

Volume II of II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County

Deadra L. Jefferson, Circuit Court Judge

RECEIVED

FEB 15 2012

SC Supreme Court

JOHN HENRY WARD,

PETITIONER,

V

STATE OF SOUTH CAROLINA,

RESPONDENT

SUPPLEMENTAL APPENDIX

ELIZABETH A. FRANKLIN-BEST
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MATTHEW J. FRIEDMAN
Assistant Attorney General

P O Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	1
TRANSCRIPT OF JURY TRIAL (MISTRIAL), DATED DECEMBER 6-10, 2004	1

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

501

1 MR DURANT Thank you, sir

2 THE COURT Recross?

3 MR BUTLER Briefly

4 RECROSS EXAMINATION

5 BY MR BUTLER

6 Q Detective, you understand the difference
7 between lack of detail and inconsistency, right?

8 A Yes, sir

9 Q Thank you

10 A Sometimes in determining whether or not
11 someone is lying to me, I view them as one and
12 the same basically Determining whether or not
13 they are being truthful or not

14 Q You understand that we are not asking you
15 to make that determination today?

16 A You're not No, sir

17 Q You understand that's what they (jury) get
18 to decide? You understand that?

19 A Yes, sir

20 Q I want you to tell me one fact in his
21 written statements that is consistent with any
22 other fact in his written statements, please
23 Are there any?

24 A No, sir

25 MR BUTLER That's all that I have

26 THE COURT You may come down, sir

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis, Jr

502

1 (WITNESS STEPS DOWN)

2 MR DURANT State calls Brian Hawks

3 (WITNESS TAKES STAND)

4 BRIAN JAMES HAWKS,

5 being duly sworn to tell the truth, the whole

6 truth and nothing but the truth, testified, as

7 follows

8 DIRECT EXAMINATION

9 BY MR DURANT

10 Q Detective Hawks, where are you employed?

11 A With the Charleston County Sheriff's

12 Office

13 Q How long have you been so employed with the

14 Sheriff's Office?

15 A Eight years

16 Q What are you current duties?

17 A I am currently assigned as a school

18 resource officer

19 Q What were your duties in May 2003?

20 A I was assigned to the Detectives office

21 Q Did you have an opportunity to assist in

22 the investigation of the Toogoodoo homicide

23 occurring on May 11th?

24 A Yes, I did

25 Q When did you become involved in that case?

26 A I was originally paged that morning to

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

503

1 respond to an armed robbery Enroute to the
2 armed robbery, I was paged and told to respond
3 to the incident out on Toogoodoo Road, the
4 murder

5 Q Do you recall what time it was when you
6 arrived there?

7 A I arrived at approximately 4 30 a m

8 Q At the time that you arrived at the scene,
9 do you recall speaking with a fellow named Kevin
10 Dunmeyer?

11 A Yes, I do

12 Q And I believe that he later gave a written
13 statement, but did you speak to him verbally at
14 the scene?

15 A Yes, I did I first interviewed him
16 verbally and once I completed that, I asked him
17 to provide me with a written statement

18 Q Okay When you spoke to him verbally, as
19 to the people that had confronted him at the
20 truck, did he tell you the people who had
21 confronted him at the truck?

22 A He stated that one of the individuals who
23 assaulted him, he believed that his name was
24 "Fred" And that two other individuals in the
25 crowd taunting him were named John Henry Ward
26 and Tremayne Washington

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

504

1 Q Okay I believe that you also spoke with
2 Mr Buncum?

3 A Yes, I did I interviewed him at the
4 Detectives office

5 Q He agreed to come to the Detectives office
6 and talk to you?

7 A Yes, he did

8 Q What did you do down at the Detectives
9 office?

10 A He arrived -- when I made contact with him,
11 I asked him to bring all the clothing, anything
12 that he had on, and a handgun that he had, while
13 he was working security at the Club Diamante
14 He arrived at the Detectives office and I
15 collected all of his clothing, the handgun and
16 also performed a gunshots residue kit, completed
17 a gunshot residence kit on him

18 Q For what purpose did you collect his
19 clothing and his weapon?

20 A To submit as evidence

21 Q Just because he was out there and because
22 he had a weapon?

23 A Correct

24 Q Okay I hand you what has previously been
25 marked as State's Exhibits 52 and 53 in evidence
26 and ask if you recognize that weapon?

State v John Henry Ward
Case No 03 GS 10-5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis, Jr

505

1 A Yes, I do It's the weapon that I took
2 into custody from Johnny Buncum

3 Q I hand you what has been marked as State's
4 Exhibit 60 for identification purposes and ask
5 if you recognize that item?

6 A Yes, sir That are the rounds that were in
7 Johnny Buncum's weapon

8 Q These were found in the magazine itself?

9 A Yes, sir

10 Q You removed them, obviously?

11 A Yes

12 Q They are in substantially the same
13 condition now as they were when you removed them
14 from his weapon?

15 A Yes

16 MR DURANT We would offer State's
17 Exhibit 60 into evidence at this time

18 MR BUTLER And we -- may we
19 approach?

20 THE COURT Yes

21 SIDEBAR

22 MR BUTLER I have the same objection
23 as before I mean, these are the bullets that
24 were taken from Buncum's gun?

25 MR DURANT I am laying a foundation
26 for what was sent to SLED Buncum had a gun,

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10, 2004
before The Honorable R Markley Dennis Jr

506

1 Buncum was out there, Buncum had a nine

2 millimeter

3 THE COURT There's no need to
4 introduce the bullets from Buncum's gun if ---

5 MR DURANT I understand that

6 THE COURT It has no relevance

7 MR DURANT The firearm -- my only
8 point is this, Judge How can I have my SLED
9 guy testify that he eliminated these weapons
10 when the jury has no idea where they came from
11 or where these rounds came from?

12 THE COURT You don't have a weapon
13 to eliminate You can't eliminate the world
14 You don't have to ---

15 MR DURANT I understand that but I
16 do have ---

17 THE COURT Any weapon that can fire
18 a 9mm shell could have fired those

19 MR DURANT That's not true

20 THE COURT Technically it is

21 MR DURANT Well, no, it's not
22 There are certain brands of nine millimeters
23 that could have fired it But no revolver
24 There are some ----

25 THE COURT I'm not talking about
26 revolvers We don't need to argue that, I'm not

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

507

1 going to allow to

2 MR DURANT Okay But just so --
3 and I'm not doing this to delay things, Judge,
4 it is just ---

5 THE COURT I am not going to allow
6 that Until there is something that comes in
7 that suggests Johnny Buncum fired ---

8 MR DURANT I don't care if it
9 is in evidence or not I mean, -- you know?

10 THE COURT Why are we having this
11 discussion?

12 MR BUTLER I can tell you as an
13 officer of the court that we are not going to
14 argue ---

15 THE COURT Let me tell you
16 something, you just made the comment that you
17 don't care if it is in evidence We just spent
18 ten minutes arguing about getting it in
19 evidence, so you do care

20 MR DURANT No, the only -- the only
21 thing is, and my job as prosecutor, Judge, is --
22 -

23 THE COURT And my job ---

24 MR DURANT I just need to let them
25 know where it came from

26 THE COURT No, you don't

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

508

1 MR DURANT Okay, that's all That's

2 fine

3 THE COURT You don't have to have

4 it admitted

5 MR DURANT That's fine

6 (SIDEBAR CONCLUDED)

7 THE COURT Sustain objection as to

8 relevance

9 MR DURANT I got no problem

10 THE COURT Good, me either

11 MR DURANT Thank you

12 DIRECT EXAMINATION CONTINUED

13 BY MR DURANT

14 Q For identification, those were the bullets

15 removed from Mr Buncum's gun, correct?

16 A Yes, sir

17 Q What is this about a GSR kit? Test? What

18 is that?

19 A It's a gunshot residue kit to detect

20 whether someone has fired a weapon

21 Q How about do you go about doing a gunshot

22 residue test?

23 A It comes in a kit There's swabs that --

24 you basically swab a person's hand and there's

25 other items that -- they collect residue from

26 their hands

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

509

1 You have to wear gloves that are provided,
2 place everything into the kit, seal it, fill out
3 form and place it into evidence

4 Q Those kits are provided by SLED?

5 A Yes, sir

6 Q Okay

7 MR DURANT I have nothing further

8 THE COURT Any questions?

9 MR BUTLER Beg the Court's
10 indulgence?

11 THE COURT Yes, sir

12 MR BUTLER (Sidebar with Mr
13 Durant)

14 MR DURANT I have no problem with
15 that

16 CROSS EXAMINATION

17 BY MR BUTLER

18 Q Good morning, Detective

19 A Good morning

20 Q You participated in the interrogation of
21 Tremayne Washington in this case?

22 A Yes, I did, with Detective Rice

23 Q And you recall that interrogation?

24 A Yes, I do

25 Q And you recall that his initial statements
26 to you were, 'I don't know nothing about

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

510

1 nothing, I don't know what you're talking
2 about ' In general?
3 A That's correct
4 Q What you call a general denial?
5 A Correct
6 Q And you -- you guys pressed him a little
7 bit and when you pressed him, he said, 'Well, I
8 don't know I was real drunk'
9 A Correct
10 Q Right?
11 A (Affirmative nod)
12 Q And every time that you pressed him for an
13 inconsistency or for more detail he would say,
14 'I don't think' -- for example, 'I don't think
15 that I was driving, but I -- you know, I was
16 real intoxicated ' Do you agree with me?
17 A That's correct
18 Q At some point you or one of the other
19 officers pointed out or asked him did he take
20 a shower and he said 'no'
21 A Correct
22 Q And you pointed out to him that he didn't
23 smell of alcohol?
24 A Correct
25 Q As a detective trained in law enforcement,
26 you know that somebody's who has been on a

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

511

1 drinking binge, the next day, will smell of
2 alcohol, right?

3 A Correct

4 Q That's a very distinct smell?

5 A Yes

6 Q You're trained to recognize that smell,
7 right?

8 A Correct

9 Q And if everything he was telling you was
10 true about his drinking so much that he didn't
11 remember certain things, and not having a
12 shower, you would expect him to smell of
13 alcohol?

14 A Correct

15 MR BUTLER I beg the Court's
16 indulgence

17 THE COURT Sure

18 MR BUTLER Your Honor, may we
19 approach

20 SIDEBAR

21 MR BUTLER The next step is what I
22 want to proffer I don't know if you want to
23 take a break and proffer it I only have about
24 three questions for him, outside the presence of
25 the jury

26 THE COURT Who do you have after

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

512

1 this?

2 MR DURANT I am starting to put up
3 my crime scene folks

4 THE COURT How long are they going
5 to be?

6 MR DURANT It shouldn't be too
7 long I mean ---

8 MR BUTLER I don't think that we
9 have any questions or don't have many questions
10 for them I've got some questions for one of
11 them

12 MR DURANT It's mostly just to
13 identify, you know, -- I do have a crime scene
14 video, which is six minutes long or something
15 like that I would hope to be able to get at
16 least one or two crime scene guys up

17 (SIDEBAR CONCLUDED)

18 THE COURT All right, Ladies and
19 Gentlemen At this point there is a matter of
20 law that I am going to have to take up out of
21 your presence I am going to have to ask you
22 to go to your jury room Do not begin your
23 deliberations, do not discuss the case We will
24 be with you probably in about five to ten
25 minutes

26 (JURY OUT @ 11 30 A M)

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

513

1 (TRANSCRIPT CONTINUED NEXT PAGE)

2

3

PROFFER TESTIMONY

4

OF

5

BRIAN HAWKS

6

7

(DEFENDANT PRESENT)

8

(JURY NOT PRESENT)

9

10 MR BUTLER May I continue?

11 THE COURT Yes, sir

12 BRIAN JAMES HAWKS,

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

16 EXAMINATION

17 BY MR BUTLER

18 Q Detective, when you were interrogating Mr
19 Washington, he first gave the general denial
20 that we spoke about Correct?

21 A Correct

22 Q And you and Detective Rice were pressing
23 him for two things two was driving the car and
24 who may have been shooting from the truck?

25 A Correct

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 - 10 2004
before The Honorable R Markley Dennis Jr

514

1 Q And he denied knowing anything about that,
2 correct?

3 A Correct

4 Q Until such time as Lieutenant Brock entered
5 the room and advised Washington, in your
6 presence, that they had information that John,
7 Mixx, ---

8 A Correct

9 Q --- was the shooter, and that Tremayne was
10 the driver?

11 A Correct

12 Q Then, that's when he said, 'Yes, Mixx was
13 doing the shooting '

14 A (Affirmative nod)

15 Q But he -- he never said that he was the
16 driver?

17 A Correct

18 Q And you understand that the State's theory
19 of the case, at this point, is that he was not
20 driving That Washington was not driving You
21 understand that?

22 A Yes

23 Q So it is not until you tell him, 'Hey,
24 look, we've got information that Mixx was
25 shooting does he then say John was the shooter '

26

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

515

1 A Correct

2 Q Okay And that was false You didn't have
3 that information at that point

4 A I don't recall whether we did or not
5 There were other interviews going on that I
6 wasn't aware of

7 Q But you were present when Brock comes in
8 and says that?

9 A Correct

10 Q And you don't know whether that was true or
11 not?

12 A I -- (negative gesture)

13 MR BUTLER That's all that I have
14 from this witness

15 THE COURT Okay

16 MR BUTLER In light of this
17 discovery, Judge, is that at the time ---

18 THE COURT Well, first of all, do
19 you object to all of that line of questioning?

20 MR DURANT Yes, sir

21 THE COURT All of it

22 MR DURANT Not all of it but ---

23 THE COURT Who is the person that
24 you said entered the room and made the
25 statement?

26 MR DURANT I certainly object to

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

516

1 that

2 MR BUTLER Brock

3 THE COURT And Brock is?

4 MR BUTLER Lieutenant Brock

5 THE COURT Okay, that's fine

6 MR BUTLER His statement is not

7 offered for the truth of the matter asserted

8 either And, of course, we say that it is

9 false

10 THE COURT Thank you very much, but

11 I just -- I will be happy You want to be heard

12 and I will allow you to be heard but I just want

13 to know who was making the statement Thank

14 you

15 MR BUTLER Yes, sir

16 THE COURT You may proceed

17 MR BUTLER My understanding from

18 reading the discovery is that at the time that

19 Lieutenant Brock gets Tremayne Washington to say

20 that John Ward was the shooter, is that they did

21 not have that information That information

22 came from one witness later than night

23 While -- only through this witness,

24 just from those questions that I asked, I

25 believe him that he didn't know

26 But what I would like to solicit

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 - 10 2004
before The Honorable R Markley Dennis Jr

517

1 from Detective Anderson is that at that point,
2 at 1 00 o'clock in the afternoon, when they
3 interviewed Washington, nobody had said that
4 So the statement that Brock makes to Washington,
5 to get him to say that, is not true

6 That's important because Tremayne is
7 implicating the defendant The only reason that
8 he does so is based on something that the
9 detective is telling him that is not true

10 Now, if they tell me that my reading
11 of the discovery is inaccurate, then it's a moot
12 point

13 MR DURANT My -- sorry, I didn't
14 mean to cut you off My only objection is that
15 -- you know, if he wants to ask this witness
16 'Did you tell the defendant, Mr Ward, or Mr
17 Washington, that you had information concerning
18 Ward was the shooter' and have him say, 'Yes, I
19 assume that' Then ask him, 'Do you know
20 whether or not that information was true and
21 have him say, 'I don't know', I have no problem
22 with that

23 THE COURT Okay First of all, I am
24 not going to be a lawyer I don't have any
25 problem with that either, how you choose to
26 phrase your questions I have a problem

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

518

1 specifically with you saying, 'I want the
2 statement that Brock said' because precisely
3 what you're trying to do, you can accomplish
4 that way But you are offering it for the truth
5 of the matter asserted, most definitely, when
6 you say 'it was said, you relied on it,
7 everybody was relying on it '

8 It is clearly offered for the truth of
9 the matter asserted in every aspect of this
10 examination, because it's essential to it

11 Your argument is 'you didn't, you said
12 you did, you lied' and therefore, sir, it is
13 offered for the truth of the matter asserted
14 That 'Brock said this, and he meant it '

15 Clearly if you want to examine this
16 witness about the conversations that he had with
17 his -- with Washington, I think is who he was
18 talking with, he's already testified and you've
19 had freedom to do that thus far How you phrase
20 it, 'did you indicate to him', that's fine I
21 mean, that's coming from this witness That's
22 not a problem

23 MR BUTLER Yes, sir

24 THE COURT But that's why my typical
25 thing that I -- that I'd be happy for the
26 Supreme Court to correct, but -- the way that I

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis, Jr

519

1 have always looked at the truth of the matter
2 asserted, if it is not offered for the truth of
3 the matter asserted, what is the relevance? In
4 this situation, it has none because you can get
5 to the same point without using the statement
6 *per se*

7 MR BUTLER You understand that the
8 content of the statement that I am concerned
9 with is that they didn't have information that
10 the was the shooter?

11 THE COURT But by content, you're
12 offering it for the truth of the matter asserted
13 that Brock said, 'We have this information '
14 When, in fact, they didn't

15 MR BUTLER (Affirmative nod)

16 THE COURT So you're offering for
17 the truth of the matter asserted, that Brock
18 said 'we have this information "

19 MR BUTLER I understand the Court's
20 position

21 THE COURT So -- I appreciate that
22 So, you know, you have -- otherwise, if Brock's
23 statement doesn't matter whether he truly said
24 that or didn't say that, but it does matter that
25 he said that

26 MR BUTLER That he said it, yes

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10, 2004
before The Honorable R Markley Dennis Jr

520

1 THE COURT Correct, so it is offered
2 for the truth of the matter asserted that he
3 said it, so it is a hearsay statement You are
4 relying on the preciseness of that statement,
5 not that somebody reacted to you

6 Now, what you do with him, that's fine

7 MR BUTLER If I could ---

8 THE COURT Yes, sir?

9 MR BUTLER I don't intend to go into
10 this line of questioning if I can't then recall
11 Detective Anderson My understanding was that
12 the State and Court had a problem with that
13 part, as well

14 THE COURT Well, Detective Anderson
15 doesn't know what ---

16 MR DURANT Right, because he wasn't
17 there

18 THE COURT Exactly So Detective
19 Anderson -- Rule 602 would prevent him from ever
20 talking about what was discussed here

21 MR BUTLER Yes, sir, and I wouldn't
22 ask him about what was discussed here

23 THE COURT Okay

24 MR BUTLER But I would ask -- and I
25 imagine that there would be an objection, but I
26 would ask him whether or not at this point in the

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 - 10, 2004
before The Honorable R Markley Dennis Jr

521

1 investigation ---

2 THE COURT You would ask this
3 witness?

4 MR BUTLER No, no, Detective
5 Anderson

6 THE COURT Okay

7 MR BUTLER At this point in the
8 investigation, had anybody given a statement
9 saying that the victim was -- that the defendant
10 was the shooter

11 THE COURT To him?

12 MR BUTLER To Detective Anderson
13 And if he knows the answer to that question, ---

14 THE COURT You can recall him
15 That's fine Do you object to him asking that
16 question of this witness -- of Anderson?

17 MR DURANT Of Detective Anderson,
18 he can't speak for all of the other ---

19 THE COURT Precisely You can ask
20 any witness that you want a question which is
21 otherwise admissible How about that? You can
22 call him, if you want I appreciate what you're
23 doing but we -- we don't play it that way You
24 know that, and I know that

25 MR BUTLER So I can't ask him if at
26 that point in the investigation they ---

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

522

1 THE COURT Beattie, I appreciate
2 what you're doing but I'm not going to try the
3 case in a piecemeal fashion

4 MR BUTLER Yes, sir

5 THE COURT If you want to recall him
6 and submit a question to him and find out from
7 the Solicitor whether he objects, we can do it

8 MR BUTLER Yes, and ---

9 THE COURT You can recall him
10 anytime that you want to

11 MR BUTLER Thank you

12 THE COURT But insofar as this
13 witness, do you wish to go into him -- into his
14 examination, so that we're clear on the proffer?
15 I am not prohibiting that line of questioning, I
16 am only prohibiting the specific thing that I
17 have just said Brock's statement Okay?

18 So however you want to do it Thus far,
19 the rest of it is pretty much along the lines of
20 what you were doing before that

21 MR BUTLER That they indicated, that
22 the officers indicated to him ---

23 THE COURT No, not "they" "He "

24 MR BUTLER "He", but he didn't say
25 it I don't think

26 THE COURT I don't know what he did

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

523

1 I wasn't there But you can ask him

2 EXAMINATION RESUMED

3 BY MR BUTLER

4 Q Detective, you didn't say that? Lieutenant
5 Brock said it?

6 A Correct

7 Q Lieutenant Brock said to Tremayne
8 Washington, 'We know, we have information that
9 John Ward was the shooter '

10 A Correct

11 Q And that was when, and only the first time
12 that he said, 'Yes, John was the shooter '

13 A Correct

14 Q You didn't say that?

15 A Correct

16 Q But it was said in your presence?

17 A Correct

18 THE COURT Again, you're using
19 Brock

20 MR BUTLER Well, that -- I am not
21 going to argue with Your Honor I just want to
22 make my record and that would be offered for the
23 affect that it had on Tremayne Washington

24 THE COURT For the affect that it
25 had on Tremayne Washington?

26 MR BUTLER That's what gets him

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

524

1 talking

2 THE COURT Okay

3 MR BUTLER Obviously I am not saying
4 that John was the shooter I am offering it for
5 its ultimate truth of the matter I am offering
6 for the truth that it was said, but not for ---

7 THE COURT Well, are we trying
8 Tremayne Washington now or are we trying -- I
9 mean, we've been trying several of them
10 throughout, but is Tremayne Washington the
11 defendant now? What stimulated Tremayne is
12 really of no consequence to you other than you
13 have already developed that 'You were trying
14 to protect yourself, and that's exactly what you
15 did '

16 MR BUTLER Yes, sir

17 THE COURT So what motivated him,
18 really I don't understand that Now, if this
19 man were there, now we're getting closer now
20 If your client is on the stand and somebody
21 comes in and says, 'We know you were the
22 shooter " Then that's a lie, then now we -- now
23 we're getting into an area

24 But why Tremayne Washington chose to --
25 how does that carry over?

26 MR BUTLER Because Tremayne

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

525

1 implicated John

2 THE COURT Yeah, he did, and so did

3 some other people

4 MR BUTLER Tremayne implicated

5 John

6 THE COURT So did some other

7 people

8 MR BUTLER And if I had the same

9 information against the others, I would try to

10 use that as well

11 THE COURT But you don't

12 MR BUTLER No

13 THE COURT So I am not going to

14 allow that in this particular case

15 MR BUTLER Thank you

16 THE COURT Except as to what we

17 have already suggested If you want to explore

18 it to that extent, no problem

19 MR BUTLER Yes, sir I am not

20 going to ask him -- the question that I just

21 asked, ---

22 THE COURT I am not going to allow

23 you to ask him anything about what Brock said

24 Now, if you want to ask him what he suggested to

25 him that forced him -- there were suggestions --

26 however you want to phrase it There are ways

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

1 to do that

2 EXAMINATION RESUMED

3 BY MR BUTLER

4 Q Was it suggested to Tremayne Washington
5 that the detectives had information that John
6 Ward was the shooter?

7 A Yes, there was

8 Q And then, and only then, did he implicate
9 John?

10 A Yes

11 THE COURT Do you have any
12 objection to that?

13 MR DURANT I don't think that I
14 have any objection to it

15 THE COURT I don't either I have
16 none I've been trying to say that for awhile

17 MR BUTLER Yes, sir

18 THE COURT Maybe I wasn't
19 communicating very well

20 MR BUTLER I'm sorry, my apologies

21 THE COURT That's okay Thank you
22 Anything else?

23 MR DURANT Not from me, Your Honor

24 THE COURT Mr Butler?

25 MR BUTLER No, sir

26 THE COURT Thank you Let's bring

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10, 2004
before The Honorable R Markley Dennis Jr

527

1 in the jury I assume that you want to continue
2 to examine this witness?

3 MR BUTLER Yes, sir Please

4 (PROFFER CONCLUDED)

5 (TRANSCRIPT CONTINUED NEXT PAGE)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

CONTINUATION

22

OF

23

EXAMINATION OF BRIAN HAWKS

24

25

(DEFENDANT PRESENT)

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

528

1 (JURY IN @ 11 45 A M)

2

3 THE COURT Thank you, Ladies and
4 Gentlemen, for your patience Mr Butler, you
5 may resume your examination

6 CROSS EXAMINATION RESUMED

7 BY MR BUTLER

8 Q Detective, continuing with our discussion
9 about the interrogation of Tremayne Washington,
10 his initial response to your questions was
11 basically a general denial?

12 A Correct

13 Q He said, 'I don't know anything about
14 this '

15 A Correct

16 Q And when you pressed him a little bit, he
17 appealed to the fact that he was "too drunk"?

18 A Correct

19 Q And at some point it was suggested to
20 Tremayne that there was information that John
21 was the shooter?

22 A Yes, it was

23 Q And then, and only then, did he say, 'Yes,
24 John was the shooter'?

25 A Correct

26 Q And it was also suggested to him that you

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis, Jr

529

1 had information that he, Tremayne, was the
2 driver?

3 A Yes, it was

4 Q And he still refused to say that he was
5 drinking? He said, 'I don't think I'd have been
6 driving, I was too drunk '

7 A Correct

8 Q And you had no way of knowing then whether
9 or not that information about John being the
10 shooter was true or not?

11 A Correct

12 MR BUTLER That's all that I have
13 Thank you

14 THE COURT Very well Redirect,
15 Solicitor?

16 MR DURANT No, sir

17 THE COURT Thank you You may come
18 down

19 (WITNESS STEPS DOWN)

20 THE COURT Solicitor, call your next
21 witness

22 MR DURANT Yes, sir We call Shawn
23 James

24 (WITNESS TAKES STAND)

25 SHAWN JAMES, being duly
26 sworn to tell the truth, the whole truth and

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

530

1 nothing but the truth, testified, as follows

2 DIRECT EXAMINATION

3 BY MR DURANT

4 Q Where are you currently employed?

5 A With the Charleston County Sheriff's
6 Office

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

9 A Been at the Sheriff's office for six years

10 Q What are your current duties?

11 A I am a deputy on patrol

12 Q What were you doing in May 2003?

13 A I was a crime scene investigator

14 Q In that capacity, did you have an
15 opportunity to respond to the shooting at 6619
16 Toogoodoo Road on May 11th?

17 A Yes, sir

18 Q What type of business is located at that
19 location?

20 A Toby's or Club Diamante, a nightclub

21 Q What time did you get out to the scene?

22 A May I refer to my ---

23 Q (Affirmative nod)

24 A (Upon review of notes), I arrived at 4 29

25 Q Were there other crime scene techs out
26 there that night?

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

531

- 1 A Yes, sir I was the first one on the
2 scene
- 3 Q Then others arrived after that?
- 4 A That's correct
- 5 Q What were your responsibilities at the
6 crime scene?
- 7 A To make sure that the crime scene was
8 secured, the collection of evidence and also to
9 take photographs
- 10 Q Was the crime scene roped off on your
11 arrival?
- 12 A Yes, sir, both sides
- 13 Q Was the victim still present when you
14 arrived?
- 15 A No, sir
- 16 Q Were you able to determine where the victim
17 had been located?
- 18 A Yes, sir
- 19 Q Where was the victim found?
- 20 A On the right side of his Honda Accord, the
21 passenger side Where his vehicle was parked,
22 there was what we'd call -- blood, there was
23 blood right there There were a lot of red
24 spots that I'd call blood It was tested for
25 blood But a lot of medical supplies, to
26 include scissors, medical supplies used by the

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

532

1 EMS and things of that nature

2 Q Was the victim's car there?

3 A Yes, sir

4 Q How kind of car was that?

5 A A 1994 Honda Accord, blue, with a South
6 Carolina tag 469 PHM (Paul, Henry, Mike)

7 Q Where was it located at the crime scene?

8 A It was off the roadway, parked on the side
9 of the roadway If you're standing facing the
10 club, the vehicle was facing to the left I am
11 not sure if that's towards Hollywood It was on
12 Toogoodoo Road, off the side of the road

13 Q Was there a GEO Tracker out there, as well?

14 A Yes, sir

15 Q Where was that Tracker located?

16 A When I arrived, it was with the Honda
17 Accord, actually right beside the Honda Accord,
18 facing Hollywood

19 Q And do you know whether or not that Tracker
20 was at the location at the time of the shooting?

21 A No, sir, it wasn't there at the time of the
22 shooting

23 Q How do you know that?

24 A I observed Deputy Frichtel's tape on two
25 different occasions Deputy Frichtel of course
26 was out there on the scene and it's clear, when

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

533

1 he backs up, about forty-five seconds after the
2 shooting started, as he was driving away, you
3 can see the GEO Tracker is behind the Honda
4 Accord off the roadway Actually was facing
5 Hollywood, in the same direction as the Honda
6 Accord was facing

7 Q Okay Anything unusual about the Tracker?

8 A Yes, sir

9 Q What was that?

10 A On the rear of the GEO Tracker -- and I
11 also have some photos with the bullet hole

12 Q We are going to go through those

13 A Okay There is a bullet hole that actually
14 -- the bullet hole was more on the left side of
15 the Tracker, actually behind the driver's -- if
16 you were to trace the driver's seat all the way
17 back, actually it entered through the rear
18 through the metal, the metal actually bent
19 inward, towards the front of the vehicle, went
20 through the headrest, through the back of the
21 headrest through the front of the headrest,
22 exited the windshield It was actually a
23 straight line right through the vehicle

24 Q Could you tell the direction that the shot
25 occurred?

26 A Yes, sir

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis, Jr

534

1 Q Where and how?

2 A The metal on the rear of the vehicle was
3 pushed inward and also through the headrest, you
4 could see where the bullet entered the headrest
5 that all the cushioning was inside and then as
6 it exited the headrest all of the cushioning was
7 outward Then there were metal (sic) shards of
8 glass on the hood

9 Q Shards of glass?

10 A Yes, sir

11 Q I would like to refer you to State's
12 Exhibit 6 if I could Ask if you can pick out
13 the victim's vehicle on this diagram?

14 A Yes, sir, right near

15 Q And where the GEO Tracker was parked?

16 A That's where the GEO Tracker was parked
17 when the shooting started and when Deputy
18 Frichtel drove by

19 Q Based on your examination of the bullet
20 path through the GEO Tracker, do you have a
21 direction of original from where that shot had
22 come from?

23 A Yes, sir The bullet actually entered --
24 the vehicle might have been over just a little
25 bit more The bullet actually entered approxi-
26 mately right here and went through, went

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

535

1 straight through It was very consistent with
2 where the nine-millimeter (9mm) casings were
3 laying right here It came right back to the
4 club, on the side of the road

5 Q Same direction as where these nine-
6 millimeters were located?

7 A Yes

8 Q Of course, the car right in front of the
9 GEO Tracker is where the victim was located, is
10 that correct?

11 A That's correct

12 Q Did you make a crime scene video that
13 evening?

14 A I did

15 MR DURANT Your Honor, I have the
16 video Also, it's been transferred to a DVD

17 THE COURT All right

18 COURT REPORTER The videotape will
19 be State's Exhibit 61 and the copy on the DVD
20 will be 61-A

21 MR DURANT Thank you I believe
22 that we would be introducing those without
23 objection, Your Honor

24 THE COURT Is that correct?

25 MR BUTLER Yes, sir

26 THE COURT Very well The tape, of

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

536

1 course, will be for ID purposes only The DVD
2 will be introduced as 61-A, without objection
3 (SO ENTERED AS STATE'S EXHIBIT 61 - ID ONLY)
4 (SO ENTERED AS STATE'S EXHIBIT 61-A)
5 DIRECT EXAMINATION CONTINUED
6 BY MR DURANT
7 Q Would you step down, please?
8 A (Complies)
9 Q Please tell the jury what is going on out
10 there as we're playing the tape
11 A (State's Exhibit 61-A playing)
12 This is after I walked the scene
13 That is the case number
14 I am walking around the scene
15 There is the GEO Tracker, as you see in the
16 lane facing me
17 Then the victim's vehicle right there, the
18 blue Honda Accord with the crime scene tape
19 taped around the side here
20 Q What is that building in the background?
21 A That's the club
22 There is the club there
23 40-caliber shell casings were on the left
24 side, to the left of where I am standing, back
25 down the roadway
26 Q Towards Hollywood?

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10, 2004
before The Honorable R Markley Dennis Jr

537

1 A Correct

2 Q And straight ahead there would be towards
3 Baptist Hill?

4 A That's correct

5 I start walking now

6 There is the victim's vehicle there

7 The victim, of course, was on the passenger
8 side of the vehicle That's where he was found
9 laying

10 As you can see there, there is where the
11 bullet hole obviously -- (pause)

12 That's where it exited the vehicle as it
13 exited the rear

14 Right now they're looking for the -- there
15 were some track marks where he had peeled out
16 There's a track mark right here where I put a --
17 -

18 Q Who do you mean by "he"?

19 A The driver of the vehicle

20 Q Which vehicle?

21 A The GEO Tracker There is where he had
22 actually got back in the vehicle after the
23 shooting had started and stopped his vehicle
24 You can see the tire mark as it crosses the fog
25 line The tire mark where he pulled up beside -
26 - then when he learned that somebody had

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10, 2004
before The Honorable R Markley Dennis Jr

538

1 actually gotten shot, he stopped his vehicle

2 As you see, this is the entry wound, or the
3 entry into the vehicle You can see the metal
4 is going towards the front of the vehicle, it is
5 inward

6 Notice the cushioning on the cushioning
7 (sic) of the vehicle All of the cushioning is
8 actually toward the front of the vehicle as the
9 bullet traveled to the front of the vehicle

10 There is the hole where it exited

11 There are shards of glass all over the
12 hood, still actually on the hood

13 The interior of the victim's vehicle I
14 did do a search of the vehicle There was
15 nothing in the vehicle

16 There is a set of keys, a set of keys that
17 were in that vehicle

18 Approximately where that sign is, is where
19 the -- right there is where the three 40-
20 caliber shell casings were located The 9mm
21 shell casings were in these area right here on
22 the ground

23 That is a white Oldsmobile there That was
24 actually in front of the club after the
25 shooting

26 Q Do you know whether or not that vehicle had

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

539

1 anything to do with the shooting?

2 A No, sir, that vehicle had nothing to do
3 with the shooting After talking to the people
4 around, that vehicle just ended up parked there
5 Stopped, because they -- somebody had bumped
6 into their vehicle and they were more worried
7 about reporting the wreck to their vehicle than
8 any-thing else Said that the Cadillac had
9 bumped into their vehicle while everybody was
10 trying to hurry and exit the parking lot

11 Q That's pretty much it?

12 A Yes, sir

13 Q (Video stopped) What efforts did you'all
14 make to locate shell casings at the scene of the
15 crime?

16 A When we first walked the scene, not only
17 looking for shell casings, we -- we actually
18 walked the scene for about forty-five minutes to
19 an hour, walked around the whole club, walked
20 down the street Then we came back and anywhere
21 that we had found shell casings, we actually got
22 down on our hands and knees

23 After that, if you notice on the drawing,
24 you will notice that the placards for the 40-
25 caliber, that there is a No 7 that is totally
26 out of sequence We used the metal detector and

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

540

1 ended up finding another shell casing on the
2 ground

3 So we used the metal detector to go around
4 and locate more shell casings

5 Q How many 40-caliber shell casings did you
6 find?

7 A There were three

8 Q And referring to State's Exhibit 6, where
9 were those shell casings located?

10 A Right here, sir At the "G" and the "7"

11 Q How about the 9mm shell casings?

12 A There were two that were behind the GEO
13 Tracker and the victim's vehicle, right here by
14 the driveway

15 Q Designated as "D" and "E" on this diagram?

16 A That's correct

17 Q And, finally, was there any other shell
18 casings found?

19 A Yes, sir, the 25 shell casings which --
20 looking at the GEO Tracker, that was way too
21 small a caliber that entered through the
22 Tracker It definitely had to be a bigger
23 caliber bullet Where the vehicles are parked,
24 that 25-caliber shell casing was found, which
25 appeared to be old, but we also collected it due
26 to the fact that it was a shell casing

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

541

1 If you look at where that was at compared
2 to where all the vehicles were, it is not
3 consistent whatsoever with where the GEO Tracker
4 was parked

5 Q Officer James, could you please step down?

6 A (Complies)

7 Q Did you take any photographs out at the
8 scene that morning?

9 A Yes, sir I took all of the photographs
10 taken out at the scene

11 Q I would like for you to look at State's
12 Exhibits 27 through 48, just to verify that
13 those are photographs that you took

14 A (Upon review), they are Yes, sir

15 Q Okay First of all, starting with State's
16 Exhibit 27, what does that depict?

17 A That is the passenger side of the victim's
18 vehicle, the Honda Accord where the victim had
19 been laying There is some plastic and stuff
20 you can see there, some medical supplies There
21 is a pair of medical scissors where he was
22 laying If you look, you can see the red spots
23 of blood where he was laying

24 Q That would be State's Exhibit 28?

25 A (Affirmative nod)

26 Q What does that photograph depict?

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10, 2004
before The Honorable R Markley Dennis Jr

542

1 A That's the GEO Tracker and the victim's
2 vehicle after the shooting had taken place

3 Q That's basically just taken from ---

4 A The Hollywood side, facing that way --
5 Baptist Hill

6 That's facing the Hollywood side, the rear
7 of the vehicle of the suspect vehicle -- excuse
8 me, the victim's vehicle and the GEO Tracker

9 Q That would State's Exhibit 29
10 State's Exhibit 30?

11 A The rear of the victim's vehicle

12 Q State's Exhibit 31?

13 A The rear of the GEO Tracker Also, you can
14 see here the entrance wound to the vehicle

15 Q State's Exhibit 32?

16 A Closeup shot of the entrance wound to the
17 vehicle Of course, you can see the bullet
18 path, trajectory, would be -- the trajectory of
19 the bullet entered here on the rear of the
20 vehicle

21 Q State's Exhibit 33?

22 A The GEO Tracker, the headrest of the
23 driver's seat of the GEO Tracker where the
24 bullet exited through the front of the seat into
25 the front of the vehicle

26 Q State's Exhibit 34?

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

543

1 A Closeup shot of the same thing, the
2 headrest of the Tracker's seat

3 Q State's Exhibit 35?

4 A The exit of the bullet from the GEO
5 Tracker

6 Q State's Exhibit 36?

7 A This is Ricky Presnell with the bullet
8 probes, showing the -- anytime that we have a
9 bullet traveling through, we want to make sure
10 that it is not two different bullets coming
11 through the vehicle We use bullet probes,
12 which we have different lengths We actually
13 ran it through the rear of the vehicle and it
14 came straight through the rear of the vehicle,
15 straight through the headrest, straight through
16 the windshield

17 Q State's Exhibit 37?

18 A Same thing, just a side view of the GEO
19 Tracker, of the bullet trajectory

20 Q State's Exhibit 38?

21 A A closeup shot of the trajectory of the
22 vehicle As you can see, there is also one
23 coming from the rear of the vehicle From the
24 rear to the seat back

25 Q And it appears to have reflected off of
26 something in the seat?

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

544

1 A Yes, sir

2 Q State's Exhibit 39?

3 A This is near the Tracker, a little bit
4 towards the club, towards, uh, -- Baptist Hill
5 You see the blue cups that are sitting there,
6 look at the two blue cups right there One is
7 laying down That's where the 9mm shell
8 casings were located Of course, the GEO
9 Tracker was consistent with where those 9mm
10 shell casings were The blue cups were placed
11 there by Deputy Campbell, prior to us getting to
12 the scene, whenever he located the shell
13 casings He'd learned the shooting had took
14 place in that area, so he put that there to
15 safeguard them

16 Q State's Exhibit 40?

17 A That is a closeup You can see the blue
18 flag and that's also another indicator of where
19 we had found the shell casings We wanted to
20 make sure that they didn't get moved

21 Q State's Exhibit 41?

22 A That is going to be standing closer to the
23 club, looking down towards the victim's vehicle
24 and the GEO Tracker If you look, you can also
25 see the skidmarks -- you can see them from more
26 than one vehicle The skidmarks from the GEO

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

545

1 Tracker are going to be the ones a little
2 further down

3 Q And these are the ---

4 A Once again, that's the 9mm shell casings

5 Q After you had marked them with placards?

6 A That's correct, sir

7 Q This is marked, I believe, on the next
8 exhibits, State's Exhibit 42

9 A And there's a closeup "D", 43,
10 (State's Exhibit) 44 is going to be "E",
11 which represents another 9mm shell casing

12 Q State's Exhibit 45?

13 A This was on the Hollywood side of the
14 vehicle The front of the GEO Tracker, the sign
15 tells us where it was located The 40-caliber
16 casings -- as you can see, there's only "G" and
17 "F", because at the point that I took that
18 picture I hadn't located the other one yet We
19 hadn't brought the metal detector around there
20 When we run the metal detector, that's when we
21 discovered the other one

22 Q That's when you discovered the one that is
23 in State's Exhibit 47?

24 A That's correct We ended up -- it could
25 have been ran over or stepped on, whatever,
26 because when we found it, it was kind of in the

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

546

1 ground

2 Q You ended up collecting those into
3 evidence?

4 A Yes, sir Those are the ones that I
5 actually picked up and took into evidence
6 myself

7 Q Okay

8 A That's the end, State's Exhibit 47 That
9 is right in front Club Diamante and you can see
10 that's the -- that's the 25 shell casing

11 Q State's Exhibit 48?

12 A That's a closeup of the same thing

13 MR DURANT Mark this, please
14 COURT REPORTER Individual or in the
15 bag?

16 MR DURANT The bag, I am not going
17 to introduce these

18 DIRECT EXAMINATION CONTINUED

19 BY MR DURANT

20 Q I hand you what has been marked as State's
21 Exhibit 62, and ask if you recognize that?

22 A Yes, sir, that is my handwriting

23 Q What is that in that bag?

24 A Three boxes with the 40-caliber spent
25 casings Actually these -- these right here
26 were actually remarked by the IBIS tech that ran

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

547

1 them through the IBIS machine

2 Q Those were the 40-caliber shell casings
3 that you collected?

4 A Yes, sir Inside this box, No 7, that's
5 my handwriting from the original case They cut
6 this out and place it in the bottom of the box

7 Q And those correspond to where on State's
8 Exhibit 6?

9 A Right here "G, F and 7", 40-caliber
10 Also, this is my handwriting inside the box
11 right here The same for the third

12 MR DURANT Thank you very much
13 Would you please answer any questions that
14 defense counsel may have for you?

15 WITNESS Yes, sir

16 THE COURT You may cross-examine?

17 MR BUTLER Beg the Court's
18 indulgence

19 THE COURT Sure

20 MR BUTLER We have no questions of
21 this witness

22 THE COURT You may step down

23 (WITNESS STEPS DOWN)

24 MR DURANT State calls Paul
25 McManigal

26 (WITNESS TAKES STAND)

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

548

1 PAUL DAVID McMANIGAL, being
2 duly sworn to tell the truth, the whole truth
3 and nothing but the truth, testified, as
4 follows

5 DIRECT EXAMINATION

6 BY MR DURANT

7 Q Where are you currently employed?

8 A With the Charleston County Sheriff's
9 office

10 Q How long have you been with the Sheriff's
11 office?

12 A Sixteen years

13 Q What are you doing now, and what were you
14 doing on May 11th?

15 A I am a crime scene investigator and that's
16 what I was doing at that time

17 Q Did you participate in processing the crime
18 scene at [REDACTED] Toogoodoo Road on May 11th, 2003

19 A Yes, I did

20 Q Any other officers present when you
21 arrived?

22 A Yes, there were

23 Q When did you get there, do you recall?

24 A I was notified at 4 20 in the morning and I
25 arrived on the scene at 5 30 in the morning

26 Q What efforts did you make to locate shell

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

549

1 casings at that location?

2 A Probably spent an extensive time doing a
3 visual search, looking on the ground, going up
4 and down the street We searched from approx-
5 imately one hundred yards on one side of the
6 club to about a hundred yards on the other side
7 of the club, both sides of the road, including
8 the ditches

9 After we had identified and marked most of
10 the evidence that we could find visually, I
11 again went over the scene with a metal detector
12 and attempted to locate more items

13 Q I believe that Detective James indicated
14 that altogether you found six shell casings out
15 at the scene, is that correct?

16 A That's correct

17 Q Showing you State's Exhibit 63 for identi-
18 fication purposes, I ask if you recognize that?

19 A (Upon review), those are two 9mm shell
20 casings that I recovered at the scene

21 Q How do you know that?

22 A I see my marking card inside this exhibit

23 Q I have the boxes marked individually for
24 identification, 63A and 63-B State's Exhibit
25 63-A, are those shell casings that you located
26 at the scene?

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

550

1 A Yes, 63-A is shell casing "D" on our crime
2 scene sketch, 63-B is shell casing "E"

3 Q Those correspond to what on this diagram?

4 A On this diagram, "D" was located right
5 there Shell casing "E" was right there

6 Q Have you examined those and do they appear
7 to be in substantially the same condition as
8 they were at the time when you recovered them?

9 A Yes

10 MR DURANT We offer 63, 63-A and 63-
11 B into evidence at this time

12 THE COURT Any objection?

13 MS KENT-JENKINSON No objection

14 THE COURT Without objection, they
15 are admitted

16 (SO ENTERED AS STATE'S EXHIBIT 63,

17 INCLUDING 63-A AND 63-B)

18 DIRECT EXAMINATION CONTINUED

19 BY MR DURANT

20 Q Did you collect any other shell casings
21 that day?

22 A Yes, I did I collected a 25-caliber
23 shell casing

24 Q State's Exhibit 64, I ask if you recognize
25 that item?

26 A (Upon review), this is the 25 caliber

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

551

1 shell casing that we labeled as "M" on the
2 scene I collected it

3 Q How do you know that?

4 A Because, again, my identification markings
5 are inside the box

6 Q Does it appear to be in substantially the
7 same condition now as it was at the time that
8 you collected it?

9 A Yes

10 Q Would you put that back in the bag?

11 A Yes

12 MR DURANT We would offer this into
13 evidence, Your Honor

14 THE COURT Any objection?

15 MS KENT-JENKINSON No objection

16 THE COURT Without objection,
17 State's Exhibit 64 is admitted

18 (SO ENTERED AS STATE'S EXHIBIT 64)

19 MR DURANT I would also offer the
20 40-calibers if there is no objection If there
21 is, I won't

22 THE COURT Where are the 40-
23 calibers? They would be in State's Exhibit 60?

24 MR DURANT State's Exhibit 60, Your
25 Honor

26 COURT REPORTER 62, Your Honor

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10, 2004
before The Honorable R Markley Dennis Jr

552

1 THE COURT The bag and contents,
2 State's Exhibit 62, is admitted into evidence
3 without objection

4 MR DURANT Okay I don't believe
5 that I have any additional questions of this
6 witness, Your Honor

7 THE COURT Cross-examine?

8 MS KENT-JENKINSON No questions

9 THE COURT You may come down, sir?
10 (WITNESS STEPS DOWN)

11 THE COURT Do you wish the witness
12 to be excused?

13 MR DURANT Yes, sir, Your Honor

14 THE COURT Any objection?

15 MS KENT-JENKINSON No objection

16 THE COURT You are also free to
17 leave Thank you, sir Is this a point where
18 we can recess for lunch?

19 MR DURANT That's fine with me, Your
20 Honor

21 THE COURT Ladies and Gentlemen, at
22 this point we will take our recess for lunch
23 Please do not begin your deliberations, do not
24 discuss the case among yourselves I would ask
25 you to be back in the jury room, please by a
26 quarter of 2 00 Thank you very much Have a

State v John Henry Ward
Case No 03 GS-10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

553

1 good lunch

2 (JURY OUT @ 12 55)

3 THE COURT Anything from the State
4 before recessing?

5 MR DURANT No, sir, Your Honor I
6 would like to talk just briefly about
7 scheduling

8 THE COURT Let me get off the record
9 and then we can chat about that Anything else
10 from the State?

11 MR DURANT No, sir

12 THE COURT Anything from the
13 Defense?

14 MR BUTLER One brief point At this
15 time, I would like to renew our Motion under
16 Brady and Rule 5 specifically requesting any
17 documentation as to whether or not there were
18 any reports from witnesses that the Defendant
19 had fired a weapon that law enforcement knew
20 about prior to the interview with Tremayne
21 Washington, which would have 1 20 in the
22 afternoon on the 11th I think that I know the
23 answer to that question but I just wanted to
24 make sure

25 THE COURT Basically I think the
26 answer is that you have everything that the

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

554

1 State has

2 MR DURANT As far as I know, Your
3 Honor, he has the same that I have You know,
4 I've given everything I've tried to be pretty
5 diligent about that

6 THE COURT That's the answer You
7 have everything

8 MR BUTLER Thank you

9 THE COURT Thank you very much

10 MR DURANT I am not aware of
11 anything You have all the supplemental reports
12 that I have

13 THE COURT Okay You'all may want
14 to check again Whatever

15 MR DURANT All right

16 THE COURT We will be at-ease
17 insofar as -- you -- we're off the record now

18 (LUNCH RECESS 12 30 - 2 00 P M)

19 (DEFENDANT PRESENT)

20 THE COURT Anything before we bring
21 in the jury?

22 MR DURANT No

23 MS KENT-JENKINSON No, Your Honor

24 THE COURT Bring in the jury,
25 please, sir

26 (JURY IN @ 2 05 P M)

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

555

1 THE COURT Thank you, Ladies and
2 Gentlemen, we are ready to resume Please call
3 your next witness, Solicitor

4 MR DURANT Thank you, Your Honor
5 We call Mike Ringley

6 (WITNESS TAKES STAND)

7 MICHAEL B RINGLEY, JR , being
8 duly sworn to tell the truth, the whole truth
9 and nothing but the truth, testified, as
10 follows

11 DIRECT EXAMINATION

12 BY MR DURANT

13 Q Where are currently you employed, sir?

14 A The Charleston County Sheriff's Office

15 Q How long have you been with the Sheriff's
16 Office?

17 A Sixteen years

18 Q What are your current duties?

19 A I am currently a sergeant with the Patrol
20 division, in Training

21 Q And what were you doing in May 2003?

22 A I was assigned the technical services unit
23 of the Charleston County Sheriff's Office,
24 otherwise known as the crime scene unit

25 Q In that capacity, did you have an
26 opportunity to attend the autopsy of the

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

556

1 deceased in this case, Jamie Simmons, on May 11th
2 of 2003?

3 A Yes, sir, I did

4 Q Where did that autopsy take place?

5 A That autopsy took place at MUSC, at the
6 University of South Carolina

7 Q Do you know who performed that autopsy?

8 A Yes, sir, Dr Susan Presnell

9 Q While at the autopsy, did you receive any
10 evidence from Dr Presnell?

11 A Yes, sir, I did Do you want me to go
12 through the list of the items?

13 Q Not at this time Showing you what we have
14 marked as State's Exhibit 65 for identification,
15 do you recognize that item?

16 A Yes, sir, I recognize these items

17 Q What is that?

18 A The items enclosed within this bag, within
19 these film canisters, are -- is a bullet core
20 and the bullet jacket that was received at the
21 autopsy on 6-12-03

22 Q On May the 11th, '03, I believe, is that
23 correct?

24 A Yes, sir Sorry May 11th

25 Q And how do you know that, sir?

26 A This is my writing on the bag within the

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

557

1 outer bag

2 Q Would you remove those items from the bag,
3 please?

4 A Yes, sir, (complies)

5 Q Marking these two items as 65-A and 65-B, I
6 would ask that you inspect those, examine them,
7 and tell me if those appear to be the bullet
8 core and bullet fragments that you obtained from
9 Dr Presnell?

10 A (Upon review), 65-A is the jacket of the
11 bullet (Upon review), 65-B is the core, the
12 lead core

13 Q Do those appear to be in substantially the
14 same condition now as they were at the time that
15 you obtained them from Dr Presnell on May 11th,
16 2003?

17 A Yes, sir

18 MR DURANT Your Honor, we would
19 offer 65, 65-A and 65-B into evidence at this
20 time

21 THE COURT Any objection?

22 MS KENT-JENKINSON No objection

23 THE COURT Without objection,
24 State's Exhibit 65, 65-A and 65-B are admitted
25 into evidence

26 (SO ENTERED AS STATE'S EXHIBIT 65,

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

558

1 INCLUDING 65-A AND 65-B)

2 DIRECT EXAMINATION CONTINUED

3 BY MR DURANT

4 Q Regarding this case, did you have an
5 opportunity to take those two items, as well as
6 some other items, up to the South Carolina Law
7 Enforcement Division? Commonly known as SLED?

8 A Yes, sir On 6-12-03, I transported these
9 items, along with some clothing, up to SLED, to
10 the forensics laboratory

11 MR DURANT Thank you very much
12 Please answer any questions that defense counsel
13 may have for you

14 THE COURT Any questions?

15 MS KENT-JENKINSON No questions

16 THE COURT You may come down, sir

17 (WITNESS STEPS DOWN)

18 MR DURANT May Mr Ringley be
19 excused?

20 MS KENT-JENKINSON No objection

21 THE COURT Without objection, he is
22 excused

23 MR DURANT The State calls Dennis
24 Wenger

25 (WITNESS TAKES STAND)

26 DENNIS R WENGER, being

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

559

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 Are you currently employed?

7 A No, sir, I am not

8 Q Where were you formerly employed?

9 A I was -- I worked for the Charleston County
10 Sheriff's Office

11 Q For how long?

12 A From -- I worked for the County from July
13 of 1985 to July of this year

14 Q And you are no longer working because of --
15 why?

16 A I am medically retired

17 Q You're having some medical difficulties as
18 the result of an on-the-job injury that you
19 received?

20 A Yes, I do

21 Q Were you still actively employed by the
22 Sheriff's office in May 2003?

23 A I was

24 Q In what capacity?

25 A I was an evidence technician Crime scene
26 evidence technician

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

560

1 Q Did you have an opportunity to participate
2 in the investigation of the shooting at the Club
3 Diamante on May 11th, 2003?

4 A I did

5 Q When did you become involved?

6 A At about 6 00 in the morning I was called
7 from my residence, was told to proceed to Club
8 Diamante on Toogoodoo Road, that there had been
9 a shooting

10 Q Did you make it to that location?

11 A No Before I got there, I was diverted to a
12 nearby location to take pictures of a vehicle
13 that was found in the ditch

14 Q Where was that location at?

15 A It was Harry Road, Harry Drive

16 Q What did you do at that location?

17 A Took pictures of the vehicle that was in
18 the ditch, paid attention to the circumstances,
19 took pictures of some skidmarks leading up the
20 vehicle There was a dirt road, skidmarks
21 leading up to the vehicle that seemed to be
22 associated with the vehicle Then I observed
23 and maintained custody on the vehicle as it was
24 towed all the way back to the evidence compound
25 on Pine Haven Drive

26 Q And it was examined at the evidence

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis, Jr

561

1 compound?

2 A Eventually it was Yes, sir

3 Q Any bullet holes or anything in that
4 vehicle that indicated that it had been involved
5 in a shooting?

6 A I don't recall specifics on that, I wasn't
7 -- I didn't participate in the search warrant on
8 the vehicle

9 Q You didn't assist in processing the car?

10 A No, sir, I didn't

11 Q After doing that, did you have an
12 opportunity to be dispatched to the area of
13 [REDACTED] Road?

14 A I was

15 Q What was that in reference to?

16 A That was in reference to a silver Dodge
17 pickup truck that was found behind the
18 residence

19 Q How far away was that from Harry Road to
20 Toogoodoo Road to where you were?

21 A It was in the close proximity It was --
22 I don't know

23 Q What did you find at that location?

24 A It was a silver pickup truck parked behind
25 a mobilehome There was -- I took -- I was
26 directed by Sergeant Scarborough to take

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

562

1 pictures of the vehicle Then I was told that
2 it was going to be taken into the evidence
3 compound, as well

4 Q You took photos at that time?

5 A Yes, I did

6 Q Did you arrange for the towing?

7 A Yes, we did

8 Q Did you go -- did you have an opportunity
9 to go to a location on Coon Club Road later that
10 morning?

11 A Yes While we were waiting on the wrecker
12 to show up to tow the pickup truck, I was
13 advised to go to Coon Club Road where a bullet
14 hole had been found in a mobilehome, a man's
15 residence

16 Q What did you do at that location?

17 A I took pictures of the bullet, I collected
18 the bullet I probed the track that the bullet
19 has traveled through to get to where it ended
20 it It indicated back towards the rear of the
21 Club Diamante, which is very -- very close by

22 Q You took pictures there, I presume

23 A (No response)

24 Q Did you take pictures there?

25 A At the mobilehome?

26 Q (Affirmative nod)

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

563

1 A Yes, sir

2 Q Then after that, did you have an
3 opportunity to be dispatched to a residence on
4 Cherryhill Road?

5 A Yes, I was

6 Q What was that in reference to?

7 A There was a lime green Cadillac at that
8 location that the resident said had been shot I
9 responded to that, took pictures of the damage
10 to the vehicle The damage consisted of a -- it
11 looked like a scuff mark along the side of the
12 door, as well as the -- the actual, uh, -- the
13 thumb release for the door, from the outside,
14 that you push in to pull the door open, it
15 looked like it had possibly been shot

16 Q Was the owner of the vehicle, Anthony
17 Washington, present?

18 A Yes, he was

19 Q You took pictures of that vehicle at that
20 time?

21 A I did

22 Q What did you do after you finished up on
23 Cherryhill Road?

24 A When I completed at Cherryhill Road, I met
25 up with the detective who was escorting the
26 silver pickup truck, the silver Dodge pickup

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

564

1 truck, which was being towed from Brewer Road

2 I met up with them, and then I completed

3 escorting it to the evidence compound

4 Q Okay I hand you what has now been marked

5 as State's Exhibit 66 for identification

6 purposes and ask if you recognize that document

7 A Yes, I do

8 Q What is that?

9 A This is the -- a printout of a map off of a

10 computer program, which I edited in all the

11 different locations that I responded to with

12 reference to this case on that one day

13 Q And it basically shows all the locations of

14 those places that you responded to as they

15 relate to Club Diamante?

16 A Yes, it does

17 Q You prepared that yourself?

18 A Yes, sir, I did

19 MR DURANT We would move State's

20 Exhibit 66 into evidence

21 THE COURT Any objection?

22 MR BUTLER No objection

23 THE COURT Without objection,

24 State's Exhibit 66 is admitted

25 (SO ENTERED AS STATE'S EXHIBIT 66)

26 DIRECT EXAMINATION CONTINUED

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

565

1 BY MR DURANT

2 Q (Starting video), why don't you come down
3 so that light won't be in your eyes?

4 A (Complies)

5 Q Here is a laser pointer, (tenders) If you
6 would, just point out to the jury first of all
7 where Club Diamante is

8 A That location there is Club Diamante

9 This location here is where the Honda
10 Accord was, initially -- I was diverted to this
11 location here where the Honda was in the ditch
12 on the dirt road

13 Q And from there, you went to Brewer Road, is
14 that correct?

15 A No, from there I went to headquarters with
16 the car

17 Q Okay

18 A After I got to headquarters with the car,
19 I was resent back to Brewer Road, which is that
20 location right there

21 Q Brewer Road is just a little dirt lane,
22 basically?

23 A Right, several mobile homes

24 Q Okay

25 A From that location, I was dispatched to a
26 mobilehome which sits right here

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

566

1 I went back to Brewer They were still in
2 the process of hooking the vehicle up

3 Then I was resent to Cherryhill, which is
4 over here

5 Q That is where the green Cadillac was?

6 A That is where the lime green Cadillac was
7 Yes, sir

8 Q Okay Thank you (Video off)

9 A (Resumes seat)

10 Q Now, what did you do with regard to the
11 Dodge pickup truck that you had towed from
12 Brewer Road?

13 A After I completed escorting it to the
14 evidence compound, we waited for a search
15 warrant to be completed Upon completion of the
16 search warrant, we served the search warrant on
17 the pickup truck as it sat in the evidence
18 compound

19 Q And pursuant to that search warrant, did
20 you remove any items -- first of all, did you
21 photograph the truck?

22 A Yes, we photographed it as it sat there in
23 the evidence compound and collected the items
24 that we believed to be pertinent to this case

25 Q I hand you State's Exhibit 67, and I would
26 ask you to open that First of all, do you

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

567

1 recognize that packaging?

2 A Yes, I do

3 Q Is that your writing on that?

4 A Yes, it is

5 Q Could you please remove the item found
6 inside and tell the jury what that is?

7 A This is a nylon pistol holster which we
8 recovered from the inside door pocket on the
9 driver's door of the silver pickup truck

10 Q Is it in substantially the same condition
11 now as it was when you took it into evidence?

12 A Yes, sir

13 MR DURANT At this time, we would
14 offer State's Exhibit 67 into evidence

15 THE COURT Any objection?

16 MR BUTLER No objection

17 THE COURT Without objection,
18 State's Exhibit 67, a bag containing holster,
19 into evidence

20 (SO ENTERED AS STATE'S EXHIBIT 67)

21 DIRECT EXAMINATION CONTINUED

22 BY MR DURANT

23 Q I hand you now what has been marked as
24 State's Exhibit 68 and ask if you recognize
25 that? Please take a look at its contents and
26 tell us what that is

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

568

1 A (Upon review), this is an empty semi-
2 automatic pistol/handgun magazine

3 Q Where was that recovered in the truck?

4 A From the center console, inbetween the
5 driver's seat and the passenger front seat

6 Q Does that appear to be substantially in the
7 same condition now as it was at the time that
8 you recovered it?

9 A Yes, it does

10 MR DURANT We would offer State's
11 Exhibit 68 into evidence

12 THE COURT Any objection?

13 MR BUTLER No objection

14 THE COURT Without objection,
15 State's Exhibit 68, a bag containing an empty
16 magazine into evidence

17 (SO ENTERED AS STATE'S EXHIBIT 68)

18 DIRECT EXAMINATION CONTINUED

19 BY MR DURANT

20 Q Now, State's Exhibit 69 for identification
21 Do you recognize that item?

22 A Yes, I do

23 Q What is that, sir?

24 A This is a magazine that was recovered,
25 which was full of bullets We have taken the
26 bullets out of it and packaged them separately

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

569

1 In this vehicle, there was a two-tiered console
2 between the driver's and the passenger's seats
3 On removal of the top tier, this was in the
4 second tier at the bottom of the console

5 Q Do those items appear to be in
6 substantially the same condition that they were
7 at the time that you recovered them?

8 A Yes, they do

9 MR DURANT We would offer State's
10 Exhibit 69 into evidence

11 THE COURT Any objection?

12 MR BUTLER No objection

13 THE COURT State's 69, a magazine
14 and bullets, into evidence without objection

15 (SO ENTERED AS STATE'S EXHIBIT 69)

16 DIRECT EXAMINATION CONTINUED

17 BY MR DURANT

18 Q Showing you what has been marked as State's
19 Exhibit 70, do you recognize that item?

20 A I recognize the packaging

21 Q You can remove the item

22 A (Upon review), yes, sir, I do

23 Q What is that, sir?

24 A This is an unfired bullet that we recovered
25 out of the ashtray of the silver Dodge pickup,
26 the dash ashtray on the vehicle

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

570

1 Q Does that item appear to be in
2 substantially the same condition now as it was
3 at the time that you recovered it?

4 A Yes, it does

5 MR DURANT We would offer State's
6 Exhibit 70 into evidence at this time

7 THE COURT Any objection?

8 MR BUTLER No objection

9 THE COURT State's Exhibit 70, a box
10 containing an unfired bullet, is admitted into
11 evidence

12 (SO ENTERED AS STATE'S EXHIBIT 70)

13 DIRECT EXAMINATION CONTINUED

14 BY MR DURANT

15 Q State's Exhibit 71, if you would, take a
16 look at that and see if you recognize that item

17 A (Upon review), yes, sir I do

18 Q What is that?

19 A It is a spent shell casing that we
20 recovered from the vent fins in front of the
21 windshield on the silver Dodge pickup

22 Q And that's a 9mm shell casing?

23 A Yes, it is

24 Q Does that appear to be in substantially the
25 same condition now as it did at the time when
26 you collected it?

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

571

1 A Yes

2 Q Your Honor, at this time we would offer

3 State's Exhibit 71 into evidence

4 THE COURT Any objection?

5 MR BUTLER No objection

6 THE COURT Without objection,

7 State's Exhibit 71, a box containing a spent

8 shell casing, into evidence

9 (SO ENTERED AS STATE'S EXHIBIT 71)

10 DIRECT EXAMINATION CONTINUED

11 BY MR DURANT

12 Q I just want to show you a couple of

13 pictures and then we will be through, Mr

14 Wenger If you want to step down

15 A (Complies)

16 Q Now showing you State's Exhibit 7, do you

17 recognize that photograph, sir?

18 A Yes, I do

19 Q What is that photograph of?

20 A That's a photograph that I took that shows

21 the skidmarks leading off of the paved road onto

22 a dirt road The silver Honda is almost on its

23 driver's side, off into the ditch

24 Q Which way would Club Diamante be in

25 relation to this photograph?

26 A It would be behind us

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

572

1 Q State's Exhibit 8?

2 A That is a closer photograph of the same
3 thing You can definitely see that the tire
4 tracks are leading up to the vehicle

5 Q State's Exhibit 9, what does that depict?

6 A That is the lime green Cadillac that was on
7 Cherryhill Road that, uh, the bullet -- apparent
8 bullet impacted the thumb handle/grip of the
9 passenger front door

10 Q Okay

11 A It also had some damage to the rear bumper
12 as well

13 Q Is this the door that you're talking about,
14 State's Exhibit 11?

15 A Yes

16 Q That is just a photo of the rear of the
17 car, is that correct?

18 A That is an overall, (affirmative nod)

19 Q This would be State's Exhibit 12, what does
20 that depict?

21 A That is a closeup picture of the damage to
22 the thumb release on the door handle of the
23 passenger front door Along it, you can see
24 the ---

25 Q You can use the ---

26 A It's just that there is also a suspicious

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

573

1 mark at the edge of the door

2 Q Right here?

3 A (Affirmative nod), there That may or may

4 not have been made by a glancing blow of a

5 bullet

6 Q State's Exhibit 13?

7 A This is the residence that the silver

8 pickup truck was parked behind

9 Q State's Exhibit 14?

10 A That is the silver pickup truck as it was

11 parked behind that residence?

12 A State's Exhibit 15?

13 A That's the passenger side view of that

14 pickup truck, an overall picture

15 Q State's Exhibit 16?

16 A That appears to be a mark that a bullet may

17 have made on the vehicle

18 Q State's Exhibit 17?

19 A That is a placard indicating that I was the

20 one that took those pictures connected with this

21 case and that's representative of the scale of

22 the bullet -- of the impact

23 Q State's Exhibit 18?

24 A This is one of the magazines as it was

25 found, found in the top console in the center of

26 the silver pickup truck

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

574

1 Q State's Exhibit 19?

2 A That's the full magazine that was found in
3 the bottom part of the console

4 Q State's Exhibit 20?

5 A That is the holster and that's where the
6 holster was found inside the pocket on the
7 driver's door

8 Q State's Exhibit 21?

9 A That is the bullet in the ashtray on the
10 dash of the vehicle

11 Q State's Exhibit 22?

12 A That is -- I believe that's it right there
13 That's the fired casing of the bullet that was
14 found in the vent in front of the windshield

15 Q State's Exhibit 23?

16 A A closer photograph of the same

17 MR DURANT Thank you, sir, you may
18 resume your seat Please answer any questions
19 that defense counsel may have for you

20 WITNESS Yes, sir

21 THE COURT You may cross-examine

22 MR BUTLER No questions

23 THE COURT You may step down

24 (WITNESS STEPS DOWN)

25 THE COURT Any objection to this
26 witness being excused?

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

575

1 MR DURANT No

2 MS KENT-JENKINSON No, Your Honor

3 MR DURANT The State calls Dan
4 DeFreese

5 (WITNESS TAKES STAND)

6 FRANK DAN DeFREESE, being
7 duly sworn to tell the truth, the whole truth
8 and nothing but the truth, testified, as
9 follows

10 DIRECT EXAMINATION

11 BY MR DURANT

12 Q Where are you employed, Mr DeFreese?

13 A I work for the South Carolina Law
14 Enforcement Division in Columbia

15 Q In what capacity are you employed by SLED?

16 A I am employed in the SLED forensic services
17 laboratory I am assigned to the Firemark &
18 Toolmark unit within the laboratory

19 Q How long have you been involved with
20 firearms identification?

21 A Since 1967

22 Q And generally what does the field of
23 firearms identification consist of?

24 A It involves the analyses of firearms and
25 also toolmark evidence Most often, in firearms
26 identification we are asked to identify a

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

576

1 particular bullet as being fired by a particular
2 gun, or cartridge casings, fired shotgun shells
3 to identify them back to the guns from whence
4 they were fired

5 And where the guns are not recovered, to
6 see if -- for instance, if two different
7 bullets, two different cartridge casings, were
8 fired by the same gun or by different guns We
9 do this with a side by side microscopic analysis
10 of the evidence specimens

11 Q What is your educational experience or
12 back-ground in this field?

13 A I am a graduate of the University of South
14 Carolina in Columbia My principal training in
15 the field of firearms and toolmark
16 identification was at SLED

17 After my employment in 1967, I was assigned
18 to the Firearms & Toolmark unit and I began a
19 period of instruction that lasted about two and
20 a half years in the techniques of firearm and
21 toolmark identification

22 My training principally occurred from
23 Lieutenant Miller Miller Cade Lieutenant Cade
24 established the SLED laboratory when SLED itself
25 was established in 1947

26 After I completed my training, I began

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

577

1 accepting cases for analyses on my own and
2 testifying as to my results, which I have been
3 doing since 1969

4 Q Obviously you are authorized by SLED to
5 conduct firearms identifications, is that
6 correct?

7 A I am

8 Q Are you a member of any professional
9 organizations relating to that field?

10 A I am I am a member of the Association of
11 Firearms & Toolmark Examiners

12 Q Do you know or have you in the past had any
13 instructional duties in this field?

14 A I do not now, but I have in the past I
15 have given instruction at the South Carolina
16 Criminal Justice Academy

17 Q You obviously have been qualified as an
18 expert in this area before, is that correct?

19 A Yes

20 Q How many times over the period of years?

21 A I think I'm somewhere between 600 and 700
22 times now

23 Q In what courts?

24 A Mostly in courts of General Sessions in
25 this state In some other hearings in this
26 state and Federal court, as well

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

578

1 MR DURANT Your Honor, at this time
2 we would offer Mr DeFreese as an expert in the
3 area of firearms and toolmark identification

4 THE COURT Do you care to examine
5 him as to qualification?

6 MR BUTLER No, sir, we agree

7 THE COURT Very well, he will be
8 permitted to render opinions in those areas

9 DIRECT EXAMINATION CONTINUED

10 BY MR DURANT

11 Q With reference to this particular case, did
12 you receive some items of evidence from the
13 Charleston County Sheriff's Office under your
14 Lab No L0306086?

15 A Yes, I did

16 Q What items did you receive from the
17 Sheriff's Office?

18 A I received one item that consisted of a
19 plain lead bullet core and two fired bullet
20 jacket fragments

21 Q I hand you what has previously been marked
22 as State's Exhibit 65, 65A and 65B, and ask if
23 you recognize those items?

24 A (Upon review), yes, sir

25 Q How do you know that those are the items
26 that you examined?

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

579

1 A By the markings which I placed on them

2 after I received them

3 Q Moving on, what else did you get from the
4 Sheriff's office?

5 A I received several fired 9mm luger caliber
6 cartridge casings

7 Q In that regard, let me show you State's
8 Exhibit 65A and 65B and ask if those are two of
9 the 9mm shell casings that you ---

10 THE COURT Did you say 65A and B?

11 WITNESS 63A and B

12 MR DURANT I need to bring my
13 glasses up here

14 THE COURT 65A was the lead core
15 and jacket

16 MR DURANT Sorry

17 DIRECT EXAMINATION CONTINUED

18 BY MR DURANT

19 Q So 63A?

20 A Yes

21 Q What are those?

22 A These contain two of the three 9mm luger
23 caliber cartridge casings

24 Q And those are the ones designated as Items
25 "D" and "E"?

26 A Yes, sir, they are

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

580

- 1 Q Okay Let me show you State's Exhibit 71,
2 and ask if you recognize that item?
3 A (Upon review), I do
4 Q Has that been marked by you, as well?
5 A It has
6 Q That is the item marked as the shell casing
7 recovered from the Dodge pickup?
8 A Yes, sir
9 Q State's Exhibit 70, do you recognize that
10 item?
11 A (Upon review), yes, sir I received this,
12 as well This is an unfired 9mm luger caliber
13 cartridge
14 Q That would be that recovered from the
15 ashtray of the pickup truck?
16 A Yes, sir, it is marked "ashtray, silver
17 Dodge PU", pickup
18 Q I hand you State's Exhibit 62 and ask if
19 you recognize the contents of that bag?
20 A (Upon review), I recognize these These
21 specimens are three fired 40-caliber Smith &
22 Wesson caliber cartridge casings They are a
23 different caliber from the previous one
24 Q Those are designated as "G, F and 7"?
25 A They are
26 Q State's Exhibit 69, do you recognize the

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

581

1 contents of that?

2 A (Upon review), yes, sir, I recognize this

3 Q What is that?

4 A One is a magazine, a magazine which is for
5 a Ruger pistol, and the other are nine unfired
6 luger caliber cartridges

7 Q That is from the bag designated "Full
8 magazine, from the lower center console of the
9 silver Dodge pickup " Is that correct?

10 A Yes

11 Q You also received a couple of firearms in
12 this case, did you not?

13 A Yes, I did

14 Q Do you recognize the photograph contained
15 in State's Exhibits 52 and 53 as being one of
16 those weapons that you examined?

17 A (Upon review), I recognize the serial
18 number, P077826, as the serial number of the H1
19 Point Model C pistol that I examined in this
20 case

21 I recognize the other photograph as being a
22 photograph of a H1 Point Model C 9mm pistol

23 Q What was the other firearm that you
24 examined in this case?

25 A It ---

26 Q Excuse me, before we get to that, do you

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 - 10 2004
before The Honorable R Markley Dennis Jr

582

1 recognize State's Exhibit 60 for -- marked for
2 identification only?

3 A (Upon review), I do

4 Q Those would be the rounds that came from
5 that H1 Point 9mm?

6 A Yes

7 Q What was the other pistol that you
8 examined?

9 A The other pistol was a Ruger, Model P95DC,
10 9mm luger caliber semiautomatic pistol

11 Q I hand you what has been marked as State's
12 Exhibit 59 for identification purposes and ask
13 if that appears to be that type of pistol?

14 A (Upon review), it is that type of pistol
15 It appears to be the pistol in that it is -- in
16 that its serial number area is altered

17 Q Thank you very much In your examination
18 of these items, did you test-fire the two
19 pistols that were provided to you?

20 A Yes, sir, I did

21 Q Were the projectiles and shell casings
22 obtained from those test-firings compared with
23 the projectiles and shell casings that were
24 submitted to you in evidence, as evidence in
25 this case?

26 A Yes, sir Where it was appropriate to

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

583

1 compare them, I have compared the test bullets
2 and cartridge casings from both pistols with the
3 evidence

4 Q And what was your conclusion(s) based upon
5 that examination?

6 A My conclusion was neither of these
7 submitted pistols fired any of the submitted
8 bullets or cartridge casings

9 Q And you made that determination, how?

10 A Based on the comparison of the individual
11 markings and of the class characteristics of the
12 test bullets, the cartridge casings fired by the
13 two pistols

14 Q With regard to State's Exhibits 65A and B,
15 contained in State's Exhibit 65, the projectile
16 fragment obtained from the autopsy in this case,
17 were you able to reach any conclusion concerning
18 the caliber of that projectile?

19 A I was I found both the core and the
20 jacket fragment/fragments in State's Exhibit 65
21 were consistent with 9mm luger caliber
22 ammunition

23 Q And that was done by virtue of its weight
24 and diameter?

25 A Its weight and its size and its other
26 remaining observable physical characteristics

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

584

1 Q Is there any possibility that it was a 40-
2 caliber projectile?

3 A No, sir

4 Q Is there any possibility that it was a 25-
5 caliber projectile?

6 A No, sir

7 Q Were you able to determine what type and/or
8 makes of firearms could have fired rounds such
9 as that?

10 A Yes, sir As an investigative aid, we
11 frequently will measure the land and groove
12 widths of a bullet and, from a database, we will
13 provide the investigator with a list of possible
14 makes or firearms that could have fired this
15 bullet I did that in this case

16 Q Was a Ruger P89 one of the types of weapons
17 which could have fired that gun?

18 A Yes, sir, it was

19 Q Based on your database?

20 A Yes

21 Q Did any of the weapons in your database
22 which could have fired this type of rounds, is
23 any of those weapons a revolver?

24 A No, sir

25 Q Do they make 9mm revolvers?

26 A They do

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

585

1 Q And are there any 9mm revolvers made with
2 lands and grooves characteristic of those which
3 you found on State's Exhibit -- what is the
4 number there?

5 A State's Exhibit 65 All of the 9mm luger
6 revolvers that I am aware of either use a
7 different number of lands and grooves than are
8 present on State's Exhibit 65 or use different
9 widths of lands and grooves So the answer to
10 the question is 'no', I am not aware of any
11 9mm luger caliber revolver that has land and
12 groove class characteristics that are like the
13 fragments in State's Exhibit 65

14 Q 9mm revolvers are fairly rare anyway,
15 aren't they?

16 A Comparatively rare The overwhelming
17 majority of 9mm luger caliber firearms are
18 pistols, carbines and submachine guns

19 Q With regard to the clip that you examined
20 or the magazine that you examined, State's
21 Exhibit 69, is that magazine consistent with one
22 which would be operational in a Ruger P89
23 semiautomatic pistol?

24 A Yes This is a magazine that would fit
25 into a Ruger P89 and some other in the Ruger P-
26 series pistol

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

586

1 Q It is basically a Ruger magazine?

2 A Yes, sir

3 Q Now, moving on, let's see -- with regard to
4 the ammunition that was in that full magazine,
5 State's Exhibit 69, compared to the unfired
6 bullet that was from the ashtray, State's
7 Exhibit 70, are those the same type of
8 ammunition?

9 A They are the same caliber and some of them
10 are of the same manufacturer The cartridge in
11 State's Exhibit 70 ---

12 Q That would be the one from the ashtray?

13 A Yes, sir

14 Q It is a Winchester brand 9mm luger
15 caliber It is a nominal 115 grain full-metal
16 jacketed bullet that is loaded into this

17 The bullet that is loaded into the
18 cartridge

19 in State's Exhibit 70 has a brass-colored bullet
20 jacket

21 There are a number of Winchester brand
22 cartridges that are also present in State's
23 Exhibit 69 However, these have a -- these are
24 also nominally 115 grain full-metal jacketed
25 bullets, but they have a copper alloy bullet
26 jacket that is a different color

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

587

1 One of them appears more copper in color
2 and the other one appears more brass in color
3 So they are the same caliber and most of them
4 were made by the same manufacturer, but they are
5 two different styles of ammunition in terms of
6 their bullet jacket material

7 Q That's is with regard to the one found in
8 the ashtray compared to the ones in the clip?

9 A Correct

10 Q And, correct me if I am wrong, the one in
11 the ashtray is brass-jacketed and the ones in
12 the clip were copper-jacketed?

13 A Correct

14 Q Now, with regard to the bullet from the
15 autopsy There was a bullet that was removed, a
16 fragment recovered from the deceased That was
17 State's Exhibit what?

18 A State's Exhibit 65

19 Q Was that ammunition similar to either type
20 ammunition from either the ashtray or the clip
21 found in the truck?

22 A The bullet jacket fragments that are
23 contained in State's Exhibit 65, 65A -- 65A has
24 two brass-colored bullet jacket fragments So
25 the bullet jacket fragment in State's Exhibit
26 65A is consistent in its construction with the

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 - 10, 2004
before The Honorable R Markley Dennis Jr

588

1 kind of bullet that was loaded into State's
2 Exhibit 70 but not consistent with the kind of
3 bullets that were located into the cartridges
4 in State's Exhibit 69

5 Q Being the magazine?

6 A Yes, sir

7 Q Do you now who sells those brass-jacketed
8 type 9mm?

9 A The only place that I have ever been able
10 to buy them is at Wal-Mart Now, they may be
11 sold at other places The only box in which
12 I've ever seen them offered for sale is a bulk
13 box of 100 It's a big, white box that has a
14 hundred loose cartridges in it

15 Q Now, if you would, -- did you have an
16 opportunity to compare the shell casing -- let's
17 see -- with regard to 63B, which was the 9mm
18 shell casing designated as "E", and 63A, which
19 was the 9mm shell casing designated as "D",
20 both of which were recovered at the club on
21 Toogoodoo Road, and State's Exhibit 71, a 9mm
22 spent shell casing recovered from the hood of
23 the pickup truck? Did you compare those
24 cartridges or shell casings with one another?

25 A I did

26 Q Microscopically?

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10, 2004
before The Honorable R Markley Dennis Jr

589

- 1 A Yes
- 2 Q What were the results of your comparison?
- 3 A I found either a matching firing pin or
- 4 matching breech face impressions on the three of
- 5 them, from which I was able to conclude that all
- 6 three of them were fired by the same gun
- 7 Q But none of them were fired by the two
- 8 pistols that you examined in this case, right?
- 9 A That's correct
- 10 Q With regard to the 40-caliber shell
- 11 casings, items "F, G and 7" ---
- 12 A State's Exhibit 62
- 13 Q State's Exhibit 62, (affirmative nod) Did
- 14 you compare those shell casings?
- 15 A I did
- 16 Q What were the results of your comparison of
- 17 those shell casings?
- 18 A I also found sufficient matching markings
- 19 on them to conclude that all three of them were
- 20 fired by the same gun, but they were not fired
- 21 by the gun that fired the three 9mm luger
- 22 cartridge casings which we were talking about
- 23 earlier
- 24 Q That is, quite frankly, because a 40
- 25 caliber won't fit in a 9mm, will it?
- 26 A Correct

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

590

1 Q And, finally, is the -- the bullet that was
2 removed from the victim's body at the autopsy,
3 State's Exhibit 63, ---

4 a State's Exhibit 65

5 Q State's Exhibit 65 --- consistent with
6 the spent 9mm shell casings that you found, the
7 two that came from the parking lot and the one
8 that came from the truck?

9 A They could have been parts of the same
10 cartridge at some point in time They may or
11 they may not have

12 Q You can't say that they were or that they
13 weren't but ---

14 A I can't say if they were or weren't The
15 bullet fragments in State's Exhibit 65 are
16 consistent with the kind of bullets you see
17 loaded into some Winchester 9mm luger caliber
18 cartridges The three cartridges cases are all
19 Winchester 9mm luger caliber cartridge cases

20 MR DURANT Thank you The Court's
21 indulgence just a moment?

22 THE COURT Sure

23 MR DURANT Please answer any
24 questions that defense counsel may have for you?

25 WITNESS Certainly

26 THE COURT You may cross-examine

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

591

1 CROSS EXAMINATION

2 BY MR BUTLER

3 Q Good afternoon, Mr DeFreese I just have
4 a couple of questions Focusing on Item 10 in
5 the SLED report, your results, the bullet core
6 fragment and two fired brass and copper-coated
7 alloy jacket fragments taken from the autopsy
8 Those are just pieces of the jackets, the outer
9 metal casing of the bullet, is that right?

10 A That's correct

11 Q And the other fragments would be fragments
12 of the bullet itself, core fragment?

13 A One of them is a core fragment, it's really
14 most of the bullet core The other two pieces
15 are of the bullet jackets

16 Q So these are pieces of the bullet?

17 A Correct

18 Q And the upshot of all this is that from
19 your examination of those pieces of that bullet,
20 you can say that it could have been fired by a
21 nine millimeter (9mm) weapon?

22 A Yes, sir Looking at those pieces, all the
23 remaining characteristics of those pieces are
24 wholly consistent with a 9mm luger caliber
25 bullet

26 Q And "consistent" means that you cannot rule

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

592

1 out the possibility that it was a 9mm -- in
2 other words, you can say that it may have been a
3 9mm weapon that fired that particular weapon?
4 A I am saying that it was most likely was a
5 9mm luger caliber firearm that fired it There
6 are a number of calibers that are close to a
7 9mm luger, so you can't theoretically rule out
8 the possibility that it was inappropriately
9 substituted in some other firearm or that the
10 bullet from a 9mm wasn't loaded into some other
11 cartridge casings That is a physical possi-
12 bility It's one that I've never encountered,
13 but I can't rule it out

14 MR BUTLER Thank you very much

15 THE COURT Redirect?

16 MR DURANT No, sir, Your Honor

17 THE COURT You may come down

18 (WITNESS STEPS DOWN)

19 MR DURANT We'd ask that Mr
20 DeFreese be excused

21 MR BUTLER No objection

22 THE COURT Thank you, Mr DeFreese,
23 you are excused Solicitor, call your next
24 witness

25 MR DURANT The State would call
26 Jennifer Stoner Your Honor, before I start

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

593

1 with Ms Stoner, I have had marked as State's
2 Exhibit 72 a report from the South Carolina Law
3 Enforcement Division indicating a 9mm Ruger
4 semiautomatic pistol was sold to Tremayne
5 Washington by Best Bet Howell (phonetic) Company
6 on October 19th, 2000 We would offer this into
7 evidence, I believe without objection

8 THE COURT Without objection?

9 MS KENT-JENKINSON Without
10 objection

11 THE COURT Without objection, it
12 is admitted as State's Exhibit 72

13 (SO ENTERED AS STATE'S EXHIBIT 72)

14 (WITNESS TAKES STAND)

15 JENNIFER M STONER, being
16 duly sworn to tell the truth, the whole truth
17 and nothing but the truth, testified, as
18 follows

19 DIRECT EXAMINATION

20 BY MR DURANT

21 Q Good afternoon

22 A Good afternoon

23 Q Could you tell the jury where you are
24 employed?

25 A I am employed by the South Carolina Law
26 Enforcement Division in the Trace Evidence

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

594

1 section

2 Q How long have you been a trace evidence
3 examiner at SLED?

4 A For approximately seven years

5 Q What exactly is trace evidence or trace
6 evidence examination?

7 A In our lab we actually analyze a large
8 variety of evidence

9 We look at paint evidence from hit-and-runs
10 or robberies

11 We look at gunshot residue evidence,
12 gunpowder evidence

13 We look at clothing of shooting victims, to
14 test the area around the hole to see how far
15 they were from the gun when they were shot

16 We look at fiber evidence

17 We analyze explosive residue

18 We analyze duct-tape, adhesives, rope,
19 cord, miscellaneous unknown materials

20 We also look at some hair evidence

21 Q So that includes the examination of gunshot
22 residue tests?

23 A Yes

24 Q What education and training have you had in
25 the area of trace examination?

26 A I have a bachelor of science in chemistry

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

595

1 from California University in Pennsylvania
2 After I graduated there, I was hired at the
3 South Carolina Law Enforcement Division and I
4 went through in-house training programs there,
5 and I have also taken numerous courses outside -
6 - basically on the instrumentation that we use
7 or on different examinations by different people
8 in the field

9 Q Are you certified by the South Carolina Law
10 Enforcement Division in trace examination and
11 GSR examination?

12 A I am

13 Q How many GSR examinations have you
14 performed in your career?

15 A I have performed well in excess of 1,500
16 GSR kit examinations

17 Q Have you ever been qualified as an expert
18 in the area of trace examination, particularly
19 with regard to gunshot powder residue?

20 A Yes, I have

21 Q On how many occasions?

22 A I have actually been certified thirty-five
23 times in court, and approximately twenty-two
24 of those were gunshot residue or gunpowder
25 examinations

26 MR DURANT Your Honor, at this time

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 - 10 2004
before The Honorable R Markley Dennis Jr

596

1 I would offer Ms Stoner as an expert in the
2 area of trace examination and gunshot residue
3 examination

4 THE COURT Any objection?

5 MS KENT-JENKINSON No, Your Honor

6 THE COURT Without objection, she
7 will be permitted to render opinions in those
8 areas

9 DIRECT EXAMINATION CONTINUED

10 BY MR DURANT

11 Q What is gunshot residue?

12 A Gunshot residue is what we -- we call
13 anything that leaves the barrel, or left on it,
14 when it is shot -- whenever you fire a weapon,
15 there's a lot of heat and a lot of pressure We
16 look for certain elements that are expelled from
17 the weapon whenever it fired

18 Q And that can be expelled from the barrel of
19 the weapon or expelled from the breech of the
20 weapon, as well?

21 A It can be expelled from the barrel, the
22 breech, the trigger guard of the cylinder gap

23 Q And it basically can be contracted by
24 handling a weapon, as well? Is that correct?

25 A That's correct If you handle a dirty
26 weapon, anything that is left on that gun can

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

597

1 transfer to your hands

2 Q What are the components of gunshot residue?
3 What are you looking for when you are performing
4 these examinations?

5 A Basically it is a two-part test

6 In the first part of the test, we look for
7 elevated levels of barium, antimony and lead on
8 a person's hand(s)

9 In the second part of the test, we actually
10 look for round particles that contain these
11 metals

12 The way that we look at it -- when a weapon
13 fires, you have high heat and high pressure, so
14 the particles that are going to be expelled from
15 that weapon are in a molten state When they
16 harden, they are going to be round We look at
17 that round pathology and we look to see if those
18 elements are present in those particles

19 Q How long does that residue tend to remain
20 on a living human being?

21 A On a living human being, you can't expect
22 to find gunshot residue, or any components of
23 gunshot residue, on their hands after a six-hour
24 timeframe So once -- if a person fires a
25 weapon, six hours from that time you won't find
26 any of that on their hands

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

598

1 Q Why is that?

2 A Normally because gunshot residue -- you
3 can't see it, but -- it's somewhat like if
4 you're baking and you get flour on your hands
5 It's like a light dusting on your hands So
6 anything that you do is going to take that
7 residue off your hands If you wash your hands,
8 it's going to be gone If you sweat, it's going
9 to take it off If you put your hands in your
10 pocket Anything that you do will remove that
11 residue from your hands Also, if you're a
12 living person, your body is going to naturally
13 absorb that residue So after six hours, you
14 can't expect to find that residue on hands

15 Q What is used to collect these samples that
16 you'll examine?

17 A It's a gunshot residue collection kit It
18 consists of Q-tip type swabs and particle lifts,
19 which are -- it's basically a round particle
20 lift that has like an adhesive on it, like on a
21 Band-aid, that you put on the hands to collect
22 anything that is there

23 Q And once you get these kits, how do you
24 test them? Microscopically or ---

25 A Basically when we get the kits in, we take
26 the swabs collected from the hands We put them

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

599

1 in a nitrate/acid solution, prepare them for our
2 instrument run, and then we just -- when it goes
3 on the instrument, it gives us a report sheet
4 back and that gives us the levels that are
5 present on that person's hands

6 When they collect, they collect from the
7 right palm, the right hand, the left palm, the
8 left back, and they also take a control which is
9 from area on the body which was not exposed to a
10 weapon, usually behind the knee or under your
11 arm Then we subtract those levels We take
12 what is normally in the body We look at these
13 levels and come to our conclusion(s)

14 Q With regard to this particular case, your
15 Lab No L0306086, did you have occasion to
16 examine some gunshot residue tests that were
17 submitted by the Charleston County Sheriff's
18 Office

19 A I actually got nine gunshot residue kits in
20 this case

21 Q When did you receive that evidence?

22 A You want when it was submitted to SLED or
23 when I actually ---

24 Q When you did your examination

25 A (Upon review), on August 8th, 2003

26 Q What individuals did you receive kits on?

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10, 2004
before The Honorable R Markley Dennis Jr

600

1 A I received a kit from
2 Jamie Simmons
3 John Raymond Campbell
4 Michael A Mungin
5 Jermaine Heyward
6 Denode Heyward
7 Kenneth Sanders
8 Johnny Buncum
9 Tremayne Washington
10 Keith Richards
11 Q With regard to your testing of the sample
12 submitted on Jermaine Heyward, which would be
13 your Item 4,
14 On Denode Heyward, which is your Item 5,
15 Tremayne Washington, which is your Item 8,
16 and Keith Richards, which is your Item 9,
17 what were your conclusions based on the exami-
18 nation of those samples?
19 A In all four of these kits the conclusion
20 was that no analyses were performed because the
21 samples were collected beyond the six-hour
22 timeframe in which probative evidence would be
23 found Since they were collected beyond that
24 timeframe, we don't even look at the evidence
25 Q What time were you advised that the
26 shooting had taken place in this case?

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

601

1 A According to the incident report that I
2 received, they were dispatched at 227 on 5-11,

3 A M

4 Q Is that the time that you used?

5 A Yes

6 Q So all of those samples were obtained in
7 excess of the six-hour window?

8 A That's correct

9 Q Next, with regard to your findings with the
10 samples submitted on John Campbell, your Item 2,
11 Michael Mungin, which is your Item 3, and Johnny
12 Buncum, which is your Item 7, what were your
13 findings with regard to the examination of those
14 samples?

15 A In those three samples, I found that the
16 quantity of metals detected did not indicate the
17 presence of gunshot residue

18 Q Does that necessarily mean that these
19 individuals had not handled or fired a weapon?

20 A No Basically a negative with a gunshot
21 residue kit just means that there is no evidence
22 there to support that they fired or handled a
23 weapon since the evidence is so fragile

24 I don't have any knowledge of what they did
25 after the alleged shooting If they went home
26 an hour later and washed their hands, I am not

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 - 10 2004
before The Honorable R Markley Dennis Jr

602

1 going to find anything on their hands

2 So the negative just means that there is no
3 evidence there to support it, it doesn't mean
4 that they did not fire or handle a weapon

5 Q Next with regard to your findings on the
6 sample that you tested on Kenneth Sanders,
7 your Item 6, what were the results of your
8 examination?

9 A Gunshot residue was found on the back of
10 his right hand

11 Q Finally, with regard to your findings with
12 the samples from Jamie Simmons, your Item 1,
13 what were your findings?

14 A Round lead particles were found on the
15 palms and backs of both hands, and round lead
16 particles are considered one of the components
17 of gunshot residue

18 Q Lead particles are not the barium and
19 antimony?

20 A Correct, these were just lead

21 Q And gunshot residue generally consists of
22 all three?

23 A First, to call it "gunshot residue", it has
24 to contain all three particles So we have
25 found, during the course of all our cases that
26 we do, we'll find gunshot residue and we will

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

603

1 also find round lead particles The majority of
2 what is in the bullet, in the primer, is lead
3 So when we find this round lead, we're also
4 looking for that indicated

5 Q Is the firing or handling of a weapon the
6 only way that you can test positive for gunshot
7 residue?

8 A You can test positive from firing a weapon,
9 handling a weapon, if you're near a weapon when
10 it was fired Or possibly if you touch
11 something that has gunshot residue on it, you
12 can pick it up

13 Q For example, can you get it from person-to-
14 person contact?

15 A It is possible

16 Q Hand-to-hand contact?

17 A It's possible

18 Q So, as a matter of fact, the kit that you
19 send out, you'all make them collect those with
20 gloves to make sure that it is not contaminated
21 by any gunshot residue from the person taking
22 the sample, is that not correct?

23 A Correct Normally the sample is taken by
24 the crime scene officer or police officer Since
25 they do handle weapons and ammunition and they
26 handle those things, there are gloves provided

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

604

1 in the kit or they are instructed how to wear
2 and how to free the gloves during the collection
3 process

4 Q Because there is the possibility of
5 transfer, correct?

6 A Yes

7 Q For example, if I were to fire a weapon and
8 shake your hand sometime after that, then what
9 are the chances -- isn't it possible that you're
10 going to have gunpowder residue transferred to
11 your hands?

12 A There is a possibility that you could get
13 gunshot residue on your hands

14 Q How about gunshot residue on inanimate
15 objects?

16 A If you fire a weapon on any inanimate
17 object in that area, that's in -- when the
18 weapon is fired, the cloud of gunshot residue
19 that is expelled from the barrel, anything that
20 is in that area, that residue will deposit on
21 It will stay on that object until it is
22 physically removed

23 If you shoot a bullet from a weapon from
24 your vehicle and you take particle lifts from
25 your window, or if you have gunshot residue on
26 the window, it will stay there until you take it

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

605

1 off So it's not like it is a living person
2 where that object is going to absorb it or wash
3 its hands It can't do any of that So if I
4 fire a gun here and deposit residue on this
5 (witness stand), it will stay there until it is
6 washed

7 Q That would be true for something like
8 gloves, is that correct?

9 A Any inanimate object

10 Q Like leather guns? If I were to fire a
11 weapon with leather gloves on, or if I were to
12 handle a weapon with leather gloves, or if I
13 were to handle a dirty holster with leather
14 gloves on and I didn't wash the gloves it would
15 stay there, is that correct?

16 A That's correct

17 Q Are the level of lead particles found on
18 the victim in this case, Jamie Simmons,
19 consistent with a transfer?

20 A Consistent with a transfer from -- can you
21 repeat your question?

22 Q Are the levels of lead particles that you
23 found on the deceased's hands, Jamie Simmons',
24 consistent with a transfer in this case?

25 A The levels that I found on his hands were
26 consistent throughout Like each area was

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

606

1 approximately the same Normally when you fire
2 a weapon or if you're near a weapon, one area of
3 your hand is going to be more exposed than the
4 other So if you have a transfer, normally it
5 is more consistent throughout, which is what I
6 did find

7 Q So the answer is, the levels are consistent
8 with a transfer?

9 A Yes, sir

10 MR DURANT Would you please answer
11 any questions that defense counsel may have for
12 you?

13 THE COURT You may cross-examine

14 MS KENT-JENKINSON I don't have any
15 questions for this witness Thank you

16 THE COURT You may come down

17 (WITNESS STEPS DOWN)

18 THE COURT Any objection to Ms
19 Stoner being excused?

20 MR DURANT Pardon me, I'm sorry
21 Your Honor?

22 THE COURT Do you wish the witness
23 to be excused?

24 MR DURANT Yes, sir

25 THE COURT Any objection?

26 MS KENT-JENKINSON No objection,

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

607

1 Your Honor

2 THE COURT You are free to leave

3 MR DURANT Just a moment, Your

4 Honor Your Honor, may we approach

5 (BENCH CONFERENCE RE SCHEDULE)

6 THE COURT All right, Ladies and

7 Gentlemen, at this point we will take a break

8 Do not begin your deliberations, don't discuss

9 the case, we will be with you in about fifteen

10 minutes, I would think Thank you

11 (JURY OUT @ 3 10 P M)

12 (BRIEF RECESS 3 10 - 3 25 P M)

13 (DEFENDANT PRESENT)

14 THE COURT Are we ready to proceed?

15 MR DURANT Yes, Your Honor Thank

16 you The pathologist will be our last witness

17 THE COURT Is the Defense ready?

18 MS KENT-JENKINSON Yes, Your Honor

19 THE COURT Let's bring in the jury

20 (JURY IN @ 3 25 P M)

21 THE COURT Thank you, Ladies and

22 Gentlemen I have what is now Court's Exhibit 1

23 that is a question from you, Mr Presiding

24 Juror, indicating that you and maybe some

25 others, I don't know, wish to take notes

26 The first thing that I would say is

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

608

1 that we're about midway or have almost completed
2 the State's case but -- but, having said, I am
3 not opposed to jurors taking notes if you'd
4 like

5 The only thing is, you need to put your
6 juror number on the outside of your pad At the
7 end of the day, you will be responsible for
8 collecting the pads and giving them to the
9 bailiff because they must stay here Then upon
10 your return, we will hand them to you and you
11 can then distribute them to the jurors that are
12 involved, and that will be -- that will be in
13 force until the case is concluded

14 I would state however that the notes
15 are your notes, for your purposes The record,
16 of course, is being kept by Ms Garrison If
17 during deliberations you should ever have a
18 disagreement or discussion as to what a witness
19 said or didn't say, we have the ability to
20 replay that testimony for you Also if you have
21 some question about what I change you, I can
22 print that and send that to you So that will
23 be available to you

24 Again, if you find it beneficial and
25 helpful, that's fine The other part that I
26 would caution you about in notetaking is this,

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

609

1 and you -- you have probably noticed that I have
2 been taking notes My are for my purposes I
3 don't have any decisions about the factual
4 issues in this case And you and I know that
5 sometimes it is not only what someone says but
6 how they say it If you are writing, looking
7 down writing your note, there may be some
8 expression, there may be some body language that
9 you miss that would have been very helpful to
10 you in making the determinations and decisions
11 that you are going to have to make But, having
12 said that, please feel free to do that

13 If there are jurors who wish to take
14 notes, please raise your hand The Clerk has
15 some pads for you

16 (NOTEPADS DISTRIBUTED TO SEVERAL JURORS)

17 THE COURT Thank you very much,
18 Ladies and Gentlemen, I appreciate We are
19 ready to proceed Solicitor, you may call your
20 next witness

21 MR DURANT Thank you, Your Honor
22 The State calls Dr Erin Presnell Your Honor,
23 may we approach?

24 THE COURT Yes, sir

25 SIDEBAR

26 MR DURANT Your Honor, defense

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 - 10, 2004
before The Honorable R Markley Dennis Jr

610

1 counsel has indicated a willingness to stipulate
2 to Dr Presnell's credentials and expertise in
3 the field of forensic pathology

4 THE COURT Is that correct?

5 MS KENT-JENKINSON Yes, sir

6 (SIDEBAR CONCLUDED)

7 THE COURT Thank you She will be
8 permitted to render opinions in that area

9 (WITNESS TAKES STAND)

10 SUSAN ERIN PRESNELL, M D ,
11 being duly sworn to tell the truth, the whole
12 truth and nothing but the truth, testified, as
13 follows

14 DIRECT EXAMINATION

15 BY MR DURANT

16 Q While affiliated with the Medical
17 University of South Carolina, Dr Presnell, did
18 you have occasion to perform an autopsy on one
19 Jamie Simmons on May 11th, 2003?

20 A I did

21 Q When was Mr Simmons pronounced dead?

22 A (Upon review), he was pronounced at 3 59

23 A M on May 11th, 2003

24 Q What was Mr Simmons' age?

25 A He was presented to us as a twenty-year-old

26 (20) male

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

611

1 Q His height?

2 A It was approximately 70 5 inches

3 Q His weight?

4 A He was approximately 150 pounds

5 Q You, of course, performed an external
6 exami-nation of his body, did you not?

7 A Yes, all of our forensic autopsies include
8 an external examination with documentation of
9 injuries, as well as an internal examination
10 where we look at all the organs, including the
11 brain, and we take samples which we look at
12 under the microscope and also obtain fluids,
13 body fluids, for toxicology testing All of
14 these things were done on Mr Simmons

15 Q What evidence of recent injury did you find
16 with regard to your external examination of Mr
17 Simmons?

18 A Mr Simmons had a fatal injury, a gunshot
19 wound, that entered through his left arm, went
20 through the humerus, the long bone in the left
21 arm, out the left arm and into the left chest,
22 into the left lung and then into the aorta,
23 which is one of the major -- it is the major
24 blood vessel in the body, -- as well as the
25 inferior vena cava, which is another major
26 vessel which returns blood to the heart It

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

612

1 went through the heart, also through the right
2 lung, and out the right chest in the front The
3 bullet was lodged in the pectoralis muscle, the
4 muscle over the top of the chest

5 Q Thank you

6 A This was considered a fatal injury There
7 were a couple of minor perforations associated
8 on his body, as well One in particular was a
9 linear-like abrasion, meaning kind of a -- where
10 skin was scraped off, on the right mid-back, mid
11 section of the back on the right, that we
12 thought after examining his clothing was
13 consistent with a graze wound from another
14 gunshot wound These were the chief major
15 findings at his autopsy

16 Q So one bullet went through the left arm,
17 into his left side, and there was another
18 projectile that grazed him across the back?

19 A Yes

20 Q The wound to his left arm, into his left
21 side, were all those injuries caused by the same
22 projectile?

23 A The wound that the decedent, Mr Simmons,
24 had was the two holes in the left arm --
25 entering back here (indicating) and coming out
26 here, and then an entrance hole in the left

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10, 2004
before The Honorable R Markley Dennis Jr

613

1 chest These holes all lined up sequentially,
2 so they were consistent with a single gunshot
3 wound

4 Q For forensic purposes, did you consider
5 this a close or a distant gunshot wound?

6 A We considered that this -- well, this was
7 considered by us to be a distant gunshot wound

8 I will just go through, briefly, how we
9 determine range of fire If a gun is fired
10 actually against the target, it will leave like
11 a ring of soot As the gun barrel is pulled
12 away from the target, then what happens is not
13 only soot come out but these little gunpowder
14 particles will come out and strike the skin and
15 cause little scratches around it We consider
16 that a close range gunshot wound

17 Once you get the gun far enough way, and
18 for most handguns that's about three yards
19 (sic), thirty-six inches, so about a yard, then
20 you don't have the soot nor will the little
21 gunpowder particles reach the skin You'll just
22 see the hole, there won't be anything

23 In his case, all we saw was the hole We
24 didn't see any of the soot nor any gunpowder
25 particles markings on any part of his body

26 The only thing is that he had on a couple

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10, 2004
before The Honorable R Markley Dennis Jr

614

1 of layers of clothing and the clothing was very
2 dark and very blood-stained, and that makes it a
3 little bit difficult to assess, to see if
4 there's dark soot dust on it We didn't see it
5 We assessed this as a probable distant gunshot
6 wound

7 Q Basically meaning over thirty-six inches?

8 A Over thirty-six to forty-two inches

9 Q You may have already covered this, but with
10 regard to internal injuries, what internal
11 injuries did the bullet cause?

12 A The bullet went through both lungs, the
13 heart, aorta, the inferior vena cava which is
14 another blood vessel and also the esophagus
15 As far as other injuries, it fractured the left
16 arm as well as one of the ribs

17 Q Were you able to tell what the trajectory
18 of the bullet, pathway, was?

19 A We describe the direction of the bullet as
20 going -- and I will point, -- upward, forward
21 and to the right

22 Meaning, the angle in his chest is going
23 up, forward and then obviously to my right, so
24 it was going in this direction

25 This doesn't particular mean that that is
26 where the gun (sic) came from When we estimate

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

615

1 our trajectories or when we do the trajectories,
2 we do it with the person in what we call
3 anatomical position That means standing up
4 straight, palms forward (illustrating) That's
5 how we get this direction Clearly most of the
6 time somebody is not standing like that during
7 an active incident, so even though the
8 trajectory is in this direction, it doesn't mean
9 that he wasn't bent in some other way and that -
10 - that, uh, that would actually put the origin
11 of the bullet from a different location

12 Q So it basically would depend on what
13 position he was in when he was struck?

14 A Yes

15 Q Did you remove any projectile from Mr
16 Simmons?

17 A Yes, we recovered the bullet from the chest
18 muscle on the right, right chest Also, in
19 addition to that, the jacket, the covering of
20 the bullet, had been stripped off and was
21 recovered in the soft tissues in the heart area
22 And we had one other little fragment that we
23 recovered kind of floating in the chest cavity
24 The bullet had been stripped by either going
25 through the heart or by hitting something
26 previous to entering the heart, like when it

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

616

1 went through bone, causing the bullet to
2 deteriorate

3 Q Showing you State's Exhibit 73 and 74, do
4 you recognize those photographs? -

5 A These are photographs of the bullet and the
6 jacket and the fragment that we recovered at
7 autopsy

8 Q Would that be the same bullet and jacket
9 fragment contained in State's Exhibit 65?

10 A (Upon review), yes

11 Q Do they fairly and accurately depict the
12 projectile and fragment removed from Jamie
13 Simmons at his autopsy on May 11th, 2003?

14 A Yes, they do

15 MR DURANT Your Honor, we would
16 offer State's Exhibits 73 and 74 into evidence
17 at this time

18 THE COURT Any objection?

19 MR BUTLER No, Your Honor

20 THE COURT Without objection,
21 State's Exhibits 73 and 74 are admitted, each
22 being a photograph

23 (SO ENTERED AS STATE'S EXHIBIT 73)

24 (SO ENTERED AS STATE'S EXHIBIT 74)

25 DIRECT EXAMINATION CONTINUED

26 BY MR DURANT

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

617

1 Q With regard to the projectile depicted in
2 State's Exhibit 73 and State's Exhibit 74, those
3 are all the same bullet?

4 A Yes, they appear to be the same bullet

5 Q Was a toxicology screen for alcohol and
6 drugs performed as part of the autopsy in this
7 case?

8 A Yes, it was It was performed on blood and
9 urine, results were negative for either drugs or
10 alcohol

11 Q Based on the history that you obtained,
12 your medical examination of the deceased, do you
13 have an opinion based on a reasonable degree of
14 medical certainty as to the cause of death in
15 this case?

16 A We classified the cause of death as the
17 single gunshot wound to his right arm/chest, and
18 the manner of death was classified as a
19 homicide

20 MR DURANT Thank you Please answer
21 any questions that defense counsel may have for
22 you?

23 THE COURT Any questions?

24 MS KENT-JENKINSON I don't have
25 any questions for Dr Presnell

26 THE COURT You may come down

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

618

1 (WITNESS STEPS DOWN)

2 THE COURT Do you wish her to be
3 excused?

4 MR DURANT I would ask that Dr
5 Presnell be excused

6 THE COURT No objection?

7 MS KENT-JENKINSON None

8 THE COURT You are free to leave
9 Thank you, Dr Presnell

10 MR DURANT Thank you, Doctor Sorry
11 to keep you waiting Your Honor, the State
12 would rest

13 THE COURT Ladies and Gentlemen, at
14 this point there are some matters of law now
15 that I must take up out of your presence I am
16 going to ask you to go to your jury room but do
17 not begin your deliberations We will be with
18 you probably in about fifteen, twenty minutes, I
19 would think Thank you

20 (JURY OUT @ 3 40)

21 THE COURT Anything from the State
22 at this point?

23 MR DURANT Nothing at this time

24 THE COURT Thank you, sir All
25 right, Mr Butler, Ms Jenkinson?

26 MR BUTLER Yes, sir For the

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

619

1 defense, at this time we move for a Directed
2 Verdict based on the argument that all evidence
3 and circumstances, taken in the light most
4 favorable to the State, would not allow a
5 reasonable juror to find the defendant of the
6 charge in the indictment

7 THE COURT Certainly there are many
8 reasonable inferences that one could draw, make
9 or read from considering the evidence in this
10 case, but given the testimony in the light most
11 favorable to the State, I would respectfully
12 deny that I think that there is substantial
13 circumstantial evidence to suggest that the
14 Defendant was the person firing the firearm and
15 that that was the firearm that ended up causing
16 the death of the victim in this matter For
17 that reason, I would deny it Thank you
18 Anything else?

19 MR BUTLER No, sir

20 THE COURT I believe before we
21 recessed for lunch that I just, in passing,
22 asked whether or not the defendant was going to
23 testify or not testify At that point there was
24 an indication that he'd indicated that he would
25 like to testify Is that correct?

26 MS KENT-JENKINSON Yes, Your Honor

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

620

1 THE COURT Have you talked with him
2 concerning his rights in connection with that?

3 MS KENT-JENKINSON I have

4 THE COURT Mr Ward, I am going to
5 ask you, sir You have had the opportunity to
6 be with counsel now, you've been assisting them
7 throughout the trial of this matter Have you
8 discussed with them your right to testify or not
9 to testify?

10 DEFENDANT Yes, sir

11 THE COURT And you have been able to
12 ask them any questions that you have concerning
13 those rights?

14 DEFENDANT Explained to you that I
15 could sentence you up to, sir

16 THE COURT They have explained to
17 you the rights and they have explained to you
18 that you have the right, of course, of
19 testifying, just as anybody does in this matter
20 But you have the right not to testify, is that
21 true?

22 DEFENDANT Yes, sir

23 THE COURT Have they explained to
24 you that if you chose to testify that you would
25 be subject to cross-examination the same as any
26 witness?

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

621

1 DEFENDANT Yes, sir

2 THE COURT They have advised you
3 that if you elected not to testify that I would
4 instruct the jury that they could not in any way
5 consider that against you?

6 DEFENDANT (Affirmative nod)

7 THE COURT Do you understand that?

8 DEFENDANT Yes, sir

9 THE COURT And I would further
10 instruct them that it would be a violation of
11 their oath Do you understand that?

12 DEFENDANT Yes, sir

13 THE COURT Understanding your rights
14 in this matter, what is your decision? To
15 testify or not to testify?

16 DEFENDANT To testify

17 THE COURT All right Are you under
18 the influence of any alcohol, any medication
19 here today?

20 DEFENDANT No, sir

21 THE COURT Have you been treated for
22 any emotional problems or mental illness?

23 DEFENDANT No, sir

24 THE COURT Are you under any undue
25 pressure that would affect your ability to think
26 or reason?

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

622

1 DEFENDANT No, sir

2 THE COURT And I realize that this

3 whole proceeding is -- that there is pressure

4 associated with it

5 DEFENDANT (Affirmative nod)

6 THE COURT But nothing to affect

7 your ability to make this type of decision?

8 DEFENDANT No, sir, nothing

9 THE COURT Are you comfortable with

10 your decision?

11 DEFENDANT Yes, sir

12 THE COURT If at any point before

13 you elect to take the stand you wish to change

14 your mind, will you let your attorneys know?

15 DEFENDANT Yes, sir

16 THE COURT And they can bring that

17 to my attention and we can revisit this issue

18 Okay?

19 DEFENDANT Yes, sir

20 THE COURT If I don't hear from you

21 and if you take the stand, I am going to assume

22 that you have consciously thought about this,

23 that you have given serious thought to it and

24 all the things that you have told me now are

25 correct and you stand by those, is that correct?

26 Is that fair?

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

623

1 DEFENDANT Yes, sir

2 THE COURT In other words, this is a

3 decision that you make knowingly and

4 intelligently, fulling understanding your

5 rights, is that true?

6 DEFENDANT Yes, sir

7 THE COURT Very well Thank you

8 very much Okay All right, let's take -- how

9 many witnesses do you anticipate?

10 MS KENT-JENKINSON Six

11 THE COURT Very good The jury

12 wants a smoke break, so that will work just

13 about right to give you a minute to get ready

14 MS KENT-JENKINSON Thank you, Your

15 Honor

16 THE COURT We will be at-ease for a

17 few minutes>

18 (BRIEF RECESS 3 45 - 3 55 P M)

19 (DEFENDANT PRESENT)

20 THE COURT Ms Jenkinson, are you

21 ready to continue?

22 MS KENT-JENKINSON Yes, Your

23 Honor

24 THE COURT Solicitor?

25 MR DURANT Yes, sir

26 THE COURT Invite the jury to

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

624

1 return

2 (JURY IN @ 3 55 P M)

3 THE COURT Thank you, Ladies and
4 Gentlemen We are now ready to continue Give
5 your attention now to the next witness
6 Defense, you may call your first witness

7 MS KENT-JENKINSON The Defense
8 would call Jermaine Heyward

9 (WITNESS TAKES STAND)

10 JERMAINE HEYWARD, being duly
11 sworn to tell the truth, the whole truth and
12 nothing but the truth, testified, as follows

13 DIRECT EXAMINATION

14 MS KENT-JENKINSON

15 Q Good afternoon, Mr Heyward Mr Heyward,
16 where are you from?

17 A Hollywood, South Carolina

18 Q Do you live there right now?

19 A Yes, I do

20 Q Are you presently in school?

21 A Yes

22 Q Where do you go to school?

23 A South Carolina State University

24 Q Do you know John Ward?

25 A Yes

26 Q Do you know where the Club Diamante is?

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

625

- 1 A Yes, I do
- 2 Q Do you remember the night of May 11th, 2003?
- 3 A I remember that morning
- 4 Q Were you at Club Diamante the night before?
- 5 A No, I wasn't
- 6 Q Do you know where you stayed that night?
- 7 A Yes
- 8 Q Where did you stay?
- 9 A [REDACTED] Road
- 10 Q Is that where you live?
- 11 A Yes, it is
- 12 Q Who lives there with you?
- 13 A Me, my father and my brothers
- 14 Q What are your brothers' names?
- 15 A Tyrone Heyward, Denode Heyward and Damian
- 16 (phonetic)
- 17 Q You were spending the night there the night
- 18 of May 11th?
- 19 A Uh-huh
- 20 Q Did anybody else come and spend the night
- 21 there?
- 22 A When I woke up that morning, it was me,
- 23 Denode, Anthony and Tremayne
- 24 Q What are their last name?
- 25 A Denode Heyward, Anthony Ward and Tremayne
- 26 Washington

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

626

- 1 Q Did you see them come in that night?
- 2 A No, I didn't
- 3 Q They were there when you woke up?
- 4 A Yes, ma'am
- 5 Q What were they doing when you woke up?
- 6 A All of us got up about the same time
- 7 There was a car -- my mother was calling and
- 8 saying come down to the Petersfield area, there
- 9 was a lot of cops back there, come down and see
- 10 what was going on
- 11 Q What was Tremayne Washington doing?
- 12 A When I went in the kitchen, he was watching
- 13 his hands
- 14 Q What was he washing his hands with?
- 15 A Bleach
- 16 Q Was he acting nervous?
- 17 A Somewhat I really don't know
- 18 Q I'm sorry, I didn't hear you
- 19 A (No response)
- 20 Q Was he acting nervous?
- 21 A Somewhat, not -- somewhat I can't really
- 22 tell
- 23 Q And what was he washing his hands with?
- 24 A Bleach
- 25 Q Do you know why he was washing his hands
- 26 with bleach?

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

627

1 A No, I -- I just seen that he was washing
2 his hands
3 Q Had you ever seen him wash his hands with
4 bleach before?
5 A No
6 MS KENT-JENKINSON That's all that
7 I have
8 WITNESS All right
9 THE COURT You may cross-examine
10 CROSS EXAMINATION
11 BY MR DURANT
12 Q This was at Denode's house, you said?
13 A Yeah, my house
14 Q Who called over -- who called over to that
15 house?
16 A My grandmother, mother, Nellie Pinckney
17 Q Do you know Shirley Ward?
18 A Yeah
19 Q And Oliver Ward?
20 A (Affirmative nod)
21 Q Do you know that they are the defendant's
22 uncle and aunt?
23 A Yes
24 Q Do you know where they live?
25 A Yes, sir
26 Q Do you know where that truck was hidden?

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

628

1 A Yeah, when I got out there that morning

2 Q Where was it?

3 A But I didn't know -- it was behind Oliver's
4 and Shirley's house

5 Q And, of course, you weren't at the club?

6 A No

7 Q So you didn't know what had went on at the
8 club, is that correct?

9 A No, sir

10 Q And you didn't -- when the police took your
11 statement that morning, you didn't mention to
12 them that you saw Tremayne washing his hands
13 with bleach, did you?

14 A No, sir, they didn't ask me that question

15 Q You didn't think that was kind of unusual?

16 A I mean, I was answering the questions that
17 they asked me

18 Q Do you wash your hands with bleach?

19 A According to what I'm doing

20 Q You were aware of the shooting the night
21 before?

22 A No, I wasn't

23 Q You weren't aware of the shooting?

24 A Not at that time

25 MR DURANT Thank you

26 THE COURT Redirect?

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

629

1 MS KENT-JENKINSON No questions
2 THE COURT You may come down
3 (WITNESS STEPS DOWN)
4 THE COURT You wish Mr Heyward to
5 be excused?
6 MS KENT-JENKINSON Yes, Your
7 Honor
8 THE COURT Any objection?
9 MR DURANT No objection, Your
10 Honor
11 THE COURT You are free to leave,
12 Mr Heyward Call your next witness, please
13 MS KENT-JENKINSON The State would
14 call John Ward
15 (WITNESS TAKES STAND)
16 JOHN HENRY WARD, JR ,
17 being duly sworn to tell the truth, the whole
18 truth and nothing but the truth, testified, as
19 follows
20 DIRECT EXAMINATION
21 MS KENT-JENKINSON
22 Q John, tell the jury how old you are
23 A Thirty-one (31)
24 Q Where did you grow up?
25 A Hollywood
26 Q In what area of Hollywood?

State v John Henry Ward
Case No 03 GS 10-5895
Jury Trial of December 6 10, 2004
before The Honorable R Markley Dennis Jr

630

1 A Petersfield

2 Q I am going to go directly to the night of
3 May 10th and the early morning of May 11th, 2003
4 Were you at Club Diamante that night?

5 A Yes

6 Q Did you have any problems with anybody out
7 there that night?

8 A No

9 Q Who did you go there with?

10 A Marvin Ravenell

11 Q What kind of car were you'all in?

12 A A green Chevy Tahoe

13 Q When you got there, what did you do?

14 A We went inside the club, started dancing
15 and stuff

16 Q Did something happen inside the club?

17 A Yeah, Keith and Shaquenta started fighting

18 Q What did you do?

19 A At first, I just stood there But, uh, it
20 was like getting out-of-hand because it was --
21 another guy started hitting Keith, so we began
22 breaking them up, pulling them apart

23 Q And did the fight move outside?

24 A Yes

25 Q Did you go outside?

26 A Yes

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
' before The Honorable R Markley Dennis Jr

631

1 Q Were you drinking that night?

2 A Yes

3 Q How much did you drink?

4 A I had about six Coronas throughout the
5 course of the night

6 Q So what was -- telling me what was going on
7 outside the club

8 A I came -- I went outside and -- and Kevin
9 had put John Campbell inside his truck and, uh,
10 someone told Keith or mentioned to Keith that
11 John Campbell had hit him

12 So Keith went to the truck to ask John why
13 he hit him, and they started argued

14 Kevin jumped out of the truck and said, you
15 now, started cursing and said, 'Get away from my
16 truck '

17 John stood up on the passenger side and
18 said something else to Keith and he started --
19 John pushed him and they started pushing each
20 other

21 So I grabbed Keith Then it was, like, you
22 know, 'cop's car is right here, ain't no need
23 for, you know, to have any trouble like that,
24 ain't no need for you to get in this and you go
25 to jail because ain't nobody got no money to
26 bail you out '

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

632

1 So at that time Kenneth Sanders came like
2 from behind Kevin and pushed him and Keith break
3 away and he started chasing him and he ran
4 Q Who ran?
5 A Kevin Dunmeyer
6 Q Were people chasing Kevin Dunmeyer?
7 A Yes
8 Q Who was chasing him?
9 A Bunch of people
10 Q Do you remember who?
11 A Keith, uh, Kenneth, uh, Andrea, a couple of
12 people
13 Q Were you chasing Kevin Dunmeyer?
14 A No
15 Q Did you see Tremayne Washington that night?
16 A Yes
17 Q Was he chasing Kevin Dunmeyer?
18 A He was standing out there, he started to --
19 they were arguing He wasn't initially in the
20 fight, he was just standing there Once
21 everything kicked off, he started
22 Q He got involved?
23 A Yeah
24 Q Did you see Catrell Douglas out there that
25 night?
26 A No I saw him out there but not during the

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

633

1 fight

2 Q When these fellows were chasing Kevin

3 Dunmeyer, what made them stop chasing him?

4 A Gunshots

5 Q What happened after that?

6 A Everybody started running

7 Q What did you do?

8 A I started running

9 Q In which direction did you run?

10 A Towards my right, towards the Hollywood

11 side

12 Q Towards Hollywood?

13 A (Affirmative nod)

14 Q Were you on the road?

15 A Um-humm, -- yes, ma'am

16 Q You ran along the road?

17 A (Affirmative nod)

18 Q Did you see a green Cadillac?

19 A Yes, ma'am

20 Q Where was that green Cadillac?

21 A It was like -- after I started running, it

22 came from behind me, stopped, and the guy got

23 out and started yelling, then he got back in,

24 and he started shooting I started running

25 again

26 Q The guy in the green Cadillac was yelling?

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

1 A Yeah
2 Q Do you know who that was?
3 A Yes, ma'am
4 Q Who was that?
5 A Ton-Ton, Antonio Washington
6 Q So you continued to run?
7 A (Affirmative nod)
8 Q When did you stop?
9 A Like when I ducked in between cars and
10 stuff
11 Q What made you stop running?
12 A Gunshots
13 Q Then what did you do?
14 A Car passed, more cars were coming, people
15 were streaming by, so as I kept on running I
16 turned around and I saw a truck coming
17 Q What kind of truck?
18 A The Dodge 1500
19 Q Did you stop them?
20 A Yes, ma'am
21 Q Why did you stop them?
22 A I ain't had no ride home
23 Q Did you get in the car?
24 A Yes, ma'am
25 Q Who was driving?
26 A Catrell Douglas

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 - 10 2004
before The Honorable R Markley Dennis Jr

635

- 1 Q Was there anybody else in the car?
- 2 A Yes, ma'am
- 3 Q Who was that?
- 4 A Tremayne Washington
- 5 Q Where was he?
- 6 A In the back seat
- 7 Q What was he doing?
- 8 A He was just sitting there
- 9 Q Did he have a gun?
- 10 A Yes, ma'am
- 11 Q Where was the gun?
- 12 A Right on his lap, cross his lap
- 13 Q And what was Catrell doing?
- 14 A He was like sipping on a little bit of
- 15 liquor that he had left in a cup, and driving
- 16 Q Where did they take you?
- 17 A Mama house, my mother's house
- 18 Q Then what did you do?
- 19 A I got in my car and proceeded to leave I
- 20 got like around the corner to my cousin Bujuan's
- 21 house and saw the car come back, you know, down
- 22 the road So I went down to see what was going
- 23 on
- 24 Q You went to Bujuan's house?
- 25 A Yes, ma'am
- 26 Q What happened while you were there?

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10, 2004
before The Honorable R Markley Dennis Jr

636

1 A I spoke to Kenneth Sanders and he -- he
2 came up to me, he grabbed me around my shoulders
3 and he said, 'Come mere, I need to talk to you '
4 He told me what happened
5 Q He told you that somebody had been shot?
6 A Yes, ma'am
7 Q Did he tell you who?
8 A Yes, ma'am
9 Q Tell me what happened after that
10 A It got -- I mean, phew I got real, like,
11 -- I was mad at first and then -- then I just
12 got real -- me and Jamie were real close
13 Q Upset?
14 A Yes, ma'am
15 Q Where did you go after you left Bujuan's
16 house?
17 A I went to my baby's mother house in, uh,
18 on Scott White Road
19 Q That's on Scott White Road?
20 A Yes, ma'am
21 Q And that's in Petersfield?
22 A No, ma'am, that's in Pineland
23 Q Pineland?
24 A Yes, ma'am
25 Q Did you spend the night there?
26 A No, ma'am Me and her were like arguing

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis, Jr

637

1 about me going out anyway earlier She didn't
2 want me there She was like, you know, she was
3 like, 'You rather be with the guys than me '
4 So I left

5 Q On May 12th, 2003, which would be the next
6 day, you went to the substation on James Island?

7 A Yes, ma'am

8 Q Why did you do that?

9 A Because me and my girlfriend, when we got
10 back to her house, I saw like my mother's phone
11 number and my cousin's phone number on the
12 Caller ID like, phew, twenty, nineteen or twenty
13 times And I called them, like, I was like,
14 'What's going on?' They were, like, 'the police
15 looking for you '

16 Q So you went up there?

17 A And -- yes, ma'am

18 Q For traffic tickets?

19 A No, ma'am When I went there, the officer
20 that handled traffic tickets for me before was
21 there, so my girlfriend spoke with her Then
22 she said that she needed an ID from me, because
23 she told me that the cops were looking for me
24 and what was going on She said, uh, 'Just give
25 me your ID ' You know, I ---

26 Q But that's not why you went there?

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10, 2004
before The Honorable R Markley Dennis Jr

638

- 1 A No, that's not why I went
- 2 Q And you gave a statement to the police that
- 3 night?
- 4 A Yes, ma'am
- 5 Q Actually two statements?
- 6 A Yes, ma'am
- 7 Q Were you telling the truth when you gave
- 8 them those statements?
- 9 A Yes, ma'am
- 10 Q And you're telling the truth today?
- 11 A Yes, ma'am
- 12 Q In your second statement, that same night,
- 13 you gave them the name of Trell Smalls
- 14 A Um-humm Yes, ma'am
- 15 Q And you gave them directions to his house?
- 16 A Yes, ma'am
- 17 Q Why did you think Catrell -- that his last
- 18 name was "Smalls", Catrell Smalls?
- 19 A All my life I knew him as just 'Trell His
- 20 family is related to the Smalls, so I just said
- 21 Trell Smalls
- 22 Q And that's the same place that you gave
- 23 them directions to?
- 24 A Yes, ma'am
- 25 Q At the very end of your statement, they
- 26 asked you did you fire a gun? I believe that

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

639

1 was Detectives Anderson and Hawks who were
2 interviewing you
3 A Yes, ma'am
4 Q And you said, "I fired a gun in the at the
5 wooded area on the same side of the truck near
6 Coon Club Road "
7 A Yes, ma'am
8 Q That is at the end of your statement?
9 A Yes, ma'am
10 Q Why did you say that?
11 A I said that because, really, I was scared
12 Uh, Officer Anderson, -- if I am allowed to call
13 names?
14 Q (Affirmative nod)
15 A Officer Anderson said that, 'Look, this --
16 I mean, this charge is lesser than murder '
17 Q What charge was lesser?
18 A Involuntary manslaughter
19 Q If you fired a gun -- 'if you tell me that
20 you fired a gun, we can charge you or you can
21 get charged with involuntary manslaughter But
22 if you sit here and try to tell me that you
23 didn't fire a gun at all, I am going to charge
24 you with murder and I am going to see that it
25 sticks ' That's exactly what he told me
26 Q Did he tell you what a murder charge

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

640

1 carries?

2 A Yeah, he said life

3 Q And did he tell you what ---

4 A He said a couple -- what involuntary

5 manslaughter? I do remember that, when he said

6 life, I just -- (negative gesture)

7 Q But involuntary manslaughter was discussed?

8 A Yes, ma'am

9 Q When you gave them the first, short state-

10 ment, they didn't believe you, did they?

11 A No, ma'am

12 Q So they asked you for more detail?

13 A Yes, ma'am

14 Q So you gave them more detail?

15 A Yes, ma'am

16 Q Were you telling the truth?

17 A Yes, ma'am

18 Q You gave them a second statement the next

19 day, on the 13th

20 A (No response)

21 Q Is that correct?

22 A Yes, ma'am

23 Q And you gave them even more detail?

24 A Yes, ma'am

25 Q And you were still telling the truth?

26 A Yes, ma'am

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis, Jr

641

1 Q At the end of that statement, did they ask
2 you if you wanted to add anything?

3 A Yes, ma'am and, uh, ---

4 Q Do you remember what you wrote on there?

5 A Yes, ma'am

6 Q What was that?

7 A I wrote that what Officer Anderson told me
8 inside the interview and what I told him, he --
9 his superior, I guess, the guy that was over
10 him, was sitting right there And when I said
11 it, he didn't dispute it I told him exactly
12 what he told me He allowed me to write it
13 down

14 Q So you continued to tell the truth?

15 A Yes, ma'am

16 MS KENT-JENKINSON Beg the Court's
17 indulgence?

18 THE COURT Yes, ma'am

19 DIRECT EXAMINATION CONTINUED

20 MS KENT-JENKINSON

21 Q John, you told me earlier that you were
22 running, trying to look for a ride?

23 A Yes, ma'am Well, where Marvin's truck was
24 parked at was like in the parking lot

25 Q And who is Marvin, again?

26 A My cousin

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

642

1 Q Did you ride with him that night?

2 A Yes, ma'am

3 Q What happened to Marvin?

4 A Well, initially, uh, I went to the door
5 because the police officer was having a dispute
6 with Bradly Anderson, another cousin So I was
7 trying to, you know, tell him, 'Let's go home '
8 And me and Marvin put him in the truck I had
9 on a St Joe's jersey, and I had took it off
10 because it was hot in the club, and I just had a
11 white tee-shirt on And that's when -- and when
12 we got Bradly in the truck, I realized that I'd
13 left the jersey in the club So I went back in
14 the club to get my jersey When I got back in
15 the club to get my jersey, that's when the fight
16 broke out

17 Q And you couldn't find Marvin?

18 A When I came back outside, I didn't really
19 go straight to Marvin's truck I went to try
20 and stop people -- because the cop was out there
21 and I'm like, 'It don't make no sense for
22 you'all to fight and the police be right here '

23 So I went to the truck and tried to, you
24 know, calm things down But it didn't happen
25 like that

26 So when I ran back, I believe Marvin was

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

643

1 gone You know, people was shooting, so I kept
2 on running

3 Q That is when you ran down the street?

4 A Yes, ma'am

5 Q John, if you could, tell me where you were
6 when the fight was going on outside the club
7 You can stand up if you need to?

8 A Standing like up in here

9 Q And this is in the area -- was there a car
10 over there?

11 A A bunch of cars all along the side of the
12 road

13 Q And where was the fight?

14 A Like right here, up here The car was like
15 on the side of the road, like on that side of
16 the driveway

17 Q And where did you go when the shooting
18 started?

19 A Right this way

20 Q How far did you get when you started
21 looking for a ride?

22 A Marvin's truck was like here, because the
23 parking lot was like crowded Cars were like
24 double rows parked and Marvin's truck had backed
25 in right here, about here

26 Q And when you didn't see Marvin's truck,

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

644

1 where did you go?

2 A I kept on running

3 Q Where did you get -- where were you when
4 you got into the Dodge truck?

5 A This is a dirt road, this would be a dirt
6 road

7 Q What road is that?

8 A Coon Club Road

9 Q Did you make it to Coon Club Road?

10 A No, not exactly I got to like where the
11 sign was

12 Q You were near that sign, and that's when
13 the truck picked you up?

14 A Yes, ma'am

15 Q Had you looked back at any point?

16 A Yes, ma'am

17 Q And what did you see?

18 A The truck

19 Q Did you see any shots from the truck?

20 A Yes, ma'am

21 Q Where did they coming from?

22 A The passenger side, the right side as it
23 was coming towards me

24 Q John, did you shoot a weapon that night?

25 A Did not No, ma'am

26 Q Did you shoot a gun out of that truck?

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis, Jr

645

1 A No, ma'am

2 Q Did anybody shoot a gun when you were in
3 the truck?

4 A No, ma'am

5 Q Did you have a gun out there that night?

6 A No, ma'am

7 MS KENT-JENKINSON John, that is
8 all that I have If you would, please answer
9 any questions that the Solicitor has for you

10 WITNESS Yes, ma'am

11 THE COURT You may cross-examine

12 MR DURANT Thank you, Your Honor

13 CROSS EXAMINATION

14 BY MR DURANT

15 Q Just so that I understand your testimony,
16 Mr Ward, referring back to State's Exhibit 6,
17 you said that you were in the area Which area
18 when ---

19 A Up here, (indicating)

20 Q And that's when all the problems were going
21 on around Dunmeyer's car?

22 A Yes, sir

23 Q And all that?

24 A Yes, sir

25 Q And you were a part of that problem, right?

26 A Yes, sir, we were fighting out there

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

646

1 Well, I wasn't -- I wasn't involved I was
2 trying to break the fight up
3 Q You told the police that you were fighting,
4 though, right?
5 A When they asked When they asked me the
6 question they said "involvement", they didn't
7 say -- (pause)
8 Q And you say that Dunmeyer ran -- which way?
9 A This way
10 Q Okay, up that way?
11 A (Affirmative nod)
12 Q Did you stay in this area?
13 A Yeah
14 Q And when did you first hear gunshots?
15 A After he started running that way
16 Q And where did you hear the gunshots from?
17 A That way
18 Q This way?
19 A Yeah
20 Q So as soon as you heard gunshots, you start
21 running this way?
22 A Yeah, me and about fifteen more people
23 Everybody just started running, even the dudes
24 that were chasing him started running
25 Q Okay And you ran -- well, just show me
26 where you ran, on this map

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

647

1 A There

2 Q Okay You say that you ran over here first
3 because your cousin's truck was supposed to be
4 there?

5 A I ran along the road

6 Q You ran along the road, because your
7 cousin's truck was supposed to be there?

8 A (Affirmative nod)

9 Q When did this incident involving the green
10 Cadillac occur? Where were you when that
11 happened?

12 A I was right here

13 Q Okay, so you were about right there?

14 A Um-humm

15 Q Okay And he got out? You say that he
16 stopped and got out, and did what?

17 A He started yelling

18 Q Did he shoot at you?

19 A He didn't shoot at me, he started shooting

20 Q Did he say something at you, to you?

21 A He didn't -- he just was talking

22 Q He didn't shoot you -- or shoot after he
23 talked to you, right?

24 A Yeah

25 Q Then he goes on down the road, is that
26 correct?

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 - 10 2004
before The Honorable R Markley Dennis Jr

648

- 1 A Yes, sir
- 2 Q And then the truck comes from where?
- 3 A I didn't see where the truck come from, I
- 4 continued on running
- 5 Q Okay You continued running?
- 6 A (Affirmative nod)
- 7 Q Well, you saw the truck some time because
- 8 you just said that you saw people shooting out
- 9 of the truck, right?
- 10 A Yeah, that was way up here
- 11 Q So that was after you got way up here?
- 12 A Yeah The truck was coming towards me and
- 13 it was on the road It was ---
- 14 Q Okay
- 15 A Yes, sir
- 16 Q And all this took how long?
- 17 A I don't know how long it took Couple
- 18 seconds I don't know Couple minutes I
- 19 don't know I wasn't counting, I was trying to
- 20 dodge bullets -- sir
- 21 Q Was anybody else shooting at you?
- 22 A No
- 23 Q Not that you know of?
- 24 A No, sir
- 25 Q You didn't hear any bullets whistle by you?
- 26 A No No, sir Hit cars, from what I heard

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

649

1 Q So it could have taken as long as two
2 minutes for you to get all the way there, down
3 to the other end where you were picked up in
4 that truck?

5 A Probably not that long

6 Q What is your relationship with Tremayne
7 Washington?

8 A Friends

9 Q How long have you'all been friends?

10 A Uh, about two or three years Three or
11 four years I can't be precise About two or
12 three years

13 Q Where do you know him from?

14 A He lives downtown

15 Q I know, but you don't live downtown Where
16 do you know him from?

17 A Oh, we met like at a house party one night

18 Q And you'all became pretty good friends,
19 right?

20 A Yes, sir

21 Q You'all hang out together a good bit, is
22 that correct?

23 A No, not really, not with his being/living
24 downtown

25 Q State's Exhibit 1, that -- you wrote that,
26 right?

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 - 10 2004
before The Honorable R Markley Dennis Jr

650

- 1 A Yes, sir
- 2 Q And State's Exhibit 3, you wrote that,
- 3 right?
- 4 A Yes, sir
- 5 Q That is your handwriting?
- 6 A Yes, sir
- 7 Q And State's Exhibit 5, that is your hand-
- 8 writing, too, is that right? Not all of it
- 9 I mean, they wrote the questions and you wrote
- 10 out the answers, is that correct?
- 11 A Yes, sir
- 12 Q So the statement are in your handwriting,
- 13 the questions are generally the ones that the
- 14 detectives asked you and then the answers are in
- 15 your handwriting, is that right?
- 16 A Yes, sir
- 17 Q No question about that?
- 18 A (No response)
- 19 Q Correct?
- 20 A Yes, sir
- 21 Q Now, in the first statement that you gave
- 22 the police, the first one, you said -- of
- 23 course, you said that you were at the fight, at
- 24 the club
- 25 A (Affirmative nod)
- 26 Q Fight started, went outside, people still

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

651

1 fighting, heard gunshots, you ran, and that's
2 when you saw a green Caddy pull pass you and
3 say, 'Here I am', started shooting, you ducked,
4 he got back in the car, turned around, went back
5 in the direction, in the other direction, then
6 'my cousin pulled up, stopped, I get in and they
7 drop me off at my car' Okay That's
8 basically not what you just said, is it?
9 A Yes, sir
10 Q Oh, it is?
11 A (Affirmative nod)
12 Q Okay So -- now, -- but didn't you say
13 that the car, the green Cadillac, came up to
14 you, stopped, he got out, said something cursing
15 at you, turned around and went back the other
16 way
17 A No, sir I didn't say cursing at me I
18 said cursing He wasn't directing it to me
19 Q Just tell me if I am reading this wrong
20 (Reading) 'So I heard gunshots, so I ran,
21 that's when I saw a green Caddie pull pass me
22 and said, 'Here I am', started shooting I
23 ducked He got back in the car, turned around,
24 went back in the other direction Then my
25 cousin pulled up, stopped ' Who are you talking
26 about, who is your cousin there?

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

652

1 A Catrell

2 Q Okay You don't mention the pickup truck,
3 right?

4 A Oh, no No, sir

5 Q Now, in this one, the Cadillac, rather than
6 just passing you by has come down, stopped,
7 pulls a gun out, shoots, turns around and goes
8 back the other way Correct?

9 A (No response)

10 Q Isn't that what you wrote?

11 A Yes, sir

12 Q So that is not true

13 A What do you mean, sir? I don't understand
14 What do you mean it's not true?

15 Q You just testified, sir, that the Cadillac
16 came down the road this way, stopped right
17 there, he got out, said that to you, shot, went
18 on that way

19 A (Affirmative nod)

20 Q Now, in the first one you said that he said
21 something to you, stopped, turned his car --
22 shot at you, turned is car around and went back
23 the other way?

24 A Yes, sir, but not in that exact order you
25 just said

26 Q Well, that's the order you wrote Isn't

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

653

1 it?

2 A (No response)

3 Q Isn't that what it says?

4 A Yes, sir But that's not what you asked
5 me

6 Q And you participated in the fight out
7 front, did you not?

8 A Could you explain "participate"? Sir?

9 Q Looking at your -- the last statement that
10 you gave, page three

11 They write out a question, "Can you tell me
12 some of the people that were fighting?"

13 Answer "Keith Richards, Bujuan Richards,
14 Kevin Dunmeyer, John Campbell, Kenneth Sanders,
15 John Ward" -- I guess that would be you, would
16 it not?

17 A Yes, sir

18 Q "Ton-Ton, Mikie "

19 A Yes, sir

20 Q That was in answer to the question of who
21 was out there fighting, isn't that true?

22 A Yes, sir

23 Q The fact of the matter is, this was a big
24 melee out there between Petersfield, where
25 you're from, ---

26 A Yes, sir

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

654

- 1 Q --- and Ton-Ton, who is from Cherryhill?
- 2 A Yes, sir
- 3 Q And Ton-Ton's buddies, right?
- 4 A It started with John Campbell
- 5 Q Yeah, because he was perceived as a
- 6 Cherryhill guy that sucker-punched Keith
- 7 Richards, a Petersfield guy, in the club, right?
- 8 A Yes, sir
- 9 Q And that's what the whole squabble started
- 10 over?
- 11 A Yes, sir
- 12 Q And you were born and raised in
- 13 Petersfield?
- 14 A Yes, sir
- 15 Q And you'all don't get along with
- 16 Cherryhill, do you?
- 17 A Yes, sir, we do It's not a fact that we
- 18 don't get along, sir
- 19 Q So you'all don't have any kinds of problems
- 20 with the people in Cherryhill? You've never had
- 21 any kind of fights with people in Cherryhill or
- 22 anything like that in the past?
- 23 A Up until that moment, they didn't have any
- 24 problems No, sir, they didn't
- 25 Q But you're a Petersfield guy
- 26 A Yes, sir

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

655

1 Q No doubt about that
2 A (No response)
3 Q As is Catrell?
4 A (No response)
5 A As is a lot of these other people who were
6 chasing Kevin Dunmeyer?
7 A (No response)
8 Q Right?
9 A Yes, sir, that's where we live
10 Q And in the first statement that you gave,
11 the one that you handwrote out, the half-page
12 one, you say -- like I said, you say the green
13 Caddie pulled past you, said 'Here I am',
14 started shooting Correct?
15 A Yes, sir
16 Q And then in your second one you say pretty
17 much the same thing started to run, ran towards
18 dirt road, saw Cadillac pass as you were going
19 towards the dirt road, it stopped, he got out
20 and Ton-Ton said, 'Here I am' and started
21 shooting
22 He jumped back in, then turned around Again,
23 he turned around? This is the second statement
24 A Yes, sir
25 Q Went back the other way 'I got almost to
26 the dirt road, that's when my cousin picked me

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

656

1 up ' Okay So in both of those two, you say
2 that he came, confronted you when you were on
3 foot, stopped his car, got out of his car,
4 pulled a gun, started shooting, or said
5 something to you and started shooting, turned
6 his car around, went back the other way

7 A No, sir

8 Q That's what it says Is that not what it
9 says?

10 A No, sir, it did not say that he said
11 anything to me I mean, we're -- I'm running,
12 they're fighting He could be talking to people
13 behind me or coming towards him

14 Q (Reading) 'That's when the Cadillac passed
15 me going towards the dirt road, stopped, Ton-Ton
16 get out and said 'Here I am', started shooting
17 I ducked He jump back in, turn around, went
18 back the other way '

19 A Yes, sir

20 Q To me that means what I say it means Do
21 you have a different meaning for that?

22 A I took it to mean getting out of the way of
23 bullet fire It's not necessarily that he was
24 shooting at me -- sir

25 Q You said the same thing in your third
26 statement, except this time he wasn't shooting

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

657

1 Looking at page three, top of page four, of your
2 statement, they ask a question "When you ran
3 away from the shots, what did you do then?"

4 Answer 'I ran back to get in Marvin truck
5 but he was not there, so I continued to run
6 because I heard more gunshots I got near the
7 dirt road, that's when Ton-Ton car passed me '
8 Okay

9 So now, rather than right there in front of
10 the club, you're all the way up there to Coon
11 Club Road when he passed you Okay?

12 A (No response)

13 Q 'He stopped and said, 'Here I am MoFo ,
14 got back in car, turned around in the dirt road,
15 went back the other way That's when I heard
16 more gunshots ' Right?

17 A Yes

18 Q So now he's turned around at Coon Club Road
19 and he's going back to the club?

20 A Yes, sir

21 Q After already being involved in the -- in
22 some shooting down the road, from what you said
23 Right in front of this police officer that is
24 down there, no doubt Right?

25 A (No response)

26 Q Drives up there, gets out, threatens you,

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

658

1 turns his car around, goes back to the club and
2 starts shooting again -- all with Deputy
3 Frichtel sitting right there in front of the
4 club?

5 A No, sir

6 Q Is that what your statement says?

7 A No, sir

8 Q Okay We will go through this line by
9 line You just tell me where I am wrong
10 When you ran away from the shots, what did
11 you do then? At this point, you say that there
12 were already gunshots, right?

13 A Yes, sir

14 Q (Reading) 'I ran back to get Marvin's
15 truck, but he was not there, so I continued to
16 run because I heard more gunshots I got near
17 the dirt road ' And when we start talking
18 about a dirt road, we're talking about Coon Club
19 Road, right?

20 A Yes, sir

21 Q Here's a map right here This is the club,
22 right?

23 A Yes, sir

24 Q Toogoodoo Road?

25 A Yes, sir

26 Q Coon Club?

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

659

- 1 A Yes, sir
- 2 Q So he comes this way?
- 3 A Yes, sir
- 4 Q According to your statement, right?
- 5 A Yes, sir
- 6 Q Shooting as he comes? You heard some -
- 7 this was after you had already heard gunshots
- 8 down here and had run all the way from here up
- 9 to this point, right?
- 10 A Yeah, -- no, sir I didn't say that he was
- 11 the one shooting
- 12 Q You said that you heard gunshots?
- 13 A Yes, sir
- 14 Q Then you ran from this direction from in
- 15 front of the club all the way up to almost Coon
- 16 Club Road?
- 17 A It's not that far, sir
- 18 Q I know it's not that far (Reading) 'So I
- 19 continued to run' -- okay -- 'because I heard
- 20 more gunshots ' Okay So you're hearing more
- 21 gunshots basically the whole time you're running
- 22 from the front of the club up to Coon Club Road,
- 23 right?
- 24 A Yes, sir
- 25 Q Okay You get near a dirt road, and that's
- 26 Coon Club Road?

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

660

1 A Yes -- sir

2 Q That's when Ton-Ton's car passes you?

3 A (No response)

4 Q Right?

5 A (No response)

6 Q Isn't that what you say?

7 A Yes, sir

8 Q (Reading) 'Ton-Ton car pass me, he

9 stopped and said, 'Here I am, MoFo' ' --

10 talking to you, I guess Right?

11 A Uh -- no, sir

12 Q Who was he talking to?

13 A He screamed it out

14 Q (Reading) 'Got back in his car, turned

15 around in the dirt road' -- Coon Club Road?

16 A Yes, sir

17 Q Okay Went back the other way, back ---

18 A Yes, sir

19 Q --- towards Baptist Hill?

20 A Yes, sir

21 Q Okay Then you hear more gunshots?

22 A All this was during the same time

23 Q Okay This time you didn't say that he

24 came out of the car with a gun and started

25 shooting, like you did in your first statement

26 You admit that you didn't say that there, right?

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

661

1 A Repeat that

2 Q In this statement, the third statement, you
3 did not say that he stopped up there where you
4 were, got out of his car with the gun and
5 started shooting, like you did in your first two
6 statements

7 A No, sir

8 Q So he has turned around now and he's going
9 back towards the club?

10 A I guess so

11 Q And you hear more gunshots, you duck
12 between two cars, dash out almost by the dirt
13 road, turn around and you see the truck coming?

14 A (No response)

15 Q You stop them, they stop 'I got in, they
16 took me to my mother's house ' Okay

17 A Yeah

18 Q Now, this is the same truck that you said
19 in your second statement was coming up the road,
20 shooting out the window, right?

21 A Yes, sir

22 Q But you didn't say that in this statement

23 A No, sir

24 Q So -- just so that I've got it clear in my
25 mind, the Cadillac is coming, after shooting all
26 the way up, stops, he gets out of the car, talks

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

662

1 to you, turns around, goes back down, shooting

2 all the way back down

3 A No, sir

4 Q Or somebody is shooting all the way back

5 down You keep saying you were hearing

6 gunshots

7 A Yes, sir

8 Q The truck, you see at some point, coming

9 back towards you this way with gunshots coming

10 out of it all the time And that you don't get

11 in the truck until it gets up to Coon Club Road

12 That's your testimony?

13 A Not exactly, sir, but some of it

14 Q I am just going by what you wrote, sir

15 A I see that

16 Q And just so that we will all have this

17 straight, nobody was shooting at you that night,

18 that you know of?

19 A No, sir

20 Q And you didn't shoot anybody?

21 A No, sir

22 Q So whatever happened out there was not

23 self-defense?

24 A (No response)

25 Q You were not defending yourself in any way?

26 A No, sir

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10, 2004
before The Honorable R Markley Dennis Jr

663

1 Q Okay Because you never had a gun?
2 A No, sir
3 Q Never shot a gun?
4 A No, sir
5 Q And Ton-Ton never shot at you?
6 A No, sir
7 Q And you weren't in fear for your life --
8 because you hadn't been shot at?
9 A Yes, sir, I was You be out there and
10 bullets traveling, it don't matter, you be
11 ducking
12 Q I understand But this was not a situation
13 where you were shooting back at someone that you
14 thought was shooting at you
15 A No, sir
16 Q So there is no way it was self-defense?
17 A No, sir
18 Q Now, you went back up over at Bujuan's
19 house after the fact?
20 A Yes -- yes, sir
21 Q And who is Bujuan?
22 A Bujuan Richards is my cousin
23 Q And Keith Richards is your cousin?
24 A Bujuan's brother
25 Q Is Fred your brother, too?
26 A No, sir

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10, 2004
before The Honorable R Markley Dennis Jr

664

1 Q Kenneth? Kenneth is a friend of yours,

2 right?

3 A Cousin, sir

4 Q Fred and Kenneth are the same people,

5 aren't they?

6 A Fred?

7 Q Fred Sanders/Kenneth Sanders, aren't they

8 same person?

9 A Yes, sir

10 Q So if you're related to one of them you're

11 related to both of them Right?

12 A Yes, sir

13 Q So you're related to him too?

14 A (No response)

15 Q Or not?

16 A Who is "him, too"?

17 Q Kenneth Kenneth Sanders, sometimes goes

18 by "Fred"

19 A (No response)

20 Q Kenneth (Fred) Sanders, are you related to

21 him?

22 A Yes, sir

23 Q And he's a friend of yours, too, right?

24 A Yeah Yes, sir

25 Q And he's a Petersfield guy?

26 A Yes, sir

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 - 10 2004
before The Honorable R Markley Dennis Jr

665

- 1 Q All the Richards are Petersfield guys,
2 right?
- 3 A We all live in Petersfield, sir
- 4 Q And Petersfield -- let's take a look at
5 something here real quick You may want to get
6 down, because I know the lights are in your
7 face
- 8 A (Complies)
- 9 Q You're familiar with maps?
- 10 A Am I familiar with them?
- 11 Q Yes, sir
- 12 A Yeah
- 13 Q This is a map of that general area, is that
14 correct?
- 15 A Yes, sir
- 16 Q Where do you live?
- 17 A (Indicating)
- 18 Q Okay This is Highway 162, right?
- 19 A (No response)
- 20 Q It says "162" right here?
- 21 A Yeah
- 22 Q Comes back up this way and on the left is
23 Marvin's Meat Market, right? Marvin Meats is
24 there on the left Is that correct?
- 25 A (No response)
- 26 Q That's back towards Charleston way

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

666

- 1 A Yes, sir
- 2 Q And back over in this area over here is
- 3 what is called Pineland, right?
- 4 A No, sir
- 5 Q Isn't that where -- where, uh, what is it,
- 6 Scott White Road?
- 7 A Scott White Road is before, way before,
- 8 Pineland
- 9 Q I know, but when I'm saying Marvin's Meats,
- 10 I'm talking -- Marvin's is way down the road I
- 11 am just saying that Pineland is back on this
- 12 side of Highway 162 outside of Hollywood This
- 13 is the Pineland area, right?
- 14 A Yes, sir
- 15 Q And down here, this is the Petersfield
- 16 area, right?
- 17 A Yes, sir
- 18 Q This is the club, Coon Club Road, right
- 19 here Brewer Road -- and what's this other road
- 20 that's right there?
- 21 A (No response)
- 22 Q Alfred?
- 23 A Yeah
- 24 Q That's Alfred Road?
- 25 A Yes, sir
- 26 Q And basically Bujuan and Keith and them

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

667

1 live right there kind of at the vee?

2 A Yes, sir

3 Q And this is Petersfield Road right here,
4 isn't it?

5 A Yes, sir

6 Q And that's where Catrell lives and that's
7 where you usually live, too, where you used to
8 stay Your mom stays right ---

9 A Yes, sir

10 Q Okay Then your girlfriend stays over here
11 in Pineland, right, or your baby's mama

12 A Yes, sir

13 Q Then over here in this area is Cherryhill,
14 right? Cherryhill Road?

15 A Yes, sir

16 Q And, so, when you went and talked to Keith
17 after the -- you can kill that (video)

18 A (Returns to witness stand)

19 Q When you went to Bujuan's and them's, it
20 was to ---

21 A They dropped me off at my car

22 Q Pardon?

23 A They drop me off at my car

24 Q So this was real close after the shooting,
25 is that right?

26 A Yes, sir

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

668

- 1 Q Within fifteen minutes?
- 2 A I don't know the exact time, sir
- 3 Q Certainly within thirty minutes?
- 4 A I don't know the exact -- I guess Yes,
- 5 sir, I guess I don't know the exact time
- 6 Q Well, certainly it doesn't take thirty
- 7 minutes to get from where the club is right
- 8 around there to ---
- 9 A No, sir No, sir
- 10 Q So it had to be pretty quick, according to
- 11 your assessment?
- 12 A (No response)
- 13 Q Correct?
- 14 A Yes, sir
- 15 Q And basically right there where you said
- 16 you to talked was probably 200 yards from your
- 17 aunt's and uncle's -- Shirley and Oliver's,
- 18 right?
- 19 A Uh, -- yes, sir
- 20 Q It's close?
- 21 A Yeah, down Brewer Road
- 22 Q Right Right down Brewer Road?
- 23 A (Affirmative nod)
- 24 Q Where Tremayne's truck was found that
- 25 night?
- 26 A Yes, sir

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

669

1 Q Or early the next morning, I should say
2 That is your aunt's and uncle's house where that
3 truck was found, right?

4 A Yes, sir

5 Q Okay So getting back to your statements
6 In your first statement you don't mention the
7 pickup truck, you don't mention the shooting
8 coming from the pickup truck You don't mention
9 any of that in your first statement, the half-
10 page statement

11 A No, sir

12 Q Then in your second statement, you do
13 mention the truck You say, 'yeah, there was
14 shooting out of the truck, yeah, I saw them
15 shooting out of the truck ' You basically said
16 that, right?

17 A (No response)

18 Q This was before you got in it, understand
19 'I saw shooting out of the truck ' Did you tell
20 them that?

21 A No, sir, that's not on my second statement

22 Q Okay, (indicating)

23 A (Upon review), yes, sir This is the second
24 one, yes, sir

25 Q So there was shooting out of the truck?

26 A (Affirmative nod)

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

670

1 Q Okay You're there on the outside, with a
2 bunch of Petersfield folks out there -- wasn't
3 there a good many, wasn't there a lot of people
4 out there?

5 A Yeah Yes, sir

6 Q And the only ride that you could find home
7 was this gray pickup truck coming down the road
8 with gunfire coming out of it?

9 A Yes, sir Everybody don't -- is not
10 fortunate enough to have cars, sir So you --
11 I had to get a ride Unfortunately, I'd left my
12 car at home

13 Q I understand that, but there were a lot of
14 cars there and a lot of Petersfield people
15 there, right?

16 A Not like that, not that much Petersfield
17 people were there

18 Q You saw Deputy Frichtel's video, sir
19 There were lots of people there from
20 Petersfield Matter of fact, Bujuan, Keith, all
21 them, they didn't leave until well after Jamie
22 had been killed ---

23 MS KENT-JENKINSON Objection

24 DIRECT EXAMINATION CONTINUING

25 BY MR DURANT

26 Q --- and the police were there and

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

671

1 everything, right?

2 THE COURT Hold on a second What's
3 the objection?

4 MS KENT-JENKINSON I didn't hear a
5 question

6 THE COURT All right Let's try
7 to break it down a little bit, Solicitor Thank
8 you Ask questions

9 MR DURANT Yes, sir

10 DIRECT EXAMINATION CONTINUED

11 BY MR DURANT

12 Q Then in your second statement, they asked
13 you who fired a gun and you said 'fire came out
14 the passenger side of Feind's truck' when they
15 were coming towards you?

16 A Yes, sir

17 Q (Reading) 'I open the door, Feind had a
18 gun, I got in the truck, they drop me off to my
19 car, I got in my car and went down Bujuan-them's
20 road and they said -- and Fred said Jamie got
21 shot Then I left, went to my baby's mother's
22 house and I told her what I'd heard Then I
23 went to sleep '

24 Question, "Did you fire a gun?"

25 Answer, "I fired a gun in the at the wooded
26 area on the same side of the road near Coon Club

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

672

1 Road "

2 This is what I am a little bit puzzled
3 about Why did you tell them that?

4 A Why did I tell them what?

5 Q That you fired a gun, if you never shot a
6 gun?

7 A Because he told me that if I didn't say
8 that I fired a gun that he was going to charge
9 me with murder, that carried a certain amount of
10 years, and that he'd make sure that it stuck
11 Some of those words

12 Q So if you didn't fire a gun, they would
13 charge you with murder?

14 A Did Did

15 Q Okay So if you did fire a gun, he was
16 going to charge you with murder?

17 A Yes, sir

18 Q So he told you that if you fired a gun that
19 he was going to charge you with murder?

20 A He told me that if I said I fired a gun the
21 charge for inman--, for involuntary manslaughter
22 carries a lesser charge than murder He told me
23 that if I continued sitting here saying that I
24 didn't shoot a gun that he was going to charge
25 me with murder and it was going to make sure
26 that it stuck That's exactly what Officer

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10, 2004
before The Honorable R Markley Dennis Jr

673

1 Anderson told me

2 Q So he told you that the only way that you
3 would not get charged with murder is if you
4 admitted to shooting?

5 A Not shooting him, shooting a gun Yes,
6 sir, that's exactly what he told me

7 Q That's your testimony?

8 A (No response)

9 Q That the only way that you would not get
10 charged with murder is if you admitted shooting
11 a gun?

12 A Yes, sir

13 Q That's what he told you?

14 A (No response)

15 Q Doesn't that seem a bit backwards to you?

16 A The whole thing seemed a little bit
17 backwards to me

18 Q And could be due to the fact, or due to --
19 didn't they tell you that other people had seen
20 you shooting a gun out there?

21 A No

22 Q When they were interviewing you, they
23 didn't tell you that?

24 A They maybe did, it was like 4 00 in the
25 morning I ---

26 MS KENT-JENKINSON Objection, Your

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

674

1 Honor

2 THE COURT Hold on a second, don't
3 answer What's the objection?

4 MS KENT-JENKINSON May we approach?

5 THE COURT Give me what the
6 objection is, please What is the basis?

7 MS KENT-JENKINSON Relevance

8 THE COURT Approach, please
9 SIDEBAR?

10 MS KENT-JENKINSON Part of the
11 objection is that he is asking him what other
12 people are saying or asking him to tell what
13 other people were saying

14 MR DURANT My question was, 'did the
15 detectives tell you that other people were
16 saying that you were shooting a gun?'

17 THE COURT What's the objection?

18 MS KENT-JENKINSON Hearsay

19 MR DURANT I am asking did the
20 detectives tell him that I am not saying who
21 it came from, I am just saying did they tell him
22 that

23 THE COURT Restate your question

24 MR DURANT That's my question

25 THE COURT That's fine If that's
26 your question, I overrule the objection

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

675

1 MR DURANT Okay

2 (SIDEBAR CONCLUDED)

3 THE COURT Overruled Restate your
4 question, please

5 CROSS EXAMINATION RESUMED

6 BY MR DURANT

7 Q Did the detectives tell you that people had
8 seen you shooting a gun out there? Did they
9 tell you that?

10 A No, he told me that someone saw me running
11 with the gun

12 Q So he told you that someone saw you running
13 with the gun?

14 A Yes, sir

15 Q Did he tell you that the person who saw you
16 -- seeing you run with the gun, saw you get into
17 the pickup truck?

18 A No, sir

19 Q He didn't tell you that?

20 A No, sir

21 Q Okay So it never occurred to you that you
22 had to come up with some reason for having a gun
23 in your hand?

24 A Say that again?

25 Q It never occurred to you, when you were
26 giving them this statement, that you needed to

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

676

1 have some reason for having a gun in your hand?
2 Because of what they told you about -- that they
3 told you that someone had seen? Isn't that
4 correct?

5 A I don't understand what you're saying

6 Q They told you that someone had seen you
7 with a guy in your hand, according to your own
8 testimony, right?

9 A Yes, sir

10 Q So did it occur to you at that time that
11 maybe you should explain to them why someone
12 might have seen you with a gun in your hand?

13 A No, sir, because I didn't have a gun in my
14 hand

15 Q Okay So that's not why you said that you
16 were shooting a gun into the woods, right?

17 A No, sir

18 MR DURANT Court's indulgence for
19 just one moment

20 THE COURT Yes, sir

21 CROSS EXAMINATION RESUMED

22 BY MR DURANT

23 Q Jermaine Heyward, he -- you previously said
24 that he is your cousin?

25 A Yes, sir

26 Q Okay As is Denode and -- all of them,

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis, Jr

677

1 right? They're blood relatives?

2 A Yes, sir

3 Q And Tremayne Washington is not a blood
4 relative, is he?

5 A He -- he said he's blood relatives with
6 Denode and the Heywards, Denode and Jermaine

7 Q He is not even a Petersfield guy, is he?

8 A No, he lives downtown

9 MR DURANT Thank you

10 THE COURT Redirect?

11 MS KENT-JENKINSON Thank you, Your
12 Honor

13 REDIRECT EXAMINATION

14 MS KENT-JENKINSON

15 Q John, you went by Bujuan's house?

16 A Yes, ma'am

17 Q And was Kenneth Sanders there?

18 A Yes, ma'am

19 Q Did you shake Kenneth Sanders' hand?

20 A No When I got out of the car, he grabbed
21 me my arm, hugged me up and carried me to the
22 side No, ma'am

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

25 THE COURT Recross?

26 MR DURANT Nothing, Your Honor

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

678

1 THE COURT You may come down, sir

2 (WITNESS STEPS DOWN)

3 THE COURT Call your next witness

4 MS KENT-JENKINSON The Defense

5 rests

6 THE COURT Any reply testimony,

7 Solicitor?

8 MR DURANT No, sir, Your Honor

9 THE COURT Very well Ladies and

10 Gentlemen, that would conclude the evidentiary
11 portion of this proceeding There still remains
12 however two very important parts of the trial,
13 the closing arguments of the attorneys and of
14 course the instruction on the law

15 Although you will not hear any more
16 evidence in either of those portions, it still
17 would be very inappropriate for you to begin
18 your deliberations, either individually or
19 collectively

20 It is 5 00, o'clock The next two
21 portions will take us well into the evening and
22 there is no reason for us to do that We will
23 come back tomorrow and we will do that first
24 thing, then you will be fresh and can then begin
25 your deliberations Please remember again that
26 you've not permitted, and should not at all,

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

679

1 discuss this case with anyone, including anyone
2 at home Do not watch any News programs about
3 it, should there be any News, do not read any
4 newspaper accounts about it, should there be
5 any I would ask you to return to your
6 jury room by 9 30 And, please remember, nobody
7 may talk about this case in your presence or
8 talk to you about serving on this jury Have a
9 good evening Thank you very much for your
10 attention today You may now retire

11 (JURY OUT @ 5 05 P M)

12 THE COURT Anything from the State
13 at this point?

14 MR DURANT Nothing except perhaps
15 for charging, Your Honor

16 THE COURT We will talk about that
17 in just a moment Anything from the Defense at
18 this point?

19 MR BUTLER Renewed Motions based on
20 the grounds previously stated

21 THE COURT Thank you very much, Mr
22 Butler I would respectfully deny that Motion
23 based on the reasons previously given

24 Okay, let's take a few minutes Then
25 we will come back and have a charge conference
26 Let Mr Ward be present during that, as well

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

680

1 Let's take five minutes, I'll be back Thank
2 you

3 (BRIEF RECESS 5 07 - 5 15 P M)

4 (DEFENDANT PRESENT)

5 MR DURANT I was thinking more about
6 the lessers

7 THE COURT I know where he's going
8 with that one I have been, too I've been
9 reading a great amount about that Clearly,
10 clearly -- I don't know, but I assume you'all
11 are wanting the lesser-included offense?

12 MR BUTLER Right I don't think
13 that there is a basis for any of them, even the
14 ones that we would want

15 THE COURT That's fine So you want
16 Murder, all or nothing?

17 MR BUTLER I don't know exactly what
18 I want You have me on the spot

19 THE COURT Well, I thought about ---

20 MR BUTLER But my instinct at this
21 point is 'no', that the only charge should be
22 murder or not guilty

23 THE COURT Okay

24 MR BUTLER That's off-the-cuff, now,
25 and ---

26 THE COURT I want you to tell me

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

681

1 what you want to do, because clearly I can argue
2 -- I can argue -- if the State said that it is
3 all-or-nothing, I could make the argument that
4 it is all-or-nothing, as you just stated

5 MR BUTLER (Affirmative nod)

6 THE COURT I think that I could make
7 an argument for voluntary manslaughter, though

8 MR BUTLER Well, it seems to me that
9 there is a basis for voluntary manslaughter,
10 that there is a basis for self-defense and that
11 there is a basis for involuntary

12 THE COURT No I would agree with
13 you at first blush I thought -- but clearly not
14 self-defense, because clearly he never says he
15 did anything, number one, and he said that
16 nobody was threatening him, number two So
17 there is no basis for his self-defense

18 Involuntary, I've thought about that
19 Clearly we are not -- if there was self-defense,
20 then that is the lawful aspect Then that
21 person has a lawful right to defend themselves
22 And if they are reckless in doing that, then we
23 get into the involuntary manslaughter So we
24 kind of -- I don't have that here

25 MR BUTLER I agree with -- I agree
26 that there is no self-defense

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

682

1 THE COURT All right

2 MR BUTLER If it is voluntary But
3 I don't think that it ---

4 THE COURT Why wouldn't fighting be
5 voluntary?

6 MR BUTLER Because it puts a gun in
7 his hand I mean, he testified that there was
8 no gun in his hand Then it's not self-defense

9 THE COURT I understand I'm
10 talking about a version where it does put it in
11 his hand and I have to consider it -- what is a
12 reasonable inference that you could draw If
13 they find him guilty of murder, they could find
14 him guilty of voluntary manslaughter because he
15 is fighting

16 MR BUTLER They could find him
17 guilty of involuntary manslaughter because they
18 could say that he was justified in arming
19 himself and then -- then --

20 THE COURT That's fine, but he still
21 doesn't have any right to shoot That's the
22 problem I have no lawful use firing of a
23 firearm That's the problem

24 MR BUTLER Yes, sir I guess the --
25 I guess the quagmire that I find myself is, I
26 don't agree with the premises that it gets to

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

683

1 here, that voluntary would be appropriate

2 THE COURT Well, it's your call

3 You tell me what you want to do What does the
4 State want?

5 MR DURANT I just think that there
6 is evidence to potentially support a voluntary
7 manslaughter charge You know, -- there's
8 evidence of sufficient provocation in this case

9 THE COURT Well, let me ask you
10 this If there is a version for that, is there
11 not a version -- it is not a version, clearly
12 now, for -- the only way that we could get him
13 firing the gun would be that he was afraid and
14 lawfully, in some way defending himself -- at
15 least from my view of the total facts at this
16 point

17 But this -- there's two parts There
18 are two possible ways to get to involuntary
19 manslaughter The first one, I haven't decided
20 yet That the defendant unintentionally killed
21 the victim, without malice but while engaged in
22 an unlawful activity not naturally tending to
23 cause death or great bodily harm

24 Now, if I have got somebody shooting
25 down a road, which is what the version is, at a
26 car, is it likely to cause death or great bodily

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

684

1 harm?

2 MR DURANT With all those people
3 around, (affirmative nod)

4 THE COURT Well, I -- all those
5 people in the Club, I would agree with you But
6 the testimony is and a version that they could
7 believe is that the shooting took place on the
8 highway and everybody says "down the road" And
9 the car, I don't think, who knows how far down
10 the road So the question then becomes is there
11 a -- is there a version that the jury could
12 believe?

13 MR DURANT There is case law that
14 says that if you intentionally fire a weapon
15 that that is not involuntary manslaughter, even
16 if for example I was shooting a warning shot
17 over someone's head The ---

18 THE COURT All right, then show me
19 that case law That's all that I need

20 MR DURANT I've got it somewhere
21 here

22 THE COURT I'll be doing some
23 research night, we can do it in the morning I
24 don't have to decide this tonight, because I can
25 put this (charge) together while you'all are
26 arguing

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10, 2004
before The Honorable R Markley Dennis Jr

685

1 MR BUTLER If I could mention one
2 other option that has just come to me

3 THE COURT Okay

4 MR BUTLER Why I think that is
5 could not be manslaughter is this There is a
6 transferred intent for murder, which as Mr
7 Durant said in his opening Malice does not
8 extent -- this is common law, and it may be
9 different in South Carolina but I am just going
10 to my law school class, just trying to remember

11 THE COURT Be careful going there,
12 that could be dangerous

13 MR BUTLER But the transferred
14 intent argument does not work for manslaughter
15 because the person who did the provoking is not
16 the victim There is no transferred intent for
17 voluntary manslaughter I am not saying that
18 for certain, but I think that is right

19 And the second is, I am not sure that
20 there was evidence that he was provoked, at all
21 You know, on -- on Mr Durant's cross-
22 examination of the Defendant, he brought up that
23 he said that he was involved in the altercation
24 but no one -- he said he helped to break up the
25 fight

26 THE COURT I'm sorry He said

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

686

1 that, but there is also a way to construe that
2 that he was involved in the fight

3 MR BUTLER Yes

4 THE COURT There was also testimony
5 that he was involved in the fight, by people
6 that put him near the car, as I recall So
7 again what the jury -- the word "involved", when
8 he said that, I wanted to know if that is also
9 the definition -- it depends on what the
10 definition is You know, what is "involved"?
11 You're right, it could be any number of things
12 but it would lend itself, in my opinion, that
13 term coupled with everything else that was going
14 on, and all the testimony that we have about
15 what he is doing -- and I mean the inference
16 that could be drawn that the Cadillac is
17 leaving, shots are being fired and the inference
18 that he is in the vehicle pursuing the Cadillac

19 MR BUTLER Yes, sir

20 THE COURT So, you know, there's a
21 ---

22 MR BUTLER Yes, sir

23 THE COURT --- fight going on

24 MR BUTLER An analogy that I can go
25 back is the case that the -- the argument that
26 transferred intent doesn't apply to voluntarily

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

687

1 I am sure that there are cases that say that you
2 can have, that you have provocation and you can
3 have in-the-heat-of-passion, but if you kill
4 somebody other than the person that provokes
5 you, it is still murder That's exactly what
6 happened here, which is why it is not voluntary
7 manslaughter

8 MR DURANT It's odd because you've
9 got -- I'm telling you, on that issue, smarter
10 minds that me have tried to explain it to me and
11 I can't see the difference But it seems like
12 we've got our Supreme Court coming own on both
13 sides of the same issue

14 THE COURT I am sure that you do
15 I am positive that you do, because it is going
16 to depend on the basic facts of each case I'm
17 sorry, it is not going to be just a wonderful
18 bright line that we are going to be able to
19 apply there Just give me the citation

20 MR DURANT The cite that I was
21 talking about in terms of involuntary was *State*
22 *v Cliffton Harris, Cliffton Harris v State of*
23 *South Carolina, 2002*

24 THE COURT What is the cite?

25 MR DURANT 354 SC 382

26 THE COURT Do you have the

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 - 10 2004
before The Honorable R Markley Dennis Jr

688

1 Southeastern?

2 MR DURANT Yes, 581 S E 2nd 154

3 THE COURT Any others that you want
4 me to look at?

5 MR DURANT That is the one that I
6 was concentrating on in the involuntary

7 THE COURT All right

8 MR DURANT They basically say that
9 there is no error in refusal to charge the law
10 of involuntary manslaughter when the defendant
11 admitted intentionally firing the gun

12 THE COURT But he didn't admit to
13 intentionally firing the gun

14 MR DURANT But claimed only
15 that he intended to shoot other victims

16 THE COURT Correct

17 MR DURANT Both ---

18 THE COURT I will look at the case
19 I understand

20 MR DURANT Okay

21 THE COURT All right I
22 understand All right Does it cite any cases?

23 MR DURANT Yeah, it cites ---

24 THE COURT I will read that

25 MR DURANT --- some other cases,
26 and I've got some other cases just on the

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

689

1 provocation issue

2 THE COURT All right

3 MR DURANT The ones that I just

4 can't reconcile are that *Harris* which ----

5 THE COURT What is the cite on

6 that?

7 MR DURANT Which is the one that I

8 just gave you, I believe Excuse me, the

9 *Childers* case ---

10 THE COURT My law clerk ---

11 MR DURANT --- which is a Court of

12 Appeals case So we've got *Harris* by the

13 Supreme Court, *Childers* by the Court of Appeals,

14 and ---

15 THE COURT But did it go up?

16 MR DURANT To me, I just can't

17 reconcile them

18 THE COURT Okay

19 MR BUTLER What is the cite for

20 *Childers*?

21 MR DURANT I'm sorry, it's 595 S E

22 2nd 872

23 THE COURT Okay That's fine

24 Thank you

25 MR DURANT So I guess my position

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

690

1 on the voluntary -- the whole issue is, you
2 know, just provocation, can they claim voluntary
3 provocation didn't come from the victim? And
4 you're got one saying yes and one saying no
5 But I think in that case that I would, just out
6 of an abundance of caution, just charge the
7 voluntary and take that issue out of it

8 MR BUTLER An abundance of caution
9 for what?

10 THE COURT Caution for what? To
11 take what out?

12 MR DURANT In other words, ---

13 THE COURT That he had ---

14 MR DURANT In other words, you
15 know, charge murder-or-nothing and he comes back
16 later and says, you know, we should have charged
17 voluntary manslaughter and some people up in
18 Columbia, far removed from this process and how
19 it works says 'we agreed' and I have to be back
20 here again

21 MR BUTLER That would only happen by
22 asking for it

23 THE COURT That's right That's the
24 catch The catch is that he says no, he wants
25 to roll the dice on murder He can't appeal
26 something that he didn't ask for

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

691

1 I don't believe that they have done that, I
2 think that they have changed that one
3 MR DURANT MR DURANT I can,
4 I can't put anything pass those people
5 THE COURT Those people?
6 MR DURANT In Columbia
7 THE COURT I can 'cause they've done
8 away with it -- well, first of all, it is not a
9 capital case We don't have improforum vitae
10 here
11 MR BUTLER That's right
12 THE COURT That is not going to
13 happen in this case
14 MR BUTLER I beg the Court's
15 indulgence for just one moment
16 THE COURT Yes, sir
17 (SIDEBAR BETWEEN COUNSEL)
18 THE COURT Listen, I have no problem
19 justifying whatever you want
20 MR DURANT No, we're talking about a
21 different issue, we're talking about accomplice
22 liability, the hand of one, the hand of all
23 THE COURT Well, we don't have that,
24 do we?
25 MR DURANT Well, this would be my
26 argument

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

692

1 THE COURT Well, you can make it
2 You can make it There's no need to make it
3 tonight I will be happy to hear you when you
4 tell me tomorrow 'I want you to do that' and put
5 it on the record

6 MR DURANT Okay

7 THE COURT But -- based on what?

8 MR DURANT Well, by virtue of the
9 fact that you have, you have testimony -- if the
10 jury just believed this and nothing else, you
11 have testimony of basically a fight between two
12 groups You've got testimony that John Ward was
13 a part of that fight You've got testimony that
14 it was a fight against Petersfield versus
15 Cherryhill You've got testimony that people in
16 the car ---

17 THE COURT The people in the car ---

18 MR DURANT May I finish?

19 THE COURT Certainly

20 MR DURANT That were spiriting away
21 the guy that got beat up, the Peterfield guy
22 which started the fight, that the Petersfield
23 people went after the Cherryhill people in the
24 car, shooting, that there was an ongoing gun
25 battle down the road

26 THE COURT Where is the testimony

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R. Markley Dennis Jr

693

1 that this guy was all in favor of this war?
2 That he was taking part in it and therefore it
3 becomes the hand of one is the hand of all?

4 MR DURANT Him saying that he was
5 part of the fight outside

6 THE COURT He said that he was
7 involved The fight outside, you -- you are
8 requiring a great leap of faith to get from that
9 to the pursuing down the road being a battle of
10 the two sections Thank you I appreciate
11 that That is well-argued As the guy said in
12 *My Cousin Vinnie*, artfully developed,
13 beautifully argued and 'no' So thank you
14 Anything else, tonight?

15 MR BUTLER No, sir

16 THE COURT Thank you

17 (COURT IN RECESS)

18 (TRANSCRIPT CONTINUED NEXT PAGE)

19

20

21

22

23

24

25

26

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

694

1

2 DECEMBER 9, 2004

9 30 A M

3

4

(DEFENDANT PRESENT)

5

THE COURT I have a jury matter that
we need to get out of the way and then I will
hear from you, Mr Durant All right?

8

MR DURANT Yes, sir

9

THE COURT Please bring in Ms
Wilson, Juror No 227 She is our alternate
juror

12

(JUROR ENTERS COURTROOM)

13

THE COURT Good morning, Ms Wilson
How are you? I hope you are well this morning

15

JUROR Oh, yeah

16

THE COURT Good Ms Wilson, I
received a note from Mr Hutton (presiding
juror) indicating that this morning that you
shared with him, for the first time, -- and if
you want to turn so that everyone can see you as
you respond

22

JUROR (Complies)

23

THE COURT That you do know some of
the witnesses who have testified, as well as the
Defendant, that they have been customers in your
place of business Is that true?

26

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

695

1 JUROR Yes, I do

2 THE COURT The fact that you know
3 these witnesses and the fact that you may known
4 the Defendant, as a customer in your place of
5 business, would that in any way influence your
6 decision in this case?

7 JUROR No, I am just curious

8 THE COURT You are curious?

9 JUROR Yeah

10 THE COURT Well, my question is, as
11 you consider the testimony, if you were to be on
12 this jury, because right now you are still the
13 alternate, but as I indicated to you on Monday
14 there is a possibility that you could be If
15 you were, would you be able to consider the
16 testimony of witnesses -- by consider, I mean
17 make decisions of which person you believe,
18 would you consider that person that you know in
19 the same way that you would consider the persons
20 that you don't know?

21 JUROR Yes, sir

22 THE COURT It wouldn't make any
23 difference?

24 JUROR No, sir

25 THE COURT And your decision would
26 be fair to both the State and to Mr Ward?

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10, 2004
before The Honorable R Markley Dennis Jr

696

1 JUROR Yes

2 THE COURT So your answers earlier
3 that you gave to the parties that you could be
4 fair to both sides has not changed in any way by
5 the fact that you now realize that you know some
6 of the witnesses and the Defendant?

7 JUROR Right

8 THE COURT Thank you very much
9 Please, ma'am, I would remind you that should
10 not talk about the fact that you know them, you
11 should not talk about the fact in the jury room

12 JUROR No

13 THE COURT You have done what you
14 should have done in making that known to the
15 foreperson, he's made that known to me

16 JUROR Yeah

17 THE COURT But please do not
18 discuss that now Okay?

19 JUROR Thank you very much You may
20 now retire to the jury room

21 (JUROR EXITS COURTROOM)

22 THE COURT Any exceptions or
23 additions from the State concerning the juror,
24 Court's Exhibit 2?

25 MR DURANT No, sir, Your Honor

26 THE COURT From the Defendant?

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

697

1 MS KENT-JENKINSON No, Your Honor

2 THE COURT What is the State's
3 desire to allow her to remain until the trial is
4 concluded?

5 MR DURANT Yes, sir, I guess out of
6 an abundance of caution

7 THE COURT The Defense, as well?

8 MS KENT-JENKINSON Yes, Your Honor

9 THE COURT Okay, well, let's broach
10 -- let me go ahead and get to the next level
11 Suppose one of them can't continue, and believe
12 it or not I'd never for ten years -- well, nine
13 is when this happened, -- I asked just before
14 they went to deliberate, 'does all of the first
15 twelve feel that they can't continue, for any
16 reason?' I had one raise their hand, one time
17 He said, 'I can't be fair '

18 So the alternate participated Suppose
19 that happens today What is the State's
20 position concerning this juror?

21 MR DURANT My position would be to
22 let her serve, Your Honor

23 THE COURT The Defense's position?

24 MS KENT-JENKINSON That's fine,
25 Your Honor

26 THE COURT Very well, I just want to

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

698

1 be sure so that if that happens we have Plan B
2 in place and won't have any problem, so that all
3 of you who have expended the energy that you
4 have expended -- and there is more energy that
5 is about to be expended on both of our parts, so
6 I

7 -- there's no need to go through that if
8 something should happen I appreciate that

9 Now, concerning the issue of the charge
10 -- Mr Durant, I need to hear from you I guess
11 I need to have the table set a little more
12 clearly

13 I think when we recessed yesterday,
14 earlier, Mr Butler, you said your reaction was
15 basically murder or not guilty I asked you to
16 think about it and reflect over night What is
17 the Defense's request with respect to the
18 inclusion to the charge of voluntary man-
19 slaughter?

20 MR BUTLER After thinking about it
21 and consulting with our client, we would object
22 to that being sent to the jury

23 THE COURT Very well You believe
24 that there is no way -- that there are no facts
25 construed in the light most favorable to the
26 Defendant that would warrant the Court's

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R. Markley Dennis Jr

699

1 instructing on that aspect of the law?

2 MR BUTLER No, sir

3 THE COURT Mr Durant -- (pause)

4 I've said before, and the victim's
5 family is here, and now that both sides are
6 represented, I wanted to say this in their
7 presence, as well, because I truly, in reading
8 last night, -- it's always -- sometimes you try
9 these cases and I think that there's not really
10 anything to it, but sometimes you try a case and
11 you realize that there are extremely perplexing
12 issues This case is replete with those types
13 of issues I want to commend both sides for the
14 -- for the manner in which this case has been
15 presented It's been handled very, very
16 professionally and certainly very ably from both
17 sides

18 Mr Durant, I thought about, riding
19 home yesterday, my little flippant remark at the
20 end You and I have known each other for a long
21 time and I didn't intend anything by that But
22 I thought, 'that's not fair to those persons who
23 are here ' I wanted to say to you, for their
24 benefit, that there is no question -- I don't
25 know how this case could have been better
26 prepared from the State's position or better

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

700

1 presented It's been logically presented and I
2 very much appreciate that

3 While you and I may differ on some
4 legal principles, that's the beauty of our
5 system I love it And I appreciate the manner
6 in which you always argue your respective
7 position So, thank you for that

8 Now, I will be happy to ---

9 MR DURANT Thank you, Your Honor I
10 appreciate that and I just want to let you know
11 that I am not that thin-skinned That was water
12 off a duck's back with me

13 THE COURT With you, I know But
14 with the persons here, it may have been
15 perceived as not -- it really was not intended
16 in any way other than to just say, 'I thank you,
17 but I can't agree with you '

18 MR DURANT Yes, sir

19 THE COURT I will now hear you,
20 because I've wrestled with this thing last night
21 and this morning I have read both of the cases
22 that you have cited It is -- it truly is an
23 intriguing issue Judge Herns, there's no
24 question that she is very direct in what she
25 says I noted, very much so, -- and I also
26 noted that they cited one of his cases in

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

701

1 support, but Judge Anderson was involved in that
2 decision

3 But clearly, clearly -- and really in
4 both of those cases there is no question but
5 that the defense in each one clearly admitted to
6 shooting or clearly admitted to participating in
7 some fashion I think the one -- I just
8 remember the facts right now They all run
9 together

10 The one where the guy picks up the
11 grate and, unfortunately, the former wife is the
12 one that was killed He, for all intents and
13 purposes, should have been but somehow he
14 survived The Court clearly in that case -- and
15 that is the case, the *Locklear* case, *State v*
16 *Locklear*, where the Supreme Court basically says
17 South Carolina has not recognized sufficient
18 legal provocation from a third-party that can be
19 transferred to the victim That issue was
20 raised on a PCR as to whether or not that
21 manslaughter charge should have been given

22 I would be happy to hear from you I
23 understand your position that you believe that
24 it may warrant it Certainly, I talked about
25 and discussed with everyone yesterday a version
26 that I think could be argued, but maybe I missed

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 - 10 2004
before The Honorable R Markley Dennis Jr

702

1 something Mr Durant, I will be happy to hear
2 from you

3 MR DURANT Okay, Your Honor Thank
4 you for giving us this opportunity to explore
5 this issue

6 THE COURT Absolutely

7 MR DURANT I believe that pursuant
8 to *State v Cooley* that the State has the right
9 to ask for a jury instruction if its believes
10 that the evidence presented in this case could
11 support a lesser-included offense

12 THE COURT Um-humm

13 MR DURANT There are cases in South
14 Carolina, such as those cited in the Court of
15 Appeals decision, *Childers*, that in a
16 transferred-intent type situation it can be
17 murder or manslaughter depending on what was in
18 the defendant's mind at the time that he fired
19 the shots

20 Now, I understand that in this case the
21 Defendant has not admitted to shooting the
22 weapon But if you take his testimony out of
23 it, there is certainly testimony from the
24 State's side that the victim was shot from the
25 front passenger seat of that truck and that that
26 Defendant was occupying that seat

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 - 10 2004
before The Honorable R Markley Dennis Jr

703

1 There is certainly evidence in the
2 State's case that whatever gunfire was coming
3 out of the truck, the front seat passenger side
4 of that truck, was intentionally fired It was
5 not a single round, there were several rounds
6 The evidence indicates that there was an ongoing
7 gun battle as these vehicles went down the road
8 So I certainly believe that there is evidence in
9 the case which supports an intentional firing of
10 the weapon

11 My position on the transferred intent
12 is, like I said, it -- in following the
13 reasoning of the Court of Appeals, is that
14 transferred intent, the intent that is
15 transferred, can be malice or it can be the
16 intent required by voluntary manslaughter,
17 depending on the circumstances

18 I would submit that there is evidence
19 in this case, from the State's case, of course,
20 that -- you know, obviously you have this fight
21 inside that kind of developed into a fight
22 between two opposing groups Petersfield and
23 Cherryhill

24 John Ward is from Petersfield There
25 is evidence to the effect that John Ward
26 participated in this fight outside of the Club

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

704

1 There is evidence that Ton-Ton, who was
2 identified with the Cherryhill side, when he
3 went to pick up Dunmeyer tried to run over some
4 Petersfield people out in the road in the exact
5 location that the Defendant said he was That
6 Cadillac picks up Dunmeyer, comes back, Ton-Ton
7 gets out of the car and starts taunting the
8 Petersfield crowd again That Keith Sanders
9 runs up to his car, tries to hit Ton-Ton, is
10 knocked down as Ton-Ton drives away That the
11 car stops again and -- right in front of where
12 this pickup truck was, -- people in the Cadillac
13 start throwing bottles from the pickup truck
14 (sic) That right after that, this pickup truck
15 starts shooting at the Cadillac and roaring out
16 of the parking lot, going after the Cadillac

17 I think that version of the facts could
18 support a verdict of either Murder or
19 Manslaughter, depending on what this jury
20 thought was going on in John Ward's mind at the
21 time that he fired that weapon

22 THE COURT Aren't you, in that
23 situation, required to speculate as to what is
24 going on in his mind?

25 MR DURANT That is the role of the
26 jury, Your Honor

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

705

1 THE COURT From the State's
2 standpoint, it is not Don't you have to prove
3 that -- you have to prove some element beyond a
4 reasonable doubt that what is going on in his
5 mind?

6 MR DURANT I understand that, Your
7 Honor, but the jury may determine that I've not
8 proved the element of malice beyond a reasonable
9 doubt but they may determine that I have proved
10 sufficiently the provocation

11 THE COURT Where is that? I agree
12 with you So where is that as to John Ward?
13 Where is the sufficient proof of malice? You
14 and I agree, totally, up to this point What is
15 the malice of John Ward beyond -- excuse me
16 What is the provocation beyond a reasonable
17 doubt?

18 MR DURANT If you -- if the
19 decision is solely based upon the case that --
20 the Supreme Court case

21 THE COURT No, my decision is -- at
22 this point, I am just looking at it from the
23 standpoint of the elements that have to be
24 present beyond a reasonable doubt and where is
25 the element of sufficient legal provocation?
26 Basically then, the response would be greater

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

706

1 than a human could normally control, would be a
2 typical reaction to that

3 MR DURANT I understand

4 THE COURT So where are those?

5 MR DURANT Basically my response to
6 that would be his participation in the fight and
7 seeing his friend and relative, Kevin Sanders,
8 knocked down by the Cadillac down the road and
9 the people in the Cadillac throwing bottles
10 right in front of his truck in the parking lot

11 THE COURT That gives him cause to
12 shoot?

13 MR DURANT I am not saying that it
14 gives him cause to shoot Voluntary
15 manslaughter is not a legal thing, Your Honor

16 THE COURT I understand, but there's
17 got to something that would justify that
18 Clearly our Court has said that words do not
19 justify somebody firing a weapon I mean, over
20 and over they've said that It has to be more
21 than that So -- and clearly there is no threat
22 to him, in a vehicle If I am taking his
23 version that he is in the truck when all of this
24 is taking place, it's no threat to him

25 MR DURANT (Affirmative nod)

26 THE COURT Clearly this can't be --

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10, 2004
before The Honorable R Markley Dennis Jr

707

1 I mean, I've tried to get there but I can't get
2 there

3 MR DURANT And I guess my response
4 to that, if you don't think that the bottle
5 throwing incident is legal provocation, there is
6 certainly testimony in this case that Ton-Ton
7 was trying to run over the Petersfield people
8 out in the road Now, he didn't admit that, but
9 there's evidence in the case

10 THE COURT I agree with that, and
11 that goes back to your -- because I thought
12 about the hand-of-one also last night in riding,
13 your argument Basically if I take your
14 position that, 'Okay, I am here defending
15 Petersfield'

16 I mean, that's really what you're saying, it is
17 really a feud

18 MR DURANT Um-humm

19 THE COURT And if I understood you
20 correctly from the hand-of-one, that because he
21 is from Petersfield, because he was there,
22 involved, and the fact that somebody from
23 Petersfield shot this person, and this person
24 happened to be from Cherryhill, that that is the
25 "hand of one" because he'd have the same
26 feeling, being from Petersfield That basically

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10, 2004
before The Honorable R Markley Dennis Jr

708

1 it's a part of this whole scheme

2 MR DURANT Not just that, but
3 actually having physically participated in the
4 fight

5 THE COURT And then to say that
6 every single person out there who participated
7 who was from Petersfield then is guilty of
8 murder, because that's a logical conclusion --
9 is it not? If you're from there and you
10 participated, ever so slightly, because we know
11 it doesn't matter how much -- whether you're a
12 key person or just a minor player, under the
13 hand of one is the hand of all, you're all
14 involved

15 MR DURANT Of course not, Your
16 Honor

17 THE COURT Okay

18 MR DURANT The people in the truck
19 -- if the people in the truck acted in concert
20 in going after that person, then in that
21 situation the hand of one is the hand of all

22 THE COURT So the provocation has
23 to be -- it arises because 'I'm from Petersfield
24 and you're picking on one of my guys'?

25 MR DURANT Not necessarily that
26 As I said, it could be the evidence of Ton-Ton

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

709

1 trying to run over Petersfield people with his
2 car

3 THE COURT Okay

4 MR DURANT Which may have included
5 the Defendant Again, -- I don't know about you
6 but it would probably make me freak out a bit

7 THE COURT I know But the law
8 doesn't allow you -- just because it makes me
9 angry and makes you angry, that's not the
10 question

11 MR DURANT I understand

12 THE COURT The question is whether
13 or not a reasonable person would I mean,
14 clearly we have not justified that

15 MR DURANT Um-humm

16 THE COURT That just doesn't rise to
17 that level

18 MR DURANT And ---

19 THE COURT It would have if Keith
20 had jumped in the car Then we get into -- I
21 tried to get into this If you had one of those
22 persons who had jumped in the car, now the
23 question comes whether the boy was in the
24 passenger seat, the backseat, driving Maybe I
25 could -- maybe that would get to Judge Herns'
26 decision where she says that it does,

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

710

1 manslaughter or murder Clearly -- because I
2 don't have any way to get this man into a
3 manslaughter situation There is no evidence
4 given thus far, that I could find, that would
5 say that legal provocation applies to him It
6 just doesn't get there

7 MR DURANT Okay

8 THE COURT That's my problem I
9 don't question that there are people out there
10 that had they been in the truck, now we have
11 that But clearly in this situation -- what
12 happens after that and what is done -- there are
13 all sorts of problems in the length of time and
14 that's very unclear from the one involvement
15 that he had And, of course, we really don't
16 know what "involvement" means I'm really going
17 -- I am taking that to the best side that I can
18 for the State

19 MR DURANT Exactly And relying on
20 his statement saying that he was fighting

21 THE COURT Sure

22 MR DURANT And -- but, I guess in
23 terms of that particular issue, my argument
24 would be that would depend on whether there was
25 a sufficient cooling-off period or not

26 THE COURT Well, I think that you

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

711

1 and I could probably spend the rest of the day
2 chatting about this, but the bottomline is that
3 I have to make the call. Somebody will review
4 this. Defense, is there anything that you wish
5 to add or change in your position at all?

6 MR BUTLER No, sir, and I don't
7 want to say anything that changes -- you're on
8 my page, and I don't want you to change your
9 mind

10 THE COURT Very well. I am going
11 to -- I agree with you, and it's one of those
12 issues that I've done before over objection of
13 the defense, and I will do it again because I
14 think you're correct. It's my responsibility to
15 instruct on the law that applies to the facts of
16 a case. But I wrestled with that all night and
17 really, truthfully, I really believe that the
18 Supreme Court case would probably control that.
19 I am not deciding on that issue because there's
20 logic to the Court of Appeals decision as well.
21 I think that there probably are circumstances
22 where I would probably -- but with the fact of -
23 - the facts are totally different than those
24 cases. IF they were closer, I might

25 But then I tried to think, 'Okay, try
26 to figure out the occupants.' I can't get to

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

712

1 the legal provocation beyond a ---

2 MR DURANT All I can say about this
3 case is that it makes my head hurt

4 THE COURT Mine hurts, too, but
5 we're about to move on to something else

6 MR DURANT I did want to ask -- and
7 I understand your ruling Believe me, I am not
8 arguing

9 THE COURT I understand

10 MR DURANT Are you -- obviously
11 you're going to charge circumstantial evidence?

12 THE COURT I will charge the -- I
13 use a combination It doesn't require any
14 greater burden of proof, but I do require -- I
15 don't use to the exclusion of every reasonable
16 hypothesis I don't use that one

17 MR DURANT I was thinking of a case
18 last night, a South Carolina Supreme Court case,
19 that came out December 2nd that said basically
20 *Grippon* is the one that must be charged

21 THE COURT I am charging that I
22 do charge *Grippon*, but I don't think that it has
23 to ---

24 MR DURANT I thought you were
25 charging the hybrid

26 THE COURT I do charge it If you

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10, 2004
before The Honorable R Markley Dennis Jr

713

1 can show me a case that says we can only charge
2 *Grippon*, then -- because that has not come down
3 at all Be happy to read it Give me the cite,
4 I have it right here

5 MR DURANT Here it is, I will just
6 hand up the case It is *State versus* -- I was
7 just thinking it maybe an advance sheet It was
8 filed November 29th, 2004

9 THE COURT Thank you

10 COURT REPORTER Do you want the cite
11 in the record?

12 MR DURANT That's fine

13 THE COURT I thought that I
14 remembered looking at this They're talking
15 about the reasonable hypothesis language

16 MR DURANT Okay

17 THE COURT That was always in
18 there That creates that extreme problem

19 MR DURANT Right

20 THE COURT Mine goes really more to
21 an explanation of what -- the part that I say
22 that -- I think that they have to be consistent
23 with each other in every particular respect

24 MR DURANT Yes, sir

25 THE COURT I think that's part of
26 that -- I think that is tied to that beyond a

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

714

1 reasonable doubt I also say that it's got to
2 be more than mere suspicion, more than a mere
3 probability In fact, that's even part of the
4 *Lincoln* charge that is greater than a
5 probability standard, so in actuality it -- we
6 use it as a part of it, but I think that it is
7 further explanation of what reasonable doubt I
8 do not charge reasonable hypothesis I charge
9 shop-lifting, the *Grippon* language I
10 appreciate it I will review this while you'all
11 are arguing

12 MR DURANT Thank you

13 THE COURT Thank you very much

14 I am always willing to change and improve
15 Anything else?

16 MR BUTLER As you were talking, I
17 was just wondering whether or not it would make
18 sense to have a mere presence charge I mean,
19 that is usually in the accomplice liability
20 charge that I have objected but -- I'm just
21 throwing that out there

22 THE COURT Well, you know, the fact
23 of the matter is that I am going to charge -- I
24 think what I am going to charge will cover that
25 To be honest with you, I thought why am I
26 reading this? One of the cases cited talked

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

715

1 about whether or not a mere presence charge
2 should have been given In that case the court
3 -- because it was a drug case, and typically
4 they are appropriate For some reason, the
5 judge didn't give it The court said, 'Well,
6 this wasn't a constructive possession case
7 This wasn't a throw-down case This was actual
8 possession Therefore, it is really -- because
9 it is not even -- because the elements are more
10 than that '

11 In this particular situation, clearly
12 they've got to prove who did it So ---

13 MR BUTLER Yes, sir

14 THE COURT --- I will not include
15 that

16 MR BUTLER Thank you

17 THE COURT Do you request that,
18 formally?

19 MR BUTLER I think I will, just to
20 be safe

21 THE COURT Well, let me hear how
22 you argue and I will -- I mean, I can throw it
23 in there I can add that That they have to
24 prove that he was the one that shot, not just
25 merely being present

26 MR BUTLER That would be great

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

716

1 Thank you

2 THE COURT Anything else?

3 MR DURANT Not from the State, Your

4 Honor

5 THE COURT From the Defense?

6 MR BUTLER No, sir

7 THE COURT How long do you

8 anticipate your argument will be? The only

9 reason I am asking that is to know how quickly

10 I have to put the charge together?

11 MR DURANT I really don't know,

12 Your Honor Thirty or forty minutes

13 THE COURT I understand And I

14 don't call time The only time that I call time

15 is when -- I have the three repeat rule If you

16 get to saying the same thing a third time, I

17 will ask you to wrap it up Other than that --

18 you're entitled to repeat it for emphasis but

19 three, that's a little bit too much

20 MR DURANT I would waive opening,

21 Your Honor

22 THE COURT Okay How long -- are

23 you going to do the argument, Ms Jenkinson?

24 MS KENT-JENKINSON Yes, sir

25 Maybe thirty minutes

26 THE COURT That's fine, perfectly

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

717

1 fine All right, I think that we are ready for
2 our jury Let's bring in the jury

3 (JURY IN @ 10 10 A M)

4 THE COURT Good morning Ms
5 Ravenel, I understand that you have a doctor's
6 appointment at noon

7 JUROR Yes, sir

8 THE COURT Is there any possibility
9 that, if necessary, you could reschedule that?

10 JUROR Yes, sir

11 THE COURT If it is not something
12 that can be rescheduled, I would very much
13 appreciate it because I can't promise you that
14 we are going to be finished to coincide with
15 that If we are, then what I will do is let you
16 go to the doctor's appointment -- how long will
17 that appointment take you?

18 JUROR About 1 30 or so, but I will
19 reschedule it

20 THE COURT You would not mind doing
21 that?

22 JUROR No, sir

23 THE COURT Thank you so much, I
24 appreciate that very, very much

25 Thank you, Ladies and Gentlemen Good
26 morning to you and thank you for your patience

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

718

1 We have been working this morning, we started
2 yesterday and continued with that this morning
3 I appreciate your patience with that

4 We have now reached that very important
5 part of this proceeding As I mentioned when we
6 started, the attorneys have two opportunities to
7 speak to you This is their second opportunity
8 to address you and talk about this case

9 Unlike the opening statements, you have
10 now heard all the evidence and you're certainly
11 will, very shortly, begin that process of
12 applying your common sense, your sense of logic
13 and reason fairly and impartially to that
14 evidence in deciding what you believe to be the
15 true facts

16 I know that you are anxious to get
17 started but before you start, the attorneys have
18 an opportunity to discuss that evidence with you
19 and suggest reasonable inferences that you may
20 draw from that evidence

21 I am confident that when you begin the
22 process that you will find their remarks very
23 beneficial, extremely helpful, both in analyzing
24 the evidence and in applying the law Please
25 give them your undivided attention

26 Remember, however, that their remarks

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10, 2004
before The Honorable R Markley Dennis Jr

719

1 are not evidence and should never be considered
2 evidence The evidence, of course, came to you
3 through the testimony of the witnesses and
4 exhibits introduced

5 Following their remarks, I will give
6 you instruction on the law And, of course,
7 that is my responsibility as the judge of the
8 law In our working together, that's my duty to
9 give you that law Your duty is to accept that
10 law and apply it fairly and impartially to those
11 facts

12 Please remember that nothing that I say during
13 my instruction should be considered by you as
14 evidence either

15 Thank you so much for your attention to
16 this trial Thank you for the manner in which
17 you have conducted yourselves as a judge
18 throughout the trial By that, I mean the
19 attention that you have paid throughout the
20 entire proceeding Please now that same
21 attention to the attorneys as they make their
22 closing arguments

23 Mr Durant, as I understand, you wish
24 to waive your opening on the law Is that
25 correct, sir?

26 MR DURANT That's correct, Your

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

720

1 Honor

2 THE COURT Ms Jenkinson

3 MS KENT-JENKINSON Thank you, Your

4 Honor May it please the Court

5 THE COURT Yes

6 MS KENT-JENKINSON It is a harsh

7 reality that you have been exposed to A

8 reality that I hope that some of you weren't

9 aware takes place Young people solving

10 problems with guns Fighting for stupid

11 reasons and taking things into their own hands,

12 using weapons that kill As a result, young

13 lives are lost

14 We would like to think that this

15 doesn't happen, but it does What would

16 compound this tragedy is if another young man

17 went to prison for something that he is not

18 responsible for

19 Jamie Simmons was in the wrong place

20 at the wrong place John Ward was in the wrong

21 place at the wrong time

22 You can say that he should have done

23 things differently, and I agree with you that

24 he should have He should have picked better

25 friends And he probably should have waited for

26 another ride instead of getting into that Dodge

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

721

1 Ram

2 He shouldn't have been easily misled by
3 the police, by people of authority He was
4 naive and they pushed him to say something,
5 pushed him to say what they wanted to hear

6 Over the last couple of days, you've
7 heard from many witnesses, many of whom were
8 out there that night They don't know what
9 happened They saw different pieces of things,
10 but they didn't see John Ward shoot a gun

11 There were some witnesses that I didn't
12 have any questions for They didn't matter

13 What this case boils down to is three
14 witnesses Catrell Douglas, Tremayne Washington
15 and John Ward

16 Going back to the other witnesses that
17 were out there that you heard from, you heard
18 how many different statements that they gave
19 They gave one statement the night of the
20 incident, a different one a couple of days later
21 and you may have even heard different ones in
22 court this week Lots of people wanted to
23 protect themselves and you saw that from the
24 git-go

25 You saw that the Solicitor was having a
26 hard time with his own witnesses, arguing with

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

722

1 them They weren't saying the right things

2 You're left with Tremayne Washington,
3 Catrell Douglas and John Ward

4 The State wants to make a big deal that
5 the Ram truck was found behind a trailer that
6 belonged to Ms Ward I think her husband's
7 name is Oliver Ward They are kin to John Ward
8 And you heard from all these witnesses,
9 everybody is related out there Everybody said
10 that so-and-so was their cousin or their aunt or
11 they were kin to somebody in Petersfield --
12 everybody is related It doesn't make any
13 difference that the truck was found behind John
14 Ward's aunt's house

15 I want to talk to you now about Catrell
16 Douglas and Tremayne Washington You're stuck
17 with whether to believe them, two people faced
18 with spending the rest of their lives in prison
19 You heard what that's called, "pine box time"
20 Of course they're interested in themselves

21 And they told you that, they told you
22 that they are willing to lie to protect
23 themselves When Catrell Douglas and Tremayne
24 Washington had the opportunity to point the
25 finger at somebody else, that's exactly what
26 they did If they weren't testifying for the

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

723

1 State this week, they would be sitting right
2 where John Ward is sitting The Solicitor would
3 be trying to convict them And now they're
4 asking you to rely on their testimony to convict
5 John Ward They are asking you to believe two
6 people that they would convict for murder

7 Catrell Douglas He didn't struggle
8 with admitting that he was willing to lie to
9 protect himself He told you that He didn't
10 fight like Tremayne Washington did Tremayne
11 Washington had a hard time trying to admit that
12 he lied, but it was quite obvious

13 Catrell Douglas told you that he is
14 hoping that his charges will be dismissed The
15 only person that can do that is the Solicitor

16 Catrell Douglas' situation is no
17 different than it was in 2003 It is the same
18 situation as when the police questioned him
19 And what did he do? He lied

20 They are both alike in that way They
21 lied to you, they admitted to it and they are
22 protecting themselves

23 Tremayne Washington's motivations are
24 a little bit more obvious The truck belonged
25 to Tremayne Washington The gun belongs to
26 Tremayne Washington We know that because we

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

724

1 have a letter from SLED, South Carolina Law
2 Enforcement Division, that said that he bought
3 a nine millimeter Ruger semiautomatic He told
4 you that he kept it in his car, in the middle
5 console

6 He also told you that he was fighting
7 out there and you heard testimony that he was
8 rocking Kevin Dunmeyer's truck back and forth
9 You heard that he said, "We'll handle that" when
10 he saw everybody fighting out there What do
11 you think happened?

12 Johnny Buncum, the security guard that
13 was out there that night, he heard Tremayne
14 Washington say, "Sum bitch gonna die tonight "
15 What do you think that meant? "Sum bitch gonna
16 die tonight ' But he wants you to believe that
17 he was just helping Johnny Buncum break up
18 fights

19 The Solicitor may tell you that he
20 doesn't have to prove motive The motivation
21 for Tremayne Washington are pretty obvious

22 But what would John Ward's motivation
23 have been? That he's from Petersfield? That
24 he hangs around with all his friends from
25 Petersfield? I don't think so

26 You may ask yourself why did Tremayne

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

725

1 Washington get in the backseat of his own truck
2 There is some testimony that some shots came
3 from the passenger side of the truck Why was
4 he in the backseat?

5 He had free reign while he was in the
6 back seat He could move around as he wanted
7 to You saw pictures of that truck and you will
8 have those pictures back there with you while
9 you are deliberating You heard testimony that
10 officers found a spent shell casing in the vent
11 of that truck, even after it had been
12 transported to the evidence compound

13 You will have these (photographs) back
14 there with you

15 The testimony was that shots came from
16 the passenger side Just suppose that is true,
17 that somebody shot a gun like this outside of
18 the passenger window The gun is fired in this
19 way (indicating), the shell casing is going to
20 come this way Tremayne Washington told you
21 that

22 If you're on the other side of the
23 truck and you fire out this side of the truck,
24 the shell casings are going to come to the right
25 and they are going to come over this way onto
26 the front of the car Tremayne Washington

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

726

1 wanted to be able to move around, so that he
2 could shoot wherever he wanted to The shots
3 came from somewhere else in that truck, not the
4 passenger side

5 Remember what Tremayne Washington did
6 after the incident, the next morning when Denode
7 Heyward picked him up He asked Denode Heyward
8 to lie for him Why would you ask your cousin
9 to lie for you?

10 And I cannot come up with another
11 reason why he would wash his hands with bleach

12 Not only were you to hear these things,
13 you were able to see them, see for yourself how
14 Tremayne Washington acted

15 Just as I told you when I gave you my
16 opening on Monday, this courtroom is not a
17 guarantee, not a guarantee that people will tell
18 the truth

19 I thought of something that Tremayne
20 Washington said on the stand and it is very
21 important in this case He said, "I am only
22 accountable about myself " How did we get here
23 today? How did we get here with both Catrell
24 Douglas and Tremayne Washington pointing the
25 finger at John Ward?

26 The police were able to get John Ward's

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

727

1 statement, they got him to say one thing that
2 they wanted to hear and they stuck with that
3 They used that when they talked with Tremayne
4 Washington and when they talked with Catrell
5 Douglas and they stuck with it and went with it

6 When they were interviewed, Catrell
7 Douglas and Tremayne Washington, they were
8 asked, "Did you see John Ward shoot a gun?"
9 It's no coincidence that John is the one that
10 the police were able to start with You saw
11 from their testimony how slick these other two
12 guys are They lied from the git-go

13 The question that you're stuck with
14 here today is that you either believe these
15 people, codefendants, beyond a reasonable doubt
16 or you don't believe them

17 I would like to talk to you now about
18 John Ward and why he is different from Tremayne
19 Washington and Catrell Douglas He told the
20 truth from the beginning You will have his
21 statements back there with you and you will be
22 able to review them as many times as you would
23 like Detective Anderson was asked, 'Are there
24 any inconsistencies in his statements?' He said
25 "No "

26 He first gave a short statement and

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

728

1 then later he gave a more detailed statement
2 The police then came back to him and he gave
3 some more detail You may ask yourself why did
4 he give such a short statement the first time
5 and why he didn't give them all the details that
6 that he did in the third statement

7 Johns gets phone calls that the police
8 wants to talk to him He goes down there -- not
9 for traffic tickets, I don't know why anyone
10 would go to the substation in the middle of the
11 night to check about their traffic tickets --
12 midnight on Sunday night

13 He goes there, not knowing what they
14 want him for Of course he knows that they want
15 to talk to him about what happened at Club
16 Diamante But other than that, that's all that
17 he knows He doesn't know that they are going to
18 ask him questions about his friends, what he saw
19 out there He's scared He gives them this
20 statement, which is consistent with the third
21 statement that he gave them when he is asked to
22 give a more detailed statement

23 If the State wants you to try this case
24 on written statements, that's fine The only
25 one with consistent statements is John Ward

26 Mr Durant spent a great deal of time

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

729

1 trying to trip up John Ward, and he couldn't do
2 it He wanted to make him look like a liar

3 Mr Durant is a lawyer and he is
4 trained to try to trip people up John Ward is
5 a young man from the country He couldn't trip
6 him up So what if he got confused about what
7 the green Cadillac did? Maybe he did get
8 confused Maybe he was wrong about the green
9 Cadillac

10 But that doesn't make him guilty of murder

11 John Ward didn't know about involuntary
12 manslaughter You heard parts of his statement
13 His entire statement consists of one sentence, a
14 four-page sentence There are many words in
15 here that are misspelled and they are out of
16 context Yet he came up with the concept of
17 involuntary manslaughter?

18 John writes a paragraph and then after
19 that the officer asks him questions and he
20 responds to those questions The last question
21 is, "Who fired the gun?" "Fire came out of the
22 passenger side of Fiend's truck when they were
23 coming towards me When I opened the door,
24 Fiend had a gun I got in the truck and they
25 dropped me off to my car I go to my baby's
26 mother's house and I told her what I heard, and

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

730

1 then I went to sleep "

2 Then out of the blue, at the bottom of
3 the statement, it says "Did you fire a gun?"
4 And John Ward writes, "I fired a gun in the --
5 at the wooded area on the same side of the truck
6 on Coon Club Road "

7 Then on the third statement, it's about
8 the fifth page of questions and answers, at the
9 end of the statement, the officer writes, "Do
10 you have anything to add to this statement?"

11 John writes, "Not about the situation,
12 but I do have to say that my answer to the
13 question did I have a gun and fired a gun on the
14 other statement was a lie, because I was given a
15 situation where either I was going to get
16 charged with murder or charged with involuntary
17 manslaughter, that's why I said I shot a gun
18 that night "

19 John Ward didn't come up with involun-
20 tary manslaughter himself We know where that
21 came from

22 You didn't see an audio or video of him
23 giving these statements You know why? Because
24 they don't want to have one

25 We have about ten pages of statement
26 altogether The second one he gave at the

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10, 2004
before The Honorable R Markley Dennis Jr

731

1 police station, four pages, took four hours and
2 fifteen minutes to take down An hour a page
3 I don't think that everything that happened that
4 night has been documented for you

5 Because the officers didn't haven't the
6 equipment to document it? I don't think so
7 We don't have it because they don't want you to
8 know what they told John Ward They don't want
9 you to know that they told him, 'Look, if you
10 tell us that you fired a gun, we might could
11 charge you with involuntary manslaughter instead
12 of murder, that carries life ' Don't you think
13 that would scare you?

14 I am sure it was something like, 'Mr
15 Ward, we want to help you out If you tell us
16 that you fired a gun, involuntary manslaughter
17 carries less than murder '

18 You have an awesome responsibility as
19 the jury You have a huge decision to make
20 You must make a collective decision as the jury
21 But the most important thing is that you must
22 form your own opinion When you're back there
23 deliberating, you must voice your opinion You
24 must tell everyone how you feel Nobody's
25 opinion is more important than another's You
26 must not compromise your opinion for the sake of

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

732

1 the group, because each of you -- each of you as
2 a juror must decide if these witnesses were
3 credible You must decide that these witnesses
4 are believable beyond a reasonable doubt If
5 you don't think that Catrell Douglas and
6 Tremayne Washington are telling the truth, you
7 must find John Ward not guilty

8 You should find John Ward not guilty
9 because he told you the truth, and he's been
10 telling the truth from the beginning

11 THE COURT Thank you, Ms
12 Jenkinson Solicitor?

13 MR DURANT Thank you, Your Honor

14 THE COURT Yes, sir

15 MR DURANT Good morning, Ladies and
16 Gentlemen As the judge told you, this will be
17 my last opportunity to address you before the
18 judge charges you the law in this case and you
19 retire to your jury room to deliberate

20 I would like to thank you for your
21 service in this case Yours is not an easy job
22 and I know that The job of a jury never is

23 As the judge will tell you, it is your
24 job in this case to find out what the truth is,
25 to find what the facts are in this case To
26 sift through all the evidence that you have seen

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

733

1 and all the testimony you've heard over the past
2 three days to determine who was telling the
3 truth and who was not

4 Once you have determined what the truth
5 is, you are to apply the law as Judge Dennis
6 will charge you in a few minutes, and arrive at
7 a verdict which speaks the truth Which speaks
8 the truth for the State of South Carolina, which
9 speaks the truth for the Defendant John Henry
10 Ward, and which speaks the truth for Jamie
11 Simmons who is not here with us today

12 It is not an easy task because this
13 case, unlike C S I , shows like that on TV, --
14 this is the kind of case that you get outside of
15 a nightclub in Hollywood, South Carolina at 3 00
16 on a weekend morning Science can sometimes
17 point you in the right direction and in this
18 case it does, but it can never tell who was
19 telling the truth and who was not That, Ladies
20 and Gentlemen, is why you are here

21 Juries perform this function every day
22 since the founding of this nation They are
23 able to do it because they bring one thing to
24 the table with them, and that thing they bring
25 is their common sense If you do that, if you
26 bring your common sense to that jury room back

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

734

1 there, you will have no trouble arriving at the
2 truth in this case because there is a thread of
3 truth that permeates this entire trial All you
4 have to do as jurors is follow that thread

5 Now, you heard basically two versions
6 of what went on that morning which are dia-
7 metrically opposed to one another You have the
8 version that was presented by the State and the
9 State's witnesses and you have the version of
10 John Ward Bottomline, you have to decide which
11 of those two versions is true If the State's
12 version is true, he's guilty If his version is
13 true, he's not

14 You have to make that decision having
15 heard from witnesses from both sides, who did
16 not tell the truth when initially questioned by
17 the police Everyone in this case is like the
18 proverbial child with its hand caught in the
19 cookie jar Those of you that have children
20 might appreciate this You got in the kitchen
21 and find your son or daughter up to here in the
22 cookie jar You say, 'Have you been eating all
23 those cookies?' "No "

24 'Well, I am standing here looking at
25 you with your hand in the cookie jar ' 'Well,
26 I wasn't eating them I was just seeing what

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

735

1 was in there '

2 'Well, tell me this How do you
3 explain all those cookie crumbs all over your
4 face and all those cookie crumbs down there on
5 the floor by your feet?' 'Okay, I ate one
6 cookie -- but it was just one '

7 'Now, now, I was in this kitchen about
8 five minutes ago and that cookie jar was full
9 Now that cookie jar is empty, and I didn't eat a
10 cookie -- and you and me are the only ones in
11 this house ' 'Okay, okay, I ate the cookies '

12 Isn't that exactly what you have going
13 on here? For whatever reasons, it is often
14 someone's gut reaction to lie to the police
15 Whether it's because they distrust law
16 enforcement, whether it's that they just don't
17 want to get involved, whether it's because they
18 are protecting friends and/or family -- which we
19 have a lot of in this case, -- or to protect
20 themselves, which we've got a lot of in this
21 case However, once you can convince that
22 person that you know that he is not telling the
23 truth and why he is not telling the truth, just
24 like that child, they generally come around to
25 the truth or at least some reasonable facsimile
26 thereof

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10, 2004
before The Honorable R Markley Dennis Jr

736

1 In spite of the testimony in this case,
2 there are a number of things in this case which
3 are really pretty much established, which have
4 really not been contested, and which you really
5 won't have to struggle over with as jurors

6 To begin with, we know that Jamie
7 Simmons was shot and killed on May 13th, 2003
8 We know that the mortal wound was a bullet which
9 perforated both of his lungs, his heart, his
10 aorta, his vena cava, his esophagus, and we know
11 that he died as a direct result of that gunshot
12 wound No question

13 We know that this brass-jacketed nine
14 millimeter Winchester projectile was what killed
15 him

16 We know that the same type of ammo that
17 was removed from his body was found in the
18 ashtray of that Dodge pickup truck

19 We know that Tremayne Washington owned
20 a Ruger P-89 semiautomatic pistol And I say
21 that not because Tremayne Washington says so,
22 but because SLED says so and because the stuff
23 that was found in the truck indicated that he
24 did the empty holster and the Ruger magazines

25 We know who was in that truck We know
26 that, not as Ms Jenkinson would have you

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

737

1 believe solely because of Catrell Douglas and
2 Tremayne Washington, but also because James
3 Murphy, Kenneth Sanders, Tron Brisbane, and John
4 Ward himself We know who was in that truck
5 You know who was in that truck

6 We know that the shots came from the
7 front passenger seat of that truck, as
8 corroborated by numerous witnesses

9 We know that the shooting started right
10 here before that truck pulled out on Toogoodoo
11 Road, precisely where the shell casings were
12 found

13 We know that those shots were aimed in
14 this direction because this GEO Tracker, which
15 is right here behind the victim's car, had a
16 through and through bullet hole -- through the
17 back of the headrest, out the front You can
18 draw a straight line back to there

19 We know that those two nine millimeter
20 shell casings and the one that was found in the
21 hood vent of that truck were all fired by the
22 same weapon

23 We know that there were no other nine
24 millimeter shell casings found in that area
25 They went up and down the road a hundred yards
26 in each direction, visually and with a metal

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

738

1 detector and these are the rounds that they
2 found three 40 calibers, two 9 millimeters,
3 this 25 caliber

4 We know that the bullet that killed
5 Jamie was not fired by a revolver or another
6 type of weapon that doesn't discharge its spent
7 shell casings Therefore, we know that Jamie
8 Simmons was killed by a bullet fired from the
9 front passenger seat of that Dodge pickup truck

10 What you have to determine, Ladies and
11 Gentlemen, is who was sitting in that seat
12 Apply your common sense to the two versions of
13 what you heard went on that night I submit
14 that you will have no problem determining that
15 the person that was sitting in that seat was the
16 same person sitting in that seat right there,
17 (indicating Defendant)

18 That is not because -- just because of
19 Catrell Douglas and Tremayne Washington You
20 can give their testimony whatever weight that
21 you want to give it They have no more reason
22 to lie in this case than you, not one whit

23 And Catrell -- particularly 'Trell --
24 I mean, Tremayne Washington is Tremayne
25 Washington You saw him Catrell Douglas is a
26 different story Catrell Douglas is this man's

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

739

1 flesh-and-blood His flesh-and-blood Now, if
2 Catrell Douglas is going to give up someone,
3 between his flesh-and-blood or somebody from
4 downtown Charleston that he doesn't even know
5 that much, which one is it going to be?

6 Everyone pretty much agrees what
7 happened inside the club, Keith Richards' fight
8 with his girlfriend -- Keith Richards being a
9 Petersfield guy, John Campbell, Rollo, gets
10 involved in it and he's identified with the
11 Cherryhill side It turns into a melee out in
12 front of the club, between Petersfield and
13 Cherryhill John Ward is part of that fight,
14 because he admits to it -- in one of his
15 versions

16 They try to get Rollo out of the
17 Suburban The Petersfield people are mad and
18 they are trying to get Rollo out An altercation
19 takes place there at the Suburban and Kevin
20 Dunmeyer is chased up the road towards the
21 Baptist Hill side Everyone pretty much agrees,
22 'our side, their side', that's what happened
23 thus far At that point, "pssst" it takes off

24 In the State's version, Ton-Ton, a
25 Cherryhill guy, in his lime green Cadillac, goes
26 up the road and picks up Dunmeyer He tried to

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

740

1 run over Petersfield people out in the road with
2 his car He picks up Dunmeyer, comes back to
3 the club and starts taunting them Like they
4 said, he wasn't stopping there asking them how
5 were they doing You know exactly what was
6 going on out there, because you've got common
7 sense

8 Kenneth, Fred Sanders, goes after him
9 and tries to get at him through the window of
10 the car He drives off, drags Fred or knocks
11 Fred to the ground He stops a little further
12 down the road and people start throwing bottles
13

14 Tremayne Washington goes to his pickup
15 and in that pickup was Catrell Douglas, driving
16 Tremayne Washington gets in the back seat and
17 John Henry Ward gets in the front passenger
18 seat I ask you to look at that like I said
19 Not because of just what Catrell and Tremayne
20 say, because I understand that you have to take
21 their testimony with a grain of salt But James
22 Murphy sat there and watched them get in the
23 truck and watched them get in the truck in
24 precisely the positions that they said that they
25 were in the truck And Tron Brisbane, the guy
26 that ended up getting run off the road, said

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

741

1 that that man (indicating Defendant) was in the
2 front passenger seat of that truck as he was
3 walking to his car just before the firing
4 started

5 And Kenneth/Fred Sanders testified that
6 after he had his little altercation with Ton-Ton
7 out there, got knocked down, that Ton-Ton went
8 further down, started throwing bottles, that at
9 that time he saw John Ward in the front
10 passenger seat of the vehicle

11 So not only do you have the two people
12 that were in the truck, you have three different
13 people outside of that truck that put that man
14 in that seat These three people are not
15 Cherryhill people, they are Petersfield people,
16 they are his friends and/or his relatives

17 Shots are fired from that truck before
18 it pulled out and then that truck takes off
19 after that Cadillac It goes down Toogoodoo
20 Road this way That was told to you by Mr
21 Buncum and Frank Brisbane, who was run off the
22 road way up there at Harry and Toogoodoo

23 Thirty minutes after the shooting, Ward
24 -- or within thirty minutes after the shooting,
25 John Ward runs into Kenneth/Fred Sanders, the
26 same guy who was chasing Ton-Ton out there and

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

742

1 gets knocked down by the car They shake hands,
2 because Fred stayed there -- Fred found out what
3 had happened, he knew that Jamie had been shot
4 and he knew that Jamie was dead John comes up,
5 they shake hands and he tells John what's going
6 on John falls out Then, guess what ends up
7 on Fred Sanders? Gunshot residue That's
8 pretty interesting

9 Later, the Dodge pickup is found parked
10 behind John Ward's aunt's house That story is
11 corroborated by all the State's witnesses, as I
12 have said, most of whom -- with the exception of
13 Dunmeyer -- are Petersfield people and/or
14 friends or relatives of the Defendant People
15 who had no reason and no desire to come into
16 this courtroom and put the finger on John Ward
17 when they could have just as easily put it on
18 Tremayne Washington, who wasn't a homeboy

19 Now, on the other side of the coin, you
20 have John Ward's version The version of
21 Jermaine Heyward and John Ward You heard from
22 Jermaine yesterday One, he wasn't at the club,
23 he doesn't know what happened at the club Two,
24 he's also related to John Ward Number three,
25 he never told the police about Tremayne
26 Washington, not John Ward, washing his hands in

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

743

1 bleach -- and he certainly had an opportunity to
2 do so because they took his statement when he
3 went over with Tremayne and Denode the next
4 morning to pick up that truck And when I asked
5 him on the stand, 'What is it that you know
6 about the shooting the night before?' "What
7 shooting?"

8 Ladies and Gentlemen, his brother,
9 Denode, and Anthony Ward, "Cabbage", and
10 Tremayne Washington, one of the defendants in
11 this case, spent the night at Jermaine's house
12 Denode and Anthony/Cabbage were right there at
13 the club when the shooting occurred, walked
14 right up there and saw Jamie's dead body on the
15 ground, and do you honestly believe that that
16 wasn't talked about back at the Heyward house?
17 That shows you what kind of witness Jermaine
18 Heyward is right there

19 Another reason that it didn't happen is
20 because they made a big point to point out to
21 you'all that when Tremayne Washington was
22 talking to you about Detective Hawks, there was
23 no smell of alcoholic beverage about his person
24 Well, don't you think that if you're
25 interviewing a murder suspect and he reeks of
26 Clorox, that you'd take note of that? You'all

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

744

1 have all dealt with Clorox You get it on your
2 hands, you can wash it with god-knows-what, but
3 for twenty-four hours it ain't coming off Even
4 if he did do it, there is another reasonable
5 explanation for it -- in that Tremayne
6 Washington could have been the one who ditched
7 the gun because it was his gun, in his truck

8 Now let's move on to Mr Ward's version
9 of what went on that night He has as much
10 incentive as anybody in this courtroom to lie to
11 you He is the one that is on trial here and he
12 certainly has the motive to tell you less than
13 the truth and to tell the police less than the
14 truth

15 But like I said, you don't have to just
16 rely on Jermaine and Cabbage If you want to
17 believe them, that's fine It's up to you Take
18 which of the four versions you want to believe
19 and believe it The first one, the second one,
20 the third one, the fourth one, the one that he
21 testified to

22 You will have those statements back
23 there You read them and you draw your own
24 conclusions as to whether or not he was being
25 completely truthful, as Ms Jenkinson would have
26 you believe

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

745

1 The fact of the matter is, the first
2 time that he talked to the police he was just
3 like that child with his hands in the cookie
4 jar 'I don't know anything about any pickup
5 truck, anybody shooting from a pickup truck or
6 anything All I know is that Ton-Ton was
7 shooting at me and I was -- then they came by
8 and I got in the truck and we left ' Which is
9 a considerably different version than what you
10 got on that witness stand and from what you got
11 in the second statement and the third statement

12 That second statement, he moves into
13 'Yes, I was in the truck but I didn't get into
14 the truck until after they started shooting '
15 It's like, 'Yeah, I had my hand in the cookie
16 jar but I was just trying to see what was in
17 there '
18 'But I sure didn't shoot any gun '

19 Well, you'all, we've got witnesses that
20 say he was in that truck and he was shooting the
21 gun I can see the wheels turning now click,
22 click, click, click, click, click

23 'Yeah, yeah, I shot a gun Now that
24 you mention it, I shot a gun after I got into
25 the truck, into the woods on Coon Club Road
26 Yeah '

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

746

1 Then come to find out he is being
2 arrested, he wants to change his statement,
3 because John Ward, like others, will do whatever
4 it takes if he thinks it is in his best
5 interest

6 I don't know if he was rattled or not
7 on cross-examination That's not my job to
8 determine, that's your job to determine

9 You know, one thing that was interest-
10 ing when you read and review the statement, --
11 and I've probably bored you to tears about what
12 he said about the Cadillac yesterday That's
13 because that is the consistent thread in all
14 three of his statements He basically says that
15 he is out there, involved in this fight at
16 Dunmeyer's, and that Dunmeyer is chased down the
17 road and that -- at that time, there's gunfire
18 So he and everybody else run over to this area,
19 where his cousin Marvin Ravenel's green Tahoe is
20 supposed to be but Marvin Ravenel's green Tahoe
21 wasn't there So he keep running on over this
22 way, this way, running up the road, and way up
23 here -- you'll have the map -- way up here, on
24 Coon Club Road, Ton-Ton comes tooling by in his
25 green Cadillac and stops right there where he
26 is, a little further down the road from here,

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

747

1 pulls out a gun and says, 'Here I am M-F' or
2 something to that effect, and starts blasting
3 away Now, he says that in his first and second
4 statements but he does not say that in his third
5 statement

6 I can't remember if he said it on the stand or
7 not

8 In all three of those statements, he
9 says that Ton-Ton then gets back in his car,
10 turns around at Coon Club Road and starts going
11 back this way I guess at some point, the truck
12 is going this way and the truck is shooting,
13 according to him, and it is just basically a war
14 zone right here between Diamante and Coon Club
15 Road

16 So when he testified yesterday, the car
17 didn't turn around Now, why do you reckon that
18 was? Because when he gave his statements, he
19 didn't know what everyone else had said He
20 hadn't read the statements of the other
21 witnesses that saw that truck screeching out
22 after that Cadillac and going down Toogoodoo
23 Road with a running gun battle He had not seen
24 Tron Brisbane's statement there they were run
25 off the road by these two vehicles as they
26 continued down the road in a running gun battle

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

748

1 He did not see Deputy Fritchel's video, which
2 shows pretty conclusively that there were no
3 gunshots from that direction prior to this
4 barrage that started the whole thing right here
5 You saw how those people reacted when those guns
6 went off Did you ever seen anybody on that
7 video react to anything that occurred back that
8 way? No And you didn't see it because it
9 didn't happen

10 And you didn't see it because Johnny
11 Buncum told you that it didn't happen and
12 Officer Fritchel told you that it didn't happen
13 Everybody else told you that it didn't happen
14 Officer Don Fritchel and Johnny Buncum and that
15 video camera were the dead sober ones there

16 Like I said, I don't know if he was
17 rattled on cross-examination or not That's for
18 you to determine It looked like to me that he
19 was having a problem remembering which lie that
20 he told when You know, he was having to
21 shuffle back and forth between those statement
22 and remember who he told what to, when

23 But, Ladies and Gentlemen, if you're
24 telling the truth, you don't have to worry

25 His version of what went on out there
26 is no corroborated by one single witness Of

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

749

1 all of the people that were out there at that
2 club that night, there is not one single witness
3 that corroborates his version of what went on or
4 saw him getting into that truck after the
5 shooting started

6 The testimony that you have is that
7 there was a running gun battle down the road and
8 he wants you to believe that in the middle of
9 this, this truck stops and he gets in

10 His version is not corroborated by the
11 physical evidence in the case These shell
12 casings, these shell casings are consistent with
13 the truck chasing the Cadillac and the Cadillac
14 -- or somebody on the side of the road, if you
15 believe Dunmeyer, -- firing back at the truck

16 The damage to the truck is consistent
17 -- it is a glancing blow It is not a -- you
18 know, if that truck is sitting there and that
19 Cadillac shoots them straight on, you don't have
20 a dent in that truck, you have a bullet hole --
21 just like you have in that GEO Tracker

22 If it had happened like he said in his
23 statement, there would have been shell casing
24 all up and down Toogoodoo Road According to
25 him, Antonio Washington was apparently just
26 driving back and forth, in front of Deputy

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

750

1 Fritchel, just blazing away It just doesn't
2 make sense

3 And another thing that struck me, maybe
4 it didn't you, is he is out there and all this
5 shooting is going on and he is up at Coon Club
6 Road -- which is not lit up like it is there at
7 the club -- and he sees this vehicle coming at
8 him, headlights on, -- and when you see a
9 vehicle coming at you at night, that's what you
10 see, the headlights -- with a gun blazing out of
11 the passenger window, now what are you'all going
12 to do? You gonna flag that truck down and ask
13 for a ride? Or are you going to see how far
14 you can get underneath the grass?

15 Then he gets in the truck Tremayne,
16 of course, is conveniently in the back seat with
17 the pistol in his lap In fact, I think he said
18 Tremayne was sipping on a cocktail

19 Ladies and Gentlemen, John Henry Ward
20 is trying to sell you the Brooklyn Bridge Do
21 not buy it

22 The fact is, the person sitting in the
23 front passenger seat of that Dodge pickup truck,
24 the person that was firing the weapon that
25 killed Jamie Simmons, was John Henry Ward If
26 you so find that as a matter of fact, you must

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

751

1 convict him It's that simple

2 When you make that decision, it is to
3 be based solely on the evidence that you heard
4 and the exhibits presented and not on what you
5 may perceive his punishment may be if he is
6 convicted If you do that, you've violated that
7 oath that you have taken as jurors It is not
8 your job to determine punishment, it is your job
9 to determine facts Punishment should not enter
10 into your deliberations at all

11 Now, I am going to say one more thing
12 on the law and then I am going to sit down The
13 judge will be charging you the law on murder in
14 this case Murder is defined as the unlawful
15 killing of another human being with malice
16 aforethought, expressed or implied

17 The key terms are "malice
18 aforethought" Aforethought does not mean
19 premeditation There does not have to be
20 premeditation for him to be convicted of murder
21 As long as he had malice in his mind, in his
22 heart at the time that he pulled that trigger,
23 then the offense is complete And it doesn't
24 have to have existed for any appreciable time
25 before he pulled the trigger, as long as it was
26 in his mind at the moment he pulled the trigger

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

752

1 There is also one other thing that I
2 want to tell you about murder Murder, of
3 course, requires malice Malice is a term of
4 art It includes an intention to kill someone
5 and it includes an intention to seriously injury
6 someone But it also extends to situations
7 where there is no intention to kill anyone
8 whatsoever

9 Certainly you can infer, due to all of
10 what was going on out there that night, that
11 John Ward was an angry man He'd been drinking,
12 he was fighting, he'd seen his buddy knocked
13 down, had had bottles thrown at him by this guy
14 from Cherryhill He'd had it up to here with
15 Cherryhill So he takes his buddy's gun and
16 start blazing out the window So maybe he
17 didn't intend to kill anyone -- and I think that
18 he did intend to, or at least seriously injure,
19 Ton-Ton or someone in that Cadillac

20 But there also is a doctrine called
21 malignant heart murder What that basically
22 means is that a person can be convicted of
23 murder when there is no actual intent to hurt
24 anyone if the defendant's conduct is so
25 extremely reckless as to rise to the level of
26 malice Malice can be inferred from conduct

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

753

1 which is so reckless and wanton as to indicate a
2 depravity of mind and disregard for human life

3 For example, if I were -- after the
4 judge charges you -- to go to the tavern across
5 the street and drink myself into oblivion and
6 get in my car and drive 100 miles an hour
7 through a school zone when school is letting out
8 and I kill a child, -- now, I didn't mean to
9 kill that child But my conduct is so stupid,
10 my conduct is so egregious, my conduct is so
11 callously opposed to the right of that child to
12 continue living that you, as a jury, can infer
13 malice on my part So you consider that in your
14 consideration of malice, too

15 But let me say this last thing It is
16 not -- and I told you this before and I will
17 tell you again now, it is not a defense to this
18 case nor is it an excuse that he was a bad shot
19 When that intent forms in his mind and it
20 manifests itself by the pulling of that trigger,
21 then the act of murder is complete It makes no
22 difference where the bullet goes if by shooting
23 you intended to kill me but in shooting you kill
24 her instead You're just as guilty of murder
25 Thank you

26 THE COURT Ladies and Gentlemen, as

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10, 2004
before The Honorable R Markley Dennis Jr

754

1 this point I am going to let you go to your jury
2 room for a brief break, five minutes or so but
3 as long as necessary Mr Presiding Juror, if
4 you would just knock when the jury is ready to
5 return, we will bring you back in the courtroom
6 Please do not begin your deliberations, do not
7 discuss the case among yourselves Thank you

8 (JURY OUT @ 11 15 A M)

9 THE COURT All right, we will be
10 at-ease until the jury indicates that they are
11 ready to return Thank you

12 (BRIEF RECESS 11 15 - 11 22 A M)

13 THE COURT Anything before we bring
14 the jury in?

15 MR DURANT No, Your Honor

16 MS KENT-JENKINSON No, Your Honor

17 THE COURT Please bring the jury in

18 (JURY IN @ 11 25 A M)

19 THE COURT Thank you, Ladies and
20 Gentlemen We are now ready to move into the
21 final portion of this proceeding when it becomes
22 my duty, as the trial judge, the judge of the
23 law to instruct you on the applicable laws in
24 this case Of course, it is your duty and
25 responsibility to accept and apply that law as I
26 will give it to you fairly and impartially to

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

755

1 the facts that you ultimately will determine
2 very shortly

3 As you recall, it is your exclusive
4 duty to determine the affect, the value, the
5 weight and the truth of the evidence Both the
6 State and Mr Ward have a right to expect that
7 you will conscientiously evaluate all of the
8 evidence in this case and once you determine the
9 true facts, you will then fairly and impartially
10 apply the law to those facts and reach a
11 decision, which of course then will be fair to
12 both sides and will honor the commitment that
13 you made to both of these parties when we
14 commenced this trial

15 Now, during this instruction, I will
16 define a number of terms for you and discuss
17 with you various legal principles Certainly
18 you are expected to apply those But if I don't
19 define a term or a word to your satisfaction,
20 please remember -- or give you a definition
21 otherwise Not to your satisfaction If I
22 don't give you a definition otherwise, you are
23 to apply your ordinary understanding to these
24 terms Of course, if I give you a definition,
25 you are to take my definition and apply that

26 Because, Ladies and Gentlemen, you are

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

756

1 expected to apply your commonsense, your sense
2 of logic and reason in deciding this case That
3 is why you were selected as judges, to be fair
4 and impartial judges Fair and impartial in
5 applying your common sense, your sense of logic
6 I know you will do that when you begin the
7 process of deciding this case

8 Now, during my instruction, you may
9 hear me on occasion use the term "Defendant"
10 You have probably heard me use that before
11 That term is really a legal term that is used to
12 designate a party against whom a claim may be
13 made It applies in a criminal dispute or a
14 civil dispute The party against whom a claim
15 is made is called the defendant That is the
16 sole significance of that term It means
17 nothing else It is merely synonymous with Mr
18 Ward When I use that term, please know that I
19 am referring to Mr Ward

20 As I told you, Mr Ward is accused by
21 this document that I now hold in my hand It is
22 a piece of paper, it is not an exhibit and
23 therefore it is not evidence To this
24 indictment, Mr Ward has rendered a plea of Not
25 Guilty, which places then upon the State of
26 proving his guilt beyond a reasonable doubt

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10, 2004
before The Honorable R Markley Dennis Jr

757

1 That means proving each of the elements
2 required of the State to obtain a verdict of
3 guilty and proving those beyond a reasonable
4 doubt

5 The reason for that is that persons, as
6 Mr Ward is today, who sit in courtroom accused
7 of criminal offenses, are never required to come
8 in and prove themselves innocent

9 We call this principal of law, Ladies
10 and Gentlemen, the presumption of innocence
11 Each of you is required under that law and by
12 virtue of your oath to actively presume that Mr
13 Ward is not guilty The presumption of
14 innocence is maintained at all times throughout
15 the trial of this case, and is only removed when
16 and if the State brings in or presents enough
17 evidence to persuade you beyond all reasonable
18 doubt that the defendant is guilty

19 What is a reasonable doubt? A
20 reasonable doubt, Ladies and Gentlemen, is a
21 doubt that would make an honest, sincere,
22 conscientious juror in search of the truth in
23 a case to hesitate to ask Proof beyond a
24 reasonable doubt is proof that leaves you firmly
25 convinced of Mr Ward's guilt

26 Now, there are very few things in this

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10, 2004
before The Honorable R Markley Dennis Jr

758

1 life or this world that we know with absolute
2 certainty In criminal cases or criminal
3 disputes such as this, the law does not require
4 proof that overcomes every possible doubt

5 If based on your consideration of the
6 evidence in this case, you are firmly convinced
7 that Mr Ward is guilty of the crime charged,
8 then you must of course return a verdict of
9 guilty

10 If on the other hand, you feel of think
11 that there is a real possibility that he is not
12 guilty, then you must give him the benefit of
13 the doubt and return a verdict of not guilty

14 Reasonable doubt, Ladies and Gentlemen,
15 may arise from the evidence which is in a case
16 or may arise from the absence or lack of
17 evidence in a case It's up to you to determine
18 whether or not a reasonable doubt exists as to
19 the guilt of this defendant

20 And I charge you, Ladies and Gentlemen,
21 that he is entitled to every reasonable doubt
22 arising in the whole case What does that
23 mean? Simple stated it means this, if upon any
24 issue of fact which is essential to a
25 conviction, that is a verdict of Guilty, you
26 should have a reasonable doubt as to how that

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10, 2004
before The Honorable R Markley Dennis Jr

759

1 issue or fact should be resolved, I would
2 instruct you that it is your duty to resolve
3 that doubt in favor of Mr Ward

4 Now, Ladies and Gentlemen, cases such
5 as this, criminal disputes, can be presented by
6 use of evidence that we call -- there are two
7 main types One is direct and the other is
8 indirect evidence The more popular name for
9 indirect evidence, the one with which we are the
10 most familiar is "circumstantial evidence "

11 Direct evidence, as the term would
12 imply, is generally related to one's sensory
13 perceptions such as "I saw something, I felt
14 something or the like " If you, in considering
15 that type of evidence, are convinced beyond a
16 reasonable doubt as to that -- as to the
17 credibility and believability of that testimony,
18 then of course that would establish that
19 particular fact

20 Circumstantial evidence, or indirect
21 evidence, is when a person comes in and
22 testifies to a number of circumstances or facts
23 and when you link them that suggest another
24 fact, or, as the case may be, the commission of
25 some criminal offense

26 I will tell you that whether you use

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10, 2004
before The Honorable R Markley Dennis Jr

760

1 circumstantial evidence or direct evidence
2 really does not matter Quite frequently the
3 party that has the burden of proof, such as the
4 State in this case, uses both direct and
5 circumstantial evidence

6 The law makes absolutely no distinction
7 between the weight or the value to be given
8 either to direct or circumstantial evidence, nor
9 is any greater degree of certainty required of
10 circumstantial evidence than of direct evidence
11 Therefore, you should weigh all of the evidence
12 in this case, considering direct evidence and
13 circumstantial evidence, should you find such to
14 exist

15 Our law does say however that to the
16 extent that the State relies on circumstantial
17 evidence to establish a particular fact or
18 circumstance, then the State has to prove to
19 each one of those circumstances, upon which it
20 relies, beyond a reasonable doubt

21 Also these facts must be wholly,
22 perfectly consistent with each other in every
23 particular respect

24 I would further instruct you in that
25 connection that the mere fact that -- that the
26 circumstances brought out in a case a strongly

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

761

1 suspicion of guilt or that the circumstances are
2 such that the defendant's guilt is probable,
3 that that would not be enough Because, you
4 see, that is not sufficient to sustain a
5 conviction

6 Why? Because the proof offered by the
7 State has to be more than mere suspicion It
8 has to be more than somebody being probably
9 guilty It has to be proof that satisfies you
10 beyond a reasonable doubt

11 Now, of course, you know that the
12 evidence which you will be considering will
13 consist of the testimony of the witnesses and
14 the exhibits that have been offered or
15 introduced through that testimony You have
16 observed that on numerous occasions during this
17 proceeding

18 Remember that during this proceeding we
19 also heard objections by counsel That was
20 their responsibility as officers of this court
21 to raise matters of law That's what an
22 objection means It simply says, 'Your Honor,
23 we have a matter of law which we need you to
24 decide '

25 If you recall, there were occasions
26 when I asked you to go to your jury room to

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 - 10, 2004
before The Honorable R Markley Dennis, Jr

762

1 consider that and make my decision Sometimes,
2 however, you heard me make a decision I either
3 sustained the objection or I overruled the
4 objection Please remember something, you
5 aren't to imply or to infer anything from that
6 You aren't even to consider that

7 Why is that? Because that's that
8 separation, if you will, of you and I working
9 together It's my responsibility to decide the
10 legal issues, your responsibility to decide the
11 factual issues So don't consider that, because
12 that is not evidence and should not be
13 considered by you in any way when you begin your
14 deliberations

15 Likewise, my remarks during the trial
16 to you or my remarks now should never -- never
17 be considered evidence As I stated throughout,
18 the sole source is the testimony of the witness
19

20 Also you will recall my statement and
21 admonition that the attorneys' remarks are not
22 to be evidence or considered evidence Nor
23 should you consider their statements on the law
24 Why?

25 Because it is your responsibility to decide the
26 evidence You consider it, you've heard it and

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

763

1 you go with your recollection

2 As I mentioned to you, if there is some
3 disagreement as to what a witness said or didn't
4 say, you have the right, if necessary, to have
5 that testimony replayed But you ultimately
6 will decide what you find to be the true facts
7 in this case

8 It is my responsibility to give you the
9 law If in giving you this law you should hear
10 something that differs from what the attorneys
11 may have said about the law, you're to disregard
12 what they said Why? Because I am the sole
13 judge of the law It is my responsibility to
14 give you the law and you must the law as I give
15 it to you

16 Now, generally, Ladies and Gentlemen,
17 witnesses who come in to testify are not
18 permitted to render opinions except in very
19 limited areas However, we do have a Rule that
20 allows certain witnesses, and we call those
21 witnesses, just to designated them or separate
22 them from lay-witnesses, we call them expert
23 witnesses

24 That witness, who is a person who by
25 education and experience has become an expert in
26 some art, science, profession or calling and our

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

764

1 rules do permit that person to state an opinion
2 as to relevant matters in which that witness
3 claims to have some expertise, and the witness
4 may likewise give you the reason for that
5 opinion

6 You should consider, Ladies and
7 Gentlemen, any expert opinion received in
8 evidence in this case like any other evidence
9 and give it the weight that you think it
10 deserves If you decide that the opinion of the
11 expert witness is not based on sufficient
12 education and experience, or if you conclude
13 that the reason(s) given in support of the
14 opinion are not sounds, or that the opinion is
15 outweighed by other evidence, then you may
16 discard the opinion entirely An expert's
17 testimony is to be given no greater weight than
18 any other witness simply because the witness is
19 designated as an expert
20 Further, you are not required to accept an
21 expert's opinion even though it is not
22 contradicted It is your decision, your job, to
23 determine what you find to be credible and
24 believable and the expert's testimony is to help
25 you make that decision, to help you as you
26 evaluate the evidence and not for the purpose of

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

765

1 controlling your judgement

2 As in any case such as this, Ladies and
3 Gentlemen, one issue that the State has to
4 establish beyond a reasonable doubt is that the
5 Defendant is the person who committed the crime
6 charged That is identification The State has
7 the burden of proving his identity beyond a
8 reasonable doubt Merely establishing the fact
9 that the defendant was present at the scene of a
10 crime, that alone is not sufficient to prove his
11 guilt beyond a reasonable doubt The State must
12 prove with respect to that he was not only
13 present but that he is the person who committed
14 the offense and that is that he is the person
15 who performed each of the elements required In
16 other words, was the perpetrator of the offense
17 We will talk about those elements in just a few
18 moments

19 If you find that the State has not
20 convinced you beyond a reasonable doubt that he
21 is the person committing the offense, then of
22 course you must return a verdict of not guilty

23 On the other hand, if you find that he
24 is that person, then you would look to each of
25 the elements to find whether or not the State
26 has met those elements, met its burden and

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

766

1 established each of those elements beyond a
2 reasonable doubt

3 I would further instruct you that a
4 statement alleged to have been made by the
5 defendant has been admitted into evidence in
6 this case And while the Court has determined
7 that the statement is admissible, I instruct you
8 that you must make the ultimate decision of
9 whether or not the defendant made the statement
10

11 If the Defendant did make the
12 statement, then you must determine whether the
13 statement was made by the Defendant voluntarily
14 and of his own free will This means that the
15 statement was not caused by pressure, force,
16 fear, duress, coercion or intimidation or by any
17 hope or promise of leniency or reward of any
18 kind

19 In determining whether the statement
20 was voluntary, you should consider both the
21 characteristics of the Defendant and the details
22 of the questions Some of the factors that you
23 may consider are the age of the defendant, the
24 defendant's education or lack of education, the
25 defendant's mental ability or capacity, the
26 defendant's intelligence, the defendant's

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

767

1 background and environment, the place and length
2 of detention, the nature of the questions, the
3 advice or lack of advice, or lack thereof to the
4 defendant of his constitutional rights,
5 including but not limited to the right to remain
6 silent, that any statement could be used against
7 him in a court of law, the right to have a
8 lawyer present, that if he could not afford a
9 lawyer that a lawyer would be appointed to
10 represent him without any costs and that he
11 could stop making a statement at any time You
12 must carefully consider all of the surrounding
13 circumstances before you give any weight to an
14 alleged statement

15 The State has the burden of proving
16 beyond a reasonable doubt that the alleged
17 statement was voluntary If you determine that
18 it was, then you may give the statement any
19 further consideration that you deem proper

20 Now, how do you decide -- and, of
21 course, if you decide that it was not his
22 statement or was not voluntary, then you cannot
23 consider the statement at all in your
24 deliberations

25 How do you decide the facts of the
26 case? You did it, again, through the exercise

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

768

1 of your common sense I would suggest to you
2 and submit to you that you have performed this
3 task many, many times in your life because
4 you've heard something or you've read something
5 and you made a decision for yourself as to
6 whether or not you believe it The same applies
7 here

8 There are many, many factors that one
9 may consider to assist them in making this type
10 of decision That is, who and what you believe
11 I wish to discuss some of those factors with you
12 now, but I will tell you that the list is not
13 all-inclusive and if I fail to mention a factor
14 that you have considered in your life and you
15 have found that reliable in assisting you in
16 making this decision, I urge you to employ that
17 when you begin the process of evaluating this
18 case

19 Some of the factors that you might
20 consider, however, would be

21 The appearance of the witness
22 How do they appear to you on the witness stand,
23 straightforward or hesitant in answering any
24 questions?

25 Was the testimony of the witness
26 consistent or was it inconsistent?

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

769

1 Was it strengthened or weakened by
2 other evidence in the case?

3 How did the witness come to know
4 the facts that he or she testified to and what
5 was the ability of the witness to know those
6 particular factors

7 Is there a reason a witness would
8 have to give testimony which may be beneficial
9 to one side or which may be detrimental to one
10 side

11 In other words, was the witness biased or
12 prejudice in any fashion?

13 There has also been testimony regarding
14 several witnesses concerning prior criminal
15 records, violations of the law I would tell
16 you that that is a factor that you may consider
17 only for the purposes of evaluating credibility
18 and for no other purpose

19 And I further instruct you that the
20 mere fact that someone has a prior record, that
21 does not necessarily render that testimony
22 incredible or unbelievable It is just merely a
23 factor that you would consider with all other
24 factors as you seek to evaluate the credibility
25 and believability of a witness' testimony

26 In making these determinations, Ladies

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

770

1 and Gentlemen, of what you find to be credible
2 and believable, our law gives you very, very
3 broad discretions as the judge of the facts
4 You have the right to believe one witness
5 against many, many witnesses against one You
6 have the right to believe all of a witness'
7 testimony, parts of a witness' testimony or none
8 of a witness' testimony Now, of course you
9 don't make that decision arbitrarily

10 But if there is a reason in the record
11 of this case for taking that position, you have
12 that right or that prerogative Why is that?
13 Because you are here to determine the truth,
14 applying your common sense, your sense of logic
15 and reason to all of the evidence and deciding
16 what you find to be credible and believable
17 You do that, of course, without any intent or
18 purpose to benefit one side or the other
19 You're supposed to be fair and impartial, fair
20 and impartial judges of the facts

21 Now, while you are given very wide and
22 broad latitude with respect to the decision on
23 what you find to be believable and credible in
24 the evidence, you don't enjoy the same with the
25 law One of the important parts of this
26 process, as I have stated throughout, and I am

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

771

1 going to repeat it again because it bears
2 repeating, the system works well because we have
3 two judges working together

4 Your responsibility is to decide the
5 facts, my responsibility is to decide the law
6 That means that I have to give you the law and
7 you must accept that law

8 Now, I would respect you should you
9 hear a principle of law that you have a feeling
10 or conclusion or thought of 'I don't like that,
11 that needs to be changed ' You have the right
12 to think that But if you follow that thought,
13 you have violated your oath You have violated
14 the promise that you made to the state and to
15 Mr Ward and you would have dishonored your
16 position I know you won't do that

17 You must accept the law, set aside any
18 feelings that you have With respect to that, I
19 also must instruct you, as I told you on Monday,
20 you have nothing to do with the sentence
21 That's my responsibility That's part of being
22 the judge of the law You don't have anything
23 to do with that You're here to decide the
24 facts, apply the law to those facts and report
25 your decision

26 Please remember something, that the

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

772

1 order of my instruction means nothing I have
2 to put it in some order Don't put any greater
3 weight or emphasis on any one part as opposed to
4 another Consider the charge as a whole when
5 you begin that process of deciding the facts and
6 applying the law

7 And, remember, the fact that I give you
8 an instruction on a particular issue is not to
9 be considered as a suggestion by me as to how
10 you are to resolve that factual issue, because
11 that's your job

12 Let's look now at the offense that is
13 charged As I mentioned to you, Mr Ward is
14 accused of committing the offense of murder in
15 that it is alleged that Mr Ward, on May 11th, at
16 [REDACTED] Toogoodoo Road feloniously, willfully and
17 with malice aforethought, either expressed or
18 implied, did kill Jamie Simmons by, basically,
19 shooting him with a handgun That as a result
20 of the gunshot wound that Mr Simmons died

21 The State, of course, as I mentioned,
22 has the burden of proving that beyond a
23 reasonable doubt

24 "Murder" is defined in Section 16-3-10
25 of our Code of Law as the killing of any person
26 with malice aforethought, either express or

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

773

1 implied The State must prove, Ladies and
2 Gentlemen, beyond a reasonable doubt that Mr
3 Ward killed another person, namely Jamie
4 Simmons, with malice aforethought

5 Malice is hatred, ill will, or
6 hostility towards another person It is the
7 intentional doing of a wrongful act without just
8 cause or excuse and with the intent to inflict
9 an injury on another or, under circumstances
10 that the law will infer an evil intent Malice
11 indicates a formed purpose and design to do a
12 wrongful act under circumstances that exclude
13 any legal right to do it

14 I would further instruct you in that
15 regard that the use of a deadly weapon permits
16 you to infer malice, but it does not require you
17 to infer malice

18 If the facts prove beyond a reasonable
19 doubt sufficient to raise an inference of malice
20 to your satisfaction, this inference would be
21 simply an evidentiary fact to be taken into
22 consideration by you along with the other
23 evidence in this case and you may give it such
24 weight as you find that it should receive

25 You, as the judge of the facts, are
26 free to accept or reject the permissive

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

774

1 inference depending on your view of the facts in
2 this case

3 Further, this malice must be malice
4 aforethought, which means that the malice must
5 have been conceived in the mind of the defendant
6 prior to the act producing the fatal result
7 The word "aforethought" is usually understood to
8 refer to the time when the evil is conceived
9 Now, our law does not require that the malice
10 must exist for any appreciable length of time
11 before the commission or act It may be
12 conceived at the very moment the action is taken
13 which results in the death of another

14 If malice is present in the mind of the
15 one doing the killing any length of time before
16 the act, then its presence would be sufficient
17 to render the killing murder

18 Now, another element which the State is
19 required to prove is criminal intent That must
20 be established beyond a reasonable doubt
21 Criminal intent is always a matter which is left
22 to the jury to determine by considering all the
23 facts and circumstances in a case It generally
24 may be inferred from the circumstances which
25 have been shown to exist And this is generally
26 how the jury makes that determination as to

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

775

1 whether or not this elements is present

2 I would instruct you in that regard
3 that while the State has to prove intent that it
4 is not required to prove motive, although the
5 presence or absence of it, of this evidence, of
6 motive, may be considered in making such a
7 determination, that is, a determination of
8 criminal intent

9 Criminal intent is a state of mind that
10 operates jointly with an act in the commission
11 of a crime Intent would include the very
12 consequences which are present -- which
13 represent the very purpose for which the act is
14 done, or are known to be substantially certain
15 to result regardless of one's desire

16 Criminal intent is a mental state of
17 conscious wrongdoing and it is up to you to
18 determine whether or not the State has
19 established that this defendant is the person
20 who alleged committed the offense

21 If so convinced beyond a reasonable
22 doubt, the State must prove to you what he
23 intended to do based on the circumstances that
24 they have shown to have existed beyond a
25 reasonable doubt

26 I would further instruct you in this

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

776

1 regard, Ladies and Gentlemen, that if the
2 defendant -- if the State should prove that the
3 Defendant, with malice aforethought, attempted
4 to kill a person, namely Jamie Simmons, but
5 further proved -- that the evidence further
6 shows that by mistake -- excuse me If the
7 intent was to kill another person -- let me
8 rephrase that

9 If the State proves that the defendant
10 in this case, with malice aforethought,
11 attempted to kill another person, but by mistake
12 killed a different person, namely Jamie Simmons,
13 the Defendant would still -- the intent to kill
14 present for the person not injured would
15 transfer We call that transferred intent under
16 our law

17 So if intent is established and malice
18 aforethought is established, beyond a reasonable
19 doubt, they have established that this defendant
20 is the person who had the gun and shot -- the
21 fact that he shot -- the fact that he shot and
22 it did not hit the intended person but someone
23 else and that person died, under our law of
24 transferred intent the State would have met its
25 burden of proof, if you believe that beyond a
26 reasonable doubt

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10, 2004
before The Honorable R Markley Dennis Jr

777

1 Ladies and Gentlemen, you were selected
2 to be a judge in this case with me You and I
3 both promised the parties something very
4 important about this process That is that we,
5 quite simply, are judges and we're not advocates
6 for either side We are not partisans for one
7 side or the other We have absolutely no
8 friends in this process to reward and we have no
9 enemies to punish We have promised that we
10 will set aside all human emotions That's very
11 critical to the process of being a judge Human
12 emotion has no place in making the decisions
13 that you
14 and I have to make

15 Each one of us have made a commitment
16 to the State and to Mr Ward that we would not
17 be influenced by that Instead, we have said
18 that we would apply our knowledge, our sense of
19 logic and reasoning fairly and impartially and
20 methodically, for you analyzing the evidence,
21 and for me consider the arguments of attorneys,
22 and make a decision based on our knowledge and
23 abilities, to the best of our ability, fairly
24 and impartially When you have done that, Ladies
25 and Gentlemen, you have honored your commitment
26 So in just a moment, that process will

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

778

1 start In just a moment, you will begin that
2 process of applying that common sense When
3 you've decided what you believe to be the true
4 facts, you take the law and apply it to those
5 facts and report your decision

6 To assist you in reporting that
7 decision, Mr Presiding Juror, I've prepared a
8 verdict form which I would like to discuss with
9 you and the other jurors now You will note,
10 Ladies and Gentlemen, that is captioned That
11 means nothing That is just to facilitate the
12 filling of the document

13 The body says, "We, the jury, by
14 unanimous consent" -- now, what does that mean?
15 Unanimous consent, as the name implies, means
16 that all of you agree Twelve to zero Eleven
17 to one, ten to two, that won't work Twelve to
18 zero "By unanimous consent find the Defendant,
19 John Henry Ward, Jr , on the charge of Murder" -
20 - and the choices are two The order means
21 nothing, I had to put them in some order
22 First, Guilty and the second Not Guilty

23 You will note that there is a line that
24 precedes each choice Then beneath it says
25 Presiding Juror

26 Whichever the choice, I would ask that

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

779

1 you place a check or an X in that block and
2 circle it Then once you have done that, if you
3 will sign it where it says Presiding Juror, you
4 will have completed the form

5 What will you be saying if the first
6 one is the choice You will be saying that
7 after evaluating all of the evidence, each juror
8 is convinced beyond a reasonable doubt that Mr
9 Ward committed the offence, that is, that he
10 killed someone, namely Jamie Simmons, with
11 malice aforethought That the State has
12 established each of those elements that I have
13 discussed with you beyond a reasonable doubt

14 What will you be saying if your
15 decision is Not Guilty? You will be saying
16 that in your consideration that the State did
17 not convince you beyond a reasonable doubt of
18 one or more Because if it is one, one element,
19 then you must return a verdict of Not Guilty
20 Why? Because the State has the burden of
21 proving each element beyond a reasonable doubt
22 Again, that being your decision, all of you
23 would have to agree

24 I know that you're anxious to get
25 started with the process, and you're almost to
26 that point First let me ask of the first

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

780

1 twelve jurors, is there any juror who feels that
2 they cannot continue in this process and decide
3 this case? If so, raise your hand (No
4 response) Thank you very much, there are none
5 Madame Alternate, when the jury leaves
6 in just a moment, I am going to ask that you not
7 return to the jury room They will take you to
8 another room and I will be in there to discuss
9 with you how long you need to remain with us?
10 Okay

11 ALTERNATE (Affirmative nod)

12 THE COURT In just a moment, I am
13 going to excuse you because I need to discuss my
14 instructions with the attorneys

15 It may be necessary for me to give you
16 some additional instructions or some
17 clarification If so, we will return you'all to
18 the courtroom to accomplish that

19 But if there aren't any additions or
20 corrections that need to be given, then we will
21 gather the exhibits and deliver them to you

22 Now, Mr Presiding Juror, when you
23 receive the exhibits, but not before, but when
24 you receive the exhibits, then the deliberations
25 may commence Please do not discuss the case
26 until you have received the exhibits

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10, 2004
before The Honorable R Markley Dennis, Jr

781

1 Once you begin your deliberations,
2 Ladies and Gentlemen, the only restriction that
3 I place on the deliberations is this If at any
4 time a juror has to leave the table for any
5 reason, you must stop deliberating until all
6 twelve of you are together Other than that,
7 you approach it and proceed as you deem fit and
8 proper Thank you very much for your attention
9 I appreciate your attention to my remarks, your
10 attention throughout the trial You may now
11 retire to your jury room but do not begin your
12 deliberations until you have received your
13 exhibits Thank you

14 (JURY OUT @ 12 00 NOON)

15 THE COURT Other than the request
16 for manslaughter, any other objections or
17 additions from the State?

18 MR DURANT With regard to the
19 definition of malice, is it the Court's position
20 that it didn't warrant a *State v Muzon* charge?

21 THE COURT Which is?

22 MR DURANT Malignant heart

23 THE COURT Thank you very much, it
24 is certainly there We have been in the process
25 of revising it I said the same thing,
26 "malignant heart", that's just a term of art

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

782

1 I chose not to use it because that doesn't
2 really tell anybody anything "Ill will", that
3 tells them something That is why we -- we're
4 really trying to get this in common sense
5 language

6 Nobody really goes around talking about a
7 malignant heart Lawyers do, but I don't think
8 people do that

9 THE COURT Any exceptions or
10 additions from the Defense?

11 MS KENT-JENKINSON No, sir

12 THE COURT Thank you very much I
13 thank you all again for your approach to this
14 matter We will be at-ease now

15 COURT REPORTER Counsel, come
16 forward and check your exhibits, please

17 (COUNSEL REVIEW AND APPROVAL OF EXHIBITS
18 TO BE SUBMITTED TO THE JURY)

19 (JURY IN DELIBERATION @ 12 20 P M)

20 (NOTIFIED OF JURY QUESTION @ 12 50 P M)

21 (DEFENDANT PRESENT)

22 THE COURT We have a note from the
23 jury asking to see the videos again Ask the
24 jury to come in

25 COURT REPORTER That note will be
26 Court's Exhibit 5

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10, 2004
before The Honorable R Markley Dennis Jr

783

1 (SO ENTERED AS COURT'S EXHIBIT 5)

2 (JURY IN @ 1 00 P M)

3 THE COURT Mr Hutto, I have the
4 note, which is now Court's Exhibit 5, indicating
5 that the jury wants to watch the two videos that
6 were introduced into evidence We are prepared
7 to play those for you It's my understanding
8 that you wish to start with the shorter one
9 first, is that correct, sir?

10 FOREMAN I'm sorry?

11 THE COURT You want to start with
12 the shorter one first?

13 FOREMAN If we would start with the
14 police car video first

15 THE COURT I will play this -- I am
16 advised by Mr Durant that it continued beyond
17 what the State played It's all in evidence and
18 you're at liberty to watch it It's about
19 twenty minutes in length I think that he said
20 he'd played around ten minutes during the trial
21 but you've entitled to view all of it I am not
22 going to ask you to tell me what you're looking
23 for or when you finish What I would simply ask
24 is that when you've seen as much the jury needs
25 to see, whatever, that if they will let you
26 know, you will just raise your hand and signal

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

784

1 to me that -- then we'll stop that and move to
2 the next one

3 FOREMAN Okay

4 THE COURT And we will play them
5 both unless you tell me otherwise

6 (WHEREUPON VIDEO REPLAYED FOR JURY)

7 THE COURT Do you need the next one
8 played, as well?

9 FOREMAN Yes, sir Thank you

10 THE COURT Thank you, sir

11 (WHEREUPON VIDEO REPLAYED FOR JURY)

12 THE COURT Anything else?

13 FOREMAN No, sir

14 THE COURT Then you may return to
15 your jury room and resume your deliberations

16 (JURY OUT @ 1 30 P M)

17 THE COURT Any exceptions or
18 additions from the State?

19 MR DURANT No, sir, Your Honor

20 THE COURT Any exceptions or
21 additions from the Defense?

22 MS KENT-JENKINSON None

23 THE COURT We will be at-ease

24 (JURY REQUEST @ 1 45 P M TO HEAR TESTIMONY
25 OF ALL EYEWITNESSES)

26 (DEFENDANT PRESENT)

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 - 10 2004
before The Honorable R Markley Dennis Jr

785

1 THE COURT Let the record reflect
2 that Mr Ward is present We have another note
3 from the jury that they want to rehear all of
4 the eyewitness testimony I will bring them, in
5 and tell them that we are happy to do that, but
6 ask them to let us know when they have heard
7 enough Any objections with that method?

8 MR DURANT No, sir

9 MS KENT-JENKINSON No, Your Honor

10 THE COURT Let's bring in the jury,
11 please This is Court's 6

12 COURT REPORTER Yes, sir

13 (SO ENTERED AS COURT'S EXHIBIT 7)

14 (JURY IN @ 1 55 P M)

15 THE COURT Thank you, Ladies and
16 Gentlemen I have your note, and that's not a
17 problem, and we will start the process I need
18 to find out something from you I don't want
19 you to respond here but if you could respond by
20 giving me certain witnesses, that would be fine
21 The term 'eyewitness' is an interesting term I
22 am not going to ask for your definition of that,
23 but clearly witnesses who were present at the
24 time would be what I construe that to mean So
25 having said that, obviously we have basically
26 two days of testimony that we will be happy to

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

786

1 replay for you

2 I assume that you want to start with
3 the first witness that testified, who was
4 present, and then proceed in sequential order
5 That's how we will be prepared to do it unless
6 you tell me otherwise I need to be sure that's
7 the way that you wish to proceed

8 I'd ask you to go back and if there is
9 a -- if there are specific witnesses that you
10 want to hear, that's fine, just let me know
11 Then we can move to those other witnesses
12 Whatever order that you want, you tell me
13 Unless I hear from you, we will start with the
14 first witness who was there and play the
15 testimony

16 Now, I will also inform you, just as I
17 did with the video, I don't want to know what
18 you or any other juror is looking for or the
19 questions that you need answered That is not
20 my concern You do not share that in this
21 courtroom, please I would just simply say that
22 we will play the testimony, we will start at the
23 beginning and we will play it We will play it
24 until you tell me to stop, just as we did with
25 the video I would -- you may hear something in
26 direct examination that answers your question

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

787

1 You may hear it in cross-examination, which
2 answers your question It may come in Redirect
3 or it may come out in Recross

4 I would remind you that -- and it
5 doesn't happen in all cases, but in many cases
6 persons who testified during this proceeding,
7 the first stage -- the attorney that calls it,
8 whether it be the State or the Defense, we call
9 that Direct That's the first, those are the
10 first questions Then we move to what we call
11 cross where the opposing side asks questions
12 As you recall, that generally dealt with matters
13 that came out on Direct I may have, in fact,
14 dealt with matters that didn't come out on
15 direct insofar as cross Generally when you get
16 to redirect, it begins to start streamlining

17 Clearly there are times that you may
18 have Direct, Cross, Redirect and sometimes
19 Recross But, again, I don't want you -- I am
20 not trying -- we will play it until you tell me
21 to stop

22 I would ask you now to please retire to
23 your jury room and I'll give you a few minutes
24 If you are going to give me a list, just let the
25 bailiffs know If not, then we will get the
26 first witness prepared and we will bring you in

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

788

1 again

2 (JURY OUT @ 2 07 P M)

3 THE COURT We will wait here a
4 moment Exceptions or additions from the State?

5 MR DURANT Just comments, Your
6 Honor Sometimes I just feel like saying, 'if
7 you had stayed awake the first time, you
8 wouldn't need to listen to it again '

9 THE COURT Noted Exceptions,
10 additions from the Defense?

11 MS KENT-JENKINSON No, sir

12 THE COURT We will be at-ease, but
13 stay close

14 MR DURANT Seriously, if they want
15 to play eleven hours of testimony, I am not
16 sticking around

17 THE COURT I understand Do you
18 want to be present during the playing of the
19 testimony?

20 MR BUTLER I would like to have to
21 option If they are telling us when to stop,
22 that might be instructive

23 THE COURT That's no problem It
24 will be replayed in the courtroom The only
25 other way would be to have the court reporter go
26 to the jury room -- I've never done it, I've

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis, Jr

789

1 heard of judges that have done that That's
2 fine but -- in this proceeding -- if it was a
3 civil proceeding, I'd say go ahead but in this
4 proceeding you have the right to be present

5 MR BUTLER Yes, sir

6 (JURY REQUEST @ 2 15 P M TO HEAR TESTIMONY
7 OF TREMAYNE WASHINGTON, CATRELL DOUGLAS,
8 TRON BRISBANE, JOHNNY BUNCUM AND KENNETH
9 SANDERS)

10 (DEFENDANT PRESENT)

11 THE COURT Please let the record
12 reflect that the Defendant and all counsel are
13 present The note reads, "We were wondering if
14 we could have the actual tape or transcript to
15 review in the jury room This will allow us a
16 chance to stop, rewind, etc and to discuss
17 openly among ourselves " Very good question
18 Maybe one day we will do that, I don't know
19 But I will address that, they are not permitted
20 to do that Bring the jury in

21 They want to hear

22 Tremayne Washington,

23 'Trell Smalls,

24 MR BUTLER Judge, that should be
25 Douglas, I think

26 THE COURT I think that it is, too

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

790

1 MR DURANT His correct name is
2 Catrell Douglas, he goes by 'Trell

3 THE COURT Okay, was there not a
4 Smalls that testified?

5 MR BUTLER His statement referred
6 to him as Smalls, and we thought that was his
7 last name but I think that is the same person

8 THE COURT So Douglas, also known as
9 Smalls They also want the river of the Honda
10 in the ditch That was who?

11 MR DURANT Tron Brisbane

12 THE COURT They also want Mr Buncum
13 and, last, Kenneth Sanders

14 (JURY IN @ 2 30 P M)

15 THE COURT Thank you very much,
16 Ladies and Gentlemen I appreciate it Thank
17 you very much, Mr Presiding Juror We are
18 prepared to play those witnesses that you have
19 listed in the order which you have listed them

20 I wish to address the first part,
21 because I will tell this jury, tell you, that is
22 a very realistic request on your part, to be
23 able to play it, have a chance to listen to it
24 and talk about it among yourselves, rewind it,
25 play it, but we don't -- that is not part of the
26 process yet One day it may

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

791

1 We are moving towards the day when
2 we're probably -- not only would I not read you
3 my charge, and I am very close to doing that
4 anyway, I hand it to you after I have given it
5 so that you can refer to it The day may come
6 when we will have the transcript that we could
7 give to you as well, but at this point this is
8 the way that we will have to do this

9 We will -- I assure you of this, ever
10 how long it takes that's -- we're here and we
11 will do whatever it is necessary until we answer
12 your questions Take as much time as you want

13 One of the things now, when we get to
14 the point in your deliberation, however long, I
15 am not going to do a marathon We all
16 understand the seriousness of what we are about
17 If you want to recess at some point, we can come
18 back and resume the next day I am not
19 suggesting that is going to have to be the case,
20 I just want to let you know that there is no
21 need for you, for any juror, to feel that we
22 can't address your concerns by the time
23 necessary We will take the time necessary It
24 is very important, and I thank you for your
25 request in that regard

26 The first witness that you have

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

792

1 requested is Mr Tremayne Washington We are
2 ready to play that

3 You have also put on here 'Trell
4 Smalls I have been informed that's one of his
5 names but I believe that Douglas was his last
6 name We will play that witness for you, as
7 well I think that they are one and the same

8 All right I will turn it over to you,
9 Ms Garrison We will play it until you raise
10 your hand I would remind you of the approach
11 to the examination Direct, Cross, Redirect and
12 Recross Thank you And the record shall
13 reflect where we stop on each witness?

14 COURT REPORTER Yes, sir, I will

15 THE COURT Thank you

16 **TESTIMONY OF TREMAYNE WASHINGTON REPLAYED, AS**
17 **FOLLOWS**

18 *TREMAYNE RASHAAD WASHINGTON,*
19 *being duly sworn to tell the truth, the whole*
20 *truth and nothing but the truth, testified, as*
21 *follows*

22 *DIRECT EXAMINATION*

23 *BY MR DURANT*

24 *Q How old are you, Mr Washington?*

25 *A Twenty-five (25)*

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10, 2004
before The Honorable R Markley Dennis Jr

793

- 1 Q Where do you live?
- 2 A [REDACTED] (phonetic) Street, Charleston,
3 South Carolina
- 4 Q Is that in downtown Charleston?
- 5 A Yes, sir
- 6 Q Were you raised in the downtown area?
- 7 A Yes, sir
- 8 Q How far did you go in school?
- 9 A Finished the 12th grade and went to Trident,
10 but I didn't finish college
- 11 Q Went to Trident, you said?
- 12 A Yeah, Trident Technical College
- 13 Q Okay But you didn't finish at Trident?
- 14 A No, didn't receive a degree
- 15 Q Where did you go to high school?
- 16 A Garrett Academy
- 17 Q Do you have a nickname?
- 18 A Yes, sir
- 19 Q What is your nickname?
- 20 A "Feddy"
- 21 Q How do you spell that?
- 22 A F-e-d-d-y
- 23 Q Do some people call you "Fiend"?
- 24 A A pretty select group of people
- 25 Q You have been charged with murder in this

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis, Jr

794

1 case, as well, have you not?

2 A Yes, sir

3 Q Those charges are still pending against
4 you?

5 A Yes, sir

6 Q Have you been promised anything in
7 consideration for your testimony today?

8 A No, sir

9 Q Has your lawyer promised you anything in
10 consideration for your testimony?

11 A No, sir

12 Q Your lawyer is in the courtroom with you
13 today, Mr Runyon?

14 A Yes, sir

15 Q Do you know John Ward?

16 A Yes, sir

17 Q How do you know John Ward?

18 A Through where I used to go, Garrett
19 Academy I remember some guys that I know from
20 Hollywood, and they introduced me to the family
21 and every-thing Took me inside the family,
22 sir

23 Q So are you and John Ward pretty close?

24 A Yes, sir

25 Q How long have you known him now?

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

795

- 1 A Eight, ten years or so Well, ever since
2 we began high school, since '94 or '95
3 Q Do you hang out with him socially and all
4 of that?
5 A (Affirmative nod)
6 Q Correct?
7 A Yes, sir
8 Q What is his nickname?
9 A "Mixx"
10 Q Now, how about Catrell Douglas? How well
11 do you know him?
12 A Know him pretty good, sir He's from the
13 Hollywood area
14 Q He's from the Petersfield area too?
15 A Yes, sir
16 Q Are most of the people that you know from
17 the Hollywood area from Petersfield?
18 A Yes, sir
19 Q What do you call Catrell Douglas?
20 A "Trell"
21 Q Did you know the victim in this case, Jamie
22 Simmons?
23 A Yes, sir
24 Q How did you know Jamie?
25 A From Mixx, being around there in Peters-

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

796

1 *field, hanging out*

2 *Q Do you have any relatives in the*
3 *Petersfield area?*

4 *A Yes, sir*

5 *Q Who would that be? '*

6 *A Actually it would be the Heywards, which I*
7 *found out about, off of my father's side*

8 *Q Sorry, I didn't hear that*

9 *A The Heywards, off my father's side*

10 *Q The Haywoods?*

11 *A Heywards*

12 *Q Do you know a lady name Nellie Pinckney?*

13 *A Yes, sir*

14 *Q What is your relationship with Ms Nellie*
15 *Pinckney?*

16 *A Cousin*

17 *Q Where does she live?*

18 *A Petersfield, off of Brewer*

19 *Q Now, going back to the morning of May 11th,*
20 *2003, were you at the Club Diamante that*
21 *morning?*

22 *A Yes, sir*

23 *Q Did you look the same then as you look now?*

24 *A No, sir I had a mini afro and a real long*
25 *beard*

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10, 2004
before The Honorable R Markley Dennis Jr

797

- 1 Q Kind of a long, pointy Fu Man Chu type of
2 thing?
- 3 A Yes, sir
- 4 Q What time did you get to the club?
- 5 A Before midnight
- 6 Q Did you go to the club with anyone?
- 7 A No -- no, sir, I met people at the club
- 8 Q Okay What did you drive to the club?
- 9 A My truck
- 10 Q What kind of truck did you have?
- 11 A A 2002 Dodge Ram
- 12 Q Showing you State's Exhibit 15 and State's
13 Exhibit 14, is that your truck?
- 14 A Yes, sir
- 15 Q When did you buy that truck?
- 16 A In May I'd just bought it Naw, April
17 I believe the end of April or -- the end of
18 April
- 19 Q Okay
- 20 A I'm not sure
- 21 Q But it wasn't too old when you purchased
22 it, is that correct?
- 23 A That's correct
- 24 Q I mean when this incident occurred?
- 25 A That's correct

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10, 2004
before The Honorable R Markley Dennis Jr

798

1 Q I hand you what hasⁱ now been marked as
2 State's Exhibit 58 for identification, and ask
3 if you recognize that document?

4 A Yes, sir, I believe that this is the
5 payments

6 Q Is that the Bill of Sale for that truck?

7 A I believe it is

8 Q It indicates a date of sale of?

9 A Yeah, April

10 Q April 27th?

11 A Yeah

12 Q What year?

13 A 2003

14 MR DURANT Your Honor, I would offer
15 that as an exhibit if there is no objection

16 THE COURT Any objection?

17 MR BUTLER No objection

18 THE COURT Without objection,
19 State's Exhibit 58 is admitted into evidence

20 (SO ENTERED AS STATE'S EXHIBIT 58)

21 DIRECT EXAMINATION CONTINUED

22 BY MR DURANT

23 Q Now, do you own a pistol?

24 A Yes, sir

25 Q What kind of pistol is it, and what

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

799

1 caliber?

2 A A P89 Ruger, nine millimeter

3 Q Where did you keep that pistol?

4 A Inside the console in my truck

5 Q Center console?

6 A Yes, sir

7 Q Was that pistol in your truck that night
8 when you went to the club?

9 A Yes, sir

10 Q John Ward had been in your truck before?

11 A Yes, sir

12 Q Does he know where you keep your pistol?

13 A Yes, sir

14 Q Did you run into anybody that you knew at
15 the club that night?

16 A Yes, sir, I'd invited several relatives to
17 the club and people that I'm involved with in a
18 record company to the club that night

19 Q I'm sorry, I didn't catch all that

20 A We have a record company and I invited a
21 lot of people to the club that night

22 Q Record company?

23 A (Affirmative nod)

24 Q And were there a bunch of folks that you
25 knew from the Hollywood area there too?

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

800

1 A Hollywood, plus also downtown and North
2 Charleston area

3 Q Did you see John Ward at the club?

4 A Yes, sir

5 Q Did you spend any time with Mr Ward that
6 evening?

7 A While we were at the club, yes, sir

8 Q What were you drinking?

9 A Beer and various liquors Just having a
10 good time, sir

11 Q Had you been drinking before you got to the
12 club?

13 A Yes, sir

14 Q Were you drunk?

15 A Not before I arrived at the club

16 Q Did you become drunk while you were at the
17 club?

18 A Yes, sir

19 Q Do you recall any disturbance going on
20 inside the club that night?

21 A Yeah Earlier there was an altercation but
22 me and a couple of guys from Hollywood, along
23 with the security and owner of the club, we kind
24 of dissolved the situation

25 Later on, another situation took place when

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

801

1 a guy from Petersfield struck a 'hood girl from
2 another part of town, or something like that

3 Q Did you see that happen?

4 A Well, no, I didn't see with my eyes But I
5 knew what happened because when we -- we were
6 trying to dissolve (sic) everything in the club

7 Q What happened after that was broken up?

8 A Well, after that was broken up, it seemed
9 like everything went back to normal The next
10 thing you know, the club was clearing out

11 Q And the next thing at the club was what?

12 A After everything went back to normal, after
13 that was broke up, everything was back to
14 normal, we went back to having a good time then
15 Some-where down the line, the club got out

16 Q Okay, they were closing the club down?

17 A Yes I believe that's when the other
18 altercation popped up

19 Q Did you leave the club?

20 A Yes, sir

21 Q Who did you leave the club with?

22 A I left the club with Ward and 'Trell

23 Q What was going on outside the club?

24 A Well, there was a fight I believe that
25 there was a fight that started off out there to

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

802

1 the right side of the club That's when you
2 could hear the gunshots firing that started up
3 also

4 Q Was there a policeman out there?

5 A Yes, sir

6 Q Where was the policeman?

7 A He was in front of the club

8 Q Did you give your keys to anyone?

9 A Yes, sir

10 Q Who did you give your keys to?

11 A 'Trell

12 Q Why did you give your keys to 'Trell?

13 A To move my truck out of all the --
14 everything that was going on Just to get my
15 truck out of the way

16 Q Was there arguing going on over by your
17 truck?

18 A Yeah Well, it was just like -- there was
19 a whole lot going on I just wanted my truck to
20 be moved You could hear cars skating off, you
21 know I just recognized -- I just told him to
22 move my truck out of harm's way

23 Q Where was your truck parked?

24 A Back -- as you came out of the club, it was
25 to the right

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

803

- 1 Q Referring to State's Exhibit 6, this is the
2 club, where did you have your truck parked?
3 A It would be on the side of the club
4 Q On the left-hand side of the club?
5 A Yes, sir
6 Q So what did 'Trell do after you gave him
7 the keys?
8 A He got in the truck and he moved it He
9 pulled it up -- after the shots and stuff
10 started off, I got into the back on the driver's
11 side I got into the backseat of the truck
12 Q So you got in from the driver's side?
13 A Yes, sir
14 Q Who was in the truck when you got in the
15 truck?
16 A 'Trell and Ward
17 Q Where was 'Trell?
18 A Driving the truck
19 Q And where was Ward?
20 A Front passenger seat of the truck
21 Q What happened after you got in the truck?
22 A There was shots being exchanged -- I
23 believe -- between the Cadillac and my truck
24 Q Shots being exchanged by whom?
25 A I am not sure who was firing from the

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

804

1 Cadillac, but I know that they were firing
2 toward my truck Then Ward was firing back
3 towards the Cadillac
4 Q Where was the Cadillac?
5 A All this took place on Toogoodoo
6 Toogoodoo That's the street outside the club
7 Q Where was the Cadillac on Toogoodoo?
8 A That would be on the same side the truck
9 was on
10 Q Was it in the road?
11 A Yes, sir
12 Q Where was your truck when John Wards
13 started shooting the gun?
14 A I believe that we was on the road, both
15 vehicles were on the road
16 Q Which way was the Cadillac headed?
17 A To go back towards Hollywood side
18 Q Which way was your truck headed?
19 A Same way, going back towards the Hollywood
20 side
21 Q What gun was John Ward shooting?
22 A I don't -- the gun I had inside the
23 console
24 Q Do you know why he was shooting at this
25 Cadillac?

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

805

1 A Well, to be honest, sir, after -- you know,
2 after going through all the motions, Ward -- of
3 course, the Cadillac was firing towards the
4 truck

5 Q Why would anybody be shooting at your truck
6 from the Cadillac?

7 A Sir, I am not sure

8 Q Had you'all had any beef with anybody in
9 the Cadillac?

10 A Uh, -- (pause) Well, like I said, I guess
11 because of the altercation that took place
12 inside the club

13 Q Well, you'all weren't involved in the
14 alter-cation inside the club, were you?

15 A I guess just being the fact that one of our
16 peoples was doing I guess from Petersfield I
17 guess they -- like a territory thing

18 Q So your testimony would be that you and
19 Ward weren't involved in any problem with
20 anybody inside the club, is that correct?

21 A (No response)

22 Q You didn't have any problem with anybody
23 inside the club?

24 A No, sir

25 Q And you didn't have any problem with

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10, 2004
before The Honorable R Markley Dennis Jr

806

1 *anybody outside the club?*

2 A *Not to my knowledge*

3 Q *And then this person in the Cadillac just*
4 *started shooting at you?*

5 A *To my knowledge, yes, sir*

6 Q *But you don't know why that was?*

7 A *No, sir*

8 Q *Did you know who was in the Cadillac?*

9 A *Yes, sir*

10 Q *Who was in the Cadillac?*

11 A *A guy that goes by the name of Ton-Ton*

12 Q *How did you know Ton-Ton?*

13 A *Just from clubs and seeing him around*

14 Q *Okay You hadn't had any problem with Ton-*
15 *Ton that day, had you?*

16 A *No, sir*

17 Q *John Ward hadn't had any problem with Ton-*
18 *Ton that night, had he?*

19 A *Not to my knowledge Not -- no, sir*

20 Q *Okay 'Trell didn't have any problem with*
21 *Ton-Ton, did he?*

22 A *Not to my knowledge, sir*

23 Q *So when Catrell pulled onto Toogoodoo Road,*
24 *which way did you turn? Right or left?*

25 A *We were going -- I believe that we were*

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis, Jr

807

1 going towards Hollywood

2 Q So that would be to the right, correct?

3 A Yes, sir

4 Q That was the same direction that the

5 Cadillac had gone, too?

6 A Yes, sir

7 Q Did Mr Ward continue shooting at the

8 Cadillac?

9 A I believe so I believe so, yes

10 Q Do you know where the Cadillac went?

11 A No, sir

12 Q So where did you go after the shooting?

13 A After the shooting, I believe that we went

14 to pick up Ward's car After we picked up

15 Ward's car, I was picked up

16 Q Where was Ward's car?

17 A I believe that we got it from his mother's

18 house From my recollection, I believe that we

19 got it from his mother's house

20 Q Where does his mother live?

21 A At Petersfield

22 Q On Petersfield Road?

23 A Yes, sir

24 Q After he picked up the car, where did you

25 go? Did you pick back up with him somewhere?

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

808

1 A Naw -- no, sir I was -- that's the part
2 that gets kind of confusing to me, because I was
3 picked up off of Petersfield Road I was picked
4 up off of Petersfield also

5 Q Who picked you up?

6 A Denode

7 Q How did Denode know to come pick you up at
8 Petersfield?

9 A 'Trell called from his phone, called Denode
10 to come They talked He told me that I talked
11 with Denode and had him come and pick me up off
12 of Petersfield Road

13 Q So you used Catrell's phone to talk to
14 Denode?

15 A (Affirmative nod), I believe so

16 Q When you talked to Denode, did you know
17 that somebody had been shot at the club?

18 A No, sir

19 Q Where did your truck get left that night?

20 A In front of -- over -- from my knowledge, I
21 thought that when they parked my truck that they
22 parked it at Ms Pinckney's house, but they told
23 me that it was behind a trailer

24 Q When did you find out that it was behind a
25 trailer?

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis, Jr

809

- 1 A The next morning
- 2 Q Okay But that night it was parked where?
- 3 A In front of Ms Pinckney's house
- 4 Q Did you see the truck parked there that
- 5 night?
- 6 A No, I just was told that it was there
- 7 Q So who parked your truck there?
- 8 A To my knowledge, 'Trell Catrell
- 9 Q So 'Trell told you that he'd parked it in
- 10 front of Ms Pinckney's house?
- 11 A I believe that he might have -- I can't
- 12 remember if it was him or maybe Denode that told
- 13 me, but I know that it was told to me I
- 14 believe that he -- he could have been the one
- 15 that told
- 16 Q But -- how did 'Trell get home?
- 17 A We were right there, by Pinckney --
- 18 (pause) No, I believe that he got home by us
- 19 So -- (pause)
- 20 Q In whose car?
- 21 A Inside Ward's We dropped him off in
- 22 Ward's car, because I was in Ward's car when I
- 23 got picked up
- 24 Q Okay And where did you'all pick up
- 25 'Trell?

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10, 2004
before The Honorable R Markley Dennis Jr

810

- 1 A Right there at the beginning of Brewer
2 Q At the beginning of what?
3 A I believe at the beginning of Brewer
4 Q Brewer Road?
5 A Yeah
6 Q Is that when you called Denode to come pick
7 you up?
8 A I believe so Yes, sir
9 Q Do you recall where you were when Denode
10 picked you up?
11 A (Pause)
12 Q If you know
13 A No, sir
14 Q Now, where did you go that night?
15 A To Denode's house
16 Q Where ---
17 A Pineland
18 Q Pineland?
19 A (Affirmative nod)
20 Q How far is Pineland from Brewer Road,
21 Petersfield area?
22 A A few miles like
23 Q Minute-wise, if you were to drive it?
24 A About ten minutes, ten or fifteen, -- ten
25 minutes

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

811

1 Q What did you do when you got back to
2 Denode's house?

3 A Just went straight to sleep Actually I
4 was already asleep when they got me out of the
5 car, got me into the house, got me into a bed,
6 and I went to sleep until the next day

7 Q What happened when you woke up the next
8 day?

9 A There was a few people inside the house,
10 they was explaining what happened the night
11 before, saying what all went down That's when
12 the phone kept ringing and they was saying that
13 I needed to go down to Petersfield and speak
14 with the detective because they saying that my
15 truck could have been involved in the murder or
16 whatever So I needed to get it straight, so I
17 went down to Petersfield to talk to the
18 detective

19 Q How did you find out that the detectives
20 were at Petersfield?

21 A I believe that Lila called the house She
22 was ---

23 Q Ms Pinckney?

24 A Yeah, she called the house She was asking
25 us did we know what was going on She was

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

812

1 explaining what was going on, and that's why
2 that morning Denode and them boys was explaining
3 to me what happened that night and -- was
4 telling me how irate it was that night up there
5 Just explained what happened, what happened to
6 Jamie and everything That's when we left the
7 house and went to talk to the detectives

8 Q So you went over to Brewer Road?

9 A Yes, sir

10 Q How did you get to Brewer Road?

11 A Denode

12 Q And where was your truck?

13 A It was parked behind the trailer

14 Q And is the trailer (State's Exhibit 13)
15 that it was parked behind?

16 A Yes, sir

17 Q Do you know who lives there?

18 A Yes, sir

19 Q Who lives there?

20 A I believe that's Lila's brother Brother

21 Q Where does Ms Pinckney live in relation to
22 that?

23 A Just right next-door, to the front

24 Q If you're looking at that picture, to the
25 left or to the right?

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

813

1 A To the left Almost like in front of it
2 Q The police ended up arresting you that
3 morning, didn't they?
4 A Yes, sir
5 Q And they read you your rights, correct?
6 A (No response)
7 Q Did they read you your rights, your Miranda
8 rights, like you see on TV?
9 A Yes
10 Q That you had the right to remain silent and
11 all that kind of stuff?
12 A Yes, sir
13 Q And you gave them a statement?
14 A Yes, sir
15 Q And -- basically, what did you tell them?
16 A Well, at the time I told them that I didn't
17 know what was going on, that I had no knowledge
18 of it, who or what, at that point in time, sir
19 Q In other words, you lied?
20 A Yes, sir
21 Q Why did you lie?
22 A Because at that point, I really didn't
23 understand what was going on I was just in the
24 dark being charged with murder at the time
25 Like -- I was, like, phew, just a terrible

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

814

1 charge, (laughs), you know? Especially when you
2 don't know actually who did what I really
3 didn't know who killed the guy

4 Q Do you know what happened to your gun?

5 A No, sir

6 Q When was the last time that you saw your
7 gun?

8 A While we were in the car

9 Q Who had your gun the last time that you saw
10 it?

11 A Ward

12 MR DURANT The Court's indulgence?

13 THE COURT Yes, sir

14 MR DURANT Please answer any

15 questions that Mr Butler may have for you

16 THE COURT You may cross examine

17 FOREMAN That's all we need

18 (READBACK CONCLUDED)

19 THE COURT Very well, the next
20 witness on your list is Catrell Douglas, also
21 known as Catrell or 'Trell Smalls Ms
22 Garrison

23 **TESTIMONY OF CATRELL DOUGLAS REPLAYED, AS**

24 **FOLLOWS**

25 CATRELL DOUGLAS, being

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

815

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 Catrell, how old are you?

7 A Twenty-two (22)

8 Q Where do you live?

9 A Petersfield Road

10 Q Who do you live with in Petersfield?

11 A My parents, my little sister, my little
12 brother

13 Q How long have you lived in the Hollywood
14 area?

15 A All my life

16 Q Did you go to school there, too?

17 A Yes, sir

18 Q Where did you go to school?

19 A I went to C C Lindy Elementary

20 Q Where did you go to high school?

21 A Baptist Hill High

22 Q How far did you get in high school?

23 A 10th grade

24 Q Prior to your arrest in this case, were you
25 working?

State v John Henry Ward
Case No 03 GS 10-5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

816

1 A Yes, sir

2 Q Where were you working?

3 A Sanders Brothers Construction

4 Q What were you doing for Sanders Brothers
5 Construction?

6 A Laborer

7 Q Prior to your present -- prior to your
8 difficulty, had you ever been in problems with
9 the law before?

10 A No, sir

11 Q You are in fact charged with murder in this
12 case, are you not?

13 A Yes, sir

14 Q And are those charges still pending against
15 you?

16 A Yes, sir

17 Q Have I or anyone else promised you anything
18 for your testimony today?

19 A The only thing that I was promised is that
20 if I told the truth that it would be in my best
21 interest

22 Q And you're represented by a lawyer, is that
23 correct?

24 A That's correct

25 Q And Mr Holmes is here, the one with the

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

817

- 1 *red necktie, and he is your lawyer, is that*
2 *correct?*
3 A *Yes, sir*
4 Q *Has he promised you anything?*
5 A *No, sir*
6 Q *Do you know Tremayne Washington?*
7 A *Yes, sir*
8 Q *How do you know Tremayne?*
9 A *From being in the neighborhood*
10 Q *Why would he be in the neighborhood?*
11 A *He knows some fellows around*
12 Q *And was one of those fellows that he knew*
13 *John Ward?*
14 A *Yes, sir*
15 Q *Tremayne Washington is not a Petersfield*
16 *guy, is he?*
17 A *No, sir*
18 Q *Is he around the Petersfield area a good*
19 *bit, though? Talking about Tremayne?*
20 A *Yes*
21 Q *What name did you know him by?*
22 A *"Fiend"*
23 Q *What kind of vehicle did Fiend have in May*
24 *of '03?*
25 A *Dodge Ram*

¹ State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

818

- 1 Q What color?
- 2 A Silver
- 3 Q Pickup truck?
- 4 A Yes, sir
- 5 Q What is the nature of your relationship
6 with John Ward and Tremayne Washington?
- 7 A Friends
- 8 Q Do you'all hang out a lot together?
- 9 A No, sir
- 10 Q Are they older or younger than you?
- 11 A Older
- 12 Q How much older than you are they?
- 13 A Maybe three or four years
- 14 Q But you know them from the neighborhood?
- 15 A Yes, sir
- 16 Q Does John Ward have a nickname too?
- 17 A Excuse me?
- 18 Q Does John Ward have a nickname too?
- 19 A (No response)
- 20 Q John Ward, does he have a nickname?
- 21 A Yes, sir
- 22 Q What is his nickname?
- 23 A "Mixx"
- 24 Q And is John Ward in the courtroom today?
- 25 A Yes, sir

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

819

- 1 Q Would you point him out to the jury,
2 please
3 A That fellow (indicating defendant) right
4 there
5 Q In the kind of checked shirt, sitting at
6 this table?
7 A Yes, sir
8 Q How long have you known him?
9 A Some years
10 Q Now, going back to May 11th, 2003, were you
11 at the Club Diamante that morning?
12 A Yes, sir
13 Q What time did you arrive?
14 A Between 1 00 o'clock and 1 30
15 Q How did you get to the club?
16 A I was dropped off
17 Q Who dropped you off?
18 A Latasha Johnson
19 Q Who is Latasha Johnson?
20 A My girlfriend
21 Q So you didn't go to the club with anybody?
22 A No, sir
23 Q What did you do after you got to the club?
24 A I went in
25 Q Did you see anybody that you knew inside

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

820

1 the club?

2 A We know everybody around here, (affirmative
3 nod)

4 Q It's kind of a local establishment, is that
5 right?

6 A Yes, sir

7 Q Where a lot of local folks go?

8 A Yes, sir

9 Q Were you hanging out with anybody inside
10 the club?

11 A No, sir

12 Q Where were you inside the club?

13 A Leaning against the bar

14 Q What were you drinking that night?

15 A Beer

16 Q How much beer did you have to drink?

17 A Maybe three or four

18 Q Pardon?

19 A Maybe three or four

20 Q Were you drunk?

21 A No, sir

22 Q Do you recall there being any problems
23 inside the club that night?

24 A Not to my knowledge

25 Q You didn't see any kind of scuffle inside

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

821

- 1 *the club?*
- 2 A *No*
- 3 Q *Now, when did you leave the club?*
- 4 A *When they moved everyone outside*
- 5 Q *So people were being moved out of the club?*
- 6 A *Yes, sir*
- 7 Q *And what did you do when you got outside*
- 8 *the club?*
- 9 A *Kind of moved around in the parking lot*
- 10 Q *What was going on outside the club?*
- 11 A *A fight or something had broke out*
- 12 Q *Where were the people fighting?*
- 13 A *Close to the road*
- 14 Q *Could you tell who was fighting?*
- 15 A *No, sir*
- 16 Q *Not necessarily the individuals but -- was*
- 17 *it just a couple of people fighting or a lot of*
- 18 *people?*
- 19 A *Really couldn't tell*
- 20 Q *And were these -- was this fighting between*
- 21 *individuals or between groups of people?*
- 22 A *I really couldn't see*
- 23 Q *Did you see Tremayne Washington and John*
- 24 *Ward out there?*
- 25 A *Yes*

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

822

- 1 Q What were they doing?
- 2 A When I saw them, they wasn't doing
3 anything
- 4 Q Where did you see them outside the club?
- 5 A Coming towards me was the time that I saw
6 them
- 7 Q And when you saw them, what happened?
- 8 A I let Tremayne and Ward know that I needed
9 a ride home
- 10 Q Okay What did he do?
- 11 A He asked me to go get the truck, so that we
12 could go
- 13 Q So I presume that he gave you the keys to
14 his truck?
- 15 A Yes, sir
- 16 Q Where was the truck parked?
- 17 A On the side of the building
- 18 Q Referring your attention to State's Exhibit
19 6 -- this is the club, Toogoodoo Road
- 20 A Yes, sir
- 21 Q Where was his truck parked?
- 22 A On the side here
- 23 Q On the left side of the club?
- 24 A Yes, sir
- 25 Q Was it pulled straight in or was it backed

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

823

1 into the ---
2 A Towards Petersfield
3 Q So the front was facing the road?
4 A Yes, sir
5 Q So what did you do after he gave you the
6 keys to the truck?
7 A I got in it and pulled it up
8 Q Did anybody else get in the truck when you
9 got in the truck?
10 A Not at the time
11 Q What happened after you cranked the truck
12 up and pulled it up?
13 A Washington and Ward entered
14 Q Where did Ward get into the truck?
15 A On the passenger side
16 Q Front or back?
17 A Front
18 Q Where did Tremayne get into the truck?
19 A In the backseat, behind the driver
20 Q Behind where you were sitting?
21 A (Affirmative nod)
22 Q After they got into the truck, what
23 happened?
24 A I was pulling out, then I got stopped
25 because the road was all congested I looked to

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

824

- 1 *see if it was clear and I heard gunshots*
- 2 Q *You heard gunshots from where?*
- 3 A *From the side of me*
- 4 Q *Where? What side?*
- 5 A *From across the seat*
- 6 Q *Who was shooting a gun?*
- 7 A *Ward*
- 8 Q *Where was he shooting the gun?*
- 9 A *I don't know the exact location but it was*
10 *pointed out the passenger window*
- 11 Q *And this was while you'all were still in*
12 *the parking lot?*
- 13 A *Yes, sir*
- 14 Q *Referring back to State's Exhibit 6, where*
15 *were you'all when he was -- when he started*
16 *shooting the gun out the passenger side window?*
- 17 A *Right there*
- 18 Q *And it was before you actually pulled out*
19 *into the road?*
- 20 A *Yes, sir*
- 21 Q *I know you said that you didn't see what*
22 *he was shooting at Which direction was he*
23 *shooting?*
- 24 A *(Gesture)*
- 25 Q *Shooting down the road toward Hollywood?*

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

825

- 1 A Yes, sir
- 2 Q Could you tell what he was shooting at?
- 3 A No, sir
- 4 Q Did you see a green Cadillac out there?
- 5 A Yes, sir
- 6 Q Where was that green Cadillac?
- 7 A Parked further up the road
- 8 Q Further up the road where?
- 9 A (Indicating), in this area
- 10 Q It was down Toogoodoo Road?
- 11 A Yes, sir
- 12 Q So was the Cadillac in the direction that
- 13 John Ward was shooting the pistol?
- 14 A Yes, sir
- 15 Q Whose pistol was he shooting?
- 16 A I couldn't tell you, I really don't know
- 17 Q Do you know where he got the pistol from?
- 18 A No, sir
- 19 Q When was the first time that you saw the
- 20 pistol?
- 21 A When he was shooting out the window
- 22 Q Do you know what kind of a pistol that it
- 23 was?
- 24 A No, sir
- 25 Q Do you know the difference between a

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

826

1 *revolver and an automatic?*

2 A *Yes, sir*

3 Q *Was it a revolver or an automatic?*

4 A *Automatic*

5 Q *Do you know what color that it was?*

6 A *It looked black at that time*

7 FOREMAN *Stop, please*

8 THE COURT *Very well, the next*

9 *witness you have requested to hear is Tron*

10 Brisbane *Just let us know when you have heard*

11 *enough*

12 (READBACK CONCLUDED)

13 **WHEREUPON TESTIMONY OF TRON BRISBANE REPLAYED,**

14 **AS FOLLOWS**

15 *TRON BRISBANE, being*

16 *duly sworn to tell the truth, the whole truth*

17 *and nothing but the truth, testified, as*

18 *follows*

19 DIRECT EXAMINATION

20 BY MR DURANT

21 Q *How old are you, Mr Brisbane?*

22 A *Nineteen (19)*

23 Q *And where are you from?*

24 A *Petersfield*

25 Q *Where?*

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

827

1 A Hollywood, South Carolina Petersfield
2 Q Petersfield?
3 A (Affirmative nod)
4 Q You are currently in the Job Corps, is that
5 correct?
6 A (Affirmative nod)
7 Q You have to answer?
8 A Yes, sir
9 Q Where are you with Job Corps?
10 A Kentucky
11 Q You're currently here over the Christmas
12 holidays?
13 A Yes
14 Q I would like to direct your attention back
15 to May 11th, 2003 Did you have occasion to be
16 at the Club Diamante that night?
17 A Yes
18 Q Who did you go to the club with?
19 A My brother and some of my friends
20 Q What is your brother's name?
21 A Oble
22 Q And what were your friends' names?
23 A Chris and Shannon
24 COURT REPORTER How do you spell
25 your brother's name?

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

828

1 WITNESS O-b-l-e

2 DIRECT EXAMINATION CONTINUED

3 BY MR DURANT

4 Q What vehicle did you go to the club in?

5 A Honda

6 Q Whose Honda?

7 A My sister's

8 Q What color was that Honda?

9 A Gray

10 Q Now, what happened at the club that night,
11 that you saw?

12 A I really didn't see anything I was outside
13 when all the fighting went on and everything

14 Q So you saw some fighting going on outside?

15 A Yeah

16 Q What happened -- what did you do when
17 fighting was going on outside?

18 A Jumped in the car and pulled off

19 Q Who was in the -- where was y'all's car
20 parked?

21 A On the opposite side of the club, back on
22 Coon Club Road

23 Q Referring to State's Exhibit 6, this is the
24 club, this is Toogoodoo Road, -- Coon Club is
25 not shown on here but it's on this side, is that

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

829

1 correct?

2 A (No verbal response)

3 Q Could you tell the jury roughly where your
4 car was parked?

5 A Right there, up on the side of the road
6 here

7 Q Okay Who all was in the car?

8 A Me, my brother, Chris and Shannon

9 Q You were all in the car together when you
10 left, too?

11 A Yeah

12 Q Who was driving?

13 A My brother

14 Q And what happened as you'all pulled away
15 from the club?

16 A We left the club, I saw the Cadillac went
17 around us and I saw the truck behind it

18 Q Where were you'all -- which way were you --
19 when you left, which direction were you'all
20 headed?

21 A Going towards Hollywood

22 Q That would be over to this side once again,
23 is that correct?

24 A Yeah

25 Q Where did that -- what did the Cadillac

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

830

1 *look like?*

2 A *Green, lime green*

3 Q *Do you know who that car belongs to?*

4 A *Ton-Ton*

5 Q *Do you know Ton-Ton's real name?*

6 A *No*

7 Q *That car passed first?*

8 A *(Affirmative nod)*

9 Q *Which side?*

10 A *On the left side*

11 Q *The left side of your car, is that correct?*

12 A *(Affirmative nod)*

13 Q *Was it going fast?*

14 A *(Affirmative nod)*

15 THE COURT *You need to say yes or*

16 *no, please*

17 WITNESS *Yes*

18 DIRECT EXAMINATION CONTINUED

19 BY MR DURANT

20 Q *Was it going fast?*

21 A *Yes*

22 Q *And what was behind that green Cadillac?*

23 A *The gray pickup, Dodge*

24 Q *Do you know who owns that vehicle?*

25 A *I don't know him personally*

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

831

- 1 Q Do you know his name?
- 2 A They call him "Fiend" Or "Fain"
- 3 Q Fiend?
- 4 A (Affirmative nod)
- 5 Q Did that pass you too?
- 6 A Yeah
- 7 Q Was that vehicle going fast or slow?
- 8 A It wasn't going that fast
- 9 Q What did you hear as these vehicles were
- 10 passing you?
- 11 A I heard gunshots after we'd pulled off
- 12 Q Did you continue to hear gunshots?
- 13 A Yeah
- 14 Q How far down Toogoodoo Road were you'all
- 15 when these vehicles passed you?
- 16 A Right at the corner, making a turn off to
- 17 go on Wilson Road
- 18 Q Which road?
- 19 A Making the turn off to go on Wilson Road
- 20 Q Okay What happened as you'all were making
- 21 the turn off to go down that road?
- 22 A That's where they passed us at
- 23 Q And what happened when they passed you'all?
- 24 A We turned off by Harris Street, ran into a
- 25 ditch

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10, 2004
before The Honorable R Markley Dennis Jr

832

1 Q Why did you'all run into the ditch?

2 A Trying to get out of the way We meant to
3 turn on the dirt road but my brother lost
4 control of the car

5 Q When did those vehicles pass you in
6 relation to when you'all ran into the ditch?

7 A That was after we got out and ran into the
8 woods

9 Q Okay Why did you run into the woods?

10 A We were still hearing gunshots and didn't
11 know where they were coming from

12 Q Where did it sound like it was coming from?

13 A Sounded like they were shooting at each
14 other or something like that

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

16 A We walked home, on foot

17 Q You'all were unable to get your car out of
18 the ditch?

19 A No

20 Q Did anyone in your vehicle have a weapon
21 that night?

22 A No

23 Q Did anyone in your vehicle fire a weapon
24 that night?

25 A No

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

833

1 Q Do you know -- did you see any of the
2 people that were in those vehicles?

3 A No

4 Q Did you see any people who were in either
5 of those vehicles any earlier that night?

6 A Yeah, my cousin John

7 Q And when you say Cousin John, who are you
8 talking about?

9 A John Ward

10 Q This John Ward right here, with the checked
11 shirt on?

12 A Yes

13 Q Which vehicle did you see him in?

14 A The truck, but that was earlier -- before

15 Q Earlier, before the shooting?

16 A (Affirmative nod)

17 Q And where did you see him in the truck?

18 A On the passenger side

19 Q Front seat passenger?

20 A Yeah

21 Q Was that as you, your brother and your
22 friends were leaving?

23 A As we were walking to the car

24 FOREMAN That's enough Thank

25 you

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

834

1 (READBACK CONCLUDED)

2 THE COURT All right The next
3 witness is Johnny Buncum

4 WHEREUPON TESTIMONY OF JOHNNY BUNCUM REPLAYED,
5 AS FOLLOWS

6 JOHNNY BUNCUM, being
7 duly sworn to tell the truth, the whole truth
8 and nothing but the truth, testified, as
9 follows

10 DIRECT EXAMINATION

11 BY MR DURANT

12 Q Good afternoon, Mr Buncum

13 A (No response)

14 Q What is your age, sir?

15 A Thirty-seven (37)

16 Q Are you employed?

17 A Yes, sir

18 Q Where do you work?

19 A Lieber Correctional Institution

20 Q What do you do at Lieber?

21 A I am a Corrections officer

22 Q What is your position/rank at Lieber
23 Correctional?

24 A Lieutenant/Captain

25 Q How long have you been with Lieber?

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10, 2004
before The Honorable R Markley Dennis Jr

835

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

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

836

1 A No, I was not inside the club when the
2 fight broke out
3 Q But you were aware of it, is that correct?
4 A Yes, sir
5 Q What happened when the fight spilled
6 outside the club?
7 A They continued fighting, two large groups
8 Q Do you know who those groups were?
9 A I know that one of the persons that was
10 chased down the road was named Dunmeyer
11 Q Okay So you didn't really have -- you
12 didn't know any names, you don't really know
13 people -- you didn't know these people
14 A No
15 Q But you say that it looked like groups of
16 people fighting?
17 A Groups of people fighting, (affirmative
18 nod)
19 Q Was there anybody there from the Sheriff's
20 office?
21 A Yes Deputy Frichtel was there
22 Q Why was Deputy Frichtel there?
23 A We'd called him because we'd had a little
24 problem inside, then outside there'd been a
25 problem

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

837

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

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

838

1 *gunfire coming from the ---*

2 *A I seen the muzzle flares from the right*
3 *passenger side, front window*

4 *Q Front window, passenger side?*

5 *A (Affirmative nod), passenger side*

6 *Q And could you tell where the shots were*
7 *being directed, which direction?*

8 *A Yes, towards the nightclub*

9 *Q Toward anything else? What did it look*
10 *like he was shooting at?*

11 *A In the parking area*

12 *Q Was that green Cadillac in the area?*

13 *A Yes, slightly up to the front, to the front*
14 *and to the right*

15 *Q Okay Did it look like any of the shots*
16 *were directed at the Cadillac?*

17 *A Yes*

18 *Q Now, where did you see the first gunshots*
19 *coming from?*

20 *A The Dodge truck*

21 *Q What happened after you observed those*
22 *first shots?*

23 *A Well, after I heard the first shots, -- the*
24 *truck was doing, you know, (hand gesture)*

25 *Q Fishtailing?*

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

839

- 1 A *Fishtailing, (affirmative nod), and shots*
2 *were coming out The lime green Cadillac -- and*
3 *there was another car in between the two of*
4 *them, in the middle, a Honda Accord The*
5 *Cadillac took off down the road, and the Honda*
6 *was trying to go down the road, and the truck*
7 *was going down the road still firing shots*
8 Q *The truck was still firing shots?*
9 A *(Affirmative nod)*
10 Q *What did it look like the truck was doing,*
11 *to you?*
12 A *Trying to catch the Cadillac*
13 Q *Did you continue to hear shots as those*
14 *vehicles went down the road?*
15 A *Yes, sir*
16 Q *How many?*
17 A *A lot*
18 Q *So what did you do after the Cadillac and*
19 *the truck had left the area?*
20 A *Well, someone come and told me that someone*
21 *was hit, so I went around there to see who it*
22 *was That's when I seen the victim laying on*
23 *the ground, near the ditch on the passenger side*
24 *of the Honda Accord*
25 FOREMAN (Signals to stop)

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10, 2004
before The Honorable R Markley Dennis Jr

840

1 (READBACK CONCLUDED)

2 THE COURT Very well Who is the
3 next one?

4 COURT REPORTER Kenneth Sanders

5 WHEREUPON TESTIMONY OF KENNETH SANDERS REPLAYED,
6 AS FOLLOWS

7 KENNETH SANDERS, being
8 duly sworn to tell the truth, the whole truth
9 and nothing but the truth, testified, as
10 follows

11 DIRECT EXAMINATION

12 BY MR DURANT

13 Q How old are you, Mr Sanders?

14 A Twenty-one (21)

15 Q Do you go by any other names besides
16 "Kenneth"?

17 A "Fred"

18 Q Where are you from?

19 A Hollywood, South Carolina

20 Q What part of Hollywood?

21 A Petersfield

22 Q Where do you work?

23 A Cummins Engine Company

24 Q How long have you been with Cummins?

25 A About five and a half years

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

841

1 Q What do you do for Cummins?

2 A I just recently switched -- I was a CSC
3 machine operator I'm currently a materials
4 operator

5 Q Have you ever been convicted of a crime in
6 a court of General Sessions?

7 A No, I haven't

8 Q Do you have currently have a pending charge
9 in the Court of General Sessions?

10 A Yes, I do

11 Q What is that charge?

12 A Assault and battery with intent to kill

13 Q Do you know the penalty that charge
14 carries?

15 A (No response)

16 Q Do you know how much time you could
17 potentially get in jail for that charge?

18 A No, I don't

19 Q Have you discussed that charge with me?

20 A No, I haven't

21 Q Have you discussed that charge with anyone
22 in my office?

23 A No, I haven't

24 Q Have I, or anyone else in my office,
25 promised you anything in exchange for your

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

842

1 *testimony here today?*

2 A No

3 Q *You have, of course, talked to me, is that*

4 *correct?*

5 A Yeah

6 Q *But not about your pending charge, is that*

7 *correct?*

8 A No

9 Q *In fact, I told you that I didn't want to*

10 *talk to you about your pending charge, did I*

11 *not?*

12 A Yeah

13 Q *Now, do you know this fellow here?*

14 A Yes I do

15 Q *What is his name?*

16 A John

17 Q *John what?*

18 A John Ward

19 Q *What's his nickname?*

20 A "Mixx"

21 Q *Where is he from?*

22 A Petersfield

23 Q *How long have you known Mixx?*

24 A All my life

25 Q *Are you friendly with him?*

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

843

1 A Yeah

2 Q Do you know Tremayne Washington?

3 A Yes

4 Q What nickname do you know him by?

5 A "Fiend"

6 Q How long have you known Fiend, Tremayne

7 Washington?

8 A Three years

9 Q And do you know what his relationship is

10 with John Ward?

11 A Friends

12 Q Do they hang out together a good bit?

13 A Yeah

14 Q Do you know Catrell Douglas?

15 A Yeah

16 Q How do you know Catrell Douglas?

17 A I grew up with him

18 Q Are you related to him?

19 A Yeah, distant cousins

20 Q Did you know Jamie Simmons?

21 A Yes

22 Q How did you know Jamie Simmons?

23 A I grew up with him, too His grandmother

24 lives right down the road from me

25 THE COURT Hold on a second Pull

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

844

1 that mic -- you need to pull your chair closer,
2 so that you can speak into that microphone,
3 please, sir The jury is having a hard time
4 hearing you, Mr Sanders

5 DIRECT EXAMINATION CONTINUED

6 BY MR DURANT

7 Q Mr Sanders, were you at the Club Diamante
8 on May 11th, 2003?

9 A Yes, I was

10 Q Who did you go to the club with?

11 A I went with my cousin Bujuan

12 Q Who else?

13 A I think his brother, Keith

14 Q Where did you'all go to the club from?

15 A We left from his mother's house in Peters-
16 field

17 Q She lives over in Petersfield?

18 A Yeah

19 Q Where in Petersfield?

20 A On Alfred Road

21 Q Is Alfred Road close to Brewer Road?

22 A Yeah, it's a split-off, a fork

23 Q Who drove over to the club?

24 A Bujuan did

25 Q Bujuan is Keith's brother, you said?

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

845

- 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

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis, Jr

846

1 Q What were you doing inside the club?

2 A (No response)

3 Q What were you doing inside the club?

4 A When I first came to the club, I was just
5 sitting at the bar

6 Q Did you run into anybody, dance with
7 anybody?

8 A Yeah I left the bar, and I was on the
9 dance floor with my cousin

10 Q What happened while you were on the dance
11 with your cousin?

12 A My cousin, Keith, and his girlfriend,
13 Shaquenta, got into an argument

14 Q Keith would be Keith Richards?

15 A Yes

16 Q And Shaquenta, do you know her last name?

17 A Shaquenta Pinckney

18 Q Where did they get into an argument at?

19 A Right in the middle of the dance floor, as
20 soon as you come off that aisleway, right to the
21 left

22 Q Do you know why they got into an argument?

23 A She was dancing with somebody and that's
24 what it was

25 Q He got a little jealous?

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

847

- 1 A Yes
- 2 Q So what happened after he got into an
3 argument with Shaquenta?
- 4 A She grabbed -- he grabbed her
- 5 Q Pardon me?
- 6 A He grabbed her
- 7 Q He grabbed her?
- 8 A Yes And she swung at him, hit him in the
9 mouth
- 10 Q What happened when she hit him in the
11 mouth?
- 12 A He had a gold crown in his mouth and it
13 knocked it out
- 14 Q Knocked his gold crown out?
- 15 A Yeah
- 16 Q What happened after that?
- 17 A Myself and his brother, his older brother,
18 Arthur, separated them Then the guy that she
19 was dancing with sneaked around us and punched
20 him
- 21 Q What was -- do you know what that fellow's
22 name was?
- 23 A His name is Rollo
- 24 Q And he sneaked around and punched who?
- 25 A Punched Keith

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

848

- 1 Q Do you know where Rollo is from?
- 2 A He's from Cherryhill
- 3 Q What happened after that?
- 4 A After that, Keith ran out of the club
- 5 behind him and ---
- 6 Q Behind who?
- 7 A Behind Rollo
- 8 Q And what happened outside?
- 9 A Outside? I came out there, I was talking
- 10 to a female friend of mine, we was about to
- 11 leave the club When I came outside, we were
- 12 parked right across from the club, and Keith and
- 13 Kevin Dunmeyer were arguing with Rollo over
- 14 beside Kevin Dunmeyer's truck
- 15 Q And where was Kevin Dunmeyer's truck?
- 16 A Kevin Dunmeyer's truck was parked right
- 17 across from the club Keith's brother's truck,
- 18 the Grand Cherokee, was backed into the CPW
- 19 area
- 20 Q Referring to State's Exhibit 6, where was
- 21 Kevin Dunmeyer's truck?
- 22 A This is where we were, where his truck was
- 23 Kevin Dunmeyer's truck was up here facing
- 24 towards Baptist Hill Road
- 25 Q Your truck was backed in?

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

849

- 1 A Yes
- 2 Q Bujuan's Cherokee was backed in?
- 3 A Yes
- 4 Q Right there in the driveway?
- 5 A Yes
- 6 Q So what happened after that? Rollo was in
- 7 the Suburban, you said, or Dunmeyer's vehicle
- 8 A (Affirmative nod), Rollo was inside the
- 9 truck At the time, Bujuan and Arthur, Keith's
- 10 older brother, was trying to calm him down --
- 11 along with Kevin Dunmeyer was trying to calm
- 12 Keith down But, uh, Rollo opened the door and
- 13 said something to him and him and Keith got into
- 14 it Keith ran to the truck and hit him again
- 15 Q Hit Rollo while he was in the truck?
- 16 A Yeah
- 17 Q What happened after that?
- 18 A Kevin started to being kind of irate and
- 19 started arguing back, like he wanted to fight
- 20 Keith, so we started to push him back Keith
- 21 said something back to him, and he ran into the
- 22 crowd and I punched him
- 23 Q You punched who?
- 24 A Punched Kevin
- 25 Q Kevin Dunmeyer?

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 - 10 2004
before The Honorable R Markley Dennis Jr

850

1 A Yes

2 Q What happened after you punched Kevin
3 Dunmeyer?

4 A When I punched him, he ran He ran away
5 from us, he ran towards Baptist Hill Road

6 Q Did you chase him?

7 A Yes, I did

8 Q How long?

9 A Just a couple of seconds, that's all, then
10 I stopped

11 Q After you stopped, did you see -- do you
12 know Ton-Ton?

13 A Yes

14 Q Do you know what Ton-Ton drives?

15 A He drives a -- well, he used to drive a
16 green Cadillac, Fleetwood

17 Q Did you see that car out there around this
18 time?

19 A Yes, I did

20 Q Where did you see that car?

21 A Coming from the Baptist Hill Road side,
22 coming down the highway

23 Q Coming from the direction that Kevin
24 Dunmeyer had run to?

25 A Yeah

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

851

1 Q Is that correct?

2 A Yes

3 Q Do you remember the police officer being
4 out there when all this was going on?

5 A The police officer was right across the
6 street from where we were

7 Q After you stopped chasing after Kevin
8 Dunmeyer, what did you do?

9 A I walked back towards my cousin's truck
10 The female that I was going to leave with, she
11 was right there, her car was parked next to my
12 cousin's truck

13 Q What happened then?

14 A Ton-Ton's car pulled up and my cousin said
15 that Kevin Dunmeyer was in the car So we were
16 like -- we were just going to leave, but Ton-
17 Ton, he stopped the car and started making some
18 gestures toward ---

19 Q Did he get out of the car?

20 A Yes, he did

21 Q What kind of gestures was he making towards
22 you?

23 A Cursing, and -- (pause)

24 Q In other words, he wasn't just asking you,
25 'How are you doing this evening?'

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

852

- 1 A That's correct
- 2 Q So what did you do when he did that?
- 3 A I proceeded towards Antonio's car When I
- 4 got to the car, I tried to talk to him He
- 5 still wasn't saying anything I swung He took
- 6 off and that's when I fell on the ground I got
- 7 my hand caught up in the car somehow
- 8 Q I'm sorry, I didn't hear that last part
- 9 You fell to the ground and what?
- 10 A My hand got tangled in the car somehow and
- 11 I fell to the ground as it pulled off
- 12 Q So he was driving off ---
- 13 A (Affirmative nod), driving off
- 14 Q --- in the Cadillac and you got knocked to
- 15 the ground?
- 16 A Yeah
- 17 Q Which way did he drive off to?
- 18 A Towards like, uh, the Coon Club Road side
- 19 Q Hollywood side?
- 20 A Yeah
- 21 Q What did you go after you got knocked down
- 22 on the road?
- 23 A I kind of hurt my leg My cousin came and
- 24 helped me up and we walked towards ---
- 25 Q Which cousin?

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

853

- 1 A Keith
- 2 Q Okay
- 3 A And we walked back to Bujuan's truck and --
- 4 and as we were walking off, Ton-Ton's car
- 5 stopped like right in front of the parking lot
- 6 entrance
- 7 Q Okay Let's refer back to State's Exhibit
- 8 6 This is Club Diamante -- to Baptist Hill, to
- 9 Hollywood You've already told us where the
- 10 vehicles were parked
- 11 A Um-humm
- 12 Q When he came back from this way, where did
- 13 Ton-Ton stop?
- 14 A When he first stopped, he was like right
- 15 here past the truck
- 16 Q Okay Is that when you went and tried to
- 17 punch him through the window?
- 18 A Yeah
- 19 Q And is that where you fell on the ground?
- 20 A Yes
- 21 Q Now, after he pulled off, where did he go?
- 22 A He pulled off and parked up here where the
- 23 parking lot is, parking lot entrance
- 24 Q Now, you say that he parked Did he
- 25 actually pull off the road or was he still in

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis, Jr

854

1 the roadway?

2 A He was still in the road

3 Q Okay And what happened after he stopped
4 up there?

5 A He stopped in front of the parking lot
6 Him and some of the people that were in his car,
7 they -- they started to throw bottles

8 Q Could you tell where they were throwing
9 bottles at?

10 A No, I couldn't really tell at the time

11 Q And these were people in the Cadillac
12 throwing bottles?

13 A Yes

14 Q Did you see -- you said that you know
15 Friend, is that correct?

16 A Yes

17 Q Do you know what kind of vehicle that he
18 was driving at the time?

19 A Yes

20 Q What kind?

21 A He had just got a Dodge, a Dodge Ram truck

22 Q What color?

23 A Like a silver

24 Q Did you see that truck out there at the
25 time that the Cadillac stopped the second time?

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

855

- 1 A Yes, I did
- 2 Q Where was it?
- 3 A It was, like, parked in the driveway
- 4 adjacent to the road or to the side of the road
- 5 Q Once again referring to State's Exhibit 6,
- 6 I believe that you said that the Cadillac
- 7 stopped right in this area?
- 8 A (Affirmative nod)
- 9 Q Where did you see the truck?
- 10 A Like right here
- 11 Q Which way was the truck pointed?
- 12 A Like pointed towards the road
- 13 Q In this direction?
- 14 A Yeah
- 15 Q Off the roadway?
- 16 A Yeah
- 17 Q So (indicating with hand)-- correct?
- 18 A Yeah
- 19 Q What happened next?
- 20 A They started throwing bottles I was just
- 21 getting ready to walk towards my cousin's truck,
- 22 about to get in the truck, ready to go on
- 23 Q What happened as you were about ready to
- 24 get into your cousin's truck?
- 25 A That's when I heard the first gunshot I

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

856

1 *opened the door and jumped inside the truck*

2 *Q Do you recall how many gunshots that you*
3 *heard initially?*

4 *A Well, after the first one, I ran to the*
5 *door and I tried to open the door and I heard*
6 *three more after that, after I was inside the*
7 *truck*

8 *Q Did you see where any of the gunshots were*
9 *coming from?*

10 *A No, I didn't*

11 *Q Could you tell which direction that they*
12 *were coming from?*

13 *A No, I didn't*

14 *Q So you couldn't tell which direction that*
15 *they were coming from?*

16 *A (No response)*

17 *Q Were they coming from -- where were you*
18 *when you heard the gunshots?*

19 *A I heard the gunshots -- the truck was*
20 *parked almost like ---*

21 *Q In this area here?*

22 *A (Affirmative nod)*

23 *Q Well, were they coming from that way or*
24 *that way?*

25 *A From behind*

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

857

1 Q So it would be coming from the Hollywood
2 side?

3 A Yes, sir

4 Q All right Do you know what happened to
5 the Cadillac?

6 A No, after all -- after I heard the
7 shooting, whatever, and I saw the police car
8 pulling out, that's when I got up in the truck
9 and ---

10 Q So you don't know what happened to the
11 Cadillac?

12 A No, (negative gesture)

13 Q Do you know what happened to the truck?

14 A No

15 Q When did you find out that someone had been
16 shot?

17 FOREMAN Your Honor, that's
18 enough Thank you

19 THE COURT Very good I would ask
20 that you return to your jury room and resume
21 deliberations

22 (JURY RESUMED DELIBERATIONS @ 3 10)

23 (JURY REQUEST FOR DEFINITION OF REASONABLE
24 DOUBT RECEIVED @ 5 20 P M)

25 THE COURT I have received another

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

858

1 note from the jury, if we could get the
2 attorneys here

3 (COUNSEL PRESENT)

4 (DEFENDANT PRESENT)

5 THE COURT All right, we have
6 another note from the jury requesting a
7 definition of reasonable doubt Here's the
8 question, (tendering jury note to counsel)
9 I've printed the charge that I read verbatim on
10 reasonable doubt What I propose to do is bring
11 them in and tell them that's the charge I
12 think that it answers that question Then I'm
13 going to send that back I am not going to go
14 any further than what I have already read

15 MR BUTLER Are you going to bring
16 them out and give them that or are you just
17 going to let them have it?

18 THE COURT I am going to let them
19 have it, let them take it back with them, but I
20 will also ---

21 MR BUTLER This is the same one that
22 you read to them?

23 THE COURT (Affirmative nod), it
24 came from my computer verbatim I think the
25 only thing that I did and that is what is in the
26 record

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

859

1 MR BUTLER (Upon review), that's
2 fine

3 MR DURANT No objection, Your Honor
4 Should we send them a dictionary, too?

5 THE COURT I've had them ask me for
6 one Any objection, Mr Butler?

7 MR BUTLER No objection, none at
8 all

9 MS KENT-JENKINSON No, Your Honor

10 THE COURT All right, please let the
11 record reflect that the Defendant is present and
12 invite the jury to return

13 COURT REPORTER Court's Exhibit 8

14 (SO ENTERED AS COURT'S EXHIBIT 8)

15 (JURY IN @ 5 45 P M)

16 THE COURT Thank you very much,
17 Ladies and Gentlemen, I appreciate it I have
18 now what has been marked as Court's Exhibit 8,
19 Mr Presiding Juror, Ladies and Gentlemen

20 The question is, "Could you explain
21 once again the definition of reasonable doubt?"
22 Then the added part, and I understand, "if you
23 could, put it more laymen's terms, that would be
24 great "

25 Please understand something, there are
26 some ways that we can talk about it but one of

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10, 2004
before The Honorable R Markley Dennis Jr

860

1 the beauties of this process, it truly is, is
2 that over the years the Court looks at certain
3 legal principles and really starts to refine and
4 define certain terms for us Therefore, it is
5 important that we stay within the Court's
6 definition I would be happy to chat with you
7 about it, but I must stick within the framework
8 and guidance of the court

9 But what I have done, and maybe this
10 will be helpful to you, is I've printed out the
11 charge that I gave to you so that you can look
12 at it and review it visually and talk about it,
13 if you wish I have attached that to this note
14 and would ask you, Mr Presiding Juror, to just
15 keep this now with the other exhibits Then
16 when the jury has completed it's deliberations,
17 returning the exhibits to the Court

18 FOREMAN Yes, sir

19 THE COURT Thank you very much You
20 may continue your deliberations

21 (JURY RESUMES DELIBERATIONS @ 5 55 P M)

22 (DEFENDANT PRESENT)

23 THE COURT Okay Let the record
24 reflect that Mr Ward is present It is now
25 9 00 p m The jury has been deliberating now
26 for nine hours and we have received a request

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

861

1 that they would like to recess for the evening
2 and continue tomorrow I think we are close to
3 the point of them, being tired, doing something
4 just to be done, or they say 'we can't resolve
5 this case ' I don't think we should push them
6 to that point

7 I'm inclined -- they have been
8 deliberating for nine hours and they have been
9 working pretty deliberately, I think, in what
10 they've asked My desire is to inform them that
11 if they are making progress toward a decision,
12 then we will stay But if they are still -- and
13 I don't want them to tell me anything But if
14 they would like to adjourn for the evening and
15 come back and start over in the morning, I am
16 inclined to allow them to do that I wanted
17 you'all to have a chance -- I want to hear from
18 you your respective positions

19 Solicitor, I will start with you first

20 MR DURANT I have no objection to
21 that, Your Honor

22 THE COURT Mr Butler?

23 MR BUTLER Judge, like you, every
24 time I've been in this situation, I've wrestled
25 it myself in trying to figure out -- I have to
26 be honest with the Court -- and I think our

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

862

1 assessment at this point is that we would object
2 to sending them home We'd cite Rule 23 I
3 know that is an ambiguous rule, subject to
4 interpretation, but you asked for my position
5 and that's the way I feel

6 THE COURT No problem at all I
7 have read that before and I will read it again
8 (Upon review), 26 of what?

9 MR BUTLER Rule 23

10 THE COURT Okay, I have it (Upon
11 review), I understand that Rule and realize that
12 Rule deals with the right to sequester the jury,
13 that's basically the provision for it I don't
14 read that -- it says "may", it doesn't say
15 "shall" I've done it, I'll do it again, and
16 we'll just have the question reviewed Other
17 states do it I don't do it, except in death
18 penalty cases, but I know of people that have --
19 not necessarily after deliberations have
20 started, but certainly before that The logic
21 eludes me as to how it is okay -- I mean, we've
22 been watching, and it is on television right
23 now, the trial in California The jury is not
24 being sequestered every night, they are going
25 home So -- I appreciate that, and your
26 objection is noted and preserved for the record

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

863

1

2 MR BUTLER Thank you

3 THE COURT Solicitor, do you wish to
4 change your position?

5 MR DURANT No, sir

6 THE COURT I am going to instruct
7 the bailiff to make inquiry as to whether they
8 are making progress and tell them that if they
9 wish to go home, we can adjourn at this point
10 Thank you very much We will be briefly-at
11 ease12 The bailiff has advised me that he
13 instructed them and they said, 'well, the
14 progress has slowed but then they were told they
15 could come back tomorrow and they said, 'let's
16 continue for awhile ' So they are going to
17 continue to do that, so we will be at ease

18 (BRIEF RECESS)

19 (NOTIFIED @ 9 20 P M OF JURY REQUEST

20 TO RECESS FOR THE DAY)

21 (DEFENDANT PRESENT)

22 THE COURT We have a note from the
23 jury requesting that they be allowed to return
24 tomorrow Let's bring in the jury

25 (JURY IN @ 9 22 P M)

26 THE COURT Thank you, Ladies and

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 - 10 2004
before The Honorable R Markley Dennis Jr

864

1 Gentlemen, for your diligent work today You
2 have been very diligent and you've worked now
3 for about nine hours in your deliberations
4 Thank you very much We appreciate that

5 At this point, the Rules permit me to
6 do several things but one is, of course, I could
7 sequester you and send you to a motel tonight,
8 provide supervision for you That's one option

9 Another option is to let you go home,
10 rest and come back in the morning, refreshed, to
11 resume your deliberation

12 I am going to permit you to go home,
13 but I will tell you that the reason for
14 sequestering a jury is very real and it is very
15 important Each of you are adults and I trust
16 you I've been trusting you every night and I
17 am going to continue to trust you But I will
18 tell you now that after you have started your
19 deliberations, even more so it is imperative
20 that no one talk with you about this case or
21 talk about it in your presence or try to talk to
22 you about this case It is also very important
23 that you not discuss it with anyone, at home or
24 anywhere, nor that you discuss it among
25 yourselves outside of this courtroom

26 I know that you will do that, but I am

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10, 2004
before The Honorable R Markley Dennis Jr

865

1 going to ask each one of you now if you solemnly
2 swear or affirm that you will not permit anyone
3 to talk with you about this case, that you will
4 not discuss this case with anyone, any of the
5 other jurors or anyone else You will not read
6 anything, you will not conduct any independent
7 research You will observe complete silence
8 concerning deliberations thus far and not
9 deliberate individually or collectively If you
10 will honor that oath, say "I will" (All jurors
11 respond verbally)

12 Is there any juror that could not make
13 that commitment? ((No response))

14 Thank you very much Have a good
15 evening I will see you in the morning at 9 30,
16 please Thank you Come directly to your jury
17 room

18 (JURY OUT @ 9 25 P M)

19 THE COURT Any exceptions or
20 additions from the State?

21 MR DURANT None

22 THE COURT Any additional exceptions
23 from the Defendant?

24 MR BUTLER No Just as their was
25 that time, my continued objection previously
26 stated

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

866

1 THE COURT As to releasing them?

2 MR BUTLER Yes

3 THE COURT Yes, sir No question
4 about it, that is preserved for the record

5 MR BUTLER Thank you

6 THE COURT And I read the note -- it
7 says that the lunch break is okay I don't know
8 why the night break would not be I mean, if --
9 if they can go to lunch and not violate it, they
10 can go home and go to bed and not violate it
11 That's my rationale

12 Thank you very much We will see
13 you'all -- you don't have to be here but the
14 jury will resume in the morning Have a good
15 evening

16 The Defendant will remain on bond Thank you

17 (COURT IN RECESS)

18 (TRANSCRIPT CONTINUED NEXT PAGE)

19

20

21

22

23

24

25 DECEMBER 10, 2004

9 30 A M

26

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10, 2004
before The Honorable R Markley Dennis Jr

867

1 (DEFENDANT PRESENT)

2 THE COURT We will resumed as soon
3 as all the jurors arrive, the bailiff will let
4 us know when they are all here

5 (JURY RESUMES DELIBERATIONS @ 9 50 A M)

6 (NOTIFIED OF JURY REQUEST @ 11 10 A M)

7 (DEFENDANT PRESENT)

8 THE COURT Good morning, Mr Ward
9 Let the record reflect that the Defendant is
10 present We have received a note from the jury
11 requesting a list of all the witnesses so that
12 they can discuss them one by one Any objection
13 to sending that back there? What number is
14 this?

15 COURT REPORTER This will be Court's
16 Exhibit 9

17 (SO ENTERED AS COURT'S EXHIBIT 9)

18 MR BUTLER No objection

19 MR DURANT None from the State

20 THE COURT All right I am going to
21 bring them in because I also want to administer
22 another oath again concerning the oath they took
23 last night So thank you Wait just a moment,
24 so we will do that Also, Ms Garrison has
25 prepared a list of the witnesses, do you'all
26 want to look at that?

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

868

1 COURT REPORTER I have their names
2 with their nicknames, I'd ask that you double-
3 check me on the nicknames, please

4 THE COURT She would like for you
5 to review it

6 MR DURANT We trust you

7 COURT REPORTER Like Anthony Ward is
8 "Cabbage"

9 THE COURT That's good, too

10 MR DURANT (Upon review), that's
11 good

12 MR BUTLER (Upon review), okay

13 COURT REPORTER Thank you

14 THE COURT Everybody agree with that
15 list?

16 MR BUTLER Yes, sir

17 MR DURANT Right

18 THE COURT We will attach it to the
19 note, it will be Court's Exhibit 9 Let's bring
20 the jury in

21 (JURY IN @ 11 20 A M)

22 THE COURT Thank you, Ladies and
23 Gentlemen Good morning to you I understand
24 that you have been at work this morning since
25 9 50 or so, and I wanted to address you earlier
26 but we were doing some other things and this

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10, 2004
before The Honorable R Markley Dennis Jr

869

1 gives me an opportunity to do that

2 Mr Presiding Juror, you have requested
3 a list of all the witnesses who have testified
4 We have prepared that list and I have attached
5 it now to Court's Exhibit 9, which is your note
6 I would ask you, please, I will -- you may take
7 it back with you I'd ask if you would retain
8 that with all the other exhibits Hopefully
9 that will help you and the other jurors as you
10 continue with your deliberations

11 FOREMAN Thank you

12 THE COURT And I thank you, sir I
13 appreciate very much the work that you've done
14 thus far and I appreciate your continuing to
15 work very diligently

16 I do want to address one issue Last
17 night before we left, I administered an oath to
18 each one of you and I now what to ask and I want
19 to administer another oath Do each of you
20 solemnly swear or affirm that from last night
21 until you returned and commenced your
22 deliberations this morning, you have honored the
23 oath that you took last night in that you -- in
24 every respect, but specifically in that you
25 discussed this case with no one outside the
26 presence of the jury, you permitted no one to

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

870

1 talk with you about this case and you did not
2 perform or conduct any deliberations,
3 individually or collectively If each of you
4 can make that commitment, say "I do" (All
5 jurors respond verbally)

6 Any juror who was unable to make that
7 commitment? (No response)

8 Thank you very much You may retire
9 and resume your deliberations and you will have
10 the list

11 (JURY RESUMED DELIBERATIONS @ 11 30 A M)

12 THE COURT Any exceptions or
13 additions from the State?

14 MR DURANT None, Your Honor

15 THE COURT From the Defense?

16 MS KENT-JENKINSON No, sir

17 THE COURT We will be at-ease and I
18 appreciate you responding so quickly

19 (NOTIFIED OF JURY REQUEST @ 11 45 A M)

20 (DEFENDANT PRESENT)

21 THE COURT We have received a note
22 from the jury that they would like to hear the
23 testimony of Brian Holmes and James Murphy

24 COURT REPORTER Court's Exhibit 10

25 (SO ENTERED AS COURT'S EXHIBIT 10)

26 THE COURT We will bring them in and

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

871

1 do it just as we did before We will play the
2 testimony until they signal us to stop Any
3 objection from the State?

4 MR DURANT No, sir

5 THE COURT From the Defense?

6 MS KENT-JENKINSON No, sir

7 THE COURT At first they said that
8 they also wanted to hear Perrigo, then they said
9 'no' Then they said Moultrie and then they
10 said no Then they said Ricky Holmes and said
11 'no', but then they put him back on the list
12 So Ricky Holmes and James Murphy That's what
13 they are looking for

14 MR BUTLER Could I ask that you give
15 them the same admonition?

16 THE COURT Absolutely Let the
17 record reflect that the Defendant is present
18 Please bring the jury in

19 (JURY IN @ 11 50 A M)

20 THE COURT Thank you, Ladies and
21 Gentlemen, Mr Foreman I have your note asking
22 to hear the testimony of Brian Holmes and James
23 Murphy

24 We will follow the same procedure that
25 we followed yesterday in replaying the
26 testimony We will play the testimony until you

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

872

1 have heard as much as you want to hear

2 When you have heard the parts that you
3 need to hear, please, Mr Foreman, signal to me
4 that is enough and we will play the next one

5 FOREMAN Thank you

6 THE COURT When we complete this,
7 you may resume your deliberations and the Clerk
8 will be in to discuss lunch with you

9 **WHEREUPON TESTIMONY OF RICKY HOLMES WAS**
10 **REPLAYED**

11 *RICKY BERNARD HOLMES, being duly*
12 *sworn to tell the truth, the whole truth and*
13 *nothing but the truth, testified, as follows*

14 *DIRECT EXAMINATION*

15 *BY MR DURANT*

16 *Q Good morning, Mr Holmes*

17 *A G'morning*

18 *Q How old are you?*

19 *A Thirty-three (33)*

20 *Q Where are you currently employed, sir?*

21 *A Sir?*

22 *Q Where do you work?*

23 *A I don't work right now*

24 *Q When you were working, who were you working*
25 *with?*

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

873

1 A I worked with my uncle, he has his own
2 little construction company
3 Q Where were you born and raised?
4 A Charleston
5 Q What part of Charleston?
6 A (No response)
7 Q Do you understand what I am asking you?
8 A (No response)
9 Q I mean, were you born in downtown
10 Charleston or where do you live?
11 A Adams Run
12 Q Were you born in Adams Run?
13 A (No response)
14 Q Were you born in Adams Run?
15 A Yes '
16 Q Were you raised in Adams Run?
17 A Yes, sir
18 Q So where is Adams Run in relation to
19 Peters-field and Cherryhill?
20 A Adams Run is not that far from it, you
21 know Maybe five or ten minutes away, something
22 like that
23 Q So it's a different little area?
24 A It's a whole different community
25 altogether

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

874

1 Q Do you know some people from Petersfield,
2 Cherryhill areas?

3 A Somewhat Not much

4 Q How do you know them?

5 A School

6 Q You all went to Baptist Hill together?

7 A Yes

8 Q Do Petersfield and Cherryhill people get
9 along?

10 A Hummm, I don't know I don't mix up in
11 their business That's their business, you
12 know

13 Q Yeah, I know But to your knowledge, do
14 Petersfield people and Cherryhill people get
15 along together?

16 A Some might talk to the next and like that,
17 you know

18 Q You went to Baptist Hill?

19 A Yes, sir

20 Q Did you graduate?

21 A No, sir

22 Q How far did you get?

23 A 11th grade

24 Q Do you have any problems with the
25 Petersfield folks or the Cherryhill folks?

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

875

- 1 A No
- 2 Q You've had some problems with the law,
3 correct?
- 4 A (No response)
- 5 Q You've had some problems with the law?
- 6 A Yeah
- 7 Q You've been convicted of possession of
8 cocaine, is that correct?
- 9 A Yes, sir
- 10 Q That was in 1996?
- 11 A Yes, sir
- 12 Q And I believe that you were also convicted
13 of distribution of cocaine in 2003, is that
14 correct?
- 15 A Yes, sir
- 16 Q Just got out of jail for that, didn't you?
- 17 A Yes, sir
- 18 Q Were you at the Club Diamante on the
19 morning of May 11th, 2003?
- 20 A Yes, sir
- 21 Q Did you go to that club very often?
- 22 A At the time, no
- 23 Q What time did you get there that night?
- 24 A I guess around between 12 00 and 12 30
- 25 Q Who did you go with?

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10, 2004
before The Honorable R Markley Dennis Jr

876

1 A I catch a ride up there, you know

2 Q So you drove your own vehicle?

3 A No, ain't got no license Don't drive

4 Q Did you run into anybody that you knew at
5 the club?

6 A Huh?

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

9 A There was a lot of people up there, you
10 know So basically I know, somewhat, some of
11 the people

12 Q Okay But you weren't particularly with
13 anybody?

14 A No

15 Q Did you see anything happen inside the club
16 that night?

17 A Yeah, the club was going on good and
18 everything and then -- then a girl and a guy,
19 they fight first, you know But they quiet that
20 down real quick

21 Q Okay What happened after that?

22 A Then the dude and a guy fight, and that's -
23 - by looking to the back of the club, he was
24 running forward By me being closer to the
25 door, you know, I just exited myself out before

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

877

1 *anybody else came up*

2 *Q Okay So the club kind of cleared out?*

3 *A Yeah*

4 *Q Who was -- do you recall any policeman*
5 *being out there when you got outside?*

6 *A Yeah, one was out there*

7 *Q What happened after everybody cleared out*
8 *of the club?*

9 *A You know, once everybody get out, everybody*
10 *started, you know, saying words back and forth*
11 *to one another This and this, you know?*

12 *Q The policeman that was out there, what was*
13 *he doing?*

14 *A Standing around He ain't tried to calm*
15 *nothing down or nothing, you know*

16 *Q Did he use his PA system or anything like*
17 *that?*

18 *A Looked like to me like he just jump in his*
19 *car, crank up and go on someplace else*

20 *Q That was a little later -- a little later*
21 *on?*

22 *A (No response)*

23 *Q First of all, when you got out, who was*
24 *fighting?*

25 *A I really didn't get to see who was*

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

878

1 *fighting*

2 *Q I don't mean names I'm talking about who*
3 *was fighting who, what group was fighting what*
4 *group?*

5 *A Oh, I don't know who group was fighting*
6 *who You know, I just saw them fighting*

7 *Q So it wasn't Petersfield versus Cherryhill*
8 *out there?*

9 *A (No response)*

10 *Q Where were you standing?*

11 *A As soon as you came -- as soon as you come*
12 *through the door, the club door, they got a big*
13 *fan in the wall and I was right there*

14 *Q That's where you were standing, outside?*

15 *A Yeah, outside*

16 *Q What did you see outside? Did you see a*
17 *blue Suburban across the street?*

18 *A Uh-huh*

19 *Q What was going on over there?*

20 *A Well, by me watching everything going on,*
21 *the blue Suburban pulled up When they pull up,*
22 *you know, the person got out of the truck and*
23 *the next thing, whoever was doing the fighting,*
24 *the fellow throwed toward him and he take off*
25 *and ran down the road, like going towards the*

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis, Jr

879

1 Baptist Hill side

2 Q And that was the person that got out of the
3 blue Suburban?

4 A (Affirmative nod), the blue Suburban

5 Q Was anybody fighting with him before he ran
6 down the road?

7 A Phew, they couldn't catch him to fight him'

8 Q Do you know who the guy was that was being
9 chased?

10 A Uh, -- Kevin Dunmeyer

11 Q What happened after they chased him down
12 Toogoodoo Road towards Baptist Hill?

13 A After they chased him that far, Ton-Ton,
14 the fellow that was driving that green Cadillac,
15 he went down there and picked him up, turned
16 around, came back by the club

17 Q And is Ton-Ton's green Cadillac, State's
18 Exhibit 11?

19 A (Upon review), yeah

20 Q Is that the blue Suburban that you saw?

21 A That's Kevin Dunmeyer's

22 Q That is State's Exhibit 24 So what
23 happened after Ton-Ton picked up Dunmeyer?

24 A They came back and stopped right in front
25 of the club, jumped out of the car and started

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

880

1 yelling, you know

2 Q Who jumped out of the car?

3 A Ton-Ton get out of the car

4 Q Okay

5 A And Kevin Dunmeyer was in the front seat of
6 his car

7 Q Ton-Ton's car?

8 A Yeah, Ton-Ton's car

9 Q What happened after he got out of the car?

10 A He started screaming and stuff, yelling
11 The fellows that chased Dunmeyer tried to grab
12 ahold of him By his having his car, front
13 door, you know, open, he was able to get back
14 in

15 Q What did he do when he got back in his car?

16 A Drive off on down the road

17 Q Towards which direction?

18 A Going towards the store side, going toward
19 RoadRunner, the Hess

20 Q Towards Hollywood side?

21 A Yeah

22 Q Now, after he got in his car and took off,
23 what did you see?

24 A That's when the gunshots were fired

25 Q And could you tell where the gunfire was

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 - 10 2004
before The Honorable R Markley Dennis Jr

881

1 *coming from?*

2 A *Gunfire was coming from all over*

3 Q *But you couldn't see specifically where any*
4 *gunfire was coming from? Correct?*

5 A *Gunfire was coming from the green Cadillac*
6 *Gunfire was coming from a gray truck Gunfire*
7 *from -- so many gunfires*

8 Q *Where was this gray truck that you're*
9 *talking about?*

10 A *The club was like there, and there's a*
11 *gravel parking lot and the truck was like coming*
12 *out*

13 Q *State's Exhibit 6 -- club, police car*
14 *When the Cadillac came back down the road after*
15 *picking up Dunmeyer, where did it stop?*

16 A *It stopped right here*

17 Q *Okay, and that's when Ton-Ton got out of*
18 *the car?*

19 A *And started, you know, saying whatever*
20 *And the fellows that was chasing Dunmeyer, they*
21 *came back this side, back toward him, and that's*
22 *how he was able to get into his car*

23 Q *He gets in his car and he drives off down*
24 *this way?*

25 A *Yeah Coming down toward Hollywood side*

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

882

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

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

883

1 Q Do you know who shot first?

2 A Seemed like al the guns went off at the
3 same time

4 Q So he was shooting at the Cadillac?

5 A (Affirmative nod)

6 Q And you say the Cadillac was shooting back?

7 A He was shooting this way and the Cadillac
8 was shooting back that way, (affirmative nod)

9 Q As it was going down the road?

10 A (Affirmative nod), the people in there
11 And people on further down the road, going
12 Baptist Hill way, before the curve, before you
13 get to the
14 -- and then the people down this way, shots were
15 coming from that way

16 Q So there were shots coming back over this
17 way, too?

18 A Shots were coming from all over

19 Q Okay A lot of shooting going on?

20 A (Affirmative nod)

21 Q So after the shooting, what happened then?

22 A After all the shooting, everything calmed
23 down a little And Eric was out there, Eric
24 Simmons, was out there in the clearing and a
25 group of people turned around and looked and saw

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis, Jr

884

1 *somebody laying down there by the ditch I*
2 *went, 'Ah, no, man, I hope nobody get hit '*
3 *Then we walked down from the front of the club,*
4 *down by the ditch and that's when we see*

5 *Q I don't think that I asked you this, but*
6 *where were you standing when all the shooting*
7 *was going on?*

8 *A Right in the middle, right in the middle of*
9 *everything*

10 *Q So you were out in front of the club?*

11 *A (Affirmative nod)*

12 *Q So Eric said somebody was down or saw*
13 *somebody was down?*

14 *A No Everybody was looking at it The*
15 *people that was running, they was parked further*
16 *down As they was coming up to the ditch, they*
17 *was saying, 'Oh, somebody get hit Somebody*
18 *down '*

19 *That's when Eric spun around and said, 'Boy,*
20 *that's be my cousin, Jamie ' Because he just*
21 *had talked to him just a few minutes and he said*
22 *that he was going home*

23 *Q Did you know Jamie?*

24 *A Yeah, I knew Jamie*

25 *Q You knew who he was?*

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 - 10 2004
before The Honorable R Markley Dennis Jr

885

- 1 A Yeah
- 2 Q Had you ever seen him at the club before?
- 3 A He don't party, don't do nothing
- 4 Q Do you know this fellow (indicating
- 5 defendant) over here?
- 6 A Not really
- 7 Q Do you know who he is?
- 8 A I know who he is, but I really don't know
- 9 of him
- 10 Q He's not like a friend or anything like
- 11 that?
- 12 A (Negative gesture)
- 13 Q What is his name?
- 14 A Pardon?
- 15 Q Do you know his name?
- 16 A The only name I know him by is "Ward"
- 17 Q Okay Did you see anybody that was in the
- 18 truck or anybody that was in the Cadillac that
- 19 night?
- 20 A No, I seen Ton-Ton and Dunmeyer in the
- 21 Cadillac But the truck, I couldn't tell
- 22 who'all was in the truck because it's got the
- 23 windows tinted and stuff
- 24 Q But you saw the Cadillac ---
- 25 A You could see gunfire from the truck

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

886

1 Q That was coming out the front passenger
2 side?

3 A (Affirmative nod), it was nighttime and you
4 could see the fire

5 Q Do you remember seeing -- do you know
6 Friend?

7 A Not really

8 Q So you never actually saw anybody who was
9 shooting, you just saw where the shots came
10 from?

11 A Exactly

12 MR DURANT Beg the Court's
13 indulgence

14 THE COURT All right

15 DIRECT EXAMINATION RESUMED

16 BY MR DURANT

17 Q Just a couple of other questions and I will
18 be done Take a look at State's Exhibits 14 and
19 15 I ask if you recognize those?

20 A (Upon review), yeah

21 Q Is that the pickup truck that you were
22 referring to seeing coming out of the parking
23 lot?

24 A Yes, sir

25 Q That was shooting?

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

887

1 A (No response)

2 Q Which way did that truck turn when it got
3 up to the Toogoodoo Road?

4 A Coming out?

5 Q As it pulled out of the parking lot, which
6 way did it turn onto Toogoodoo Road?

7 A Right behind the Cadillac

8 Q What did it look like it was doing?

9 A What?

10 Q What did it look like it was doing?

11 A (No response)

12 Q You said that it was right behind the
13 Cadillac?

14 A Yeah

15 Q Was he chasing the Cadillac?

16 A Well, you could -- somewhat like that

17 Q Could you hear shooting continue as they
18 were going down the road?

19 A You could hear it, (affirmative nod)

20 MR DURANT Could you please answer
21 any questions that defense counsel may have for
22 you?

23 THE COURT Cross examine?

24 MS KENT-JENKINSON Thank you

25 CROSS EXAMINATION

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

888

1 BY MS KENT-JENKINSON

2 Q Good morning, Mr Holmes

3 A G'morning

4 Q You gave a statement to the police on the

5 18th of May, 2003?

6 A Yes, ma'am

7 Q They wanted to talk to you about what had

8 happened that night?

9 A Yes, ma'am

10 Q I am going to give you a copy of your

11 statement, (tenders) I will give you a chance

12 to look at it

13 A (Review)

14 Q You said that the green Cadillac started

15 shooting first?

16 A What?

17 Q The green Cadillac started shooting first?

18 A No, I said that it all started at the same

19 time I couldn't say if the green Cadillac

20 started shooting first or what

21 (READBACK CONCLUDED)

22 COURT REPORTER And this is the

23 testimony of James Murphy

24 **WHEREUPON THE TESTIMONY OF JAMES MURPHY WAS**

25 **REPLAYED**

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

889

1 JAMES
2 MURPHY, being duly sworn to tell the truth, the
3 whole truth and nothing but the truth,
4 testified, as follows

5 DIRECT EXAMINATION

6 BY MR DURANT

7 Q How old are you, Mr Murphy?

8 A Twenty-six (26)

9 Q Where do you live?

10 A Hollywood

11 THE COURT Mr Murphy, please pull
12 your chair forward and speak into the
13 microphone Thank you

14 DIRECT EXAMINATION CONTINUED

15 BY MR DURANT

16 Q What part of Hollywood?

17 A On 162 (phonetic)

18 Q Do you live in Petersfield?

19 COURT REPORTER What part of Holly-
20 wood?

21 THE COURT What did you just say?

22 DEFENDANT Pineland

23 DIRECT EXAMINATION CONTINUED

24 BY MR DURANT

25 Q Is Pineland part of Petersfield,

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

890

- 1 *Cherryhill?*
- 2 A *No*
- 3 Q *That's a different area?*
- 4 A *Yes*
- 5 Q *Are you currently employed?*
- 6 A *Yeah*
- 7 Q *Doing what?*
- 8 A *Building docks*
- 9 Q *Are you married?*
- 10 A *Yes*
- 11 Q *Got any kids?*
- 12 A *Yes*
- 13 Q *You have a criminal record, right?*
- 14 A *Yes*
- 15 Q *Convicted of failing to stop for a blue*
- 16 *light, possession of stolen auto and grand*
- 17 *larceny in 1998, is that correct?*
- 18 A *Yes*
- 19 Q *And also for using a vehicle without*
- 20 *permission in 2001, is that correct?*
- 21 A *Yes*
- 22 Q *Are you currently on probation?*
- 23 A *No*
- 24 Q *Do you have any pending charges currently?*
- 25 A *No*

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

891

- 1 Q Did you know Jamie Simmons?
- 2 A Yes
- 3 Q How did you know him?
- 4 A By school and by him being over at John's
- 5 house
- 6 Q Are you related to him, Jamie?
- 7 A No
- 8 Q Is your wife related to him?
- 9 A (Affirmative nod), wife
- 10 Q Do you know John Ward?
- 11 A Yes
- 12 Q How do you know him?
- 13 A Cousins
- 14 Q Do you know Catrell Douglas?
- 15 A Yes
- 16 Q How do you know him?
- 17 A I guess we're related
- 18 Q You'all are cousins, as well?
- 19 A Yeah
- 20 Q Do you know Tremayne Washington?
- 21 A Somewhat
- 22 Q Now, were you at the Club Diamante on May
- 23 11th, 2003?
- 24 A Yes
- 25 Q What time did you get to the club?

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis, Jr

892

- 1 A About 10 00
- 2 Q How did you get to the club?
- 3 A Drive my own vehicle
- 4 Q What were you drinking that night?
- 5 A (No response)
- 6 Q What were you drinking?
- 7 A A couple beers
- 8 Q Were you drinking liquor, too, or just
- 9 beer?
- 10 A Just beer
- 11 Q What happened inside the club?
- 12 A An argument kick off and they led us
- 13 outside
- 14 Q What happened after everyone got outside?
- 15 A Start arguing -- and something went on over
- 16 on the other side of the road
- 17 Q What did you see going on over on the other
- 18 side of the road?
- 19 A They was like around a Suburban
- 20 Q Blue Suburban?
- 21 A Yeah
- 22 Q What did you see going on around the blue
- 23 Suburban?
- 24 A It looked like they was shaking it
- 25 Q Could you tell who was shaking it?

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis, Jr

893

1 A No

2 Q Do you recall telling the police that you
3 saw somebody shaking it?

4 A Yes

5 Q Who did you tell the police you saw shaking
6 the car?

7 A I told him that it was a bunch of people
8 shaking the truck

9 Q I hand you what has been marked as State's
10 Exhibit 56, do you recognize that statement?

11 A Yes

12 Q Did you give that statement?

13 A Yes

14 Q And it was given on May 12th, 2003, is that
15 correct?

16 A Yes

17 Q Starting with that, right here, what did
18 you tell the police? With "John Campbell"

19 A He was inside the truck, the Suburban

20 Q Right That they got in Kevin's truck
21 Then you said "and Keith and Fiend, who owns the
22 gray truck, were rocking Kevin's car" Do you
23 remember telling them that?

24 A Yes

25 Q Who do you mean by "Fiend"?

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

894

- 1 A I guess his name is Tremayne
- 2 Q Tremayne Washington?
- 3 A (Affirmative nod)
- 4 Q Then it says, "Fiend went back over to his
- 5 truck and said, "Sum'bitch is gonna die up here
- 6 tonight " Is that correct?
- 7 A (No response)
- 8 Q Do you remember Fiend saying that?
- 9 A Yes
- 10 Q So after the incident occurred over at the
- 11 Suburban, what happened?
- 12 A That's when I heard a shot fired
- 13 Q Do you know who owned that Suburban?
- 14 A Yes
- 15 Q What happened after -- where did he go?
- 16 A He went towards the other side of the club
- 17 Q Towards the Baptist Hill side?
- 18 A Baptist Hill
- 19 Q On foot or in his car?
- 20 A Foot
- 21 Q Why did he run off on foot?
- 22 A Because they were fighting
- 23 Q People were fighting him?
- 24 A Yeah
- 25 Q Did you see the green Cadillac out there?

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis, Jr

895

- 1 A Yes
- 2 Q Where did you see the green Cadillac?
- 3 A Right behind him
- 4 Q Right behind Dunmeyer?
- 5 A Yeah
- 6 Q What did the green Cadillac do?
- 7 A Pick up Dunmeyer, then turn around and came
8 back in front of the club
- 9 Q Do you know who owns that green Cadillac?
- 10 A Yes
- 11 Q Who owns it?
- 12 A Antonio Washington
- 13 Q What happened when the Cadillac got back in
14 front of the club?
- 15 A That's when he stopped, started saying
16 something and -- he jumped out, jumped back in
17 and started riding off
- 18 Q When you say that "he" jumped out, jumped
19 back in and started riding off, you're talking
20 about Ton-Ton?
- 21 A Yeah
- 22 Q After he got in his car and took off, what
23 happened then?
- 24 A That is when everything started
- 25 Q Okay, and that's when what started?

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

896

- 1 Q Ton-Ton went towards my left, toward ---
2 Q Toward the Hollywood side or toward the
3 Baptist Hill side?
4 A Hollywood
5 Q Then what happened?
6 A Then the truck went behind him
7 Q Where did the truck come from?
8 A By the club
9 Q Beside the club?
10 A (Affirmative nod)
11 Q And who was in the truck?
12 A Fiend, Mixx, and -- I mean John, Tremayne
13 and Catrell
14 Q And where was Catrell?
15 A Driver's seat
16 Q Driver's seat?
17 A (Affirmative nod), yes
18 Q Catrell is your cousin, is that correct?
19 A Yes
20 Q And where was John Ward?
21 A Next to the driver, the passenger's
22 Q The front passenger seat?
23 A I think so, yes
24 Q And where was Fiend?
25 A I think in the back, I'm not too sure

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

897

1 Q I hand you what has been marked State's
2 Exhibit 57 for identification and ask if you
3 recognize that

4 A Yes

5 Q That is a statement you gave to a detective
6 on May 27th, is that correct?

7 A (Affirmative nod)

8 Q That would be Detective Shepherd?

9 A Yes

10 Q Do you recall them asking you who was in
11 the gray pickup?

12 A Yes

13 Q What did you tell him?

14 A John, Tremayne and Catrell

15 Q Okay Then he asked you, "Do you know
16 where each was sitting?" What did you tell him?

17 A Yeah

18 Q What did you tell him?

19 A (No response)

20 Q "Mlxx was in the passenger seat", correct?

21 A Yes

22 MS KENT-JENKINSON Objection, Your
23 Honor

24 THE COURT What's the objection?

25 MS KENT-JENKINSON Leading

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis, Jr

898

1 THE COURT Sustained

2 DIRECT EXAMINATION CONTINUED

3 BY MR DURANT

4 Q What did you tell him?

5 A (No response)

6 Q Can you read this?

7 A "Mixx was in the passenger seat, Catrell
8 was driving and Flend was in the back "

9 Q Was in the back, (affirmative nod) Thank
10 you How did you know who was in the pickup
11 truck?

12 A Because I saw them

13 Q Did you see them get in the truck?

14 A Yes

15 Q How far away from the truck were you when
16 you saw them get in the truck?

17 A I think about twenty foot, twenty feet

18 Q Okay Referring to State's Exhibit 6 --
19 grass parking, dirt parking lot, club, Toogoodoo
20 Road Where was your car parked?

21 A Right here

22 Q Where did you see the truck come from?

23 A From kind of back here

24 Q What did it pull up to?

25 A (Indicating)

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

899

- 1 Q Right in this area here?
- 2 A (Affirmative nod)
- 3 Q And what did you see when the truck pulled
- 4 -- where did you see the folks get into the
- 5 truck?
- 6 A Here
- 7 Q Right there?
- 8 A (Affirmative nod)
- 9 Q Okay And they pulled up and then what
- 10 happened when the truck pulled up to Toogoodoo
- 11 Road?
- 12 A Shots from the truck
- 13 Q From where in the truck?
- 14 A I am not sure if it was the front or the
- 15 back, but I believe that it was front
- 16 Q The front passenger side or driver's side?
- 17 A Passenger
- 18 Q And it looked like the front passenger to
- 19 you?
- 20 A (Affirmative nod)
- 21 Q And you were standing over here at the
- 22 time?
- 23 A Yeah
- 24 Q Did the truck start shooting before or
- 25 after it left the parking lot?

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

900

- 1 A After they -- when he got in the road
- 2 Q Okay Which way did the truck go?
- 3 A Towards Hollywood side
- 4 Q Do you know in which direction was the
- 5 truck shooting?
- 6 A (No verbal response)
- 7 Q You couldn't tell in which direction the
- 8 truck was shooting?
- 9 A (Negative gesture)
- 10 Q Now, where was Jamie Simmons?
- 11 A Standing by his car
- 12 Q Had you see him -- did you see him get to
- 13 the club?
- 14 A You mean when he came there?
- 15 Q Right
- 16 A No
- 17 Q Where was he in relation to -- do you know
- 18 what kind of car that he drove?
- 19 A Yes
- 20 Q Where was he in relation to where his car
- 21 was parked?
- 22 A Like in front of his car
- 23 Q Where?
- 24 A In front of his car
- 25 Q In front of his car?

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

901

1 A (Affirmative nod)

2 Q Did you see Jamie go down? After you saw
3 these gunshots fired from the truck, did you see
4 Jamie go down?

5 A (No response)

6 Q Did you see Jamie go down after you saw
7 gunshots?

8 A Yes

9 Q Where did he go down?

10 A Like on the passenger side of his car, in
11 the ditch

12 Q What did you think when you saw him do
13 down?

14 A I thought that he just fell

15 Q How close were you to Jamie when he fell
16 down?

17 A About fifteen

18 Q Fifteen feet or yards, or what?

19 A Fifteen feet

20 Q Did you go to check on him?

21 A Yeah But by the time that I got over
22 there, some other people were over there

23 Q Did you go over there and look where he
24 was?

25 A Yeah

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

902

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

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

903

1 Q The 27th of May?

2 A (Affirmative nod)

3 Q How did you come to talk to Detective

4 Shepherd on the 27th?

5 A My wife got in contact with him

6 Q And you went to talk to him?

7 A Yeah

8 Q Why did you go back to talk to him on the

9 27th?

10 A To tell him that I hadn't told him every-

11 thing, all the names

12 Q Who were the names that you'd left out?

13 A John and 'Trell

14 Q And John and 'Trell are what?

15 A Relation, cousins

16 Q And you substituted them for who?

17 A Keith and Kenneth

18 Q Keith Richards and Kenneth Sanders?

19 A (Affirmative nod)

20 Q Is that correct?

21 A (Affirmative nod)

22 THE COURT Is that a "yes"?

23 WITNESS "Yes "

24 THE COURT Thank you

25 DIRECT EXAMINATION CONTINUED

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

904

1 BY MR DURANT

2 Q Just a couple of other questions and I
3 believe that I'll be through Do you recognize
4 State's Exhibit 15 and State's Exhibit 14?

5 A Yes

6 Q Whose truck is that?

7 A Tremayne Washington's

8 Q Is that the truck that you saw shooting
9 that night?

10 A Yes

11 Q Is it the truck that you saw shooting from
12 right before Jamie went down?

13 A Yes

14 Q State's Exhibit 10 and State's Exhibit 11,
15 do you know whose car that is?

16 A Yes

17 Q Whose car is that?

18 A Antonio's

19 Q And that is the one that you saw out there
20 that night

21 A (Affirmative nod)

22 (READBACK CONCLUDED)

23 THE COURT Thank you very much,
24 Ladies and Gentlemen You may retire to your
25 jury room, and the Clerk will be in to discuss

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

905

1 lunch with you momentarily

2 (JURY OUT @ 1 00 P M)

3 THE COURT Any exceptions or
4 additions from the State?

5 MR DURANT No, sir

6 THE COURT From the Defense?

7 MS KENT-JENKINSON No, Your Honor

8 THE COURT Thank you, we will at-
9 ease until we hear from the jury If you go to
10 lunch, please leave your cell number with the
11 clerk

12 (RECESS)

13 (DEFENDANT PRESENT)

14 THE COURT I got another note from
15 Mr Hutto just a few moments ago I read, Your
16 Honor, upon reviewing and revisiting all of the
17 evidence and testimony, it appears that we are
18 at a deadlock Please advise what direction
19 should be taken Thank you, Roger Hutto

20 They have been deliberating now for
21 over thirteen hours

22 COURT REPORTER Closer to fifteen,
23 Your Honor

24 THE COURT What is the State's
25 request?

26 MR DURANT We have nowhere to go,

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

906

1 Your Honor

2 THE COURT Defense?

3 MR BUTLER I think given the
4 circumstances, I feel compelled to move for
5 a mistrial

6 THE COURT I appreciate that
7 Neither of you wish to have an Allen charge
8 given?

9 MR BUTLER No, sir

10 MR DURANT I would like an Allen
11 charge, Your Honor

12 THE COURT Well, I appreciate that
13 That's noted I would do that normally but this
14 jury, these people have demonstrated -- I don't
15 know of a jury that I've had that has more
16 methodically dealt with a case in analyzing a
17 case as this jury has They have been extremely
18 diligent Usually jurors, and you'all have had,
19 go out, deliberate about three hours and say
20 'we're deadlocked, we can't do anything ' These
21 people have never said that word until just now
22 Instead, they chose to approach it by requesting
23 testimony, requesting instruction, requested
24 additional testimony Given all of that, I
25 think that the only option left for the court --
26 I am not going to require these people to do any

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

907

1 more than what they've done It is noted, Mr
2 Durant, and you're very proper in asking for
3 that but the Court declines your Motion, for
4 those reasons

5 Let's bring in our jury, please

6 (JURY IN @ 3 30 P M)

7 THE COURT Do we have all of the
8 exhibits, Mr Hutto?

9 FOREMAN Yes, Your Honor

10 THE COURT Mr Hutto, I have now
11 what has become Court's Exhibit 11 ---

12 (SO ENTERED AS COURT'S EXHIBIT 11)

13 THE COURT --- indicating that after
14 considering all the evidence and testimony, it
15 appears that the jury is deadlocked I would
16 not ask you to state any breakdown on the vote,
17 I just assume by that that you do not believe
18 that it would serve any useful purpose to
19 continue your deliberations or to have further
20 instruction by this Court Is that correct,
21 sir?

22 FOREMAN If there is any further
23 instruction that would help, but I ---

24 THE COURT Help with respect to -- I
25 could give you an instruction, we call it an
26 Allen charge Basically it simply says that you

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

908

1 all need to listen to each other, that you need
2 to consider each other's views in analyzing the
3 evidence

4 I would just ask you, sir, is that what
5 you have been doing for the last fifteen hours?

6 FOREMAN Yes, Your Honor

7 THE COURT That's what I figured you
8 had been doing

9 FOREMAN (Affirmative nod)

10 THE COURT Given that, I am not --
11 there is nothing else that I can tell you other
12 than the fact that somebody else will decide
13 this case They will pick twelve more people
14 and this case will be retried and the people
15 will testify the same way, they will hear the
16 same evidence and somebody will decide it But
17 you'all are confident that you can't decide it,
18 is that correct?

19 FOREMAN Yes, Your Honor

20 THE COURT Very well Thank you
21 Ladies and Gentlemen, a mistrial is certainly
22 not a pleasant situation, for you, for me, for
23 the parties involved, or for the witnesses
24 involved But I will tell you that your
25 approach to the jury's deliberations has been
26 quite admirable The method in which you went

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

909

1 about it, your perseverance

2 I was talking before you came out that
3 many times we have juries deliberating for three
4 or four hours and we get this note that you've
5 written, 'we are hopelessly deadlocked'

6 We never heard a word about that from
7 you We only heard, 'let me hear this
8 testimony', 'let us consider this charge', 'can
9 you explain this?' All of which demonstrates
10 your intent and effort to try to resolve this
11 dispute I just thank you for that type of
12 commitment to the process I appreciate it

13 I am now going to dismiss you and
14 declare a mistrial in this case The case will
15 be reset, retried If there are any questions
16 that any of you wish to address or answer, I
17 will try to do so If you have any, if you want
18 to wait in the jury room, I will be happy to
19 speak with you after it If you don't, I
20 understand that too and you are free to leave

21 I will tell you now that certainly your
22 services have been completed You are free to
23 discuss this case or to not talk about this
24 case By that, I mean that it is your decision
25 If you want to talk about it and answer any
26 questions that someone may ask of you, that's

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10, 2004
before The Honorable R Markley Dennis Jr

910

1 fine But if you don't want to, that also is
2 fine If someone should persist in asking you
3 questions about it and you've indicated to that
4 individual that you're desirous of talking with
5 them and they will not cease, call Ms
6 Armstrong, let her know She can let me know
7 and we will try to assist you

8 Good luck to each one of you And, as
9 I say, if any of you have any questions, give me
10 a few minutes and then I will be happy to step
11 back and answer any questions Good luck to each
12 one of your Thank you

13 (JURY DISMISSED)

14 THE COURT I assume that the
15 bondsman will continue on the bond?

16 MS KENT-JENKINSON I assume so,
17 Your Honor

18 THE COURT We need to find that out
19 before he is released, please I will need to
20 know that He did for the trial, but I need a
21 further indication that he is on the bond

22 MS KENT-JENKINSON Yes, sir

23 THE COURT He stays here until we
24 hear from the bondsman

25 MS KENT-JENKINSON Yes, sir

26 THE COURT He will be in custody

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

911

1 until you can respond to that

2 MS KENT-JENKINSON Yes, sir

3 THE COURT Please, each side,
4 retrieve your exhibits

5 (EXHIBITS RETURNED TO COUNSEL)

6 THE COURT Anything further from the
7 State, Mr Durant?

8 MR DURANT No, sir

9 THE COURT From the Defense?

10 MS KENT-JENKINSON No, sir

11 THE COURT This matter is concluded
12 (TRANSCRIPT CONCLUDED)

13

14

15

16

17

18

19

20

21

22

23

24

25

26 STATE OF SOUTH CAROLINA)

State v John Henry Ward
Case No 03 GS 10 5895
Jury Trial of December 6 10 2004
before The Honorable R Markley Dennis Jr

912

1 COUNTY OF CHARLESTON)

2

3 CERTIFICATE OF COURT REPORTER

4

5 I, the undersigned, Deborah Garrison,
6 Circuit Court Reporter for the 9th Judicial
7 Circuit of the State of South Carolina, do
8 hereby certify that the foregoing is a true,
9 accurate and complete transcript of the Jury
10 Trial before The Honorable R Markley Dennis,
11 Jr , on December 6-10, 2005,

12 I further certify that I am neither kin
13 nor counsel to any of the parties and have no
14 interest in the outcome of this action

15

16

17 _____
Deborah A Garrison

18

19

20

21

22

23 Charleston, South Carolina

24 April 28, 2006