

Volume I of II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County

Deadra L. Jefferson, Circuit Court Judge

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SC Supreme Court

JOHN HENRY WARD,

PETITIONER,

V

STATE OF SOUTH CAROLINA,

RESPONDENT

SUPPLEMENTAL APPENDIX

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	)	COURT OF GENERAL SESSIONS
COUNTY OF BERKELEY	)	
STATE OF SOUTH CAROLINA	)	
	)	
vs	)	Case No 03-GS-10-5895
	)	
JOHN HENRY WARD,	)	
	)	
Defendant	)	

TRANSCRIPT OF JURY TRIAL
(Mistrial)

The within jury trial was held December 6-10, 2004, before
The Honorable R. Markley Dennis, Jr., in Courtroom 4C of the Charleston County
Courthouse, 100 Broad Street, Charleston, South Carolina, attended by Counsel, as
follows

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1 DECEMBER 6, 2004 12 15 P M

2

3 (STATUTORY JURY QUALIFICATION)

4 (DEFENDANT PRESENT)

5 (CASE SPECIFIC JURY QUALIFICATION)

6 (JURY SELECTION)

7

8 THE COURT Are there any Motions for
9 the jury selection, from the State?

10 MR HENDERSON No, sir

11 THE COURT From the Defense?

12 MR HOUSTON No, Your Honor

13 THE COURT Very well

14 (JURY SEATED @ 12 15 P M)

15 (JURY POOL DISMISSED)

16 THE COURT Ladies and Gentlemen,
17 those of you that were selected, thank you very
18 much for you patience I appreciate that

19 It is now a quarter after 12 00 There
20 are some matters of law that I must take up out
21 of your presence, so this is a great time for you
22 to go ahead and get your lunch I am going to
23 give you a little bit longer than normal, not by
24 much but a little bit because we have some
25 business that we have to take care of an I want
26 to be the court personnel has a decent lunch

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11

1 break, as well So I am going to ask you to be
2 back in your courtroom -- and when you exit, you
3 exit directly through this door and they will
4 show you where you need to report If you will
5 be back at 2 00 o'clock, we will start the
6 process at that time

7 Please remember that you have heard no
8 evidence in this case Don't speculate about
9 this case, because you will make a commitment to
10 the parties that you will decide the case based
11 on the evidence and that's what you hear in the
12 courtroom Obviously it is very important, then,
13 that you not allow anyone to talk with you about
14 this case or talk about it in your presence when
15 you are outside the courtroom It's very
16 critical because it is to preserve this process
17 in every respect Obviously it could influence
18 your -- and, even if it didn't, the appearance of
19 it would create a problem So please don't let
20 that happen

21 When you come back into the courtroom,
22 let me with you about the two end seats here
23 Those are our alternate chairs? Is that what we
24 use?

25 CLERK Yes

26 THE COURT Mr Simpson and Ms

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1 Wilson, you are our alternates Those will be
2 your seats, that you're occupying right now, as
3 long as you are the alternate

4 Now, that term really doesn't mean
5 anything At that end of the trial, after we
6 have heard all of the evidence, after we have
7 heard the law, after you have heard the arguments
8 and the attorneys, if the first twelve are able
9 to continue then you would not participate

10 But if anything should happen to one of
11 the first twelve before that point and they have
12 to be excused, then you will

13 So please remember that until the Court
14 dismisses, while you may be called an "alternate
15 juror", you are very much a part of this jury
16 panel and you need to pay the same attention that
17 everyone else would here in this proceeding Of
18 course, those will be your seats

19 The only other designated seat that we
20 have is being occupied by Ms Jordan, I think
21 She is eligible to serve, as is any of the first
22 twelve of you, as your presiding juror, fore-
23 person, forelady, forewoman I call them
24 presiding jurors

25 Someone has to be responsible, Ladies
26 and Gentlemen, in the jury panel for actually

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1 signing the verdict form on behalf of the jury
2 Somebody has to be responsible for actually
3 receiving any exhibits that might be introduced
4 during the trial and when the jury has completed
5 its deliberation returning those exhibits to the
6 Court

7 Other than maybe from time to time
8 there may be a necessity for some written
9 communication from the jury to the Court, it
10 would be your responsibility as presiding juror
11 to prepare that on behalf of the other jurors
12 Other than that, -- that's really the additional
13 responsibilities The statute allows me
14 to select that person or for you to designate
15 your presiding juror I would ask that you as
16 some point select that person Once that person
17 has been so identified, I would simply ask that
18 that individual occupy that seat for the balance
19 of the trial

20 Until you have identified your
21 presiding juror, any of you are free to occupy
22 that seat until that time

23 Have a good lunch and I will look
24 forward to seeing you when you return at 2 00
25 o'clock Thank you

26 (JURY OUT @ 12 25)

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14

1 THE COURT All right, we have a
2 Motion, I think, concerning a statement, is that
3 correct? A *Jackson v Denno* Hearing?

4 MR BUTLER I believe that we will
5 have a *Jackson v Denno* matter

6 THE COURT Okay, is the State ready
7 to proceed?

8 MR DURANT I believe so, Your Honor

9 THE COURT Very well, you may
10 proceed

11 MR DURANT The State would call Mike
12 Anderson

13 (WITNESS TAKES STAND)

14 MICHAEL ANDERSON, being
15 duly sworn to tell the truth, the whole truth and
16 nothing but the truth, testified, as follows

17 DIRECT EXAMINATION

18 BY MR DURANT

19 Q Where are you employed, Detective Anderson?

20 A Charleston County Sheriff's Office

21 Q How long have you been with the Sheriff's
22 Office?

23 A A little over five years

24 Q And you were a detective with the Sheriff's
25 Office back in May of 2003, is that correct?

26 A Yes, sir

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15

1 Q Did you have an opportunity to come into
2 contact with the defendant in this case, John
3 Henry Ward, Jr ?

4 A Yes, sir, I did

5 Q Where and when was that?

6 A At about midnight on the night of the
7 shooting, less than twenty-four hours afterwards
8 He presented himself to a deputy at the James
9 Island substation for the Sheriff's Office They
10 knew that we wanted to talk with him and they
11 contacted us, I met with him there

12 Q So he actually came to the substation?
13 You'all didn't pick him up or anything such as
14 that?

15 A That's correct

16 Q Was he a suspect at the time?

17 A Yes, sir

18 Q Was he taken into custody when he presented
19 at the James Island substation?

20 A No, sir, not immediately

21 Q Who was with you that evening?

22 A Detective Boyd

23 Q Did you have an opportunity to speak with
24 Mr Ward?

25 A Yes, sir, I did

26 Q What did you ask him, and what did he say?

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16

1 A Initially I just asked him what he saw and
2 heard, was he at the Club that night and just
3 to tell me what he saw and heard

4 Q Did he give you a verbal rendition of what
5 he'd seen and heard at the club that night?

6 A Yes, sir, he did

7 Q What was the substance of that verbal
8 recount?

9 A He gave details that told us that he was in
10 fact there, but denied having anything to do with
11 the shooting or being in the pickup truck -- the
12 gray Dodge pickup truck that we had questioned
13 about

14 Q Did you have him reduce that statement to
15 writing?

16 A Yes, sir

17 Q And do you have that statement with you?

18 A Yes, I do

19 Q If I could see that first page?

20 A (Tendering)

21 MR DURANT Mark that as State's
22 Exhibit 1 for identification, please

23 (SO ENTERED AS STATE'S EXHIBIT 1 FOR ID)

24 MR DURANT And mark this one as
25 State's 2 for identification

26 (SO ENTERED AS STATE'S EXHIBIT 2 FOR ID)

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17

1 MR DURANT And State's 3 for
2 identification

3 (SO ENTERED AS STATE'S EXHIBIT 3 FOR ID)

4 MR DURANT Thank you

5 DIRECT EXAMINATION RESUMED

6 BY MR DURANT

7 Q Mike, I now hand you what has been marked as
8 State's Exhibit 1 for identification purposes and
9 ask if you recognize that document?

10 A Yes, sir, that's the first statement that
11 Mr Ward wrote for us

12 Q Did you write that for him or is it written
13 in his own hand?

14 A No, sir Mr Ward wrote it himself

15 Q Okay I notice that statement is unsigned
16 Why is it unsigned?

17 A After he gave it to me, I explained to him
18 that -- initially his verbal statement was much
19 more detailed I also explained to him that I
20 didn't believe what he was telling me And asked
21 if he wouldn't mind writing another statement,
22 following *Miranda* warning, and he agreed

23 Q Okay At that point, what did you do?

24 A *Mirandized* Mr Ward

25 Q I hand you what has been marked as State's
26 Exhibit 2 for identification purposes and ask if

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18

1 you recognize that document?

2 A Yes, sir

3 Q What is that?

4 A This is the Sheriff's Office Advisement of
5 Rights form

6 Q And is that what you used to advise Mr
7 Ward of his rights, subsequent to that first
8 written statement that he gave?

9 A Yes, it is

10 Q And you actually used the form to advise
11 him of his rights?

12 A Yes, sir

13 Q How did you go about advising him of your
14 rights -- his rights?

15 A The form is broken down into two parts The
16 first part is the actual advisement, which is
17 again broken down into five additional parts

18 Initially I asked Mr Ward what his highest
19 level of education was He told me that he was
20 a high school graduate, assured me that he could
21 read I explained to him that I would be
22 reading it and asked him to follow along

23 Q When was he advised of his rights?

24 A At 12 45 a m

25 Q Excuse me for interrupting You were
26 telling us about advising him of his rights

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19

- 1 A The advisement is broken down into these
2 five additional parts We go through it one
3 part at a time, starting with the first part I
4 read it to him, asked him if he understood it
5 He said that he did I asked him to initial to
6 the left of that number one and so on down the
7 five
- 8 Q Did you read him his rights exactly as they
9 appear on that form?
- 10 A Yes, sir
- 11 Q And did you read him all of the rights as
12 they appear on that form?
- 13 A Yes, sir
- 14 Q And his initials beside these rights, those
15 are his initials?
- 16 A Those are John Henry Ward's initials,
17 "JHW"
- 18 Q With regard to the Defendant's physical
19 condition at the time that this took place, did
20 he appear to be intoxicated or under the
21 influence of any alcohol or drugs at the time?
- 22 A No, sir
- 23 Q Did he appear to understand what you said?
- 24 A Yes, sir
- 25 Q Did he exhibit any confusion?
- 26 A No, sir

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20

- 1 Q Did he appear to be mentally competent?
- 2 A Yes, sir
- 3 Q Was his speech coherent?
- 4 A Yes, it was
- 5 Q Could you understand what he said?
- 6 A (Affirmative nod)
- 7 Q And was he able to understand what you
- 8 said?
- 9 A Yes, sir
- 10 Q Did he appear to be tired, exhaustive or
- 11 anything like that?
- 12 A No, sir
- 13 Q Did he acknowledge in writing that he
- 14 understood his rights?
- 15 A Yes, he did
- 16 Q And that is his signature on the
- 17 acknowledgment?
- 18 A Yes, sir
- 19 Q And whose signatures is the witness?
- 20 A Myself and Detective Boyd
- 21 Q After he was advised of his rights, did he
- 22 indicate to you whether or not he was willing to
- 23 continue speaking with you?
- 24 A He stated that he would
- 25 Q And at that point, did you have him sign a
- 26 written waiver of his rights?

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21

- 1 A Yes, sir
- 2 Q And that is the form in State's Exhibit 2,
3 is that correct?
- 4 A That's correct
- 5 Q That is his signature?
- 6 A Yes, sir
- 7 Q And who witnessed his signature?
- 8 A Myself and Detective Boyd
- 9 Q At any time during the advisement of his
10 rights or during the taking of his statement,
11 did you or anyone else in your presence promise
12 him anything?
- 13 A No, sir
- 14 Q Did you threaten him in any way?
- 15 A No, sir
- 16 Q Did you threaten any member of his family?
- 17 A No, sir
- 18 Q Did you brandish firearms in his presence?
- 19 A No, sir
- 20 Q Did you deprive him of food, water,
21 bathroom or comforts?
- 22 A No, sir
- 23 Q At any time during this process, including
24 the advisement of his rights and the taking of
25 this statement, did he invoke his right to
26 counsel?

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22

1 A No, he did not

2 Q Did he ever indicate that he did not want
3 to talk to you?

4 A No, he did not

5 Q Did he at any -- at any time after he
6 started talking to you, did he indicate that he
7 wanted to stop talking to you?

8 A No, sir

9 Q Did Mr Ward in fact provide you with a
10 written statement?

11 A Yes, he did

12 Q If you would, take a look at State's
13 Exhibit 3 and tell me if you recognize that?

14 A (Upon review), yes, sir

15 Q What is that?

16 A This is the written statement that was
17 taken after the Defendant was advised of his
18 *Miranda* rights

19 Q Mechanically, how did you go about taking
20 that statement?

21 A Again, we spoke with him verbally and then
22 asked him to write down what he had told us
23 He gave us that initial written statement and
24 then the question-and-answer portion, which I
25 wrote down the question, and Mr Ward wrote down
26 his response

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23

1 Q So in that statement, he wrote out his own
2 statement, is that correct?

3 A That's correct

4 Q And you would write down the question, he
5 would write down the answer?

6 A That's right

7 Q So the answers are in his handwriting?

8 A That's correct

9 Q Is that correct?

10 A Yes, sir

11 Q Did you provide him with a copy of the
12 written statements?

13 A Yes, sir

14 Q Was he given the opportunity to read it and
15 sign it?

16 A Yes, sir

17 Q Did he do so?

18 A Yes, sir

19 Q Did he sign every page?

20 A Yes, sir

21 Q Did you and Detective Boyd witness every
22 page?

23 A Yes, we did

24 MR DURANT These are for the Court's
25 consideration, Your Honor

26 THE COURT Any objection to the

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24

1 Court considering State's Exhibits 1, 2 and 3 at
2 this point in time?

3 MR BUTLER No, sir

4 THE COURT Thank you, sir

5 MR DURANT I apologize, Your Honor,
6 for not showing them to defense counsel but they
7 have copies of them

8 THE COURT I'm sure they do Not a
9 problem

10 MR BUTLER Could I see them just to
11 make sure what you have?

12 MR DURANT Sure

13 (SIDEBAR REVIEWING EXHIBITS)

14 MR DURANT We haven't gotten to that
15 one yet, (tenders to Court Reporter)

16 (SO ENTERED AS STATE'S EXHIBIT 4 FOR ID)

17 DIRECT EXAMINATION CONTINUED

18 BY MR DURANT

19 Q Okay Now, the next day, -- that occurred
20 on May 12th, is that correct? The first
21 statement that you testified to?

22 A Yes, sir

23 Q He came in about midnight?

24 A Yes, sir

25 Q The next day, May 13th, did you have
26 occasion to speak with the Defendant, Mr Ward?

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25

1 A Yes, sir Myself and Detective Rice picked
2 Mr Ward up from the detention center, took him
3 to our Metro major case office and interviewed
4 him a second time

5 Q Where is that office located?

6 A Off of Leeds Avenue

7 Q Okay What was the purpose for
8 interviewing him the second time?

9 A We wanted to talk to him about who was in
10 the vehicle with him, who was in that pickup
11 truck? He'd given some information about the
12 driver and we wanted to clarify that

13 Q Do you recall what name that he had given
14 you concerning the driver of the truck?

15 A He stated the name was 'Trell Smalls

16 Q In the meantime, had you tried to locate
17 this 'Trell Smalls fellow?

18 Q We tried to locate any information on any
19 'Trell Smalls and had had no luck

20 Q Okay So, primarily for that purpose, you
21 went back to speak with him?

22 A Yes, sir

23 Q And when was it on the 13th, do you recall?

24 A The time was in the afternoon It should
25 be written on the Rights form It was about
26 3 00 or 3 30

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26

1 Q And prior to speaking to him this time, was
2 he once again advised of his Constitutional
3 rights?

4 A Yes, sir

5 Q And, once again, did you use a printed
6 form?

7 A Yes, sir

8 Q Would you take a look at State's Exhibit 4
9 and tell us whether or not that is the form that
10 was used in this case?

11 A (Upon review), yes, it is

12 Q To abbreviate this, was he advised of every
13 right on that form as it is written?

14 A Every right, in the same manner that he was
15 advised the day prior

16 Q Did he also initial that form?

17 A Yes, sir

18 Q And did he also sign the acknowledgment of
19 rights, that he understood his rights?

20 A Yes, sir

21 Q And who witnessed this particular form?

22 A Myself and Detective Larry Rice

23 Q Detective Rice?

24 A Yes, sir

25 Q And once he was advised of his rights, did
26 he indicate -- you said that he signed the

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1 written acknowledgment, is that correct?

2 A Yes, sir, that's correct

3 Q Did he also indicate that he would be
4 willing to continue to talk with you?

5 A Yes, sir

6 Q And did he sign a written waiver of his
7 rights?

8 A Yes, sir

9 Q At any time during this process --
10 obviously he had been in jail, so he was not
11 intoxicated, correct?

12 A No, sir

13 Q Did he appear to be under the influence?

14 A No, sir

15 Q Did he exhibit any mental problems,
16 confusion, incoherence, anything that would give
17 you any concern?

18 A No

19 Q Once he signed the written waiver, did he
20 indicate that he was willing to continue talking
21 to you?

22 A Yes, sir

23 Q Did he continue talking to you?

24 A Yes, he did

25 Q Once again, did you promise him anything in
26 order for him to talk to you?

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1 A No, sir

2 Q Offer him leniency?

3 A No, sir

4 Q Threaten him?

5 A No

6 Q Threaten his family?

7 A No, sir

8 Q Brandish firearms?

9 A No, sir

10 Q Deprive him of food?

11 A No

12 Q Did he indicate at any time that he wanted

13 to stop talking to you?

14 A No, sir

15 Q Or that he wanted a lawyer?

16 A No, sir

17 Q Or that he didn't want to answer any

18 further questions?

19 A No, sir

20 Q How did you proceed with taking the state-

21 ment on this occasion?

22 A At this time, we went right into the

23 question and answer portion Detective Rice

24 wrote the question and Mr Ward wrote the

25 answer

26 MR DURANT (Tenders document to

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1 Court Reporter)

2 (SO ENTERED AS STATE'S EXHIBIT 5 FOR ID)

3 DIRECT EXAMINATION CONTINUED

4 BY MR DURANT

5 Q And State's Exhibit 5, what is that?

6 A This is a statement that myself and
7 Detective Rice took from Mr Ward on the 13th

8 Q And was he given an opportunity to read
9 that second statement?

10 A Yes, sir

11 Q Was he provided with a copy?

12 A Yes, sir

13 Q Did he sign the second statement?

14 A Yes, sir

15 Q Is his signature on each and every page?

16 A Yes, sir

17 Q That's a seven-page document, is that
18 correct?

19 A (Upon review), that's correct

20 MR DURANT Your Honor, we would
21 present for your consideration State's 4 and 5
22 at this time

23 THE COURT Any objection?

24 MR BUTLER No objection

25 THE COURT Without objection

26 MR DURANT We have no further

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1 questions, Your Honor

2 THE COURT Thank you You may
3 cross-examine, Mr Butler

4 CROSS EXAMINATION

5 BY MR BUTLER

6 Q Good afternoon, Detective I want to talk
7 about prior to Mr Ward initially coming to the
8 substation and giving the verbal statement You
9 said that he was a suspect at that time?

10 A Yes, sir, he -- I had been advised --
11 actually, I'd went to the crime scene, gone
12 home We split up in shifts Once I came in,
13 that is one of the assignments that was given to
14 me, as well as the rest of the detectives, was
15 to locate him

16 Q And it is your understanding that he became
17 aware, somehow, of the fact that he was a
18 suspect and came in voluntarily?

19 A He came in initially and told us, as well
20 as the deputy that he met with, that he'd had
21 some traffic tickets that he wanted to clear up,
22 some problem with traffic tickets

23 Q But at the time that he came in, you knew
24 that he was a suspect in this incident?

25 A I knew that we wanted to talk to him, yes,
26 sir

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1 Q And, so, somebody in your department had
2 been given the directive to locate him and bring
3 him to the substation, bring him somewhere that
4 he could be interviewed?

5 A Yes, sir

6 Q And can you tell us briefly, that was based
7 on what?

8 A I -- I was not there during the daytime
9 When I came in, I was given the assignment

10 Q And when he came in initially and gave a
11 verbal statement, you said that he gave you a
12 more complete verbal statement but then when
13 he was asked to write it down that he wrote down
14 a less detailed version than what he told you?

15 A Correct

16 Q And you also didn't believe it?

17 A Yes, sir, that's correct

18 Q Tell me why you didn't believe what he
19 wrote down

20 A The fact that he had given us a much more
21 detailed statement verbally, and the fact that
22 when we asked him to reduce it to writing that
23 it was much more vague That raises a red flag
24 That's one of the things we look for

25 Q Was the verbal statement inconsistent with
26 what he wrote down or was the written statement

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1 just less detailed?

2 A I don't remember I believe that it was
3 less detailed

4 Q Did he give you inculpatory information
5 himself, verbally? Things that you could use to
6 prosecute him, charge him, that he then left
7 out? Or was it just the overall detail was ---

8 A The overall details Yes, sir

9 Q Can you tell me what it was -- content, was
10 there anything in content of what he wrote down
11 that was at variance with why you thought that
12 he was a suspect? Do you recall that now?

13 A In what -- in regards to what he wrote
14 down? Or what he said?

15 Q What he wrote down

16 A No, sir

17 Q Did he write down something but you knew
18 that you had information, that you were being
19 told that it was different from that?

20 A I don't remember if his initial statement -
21 - if he wrote in his initial statement if he
22 stated that he was not in the Dodge pickup I
23 know that we had information, we had a statement
24 that put him in that gray Dodge pickup That's
25 one thing

26 Q Hold on just a second Can I hold State's

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1 Exhibit 1 for ID? I am showing you what has
2 been marked as State's Exhibit 1 for
3 identification Does that appear to be the
4 initial written statement that he gave?

5 A Yes, sir

6 Q I am going to read it Tell me if I am
7 reading this correctly (reading)

8 *We were in club, fight started we whet*
9 *outside people still were fighting So*
10 *I herd gun shots so I ran that's when I*
11 *saw a green Caddie pull pass me and*
12 *said, "HereI am -- started*
13 *shooting,*

14 *I duckt he got back in the car turned*
15 *around whet back in other direction*
16 *then my cousin pulled up stop I*
17 *got in they drop me of to my car and I*
18 *left and whett to my baby mother house*
19 *we got up this morning when't out came*
20 *home and then no I'm here "*

21 Is that correct?

22 A Yes, sir

23 Q So what was your understanding when he said
24 'my cousin pulled up, and I got in'? What
25 vehicle was he talking about?

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1 A With it not being written in the verbal
2 statement, I can't remember exactly what vehicle
3 he is was talking about

4 Q Could that have been the gray truck?

5 A It could have been I don't know

6 Q And at some point later you figure out that
7 he was in the gray truck from which the gunfire
8 was supposed to have been shot from, correct?

9 A Correct

10 Q And in this written statement, he gets in
11 whatever vehicle he is speaking about after
12 shots being fired, correct?

13 A Yes

14 Q So in the written statement that he
15 initially gave, there are shots fired and then
16 he gets into the vehicle and leaves?

17 A Correct

18 Q And in later written statements that you
19 get from him, he is in the vehicle at the time
20 the shots are fired, correct?

21 A Correct

22 Q And he says that he fired the shots?

23 A Correct

24 Q And that is more in line with what you
25 thought the truth was?

26 A Yes, sir

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1 Q Based on information that you had prior to
2 meeting with him?

3 A Based upon that, as well as soon as of the
4 physical evidence that I had knowledge of that
5 was recovered at the scene

6 Q So when you sit down and meet with him, you
7 think that he might actually have been in the
8 gray truck that the shots were fired from and
9 that he may have shot that weapon from the
10 truck?

11 A Correct

12 Q But he tells you that he gets in the
13 vehicle after the shots are fired?

14 A Correct

15 Q And he's a suspect at this point?

16 A Yes, sir And to clarify, he tells me -- I
17 am still not sure whether he stated it was the
18 actual truck or if he stated that it was another
19 vehicle I don't know

20 Q When he gives you the verbal statement and
21 the initial written statement, his rights had
22 not been read to him, is that correct?

23 A Correct

24 Q It's after he gives you the written
25 statement that you don't think gives with what
26 you think the truth is, that you *Mirandize* him?

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1 A That coupled with the fact that I knew that
2 I wanted to question him and that I was going to
3 ask questions of him that could possibly elicit
4 an incriminating response That's why I
5 *Mirandized* him and continued with the interview

6 Q You mean to tell me that the first time
7 that you sat down with him, he was a suspect and
8 you weren't expecting him to give incriminating
9 information?

10 A I was not going to question him in a manner
11 in which I believe that he could have possibly
12 give incriminating responses I was not going
13 to ask him specific questions

14 Q After you *Mirandized* him, you testified
15 that you gave him no promises, made no threats,
16 no offers to him, is that correct?

17 A That's right

18 Q Do you have a copy of your report or
19 summary with you?

20 A No, sir

21 Q I ask you to look at that document and see
22 if that appears to be your case summary or
23 report?

24 A (Upon review), correct

25 Q Can I hold that, please?

26 A (Tenders)

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1 Q Just let me ask you if I am reading it
2 correctly, (reading)

3 *I explained to Ward that if he was*
4 *involved in the shooting in any way*
5 *and he withheld information that it*
6 *would be looked upon as a display*
7 *of guilt on his part*

8 You told him that?

9 A Yes, sir

10 Q (Reading)

11 *I further advised him that he would*
12 *probably be charged with murder*
13 *due to the fact that witnesses put him*
14 *getting into Tremayne Washington's truck*
15 *at the scene and they also reported*
16 *gunfire from the same truck*

17 You told him that?

18 A Yes, sir

19 Q So at the time before you even talked to
20 him to get the verbal statement, you're saying
21 that he probably will be charged with murder due
22 to the fact that witnesses put him in Tremayne
23 Washington's truck at the scene?

24 A At that point that was past the initial
25 statement, that was past *Miranda* and we were

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1 into the second statement interview

2 Q At what point did you get this information
3 that you are confronting him with? The fact
4 that witnesses put him getting into Tremayne
5 Washington's truck and report gunfire coming
6 from the same?

7 A I would have had that before the initial
8 encounter

9 Q So you would have had that before you ever
10 talked to him the first time?

11 A Correct

12 Q So you've got evidence sufficient to arrest
13 him at the point when you meet with him the
14 first time?

15 A Whether it was sufficient to arrest him or
16 not, I don't really -- I don't think so

17 Q You told him that it was, didn't you?

18 A I explained to him that we had evidence
19 against him

20 Q (Reading) *"He probably be charged with*
21 *murder due to the fact that witnesses*
22 *put him getting into Tremayne*
23 *Washington's truck at the scene They*
24 *also reported gunfire coming from the*
25 *truck "*

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1 A Correct

2 Q So the information that you had prior to
3 the time that you met with him to get the verbal
4 statement was sufficient to arrest him for
5 murder?

6 A That's correct

7 Q (Reading) *"I also advised Washington (sic)*
8 *that one witness went as far as to say*
9 *that Ward"* -- that's the Defendant

10 A Correct

11 Q (Reading) *" got in the truck with a*
12 *firearm "* Right?

13 A That's right

14 Q (Reading) *"It was made clear to Ward that*
15 *the only thing that he could do to help*
16 *himself in this situation was to tell*
17 *the truth "*

18 A Right

19 Q Correct?

20 A Yes

21 Q And that's the version of the truth that
22 you think is right?

23 A The truth is the truth regardless of what I
24 think or anybody else thinks That's what I was
25 looking for when I talked with Mr Ward

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1 Q But the version that he initially gave you,
2 you did not think was the truth

3 A That's right

4 Q And the version of the truth that you
5 wanted was one consistent with witnesses putting
6 him with the truck and gunfire coming from the
7 truck, right?

8 A I wanted the truth from him That's all

9 Q But it is safe to say that some versions of
10 the truth were not going to be satisfactory to
11 you, is that right?

12 A It's safe to say that if we have evidence
13 and witnesses that point us in one direction,
14 then that's the direction that we are going to
15 go in That's where the investigation was at
16 If someone comes to us and tells us something
17 that is completely differ from what we have
18 been, of course we are going to look upon at as
19 possibly being untrue

20 Q What do you mean by he could only help
21 himself by telling the truth? What does it
22 mean, being able to "help" one's self?

23 A It's the best thing that you can do for
24 yourself

25 Q Would you explain that, please?

26 A In talking with people, especially in

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1 interrogations, that's the line that you go on -
2 - the truth, we want the truth That's the way
3 you can help yourself Any number of things
4 You know, how the community perceives the
5 situation You know, I -- we don't promise
6 anything, ever
7 Q None of this is on video or audio?
8 A That's correct
9 Q Is it your department's policy not to
10 record suspect interviews, interrogations?
11 A We don't have any policy, either way
12 Q Any reason why it wasn't done in this case?
13 A No, sir
14 Q When he walked in there initially, with the
15 information that you had, could he have just
16 walked out if he'd changed his mind after he
17 started talking with you?
18 A I honestly don't know That's a
19 supervisory decision
20 Q And the first time that you spoke with him,
21 Detective Boyd was present the entire interview?
22 A Correct
23 Q Can you tell me how long this entire
24 process took from the time that he first met
25 with you until -- how long this process took?
26 A The time is written down on the statement,

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1 but I believe about four, four-and-a-half hours

2 Q So is it safe to say that he told you in
3 the first statement, verbally, and what he wrote
4 down in the second statement, and your
5 dissatisfaction with it led you then to want to
6 ask him more questions?

7 A I'm sorry Could you repeat that? You
8 lost me a little bit there

9 Q Is it safe to say that the verbal statement
10 that he initially gave you and the written
11 version that you were dissatisfied with led you
12 to want to ask him further questions?

13 A Yes, sir

14 Q Resulting in the second statement?

15 A Correct

16 Q You didn't discuss then the potential
17 sentences for murder or lesser charges, or
18 anything like that?

19 A No, sir

20 MR BUTLER Beg the Court's
21 indulgence one moment

22 THE COURT Yes, sir

23 CROSS EXAMINATION CONTINUED

24 BY MR BUTLER

25 Q Showing you State's Exhibit 2, the time
26 would be at the top, 12 45 a m to 4 15

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1 A Right

2 Q So three-and-a-half hours?

3 A Okay, so my math was wrong I apologize

4 Q That's close enough for me, I just wanted

5 to make sure that's the figures we are speaking

6 about

7 A Yes, sir

8 MR BUTLER Beg the Court's

9 indulgence one moment, please

10 THE COURT Sure

11 MR BUTLER That's all that I have

12 Thank you

13 THE COURT Redirect?

14 MR DURANT No, Your Honor

15 THE COURT You may come down

16 MR DURANT I don't have any other

17 witnesses on that issue, Your Honor

18 THE COURT Any witnesses, Mr

19 Butler?

20 MR BUTLER No, sir

21 THE COURT Anything from the State

22 by way of argument?

23 MR DURANT I just think that it

24 ought to come in

25 THE COURT Mr Butler?

26 MR BUTLER Yes, sir My concerns

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1 with the series of events and the statements
2 that were generated are that he should have been
3 *Mirandized* prior to the first statement He
4 wasn't

5 Then he certainly should have been
6 *Mirandized* prior to giving the first written
7 statement, that they don't like

8 Now, the fact that he subsequently was
9 *Mirandized* does not cure that problem The
10 detective admitted that the reason that he
11 followed up and wanted to talk to him further
12 was because of his responses in the first
13 statement So it then becomes fruit of the
14 poisonous tree We would move that it all be
15 excluded because of that reason

16 THE COURT Thank you I think --
17 of course, the problem that you have, I assume
18 you're going to want to the first statement
19 because he says one thing that does not implicit
20 himself Keeping it out is not going to be
21 something that you want me to do, I wouldn't
22 think

23 MR BUTLER No, sir But what
24 follows from it -- yes, sir

25 THE COURT I appreciate that but,
26 clearly, in this particular setting he was

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1 *Mirandized* It would have been much cleaner had
2 he been *Mirandized* initially, but I don't think
3 that created any problem I think the
4 subsequent action by the State, certainly as to
5 the statements that followed, clearly, because
6 those statements are quite different and there
7 are distinctions So clearly it -- there was
8 additional, as well Additional information, as
9 indicated But clearly those are, I think, that
10 -- that the Defendant knew his rights, that his
11 rights were read to him, those rights consisting
12 of the right to remain silent, understanding
13 that anything he said would be used against him,
14 the right to consult a lawyer, advising him that
15 if he wanted to have one appointed for him if he
16 was unable to afford one, that one would be --
17 and he could stop at any point

18 There is nothing to indicate that the
19 Defendant, by the preponderance of the evidence,
20 had any of his faculties impaired or anything to
21 encourage him to speak so as to make his
22 statement involuntary

23 Therefore, I find, by the preponderance
24 of the evidence that the *Miranda*, the
25 appropriate *Miranda* warnings were given and that

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1 his state-ment was voluntary

2 At this point, it would be an issue for
3 the jury

4 MR BUTLER May I beg the Court's
5 indulgence just one minute to confer with Ms
6 Jenkinson?

7 THE COURT Sure

8 MR BUTLER Thank you, Judge If I
9 could, just for the record, my argument is based
10 on his right to remain silent, his right to
11 effective assistance of counsel under the 4th,
12 5th, 6th, 8th and 14th Amendments to the United
13 States Constitution and comparable provisions
14 of the State Constitution Thank you

15 THE COURT No problem Clearly he
16 waived those rights when he gave the statements
17

18 And I assume that you are not asking me to
19 suppress the first one?

20 MR BUTLER Not by itself, no, sir
21 My position would be that everything after that
22 should be suppressed

23 THE COURT I understand I
24 appreciate that I understand that situation
25 I would be happy to suppress it, but I don't
26 think that you're going to do that

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1 MR BUTLER I ---

2 THE COURT I understand your
3 dilemma I understand Anything further from
4 the State? Anything need to be supplemented, to
5 what has been said thus far?

6 MR DURANT No, sir

7 THE COURT Thank you very much We
8 will be at-ease then until 2 00 o'clock

9 MS KENT-JENKINSON Your Honor, I
10 think that we probably need to address ---

11 THE COURT Yeah, we do The trial
12 has been called He is in custody

13 MS KENT-JENKINSON Your Honor, he
14 is on satellite monitoring I have spoken with
15 the bondsman and I am trying to get an affidavit
16 signed by him

17 THE COURT I want him -- this
18 afternoon, if he wants to come, I will be happy
19 to hear from him but at this point, until I hear
20 from the bondsman, he is in custody

21 MS KENT-JENKINSON Would you like
22 the bondsman here?

23 THE COURT I would I think given
24 the nature of this, I need to have that

25 (LUNCH RECESS 12 50 - 2 00 P M)

26 (DEFENDANT PRESENT)

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1 THE COURT Roger Hutto is the
2 foreperson All right, Mr Ward is present Is
3 the Defense ready to proceed, Ms Jenkinson?

4 MS KENT-JENKINSON Yes, Your Honor

5 THE COURT The State is ready to
6 proceed?

7 MR DURANT Yes, sir, Your Honor

8 THE COURT Very well, bring in our
9 jury

10 (JURY IN @ 2 00 P M)

11 THE COURT Thank you very much,
12 Ladies and Gentlemen Mr Hutto, as I under-
13 stand it, you have been selected as the
14 presiding juror, is that correct?

15 MR HUTTO Yes, Your Honor

16 THE COURT Thank you Ladies and
17 Gentlemen -- and, of course, sir, that will be
18 your seat for the balance of the trial

19 I made a comment to you during the
20 qualifications in this case and advised you that
21 you would be making a commitment to the parties
22 and that is about to occur I would ask you to
23 please give your attention to Mr Wilson as he
24 administers your oath

25 (WHEREUPON JURY SWORN)

26 THE COURT Thank you Now, by

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1 virtue of that oath, as I mentioned to you our
2 system contemplates two judges working together
3 Now we have the second judge in place You have
4 become a judge and now you and I will help
5 resolve this dispute

6 My responsibility, as I indicated to
7 you on several occasions today, is to be the
8 judge of the law That means that I have to
9 preside over this trial, it means that I have to
10 make rulings on matters of law And it means
11 that at the conclusion of the trial, I will have
12 to give you the law that you have just promised
13 to accept and apply fairly and impartially to
14 the facts that you will ultimately determine
15 when you begin your deliberations

16 Nothing that I have said indicates to
17 you, and I would tell you now, that you must not
18 take anything I say or do during this proceeding
19 to be an indication or a suggestion of how
20 you're to resolve a factual issue

21 Because by virtue of that oath, now
22 Ladies and Gentlemen you, and only you, has that
23 responsibility No one in this courtroom has
24 that duty but you

25 What have you said by making this
26 commitment? Well, the first thing that you

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1 said, sort of really wrapped up in the oath, if
2 you will, is that first of all you brought an
3 open mind when you came into this courtroom just
4 moments ago Because if you think about it,
5 each one of you indicated, either by responding
6 or not responding to my questions, that there
7 was nothing about this case, that you knew
8 nothing about this case or that if you did there
9 was nothing about what you knew that would
10 affect,

11 in any way, your judgment or cause you to
12 prejudge any issue

13 Basically you have said, 'I haven't
14 determined anything, Judge I haven't
15 determined anything, Mr Durant I haven't
16 determined anything, Ms Jenkinson, Mr Ward,
17 Mr Butler I am here to a judge and to be fair
18 and impartial ' That was a promise

19 I am confident that each one of you
20 will honor that part of your commitment Now,
21 it is very important during this process that
22 you remember that you have that duty to maintain
23 that open mind throughout this proceeding For,
24 you see, you are not -- it would not be proper
25 for you to begin to determine any issue in this
26 case until I give you the instruction to begin

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1 your deliberation Until that point, whatever
2 you have to do to maintain an open mind, I urge
3 you to do that Because if you don't, then you
4 will have violated the commitment that you just
5 made to the parties

6 The last instruction that I will give
7 to you before leaving this courtroom is when
8 those deliberations may start So until then,
9 just remember that you're not to decide
10 anything

11 Now, does that mean that you're not to
12 make mental notes? Of course not You through-
13 out this process will use your common sense, you
14 will make those notes, you will think about
15 those things and you will recall those things
16 that are important to you, that you found
17 extremely beneficial in your life to assist you
18 in making decisions of credibility and
19 believability That is what you ultimately will
20 judge

21 You will ultimately consider the
22 evidence in this case, which consists of the
23 testimony of the witnesses and exhibits, and
24 nothing else, and decide what you find to be
25 credible and believable Then once you have
26 decided that, as you promised to the parties in

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1 this dispute, you will then take the law as I
2 give it to you and apply that law fairly and
3 impartially to those facts That is how you
4 will reach a decision

5 And when you do that, Ladies and
6 Gentlemen, you will have honored the commitment
7 that you just made to both sides

8 Now, let's talk about this proceeding
9 just a moment This is a criminal dispute As
10 I mentioned to you when started, Mr Ward has
11 been accused by the indictment and he is charged
12 with the offense of murder That is just what
13 this does, it accuses him of that It is not
14 evidence, it shouldn't even be considered by you
15 as evidence It simply says the State accuses
16 him and now the State, and only the State, has
17 the burden of establishing all of the elements
18 required by law for you to return a verdict

19 They have to meet a standard that we
20 call "beyond a reasonable doubt " What does
21 that term mean? I will define it for you during
22 the charge portion of this proceeding when I
23 give you the law, but I would tell you now that
24 beyond a reasonable doubt means simply that
25 doubt that would cause a sincere, conscientious
26 juror who is searching for the truth in a case

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1 such as this to hesitate to act or take some
2 action That is the standard that you will
3 apply

4 And what you will ultimately do when
5 you begin your process of deciding this case,
6 you will be analyzing that evidence and deciding
7 whether or not the State has convinced you as to
8 each element of the crime of murder I will
9 define those for you during the charge portion
10 I will give you an outline of what elements they
11 are required to prove And you will ask
12 yourself, 'am I convinced beyond a reasonable
13 doubt as to each one?'

14 If at the end of this process your
15 response is 'yes, I am' then the State has met
16 its burden of proof and by virtue of the oath
17 that you just took, you must return a verdict
18 of Guilty

19 I am going to ask you to please stop
20 anyone else from coming into the courtroom until
21 the arguments are completed Please, sir Thank
22 you very much Let that be the last one Thank
23 you so much

24 If, on the other hand, during the
25 process you were to say 'well, I am not sure,
26 they might have' or suppose you were to

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1 conclude, 'well, he may have, he probably could
2 have', that wouldn't be sufficient because that
3 doesn't rise to that level that you have to --
4 that the State has to prove That is, beyond a
5 reasonable doubt

6 In fact, that is one of the
7 distinctions between a proceeding of this
8 nature, a criminal dispute, and a civil dispute
9 In a civil dispute, the burden of proof is this
10 probability standard And when a party has that
11 burden, they have to prove it most probable
12 Well, in a proceeding of this nature, it's more
13 than that, much greater than that, it's beyond a
14 reasonable doubt

15 The other distinction is that the only
16 party that has a burden of proof is the State,
17 the only party You would never, ever, during
18 this entire proceeding look to Mr Ward to prove
19 anything whatsoever Why? Because persons
20 accused of criminal offenses in this state and
21 in this country never are required to prove
22 anything whatsoever The only person, as I
23 said, is the State

24 That is what a verdict means When a
25 jury returns a verdict in a criminal dispute
26 such as this, a Guilty verdict means that jury

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1 analyzed the evidence and was convinced beyond a
2 reasonable doubt that the State had met its
3 burden of proof as to each of the elements
4 A Not Guilty verdict means that they failed as
5 to one or more If they fail as to one, then
6 you must return a verdict of Not Guilty, as the
7 law requires you to do

8 Now, the proceeding has four distinct
9 part, one of which will occur in just a moment
10 That's the first opportunity that the attorneys
11 have to speak to you We call that opening
12 statements

13 At that time, the attorneys will have
14 their chance to give you an overview of this
15 dispute They may discuss some of the evidence
16 that they expect that you will hear during the
17 trial And they may even discuss legal
18 principles with you

19 I think that you will find their
20 remarks to be helpful, really to provide some
21 guidance as we work through the evidentiary
22 portion of the proceeding, to give you again
23 somewhat of an outline, if you will, of what to
24 expect

25 I know that you will give them your
26 attention but please remember something, that

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1 just as my remarks should never be considered
2 evidence, their remarks should never be
3 considered evidence either

4 During the evidentiary portion is when
5 you will hear the testimony of the witnesses
6 It is at that time, of course, as the term
7 implies, you will receive the evidence
8 Evidence, of course, would be the testimony of
9 the witnesses who appear and testify before you
10 and any exhibits that might be introduced
11 through that testimony

12 Now, following the evidentiary portion
13 of this proceeding, we will move into the part
14 that we call the closing argument It is at
15 that time that the attorneys will have their
16 second opportunity to address you and they will
17 discuss with you the evidence that has been
18 introduced, as well as, suggest reasonable
19 inferences that you may draw from that evidence

20 Now, I am confident that when you reach
21 the point to begin your deliberations, you will
22 their remarks very helpful, very beneficial to
23 you

24 As I mentioned to you this morning,
25 they are officers of this court and have a very
26 important responsibility in this process You

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1 must, and should always, when they speak to you
2 give them undivided attention But remember
3 that their remarks, while extremely important,
4 are not evidence

5 Following the closing arguments, Ladies
6 and Gentlemen, I will then at that time discuss
7 various legal principles with you indepth and
8 give you the law Then following that, it is at
9 that time that you will retire and begin the
10 process of deciding this case

11 I look forward to trying this case with
12 you It is an honor to serve with each one of
13 you in this process I very much appreciate
14 your attention to my remarks I ask you now to
15 please give that same attention to the attorneys
16 as they give their opening statement on behalf
17 of their client

18 THE COURT Solicitor?

19 MR DURANT Thank you, Your Honor
20 Your Honor, could we approach just one second?

21 (SIDEBAR)

22 THE COURT Mr Anderson has been
23 identified as the investigator and he may
24 remain All other witnesses who are here to be
25 called or subject to be called, I would ask that
26 you please now exit the courtroom

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1 MR DURANT Deputy Frichtel would
2 also be my first witness

3 THE COURT He needs to go
4 (SEVERAL INDIVIDUALS EXIT)

5 THE COURT Thank you very much
6 Thank you, Ms Jenkinson You may proceed, Mr
7 Durant

8 MR DURANT Thank you, Your Honor
9 Good afternoon, Ladies and Gentlemen My name
10 is Bruce Durant I had an opportunity to
11 identify myself to you earlier I am employed
12 here in the Solicitor's Office for the 9th
13 Circuit, which is comprised of Berkeley and
14 Charleston counties

15 It is my job in this case to prosecute
16 this matter, this murder charge that the Judge
17 has told you about, on behalf of the State of
18 South Carolina

19 Seated with me is Detective Mike
20 Anderson He's with the Charleston County
21 Sheriff's Office He will be seated with me
22 throughout the trial

23 That fellow back there in the blue
24 blazer is my investigator You will see me
25 consulting with him at various times during
26 the trial

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1 Terry Purcell, in purple back there,
2 is also with my office

3 As you have been told, the Defendant in
4 this case, John Henry Ward, has been charged
5 with murder

6 He's not the only one that has been
7 charged with murder There are two
8 codefendants Catrell Douglas and Tremayne
9 Washington Their cases are not being tried
10 this week We are only trying Mr Ward's case
11 this week Mr Ward's case is the only one that
12 you are to concern yourself with

13 Over the next couple of days, two or
14 three days probably, you're going to hear a
15 tragic story It's a story that proves the old
16 adage that guns and alcohol don't mix

17 It is a story that has become more and
18 more commonplace in our society, where disputes
19 are resolved at the business end of a gun
20 Where apparently it has become the preferred
21 method of dealing with a dispute to shoot
22 someone that disagrees with you or disrespects
23 you

24 But, mostly, it's a story of a tragedy
25 because the person who was shot, the person who
26 was killed, the person who is not here with us

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1 today, was a completely innocent bystander He
2 was a 20-year-old kid His name was Jamie
3 Simmons He was not a drinker, was not a drug
4 user, was not a gang-banger, he was not a big
5 party guy He was not involved in any dispute
6 with anybody the night that he got killed He
7 was someone that was in the wrong place at the
8 wrong time Now he is someone that is dead
9 He is dead at the hands of this man right here,
10 John Henry Ward

11 This story begins last year, 2003, on
12 May 11th, 2003, at a nightclub out in Hollywood,
13 South Carolina, called Club Diamante Some
14 people also called it Toby's It is located at
15 [REDACTED] Road

16 This was a Saturday night, going into
17 Sunday morning It was a right popular club out
18 in that area and it had a lot of folks in it
19 that night

20 The problem started inside the club
21 when a fellow named Keith Richards got into a
22 fight with his girlfriend, Shaquenta Bingham
23 A third party, named John Campbell, who you also
24 may hear referred to this case as "Roldo" or
25 "Rollo", intervened in their dispute and ended
26 up punching Keith Richards

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1 Well, the fight inside -- there was a
2 lot of security there and they broke that up
3 fairly quickly But it wasn't long before it
4 moved outside Although, there was a deputy
5 sheriff already on scene there, out in the
6 parking lot, after it spilled out into the
7 parking lot and road in front of the club, it
8 eventually turned into a melee between
9 Petersfield on one side and Cherryhill on the
10 other

11 Now, I don't believe any of you folks
12 are from the Hollywood area I don't know if
13 you know anything about that area Petersfield
14 and Cherryhill do not get along They are like
15 the proverbial Hatfields and McCoys, or South
16 Korea and North Korea, with Highway 162 being
17 the demilitarized zone Basically these are
18 just two little residential communities along
19 Highway 162, in Hollywood

20 Anyway, in the midst of this melee, a
21 fellow named Kevin Dunmeyer was trying to take
22 Rollo and put him in his, Dunmeyer's, blue
23 Suburban which was parked across the street
24 from the club, to get him out of there Keith
25 Richards and a bunch of Petersfield people were
26 trying to get at Rollo while Dunmeyer and a

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1 bunch of Cherryhill folks were trying to keep
2 them away

3 In any event, they get Rollo to the
4 Suburban and a bunch of people, Petersfield
5 people, end up chasing Kevin Dunmeyer up
6 Toogoodoo Road towards the Baptist Hill side
7 while the -- and the other guy drive off in the
8 Suburban

9 About this time, we have showing up a
10 fellow, a Cherryhill guy, named Ton-Ton, Anthony
11 Washington, who drives a lime green Cadillac
12 Anthony Washington goes up Toogoodoo Road -- and
13 some of the Petersfield people say that he tried
14 to run them over in the road -- where he picks
15 up Dunmeyer

16 Also about this time, the victim, Jamie
17 Simmons, shows up Jamie Simmons, as I said,
18 was twenty years old, he was a security guard
19 out at Kiawah Island He was stopping by the
20 club to talk to his cousin, Marcus Moultrie, who
21 was at the club about perhaps getting Marcus a
22 job out on Kiawah Island, as well

23 Marcus seeing him driving down the
24 road, flags him down Jamie stops and they talk
25 briefly through the window of Jamie's car They
26 decide that they are going to go to the Waffle

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1 House and talk about this job there So Jamie
2 pulls his car over to the side of Toogoodoo Road
3 and parks it in front of his cousin Marcus' GEO
4 Tracker Jamie then gets out of the car to wait
5 for his cousin, Marcus

6 About this time, Ton-Ton, or Anthony
7 Washington, has picked up Kevin Dunmeyer, turned
8 his car around and has come back to the club,
9 heading in the direction of Hollywood He stops
10 out in front of the club and gets into another
11 verbal and/or physical altercation with some
12 folks from Petersfield Well, they start to go
13 after him again He jumps in his car and takes
14 off down Toogoodoo Road

15 About this time, we have a gray Dodge
16 club cab pickup truck that comes into play
17 That pickup truck is parked in the parking lot
18 there at The Club Diamante It pulls up to
19 Toogoodoo Road Inside that pickup truck are
20 three Petersfield guys

21 The truck is owned by a fellow named
22 Tremayne Washington, he also comes by the
23 nickname "Fiend" He is in the back passenger
24 seat, it's a club cab, of that pickup truck

25 The truck is being driven by a fellow
26 named by Catrell Douglas, who is also known by

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1 the name ``Trell``

2 The front seat passenger of that truck
3 was the Defendant, John Henry Ward, who goes by
4 the nickname ``Mixx``

5 Well, just before this truck gets up to
6 Toogoodoo Road, Mr Ward takes a Ruger P-89, a
7 nine millimeter pistol, and starts blasting away
8 at the Cadillac that is driving down Toogoodoo
9 Road The pistol is owned by Tremayne
10 Washington and is generally kept in the truck,
11 in the center console

12 The truck then peels out of the parking
13 lot, going in the same direction as the
14 Cadillac, chasing the Cadillac, and they are
15 involved in an ongoing gun battle going down
16 Toogoodoo Road

17 Once the vehicles have left the area
18 and the smoke has cleared, Jamie Simmons and is
19 found in a ditch on the passenger side of his
20 car A bullet has gone through his left arm
21 into his left side, through his left lung,
22 through his heart, perforated his aorta,
23 perforated the vena cava, perforated his
24 esophagus, through his right lung and lodged in
25 his right pectoral muscle
26 He was dead before they could get him to the

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1 hospital

2 An autopsy is performed on him that
3 morning, the medical examiner removes the
4 projectile, a nine millimeter brass-jacketed
5 projectile The Sheriff's Office crime scene
6 unit responds, they search the area of the
7 shooting up and down Toogoodoo Road, around the
8 area of the club, the grass parking lot -- both
9 visually and with metal detectors -- and they
10 locate six spent shell casings

11 Right there where the truck was pulled
12 out on Toogoodoo and where gunfire was seen
13 coming from that truck, they find two spent
14 Winchester nine millimeter shell casings

15 Further down the road, in the direction
16 that the Cadillac had left, they found three 40
17 caliber shell casings And right in front of
18 the club, they found a single 25 caliber shell
19 casing

20 The Dodge pickup truck involved in the
21 shooting was located four to five miles away,
22 hidden behind a house on a rural road in the
23 Petersfield area They searched the truck and
24 they found an empty nine millimeter magazine, a
25 full nine millimeter magazine, an empty holster,
26 an unfired brass-jacketed nine millimeter round

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1 in the ashtray, and a spent nine millimeter
2 shell casing, Winchester, Luger nine millimeter
3 shell casing which was stuck in the hood vent --
4 the vents on the hood, it was lodged in there

5 They do not find the pistol, nor do
6 they ever find the pistol

7 All the evidence was sent to SLED, was
8 examined by SLED firearms identification folks,
9 who conclude that the projectile which killed
10 Jamie Simmons was a brass-jacketed nine
11 millimeter bullet They further conclude that
12 the rifling characteristics on the jacket of
13 that bullet were consistent with a round having
14 been fired from a Ruger P-89 pistol, as well as
15 some other pistols, but that's one of the
16 pistols that could have fired that It was not
17 fired by a revolver, it is not a 25 caliber or
18 a 40 caliber

19 That the bullet that they found, the
20 unfired bullet that they found in the ashtray of
21 the truck, was the same type of bullet that
22 killed Jamie

23 And that the two nine millimeter shell
24 casings that were found in the parking lot, and
25 the nine millimeter shell casing they found in
26 the hood vent of the truck, were all fired by

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1 the same weapon

2 Now, I am not here today telling you
3 that John Henry Ward meant to kill Jamie
4 Simmons I don't think that he did and I don't
5 that the evidence in this case will show you
6 that he did, because he didn't have a beef with
7 Jamie Simmons But under the law, it makes
8 absolutely no difference

9 Because, you see, Ladies and Gentlemen,
10 when he took that P-89 and he started blasting
11 away at that Cadillac, out of the window of that
12 truck, he had malice in his heart, he had malice
13 in his mind Once he pulled that trigger, he
14 had malice in his mind, that murder was
15 complete

16 It made no difference where that bullet
17 went, it is irrelevant where the bullet went
18 The law does not excuse poor marksmanship nor is
19 it a defense to murder

20 THE COURT Ms Jenkinson?

21 MS KENT-JENKINSON Thank you, Your
22 Honor May it please the Court?

23 THE COURT Yes

24 MS KENT-JENKINSON What you didn't
25 hear about that night is that it was like a war
26 zone out there Which may sound ridiculous to

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1 you when I first mention that, because it was
2 at a nightclub at 3 00 a m in the morning and
3 people were out there drinking, having a good
4 time But there were bullets going all over
5 everywhere out there, it was a scary situation

6 It was such a scary situation that the
7 deputy who responded -- responded because of a
8 fight at the club -- had to leave I don't
9 blame Deputy Frichtel for leaving that night
10 He made a wise decision But he left because it
11 was dangerous out there He returned as soon as
12 he could, responded When he came back, Jamie
13 Simmons was dead

14 It is a tragedy what happened out
15 there You will hear about shell casings that
16 were found at the scene that came from several
17 different types of guns You will hear
18 testimony from people who were out there that
19 night, people who could have wound up dead
20 themselves These same people are out there
21 running, hoping to take shelter, or either
22 firing guns themselves -- or both

23 John Ward was out there He doesn't
24 deny that He was out there and he was scared
25 He was running, too

26 When you see the video from Deputy

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1 Fritchel's car, you will be shocked It
2 documents just how things got started out there
3 Just how scarey it really was

4 The problem that we are faced with,
5 the problem that you are faced with is how
6 things happened and what transpired after Deputy
7 Fritchel left We have lots of different
8 stories and you will hear them

9 People were out there drinking, having
10 a good time and the whole thing turned ugly
11 Cars were trying to get out of the parking lot
12 You will see the video, cars are lined up on
13 Toogoodoo Road People are trying to get away
14 They were running along the ditches to get to
15 their cars and go

16 The same people that you are going to
17 hear from, from this witness stand, they have
18 certain biases and prejudices Some of them
19 want to protect themselves There were several
20 people out there shooting and those are the same
21 people that want to look out for their own
22 interest They don't want to be sitting where
23 John Ward is sitting today

24 I ask you to listen carefully to that
25 testimony and keep in your mind what their
26 motivations and interests are It will be

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1 difficult for you to determine what really
2 happened It will become evident to you from
3 the different versions that you hear that that
4 is why we are here today, that there are
5 different stories of what happened

6 Unfortunately, there is no guarantee
7 that the truth will be told in this courtroom
8 and there is no guarantee that witnesses are
9 going to be credible These are the people
10 that you are going to be depending on to make
11 your decision People who are trying to take
12 cover, people who have been drinking and people
13 who have criminal records themselves

14 The police will tell you that they
15 talked to these same people when they were
16 investigating this crime, and those were the
17 people that they had to depend on

18 As you have heard already, there is
19 no gun The gun has never been found Maybe
20 if you had that gun your decision would be a
21 lot easier, but we don't have it

22 What happened at Club Diamante is
23 terrible The police had to blame somebody,
24 and that's why John Ward is here today

25 Thank you

26 THE COURT Thank you You may call

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1 your first witness, Mr Durant

2 MR DURANT The State calls Officer
3 Don Fritchel

4 (WITNESS TAKES STAND)

5 DONALD FRITCHEL, being
6 duly sworn to tell the truth, the whole truth
7 and nothing but the truth, testified, as
8 follows

9 DIRECT EXAMINATION

10 BY MR DURANT

11 Q Where are you currently employed?

12 A Currently I'm employed at the Charleston
13 County Sheriff's Office

14 Q In what capacity are you employed by the
15 Sheriff's Office?

16 A I'm a deputy on patrol, and I parole
17 currently the south district of Charleston

18 Q Were you also in the south district in --
19 doing the same thing -- May 2003?

20 A Yes, sir, I was

21 Q Does the south district include the area
22 of [REDACTED] Toogoodoo Road?

23 A Yes, sir, it does

24 Q That is located in what part of the county?

25 A It's located in the north part of the
26 county, in Hollywood, South Carolina

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1 Q Is that particular address in the county of
2 Charleston?

3 A Yes, sir, it is

4 Q Did you have occasion to be dispatched to
5 [REDACTED] Road the early morning of May
6 11th, 2003?

7 A Yes, sir, I did

8 Q What type of business is located there?

9 A It's an ABC establishment, a local bar

10 Q What's the name of it, do you recall?

11 A It was Club Diamante at that time

12 Q How many times were you dispatched out to
13 that location on the morning of May 11th, 2003?

14 A I responded there twice Once, I believe
15 it was in the -- (pause) -- around the midnight
16 hour, and then once later, 2 45

17 Q And you've had problems at that location in
18 the past?

19 A Yes, sir, we have

20 Q Now, when you were dispatched out there the
21 second time that morning, the after 2 00 a m ,
22 not the midnight, what was that in reference to?

23 A The second time that I responded there, it
24 was in reference to a subject throwing bottles
25 out in the parking lot And what really was the
26 problem is that there was another patron at the

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1 location who didn't want to leave

2 Q What time did you actually get on scene out
3 there?

4 A May I refer to my ---

5 Q On the second response?

6 A May I refer to my notes?

7 Q Yes, you may Would that help to refresh
8 your recollection?

9 A Yes, sir (Upon review), I was dispatched
10 at 0227 and I arrived at 0247

11 Q So that's roughly a little after a quarter
12 of 3 00 in the morning?

13 A 3 00 in the morning, (affirmative nod)

14 Q What did you find upon arriving at the
15 scene?

16 A When I arrived, I found the bouncer, I
17 believe that his name is Mr Buncum, standing
18 at the front of the club He stated that he
19 had an unruly patron who didn't want to leave

20 I knew that I was the only one in the south
21 district at that time and had -- had the patron
22 leave the premises That's when Mr Buncum
23 stated that he was going to close the club

24 Q Did you stay around after that?

25 A Yes, sir, he asked me to

26 Q Who asked you to?

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1 A Mr Buncum, the security

2 Q What happened?

3 A He asked me to stick around He said that
4 he was going to close the Club shortly I stood
5 right near my patrol vehicle, which was at the
6 front of the club He opened the door,

7 apparently, and they started exiting All the
8 patrons exited and then a large fight occurred
9 out into the street right in front of the club

10 Q Who appeared to be fighting? Were there
11 individuals or groups of individuals or ---

12 A It was a large group of individuals and it
13 appeared that there was several groups fighting
14 other groups, and that there was one person
15 running around, wording off -- all different
16 groups

17 Q What did you do in an attempt to restore
18 order out there?

19 A What I did was -- I didn't have the
20 manpower to stop the fights There were
21 approximately twenty or more So I opened my
22 patrol vehicle and got on the PA system At
23 that time, I also turned on my overhead lights,
24 which also engaged my video camera, and started
25 going over my PA system that all patrons needed
26 to leave the premises

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1 Q Did turning on your lights or PA system
2 have any affect?

3 A No, sir, it did not

4 Q Did you attempt to physically intervene?

5 A No, sir, I did not

6 Q Why was that?

7 A It's been my -- there were so many patrons
8 and so many people and there were so many people
9 fighting, that it would have -- it would have
10 injured me or -- and then if I befall victim,
11 then that allowed my weapon to be introduced
12 So I immediately called for backup and I asked
13 for more units to respond to my location

14 Q Do you recall seeing a blue Suburban out
15 there while this was going on?

16 A I do recall a blue Suburban, and I believe
17 that it was to the rear of -- on the opposite
18 side of the road from my patrol vehicle

19 Q Was anything going on around over -- was
20 anything going on around the Suburban?

21 A During the fight, I did see one of the
22 individuals run towards the Suburban and then
23 run down the street towards Baptist Hill Road

24 Q Referring to what has previously been
25 introduced as State's Exhibit 26 into evidence,
26 does this appear to be the type of blue Suburban

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1 that you saw across the street?

2 A Yes, sir

3 Q So what happened after you saw -- now, you
4 say that you saw him run away from, run down
5 away from the Suburban?

6 A (Affirmative nod)

7 Q Why was he running from the Suburban?

8 A I have no idea I knew that there were a
9 lot of people around the Suburban, so I assumed
10 that there was some kind of altercation with him
11 and ---

12 Q Which way did that person run?

13 A He ran in the direction of Baptist Hill
14 Road

15 Q Which, if you're standing at the club
16 looking at Baptist Hill -- or Toogoodoo Road,
17 then Baptist Hill would be to your right or to
18 your left?

19 A If I am facing the club, it would be to my
20 right

21 Q If you're facing the club?

22 A If I'm facing the club, (affirmative nod)
23 In the direction that I was standing, I was
24 facing the roadway, so it would have been to my
25 left

26 Q Do you recall seeing a green-colored

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1 Cadillac out there that night?

2 A Yes, sir, I do

3 Q Referring to State's Exhibit 11 in
4 evidence, does that appear to be the same
5 Cadillac that you saw out there that evening?

6 A Yes, sir, it does

7 Q What was that Cadillac doing, or what did
8 you see it doing?

9 A Shortly after I saw that gentleman run down
10 towards Baptist Hill, I saw him remove his shirt
11 and run, and, uh, the green Cadillac went down
12 in the direction that that subject had run in
13 Then I saw the green Cadillac turn around and
14 come back towards the club and stop right in
15 front of the club

16 Q So when he came back around he would have
17 been heading in which direction then?

18 A He would have been heading towards 165

19 Q What happened after that?

20 A After that, I saw all the subjects start
21 running towards vehicles and I was thinking the
22 altercation was about to be over Then I had
23 saw the Cadillac continue down towards 165,
24 which is right after Harry Street, and at that -
25 - and then I heard some shots being fired

26 Q Were you able to determine where those

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1 shots came from or did you see where those shots

2 ---

3 A No, I could not

4 Q Which direction did they come from?

5 A They came from the direction of the 165

6 area

7 The direction ---

8 Q Just to orient the jury, if you're standing

9 in Toogoodoo Road, looking at the Club, it ---

10 A It would be to the left

11 Q To the left?

12 A (Affirmative nod), and that was the

13 direction that I had just saw the green Cadillac

14 go towards

15 Q Okay What did you do when you heard the

16 gunfire?

17 A As soon as I heard the gunfire, I retreated

18 and went around to my passenger side of my

19 vehicle My vehicle was parked directly in

20 front of the club and I went to the rear/trunk

21 area, came over the top and pulled my service

22 weapon and aimed it towards where I believed the

23 threat was It was somewhere towards 165

24 Q Were you wearing your gloves that night?

25 A Yes, sir, I was

26 Q What gloves were you wearing?

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- 1 A I was wearing black search gloves
- 2 Q What are they made of?
- 3 A Black leather Sorry
- 4 Q Did you hear any other gunshots?
- 5 A I heard several shots from in front of me
- 6 on 165, and then I believe that I heard another
- 7 shot or two from behind me, which was my major
- 8 concern because I believe that I started to
- 9 think that I was in crossfire, that I was being
- 10 shot at And, uh, ---
- 11 Q What did you notice about the shot that
- 12 came from behind you?
- 13 A It sounded distant, it sounded kind of far
- 14 away
- 15 Q What did you do when you heard that shot?
- 16 A I ducked down again and went to my driver
- 17 side of my vehicle and put it in reverse, hit my
- 18 siren so that I wouldn't run over anybody and
- 19 backed out and drove down the road
- 20 Q Which way?
- 21 A Towards 165 So if you're facing the club,
- 22 that would be to the left
- 23 Q In the same direction that you had seen the
- 24 Cadillac heading earlier, is that correct?
- 25 A Yes, sir
- 26 Q Did you stop on the way?

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1 A Yes, sir, I did I was flagged down by
2 somebody who stopped me and said that there was
3 a young man had been shot That's when I exited
4 my patrol vehicle

5 Q And did you stay on the scene at that time?

6 A I tried to When I stepped out of my
7 vehicle and went around the back of my car, and
8 I didn't make it to him because I saw a mob of
9 people and I believe that I heard some shots
10 behind me

11 Q When you say behind you, what direction are
12 you talking about?

13 A That would be to my right

14 Q Towards the Baptist Hill side or towards
15 the Hollywood side?

16 A Towards the Baptist Hill

17 Q All right, sir What did you do when -- at
18 that point?

19 A At that point, I felt that I was still in
20 danger and that I was way outnumbered, so I
21 jumped back in my patrol vehicle and decided to
22 leave the incident location

23 Q Where did you go?

24 A I went to 165 and Toogoodoo Road, which is
25 not far from the location, and called for
26 backup I informed them that I believed that

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1 somebody had been shot and that I needed more
2 units to be at my location

3 Q What did you do once you got backup to
4 arrive?

5 A As soon as I saw the first patrol vehicle,
6 I headed back in and parked on 160, or on
7 Toogoodoo Road, and ran towards the ditch where
8 the subject was

9 Q Is that where you had been flagged down
10 earlier?

11 A Correct

12 Q What did you find there?

13 A I found a young black male laying on his
14 back and -- with his feet facing towards the
15 roadway

16 Q Did he appear to be alive at the time?

17 A I would like to think so I felt for a
18 pulse, could barely feel a slight pulse I put
19 my face down by his face, hopefully to hear some
20 kind of breathing I could hear a little bit,
21 but I'm not sure if it was him alive or not

22 Q Do you recall whether you administered CPR
23 or not?

24 A I tried my best The subject -- I was told
25 by an individual there that he was on his face,
26 that the bullet had went into the back and that

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1 they'd rolled him over when I'd gotten there
2 I kneeled down over him and started checking his
3 vitals and talking to him

4 Q Do you recall whether you held his hands?

5 A I don't recall if I held his hands It
6 wouldn't surprise me if I did It's something
7 that I would do

8 Q Would it be fair to say that he was in
9 pretty bad shape?

10 A He was in bad shape

11 Q Do you know how long that it took the
12 ambulance to arrive?

13 A I have no idea, sir

14 Q Do you have an in-car camera in your car?

15 A Yes, sir, I do

16 Q Did you have one in your car that night?

17 A Yes, sir, I did

18 Q How was it activated?

19 A It's activated once I hit my blue lights
20 Every time that I activate my overhead blue
21 lights, they automatically turn on the camera

22 Q And was a videotape made that night while
23 you were there at the club?

24 A Yes, sir, it was When I turned my blue
25 lights on, it was strictly for crowd control

26 I wasn't thinking of recording the event I was

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1 strictly turning on my blue lights in hopes that
2 my blue lights would make the crowd want to go,
3 retreat

4 Q I hand you what has been marked as State's
5 Exhibit 49 for identification purposes, and ask
6 if you recognize that?

7 A Yes, sir, that's the videotape from my
8 cruiser, from my patrol vehicle

9 Q Have you had an opportunity to review this
10 videotape?

11 A Once

12 Q From your review of the videotape, does it
13 fairly and accurately depict what went on out
14 there that night, at least as was seen by your
15 video camera?

16 A Yes, sir

17 MR DURANT Your Honor, at this
18 point, we would offer State's Exhibit 49 into
19 evidence I have, by agreement with defense
20 counsel, had this video also transferred, the
21 first twenty minutes, transferred to a DVD
22 format

23 THE COURT Okay

24 MR DURANT I believe that we've
25 agreed, without objection, that I would also
26 have that marked as an exhibit and introduce it

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1 into evidence in lieu of actually playing the
2 tape because it is easier to manipulate

3 THE COURT That's not a problem
4 I just want the tape to also be marked for
5 identification The tape is State's Exhibit 49
6 and we will make the DVD copy State's Exhibit
7 49-A

8 (ENTERED AS STATE'S EXHIBIT 49)
9 (ENTERED AS STATE'S EXHIBIT 49-A)

10 MR DURANT Okay

11 THE COURT Any objection?

12 MR BUTLER No objection

13 THE COURT Very well State's
14 Exhibit 49 will be the tape itself ---

15 COURT REPORTER And the DVD copy
16 will be State's Exhibit 49-A

17 DIRECT EXAMINATION CONTINUED

18 BY MR DURANT

19 Q Deputy Frichtel, would you step down,
20 please, sir?

21 A (Complies)

22 Q If you would, come stand over here

23 A (Complies)

24 Q We're going to play this (State's Exhibit
25 49-A) and I would basically like for you to tell
26 the jury what is going on We're not going to

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1 play the whole thing

2 THE COURT Mr Durant, will there be
3 any sound on the tape?

4 MR DURANT No, sir, not at the --
5 just at the very beginning there's something
6 that is unintelligible but basically no ---

7 THE COURT That's okay That's not
8 a problem for you, is it, Deb?

9 COURT REPORTER No, sir

10 MR DURANT (Begins to play State's
11 Exhibit 49-A)

12 WITNESS I had just activated my
13 blue lights, the fight is still going on in the
14 street

15 DIRECT EXAMINATION CONTINUED

16 BY MR DURANT

17 Q What is the building in front of you there?

18 A That's the corner of the building, it's the
19 side facing Baptist Hill -- side corner

20 Q So you'd pulled in straight towards the
21 club, kind of?

22 A Right, that little overhang on the left-
23 hand side is actually the doorway The doorway
24 is right below that gentlemen in the hat, behind
25 where he's standing, that's the doorway to the
26 club

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1 I'm facing the club I had just activated
2 my blue lights I had just got on the PA
3 system, trying to control the crowd

4 The crowd is pretty much scattered around
5 all over watching the fight that is going on and
6 watching the vehicles as they start to move
7 around

8 Q Do you know any of these individuals out
9 there?

10 A Not right offhand, no,, sir Okay, you'll
11 see people start to duck

12 Q Who is that fellow there? Did you just see
13 him?

14 A I'm sorry?

15 Q (Backs tape up and replays portion)

16 A (Negative gesture) They're watching -- I
17 believe right now that they're watching the
18 Cadillac as it pulled up to the front of the
19 club They're watching the altercation around
20 the Cadillac

21 Then the green Cadillac starts to pull
22 away,

23 and then the gunfire happened As soon as the
24 gunfire started, that's when I ran around to the
25 trunk of my vehicle and radioed "shots fired"
26 and then -- then I heard what I thought, in the

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1 distance, was another round behind me

2 Q As you were standing there, looking at
3 that, would that have been to your right that
4 you heard the distant gunshots?

5 A Yes, it would have been directed to my
6 rear That's when I jumped in the vehicle and
7 started to back out You can see the doorway
8 I'm still trying to back out of the club
9 and look around to see who was around the club,
10 trying to get as much detail as I can of what
11 happened

12 Then I take off down the road and right up
13 here ---

14 Q Let me stop right here Do you recall
15 seeing this vehicle?

16 A Yes, sir, I do

17 Q What is that?

18 A It's a GEO Tracker

19 Q Okay Whose vehicle is that?

20 A I believe that was the victim's vehicle
21 This person here flags me down, tells me to
22 stop

23 That's where I exited my vehicle You
24 don't see me exit the vehicle because I ran
25 around to the rear of the vehicle

26 I didn't get close enough -- I believe that

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1 I heard some more shots coming from behind me,
2 further behind my patrol vehicle, heard some
3 rounds, and I jumped back in the car and that's
4 where I proceeded then to Toogoodoo Road and
5 165

6 Q Is this when you were radioing in for
7 backup?

8 A Right, I radioed in for backup and I tried
9 to find a good spot to actually retreat to, that
10 would give me good cover but also allow me to be
11 well seen by the backup units when they got
12 there to meet me, to go back in to the club

13 I am also kind of keeping an eye out for
14 vehicles stopped in the woods I didn't know if
15 anybody had pulled off anywhere and tried to
16 hide their vehicle, but -- (pause)

17 This is Toogoodoo Road and 165

18 That's where I sat here for a couple of
19 minutes, if that, and waited for a backup unit
20 to at least respond The reason why I was
21 waiting for a backup unit was I wanted to give
22 some help to him, but I couldn't go it unless I
23 had someone to watch my back In order to try
24 to do CPR or try to help anybody, I can't do it
25 if I have a bunch of people over me and I have
26 no other officer there to watch behind me and

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1 make sure that nobody tried to take my --

2 (pause)

3 At this time, I see my backup, my partner,
4 I believe that he was at Johns Island Park, ---

5 Q He would have been coming in from your
6 right there?

7 A Right He was coming up, I saw his lights
8 coming, so that's when I proceeded to go back
9 in

10 Q So at this point, according to your in-car
11 camera, you'd been gone about five minutes, is
12 that correct?

13 A Somewhere around there

14 Q Approximately five minutes after the
15 shooting?

16 A Correct You will see me run towards ---

17 Q That's you there?

18 A (Affirmative nod), trying to find out if
19 there was a victim, for sure, and where he was
20 at

21 Q Who is that?

22 A That's Deputy Campbell He was the first
23 unit on the scene with me, the first backup
24 unit His job was to try to clear out the
25 crowd, so he's coming in there to make sure that
26 people start getting back, get away from the

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1 scene

2 Q Do you know what vehicle this is here?

3 A That's the same GEO Tracker that you
4 previously saw on the side of the road

5 Q It was parked on the side when you left?

6 A Yes, sir That's another backup unit just
7 coming to the scene

8 Q Do you know who that was?

9 A I have no idea

10 Q Whose car is that?

11 A I believe that's the victim's vehicle

12 Q Is this you, over working on the victim
13 there?

14 A Yes, sir That's me, leaning down over him
15 trying to hear his vitals and -- get his vitals

16 Q So you were with him for awhile?

17 A I was with him until EMS and the fire
18 department responded to relieve me

19 I believe that the officer that just came
20 up here is Deputy Stanley

21 I believe that is one our rescue vehicles

22 The fire department/rescue just pulled up

23 Q Do you know how long that it took the
24 ambulance to arrive?

25 A I have no idea, sir

26 Unfortunately, looking towards the front of

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1 my camera, you can't see the whole perimeter,
2 the whole scene But while we were there, there
3 were several more tussles, we just had one other
4 in the left, mid-left quadrant, just had an
5 alter-cation here When I returned to the
6 scene, I would estimate that there was still 100
7 to 150 patrons there

-8 Q All this time that is going by while you
9 are waiting on the ambulance, are you continuing
10 to tend to the victim?

11 A I was until the fire department came to the
12 scene Once the fire department came to the
13 scene, that's when I advised them what I'd
14 found, what I believed I turned it over to
15 them, because they have a little more training
16 than I do as far as medical

17 That's when I strictly went to crowd
18 control and talking to people who were at the
19 scene

20 Q I think that's enough, you can return to
21 the stand

22 A (Complies)

23 Q Before you sit back down, I want you to
24 take a look at one more thing

25 A Yes, sir

26 Q If you would just come over to this side,

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1 I'm going to show you what has been marked as
2 State's Exhibit 6, already in evidence If you
3 would, orient the jury as to what's going on
4 there What is this right here?

5 A That's my patrol vehicle That's where I
6 pulled into the front of the club Out of the
7 corner of the camera, you can see the corner of
8 the building and that truck is facing my
9 vehicle

10 Q When -- where were you when you heard the
11 gunshots?

12 A I was standing approximately inbetween my
13 front and rear doors of my patrol vehicle

14 Q Where was the Suburban that you had seen
15 the scuffle around?

16 A Right about here

17 Q Parked on the other side of Toogoodoo Road?

18 A Other side, about there

19 Q And you said that you saw somebody run from
20 that vehicle?

21 A (Affirmative nod)

22 Q Which direction did he run?

23 A He ran down the roadway here and started
24 taking off his shirt as he was running towards
25 Baptist Hill Then I lost sight of him

26 Q How about the green Cadillac that you said

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1 that you saw, when did you first see it?

2 A The first time that I saw it, it was
3 driving this way towards Baptist Hill Road

4 The second time I saw it, it was coming
5 back this way It stopped approximately right
6 about here in the roadway

7 Q What happened after it stopped?

8 A Right after it stopped, it sat there and
9 they had some kind of argument outside the
10 vehicle, yelling at each other, and then the
11 vehicle sped off this way

12 Q Heading down the road?

13 A Heading down the road and about here is
14 where I lost sight of the Cadillac and that's
15 when I heard some rounds being fired

16 Q What did you do when you heard the rounds?

17 A Well, actually, it was probably further
18 down than that because this is where he was So
19 I -- it was probably down here where I lost
20 sight of him Then I heard some rounds being
21 fired as he continued down

22 Q When you heard the shots, you're standing
23 here

24 A (Affirmative nod)

25 Q Where they coming from this side or that
26 side?

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1 A This side I was standing right here
2 When I heard the shots, I went to there
3 Q That's when you got your weapon out?
4 A Yes, sir
5 Q And you said that you thought that you
6 heard a distant shot Where did you hear that
7 from?
8 A It sounded like it was down further towards
9 the Baptist Hill area, but I didn't know how far
10 or anything
11 Q You heard shots on one side and then the
12 other?
13 A That's right
14 Q That's when you got in your car to leave?
15 A Correct, sir That's when I came back
16 around to the driver's side, came down here
17 Q And that's where the GEO Tracker was at
18 that point?
19 A Correct, it was on the side of the road
20 there
21 Q And this was the victim's car?
22 A Correct
23 Q That's the area where you were flagged
24 down?
25 A That's correct Actually I was stopped
26 right about here

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1 Q Okay Then when you left, returned, came
2 back, where was that GEO Tracker at that time?

3 A It was moved to here (indicating in
4 roadway)

5 MR DURANT Thank you, sir Please
6 answer any questions that defense counsel may
7 have for you?

8 WITNESS Yes, sir

9 THE COURT You may cross-examine,
10 Mr Butler

11 CROSS EXAMINATION

12 BY MR BUTLER

13 Q Good afternoon, Deputy

14 A How are you, sir?

15 Q You go by "Deputy", "Patrolman"?

16 A "Deputy", sir

17 Q Could I ask you to step down and let's go
18 back through this just a second?

19 A (Complies)

20 Q Referring again to State's Exhibit 6, you
21 heard shots coming from different areas at
22 different times throughout the whole incident,
23 is that correct?

24 A Yes, sir

25 Q At some point when you're parked here, near
26 the intersection of Toogoodoo Road -- and what's

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1 this road here?

2 A That's ---

3 Q Or where were you parked initially?

4 A Here (indicating)

5 Q Here?

6 A Yes, sir

7 Q Okay When you were parked here initially
8 and you took cover and -- then you heard shots
9 coming from what direction?

10 A I first heard -- when I took cover, I'd
11 originally heard shots coming from this area
12 around ---

13 Q Where the victim is?

14 A Somewhere down in that area That's when I
15 had taken cover Then I heard distance rounds
16 somewhere down the road This roadway was
17 actually lined with vehicles, all up and down
18 the road were cars parked because there's only
19 limited parking in front of the club

20 Q Okay And at some point when you're
21 driving down Toogoodoo Road someone tried to
22 flag you down at the point where the victim is?

23 A Correct

24 Q They presumed then that the victim had been
25 shot at that point?

26 A Correct

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1 Q And that's why they were trying to flag you
2 down?

3 A Correct

4 Q And then subsequent to that, you heard more
5 shots being fired from this same distant area
6 that you had heard shots being fired from
7 before?

8 A I believe that I heard some shots There
9 were shots fired, yes

10 Q Let's back up When your car is where the
11 police car is indicated on State's Exhibit 6,
12 you heard shots coming from -- if you're looking
13 at the diagram, based on the diagram -- the
14 right?

15 A After I heard the shots ---

16 Q (Affirmative nod), first you heard shots
17 from where the victim was and then shots from --
18 to the right of the club?

19 A (No verbal response)

20 Q You, in leaving the area someone tried to
21 flag you down because the victim had already
22 been shot?

23 A (Affirmative nod)

24 Q Then you heard shots again coming from this
25 same area, general area?

26 A Somewhere down -- yeah

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1 Q Right side?

2 A (Affirmative nod), somewhere down in here

3 Q Okay Thank you Resume your seat,

4 please

5 A Okay, (complies)

6 Q You have been in law enforcement for how
7 long?

8 A Five years

9 Q You also trained at the Academy?

10 A Yes, sir

11 Q An important part of your training not only
12 is -- to not only become law enforcement but
13 during your tenure as law enforcement is to know
14 how to intervene in a crisis?

15 A Yes, sir

16 Q When it's appropriate to intervene?

17 A Correct

18 Q When it's appropriate, for your own safety
19 and the safety of others, to retreat?

20 A Correct

21 Q When it is appropriate to draw your service
22 revolver?

23 A Correct

24 Q And that's an important issue in law
25 enforcement training, is it not?

26 A It is

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1 Q It is not something that you have to do
2 everyday, fortunately for you, right?

3 A Fortunately, (affirmative nod)

4 Q A lot of decision, a lot of information and
5 a lot of thought has to go into drawing your
6 revolver, isn't that correct?

7 A Correct

8 Q You only do so when it is necessary to
9 protect your own safety, correct?

10 A Correct

11 Q Or, if you can, the safety of somebody
12 else?

13 A Within reason, yes

14 Q And you heard shots being fired from
15 different directions?

16 A Correct

17 Q Most likely from different guns by
18 different people?

19 A (No verbal response)

20 Q And your initial instinct, based on your
21 years of training in law enforcement, was to
22 seek cover first?

23 A (No verbal response)

24 Q Correct?

25 A Correct

26 Q And withdraw your service revolver?

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1 Correct?

2 A Correct

3 Q So it was a dangerous situation?

4 A (No verbal response)

5 Q One that for you, specialized and trained
6 in these issues, thought you had to take
7 defensive measures?

8 A (No verbal response)

9 Q Correct?

10 A Correct

11 Q Your revolver was loaded, correct?

12 A Correct, my weapon was loaded

13 Q Your finger should have been or would have
14 been on the trigger or close to the trigger?

15 A It wouldn't have been on the trigger It
16 would have been easily accessible

17 Q You could have fired, and were prepared to
18 fire, if necessary?

19 A If necessary

20 Q Fortunately for you, you were able to leave
21 the scene without having to fire your weapon?

22 A Correct

23 Q All those people that you observed in that
24 fracas and fighting at different points during
25 the incident, you were never able to identify
26 Mr Ward, the defendant, as any of those people?

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1 A I wouldn't know if he was any of them or
2 not

3 MR BUTLER Beg the Court's
4 indulgence

5 THE COURT Yes, sir

6 MR BUTLER That's all that I have
7 Thank you, Deputy

8 THE COURT Any redirect, Mr Durant?

9 MR DURANT Maybe just a couple, Your
10 Honor

11 THE COURT Sure

12 REDIRECT EXAMINATION

13 BY MR DURANT

14 Q Would it be safe to say that -- referring
15 back to State's Exhibit 6, -- that whatever
16 shots that you heard from down this way, down
17 this way, did you hear any bullets going past
18 you or anything?

19 A No, sir

20 Q And I believe that on the video that we
21 just saw that there was a car parked, or a van
22 parked, in this area, that there was a Cadillac
23 there with the doors open, cars in the lot, a
24 lot of things obstructing what was happening
25 down here?

26 A Correct

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1 Q And even from where you were to where the
2 actual victim was?

3 A Correct

4 Q Correct?

5 A Correct

6 Q Lots of obstructions, would it be safe to
7 say?

8 A Absolutely There were a lot of vehicles
9 parked in that grass lot and all over the place
10 I couldn't see

11 Q Okay Just for purposes -- we'll refer
12 back to State's Exhibit 49-A, can we get this
13 back on for just a second, Scott? Thank you

14 (Videotape playing) -- no question where
15 those shots were coming from, correct?

16 A Correct

17 Q And when you say that they sounded distant,
18 did it appear that anyone reacted to shots back
19 to the right?

20 A No, sir However, we're trained to hear if
21 there's any rounds ---

22 Q I understand, I understand And you've got
23 cars all over there, along the side of the road?

24 A Right

25 Q And then you got the victim's car right
26 there, is that correct?

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1 A Yes, sir

2 MR DURANT Okay, -- that's all that
3 I wanted to show Thank you I don't have
4 anything further

5 THE COURT Recross, Mr Butler?

6 MR BUTLER No, sir

7 THE COURT You may step down

8 (WITNESS STEPS DOWN)

9 THE COURT All right, Ladies and
10 Gentlemen, I am going to let you go to your jury
11 room for a few minutes Please do not discuss
12 the case among yourselves We will be with you
13 shortly

14 (JURY OUT @ 3 30 P M)

15 THE COURT Anything from the State
16 before recessing?

17 MR DURANT Sorry, Your Honor, what
18 time did you say to be back?

19 THE COURT About fifteen minutes
20 I've got to -- the Clerk needs me for something
21 Anything from the Defense?

22 MS KENT-JENKINSON No, sir

23 (BRIEF RECESS 3 30 - 3 45)

24 (DEFENDANT PRESENT)

25 THE COURT Thank you very much I
26 appears that Mr Ballard is willing to stay on

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1 the bond That being done, -- and we need to
2 file this with the Clerk's office, please
3 Assuming that nothing changes between now and
4 the time of recessing, then Mr Ward, I will
5 allow you to remain on that bond, sir Thank
6 you

7 Thank you, Ms Jenkinson All right, are you
8 ready to call your next witness, Mr Durant?

9 MR DURANT I believe so, Your Honor

10 THE COURT Is the Defense ready?

11 MS KENT-JENKINSON Yes, Your

12 Honor

13 THE COURT The record will reflect
14 that Mr Ward is present You may bring the
15 jury in

16 (JURY IN @ 3 47 P M)

17 THE COURT Thank you, Ladies and
18 Gentlemen Mr Durant, we are ready to
19 continue You may call your next witness

20 MR DURANT The State would call Mr
21 Perrigo

22 (WITNESS TAKES STAND)

23 JESSE LEE PERRIGO, being
24 duly sworn to tell the truth, the whole truth
25 and nothing but the truth, testified, as
26 follows

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1 DIRECT EXAMINATION

2 BY MR DURANT

3 Q How old are you, Mr Perrigo?

4 A Twenty-two (22)

5 Q You are here pursuant to a subpoena, is
6 that correct?

7 A Yes, sir

8 Q Where are you currently staying?

9 A College?

10 Q Yes, where are you going to school at?

11 A I am going to school in Daytona Beach,
12 Florida, studying computer information

13 Q What year are you in?

14 A My junior year

15 Q Pardon?

16 A Junior

17 Q Your junior year?

18 A (Affirmative nod)

19 Q If you would, please speak into that
20 microphone because this lady (court reporter)
21 has got to hear everything that you're saying
22 and so do these folks (jury) over here Okay?

23 A Okay

24 Q What are you majoring in there?

25 A Computer Information

26 Q Where do you live when you're not in

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1 school?

2 A I live in Hollywood, South Carolina

3 Q What part of Hollywood?

4 A Petersfield

5 Q Do you know this fellow here?

6 A Yes, I do

7 Q What is his name?

8 A John Ward

9 Q How nickname do you know him by?

10 A "Mixx"

11 Q How do you know him?

12 A He's my family

13 Q He is your cousin, is that correct?

14 A Yeah

15 Q Do you know a fellow named Tremayne

16 Washington? Or, "Fiend"?

17 A Yeah

18 Q How do you know him?

19 A Through a -- cousin

20 Q Do you know a fellow named Catrell Douglas?

21 A Yes, I do

22 Q How do you know Catrell Douglas?

23 A Went to school together, he stays in

24 Peters-field

25 Q Okay Is Catrell family, too?

26 A I think so

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1 Q Okay But John Ward is definitely your
2 cousin, is that correct?

3 A Yes

4 Q Do you know the victim in this case, Jamie
5 Simmons?

6 A Yes, I do

7 Q How do you know Jamie?

8 A Well, he -- I think that his family is
9 mostly from here, we went to school together

10 Q Now, going back to the morning, early
11 morning, of May 11th, 2003 Did you have the
12 occasion to be at Club Diamante that morning?

13 A Yes

14 Q What time did you get there?

15 A I think bout 11 30 - 12 00 o'clock

16 Q Who did you go with?

17 A I went with Denode Heyward

18 Q Denode Heyward?

19 A (Affirmative nod)

20 Q Now, are you related to Denode, too, or is
21 he just a friend of yours?

22 A I'm related to him

23 Q You're related to him, as well?

24 A (Affirmative nod)

25 Q Whose car did you'all go in?

26 A Denode's car

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1 Q What kind of car does he drive?

2 A It was a Delta, I think

3 Q An Oldsmobile Delta?

4 A (Affirmative nod)

5 Q 88 Olds type?

6 A (Affirmative nod)

7 Q Okay Did you run into anybody else at the
8 club there that you knew?

9 A Lots of people, (affirmative nod)

10 Q Did you see Cabbage there?

11 A Yes, I did

12 Q What is Cabbage's real name, do you know?

13 A Anthony Ward

14 THE COURT You need to pull that mic
15 so that you can speak more into it, please, sir

16 WITNESS (Complies)

17 THE COURT Thank you very much

18 DIRECT EXAMINATION CONTINUED

19 BY MR DURANT

20 Q Anything happen inside the club that night?

21 A No, it was -- a fight broke out, I guess
22 I wasn't too sure

23 Q Were you able to see who was actually
24 fighting inside the club? Or where exactly
25 inside the club did the fight break out?

26 A On the dance floor

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1 Q What happened after the fight inside the
2 club?

3 A They went outside They didn't want us to
4 stay in the club, so we went outside

5 Q Did you go outside, too?

6 A Yes, I did

7 Q What was happening when you got outside?

8 A There was a big crowd in front of the club,
9 over there around one of the trucks or whatever

10 Q Do you recall a police officer being out
11 there that night?

12 A Yes, I do

13 Q Where was he?

14 A His car was parked right when you come out
15 the door

16 Q In front of the club?

17 A I don't know if he was in there or not

18 Q And you said that there was something going
19 on over at Dunmeyer's truck? Is that correct?

20 A Correct

21 Q I want to have you take a look at a few
22 pictures Can you see that?

23 A Yeah

24 Q Do you recognize that truck?

25 A Yes, I do

26 Q That would be State's Exhibit 24 that we're

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- 1 referring to Whose truck is that?
- 2 A Dunmeyer's
- 3 Q Where was that truck parked?
- 4 A Straight across from the club, I think
- 5 Q What was going on over there at that
- 6 Suburban?
- 7 A I think one of the people that he was
- 8 riding with was involved in the fight I think
- 9 Q What did you see?
- 10 A All I saw was a crowd over there
- 11 Q Looked like they were fighting or?
- 12 A Arguing, they wasn't fighting at first
- 13 Q Who was fighting out there? There was a
- 14 lot of people out there, is that correct?
- 15 A Correct
- 16 Q Were there individuals fighting or groups
- 17 fighting?
- 18 A It wasn't individuals fighting
- 19 Q Pardon?
- 20 A It wasn't individuals
- 21 Q What groups were fighting out there?
- 22 A You have Cherryhill and -- there was like
- 23 three or four different ones
- 24 Q Were Petersfield people, too?
- 25 A Yeah
- 26 Q What other groups besides Petersfield and

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- 1 Cherryhill that you saw?
- 2 A I don't really know
- 3 Q So after you saw this altercation over at
- 4 the vehicle, the Suburban, what happened then?
- 5 A After that, I don't know
- 6 Q You said that Kevin put somebody in his
- 7 car? You saw that, I think you said?
- 8 A No, he was already in the car
- 9 Q Oh, okay What happened after that?
- 10 A After that, they continued to argument,
- 11 then they started fighting and Kevin started
- 12 running
- 13 Q Who was trying to fight Kevin?
- 14 A I -- (shrug)
- 15 Q Which group?
- 16 A Well, it was an altercation between Peters-
- 17 field and Cherryhill
- 18 Q So the Petersfield people were chasing
- 19 Kevin, fighting Kevin, or wanted to fight Kevin?
- 20 A Yes
- 21 Q Did you see anyone chasing Mr Dunmeyer?
- 22 A There were a lot of people chasing that
- 23 morning
- 24 Q Where was he chased to?
- 25 A He was going towards Baptist Hill side
- 26 Q So he was being chased towards Baptist

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1 Hill?

2 A (No verbal response)

3 Q Where was Denode's car parked? You came in

4 Denode's car, right?

5 A (Affirmative nod)

6 Q Where was his car parked?

7 A His car was parked toward the curb towards

8 Hollywood

9 Q The opposite side from the Baptist Hill

10 side, correct?

11 A Yes Right

12 Q So after you saw these folks chasing Mr

13 Dunmeyer, what did you do?

14 A After that, I was trying to go back to the

15 car

16 Q Where you had parked, or where Denode was

17 parked?

18 A Yeah

19 Q What happened as you were going back to

20 your car, Denode's car?

21 A Well, then they started shooting

22 Q Who started the shooting?

23 A I don't know who started the shooting

24 Q Where did you see shots coming from?

25 A As I was going back towards the car, I was

26 ducking down I glanced up and I did see fire

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- 1 coming from the truck
- 2 Q What truck?
- 3 A The gray pickup truck
- 4 Q Do you know whose gray pickup truck that
- 5 was?
- 6 A At the time, no, I didn't
- 7 Q If you didn't know at the time, that's
- 8 fine Do you know where in the truck the gunfire
- 9 was coming from?
- 10 A I could tell that it was coming from -- it
- 11 was coming from the passenger's side I don't
- 12 know whether it was the front or the back
- 13 Q It was coming from the passenger's side of
- 14 the truck?
- 15 A Yeah
- 16 Q This is State's Exhibit 14, do you
- 17 recognize that vehicle?
- 18 A Yes, sir
- 19 Q Is that the vehicle that you saw gunfire
- 20 coming from?
- 21 A Yes, sir
- 22 Q And you said it was coming from the
- 23 passenger side, but you don't know if it was
- 24 front or back?
- 25 A Right
- 26 Q Where was the truck when you saw the

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- 1 gunfire coming out of it?
- 2 A Coming out of the club
- 3 Q Where out of the club?
- 4 A On the side
- 5 Q Where -- if you're standing on Toogoodoo
- 6 Road, looking at the club, the left side or the
- 7 right side of the club?
- 8 A Left
- 9 Q Was the truck firing before it actually
- 10 came, pulled out, onto Toogoodoo Road?
- 11 A (No verbal response)
- 12 Q Or was it still in the parking lot?
- 13 A Was it firing?
- 14 Q Yes
- 15 A When I glanced up, it was still moving
- 16 Q What direction was he firing?
- 17 A I'm not sure
- 18 Q Was it -- well, let me ask you this, when
- 19 you saw gunfire coming from the truck was it in
- 20 the parking lot or not?
- 21 A Was the truck in the parking lot?
- 22 Q Yes
- 23 A Yeah, it was pulling out
- 24 Q It was pulling out?
- 25 A (Affirmative nod)
- 26 Q Were you on the passenger side of the truck

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1 or the driver's side of the truck?

2 A I was on the passenger side

3 Q And what happened right in front of you
4 when gunfire erupted from the passenger side of
5 that truck?

6 A Well, when I saw -- when I glanced up, when
7 I saw the fire, I went back down and the truck
8 went on out Then I heard a moaning sound

9 Q What was the moaning sound?

10 A It was a young man laying on the ground

11 Q Who was that young man?

12 A Jamie Simmons

13 Q From where you were, was he in front of
14 you?

15 A He was on the grass, I was still like on
16 the road

17 Q Now, did you see Jamie Simmons fall to the
18 ground?

19 A Well, -- no, I didn't

20 Q Do you remember telling the police officer
21 that when you gave your statement on May 14th,
22 2003?

23 A My first statement? The one that I wrote
24 or the one that the police wrote?

25 Q The second statement

26 A The second one?

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1 Q Right

2 A When I -- I'm not sure if I told them that

3 the first ---

4 Q Well, actually either one

5 A (No response)

6 Q I hand you this and ask you if you

7 recognize that document?

8 A (Upon review), yes

9 Q What is that?

10 A This is my first statement

11 Q That is the statement that you wrote out in

12 your own hand, is that correct?

13 A Yeah

14 Q Does that statement say anything about

15 seeing Jamie go down?

16 A (Upon review), yes

17 Q I hand you this and ask if you recognize

18 that statement?

19 A Yeah, this is the one that the police

20 wrote

21 Q You signed it, right?

22 A Yeah, but I didn't know that I didn't have

23 to sign the statement

24 Q Well, why wouldn't you want to sign it?

25 A I didn't write it

26 Q I know that you didn't write it but -- I

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- 1 mean, are you saying that it isn't true?
- 2 A No
- 3 Q So it is true, is what you're saying?
- 4 A Some of it is true
- 5 Q What is not true?
- 6 A (Pause) -- it's true
- 7 Q It's true?
- 8 A (Affirmative nod)
- 9 Q Is that correct?
- 10 A Yes
- 11 Q And you signed it?
- 12 A Yes, I did
- 13 Q Matter of fact, you even made corrections
- 14 where they'd made mistakes, is that correct?
- 15 A Yes
- 16 Q Like right there, you initialed that
- 17 Changed some spellings Initialed there, right?
- 18 A (No response)
- 19 Q Correct?
- 20 A Right
- 21 Q Basically what's in this statement is what
- 22 you just told the jury, correct?
- 23 A Right
- 24 Q The only question that I have is, I'd ask
- 25 you where the shots were being directed from the
- 26 truck You said that you don't know After

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1 reading this statement, does that refresh your
2 recollection?

3 A Yeah, I couldn't tell you

4 Q But you did say that you saw Jamie go down?

5 A Huh?

6 Q You did say that you saw Jamie go down?

7 Correct?

8 A (No response)

9 Q Let's make this easy for you What did you
10 tell -- right here?

11 A The shots?

12 Q Yeah

13 A "The shots were being fired towards Jamie's
14 vehicle in the road " That's what is there

15 Q What you just said was true?

16 A No, I said that I didn't know where the
17 shots were fired

18 Q What does it say right after that?

19 A "Then I saw Jamie fall to the ground and I
20 ran and checked on him "

21 Q Okay That's from the statement that you
22 just told the jury was true

23 A No, I didn't see the gun I just saw the
24 flash

25 Q I understand that you didn't see the gun,
26 but you saw -- correct me if I'm wrong In your

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1 statement you said that you saw shots fired from
2 the truck

3 A Right

4 Q You saw that when the shots were fired from
5 the truck that you saw Jamie go down Correct?
6 Isn't that what is in your statement?

7 A It's in the statement

8 Q Okay And you said that the shots were
9 being fired toward Jamie's vehicle in the
10 roadway Isn't that in that statement?

11 A It's in there, but I don't know where the
12 shots were fired

13 Q And that's from the statement that you just
14 told the jury that you just read and that you
15 told the jury was true?

16 A That's not the first statement

17 Q That's correct, it's in the second
18 statement

19 A Right

20 Q That's the one that you just read and told
21 the jury was true, correct?

22 A Correct

23 Q Now, when you ran over Jamie, what did you
24 see -- or over to where Jamie was, what did you
25 see?

26 A I didn't touch him, I just looked

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- 1 Q Where was he?
- 2 A He was laying on the grass right by the
3 ditch over there I'm not really sure where ---
- 4 Q Was he in the ditch?
- 5 A I think he was half out I'm not sure
- 6 Q Half in, half out?
- 7 A (No response)
- 8 Q Face up or face down, when you saw him?
- 9 A Face up
- 10 Q Did you say anything to him?
- 11 A Well, I didn't know it was him I just
12 asked him if he was all right, if he had been
13 shot, and he didn't say nothing
- 14 Q Okay He didn't respond to your question?
- 15 A No
- 16 Q What did you do then?
- 17 A Then I looked around I thought somebody
18 was playing, trying to get me for something
19 There were some more people over there, too,
20 that say that he got shot So that's when I
21 went and stopped the police officer
- 22 Q You flagged down the police officer?
- 23 A Yes, I did
- 24 Q Okay
- 25 MR DURANT Can I get this
26 (videotape) up one more time, Scott? Okay

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1 CLERK (Complies)

2 DIRECT EXAMINATION CONTINUED

3 BY MR DURANT

4 If you (witness) want to get down to where
5 you can actually see, I know that's in your
6 eyes

7 (Video playing), I am going to speed this
8 up a little bit Do you recognize that car
9 there?

10 A Yes

11 Q Whose car is that?

12 A Jamie's

13 Q And where was Jamie when you saw him go
14 down?

15 A He be over here

16 Q As you're looking at that picture, he would
17 be on the right side of the car, is that
18 correct?

19 A Correct

20 Q Is that you there?

21 A Yeah

22 Q Hold on just a second -- no, that's okay
23 I don't need to show you anything else on that
24 Now, after you'd flagged down the deputy, what
25 happened?

26 A He asked me what was wrong and I told him

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1 that a young man got shot
2 Q How long did you end up staying there?
3 A I stayed there for quite a bit I'm not
4 sure of the time
5 Q Had the ambulance arrived when you left?
6 A I think so
7 Q By the time that the ambulance arrived, did
8 you know who that was on the ground?
9 A Oh, I knew before ambulance got there
10 Q Who did you eventually leave with?
11 A Me, Denode, Anthony Ward and Jonathon Mack
12 Q You, Denode, Anthony Ward -- who also goes
13 by, what's his nickname?
14 A Jonathon Mack
15 Q What is Anthony's nickname?
16 A "Cabbage"
17 Q But not Tremayne Washington, right?
18 A Right No
19 Q Now, where did you go after you left the
20 club?
21 A Went to Denode's house
22 Q Where does Denode live?
23 A In Pineland
24 Q And where did you go after you got to
25 Pineland
26 A My uncle was waiting for me

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1 Q Your uncle took you home then?

2 A Yes, sir

3 Q Could you step down just a second, Mr
4 Perrigo? I just want to refer you to State's
5 Exhibit 6 If you would -- this is the club
6 This is where the police car was, there's
7 testimony as to that This is Jamie's car and
8 where Jamie was (indicating)

9 Could you tell the jury where you were when
10 you saw shots coming from the passenger side of
11 that pickup truck?

12 A I was right around here somewhere

13 Q So you were kind of adjacent to his car?

14 A The other side

15 Q And where was the pickup truck?

16 A Over here

17 Q From the side?

18 A (Affirmative nod)

19 Q Where did you see the pickup when you saw
20 which side the gunshots were coming from, the
21 passenger side?

22 A Somewhere around in here

23 THE COURT You need to speak up,
24 please, sir

25 WITNESS Somewhere in here

26 DIRECT EXAMINATION CONTINUED

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1 BY MR DURANT

2 Q He was getting out to the road, is what you
3 said?

4 A Right

5 Q There is, of course, a ditch there, right?

6 A Right Yeah

7 Q And what's this area here and all back over
8 in here?

9 A Grass, -- grass

10 MR DURANT Did you get all that?

11 COURT REPORTER Yes, sir

12 MR DURANT You are good'

13 THE COURT She is

14 MR DURANT Could you please answer
15 any questions that defense counsel may have for
16 you, Mr Perrigo?

17 THE COURT Hold on just a second

18 Mr Durant, are you going to mark these
19 documents that you have been showing him?

20 MR DURANT I wasn't planning to put
21 them into evidence but we can ---

22 THE COURT Probably need to mark
23 them for identification

24 MR DURANT The first one that I
25 showed him was ---

26 COURT REPORTER State's Exhibit 50,

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1 identification only

2 MR DURANT And the second one that
3 I showed him would be (State's Exhibit) 51 for
4 identification

5 THE COURT Thank you, sir

6 MR DURANT Thank you, sir Sorry

7 THE COURT That's okay You may
8 cross examine, Ms Jenkinson

9 MS KENT-JENKINSON Thank you

10 CROSS EXAMINATION

11 BY MS KENT-JENKINSON

12 Q Good afternoon, Mr Perrigo

13 A (Affirmative nod), how you doing?

14 Q I just have a couple of questions You
15 gave two statements to the police?

16 A Yes, sir -- I mean 'yes, ma'am'

17 Q The first statement that you gave was
18 actually the night of the shooting, correct?

19 A Right

20 Q And that was in your own handwriting?

21 A Correct

22 Q You wrote that out?

23 A Correct

24 Q And you told them that you saw Mr Simmons
25 after he was shot?

26 A Correct

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1 Q And the police came back to you to give a
2 second statement

3 A Correct

4 Q And they wrote that out for you?

5 A Yes, they told me that they wanted to, that
6 they were going to write it

7 Q That was a couple of days later?

8 A Correct

9 Q When you gave them a second statement, the
10 police were writing it and that is when it was
11 included that you heard gunshots?

12 A Right

13 Q Or saw gunshots?

14 A Correct

15 Q Your first statement, was that a true
16 statement?

17 A Yes, it was

18 MS KENT-JENKINSON Beg the Court's
19 indulgence?

20 THE COURT Sure

21 MS KENT-JENKINSON That's all that
22 I have, Mr Perrigo Thank you

23 THE COURT Redirect?

24 REDIRECT EXAMINATION

25 BY MR DURANT

26 Q And your second statement is a true state-

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- 1 ent, too, correct?
- 2 A Parts of it
- 3 Q The parts are the same things that you've
- 4 testified to, is it not?
- 5 A Not where the guns (sic) were fired to
- 6 Q Pardon?
- 7 A I don't know where the shots were fired,
- 8 where the gun was aiming at
- 9 Q I know that you didn't see the gun but you
- 10 did make some inferences, did you not?
- 11 A Inferences? Meaning?
- 12 Q Well, you see shots coming from the truck
- 13 Correct?
- 14 A Right
- 15 Q You see the passenger -- okay Let me --
- 16 tell me where I'm wrong Okay?
- 17 A (Affirmative nod)
- 18 Q You're standing right in this area,
- 19 correct?
- 20 A Correct
- 21 Q You see the truck right here in this area,
- 22 shots coming from the passenger side, correct?
- 23 A Right
- 24 Q You see the victim -- he wasn't reaching
- 25 back over the truck and shooting that way, was
- 26 he?

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1 A I was -- I didn't see it I just saw the
2 flash

3 Q Once you saw shots coming from the truck,
4 you seen this guy go down, right?

5 A After the truck sped off He didn't go --
6 after the truck sped off, after I heard the
7 moan, I go over there

8 Q Okay So what inference did you draw from
9 that series of events?

10 A I don't know ---

11 Q What direction was he shooting in?

12 A I couldn't tell you

13 Q Don't guess it has anything to do with Mr
14 Ward's your cousin?

15 A No Because if that was the case, then I
16 wouldn't ever have mentioned or said that I seen
17 the gunfire coming from the truck

18 MR DURANT I have no further
19 questions

20 THE COURT Recross?

21 MS KENT-JENKINSON No questions

22 THE COURT You may come down, sir

23 (WITNESS STEPS DOWN)

24 THE COURT Solicitor, you may call
25 your next witness

26 MR DURANT I would ask that Mr

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1 Perrigo be excused if there is no objection,

2 Your Honor

3 THE COURT Any objection?

4 MS KENT-JENKINSON No objection

5 THE COURT Mr Perrigo, you are free

6 to leave, sir Thank you Call your next

7 witness

8 MR DURANT We would call Marcus

9 Moultrie

10 (WITNESS TAKES STAND)

11 MARCUS MOULTRIE, being

12 duly sworn to tell the truth, the whole truth

13 and nothing but the truth, testified, as

14 follows

15 DIRECT EXAMINATION

16 BY MR DURANT

17 Q How old are you, Marcus?

18 A Twenty-one (21)

19 Q Where are you currently employed?

20 A Holset, Leeds Avenue

21 Q Holset?

22 A (Affirmative nod)

23 Q What kind of work do you do there?

24 A Manufacturing

25 Q What do you'all manufacturer?

26 A Turbos, diesel engines

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1 Q Where do you live?

2 A [REDACTED] Road

3 Q Obviously that's in Petersfield, is that
4 correct?

5 A Um-humm

6 Q How did you know the victim, Jamie Simmons?

7 A He's my cousin

8 Q What was Jamie's age in relation to your
9 age?

10 Were you'all about the same age?

11 A Yes, sir

12 Q Could you describe your relationship with
13 Jamie? Were you social friends with him as well
14 as being family? Or, mostly family?

15 A We was social friends and family, it was
16 like -- when we'd see each other, we'd - we was
17 tight, (affirmative nod)

18 Q You didn't necessarily hang out with him
19 all the time but ---

20 A No

21 Q --- you had a good relationship with him?

22 A Yeah

23 Q Is that correct?

24 A Um-humm

25 THE COURT Is that a "yes"? You
26 need to say "yes"

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1 WITNESS "Yes", yes

2 THE COURT Thank you

3 DIRECT EXAMINATION CONTINUED

4 BY MR DURANT

5 Q Now, were you at the Club Diamante early
6 morning of May 11th?

7 A Yes, sir

8 Q Did you go to that club a good bit back in
9 those days?

10 A No, I just went there that night

11 Q Tell me a little bit about Jamie Was
12 Jamie a big clubber?

13 A No, he wasn't a partier

14 Q Sir?

15 A He wasn't not a partier

16 Q He was not a partier?

17 A (Negative gesture)

18 Q Did you ever know Jamie to be a big
19 drinker?

20 A No, I never saw him drink

21 Q Did you ever see him use any kind of
22 illegal narcotics or anything of that nature?

23 A No, sir

24 Q Ever known him to be a member of a gang?

25 A No, sir

26 Q What kind of things did Jamie enjoy?

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1 A Riding, music, drawing -- he loved drawing
2 Q He was an artist?
3 A Yeah
4 Q Do you know where Jamie was working at the
5 time of his death?
6 A I believe that it was on Kiawah Island
7 Q What was he doing there?
8 A I believe he was a security guard
9 Q Now, on the morning of May 11th, what time
10 did you get to the club?
11 A I went there about 12 00 or 1 00, somewhere
12 around 12 00 or 1 00
13 Q Who did you go with?
14 A My brother
15 Q Your brother's name is what?
16 A Cory Moultrie
17 Q How did you'all get to the club?
18 A I drove my car
19 Q What kind of car were you driving at the
20 time?
21 A GEO Tracker
22 Q What color is that GEO Tracker?
23 A Like a lime/mint green
24 Q Where did you have your car parked?
25 A My car was parked on the side of the road
26 by the sign

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- 1 Q Did you go into the club?
- 2 A Yes, sir
- 3 Q Were you drinking that night?
- 4 A Yes, sir
- 5 Q How much did you have to drink?
- 6 A I can't remember
- 7 Q What were you drinking?
- 8 A Beer
- 9 Q Were you drunk?
- 10 A No, sir
- 11 Q Did you see anything happen inside the
- 12 club?
- 13 A I saw a fight break out
- 14 Q Where did the fight break out?
- 15 A On the dance floor
- 16 Q Could you tell who was fighting?
- 17 A Not at the time
- 18 Q What happened after the fight broke out on
- 19 the dance floor?
- 20 A After the fight broke out, I guess the club
- 21 was about to end and everyone was leaving
- 22 Q Did you go outside, as well?
- 23 A Um-humm, (affirmative nod)
- 24 Q What was happening outside?
- 25 A Well, another thing broke out and some guys
- 26 were running after somebody

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1 Q Where was that fight, do you recall where
2 you saw that at?

3 A It was in the road headed towards Baptist
4 Hill

5 Q Do you recall a policeman being out there?

6 A Yeah, a police car was out there

7 Q What were you doing while those folks were
8 fighting down the road?

9 A I was walking to my car

10 Q If you come out of the club and the fight
11 was in front of you, which way would your car
12 have been parked, to the left or to the right?

13 A To the right

14 Q And did you -- do you recall seeing a blue
15 Suburban out there?

16 A Yes, sir

17 Q What was going on around that Suburban?

18 A I think someone was inside the car, or
19 something like that, and some people was trying
20 to get at 'em

21 Q Do you know who the owner of that car is?

22 A I believe his name is Kevin Dunmeyer

23 Q Now, I believe that you previously said
24 that you saw somebody getting chased down the
25 road

26 A (Affirmative nod)

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- 1 Q Which way was that?
- 2 A Towards Baptist Hill
- 3 Q Had you seen Jamie at the club up to this
- 4 time?
- 5 A No, sir
- 6 Q When did you first see Jamie?
- 7 A He was riding through when I walked to my
- 8 car
- 9 Q So this was after they'd chased the guys up
- 10 towards Baptist Hill?
- 11 A Yes
- 12 Q Where did you see ---
- 13 A Coming from Edisto way
- 14 Q That would be from the Baptist Hill side or
- 15 the Hollywood side?
- 16 A From the Baptist Hill side
- 17 Q What did you do when you saw him?
- 18 A I stopped him in the middle of the road and
- 19 told him that I wanted to talk to him about a
- 20 job He was looking for me a job at Kiawah
- 21 Island
- 22 Q He was trying to find you a job out at
- 23 Kiawah?
- 24 A Um-humm
- 25 Q Where did you'all agree to go talk?
- 26 A The Waffle House

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1 Q That would be the Waffle House on Savannah
2 Highway?

3 A Yes, sir

4 Q So where did that conversation take place?

5 A In the middle of the road

6 Q And he was in his car still?

7 A Yes, sir

8 Q You were outside the car, speaking through
9 the window, is that right?

10 A Um-humm

11 COURT REPORTER Is that a "yes"?

12 WITNESS Yes, sir

13 DIRECT EXAMINATION CONTINUED

14 BY MR DURANT

15 Q What did you do after you'all had that
16 conversation?

17 A After we had the conversation, I believe
18 that he pulled over on the side of the road I
19 got in my car and ---

20 Q Where did he park his car in relation to
21 where your car was?

22 A His car was directly in front of mine

23 Q Did he get out of his car?

24 A I believe so

25 Q And were you outside of your car at that
26 time, still, too?

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1 A I was inside the car, I was waiting on my
2 brother

3 Q So your brother wasn't already at your car?

4 A (Negative gesture), uh-huh

5 THE COURT Is that a "no"?

6 WITNESS "No "

7 DIRECT EXAMINATION CONTINUED

8 BY MR DURANT

9 Q What happened after you got -- as you were
10 sitting in your car, waiting for your brother?

11 A I believe some shots break -- some shots
12 broke out

13 Q From which direction did you hear those
14 shots come from?

15 A I believe that it was from behind, from
16 Baptist Hill

17 Q Okay Did they sound close or far away?

18 A Can't really tell

19 Q You just heard some shots, right?

20 A Yes

21 Q What did you do when the gunfire stopped?

22 A I got myself up off the ground ---

23 Q Excuse me What did you do when the
24 gunfire started, I should ask?

25 A I got out of my vehicle and laid on the
26 ground

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1 Q So you got out of your car?

2 A (Affirmative nod)

3 THE COURT Is that a "yes"?

4 WITNESS Yes

5 THE COURT You need to answer with
6 words, please, sir The record has got to be
7 clear

8 WITNESS Yes, sir

9 THE COURT Thank you

10 DIRECT EXAMINATION CONTINUED

11 BY MR DURANT

12 Q After the gunfire stopped, what did you do?

13 A I immediately got up, got into my car and -
14 - by that time, my brother came in and we
15 started to pull off

16 Q And what did you do as you started to pull
17 off?

18 A I believe that I spin my car, I sped away

19 Q You sped away?

20 A Um-humm

21 Q Did you leave?

22 A No, I didn't leave My brother stopped me
23 and told me that somebody had gotten shot

24 Q Did you notice anything wrong with your car
25 at that time?

26 A Yes, I noticed that I had a hole in my

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- 1 wind-shield
- 2 Q So what did you when you stopped the car?
- 3 A We got out and we went over to find out who
- 4 got shot
- 5 Q And who had gotten shot?
- 6 A My cousin
- 7 Q Jamie?
- 8 A (Affirmative nod), Jamie Simmons
- 9 Q And this was the cousin that had just
- 10 gotten there?
- 11 A Yes
- 12 Q Do you recall the police officer coming on?
- 13 A The police officer almost ran over me
- 14 Q Did the police officer stay there?
- 15 A Yes
- 16 Q Now, when you ran up and saw Jamie, where
- 17 was he?
- 18 A He was laying beside the ditch
- 19 Q On which side of the car?
- 20 A It was on the right side of the car, the
- 21 passenger side
- 22 Q Was he actually in the ditch?
- 23 A He wasn't actually in the ditch
- 24 Q Was he face down or face up?
- 25 A Face up
- 26 Q Did he appear to be alive, to you, at that

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1 time?

2 A Yes, sir

3 Q Was he conscious?

4 A Yes, sir

5 Q Did he respond to you? Did you talk to

6 him?

7 A He didn't respond but he was breathing

8 Q How long did it take the ambulance to get

9 there?

10 A I'd estimate about five to ten minutes

11 Q Was Jamie's parents out there too?

12 A Not at the time

13 Q Do you know if they came out there later?

14 A Yes, sir

15 Q Do you know how they got out there?

16 A I believe that it was a cousin of theirs

17 that was out there at the club, and he went to

18 their house and got them

19 Q How long were you out there that morning?

20 A I was out there real late

21 Q In fact, your car got roped off at the

22 crime scene, is that correct?

23 A Yes, sir

24 Q Do you know this fellow?

25 A Yes, sir

26 Q Who is that? -

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- 1 A John Ward
- 2 Q How do you know him?
- 3 A He lives in the neighborhood
- 4 Q Are you friends with him?
- 5 A Yeah
- 6 Q Do you know Catrell Douglas?
- 7 A Yes, sir
- 8 Q How do you know him?
- 9 A He's my cousin
- 10 Q Do you know a guy named Tremayne
- 11 Washington?
- 12 A No, sir
- 13 Q Would you step down for a second?
- 14 A (Complies)
- 15 Q If you would, I need for you to stand off
- 16 over here because the ladies and gentlemen of
- 17 the jury also have to see Okay?
- 18 A Okay
- 19 Q Obviously this is the Club Diamante Could
- 20 you tell the jury where your car was parked?
- 21 A It was parked along here
- 22 Q And where -- now, you said that you saw a
- 23 fight around the Suburban Where did that take
- 24 place?
- 25 A Over here (indicating)
- 26 Q And you said that you saw someone getting

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1 chased, where did you see someone getting chased
2 to?

3 A From this side of the club back that way

4 Q Now, when Jamie showed up, which direction
5 did Jamie come from?

6 A From this side

7 Q And where did you flag him down at?

8 A Here

9 Q Right there, in front of the club?

10 A Um-humm

11 Q That's where you talked to him?

12 A Yes, sir

13 Q Where did he go after you talked to him?

14 A Came and parked right in here

15 Q And what did you do after he parked there?

16 A I got in my truck

17 Q And that's when the gunfire started?

18 A Um-humm

19 THE COURT Is that a "yes"?

20 WITNESS "Yes "

21 DIRECT EXAMINATION CONTINUED

22 BY MR DURANT

23 Q You say that after the gunfire started, you
24 pulled your truck out and then stopped Where
25 did you pull your car out to?

26 A I pulled my car out to right about here, I

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- 1 stopped right here
- 2 Q Right in that lane of travel?
- 3 A Yes, sir
- 4 Q Okay Let me just let you look at one
- 5 other thing and then I will be through Would
- 6 you turn the screen back on, Scott, please?
- 7 You can stand right over here, Mr
- 8 Moultrie That's fine
- 9 Showing you (State's Exhibit 49-A), do you
- 10 see on this diagram the area that you talked to
- 11 Jamie in before he parked his car?
- 12 A Yes, sir (indicating)
- 13 Q Somewhere along where that Cadillac is,
- 14 maybe?
- 15 A Yes, sir
- 16 Q And what is this vehicle?
- 17 A That's my vehicle
- 18 Q Is that where your vehicle was parked at
- 19 the time of the shooting?
- 20 A Yes, sir
- 21 Q And whose vehicle is this?
- 22 A That's Jamie's vehicle
- 23 Q As you look at that picture right here,
- 24 where did you see Jamie? Once you'd stopped,
- 25 where was he?
- 26 A He would have been over there in the gap

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1 Q Over here?

2 A Um-humm, (affirmative nod)

3 Q That's where you saw him after the
4 shooting?

5 A Yes, sir

6 Q Okay And, moving along -- is that your
7 vehicle there?

8 A Yes, sir

9 Q That is where you moved to after the
10 shooting, is that correct?

11 A Yes, sir

12 Q Okay There's something else that I wanted
13 to have you look at while you're standing up, if
14 I can find it

15 Let's start out with this, do you recognize
16 that vehicle?

17 A Yes, sir

18 Q That would be ---

19 A --- my vehicle

20 Q Your car?

21 A Yes, sir

22 Q Disregard that one, -- I can't find it

23 Referring to State's Exhibit 29, what does
24 that depict? What does that show? Whose car is
25 to the right?

26 A That's Jamie's car to the right

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- 1 Q And your car to the left?
- 2 A Yes, sir
- 3 Q And that is, once again, where you parked
- 4 it after the shooting, just the other side, is
- 5 that correct?
- 6 A Yes, sir
- 7 Q Now, referring to State's Exhibit 13, what
- 8 is this right here?
- 9 A That's a bullet hole
- 10 Q Was that there before May 11th, 2003?
- 11 A No, sir
- 12 Q State's Exhibit 32, what is that a picture
- 13 of? That's basically a closeup of that same
- 14 hole, is that correct?
- 15 A Yes, sir
- 16 Q That was State's Exhibit 32?
- 17 A That's correct
- 18 Q State's Exhibit 33, what does that show?
- 19 A Bullet hole to my seat
- 20 Q Presumably that shot came through after you
- 21 got out of your car?
- 22 A Yes, sir
- 23 Q State's Exhibit 34, that's basically a
- 24 close up of the same shot, is that correct?
- 25 A Yes
- 26 Q And State's Exhibit 35, what does that

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1 depict?

2 A A bullet hole through my windshield

3 Q Went in through the back, through the head-
4 rest and out the front windshield?

5 A Yes, sir

6 MR DURANT Thank you You may
7 resume your seat, Marcus Please answer any
8 questions that Mr Butler or Ms Kent-Jenkinson
9 may have for you

10 WITNESS (Complies)

11 THE COURT You may cross-examine,
12 Ms Jenkinson

13 MS KENT-JENKINSON Thank you, Your
14 Honor

15 THE COURT Yes, ma'am

16 CROSS EXAMINATION

17 BY MS KENT-JENKINSON

18 Q Good afternoon, Mr Moultrie

19 A (Affirmative nod)

20 Q This is your car right here?

21 A Yes, ma'am

22 Q You didn't see any cars come by you?

23 A No, ma'am

24 MS KENT-JENKINSON That's all that
25 I have Thank you

26 THE COURT Redirect?

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1 MR DURANT No, sir

2 THE COURT You may come down, Mr
3 Moultrie

4 (WITNESS STEPS DOWN)

5 THE COURT Call your next witness

6 MR DURANT The State calls Johnny
7 Buncum

8 (WITNESS TAKES STAND)

9 JOHNNY BUNCUM, being
10 duly sworn to tell the truth, the whole truth
11 and nothing but the truth, testified, as
12 follows

13 DIRECT EXAMINATION

14 BY MR DURANT

15 Q Good afternoon, Mr Buncum

16 A (No response)

17 Q What is your age, sir?

18 A Thirty-seven (37)

19 Q Are you employed?

20 A Yes, sir

21 Q Where do you work?

22 A Lieber Correctional Institution

23 Q What do you do at Lieber?

24 A I am a Corrections officer

25 Q What is your position/rank at Lieber
26 Correctional?

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- 1 A Lieutenant/Captain
- 2 Q How long have you been with Lieber?
- 3 A Ten years
- 4 Q Do you also -- in May of 2003, were you
- 5 also moonlighting? Working a second job?
- 6 A Yes
- 7 Q Do you own your own company?
- 8 A Yes, I do
- 9 Q What is the name of that company?
- 10 A Maximum Security
- 11 Q What kind of company is Maximum Security?
- 12 A We provide security for nightclubs, hotels
- 13 Q In May 2003, were you providing security at
- 14 Club Diamante?
- 15 A Yes, we were
- 16 Q How long had you'all been working at the
- 17 Club Diamante?
- 18 A Approximately six months
- 19 Q Now, directing your attention to the early
- 20 morning of May 11th, 2003, which would be early
- 21 Sunday morning, did you have some sort of
- 22 problem inside the club?
- 23 A Yes, sir, we had a small fight that kind of
- 24 extended to the outside of the club
- 25 Q What happened with regard to the fight
- 26 inside the club? Were you inside when that

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1 happened?

2 A No, I was not inside the club when the
3 fight broke out

4 Q But you were aware of it, is that correct?

5 A Yes, sir

6 Q What happened when the fight spilled
7 outside the club?

8 A They continued fighting, two large groups

9 Q Do you know who those groups were?

10 A I know that one of the persons that was
11 chased down the road was named Dunmeyer

12 Q Okay So you didn't really have -- you
13 didn't know any names, you don't really know
14 people -- you didn't know these people

15 A No

16 Q But you say that it looked like groups of
17 people fighting?

18 A Groups of people fighting, (affirmative
19 nod)

20 Q Was there anybody there from the Sheriff's
21 office?

22 A Yes Deputy Frichtel was there

23 Q Why was Deputy Frichtel there?

24 A We'd called him because we'd had a little
25 problem inside, then outside there'd been a
26 problem

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1 Q There was a problem earlier?

2 A Yes, sir

3 Q Now, you mentioned something about seeing
4 somebody being chased Tell us what you saw
5 with regard to that

6 A I remember Mr Dunmeyer came outside the
7 club, tried to put someone else in the Suburban

8 Q Okay

9 A And some smaller guys tried to jump on him
10 when he was trying to put 'em in the car, and he
11 ran down Toogoodoo

12 Q Which way down Toogoodoo Road?

13 A Towards Baptist Hill area

14 Q What happened after that car -- after he
15 ran down Toogoodoo Road?

16 A Well, I never seen Dunmeyer again Shortly
17 after, a lime green Cadillac went down Toogoodoo
18 Road In a few seconds, it came back Pulled
19 up close to the front of the club

20 Then a Dodge, 1500c Dodge Ram, came out of
21 the parking lot fishtailing and gunshots were
22 fired

23 Q What did the guy -- where did the guy in
24 the pickup truck seem to be shooting -- well,
25 which side -- did you see, did you actually see
26 gunfire coming from the ---

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- 1 A I seen the muzzle flares from the right
2 passenger side, front window
3 Q Front window, passenger side?
4 A (Affirmative nod), passenger side
5 Q And could you tell where the shots were
6 being directed, which direction?
7 A Yes, towards the nightclub
8 Q Toward anything else? What did it look
9 like he was shooting at?
10 A In the parking area
11 Q Was that green Cadillac in the area?
12 A Yes, slightly up to the front, to the front
13 and to the right
14 Q Okay Did it look like any of the shots
15 were directed at the Cadillac?
16 A Yes
17 Q Now, where did you see the first gunshots
18 coming from?
19 A The Dodge truck
20 Q What happened after you observed those
21 first shots?
22 A Well, after I heard the first shots, -- the
23 truck was doing, you know, (hand gesture)
24 Q Fishtailing?
25 A Fishtailing, (affirmative nod), and shots
26 were coming out The lime green Cadillac -- and

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1 there was another car in between the two of
2 them, in the middle, a Honda Accord The
3 Cadillac took off down the road, and the Honda
4 was trying to go down the road, and the truck
5 was going down the road still firing shots

6 Q The truck was still firing shots?

7 A (Affirmative nod)

8 Q What did it look like the truck was doing,
9 to you?

10 A Trying to catch the Cadillac

11 Q Did you continue to hear shots as those
12 vehicles went down the road?

13 A Yes, sir

14 Q How many?

15 A A lot

16 Q So what did you do after the Cadillac and
17 the truck had left the area?

18 A Well, someone come and told me that someone
19 was hit, so I went around there to see who it
20 was That's when I seen the victim laying on
21 the ground, near the ditch on the passenger side
22 of the Honda Accord

23 Q Did you walk up to where the victim was?

24 A Yes

25 Q Did he appear to still be alive at the
26 time?

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- 1 A No
- 2 Q Was he face down or face up?
- 3 A He was face up
- 4 Q Were you there when the police arrived?
- 5 A Yes
- 6 Q I believe that you talked to Detective
- 7 Hawks that night, is that correct?
- 8 A Yes, sir
- 9 Q Also talked to a Detective Magwood that
- 10 night?
- 11 A Yes, sir
- 12 Q Did you own a weapon at the time?
- 13 A Yes
- 14 Q What kind of weapon did you own?
- 15 A A nine millimeter
- 16 Q What kind of nine millimeter?
- 17 A Hi Point
- 18 Q Did you have that weapon with you that
- 19 night?
- 20 A No, it was locked inside my truck in the
- 21 safe
- 22 Q You have a safe inside your truck?
- 23 A Yes, sir
- 24 Q Did you ever have your weapon outside your
- 25 truck at any time during this evening, during
- 26 this gun battle?

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1 A No, sir

2 Q Did you ever fire your weapon at any time
3 during that evening?

4 A No, sir

5 Q Do you know what happened to that weapon?

6 A Yes, it was confiscated by Detective Hawks

7 Q Did he run some test on it, is that right?

8 A Yes, and they did lead tests on my hands
9 and my clothing

10 Q Mr Buncum, I now hand you what has been
11 marked as State's Exhibits 52 and 53 for identi-
12 fication and ask if you recognize those photo-
13 graphs?

14 A Yes, sir

15 Q What is that a photograph of?

16 A That's my weapon

17 Q Does it depict your weapon as it appeared
18 at the time that you last saw it?

19 A (Affirmative nod), yes, sir

20 MR DURANT I offer State's Exhibit
21 52 and Exhibit 53 into evidence I believe that
22 there is no objection, Your Honor

23 THE COURT Any objection?

24 MR BUTLER No objection

25 THE COURT Without objection,
26 State's Exhibits 52 and 53, each being a

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1 photograph, is admitted into evidence

2 (SO ENTERED AS STATE'S EXHIBIT 52)

3 (SO ENTERED AS STATE'S EXHIBIT 53)

4 DIRECT EXAMINATION CONTINUED

5 BY MR DURANT

6 Q You said that you had -- that Detective
7 Hawks did something with your hand, too?

8 A Yes, sir

9 Q What was that?

10 A I think it was a lead test to see if I'd
11 fired a weapon

12 Q Okay

13 MR DURANT Court's indulgence

14 THE COURT Sure

15 DIRECT EXAMINATION RESUMED

16 BY MR DURANT

17 Q You said in your direct testimony that you
18 saw gunfire from the front passenger side of the
19 gray truck, is that correct?

20 A Yes, sir

21 Q Could you tell who was in the truck?

22 A Not quite, not without guessing

23 Q You didn't see who was shooting, just saw
24 where the gunfire was coming from, is that a
25 fair statement?

26 A Yes, sir

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1 Q Mr Buncum, I hand you what has previously
2 been marked as State's Exhibit 9 Do you
3 recognize that vehicle?

4 A Yes, that's the lime green Cadillac

5 Q That you saw?

6 A Right

7 Q The one that you saw the truck shooting at?

8 A Yes, sir

9 Q Now, I would have you look at what has been
10 marked as State's Exhibit 15, into evidence, do
11 you recognize that photograph?

12 A Yes, that's the 1500c truck

13 Q Which window did you see gunfire coming
14 from?

15 A The right passenger window, right in the
16 front

17 Q This is State's Exhibit 24, do you
18 recognize that vehicle?

19 A Yes, that was the Suburban that was parked
20 across the street from the club

21 Q That is where you saw the fighting going
22 on?

23 A Yes

24 Q You couldn't see who was in the Cadillac
25 either, could you?

26 A No, sir

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1 MR DURANT Thank you Please answer
2 any questions that defense counsel may have for
3 you

4 WITNESS Yes, sir

5 THE COURT You may cross examine,
6 Mr Butler

7 CROSS EXAMINATION

8 BY MR BUTLER

9 Q Good afternoon, sir

10 A Good afternoon

11 Q You talked about the parties involved in
12 the fights, both inside and outside the club
13 At some point there was a man that ran away from
14 the club, is that right?

15 A Yes, sir

16 Q Did you ever come to learn who that person
17 was?

18 A Yes, sir

19 Q Who was that?

20 A Kevin Dunmeyer

21 Q And one of the people that was chasing him,
22 you described as a tall, black male with a beard
23 before?

24 A No, sir

25 Q Do you remember giving statements to law
26 enforcement about this incident?

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1 A Yes, sir

2 Q Written statements?

3 A Yes, sir

4 Q Okay Both on the day of the incident and
5 then some days later?

6 A Yes, sir

7 Q If I showed you copies of those statements,
8 would that help refresh your recollection?

9 A Yes, sir

10 MR BUTLER Beg the Court's
11 indulgence

12 THE COURT Yes, sir, take your time

13 MR BUTLER Please mark these as
14 Defendant's Exhibits 1 and 2 for identification

15 COURT REPORTER So marked

16 CROSS EXAMINATION CONTINUED

17 BY MR BUTLER

18 Q I want to show you what has been marked as
19 Defendant's Exhibit 2 for identification Do
20 you recognize that document, sir?

21 A Yes, sir

22 Q And you recognize that is a statement that
23 you gave to law enforcement on the 15th of May,
24 2003?

25 A (Affirmative nod)

26 Q Let me direct you right quick to that

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1 sentence right there, "as Dunmeyer was running
2 away, the tall black male with a beard that was
3 arrested stated, "We will handle that "

4 A Yes, sir

5 Q Do you remember that now?

6 A Yes, sir

7 Q Do you remember that there was a tall black
8 male with a beard

9 A Yes, sir

10 Q He was on the other side of the fight from
11 Mr Dunmeyer?

12 A No, sir Let me restate -- what did you
13 say? Because I know that I told you that there
14 was a small black male chasing Dunmeyer

15 Q Here is what I am asking, not necessarily
16 that the tall black male was chasing Dunmeyer
17 but he was with the group of people ---

18 A Yes

19 Q --- that were on the other side of the
20 fight with Mr Dunmeyer?

21 A Yes

22 Q Okay I'm sorry if I stated that
23 incorrect-ly So you remember him now, the tall
24 black male?

25 A Yes

26 Q When Dunmeyer got away, the tall black male

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1 with the beard said, 'That's alright, we'll
2 handle that '

3 A Yes, sir

4 Q As if to say, 'It's okay that he got away,
5 we will take care of him '?

6 A Yeah

7 Q And the tall black male with the beard is
8 not, and was not, the defendant, correct?

9 A Yes

10 Q Then you saw the tall black male with the
11 beard who said, 'We'll handle that', get in the
12 Dodge truck?

13 A Yes, sir

14 Q The same gray Dodge truck that you saw the
15 shots fired from?

16 A Yes, sir

17 Q When you gave both of your statements to
18 law enforcement, you wanted to be accurate as
19 best you could, right?

20 A Yes, sir

21 Q And you wanted to give them as much
22 informa-tion as you could possible give them,
23 correct?

24 A Yes, sir

25 Q And you knew that where the shots were
26 fired from in the truck was important, did you

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1 not?

2 A Yes, sir

3 Q And today you've testified that they came
4 from the passenger side -- front or rear? Which
5 one?

6 A Front

7 Q Okay So if this is a -- this is an
8 extended cab truck, is that right?

9 A Yes, sir

10 Q So there's two doors on each side?

11 A Yes, sir

12 Q Do you remember, in either of your
13 statements to the police, that you specified
14 whether or not it was from the front or back?

15 A I don't remember

16 Q Showing you what has been marked for
17 Defendant's Exhibit 1 for identification, that's
18 the statement that you gave on the night of the
19 incident, correct?

20 A Yes

21 Q And when they asked you where the shots
22 came from, you said what?

23 A I said the passenger side

24 Q And then four days later -- beg the Court's
25 indulgence (reviewing statement)

26 MR DURANT Page one, third line from

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1 the bottom

2 MR BUTLER Thank you

3 CROSS EXAMINATION RESUMED

4 BY MR BUTLER

5 Q The statement that you gave to the police
6 then, (reading) " shots were fired from
7 passenger side of the Dodge truck" Is that
8 correct?

9 A Yes

10 Q That was your statement four days after the
11 incident and that's your statement on the night
12 of the incident So knowing the importance of
13 where the shots came from, you were unable then
14 to specify whether it was from the front or the
15 back, is that correct?

16 A I wasn't asked whether it was from the
17 front or the back

18 MR BUTLER Beg the Court's indul-
19 gence

20 THE COURT Yes, sir

21 MR BUTLER That's all that I have
22 Thank you

23 THE COURT Very well Redirect?

24 MR DURANT I have nothing further
25 I would ask that Mr Buncum be excused

26 MR BUTLER No objection

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1 THE COURT You may come down, Mr
2 Buncum

3 (WITNESS STEPS DOWN)

4 THE COURT How long is your next
5 witness?

6 MR DURANT I don't know, Your Honor,
7 because I haven't talked to him

8 THE COURT Well, why don't we do
9 this? At this point, Ladies and Gentlemen, we
10 will give the Solicitor a chance to talk with
11 the witness, if he wishes, and we'll recess at
12 this point

13 Please remember something that you --
14 you have started, of course, hearing this
15 matter It's very important that you not begin
16 your deliberations in this case Of course,
17 that means talking amongst yourselves, but it
18 also means talking with anyone else outside of
19 this courtroom So when you go home tonight, if
20 there is someone there, I would imagine a
21 typical question would be, 'What are you doing?
22 What's this case about?' You may not talk about
23 it If you do, at that moment you would have
24 started your individual deliberations

25 You can talk about something else
26 When we complete this case you will be free to

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1 discuss it is you chose to discuss it But
2 until you have finished, until you have decided
3 this case, do not talk with anyone outside of
4 this courtroom, including anyone that may be at
5 home And, of course, do not allow anyone to
6 talk with you about it

7 I am also going to instruct you not to
8 read any newspaper articles about this case If
9 you're watching the News account and there
10 should be some News program that may come on,
11 you're instructed to not watch that, to leave
12 the room, turn the television off You may not
13 view any news coverage of this case

14 Have a good evening I would ask that
15 you be back in your jury room, please, by 9 30
16 in the morning Thank you Come directly to
17 the jury room Do not call that number, please,
18 after 6 00 There's no need to listen to that
19 message It doesn't apply to you

20 (JURY OUT @ 5 05 P M)

21 THE COURT All right, anything from
22 the State before recessing?

23 MR DURANT No, sir, Your Honor

24 THE COURT Anything from the
25 Defense?

26 MS KENT-JENKINSON No, Your Honor

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1 THE COURT At this point, Mr Ward,
2 I am going to allow you to remain out on bond
3 Please understand, sir, that we have started
4 this case Of course, you're expected to be
5 present This is your trial, your opportunity
6 to be present, your day in court While I would
7 reiterate that you, of course, have absolutely
8 nothing to prove in this trial or explain, it is
9 still your opportunity to be present for your
10 trial If you aren't present in the morning,
11 this trial will proceed in your absence Do you
12 understand that?

13 DEFENDANT I will be here

14 THE COURT Very well Thank you,
15 sir We will be at-ease until 9 30

16 (COURT IN RECESS)

17 (TRANSCRIPT CONTINUED NEXT PAGE)

18

19

20

21

22

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26

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1

2

3

4

5

6

7 DECEMBER 7, 2004

9 30 A M

8

9

(DEFENDANT PRESENT)

10

THE COURT Good morning We

11

received a phone call from Anna Margaret Jordon,

12

Juror No 216, No 15 on the jury strike list

13

Ms Jordan advised that she was at that moment

14

in an automobile accident Then when Scott

15

called her back, she confirmed that She was

16

then talking to the investigating officer,

17

indicated that she was basically all right but

18

that she was feeling uncomfortable and that she

19

was probably going to go to the hospital to have

20

her condition checked We advised her that we

21

would excuse her from further participating

22

Any objection from the State?

23

MR DURANT I don't believe so, Your

24

Honor

25

THE COURT That didn't sound very

26

decisive

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1 MR DURANT Well, I -- (pause)

2 THE COURT Any objection from the
3 Defendant?

4 MS KENT-JENKINSON No, Your Honor

5 THE COURT The alternative is that
6 we can -- we have a cell phone number to call
7 her back We could just delay the trial until
8 she can go to the emergency room and do those
9 things that she has to do Whatever you want to
10 do, Solicitor

11 MR DURANT (No verbal response)

12 THE COURT Or we could wait and get
13 the doctor's report from her I don't know what
14 that is going to be

15 MR DURANT Which one was it?

16 THE COURT Number 216, Anna Margaret
17 Jordan I can't put a face with the name But
18 if she was the one that was sitting next to the
19 foreperson, she continued ---

20 MR DURANT That was Mr Brickman's
21 secretary

22 THE COURT Ms Jordan?

23 MR DURANT Yeah

24 THE COURT Was she the one that was
25 sitting next to the foreperson?

26 MR DURANT I don't know but I know

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1 one of them was asleep, thirty seconds into my
2 opening statement

3 THE COURT She slept off and on
4 throughout the afternoon, as did another one,
5 but she slept the most Any objection?

6 MR DURANT No, sir I mean, if it
7 was a thing where she was going to be thirty
8 minutes late, I ---

9 THE COURT I don't know We can
10 find out from her

11 MR DURANT If she is going to be
12 tied up at the emergency room, let's just go on

13 THE COURT At that moment, at about
14 ten after 9 00, she was still at the accident
15 scene

16 MR DURANT I'll leave it to you'all
17 Like I say, if she ends up going to the
18 hospital, we just ought to go on with the trial

19 THE COURT All right I can't tell
20 you what to do, Bruce

21 MR DURANT I understand, but I hate
22 to have to herd these cats together again

23 THE COURT Whatever you want to do,
24 Solicitor If you want me to find out from the
25 hospital what she is doing, we can stop the
26 trial if we have to do that

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1 MR DURANT Well, I mean, if Scott
2 called her and she says that she is on the way
3 to the hospital, I'd say let's go on

4 THE COURT We have already -- we
5 have already done that

6 MR DURANT So she is on her way?

7 THE COURT She was on her way to
8 the hospital then, that was her plan

9 MR DURANT Let's move on

10 THE COURT Okay Is the State
11 ready to proceed?

12 MR DURANT Yes, sir

13 THE COURT Is the Defense ready to
14 proceed?

15 MS KENT-JENKINSON Yes, Your Honor

16 THE COURT Thank you Let the
17 record reflect that Mr Ward is present Let's
18 bring in our jury, please

19 (JURY IN @ 9 45 A M)

20 THE COURT Good morning, Ladies and
21 Gentlemen Mr Simpson, you may move down and
22 take the seat right in front of you, sir I am
23 going to place you on the jury now We had a
24 witness -- not a witness, a juror A juror, Ms
25 Jordan, who has advised us this morning that
26 unfortunately she was in an automobile accident,

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1 a minor accident, but she is going to have to go
2 be checked this morning So that's that reason
3 we have an alternate You now will be a part of
4 this jury, Mr Simpson Thank you very much

5 Thank you, Ladies and Gentlemen We
6 will now continue in this matter I hope that
7 you had a good evening Please give your
8 attention to the next witness

9 You may call your next witness,
10 Solicitor

11 MR DURANT Thank you, Your Honor
12 The State calls Tron Brisbane

13 (WITNESS TAKES STAND)

14 TRON BRISBANE, being
15 duly sworn to tell the truth, the whole truth
16 and nothing but the truth, testified, as
17 follows

18 DIRECT EXAMINATION

19 BY MR DURANT

20 Q How old are you, Mr Brisbane?

21 A Nineteen (19)

22 Q And where are you from?

23 A Petersfield

24 Q Where?

25 A Hollywood, South Carolina Petersfield

26 Q Petersfield?

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1 A (Affirmative nod)
2 Q You are currently in the Job Corps, is that
3 correct?
4 A (Affirmative nod)
5 Q You have to answer?
6 A Yes, sir
7 Q Where are you with Job Corps?
8 A Kentucky
9 Q You're currently here over the Christmas
10 holidays?
11 A Yes
12 Q I would like to direct your attention back
13 to May 11th, 2003 Did you have occasion to be
14 at the Club Diamante that night?
15 A Yes
16 Q Who did you go to the club with?
17 A My brother and some of my friends
18 Q What is your brother's name?
19 A Oble
20 Q And what were your friends' names?
21 A Chris and Shannon
22 COURT REPORTER How do you spell
23 your brother's name?
24 WITNESS O-b-l-e
25 DIRECT EXAMINATION CONTINUED
26 BY MR DURANT

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- 1 Q What vehicle did you go to the club in?
- 2 A Honda
- 3 Q Whose Honda?
- 4 A My sister's
- 5 Q What color was that Honda?
- 6 A Gray
- 7 Q Now, what happened at the club that night,
- 8 that you saw?
- 9 A I really didn't see anything I was outside
- 10 when all the fighting went on and everything
- 11 Q So you saw some fighting going on outside?
- 12 A Yeah
- 13 Q What happened -- what did you do when
- 14 fighting was going on outside?
- 15 A Jumped in the car and pulled off
- 16 Q Who was in the -- where was y'all's car
- 17 parked?
- 18 A On the opposite side of the club, back on
- 19 Coon Club Road
- 20 Q Referring to State's Exhibit 6, this is the
- 21 club, this is Toogoodoo Road, -- Coon Club is
- 22 not shown on here but it's on this side, is that
- 23 correct?
- 24 A (No verbal response)
- 25 Q Could you tell the jury roughly where your
- 26 car was parked?

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- 1 A Right there, up on the side of the road
2 here
3 Q Okay Who all was in the car?
4 A Me, my brother, Chris and Shannon
5 Q You were all in the car together when you
6 left, too?
7 A Yeah
8 Q Who was driving?
9 A My brother
10 Q And what happened as you'all pulled away
11 from the club?
12 A We left the club, I saw the Cadillac went
13 around us and I saw the truck behind it
14 Q Where were you'all -- which way were you --
15 when you left, which direction were you'all
16 headed?
17 A Going towards Hollywood
18 Q That would be over to this side once again,
19 is that correct?
20 A Yeah
21 Q Where did that -- what did the Cadillac
22 look like?
23 A Green, lime green
24 Q Do you know who that car belongs to?
25 A Ton-Ton
26 Q Do you know Ton-Ton's real name?

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1 A No

2 Q That car passed first?

3 A (Affirmative nod)

4 Q Which side?

5 A On the left side

6 Q The left side of your car, is that correct?

7 A (Affirmative nod)

8 Q Was it going fast?

9 A (Affirmative nod)

10 THE COURT You need to say yes or

11 no, please

12 WITNESS Yes

13 DIRECT EXAMINATION CONTINUED

14 BY MR DURANT

15 Q Was it going fast?

16 A Yes

17 Q And what was behind that green Cadillac?

18 A The gray pickup, Dodge

19 Q Do you know who owns that vehicle?

20 A I don't know him personally

21 Q Do you know his name?

22 A They call him "Fiend" Or "Fain"

23 Q Fiend?

24 A (Affirmative nod)

25 Q Did that pass you too?

26 A Yeah

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- 1 Q Was that vehicle going fast or slow?
- 2 A It wasn't going that fast
- 3 Q What did you hear as these vehicles were
- 4 passing you?
- 5 A I heard gunshots after we'd pulled off
- 6 Q Did you continue to hear gunshots?
- 7 A Yeah
- 8 Q How far down Toogoodoo Road were you'all
- 9 when these vehicles passed you?
- 10 A Right at the corner, making a turn off to
- 11 go on Wilson Road
- 12 Q Which road?
- 13 A Making the turn off to go on Wilson Road
- 14 Q Okay What happened as you'all were making
- 15 the turn off to go down that road?
- 16 A That's where they passed us at
- 17 Q And what happened when they passed you'all?
- 18 A We turned off by Harris Street, ran into a
- 19 ditch
- 20 Q Why did you'all run into the ditch?
- 21 A Trying to get out of the way We meant to
- 22 turn on the dirt road but my brother lost
- 23 control of the car
- 24 Q When did those vehicles pass you in
- 25 relation to when you'all ran into the ditch?
- 26 A That was after we got out and ran into the

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1 woods

2 Q Okay Why did you run into the woods?

3 A We were still hearing gunshots and didn't
4 know where they were coming from

5 Q Where did it sound like it was coming from?

6 A Sounded like they were shooting at each
7 other or something like that

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

9 A We walked home, on foot

10 Q You'all were unable to get your car out of
11 the ditch?

12 A No

13 Q Did anyone in your vehicle have a weapon
14 that night?

15 A No

16 Q Did anyone in your vehicle fire a weapon
17 that night?

18 A No

19 Q Do you know -- did you see any of the
20 people that were in those vehicles?

21 A No

22 Q Did you see any people who were in either
23 of those vehicles any earlier that night?

24 A Yeah, my cousin John

25 Q And when you say Cousin John, who are you
26 talking about?

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- 1 A John Ward
- 2 Q This John Ward right here, with the checked
3 shirt on?
- 4 A Yes
- 5 Q Which vehicle did you see him in?
- 6 A The truck, but that was earlier -- before
- 7 Q Earlier, before the shooting?
- 8 A (Affirmative nod)
- 9 Q And where did you see him in the truck?
- 10 A On the passenger side
- 11 Q Front seat passenger?
- 12 A Yeah
- 13 Q Was that as you, your brother and your
14 friends were leaving?
- 15 A As we were walking to the car
- 16 Q Did you see anybody in the Cadillac?
- 17 A Yeah, before we left the club, Ton-Ton was
18 driving
- 19 Q He was driving the Cadillac?
- 20 A Yeah
- 21 MR DURANT May I have the screen on,
22 please?
- 23 DIRECT EXAMINATION CONTINUED
- 24 BY MR DURANT
- 25 Q If you would, turn around -- or, it may be
26 better if you step down

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- 1 A (Complies)
- 2 Q Looking at what has been previously marked
3 as State's Exhibit 7, in evidence, do you
4 recognize what that shows?
- 5 A Yes, sir
- 6 Q What is that?
- 7 A That's the car we was driving
- 8 Q Is that where you'all went into the ditch
9 at?
- 10 A Yeah
- 11 Q State's Exhibit 8, is that the same -- what
12 is that?
- 13 A That's the same car
- 14 Q What intersection is that at?
- 15 A Right here where you turn to go to Harry
16 Drive or Harris Street
- 17 Q Harry and Toogoodoo Road?
- 18 A Yes
- 19 Q Next would be State's Exhibit 9, State's
20 Exhibit 10 and State's Exhibit 11 Do you
21 recognize that vehicle?
- 22 A Yes
- 23 Q Whose vehicle is that?
- 24 A Ton-Ton's Cadillac
- 25 Q Is that the vehicle that passed you'all
26 that evening?

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1 A Yeah

2 Q State's Exhibits 14 and 15, do you
3 recognize that truck?

4 A Yes

5 Q Whose truck is that?

6 A That's Friend's truck

7 Q Is that the truck that you saw passing you,
8 following the Cadillac?

9 A Yes

10 Q You can resume your seat

11 A (Complies)

12 MR DURANT Court's indulgence

13 THE COURT Sure

14 MR DURANT Please answer any
15 questions that defense counsel may have for you

16 THE COURT You may cross-examine

17 MS KENT-JENKINSON Thank you

18 THE COURT Yes, ma'am

19 CROSS EXAMINATION

20 BY MS KENT-JENKINSON

21 Q Good morning, Mr Brisbane You gave a
22 statement to the police, is that correct?

23 A Yes

24 Q And you told the police who owns the Dodge
25 Ram truck?

26 A Yes

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1 Q Who is that?

2 A I know his nickname Fiend

3 Q What does he look like?

4 A Tall, glasses, long beard

5 Q Long beard?

6 A (Affirmative nod)

7 THE COURT Is that a "yes"?

8 WITNESS "Yes "

9 CROSS EXAMINATION CONTINUED

10 MS KENT-JENKINSON

11 Q You saw the Dodge truck and the Cadillac
12 and you heard some shooting?

13 A Yes

14 Q At that time, you didn't see who was in the
15 car?

16 A No

17 Q And you saw John Ward in the Dodge pickup
18 earlier that night?

19 A Yes

20 Q Not during the shooting?

21 A No

22 MS KENT-JENKINSON Thank you

23 THE COURT Redirect?

24 REDIRECT EXAMINATION

25 BY MR DURANT

26 Q But when you saw John Ward, correct me if I

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1 am wrong, it was as you'all were walking to your
2 car to leave, is that correct? And he was in
3 the front passenger seat at that time?

4 A Yes

5 MR DURANT Nothing else

6 THE COURT Recross?

7 MS KENT-JENKINSON Beg the Court's
8 indulgence, (sidebar with Mr Butler) No, Your
9 Honor

10 THE COURT Very well, you may come
11 down, sir

12 (WITNESS STEPS DOWN)

13 THE COURT Do you wish the witness
14 to be excused, Solicitor?

15 MR DURANT Yes, sir

16 THE COURT Any objection, Ms
17 Jenkinson?

18 MS KENT-JENKINSON No, Your Honor,

19 THE COURT You are also free to
20 leave, sir

21 MR DURANT The State would call
22 Kevin Dunmeyer

23 (WITNESS TAKES STAND)

24 KEVIN T DUNMEYER, being
25 duly sworn to tell the truth, the whole truth
26 and nothing but the truth, testified, as

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1 follows

2 DIRECT EXAMINATION

3 BY MR DURANT

4 Q Good morning, Mr Dunmeyer

5 A Good morning

6 Q Please tell the jury your age

7 A Thirty-two (32)

8 Q Where are you currently employed?

9 A Eastside Automotive

10 Q What do you do for them?

11 A I repair cars that come from sales, whole-
12 sale, go out to the sales, buy cars and bring
13 them back to the lot

14 Q You're a mechanic?

15 A Yes, sir

16 Q Did you used to teach mechanics, auto
17 mechanics?

18 A I did, at the high school

19 Q Which high school?

20 A Baptist Hill

21 Q How long were you at Baptist Hill High
22 School?

23 A Five years

24 Q Where did you grow up?

25 A In Hollywood

26 Q Are you married?

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1 A No

2 Q Kids?

3 A Yes

4 Q How many?

5 A Four

6 MR DURANT Court's indulgence just
7 one moment (sidebar with Ms Jenkinson)

8 THE COURT Yes, sir

9 DIRECT EXAMINATION RESUMED

10 BY MR DURANT

11 Q Do you have any charges pending in the
12 Court of General Sessions here in Charleston
13 County?

14 A No, I don't

15 Q Moving on to May 11th, 2003, did you have an
16 occasion to be at the Club Diamante that
17 morning?

18 A Yes, I was

19 Q What time did you get there?

20 A Maybe around 11 30

21 Q Who did you go with?

22 A I just came from work, so I came by myself

23 Q How did you get to the club?

24 A I drove

25 Q What did you drive?

26 A A blue Suburban

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- 1 Q And what color is your Suburban?
- 2 A Blue
- 3 Q Dark blue, light blue?
- 4 A Dark blue
- 5 Q Where did you park it?
- 6 A Heading southbound on the right side of
- 7 Toogoodoo Road
- 8 Q On the right side of ---
- 9 A Of Toogoodoo Road
- 10 Q In relation to where the club is, is that
- 11 on the side that the club is?
- 12 A Directly across the street
- 13 Q Directly across the street?
- 14 A (Affirmative nod)
- 15 Q And when you say southbound, is that point-
- 16 ing towards Baptist Hill or pointing towards
- 17 Hollywood?
- 18 A Towards Baptist Hill
- 19 Q Okay Obviously you were at the club
- 20 Were you drinking that night?
- 21 A Yes, I was
- 22 Q What were you drinking?
- 23 A Say again?
- 24 Q What were you drinking?
- 25 A Vodka
- 26 Q And were you intoxicated?

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1 A No

2 Q Anything happen inside the club that night?

3 A Well, I witnessed an altercation that to me
4 was more an argument than physical I didn't
5 see anything physical, it was more of an
6 argument I was about to leave, so I started
7 out Then one of my friends asked if, one of my
8 close friends from work, asked me for a ride
9 home

10 Q Who was that?

11 A Rollo

12 Q What's Rollo's real name?

13 A I don't know his real name I just know
14 him at work and that's what we refer to him as

15 Q Okay So what happened after he asked you
16 for a ride home?

17 A We were walking out and they were kind of
18 arguing back and forth, him and another guy, and
19 I just said, 'Well, why don't you go ahead and
20 leave?' And I said, 'well, I will give you' --
21 that's when he said, 'Well, I don't have a
22 ride '

23 I said, 'I'll give you a ride home ' As we were
24 walking to the truck, I opened the passenger
25 door so he ---

26 Q Who was he arguing with?

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- 1 A Keith Richards
- 2 Q You know Keith Richards?
- 3 A Yes
- 4 Q Where is Keith Richards from?
- 5 A Petersfield, I think
- 6 Q Petersfield?
- 7 A Yeah, I know his brother's from
- 8 Petersfield
- 9 Q So, anyway, -- continue
- 10 A So I opened the passenger door As I was
- 11 letting him in, I was talking to Keith Richard's
- 12 brother and we was just ---
- 13 Q What is Keith Richard's brother's name?
- 14 A We just call him Poochie -- Arthur Arthur
- 15 Richards
- 16 Q Do you know if Rollo had any kind of
- 17 problem inside the club?
- 18 A The only thing that I knew about was the
- 19 arguing
- 20 Q Was he involved in this argument inside the
- 21 club?
- 22 A Was Arthur involved in the arguing?
- 23 Q No, I'm talking about Rollo
- 24 A Oh, yeah
- 25 Q He was involved with the arguing inside the
- 26 club?

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1 A Yes

2 Q Okay You weren't working at the club out
3 there?

4 A No

5 Q So you -- do you recall any police being
6 out there at the time?

7 A Yes, sir There was a police car I don't
8 know if it was to my right or my left, but I did
9 see the car on the way out

10 Q What happened after you put Rollo in your
11 Suburban?

12 A I opened the door, I let him in and he
13 started arguing, back and forth, with me and his
14 brother, Arthur -- Keith's brother, Arthur We
15 were talking and he was explaining to me what
16 was going on, that Rollo had gotten upset with
17 his brother and that they were arguing So when
18 Keith came up, we were just talking and -- at
19 that time, we were just talking And I said,
20 'Well, I don't really know what's going on I'm
21 going home ' That is pretty much how it was
22 going to be So I closed my door and went to
23 get in my driver's door and that's when there
24 was a crowd right around the truck Arthur told
25 them, 'He had nothing to do with this, just let
26 him go ahead and leave ' But it didn't turn out

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1 that way

2 Q Who was the crowd around the truck?

3 A The guy that I seen -- his brother, Keith,
4 was still there You know, egging it on

5 Arthur was telling them that I didn't have
6 nothing to do with it, but then Keith -- Keith
7 tried to strike me When he lunged at me ---

8 Q Who were the other guys out there with
9 Keith?

10 A Keith, Kenneth Sanders and -- you know, as
11 far as being able to say who'all was there, I
12 didn't pay that much attention except to those
13 in front of me

14 Q Where were they from?

15 A Preaksville

16 COURT REPORTER That name, again?

17 WITNESS Preaksville (phonetic)

18 DIRECT EXAMINATION CONTINUED

19 BY MR DURANT

20 Q Do you remember -- do you know this fellow?

21 A Yes, sir

22 Q Do you remember whether or not he was out
23 there around your truck?

24 A I saw him inside But as far as outside, I
25 never saw him outside I was just concentrating
26 on the guys that was in front of me

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- 1 Q Do you know of a fellow named Fiend?
- 2 A Not personally
- 3 Q Tremayne Washington?
- 4 A Not personally, I just seen him
- 5 Q Do you know who he is?
- 6 A Yes, sir
- 7 Q Was he out there around your truck?
- 8 A I didn't see him
- 9 Q Do you remember speaking with, I believe it
10 was Detective Hawks the morning after the
11 shooting?
- 12 A Yes, sir
- 13 Q Do you remember telling him verbally what
14 went on out there that morning?
- 15 A Yes
- 16 Q Do you remember telling him that you had
17 seen Mr Ward and Mr Washington out in the
18 crowd, the Petersfield crowd, that was around
19 your truck?
- 20 A He asked me did I see them and I told him
21 that I'd seen them, they was on the inside
- 22 Q Who took a swing at you?
- 23 A Keith Richards and Kenneth Sanders
- 24 Q What happened after Keith took a swing at
25 you?
- 26 A Keith took a swing, he lunged towards me

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1 and grabbed me I grabbed him, pushed him to
2 the side and back

3 Q Do you know Fred Sanders' real name?

4 A Fred Sanders? Kenneth?

5 Q Kenneth's?

6 A No

7 Q What happened after Fred hit you?

8 A I backed up and I took off down, I ran down
9 the street

10 Q Which way did you run?

11 A South, towards Baptist Hill

12 Q Were you being chased?

13 A Yes, sir

14 Q Do you know who was chasing you?

15 A No, I didn't never look back

16 Q What happened to your vehicle?

17 A It was left there I left Rollo in --
18 well, I left Rollo in the truck

19 Q Was anybody else in the truck?

20 A Not that I know of

21 Q Where did you go?

22 A I ran down the street to a guy named Jesse
23 Brook's house When I got there, Antonio picked
24 me up

25 Q Antonio who?

26 A Washington

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- 1 Q What is Antonio Washington's nickname?
- 2 A Ton-Ton
- 3 Q What did he pick you up in?
- 4 A A green Cadillac
- 5 Q Anyone else in the car?
- 6 A Yes, there was a passenger in the car I
- 7 don't know his real -- I don't even know the
- 8 guy
- 9 Q Do you know his nickname?
- 10 A Chang, I believe it is
- 11 Q Where were you sitting in the car?
- 12 A Back passenger, right
- 13 Q Front or rear?
- 14 A Rear
- 15 Q Who was driving?
- 16 A Antonio
- 17 Q And who was the front seat passenger?
- 18 A Chang
- 19 Q Where did you'all go after Ton-Ton picked
- 20 you up?
- 21 A I told him to take me back to the police
- 22 Q To the club?
- 23 A Uh-huh, because it was right in front
- 24 Q Okay So, did you go back to the club?
- 25 A We were headed back to the club and we --
- 26 just as we got in front of the club, I started -

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1 - I could see gunfire from the front of the car
2 and I could hear it right here at my ear
3 (indicating right side of head) I was on the
4 passenger side

5 Q Where was the truck at this time, was it
6 still there?

7 A My truck?

8 Q (Affirmative nod)

9 A It was still there

10 Q Okay Now, you were traveling back to the
11 club?

12 A Back to the club, (affirmative nod)

13 Q Had you'all gotten to the club yet?

14 A We were almost directly in front of the
15 police car, that's why I was about to get out

16 Q What did you see?

17 A A crowd of people started to enter the
18 street area where we were, they were coming
19 towards the car

20 Q Did you stop?

21 A We had came to a complete stop when I was
22 about to get out, then I could see the gunfire
23 up the street and -- and I could hear it, like
24 it was right there

25 Q Where did you see gunfire at?

26 A It was coming I could see the firing, it

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- 1 was down the street a little ways
- 2 Q Down the street which way?
- 3 A North, towards Hollywood
- 4 Q How far down the street?
- 5 A It was about -- maybe 80, 90 yards It was
- 6 a good little ways
- 7 Q Did you hear any other gunfire other than
- 8 gunfire that was coming behind you -- did you
- 9 hear that or did you just see it?
- 10 A I could hear the shots like it was right
- 11 there and I could also see fire down the street
- 12 Q And did you hear any other gunfire?
- 13 A There was a lot of gunfire
- 14 Q Pardon?
- 15 A There was a lot of gunfire
- 16 Q What direction did you ---
- 17 A To my left
- 18 Q To your right? Directly to your right?
- 19 A I could hear it on the right but the
- 20 gunfire was on the left side Everybody was
- 21 coming towards the car from the right, and
- 22 that's when
- 23 I noticed the gunfire -- from the right
- 24 Q And you saw what you thought was gunfire
- 25 coming from down the road?
- 26 A Exactly

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1 Q What happened when all this gunfire
2 started?

3 A When I heard it, I just laid down in the
4 backseat

5 Q What did Ton-Ton do?

6 A As I was laying down, when the gunfire
7 started he whipped out in the left lane to go --
8 to speed up As I was laying down, he lay down

9 Q He was laying down as he was driving away?

10 A Both of us, (affirmative nod) As I was
11 laying down, he was going down too

12 Q Where did he go?

13 A Straight up the street

14 Q Toward Hollywood?

15 A Toward Hollywood

16 Q Did you continue to hear gunshots as you
17 continued down Toogoodoo Road?

18 A As I -- as we were traveling, we could
19 still hear the gunshots and then they faded out

20 Q Okay Where did you go when you left the
21 area of the club?

22 A Went to Hollywood and he said he was going
23 home I asked him again to take me back to the
24 police

25 Q Why did you want to go back?

26 A Because I wanted something to be done with

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1 the guys who assaulted me

2 Q Did you know who was shooting shots at you?

3 A To be honest with you, it was -- in
4 Hollywood, it's like the norm for shooting You
5 know, it's nothing for shots to be fired

6 So when the shots were fired, I figured
7 that there was shooting going on Was it
8 actually intended for me? No, I didn't think so
9 because

10 I had nothing to do with what was going on

11 Q Did you see anybody shooting?

12 A Directly, no, other than the shots in front
13 of the car Actually, no

14 Q Did Ton-Ton want to go back?

15 A He came back

16 Q Did he want to come back?

17 A At first, he didn't want to I said,
18 'Well, I ain't got nothing to hide, so take me
19 back ' He came back I told him that since he
20 really didn't do anything, just to tell the
21 police what happened So he did stay

22 Q So did he take you back?

23 A Yes, he did

24 Q When he got back to the club, how long was
25 that after the shooting?

26 A It was just enough time to go to his house,

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1 we argued about it, and right back Maybe no

2 more than maybe fifteen minutes

3 Q Was Jamie Simmons still there then?

4 A Who was that?

5 Q The guy that got shot, was he still there

6 then when you returned to the scene?

7 A Yes Yes, sir

8 Q He hadn't been taken away by the ambulance

9 yet?

10 A No, sir

11 Q Of course, your Suburban was still there?

12 A Yes, sir No, my Suburban was gone It

13 was gone The fight had cleared up and my

14 Suburban was gone

15 Q How did the Suburban get gone? Did you

16 have the keys to it?

17 A No, I had already put the key in the

18 ignition when I'd opened the door

19 Q Do you recall seeing a fellow named Anthony

20 Ward out there when you got back?

21 A Yes, I talked to him

22 Q What is his nickname?

23 A Cabbage

24 Q Was he one of the ones that had been

25 chasing you earlier?

26 A (Affirmative nod), I specifically saw him

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1 in the crowd I saw him standing a couple feet
2 back from the crowd

3 Q Did you talk to any police that night?

4 A Yes, I did

5 Q One of those would be Detective Hawks, is
6 that correct?

7 A Yes, sir

8 MR DURANT Would you mark this for
9 identification, please?

10 COURT REPORTER State's Exhibit 54
11 for identification

12 DIRECT EXAMINATION CONTINUED

13 BY MR DURANT

14 Q Mr Dunmeyer, I hand you what has been
15 marked as State's Exhibit 54 for identification
16 purposes and ask if you recognize that?

17 A Yes, sir

18 Q What is that?

19 A It's a statement signed by myself

20 Q Is that the statement that you gave to the
21 police that night?

22 A Yes, sir

23 Q If you would, take a second and read it

24 A (Upon review), I'm finished

25 Q You read it?

26 A Yes

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1 Q Did you tell them the truth?

2 A To a certain point, I did I lied about
3 the Fred Sanders incident because it was to the
4 point -- I mean, growing up in Hollywood, these
5 things happen all the time and nothing is ever
6 done I was struck by two individuals that I'd
7 had nothing to do with and it was just to the
8 point when I told the police about it, they
9 said, 'Well, we're not concerned with that right
10 now '

11 All of this could have been avoided if that had
12 never happened

13 Q So what did you tell the police?

14 A I told them that Fred Sanders had a gun
15 I never saw him with a gun But when they told
16 me that they weren't going to, you know, pretty
17 much weren't going to do anything about it, you
18 know, -- well, if it needs to be for him to have
19 a gun, just say that he had a gun, and that's
20 what I said

21 Q You told them more than that he just had a
22 gun, you said that Sanders was shooting the gun
23 at you

24 A Well, I lied about it

25 Q Not only did you say that he was shooting a
26 gun at you but you said that he was shooting the

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1 gun at you before ---

2 A That part about Kenneth Sanders, I lied
3 It happens too often This happens on and on
4 and on and nothing is ever done

5 Q Why did you lie about Kenneth Sanders?

6 A Because he was one of the ones that had
7 struck me and I knew that nothing would be done

8 Q You were mad, right?

9 A Pretty -- pretty much

10 Q How many shots did Ton-Ton fire out of the
11 car that night?

12 A He didn't have a gun

13 Q How about Chang?

14 A Never had a gun There was no gun there in
15 the car

16 Q How about you?

17 A I never had a gun The only gun that I
18 ever had, I no longer have I haven't had that
19 gun for over a year Matter of fact, the City
20 has it

21 Q What kind of gun did you own when you had a
22 gun?

23 A HiPoint, nine millimeter It was
24 confiscated, so I -- I didn't have a permit
25 The gun wasn't registered, I didn't have a
26 permit, so they took the gun

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1 Q That was in 2002?

2 A (Affirmative nod), this happened a long
3 time ago Exactly, because I didn't have a
4 concealed weapons permit

5 Q So it is your testimony that nobody in the
6 Cadillac had a gun and that nobody in the
7 Cadillac was shooting, is that correct?

8 A (Affirmative nod) No, sir

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

10 A Police officer took me

11 Q That would be who?

12 A Officer Shepherd

13 Q Detective Shepherd?

14 A (Affirmative nod)

15 Q Could you step down for a moment, Mr
16 Dunmeyer?

17 A (Complies)

18 Q If you would, I need for you to stand back
19 over on the side When I ask the questions,
20 just show the jury where it happened

21 A Okay

22 Q First of all, where did you park your
23 Suburban?

24 A About right here

25 Q Across the street?

26 A Directly across the street

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201

1 Q And where did this altercation take place
2 where Keith Richards took a swing at you and
3 Fred Sanders hit you?

4 A Right in here My truck was parked right
5 here, directly in front of the club

6 Q So it was right there in the road?

7 A Yes, sir

8 Q And when they chased you, which direction
9 did you run?

10 A South, which would be this way, towards
11 Baptist Hill

12 Q Do you remember if Ton-Ton was out there
13 when they were trying to hit you?

14 A I remember seeing him earlier that night in
15 the club, but as far as whether he was on the
16 outside when they were trying to hit me, I am
17 not sure about that

18 Q How far did you end up running down the
19 road towards Baptist Hill?

20 A About an eighth of a mile

21 Q And that's when Ton-Ton came in his truck
22 and picked you ---

23 A It was probably not that far, close

24 Q And that's when Ton-Ton picked you up?

25 A Exactly

26 Q Now, after he picked you up, you said that

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1 he turned around and you'all went back Where
2 did you come back to at the club?

3 A We got almost to the -- the police car was
4 sitting right here and we got almost ---

5 Q Right there where it says "police car"?

6 A Exactly We got right up in here, real
7 close right up in here

8 Q What happened as you got up into that area?

9 A A lot of guys, right in front of here,
10 started coming towards the car

11 Q Okay What did you'all do when they
12 started coming towards the car?

13 A At first I didn't do anything because I saw
14 the police car

15 Q Okay

16 A Then I stated seeing shooting up in here

17 Q Which way? How far up?

18 A It was ---

19 Q Just to orient you, this is -- you were out
20 there that night, correct?

21 A Yes, sir

22 Q This is Jamie Simmons' car

23 This is where he was found

24 Was the gunfire that you saw ahead of or
25 behind his car?

26 A It was ahead of his car

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1 Q On which side of the road?

2 A To the right Or (twisting body), it would
3 be on this side to my left

4 Q And how far down was this in relation to
5 Coon Club Road?

6 A Right there

7 Q Almost to Coon Club Road?

8 A (No verbal response)

9 MR DURANT Mark this, please

10 COURT REPORTER State's Exhibit 55
11 for identification

12 MR DURANT State's Exhibit 55 is a
13 TMS map, Your Honor I believe I would move it
14 into evidence without objection from the
15 defendants

16 THE COURT Is that correct?

17 MS KENT-JENKINSON That's correct

18 THE COURT Without objection,
19 State's Exhibit 55, a TMS Map, is admitted

20 (SO ENTERED AS STATE'S EXHIBIT 55)

21 DIRECT EXAMINATION CONTINUED

22 BY MR DURANT

23 Q Referring to State's Exhibit 55, this is
24 the club Could you tell the jury where Coon
25 Club Road is?

26 A Right here

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204

1 Q Okay And where in relation to this map
2 did you see the gunfire?

3 A It was right up in here

4 Q Okay Thank you Now, where did you hear
5 the gunfire coming from?

6 A Directly by the car, to my right

7 Q You were stopped here and you heard gunfire
8 where?

9 A Right here

10 Q To the right-hand side?

11 A Yeah

12 Q As you were going down the road, did you
13 continue to hear any gunfire?

14 A Yes

15 Q Where did you hear that gunfire from?

16 A Still to the right-hand side

17 Q To the right-hand side of the truck?

18 A Yes We was in the car

19 Q Excuse me To the right-hand side of the
20 car?

21 A (Affirmative nod)

22 MR DURANT Could we have the screen
23 just a second?

24 DIRECT EXAMINATION CONTINUED

25 BY MR DURANT

26 Q State's Exhibits 24, 25 and 26, do you

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205

1 recognize this vehicle?

2 A Yes, that's mine

3 Q There's 25, there's 26

4 A Yes, sir

5 Q Whose vehicle is that?

6 A It's mine

7 Q Now looking at State's Exhibits 9, 10 and

8 11, do you recognize that vehicle?

9 A Yes, sir

10 Q Is that the vehicle that you were in that

11 night?

12 A Yes, sir

13 Q And that's the vehicle that you were in

14 when you heard the shots?

15 A Yes, sir

16 Q How long did you have your head down?

17 A From the time that I heard shots fired by

18 me until about the time that we got up to Coon

19 Club Road or Little Pappy Road

20 Q Did you ever see where the gunshots were

21 coming from?

22 A I knew that they wasn't coming from the

23 front anymore but from the back

24 Q It was coming from the back at that time?

25 A (Affirmative nod), 'cause we had already

26 left

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206

1 Q Could you tell if they were coming from a
2 vehicle or what?

3 A No, I couldn't really tell I just know
4 that it was to my right

5 Q You can take your seat Thank you

6 A (Complies)

7 MR DURANT Please answer any ques-
8 tions that defense counsel may have for you

9 THE COURT You may cross examine

10 MR BUTLER Beg the Court's
11 indulgence

12 THE COURT Yes, sir

13 CROSS EXAMINATION

14 BY MR BUTLER

15 Q Good morning Could I ask that you step
16 down for me just a second?

17 A (Complies)

18 Q Show me again where the Cadillac is when
19 you start to hear any shots?

20 A We are approaching here, stopped right
21 here

22 Q And you heard shots coming from over in
23 this area?

24 A Uh-huh, (affirmative nod)

25 Q Which would be on State's (Exhibit) 6, to
26 the right of the club?

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207

1 THE COURT Excuse me, Mr Butler

2 You may want to -- you have two jurors that
3 can't see

4 MR BUTLER Sorry, (moves)

5 THE COURT That's all right Excuse
6 me for interrupting you, sir

7 MR BUTLER Thank you

8 CROSS EXAMINATION CONTINUED

9 BY MR BUTLER

10 Q On State's Exhibit 6, that would be to the
11 right of the club that you heard shots?

12 A (Affirmative nod)

13 Q And you were over in this area?

14 A As soon as we got to about right here, the
15 shots started coming

16 Q Okay

17 A We drove -- as soon as we come to a
18 complete stop

19 Q Okay

20 A We saw people running -- and we were at a
21 dead stop, right here I was about to get out
22 Saw people running towards the car, heard shots
23 I laid down and when I laid down, he was already
24 in this lane, had pulled over in this lane By
25 the time that he'd got in this lane, I'd laid
26 down and he'd laid down

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208

1 Q And the other location that you saw muzzle
2 fire from, that ---

3 A I saw muzzle fire from here

4 Q Down here?

5 A Uh-huh, (affirmative nod)

6 Q And you said that was a good ways, 80 or 90
7 yards?

8 A It was a good ways

9 Q And you could see the muzzle fire?

10 A Exactly

11 Q All right, you can resume your seat Thank
12 you

13 A (Complies)

14 Q I want to ask you to just briefly clarify
15 what you said on direct about your statement and
16 Kenneth Sanders Okay?

17 Kenneth Sanders was involved with the beef
18 with you at some point that night?

19 A Yes, sir

20 Q And your past experience was that when
21 things like this happen, nobody is held
22 responsible?

23 A I never said that I said that when things
24 like this happen that nothing is ever done

25 Q And you wanted to make sure that something
26 was done?

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209

1 A Exactly

2 Q And Kenneth Sanders was responsible ---

3 A For the assault on myself, (affirmative
4 nod)

5 Q For the assault on you?

6 A I never knew anything about the actual, the
7 part about the guy being shot I didn't know
8 anything about that

9 Q I understand that So to make sure that
10 he was held responsible, you included in your
11 statement that he had a gun?

12 A Exactly

13 Q When he didn't?

14 A Right I never saw him with a gun

15 Q If he had had a gun, you would have told
16 the officers that he did because you wanted him
17 to be held responsible, right?

18 A Exactly

19 Q Just like you'd want anybody else who is
20 responsible for any wrongdoing involving you to
21 be held responsible? Correct

22 A Exactly

23 Q And you would have told the police that,
24 right?

25 A I would have Yes, I would have

26 Q And with respect to the altercation and the

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210

1 argument outside the club, you did not see John

2 Ward involved in that, did you?

3 A I never saw him other than on the inside

4 Q Okay And you did not tell Detective Hawks

5 anything about John Ward being involved in an

6 altercation ---

7 A My whole ordeal was about what happened to

8 me I knew nothing about as far as him having -

9 - or being there, other than on the inside

10 Q Or being in the altercation outside?

11 A I never saw him

12 Q And if you had saw him, you would have told

13 Detective Hawks that ---

14 A Right I was immediately concerned with

15 the two guys that were standing right in front

16 of me There was a crowd and it's hard to pick

17 out of a crowd of about forty people who is who,

18 I just noticed the fellows that were in front of

19 me

20 Q Referring to State's Exhibit 54 for ID,

21 have you had an opportunity to review your

22 written statement to Detective Hawks?

23 A Yes, I have

24 Q You don't say anything about John Ward in

25 that statement, do you?

26 A No, I don't

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211

1 Q You talked earlier about a guy whose
2 nickname is Fiend?

3 A Yes, sir

4 Q F-I-e-n-d?

5 A I am not really sure how -- I don't even
6 know the guy other than having seen him with
7 Ward

8 Q And he's a tall, young black man?

9 A He's about Mr Ward's height, a little bit
10 shorter, slender

11 Q On this night he had a long beard?

12 A I never really -- I knew that he was -- I
13 know the description as far as the beard and the
14 glasses, but to say that I actually seen him
15 outside, I never seen him outside All I know
16 is that there was a crowd of about forty people

17 Q But you know that's what he looks like?

18 A Yes, sir

19 MR BUTLER Beg the Court's indul-
20 gence

21 THE COURT Yes, sir

22 MR BUTLER That's all that I have
23 Thank you

24 THE COURT Redirect?

25 MR DURANT No Thank you, Your
26 Honor

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212

1 THE COURT You may come down, sir

2 (WITNESS STEPS DOWN)

3 THE COURT Do you wish the witness
4 to be excused?

5 MR DURANT Yes, Your Honor

6 THE COURT Any objection?

7 MR BUTLER No

8 THE COURT You are also free to
9 leave, Mr Dunmeyer Thank you, sir

10 MR DURANT We call Kenneth Sanders

11 (WITNESS TAKES STAND)

12 KENNETH SANDERS, being
13 duly sworn to tell the truth, the whole truth
14 and nothing but the truth, testified, as
15 follows

16 DIRECT EXAMINATION

17 BY MR DURANT

18 Q How old are you, Mr Sanders?

19 A Twenty-one (21)

20 Q Do you go by any other names besides
21 "Kenneth"?

22 A "Fred"

23 Q Where are you from?

24 A Hollywood, South Carolina

25 Q What part of Hollywood?

26 A Petersfield

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213

- 1 Q Where do you work?
- 2 A Cummins Engine Company
- 3 Q How long have you been with Cummins?
- 4 A About five and a half years
- 5 Q What do you do for Cummins?
- 6 A I just recently switched -- I was a CSC
- 7 machine operator I'm currently a materials
- 8 operator
- 9 Q Have you ever been convicted of a crime in
- 10 a court of General Sessions?
- 11 A No, I haven't
- 12 Q Do you have currently have a pending charge
- 13 in the Court of General Sessions?
- 14 A Yes, I do
- 15 Q What is that charge?
- 16 A Assault and battery with intent to kill
- 17 Q Do you know the penalty that charge
- 18 carries?
- 19 A (No response)
- 20 Q Do you know how much time you could
- 21 potentially get in jail for that charge?
- 22 A No, I don't
- 23 Q Have you discussed that charge with me?
- 24 A No, I haven't
- 25 Q Have you discussed that charge with anyone
- 26 in my office?

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1 A No, I haven't

2 Q Have I, or anyone else in my office,
3 promised you anything in exchange for your
4 testimony here today?

5 A No

6 Q You have, of course, talked to me, is that
7 correct?

8 A Yeah

9 Q But not about your pending charge, is that
10 correct?

11 A No

12 Q In fact, I told you that I didn't want to
13 talk to you about your pending charge, did I
14 not?

15 A Yeah

16 Q Now, do you know this fellow here?

17 A Yes, I do

18 Q What is his name?

19 A John

20 Q John what?

21 A John Ward

22 Q What's his nickname?

23 A "Mixx"

24 Q Where is he from?

25 A Petersfield

26 Q How long have you known Mixx?

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215

- 1 A All my life
- 2 Q Are you friendly with him?
- 3 A Yeah
- 4 Q Do you know Tremayne Washington?
- 5 A Yes
- 6 Q What nickname do you know him by?
- 7 A "Fiend"
- 8 Q How long have you known Fiend, Tremayne
- 9 Washington?
- 10 A Three years
- 11 Q And do you know what his relationship is
- 12 with John Ward?
- 13 A Friends
- 14 Q Do they hang out together a good bit?
- 15 A Yeah
- 16 Q Do you know Catrell Douglas?
- 17 A Yeah
- 18 Q How do you know Catrell Douglas?
- 19 A I grew up with him
- 20 Q Are you related to him?
- 21 A Yeah, distant cousins
- 22 Q Did you know Jamie Simmons?
- 23 A Yes
- 24 Q How did you know Jamie Simmons?
- 25 A I grew up with him, too His grandmother
- 26 lives right down the road from me

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216

1 THE COURT Hold on a second Pull
2 that mic -- you need to pull your chair closer,
3 so that you can speak into that microphone,
4 please, sir The jury is having a hard time
5 hearing you, Mr Sanders

6 DIRECT EXAMINATION CONTINUED

7 BY MR DURANT

8 Q Mr Sanders, were you at the Club Diamante
9 on May 11th, 2003?

10 A Yes, I was

11 Q Who did you go to the club with?

12 A I went with my cousin Bujuan

13 Q Who else?

14 A I think his brother, Keith

15 Q Where did you'all go to the club from?

16 A We left from his mother's house in Peters-
17 field

18 Q She lives over in Petersfield?

19 A Yeah

20 Q Where in Petersfield?

21 A On Alfred Road

22 Q Is Alfred Road close to Brewer Road?

23 A Yeah, it's a split-off, a fork

24 Q Who drove over to the club?

25 A Bujuan did

26 Q Bujuan is Keith's brother, you said?

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217

- 1 A Yeah
- 2 Q Are you related to them too?
- 3 A Yes
- 4 Q How are you related to them?
- 5 A Cousins
- 6 Q What kind of vehicle was Bujuan driving?
- 7 A Bujuan had a black Jeep, Grand Cherokee
- 8 Q Were you drinking that night?
- 9 A Yes, I was
- 10 Q Were you drinking before you got to the
- 11 club?
- 12 A Yes, I was
- 13 Q Were you drinking after you got to the
- 14 club?
- 15 A Yes
- 16 Q What were you drinking that night?
- 17 A Heineken
- 18 Q Do you recall what time it was when you got
- 19 to the club?
- 20 A About 11 30
- 21 Q Were there a lot of people there that
- 22 night?
- 23 A Yes
- 24 Q How often did you go to that club?
- 25 A Twice a month
- 26 Q What were you doing inside the club?

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1 A (No response)

2 Q What were you doing inside the club?

3 A When I first came to the club, I was just
4 sitting at the bar

5 Q Did you run into anybody, dance with
6 anybody?

7 A Yeah I left the bar, and I was on the
8 dance floor with my cousin

9 Q What happened while you were on the dance
10 with your cousin?

11 A My cousin, Keith, and his girlfriend,
12 Shaquenta, got into an argument

13 Q Keith would be Keith Richards?

14 A Yes

15 Q And Shaquenta, do you know her last name?

16 A Shaquenta Pinckney

17 Q Where did they get into an argument at?

18 A Right in the middle of the dance floor, as
19 soon as you come off that aisleway, right to the
20 left

21 Q Do you know why they got into an argument?

22 A She was dancing with somebody and that's
23 what it was

24 Q He got a little jealous?

25 A Yes

26 Q So what happened after he got into an

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- 1 argument with Shaquenta?
- 2 A She grabbed -- he grabbed her
- 3 Q Pardon me?
- 4 A He grabbed her
- 5 Q He grabbed her?
- 6 A Yes And she swung at him, hit him in the
7 mouth
- 8 Q What happened when she hit him in the
9 mouth?
- 10 A He had a gold crown in his mouth and it
11 knocked it out
- 12 Q Knocked his gold crown out?
- 13 A Yeah
- 14 Q What happened after that?
- 15 A Myself and his brother, his older brother,
16 Arthur, separated them Then the guy that she
17 was dancing with sneaked around us and punched
18 him
- 19 Q What was -- do you know what that fellow's
20 name was?
- 21 A His name is Rollo
- 22 Q And he sneaked around and punched who?
- 23 A Punched Keith
- 24 Q Do you know where Rollo is from?
- 25 A He's from Cherryhill
- 26 Q What happened after that?

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220

1 A After that, Keith ran out of the club

2 behind him and ---

3 Q Behind who?

4 A Behind Rollo

5 Q And what happened outside?

6 A Outside? I came out there, I was talking

7 to a female friend of mine, we was about to

8 leave the club When I came outside, we were

9 parked right across from the club, and Keith and

10 Kevin Dunmeyer were arguing with Rollo over

11 beside Kevin Dunmeyer's truck

12 Q And where was Kevin Dunmeyer's truck?

13 A Kevin Dunmeyer's truck was parked right

14 across from the club Keith's brother's truck,

15 the Grand Cherokee, was backed into the CPW

16 area

17 Q Referring to State's Exhibit 6, where was

18 Kevin Dunmeyer's truck?

19 A This is where we were, where his truck was

20 Kevin Dunmeyer's truck was up here facing

21 towards Baptist Hill Road

22 Q Your truck was backed in?

23 A Yes

24 Q Bujuan's Cherokee was backed in?

25 A Yes

26 Q Right there in the driveway?

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1 A Yes

2 Q So what happened after that? Rollo was in
3 the Suburban, you said, or Dunmeyer's vehicle

4 A (Affirmative nod), Rollo was inside the
5 truck At the time, Bujuan and Arthur, Keith's
6 older brother, was trying to calm him down --
7 along with Kevin Dunmeyer was trying to calm
8 Keith down But, uh, Rollo opened the door and
9 said something to him and him and Keith got into
10 it Keith ran to the truck and hit him again

11 Q Hit Rollo while he was in the truck?

12 A Yeah

13 Q What happened after that?

14 A Kevin started to being kind of irate and
15 started arguing back, like he wanted to fight
16 Keith, so we started to push him back Keith
17 said something back to him, and he ran into the
18 crowd and I punched him

19 Q You punched who?

20 A Punched Kevin

21 Q Kevin Dunmeyer?

22 A Yes

23 Q What happened after you punched Kevin
24 Dunmeyer?

25 A When I punched him, he ran He ran away
26 from us, he ran towards Baptist Hill Road

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222

1 Q Did you chase him?

2 A Yes, I did

3 Q How long?

4 A Just a couple of seconds, that's all, then
5 I stopped

6 Q After you stopped, did you see -- do you
7 know Ton-Ton?

8 A Yes

9 Q Do you know what Ton-Ton drives?

10 A He drives a -- well, he used to drive a
11 green Cadillac, Fleetwood

12 Q Did you see that car out there around this
13 time?

14 A Yes, I did

15 Q Where did you see that car?

16 A Coming from the Baptist Hill Road side,
17 coming down the highway

18 Q Coming from the direction that Kevin
19 Dunmeyer had run to?

20 A Yeah

21 Q Is that correct?

22 A Yes

23 Q Do you remember the police officer being
24 out there when all this was going on?

25 A The police officer was right across the
26 street from where we were

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223

1 Q After you stopped chasing after Kevin

2 Dunmeyer, what did you do?

3 A I walked back towards my cousin's truck

4 The female that I was going to leave with, she

5 was right there, her car was parked next to my

6 cousin's truck

7 Q What happened then?

8 A Ton-Ton's car pulled up and my cousin said

9 that Kevin Dunmeyer was in the car So we were

10 like -- we were just going to leave, but Ton-

11 Ton, he stopped the car and started making some

12 gestures toward ---

13 Q Did he get out of the car?

14 A Yes, he did

15 Q What kind of gestures was he making towards

16 you?

17 A Cursing, and -- (pause)

18 Q In other words, he wasn't just asking you,

19 'How are you doing this evening?'

20 A That's correct

21 Q So what did you do when he did that?

22 A I proceeded towards Antonio's car When I

23 got to the car, I tried to talk to him He

24 still wasn't saying anything I swung He took

25 off and that's when I fell on the ground I got

26 my hand caught up in the car somehow

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224

1 Q I'm sorry, I didn't hear that last part

2 You fell to the ground and what?

3 A My hand got tangled in the car somehow and

4 I fell to the ground as it pulled off

5 Q So he was driving off ---

6 A (Affirmative nod), driving off

7 Q --- in the Cadillac and you got knocked to

8 the ground?

9 A Yeah

10 Q Which way did he drive off to?

11 A Towards like, uh, the Coon Club Road side

12 Q Hollywood side?

13 A Yeah

14 Q What did you go after you got knocked down

15 on the road?

16 A I kind of hurt my leg My cousin came and

17 helped me up and we walked towards ---

18 Q Which cousin?

19 A Keith

20 Q Okay

21 A And we walked back to Bujuan's truck and --

22 and as we were walking off, Ton-Ton's car

23 stopped like right in front of the parking lot

24 entrance

25 Q Okay Let's refer back to State's Exhibit

26 6 This is Club Diamante -- to Baptist Hill, to

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225

1 Hollywood You've already told us where the
2 vehicles were parked

3 A Um-humm

4 Q When he came back from this way, where did
5 Ton-Ton stop?

6 A When he first stopped, he was like right
7 here past the truck

8 Q Okay Is that when you went and tried to
9 punch him through the window?

10 A Yeah

11 Q And is that where you fell on the ground?

12 A Yes

13 Q Now, after he pulled off, where did he go?

14 A He pulled off and parked up here where the
15 parking lot is, parking lot entrance

16 Q Now, you say that he parked Did he
17 actually pull off the road or was he still in
18 the roadway?

19 A He was still in the road

20 Q Okay And what happened after he stopped
21 up there?

22 A He stopped in front of the parking lot
23 Him and some of the people that were in his car,
24 they -- they started to throw bottles

25 Q Could you tell where they were throwing
26 bottles at?

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226

- 1 A No, I couldn't really tell at the time
- 2 Q And these were people in the Cadillac
- 3 throwing bottles?
- 4 A Yes
- 5 Q Did you see -- you said that you know
- 6 Friend, is that correct?
- 7 A Yes
- 8 Q Do you know what kind of vehicle that he
- 9 was driving at the time?
- 10 A Yes
- 11 Q What kind?
- 12 A He had just got a Dodge, a Dodge Ram truck
- 13 Q What color?
- 14 A Like a silver
- 15 Q Did you see that truck out there at the
- 16 time that the Cadillac stopped the second time?
- 17 A Yes, I did
- 18 Q Where was it?
- 19 A It was, like, parked in the driveway
- 20 adjacent to the road or to the side of the road
- 21 Q Once again referring to State's Exhibit 6,
- 22 I believe that you said that the Cadillac
- 23 stopped right in this area?
- 24 A (Affirmative nod)
- 25 Q Where did you see the truck?
- 26 A Like right here

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227

- 1 Q Which way was the truck pointed?
- 2 A Like pointed towards the road
- 3 Q In this direction?
- 4 A Yeah
- 5 Q Off the roadway?
- 6 A Yeah
- 7 Q So (indicating with hand)-- correct?
- 8 A Yeah
- 9 Q What happened next?
- 10 A They started throwing bottles I was just
- 11 getting ready to walk towards my cousin's truck,
- 12 about to get in the truck, ready to go on
- 13 Q What happened as you were about ready to
- 14 get into your cousin's truck?
- 15 A That's when I heard the first gunshot I
- 16 opened the door and jumped inside the truck
- 17 Q Do you recall how many gunshots that you
- 18 heard initially?
- 19 A Well, after the first one, I ran to the
- 20 door and I tried to open the door and I heard
- 21 three more after that, after I was inside the
- 22 truck
- 23 Q Did you see where any of the gunshots were
- 24 coming from?
- 25 A No, I didn't
- 26 Q Could you tell which direction that they

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1 were coming from?

2 A No, I didn't

3 Q So you couldn't tell which direction that
4 they were coming from?

5 A (No response)

6 Q Were they coming from -- where were you
7 when you heard the gunshots?

8 A I heard the gunshots -- the truck was
9 parked almost like ---

10 Q In this area here?

11 A (Affirmative nod)

12 Q Well, were they coming from that way or
13 that way?

14 A From behind

15 Q So it would be coming from the Hollywood
16 side?

17 A Yes, sir

18 Q All right Do you know what happened to
19 the Cadillac?

20 A No, after all -- after I heard the
21 shooting, whatever, and I saw the police car
22 pulling out, that's when I got up in the truck
23 and ---

24 Q So you don't know what happened to the
25 Cadillac?

26 A No, (negative gesture)

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229

1 Q Do you know what happened to the truck?

2 A No

3 Q When did you find out that someone had been
4 shot?

5 A My cousin, after the gunshots, after the
6 police left, my cousin responded to me, turned
7 the truck over and we was about to leave and
8 that's when Marcus ran over to the truck and
9 was, like, 'Fred', Jamie had gotten shot

10 Q Would that be Marcus Moultrie?

11 A Yes

12 Q Did you go over to where Jamie was?

13 A Yes, I did

14 Q What did you see?

15 A He was lying on the ground, he was shaking
16 and -- and his face had already started to kind
17 of swell or whatever I didn't recognize him at
18 first

19 Q Was he face down or face up?

20 A At that time, he was laying on his back
21 He was face up

22 Q What did you do when you saw Jamie?

23 A I like -- he was like right across from the
24 ditch like I ran over and I grabbed his hand,
25 tried to talk to him He wasn't responding or
26 anything, he didn't say anything So at that

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230

1 time, I called 911

2 Q How much longer did you stay around at the
3 scene?

4 A After I called the 911 dispatch, I talked
5 to her for a few minutes and the phone got
6 disconnected, so -- I left Got in my cousin's
7 truck and ---

8 Q Who did you leave with?

9 A I left with Bujuan

10 Q The police were already there when you
11 left?

12 A No, the police car hadn't came back

13 MR DURANT Beg the Court's
14 indulgence just a moment

15 THE COURT Yes, sir

16 DIRECT EXAMINATION CONTINUED

17 BY MR DURANT

18 Q After you'all left in Bujuan's truck -- you
19 left in Bujuan's truck, is that correct?

20 A Yes

21 Q Where did you'all go?

22 A Back to Bujuan's mother's house That is
23 where my truck was parked

24 Q Okay Sometime later on that evening, did
25 you see him (indicating defendant)?

26 A Yes, I did

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231

1 Q Where?

2 A Shortly after we left the club, this truck
3 pulled up

4 Q And was he in the truck?

5 A Yes, he was

6 Q Did you talk to him?

7 A Yes, I did

8 Q What did you do, what did you talk to him
9 about?

10 A Well, he came out of the truck I shook
11 his hand and I ultimate (sic) walked him over to
12 the side I knew him and Jamie were close
13 friends, so I told him that Jamie had gotten
14 shot to the club I didn't know whether he was
15 dead or not

16 Q What did he do when you told him that?

17 A He started to cry, he fell to the ground

18 Q Did you end up going back to the club that
19 night?

20 A Yes, I did

21 Q Why did you end up going back to the club?

22 A After I left my cousin's house, I went to
23 my house and -- the female that I was talking to
24 at the club, we were together And my cousin,
25 Leroy, came and said that somebody had called
26 around there and said that I was involved in

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1 something

2 Q So did you go back to the club?

3 A Yes, I did

4 Q Who did you go back to the club with?

5 A I had my truck by that time, so I drove my
6 truck back up to the club

7 Q Who did you go with?

8 A (No response)

9 Q Did anybody go with you?

10 A (Affirmative nod), yeah It was me, my
11 cousin Leroy and my cousin Arthur

12 Q What did you do when you got to the club?

13 A I started yelling and said that, 'I can't
14 believe that somebody had called my name around
15 here ' I was just -- (pause)

16 Q Did you talk to any police?

17 A Yes, I did

18 Q Do you recall who you talked to?

19 A I can't remember which police officer it
20 was

21 Q Did you see Jamie Simmons in a beef with
22 anybody at the club that night?

23 A No

24 Q Had you ever seen Jamie Simmons at the club
25 before?

26 A I didn't see him at the club that often

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- 1 Q Now, after you had gone back to the scene
2 and talked to the police, where did you go then?
3 A After I gave my statement and talked to the
4 police, then I went back to my cousin Bujuan's
5 house
6 Q Your cousin, who?
7 A Bujuan
8 Q That's the one on Alfred Road?
9 A Yeah
10 Q At Alfred and Brewer?
11 A (Affirmative nod)
12 Q Did you receive a phone call that morning?
13 A Yes, sir, I did
14 Q What time was this, do you recall?
15 A About 7 30, 8 00 o'clock that morning, I
16 guess
17 Q Who did you receive a phone call from?
18 A I received a phone call from Mr
19 Washington
20 Q From who?
21 A Tremayne Washington, Fiend
22 Q Fiend?
23 A Yes
24 Q What did Fiend want you to do?
25 A He wanted me to say that I was driving his
26 truck

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1 Q What did you tell him?
2 A I told him "no"
3 Q At any time that night, did you handle a
4 gun?
5 A No, I didn't
6 Q Did you fire a gun?
7 A No, I didn't
8 Q Did you own a gun?
9 A No, I didn't
10 Q Did Bujuan have a gun?
11 A No
12 Q Did Keith have a gun?
13 A No
14 Q Do you know why people were saying/calling
15 your name?
16 A Well, during the time of -- I used to go
17 out there all the time I had a friend -- no
18 one ever say that I had a gun, they said that
19 the people that I was riding with, that I used
20 to bring down there, used to have a gun But
21 the truck that my friend, Michael, had was
22 identical to that Mr Washington had So once
23 people started saying it was those boys, that's
24 what they were saying But they were wrong for
25 that I didn't have anything to do with it
26 MR DURANT Court's indulgence for

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1 just one moment

2 THE COURT All right

3 MR DURANT I don't believe that I
4 have any further questions Oh, -- just one
5 moment Could you please answer any questions
6 that defense counsel may have for you?

7 WITNESS Yes, sir

8 THE COURT Cross examination

9 CROSS EXAMINATION

10 BY MR BUTLER

11 Q Good morning, Kenneth

12 A Good morning

13 Q The morning after or later the same morning
14 of the incident at the club, the shooting,
15 Tremayne Washington called you and wanted you
16 to say that you were driving his truck?

17 A Yeah, he say -- he told me that if I was
18 asked by anybody to say that I was driving his
19 truck

20 Q And that would have been a lie?

21 A Yes, that would have

22 Q And, so he wanted you to lie for him?

23 A Yes

24 Q And Tremayne is a tall, thin, young black
25 man, is that right?

26 A Yes

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1 Q With, at the time, a long beard?

2 A Yes

3 Q And you told him that you would not lie for
4 him, is that right?

5 A That's correct

6 Q And you saw John later in the morning with
7 the gray truck, is that right?

8 A No, no I saw him right after we left the
9 club

10 Q After you left the club?

11 A Yes

12 Q But not at the club?

13 A At the club, I did see him but he wasn't
14 driving that truck

15 Q When Mr Durant asked you if you saw him, I
16 thought with Tremayne and the truck, I thought
17 that was later in the morning, somewhere other
18 than the club Is that right?

19 A Yes

20 Q All right And John has never called you
21 and asked you to lie for him, has he?

22 A No

23 MR BUTLER Beg the Court's indul-
24 gence

25 THE COURT All right

26 MR BUTLER (Sidebar with Ms Kent-

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1 Jenkinson), that's all that I have Thank you

2 THE COURT Redirect?

3 MR DURANT Just a couple

4 REDIRECT EXAMINATION

5 BY MR DURANT

6 Q You said that you saw him (indicating
7 defendant) in the truck at the club?

8 A Yes

9 Q When was that?

10 A Right after Mr Dunmeyer ran down the road
11 and I came back to the truck The truck was
12 parked in the driveway, like right -- well, like
13 right across, twenty feet, thirty feet,
14 something like that The truck door was open,
15 Mr Ward was on the passenger side and Mr
16 Washington was in the backseat

17 Q Was Mr Ward in front passenger seat or the
18 back passenger seat?

19 A He was in the front passenger seat, if I
20 remember correctly

21 Q When was that in relation to when you heard
22 the shooting?

23 A That was way before the shooting That was
24 when Ton-Ton's car was coming back down the
25 road

26 Q So that's when Ton-Ton's car was coming

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1 back down from the Baptist Hill ---

2 A Yes

3 Q Okay

4 MR DURANT I have no further
5 questions

6 THE COURT Recross?

7 MR BUTLER Nothing further Thank
8 you

9 THE COURT Very well You may come
10 down, sir You want this witness to be excused?

11 MR DURANT Yes, sir

12 THE COURT Any objection?

13 MS KENT-JENKINSON No, Your Honor

14 THE COURT Mr Sanders, you are free
15 to leave

16 (WITNESS STEPS DOWN)

17 THE COURT At this point, Ladies and
18 Gentlemen, we will take our morning recess You
19 may go to your jury room Please do not discuss
20 the case among yourselves, we will be with you
21 in just a few minutes Thank you

22 (JURY OUT @ 11 10)

23 THE COURT Anything from the State
24 before we recess?

25 MR DURANT No, sir

26 THE COURT From the Defense?

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1 MR DURANT No, Your Honor

2 THE COURT Thank you, we will be in
3 recess for about ten minutes

4 (BRIEF RECESS 11 10 - 11 25 A M)

5 (DEFENDANT PRESENT)

6 THE COURT Are you ready to proceed,
7 Mr Durant?

8 MR DURANT Yes, sir

9 THE COURT Is the Defense ready?

10 MS KENT-JENKINSON Yes, Your Honor

11 THE COURT Please invite the jury to
12 return

13 (JURY IN @ 11 25 A M)

14 THE COURT Thank you, Ladies and
15 Gentlemen Solicitor, you may call your next
16 witness

17 MR DURANT The State calls Ricky
18 Holmes

19 (WITNESS TAKES STAND)

20 RICKY BERNARD HOLMES,
21 being duly sworn to tell the truth, the whole
22 truth and nothing but the truth, testified, as
23 follows

24 DIRECT EXAMINATION

25 BY MR DURANT

26 Q Good morning, Mr Holmes

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- 1 A G'morning
- 2 Q How old are you?
- 3 A Thirty-three (33)
- 4 Q Where are you currently employed, sir?
- 5 A Sir?
- 6 Q Where do you work?
- 7 A I don't work right now
- 8 Q When you were working, who were you working
- 9 with?
- 10 A I worked with my uncle, he has his own
- 11 little construction company
- 12 Q Where were you born and raised?
- 13 A Charleston
- 14 Q What part of Charleston?
- 15 A (No response)
- 16 Q Do you understand what I am asking you?
- 17 A (No response)
- 18 Q I mean, were you born in downtown
- 19 Charleston or where do you live?
- 20 A Adams Run
- 21 Q Were you born in Adams Run?
- 22 A (No response)
- 23 Q Were you born in Adams Run?
- 24 A Yes'
- 25 Q Were you raised in Adams Run?
- 26 A Yes, sir

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1 Q So where is Adams Run in relation to
2 Peters-field and Cherryhill?

3 A Adams Run is not that far from it, you
4 know Maybe five or ten minutes away, something
5 like that

6 Q So it's a different little area?

7 A It's a whole different community
8 altogether

9 Q Do you know some people from Petersfield,
10 Cherryhill areas?

11 A Somewhat Not much

12 Q How do you know them?

13 A School

14 Q You all went to Baptist Hill together?

15 A Yes

16 Q Do Petersfield and Cherryhill people get
17 along?

18 A Hummm, I don't know I don't mix up in
19 their business That's their business, you
20 know

21 Q Yeah, I know But to your knowledge, do
22 Petersfield people and Cherryhill people get
23 along together?

24 A Some might talk to the next and like that,
25 you know

26 Q You went to Baptist Hill?

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1 A Yes, sir

2 Q Did you graduate?

3 A No, sir

4 Q How far did you get?

5 A 11th grade

6 Q Do you have any problems with the

7 Petersfield folks or the Cherryhill folks?

8 A No

9 Q You've had some problems with the law,

10 correct?

11 A (No response)

12 Q You've had some problems with the law?

13 A Yeah

14 Q You've been convicted of possession of

15 cocaine, is that correct?

16 A Yes, sir

17 Q That was in 1996?

18 A Yes, sir

19 Q And I believe that you were also convicted

20 of distribution of cocaine in 2003, is that

21 correct?

22 A Yes, sir

23 Q Just got out of jail for that, didn't you?

24 A Yes, sir

25 Q Were you at the Club Diamante on the

26 morning of May 11th, 2003?

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- 1 A Yes, sir
- 2 Q Did you go to that club very often?
- 3 A At the time, no
- 4 Q What time did you get there that night?
- 5 A I guess around between 12 00 and 12 30
- 6 Q Who did you go with?
- 7 A I catch a ride up there, you know
- 8 Q So you drove your own vehicle?
- 9 A No, ain't got no license Don't drive
- 10 Q Did you run into anybody that you knew at
- 11 the club?
- 12 A Huh?
- 13 Q Did you run into anybody that you knew at
- 14 the club?
- 15 A There was a lot of people up there, you
- 16 know So basically I know, somewhat, some of
- 17 the people
- 18 Q Okay But you weren't particularly with
- 19 anybody?
- 20 A No
- 21 Q Did you see anything happen inside the club
- 22 that night?
- 23 A Yeah, the club was going on good and
- 24 everything and then -- then a girl and a guy,
- 25 they fight first, you know But they quiet that
- 26 down real quick

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1 Q Okay What happened after that?

2 A Then the dude and a guy fight, and that's -
3 - by looking to the back of the club, he was
4 running forward By me being closer to the
5 door, you know, I just exited myself out before
6 anybody else came up

7 Q Okay So the club kind of cleared out?

8 A Yeah

9 Q Who was -- do you recall any policeman
10 being out there when you got outside?

11 A Yeah, one was out there

12 Q What happened after everybody cleared out
13 of the club?

14 A You know, once everybody get out, everybody
15 started, you know, saying words back and forth
16 to one another This and this, you know?

17 Q The policeman that was out there, what was
18 he doing?

19 A Standing around He ain't tried to calm
20 nothing down or nothing, you know

21 Q Did he use his PA system or anything like
22 that?

23 A Looked like to me like he just jump in his
24 car, crank up and go on someplace else

25 Q That was a little later -- a little later
26 on?

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1 A (No response)

2 Q First of all, when you got out, who was
3 fighting?

4 A I really didn't get to see who was
5 fighting

6 Q I don't mean names I'm talking about who
7 was fighting who, what group was fighting what
8 group?

9 A Oh, I don't know who group was fighting
10 who You know, I just saw them fighting

11 Q So it wasn't Petersfield versus Cherryhill
12 out there?

13 A (No response)

14 Q Where were you standing?

15 A As soon as you came -- as soon as you come
16 through the door, the club door, they got a big
17 fan in the wall and I was right there

18 Q That's where you were standing, outside?

19 A Yeah, outside

20 Q What did you see outside? Did you see a
21 blue Suburban across the street?

22 A Uh-huh

23 Q What was going on over there?

24 A Well, by me watching everything going on,
25 the blue Suburban pulled up When they pull up,
26 you know, the person got out of the truck and

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1 the next thing, whoever was doing the fighting,
2 the fellow throwed toward him and he take off
3 and ran down the road, like going towards the
4 Baptist Hill side

5 Q And that was the person that got out of the
6 blue Suburban?

7 A (Affirmative nod), the blue Suburban

8 Q Was anybody fighting with him before he ran
9 down the road?

10 A Phew, they couldn't catch him to fight him'

11 Q Do you know who the guy was that was being
12 chased?

13 A Uh, -- Kevin Dunmeyer

14 Q What happened after they chased him down
15 Toogoodoo Road towards Baptist Hill?

16 A After they chased him that far, Ton-Ton,
17 the fellow that was driving that green Cadillac,
18 he went down there and picked him up, turned
19 around, came back by the club

20 Q And is Ton-Ton's green Cadillac, State's
21 Exhibit 11?

22 A (Upon review), yeah

23 Q Is that the blue Suburban that you saw?

24 A That's Kevin Dunmeyer's

25 Q That is State's Exhibit 24 So what
26 happened after Ton-Ton picked up Dunmeyer?

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- 1 A They came back and stopped right in front
2 of the club, jumped out of the car and started
3 yelling, you know
- 4 Q Who jumped out of the car?
- 5 A Ton-Ton get out of the car
- 6 Q Okay
- 7 A And Kevin Dunmeyer was in the front seat of
8 his car
- 9 Q Ton-Ton's car?
- 10 A Yeah, Ton-Ton's car
- 11 Q What happened after he got out of the car?
- 12 A He started screaming and stuff, yelling
13 The fellows that chased Dunmeyer tried to grab
14 ahold of him By his having his car, front
15 door, you know, open, he was able to get back
16 in
- 17 Q What did he do when he got back in his car?
- 18 A Drive off on down the road
- 19 Q Towards which direction?
- 20 A Going towards the store side, going toward
21 RoadRunner, the Hess
- 22 Q Towards Hollywood side?
- 23 A Yeah
- 24 Q Now, after he got in his car and took off,
25 what did you see?
- 26 A That's when the gunshots were fired

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1 Q And could you tell where the gunfire was
2 coming from?

3 A Gunfire was coming from all over

4 Q But you couldn't see specifically where any
5 gunfire was coming from? Correct?

6 A Gunfire was coming from the green Cadillac
7 Gunfire was coming from a gray truck Gunfire
8 from -- so many gunfires

9 Q Where was this gray truck that you're
10 talking about?

11 A The club was like there, and there's a
12 gravel parking lot and the truck was like coming
13 out

14 Q State's Exhibit 6 -- club, police car
15 When the Cadillac came back down the road after
16 picking up Dunmeyer, where did it stop?

17 A It stopped right here

18 Q Okay, and that's when Ton-Ton got out of
19 the car?

20 A And started, you know, saying whatever
21 And the fellows that was chasing Dunmeyer, they
22 came back this side, back toward him, and that's
23 how he was able to get into his car

24 Q He gets in his car and he drives off down
25 this way?

26 A Yeah Coming down toward Hollywood side

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- 1 Q Where did you see the truck?
- 2 A The truck was sitting right up in here
- 3 Q Facing the road or facing the other way?
- 4 A No, it was sitting there facing the road
- 5 like they were trying to come out on the road
- 6 Q Okay So it was facing the road like it
- 7 was about to come out into the road, is that
- 8 correct?
- 9 A Yeah
- 10 Q Did you see any gunfire coming from that
- 11 truck?
- 12 A (Affirmative nod), passenger side
- 13 Q It came from the passenger side?
- 14 A (Affirmative nod)
- 15 Q Could you tell which direction the gunfire
- 16 was directed?
- 17 A They was shooting down this way The
- 18 Cadillac, I think, stopped After Ton-Ton had
- 19 stopped, he drive down this way
- 20 The truck was sitting like this, so whoever
- 21 was sitting in the driver, right passenger side,
- 22 the bullet coming from this way, shooting at
- 23 Ton-Ton, was coming like this way
- 24 Ton-Ton's shooting was coming back this way
- 25 at the truck
- 26 Q Do you know who shot first?

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1 A Seemed like al the guns went off at the
2 same time

3 Q So he was shooting at the Cadillac?

4 A (Affirmative nod)

5 Q And you say the Cadillac was shooting back?

6 A He was shooting this way and the Cadillac
7 was shooting back that way, (affirmative nod)

8 Q As it was going down the road?

9 A (Affirmative nod), the people in there
10 And people on further down the road, going
11 Baptist Hill way, before the curve, before you
12 get to the
13 -- and then the people down this way, shots were
14 coming from that way

15 Q So there were shots coming back over this
16 way, too?

17 A Shots were coming from all over

18 Q Okay A lot of shooting going on?

19 A (Affirmative nod)

20 Q So after the shooting, what happened then?

21 A After all the shooting, everything calmed
22 down a little And Eric was out there, Eric
23 Simmons, was out there in the clearing and a
24 group of people turned around and looked and saw
25 somebody laying down there by the ditch I
26 went, 'Ah, no, man, I hope nobody get hit '

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1 Then we walked down from the front of the club,

2 down by the ditch and that's when we see

3 Q I don't think that I asked you this, but

4 where were you standing when all the shooting

5 was going on?

6 A Right in the middle, right in the middle of

7 everything

8 Q So you were out in front of the club?

9 A (Affirmative nod)

10 Q So Eric said somebody was down or saw

11 somebody was down?

12 A No Everybody was looking at it The

13 people that was running, they was parked further

14 down As they was coming up to the ditch, they

15 was saying, 'Oh, somebody get hit Somebody

16 down '

17 That's when Eric spun around and said, 'Boy,

18 that's be my cousin, Jamie ' Because he just

19 had talked to him just a few minutes and he said

20 that he was going home

21 Q Did you know Jamie?

22 A Yeah, I knew Jamie

23 Q You knew who he was?

24 A Yeah

25 Q Had you ever seen him at the club before?

26 A He don't party, don't do nothing

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1 Q Do you know this fellow (indicating
2 defendant) over here?

3 A Not really

4 Q Do you know who he is?

5 A I know who he is, but I really don't know
6 of him

7 Q He's not like a friend or anything like
8 that?

9 A (Negative gesture)

10 Q What is his name?

11 A Pardon?

12 Q Do you know his name?

13 A The only name I know him by is "Ward"

14 Q Okay Did you see anybody that was in the
15 truck or anybody that was in the Cadillac that
16 night?

17 A No, I seen Ton-Ton and Dunmeyer in the
18 Cadillac But the truck, I couldn't tell
19 who'all was in the truck because it's got the
20 windows tinted and stuff

21 Q But you saw the Cadillac ---

22 A You could see gunfire from the truck

23 Q That was coming out the front passenger
24 side?

25 A (Affirmative nod), it was nighttime and you
26 could see the fire

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1 Q Do you remember seeing -- do you know
2 Friend?

3 A Not really

4 Q So you never actually saw anybody who was
5 shooting, you just saw where the shots came
6 from?

7 A Exactly

8 MR DURANT Beg the Court's
9 indulgence

10 THE COURT All right

11 DIRECT EXAMINATION RESUMED

12 BY MR DURANT

13 Q Just a couple of other questions and I will
14 be done Take a look at State's Exhibits 14 and
15 15 I ask if you recognize those?

16 A (Upon review), yeah

17 Q Is that the pickup truck that you were
18 referring to seeing coming out of the parking
19 lot?

20 A Yes, sir

21 Q That was shooting?

22 A (No response)

23 Q Which way did that truck turn when it got
24 up to the Toogoodoo Road?

25 A Coming out?

26 Q As it pulled out of the parking lot, which

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1 way did it turn onto Toogoodoo Road?

2 A Right behind the Cadillac

3 Q What did it look like it was doing?

4 A What?

5 Q What did it look like it was doing?

6 A (No response)

7 Q You said that it was right behind the
8 Cadillac?

9 A Yeah

10 Q Was he chasing the Cadillac?

11 A Well, you could -- somewhat like that

12 Q Could you hear shooting continue as they
13 were going down the road?

14 A You could hear it, (affirmative nod)

15 MR DURANT Could you please answer
16 any questions that defense counsel may have for
17 you?

18 THE COURT Cross examine?

19 MS KENT-JENKINSON Thank you

20 CROSS EXAMINATION

21 BY MS KENT-JENKINSON

22 Q Good morning, Mr Holmes

23 A G'morning

24 Q You gave a statement to the police on the
25 18th of May, 2003?

26 A Yes, ma'am

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1 Q They wanted to talk to you about what had
2 happened that night?

3 A Yes, ma'am

4 Q I am going to give you a copy of your
5 statement, (tenders) I will give you a chance
6 to look at it

7 A (Review)

8 Q You said that the green Cadillac started
9 shooting first?

10 A What?

11 Q The green Cadillac started shooting first?

12 A No, I said that it all started at the same
13 time I couldn't say if the green Cadillac
14 started shooting first or what

15 Q Okay Can you read to me what you wrote in
16 your statement, down towards the bottom of the
17 page, about the shooting?

18 A (No response)

19 Q I believe that it starts down here, "A
20 group of fellows "

21 A (Reading) "A group of fellows came over
22 and started fighting with Ton-Ton and he jumped
23 back into his Cadillac and drove off towards
24 Holly-wood, South Carolina He stopped and
25 picked " -- (mumbling)

26 Q Why don't I read it for you and you tell me

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1 if that's correct?

2 A All right

3 Q (Reading) "A group of fellows ran over and
4 started fighting with Ton-Ton and he jumped back
5 into the Cadillac and drove toward Hollywood
6 He stopped and I saw gunfire from the Cadillac
7 Then the gray Dodge pickup went down the road "
8 Is that correct?

9 A I did see gunfire from both the Cadillac
10 and the truck, they both was shooting

11 Q Did also the statement -- you told the
12 police that Fred was driving the truck?

13 A No, I didn't know who was driving the
14 truck Just by standing out there and everybody
15 saying this person and that person, but I didn't
16 see who was driving the truck myself

17 Q So this statement wasn't correct when you
18 said that Fred was driving the truck?

19 A In the -- the statement said that I didn't
20 know who was driving the truck I say everybody
21 say 'this person', 'that person' I just went
22 with that

23 Q So you just 'went with that'?

24 A (Affirmative nod)

25 THE COURT Ms Jenkinson, do you
26 want to have that marked, please?

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1 MS KENT-JENKINSON Yes, sir

2 COURT REPORTER Defendant's Exhibit

3 3 for identification

4 (SO ENTERED AS DEFENDANT'S EXHIBIT 3)

5 THE COURT Thank you

6 MS KENT-JENKINSON That's all that

7 I have Thank you

8 THE COURT Redirect?

9 MR DURANT Yes, sir, just a couple
10 of questions May I have Defendant's Exhibit 2
11 for identification?

12 COURT REPORTER (Tenders)

13 REDIRECT EXAMINATION

14 BY MR DURANT

15 Q She read this to you, "A group of fellows
16 ran over and started fighting with Ton-Ton and
17 he jumped back into his Cadillac and drove
18 toward Hollywood He stopped and I saw gunfire
19 from the Cadillac " Then the gray truck, Dodge
20 pickup truck, the "gray Dodge pickup went down
21 the road from the parking lot and started
22 shooting before he left the parking lot " She
23 left that part out, right?

24 A Um-humm

25 Q Is that true, did that truck start shooting
26 before it left the parking lot?

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1 A The truck was shooting before they even was
2 thinking about pulling out

3 Q It goes on to say the "gray truck pickup
4 then went down the road after the green
5 Cadillac"

6 A Correct

7 Q And then also your statement says, "I
8 believe a guy named Fred was driving the truck "
9

10 A Correct

11 Q It didn't say, 'I saw a guy named Fred
12 driving the truck', is that correct?

13 A Correct

14 Q Why did you believe Fred was driving the
15 truck?

16 A Just like I told her, everybody else saying
17 everything around So -- (pause)

18 Q People were calling Fred's name out there?

19 A So that's what I went with

20 Q Okay

21 MR DURANT I have no further
22 questions

23 THE COURT Recross?

24 MS KENT-JENKINSON I don't have
25 anything, Your Honor

26 THE COURT You may come down, Mr

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1 Holmes

2 (WITNESS STEPS DOWN)

3 THE COURT Do you wish this witness
4 to be excused?

5 MR DURANT Please

6 THE COURT Any objection?

7 MS KENT-JENKINSON No objection

8 THE COURT Sir, you are free to go
9 Thank you very much Solicitor, call you next
10 witness

11 MR DURANT The State calls James
12 Murphy

13 (WITNESS TAKES STAND)

14 JAMES MURPHY, being
15 duly sworn to tell the truth, the whole truth
16 and nothing but the truth, testified, as
17 follows

18 DIRECT EXAMINATION

19 BY MR DURANT

20 Q How old are you, Mr Murphy?

21 A Twenty-six (26)

22 Q Where do you live?

23 A Hollywood

24 THE COURT Mr Murphy, please pull
25 your chair forward and speak into the
26 microphone Thank you

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1 DIRECT EXAMINATION CONTINUED

2 BY MR DURANT

3 Q What part of Hollywood?

4 A On 162 (phonetic)

5 Q Do you live in Petersfield?

6 COURT REPORTER What part of Holly-
7 wood?

8 THE COURT What did you just say?

9 DEFENDANT Pineland

10 DIRECT EXAMINATION CONTINUED

11 BY MR DURANT

12 Q Is Pineland part of Petersfield,
13 Cherryhill?

14 A No

15 Q That's a different area?

16 A Yes

17 Q Are you currently employed?

18 A Yeah

19 Q Doing what?

20 A Building docks

21 Q Are you married?

22 A Yes

23 Q Got any kids?

24 A Yes

25 Q You have a criminal record, right?

26 A Yes

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- 1 Q Convicted of failing to stop for a blue
2 light, possession of stolen auto and grand
3 larceny in 1998, is that correct?
- 4 A Yes
- 5 Q And also for using a vehicle without
6 permission in 2001, is that correct?
- 7 A Yes
- 8 Q Are you currently on probation?
- 9 A No
- 10 Q Do you have any pending charges currently?
- 11 A No
- 12 Q Did you know Jamie Simmons?
- 13 A Yes
- 14 Q How did you know him?
- 15 A By school and by him being over at John's
16 house
- 17 Q Are you related to him, Jamie?
- 18 A No
- 19 Q Is your wife related to him?
- 20 A (Affirmative nod), wife
- 21 Q Do you know John Ward?
- 22 A Yes
- 23 Q How do you know him?
- 24 A Cousins
- 25 Q Do you know Catrell Douglas?
- 26 A Yes

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- 1 Q How do you know him?
- 2 A I guess we're related
- 3 Q You'all are cousins, as well?
- 4 A Yeah
- 5 Q Do you know Tremayne Washington?
- 6 A Somewhat
- 7 Q Now, were you at the Club Diamante on May
- 8 11th, 2003?
- 9 A Yes
- 10 Q What time did you get to the club?
- 11 A About 10 00
- 12 Q How did you get to the club?
- 13 A Drive my own vehicle
- 14 Q What were you drinking that night?
- 15 A (No response)
- 16 Q What were you drinking?
- 17 A A couple beers
- 18 Q Were you drinking liquor, too, or just
- 19 beer?
- 20 A Just beer
- 21 Q What happened inside the club?
- 22 A An argument kick off and they led us
- 23 outside
- 24 Q What happened after everyone got outside?
- 25 A Start arguing -- and something went on over
- 26 on the other side of the road

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1 Q What did you see going on over on the other
2 side of the road?

3 A They was like around a Suburban

4 Q Blue Suburban?

5 A Yeah

6 Q What did you see going on around the blue
7 Suburban?

8 A It looked like they was shaking it

9 Q Could you tell who was shaking it?

10 A No

11 Q Do you recall telling the police that you
12 saw somebody shaking it?

13 A Yes

14 Q Who did you tell the police you saw shaking
15 the car?

16 A I told him that it was a bunch of people
17 shaking the truck

18 Q I hand you what has been marked as State's
19 Exhibit 56, do you recognize that statement?

20 A Yes

21 Q Did you give that statement?

22 A Yes

23 Q And it was given on May 12th, 2003, is that
24 correct?

25 A Yes

26 Q Starting with that, right here, what did

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- 1 you tell the police? With "John Campbell"
- 2 A He was inside the truck, the Suburban
- 3 Q Right That they got in Kevin's truck
- 4 Then you said "and Keith and Fiend, who owns the
- 5 gray truck, were rocking Kevin's car" Do you
- 6 remember telling them that?
- 7 A Yes
- 8 Q Who do you mean by "Fiend"?
- 9 A I guess his name is Tremayne
- 10 Q Tremayne Washington?
- 11 A (Affirmative nod)
- 12 Q Then it says, "Fiend went back over to his
- 13 truck and said, "Sum'bitch is gonna die up here
- 14 tonight " Is that correct?
- 15 A (No response)
- 16 Q Do you remember Fiend saying that?
- 17 A Yes
- 18 Q So after the incident occurred over at the
- 19 Suburban, what happened?
- 20 A That's when I heard a shot fired
- 21 Q Do you know who owned that Suburban?
- 22 A Yes
- 23 Q What happened after -- where did he go?
- 24 A He went towards the other side of the club
- 25 Q Towards the Baptist Hill side?
- 26 A Baptist Hill

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- 1 Q On foot or in his car?
- 2 A Foot
- 3 Q Why did he run off on foot?
- 4 A Because they were fighting
- 5 Q People were fighting him?
- 6 A Yeah
- 7 Q Did you see the green Cadillac out there?
- 8 A Yes
- 9 Q Where did you see the green Cadillac?
- 10 A Right behind him
- 11 Q Right behind Dunmeyer?
- 12 A Yeah
- 13 Q What did the green Cadillac do?
- 14 A Pick up Dunmeyer, then turn around and came
- 15 back in front of the club
- 16 Q Do you know who owns that green Cadillac?
- 17 A Yes
- 18 Q Who owns it?
- 19 A Antonio Washington
- 20 Q What happened when the Cadillac got back in
- 21 front of the club?
- 22 A That's when he stopped, started saying
- 23 something and -- he jumped out, jumped back in
- 24 and started riding off
- 25 Q When you say that "he" jumped out, jumped
- 26 back in and started riding off, you're talking

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1 about Ton-Ton?

2 A Yeah

3 Q After he got in his car and took off, what

4 happened then?

5 A That is when everything started

6 Q Okay, and that's when what started?

7 Q Ton-Ton went towards my left, toward ---

8 Q Toward the Hollywood side or toward the

9 Baptist Hill side?

10 A Hollywood

11 Q Then what happened?

12 A Then the truck went behind him

13 Q Where did the truck come from?

14 A By the club

15 Q Beside the club?

16 A (Affirmative nod)

17 Q And who was in the truck?

18 A Friend, Mixx, and -- I mean John, Tremayne

19 and Catrell

20 Q And where was Catrell?

21 A Driver's seat

22 Q Driver's seat?

23 A (Affirmative nod), yes

24 Q Catrell is your cousin, is that correct?

25 A Yes

26 Q And where was John Ward?

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- 1 A Next to the driver, the passenger's
- 2 Q The front passenger seat?
- 3 A I think so, yes
- 4 Q And where was Friend?
- 5 A I think in the back, I'm not too sure
- 6 Q I hand you what has been marked State's
- 7 Exhibit 57 for identification and ask if you
- 8 recognize that
- 9 A Yes
- 10 Q That is a statement you gave to a detective
- 11 on May 27th, is that correct?
- 12 A (Affirmative nod)
- 13 Q That would be Detective Shepherd?
- 14 A Yes
- 15 Q Do you recall them asking you who was in
- 16 the gray pickup?
- 17 A Yes
- 18 Q What did you tell him?
- 19 A John, Tremayne and Catrell
- 20 Q Okay Then he asked you, "Do you know
- 21 where each was sitting?" What did you tell him?
- 22 A Yeah
- 23 Q What did you tell him?
- 24 A (No response)
- 25 Q "Mixx was in the passenger seat", correct?
- 26 A Yes

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1 MS KENT-JENKINSON Objection, Your

2 Honor

3 THE COURT What's the objection?

4 MS KENT-JENKINSON Leading

5 THE COURT Sustained

6 DIRECT EXAMINATION CONTINUED

7 BY MR DURANT

8 Q What did you tell him?

9 A (No response)

10 Q Can you read this?

11 A "Mixx was in the passenger seat, Catrell

12 was driving and Fiend was in the back "

13 Q Was in the back, (affirmative nod) Thank

14 you How did you know who was in the pickup

15 truck?

16 A Because I saw them

17 Q Did you see them get in the truck?

18 A Yes

19 Q How far away from the truck were you when

20 you saw them get in the truck?

21 A I think about twenty foot, twenty feet

22 Q Okay Referring to State's Exhibit 6 --

23 grass parking, dirt parking lot, club, Toogoodoo

24 Road Where was your car parked?

25 A Right here

26 Q Where did you see the truck come from?

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- 1 A From kind of back here
- 2 Q What did it pull up to?
- 3 A (Indicating)
- 4 Q Right in this area here?
- 5 A (Affirmative nod)
- 6 Q And what did you see when the truck pulled
- 7 -- where did you see the folks get into the
- 8 truck?
- 9 A Here
- 10 Q Right there?
- 11 A (Affirmative nod)
- 12 Q Okay And they pulled up and then what
- 13 happened when the truck pulled up to Toogoodoo
- 14 Road?
- 15 A Shots from the truck
- 16 Q From where in the truck?
- 17 A I am not sure if it was the front or the
- 18 back, but I believe that it was front
- 19 Q The front passenger side or driver's side?
- 20 A Passenger
- 21 Q And it looked like the front passenger to
- 22 you?
- 23 A (Affirmative nod)
- 24 Q And you were standing over here at the
- 25 time?
- 26 A Yeah

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1 Q Did the truck start shooting before or
2 after it left the parking lot?

3 A After they -- when he got in the road

4 Q Okay Which way did the truck go?

5 A Towards Hollywood side

6 Q Do you know in which direction was the
7 truck shooting?

8 A (No verbal response)

9 Q You couldn't tell in which direction the
10 truck was shooting?

11 A (Negative gesture)

12 Q Now, where was Jamie Simmons?

13 A Standing by his car

14 Q Had you see him -- did you see him get to
15 the club?

16 A You mean when he came there?

17 Q Right

18 A No

19 Q Where was he in relation to -- do you know
20 what kind of car that he drove?

21 A Yes

22 Q Where was he in relation to where his car
23 was parked?

24 A Like in front of his car

25 Q Where?

26 A In front of his car

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- 1 Q In front of his car?
- 2 A (Affirmative nod)
- 3 Q Did you see Jamie go down? After you saw
- 4 these gunshots fired from the truck, did you see
- 5 Jamie go down?
- 6 A (No response)
- 7 Q Did you see Jamie go down after you saw
- 8 gunshots?
- 9 A Yes
- 10 Q Where did he go down?
- 11 A Like on the passenger side of his car, in
- 12 the ditch
- 13 Q What did you think when you saw him do
- 14 down?
- 15 A I thought that he just fell
- 16 Q How close were you to Jamie when he fell
- 17 down?
- 18 A About fifteen
- 19 Q Fifteen feet or yards, or what?
- 20 A Fifteen feet
- 21 Q Did you go to check on him?
- 22 A Yeah But by the time that I got over
- 23 there, some other people were over there
- 24 Q Did you go over there and look where he
- 25 was?
- 26 A Yeah

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1 Q Did he appear to be alive to you at that
2 time?

3 A No

4 Q How much longer did you end up staying at
5 the scene?

6 A About thirty minutes

7 Q Had the ambulance gotten there before you
8 left?

9 A (Negative gesture)

10 Q So you left before the ambulance got there?

11 A Yes

12 Q Now, with regards to State's Exhibit 56 for
13 identification, that is the first statement that
14 you gave the police?

15 A Yes

16 Q And that was to Detective Crews, is that
17 correct?

18 A Yes

19 Q What is the date on that?

20 A The 12th

21 Q And then the second statement you gave to
22 Detective Shepherd?

23 A Yeah

24 Q That was on the what?

25 A The 27th

26 Q The 27th of May?

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1 A (Affirmative nod)
2 Q How did you come to talk to Detective
3 Shepherd on the 27th?
4 A My wife got in contact with him
5 Q And you went to talk to him?
6 A Yeah
7 Q Why did you go back to talk to him on the
8 27th?
9 A To tell him that I hadn't told him every-
10 thing, all the names
11 Q Who were the names that you'd left out?
12 A John and 'Trell
13 Q And John and 'Trell are what?
14 A Relation, cousins
15 Q And you substituted them for who?
16 A Keith and Kenneth
17 Q Keith Richards and Kenneth Sanders?
18 A (Affirmative nod)
19 Q Is that correct?
20 A (Affirmative nod)
21 THE COURT Is that a "yes"?
22 WITNESS "Yes "
23 THE COURT Thank you
24 DIRECT EXAMINATION CONTINUED
25 BY MR DURANT
26 Q Just a couple of other questions and I

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1 believe that I'll be through Do you recognize

2 State's Exhibit 15 and State's Exhibit 14?

3 A Yes

4 Q Whose truck is that?

5 A Tremayne Washington's

6 Q Is that the truck that you saw shooting
7 that night?

8 A Yes

9 Q Is it the truck that you saw shooting from
10 right before Jamie went down?

11 A Yes

12 Q State's Exhibit 10 and State's Exhibit 11,
13 do you know whose car that is?

14 A Yes

15 Q Whose car is that?

16 A Antonio's

17 Q And that is the one that you saw out there
18 that night

19 A (Affirmative nod)

20 MR DURANT Court's indulgence

21 THE COURT Yes, sir

22 MR DURANT I don't have any further
23 questions Please answer any questions that
24 defense counsel may have for you

25 THE COURT You may cross examine

26 CROSS EXAMINATION

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1 BY MS KENT-JENKINSON
2 Q Good morning, Mr Murphy
3 A (No response)
4 Q You gave two statements about a week and a
5 half apart
6 A Yes
7 Q In your first statement you told the police
8 about Tremayne Washington shaking Kevin
9 Dunmeyer's car, is that correct?
10 A (Affirmative nod)
11 Q And in both statements you told police that
12 Tremayne Washington said "Some bitch gonna die
13 tonight "
14 A Yes
15 Q What does Tremayne Washington look like?
16 A Big, glasses, at the time he had a long
17 goatee/beard -- a little taller than me
18 MS KENT-JENKINSON Beg the Court's
19 indulgence
20 THE COURT All right
21 CROSS EXAMINATION CONTINUED
22 BY MS KENT-JENKINSON
23 Q You told the police that both times,
24 correct?
25 A Yes
26 Q And that was true?

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1 A Yes

2 MS KENT-JENKINSON That's all that

3 I have Thank you

4 THE COURT Redirect?

5 MR DURANT Nothing on redirect

6 Thank you

7 THE COURT You may come down, sir

8 (WITNESS STEPS DOWN)

9 MR DURANT Your Honor, we'd ask that
10 he be excused

11 THE COURT Any objection?

12 MS KENT-JENKINSON No objection,
13 Your Honor

14 THE COURT Mr Murphy, you are free
15 to go Ladies and Gentlemen, at this time we
16 will take our lunch break Please remember not
17 to discuss this case among yourselves or with
18 anyone else and to not let anyone else discuss
19 the case with you I hope that you have a good
20 lunch and I'd ask that you be back in your jury
21 room at 2 00

22 (JURY OUT @ 12 15)

23 THE COURT I needed to give them a
24 little longer because I need to take the report
25 of the Grand Jury You'all may leave your
26 things where they are

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1 Is there anything from the State before
2 recessing?

3 MR DURANT No, Your Honor

4 THE COURT From the Defense?

5 MS KENT-JENKINSON No, sir

6 THE COURT Very well Thank you, I
7 will see you at 2 00

8 (LUNCH RECESS 12 10 - 2 00 P M)

9 (DEFENDANT PRESENT)

10 THE COURT Let the record reflect
11 that Mr Ward is present Is the State ready to
12 proceed?

13 MR DURANT Yes, sir

14 THE COURT And the Defense?

15 MS KENT-JENKINSON Ready, Your
16 Honor

17 THE COURT Let's invite the jury to
18 return

19 (JURY IN @ 2 10 P M)

20 THE COURT Thank you, Ladies and
21 Gentlemen We are not ready to resume with the
22 State's case Mr Durant, you may call your
23 first witness

24 MR DURANT We call Anthony Ward

25 (WITNESS TAKES STAND)

26 ANTHONY WARD, being

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1 duly sworn to tell the truth, the whole truth
2 and nothing but the truth, testified, as
3 follows

4 DIRECT EXAMINATION

5 BY MR DURANT

6 Q How old are you, Mr Ward?

7 A Twenty (20)

8 Q Do you have a nickname?

9 A "Cabbage"

10 Q How far did you go in school?

11 A 11th

12 Q Pardon me?

13 A The 11th

14 Q 11th grade?

15 A Yeah

16 Q Where did you do to school?

17 A Baptist Hill

18 Q What do you do for a living?

19 A Nothing

20 Q Well, obviously you're incarcerated right
21 now, is that correct?

22 A Um-humm

23 Q Where whereabouts?

24 A Turbeville Correctional Center

25 Q In terms of a prior record, you were con-
26 victed of possession of a stolen auto, breaking

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1 into an auto and possession of burglary tools
2 in 2003, is that correct?
3 A Yeah
4 Q And you're currently in prison for two
5 counts of possession of cocaine and grand
6 larceny, is that correct?
7 A Yes, sir
8 Q How long have you been in prison now?
9 A Above five or six months
10 Q Where are you from originally?
11 A Hollywood
12 Q What part of Hollywood?
13 A Petersfield
14 Q Do you know Tremayne Washington?
15 A Yes, sir
16 Q What name do you know him by?
17 A "Fiend"
18 Q Do you know this fellow (defendant) over
19 here?
20 A Yes, sir
21 Q What is his name?
22 A John
23 Q What is his nickname?
24 A "Mixx"
25 Q What is your relationship like with
26 Tremayne Washington?

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1 A Family

2 Q You'all pretty close?

3 A (Affirmative nod)

4 Q You need to answer 'yes' or 'no'

5 A "Yes "

6 Q How about John Ward, are you pretty close

7 with John Ward?

8 A Yes

9 Q Do you know what Tremayne Washington's

10 relationship is with John Ward?

11 A No

12 Q Are you related to John Ward, too?

13 A Yes, sir

14 Q How about Catrell Douglas, do you know him?

15 A Yes, sir

16 Q Going back to the morning that Jamie was

17 killed, May 11th of 2003, were you at the Club

18 Diamante?

19 A Yes

20 Q Pardon?

21 A Yes, sir

22 Q How did you get to the club?

23 A Tremayne Washington

24 Q Whose vehicle did you'all go to the club

25 in?

26 A His Dodge truck

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- 1 Q That would be -- showing you State's
2 Exhibits 15 and 16, and ask if you recognize
3 that vehicle?
4 A Yes, sir
5 Q Is that Tremayne's truck?
6 A Um-humm
7 Q Is it?
8 A Yes, sir
9 Q When did you'all get to the club?
10 A (No response)
11 Q Do you remember?
12 A No
13 Q What did you do after you got to the club?
14 A Uh, -- we, uh, went in for a minute Then
15 I went to pick my other cousin up
16 Q What did you go after you picked him up?
17 A Bring him back to the club and give
18 Tremayne back his keys
19 Q Anything happen in the club that night?
20 A A little commotion
21 Q What happened after that commotion?
22 A Everything led outside and from then on a
23 bunch of chaos been going on
24 Q Pardon me?
25 A From then on a bunch of chaos be going on
26 Q Were you outside too?

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1 A Yeah

2 Q Do you know Kevin Dunmeyer?

3 A Yeah

4 Q What was going on over at Kevin Dunmeyer's

5 truck?

6 A Arguing and fussing back and forth

7 Q Did you get involved in it, too?

8 A Naw

9 Q Whatever happened to Kevin Dunmeyer?

10 A It was a little scuffle and then he started

11 running

12 Q Who was after him?

13 A Lot of people

14 Q Petersfield people?

15 A I couldn't tell you

16 Q You know Ton-Ton?

17 A Yeah

18 Q Was he out there that night?

19 A Yeah

20 Q What did Ton-Ton do?

21 A He, uh, started to run a bunch of people

22 over with his car

23 Q What kind of car was he driving?

24 A Cadillac

25 Q What color Cadillac?

26 A Green/blue

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- 1 Q State's Exhibit 11, do you recognize that
2 vehicle?
3 A Yeah
4 Q Whose vehicle is that?
5 A That's the car
6 Q Ton-Ton's car?
7 A Yeah
8 Q Where was he?
9 A Huh?
10 Q Where was he headed when he was trying to
11 run people over with his car?
12 A Uh, trying to -- I guess see Kevin
13 Dunmeyer
14 Q I'm sorry, I didn't understand that Kevin
15 Dunmeyer?
16 A Yeah
17 Q He was trying to fight with Kevin Dunmeyer?
18 A (Negative gesture), go get him, pick him
19 up
20 Q What happened then?
21 A He came back through, you know, trying to
22 do the same thing
23 Q And when you say "trying to do the same
24 thing", what are you talking about?
25 A Trying to get through with the car
26 Q He was heading which way now? Towards

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1 Hollywood or Baptist Hill?

2 A Hollywood

3 Q Now, what happened when he came back to the
4 club and was trying to hit people then?

5 A Yeah, uh, he was about to get caught Some
6 people started running up his car and started
7 choking him or something

8 Q Who ran up to his car and started choking
9 him?

10 A Kenneth Sanders

11 Q Does he also go by the name "Fred"

12 A (Affirmative nod)

13 Q What happened when Fred ran up to his car?

14 A Started choking him, mashed the gas He
15 pulled off and was dragging by the car

16 Q Dragging Kenneth?

17 A (Affirmative nod)

18 THE COURT Is that a "yes"

19 WITNESS Yes

20 THE COURT Thank you

21 DIRECT EXAMINATION CONTINUED

22 BY MR DURANT

23 Q Then what happened?

24 A He drove off, that was it

25 Q Did you see Tremayne Washington's truck out
26 there?

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- 1 A No, not -- no, I didn't
- 2 Q You didn't see Tremayne Washington's truck
- 3 at that time?
- 4 A No
- 5 Q What happened after the Cadillac drove off?
- 6 A When the Cadillac drove off, I, uh, heard a
- 7 lot of shots and everybody started ducking
- 8 around, you know
- 9 Q Where did you hear the shots coming from?
- 10 A Sheesh, everywhere, man
- 11 Q Did you hear any coming from Hollywood way?
- 12 A No You know, I couldn't tell you I just
- 13 heard shots
- 14 Q What did you do when you heard the shots?
- 15 A Started ducking and running
- 16 Q What happened while you were running?
- 17 A I tripped over a body
- 18 Q Did you look to see who it was?
- 19 A Uh-uh, not at the time
- 20 Q Where did you go?
- 21 A Across the street and talked to -- talked
- 22 to two girls, tell them what happened Then we
- 23 walked back over and that's when we find out who
- 24 it was
- 25 Q Who was it?
- 26 A Jamie

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1 Q Did you know Jamie?
2 A Yeah
3 Q Did he look like he was alive when you saw
4 him?
5 A Uh-uh, no
6 Q Now, how long did you stick around there at
7 the club?
8 A Until the police get there
9 Q Who did you leave with?
10 A Denode Heyward
11 Q Denode Heyward?
12 A (Affirmative nod)
13 Q Who is Denode Heyward?
14 A Cousin
15 Q Who else left with you and Denode Heyward?
16 A Jesse Perrigo
17 Q Did anybody else?
18 A No
19 Q Whose car did you leave in?
20 A Denode's
21 Q Denode's car?
22 A Yeah
23 Q What kind of car was Denode driving?
24 A Delta 88
25 Q Did Tremayne Washington leave with you in
26 that car?

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- 1 A No
- 2 Q Where did you'all go?
- 3 A Denode's house
- 4 Q Where does Denode live?
- 5 A Pineland
- 6 Q And Pineland is where in Hollywood?
- 7 A Uh, -- in Hollywood
- 8 Q Is it near 162 anywhere?
- 9 A Off of 162
- 10 Q Now, after you'all got back to Denode's
- 11 house, did you go anywhere?
- 12 A No, not yet Not until we get the phone
- 13 call
- 14 Q Who did you'all get a phone call from?
- 15 A Tremayne
- 16 Q What did Tremayne want?
- 17 A Asked to come pick him up
- 18 Q Did you'all go pick him up?
- 19 A Yeah
- 20 Q Where did you go pick him up at?
- 21 A Petersfield
- 22 Q Whereabouts in Petersfield?
- 23 A I don't -- off -- we stopped on Ethel Post
- 24 Office Road I can't remember the exact spot,
- 25 but we seen him and picked him up
- 26 Q So you picked him up on Ethel Post Office

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1 Road?

2 A Yeah

3 Q Where was he? Was he just like on the side
4 of the road?

5 A I can't even remember, man That's as far
6 as I can remember

7 Q Was he by himself?

8 A Far as I know, yeah

9 Q Was his truck with him?

10 A No

11 Q Did you ask him where his truck was?

12 A Yeah

13 Q What did he say?

14 A "Don't worry about it "

15 Q Where did you go after you picked Tremayne
16 up in Petersfield?

17 A Back to Denode's house

18 Q And just so that the jury understands,
19 Pineland, where Denode lives, is a good ways
20 from Petersfield, isn't it?

21 A About ten minutes

22 Q You had to go up Highway 162, right?

23 A Yeah

24 Q And did you turn down Toogoodoo Road?

25 A Shit, man, I ---

26 Q Ethel Post Office Road and out that way?

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- 1 A (Affirmative nod)
- 2 Q Okay Now, after you'all picked up
3 Tremayne, where did you'all go? Back to
4 Denode's house, you said?
- 5 A Yes, sir
- 6 Q Did Tremayne stay there that night?
- 7 A Yes, sir
- 8 Q Did you stay there that night?
- 9 A Yes, sir
- 10 Q Now, the next morning, did you get any
11 information about where Tremayne Washington's
12 truck was?
- 13 A Not until I got to the house
- 14 Q What did you find out when you got to the
15 house?
- 16 A The truck was out behind my house, my
17 uncle's house
- 18 Q Your uncle is who?
- 19 A Oliver Ward
- 20 Q Did -- were you still with Tremayne then or
21 was that after he had already left?
- 22 A No, we still been together
- 23 Q So Oliver Ward told you that the truck was
24 back behind his house?
- 25 A No, no When I got there, you know, there
26 was a bunch of policemen outside

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1 Q So you went over to your uncle's house?

2 A No'

3 Q You tell me I'm trying to figure it out
4 myself

5 A There was a bunch of policemen outside
6 Right?

7 Q Outside your house?

8 A Yeah, outside the -- right there in that
9 little area

10 Q All right

11 A So I walked past the little area, past all
12 the police and everything I can see that they
13 putting the truck on the back of a wrecker

14 Q Okay

15 A Yeah

16 Q So did you go over with Tremayne that
17 morning to where his truck was?

18 A Yes, sir

19 Q How did you get back over to where the
20 truck was found at your uncle's house?

21 A He rode with me and Denode -- and Tremayne
22 (phonetic)

23 MR DURANT Court's indulgence

24 THE COURT Yes, sir

25 DIRECT EXAMINATION RESUMED

26 BY MR DURANT

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1 Q Do you remember Mr Casey and I coming to
2 talk to you at Turbeville?

3 A (Affirmative nod)

4 THE COURT Is that a "yes"?

5 WITNESS Yeah

6 THE COURT Thank you

7 DIRECT EXAMINATION CONTINUED

8 BY MR DURANT

9 Q And do you remember us talking about Ton-
10 Ton's car coming back after they picked up --
11 after he picked up Dunmeyer?

12 A Yes, sir

13 Q Do you remember telling us that you saw
14 Tremayne's truck coming out of the parking lot,
15 going after the Cadillac?

16 A (No response)

17 Q Do you remember that or not?

18 A Shit, man, I don't know about this

19 Q Did you see the truck going after the
20 Cadillac?

21 A Not that I can recall

22 Q Do you deny telling us that the truck went
23 after the Cadillac?

24 A Not as I recall

25 Q You are, of course, a Petersfield guy?

26 A Huh?

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- 1 Q You are a Petersfield guy, right?
- 2 A What you?
- 3 Q You're from Petersfield?
- 4 A Yeah, I be Yeah
- 5 Q Show the jury what you got on your hand
- 6 A Ah, man
- 7 Q Come on, show it to them
- 8 A (Laughs)
- 9 Q Show it to them, show them your tattoo
- 10 A No, man
- 11 Q Show them your tattoos All you got to do
- 12 is put them up there
- 13 A (Raises hands slightly)
- 14 Q What? You got "Peters" on one and "Field"
- 15 on the other, right?
- 16 A Yeah
- 17 Q Of course, all the guys in the truck were
- 18 Petersfield folks, too, weren't they?
- 19 A I don't know what you're trying to get at,
- 20 sir
- 21 MR DURANT Would you please answer
- 22 any questions that defense counsel may have for
- 23 you?
- 24 THE COURT You may cross-examine
- 25 MS KENT-JENKINSON I don't have any
- 26 questions for this witness

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1 THE COURT Very well, you may come
2 down

3 (WITNESS STEPS DOWN)

4 THE COURT You want this witness to
5 be excused?

6 MR DURANT Yes, sir

7 THE COURT Any objection to excusing
8 Mr Ward?

9 MS KENT-JENKINSON No, Your Honor

10 THE COURT Mr Ward, you are free to
11 go Thank you, sir

12 MR DURANT The State calls Ms
13 Shirley Ward

14 (WITNESS TAKE STAND)

15 SHIRLEY WARD, being duly
16 sworn to tell the truth, the whole truth and
17 nothing but the truth, testified, as follows

18 DIRECT EXAMINATION

19 BY MR DURANT

20 Q Where do you live, Ms Ward?

21 A Hey All right

22 Q How are you?

23 A Fine

24 Q Will you tell the jury where you live,
25 what's your address?

26 A I live in Hollywood, South Carolina

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1 Q Whereabouts in Hollywood?

2 A A place called Petersfield

3 Q Whereabouts in Petersfield?

4 A Where?

5 Q Whereabouts in Petersfield? What is the

6 name of the road that you live on?

7 A [REDACTED] Road

8 Q What is your address on [REDACTED] Road

9 A [REDACTED] [REDACTED] Road, Hollywood, South

10 Carolina [REDACTED] Hollywood, South Carolina

11 Q Do you know a lady name Lila Pinckney

12 A Who?

13 Q A Ms Pinckney?

14 A Nellie Pinckney?

15 Q Nellie Pinckney Excuse me I got the

16 name wrong

17 A Yes

18 Q Where ---

19 A That's my sister-in-law

20 Q That is your sister-in-law?

21 A Yeah

22 Q Where does Ms Nellie Pinckney live in

23 relation to where your house is?

24 A Where she lives in front of me

25 Q She lives pretty much right across the

26 lane?

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1 A Yeah

2 Q Right?

3 A Yeah

4 Q Do you know this fellow (defendant) right

5 here?

6 A Yeah

7 Q Who is that?

8 A That is my nephew

9 Q Your nephew?

10 A (Affirmative nod)

11 Q John is your nephew?

12 A (Affirmative nod)

13 Q You are his aunt, correct?

14 A Yeah

15 Q I would like for you to think back to the

16 morning of May the 11th, 2003, which was a Sunday

17 morning, I believe

18 A Um-humm

19 Q Did you find anything unusual out in back

20 of your house?

21 A Well, when I wake up Sunday mornings, I

22 always get up in the morning and cook before I

23 go to church I opened my venetian blind, and

24 when I open my -- on Sunday, about ten to 7 00,

25 I get up When I opened my venetian blind, I

26 saw a truck behind my house then

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1 Q Okay

2 A At the time

3 Q Did you know who that truck belonged to?

4 A No, I ain't knowed

5 Q Do you know Tremayne Washington?

6 A I heard about him

7 Q But you don't know him?

8 A (Negative gesture)

9 Q Do you know what kind of vehicle that

10 Tremayne Washington drives?

11 A No, no

12 Q Could we have the screen, please? Mrs

13 Ward, this may blind you -- could you look

14 around? I'd like for you to take a look at

15 State's Exhibit 13 Can you look around behind

16 you?

17 A Yes, (complies)

18 Q Do you recognize that place?

19 A Humm, I don't know That's my house,

20 right?

21 Q Yes, ma'am, that's your house

22 A (Affirmative nod)

23 Q Is that the house (sic) that you found --

24 saw the truck behind that morning?

25 A Um-humm

26 THE COURT Was that a "yes", ma'am?

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1 WITNESS "Yes "

2 THE COURT Thank you

3 DIRECT EXAMINATION CONTINUED

4 BY MR DURANT

5 Q And if you would, take a look at State's
6 Exhibit 15 right behind you Excuse me, that
7 would be State's Exhibit 14 Is that the truck
8 that was behind your house?

9 A Yes

10 Q And also in State's Exhibit 15, is that the
11 same truck?

12 A Yes

13 Q There is no driveway back there, is there?

14 A (Negative gesture)

15 Q Is there a driveway back there?

16 A Yeah, there's a drive because that's where
17 the line to my gas tank is at But my yard is
18 open enough -- my house is -- it's an open yard

19 Q I understand But you'all don't generally
20 park back there, right?

21 A No, we don't park back there

22 Q So it was kind of unusual to have a truck
23 parked back behind your house?

24 A Yes When I wake up, it is

25 MR DURANT Could you please answer
26 any questions that defense counsel may have for

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1 you?

2 THE COURT Any questions?

3 MS KENT-JENKINSON Real quick

4 THE COURT Sure

5 CROSS EXAMINATION

6 BY MS KENT-JENKINSON

7 Q Ms Ward, you don't know how that truck got
8 behind your house?

9 A No

10 MS KENT-JENKINSON Thank you,

11 ma'am

12 THE COURT Redirect?

13 MR DURANT No, sir

14 THE COURT Ms Ward, you may come
15 down Any objection to excusing this witness?

16 MR DURANT No, sir

17 MS KENT-JENKINSON No, Your Honor

18 (WITNESS STEPS DOWN)

19 MR DURANT The State calls Cantrell
20 Douglas

21 (WITNESS TAKES STAND)

22 CATRELL DOUGLAS, being
23 duly sworn to tell the truth, the whole truth
24 and nothing but the truth, testified, as
25 follows

26 DIRECT EXAMINATION

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1 BY MR DURANT
2 Q Catrell, how old are you?
3 A Twenty-two (22)
4 Q Where do you live?
5 A Petersfield Road
6 Q Who do you live with in Petersfield?
7 A My parents, my little sister, my little
8 brother
9 Q How long have you lived in the Hollywood
10 area?
11 A All my life
12 Q Did you go to school there, too?
13 A Yes, sir
14 Q Where did you go to school?
15 A I went to C C Lindy Elementary
16 Q Where did you go to high school?
17 A Baptist Hill High
18 Q How far did you get in high school?
19 A 10th grade
20 Q Prior to your arrest in this case, were you
21 working?
22 A Yes, sir
23 Q Where were you working?
24 A Sanders Brothers Construction
25 Q What were you doing for Sanders Brothers
26 Construction?

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1 A Laborer

2 Q Prior to your present -- prior to your
3 difficulty, had you ever been in problems with
4 the law before?

5 A No, sir

6 Q You are in fact charged with murder in this
7 case, are you not?

8 A Yes, sir

9 Q And are those charges still pending against
10 you?

11 A Yes, sir

12 Q Have I or anyone else promised you anything
13 for your testimony today?

14 A The only thing that I was promised is that
15 if I told the truth that it would be in my best
16 interest

17 Q And you're represented by a lawyer, is that
18 correct?

19 A That's correct

20 Q And Mr Holmes is here, the one with the
21 red necktie, and he is your lawyer, is that
22 correct?

23 A Yes, sir

24 Q Has he promised you anything?

25 A No, sir

26 Q Do you know Tremayne Washington?

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- 1 A Yes, sir
- 2 Q How do you know Tremayne?
- 3 A From being in the neighborhood
- 4 Q Why would he be in the neighborhood?
- 5 A He knows some fellows around
- 6 Q And was one of those fellows that he knew
- 7 John Ward?
- 8 A Yes, sir
- 9 Q Tremayne Washington is not a Petersfield
- 10 guy, is he?
- 11 A No, sir
- 12 Q Is he around the Petersfield area a good
- 13 bit, though? Talking about Tremayne?
- 14 A Yes
- 15 Q What name did you know him by?
- 16 A "Fiend"
- 17 Q What kind of vehicle did Fiend have in May
- 18 of '03?
- 19 A Dodge Ram
- 20 Q What color?
- 21 A Silver
- 22 Q Pickup truck?
- 23 A Yes, sir
- 24 Q What is the nature of your relationship
- 25 with John Ward and Tremayne Washington?
- 26 A Friends

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- 1 Q Do you'all hang out a lot together?
- 2 A No, sir
- 3 Q Are they older or younger than you?
- 4 A Older
- 5 Q How much older than you are they?
- 6 A Maybe three or four years
- 7 Q But you know them from the neighborhood?
- 8 A Yes, sir
- 9 Q Does John Ward have a nickname too?
- 10 A Excuse me?
- 11 Q Does John Ward have a nickname too?
- 12 A (No response)
- 13 Q John Ward, does he have a nickname?
- 14 A Yes, sir
- 15 Q What is his nickname?
- 16 A "Mixx"
- 17 Q And is John Ward in the courtroom today?
- 18 A Yes, sir
- 19 Q Would you point him out to the jury,
- 20 please
- 21 A That fellow (indicating defendant) right
- 22 there
- 23 Q In the kind of checked shirt, sitting at
- 24 this table?
- 25 A Yes, sir
- 26 Q How long have you known him?

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- 1 A Some years
- 2 Q Now, going back to May 11th, 2003, were you
- 3 at the Club Diamante that morning?
- 4 A Yes, sir
- 5 Q What time did you arrive?
- 6 A Between 1 00 o'clock and 1 30
- 7 Q How did you get to the club?
- 8 A I was dropped off
- 9 Q Who dropped you off?
- 10 A Latasha Johnson
- 11 Q Who is Latasha Johnson?
- 12 A My girlfriend
- 13 Q So you didn't go to the club with anybody?
- 14 A No, sir
- 15 Q What did you do after you got to the club?
- 16 A I went in
- 17 Q Did you see anybody that you knew inside
- 18 the club?
- 19 A We know everybody around here, (affirmative
- 20 nod)
- 21 Q It's kind of a local establishment, is that
- 22 right?
- 23 A Yes, sir
- 24 Q Where a lot of local folks go?
- 25 A Yes, sir
- 26 Q Were you hanging out with anybody inside

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1 the club?

2 A No, sir

3 Q Where were you inside the club?

4 A Leaning against the bar

5 Q What were you drinking that night?

6 A Beer

7 Q How much beer did you have to drink?

8 A Maybe three or four

9 Q Pardon?

10 A Maybe three or four

11 Q Were you drunk?

12 A No, sir

13 Q Do you recall there being any problems

14 inside the club that night?

15 A Not to my knowledge

16 Q You didn't see any kind of scuffle inside

17 the club?

18 A No

19 Q Now, when did you leave the club?

20 A When they moved everyone outside

21 Q So people were being moved out of the club?

22 A Yes, sir

23 Q And what did you do when you got outside

24 the club?

25 A Kind of moved around in the parking lot

26 Q What was going on outside the club?

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- 1 A A fight or something had broke out
- 2 Q Where were the people fighting?
- 3 A Close to the road
- 4 Q Could you tell who was fighting?
- 5 A No, sir
- 6 Q Not necessarily the individuals but -- was
- 7 it just a couple of people fighting or a lot of
- 8 people?
- 9 A Really couldn't tell
- 10 Q And were these -- was this fighting between
- 11 individuals or between groups of people?
- 12 A I really couldn't see
- 13 Q Did you see Tremayne Washington and John
- 14 Ward out there?
- 15 A Yes
- 16 Q What were they doing?
- 17 A When I saw them, they wasn't doing
- 18 anything
- 19 Q Where did you see them outside the club?
- 20 A Coming towards me was the time that I saw
- 21 them
- 22 Q And when you saw them, what happened?
- 23 A I let Tremayne and Ward know that I needed
- 24 a ride home
- 25 Q Okay What did he do?
- 26 A He asked me to go get the truck, so that we

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1 could go

2 Q So I presume that he gave you the keys to
3 his truck?

4 A Yes, sir

5 Q Where was the truck parked?

6 A On the side of the building

7 Q Referring your attention to State's Exhibit
8 6 -- this is the club, Toogoodoo Road

9 A Yes, sir

10 Q Where was his truck parked?

11 A On the side here

12 Q On the left side of the club?

13 A Yes, sir

14 Q Was it pulled straight in or was it backed
15 into the ---

16 A Towards Petersfield

17 Q So the front was facing the road?

18 A Yes, sir

19 Q So what did you do after he gave you the
20 keys to the truck?

21 A I got in it and pulled it up

22 Q Did anybody else get in the truck when you
23 got in the truck?

24 A Not at the time

25 Q What happened after you cranked the truck
26 up and pulled it up?

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- 1 A Washington and Ward entered
- 2 Q Where did Ward get into the truck?
- 3 A On the passenger side
- 4 Q Front or back?
- 5 A Front
- 6 Q Where did Tremayne get into the truck?
- 7 A In the backseat, behind the driver
- 8 Q Behind where you were sitting?
- 9 A (Affirmative nod)
- 10 Q After they got into the truck, what
- 11 happened?
- 12 A I was pulling out, then I got stopped
- 13 because the road was all congested I looked to
- 14 see if it was clear and I heard gunshots
- 15 Q You heard gunshots from where?
- 16 A From the side of me
- 17 Q Where? What side?
- 18 A From across the seat
- 19 Q Who was shooting a gun?
- 20 A Ward
- 21 Q Where was he shooting the gun?
- 22 A I don't know the exact location but it was
- 23 pointed out the passenger window
- 24 Q And this was while you'all were still in
- 25 the parking lot?
- 26 A Yes, sir

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1 Q Referring back to State's Exhibit 6, where
2 were you'all when he was -- when he started
3 shooting the gun out the passenger side window?

4 A Right there

5 Q And it was before you actually pulled out
6 into the road?

7 A Yes, sir

8 Q I know you said that you didn't see what
9 he was shooting at Which direction was he
10 shooting?

11 A (Gesture)

12 Q Shooting down the road toward Hollywood?

13 A Yes, sir

14 Q Could you tell what he was shooting at?

15 A No, sir

16 Q Did you see a green Cadillac out there?

17 A Yes, sir

18 Q Where was that green Cadillac?

19 A Parked further up the road

20 Q Further up the road where?

21 A (Indicating), in this area

22 Q It was down Toogoodoo Road?

23 A Yes, sir

24 Q So was the Cadillac in the direction that
25 John Ward was shooting the pistol?

26 A Yes, sir

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- 1 Q Whose pistol was he shooting?
- 2 A I couldn't tell you, I really don't know
- 3 Q Do you know where he got the pistol from?
- 4 A No, sir
- 5 Q When was the first time that you saw the
- 6 pistol?
- 7 A When he was shooting out the window
- 8 Q Do you know what kind of a pistol that it
- 9 was?
- 10 A No, sir
- 11 Q Do you know the difference between a
- 12 revolver and an automatic?
- 13 A Yes, sir
- 14 Q Was it a revolver or an automatic?
- 15 A Automatic
- 16 Q Do you know what color that it was?
- 17 A It looked black at that time
- 18 Q And when I asked you about the Cadillac,
- 19 what color was the Cadillac?
- 20 A Green
- 21 Q I show you what has been marked as State's
- 22 Exhibit 11, do you recognize that car?
- 23 A Yes, sir
- 24 Q Is that the Cadillac that you were talking
- 25 about?
- 26 A Yes, sir

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1 Q The Cadillac was out to your right, down

2 Toogoodoo Road?

3 A Yes, sir

4 Q Do you know who owns that car?

5 A Yes, sir

6 Q Who?

7 A Antonio Washington

8 Q Where is Antonio Washington from?

9 A Cherryhill

10 Q Showing you State's Exhibits 14 and 15, do

11 you recognize that truck?

12 A Yes, sir

13 Q Whose truck is that?

14 A Tremayne Washington's

15 Q Is that the truck that you were driving

16 that night?

17 A Yes, sir

18 Q Do you recall how many shots that he fired?

19 A No, sir

20 Q Did you hear anybody else shooting besides

21 Mr Ward?

22 A No, sir

23 Q Did you see anybody else shooting besides

24 Mr Ward?

25 A No, sir

26 Q After he shot the gun out of the passenger

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1 side window of the truck, what did you do?

2 A I panicked at first As soon as I saw an
3 opening, I pulled out and left

4 Q Did you pull out fast?

5 A Yes, sir

6 Q Which way did you turn?

7 A Going towards Hollywood side

8 Q And that was the same direction that the
9 Cadillac had gone?

10 A Yes, sir

11 Q Could you see the Cadillac up ahead of you
12 after you made the turn?

13 A No, sir

14 Q So the Cadillac was a good ways up the road
15 by then?

16 A Yes, sir

17 Q Once you left the club, where did you and
18 Tremayne Washington and Mr Ward go?

19 A We went to Petersfield

20 Q Where in Petersfield?

21 A To Ward's mother's house

22 Q Do you know where Ward's mother lives in
23 Petersfield?

24 A Yes, sir

25 Q Where? Which road?

26 A Petersfield Road

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- 1 Q She lives on Petersfield Road?
- 2 A (Affirmative nod)
- 3 Q What did you'all do when you got to Ward's
- 4 mother's house?
- 5 A We dropped him off
- 6 Q Dropped who off?
- 7 A Dropped Ward off
- 8 Q And why did you drop him off?
- 9 A Because he wanted to go get his car
- 10 Q Did he get his car?
- 11 A Yes, sir
- 12 Q What kind of car was he driving?
- 13 A A Buick
- 14 Q Now, at the time that you dropped Ward off,
- 15 was he supposed to meet back up with you'all
- 16 somewhere?
- 17 A Yes
- 18 Q Where was that?
- 19 A Nellie Pinckney's house
- 20 Q And Nellie Pinckney lives where?
- 21 A On Brewer Road
- 22 Q And that's a little ways down Ethel Post
- 23 from Petersfield, is that correct?
- 24 A Yes, sir
- 25 Q Who was left in the truck after you dropped
- 26 John Ward off?

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- 1 A Me and Washington
- 2 Q What did you do when you got to Ms
- 3 Pinckney's house?
- 4 A Parked the truck
- 5 Q Where did you park the truck?
- 6 A At the front of the house, in the driveway
- 7 Q Do you know Shirley Ward?
- 8 A No, sir
- 9 Q Could I get the screen for just a second?
- 10 (Videotape playing), -- if you would turn
- 11 around, that is State's Exhibit 13 Do you know
- 12 where that house is?
- 13 A Yes, sir
- 14 Q Where is that house?
- 15 A On the right-hand side of Ms Pinckney's
- 16 house
- 17 Q So if you are standing there looking at
- 18 that house, where would Ms Pinckney's house be?
- 19 A On the left-hand side
- 20 Q On the left-hand side?
- 21 A (Affirmative nod)
- 22 Q And -- so you don't know who lives in that
- 23 house?
- 24 A Yeah, I know who lives in it but I don't
- 25 know her real name
- 26 Q Who do you know -- what is the name of the

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1 lady that you know who lives there?

2 A I know her by "Fuzzy"

3 Q By what?

4 A By "Fuzzy"

5 Q I'm sorry, I just didn't understand you

6 A I know her by "Fuzzy"?

7 Q Fuzzy?

8 A Yeah

9 Q Okay The next picture, State's Exhibit

10 14, -- next picture, please And State's

11 Exhibit 15

12 Is that where you left the truck?

13 A No, sir

14 Q That's all, Scott Thank you Now, when -

15 - so you say that you left the truck parked in

16 front of the house that was to the left, is that

17 right?

18 A Yes, sir

19 Q So what happened after you'all parked the

20 truck there?

21 A We got in Ward's car and his car left back

22 out

23 Q So Ward came and picked you'all up in his

24 car?

25 A Yes, sir

26 Q Is that correct?

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- 1 A (Affirmative nod)
- 2 Q Where did you get in Ward's car?
- 3 A At the time, I got into the backseat
- 4 Q And who was sitting in the front?
- 5 A Yes, sir
- 6 Q Who was sitting in the front?
- 7 A Oh, Washington and Ward
- 8 Q Who was driving?
- 9 A Ward
- 10 Q Did you have a cell phone at the time?
- 11 A Yes, sir
- 12 Q Did anybody use your cell phone?
- 13 A Washington
- 14 Q Do you recall what your cell number was at
- 15 the time?
- 16 A I think it was [REDACTED]
- 17 Q Do you know who he called?
- 18 A No, sir
- 19 Q After that call, when -- well, let me ask
- 20 you this When did you'all learn that someone
- 21 had been shot at the club?
- 22 A When he made that call
- 23 Q What were you thinking when you heard that?
- 24 A I was thinking to myself, like, 'Damn!' I
- 25 mean -- excuse me
- 26 Q Did you know who had been shot back at the

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1 club then or just that somebody had been shot?

2 A Just to know that someone was shot

3 Q Where did you'all go?

4 A As we were leaving out of the dirt road, he
5 stopped the car and he asked me to drive because
6 I feel like -- I think he was drunk or upset
7 about the situation that just happened So I
8 drove

9 Q So you started driving Ward's car?

10 A Yes, sir

11 Q Where did you'all go?

12 A We went -- he asked me to go back by the
13 club

14 Q Did you do that?

15 A Yes, sir

16 Q What did you see when you got to the club?

17 A I saw the EMS and a bunch of people
18 standing around

19 Q Did you'all stop?

20 A No, sir

21 Q So what were you thinking at this time?

22 A I was just -- my mind went blank after
23 that I really couldn't think straight

24 Q After you drove back to where the club was
25 and saw what was going on there, where did
26 you'all go?

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- 1 A We went back to Petersfield
- 2 Q Whereabouts in Petersfield did you go?
- 3 A I went back home and I left those two
- 4 together
- 5 Q Did you drive to your house?
- 6 A No, sir
- 7 Q Who drove to your house?
- 8 A I drove to a dirt road near my house, then
- 9 I got out and walked
- 10 Q Okay Where do you live?
- 11 A Petersfield Road
- 12 Q You live on Petersfield Road, too?
- 13 A Yes, sir
- 14 Q And John Ward and Tremayne Washington were
- 15 in the car when you left?
- 16 A Yes, sir
- 17 Q Have you seen John Ward or Tremayne
- 18 Washington since that night?
- 19 A No, sir
- 20 Q Do you know what happened to the gun?
- 21 A No, sir
- 22 Q Who had the gun the last time that you saw
- 23 it?
- 24 A Ward
- 25 Q And when was the last time that you saw the
- 26 gun?

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1 A When he pulled it back in the truck at the
2 club

3 Q Now, on May 22nd, some ten or eleven days
4 later, you remember the police coming by your
5 house?

6 A Yes, sir

7 Q You knew at that time that they were
8 looking for you, did you not?

9 A Yes, sir

10 Q You weren't home when they came the first
11 time, is that correct?

12 A Yes, sir

13 Q Did you talk to your mama?

14 A Yes

15 Q What is your mama's name?

16 A Denise Moultrie

17 Q Did you tell her what happened?

18 A Yes, sir

19 Q Now, the next day, the 23rd of May, did the
20 police come back by your house again?

21 A Yeah

22 Q And what happened then?

23 A They questioned me

24 Q Did they take you into headquarters or just
25 question you out there where you were?

26 A At first they questioned me where I was and

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1 then they took me down and questioned me some
2 more

3 Q And what did you -- and they ended up
4 reading you your rights and all that, and you
5 gave them a statement, didn't you?

6 A Yes, sir

7 Q Did you tell them the truth?

8 A No, sir, not in the first statement

9 Q What did you tell them in the first state-
10 ment?

11 A That no one shot out of the truck

12 Q Basically what you told is that you weren't
13 in the truck, hadn't seen the truck, didn't see
14 any shooting, didn't nothing anything about
15 anything Right?

16 A No, I told them that I was driving the
17 truck and everything else but not about anybody
18 shooting out of the truck

19 Q I think that you told them that in your
20 second statement In the first statement, you
21 basically told them that you didn't see
22 anything Right?

23 A (No response)

24 Q Do you recall that?

25 A Yes, sir

26 Q You told them that you weren't in the

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1 truck Correct?

2 A Yes, sir

3 Q You told them that you didn't know anything
4 about the shooting?

5 A Yes, sir

6 MR BUTLER Objection, leading

7 THE COURT Sustained

8 DIRECT EXAMINATION CONTINUED

9 BY MR DURANT

10 Q Would it be safe to say that you didn't
11 tell them the truth?

12 A Didn't tell them the truth

13 Q Did they continue to question you?

14 A Yes, sir

15 Q And what did you tell them when they
16 continued to question you?

17 A I kind of opened up a little bit and told
18 them a little bit

19 Q Did you tell them that you had been in the
20 truck?

21 A Yes, sir

22 Q Did you tell them that anybody in the truck
23 had been shooting?

24 A Not in the second statement I told them
25 that there was nobody shooting

26 Q Did they continue to question you?

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1 A (Affirmative nod) Yes, sir

2 Q And did you continue to talk to them?

3 A Yes, sir

4 Q And what did you tell them then?

5 A I really can't remember everything that

6 they were questioning me about

7 Q Did you finally -- my question is, did you

8 finally tell them the truth?

9 A Oh, yes, sir

10 Q Are you telling this jury the truth?

11 A Yes, sir

12 MR DURANT Just a couple of other

13 questions and I will be through Court's

14 indulgence?

15 THE COURT Yes, sir

16 DIRECT EXAMINATION RESUMED

17 BY MR DURANT

18 Q Do you know if Tremayne Washington owned a

19 gun?

20 A No No, sir

21 Q Had you ever seen a gun in his truck

22 before?

23 A Yes, sir

24 Q Where had you seen it in his truck before?

25 A In the console

26 Q And what kind of gun did it look like?

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1 A It was an automatic That's all I

2 remember

3 Q Black or silver?

4 A Black

5 Q And -- did you see Tremayne Washington

6 shoot the gun that night?

7 A No, sir

8 Q Was anybody else in that truck shooting a

9 gun besides John Ward?

10 A No, sir

11 MR DURANT Would you please answer

12 any questions that defense counsel may have?

13 THE COURT Hold on a minute, Mr

14 Butler I anticipate that there will probably

15 be some length to this?

16 MR BUTLER Yes, sir

17 THE COURT Very well Ladies and

18 Gentlemen, at this point I am going to let you

19 go to your jury room Do not begin your

20 deliberations, do not discuss the case among

21 yourselves We will be with you in about ten

22 minutes, I would think Thank you

23 (JURY OUT @ 3 10 P M)

24 (BRIEF RECESS)

25 (JURY IN @ 3 30 P M)

26 THE COURT Mr Butler, you may

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1 continue

2 MR BUTLER Thank you

3 CROSS EXAMINATION

4 BY MR BUTLER

5 Q Good afternoon, Mr Catrell (sic) I want
6 to make sure that I understand something You
7 didn't know that there were guns in the car?

8 A No, sir

9 Q You did not know that anyone in the car
10 planned to pull a gun?

11 A No, sir

12 Q You did not know that anybody in the car
13 planned to shoot a gun?

14 A No, sir

15 Q You did not know when Tremayne Washington
16 asked you to drive that you would be pursuing
17 anybody?

18 A No, sir

19 Q Because in your mind you were not pursuing
20 anybody?

21 A Yes, sir

22 Q You did not know at the time that you would
23 be leaving a crime scene?

24 A No, sir

25 Q You did not know that anybody that was in
26 the truck had been involved in the altercation

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1 that was just prior to your driving away, is

2 that right?

3 A Yes, sir

4 Q So you knew nothing about nothing?

5 A (No response)

6 Q You didn't even see the gun until you

7 started hearing shots being fired, is that

8 right?

9 A Yes, sir

10 Q You were in the wrong place at the wrong

11 time?

12 A Yes, sir

13 Q A victim of circumstance?

14 A (No response)

15 Q You didn't do anything?

16 A No, sir

17 Q Do you understand that that makes you not

18 guilty of anything at all with respect to these

19 charges? Do you understand that?

20 A Yes, sir

21 Q Do you understand that means that based on

22 your testimony, with respect to your charges,

23 that the State of South Carolina either has to

24 dismiss them against you or try you for murder?

25 Do you understand that?

26 A (No response)

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- 1 Q Because you're not guilty of murder
2 Right?
- 3 A Yes, sir
- 4 Q You're not guilty of manslaughter Right?
- 5 A Yes, sir
- 6 Q You're not guilty of involuntary man-
7 slaughter Right?
- 8 A Right
- 9 Q And you didn't help anybody, so you're not
10 guilty as an accessory to anything Is that
11 correct?
- 12 A Yes, sir
- 13 Q So either the State is going to drop the
14 case against you or you're going to go to trial,
15 is that right?
- 16 A Yes, sir
- 17 Q And you understand that the State of South
18 Carolina will be prosecuting you based on what
19 you just said, which makes you not guilty Do
20 you understand that?
- 21 A Yes, sir
- 22 Q You don't want to go to prison, do you?
- 23 A No, sir
- 24 Q And you said that you live in -- where is
25 it? Petersfield?
- 26 A Yes, sir

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- 1 Q But that's not where you live now, is it?
- 2 A No, sir
- 3 Q Where do you live now?
- 4 A [REDACTED] Avenue
- 5 Q The Detention Center?
- 6 A (Affirmative nod)
- 7 Q Where you've been since this incident,
- 8 correct?
- 9 A Yes, sir
- 10 Q You don't like it down there, do you?
- 11 A No, sir
- 12 Q Obviously you don't get to leave, right?
- 13 A Right
- 14 Q You don't get to eat what you want?
- 15 A No, sir
- 16 Q You don't get to see the people that you
- 17 want to see as often as you want to see them, is
- 18 that right?
- 19 A Yes, sir
- 20 Q You don't get to wear the clothes that you
- 21 usually want to -- get to wear, do you?
- 22 A No, sir
- 23 Q You came over today in a gray jumpsuit and
- 24 then changed clothes, right?
- 25 A Yes, sir
- 26 Q You understand that murder carries a

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1 sentence of thirty years to life, do you
2 understand that?

3 A Yes, sir

4 Q And that thirty years is a day-for-day
5 thirty years, do you understand that?

6 A Yes, sir

7 Q How old are you?

8 A Twenty-two (22)

9 Q So do you understand that the very minimum
10 that you could get for murder is one-third
11 longer than you've been on the planet, do you
12 understand that?

13 A Yes, sir

14 Q You also understand that "life" in South
15 Carolina means that you die in prison?

16 A Yes, sir

17 Q You are not eligible for parole, do you
18 understand that?

19 A Yes

20 Q They call is "pine box time", you get out
21 in a pine box You understand that, right?

22 A Yes, sir

23 Q You don't want any of that to happen, do
24 you?

25 A No, sir

26 Q When you testified that you'd been told

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1 that it was in your best interest to tell the
2 truth, what do you think that meant?

3 A That it would come out alright, that it
4 would work out for me if I told the truth

5 Q That it would work out for you if you told
6 the truth?

7 A (Affirmative nod)

8 Q And "work out for you" means what?

9 A Means that it's in my best interest if I
10 told the truth Just like that

11 Q Your charges would work out in the best
12 interest for you, right?

13 A Yes, sir

14 Q So you're hoping that your charge will be
15 dismissed?

16 A Yes, sir

17 Q That would be great for you, wouldn't it?

18 A Yes, sir

19 Q The charges being dismissed means no prison
20 time at all

21 A Yes, sir

22 Q Charges not being dismissed for you could
23 mean thirty years to life

24 A Yes, sir

25 Q So you want your charges to be dismissed?

26 A Yes, sir

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1 Q And you know that the only person who can
2 dismiss your charges is Mr Durant, is that
3 correct?

4 A Yes, sir

5 Q I want to go back to -- I want to go back
6 to your testimony about the night of the
7 incident, if I could, please This was
8 Tremayne's truck?

9 A Yes, sir

10 Q He directed you to go to his truck, right?

11 A Yes, sir

12 Q He gave you his keys?

13 A Yes, sir

14 Q And he wanted you to pull the truck around,
15 right?

16 A Yes, sir

17 Q So that you could pick up Tremayne and
18 John?

19 A (No response)

20 Q Is that right?

21 A Yes, sir

22 Q And I guess you didn't understand why he
23 was asking you to do that?

24 A I'd asked them for a ride home I guess I
25 figured that since we'd all be riding together

26 Q It was Tremayne Washington's truck, but

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1 Tremayne got into the backseat of the truck,
2 right?

3 A Yes, sir

4 Q He didn't pull it around and then say, 'I
5 don't want to drive my truck ' He let you
6 drive, correct?

7 A Yes

8 Q And even though your testimony is that the
9 front passenger seat would have been unoccupied,
10 he chose to get in the back seat?

11 A Yes, sir

12 Q And the way that this cab is set up, the
13 front seats are like bucketseats?

14 A Yes, sir

15 Q And the back seat is not like a bucket
16 seat?

17 A No, sir

18 Q So if you're in the back, you have access
19 to both windows, both sides of the car, is that
20 correct?

21 A Yes, sir

22 Q You could slide from the passenger side
23 window all the way to the driver's side window
24 or in between, is that right?

25 A (Affirmative nod)

26 Q And that's where Tremayne was sitting,

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1 correct

2 A Yes, sir

3 Q I'm sorry, did you testify that you knew
4 Tremayne had a gun or did not know?

5 A No

6 Q You did not know?

7 A No

8 Q I want to refer to State's Exhibit 6, if I
9 could, for just a moment Your testimony is
10 that Tremayne's truck was pulling out of the
11 parking lot here, is that right?

12 A Yes, sir

13 Q And it hadn't yet turned, hadn't yet made
14 the turn when John started firing out the front
15 passenger side window?

16 A Yes, sir

17 Q So the truck would have been facing out
18 this way, towards Toogoodoo Road?

19 A (Affirmative nod)

20 Q So he would have been firing -- you say
21 that he fired then down this way? If you
22 looking at State's Exhibit 6, to the left?

23 A Yes, sir

24 Q Is that right?

25 A (Affirmative nod)

26 Q So if John is in the front passenger seat

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1 and he is firing that way, you're saying that he
2 shot like this (indicating), is that right?

3 A Yes, sir

4 Q Given what we just went over initially
5 about how you knew nothing, didn't do anything,
6 you had nothing to hide, did you?

7 A No, sir

8 Q And when you first talked to the police,
9 you lied to them, isn't that right?

10 A Yes, sir

11 MR BUTLER Beg the Court's indul-
12 gence

13 THE COURT Yes, sir

14 CROSS EXAMINATION CONTINUED

15 BY MR BUTLER

16 Q Take that if you would, please

17 A (Complies)

18 Q I don't know if you'll need to refer to it
19 or not, but do you recognize that as the
20 statement that you gave police? Written
21 statement?

22 A I guess

23 Q Is that your signature at the bottom?

24 A Yes, sir

25 Q Did you tell the police, (reading) "I got
26 a ride with someone near the front of the club

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1 I don't remember who gave me a ride home " Did
2 you tell them that?
3 A Yes, sir
4 Q That was a lie, right?
5 A Yes, sir
6 Q (Reading) "I did not see Fiend's truck at
7 the club that night " That was a lie, right?
8 A Yes, sir
9 Q (Reading) "I did not know Fiend owned a
10 gun " That was a lie?
11 A Yes, sir
12 Q (Reading) "I did not see a gun in his
13 truck " That was a lie?
14 A Yes, sir
15 Q (Reading) "I had driven the truck before
16 but only to move it out of someone's way " That
17 was a lie, right?
18 A Yes
19 Q And according to your testimony now, I
20 guess that it would be a lie that you said that
21 then you didn't see anyone shooting from the
22 truck Right?
23 A Yes, sir
24 Q You still say that you didn't see the fight
25 inside the club, is that right?
26 A Yes, sir

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1 Q When you were growing up, did your parents
2 ever tell you that if you don't have anything to
3 hide that then you should just tell the truth?

4 A Yes, sir

5 Q So when you're lying to the police, you
6 understand that it looks like you have something
7 to hide?

8 A Yes

9 Q And you knew that you were a suspect in a
10 murder case Correct?

11 A Yes

12 Q They read you your rights Right?

13 A Yes, sir

14 Q And you waived them, right?

15 A Yes, sir

16 Q And on the waiver where you signed, it says
17 "I am being questioned concerning a murder
18 charge " You knew that, right?

19 A Yes, sir

20 Q That is your signature, right?

21 A Yes, sir

22 Q That says "murder", right?

23 A Yes

24 Q And you didn't want to implicate yourself
25 in a murder, did you?

26 A No, sir

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1 Q So you lied to prevent yourself from being
2 implicated in a murder?

3 A Yes, sir

4 Q Then they decided to talk to you some more,
5 do you remember that?

6 A Yes, sir

7 Q Friend told you to get the keys?

8 A (Affirmative nod)

9 Q Friend told you to crank up the car Right?

10 A Yes, sir

11 Q He didn't want to go crank the car He
12 wanted you to crank it and bring it around,
13 right?

14 A Yes, sir

15 Q And all of these orders came from Tremayne
16 Washington, right?

17 A Yes, sir

18 Q They didn't come from John, did they?

19 A No, sir

20 Q John didn't tell you anything, did he?

21 A No, sir

22 Q Then you pulled to the front of the parking
23 lot, and that's when they got in, right?

24 A Yes, sir

25 Q Do you remember when they asked you did
26 John shoot a gun from the truck and you said

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1 'no'? Is that right?

2 A (No response)

3 Q You didn't say, 'I'm not sure', did you?

4 You didn't say, 'I don't remember', did
5 you?

6 A No

7 Q And you didn't waiver at all You said
8 "no", right?

9 A (No response)

10 Q And then they asked you, the very next
11 question "Did Fiend shoot a gun from the
12 truck?" And you remember that you answered,
13 "Not that I know of " Do you remember saying
14 that?

15 A Yes

16 Q Do you agree with me that's what you said?

17 A (No response)

18 Q Do you agree with me that there is a
19 difference between "no" and "not that I know
20 of", do you agree with me?

21 A (No response)

22 Q "No" means 'I know the answer to that
23 question and the answer is no, that fact did not
24 happen ' Do you agree with me?

25 "Not that I know of" means, you know, 'it
26 might have happened but if it did, I have no way

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1 of knowing that '

2 Do you agree with me? Is that the way that
3 you would characterize those two answers?

4 A Yes, sir

5 Q And with respect to John having a gun, it
6 was, without a doubt, "No" Right?

7 A (No response)

8 Q With Fiend, it was "not that I know of"
9 Isn't that right?

10 A Yes, sir

11 Q Now, if Fiend had shot a gun in a car that
12 you were driving, wouldn't you know that?

13 A Well, - yes

14 Q And I understand that you are saying today
15 that even in your second statement that you
16 really were not being completely truthful
17 Right?

18 A Yes, sir

19 Q And you were not being completely truthful
20 although you know that you signed something
21 saying that this was the truth Right?

22 A Yes, sir

23 Q You were willing to sign something saying,
24 'this is the truth' even though you know that
25 it's a crime to give false information to the
26 police, isn't that right?

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1 A Not at the time, I didn't know that

2 Q Okay But you wanted to say whatever you
3 needed to say to not be implicated in a murder,
4 right?

5 A So you were still willing to lie when you
6 said "not that I know of" about Friend, isn't
7 that right?

8 A Yes, sir

9 Q And then it was only on the third time that
10 they came to you -- about how long did this
11 whole process take? Them talking to you?

12 A About an hour

13 Q An hour?

14 A (Affirmative nod)

15 Q You gave them three statements in an hour?

16 A Yeah

17 Q And they told you, 'we think that it would
18 be in your best interest if you cooperate '
19 Right?

20 A I didn't mean to say it like that, they
21 didn't say ---

22 Q No, what did the police tell you? That
23 night?

24 A Police?

25 Q Yeah They didn't believe you at first,
26 right?

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1 A No, I don't guess so

2 Q And they told you that to help yourself
3 that you needed to come up with something else,
4 didn't they?

5 A Yes, sir

6 Q And the 'something else' couldn't have been
7 what you told them initially because that wasn't
8 getting you anywhere, was it?

9 A I don't guess so

10 Q So you had to come up with something other
11 than what you had told them the first time,
12 right?

13 A Yeah

14 THE COURT Did you answer?

15 MR BUTLER You answered "yes", isn't
16 that right?

17 WITNESS Yes, sir

18 CROSS EXAMINATION CONTINUED

19 BY MR BUTLER

20 Q So when you give them more information,
21 you're hoping that it will be better for you,
22 right?

23 A Yes

24 Q Too little information wasn't helping you
25 'I'll give you some more ' Right?

26 A (No response)

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1 Q But what happened is that you were charged
2 with murder, isn't that correct?

3 A Yes, sir

4 Q For a murder that, according to your
5 testimony, you cannot be guilty for under any
6 theory of it Do you understand that?

7 A Um-humm

8 Q So it's kind of like you find yourself here
9 today in the same position that you did with the
10 police back on May 22nd, isn't that right? Or on
11 May 23rd, 2003?

12 A Yes, sir

13 MR BUTLER Beg the Court's
14 indulgence just a moment

15 THE COURT Sure

16 CROSS EXAMINATION CONTINUED

17 BY MR BUTLER

18 Q When you pulled out -- and you said that
19 you already had seen John shooting, -- why did
20 you go in the same direction as the Cadillac?

21 A That was the opening

22 Q That was the opening?

23 A Yes, sir

24 MR BUTLER That's all that I have
25 Thank you

26 THE COURT Redirect?

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1 MR DURANT Just a couple

2 REDIRECT EXAMINATION

3 BY MR DURANT

4 Q After you got in that truck and John Ward
5 started firing the gun, you knew there was a
6 problem then, didn't you?

7 A Yes, sir

8 Q And you particularly knew there was a
9 problem later when you found out that somebody
10 got shot?

11 A Yes, sir

12 Q And you certainly knew there was a problem
13 when you found out later that the person that
14 got shot died?

15 A Yes, sir

16 Q And you've told the jury that you didn't
17 know what was going on beforehand but it isn't
18 the truth that you didn't help John Ward after
19 the fact, now, isn't it?

20 A (No response)

21 Q Because you did help John Ward, didn't you?

22 A Yeah

23 Q How did you help John Ward?

24 A By taking him over to his house

25 Q Pardon?

26 A By taking him to Petersfield to get his

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1 car

2 Q By driving away in the car, by lying to the
3 police about his involvement

4 A (Affirmative nod)

5 Q He was a Petersfield guy, right?

6 A Yes, sir

7 Q Now, you are not guiltless in this thing?

8 A Excuse me?

9 Q You are not without guilt in this thing,
10 are you?

11 A No, sir

12 Q And before you even talked to the police,
13 did you talk to your mother?

14 A Yes, sir

15 Q Did you tell her what happened?

16 A I didn't tell her what happened, I just
17 basically told her that I was driving the truck
18 that night

19 Q Okay Did you tell her that John Ward was
20 the ---

21 MR BUTLER Objection, hearsay

22 THE COURT Sustained Rephrase your
23 question

24 MR BUTLER Prior inconsistent
25 statement

26 THE COURT Okay Approach

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1 (SIDEBAR)

2 THE COURT The basis of the
3 objection is hearsay?

4 MR BUTLER Yes, sir, and improper
5 bolstering

6 THE COURT Overruled I will allow
7 it

8 REDIRECT EXAMINATION RESUMED

9 BY MR DURANT

10 Q Before you talked to the police about what
11 happened, you talked to your mama?

12 A Yes, sir

13 Q You told her what happened, didn't you?

14 A (Affirmative nod)

15 Q And you told her that you were driving the
16 truck?

17 A Yes, sir

18 Q And you told her that John Ward had shot
19 the gun from that truck?

20 A Yes, sir

21 Q And you said all that before you knew what
22 the penalty for murder was, didn't you?

23 A Yes, sir

24 Q You just told her all that before you'd had
25 any legal advice, didn't you?

26 A Yes, sir

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1 Q And the next day you talked to the police?

2 A Yes, sir

3 Q And wouldn't it be fair to say that every-
4 thing that you told the police in that first
5 statement was a lie?

6 A Yes, sir

7 Q Was hardly a shred of truth in the whole
8 statement, is that correct?

9 A Yes, sir

10 Q And the police didn't believe you

11 A No

12 Q And they told you at the time, did they
13 not, that ---

14 A Yes, sir

15 Q --- we have witnesses putting you in the
16 truck, right?

17 A Yes

18 Q So they knew that you were in the truck?

19 A Yes, sir

20 Q So you gave them a statement saying, 'Well,
21 yeah, I was in the truck ' Right?

22 A Yes, sir

23 Q And you told them in that second statement
24 who was in the truck with you?

25 MR BUTLER Objection, leading

26 THE COURT Sustained

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1 REDIRECT EXAMINATION CONTINUED

2 BY MR DURANT

3 Q Did you tell them in the second statement
4 who was in the truck with you?

5 A Yes, sir

6 Q And did you tell them in the second
7 statement where everyone in the truck was
8 sitting?

9 A Yes, sir

10 Q And did you tell them in the second
11 statement whether anyone was shooting from the
12 truck?

13 MR BUTLER Objection, beyond the
14 scope of cross Asked and answered on direct

15 THE COURT Well, ---

16 MR DURANT I think he went very much
17 into detail into this, Your Honor

18 THE COURT Rephrase your question
19 and move on, please, sir You've covered it
20 Thank you

21 REDIRECT EXAMINATION CONTINUED

22 BY MR DURANT

23 Q But in the second statement you told them
24 you were in the truck and who was in the truck,
25 is that correct?

26 A Yes, sir

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1 Q Did you tell them that anybody was shooting
2 from the truck?

3 A No, sir

4 Q Did they believe that?

5 A No, sir

6 Q Why didn't they believe that?

7 A Because they already knew that someone was
8 shooting from that truck

9 Q Had lots of people who told them that there
10 was shooting out of the truck?

11 A Yes, sir

12 Q So what did you tell them ---

13 MR BUTLER Same objection We've
14 been over this Went over it on direct and ---

15 THE COURT Overruled You'll have
16 him on recross I will ask you, sir, to move
17 closer to that mic Speak into the mic, please

18 WITNESS Yes, sir

19 THE COURT Thank you

20 REDIRECT EXAMINATION CONTINUED

21 BY MR DURANT

22 Q So what did you tell them then?

23 A I told them that Ward was shooting out of
24 the truck

25 Q And you hadn't talked to a lawyer then, had
26 you?

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1 A No, sir

2 Q Did you know what the penalty for murder

3 was then when you told them that?

4 A Yes, sir

5 Q You did know the penalty?

6 A (Affirmative nod)

7 Q You hadn't talked to me, had you?

8 A No, sir

9 Q Didn't even know that I existed, did you?

10 A No, sir

11 Q Just one last question, why didn't you just

12 tell the police the truth to start with?

13 A I was scared that I'd end up in jail

14 Q And where did you end up?

15 A In jail

16 MR DURANT Thank you Please answer

17 any questions that Mr Butler may have

18 THE COURT Recross

19 RECROSS EXAMINATION

20 BY MR BUTLER

21 Q You admit now that you assisted John and

22 Tremayne after the incident?

23 A (No response)

24 Q In that last line of questioning from Mr

25 Durant?

26 A Repeat that?

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- 1 Q You assisted them after the incident?
- 2 A (No response)
- 3 Q You drove them away from the incident?
- 4 A Yes, sir
- 5 Q Knowing that a crime had been committed?
- 6 A That's right
- 7 Q You understand that doing things after a
- 8 murder can never make you guilty of murder?
- 9 Do you understand that?
- 10 A Yes, sir
- 11 Q Have you ever talked to your lawyer about
- 12 misprison of a felony?
- 13 A (No response)
- 14 Q Have you heard that term before?
- 15 A Yes
- 16 Q Do you understand that carries zero to ten?
- 17 A Yes, sir
- 18 Q And is a common law misdemeanor? Do you
- 19 understand that?
- 20 A (No response)
- 21 Q And you and your lawyer have had those
- 22 discussions?
- 23 A (Affirmative nod)
- 24 Q You have?
- 25 A Yes, sir
- 26 Q And you understand that is not at all the

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1 same as murder, do you understand?

2 A Yes, sir

3 MR BUTLER That's all that I have

4 Thank you

5 THE COURT Very well You may come

6 down, sir

7 (WITNESS STEPS DOWN)

8 MR DURANT He can be excused, Your

9 Honor

10 MS KENT-JENKINSON No objection

11 THE COURT Very well, Mr Douglas,

12 you are free to go Solicitor, call your next

13 witness

14 MR DURANT We call Tremayne

15 Washington

16 (WITNESS TAKES STAND)

17 TREMAYNE RASHAAD WASHINGTON,

18 being duly sworn to tell the truth, the whole

19 truth and nothing but the truth, testified, as

20 follows

21 DIRECT EXAMINATION

22 BY MR DURANT

23 Q How old are you, Mr Washington?

24 A Twenty-five (25)

25 Q Where do you live?

26 A [REDACTED] (phonetic) Street, Charleston,

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1 South Carolina

2 Q Is that in downtown Charleston?

3 A Yes, sir

4 Q Were you raised in the downtown area?

5 A Yes, sir

6 Q How far did you go in school?

7 A Finished the 12th grade and went to Trident,
8 but I didn't finish college

9 Q Went to Trident, you said?

10 A Yeah, Trident Technical College

11 Q Okay But you didn't finish at Trident?

12 A No, didn't receive a degree

13 Q Where did you go to high school?

14 A Garrett Academy

15 Q Do you have a nickname?

16 A Yes, sir

17 Q What is your nickname?

18 A "Feddy"

19 Q How do you spell that?

20 A F-e-d-d-y

21 Q Do some people call you "Fiend"?

22 A A pretty select group of people

23 Q You have been charged with murder in this
24 case, as well, have you not?

25 A Yes, sir

26 Q Those charges are still pending against

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1 you?

2 A Yes, sir

3 Q Have you been promised anything in
4 consideration for your testimony today?

5 A No, sir

6 Q Has your lawyer promised you anything in
7 consideration for your testimony?

8 A No, sir

9 Q Your lawyer is in the courtroom with you
10 today, Mr Runyon?

11 A Yes, sir

12 Q Do you know John Ward?

13 A Yes, sir

14 Q How do you know John Ward?

15 A Through where I used to go, Garrett
16 Academy I remember some guys that I know from
17 Hollywood, and they introduced me to the family
18 and every-thing Took me inside the family,
19 sir

20 Q So are you and John Ward pretty close?

21 A Yes, sir

22 Q How long have you known him now?

23 A Eight, ten years or so Well, ever since
24 we began high school, since '94 or '95

25 Q Do you hang out with him socially and all
26 of that?

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- 1 A (Affirmative nod)
- 2 Q Correct?
- 3 A Yes, sir
- 4 Q What is his nickname?
- 5 A "Mixx"
- 6 Q Now, how about Catrell Douglas? How well
- 7 do you know him?
- 8 A Know him pretty good, sir He's from the
- 9 Hollywood area
- 10 Q He's from the Petersfield area too?
- 11 A Yes, sir
- 12 Q Are most of the people that you know from
- 13 the Hollywood area from Petersfield?
- 14 A Yes, sir
- 15 Q What do you call Catrell Douglas?
- 16 A "Trell"
- 17 Q Did you know the victim in this case, Jamie
- 18 Simmons?
- 19 A Yes, sir
- 20 Q How did you know Jamie?
- 21 A From Mixx, being around there in Peters-
- 22 field, hanging out
- 23 Q Do you have any relatives in the
- 24 Petersfield area?
- 25 A Yes, sir
- 26 Q Who would that be?

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- 1 A Actually it would be the Heywards, which I
2 found out about, off of my father's side
3 Q Sorry, I didn't hear that
4 A The Heywards, off my father's side
5 Q The Haywoods?
6 A Heywards
7 Q Do you know a lady name Nellie Pinckney?
8 A Yes, sir
9 Q What is your relationship with Ms Nellie
10 Pinckney?
11 A Cousin
12 Q Where does she live?
13 A Petersfield, off of Brewer
14 Q Now, going back to the morning of May 11th,
15 2003, were you at the Club Diamante that
16 morning?
17 A Yes, sir
18 Q Did you look the same then as you look now?
19 A No, sir I had a mini afro and a real long
20 beard
21 Q Kind of a long, pointy Fu Man Chu type of
22 thing?
23 A Yes, sir
24 Q What time did you get to the club?
25 A Before midnight
26 Q Did you go to the club with anyone?

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- 1 A No -- no, sir, I met people at the club
2 Q Okay What did you drive to the club?
3 A My truck
4 Q What kind of truck did you have?
5 A A 2002 Dodge Ram
6 Q Showing you State's Exhibit 15 and State's
7 Exhibit 14, is that your truck?
8 A Yes, sir
9 Q When did you buy that truck?
10 A In May I'd just bought it Naw, April
11 I believe the end of April or -- the end of
12 April
13 Q Okay
14 A I'm not sure
15 Q But it wasn't too old when you purchased
16 it, is that correct?
17 A That's correct
18 Q I mean when this incident occurred?
19 A That's correct
20 Q I hand you what has now been marked as
21 State's Exhibit 58 for identification, and ask
22 if you recognize that document?
23 A Yes, sir, I believe that this is the
24 payments
25 Q Is that the Bill of Sale for that truck?
26 A I believe it is

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1 Q It indicates a date of sale of?
2 A Yeah, April
3 Q April 27th?
4 A Yeah
5 Q What year?
6 A 2003
7 MR DURANT Your Honor, I would offer
8 that as an exhibit if there is no objection
9 THE COURT Any objection?
10 MR BUTLER No objection
11 THE COURT Without objection,
12 State's Exhibit 58 is admitted into evidence
13 (SO ENTERED AS STATE'S EXHIBIT 58)
14 DIRECT EXAMINATION CONTINUED
15 BY MR DURANT
16 Q Now, do you own a pistol?
17 A Yes, sir
18 Q What kind of pistol is it, and what
19 caliber?
20 A A P89 Ruger, nine millimeter
21 Q Where did you keep that pistol?
22 A Inside the console in my truck
23 Q Center console?
24 A Yes, sir
25 Q Was that pistol in your truck that night
26 when you went to the club?

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- 1 A Yes, sir
- 2 Q John Ward had been in your truck before?
- 3 A Yes, sir
- 4 Q Does he know where you keep your pistol?
- 5 A Yes, sir
- 6 Q Did you run into anybody that you knew at
- 7 the club that night?
- 8 A Yes, sir, I'd invited several relatives to
- 9 the club and people that I'm involved with in a
- 10 record company to the club that night
- 11 Q I'm sorry, I didn't catch all that
- 12 A We have a record company and I invited a
- 13 lot of people to the club that night
- 14 Q Record company?
- 15 A (Affirmative nod)
- 16 Q And were there a bunch of folks that you
- 17 knew from the Hollywood area there too?
- 18 A Hollywood, plus also downtown and North
- 19 Charleston area
- 20 Q Did you see John Ward at the club?
- 21 A Yes, sir
- 22 Q Did you spend any time with Mr Ward that
- 23 evening?
- 24 A While we were at the club, yes, sir
- 25 Q What were you drinking?
- 26 A Beer and various liquors Just having a

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1 good time, sir

2 Q Had you been drinking before you got to the
3 club?

4 A Yes, sir

5 Q Were you drunk?

6 A Not before I arrived at the club

7 Q Did you become drunk while you were at the
8 club?

9 A Yes, sir

10 Q Do you recall any disturbance going on
11 inside the club that night?

12 A Yeah Earlier there was an altercation but
13 me and a couple of guys from Hollywood, along
14 with the security and owner of the club, we kind
15 of dissolved the situation

16 Later on, another situation took place when
17 a guy from Petersfield struck a 'hood girl from
18 another part of town, or something like that

19 Q Did you see that happen?

20 A Well, no, I didn't see with my eyes But I
21 knew what happened because when we -- we were
22 trying to dissolve (sic) everything in the club

23 Q What happened after that was broken up?

24 A Well, after that was broken up, it seemed
25 like everything went back to normal The next
26 thing you know, the club was clearing out

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1 Q And the next thing at the club was what?

2 A After everything went back to normal, after
3 that was broke up, everything was back to
4 normal, we went back to having a good time then
5 Some-where down the line, the club got out

6 Q Okay, they were closing the club down?

7 A Yes I believe that's when the other
8 altercation popped up

9 Q Did you leave the club?

10 A Yes, sir

11 Q Who did you leave the club with?

12 A I left the club with Ward and 'Trell

13 Q What was going on outside the club?

14 A Well, there was a fight I believe that
15 there was a fight that started off out there to
16 the right side of the club That's when you
17 could hear the gunshots firing that started up
18 also

19 Q Was there a policeman out there?

20 A Yes, sir

21 Q Where was the policeman?

22 A He was in front of the club

23 Q Did you give your keys to anyone?

24 A Yes, sir

25 Q Who did you give your keys to?

26 A 'Trell

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1 Q Why did you give your keys to 'Trell?

2 A To move my truck out of all the --
3 everything that was going on Just to get my
4 truck out of the way

5 Q Was there arguing going on over by your
6 truck?

7 A Yeah Well, it was just like -- there was
8 a whole lot going on I just wanted my truck to
9 be moved You could hear cars skating off, you
10 know I just recognized -- I just told him to
11 move my truck out of harm's way

12 Q Where was your truck parked?

13 A Back -- as you came out of the club, it was
14 to the right

15 Q Referring to State's Exhibit 6, this is the
16 club, where did you have your truck parked?

17 A It would be on the side of the club

18 Q On the left-hand side of the club?

19 A Yes, sir

20 Q So what did 'Trell do after you gave him
21 the keys?

22 A He got in the truck and he moved it He
23 pulled it up -- after the shots and stuff
24 started off, I got into the back on the driver's
25 side I got into the backseat of the truck

26 Q So you got in from the driver's side?

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- 1 A Yes, sir
- 2 Q Who was in the truck when you got in the
3 truck?
- 4 A 'Trell and Ward
- 5 Q Where was 'Trell?
- 6 A Driving the truck
- 7 Q And where was Ward?
- 8 A Front passenger seat of the truck
- 9 Q What happened after you got in the truck?
- 10 A There was shots being exchanged -- I
11 believe -- between the Cadillac and my truck
- 12 Q Shots being exchanged by whom?
- 13 A I am not sure who was firing from the
14 Cadillac, but I know that they were firing
15 toward my truck Then Ward was firing back
16 towards the Cadillac
- 17 Q Where was the Cadillac?
- 18 A All this took place on Toogoodoo
19 Toogoodoo That's the street outside the club
- 20 Q Where was the Cadillac on Toogoodoo?
- 21 A That would be on the same side the truck
22 was on
- 23 Q Was it in the road?
- 24 A Yes, sir
- 25 Q Where was your truck when John Wards
26 started shooting the gun?

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1 A I believe that we was on the road, both
2 vehicles were on the road

3 Q Which way was the Cadillac headed?

4 A To go back towards Hollywood side

5 Q Which way was your truck headed?

6 A Same way, going back towards the Hollywood
7 side

8 Q What gun was John Ward shooting?

9 A I don't -- the gun I had inside the
10 console

11 Q Do you know why he was shooting at this
12 Cadillac?

13 A Well, to be honest, sir, after -- you know,
14 after going through all the motions, Ward -- of
15 course, the Cadillac was firing towards the
16 truck

17 Q Why would anybody be shooting at your truck
18 from the Cadillac?

19 A Sir, I am not sure

20 Q Had you'all had any beef with anybody in
21 the Cadillac?

22 A Uh, -- (pause) Well, like I said, I guess
23 because of the altercation that took place
24 inside the club

25 Q Well, you'all weren't involved in the
26 alter-cation inside the club, were you?

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1 A I guess just being the fact that one of our
2 peoples was doing I guess from Petersfield I
3 guess they -- like a territory thing

4 Q So your testimony would be that you and
5 Ward weren't involved in any problem with
6 anybody inside the club, is that correct?

7 A (No response)

8 Q You didn't have any problem with anybody
9 inside the club?

10 A No, sir

11 Q And you didn't have any problem with
12 anybody outside the club?

13 A Not to my knowledge

14 Q And then this person in the Cadillac just
15 started shooting at you?

16 A To my knowledge, yes, sir

17 Q But you don't know why that was?

18 A No, sir

19 Q Did you know who was in the Cadillac?

20 A Yes, sir

21 Q Who was in the Cadillac?

22 A A guy that goes by the name of Ton-Ton

23 Q How did you know Ton-Ton?

24 A Just from clubs and seeing him around

25 Q Okay You hadn't had any problem with Ton-
26 Ton that day, had you?

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- 1 A No, sir
- 2 Q John Ward hadn't had any problem with Ton-
- 3 Ton that night, had he?
- 4 A Not to my knowledge Not -- no, sir
- 5 Q Okay 'Trell didn't have any problem with
- 6 Ton-Ton, did he?
- 7 A Not to my knowledge, sir
- 8 Q So when Catrell pulled onto Toogoodoo Road,
- 9 which way did you turn? Right or left?
- 10 A We were going -- I believe that we were
- 11 going towards Hollywood
- 12 Q So that would be to the right, correct?
- 13 A Yes, sir
- 14 Q That was the same direction that the
- 15 Cadillac had gone, too?
- 16 A Yes, sir
- 17 Q Did Mr Ward continue shooting at the
- 18 Cadillac?
- 19 A I believe so I believe so, yes
- 20 Q Do you know where the Cadillac went?
- 21 A No, sir
- 22 Q So where did you go after the shooting?
- 23 A After the shooting, I believe that we went
- 24 to pick up Ward's car After we picked up
- 25 Ward's car, I was picked up
- 26 Q Where was Ward's car?

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1 A I believe that we got it from his mother's
2 house From my recollection, I believe that we
3 got it from his mother's house

4 Q Where does his mother live?

5 A At Petersfield

6 Q On Petersfield Road?

7 A Yes, sir

8 Q After he picked up the car, where did you
9 go? Did you pick back up with him somewhere?

10 A Naw -- no, sir I was -- that's the part
11 that gets kind of confusing to me, because I was
12 picked up off of Petersfield Road I was picked
13 up off of Petersfield also

14 Q Who picked you up?

15 A Denode

16 Q How did Denode know to come pick you up at
17 Petersfield?

18 A 'Trell called from his phone, called Denode
19 to come They talked He told me that I talked
20 with Denode and had him come and pick me up off
21 of Petersfield Road

22 Q So you used Catrell's phone to talk to
23 Denode?

24 A (Affirmative nod), I believe so

25 Q When you talked to Denode, did you know
26 that somebody had been shot at the club?

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- 1 A No, sir
- 2 Q Where did your truck get left that night?
- 3 A In front of -- over -- from my knowledge, I
- 4 thought that when they parked my truck that they
- 5 parked it at Ms Pinckney's house, but they told
- 6 me that it was behind a trailer
- 7 Q When did you find out that it was behind a
- 8 trailer?
- 9 A The next morning
- 10 Q Okay But that night it was parked where?
- 11 A In front of Ms Pinckney's house
- 12 Q Did you see the truck parked there that
- 13 night?
- 14 A No, I just was told that it was there
- 15 Q So who parked your truck there?
- 16 A To my knowledge, 'Trell Catrell
- 17 Q So 'Trell told you that he'd parked it in
- 18 front of Ms Pinckney's house?
- 19 A I believe that he might have -- I can't
- 20 remember if it was him or maybe Denode that told
- 21 me, but I know that it was told to me I
- 22 believe that he -- he could have been the one
- 23 that told
- 24 Q But -- how did 'Trell get home?
- 25 A We were right there, by Pinckney --
- 26 (pause) No, I believe that he got home by us

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1 So -- (pause)

2 Q In whose car?

3 A Inside Ward's We dropped him off in
4 Ward's car, because I was in Ward's car when I
5 got picked up

6 Q Okay And where did you'all pick up
7 'Trell?

8 A Right there at the beginning of Brewer

9 Q At the beginning of what?

10 A I believe at the beginning of Brewer

11 Q Brewer Road?

12 A Yeah

13 Q Is that when you called Denode to come pick
14 you up?

15 A I believe so Yes, sir

16 Q Do you recall where you were when Denode
17 picked you up?

18 A (Pause)

19 Q If you know

20 A No, sir

21 Q Now, where did you go that night?

22 A To Denode's house

23 Q Where ---

24 A Pineland

25 Q Pineland?

26 A (Affirmative nod)

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1 Q How far is Pineland from Brewer Road,
2 Petersfield area?

3 A A few miles like

4 Q Minute-wise, if you were to drive it?

5 A About ten minutes, ten or fifteen, -- ten
6 minutes

7 Q What did you do when you got back to
8 Denode's house?

9 A Just went straight to sleep Actually I
10 was already asleep when they got me out of the
11 car, got me into the house, got me into a bed,
12 and I went to sleep until the next day

13 Q What happened when you woke up the next
14 day?

15 A There was a few people inside the house,
16 they was explaining what happened the night
17 before, saying what all went down That's when
18 the phone kept ringing and they was saying that
19 I needed to go down to Petersfield and speak
20 with the detective because they saying that my
21 truck could have been involved in the murder or
22 whatever So I needed to get it straight, so I
23 went down to Petersfield to talk to the
24 detective

25 Q How did you find out that the detectives
26 were at Petersfield?

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1 A I believe that Lila called the house She

2 was ---

3 Q Ms Pinckney?

4 A Yeah, she called the house She was asking

5 us did we know what was going on She was

6 explaining what was going on, and that's why

7 that morning Denode and them boys was explaining

8 to me what happened that night and -- was

9 telling me how irate it was that night up there

10 Just explained what happened, what happened to

11 Jamie and everything That's when we left the

12 house and went to talk to the detectives

13 Q So you went over to Brewer Road?

14 A Yes, sir

15 Q How did you get to Brewer Road?

16 A Denode

17 Q And where was your truck?

18 A It was parked behind the trailer

19 Q And is the trailer (State's Exhibit 13)

20 that it was parked behind?

21 A Yes, sir

22 Q Do you know who lives there?

23 A Yes, sir

24 Q Who lives there?

25 A I believe that's Lila's brother Brother

26 Q Where does Ms Pinckney live in relation to

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1 that?

2 A Just right next-door, to the front

3 Q If you're looking at that picture, to the
4 left or to the right?

5 A To the left Almost like in front of it

6 Q The police ended up arresting you that
7 morning, didn't they?

8 A Yes, sir

9 Q And they read you your rights, correct?

10 A (No response)

11 Q Did they read you your rights, your *Miranda*
12 rights, like you see on TV?

13 A Yes

14 Q That you had the right to remain silent and
15 all that kind of stuff?

16 A Yes, sir

17 Q And you gave them a statement?

18 A Yes, sir

19 Q And -- basically, what did you tell them?

20 A Well, at the time I told them that I didn't
21 know what was going on, that I had no knowledge
22 of it, who or what, at that point in time, sir

23 Q In other words, you lied?

24 A Yes, sir

25 Q Why did you lie?

26 A Because at that point, I really didn't

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1 understand what was going on I was just in the
2 dark being charged with murder at the time
3 Like -- I was, like, phew, just a terrible
4 charge, (laughs), you know? Especially when you
5 don't know actually who did what I really
6 didn't know who killed the guy

7 Q Do you know what happened to your gun?

8 A No, sir

9 Q When was the last time that you saw your
10 gun?

11 A While we were in the car

12 Q Who had your gun the last time that you saw
13 it?

14 A Ward

15 MR DURANT The Court's indulgence?

16 THE COURT Yes, sir

17 MR DURANT Please answer any
18 questions that Mr Butler may have for you

19 THE COURT You may cross examine

20 MR BUTLER I beg the Court's
21 indulgence

22 THE COURT Yes, sir, take your time

23 MR BUTLER May it please the Court,

24 ---

25 THE COURT Yes, sir

26 MR BUTLER (Tenders document to be

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1 marked as exhibit)

2 COURT REPORTER Defendant's Exhibit

3 5 for identification

4 CROSS EXAMINATION

5 BY MR BUTLER

6 Q Mr Washington, I am going to show you what
7 has been marked as Defendant's Exhibit 5 for ID,
8 do you recognize that document?

9 A Yes

10 Q That's you when you were booked into the
11 detention center on May 11th, 2003?

12 A Yes, sir

13 Q The day of this incident?

14 A Yes, sir

15 Q And that's how you would have appeared back
16 then?

17 A Yes, sir

18 Q With a long beard?

19 A (Affirmative nod)

20 MR BUTLER Your Honor, at this time
21 I would offer Defendant's Exhibit 5 into
22 evidence

23 THE COURT Any objection?

24 MR DURANT No, sir

25 THE COURT Without objection,
26 Defendant's Exhibit 5 is admitted

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1 (SO ENTERED AS DEFENDANT'S EXHIBIT 5)

2 CROSS EXAMINATION CONTINUED

3 BY MR BUTLER

4 Q Mr Washington, throughout your direct, I
5 noticed there were a couple of times that you
6 used the phrase "from to my knowledge"

7 For example, when asked how your truck
8 ended up where it was, you said 'from my
9 knowledge, Trell parked it there '

10 What do you mean by "from my knowledge"?

11 A Because I know that he had keys to my truck
12 and I know that we picked him up at Brewer, so,
13 yes, he did park it there

14 Q You weren't with him at that point?

15 A No, I was in the car with Ward

16 Q Okay I want to talk about your first
17 statement to the police that Mr Durant went
18 over with you, if I could, please

19 At the time that you gave them this state-
20 ment, you knew that you were a suspect in a
21 murder investigation, is that correct?

22 A Yes, sir

23 Q They read you your rights and they told you
24 that you were a suspect in a murder investiga-
25 tion, correct?

26 A No, sir

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1 Q They did not?

2 A No, sir Also, when they first started
3 talking towards me, I asked Detective Rice, I
4 said, uh, 'Do I need to have my attorney
5 present?' He said he cannot really advise that
6 but, you know, they were just trying to get to
7 the basics of what went on that night

8 Q So you asked whether you needed to have
9 your attorney there and he ---

10 A No, I asked

11 Q (Affirmative nod), you asked him

12 A Right

13 Q And ---

14 A I asked Detective Rice Detective Rice
15 said that he can't tell me what to do, and what
16 not to do, but that I really don't have anything
17 to worry about So I wasn't read my rights or
18 any-thing before we got started

19 MR BUTLER Mark that

20 COURT REPORTER Defendant's Exhibit
21 6 for identification

22 CROSS EXAMINATION CONTINUED

23 BY MR BUTLER

24 Q If I understand correctly, the Detective
25 told you that you didn't have anything to worry
26 about?

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1 A No, he said that he cannot suggest me on
2 what to do But he explained what happened and
3 that he was just trying to get to the basics of
4 what went on So I wasn't -- at the point in
5 time, I didn't become an actual suspect, I
6 guess, until after the interview, until after
7 the interview was over

8 Q So then he did not read you your *Miranda*
9 rights?

10 A Not when we began I wasn't arrested

11 Q At what point did he read you your *Miranda*
12 rights?

13 A I believe that he made a call to the
14 Solicitor or whatever and the Solicitor told him
15 to go ahead and arrest me

16 Q And then you didn't talk any more after
17 that, is that what you're telling me?

18 A Yes, sir That's when he carry me --
19 that's when he carry me down over to Leeds
20 Avenue

21 Q So prior to your giving this four-page
22 written statement, you had not had your Rights
23 read to you and acknowledged that?

24 A Yes, sir

25 Q Let me show you what has been marked
26 Defendant's Exhibit 6 Do you recognize that as

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1 an Advisement of Rights form with your signature
2 at the bottom?

3 A (Upon review), I believe this is what I
4 signed when I was over on Leeds Avenue

5 Q I understand what you're saying but I want
6 to make sure that that is an Advice of Rights
7 form, with your signature, that advises you that
8 you're being charged with murder

9 A Yes, after the fact

10 Q I understand you're saying that you did
11 this after you gave the statement

12 A Yes

13 Q But that is what that is?

14 A Yes As a matter of fact, I did that in
15 booking I did that after everything was over

16 Q I want to refer now to the subsequent pages
17 in the same exhibit, Defendant's Exhibit 6
18 If you would, just hold onto that for me,
19 please

20 You admitted on direct that you told lies
21 in your first statement to the police, right?

22 A Yes

23 Q For example, you said that Denode took you
24 home from the club, right?

25 A Yes

26 Q That was a lie?

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1 A Yes

2 Q You said that he took you home in his car,
3 Denode's car, right?

4 A Yes

5 Q That was a lie?

6 A Not from the club, but that's how I got
7 home Denode's car It was just around the
8 corner from the club

9 Q That you didn't know who had the keys to
10 your truck

11 A No To this day, I still don't I still
12 don't have the keys

13 Q That you stayed at Denode's house Is that
14 the truth?

15 A Yes

16 Q That's true?

17 A Yes That's how I got to Denode's house,
18 woke Denode up, that's why I stayed there
19 That's where I received all the information at,
20 sir

21 Q Denode told you, 'don't worry about' where
22 your truck was?

23 A That's a lie, because I had an idea already
24 where my truck was

25 Q Your cousin came and woke you up, that's
26 true?

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- 1 A Yes
- 2 Q But you didn't know who was driving your
3 truck That's a lie?
- 4 A Yes
- 5 Q That the gun should be in the console of
6 the truck That was a lie
- 7 A No, that's where it should be
- 8 Q That's the truth?
- 9 A Yes, sir
- 10 Q And did you at point have more than one
11 nine millimeter in that truck?
- 12 A Not to my knowledge -- no, sir
- 13 Q Well you would know if you had more than
14 one, right?
- 15 A Well, I don't normal like that (sic)
- 16 Q You had two magazines?
- 17 A Three
- 18 Q Three magazines?
- 19 A Yes, sir
- 20 Q And the magazine is the container that
21 holds the bullets that you put in the gun and
22 fire it?
- 23 A Yes
- 24 Q Why do you have a nine millimeter weapon
25 with three magazines that you keep in your
26 truck?

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1 A Because I went to the store and buy it, I
2 chose to have it That's my right, to bear
3 arms

4 Q You told the police that you don't remember
5 the shooting because you were too intoxicated
6 That was a lie?

7 A Yes

8 Q That you left in your cousin's dark blue
9 Oldsmobile That's a lie?

10 A Yes

11 Q You didn't remember letting anyone hold the
12 keys That's a lie?

13 A Yes

14 Q That you were still wearing the same
15 clothing that you had on that night That was a
16 lie, wasn't it?

17 A No The only thing that I changed was my
18 pants the next day when I left the house

19 Q You hadn't changed more than your pants?

20 A I had on my white tee-shirt and I had on
21 like some sweat pants, but I also the night at
22 the club I wore my FUBU shirt over my white
23 shirt and a pair of jeans

24 Q But you didn't have on the FUBU shirt when
25 you were talking with the police?

26 A No, that was the next day

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1 Q So it's not that you took off that shirt so
2 that nobody could identify you?

3 A No, I was at the club I had invited
4 several people to the club I changed clothes
5 the next day

6 Q But the investigators asked you, 'Are you
7 wearing the same clothes that you wore last
8 night?' You said 'yes'

9 A Yes

10 Q That was a lie

11 A I had on the same -- the only thing that
12 I'd changed was my pants

13 Q You did not have on the FUBU shirt when you
14 were talking to the police

15 A I had on a white tee-shirt You know what
16 a FUBU jersey is, how you wear it over? Put on
17 your white shirt and then your jersey? I don't
18 know if you know, but -- I had on the shirt
19 without the jersey

20 Q So when they asked you 'are you wearing the
21 same thing', you took that to mean that 'well,
22 as long as I am wearing the same underclothes, I
23 can answer yes to that question '

24 A I didn't have on exactly the same thing,
25 but before I left -- I don't know if they've got
26 it noted in here, but I told them exactly what

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1 I'd had on You should have that It should be
2 in here if this is the same, exact document

3 Q I direct you to page three of your
4 statement A (Upon review), okay

5 Q (Reading) "I had on a pair of jeans, this
6 white tee-shirt that I am wearing now and these
7 same shoes, black Jordans " That is what your
8 answer was, right?

9 A Yes, sir

10 Q And the question was, "What were you
11 wearing at the club last night?" Do you see
12 that right above the answer?

13 A Yeah, I didn't mention nothing about the
14 FUBU jersey

15 Q So that was a lie?

16 A Yes

17 Q So that your truck was left at the club was
18 a lie?

19 A Yes

20 Q So it's safe to say that when they first
21 talked to you -- and now you're saying that you
22 didn't know that you were a suspect in a murder,
23 -- you lied anyway

24 A Yes

25 Q And you said it was because you were
26 nervous, is that right? Or that you didn't

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1 really know what was going on?

2 A Well, actually, you know, to have an
3 accusation like murder and they want to try to
4 get you to the point, people -- you know, like I
5 said, again, I don't know who killed him He
6 was a friend of ours and I wasn't going to say
7 any-thing when I really don't know

8 Q I thought that you said that you did not
9 understand that you were a suspect in a murder?

10 A I was not a suspect at the time, until
11 after he made the phone call We was just
12 talking He, Mr Rice, told me that he can't
13 advise me on what to do but he was just trying
14 to get to the bottom of it of what went on that
15 night He'd talked to several different people
16 and that's what was run by him first

17 Q On direct, you told Mr Durant that you
18 lied because you didn't understand what was
19 going on Is that right?

20 A Yeah

21 Q When you don't understand what is going on,
22 is it your natural reaction to lie?

23 A No

24 Q So what's the difference?

25 A I guess, in some many words, that at the
26 point in time after things went the way that

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1 they went, it was just best to try to help -- to
2 help me and my friends out at the same time I
3 guess that's what it boiled down to

4 Q This was the afternoon of the same morning
5 that the incident happened, is that right?

6 A Yes

7 Q So if the incident occurred in the early
8 morning hours of May 11th, your interview with
9 the police was the afternoon of the 11th Is that
10 right?

11 A Yes

12 Q And basically in your first statement you
13 say, you know, 'I don't know anything about all
14 the shooting or anything like that ' You know,
15 'I was there, then I got a ride home and I don't
16 know nothing about nothing ' Right?

17 A Yes

18 Q And they didn't believe you, right?

19 A Sir?

20 Q And they didn't believe you Right?

21 A Well, -- no

22 Q So they started to pressure you for more
23 answers, isn't that right?

24 A No, basically that was just about it
25 That's when, you know, -- because at first --
26 before -- like I said, before I was told that I

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1 was going to be charged and everything, like I
2 was -- like I was telling, uh, Mr Durant, in my
3 statement, you know, they got -- things -- they
4 got irate They was coming at me and I was like,
5 'Whoa '

6 I got to the point now, like, 'Whatever '

7 Q Then you started telling me that you didn't
8 remember, right?

9 A (No response)

10 Q You gave them a written statement that you
11 now admit was full of lies

12 A Yes

13 Q Then they pressed you more and when they
14 pressed you, you said -- many times -- 'well, I
15 don't really remember I don't think I was
16 driving the truck, because I don't remember
17 driving the truck ' Did you say that to the
18 police?

19 A Sir, I never meant to drive my truck I
20 never told anyone that I was driving my truck
21 I guarantee you that's not in the statement you
22 just submitted me, so I don't even know -- I
23 never said it

24 Q So you never told the police, when they
25 asked you and pressed you for who was driving,
26 you never said, "Well, I don't remember if I was

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1 driving, because I was too drunk"?

2 A Never said that

3 Q You never told the police ---

4 A I told the police I know that I wasn't
5 driving because I wasn't capable of driving
6 That's what I said if you want to quote what I
7 said

8 Q So you never told Detective Hawks that you
9 don't remember driving, because you were drunk?

10 A I always told the police that I wasn't
11 driving And I know that I wasn't capable of
12 driving

13 Q You never said, "I don't believe that I
14 was", meaning driving, "but I do remember I
15 wasn't because I was still intoxicated "

16 A Never said that

17 Q And when they pressed you again and said,
18 'we really think you were driving', you didn't
19 say "I don't believe that I was, they would not
20 have let me drive " You didn't say that either?

21 A I told them that I know that I wasn't I
22 believe -- I know that I told them that I wasn't
23 driving because I was incapable of driving
24 Which, I wasn't

25 Q So that's your testimony today, that the
26 reason that you were not driving is because you

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1 were drunk?

2 A Yeah

3 Q But you never used that as a reason to
4 explain why you couldn't remember anything?

5 A That's why I can't recollect everything
6 that went on If I knew everything that had
7 went on, I would have told my lawyer, I would
8 have told whoever needs to know, what all went
9 on that night

10 Q Except for the police, to whom you lied,
11 right?

12 A Yes, at the beginning, which I have already
13 admitted in my first statement wasn't the truth,
14 because I knew who was in my truck shooting
15 That's basically what it boiled down to, was
16 that, that I hid from the police

17 Q The only thing that you hid from the police
18 is that you knew who was shooting, and that it
19 was John?

20 A No, I knew who drove my truck, I know who
21 had the keys to my truck

22 Q I mean, we don't have to go through them
23 all but we could go through about eight or ten
24 lies in your first statement

25 A Yes, but I have already admitted that the
26 first statement was bogus

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1 Q But you weren't involved in any of the
2 altercations at all that night, on the inside or
3 the outside?

4 A No

5 Q And you didn't have a beef with anybody
6 that night?

7 A No

8 Q So when Mr Dunmeyer runs away from the
9 crowd, you would have had no reason to say,
10 'That's okay, we'll handle that'?

11 A No

12 Q So if anybody has said that they heard you
13 say that, they're lying?

14 A I am not sure

15 Q What do you mean you're not sure You mean
16 that you didn't say it?

17 A I don't know if I said it, I don't remember
18 saying it But I don't think that I ever said
19 it

20 Q Well, if you didn't have a problem with
21 anyone, ---

22 A They must have heard it wrong, I know that
23 I didn't say that

24 Q Well, if you didn't say that, you surely
25 didn't say 'Some bitch is going to die tonight '

26 A Never said that

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1 Q Because you didn't have a beef with
2 anybody?

3 A (Negative gesture)

4 Q So there would be no reason for you to say
5 any of those things?

6 A Correct

7 Q So if anybody says that you did say that,
8 they're lying?

9 A Yes I didn't have a problem with anyone
10 Actually if you -- if you check the witnesses
11 and if you talk with the owner, he will tell you
12 that I am usually one of the guys that tries to
13 help break up the confusment in the club

14 Q Is that what you do when you're drunk? You
15 break up ---

16 A Well, I -- if I'm not intoxicated over
17 there But at least I try to keep everything
18 smooth

19 Q Is that what you were doing this night?

20 A Yeah When the altercation went on in the
21 club, we broke it up

22 MR BUTLER Beg the Court's
23 indulgence

24 THE COURT Yes, sir

25 CROSS EXAMINATION CONTINUED

26 BY MR BUTLER

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1 Q So -- we won't go over them again, but you
2 admit that you lied in your written statement

3 A (Affirmative nod)

4 Q You didn't want to implicate yourself, is
5 that fair to say?

6 A Why? Can you please explain?

7 Q You didn't want to make yourself look like
8 you were at all responsible for a crime

9 A Yes

10 Q And as I understand it now, you had no beef
11 with anybody

12 A (Negative gesture), no

13 Q You didn't have a gun?

14 A I had a gun inside my console

15 Q You didn't physically possess a gun?

16 A No

17 Q You didn't shoot at anybody?

18 A No

19 Q You didn't direct for anybody to shoot at
20 anyone?

21 A No

22 Q You didn't ask 'Trell to go pull the car
23 around so that you could make a quick getaway?

24 A (No response)

25 Q He was driving because you were too drunk?

26 A Yes

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1 Q Do you remember, the next day, telling
2 investigators that you were too drunk and them
3 coming to you, asking you if you had taken a
4 shower and you said no, then them commenting to
5 you, 'Well, you don't smell like alcohol ' Do
6 you remember that?

7 A Yes, he told me that I didn't smell like
8 alcohol

9 Q And you hadn't taken a shower, is that
10 right?

11 A No, I washed off I didn't take a full
12 shower I took a birdie-like

13 Q So you didn't know anything was going to
14 happen until, all of a sudden, for reasons that
15 you don't even understand, John started shooting
16 this gun?

17 A Yes

18 Q You're saying that he never had a beef with
19 anybody, as well?

20 A I'm not sure I can only be accountable
21 for me having a beef with someone

22 Q I thought on direct that you said that he'd
23 not had a beef with anybody that night

24 A I said that I am not sure

25 Q Well, so -- after law enforcement confronts
26 you about the lies, and then you said, 'Well, I

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1 don't remember certain things because I was
2 intoxicated', -- right? Or you denied saying
3 that

4 A (No response) Say again?

5 Q When they confronted you about lies, you
6 then said, 'Well, I don't believe that I was
7 even there at the club because I was too
8 intoxicated ' Do you remember saying that?

9 A But in actuality, after the -- you know,
10 after questioning and questioning, it wasn't
11 even confirmed that they was lies They just
12 was told -- they made a phone call and whoever
13 they called told them to go ahead and charge me
14 with it

15 Q Before that You gave a written statement
16 saying that you didn't know nothing about
17 nothing, right?

18 A Yes

19 Q And we now know that was all a lie, right?

20 A Yes

21 Q Then later you gave them a verbal statement
22 saying, 'Well, I don't believe that I was there
23 but I don't remember because I was too drunk '
24 Do you admit to saying that or not?

25 A Believe that I was at the club?

26 Q Right

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1 A I know that I was at the club

2 Q You never told them, 'I don't believe that
3 I was there, because -- I was too intoxicated,
4 so I might not remember ' You didn't say that?

5 A I always say that I was at the club But,
6 you know, after being out so late and, you know,
7 maybe I could have said it But, you know, I
8 always knew that I was at the club

9 Q But you could have been up so late and,
10 what, so sleep-deprived, that you may have said
11 things that weren't true, as well?

12 A Might have

13 Q I'm trying to figure out what makes you lie
14 and I don't want to put words into your mouth,
15 so I want you to help me with that Can you
16 help me with that?

17 A Well, like I told you before, we went back
18 through it and -- at the time everything was
19 going on, it was happening, like I said, the
20 first statement wasn't true Wasn't true,
21 wasn't fully true

22 Q I am going to offer an explanation and I
23 want you to tell me if it is the right one

24 A Help yourself

25 Q You did not tell the truth in the written
26 statement initially, not because of

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1 intoxication, not because of sleep deprivation,
2 but because you didn't want to implicate
3 yourself in a crime True or False?

4 A False

5 Q Okay Then when they confronted you with
6 the lies and you said, 'Well, I don't remember
7 I don't think I was driving I don't think I
8 was there But I was so drunk that I might not
9 remember ' That was because you didn't want to
10 implicate yourself in a crime and you were
11 trying to cover your butt because they'd caught
12 you in some lies True or False?

13 A False

14 Q Give me any other explanation that you can
15 come up with for lying Take as long as you
16 need

17 A I don't need to lie

18 Q Well, why did you lie?

19 A At first, I didn't look at it as being my
20 problem -- at first Because I didn't shoot
21 nobody, I didn't shoot nobody So I didn't look
22 at it as a problem of mine, to start off with

23 Q So your natural reaction ---

24 A But one thing -- (pause)

25 Q Go ahead

26 A But one thing that I didn't know, after

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1 waking up and everybody telling me that I need
2 to get to the police department because my truck
3 was involved, they was saying I know that my gun
4 was being shot and I know my gun and everything
5 was in the car

6 Q So when somebody is asking you about some-
7 thing that you don't think is at all your
8 business or that you're not responsible for,
9 that means you have a license to lie?

10 A No, I just try to mind my own business

11 Q And minding your own business entails lying
12 about a crime?

13 A In actuality, the whole case is about
14 murder Someone got murdered 'Tremayne, do
15 you know who murdered this person?' "No, I
16 don't "

17 Q At some point -- you continued to maintain
18 that you didn't know anything about the
19 shooting Correct?

20 A Yes

21 Q And this goes on for some time, right?

22 A Yes

23 Q Would you say a matter of hours?

24 A I talked with my attorney, me and my
25 attorney talked Other than that, there was --
26 you know And I talked to several people in the

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1 jail, they were telling me that they were out
2 there I talked to people on the phone to
3 explain the situation, saying 'What do you think
4 happened? What happened? Has anyone got an
5 explanation as to what happened, as to what went
6 on out there?'

7 Q At some point you say that John shot the
8 gun?

9 A Yes

10 Q At some point you told the police that John
11 had shot the gun when you had not said that
12 before, right?

13 A I only talked to the police that one day
14 I never talked to police other than the -- the
15 only time that I ever talked to the police, I
16 talked to a chief investigator recently about --
17 but as far as talking to the police, I never
18 talked to the police but that one day

19 Q I am talking about the same day You
20 initially say, 'I don't know anything about
21 anything '

22 Slowly you come around and you say, 'Well,
23 maybe But I'm not sure because I was drunk and
24 I don't remember '

25 Eventually, the same day, you say John was
26 shooting the gun Right?

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1 A No No

2 Q So are you saying that you didn't tell the
3 police that John shot the gun?

4 A No, because they would have had it right
5 here in the statement, I would guess This is
6 my statement and it isn't in there

7 Q So you didn't tell Detective Hawks, 'Yes,
8 Mixx was doing the shooting ' You never told
9 him that?

10 A I don't know even who Detective Hawks is

11 Q Any member of law enforcement? Don't you
12 think that you would remember if you implicated
13 a friend in a murder?

14 A I told my -- I know that me and my attorney
15 talked ---

16 Q I am not asking about what you told your
17 attorney

18 A That was the same day, and I told ---

19 Q I am talking about what you told law
20 enforcement

21 A What I -- I am telling you that after this,
22 after this statement was over and everything, I
23 never talked to law enforcement, those
24 detectives, again

25 Q So it wasn't that one detective came in and
26 said, 'Look, we have information that you were

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1 driving and we have information that John was
2 shooting, you might as well come clean ' And
3 that you said, 'Well, I don't think that I was
4 driving ' But you said that John was shooting
5 That didn't happen?

6 A I don't recall

7 Q Well, don't you think that you would
8 remember a conversation like that?

9 A I don't recall

10 Q Can you give us any kind of explanation as
11 to why you don't recall that?

12 A Because I don't remember talking to -- I
13 don't even know who Detective Hawks is I don't
14 recall

15 Q Forget the name Did you tell any cop who
16 was investigating the murder, when they
17 confronted you and said 'we have information
18 that you were driving' -- let's start with that
19 Do you remember this part of the conversation?

20 A Oh, you know something? I remember someone
21 saying, 'Well, I know Ward is involved ' A
22 detective telling me that they know Ward is
23 involved and he goes on and on and on and --
24 basically, that's about it

25 Q So they never came to you and said, 'We
26 have information that you were driving and Mixx

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1 was shooting ' That didn't happen?

2 A I am not sure

3 Q And you never said, 'Yes, Mixx was doing
4 the shooting'?

5 A Not until recently

6 Q You sure that this is not that you find
7 yourself today in the exact same position that
8 you found yourself back then, and this amnesia
9 comes back?

10 A No, because I never had amnesia

11 Q Can you give me any other information why
12 you would not recall the conversation where you
13 admitted or implicated John in shooting
14 somebody?

15 A Because I don't know if he shot someone

16 Q You don't know if he shot someone?

17 A (No response)

18 Q Or implicating him in firing a weapon,
19 claiming that he fired a weapon Give us any
20 explanation that you can come up with why you
21 don't recall that conversation?

22 A Recently I said that I know John was in my
23 car, firing from my car But as far as the
24 statement, the first statement, which you're
25 going back to, I've already admitted that the
26 statement isn't true

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1 Q So you never told police that John was
2 shooting the weapon?

3 A I told the chief investigator

4 Q So you did tell them?

5 A Recently

6 Q On the day that they first questioned you,
7 you never told them that?

8 A No, not that I can recall

9 Q So it's not that you deny everything and
10 then they came to you and said, 'Hey, we have
11 information that he was shooting' And then you
12 said, 'Oh, yeah, now I remember that he was '
13 That didn't happen?

14 A (No response)

15 Q Yes or no?

16 A No

17 MR BUTLER Beg the Court's
18 indulgence

19 THE COURT Sure

20 MR BUTLER I think that I am almost
21 finished

22 THE COURT All right

23 CROSS EXAMINATION CONTINUED

24 BY MR BUTLER

25 Q So I guess that it is also -- go ahead,
26 help yourself

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1 A (Drinking water)

2 Q I want to ask you about the guns That
3 nine millimeter was an automatic, semi-automatic
4 or something like that?

5 A Yes

6 Q And it has a magazine that you load into
7 the grip of the gun?

8 A Yes

9 Q And when you fire the weapon, the spent
10 casings are ejected?

11 A Yes

12 Q Is that right?

13 A Yes

14 Q And they eject out of the right-hand side
15 of the gun?

16 A Hummm, -- yes

17 Q I guess it is also your explanation for why
18 you tried to get your cousin, Denode, to lie was
19 because you didn't really know what was going
20 on So you figured, 'I will get him to lie
21 too ' Is that right?

22 A Lie in what way?

23 Q Did you not get Denode to lie and say that
24 he had taken you from the club?

25 A Yes

26 Q You did do that?

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1 A Yes

2 Q And it's not that the reason you did that
3 was to protect yourself from being involved in a
4 potential murder charge?

5 A Yes

6 Q That is the reason why?

7 A Yes

8 Q So sometimes that is the reason why you lie
9 or get people to lie?

10 A I said, going back to my first statement,
11 my first statement wasn't true

12 Q I am not asking you about that I am
13 asking you about ---

14 A Well, that goes with the first statement,
15 the question that you asked me now That goes
16 with the first statement

17 Q I am not talking about lying to the police
18 I am talking about trying to get your cousin to
19 tell the police the same thing so that you would
20 have your stories straight Did that not
21 happen?

22 A Yes

23 Q And I am asking you, isn't the reason that
24 you tried to get other people to lie for you, to
25 corroborate your own lie, was to keep you from
26 being involved in this crime?

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1 A Yes

2 Q Okay, we're making progress So you will
3 lie if it benefits you?

4 A Well, -- yes

5 Q Okay And when you told these first lies
6 and tried to get people to lie, you weren't even
7 charged with murder, were you?

8 A No

9 Q And now you are Isn't that right?

10 A Yes

11 Q And if you didn't want to be charged with
12 murder, you sure don't want to go to prison for
13 murder, do you?

14 A Of course (negative gesture)

15 Q Oh, you weren't shaking Mr Dunmeyer's car,
16 were you, that night?

17 A No

18 Q So if anybody said that, they were lying?

19 A Yes And, also, because I was told about
20 the shaking of the car, I bet you a million
21 bucks my prints isn't on because I never touched
22 his car

23 Q Okay But if you were shaking the car and
24 if you did say, 'That's okay, we'll handle that'
25 when he got away, and if you did say, 'Some
26 bitch is going die tonight', that would make it

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1 look like you --that would make it look like you
2 had a motive to shoot somebody wouldn't it?

3 A Yes

4 Q So you wouldn't want to admit to that,
5 would you?

6 A Well, sir, like I said, again, I know that
7 they had several investigators out there, which
8 I don't even know which car was Mr Dunmeyer's
9 one but, like I said, I bet you a million
10 dollars my fingerprints weren't on his car
11 because I didn't touch his car

12 Q I don't have a million dollars, I'm a
13 public defender But I appreciate the offer
14 Here is what I am asking you, you would not want
15 to admit to rocking and shaking cars and being
16 involved in the fight, to saying 'that's okay,
17 we will take care of that', not willing to admit
18 that you said, 'Some bitch is gonna die
19 tonight', because that sure makes it look like
20 you've got a motive to shoot somebody

21 A I never said any of those things Going
22 back to the fact that the people who you're
23 naming was, I believe, the people that are not
24 from Petersfield or around that area For
25 another thing, they probably do have something
26 against me because I do be with the Petersfield

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1 folks/crowd

2 Q Maybe they have something against you
3 because you lie a lot

4 A They don't know me

5 MR BUTLER I'm done Thank you

6 THE COURT Redirect, Mr Durant?

7 MR DURANT I don't believe I have
8 any questions, Your Honor

9 THE COURT Thank you, sir Mr
10 Washington, you may step down

11 TREMAYNE WASHINGTON May I keep that,
12 have a copy of that (State's Exhibit 58, Bill of
13 Sale for Dodge truck)? That was my only copy

14 COURT REPORTER No, sir, not at this
15 time You can contact the Clerk's office once
16 the trial is complete Is that okay?

17 TREMAYNE WASHINGTON Okay

18 (WITNESS STEPS DOWN)

19 THE COURT Do you wish for Mr
20 Washington to be excused?

21 MR DURANT Yes, sir

22 MS KENT-JENKINSON No objection

23 THE COURT Thank you Mr

24 Washington, you are free to leave

25 THE COURT All right Ladies and
26 Gentlemen, I am -- we made mention that we'd

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1 decide how long we were going to work It looks
2 like this case will run into Friday, so there is
3 no reason for us work late into the evenings
4 We don't want to keep you away from your homes
5 and lives anymore that is necessary It is now
6 5 10 and I we are going to take our evening
7 recess

8 Please remember that you are not to
9 discuss this case with anyone or allow anyone to
10 discuss it with you Please do not start your
11 deliberations, as that would be a violation of
12 the commitment that you have made to the Court
13 and to the parties

14 I would ask that you be back in your
15 jury room in the morning at 9 30 and we will
16 continue the trial at that time I hope you have
17 a restful and pleasant evening and we will see
18 you in the morning

19 (JURY OUT @ 5 10 P M)

20 THE COURT Is there anything from
21 the State before recessing?

22 MR DURANT No, sir

23 MS KENT-JENKINSON No, Your Honor

24 THE COURT Very well Then I hope
25 that you have a pleasant and restful evening
26 I'd ask that you be here in the morning by 9 00,

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1 9 15 so we can address anything that we need to
2 address before we bring the jury in Thank you

3 (COURT IN RECESS @ 5 15 P M)

4 (TRANSCRIPT CONTINUED NEXT PAGE)

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26 DECEMBER 8, 2004

9 15 A M

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1 (DEFENDANT PRESENT)

2 THE COURT Good morning, Mr Ward

3 DEFENDANT Good morning

4 THE COURT Please let the record

5 reflect that Mr Ward is present

6 MR DURANT Your Honor, I would like

7 to bring up just one matter

8 THE COURT Be happy to hear from

9 you

10 MR DURANT Yes, sir, Your Honor

11 The State this morning was intending to call

12 Catrell Douglas' other, under 801(b) However,

13 I am not sure whether or not she has been

14 sequestered during this case -- because I had

15 not intended to call her as a witness I did

16 want to bring that to the Court's attention

17 She was not on my original witness list

18 THE COURT Okay What is the

19 position of the Defendant, Mr Butler?

20 MR BUTLER Before we would ever get

21 to the evidentiary issue, we would object It

22 is obvious that we crossed Mr Douglas in the

23 way that we did, -- standard proper cross-

24 examination should have been foreseeable If

25 she has seen any of the testimony, especially

26 that of her son, it doesn't seem to me to be

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1 possible that she can't at least be
2 subconsciously tainted by seeing that We would
3 object

4 THE COURT Unfortunately, -- was she
5 in the courtroom during this examination?

6 BY BAILIFF Yes

7 THE COURT She was Okay, that
8 answers that Thank you, Ms Holmes

9 First of all, clearly I understand your
10 position but I -- I ran afoul of this in
11 Spartanburg one time, the exception is 801(b)(1)
12 that talks about allowing the minimal
13 confirmation of a victim of a criminal sexual
14 conduct The person testified but not before
15 the person confirmed the statement Under that
16 Rule, the declarant has to be present, has to
17 testify subject to cross-examination and then
18 you may publish the statement, as I read the
19 Rules So there would have been no way to ask
20 that question first

21 MR BUTLER I think I follow but I am
22 not sure how that affects her presence in the
23 courtroom

24 THE COURT That's -- I have taken
25 care of the first issues, because the first
26 issue, I think from the standpoint of while he

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1 could have called her after, he called her
2 before -- he couldn't have asked that question
3 before he actually testified The problem now,
4 though, is compounded by the fact that she was
5 present in the courtroom and -- because of the
6 potential problem, I can't allow her to testify
7 It's noted and the Court sustained the
8 objection, because she was present during his
9 testimony Thank you But not for the reason
10 that it wouldn't have been proper otherwise
11 Okay?

12 MR DURANT Yes, sir

13 THE COURT Anything else,
14 Solicitor?

15 MR DURANT No, sir, Your Honor

16 THE COURT Anything from the
17 Defense before we bring in the jury?

18 MR BUTLER No, sir

19 THE COURT Very well, let's bring
20 in our jury, please

21 (JURY IN @ 9 35 A M)

22 BAILIFF Jury is all seated, Your
23 Honor

24 THE COURT Thank you, Mr Robinson
25 Good morning, Ladies and Gentlemen, I hope that
26 you all enjoyed the little refreshments You'll

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1 have to thank the Clerk I'm glad they did
2 that You've certainly earned those and I
3 appreciate very much their taking care of that
4 for you -- not the best dietary matters, but I
5 guess we will worry about that January 1st
6 That's the appropriate thing to do Thank you
7 We are now ready to continue in this matter and
8 I would appreciate you giving your attention now
9 to the next witness

10 Solicitor, you may call your next
11 witness

12 MR DURANT The State calls Michael
13 Anderson

14 (WITNESS TAKES STAND)

15 MICHAEL ANDERSON, being duly
16 sworn to tell the truth, the whole truth and
17 nothing but the truth, testified, as follows

18 DIRECT EXAMINATION

19 BY MR DURANT

20 Q Would you please tell the jury where you
21 are employed?

22 A I am presently employed with the Charleston
23 County Sheriff's Office as a criminal
24 investigator

25 Q How long have you been with the Sheriff's
26 Office?

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1 A About a five and a half years

2 Q And your duties are?

3 A I am still a criminal investigator

4 Q And is that what you were doing in May

5 2003?

6 A Yes, sir

7 Q Are you currently the case agent on the

8 Toogoodoo homicide case?

9 A Yes, I am

10 Q Were you originally the case agent?

11 A No, sir Originally Larry Rice, who was
12 an investigator with our office, he was
13 originally assigned as the primary case agent on
14 this However, he and his family moved to Texas
15 so that he could become a teacher and pursue
16 careers out there in that area

17 Q So he is no longer in the state?

18 A Correct

19 Q When did you become involved with the case?

20 A On the morning of the shooting, I was
21 called to the scene

22 Q Do you remember what time it was when you
23 arrived there?

24 A I don't remember exactly what time it was
25 It was fairly quickly, about the same time as
26 other investigators were getting there, along

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1 with the crime scene unit

2 Q What were you and other detectives doing
3 out at the crime scene?

4 A Just trying to locate witnesses, get an
5 idea of what had happened at the scene?

6 Q Talking to people?

7 A Yes

8 Q Taking statements, that kind of thing?

9 A Yes, sir

10 Q Was the victim, Jamie Simmons, still
11 present when you arrived?

12 A No

13 Q What was the victim's name and age?

14 A The victim's name was Jamie Simmons He
15 was twenty (20) years old when he was killed

16 Q And you were aware that he had passed away
17 by the time that you arrived?

18 A I was

19 Q During the investigation, a silver Honda
20 was located in the ditch on Toogoodoo Road and
21 Harry Road Would you tell the jury about that?

22 A Yes, sir Detectives Shepherd and Smith
23 were assigned to look for a gray or silver Dodge
24 pickup that we'd had information had been out
25 there, that was no longer there and that we
26 hadn't found yet When they were doing that,

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1 they located this Honda in a ditch about half a
2 mile away from the crime scene Detective Smith
3 stayed with the vehicle until Crime Scene was
4 able to get there

5 Q Was it thought that vehicle may have been
6 involved in some way at the time?

7 A Yes, sir Of course the fact that it had
8 been abandoned near the crime scene and that
9 there was nobody there with the vehicle, that --
10 that raised some red flags, if you will, as it
11 possibly being involved in the shooting

12 Q Were you subsequently able to identify who
13 was in that vehicle and interview them?

14 A Yes, sir We interviewed some of the
15 people that were in the vehicle

16 Q Was that vehicle processed by Crime Scene?

17 A Yes, it was

18 Q As a result of those interviews and the
19 processing by Crime Scene, were you able to
20 determine whether or not that vehicle was
21 involved in the shooting?

22 A We believe that it was not There was
23 never any evidence recovered from the vehicle,
24 outside or inside, to suggest that anybody in
25 the vehicle had been involved in the shooting
26 And the people that we interviewed of course

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1 stated that they had not been involved, as well

2 Q There has also been considerable evidence
3 in this case concerning Kevin Dunmeyer's blue
4 Suburban Were you able to determine whether or
5 not that vehicle was involved in the shooting?

6 A We believe that it was not involved in the
7 actual shooting It was involved in the initial
8 altercation, if you will, that led to the
9 shooting, but we believe that it was not
10 involved in the actual shooting confrontation
11 out there

12 Q That vehicle was also processed by Crime
13 Scene, was it not?

14 A Yes, it was

15 Q No indication from that that any guns had
16 been discharged from that vehicle?

17 A Correct

18 Q As a result of your investigation, were
19 you able to identify any vehicles that were
20 potentially involved in the shooting?

21 A Yes, sir We identified and were looking
22 for this gray or silver Dodge pickup
23 Throughout -- through the investigation, as the
24 investigation wore on, we also identified as
25 possibly being involved the green Cadillac
26 belonging to Antonio Washington

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1 Q With regard to the green Cadillac, were
2 you'all able to locate that vehicle?

3 A Yes, sir Initially, Antonio Washington
4 and, I believe, Kevin Dunmeyer, returned to the
5 scene I believe that they came back in the
6 same Cadillac

7 At that time, we had information that
8 either one of them or the vehicle itself was
9 involved in the actual shooting

10 As the investigation went on, we took a
11 statement from one witness who stated that it
12 was possible that Antonio Washington -- who
13 stated that Antonio Washington did -- that there
14 was gunfire coming from the Cadillac So we
15 refocused and said, 'Okay, we need to deal with
16 this Cadillac ' Detective Shepherd located the
17 Cadillac at Washington's residence

18 Q Which was where?

19 A That was -- I'd have to check all the
20 addresses I would have to refer to my notes to
21 give you the address

22 Q That's okay Who was the owner of that
23 vehicle?

24 A Antonio Washington

25 Q And what is his nickname?

26 A "Ton-Ton"

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1 Q With regard to the pickup truck, were
2 you'all able to locate it?

3 A Yes, we were

4 Q Where was the truck located?

5 A It was located on Brewer Road

6 Q What area of Hollywood is Brewer Road?

7 A Brewer Road is in the Petersfield area

8 Q Who was the owner of that truck?

9 A Tremayne Washington

10 Q And he goes by the nickname?

11 A "Fiend" At one point also in the
12 investigation, people telling were us his
13 nickname and some said "Fain" and others said
14 "Fiend" It was the same -- same nickname

15 Q What was done with the pickup truck after
16 it was located on Brewer Road?

17 A It was towed to the Sheriff's Office
18 evidence compound

19 Q When did you come into contact with the
20 defendant in this case, John Henry Ward, Jr ?

21 A Mr Ward presented himself to one of our
22 deputies at a substation on James Island about
23 midnight the actual night of the shooting The
24 shooting took place in the early morning hours
25 of the 11th, and about the midnight hour is when
26 he showed up at our substation on James Island

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1 Q For what purposes did he show for at your
2 substation on James Island?

3 A He stated that he had some traffic tickets
4 that he thought that he needed to take care of
5 That's why he was there at midnight

6 Q And this was like at around midnight?

7 A Correct

8 Q Was he a suspect at the time?

9 A Yes, he was a suspect at that time We
10 were -- I had to come in -- let me back up a
11 little bit When -- after the initial
12 investigation got started, we had a group of
13 investigators and half of us were sent home We
14 were split into two shifts, and I got put on the
15 night shift So I went home, then came back and
16 we were briefed One of the things that we were
17 briefed about was that we needed to located Mr
18 Ward and speak to him

19 Q Did you speak with him when he showed up at
20 the substation?

21 A Yes, sir

22 Q And what did you say to him with regard to
23 the shooting out on Toogoodoo Road?

24 A I just asked him what he saw and asked him
25 to write it down for me

26 Q Did he do so?

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1 A Yes, he did

2 MR BUTLER I just need to renew my
3 objection pretrial

4 THE COURT Your objection is noted
5 and under the ruling previously made, I would
6 overrule those objections Thank you, sir It
7 is preserved Thank you

8 MR DURANT Thank you, Your Honor

9 DIRECT EXAMINATION CONTINUED

10 BY MR DURANT

11 Q Mr Anderson, I hand you what has
12 previously been marked as State's Exhibit 1 and
13 ask if you recognize that?

14 A Yes, I do

15 Q What is that?

16 A This is the initial written statement that
17 John Ward gave me

18 Q And that was given to you at the ---

19 A --- James Island substation

20 Q Who wrote that statement?

21 A Mr Ward did

22 Q In his own writing?

23 A (No response)

24 Q In his own hand?

25 A Yes, sir

26 Q What did you do when he wrote out that

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1 statement?

2 A After he wrote it out, I read over it and -
3 - I already had some suspicions as far as
4 whether he was telling me the truth His
5 initial verbal statement was fairly detailed as
6 far as his recollection of the events that took
7 place in the club I don't remember exactly
8 what he said verbally but once he wrote it down,
9 it was very vague in comparison to his earlier
10 statement and was something that -- that's an
11 indicator that maybe he was trying to hide
12 something

13 So I explained to him that I didn't believe
14 him I explained to him that I would be asking
15 him questions regarding what happened, very
16 pointed questions, and that he would be
17 *Mirandized*

18 Q And is that why that statement is not
19 signed?

20 A Correct

21 Q But it is a statement that he wrote and a
22 statement that you witnessed him write?

23 A That's correct

24 MR DURANT Your Honor, we would
25 offer State's Exhibit 1 into evidence at this
26 time

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1 THE COURT State's Exhibit 1 is
2 admitted subject to the objection of counsel
3 (SO ENTERED AS STATE'S EXHIBIT 1)
4 DIRECT EXAMINATION CONTINUED
5 BY MR DURANT
6 Q Could you please relate to the jury what he
7 wrote in his initial statement?
8 A Yes, sir (Reading) "We were in club,
9 fight started, we went outside, people still
10 were fighting So I herd (sic) gun shots, so I
11 ran That's when I saw a green Caddie pull pass
12 me and said "Here I am _____ (blank) " Started
13 shoot-ing, I duckt (sic) He got back in the
14 car, turned around, went back in other
15 direction Then my cousin pulled up, stop, I
16 got in, they dropped me off to my car and I left
17 and wentt (sic) to my baby mother house We got
18 up this morning, whent (sic) out, come home and
19 then no (sic) I'm here "
20 Q So after he gave you that statement, you
21 told him that you didn't believe him?
22 A Correct
23 Q And what did you?
24 A Read him the Advisement of Rights form and
25 I -- I used the Advisement of Rights form to
26 give him his *Miranda* warning

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1 Q I hand you what has previously been marked
2 as State's Exhibit 2 and ask if you recognize
3 that document?

4 A Yes, sir

5 Q What is that?

6 A This is the Advisement of Rights form that
7 I used to give Mr Ward his *Miranda* warning

8 Q How did you go about using that form to
9 advise him of his rights?

10 A I explained to Mr Ward what I was going to
11 do, that I was going to give him his *Miranda*
12 warning

13 I questioned him as to how far he had gone
14 to school He indicated to me that he was a
15 high school graduate

16 I asked him if he could read I believe
17 that he stated that he could read I don't have
18 it written down Then I asked him to follow
19 along as I read the form to him and I proceeded
20 to read the form

21 That's the way that we now -- which, there
22 are two main parts The first part is the
23 Advisement and the second part is the Waiver

24 The first part, the Advisement, is broken
25 down into five additional parts dividing the
26 advisement of rights into five parts That is,

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1 I believe, to make it easier to understand

2 Q What is the first right that you advised
3 him of?

4 A The first right that I advised him of was
5 number one, (reading) "That I have the
6 absolute right to remain silent and do not have
7 to answer any questions or give a statement and
8 this fact cannot be used against me "

9 Q After you read him that, what did you do?

10 A After he understood it, said that he did,
11 and -- I said, 'If you understand, go ahead and
12 initial to the left of number one ' Which, he
13 did

14 Q After you did that, what was number two?

15 A Number two is, (reading) "If I do answer
16 questions or give a statement, anything that I
17 say can and will be used against me in a court
18 of law "

19 Q Once again, did he initial that?

20 A Yes, sir

21 Q Number three?

22 A (Reading) "That I have the right to
23 consult with a lawyer of my choice before I
24 answer questions or give a statement and also to
25 have him present while I am being questioned "
26 He understood that and indicated so by

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1 initialing next to number three

2 Q Number four?

3 A Number four, (reading) "That if I wish to
4 talk to a lawyer or have him present, but am
5 unable to afford or hire a lawyer, one will be
6 appointed to represent me free of charge "
7 Again, he understood that and indicated so by
8 his initials next to that number

9 Q With regard to the defendant's physical
10 condition at the time, did he appear to be
11 intoxicated or under the influence of alcoholic
12 beverage at the time that you talked to him?

13 A No, sir, he did not

14 Q Did he appear to understand what you were
15 saying?

16 A Yes, he did

17 Q Did he indicate or exhibit any confusion?

18 A No

19 Q Did he appear to be mentally competent?

20 A Yes, he did

21 Q Was his speech coherent?

22 A Yes

23 Q Did he appear to be tired or exhausted?

24 A No

25 Q Did he acknowledge in writing that he
26 understood his writings?

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1 A Yes, sir

2 Q And did he sign the -- did he, in fact,
3 sign the Waiver of his rights?

4 A Yes, sir, he signed the waiver with his
5 full signature And, there's also a fifth part
6 to the conventional waiver Number five,
7 (reading) If I decide to answer questions or
8 give a statement without having a lawyer present
9 representing me, I have the absolute right
10 during this interview to stop answering
11 questions and to remain silent "

12 Then underneath that, in all caps, it says,
13 (reading) "I FULLY UNDERSTAND EACH OF THESE
14 RIGHTS WHICH HAVE BEEN EXPLAINED TO ME "
15 Underneath which is Mr Ward's signature, his
16 full signature

17 Q And who signed as witnesses?

18 A Myself and Detective Derek Boyd

19 Q So after being advised of his rights, did
20 he indicate that he was willing to continue to
21 talk?

22 A Yes, sir We went through the waiver of
23 rights portion of the Advisement of Rights form

24 Q What does the waiver portion say?

25 A The Waiver says, (reading) "I fully
26 understand each of these rights which have been

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1 explained to me, and having these in mind, I
2 wish to waive these rights and answer questions
3 concerning the charge of murder which I have
4 been accused of committing No threats, force
5 or promises of any kind have been made to me by
6 anyone to induce or cause me to waive these
7 rights and answer questions "

8 Q Once again, that is his signature?

9 A That's correct

10 Q Was that signature witnessed, as well?

11 A Yes, sir, by myself and Detective Boyd

12 MR DURANT Your Honor, at this time
13 we would offer State's Exhibit 2 into evidence

14 THE COURT It's been read already,
15 but subject to the objection of counsel pre-
16 viously argued and the ruling previously given
17 it is admitted

18 (SO ENTERED AS STATE'S EXHIBIT 2)

19 DIRECT EXAMINATION CONTINUED

20 BY MR DURANT

21 Q After you had advised him of his rights or
22 at any time during the taking of his statement,
23 did you or anyone else in your presence promise
24 him anything?

25 A No, sir

26 Q Offer him leniency if he would talk to you?

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- 1 A No, sir
- 2 Q Threaten him in any way?
- 3 A No, we did not
- 4 Q Threaten his family?
- 5 A No
- 6 Q Display firearms to him?
- 7 A No
- 8 Q Deprive him of food or water?
- 9 A No, we did not
- 10 Q The opportunity to go to the bathroom?
- 11 A No
- 12 Q Anything of that nature?
- 13 A No, sir
- 14 Q What time was he advised of his rights?
- 15 A The advisement -- we began the statement
- 16 at 12 45 a m , and -- I don't have the exact
- 17 time that the advisement was but we went into
- 18 the statement immediately afterwards, so
- 19 approximately 12 40
- 20 Q At any time during the taking of the state-
- 21 ment, did he indicate that he wanted to stop
- 22 talking to you?
- 23 A No
- 24 Q Did he want a lawyer?
- 25 A No, he did not
- 26 Q Did he refuse to answer further questions?

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- 1 A No, he did not
- 2 Q And did he provide you with a written
3 statement?
- 4 A Yes, sir, he did
- 5 Q I hand you what has been marked as State's
6 Exhibit 3 for identification Do you recognize
7 that document?
- 8 A Yes, this is a statement that John Ward
9 gave, a written statement
- 10 Q Consisting of how many pages?
- 11 A The statement itself is three pages It's
12 a total of four, counting the Advisement of
13 Rights as the first page
- 14 Q Is each page signed by Mr Ward?
- 15 A Yes, sir, it is
- 16 Q Who wrote out that statement?
- 17 A Mr Ward did
- 18 Q And how did you go about taking, actually
19 taking the written statement?
- 20 A Questioned him verbally, got a verbal
21 statement from him Asked him to write it down,
22 which he did Then we moved into a question-
23 and-answer portion, in which I would write a
24 question down and Mr Ward would write the
25 answer
- 26 Q After he gave you the statement and signed

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1 it, was he allowed to read the statement?

2 A Yes, sir

3 Q Was he allowed to make any changes if he
4 wanted to?

5 A Yes, sir

6 Q And you and Detective Boyd witnessed the
7 statement that Mr Ward gave?

8 A Correct

9 MR DURANT Your Honor, at this time
10 we would offer State's Exhibit 3 into evidence

11 THE COURT Same objection?

12 MR BUTLER Yes, sir

13 THE COURT Very well, the objection
14 is noted It is admitted subject to the
15 objection of counsel previously argued, with the
16 ruling previously made in connection with that
17 matter Thank you, Solicitor

18 MR DURANT Thank you, Your Honor

19 THE COURT Yes, sir

20 DIRECT EXAMINATION CONTINUED

21 BY MR DURANT

22 Q Would you please publish that statement to
23 the jury?

24 A Yes, sir (Reading) "Started fighting in
25 the club (Keith & girlfriend) They continued
26 to fight outside club but it was Keith and Kevin

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1 and some other guy that supposedly hit Keith
2 while he was fighting his girlfriend, so every
3 one went outside and started fighting again So
4 Kevin ran down the road So I wen't (sic) to
5 look for my cousin I was riding with, but he
6 went to take bradly home an (sic) wasn't their
7 (sic) So they started shooting That's when
8 everybody started to run, so I ran toward the
9 dirt road That when the Cuiddlac pas (sic) me
10 going towards the dirt road Stop, Ton-Ton got
11 out, said "Her, I am", started shooting I duc
12 (sic), he jump back in, then turn around, went
13 back the other way I got almost to the dirt
14 road, that's when my cousin stop pick me up I
15 got in the passenger side of the truck, they
16 took me home I got in my car, whent (sic) to
17 my girl friend house Got up, wht (sic) out" --
18 and then he's got an arrow pointing over to two
19 words, "came home", and the arrow points over to
20 "about 10 30" (Reading) "Came back a couple
21 hours ago, I was here every (sic) since "

22 Then we moved into the question-and-
23 answer part of the statement First question
24 that I asked him was (reading

25 Q How did you get to the Club Diamante
26 last night?

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1 A *My cousin Taho (Marvin Ravenell)*

2 Q *Who was driving the truck that you left*
3 *in?*

4 A *Trell Smalls*

5 Q *Who is Trell and where does he live?*

6 A *Down the street from my mother's house*
7 *Petersfield Road Don't know address*

8 Q *Who else was in the truck when you got*
9 *in to leave?*

10 A *Me, Trell, Feind (sic)*

11 Q *What's Fiend's name? Where does he*
12 *live?*

13 A *Main/downtown*

14 Q *Was either Fiend or Trell shooting a*
15 *gun?*

16 A *No*

17 Q *Did Fiend have a gun when you got in*
18 *his truck?*

19 A *Yes*

20 Q *Who fired a gun?*

21 A *Fire came out of the passenger side of*
22 *Feind (sic) truck when they were coming*
23 *towards me When I open the door, feind*
24 *had a gun I got in the truck and they*
25 *drop me off to my car I got in my car*

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1 and wen't down bujan them road They
2 said that Fred said that Jammie got
3 shot Then I left, whent to my
4 baby mother house and I told her
5 what I herd (sic) and I went to sleep "

6 Q Did you fire a gun?

7 A I fired a gun in the at the wooded area
8 on the same side of the truck near Coon
9 Club Road

10 That's the end of the statement

11 Q When he admitted getting into the truck,
12 what truck was he referring?

13 A Tremayne Washington's truck, the gray or
14 silver Dodge pickup

15 Q What time was it when you'all concluded
16 taking that statement?

17 A 4 15 in the morning on the 12th

18 Q What did you do with Mr Ward after he gave
19 you that statement?

20 A We arrested him and transported him to the
21 Charleston County Detention Center and booked
22 him in on the charge of murder

23 Q Moving on to the next day, May 13th, did you
24 have an occasion to speak with the defendant,
25 Mr Ward, again?

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1 A Yes, sir Myself and Deputy Rice later
2 went to pick him up from the Detention Center,
3 took him to our metro office and had another
4 interview with him

5 Q Do you recall about what time of day this
6 was?

7 A It was sometime in the afternoon, about
8 maybe 3 00 o'clock in the afternoon 3 30 or
9 somewhere in that timeframe

10 Q Was he advised of his Rights again?

11 A Yes, sir

12 Q I hand you what has been marked as State's
13 Exhibit 4 and ask if you recognize that
14 document?

15 A Yes, sir, it is the Advisement of Rights
16 form that myself and Detective Rice used to
17 again *Mirandize* Mr Ward on the second
18 interview, May 13th

19 Q And -- not in detail this time, but was he
20 advised of his Rights as they are written on
21 that form?

22 A Yes, sir Again we went through the
23 advise-ment, one by one, he initialed to the
24 left of each number indicating that he
25 understood those rights He gave his full
26 signature and myself and Larry Rice then

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1 witnessed that and went into the waiver

2 It's the exact same waiver, concerning the
3 charge of murder, "No threats, force or promises
4 of any kind have been made to me by anyone to
5 induce or cause me to waive these rights and
6 answer questions " Mr Ward gave his full
7 signature on that and myself and Detective Rice
8 witnessed it

9 Q Once again, did you have any question con-
10 cerning his mental competency at the time?

11 A No No, sir Nothing ---

12 Q His state of sobriety?

13 A No

14 Q No indication to you that he didn't under-
15 stand what was going on?

16 A Correct

17 Q By talking to him again, did you or anyone
18 in your presence promise him anything?

19 A No, sir

20 Q Offer him anything?

21 A No, we did not

22 Q Threaten him or his family?

23 A No

24 Q Display weapons?

25 A No, sir

26 Q Deprive him of food, water or bathroom?

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1 A No, we did not

2 Q Did he indicate that he wanted to stop
3 talking to you?

4 A No, sir

5 Q Did he indicate that he wanted a lawyer?

6 A No, he did not

7 Q Did he indicate that he was going to refuse
8 to answer any further questions?

9 A No

10 MR DURANT Your Honor, we would also
11 offer State's Exhibit 4 into evidence at this
12 time

13 THE COURT Subject to the same
14 objection previously made and ruling previously
15 given, it is admitted

16 (SO ENTERED AS STATE'S EXHIBIT 4)

17 DIRECT EXAMINATION CONTINUED

18 BY MR DURANT

19 Q And did he provide you with another written
20 statement?

21 A Yes, sir

22 Q How was that statement taken?

23 A That statement was divided into questions
24 and answers Detective Rice wrote the questions
25 and Mr Ward wrote the answers

26 Q I hand you what has been marked as State's

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1 Exhibit 5 and ask if you recognize that?

2 A Yes, sir This is the statement that
3 myself and Detective Rice took from Mr Ward on
4 the 13th

5 Q It consists of how many pages?

6 A A total of seven pages, including the first
7 page, being an Advisement of Rights form

8 Q Is each page signed by Mr Ward?

9 A Yes, sir

10 Q Each page witnessed by you and Detective
11 Rice?

12 A Yes, they are

13 Q Was he provided with a copy of the
14 statement?

15 A Yes, sir

16 Q Was he given an opportunity to read the
17 statement and make any changes that he wanted
18 to?

19 A Yes, sir

20 MR DURANT Your Honor, we would
21 offer State's Exhibit 5 into evidence at this
22 time

23 THE COURT Admitted subject to the
24 objection of counsel previously argued and under
25 rulings previously made

26 (SO ENTERED AS STATE'S EXHIBIT 5)

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1 DIRECT EXAMINATION CONTINUED

2 BY MR DURANT

3 Q Would you please publish that statement to
4 the jury?

5 A Yes, sir, (reading)

6 Q What time did you go to the club?

7 A 11 30 - 12 00

8 Q How did you get to the club?

9 Q Excuse me, before you go on Why did
10 you'all go back and question him again? I
11 forgot to ask you that

12 A We wanted more information from him When
13 you're dealing with people in an investigation,
14 you don't always get a hundred percent of the
15 facts right off the bat Many times, you have
16 to go back and reinterview, reinterview

17 Mr Ward had talked about the driver of the
18 vehicle, of this truck, Mr Smalls We were
19 particularly interested in finding that person
20 He had given us the name 'Trell Smalls' and we'd
21 looked for anything on a Trell Smalls from that
22 area and we found nothing So we went back

23 One of the reasons that we went back was to
24 clarify that, to try to get an idea of where Mr
25 Smalls lived at so that we could talk to him

26 Q Okay Sorry to interrupt you Would you

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1 continue?

2 A Yes, sir, (reading)

3 Q How did you get to the club?

4 A My cousin Marvin Ravenell

5 Q What kind of vehicle did you go in?

6 A Chevy Tahoe (Green)

7 Q How many fights did you see at the
8 club?

9 A About two/but the same fight

10 Q Who was fighting?

11 A It started with Keith Richards and his
12 girlfriend, Shaquenta, then John
13 Campbell hit Keith inside the club

14 We broke up the fight and went outside

15 Q When they got outside, what happened
16 then?

17 A We got outside Some body told Keith
18 that John C Hit him an Keith went to
19 ask him why he hit him Kevin put John
20 inside the truck Keith went to the
21 truck and ask John why you hit me
22 They started arguing Then Kevin said,
23 'get the F away from my truck ' Him
24 and Keith started arguing, so he push
25 Keith Then Keith pushed back or vice-

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1 *versa Then they started fighting*

2 *Q How many people were fighting?*

3 *A About 16-17 people were fighting,*
4 *basically people from Cherryhill and*
5 *Petersfield were fighting*

6 *Q Can you tell me some of the people who*
7 *were fighting?*

8 *A Keith Richards, Bujaun Richards, Kevin*
9 *Dunmeyer, John Campbell, Kenneth*
10 *Sanders, John Ward, "Ton-Ton", "Mikie"*

11 *Q When did you hear the first shot?*

12 *A When Kevin started running down the*
13 *road towards Baptist Hill Road and*
14 *probably got near Ton-Ton car that's*
15 *when everybody, including my self*
16 *started running back the other way*

17 *Q Did you see who fired the first*
18 *gunshot?*

19 *A No*

20 *Q How many shots did you hear?*

21 *A About 2 or 3*

22 *Q When you ran away from the shots, what*
23 *did you do then?*

24 *A I ran back to get in Marvin truck*
25 *but he was not their (sic), so I*

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1 continue to run 'cause I herd (sic)
2 more gunshots I got near the
3 dirt road That's when Ton-Ton car
4 pass me, he stop and said, "Here I am
5 m f ", got back in the car, turned
6 around in the dirt road, wen't back the
7 other way That's when I heard more
8 gun shots, duc (sic) between two
9 cars, dash out, got almost by the dirt
10 road, turn around and saw the truck
11 coming I stop them, they stop I
12 got in, the (sic) took me to my mothers
13 house, the (sic) left I went around the
14 corner by bujauns house, that when they
15 said some one got shot That's when
16 they said that they were going to
17 find out who I wen't to my baby
18 mother house at that time

19 Q Who was in the truck you got into?

20 A Feind and Trell Smalls

21 Q Anyone in the bed of the truck?

22 A No

23 Q What color is the truck and who owns
24 it?

25 A Grey/or Platium - Feind (T

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1 Washington)

2 Q Did you see anyone in the truck with a
3 gun?

4 A Yes (Feind)

5 Q What kind of gun did Feind have?

6 A 9mm (black)

7 Q Have you see Feind with this gun
8 before?

9 A Yes (across the street from my house
10 about a month ago)

11 Q Did you shoot Feind's gun?

12 A No

13 Q Did you see anyone shoot Feind's gun
14 that night?

15 A No

16 Q Who was driving the truck?

17 A Trell Smalls

18 Q How long have you known Feind?

19 A About 2 years

20 Q Do you know Oble Brisbane?

21 A Yes

22 Q Was he and his brother Tron at the
23 club?

24 A Yes

25 Q What kind & color of car where (sic)

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1 they in?

2 A I don't know, they were at the club
3 when I got there

4 Q Have you ever seen Oble with a gun?

5 A No

6 Q Did you see gunfire come from Feind's
7 truck?

8 A Yes (after Ton-Ton car wen't down that
9 side towards Baptist Hill Road The
10 truck was coming form that side, I
11 herd gun shot, I duc on Then I turn
12 around and I saw shots coming from the
13 truck "

14 Q When you saw the gunfire, where was it
15 coming from?

16 A The passenger (right) side of the truck
17 five or six

18 Q Who took you home?

19 A Trell Smalls & (Feind)

20 Q Who is your child's mother & where does
21 she live?

22 A Joannare Mitchell, [REDACTED] [REDACTED] [REDACTED]
23 Road

24 Q Where is the gun Feind had that night?

25 A I don't know When I went to mom

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1 house, they went out of Petersfield, I
2 went down by bujuan dirt road 'cause I
3 saw all the car lights

4 Q When did you find out someone was shot?

5 A After I wen't down brewer road by
6 bujaun house that's when Fred (Kenneth)
7 told me or just was saying someone got
8 shot

9 Q Where does Tyrell live?

10 A Down the road from moms house on the
11 left hand side, white trailer, Grey
12 pontiac in yard "

13 And I believe that Tyrell was 'Trell
14 Detective Rice was writing this

15 (Reading)

16 Q How much did you drink that night?

17 A I drank about six Coronas

18 Q What is your nickname?

19 A Mixx

20 Q Do you have anything to add to this
21 statement?

22 A Not about the situation But I do have
23 to say that my answer to the question
24 did I have a gun and fired a gun on the
25 other statement was a lie because I was

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1 *given an situation were either I was*
2 *going to get charged with murder or*
3 *chared (sic) with Involuntary man*
4 *slaughter that's why I said I had*
5 & *shot a gun that night "*

6 That's the end of the statement

7 Q Based on that statement, were you'all able
8 to locate a Trell or 'Trell Smalls?

9 A Yes We went to a house, I believe that it
10 was the first one that we went to based on the
11 direction, the description that we were given,
12 and found that was the location, that a Catrell
13 Douglas lived there We thought that may be
14 him

15 Q And I believe Mr Douglas was arrested on
16 the 23rd, is that correct?

17 A That's correct

18 Q What efforts did you'all make to try to
19 locate the weapon in this case?

20 A We searched several residences and
21 vehicles If I could refer to my notes for the
22 addresses and the kind of vehicles that we
23 searched?

24 Q Certainly

25 A (Upon review), okay We searched

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1 Tremayne Washington's vehicle at the
2 Sheriff's Office compound
3 [REDACTED] Road, John Ward's
4 house
5 [REDACTED], the mother of
6 Mr Ward's child We searched the residence
7 [REDACTED], Denode Heyward's
8 residence We searched the house
9 [REDACTED] is Catrell
10 Douglas' house and we searched that
11 [REDACTED] is Anthony Ward's
12 residence There was a consent search that was
13 done on that house Drugs were located and Mr
14 Ward was arrested
15 [REDACTED], Mr Kevin Dunmeyer's
16 house, we searched that
17 A consent search was done on Antonio's
18 Washington's vehicle at Antonio Washington's
19 residence
20 Also, we had received an anonymous tip, or
21 a tip from someone that wanted to remain
22 anonymous, that the gun used in the case was
23 located at a Roosevelt Campbell's house, who was
24 also known as "Groundhog" or "Bubba" We tried
25 to corroborate that information, so that we
26 could get a search warrant

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1 We went in and actually identified --
2 either I spoke to him on the phone or spoke to
3 this person in person to find out who it was
4 that he had heard that statement from, and he
5 stated that he had heard it from a crowd of
6 people and couldn't tell me exactly who it was
7 I was unable to corroborate that information

8 We went to Mr Campbell's residence He
9 actually lived in a trailer next door to his
10 father, which was a house He wasn't home at
11 the time We looked around as much as we could
12 legally and we didn't find a gun at that
13 residence either

14 Q I believe that you also searched the
15 Suburban?

16 A (Affirmative nod)

17 Q And the Honda that was found in the ditch,
18 as well?

19 A Yes, sir, we did We did do both of
20 those The Suburban was -- Kevin Dunmeyer gave
21 us consent for the Suburban and that was
22 searched at the Sheriff's Office compound

23 The Honda was searched per a search warrant
24 at the compound, as well

25 Q Do you know whether the Dodge pickup truck
26 was processed by the Crime Scene Unit?

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1 A Yes, it was

2 Q Mr Washington's truck?

3 A Correct

4 Q Let me ask you the obvious question From
5 all the searches that you did, did you ever come
6 up with a weapon or anything else relevant to
7 this case?

8 A Well, evidence was recovered from Tremayne
9 Washington's vehicle but the weapon was never
10 found No, it was not

11 Q Was the Dodge pickup truck processed for
12 latent prints?

13 A Yes, it was

14 Q And were any prints lifted?

15 A The only -- well, there were several prints
16 lifted Yes

17 Q Did you have those prints compared with the
18 known prints of Mr Ward, Mr Douglas and Mr
19 Washington?

20 A We did The only prints that we got back
21 that were actual hits or matches were that of
22 Tremayne Washington, the owner of the vehicle

23 Q Do you know whether any attempts were made
24 to lift prints off of the evidence that was
25 obtained from Tremayne Washington's truck?

26 A Yes Shell casings and bullets that were

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1 located, they were dusted for latents I
2 believe that there were some magazines that were
3 recovered and those were also dusted for
4 latents

5 Q Any latents recovered off of those items?

6 A I don't know, I don't believe so

7 Q You were never advised by Crime Scene that
8 they had?

9 A Right

10 Q And were any items -- are you aware of any
11 items that were sent to the firearms identifica-
12 tion section of SLED to be examined?

13 A Yes, sir, there were several items that
14 were sent that were recovered in Mr Dunmeyer's
15 residence They went outside and found a tree
16 stump that was being used for target practice
17 One of the crime scene investigators recovered a
18 spent projectile from the tree stump and it was
19 sent to SLED for elimination purposes

20 Shell casing from the scene were sent to
21 SLED

22 Shell casings were also sent from -- that
23 were recovered from inside Mr Washington's
24 vehicle were also sent

25 There were also two weapons that were sent
26 to SLED One was recovered from Mr Buncum,

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1 the security guard that we'd interviewed and
2 said that he had a firearm at the club That
3 was sent for comparison and elimination
4 purposes

5 Also later on, and this was several weeks
6 if not months after the investigation was
7 started, there was a firearm recovered, a Ruger
8 9mm that actually had the serial number ground
9 down, like someone was trying to get rid of the
10 serial number This was during a rape
11 investigation, a criminal sexual conduct
12 investigation, that this weapon was recovered
13 It was down in the Hollywood area somewhere, I
14 don't know the address I was notified because
15 the detective
16 in that case was aware that we were looking for
17 a Ruger 9mm We sent that to SLED for
18 elimination purposes, as well

19 And, also the projectile that was recovered
20 from Mr Simmons, Jamie Simmons, the victim's
21 body

22 Q I hand you what has previously been marked
23 as State's Exhibit 52 and 53 in evidence and ask
24 if you recognize those photographs

25 A This is the H1 Point firearm that was
26 recovered from Mr Buncum, the nine millimeter

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1 Q I hand you what has been marked as State's
2 Exhibit 59 for identification and ask if you
3 recognize that item?

4 A This is the Ruger P99, the nine millimeter
5 that was recovered from that house during the
6 criminal sexual conduct investigation by another
7 detective in my office

8 Q Does that photograph fairly and accurately
9 depict the weapon that was sent up to SLED to be
10 examined in this case?

11 A Yes

12 Q And it was sent for basically elimination
13 purposes?

14 A That's correct

15 MR DURANT Your Honor, we would
16 offer State's Exhibit 59 into evidence at this
17 time

18 MR BUTLER Objection, Your Honor

19 THE COURT Please approach

20 (SIDEBAR)

21 THE COURT State's Exhibit 59, the
22 objection to relevance is sustained

23 MR DURANT I don't believe that I
24 have any additional questions of Detective
25 Anderson at this time, Your Honor

26 THE COURT Very well

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1 MR DURANT Would you please answer
2 any questions that ---

3 THE COURT Do you want to ---

4 MR BUTLER Yes, sir, if we could
5 have a short break now

6 THE COURT Very well Ladies and
7 Gentlemen, at this point, we will take a recess
8 Do not begin your deliberations, do not discuss
9 the case We will be with you, probably in
10 about ten minutes

11 JURY OUT @ 10 20 A M

12 (BRIEF RECESS)

13 (JURY IN @ 10 30 A M)

14 (DEFENDANT PRESENT)

15 THE COURT Mr Butler, you may
16 cross-examine

17 MR BUTLER Thank you, Your Honor

18 CROSS EXAMINATION

19 BY MR BUTLER

20 Q Detective, how long have you been in law
21 enforcement?

22 A Total years in law enforcement -- let me do
23 my math here, -- about seven and a half years

24 Q And you trained at the Academy?

25 A Correct

26 Q And I assume that you don't start off as

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1 detective, right?

2 A I started off at the Medical University as
3 a public safety officer, then I moved over to
4 the Sheriff's Office in July of 1999

5 Q So you moved up in the ranks, safe to say?

6 A I am not getting paid any more money but
7 I've been 'promoted', I guess, if you will, to
8 an investigator It's something that you have
9 to interview for

10 Q You have to show a certain level of
11 competency and skill to be a detective?

12 A Yes, sir

13 Q And through your years of experience and
14 your training, you know that a statement from a
15 defendant in a criminal case can be critical,
16 right?

17 A Yes

18 Q Can be the most important evidence in a
19 criminal case, correct?

20 A It sometimes can be Yes, sir

21 Q You want to get people talking, isn't that
22 right?

23 A Yes, sir

24 Q And they teach you that, right?

25 A Yes, sir

26 Q Because even if somebody talks and they

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1 tell you something that turns out to be false,
2 that can be relevant just as if they tell you
3 some-thing that turns out to be true?

4 A That's correct

5 Q Because if people tell lies, there are
6 reasons why people lie and those reasons are
7 important to you as an investigator, aren't
8 they?

9 A It is important to me to find out why they
10 are lying Yes, sir

11 Q So you want to get people talking, to
12 ultimately get to the truth

13 A Right

14 Q And there are things that they teach you --
15 there's a whole field of investigation called
16 Interrogation Skills, is there not?

17 A There is

18 Q And you're taught how to interrogate
19 suspects, right?

20 A We got about half a day of a day's worth of
21 training in interviewing and interrogation
22 during Detective Level I, what we call the
23 Detective Level I class, which was a week-long
24 class at the Academy, which I attended shortly
25 after getting up -- being promoted, if you will
26 -- to the Detectives office

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1 Q Questioning a suspect in a criminal case
2 wouldn't be like talking to me about what I had
3 for dinner last night, safe to say?

4 A That's correct

5 Q It is a specialized technique, is that
6 right?

7 A Yes, sir

8 Q Designed in part to get people to talk,
9 right?

10 A Correct In part

11 Q Okay Now, with respect to your interview
12 with John, you never promised him anything?

13 A No, sir

14 Q Never suggested that it would be easier on
15 him if he spoke to you?

16 A Not easier on him in the manner of charge
17 which he was facing I did tell him, and this
18 is paraphrasing, that the best thing for him to
19 do, that it would be in his best interest to
20 tell the truth I was trying to appeal to his
21 moral character at that point That's one of
22 the techniques that we are taught

23 Q One of things that you are taught is to
24 say, 'Look, it'll all be better for you if you
25 just tell the truth ' Right?

26 A Yes, sir Absolutely, 'get it off your

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1 shoulders, get it off your chest '

2 Q But that is not always the case if you're
3 talking about what is best for the person, is
4 it?

5 A What do you mean?

6 Q I mean, for example, say you had -- let's
7 just say, hypothetically, that you had a
8 situation where a person wasn't going to talk
9 and there was very little evidence against them
10 They gave you a confession and then they got
11 charged with a very serious crime That would
12 be a situation where it would not be in their
13 best interest -- their best interest -- to talk
14 Would you agree with me in that situation?

15 A Looking at it from a legal standpoint of
16 the defense, that's correct

17 Q But it's okay for you because you want to
18 get them talking, you want to get to the truth,
19 right?

20 A Absolutely

21 Q You never mentioned to John the charge of
22 involuntary manslaughter?

23 A I did not

24 Q You never told him, 'Look, you know, maybe
25 it was just an accident And if you tell us,
26 we'll see what we can do to help you And

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1 involuntary manslaughter, that's a lot less
2 serious than murder ' But you didn't have that
3 discussion, did you?

4 A I did not discuss with Mr Ward the charge
5 of involuntary manslaughter, nor did I ever
6 promise him any lesser charge Part of this
7 thing is that we felt, as we got into the
8 investigation, pretty early on, that Mr Simmons
9 was not the intended party In speaking with
10 Mr Ward, we did speak to him about that

11 Q But you never used the words "involuntary
12 manslaughter"? He came up with that?

13 A That's correct

14 Q At what time did you begin your
15 interrogation of John?

16 A He came to the substation at about
17 midnight In that first encounter, when we took
18 that verbal statement, he gave his first written
19 statement, about a half page long statement, and
20 it was between that time and about 12 45 in the
21 morning

22 Q When -- at what point in the interview did
23 he ultimately say, 'I fired a weapon '

24 A At the end

25 Q Which would have been at what time?

26 A Close to the end of the interview, which

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1 would be 4 15 in the morning

2 Q Four hours and fifteen minutes later?

3 A Correct

4 Q State's Exhibit 3, his written statement
5 finally given four hours and fifteen minutes
6 later?

7 A Correct Well, the entire statement wasn't
8 four hours and fifteen minutes

9 Q Sure

10 A It ended four hours and fifteen minutes
11 after he came to the substation This statement
12 itself started at approximately 12 45 a m , so
13 it was about three and a half hours later

14 Q He didn't leave and then come back, right?

15 A Right

16 Q He was there the whole time?

17 A Yes, sir, he was there the whole time

18 Q In police custody or in the presence of
19 police officers?

20 A In the presence of police officers He
21 wasn't in custody

22 Q And tagged onto the end, "I fired a gun in
23 the at the wooded area on the same side of the
24 truck near Coon Club Road " Right? That's what
25 it says?

26 A In answer to the last question that I asked

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1 him, (affirmative nod)

2 Q Okay

3 A I asked him, "Did you fire a gun?"

4 Q And that's at the very end of this four
5 hour and fifteen minute process?

6 A That's correct

7 Q Then later when you talked to him, he said,
8 'Look, the only reason I said that was because
9 you guys told me that you would charge me with
10 involuntary manslaughter ' He did say that,
11 right? He wrote that down?

12 A He said that and wrote it down We gave
13 him an opportunity to write that down the next
14 day He did tell me, he retracted that
15 statement that night, the night that he gave it
16 We told him, 'You're under arrest, you're going
17 to jail for murder ' And he attempted to
18 retract his statement I noted that in my notes
19 because I felt that it was important And that
20 was one

21 of the reasons, along every other reason, why
22 we wanted to talk to him the next day and we
23 went back to speak with him

24 Q And involuntary manslaughter was a concept
25 that came completely from John and not from you?

26 A I wouldn't have even -- involuntary

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1 manslaughter doesn't even play into this, into
2 this entire investigation As a rule, I never -
3 - nor would any other investigator in my office
4 -- ever promise leniency to any suspect that we
5 interrogate or interview

6 Q But you did tell him that 'it will be in
7 your best interest if you talk', right?

8 A Appealing to his moral character He was
9 upset about the fact that Jamie had been killed
10 He told me that Jamie was his cousin It was --
11 he was upset about that That is, again,
12 getting back into what you're taught, what we're
13 taught, about interview and interrogation,
14 trying to appeal to that moral side

15 You know, what could get him to tell the
16 truth? Well, you know, in the eyes of your
17 family and the eyes of the community, you -- and
18 that's the direction that I went with Mr Ward

19 Q You agree with me that your report
20 indicates that it was made clear to Ward that
21 the only thing that he could do to help himself
22 in the situation was to tell the truth?

23 A Correct

24 Q You explained to Ward that if he was
25 involved in the shooting in any way, and he
26 withheld that information, that it would be

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1 looked at as a display of guilt on his part?

2 A Correct I explained to him that if he
3 lied to us and we were later able to prove that
4 to be a lie, it would be a display of guilt
5 Why would he lie if he hadn't done anything
6 wrong?

7 Q So, on one hand, 'if we were involved and
8 you don't tell us, it makes you look guilty',
9 right?

10 A Yes, sir

11 Q 'So the best thing that you can do to help
12 yourself is to tell us the truth '

13 A That's correct The best thing that you
14 can do is tell us the truth I mean, that's a
15 basic tenant

16 Q But you had an idea -- you didn't think
17 that he was telling the truth up to that point,
18 correct?

19 A I didn't believe him No, sir

20 Q All right

21 A No, sir

22 Q Well, let's start with the first written
23 statement that he did not sign (State's Exhibit
24 1), do you have that in front of you?

25 A Yes, sir

26 Q That is State's Exhibit 1 -- sorry, -- yes,

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1 State's Exhibit 1

2 A Correct

3 Q Okay, let's go through that This is in his
4 handwriting, that he wrote, correct?

5 A Yes

6 Q "We were in club, fight started we whent
7 outside" -- correct?

8 A Correct

9 Q How did he spell "went"?

10 A W-h-e-t, and I think there's an "n" in
11 there somewhere but the "t" is on top of the
12 "n" It's a little ---

13 Q (Reading) "We whent outside people still
14 were fighting so I herd" -- h-e-r-d -- "gun
15 shots" -- that was h-e-r-d?

16 A Yes, sir

17 Q (Reading) "so I ran that's when I saw a
18 green Caddie pull pass me and said "Her I am" --
19 spelled h-e-r, "her I am"

20 (Reading) "started shooting I duckt" --
21 and how did he spell ducked?

22 A D-u-c-k-t

23 Q (Reading) "I duckt he got back in the
24 car turned around whent" -- spelled the same
25 way?

26 A Looks like it, yes, sir

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1 Q (Reading) " back in other direction
2 then my cousin pulled up" -- and you understand
3 this is ---

4 A (Affirmative nod), they are fragmented
5 sentences

6 Q Well, with respect to cousin, that Mr
7 Douglas is in some way John's cousin, right?

8 A Right

9 Q (Reading) "Pulled up stop I got in they
10 drop me of (sic) to my car and I left and whent"
11 -- spelled the same way?

12 A W-h-e-n-t

13 Q (Reading) "to My baby mother house we
14 got up this morning when't" -- w-h-e-n and then
15 apostrophe 't

16 A Um-humm

17 Q (Reading) "When't out come home and then
18 no I'm here " Did I read that accurately?

19 A Yes, sir Could I add one thing?

20 Q Sure

21 A As to the earlier question about his
22 cousin, he could possibly be referring to 'Trell
23 Smalls, who we later determined to be his
24 cousin

25 In talking with people throughout this
26 investigation, it seemed as if everybody was

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1 related

2 'That's my cousin '

3 'Well, is that your first cousin?'

4 "No, we later on down the line '

5 So that really didn't tell us a whole lot

6 when he said "my cousin pulled up" I wanted to

7 add that

8 Q Sure And then later he tells you that

9 this person's name is Trell?

10 A Trell Smalls

11 Q Trell Smalls?

12 A Yes, sir

13 Q Let me ask you if you have this experience

14 in your job, as I do in mine, you are talking to

15 people, especially people in rural areas and

16 especially African-Americans, you're talking

17 about somebody and they will say

18 'Well, that was Tater, Tater was there

19 Who is Tater?

20 He's my cousin

21 Well, do you know his name?

22 No, we just always called him "Tater"

23 Do you know his last name?

24 No, that's just what we call him '

25 Do you have that experience?

26 A When I am trying to get information from

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1 somebody and they may be trying to withhold
2 information, yes, and it seems as if, you know
3 'Yeah, he's my cousin I've lived next door to
4 him for years ' But, yet, they can't tell you
5 his real name Yeah, I've had that experience

6 Q He subsequently gave you an address, right?

7 A Directions

8 Q That ended up being correct, right?

9 A That was the only one that we went to that
10 resembled the description that he gave us and
11 the approximate directions of how to get there

12 Q So, in summary, with respect to this
13 statement, he said that they were at the club,
14 the fight started, they went out, there were
15 gunshots, a 'green Cadillac passed me, he said
16 "Here I am", and he started shooting', the
17 person in the Cadillac He ducked, the other
18 person got back in the car, turned around, went
19 the other direction His cousin, John's cousin,
20 pulled up and stopped and he got in They took
21 him to his car and he left Right? With
22 respect to the incident at the club, that's
23 basically what he
24 is saying?

25 A Basically, yes, sir

26 Q Let's go now to his second written

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1 statement
2 Do you have that before you?
3 A Yes, sir
4 Q And that is State's ---
5 A --- Exhibit 3
6 Q --- Exhibit 3?
7 A Yes, sir
8 Q You said that you wanted more detail, that
9 earlier that he had given you more detail so you
10 wanted him to give a second written statement,
11 correct?
12 A Yes, sir
13 Q Tell me, if you would, please, if I am
14 reading this correctly, (reading)
15 "Started fighting in the club " --
16 that's the first thing that he wrote That's how
17 the sentence begins, right?
18 A Yes, sir
19 Q (Reading) "Started fighting in the club
20 (Keith & girlfriend) they continued to fight
21 outside club but it was Keith and Kevin and some
22 other guy that supposedly hit Keith while he was
23 fighting his girlfriend so every one went
24 outside and started fighting again so Kevin ran
25 down the road so I wen't" -- spelled this time
26 w-e-n't, with an apostrophe, right?

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1 A Yes, sir

2 Q (Reading) "I wen't to look for my cousin
3 I was riding with but he went to take bradly
4 home an wasn't their" -- a-n, not a-n-d

5 (Reading) "An wasn't their" -- t-h-e-I-
6 r Not t-h-e-re, but t-h-e-I-r, the possessive
7 Right?

8 A (Affirmative nod), correct

9 Q (Reading) " wasn't their so they
10 started shooting that's when everybody started
11 to run so I ran toward the dirt road that when"
12 "that when", not "that's when", right?

13 A Right

14 Q (Reading) " that when the cuiddlac pas
15 me" -- p-a-s, not p-a-s-s or p-a-s-s-e-d, right?

16 A Right

17 Q Pass is misspelled, correct?

18 A Right

19 Q (Reading) " pas me going towards the
20 dirt road stop Ton-Ton got out said her" --
21 h-e-r and not h-e-r-e, -- " her I am started
22 shooting I duc" -- d-u-c-, right?

23 A Right

24 Q (Reading) " I duc he jump back in then
25 turn around whent" -- spelled the same way,
26 right?

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- 1 A Right
- 2 Q (Reading) "whent back the other way I
3 got almost to the dirt road that's when my
4 cousin stop pick me up I got In the passenger
5 side of the truck they took me home I got In my
6 car whent" -- spelled the same way, right?
- 7 A Correct
- 8 Q (Reading) " to my girlfriend house "
9 Not "my girlfriend's", possessive house but my
10 "girlfriend house" Right?
- 11 A Correct
- 12 Q (Reading) "got up whet" -- misspelled --
13 "whet out came home about 10 30 came back a
14 couple hours ago I was here every since "
15 Right?
- 16 A Right
- 17 Q Not "ever since" but "every since" Okay?
- 18 A (Affirmative nod)
- 19 Q Now, if you stop at the third to the last
20 line, "my girlfriend house" See that period?
- 21 A Right
- 22 Q Everything else in there is one sentence,
23 isn't that right?
- 24 A That's right
- 25 Q Everything that I just read, with the
26 exception of "got up whent out came home about

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1 10 30", everything else is one sentence Right?

2 A Correct

3 Q And that's how he wrote it?

4 A He wrote that in his own hand Yes, sir

5 Q You asked him about Trell Smalls and he
6 gave you a description of the place that turned
7 out to be where Trell lives, right?

8 A Well, I'm not sure -- no, we did Sorry
9 We did question him both times as to who was
10 Trell, where does he live?

11 Yes, he did give an approximate location
12 He said 'down the street from my mother's house,
13 I don't know the address '

14 I don't believe at that point that we went
15 into further detail with him That was done the
16 next day when myself and Detective Larry Rice
17 interviewed him

18 Q Then you asked him, "Who fired a gun?"
19 And he said, (reading) "Fire came out " --
20 and this is on the last page

21 A Yes, sir

22 Q (Reading) "Fire came out the passenger
23 side of Feind truck when they were coming
24 towards me " So he is telling you that he
25 wasn't in the truck at that point Right?

26 A Let me catch up with you

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- 1 Q I'm on, sorry, the last page
- 2 A Okay, I'm with you Go ahead
- 3 Q "Fire came out the passenger side of Feind
4 truck when they were coming towards me " So he
5 is telling you that 'I wasn't in the truck yet
6 They were coming towards me, and that's when I
7 saw gunfire ' Right?
- 8 A He is stating, yes, sir, that the gunfire
9 or fire came out of the passenger side of the
10 truck before you got into it That's correct
- 11 Q (Reading) "When I open the door " --
12 not 'when I opened the door', -- "when I open
13 the door feind had a gun " Right?
- 14 A Correct
- 15 Q (Reading) "I got in the truck and they
16 drop me off to my car I got in my car and wen't
17 down bujan them road" -- etcetera, so forth
- 18 A He actually said that it was Bujuan
- 19 Q Bujuan?
- 20 A (Affirmative nod), "I went down Bujuan them
21 road"
- 22 Q Okay Now, I understand that this is a
23 more detailed version of his first statement,
24 but it is not inconsistent, is it?
- 25 A (No response)
- 26 Q It is not different ---

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1 A When we -- when we spoke to him -- of
2 course, the first time we didn't ask him any
3 questions but I felt like it could incriminate -
4 - that his answers could incriminate him He
5 gave a fairly detailed verbal statement Then I
6 asked him for the written statement and it's
7 very vague That's something that's, if you
8 will, a red flag that went up to me He was
9 holding back, he didn't want to write these
10 things down

11 When we got -- when we went through the
12 *Miranda* and got to the second interview with
13 him, if you want to call it the second
14 interview, it was still one event But the
15 second written statement by him, in questioning
16 him regarding gunfire from the truck, he lied
17 about that Eventually through more
18 questioning, we started to get a little bit more
19 information, a little bit more information
20 That's why I continued to get -- to continue to
21 press him and to continue with the interview
22 We caught him lying So we went on with the
23 interviewing

24 Q Here is the question that I am asking,
25 nothing in his second written statement is
26 inconsistent, at odds, with what he told you in

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1 the first written statement?

2 A Yes, sir, you're correct

3 Q He gives you more detail but as opposed to
4 -- I mean, what he could have said -- right? He
5 could have said, 'I wasn't at the club that
6 night, I don't know what you're talking about '
7 Right?

8 A He could have said that, yes

9 Q That wouldn't be an uncommon response from
10 a suspect, would it?

11 A No, sir, it would not be

12 Q Okay He could have said, 'I wasn't even
13 in that truck, I don't know what you're talking
14 about ' Right?

15 A Right

16 Q That wouldn't be an uncommon response from
17 a suspect, right?

18 A Right

19 Q As a matter of fact, it's the response that
20 you might have gotten from some of suspects in
21 this case, right?

22 A Yes, sir

23 Q So he admitted being at the club?

24 A Right

25 Q He admitted being in the truck?

26 A Correct

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1 Q Right?

2 A Correct

3 Q He didn't say, 'I don't know nothing about
4 any guns ' Did he?

5 A Right

6 Q Like some people in the case did, right?

7 A That's correct

8 Q He didn't say, 'I don't know nothing about
9 nothing, I don't know what you're talking
10 about ' He didn't say that, did he?

11 A No, sir, he did not

12 Q So then the last thing that you asked him,
13 "Did you fire a gun?" And he said, "I fired a
14 gun in the at the wooded area on the same side
15 of the truck near Coon Club Road " Right?

16 A Right

17 Q So is it your testimony that nothing
18 happened inbetween everything that led up that
19 question, that last sentence, that that was just
20 a natural progression, that that was just a
21 natural question to ask him and that that is
22 what he said?

23 A No, we're continuing to interview and
24 interrogate him At one point, my supervisor
25 had come to the building, this was a substation
26 on Folly Road and we don't normally do

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1 interviews in this substation, and he was in
2 another part of the building Towards the end
3 of the interview
4 -- I don't remember exactly what time it was, I
5 don't remember where we were in the questioning,
6 my supervisor came in, asked what we had in the
7 investigation, because in investigations,
8 especially in murder investigations, before we
9 arrest somebody the supervisor is going to have
10 the opportunity to review what we have and
11 they're going to make the decision or give the
12 go-ahead He came in, 'What do you have?' I
13 told him 'Lock him up ' I got up to go ahead
14 and do that and Mr Ward asked, 'No, let's
15 continue talking ' So, okay, we did and then we
16 got to this point

17 Q Four hours and fifteen minutes later?

18 A Right, from the initial encounter That's
19 correct Four hours and fifteen minutes

20 Q So from the initial encounter, in four
21 hours and fifteen minutes were generated four
22 pages of statement, is that right?

23 A That's right That's -- correct

24 Q Basically one page per hour is what this
25 process yielded?

26 A If you were to average it out, correct

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1 Q So then you go back to him and you want
2 some more information because you haven't been
3 able to figure out that Trell Smalls is Trell
4 Douglas?

5 A That was part of it, yes

6 Q I know -- you understand that "Smalls" is a
7 family name that is shared by the Douglas
8 family, did you understand that?

9 A No, I didn't know that

10 Q So you went back to him Let's go to his
11 third written statement, on the 13th

12 A I have it

13 Q Okay You asked him what time that he got
14 there and he said 11 30 to 12 00

15 Q Right

16 A You asked him how did he get to the club
17 and he told you, 'My cousin, Marvin Ravenell'
18 And that's what he'd told you the first time,
19 hadn't he?

20 A Which one are you referring to, the short
21 one or the four-page statement?

22 Q (Reading)

23 Q How did you gt to the Club
24 Diamante last night?

25 A My cousin Taho, (Marvin Ravenell)

26 A That's right

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1 Q So that is consistent with what he'd told
2 you?

3 A Correct

4 Q Told you that he's rode in his Chevy Tahoe,
5 which is what he told you before Right?

6 A Right

7 Q (Reading)

8 Q How many fights did you see?

9 A About two/but the same fight

10 Q Who was fighting?

11 A It started with Keith Richards and
12 his girlfriend Shaquenta then John
13 Campbell hit Keith inside the club
14 we broke up the fight and went
15 outside "

16 That was consistent with what he'd told you
17 before?

18 A Correct

19 Q (Reading)

20 "A We got outside some body " --
21 two words, not one word "somebody"
22 -- "some body told Keith that John C
23 hit him & Keith went to ask him
24 why he hit him Kevin put John
25 inside the truck Keith went to the

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1 truck and ask John why you hit me

2 they started arguing then " --

3 do you recognize that word?

4 A "Then" or ---

5 Q After that, somebody's name

6 A "Kevin"

7 Q (Reading) " then Kevin said get the F

8 away from my truck and Keith

9 started arguing so he push Keith

10 then Keith push back or vice-versa

11 then they started fighting" -- and

12 that's the end of the sentence, right?

13 A Right

14 Q Consistent with what he had told you

15 before, correct?

16 A Yes, sir

17 Q (Reading)

18 "Q How many people were fighting?

19 A About 16-17 people were fighting

20 basicly people from Cherryhill and

21 Petersfield were fighting "

22 Right?

23 A Right

24 Q So basically he told you that there were

25 two different groups of people?

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1 A Yes, sir

2 Q One from one area and one from another?

3 A Yes, sir

4 Q A fact that a lot of people didn't want to
5 admit to at first, isn't that correct?

6 A Right Some did and some wouldn't, that's
7 correct That is what we felt was going on out
8 there at that time

9 Q (Reading)

10 Q Can you tell me some of the people
11 who were fighting?

12 A Keith Richards, Bujuan Richards,
13 Kevin Dunmeyer, John Campbell,
14 Kenneth Sanders, John Ward,
15 Ton-Ton and Mikie "

16 Right?

17 A Right

18 Q All of which was corroborated by your
19 investigation with other witnesses, with the
20 exception of -- I don't believe that I've heard
21 Mikie's name, but all these others?

22 A Yeah, I can -- most of these, I remember
23 from speaking with people There were several
24 statements that were taken I can reasonably
25 say that these were the people fighting

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1 Q Okay, (reading)

2 Q When did you hear the first
3 shot?

4 A When Kevin started running down
5 the road towards Baptist Hill
6 Road and probably got near Ton-
7 Ton car" -- not Ton-Ton's car,
8 right? But "Ton-ton car"?

9 A (Affirmative nod)

10 Q (Reading)

11 A That is when everybody, including
12 my self" -- two words, not one
13 word, "myself" -- "including my
14 self started running back the
15 other way "

16 Right?

17 A Correct

18 Q Consistent with what he had told you at
19 that point, correct?

20 A Yes, sir

21 Q (Reading)

22 Q Did you see who fired the first
23 gunshot?

24 A No

25 Q How many shots did you hear?

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1 A *About 2 or 3*

2 Q *When you ran away from the shots*
3 *what did you do then?*

4 A *I ran back to get in Marvin truck*
5 *but he was not their -- and*
6 *"there" is spelled possessive --*

7 *" so I continued to run cause I*
8 *herd" -- spelled the same way --*
9 *"more gun shots I got near the dirt*
10 *road that's when Ton-Ton car*
11 *pass me he stop and said Here I am*
12 *M F got back in the car*
13 *turned around in the dirt road*
14 *wen't back the other way thats when*
15 *I heard more gun shots duc" -- d-*
16 *u-c -- "between two cars dash out*
17 *got almost by the dirt road turn*
18 *around saw the truck coming I stop*
19 *them they stop I got in the" -- I*
20 *assume "they" --" took me to my*
21 *mothers house the left I went*
22 *around the corner by bujauns " --*
23 *you told me that name before Sorry*

24 A *Bujan*

25 Q *(Reading)*

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1 " *Bujauns house that when they*
2 *said some one got shot that's when*
3 *they said they were going to find*
4 *out who I wen't to my baby mother*
5 *house at that time*

6 Right?

7 A That's correct

8 Q More detail but still consistent with
9 every-thing that he told you up to that point,
10 do you agree with me?

11 A Yes, sir

12 Q (Reading)

13 Q *Who was in the truck you got into?*

14 A *Feind and Trell Smalls "*

15 Right?

16 A Correct

17 Q Consistent with what he had told you
18 before, right?

19 A Right

20 Q (Reading)

21 Q *Anyone in the bed of the truck?*

22 A No

23 Q *What color is the truck and who*
24 *owns it?*

25 A *Grey/Platium - Feind (T*

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1 Washington)

2 Feind owned the truck, right?

3 A Right

4 Q (Reading)

5 Q Did you see anyone in the truck
6 with a gun?

7 A Yes (Feind)

8 That's what he had told you before, right?

9 A That's not what he told me before
10 initially, until we got to that point where we
11 finally got him to admit that he saw or state
12 that he saw Mr Washington with a gun It's not
13 consistent with his initial verbal account to me
14 after he had been read his *Miranda* rights But,
15 yes, it is consistent with the written statement
16 that was the final written statement the night
17 before, that we had taken

18 Q Going to the next page (Page 6 of 7), you
19 asked him, (reading)

20 Q Did you see gunfire come from
21 Feind's truck?

22 A Yes (after Ton-Ton car wen't down
23 that side towards Baptist Hill
24 Road the truck was coming from that
25 side I herd" -- misspelled -- "gun

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1 shot I duc" -- misspelled -- "an
2 then I turn around I saw shots coming
3 from the truck "

4 Right?

5 A Correct

6 Q Okay

7 A And that would be the same, as far as
8 consistency is concerned, ---

9 Q Still consistent with what he told you?

10 A Inconsistent with verbal, consistent with
11 the final written statement from the night
12 before

13 MR BUTLER Beg the Court's
14 indulgence just one moment

15 THE COURT Sure

16 CROSS EXAMINATION CONTINUED

17 BY MR BUTLER

18 Q You keep referring to the inconsistency
19 between his verbal statement and what I just
20 read in his written statements, right?

21 A That's right

22 Q You took a -- you filed a report in this
23 case, right?

24 A Correct

25 Q And that is also a routine part of police
26 work, right?

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1 A Yes, sir

2 Q You write down the important stuff so that
3 you can remember it later when you're asked
4 about it?

5 A Yes, sir

6 Q You write down the important stuff so that
7 the prosecutor will have it and so ultimately I
8 can have it so that we can assess the case?
9 Correct?

10 A That's correct

11 Q And it assists you when you testify, you
12 can say, 'Well, I might not remember that
13 specific detail, let me look at what I wrote
14 down ' Right?

15 A Um-humm

16 Q And inconsistencies in a suspect's
17 statement to you would be very important
18 Right?

19 A It would be important, very important at
20 the time that we're talking to him because we're
21 trying to figure out -- I am trying to develop
22 in my mind whether or not I believe that he is
23 being truthful or untruthful Yes, it is
24 important eventually for courtroom purposes to
25 have that documented

26 I did not document the fact that he had

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1 lied to me initially in the verbal statement,
2 just because it is impossible to write down
3 everything when dealing with something like
4 this

5 Q How many pages are your collective reports
6 in this case?

7 A (Upon review), a total of twenty-one pages

8 Q Twenty-one pages of facts that you
9 collected and documented in this murder
10 investigation? Right?

11 A That's correct With the understanding
12 that some of the pages -- can I show the jury --
13 the first page itself is just this long Some
14 of these pages have very little information on
15 them because on that particular day -- I didn't,
16 didn't try to, depending on how the case is
17 going, because sometimes it can get going and
18 you just don't have a whole lot of time You
19 write down as much as you can and you move
20 along

21 Sometimes there is very little information On
22 others, it's as detailed as I can possibly get

23 Q So you can't write down everything, right?

24 A No, I can't

25 Q You're only human

26 A (No response)

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1 Q Right?

2 A Correct

3 Q The lies that a suspect tells you in an
4 interrogation are critical facts, wouldn't that
5 be true?

6 A Yes, sir

7 Q Not just some may-be-important peripheral
8 fact If you suspect somebody of murder and
9 they tell you one thing and then tell you
10 something else, like we just discussed before,
11 the fact that someone lies, in and of itself, is
12 extremely important, right?

13 A Right The fact that someone lies is very
14 important inasmuch as their credibility

15 In the case of Mr Ward, from Point A to
16 Point Z, if you will, the final -- from 12 00
17 midnight to 4 15 A M , we had talked with him
18 and in the final statement that he gave he
19 admitted to being culpable in this
20 investigation, being culpable in the murder of
21 Jamie Simmons So, yes, it was very important
22 that he
23 didn't lie to me inasmuch as his credibility was
24 concerned That's obviously from reading his
25 statement to me and to any other investigator
26 that would deal it

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1 Q Okay In the twenty-one pages, nowhere in
2 there do you indicate that Mr Ward lied to you

3 A Right The first -- there is one page in
4 which not all but the majority of it is written
5 about my interview, my encounter with Mr Ward
6 Correct, I did not document in that page that he
7 had lied to me

8 It took three and a half hours, once I'd
9 *Mirandized* him, to get to that final statement
10 There's almost three written pages -- well, not
11 even, -- I think it was three written pages, not
12 quite three handwritten pages And we were not
13 talking about sports or anything else, that was
14 the conversation where I had Mr Ward, trying to
15 get the truth out of him

16 Q So out of the four hours and fifteen
17 minutes, what does make it into your report is
18 that you told him that it looked like -- that if
19 he was withholding information that it'd look
20 like he was guilty, right?

21 A Right

22 Q And you told him that the best thing that
23 he could do for himself was to tell the truth,
24 right?

25 A Right

26 Q And the only thing that gets documented in

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1 the written statement are all these things that
2 are consistent, that make him look not guilty,
3 except for the one sentence tagged on the end
4 Do you agree with me?

5 A Yes, sir

6 Q But nowhere in your report do you write
7 down that he lied, is that right?

8 A That's -- that's correct

9 Q And when you go back and talk to him, he
10 asked you -- you asked him, 'do you have
11 anything to add ' And he said not about the
12 situation, meaning not about the incident, ---

13 A Right

14 Q (Reading) "But I do have to say that my
15 answer to the question did I
16 have a gun and fired a gun on the
17 other statement was a lie because I
18 was given an situation were either
19 I was going to get charged with
20 murder or charged with involuntary
21 manslaughter that's why I said
22 I had & shot a gun that night "

23 Am I reading that correctly?

24 A You are reading that correctly, yes, sir

25 Q So this kid from the sticks who can't spell

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1 knows about involuntary manslaughter? Is that
2 right?

3 A He didn't get it from me, sir

4 Q And is it just a coincidence that
5 involuntary manslaughter is the least serious
6 homicide? It only carries five years, is that
7 right?

8 A I thought that it carried one to three, but
9 I will take your word for it

10 Q So it's just a coincidence that John comes
11 up with, on his own, the term "involuntary
12 manslaughter", which only carries five years and
13 that -- that the only statement that he gave you
14 that at all would make him guilty is tagged onto
15 the last little page of his written statement?
16 Is that just a coincidence?

17 A Absolutely

18 Q Okay

19 MR DURANT Your Honor, may we
20 approach just a second

21 THE COURT Sure

22 SIDEBAR

23 MR DURANT He is getting awfully
24 close to his prior experience with the law
25 enforcement system

26 MR BUTLER I didn't mention any

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1 other criminal charges

2 MR DURANT But he's previously been
3 charged with four counts of ABWIK

4 MR BUTLER Not involuntary man-
5 slaughter I mean, I will leave it alone

6 MR DURANT I am just telling you --
7 I am just telling you, that would be my
8 position

9 THE COURT All right, thank you

10 MR BUTLER Thank you

11 (SIDEBAR CONCLUDED)

12 MR BUTLER Beg the Court's
13 indulgence

14 THE COURT Sure

15 CROSS EXAMINATION RESUMED

16 BY MR BUTLER

17 Q As the case agent, you have possession and
18 access to the file?

19 A Correct

20 Q And the file contains all the written
21 statements, all the police reports from other
22 officers, right?

23 A That's correct

24 Q So you're familiar with all the evidence
25 in the case?

26 A "Familiar" would be kind of a loose term

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1 We took almost fifty written statements, there
2 are pages and pages of written documentation by
3 other investigators, other detectives I've
4 reviewed everything as best I can

5 MR DURANT May we approach, Your
6 Honor?

7 THE COURT Sure
8 SIDEBAR

9 MR DURANT I just want to see where
10 he's going with this

11 MR BUTLER I am anticipating calling
12 Hawks Okay?

13 MR DURANT You can put Hawks up now

14 MR BUTLER I don't want to have to
15 recall him Cross is wide-open, so I'll just
16 tell you Hawks, in his report, says that that
17 he tells Tremayne -- he tells Tremayne
18 Washington, 'you might as well come clean with
19 us, because we know that you were driving and we
20 know who was the shooter ' At the time, nobody
21 was saying that It was just something that
22 they made up to get him to talk

23 I went through that with Tremayne
24 Tremayne wouldn't admit saying it, but I am
25 going to get it out of Hawks

26 MR DURANT Well, actually that is

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1 not what was said Ton-Ton ---

2 MR BUTLER They talked with him at
3 10 40 that night and then they talked with him
4 at 1 00 in the afternoon Look, if I'm wrong,
5 tell me

6 MR DURANT Okay

7 MR BUTLER They talked to Tremayne,
8 the kid from yesterday You might recall that
9 I was asking him, 'you didn't bring up the fact
10 that you were the shooter' and that they'd
11 suggested it to him He wouldn't admit to them
12 even saying it, but -- everything is documented
13 in the discovery They talked to Antonio
14 Washington at 10 40, they talked to Tremayne at
15 1 00 in the afternoon That's why I was asking
16 him what day that was, what time that was He
17 told me 1 00

18 MR DURANT As long as you're not
19 asking for hearsay

20 THE COURT That's the only question
21 I have

22 MR BUTLER It's a statement for the
23 affect on the hearer, ---

24 THE COURT You can argue that, but
25 it would be hearsay if you ask him anything
26 about what was said by somebody else other than

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1 him

2 MR BUTLER What anyone else said
3 other than -- okay

4 THE COURT You can ask how someone
5 reacted but the statement itself doesn't come in
6 because obviously that's hearsay

7 MR BUTLER Can I ask him if there
8 was no statement that said ---

9 THE COURT How can you do that with-
10 out getting into hearsay? You can ask him if he
11 made the statement?

12 MR BUTLER At the time that they
13 were interviewing Tremayne, nobody had given
14 them a report saying that he was the shooter?

15 THE COURT It calls for hearsay

16 MR BUTLER But it not offered for
17 the truth of the matter asserted

18 THE COURT It is so offered for the
19 truth, why else would you ask it?

20 MR BUTLER To show that they were
21 lying, to get him to talk

22 THE COURT Then it is offered for
23 the truth of the matter asserted

24 MR BUTLER It is offered for the
25 falsity of the matter asserted

26 THE COURT No, sir I appreciate

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1 it

2 MR BUTLER I just need to get the
3 times from him, then

4 THE COURT Okay

5 (SIDEBAR CONCLUDED)

6 CROSS EXAMINATION CONTINUED

7 BY MR BUTLER

8 Q Can you tell me, Detective, the time that
9 you spoke to -- or that investigators
10 interrogated Tremayne Washington? The date and
11 time, please?

12 A I know that it was on the same day that
13 Jamie was killed, the 11th of May Without
14 referring some other detectives' notes,
15 (negative gesture) I could get those and review
16 them to get you the time if you want

17 Q Do you remember ---

18 A It was sometime -- I don't know

19 Q Do you recall his testimony that it was in
20 the afternoon?

21 A Yes

22 Q Do you recall me asking, to get that infor-
23 mation, and that it was 1 30 in the afternoon?

24 A Yes, sir

25 Q 1 30 in the afternoon on the 11th is when
26 Tremayne Washington's interview was?

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1 A Right

2 MR BUTLER Beg the Court's indul-
3 gence?

4 THE COURT Yes, sir

5 WITNESS Actually I see that it
6 was actually 1 20

7 MR BUTLER Thank you

8 CROSS EXAMINATION CONTINUED

9 BY MR BUTLER

10 Q I understand that your testimony is that
11 you did not make any kind of improper suggestion
12 to Mr Ward as to why he should talk, didn't
13 make any promises, didn't bring up involuntary
14 manslaughter, correct?

15 A That's right

16 Q And, of course, we don't have any audio
17 recording or video recording of this interview,
18 right?

19 A That's right The substation that we did
20 the interview at is not equipped for either
21 We don't have a policy, either way, as to
22 whether or not we record, video or audiotape
23 interviews

24 Normally we do not We've never done that

25 Q Part of being an investigator is collecting
26 facts, would you agree with me?

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1 A Yes, sir

2 Q Then the second part is that you document
3 the facts that you've collected, would you agree
4 with me?

5 A Yes, sir

6 Q For example, you go to a crime scene, talk
7 with witnesses and then you write down what they
8 say?

9 A Right When you're documenting facts, you
10 document relevant facts or what we perceive to
11 be relevant at the time based on information
12 that we have that something might be relevant

13 Unfortunately, it's nearly impossible to
14 document every single thing that we are told or
15 that's said to us or everything that we see and
16 do

17 Q Collecting and documenting is just a part
18 of what it means to be an investigator, right?

19 A It's a big part of what it means to be an
20 investigator

21 Q A huge part, would you agree?

22 A Big Yes, sir

23 Q And, for the reasons that we spoke of
24 earlier, then you can take advantage -- for
25 example, 'How do I know XYZ happened? Because
26 I wrote it down ' Right?

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1 A Right
2 Q Corroboration?
3 A (No response)
4 Q Are you familiar with the term?
5 A Yes, sir, I'm familiar with the concept of
6 corroboration Are you speaking of
7 corroboration of my own testimony?
8 Q Sure
9 A Yes, sir, you could look at it that way
10 Q And you would agree with me that the more
11 facts that you can collect and document, for all
12 practical purposes, and I know that you can't
13 collect and document them all, but for all
14 practical purposes, the more that you can
15 collect and document, the more thorough an
16 investigation is
17 A Correct
18 Q Then you can bring those into the jury and
19 say, 'Here is what happened and here is how I
20 know ' Right?
21 A Correct
22 Q Given a choice, you would always rather
23 have more information than less, wouldn't you?
24 A Absolutely
25 Q Now, when you take a statement from a
26 suspect, you have to prove several things before

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1 you can even present that report, isn't that

2 right?

3 A With regards to *Miranda* and voluntariness?

4 Q Right

5 A Yes

6 Q You have to prove that you read the suspect
7 their rights?

8 A Right

9 Q You have to prove that he understood them?

10 A Right

11 Q You have to prove that he agreed to waive
12 them?

13 A Right

14 Q You have to prove, 'I don't want a lawyer,
15 I want to talk ' Right?

16 A Right

17 Q You have to prove all that?

18 A Right

19 Q And you have to prove that you didn't make
20 any improper suggestions, inducements, threats
21 or promises, right?

22 A (Affirmative nod), which we do with the
23 *Miranda* form Yes, sir

24 Q And you have to prove that the statement
25 took place, right?

26 A Right

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1 Q That he actually said the things that you
2 say that he said, right?

3 A Which is done with the statement itself

4 Q And you have already basically told us that
5 the four hours and fifteen minutes is not all
6 completely represented in the written documents
7 that we have, right?

8 A Right

9 Q For example, you said that 'Well, he lied
10 to me but somehow that didn't make it into the
11 documents ' Right?

12 A Correct

13 Q If we had an audio or a video, we could
14 hear you read John's Rights to him or see it,
15 right?

16 A Yes, sir

17 Q We could hear or see him acknowledge that
18 he understood them, right?

19 A Correct

20 Q We could hear or see that there were no
21 promises made and that you didn't talk about
22 involuntary manslaughter, right?

23 A That's correct

24 Q That would be more information as opposed
25 to less, would it not be?

26 A Yes, it would be

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1 Q Without that information, with respect to
2 inducements and promises and leniency, we have
3 your word and that's it Right?

4 A At this point, that's correct

5 Q That would be less information as opposed
6 to more, right?

7 A Right

8 Q And I take it that you opted for less
9 instead of more in this murder investigation
10 because there was not equipment at the
11 substation?

12 A Well, that's part of it Again, as I
13 testified earlier, we don't have the equipment
14 at the substation We don't have a policy
15 concerning video or audio taping You know,
16 it is not a -- we just don't do it I don't
17 know why, I am not the one that makes that
18 decision I've never audio-taped or video
19 recorded any interview or interrogation The
20 way that we document is written statements and
21 *Miranda* forms, which are signed by the people
22 that we speak with

23 MR BUTLER Beg the Court's
24 indulgence

25 THE COURT Yes, sir

26 MR BUTLER That is all that I have

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1 Thank you, Detective

2 THE COURT Very well Redirect,
3 Solicitor?

4 MR DURANT I just have a couple of
5 things

6 REDIRECT EXAMINATION

7 BY MR DURANT

8 Q From your experience as an investigator, in
9 dealing with people, is it characteristic for
10 people to start out telling you the truth and
11 move to a lie or vice-versa?

12 A No It's a characteristic for people to
13 either lie or withhold information, or both
14 Even -- sometimes with victims, sometimes with
15 witnesses and a lot of times with suspects

16 Q Just correct me if I am wrong The first
17 statement that you took from Mr Ward, he
18 doesn't mention the pickup truck, he doesn't
19 mention any shots coming from the pickup truck,
20 he doesn't mention being in the pickup truck
21 Is that pretty much the case?

22 A That's right -- in the initial -- the
23 initial written statement that I had gotten from
24 Mr Ward, which was before he was read his
25 *Miranda*, and -- this is what it was (displaying
26 State's Exhibit 1) There is nothing in there

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1 about any shots coming from the vehicle or Fiend

2 having a gun or anything

3 Q By the second statement, he does admit

4 there were gunshots, he heard gunshots?

5 A (Affirmative nod)

6 Q He does admit shots being fired from the

7 pickup truck?

8 A Right

9 Q And he does admit firing a weapon?

10 A Correct

11 Q Is any of that in his first statement?

12 A No, sir

13 Q What does that indicate to you?

14 A That he was lying Which is why we pressed

15 him in further a interview and interrogation of

16 him

17 Q In his first statement, basically he said

18 that Ton-Ton shot at him and that were the only

19 shots fired that night that he knew of, correct?

20 A Let me review this real quick to make sure

21 that I am testifying correctly (Upon review),

22 that's correct That is what it appears to be,

23 it appears to say (Reading) "The Cadillac

24 passed me and said, here I am " -- and started

25 shooting a gun He also made references to

26 hearing gunshots in the first part of the

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1 statement and that is when he starts to runs,

2 sees the Cadillac and Ton-Ton and the shots

3 Q And in his subsequent statements, he admits

4 to be involved in this fight out there with

5 Kevin Dunmeyer Did he admit to that in his

6 first statement?

7 A No, sir

8 Q Referring to his last statement, Page 4 of

9 7, when he is telling you about this incident --

10 -

11 A This is the one on the 12th or the 13th?

12 Q The last statement, on the 13th

13 A On the 13th Okay

14 Q Page four

15 A (Upon review), okay Go ahead

16 Q In the previous statement he told you that

17 Ton-Ton shot at him, didn't he?

18 A Right The one previous

19 Q Did he tell you that on page four of the

20 last statement, that he had been shot at by Ton-

21 Ton?

22 A May I take a minute to review it?

23 Q Please do so

24 A (Upon review), no, he does not He

25 specifically references other gunshots but does

26 not say that Ton-Ton shot at him