

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Jasper County
Honorable Bentley Price, Circuit Court Judge

RECEIVED

Oct 27 2023

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

OSMAN UVALDO JIMENEZ BENITEZ,

APPELLANT

APPELLATE CASE NO 2021-001500

RECORD ON APPEAL

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State of South Carolina v. Osman Uvaldo Jimenez Benitez - 2019GS2700819

1 STATE OF SOUTH CAROLINA IN THE GENERAL SESSIONS COURT
2 COUNTY OF JASPER 14th JUDICIAL CIRCUIT

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STATE OF SOUTH CAROLINA,

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vs.

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CASE NO. 2018GS701486 - 1487
TRANSCRIPT OF HEARING

7

OSMAN UVALDO JIMENEZ BENITEZ,

TRANSCRIPT OF TRIAL

8

TRIAL BEFORE:

THE HONORABLE CARMEN T. MULLEN

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DATE:

NOVEMBER 4, 2021

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REPORTED BY:

KYMBERLEE M. WILLIAMS, CSR/RPR

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State of South Carolina v. Osman Uvaldo Jimenez Benitez - 2019GS2700819

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State of South Carolina v. Osman Uvaldo Jimenez Benitez - 2019GS2700819

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I N D E X

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CERTIFICATE OF REPORTER

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EXHIBITS

10

(NONE OFFERED)

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State of South Carolina v. Osman Uvaldo Jimenez Benitez - 2019GS2700819

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PROCEEDINGS

THURSDAY, NOVEMBER 21, 2021

RIDGELAND, SOUTH CAROLINA

MS. LEMPESIS: Your Honor, this is a bond reduction motion and also a speedy motion. Ms. Carmody represents the defendant.

Your Honor, the indictment number is 2019-GS-27-00819, hit and run with death resulting.

Mr. Benitez currently does not have a bond. He also has and ICE hold.

This case was previously -- it is older, Judge. I will tell you right away that he has been in custody for a while. This case is 734 days old. He has been in custody the entire time. Mr. Hall had the case first from our office, and then Mr. Gorley, and now we are here and I will be handling it. It has not yet been indicted.

He will be ready to be indicted in the December 2 term of our grand jury. The State can be ready to try it by the December 6 term.

Do you want the facts of the case very briefly?

THE COURT: Please.

MS. LEMPESIS: I failed to mention the victim's sister is in the courtroom and also is the victim's son.

Your Honor, this incident occurred on October 26 of

State of South Carolina v. Osman Uvaldo Jimenez Benitez - 2019GS2700819

1 2019 at about 4:00 in the morning. Law enforcement was called
2 to the scene, which was here in Hardeeville, in Jasper County.
3 Law enforcement was called to the scene on the report of a
4 vehicle striking a pedestrian.

5 The pedestrian, victim in this case, Mr. Morales
6 (phonetic) was found in a deceased status.

7 The driver of the vehicle that was left at the
8 scene was a Dodge Avenger vehicle. The driver was gone. The
9 victim was actually right in front -- almost under the car, the
10 body. The driver of the vehicle was gone.

11 They ran the tags -- law enforcement did. It was
12 registered to the defendant. Law enforcement then began to
13 investigate and found witnesses who didn't see the incident
14 that had occurred but knew the defendant and the victim.

15 It came to light that the defendant and the victim
16 had been hanging out all night and drinking together. They
17 were seen together at a gas station on the surveillance footage
18 at about 2:00 in the morning.

19 Also, some additional footage from the the parking
20 garage shows some of the events leading up to the incident.
21 You can see the victim's vehicle leaving the defendant's house
22 around 4:15 in the morning. Then you can see the defendant's
23 vehicle leaving right after the victim leaves.

24 You can see Mr. Benitez', the defendant's vehicle,
25 driving fast and passing the victim's vehicle on a double

1 yellow line and cutting the victim's car off. You can't see
2 exactly what happened after that, but there are witnesses that
3 the State will call who will say that the defendant and the
4 victim got into an argument.

5 The victim then left; and that ultimately,
6 Mr. Benitez, the defendant, was chasing after them -- the
7 witness and the victim.

8 At some point the victim got out of his car and
9 Mr. Benitez then ran the victim over with his car and that he
10 then fled the scene

11 THE COURT: Did the victim pull over?

12 MS. LEMPESIS: What we think happened is that he
13 left the car at one point and was walking down the road and the
14 argument was still happening and Mr. Benitez ran into and over
15 Mr. Benitez.

16 He was interviewed later and made some -- did make
17 some statements that the State would intend to probably use
18 basically denying that he was driving the car that night and
19 being at the gas station.

20 THE COURT: Was the witness that you are telling me
21 about in the same car with the victim?

22 MS. LEMPESIS: They were, and then they got out of
23 the car

24 THE COURT: Does he have a prior record?

25 MS. LEMPESIS: No prior record. He does have an

State of South Carolina v. Osman Uvaldo Jimenez Benitez - 2019GS2700819

1 ICE hold.

2 THE COURT: You are prepared to try this on
3 December 6?

4 MS. LEMPESIS: Yes

5 THE COURT: Is there a MAIT report?

6 MS. LEMPESIS: There was no MAIT report

7 THE COURT: Ms. Carmody

8 MS. CARMODY: Thank you, Your Honor. Some
9 procedural history. Back on December 2, 2019, shortly after
10 his arrest, he was denied bond. On February 2 of this year, he
11 again filed a bond motion.

12 On February 11 this Honorable Court denied his bond
13 and ordered that the Solicitor's office make an offer on his
14 case within 10 days.

15 Ms Lempesis made an offer on the case at that time
16 to plead as charged. She also indicated that the case would be
17 presented to the grand jury.

18 Mr. Ben thereafter rejected the State's offer. On
19 February 23 of this year, he indicated he wanted to go to
20 trial.

21 In June this Court had a status conference on the
22 pending jail cases. Mr. Benitez' case was for trial November
23 1. The State did not seek a continuance of the case, and the
24 case has not been put on the docket.

25 I am asking the Court for a speedy trial pursuant

1 to the 14 amendment. The Courts and legislature have laid out
2 the factors for a speedy trial. The length of the delay is
3 number one. The length of the delay that can be tolerated for
4 ordinary street crimes is considerably less than for a serious
5 crime.

6 In this particular case, there is no evidence that
7 has been received and no new evidence since June 17, 2020. The
8 case at this time is now more like an ordinary street crime.
9 It has become very straightforward with age. It has not been
10 presented to the grand jury for indictment. The Court ordered
11 that Mr. Benitez' case be tried.

12 In this case, the State didn't add it on the list
13 The case was not indicted. I talked with
14 Ms. Lempesis a couple of weeks ago and asked what is going on
15 with this case. She said he transferred it to Daniel Gorley,
16 and he left, but they had notice 30 days ago that Daniel Gorley
17 was leaving.

18 Mr. Benitez' has been sitting in the jail for over
19 two years with no bond. He has an immigration attorney on the
20 ICE hold

21 MS. LEMPESIS: I am sure we do not have that
22 notice.

23 MS. CARMODY: So the defendant not in any way
24 whatsoever contributed to the delay, nor has he asked for a
25 continuance. The defendant has no duty to bring himself to

1 trial. The defendant has not in any way requested a
2 continuance in this matter. To the contrary, the defendant
3 through counsel submitted an email to this Court on February 2
4 rejecting the State's offer indicating he was ready and willing
5 to go to trial.

6 Prejudice to the defendant is the fourth factor.
7 It should be assessed in the light, in the interest of the
8 defendant, which the speedy trial right was designed to
9 protect, to prevent oppressive pretrial incarceration.

10 Mr. Benitez was held in pretrial confinement for
11 over two years. And despite setting a trial date, he remains
12 incarcerated. This is the circumstance that the speedy trial
13 right is designed to protect.

14 In this case, I have to ask for a dismissal in
15 light of the fact that this case has not been indicted by a
16 grand jury. The State had indicated previously they were going
17 to try this case and they didn't.

18 Ms. Lempesis indicated previously that she was
19 going to indict this case and didn't. We were going to work
20 out a plea. The case is not even indicted, Your Honor

21 THE COURT: Solicitor?

22 MS. LEMPESIS: I will say a lot of solicitors'
23 offices do not indict for the week before trial. I did
24 represent the State after Mr. Hall left. There was a bond
25 motion, and I did handle that bond motion as I often do. I did

1 extend that 20-year recommendation. In the last month I
2 extended a different recommendation, a 10-year recommendation.
3 That is down from the initial 20-year recommendation.

4 She says she has spoken with her client. Mr. Hall
5 and Ms. Carmody apparently talked about him pleading to
6 voluntary manslaughter. I have made another recommendation, a
7 revised recommendation. Ms. Carmody -- apparently, her client
8 is willing to plea, but just not to that.

9 Because of the immigration issues, apparently, he
10 did reassign the case. I was reassigned from basically,
11 Patrick Hall to Daniel Gorley. It is my mistake that it is not
12 on your docket this week.

13 THE COURT: So the term of Court is December 6, and
14 the grand jury meets on the 2nd?

15 MS. LEMPESIS: Yes, Your Honor

16 THE COURT: I will do this. I will continue to
17 deny his bond. He is a flight risk. We will put it on the
18 December 6 trial docket

19 MS. LEMPESIS: December 6 is your term.

20 THE COURT: We are going to put it on the roster
21 for that week.

22 I am denying your bond at this time. I think you
23 are a flight risk. Let's get it to the December 6 term of
24 Court.

25 MS. LEMPESIS: Yes, Your Honor.

State of South Carolina v. Osman Uvaldo Jimenez Benitez - 2019GS2700819

1 MS. CARMODY: May I make a motion on the record for
2 a speedy trial?

3 THE COURT: Yes.

4 I don't think you need to go through the factors.
5 I will grant your motion for a speedy trial at this time.

6 MS. LEMPESIS: Thank you, Your Honor.

7 (At 3:18 p.m., the proceedings were concluded.)

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9 END OF TRANSCRIPT

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1 STATE OF SOUTH CAROLINA
2 IN GENERAL SESSIONS
3 COUNTY OF JASPER COUNTY

4 The State of South Carolina,
5 vs. Transcript of Record
6 2019-GS-27-00819
7 Osman Uvaldo Jimenez-Benitez,
8 Defendant.

9
10 December 6, 2021
11 Jasper, South Carolina
12 Volume I of IV

13 B E F O R E:

14 The HONORABLE BENTLEY PRICE

15 A P P E A R A N C E S:

16 Mary Jordan Lempesis, Prosecutor

17 Carolyn Carmody, Representing the Defendant

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SHARON G. HARDOON, CSR
Official Circuit Court Reporter, III

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1 (Roll call At 10:15 a.m.)

2 THE BAILIFF: All rise.

3 THE COURT: Thank you very much. Please
4 be seated. Good morning. Everybody ready to go?

5 Okay, I'll be right back.

6 (Off the record.)

7 THE BAILIFF: All rise.

8 THE COURT: Let's try it again. Thank
9 you very much. Please be seated.

10 All right. Good afternoon. My name is
11 Bentley Price. I am a circuit court judge in
12 Charleston, but I have the honor of being here
13 with your wonderful clerk Miss Bostick for the
14 week and everyone else. What we're going to do
15 now is, you've already seen earlier, we asked
16 about your past work history and your spouse's
17 work history, and, at this time, we're simply just
18 going to qualify you as jurors. What that means
19 is that there are certain disqualifications that
20 would prevent you from serving on a jury, and then
21 there are certain exemptions that you may elect to
22 take, meaning you're not disqualified but, if you
23 want to take the election, you can take it which
24 doesn't mean that you're not going to be able to
25 serve on a jury, it's that you'll be transferred

1 from this week to say another week that's a little
2 bit more convenient. But, obviously, we'd like to
3 have all of you stay, so if you cannot claim the
4 exemption, obviously that helps us out.

5 So what I'm going to do first, is I'm going
6 to go over the qualifications. In this situation, if
7 any of these qualifications apply to you, you will
8 need to stand, give us your juror number, and explain
9 to us how it applies.

10 All right. Raise your right hand. Do you
11 solemnly swear or affirm that you will accurately
12 interpret the language requested in this courtroom of
13 the witnesses without addition thereto or detractions
14 therefrom or any other amendment of your own
15 interpretation? Do you solemnly swear?

16 THE INTERPRETER: I do, Your Honor.

17 THE COURT: All right. Ladies and
18 Gentlemen, again, thank you. If any of these
19 apply to you, please just stand up and indicate
20 how they apply.

21 The first one is, anyone here not 18 years of
22 age or older? All right, there are none.

23 Is anyone here not a citizen of the United
24 States? All right, there are none.

25 Is anyone here not a citizen or resident of

1 Jasper County, meaning you moved since you received
2 your notice? All right, there are none.

3 THE CLERK: One standing.

4 THE COURT: Yes, sir.

5 JUROR 216: 216, I believe is my number.
6 Yeah, I'm in Beaufort County now. I used to live
7 in Jasper, but now I'm in Beaufort.

8 THE COURT: All right. You may be
9 excused.

10 THE CLERK: 216.

11 JUROR 216: Thank you very much.

12 THE COURT: Does anyone here not read,
13 write, speak, or understand the English language?
14 All right, there are none.

15 Does anyone here not have a sixth-grade
16 education or its equivalent? There are none.

17 Does anyone have a mental or a physical
18 infirmity that would preclude them from serving on
19 a jury? All right, there are none.

20 Has anyone been convicted of a crime in
21 federal or state of a crime punishable by
22 imprisonment for more than one year and has not
23 had their civil rights restored by a pardon or
24 amnesty? What that simply means is that you were
25 convicted of a crime. You didn't have to serve a

1 year. You didn't have to get a year probation.
2 If it carried up to one year, that unfortunately
3 would preclude you. All right, there are none.

4 Is anyone here a clerk, deputy clerk of
5 court, constable, sheriff, or other commissioned
6 law enforcement officer, probate judge, county
7 commissioner, magistrate, or other county officer
8 or any person employed within the walls of any
9 courthouse? All right, there are none.

10 Has anyone here served on jury duty in
11 the past calendar in a court of record which is
12 where you are now? Yes, sir. Stand up. Juror
13 number?

14 JUROR 196: Nicholas Sikea.

15 THE CLERK: Number 196.

16 THE COURT: Yes, sir.

17 JUROR 196: I have been called in for
18 jury service three or four years in a row.

19 THE COURT: Did you serve on a jury.

20 JUROR 196: Every year the jury dismissed
21 and they continued to trial.

22 THE COURT: All right. Well, then you
23 have not served on a jury in the past calendar
24 year, so you're fine.

25 All right. Has anyone served as a member

1 of the Jasper County Grand Jury in the past three
2 years? All right, there are none.

3 All right. That's it for the qualifications.
4 The next ones are exemptions. If any of these apply
5 to you and you wish to claim the exemption, please
6 stand, give us your juror number, and indicate how or
7 why you would like to claim the exemption.

8 Is anyone here 65 years of age or older
9 and wishes to claim the exemption? All right.
10 Your juror number?

11 THE CLERK: His number is number 230.

12 THE COURT: All right. Are you over the
13 age of 65.

14 JUROR 230: 69.

15 THE COURT: All right. Would you like to
16 claim the exemption or would you like to stay with
17 us.

18 JUROR 230: Yes.

19 THE COURT: You can be excused. Yes,
20 sir.

21 JUROR 105: 103 (sic).

22 THE COURT: Are you over the age of 65?

23 JUROR 103: I am.

24 THE COURT: And you wish to claim the
25 exemption?

1 JUROR 105: I would like to.

2 THE COURT: You may be exempt.

3 THE CLERK: Your name, sir.

4 JUROR 105: Daniel Kelley.

5 THE CLERK: Your last name again?

6 THE COURT: Kelley.

7 THE CLERK: Number 105.

8 THE COURT: All right. Has anyone served
9 on a jury in the past three years in a court of
10 record such as this? All right, there are none.

11 Does anyone have any small children that
12 are seven years of age or younger, you have legal
13 custody of the child or children, you provide the
14 principal care, custody, and control of the
15 children, and you're unable to make arrangements
16 for adequate care for them while performing jury
17 duty for this week. You have to qualify for all
18 of those.

19 THE CLERK: Number 241.

20 JUROR 241: Yes. I got kids in school
21 and she's like five, six, the other one is like
22 seven, eight years old. I don't have
23 transportation to take them back and forth.

24 THE COURT: Who took them to school this
25 morning?

1 JUROR 241: I did.

2 THE COURT: All right. Who's going to
3 take them to school tomorrow morning?

4 JUROR 241: I guess I do.

5 THE COURT: Right. So I'm saying who --

6 JUROR 241: My wife works.

7 THE COURT: And you don't work.

8 JUROR 241: Yes, I do work. After drop
9 them off at school, then I head for work.

10 THE COURT: Who picks them up from
11 school?

12 JUROR 241: I do.

13 THE COURT: All right. And who's going
14 to pick them up from school today?

15 JUROR 241: I have to.

16 THE COURT: Okay. We'll transfer you to
17 another week.

18 JUROR 241: Thank you, sir.

19 THE COURT: Anyone here -- it's the same.
20 Does anyone here care for someone who is 65 years
21 of age or older and cannot find adequate care for
22 that person this week? All right, yes, sir.

23 JUROR 166: I believe my number is 166.
24 My wife is 69. She has Alzheimer's and she's
25 taking medication to keep the plaque from the

1 brain spreading further and it's been causing a
2 lot of stomach problems. So now they gave her
3 three different medications that she has to take
4 throughout the day. And I color coded them. I
5 wrote a chart for her. I thought she would be
6 able to do it. This morning, she's still having
7 problems.

8 THE COURT: All right. Well, just get
9 somebody to help you out next time, but we'll
10 continue you to another term.

11 JUROR 166: Appreciate it, Your Honor.

12 THE COURT: You're welcome.

13 Does anyone perform a service for a
14 business, commercial or otherwise, whose services
15 are so essential to the operation of the
16 enterprise that it must close or cease to function
17 if you're required to perform jury duty this week?
18 All right. Take your mask off so we can hear
19 you.

20 JUROR 72: My juror number is 72. I
21 might have to go out to work out of town for
22 weeks. I had come here. I missed, like, two
23 weeks of work to be out of town.

24 THE COURT: Say that last part again.

25 JUROR 72: I have to go to work. I work

1 out of town weeks at a time. So I got to do
2 construction work, plumbing and stuff.

3 THE COURT: Right. But I'm saying
4 what -- the case is probably going to last a day
5 or two, but is that going to affect your ability
6 to go to work.

7 JUROR 72: Yes.

8 THE COURT: And you own the company?

9 JUROR 72: I'm supposed to be out of town
10 right now.

11 THE COURT: Right. But do you own the
12 company?

13 JUROR 72: No, sir.

14 THE COURT: All right. What do you do,
15 sir?

16 JUROR 72: I own NES Underground, LLC.
17 If I don't work, the company is completely shut
18 down and out of operation until I return.

19 THE COURT: All right. And you, sir.

20 JUROR 102: 102. I mean, if I don't
21 work, everything stops. I mean -- you know, if
22 I'm off the whole week, I wouldn't be doing
23 anything. I wouldn't have any income. I have
24 another helper that helps me, so he stops.

25 THE COURT: All right. Gentlemen,

1 you-all are going to make alternative arrangements
2 the next time that you're called to jury duty
3 which will be fairly quickly, all right? I'll
4 excuse you from this term, but you'll need to make
5 arrangements next time.

6 JUROR 102: Do we have to be exempted
7 from this one? Like, I could stay.

8 THE COURT: This is an exemption that you
9 can elect to take or not take.

10 JUROR 102: I'll stay.

11 THE COURT: What would you like to do?

12 JUROR 102: I mean, I would like to say.

13 Is it the whole week? I can manage --

14 THE COURT: It won't be the whole week.
15 It will probably be, like, until Wednesday, if we
16 get there. But it may only be a day or so?

17 JUROR 102: I'll stay.

18 THE COURT: All right. Thank you.

19 You're going to claim the exemption? All
20 right, you're free to go. What's your juror
21 number?

22 JUROR 72: 72.

23 THE COURT: 72 is free to go.

24 THE CLERK: That would be a transfer
25 right, Your Honor?

1 THE COURT: Yes, ma'am.

2 Is anyone here a full-time student,
3 school teacher, crossing guard, bus driver, or
4 serves in any school-related function who is
5 unable to serve this week because of that school
6 involvement? All right, yes, ma'am.

7 JUROR 4: Number four. I'm enrolled in
8 two schools.

9 THE COURT: What's your juror number?

10 JUROR 4: Four.

11 THE COURT: Okay. And are you out of
12 school today because of that?

13 JUROR 4: Yes.

14 THE COURT: You want to claim the
15 exemption?

16 JUROR 4: I have a graduation ceremony
17 this week.

18 THE COURT: We'll transfer you to the
19 summertime.

20 JUROR 133: I work for USCB. My number
21 is, I believe 133. Yeah, I'm out of work right
22 now because of that. Like, I'm supposed to give
23 my job a heads-up. I, kind of, was last minute
24 on, like, today, so ...

25 THE COURT: I'm saying, do you work at a

1 school?

2 JUROR 133: Yes. I work at USCB.

3 THE COURT: What do you do there?

4 JUROR 133: Work in the kitchen. Like, I
5 feed the college kids.

6 THE COURT: All right. We'll transfer
7 you to the summertime, okay.

8 JUROR 133: Thank you.

9 THE COURT: Is anyone here employed at
10 the department of corrections here at the
11 penitentiary in Jasper County? All right.

12 Have you or any member of your family
13 ever worked in law enforcement? If so, please
14 stand.

15 Yes, ma'am. Jury number?

16 JUROR 42: 42.

17 THE COURT: All right.

18 JUROR 42: I didn't really work -- well,
19 many years ago when I was a telecommunication
20 officer. My brother was a deputy sheriff and a
21 wildlife game warden. My daughter currently is a
22 telecommunications officer here in Jasper.

23 THE COURT: All right. Thank you, ma'am.

24 Yes, ma'am.

25 JUROR 100: Juror 100. My brother is a

1 retired police and corrections officer in
2 Florida.

3 THE COURT: Thank you, ma'am.

4 JUROR 29: My father is deceased now, but he
5 was the captain at the sheriff's department in Calhoun
6 County.

7 THE COURT: Thank you, ma'am. Yes,
8 ma'am.

9 JUROR 12: Juror number 12. My
10 brother-in-law is retired from Springfield, Mass.
11 police officer, and my cousin is a state trooper
12 in Massachusetts.

13 THE COURT: All right. Thank you, ma'am.
14 Yes, sir.

15 JUROR 160: Former Jasper County
16 detention center.

17 THE COURT: All right. Are you currently
18 employed there now, sir?

19 JUROR 160: No.

20 THE COURT: Thank you. Sir?

21 JUROR 14: Dave Burns. I'm currently
22 with the Department of Homeland Security assigned
23 to the airport in Savannah.

24 THE COURT: All right. Yes, ma'am.

25 JUROR 212: Juror 212. I have a brother

1 who was a former police officer in Georgia.

2 THE COURT: All right. If anyone thinks
3 that they cannot be fair and impartial based on
4 that information please stand. If you feel like
5 you can be fair and impartial please remain
6 seated. All right, all have remained seated.

7 Is anyone -- are you related to or close
8 personal friends or anybody with an employee or
9 former employee of the Hardeeville Police
10 Department? If so, please stand. All right.
11 There are none.

12 Have you or any of your immediately
13 family members or close personal friends ever
14 worked for the solicitor's office, which is the
15 prosecuting agency. There are none.

16 Are you or any of your immediate family
17 members close personal friends or acquaintances
18 with anyone who works at the solicitor's office?
19 If so, please stand. All right. There are none.

20 Are you or any member of your immediate
21 family a former or present member or contributor
22 to a victim's rights organization such as Mothers
23 Against Drug Driving, Citizens Against Violence,
24 any of those types of organizations? If so,
25 please stand. All right. There are none.

1 Has anyone here ever served on a jury
2 before either civil or criminal? If so, please
3 stand.

4 All right. We will start over here.
5 Ladies first. Yes, ma'am.

6 JUROR 140: It was an assault and battery
7 case and it was settled.

8 THE COURT: All right. Were you
9 empanelled on the jury and then it settled?

10 JUROR 140: Yes.

11 THE COURT: Yes, ma'am.

12 JUROR 179: I was on a jury in Los
13 Angeles on a drunk driving charge.

14 THE COURT: All right. And did it go to
15 trial?

16 JUROR 179: I don't think, no. I think
17 it was dismissed. It was very short, and it was a
18 long time ago.

19 THE COURT: Yes, ma'am.

20 JUROR 10: Over 10 years ago, I was on a
21 jury in Hampton County for a rape.

22 THE COURT: All right. Did it go to
23 trial?

24 JUROR 10: Yes, I did.

25 THE COURT: And did it go to a verdict?

1 JUROR 10: Yes.

2 THE COURT: And what was the verdict?

3 JUROR 10: Not guilty.

4 THE COURT: All right. Yes, sir.

5 JUROR 145: I was on a jury for murder.

6 THE COURT: Where was that?

7 JUROR 145: Michigan.

8 THE COURT: And did it go to trial?

9 JUROR 145: It did.

10 THE COURT: Did it go to verdict?

11 JUROR 145: Yes. They were found guilty.

12 THE COURT: All right. Yes, ma'am.

13 JURY 92: I was on a jury over 10 years
14 ago for a civil case.

15 THE COURT REPORTER: I need numbers.

16 THE COURT: I'll get them.

17 THE CLERK: Your number, ma'am?

18 JUROR 92: 92.

19 THE COURT: Yes, sir.

20 JUROR 92: I've been on jury twice and
21 Grand Jury.

22 THE COURT: All right. Okay, and the
23 Grand Jury. All right. Yes, ma'am.

24 JUROR 12: Juror number 12. In
25 Massachusetts I was on a jury for drunk driving.

1 It went to trial and found not guilty.

2 THE COURT: I'm sorry. We didn't get
3 you-all's jurors number. Yes, ma'am. You in the
4 front?

5 JUROR 140: 140.

6 JUROR 179: 179.

7 JUROR 10: 10.

8 THE COURT: All right. Ladies and gentlemen,
9 this case a -- it is State of South Carolina vs. Osman
10 Jimenez-Benitez.

11 MS. LEMPESIS: Judge, I apologize to
12 interrupt, but the gentleman who stood up as well.

13 JUROR 145: I don't know my number.

14 THE CLERK: What's your name?

15 JUROR 145: Ronald Miller.

16 THE COURT: And the charge in this case
17 is hit and run with death. Knowing that some of
18 you-all's past experiences dealt with those type
19 cases, would that, in any way, knowing that that's
20 the type of case that we'll be trying this week,
21 would that in any way impair your abilities to be
22 fair and impartial in this case knowing that this
23 case involves an incident with death? If so,
24 please stand.

25 All right. You're not able to be fair

1 and impartial, you don't believe.

2 JUROR 179: My son was killed in a hit
3 and run in a head-on collision.

4 THE COURT: I'm sorry for that and you
5 may be excused. Your juror number, ma'am?

6 JUROR 179: 179.

7 THE COURT: All right. Thank you, ma'am.

8 THE CLERK: This trial or the whole
9 panel?

10 THE COURT: This trial. This is all we
11 got.

12 All right. Ladies and gentlemen, at this
13 point, I'm going to ask you a couple quick
14 questions and then I'm going to allow the
15 solicitor's office to introduce themselves and the
16 defense to introduce themselves and I'm going to
17 ask you if you know any of the people involved in
18 the trial, and then I'm going to ask anybody that
19 may have an extreme hardship or something they
20 would like to talk to me in private about and I'll
21 be happy to hear you out on those charges -- on
22 those issues as well, but this case that we'll be
23 trying this week is a criminal case. All right?
24 It's, as I indicated, the State of South Carolina
25 vs. Osman Benitez and the charge is hit and run

1 with death.

2 At this point in time, I'm going to allow
3 the solicitor office to introduce themselves and
4 the parties which they represent. Yes, ma'am.

5 MS. LEMPESIS: Thank you, Your Honor. My
6 name is Mary Jordan Lempesis. I'm a prosecutor
7 for the State of South Carolina for the 14th
8 Circuit. Again, it's Mary Jordan Lempesis. And
9 sitting with me today is J.D. Williams. He is
10 also a prosecutor in our office. You are going to
11 see some other lawyers here as well. Sam Molina,
12 who is also a prosecutor in our office, and
13 Jared Shedd. And they may not necessarily be up
14 here for the trial, but I'm introducing them just
15 in case. Thank you.

16 THE COURT: Yes, ma'am.

17 MS. CARMODY: Good morning, everybody.
18 My name is Carolyn Carmody. I'm an attorney here
19 in South Carolina. This is my client. My
20 client's name is Osman Jimenez-Benitez.
21 Mr. Benitez, will you please stand up. This is
22 Mr. Benitez. Thank you?

23 THE COURT: All right. Does anybody have
24 any knowledge about this case or about this
25 defendant or have, as I indicated earlier, know

1 anybody with the solicitor's office or ever been
2 represented by Ms. Miss Carmody If so, please
3 stand. All right.

4 I'm going to read you a list of names. These
5 are potential witnesses, and so ultimately what we
6 need to know is if you know them. And so, if you know
7 any of these people, at the end please stand and
8 indicate how you know them. I will try to let you
9 know where they work, if I can, so that may jog your
10 memory. So if you know any of these just sit tight
11 and then at the end I'll just ask you. If you'll just
12 stand. All right.

13 Joe Floyd who is the owner operator of
14 Palmetto Truck and Auto Repair, Dr. Erin Presnell with
15 MUSC, Anibal Berdugo -- it says it twice. I don't
16 know if her name is Berdugo Berdugo, but --

17 MS. LEMPESIS: Judge, it is Berdugo
18 Berdugo and he's in Hardeeville.

19 THE COURT: All right. He lives in
20 Hardeeville. Officer Thomas Hubbard with the
21 Jasper County Sheriff's Office formerly of the
22 Hardeeville Police Department, Officer Frank Lemus
23 with Hardeeville, P.D., Tim French, with Beaufort
24 County Sheriff's Office, Laura Bayne with South
25 Carolina department of Motor Vehicles, Phillip

1 Cothran with the Jasper County Emergency
2 Communications, Officer Rhonda Watson with the
3 Jasper County Sheriff's Office, Sara Roblero
4 Morales, which is the sister of the victim, And
5 Darsheel Patel or Pravinkumar Patel, manager of
6 the Octane Gas Station.

7 Anybody close personal friends or have any
8 knowledge of any of those witnesses?

9 All right. We will start with you, sir.

10 JUROR 37: Joe Floyd, the mechanic.

11 THE COURT: Right. How do you know him?

12 JUROR 37: I grew up with him in
13 childhood. He's actually my mechanic also.

14 THE COURT: What juror number are you?

15 JUROR 37: 37.

16 THE COURT: All right. Would that impair
17 your ability to be fair and impartial in this case
18 if you know him?

19 JUROR 37: No.

20 THE COURT: All right.

21 JUROR 38: The same.

22 THE COURT: Would that affect your
23 ability to be fair and impartial?

24 JUROR 38: No.

25 THE COURT: All right. And your juror

1 number?

2 JUROR 38: 38.

3 THE COURT: Yes, sir.

4 JUROR 40: Jury number 40. Phil Cothran,
5 my brother.

6 THE COURT: Who is?

7 JUROR 40: Phil Cothran.

8 THE COURT: Phil Cothran is your brother?

9 JUROR 40: Yes, sir.

10 THE COURT: All right. Would that affect
11 your ability to be fair and impartial in this
12 case?

13 JUROR 40: As long as it's okay with you.
14 We're brothers.

15 THE COURT: I love to have you stay, but
16 he -- I'm not sure what he'll testify to. But, I
17 mean, if you think you can be fair and impartial,
18 I'd love to have you stay. If you think it would,
19 unfortunately, affect your ability to be fair and
20 impartial, then I'd have to excuse you.

21 JUROR 40: I can be fair.

22 THE COURT: All right.

23 JUROR 196: Joe Floyd, mechanic and
24 friend.

25 THE COURT: All right. And would that

1 affect your ability to be fair and impartial?

2 JUROR 196: No, sir.

3 MS. LEMPESIS: What's your number?

4 JUROR 196: I don't remember. Nicholas
5 Sikes.

6 THE COURT: All right. I'm going to read
7 you another list of names, if you know any of
8 these people please stand up and indicate how you
9 know them. Alfredo Puga, Anibal Berdugo, Bernardo
10 Morales, Celenia Euceda, Chief Sam Woodward with
11 HPD which stands for Hardeeville Police
12 Department, Detective Corporal Frank Lemus with
13 HPD, Detecive Thomas Hubbard with HPD, Diane
14 Perez, Erin Girard with Jasper County Fire-Rescue,
15 Erin Presnell, Jairo Solano, he's the interpreter,
16 Joel Floyd, Justino Flores, Leonides Mota, Michael
17 Royals with the Jasper Fire-Rescue, Patrolman
18 First Class Edgar, I believe it's pronounced,
19 Monge, Monge with HPD, Patrolman First Class,
20 Dorihan Bapties with HPD, Raymundo Roblero, Sara
21 Roblero, Sergeant Dustin Creel with HPD, Sergeant
22 Gerry Brown with HPD, Sergeant Rhonda Watson with
23 HPD, Todd Harvey with Jasper County Coroner's
24 Office, Trooper John Conley with highway patrol.
25 All right. Anybody know any of those

1 potential witnesses?

2 THE WITNESS: You said Sam Woodward. I
3 know Sam Woodard and Joel Floyd, but Sam Woodward.

4 JUROR UNIDENTIFIED: All right. Sam
5 Woodward with HPD, how do you know him?

6 JUROR UNIDENTIFIED: Grew up with him.

7 THE COURT: All right. Would that affect
8 -- he's the chief, would that affect in any way
9 your ability to be fair and impartial?

10 JUROR UNIDENTIFIED: No.

11 THE COURT: Yes, sir.

12 JUROR 38: Jury 38. The same again. I
13 know Sam Woodward.

14 THE COURT: Would that affect in any way
15 your ability to be fair and impartial?

16 JUROR 38: No, sir.

17 THE COURT: Yes, ma'am.

18 JUROR 173: Sam Woodward.

19 THE COURT: All right. You know the
20 chief as well.

21 JUROR 173: Yes, he's a long-time friend.

22 THE COURT: Would that affect your
23 ability to be fair and impartial?

24 JUROR 173: No.

25 THE COURT: All right. Yes, ma'am.

1 JUROR 189: Sam Woodward and Todd Harvey.

2 THE COURT: All right. Both of them with
3 HPD?

4 JUROR 189: No. Sam Woodward and
5 Todd Harvey is former Jasper County Coroner's
6 Office?

7 THE COURT: Todd Harvey. Would that in
8 any way affect your ability to be fair and
9 impartial?

10 JUROR 189: No.

11 THE COURT: All right. Thank you, ma'am.

12 All right. Anything further from the
13 State?

14 MS. LEMPESIS: Nothing further from the
15 State, Your Honor.

16 THE COURT: Anything further from the
17 defense.

18 MS. CARMODY: No, Your Honor.

19 THE COURT: All right. Are you-all ready
20 to move forward?

21 MS. LEMPESIS: Yes, Judge. We're ready
22 to -- we're ready, Your Honor.

23 THE COURT: And are you ready,
24 Miss Carmody?

25 THE CLERK: Sir, this is a new system and

1 it keeps freezing on me, so I'm going to have to
2 go back the old way.

3 THE COURT: Okay.

4 THE CLERK: That means we got to cut out
5 because it keeps freezing. It won't let me excuse
6 them. This is going to take a few minutes,
7 Your Honor.

8 THE COURT: Take your time.

9 While she's doing that, does anyone else
10 need to come up and speak to me privately about
11 any concerns that they may have about serving on
12 the jury duty?

13 All right. All right come up, sir? All
14 right. What's your number?

15 JUROR 32: 32. I feel that my religious
16 beliefs concerning being a part of the world,
17 serving in government, or, you know, murder and
18 death in this instance impair my views to be a
19 juror. My views don't allow me to do that.

20 THE COURT: All right. You're excused.

21 THE CLERK: What's his juror number?

22 JUROR 32: 32.

23 THE COURT: 32. All right, you can be
24 excused.

25 THE CLERK: Juror 42.

1 THE COURT: Come up, ma'am.

2 JUROR 42: You said this involves death
3 of someone's child?

4 THE COURT: I have no idea what it is.

5 JUROR 42: I don't know how I'll handle
6 it because I got a son who got killed in an
7 accident. It's been a horrible 20 years.

8 THE COURT: What's your number?

9 JUROR 42: 42.

10 THE COURT: I didn't realize there's
11 another case behind this, Miss Bostick. So,
12 whoops.

13 THE CLERK: Have them call back.

14 I'll excuse you from this trial, but just
15 call back after 6:00 tonight.

16 THE CLERK: Right.

17 THE COURT: And we'll tell you if you
18 need to come back.

19 JUROR 42: Thank you.

20 THE CLERK: Juror 130.

21 JUROR 130: I just lost my aunt just
22 yesterday, so I don't know if I'll be able to.

23 THE COURT: Just call back after 6:00.

24 THE CLERK: What's your number?

25 THE COURT: What's your number?

1 JUROR 130: 130.

2 THE COURT: 130. All right, ma'am, sorry
3 for that.

4 (Off the record.)

5 THE CLERK: Number 124 has a question.

6 THE COURT: Yes, sir.

7 JUROR 124: Are you starting a trial
8 today?

9 THE COURT: Yes.

10 JUROR 124: I brought my wife with me.
11 She's in the car waiting. You know, she received
12 a letter as well, you know, the same. She got it
13 yesterday, but we didn't read it -- you know, we
14 didn't read it currently. She came today thinking
15 that she was in the jury at the same time, but
16 hers is in January. And she's in the car waiting
17 for me thinking that we just going be here for a
18 couple hours something like that.

19 THE COURT: All right. I'm confused.
20 What's your issue?

21 THE WITNESS: Well, the thing is that
22 she's waiting for me in the car. I don't know how
23 long it will be here today.

24 THE COURT: Oh, we're going to take a
25 break whenever we're done selecting the jury. So

1 if you get selected, you'll have about an hour and
2 a half break. If you don't get selected, then
3 you'll be free to go.

4 THE WITNESS: Okay, I can take her home.

5 THE COURT: Sure.

6 (Off the record.)

7 THE BAILIFF: All rise.

8 THE COURT: Thank you very much. You may
9 be seated.

10 All right. Miss Bostick, are we ready?

11 MS. LEMPESIS: We're ready.

12 THE COURT: All right. For the record,
13 we've agreed that it's five and five, and I'm
14 assuming that we're all going to consent that Miss
15 Bostick can pull them.

16 MS. LEMPESIS: Yes, Your Honor.

17 MS. CARMODY: Yes.

18 THE COURT: Shockingly enough, we had a
19 capital case, Miss Bostick, and the attorneys
20 couldn't agree on anything. I told you, we found
21 a blind man that was a vender at the courthouse to
22 come and pull it.

23 (Off the record.)

24 THE COURT: All right. Ladies and
25 gentlemen of the jury, obviously this will be

1 extremely random. When you hear your name called,
2 if you will please just come and stand right here.
3 I'm going to give the attorneys a couple seconds
4 to talk things over. Obviously, they've taken
5 extensive notes and then I will ask the State, or
6 Miss Bostick will, and the defense. And if you
7 are seated, if you'll please come over here and
8 they'll seat you in the jury box.

9 All right. Miss Bostick.

10 THE CLERK: Juror 173, Kimberly Ratliff.
11 How says the State?

12 MS. LEMPESIS: Please present this juror.

13 THE CLERK: How says the defense?

14 MS. CARMODY: Please excuse the juror.

15 THE CLERK: Thank you, Miss Ratliff.

16 Please have a seat back in the audience.

17 Juror number 29, July Carey. How says the
18 State?

19 MS. LEMPESIS: Please present this
20 juror.

21 THE COURT: How says the defense?

22 MS. CARMODY: Please strike the juror.

23 THE CLERK: Pardon me, ma'am.

24 MS. CARMODY: Please excuse the juror.

25 THE CLERK: Thank you, ma'am. Have a

1 seat back in the audience.

2 Juror number 65, Andrea Hernandez Flores, or
3 Andrea Flores Hernandez. How says the State?

4 MS. LEMPESIS: Please present this
5 juror.

6 THE CLERK: How says the defense?

7 MS. CARMODY: Please seat the juror.

8 THE CLERK: Have a seat in the jury box,
9 ma'am.

10 Juror number 212, Shannah Thomas. How
11 says the State?

12 MS. LEMPESIS: Please present this
13 juror.

14 THE CLERK: How says the defense.

15 MS. CARMODY: Please excuse the juror.

16 THE CLERK: Thank you, ma'am. Have a
17 seat back in the audience.

18 Juror number 160, Jacvor Patterson. How
19 says the State?

20 MS. LEMPESIS: Please present this juror.

21 THE CLERK: How says the defense?

22 MS. CARMODY: Please seat the juror.

23 THE CLERK: Come forward, sir, and have a
24 seat in the jury box.

25 Juror number 124, Salomon Gonzalez Lopez.

1 How says the State?

2 MS. LEMPESIS: Please excuse this
3 juror.

4 THE CLERK: Thank you, sir. Have a seat
5 back in the audience.

6 Juror number 246, Stacy Woods. How says the
7 State?

8 MS. LEMPESIS: Please present this
9 juror.

10 THE CLERK: How says the defense?

11 MS. CARMODY: Please seat the juror.

12 THE COURT: Come forward, ma'am. Have a
13 seat in the jury box.

14 Jury number 228, Cotdney Walters. How
15 says the State?

16 MS. LEMPESIS: Please present this
17 juror.

18 THE CLERK: How says the defense?

19 MS. CARMODY: Please seat the juror.

20 THE CLERK: Come forward, sir. Have a
21 seat in the jury box.

22 Jury number 189, Beverly Sauls. How says
23 the State?

24 MS. LEMPESIS: Please present this
25 juror.

1 THE CLERK: How says the defense?

2 MS. CARMODY: May we approach, Your
3 Honor?

4 THE COURT: Sure, come on up. On the
5 record or off?

6 MS. CARMODY: On the record.

7 Jury 189, I would request that she be
8 excused for cause. That's this one.

9 THE COURT: I asked her -- I asked if she
10 could be fair and impartial.

11 MS. CARMODY: She knows the coroner.

12 MS. LEMPESIS: We're not going to go
13 through that with the witness.

14 THE COURT: Okay, easy enough.

15 MS. CARMODY: Thank you.

16 THE COURT: All right.

17 MS. CARMODY: Please excuse the juror.

18 THE CLERK: Thank you, ma'am. Have a
19 seat back in the audience.

20 THE COURT: What number was that one?

21 THE CLERK: 189.

22 Juror number 50, Dolores Doe. How says the
23 State?

24 MS. LEMPESIS: Please present this
25 juror.

1 THE COURT: How says the defense?

2 MS. CARMODY: Please seat the juror.

3 THE CLERK: Come forward, ma'am. Have a
4 seat in the jury box.

5 JUROR 24: Madame Clerk, it may be a
6 discrepancy on my part. Did you call juror Number
7 124?

8 THE CLERK: No, sir.

9 THE COURT: They did. 124 and the State
10 struck him. I'm just trying to see if it's a
11 discrepancy. I thought I was 124 and my name
12 wasn't called.

13 THE CLERK: You're not 124, Mr. Burns.
14 You are --

15 THE COURT: Mr. Burns, you are number
16 24.

17 JUROR 24: Thank you.

18 THE COURT: Yes, sir, thank you.

19 THE CLERK: Juror number 12, Patricia
20 Belliveau. How says the State?

21 MS. LEMPESIS: Please present this
22 juror.

23 THE CLERK: How says the defense?

24 MS. CARMODY: Please excuse the juror.

25 THE CLERK: Have a seat back in the

1 audience, ma'am, thank you.

2 Juror number 165, Christopher Pitcavage.

3 How says the State?

4 MS. LEMPESIS: Please present this
5 juror.

6 THE CLERK: Does the defense have cause
7 for strike?

8 MS. CARMODY: Please seat the juror.

9 THE CLERK: Have a seat in the jury
10 box.

11 Jury number 73, Elizabeth Gawrysiak. How
12 says the State?

13 MS. LEMPESIS: Please present this
14 juror.

15 THE CLERK: Does the defense have cause
16 for strike?

17 MS. CARMODY: Please seat the juror.

18 THE CLERK: Come forward, ma'am.

19 Juror number 10, Angela Barker. How says the
20 State?

21 MS. LEMPESIS: Please present this
22 juror.

23 THE CLERK: Does the defense have cause
24 for strike?

25 MS. CARMODY: Please seat the juror.

1 THE CLERK: Come forward, ma'am.

2 Juror number 1, Darius Aiken. How says
3 the State?

4 MS. LEMPESIS: Please present the
5 juror.

6 THE CLERK: Does the defense have cause
7 or strike?

8 MS. CARMODY: Please seat the juror.

9 THE CLERK: Come forward, sir.
10 Juror number 37, James Cooler. How says the
11 State?

12 MS. LEMPESIS: Please present this
13 juror.

14 THE CLERK: Does the defense have cause
15 for strike?

16 MS. CARMODY: Please seat the juror.

17 THE CLERK: Come forward, sir, and have a
18 seat in the jury box.

19 Juror number 38, Thomas Cooler. How says
20 the State?

21 MS. LEMPESIS: Please present this
22 juror.

23 THE COURT: Does the defense have cause
24 for strike?

25 MS. CARMODY: Please seat the juror.

1 THE CLERK: Come forward sir and have a
2 seat in the jury box.

3 Jury number 113, David Laire. How says
4 the State?

5 MS. LEMPESIS: Please present this
6 juror.

7 THE CLERK: Pardon me?

8 MS. LEMPESIS: Please present the
9 juror.

10 THE CLERK: Does the defense have cause
11 for strike?

12 MS. CARMODY: Please seat the juror.

13 THE CLERK: Please come forward and have
14 a seat in the jury box.

15 THE COURT: All right. We're going to go
16 with two alternates. And you-all agree it's one
17 and two?

18 MS. LEMPESIS: Yes, Your Honor.

19 MS. CARMODY: Yes, Your Honor.

20 THE COURT: Okay.

21 THE CLERK: Juror number 231, Christopher
22 White. How says the State?

23 MS. LEMPESIS: Please present this
24 juror.

25 THE CLERK: How says the defense?

1 MS. CARMODY: Please seat the juror.

2 THE CLERK: Alternate number 1. Come
3 forward, sir.

4 Jury number 140, Christine Mckim. How
5 says the State?

6 MS. LEMPESIS: Please present this
7 juror.

8 THE CLERK: How says the defense?

9 MS. CARMODY: Please excuse the juror.

10 THE CLERK: Thank you, ma'am. Have a
11 seat back in the audience.

12 Juror number 237, Asia Williams. How
13 says the State?

14 MS. LEMPESIS: Please present the
15 juror.

16 THE CLERK: How says the defense.

17 MS. CARMODY: Please seat the juror.

18 THE CLERK: Come forward, ma'am.
19 Alternate number 2.

20 THE COURT: All right. Any issues as to
21 the selection of the jury before I release the
22 panel from the State?

23 MS. LEMPESIS: No, Your Honor. Not from
24 the State.

25 MS. CARMODY: No, Your Honor. Not from

1 the defense.

2 THE COURT: All right. Ladies and
3 gentlemen of the jury, this is the selection of
4 this trial. We have one more that is behind it,
5 and so I would ask that you be excused for the
6 rest of the day. And if you'll just call back in,
7 Madame Clerk, will put a message back on there
8 indicating whether you need to come back tomorrow
9 or when you need to come back, if at all. The
10 message will be on there after 6:00. If you'll
11 please call in to get your direction. And as far
12 as your employers and loved ones know, you're in
13 jury duty all day so have a good rest of your
14 day.

15 THE CLERK: Phone slips at the back
16 door.

17 THE COURT: Phone clips, yes, so you'll
18 know what number to call in.

19 Miss Lempesis, tell me, what time will
20 your witness be available just so I know for
21 planning purposes on how long to let them go?

22 MS. LEMPESIS: I have been planning
23 around what you said, about 1:30. So we'll be
24 ready with our witnesses at 1:30.

25 THE COURT: All right. Ladies and

1 MS. CARMODY: Can we take a brief recess?

2 THE COURT: Then I'm going to come back
3 and try to figure out what motions we can hear now
4 before we go to lunch. Obviously, I got to wait
5 for them to get out so we'll take a break while
6 they're leaving because I don't want them to hear
7 us.

8 MS. CARMODY: Thank you, Your Honor.

9 MS. LEMPESIS: Thank you, Your Honor.

10 (A break was taken from 12:01 p.m. to 12:05 p.m.)

11 THE COURT: All right. You want to try
12 to tackle some of these motions before we go to
13 lunch?

14 MS. LEMPESIS: Yes, Your Honor.

15 Judge, the only pretrial the State has is
16 a Jackson v. Denno hearing. And like we discussed
17 on Friday, we do have one witness to appear
18 virtually, as you can see, is in training in
19 Jacksonville, Florida. Your law clerk is going to
20 open your virtual courtroom.

21 Would you like to start with that, or did
22 you want to going through some of this other --

23 THE COURT: We'll just wait until --
24 we'll knock out what we can knock out. We'll go
25 to lunch and come back at 1:30 and knock his out.

1 MS. LEMPESIS: Okay. Knock his out at
2 1:30?

3 THE COURT: Okay.

4 MS. LEMPESIS: He's available to testify
5 virtually now.

6 THE COURT: Oh, oh, oh. I thought you
7 were saying that he was only available at 1:30.

8 MS. LEMPESIS: Oh, no. I'm sorry. The
9 witnesses that are actually going to testify today
10 for the trial are going to go and be ready to go
11 at 1:30.

12 THE COURT: Got it.

13 MS. LEMPESIS: Officer Lemus is the
14 officer for the Jackson v. Denno. He's available
15 any time now. I do need to just get him the link
16 for the courtroom. In fact, if we can go
17 through -- that's all that the State has. We've
18 shown Miss -- I had, you know -- I had thought
19 there was an issue with some of the issues that we
20 intended to present.

21 MS. CARMODY: Your Honor, briefly with
22 the Jackson v. Denno hearing, the defense does
23 intend to call Miss Solano, the Spanish
24 interpreter, to interpret what was said during
25 this interrogation, what was said during his

1 Miranda warnings. And I'm not sure how the Court
2 would like me to do that because he is also
3 interpreting for my client as well. Maybe say
4 everything in Spanish.

5 THE COURT: I got no problem with that.
6 And then whatever he says in English, he doesn't
7 really need to know because he's already said it
8 in Spanish. So that's fine.

9 MS. CARMODY: Okay.

10 THE COURT: So let's talk about these
11 outstanding motions. And we'll take them in order
12 I guess, so this is the -- because I understand
13 that's the only motion the State has.

14 But, as to defense, it says renew Rule 5
15 and Brady motions, what's that?

16 MS. CARMODY: Yes, Your Honor. Your
17 Honor, back in November 19th of 2019, we filed a
18 Rule 5 back then. It's my understanding that the
19 defense has never been provided with the 911 calls
20 in this case. And I believe at some point there
21 was some communication with the solicitor's office
22 that those phone calls no longer exist. I need
23 that put on the record, if that's still true
24 today.

25 Additionally, I also have issue with the

1 criminal record of one of the State's witnesses,
2 Your Honor. The date of birth that's provided on
3 the criminal is different than the date of birth
4 that he provided to law enforcement. So I'm not
5 sure the criminal record the State provided is
6 accurate.

7 THE COURT: All right. And who's that
8 witness?

9 MS. CARMODY: That's Mr. Anibal
10 Berdugo.

11 MS. LEMPESIS: His name is Anibal Fermin
12 Berdugo Berdugo. It's misspelled in the incident
13 report, but we did confirm the spelling of his
14 last name. His date of birth is [REDACTED]/2003 and
15 that's what's listed on that witness's statement,
16 which was in the incident report.

17 I'm not sure where Miss -- I'm not sure
18 where Miss Carmody is saying that he gave a
19 different date of birth, and so I'd asked you to
20 point me in that direction because I don't
21 remember that it's in his report.

22 MS. CARMODY: In his recorded statement
23 with law enforcement, they asked him what his date
24 of birth was. And at first he said he doesn't
25 know. He didn't know when his birthday was. And

1 then he provides --

2 THE COURT: Well, I guess the real
3 question is, Miss Lempesis, is he going to
4 testify?

5 MS. LEMPESIS: Yes, sir, Your Honor.

6 THE COURT: Are you attempting to put his
7 record in?

8 MS. LEMPESIS: No, he has no prior
9 record.

10 THE COURT: All right. Then it's a
11 non-issue.

12 MS. CARMODY: Well, Your Honor, I'm not
13 sure if he does have a record because I don't
14 believe that he actually provided that correct
15 information to law enforcement.

16 THE COURT: She said that he -- Miss
17 Lempesis said he doesn't have a record.

18 MS. CARMODY: He does?

19 THE COURT: Does not.

20 MS. LEMPESIS: He does not have a
21 record.

22 MS. CARMODY: Under -- is his date of
23 birth correct?

24 THE COURT: Why do you care? If it's
25 not, and we go back and find he's got a six-page

1 rap sheet, why do you want to kick that hornet's
2 nest?

3 MS. CARMODY: I got to, Your Honor.
4 Yes.

5 THE COURT: Let's move on.

6 All right. Is the 911 -- she wants to know
7 on the record if the 911 call had been -- because over
8 the 90 days it erased, or whatever the case be.

9 MS. LEMPESIS: They generally -- I don't
10 know how long they save them, generally. There is
11 no saved 911 call. This occurred on October 26th
12 of 2019, which was -- the Jasper County Sheriff's
13 Office was hacked by on-line or -- I don't know
14 what the correct word is.

15 THE COURT: Hackers?

16 MS. CARMODY: Cyber attack that basically
17 wiped out all of their records and accessed
18 information. And so they do not have a saved 911
19 call. They do have, in place, a system where they
20 were able to retrieve the raw material from the
21 call and so we do have a CAD report which has been
22 provided to Miss Carmody which was prepared by
23 Phillip Cothran, who is on the State's witness
24 list. He is the evidence custodian or -- the
25 records custodian, excuse me, for the Jasper

1 County Sheriff's Office dispatch. And so that CAD
2 report is what we will be introducing. We don't
3 have a saved 911 call. The caller was the
4 victim's sister, and she is the only caller.

5 THE COURT: All right.

6 MS. CARMODY: Your Honor, it's my
7 client's position if this information was
8 valuable, it would actually be exculpatory. The
9 statutes, you know, essentially requires my client
10 to notify the law enforcement or do something to
11 render aid. And I believe that without that --
12 those 911 records, you know, it's prejudicial to
13 my client. It's denying his right to a fair trial
14 because had the evidence been produced, he may be
15 able to use that in his defense.

16 THE COURT: Was there a supplemental
17 request for the 911 audio that you're aware of,
18 Miss Lempesis?

19 MS. LEMPESIS: I asked the sheriff's
20 office, dispatch, they do have it.

21 THE COURT: All right.

22 MS. LEMPESIS: So it was lost.

23 THE COURT: Well, we'll take up
24 admissibility at the time of trial right before
25 they're going to testify. Just remind me and

1 we'll do that then.

2 All right. What about -- I did the
3 defendant's proposed voir dire.

4 Renewed Rule 5.

5 Defendant's potential witness list, I
6 read that.

7 Motion to suppress defendant's statement
8 to law enforcement.

9 MS. CARMODY: That's the Jackson v. Denno
10 hearing, Your Honor.

11 THE COURT: Right, so I'm marking that as
12 not done.

13 All right. Motion to suppress
14 identification, the Biggers hearing.

15 MS. CARMODY: That would require
16 testimony as well, Your Honor.

17 THE COURT: Right. When do you expect to
18 have them here. Do you want to just take that up
19 at a later time, or when do you want to do that?

20 MS. CARMODY: Your Honor, it would be
21 Officer Hubbard. He's here. And, actually, while
22 Lemus is available by video, that would be a good
23 time for this as well.

24 THE COURT: All right. We'll deal with
25 that in just a moment.

1 All right. Motion to suppress DNA
2 evidence.

3 MS. CARMODY: Your Honor, if the State
4 does intend to admit DNA evidence, my client's
5 DNA, maybe we'll be able to take that up then.
6 I'm not sure that they do intend to admit his DNA
7 evidence. If they do, you know, I would just rely
8 on the State v. Phillips case. You know,
9 not-to-be-excluded-type situation, or not to be
10 excluded. And it's touch DNA that they talked
11 about in the Phillips case.

12 THE COURT: All right.

13 MS. CARMODY: So that would be the basis
14 for that. You want me to argue that now?

15 THE COURT: No, we'll wait to see what
16 the State intends on doing as they move forward.

17 What about the motion to dismiss?

18 MS. CARMODY: Okay. That, Your Honor, we
19 can actually take up now.

20 THE COURT: All right.

21 MS. CARMODY: Your Honor, so the basis
22 for the motion to dismiss is a speedy trial
23 violation. And I included the procedural history
24 in the memorandum of law in support of that
25 motion, so just briefly, you know, my client was

1 arrested on November 1st of 2019. He was charged
2 with hit and run and duties of a driver involved
3 in an accident.

4 At the time of his arrest, he was denied
5 bond. He has an immigration hold. He has no
6 criminal record, Your Honor. The basis for
7 denying his bond was the immigration hold, that
8 they thought he would be a flight risk. Since his
9 arrest, he's actually been denied bond again.

10 Earlier this year, Your Honor, Judge
11 Mullen had actually filed a status conference on
12 all of our jail cases. Mr. Benitez was in the
13 jail for over 700 days. Judge Mullen ordered that
14 his case be tried last month. The State never
15 filed a continuance of the case, didn't add it on
16 the trial roster, and just -- I guess assume it
17 didn't exist and he was just sitting in the jail.
18 His case remained unindicted. He just recently
19 indicted last week. Last week, Your Honor.

20 So, Your Honor, the right to a speedy
21 trial is a fundamental right. It's imposed on the
22 State by the process clause of the 14th amendment.
23 It requires a functional analysis in the
24 particular context of each case. And I'm relying
25 on the Barber factors. And so it's the length of

1 delay, the reason for the delay, the defendant's
2 assertion of his right and prejudice to the
3 defendant. The length of delay can be tolerated.
4 The amount of the delay can be tolerated. It
5 depends on the particular circumstances of each
6 case.

7 In this particular case, he's been in
8 jail for over two years without a bond. And it's
9 over 750 days now. There's been no new evidence
10 presented in this case and it was literally just
11 presented to the Grand Jury last week.

12 The reason for the delay, in addition,
13 the State did not seek a continuance from the
14 court last month. If the Court finds the lack of
15 an intentional delay, it's even more of a mutual
16 reason such as negligence or a over-crowded court
17 could be weighed less heavily for the State;
18 however, this is not, you know, an over-crowded
19 docket, and not negligence. He sat in jail for
20 over two years without an indictment when the
21 Grand Jury had met in at least 12 months.

22 I understand that the solicitor's office
23 had some turnover. But we had turnover on the
24 defense side as well, Your Honor, and we were
25 ready to go forward with this trial last month,

1 and prior to that actually. In my email several
2 months ago, I indicated he was ready to go to
3 trial.

4 Your Honor, the next factor, the
5 defendant's assertion of his right. And, as I
6 mentioned, he has not in any way requested a
7 continuance in this matter, nor has he consented
8 to any continuance. To the contrary, he actually
9 submitted an email to this Court on February 23rd
10 of this year rejecting the State's offer and
11 indicated he was ready and willing to go to trial
12 as soon as jury trial resumed.

13 Your Honor, the last factor is prejudice to
14 the defendant, and that should be assessed in light of
15 the interest of the defendant which speedy trial is
16 designed to protect. This is the type of case that
17 speedy case was designed to protect, Your Honor. He
18 has been held in pretrial confinement now for over two
19 years as I mentioned. He has been denied bond.
20 Despite setting a trial date, he remained incarcerated
21 under the presumption of innocence. His life has been
22 put on hold. His family actually had to leave the
23 country because he was unable to help support his wife
24 and his child.

25 He's also suffered great prejudice by the

1 loss of evidence in this case, as we just
2 mentioned, with the 911 call. I believe that
3 information in the 911 call would have actually
4 been exculpatory.

5 There are also witnesses in this case
6 that are no longer available, that they've left
7 the country. We're not able to locate them. And
8 that's another basis that's causing him prejudice.

9 So, in consideration of all these
10 factors, Your Honor, I'm asking for the Court to
11 dismiss this case with this speedy trial motion.

12 THE COURT: All right. Thank you very
13 much.

14 MS. LEMPESIS: Judge, first of all, we
15 heard this exact same motion from Miss Carmody
16 last month in front of Judge Mullen and she denied
17 it and set the case for trial right now. We're
18 here ready to go to trial. Judge Mullen
19 considered everything that Miss Carmody said in
20 her statements. Yes, it was -- he has been in
21 custody for this amount of time. There's been a
22 couple of different prosecutors on it, as is the
23 case a lot times. We did indict it last week, but
24 a lot of circuits wait until the last minute to
25 indict everything before they go to trial, so

1 that's not actually out of the ordinary.

2 We're here. We're ready. Judge Mullen
3 ruled on this, but I understand Miss Carmody might
4 need to put it on the record again.

5 We stand here ready with our witnesses
6 lined up and ready to go. And I'm not sure what
7 else actually can be done besides saying just
8 that. We are ready to go. It's been set for
9 trial on this date and Judge Mullen has already
10 denied this motion.

11 THE COURT: All right. I'll deny the
12 motion and --

13 MS. CARMODY: Your Honor -- I'm sorry,
14 Your Honor. Your Honor, I just need to correct
15 the record. Judge Mullen did not deny this
16 motion. She actually granted his motion for a
17 speedy trial last month and set it on the trial
18 docket this month.

19 MS. LEMPESIS: She granted the speedy
20 trial motion. She denied the motion to dismiss
21 and she set it for trial today.

22 THE COURT: All right. We're ready to go
23 forward. And I'll grant the motion to sequester
24 the State's witnesses. Who are you-all electing
25 to have from law enforcement?

1 MS. LEMPESIS: Officer Hubbard is here,
2 and he works for the Jasper County Sheriff's
3 Office now but did -- was the lead detective on
4 this case when he was with Hardeeville PD. So
5 he's still law enforcement and he's sitting with
6 us.

7 THE COURT: Sounds good. We'll be back
8 in one hour at 1:30.

9 MS. LEMPESIS: Thank you, Judge. Do you
10 want to instead -- I'm sorry. I've emailed our
11 witness who's testifying virtually. If he could
12 do it one o'clock, do you want to do it then, or
13 do you just want to wait until 1:30?

14 THE COURT: Well, it's up to you-all. I
15 mean --

16 MS. LEMPESIS: That is the Jackson v.
17 Denno.

18 THE COURT: I understand that. But I'm
19 saying, is he available now?

20 MS. LEMPESIS: He should be. I sent the
21 link to him. He was going to be pretty much on
22 standby. I'm not logged into your virtual
23 courtroom.

24 THE LAW CLERK: We're having issues with
25 the virtual courtroom. I'll send you-all a Zoom

1 link to a meeting that I started, so you should be
2 able to join.

3 MS. LEMPESIS: And I am joined in -- I
4 haven't joined yet, but I did send him that link.
5 I just didn't want to delay the jury when they
6 come back at 1:30 too much.

7 THE COURT: How long do you think it will
8 take?

9 MS. LEMPESIS: It will take, like, 15
10 minutes. It sounds like Miss Carmody is trying to
11 call a witness.

12 THE COURT: Who are you going to call?

13 MS. CARMODY: Yes, Your Honor. For the
14 Jackson v. Denno hearing, I would call Mr. Solano.

15 THE COURT: Who is that?

16 MS. CARMODY: The Spanish interpreter,
17 Your Honor.

18 THE COURT: You already told me that.
19 That's fine. My point is, I still have to give
20 the staff time to eat.

21 MS. LEMPESIS: Absolutely, Judge.

22 THE COURT: That will be fine. We'll
23 come back in an hour at 1:30.

24 MS. LEMPESIS: Okay.

25 THE COURT: If everybody gets back early

1 and we're ready to go, we'll be ready to roll.

2 MS. LEMPESIS: Thank you.

3 (a break was taken from 12:32 p.m. to 1:33 p.m.)

4 THE BAILIFF: All rise.

5 THE COURT: Thank you very much. Be
6 seated.

7 All right.

8 MS. LEMPESIS: Thank you, Judge.

9 Starting out with the Jackson v. Denno, I call
10 Frank Lemus, who you see on there.

11 THE COURT: There he is.

12 MS. LEMPESIS: Okay. So to recap our
13 phone conversation on Friday, Judge, we had asked
14 that you allow Officer Lemus to testify virtually
15 for the purpose of the trial hearing and Your
16 Honor agreed, and so we're here. We're going to
17 call Officer Lemus as our first witness for the
18 purposes of this Jackson v. Denno hearing.

19 Judge, just by way of background quickly, the
20 defendant, Mr. Jimenez-Benitez did make two statements
21 to law enforcement. The first was on October 29th of
22 2019 and then the second came on November 1st.
23 Officer Lemus translated in both of those interviews
24 and so I'll go ahead and start the questioning of him
25 this time.

Testimony of Frank Lemus

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1 WHEREUPON:

2 OFFICER FRANK LEMUS,
3 after having been sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MS. LEMPESIS:

6 Q Officer Lemus, can you hear me okay? I don't know
7 if he can hear me because I'm muted.

8 THE COURT: All right. I'm muted too.
9 Maybe it was because of hers earlier, so why don't
10 we try it now.

11 BY MS. LEMPESIS:

12 Q Officer Lemus, can yo hear me now?

13 A Yes, ma'am, I can hear you.

14 Q Okay, great. If any point you can't hear, I'm
15 going to -- make sure to stop right away, okay?

16 THE COURT: See, it won't work. Put your
17 microphone in front of yours and put your sound
18 up.

19 BY MS. LEMPESIS:

20 Q Officer Lemus, you can hear me, right? You can
21 hear me?

22 A Yes, ma'am.

23 Q Okay. Now, I think we're going. Officer Lemus,
24 tell me who you were working for on October 29,
25 2019?

Testimony of Frank Lemus

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1 A The Hardeeville Police Department.

2 Q Were you present during questioning of the
3 defendant in this case, Mr. Osman Jimenez-Benitez?

4 A Yes, ma'am.

5 Q Okay. And who else was present for that
6 interview?

7 A Detective Hubbard.

8 Q Okay. And what was your role in this interview of
9 the defendant?

10 A It was to solely translate what he was saying
11 in Spanish so Detective Hubbard could understand
12 what he said.

13 Q And at the time of this interview, did Mr. Benitez
14 or Jimenez-Benitez appear to be under the influence or
15 drug or anything that would prevent his ability to
16 understand?

17 A No, ma'am.

18 Q And did he have any sort of physical or mental
19 disability that would impair his ability to
20 understand?

21 A No, ma'am. Not that he expressed to us.

22 Q And, Officer Lemus, what language did the
23 defendant speak?

24 A He spoke in Spanish, ma'am.

25 Q And, Officer Lemus, do you speak Spanish?

Testimony of Frank Lemus

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1 A Yes, ma'am.

2 Q And can you tell the Court your background as far
3 as speaking Spanish?

4 A Both my parents are Mexican. My father
5 doesn't speak English, so I grew up speaking
6 Spanish in my family.

7 Q Is it fair to say you're bilingual?

8 A Yes, ma'am.

9 Q Do you interpret -- how often do you interpret in
10 this sort of scenario in your role as an officer?

11 A I worked in law enforcement. I've been
12 called on quite often to interpret when an officer
13 can't understand what's being said or
14 communicated.

15 Q Do you regularly interpret for all parties, not
16 just defendants, or people who are suspects?

17 A Anybody that's having trouble communicating
18 with law enforcement and they need someone to try
19 to understand what's being said, yes, ma'am.

20 Q Okay. This questioning of Mr. Jimenez-Benitez on
21 October 29th, where did it happen?

22 A It happened at the Hardeeville Police
23 Department at 26 Martin Street in the data master
24 room.

25 Q And do you know whether or not Mr. Benitez was

Testimony of Frank Lemus

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1 under arrest at the time?

2 A I was not aware.

3 Q Okay. Did you advise him of his Miranda rights?

4 A After Detective Hubbard read to him in
5 English, I translated into Spanish. I have a card
6 that's in English and Spanish.

7 Q And so you advised him of his rights in Spanish?

8 A Yes, ma'am.

9 Q Did he -- did he indicate that he understood those
10 rights?

11 A There was a sign that he was confused, so I
12 allowed him to read it to himself then explain to
13 me that he did understand.

14 Q So you handed him the Spanish language Miranda
15 card to read?

16 A Correct, the one that was in Spanish.

17 Q Okay. And then when asked if he wanted to speak
18 with you and Officer Hubbard, what did he say?

19 A He did say he would like to speak to him.

20 Q Officer Lemus, in your speaking with him and,
21 obviously, you're translating English to Spanish, did
22 he appear to have any difficulty in understanding the
23 Spanish language?

24 A When it was time to express that he was not
25 understanding, what I would do is allow him to

Testimony of Frank Lemus

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1 read it and then I would ask him if he understood
2 what he was reading, and, at that time, he did
3 understand.

4 Q Okay. And did he -- was he threatened or coerced
5 in any way during this process?

6 A No, ma'am.

7 Q Okay. And did he agree to speak with you and with
8 Officer Hubbard?

9 A Yes, ma'am.

10 Q Did you -- his responses to you during this
11 interview, did they -- were they such that you believe
12 he understood what you were asking him?

13 A Yes, ma'am. He understood.

14 Q And in this first interview, did you stop at any
15 time and ask for a lawyer?

16 A No, ma'am. He never asked for a lawyer
17 during the interview.

18 Q Officer Lemus, did you accurately translate the
19 defendant's statement to you understanding that you
20 might miss a word or two, but the context of the
21 defendant's statements to you, did you accurately
22 translate those back out loud to Officer Hubbard?

23 A Yes, ma'am. Any time there was any
24 confusion, I would pull it up on-line to make sure
25 I had the correct, accurate translation.

Testimony of Frank Lemus

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1 Q And Officer Lemus, as to that first interview on
2 October 29th, I'm going to fast toward to the second
3 interview that happened on November 1st. On that day,
4 that November 1st interview, did you, again, advise
5 the defendant Mr. Jimenez-Benitez of his Miranda
6 rights?

7 A I did, ma'am.

8 Q And, again, who was present for that interview?

9 A It was also Detective Hubbard again.

10 Q And on this day, did he appear to understand or --
11 excuse me. Did he appear to be under the influence of
12 any sort of alcohol or drugs that would impair his
13 ability to understand?

14 A I don't believe so. No, ma'am.

15 Q Any physical or mental disability that would
16 impair his ability to understand?

17 A Nothing that I saw and nothing that he
18 expressed to me.

19 Q And this questioning, does this again happen at
20 the Hardeeville Police Department?

21 A Yes, ma'am, at the same -- in the data master
22 room on Martin Street.

23 Q Okay. Officer Lemus, how did you advise
24 Mr. Benitez of his rights that day?

25 A I used the same card that I always carried

Testimony of Frank Lemus

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1 that has English and Spanish.

2 Q Okay. And did he indicate that he understood
3 those rights?

4 A Yes, ma'am. At the very end, he did say he
5 understood.

6 Q Okay. And in this second interview,
7 Officer Lemus, there were some more -- there were some
8 questions that the defendant had of you, that's
9 correct, right?

10 A Yes, ma'am. That is correct.

11 Q What questions did he have of you and
12 Officer Hubbard when you were advising him of his
13 rights?

14 A He was wanting to know if we had additional
15 questions, which is why he was having a little bit
16 of confusion as to why he was there and what we
17 needed him for. And if we did additional
18 questions, we would try to explain to him.

19 Q So you explained to him the purpose of this
20 interview in Spanish, correct?

21 A I did.

22 Q And you translated what the defendant said to you
23 and translated it into English for Officer Hubbard?

24 A Yes, ma'am.

25 Q Okay. And after you answered the defendant's

Testimony of Frank Lemus

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1 questions, did he agree to speak with you?

2 A Yes, ma'am. He said yes.

3 Q Did he, again, read the Miranda warnings written
4 in Spanish?

5 A Yes, ma'am. I handed the card to him for him
6 to read them for himself as well.

7 Q Okay. And so, again -- I'm sorry. I already
8 asked this, but did he agree to speak with you and
9 Officer Hubbard without a lawyer?

10 A Yes, ma'am, he did.

11 Q Okay. And did you accurately translate the
12 statements that he made to you?

13 A Yes, ma'am.

14 Q Okay. Officer Lemus, I don't have any other
15 questions for you right now for this hearing, and
16 Miss Carmody now is going to ask you questions.
17 Please answer any questions she has.

18 A Yes, ma'am.

19 THE COURT: Unmute it.

20 MS. LEMPESIS: Unmute and put the volume
21 up all the way.

22 CROSS-EXAMINATION

23 BY MS. CARMODY:

24 Q Can you hear me?

25 A Yes, ma'am. I can hear you.

Testimony of Frank Lemus

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1 Q Officer Lemus, I want to talk to you first about
2 the very first statement that my client gave on
3 October 29, 2019.

4 A Yes, ma'am.

5 Q Okay. Now, you indicated to the solicitor that
6 you were working at Hardeeville Police Department at
7 the time?

8 A Yes, ma'am.

9 Q Okay. And on October 29th, were you working as an
10 interpreter or were you working as law enforcement?

11 A I was working as a police officer, ma'am.

12 Q Okay. So when you testified that you were solely
13 there to translate, you were actually working in the
14 capacity as law enforcement?

15 A I was pulled into that room solely to
16 translate, not to perform any kind of law
17 enforcement duty as far as any -- I was there to
18 translate is what I meant.

19 Q When you say that you were there to translate, is
20 it your understanding that a translation is if the
21 person says something in Spanish, you repeat what the
22 person says in English and it's up to the officer to
23 ask for clarification?

24 A Yes, ma'am.

25 Q And is that what happened throughout that first

1 interview?

2 A He would make a statement or he would tell me
3 something that I would tell to Detective Hubbard
4 in English and Detective Hubbard would say
5 something in English and I would tell, you know,
6 Mr. Osman, I would tell it to him in Spanish.

7 Q Would you say that -- would you say that you had a
8 conversation with Mr. Benitez in Spanish for
9 clarification at times to ask him really what he
10 meant?

11 A Just to make sure I understand what I was
12 translating in English, I would -- if I didn't
13 understand what he was saying or he used a word
14 that I'm not familiar with, I would get
15 clarification, yes, ma'am.

16 Q Okay. You indicated that he was not under the
17 influence of alcohol and drugs. Did you ask him?

18 A I don't recall, ma'am.

19 Q You indicated that he was had no physical or
20 mental disabilities? Did ask you him that?

21 A I don't recall, ma'am.

22 Q And you also testified to your history in Spanish,
23 and you had indicated that both of your parents are
24 Mexican, correct?

25 A Yes, ma'am.

Testimony of Frank Lemus

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1 Q And were you born in the United States?

2 A Yes, ma'am. I was born in Colorado.

3 Q Did Mr. Benitez, at any point, tell you where he
4 was born?

5 A I don't recall asking him where he was born,
6 ma'am.

7 Q Did he speak any English?

8 A At times, he would speak a little bit of
9 English.

10 Q And you said you grew up speaking Spanish, so is
11 it fair to say that Spanish is not your first language
12 but your second language?

13 A I grew up speaking both. So however you
14 interpret that, I'm not sure.

15 Q All right. You also testified that you had given
16 Mr. Benitez a card to read his Miranda rights?

17 A Yes, ma'am.

18 Q At any point, did you ask him if he could read?

19 A I asked him if he understood what he was
20 reading, yes, ma'am. I don't know if I asked him
21 specifically the question, can you read and write?
22 I don't recall that, ma'am.

23 Q Did you ask him to read the card out loud?

24 A No, ma'am, but I can hear him read the card
25 so I didn't have to because he was reading it in

1 Spanish.

2 Q Okay. And -- all right. When Mr. Benitez was
3 brought into Hardeeville PD, it was yourself and
4 Detective Hubbard, correct?

5 A Yes, ma'am.

6 Q And you were both in uniform?

7 A Yes, ma'am.

8 Q Okay. And, at any point during the interrogation,
9 did you let Mr. -- did you or Detective Hubbard let
10 Mr. Benitez know that he was free to leave?

11 A I don't know if it was said. I don't know if
12 that was said or not. I'm not aware. I don't
13 recall.

14 Q If it was said, you would have translated it,
15 correct?

16 A If it was said. If it was translated for me
17 to tell him, yes, ma'am.

18 Q You said at times he seemed a little bit confused.

19 A Yes, ma'am.

20 Q Okay. And was it confused about the questions you
21 were asking him or were you confused about his
22 responds, or both?

23 A Ma'am, I took it as he was confused as to why
24 he was called in the second time. That's when the
25 confusion was being shown.

Testimony of Frank Lemus

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1 Q We're talking about the first statement right
2 now?

3 A The confusion was the second statement. I
4 don't recall him being confused in the first
5 statement. He just wanted to make sure -- I just
6 wanted to make sure he understood what I was
7 trying to explain to him on the Miranda card.

8 Q Okay. When you asked him if he wanted to talk
9 with you, he wanted to speak, isn't it true that you
10 left out if he would speak without an attorney?

11 A Ma'am, I read everything that was on the
12 card.

13 Q Okay. During that first statement, do you
14 remember him telling you that he had not slept?

15 A I don't recall.

16 Q If he had told you that he didn't sleep, you would
17 have translated it, correct?

18 A What was the question again, ma'am?

19 Q Did he tell you that he had not slept? He did not
20 get no sleep?

21 A Oh, yes. He did say he hadn't slept. I
22 don't remember the exact number of days. Maybe
23 three days or something. Or he was walking for
24 three days, or something like that, ma'am.

25 Q At any time, did you offer him something to drink

Testimony of Frank Lemus

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1 or something to eat?

2 A If it was not told for me to say, I would not
3 have said it. And if I recall, Officer Hubbard --
4 Detective Hubbard did offer him if he wanted some
5 water during the interview.

6 Q And you would have translated that if he asked it,
7 right?

8 A I didn't have to because he replied to him
9 that he didn't.

10 Q Okay. Going -- hold on. Let's stick with the
11 first statement first. He was confused about he had a
12 right to an attorney, correct?

13 A I don't recall, ma'am.

14 Q You don't recall --

15 A When if he showed any kind of
16 misunderstanding whether he wanted an attorney or
17 not on the first interview?

18 Q Yes.

19 A I read it to him and he said he understood.
20 He told me he understood and he wanted to speak to
21 us.

22 Q But you didn't say he'd like to speak to you
23 without an attorney?

24 A I asked him if he understood his rights. He
25 said yes. And I asked him if he would like to

Testimony of Frank Lemus

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1 speak to us, and he said yes.

2 Q Okay. On the second interview, again, you said
3 you advised him of his Miranda rights?

4 A Yes, ma'am.

5 Q And, again, in your acting in the capacity of law
6 enforcement, but like, essentially, translating as a
7 secondary function of that job?

8 A I was asked to translate because I'm able to
9 speak to him in Spanish. Is that what you're
10 asking me?

11 Q So was your primary function in law enforcement or
12 translator?

13 A They called me in there just to translate,
14 but I was police officer at the time.

15 Q Okay. And you were in uniform?

16 A Yes, ma'am, I was in uniform.

17 Q And similar to the first interrogation, it was you
18 and Officer Hubbard in the room with Mr. Benitez.

19 A Yes, ma'am.

20 Q Just the three of you in a room and it was in a
21 room at the Hardeeville Police Department.

22 A Yes. It was at 26 Martin Street in the data
23 master room, ma'am.

24 Q Did you advise Mr. Benitez that the statement was
25 being video and audio recorded.

Testimony of Frank Lemus

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1 A I don't recall, ma'am.

2 Q What about his first statement, did you advise him
3 that was being video and audio recorded?

4 A I don't recall, ma'am.

5 Q All right. On the second statement, did you ask
6 him if he was under the influence?

7 A I don't recall, ma'am.

8 Q Same thing with the physical and mental
9 impairments, do you remember?

10 A I don't recall, ma'am.

11 Q So you testified you used the same card, again, as
12 you did in the first interrogation. And, again, I'll
13 ask you, in the second interrogation, did you ask him
14 his level of education?

15 A I don't recall if I asked him about his level
16 of education. I did ask if he understood and he
17 told him yes.

18 Q All right. In the second statement you said that
19 he did agree to speak without a lawyer, which is
20 different than what you testified to in the first
21 statement when the solicitor asked you if he was
22 willing to talk with you. Do you agree that in the
23 second statement you actually included, did he agree
24 to speak without a lawyer versus in the first
25 statement you didn't?

Testimony of Frank Lemus

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1 A In the Miranda card, it states that you're
2 entitled to a lawyer. And, at the very end of the
3 Miranda warnings to make sure that he agreed to
4 speak with us.

5 Q At times, did you have to look up what words
6 meant?

7 A I did, ma'am.

8 Q And what did you use to look the words up?

9 A What did I use?

10 Q Yes.

11 A The Internet.

12 Q Just Google or is it Google Translate?

13 A Google Translate, yes, ma'am.

14 Q Would you agree that Google Translate is not
15 always accurate?

16 A I haven't had an issue. In the capacity of
17 law enforcement, I haven't had an issue of finding
18 a word when I couldn't figure out what the word
19 was or to try to get it across to the person I'm
20 speaking with.

21 Q Would you agree that context also matters?

22 A I can usually tell -- or I can tell whether
23 the word that I'm trying to translate is accurate
24 to what I'm trying to convey over to the person
25 that I'm speaking with. So if it's not an

Testimony of Frank Lemus

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1 accurate translation, I wouldn't use that.

2 Q What about when somebody says something in Spanish
3 or you're trying to say something in Spanish and it
4 requires a certain pronunciation in order to
5 understand? For instance, there's different
6 pronunciations for words for female versus male, and
7 things like that. Would you agree that there are
8 different pronunciations?

9 A Right, there is different ways to say a word.
10 Depends on what you're asking.

11 Q And, like -- let me give you a for instance. At
12 one point in his statement, he indicated that he was
13 walking up a mountain. Did you actually confirm what
14 he said?

15 A I just repeated what he said, and that's when
16 Detective Hubbard pulled something up on his phone
17 and showed him what he was referring to as a
18 mountain. I just repeated what he said.

19 Q Is it possible that that was a mistranslation?

20 A I have no idea. I just repeated what he
21 said. If it wasn't what he meant, then he didn't
22 tell me otherwise.

23 Q At any point in his interview, did he indicate to
24 you that he is from Honduras?

25 A I don't recall, ma'am.

Testimony of Frank Lemus

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1 Q You don't recall asking where he lived or --

2 A It was two years ago now. I don't recall.

3 Q Have you had an opportunity to look at your
4 statement -- his statements since then?

5 A I had an opportunity to review the video and
6 make sure that I watched that video, but it was
7 over two hours long. And I watched the entire
8 thing and it was two hours of video that I had
9 watched.

10 Q Okay. All right. Another question for you, while
11 you're interpreting a statement, especially you just
12 indicated that it was two hours long, would you agree
13 that an interpreter actually needs to take frequent
14 breaks because what would happen is they get fatigued
15 and they get tired and they actually start repeating
16 words in English versus translating those words into
17 Spanish?

18 A If you're asking me if I was tired, I was not
19 tired. I was good for the time I was there.

20 Q Would you agree that in your experience in law
21 enforcement and just having family who are Hispanics
22 that the Hispanic culture believes that cooperating is
23 good and they often say "yes" in terms of cooperation,
24 but not that they agree?

25 MS. LEMPESIS: I object, Your Honor.

Testimony of Frank Lemus

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1 That's asking Officer Lemus to --

2 THE COURT: I'll sustain that objection.

3 And by the way, the Zoom is going to time
4 out in six minutes.

5 MS. CARMODY: Yes.

6 THE WITNESS: Ma'am, I heard the question
7 but there was some talking in the background.

8 BY MS. CARMODY:

9 Q The judge sustained the objection. You don't have
10 to answer.

11 A Yes, ma'am. Yes, ma'am.

12 MS. CARMODY: I don't have any further
13 questions for the officer for this hearing,
14 Your Honor, but I will need him for another
15 hearing.

16 THE COURT: We'll have to do that
17 tomorrow because we only get one bite at the Zoom
18 a day, I think.

19 MS. LEMPESIS: What do you have?

20 MS. CARMODY: For the consent, when he
21 consented to the DNA.

22 MS. LEMPESIS: She's saying that she's
23 going to need to call him a witness in, I guess, a
24 hearing that needs to happen tomorrow before our
25 DNA expert testifies.

Testimony of Frank Lemus

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1 THE COURT: All right. And which order
2 is your DNA expert.

3 MS. LEMPESIS: Towards the end, so it
4 will be -- I have him coming tomorrow at 1:00.

5 THE COURT: Okay. So ask him if he can
6 be valuable around 12:30 tomorrow.

7 MS. LEMPESIS: Officer Lemus. I will.

8 THE COURT: All right.

9 MS. LEMPESIS: Judge, I do need to --

10 THE COURT: Sure, go right ahead.

11 (COURT EXH. 1-A, Disk of interviews, was
12 marked for identification.)

13 REDIRECT EXAMINATION

14 BY MS. LEMPESIS:

15 Q Officer Lemus, just really, really quickly, I'm
16 going to hold up to the camera. This is the disk you
17 just referred to having reviewed. Or is this the
18 disk?

19 A Yes, ma'am.

20 Q Okay. Let me take it out.

21 MS. LEMPESIS: It's marked as a Court's
22 exhibit, Judge, right now.

23 BY MS. LEMPESIS:

24 Q Officer Lemus, are you able to recognize that disk
25 that I'm showing you?

Testimony of Frank Lemus

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1 A Yes, ma'am.

2 Q And how are you able to recognize it?

3 A I put the date and my initials on it after I
4 finished viewing the video.

5 Q This statement -- these statements from the
6 defendant, they were video and audio recorded; is that
7 correct?

8 A Yes, ma'am, they were.

9 Q Does that disk that I've shown you contain that
10 interview -- those two interviews that you've
11 reviewed?

12 A It does, yes, ma'am. Yes, ma'am.

13 MS. LEMPESIS: I have no further
14 questions, Officer Lemus. Thank you. It sounds
15 like we're going to need you to be available
16 tomorrow at 12:30 to testify again virtually.

17 THE WITNESS: Yes, ma'am. Can I be
18 excused for now?

19 MS. LEMPESIS: For the State you are.
20 Judge, may he be excused?

21 THE COURT: I don't need anything
22 further. Yes, ma'am.

23 MS. LEMPESIS: Yes, sir. You can go back
24 to your training.

25 THE WITNESS: Thank you, ma'am. I.

Testimony of Thomas Hubbard

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1 appreciate that

2 MS. LEMPESIS: Thank you.

3 THE COURT: All right. For purposes
4 of -- do you need to mention any of this
5 information in your opening statement?

6 MS. LEMPESIS: Judge, we have another
7 witness to call, Officer Hubbard to testify.

8 MS. CARMODY: I have a witness, too,
9 Your Honor.

10 THE COURT: All right. Then you can be
11 excuse.

12 Mr. Hubbard.

13 MS. LEMPESIS: Thank you. Officer
14 Hubbard, you may take the stand.

15 THE COURT: Raise your right hand. Do
16 you swear or affirm the testimony you give will be
17 the truth, the whole truth, and nothing but the
18 truth?

19 THE WITNESS: I do, sir.

20 THE COURT: All right.

21 WHEREUPON:

22 OFFICER THOMAS HUBBARD,
23 after having been sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MS. LEMPESIS:

Testimony of Thomas Hubbard

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1 Q Officer Hubbard, who do you work for now?

2 A I work for the Jasper County Sheriff's
3 Office.

4 Q And did you used to work for the Hardeeville
5 Police Department?

6 A I did.

7 Q Thank you. And how long have you worked for --
8 how long have you been in law enforcement?

9 A In law enforcement for 12 years.

10 Q Were you assigned to this case as a detective on
11 October 26, 2010?

12 A Yes, ma'am.

13 Q And did you -- were you present during the
14 questioning of Mr. Benitez on October 29th of 2019?

15 A Yes, ma'am.

16 Q You've obviously heard Officer Lemus's testimony.
17 Who else was present for the interview of
18 Mr. Benitez?

19 A No one else was present other than the three
20 of us; Mr. Benitez, myself, and Officer Lemus.

21 Q Was it audio and video recorded?

22 A It was, using the data master audio and video
23 recording system.

24 MS. LEMPESIS: Permission to approach,
25 Your Honor.

Testimony of Thomas Hubbard
THE COURT: Absolutely.

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1

2

BY MS. LEMPESIS:

3

Q Officer Hubbard, I'm just going to hand you what's
4 been marked as a court's exhibit. Do you recognize
5 it?

6

A Yes, ma'am.

7

Q How are you able to recognize it?

8

A I'm able to recognize it based on my
9 signature and date on the top of the disk.

10

Q Did you review it at my request?

11

A I did.

12

Q And is it a fair and accurate depiction of the
13 interview that took place?

14

A Yes.

15

Q Both interviews that took place?

16

A It is.

17

Q Of the defendant?

18

A Yes, ma'am.

19

MS. LEMPESIS: Your Honor, I am going to
20 play -- I think we should play a portion of the
21 Miranda warnings to the defendant for Your Honor.

22

BY MS. LEMPESIS:

23

Q But first let me just ask, Officer Hubbard, in
24 your questioning of the defendant with the use of
25 Officer Lemus as a translator, did you -- did it

Testimony of Thomas Hubbard

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1 appear to you that the defendant understood what he
2 was being asked?

3 A It did.

4 Q Did he appear to be under the influence of alcohol
5 or drugs or have any mental or physical disability
6 that would impair his ability to understand?

7 A He did not have anything that he was
8 exhibiting.

9 Q Do you oftentimes use Officer Lemus to translate
10 for you?

11 A There have been times, along with other
12 officers that are bilingual.

13 Q And is that the common practice in the Hardeeville
14 Police Department to ask another officer to
15 translate?

16 A If there is one available, yes, ma'am.

17 Q And when you questioned Mr. Benitez on October
18 29th was he under arrest at that time?

19 A He was not.

20 Q And, in fact, did he come in willingly for his
21 interview?

22 A He did.

23 Q When he was advised of his rights, did you tell
24 him the purpose of the questioning?

25 A I told him that I needed to speak with him in

Testimony of Thomas Hubbard

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1 reference to an incident.

2 Q Okay. And we've heard Officer Lemus testify he
3 was advised of his rights by reading him the Spanish
4 Miranda card, correct?

5 A Correct.

6 Q Did you witness him read that Miranda card
7 himself?

8 A I did.

9 Q Did he indicate he understood?

10 A He did. He indicated he would like to read
11 the card, at which time Officer Lemus presented
12 him with the card which is printed in English on
13 one side and Spanish on the other side. I can
14 verbally hear Mr. Osman reading the card somewhat
15 silently but to himself. After reading the card,
16 he advised that he did understand.

17 Q And did you ask if he wanted to speak with you?

18 A We did.

19 Q And what he did say?

20 A He advised he would speak with us.

21 Q Okay. Was he threatened or coerced in any way?

22 A No, ma'am.

23 Q What did he tell you happened? At this first
24 interview on October 29th, can you summarize for the
25 Court what he told you happened -- what he told you as

Testimony of Thomas Hubbard

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1 far as during this questioning what he said to you?

2 A During the first interview, Mr. Osman advised
3 that he, the victim, Yobani and one of Jovani's
4 friends, which was Mr. Anibal were drinking beer
5 at his residence located at ■ St. Phillips Road
6 within Hardeeville on the night in question.

7 Mr. Osman informed that they had gone to the
8 store in reference to getting more beer. And then he
9 allowed Mr. Anibal to drive his vehicle to the store
10 in order to purchase the beer, at which time he was
11 sleeping in the back seat. He said that he was awoken
12 upon a shaking of the vehicle or jarring of the
13 vehicle. And when he came to, he saw Mr. Anibal
14 getting out of the driver's side front seat which
15 would be the driver's seat. Asked Mr. Anibal what had
16 happened and that's when he noticed that Mr. Yobani
17 was under the vehicle and Mr. Anibal ran down the
18 road. He advised that he attempted to try to get the
19 vehicle off of Mr. Yobani but was not able to, and
20 then walked away from the scene. And that was pretty
21 much it.

22 We inquired about what he did next, which
23 he advised that he had walked for about three days
24 because he did not have a cell phone that he was
25 able to use because he supposedly lost it. And

Testimony of Thomas Hubbard

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1 then he was able to locate an area where he could
2 use a phone in order to call someone to pick him
3 up and then he went to North Carolina.

4 Q Do you know if Mr. Benitez had family in
5 Hardeeville?

6 A The only family that we were aware of during
7 the course of the investigation was a wife and
8 children located at ■ St. Phillips.

9 Q In Hardeeville.

10 A In Hardeeville at the incident --

11 MS. CARMODY: Objection. Your Honor, I'm
12 not sure what this has to do with the -- for the
13 purpose of the Denno hearing.

14 MS. LEMPESIS: I'll move on.

15 THE COURT: All right.

16 BY MS. LEMPESIS:

17 Q So that was in response to the first question, the
18 first -- that was everything he told in that first
19 interview?

20 A Yes, ma'am.

21 Q And then jumping -- was he allowed to leave after
22 that?

23 A He was.

24 Q And so then jumping to the interview of
25 November 1st, did you also advise him of his rights

Testimony of Thomas Hubbard

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1 for the use of Officer Lemus as a translator?

2 A We did.

3 Q And how was he advised of his rights?

4 A The same manner as the first time, with a
5 prepared card that Officer Lemus had. Again, that
6 was read in English from my documentation, and
7 then read to him in Spanish with the use of
8 Officer Lemus.

9 Q And did he indicate that he understood and was
10 going to talk to you?

11 A Yes.

12 Q Okay. And, as Officer Lemus testified, did he ask
13 some questions of you during this interview after his
14 rights were read to him?

15 A He was -- per Officer Lemus, he was
16 exhibiting confusion based upon why we were
17 requesting him to come back because he advised us
18 of all that he could remember of the incident
19 during the first interview. I explained to
20 Officer Lemus to translate to him that we were
21 needing to follow up with additional questions we
22 had since our first interview, and that's why he
23 was asked to return so we could ask him the
24 follow-up questions that we did have, and also to
25 clarify anything that he may not have remembered

Testimony of Thomas Hubbard

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1 at the time of the first interview and recollected
2 after the fact for the second interview.

3 Q Okay. And after that back and forth, did he end
4 up agreeing to talk?

5 A He did.

6 Q Okay. Can you tell me what he did tell you in
7 that interview?

8 A During the portion of this interview,
9 Mr. Osman kept to the fact that he was not aware
10 of what happened, pretty much sticking to the same
11 story that he had provided during the first
12 interview. When informing him that we had video
13 evidence of him arriving at the Octane Gas Station
14 where he was, in fact, the driver of the vehicle
15 and Mr. Anibal was not the driver of his vehicle,
16 as he had claimed in his first statement, he
17 advised that he did not recall that. We also
18 questioned him about additional video that we had
19 from the Palmetto Trucking car garage located at
20 the corner of St. Phillips Road and Paynesville
21 Road.

22 MS. CARMODY: Objection. Again, Your
23 Honor, I'm not sure what this -- the relevance of
24 this testimony right now for the purposes of the
25 Denno hearing.

Testimony of Thomas Hubbard

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1 MS. LEMPESIS: We have introduced his
2 statement, Judge. I'm not going to play it. He
3 needs to testify in Jackson v. Denno to what the
4 defendant said as part of the hearing. I'm not
5 going to play the entire hour, two-hour interview,
6 so I'm asking Officer Hubbard to testify to it.

7 THE COURT: All right. I'll overrule it.

8 MS. CARMODY: He's also testifying to
9 what Officer Lemus said. He's not testifying to
10 what Mr. Osman said. He doesn't know what
11 Mr. Osman said.

12 MS. LEMPESIS: That's why we called
13 Officer Lemus because he translated it. If Miss
14 Carmody wants to challenge the translation, then
15 she'll have to do that.

16 THE COURT: Okay. I'll overrule it.

17 MS. LEMPESIS: Thank you, Your Honor.
18 Officer Hubbard, you can continue.

19 THE WITNESS: I believe we left off where
20 we picked up video from the Palmetto Trucking car
21 garage located at the corner of St. Phillips and
22 Paynesville Road. On that video, it shows that
23 Mr. Anibal is seen running from Mr. Osman's place
24 of residency back on to Paynesville Road towards
25 the direction of Young Street. A short period

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1 after the victim's vehicle, which was a
2 white-colored Suburban, was seen exiting from the
3 driveway of St. Phillips and proceeded towards
4 Young Street, which is the same direction that Mr.
5 Anibal had been last seen running towards. The
6 victim's vehicle is then seen stopping near where
7 Mr. Anibal was last seen on video in appearance of
8 picking him up. And when the vehicle proceeded,
9 Mr. Anibal is no longer seen on video at all.

10 A short time later, the vehicle of
11 Mr. Osman was seen leaving his place of residency
12 at St. Phillips at a high rate of speed,
13 proceeding in the same direction as which
14 Mr. Jovani's vehicle was seen traveling towards
15 Young Street again at a high rate of speed
16 catching up to the vehicle and also passing the
17 vehicle. At which time, they go out of sight from
18 the camera vehicle.

19 BY MS. LEMPESIS:

20 Q And, Officer, I am going to cut you off there
21 because we are talking about what he did say to you
22 during this interview and that's where we need to get
23 to right now.

24 A Right.

25 Q You explained to him -- essentially, you're

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1 telling the Court that you explained to him that you
2 had video surveillance footage that shows --

3 A Correct.

4 Q -- the events of the night.

5 A Explained all that to him. He advised that
6 he did not know what you were talking about. He
7 did not recall any of that.

8 Q Okay. After saying he doesn't remember and didn't
9 know what you were talking about, what happened after
10 that?

11 A I noted that Mr. Osman exhibited nervousness
12 and telling us that we did not know what we were
13 referring to as far as explaining to him the
14 evidence that we had collected. Mr. Osman never
15 advised that he wanted to stop talking or
16 anything. But after getting to a point where he
17 was not giving us any additional information from
18 what we had previously collected, we ended the
19 interview.

20 Q Another thing, Officer Hubbard, is, did you get
21 consent from him during this interview to take a
22 buccal swab from him?

23 A We did.

24 Q Okay. And then, finally, was he placed under
25 arrest -- was he arrested at this interview?

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1 A He was arrested shortly after the
2 interview.

3 MS. LEMPESIS: Your Honor, at this time,
4 I would like to show the Court portions of the
5 interviews that just have the Miranda warnings.

6 THE COURT: All right.

7 MS. LEMPESIS: Unfortunately, we have not
8 been able to get the TV to show what our tablet is
9 showing, so, if it pleases the Court, I would like
10 to just put our tablet up next to you and you can
11 view it.

12 MS. CARMODY: I can get it up on mine.

13 MS. LEMPESIS: Let me just use -- I
14 apologize, Judge. I don't have anything to
15 display on the screen as far as testimony today,
16 so we'll have that running by tomorrow.

17 MS. CARMODY: Your Honor, when I call --
18 Mr. Solano will testify. We're actually going to
19 start from the beginning. So if it will please
20 the Court, I would think we should just watch it
21 one time from the beginning rather than --

22 THE COURT: All right.

23 MS. CARMODY: You want to play the whole
24 thing?

25 MS. LEMPESIS: I don't want to play the

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1 whole thing. I just want to play the parts that
2 show Miranda. And Miss Carmody is going to be
3 disputing the testimony in her -- when she calls
4 Mr. Solano. So I think the Court might need to
5 see it now and then -- rather than to see with
6 Mr. Solano, pausing to tell you how it's wrong.

7 THE COURT: Just fast forward it to the
8 Miranda.

9 MS. LEMPESIS: Thank you. We have it
10 time marked.

11 THE COURT REPORTER: Counsel, can you
12 tell me the time marks for the record, please?

13 MS. LEMPESIS: Yes, ma'am.

14 (Video played from time mark 2:32 to 5:26.)

15 MS. LEMPESIS: That's the portion from
16 the first hearing.

17 THE COURT: All right.

18 (Video two played from 1:30 to 8:45)

19 MS. LEMPESIS: Your Honor, I don't have
20 any other questions for Officer Hubbard.

21 THE COURT: Miss Carmody.

22 MS. CARMODY: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MS. CARMODY:

25 Q Detective Hubbard, there were -- you were present

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1 for both interrogations?

2 A Yes, ma'am.

3 Q Both. And both times, everything that you
4 testified to was based on what Officer Lemus was
5 telling you, correct?

6 A Correct. Translations that he was providing
7 from Mr. Osman and then providing to Mr. Osman
8 from me.

9 Q You don't speak Spanish yourself?

10 A I do not.

11 Q And you don't understand Spanish?

12 A Very little.

13 Q Okay. At times, Officer Lemus would try to
14 clarify things with Mr. Benitez without you having to
15 ask him to?

16 A I'm sorry.

17 Q Would Officer Lemus clarify what you were saying
18 without you having to ask him the question?

19 A I believe there were times where he was
20 trying to clarify. And, again, most of the times,
21 that I recall, he was explaining to me in English
22 what he was trying to clarify for the
23 documentation.

24 Q Okay. And you indicated that it appeared that
25 Mr. Benitez understood, correct?

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1 A Correct.

2 Q But that is based on what you're hearing from
3 Officer Lemus?

4 A Also from Mr. Osman as well. I understand
5 "si" as an indication of yes. So when we're
6 asking him if he understood Mr. Osman, he stated,
7 "si."

8 Q So on that one word "si," you took that to mean
9 that he understood everything that he was saying?

10 A From that one question, yes.

11 Q Okay. That would require the interpretation to be
12 correct?

13 A Again, yes. And that's what Officer Lemus
14 translated.

15 Q On his first statement, actually in either
16 statement, are you aware that Mr. Benitez is from
17 Honduras?

18 A I don't recall if I knew that or not.

19 Q You know that he doesn't speak English?

20 A Correct.

21 Q Is it fair to say that you knew he wasn't a
22 citizen of the United States?

23 A I couldn't tell. I didn't ask that
24 question.

25 Q Did you ask him for his identification?

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1 A I can't remember if I did or not.

2 Q Okay. You don't remember if you asked him for ID?

3 A I don't recall if I did or not.

4 Q How did you know he was the person -- how did you
5 know he was Mr. Benitez?

6 A We had his information off the registered
7 owner of the vehicle.

8 Q When he came in, though, you assumed it was him?

9 A Yes.

10 Q All right. Are you aware that nationals of
11 another country can contact a consulate to request an
12 interpreter?

13 A I was not aware.

14 Q So it's fair to say that you didn't advise him
15 that he could contact a consulate for an
16 interpreter?

17 A I didn't advise him.

18 Q Are you aware of whether Officer Lemus advised him
19 that he could contact a consulate for an
20 interpreter?

21 A Not that I'm aware of.

22 Q Okay. You indicated that, at times, you used
23 Officer Lemus as an interpreter. What other means of
24 interpreting did you use?

25 A Other officers.

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1 Q What about the language line?

2 A We did not have one set up for the
3 Hardeeville Police Department.

4 Q How long have you been in law enforcement?

5 A Twelve years.

6 Q Have you ever used a language line or always used
7 law enforcement officers?

8 A Recently, I have used the language line being
9 at the Jasper County Sheriff's Office because
10 there is one set up, but not prior.

11 Q And I asked Officer Lemus, but I'll ask you as
12 well. You both were in uniform, correct?

13 A Correct.

14 Q Officer Lemus was informed of the facts -- well,
15 the background information about the case as well? He
16 knew what was going on?

17 A I'm not sure what you mean.

18 Q Did Officer Lemus know what was going on with the
19 case?

20 A I informed him that I needed him to do a
21 translation for an investigation that I was
22 currently working on. I'm not aware if he was
23 briefed on everything for the case or not.

24 Q All right. And, in the first interview, I
25 understand that this is information that Officer Lemus

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1 has provided to you, but Officer Lemus provided you
2 information that Mr. Benitez said he had not been --
3 he had not slept for three days?

4 A I believe that's correct.

5 Q At any point, did you offer him anything to drink
6 or anything to eat?

7 A I don't recall offhand.

8 Q If you did, it would be on video, correct?

9 A It would.

10 Q All right. At any point, did you direct
11 Officer Lemus to interpret to Mr. Benitez that he was
12 free to leave?

13 A At any time?

14 Q At any point in the first interrogation, did you
15 tell him he was free to leave?

16 A I believe at the end of the interview we told
17 him, thank you for coming in, he was free to
18 leave.

19 Q At the end of the interview?

20 A I believe so.

21 Q What about the second interrogation, did you tell
22 him he was free to leave?

23 A We told him if he didn't want to speak
24 anymore then we would stop the interview.

25 Q But not that he would be free to leave the room

1 and go home?

2 A I don't believe -- specifically telling him
3 that, no.

4 Q And he was interrogated both times at Hardeeville
5 PD in a room with yourself and Lemus, correct?

6 A Interview twice, yes, ma'am.

7 Q I just want to make sure that's it.
8 Officer Lemus had testified that at times he seemed a
9 little bit confused. Did you always ask Officer Lemus
10 to help him understand or did he do it on his own?

11 A I don't readily recall. I believe that some
12 of that he was doing on his own, especially during
13 the Miranda rights being read to him. But he
14 would tell me in English what he was informing
15 Mr. Benitez of.

16 Q Would you agree that when he's informing of things
17 that you're not directing, he's not acting as an
18 interpreter, he's acting as a law enforcement
19 officer?

20 A I can't say that.

21 Q Well, if he wasn't interpreting what you said, he
22 would be -- he would be directing you to say he
23 doesn't understand, what would you like me to do.

24 A I would dictate that as clarifying. I
25 wouldn't say that would be in a law enforcement

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1 action.

2 Q He explained to him his Miranda rights?

3 A Correct.

4 Q In the first statement where he -- Officer Lemus
5 says, would you like to speak to us, he didn't say,
6 would you like to speak to us without an attorney,
7 correct?

8 A I believe on both interviews I specifically
9 asked if he was willing to speak with us without
10 an attorney.

11 Q And you're -- okay. And it's your assumption that
12 the translation was correct, right?

13 A I'm going off of his translation so, yes.

14 Q All right.

15 MS. CARMODY: I don't believe I have any
16 further questions, Your Honor.

17 THE COURT: All right. Thank you very
18 much. Anything further, Miss Lempesis.

19 MS. LEMPESIS: Not from the State for
20 Officer Hubbard.

21 THE COURT: All right. Miss Carmody.

22 MS. CARMODY: Yes. Your Honor, the
23 defense will call Mr. Solano.

24 THE COURT: All right. Do you swear the
25 testimony you give will be the truth, the whole

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1 truth, and nothing but the truth?

2 THE WITNESS: I do.

3 WHEREUPON:

4 JAIRO SOLANO,

5 after having been sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MS. CARMODY:

8 Q Mr. Solano, could you please spell your name for
9 court reporter?

10 A Jairo, J-a-i-r-o. The last name S-o-l-a-n-o.

11 Q And, Mr. Solano, how long have you lived in the
12 United States?

13 A Fifty-two years.

14 Q And were you born in the United States?

15 A No.

16 Q Where were you born?

17 A Columbia, South America.

18 Q And what is your first language?

19 A I been here so long, it would be both.

20 Q Growing up, did you speak Spanish or did you speak
21 English?

22 A Growing up, I spoke Spanish. And I belong to
23 a Spanish-speaking congregation. I teach the
24 Bible and I give courses in Spanish. So I will
25 say maybe I speak more Spanish than English.

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1 Q Okay.

2 MS. LEMPESIS: Judge, I'm sorry to
3 interrupt, but just make sure, I don't have a
4 problem with it, but this is not being translated
5 for the defendant.

6 THE COURT: The only thinking I was
7 thinking of was that, either tomorrow or at the
8 request of the defendant, he'll have to read him
9 the transcript of what's being said so he'll be
10 aware of what was testified to.

11 MS. LEMPESIS: Okay.

12 BY MS. CARMODY:

13 Q He has headphones.

14 All right. And, Mr. Solano, did you have
15 an opportunity to review both of the defendant's
16 statements to law enforcement?

17 A I did.

18 Q All right. I'm going to start at the first
19 interrogation. Mr. Solano, I'm going to play the
20 recording. If you would please let me know where you
21 would like me to stop. I'd like to let the Court know
22 what the officer says and what Mr. Benitez says.

23 A If I could ask also, that the volume --

24 Q Turn it up?

25 A In the previous, it's been, kind of, low for

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1 me because the interpreter and the defendant,
2 they're volume is not as loud as the detective.

3 Q I'll turn it up.

4 (Video interview one played.)

5 Q Let me know if I need to turn it up some more.

6 A It's too low for me to hear. Put it as loud
7 as you can.

8 Q It's at 100.

9 MS. CARMODY: Do you have volume on your
10 end too, or is it only me? Miss Bostick, do you
11 have volume on your end too, or is it only me?

12 THE CLERK: It's all the way up.

13 THE WITNESS: I can just pause it more
14 than I have to. I can pause and make a statement,
15 if I listen to it using earphones.

16 BY MS. CARMODY:

17 Q Yes.

18 A And also that the interpreter has a very
19 strong accent, so sometimes, the pronunciation,
20 I'm having to pause to understand what he was
21 trying to say. So that's why the higher volume is
22 better for me.

23 Q Just raise your hand and I'll pause.

24 A Okay.

25 (Video played.)

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1 BY MS. CARMODY:

2 Q Can you hear it? Okay.

3 A If I could stand closer to the speaker maybe.

4 THE COURT REPORTER: I have an actual
5 speaker.

6 THE CLERK: Okay.

7 MS. CARMODY: Thank you.

8 THE COURT: All right. Stop it for a
9 second. We're just going to do this tomorrow. I
10 mean, unless you're going to bring it up in your
11 opening statement, we're wasting hours of the
12 jury's time. We don't have time for this.

13 So I'll just have to take it under
14 advisement. Are you planning on -- just don't
15 bring up anything as to the statements that he may
16 or may not have given in your opening statements
17 and we'll address this once we get all this stuff
18 sorted out in the morning.

19 All right. Anything that we need to do
20 before we get started other than we sequestered
21 the witness and I granted that motion?

22 MS. CARMODY: Your Honor, additional
23 motion would be DNA, Your Honor.

24 THE COURT: I said we would get to that
25 whenever she said they were going to testify and

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1 that would be at lunchtime tomorrow because the
2 DNA expert is going to be here at one o'clock.

3 MS. CARMODY: Okay. Your Honor, briefly,
4 just so I don't forget, could I put my Court's
5 exhibits in for the court reporter?

6 THE COURT: Absolutely.

7 MS. CARMODY: Thank you. I'm handing the
8 court reporter what's been previously marked as
9 the Court's Exhibits 1 through 8, which is
10 defense's renewed discovery motion, my potential
11 witness list, motion to sequester the State's
12 witnesses, proposed voir dire, notice of motion,
13 and motion to dismiss for speedy trial violation,
14 memorandum of law in support of a speedy trial
15 violation, notice of motion and motion to suppress
16 statements to law enforcement, and the notice of
17 motion and motion to suppress the identification
18 evidence and memorandum in support.

19 (COURT EXH. 1, Defense's renewed discovery
20 motion, was marked for identification.)

21 (COURT EXH. 2, Potential witness list, was
22 marked for identification.)

23 (COURT EXH. 3, Motion to sequester the
24 State's witnesses, was marked for identification.)

25 (COURT EXH. 4, Proposed voir dire, was

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marked for identification.)

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(COURT EXH. 5, Motion to dismiss for speedy trial violation, was marked for identification.)

(COURT EXH. 6, Memorandum of law in support of a speedy trial violation, was marked for identification.)

(COURT EXH. 7, Notice of motion; motion to suppress statements to law enforcement, was marked for identification.)

(COURT EXH. 8, Notice of motion; Motion to suppress the identification evidence and memorandum in support, was marked for identification.)

THE COURT: All right. Thank you, ma'am.

MS. CARMODY: Thank you.

THE COURT: All right. Miss Lempesis, anything before we bring them out?

MS. LEMPESIS: Yes, Judge. If I could take a quick restroom break.

THE COURT: We'll take a five-minute break.

MS. LEMPESIS: I'm sorry. Just so I know for tomorrow's purposes, the identification issue, we're just going to take it up prior to that witness's testimony?

THE COURT: Well, you can take it first

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1 thing in the morning. We just got to figure out a
2 way to do it. Now is not the time to figure it
3 out with the jury sitting back there.

4 So all I was saying was, since the
5 statement -- I have not agreed to allow the statement
6 to come in and discussing the voluntariness of it
7 because she still has the witness to go through, just
8 don't mention it in your opening statement that he
9 gave any statements.

10 MS. LEMPESIS: Sure. I've got that part.
11 But I'm talking about the identification of the
12 defendant by one of our witnesses, Anibal Berdugo.

13 THE COURT: Correct. We'll do it all in
14 the morning.

15 MS. LEMPESIS: Okay. Okay. I think we
16 can --

17 THE COURT: Okay, we'll take a quick
18 break.

19 MS. LEMPESIS: Do you need to object to
20 the picture as well?

21 MS. CARMODY: I'm sorry, Your Honor.

22 THE COURT: Off the record.

23 (Off the record.)

24 THE COURT: All right. Let me see. What
25 pictures are we objecting to?

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1 MS. LEMPESIS: I'm objecting to the
2 pictures. It was on the State's -- okay. So
3 State's 2 and State's 3 are duplicative, Your
4 Honor. And State's 5, as well. They all depict
5 the same thing. I believe that's redundant and a
6 waste of time.

7 THE COURT: Pass them up.

8 MS. LEMPESIS: I'll bring them up, Your
9 Honor.

10 MS. CARMODY: Under 403, Your Honor.

11 MS. LEMPESIS: Judge, those are pictures
12 of the victim. They're pictures of the scene that
13 Officer Watson will testify to. They show the
14 victim's body. You can see the bottom half of his
15 body. His leg sticking out from underneath the
16 defendant's car. There's two different angles of
17 that. And then the last one, Number 5, shows that
18 is the back of his head and it's facing the other
19 direction so you don't see his face. But that is
20 a view that shows his body, how it's pinned
21 underneath the vehicle.

22 THE COURT: And your objection is that
23 they are duplicative under 403?

24 MS. CARMODY: Yes, Your Honor. 403. You
25 know, it's more prejudicial than probative. I

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1 believe that the State is trying to prove how the
2 injury occurred and they can do that through one
3 photograph and not three of them. And, you know,
4 it's duplicative as well, Your Honor.

5 THE COURT: All right. I'll overrule the
6 objection. I'll allow it. They're all from
7 different angles and different parts of the scene.
8 Let's take a quick ten-minute break, five-minute
9 break, a quick break.

10 MS. LEMPESIS: Thank you, Your Honor.

11 (A break was taken.)

12 THE COURT: All right. Bring them out.

13 (Jury enters the Courtroom at 3:09 p.m.)

14 THE COURT: All right. Well, good
15 afternoon. I hope you had a good lunch.
16 Obviously, there was a scheduling snafu, so I did
17 not realize something was going to take so long so
18 I messed that up. Sorry about leaving you-all
19 back there a little longer than I expected. I
20 apologize.

21 At this point, we're going to go ahead
22 and swear you in and then we'll proceed.

23 THE CLERK: Thank you. Please stand and
24 raise your right hand. Do you swear or affirm
25 that you shall well and truly try the case

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1 2019-GS-27-819, The State of South Carolina vs.
2 the defendant, Osman Uvaldo Jimenez-Benitez and
3 render a true verdict according to the law and the
4 evidence so help you God?

5 JURY PANEL: I do.

6 THE CLERK: Thank you. If you took the
7 oath, you may be seated.

8 THE COURT: All right.

9 THE CLERK: I think we got the
10 foreperson. Mr. Laire?

11 FOREPERSON: Yes.

12 THE COURT: You're the only one that has
13 to keep the same seat. Everybody else can rotate.
14 That's the reason she was asking. You're in the
15 hot seat. You stay there.

16 All right. Ladies and gentlemen, at this
17 time, I'm going to allow the parties to give their
18 opening statement. As I indicated before, this is
19 not to be considered by you as evidence. This is
20 simply what they think the evidence is going to
21 show throughout the trial.

22 Also -- I was going to remind you-all of
23 something, but now I can't remember what it was.
24 Do you want to all agree, instead of saying, Osman
25 Uvaldo Jimenez-Benitez, do you-all want to call

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1 him Mr. Benitez? Can we all agree on that?

2 MS. CARMODY: Yes, Your Honor.

3 THE COURT: Make it easier on everybody.

4 MS. LEMPESIS: Sure, Your Honor.

5 THE COURT: He has a hyphenated name, but
6 we're going to condense it down to Benitez.

7 All right. Miss Lempesis, happy to hear
8 from you.

9 MS. LEMPESIS: Thank you, Your Honor.
10 May it please the Court?

11 OPENING STATEMENT

12 Mr. Benitez, Osman Jimenez-Benitez, the
13 defendant in this case, sitting here. He is
14 charged with the crime of hit and run with death
15 resulting. You've heard the judge tell you that
16 that is what we're here for today.

17 I am the prosecutor in the case and my
18 job is to prove to you-all beyond a reasonable
19 doubt that Mr. Benitez was the driver of the
20 vehicle involved in an accident, and that he left
21 the scene and did not go and seek help, or, if he
22 did go seek help, he didn't return to the scene in
23 order to stay until law enforcement arrived. And
24 as a result of that accident, someone died. And
25 that's exactly what happened here. That's exactly

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1 what I'm going to prove to you through witness
2 testimony and evidence that you will see and you
3 will hear and that we will show you.

4 Osman Jimenez-Benitez, Mr. Benitez, the
5 defendant in this case, was the driver of the
6 vehicle, his vehicle registered to him, on
7 October 26th of 2019 at about four o'clock in the
8 morning when he, while driving that vehicle, ran
9 over the victim in this case. The victim's name
10 is Yobani Roblero Morales. Mr. -- and we'll call
11 him Yobani. Yobani was run over by the
12 defendant's car while the defendant was driving
13 and he was left there by Mr. Benitez to die.
14 Mr. Benitez left. He did not return and he did
15 not call for help.

16 Yovani's sister, who lived just up the
17 street, she's the one who called 911. And by the
18 time EMS got there and fire got there, it was too
19 late, and Mr. Yobani was deceased. He had died.

20 You're going to see pictures. You're
21 going to see surveillance footage. And you're
22 going to hear testimony of witnesses. And all of
23 this is going to prove to you beyond a reasonable
24 doubt that Mr. Benitez is guilty of this crime.
25 And at the end of the case, I'm going to come back

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1 and I'm going to ask you to find him just that;
2 guilty.

3 Thank you.

4 THE COURT: All right. Yes, ma'am.

5 MS. CARMODY: Thank you. May it please
6 the Court, Madame Solicitor?

7 THE COURT: Yes, ma'am.

8 OPENING STATEMENT

9 MS. CARMODY: Good morning, everybody.
10 As I told you before, my name is Carolyn Carmody
11 and I'm an attorney in South Carolina.

12 Mr. Osman Jimenez-Benitez, he's 33 years
13 old. He lived in Honduras up until about 2014.
14 He moved to the United States in 2014. If you'll
15 notice, we have an interpreter at the table
16 because Mr. Benitez actually speaks Spanish. Most
17 of the witnesses in this case speak Spanish.

18 This case is very, very sad, sad case.
19 It involves a death of Mr. Yobani Morales.
20 Mr. Morales was a very good friend of Mr. Benitez.
21 This case is about what happened to Mr. Morales.
22 We are here to determine what happened because
23 this case is not as the solicitor told you, that
24 Mr. Benitez just ran over his friend and left him
25 there. That's not what happened. The State has

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1 the burden to prove to you beyond a reasonable
2 doubt what happened in this case.

3 The evidence in this case will show you
4 that the State cannot prove to you beyond a
5 reasonable doubt that Mr. Osman Benitez ran over
6 his friend and left him there. That's not what
7 happened.

8 And, as I said, this is a sad case. The
9 evidence in this case is sad. Mr. Morales's
10 sister, Sara she's without her brother. It is a
11 very, very sad case. A sad case doesn't mean that
12 the defendant is the one who did it and this
13 defendant is guilty. That's not what it means.
14 It means that he feels for Sara and her family and
15 Mr. Yobani just like she does. He was a very good
16 friend.

17 The evidence in this case will show you
18 that they were very good friends, that they were
19 actually hanging out that night along with another
20 individual.

21 I do not want to take up too much of your
22 time because I understand your time is precious
23 and it's valuable. I need your attention in this
24 case. I need you to pay attention to the
25 evidence, what evidence there is, and what

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1 evidence there isn't.

2 Thank you.

3 THE COURT: All right. Miss

4 Lempesis call your first witness.

5 MS. LEMPESIS: The State calls Officer

6 Rhonda Watson.

7 THE CLERK: Raise your right hand. Do

8 you swear or affirm the testimony you give the

9 court will be the truth?

10 THE WITNESS: Yes, ma'am.

11 WHEREUPON:

12 RHONDA WATSON,

13 after having been sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MS. LEMPESIS:

16 Q Good afternoon, Officer Watson. Can you state

17 your name for the court reporter?

18 A Yes, ma'am. My name is Rhonda Watson,

19 R-h-o-n-d-a, W-a-t-s-o-n.

20 Q Thank you.

21 MS. LEMPESIS: Have we sworn the witness?

22 THE COURT: She did.

23 MS. LEMPESIS: Thank you.

24 BY MS. LEMPESIS:

25 Q Officer Watson, who do you work for?

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1 A I currently work for Jasper County Sheriff's
2 Office.

3 Q Who did you work for in October of 2019?

4 A The Hardeeville Police Department.

5 Q Okay. And how long have you been in law
6 enforcement?

7 A Ten years.

8 Q Were you working on October 26th of 2019?

9 A Yes, ma'am, I was.

10 Q And did you respond to an incident at Haynesville
11 Road and Young Road (sic)?

12 A Yes, ma'am.

13 Q Okay. And what was that report? What did that
14 incident come in and reported as?

15 A When dispatch gives out the call, it said
16 something about, *I think my brother's dead. He's*
17 *under the car.* We couldn't quite make out exactly
18 what it was until we got on scene.

19 Q Okay. And did you respond to the scene?

20 A I did.

21 Q Okay. And were you the first person on scene?

22 A Yes, ma'am.

23 Q Officer Watson, I'm going to show you without
24 showing it to the jury what we marked as State's
25 Exhibit 1.

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1 (PLF. EXH. 1, Aerial map, was marked for
2 identification.)

3 MS. LEMPESIS: Your Honor, permission to
4 approach the witness?

5 THE COURT: Absolutely.

6 MS. LEMPESIS: Counsel has seen he --

7 MS. CARMODY: Your Honor, may we approach
8 briefly?

9 THE COURT: Sure.

10 (Bench conference off the record.)

11 MS. LEMPESIS: And, Judge, if I can just
12 ask Deputy Watson permission to step down from the
13 bench, it will be easier that way.

14 THE COURT: Sure.

15 BY MS. LEMPESIS:

16 Q Deputy Watson, can you just come around here?

17 A (Complies.)

18 Q And without showing it to the jury, I want to show
19 to you, if you can take a look, do you recognize what
20 this is, State's Exhibit 1?

21 A I do.

22 Q Okay. And what is it?

23 A This is an aerial map of -- showing the
24 location of the incident.

25 Q Okay. How are you able to recognize that this is

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1 a map of this location?

2 A Well, this is US 17 and this is Haynesville
3 Road and this is Young Street that intersects with
4 Haynesville Road.

5 Q And is this a fair and accurate depiction of this
6 area that is shown here?

7 A Yes, ma'am.

8 MS. LEMPESIS: Okay. Your Honor, at this
9 time I move to admit State's Exhibit 1 into
10 evidence.

11 THE COURT: All right. Any objection?

12 MS. CARMODY: Subject to over the
13 objection.

14 THE COURT: All right. Over the
15 objection.

16 (PLF. EXH. 1, Aerial map, was entered into
17 evidence.)

18 MS. LEMPESIS: Permission to publish?

19 THE COURT: Yes.

20 MS. LEMPESIS: Thank you.

21 BY MS. LEMPESIS:

22 Q All right. Deputy Watson -- and I apologize, I
23 asked you -- would you come back down?

24 A Yes, ma'am.

25 Q Thank you. Just so we can point it out clearly

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1 for the jury. Would you show me where you responded
2 on this map?

3 A Right here at this intersection with
4 Haynesville Road and Young Street.

5 Q Okay. And do you recall where -- do you recall
6 where the vehicle was located when you got there?

7 A Yes. It was partially over this ditch line
8 on this side of the roadway of Young Street.

9 Q Where is this?

10 A In the city limits of Hardeeville.

11 Q And what county is that located in?

12 A Jasper County.

13 Q Deputy Watson, you can sit back down. When you
14 got there, what did you see initially?

15 A I saw a dark-colored vehicle that looked like
16 it was partially in the ditch. I walked briefly
17 around the vehicle, not in the ditch line. I
18 could see what looked like legs and feet hanging
19 out in front of the vehicle.

20 Q Did you see anybody else around the area when you
21 first arrived?

22 A No, ma'am.

23 MS. LEMPESIS: Permission to approach the
24 witness, Your Honor?

25 THE COURT: Yes, ma'am.

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1 (PLF. EXH. 2, Photo, was marked for
2 identification.)

3 (PLF. EXH. 3, Photo, was marked for
4 identification.)

5 (PLF. EXH. 4, Photo, was marked for
6 identification.)

7 (PLF. EXH. 5, Photo, was marked for
8 identification.)

9 BY MS. LEMPESIS:

10 Q Deputy Watson, I'm going to hand you what's been
11 marked for identification purposes as State's Exhibit
12 2 through 5. If you can just take a minute and tell
13 me when you're done.

14 A (Complies.) Yes, ma'am.

15 Q Thank you. Do you recognize those pictures?

16 A I do.

17 Q How are you able to recognize them?

18 A That's the vehicle that I came in contact
19 with when I first came on scene. And that's the
20 young man that was hanging out underneath the
21 vehicle.

22 Q Okay. And do those pictures fairly and accurately
23 depict what you saw that night?

24 A Yes, ma'am.

25 MS. LEMPESIS: Your Honor, at this time,

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1 I would move to admit State's Exhibit 2 through 5
2 into evidence.

3 THE COURT: Any objection?

4 MS. CARMODY: Subject to 403, Your Honor.

5 THE COURT: All right.

6 (PLF. EXH. 2, Photo, was entered into
7 evidence.)

8 (PLF. EXH. 3, Photo, was entered into
9 evidence.)

10 (PLF. EXH. 4, Photo, was entered into
11 evidence.)

12 (PLF. EXH. 5, Photo, was entered into
13 evidence.)

14 MS. LEMPESIS: Your Honor, permission to
15 publish the pictures?

16 THE COURT: Are you going to put it on
17 ELMO?

18 MS. LEMPESIS: Yes, sir.

19 THE COURT: Okay.

20 MS. LEMPESIS: Miss Bostick, can you tell
21 me how to turn it on?

22 THE CLERK: There should be a button at
23 the top.

24 MS. LEMPESIS: Thank you.

25 BY MS. LEMPESIS:

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1 Q Miss Watson, we got a little bit of a glare
2 happening here, but can you tell the jury what we're
3 looking at in State's Exhibit 2?

4 A That's the side-view of the vehicle, and I
5 see the feet hanging out in front of the
6 vehicle.

7 Q And I'm going to point, but tell me if I'm
8 pointing in the wrong direction. Is this -- are these
9 the feet that you're referring to?

10 A Yes, ma'am. That should be the right foot.

11 Q Okay. And now, State's Exhibit 3, to the extent
12 that you can see -- Deputy Watson, I've cut off some
13 of the picture, but is that the front of the
14 vehicle?

15 A Yes, it is, from the driver's side. And I
16 can see the legs of the young man hanging out the
17 front of the vehicle from the side view.

18 Q Okay. Is that right here that we're looking?

19 A Down just a little bit further. A little
20 more.

21 Q Okay.

22 A Right there.

23 Q Okay. This is State's Exhibit 4. And can you
24 tell the jury what we're looking at here?

25 A Yes. That's the back of the vehicle that was

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1 partially in the roadway on Haynesville Road, and
2 the front of the vehicle pointing towards the
3 ditch and there's a road sign that also says that
4 it's Young Street and Haynesville Road.

5 Q Okay. State's Exhibit 5, I'm going to try to
6 adjust the glare. Deputy Watson, can you tell us what
7 we're looking at, which is hard to see in this
8 picture?

9 A Yes, ma'am. That's going to be the front
10 driver's side of the vehicle. That's the front
11 driver's side tire. And you can see the head of
12 the victim just past the tire closest to the door.

13 THE COURT: Miss Lempesis, turn it.

14 MS. LEMPESIS: Turn the picture.

15 THE COURT: There you go.

16 MS. LEMPESIS: Is that better?

17 THE COURT: Now, I can see it.

18 MS. LEMPESIS: Thank you, Judge.

19 THE COURT: Deputy, if you want to, here
20 is a -- they call them cat toys, not a pointer
21 because they're against the law, but you can
22 utilize it to point where you want to on there so
23 everybody can see it.

24 THE WITNESS: Yes, sir.

25 THE COURT: Sorry.

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1 BY MS. LEMPESIS:

2 Q So now, Deputy Watson, with the Judge's kind
3 guidance, can you point to us what we're looking at?

4 A Okay.

5 THE WITNESS: It makes it go away once it
6 goes to the screen, Your Honor.

7 BY MS. LEMPESIS:

8 Q It's not going to point on the screen?

9 A No.

10 Q I'll point again, Deputy Watson, is this where
11 you're looking?

12 A Yes. That's the head of the young man that's
13 underneath the vehicle.

14 Q Okay, thank you.

15 THE WITNESS: Thank you, Your Honor.

16 THE COURT: You can keep it.

17 BY MS. LEMPESIS:

18 Q What did you do after you got there and observed
19 the scene? What were the steps that you took as the
20 responding officer?

21 A My shift supervisor was immediately en route.
22 And as soon as he got there, I told him that the
23 young man was underneath the vehicle. And then I
24 tried to pull the complainant that had called in
25 to 911, I pulled her away from the scene so that

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1 she couldn't see anything else that was going to
2 take place because she had stated it was her
3 brother.

4 Q So you were -- you became aware that the person --
5 did you become aware of who the person was that called
6 911?

7 A Yes.

8 Q And who was that?

9 A Her name was Sara and she said that she was
10 the sister of the gentleman that was under the
11 car.

12 Q Okay. And so as you're there, you're running,
13 sort of, control of the area, is that accurate?

14 A Yes, ma'am.

15 Q And what else did you do besides that?

16 A I had combed the area to see if there were
17 any other individuals that may have seen what had
18 happened, or if there was anybody else inside the
19 vehicle. The vehicle was locked. There was no
20 one inside the vehicle and no one else located at
21 the current time. The fire department did come on
22 scene. The fire department was requested to
23 respond. And then once the fire department was
24 doing what they were doing in reference to the
25 body, I then made sure Sara could not see what the

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1 fire department was doing.

2 Q You said the doors were locked. Did you try to
3 open the doors to that vehicle?

4 A Yes, ma'am.

5 Q And they were locked?

6 A Yes, ma'am.

7 Q What did you do after that?

8 A I stayed on scene. Sergeant Brown had
9 notified the on-call detective as well as the
10 chief of the police department. I kept the scene
11 secure until the detective arrived on scene.

12 Q Did you have any other involvement in the case as
13 far as that evening or otherwise?

14 A There were two young men that were located
15 coming from Young Street, and I asked them who
16 they were and what they were doing in the area.
17 And they had very broken English. They didn't
18 speak very well English. They were Spanish --
19 fluent in Spanish and they had stated that they
20 were nephews of the individual, of the victim.

21 Q Deputy Watson, I'm going to ask you not to tell us
22 what they said, but -- what anybody said to you,
23 but -- so you came into contact with these two other
24 individuals; is that correct?

25 A Yes, ma'am.

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1 Q Were they there with Sara?

2 A No.

3 Q Okay.

4 A They were -- they were -- briefly, later,
5 after the fire department and the shift supervisor
6 and all and Officer Batiste had arrived on scene,
7 they were then located.

8 Q And did they stay there at the scene and cooperate
9 with you?

10 A They did.

11 Q And did you have anything else to do with them?

12 A I just transported them to the police
13 department for their interviews.

14 Q Okay.

15 MS. LEMPESIS: I beg the Court's
16 indulgence.

17 BY MS. LEMPESIS:

18 Q Do you recall, Deputy Watson, what EMS or the fire
19 department did once when they arrived at the scene?

20 A When they arrived on scene, they started
21 assessing the area and trying to figure out a way
22 to get the vehicle off of the individual under the
23 car.

24 Q Were they able to move the vehicle?

25 A Yes, they jacked the vehicle up and move the

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1 vehicle off of the young man.

2 Q Do you know if the victim was alive or deceased at
3 that point? And it's okay if you don't?

4 A I don't recall anybody telling me
5 specifically that he was not alive, but his body
6 was lifeless.

7 MS. LEMPESIS: Thank you. I don't have
8 any other questions for you at this time. Please
9 answer any questions Miss Carmody has.

10 THE WITNESS: Yes, ma'am.

11 CROSS-EXAMINATION

12 BY MS. CARMODY:

13 Q Good afternoon, Officer Watson.

14 A Ma'am.

15 Q Officer Watson, what time approximately was it
16 that you were dispatched and arrived on scene?

17 A It was in the early morning hours. I would
18 say anywhere from 3:00 to 4:00 a.m.

19 Q But it was after 4:00 a.m.

20 A Yes, ma'am. It was dark, and I knew they
21 were getting close to the shift change and shift
22 change occurs at 6:00 a.m.

23 Q Okay. All right. When you arrived on scene, you
24 saw a Dodge Avenger?

25 A It was a dark-colored car later identified as

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1 a Dodge Avenger.

2 Q And a white Suburban?

3 A It was a white something. It was a white
4 Chevy -- it was either a pickup truck or a
5 Suburban.

6 Q Okay. You testified that the Dodge Avenger was
7 partially in the ditch?

8 A It appeared to be partially in the ditch,
9 yes, ma'am.

10 Q What type of road -- I know that you looked at the
11 map that the solicitor provided you, but is this a
12 well-lit area?

13 A No.

14 Q Okay. And at the time when you first arrived, you
15 didn't believe that the Suburban was actually even
16 part of the investigation, correct?

17 A At the time, when I first arrived, I didn't
18 know what I was facing. There was nobody inside
19 the victim's vehicle and there was no one inside
20 the suspect vehicle.

21 Q So, let's get back to, we have a Dodge Avenger and
22 we have Suburban, a white Suburban.

23 A A Chevy Suburban.

24 Q Okay. The white Suburban, it was in the middle of
25 the road and it had the headlights on, correct?

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1 A It was in the middle of the road on Young
2 Street.

3 Q On Young Street.

4 A It was not on Paynesville Road at all.

5 Q On Young Street, though, it was in the middle of
6 the road and the headlights were on?

7 A Yes.

8 Q And, at the time, did you believe that it was
9 possible maybe Sara had driven that vehicle?

10 A No.

11 Q No. Did you know whose vehicle it was when you
12 first arrived?

13 A No.

14 Q At some point during that night, did you learn
15 that the Suburban was registered to a man by the name
16 of Roblero Morales?

17 A I don't recall.

18 Q Okay. Were you the primary investigating
19 officer?

20 A I was the primary officer on scene, yes.
21 Detective Hubbard was the primary investigator.

22 Q Okay. The MAIT team, you know, at some point, did
23 an investigation in this case. Did you let the MAIT
24 team know you were the primary investigating
25 officer?

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1 A I was not aware that the MAIT team arrived.

2 Q All right. Were you the first on scene?

3 A Yes.

4 Q All right. And it was your job to control the
5 scene to secure it?

6 A Yes.

7 Q And your job to find out what was going on?

8 A When I discovered there was a body under the
9 vehicle, I immediately told my supervisor who then
10 immediately called the chief and the detective.

11 Q Okay. But I'm talking about, when you first
12 arrived on scene. When you first arrived on scene,
13 it's your job to control and secure the scene and find
14 out what's going on?

15 A To the best of my ability, yes, without
16 tampering evidence.

17 Q I understand. So your job was also to locate
18 potential witnesses?

19 A Correct.

20 Q All right. And you testified earlier there was
21 nobody around, but there were actually a lot of people
22 out front, no?

23 A Not that I recall.

24 Q All right. Do you recall seeing a man with a
25 puppy?

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1 A I don't recall a man with a puppy.

2 Q Did you ever have an opportunity to review your
3 body cam evidence in the case?

4 A No, ma'am, I have not.

5 Q All right. What about a man Adella -- or a female
6 Adella?

7 A I think Adella may have arrived shortly after
8 and she was either friends or co-workers with
9 Sara.

10 Q Okay. What about Rios?

11 A I don't recall that name at all.

12 Q These are people that were apparently on scene.
13 So we have -- actually, numerous people. So we have
14 -- how about a guy with a dog, two males, and a
15 female?

16 A I was mainly controlling the complainant who
17 identified herself as the victim's sister.

18 Q At any point, do you remember letting other
19 officer know that there's more people contaminating
20 the scene and they're less able to thoroughly
21 investigate?

22 A As far as I know, there was no one
23 contaminating the scene.

24 Q Would you like me to show you your body cam video?

25 A Ma'am?

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1 Q Would you like me to show you our body cam video
2 to refresh your recollection?

3 A You can.

4 Q Sure.

5 THE CLERK: Let me know when you're
6 ready.

7 MS. LEMPESIS: Your Honor, can we
8 approach?

9 (Bench conference off the record.)

10 THE COURT: All right. Ladies and
11 gentlemen of the jury, we're just going to need to
12 take up a quick matter of law outside of your
13 presence. If you just give us a couple quick
14 moments, take the opportunity to use the restroom
15 and we'll bring you back out.

16 (Jury exits the courtroom at 3:41 p.m.)

17 (Video played.)

18 MS. LEMPESIS: Are you showing it from
19 the beginning?

20 MS. CARMODY: No. I'm at 9:01:46 right
21 now.

22 THE WITNESS: This is Sergeant Brown
23 right here. At this point, I'm thinking we're
24 trying to figure out exactly how the car got on
25 top of him. And that's the fire department. They

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1 were trying to get him out from under the vehicle.

2 The two gentlemen that I escorted to the police

3 department come out from behind the truck. I

4 don't know when Baptiste arrives, or, excuse me,

5 Officer Baptiste. I'm explaining to Sergeant

6 Brown the injuries that he has.

7 BY MS. CARMODY:

8 Q All right. We just passed it. Did you hear it?

9 A I didn't.

10 Q Let me back up. 9:02:37.

11 MS. LEMPESIS: I believe all we're doing
12 right now is showing the video to Deputy Watson so
13 she can refresh her recollection, not narrate her
14 through it. I can't hear Miss Carmody.

15 THE COURT: They're fast forwarding it.

16 MS. CARMODY: Your Honor, I'm trying not
17 to turn the volume up too loud so the jury can't
18 hear it. I was trying to keep the volume low. It
19 was at 9:02:37. You need to back up a little bit.

20 THE WITNESS: Okay.

21 BY MS. CARMODY:

22 Q I'm sorry. 9:02:37.

23 A Yes, they were then -- the fire department,
24 they weren't by the fire truck. They weren't by
25 the scene. But they could see what was taking

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1 place, and I was trying to get them out of the way
2 so they couldn't see what was going on. These
3 people came up later.

4 Q But that's what I'm asking about, spectators. Did
5 you let Officer Brown know there was spectators
6 around?

7 A Yes, I remember the dog now.

8 Q Got you.

9 MS. CARMODY: Thank you, Your Honor.

10 THE COURT: All right. Bring them out.

11 (Jury enters the courtroom at 3:47 p.m.)

12 THE COURT: While they're doing that, I
13 forgot to tell you-all earlier in my little
14 colloquy that anybody that tried a case with me
15 knows that this is you-all's courtroom this week,
16 so you don't have to ask me for permission to do
17 anything. You want to step down, bring them down,
18 whatever you-all want to do. This is you-all's
19 trial. You-all's court room. I'm just sitting up
20 here hanging out with Aimee.

21 MS. LEMPESIS: Thank you, Your Honor.

22 THE BAILIFF: Ladies and gentlemen coming
23 into the courtroom.

24 (Jury enters courtroom at 3:48 p.m.)

25 THE COURT: All right. Ladies and

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1 gentlemen of the jury, I just realized that I have
2 forgotten to explain to you that I am the sole and
3 exclusive judge of the evidence that is allowed in
4 this case and of the law. You are the sole and
5 exclusive judges of the facts. So when I have to
6 take up a matter of law, I, unfortunately, have to
7 do it outside of your presence. Fortunately, the
8 jury room is not too far away, but that will be a
9 common occurrence. I'll have to ask you-all to be
10 excused. So just understand that that's just
11 something that's a byproduct of how the trial must
12 proceed.

13 All right.

14 BY MS. CARMODY:

15 Q Officer Watson, having reviewed your body cam, did
16 that refresh your recollection?

17 A Yes, ma'am.

18 Q Would you agree that there was a male on scene
19 with a dog -- actually, two males and a female at the
20 end where the fire truck is?

21 A Yes. At the end of the fire truck is not
22 where the scene was marked off.

23 Q And, Officer Watson, would you agree that the more
24 people that contaminate the scene the less able it is
25 to thoroughly investigate?

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1 A Those individuals were not allowed near the
2 scene.

3 Q But that's not what I'm asking you. I'm asking
4 you, would you agree with the statement that the more
5 people that contaminate the scene, the less able it is
6 to thoroughly investigate?

7 A I would agree so, yes, but those individuals
8 are not allowed near the scene.

9 Q So the names of spectators -- because it was your
10 job to control the scene, correct?

11 A Correct.

12 Q Okay. The names of spectators are Freddy and two
13 others, a male and a female. Do you remember talking
14 with them?

15 A No, I don't remember.

16 Q Okay. You testified earlier --

17 A I do remember telling everybody that they
18 needed to go away.

19 Q You testified earlier that was also your job to
20 look for potential witnesses?

21 A Correct.

22 Q Do you remember talking with a male by the name of
23 Youreis, Y-o-u-r-e-i-s?

24 A I don't recall.

25 Q What about a female by the name of Lupe, Lupe?

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1 A I think Lupe may have been the -- I'm not
2 sure if she was one of the females that was in the
3 fire truck that lives in the first house at the
4 end of the fire truck or if that was the employee
5 that worked with Sara.

6 Q Okay. But you do remember talking with Lupe?

7 A I remember talking to a female. I don't
8 remember what her name was.

9 Q Do you remember talking with Sara's friends who
10 live in the house in front of her, Adella and Rios?

11 A I don't recall them by name, no.

12 Q Do you remember speaking with another female and
13 another male?

14 A Not -- off the top of my head, no.

15 Q Okay.

16 A I was more concerned about making sure Sara
17 didn't see her brother.

18 Q I understand. I understand. But it was also
19 your job on scene, as you testified earlier, to
20 control and secure the scene, find out what's going
21 on, to locate potential witnesses, correct?

22 A Correct. And by that time there was another
23 officer, Officer Baptiste that was there.

24 Q So -- okay. So, you indicated earlier that you
25 had two boys out there with a dog, right?

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- 1 A Two boys with a dog?
- 2 Q There was a male with a dog and another male?
- 3 A There were two young men that were coming
- 4 from the house that Sara lives at, and I located
- 5 them behind the Suburban.
- 6 Q You sent them away from the scene?
- 7 A Not those two, no.
- 8 Q Okay. At some point, were you directed to bring a
- 9 man by the name of Anibal and Joel down to Hardeeville
- 10 PD?
- 11 A Yes, ma'am.
- 12 Q And where did that direction come from?
- 13 A It either came from the detective or
- 14 Sergeant Brown.
- 15 Q And which detective would that be?
- 16 A Detective Hubbard.
- 17 Q Do you recall -- did Detective Hubbard give you
- 18 the direction to make sure that you isolated those two
- 19 individuals?
- 20 A He didn't give me the direction. I just
- 21 automatically did it.
- 22 Q So you're -- okay. That's two different
- 23 responses. So you're saying that, no, he did not give
- 24 you the direction?
- 25 A Correct, he did not give me the direction. I

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1 stayed in the area with those two so they couldn't
2 communicate with each other or with anyone else.

3 Q I hate to do this again. Do you want to look at
4 your body cam again, ma'am?

5 A Explaining what?

6 Q The direction from Detective Hubbard was to
7 isolate the man named Anibal and keep him separate
8 from other people and you recall letting
9 Detective Hubbard know that you actually sent him away
10 because he was there with a dog.

11 MS. LEMPESIS: Objection, Your Honor.

12 THE WITNESS: I'm confused now.

13 MS. LEMPESIS: Asked and answered.

14 THE COURT: Hold on. Let's hear the
15 objection.

16 MS. LEMPESIS: The question has been
17 asked and answered from Deputy Watson as to --

18 THE COURT: Let's try this: Rephrase the
19 question one more time. And, if not, then we're
20 going to have to let her refresh her recollection.

21 BY MS. CARMODY:

22 Q Do you recall receiving an order from
23 Detective Hubbard?

24 A No, I do not recall.

25 Q If you'd let me finish the question. You

Testimony of Jairo Solano

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1 testified earlier that it was Detective Hubbard --
2 that he was in charge of the investigation?

3 A Correct.

4 Q You do not -- were you under Detective Hubbard's
5 direction?

6 A Because he was the detective on call, yes, as
7 well as Sergeant Brown.

8 Q Okay. Do you recall receiving a directive to keep
9 Anibal and Joel separate -- actually, isolate them and
10 get them down to Hardeeville PD?

11 A I don't recall being told to keep them
12 isolated. That's just a part of police training
13 when you're interviewing individuals, to keep them
14 separate and away from everyone else, if
15 possible.

16 Q Do you recall letting the officer know that you
17 had sent them away?

18 A I didn't send them away.

19 Q The individual with the dog, you didn't tell him
20 to go home?

21 A The individual with a dog was somebody that
22 lived at the first house.

23 Q Uh-huh.

24 A And that was not one of the cousins or the
25 nephews.

Testimony of Jairo Solano

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1 Q Okay, let's try this. At some point, did
2 Detective Hubbard ask you where -- he was looking for
3 a cell phone.

4 A Okay.

5 Q Yes?

6 A I vaguely recall, yes.

7 Q Okay. And did you find out that the cell phone he
8 was looking for had actually belonged to a nephew
9 named Joel?

10 A I don't recall.

11 Q Do you recall saying, "I don't know, unless he was
12 one up here with a dog. I made him go away. There
13 was a guy with a puppy. I made him go away"?

14 A And that was the puppy that was behind the
15 fire truck. That's not the two individuals I came
16 into contact with behind the Suburban.

17 Q All right. So we're going back to my original
18 question when you said there was nobody out there.
19 Originally, you testified that there was -- you know,
20 there was nobody on the scene.

21 A Those two individuals did not come up until
22 later, and they came from the house up the road of
23 Young Street which is a gravel, dirt road.

24 Q All right. So at what point would you agree that
25 there were a lot of people on scene?

Testimony of Jairo Solano

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1 A After the fire department and the other
2 officers were on scene because I was mainly with
3 Sara.

4 Q All right. There is a lot of people who actually
5 live in that area, correct?

6 A Correct.

7 Q All right. Some of them are cousins of Sara,
8 correct?

9 A I assume so.

10 MS. LEMPESIS: Objection. That's outside
11 of this witness's knowledge.

12 THE COURT: All right.

13 BY MS. CARMODY:

14 Q Did you learn -- sorry.

15 THE COURT: What was the question?

16 MS. CARMODY: I asked if they were
17 cousins of Sara.

18 THE COURT: Do you know the answer to
19 that?

20 THE WITNESS: I don't recall,
21 Your Honor.

22 THE COURT: All right. I'll overrule the
23 objection.

24 BY MS. CARMODY:

25 Q At any point, did you talk to a witness --

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1 witnesses who lived in the area?

2 A The only witness that I'm aware of are the
3 two individuals that I transported to the police
4 department and Sara, but Sara didn't witness it.

5 Q What about an individual who lives in the house
6 adjacent to Sara next door?

7 A There's only one house on Young Street.

8 Q Adella and Rios, where do they live?

9 A I don't remember them.

10 Q You don't know where they live?

11 A The name doesn't ring a bell to me.

12 Q Okay. Do you recall talking to a male and a
13 female?

14 A Yes.

15 Q Did the male and the female tell you that they
16 heard anything?

17 MS. LEMPESIS: Objection. Calls for
18 hearsay.

19 THE COURT: Correct. Don't say anything
20 that someone else said, okay?

21 BY MS. CARMODY:

22 Q DID you learn anything from the male and the
23 female?

24 MS. LEMPESIS: Objection.

25 THE COURT: She can testify as to what

Testimony of Jairo Solano

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1 she did as a result of information she received
2 from them in her investigation.

3 MS. LEMPESIS: Thank you, Your Honor.

4 THE COURT: All right.

5 BY MS. CARMODY:

6 Q Did you receive any information from them?

7 A I don't recall.

8 Q All right. Out of everybody that you actually
9 talked to -- let's do this. Did anybody tell you that
10 they actually saw what happened?

11 A No.

12 Q Okay.

13 A One of the nephews --

14 Q Nope. That's not my question. My question is
15 whether --

16 A No.

17 Q All right. It would be fair to say that you spent
18 a significant amount of time that evening speaking
19 with Miss Morales, correct?

20 A Miss Morales being Sara.

21 Q Sara.

22 A Yes.

23 Q She was obviously very upset?

24 A Yes.

25 Q Okay. Concerned for her brother.

Testimony of Jairo Solano

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1 A Correct.

2 Q You asked Sara for her date of birth, right?

3 A I did.

4 Q She provided that to you right away?

5 A I think so. I'm not sure. I know I asked
6 her questions and then was trying to take her mind
7 off of the incident and make casual conversation
8 with her.

9 Q As part of your investigation when you were
10 speaking with a witness, do you ask them their date of
11 birth?

12 A Yes.

13 Q All right. And do you ask them their address?

14 A Yes.

15 Q Did you note in our report that Sara didn't
16 provide these things to you?

17 A I don't recall. Sara told me that she lives
18 at the house at the end of Young Street.

19 Q Okay. Was Sara cooperative with you?

20 A Yes.

21 Q All right. Did she tell you she didn't see what
22 happened?

23 MS. LEMPESIS: Objection.

24 BY MS. CARMODY:

25 Q Or, did she tell you what happened?

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1 A No. She only said that her brother was under
2 the car.

3 Q Okay.

4 THE COURT: All right. I'll sustain the
5 objection, ma'am. You can't say what someone else
6 said, okay?

7 THE WITNESS: Yes, sir.

8 THE COURT: All right.

9 BY MS. CARMODY:

10 Q Did Sara know what happened?

11 A I don't know.

12 Q Well, if she did know what happened, it would have
13 been part of your investigation, correct?

14 A Correct.

15 Q And it wasn't part of your investigation?

16 A No, it was not.

17 Q All right. Did Sara know whose car it was? I'm
18 talking about the Avenger.

19 A As far as I can remember, she didn't tell me
20 who the car belonged to or whether or not she knew
21 who it belonged to.

22 Q You're -- did Sara know whose car it was out
23 front?

24 A I don't know.

25 Q All right. You don't recall asking her about

Testimony of Jairo Solano

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1 whose car it was out front?

2 A I recall asking her several questions. I
3 recall asking her about her date of birth. I
4 don't recall whether or not she told me who the
5 owner of the car was.

6 Q Had she ever seen that car before?

7 A I don't know.

8 Q You didn't ask her, or you don't remember?

9 A I don't remember.

10 Q Was there anybody outside around the car when Sara
11 came outside?

12 A Not that I recall, no. The only person that
13 I saw was Sara.

14 How did Sara learn that her brother was
15 under the car?

16 MS. LEMPESIS: Objection.

17 THE WITNESS: I don't know.

18 MS. LEMPESIS: Objection, that's outside
19 of the witness's knowledge.

20 THE COURT: I'll sustain the objection.

21 BY MS. CARMODY:

22 Q In the court of your investigation, did you
23 investigate who was on -- who had been on scene before
24 you arrived?

25 A To my knowledge, it was only Sara.

1 Q All right. To your knowledge, were the vehicles,
2 the Suburban and the Dodge Avenger moved?

3 A No.

4 Q All right. So, how long were you out on scene?

5 A As long as Sergeant Brown allowed me to be.

6 Q You don't know how long that is?

7 A It could have been a couple of hours. But to
8 know exactly how long I was there, I don't.

9 Q I got a question for you: At what point -- you
10 see this man under the vehicle, correct?

11 A Correct.

12 Q All right. You said that his feet were sticking
13 out, correct?

14 A Yes.

15 Q At what point did you check for a pulse?

16 A I didn't. I immediately called for the fire
17 department because I'm not an EMT, nor am I
18 certified, nor have I been trained to do anything
19 of that aspect.

20 Q How long have you been in law enforcement?

21 A Ten years.

22 Q Have you been trained in CPR?

23 A I have.

24 Q Have you been trained in looking for what's called
25 a pedal pulse?

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1 A A what?

2 Q A pedal pulse.

3 A No, ma'am.

4 Q In the foot.

5 A No, ma'am.

6 Q Do you know how to check for a pulse?

7 A Not on the feet, I don't. I never been
8 trained to check for a pulse on a foot. I've
9 always been taught to check for a pulse on the
10 wrist and that's it.

11 Q Did you try to communicate with Mr. Yobani?

12 A Who?

13 Q Mr. Yobani under the vehicle, the victim?

14 A No, I didn't.

15 Q So you arrive on -- just to be clear, you arrive
16 on scene and took no action whatsoever to help the
17 individual under the car?

18 A I checked to see if the door was locked to
19 the car and it was. There was no way for me to do
20 anything.

21 Q I have no more questions on that aspect.

22 Did Sara let you know -- what relation was
23 Yobani to Sara?

24 MS. LEMPESIS: Objection. That's outside
25 of the deputy's knowledge base.

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1 THE COURT: All right. During your
2 investigation, were you made aware of that
3 information?

4 THE WITNESS: Yes. Sara and --

5 THE COURT: Then you can answer the
6 question.

7 THE WITNESS: -- Yobani were brother and
8 sister.

9 THE COURT: All right.

10 BY MS. CARMODY:

11 Q Did Sara provide you an address for Yobani?

12 A If she did, it was the Young Street address
13 because she said that --

14 Q No. I'm not asking what she said. I'm asking if
15 she provided an address.

16 A I don't know.

17 Q Through your investigation, when is the last time
18 that Sara saw Yobani?

19 A Later in the evening.

20 Q We're talking about the day prior?

21 A No. It was the -- well, the night of before
22 midnight.

23 Q Do you know about what time?

24 A I don't.

25 Q You indicated earlier that Sara called 911?

Testimony of Jairo Solano

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1 A Yes.

2 Q How do you know she called 911?

3 A Because when dispatch notified us, they --
4 dispatch dispatched a call and a lot people don't
5 know the non-emergency number.

6 Q I'm sorry?

7 A A lot of people don't know the non-emergency
8 number to dispatch.

9 Q Okay. Are you saying that she called the
10 non-emergency number?

11 A No, she did not. She called 911.

12 Q All right. Do you know whose phone she used?

13 A I don't know.

14 Q You don't?

15 A I don't.

16 Q Did you ever collect the phone during the course
17 of the investigation?

18 A Not to the recollection of my memory, no.

19 Q Do you remember directing Sara to locate a number
20 on the phone she was holding?

21 A Yes.

22 Q Do you know whose phone --

23 A I don't remember whose number I asked her to
24 look up.

25 Q All right. At any point in your investigation,

Testimony of Jairo Solano

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1 did you learn that a man by the name of Anibal had
2 actually been on scene?

3 A If I'm not mistaken, I do believe that's one
4 of the nephews that was transported to the police
5 department.

6 Q Okay. What about a man by the name of Joel?

7 A I believe he was the second individual that
8 was transported to the police department.

9 Q And whose phone were you directed to collect?

10 A I don't remember.

11 Q Detective Hubbard gave you an instruction to
12 collect somebody's phone. You don't remember whose
13 phone it was?

14 A I don't.

15 Q Did you collect the phone?

16 A I don't remember. I don't recall.

17 MS. CARMODY: Your Honor --

18 BY MS. CARMODY:

19 Q Would it help -- would it refresh your
20 recollection if you reviewed your body cam video?

21 A It probably would.

22 THE COURT: All right. Ladies and
23 gentlemen, we're going to take about a five-minute
24 break. I need to address something with the
25 lawyers and then I'll bring you right back in,

1 okay?

2 (Jury exits the courtroom at 4:10 p.m.)

3 THE COURT: Miss Lempesis, who is your
4 next witness?

5 MS. LEMPESIS: It is our 911 dispatch
6 representative, Phillip Cothran.

7 THE COURT: And what is his role and
8 responsibility, just as a chain witness to get in
9 the 911 call?

10 MS. LEMPESIS: To get in the CAD report.
11 He will testify to the CAD report and get it in
12 through them. Again, we don't have the 911 call
13 because it wasn't able to be collected.

14 THE COURT: All right. How long do you
15 think he'll take?

16 MS. LEMPESIS: It won't take me but maybe
17 five minutes.

18 THE COURT: How long do you think it will
19 take you?

20 MS. CARMODY: On the next witness, I'm
21 not sure, Your Honor. We do have an issue about
22 the 911 call not being reserved.

23 THE COURT: Well, I mean, I've already
24 ruled on that. There's nothing we can do about
25 it. I mean, the fact that it's gone, it's gone.

1 STATE OF SOUTH CAROLINA
2 IN GENERAL SESSIONS
3 COUNTY OF JASPER COUNTY

4 The State of South Carolina,
5 vs. Transcript of Record
6 2019-GS-27-00819
7 Osman Uvaldo Jimenez-Benitez,
8 Defendant.
9

10 December 7, 2021
11 Jasper, South Carolina
12 Volume II of IV

13 B E F O R E:

14 The HONORABLE BENTLEY PRICE

15 A P P E A R A N C E S:

16 Mary Jordan Lempesis, Prosecutor

17 Carolyn Carmody, Representing the Defendant

18

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20

21

22

SHARON G. HARDOON, CSR
Official Circuit Court Reporter, III

23

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25

1 THE BAILIFF: All rise.

2 THE COURT: All right. Thank you very much.
3 Please be seated.

4 Anything else? Did you hear what she
5 said? She's waiting to start the Zoom, obviously,
6 because we only get that limited time limit. Is
7 the witness available?

8 MS. LEMPESIS: Judge, yes.
9 Officer Lemus is available and he is ready to hop
10 on whenever he is needed. I don't need him
11 anymore for testimony.

12 THE COURT: Right.

13 MS. CARMODY: So it's whenever
14 Miss Carmody says she needs him.

15 THE COURT: All right.

16 MS. LEMPESIS: I guess we're starting
17 back with the Jackson v. Denno and we're where
18 Mr. Solano was testifying.

19 THE COURT: All right. Mr. Solano, if
20 you'll come back up.

21 MS. CARMODY: I just need one minute,
22 Your Honor. I'm just setting up my computer and I
23 will be right there.

24 (Off the record.)

25 THE COURT: Miss Carmody, your witness.

1 MS. CARMODY: Your Honor, this is
2 continuing the testimony of Mr. Solano from
3 yesterday. He's the interpreter.

4 CROSS-EXAMINATION

5 BY MS. CARMODY:

6 Q Mr. Solano, you had an opportunity to review the
7 statements in the case?

8 A I did.

9 Q And, if you could, please look at the first video
10 and go to marker around the three-minute mark.

11 A Is it close enough?

12 Q That's fine. If you could, please play the video
13 and pause it as necessary and let the Court know
14 what's going on in the video.

15 A (Video played.) I just want to mention that
16 the interpreter does not tell him that he's going
17 to read it in English and he will read it in
18 Spanish.

19 Q I'm sorry. Mr. Solano, just speak up a little
20 bit.

21 A The interpreter does not tell the defendant
22 what he just said.

23 Q So Detective Hubbard had said something and the
24 interpreter did not interpret that to Mr. Benitez.

25 A Correct.

1 Q Okay. Go ahead.

2 A (Video played.) He starts saying that you
3 have a right to remain silent. And the word for
4 remain is permanecer. He says permanesal (ph).
5 That is not a word in Spanish.

6 Q So your testimony is that Officer Lemus did not
7 accurately interpret the Miranda rights, or that
8 statement.

9 A The word is permanesal, and permanesal is not
10 -- I looked it up in the dictionary to think there
11 was a different word to say for "remain" in
12 Spanish. Permanesal is not a word.

13 Q Permanesal is not a word, okay. So Mr. Benitez,
14 speaking Spanish, would not know what his rights are,
15 correct?

16 A Correct.

17 Q Keep going.

18 A (Video played.) And he is saying, whatever
19 statement you say can be used -- he's trying to
20 say court of law, or court. And he uses the
21 bunal. A bunal, again, is not a word in Spanish.
22 There's simpler word that sounds like tribunal,
23 and that's a place where the Spanish would know as
24 sports announcer. A type of platform for sports
25 announcer is una (ph).

1 So it's not -- he was trying to say the
2 word for court in Spanish, tribunal.

3 Q So from a Spanish interpretation, the officer is
4 saying he has a right to talk in a sports arena?

5 A That's what it sounds to him.

6 Q I understand. Keep going.

7 A (Video played.) So now he's saying you have
8 the right to have an attorney present before and
9 during the process. And he uses the word -- he's
10 trying to say previous in Spanish, which is
11 previo, but the prever that means foreseen.

12 Q Okay.

13 A To foresee.

14 Q To foresee something.

15 A He's really saying to foresee.

16 Q So he has the right to talk to an attorney to
17 foresee, okay?

18 A Foresee.

19 Q To foresee we don't know what.

20 A (Video played.) Here he goes back, if he has
21 the means to pay for an attorney, and if you don't
22 have it, then a court appointed will be assigned.
23 Asignia is not a word. The word is asigna.

24 Q Asigna.

25 A Asigna.

1 Q Okay.

2 A (Video played.) So now the interpreting goes
3 on. He is no longer interpreting. He's just
4 saying. As he continues to talk, he says, do you
5 understand these rights. He answers, for the
6 moment, no.

7 Q Okay. So the interpreter is no longer acting in
8 the capacity as an interpreter now.

9 A Not in this moment.

10 Q And he asked Mr. Benitez if he understands his
11 right and he says, not at this moment, no, correct?

12 A Correct.

13 Q Did he convey that to the detective?

14 A I would have to listen because I don't
15 remember. (Video played.) The defendant
16 responds, do you mean if I have the right for --
17 and he interrupts him and says, do you want to
18 read it instead?

19 Q Okay. So Mr. Benitez is asking the
20 Detective Lemus if he has the right, and
21 Detective Lemus interrupts him, correct?

22 A Correct.

23 Q And asks him, do you want to read it?

24 A Yes.

25 Q Mr. Benitez himself never asked to read it,

1 correct?

2 A No.

3 Q Okay. And the officer never asked Mr. Benitez if
4 he was able to read or his education level, correct?

5 A I do not hear that. Not at this moment.

6 Q Okay.

7 A (Video played.)

8 Q Did the video go off?

9 A No, he is reading very low in Spanish.

10 Q Okay, I got you.

11 A And, again, he asked him, do you understand
12 that, when that's not what the detective is
13 asking. He's asking him, do you understand
14 that.

15 Q Again, Mr. Lemus is acting on his own volition and
16 he is talking with Mr. Benitez without the detective
17 asking him a question?

18 A He is not interpreting.

19 Q He is not interpreting, correct.

20 A (Video played.) The detective says, having
21 your rights in mind, are you willing to speak with
22 me without an attorney? The interpreter leaves
23 out, without a lawyer. He does say everything
24 else. And instead of -- he uses the word
25 mentir, with those rights in mind. And the right

1 word in Spanish is mente. So what he is literally
2 saying with the rights to lie in mind, you wish to
3 speak to him now. But he omits "without an
4 attorney." In turn he uses mentir, which means to
5 lie. With the rights to lie are you willing to
6 speak me.

7 Q So the -- again, we have the situation where we
8 have the Officer Hubbard saying with the rights in
9 mind, do you wish to talk to us without an attorney.
10 But when it's interpreted to Mr. Benitez, you said,
11 with these lies in mind, do you wish to talk to us?

12 A With the right to lie.

13 Q With the right to lie --

14 A In mind.

15 Q -- in mind, do you wish to talk to us, and leaves
16 out without an attorney?

17 A Exactly.

18 Q Okay.

19 A And he responds, yes.

20 (Video played.) The detective is asking if
21 you have an ID, and Lemus says, do you have a
22 passport. And now he responds, it's in the truck.
23 And the interpreter is asking him to clarify, in the
24 truck, in the truck?

25 (Video played.) The defendant says, I have an

1 ID, and the interpreter does not interpret what he
2 just said.

3 (Video played.) The defendant is saying, I
4 don't understand myself. The interpreter just keeps
5 asking him where, where, where. He is not telling the
6 detective what he is saying.

7 Q Are there --

8 A (Video played.)

9 THE COURT: Do we need to go any further
10 now? Obviously now the statement is the
11 statement.

12 BY MS. CARMODY:

13 Q Mr. Solano, could you pause that for one moment,
14 please? Mr. Solano, are there other instances in the
15 video statement where the officer is not accurately
16 interpreting what Mr. Benitez said in the video?

17 A There is an area at the ninth minute.
18 There's others, but we would have to listen to the
19 entire --

20 Q I understand there is.

21 A I think there's one that's easier to
22 explain.

23 Q About the ninth minute marker?

24 A Yes.

25 Q Sure?

1 THE COURT: But the Court is only
2 concerned about whether the statement itself was
3 voluntarily given. I'm not concerned -- once
4 that's been determined by myself, then whatever is
5 interpreted in the statement really has no bearing
6 on whether I allow it to be admissible or no. So
7 I don't need to go any further.

8 MS. CARMODY: Thank you, Your Honor.

9 Your Honor, there was another statement that
10 he gave as well. We have the same issues, Your Honor,
11 in the second statement as well.

12 THE COURT: All right.

13 MS. CARMODY: It's not accurately
14 interpreted, and Mr. Solano will testify to the
15 same thing.

16 THE COURT: All right.

17 BY MS. CARMODY:

18 Q Mr. Solano, just briefly, just to cover one other
19 thing, is there such a thing called interpreter
20 fatigue?

21 A In some cases that could happen, yes.

22 Q Can you explain to the Court what interpreter
23 fatigue is?

24 A While the interpreter doesn't take a break,
25 he can begin to, kind of, like, space out.

1 Q Is it often true too that he's also talking in
2 English instead of Spanish?

3 A Yes.

4 Q And that's due to interpreter fatigue?

5 A I couldn't tell you that.

6 Q Did you hear -- in reviewing the statement, did
7 you hear the officer actually conveying information to
8 Mr. Benitez in English?

9 A Yes.

10 Q And the -- approximately how much of the statement
11 would you say was accurately conveyed to Mr. Benitez
12 in Spanish? Would you say it's about 40 or 50 percent
13 inaccurate?

14 A I could say that, yes.

15 Q And the same for the second statement, correct?

16 A Maybe less in the second statement.

17 Q Anywhere in that statement did you hear the
18 officers advise Mr. Benitez that he had the right to
19 contact a consulate to get him an interpreter?

20 A No.

21 MS. CARMODY: I don't have any further
22 questions, Your Honor.

23 THE COURT: All right. Anything?

24 MS. LEMPESIS: Not from us. Well -- no,
25 not from Mr. Solano. Thank you.

1 THE COURT: All right. You may step
2 down.

3 All right. Miss Carmody, anything else?

4 MS. CARMODY: Not at this time, Your
5 Honor.

6 THE COURT: Are you ready to move on to
7 the Biggers hearing or is there anything else as
8 to the Denno hearing?

9 MS. CARMODY: That's it for the Denno
10 hearing.

11 THE COURT: All right. Solicitor.

12 MS. CARMODY: I do have an argument on
13 it.

14 THE COURT: All right.

15 MS. LEMPESIS: I do. I would like to call
16 Officer Lemus back. He is ready to hop on his Zoom so
17 he can testify as to just the Miranda card that he
18 read out loud.

19 THE COURT: All right. Then we'll have
20 to go straight into the Biggers. Let me go ahead
21 and make her -- see, because if her argument takes
22 up all our argument on Zoom, then it's no good.

23 MS. LEMPESIS: I know.

24 THE COURT: Let's do this. Let me go
25 ahead and hear your argument, Miss Carmody, and

1 then we'll get Mr. Lemus on.

2 MS. CARMODY: Okay.

3 MS. LEMPESIS: Just, I can tell you what
4 I'll ask of him, so that Miss Carmody can make her
5 argument with all the information, but the card he
6 used, I just asked him -- I had not seen in person
7 and they didn't have a copy of it in evidence, but
8 it's from lexusnexus.com.

9 THE COURT: Okay.

10 MS. LEMPESIS: That's where they got the
11 Miranda card, the Spanish ones.

12 THE COURT: All right.

13 MS. CARMODY: One moment, Your Honor.
14 May it please the Court?

15 THE COURT: All right. Yes, ma'am.

16 MS. CARMODY: Your Honor, back on
17 October 26th, the Hardeeville Police Department
18 responded to an incident involving my client's
19 vehicle. They did obtain two subsequent
20 statements from my client, and Your Honor has
21 heard what the Miranda issue is, on those
22 statements. My client is moving for the
23 suppression of all statements made by him to the
24 Hardeeville Police Department and any evidence
25 seized because those statements were obtained in

1 violation of the 4th, 5th, 6th, 14th Amendments to
2 the United States Constitution, article 4, section
3 3, section 10 and section 14 of the State
4 Constitution, and pursuant to Jackson v. Denno and
5 Miranda.

6 Your Honor, the Miranda, as the Court
7 knows, bars the admission of statements given by a
8 suspect custodial interrogation. Your Honor,
9 there's -- without prior warning. There was
10 testimony from Officer Lemus as well as
11 Detective Hubbard that my client was asked to go
12 to Hardeeville Police Department. He was in a
13 room with two uniformed officers and at no point
14 in time did they tell him that he was free to
15 leave.

16 And, Your Honor, it's my position that a
17 man in Mr. Benitez's situation, that he's from
18 Honduras, he's not from the United States, he's
19 meeting with two law enforcement officers out at
20 the police department, he's not told that he's
21 free to leave, that he did not, under those
22 circumstances believe that he was free to leave
23 and he was taken into custody.

24 Your Honor, because my client was in
25 custody, this triggers the Miranda that officers

1 are required to advise him of his rights. Prior
2 to questioning, he asked to be warned that he has
3 the right to remain silent and any statement he
4 does make may be used against him, that he has a
5 right to the presence of an attorney, either
6 retained or appointed, and the questioning
7 initiated by law enforcement after the person has
8 been taken into custody, or otherwise deprive him
9 of his freedom in any way.

10 Your Honor, because the officer -- both
11 officers knew that Mr. Benitez did not speak
12 English. That was the whole reason that the
13 detective asked Lemus to come in and help him
14 interpret. Detective Lemus testified that he was
15 interpreting and clarifying. Your Honor, that is
16 not what has happened. Detective Lemus is not --
17 Officer Lemus, he is not an interpreter. He also
18 testified he grew up in a Spanish household. And
19 the words that he told Mr. Benitez and what
20 Mr. Benitez understood being a native of Honduras
21 was not what was supposed to be conveyed in the
22 Miranda. That's what Mr. Solano testified to.

23 At one point, I thought it was
24 interesting that they did not tell him, with these
25 rights in mind, do you want to talk to us. They

1 actually said, with these lies in mind, do you
2 want to talk to us, and left out, without an
3 attorney. He specifically asked a question about
4 the attorney and the officers did not stop the
5 interrogation.

6 Instead Detective Lemus takes it upon
7 himself in the capacity of a law enforcement
8 officer, not an interpreter, and decides that he's
9 going to try to clarify what he was talking about.
10 They should have stopped the interrogation at that
11 point. As soon as he had questions about whether
12 he wanted an attorney, I believe there was an
13 indication as to the rights of an attorney.
14 Because he's from Honduras, he doesn't understand
15 the laws of the United States. He doesn't
16 understand what the officer is telling him.

17 He never asked to be provided with a
18 Miranda card. They never even asked him if he
19 knew how to read. Mr. Benitez actually has a
20 fifth-grade education in Honduras. It's not
21 comparable to the fifth grade here in the United
22 States.

23 There's words that they used, you know,
24 to clarify what he was supposedly reading, and the
25 officer's statements are completely inconsistent

1 with what's on the card. I would submit to the
2 court that that was not a valid Miranda warning.

3 Additionally, Your Honor, we're also
4 asking for the statement to be suppressed as his
5 statement was not voluntarily given to the police.
6 What I mean by that is, we also have the issue
7 that law enforcement never told him that he has a
8 right to contact a consulate in Honduras -- of
9 Honduras to provide him with an interpreter. That
10 would have been the correct thing to do.

11 The United States Supreme Court has
12 actually said that that is not a reason to
13 suppress a statement, Your Honor. However, it is
14 and can be a factor in considering whether the
15 statement was actually voluntary.

16 I've had two cases that I state here that
17 had interpreted the consulate provision. And I'm
18 talking about the Vienna Convention, Your Honor.
19 The case was actually heard after the fact. It
20 was at a -- let me just pull it up here. I think
21 it was State v. Lopez, Your Honor. In that case,
22 the defendant didn't raise the issue until after
23 he had done a plea and he tried to go back and say
24 that the plea was bad because, you know, he wasn't
25 informed of his rights under the Vienna

1 Convention. Essentially, what the Court was
2 saying was that he should have raised that at
3 pretrial. That's exactly what I'm doing right
4 now.

5 Your Honor, as the Supreme Court in
6 Sanchez-LLamas vs. Oregon and that is at 548 U.S.
7 331, that is a 2006 case by the United State's
8 Supreme Court. The court in that case, Your
9 Honor, going through a lengthy discussion about
10 the whole Vienna Convention. The court does say
11 that that in and of itself is not a basis to
12 suppress the statement; however, they did say it
13 could be considered as an additional factor in the
14 voluntariness of the statement.

15 Your Honor, there are two different
16 issues here. The issue that he wasn't informed of
17 his right under Miranda. We also have the issue
18 that his statement was involuntarily.

19 All right. Another case, Your Honor.
20 State vs. Rios, 388 S.C. 355. That's the Court of
21 Appeals in 2019. In that case the Spanish
22 interpreter with the police department testified
23 in the Jackson vs. Denno hearing. He testified
24 that he used two forms for the purpose of
25 informing Rios of his Marijuana rights. The

1 sergeant advised Rios of his Miranda rights in
2 Spanish by reading rights to him from a card
3 printed in Spanish. The sergeant testified that
4 Rios acknowledged and understood his rights. How
5 would we know this. Because he initialed the card
6 next to each enumerated right. The sergeant also
7 gave Rios a preinterrogation waiver form with his
8 Miranda rights printed in English. He asked him
9 if he understood those rights, he said yes. He
10 had given two separate statements to law
11 enforcement in that case.

12 In the first statement he provided an
13 oral statement in Spanish and the sergeant
14 actually transcribed that statement in Spanish and
15 then wrote it out for him and asked the defendant
16 to sign it. What would have been a much better
17 thing to do in this situation is usually write out
18 what he's saying and have him sign it. That way
19 he understands what his statement actually was.

20 As I said, there's two issues here. We
21 have a Miranda issue and the voluntariness. The
22 accuracy of the statement as well. In that case
23 -- one minute.

24 Your Honor, so the due process clause of
25 the 5th Amendment is that no person shall be

1 deprived of right, liberty, or property without
2 due process of law. And when a defendant in a
3 criminal case is deprived of due process, if his
4 conviction is found in full or in part upon an
5 involuntarily confession without regard to the
6 truth or falsity of that confession, that's a
7 violation -- that's a Constitution violation. The
8 test is whether considering the totality of the
9 circumstances, the free will of the witness was
10 overborne. In certain interrogation techniques,
11 either in isolation or as applied police unique
12 characteristics of a particular suspect, some
13 things are so offensive to a civilized system of
14 justice that they must be condemned. That is the
15 issue in this case. He did not tell him that he
16 had the right to contact the consulate. They put
17 him in a room with two people who he thought was
18 acting as his interpreter. He thought that the
19 Detective Lemus was supposed to be interpreting.
20 He wasn't. He was acting as a law enforcement
21 officer. That's what Detective Lemus said. He
22 said he was acting as an interpreter. He was not.
23 He was acting as a law enforcement officer.

24 The interpreter testified that he was not
25 accurately interpreting what Mr. Benitez said. He

1 was not accurately interpreting what the detective
2 was asking him.

3 THE COURT: All right. Anything briefly?

4 MS. LEMPESIS: From the State, Judge,
5 yes. I'll just hand up Rios that Miss Carmody --

6 MS. CARMODY: I'm sorry. I have it.

7 MS. LEMPESIS: I have a copy, Judge.
8 I'll just hand it up. This is the case that
9 Miss Carmody just cited for the court. And I'll
10 argue that it just, actually, supports the State's
11 position that the statements were knowingly and
12 voluntarily made by -- and intelligently made by
13 the defendant to Officer Lemus and to Officer
14 Hubbard at the time.

15 His interview, you've seen -- you watched
16 the recording of the second interview. The
17 defendant did ask some more questions of the two
18 investigators. And Officer Hubbard,
19 Detective Hubbard made it a point to say -- to
20 answer those questions, and say, let me explain
21 this. If you don't want to talk to me, you don't
22 have to. And Lemus translates, if you don't want
23 to talk, you don't have to. So they go back and
24 forth making sure the defendant clearly
25 understands what he is asking -- or being asked of

1 and is answering to -- I asked both officers if
2 the defendant appeared to understand what he was
3 being advised of. He was -- both said that he
4 did. In fact, he did asked for the card to read
5 the Spanish Miranda warnings himself. And Officer
6 Lemus testified that he could hear the defendant
7 reading the words out loud to himself, indicating
8 that he obviously has the ability to read and he
9 was reading them out loud. And then he said -- he
10 did agree to speak with him.

11 The Rios case, in that case, you have
12 actually the officer speaking in Spanish to the
13 defendant. He didn't interpret it at all. And
14 the defendant, instead, just wrote down the
15 defendant's statement and showed it to him and had
16 him read it. In the Rios case, defendant argued
17 that he had a limited understanding -- a limited
18 ability to read and also didn't understand the
19 dialect because he was generally arguing that he
20 had spoken an entirely different dialect.

21 So we have no evidence here that Mr.
22 Benitez doesn't -- can't read or write, and
23 actually took that card and read it out loud
24 himself. So we have evidence that he was fully
25 advised of his Miranda rights and did knowingly

1 and intelligently and voluntarily waive those
2 rights and did agree to speak to the officers in
3 both of the interviews.

4 As to the second about the Vienna
5 Convention, I'll just hand up the case State v.
6 Banda for the Court. And just very briefly,
7 Judge, in that case the Supreme Court addressed
8 the rights of the Vienna Convention. In the Banda
9 case, the defendant argued that their statement
10 should be suppressed because they failed to notify
11 the consulate of the defendant's own country.
12 This was as to the U.K. Convention, but the Vienna
13 Convention has a similar clause. And the United
14 States Supreme Court has held that suppression of
15 evidence was not an appropriate remedy for a
16 violation of the Vienna Convention. And in Banda,
17 the South Carolina Supreme Court cited that same
18 case, Sanchez-Llamas vs. Oregon and made that same
19 finding.

20 And so the remedy here would not be to
21 suppress the defendant's statement based on that
22 violation of the Vienna Convention.

23 THE COURT: All right. I've, obviously,
24 for two days have taken into consideration as
25 to -- as to the violation of the voluntariness of

1 the statement, I find on both instances, the fact
2 that the defendant had the opportunity to read the
3 Miranda card, the fact that Lemus was
4 interpreting, and also, even though it was
5 sometimes maybe misrepresentation, I believe he
6 was also trying to assist him in understanding
7 what his voluntariness was, and the fact that the
8 detectives and Hubbard and Lemus told the
9 defendant on several occasions that he could stop
10 giving a statement any given time versus you're
11 free to leave, I find that's very harmless. And
12 the fact that there was no intimidation, coercion,
13 or deception, I find that the statement was
14 voluntary and I'll allow it in.

15 All right. Let's move on to the next
16 hearing.

17 MS. CARMODY: Your Honor, going on
18 Miranda also? There's two separate issues.

19 THE COURT: Yes.

20 MS. CARMODY: Your Honor, we do have one
21 other issue related to the statement.

22 THE COURT: Well, I'm letting the
23 statement in.

24 MS. CARMODY: Yes, Your Honor. And
25 that's the issue that I have now, is that the

1 State would like Officer Hubbard to testify as to
2 what the interpreter is saying my client said.

3 Your Honor, number 1, that's hearsay upon
4 hearsay. I don't believe that the -- Officer
5 Hubbard should be able to testify to what Officer
6 Lemus is saying, especially in a case where an
7 interpretation contains so much inaccuracy.

8 THE COURT: Mr. Hubbard can testify as to
9 what Lemus said to him in English. If he does not
10 speak Spanish, obviously he's not going to be able
11 to testify as to what he was saying in Spanish.

12 MS. CARMODY: So, Your Honor, the issue
13 is going to be that Detective Hubbard wants to
14 testify to what my client was telling Detective
15 Lemus.

16 THE COURT: No, he's only going to be
17 able to say what Lemus told him that he said.

18 MS. CARMODY: But that's hearsay, Your
19 Honor.

20 THE COURT: It's an interpreter. I mean,
21 that's what he's trying to act as, so I'm going to
22 allow it.

23 MS. CARMODY: Your Honor, there is a
24 case --

25 THE COURT: I'm going to. Miss Carmody,

1 we're going to move on. All right. I'm allowing
2 the statements. If there is any issue as to what
3 he's going to testify to, object to it at that
4 time. All right.

5 MS. CARMODY: Yes, sir.

6 THE COURT: We got to get going. We were
7 supposed to start at 9:00. It's already 9:50 and
8 we're not even on the second hearing. When I say
9 nine o'clock, I mean nine o'clock. Okay?

10 Aimee, pull it up.

11 MS. LEMPESIS: Your Honor, I think the
12 next matter that we were -- Miss Carmody has
13 indicated she needs Officer Lemus to testify to, I
14 don't think we need to have any testimony. This
15 is Miss Carmody's motion for -- under Niel v.
16 Biggers. I'll let her make her motion and her
17 argument and however many witnesses she needs to
18 call, but we are not -- there is no out-of-court
19 identification here.

20 We have a witness on all, Berdugo
21 Berdugo, who was with the defendant and the victim
22 in the case the night of the incident from about
23 10:30 or eleven o'clock at night, or a little bit
24 later, until the incident occurred, about 4:00 in
25 the morning, 4:15.

1 The testimony will be that Anibal met
2 Mr. Osman that night. He was a friend of
3 Yobani's. Yobani is Anibal's -- I think his
4 uncle. To some extent -- he lived in the house
5 with Yobani on Young Street. Anibal met him that
6 night. Hung out with him all that night. He'll
7 presumably be able to identify Mr. Benitez in the
8 courtroom because he knows him from being with him
9 on the night and he's familiar with him, but there
10 was never any, sort of, out-of-court photo line-up
11 presented to Anibal. Officer Hubbard met Anibal,
12 interviewed him. Anibal admitted and will testify
13 that he was not forthcoming with law enforcement
14 initially because he was -- ultimately, he was
15 just terrified and he was scared.

16 And so, initially, he told -- he gave the
17 officers a different account of what had actually
18 happened that night. Later he came back and he
19 told them exactly what happened. We have it
20 all -- it will backup his story -- in the
21 surveillance footage. It was in those interviews
22 with Anibal that they -- they already have Osman
23 Benitez identified as the suspect because he's the
24 registered owner of the car. They have video
25 surveillance footage of him driving the car

1 earlier that night. And then Anibal tells them,
2 yeah, that's the guy, Yobani's friend. He says --
3 he end up -- either Hubbard -- I don't even think
4 Hubbard gave him his name. I don't think it
5 matters. But there's no out-of-court unduly
6 suggestive identification.

7 THE COURT: Right. Is there -- any
8 police show up or on the scene on the night of the
9 incident or is there any photo line-up that was
10 presented to anyone in this case?

11 MS. LEMPESIS: No.

12 THE COURT: Well, then there's no reason
13 to have a Biggers hearing then. Because that's
14 the only two opportunities that you would need it.

15 MS. CARMODY: Your Honor, I would
16 completely disagree.

17 THE COURT: All right. Well, let me hear
18 from you real quickly.

19 MS. CARMODY: Okay. Your Honor, if I
20 could call Detective Hubbard to the stand, Your
21 Honor.

22 THE COURT: Detective Hubbard, come on
23 up.

24 THE INTERPRETER: Your Honor, the
25 conversation is getting faster and faster and it's

1 getting harder for me to keep up. If you could
2 slow down.

3 THE COURT: All right. No problem.
4 You're still under oath.

5 THE WITNESS: Yes, sir.

6 MS. CARMODY: Your Honor, if I may approach.
7 This is the case.

8 CONTINUATION OF OFFICER THOMAS HUBBARD

9 CROSS-EXAMINATION

10 BY MS. CARMODY:

11 Q Good morning, Detective Hubbard.

12 A Morning.

13 Q Detective Hubbard, when you -- the first time that
14 you had talked to Mr. Anibal Berdugo -- Mr. Anibal
15 Berdugo, isn't it true that he told you that he didn't
16 know what had happened that night, he had been
17 sleeping?

18 A Correct.

19 Q And he maintained that throughout that entire
20 interview?

21 A The first interview, yes.

22 Q Yes, okay. And then when you meet with him the
23 second time, the purpose of that second meeting is
24 actually to confront him with video surveillance that
25 you had found, correct?

1 A We confronted him that the story line that he
2 provided us was inconsistent with evidence that we
3 collected, though we did not show him any of the
4 evidence we collected.

5 Q That's not what I'm asking you. I'm asking you --
6 let me rephrase it.

7 When you're talking with Mr. Anibal Berdugo,
8 the second time that you're talking with him, at any
9 point in time, did he specifically, him, himself, tell
10 you it was my client?

11 A I can't remember if he actually said Osman's
12 name, but I know he just mentioned he had just met
13 him that evening.

14 Q Isn't it true that all throughout that statement
15 you actually told him that the person that was with
16 him that night was Osman Benitez?

17 A Again, I cannot remember if I specifically
18 told him the name. But he did acknowledge that it
19 was the individual he had just met that night.

20 Q Did you -- okay. So did you review your
21 statement?

22 A I did.

23 Q Okay. So in that statement, isn't it true that
24 numerous, numerous times throughout that statement,
25 you and Officer Lemus are consistently telling Anibal

1 that the person that was with him was Mr. Benitez, his
2 name?

3 A Yes.

4 Q And you also told him, we know that you were with
5 him because we saw you two on video, correct?

6 A Yes.

7 Q Okay. And Mr. Berdugo, Anibal Berdugo was telling
8 you that, I'm not sure if it was him. I don't know
9 who it was. It was dark outside. I was groggy.
10 Things of that nature, correct?

11 A For the first interview?

12 Q For the first and, actually, for the second
13 interview.

14 A No. For the second interview, Mr. Anibal
15 advised that he could see the defendant had come
16 from behind the victim's vehicle. He was able to
17 tell that it was him prior to running from the
18 scene.

19 Q He did not actually tell you who it was. You told
20 him who it was, correct?

21 A For -- the translation was that he could tell
22 it was the defendant walking -- or coming from
23 behind the victim's vehicle while he was walking
24 back up to the scene. And then he was told that
25 he was needing to get out of there or else he

1 would be harmed. But he could tell it was the
2 individual he was with that night prior.

3 Q Okay. But my point is that, did he tell you --
4 give you a description of my client? Did he say he
5 was wearing this type of clothing. Did he say he
6 looked like this. This is his build or anything like
7 that?

8 A He didn't give me clothing, but he said he
9 could recognize the individual as the individual
10 he was with that night.

11 Q Okay. So that's how he identified him to you and
12 you filled in that the name of that person is
13 Osman Jimenez-Benitez?

14 A Yes.

15 Q So Mr. Anibal said, I'm with that person that
16 night, but it was not him who actually told you who my
17 client was. You told him who it was, correct?

18 A I don't know.

19 Q I'm sorry. He did not tell you, I was with Mr.
20 Osman Benitez?

21 A He advised he was with that defendant that
22 night.

23 Q That person.

24 A Correct.

25 Q And you told him that person is Osman

1 Jimenez-Benitez?

2 A Correct. That's who we were referring to.

3 MS. CARMODY: I don't have any further
4 questions, Your Honor.

5 THE COURT: All right. You may step
6 down.

7 Miss Lempesis, you got anything?

8 MS. LEMPESIS: I don't have anything.

9 THE COURT: All right.

10 MS. CARMODY: Brief argument, Your
11 Honor.

12 THE COURT: Sure.

13 MS. CARMODY: Your Honor, I would submit
14 to the Court that that was absolutely more than a
15 show of bias, Your Honor. A showing of bias are
16 widely condemned and disfavored under the law,
17 Your Honor. The law enforcement telling the
18 witness who the person was that was with him, Your
19 Honor, it goes ever more to a show of bias. They
20 didn't even have to -- they didn't show him any
21 pictures or anything like that. They didn't have
22 to. They were telling Anibal who he was with that
23 night. Anibal didn't tell them that.

24 So, Your Honor, I believe that any subsequent
25 identification in this case would be significantly

1 prejudicial to my client because of the first time
2 that law enforcement tells him who he's with.

3 There's two prongs, Your Honor, to the test.
4 The first one is whether -- the Court must determine
5 whether the identification process was unduly
6 suggestive. There's no doubt whatsoever that law
7 enforcement, you were with Jimenez-Benitez, that that
8 is unduly suggestive, Your Honor. No evidence
9 whatsoever.

10 I believe that the second is the one that's
11 going to go into the totality of the circumstances.
12 So the second prong says that eyewitness
13 identification which is unreliable because it was a
14 suggestive line-up procedure is constitutionally
15 inadmissible as a matter of law. The following
16 factors are to be considered in evaluating the
17 totality of the circumstances as to whether an
18 identification is admissible. The opportunity of the
19 witness to be the criminal at the time of crime, the
20 witness's degree of attention, factors to give a
21 witness's prior description, the level of certainty by
22 the witness, and the length of time to the crime of
23 congregation.

24 Number 1, Your Honor, he never gave a
25 description. The officer just testified to that.

1 The officer literally told Anibal who he was with
2 that night. Never asked him to clearly give a
3 description. You know, what did the guy look
4 like? Did he have brown hair? You know, what was
5 his build? What was his race? Anything like
6 that. The officers are the ones who provided
7 Mr. Anibal Berdugo with the name of my client and
8 identified him.

9 Thank you, Judge.

10 THE COURT: All right. Miss Lempesis.

11 MS. LEMPESIS: It's not an issue of an
12 out-of-court identification. They provided his
13 name after, you know, realizing and knowing that
14 he was with him all night. I think that it's -- I
15 could have Anibal testify and identify the
16 defendant by his name, but I'm not going to do
17 that. I can ask Anibal, do you see the person in
18 the courtroom that you were with all night, that
19 was driving the car, that chased you and your
20 friend down Haynesville Street, and, if you do,
21 can you point to him?

22 You know, it's true that he didn't know
23 his name. They just met earlier that evening.
24 They had this mutual friend, Yobani. But when
25 asked if that was -- if Osman was his name, I

1 think the response was, yeah, I think so. But I'm
2 not arguing that he knew this guy's name in full,
3 but he certainly knew him to be the person that
4 was driving the car that night that threatened him
5 after he had run his friend over, and who -- and
6 who was with the whole night. And who he will be
7 able to recognize and identify in the courtroom.
8 If you don't want me to call him -- have him call
9 him by his name, I'm fine to do that. He can
10 point to him at the table.

11 THE COURT: No, I don't believe it's a
12 Biggers issue. I believe that -- also that's one
13 of the defenses, and the jury can give it whatever
14 weight. I think it's an issue for the jury. They
15 can give it whatever weight that they want to give
16 it, so I will allow it.

17 Anything else before we bring them out?
18 Who's -- you have to email Lemus and tell him he is
19 excused. And where is the detective that was here
20 yesterday?

21 MS. LEMPESIS: She should be --

22 THE COURT: I see that some of these are
23 family members. Is any one of them the sister
24 that's going to testify next?

25 MS. LEMPESIS: No, they're not here for

1 the State, Your Honor. I did have sequestration.
2 Miss Carmody indicated some of them may be
3 witnesses in her case, so I'd ask that anybody who
4 is a witness be excused.

5 THE COURT: Yeah, they need to be
6 excused.

7 MS. CARMODY: They're not witnesses, Your
8 Honor.

9 THE COURT: So, obviously, they won't be
10 able to testify if they stay.

11 All right. I'm just going to grab a cup
12 of coffee. You-all stay seated.

13 MS. LEMPESIS: Can we bring Deputy Watson
14 to the stand?

15 THE COURT: Go ahead.

16 (Off the record.)

17 THE BAILIFF: All rise.

18 THE COURT: You-all are fine. You can
19 bring them out.

20 (Jury enters the courtroom at 10:02 a m.)

21 THE COURT: All right. Well, thank
22 you-all so much for being here on time.
23 Obviously, I'm not doing a very good job of
24 guessing how long things will take. They keep
25 going over, so that's my fault. So I apologize

1 for that. I hope you-all had a good early evening
2 last night, but for right now, we will continue
3 with the testimony of the deputy.

4 If you'll come up. You're still under oath.

5 THE COURT: Just for the record, indicate
6 who you are again.

7 THE WITNESS: Rhonda Watson, R-h-o-n-d-a,
8 W-a-t-s-o-n.

9 THE COURT: All right.

10 CONTINUATION OF CROSS-EXAMINATION

11 BY MS. CARMODY:

12 Q Good morning, Officer Watson.

13 A Good morning.

14 Q Officer Watson, after court last night, did you
15 have the opportunity to review your body cam?

16 A I did, ma'am.

17 Q Officer Watson, I'm going to back up a little bit
18 and obtain some clarification about what you testified
19 to yesterday to make sure -- to give you an
20 opportunity to make sure it's accurate.

21 A Yes, ma'am.

22 Q All right. And, Officer Watson, you were
23 dispatched and arrived on scene at approximately what
24 time?

25 A I'm going to say between 4:00 and 4:30.

1 Q All right. And when you were -- when you arrived
2 on scene was the area -- like, was it lit, like a lit
3 area?

4 A No.

5 Q And when you arrived on scene, did you
6 recognize -- did you see two vehicles there?

7 A I did.

8 Q Did you see a Dodge Avenger?

9 A I did.

10 Q And did you see a white Suburban?

11 A I did.

12 Q And the Dodge Avenger was partially in a ditch,
13 correct?

14 A Yes, ma'am.

15 Q And the Suburban, the location of the Suburban was
16 coming out, like, out of another -- out of the street,
17 so it was perpendicular? Would you say it was
18 perpendicular --

19 A It was as if it was stopped at a stop sign
20 waiting to enter Haynesville Road.

21 Q And, at the time, did you -- did you do any
22 investigation with that Suburban?

23 A No.

24 Q Did you have the Suburban towed?

25 A No.

1 Q Did you find out who was driving it?

2 A I later found out that the victim was driving
3 the Suburban.

4 Q Okay. But at the time when you arrived, you
5 didn't know who had been driving it, correct?

6 A Correct.

7 Q And, at the time, you didn't believe that the
8 Suburban actually had anything to do with what was
9 going on?

10 A I wasn't exactly sure, exactly what was going
11 on because there was nobody around except for the
12 complainant that was there.

13 Q Okay. And -- all right. So the Suburban is
14 actually -- it's really in the middle of the road, you
15 said, at the stop sign and the headlights were on,
16 correct?

17 A Yes.

18 Q All right. And, at some point, I believe you had
19 actually questioned whether Sara, the complainant had
20 driven that car.

21 A Correct.

22 Q You later learned that the Suburban was actually
23 registered to a man named Roblero Morales?

24 A That was a two last name.

25 Q I'm sorry.

1 A Roblero Morales I believe is a double last
2 name.

3 Q Oh, okay. Did you later learn that it was
4 registered to a Mr. Roblero Morales?

5 A No. I'm not exactly a hundred percent with
6 the Suburban.

7 Q Okay, I understand. But it's your testimony that
8 you did not do absolutely anything with the Suburban,
9 correct?

10 A Correct.

11 Q You didn't go in the vehicle?

12 A No.

13 Q You didn't obtain any evidence from the
14 Suburban?

15 A No.

16 Q All right. And -- okay. And, Officer Watson, you
17 were the primary investigating officer that night,
18 correct?

19 A Correct.

20 Q And you were the first on scene?

21 A Yes.

22 Q And your duties, as being first on scene, your job
23 is to control the scene and secure the area,
24 correct?

25 A Correct.

1 Q Did you put up crime scene tape?

2 A No, ma'am, I did not.

3 Q Was there anything put up or any type of
4 indication to indicate we don't want people walking in
5 this area?

6 A No.

7 Q So the scene -- would you agree that the scene was
8 not secure?

9 A Well, there was no one out at 4:30 in the
10 morning. The only person I came in contact with
11 was with Sara. So no one had come into the scene
12 except for Sara.

13 Q You would agree, though, that absent Sara being
14 there, the scene was not secure though, correct?

15 A It wasn't marked off with crime scene tape.

16 Q Okay. And when you first arrived there, actually
17 your job was to find out what was going on.

18 A Correct.

19 Q All right. And you had said that you were
20 dispatched to the area.

21 A Correct.

22 Q You were dispatched by Jasper County?

23 A Well, the Hardeeville Police Department
24 dispatch, which is also the same as the Jasper
25 County Dispatch Center.

1 Q Okay. And the Jasper County Dispatch Center did
2 not tell you who called you -- had called them,
3 correct?

4 A I'm not aware.

5 Q Did they tell you if it was a female?

6 A They did say that the complainant had stated
7 that someone had killed her brother.

8 Q And you learned that the complainant was Sara
9 Morales?

10 A Correct.

11 Q All right. So it's your understanding that you're
12 responding to a call that was placed by Sara Morales?

13 A Correct.

14 Q Okay. While you're on scene, it's also part of
15 your duties to locate potential witnesses?

16 A Correct.

17 Q And, initially, that was just Miss Morales,
18 correct?

19 A Correct.

20 Q What about a man by the name of Anibal, was he
21 there with Sara Morales?

22 A No.

23 Q What about a man by the name of Joel, was he there
24 with Sara Morales?

25 A No.

1 Q At some point lots of people start to gather,
2 correct?

3 A Correct.

4 Q All right. Some of those people, you learned, are
5 actually cousins of Sara?

6 A Yes.

7 Q And they lived in a house adjacent to Sara?

8 A If you want to call it adjacent, yes,
9 ma'am.

10 Q They live in the same neighborhood?

11 A Yes.

12 Q All right. And did you talk to any of those
13 people?

14 A I did.

15 Q Did you speak with a woman by the name of Adella?

16 A Adella? I don't recall an Adella.

17 Q What about a Rios?

18 A Where Hispanic names are pronounced a little
19 bit different, I'm not exactly sure if it's a Rios
20 or was it Rias.

21 Q R-i-o-s or R-i-a-s.

22 A I don't recall R-i-a-s.

23 Q All right. Approximately, how many people did you
24 talk to on scene?

25 A Approximately, nine.

1 Q All right. And out of the nine people that you
2 talked to on scene, how many of those people did you
3 collect information from?

4 A I collected information from the complainant
5 Sara about her and her brother and the nephew
6 Joel. And then the individuals that were standing
7 behind the fire truck, the gentlemen said his name
8 was Arias, or something of that nature. And then
9 there was the gentleman with the dog, and he
10 was -- later his name was discovered to be
11 Raymond.

12 Q All right. So to clarify what I asked you about
13 yesterday, was there a man with the dog there?

14 A Yes.

15 Q And the man with the dog, his name is Raymond?

16 A Yes.

17 Q All right. And isn't it true that while the
18 witnesses -- well, all these people are gathering,
19 you're trying to keep them away from the area?

20 A From the scene that was taking place, yes.

21 Q And did you obtain their name and contact
22 information prior to sending them away?

23 A Not on the individuals that were standing
24 behind the fire struck.

25 Q So initially -- the people that were on scene

1 initially you didn't confirm who they were, correct?

2 A Correct.

3 Q Isn't it true that we would have no way of knowing
4 now after the fact who was initially on scene?

5 A I know exactly who was on the scene.

6 Q You just testified that you didn't confirm who was
7 there and didn't obtain their contact information.

8 A No, there was no one there before the fire
9 truck arrived except for Sara.

10 Q Once the fire truck arrived, numerous people were
11 on scene?

12 A Correct. There was three, four people behind
13 the fire truck that was not closest to the scene.
14 Sara's co-worker, slash, friend, and a gentleman
15 that was with the co-worker friend was on the
16 other side of the road behind the fire truck and
17 ambulance.

18 Q All right. So just to clarify, you said three to
19 four people behind the fire truck.

20 A Correct.

21 Q Sara's friend, who was also her co-worker.

22 A Yes.

23 Q And a man who was also with the co-worker?

24 A If he -- I do believe he arrived with the
25 co-worker but never got out of the car. And then

1 when he did get out of the car and approach where
2 I had Sara and Sara's co-worker, I did discover
3 that he was also there too.

4 Q Okay. And what about -- you testified that three
5 to four people were behind the truck, who were they?

6 A The Rias was the man and his wife. And from
7 the way I understand it from the video, Raymond,
8 which was -- if I understood correct, he was the
9 victim's brother.

10 Q The owner of the vehicle?

11 A I don't know if he was the owner of the
12 vehicle. He was just the victim's brother.

13 Q Was his name Raymond Roblero Morales?

14 A Raymond Morales is what he said.

15 Q All right. No man by the name Anibal on scene?

16 A Not at first, no.

17 Q Is it fair to say that the people that you
18 eventually -- let me back up for a second. At some
19 point, you have a conversation with some of these
20 people, correct?

21 A Correct.

22 Q And did any of these -- any of the people that you
23 talked to who were on scene tell you that they saw
24 what happened?

25 A No. Anibal --

1 Q I'm not asking about Anibal. You said Anibal was
2 not on scene.

3 A No, not until later.

4 Q All right. So, when you arrived on scene, you
5 noticed that it appeared to be a person that had been
6 hit by the car, correct?

7 A Yes.

8 Q And, like I asked you yesterday, did you take any
9 steps to make sure that he was not alive?

10 A No, I immediately went to my supervisor that
11 arrived on scene seconds after I did and advised
12 him that the gentleman was underneath the front of
13 the car.

14 Q Okay. But you, yourself, did not try to talk to
15 him --

16 MS. LEMPESIS: Your Honor, I object.
17 This has been asked and answered yesterday during
18 Deputy Watson's testimony. She didn't need to be
19 refreshed on that.

20 MS. CARMODY: Your Honor, after she
21 reviewed her body cam, I'm just giving her an
22 opportunity to correct any misstatements.

23 THE COURT: All right.

24 MS. CARMODY: Thank you, Your Honor.

25 BY MS. CARMODY:

1 Q And you were speaking with Miss Morales. Is it
2 fair to say that when you were speaking with her she
3 was very upset?

4 A Yes.

5 Q And is it also fair to say that your focus at the
6 time of being on scene was Miss Morales?

7 A Correct. Sergeant Brown had already
8 eventually taken over the rest of the scene. He
9 was the one that made contact with the vehicle.

10 Q But -- okay. That's not what I'm asking you,
11 though. Your focus at the time that you personally
12 are on scene is Sara.

13 A Yes.

14 Q And understandably so. She's telling you that her
15 brother is under the vehicle, right?

16 A Yes.

17 Q All right. And isn't it true that prior to
18 talking with Miss Morales, you did not obtain the name
19 or the address of anybody that was on scene?

20 A There was no one else on scene besides Sara.
21 Everyone else -- everyone else came up later.

22 Q Okay. And through your investigation and your
23 discussions with Sara, did you learn that -- did Sara
24 know what happened?

25 A She said that someone had called her nephew

1 and told him that her brother had been killed.

2 And so that's when Sara said she went to the end
3 of the road and found her brother under the car.

4 Q Where did that call come from?

5 A She didn't know where the call came from.

6 And when I was assisting Sara to try to find the
7 phone where it came from, she could not locate the
8 number.

9 Q And the phone that Sara had in her possession, was
10 that her phone?

11 A No.

12 Q Whose phone was it?

13 A It was Joel's phone.

14 Q At some point, did you seize the phone?

15 A I did.

16 Q Did you also -- did Sara know whose car it was?

17 A No.

18 Q Did Sara know who had been driving the vehicle?

19 A No.

20 Q Prior to your arriving, I would imagine Sara went
21 to check on her brother, correct?

22 A Yes.

23 Q When Sara went to check on her brother, did she
24 indicate that she did anything?

25 MS. LEMPESIS: Objection, Your Honor.

1 We're not asking -- Miss Carmody is asking about
2 what happened before she even arrived.

3 MS. CARMODY: I'll rephrase the
4 question.

5 THE COURT: All right.

6 MS. LEMPESIS: It's outside of her
7 knowledge. And also it would be hearsay if she
8 testified to what Sara told her she did.

9 THE COURT: All right. Rephrase the
10 question.

11 BY MS. CARMODY:

12 Q Was Sara -- did Sara let you know what she had
13 done when she came outside?

14 A Yes. She said when she came up to the car,
15 she --

16 MS. LEMPESIS: Objection again. It's --
17 it's hearsay.

18 MS. CARMODY: It's an excited utterance,
19 Your Honor.

20 MS. LEMPESIS: She hasn't laid the
21 foundation for it.

22 THE COURT: Lay the foundation for it then.

23 BY MS. CARMODY:

24 Q When you were speaking with Sara, she was upset?

25 A Yes.

1 Q And she was upset that her brother had just been
2 killed?

3 A Correct.

4 Q And she was crying?

5 A Yes.

6 Q Did she appear to be under stress?

7 A Yes.

8 Q Was she trying to let you know what was
9 happening -- what happened?

10 A To the best of her ability, yes. She had
11 stated she didn't know what had happened, and she
12 was just trying collect herself and tell me the
13 best she knew how.

14 THE COURT: Okay. I'll allow it.

15 MS. CARMODY: Thank you, Your Honor.

16 BY MS. CARMODY:

17 Q In your conversation with Sara, what did she tell
18 you about when she first came outside?

19 A She said she came up to the car. At first it
20 was that she touched his leg. Then she said no, I
21 touched his foot.

22 Q Was anybody with her?

23 A No.

24 Q Did she tell you to confirm Anibal was not
25 there?

1 A Anibal was not there.

2 Q What about Joel?

3 A Joel was not there.

4 Q At some point in your investigation you learned

5 that Sara's brother was named Yobani Morales?

6 A The victim, yes.

7 Q Was Yobani living with Sara?

8 A Yes.

9 Q Did she indicate how long Yobani had lived with

10 her?

11 A I don't recall how long she said he had lived

12 with her. She stated that he lived with her and

13 her children.

14 Q And you learn that he's from Guatemala?

15 A I didn't learn that, no.

16 Q Did she provide you with his date of birth?

17 A Yes.

18 Q Did she provide you with her date of birth?

19 A Yes.

20 Q Sara was forthcoming with her information?

21 A Yes.

22 Q At some point, did Sara tell you the last time

23 that she had saw Yobani?

24 A Yes. She stated that she saw him around nine

25 o'clock the evening of the incident.

1 Q Did she know where he was?

2 A No.

3 Q Who he was with?

4 A No.

5 Q Do you know the telephone number for the phone
6 that Sara had in her possession?

7 A I don't recall the phone number, but they did
8 provide the phone number.

9 Q Do you know what type of phone it was?

10 A It was just a regular cell phone, touch
11 screen cell phone. The brand, I don't know.

12 Q Was it green?

13 A No.

14 Q What color was it?

15 A It looked like it was black to me.

16 Q When Sara was looking through that phone for that
17 phone call before you seized the phone, did she find
18 it?

19 A No.

20 Q Sara also indicated that there are the numerous
21 people who live at her house, correct?

22 A Yes.

23 Q And who are those people?

24 A Her, her daughter. I don't recall her saying
25 a son, but she said her children. She did state a

1 daughter. Joel. I'm not sure about Anibal. And
2 the brother Raymond.

3 Q And Yobani?

4 A Yes, and Yobani.

5 Q You indicate -- you testify that you're not sure
6 about Anibal. Is that because you don't remember, or
7 is that because she said he doesn't live there, or --

8 A I just don't quite recall.

9 Q Okay. In Sara's -- while she's upset and she's
10 crying and she's talking with you, did she also let
11 you know that Anibal had received a phone call that
12 someone wanted to beat up Yobani?

13 A I remember her saying something about
14 somebody saying that they wanted to beat up
15 Anibal, but it wasn't through a phone call.

16 Q Beat up Anibal or beat up Yobani?

17 A I'm sorry.

18 MS. LEMPESIS: I thought we were under
19 the excited utterance exception to hearsay, but
20 now we're talking about what somebody said to --

21 THE COURT: How long after you began to
22 talk to Sara was this conversation?

23 THE WITNESS: Anywhere from 30 to 45
24 minutes.

25 THE COURT: You're getting outside the

1 window, Miss Carmody. That's about the threshold,
2 30 to 40 minutes.

3 MS. CARMODY: Your Honor, the excitement
4 is still there. Her brother is still under the
5 vehicle as Officer Watson testified. She's trying
6 to contain Sara away from the vehicle. So she's
7 upset this entire time.

8 THE COURT: I'm just telling you, you're
9 getting close.

10 MS. CARMODY: Thank you, Your Honor.

11 BY MS. CARMODY:

12 Q And did she let you know -- are you sure that it
13 was Anibal -- I mean, Yobani or Anibal?

14 A I'm pretty sure it was her brother Yobani,
15 not Anibal.

16 Q So to clarify, someone wanted to beat up Yobani.

17 A Correct.

18 Q Did she indicate where she got this information
19 from?

20 A No.

21 Q When Sara first learned that her brother had been
22 hit by the car, did she indicate to you that anybody
23 went to get her in person?

24 A She said something about somebody knocking on
25 the door, but she never elaborated. And then she

1 said that's when she started heavily conversating
2 about someone calling Joel on his cell phone
3 telling him that Yobani had been killed.

4 Q To confirm, that's the phone in her possession?

5 A Yes.

6 Q Now, Detective Hubbard arrives on scene at some
7 point?

8 A Yes.

9 Q And, in addition to Detective Hubbard, who else
10 was on scene?

11 A As far as from the police department?

12 Q Oh, yes. Just the police department, yes.

13 A Myself, Sergeant Brown, Officer Bapties,
14 Chief Sam Woodward showed up and Detective Hubbard
15 showed up.

16 Q Who assumed control of the scene or control of the
17 investigation?

18 A Detective Hubbard.

19 Q And it was your understanding at the time that you
20 were working under the direction of Detective Hubbard,
21 correct?

22 A Correct.

23 Q And, at some point, Detective Hubbard directed you
24 to get a man by the name of Anibal?

25 A No, he did not.

1 Q Did he ask you to get a man by the name of Joel?

2 A No. That was Chief Sam Woodward.

3 Q My apologies. Sam Woodward, the chief.

4 A Correct.

5 Q Did he direct you to get a man by the name of

6 Anibal?

7 A I recall him telling me to get the nephew,

8 and I'm pretty sure it was Joel he was referring

9 to. And he did say, get him and isolate him.

10 Q And you had to go looking for him?

11 A Had I been looking for him?

12 Q You had to go look for him. He wasn't --

13 A Correct.

14 Q He wasn't --

15 A Correct.

16 Q He wasn't there with Sara.

17 A Correct.

18 Q You also at some point came across a man named

19 Anibal?

20 A Yes.

21 Q And you had to go looking for him as well,

22 correct?

23 A Anibal was with Joel when I found Joel.

24 Q So Anibal and Joel had been together?

25 A When I came over to the back of the Suburban

1 where Sara's van was parked behind the Suburban.

2 Q Okay. And you had some initial -- initial -- it
3 was initially hard because of the interpretation, they
4 were speaking Spanish, correct?

5 A Correct.

6 Q To determine who was who?

7 A Correct.

8 Q And you take Anibal and Joel and you put them in
9 your vehicle?

10 A Correct.

11 Q Neither one of them was isolated?

12 A Not at that current moment, no.

13 Q And both of them had been talking with -- well,
14 presumably talking with each other when you arrived.
15 They were in close proximity?

16 A When you say when I arrived, when I arrived
17 on scene or when I found them?

18 Q When you found them --

19 A Correct.

20 Q They were in close proximity?

21 A (Witness nods head up and down.)

22 Q Was either of them the person that was with the
23 puppy?

24 A No.

25 Q Okay. The person with the puppy was the owner of

1 the vehicle?

2 A I don't recall who the owner of the Suburban
3 was. It was with the brother Raymond Morales.

4 Q Okay. Was the person with the dog any of the
5 people that you mentioned earlier?

6 MS. LEMPESIS: I want to object. I think
7 we've gotten well into who the person with the dog
8 was. And Deputy Watson said she can't identified
9 him by name.

10 THE COURT: I'll sustain the objection.
11 Asked and answered. Let's move on.

12 BY MS. CARMODY:

13 Q When you bring Anibal and Joel, how many -- were
14 additional people on scene?

15 A The actual scene?

16 Q Yes. Were there additional people?

17 A Yes. Detective Hubbard was still on scene.
18 The chief --

19 Q I was just asking if additional people were on
20 scene.

21 At some point, did you have a concern
22 that the number of the people on scene could
23 potentially contaminate the investigation?

24 A No. I told the individuals to please step
25 back so that the scene wouldn't get contaminated,

1 because I didn't want them to be able to take
2 pictures of the body coming out from under the
3 car.

4 Q Okay. And there was no crime scene tape at this
5 point either?

6 A No.

7 Q So when you bring Joel and Anibal -- well, you put
8 them in your car and you take them over to Hardeeville
9 PD?

10 A Correct.

11 Q Did you talk with either one of them?

12 A I briefly used Google translate to try and
13 figure out what their name and date of birth was
14 and that was it.

15 Q In trying to find out their name and date of
16 birth, did Joel provide you his name and date of
17 birth?

18 A On a piece of paper, yes.

19 Q And did Anibal provide you his name and date of
20 birth?

21 A He provided me with his name. He provided me
22 with the month and maybe the day, but he, for
23 whatever reason -- no, he provided me with the
24 month. He wasn't sure about the day of his date
25 of birth and he could not provide me the year.

1 Q Okay. When you were using Google translate, did
2 you have issues speaking with Joel and that he seemed
3 to be -- the interpretation wasn't correct?

4 A No, there was no confusion.

5 Q Okay. Would you say that Joel was forthcoming
6 with you?

7 A Yes.

8 Q Was Joel intoxicated?

9 A Not that I recall.

10 Q Did he smell like alcohol?

11 A I couldn't smell alcohol on either one of
12 them at the time.

13 Q You didn't smell alcohol. Had either one
14 indicated that they were drinking?

15 MS. LEMPESIS: Objection, she's asking
16 for hearsay.

17 THE COURT: I'll sustain the objection.

18 MS. CARMODY: I'll move on, Your Honor.

19 BY MS. CARMODY:

20 Q Prior to leaving the scene, did you collect any
21 evidence?

22 A No.

23 Q Did you take --

24 A Just the cell phone, and I immediately turned
25 it over to Detective Hubbard.

1 Q Okay. The cell phone that you collected from
2 Sara?

3 A Uh-huh. Yes, ma'am.

4 Q Turned over to Hubbard, right?

5 A Yes, ma'am.

6 Q Okay. Did you take any pictures?

7 A No, I didn't.

8 Q Did you collect any witness statements?

9 A No, other than Sara's verbal statement.

10 Q And you indicated earlier that you did not put up
11 any type of tape or anything like that initially. I
12 just want to confirm, at any point you were there --

13 MS. LEMPESIS: Your Honor, I object.
14 It's been asked and answered.

15 MS. CARMODY: Your Honor, I'm covering
16 the entire time she was there.

17 THE COURT: Let's move on. I mean, we --
18 BY MS. CARMODY:

19 Q The entire time that you were there, did you add
20 any crime scene tape or anything like that?

21 A No.

22 Q All right.

23 MS. CARMODY: Beg the Court's
24 indulgence.

25 THE COURT: All right.

1 BY MS. CARMODY:

2 Q Officer Watson, after you brought the two
3 individuals to the Hardeeville PD, did that conclude
4 your investigation?

5 A It did, but I stayed to keep them
6 separated.

7 Q You separated once they are at Hardeeville PD?

8 A Correct.

9 Q Okay. And when I say concluded your
10 investigation, you went and did other things with your
11 job and didn't have anymore work to do on this
12 particular case?

13 A At what time are you referring?

14 Q After you left the two individuals at Hardeeville
15 PD.

16 A I didn't leave them there. I stayed with
17 them until they were each individually taken into
18 the interview room.

19 Q Okay. And after they were taken into the
20 interview room, did you do anything else?

21 A I can recall on the video stating that Anibal
22 needed a ride home, and I volunteered to take him
23 home. I don't remember whether or not I took him
24 home, but the video says that I offered assistance
25 to take him home.

1 Q Okay. But you don't recall where you drove him
2 to?

3 A I don't.

4 Q So after you offered assistance to Anibal to drive
5 him home, did you have any other -- did you do any
6 other work in the case?

7 A No.

8 Q All right.

9 MS. CARMODY: I don't have any further
10 questions, Your Honor.

11 MS. LEMPESIS: Just very briefly.

12 REDIRECT EXAMINATION

13 BY MS. LEMPESIS:

14 Q Deputy Watson?

15 A Yes, ma'am.

16 Q You're the first deputy on that night of October
17 26 at about 4:15 in the morning?

18 A Yes, ma'am. I was the first officer on
19 scene.

20 Q There were no other deputies there when you
21 arrived on scene?

22 A I was the first officer on scene, yes. And
23 then Sergeant Brown arrived seconds later.

24 Q When you arrived on scene, who was the only person
25 you saw immediately?

1 A Sara.

2 Q Thank you. And Sara, you just determined, was the
3 sister of the victim. You also were not the lead
4 detective in this case?

5 A Correct, I was not the lead detective.

6 Q So your role as you testified earlier --

7 A Take identification.

8 Q Crowd control, basically?

9 A Correct.

10 Q And during that crowd control, you also did
11 have -- you did become involved with Anibal and Joel?

12 A Joel, yes, ma'am.

13 Q They are there soon after you got there, correct?

14 A It was a little while later.

15 Q What's a little while later, do you recall?

16 A Anywhere from an hour to maybe hour and 15
17 minutes.

18 Q So when they do arrive at that scene when your
19 dealing with Sara, did they stay when Sara left,
20 Anibal specifically?

21 A Yes.

22 Q Yes. Did he ride with you to the Hardeeville
23 police station willingly?

24 A Correct. It was shortly after I located the
25 two of them that I placed them in the back of my

1 patrol car and took them to the police department.

2 Q And it's not that they were under arrest. They
3 went with you because they needed a ride to the
4 station, correct?

5 A Correct.

6 Q Okay.

7 A And I offered that assistance.

8 Q Thank you. You took them because you could drive
9 them there.

10 When you got on scene -- or no. The victim's
11 body, Yobani's body --

12 A Correct.

13 Q -- which car was he underneath?

14 A It was underneath the Dodge Avenger.

15 Q Okay. And of the nine people, you said you talked
16 to about nine people on scene while you were there
17 crowd controlling --

18 A Yes, ma'am.

19 Q -- out of those nine people on scene that you
20 spoke to --

21 A Yes, ma'am.

22 Q -- were any of them the defendant, Osman
23 Jimenez-Benitez?

24 A No, ma'am.

25 Q Is that because he wasn't there?

1 A Correct.

2 MS. CARMODY: Objection; calls for
3 speculation.

4 THE COURT: I'll overrule it.

5 MS. LEMPESIS: Thank you.

6 BY MS. LEMPESIS:

7 Q Deputy Watson, I don't have any other questions
8 for you.

9 A Thank you, ma'am.

10 THE COURT: All right. You may step
11 down. You may be excused. Have a great rest of
12 your day.

13 THE WITNESS: You too, sir.

14 THE COURT: All right. Ladies and
15 gentlemen, there's something I need to take up
16 with the attorneys. Let's take a quick
17 five-minute break and I'll bring you right back
18 in. All right.

19 (Jury exits the courtroom at 10:44 a m.)

20 THE COURT: All right. Miss Lempesis,
21 Aimee just Skyped me and said that she got what
22 you were discussing this morning that you have
23 several witnesses today, but a lot are chain
24 witness. What's the chain to, the DNA?

25 MS. LEMPESIS: The chain -- the only

1 chain is DNA and that's Detective Hubbard. So he
2 is one of the more key witnesses. It's the
3 surveillance. It's records custodians.

4 THE COURT: Do we really need to bring
5 record custodians in here?

6 MS. LEMPESIS: Unless Miss Carmody will
7 stipulate to the surveillance footage.

8 THE COURT: Where does the surveillance
9 footage come from?

10 MS. LEMPESIS: It comes from Palmetto
11 Trucking Company, which is Joe Floyd, one of the
12 witnesses. And it comes for Octane Gas Station
13 and that's Mr. Patel, and they are the people who
14 testified that the surveillance footage was taken
15 from their machine that records daily, every hour,
16 da-da-da.

17 MS. CARMODY: Your Honor, I can stipulate
18 to the videos. The issue that I would have is if
19 the officer tries to narrate what's going on in
20 the video.

21
22
23
24
25

1 MS. LEMPESIS: Okay. The officer will be
2 asked to narrate what happened in the video
3 because otherwise -- there's no volume on these
4 videos. I'm going to also ask Anibal who is in
5 the videos to tell us who we're looking at, where
6 he is, Yobani. He can identify the people that he
7 was with that night on camera. He is in the
8 video. And then Detective Hubbard will testify
9 and I will ask him to narrate in the sense that
10 what we're looking at now, we're looking at
11 footage from Palmetto Trucking and we're looking
12 at Haynesville Road and you need to, you know,
13 focus your attention on the right corner.

14 THE COURT: And Detective Hubbard, was he
15 the one that went to Palmetto Trucking and asked
16 to see their surveillance camera?

17 MS. LEMPESIS: Yes.

18 THE COURT: Well, we'll take a
19 five-minute break. When we get back, tell me what
20 you're going to stipulate to and let's go ahead
21 and release them.

22 MS. LEMPESIS: That would be fantastic.

23 THE COURT: All right. You-all let me
24 know. Is Anibal in the courtroom?

25 MS. LEMPESIS: Anibal is not in the

1 courtroom.

2 (A break was taken from 10:48 a.m. to 10:53 a m.)

3 THE DEPUTY: All rise.

4 THE COURT: Thank you be seated.

5 THE CLERK: Get Miss Carmody, please.

6 THE COURT: All right. Who all were you
7 able to agree upon?

8 MS. LEMPESIS: Joel Floyd and Mr. Patel
9 and the two surveillance videos.

10 THE COURT: Okay.

11 MS. LEMPESIS: So she's stipulating those
12 will just be -- I'll introduce them into evidence
13 with Mr. Anibal.

14 THE COURT: All right.

15 MS. LEMPESIS: Because they've already
16 been deemed admitted.

17 THE COURT: All right. You can bring
18 them out.

19 (Jury enters the courtroom at 10:57 a m.)

20 THE COURT: Thank you very much. Call
21 your next witness.

22 MS. LEMPESIS: The State calls
23 Laura Bayne.

24 THE CLERK: Good morning. Will you raise
25 your right hand, place your left hand on the

Testimony of Laura Bayne

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1 Bible. Do you swear to tell the truth, the whole
2 truth, and nothing but the truth?

3 THE WITNESS: I do.

4 THE CLERK: Put your mask down and adjust
5 your mic.

6 WHEREUPON:

7 LAURA BAYNE,
8 after having been sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MS. LEMPESIS:

11 Q Good morning, Ms. Bayne. Can you spell your last
12 name for the court reporter?

13 A Yes, certainly. B-a-y-n-e.

14 Q Thank you. Who do you work for?

15 A I work for the South Carolina Department of
16 Motor Vehicles.

17 Q Thank you. And where do you work? Where are you
18 located?

19 A In Blythewood, South Carolina.

20 Q So you just drove here this morning?

21 A Yes, and ran upstairs.

22 Q What is your job with the Department of Motor
23 Vehicles?

24 A I'm the director of vehicle services.

25 Q Okay. And what do your responsibilities

1 include?

2 A I oversee the State's program for title and
3 registration, license plates, large commercial
4 motor vehicles, and our contact center.

5 Q And do you keep records in that position? Is that
6 what your responsibility is?

7 A Yes.

8 Q And did I request that you pull some records
9 regarding the defendant in this case, Mr. Osman
10 Jimenez-Benitez?

11 A Yes.

12 Q Thank you. And those records, are they kept in
13 the ordinary course of business?

14 A Yes, ma'am.

15 (STATE EXH. 36, DMV record of plate and
16 registration, was marked for identification.)

17 BY MS. LEMPESIS:

18 Q Miss Bayne, I'm going to show you what we marked
19 as State's Exhibit 36. If you can, just look at that
20 real quick and review it.

21 A Yes, ma'am.

22 Q Do you recognize what I've handed you?

23 A Yes. This is a record of the current plate
24 and registration that been admitted.

25 Q Okay. And how are you able to recognize it?

Testimony of Laura Bayne

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1 A I pulled the documents myself yesterday and
2 authenticated them.

3 Q Thank you. And is it a fair and accurate
4 representation of the record you pulled?

5 A Yes.

6 MS. LEMPESIS: Your Honor, at this time I
7 move to admit State's Exhibit 36.

8 THE COURT: All right. Any objection?

9 MS. CARMODY: No objection.

10 THE COURT: Without objection.

11 (STATE EXH. 36, DMV record of plate and
12 registration, was entered into evidence.)

13 BY MS. LEMPESIS:

14 Q And, Miss Bayne, would you tell me on that
15 document -- well, first of all, what is that document
16 titled?

17 A It's called current plate.

18 Q And what does that document tell you?

19 A It tells me the VIN, the make, model of the
20 vehicle, the title number, the plate number, the
21 current registered owner, and the address of that
22 registered owner.

23 Q Thank you. And would you tell me the make and
24 model of the vehicle?

25 A Certainly. It's a Dodge Avenger, 2009.

Testimony of Laura Bayne

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1 Q Okay. And can you tell me who it's registered
2 to?

3 A Yes, Mr. Osman Uvaldo Jimenez-Benitez.

4 Q Okay. Can you tell me what date it was issued?

5 A Certainly. This particular registration date
6 of issue was 11/16/2018.

7 Q Okay. Can you tell me the license plate number?

8 A Certainly. It is, [REDACTED]

9 Q Okay. Miss Bayne, I think that's all I have for
10 you.

11 A Okay.

12 Q I'm going to take that back from you. If you can,
13 just answer any questions that Mr. Carmody might have.

14 A Yes, ma'am.

15 MS. CARMODY: No questions, Your Honor.

16 THE COURT: All right. Thank you so very
17 much.

18 THE WITNESS: Thank you.

19 THE COURT: Have a great rest of your
20 day. Call your next witness.

21 MS. LEMPESIS: The State calls Phillip
22 Cothran.

23 THE CLERK: Raise your right hand. Do
24 you solemnly swear to tell the truth, the whole
25 truth, and nothing but the truth sworn so help you

Testimony of Phillip Cothran

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1 God?

2 THE WITNESS: I do.

3 THE CLERK: Come around. Pull the
4 microphone towards you.

5 WHEREUPON:

6 PHILLIP COTHAN,
7 after having been sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MS. LEMPESIS:

10 Q Good morning, Mr. Cothran.

11 A Good morning.

12 Q Can you state your first and last name for the
13 record?

14 A Phillip Cothran.

15 Q Thank you. And who do you work for?

16 A Jasper County Emergency Services.

17 Q What's your position with Jasper County Emergency?

18 A I am the CAD coordinator.

19 Q What is a CAD coordinator?

20 A It has a lot of roles in one. Basically, I'm
21 a telecommunications officer which means that I
22 answer 911 calls and dispatch those out. Also a
23 shift supervisor. So, I have that role as well as
24 a front line position, so I'm doing everything
25 else everyone else is doing. And the CAD

Testimony of Phillip Cothran

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1 coordinator also oversees the center, assists the
2 director of emergency services and the unit.

3 Q And do part of your responsibilities include
4 keeping records for the dispatch?

5 A Yes.

6 Q And do those records include 911 calls or CAD
7 reports?

8 A They do.

9 Q Okay. And a CAD report, tell me again what CAD
10 means?

11 A Computer-aided dispatch.

12 Q Computer-aided dispatch.

13 A Yes. Basically a program that just helps
14 accomplish what we need to accomplish.

15 Q And did you pull information regarding this
16 incident from October 26th of 2019 and put it in your
17 report?

18 A I did.

19 Q And is that information -- are those records that
20 are kept in the regular course of business?

21 A Yes.

22 (STATE EXH. 6, Conference reference report,
23 was marked for identification.)

24 BY MS. LEMPESIS:

25 Q Okay. And, Mr. Cothran, I am going to show you

Testimony of Phillip Cothran 251

1 what has been marked as State's Exhibit 6. If you can
2 just take a look through that and tell me when you've
3 had a chance to review it.

4 A Okay.

5 Q Thank you. What I'm going to do, is that -- can
6 you tell me what it is?

7 A This is a conference reference report, which
8 is basically whenever we enter information in the
9 CAD system, this is the report that's generated
10 from all that being compiled.

11 Q Okay.

12 A What pertains to the information we gathered
13 and who we sent to the call, and then all the
14 times associated with that.

15 Q Okay. And, Mr. Cothran, is that a fair and
16 accurate depiction of that report you made?

17 A Yes.

18 Q Has it been altered in any way?

19 A No.

20 MS. LEMPESIS: At this time, I would move
21 to admit State's Exhibit 6 into evidence.

22 MS. CARMODY: Your Honor, subject to my
23 pretrial objection regarding the 911 call.

24 THE COURT: I understand.

25 MS. CARMODY: Thank you.

Testimony of Phillip Cothran
THE COURT: All right. It's in

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1
2 evidence.

3 MS. LEMPESIS: Thank you.

4 THE COURT: Over the objection.

5 (STATE EXH. 6, Conference reference
6 report, was marked for identification.)

7 BY MS. LEMPESIS:

8 Q Mr. Cothran, in reviewing that report, can you
9 tell how many calls for service came into dispatch in
10 relation to a hit and run with death on October 26th
11 of 2019?

12 A As far as I can tell, it's just regarding one
13 phone call from one person.

14 Q One phone call from one person. Can you tell who
15 that person is or is there any way I can find
16 statements or information inside the report?

17 A There is not.

18 Q Okay. Can you -- is there a 911 recording
19 associated with this report?

20 A There is not.

21 Q Okay. Can you explain to the jury why there is
22 not a 911 actual recorded call?

23 A Sure. I might have my dates slightly off,
24 but at some point in late September of 2019 the
25 Jasper County's network was hit with a malware

Testimony of Phillip Cothran

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1 attack which was ransomware which basically locks
2 all the files. And that malware attack spread
3 throughout the county's network and it took down
4 numerous computers and servers. Unfortunately,
5 one of those servers was the audio recording
6 server. And during this time frame this service
7 was being rebuilt by a manufacturer and installed.
8 And, unfortunately, this call came in during the
9 time when it was not in place.

10 Q So hackers basically prevented you-all from being
11 able to have those 911 calls recorded and saved?

12 A Correct.

13 Q Okay. So, any incident that occurred during this
14 time frame in Jasper County, no 911 call was saved; is
15 that correct?

16 A Correct.

17 Q Okay.

18 A There was not an actual server to record it.
19 That server was replaced, I believe, in early
20 November.

21 Q Okay.

22 A The vender gave us a temporary one to use,
23 but that was as quick as they could get it to
24 us.

25 Q So, essentially, this report that we now admitted

1 is the extent of the information that you have in your
2 records regarding this incident?

3 A Correct.

4 Q And this report again shows one call came in that
5 evening or that early morning?

6 A Correct.

7 Q Thank you. I'm going to call your attention to
8 the bottom of the report on the first page,
9 Mr. Cothran. Obviously, you stated that you can't --
10 you don't know who called, but can you read to the
11 jury or publish to the jury that -- that last line at
12 4:38 and 11:00 a.m.

13 A Car is on her brother.

14 Q It says the car is on her brother?

15 A Uh-huh.

16 Q Okay. So these records, they're kept as the call
17 comes in, they're kept contemporaneously as the
18 dispatch is taking information, the dispatcher?

19 A Correct.

20 Q Okay.

21 MS. LEMPESIS: Beg the Court's
22 indulgence.

23 BY MS. LEMPESIS:

24 Q Mr. Cothran, I don't have any other questions for
25 you. Please answer any questions Miss Carmody has for

Testimony of Phillip Cothran

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1 you.

2 CROSS-EXAMINATION

3 BY MS. CARMODY:

4 Q Mr. Cothran, good. Just briefly, okay?

5 A Okay.

6 Q Referring to the State's exhibit they just handed
7 you, that's the CAD report --

8 A Yes, ma'am.

9 Q -- on the CAD report, where is it that one call
10 came in? Can you specifically point to that?

11 A If you -- do you have a copy?

12 Q Yes, I do.

13 A If you look on this first area under call
14 narrative --

15 Q Let me see.

16 A -- it's listed -- so it's listed from when
17 the call started coming in to when it ended. So,
18 you know, that's the time the caller would have
19 called in. There's also on page -- it would be
20 page 3. So this details when the call was
21 created.

22 Q Okay.

23 A It talks about when the narrative was added
24 and actions.

25 Q Now, just to clarify, on the report when it says

1 narrative added, is that what indicates that there was
2 a 911 call?

3 A Yes. Or a call. Whether it came in on the
4 admin line or 911, I can't tell you. Obviously,
5 it came in and this is information they put in.

6 Q Okay. But, sir, there's actually -- if you look
7 at the report, there's several areas where it says
8 narrative added.

9 A Correct.

10 Q So I'm asking how you distinguish that that is
11 specifically a 911 call?

12 A Well, again, I'm saying that it's a phone
13 call.

14 Q It's a phone call.

15 A If that came in on a 911 line or an admin
16 line, can't tell you.

17 Q Okay.

18 A I can just tell you that a phone call came
19 in, this person answered it and this is the
20 information they documented.

21 Q All right. So, a phone call came in, but you
22 can't testify that was actually a 911 call?

23 A That's not what I'm saying.

24 Q Okay.

25 A I'm saying it was a phone call.

Testimony of Phillip Cothran

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1 Q Okay. I'm a little bit confused, sir. So, how
2 would -- how could phone calls come in if they weren't
3 by 911?

4 A On an admin line.

5 Q Admin line, okay.

6 A That just means administrator or
7 non-emergency, so a regular 10 digit phone
8 number.

9 Q All right. So prior to that when it was a
10 catch-up call created, what does that mean?

11 A So CAD catch-up is a feature used by the
12 system to enter information if the CAD goes down.
13 In which case, this was entered on -- if you look
14 on page 2, on this bottom area at the very top --

15 Q Okay.

16 A -- it says call log, and it has a time/date
17 stamp of 12/10/2019 at 5:56, so that -- if you
18 look at the very bottom of those, it's CAD versus
19 catch-up call added, and it's that number, et
20 cetera. So this is when the CAD catch-up feature
21 was used to add this information into the system.

22 Q Okay. So just to confirm, this report is not
23 capturing information real time?

24 A The information, that same hack that I
25 referred to earlier, also shuts down the various

Testimony of Phillip Cothran

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1 CAD servers, so we were forced to start putting
2 information into an Excel spreadsheet, so this
3 information was documented as it was obtained.
4 And then once we got our CAD back on-line, we had
5 to go back and start putting all these calls that
6 we had back into the system.

7 Q Okay. So when you're testifying that only one
8 call came in, this is information that was transferred
9 from an Excel spreadsheet?

10 A Yes.

11 Q And it was transferred in December 10th of 2019?

12 A Yes.

13 Q And the information that's being transferred is
14 information that was on the Excel spreadsheet from
15 October 25 of 2019?

16 A Correct.

17 Q And is this done by a computer or is it done by
18 people?

19 A This would be the call taker, instead of
20 typing this information into the CAD because they
21 didn't have one, obviously we have to track that
22 information somehow. So the easiest and best way,
23 the most accurate way is to put it into an Excel
24 spreadsheet. It was a lot easier to type than
25 handwrite, especially when you're doing something

Testimony of Phillip Cothran

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1 like that.

2 So, the call taker would have documented
3 these times as best they could, and then entered what
4 the caller was telling them the same way we would with
5 the CAD. And the same thing for all these other times
6 for the units. The dispatcher would have been
7 recording what time they told this person, you know,
8 go to the call and what time they got here.

9 Q Okay. Essentially, by looking at this report that
10 was created in December, you cannot definitively state
11 that there was only one 911 call that came in that
12 night, correct?

13 A No. I can only tell you that based off of
14 this. It's only recording one phone call.

15 Q Okay. It doesn't tell you who the caller was?

16 A Other than the first line of the narrative,
17 no, I wouldn't know who the caller was. It
18 doesn't list a name.

19 MS. CARMODY: I don't have any further
20 questions, Your Honor.

21 THE COURT: All right.

22 MS. CARMODY: Thank you, sir.

23 THE COURT: Anything else in follow-up?

24 MS. LEMPESIS: Just very briefly.

25 REDIRECT EXAMINATION

Testimony of Phillip Cothran

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1 BY MS. LEMPESIS:

2 Q That Excel spread sheet that you-all were using at
3 the time because the CAD system was down, that was
4 recorded in real time, correct?

5 A Yes.

6 Q So the calls that came in for this incident, would
7 have been -- any of the calls that came in should have
8 been recorded in the Excel spreadsheet and would have
9 been -- would have shown up in this report, correct?

10 A Yes.

11 Q I have no further questions, Mr. Cothran. Thank
12 you.

13 THE COURT: Thank you very much. You may
14 be excused.

15 All right. Call your next witness.

16 MS. LEMPESIS: Your Honor, the State
17 calls Sara Roblero Morales.

18 THE CLERK: Raise your right hand. Do
19 you solemnly swear tell the truth, the whole
20 truth, and nothing but the truth sworn so help you
21 God?

22 THE WITNESS: Yes.

23 MS. LEMPESIS: Your Honor, we need to
24 swear in our interpreter -- the Court's
25 interpreter for Miss Roblero Morales.

Testimony of Phillip Cothran

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1 THE COURT: Raise your right hand, ma'am.

2 Do you solemnly swear that you will accurately
3 interpret the language requested in this courtroom
4 of the witness without additions thereto or
5 detractions therefrom or any other amendments of
6 your own interpretation so help you God?

7 THE INTERPRETER: I do, sir.

8 THE COURT: Thank you, ma'am.

9 THE CLERK: Come this way.

10 MS. LEMPESIS: Judge, what do you think
11 is the best position for Miss Rosita to stand? I
12 think she should stand next to the witness.

13 THE COURT: That's fine. Just so she can
14 speak up so the jury can hear her. That will be
15 fine. Because, obviously, her speaking into the
16 microphone does us no good. We just need to hear
17 her.

18 MS. LEMPESIS: That's right.

19 THE INTERPRETER: Do we need him for
20 something?

21 THE COURT: He's interpreting for the
22 defendant.

23 MS. LEMPESIS: I'll just ask the
24 interpreter if she can just repeat what I'm saying
25 to Miss Morales.

1 WHEREUPON:

2 SARA ROBLERO MORALES,
3 after having been sworn to tell the truth, testified
4 as follows:

5 DIRECT EXAMINATION

6 BY MS. LEMPESIS:

7 Q Sara Morales Roblero, can you state your full name
8 for the court reporter?

9 A Good morning to everybody. I am Sara Morales
10 Roblero.

11 Q Thank you. Miss Roblero, where do you live?

12 A I live on ■ Young Street in Hardeeville.

13 Q Thank you. And where do you work?

14 A McDonalds.

15 Q And are you related to Yobani Roblero?

16 A Yeah, he was my brother.

17 Q And, your brother, where did he live?

18 A He lived in my house.

19 Q And can you say again where that house is
20 located?

21 A ■ Young Street, Hardeeville.

22 Q Was he have living with you in October of 2019?

23 A Yes.

24 Q And how long had he been living with you?

25 A Three and a half years.

Testimony of Sara Morales Roblero

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1 Q Okay. And did your brother -- did he work?

2 A Yes.

3 Q What did he do?

4 A Construction.

5 Q Okay. Miss Roblero, I'm going take you back to
6 the early morning of October 26, 2019.

7 A Okay. It's okay.

8 Q Do you -- tell me what you recall from that early
9 morning.

10 A What I remember is, I was getting dressed to
11 go to work. My nephew arrived crying and
12 screaming that my brother was underneath the car.
13 I run over there to where my brother was. When I
14 see my brother, the only thing I can see was his
15 feet. All of his body was underneath the car and
16 I investigate and tried to open the car, but the
17 car was locked and with the lights off. And I
18 picked up the telephone from my nephew and I
19 called the police desperately because he was my
20 brother, and the police answered right away. They
21 told me not to get near the body until the police
22 arrived there.

23 Q You mentioned your nephew. What was his name?

24 A Joel Roblero.

25 Q And was there anybody else there with you?

- 1 A My other brother.
- 2 Q Your other brother. What's his name?
- 3 A Raymond Morales.
- 4 Q Okay. And you said -- and I'm going to ask you
- 5 again because it was a little bit fast. You said --
- 6 did you try to open the doors to the car?
- 7 A Yes.
- 8 Q Hold on. Let her translate.
- 9 A Yeah, I was trying to. I tried to. The car
- 10 was locked, the lights were off, and I was just
- 11 desperate.
- 12 Q And you called 911?
- 13 A I called the police.
- 14 Q And did you stay there until the police arrived?
- 15 A On the telephone until the police arrived.
- 16 Q When did you last see your brother that night?
- 17 A Friday night, we all had supper. And my
- 18 brother stayed there in the living room, and I
- 19 went to bed.
- 20 Q Let her translate.
- 21 A I went to bed and I didn't see him again
- 22 until the next morning. I went to bed because I
- 23 have to go to sleep.
- 24 Q Do you know Anibal Berdugo?
- 25 A Yes.

Testimony of Sara Morales Roblero

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1 Q Did he live with you at this time?

2 A Yes.

3 Q Are you related to him?

4 A Not really, really.

5 Q Not really, really. Was Anibal related to
6 Yobani?

7 A More friends.

8 MS. LEMPESIS: Beg the Court's
9 indulgence.

10 BY MS. LEMPESIS:

11 Q Sara, when you arrived at the -- where the car
12 was, and you saw your brother's legs, did you touch
13 him to see if he was moving or alive?

14 A Yes. I got there. I touched his legs and I
15 started screaming to get out of there. But when I
16 touched him, his legs were cold so I desperately
17 called the police.

18 Q Sara, if you can, would you please come down here?
19 I'm going to show you the map that's already been
20 admitted.

21 Sara, can you show me on the map where your
22 house is on Young Street? On Young Street, where are
23 you?

24 A (Indicating).

25 Q To clarify, you understand the map?

1 A Yes.

2 Q So point again to where your house is
3 approximately?

4 A (Indicating).

5 Q And where -- well, that's it exactly. Okay.

6 Sara, I don't have any other questions
7 for you. Answer any questions Miss Carmody has,
8 okay?

9 A Yes.

10 CROSS-EXAMINATION

11 BY MS. CARMODY:

12 Q Good morning, Miss Morales.

13 A Good morning.

14 Q Ma'am, what were you doing -- you said it was your
15 Nephew Joel that came in screaming. What were you
16 doing when Joel came in screaming?

17 A I was getting ready to go to work.

18 Q Do you know if Anibal was at home?

19 A I don't know.

20 Q Did you talk to Anibal at all?

21 A When?

22 Q When you learned what happened with your
23 brother?

24 A I didn't pay attention. I didn't have a head
25 to think about it.

Testimony of Sara Morales Roblero

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1 Q You immediately went outside to check on your
2 brother?

3 A Yes.

4 Q Did you receive a phone call that something
5 happened to your brother or did someone receive a
6 phone call?

7 A No.

8 MS. LEMPESIS: Judge, I'm sorry. If the
9 translator can repeat what Sara said.

10 THE INTERPRETER: No.

11 MS. LEMPESIS: No. Okay.

12 BY MS. CARMODY:

13 Q Okay. When you went outside and you saw your
14 brother outside, was there anybody at the car?

15 THE INTERPRETER: Sorry?

16 BY MS. CARMODY:

17 Q Was there anybody at the car?

18 A No.

19 Q At some point, did Anibal talk to you?

20 A After?

21 Q That night, did Anibal talk to you?

22 A That night, no.

23 Q That night, no. Do you remember talking with
24 Sergeant Watson, the female officer?

25 A Yes.

Testimony of Sara Morales Roblero

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1 Q And you provided her your information?

2 A What information?

3 Q Did you provide her with your address, your date
4 of birth, and things like that?

5 A To the police? Yes. When they arrived on
6 the scene, yes.

7 Q All right. You also provided them with Yobani's
8 date of birth as well?

9 A I think so.

10 Q Did you provide them with information about the
11 other people in your household?

12 A No. That I know of, no.

13 Q Did any officer ever ask you about the other
14 people in your household?

15 A I don't remember.

16 Q Do you know what Anibal's date of birth is?

17 MS. LEMPESIS: Objection; relevance.

18 MS. CARMODY: Your Honor, this is the
19 person that lives in her home and he's family.
20 She provided the information to law enforcement.

21 THE COURT: Right. But what's the
22 relevance of whether she knows what his birthday
23 is?

24 MS. CARMODY: Because, Your Honor, I
25 believe the information he provided is not

Testimony of Sara Morales Roblero

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1 accurate.

2 THE COURT: All right. I'll overrule it.

3 Let's see if she knows.

4 BY MS. CARMODY:

5 Q Do you know what Anibal's date of birth is?

6 A No.

7 Q Okay. And Joel Roblero, he is your nephew?

8 A Yes.

9 Q And you testified that he lives with you? How
10 long has Joel lived with you?

11 A About four years.

12 Q At the time that this happened or now?

13 A When that happened.

14 Q When it happened?

15 A Four years.

16 Q How long had Anibal been living with you; a year,
17 two years, five years, 10?

18 A About two years.

19 Q Okay. And when you went outside, you called the
20 police?

21 A Not when I left the house. When I arrived
22 where my brother was.

23 Q Okay. You called the police?

24 A Yes.

25 Q And whose phone did you use?

Testimony of Sara Morales Roblero

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- 1 A My nephew.
- 2 Q Joel?
- 3 A Joel.
- 4 Q Ma'am, you had testified earlier that you were in
5 the house getting ready for work, you didn't see what
6 happened outside?
- 7 A Okay. I didn't, but I hear. I heard. I
8 heard the noise of the car. I never thought --
- 9 Q I'm sorry, ma'am. I didn't catch the
10 translation?
- 11 A No, but I heard the noise of the car. But I
12 never thought it was my brother.
- 13 Q Okay. All right. Besides hearing a noise, did
14 you -- you didn't actually see anything outside?
- 15 A No.
- 16 Q And --
- 17 A I was in my room.
- 18 Q Okay, in your room.
- 19 Ma'am, to your personal knowledge of what you
20 personally know, you do not know what happened
21 outside, correct?
- 22 A No. The only thing I know is when I got to
23 my brother's body.
- 24 Q And you do not know how it happened?
- 25 A No.

Testimony of Sara Morales Roblero

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1 Q Do you know whose car it was?

2 A No.

3 Q Have you ever seen that car before?

4 A Before that, no.

5 Q Was Yobani hanging out with friends at your
6 house?

7 A No.

8 Q Did Anibal ever relate to you that he received a
9 phone call that Yobani had been beaten up?

10 MS. LEMPESIS: Objection. It calls for
11 hearsay.

12 MS. CARMODY: It's not hearsay, Your
13 Honor. It's not for the truth of the matter
14 asserted.

15 THE COURT: I'll sustain the objection.

16 BY MS. CARMODY:

17 Q Did you know Yobani -- had he been drinking at
18 your house?

19 THE INTERPRETER: No, no, no, no.

20 THE WITNESS: No.

21 MS. CARMODY: I beg the Court's
22 indulgence, Your Honor.

23 THE COURT: Okay.

24 MS. CARMODY: I have no further questions,
25 Your Honor.

Testimony of Sara Morales Roblero
THE COURT: All right.

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MS. CARMODY: Thank you.

REDIRECT EXAMINATION

BY MS. LEMPESIS:

Q Sara, when you ran up to where the car was and
your brother was, was there anybody else around?

A No.

MS. LEMPESIS: Okay, thank you. No more
questions.

THE COURT: Thank you.

All right. Call your next witness.

MS. LEMPESIS: Thank you, Your Honor.
Can we approach about scheduling?

THE COURT: Sure.

(Bench conference off the record)

MS. LEMPESIS: Your Honor, thank you.
The State calls Anibal Berdugo Berdugo.

THE CLERK: Raise your right hand. Do
you solemnly swear or affirm to tell the truth,
the whole truth, and nothing but the truth so help
you God?

THE WITNESS: I do.

WHEREUPON:

ANIBAL BERDUGO BERDUGO,
after having been sworn to tell the truth, testified

Testimony of Anibal Berdugo Berdugo
as follows:

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DIRECT EXAMINATION

BY MS. LEMPESIS:

Q Good morning, Mr. Berdugo Berdugo. Is it Berdugo Berdugo?

A Anibal Berdugo, yes.

Q Anibal Berdugo. Anibal, how old are you?

A Twenty-one.

Q And where do you live?

A In Hardeeville.

Q And do you work?

A Yes.

Q Where do you work?

A In electricity.

Q In electricity. And where is your job?

A I don't have stability. We move everywhere.

Q But you work in electricity?

A Yes.

Q Anibal, were you living in Hardeeville in October of 2019?

A Yes.

Q And how old were you then?

A Like 19, 18.

Q Okay. Who were you living with in

Testimony of Anibal Berdugo Berdugo 274

1 October of 2019?

2 A With Sara.

3 Q With Sara, okay. And who else lived with you at

4 Sara's house?

5 A Yobani.

6 Q Do you know --

7 A Which is her brother and his nephew.

8 Q Okay. Do you know Yobani's last name?

9 A Morales.

10 Q Okay. And were you related to Yobani?

11 A Friend.

12 Q Friend. And about how long have you lived there

13 with Sara?

14 A About two years.

15 Q About two years, okay. Anibal, I want to take you

16 back to that night of October 25th and the 26th of

17 2019.

18 A Okay.

19 Q Do you remember what you were doing that night

20 around 10:00 o'clock or so?

21 A I remember a little.

22 Q Okay. Tell me what you were doing that evening?

23 A I was eating at a restaurant at 10:00

24 o'clock.

25 Q Okay. And what did you do -- did you receive any

Testimony of Anibal Berdugo Berdugo

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1 phone calls?

2 A Yes, from Yobani.

3 Q From Yobani. Okay. And what did Yobani -- what
4 did you do after you spoke to Yobani?

5 A I went to where he was.

6 Q I went to where he was. Where was he?

7 A Okay. They were drinking where the General
8 Dollar is.

9 Q Okay. Was he drinking at someone's house?

10 A Yes.

11 Q Do you know whose house he was at?

12 A Osman. I think that is Osman.

13 Q Okay. Did you know Osman before that night?

14 A No.

15 Q So you met Osman that night?

16 A Yes.

17 Q What did you do once you got to Osman's house?

18 What would you do once you got to Osman's where they
19 were drinking?

20 A Nothing. I was just hanging with them.

21 Q So hanging out, drinking beer?

22 A Yes.

23 Q Okay. Do you recall about what time you got
24 there?

25 A About 10:30 or 11:00.

Testimony of Anibal Berdugo Berdugo

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1 Q And about how long were you there?

2 A Where? I went there for about two hours and
3 then we went to the store.

4 Q Okay. What store did you go to? What sort of
5 store?

6 A The gas station.

7 Q The gas station, okay. And how did you get to the
8 store?

9 A Osman took us.

10 Q Okay. Did he drive you?

11 A Yes.

12 Q Do you know whose car you rode in?

13 A Yes.

14 Q Whose car did you ride in?

15 A Osman.

16 Q Did Osman drive the car?

17 A Yes.

18 MS. CARMODY: Objection, Your Honor.

19 THE COURT: I'll overrule it.

20 BY MS. LEMPESIS:

21 Q What did you do when you got to the gas station?

22 A What?

23 Q What did you do when you got to the gas station?

24 A We got more beer.

25 Q Okay. And do you recall who went into the gas

Testimony of Anibal Berdugo Berdugo

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1 station to buy more beer?

2 A Me and Osman.

3 Q Okay. And what did you do when you left the gas
4 station?

5 A We went to the house, Osman's house.

6 Q And -- actually, let me back up. Where was Yobani
7 when you went to the gas station?

8 A He was in the car in the back seat.

9 Q In the car in the back seat, okay. Did he get out
10 at the gas station?

11 A No.

12 Q Okay. So you get more beer, and get back into
13 Osman's car. Did Osman drive away from the gas
14 station?

15 MS. CARMODY: Objection; leading, Your
16 Honor.

17 THE WITNESS: Yes.

18 THE COURT: I'll overrule it. Go
19 ahead.

20 MS. LEMPESIS: Thank you.

21 BY MS. LEMPESIS:

22 Q And you said you went back to his house?

23 A Yes.

24 Q Did you stay there or did you go back out?

25 A We were there for a little bit.

Testimony of Anibal Berdugo Berdugo

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1 Q Okay. And then what did you do?

2 A So then Osman told him, I'm going to take you
3 someplace. I'm going to some street, but I don't
4 know what street because I never been there.

5 Q Okay. So you-all left the house, Osman's house?

6 A Yes.

7 Q Okay. And did Yobani go with you as well?

8 A Yes.

9 Q Who drove when you left?

10 A Osman.

11 Q Did he drive his car?

12 A Yes.

13 Q And about how long did you-all drive?

14 A Maybe an hour, 40 minutes or more. Don't
15 know.

16 Q Okay.

17 A I don't remember.

18 Q And what was -- did anything happened while Osman
19 was driving?

20 A He was driving very fast.

21 Q Okay. And what happened after this, after the
22 driving fast?

23 A We told him not to drive that fast, so he got
24 mad because he told him it was his car.

25 Q You and Yobani told him this?

Testimony of Anibal Berdugo Berdugo

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1 A Yes, both.

2 Q Were you in the front seat, Anibal, or the back
3 seat?

4 A I was in the back.

5 Q Okay.

6 MS. CARMODY: Your Honor, may we approach
7 briefly?

8 (Bench conference off the record.)

9 BY MS. LEMPESIS:

10 Q I'm going to slow down talking a little bit.

11 So, you and Yobani are in Osman's car.

12 A Yes.

13 Q And he's driving very fast.

14 A Yes.

15 Q And you're asking him to slow down.

16 MS. CARMODY: Objection; leading, Your
17 Honor.

18 MS. LEMPESIS: I will rephrase.

19 BY MS. LEMPESIS:

20 Q Tell me what happened after he was driving fast?

21 A They left and they came back to the same
22 place.

23 Q Did you go back to Osman's house?

24 A Okay. Yeah, we went to the house.

25 Q Okay. And what happened once you got back to the

- 1 house?
- 2 A He was mad and he tried to hit me.
- 3 Q Who is "he"?
- 4 A Osman.
- 5 Q Was Osman drinking that night?
- 6 A Yes.
- 7 Q And did he hit you?
- 8 A He pushed me.
- 9 Q What did you do after this happened?
- 10 A I tried to go to the house, walk to the
- 11 house.
- 12 Q To what house, Anibal?
- 13 A Where I live.
- 14 Q Where you live. Do you know the address where you
- 15 were living?
- 16 A No. Okay. I know, but I don't know the
- 17 address.
- 18 Q Is that when you were living with Sara?
- 19 A Yes, I still live there.
- 20 Q And you still live there?
- 21 A Yes.
- 22 Q So you were -- so you left and you started heading
- 23 home?
- 24 A Yes. Walking.
- 25 Q What happened once you left and you were heading

Testimony of Anibal Berdugo Berdugo

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1 out?

2 A Yobani got to me and I got to the car.

3 Q Okay. So Yobani came and did he pick you up in
4 his car?

5 A Yes.

6 MS. CARMODY: Objection; leading.

7 THE COURT: I'll overrule it.

8 BY MS. LEMPESIS:

9 Q Anibal, I'm going to hand you what I've marked as
10 a State's exhibit. It's a picture. Anibal, do you
11 recognize that, what's in the picture?

12 A Yes.

13 Q Okay. And can you -- how are you able to
14 recognize it?

15 A That's Yobani's car.

16 Q That's Yobani's car, okay. And is that what it
17 looked like that night?

18 A Yes.

19 Q Okay.

20 MS. LEMPESIS: Your Honor, at this time,
21 I would move to admit and publish State's Exhibit
22 8.

23 THE COURT: Any objection?

24 MS. CARMODY: Without objection, Your
25 Honor.

Testimony of Anibal Berdugo Berdugo
(STATE EXH. 8, Picture, was marked and

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1
2 entered into evidence.)

3 BY MS. LEMPESIS:

4 Q Anibal, is that Yobani's car?

5 A Yes.

6 Q Okay. And so what happened after Yobani picked
7 you up?

8 A Osman was following us.

9 Q Okay. Following you -- how was he following you?
10 In his car?

11 A Yes.

12 Q And where did -- how far did he follow you?

13 A About where the Dollar is, and then he went
14 up ahead.

15 Q Is the Dollar the Dollar General?

16 A Yes.

17 Q Okay. And then -- I'm sorry. You said he went up
18 ahead?

19 A Yes. He went ahead and passed them and kept
20 going.

21 Q And then where did Yobani drive to?

22 A We went to the house, to the entrance of the
23 house.

24 Q And what happened after you got to the house?

25 A We didn't get to the house. We were in the

Testimony of Anibal Berdugo Berdugo

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1 entrance. We stop at an entrance because Osman
2 was following us.

3 Q Okay. And what did you do then when you got to
4 the entrance?

5 A Yobani stopped the car and he got out of the
6 car.

7 Q What did Yobani do then?

8 A He went walking down the street where Osman
9 was.

10 Q And tell me, where was Osman at that time?

11 MS. CARMODY: Objection; calls for
12 speculation.

13 BY MS. LEMPESIS:

14 Q Could you see Osman from where you were?

15 A Just the car.

16 Q Okay. And so where was his car?

17 A It was at the entrance of the house.

18 Q Okay. What happened after Yobani got out of the
19 car?

20 A They are arguing with Osman, and I told him
21 to go to the house. I told him, let's go to the
22 house, but Yobani kept walking and I went to the
23 house.

24 Q Okay. What did you do once you got back to your
25 house?

Testimony of Anibal Berdugo Berdugo

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- 1 A I tried to take my shoes off and I heard the
2 noise from the car, from a car.
- 3 Q And what sort of a noise did you hear?
- 4 A Oh, okay. The noise of the wheel or the tire
5 when somebody is trying to get out of a hole or a
6 ditch or something.
- 7 Q What did you do once you heard that noise?
- 8 A I went back walking.
- 9 Q Back walking where to?
- 10 A To the exit where the car -- where Yobani's
11 car was.
- 12 Q What did you see when you got to where Yobani's
13 car was?
- 14 A Yobani wasn't there.
- 15 Q Okay. Did you see Osman or his car?
- 16 A Osman was out of the car.
- 17 Q Out of Osman's car?
- 18 A Yeah, Osman was outside of the car, of his
19 car. Osman's car.
- 20 Q And did Osman say anything to you?
- 21 A Yes.
- 22 Q What did he say?
- 23 A He said that trying to get out of there. If
24 I didn't get out of there, the same thing that
25 happened to my friend was going to happen to me.

Testimony of Anibal Berdugo Berdugo

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1 He told me to go. So I turned around and took off
2 to the house. I start running and I lost my shoes
3 and I fell.

4 Q Were you scared?

5 A Yes.

6 Q What did you -- actually, Anibal, if you can, come
7 down here, and, Rosie, you too.

8 Anibal, can you point to where the Dollar
9 General is, do you know?

10 A (Indicating).

11 Q Do you know where Osman's house was or where you
12 were that night with Osman?

13 A (Indicating.)

14 Q I'm going to ask you to scoot back right over here
15 so they can see. So show me again where the house was
16 that you were hanging with Osman and Yobani.

17 A (Indicating).

18 Q And where is the Dollar General?

19 A (Indicating).

20 Q And you said you left -- you left Osman's house
21 after the argument and you were running or walking?

22 MS. CARMODY: Objection, Your Honor.

23 Leading the witness.

24 THE COURT: All right. Rephrase the
25 question.

Testimony of Anibal Berdugo Berdugo

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1 BY MS. LEMPESIS:

2 Q Where were you approximately when Yobani picked
3 you up?

4 A (Indicating).

5 Q And where -- what direction did you-all -- did
6 Yobani drive once he picked you up?

7 A (Indicating).

8 Q Okay. So that's this way (indicating). Anibal,
9 can you show me where Sara's house is?

10 A (Indicating).

11 Q Where -- about where did Osman pass you in his
12 car?

13 A (Indicating).

14 Q And where did you -- did Yobani stop his car?

15 A (Indicating).

16 Q Okay. And where was the defendant's car when it
17 when it stopped?

18 A (Indicating).

19 Q Anibal, when you got back to Sara's house, who did
20 you -- what did you do?

21 A I took my shoes off. I heard the noise, so I
22 went out.

23 Q After -- after you went back to where Yobani's car
24 was and after you saw Osman and he said that to you,
25 you said you went back to --

Testimony of Anibal Berdugo Berdugo

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1 A I run back to the house. I let his nephew
2 know.

3 Q Okay. Who is Sara's nephew? What is his name?

4 A Benmado (ph).

5 Q It's okay if you don't. It's okay if you don't
6 know his name. If you don't know, just say so you
7 don't know.

8 So you went back to Sara's house; is that
9 correct?

10 A Yes.

11 Q And did you tell anybody what happened?

12 A I was nervous.

13 Q Stop and let Rosie translate.

14 THE INTERPRETER: Yes. He says when he
15 got back to the house he didn't tell his nephew
16 that he saw what happened but that he got a
17 call.

18 MS. LEMPESIS: He got a call.

19 BY MS. LEMPESIS:

20 Q Anibal was that the truth?

21 A No.

22 Q Why did you not immediately say what happened?

23 A Because I was scared.

24 Q What were you scared of?

25 A I don't know. I was nervous and scared.

Testimony of Anibal Berdugo Berdugo

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1 Q Okay. And so you told -- so you said you got a
2 call.

3 A Yes.

4 Q And then what did you do?

5 A Sara's nephew and myself went over there to
6 check for what's going on.

7 Q Okay. And what did you see?

8 A I move Yobani's car to the exit.

9 Q Okay, so stop right there. So, Yobani's car,
10 where was it parked?

11 A Okay. When we got there, he parked in the
12 middle of the street and that's where he was. I
13 moved it to the exit.

14 Q So you -- make sure I understand correctly.
15 You're saying you got into Yobani's car and drove it
16 to the end of the street?

17 A Almost to the exit.

18 Q Okay. And once you did that, what did you do?

19 A There was nobody there except Osman's car.

20 Q Okay. And did you see Yobani?

21 A Yeah, that's when we saw him underneath the
22 car.

23 Q Underneath the car. What part of his body, did
24 you see?

25 A Only the feet.

Testimony of Anibal Berdugo Berdugo

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1 Q And was Osman there still?

2 A No.

3 Q Did you try to move the car?

4 A I had tried to open the car, but the car was
5 locked.

6 Q Okay. Was your -- was the other gentleman, Joel,
7 was he there with you?

8 A Yes.

9 Q What did you both do next?

10 A He went fast to let Sara know.

11 Q Joel went fast to let Sara know. What did you do?

12 A He says, I just stay there because I was
13 shaking. I was scared.

14 Q Did you end up staying there or did you end up
15 going back to the house at any point?

16 A Yeah, I started walking towards the house.

17 Q Once -- do you know who called 911?

18 A Sara.

19 Q And, Anibal, once the fire truck and the ambulance
20 got there, were you around during that time?

21 A I was nearby. I was looking.

22 Q Watching?

23 A Uh-huh.

24 Q And, Anibal, did you go to the police station
25 later that night or morning?

Testimony of Anibal Berdugo Berdugo

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1 A Yes.

2 Q And did you talk to one of the detectives or
3 officers?

4 A Yes.

5 Q And did you tell them the truth right away?

6 A No.

7 Q What did you tell them?

8 A That I was not with them. That they had just
9 called me.

10 Q Did you eventually tell them -- the officer what
11 had happened that night?

12 A Yes. Later, yes.

13 Q Is it what you told us today?

14 A Yes.

15 MS. LEMPESIS: Your Honor, I'm going to
16 now admit what's been stipulated to by the State
17 and the defense. Beg the Court's indulgence.

18 All right. I am now going to admit
19 what's been stipulated to as State's Exhibit 7.

20 THE COURT: All right.

21 MS. LEMPESIS: Your Honor, Miss Carmody
22 would like to come up.

23 (Bench conference off the record.)

24 THE COURT: Ladies and gentlemen of the
25 jury, there is a matter that we need to take up of

1 Testimony of Anibal Berdugo Berdugo
2 law. So I ask that you please excuse us for about
3 five minutes and I'll bring you right back in.

4 (Jury exits the courtroom at 12:16 p m.)

5 THE COURT: All right.

6 MS. CARMODY: Your Honor, the issue is
7 that the State indicated that she wants to use
8 that photograph.

9 MS. LEMPESIS: Actually, I'm going to use
10 this, but I'm going to admit the smaller 8 by 11
11 so Miss Bostick doesn't have a crowded evidence
12 room. But these are stills that we pulled the
13 surveillance footage. I'm going to play the
14 surveillance footage, the relevant parts that
15 we've stipulated to. It shows from beginning to
16 end. And all but the first clip have Anibal in
17 it.

18 So before I do that, to help the jury
19 understand, I am going to have Anibal, from this
20 smaller one on the stand, but identify who the
21 people are in this picture.

22 THE COURT: Okay.

23 MS. LEMPESIS: He obviously knows
24 himself, he knows Yobani, and he can say -- he
25 can't say it's Osman, but he can say this is the
 guy he was with that night who drives the car.

Testimony of Anibal Berdugo Berdugo

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1 THE COURT: Okay.

2 MS. LEMPESIS: And so that's going to
3 make it easier so that when the jury is watching
4 the surveillance, which is as surveillance, it's
5 clear, but it's easy to identify what you're
6 looking at and what you're watching. So that's
7 what I intend to do.

8 THE COURT: And what's your objection?

9 MS. CARMODY: Your Honor, my objection,
10 number 1, that I talked about earlier is that, you
11 know, the State has the name of the case across
12 the top. I believe that should be redacted. It
13 believe it's prejudicial to my client, Your Honor.

14 Additionally, if they're going to play
15 the video and the jury is going to watch the
16 video, I believe that -- you know, the witness can
17 testify to what's happening on the video. But to
18 put still shots with it and in addition to saying,
19 oh, this was Osman, and with still shots with the
20 State's name above the still shots, I think it's
21 prejudicial and it's -- you know, it's additional
22 evidence that the jury doesn't need, Your Honor.
23 It's cumbersome and a waste of time. It's
24 redundant, and I would object under 403.

25 THE COURT: All right. I find it to be

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1 relevant and I find it's a non-issue as I
2 indicated previously that the State has actually
3 just put the State caption of the case in we're
4 trying, so I'll allow it. So you can bring them
5 back out.

6 MS. CARMODY: And the still shots as
7 well, Your Honor?

8 THE COURT: I'll allow the still shots.

9 MS. CARMODY: Thank you, Your Honor.

10 (Jury enters the courtroom at 12:20 p m.)

11 THE COURT: Yes, ma'am.

12 (STATE EXH. 9, Photos, was marked for
13 identification.)

14 MS. LEMPESIS: May it please the Court?

15 THE COURT: Yes, ma'am.

16 BY MS. LEMPESIS:

17 Q Anibal, I'm going to hand you something that I'm
18 going to ask you what it is. It's marked as State's
19 Exhibit 9. Do you know what that is?

20 A Yes.

21 Q Do you know who the people are in those
22 pictures?

23 A Yes.

24 Q Okay. And is that an accurate picture of what
25 you-all looked like on October 26, 2019?

Testimony of Anibal Berdugo Berdugo

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1 A Yes.

2 MS. LEMPESIS: Your Honor, at this time,
3 I would move to admit State's Exhibit 9 into
4 evidence.

5 THE COURT: All right. Over the
6 objection.

7 (STATE EXH. 9, Photos, was entered into
8 evidence.)

9 MS. LEMPESIS: I would have permission to
10 publish and ask the witness to step down.

11 BY MS. LEMPESIS:

12 Q Anibal, just tell me, where are you?

13 A (Indicating.)

14 Q So that's you. Where is Yobani?

15 A (Indicating).

16 Q Okay. And where is Osman, or the person you were
17 with that night driving the car?

18 A (Indicating.)

19 Q Anibal, I want to direct your attention to the
20 screens, probably this one, for you to watch.

21 A Okay.

22 Q We're going to publish what's been entered as
23 State's Exhibit 7 and play it now.

24 (STATE EXH. 7, Video, was marked and entered
25 into identification.)

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1 BY MS. LEMPESIS:

2 Q And as we're watching, Anibal, I'm going to ask
3 you some questions.

4 A Yes.

5 (Video played.)

6 BY MS. LEMPESIS:

7 Q Anibal, do you recognize either of the cars?

8 A Yes.

9 Q Whose car? Which car do you recognize?

10 A Yobani's car.

11 Q Yobani's car. Is it the one that just pulled
12 up?

13 A Yes.

14 Q Anibal, were you with Yobani at this point in the
15 night?

16 A No.

17 Q Is that Yobani?

18 A Yes.

19 Q Do you know who that is with the beer? Is that
20 Yobani that's walking out with the beer.

21 A Osman.

22 Q And is that Yobani who just walked into the
23 cooler?

24 A Yes.

25 Q Okay. Anibal, you testified earlier that -- well,

Testimony of Anibal Berdugo Berdugo

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- 1 first, do you see the time on the bottom right-hand
2 side of the video?
- 3 A Yes.
- 4 Q Does that say -- what time does that say? Do you
5 see on the far right-hand side?
- 6 A 2:14.
- 7 Q Were you with Yobani and Osman by this point?
- 8 A Yes.
- 9 Q Okay. Anibal, whose car is that approaching now,
10 do you know?
- 11 A Osman's car.
- 12 Q Anibal, where are you in this video?
- 13 A I'm there with Osman.
- 14 Q Okay. Who is driving?
- 15 A Osman.
- 16 Q Is that you in the gray shirt?
- 17 A Yes.
- 18 Q Who is in the red shirt?
- 19 A Osman.
- 20 Q Who is that walking back out?
- 21 A I and Osman.
- 22 Q Where is Yobani at this time?
- 23 A He's sitting in the back.
- 24 Q Okay. Who is that getting in the driver's seat?
- 25 A Osman.

Testimony of Anibal Berdugo Berdugo 297

1 Q You said you left the gas station, you went back
2 to his house briefly?

3 A Yes.

4 Q And then you said you-all went out driving and
5 that's when he was driving very fast?

6 A Yes.

7 Q And then you testified that you were going back to
8 Osman's house --

9 MS. CARMODY: Objection; leading, Your
10 Honor.

11 THE COURT: I'll allow it for the
12 purposes of this witness.

13 MS. LEMPESIS: Thank you.

14 BY MS. LEMPESIS:

15 Q You went back to his house and that's when he
16 tried to fight you?

17 A Yeah.

18 Q And then you left -- you left Osman's house and
19 started walking out?

20 A Yes.

21 Q Anibal, if you are able to see the defendant's
22 car, point it out. If not, don't worry.

23 A Yes.

24 Q Can you tell whose car that is?

25 A Yobani's.

Testimony of Anibal Berdugo Berdugo

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1 Q If you can tell what the next car is?

2 A Osman.

3 Q Anibal, can you see yourself on this video?

4 THE INTERPRETER: He's walking there.

5 Q So that's -- okay. Whose car is that?

6 A That's Yobani's car. That's what I got in.

7 Q Okay. Who's car is that?

8 A That's the car that was following us.

9 Q What is that? What happened there?

10 A That's when he passed us.

11 Q And is that as you were driving home, Yobani was
12 driving you home?

13 A Yes.

14 (End of video review.)

15 BY MS. LEMPESIS:

16 Q Anibal, do you see Osman in the courtroom today?

17 MS. CARMODY: Objection, Your Honor.

18 Subject to my argument.

19 THE COURT: All right. I'll overrule the
20 objection.

21 BY MS. LEMPESIS:

22 Q If you need to stand up, that's fine.

23 A Yes.

24 Q Do you see Osman in the courtroom today, the
25 person who was driving the car that night?

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1 THE COURT: I can't hear him.

2 BY MS. LEMPESIS:

3 Q You do see the person who was driving the car?

4 A Yes.

5 Q What is he wearing?

6 A A shirt.

7 Q What color shirt?

8 MS. LEMPESIS: If we could ask the
9 defendant to remove his mask for identification.

10 THE COURT: The interpreter will have to
11 ask him.

12 THE WITNESS: Yes, that's him.

13 BY MS. LEMPESIS:

14 Q And he's wearing a blue shirt; is that correct?

15 A Yes.

16 MS. LEMPESIS: So let the record reflect
17 that Anibal identified the defendant.

18 THE COURT: All right. The record will
19 reflect.

20 MS. LEMPESIS: Thank you.

21 BY MS. LEMPESIS:

22 Q Anibal, I don't have any other questions for you
23 right now.

24 THE COURT: All right. Ladies and
25 gentlemen, it's 12:40. This is probably a good

Testimony of Anibal Berdugo Berdugo 300

1 stopping point for us because I believe that

2 Miss Carmody's cross-examination will be pretty

3 lengthy as well. So we probably need to go ahead

4 and take a lunch break. So we'll just return back

5 in one hour, so be back here in 1:40. All right.

6 Look forward to seeing you back then. Hope you

7 enjoy your lunch. Remember, don't discuss

8 anything about the case.

9 (Jury exits the courtroom at 12:40 p m.)

10 (A break was taken from 12:40 p.m. to 1:52 p m.)

11 THE BAILIFF: All rise.

12 THE COURT: Thank you. All right, Ms.

13 Carmody.

14 (Jury enters the courtroom at 1:52 p m.)

15 CROSS-EXAMINATION

16 BY MS. CARMODY:

17 Q Good afternoon.

18 A Good afternoon.

19 Q Anibal, am I pronouncing that correct?

20 A Yes.

21 Q Okay. Anibal, when were you born?

22 A I don't know my correct date of birth.

23 Q I want to call your attention to earlier in the

24 day on October 25th of 2019.

25 A Okay.

Testimony of Anibal Berdugo Berdugo

301

1 Q What were you doing that day?

2 A I went to work.

3 Q And where were you working at the time?

4 A I don't remember.

5 Q And do you remember what day of the week it was?

6 A No.

7 Q Do you remember, was it sunny, was it raining,
8 anything like that?

9 A No.

10 Q What's the first thing that you do remember?

11 A That I was eating at the restaurant.

12 Q What restaurant were you eating at?

13 A A Mexican restaurant.

14 Q Do you know, where is the Mexican restaurant
15 located?

16 A I don't know.

17 Q Is there -- do you remember who you were with?

18 A I was by myself.

19 Q Do you remember what you had to eat?

20 A No.

21 Q Do you remember the name of the restaurant?

22 A It used to be called El Mexicana.

23 Q Do you remember what time you got there?

24 A Around nine o'clock at night.

25 Q While you're at the restaurant, you called

1 Yobani?

2 A No, he called me.

3 Q And after Yobani called you, how long did you stay
4 at the restaurant?

5 A I don't remember.

6 Q Okay. At some point, you left the restaurant?

7 A Yes.

8 Q And did you drive?

9 A No.

10 Q Did you walk?

11 A A friend picked me up and took me to the
12 Dollar.

13 Q What's your friend's name?

14 A I don't remember.

15 Q What does your friend look like?

16 A I don't know.

17 Q All right. What kind of car did he have?

18 A A van.

19 Q What color was it?

20 A White.

21 Q Where did you -- did you ask your friend to bring
22 you somewhere?

23 A Okay. He left me off at the Dollar, at the
24 Dollar General. The Dollar.

25 Q You asked your friend to bring you to the Dollar

Testimony of Anibal Berdugo Berdugo

303

1 General?

2 A Yes.

3 Q Okay. And what did you do while you're at the
4 Dollar General?

5 A I went to Osman's house because -- I walked
6 towards Osman's house.

7 Q Okay. But did you --

8 A Because Yobani was waiting for me.

9 Q Okay, hold on one second.

10 All right. So, you're at the Dollar General
11 and your friend dropped you off. Did Yobani give you
12 directions?

13 A Yes.

14 Q What directions did he give you?

15 A He explained it was close to the General, the
16 Dollar.

17 Q Okay. What type of house were you looking for?

18 A The house because Yobani was there.

19 Q I understand. That's what you keep saying. But
20 I'm asking you -- okay. So you're near the Dollar
21 General. How did you know where to walk to get to the
22 place you call Osman's house?

23 A Yobani.

24 Q Yobani gave you directions?

25 A He explained to me how to get there.

Testimony of Anibal Berdugo Berdugo.

304

1 Q Okay. And what exactly did he -- how did he
2 explain it to you?

3 A Okay. That he was close to the Dollar and
4 that he was going to wait for me in the street.

5 Q Yobani was going to wait for you in the street,
6 you said?

7 A Yeah, in the street near the Dollar.

8 Q Okay. I'm sorry. I just need to clarify.

9 So Yobani was going to be waiting in the
10 street for you, like he's going to waive, or something
11 like that?

12 A Yobani was in Osman's house.

13 MS. CARMODY: I understand you keep
14 saying the place he keeps calls Osman's house, but
15 I'm asking --

16 THE INTERPRETER: That's where Yobani
17 was.

18 THE COURT: Ma'am, I need you to let him
19 answer.

20 THE WITNESS: Yobani was there outside.

21 MS. CARMODY: Your Honor, may we
22 approach?

23 (Bench conference off the record.)

24 THE COURT: Just tell him to let you
25 interpret to him and then take a second and then

Testimony of Anibal Berdugo Berdugo 305
1 you respond back.

2 THE INTERPRETER: No problem, Your Honor.

3 No problem.

4 BY MS. CARMODY:

5 Q Yobani indicated to you that he would be close to
6 the Dollar General?

7 A Yes.

8 Q Did he indicate to you how you were to find him?

9 A That he was close to a Dollar and that he was
10 drinking with a friend.

11 Q Okay. Did Yobani ask you to walk down a
12 particular street?

13 A Yes.

14 Q What street did he ask you to walk down?

15 A From the Dollar, he told me to go to the
16 right and then to the left.

17 Q Okay. At some point, you recognize Yobani?

18 A Of course, because I live with him.

19 Q When you saw Yobani, what was he wearing?

20 A I don't remember.

21 Q What color house was it?

22 A I didn't see because it was dark.

23 Q Did you go inside the house?

24 A No.

25 Q At some point -- so you stay at the -- well, let

Testimony of Anibal Berdugo Berdugo

306

1 me back up.

2 When you got to the house -- hold on. Let me
3 back up a second.

4 What does the house look like?

5 A No, I don't remember.

6 Q Can you recall any details at all about the
7 house?

8 A Just the porch where I was sitting.

9 Q Okay. Was there lights on the porch?

10 A I don't remember.

11 Q Is it a big porch, a small porch?

12 A Little.

13 Q Was there anything that you recall about the
14 porch?

15 A No.

16 Q Do you remember how many chairs were out there?

17 A No, I don't remember.

18 Q Do you remember if there were any kid's toys out
19 there?

20 MS. LEMPESIS: Objection. Asked and
21 answered. He's answered the question. He doesn't
22 remember.

23 THE COURT: I'll let him answer if there
24 were toys out there and then move on.

25 THE WITNESS: I don't see it. I don't

Testimony of Anibal Berdugo Berdugo

307

1 remember anything there.

2 BY MS. CARMODY:

3 Q Okay. Who was out on the porch?

4 A Osman, Yobani.

5 Q Anybody else?

6 A No.

7 Q Okay. The person that you say is Osman, what was
8 he wearing?

9 A I don't remember. I didn't pay attention.

10 Q Okay. What's the next thing that you do
11 remember?

12 A I don't understand.

13 Q How long were you at this -- the house?

14 A Maybe two hours, and then we went to the
15 store.

16 Q All right. While you were at the house for that
17 two hours, what did you do?

18 A Nothing. Drinking.

19 Q Drinking. How much had you had to drink?

20 A I don't remember.

21 Q Do you remember anything else about that two-hour
22 window?

23 A No, we were only drinking.

24 Q All right. So after two hours goes by, you
25 indicated you went to a store, correct?

- 1 A Yes.
- 2 Q Okay. And whose idea was it to go to the store?
- 3 A I don't remember.
- 4 Q Do you remember what store you went to?
- 5 A I don't know the exact name of the gas
- 6 station.
- 7 Q You went to a gas station?
- 8 A Yes.
- 9 Q Okay. And how did you get to the gas station?
- 10 A In Osman's car.
- 11 Q Okay. What do you remember about Osman's car?
- 12 A Nada. Nothing.
- 13 Q What color was it?
- 14 A Maybe light gray.
- 15 Q Where did you sit in the car?
- 16 A I didn't understand the question.
- 17 Q Where were you seated in the car?
- 18 A Next to the driver.
- 19 Q How long did it take you to get to the store?
- 20 A Maybe three or four minutes.
- 21 Q All right. Now, you arrive at the store. Can you
- 22 tell me anything at all that you remember about the
- 23 gas station?
- 24 A Only that we went to get beer.
- 25 Q What kind of beer did you buy?

Testimony of Anibal Berdugo Berdugo

309

1 A Modelo.

2 Q Okay. Who paid for the beer?

3 A Osman.

4 Q Is that the only thing you bought at the store?

5 Is that the only thing Osman bought at the store?

6 A Yes.

7 Q How long did you stay at the gas station?

8 A I can't remember.

9 Q Can you tell me anything that you remember about
10 the inside of Osman's car, or the car you call Osman's
11 car?

12 A No.

13 Q All right. When you -- I assume you-all left the
14 gas station, right?

15 A Yes.

16 Q And when you left the gas station, where did you
17 go?

18 A Osman's house.

19 Q Do you remember how to get from the gas station to
20 Osman's house?

21 A Yes.

22 Q Okay. Can you tell me? Tell the jury?

23 A Well, he was driving.

24 Q That's not what I asked you. Do you remember what
25 road to get to the place you call Osman's house? Do

Testimony of Anibal Berdugo Berdugo

310

1 you remember how --

2 A No.

3 Q Do you remember how long it took to get there?

4 A About three minutes.

5 Q All right. And when you arrive at the place that

6 you call Osman's house, did you-all get out of the

7 car?

8 A Yes.

9 Q Okay. What did you do next?

10 A We stayed there and then he just -- or he was

11 going to run an errand so they went somewhere.

12 Q Okay. What errand were you going to run?

13 A I don't know. He didn't say.

14 Q All right. Who had to run the errand?

15 A Osman.

16 Q How long were you at the house before you say

17 Osman had to run the errand?

18 A I don't remember.

19 Q Were you-all still drinking?

20 A Yes.

21 Q Approximately, what time is it?

22 A I don't remember. I didn't look on my

23 telephone.

24 Q Did you use your phone at all that night?

25 A No, I didn't make any calls.

Testimony of Anibal Berdugo Berdugo

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1 Q So, who got in the car to go run the errand?

2 A Osman, Yobani, and myself.

3 Q Where did you sit that time?

4 A In the back.

5 Q Do you remember what side in the back, or no?

6 A I don't remember.

7 Q All right. And when -- who was driving?

8 A Osman.

9 Q Just to clarify: When you came back from the gas
10 station and before you went to go run the errand, did
11 you still remain on the porch?

12 A I don't remember.

13 Q Do you recall if you ever went in the house?

14 A No.

15 Q All right. And so the three of you were in the
16 car and going to do an errand and where did you go?

17 A We just got in the car. We went down the
18 street, and he was just driving around.

19 Q Okay. You say driving around. So do you remember
20 any landmarks at all?

21 A The only thing I remember is my telephone did
22 not have a signal where he took us.

23 Q You testified earlier that you hadn't used your
24 phone or looked at your phone that night, so how did
25 you know it didn't have a signal?

Testimony of Anibal Berdugo Berdugo

312

1 A Okay. I just look at it and I saw I didn't
2 have a signal.

3 Q When you looked at your phone, do you remember
4 what time it was?

5 A No.

6 Q So you're driving around and approximately how
7 long are you driving around?

8 A About 45, one hour. I don't remember real
9 good.

10 Q Okay. Were you-all listening to music?

11 A I don't remember.

12 Q Did you stop anywhere?

13 A No. I don't remember, no.

14 Q Do you have -- at this point, do you have any
15 estimate as to what time it was?

16 A No.

17 Q Were you-all talking in the car?

18 A No. No.

19 Q Quiet ride for 45 minutes?

20 A I don't remember.

21 Q Were you still drinking while you were in the
22 car?

23 A No, I don't think so.

24 Q Okay. What is the next thing that you remember?

25 A That we told him to slow down in the

Testimony of Anibal Berdugo Berdugo

313

1 driving.

2 Q All right. Let's talk about that for a second.

3 Approximately -- where were you, actually, when he was

4 driving fast?

5 A I don't remember.

6 Q Jasper County?

7 A I don't know. I don't remember.

8 Q Okay. Do you know how fast he was going?

9 A No.

10 Q Do you remember if any other cars were on the
11 road?

12 A I don't remember.

13 Q All right. What is the next thing you do
14 remember?

15 A He was going around and then we came back to
16 the house.

17 Q You came back to the house --

18 A Osman's house.

19 Q You came back to the house you call Osman's house,
20 right?

21 A Yes.

22 Q Okay. And when you got back to the house, did
23 you-all get out of the car?

24 A Yes.

25 Q And did you -- what did you-all do when you got

Testimony of Anibal Berdugo Berdugo

314

1 out of the car?

2 A Osman was mad and he tried to hit me.

3 Q All right. Let me talk about that for a second.
4 So, when you say Osman was mad, what do you remember
5 about Osman that night, what physical characteristics
6 do you remember about Osman?

7 A That he got mad because we told him he was
8 driving too fast.

9 Q I understand that you're saying that you got mad
10 at him, but I'm asking if you remember any physical
11 characteristics about the man you call Osman that
12 night?

13 A No.

14 Q When you say he got mad at you, was this
15 outside -- this was outside the residence?

16 A Yeah, outside of the house.

17 Q Do you remember anything else besides -- do you
18 remember anything else that was going on besides Osman
19 was mad at you?

20 A No. We told him that he was driving too
21 fast.

22 Q Where did this conversation happen?

23 A I don't understand what you say.

24 Q Was this on the porch?

25 A When we told him he was driving very fast.

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1 Q I understand. You keep saying that, but I'm
2 asking you where this conversation happened. When you
3 told Osman you were driving very fast, where were
4 you?

5 A But we were in the car.

6 Q Let me clarify. I'm sorry.

7 You had testified that you got back to the
8 house that you call Osman's house, correct?

9 A Okay, yes.

10 Q And you testified the only thing that you remember
11 is that you were mad -- or you were mad that Osman was
12 driving fast, correct?

13 A No, I was not mad. He was the one that was
14 mad.

15 Q Okay. How do you know Osman was mad?

16 A Because he pushed me.

17 Q All right. So when he pushed you, where did that
18 happen?

19 A I was outside Osman's house.

20 Q Where outside of the house?

21 A Just where the porch is. Just outside of the
22 house.

23 Q You were on the porch?

24 A No, outside.

25 Q Off the porch?

Testimony of Anibal Berdugo Berdugo

316

1 A Off the porch.

2 Q Okay. Do you remember anything else about him
3 being mad?

4 THE INTERPRETER: Him being mad?

5 MS. CARMODY: No. Osman.

6 BY MS. CARMODY:

7 Q Do you remember anything else about that?

8 A No.

9 Q Okay. Where was Yobani?

10 A He was right there.

11 Q Okay. What is the next thing that you remember?

12 A Nothing really, but I started walking to the
13 house because I didn't want to stay there no
14 more.

15 Q Okay. Let me ask you some questions about that.
16 So you're walking to what house?

17 A Where I live.

18 Q And where is that?

19 A In Hardeeville.

20 Q Do you know what street it is?

21 A No, I don't remember the name.

22 Q When you were walking down -- I would imagine you
23 were walking down the road, correct?

24 A Yes, and then Yobani catch up with me and I
25 got in Yobani's car.

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317

1 Q Back up a little bit. You're walking down the
2 road. Approximately how long were you walking down
3 the road?

4 A Where the Dollar is.

5 Q All right. And did you try to call anybody?

6 A No.

7 Q Do you know approximately what time it is right
8 now?

9 A No, I don't remember.

10 Q It's dark outside? It's dark outside?

11 A Yes.

12 Q Do you remember if it was raining?

13 A No.

14 Q All right. The next thing you remember, you say
15 Yobani's car stopped, right?

16 A Yes. Yobani stopped and he was telling me he
17 was taking me home.

18 Q Okay. And when Yobani said he was taking you
19 home, did you tell him anything?

20 A No.

21 Q How long did it take you to get home?

22 A I don't understand you.

23 Q From the time Yobani picked you up until the time
24 that you arrived home, how long was it?

25 A We did not get home.

Testimony of Anibal Berdugo Berdugo

318

1 Q How long were you in Yobani's car?

2 A Maybe a half a minute.

3 Q Half a minute?

4 A Yup. Yes, ma'am.

5 Q Okay. What is the next thing you remember?

6 A That he was following us.

7 Q Okay. Who was following you?

8 A He was following -- Osman was following us.

9 Q How do you know Osman was following you?

10 A Because I recognize his car.

11 Q Recognize his car, okay. All right. Did you see
12 who was driving the car?

13 A Osman.

14 Q And how did you see Osman driving the car?

15 A Because he passed us and I saw him.

16 Q Okay. And after the car passed, what happened
17 next?

18 A He kept going, but we turned to the driveway
19 where we live.

20 Q All right. Did you get out of Yobani's car?

21 A Yes.

22 Q Some. When you get out of Yobani's car, what did
23 you do next?

24 A I was just telling Yobani let's keep going,
25 Let's go home.

Testimony of Anibal Berdugo Berdugo

319

1 Q I'm asking you -- so what did you do next?

2 A Yobani didn't want to, so he got out of the
3 car.

4 Q Okay. You got out of the car, okay.

5 A Yes.

6 Q All right. And when you got out of the car, where
7 did you go?

8 A Since I walked a little bit outside, then I
9 turned around and I started walking towards the
10 house.

11 MS. CARMODY: I'm sorry, ma'am. I didn't
12 hear you.

13 THE INTERPRETER: I started walking a
14 little bit outside, but I turned around and I went
15 towards the house.

16 MS. CARMODY: Okay.

17 BY MS. CARMODY:

18 Q You're walking towards the house and what do you
19 do next?

20 A I got to the house and I was getting my shoes
21 off.

22 Q All right. Taking your shoes off. What kind of
23 shoes did you have on?

24 A I don't remember.

25 Q You took your shoes off? Your shoes were off?

Testimony of Anibal Berdugo Berdugo

320

1 A I stopped because I heard the noise of the
2 car -- of a car.

3 Q All right. Approximately what time is this?

4 A I don't remember.

5 Q All right. When you first got in the house, who
6 was home?

7 A I did not go inside of the house.

8 Q You take your shoes off outside?

9 MS. CARMODY: Ma'am?

10 THE INTERPRETER: Yes. They take their
11 shoes off outside the house when he heard the
12 noise of the car.

13 MS. CARMODY: Okay, ma'am. Hold on.
14 Hold on. I just want to clarify what he's saying.

15 BY MS. CARMODY:

16 Q So you're walking to the house, but you never
17 actually go in the house?

18 A Yes, that's correct.

19 Q All right. And you were taking off your shoes?

20 A I was going to take my shoes off.

21 Q Okay. Are these shoes, like, you mean, you untie
22 your shoes and take them off?

23 A Yes.

24 Q So while you're taking your shoes off, you say you
25 hear a noise?

Testimony of Anibal Berdugo Berdugo

321

1 A Yes.

2 Q Okay. And when you hear the noise, what did you
3 do?

4 A I turn around.

5 Q Okay. What did you do?

6 A I was going to check with what was going
7 on.

8 Q Okay. And how did you check what's going on?

9 A Because I couldn't see Yobani. He was not
10 there.

11 Q I'm asking you, how did you check what's going on?
12 What did you do?

13 A I heard the noise of the car, so I went to
14 see what was going on.

15 Q All right. And when you went to go see what's
16 going on, did you tell anybody you were going to see
17 what's going on?

18 A No.

19 Q What did you do next?

20 A Nothing. I only saw -- I didn't see Yobani.
21 I only saw Osman.

22 Q Okay, back up a second. The house that you were
23 living in, was there a driveway?

24 A Yes.

25 Q So can you explain to the jury how you get from

Testimony of Anibal Berdugo Berdugo 322
1 the house to where you say you went to? How do you
2 get from the house to the place you're going to check
3 to see what's going on?

4 A In the street?

5 Q Yeah. How do you get there?

6 THE INTERPRETER: He doesn't understand
7 your question.

8 BY MS. CARMODY:

9 Q Okay. How do you get from the house -- so, wait.
10 Let me skip -- we'll go back to that in a second.

11 What's the next thing you see?

12 A I went back to see where Yobani's car was.

13 Q Okay.

14 A I didn't see Yobani there. I only saw Osman
15 standing there.

16 Q All right. Okay. So how far was Yobani's car
17 from the house?

18 A Close.

19 Q Okay. And when you see -- you saw Yobani's car
20 there?

21 A Uh-huh.

22 Q Is there anything in particular you remember about
23 Yobani's car?

24 A No.

25 Q All right. When you walk up to the area where

Testimony of Anibal Berdugo Berdugo

323

1 Yobani's car is, which way is Yobani's car facing?

2 A Facing the house. Facing the house.

3 Q Okay. What else do you remember about Yobani's
4 car?

5 A Nothing.

6 Q And you testified earlier that you did not see
7 Yobani then. You only saw Osman, correct?

8 A Yeah.

9 Q All right. So where was Osman when you saw him?

10 A Outside of his car.

11 Q Outside of Osman's car?

12 A Of his car. Of Osman's car.

13 BY MS. CARMODY:

14 Q Okay. And when you saw Osman, do you remember
15 anything in particular about him?

16 A No.

17 Q Is it dark outside?

18 A Yes, it was dark.

19 Q All right. So when you see Osman outside of his
20 car, where was Osman outside of his car?

21 A He was outside of his car.

22 Q Okay. All right. So let's picture a car, right,
23 we have the front of the car, the back, and sides.

24 Where was Osman?

25 A In the side of the car, in the street.

Testimony of Anibal Berdugo Berdugo

324

1 Q The street side of the car?

2 A Uh-huh. Yes, ma'am.

3 Q So which side of Osman's car do you see first?

4 A I can't remember.

5 Q All right. After you see Osman -- well, the
6 person you're saying is Osman, what did you do next?

7 A He said, fighting, get out of there or the
8 same thing was going to happen to me that happened
9 to my friend.

10 Q Okay. So Osman said what?

11 THE INTERPRETER: That if he did not back
12 away from there, the same thing that happened to
13 his friend was going to happen to him.

14 BY MS. CARMODY:

15 Q Okay. Where was Osman when he -- well, where was
16 this person when he said this to you?

17 A Osman was outside of the car.

18 Q And where were you?

19 A I was walking towards the street.

20 Q All right. And when you hear this, what did you
21 do?

22 A He told me to get away, so I started running
23 towards the house.

24 Q You started running towards whose house?

25 A Where I live. My house.

Testimony of Anibal Berdugo Berdugo

325

- 1 Q Okay. And do you go in the house?
- 2 A Yes.
- 3 Q Okay. Who was the very first person that you
- 4 talked to?
- 5 A Joel.
- 6 Q Who is Joel?
- 7 A Sara's nephew.
- 8 Q And where was Joel?
- 9 A He was sleeping.
- 10 Q Okay. Is this a single-family house or two
- 11 floors?
- 12 A One.
- 13 Q All right. Where was he sleeping?
- 14 A In his room.
- 15 Q In his room. Did you have to knock on the door or
- 16 how did you --
- 17 A I just went in. Oh, I sleep in the same
- 18 bedroom.
- 19 Q You sleep in the same room.
- 20 Okay. And when you go in the room, did you
- 21 turn the lights on?
- 22 A Yes.
- 23 Q All right. You said Joel was sleeping?
- 24 A Yes.
- 25 Q All right. And then what did you tell him?

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1 A That I was nervous. I told him that Yobani
2 had called me. Because I was nervous, I told him
3 that Yobani had called me.

4 Q Hold on one second. Because you were nervous, you
5 had told him Yobani called you?

6 A Yes, because I was scared.

7 Q Okay. And what did you tell him Yobani told
8 you?

9 A To go outside and check because Yobani had
10 called him.

11 Q All right. So you tell Joel to go outside and
12 check because Yobani had called you, but what did with
13 Yobani tell you when he called you?

14 A I was nervous, so that's why I said that.

15 Q Okay. Do you remember saying anything else to
16 him?

17 A No.

18 Q All right. So, what happened next?

19 THE INTERPRETER: What?

20 BY MS. CARMODY:

21 Q What happened next?

22 A So Joel and myself, we went to Yobani's
23 car.

24 Q Okay. And you had said Noel was in bed. Did he
25 have to get dressed?

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1 A No.

2 Q He was already dressed?

3 THE INTERPRETER: He doesn't understand
4 what you're talking about.

5 BY MS. CARMODY:

6 Q Did he have clothes on?

7 A Yes.

8 Q All right. And when you told Joel that Yobani had
9 called you, what did Joel tell you?

10 A Let's go check and they went to check.

11 Q Did you tell Joel that you had heard this noise?

12 A Not at the moment.

13 Q Okay. So, Joel goes outside?

14 A Yes.

15 Q You went with him?

16 A Yes.

17 Q And what did you do -- the first thing you did
18 outside?

19 A We got up to Yobani's car and I turned it
20 around.

21 Q Okay. So, hold on. Let's back up a second. So
22 who went to Yobani's car?

23 A Me and Joel.

24 Q All right. All right. And who was on the
25 driver's side? Who was on the passenger's side?

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- 1 A I was driving.
- 2 Q Did Joel get in the car?
- 3 A Yes.
- 4 Q All right. And when you say you turned around,
- 5 what do you mean?
- 6 A Okay. There's an entrance there and you can
- 7 back up and turn around so you can go out again.
- 8 Q Okay. All right. And then what?
- 9 A We saw Osman's car. We got out of the car.
- 10 Q You saw this car that you say was Osman's car,
- 11 right?
- 12 A We saw Osman's car right there.
- 13 Q Okay. Stop for a second. So you had indicated
- 14 that you and Joel are now outside and that you are at
- 15 Yobani's car. What do you remember about Joel?
- 16 A We got out of the truck and we saw Yobani's
- 17 feet.
- 18 Q I understand that, but what do you remember about
- 19 Joel?
- 20 A I don't remember anything.
- 21 Q Okay. Then so you --
- 22 A I don't understand what you're talking
- 23 about.
- 24 MS. CARMODY: So he just said that he saw
- 25 Yobani's feet, so let's go there.

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1 BY MS. CARMODY:

2 Q Where did he see Yobani's feet from?

3 A Underneath of the car.

4 Q Where were you?

5 A They got out of Yobani's car to see if
6 Yobani's was in Osman's car. That's when we saw
7 Yobani's feet underneath the car.

8 Q I'm sorry. I just need to clarify. Okay. So you
9 are in the driver's seat of Yobani's car; is that
10 right?

11 A Yes.

12 Q And at what point did you see Yobani's feet
13 underneath the car?

14 A When I got out of the car.

15 Q When you got out. And then what did you do?

16 A We tried to open the car to see if there was
17 somebody inside, but it was locked.

18 Q Okay. Who tried?

19 A I.

20 Q You tried to open the driver's side door or the
21 passenger's side?

22 A I don't remember good, but I think it was the
23 driver's.

24 Q All right. And what did you do then?

25 A Joel went to tell Sara.

1 Q Well, Joel left, but you're not sure exactly what
2 he did, correct?

3 A He went to tell Sara what was going on.

4 Q Okay. He told you he was going to get Sara?

5 A No, he just took off and went to tell Sara.

6 Q Okay. So, what did you do?

7 A Okay. I went to do the same thing but he was
8 faster than me.

9 Q You -- okay. So immediately after you try the
10 driver's side door and it doesn't open, did you run to
11 the house with Joel?

12 A Yes.

13 Q Do you remember anything else?

14 A No. Nothing.

15 Q All right. So when you're running to the house
16 with Joel, what happened?

17 A Nothing.

18 Q Where did you go?

19 A To the house. Did I leave?

20 Q What did you do at the house?

21 A I didn't go inside the house. I stay
22 outside.

23 Q Okay. So you're staying outside the house. What
24 did you do?

25 A Nothing.

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1 Q Did you talk to anybody?

2 A No.

3 Q Did you see anyone?

4 A No.

5 Q How long did you stay outside the house?

6 A I don't remember.

7 Q What happened next?

8 A I don't remember. I was very nervous and
9 scared.

10 Q What's the next thing you do remember?

11 A That Sara came out. That's it.

12 Q That's it. You went to bed?

13 A I stayed out there. Oh, I stayed there until
14 the police arrived.

15 Q Stayed where?

16 A Close to where the accident happened.

17 MS. CARMODY: I'm sorry.

18 THE INTERPRETER: Close to where the
19 accident happened.

20 BY MS. CARMODY:

21 Q Okay. And did you talk to anybody?

22 A No.

23 Q All right. So, do you remember at some point you
24 get picked up by the police?

25 MS. LEMPESIS: Objection. It's

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misleading.

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THE COURT: Hold on. Overruled.

BY MS. CARMODY:

Q At some point, did an officer talk to you?

A Yes.

Q Okay. And when -- do you remember what the
officer's name was?

A No.

Q Do you remember if it was a male or a female?

A Male.

Q Okay. Do you remember talking with a female?

A I don't remember.

Q All right. What's the -- while you're still at
home, what did you tell the officer, if anything?

A I don't understand what you're asking me?

Q Okay. While you're at your house, did you talk to
the police?

A I don't remember.

Q Do you remember going to a police department?

A Yes.

Q Okay. Do you remember how you got there?

A The police took me.

Q Okay. While you were at the house, did you do
anything to reach out to law enforcement?

THE INTERPRETER: When he was at the

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1 house you said?

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2 BY MS. CARMODY:

3 Q Did you do anything to contact the police?

4 MS. LEMPESIS: Objection; relevance.

5 THE COURT: Let's take a break, ladies
6 and gentlemen. We've been going about an hour and
7 20 minutes, so let's take our afternoon break.
8 I'll bring you back in in about five or ten
9 minutes.

10 (Jury exits the courtroom at 3:05 p m.)

11 THE COURT: You asked some of the exact
12 same questions that Miss Lempesis has asked, and
13 it really hasn't moved us forward at all. So if
14 it gets to not be going, I'm going to limit you to
15 the amount of questions that you can ask, all
16 right?

17 MS. CARMODY: Your Honor, I need cover
18 two statements to law enforcement and I need to
19 cover a statement he gave to Miss Lempesis and the
20 exhibits.

21 THE COURT: There's two things. That
22 shouldn't take long at all.

23 Bring them out.

24 (Jury enters the courtroom at 3:15 p m.)

25 THE COURT: All right.

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1 MS. CARMODY: Thank you, Your Honor.

2 BY MS. CARMODY:

3 Q Mr. Anibal, where we had left off, what I asked
4 you was if you had done anything that evening to reach
5 out to law enforcement.

6 THE INTERPRETER: Excuse me?

7 MS. CARMODY: Did he do anything to reach
8 out to law enforcement?

9 THE WITNESS: No, I didn't do anything.

10 BY MS. CARMODY:

11 Q Okay. When you arrived at -- well, you testified
12 earlier you were brought to the police department,
13 correct?

14 A Yes.

15 Q All right. And when you were brought to the
16 police department, do you recall giving a statement to
17 law enforcement?

18 A I don't remember. I was very scared and
19 nervous.

20 Q You don't remember the statement you gave to law
21 enforcement?

22 A I was scared.

23 Q Okay. So let me see if I can refresh your
24 recollection, okay? Do you remember law enforcement
25 asked you when the last time you saw Yobani was?

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1 A No, I don't remember.

2 Q You don't remember. Did you have a chance or
3 opportunity to review your statement prior to
4 testifying?

5 A I don't remember.

6 Q You don't remember if you had an opportunity to
7 review your statement prior to your testimony?

8 A No.

9 Q Okay.

10 A I don't understand what you're asking me.

11 Q Okay. Prior to coming to court, did you meet with
12 the solicitor's office?

13 MS. CARMODY: Ma'am, if you can just
14 interpret what he's saying.

15 THE INTERPRETER: No, he don't
16 remember.

17 BY MS. CARMODY:

18 Q All right. And you actually were -- you gave two
19 statements to law enforcement in this case, do you
20 remember either one?

21 A Yes.

22 Q Okay. All right. So, what do you remember?

23 A What I'm saying right now. What happened.

24 Q Okay.

25 MS. CARMODY: Your Honor, may we

1 approach?

2 (Bench conference off the record.)

3 BY MS. CARMODY:

4 Q So I'm talking -- so, I want to focus your
5 attention on immediately after, that same night --
6 actually, it's morning -- when you went to the police
7 department. Do you remember giving a statement to the
8 police?

9 A Yes.

10 Q Okay. And when the officer asked you, when is the
11 last time you saw Yobani, what did you say?

12 A I don't remember.

13 Q Do you recall telling law enforcement that the
14 last time you saw Yobani was about 9:00 or ten o'clock
15 the night prior?

16 A That's what I told him.

17 Q Do you remember telling law enforcement that you
18 received a call from Yobani?

19 A I told him that because I was scared.

20 Q I'm not asking why you told him. I'm asking if
21 you made that statement.

22 A Yes.

23 Q Okay. Do you recall letting law enforcement know
24 that Yobani called you to say they wanted to beat him
25 up?

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1 A No. I don't remember.

2 Q You don't remember saying that?

3 A I was nervous. I was scared. I don't
4 remember.

5 Q Okay. Well, do you remember law enforcement
6 asking you when you received a phone call?

7 A No, I don't remember.

8 Q Do you remember law enforcement telling you that
9 they need you to be very honest with them because they
10 know that you're lying?

11 A Yes.

12 Q Okay. Do you remember -- in either statements
13 that you gave to the police, at any point, did you
14 ever tell the police the name of the person you were
15 with that night?

16 A I don't remember.

17 Q Okay. So do you remember law enforcement telling
18 you, *let me explain this to you, okay?*

19 MS. LEMPESIS: Objection. This is
20 hearsay. She's not asking for his statement,
21 which she could do. She's asking what law
22 enforcement said to him. So if she's trying to
23 get it in --

24 THE COURT: Just ask a question if he
25 recalls --

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1 MS. CARMODY: Okay.

2 THE COURT: -- what was asked of him like
3 you've been doing. Or the statement that he gave,
4 excuse me.

5 BY MS. CARMODY:

6 Q Do you recall law enforcement explaining to you --

7 MS. LEMPESIS: Objection, that's the same
8 method. She's about to say what law enforcement
9 said to him which is hearsay. If she's trying to
10 impeach him with his prior inconsistent statement,
11 she can do that but she needs to make him say his
12 statement, not law enforcement's statement.

13 THE COURT: I'll overrule it. Ask the
14 question.

15 MS. CARMODY: Thank you, Your Honor.

16 BY MS. CARMODY:

17 Q Do you recall law enforcement asking you that they
18 needed you to be honest with them. They know that you
19 and Yobani and Osman were together all night long?

20 A Yes.

21 Q And you were confronted and -- with your -- so you
22 were confronted by law enforcement that they knew you
23 were not being truthful with them?

24 A Yes.

25 Q That was the second statement you gave to law

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1 enforcement, correct?

2 A Yes. I told them the truth.

3 Q Do you remember telling law enforcement that when
4 you saw Yobani at the house that he was sitting in the
5 chair?

6 A I don't understand.

7 Q When you -- okay. So when you leave the
8 restaurant and you go to the Dollar General, you
9 testified earlier that Yobani was out in the street
10 waiting for you?

11 A He was at Osman's house.

12 Q But your testimony that he was in the street
13 waiting for you wasn't entirely accurate, correct?

14 A Yes.

15 Q Okay. Do you also remember telling law
16 enforcement that Yobani and -- you don't name the
17 person as Osman. They were gone, like, two hours.

18 THE INTERPRETER: Ask again, please.

19 BY MS. CARMODY:

20 Q Do you remember telling law enforcement that they
21 were gone two hours?

22 A I don't remember.

23 Q Do you remember telling law enforcement that when
24 this car ride happened, the long car ride, that you
25 were actually at the trailer and that you had stayed

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1 there an hour and a half while they left?

2 A I don't remember. No.

3 Q And, in fact, do you recall the detective
4 specifically asking you whether you went to the store
5 with them?

6 A I don't understand what you're telling me.

7 Q Did the detective ask you -- did the detective
8 specifically ask you, if you stayed at the house while
9 the other two men went to the store?

10 A No. I don't remember.

11 Q Do you remember telling law enforcement that they
12 had come back and they picked you up and they were
13 going to take you but you didn't want to go?

14 A I don't remember.

15 Q Do you remember telling law enforcement that when
16 they came back to the house that they were fighting?

17 THE INTERPRETER: They were fighting?

18 MS. CARMODY: Uh-huh.

19 THE WITNESS: That's when he tried to hit
20 me.

21 BY MS. CARMODY:

22 Q I'm sorry?

23 A That's what he tried to hit me. He pushed
24 me.

25 Q When you were asked that question by law

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1 enforcement, you didn't provide that to them at the
2 time, did you?

3 A I don't remember.

4 Q Do you recall being confronted by law enforcement
5 again that, you know, they knew you were not being
6 honest?

7 A Yes.

8 Q Okay. Do you recall being told that around
9 2:00 a.m. you and Osman left the house and went to
10 Octane Gas Station to get more beer?

11 A There were the three of us.

12 Q All right. But my question to you is: When you
13 were questioned by law enforcement, law enforcement
14 told you that around 2:00 a.m. you and Osman left the
15 house and went to the gas station to go buy beer?

16 A I don't remember.

17 Q Okay. Is it fair to say that if you weren't
18 informed by law enforcement what happened you wouldn't
19 remember anything?

20 A Yes.

21 Q Right, I agree.

22 MS. CARMODY: Beg the Court's indulgence,
23 Your Honor.

24 BY MS. CARMODY:

25 Q Do you recall Detective Hubbard asking what

1 happened when you-all left the trailer before you got
2 to the house?

3 A No.

4 Q Do you recall telling Detective Hubbard, I don't
5 remember, but I think it's one time, maybe two, that
6 the car had stopped one or two times prior to getting
7 to your house?

8 A No.

9 Q No?

10 A I don't remember.

11 Q You don't remember. Isn't it true that when the
12 car left the house and before you got home that it
13 actually did stop at least one or two times?

14 A I don't remember.

15 Q Isn't it also true that when the car had stopped,
16 you-all were arguing outside?

17 A I don't understand what you're asking.

18 Q When you left the house that you call Osman's
19 house, and prior to getting to the house that you say
20 you live at, the car stopped one to two times,
21 correct?

22 A I don't understand what you're saying.

23 Q So, going back to what you testified to earlier
24 that -- you were walking down the road and you
25 indicated to the jury that Yobani picked you up in his

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1 car, correct?

2 A Yes.

3 Q From the time Yobani picked you up into his car
4 before you arrived at our house, Yobani had stopped
5 the car at least one or two times, correct?

6 A Just the entrance of the house.

7 Q Okay. But you don't recall telling law
8 enforcement that you think it was one or maybe two
9 times the car had stopped?

10 MS. LEMPESIS: Objection. Asked and
11 answered. He just said one time.

12 THE COURT: I'll sustain the objection.
13 Move on.

14 BY MS. CARMODY:

15 Q Do you recall telling law enforcement that --
16 well, actually, let me back up a second.

17 So, you testified earlier that when you got
18 back to the house, you didn't go all the way in the
19 house, correct?

20 A Which house?

21 Q The house you live at.

22 A I don't understand what you're saying.

23 Q Okay. So, when you got to the house you live at,
24 you didn't go all the way inside, correct?

25 A No.

1 Q All right. Do you recall telling law enforcement
2 that you had actually called Yobani's phone?

3 A I don't understand what you're talking
4 about.

5 Q Okay. Would it refresh your recollection if you
6 actually watched your statements to law enforcement?

7 A I don't know English.

8 Q I'm sorry?

9 A I do not know English.

10 BY MS. CARMODY:

11 Q Okay. Let's just clarify. When you gave the
12 statement to law enforcement was the law enforcement
13 officer interpreting for you?

14 A Yes.

15 Q And if you reviewed your statement in Spanish,
16 would it help to refresh your recollection?

17 A No.

18 Q It would not?

19 A I still don't understand what you're asking
20 me.

21 Q Okay. Your statements that you made to law
22 enforcement, two separate statements, were both audio
23 and video recorded. Do you understand that?

24 A Okay.

25 Q Would it help your memory if you watched the

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1 video?

2 A I don't know.

3 MS. CARMODY: Your Honor, may we
4 approach?

5 (Bench conference off the record.)

6 BY MS. CARMODY:

7 Q Okay. Let me phrase this differently. Do you
8 watch television?

9 A Yes.

10 Q Okay. And when -- do you watch, like, the news
11 and things like that?

12 A No, because I work and I get home late.

13 Q All right. But you you've seen a movie, correct?

14 A Yes.

15 Q All right. When you watch television, is it in
16 Spanish?

17 A Yes, because I don't know English.

18 Q Okay. And so when you gave your statements to law
19 enforcement, okay, there was a camera in the room.

20 Okay? It's recording the two officers and it's
21 recording you as well. Okay? And the cameras are
22 recording what the officer is asking you and it's
23 recording what you say.

24 A Yeah.

25 Q Okay. Do you believe, if I show you that video,

1 it would help you remember what the officer asked you
2 and what you said?

3 A I don't know.

4 Q Okay. Mr. Anibal, do you have memory problems?

5 A No.

6 Q No. Ever suffer a head injury?

7 A No.

8 Q No. Do you remember what you did yesterday?

9 A Yes.

10 Q What did you do yesterday?

11 A I went to work.

12 Q Okay. And what time did you get home last
13 night?

14 A About 7:00.

15 Q Okay. And did you eat dinner?

16 A Yes.

17 Q Do you remember what you ate?

18 MS. LEMPESIS: Your Honor, objection. I
19 don't know where this line of questioning is
20 going.

21 THE COURT: I'll sustain it as to
22 relevance.

23 MS. CARMODY: Your Honor, it's --

24 THE COURT: Just ask him the next
25 relevant question as to the statement he gave to

1 Testimony of Anibal Berdugo Berdugo 347
2 law enforcement.

3 BY MS. CARMODY:

4 Q All right. In another statement that -- in your
5 statement you gave to law enforcement, you were
6 also -- do you remember telling law enforcement that
7 you were in your room when you heard a noise
8 outside?

9 A No.

10 Q Do you remember telling law enforcement that you
11 saw Osman -- well, law enforcement is saying that you
12 saw Osman. That's when he saw Osman behind the car
13 that Yobani had?

14 MS. LEMPESIS: Objection. Confusing.
15 It's a confusing question.

16 THE COURT: She has to translate the
17 question first.

18 THE INTERPRETER: Ask the question again,
19 please.

20 BY MS. CARMODY:

21 Q Do you remember telling law enforcement that you
22 came running out, didn't see Yobani anymore, and
23 that's when you saw -- law enforcement used the name
24 Osman -- but that's when you saw a man -- I'll say a
25 man -- behind the car that Yobani had?

26 A Yes.

1 Q To clarify, the car that Yobani had was the big
2 Suburban, correct?

3 A Yes.

4 Q Okay. But it's your testimony today that when you
5 came outside you saw the man that you're now calling
6 Osman outside of Osman's car?

7 A Yeah, they were both cars and I saw them -- I
8 saw him.

9 Q Where -- okay. I'm not sure you're understanding
10 my question. When you provided the statement to law
11 enforcement, the man that you saw outside was behind
12 the car that Yobani had.

13 A Behind Osman's car, because I was walking.

14 Q Okay. But you testified today that the male that
15 you saw outside was outside of Osman's car?

16 A Yes.

17 Q Would you agree that that's not what you told law
18 enforcement?

19 A I don't remember.

20 Q All right. But you do recall giving a statement
21 to law enforcement, correct?

22 A Yes.

23 Q Okay. Your first statement that you gave to law
24 enforcement was on October 26th of 2019?

25 A I don't remember the date.

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1 Q All right. But you do remember giving the first
2 statement to law enforcement the same morning of the
3 incident, correct?

4 A Yes.

5 Q And you also gave a second statement to law
6 enforcement on October 1st?

7 A Yes.

8 Q Okay.

9 MS. CARMODY: May we approach, Your
10 Honor?

11 (Bench conference off the record.)

12 THE COURT: Ladies and gentlemen, there
13 is an issue we need to take up outside the
14 presence of the jury. If you'll just give us a
15 couple quick moments, we'll get you right back in,
16 okay?

17 (Jury exits the courtroom at 3:47 p m.)

18 THE COURT: All right. What was the last
19 question?

20 MS. CARMODY: Your Honor, what I was
21 asking the Court --

22 THE COURT: No. What was the last
23 question that you asked to the witness, please?

24 MS. CARMODY: The question I asked him,
25 Your Honor, is where -- essentially, what the

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1 issue is, just to clarify for the Court, is that
2 he never actually says Osman. Law enforcement
3 said that. So my question to him was, that's when
4 he saw Osman -- the interpreter is saying Osman --
5 behind the car that Yobani had, and that's
6 inconsistent with what his statement was today.

7 MS. LEMPESIS: I think that's a point for
8 closing -- argument in closing. I don't think
9 that she's successfully impeach of any prior
10 inconsistent statement, first of all. I don't
11 think we are trying to refresh his recollection.
12 I don't even know where we are right now. If
13 she's saying that he testified different as far as
14 where Osman was standing when he saw him, when he
15 came back up to the incident location, then that's
16 an argument for her to make to the jury that his
17 testimony was consistent.

18 THE COURT: Is it inconsistent as to what
19 he testified to earlier with Miss Lempesis? Is
20 that what you're indicating?

21 MS. CARMODY: Your Honor, it's
22 inconsistent on both. It's inconsistent as to
23 what he testified earlier and it's inconsistent
24 with what he told law enforcement on two separate
25 occasions.

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1 THE COURT: Okay. Well, why are we not
2 asking that question?

3 MS. CARMODY: Well, Your Honor, I'm
4 trying to. He's not understanding anything I say,
5 so I believe that --

6 THE COURT: But playing his statement
7 isn't going to refresh his recollection as to the
8 inconsistencies that he's made here today.

9 MS. CARMODY: Your Honor?

10 THE COURT: You can certainly bring up
11 the fact that he's been inconsistent in his
12 testimony today. I got no problem with that. If
13 it's inconsistent, it's inconsistent. That's just
14 the way it goes.

15 MS. CARMODY: Your Honor, but the problem
16 is that the statement -- the second statement that
17 he gave to law enforcement was not his statement.
18 The statement that he gave to law enforcement is
19 actually law enforcement telling him what they
20 believe happened. And that's the issue. That's
21 why he doesn't remember and that's why he doesn't
22 recall anything because he doesn't remember.

23 MS. LEMPESIS: Law enforcement didn't --
24 they met with him again. They showed him the
25 surveillance footage. They showed him the

1 Testimony of Anibal Berdugo Berdugo
2 surveillance footage, but they explained what they
3 had, what they had discovered in their
4 investigation, and confronted him with the fact
5 that he hadn't told the truth the first time.

6 THE COURT: He's saying he didn't tell
7 them the truth.

8 MS. LEMPESIS: He didn't tell them the
9 truth, and so -- and that's in their second
10 interview of him. I mean, we can't -- we had him
11 testify today and made sure to point out the fact
12 that he was not truthful the first time around.
13 And now he's testified in showing what he sees in
14 the surveillance footage. It's not on the
15 surveillance footage. It's the defendant on the
16 surveillance footage, Osman.

17 THE COURT: All right. Miss Carmody?

18 MS. CARMODY: He doesn't remember any
19 physical characteristics to identify him on
20 surveillance.

21 THE COURT: You take the witness as they
22 come. That's just the way it goes. I mean --

23 MS. LEMPESIS: He's already testified to
24 that, and he's already identified the defendant.
25 It's a matter for the jury to consider in weighing
26 the facts.

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1 THE COURT: I mean, again, that's a fact
2 for the jury. If you want to point out any
3 inconsistencies, I've been very, very, very --
4 probably the most patient I've been in about four
5 years on this cross. So, I think -- I mean, you
6 take the witness as they come. I mean, if he
7 remembers, he remembers. If he doesn't, he
8 doesn't. If he's inconsistent, he inconsistent.
9 That's obviously something that you can point out
10 and that's a fact for the jury to consider.

11 What are your next five questions?

12 MS. CARMODY: Well, Your Honor, I need to
13 go through the video with him, and also --

14 MS. LEMPESIS: The surveillance video, is
15 that what you're saying?

16 MS. CARMODY: Uh-huh.

17 MS. LEMPESIS: I would object just right
18 now as to relevance because, you know, if we're
19 going to spend an hour going through the
20 surveillance -- it speaks for itself.

21 THE COURT: What do you need to go
22 through with him as far as the surveillance video?

23 MS. CARMODY: Your Honor, because he
24 testified that he narrated what was going on in
25 the surveillance video, I need to cross-examine

Testimony of Anibal Berdugo Berdugo
1 him on that area.

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2 THE COURT: Say it again.

3 MS. CARMODY: He narrated what was going
4 on in the surveillance video and I need to
5 cross-examine him on that.

6 THE COURT: I understand what you need to
7 do. I'm asking you, what are you going to ask
8 him? What are you going to examine him on?

9 MS. CARMODY: I'm going to ask him
10 what -- how he identified that car as -- how does
11 he know that's the car? How does he know who was
12 driving the car? How -- things like that, Your
13 Honor. And also too, to show that he can't tell
14 whose car it is.

15 THE COURT: He can't tell what?

16 MS. CARMODY: He can't tell whose that is
17 on the video. Your Honor, the problem is, I don't
18 know if he's just misunderstanding me, or if he
19 doesn't remember, or if he's being evasive. But
20 he's lied to law enforcement on, at least, two
21 different occasions. He's lied to the Court
22 today. And now he's lied on cross-examination.

23 THE COURT: I think he's fessed up to
24 certain -- to those --

25 MS. CARMODY: I haven't gotten through

1 Testimony of Anibal Berdugo Berdugo 355
2 half of it, Your Honor.

3 MS. LEMPESIS: Well, Judge, the
4 surveillance footage is what it is. First of all,
5 she stipulated to the fact that it could come in.
6 It's admitted. He narrated to the extent that he
7 -- that we had him point out who is who on the
8 video. But Investigator Hubbard -- Detective
9 Hubbard will testify to that as well.

10 Sure, he didn't know the car was
11 registered to the defendant. That's why we had
12 somebody from the DMV come testify that it was
13 registered to the defendant and that's the same
14 car that was the surveillance footage that Osman
15 was getting out, driving. That's at the scene of
16 the incident with the victim's dead body
17 underneath it.

18 MS. CARMODY: Your Honor, the issue here
19 is that he doesn't actually remember anything that
20 happened that night. The only thing he remember
21 is what law enforcement told him.

22 MS. LEMPESIS: That's not true at all.
23 He testified to what he remembered. He testified
24 that he lied the first time. Came right out and
25 said it. He lied. Now he's here. He's telling
 the truth. He told the truth the second time

1 around.

2 It's up to the jury to decide whether or
3 not they want to believe him. I don't think
4 Miss Carmody gets to sit here and have Anibal
5 testify as to in the surveillance footage. He
6 already he's -- that it's already -- it's clear
7 for the jury. And if she wants to make an
8 argument that it could not be the defendant's car,
9 it could not be the defendant, then that's an
10 argument for the jury.

11 MS. CARMODY: Your Honor, I believe
12 that's within the scope of cross-examination, Your
13 Honor.

14 THE COURT: All right. I'm going to -- I
15 will assist. You can bring them back out.

16 (Jury enters the courtroom at 3:55 p m.)

17 THE COURT: All right.

18 BY MS. CARMODY:

19 Q All right. I'd like to draw your attention to
20 this person that you saw outside your house at night,
21 okay?

22 A Yes.

23 Q The very first time that you gave the statement to
24 the police, they specifically asked you, *do you know*
25 *the person who approached you*, correct?

Testimony of Anibal Berdugo Berdugo

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1 A Yes.

2 Q Do you recall telling law enforcement, *no, it was*
3 *dark, I did not see his face?*

4 A I don't remember.

5 Q In your second statement to law enforcement,
6 Detective Hubbard asks you, *did he see Osman there?*

7 A Yes.

8 Q When did you learn Osman's name?

9 A I don't remember.

10 Q You testified earlier today that you hadn't gone
11 in the house and taken your shoes off yet, correct?

12 A I don't remember.

13 Q You don't remember your testimony today?

14 A I don't understand.

15 Q Did you testify earlier today that you hadn't --
16 you did not take your shoes off, you not gotten taken
17 your shoes yet?

18 THE INTERPRETER: If he had taken them off?

19 MS. CARMODY: Yes, I'm asking him a
20 question.

21 MS. LEMPESIS: Objection. I think it's
22 confusing, misleading. I don't think --

23 MS. CARMODY: I can rephrase the
24 question, Your Honor.

25 THE COURT: All right. Just rephrase the

Testimony of Anibal Berdugo Berdugo
1 question, but just slow it down for him.

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2 MS. CARMODY: Sure, Your Honor.

3 BY MS. CARMODY:

4 Q Did you testify earlier today that when you made
5 it back to your house you did not go in the house?

6 A No, I did not go in the house.

7 Q Okay. And you also testified that you were taking
8 your shoes off, correct?

9 A Yes.

10 Q And I clarified with you that you need to untie
11 your shoes, correct?

12 A Yes.

13 Q Do you remember when you gave a statement to law
14 enforcement -- that you give law enforcement this
15 elaborate story of how you were running, Osman was
16 chasing you, and your sandals had fallen off?

17 A Yes.

18 Q Okay. And do you remember when you talked to law
19 enforcement they asked you about you had two
20 injuries?

21 A Yes.

22 Q Okay. Law enforcement asked you about a scratch
23 that you had on your head?

24 A Yes.

25 Q And they asked you about a red area that you had

Testimony of Anibal Berdugo Berdugo

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1 on your face?

2 A Just the forehead.

3 Q Okay. You don't recall -- do you or do not recall
4 Detective Hubbard asking you about a red mark on your
5 cheek?

6 A I don't remember.

7 Q At any point, do you remember providing a pretty
8 elaborate explanation about how you fell and you don't
9 know how it happened, you slipped and you got back up,
10 do you remember that?

11 A Yes.

12 Q Okay. All right, I have a question for you now.
13 When you were running, I mean, is it -- how old are
14 you, first of all? Did you say you were 21?

15 A Yes.

16 Q Okay. And when you were running and you're
17 falling, do you normally put your hands up?

18 A I don't understand.

19 Q If you're going to trip and you're going to fall,
20 do you put your hands out?

21 MS. LEMPESIS: Objection; relevance. I
22 don't know where this is going.

23 MS. CARMODY: Your Honor --

24 MS. LEMPESIS: He had one cut on his
25 head, not --

Testimony of Anibal Berdugo Berdugo
MS. CARMODY: Two. And, Your Honor, I'm

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1 asking how he got them.
2

3 THE COURT: How did you get the cuts?

4 THE WITNESS: Because I was running and I
5 slipped and I hit my head.

6 THE COURT: Thank you.

7 BY MS. CARMODY:

8 Q All right. I want to show you what was marked as
9 State's 1. State's 1 right here. Have you ever
10 reviewed this map with the solicitor's office?

11 A No.

12 Q You never reviewed the map with them?

13 A Here?

14 Q So what I'm asking you is: Did anybody from the
15 solicitor's office ever show you this map?

16 A No.

17 Q Okay. So, the map is pretty big and it explains
18 where the areas are, so what I want you to show me is
19 where you were dropped off. You can actually step
20 down. When you were dropped off, where was it?

21 A Who dropped?

22 Q Your friend that you don't remember his name.

23 A (Indicating).

24 Q Okay. He dropped you off right here
25 (indicating)?

Testimony of Anibal Berdugo Berdugo

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1 A Yes.

2 Q After he dropped you off, where did you go?

3 A Down there (indicating).

4 Q Down this way here (indicating)?

5 A (Indicating).

6 Q Where was Yobani?

7 THE COURT: If you can't see, you-all can
8 stand up. Feel free to move around. It's fine.

9 BY MS. CARMODY:

10 Q Where was Yobani?

11 A I don't understand.

12 Q Right there on the porch (indicating)?

13 MS. LEMPESIS: Your Honor, I object.
14 This is a confusing line of questioning.

15 THE COURT: It's fine keep going. Keep
16 going.

17 MS. CARMODY: Thank you.

18 BY MS. CARMODY:

19 Q And then that night when you-all had gone out in
20 the car and you had driven around for about an hour
21 and a half, can you point out to the jury where he
22 went?

23 MS. LEMPESIS: Objection. He's already
24 testified on direct he didn't know where they
25 went.

Testimony of Anibal Berdugo Berdugo

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1 THE COURT: He needs to answer.

2 THE WITNESS: That street, there

3 (indicating).

4 BY MS. CARMODY:

5 Q You went down this street which way?

6 A I don't know. I don't remember.

7 Q Okay. Is it helping your memory that there's big
8 names on here as to what things are?

9 MS. LEMPESIS: Objection.

10 THE COURT: It's fine. Go ahead.

11 THE WITNESS: Yes. Hardeeville.

12 BY MS. CARMODY:

13 Q You can have a seat.

14 All right. Let me try to summarize something
15 here for you. The videos that you were shown earlier,
16 how many times have you seen those videos?

17 A Today.

18 Q Today is the only day that you've ever seen the
19 video?

20 A Yes.

21 Q Okay.

22 MS. CARMODY: Your Honor, if we could put
23 up State's Exhibit --

24 BY MS. CARMODY:

25 Q While he's doing that, do you recall telling law

Testimony of Anibal Berdugo Berdugo

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1 enforcement that you had about eight beers that
2 night?

3 A Yes.

4 Q You do, okay. Is that still accurate? Is that
5 still your testimony? Still your statement?

6 A Yes.

7 Q Do you recall law enforcement asking you to look
8 at your cell phone? Do you remember -- maybe if I use
9 the word remember. Do you remember law enforcement
10 telling you that they wanted you to look at your cell
11 phone?

12 A Yes.

13 Q Do you remember what your response was?

14 A Yes.

15 Q What did you say?

16 A Yup.

17 Q You're saying you said "yes?"

18 A (Witness nods head up and down.)

19 Q Do you recall that Detective Hubbard who is here
20 advised you that he had to get a search warrant on
21 your phone because you had refused consent?

22 A I don't remember.

23 Q Isn't it true that, but for the -- my client
24 sitting here in the courtroom today, you did not
25 remember what this man looked like?

Testimony of Anibal Berdugo Berdugo

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1 A What?

2 Q Do you remember what he looked?

3 MS. CARMODY: Mr. Osman, actually, can
4 you turn around for me?

5 MS. LEMPESIS: Object. He's already
6 identified the defendant in the courtroom. I'm
7 not sure what this --

8 THE COURT: What's your question, because
9 he's already done an identification?

10 MS. CARMODY: Testing his memory,
11 Your Honor?

12 THE COURT: I'm sorry?

13 MS. CARMODY: Memory, Your Honor.

14 THE COURT: Well, I'm saying, what is
15 your --

16 MS. CARMODY: My question is, I want to
17 know if he can recognize any facial features from
18 him or anything distinctive about his face or
19 anything about his face that he remembers.

20 MS. LEMPESIS: He's already identified
21 him.

22 THE COURT: Yeah, he's already identified
23 him, so I'll sustained the objection.

24 You can sit back down, sir.

25 BY MS. CARMODY:

Testimony of Anibal Berdugo Berdugo

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1 Q Okay. My question to you is: Earlier you
2 testified that you knew whose cars these were on the
3 video. I'm asking you now, what identifying
4 characteristics do you know on the video that you can
5 say these are those cars?

6 Let me rephrase that. How do you know that
7 the car driving down the road is Yobani's car and the
8 car driving down the road belongs to Osman?

9 THE INTERPRETER: Okay. Ask again
10 differently, please.

11 BY MS. CARMODY:

12 Q How do you know that the car on video belongs to
13 Yobani?

14 A Because I know the car.

15 Q Okay. And how do you know that the -- what do you
16 know about the car that you saw on video?

17 A I don't understand what you want me to tell
18 you.

19 Q Never mind. It's okay. I'll withdraw.

20 THE COURT: How do you know it's Yobani's
21 car?

22 THE WITNESS: It has a decal of a horse
23 on the back.

24 BY MS. CARMODY:

25 Q Okay, thank you.

Testimony of Anibal Berdugo Berdugo
THE INTERPRETER: If you let me ask the

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1
2 question not word for word --

3 MS. LEMPESIS: I asked that the
4 translator --

5 THE COURT: All right. You going to have
6 to translate the way she asks the questions. I'll
7 try to assist as I can.

8 THE INTERPRETER: Thank you, sir.

9 MS. CARMODY: I understand.

10 BY MS. CARMODY:

11 Q The other car that you identify on the video, how
12 do you recognize that car?

13 A Because I have seen it based. We were in
14 it.

15 Q Is it your testimony that you remember that
16 specific thing about those two vehicles but nothing
17 else about the car?

18 A Yes.

19 MS. CARMODY: Beg the Court's indulgence.
20 Your Honor, and it will be brief.

21 BY MS. CARMODY:

22 Q All right. Isn't it true -- let me give you some
23 context first. Let me context for the interpreter,
24 okay. When you were at the house and you indicated
25 there was an argument, okay, isn't it true that you

Testimony of Anibal Berdugo Berdugo
1 picked up a bar or a piece of wood and hit my
2 client?

4 THE COURT: What's the relevance of that?

8 THE COURT: No. He testified that he
9 tripped and fell and that's where the marks came
10 from. I asked him myself.

13 THE COURT: Did you hit her client with a
14 board?

16 MS. CARMODY: No.

18 BY MS. CARMODY:

21 MS. LEMPESIS: Objection; relevance.
22 There is no testify in evidence about a crow
23 bar.

25 THE COURT: I'll sustain the objection.

Testimony of Anibal Berdugo Berdugo

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1 There's been nothing about a crow bar or any type
2 of fight. He's testified as to what transpired
3 there. You asked him if he hit him with a
4 board.

5 MS. CARMODY: This is outside the
6 vehicle. There is -- I'm sorry. It's a tire
7 iron. Not a crow bar. Just to clarify for the
8 record.

9 MS. LEMPESIS: Objection; relevance.

10 THE COURT: I'll sustain the objection.
11 Move on.

12 BY MS. CARMODY:

13 Q All right. In both statements that you provided
14 to the police, did the police pick you up both times?

15 A Yes.

16 Q Okay. You don't have a driver's license?

17 MS. LEMPESIS: Objection; relevance.

18 THE COURT: All right. I'll sustain the
19 objection.

20 MS. CARMODY: Your Honor, does he drive?

21 BY MS. CARMODY:

22 Q Do you drive?

23 MS. LEMPESIS: Objection; relevance.

24 MS. CARMODY: It is relevant.

25 THE COURT: It's not relevant at all

Testimony of Anibal Berdugo Berdugo 369

1 whether he can drive. The police came and picked
2 him up and took him to the police station.
3 Everybody's testified to that.
4 BY MS. CARMODY:
5 Q The night that this occurred, you do admit that
6 you did drive Yobani's vehicle?
7 A I only moved it.
8 Q My question is --
9 MS. LEMPESIS: Objection.
10 MS. CARMODY: Thank you.
11 THE COURT: He's given the answer.
12 MS. LEMPESIS: Thank you.
13 MS. CARMODY: No further questions, Your
14 Honor. He's subject to recall, though, for the
15 defense.
16 THE COURT: All right.
17 MS. LEMPESIS: I don't have any other
18 questions. I don't have any redirect for this
19 witness.
20 THE COURT: All right. Who is your next
21 witness?
22 MS. LEMPESIS: It is Detective Hubbard.
23 Your Honor, can we approach regarding scheduling?
24 THE COURT: Yes. Ma'am, let him know
25 that he's still under subpoena.

1 THE WITNESS: Okay.

2 (Bench conference off the record.)

3 THE COURT: All right. Obviously,
4 Detective Hubbard is going to take a long, long
5 time. And as I indicated, I'm always going to err
6 on the side of letting you all sneak out a little
7 earlier as opposed to keeping you-all here until
8 six o'clock at night because I know you-all have
9 lives as well. So what we're going to do is,
10 we're going to go ahead and sneak out now. And if
11 you-all will be back here tomorrow morning at
12 9:30, we will start at 9:29. We will see you
13 then.

14 (Jury exits the courtroom at 4:22 p m.)

15 All right. Let's talk about scheduling.

16 MS. LEMPESIS: So, Judge, as I mentioned
17 just now at the side bar, I have Detective Hubbard
18 testifying next and Tim French the DNA analyst and
19 Dr. Presnell from MUSC. Tim French is coming from
20 Beaufort and Dr. Presnell is coming from
21 Charleston. I'd like to try to give them a
22 realistic time to be here, and so I guess for your
23 guidance on that.

24 THE COURT: How long do you think that
25 your direct is going to take with Detective

1 Hubbard?

2 MS. LEMPESIS: My direct with Detective
3 Hubbard will take -- I'm going to play the
4 surveillance footage again for him, so that's like
5 eight minutes total -- 12 minutes, excuse me.
6 We'll skip over some of it. I just want to bring
7 the jury's attention to a couple of things. I
8 would say 25, 30 minutes tops for me.

9 THE COURT: All right. Then what I'm
10 going to do out of an abundance of caution and
11 make sure this case gets finished tomorrow, I am
12 going to extend to Miss Carmody the same amount of
13 time that you are extended. And that's the only
14 way we're going to be able to move forward. If
15 you take 20, she takes 20. If you take 10, she
16 takes 10. You take an hour, she gets an hour.
17 All right?

18 MS. LEMPESIS: Thank you.

19 THE COURT: That's how we're going to
20 proceed for tomorrow. See you at 9:30. When I
21 say 9:30, I mean starting. The jury will be
22 seated at 9:29. If nobody is ready, that's going
23 to be on you-all. Not on me. I was here at 8:40
24 this morning.

25 (Court adjourned at 4:24 p m.)

CERTIFICATE OF REPORTER

I, SHARON G. HARDOON, Official Circuit Court Reporter, III for the State of South Carolina at Large, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in General Sessions for Jasper County, South Carolina.

I do further certify that I am neither kin, counsel, nor interest to any party hereto.

October 5, 2022



Sharon G. Hardoon, CSR
Official Circuit Court Reporter, III

1 STATE OF SOUTH CAROLINA
2 IN GENERAL SESSIONS
3 COUNTY OF JASPER COUNTY

4 The State of South Carolina,

5 vs. Transcript of Record
2019-GS-27-00819

6 Osman Uvaldo Jimenez-Benitez,
7 Defendant.

8
9
10 December 8, 2021
11 Jasper, South Carolina
Volume III of IV

12
13 B E F O R E:

14 The HONORABLE BENTLEY PRICE

15 A P P E A R A N C E S:

16 Mary Jordan Lempesis, Prosecutor

17 Carolyn Carmody, Representing the Defendant

18

19

20

21

22

SHARON G. HARDOON, CSR
Official Circuit Court Reporter, III

23

24

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1 THE BAILLIF: All rise.

2 MS. CARMODY: I do have a motion I want
3 to put on the record before the jury comes in.

4 THE COURT: Okay. Tell me when you're
5 ready. Go right ahead.

6 MS. CARMODY: Your Honor, you ready?

7 THE COURT: Yes, ma'am.

8 MS. CARMODY: The defense would like to
9 make a motion for a mistrial. The interpreter
10 yesterday, Miss Rosa, she did not interpret what I
11 said, and rather she pointed to my client and said
12 Osman's car. I believe the question was, *how do*
13 *you know whose car this is in the video*, or
14 something to that effect. And rather interpreting
15 that to the witness, as I said, she pointed to my
16 client and she said this is Osman's car. I have
17 two witnesses, Your Honor, that could testify to
18 that. I did not see it at the time. I was
19 looking at my notes to ask the witness the next
20 question. I do have two witnesses who can testify
21 as to what happened.

22 Your Honor, this happened in front of the
23 jury. I don't believe that a curative instruction
24 to the jury would cure the prejudice to my client.

25 Additionally, we also had another issue

1 with the interpreter. She was interpreting
2 simultaneously. So in other words, the witness
3 was listening to two people speak at the same
4 time. I was talking and the witness was
5 interpreting -- I mean, interpreter was
6 interpreting to the witness at the same time. I
7 believe that would affect his testimony because
8 he's literally listening to two people speak. An
9 interpreter is supposed to listen to the question
10 and then interpret to the witness, the witness
11 speaks, and then the interpreter speaks. There's
12 only one person talking at a time.

13 I believe that -- I have serious concerns
14 about the qualifications of the interpreter. It's
15 my understanding that she is not a certified
16 interpreter. My client is charged with a violent
17 felony. He's looking at a substantial term in
18 prison, and I believe that the issues with the
19 interpreter affected his right to a fair trial.

20 And, as I mentioned earlier, if there's a
21 curative instruction, I don't believe that would
22 cure the prejudice to my client.

23 THE COURT: All right. Raise your right
24 hand. Do you solemnly swear that you will
25 accurately interpret the language requested in

1 this courtroom of the witnesses without additions
2 thereto or detractions therefrom or any other
3 amendments of your own interpretations so help you
4 God?

5 THE INTERPRETER: I do.

6 THE COURT: Miss Lempesis.

7 MS. LEMPESIS: Judge, whether or not
8 she's a court-certified interpreter, I'll let her
9 speak to that. I know she's on our list.

10 THE CLERK: She's on our list.

11 THE COURT: She told me she's been doing
12 it for 20 years. Said that she used to do it when
13 Judge Buckner first took the bench.

14 MS. LEMPESIS: Yeah, she certainly has.
15 I started at the solicitor's office 13 years ago.
16 And while she doesn't get called often anymore in
17 general sessions court, I know she's translating
18 this morning in family court.

19 THE COURT: She told me she translates
20 almost daily in family court.

21 MS. LEMPESIS: She does, Your Honor.

22 THE COURT: And so I think that -- I
23 think that her certification is not an issue. I
24 think that the extent that she might have pointed,
25 or whatever it is Miss Carmody is alleging

1 happened, I don't recall seeing that. I certainly
2 will -- I don't have to remind you, it was a
3 little bit confusing at times. And to the extent
4 that she made any sort of hand motions, I don't
5 recall seeing that. I don't think that she made
6 any independent identification of the defendant or
7 any sort of independent statements.

8 And so I would say that it's obviously
9 difficult with a translator involved, but I think
10 that's probably just again an issue for the jury
11 to consider.

12 I don't know that it goes -- it would be
13 cause for a mistrial, and I'm not sure exactly
14 what question was asked that Miss Carmody was
15 saying was so tainted by her involvement as a
16 translator.

17 THE COURT: I agree. The simultaneous
18 aspect of it I believe is a non-issue, so I'll
19 deny it based on that.

20 As to pointing, I mean, I assume it was
21 just in reference to speaking of who the question
22 was pertaining to, which was Osman. So she said
23 as to Osman's car and just made a reference with
24 her hand. I didn't notice it. I certainly didn't
25 take it into consideration. I'll preserve it for

1 the record, but I'm going to deny the motion.

2 MS. CARMODY: Thank you, Your Honor.

3 THE COURT: Are they all here?

4 THE BAILIFF: One more.

5 MS. CARMODY: Your Honor, we also have --
6 I don't know if Your Honor wants to make rulings
7 now on some objections I would have as to Officer
8 Hubbard.

9 THE COURT: Who's testifying next?

10 MS. LEMPESIS: Officer Hubbard.

11 THE COURT: All right. What are your
12 objections?

13 MS. CARMODY: The first objection,
14 Your Honor, is I believe that Officer Hubbard
15 wants to narrate what he sees on the videos that
16 we watched yesterday. The State does intend to
17 play those again. My objection to him narrating
18 would be, Number 1, he lacks personal knowledge.
19 Number 2, it will call for speculation. Number 3,
20 it will be misleading to the jury. And Number
21 four, Your Honor, that the video speaks for
22 itself.

23 THE COURT: All right. I've already
24 ruled on that motion.

25 MS. CARMODY: Your Honor, the ruling?

1 THE COURT: I ruled on it previously. I
2 said I would allow him to narrate it. Obviously,
3 he can testify as to what he's showing the jury.
4 I've already let the videos in, so I have no
5 problem with it whatsoever.

6 MS. CARMODY: That's a final ruling, Your
7 Honor?

8 THE COURT: Yes.

9 MS. CARMODY: Thank you, Your Honor.

10 Number 2 is the testimony regarding what
11 the witness says that the client says. Your
12 Honor, I have a case State vs. Hernandez.

13 THE COURT: What's your objection again?

14 MS. CARMODY: The testimony regarding
15 what the interpreter said that my client says.
16 After -- so I believe -- I have a case.

17 THE COURT: Just make your motion first
18 so I know what you're talking about.

19 MS. CARMODY: Yes. So, Your Honor, it's
20 hearsay not admitted in the exception because my
21 client is speaking to the interpreter who is
22 speaking to Detective Hubbard. And, Your Honor,
23 the State vs. Hernandez actually addresses that
24 issue. I can hand it up to the Court. The
25 initial conversation between the -- well, not even

1 the interpreter, Your Honor, because our
2 interpreter, Mr. Solano, testified that the
3 statement was 40 to 50 percent accurate. So it's
4 not even an interpretation. So I believe that the
5 initial statement my client gave to the Detective
6 Lemus would be a statement by a party opponent.
7 However, the second level of hearsay is without an
8 exception. As I said, the interpreter that
9 testified was inaccurate. And also, I believe
10 because it's inaccurate. It also would be a
11 confrontation clause issue because he is not
12 acting as an interpreter. He is making statements
13 and allegations against my client, Your Honor, and
14 he is not here to testify.

15 Your Honor, I could hand up the Hernandez
16 case. It's our position that it would be
17 extremely prejudicial to my client and would
18 mislead the jury as to what he actually said.

19 THE COURT: All right. What would the
20 State like to tell me?

21 MS. LEMPESIS: Judge, you've already
22 ruled on this in the Jackson v Denno. You said
23 you would allow the statement in and find it be
24 knowingly, voluntarily, and intelligently made.

25 MS. CARMODY: Your Honor, I'd just like

1 to put this as an unpublished opinion, but it is
2 persuasive.

3 THE COURT: All right. I've already made
4 a ruling on this so I will allow that to be made
5 part of the record as a final ruling.

6 Anything else?

7 MS. LEMPESIS: Not from the State.

8 MS. CARMODY: Let me just double check,
9 Your Honor. I believe that's it. Let me just
10 double check.

11 It's my understanding the State does not
12 intend to play the video of the interrogation, so
13 I'm not raising an issue on that because they're
14 not going to play it.

15 We also have a DNA issue.

16 THE COURT: We'll take that up later.

17 MS. CARMODY: Okay.

18 MS. LEMPESIS: I will be asking
19 Officer Hubbard in his testimony if he is the
20 first in the chain to take the buccal swab from
21 the defendant, so I will be asking about that.

22 THE COURT: That's fine. That's just
23 initiating the chain.

24 MS. LEMPESIS: Thank you, Your Honor.

25 MS. CARMODY: That's it, Your Honor.

1 THE CLERK: Bring them out.

2 THE COURT: You can bring them out.

3 THE BAILIFF: Ladies and gentlemen, if you
4 will come into the courtroom, please.

5 THE COURT: All right.

6 (Jury enters the courtroom 9:14 a.m.)

7 THE COURT: All right. Ladies and
8 gentlemen, thank you so much for being here on
9 time. We are going to go ahead and begin. There
10 is an investigation into where my tie is, so I'm
11 not being casual today. I think it's probably in
12 the driveway with the rest of the stuff that fell
13 out of my arms. I'm not trying to be casual. But
14 if I find it, I'll let you know and keep you
15 updated. Sorry about that.

16 All right. Miss Lempesis.

17 MS. LEMPESIS: Thank you, Your Honor.

18 Your Honor, the State will call
19 Investigator or Officer Hubbard.

20 THE COURT: You're still under oath.

21 WHEREUPON:

22 THOMAS HUBBARD,
23 after having been sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MS. LEMPESIS:

1 Q Good morning, Officer Hubbard. Who do you work
2 for?

3 A For the Jasper County Sheriff's Department.

4 Q Thank you. And who did you previously work for?

5 A I previously worked for the Hardeeville
6 Police Department.

7 Q And how long have been in law enforcement?

8 A I've been in law enforcement for 12 years.

9 Q Were you working for the Hardeeville Police
10 Department in October of 2019?

11 A I was.

12 Q And were you -- what was your position at
13 Hardeeville PD at that time?

14 A I was an investigator.

15 Q Okay. And were you assigned to investigate the
16 case that we're here about this week?

17 A Yes. Yes, ma'am.

18 Q Okay. Were you working October 26th of 2019?

19 A Yes, ma'am. I was the on-call detective.

20 Q Okay. Were you called to this incident?

21 A I was.

22 Q Tell the jury about what time you arrived at the
23 scene.

24 A I had received a call involving the incident.
25 I believe it was around 4:50 in the morning. I

1 don't recall the time that I arrived, but it was
2 approximately a 20-minute drive from my residence
3 to the incident location. So I would say
4 approximately around 5:00, 5:30.

5 Q Okay. When you arrived, what do you see?

6 A Upon arrival, I noted that the fire
7 department was there. EMS was there. There were
8 a couple of law enforcement vehicles there as
9 well. I met with the law enforcement that was on
10 scene, which would have been Officer Watson,
11 Sergeant Barry Brown and Officer Bapties. That
12 initial briefing on what they had come across,
13 which was a vehicle that was on top of an
14 individual.

15 Upon my arrival, the individual was already
16 pulled from under the vehicle by EMS and medical
17 staff, and I believe he was loaded in the EMS at that
18 time.

19 Q Okay. Do you know or are you aware of how they
20 removed him from underneath the vehicle?

21 A I don't. I wasn't there when they extricated
22 him from under the vehicle.

23 Q What then did you do in taking over an
24 investigation of this incident?

25 A Upon arrived, just collecting the information

1 pertinent from the officer on scene who have the
2 initial observations, initial discussions with any
3 parties that are around the scene. Collecting
4 evidence, photographing the scene, interviewing
5 anybody that is relevant, and searching for
6 additional parties.

7 Q Okay. Did you -- in reporting first to the scene,
8 did you identify the car that was involved?

9 A I did.

10 Q And how did you do that?

11 A We had a dispatch run the information for the
12 vehicle. We had that vehicle information come
13 back and I also ran a DMV search that I have
14 access to which gives the printout of the
15 information as well.

16 Q Okay. Can you tell us who the car was registered
17 to?

18 A The vehicle was registered to a Osman
19 Jimenez-Benitez. It was returning to an address
20 out of -- I don't know the exact numeric, but it
21 was out of Azalea Gardens in the Hardeeville
22 area.

23 Q Okay. And did you -- in arriving at the scene and
24 gathering the information from the other deputies and
25 beginning your investigation, did you -- was the owner

1 of the vehicle, Mr. Benitez, there at the scene?

2 A Not that we were able to locate.

3 Q Okay. I am going to ask you to step down
4 Officer Hubbard, and I'm going to show the jury,
5 again, State's Exhibit 1 that's already been admitted
6 and have you explain -- let me make sure everybody can
7 see. We have, obviously, seen surveillance footage.
8 I want you to walk us through right now the different
9 locations on this map first. Is Octane Gas Station on
10 this map?

11 A It is not present on the map.

12 Q Do you know what road Octane Gas Station is on?

13 A It's off the main primary highway, which is
14 Whyte Hardee Boulevard here and it would be
15 further over in this area here (indicating).

16 Q How about the incident location where you reported
17 at about five o'clock that morning?

18 A The location would have been right here at
19 the corner of Haynesville and Young Street.

20 Q Okay. And did you discover or learn during your
21 investigation where the victim Yobani lived?

22 A The victim was reported to be living at ■
23 Young Street, which is the address on the corner
24 of Young Street.

25 Q And the Dollar General, can you point for us where

1 that is?

2 A Dollar General is right here (indicating).

3 Q All right. For right now -- I'll have you go back
4 to your seat.

5 So you've testified that you ran the vehicle
6 information.

7 A Yes, ma'am.

8 Q And it came back matching to the defendant Osman
9 Jimenez-Benitez, correct?

10 A Yes, ma'am.

11 Q Okay. What did you do with that information
12 next?

13 A While beginning the initial investigation on
14 trying to locate Mr. Osman, we proceeded to the
15 address listed on the registered vehicle
16 information, which was in the Azalea Gardens in
17 the Hardeeville area. It's outside the
18 Hardeeville jurisdiction. It's still within the
19 Jasper County jurisdiction. We met with the
20 deputies who assisted us with going out to that
21 location. Made contact with a Hispanic female. I
22 didn't get her name, but asking through her that
23 Osman did not live there currently any longer. He
24 did previously.

25 And she was able to walk me through on my

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1 cell phone doing a map view where he currently lived.
2 She was trying to explain to me where he lived, which
3 we had difficulties with due to the language barrier.
4 So I pulled up a map and she was able to direct me
5 from Street View how to get to his residence which
6 took us down Highway 321 turning on to Haynesville
7 immediately onto St. Phillips, and she was able to
8 differentiate between the house across the street on
9 St. Phillips, which was a yellow house. She said it
10 was not the yellow house.

11 She pointed to the trailer which was on
12 the other side of St. Phillips, which is the first
13 address on St. Phillips as the trailer that Osman
14 lived at presently.

15 Q Okay. And Officer Hubbard, forgive me, but going
16 back to our map and the incident location, the
17 intersection is one of the -- what's the intersection
18 there that the incident occurred at where the car was
19 found and the victim's body was found?

20 A The incident location would have been at
21 Haynesville and Young Street.

22 Q And where is that located? Is it in the city
23 limits?

24 A It is in the city limits of Hardeeville.
25 County of Jasper.

1 Q In Jasper County?

2 A Yes.

3 Q Thank you. So you've learned that Osman Benitez
4 is not at ■ Azalea Drive, doesn't live there anymore.
5 What did you do next then with that information you
6 learned during your investigation?

7 A Upon getting the information from the female
8 at the Azalea Gardens address, I met with officers
9 at the Hardeeville Police Department. It was
10 Officer Creole at the time who assisted me with
11 going over to St. Phillips Road and making contact
12 with residents at ■ St. Phillips Road,
13 which was the trailer that the female pointed out
14 to me on the map.

15 Q Okay. And you don't have to step down, but do you
16 see that address marked on this map?

17 A Yes, ma'am. It is the red point with a line
18 going to it for St. Phillips Avenue.

19 Q Okay. So, it is --

20 A Top left, yes, ma'am.

21 Q This location right here?

22 A Yes, ma'am.

23 Q And where is that in relation to -- actually,
24 we'll wait on that. So you learned now that the
25 defendant is living at ■ St. Phillips Road?

1 A Yes, ma'am.

2 Q So what did you do? You went to that address; is
3 that correct?

4 A Correct.

5 Q What did you do when you got there?

6 A Upon getting to the residence I knocked on
7 the door where I was met with another Hispanic
8 female. We had a brief discussion. It was,
9 again, another issue with language barrier. We
10 were using Google Translate because we did not
11 have any officers on duty that were bi-lingual at
12 the time.

13 So in speaking with her through Google
14 Translate, I was able to ascertain that Osman did live
15 at the residence. I ascertained that her information
16 was Salinia.

17 Q Her information, her name?

18 A Her name, correct.

19 Q He did live at the residence or did not?

20 A He did live at the residence with her.

21 Q Okay.

22 A I ascertained further that -- through the
23 investigation that she was his wife. Also, that
24 she had last seen Osman approximately 10:30 the
25 night prior, which would have been the Friday

1 leading up to the event with two individuals on
2 their porch.

3 Q Okay. And was he there when you were at that
4 address, Mr. Benitez, Osman Benitez?

5 A No, ma'am. Through the translation
6 application that we had, we did ask if we could
7 look in the residence to see if Mr. Osman was
8 there. She granted us access to do so. In
9 looking at the residence, we did not find Osman.

10 Q Okay. Did you, at some point at this scene -- so
11 going backwards when you arrived at the scene, did you
12 take pictures?

13 A I did.

14 (STATE EXH. 10, Photo, was marked for
15 identification.)

16 (STATE EXH. 11, Photo, was marked for
17 identification.)

18 (STATE EXH. 12, Photo, was marked for
19 identification.)

20 (STATE EXH. 13, Photo, was marked for
21 identification.)

22 (STATE EXH. 14, Photo, was marked for
23 identification.)

24 (STATE EXH. 15, Photo, was marked for
25 identification.)

1 (STATE EXH. 16, Photo, was marked for
2 identification.)

3 (STATE EXH. 17, Photo, was marked for
4 identification.)

5 (STATE EXH. 18, Photo, was marked for
6 identification.)

7 (STATE EXH. 19, Photo, was marked for
8 identification.)

9 (STATE EXH. 20, Photo, was marked for
10 identification.)

11 (STATE EXH. 21, Photo, was marked for
12 identification.)

13 (STATE EXH. 22, Photo, was marked for
14 identification.)

15 (STATE EXH. 23, Photo, was marked for
16 identification.)

17 BY MS. LEMPESIS:

18 Q I'm going to hand you what's already been marked
19 as State's Exhibits 10 through 23. If you can take a
20 moment and look through those, and once you're done
21 reviewing just let me know.

22 A Yes, ma'am.

23 Q Thank you. And, Officer Hubbard, do you recognize
24 those pictures?

25 A I do, ma'am.

1 Q How are you able to recognize them?

2 A Those are the scene photographs and
3 photographs that had been taken of the vehicle,
4 again, either at the scene or at the garage where
5 the search warrant was executed on the vehicle.

6 Q A search warrant. Did you secure a search warrant
7 for this vehicle?

8 A I obtained two search warrants. One for
9 latent evidence, DNA evidence, and things of that
10 nature. And a secondary warrant for the black box
11 information for the vehicle, which was for the air
12 bag control.

13 Q And -- okay. I'm going to -- are those pictures
14 fair and accurate?

15 A Yes, ma'am.

16 Q And have they been altered in any way?

17 A No, ma'am.

18 MS. LEMPESIS: Your Honor, at this time,
19 I move to admit State's Exhibits 10 through 23.

20 MS. CARMODY: Without objection.

21 THE COURT: All right.

22 MS. LEMPESIS: And I would ask to
23 publish.

24 THE COURT: Without objection.

25 (STATE EXH. 10, Photo, was admitted into

1 evidence.)
2 (STATE EXH. 11, Photo, was admitted into
3 evidence.)
4 (STATE EXH. 12, Photo, was admitted into
5 evidence.)
6 (STATE EXH. 13, Photo, was admitted into
7 evidence.)
8 (STATE EXH. 14, Photo, was admitted into
9 evidence.)
10 (STATE EXH. 15, Photo, was admitted into
11 evidence.)
12 (STATE EXH. 16, Photo, was admitted into
13 evidence.)
14 (STATE EXH. 17, Photo, was admitted into
15 evidence.)
16 (STATE EXH. 18, Photo, was admitted into
17 evidence.)
18 (STATE EXH. 19, Photo, was admitted into
19 evidence.)
20 (STATE EXH. 20, Photo, was admitted into
21 evidence.)
22 (STATE EXH. 21, Photo, was admitted into
23 evidence.)
24 (STATE EXH. 22, Photo, was admitted into
25 evidence.)

1 (STATE EXH. 23, Photo, was admitted into
2 evidence.)

3 BY MS. LEMPESIS:

4 Q Detective Hubbard, would you please step down?
5 I'm going to ask that you come over here.

6 A Yes, ma'am.

7 Q Okay. This is State's Exhibit 10. Can you tell
8 the jury what they're looking at?

9 A So this is a -- this is a photograph of the
10 scene from me standing up around about the middle
11 of the -- I'm sorry -- the middle of the roadway
12 of Haynesville Road facing onto Young Street. So
13 this is at the intersection of Young and
14 Haynesville.

15 Q Show us -- just so we're oriented. So we're
16 looking at the picture.

17 A I would be standing in about the middle of
18 the roadway on Haynesville facing down towards the
19 direction of Young Street.

20 Q Okay. What is in that picture?

21 A In this picture is a gray-colored Dodge
22 Avenger with a South Carolina tag that returned
23 registered to Mr. Osman. In front of that vehicle
24 is a white-colored Chevy Suburban that ended up
25 returning to a Raymondo -- I believe it was

1 Morales. Yes, Morales. And then the vehicle
2 behind it, I don't recall the information for that
3 one. I can't remember if that was Sara's
4 vehicle.

5 Q We've seen the picture of this white Suburban. In
6 your investigation, did you determine it was the
7 victim who was driving the car that night, that
8 vehicle?

9 A Yes. The information that I obtained
10 throughout the investigation and also observed was
11 Mr. Yobani to be driving it and authorized the use
12 of it.

13 Q And, again, whose vehicle did you determine this
14 Dodge Avenger --

15 A The gray-colored Dodge Avenger, we obtained
16 information that it was belonging to Mr. Osman.

17 Q And I know you said you arrived after the body of
18 the victim had been removed from underneath the
19 vehicle, correct?

20 A Yes, ma'am.

21 Q Can you -- and based on your knowledge and your
22 investigation, can you, sort of, point to in the
23 picture where the body would have been?

24 A In this picture, no.

25 MS. CARMODY: Objection, Your Honor.

1 MS. LEMPESIS: Okay, that's fine. I'll
2 actually withdraw the question. You did answer
3 it.
4 BY MS. LEMPESIS:
5 Q Is this picture after the body had been removed?
6 A It is.
7 Q Okay. This is State's Exhibit 11.
8 State's Exhibit 11, tell us what this would have been
9 here.
10 A This is a picture of the inside rear
11 passenger compartment of the gray Dodge Avenger.
12 It's photographing the back seat where there was a
13 case of Modelo alcohol that was -- sorry, beer
14 that was in the rear passenger side floor board.
15 Q And State's Exhibit 12?
16 A This is, again, another photo, a little bit
17 closer up of the case along with some other
18 bottles that were located besides the case.
19 Q Okay. Now, State's Exhibit 13.
20 A This is a picture of the gray Dodge Avenger
21 after it was transported to Butler's Service
22 Center who assisted us with placing the vehicle on
23 a lift so that the undercarriage of the vehicle
24 could be processed.
25 Q Okay. Was it towed?

1 A It was towed.

2 Q I am now showing you State's Exhibit 14. What are
3 we looking at here?

4 A This is the undercarriage of the vehicle.
5 This is the cross member between the left and
6 right side of passenger and driver's side of the
7 vehicle. So if you're looking -- sitting in the
8 vehicle, this would be the cross member that goes
9 pretty much from under the driver's seat to just
10 about under the passenger side seat just behind
11 where the engine sits in the engine compartment.

12 Q Is there anything of note in this picture? What
13 was the reason that you took this picture?

14 A This picture was taken due to the noting of
15 clearing on the undercarriage of this cross
16 member. How everything else appears to be dirty
17 due to normal road-wear conditions, travel
18 conditions. The cleaned off portion would have
19 been the approximate location of where the
20 victim's body was resting under the vehicle on the
21 victim's back.

22 Q Okay. And this is State's Exhibit 15.

23 A This would be a little bit zoomed out picture
24 of the same area capturing from both wheel lines
25 showing the distance between the cross member and

1 the wheels.

2 Q Okay. Can you point for me again to what we just
3 looked at in Exhibit 14?

4 A Yes, ma'am. This would be the area that was
5 cleaned, appearing to be where Mr. Yobani's body
6 was resting under the vehicle.

7 Q Okay. This is State's exhibit 16. Can you tell
8 us -- it is hard to see, but can you tell us what
9 we're looking at?

10 A This was a picture that we took of the oil
11 pan drain bolt. This is where you would change
12 your oil on the oil pan. There are small red
13 fragments, fibers, that were collected that
14 matched the color and consistency of the material
15 that Mr. Yobani's shirt was made of.

16 Q He had a red shirt on?

17 A He did.

18 Q Okay. State's Exhibit 17.

19 A Again, it was another close-up picture with a
20 measuring device to be able to show the sides of
21 the bolt itself along with the fibers.

22 Q Okay. And this is another --

23 A Correct. This was a side-board angle to try
24 to capture as best as possible with the camera the
25 fibers on the bolts since it was very hard to

1 see.

2 Q This is State's Exhibit 19. Can you tell the jury
3 what we're looking at here?

4 A This is a close-up picture of a segment of
5 suspected blood from under the engine compartment
6 area on plastic paneling that we were able to
7 locate while the vehicle was in the area.

8 Q Okay. This is State's Exhibit 20.

9 A This is a picture of the inside front
10 passenger wheel showing where there is a red
11 discoloration around the inside of the wheel. The
12 material that's on the inside of the wheel was
13 suspected to be blood that came from Mr. Yobani's
14 arm as the wheel was spinning.

15 MS. CARMODY: Objection. Calls for
16 speculation.

17 THE COURT: I'll overrule it.

18 THE WITNESS: This was believed to be
19 from the wheel spinning in a fast pace or a fast
20 manner.

21 MS. CARMODY: Objection, Your Honor.
22 Calls for speculation.

23 THE COURT: I'll sustained it.

24 BY MS. LEMPESIS:

25 Q All right. So, tell us specifically where in this

1 picture you see what you suspected to be blood.

2 A There are multiple pictures of this wheel
3 that encompass the entire --

4 MS. CARMODY: Objection, Your Honor.
5 Assuming facts not in evidence.

6 THE COURT: I'll overrule it.

7 THE WITNESS: This shows the entire
8 circumference of the wheel which has this red
9 marking across the entire inside of the tire, all
10 of which appears to be the red material which was
11 suspected to be blood.

12 BY MS. LEMPESIS:

13 Q And here is State's Exhibit 21. Is that --

14 A This is a continuation of the same inside
15 wheel that we just saw from the previous picture
16 with the red discoloration suspected blood on the
17 inside of the tire.

18 Q And, again, this is State's Exhibit 22.

19 A Correct. This is the same trail of the
20 matter on the inside of the same wheel which was
21 suspected to be blood.

22 Q State's Exhibit 23.

23 A And, again, the same -- on the same wheel
24 inside with the material on the inside. Same red
25 material suspected to be blood.

1 Q Okay.

2 A Thank you.

3 Q So, Officer Hubbard, what else did you do in your
4 investigation into this incident? What other evidence
5 did you seek out?

6 A For the vehicle, or all together?

7 Q All together. I'll take you through the
8 surveillance footage.

9 A I collected surveillance video from multiple
10 locations including the Octane service station, as
11 well as Palmetto Truck & Car auto shop. The
12 Palmetto Truck & Car auto shop is in very close
13 proximity to St. Phillips Road. The back of the
14 property meets up with Haynesville Road. The
15 front of the property meets up with the 321 on a
16 section of Highway 17. And then Octane service
17 station is on Whyte Hardee Boulevard in the Exit 5
18 area.

19 Q Okay. What did you learn when you collected that
20 surveillance footage?

21 A Upon collecting all of the surveillance
22 footage and piecing everything together, we were
23 able to determine that Yobani had gone over to
24 Osman's house earlier within the night of Friday.
25 I believe it was around 10:00, maybe 11:00. They

1 were at the house for a little while and then
2 departed to go to the Octane service station.

3 Upon arriving at the Octane service station,
4 we see Mr. Yobani's vehicle entering into the parking
5 lot and parking at a pump. Mr. Yobani is then seen
6 exiting out of the driver's seat of that vehicle where
7 Mr. Osman is seen exiting the passenger side seat.

8 Q Actually, Officer, I am going to stop you there,
9 and if you, from your seat -- we set it up so that you
10 can pull up the video.

11 A I'll have to get that.

12 Q And this is the surveillance footage that we've
13 seen that's been admitted into evidence previously as
14 State's Exhibit 7. And, if you can, what I'm going to
15 have you do now is walk us through what we're
16 watching. If you need to, you can jump forward. Is
17 this what you were just testifying to?

18 A Yes, ma'am. This would have at about 10:40
19 in the morning, roughly. Where --

20 Q You said in the morning. Do you mean --

21 A I'm sorry. In the evening.

22 This would have been about 10:40 in the
23 evening on that Friday where Yobani's vehicle is seen
24 entering into the parking lot and parking at the pump.

25 Q Okay.

1 A Do you want me to play it?

2 Q You can play it, yes. And, if you don't mind,
3 just for the sake of brevity. Let's fast forward to
4 the part where he enters.

5 A Yes, ma'am. (Video played.) So this is his
6 vehicle at the main highway entering in now. He
7 is pulling into the parking lot and parking at the
8 gas pump there.

9 Q Okay.

10 A This is Osman exiting the passenger side of
11 the vehicle and going into the store. Yobani is
12 seen exiting and talking on the phone for a brief
13 moment at the front of the vehicle before entering
14 into the store. And then it will show Osman and
15 Yobani coming into the store and then going into
16 the cooler to get a case of the beer.

17 Q Okay.

18 A Which this was Osman. Yobani will come up.

19 Q Feel free to fast forward.

20 A Yeah, I'm trying to get the mouse to reach.
21 So this was Osman coming out of the cooler and
22 Yobani going into the cooler.

23 Q If you can, you can jump forward to the next
24 video.

25 A Okay. I believe this was when they were

1 going back to the car. They put the beer in the
2 back passenger side and then left the scene.

3 Q Okay.

4 A This was further up.

5 Q Which camera is this?

6 A This is camera 8 off of Palmetto Truck & Car
7 automotive shop's building. This is on the side
8 of the building facing to the side of --

9 Q Can you pause it?

10 A Yes, ma'am.

11 Q Okay. So, this is -- Officer Hubbard, will you
12 step down real quick?

13 A Yes, ma'am.

14 Q You said this is Palmetto Truck?

15 A Truck & Car automotive shop. From this
16 particular angle, we are looking outside the shop
17 in this direction here, overseeing the vehicles in
18 the corner of the lot here facing onto the
19 intersection of St. Phillips Avenue and
20 Haynesville Road. And also the -- I'm sorry. And
21 also the exiting of 321 onto Highway 17.

22 Q Okay. So, in watching this video, can you explain
23 to the jury, the best that you can, which direction
24 the -- where in the video is the defendant's house?

25 A In the video itself, this will be the front

1 corner of the trailer for the residence of
2 Mr. Osman. And this will be the very back far end
3 corner, down St. Phillips, to the corner of the
4 trailer.

5 Q All right. So knowing that -- can you take your
6 seat again? And if you can just back it up a moment
7 and explain with that information what we're looking
8 at.

9 A Yes, ma'am.

10 Q And about what time is this?

11 A We are currently now on the Saturday morning
12 at approximately 2:14 in the morning.

13 Q And when you collected this video, this
14 surveillance footage, what is of importance in this
15 clip?

16 A The importance of this clip shows the vehicle
17 matching Mr. Osman leaving Mr. Osman's property
18 and then proceeding onto the exit of 321 merging
19 onto 17.

20 Q Okay, thank you. Go ahead and play it.

21 (Video played.)

22 BY MS. LEMPESIS:

23 Q Okay. So now, approximately what time is it?

24 A Approximately, we are at 2:17, Saturday
25 morning back at the Octane Gas Station where we

1 had the video from Yobani's vehicle previously
2 entering. This video shows a vehicle matching
3 Mr. Osman's entering into the parking lot and
4 parking at a pump as well. In this segment of
5 video, we are able to see Mr. Anibal exit the
6 passenger front of the vehicle and Mr. Osman exit
7 the driver front of the vehicle.

8 Q So who is that that got out of the driver's
9 seat?

10 A The driver was Mr. Osman. And this will show
11 the interior camera. This is showing Anibal
12 coming to the beer cooler as well as Mr. Osman.

13 Q Okay.

14 A This will show the two individuals coming
15 back to the vehicle to place the case of beer that
16 they had just purchased into the rear passenger
17 seat floor board of the vehicle, which we had
18 photographed, which looks like it was being placed
19 in the same area.

20 Q Okay.

21 A We are then going to see Mr. Anibal get back
22 into the vehicle on the front passenger side.

23 Q Okay.

24 A And Mr. Osman gets back into the vehicle on
25 the front driver's side.

1 Q Thank you. Okay. The next video we go to --
2 pause it for us.

3 A Yes, ma'am. So this is the video back at
4 Palmetto Truck & Car automotive shop at the same
5 angle we had previously, at which time now we are
6 still on Saturday morning at approximately 4:00 or
7 5:00 in the morning.

8 Q You keep saying approximately. In getting this
9 surveillance footage from owners of Palmetto
10 Trucking --

11 A Yes, ma'am.

12 Q -- is the time exact?

13 A It is not. At both locations, the Octane
14 service station and Palmetto Truck & Car, I was
15 able to ascertain that both systems were not
16 exactly correct within three to four minutes. I
17 think it was within three or four minutes of each
18 other. One ended up being about three or four
19 minutes slow, and the other ended up being three
20 or four minutes fast. But those are notated. So
21 these are camera times, not the actual physical
22 time.

23 Q But it's close. It's very close in the sense that
24 it's --

25 A Correct.

1 Q -- minutes from 4:05.

2 A Yes, ma'am.

3 Q I apologize. I interrupted you. Tell the jury
4 what we see on this portion of the video.

5 A On this portion of the video, we'll end up
6 seeing the vehicle matching Mr. Osman's returning
7 back to the residence.

8 Q Thank you.

9 A Are you ready to play?

10 Q Yes.

11 A (Video played.) And the video here has
12 jumped from that 4:05 time point to the
13 approximately 4:14 time point.

14 Q Can you point the jury, before you hit play, in
15 the general direction of what we're looking at?

16 A If everyone can see where the mouse is at,
17 we're going to be looking into this area here
18 where we will see an individual matching the
19 description of Anibal running from the area of
20 Mr. Osman's residence back onto Haynesville
21 Road.

22 Q Thank you.

23 A That was him.

24 Q Thank you.

25 A You will also see him come back to the corner

1 very, very briefly. Right there.

2 Q Okay.

3 A And then this is a vehicle matching
4 Mr. Yobani's leaving from Mr. Osman's property.

5 Q Turning in the direction then of the Dollar
6 General; is that correct?

7 A Correct. Yes, ma'am.

8 Q Okay.

9 A In the same direction as they live as well.

10 Q Okay.

11 A In this section, you're going to see a
12 vehicle matching Mr. Osman's exiting St. Phillips
13 Road at a rapid pace. And this is another angle
14 that is directly behind Palmetto Truck & Car just
15 to the -- if you were to point the two angles side
16 by side, this would be an angle to the left of the
17 previous angle at that intersection. So it would
18 follow in line with the direction the vehicles
19 were traveling.

20 Q So looking at what road?

21 A So the previous angle showed where St.
22 Phillips Road was at on Haynesville towards the
23 Dollar General and the Young Street address.

24 Q Okay. Where is the relevant portion of this
25 video?

1 A The relevant portion for this video is going
2 to be up in this area here where we're going to
3 see Mr. Anibal walking, at which point
4 Mr. Yobani's vehicle is then seen stopping next to
5 Anibal and driving away with Anibal no longer in
6 sight getting into the vehicle.

7 Q Okay.

8 A We should see him coming up shortly here.
9 That's the shadow and then that is him. And as
10 Mr. Yobani's vehicle is driving away, we see
11 Mr. Osman -- a vehicle matching Mr. Osman's
12 driving directly past behind him. And this
13 portion is, again, further towards Dollar General
14 which is in the top left. And Mr. Osman -- a
15 vehicle matching Mr. Osman's description is seen
16 side by side with Mr. Yobani's vehicle pursuing
17 after them.

18 Q What road are they driving up?

19 A This is on Haynesville Road behind the Dollar
20 General and Palmetto Truck & Car.

21 Q Can you back up and replay that portion you were
22 talking about? I asked you to, but -- thank you.
23 That's good.

24 A Right here?

25 Q Yes, sir. Okay. Is that the extent of the

1 footage?

2 A Yes, ma'am.

3 Q Thank you.

4 THE COURT: Is that everything as to the
5 videos and pictures?

6 MS. LEMPESIS: Yes, sir, it is.

7 THE COURT: All right. Let's take about
8 a 10-minute break then just real quickly. All
9 right. Go stretch your legs. Use the restroom
10 and we'll get you right back in.

11 (Jury exits the courtroom at 10:26 a.m.)

12 (A break was taken from 10:26 a.m. to 10:35 a.m.)

13 THE COURT: You can bring them out.

14 Let's do this, because I want him to
15 think about it, because we only have one more
16 witness after this. So I'm going to go ahead and
17 charge the defendant. So give me one second just
18 because, again, I want to give him some time to
19 think about it. I'll go ahead and do it now.

20 If the defendant will please stand. All
21 right. Raise your right hand. Do you swear or
22 affirm the testimony you give will be the truth,
23 the whole truth, and nothing but the truth?

24 MR. JIMENEZ-BENITEZ: Yes.

25 THE COURT: All right. Would it be

1 MR. JIMENEZ-BENITEZ: Yes. I cannot
2 testify.

3 THE COURT: All right. For the record, I
4 read the defendant's right to testify and I had
5 the interpreter read the exact charge to him, and
6 he has indicated that, at this point, he does not
7 wish to testify. However, I will go over all this
8 again with him at that time, but I wanted to get
9 all that done while the jury was out.

10 All right. You can bring them out.

11 (Jury enters the courtroom at 10:45 a.m.)

12 BY MS. LEMPESIS:

13 Q Officer Hubbard, and may it please the Court,
14 we're going to start back where we stopped off.

15 Did you, in your investigation, interview
16 Anibal Berdugo?

17 A I did.

18 Q And how many times did you interview him?

19 A Two times.

20 Q The first time, do you recall when was the first
21 time you interviewed him?

22 A The first time was shortly thereafter the
23 incident after the incident date took place on the
24 26th.

25 Q And how did he come to the police station?

1 A He came to the police department by
2 Officer Watson who transported him.

3 Q Did he come on his own, like, willingly?

4 A To my understanding, he did.

5 Q Okay. And, when you initially interviewed Anibal,
6 was he truthful with you?

7 A For the first interview, he was not.

8 Q How did you determine that he wasn't truthful?

9 A Based on the story line of events during that
10 interview we were able to -- we had contradicting
11 video evidence that showed he was present with
12 Mr. Osman and Mr. Yobani that night conflicting
13 with his first statement.

14 Q What was your impression of Anibal when you
15 interviewed him?

16 A I noted that he was nervous. He was very
17 small. He looked a lot younger than he claimed
18 that he was. He advised that he was about 19
19 years of age. He looked and appeared to be
20 younger than that. But other than that, that was
21 about it. I noted that he did have a minor
22 scratch on his forehead and a red mark, I believe,
23 on his jaw line and neck.

24 Q And your second interview with Anibal, did you --
25 what did you do in confronting him?

1 A In my second interview with Anibal, I did ask
2 -- or did inform him that I had additional
3 questions for him. I needed to clarify some
4 things that I knew he was not being honest about.
5 Upon telling him that I had knowledge that he was
6 with Mr. Yobani and Mr. Osman throughout the
7 entire night and confronting him with what I was
8 able to collect on video. He did come through and
9 actually tell us what he remembered about the
10 night. And at the end of the interview, he said
11 multiple times that he had, at this point, told us
12 everything that happened that night.

13 Q Did you collect his cell phone?

14 A I did.

15 Q Okay. And did you have that cell phone
16 analyzed?

17 A I did.

18 Q Okay. What did you -- did you examine the records
19 that were -- that came -- or, did you examine his
20 phone?

21 A I did. Shortly after I obtained the search
22 warrant for the phone for Anibal, I did access the
23 phone to -- looked for a time of when he called
24 Mr. Yobani per his information from his
25 interview.

1 Q Not when he called him, but when -- initially he
2 told you he called him; is that correct?

3 A Correct.

4 Q And so you're looking at his phone. I'm sorry. I
5 interrupted you.

6 A So we were looking for that. In looking for
7 that, I did not see any phone calls coming in from
8 Yobani to Anibal's phone. However, I did see two
9 back-to-back phone calls from Yobani -- I'm
10 sorry -- from Anibal to Yobani, and that would be
11 at the approximate time of -- after the incident
12 took place and seeing the vehicles on camera.

13 Q Okay. Can you approximate what time?

14 A I don't remember offhand.

15 Q That's okay. So sometime after four o'clock in
16 the morning?

17 A Correct.

18 Q Okay. And then did Anibal come and speak with you
19 willingly for that second interview?

20 A He did.

21 Q Okay. Did you take -- did you collect what's
22 called a buccal swab or a DNA swab from Anibal?

23 A I don't remember if I did or not.

24 Q Okay. If I --

25 A Oh, yes. For elimination purposes, yes.

1 Q Thank you. Also, in your investigation, did you
2 obtain a sample from the victim in the case, a DNA
3 sample?

4 A We collected a blood spot from the coroner's
5 office.

6 Q Thank you.

7 A Which is used for the standard.

8 Q Thank you. And did you --

9 MS. LEMPESIS: Beg the Court's
10 indulgence.

11 BY MS. LEMPESIS:

12 Q Did you, at some point, collect a DNA sample or a
13 buccal swab from the defendant, Mr. Osman?

14 A I did.

15 Q Okay. And you've mentioned you had a search
16 warrant for the vehicle. Did you collect any DNA
17 samples for testing from the vehicle?

18 A I did.

19 Q Okay. I am going to hand you now, Officer
20 Hubbard, what we marked as State's Exhibits 24 through
21 35.

22 (STATE EXH. 24, Unknown touch DNA swab from
23 the top half of the steering wheel, was marked for
24 identification.)

25 (STATE EXH. 25, Unknown touch DNA swab from

1 the bottom half of the steering wheel, was marked for
2 identification.)

3 (STATE EXH. 26, Unknown touch DNA swab from
4 the gear shifter, was marked for identification.)

5 (STATE EXH. 27, Unknown touch DNA swab from
6 the driver interior door handle, was marked for
7 identification.)

8 (STATE EXH. 28, Unknown touch DNA swab from
9 the driver's side rear door handle interior, was
10 marked for identification.)

11 (STATE EXH. 29, Unknown touch DNA swab from
12 the passenger front door handle interior, was marked
13 for identification.)

14 (STATE EXH. 30, Unknown touch DNA swab from
15 the passenger front door handle interior, was marked
16 for identification.)

17 (STATE EXH. 31, Suspected blood spot from
18 the inside wall on the passenger tire, was marked for
19 identification.)

20 (STATE EXH. 32, Suspected blood spot from
21 under the engine compartment, was marked for
22 identification.)

23 (STATE EXH. 33, Known standard blood spot
24 from the victim, was marked for identification.)

25 (STATE EXH. 34, Known standard buccal swab

1 from Anibal Fermin Berdugo, was marked for
2 identification.)

3 (STATE EXH. 35, Known standard buccal swab
4 from Osman Jimenez-Benitez, was marked for
5 identification.)

6 BY MS. LEMPESIS:

7 Q I want you to look at them, and I'll ask you the
8 same question as to each one as a group, okay?

9 A Yes, ma'am.

10 Q Okay. For the sake of brevity, but, as to those
11 Exhibits 24 through 35, are you able to recognize each
12 one of those?

13 A I am.

14 Q And how are you able to recognize them?

15 A They're evidence bags with my writing
16 indicating what these samples are, and sealed by
17 myself, and the date that they were sealed, also
18 with evidence tape on the top of the bag with my
19 initials and the date that they were sealed.

20 Q And just -- so that's how you're able to recognize
21 them. You said your initials are on the bag,
22 sealed?

23 A Yes, ma'am.

24 Q Did you alter these items in any way?

25 A No, ma'am.

1 Q And when they were in your possession, did you
2 maintain the integrity of each item?

3 A Yes, ma'am.

4 Q In the sense that you didn't change it or mess
5 with it in any way?

6 A Correct.

7 Q Once you collected them, what did you do with
8 them?

9 A Once they were collected, they were turned
10 over to the Beaufort County forensics lab where
11 they assisted numerous times with analyzing them
12 for cases.

13 Q Did you take them to the Beaufort County Sheriff's
14 Office lab?

15 A I did.

16 Q And I'm going to have you go through quickly
17 Exhibit 24. Number 24. It should be on the top of
18 your pile.

19 A Yes, ma'am.

20 Q Can you tell the jury what that is?

21 A This is an unknown touch DNA swab from the
22 top half of the steering wheel from the gray Dodge
23 Avenger.

24 Q 25.

25 A 25 is going to be an unknown touch DNA swab

1 from the bottom half of the steering wheel of the
2 gray Dodge Avenger.

3 Q 26.

4 A 26 is going to be an unknown touch DNA swab
5 from the gear shifter of the gray Dodge Avenger.

6 Q 27.

7 A It's going to be an unknown touch DNA swab
8 from the driver interior door handle of the gray
9 Dodge Avenger.

10 Q 28.

11 A It's going to be an unknown touch DNA swab
12 from the driver's side rear door handle interior
13 on the gray Dodge Avenger.

14 Q Okay. 29.

15 A It's going to be an unknown touch DNA swab
16 from the passenger front door handle interior on
17 the gray Dodge Avenger.

18 Q 30.

19 A It's going to be an unknown touch DNA swab
20 from the passenger rear door handle interior on
21 the gray Dodge Avenger.

22 Q And Number 31.

23 A It's going to be a suspected blood spot from
24 the inside wall on the passenger tire. This was a
25 swab that we took --

1 Q Okay. 32.

2 A -- on the gray Dodge Avenger.

3 Q Thank you. 32.

4 A It's going to be suspected blood spot from
5 under the engine compartment, which is a swab as
6 well on the gray Dodge Avenger.

7 Q 33.

8 A It's going to be known standard blood spot
9 from the victim collected from the coroner's
10 office from the autopsy.

11 Q 34.

12 A 34 is going to be a known standard buccal
13 swab from Anibal Fermin Berdugo Berdugo.

14 Q Number 35.

15 A 35 is a known standard buccal swab from
16 Mr. Osman Jimenez-Benitez.

17 Q Thank you. Officer, Mr. Hubbard, we've heard
18 about your investigation. Ultimately, did you arrest
19 anybody for this offense of hit and run with death?

20 A I did.

21 Q And do you see the person that you arrested in the
22 courtroom?

23 A I do.

24 MS. LEMPESIS: Your Honor, if I could ask
25 the defendant to please stand up and remove his

1 mask.

2 THE COURT: All right.

3 MS. LEMPESIS: Thank you.

4 BY MS. LEMPESIS:

5 Q Officer Hubbard, do you see the person that you
6 arrested and charged with this crime?

7 A Yes, ma'am.

8 Q And can you identify him?

9 A He is the defendant seated beside the defense
10 counsel.

11 Q Okay. This happened some time ago. Does he look
12 the same as he did.

13 A Not exactly. He looks a bit heavier now than
14 what he did previously.

15 Q Thank you. But, again, for the record, we
16 identified Mr. Osman Jimenez-Benitez who's the person
17 you determined to have committed this crime?

18 A Yes, ma'am.

19 Q Thank you.

20 MS. LEMPESIS: Your Honor, I don't have
21 any other questions for this witness at this
22 time.

23 THE COURT: All right. You may be
24 seated. You may proceed.

25 CROSS-EXAMINATION

1 MS. CARMODY:

2 Q Good morning, Detective Hubbard.

3 A Good morning, ma'am.

4 Q It's my understanding that you reviewed all of the
5 interviews in this case on all the videos.

6 A Yes, ma'am.

7 Q And you reviewed your incident record and
8 everything.

9 A Yes, ma'am.

10 Q All right. So, let's start back with you
11 testified earlier that you were working for
12 Hardeeville PD at the time?

13 A Yes, ma'am.

14 Q So, what -- could you explain to the jury what
15 exactly your job was at Hardeeville PD at the time?

16 A I was an investigator. I also assisted with
17 incident involving IT at the department as well.

18 Q I'm sorry?

19 A I also assisted with the IT at the
20 department.

21 Q IT, okay. You mean computers?

22 A Information technology, yes, ma'am.

23 Q All right. And as an investigator, how many years
24 experience do you have?

25 A I was an investigator for four years with the

1 police department.

2 Q All right. And as an investigator -- well,
3 previous -- how much law enforcement experience did
4 you have previously?

5 A Previous to the four years?

6 Q Uh-huh.

7 A Eight years.

8 Q Eight years. All right. So 12 years law
9 enforcement experience?

10 A Correct.

11 Q And I would imagine that you went to an academy?

12 A Yes, ma'am.

13 Q And while you were at the academy they taught you
14 about how to write incident reports and things like
15 that?

16 A I don't recall if we went over incident
17 report writing.

18 Q Or did they teach how to investigate and how to --

19 A Under specialized classes, yes.

20 Q All right. So, when you had arrived at the scene
21 for this case, did you notice any type of evidence
22 tape that had been put up?

23 A I did not see any evidence tape.

24 Q What would be the purpose of putting up evidence
25 tape?

1 A To secure a scene or to rope off parameters
2 where a scene took place.

3 Q And the -- when you arrived on scene,
4 approximately how many people were on scene?

5 A I don't recall offhand.

6 Q More than just law enforcement?

7 A Yes. There were fire department, EMS,
8 coroner, tow truck driver arrived. I mean, there
9 were definitely quite a few people out there, but
10 I don't recall exactly how many.

11 Q What about members of the public?

12 A I believe there were members of the public
13 out there as well.

14 Q Are we taking 2, 4, 10, 20?

15 A I don't recall offhand.

16 Q More than Sara?

17 A More than Sara, yes.

18 Q All right. And also on scene -- this was after
19 four o'clock in the morning?

20 A Correct.

21 Q All right. In the area on scene, is it lit or is
22 it dark?

23 A It's dark.

24 Q A dark area, okay. And when you arrived on scene,
25 was it your understanding that both vehicles were

1 where they were left in the same position? Well, let
2 me rephrase that, I'm sorry.

3 When you arrived on scene, had you been
4 informed that either vehicle had been moved?

5 A Upon arriving on scene, I was not informed
6 that any vehicle had been moved.

7 Q Okay. And the pictures that you testified to
8 earlier, the State showed you the location of the
9 vehicles --

10 A Yes, ma'am.

11 Q -- that's how they looked when you were on
12 scene?

13 A Yes, ma'am.

14 Q But you have no knowledge as to how those vehicles
15 ended up in that position?

16 A I do have knowledge that Anibal --

17 Q No.

18 A At the time, no.

19 Q At the time, you had no --

20 A No.

21 Q So just to be clear, the pictures are not
22 necessarily an accurate representation of the scene,
23 how it was left?

24 A It was how it was when I arrived.

25 Q When you arrived?

1 A Correct. I can't testify what it was before
2 that.

3 Q But you later learned that was inaccurate,
4 correct?

5 A Correct, later.

6 Q So when you're on scene, the fire department had
7 already left?

8 A I believe the fire department was on scene at
9 the time I arrived.

10 Q Okay. Mr. Yobani had already been put into an
11 ambulance?

12 A I believe he was either in the ambulance or
13 the coroner's vehicle, but I believe he was in the
14 ambulance at the time.

15 Q All right. So when you're on scene, you have two
16 vehicles there, right?

17 A Yes, ma'am.

18 Q Okay. And you indicated earlier that you had got
19 a search warrant and processed the sedan vehicle, the
20 smaller one?

21 A Correct.

22 Q The Dodge Avenger. What type of investigation did
23 you do on the other vehicle that was there?

24 A I couldn't determined that the vehicle was
25 involved in the hit and run.

1 Q My question was: Did you do any type of
2 investigation on that vehicle?

3 A Not that I can recall, no.

4 Q All right. So, when you -- when you executed a
5 search warrant, it was only for one vehicle?

6 A Correct.

7 Q All right. Did you go into the other vehicle at
8 all?

9 A I believe we walked around it. We didn't
10 readily look inside the vehicle. Didn't see
11 anything that appeared to be pertinent to the
12 actual incident, and the vehicle was released to
13 the registered owner which was Mr. Raymondo.

14 Q So at the time of your investigation, you didn't
15 believe it was pertinent.

16 A Correct, at the initial time.

17 Q And, at some point later, you realized that --
18 through your investigation, that the vehicle was
19 actually involved in this investigation?

20 A It was seen during the course of the
21 investigation, yes.

22 Q Okay. You learned that it had been alleged that
23 Yobani was driving that vehicle?

24 A Correct.

25 Q Okay. But at the time when you were on scene, you

1 didn't do anything at all to process that vehicle?

2 A No.

3 Q Is it safe to assume that we don't know who was
4 driving it?

5 A We obtained, during the course of the
6 investigation, that Yobani was driving it.

7 Q Okay. Based on the video alone.

8 A Correct.

9 Q But not based on any --

10 A Not alone. But also with Anibal.

11 Q Anibal. We'll get to Anibal in a minute.

12 But based on -- you did not obtain any
13 physical evidence from that vehicle, correct?

14 A No, not that I recall.

15 Q No DNA swabs, anything like that?

16 A No.

17 Q Fingerprints?

18 A No.

19 Q All right. You also took a lot of pictures while
20 you were on scene and you took pictures of the Dodge
21 Avenger, correct?

22 A Correct.

23 Q And, in the photographs -- well, actually, when
24 you were on scene, do you recall seeing any other type
25 of evidence outside the vehicle?

1 A I believe there was a tire iron that we
2 located in close proximity to the vehicle. I
3 believe we located a shoe matching the victim's
4 shoe off to the side, a sock as well.

5 Q Okay. Now, you did -- you collected the tire
6 iron?

7 A Yes, ma'am.

8 Q Did you process the tire iron for prints, DNA,
9 anything like that?

10 A Not that I can recall.

11 Q What about after you learned that Yobani had
12 injury? Did you think to process the tire iron at
13 that time?

14 A Not at the time.

15 Q Not Yobani. I'm sorry. Let me strike that.
16 Rephrase it.

17 Anibal. I'm getting confused. Anibal,
18 you said he had a scratch and a bruise. Did you
19 think to process that tire iron at all?

20 A No, ma'am.

21 Q Okay. Did you take any pictures of tire tracks at
22 the scene?

23 A I don't believe so.

24 Q What about pictures of -- did you take pictures of
25 the smaller vehicle, the Dodge Avenger?

1 A I'm sorry?

2 Q You took pictures of the Dodge Avenger?

3 A Yes.

4 Q All right. What about -- what about, like,
5 interviewing people that were on scene? Did you
6 interview anybody?

7 A I did.

8 Q Who were those people?

9 A I believe I spoke to Sara, briefly. I spoke
10 with a -- I believe her name is Diana who is a
11 resident in the area. I spoke with a Mr. Roblero,
12 the owner of the vehicle belonging to -- that Mr.
13 Yobani was using. I spoke with Anibal and I spoke
14 with Joel.

15 Q Okay. And out of all of those people that you
16 talked to, Sara Roblero, Raymondo, Anibal, and Joel,
17 did any of those people indicate that they saw what
18 happened?

19 A No, they just heard.

20 Q That's not what I asked you. None of those people
21 indicated they saw what happened.

22 A They didn't see, but they heard noises.

23 Q Okay. But my question again is: Nobody saw what
24 happened.

25 A Correct.

1 Q Okay. All right. There were also lots of
2 spectators out there, right? People wondering what's
3 going on?

4 A I guess you could say that.

5 Q Did any of those people approach you and tell you
6 that they saw what happened?

7 A No.

8 Q Did you get a list of any of the spectators?

9 A No.

10 Q Did you obtain witness statements from Diana or
11 anybody else that was on scene?

12 A Not written statements, but verbal
13 statements.

14 Q Okay. And while you were on scene, you were
15 informed -- well, you learned through the course of
16 your investigation that an individual by the name of
17 Anibal had received a call that someone wanted to beat
18 up Yobani, correct?

19 A That was his initial statement.

20 Q Okay. And so at the time of your investigation
21 that's the information that you had on scene?

22 A Initially, yes.

23 Q Okay. And did you direct -- did you or some --
24 well, actually, let me ask you this way. Do you know
25 if Officer Watson was directed to bring individuals

1 down to the police department for a statement?

2 A Yes.

3 Q All right. And do you know, because you were in
4 charge of the investigation, whether she was directed
5 to keep them isolated?

6 A I believe the request was for her to keep
7 them separated at the police department until they
8 could be interviewed.

9 Q Okay. These individuals were not on scene with
10 the rest of the spectators, correct?

11 A I don't recall.

12 Q All right.

13 A The first time that I had contact with them
14 was at the police department.

15 Q Okay. And you directed -- you, or somebody under
16 your authority, directed that the cell phone be
17 seized.

18 A Correct.

19 Q And the reason that the cell phone had to be
20 seized was because you were looking for that phone
21 call from the person that had threatened Yobani.

22 A We were looking for a phone call to Anibal
23 from Yobani as he stated.

24 Q As he told you, okay.

25 Now, you indicated that you took several

1 pictures while you were on scene.

2 A Yes, ma'am.

3 Q The vehicle, the smaller vehicle, the Dodge
4 Avenger was in or near a ditch, correct?

5 A Yes, ma'am.

6 Q Okay. And you indicated that you did not take
7 pictures of tire tracks, but you took pictures of the
8 vehicle.

9 A Correct.

10 Q All right. And -- let's -- so, who is the MAIT
11 team?

12 A The MAIT team is a division with the
13 South Carolina Highway Patrol.

14 Q Okay. And, at some point in your investigation,
15 did you request the MAIT team to help you?

16 A For the extraction of the data from the black
17 box air bag control module of the gray Dodge
18 Avenger.

19 Q All right. You assisted in that, correct,
20 executing the search warrant?

21 A I assisted them by getting them the search
22 warrant needed for it and remained present while
23 they extracted the data, or attempted to extract
24 the data.

25 Q And is it your understanding that they also did --

1 they looked at the vehicle physically?

2 A Yes.

3 Q Okay. And is it also your understanding that it
4 determined the airbags in the vehicle had not been
5 deployed?

6 A Correct.

7 Q Is it also your understanding that there was no
8 data from the air bag control module?

9 A Correct.

10 Q Data from the air bag control module would
11 indicate an impact, correct?

12 A I can't testify to that. I don't have the
13 experience for that, or training.

14 Q I understand. Absolutely. But the air bags in
15 the vehicle had not gone off.

16 A Correct.

17 Q And is it also your understanding that there was
18 no exterior damage to the vehicle that was new?

19 A I'm sorry?

20 Q There was no new exterior damage to the vehicle?

21 A From when?

22 Q The MAIT team had determined that there was no new
23 physical damage to the vehicle to indicate that it was
24 involved in a collision?

25 A I'm not following you.

1 Q Okay. So on the vehicle itself, right, it had --
2 when you took pictures on it, it's got scratches, it's
3 got dings, and things like that. It's not a brand new
4 vehicle.

5 A Correct.

6 Q And the -- in the pictures, there is no picture to
7 indicate there was fresh damage to the exterior
8 portion of that vehicle. Like, we don't have a huge
9 dent anywhere on the vehicle, correct?

10 A Not that I can recall in the pictures.

11 Q All right. You also talked with the MAIT team,
12 correct?

13 A Correct.

14 Q All right. And are you aware through your
15 conversations with the MAIT team that there was some
16 minor damage rusting on the left front corner of the
17 panel?

18 A On the fender?

19 Q Uh-huh.

20 A Yes.

21 Q Did you determine that damage to be preexisting?

22 A Yes, based on the condition of it.

23 Q And it didn't appear as though there was any fresh
24 damage to correlate the incident?

25 A On which incident? With the collision at

1 Haynesville?

2 Q This incident.

3 A Not that I recall.

4 Q And, the vehicle -- apparently the vehicle had
5 been run over a pedestrian that was already lying in
6 the road?

7 A I'm sorry?

8 Q Apparently the vehicle run over a pedestrian that
9 was already lying in the road because there was no
10 exterior damage to the vehicle to indicate --

11 MS. LEMPESIS: Objection. She's asking
12 Officer Hubbard to speculate.

13 THE COURT: Yeah, I'll sustain the
14 objection to speculation.

15 BY MS. CARMODY:

16 Q Okay. Through your conversation with the MAIT
17 team, you had worked on this together, you had
18 executed the search warrant together.

19 A Correct.

20 Q And you had -- also you had talked to them on the
21 phone as well?

22 A Correct.

23 Q You're the one that had requested their
24 assistance.

25 A Correct.

1 Q All right. And as you talked about earlier, they
2 did an exterior view of the vehicle as well as the air
3 bag control module?

4 A Correct.

5 Q All right. And are you aware of a man by the name
6 of Mr. Connelly?

7 A Yes, he is with the South Carolina Highway
8 Patrol MAIT team.

9 Q And you had a conversation with Mr. Connelly?

10 A Yes.

11 Q Would it refresh your recollection if I showed you
12 the -- well, the transcript of the phone call?

13 A That would be fine.

14 Q That is the transcript.

15 A Okay. (Reviewing transcript.) Okay.

16 Q Okay, thank you.

17 And, Officer, as I was asking earlier, was
18 there new damage to the exterior of the vehicle?

19 A Not that the MAIT team indicated.

20 Q Okay. And did the MAIT team believe that the
21 vehicle had run over a pedestrian that was already
22 lying in the road?

23 MS. LEMPESIS: Objection.

24 THE WITNESS: That was their assumption,
25 yes.

1 BY MS. CARMODY:

2 Q Thank you. All right. You had testified earlier
3 about it was your view on the video that you had seen
4 these vehicles driving at what you consider to be a
5 fast speed?

6 A Correct.

7 Q All right. But by watching the video, you
8 couldn't accurately determine actually how fast either
9 one of those was traveling, right?

10 A No.

11 Q Okay. And there's no evidence on the exterior of
12 the vehicle to suggest that the vehicle had hit a
13 person -- like, okay. There is no damage to the
14 exterior of the vehicle to indicate that a person was
15 hit by a vehicle, correct?

16 A Of the Dodge Avenger?

17 Q Yes. There's no physical evidence on the exterior
18 of the vehicle.

19 A There was fibers were obtained -- were
20 recovered from the undercarriage of the vehicle
21 matching the victim's shirt.

22 Q I'm talking about the exterior of the vehicle, the
23 bumper?

24 A That would be the exterior, underneath.

25 Q So the bumper. The painted portion of the

1 vehicle? Do you know what I mean?

2 A No. There was no damage that was noted from
3 that incident, no.

4 Q Okay. And when you processed the vehicle, you
5 said that you processed it for DNA?

6 A Correct.

7 Q All right. And so it was only you involved in
8 taking the DNA swabs?

9 A I was the one who collected them. I don't
10 recall if another investigator assisted with
11 documenting anything, but I was the one collecting
12 the actual evidence.

13 Q You're the one that swabbed the vehicle?

14 A Correct. Yes.

15 Q And when you swabbed the vehicle that was pursuant
16 to a search warrant?

17 A Yes, ma'am.

18 Q And your search warrant was also to obtain latent
19 prints, correct?

20 A To encompass any and all evidence, yes.

21 Q It included latent prints.

22 A Correct.

23 Q And through your training and experience in law
24 enforcement, do you know how to collect prints?

25 A I do.

1 Q And did you collect them in this case?

2 A I did not.

3 Q All right. Who is the first person that you asked
4 to be brought to the police department?

5 A The morning of the incident? I believe it
6 was both Anibal and Joel at the same time.

7 Q Anibal and Joel, yes. And both of those
8 individuals did not speak English, correct?

9 A They did not.

10 Q And you required the assistance of an
11 interpreter?

12 A I did.

13 Q And did Detective Lemus assist you in that?

14 A He did.

15 Q All right. Detective Lemus, did he assist you in
16 interpreting any statements in this case?

17 A He did.

18 Q From Spanish individuals?

19 A In Spanish to them, and then English from
20 them.

21 Q You were still present in the room at the time?

22 A Correct.

23 Q You were in close proximity to Anibal?

24 A Correct.

25 Q And do you recall that you thought he had been

1 drinking that night that you could smell alcohol on
2 him?

3 A I don't readily recall, but I think there was
4 a notation for it.

5 Q Did you ask him for an identification?

6 A I can't remember if I asked for an ID card,
7 but I asked him for his information.

8 Q Did he indicate to you that he did not remember
9 his address?

10 A I believe so. He said, he -- I believe he
11 said he didn't recall the number he lived at, but
12 he knew where he lived at, how to get there.

13 Q And did he tell you that he did not know his date
14 of birth?

15 A He did.

16 Q And do you generally -- when you interview people,
17 do you usually require identification?

18 A I do so that way I can document who I'm
19 speaking with.

20 Q In your experience in investigations, when a
21 person does not provide their address or their date of
22 birth, do you -- what steps do you take to follow up
23 on that?

24 A I try to do searches through readily
25 available databases that I have access to in order

1 to collect that information using multiple sources
2 to try to ascertain factual evidence as to the
3 identity of that person.

4 Q At times, when people don't provide that
5 information, do you take them into custody? Do you
6 figure out who they are?

7 A Not necessarily. Or not regularly, no.

8 Q So you don't require people to give you their date
9 of birth?

10 A If they don't give me their birth, do I take
11 them to jail?

12 Q No. I'm asking --

13 A No.

14 Q -- do you hold on to them until you figure out who
15 you're talking to?

16 A No.

17 Q All right. In your conversation with Joel, did he
18 indicate to you that Anibal had given him the same
19 story, that he was sleeping and got this call from
20 Yobani?

21 A Yes.

22 Q And did you, through your investigation, learn
23 that Anibal had also told that story to other officers
24 on scene as well?

25 A I don't recall ascertaining from other

1 officers what Anibal specifically told them.

2 Q But it was generally that he had gotten this call
3 from Yobani and that somebody wanted to beat him up?

4 A I don't recall if he told that specifically
5 to anybody else other than myself.

6 Q Did you also learn that he had indicated to you
7 that he was at home sleeping that night?

8 A Yes. That's what he informed us of,
9 initially.

10 Q You also learned this to be false?

11 A Yes.

12 Q Did he indicate to you that he didn't know whose
13 car it was?

14 A Which vehicle?

15 Q The vehicle -- the Dodge Avenger.

16 A Yes.

17 Q Did he -- okay. Initially, when -- let's go to
18 his statement about who -- the person he saw outside
19 the vehicle. You know what I'm referring to?

20 A Which statement?

21 Q Anibal had indicated to you that he had seen
22 somebody outside of the Dodge Avenger.

23 A The initial statement?

24 Q All the statements.

25 A There's two different statements, so ...

1 Q So, let's see. Hold on one second. I'm just
2 trying to find it. One second.

3 In his first statement, do you recall being
4 informed that the guy -- no name -- the guy said if he
5 didn't get out of there, he was going to hurt him or
6 kill him too?

7 A Yes.

8 Q Okay. And then do you recall asking, *what exactly*
9 *did the guy say to you?*

10 A Yes.

11 Q Okay. Then, do you recall that -- a response. He
12 said something like -- something like that is what he
13 heard. You didn't hear very well because he was
14 scared?

15 A Yes.

16 Q At the time, did you ask him if he could identify
17 the person outside?

18 A Yes.

19 Q And did he indicate no because it was dark and he
20 was groggy?

21 A Yes.

22 Q He didn't see his face?

23 A Yes.

24 Q Do you recall that on his first statement that he
25 gave you, he said -- you asked where the guy -- where

1 the guy was when this conversation had happened. And
2 he had indicated, *he came from behind the truck*. So
3 when he said it to him, he doesn't know exactly where
4 the guy was when he said it?

5 A Something to that effect. He saw him from
6 around the back of the truck when he said it, or
7 when he heard it being said.

8 Q He also indicated to you that -- well, you had
9 confronted him -- let me back up a little bit. I just
10 want to be clear that, in his second statement to you,
11 he had to be confronted with lies and misstatements on
12 numerous occasions, right?

13 A Correct.

14 Q And, essentially, for each thing -- for each
15 confrontation you're telling him, *we know you're not*
16 *being truthful*, right?

17 A Yes.

18 Q Okay. At any point, any point at all, in his
19 first or his second interrogation, did he specifically
20 state the name Osman?

21 A He referred to him after we had told him who
22 we were showing as Osman.

23 Q So to be clear, he didn't say it was Osman. You
24 told him it was Osman?

25 A Correct.

1 Q All right. You had also -- when you confronted
2 him about the scratch on the forehead and the red mark
3 on his cheek, he had indicated to you that he was
4 running and his sandals had fallen off?

5 A I believe so, correct.

6 Q Did he have any injury to his hands or his arms,
7 or anything like that?

8 A I don't recall. I don't remember seeing
9 any.

10 Q But it was your understanding that he said he had
11 tripped while he was running?

12 A Correct.

13 Q All right. You did confirm that these were
14 sandals that go over the tops of his feet?

15 A Correct.

16 Q And you had asked him if he was wearing those same
17 shoes that he had on at the time, and he indicated
18 they weren't.

19 A Correct. During the second interview?

20 Q Yeah.

21 A Yes.

22 Q Would you say, in your experience in law
23 enforcement, that Anibal was forthcoming?

24 A In the second interview, yes.

25 Q Well, okay. Let's back up for a second then. Do

1 you recall asking him in the second interview -- let's
2 talk about the second one. Do you recall asking him,
3 *Do you know what time the phone call was in the*
4 *morning.* The phone call referring to the one he had
5 received from Yobani.

6 A I'm sorry. For which area?

7 Q So, in the second interview do you recall asking
8 him, do you know what time the call was in the
9 morning, the call that he had received from Yobani?

10 A Was this when he was asked to come over to --

11 Q No. This is when he's giving you the story that
12 Yobani had called him and said somebody wanted to beat
13 him up.

14 A Correct. He didn't advise that in the second
15 statement. That was his first statement.

16 Q Well, in the second statement, and this is right
17 prior to you confronting him, you said, *That morning,*
18 *you got a call from Yobani.*

19 He said, *Not sure if it was him because*
20 *he couldn't hear very well.*

21 *Do you know what time the phone call was in*
22 *the morning?*

23 *Not really sure, but about 24 to 30 minutes*
24 *before the police arrived.*

25 Did you indicate -- do you remember that?

1 MS. LEMPESIS: I object to this line of
2 questioning. If she's reading from some sort of
3 transcript of Mr. Hubbard's interview of Anibal --
4 I don't hear a question is the point.

5 THE COURT: Let's direct the question.

6 BY MS. CARMODY:

7 Q Do you recall him making that statement?

8 A I recall him advising that he had tried
9 calling to Yobani after he had ran back to the
10 house. And when he didn't get an answer from
11 Yobani is when he went back to front of the road.
12 I don't remember in the second interview where he
13 was getting this call. That is what I remember
14 from his first interview of his statement of
15 events.

16 Q Okay. In the first interview, though, he
17 indicated to you he had gotten a phone call.

18 A Correct.

19 Q And somebody wanted to beat up Yobani?

20 A Correct.

21 Q And that phone call had occurred 25 to 30 minutes
22 prior to the police arriving?

23 A Approximately, I think.

24 Q So he provided specific information on that phone
25 call, correct?

1 A Correct.

2 Q All right. And when you asked him why he lied to
3 you, did he indicate he was afraid?

4 A He did.

5 Q Did you ask him what he was afraid of?

6 A I did.

7 Q He did not indicate that anybody had threatened
8 him, or anything like that, correct?

9 A He did. During the second interview, he
10 advised that he was threatened by the defendant,
11 Osman, as he went back to the scene that something
12 was going to happen to him.

13 Q Let's back up for a second. He never said he was
14 threatened by defendant Osman. Because again, you
15 told him who it was. He said that --

16 MS. LEMPESIS: Objection. She's
17 testifying.

18 MS. CARMODY: I'm clarifying,
19 Your Honor.

20 THE COURT: All right. Reask the
21 question.

22 BY MS. CARMODY:

23 Q Just to be clear, he did not tell you that he was
24 threatened by Osman?

25 A He told me that it was the individual that he

1 was with prior that night. And he --

2 Q After -- okay, just to be clear. This is after he
3 told you he didn't see the person.

4 A From the first interview, yes.

5 Q And it was dark and he was groggy.

6 A Yes.

7 Q And so then you had confronted him with that
8 information you believe to be false?

9 A Correct.

10 Q He also had indicated to you that he was home all
11 night that night, right?

12 A During the first interview, yes.

13 Q And, in the second interview, you had to confront
14 him with that because you believed that to be false?

15 A Yes.

16 Q And you also had asked him if -- you talked about
17 the incident at the house where they drove around for
18 approximately two hours?

19 A Yes.

20 Q He indicated to you that he had stayed at the
21 house?

22 A Yes.

23 Q And you had to confront him with that again and
24 tell him again, you know, that's not true either,
25 correct?

1 A Correct.

2 Q And you had indicated to him that it wasn't until
3 you told him, you're on video at Octane Gas Station,
4 that he said okay?

5 A He said -- he told us that he was there with
6 them after being confronted that we had him on
7 video, yes.

8 Q But you had to tell him he was on video?

9 A That's how we confronted him, yes.

10 Q All right. Again, you asked him, when you-all
11 left the store, where did you go, right?

12 A Yes.

13 Q And did he indicate to you that they went back to
14 the trailer?

15 A I believe he indicated that they went back to
16 the trailer briefly before Mr. Osman said that he
17 needed to go somewhere. And they got back into
18 Mr. Osman's vehicle and traveled for a long
19 time.

20 Q But my point in asking you this is that, you asked
21 him a specific question, *where did you-all go? Back*
22 *to the trailer.* You had to confront him again and
23 tell him you didn't believe that information to be
24 true, either, right?

25 A I'm sorry?

1 Q Did you have to confront him about that as well?

2 A About them not going back to the house?

3 Q About them being gone for two hours.

4 A I'm not sure I'm following you. I remember
5 asking him about them being gone for two hours --
6 or going somewhere, and I was asking where they
7 went for that period of time.

8 Q And he had told you they went back to the trailer,
9 and you had to confront him again and say, no, we
10 think you were actually gone for two hours, right?

11 A Correct.

12 Q Based on the video you said, right?

13 A Correct.

14 Q Okay. And he wasn't truthful in that either,
15 right?

16 A He said that they were out driving around,
17 and we saw where they came back.

18 Q My point is that you indicated before that that he
19 wasn't forthcoming in the second statement -- he
20 wasn't forthcoming in the first statement, but not the
21 second. And all of these references I'm making right
22 now are all in his second statement. And now -- I
23 mean, this just goes on and on and on, and I'm not
24 going to belabor the point. We did that yesterday.

25 But when you do an investigation and when

1 you're interrogating somebody or interviewing
2 somebody, whatever you want to call it, isn't it -- do
3 you ask the who, what, where, when, and how?

4 A Usually in a roundabout way. Maybe in a
5 different order, but you get the same answers,
6 yes.

7 Q But when you want to confront a witness about
8 inconsistencies in their statement, do you
9 specifically tell the witness the information that you
10 have?

11 A On occasions, I will. Yes.

12 Q Would you agree that, in this case, you spoon fed
13 him the information?

14 A The information we already knew from
15 surveillance, yes.

16 Q Well, the information that you picked up on
17 surveillance?

18 A Yes.

19 Q Okay. So his second statement wasn't -- that
20 wasn't information he provided to you voluntarily?

21 A After confronting him with the
22 inconsistencies, yes, he did provide it
23 voluntarily.

24 Q But when he provided the information to you, it
25 was after you gave it to him?

1 A Yes.

2 Q All right.

3 THE COURT: Twelve minutes.

4 BY MS. CARMODY:

5 Q On the first statement -- sorry. I just lost my
6 train of thought.

7 THE COURT: Take your time. I was just
8 giving you a warning.

9 BY MS. CARMODY:

10 Q On the first statement, you indicated that he may
11 have been under the influence of alcohol?

12 A Yes.

13 Q What about on the second statement?

14 A I don't recall. I don't think he was under
15 the influence on the -- I didn't recall believing
16 him to be under the influence on the second one.

17 Q All right. And both times that you spoke with
18 Mr. Anibal, he had to be brought to the police
19 department?

20 A Yes, ma'am.

21 Q You had indicated earlier that when you talked
22 with witnesses in this case that you had used an
23 interpreter or somebody from the police department who
24 was familiar in Spanish to interpret?

25 A Yes, ma'am.

1 Q But when you went out on scene to speak with the
2 witness, where you say Mr. Osman lives, that was done
3 through Google Translate?

4 A It was.

5 Q Did you have an instance in the past where Google
6 Translate wasn't accurate?

7 A It doesn't translate all of the words, but it
8 does translate a good portion of them to, at
9 least, get some kind of dialogue to be able to
10 communicate.

11 Q At some point you have a conversation with my
12 client, correct?

13 MS. LEMPESIS: Your Honor, may we
14 approach?

15 (Bench conference off the record.)

16 THE COURT: All right. Ask your next
17 question.

18 MS. CARMODY: Yes.

19 BY MS. CARMODY:

20 Q The video that we saw with the people, you know,
21 that you say are on the video, that's just your
22 personal observation, correct?

23 A Of -- observation of the video, yes.

24 Q Okay. But you weren't present for any of that,
25 correct?

1 A Present in the video?

2 Q Yeah.

3 A No.

4 Q All right. And you don't have any independent
5 witnesses to say this is what's happening. That is
6 what you believed, right?

7 A I'm sorry. I'm not following you.

8 Q You don't have an independent witness to tell you,
9 oh, this is what's going on. This is information
10 coming from you, correct? So you saw the video and
11 you determined that, right?

12 A From watching the video and seeing what
13 happened, yes.

14 Q All right. And the same thing with the people
15 there too. That's who you think it is, right?

16 A In the video, that's who we are able to
17 identify in the five videos.

18 Q All right. I believe that's going to be it. But
19 let me just --

20 MS. CARMODY: I beg the Court's
21 indulgence briefly, Your Honor.

22 THE COURT: Okay.

23 BY MS. CARMODY:

24 Q Did you obtain any surveillance video where this
25 incident is alleged to have occurred?

1 A Which section of the incident --

2 Q Where the vehicles are, there is no
3 surveillance?

4 A No. There is none that we knew were in the
5 area.

6 Q All right. So it's safe to assume that you don't
7 know what happened after these two vehicles are off
8 camera, correct?

9 A No. Not video-wise, no.

10 Q On those videos, you are not able to determine who
11 is driving the videos, correct? I mean -- not the
12 videos. The vehicles.

13 A Based on the identification we made of the
14 individual, we were able to identify which
15 position of vehicle they were getting in and out
16 of.

17 Q You're assuming that information now, correct?

18 A No, ma'am.

19 Q So by looking at the video, you're testifying to
20 the jury that you can see who's driving the video? I
21 keep saying video. I'm sorry. You can see who's
22 driving the vehicle on the video?

23 A Getting in and out of the seats of the
24 vehicle, yes.

25 Q Okay. But we're talking about two different

1 periods of time. We're talking about at the store
2 versus you're saying two vehicles were driving down
3 the road?

4 A Which section of video?

5 Q When the two -- the section of video where the two
6 vehicles are driving down the road?

7 A On Haynesville Road?

8 Q Yes.

9 A Yeah.

10 Q You're not able to determine from the video who's
11 driving the vehicle?

12 A I can determine that Anibal was walking down
13 the road.

14 Q That's not what I asked you. I asked you if you
15 can determine who is driving the vehicle?

16 A Specifically, no.

17 MS. CARMODY: I don't have any further
18 questions. Thank you, Your Honor.

19 THE COURT: All right. Anything as a
20 follow-up?

21 MS. LEMPESIS: Just briefly.

22 REDIRECT EXAMINATION

23 BY MS. LEMPESIS:

24 Q Officer Hubbard, which car was the victim's body
25 found pinned underneath?

1 A The victim's body was found pinned under the
2 gray Dodge Avenger.

3 Q And who was that registered to?

4 A The vehicle was registered to Mr. Osman.

5 Q Osman?

6 A Osman Jimenez-Benitez.

7 Q Was Anibal ever a suspect in this case?

8 A Until we had further follow-up interviews
9 with him, everyone was a person of interest until
10 we had that clarified.

11 Q And, in your second interview, you clarified --

12 A Yes, ma'am.

13 Q -- his involvement.

14 A Yes, ma'am.

15 Q Did you also confirm all of that in the
16 surveillance footage that we watched?

17 A Yes, ma'am.

18 MS. LEMPESIS: I have no further
19 questions.

20 THE COURT: All right. Thank you very
21 much. You may step down.

22 Call your next witness.

23 MS. LEMPESIS: Your Honor, the State
24 calls Tim French.

25 Your Honor, may Miss Carmody and I

1 approach about scheduling?

2 THE COURT: Sure.

3 Ladies and gentlemen of the jury, we're
4 going to take about a five-minute break and we'll
5 get you right back in, okay?

6 (Jury exits the courtroom at 11:47 a.m.)

7 THE COURT: All right.

8 MS. LEMPESIS: Judge, this is Tim French
9 on the stand. He is a panelist with the DNA lab
10 at the Beaufort County Sheriff's Office and he
11 analyzed the swabs of the DNA in this case. We
12 mean to call him as an expert in forensic DNA, and
13 also in touch DNA or TrueAllele. And if you want
14 me, I can go through those questions quickly.

15 THE COURT: What is she objecting to, to
16 his qualifications that he's not an expert? What
17 are you contesting?

18 MS. CARMODY: May I approach, Your Honor?
19 This is the State v. Phillips case. This is
20 basically on point to what I'm arguing.

21 THE COURT: All right. What are you
22 arguing?

23 MS. CARMODY: Your Honor, well, actually
24 there's two sets of arguments. Number 1, they did
25 not obtain a search warrant for his DNA. They

1 obtained invalid consent. When Officer Lemus was
2 asking my client whether he would consent to the
3 DNA sample, he actually thought this was for
4 medical purposes. And that is clear when he kept
5 saying I don't understand, I don't understand, I
6 don't understand. What happens if I get sick?
7 Things like that. He didn't understand what DNA
8 was. Officer Lemus never interpreted what DNA
9 was. He said it in English language. He obtained
10 a search warrant for a vehicle. It makes no sense
11 to me whatsoever why they didn't just take the
12 safer route and obtain a search warrant for DNA.
13 They had already saw the judge to get the search
14 warrant for the vehicle. Instead they, I believe,
15 they obtained an invalid consent.

16 And second, my second argument is that,
17 the State has put in evidence already from the DMV
18 that the vehicle was registered to him.

19 This case particularly involves a mixture
20 of DNA, so it has different contributors and they
21 have to put in a known person in order to
22 determine who else was there. They indicate that
23 my client cannot be excluded as a contributor to
24 the DNA. That goes right to State v. Phillips
25 case. In that case, exactly what we have here.

1 It was a mixture of DNA. And the Court believed
2 that the probative value was substantially
3 outweighed by the danger of unfair prejudice given
4 that the information wasn't needed. They had
5 other evidence. And it didn't go to the -- there
6 wasn't anything probative of it. And it was
7 prejudicial because the jury doesn't understand
8 what cannot be not excluded from the DNA sample
9 means.

10 I can go into more of the Billy Phillips
11 case, Your Honor, but it's a pretty recent case.

12 THE COURT: All right. What would you
13 like to do, Miss Lempesis? Do you want to qualify
14 your expert, or what would you like to do?

15 MS. LEMPESIS: I do, Judge. The DNA
16 evidence that we are introducing is probative
17 because the purpose of offering the DNA evidence
18 is to corroborate our theory that the defendant
19 was driving the car that killed the victim Yobani.
20 It's not overly prejudicial. It won't be
21 misleading. We will have Mr. French explain. He
22 will testify what it means to say the defendant
23 cannot be excluded. He will make it clear that
24 cannot be excluded does not mean included, which
25 was the issue in the Phillips case.

1 The DNA testing alone doesn't prove the
2 defendant was driving the car. We understand that
3 DNA does not have that power. Mr. French can make
4 the limitation of the DNA evidence clear in his
5 testimony. However, the victim, Yobani, he can't
6 run himself over. And Anibal being excluded from
7 the swabs of the steering wheel and the gear shift
8 is high probative and very strategic to
9 corroborate Anibal's story -- account that he
10 wasn't driving the car, which is what the defense
11 is -- it seems part of their defense, or one of
12 the defenses is that Anibal was the driver.

13 Also, Mr. Benitez, Mr. Osman, the
14 defendant, can be excluded from the rear driver's
15 door handle and the passenger's door handle which
16 is probative in corroborating Anibal's story as
17 well.

18 And so for those reasons, I do intend to
19 offer him as an expert and introduce this
20 evidence.

21 THE COURT: All right.

22 MS. CARMODY: Your Honor, like I said,
23 the State has already put in the registered owner
24 of the vehicle. The fact that his DNA would be
25 all over that vehicle, you know, stands without

1 reason. I'm not sure of -- the probative value of
2 this particular evidence outweighs the value of
3 unfair prejudice.

4 THE COURT: I agree with you. I think
5 that's your argument, and certainly you can make
6 that argument in closing argument and you can
7 certainly make the argument with the expert. But,
8 obviously, in this Phillips case they refer back
9 to counsel in talking about when admitting
10 scientific evidence under Rule 702, the trial
11 judge must find the evidence will assist the trier
12 of fact, the expert witness is qualified, and the
13 underlying science is reliable. And if so, then
14 must determine whether the probative value
15 outweighs it's prejudicial effect. I agree, to
16 some extent, that I think it will assist the trier
17 of fact as to who was involved in driving the
18 automobile, and so I will allow it.

19 MS. LEMPESIS: Thank you, Your Honor.

20 THE COURT: All right. Bring them out.

21 (Jury enters the courtroom at 11:55 a.m.)

22 THE COURT: All right. Miss Lempesis.

23 MS. LEMPESIS: Thank you, Your Honor.

24 WHEREUPON:

25 TIMOTHY FRENCH,

1 after having been sworn to tell the truth, testified
2 as follows:

3 DIRECT EXAMINATION

4 BY MS. LEMPESIS:

5 Q Good morning still, Mr. French?

6 A Good morning.

7 Q Who do you work for?

8 A I work for the Beaufort County Sheriff's
9 Office in the forensic services laboratory.

10 Q Okay. What do you do for the Beaufort County
11 Sheriff's Office?

12 A I analyze DNA evidence.

13 Q And what is -- so what's your job title?

14 A DNA analyst.

15 Q Thank you. And what are some of your duties and
16 responsibilities in that position?

17 A Just that, collect evidence from agencies.
18 Our own and outside. Looking for the DNA evidence
19 and assisting with criminal trials.

20 Q Thank you. And how long have you worked in the
21 Beaufort County Sheriff's Office lab?

22 A It will be 14 years in January.

23 Q And before that, did you hold any positions as an
24 analyst elsewhere?

25 A Yes. I worked for 10 years in the Charlotte

1 laboratory and nine years in the Syracuse
2 laboratory in New York.

3 Q Okay. And tell us, tell the jury about your
4 training and qualifications as a DNA analyst?

5 A I have a bachelor of science degree from the
6 State University of New York where I have a major
7 in biology and a minor in chemistry and math.
8 Since, as it is related to DNA, I have coursework
9 completed in conventional serology at the FBI
10 Academy in Quantico, Virginia. Blood sustain
11 analysis system at the Serolab Research Institute
12 in San Francisco, and advanced DNA training at the
13 Marshal University in West Virginia.

14 Q Thank you, Mr. French. And have you testified as
15 an expert before in a court?

16 A Yes, ma'am.

17 Q Okay. And do you know roughly about how many
18 times?

19 A In DNA, 20.

20 Q Thank you. And have you been qualified as an
21 expert before?

22 A Yes.

23 Q In what field?

24 A DNA.

25 Q Okay.

1 A Among others.

2 Q Thank you.

3 MS. LEMPESIS: Your Honor, at this time,
4 the State would offer Mr. French as an expert in
5 forensic DNA analysis.

6 THE COURT: Miss Carmody, any voir dire
7 or any objections?

8 MS. CARMODY: Your Honor, just subject to
9 my prior objections.

10 THE COURT: All right. Ladies and
11 gentlemen, this witness will be qualified as an
12 expert. The difference between an expert and a
13 lay witness is that he is allowed to give his
14 opinion whereby a lay witness is not allowed to
15 give their opinion. Okay?

16 MS. LEMPESIS: Thank you.

17 BY MS. LEMPESIS:

18 Q Mr. French, now, can you explain touch DNA to the
19 jury?

20 A Touch DNA is where you're looking for the
21 deposition of DNA through skin cells that are left
22 behind when someone contacts an item.

23 Q And are there multiple ways that touch DNA can end
24 up on an item?

25 A Yes.

1 Q What are some of those ways?

2 A Either by direct contact, you can touch
3 something, or indirect, which is also known as
4 secondary transfer. An example of that would be
5 like if I shook your hand and then you picked up
6 your pen and my DNA ends up on your pen.

7 Q Okay. What is the difference between partial and
8 full -- partial and a full DNA profile?

9 A A full DNA profile is just that. It's the
10 whole profile that we're looking for. Partial is
11 just not a full profile.

12 Q Okay. The Beaufort County sheriff's lab where you
13 work, is it accredited?

14 A Yes.

15 Q And what does it take, briefly, for the lab to be
16 accredited?

17 A We have to follow strict guidelines and we're
18 actually audited every other year. In fact, the
19 DNA section is actually audited every year on
20 what -- our qualifications of our analysts, record
21 keeping, handling of evidence, a variety of
22 things.

23 Q Okay.

24 A To make sure that we're following our
25 procedures.

1 Q Sure. Are you familiar with TrueAllele?

2 A Yes.

3 Q And can you explain to the jury what that is?

4 A TrueAllele is a computer software that we
5 use. It helps sort out mixtures of DNA.

6 Simple -- if you have, like, a single source
7 profile, the DNA from one person, it's very easy
8 to compare that to an individual. When you have
9 multiple people in that mixture, it becomes harder
10 to interpret what people could be in there. This
11 software actually sorts it out into possible
12 contributors. And then when you compare it to
13 someone after that it gives you a statistical
14 value as well.

15 Q Okay. How long has the Beaufort County Sheriff's
16 Office lab been using this TrueAllele software?

17 A Since 2016.

18 Q Has the lab been certified since they started
19 using TrueAllele?

20 A Yes.

21 Q Have you testified about the use of TrueAllele
22 before?

23 A Yes.

24 MS. LEMPESIS: Your Honor, at this time,
25 the State would move to qualify Mr. French as an

1 expert in TrueAllele.

2 THE COURT: All right. Any objection?

3 MS. CARMODY: Same objection, Your
4 Honor.

5 THE COURT: Over the objection.

6 MS. LEMPESIS: Thank you, Your Honor.

7 BY MS. LEMPESIS:

8 Q Mr. French, did you analyze or perform testing on
9 DNA in this case?

10 A Yes, I did.

11 Q And I'm going to show you some items that have
12 been marked already as State's Exhibits 24 through 30.
13 Can you tell me -- well, first, look at those items
14 and tell me when you're done.

15 A You said 24 through 30?

16 Q Yes, sir.

17 A I got additional ones beyond that here.

18 Q I'm sorry. I got my numbers wrong.

19 A I have 24 through 30, but I have some more as
20 well.

21 Q Thank you. 24 through 35 is what you should
22 have?

23 A Yes.

24 Q Thank you. I apologize. So you looked at those
25 items. Can you go through now, Mr. French, and tell

1 me what each item is?

2 A Sure. 24 is our item 1. It's a swab of the

3 top half of the steering wheel.

4 Let's see. 25 is our item 2. That's the

5 swab from the bottom half of the steering wheel.

6 26 is our item 3, and it is the swab of the

7 gear shifter.

8 27 is our number 4. That is a swab of the

9 driver's interior door handle.

10 28 is our number 5. That's a swab of the

11 driver's side rear interior door handle.

12 29 is our number 6, and that is the swab of

13 the passenger's side front interior door handle.

14 Number 30 is our number 7. That's a swab of

15 the passenger's side interior door handle.

16 31 is our Number 8. That is two swabs of

17 suspected blood from the inside wall of the

18 passenger's front tire well.

19 Number 32 is our number 9. That's two swabs

20 of suspected blood from the frame under the engine

21 compartment.

22 Number 33 is our number 10. That is a blood

23 standard from Raymondo Morales Roblero.

24 Number 34 is our number 11. That's a buccal

25 standard from Anibal Fermin Berdugo Berdugo.

1 And the last one is item 35. That's our
2 number 12. That's a buccal standard from
3 Osman Jimenez-Benitez.

4 Q Okay. As to each of those items, Mr. French,
5 other than testing those items, did you do anything to
6 alter them or change them in any way?

7 A No.

8 Q Okay. And recognizing them, can you just tell me
9 briefly how you're able to recognize them? Is there
10 -- did you initial the bag?

11 A We have our label on them that has the case
12 number, item numbers. And then on each of the
13 bags you will see an evidence seal at the bottom.
14 The one at the top is the original seal. The
15 person who sealed the package. And then when I
16 open the package, examine the contents,
17 afterwards, I put tape on the bottom and put my
18 initials on there as well.

19 Q Thank you.

20 MS. LEMPESIS: At this time, Judge, we
21 would move to admit State's Exhibits 24 through 35
22 into evidence.

23 THE COURT: All right. Over the
24 objection.

25 MS. LEMPESIS: Thank you, Your Honor.

1 (STATE EXH. 24, Unknown touch DNA swab from
2 the top half of the steering wheel, was entered into
3 evidence.)

4 (STATE EXH. 25, Unknown touch DNA swab from
5 the bottom half of the steering wheel, was entered
6 into evidence.)

7 (STATE EXH. 26, Unknown touch DNA swab from
8 the gear shifter, was entered into evidence.)

9 (STATE EXH. 27, Unknown touch DNA swab from
10 the driver interior door handle, was entered into
11 evidence.)

12 (STATE EXH. 28, Unknown touch DNA swab from
13 the driver's side rear door handle interior, was
14 entered into evidence.)

15 (STATE EXH. 29, Unknown touch DNA swab from
16 the passenger front door handle interior, was entered
17 into evidence.)

18 (STATE EXH. 30, Unknown touch DNA swab from
19 the passenger front door handle interior, was entered
20 into evidence.)

21 (STATE EXH. 31, Suspected blood spot from
22 the inside wall on the passenger tire, was entered
23 into evidence.)

24 (STATE EXH. 32, Suspected blood spot from
25 under the engine compartment, was entered into

1 evidence.)

2 (STATE EXH. 33, Known standard blood spot
3 from the victim, was entered into evidence.)

4 (STATE EXH. 34, Known standard buccal swab
5 from Anibal Fermin Berdugo, was entered into
6 evidence.)

7 (STATE EXH. 35, Known standard buccal swab
8 from Osman Jimenez-Benitez, was entered into
9 evidence.)

10 BY MS. LEMPESIS:

11 Q Mr. French, I want to ask you about -- I want to
12 go through these items and first ask you about the
13 swabs taken from the steering wheel and then gear
14 shifter of this vehicle. Those are State's Exhibits
15 24, 25, 26, your item Numbers 1, 2, 3.

16 As to those items, were you able to obtain a
17 DNA mixture from State's Exhibit 24, the swab of the
18 top half of the steering wheel?

19 A Yes, I did.

20 Q Okay. And what were the results from that -- from
21 your testing?

22 A Well, there is a mixture there. And the
23 information that we got is that the owner of the
24 car is Osman Benitez. So we see his DNA there.
25 And since it's his vehicle, we -- the way we

1 report that is that he cannot be excluded. We
2 tell the software ignore that part of the DNA and
3 look for who else might be there.

4 Q Okay. And was anyone else there?

5 A Yeah. I believe a match to Yobani Morales
6 Roblero. It is 23,400 times more likely than
7 coincidental match to an unrelated individual.
8 And our policy in our laboratory is that any match
9 under a million, we also report a false positive
10 read. It is, what is the chance that someone
11 other than that individual might have that same
12 match score or higher.

13 In this case, that is a false positive would
14 occur if a non-contributor, someone who did not
15 contribute their DNA to the swab of the top half of
16 the steering wheel, have a match score of that 23,400
17 or more, the chance of a false positive rate for this
18 comparison one in 26.5 billion.

19 Q Okay. And were you able to exclude anyone from
20 this item which is the swab of the top half of the
21 steering wheel?

22 A Yes. Anibal Fermin Berdugo Berdugo was
23 excluded.

24 Q Excluded. Thank you.

25 You sort of explained it already, but just to

1 go back to it, what does a match mean?

2 A A match means that the DNA matches that
3 profile.

4 Q Okay. And, again, what does it mean to exclude a
5 contributor? Not again, actually. What does it mean
6 to exclude a contributor?

7 A That means that you do not see that person's
8 DNA there.

9 Q Okay, thank you.

10 Now, as to State's 25, which is the swab --
11 it's your item Number 2 and it's the swab of the
12 bottom half of the steering wheel. Can you tell the
13 jury were you able to obtain a DNA mixture?

14 A Yes.

15 Q And what were the results?

16 A Again, on that, we can tell the software to
17 ignore the owner of the vehicle and look for who
18 else is there. And on this sample, Yobani Morales
19 Roblero and Anibal Fermin Berdugo Berdugo were
20 both excluded.

21 Q Excluded, okay. And as to State's Exhibit 26,
22 your item Number 3, the swab of gear shifter, can you
23 tell the jury the results of your testing on that
24 item?

25 A That's the same as the last one. The owner

1 of the vehicle we told the software to ignore and
2 look for who else is there. And Yobani Morales
3 Roblero and Anibal Fermin Berdugo Berdugo, again,
4 were both excluded.

5 Q Okay. I'm going to move now to other areas of the
6 car. State's Exhibit Number 28, that is the swab of
7 the driver's side rear interior door handle as you
8 testified to.

9 A Yes.

10 Q That's your item Number 5.

11 A Uh-huh.

12 Q Were you able to obtain a DNA mixture from this
13 item?

14 A Yes.

15 Q Okay. And what were the results of your testing?

16 A All three of the profiles that we had for
17 people in this case are excluded.

18 Q Was Osman Jimenez-Benitez excluded?

19 A Yes.

20 Q And how about State's 29 that, as you testified,
21 is the swab of the passenger side front interior door
22 handle. That's your item Number 6.

23 A Uh-huh.

24 Q Did you obtain a DNA mixture?

25 A Yes, I did.

1 Q What were the results of your testing?

2 A A match to Yobani Morales Roblero is 247
3 trillion times more likely than a coincidental
4 match to an unrelated individual. And Anibal
5 Fermin Berdugo Berdugo and Osman Jimenez-Benitez
6 were both excluded.

7 Q Excluded. Finally, Mr. French, on the items that
8 are marked -- they are marked State's Exhibits 31 and
9 32, can you tell us what those items are?

10 A Those are the swabs of suspected blood from
11 the vehicle.

12 Q Okay. Is 31 suspected blood from the inside wall
13 of the passenger's front tire well?

14 A Yes.

15 Q And 32 is suspected blood from the frame under the
16 engine compartment?

17 A That's correct.

18 Q Okay. What kind of test did you run on those
19 items?

20 A The first thing since they thought this was
21 blood when they turned it in, we do what's called
22 a screening test for blood. It's just simple. We
23 swab the sample and got a reading to it. And if
24 it's blood, it will turn or change color. In this
25 case, both them were positive so it's an

1 indication there's blood there. It's not proof
2 that there's blood, but it's a presumptive test.
3 And then we perform DNA tests as we do with the
4 other swabs.

5 Q And what did your testing reveal on those swabs?

6 A On both of these, I had a single source
7 profile. So it's DNA from one person.

8 Q And who was that person?

9 A Excuse me?

10 Q Do you know who that person was?

11 A A match to Yobani Morales Roblero is 7
12 octillion times more likely than a coincidental
13 match to an unrelated individual.

14 Q Thank you, Mr. French. I don't have any other
15 questions for you.

16 THE COURT: All right, Miss Carmody.

17 CROSS-EXAMINATION

18 BY MS. CARMODY:

19 Q Good afternoon, Mr. French.

20 A Hi.

21 Q Yes, afternoon.

22 All right. You testified as to your training
23 and experience all that, and qualifications, but I
24 didn't hear any testimony that you're involved in the
25 actual collection of the samples.

1 A No, I was not.

2 Q All right. When did you become involved in this
3 case?

4 A When the samples were brought to our lab.

5 Q And when was that?

6 A The 6th of December 2019.

7 Q Okay. And you can't testify as to, Number 1, the
8 collection procedures at the Hardeeville Police
9 Department, correct?

10 A No.

11 Q All right. Do you train those officers over there
12 in the collection of DNA?

13 A No.

14 Q Do you train any of the officers there on the
15 preservation of evidence, or anything like that?

16 A No.

17 Q So, essentially, it's your testimony that until
18 your -- when you received the samples, you're relying
19 on everybody else to do things correctly, correct?

20 A Yes.

21 Q Okay. You can only test what you have, right?

22 A Correct.

23 Q All right. And, similarly, when you got the --
24 when you say -- let me back up for a second.

25 On item Number 1, for instance, okay, we'll

1 talk about the swab of the top half of the steering
2 wheel, right? And when you say that, you know, it
3 assumes two or three contributors and that Mr. Benitez
4 cannot be excluded as a contributor, that's because
5 you're obtaining information from somewhere that he
6 owned the vehicle, right?

7 A That's correct.

8 Q And are you also assuming that because he's the
9 owner of the vehicle his DNA would be there?

10 A Correct.

11 Q But that's not necessarily true in every case,
12 right? Could somebody own a vehicle and not drive
13 it?

14 A Can someone own a vehicle and not drive it?

15 Sure.

16 Q Like, I own a vehicle, you know, and my husband
17 drives it?

18 A Sure.

19 Q Okay. So you're assuming, though, information
20 that you don't necessarily know is true, right?

21 A I was informed that it was his vehicle.

22 Q Okay. But, again -- all that information, again,
23 came from the police department?

24 A That's correct.

25 Q All right. And the samples -- actually, sample

1 Number 2, item Number 2 is the swab of the bottom half
2 of the steering wheel?

3 A That's correct.

4 Q Again, in that instance, you had to assume his DNA
5 would already be there?

6 A That is correct.

7 Q And, similarly, like the swab of the gear shifter,
8 you had to assume his DNA would be there?

9 A That's correct.

10 Q But in the swabs of driver's side rear -- the back
11 of the car and the passenger side door, you could
12 exclude him as a contributor to the DNA?

13 A That's correct. I'm not making an assumption
14 that his DNA is going to be there. It's based on
15 strictly what I'm informed. I see a high match
16 score on the comparison.

17 Q What would happen if you didn't make that
18 assumption that his DNA would be there?

19 A Then you still have a contributor that
20 matches to him that we are looking beyond. We're
21 not comparing to that contributor. We're looking
22 at a different contributor in that mixture.

23 Q Okay. But -- what do you mean? Okay. Just to be
24 clear, cannot be excluded does not mean a DNA match?

25 A That means we're not giving it a statistical

1 value because it's not probative.

2 Q To be clear, cannot be excluded does not match
3 it's a match, right?

4 A We don't call it a match.

5 Q Okay. Is it also true that when you are looking
6 at samples that were obtained, DNA can be there for
7 any amount of time?

8 A One of the reasons, sure.

9 Q It doesn't tell you who was driving the vehicle at
10 the time?

11 A No, it doesn't.

12 MS. CARMODY: I don't have any further
13 questions.

14 THE COURT: Anything as a follow-up?

15 MS. LEMPESIS: No, Your Honor.

16 THE COURT: All right. Thank you so very
17 much and have a wonderful rest of your day.

18 All right. Ladies and gentlemen of the jury,
19 it's my understanding that the State has one more
20 witness. Is that correct?

21 MS. LEMPESIS: Yes.

22 THE COURT: It will not be a very long
23 witness. And then there's a lot of work that I'll
24 have to undertake. So if you-all can hang in
25 there just a little bit longer, we'll go ahead and

1 finish up this last witness and then we'll work
2 while you-all go to lunch. Is that fair enough?

3 Call your next witness.

4 MS. LEMPESIS: The State calls Erin (sic)
5 Presnell, Dr. Erin Presnell.

6 THE CLERK: Raise your right hand. Do
7 you solemnly swear or affirm to tell the truth,
8 the whole truth, and nothing but the truth?

9 THE WITNESS: I do.

10 WHEREUPON:

11 SUSAN PRESNELL, M.D.,
12 after having been sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MS. LEMPESIS:

15 Q Good morning, Dr. Presnell. Can you state your
16 name for the record?

17 A My name is Sue Presnell, P-r-e-s-n-e-l-l.

18 Q Thank you. And I called you Dr. Erin Presnell.

19 A Erin is my middle name. That's what I go
20 by.

21 Q Thank you. Dr. Presnell, where do you work?

22 A I'm a forensic pathologist at the University
23 of South Carolina, MUSC up in Charleston.

24 Q Thank you. And can you explain to the jury -- if
25 you're situated. I'm sorry.

1 A I'm situated.

2 Q Can you explain to the jury what a forensic
3 pathologist is and does?

4 A Kind of a more familiar term is forensic
5 pathology. But let me just say, pathology is
6 medical specially. It's the study of disease. So
7 most pathologist look at biopsies or if a surgeon
8 operates on someone and something in surgery is
9 taken out, they look at it under the microscope
10 and diagnose cancer, infection, et cetera.

11 I'm a regular pathologist, and then I did an
12 additional subspecialty year where I did forensic
13 pathology. So I'm not just looking at a piece of
14 tissue. I'm looking at a whole entire body. If
15 somebody passed away, I do what's called an autopsy
16 where I look at everything outside, I look at the
17 inside, and then determine the cause and manner of
18 death.

19 Q Thank you. Can you tell the jury about your
20 education, training, and experience?

21 A Pathology is a medical specialty, so I went
22 to college at Clemson. Then I went to MUSC
23 medical school. That was four years. I took
24 pathology as my subspecialty. So I did another
25 five-year training and then additional, I told

1 you, a year of forensic pathology. So several
2 years. And then I took the boards for pathology
3 and forensic pathology, so I'm board certified in
4 those specialties.

5 Q Thank you. And you're board certified and
6 licensed in South Carolina?

7 A Yes.

8 Q Okay. And have you testified before in court?

9 A I have.

10 Q About how many times?

11 A A complete estimate, not complete, around 200
12 times maybe.

13 Q And have you been qualified as an expert before in
14 forensic pathology?

15 A Yeah, and forensic pathology.

16 MS. LEMPESIS: Your Honor, at this time,
17 I would offer Dr. Presnell as an expert in
18 forensic pathology.

19 MS. CARMODY: Without objection.

20 THE COURT: All right. Again, ladies and
21 gentlemen, she's been qualified as an expert and
22 thus can give her opinion.

23 MS. LEMPESIS: Thank you.

24 BY MS. LEMPESIS:

25 Q Dr. Presnell, can you -- did you perform an

1 autopsy on the victim in this case, Yobani Roblero
2 Morales?

3 A Yes, I did an autopsy on Mr. Morales Roblero
4 on October 28, 2019.

5 Q Okay. And do you have -- do you have identifying
6 information about him or his date of birth in your
7 report?

8 A I have this information that would be
9 provided by the coroner as October 3, 1985.

10 Q Thank you. Where did this autopsy take place?

11 A This was at MUSC in Charleston.

12 Q Thank you. And, Dr. Presnell, at this point, I
13 would ask -- I'm going to ask you to go through your
14 findings in your autopsy. And will it assist you if I
15 show you a chart for you to explain your findings?

16 A Yes.

17 Q Thank you. I am going ask you then, Dr. Presnell,
18 to step down, if you don't mind. And I want to make
19 sure all the jurors can see. I have markers. We are
20 just going to give you some highlighters. It looks
21 like you have your own marker, so whichever you
22 prefer.

23 A This is just a highlighter.

24 Q Okay. Dr. Presnell, in performing your autopsy,
25 can you -- not every single thing, but, from top to

1 bottom, draw the injuries that you noted to be on
2 Yobani Roblero's body.

3 A All right. I tried to group these together.
4 There was a lot of scrapes, which I refer to as
5 abrasions. There are several lacerations, which
6 is injury from blunt trauma that causes --
7 something blunt hit the skin and caused it to
8 split. And then there's some thermal injury too.
9 Some burn marks. The injuries to the head, he has
10 multiple abrasions along the side of the right
11 face. He has a couple, actually, on the left side
12 as well, and the nose. But right here he does
13 have three lacerations. And lacerations, again,
14 are from blunt trauma, and abrasions along that
15 side. So a lot of scrapes and injury to the right
16 side of the scalp and the face.

17 Then the next area is he has some bruising in
18 the front of the shoulder areas.

19 And then the next big category is abrasions
20 or scrapes all along the back. So he has a big group
21 of scrapes in this area. He actually has a large,
22 kind of, rectangular area of burn, kind of scrape,
23 burn, or thermal injury is what I called it, on the
24 right thigh. And then within all this, he has a bunch
25 of little scrapes, which I can add on to it, but these

1 are the main things.

2 And then in the elbow area, he has four more
3 lacerations or splits like skin tears in this left
4 elbow area that are also scrapes.

5 And then he has a large area of abrasions
6 down the inside of the right leg.

7 So those are main categories. And again,
8 like I said, other little scrapes around the body as
9 well. He had some on right hip area. The right
10 abdomen and right hip area there was a couple scrapes
11 as well.

12 As far externally, those are his main
13 injuries.

14 Q Can you explain a little bit more as far as the
15 injury to his left -- you said his left --

16 A Elbow area.

17 Q -- elbow area.

18 A Yes.

19 Q -- just as far as appearance?

20 A Well, he's got these four lacerations that
21 are horizontal across the -- kind of the distal,
22 meaning the bottom of the upper arm and the first
23 part of the forearm. So he's got four tears
24 across -- horizontally across that elbow there.
25 And then there is a lot of scraping associated

1 with that too. Like, scraping of the skin.

2 Q You are able -- in your autopsy, how deep were
3 those scrapes, do you know?

4 A The scrapes weren't too bad. I didn't
5 measure. I didn't see bone, but I saw the soft
6 tissues underneath.

7 Q As to the injury to his back, can you describe --
8 you called it a thermal abrasion?

9 A Yeah. It's -- the skin is scraped, but it's
10 also, kind of, got thermal -- like it's been
11 heated. A heat mark on this area. It's, kind of,
12 you know, dried out and crispy, basically.

13 Q Thank you, Dr. Presnell. You can have a seat
14 again. Thanks.

15 Dr. Presnell, can you tell the jury now about
16 the internal injuries that you found on the victim,
17 Yobani?

18 A Well, he didn't actually have a lot of
19 internal injuries. The main findings were he had
20 five rib fractures on the left side of his chest
21 and one on the right side. He did have a little
22 bit of hemorrhaging around the neck area, although
23 I couldn't be sure if anything was actually
24 damaged. It was in the lower neck area.

25 Q Dr. Presnell, based on your autopsy and your

1 findings, did you form an opinion as to the cause of
2 death of Mr. Yobani?

3 A Well, I also knew the circumstances and saw
4 some scene pictures in the position that he was
5 found in. And based on that and the autopsy
6 findings with the abrasions, the rib fractures, no
7 real other internal injuries, I concluded that he
8 died from what we call mechanical asphyxia. So
9 it's some kind of compression. Mechanical
10 asphyxia compression is not allowing him to breath
11 due to the car being on him.

12 Q In your expert opinion, mechanical asphyxia, about
13 how long would it take for a victim -- for a person in
14 that situation to die?

15 A I mean, it depends on the particular
16 situation. I always just refer back to my
17 training when they talk about CPR. And if
18 somebody collapses that you need to start within
19 four minutes or otherwise brain death can ensue.
20 So, usually, if you can't breath, that gives you
21 eight minutes to pass.

22 Q Minutes. So, expert opinion, maybe four minutes,
23 could be four minutes?

24 A It could be. If there's complete
25 compression, you know, there could be a little bit

1 of air movement, maybe it was longer. If it was
2 completely, maybe shorter. I just don't know.

3 Q Your autopsy findings, you look at other injuries,
4 internal and external, were any of those other
5 injuries -- in your expert opinion, would any of those
6 injuries be fatal, could they have been?

7 A What other injuries?

8 Q The injuries you've depicted on the outside of his
9 body and also --

10 A None of the injuries are fatal by themselves.
11 That's why I concluded the mechanical asphyxia.

12 Q Okay. Thank you, Dr. Presnell. I don't have any
13 other questions for you.

14 CROSS-EXAMINATION

15 BY MS. CARMODY:

16 Q Good afternoon, Dr. Presnell.

17 A Hey.

18 Q Did you -- you indicated that there were some
19 fractures on the left and the right side of the
20 chest?

21 A Yes.

22 Q Okay. Nothing on the bottom of the legs, or
23 anything like that?

24 A No, not -- you mean like any injuries.

25 Q Or any injuries that you would think, like, if

1 somebody was standing up and had been hit by a car, so
2 to speak?

3 A No. If you don't assume -- if I assume he
4 was struck by a car, he would be struck on the
5 legs and can cause what we call bumper fractures.
6 So I did not see that in this case.

7 Q No bumper fractures at all?

8 A Right.

9 Q And the information, you said you obtained all
10 that from law enforcement. So you're relying on
11 what's been provided from the scene?

12 A I saw photographs from the coroner.

13 Q And did you also do a blood alcohol level?

14 A Yes. We do toxicology on all of our forensic
15 autopsy cases. He had a blood alcohol of .225.

16 Q And approximately, how much is that?

17 A Well, .08 is the legal limit for driving, so
18 times three-ish.

19 Q Almost three times the legal limit?

20 A Yeah. So .08. So times three would be .24,
21 so almost three times.

22 Q What type of symptoms would you suspect -- or how
23 would somebody be acting three times the limit?

24 A Well, again, it depends on the situation.
25 Chronic alcoholics can handle a lot more alcohol

1 than those that don't normally drink alcohol.
2 Certainly, typically, with alcohol intoxication
3 your coordination could be impaired, judgment
4 could be impaired, judgment could be impaired.
5 But I can't, at autopsy, predict how he was
6 acting.

7 Q Okay.

8 MS. CARMODY: I don't have any further
9 questions, thank you.

10 THE COURT: Anything in follow-up?

11 MS. LEMPESIS: No. No, Your Honor.

12 THE COURT: All right. Dr. Presnell,
13 have a safe trip back home.

14 THE WITNESS: Thank you.

15 THE COURT: All right. Miss Lempesis
16 call your next witness.

17 MS. LEMPESIS: Thank you, Your Honor. At
18 this time, the State rests.

19 THE COURT: All right. Ladies and
20 gentlemen, at this time the State rests and so
21 there are some matters of law that I need to take
22 up with the attorneys. It is 12:35. It's going
23 to take us a little longer because we got to stay
24 and work and I have to give the staff an
25 opportunity to have a break and be able to eat.

1 So why we don't come back at around 1:50. About
2 an hour and 20 minutes. Wait. Is that 20? An
3 hour and 15 minutes. How about that? All right.

4 Hold on. That math doesn't work. Did I
5 say 12:50 or 1:50?

6 THE CLERK: 1:50.

7 THE COURT: All right. An hour and 20
8 minutes. Fair enough.

9 (Jury exits the courtroom at 12:35 p.m.)

10 THE COURT: All right. Any motions that
11 we need to take up at this time?

12 MS. CARMODY: One minute, Your Honor. I
13 do have a directed verdict.

14 Your Honor, may I approach?

15 THE COURT: Sure.

16 MS. CARMODY: I'm handing up the statute
17 and case law as well. What I passed up to Your
18 Honor is the 56-5-1210, in addition to 56-5-1230
19 in the State vs. Little John case, which is
20 actually back in 1955, a Supreme Court case.

21 THE COURT: All right.

22 MS. CARMODY: Yes, Your Honor. May it
23 please the Court? Your Honor, if there is no
24 direct evidence of guilt, the Court should grant a
25 motion for a directed verdict unless the facts and

1 circumstances testified by the State's witnesses
2 were such that, from those facts and
3 circumstances, his guilt might be fairly and
4 logically deduced, not merely suspected.

5 Your Honor, the statute 56-5-1210 requires
6 the State prove that the defendant, Mr. Benitez, was
7 the driver of a vehicle when it was involved in an
8 accident. Your Honor, there is no evidence. It's
9 mere suspicion. In the Little John case, the Supreme
10 Court in 1955 -- it's actually an old but very
11 interesting case. It's been cited almost about 50
12 times.

13 In Little John, he was actually charged
14 with violating the statute that he can't possess
15 or store alcohol in a business that was not a
16 liquor store. The State was required to prove
17 that an apartment on the second floor of the
18 building that he owns was used in connection with
19 his cafe business in which he was found in that
20 apartment, that it was his, and that it was put
21 there by him, and to his knowledge. In that case,
22 the Supreme Court found that the trial court erred
23 in not granting a directed verdict. Why? Because
24 there was no direct evidence of the defendant's
25 guilt. No evidence to reasonably infer that

1 Little John used the second floor of this building
2 as part of his cafe business by the mere fact he
3 owned the building.

4 So, in other words, you can't just assume
5 that, you know, he was using the business -- using the
6 second floor for that purpose on the fact that he
7 owned the building. Similar to this case.

8 In this case, there's evidence from the
9 Department of Motor Vehicles that Mr. Benitez was
10 the registered owner of the Dodge Avenger. That
11 relevant period of time is after four o'clock in
12 the morning. The evidence that he drove the
13 vehicle earlier that night is not relevant because
14 the temporal moment that we're talking about was
15 at the time the alleged incident occurred. There
16 is no witness that's testified that they saw what
17 happened. Anibal testified he doesn't remember
18 what happened that night. Mr. Benitez, actually,
19 in his statement -- well, it wasn't admitted -- he
20 said he wasn't the driver.

21 On the DNA evidence, Your Honor, the
22 Phillips made clear that, it cannot be excluded
23 does not mean included. The DNA in a car that you
24 own does not tell us who the driver was at the
25 time.

1 The second element is that the accident
2 resulted in injury or death of a person. That
3 requires the Court to assume that Mr. Morales
4 wasn't already deceased. We're not sure what
5 happened to him. It was clear he was very drunk.
6 The pathologist testified that he was three times
7 the limit. There's no witness testimony as to
8 anybody that had seen what happened. The car does
9 not have any damage that is consistent with
10 hitting a person. The airbags were not deployed.
11 And the pathologist testified that he did not have
12 any bumper fractures to indicate that he actually
13 had been hit by a car.

14 Additionally, Detective Hubbard also
15 testified in those conversations with the MAIT
16 team that they didn't find any evidence on the
17 exterior of the vehicle to indicate that he had
18 actually hit somebody. So there is no evidence
19 the vehicle -- let me back up. Sorry about that.

20 So the car does not have any damage to it
21 consistent with hitting a person.

22 Number 3, the defendant did not stop the
23 vehicle at the scene of an accident or as close as
24 possible. There's absolutely no evidence that the
25 vehicle was not stopped at the scene. We've seen

1 lots of pictures to indicate there is a vehicle at
2 the scene. That element fails.

3 The defendant failed to return and remain
4 at the scene until he fulfilled the requirements
5 of 56-5-1230. So what does 56-5-1230 actually
6 require. It requires that the person give name,
7 address, and registration number. The vehicle was
8 on scene and provided all this information as he
9 was the registered owner. Upon request, the
10 person has to give their license. There's been no
11 evidence that anybody requested the driver's
12 license. And render reasonable assistance if
13 apparent treatment is necessary. There's no
14 evidence, Your Honor, that this didn't happen.
15 The 911 calls do not exist. The Court should draw
16 a negative inference that lost evidence would be
17 exculpatory or regardless, there's no direct
18 evidence that he did not call 911. Again, it's
19 mere suspicion.

20 Lastly, a person who fails to stop or to
21 comply with the statute is guilty. I'm directing
22 the Court to the last sentence in section A. Your
23 Honor, this court is actually disjunctive and
24 allows for a choice between two mutually exclusive
25 possibilities. It does not require both. Even if

1 you believe that there's evidence that reasonably
2 infers he was the driver involved in the accident
3 as opposed to mere suspicion, there's still no
4 evidence that he did not comply with the statute.
5 The vehicle was stopped at the scene and there's
6 evidence that he did not call 911.

7 I'm asking the Court to grant the defense's
8 motion for a directed verdict.

9 THE COURT: All right. From the State?

10 MS. LEMPESIS: Thank you, Your Honor.

11 There has certainly been evidence presented that
12 could fairly and logically deduce that the
13 defendant was the driver of this vehicle that was
14 involved in an accident, and that he did fail to
15 report it afterwards. He ran from the scene. He
16 did not return and did not provide the information
17 upon request.

18 The defendant is on the video driving
19 that night, you know, two hours earlier. We have
20 the car that's registered to him. We have the
21 witness Anibal saying that's him driving. And
22 Anibal's statements to police are corroborated by
23 the surveillance footage which shows the Dodge
24 Avenger registered to Mr. Benitez racing up beside
25 his car on Haynesville Road. And then we have

1 Anibal's account of the defendant's statement to
2 him where he said, *You need to go or I'm going to*
3 *hurt you like I hurt your friend.*

4 The evidence that we have that -- so we
5 have certainly enough to go to the jury that
6 Mr. Benitez was driving the car that night. The
7 videos, Anibal's account, and then we have the
8 evidence that it was involved in an accident that
9 resulted in death. The evidence of that is that
10 Mr. Benitez's car is the one in which the victim's
11 body is pinned underneath. We also have the
12 officer's testimony that there was nobody there
13 when she -- Deputy Watson first arrived on the
14 scene. Mr. Benitez can't rely on his car to speak
15 for him simply because it's registered and has a
16 tag. It's not the car's responsibility to report
17 an accident. It's the defendant's responsibility
18 to report an accident, which he did not do, which
19 is supported by the fact that there's only one 911
20 call. Unfortunately, we don't have the calls, as
21 you know. We have the CAD report which showed
22 that -- the witness testified that that would
23 include all of the calls that came in.

24 For those reasons, I think we've
25 satisfied the burden to get past a directed