washington

9 Q Where is John Ward from?

10 A Petersfield

11 Q Going back to May 11th, 2003, were you at the
12 Club Diamante that night?

13 A Yes, sir

14 Q How did you get to Club Diamante?

15 A I was dropped off

16 Q You were dropped off by whom?

17 A Latasha Johnson

18 Q Who is Latasha Johnson?

19 A A friend

20 Q And did she go to the club with you or just drop
21 you off?

22 A She just drop me off

23 Q Do you recall what time it was when you got to
24 the club?

25 A Between 1 00 and 1 30

C DOUGLAS - DIRECT EX BY MR. DURANT

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1 Q What did you do after you got to the club?

2 A I went inside

3 Q What did you do inside?

4 A Sat at the bar.

5 Q Were you with anybody at that time?

6 A No, sir.

7 Q Were you drinking that night?

8 A Yes, sir

9 Q What were you drinking?

10 A Beer

11 Q How much beer?

12 A Maybe three or four

13 Q Were you drunk?

14 A No, sir

15 Q How long were you in the club?

16 A Maybe an hour and a half.

17 Q Did you see John Ward and Tremayne Washington in
18 the club that night?

19 A Yes, sir

20 Q Where did you see them?

21 A Mingling around in the crowd

22 Q Do you recall there being any problems inside
23 the club that night?

24 A Not to my knowledge

25 Q You didn't see anything?

1 A No, sir

2 Q What did you do when the club emptied out? Were
3 you near the dance floor?

4 A No, sir

5 Q Where were you inside the club?

6 A I was still at the bar

7 Q Where is the bar in relation to where the dance
8 floor is?

9 A The bar is at the front The dance floor is at
10 the back

11 Q What happened when the club emptied out that
12 night?

13 A Everybody went outside

14 Q What was going on outside?

15 A A fight or something broke out.

16 Q Where did the fight occur?

17 A In the road

18 Q Whereabouts in the road?

19 A In the middle of the road

20 Q In the front of the club?

21 A Front of the club

22 Q Down Baptist Hill way, down Hollywood way or
23 where?

24 A Right in front of the club

25 Q What do you remember about the squabble out in

1 front of the club?

2 A Not very much because I wasn't close to it.

3 Q Where were you standing at the time?

4 A I was still standing in front of the club

5 Q You didn't see what was going on?

6 A No, sir.

7 Q Do you know who was involved in the squabble?

8 A No, sir.

9 Q Did you see anybody that you knew out there?

10 A It's a local club, everybody know everyone out
11 there

12 Q Pardon?

13 A It is a local club, everybody know everyone out
14 there

15 Q I'm talking about in terms of the fighting that
16 was going on out in the street?

17 A I really wasn't paying attention

18 Q Now, while this was going on, what happened?

19 A While this was going on, I let Washington know I
20 needed a ride home and he gave me the keys so I could go
21 get the truck so we could leave.

22 Q Where was the truck?

23 A On the side of the building

24 Q Which side of the building?

25 A On the right-hand side of the club

1 Q Okay Referring you to State's Exhibit No. 6,
2 have you seen this before?

3 A Yes, sir

4 Q I believe club, Toogoodoo Road. Where was his
5 truck parked?

6 A On this side by the club, this side of the club

7 Q And where was the fight going on out in the
8 road?

9 A Right here

10 Q Do you remember seeing anybody get chased that
11 night?

12 A No, sir

13 Q Now, what did you do when Washington gave you
14 the keys to the truck?

15 A I went to get the truck and pull it up so we
16 could get in and leave

17 Q Was the truck locked?

18 A I really don't know.

19 Q You don't remember?

20 A I don't remember

21 Q So what did you do when you cranked the truck
22 up?

23 A I pulled it up in the driveway so we could go

24 Q And who got into the truck?

25 A Washington and Ward

C DOUGLAS - DIRECT EX BY MR DURANT

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1 Q And who got into the truck where?

2 A Washington got in behind the driver's seat and
3 Ward got in the passenger side

4 Q Front passenger or back passenger?

5 A Front passenger

6 Q Pardon?

7 A Front passenger

8 Q And where did you pull the truck when they got
9 into it, where did they get into the truck at?

10 A Right there.

11 Q Okay. They were together when they got into the
12 truck?

13 A Yes, sir

14 Q Now, you know Anthony Washington, Antonio
15 Washington?

16 A Yes, sir

17 Q What name do you know him by?

18 A Ton-Ton

19 Q And what kind of car does he drive?

20 A Green Cadillac

21 Q Did you see that green Cadillac out there that
22 night?

23 A Yes, sir

24 Q Where did you see the green Cadillac?

25 A Sitting further up the road

- 1 Q Sitting where?
- 2 A Further up the road
- 3 Q Up the road where?
- 4 A Going toward the Hollywood side
- 5 Q Okay And was this at about the time that Fiend
6 and Mix got in the truck?
- 7 A Excuse me?
- 8 Q Was this at about the time that Fiend and Mix
9 got in the truck?
- 10 A Yes, sir
- 11 Q What happened after Fiend and Mix got in the
12 truck?
- 13 A Shots were fired.
- 14 Q Who fired the shots?
- 15 A Mr Ward
- 16 Q Where was Mr Ward firing shots?
- 17 A He was shooting out the passenger window.
- 18 Q The front passenger window of the truck?
- 19 A Yes, sir
- 20 Q Could you tell what he was shooting at?
- 21 A No, sir
- 22 Q Could you tell in what direction he was
23 shooting?
- 24 A No, sir
- 25 Q Well, where was the truck when he started

C DOUGLAS - DIRECT EX BY MR DURANT

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1 shooting out the window?

2 A Right here

3 Q Had you turned onto Toogoodoo Road yet or was he
4 shooting before you turned onto Toogoodoo Road?

5 A Before I turned onto Toogoodoo Road.

6 Q So you were still in the parking lot?

7 A Yes, sir

8 Q Which way was he shooting his gun, was he
9 shooting his gun this way or that way?

10 A Towards the Hollywood side

11 Q Toward the Hollywood side, is that correct?

12 A Yes, sir

13 Q How many times did he shoot?

14 A I really can't remember

15 Q Now, the Cadillac that you saw, where did you
16 see that Cadillac?

17 A Right about here

18 Q It was in the road And which way was it going?

19 A Facing toward Hollywood

20 Q It was facing this way?

21 A Uh-huh

22 Q Do you know what kind of gun Ward was using?

23 A No, sir

24 Q Do you know whose gun it was?

25 A No, sir

1 Q Do you know the difference between a revolver
2 and an automatic?

3 A Yes, sir

4 Q Was it an revolver or an automatic?

5 A Automatic

6 Q Do you know what color it was?

7 A It was black

8 Q Did you know where he got the gun?

9 A No, sir

10 Q Do you know whether Tremayne Washington owned a
11 gun?

12 A No, sir

13 Q You never seen Tremayne Washington in possession
14 of a gun before?

15 A Yes, sir

16 Q Where?

17 A In his truck

18 Q Where in his truck?

19 A In the console

20 Q Where, in the center console?

21 A In the center console

22 Q When had you seen a gun in Mr. Washington's
23 truck in the center console?

24 A I really can't say, weeks

25 Q That night or a different time?

C DOUGLAS - DIRECT EX BY MR DURANT

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1 A No, different time

2 Q What kind of gun had you seen in the center
3 console of Mr Washington's truck before?

4 A It was an automatic

5 Q What color?

6 A The handle I saw it was black

7 Q Did you see anyone shooting at the truck that
8 you were in?

9 A Excuse me?

10 Q Did you see anyone shooting at you, at the truck
11 that you were in?

12 A No, sir

13 Q From anywhere else outside?

14 A No, sir

15 Q Did you hear anyone?

16 A No, sir

17 Q Shooting at the truck?

18 A No, sir

19 Q Did you hear any gunshots other than Mr Ward's
20 gunshots?

21 A No, sir

22 Q What did you do after Mr Ward shot out the
23 passenger window of the truck?

24 A I panicked at first When I first -- when I
25 started opening to leave like that

- 1 Q Which way did you go?
- 2 A Towards the Hollywood side
- 3 Q The same way the Cadillac had gone?
- 4 A Yes, sir
- 5 Q Would it be safe to say you were going fast?
- 6 A Yes.
- 7 Q Do you know where the Cadillac went?
- 8 A No, sir
- 9 Q After you turned right on Toogoodoo Road, where
- 10 did y'all go?
- 11 A We went back to Petersfield
- 12 Q How far is Petersfield from the club?
- 13 A Maybe five minutes
- 14 Q And where in Petersfield did y'all go?
- 15 A We went back to Ward's mother's house
- 16 Q And where does Ward's mother live?
- 17 A On Petersfield Road.
- 18 Q And you live on Petersfield Road, too, is that
- 19 right?
- 20 A Yes, sir
- 21 Q And why did y'all go to Ward's mother's house?
- 22 A He wanted to get his car
- 23 Q Whose car?
- 24 A Ward's
- 25 Q What kind of car was he driving at the time?

C DOUGLAS - DIRECT EX BY MR DURANT

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1 A A Buick

2 Q And what happened after you took Ward to his
3 mama's house?

4 A He asked us to meet him

5 Q Pardon me?

6 A He asked us to meet him at another spot
7 somewhere

8 Q Where did he ask you to meet him at?

9 A At Nelly Pinkney's house

10 Q And Nelly Pinkney lives where?

11 A She lives on Brewer Road

12 Q And Brewer Road is a dirt road, is that correct?

13 A Yes, sir

14 Q And it turns off of a paved road, is that
15 correct?

16 A Yes, sir

17 Q Do you know what the paved road is that it comes
18 off of?

19 A Ethel Post Office

20 Q And do you know where Alford Road is?

21 A No, sir

22 Q Do you know where Keith Richards lives?

23 A Yes.

24 Q Doesn't he live right there where Brewer Road
25 and another road come together at Ethel Post?

C DOUGLAS - DIRECT EX BY MR DURANT

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1 A Yeah

2 Q Now, when you went to Nelly Pinkney's house,
3 were you still driving the truck at the time?

4 A Yes, sir

5 Q And who was in the truck with you?

6 A Washington

7 Q And where was Ward at the time?

8 A In his car

9 Q And was that car following you?

10 A Somewhat, yeah

11 Q He's coming on behind you Now --

12 MR DURANT. Just a second, Your Honor, while
13 that warms up a little bit

14 BY MR. DURANT

15 Q Up on the screen is State's Exhibit No 13 Do
16 you recognize that residence?

17 A Yes, sir

18 Q Whose house is that?

19 A Shirley Ward

20 Q And do you know what road that is on?

21 A I think that's still on Brewer Road

22 Q Okay And if you look at that house, where is
23 Nelly Pinkney's house?

24 A On the left-hand side

25 Q It would be on the left-hand side of that house?

C DOUGLAS - DIRECT EX BY MR DURANT

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1 A Yes, sir

2 Q Now, looking at State's 14 --

3 MR DURANT Give me State's 14, please

4 BY MR DURANT

5 Q And State's 15, is that where you parked the
6 truck?

7 A No, sir

8 Q Where did you park the truck?

9 A In Nelly Pinkney's driveway

10 Q In the front or the back?

11 A Front.

12 Q Do you know if Nelly Pinkney has any
13 relationship with John Ward or Tremayne Washington?

14 A I know that she's John Ward's cousin or aunt or
15 whatever

16 Q Okay Do you know where Tremayne used to stay
17 sometimes when he was -- or do you know where did Tremayne
18 stay when he stayed in Petersfield?

19 A I don't know

20 Q Okay

21 MR DURANT. That's all You can kill it

22 BY MR DURANT

23 Q So what happened after you parked the front of
24 the truck in front of Nelly Pinkney's house?

25 A We got back in Ward's car and left.

1 Q And when you left, what happened?

2 A As we were driving down the dirt road, Ward
3 asked me to drive because I figured he was still upset
4 from what just happened

5 Q And what happened?

6 A I drove and went back by the club to see what
7 happened

8 Q Now, before that, did you receive any phone
9 calls?

10 A No, sir

11 Q Were any phone calls made?

12 A Yes, sir

13 Q By whom?

14 A I think Washington made the call

15 Q And whose phone did he use?

16 A Mine

17 Q Your cell phone?

18 A Yes, sir

19 Q Do you recall what your cell phone number was at
20 the time?

21 A 693-0251

22 Q And what was the cell company?

23 A Verizon

24 Q Now, do you know who he called?

25 A No, sir

C DOUGLAS - DIRECT EX BY MR DURANT

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1 Q What happened after he made that call?

2 A I guess someone told him that someone got shot
3 up there

4 Q Did y'all know at that time who had gotten shot?

5 A No, sir

6 Q Where did y'all go after that phone call?

7 A We went back by the club

8 Q The club on Toogoodoo Road?

9 A Yes, sir

10 Q What did you see when you got back over to the
11 club on Toogoodoo?

12 A I saw EMS and a crowd of people

13 Q Did you stop?

14 A No, sir

15 Q What did y'all do?

16 A We ride right on through

17 Q What were you thinking at this time?

18 A My mind went blank

19 Q Do you know what happened to the weapon that
20 John Ward had that night?

21 A No, sir.

22 Q Do you know whether Tremayne was shooting in the
23 back seat?

24 A No, sir

25 Q You're saying that he didn't shoot or you don't

1 know or what?

2 A I don't know

3 Q Where was the gun the last time you saw it?

4 A In Ward's hand

5 Q And when was that, when he was still in the
6 truck or later?

7 A Still in the truck

8 Q Now, you were picked up by the police on May the
9 23rd, is that correct?

10 A Yes, sir

11 Q And where did they take you? Where did they
12 take you?

13 A To the little station to question me

14 Q Took you to a little station where?

15 A In Ravenel

16 Q And what happened when you got there?

17 A They questioned me about what happened that
18 night

19 Q And you gave them a statement?

20 A Yes, sir

21 Q Did you tell them the truth?

22 A Not in the first statement

23 Q What did you tell them the first time, if you
24 remember?

25 A I don't know anything

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1 Q Didn't know anything about anything, did you?

2 A No, sir

3 Q What did they tell you?

4 A They didn't believe it

5 Q And did you continue to talk to them?

6 A Yes, sir

7 Q What did you do?

8 A I gave them a second statement

9 Q And what did you tell them in the second
10 statement?

11 A I told them that I was driving the truck, I
12 didn't know anything else

13 Q You told them you were in the truck, but nobody
14 in the truck was shooting, right?

15 A Yes, sir

16 Q What did the police tell you?

17 A Still didn't believe me

18 Q Did you continue to talk to them?

19 A Yes, sir

20 Q And then what did you tell them?

21 A I told them that I was driving the truck and
22 when I was driving the truck, Ward shot out of it

23 Q Excuse me. Go ahead repeat it

24 A While I was driving the truck, John Ward shot
25 out of it

C DOUGLAS - DIRECT EX BY MR DURANT

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1 Q Was that the truth?

2 A Yes, sir

3 Q And that's what you told this jury today?

4 A Yes, sir

5 MR DURANT Would you please answer any
6 questions that defense counsel may have for you

7 THE WITNESS Yes, sir

8 CROSS-EXAMINATION

9 BY MR RUNYON

10 Q Good afternoon, Mr Douglas

11 A Good afternoon

12 Q Mr Tremayne Washington gave you the keys to his
13 truck in the club?

14 A No, sir, outside the club.

15 Q Outside the club And why did he give you the
16 keys to the truck?

17 A Because I asked him for a ride home

18 Q You asked him for a ride home?

19 A Yes, sir.

20 Q And he said go get his truck?

21 A Yes, sir

22 Q He was going to let you drive his truck because
23 of what reason?

24 A His own personal reasons.

25 Q Okay He wasn't intoxicated or anything of that

1 sort?

2 A I really can't tell

3 Q You really couldn't tell So you get the truck
4 and Mr Washington gets in the back seat?

5 A Yes, sir

6 Q Did you and Mr Washington and Mix agree that
7 somebody was going to shoot out of the truck?

8 A No, sir

9 Q Did anybody ever talk about that?

10 A No, sir

11 Q Okay Now, you say you don't know if
12 Mr Washington shot out the back of the truck -- shot out
13 of the back window?

14 A Yes, sir

15 Q But how many guns were you aware of that were
16 around?

17 A In the truck?

18 Q In the truck

19 A Just the one that Ward had.

20 Q Okay. Just the one that Ward had Let me ask
21 you this You drove that vehicle, did you not, sir?

22 A Yes, sir.

23 Q And it's got like a running board and a step to
24 get into it?

25 A Yes, sir.

1 Q It's pretty far off the ground?

2 A Yes, sir

3 Q Okay So you have to actually open the truck,
4 step up in -- step on the step more or less and then get
5 in the truck?

6 A Yes, sir

7 Q Okay Now, y'all didn't chase the green
8 Cadillac down the road, you just were getting out of
9 there?

10 A Yes, sir

11 Q You didn't hear any shots before this or any
12 shots after it?

13 A No, sir

14 Q Okay Do you know who parked the truck behind
15 that lady's house?

16 A No, sir

17 Q All right When you got there, you parked it in
18 the driveway?

19 A Yes, sir

20 Q And you and Mr Washington got out and got in
21 Mr Ward's car?

22 A Yes, sir

23 Q And then Mr Ward took y'all some place?

24 A Yes, sir

25 Q And you went back by the club?

C DOUGLAS - CROSS-EX BY MR RUNYON

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1 A Yes, sir

2 Q And after that, where did he take you?

3 A I was driving.

4 Q You were driving Mr Ward's car?

5 A Yes, sir

6 Q So Mr. Ward was -- where did you go after you
7 went back by the club?

8 A We went back by the club and came back and went
9 back to Petersfield

10 Q Where in Petersfield?

11 A Close by my house

12 Q Okay Where did Mr -- where was Mr. Washington
13 at this time?

14 A Still in the car

15 Q Still in the car In the back seat of the car?

16 A Front seat

17 Q Front seat Did you leave him off anywhere, let
18 him off anywhere?

19 A No, sir.

20 Q Okay. When and where did you and Mr Ward and
21 Mr Washington get out of the car?

22 A Nowhere When I went back to Petersfield, I
23 pulled into a dirt road close by my house and I got out
24 and walked home.

25 Q Where did you get out?

1 A Dirt road close by my house

2 Q Okay And did you get out?

3 A Yes, sir

4 Q And did Mr Washington get out?

5 A I don't know, I didn't turn around and look.

6 Q You don't know what Mr Ward did?

7 A No, sir.

8 Q Okay And so, basically, what you're saying you
9 did was after -- when the police came to you, you didn't
10 tell them the truth at first?

11 A No, sir

12 Q And, basically, you just were not truthful about
13 what you knew had happened before?

14 A Yes, sir

15 Q Certainly, no one had planned what occurred?

16 A Excuse me?

17 Q When you were in the truck, you didn't say John
18 get the gun and shoot at somebody, did you?

19 A No

20 Q Did you hear Mr Washington say that?

21 A No

22 Q All right The gun was taken -- the first thing
23 you know is you saw Mr. Ward with a gun in his hand?

24 A Yes

25 Q And shooting at something?

1 A Yes

2 Q For some reason?

3 A Yes

4 Q You showed us on -- you pointed to this chart
5 where you thought the truck was, in what direction was he
6 shooting?

7 A He was shooting out the passenger window

8 Q At what?

9 A I don't know at what

10 Q Okay. And what direction was he shooting?

11 A In the Hollywood direction

12 Q In the Hollywood direction?

13 A Yes, sir

14 Q You're familiar with that club, aren't you?

15 A Yes

16 Q You've been there before?

17 A Yes, sir

18 Q And you're familiar with the parking out there?

19 A Yes, sir

20 Q There's a small ditch that runs along with the
21 roadway, the drainage?

22 A Yes, sir

23 Q And there's a kind of a driveway and a little
24 bit more of a drainage and then a parking lot?

25 A Yes, sir

1 Q Where were you in relationship to that ditch
2 when Mr Ward fired the weapon?

3 A I was right on the side of the ditch

4 Q Beg your pardon?

5 A I was pulling out the parking lot around the
6 side of the ditch

7 Q You were pulling out the parking lot around the
8 side of the ditch?

9 A Yeah

10 Q And do you know if anyone shot at y'all?

11 A No, sir

12 Q Okay Now, there's no question in your mind
13 that Mr Ward shot out the window of the truck, correct?

14 A Right

15 Q He must have rolled the window down, didn't he?

16 A Yes, sir.

17 Q He didn't shoot through the glass?

18 A No, sir

19 Q So the window was rolled down at some point and
20 you're saying Mr Ward shot out the window?

21 A Yes, sir

22 Q Or out of the window would be correct English
23 And you have no idea what he was shooting at?

24 A No, sir.

25 Q Now, when you pulled onto the roadway, onto

1 Toogoodoo Road?

2 A Yes, sir

3 Q Heading back towards Hollywood, is that correct?

4 A Yes

5 Q Did Mr Ward shoot out of the window at that
6 point in time?

7 A Not that I know of

8 Q Okay So at no time did y'all go down the road
9 with him shooting?

10 A No, sir

11 Q Now, going back to Mr Washington giving you his
12 keys to get his truck?

13 A Yes, sir.

14 Q You knew what was his truck was -- you knew what
15 truck was his, didn't you?

16 A Yes, sir

17 Q Is there any reason why he didn't go get his own
18 truck?

19 A I don't know

20 Q He just said here's the keys, go get the truck?

21 A Yes, sir

22 Q Was Mr. Ward with Mr Washington at the time he
23 gave you the keys to the truck?

24 A No, sir

25 Q All right And you went and pulled the truck up

1 and Mr Washington got in the back seat?

2 A Yes, sir

3 Q When did Mr Ward get in the truck?

4 A After he got in the back seat

5 Q So he just kind of came up almost at the same
6 time?

7 A I think so

8 Q The next thing you know someone is shooting down
9 the road?

10 A Yes, sir

11 Q Did you say anything to anybody, to Mr. Ward or
12 to Mr Washington, at the time the shots were fired?

13 A No, sir

14 Q Did you hear Mr. Washington say anything to
15 anyone at the time the shots were fired?

16 A No, sir

17 Q It's just all of a sudden, these shots were
18 fired?

19 A Yes, sir

20 Q When you pulled out on the road, where was the
21 green Cadillac?

22 A Sitting in the middle of the road.

23 Q Sitting in the middle of the road?

24 A Yes, sir

25 Q And was the green Cadillac in your way when you

C DOUGLAS - CROSS-EX BY MR RUNYON

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1 pulled out or did you pull out into the roadway heading in
2 the opposite lane of traffic, travel?

3 A It wasn't in my way

4 Q It wasn't in your way at all?

5 A No

6 Q Did you pull in behind him?

7 A When I pulled out, he was already gone

8 Q He was already gone?

9 A Yes

10 Q After you saw the gun at the initial firing, did
11 you ever see the weapon after that?

12 A No, sir

13 MR RUNYON I have no further questions of this
14 witness at this time

15 MR BUTLER May we approach?

16 THE COURT Yes

17 (WHEREUPON, a bench conference was held in the
18 presence of the jury but outside the hearing of
19 the jury)

20 THE COURT. All right Folks, what we're going
21 to do is -- it's after 5 00, so we're going to break for
22 the evening What I would like to do is start a little
23 bit earlier tomorrow morning and ask that y'all be in by
24 9-00 and we'll start tomorrow morning at 9 00 and that
25 will help get us on track so we get this case finished up

1 this week So if that doesn't cause anybody any
2 heartache, I would like to have y'all here by about five
3 minutes till 9 00 and we'll get started at 9 00 promptly
4 tomorrow morning

5 Let me leave you with the admonition not to
6 discuss the case or begin deliberations or talk about the
7 case in any way with anybody

8 If you wouldn't mind, let me just have
9 Mrs White, if you would, just come up for a second after
10 I let everybody go so I can discuss your note with you
11 before you leave

12 Otherwise, I will see the rest of y'all tomorrow
13 morning at 9 00 Thank you very much

14 (WHEREUPON, the following proceedings were held
15 outside the presence of the jury)

16 THE JUROR Yes, sir

17 THE COURT. Your note, you talk about -- the
18 only part that gives me concern is so far we've only had
19 Channel 2 and Channel 4 ask to cover -- or Channel 2 and 5
20 ask to cover it I don't think anybody was here today
21 But you say if we air the story, I cannot avoid it. What
22 do you mean?

23 THE JUROR I'm an audio technician Basically,
24 I don't have the opportunity --

25 THE COURT I'm sorry, if y'all want to come up,

1 we're talking about what she does

2 THE JUROR: I don't have really -- I'm not
3 really given the occasion to pay close attention to the
4 new stories because I'm focusing on out Q's and role Q's,
5 however, it is playing in front of me, so

6 THE COURT: Well, do this, so far, your station
7 hasn't asked to cover it If they do ask to cover it, I
8 would ask if it looks like in any way anybody is asking
9 you to do anything with it, tell them that the judge said
10 you can't do anything with the case And, of course, if
11 any of your co-workers ask you anything about the case,
12 you can't discuss it

13 THE JUROR Of course

14 THE COURT If it in any way raises a problem,
15 please bring it to my attention so I can talk to them and
16 explain

17 THE JUROR: Most definitely I don't think we
18 will be covering it, but we do make a rundown before the
19 show so I will have a heads up and, most likely, I could
20 make other arrangements to be absent

21 THE COURT If there's any problem at all, let
22 me know Thank you.

23 THE JUROR: Uh-huh

24 THE COURT: Okay We'll see y'all tomorrow
25 morning then

1 MISS JENKINSON May I approach on an unrelated
2 matter?

3 THE COURT You come back -- be here at about
4 8 45 in the morning so we can get started on time.

5 (WHEREUPON, the witness exits the witness
6 stand)

7 (WHEREUPON, the court was in recess for the
8 afternoon of Tuesday, June 7, 2005)

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1 (WHEREUPON, the following proceedings were held
2 before the Court on Wednesday, June 8, 2005.)

3 THE COURT All right Is everyone here? When
4 we left off yesterday, we left with Mr Butler getting
5 ready to begin his cross-examination Over the evening
6 break, both of you sent me e-mails citing different
7 authorities I have had the opportunity to read those
8 cases.

9 Mr. Durant, some of his cases from out of state
10 do seem to support his position that at the time the crime
11 occurred motive to lie arises and that would then preclude
12 you being able to bring in Cabbage's mother, for lack of
13 not remembering the name

14 MR DURENT I just got the cases this morning
15 The only one I've had to read was the one -- that looked
16 to me to be the most on point was the Maryland case.

17 THE COURT· The Maryland case seems to be
18 directly on point

19 MR DURENT My only problem with that case is,
20 apparently, that the mother had some relationship with the
21 victim in that case and there was an equal motive for the
22 person to lie to the mother as there was for her to lie to
23 the police That's not the situation we have here.

24 This conversation with his mother occurred
25 admittedly after the shooting But while the mother

1 knew -- or I think the mother had heard on the street that
2 he might be involved in this thing

3 THE COURT If I recall the testimony correctly,
4 the police had come by their house looking for him.

5 MR DURANT· That may or may not be true. In
6 talking to Mr Holmes after that, he had indicated to me
7 that actually this conversation had occurred prior to the
8 police coming to the house, but as a result of her having
9 heard out on the street that he might have been involved
10 in the incident But, you know, I'll rely on your good
11 judgment, Your Honor I just don't think he had a
12 reason -- and particularly in the context -- particularly
13 in the context that Mr Butler portrayed in his
14 cross-examination before, it was based on the sentence,
15 you know, knowing what the sentence was, the 30-year
16 sentence

17 THE COURT Well, that factors into the improper
18 motive

19 MR DURANT Exactly, improper motive And,
20 obviously, at the time he talked to his mother, he didn't
21 know what the sentence was for murder or anything like
22 that. So it precedes that kind of stuff I mean, I don't
23 have any problem with Mr Butler cross-examining him. You
24 know, you're saying this to try to save your butt.

25 THE COURT I know the question is, though, but

1 you don't then get to come back in and rehabilitate him by
2 putting in his mother's prior consistent statement Or
3 putting in the prior consistent statement through his
4 mother

5 MR DURANT Only to the extent that he alleges
6 that he made up that whole story just to avoid getting a
7 life prison term

8 THE COURT: The implication is that once you
9 know you're in a deep hole, you've got an incentive to
10 lie, to get out of it beginning at the time it occurred

11 MR DURANT Exactly And when he was down at
12 the police station being questioned by the police, he was
13 in a deep hole He was not in that deep hole when he was
14 talking to his mama

15 THE COURT. He was in the deep hole at the time
16 the crime occurred, that's what the cases say That's
17 what the Maryland case says specifically.

18 MR DURANT He was obviously in trouble,
19 there's no doubt about that I'm just saying that he did
20 not have -- the wording of the Maryland statute is a bit
21 different Actually, it looked like the Maryland statute
22 was about the same You know, before the improper motive
23 or influence arose Because it says influence or motive
24 As long as it was made prior to the improper influence or
25 motive arose

1 My argument in this case is his motive, his
2 motive when he was talking to the police was to save his
3 behind His motive when he was talking to his mother was
4 not He had a motive to lie to the police He did not
5 have a motive to lie to his mother

6 THE COURT. All right Under the Maryland case,
7 which is McCraig versus The State, 122 Maryland Appellate
8 598 There's a New York case, also, let's see, I think it
9 was Voley vs State, 699 N E.2nd 620, Thompson versus
10 State, N E.2nd 229, State versus Beard, 652 N E 2nd 465
11 All of those seem to indicate that motive to lie basically
12 arises at the time the crime was committed and he would
13 have therefore had a motive to lie to his mother And
14 under that reasoning, then, it would be improper to allow
15 you to bolster with the prior consistent statement,
16 assuming Mr Butler triggers it by going into the more
17 thorough cross-examination that he proffered yesterday
18 So I'm going to allow him to do that based upon my ruling
19 that it would be improper to allow you to bring in
20 Mrs Douglas to testify to Catrell Douglas' prior
21 consistent statement

22 Now, when we left yesterday Mr. Runyon had just
23 finished his cross, is that correct?

24 MR RUNYON That's correct, Your Honor."

25 THE COURT You did your cross based upon my

1 prior statement that I was inclined to limit -- or allow
2 him to put that statement in Do you wish to reopen your
3 cross-examination now?

4 MR RUNYON No, Judge, just, basically, for the
5 record, I think I would have an opportunity based on
6 what's going to occur with the cross-examination or what
7 have you, if I think it's necessary, to do some recross
8 after these two guys finish fighting with each other.

9 THE COURT All right

10 MR RUNYON I say fighting professionally,
11 Judge.

12 THE COURT Mr Butler, you understand now that
13 you would be allowed to do the cross-examination that you
14 proffered yesterday? Do you understand that?

15 MR BUTLER Yes, I can do what I want to do?

16 THE COURT You can do what you want to do.

17 MR BUTLER That's all I need to know

18 MR DURANT I'm sure that delights him, Your
19 Honor

20 THE COURT I had a feeling it might But I
21 would rather be -- you know, you try to read them and you
22 read them the best you can and go on

23 MR DURANT With regard to the other issue
24 we're probably going to have with regard to Mr Green

25 THE COURT That's a tricky one. I've been

1 looking at Mr Green's statement I would like to get us
2 back on track right now since I told the jury to be here
3 at 9 00, so let's go ahead and deal with getting this
4 going The last thing I like to do is ask people to come
5 in early and then we don't get them in

6 Can you check and see if the jury is all here?

7 MR. DURANT We have a copy of the Jackson V
8 Denno from the first trial regarding the statements given
9 by Mr John Henry Ward I believe we have agreed to have
10 this marked as a Court's Exhibit and made a part of the
11 record in the case as well

12 THE COURT All right And y'all want me to
13 just rule based on that testimony as opposed to hearing
14 it?

15 MR. DURANT That's correct, Your Honor.

16 THE COURT Bring the jury in

17 (WHEREUPON, the following proceedings were held
18 in the presence of the jury)

19 THE COURT Good morning, welcome back. We are
20 now going to resume where we left off yesterday afternoon
21 Mr Butler will now conduct his cross-examination of the
22 witness

23 I remind you, you are still under oath, sir

24 CATRELL DOUGLAS,

25 being previously duly sworn, testified as follows

1 THE COURT Mr. Butler

2 MR BUTLER May it please the Court?

3 (WHEREUPON, the witness, Catrell Douglas,

4 resumes the witness stand)

5 CROSS-EXAMINATION

6 BY MR. BUTLER

7 Q Good morning, Mr Douglas

8 A Good morning

9 Q How are you?

10 A Fine

11 Q Good I want to go back over a little bit your
12 testimony from yesterday concerning the incident Okay?

13 A Yes, sir

14 Q You didn't have a weapon?

15 A No, sir

16 Q So you, obviously, couldn't fire a weapon?

17 A Yes, sir.

18 Q You didn't know that anyone else had a weapon
19 until someone started shooting?

20 A Yes, sir

21 Q You didn't participate in any sort of plan?

22 A No, sir

23 Q Any sort of plan to fight or to shoot?

24 A No, sir

25 Q You didn't drive after or pursue Ton-Ton's

1 Cadillac?

2 A No, sir.

3 Q You didn't know at the time that you were
4 driving away from a crime scene?

5 A No, sir

6 Q You didn't even know about the fight that
7 happened before the shooting?

8 A No, sir

9 Q So you, basically, knew nothing about nothing?

10 A Yes, sir

11 Q You were at the wrong place at the wrong time?

12 A Yes, sir

13 Q A victim of circumstance?

14 A Yes, sir

15 Q You didn't do anything wrong?

16 A No, sir

17 Q You didn't help anybody do anything wrong?

18 A Not to the point where he start shooting and I
19 drove off That's about it.

20 Q You understand based on your testimony you're
21 not guilty of anything, right?

22 A Right

23 Q Definitely not guilty of murder, right?

24 A Right

25 Q Definitely not guilty as an accomplice to

1 murder?

2 A Right

3 Q Yet you sit there charged with murder?

4 A Yes

5 Q So I take it then you expect either for your
6 charges to be dismissed completely, right?

7 A The murder charge, yes

8 Q Or you will go to trial?

9 A Yes

10 Q You don't want to go to trial, do you?

11 A No

12 Q You're hoping that your charges will be
13 dismissed, right?

14 A The murder charge, yes

15 Q Well, you're not guilty of manslaughter either,
16 are you?

17 A No, sir

18 Q You're not guilty of involuntary manslaughter,
19 are you?

20 A No, sir

21 Q You're not guilty of accessory before the fact,
22 are you, to murder?

23 A Yes

24 Q Before the fact?

25 A No, no

1 Q Let me guess, you think you're guilty of
2 misprison of a felony?

3 A Yes, sir.

4 Q You've talked about that with your lawyer?

5 A Yes, sir

6 Q Misprison of a felony is a misdemeanor?

7 A Yes, sir

8 Q Is that what you're expecting to be able to
9 ultimately plead guilty to?

10 A Yes, sir

11 Q And you've had discussions with your lawyer
12 about that?

13 A Yes, sir

14 Q And you're hoping to not get any prison time at
15 all?

16 A I already did a year and a half in jail.

17 Q You did a year and a half in jail and then you
18 got out right after your testimony in a prior hearing,
19 right?

20 A Yes, sir

21 Q Where you testified in December basically the
22 same as you did yesterday?

23 A Yes, sir.

24 Q You sat in jail for 18 months, gave the story
25 that you gave yesterday and then all of a sudden you get

1 out on bond, right?

2 A Yes, sir

3 Q Do you think that was just a coincidence?

4 A No, sir

5 Q I take it from your testimony yesterday that you
6 didn't see even see a weapon until you say John started
7 shooting?

8 A Yes, sir

9 Q Don't know where it came from?

10 A No, sir

11 Q Don't know where he got it from?

12 A No, sir

13 Q It just appeared?

14 A Yes, sir.

15 Q And you cannot say whether Tremayne was firing a
16 weapon?

17 A No, sir

18 Q Don't you think if Tremayne were firing a weapon
19 in the back seat you would know it?

20 A Basically

21 Q You said basically?

22 A (Witness nods head)

23 Q At the time that the shooting happened, the
24 truck was pulling out onto the road?

25 A No, sir

1 Q What was it doing?

2 A It was still parked

3 Q It was still parked?

4 A It was still in the same spot before we went
5 into the road.

6 Q Let me show you Defendant's 1. Okay If this
7 is Club Diamante and this is Toogoodoo Road, where was the
8 truck when the shooting started?

9 A The truck should be right here

10 Q Okay Parked?

11 A No

12 Q Well, was it parked or was it moving?

13 A It wasn't moving because the road was congested,
14 you couldn't get out

15 THE COURT Could you lean forward and speak in
16 the microphone, please

17 THE WITNESS Yes, sir

18 BY MR BUTLER

19 Q Your testimony is that John extended his right
20 arm out the front passenger window and started shooting?

21 A Yes, sir

22 Q If I'm John and I'm in the passenger seat and
23 facing forward, I extend my right arm directly out from my
24 side like that and he started shooting?

25 A Yes, sir.

1 Q You testified that later you ended up driving
2 John's car, right?

3 A Yes, sir

4 Q And that was because he was too upset?

5 A His own personal reasons

6 Q His own personal reason?

7 A Yes, sir

8 Q Did you not on direct testify that he was too
9 upset to drive?

10 A He was either too upset or either drunk, his own
11 personal reasons

12 Q Well, it couldn't have been because his cousin
13 had been shot, could it have been?

14 A I don't know

15 Q Well, it couldn't have been that, because you
16 didn't know that according to your testimony yesterday
17 until later, right?

18 A Yeah.

19 Q So your testimony yesterday is he was too upset,
20 but today it was just his own personal reason?

21 A Same thing

22 Q You're sure it's not that you don't want to
23 admit to driving the car afterwards for some other reason?

24 A No

25 Q It was Tremayne that told you to pull the car

1 around -- the truck around?

2 A Yes

3 Q He told you to pull the truck around and you
4 stayed -- and he stayed in front of the club?

5 A Yes

6 Q And you got in the back seat, Tremayne did?

7 A Yes, sir

8 Q Even though it's his truck?

9 A Yes, sir

10 Q And the back seat of that truck is like a bench
11 seat, right?

12 A Yes, sir

13 Q Unlike the front seat, they're bucket seats?

14 A Yes, sir.

15 Q Let's talk about the statements that you gave to
16 the police Mr Durant went through this with you a
17 little bit yesterday You admit you lied in those
18 statements?

19 A Yes, sir

20 Q Despite the fact that you signed them numerous
21 times saying they are the truth?

22 A Yes, sir

23 Q Despite the fact that you know that it's a crime
24 to lie to the police, right?

25 A Yes, sir

1 Q You lied to the police knowing that it was a
2 crime to lie to the police because you did not want to be
3 charged with murder, did you?

4 A Yes, sir

5 Q And to avoid being charged with murder, you were
6 willing to lie?

7 A Yes, sir

8 Q I want to show you what has been marked
9 Defendant's 2 for ID and ask you if you recognize that as
10 your first written statement to police?

11 (WHEREUPON, Defendant's Exhibits Nos 2, 3 AND 4
12 were marked for identification only)

13 BY MR. BUTLER

14 Q Do you recognize that?

15 A Yes, sir

16 Q That's the statement that you gave the police on
17 May 23rd, 2003?

18 A Yes, sir

19 Q Twelve days after the incident, right?

20 A Yes, sir.

21 Q About the middle of the page, you say I did not
22 know anyone was shot until I got home, right?

23 A Yes, sir

24 Q That was a lie?

25 A Yes, sir

1 Q A little bit further down, I caught a ride with
2 someone near the front of the club I don't remember who
3 gave me a ride home That was a lie?

4 A Yes, sir

5 Q I did not see Fiend's truck at the club that
6 night That was a lie?

7 A Yes, sir

8 Q So that's three lies, right?

9 A Yeah

10 Q The last time I was in the truck was Friday.
11 I'm not sure of the time, but it was still daylight Is
12 that true or false?

13 A False

14 Q All right So that was a lie I did not know
15 Fiend to own a gun and I did not see a gun in his truck
16 That's two lies, right?

17 A True

18 Q I have driven the truck before, but only to move
19 it out of someone's way That was a lie?

20 A True

21 Q So at this point, we're at seven lies, right?

22 A Yes, sir

23 Q Why did you just throw in there that you had
24 driven the truck before but not that night?

25 A My own personal reasons

1 Q Your own personal reasons Well, share them
2 with us, if you could, please Why did you throw that in
3 there?

4 A Because I was afraid they would get the
5 fingerprints out the truck

6 Q Right You were worried that they were going to
7 get fingerprints out of the truck showing you had driven
8 the truck so you wanted an alternative explanation as to
9 why they would be there, right?

10 A Yes, sir

11 Q Let me guess, they were pressing you about who
12 was driving the truck, weren't they?

13 A Yes, sir

14 Q And when I say they, you understand I mean the
15 police?

16 A Yeah

17 Q And they were pressing you saying look, we know
18 you were in the truck, you might as well tell us, weren't
19 they?

20 A Yes

21 Q And they were telling you hey, if you've driven
22 that truck, your fingerprints are going to be in it and
23 we're going to find out you're lying, didn't they?

24 A No

25 Q They didn't tell you that?

1 A No

2 Q They did tell you that they knew you had been
3 driving the truck and you should tell them?

4 A Yes, sir

5 Q And in order to account for the physical
6 evidence that they may find you say oh, yeah, I did drive
7 the truck, but it wasn't that night, it was before, right?

8 A Right

9 Q And that was in response to them pressing you
10 about that issue, right?

11 A Yes

12 Q You didn't just up and volunteer and say oh, by
13 the way, I've driven that truck before, did you?

14 A No

15 Q That was something they wanted to know, right?

16 A Yes, sir

17 Q A little bit further down on the second page,
18 did you see anyone shooting at the club I take it now
19 based on your testimony that that was a lie?

20 A Yes, sir

21 Q Do you know Ton-Ton?

22 A Yes, sir

23 Q All right You said no, right?

24 A (Witness nods head)

25 Q That was a lie?

1 A Yes, sir

2 Q And was he at the club You said no That was
3 a lie?

4 A Yes, sir

5 Q So that's ten lies at this point, right?

6 A Yes, sir

7 Q You didn't see the fight outside the club,
8 though, right?

9 A Excuse me?

10 Q The fight outside the club, you did not see
11 that?

12 A No

13 Q So that was the truth, okay And all of this,
14 you know that they're talking to you about a shooting and
15 a murder, right?

16 A Yes, sir

17 Q And when they're questioning you about a murder,
18 you basically say hey, I was there, but I don't know
19 anything about anything, right?

20 A Yes, sir

21 Q Okay. Go back to the top of the first page
22 Are you with me?

23 A Yes, sir.

24 Q Tell me if I'm reading this correctly On
25 May 11th, 2003, I arrived at Club Diamante about 1 30 a m.

1 A friend of mine dropped me off While I was at the club,
2 I did not see anyone with a gun I saw John Ward and
3 Friend in the club And Friend -- by Friend, you mean
4 Tremayne Washington, right?

5 A Yes, sir

6 Q But I did not see them having problems with
7 anyone I did not see Jamie Simmons in the club Okay
8 Is that basically what that says?

9 A Yes, sir.

10 Q So in the second sentence that you start -- in
11 the second sentence that you give police, you start
12 talking about Tremayne Washington and John Ward, right?

13 A In the second statement?

14 Q No, I'm sorry, the second sentence of your first
15 statement?

16 A Yes, sir

17 Q All right And Jamie Simmons?

18 A Yes, sir

19 Q There were dozens of people at that club that
20 night, right?

21 A Yes, sir

22 Q You knew many of them, right?

23 A Yes, sir

24 Q How many other people's names appear in your
25 two-page statement going onto the third page statement to

1 police? How many other names do you mention besides Jamie
2 Simmons, John Ward, Tremayne Washington?

3 A I can't really remember

4 Q Well, look it over and see Would you agree
5 with me the answer to that question is none?

6 A None

7 Q Nobody else?

8 A No

9 Q So out of the dozens of people that were present
10 at the scene that night, in your second sentence, you just
11 chose to start talking about John Ward and Tremayne
12 Washington?

13 A First of all, this isn't the first statement

14 Q That's not your first statement?

15 A No It's wrote in paragraph form, the questions
16 from the first one

17 Q Are you saying that you gave an initial verbal
18 statement that he then committed to writing?

19 A Yeah.

20 Q Okay You didn't bring up John Ward and
21 Tremayne Washington, did you?

22 A No

23 Q They did?

24 A They did

25 Q The cops did?

1 A Yes.

2 Q They wanted to know about Ward and Washington,
3 right?

4 A Yes, sir

5 Q They specifically were asking you about Ward and
6 Washington, right?

7 A Yes, sir

8 Q You didn't bring those names into the
9 discussion, the police did, right?

10 A Yes, sir

11 Q In the same way that they were pressing you
12 about your driving, right?

13 A Yes, sir

14 Q They pressed you -- despite your claims to the
15 contrary, they pressed you about you driving, right?

16 A Yes, sir

17 Q And they pressed you about Ward and Washington,
18 right?

19 A Yes, sir

20 Q And that's why you mentioned Ward and Washington
21 in the second sentence of your first written statement,
22 right?

23 A Yes, sir.

24 Q Okay They didn't believe you, though, did
25 they?

1 A No, sir

2 Q So they had you give a second written statement,
3 right?

4 A Yes, sir

5 Q I want to show you what's marked Defendant's
6 Exhibit 3 for ID and let me ask you if you recognize that
7 as your second written statement?

8 A Yes, sir

9 Q And that's given to the police the same night,
10 right?

11 A Yes, sir

12 Q The 23rd? After they don't believe you about
13 what you're telling them in the first statement, right?

14 A Yes, sir

15 Q They pressed you and then you admitted you were
16 driving the truck, right?

17 A Yes, sir

18 Q And you told them that Fiend gave you the keys?

19 A Yes, sir

20 Q While outside the club, right?

21 A Yes, sir

22 Q And that Fiend told you to crank up the car,
23 right?

24 A Yes, sir

25 Q And there's no mention of John Ward anywhere, is

1 there?

2 A No, sir

3 Q And they asked you specifically if you had seen
4 either one of them with a gun and you said no?

5 A Yes, sir

6 Q Did you see Fiend or John with a gun and your
7 answer is no, right?

8 A Yes, sir

9 Q You signed that statement as being the truth
10 about -- I don't know, about eight times, is that right?

11 A Yes, sir

12 Q They asked you when you heard the first gunshots
13 and you said when you were pulling off, right?

14 A Yes, sir

15 Q And by that, you meant when you were pulling out
16 onto the road, right?

17 A Yes, sir

18 Q And said you heard eight or nine shots?

19 A Yes, sir.

20 Q But they were coming from behind you?

21 A Yes, sir

22 Q Right?

23 A (Witness nods head)

24 Q And from behind you, you meant -- referring to
25 Defendant's 1, you meant back over by the club, right?

1 A Yes, sir

2 Q Was that true or not true?

3 A Not true

4 Q They asked you specifically did John shoot a gun
5 from the truck and your answer was no, right?

6 A Yes, sir

7 Q Again, they're pressing you about John and
8 Tremayne, right?

9 A Yes, sir

10 Q You're not bringing up their names, the police
11 are, right?

12 A Yes, sir

13 Q They asked you if John shot from the truck, you
14 said no Then they asked you did Fiend shoot a gun from
15 the truck and your answer was what?

16 A Not that I know of

17 Q Not that I know of You agree with me that no
18 is different than not that I know of, isn't it?

19 A Yes, sir

20 Q No means just what it says, no, right?

21 A Yes, sir

22 Q Not that I know of means he may have, but I
23 don't know, right?

24 A Yes, sir

25 Q But wouldn't you have known if Tremayne had shot

1 a gun from inside the truck?

2 A Yes, sir

3 Q Then why didn't you just say no?

4 A I said it in the perspective that I couldn't see
5 back there, so that's why I said it like that

6 Q Wouldn't you have heard the gunfire?

7 A Yes, sir

8 Q Wouldn't you have known if gunfire, if it were
9 in the truck that you were driving, was coming from the
10 truck that you were driving?

11 A Yes, sir

12 Q So how come you couldn't say no?

13 A I just didn't.

14 Q You told them that you didn't remember what John
15 was wearing, right?

16 A Yes, sir

17 Q You told them that you didn't remember what
18 Fiend was wearing?

19 A Yes, sir

20 Q They asked you when the truck left your house
21 who was driving I take it that you had told them they
22 dropped you off at your house in the truck?

23 A No, sir

24 Q When you said I don't know when they asked you
25 when the truck left your house who was driving, what did

1 you mean?

2 A When the truck left my house?

3 Q At the bottom of the second page?

4 A Okay

5 Q They asked you -- I'm sorry on the bottom of the
6 -- let me just show it to you They asked you there, when
7 the truck left your house who was driving and you said I
8 don't know, right?

9 A Yes, sir

10 Q What were they asking you about?

11 A Why were they asking me that?

12 Q Say that again?

13 A What did you say?

14 Q What were they asking you about? When was the
15 truck ever leaving your house?

16 A At no point

17 Q Okay Did you tell them that they had dropped
18 you off at your house in the truck?

19 A Yes, sir

20 Q And that was a lie?

21 A That was a lie

22 Q Because you didn't want to admit to driving
23 John's car?

24 A Yes, sir

25 Q You didn't volunteer any of the information that

1 you testified about yesterday as to where the truck ended
2 up and how you ended up getting home, right?

3 A Yes, sir

4 Q You didn't tell the police about that?

5 A No, sir

6 Q So in the first statement, you told them you
7 didn't know anything about anything, right?

8 A Yes, sir

9 Q They didn't believe you?

10 A Yes, sir

11 Q And for some reason, you volunteered that you
12 had driven the car before, right?

13 A Yes

14 Q We know now that was to explain the fingerprints
15 should they have been there, right?

16 A Yes, sir

17 Q They didn't believe you and then you said oh,
18 yeah, by the way, I was driving, right?

19 A Yes, sir

20 Q But John didn't shoot a gun and I don't know if
21 Tremayne did, right?

22 A Yes, sir

23 Q That's the gist of your second statement?

24 A Yes, sir

25 Q But they pressed you further, didn't they?

C DOUGLAS - CROSS-EX BY MR. BUTLER

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1 A Yes, sir

2 Q They weren't satisfied with just you saying that
3 you were in the truck, were they?

4 A No, sir

5 Q And they weren't satisfied with you just saying
6 that you had driven the truck, were they?

7 A No, sir

8 Q They wanted more, right?

9 A Yes, sir

10 Q And in the third statement, they say did anybody
11 in the truck shoot and you said yes, Ward, right?

12 A Yes, sir

13 Q There was no further discussion in your third
14 statement about what happened after the shooting, was
15 there?

16 A Yes, sir

17 Q There was?

18 A No

19 Q Okay There wasn't any further discussion about
20 where the truck went, was there?

21 A No

22 Q There wasn't any further discussion about
23 changing cars, you driving Ward's car, was there?

24 A No, sir

25 Q There wasn't any further discussion about how

1 you learned that Jamie Simmons was shot, was there?

2 A No, sir

3 Q The only thing that occurs in your third
4 statement of any importance is who was shooting and you
5 said John, right?

6 A Yes, sir

7 Q And would you agree with me that your first two
8 written statements -- tell me if I'm doing this right,
9 your first two statements are one, two, three pages, four,
10 five, six, seven, eight pages, save for the advice of
11 rights, so there are seven pages, right?

12 A Yes, sir

13 Q Let me show you Defendant's 4 for ID That's
14 your third written statement, right?

15 A Yes, sir

16 Q And that's one page and a few lines on the
17 second page, right?

18 A Yes, sir

19 Q And that's because once you said John was
20 shooting, they stopped questioning you, right?

21 A Yes, sir

22 Q Didn't care about anything else, did they?

23 A No, sir

24 Q Safe to say that this whole process was designed
25 ultimately to get you to say somebody was shooting, right?

1 A Yes, sir

2 Q And when you did that, it stopped?

3 A Yes, sir

4 Q And you were continuing to tell them what you
5 thought they wanted to hear, right?

6 A I was telling them the truth

7 Q Well, when you told them -- your first
8 statement, that wasn't getting you anywhere, was it?

9 A No, sir

10 Q They continued to press you?

11 A Yes, sir

12 Q And when you told them the second statement that
13 wasn't getting you anywhere, was it?

14 A No, sir

15 Q It was or was not?

16 A It was not

17 Q It was not They continued to press you?

18 A Yes, sir

19 Q And at this time, you're not yet charged with
20 murder, but you're looking at a murder charge?

21 A Yes, sir

22 Q And you don't want to be charged with murder
23 when you're sitting there, do you?

24 A No, sir

25 Q So in an attempt to prevent being charged with

1 murder, you eventually said okay, John was the shooter,
2 right?

3 A Yes, sir.

4 Q And then what did they do?

5 A Stop questioning me

6 Q And what happened to the murder charge?

7 A It still came on me

8 Q They charged you anyway, didn't they?

9 A Yes, sir.

10 Q They didn't believe you throughout the process,
11 right?

12 A No, sir

13 Q They told you you need to come up with something
14 else, didn't they?

15 A Yes

16 Q All right And something else meant -- had to
17 be something more than what you were telling them, right?

18 A Yes, sir

19 Q Because what you had been telling them wasn't
20 working for you, was it?

21 A Yes.

22 Q Yes or no?

23 A No, it wasn't working for me

24 Q So something else had to be somebody was
25 shooting, right?

1 A Yes, sir

2 Q If you didn't want to be charged with murder,
3 you certainly don't want to be convicted of murder, do
4 you?

5 A No, sir

6 Q And you don't want to go to prison for any
7 charge, do you?

8 A No, sir

9 Q And you know that murder carries a sentence of
10 mandatory minimum of 30 years, right?

11 A Right

12 Q You can't get any less than 30, you understand
13 that, right?

14 A Yes, sir

15 Q And that that is a day-for-day sentence?

16 A Yes, sir

17 Q No early release, no parole, 30 years, do you
18 understand that?

19 A Yes, sir

20 Q How old are you?

21 A Twenty-two.

22 Q So you understand that the very minimum sentence
23 for murder is 50 percent longer than you've been on the
24 planet Do you understand that?

25 A Yes, sir.

1 Q And you understand the alternative sentence to
2 30 years is life, right?

3 A Yes, sir

4 Q And life in South Carolina means just that, you
5 die there?

6 A Yes, sir

7 Q You understand that, right?

8 A Yes, sir

9 Q Have you ever heard the term pine box life,
10 meaning they take you out in a pine box?

11 A Yeah

12 Q You don't want to do that, do you?

13 A No, sir

14 Q And you know that the only person who can make
15 that murder charge go away is Mr Durant, isn't that
16 right?

17 A Yes, sir

18 Q In the prior hearing where you gave sworn
19 testimony in December, are you with me?

20 A Yes, sir

21 Q You gave basically the same version that you
22 gave yesterday about this incident, right?

23 A Yes, sir

24 Q Basically saying you didn't know nothing about
25 nothing, right?

C DOUGLAS - CROSS-EX BY MR BUTLER

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1 A Yes, sir

2 Q Did they drop the murder charge then?

3 A No, sir.

4 Q You're still charged with murder, aren't you?

5 A Yes, sir

6 Q It's just looming out there, hanging out there,
7 isn't it, the murder charge?

8 A Yes, sir

9 Q Even though you told what you said was the
10 truth, they didn't drop the murder charge?

11 A No, sir

12 Q You're still looking at that minimum 30, right?

13 A Yes, sir

14 Q Is that because they wanted you to continue to
15 testify?

16 A I guess so.

17 Q You guess so?

18 MR. BUTLER Beg the Court's indulgence

19 BY MR. BUTLER

20 Q When you talked to the police, you went through
21 a series of lies to avoid being charged with murder,
22 right?

23 A Yes, sir

24 Q You didn't want to be charged with murder for
25 all of the reasons we've talked about, right?

1 A Yes, sir

2 Q Sitting here today, you're charged with murder,
3 right?

4 A Yes, sir

5 Q And you're basically in the exact same position
6 that you were when you first talked to the police?

7 A Yes, sir

8 Q May 11th, aren't you?

9 A Yes, sir

10 MR BUTLER: That's all I have, thank you.

11 THE COURT Mr Durant, redirect?

12 MR DURANT. Judge, I do have a couple
13 questions

14 REDIRECT EXAMINATION

15 BY MR DURANT

16 Q Catrell, I believe you've already stated, you're
17 from Petersfield, right?

18 A Yes, sir

19 Q Born and raised there?

20 A Yes, sir

21 Q Lived there all of your life?

22 A Yes, sir

23 Q And how about John Ward, Mix, where's he from?

24 A Petersfield

25 Q Lived there all of his life?

C DOUGLAS - REDIRECT EX BY MR. DURANT

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1 A I believe so

2 Q He's a homeboy right, a good friend of yours?

3 A Yes, sir

4 Q And at the time of this shooting, how long had
5 you known this man?

6 A A few months

7 Q A couple months?

8 A A couple months

9 Q He's not Petersfield, is he?

10 A No, sir

11 Q He's not a homeboy, is he?

12 A No, sir

13 Q So let me ask you this question, sir, if you're
14 going to tell the lie to the police about which one of
15 those two were shooting, which one would you lie about?

16 A Excuse me?

17 Q If you were going to lie to the police, based
18 upon your prior relationship with these two people, about
19 which one was shooting a weapon, which one would you lie
20 about?

21 A Washington Washington

22 Q You would lie about Washington?

23 A Yeah.

24 Q And when you mean that what do you say, if
25 you're going to tell the cops that somebody was shooting,

1 who would you tell the cops was shooting if you were
2 telling a lie?

3 A I would tell them Washington was shooting a gun

4 Q Why?

5 A Because he's not a homeboy

6 MR DURANT Thank you

7 THE COURT Mr Runyon?

8 RECROSS-EXAMINATION

9 BY MR RUNYON

10 Q Let me understand this You're not saying that
11 Mr Washington was shooting any guns, are you?

12 A No, sir

13 Q Okay And since I've gotten into my 60's, I
14 sometimes doubt my hearing, I didn't hear what you said on
15 that You're not saying that Mr Washington -- if you
16 could speak up You're not saying that Mr. Washington was
17 doing any shooting, are you?

18 A No -- yes, sir -- no

19 Q Are you saying Mr Washington was shooting?

20 A No

21 Q Okay See that's what I'm trying to --

22 A Okay

23 Q Secondly, you were asked about the truck and
24 there's no question about the fact you were driving the
25 truck?

C. DOUGLAS - RECROSS-EX BY MR RUNYON

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1 A No, sir.

2 Q There's no question about the fact that
3 Mr Washington got in the back seat of his own truck?

4 A No, sir

5 Q He got in the back seat of his own truck?

6 A Yes, sir

7 Q And you were asked about the back seat being a
8 bench seat?

9 A Yes, sir

10 Q Had you been in that truck before that night?

11 A Yes, sir

12 Q Did you see it after that night?

13 A No, sir

14 Q Okay. Would you think that those back seats are
15 also bucket seats?

16 A I really can't remember

17 Q You really can't remember. So you don't know
18 whether the back seat is a bench seat or a bucket seat, do
19 you?

20 A Not right now

21 Q And you didn't see Mr Washington with a gun?

22 A No, sir

23 Q And you certainly didn't see anybody firing out
24 the back seat of that truck, did you?

25 A No, sir

1 Q You didn't hear anybody firing out the back seat
2 of that truck?

3 A No, sir

4 Q Okay

5 MR RUNYON I have no further questions, Judge
6 THE COURT Mr Butler?

7 RECROSS-EXAMINATION

8 BY MR BUTLER.

9 Q Mr. Durant asked you if you were going to point
10 the finger and lie, you would have pointed it at Tremayne
11 Do you remember that question?

12 A Yes, sir

13 Q And that answer, right?

14 A Yes.

15 Q You remember when the police asked you about who
16 was shooting in your second statement -- and we went over
17 this Did John shoot, you said no?

18 A Yes, sir

19 Q Did Fiend shoot, you said not that I know of?

20 A Yes, sir

21 Q Okay Would the reason that you didn't want to
22 say John was shooting then was because you didn't want to
23 implicate your homeboy, right?

24 A Right

25 Q Do you have any better idea of why you would

1 have still said not that I know of with respect to Fiend?

2 A No, sir

3 Q Why didn't you just say no?

4 A I just didn't

5 Q And why didn't you just go ahead and --

6 MR DURANT Asked and answered, Your Honor

7 MR BUTLER. I'll rephrase

8 BY MR BUTLER

9 Q Why didn't you just say -- if you would be
10 willing to lie on Fiend, why didn't you just say Fiend was
11 shooting?

12 A Because I didn't -- I didn't want any charges to
13 appear at that time.

14 Q Why didn't you just say no?

15 A I just didn't

16 Q When the cops spoke to you, they had very
17 specific ideas of what they wanted to talk about, didn't
18 they?

19 A Yes, sir

20 Q And they had very specific ideas of what you
21 were telling the truth about, right?

22 A Yes

23 Q And what you were lying about, right?

24 A Yes.

25 Q For example, they thought you were lying about

1 your not driving the truck, right?

2 A Yes

3 Q They thought you were lying about saying Ward
4 wasn't shooting, right?

5 A Yes

6 Q And did they not tell you look, we know Ward was
7 the shooter so you might as well tell us?

8 A Yes

9 MR BUTLER That's all I have

10 THE COURT You may step down. Mr. Durant, do
11 you have another witness?

12 MR DURANT May we approach?

13 THE COURT Yes, sir

14 (WHEREUPON, a bench conference was held in the
15 presence of the jury but outside the hearing of
16 the jury)

17 THE COURT Ladies and gentlemen, I'm going to
18 need to send you out for a moment while we take up a
19 matter of law Do not begin deliberations or discussions
20 on the matter. We'll see you back in a few minutes.

21 (WHEREUPON, the following proceedings were held
22 outside the presence of the jury.)

23 THE COURT Mr Durant

24 MR DURANT. Yes, Your Honor, we just need to
25 have -- a couple of the issues that we need to deal with

1 First of all, we need to deal with the issue of Mr Clark
2 Green and as to whether or not he is going to be allowed
3 to testify

4 Also, we have, I believe, a Jackson V Denno with
5 regard to statements given by Mr Washington that we need
6 to deal with

7 THE COURT As I understand it, on Mr Green's
8 testimony, the statement that y'all have provided me, you
9 don't intend to offer the statement?

10 MR DURANT: Don't intend to offer the
11 statement It would be my intention, Your Honor, to
12 question him concerning statements made to him by
13 Mr Washington that are incriminatory to Mr. Washington

14 THE COURT Right

15 MR DURANT As to being in the truck, shooting
16 a weapon In my opinion, that is all -- in my opinion
17 that is all an admission against his penal interest and is
18 inculpatory as to himself and admissible as an exception
19 to the hearsay rule

20 Now, with regard to what he may say about who
21 else was in the truck and who else was shooting that is --
22 I don't know if those cases make your head hurt like they
23 make my head hurt, but that is a nonsel self inculpatory
24 statement that's collateral to a self inculpatory
25 statement

1 Now, as to those, I believe they are hearsay
2 And I believe the case, particularly, that State V Fuller
3 case stands for that proposition So I think the only
4 issue there is with regard to that is, you know, I'm not
5 intending to ask him any questions along the line as to
6 who else was in the truck and who else was shooting. But
7 if it comes --

8 THE COURT The problem really comes up on
9 Mr Runyon's cross-examination

10 MR DURANT Exactly And at that point, then
11 it's a question of objection cause for hearsay

12 THE COURT· I understand that But --

13 MR. DURANT· But in terms of Mr Runyon,
14 Mr Runyon is not entitled to have hearsay evidence in the
15 record as a matter of cross-examination. If he is
16 intending to elicit that statement to prove the truth of
17 the matter asserted, then basically it's hearsay And as
18 to that statement, there is no exception to the hearsay
19 rule

20 THE COURT But isn't he entitled to, under the
21 confrontation clause, a thorough cross-examination, which
22 would include prior statements of the witness? And the
23 way I'm reading this statement is it's okay with Mr Ward
24 and his defense team to not have Mr Green testify
25 Mr Washington told me that the victim in this case was

1 hit by a stray bullet from one of the other shooters
2 Because if you leave that in, it implicates Mr Ward as
3 possibility being the shooter and that would violate the
4 Bruton rule All right So they're in agreement that if
5 he didn't testify about that, then they don't care if Mr
6 Clark testifies because he doesn't implicate Mr Ward.

7 However, as I understand Mr Runyon's argument
8 earlier in the week, if you take that statement out, it
9 only implies him and because he has given another
10 statement that seemed to suggest that -- it seems to leave
11 it out of context and suggest that Mr Runyon's client,
12 Mr. Washington, is therefore the shooter

13 MR DURANT: Once again, Your Honor, I would
14 rely on --

15 THE COURT And he gave a statement completely
16 exonerating Mr. Washington as being the shooter --

17 MR. DURANT: All that statement is saying that
18 Washington believed that the bullet that killed him may
19 have come from another shooter I mean, if he is
20 attempting to elicit that statement to prove it's true,
21 which he is doing, then why is that not hearsay? Why is
22 that not excepted by the hearsay rule because it is not an
23 admission by his client It is not inculpatory by his
24 client It is a nonself inculpatory statement within the
25 context of an admission against his own people

1 THE COURT But it exculpates Mr Washington and
2 inculcates Mr Ward and Mr Ward has the right to not
3 have -- he has the right to then cross-examine
4 Mr. Washington about Mr Washington's statements and he's
5 not going to have the opportunity to do that -- I assume
6 he's not going to testify in this trial

7 MR. BUTLER I can have a position in that part
8 of it I just want to clarify one thing that Your Honor
9 said What Your Honor just said, we don't so much have a
10 problem with it because the fatal bullet could have come
11 from another shooter The problem I had was he mentioned
12 the word codefendants Anything that places -- uses the
13 word codefendants or anybody else in the car is what we
14 have a problem with He may have meant that Ton-Ton's
15 bullet killed him, in which case, if he just says some
16 other shooter, I'm not as concerned about that As soon
17 as it's codefendant or someone in the truck, that's the
18 concern I have

19 MR RUNYON Judge, very simply, and I think the
20 Court has my position, but just for my learned colleagues
21 edification, I'm not relying upon some rule of evidence on
22 my position, I'm relying upon the confrontation clause of
23 the United States constitution, which I think trumps the
24 rules of evidence

25 MR DURANT· Not always. The Supreme Court has

1 basically said that an affirmative ruling to the hearsay
2 rule will trump the confrontation clause

3 MR RUNYON Well, Judge, I have a right to find
4 out whether Mr Green was lying when he gave this
5 statement or if he's lying on the stand My position is
6 going to be that he's lying both times, but that's what we
7 have a right to do, to fully cross-examine and to fully
8 defend my client And that's what I want to do

9 And Judge, I want to point something out for the
10 record This problem was known to the prosecution The
11 prosecution called these two people to trial together and
12 so they chose to go down this road and we don't have any
13 control over that, so we've just got a right to defend
14 ourselves.

15 And also one other thing with regard to
16 Mr. Green, there's been a lot of banding about whether or
17 not he was a conflict and what have you, but I think
18 Mr Green needs to -- I would ask -- because if Mr Green
19 gets on the stand and says no, I don't want to testify in
20 a proceeding -- you know, I assert my attorney/client
21 privilege, then he's not even going to testify

22 MR DURANT My only objection to that is what
23 he had to say, Your Honor, is I disagree that -- I
24 understand he has a right to confront the witness But I
25 do not agree that he has the right to get evidence in the

1 record that is inadmissible pursuant to the rules of
2 evidence through cross-examination regardless of who it
3 is The statement is hearsay and if it's objected to and
4 if there's no exception to the hearsay rule, then it
5 shouldn't come in

6 THE COURT My concern is that on
7 cross-examination Mr Runyon is going to want to explore
8 this statement that said Mr. Washington told me that the
9 victim in this case was hit by a stray bullet from one of
10 the shooters And if Mr Runyon starts pointing the
11 finger then at Mr Ward, then he is going to be violating
12 Bruton by bringing in that statement

13 MR DURANT. Mr Green, as I recall, doesn't
14 know who was in the truck I'm not even sure Mr Green
15 knows how many people were in the truck. He was never
16 told that And that statement in and of itself doesn't
17 indicate that the shooter was in the truck

18 THE COURT No, it doesn't necessarily implicate
19 it, but if I tell him he can't talk about that statement,
20 it limits his right of cross-examination.

21 MR DURANT: That is -- but all that is, Judge,
22 is him trying to put a statement in the record saying
23 yeah, to this effect, well, he said I didn't kill the guy,
24 the other guy killed the guy I was there, but I didn't
25 do that Okay

1 THE COURT There's a big difference there.

2 MR DURANT. Well --

3 THE COURT. He's putting in a guy who is not
4 charged with anything, not implicated in it It's
5 somebody who talked to him in the jail So he's going to
6 ask what Mr Washington said, that's exactly what you want
7 is for him to say what did Mr Washington tell you He
8 told him all about that crime Well, who did he tell you
9 did it? One of the shooters What do you mean one of the
10 shooters, do you mean Mr. Ward?

11 MR DURANT No, Mr Washington told him that he
12 was in that truck and shooting a pistol, Your Honor.

13 THE COURT I understand that But in addition
14 to that, he told him --

15 MR DURANT. We agree that is an inculpatory as
16 to Mr Washington

17 THE COURT Absolutely, it is

18 MR DURANT Okay

19 THE COURT I'm not concerned about that. I'm
20 concerned about what happens is when Mr Runyon starts
21 asking him about what do you mean other shooters

22 MR. DURANT Now, when he starts telling him --

23 THE COURT If he starts to implicate Mr Ward,
24 then we've got a Bruton problem

25 MR DURANT. I understand that, Your Honor, but

1 the answer to that is to object for the hearsay reasons.
2 Because it is hearsay as to whoever else he tries to shift
3 the blame to

4 And this is the Fuller case, whoever else he
5 tries to shift blame to, whether it's somebody in the
6 truck, whether it's somebody outside the truck is a
7 nonself inculpatory statement, correct, I believe, that is
8 collateral to a self inculpatory statement. And the
9 Fuller case doesn't say you throw out the baby with the
10 bath water, it just says you have to stick to the parts of
11 the statement that he made that were against his penal
12 interest

13 As to anything he may say about anybody else
14 that shifts blame away from himself, then that is nothing
15 but a self-serving hearsay declaration on the part of
16 Mr Washington and, as such, is subject to being excluded
17 by the Court as self-serving hearsay given a proper
18 objection is made and despite what the confrontation
19 clause says because that's just a rule of evidence, Your
20 Honor

21 MR RUNYON Then I move for a mistrial as to
22 Mr Washington and let us go home because what he's saying
23 is the statement says -- the statement says Mr Washington
24 allegedly said I was shooting a -- a 357 Magnum out the
25 window or out of the truck. Now -- and one of the other

1 shooters then -- this is where we're going to have some
2 problems. And it's not -- you can't disconnect the
3 shooting because, you know, he's going to be coming in
4 here asking for the hand of one is the hand of all An
5 inculpatory statement of shooting the gun and someone else
6 being the shooter inculpates Mr Washington with that
7 other shooter and it's going -- and I have the right to
8 ask them if they were in the truck Because this young
9 man was not killed by a 357 Magnum

10 Now we're getting down to the point that the
11 State can come in here and put up all these various
12 theories of who shot who and all that sort of stuff But
13 now it's coming down to, you know, the issues of just
14 another theory and, therefore, that Mr Washington was
15 shooting and that's inculpatory as to him, but he wasn't
16 part of what someone else did If the State has any
17 theory of this case it's that the people in the truck were
18 acting in concert in some fashion, whether shooting or
19 not, that's why he's going to be talking about the hand of
20 one is the hand of all. We've already got testimony that
21 people didn't have an agreement, but he's still going to
22 be arguing that

23 MR DURANT Well, Your Honor, if I just may
24 briefly address that If that is his concern, then he
25 doesn't want to go into any of that stuff in the statement

1 about him saying that everybody in the truck was shooting
2 Because that certainly puts the hand of one, hand of all
3 into evidence

4 MR RUNYON. Judge, I would respectfully -- Mr
5 Durant is a good lawyer and I understand and I accept his
6 wisdom, but I'm trying to defend my client He's trying
7 to prosecute my client So I'm not going to necessarily
8 take the suggestion what I should or shouldn't do from the
9 prosecution

10 THE COURT. All right Well, I find that if we
11 were to allow Mr Green to testify per this statement that
12 it would unconstitutionally restrict Mr Washington's
13 right to cross-examine under the confrontation clause
14 because in order to split the -- you know, split the hairs
15 like the State suggests it's going to -- if we split the
16 hairs like the State suggests, it violates
17 Mr Washington's right to cross-examine If I let him
18 have a free and unfettered cross-examination, which I
19 believe he would be entitled to, he would implicate
20 Mr Ward which would violate his rights under Bruton So
21 I'm not going to allow Mr Green to testify

22 MR DURANT I would except to your ruling, Your
23 Honor.

24 THE COURT Thank you All right. What's next
25 then?

1 MR DURANT I guess we can go into the Jackson
2 V Denno

3 THE COURT Why don't we take a break here so I
4 can go and read it I haven't had a chance to look at it
5 yet I'll be back in about 10 minutes

6 (WHEREUPON, a recess was taken)

7 THE COURT Just for the record, do you have the
8 Miranda warning waivers?

9 MR. DURANT Yes, sir, Your Honor Just the
10 actual waiver forms, not the statements, correct?

11 THE COURT. Yeah, they're not attached to the
12 exhibits

13 MR DURANT They're separately marked

14 THE COURT Let me look at those first. Thank
15 you Well, I've read the transcript from the previous
16 hearing on this, and I agree with Judge Dennis' ruling
17 that he made And I find that the statements given were
18 freely, voluntarily and intelligently made, that he waived
19 his right -- was advised of his rights and waived the
20 rights And again, just for the record, I assume you're
21 not asking to have -- where did Mr Runyon go? I thought
22 he was here Sorry about that

23 MR RUNYON That's all right, Judge I was
24 just down there

25 THE COURT Just for the record, I was just

1 stating that I have read the transcript from the previous
2 hearing on the Jackson V Denno hearing that Judge Dennis
3 heard on -- in the previous trial, let's see, December 6th
4 of 2004 The parties are stipulating this would be the
5 record that I would rule on I agree with Judge Dennis'
6 ruling that the two statements that were -- the first
7 statement, I gather your position is you still don't want
8 that suppressed?

9 MR BUTLER Yes, sir, that's right.

10 THE COURT But the two statements that were
11 made subsequent to that where he was properly advised of
12 his rights and the evidence by the preponderance of the
13 evidence shows that he waived those rights and so it's
14 enough to get it to the jury

15 MR BUTLER So I can clarify my position, Your
16 Honor, I didn't want the first one suppressed unless they
17 would all be suppressed If the second two were coming
18 in, then yes, I would want the first one coming in. I
19 think that's what I stated last time. My position would
20 be exactly the same

21 THE COURT All right

22 MR RUNYON Judge?

23 THE COURT Yes, sir

24 MR RUNYON You're talking about Mr. Ward's
25 statements?

1 THE COURT Mr Ward's statements

2 MR RUNYON Judge, we would have an objection
3 to the redacted statement of 513(3)

4 THE COURT I haven't seen the statement I
5 just did a hearing on whether or not they were freely,
6 voluntarily and intelligently made

7 MR RUNYON Oh, all right

8 THE COURT: And whether or not they had been
9 properly Mirandized He waived it I haven't seen the
10 statement That wasn't in the record

11 MR RUNYON Okay

12 THE COURT All right, sir Where does that
13 leave us then?

14 MR DURANT I've changed my strategy, Your
15 Honor At this point, we would propose to call Deborah
16 Garrison next door and put in some previous testimony. I
17 don't believe I'm going to put in Mr Ward's statement I
18 don't believe I'm going to put in anybody's statements.
19 And so we will play Mr Washington's testimony from the
20 previous trial, the crime scene and the SLED folks this
21 afternoon and I will be prepared to rest

22 THE COURT What's y'all's position on
23 Mr Washington's previous testimony?

24 MR RUNYON Judge, obviously, he was a willing
25 witness at that point in time He was thoroughly

1 cross-examined, I think, but that's Mr Butler's
2 wheelbarrow to push Under the rules and what have you,
3 we don't have any objection that the Court would note
4 And as far as the strategy of Mr Durant, we would
5 stipulate to his wisdom on that But anyway, that's --

6 THE COURT So you don't have an objection to
7 Mr. Washington's prior testimony being played?

8 MR RUNYON As an officer of the court, I
9 can't, the way it sounds

10 THE COURT Mr Butler?

11 MR BUTLER I don't think that I can I had
12 the opportunity to fully cross him And I think it
13 qualifies under the exception of former testimony. The
14 only thing, I guess, that would need to be placed in the
15 record is that he is unavailable because he is going to
16 assert his Fifth Amendment privilege in this trial. I'm
17 assuming that's coming

18 MR DURANT I was advised by Mr. Runyon that he
19 was intending to do that as well

20 THE COURT For the record then, everybody has
21 agreed to that. Can we hear it from you?

22 MR RUNYON. I thought I just said that, Judge

23 THE COURT Okay You're right

24 MR RUNYON I just said that, Judge

25 THE COURT. All right. Let's see if they're at

1 a breaking point here so we can get --

2 MR DURANT Your Honor, because I changed my
3 strategy, actually, that's probably the only people I'm
4 going to have here before lunch As I recall, that
5 testimony took maybe an hour or so, so we may have to -- I
6 can try to get some people here a little earlier and we
7 can break for lunch

8 THE COURT We can take an early lunch

9 MR RUNYON Judge, I would offer to stipulate
10 as long as the court reporter brings it in -- brings it
11 over and she tells you without going through all of the
12 formalities that, you know, she has kept this in a
13 mayonnaise jar in her care, custody and control or what
14 have you, we don't have to go through all of the
15 formalities of having her authenticate the recording.

16 THE COURT All right Do you stipulate to
17 authenticity?

18 MR BUTLER I'm sorry, I was talking
19 Authenticity of?

20 THE COURT He's stipulating to authenticity to
21 just have Mrs Garrison to bring it over She will state
22 that it is -- she took the record, she kept it in her care
23 and custody and that it is, in fact, that

24 MR BUTLER: I will stipulate to that She's
25 going to play the whole tape?

1 MR DURANT. Actually, I was hoping she could
2 leave it with the court reporter and have her play it so
3 she could go back to work

4 MR BUTLER Yeah, that's fine, too. I will
5 stipulate to that

6 MR DURANT. What I was planning on doing, I
7 haven't even seen the tape I was just intending to
8 authenticate it through her and then maybe get it into
9 evidence and let our court reporter play it

10 THE COURT We probably need her tape recorder
11 (WHEREUPON, a short recess was taken)

12 THE COURT Do you mind if we start without him
13 to put the authentication on the record?

14 (WHEREUPON, Mr Butler is not present in the
15 courtroom, but Mrs Martha Kent is present The
16 jury is out)

17 DEBORAH GARRISON,
18 being first duly sworn, testified as follows:

19 THE WITNESS Deborah Garrison, G-A-R-R-I-S-O-N

20 THE COURT All right Your witness

21 MR DURANT Thank you, Your Honor

22 DIRECT EXAMINATION

23 BY MR DURANT

24 Q Good morning, Ms Garrison

25 A Good morning

D GARRISON - DIRECT EX BY MR. DURANT

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1 Q How are you?

2 A Doing good

3 Q You are a court reporter?

4 A I am

5 Q For the ninth judicial circuit, is that correct?

6 A That's correct

7 Q And in that capacity, did you have the
8 opportunity to transcribe the proceedings in the State of
9 South Carolina versus John Henry Ward in December of 2004?

10 A Yes, sir, the trial was in December.

11 Q Okay And you were the court reporter for that
12 trial, is that correct?

13 A That's correct.

14 Q And I believe Judge Dennis was the trial judge?

15 A He was

16 Q And during that trial, I don't know -- remember
17 which particular day, but did you transcribe -- record and
18 transcribe the testimony of a Tremayne R Washington?

19 A Yes, sir

20 Q And pursuant to a subpoena issued to you, do you
21 have an audio tape or have you brought an audio tape to
22 court with you today which contains the audio recording of
23 Tremayne R Washington's testimony, both direct and
24 cross-examination?

25 A Yes, sir

1 Q And have you had an opportunity to review that
2 tape recording?

3 A I have

4 Q And does it truly and accurately reflect his
5 testimony which occurred before Judge Dennis' court in
6 December of 2004?

7 A Yes, sir, it does

8 Q And have you altered or tampered with that tape
9 recording in any way?

10 A No, sir

11 Q Do you have those tape recordings with you?

12 A I do I have given them to the court reporter
13 MR DURANT. Could I have these marked as
14 State's Exhibits, please?

15 MR RUNYON Might I suggest that they be --
16 whether you call them State's Exhibits or Court's
17 Exhibits, that they be entered for the record, but not
18 entered for the purpose of being an exhibit that could go
19 to the jury

20 MR DURANT I have no problem with them being
21 allowed to hear the testimony again if they hear it I'm
22 sure there's probably other things on the tapes as well

23 THE WITNESS There is.

24 MR. DURANT I have no problem with that
25 limitation.

D GARRISON - DIRECT EX BY MR DURANT

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1 THE COURT That's fine You don't have any
2 problem with that?

3 MISS JENKINSON No, sir

4 THE COURT The tapes themselves are not going
5 to go back If they need to hear it, we will play it for
6 them

7 MR DURANT. If they need to hear his testimony
8 again, we will bring them out and play it again And I
9 will -- I don't know if we will admit them as a State's
10 Exhibit or a Court Exhibit.

11 THE COURT. I think it probably would be a State
12 Exhibit

13 MR DURANT We'll mark it as a State's Exhibit
14 with the understanding that it be admitted, but should the
15 jury wish to replay it, they would have to be brought out
16 and play it again rather than send the tapes back Are we
17 all agreed on those ground rules?

18 MR BUTLER Yes, sir

19 THE COURT Very well

20 (WHEREUPON, State's Exhibits Nos 76 AND 77 were
21 marked for identification and received into
22 evidence)

23 BY MR DURANT

24 Q Mrs Garrison, I now hand you what's marked as
25 State's Exhibit 76 and 77 One of them -- obviously, the

D GARRISON - DIRECT EX BY MR DURANT

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1 tape is not in at the current time But are those the
2 tape recordings of the testimony that you spoke of
3 previously?

4 A Yes, sir

5 MR DURANT Your Honor, at this time, we offer
6 State's 76 and 77 into evidence subject to any questioning
7 by defense counsel and/or subject to the limitations we
8 just agreed to on the record

9 MR RUNYON On behalf of Tremayne Washington,
10 we would not have any questions, Judge We would also
11 offer to stipulate that the Tremayne R Washington, whose
12 testimony is supposed to be on those tapes is one and the
13 same Tremayne Washington who is sitting here in the
14 courtroom today on trial

15 THE COURT All right

16 MR RUNYON That was his testimony as a
17 witness One other matter, Judge, I see -- I perceive
18 laying in front of the honorable court reporter an
19 envelope that I think contained -- is that a sealed
20 envelope?

21 MR. DURANT This is a sealed transcript

22 MR. RUNYON. And just out of an abundance of
23 caution, is it our understanding that the sealed
24 transcript will be made a part of the record, but not
25 necessarily an exhibit as you would with a deposition?

D GARRISON - DIRECT EX BY MR DURANT

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1 THE COURT I guess that would be proper to keep
2 it in We won't open it at this time, but it will be a
3 part of the record

4 MR DURANT I would like to mark that as a
5 Court's Exhibit and offer it as a Court's Exhibit, but not
6 necessarily something that goes back to the jury

7 MR RUNYON That's right

8 THE COURT. Correct

9 MR DURANT In that regard, may I ask her
10 another couple of questions.

11 Could you mark this, please, as a State's
12 Exhibit -- excuse me, as a Court's Exhibit.

13 (WHEREUPON, Court's Exhibit No 3 was marked for
14 identification)

15 BY MR DURANT:

16 Q Ms. Garrison, also at my request, did you
17 provide a sealed original transcript of the testimony of
18 Tremayne R Washington, which is recorded in State's
19 Exhibits 76 and 77?

20 A Yes, sir

21 Q And I hand you what's marked as Court's
22 Exhibit 3 and ask if you can identify that package,
23 please?

24 A That is the transcript of Mr Washington's
25 testimony that I prepared

1 Q Okay It is a true and accurate transcript of
2 his testimony?

3 A Yes, sir, it is

4 MR DURANT. Thank you very much We offer this
5 as Court's Exhibit No 3 at this time, Your Honor

6 THE COURT Anything from either defendant?

7 MR BUTLER Nothing from us, Judge

8 THE COURT All right Thank you

9 THE WITNESS Thank you

10 MR DURANT Thank you very much, Ms Garrison

11 THE COURT All right Are you queued up and
12 verified it's working?

13 THE COURT REPORTER Yes, sir.

14 THE COURT All right Let's bring the jury
15 back in then

16 (WHEREUPON, the following proceedings were held
17 in the presence of the jury)

18 THE COURT All right Welcome back, ladies and
19 gentlemen I appreciate your patience when we're on a
20 break like that. A lot of times we're taking care of
21 things that actually streamline the trial in some respects
22 that you don't know it because you're just sitting in
23 there, but it is for your own good Like your mama used
24 to say, trust me on that

25 The next witness that you're going to hear is

D GARRISON - DIRECT EX. BY MR DURANT

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1 actually going to be an unusual format a little bit
2 You're going to hear an audio tape of a transcript and the
3 testimony of the defendant, Mr Tremayne Washington, at a
4 prior hearing The rules provide under circumstances we
5 can do this So the testimony that you're actually going
6 to be hearing now is of Mr Washington that took place at
7 another hearing back in December of this past year

8 Now, you will hear Mr Washington's voice. He
9 is the witness You will hear Mr Durant He is doing
10 the direct examination And then you will also hear the
11 voice of Mr. Butler who is doing the cross-examination.
12 The tape has been authenticated by another court reporter
13 It is in the -- my court reporter's machine now And she
14 will play it for you and you will hear it over the sound
15 system So, hopefully, this will work as planned If you
16 cannot hear it when we start, just raise your hand and we
17 will try to make an adjustment to the microphone level

18 Holly, if you're ready

19 (WHEREUPON, the audio testimony of Tremayne
20 Washington, marked as Court's Exhibits 76 and
21 77, were played to the jury Court's Exhibit 3
22 is the original transcript of the testimony.)

23 THE COURT. All right Ladies and gentlemen,
24 we're going to break for lunch then It's ten after
25 12 00. If you would, be back in the jury room at, say

1 quarter til 2.00 We will get started back promptly at
2 that time.

3 Again, do not begin deliberations or discussions
4 about the case We will see you in a little bit

5 (WHEREUPON, the following proceedings were held
6 outside the presence of the jury)

7 (WHEREUPON, the court received a note from the
8 foreperson)

9 THE COURT. I just received a note from the
10 foreman who says, Your Honor, I was not able to understand
11 much of the testimony that we heard on the tape Though,
12 I could hear it for the most part very well, marbles in
13 the mouth is the best way to describe it He signs it and
14 puts others may feel the same

15 MR. BUTLER Well, I can tell you that I had
16 trouble understanding it and I know what it says because
17 I've got the transcript and have read it We ask one of
18 our law clerks and she said there were parts that she
19 couldn't understand either so that does concern me I
20 have a couple proposed solutions One would be -- I wish
21 I had thought of this beforehand, one would be to let them
22 hear it again and each have a copy of the transcript to
23 read along with it That would be my first suggestion I
24 know logistically that's probably not ideal. Second would
25 be to have the State enter into evidence the transcript

D GARRISON - DIRECT EX BY MR DURANT

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1 I had trouble hearing a lot of it, too, and understanding
2 it.

3 MR DURANT I would not have any objection to
4 either of those

5 MR RUNYON I had trouble understanding and
6 he's my client

7 MR BUTLER I guess we could give them the
8 option of either hearing it against with the -- I'm torn
9 because as far as content, ideally, what I would like for
10 them to do is hear it again with the transcript. I know
11 that logistically that creates problems, but I'm more
12 concerned with the content than logistics So that would
13 be my first request If not that, then present the option
14 to them of either doing that or having the transcript with
15 them in the jury room

16 MR RUNYON I think the simplest thing would be
17 put multiple copies of the transcript into evidence as a
18 Court's exhibit and let the jury have it

19 MR DURANT Let's just make Court's Exhibit 3 a
20 State's Exhibit and admit it And if you want to admit
21 copies, that's up to you

22 THE COURT Why don't we do this, why don't we
23 make 12 copies that they could have during deliberations
24 Otherwise, we run the risk of each one of them -- if we
25 only sent the one, it would take 12 hours to read

1 MR DURANT What are you expecting a quick
2 verdict?

3 THE COURT. We'll have the jury -- or the
4 clerk's office make 12 copies of it.

5 MR DURANT Make it from the sealed copy?

6 THE COURT Correct

7 MR DURANT Very well

8 THE COURT Okay

9 MR DURANT Now, in terms of scheduling, if we
10 may just talk

11 THE COURT Okay

12 MR DURANT I've got, one, two, three, four
13 crime scene guys, the same four crime scene guys that
14 testified at the last, which, as I recall, went fairly
15 quickly Okay I'm just trying to get a feel, I'm not
16 making --

17 MR BUTLER It might be longer this time

18 MR. DURANT. When you say a little longer, are
19 we talking, you know, 15 minutes longer or are we going --
20 is that going to take the rest of the day? Because I'm
21 not going to drag these people down from Columbia if I
22 don't have to

23 MR BUTLER 15 minutes longer, 15 to 30.

24 MR DURANT And I've got three folks from
25 Columbia and the medical examiner