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SC Court of Appeals

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Berkeley County

Honorable Deadra L. Jefferson, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

EVODIO HERNANDEZ-SANTO,

APPELLANT

APPELLATE CASE NO 2019-000142

---

RECORD ON APPEAL

---

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**INDEX**

|                                                               |     |
|---------------------------------------------------------------|-----|
| INDEX .....                                                   | i   |
| TRANSCRIPT OF TRIAL HELD JANUARY 1, 2019.....                 | 1   |
| VOIR DIRE AND JURY SELECTION .....                            | 3   |
| TRANSCRIPT OF TRIAL HELD JANUARY 14-16, 2019.....             | 33  |
| TESTIMONY                                                     |     |
| FLOR REYES.....                                               | 38  |
| STATE’S MOTION TO EXCLUDE PRIOR RECORD OF FIRST WITNESS ..... | 64  |
| COURT’S RULING .....                                          | 73  |
| OPENING REMARKS BY THE COURT.....                             | 79  |
| OPENING STATEMENT BY MR. MYERS.....                           | 89  |
| OPENING STATEMENT BY MR. GOODWYN .....                        | 92  |
| TESTIMONY                                                     |     |
| BENJAMIN REYNA.....                                           | 94  |
| FLOR REYES.....                                               | 141 |
| PROFFER TESTIMONY                                             |     |
| FLOR REYES.....                                               | 185 |
| TESTIMONY                                                     |     |
| FLOR REYES.....                                               | 196 |
| THE STATE RESTS .....                                         | 224 |
| MOTION FOR DIRECTED VERDICT.....                              | 225 |
| COURT’S RULING .....                                          | 226 |

|                                                       |     |
|-------------------------------------------------------|-----|
| COLLOQUY REGARDING DEFENDANT’S RIGHT TO TESTIFY ..... | 227 |
| THE DEFENSE RESTS .....                               | 232 |
| RENEWAL OF MOTION FOR DIRECTED VERDICT .....          | 235 |
| COURT’S RULING .....                                  | 235 |
| CLOSING ARGUMENT BY MR. DUQUETTE .....                | 242 |
| CLOSING ARGUMENT BY MS. TOLLEY .....                  | 249 |
| JURY CHARGE .....                                     | 257 |
| VERDICT .....                                         | 279 |
| SENTENCING .....                                      | 287 |
| INDICTMENTS .....                                     | 296 |
| CERTIFICATE OF COUNSEL .....                          | 300 |

1 STATE OF SOUTH CAROLINA ) GENERAL SESSIONS COURT  
2 COUNTY OF BERKELEY ) CASE NO. 2018-GS-08-00609  
3 2018-GS-08-00610  
4

5 STATE OF SOUTH )  
6 CAROLINA, )  
7 Plaintiff, ) Transcript of Record  
8 vs. )  
9 EVODIO ) Date: January 1, 2019  
HERNANDEZ-SANTO, )  
10 Defendant.

11 \* \* \* \* \*

12  
13 B E F O R E:  
14 The Honorable DEADRA JEFFERSON  
15  
16  
17  
18

19 \* \* \* \* \*

20  
21 Denise J. Lauder, RPR  
22 Ninth Judicial Circuit  
23  
24  
25

1                                   A P P E A R A N C E S

2

3       REPRESENTING THE STATE OF SOUTH CAROLINA:

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20  
21  
22  
23  
24  
25

# INDEX

Page No.

|                                   |   |
|-----------------------------------|---|
| Voir Dire and Jury Selection..... | 4 |
| Certificate of Reporter           |   |

## INDEX OF EXHIBITS

(No exhibits were offered or  
marked for identification.)

1                   (The following proceedings were had  
2   January 14, 2019, in re State v. Evodio  
3   Hernandez-Santo, Berkeley County General Sessions  
4   Court.)

5                   THE COURT:  Ladies and gentlemen, we  
6   appreciate your patience.  We're now going to  
7   proceed with the selection of the jury in the State  
8   of South Carolina v Mr. Hernandez-Santo.

9                   You may proceed, Madame Clerk.

10                  Sir, please stand for your formal  
11   arraignment.

12                  THE CLERK:  Indictment No.  
13   2018-GS-08-00609, State of South Carolina, County  
14   of Berkeley, v Evodio Hernandez-Santo, indicted for  
15   discharging firearm into a dwelling.

16                  The indictment reads that in Berkeley  
17   County, South Carolina on or about October 6, 2017,  
18   the Defendant Evodio Hernandez-Santo unlawfully did  
19   discharge or cause to be discharged a firearm into  
20   a dwelling, building, structure or enclosure  
21   regularly occupied by persons, in violation of  
22   16-23-440 of the Code of Laws, South Carolina 1976,  
23   as amended.

24                  How do you plead to the charges?

25                  THE DEFENDANT:  Not guilty.

1 THE CLERK: And how would you be tried?

2 THE DEFENDANT: By jury.

3 THE CLERK: Indictment No.

4 2018-GS-08-00610, State of South Carolina, County  
5 of Berkeley, v. Evodio Hernandez-Santo, indictment  
6 for unlawful carry of a pistol.

7 The indictment reads, the Defendant  
8 Evodio Hernandez-Santo did in Berkeley County on or  
9 about October 6, 2017, willful and unlawfully carry  
10 about his person a handgun, whether concealed or  
11 not, in violation of 16-23-20 of the South Carolina  
12 Code of Laws, 1975, as amended.

13 How do you plead?

14 THE DEFENDANT: Not guilty.

15 THE CLERK: And how will you be tried?

16 THE DEFENDANT: By trial.

17 THE COURT: Okay. Thank you, ma'am.

18 Ladies and gentlemen, we are going to  
19 go through a process that is called voir dire.  
20 It's just simply a legal term meaning that I'm  
21 going to ask you some questions so that you can  
22 effectively -- so that the attorneys can more  
23 effectively exercise their peremptory challenges in  
24 jury selection.

25 If a question applies to you, please



1 stand and in a loud and clear voice tell me your  
2 name, your juror number, and answer to the question  
3 if applicable. And please remain standing until  
4 the Court has completed questioning you.

5 Is there any member of the panel  
6 related by blood or marriage to Mr. Hernandez-Santo  
7 or to anyone who is employed with or has any  
8 ownership in El Alamo, which is located in Hanahan,  
9 South Carolina?

10 If so, please stand at this time.

11 THE JURY PANEL: (None)

12 THE COURT: Before we go any further,  
13 I'm going to ask counsel for the State to stand and  
14 introduce themselves, tell us the names of any  
15 attorneys who will be assisting him in the trial of  
16 this case, as well as tell us the names of the  
17 lawyers in his office.

18 And I will have counsel for the State  
19 (sic) to do the same and to have her client stand  
20 and face the panel.

21 I apologize that I skipped over that in  
22 my haste. You may proceed.

23 MR. DUQUETTE: Thank you, Your Honor.

24 THE COURT: You're welcome.

25 MR. DUQUETTE: Good afternoon. My name

1 is Daniel Duquette. I work for the Ninth Circuit  
2 Solicitor's Office. That's for Charleston and  
3 Berkeley County. I work for the Solicitor Scarlett  
4 Wilson.

5 Today with me is Mr. Alex Myers,  
6 assistant solicitor, and Ms. Denita Brown, a  
7 paralegal with our office.

8 THE COURT: Ms. Tolley, you may  
9 proceed.

10 MS. TOLLEY: Good afternoon. I'm Juan  
11 Tolley. I'm an attorney here in Berkeley County.  
12 I practice with eight other attorneys. One of  
13 those attorneys here with me today is Patrick  
14 Goodwyn. Other attorneys in our office are  
15 Mr. David Schwacke, John Church, Julie Shivers,  
16 Keisha White, Debbie Littlejohn, and Sophia  
17 Sunderhaus.

18 THE COURT: And if you would have you  
19 client stand and face the panel.

20 Stand and face the panel.

21 THE DEFENDANT: (Complies)

22 THE COURT: Thank you very much. You  
23 may take your seats.

24 Does any member of the panel have a  
25 close personal or social relationship with

1 Mr. Hernandez-Santo, or anyone who is employed with  
2 or have any ownership interest in the El Alamo,  
3 which is located in Hanahan, South Carolina? If  
4 so, please stand at this time.

5 THE JURY PANEL: (None)

6 THE COURT: The following is a list of  
7 potential witnesses. I would ask that you listen  
8 very carefully. Arelis Santo employed with El  
9 Alamo; Benjamin Reyna Flores, also employed at El  
10 Alamo; Detective Flor Reyes; Detective Fred Durant,  
11 both of the Hanahan Police Department; Shelia Shea  
12 and Rose Fillingame, both records custodians with  
13 the Hannahan Police Department; and Hassan Adganu  
14 who is the owner of the Kwik Fill Gas Station;  
15 Kristy Gore; Raymondo Jimenez; and Carlos Reyna  
16 Hernandez.

17 Is there anybody related by blood or  
18 marriage to any of the individuals that I've just  
19 listed or does anyone have a close personal or  
20 social relationship with any of these individuals?  
21 If so, please stand.

22 Yes, sir. Tell me your name and your  
23 juror number.

24 PROSPECTIVE JUROR: Steven Surface,  
25 169.

1                   THE COURT: And who do you have a  
2 relationship with?

3                   PROSPECTIVE JUROR: I don't know how to  
4 pronounce his name, but we call him Sam. He owns  
5 the gas station in question.

6                   THE COURT: How would you characterize  
7 your relationship? Are you friends?

8                   PROSPECTIVE JUROR: I've had business  
9 dealings with him when I opened a business. I live  
10 one street behind his store and I buy all my gas  
11 from him. He knows me personally and he knows my  
12 family. I have done work at his house in the past.

13                  THE COURT: As a result of this  
14 relationship, do you feel that you can remain fair  
15 and impartial and render a fair and impartial  
16 decision in this case based solely on the evidence  
17 as it will be presented and on the law as the Court  
18 will instruct?

19                  PROSPECTIVE JUROR: On this issue, yes.

20                  THE COURT: Thank you. You may take  
21 your seat.

22                  Has any member of the panel ever been  
23 represented by any of the attorneys involved in  
24 this case or by any -- or by any of the lawyers  
25 with whom they practice law? If so, please stand

1 at this time.

2 THE JURY PANEL: (None)

3 THE COURT: Is there any member of the  
4 panel related by blood or marriage to, or have a  
5 close personal or social relationship with any of  
6 the attorneys involved in this case, any of the  
7 lawyers in their offices, or any person employed in  
8 any capacity whatsoever in their offices? If so,  
9 please stand at this time.

10 THE JURY PANEL: (None)

11 THE COURT: Right. Has any member of  
12 the panel formed or expressed an opinion about any  
13 issue or matter involved in this case? If so,  
14 please stand at this time.

15 THE JURY PANEL: (None)

16 THE COURT: Does any member of the  
17 panel have any personal knowledge of the alleged  
18 facts and circumstances of this case, which are  
19 alleged to have taken place on October 6th of 2018,  
20 at the El Alamo establishment in Hanahan, South  
21 Carolina?

22 MR. DUQUETTE: 2017, Your Honor.

23 THE COURT: Oh, I'm sorry, 2017. I'm  
24 two years behind. I apologize, October 6, 2017, at  
25 the El Alamo establishment in Hanahan, South

1 Carolina? If so, please stand at this time.

2 THE JURY PANEL: (None)

3 THE COURT: Has any member of the panel  
4 read, watched or listened to any media accounts  
5 about this case? Anything that could have been on  
6 the radio, TV, Internet or in the newspapers? If  
7 so, please stand at this time.

8 THE JURY PANEL: (None)

9 THE COURT: Is there any member of the  
10 panel who lives in the vicinity of the El Alamo  
11 establishment in Hanahan, South Carolina? If so,  
12 please stand at this time.

13 Yes, sir; tell me your name and juror  
14 number.

15 PROSPECTIVE JUROR: Steven Surface,  
16 169.

17 THE COURT: And how far would you say  
18 you live in proximity?

19 PROSPECTIVE JUROR: A quarter of a mile  
20 on Belvedere Drive.

21 THE COURT: As a result of this  
22 experience, do you feel that you can remain fair  
23 and impartial and render a fair and impartial  
24 decision in this case based solely on the evidence  
25 as it will be presented and on the law as the Court

1 will instruct?

2 PROSPECTIVE JUROR: No, ma'am, I don't  
3 think so.

4 THE COURT: Okay. Sir, you will be  
5 excused from the trial of this case only. You may  
6 take your seat.

7 Yes, ma'am, tell me your name and juror  
8 number.

9 PROSPECTIVE JUROR: Daphne Brown, 19.

10 THE COURT: Yes, ma'am.

11 PROSPECTIVE JUROR: I live in Hanahan,  
12 but I don't know where the location is.

13 THE COURT: Okay. Then I need those  
14 who live in the close proximity of the  
15 establishment. Thank you, ma'am. You may take  
16 your seat.

17 Is there any member of the jury panel  
18 aware of any bias or prejudice towards the State or  
19 defense in this case? If so, please stand at this  
20 time.

21 THE JURY PANEL: (None)

22 THE COURT: Is there any member of the  
23 panel who is a member of the grand jury which  
24 issued the Indictments in this case? If so, please  
25 stand at this time.

1 THE JURY PANEL: (None)

2 THE COURT: Is there any member of the  
3 panel who is a member of, or contributor to any  
4 group which has as its primary concern the  
5 promotion of law enforcement or victims' rights?  
6 These groups would include but are not limited to  
7 Mother's Against Drunk Driving, Students Against  
8 Drunk Driving, Citizens Against Violent Crimes,  
9 People Against Rape, Citizens Advocating a Return  
10 to Decency and Ethics, Parents Empowered to Save  
11 Teens, or any other community watch-type group? If  
12 so, please stand.

13 THE JURY PANEL: (None)

14 THE COURT: Does any member of the  
15 panel have a religious, moral or philosophical  
16 opposition to the use of firearms? If so, please  
17 stand at this time.

18 THE JURY PANEL: (None)

19 THE COURT: Is there any member of the  
20 panel who has a moral, philosophical, or religious  
21 opposition to sitting in judgment of a fellow human  
22 being? If so, please stand at this time.

23 THE JURY PANEL: (None)

24 THE COURT: Is there any member of the  
25 panel who has ever been the victim of a violent



1 crime? If so please stand at this time.

2 Yes, sir; tell me your name and juror  
3 number.

4 PROSPECTIVE JUROR: Jerry Back, 5.

5 THE COURT: And, sir, it was you?

6 PROSPECTIVE JUROR: Yeah. It was a  
7 long time ago.

8 THE COURT: Tell me what year.

9 PROSPECTIVE JUROR: I was 16, so it was  
10 a long time ago.

11 THE COURT: Okay. As a result of this  
12 experience, do you feel that you can remain fair  
13 and impartial and render a fair and impartial  
14 decision in this case based solely on the evidence  
15 as it will be presented and on the law as the Court  
16 will instruct?

17 PROSPECTIVE JUROR: Yes, ma'am.

18 THE COURT: Thank you. You may take  
19 your seat.

20 Yes, sir.

21 PROSPECTIVE JUROR: 43, John Conyers.

22 THE COURT: 43.

23 PROSPECTIVE JUROR: Yes, ma'am.

24 THE COURT: How long ago was it, sir?

25 PROSPECTIVE JUROR: Back in '94.

1 THE COURT: Okay. Remain standing for  
2 me.

3 Yes, ma'am, in the yellow coat.

4 PROSPECTIVE JUROR: Melody Stackhouse,  
5 166.

6 THE COURT: And how long ago was it?

7 PROSPECTIVE JUROR: 1990.

8 THE COURT: As a result of these  
9 experiences, do you both feel that you can remain  
10 fair and impartial and render a fair and impartial  
11 decision in this case based solely on the evidence  
12 as it will be presented and on law as the Court  
13 will instruct? Number 43?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: Number 166?

16 PROSPECTIVE JUROR: Yes, ma'am.

17 THE COURT: Thank you. You may both  
18 take your seats.

19 Yes, ma'am. Tell me your name and  
20 juror number.

21 PROSPECTIVE JUROR: 36, Sara Clark.

22 THE COURT: How long ago was it?

23 PROSPECTIVE JUROR: Twenty years ago.

24 THE COURT: As a result of this  
25 experience, do you feel that you can remain fair

1 and impartial and render a fair and impartial  
2 decision in this case based solely on the evidence  
3 as it will be presented and on the law as the Court  
4 will instruct.

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: Okay. Does any member of  
7 the panel have a moral, philosophical or religious  
8 opposition to the consumption of alcohol? If so,  
9 please stand at this time.

10 THE JURY PANEL: (None)

11 THE COURT: This refers to former  
12 employment and not current employment. And if you  
13 already disclosed in voir dire that you -- I mean  
14 during role call that you were retired from this  
15 employment, you do not have to stand again. You  
16 would have already provided us with this  
17 information.

18 Is there any member of the panel who  
19 was formerly employed in law enforcement? If so,  
20 please stand at this time.

21 Yes, sir; name and number.

22 PROSPECTIVE JUROR: Steven Surface,  
23 169.

24 THE COURT: Are you retired from that  
25 employment?

1 PROSPECTIVE JUROR: No, ma'am, six  
2 years.

3 THE COURT: Did you disclose in role  
4 call your former employment?

5 PROSPECTIVE JUROR: Yes, ma'am.

6 THE COURT: Then you don't have to  
7 again, sir. You may take your seat.

8 PROSPECTIVE JUROR: Okay.

9 THE COURT: Is there any member of the  
10 panel who has a family member employed in law  
11 enforcement? If so, please stand at this time.

12 Yes, ma'am; tell me your name and juror  
13 number.

14 PROSPECTIVE JUROR: Morgan McElvogue,  
15 104. My father and my two brothers are all three  
16 police officers.

17 THE COURT: I'm sorry, I can't hear  
18 you.

19 PROSPECTIVE JUROR: My father and three  
20 brothers are all police officers.

21 THE COURT: What agencies?

22 PROSPECTIVE JUROR: Charleston County.

23 THE COURT: As a result of this  
24 experience, do you feel that you can remain fair  
25 and impartial and render a fair and impartial

1 decision in this case based solely on the evidence  
2 as it will be presented and on the law as the Court  
3 will instruct?

4 PROSPECTIVE JUROR: I think I would be  
5 biased.

6 THE COURT: You will be excused from  
7 the trial of this case only. You may take your  
8 seat.

9 PROSPECTIVE JUROR: I did ten years of  
10 correctional medicine, and during that ten-year  
11 time I was also a badge-carrying physician for the  
12 SWAT team in Langford County in Indiana. I was  
13 considered part of the county officers force.

14 THE COURT: Tell me your name and juror  
15 number.

16 PROSPECTIVE JUROR: Oh, I'm sorry,  
17 Jerry Back, 5.

18 THE COURT: As a result of that  
19 experience, do you feel that you can remain fair  
20 and impartial and render a fair and impartial  
21 decision in this case based on the evidence as it  
22 will be presented and on the law as the Court will  
23 instruct?

24 PROSPECTIVE JUROR: No, ma'am.

25 THE COURT: Sir, you will be excused

1 from the trial of this case only.

2 Is there any member of the panel who  
3 has a moral, philosophical, or religious opposition  
4 to illegal or undocumented persons being located in  
5 the United States? If so, please stand at this  
6 time.

7 THE JURY PANEL: (None)

8 THE COURT: Is there any member of the  
9 panel who has ever had any experience with the  
10 Hannahan Police Department? If so, please stand at  
11 this time.

12 Okay. Tell me your name and juror  
13 number and remain standing.

14 PROSPECTIVE JUROR: Daphne Brown, 19.  
15 I got a speeding ticket --

16 THE COURT: I don't need you to tell me  
17 the circumstances. I just need you to remain  
18 standing for me. I know it's a lot of directions,  
19 I apologize.

20 THE COURT: Yes, sir.

21 PROSPECTIVE JUROR: Steven Surface,  
22 169. I'm friends with the chief of police.

23 THE COURT: I need to know -- I'm  
24 talking about experience, not friendships.

25 PROSPECTIVE JUROR: Oh.

1 THE COURT: And we've already excused  
2 you from the panel.

3 PROSPECTIVE JUROR: Okay.

4 THE COURT: Yes, sir.

5 PROSPECTIVE JUROR: Kevin Pool, 132.

6 THE COURT: And next to you.

7 PROSPECTIVE JUROR: Alex Dash, 48.

8 THE COURT: You said 48.

9 PROSPECTIVE JUROR: Yes, ma'am.

10 THE COURT: Thank you.

11 Yes, sir.

12 PROSPECTIVE JUROR: John Conyers, 43.

13 THE COURT: And, yes, ma'am.

14 PROSPECTIVE JUROR: Caitlin Mogan, 114.

15 THE COURT: As a result of these  
16 experiences, do you all feel that you can remain  
17 fair and impartial and render a fair and impartial  
18 decision in this case based solely on the evidence  
19 as it will be presented and on the law as the Court  
20 will instruct you.

21 If your answer is yes, take your seat.

22 Did I leave out someone?

23 PROSPECTIVE JUROR: 36, Sara Clark. I  
24 wasn't sure if a parking ticket was -- I mean, a  
25 speeding ticket.

1 THE COURT: I asked -- when I say any  
2 experience, that means if you've ever come into any  
3 interaction with them for any reason. If they ever  
4 investigated a case or you had a case involving  
5 them, so that would be included. If you would  
6 stand for me please. And you are 36.

7 PROSPECTIVE JUROR: Yes, ma'am.

8 THE COURT: As a result of this  
9 experience, do you feel that you can remain fair  
10 and impartial and render a fair and impartial  
11 decision in this case based solely on the evidence  
12 as it will be presented and on the law as the Court  
13 will instruct?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: Thank you, ma'am.

16 Does any member of the panel know of  
17 any reason whatsoever why he or she should not  
18 serve with a particular emphasis being placed on  
19 your ability to be fair and impartial to both the  
20 State and the defense? If so, please stand at this  
21 time.

22 THE JURY PANEL: (None)

23 THE COURT: Any additional questions  
24 from the State?

25 MR. DUQUETTE: No, Your Honor.



1 THE COURT: From the defense?

2 MS. TOLLEY: None, but if we could  
3 approach for second a second.

4 THE COURT: Sure.

5 (Bench conference.)

6 THE COURT: Any additional questions  
7 from the defense?

8 MS. TOLLEY: No, ma'am.

9 THE COURT: Strikes are 5 and 5. If  
10 you all would give us a few moments.

11 Ladies and gentlemen, if you would bear  
12 with us as we create strike sheets that are done by  
13 computer, we appreciate your patience in advance.

14 I assume we could have one alternative.  
15 Is that correct? From the State?

16 MR. DUQUETTE: Yes, Your Honor.

17 THE COURT: From the defense?

18 MS. TOLLEY: Yes, ma'am.

19 THE COURT: We will have one  
20 alternative. Strikes will be 1 and 2 and 5 and 5  
21 on the substantive offense.

22 We're going to create strike sheets,  
23 ladies and gentlemen, where your names are listed  
24 randomly. If your name is called, please come  
25 forward -- are you going to demonstrate for us? If

1 you would come forward and stand where the bailiff  
2 is standing and turn forward and face the panel  
3 until we either seat or excuse you as a juror.

4 Please bring all of your personal  
5 belongings with you. And if someone has to come  
6 from the inside of the bench, I would appreciate it  
7 if you all would just slide down and let them sit  
8 on the end of the bench if they have to return to  
9 the gallery so that they don't have to climb over  
10 you.

11 Give us a few moments and then I would  
12 ask that you give the clerk your attention.

13 (Pause)

14 Ladies and gentlemen if your name is  
15 called, just stand in place for us. That saves you  
16 having to come forward.

17 You may proceed when you're ready.

18 THE CLERK: Juror 182, David Tunesi.

19 What say you for the State?

20 MR. DUQUETTE: Please excuse the juror.

21 THE CLERK: Excuse the juror.

22 Juror 110, Susan Miller.

23 What say you for the State?

24 MR. DUQUETTE: Your Honor, please  
25 present the juror.

1 THE CLERK: What say you for the  
2 defense?

3 MS. TOLLEY: Excuse the juror.

4 THE CLERK: Excuse the juror.

5 Juror 146, Alaysia Robertson.

6 What say you for the State?

7 MR. DUQUETTE: Your Honor, please  
8 present the juror.

9 THE CLERK: What say you for the  
10 defense?

11 MS. TOLLEY: Please swear the juror.

12 THE COURT: Ma'am, if you would come  
13 forward with your belongings to be seated.

14 Juror 166, Melody Stackhouse.

15 What say you for the State?

16 MR. DUQUETTE: Excuse the juror.

17 THE CLERK: Excuse the juror.

18 Juror 170, Karen Tawes.

19 What say you for the State?

20 MR. DUQUETTE: Your Honor, please  
21 present this juror.

22 THE CLERK: What say you for the  
23 defense?

24 MS. TOLLEY: Excuse the juror.

25 THE CLERK: Excuse the juror.

1 Juror 86, Bobby King.

2 What say you for the State?

3 MR. DUQUETTE: Your Honor, please  
4 present this juror.

5 THE CLERK: What say you for the  
6 defense?

7 MS. TOLLEY: Please swear the juror.

8 THE CLERK: Seat the juror.

9 Juror 39, Russell Clouse.

10 What say you for the State?

11 MR. DUQUETTE: Your Honor, please  
12 present this juror.

13 THE CLERK: What say you for the  
14 defense?

15 MS. TOLLEY: Please excuse the juror.

16 THE CLERK: Excuse the juror.

17 THE COURT: Counsel has expended three  
18 strikes.

19 THE CLERK: Juror 10, Nickie Bennett.

20 What say you for the State?

21 MR. DUQUETTE: Your Honor, please seat  
22 the juror.

23 THE CLERK: What say you for the  
24 defense?

25 MS. TOLLEY: Swear the juror.

1 THE CLERK: Seat the juror.  
2 Juror 40, Ronald Cochran, the Third.  
3 What say you for the State?  
4 MR. DUQUETTE: Please present this  
5 juror.  
6 THE CLERK: What say you for the  
7 defense?  
8 MS. TOLLEY: Swear the juror.  
9 THE CLERK: Seat the juror.  
10 Juror 38, Dale Cliborne.  
11 What say you for the State?  
12 MR. DUQUETTE: Please seat the juror.  
13 THE CLERK: What say you for the  
14 defense?  
15 MS. TOLLEY: Swear the juror.  
16 THE CLERK: Seat the juror.  
17 Juror 106, Abby McMakin.  
18 What say you for the State?  
19 MR. DUQUETTE: Please seat the juror.  
20 THE CLERK: What say you for the  
21 defense?  
22 MS. TOLLEY: Excuse the juror.  
23 THE CLERK: Excuse the juror.  
24 Juror 109, Richard Metts, Junior.  
25 What say you for the State?

1 MR. DUQUETTE: Excuse the juror.  
2 THE CLERK: Excuse the juror.  
3 Juror 9, Elizabeth Bauer.  
4 What say you for the State?  
5 MR. DUQUETTE: Please seat the juror.  
6 THE CLERK: What say you for the  
7 defense?  
8 MS. TOLLEY: Please swear the juror.  
9 THE CLERK: Seat the juror.  
10 Juror 75, Jayson Hoppock.  
11 What say you for the State?  
12 MR. DUQUETTE: Please dismiss this  
13 juror.  
14 THE CLERK: Excuse the juror.  
15 State has exhausted four strikes.  
16 Juror 8, Paul Barter.  
17 What say you for the State?  
18 MR. DUQUETTE: Seat the juror.  
19 THE CLERK: What say you for the  
20 defense?  
21 MS. TOLLEY: Swear the juror.  
22 THE CLERK: Seat the juror.  
23 Juror 135, Jacob Pues.  
24 What say you for the State?  
25 MR. DUQUETTE: Seat the juror.

1 THE CLERK: What say you for the  
2 defense?  
3 MS. TOLLEY: Swear the juror.  
4 THE CLERK: Seat the juror.  
5 Juror 111, Mattie Mitchell.  
6 What say you for the State?  
7 MR. DUQUETTE: Please seat the juror.  
8 THE CLERK: What say you for the  
9 defense?  
10 MS. TOLLEY: Please swear the juror.  
11 THE CLERK: Seat the juror.  
12 Juror 120, Sylvia Moyd.  
13 What say you for the State?  
14 MR. DUQUETTE: Please seat the juror.  
15 THE CLERK: What say you for the  
16 defense?  
17 MS. TOLLEY: Swear the juror.  
18 THE CLERK: Seat the juror.  
19 Juror 137, Seirra Randolph  
20 What say you for the State?  
21 MR. DUQUETTE: Please present the  
22 juror.  
23 THE CLERK: What say you for the  
24 defense?  
25 MS. TOLLEY: Please swear the juror.

1 THE CLERK: Seat the juror.

2 THE COURT: Juror 52, Jason Deither.

3 What say you for the State?

4 MR. DUQUETTE: Please present this

5 juror.

6 THE CLERK: What say you for the

7 defense?

8 MS. TOLLEY: Please swear the juror.

9 THE CLERK: Seat the juror.

10 THE COURT: Alternates 1 and 2,

11 correct.

12 THE CLERK: For the alternate, juror

13 20, David Brown.

14 What say you for the State?

15 MR. DUQUETTE: Present the juror.

16 THE CLERK: What say you for the

17 defense?

18 MS. TOLLEY: Excuse the juror.

19 THE CLERK: Excuse the juror.

20 Juror 44, Laura Coulston.

21 What say you for the State?

22 MR. DUQUETTE: Excuse the juror.

23 THE CLERK: Excuse the juror.

24 Juror 21, Jennifer Buchanan.

25 Any challenge for cause from the State?



1 MR. DUQUETTE: None. Please present  
2 the juror.

3 THE CLERK: What say you for the  
4 defense?

5 MS. TOLLEY: Swear the juror.

6 THE CLERK: Seat the juror.

7 THE COURT: Any motions regarding the  
8 selection of the jury from the State?

9 MR. DUQUETTE: None from the State.

10 THE COURT: From the defense?

11 MS. TOLLEY: None from the defense,  
12 Your Honor.

13 THE COURT: To the remainder of the  
14 panel, if you would call after 6:00 this evening  
15 for further instructions. We appreciate your  
16 patience.

17 Have a great day.

18 PROSPECTIVE JUROR: Thank you, Your  
19 Honor.

20 (Remainder of the jury panel left the  
21 courtroom.)

22 THE COURT: Any exceptions to the jury  
23 being sworn from the State?

24 MR. DUQUETTE: None.

25 THE COURT: From the defense?

1 MS. TOLLEY: None from the defense.

2 THE COURT: Ladies and gentlemen,  
3 please stand to be sworn.

4 THE JURY,

5 being first duly sworn, testified as follows:

6 (At this time there was a break in  
7 these proceedings, whereupon the trial continued to  
8 completion.)

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1 CERTIFICATE OF REPORTER

2

3 I, Carol Denise Lauder, Registered  
4 Professional Reporter and Notary Public for the  
5 State of South Carolina at Large, do hereby certify  
6 that the foregoing transcript is a true, accurate,  
7 and complete record.

8 I further certify that I am neither related  
9 to nor counsel for any party to the cause pending  
10 or interested in the events thereof.

11 Witness my hand, I have hereunto affixed my  
12 official seal this 18th day of June, 2019 at  
13 Charleston, Charleston County, South Carolina.

14

15

16

17 S/Denise Lauder  
18 Carol Denise Lauder  
19 Registered Professional  
20 Reporter, CP  
My Commission expires  
February 27, 2028

21

22

23

24

25

1 STATE OF SOUTH CAROLINA ) GENERAL SESSIONS COURT  
 2 COUNTY OF BERKELEY ) CASE NO. 2018-GS-08-00609  
 3 2018-GS-08-00610

4 STATE OF SOUTH )  
 5 CAROLINA, )  
 6 Plaintiff, ) Transcript of Record  
 7 vs. )  
 8 EVODIO ) Date: January 14, 2019 -  
 9 HERNANDEZ-SANTO, ) January 16, 2019  
 Defendant.

10 \* \* \* \* \*

13 B E F O R E:

14 The Honorable Deadra Jefferson

21 \* \* \* \* \*

23 Denise J. Lauder, RPR

24 Ninth Judicial Circuit

1                   A P P E A R A N C E S

2

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|----|------------------------------------------|----------|
| 1  | I N D E X                                |          |
| 2  |                                          | Page No. |
| 3  | <u>THE JURY- SWORN</u>                   | 5        |
| 4  | JACKSON V. DENNO                         |          |
| 5  | <u>FLOR REYES</u>                        | 6        |
| 6  | DIRECT EXAMINATION BY MR. DUQUETTE       | 7        |
| 7  | CROSS-EXAMINATION BY MS. TOLLEY          | 14       |
| 8  | REDIRECT EXAMINATION BY MR. DUQUETTE     | 18       |
| 9  | COURT'S OPENING REMARKS                  | 47       |
| 10 | STATE'S OPENING STATEMENT                | 57       |
| 11 | DEFENSE OPENING STATEMENT                | 60       |
| 12 | <u>BENJAMIN REYNA</u>                    | 62       |
| 13 | DIRECT EXAMINATION BY MR. MYERS          | 62       |
| 14 | CROSS-EXAMINATION BY MR. GOODWYN         | 79       |
| 15 | REDIRECT EXAMINATION BY MR. MYERS        | 86       |
| 16 | <u>FLOR REYES</u>                        | 109      |
| 17 | DIRECT EXAMINATION BY MR. DUQUETTE       | 109      |
| 18 | PROFFERED TESTIMONY - DIRECT EXAMINATION | 153      |
| 19 | BY MR. DUQUETTE                          |          |
| 20 | CROSS-EXAMINATION BY MS. TOLLEY          | 155      |
| 21 | CONTINUING DIRECT EXAM BY MR. DUQUETTE   | 164      |
| 22 | CROSS-EXAMINATION BY MS. TOLLEY          | 167      |
| 23 | REDIRECT EXAMINATION BY MR. DUQUETTE     | 189      |
| 24 | <u>EVODIO HERNANDEZ-SANTO</u>            | 195      |
| 25 | EXAMINATION BY THE COURT                 | 195      |

25

1                   (The following proceedings were had  
2   1/14/2019, 2:51 p.m., in re State v. Santo.)

3                   THE JURY,

4   being first duly sworn, testified as follows:

5                   THE CLERK: Please be seated.

6                   THE COURT: Ladies and gentlemen, if  
7   you all could indulge us, we have some pretrial  
8   matters that we need to deal with regarding this  
9   case, and I need to see how long it's going to take  
10   because I don't want you all sitting an excessive  
11   amount of time as we do this.

12                  I anticipate that we are going to have  
13   about ten witnesses in this case which means we  
14   might be able to finish it tomorrow. It just  
15   depends on how long each witness takes. But I'm  
16   going to ask that you go to your jury room so that  
17   the bailiffs can get your cell phone numbers.

18                  During this break, please do not  
19   discuss this case and please do not speculate about  
20   what you think it may or could be about. And then  
21   once I've talked with counsel to see how long this  
22   matter of law will take, I'll decide whether I'm  
23   going to have you all wait or whether we're going  
24   to start fresh in the morning.

25                  And you-all have had a really long day.



1 We do this every day, week in and week out, so  
2 we're used to this schedule. I recognize that you  
3 all are not, and I don't want to tax your patience  
4 too much. So I'm going to turn you over to the  
5 able and competent hands of the bailiff, and I'll  
6 let you know shortly how we'll be proceeding.

7 (Jury out, 2:41 p.m.)

8 THE COURT: All right. The witness on  
9 the Jackson v. Denno, how long do you all think  
10 that witness will be in terms of questioning?

11 MR. DUQUETTE: Your Honor, I think that  
12 could be completed in less than 30 minutes.

13 THE COURT: Ms. Tolley?

14 MS. TOLLEY: I agree.

15 THE COURT: Is the witness present?

16 MR. DUQUETTE: He is, Your Honor.

17 THE COURT: All right. Let's get  
18 started and see how long it takes.

19 MR. DUQUETTE: The State calls Flor  
20 Reyes.

21 FLOR REYES,

22 being first duly sworn, testified as follows:

23 THE CLERK: Please be seated, state  
24 your full name for the record, and spell your last  
25 name.

*FLOR REYES - DIRECT EXAM BY MR. DUQUETTE*

1 THE WITNESS: Flor Reyes. Last name is  
2 R-E-Y-E-S.

3 THE COURT: You may proceed.

4 MR. DUQUETTE: Thank you, Your Honor.

5 THE COURT: You're welcome.

6 DIRECT EXAMINATION

7 BY MR. DUQUETTE:

8 Q. Mr. Reyes, what agency do you work at?

9 A. Hanahan Police Department.

10 Q. And how long have you worked there?

11 A. Wow, 20 years, approximately.

12 Q. What is your role at Hanahan Police  
13 Department?

14 A. I'm an investigator, I'm a detective.

15 Q. Okay. And you became involved in the  
16 investigation into the defendant; is that correct?

17 A. Yes, sir.

18 Q. And how did you become involved?

19 A. I would become involved because I  
20 received a call from Benjamin, who is with the El  
21 Alamo, in reference to an incident that took place  
22 at his business, at which time I responded over to  
23 the business when he called me.

24 Q. And for what reason did you end up  
25 making contact with the defendant?

*FLOR REYES - DIRECT EXAM BY MR. DUQUETTE*

1           A.     I made contact with the defendant  
2     because he was identified by Benjamin and his wife,  
3     his vehicle was. They believed it was him involved  
4     in this incident; therefore, I reached out to him  
5     to contact him to speak to him about the incident.

6           Q.     And did you, in fact, meet with the  
7     defendant?

8           A.     Yes.

9           Q.     And where was that?

10          A.     At the Hanahan Police Department, my  
11     office.

12          Q.     Do you remember the date?

13          A.     It was October 19th, 2017.

14          Q.     Okay. Was anybody present during that  
15     meeting?

16          A.     No, sir; it was just me and him in the  
17     office.

18          Q.     Was he told to come in, or did you ask  
19     him to come --

20          A.     I asked him.

21          Q.     Okay. Did he appear to be under the  
22     influence of any drugs or alcohol or anything that  
23     would impair his ability to make coherent  
24     statements or understand what you were asking of  
25     him?

## FLOR REYES - DIRECT EXAM BY MR. DUQUETTE

1 A. No, sir.

2 Q. Where in the police station did you  
3 meet with him?

4 A. On the second floor, we got two floors.  
5 And we got records upstairs and the investigations  
6 division upstairs, the officers are upstairs, and  
7 my office.

8 Q. Was this meeting recorded?

9 A. It was video and audio recorded, yes,  
10 sir.

11 Q. About how long did you meet with the  
12 defendant?

13 A. Approximately, 20 minutes. I know it  
14 was more than -- it was 45 minutes, I think.

15 Q. And was he Mirandized or anything prior  
16 to --

17 A. Yes, sir. I verbally and in writing  
18 Mirandized him.

19 Q. Was he in custody --

20 A. No, sir.

21 Q. -- at any point?

22 A. No, sir.

23 Q. Was he put in handcuffs?

24 A. No, sir.

25 Q. Was he put in a jail cell or in the

*FLOR REYES - DIRECT EXAM BY MR. DUQUETTE*

1 back of a police car or anything?

2 A. No, sir.

3 Q. Were there any promises you made in  
4 exchange for him speaking to you about the  
5 incident?

6 A. No, I didn't promise him anything; no,  
7 sir.

8 Q. Was he free to go --

9 A. Yes, sir.

10 Q. -- during the -- okay. As part of the  
11 Miranda process, did the defendant sign any  
12 paperwork or make any verbal acknowledgment that he  
13 understood his rights?

14 A. He signed an advisement of rights that  
15 we have that explains all the rights, and the  
16 waiver of rights on the bottom that he initials and  
17 signs. And it's dated and signed too.

18 Q. How did he come to arrive at the police  
19 station? Did you pick him up?

20 A. No, sir, he came on his own.

21 Q. He came on his own?

22 A. Yes, sir.

23 Q. At that point in the investigation, did  
24 you -- were there charges pending?

25 A. No, there weren't any charges pending.

## FLOR REYES - DIRECT EXAM BY MR. DUQUETTE

1 There was no arrest warrant or anything at that  
2 time.

3 Q. Okay. Did he respond to your  
4 questions?

5 A. Yes, sir.

6 Q. Did he acknowledge and understand --  
7 did he acknowledge his rights, that he understood  
8 his rights?

9 A. Yes, sir.

10 Q. And did he waive those rights?

11 A. Yes, sir.

12 Q. Was this conversation in English or  
13 Spanish?

14 A. It was in English, most of it was in --  
15 as far as the waiver of rights, it was in English.  
16 When I did the Miranda part, that was in English.

17 Q. Did he indicate whether or not he  
18 understood English?

19 A. Yes, he understood English. The  
20 conversation was in English. I mean, the whole  
21 conversation completely.

22 Q. Did he indicate if he could read in  
23 English, to your recollection?

24 A. I mean, he read the paper in front of  
25 me. He didn't actually tell me he could read

*FLOR REYES - DIRECT EXAM BY MR. DUQUETTE*

1 English, but he took the paper and he actually read  
2 it because he told me he reads everything he signs,  
3 is what he told me.

4 Q. Was he advised of the nature of your  
5 investigation --

6 A. Yes, sir.

7 Q. -- during that meeting?

8 A. Yes, sir.

9 Q. Was he advised of his rights prior to  
10 any questioning about the incident?

11 A. I don't understand.

12 Q. Was he advised of his rights? You said  
13 you advised him of his Miranda rights. Was that  
14 prior to any interrogation or questioning about the  
15 incident in question?

16 A. Yes, sir. I explained it to him, yes,  
17 sir.

18 Q. So how -- how was Miranda given to him?  
19 Was it --

20 A. I read the Miranda -- when I gave the  
21 Miranda to him, I read exactly on the paper what he  
22 signed. That's what I read.

23 Q. And did you keep a copy of that?

24 A. Yes, sir.

25 Q. The page you signed?

## FLOR REYES - DIRECT EXAM BY MR. DUQUETTE

1 A. Yes.

2 Q. Was that in your report that you  
3 submitted?

4 A. It's entered in the case file, yes,  
5 sir.

6 Q. Did his answers to your questions  
7 appear to be rational and responsive?

8 A. Yes, sir.

9 Q. Was there any coercion of the defendant  
10 on your part --

11 A. No, sir.

12 Q. -- to answer any questions?

13 A. No, sir.

14 Q. Did the defendant request a break at  
15 any moment to use the bathroom or --

16 A. No, he --

17 Q. -- have a rest or anything like that?

18 A. No, sir.

19 Q. Did you threaten the defendant at any  
20 time?

21 A. No, sir.

22 Q. Did he at any point change his mind  
23 about speaking with you and ask to leave the  
24 interview?

25 A. No. He never asked to leave the



*FLOR REYES - CROSS EXAM BY MS. TOLLEY*

1 interview, no, sir.

2 Q. To the best of your knowledge, was the  
3 statement given freely and voluntarily?

4 A. Yes, sir.

5 MR. DUQUETTE: Your Honor, I have no  
6 further questions at this time.

7 THE COURT: Any questions for the  
8 witness, Ms. Tolley?

9 MS. TOLLEY: Just a couple, Judge.

10 THE COURT: You may proceed when you're  
11 ready.

12 CROSS-EXAMINATION

13 BY MS. TOLLEY:

14 Q. Good afternoon.

15 A. Good afternoon.

16 Q. So you called Mr. Hernandez-Santo into  
17 your office; is that correct?

18 A. I asked to speak with him, if he could  
19 come speak with me.

20 Q. How did you get in touch with him?

21 A. Called him. A telecommunication text  
22 or called.

23 Q. Okay. And he came in voluntarily?

24 A. Yes, ma'am.

25 Q. Okay. And he was cooperative?

## FLOR REYES - CROSS EXAM BY MS. TOLLEY

1 A. Yes, ma'am.

2 Q. Okay. And were you in the room, just  
3 the two of you?

4 A. Yes, ma'am.

5 Q. Okay. And the room that you were in,  
6 would you say it's a five by ten? Ten by 20? How  
7 big a room is it?

8 A. It's not a big office. I mean, it  
9 ain't dinky. I mean, it's maybe ten by ten, maybe.  
10 I'm not exactly sure. I can't really say.

11 Q. All right.

12 A. I mean, I had the door open. He was  
13 sitting near to the door, I was sitting on the end.  
14 So he was right near the door, the door was wide  
15 open.

16 Q. Okay. Got you. So just the two of you  
17 in the office?

18 A. Yes.

19 Q. Okay. And were you wearing a gun at  
20 that time?

21 A. Yes, ma'am. I usually wear my weapon,  
22 yes, ma'am.

23 Q. And Mr. Hernandez-Santo didn't have  
24 anyone with him, did he?

25 A. No, ma'am.

*FLOR REYES - CROSS EXAM BY MS. TOLLEY*

1           Q.     And did he at some point say, well, I'm  
2     feeling a little pressured?

3           A.     He did feel the -- he did say that.  
4     And I stated to him, as you see on the video, I did  
5     not want to him to feel pressured. It was up to  
6     him if he wanted to go forward with this, but I  
7     told him we had no intention to make him feel  
8     pressured.

9           Q.     Okay. When he said that, did you stop  
10    the interview?

11          A.     No; he wanted to go forward. He said  
12    he was fine, he wanted to keep going.

13          Q.     Okay. But when he said, I feel  
14    pressured, did you at that point -- did he at that  
15    point continue, or did he still appear to be a  
16    little bit reluctant?

17          A.     No. When he said I feel pressured, I  
18    told him, I don't want you to feel pressured and if  
19    you feel pressured, you know, we're -- it was -- he  
20    said that. And I said, I don't want you to feel  
21    pressured, you know. If you feel pressured, I  
22    don't want you to feel that way because I'm not  
23    trying to pressure you in any way. Those were my  
24    words to him.

25          Q.     Okay. Did you let him leave at that

## FLOR REYES - CROSS EXAM BY MS. TOLLEY

1 point?

2 A. Well, he didn't get up and want to  
3 leave. I mean, the door was open. I mean, he just  
4 sat there.

5 Q. Okay. But you kept talking even though  
6 he said I feel pressured?

7 A. Well, we both kept talking, ma'am. I  
8 mean, it wasn't just me. It was him, too.

9 Q. Okay. But most of the communication  
10 was relaying to him that he should feel comfortable  
11 with you and that there was nothing to be concerned  
12 about really, and that, you know, we should go on  
13 with this interview?

14 A. All I said to him was, I don't want him  
15 to feel pressured and I'm not pressuring him in any  
16 way, shape, or form. I don't want him to feel  
17 pressured. That's all that was said.

18 Q. Yet you waited -- you waited?

19 A. What -- I don't understand.

20 Q. I mean, it wasn't like you were going  
21 to end the conversation at that point, am I right?

22 A. No. I told him -- I reassured him that  
23 I wasn't trying to pressure him.

24 Q. Uh-huh --

25 A. Okay. He told me to keep going.

*FLOR REYES - CROSS EXAM BY MS. TOLLEY*

1 Q. Right.

2 A. You know --

3 Q. You kept talking until he gave in,  
4 right?

5 A. No. I mean, I'm not -- I don't recall  
6 me keep talking for him to give in. I mean, I  
7 wanted him -- to reassure him that I wasn't trying  
8 to pressure him.

9 Q. Okay. So after he said I felt  
10 pressured, the interview went on for another at  
11 least 30 minutes, am I right?

12 A. I don't know how long. I can't really  
13 say, ma'am. I don't know how long it went on.

14 Q. Okay. But the video is approximately  
15 40 minutes, isn't it?

16 A. Uh-huh.

17 Q. Okay. And that would have been early  
18 on in the conversation with him; is that correct?

19 A. Yes, ma'am. That was early on when we  
20 were talking -- you know, going over the advisement  
21 of rights.

22 MS. TOLLEY: Okay. I don't have any  
23 other questions.

24 THE COURT: Any redirect?

25 REDIRECT EXAMINATION

## FLOR REYES - REDIRECT EXAM BY MR. DUQUETTE

1 BY MR. DUQUETTE:

2 Q. You said that happened early on while  
3 you were giving him the advisement of his rights?

4 A. Yes, sir.

5 Q. So after he made a statement in  
6 reference to feeling pressured, did he then proceed  
7 with waiving his rights, signing a waiver, and  
8 telling you he wanted to talk to you?

9 A. Yes, sir.

10 Q. Okay. So you weren't questioning him  
11 at the time about the incident that he said --

12 A. No, no, no. No, sir.

13 Q. Okay.

14 A. No. My -- as a matter of fact, my  
15 words to him was, you know, if he -- I asked him if  
16 he understood his rights, and I could not speak  
17 with him about the case unless he waived his rights  
18 and was willing to talk to me.

19 And he was adamant that he wanted to  
20 talk to me, so, you know --

21 Q. Okay.

22 A. So he still signed the waiver after  
23 that.

24 Q. And did you meet with him a second  
25 time?

*FLOR REYES - REDIRECT EXAM BY MR. DUQUETTE*

1           A.    Yes, sir.

2           Q.    And what was that location?

3           A.    At his house,           Yeamans Hall Road.

4           Q.    And was that at a later date or --

5           A.    It was a later date.

6           Q.    And what was the nature of that

7 meeting?

8           A.    I went to -- I asked him if I could  
9 talk to him more about the case. He was willing.

10 I went there and when I started speaking to him, I  
11 asked him if I could take photographs of the  
12 vehicle. He said, sure, no problem, you can take  
13 photographs.

14                   And that's where I went from there, and  
15 I spoke with him about the case.

16           Q.    And was he charged at that time?

17           A.    No, sir.

18           Q.    Was he placed in handcuffs at that  
19 time?

20           A.    No, sir.

21           Q.    Was he placed in the back of a police  
22 car?

23           A.    No, sir.

24           Q.    Was that at -- was anybody present  
25 during that meeting --

## FLOR REYES - REDIRECT EXAM BY MR. DUQUETTE

1 A. No, sir.

2 Q. -- with you?

3 A. It was just me and him.

4 Q. Was he free to say no?

5 A. Yes, sir. I asked -- I called him and  
6 asked him if I could come over. And he said, yeah,  
7 come over.

8 Q. Okay. And when you arrived on the  
9 scene, did he ask you to leave at any point?

10 A. No, sir.

11 Q. And did he engage in conversation with  
12 you at that point?

13 A. He did.

14 Q. And did he make statements to you at  
15 that point regarding your investigation?

16 A. He did.

17 Q. Was he threatened at that point?

18 A. No, -- no, ma'am -- I mean, no, sir.

19 Q. Did he appear to be of clear and sound  
20 mind?

21 A. Yes, sir.

22 Q. And where did that conversation  
23 physically take place at his residence? Was that  
24 inside the residence?

25 A. No, we were outside. We were at his



*FLOR REYES - REDIRECT EXAM BY MR. DUQUETTE*

1 car, and he was on the porch railing right beside  
2 the car. I was taking photographs and we were  
3 talking. We were outside.

4 Q. So he wasn't denied access to the  
5 bathroom or telephone or food or drink or anything  
6 at that point either?

7 A. No, sir.

8 Q. Okay. Were any promises made at that  
9 point in exchange for his statements?

10 A. No, sir.

11 Q. And, approximately, how long did you  
12 speak to him on that occasion?

13 A. It wasn't -- not even close to  
14 40 minutes. I'm going to guess that it was  
15 probably 15 minutes maybe, 20, something like that.

16 Q. Were there any recordings of that  
17 conversation?

18 A. No. No, sir.

19 MR. DUQUETTE: The State has no further  
20 questions, Your Honor.

21 THE COURT: Sir, you may step down.

22 Are there any objections to the  
23 statement.

24 MS. TOLLEY: We would object to the  
25 introduction of the statements based on the fact

1     that this was a statement made to law enforcement  
2     where there was possible pressure to provide a  
3     statement of any kind, regardless of what good the  
4     statement was.

5                 The fact that he was in a police  
6     station, that he was in an office that was, at the  
7     largest, ten by ten according to the police  
8     officer, in a room with an armed police officer,  
9     the situation itself would cause one to feel  
10    pressured and to feel compelled to give in.

11                And based on all of that, we would ask  
12    the Court to consider excluding the statement.  
13    Also, I think there was testimony that there was  
14    another conversation that was not recorded. And if  
15    there are statements that they intend to introduce  
16    that were not video or audio recorded, we would ask  
17    that those be excluded at this time as well.

18                THE COURT: Would the State like to  
19    respond?

20                MR. DUQUETTE: Your Honor, it's the  
21    State's position the defendant was not in custody  
22    during either of these interactions. He  
23    voluntarily responded to the police station. After  
24    doing so, he voluntarily waived his rights under  
25    Miranda, although he was not in custody.

1                   Same thing goes for the interaction at  
2 his house. He calls the defendant and responds  
3 over there. He was not in custody at that time and  
4 free to leave at that time. He could have walked  
5 back inside his house. He was free to leave on  
6 both occasions.

7                   And on the occasion at the police  
8 department, he signed a waiver of his rights and  
9 verbally acknowledged a waiver of his rights.

10                  THE COURT: Anything further from the  
11 defense?

12                  MS. TOLLEY: I guess we would  
13 specifically like to know which statements were  
14 made, I guess, verbally that were not recorded that  
15 they intend to introduce at this time.

16                  MR. DUQUETTE: We would only introduce  
17 statements that are in the report that was provided  
18 in discovery regarding the usage of the defendant's  
19 vehicle. In reference to the recorded interview at  
20 the police department as previously mentioned, Your  
21 Honor, we would intend to play segments of that  
22 interview with parts redacted referring to previous  
23 arrests.

24                  THE COURT: Is that what you need, Ms.  
25 Tolley?

1 MS. TOLLEY: That is -- were there  
2 specific statements that he made that you intend to  
3 introduce that were verbally? Not on the video,  
4 but other times?

5 MR. DUQUETTE: From the meeting at the  
6 house, Your Honor, the statements that he made that  
7 are referenced in the report that was provided in  
8 discovery would be the limiting -- would be what --

9 THE COURT: What are those? I haven't  
10 seen them, so I have no idea what you're talking  
11 about. What is recorded --

12 MR. DUQUETTE: During the meeting at  
13 the defendant's house he tells the detective that  
14 nobody else drives his vehicle and that he's the  
15 only one that uses the vehicle, something along  
16 those lines.

17 Those statements would be the only  
18 statements we would be putting into evidence from  
19 that interaction.

20 THE COURT: And they didn't Mirandize  
21 him at that point?

22 MR. DUQUETTE: Correct.

23 THE COURT: And why?

24 MR. DUQUETTE: It's the State's  
25 position that he was not in custody at that point.

1                   THE COURT: I'm going to think about  
2   that because he had already been identified as a  
3   suspect, and I think at that point you wouldn't  
4   have wanted to take a picture of his car unless you  
5   thought it was his vehicle, and he made inculpatory  
6   statements. I'm just trying to figure out why he  
7   wasn't Mirandized.

8                   MR. DUQUETTE: Your Honor, the  
9   detective was still doing his investigation at that  
10   point; there had been no warrants drawn up. And he  
11   was trying to go over there in furtherance of his  
12   investigation to speak with the suspect a second  
13   time.

14                  THE COURT: Ms. Tolley?

15                  MS. TOLLEY: Well, we would first say  
16   that that was certainly a time where he should have  
17   been Mirandized again. That's like a second  
18   incident where he's going out and talking to  
19   Mr. Hernandez-Santo, where custody is apparently  
20   inevitable based on information that he -- the way  
21   that he proceeded with his investigation.

22                  And that he was not Mirandized at that  
23   point and given the opportunity to seek counsel at  
24   that point would prove problematic and against the  
25   laws of this State.

1 THE COURT: But you have no objection  
2 to the pictures; is that correct?

3 MS. TOLLEY: We do object to the  
4 pictures being introduced into evidence, Your  
5 Honor.

6 THE COURT: I'm sorry, I couldn't hear  
7 you with all that pounding, I'm sorry. So would  
8 you say that again, I apologize?

9 MS. TOLLEY: Our objections are mainly  
10 with the statements, Your Honor.

11 THE COURT: So you don't have any  
12 objection to the pictures which you would  
13 acknowledge are non-testimonial? They could have  
14 taken pictures of the car from the street.

15 MS. TOLLEY: Okay. Thank you, Judge.

16 THE COURT: I don't know if you have  
17 any expectation of privacy when your car is parked  
18 in the driveway. I don't think that you could  
19 really argue. I mean, I think the car would  
20 probably be -- I don't know that they have to  
21 Mirandize you to take a picture of your car.

22 MR. DUQUETTE: Your Honor --

23 MS. TOLLEY: We would think that they  
24 would. It was part of the ongoing investigation.

25 THE COURT: I don't think -- cars are

1 non-testimonial.

2 MS. TOLLEY: Okay.

3 THE COURT: They can stand in the  
4 street and take a picture of your car.

5 MS. TOLLEY: Okay.

6 THE COURT: I mean, they could be nice  
7 and come and ask, but I don't think they have to  
8 ask your permission to take a picture of your car.  
9 I don't think you have any expectation of privacy.

10 Now, if it's in your garage, that's a  
11 different story, but if it's out in the street, I  
12 don't know that -- was it in a carport or a garage,  
13 or something? Where was it?

14 MS. TOLLEY: It was not in a carport or  
15 garage.

16 THE COURT: Was it parked on the  
17 street? Where was it parked? Was it parked in the  
18 driveway? Where was it parked?

19 MS. TOLLEY: It was parked on the  
20 defendant's property, unless I'm mistaken.

21 THE COURT: I mean, but how was it  
22 situated?

23 MR. DUQUETTE: It was parked alongside  
24 the house. Is that correct?

25 Your Honor, the State reiterates its

1 position that during that encounter the suspect was  
2 not in custody at that time, therefore, Miranda  
3 wouldn't apply.

4 THE COURT: I don't know if I agree  
5 with that. I think once you develop somebody as a  
6 suspect and you want them to inculcate themselves,  
7 out of an abundance of caution you probably should  
8 Mirandize them, especially if you know they're  
9 going to say something that is particularly germane  
10 to this case, which is, that he's the only person  
11 that drives this car.

12 Because I assume that the whole posture  
13 of the defense is going to be you can't prove who  
14 was in the car. I'm going to think about that, but  
15 I think the pictures clearly come in. They're  
16 non-testimonial. I don't think you have to ask his  
17 permission to take pictures of a car that's clearly  
18 visible in the public space and domain.

19 I don't know if you have any  
20 expectation of privacy when your car is parked like  
21 that. Now, if it were a garage, that would be a  
22 different story. I'm going to need to watch the  
23 video because I can't make any decision about that  
24 until I see it for myself.

25 Do you-all have a copy for me to look



1 at?

2 MR. DUQUETTE: Yes, Your Honor.

3 THE COURT: And who would your first  
4 witness be?

5 MR. DUQUETTE: Your Honor, our first  
6 witness would be Benjamin --

7 THE COURT: The employee at the El  
8 Alamo?

9 MR. DUQUETTE: Yes.

10 THE COURT: And who is the next  
11 witness?

12 MR. DUQUETTE: Detective Reyes.

13 THE COURT: Do you have other questions  
14 you can ask him other than about the statement?

15 MR. DUQUETTE: Not at this time, Your  
16 Honor.

17 THE COURT: You don't have any other  
18 witnesses you can call before him?

19 MR. DUQUETTE: Your Honor, we would  
20 probably call him second. I don't think we would  
21 call any other witnesses before we called him.

22 THE COURT: Well, I need time to watch  
23 the video, and I'm not going to watch it while I've  
24 got a jury sitting. So you all -- I've taken that  
25 under advisement, and you all will just have to

1 stay away from it until I can make a ruling on it.

2 So we'll proceed with opening  
3 arguments, and then you can call your first  
4 witness, and then I'll watch that tonight, but I  
5 need it to watch it. It needs to be marked as a  
6 Court's Exhibit. That's the un-redacted copy,  
7 correct?

8 MR. DUQUETTE: Yes, Your Honor.

9 THE COURT: But just for your guidance  
10 purposes, you need to stay away from it in opening,  
11 but purely for the purpose of you all being  
12 prepared as we proceed with trial, it appears that  
13 he was appropriately Mirandized. And absent me  
14 seeing something contrary to that in the video, I  
15 don't see where it's not going to come in.

16 But the statements at the car, I have  
17 to think about that a little bit. All right.

18 Do you all want to take a quick break,  
19 a quick powder break? And then I'll start with  
20 opening instructions.

21 And I'm appointing No. 111 as the  
22 foreperson, and I need for them to have notebooks,  
23 please.

24 (A recess was had.)

25 THE COURT: All right. Are you all

1 ready to proceed on Mr. Santo's case?

2 MR. DUQUETTE: Your Honor, the State  
3 did file a motion in reference to some prior  
4 convictions of our first witness. Are you inclined  
5 to do that --

6 THE COURT: I'm sorry, say that one  
7 more time.

8 MR. DUQUETTE: We had filed a motion to  
9 exclude the record of our first witness. Did you  
10 want to rule on that at this time?

11 THE COURT: What's he charged with? I  
12 think I saw that somewhere.

13 MR. DUQUETTE: Bringing in and  
14 harboring aliens, Your Honor.

15 THE COURT: Is it a felony?

16 MR. DUQUETTE: Yes, Your Honor.

17 THE COURT: How much time does it  
18 carry?

19 MR. DUQUETTE: I believe it's five  
20 years, Your Honor.

21 THE COURT: Harboring someone would  
22 include lying, wouldn't it? Misleading the police?

23 MS. TOLLEY: Yes, ma'am.

24 THE COURT: So tell me why it wouldn't  
25 be admissible on his credibility.

1 MR. DUQUETTE: We submit that not only  
2 are they irrelevant to the case at hand, but  
3 they're also unfairly prejudicial and have the  
4 potential to not only confuse the issues, but also  
5 mislead the jury as to what the issues in the  
6 immediate case are.

7 THE COURT: Isn't credibility always an  
8 issue? And what are the elements of harboring? Is  
9 that a federal crime or a state crime?

10 MR. DUQUETTE: It's a federal crime,  
11 Your Honor.

12 THE COURT: And what are the elements  
13 of that crime?

14 MR. DUQUETTE: Your Honor, I don't have  
15 those with me, I apologize.

16 THE COURT: Ms. Tolley, do you know?

17 MS. TOLLEY: No, ma'am. We were just  
18 handed this a few minutes ago.

19 THE COURT: Now, you did file a motion  
20 to suppress the identification. Are you  
21 withdrawing that since they're not making any ID of  
22 your client?

23 MS. TOLLEY: Yes, ma'am.

24 THE COURT: Is there going to be any  
25 Lyle testimony from the State? Prior bad acts?

1                   MR. DUQUETTE: Not at this time do we  
2 have that planned, Your Honor.

3                   THE COURT: Does the defendant have any  
4 prior convictions?

5                   MR. DUQUETTE: He does, Your Honor.

6                   THE COURT: What are they?

7                   MR. DUQUETTE: He has an unlawful use  
8 of 911.

9                   THE COURT: Is that it?

10                  MR. DUQUETTE: Yes, Your Honor.

11                  THE COURT: Okay. I don't think that  
12 would be allowed to be used to impeach his  
13 credibility, but I'll take it up again if he  
14 testifies. But I don't think -- I'm not aware of  
15 that being within the classification of offenses to  
16 be used for impeachment.

17                  Does the State intend to seek any prior  
18 bad acts of the defendant not the subject of a  
19 conviction?

20                  MR. DUQUETTE: Not at this time, Your  
21 Honor.

22                  THE COURT: It's a broad motion, but I  
23 don't know if that really -- regarding your motion  
24 in limine regarding lay witnesses, you'll have to  
25 make a contemporaneous objection.

1                   Is there any objection to sequestering  
2   the witnesses? I assume you all could agree to  
3   that.

4                   MR. DUQUETTE: None from the State,  
5   Your Honor.

6                   THE COURT: That would apply to all  
7   witnesses with the exception of the case agent or  
8   any victims. So that's by agreement?

9                   MS. TOLLEY: Your Honor, is it okay if  
10   our investigator remains in the room?

11                  THE COURT: As long as she is not going  
12   to be called as a fact witness.

13                  MR. DUQUETTE: Your Honor, I do have a  
14   party on the witness list who we do not intend to  
15   call at this time who --

16                  THE COURT: I'm listening. Go ahead.

17                  MR. DUQUETTE: We do have somebody on  
18   the witness list, at this point we don't intend to  
19   call her. She was related to managing the  
20   business. Would you allow her to be in the  
21   courtroom as a --

22                  THE COURT: Who was the witness?

23                  MR. DUQUETTE: It's Arelis Santos.

24                  THE COURT: Are you saying you're not  
25   calling her as a witness?

1                   MR. DUQUETTE: We don't intend to at  
2 this point.

3                   THE COURT: Well, you say at this  
4 point; I'm going to preclude her from testifying if  
5 you plan to call her at all.

6                   MR. DUQUETTE: Okay.

7                   THE COURT: So if at the end of the  
8 case you decide you want to call her, that's going  
9 to be a problem if she's been in here hearing all  
10 the testimony.

11                   Is she a victim or does she own the  
12 business?

13                   MR. DUQUETTE: Your Honor, she was  
14 managing the business.

15                   THE COURT: But she doesn't own it?

16                   MR. DUQUETTE: No. But that's who Ms.  
17 Tolley refers to as the victim not wishing to  
18 proceed. So under defense counsel's definition of  
19 a victim --

20                   THE COURT: But the statute drives what  
21 a victim is. She doesn't own it, she's not a  
22 victim --

23                   MR. DUQUETTE: Correct.

24                   THE COURT: -- but she was the manager.  
25 Ms. Tolley, do you have any objection to Ms. Santos

1 being present in the courtroom? Do you plan to  
2 call her as a witness?

3 MS. TOLLEY: I don't know if we do or  
4 not, Your Honor. She is listed as the victim on  
5 the police report so I'm not sure what they're  
6 saying. And the witness that we were referring to  
7 was Mr. Benjamin Reyna Flores. Not Ms. Arelis.

8 THE COURT: But he's an employee. In  
9 what capacity is he employed with the business?

10 MS. TOLLEY: I mean, we asked -- I  
11 guess, we've asked these questions before, and, in  
12 fact, we've submitted supplemental discovery  
13 requests so that we can find out some of these  
14 things, and, you know, we were not provided with  
15 any of that information.

16 We specifically asked for employees of  
17 the restaurant and any other witnesses, and none of  
18 that has been provided to us.

19 THE COURT: In what capacity is  
20 Mr. Flores employed with the El Alamo?

21 MR. DUQUETTE: Your Honor, he is not  
22 currently employed. At one point the business  
23 license was in his name. He primarily responded to  
24 the scene to communicate with the police due to his  
25 ability to speak English.



1                   THE COURT: Who actually owns this  
2 business?

3                   MR. DUQUETTE: At this time Arelis  
4 Santos does, Your Honor.

5                   THE COURT: Do you have some documents  
6 that corroborates that, or is she just telling you  
7 she owns it?

8                   MR. DUQUETTE: I do not.

9                   THE COURT: Do they own this building,  
10 or are they leasing it?

11                  MR. DUQUETTE: They were leasing, Your  
12 Honor.

13                  THE COURT: Were? It's not open  
14 anymore?

15                  MR. DUQUETTE: I'm not sure of the  
16 current status of the lease, Your Honor.

17                  THE COURT: I think out of an abundance  
18 of caution, if she's not the owner of the business  
19 and she is a fact witness, while she may have been  
20 acting in some managerial capacity, I would have to  
21 have some proof to bring her within the statutory  
22 definition of a victim before I could make a  
23 decision, and since you're advocating she be  
24 present, it's your burden to defend.

25                  MR. DUQUETTE: Your Honor, the State

1 would withdraw the request that she be allowed in  
2 the courtroom at this time.

3 THE COURT: Okay. Now, Is there  
4 anything else we need to -- I guess we're back to  
5 the original question which are the elements --  
6 where is that motion? Which are -- what are the  
7 elements -- does anybody know the elements of the  
8 federal crime -- what's it called, harboring?

9 MR. DUQUETTE: Your Honor, it's  
10 bringing in and harboring aliens.

11 THE COURT: Bringing in and harboring  
12 an alien.

13 MR. DUQUETTE: -- harboring an alien.

14 THE COURT: When was he convicted?

15 MR. DUQUETTE: 2015, Your Honor.

16 THE COURT: And he's on federal  
17 probation?

18 MR. DUQUETTE: Correct.

19 THE COURT: What's his immigration  
20 status?

21 MR. DUQUETTE: I believe he's a legal  
22 permanent resident, an LPR. He has a green card.

23 MS. TOLLEY: Judge, there is another  
24 charge on the record, and I'm not sure whether this  
25 falls within that or not, for aiding and abetting.

1 And I'm not sure what this is. It says 30 days to  
2 serve two years supervised probation.

3 THE COURT: What year is that?

4 MS. TOLLEY: It looks like 2011.

5 THE COURT: Okay. Then, I think that  
6 might be something separate. I hate to be  
7 redundant. Let's see, bringing and harboring  
8 aliens. I'm trying to figure out if that involves  
9 dishonesty, and that's why I need to know the  
10 elements because that's the only way I can  
11 determine if it's admissible or not.

12 I'm going to need an answer since he's  
13 your first witness. And my clerk is looking up the  
14 statute right now. It's a federal offense. But  
15 anything that's going to bear on his credibility,  
16 if it involves him being dishonest in some way with  
17 any authority, it's going to be admissible.

18 I would imagine there's a statute akin  
19 to that. Is there a state statute akin to it? I  
20 know there's a state statute that's akin to you  
21 hiring someone who is undocumented, but I don't  
22 know --

23 MS. TOLLEY: Judge, we have the statute  
24 pulled up on our phone, but I don't know if it's --

25 THE COURT: I'm sorry?

1 MS. TOLLEY: We have the statute pulled  
2 up on the phone, but I don't know if that's helpful  
3 to the Court or not.

4 THE COURT: Knowing that a person is an  
5 alien, brings to or attempts to bring to the United  
6 States in any manner whatsoever, such person at a  
7 place other than a designated port of entry or  
8 place other than as designated by the commissioner,  
9 regardless of whether such alien has received prior  
10 official authorization to come in, enter, or  
11 reside.

12 Knowing, or in reckless disregard of  
13 the fact that an alien has come to, entered, or  
14 remains in the United States -- transports, or  
15 moves or attempts to transport or move within the  
16 United States.

17 Knowing or in reckless disregard of the  
18 fact that an alien has come to, entered, or remains  
19 in the United States -- harbors, or shields from  
20 detection, or attempts to conceal, harbor, or  
21 shield such alien in any place.

22 Encourages or induces an alien to come  
23 to, enter, or reside in the US. Engages in any  
24 conspiracy to commit any of the preceding acts, or  
25 aids or abets the commission of any of the

1 preceding acts.

2                   So I'm wondering since -- well, that's  
3 a different year, though. Do we know exactly what  
4 he pled guilty to or what he was found guilty of?

5                   MR. DUQUETTE: Your Honor, my  
6 understanding is that the actual conviction as far  
7 as the bringing in and harboring aliens, that's the  
8 statute.

9                   MS. TOLLEY: The question is whether or  
10 not he had a second charge for smuggling aliens.  
11 That's what I can't --

12                  THE COURT: Well, you said he had a  
13 2011 conviction, but it looks like that's under a  
14 different part of the statute which deals with aids  
15 or abets the commission of any of the preceding  
16 acts.

17                  How does this come within the  
18 definition -- of course, a person's convictions in  
19 a circumstantial case, credibility is always an  
20 issue, but how does it come within the definition  
21 of dishonesty? Because the supreme court has been  
22 clear in delineating that a conviction in and of  
23 itself is not sufficient. It has to be something  
24 that bears on a person's ability to be honest or  
25 having committed some offense that deals with

1 honesty.

2 MS. TOLLEY: We would -- on behalf of  
3 the defense, we would state that this clearly  
4 involves dishonesty, and it would also have to  
5 involve some sort of conspiracy, which is not the  
6 kind of thing that someone could do on their own.  
7 They would have to involve multiple people.

8 The fact that the people that they were  
9 helping knew that they were coming into the country  
10 illegally --

11 THE COURT: Does this involve a theft?  
12 Is that -- that's really what the supreme court has  
13 said, that it really needs to involve some theft,  
14 stealing or some dishonesty; in other words, like a  
15 false input to the police, shoplifting, those kinds  
16 of offenses where you're being dishonest.

17 In other words, you've lied which  
18 clearly bears on your ability -- your veracity. If  
19 I follow your logic, people who are committed of a  
20 drug offense, then that would be admissible.

21 MS. TOLLEY: A lot of the drug offenses  
22 are admissible, but in this particular case we  
23 would say that the fact that in order to --

24 THE COURT: Drug offenses are not  
25 admissible to impeach somebody's credibility.

1 MS. TOLLEY: Right. Well, we would  
2 just assert that it does involve some sort of lying  
3 or false representation, because in some of these  
4 instances -- and we don't know the facts and  
5 circumstances --

6 THE COURT: That's what I was about to  
7 say. I don't know the facts of what he pled to so  
8 I have no idea.

9 MS. TOLLEY: We don't know the facts  
10 and circumstances. And it may involve getting  
11 illegal paperwork, which would be a lie and a  
12 falsehood. And some of that would be --

13 THE COURT: I think we'd have to take  
14 it up in a proffer before I can make any kind of  
15 decision because I don't know what it involves.  
16 Did you all get the federal transcript to see what  
17 he pled to?

18 MR. DUQUETTE: No, Your Honor. We just  
19 have the federal charge.

20 THE COURT: But it is a felony?

21 MR. DUQUETTE: Yes, Your Honor.

22 THE COURT: Yeah. I mean, I'd have to  
23 -- I don't know. And now we have to rely on what  
24 he tells us, so I have no clue of what it involves  
25 or what provision of (a)(1)(A) one through -- let's

1     see, 1324 subsection (a)(1)(A), (1)(A) i, ii, iii,  
2     iiii, and then (B)(1)(2).

3                 So I don't know what provision of the  
4     statute he pled to. I have no idea, and I don't  
5     know what exactly he pled to and whether it  
6     involves dishonesty. I mean, we'd have to create a  
7     proffer and take it up, and I'd have to hear  
8     which -- I don't know.

9                 It's kind of troubling because now it's  
10    almost like a trial within a trial about what he  
11    did or didn't do, and the best evidence of that is  
12    the transcript of exactly what he pled guilty to or  
13    contacting the US attorney and having gotten the  
14    indictment to see what it says. I assume he pled  
15    in Charleston.

16                MR. DUQUETTE: Your Honor, I think it  
17    may have been in Texas.

18                THE COURT: Well, that's another -- it  
19    happened in Texas?

20                MR. DUQUETTE: I believe so, Your  
21    Honor.

22                THE COURT: Then that's -- and it  
23    happened -- I don't know how long they're required  
24    to keep their records in federal court. They may  
25    have been already destroyed if it wasn't appealed.



1                   I mean, I don't want to misspeak  
2 because their system of court reporters are very  
3 different than ours. They're independent  
4 contractors, and I don't know how long they're  
5 required to keep their records.

6                   I don't know if after -- I don't know  
7 if after the appeal period runs if they can destroy  
8 their records or if they have to keep it any  
9 longer. I have no idea.

10                  Are we ready to proceed? At least we  
11 can try to get some opening arguments and  
12 instructions. From the State?

13                  MR. DUQUETTE: Yes, Your Honor.

14                  THE COURT: From the defense?

15                  MS. TOLLEY: We're ready, Your Honor.

16                  THE COURT: Before there's any cross  
17 examination of the witness regarding his prior  
18 records, it needs to be done in camera to create a  
19 proffer. Any exception from the State?

20                  MR. DUQUETTE: No, Your Honor.

21                  THE COURT: From the defense?

22                  MS. TOLLEY: No, Your Honor.

23                  THE COURT: Because I have no idea what  
24 it involves, and I can't really make an informed  
25 decision about it until we hear from him exactly

## COURT'S OPENING REMARKS

1 what it was he pled guilty to and what the  
2 circumstances were.

3 Please bring in the jury. And I've  
4 appointed No. 111 as the foreperson.

5 (Jury in, 3:59 p.m.)

6 THE COURT: You may be seated. Ladies  
7 and gentlemen, we appreciate your patience. I had  
8 a matter I needed to deal with that was completely  
9 unrelated to this case. But we also had some  
10 matters of law that we needed to deal with, and  
11 dealing with those in advance allows us to proceed  
12 without having to stop and start a lot during the  
13 progress of the trial.

14 So please know that we do not take your  
15 time for granted and we appreciate your patience.

16 You have been selected for the case of  
17 the State of South Carolina versus Evodio  
18 Hernandez-Santo, Indictments 2018-GS-08-609 and 610  
19 for the offenses of discharging firearms into a  
20 dwelling and unlawful carrying of a pistol, the  
21 elements of which I will explain to you at the  
22 conclusion of the case.

23 What I am now going to say to you is  
24 intended to serve as an introduction to the trial  
25 of this case so that you may understand what is

*COURT'S OPENING REMARKS*

1    happening.

2                   During the course of this trial you  
3    will be allowed to take notes.  If you would, write  
4    your juror number on the first page inside the  
5    notebook so that you will be able to identify which  
6    notepad belongs to you.  I will give you some  
7    instructions regarding note taking near the  
8    conclusion of this instruction.

9                   The defendant is charged, again, by an  
10   indictment filed with the court, the elements of  
11   which I will explain to you at the conclusion of  
12   the case.  The indictments, ladies and gentlemen,  
13   are simply the charge or charges by which the case  
14   is brought into court, and it is not in any sense  
15   evidence of any of the allegations as they may  
16   contain.

17                  The defendant has pled not guilty to  
18   the indictments.  The State, therefore, has the  
19   burden of proving each of the elements of each  
20   indictment beyond a reasonable doubt.  And it will  
21   be your duty, ladies and gentlemen, to decide  
22   whether the State has met that burden or not.

23                  Your purpose as jurors is to find and  
24   determine the facts.  You are the sole judges of  
25   the facts in this case.  If at any time I make any

## COURT'S OPENING REMARKS

1 comment regarding the facts, you must disregard it.

2           You are to determine the facts from the  
3 testimony you hear and the other evidence  
4 introduced in court. It is up to you to determine  
5 the inferences which you feel may be properly drawn  
6 from the evidence.

7           It is especially important that you  
8 perform your duty of determining the facts  
9 diligently and conscientiously because, ordinarily,  
10 there is no way to correct an erroneous  
11 determination of facts made by a trial jury.

12           On the other hand, and with equal  
13 emphasis, the same law that makes you the judges of  
14 the facts makes me the judge of the law.

15           The law as given by the Court is the  
16 only law you can consider. You must accept and  
17 follow it even though you may disagree with it. I  
18 cannot disagree with you about the facts, and you  
19 cannot disagree with the Court about what the law  
20 is or what the law should be.

21           Your responsibility, ladies and  
22 gentlemen, is to take the law as I instruct it,  
23 apply it to the facts as you find them from the  
24 testimony of the witnesses and the other evidence  
25 that will be introduced during the course of this

*COURT'S OPENING REMARKS*

1 trial.

2 After doing that, you will render your  
3 verdict in this case, a verdict under the solemn  
4 oath that you have taken as jurors.

5 Until I advise you to begin your  
6 deliberations, you must not discuss this case with  
7 anyone. That includes your fellow jurors, your  
8 friends, your family members, and anyone else  
9 involved in the case. After it is submitted to  
10 you, you must discuss it only in the jury room with  
11 your fellow jurors.

12 The attorneys and the parties have been  
13 advised that they should not speak with you. So if  
14 you should run into them incidentally in the  
15 hallway or out in the parking area, or even on the  
16 elevator or otherwise, and they don't speak with  
17 you, please don't think they're being ugly or  
18 untoward. They're simply following the Court's  
19 instructions. Again, we would not want an innocent  
20 conversation to be observed and misinterpreted.

21 During the trial you are not to read,  
22 listen to, or watch any news reports about this  
23 case. That includes anything that may be in the  
24 newspaper, radio, Internet, or television. And,  
25 also, you are not to do any independent research of

*COURT'S OPENING REMARKS*

1 any type on the Internet regarding any issue or  
2 matter involved in this case.

3           You must not consider anything that you  
4 may have read or heard about this case outside the  
5 courtroom, whether before or during the course of  
6 the trial. It is essential that you maintain an  
7 open mind and not decide any issue in this case  
8 until all of the evidence has been presented, the  
9 parties have made their closing arguments, and I  
10 have instructed you on the law.

11           It is your solemn responsibility to  
12 determine whether the State has met their burden of  
13 proof, and your verdict must be based solely on the  
14 evidence as it is presented to you in this trial  
15 and on the law as I will instruct you during and at  
16 the close of the trial.

17           In just a moment the Solicitor will  
18 make what is called an opening statement in which  
19 he will explain to you what he believes the issues  
20 to be in this case. In other words, he will argue  
21 to you what he believes the evidence will show.

22           The attorney for the defendant may also  
23 make an opening statement, although she is not  
24 required to do so.

25           Keep in mind, ladies and gentlemen,

*COURT'S OPENING REMARKS*

1     that what the attorneys say during opening  
2     statements is not evidence. It is only their  
3     contention as to what they believe the evidence  
4     will show.

5                 The evidence in this case will be  
6     presented to you by the testimony of sworn  
7     witnesses from the witness stand and/or by exhibits  
8     that may be introduced into evidence.

9                 From time to time, you will hear the  
10    attorneys say, Your Honor, I object. Just as in  
11    sports, business, or any other structured activity,  
12    there are certain rules that the attorneys must  
13    obey in the presentation of evidence. These rules  
14    have a definite purpose. They ensure that you  
15    receive the most trustworthy and reliable evidence  
16    available.

17                An objection is the procedure that an  
18    attorney uses to call a possible violation of these  
19    rules to my attention as the judge of the court;  
20    and for this reason you should never hold an  
21    attorney's objection against them, nor should you  
22    conclude from the Court overruling or sustaining an  
23    objection that I favor one side or the other. In  
24    fact, you should expect objections. They are a  
25    healthy part of our process.

## COURT'S OPENING REMARKS

1           Also during the trial you may hear the  
2 attorneys say, Your Honor, we have a matter of law  
3 to discuss, or they may ask to approach the bench,  
4 or I may ask them to approach the bench, or it  
5 might even be necessary that we exclude you from  
6 the courtroom for a short while while we discuss  
7 matters of law.

8           The reason we do this is because you  
9 are the finders of the facts, and sometimes when I  
10 am discussing matters of law it might be necessary  
11 for me to make some comment about the facts in  
12 connection with a ruling; and for this reason we  
13 exclude you from the courtroom so that in no way  
14 will you be influenced by anything that the Court  
15 may say or do in connection with the facts of this  
16 case.

17           In determining the facts in this case,  
18 ladies and gentlemen, you must decide whether or  
19 not the testimony of a witness or witnesses is  
20 believable. It is my responsibility to rule as a  
21 matter of law as to whether certain testimony is  
22 admissible at all or not. But once it is admitted,  
23 whether or not you believe it is solely a matter  
24 for you to determine.

25           In deciding whether to believe a



*COURT'S OPENING REMARKS*

1 witness you have the right to consider the interest  
2 of any witness or bias of any witness, the  
3 prejudice of any witness, the opportunity for the  
4 witness to have seen the matters and things about  
5 which the witness may testify, and the way that the  
6 witness acts on the witness stand, what we commonly  
7 refer to as their demeanor.

8           You have a right to consider anything  
9 that is in the record that will help you evaluate  
10 the testimony of the witnesses. That means that it  
11 is your duty to pay close attention to the  
12 witnesses, to observe them, to listen to them, and  
13 to pay close attention to the attorneys and to the  
14 Court.

15           Although I know it is very difficult  
16 sometimes, do not allow your thoughts to wander,  
17 but give strict attention to the testimony so that  
18 at the end of the testimony, after the arguments of  
19 counsel, and the charge on the law you will then be  
20 in a position to determine the facts, apply the law  
21 to those facts, and thus render a verdict in this  
22 case.

23           During the course of this trial you  
24 will be given the opportunity to take notes. Note  
25 taking is a privilege that you may choose to

## COURT'S OPENING REMARKS

1 exercise or not to exercise. Not everyone finds  
2 note taking helpful to them. If you should decide  
3 to take notes, please don't try to record  
4 everything that is said; it's physically  
5 impossible.

6 Even a moderate speaker speaks at over  
7 200 words a minute. And the only reason the court  
8 reporter can take it down is because she's trained  
9 in a very specialized and complex form of  
10 shorthand, aided with a complex set of software and  
11 computers to assist her. But even with that, she  
12 does not produce a transcript until she has  
13 listened to her backup tape to make sure that she  
14 has taken down everything accurately.

15 So, please don't try to record  
16 everything that is said and do not allow note  
17 taking to become a distraction to you. Again, as  
18 I've emphasized, it is important that you rely on  
19 your powers of observation in observing the  
20 witnesses.

21 You may want to keep an outline of the  
22 main points that are being made and the main  
23 arguments so that when you retire to deliberate you  
24 can allow your notes to refresh your memory.

25 During breaks and recesses your notes

*COURT'S OPENING REMARKS*

1 will be left in your seats. And we do that to make  
2 sure there's no premature temptation to deliberate  
3 regarding any fact or matter in the case.

4           Also, I will remind you that your notes  
5 are for your individual and your specific purpose.  
6 They are to be used to refresh your own memory, and  
7 they're not to be shared with anyone else. In  
8 addition, you are reminded that your notes should  
9 not be considered any more reliable than a fellow  
10 juror's memory. That person's memory should be  
11 considered just as reliable as notes that may have  
12 been taken by a fellow juror.

13           Madam Forelady, it will be your  
14 responsibility to fill out the verdict form, but I  
15 will give you further instructions regarding that  
16 at the conclusion of the case.

17           Ladies and gentlemen, the foreperson  
18 serves in a purely administrative function. We  
19 need someone to fill out the verdict form. I wish  
20 there were more scientific methods to select a  
21 foreperson, but there's not. It's completely  
22 random.

23           We just make sure that a cross section  
24 of the community is represented in that capacity;  
25 however, I emphasize that that person does not have

## OPENING STATEMENT BY MR. MYERS

1 a greater vote or voice than any other juror. It  
2 is purely administrative.

3 In order to preserve everyone's rights,  
4 I'm going to give counsel the opportunity to take  
5 exception to anything that the Court has said by  
6 way of opening instructions. Any exceptions from  
7 the State?

8 MR. DUQUETTE: None, Your Honor.

9 THE COURT: From the defense?

10 MS. TOLLEY: None, Your Honor.

11 THE COURT: Okay. Ladies and  
12 gentlemen, please give counsel your undivided  
13 attention. You may proceed.

14 MR. MYERS: Thank you, Your Honor.

15 THE COURT: You're welcome.

16 MR. MYERS: May it please the Court --

17 THE COURT: Yes, sir.

18 MR. MYERS: -- defense counsel. My  
19 name is Alex Myers. I'm an Assistant Solicitor  
20 with the Ninth Judicial Circuit. I am here to  
21 assist Mr. Duquette in the prosecution of  
22 Mr. Evodio Hernandez-Santo.

23 I'm going to give you a little bit of a  
24 summary of what we're going to be dealing with in  
25 this trial.

*OPENING STATEMENT BY MR. MYERS*

1                   To begin with, the facts: On  
2   October 6th of 2017, the defendant drove past the  
3   El Alamo nightclub located in the Hanahan area of  
4   Berkeley County. He fired shots from a handgun  
5   through the window and immediately left the area.  
6   All of these events were captured on video  
7   surveillance.

8                   Shortly thereafter, employees arrived  
9   for work. This happened at about 10:30 p.m. that  
10   night. They arrived for work because it's a  
11   nightclub, and they discovered the damage to the  
12   building. Shortly after that, the employees  
13   reviewed the video surveillance and then identified  
14   the defendant's vehicle and subsequently contacted  
15   law enforcement.

16                  Now, the evidence will consist of -- it  
17   may consist of the testimony of several witnesses,  
18   maybe some photographs, maybe a video.

19                  Now, Mr. Hernandez is charged with two  
20   crimes. He's charged with discharging a firearm at  
21   or into a building or structure. He is also  
22   charged with the unlawful carrying of a handgun.

23                  The State has the burden to prove that  
24   the defendant committed these crimes. In order to  
25   convict Mr. Hernandez of discharging a firearm at

## OPENING STATEMENT BY MR. MYERS

1 or into a building or structure, we must prove that  
2 he either discharged or caused to be discharged a  
3 firearm into or at a building or structure that is  
4 regularly occupied by persons.

5 For unlawful carrying of a handgun we  
6 only need to prove that he carried about his person  
7 a handgun. Carried about his person sounds a  
8 little odd, it's not normal language. All that  
9 means in South Carolina for the purposes of this  
10 statute is that the weapon be readily accessible or  
11 convenient for immediate use.

12 It does not mean -- it does not mean  
13 that it needed to be touching the defendant. It  
14 just means it needs to be readily accessible.

15 Now, when we -- when the State has to  
16 prove these things, we have to prove it beyond a  
17 reasonable doubt. You're going to hear that a lot  
18 in your instructions. What that does not mean,  
19 that does not mean that you must be absolutely  
20 certain that these things occurred. That's not  
21 required.

22 You need only be firmly convinced,  
23 firmly convinced, that he carried about his person  
24 a handgun, that he discharged or caused to be  
25 discharged a firearm into or at a building or a

## OPENING STATEMENT BY MR. GOODWYN

1 structure that is regularly occupied by persons.

2 It's very important that you pay close  
3 attention to the testimony and also watch the  
4 evidence if that -- if you're exposed to that. And  
5 we ask that once you've reviewed the evidence, that  
6 you find the defendant guilty.

7 THE COURT: Mr. Goodwyn, you may  
8 proceed.

9 MR. GOODWYN: Thank you, Your Honor.

10 THE COURT: You're welcome.

11 MR. GOODWYN: May it please the Court?

12 THE COURT: Yes, sir.

13 MR. GOODWYN: Ladies and gentlemen of  
14 the jury, my name is Patrick Goodwyn. We briefly  
15 met a while ago. I'm here with my co-counsel, Juan  
16 Tolley, and we are proud to represent Mr. Evodio  
17 Hernandez-Santo.

18 I'll be brief because I know it's  
19 getting about that time where everybody is ready to  
20 go home.

21 But I want to convince upon you and,  
22 really, let you feel this in your belly, how  
23 important your job is. How important and how rare  
24 it is in this world to have the ability to sit in  
25 judgment of somebody else where they have -- the

*OPENING STATEMENT BY MR. GOODWYN*

1 State has to prove to you beyond a reasonable doubt  
2 the defendant actually committed the crime he's  
3 been charged with.

4 I'm going to boil it down for you into  
5 one phrase that I need each and every single one of  
6 you to ask yourself, show me the evidence. Show me  
7 the evidence. And I'll tell you the evidence will  
8 show they don't have a gun, they don't have a  
9 bullet, they don't have gun residue.

10 Now, let me tell you about gun residue  
11 real quick. In the investigation of a crime where  
12 a weapon is used, police officers usually test for  
13 gun residue. The evidence will show that the  
14 officers had plenty of opportunity to test the gun  
15 for residue and they didn't do it. They didn't do  
16 it. Show me the evidence.

17 The evidence will also show that the  
18 police were not called for four days. Four days.  
19 Show me the evidence. They don't have an  
20 eyewitness. They don't. All they have is a  
21 Hummer, what looks like a Hummer, and they're going  
22 to say that Mr. Hernandez-Santo -- that's his  
23 Hummer. That's all they have. They don't have an  
24 eyewitness. Show me the evidence.

25 Ladies and gentlemen of the jury, I



*BENJAMIN REYNA - DIRECT EXAM BY MR. MYERS*

1 expect this to go into tomorrow, and my co-counsel,  
2 Juan Tolley, will ask you -- will give the closing  
3 argument and ask you to find Mr. Hernandez-Santo  
4 not guilty. Keep in mind, show me the evidence,  
5 and I'm confident that they won't have it. Thank  
6 you.

7 THE COURT: Call your first witness.

8 MR. DUQUETTE: The State calls Benjamin  
9 Reyna.

10 BENJAMIN REYNA,

11 being first duly sworn, testified as follows:

12 THE CLERK: Please be seated. State  
13 your full name for the record and spell your last  
14 name, please.

15 THE WITNESS: My name is Benjamin  
16 Reyna, R-E-Y-N-A.

17 THE COURT: You may proceed.

18 MR. MYERS: Thank you, Your Honor.

19 THE COURT: You're welcome.

20 DIRECT EXAMINATION

21 BY MR. MYERS:

22 Q. How you doing, Mr. Reyna?

23 A. Just fine.

24 Q. Mr. Reyna, please tell us what you do  
25 for a living.

## BENJAMIN REYNA - DIRECT EXAM BY MR. MYERS

1           A.    I'm a manager of a club in Columbia,  
2   South Carolina.  I'm the manager in a club in  
3   Columbia called El Caliente.  It's a nightclub.

4           Q.    A nightclub?

5           A.    Uh-huh.  Yes.

6           Q.    How long have you been doing that,  
7   managing nightclubs?

8           A.    About 10, 12 years.

9           Q.    Okay.  Are you currently on federal  
10   probation?

11          A.    Yes, sir.

12          Q.    And what are you on federal probation  
13   for?

14          A.    I was charged for aiding and abetting  
15   illegal aliens.

16          Q.    Are you familiar with the El Alamo?

17          A.    Yes, sir.

18          Q.    Okay.  How are you familiar with the El  
19   Alamo?

20          A.    Well, I used to own the El Alamo three  
21   or four years ago.  Now, whenever they need  
22   something -- Arelis Santos is the manager.  And  
23   whenever she needs something, she calls me to  
24   provide her with things like this.

25          Q.    So when you say you used to run the

*BENJAMIN REYNA - DIRECT EXAM BY MR. MYERS*

1 Alamo, tell me what that means.

2 A. I used to be the manager back in about  
3 three or four years ago, and I used to be the owner  
4 too.

5 Q. And what does that mean to be the  
6 manager of the El Alamo? What do you do as the  
7 manager?

8 A. We just open, we run, we made sure  
9 that, you know, we run the business.

10 Q. Okay. Now, where is the El Alamo  
11 located?

12 A. 5901 --

13 COURT REPORTER: Say again. Say again.

14 THE WITNESS: 5901 Loftis, L-O-F-T-I-S,  
15 Hanahan, South Carolina, 29410.

16 COURT REPORTER: Thank you.

17 BY MR. MYERS:

18 Q. Is that in Berkeley County?

19 A. Yes, sir.

20 Q. What was your relationship to the El  
21 Alamo on the night of October 6th, 2017?

22 A. I'm pretty much just some calls  
23 whenever they need advice for something or whenever  
24 -- and I do most of the heavy work. You know, the  
25 handyman in the daytime because I usually -- I'm

BENJAMIN REYNA - DIRECT EXAM BY MR. MYERS

1 not working at the El Alamo by court order.

2 Q. So when you say you're on call -- and  
3 you said it was for handy work and advice?

4 A. Advice, whenever like, you know, they  
5 need to know something. Like in this case, there  
6 was something going on. So they just called me to  
7 see what can they do or what -- what they were  
8 supposed to do, or what can -- just wait and see  
9 what's going on.

10 Q. Very well. Tell me what a typical day  
11 is for El Alamo nightclub.

12 A. Well, we open -- they go in around  
13 12:00 to get prepared to get ready to open.

14 Q. I'm sorry to interrupt you. Did you  
15 say 12:00? Do you mean 12 in the afternoon, or --

16 A. No, 12 in the evening, at night.

17 Q. 12:00 in the evening. Okay. I'm  
18 sorry, continue.

19 A. And then we open around -- they open  
20 around 1:00 o'clock in the morning, and we stay  
21 late until 5 or 6. It depends on the crowd.

22 Q. Now, is that every night?

23 A. No. Wednesday, Friday, Saturday, and  
24 Sunday.

25 Q. Sunday. Okay. Does the El Alamo have

*BENJAMIN REYNA - DIRECT EXAM BY MR. MYERS*

1 a video security system?

2 A. Yes, sir.

3 Q. Tell me about it. What areas does the  
4 video security system cover?

5 A. We cover all our parking lot. We cover  
6 the -- we cover our parking lot, we cover the  
7 street, and we cover the back of the building.

8 Q. Okay. So you say it would cover the  
9 immediate area outside?

10 A. Outside of the building, exactly.

11 Q. Okay. Was the video surveillance  
12 system working on the night of October 6th, 2017?

13 A. Yes, sir.

14 Q. Okay.

15 MR. MYERS: Your Honor, may I approach  
16 the witness?

17 THE COURT: You may.

18 BY MR. MYERS:

19 Q. Mr. Reyna, I am handing you an  
20 item marked for the purpose of identification as  
21 State's Exhibit 2.

22 (STATE EXH. 2, CD, was marked for  
23 identification.)

24 BY MR. MYERS:

25 Q. Do you recognize that item?

## BENJAMIN REYNA - DIRECT EXAM BY MR. MYERS

1 A. Yes, sir.

2 Q. What is that?

3 A. This is a CD which contains a video  
4 that I saw, and I have initialed my initials and I  
5 dated it.

6 Q. Okay. So how do you know that's the  
7 video?

8 A. Well, I initialed it and I dated it.

9 Q. Okay. When did you initial it?

10 A. It was 1/11/19, which is I believe last  
11 Friday.

12 Q. So you've -- you know that you have  
13 viewed that video?

14 A. Yes.

15 Q. And because you have your initials on  
16 it?

17 A. Yes.

18 Q. Okay. Is the video in substantially  
19 the same condition in appearance now as it was when  
20 you first watched it?

21 A. To me it looks the same.

22 Q. Okay. Tell me about -- tell me exactly  
23 what's on that disk, the video contents.

24 A. On the video it shows what -- we're  
25 looking at the car, the SUV, Hummer as you --

*BENJAMIN REYNA - DIRECT EXAM BY MR. MYERS*

1           Q.     Well, I'm sorry. Tell me about where  
2 those cameras are showing on that video.

3           A.     This camera -- well, one of the cameras  
4 show when it's coming -- coming from Yeamans Hall  
5 to Loftis, and another one show where he was  
6 parking -- the car was parking across the street in  
7 a gas station, and then leaving the gas station  
8 toward Yeamans Hall toward Remount Road.

9                     And then I saw him, he was the only one  
10 just over this crossing, to where he left the lot.

11                    MR. MYERS: Your Honor, we offer the  
12 disk marked as State's Exhibit 2 for admission into  
13 evidence.

14                    THE COURT: Any objection?

15                    MS. TOLLEY: We would just renew the  
16 objections we made previously.

17                    THE COURT: Please, approach.

18                             (Bench conference.)

19                    THE COURT: There weren't any  
20 objections made about this video.

21                    MS. TOLLEY: I think -- I don't know we  
22 said anything about this video, but our reference  
23 was to all of the videos in that we --

24                    THE COURT: You need to make a specific  
25 objection about this video. I haven't heard

## BENJAMIN REYNA - DIRECT EXAM BY MR. MYERS

1 anything about this. So if you have one, I need  
2 you to make it.

3 MS. TOLLEY: I guess part of our  
4 objection is -- well, tell me what part of it  
5 you're going to play because it's longer than just  
6 a couple of seconds of a video.

7 MR. DUQUETTE: It's the part of the  
8 video where the car --

9 THE COURT: You need to tell her  
10 specifically what portion you're seeking to  
11 introduce so she can tell me if she objects or not.

12 MR. DUQUETTE: The portion of the video  
13 where the Hummer drives by the business and the  
14 window shatters.

15 MR. TOLLEY: Okay. I mean, we  
16 obviously object to it, but --

17 THE COURT: I need a basis for you to  
18 object to it.

19 MR. GOODWYN: Authentication, Your  
20 Honor.

21 THE COURT: Videos are  
22 self-authenticating. He's already established that  
23 he's the manager of the business and it's been kept  
24 in the ordinary course and it's like it was when --

25 MS. TOLLEY: He said he was not the



*BENJAMIN REYNA - DIRECT EXAM BY MR. MYERS*

1 manager.

2 MR. GOODWYN: He said he's not the  
3 manager anymore. He said he was a couple of years  
4 ago.

5 THE COURT: But he also said he does  
6 the maintenance on the premises, including this.

7 Do you have some indication it's been  
8 hypothecated in some way and it's not what it  
9 purports to be?

10 MS. TOLLEY: I don't. I don't. The  
11 question is, where was the video between then and  
12 now?

13 THE COURT: Where was the video between  
14 then and now? Who's had it? Who got it because,  
15 he obviously didn't get it?

16 MR. DUQUETTE: He provided it to  
17 Detective Reyes.

18 THE COURT: But you didn't ask him  
19 that. You didn't say what day he did it. You  
20 didn't -- there's need to be some more specificity  
21 to establish the foundation. Under the rules  
22 videos are self authenticating, but you do have to  
23 prove the chain. Where's it been? Where it came  
24 from.

25 (End of bench conference.)

*BENJAMIN REYNA - DIRECT EXAM BY MR. MYERS*

1 THE COURT: Foundation. You may  
2 proceed.

3 BY MR. MYERS:

4 Q. Mr. Reyna, how did I get that video?

5 A. Well, I give it to Officer Reyes --

6 MR. GOODWYN: Objection, Your Honor.

7 THE COURT: Basis?

8 MR. GOODWYN: Speculation. He doesn't  
9 know how he got the video.

10 THE COURT: You need to rephrase the  
11 question.

12 BY MR. MYERS:

13 Q. Where did you get that video? Well,  
14 who did you -- when you watched that -- after you  
15 watched that video, what did you do with it?

16 A. Can you --

17 Q. I'm sorry. After you viewed that video  
18 the first time on October 6th, what did you do with  
19 the -- what did you do with it?

20 A. Well, after I viewed the video -- I was  
21 in Columbia. When I arrived in Columbia around  
22 6:00 in the morning, I went straight to the back  
23 and I watched the video. And then, I don't -- I  
24 don't call the police officers right away.

25 It wasn't until a few days because I

*BENJAMIN REYNA - DIRECT EXAM BY MR. MYERS*

1     decided to contact Mr. Santo to give him the  
2     benefit of the doubt, and to -- I asked him to --  
3     if he want to pay the damage. And he just tell me  
4     to -- because I got the video and I saw the video.  
5     And he say, you do whatever you want.

6                     MS. TOLLEY:  Objection.

7                     THE COURT:  Basis?

8                     MS. TOLLEY:  Hearsay.

9                     THE COURT:  An admission against  
10    interest; overruled.

11   BY MR. MYERS:

12                    Q.   Continue, Mr. Reyna.

13                    A.   Yes.  I -- and then I saw the video.  
14   In fact, I saw three -- there were three cameras  
15   there was actually watching it.  So that's when I  
16   decide -- after I saw the video and I called him  
17   and contacted him, I decides to call Mr. Reyes.  I  
18   got his phone number.

19                    Q.   Uh-huh?

20                    A.   So I called Officer Reyes.  I showed  
21   him the video, and then he -- in fact, I think he  
22   gave me a USB to get the video from my recorder,  
23   and I couldn't do it.  So he bring somebody, a  
24   technician from Hanahan.

25                    Q.   Okay.  So after you contacted him, what

## BENJAMIN REYNA - DIRECT EXAM BY MR. MYERS

1 did Mr. Reyes do?

2 A. He watched the video with me, and I was  
3 showing it to him, you know. And once -- we  
4 couldn't get the video on the USB, and he bring out  
5 his own technician to do it.

6 Q. Okay. Now, let's go back to what you  
7 were doing October 6th. You said that they sent  
8 you -- the police called you?

9 A. Well, Arelis, which is the manager of  
10 the place, she called me when she arrived to the  
11 Alamo and she saw the window was broke. And I just  
12 tell her, you know what? Just check the video.  
13 Once -- and when she checked the video she said,  
14 well, I see something on the video.

15 Let me -- and I said, take a video with  
16 your phone and send it to my What's Up. And that's  
17 why I watched -- that's when I first viewed the  
18 video. I was in Columbia, but she send it to me on  
19 What's Up.

20 I mean, you can actually get your  
21 telephone and take a video on there and --

22 Q. And then what happened after that  
23 night? After you received that call, then what did  
24 you do?

25 A. Well, after I received the call, then I

*BENJAMIN REYNA - DIRECT EXAM BY MR. MYERS*

1 continue to work, and then I drive back to -- from  
2 Columbia to Charleston when I finish over there in  
3 Columbia. And I arrived around 6:00 in the  
4 morning.

5 Q. At where?

6 A. At the El Alamo.

7 Q. Okay. So that's when you viewed --

8 A. Uh-huh, that's when I viewed it.

9 That's when I actually viewed the video on the --  
10 actually, when -- with the cameras and everything.

11 Q. Okay. And you said that you actually  
12 spoke with the defendant.

13 A. I want to -- I believe I spoke with  
14 him. I'm almost 100 percent sure that I spoke with  
15 him and -- because I have his number and we -- you  
16 know, we were talking. So I spoke so him and I  
17 asked him -- I checked my text. I believe I spoke  
18 to him.

19 Q. Okay. So you knew that this happened  
20 --

21 A. Yes.

22 Q. -- on October 6th, but you didn't  
23 contact the police until the 10th?

24 A. Yes. Because I believe -- since it's  
25 the weekend and we're busy on the weekend, and we

## BENJAMIN REYNA - DIRECT EXAM BY MR. MYERS

1 wanted to -- I know it was going to take time, and  
2 I had the video and everything. So I just  
3 contacted the officer Monday or Tuesday; I don't  
4 remember.

5 Q. Okay. All right. And so when you  
6 contacted the officer and he came out, he watched  
7 the video with you?

8 A. Uh-huh. Yes.

9 Q. Is that when the officer took the  
10 video?

11 A. No. We couldn't get it because we  
12 couldn't take the video from the video tape to the  
13 USB. He couldn't take it at that time. He had to  
14 bring his own technician to do it.

15 Q. Okay.

16 MR. MYERS: Your Honor, we renew our  
17 request to offer State's Exhibit A -- or State's  
18 Exhibit 2 for admission into evidence.

19 THE COURT: Any objection?

20 MS. TOLLEY: Can we approach?

21 THE COURT: Sure.

22 (Bench conference.)

23 MS. TOLLEY: He just testified that  
24 they couldn't open the video, that they couldn't  
25 look at the video at that time, so --

*BENJAMIN REYNA - DIRECT EXAM BY MR. MYERS*

1 THE COURT: Well, what it testified to  
2 is he couldn't transfer the video so they had a  
3 police technician come over and transfer it to a  
4 USB. He said he watched it when he came back from  
5 Columbia.

6 MS. TOLLEY: Right. The -- I guess our  
7 other issue was, is this some sort of -- it sounds  
8 to me like he's identifying my client as the  
9 person. And we just had a hearing that --

10 THE COURT: I don't know. What is he  
11 going to testify to?

12 MS. TOLLEY: Sounds like he just  
13 already said, I called Evodio Santo because I  
14 thought he was the one who did it.

15 THE COURT: We don't need anybody to  
16 annotate the video. If you plan to play it, just  
17 play it. We don't need anybody editorializing. It  
18 says what it says.

19 MS. TOLLEY: Okay.

20 MR. MYERS: Okay. Very well, Your  
21 Honor.

22 THE COURT: Do you have any exception  
23 to that?

24 MS. TOLLEY: No, ma'am.

25 (End of bench conference.)

## BENJAMIN REYNA - DIRECT EXAM BY MR. MYERS

1 THE COURT: You may proceed. Marked  
2 and admitted without objection.

3 (PLF. EXH 2 in evidence.)

4 MR. MYERS: The Court's indulgence,  
5 Your Honor.

6 THE COURT: Yes, sir.

7 MR. MYERS: At this time, the State  
8 requests to publish the video, Your Honor, to the  
9 jury.

10 THE COURT: You may proceed.

11 (Video played in open court.)

12 MR. MYERS: Your Honor, May we approach  
13 one more time?

14 THE COURT: Sure.

15 (Bench conference.)

16 MR. MYERS: I just want to be real  
17 clear. He can't make any comments about this  
18 video, correct?

19 THE COURT: What do you want to ask  
20 him?

21 MR. MYERS: Just that's where the  
22 window broke out.

23 THE COURT: You don't need to ask him  
24 that; it's self evident.

25 MR. MYERS: Very well. Can I ask him



*BENJAMIN REYNA - DIRECT EXAM BY MR. MYERS*

1     what he saw on the video that he relayed to the  
2     police? I can't ask him what he saw when the car  
3     drove by?

4                   MS. TOLLEY: He wasn't there, so he  
5     didn't see it.

6                   THE COURT: He wasn't there. You can  
7     ask the officer what he relayed to him, maybe. But  
8     it doesn't need to be annotated. It is what it is.

9                   (End of bench conference.)

10                  THE COURT: You may proceed.

11     BY MR. MYERS:

12                  Q.     So that's the video you observed,  
13     correct?

14                  A.     Yes, sir.

15                  Q.     And you stated that you subsequently  
16     contacted police?

17                  A.     Yes, sir. Well, I contacted Officer  
18     Reyes -- Detective Reyes.

19                  Q.     Okay. What made you call Detective  
20     Reyes about that video?

21                  A.     When?

22                  Q.     What made you call --

23                  A.     Oh, what made me call. Since he wasn't  
24     responding, I decided to call Detective Reyes.

25                  Q.     Right. But I -- from what I saw it was

## BENJAMIN REYNA - CROSS EXAM BY MR. GOODWYN

1 -- why would you call him about that video?

2 A. Because somebody -- there was some  
3 vandalism against the building.

4 Q. Okay.

5 A. And I -- they have -- they had broke  
6 some glasses before, and I approached the people  
7 before that. And they did not respond to it so I  
8 call the police.

9 Q. Very well. Thank you, Mr. Reyna.

10 MR. MYERS: No further questions, Your  
11 Honor.

12 THE COURT: Any questions for the  
13 witness?

14 MR. GOODWYN: Yes, Your Honor, briefly.

15 THE COURT: You may proceed.

16 CROSS-EXAMINATION

17 BY MR. GOODWYN:

18 Q. Good afternoon, Mr. Reyna.

19 A. Good afternoon.

20 Q. You testified earlier that currently  
21 you manage a nightclub in Columbia?

22 A. Yes.

23 Q. Before that, you managed the El Alamo  
24 for how long?

25 A. Let's say one whole -- more than a

*BENJAMIN REYNA - CROSS EXAM BY MR. GOODWYN*

1 year.

2 Q. Okay. So this is a small business,  
3 right?

4 A. Yes, very small.

5 Q. And a small business -- this is your  
6 livelihood managing these businesses?

7 A. Yes.

8 Q. And it's kind of your pride?

9 A. Well, I mean, this is America; you live  
10 your dream.

11 Q. Absolutely.

12 A. And you are trying to make the best you  
13 can.

14 Q. Absolutely. And this is -- I mean,  
15 this is what you put your blood, sweat, and tears  
16 in?

17 A. Everything.

18 Q. The El Alamo, it's a late night bar, so  
19 --

20 A. Yes, after party.

21 Q. Right. You testified that it usually  
22 opens at about --

23 A. At 1:00 in the morning.

24 Q. Okay.

25 A. The late crowd.

## BENJAMIN REYNA - CROSS EXAM BY MR. GOODWYN

1 Q. On October the 6th of 2017, you  
2 testified that you were not at the El Alamo?

3 A. No; I was in Columbia.

4 Q. You were in Columbia managing your  
5 other nightclub?

6 A. Another nightclub, yes.

7 Q. And you found out about the shattered  
8 glass from another employee?

9 A. No, from the manager Arelis Santos  
10 which is part owner of the Alamo. She's the  
11 manager.

12 Q. She's your wife?

13 A. Live-in mates. I mean, we live  
14 together.

15 Q. Sure.

16 A. Uh-huh.

17 Q. And did you instruct -- you didn't  
18 instruct Ms. Santos -- Arelis to call the police at  
19 that time?

20 A. No. I just said, wait until I get  
21 there so I can check the video and I can do  
22 everything. Because she doesn't speak English and,  
23 in fact, if she was going to call the police, she  
24 was going to have to have somebody translate for  
25 her.

*BENJAMIN REYNA - CROSS EXAM BY MR. GOODWYN*

1           Q.    I understand.  So you told her to wait  
2   until you got there?

3           A.    Exactly.

4           Q.    To board up the window?

5           A.    Yes.

6           Q.    Okay.  So that you guys could open that  
7   night?

8           A.    Yes.

9           Q.    Okay.  But you -- and you were  
10   concerned about maybe this happening again?

11          A.    Yes.  I mean, that's always a concern,  
12   especially when somebody does something like that  
13   you never know what -- you know, if they want to  
14   come back or not.

15                I mean, well, we -- once we see  
16   something like this, I mean, we have somebody  
17   outside, one of the security guys, on the parking  
18   lot to keep an eye on --

19          Q.    But you didn't feel the need to come  
20   back that night.

21          A.    Yes.

22          Q.    And you waited four days before you  
23   called Detective Reyes?

24          A.    Well, usually on the weekends, let's  
25   say on Friday, Saturday, and Sunday we're busy.

## BENJAMIN REYNA - CROSS EXAM BY MR. GOODWYN

1 And since it's a late night, we go to sleep, what?

2 Six or 7:00 in the morning. I work in Columbia and

3 I drive over here.

4 So by the time I get to Charleston,  
5 it's seven or eight, so you sleep pretty much all  
6 day.

7 Q. Sure.

8 A. And, in fact, I was trying to remember  
9 if I called Officer Reyes on Monday, and then he  
10 couldn't make it to me until Tuesday.

11 Q. So you're saying you called him the day  
12 before. So the report -- you didn't actually file  
13 this report with Detective Reyes --

14 A. No.

15 Q. -- until October the 10th?

16 A. No.

17 Q. But you're testifying that you called  
18 him the day before?

19 A. I called him -- I don't exactly  
20 remember which day, but I called him, you know.  
21 But we couldn't meet until the next day I think.  
22 He was --- he's the one who called -- I called him  
23 and --

24 Q. Right.

25 A. -- he's the one that come right away.

*BENJAMIN REYNA - CROSS EXAM BY MR. GOODWYN*

1           Q.    The video that we just saw, the  
2   surveillance from the El Alamo --

3           A.    Uh-huh.

4           Q.    -- and that's facing back towards  
5   Yeamans Hall Road?

6           A.    That's facing toward Yeamans Hall Road,  
7   yes.

8           Q.    And all I saw was a -- that you could  
9   only see a vehicle?

10          A.    Yes.

11          Q.    You were not -- all you were able to  
12   see is the vehicle?

13          A.    Uh-huh. Yes, which I recognized.

14               MR. GOODWYN: Beg the Court's  
15   indulgence?

16               MS. TOLLEY: Your Honor, may we  
17   approach?

18               THE COURT: Sure.

19               (Bench conference.)

20               MS. TOLLEY: We want to ask him about  
21   his record, and I know you said that --

22               THE COURT: You've already asked him  
23   about it so it kind of waives that. You can't go  
24   into any details of it.

25               (End of bench conference.)

## BENJAMIN REYNA - CROSS EXAM BY MR. GOODWYN

1 BY MR. GOODWYN:

2 Q. Just a couple more things, Mr. Reyna.  
3 You testified that you're on federal probation?

4 A. Yes, sir.

5 Q. And that federal probation is for --

6 A. Aiding and abetting --

7 Q. -- the harboring of illegal aliens?

8 A. -- illegal aliens, yes, sir.

9 Q. And you're still on probation?

10 A. Yes, for three years. I go -- I  
11 actually -- well, I -- well, go ahead.

12 Q. Finish what you were saying.

13 A. No. Actually, what I was going to say,  
14 I'm being sentenced already for that, too. I mean,  
15 I'm supposed to report on February 1st. I don't  
16 know if they want to move the reporting date, so  
17 that's my reporting date. I want to be clear about  
18 it.

19 Q. Right. And this is not -- just let me  
20 back track just a little bit. This is not the only  
21 time where you've had to board up your windows?

22 A. Yes, it's not the first time. It's  
23 been a lot -- two or three, I don't remember how  
24 many occasions. But like I say, before, I --  
25 whenever something like this happens, we have the



*BENJAMIN REYNA - REDIRECT EXAM BY MR. MYERS*

1 video.

2 One day three little kids were playing  
3 with rocks, and they throw a rock and they broke  
4 it. And we approached the parents and they -- I  
5 mean, they paid for the glass and we let it go.

6 MR. GOODWYN: Nothing further, Your  
7 Honor. Thank you.

8 THE COURT: You're welcome. Any  
9 redirect?

10 REDIRECT EXAMINATION

11 BY MR. MYERS:

12 Q. You just testified that you saw a  
13 vehicle on that video, correct?

14 A. Yes, sir.

15 Q. But it wasn't -- you just said -- but  
16 it wasn't just any vehicle, was it?

17 A. I recognized the vehicle because I was  
18 used to see him in the car.

19 Q. So that isn't the first time you've  
20 seen that vehicle, is it?

21 A. No. Since -- since it's not like a van  
22 or like a truck or -- it's like a very particular  
23 car. I mean, it's not a, you know, a Ford F-150 or  
24 a Dodge Caravan; it's a Hummer.

25 Q. So you would agree that's not just a

## BENJAMIN REYNA - REDIRECT EXAM BY MR. MYERS

1 vehicle you saw?

2 A. That's why I recognized it. It was  
3 special for me. Now, on my video on the cameras  
4 that I have you can actually zoom it in so you can  
5 view the vehicle a lot easier. Stop it, pause it,  
6 zoom it in, and you can actually see the driver in  
7 the car.

8 Q. Very well.

9 MR. MYERS: The Court's indulgence?

10 THE COURT: Uh-huh.

11 MR. MYERS: No further questions, Your  
12 Honor.

13 THE COURT: Any objection to the  
14 witness being excused? From the State?

15 MR. MYERS: No, Your Honor.

16 THE COURT: From the defense?

17 MR. GOODWYN: No, Your Honor.

18 THE COURT: Sir, you're excused.

19 THE WITNESS: For the day or --

20 THE COURT: You're excused.

21 THE WITNESS: Thank you.

22 THE COURT: Thank you. Could Counsel  
23 approach for me, please?

24 (Bench conference; no reporter.)

25 THE COURT: Madam Forelady, ladies and

1 gentlemen, the next witness is going to be fairly  
2 lengthy so we're going to break for the day. We'll  
3 resume in the morning at 9:30. The bailiffs will  
4 instruct you how to enter the building. As soon as  
5 everyone arrives, we'll resume testimony.

6                   Please leave your notepads in your  
7 seats. And during the break, please do not watch,  
8 read, or listen to any media accounts about this  
9 case if there have been any, and don't do any  
10 independent research on the Internet.

11                   Please don't post anything about your  
12 jury service on any social networking sites. That  
13 includes Facebook, Twitter, Snap Chat, IG -- I  
14 forget, there's too many for me to remember. But  
15 as many as there are, there are probing eyes that  
16 read them and call us and let us know what you  
17 said.

18                   So I would not want an innocent comment  
19 about your jury service to be misinterpreted. So  
20 if you would not make any comments during your  
21 service, that would be helpful.

22                   I know it's been a long day for you  
23 all. This is our first week back in jury trials.  
24 We had nonjury court last week, and it's been a  
25 typical Monday. So please know we don't take your

1 time for granted and we appreciate how very  
2 generous you've been with us with your time and  
3 your patience.

4 I hope you all have a great evening,  
5 and we'll see you in the morning at 9:30. If you  
6 would leave your notepads in your seats, please.

7 (Jury out, 4:57 p.m.)

8 THE COURT: You may be seated.  
9 Anything we need to take up before we adjourn?  
10 From the State?

11 MR. DUQUETTE: Just to clarify, Your  
12 Honor, if you would like a redacted copy of what I  
13 intend to introduce?

14 THE COURT: Well, I think you're going  
15 to have to if you want to place it into evidence.  
16 And you need to provide Ms. Tolley with that so she  
17 can know -- you know, she has to be able to make an  
18 informed decision with her client, and she can only  
19 do that if she sees what it is -- she may not have  
20 an objection, but she can't sort of make a decision  
21 without knowing.

22 MR. DUQUETTE: And that statement is on  
23 the disk that --

24 THE COURT: But I think she needs to  
25 see it in its totality, how you intend to introduce

1 it, so that she can make an informed -- she can go  
2 through that with her client.

3 How long is it going to take you all to  
4 provide that to her?

5 MR. DUQUETTE: The actual disk with the  
6 segment of Spanish, they already have a copy --

7 THE COURT: No. I'm talking about the  
8 redacted version.

9 MR. DUQUETTE: What portion of the  
10 video?

11 THE COURT: I'm talking about the  
12 redacted version in its entirety that you would be  
13 seeking to introduce, how long is it going to take  
14 you to get that?

15 MR. DUQUETTE: We can probably get it  
16 by the end of evening, Your Honor.

17 MS. TOLLEY: By five?

18 THE COURT: What time are you -- she  
19 needs to know.

20 MR. DUQUETTE: Probably by 7:00 p.m.,  
21 Your Honor.

22 THE COURT: I assume you will not be at  
23 the courthouse at 7:00 p.m.

24 MS. TOLLEY: No, ma'am.

25 THE COURT: Yes. Just make sure she

1 gets it first thing in the morning. Sufficient for  
2 you to be able to look at it, Ms. Tolley.

3 MS. TOLLEY: It's 35 minutes or  
4 possibly --

5 THE COURT: Well, you know, I don't  
6 think you're going to re-watch the whole thing, are  
7 you? You're really looking to see what part of it  
8 is redacted.

9 MS. TOLLEY: All right.

10 THE COURT: So you've watched it  
11 before, I would assume, and watched it with your  
12 client.

13 MS. TOLLEY: I have. I mean, I guess  
14 that's part of our objection about all of these  
15 videos, especially -- they showed one of him  
16 driving by and the window shattering. I think they  
17 played it like twice. It wasn't like one time.

18 Did you play it twice? Or was it --

19 MR. DUQUETTE: I did.

20 MS. TOLLEY: They played it twice, so  
21 it wasn't like the actual video. They played it  
22 two times, that same scene.

23 THE COURT: Uh-huh.

24 MS. TOLLEY: Which is problematic.

25 It's not an accurate representation because they

1     played the same scene twice. They altered the  
2     video so that they played that same scene twice.

3                 THE COURT: Did you do that?

4                 MR. DUQUETTE: We restarted it so that  
5     -- I don't believe that the witness on the stand  
6     had observed the first run of it, so I wanted to  
7     make sure that he witnessed what we were publishing  
8     so that he could speak to it.

9                 THE COURT: But you all have that.

10                MS. TOLLEY: We have that, but they  
11     played it twice, like it happened twice. I mean,  
12     just the way the video was presented to the jury --

13                THE COURT: You know, I thought they  
14     played it twice. I mean, that's just a short clip.

15                MS. TOLLEY: Okay.

16                THE COURT: I mean it's hard to -- it's  
17     not rational to say it's the same thing twice  
18     because you feel like, what is that, in the matrix,  
19     like if you see the same thing twice, it's like an  
20     anomaly. But I thought they played it twice. It's  
21     a short clip of the video.

22                MS. TOLLEY: Okay.

23                MR. DUQUETTE: Your Honor, while on the  
24     topic, there are several clips that I may ask  
25     Detective Reyes to slow down, stop or replay to

1 point out different parts of the video that he's  
2 referencing in his testimony.

3 THE COURT: He's not going to be able  
4 to annotate the --

5 MR. DUQUETTE: Okay.

6 THE COURT: It is what it is. It's  
7 self authenticating, he wasn't there, he doesn't  
8 have any real personal knowledge of what happened.  
9 If he wants to say I watched the video and I got  
10 the information from this car I saw in the video,  
11 he can do that, but you're not going to stop and  
12 start the video and have him annotating as if he  
13 were there present and observed it because he  
14 didn't.

15 MR. DUQUETTE: But he is going to be  
16 able to speak to what he observed on the video?

17 THE COURT: He can speak as to what he  
18 did in his investigation and how he used the video  
19 to further that, but he's not going to be able to  
20 say this happened at this particular time because  
21 the video doesn't even have the right date on it,  
22 it has a June date on it, and nobody has really  
23 explained that either, but we all know -- but we  
24 all know from having dealt with this that nobody's  
25 surveillance cameras ever have the right date



1     because nobody ever changes the time. Nobody has  
2     really said this -- it's a car, it passes, the  
3     window shatters. If he wants to say I looked at  
4     this, as a result of looking at this, I did these  
5     particular things, but he's not going to be able to  
6     look at that video and say that's the defendant's  
7     car and this happened at this time. It is what it  
8     is. You don't get to annotate the video unless you  
9     were there. That's different. So it's second-hand  
10    information, he wasn't there. All right. Anything  
11    else we need to take up before we adjourn for the  
12    evening, from the State?

13                   MR. DUQUETTE: No, Your Honor.

14                   THE COURT: From the defense?

15                   MS. TOLLEY: No, Your Honor.

16                   THE COURT: Please make sure Ms. Tolley  
17    gets a copy of that video first thing in the  
18    morning so that she can go over it with her client  
19    and see if she has any objections. Have a good  
20    night. Get some rest. We've had a long day.

21                   (These proceedings were recessed at  
22    5:03 p.m., to be continued 1/15/2019 at 9:30  
23    a.m.)

24

25

1                   (The following proceedings were had  
2   1/15/2019, Berkeley County General Sessions, State  
3   v. Hernandez-Santo, 10:16 a.m.)

4                   THE COURT: I understand you-all have  
5   some technical issues? Did you work them out or --

6                   MR. MYERS: So, basically, where we're  
7   at, Your Honor, is we have the video redacted, and  
8   we have several versions of it, but she is unable  
9   to view it on her computer.

10                  I think -- are we good to go now?

11                  MR. DUQUETTE: Yes.

12                  THE COURT: Was she able to watch it?

13                  MR. DUQUETTE: Your Honor, yes. We  
14   gave them a copy initially on their device -- we  
15   reformatted it and they have a copy.

16                  THE COURT: So they're watching it  
17   right now?

18                  MR. DUQUETTE: Yes, Your Honor.

19                  THE COURT: Okay. Does Mr. Santo need  
20   to be in there with them while they're watching it?  
21   Or do they need -- where are they, I guess is a  
22   better question?

23                  MR. DUQUETTE: They're back here in --

24                  THE COURT: In their workroom?

25                  MR. DUQUETTE: Yes.

1                   THE COURT: Can we find Ms. Tolley and  
2 ask if her client needs to watch it with her?

3                   What I'm trying to determine is, do you  
4 all need Mr. Santo with you all?

5                   MR. GOODWYN: I would assume so, but  
6 this is Ms. Tolley's. I want to make sure --

7                   THE COURT: Can you go make sure for  
8 me?

9                   MR. GOODWYN: Sure.

10                  THE COURT: Thank you.

11                  (Brief pause.)

12                  MS. TOLLEY: There's one part that we  
13 have a question about, we still haven't had a  
14 chance to see it yet. He's told me what he's cut  
15 out, and I'm okay --

16                  THE COURT: Are you good with that, or  
17 do you feel like you need to watch it with your  
18 client before you -- because I'll give you the time  
19 to do that if you need to, at least to watch the  
20 object -- the part that's been redacted.

21                  MR. DUQUETTE: Your Honor, the State  
22 would request that the defense is allowed time to  
23 review the video now so that there's no issues  
24 later about any surprises or anything that they  
25 didn't know was in the video, which I assume

1 they've already watched it.

2 And that would also give Detective  
3 Reyes time to watch the redacted version as well,  
4 because the original he's already reviewed several  
5 times.

6 THE COURT: Let me ask a quick  
7 question. Do you have any other witnesses you  
8 could call before him? Because the jury is sitting  
9 and I don't -- I'm not a particular fan of that.

10 MR. DUQUETTE: Your Honor, I think we  
11 plan to call Detective Reyes, and that will be our  
12 last witness.

13 THE COURT: So Detective Reyes -- so  
14 you're not calling any of the records custodians or  
15 the owner of the Kwik Fill?

16 MR. DUQUETTE: I don't plan to call  
17 those at this time, Your Honor.

18 THE COURT: And you're not going to  
19 call Ms. Santo?

20 MR. DUQUETTE: Correct, Your Honor.

21 THE COURT: Okay. So that's going to  
22 be your last witness. And then -- so let me tell  
23 you how I'm going to handle this. Let's see here.

24 Did you all plan to call any of your  
25 witnesses?

1 MS. TOLLEY: I think if Mr. Reyes --  
2 Detective Reyes is their last witness, we may not  
3 call any witnesses. And I'll speak with my client  
4 about whether or not he wants to testify.

5 THE COURT: Okay.

6 MR. DUQUETTE: Your Honor, the State  
7 has a matter of law that we would like to address  
8 with the Court.

9 THE COURT: I'm listening.

10 MR. DUQUETTE: In reference to the  
11 encounter Detective Reyes had at the defendant's  
12 home, I just wanted to point the Court's direction  
13 to the Supreme Court case Beckwith versus the  
14 United States. I have a copy for Your Honor if  
15 you'd like it and for defense counsel.

16 THE COURT: I'm still going to take it  
17 up in camera and hear argument. I haven't made a  
18 decision about it.

19 MR. DUQUETTE: In that case, Your  
20 Honor, the Court found that the fact that the  
21 investigation had focused on the defendant was  
22 irrelevant as to whether he was entitled to Miranda  
23 warnings.

24 The only thing that mattered was  
25 whether the defendant was in custody, and since he

1    wasn't and he knew he wasn't, the agents did not  
2    need to give him warnings.  And that's Beckwith  
3    versus the United States, 425 United States 341.

4                   The State would again argue --

5                   THE COURT:  I'm not hearing any  
6    argument until I take up the testimony in camera,  
7    until I hear what the actual testimony is.

8                   MR. GOODWYN:  I'm sorry, Your Honor,  
9    did the Solicitor say Beckwith or Leckwith?

10                  THE COURT:  Beckwith.  So we're going  
11   to follow with the same procedure that I indicated  
12   on yesterday; which is, when they make a  
13   contemporaneous objection, then I'm going to rule  
14   on it.  I'm not ruling in advance.

15                  And when it deals with the -- because I  
16   haven't even ruled on the other part yet.  I took  
17   it under advisement.  So when we get to the portion  
18   of the testimony which deals with the statements  
19   that are not recorded, those statements purported  
20   to have been made by the defendant to the detective  
21   when he was taking pictures of the defendant's car,  
22   we'll hear that in camera.  I need to hear exactly  
23   what it is before I rule on it.

24                  MR. DUQUETTE:  Yes.

25                  THE COURT:  All right, you all.  So we

1     need to take a break then for Ms. Tolley and her  
2     client to watch the video?

3                 MR. DUQUETTE:  Yes, Your Honor.  The  
4     State would request approximately a 35-minute break  
5     to allow time so the defense counsel can watch --

6                 THE COURT:  Is that how long the video  
7     is?

8                 MR. DUQUETTE:  Yes, Your Honor.

9                 THE COURT:  Ms. Tolley?

10                MS. TOLLEY:  That should be sufficient  
11     for us, Judge.

12                THE COURT:  Okay.  Then we will be at  
13     ease until 10 of 11.  Wouldn't that be 35 minutes?

14                MS. TOLLEY:  Yes, ma'am.

15                THE COURT:  So 10:50.  And I'm going to  
16     let the jury walk around while that's going on,  
17     even though it's freezing outside.  I'm sure they  
18     don't want to be stuck in there.

19                (A recess transpired.)

20                THE COURT:  Okay.  Has the defendant  
21     had a full opportunity to review the video?

22                MS. TOLLEY:  Yes, ma'am.

23                THE COURT:  Any there any exceptions to  
24     the redacted portion of the video?

25                MS. TOLLEY:  There are some things that

1 are included in the redacted video --

2 THE COURT: I sorry, I can't hear you,  
3 Ms. Tolley.

4 MS. TOLLEY: There are some things that  
5 are included in the redacted video that we had some  
6 concerns about. There was mention of an incident  
7 involving La Bomba nightclub. There was an  
8 incident involving --

9 THE COURT: Well, we're sort of taking  
10 it out of order. I'm dealing with something very  
11 specific. They indicated that they were going to  
12 redact a portion of the video that is Spanish  
13 speaking. I need to know if there is any  
14 exceptions to that portion that was redacted.

15 MS. TOLLEY: No, ma'am.

16 THE COURT: Okay. Now, I'll hear any  
17 other objections you have about the video. So  
18 those are two separate things.

19 MS. TOLLEY: There were other things  
20 included in the video that we had concerns about,  
21 but I think, ultimately, what we decided is that  
22 we'd just like to play the entire video because it  
23 flows better, everything is put in context.

24 THE COURT: Including the  
25 Spanish-speaking portion?



1 MS. TOLLEY: Yes, ma'am.

2 THE COURT: Any exception from the  
3 State?

4 MR. DUQUETTE: None from the State,  
5 Your Honor.

6 THE COURT: Okay. And that's about  
7 45 minutes, correct?

8 MR. DUQUETTE: Yes, Your Honor.

9 THE COURT: Okay. So since there is no  
10 exception, I don't need the redacted video and I  
11 don't know need the original marked as a Court's  
12 Exhibit since you all have agreed to play the  
13 entirety of the video. So you can have that back.

14 I assume that's the original, and that  
15 would need to then be marked as the State's Exhibit  
16 whichever next in line it would be.

17 MS. TOLLEY: Judge, our only concern is  
18 that we would ask that the officer not be allowed  
19 to comment on these things that we have concerns  
20 about, just to let the video play.

21 THE COURT: But you mentioned that  
22 there was some incident at another club.

23 MS. TOLLEY: Right.

24 THE COURT: Are you now saying that you  
25 don't have any objection to that part of it being

1 played?

2 MS. TOLLEY: No, ma'am. It wasn't an  
3 incident at the club. I think he references the  
4 club when he's talking to Detective Reyes about  
5 bringing somebody from the club or knowing somebody  
6 from La Bomba.

7 MR. REYES: I went to pick up somebody  
8 from that club.

9 THE COURT: So you don't have an  
10 objection to that is what you're telling me?

11 MS. TOLLEY: We don't have any  
12 objection to it being played. We would object to  
13 the officer or anyone else commenting on it. We  
14 would also object to anyone commenting on an  
15 incident where he's talking about possibly being  
16 robbed outside, talking about possibly being  
17 robbed. And the -- there was a --

18 THE COURT: Okay. I'm confused now.  
19 You said you want the entire video played.

20 MS. TOLLEY: Yes, ma'am.

21 THE COURT: But you object to portions  
22 of the video being played?

23 MS. TOLLEY: No, ma'am, we don't have  
24 any objections to the video being played.

25 THE COURT: Okay.

1                   MS. TOLLEY: We just would like no  
2 comment on these parts because we do think they are  
3 problematic, but in the context of the entire video  
4 just being played, we think that would be better  
5 than breaking it up into pieces the way that it has  
6 been broken up.

7                   THE COURT: Basically, you're just  
8 asking that the officer not editorialize with the  
9 video.

10                  MS. TOLLEY: Right. And then, if he  
11 gets questioned about it, we would ask that he not  
12 -- that he not be questioned about the domestic  
13 incident that's referenced in there because it's --  
14 it's made to sound like maybe that was something  
15 where he got arrested or charged. And that is not  
16 something that would typically be admissible.

17                  There's also -- in reference to his  
18 being charged with unlawful use of 911, which we've  
19 talked about not being admissible --

20                  THE COURT: So I would assume since  
21 you're asking that the entire video be played that  
22 you're withdrawing any objection to that. You  
23 can't have it both ways. You got -- I can redact  
24 it or it's -- I mean, I need to know exactly what  
25 you're agreeing to.

1 MS. TOLLEY: We agree that it should be  
2 played, but no one should comment on those things.

3 THE COURT: Okay. I assume the State  
4 has no exception to that.

5 MR. DUQUETTE: Your Honor, in reference  
6 to the portion of the video that references his  
7 arrest at the nightclub, that speaks to the  
8 officer's investigation of the incident and the  
9 defendant's previous interactions at the nightclub.

10 THE COURT: He can talk about that  
11 without editorializing the video. The video speaks  
12 for itself.

13 MR. DUQUETTE: Yes, Your Honor.

14 MS. TOLLEY: Is he going to talk about  
15 -- the unlawful use of 911 is a criminal charge,  
16 and I believe that --

17 THE COURT: Maybe I misunderstood. I  
18 think -- I thought he was going to talk about -- I  
19 guess, I'm a little confused. Why does he need to  
20 make -- in what context would reference be made as  
21 to what you're talking about?

22 MR. DUQUETTE: Your Honor, the  
23 defendant was arrested for unlawful use of 911 at  
24 the El Alamo, which he's accused of shooting a  
25 window out of. The officer would speak as to the

1 context and what from that interview he used in his  
2 investigation as developing the defendant as a  
3 suspect.

4 THE COURT: Again, maybe I'm slow. Say  
5 that one more time.

6 MR. DUQUETTE: Your Honor, the  
7 defendant was charged for unlawful use of 911  
8 stemming from an incident at the very business that  
9 he is accused of shooting the window out of. The  
10 detective, during the interview with the defendant,  
11 spoke to him about the details of that arrest, and  
12 the detective used information from that  
13 conversation in furthering his investigation into  
14 the shooting out of the window of that business.

15 The State's position is that is  
16 absolutely relevant as to --

17 THE COURT: He can talk about that  
18 without -- he's not going to be able to annotate  
19 this video. It speaks for itself.

20 MR. DUQUETTE: Yes, Your Honor.

21 THE COURT: We don't need anybody  
22 interpreting what it says. I don't think there's  
23 ambiguity to the English language. He can talk  
24 about the extent of his investigation, but I'm not  
25 going to have the video being stopped and started

1 and him annotating.

2 MR. DUQUETTE: Absolutely, Your Honor.

3 THE COURT: And you can question him  
4 about the elements required for Miranda without  
5 making reference to the video because it -- like I  
6 said, it's going to speak for itself --

7 MR. DUQUETTE: Yes, Your Honor.

8 THE COURT: -- as to him giving him his  
9 Miranda warnings and whether he waived them, which  
10 brings us back to the other matter that I have  
11 under advisement.

12 I think the elements of Miranda were  
13 met and the statements that the defendant made  
14 pursuant to Miranda is admissible.

15 Now, the rest of it regarding any  
16 portions of the video, any arguments regarding  
17 portions of the video, you all have taken out of my  
18 hands because you all have agreed to playing the  
19 entire video. So that makes any remaining issues  
20 regarding that moot; however, videos are self  
21 authenticating. They're not to be annotated.

22 He doesn't get to interpret what  
23 somebody else's state of mind is. It's not  
24 appropriate under the rules. If he wants to talk  
25 about the scope of his investigation, he can do

1     that.  If he wants to talk about what led him up to  
2     investigating the defendant, he can do that, but he  
3     needs to be very careful about making reference to  
4     prior bad acts that's not the subject of the  
5     conviction.

6                 That requires him to have a separate  
7     hearing to determine if they can prove by clear and  
8     convincing evidence before they're even admissible.

9                 MR. DUQUETTE:  Yes, Your Honor.

10                THE COURT:  Does that satisfy the  
11     defense, Ms. Tolley?

12                MS. TOLLEY:  Yes, ma'am.

13                THE COURT:  All right.  Are we ready to  
14     proceed?  From the State?

15                MR. DUQUETTE:  Yes, Your Honor.

16                THE COURT:  From the defense?  Is the  
17     defense ready to proceed?

18                MS. TOLLEY:  Yes, ma'am.

19                THE COURT:  Okay.  Please bring in the  
20     jury.

21                What number does that need to be marked  
22     as?

23                COURT REPORTER:  State's Number 8.

24                MR. DUQUETTE:  Number 8.

25                THE COURT:  Okay.  I need the court

## FLOR REYES - DIRECT EXAM BY MR. DUQUETTE

1 reporter to have that so she can mark it, and it  
2 will be admitted subject to Ms. Tolley's Jackson v  
3 Denno objection which I ruled on.

4 (STATE EXH. 8 in evidence.)

5 (Jury in, 11:47 a.m.)

6 THE COURT: Ladies and gentlemen, we  
7 appreciate your patience. I hope you had a restful  
8 evening. We are now going to resume with the  
9 State's testimony. The defense may -- I mean, the  
10 State's testimony. The State may proceed.

11 MR. DUQUETTE: Thank you, Your Honor.

12 THE COURT: You're welcome.

13 MR. DUQUETTE: The State calls  
14 Detective Flor Reyes.

15 FLOR REYES,

16 being first duly sworn, testified as follows:

17 THE CLERK: Please have a seat. State  
18 your full name for the record and spell your last  
19 name, please.

20 THE WITNESS: Flor Reyes. Last name is  
21 R-E-Y-E-S.

22 THE COURT: You may proceed.

23 DIRECT EXAMINATION

24 BY MR. DUQUETTE:

25 Q. Good morning, Mr. Reyes. Could you



*FLOR REYES - DIRECT EXAM BY MR. DUQUETTE*

1 please share with the jury where you work?

2 A. I work at the Hanahan Police  
3 Department.

4 Q. What is your position at the Hanahan  
5 Police Department?

6 A. I'm a detective investigator.

7 Q. And how long have you been in that  
8 position?

9 A. Going on three years now.

10 Q. Can you please describe your  
11 educational and training background?

12 A. High school, graduated from high  
13 school, GED, graduated from South Carolina Criminal  
14 Justice Academy. College -- I had some college at  
15 Trident Tech in different trades.

16 Q. What are your primary duties and  
17 responsibilities as a detective with the Hanahan  
18 Police Department?

19 A. Investigate criminal cases, any kind,  
20 different types of different cases. I'm not just  
21 assigned to one type of a crime case, but, you  
22 know, we have a variety of them.

23 Q. Were you involved in the investigation  
24 of damage to the El Alamo which occurred on  
25 October 6, 2017?

## FLOR REYES - DIRECT EXAM BY MR. DUQUETTE

1 A. Yes, sir.

2 Q. And on what date did you get involved  
3 in that investigation?

4 A. I got involved in that investigation  
5 October 10th, 2017.

6 Q. And that's four days later?

7 A. Yes, sir.

8 Q. And were you dispatched to the scene,  
9 or were you called directly by the business?

10 A. Ben called me. Benjamin, he called me  
11 and told me what was going on because he was out of  
12 town at that time.

13 Q. And did you respond to the scene?

14 A. Yes, sir.

15 Q. And what's the address of that business  
16 that you responded to, the El Alamo?

17 A. It's 5901 Loftis Road in Hanahan.

18 Q. And that's in Berkeley County?

19 A. Yes, sir.

20 Q. Are you familiar with that location?

21 A. Yes, sir.

22 Q. What is the approximate distance from  
23 the police station where you work to the El Alamo?

24 A. Approximately, about a block.

25 Q. One block away?

*FLOR REYES - DIRECT EXAM BY MR. DUQUETTE*

1           A.    About that, yes, sir.

2           Q.    And on October 10th, 2017, when you  
3 responded, did you respond from the police station?

4           A.    Yes, sir.

5           Q.    And did you meet with employees of the  
6 business upon your arrival?

7           A.    Yes, sir.

8           Q.    Who did you meet with upon arrival?

9           A.    I met with Benjamin and Arelis.

10          Q.    Did they advise you of the damage to  
11 the window?

12          A.    Yes, sir.

13          Q.    What did they advise you had happened  
14 to the window?

15          A.    They told me, basically, that the  
16 window was shot out. They told me they had video  
17 footage of the vehicle involved and the shooting  
18 that took place when the window was shot out.

19          Q.    And what vehicle did they describe to  
20 you?

21          A.    It was a silver, grayish Hummer.

22          Q.    And you said they had video footage; is  
23 that right?

24          A.    Yes, sir.

25          Q.    And did they say that they had

*FLOR REYES - DIRECT EXAM BY MR. DUQUETTE*

1 recognized the vehicle from the surveillance video?

2 A. Yes, sir.

3 Q. Did they provide ownership information  
4 on who that vehicle would have belonged to?

5 A. Yes, sir. They believed it belonged  
6 to --

7 MS. TOLLEY: Objection.

8 THE COURT: Basis?

9 MS. TOLLEY: Our prior objections  
10 regarding identification.

11 THE COURT: Approach.

12 (Bench conference.)

13 THE COURT: It's not only an ID issue.  
14 It's a hearsay objection, and that needs to be  
15 sustained because they're entitled to cross examine  
16 any -- now, he can talk about hearsay in his  
17 investigation. The supreme court has been very  
18 clear that testimony of that type is subject to a  
19 hearsay objection. It's sustained.

20 (End of bench conference.)

21 THE COURT: He can say what he did as a  
22 result of a conversation.

23 MR. DUQUETTE: Thank you, Your Honor.

24 BY MR. DUQUETTE:

25 Q. As a result of your conversation with

*FLOR REYES - DIRECT EXAM BY MR. DUQUETTE*

1 Benjamin, what did you do with that information?

2 A. I -- as far as what he told me, the  
3 information he gave me?

4 Q. Correct.

5 A. I -- the first thing I did is try to  
6 get a copy of the video, of course; and with that  
7 information, I tried to confirm what he told me as  
8 far as the identity of the vehicle. That's what I  
9 was trying to do. So I got a copy of the video.

10 When I got a copy of the video, I went  
11 back and I studied the video to look at the car,  
12 but upon me looking at the video, I'd seen the car  
13 before myself. And as far as the vehicle I saw and  
14 the information I was -- that he told me, I was  
15 trying to confirm because -- I'm trying to figure  
16 out how to say this.

17 I was trying to confirm the vehicle --  
18 owner of the car, who the car belonged to because I  
19 had seen it before and the person that was, you  
20 know, driving that car.

21 MS. TOLLEY: Objection.

22 THE COURT: Basis?

23 MS. TOLLEY: Lack of personal  
24 knowledge, irrelevant.

25 THE COURT: It's a lack of foundation.

## FLOR REYES - DIRECT EXAM BY MR. DUQUETTE

1 Please rephrase the question and make sure you  
2 bring it within the ambit of his personal knowledge  
3 and the context.

4 BY MR. DUQUETTE:

5 Q. Detective, you said you've seen the car  
6 before?

7 A. Yes, sir.

8 Q. And do you know who the owner of that  
9 car was?

10 A. With the car? Yes, sir. From my  
11 knowledge, yes, sir, I've seen it with him.

12 Q. And who would that be?

13 A. Evodio Hernandez-Santo.

14 Q. And that's the defendant?

15 A. Yes, sir.

16 Q. And do you see him in the courtroom  
17 today?

18 A. Yes, sir.

19 Q. Where is he seated?

20 A. He's seated over there with the  
21 defense.

22 Q. Now, what day did Benjamin allege that  
23 this damage had happened to the business?

24 A. He alleged it occurred on October 6,  
25 2017.

*FLOR REYES - DIRECT EXAM BY MR. DUQUETTE*

1 Q. And did you note that the business did,  
2 in fact, have a security camera on it?

3 A. Yes, sir.

4 Q. And you said you reviewed that?

5 A. Yes, sir.

6 Q. And that you collected it?

7 A. Yes, sir.

8 Q. And what information did you gather  
9 from watching the video?

10 A. Well, I looked at the video. Of course  
11 the video doesn't show that it has a tag on it, of  
12 course, from the angle of the video. So in my  
13 investigation, what I usually do is just look for  
14 identifiers of the car, something that usually  
15 wouldn't, you know, be on every Hummer that'll help  
16 identify that's the car.

17 So that's where I headed my  
18 investigation, towards trying to confirm that if it  
19 was the defendant's car or not. So I took time to  
20 review the video in detail, that's what I did, and  
21 looked for specific things. And there were several  
22 things that I did notice about the vehicle.

23 Now, at that time when I reviewed the  
24 video, okay, I hadn't looked at -- actually go look  
25 at his car yet during that part of the

FLOR REYES - DIRECT EXAM BY MR. DUQUETTE

1 investigation. That was the beginning of the  
2 investigation. So I looked at the video and I  
3 looked at -- if there was any damage -- particular  
4 damage of the car that would stand out. That's the  
5 first thing I looked for.

6 I looked for anything in the interior  
7 of the car that would stick out that, you know,  
8 that if you would go buy a Hummer, you know, it  
9 wouldn't be just sitting there. And there were  
10 several things that I noticed about the video. He  
11 had -- it was a sticker on the far right, upper  
12 part of the windshield, a white, square sticker.

13 I noticed that the VIN -- you could see  
14 a white piece of paper covering the VIN. I also  
15 noticed that there was something hanging from the  
16 rear-view mirror, you could tell. I also noticed  
17 that in his car on the dashboard he had a bracket  
18 to -- you know, the older GPS that were round with  
19 the bracket, I saw that on the dashboard.

20 I mean, if the driver is sitting here,  
21 it's right here on the dashboard. (Indicating)  
22 There was some paperwork set a certain way on the  
23 dash -- also on the dash. That's what I saw in the  
24 video. Also, I noticed there was a holder. When I  
25 did some research, it was like an aftermarket



*FLOR REYES - DIRECT EXAM BY MR. DUQUETTE*

1 holder goes on top of the dash, and to the right of  
2 that was a piece of paper.

3 So here's the driver, the holder, the  
4 piece of paper. (Indicating) And when I looked at  
5 the video, it was a traffic ticket. I don't know  
6 what it was for, but there was a traffic ticket  
7 sitting there.

8 MS. TOLLEY: Objection.

9 THE COURT: Basis?

10 MS. TOLLEY: Irrelevant.

11 THE COURT: Please approach.

12 (Bench conference.)

13 THE COURT: Why is he making reference  
14 to a parking ticket? He has not established he can  
15 see that it has the defendant's name on. It's a  
16 prior bad act. That's a violation of ordinance of  
17 statute which is not the subject of a conviction.  
18 It's problematic.

19 MR. D: I understand, Your Honor.

20 THE COURT: So I'm going to strike the  
21 question and the answer.

22 (End of bench conference.)

23 THE COURT: The last question and  
24 answer are stricken from the record. Ladies and  
25 gentlemen, you are to give it absolutely no

## FLOR REYES - DIRECT EXAM BY MR. DUQUETTE

1 consideration in your deliberations.

2 Sustained; relevance, prior bad acts,  
3 and foundation.

4 BY MR. DUQUETTE:

5 Q. Detective, let me take you back to  
6 October 10th. You were on the scene at the El  
7 Alamo?

8 A. Yes, sir.

9 Q. Meeting with the business owners?

10 A. Yes, sir.

11 Q. Other than the footage that you  
12 collected from the scene, did you note anything  
13 else from the scene indicating a shooting had taken  
14 place?

15 A. Yes, sir. The bay window glass was  
16 shattered, and there was a bullet hole in the wall  
17 -- what appeared to be a bullet hole in the wall.

18 Q. And did you take pictures of the  
19 damage?

20 A. Yes, sir.

21 MR. DUQUETTE: Permission to approach,  
22 Your Honor?

23 THE COURT: You may.

24 BY MR. DUQUETTE:

25 Q. Detective Reyes, I'm handing you what's

*FLOR REYES - DIRECT EXAM BY MR. DUQUETTE*

1     been marked as State's Exhibit for ID Numbers 3, 4,  
2     5, and 6. Do you recognize those images?

3             A.     Yes, sir.

4             Q.     And what are those?

5             A.     This is a picture of the outside of the  
6     Alamo with the bay window that was shot out. It  
7     was covered up with a board. And then this picture  
8     is from the inside of the Alamo where the bay  
9     window was boarded up.

10            I went on the other side of the wall  
11     right there and I took a picture of what appeared  
12     to be a bullet hole and a picture of a bullet hole  
13     of a window that was beside the shattered window  
14     that appeared to be -- looked like a bullet hole.

15            And then another picture is a broad  
16     picture of the wall that looked over that and was  
17     on the inside.

18            Q.     And who took those photographs?

19            A.     I did.

20            Q.     And on what date did you take those  
21     photographs?

22            A.     It was the same day I went over there.

23            Q.     Are those a fair and accurate  
24     representation of the photographs that you took on  
25     October 10th, 2017?

*FLOR REYES - DIRECT EXAM BY MR. DUQUETTE*

1           A.     Yes, sir.

2           MR. DUQUETTE:   Your Honor, the State  
3     seeks to admit State's Exhibits 3 through 6 and  
4     publish to the jury at that time.

5           THE COURT:   Any objection?

6           MS. TOLLEY:   No, without objection.

7           THE COURT:   Marked and admitted.   That  
8     was 3 through 6, correct?

9           MR. DUQUETTE:   Yes, sir.

10          THE COURT:   Exhibits 3 through 6  
11     without objection.   And you may  
12     proceed.

13                         (STATE EXH. 3 in evidence.)

14                         (STATE EXH. 4 in evidence.)

15                         (STATE EXH. 5 in evidence.)

16                         (STATE EXH. 6 in evidence.)

17     BY MR. DUQUETTE:

18           Q.     Would you please tell us on the screen  
19     here what you see in this photo?

20           A.     That is what appears to be the bullet  
21     hole I'm talking about on the other side of the  
22     wall from the bay window.   The broken window is  
23     here, and somebody has tried to -- on the inside of  
24     --

25           Q.     And that was inside the business?

*FLOR REYES - DIRECT EXAM BY MR. DUQUETTE*

1           A.    Yes.  Yes.  There's a dance floor right  
2   beside it and people dance right beside this wall.

3           Q.    Exhibit 4, please.  And what is this a  
4   photo of?

5           A.    It's just a stand-back photo.  I stand  
6   back and took an overall photo of the wall.  
7   There's a bullet.

8           Q.    Exhibit 5, please.

9           A.    That is the bay window that was shot  
10   out right there.  That's the -- they covered it up.

11          Q.    Exhibit 6, please.

12          A.    That's the other bullet hole that's --  
13   I believe it's to the right side, that panel.  That  
14   glass is right beside the wood covering the window.

15          Q.    Looking at Exhibit 5, can you show us  
16   where that was located, that --

17          A.    I believe it was located in this area  
18   over here.

19          Q.    Okay.  Thank you.  Before leaving El  
20   Alamo on October 10th, had you gathered information  
21   on who you believed to be responsible for that  
22   damage?

23          A.    As far as who they believed it was, is  
24   that what you're saying?

25          Q.    Yes.

FLOR REYES - DIRECT EXAM BY MR. DUQUETTE

1 A. Yes, sir.

2 Q. Where did that name come from?

3 A. It came from Benjamin and Arelis.

4 Q. And what was that based on?

5 A. That's based on them seeing the  
6 vehicle.

7 MS. TOLLEY: Objection.

8 THE COURT: Basis?

9 MS. TOLLEY: Lack of personal  
10 knowledge.

11 THE COURT: Sustained.

12 BY MR. DUQUETTE:

13 Q. After leaving the scene on  
14 October 10th, did you gather any other video from  
15 the night in question?

16 A. On the 10th?

17 Q. After leaving on the 10th.

18 A. Okay. Yeah. There was another video  
19 we got, yes, sir.

20 Q. And where did you get that video from?

21 A. From the Kwik Fill gas station.

22 Q. And what's that location in relation to  
23 El Alamo?

24 A. It's right across from the Alamo,  
25 across from Loftis, Yeamans Hall Road in

*FLOR REYES - DIRECT EXAM BY MR. DUQUETTE*

1 Hanahan.

2 Q. Are you familiar with the area of the  
3 Kwik Fill as you are with the El Alamo?

4 A. Yes, sir.

5 Q. What is the approximate distance from  
6 the El Alamo to the Kwik Fill?

7 A. Oh, wow. Man, it's right across the  
8 street. It's right there. I don't know, maybe  
9 100, 200 feet maybe. I don't know.

10 Q. Would you recognize an aerial map of  
11 the business if you were to be shown one?

12 A. Yes, sir.

13 MR. DUQUETTE: Permission to approach,  
14 Your Honor?

15 THE COURT: You may.

16 BY MR. DUQUETTE:

17 Q. I'm showing you what's been marked as  
18 State's Exhibit 1 for identification. Do you  
19 recognize what that is?

20 A. Yes, sir.

21 Q. And what is that?

22 A. It's an aerial view of the area of the  
23 Alamo, Yeamans Hall, Loftis Road, that area right  
24 there, and the Kwik Fill and surrounding  
25 businesses.

*FLOR REYES - DIRECT EXAM BY MR. DUQUETTE*

1 Q. Does it accurately represent the area  
2 of the El Alamo and the Kwik Fill as it appears  
3 today and as it would have appeared on October of  
4 2017?

5 A. Yes, sir.

6 MR. DUQUETTE: Your Honor, at this time  
7 the State moves to publish State'S Exhibit 1 for  
8 the jury.

9 THE COURT: You may proceed.

10 MR. DUQUETTE: Exhibit 1, please.

11 BY MR. DUQUETTE:

12 Q. Detective Reyes, you just told us you  
13 gathered additional video from the incident in  
14 question from the Kwik Fill. Can you please point  
15 out where the Kwik Fill is?

16 A. The Kwik Fill is right there.

17 Q. And where is the El Alamo?

18 A. Right there.

19 Q. And just for reference, where is the  
20 police station you work at?

21 A. Right there.

22 Q. Okay. Are all those locations in  
23 Hanahan, in Berkeley County?

24 A. Yes, sir.

25 Q. On what date did you collect the video



*FLOR REYES - DIRECT EXAM BY MR. DUQUETTE*

1 from the Kwik Fill?

2 A. It was on the --

3 MS. TOLLEY: Objection.

4 THE COURT: Basis?

5 MS. TOLLEY: Lack of personal  
6 knowledge. I'm not sure that he's the person who  
7 secured the video.

8 THE COURT: Well, he asked him the  
9 direct question, so either he'll be able to give a  
10 date or not.

11 Overruled. You can answer the  
12 question.

13 THE WITNESS: October 13th, 2017.

14 BY MR. DUQUETTE:

15 Q. And was anyone with you when you  
16 collected the footage?

17 A. Yes, sir. Detective Durant, who is  
18 also an investigator with Hanahan Police  
19 Department.

20 Q. And on what date did you collect  
21 footage of?

22 A. We collected footage of October 6th,  
23 2017, the day of the incident in question.

24 Q. And this is after you had already  
25 viewed the video from the El Alamo across the

## FLOR REYES - DIRECT EXAM BY MR. DUQUETTE

1 street?

2 A. Yes, sir.

3 Q. To your knowledge, has your agency  
4 regularly collected surveillance footage from that  
5 gas station over the past several years?

6 A. Yes, sir.

7 Q. After gathering video from both the  
8 business itself and also the gas station across the  
9 street, what observations did you make?

10 A. Well, the video at the Kwik Fill gave  
11 me a lot more detail. The observation I -- during  
12 my investigation as it was ongoing, like I said  
13 earlier, I was trying to identify the car and look  
14 for things.

15 The Kwik Fill video showed the Hummer  
16 pulling right beside the gas station, right there,  
17 and there's cameras right there where he pulled up  
18 at. There are cameras on the front of the business  
19 and the back, and that's why I collected -- when I  
20 first viewed the video, Detective Durant was with  
21 me.

22 I knew that there was a lot more  
23 detail, a lot more closer to the car that you could  
24 identify the car, a lot more -- and more lighting  
25 too. So you were able to see a lot more as far as

FLOR REYES - DIRECT EXAM BY MR. DUQUETTE

1 the video.

2 So I collected -- with Detective  
3 Durant, we collected the video for the case, and  
4 that give me the opportunity to view it a lot  
5 better to see the things inside of the video, like  
6 I testified earlier, the damage and certain things.

7 You could see inside the video -- I  
8 mean, in the car, you could see through the video.  
9 When I looked at it, there was somebody with a  
10 white shirt, long-sleeve shirt, you could tell that  
11 was sitting right beside the cameras right there.

12 And in the video you can see where it  
13 came -- the car came in, it pulled off of Yeamans  
14 Hall Road and it pulled up right beside the gas  
15 station. It's all glass you can see in the video.  
16 It pulled right there, and there's camera right  
17 there and there's a camera on the back side.

18 And you could see the car pull up and  
19 just sit there. Nobody got out of the car. Nobody  
20 pumped gas. Nobody went in the store to purchase  
21 anything. And the way that it was parked, it was  
22 pulled in -- I don't know if I'm allowed -- am I  
23 allowed to show it to Your Honor?

24 Q. Absolutely.

25 A. The car pulled in and sat right there.

FLOR REYES - DIRECT EXAM BY MR. DUQUETTE

1    There's cameras here, there's cameras over here.  
2    As you notice, it's so close you can see the  
3    details; Alamo is right there. It sat right there,  
4    and it just sat there. Sat there a few minutes --  
5    well, when it first got there, it pulled up, then  
6    it backed up a little bit, then it pulled up a  
7    minute or two later.

8                    Then he decided to come right here and  
9    sit right there like he was watching -- it looked  
10   like he was watching the place. Okay. And that's  
11   when he ended up pulling back out this way. But  
12   while he was sitting there, you could see in the  
13   video -- as I was watching the video during my  
14   investigation, you could see a lot of detail inside  
15   the car.

16                   Some of the details that I observed,  
17   just stuff on -- the sticker and all that stuff,  
18   the holder, you can see all that in the video,  
19   which I later -- when I took photos of the car  
20   later on the other day, you know, after, I compared  
21   them and that's how I was able to identify the car  
22   because it's the same car, you know.

23                   Q.    Let me bring you back to the video.  
24   While -- when you observed the video, was there  
25   anything indicating from the video from the Kwik

*FLOR REYES - DIRECT EXAM BY MR. DUQUETTE*

1 Fill what had caused the window to shatter?

2 A. Yes, sir.

3 Q. And what was that?

4 A. When he was -- when the car pulled out  
5 taking a left turn, there's a camera right in this  
6 area, right here, and you could see inside the car.  
7 And what I saw on the video while reviewing the  
8 video is a white shirt -- it may not be completely  
9 white, it maybe off-white, a light -- a real light  
10 color, it looked like a white shirt. It looked  
11 like a long sleeve.

12 And you can tell at that point -- when  
13 I looked at the video, I could tell that there was  
14 a gun in the right hand and he was turning. And I  
15 was -- with the left hand, the car, as that was  
16 going like that. (Indicating) It was only like a  
17 second or two that you could see it, but you can  
18 clearly see the gun in his right hand.

19 And then he took a left, and then a  
20 minute or two later, or a few minutes later, you  
21 could see the car come down this road. And you  
22 could see the Hummer -- you could see a flash  
23 coming from the Hummer, and it appeared to be like  
24 a gun flash to me, and you could see the window  
25 going down.

FLOR REYES - DIRECT EXAM BY MR. DUQUETTE

1                   And then the Hummer kept going in that  
2   direction. But prior -- also, in the video prior  
3   -- before even that happened, you could see the  
4   Hummer earlier -- at the time, I think it was like  
5   10:32, approximately that time, it started driving  
6   around, and you could see it come into the area.  
7   It drove this way, a few minutes later it drove  
8   this way, and then it drove and pulled into the gas  
9   station and sat there, right there.

10                  And that's when he pulled around, I saw  
11   the gun, he came back later, I believe it was like  
12   10:50, around there, and you could see the  
13   muzzle -- like a muzzle flash light. The  
14   reflection off the window -- you could see off the  
15   bay window, and that's when the window came down.

16                  Q.    So you said you saw the vehicle pass by  
17   on that video more than one time?

18                  A.    Yes, sir. I believe it was like three  
19   times.

20                  Q. .  How many individuals were visible  
21   inside the vehicle?

22                  A.    You could clearly see there was only  
23   one person in the car.

24                  Q.    Did you capture screen shots from the  
25   Kwik Fill video showing anything inside the

FLOR REYES - DIRECT EXAM BY MR. DUQUETTE

1 vehicle?

2 A. Screen shots?

3 Q. As part of your investigation, in  
4 addition to collecting the Kwik Fill security  
5 video, did you collect screen shots from that  
6 security footage?

7 A. Yes.

8 Q. What did those show?

9 A. It showed a hand with the gun, shape of  
10 the gun, and all that stuff.

11 MR. DUQUETTE: Permission to approach?

12 THE COURT: You may.

13 BY MR. DUQUETTE:

14 Q. Detective, I'm handing you what's been  
15 marked as State's Exhibit 7 for identification.  
16 Can you identify what that is?

17 A. This is the Kwik Fill video.

18 Q. And how do you know that?

19 A. I know that because it's my handwriting  
20 on it, first of all, but I also initialed it and  
21 dated it.

22 Q. Did you collect that video from the  
23 Kwik Fill?

24 A. Yes, sir. It's a copy of the video.

25 Q. Does it appear to be in the same

*FLOR REYES - DIRECT EXAM BY MR. DUQUETTE*

1 condition as when you collected it?

2 A. Yes, sir.

3 MR. DUQUETTE: Your Honor, the State  
4 seeks to admit State's Exhibit 7 into evidence and  
5 publish to the jury at this time.

6 THE COURT: Any objection?

7 MS. TOLLEY: Without objection.

8 THE COURT: What number is that again?

9 MR. DUQUETTE: State's Exhibit 7, Your  
10 Honor.

11 THE COURT: Marked and admitted without  
12 objection. You may proceed.

13 MS. TOLLEY: Judge, may we approach?

14 THE COURT: Yes, ma'am.

15 (Bench conference)

16 MS. TOLLEY: I assume this is not the  
17 entire video?

18 MR. DUQUETTE: No. It's just several  
19 clips from the entire portion that was provided in  
20 discovery.

21 THE COURT: Do you need to look at it?

22 MS. TOLLEY: No, we're good I think.

23 (End of bench conference.)

24 THE COURT: You may proceed.

25 (STATE EXH. 7 in evidence.)



*FLOR REYES - DIRECT EXAM BY MR. DUQUETTE*

1 BY MR. DUQUETTE:

2 Q. Detective Reyes, have you completely  
3 watched the video?

4 A. (No response)

5 (Video clip played in open court.)

6 MR. DUQUETTE: Thank you, Dee. Next  
7 clip, please.

8 Beg the Court's indulgence, Your Honor?

9 THE COURT: Uh-huh.

10 BY MR. DUQUETTE:

11 Q. Okay. Detective, please take a look at  
12 this video clip.

13 (Video clip played in open court.)

14 MR. DUQUETTE: Pause it, please. Stop.

15 BY MR. DUQUETTE:

16 Q. What time do we see on the clock here?

17 A. 2242 military time, which is about  
18 10:42 p.m.

19 Q. Okay. And what did you see on that  
20 clip?

21 A. What I just saw on the clip, is that  
22 what you're asking me?

23 Q. Yes.

24 A. I see the Hummer come down and take a  
25 right turn.

FLOR REYES - DIRECT EXAM BY MR. DUQUETTE

1 Q. Detective Reyes, watch this clip.

2 (Video clip played in open court.)

3 Q. Detective, was that part of the footage  
4 you collected as part of your investigation?

5 A. Yes, sir.

6 Q. Detective, please watch this clip and  
7 tell me what you see here. And please note the  
8 time that you see on that video for the Court.

9 A. Yes, sir.

10 Q. The video time. And what is that?

11 A. 2245, 10:45 p.m.

12 Q. Thank you. Let's take a look at this  
13 part of the surveillance video.

14 (Video clip played in open court.)

15 Q. What is the time on that camera?

16 A. Looks like 10:45.

17 Q. Take a look at this clip. What is the  
18 time on that video, sir?

19 A. 2249, 10:49 p.m.

20 Q. All right. One last clip, Detective  
21 Reyes, from this video. Please watch this clip.

22 (Video clip played in open court.)

23 MR. DUQUETTE: Thank you, Dee.

24 BY MR. DUQUETTE:

25 Q. Detective Reyes, are those portions of

*FLOR REYES - DIRECT EXAM BY MR. DUQUETTE*

1 the video what you collected from the Kwik Fill?

2 A. Yes, sir.

3 Q. And how did those video clips assist  
4 you in your investigation?

5 A. They displayed basically what I've  
6 already testified to, that you could see the gun  
7 flash, barrel or whatever, off the window of the  
8 Alamo as he was driving by to when he's coming  
9 down.

10 Also, those portions of the video that  
11 you just showed you could see in the video what I  
12 described on the dashboard, all the stuff that  
13 helped identify that car. There's damage to the  
14 air take. One of the air takes of the Hummer --  
15 there's one on the right and one on the left, and  
16 the one on the passenger side is damaged, missing.

17 That also helped a great deal in  
18 helping me identify that car and the damage to it.  
19 And the reason I say it helped me identify it,  
20 because I later took pictures of the defendant's  
21 vehicle after the fact, after I saw the videos and  
22 matched, you know, all the damage, all the stuff on  
23 the dash, everything, to help identify that car.

24 MR. DUQUETTE: Your Honor, permission  
25 to approach the witness?

## FLOR REYES - DIRECT EXAM BY MR. DUQUETTE

1 THE COURT: You may.

2 BY MR. DUQUETTE:

3 Q. Detective Reyes, I've handed you what's  
4 been marked as State's 13 and 14 for  
5 identification. Do you recognize those images?

6 A. Yes, sir.

7 Q. And what are those images?

8 A. It's a picture of the driver in the  
9 car, in the Hummer, all the stuff that's on the  
10 dash, and also it is a picture of when the Hummer  
11 took a left before the incident, the window came  
12 down; when he took a left out of the parking lot of  
13 the gas station.

14 As I slowly reviewed it, I observed the  
15 gun in the hand, the picture of the hand, the shape  
16 of the gun and everything inside of the vehicle.

17 Q. Did you capture those screen shots?

18 A. Yes, sir.

19 Q. Did you capture those screen shots off  
20 of the video that you collected from Kwik Fill?

21 A. It was captured off the video, yes,  
22 sir.

23 Q. Do they appear to be in substantially  
24 the same condition as when you collected them?

25 A. Yes, sir.

*FLOR REYES - DIRECT EXAM BY MR. DUQUETTE*

1                   MR. DUQUETTE: Your Honor, the State  
2 seeks to admit State's Exhibits 13 and 14, and  
3 publish to the jury at this time.

4                   THE COURT: Any objection?

5                   MS. TOLLEY: No objection.

6                   THE COURT: Marked and admitted without  
7 objection. You may proceed.

8                   (STATE EXH. 13 in evidence.)

9                   (STATE EXH. 14 in evidence.)

10                  MR. DUQUETTE: Please publish Exhibit  
11 13.

12 BY MR. DUQUETTE:

13                  Q. Detective Reyes, can you please tell us  
14 what we're looking at in this picture?

15                  A. You're looking at the picture of the  
16 inside of the car, the front, all of the stuff --  
17 the paperwork on the dash and everything, the  
18 holder, and this mess. Everything that I already  
19 described about the inside of the car, especially  
20 the way the paperwork is set up on the front dash.

21                         You could see the damage here, the air  
22 take is missing. This is damage right there.  
23 There's certain damage right there, which helped me  
24 -- all that helped me identify the car.

25                  Q. Can you show us with the laser pointer

## FLOR REYES - DIRECT EXAM BY MR. DUQUETTE

1 what you're referring to, please?

2 A. Oh, I'm sorry. I'm talking about right  
3 there. The holder, the air thing there, and that  
4 one is missing, it's damaged, it's gone, and  
5 there's damage up there to the car. It was  
6 damaged.

7 Q. And that screen shot is of -- from what  
8 portion of that video?

9 A. This screen shot -- I don't understand.

10 Q. What portion of the Kwik Fill video is  
11 that screen shot from?

12 A. This is one where he's sitting at the  
13 Kwik Fill. He pulled up to the Kwik Fill and he's  
14 sitting there. The video shows that.

15 Q. Thank you.

16 MR. DUQUETTE: Exhibit 14, please, Dee.

17 BY MR. DUQUETTE:

18 Q. And what is this a screen shot of?

19 A. This is a screen shot as the car is  
20 turning to the left. The couple seconds it shows  
21 it, the gun is right there, the white shirt.  
22 That's what it shows. The still shot -- the still  
23 shot, it's more blurry than the actual seeing it.

24 You know, it shows more detail than  
25 when it's in motion. That's the gun right there as

*FLOR REYES - DIRECT EXAM BY MR. DUQUETTE*

1 he's taking a left, his hand is on the wheel.

2 MR. DUQUETTE: Thank you, Dee.

3 BY MR. DUQUETTE:

4 Q. After reviewing the footage from both  
5 the Kwik stop and the El Alamo, did you notice  
6 anything about the clock times on the video?

7 A. Yes, sir. The video for the -- that we  
8 collected from the Alamo is an hour and, roughly,  
9 eight minutes off. That's what I noticed.

10 Q. Off from what?

11 A. From the time from the Kwik Fill video,  
12 about an hour and eight minutes off, so...

13 Q. In your experience as a detective, is  
14 it uncommon for gas stations, bars, or any other  
15 businesses to have security systems where the clock  
16 is off?

17 A. Yeah, the clocks are off. You know, it  
18 happens. Dates, times, they're off, yes, sir.

19 Q. Clock times aside, did you determine  
20 that both videos from the El Alamo and the Kwik  
21 Fill show the same event occurring at the same  
22 time?

23 A. Yes, sir.

24 Q. Do both camera angles from each  
25 business show the Hummer drive by the El Alamo as

## FLOR REYES - DIRECT EXAM BY MR. DUQUETTE

1 the window shatters?

2 A. Yes, sir.

3 Q. In reviewing the video evidence, did  
4 you note any other cars, people in the vicinity,  
5 when the window was shattered out?

6 A. At the time it drove by and it  
7 shattered, I don't recall seeing any other  
8 vehicles, no.

9 Q. After reviewing the video, did you have  
10 occasion to meet with the defendant after watching  
11 these videos?

12 A. Yes, sir.

13 Q. On what date was that?

14 A. That was on October 19th, 2017.

15 Q. And where did you meet?

16 A. I met him at his house, Yeamans  
17 Hall Road in Hanahan.

18 Q. Prior to that, did you have any  
19 meetings with the defendant?

20 A. Prior to that, no.

21 Q. Prior to meeting at his house?

22 A. No -- wait. That was the 19th. I  
23 interviewed him, I believe, on the 13th of October.

24 Q. And where was that?

25 A. That was at the Hanahan Police



*FLOR REYES - DIRECT EXAM BY MR. DUQUETTE*

1 Department.

2 Q. And was that conversation recorded?

3 A. Yes, sir. Audio and video recorded,  
4 yes, sir.

5 Q. And who recorded it?

6 A. I did, sir.

7 MR. DUQUETTE: Permission to approach,  
8 Your Honor?

9 THE COURT: You may.

10 BY MR. DUQUETTE:

11 Q. Detective, I'm handing you what's been  
12 marked as State's Exhibit 8 for ID. Do you  
13 recognize that item?

14 A. Yes, sir.

15 Q. And what is it?

16 A. It is a copy of the interview I had  
17 with the defendant on the 13th.

18 Q. And you stated you recorded it?

19 A. Yes, sir.

20 Q. How do you recognize it as the -- that  
21 interview?

22 A. Well, the label from the Hanahan Police  
23 Department, that's the label that we use for copies  
24 of the video, my writing, and I dated it and  
25 initialled it.

## FLOR REYES - DIRECT EXAM BY MR. DUQUETTE

1 MR. DUQUETTE: The State seeks to admit  
2 State's Exhibit 8 and publish to the jury at this  
3 time.

4 THE COURT: Any objection?

5 MS. TOLLEY: No objection.

6 THE COURT: You may proceed. Without  
7 objection.

8 (STATE EXH. 8 in evidence.)

9 MR. DUQUETTE: Beg the Court's  
10 indulgence.

11 BY MR. DUQUETTE:

12 Q. Detective Reyes, I would like you to  
13 watch this portion of the recorded interview you  
14 submitted into evidence. Okay?

15 A. Yes, sir.

16 (Video being played)

17 Q. Can you hear it, Detective?

18 A. I can hear it, but not very good.

19 MR. DUQUETTE: The Court's indulgence,  
20 Your Honor.

21 BY MR. DUQUETTE:

22 Q. Can you hear that better?

23 A. Yes, sir.

24 THE COURT: I can't hear it. You're  
25 going to need to work on that.

*FLOR REYES - DIRECT EXAM BY MR. DUQUETTE*

1                   Ladies and gentlemen, I'm going to give  
2   you a brief restroom break. During the break,  
3   please do not discuss the case and please leave  
4   your notepads in your seats. We should be out  
5   about five minutes.

6                   (Jury out, 12:39 p.m.)

7                   THE COURT: We'll be at ease. And I  
8   expect you all to work on the technology.

9                   Sir, during the break, you can take a  
10   restroom break. Please don't discuss your  
11   testimony with anyone.

12                  THE WITNESS: Yes, ma'am.

13                  (A recess transpired.)

14                  THE COURT: Did we get the technical  
15   issue resolved?

16                  MR. DUQUETTE: Yes, Your Honor.

17                  THE COURT: All right. Do we need to  
18   do a test run to make sure, or have you all already  
19   done it?

20                  MR. DUQUETTE: We'll do one more test  
21   run, Your Honor, just to make sure.

22                  THE COURT: All right. Is the Defense  
23   ready? Okay. Please bring in the jury.

24                  (Jury in, 12:40 p.m.)

25                  THE COURT: You may be seated. Ladies

*FLOR REYES - DIRECT EXAM BY MR. DUQUETTE*

1 and gentlemen, I hope you enjoyed your break.

2 We'll now resume the testimony.

3 The State may proceed.

4 MR. DUQUETTE: Your Honor, at this time  
5 the State seeks to publish State's Exhibit 8 to the  
6 jury.

7 THE COURT: You may proceed.

8 (Video played in open court.)

9 MR. DUQUETTE: Madam Forelady, ladies  
10 and gentlemen, it's 1:00; we're going to break for  
11 lunch. During this break, please do not discuss  
12 the case. We'll resume at 2:15.

13 Please leave your notepads in your  
14 seats and follow the bailiff's instructions in  
15 returning to the courthouse. Please don't expose  
16 yourself to any media reports about this case, if  
17 there are any, and don't have any contact with  
18 anyone in or about the courthouse. See you all at  
19 2:15.

20 (Jury out, 1:00 p.m.)

21 THE COURT: You may be seated.

22 Anything before we adjourn for lunch? From the  
23 State?

24 MR. DUQUETTE: None from the State.

25 THE COURT: Nothing from the defense.

*FLOR REYES - DIRECT EXAM BY MR. DUQUETTE*

1 MS. TOLLEY: Nothing from the defense.

2 THE COURT: See you all at 2:15. If  
3 you have requests for instructions, you need to  
4 submit those to me now.

5 (A luncheon recess transpired.)

6 THE COURT: Is the State ready?

7 MR. DUQUETTE: Yes, Your Honor.

8 THE COURT: Is the defense ready to  
9 proceed?

10 MS. TOLLEY: Yes, Your Honor.

11 THE COURT: Please bring in the jury.

12 (Jury in, 2:28 p.m.)

13 THE COURT: You may be seated. We'll  
14 now resume testimony.

15 The State may proceed.

16 MR. DUQUETTE: Thank you, Your Honor.

17 THE COURT: You're welcome.

18 (Video continued to the end.)

19 BY MR. DUQUETTE:

20 Q. Detective Reyes, during that meeting,  
21 did you learn anything about the defendant's  
22 previous interactions at the business?

23 A. Yes, sir.

24 Q. And what were those?

25 MS. TOLLEY: Objection.

## FLOR REYES - DIRECT EXAM BY MR. DUQUETTE

1 THE COURT: Basis?

2 MS. TOLLEY: May we approach?

3 THE COURT: Yes.

4 (Bench conference; no reporter.)

5 THE COURT: Proceed.

6 BY MR. DUQUETTE:

7 Q. Detective Reyes, what did you learn  
8 about the defendant's ability to visit the El  
9 Alamo?

10 A. He wasn't allowed to go back over there  
11 due to another situation --

12 MS. TOLLEY: Objection.

13 THE COURT: Basis?

14 MS. TOLLEY: Lack of personal  
15 knowledge.

16 THE COURT: Sustained.

17 BY MR. DUQUETTE:

18 Q. Following that interview, Detective  
19 Reyes, did you meet with the defendant again?

20 A. Yes, sir.

21 Q. And what date was that?

22 A. October 19th, 2017.

23 Q. What was that location?

24 A. At his residence, Yeamans Hall  
25 Road in Hanahan.

*FLOR REYES - DIRECT EXAM BY MR. DUQUETTE*

1 (Off-the-record conference.)

2 THE COURT: You may continue.

3 BY MR. DUQUETTE:

4 Q. Did you collect any evidence during  
5 this interaction?

6 A. Yes, sir.

7 Q. And what was that?

8 A. Photographs of the vehicle, with his  
9 permission.

10 MR. DUQUETTE: Your Honor, may I  
11 approach?

12 THE COURT: You may.

13 BY MR. DUQUETTE:

14 Q. Detective Reyes, I'm showing you what's  
15 been marked as State's Exhibits 9 through 12 for  
16 identification. Do you recognize those photos?

17 A. Yes, sir.

18 Q. And what are those photos of?

19 A. The defendant's vehicle, the Hummer.

20 Q. And who took those photographs?

21 A. I did.

22 Q. And when did you take those photos?

23 A. I'm sorry?

24 Q. When did you take those?

25 A. The 19th.

## FLOR REYES - DIRECT EXAM BY MR. DUQUETTE

1 Q. Are those a fair and accurate  
2 representation of the photographs that you took  
3 while meeting with the defendant at this house?

4 A. Yes, sir.

5 MR. DUQUETTE: Your Honor, at this time  
6 the State seeks to admit Exhibits 9 through 12 into  
7 evidence and publish for the jury.

8 THE COURT: Any objection?

9 MS. TOLLEY: Without objection.

10 THE COURT: Marked and admitted without  
11 objection. You may proceed.

12 (STATE EXH. 9 in evidence.)

13 (STATE EXH. 10 in evidence.)

14 (STATE EXH. 11 in evidence.)

15 (STATE EXH. 12 in evidence.)

16 MR. DUQUETTE: Dee, could you please  
17 publish Exhibit 9?

18 BY MR. DUQUETTE:

19 Q. Detective Reyes -- there's a laser  
20 pointer there -- could you please tell us what we  
21 see in this photo?

22 A. This is the front passenger side of the  
23 Hummer. And, if you notice, the damage to the --

24 Q. You can use the laser pointer.

25 A. The damage right there, the air filter



*FLOR REYES - DIRECT EXAM BY MR. DUQUETTE*

1     thing is missing. There's damage right there,  
2     which was one of the areas that helped me identify  
3     the vehicle.

4             Q.     Exhibit 10, please.

5             A.     This matched the video from the Kwik  
6     Fill, same damage.

7             Q.     And what do we see in Exhibit 10?

8             A.     You see here, there's a piece hanging  
9     down. There's the white square, the VIN number  
10    covered. Right there is the bracket, GPS bracket  
11    type thing. There's the holder. There's a piece  
12    of paper on this side of the holder.

13            All of this is -- as a matter of fact,  
14    the set-up is -- if you look at the -- when I  
15    looked at the Kwik Fill video, exactly. Same  
16    match. It's the same thing, everything matched.

17            MR. DUQUETTE: Dee, can you please  
18    publish Exhibit 13.

19    BY MR. DUQUETTE:

20            Q.     Now, this is Exhibit 13. Are you  
21    referencing this as the match when you referenced  
22    the Kwik Fill video --

23            A.     Correct.

24            Q.     -- that's in evidence?

25            A.     Yes, sir.

*FLOR REYES - DIRECT EXAM BY MR. DUQUETTE*

1 Q. And what matches?

2 A. There's the holder, the paper, the  
3 whole set-up right here, right there. There's --  
4 the sticker is up here. Especially, when you look  
5 at the video, the Kwik Fill video, you would --  
6 you'll be able to see it a lot clearer than this.

7 This picture is a little bit more  
8 blurry, and you'll notice on the video -- not as  
9 prevalent on this, but you'll notice when he pulled  
10 up and backed up in the video at the Kwik Fill, you  
11 see the -- whatever it is, the beads hanging.  
12 They're moving and all that. You'll see it, it's  
13 there.

14 And the damage right there, there's the  
15 damage. Notice the air filter cover there, and  
16 it's not there; the damage is there. Same thing as  
17 the photo I took from his residence of his car.

18 MR. DUQUETTE: Dee, please publish  
19 Exhibit 11.

20 BY MR. DUQUETTE:

21 Q. What is this a picture of?

22 A. That's the front of his vehicle. I  
23 just photographed all this so you could see all  
24 that --

25 Q. Exhibit 12, please.

FLOR REYES - DIRECT EXAM BY MR. DUQUETTE

1           A.     That's the driver's side. As you  
2 notice, this is what's missing on the other side, a  
3 comparison. That's what's supposed to be there,  
4 but apparently some kind of accident or something  
5 happened. It's damage.

6           Q.     Exhibit 9, please. Please reference  
7 the damage that you're referring to.

8           A.     Right there, which is the same on the  
9 Kwik Fill video --

10          Q.     And comparing these photos that you  
11 took of the defendant's vehicle to the gray-colored  
12 Hummer in the video of the incident with the window  
13 shattering, what observations did you make in  
14 reference to their similarity?

15          A.     The observation that that was the  
16 vehicle, the same vehicle as I just showed. Same  
17 things on the video. If you look at the video of  
18 the Kwik Fill, the close-up, you'll see the front  
19 and you'll see all the -- and the damage of the car  
20 to the other side of the vehicle.

21          Q.     In meeting with the defendant on this  
22 day, did he make any comments to you? Did you  
23 speak to the defendant?

24          A.     At the residence?

25          Q.     Yes.

*PROFFERED TEST. FLOR REYES - DIRECT EXAM BY MR. DUQUETTE*

1 MS. TOLLEY: Objection.

2 THE COURT: Basis? Anything that was  
3 subject to the objection was supposed to be taken  
4 up in camera. Is this the testimony?

5 MR. DUQUETTE: Perhaps, Your Honor.

6 THE COURT: Madam Forelady, ladies and  
7 gentlemen, I have a brief matter of law to take up  
8 with counsel. During the break, please do not  
9 discuss the case and please leave your notepads in  
10 your seats.

11 (Jury out, 3:22 p.m.)

12 THE COURT: You may be seated. Proceed  
13 with the questions.

14 DIRECT EXAMINATION - PROFFERED TESTIMONY

15 BY MR. DUQUETTE:

16 Q. Detective Reyes, did the defendant make  
17 any statements to you at that time?

18 A. Yes, sir.

19 Q. What were those statements?

20 A. He just basically responded to my  
21 questions to him. I asked him if he was the only  
22 one that drives that car. And he told me, yes, he  
23 was the only one, nobody else drives the car but  
24 him.

25 Q. And where was the defendant physically

*PROFFERED TEST. FLOR REYES - DIRECT EXAM BY MR. DUQUETTE*

1 located when this conversation took place?

2 A. We were outside. Just when I was  
3 taking pictures of the car, we were talking. I  
4 think it was right after I took the pictures, but  
5 he was standing on the porch just watching what I  
6 was doing while I was taking pictures and we were  
7 talking, but we was outside.

8 Q. Was the defendant free to walk inside  
9 at any moment?

10 A. Yes, sir.

11 Q. Was the defendant ever in handcuffs?

12 A. No, sir.

13 Q. Did you tell the defendant he could not  
14 move?

15 A. No, I did not.

16 Q. What other statements did the defendant  
17 make at that time, if any?

18 A. That's pretty much -- I mean, we didn't  
19 carry on a long conversation. I mean, that's  
20 pretty much it as far as statements he made.

21 MR. DUQUETTE: Your Honor, the State  
22 has no further questions regarding testimony of  
23 that.

24 THE COURT: Any cross examination of  
25 the witness on this limited issue?

*PROFFERED TEST. FLOR REYES - CROSS EXAM BY MS. TOLLEY*

1 MS. TOLLEY: Yes.

2 THE COURT: You may proceed. I need  
3 that door closed, please.

4 CROSS-EXAMINATION

5 BY MS. TOLLEY:

6 Q. Good afternoon.

7 A. Good afternoon.

8 Q. So you met with Mr. Hernandez-Santo on  
9 October 19th; is that correct?

10 A. Yes, ma'am.

11 Q. And this was at his residence?

12 A. Yes, ma'am.

13 Q. Okay. At that time you had already  
14 spoken with Arelis; is that right?

15 A. Are you talking about the -- or  
16 Benjamin's girlfriend then?

17 Q. That's right.

18 A. Are you talking about that day, or  
19 when? I'm not sure. During the whole  
20 investigation, yes. I talked to her, yes, ma'am.

21 Q. Okay. Did you talk to her on, I guess,  
22 October 10th?

23 A. Yes.

24 Q. Did you, yes or no? I don't know --

25 A. Yes. She was at the Alamo.

*PROFFERED TEST. FLOR REYES - CROSS EXAM BY MS. TOLLEY*

1 Q. Did you talk to her then?

2 A. Yes.

3 Q. Okay. And did you talk to Benjamin?

4 A. Yes, both of them.

5 Q. Okay. Did you talk to anyone else?

6 A. There was nobody else there but them.

7 Q. Okay. So the answer is no?

8 A. No.

9 Q. Okay. And at that time, by the time  
10 you spoke with Mr. Evodio Santo on October 19th,  
11 you had already seen the video at Kwik Fill?

12 A. Yes.

13 Q. And you had already seen the video at  
14 El Alamo?

15 A. Yes, ma'am.

16 Q. And you had already reviewed both  
17 videos?

18 A. Yes, ma'am.

19 Q. Okay. And so you went to meet with  
20 Mr. Evodio Hernandez-Santo to follow up and  
21 continue your investigation?

22 A. Correct.

23 Q. Okay. When you got there, did you  
24 Mirandize him?

25 A. No, ma'am.

## PROFFERED TEST. FLOR REYES - CROSS EXAM BY MS. TOLLEY

1 Q. Okay. Did you tell him that he was a  
2 possible suspect?

3 A. No, ma'am, I did not tell him he was a  
4 possible suspect. I think he kind of already knew  
5 that from our interview.

6 Q. Okay. Did you remind him that he had a  
7 right to remain silent?

8 A. No, I did not remind him.

9 Q. Did you remind him that he had a right  
10 to an attorney?

11 A. At that time, no. He already knew  
12 that. I already read him his rights before. He  
13 was aware of his rights.

14 Q. That was --

15 A. That was --

16 Q. That was a few days ago?

17 A. Yes.

18 Q. Okay. And you didn't feel it necessary  
19 to do that again?

20 A. No, ma'am.

21 Q. Okay.

22 A. At that time, no, ma'am.

23 Q. But it would have been appropriate?

24 A. Well, he wasn't in custody or anything,  
25 ma'am. I mean, no. I mean, I didn't think I



*PROFFERED TEST. FLOR REYES - CROSS EXAM BY MS. TOLLEY*

1 needed to, no. According to -- no.

2 Q. So he was the focus of your  
3 investigation?

4 A. Well, his vehicle was, yes, ma'am. And  
5 him, yeah.

6 Q. Okay. Were you wearing your gun when  
7 you went to see him?

8 A. Yes.

9 Q. And you were there on official  
10 business?

11 A. Yes, ma'am.

12 MS. TOLLEY: I don't have any other  
13 questions.

14 THE COURT: Any redirect?

15 MR. DUQUETTE: No, Your Honor.

16 THE COURT: Any objection to this line  
17 of testimony?

18 MS. TOLLEY: We would object to the  
19 line of testimony based on the fact that we believe  
20 the testimony -- the statement was not freely and  
21 voluntarily given; that Mr. Reyes had already  
22 conducted a significant amount of investigation  
23 prior to meeting with Mr. Evodio Hernandez-Santo  
24 the second time; and at that time it would  
25 definitely have been appropriate to Mirandize him

1 and remind him of his rights given the fact that he  
2 had already viewed the video at Kwik Fill, already  
3 reviewed the video at El Alamo, had already talked  
4 to Arelis, had already talked to Benjamin, and had  
5 basically made up his mind that this was the  
6 suspect and that he was the person he was looking  
7 at. He came there to further confirm that.

8                   Based on all of that, it would have  
9 been appropriate to Mirandize him, remind him that  
10 he had a right to remain silent and that he had a  
11 right to an attorney.

12                   THE COURT: Would the State like to  
13 respond?

14                   MR. DUQUETTE: Your Honor, it is the  
15 State's position that an individual being a suspect  
16 in a crime is no legal threshold and in no way does  
17 that require Miranda. And the Supreme Court case  
18 Miranda-Arizona well-establishes that Miranda is a  
19 two-prong test; and one of those prongs is custody  
20 and the other is interrogation. Without one of  
21 those prongs, Miranda does not apply.

22                   In this case, the defendant was not in  
23 custody. You heard testimony that he was on his  
24 porch; he was free to leave at any time; he was  
25 never in handcuffs; he was not in custody.

1                   I would further argue the Supreme Court  
2 Beckwith versus U.S., which we cited earlier, a  
3 1976 Supreme Court case, held that the fact that an  
4 investigation had focused on a defendant was  
5 irrelevant in whether he was entitled to Miranda  
6 warnings. The only thing that mattered in that  
7 case was whether the defendant was in custody; and  
8 since he wasn't and knew that he wasn't, he was not  
9 required to be read Miranda warnings.

10                  THE COURT: Anything further from the  
11 defense?

12                  MS. TOLLEY: We would just renew our  
13 objection, Your Honor.

14                  THE COURT: The objection is overruled.  
15 There are several South Carolina State Supreme  
16 Court cases on point that address this issue, one  
17 of which is -- well, actually, it's a court of  
18 appeals case and one is a Supreme Court case that's  
19 cited within that case.

20                  Not exactly the same facts, but similar  
21 facts where someone was, in fact, a suspect, had  
22 been Mirandized twice. She was a suspect in her  
23 husband's murder, and she had given two statements  
24 subject to Miranda warnings.

25                  The police then came to her home where

1 she was questioned, and not only questioned, but  
2 secretly recorded. And the court of appeals has  
3 affirmed -- well, citing the State versus Neeley,  
4 indicated there was no need to Mirandize her a  
5 third time, that she was not in custody, and the  
6 fact that she was a suspect was not dispositive in  
7 terms of the analysis required to determine if  
8 Miranda warnings were appropriate to be given.

9               In citing Neeley, the court of appeals,  
10 which is the Supreme Court case, the court of  
11 appeals stated: A noncustodial situation is not  
12 converted to one in which Miranda applies simply  
13 because a reviewing court concludes that even in  
14 the absence of any formal arrest or restraint of  
15 freedom of movement, the questioning took place in  
16 a coercive environment.

17               The police officers were not required  
18 to administer Miranda warning to everyone whom they  
19 question, nor to require those warnings to be  
20 imposed simply because the questioning takes place  
21 in the station house or because the questioned  
22 person is one whom the police suspect, citing State  
23 versus Croft, which is a court of appeals'  
24 decision.

25               The seminal question is whether the

1     defendant is in a custodial situation which would  
2     trigger Miranda; in other words, where his freedom  
3     was restricted.

4                     And after thinking about it a little  
5     bit more, actually the question that was asked by  
6     the officer could have likewise exculpated the  
7     defendant if he indicated there were five or six  
8     other people who, in fact, had the use of this  
9     vehicle versus him, indicating that he was the only  
10    person that used his vehicle.

11                    So, again, what is dispositive is  
12    whether he was in custody, and whether the  
13    statements or the interrogation was designed to  
14    have him inculcate himself. And really the test  
15    isn't even really whether he was inculcating  
16    himself, because even if the statement exculpated  
17    him, he still -- if Miranda is appropriate, the  
18    statements would not be admissible.

19                    And I can't think of a greater  
20    situation than someone who's already been  
21    questioned twice and Mirandized, and who is the  
22    suspect in her husband's murder, and our courts  
23    have indicated that it was not necessary to  
24    Mirandize her again when the statement was taken in  
25    her house, as well as having been secretly

1 recorded; and it was, in fact, deemed appropriate  
2 to have been used against her in the trial.

3 And so what, again, is dispositive is  
4 whether it is a custodial situation. And, clearly,  
5 he was at his home, he was free to leave, he could  
6 have stopped talking at any time. It appears it  
7 was in a conversational nature, although the direct  
8 question was asked, does anybody else -- are you  
9 the sole user -- are you the person who has the  
10 sole use of the vehicle?

11 So the objection is overruled, and that  
12 is based on State versus Douglas, State versus  
13 Neeley, and State versus Frauss. As well as -- I  
14 think I said State versus Douglas.

15 All right. Are we ready to proceed, or  
16 do you all need to go to the restroom?

17 MR. DUQUETTE: Ready to proceed, Your  
18 Honor.

19 MS. TOLLEY: We're ready.

20 THE COURT: Everybody good?

21 MS. TOLLEY: I'm sorry?

22 THE COURT: Does your client need to go  
23 to the restroom?

24 MS. TOLLEY: No.

25 THE COURT: All right. Please bring in

*FLOR REYES - CONTINUING DIRECT EXAM BY MR. DUQUETTE*

1 the jury.

2 (Jury in, 3:35 p.m.)

3 THE COURT: You may be seated. You may  
4 proceed.

5 MR. DUQUETTE: Thank you.

6 CONTINUING DIRECT EXAMINATION

7 BY MR. DUQUETTE:

8 Q. Detective Reyes, you just testified  
9 that you met with the defendant on October 19,  
10 2017; is that correct?

11 A. Yes, sir.

12 Q. And that was at the defendant's home;  
13 is that correct?

14 A. Yes, sir.

15 Q. And you took pictures of his vehicle;  
16 is that correct?

17 A. Correct.

18 Q. During that encounter, did the  
19 defendant make any statements regarding the use of  
20 his gray-colored Hummer?

21 A. Yes, sir.

22 Q. And what were those statements?

23 A. I asked him -- he sort of made the  
24 statement when I asked him the question, was he the  
25 only one that drives his car because I did

FLOR REYES - CONTINUING DIRECT EXAM BY MR. DUQUETTE

1 establish was anybody else -- could anybody else  
2 have driven that car. And he said, nobody drives  
3 his car, he's the only one that drives it.

4 Q. Detective, based on your investigation,  
5 what did you do next?

6 A. After I took the photos, I went back,  
7 took these photos, and I looked at the photos and  
8 studied them and compared them to the Kwik Fill  
9 video. Because the video from the Alamo, I mean,  
10 you can't see a whole lot as far as details.

11 So I took that and compared them to the  
12 video, the damage, the way everything is set on the  
13 dash, papers, everything, and especially the damage  
14 stuck out, and everything matched. Of course, it's  
15 part of my job to make sure that my investigation  
16 is as proper and the best I can. And that's why I  
17 did that, to confirm. And it confirmed that  
18 everything matched, you know, I did find in his  
19 vehicle.

20 Q. And did you seek arrest warrants based  
21 on this information?

22 A. Yes, sir, I did.

23 Q. And did you contact the defendant and  
24 advise him of these warrants?

25 A. I did.



*FLOR REYES - CONTINUING DIRECT EXAM BY MR. DUQUETTE*

1 Q. Did the defendant turn himself in?

2 A. No, he didn't. As per discussion and  
3 the video, we --

4 MS. TOLLEY: Objection.

5 THE COURT: Basis?

6 MS. TOLLEY: May we approach?

7 THE COURT: Yes.

8 (Bench conference)

9 THE COURT: Why is it relevant whether  
10 he turned himself in or not? Did they have to go  
11 like hunt him down --

12 MR. DUQUETTE: He had to contact the  
13 U.S. Marshals. They went to his house and his  
14 house was vacant. So he contacted the U.S.  
15 Marshals and they found him on Savannah Highway.

16 THE COURT: Well, where did they find  
17 him on Savannah Highway? It's not like he left the  
18 state. Flight is like when you leave South  
19 Carolina. Yeah. That's a little problematic.

20 (End of bench conference.)

21 THE COURT: Objection sustained;  
22 relevance.

23 MR. DUQUETTE: Thank you, Detective  
24 Reyes. Please answer any questions the defense  
25 counsel may have.

## FLOR REYES - CROSS EXAM BY MS. TOLLEY

1 THE COURT: Any questions for the  
2 witness?

3 MS. TOLLEY: Yes, ma'am.

4 THE COURT: You may proceed.

5 CROSS-EXAMINATION

6 BY MS. TOLLEY:

7 Q. Good afternoon.

8 A. Good afternoon.

9 Q. Still doing okay?

10 A. I'm good. Thank you for asking.

11 Q. Okay. So, Detective Reyes, you were  
12 not present when this incident occurred, were you?

13 A. No, ma'am.

14 Q. Okay. So you didn't actually see for  
15 yourself what happened?

16 A. No, I wasn't on the scene. Whatever I  
17 saw in the video clip is what -- you know.

18 Q. Okay. And you don't know who was  
19 present at El Alamo when this happened?

20 A. When the shooting happened, no, ma'am.

21 Q. Okay. And your involvement came only  
22 when you were contacted by Benjamin or Arelis; is  
23 that right?

24 A. It was Benjamin who called me. He was  
25 out of the tri-county area, and he called me to

*FLOR REYES - CROSS EXAM BY MS. TOLLEY*

1 tell me about it.

2 Q. Okay. And so the information you had  
3 about what happened started with that phone call?

4 A. Yes, ma'am.

5 Q. Okay. And you also spoke with them in  
6 person on October 10th?

7 A. Yes, ma'am.

8 Q. Okay. And based on that conversation  
9 with them, what they told you is that it happened  
10 on October 6th; is that right?

11 A. Correct, according to the video.

12 Q. And what they told you is that it  
13 appeared to be a Hummer that they recognized; is  
14 that right?

15 A. Yes, ma'am.

16 Q. And that sort of started you on your  
17 path of investigating; is that correct?

18 A. Yes.

19 Q. Okay. And so the focus was on this  
20 Hummer?

21 A. The focus was on the Hummer, yes,  
22 ma'am, to identify the Hummer and whoever was in  
23 it.

24 Q. Okay. And they sort of threw out the  
25 name of Mr. Hernandez-Santo? Did they do that?

## FLOR REYES - CROSS EXAM BY MS. TOLLEY

1           A.    No.  They told me that they -- they  
2   basically told me it was his vehicle, they know his  
3   vehicle from being a regular at the -- coming to  
4   the El Alamo.  So they knew what his vehicle looked  
5   like.

6           Q.    Okay.  So at the Hanahan Police  
7   Department you have a lot of resources at your  
8   disposal; is that right?

9           A.    Yes, ma'am.

10          Q.    Okay.  Do you have a crime scene team  
11   at the Hanahan Police Department?

12          A.    A crime scene unit, per se?  No, ma'am.

13          Q.    Okay.

14          A.    We're detectives, we work it when it  
15   takes place.  We don't have an exact unit for it,  
16   no.

17          Q.    Okay.  Do you have people who can come  
18   out and take fingerprints?

19          A.    We do that, the detectives do.

20          Q.    Okay.  Do you have people who can come  
21   out and mark where items are found at a crime  
22   scene?

23          A.    We do, technically.

24          Q.    Okay.  And do you have people who can  
25   -- are you the only detective who came out to the

*FLOR REYES - CROSS EXAM BY MS. TOLLEY*

1 scene?

2 A. On the 10th? Yeah. On the 10th when I  
3 went out there, yes, ma'am.

4 Q. Did any other detective go out to the  
5 scene right at El Alamo?

6 A. On that day when I talked to them, no,  
7 ma'am. I went there.

8 Q. Any other day?

9 A. Who went with me to the Alamo?

10 Q. Yes.

11 A. Not for this incident, not that I can  
12 recall.

13 Q. Were there other incidents at El Alamo?

14 A. Were there every incidents in the past?

15 Q. Uh-huh.

16 A. Yes.

17 MR. DUQUETTE: Objection.

18 THE COURT: Basis?

19 MR. DUQUETTE: Relevance.

20 THE COURT: Please approach.

21 (Bench conference.)

22 MR. DUQUETTE: Your Honor, unless  
23 there's some kind of connection to a previous  
24 incidents at El Alamo, there's no indication that  
25 any previous incident had anything to do with this

*FLOR REYES - CROSS EXAM BY MS. TOLLEY*

1 case. So I would argue any discussion of previous  
2 incidents at the bar would be irrelevant.

3 THE COURT: How is it relevant?

4 MS. TOLLEY: It's relevant because I  
5 guess there was talk about my client being arrested  
6 for unlawful use of 911 in the video. And the  
7 reason that he was arrested is because he got  
8 arrested at El Alamo and everybody in the bar got  
9 arrested at El Alamo that particular day.

10 THE COURT: So --

11 MS. TOLLEY: -- for selling alcohol  
12 illegally.

13 THE COURT: How is that relevant if  
14 your position is he wasn't there and he didn't do  
15 it?

16 MS. TOLLEY: Well, it's relevant  
17 because if there were other things going on, it  
18 could have been anything else that caused a  
19 problem.

20 THE COURT: I'm listening. Was there  
21 something else?

22 MS. TOLLEY: No.

23 THE COURT: I'm going to give him a  
24 little bit of latitude to the extent that it could  
25 be somebody else. Well, not somebody else that did

*FLOR REYES - CROSS EXAM BY MS. TOLLEY*

1 it, but it could be motivation for acrimony towards  
2 this particular establishment. I'm just giving you  
3 a little bit of rope.

4 (End of bench conference.)

5 THE COURT: You may proceed. I'll give  
6 you a little bit of latitude.

7 Sir, do you remember the question, or  
8 do you need it repeated?

9 THE WITNESS: If she can repeat it,  
10 that's --

11 THE COURT: Please repeat the question.

12 BY MS. TOLLEY:

13 Q. There were other incidents at El Alamo?

14 A. Yes, ma'am.

15 Q. Okay. And one of those incidents was  
16 when the police raided the place because they  
17 didn't -- they were selling alcohol without a  
18 license?

19 A. They've had some incidents; I can't  
20 tell you exactly what they were. I know they did  
21 raid the place. I wasn't there, so I can't really  
22 testify to exactly what was going on over there.

23 Q. Okay. And this business -- well, I  
24 call it a business, but I'm not sure that they ever  
25 had a business license; is that right?

## FLOR REYES - CROSS EXAM BY MS. TOLLEY

1 MR. DUQUETTE: Objection;  
2 argumentative.

3 THE COURT: Basis? Basis of the  
4 objection?

5 MR. DUQUETTE: Argumentative.

6 THE COURT: And you all need to stand  
7 when addressing the Court, that goes for both.  
8 Basis of your objection?

9 MR. DUQUETTE: Argumentative, Your  
10 Honor.

11 THE COURT: Please approach.

12 (Bench conference.)

13 THE COURT: Why is whether they have a  
14 business license relevant?

15 MS. TOLLEY: Well, there is -- I guess  
16 our point is going to be that they a lot of things  
17 going on there, and there were a lot of reasons why  
18 someone might come and retaliate.

19 THE COURT: I think them not having a  
20 business license goes more to appeal to the biases  
21 and prejudices of the jury in that it really sort  
22 of links into whether they're documented or  
23 undocumented, and I think it's problematic.  
24 Sustained; relevance.

25 (End of bench conference.)



*FLOR REYES - CROSS EXAM BY MS. TOLLEY*

1                   THE COURT: You may proceed. The  
2 objection is sustained.

3 BY MS. TOLLEY:

4                   Q. You were in the courtroom for  
5 Benjamin's testimony?

6                   A. Yes, ma'am.

7                   Q. And you heard him testify that he had  
8 been arrested for aiding and betting aliens?

9                   A. I heard what he said, yes, ma'am.

10                  Q. Okay. So you began your investigation;  
11 is that correct?

12                  A. Yes, ma'am.

13                  Q. Okay. In addition to the resources  
14 that you have available to you in your department,  
15 you have other agencies that you can go to for  
16 help; is that correct?

17                  A. Yes, ma'am. We only do that when --  
18 depending on the circumstances that would require  
19 -- you know, depending on what it is.

20                  Q. Okay. You didn't -- SLED is one of the  
21 agencies that you can use to help you; is that  
22 correct?

23                  A. Yes, ma'am.

24                  Q. That's the State Law Enforcement  
25 Division?

## FLOR REYES - CROSS EXAM BY MS. TOLLEY

1 A. Yes, ma'am.

2 Q. They can run tests?

3 A. Yes, ma'am.

4 Q. Okay. SLED was not called?

5 A. No, ma'am.

6 Q. SLED didn't run any tests?

7 MR. DUQUETTE: Objection.

8 THE COURT: Basis?

9 MR. DUQUETTE: Asked and answered, Your  
10 Honor.

11 THE COURT: Please repeat the question.  
12 I'm sorry, I was asking my clerk to do something  
13 and I didn't hear the question.

14 MS. TOLLEY: SLED didn't run any tests.

15 THE COURT: Overruled. You may answer  
16 the question.

17 THE WITNESS: No, they did not, no,  
18 ma'am.

19 BY MS. TOLLEY:

20 Q. Okay. So some tests that SLED might  
21 run or -- they can do fingerprint tests; is that  
22 correct?

23 A. Yes. Some of the tests they can do,  
24 they can run in every case.

25 Q. They can sometimes make a determination

FLOR REYES - CROSS EXAM BY MS. TOLLEY

1 about a kind of bullet or type of bullet?

2 MR. DUQUETTE: Objection, Your Honor.

3 THE COURT: Basis?

4 MR. DUQUETTE: Relevance.

5 THE COURT: Overruled. It goes to the  
6 nature of the investigation.

7 THE WITNESS: Yes, they can.

8 BY MS. TOLLEY:

9            q.    They can test gunshot residue?

10                    A.    They can.

11 Q. They can do tests or focus on what kind  
12 of gun it might have been?

13                   A.    Yes, ma'am.

14 Q. Okay. None of this was done?

15                   A.    No, ma'am.

16 Q. Okay. You also have the ability to  
17 talk to witnesses; is that right?

18                   A.    Yes, ma'am.

19 Q. As part of your investigation?

20           A.     Yes, ma'am.  Can I respond back to the  
21   previous question?  Am I allowed to?

22 THE COURT: Sir, you can explain your  
23 answers.

24 THE WITNESS: Okay.

25 THE COURT: But you need to answer yes

## FLOR REYES - CROSS EXAM BY MS. TOLLEY

1 or no first, and then you may explain.

2 THE WITNESS: Okay. Well --

3 THE COURT: You may explain your  
4 answer.

5 THE WITNESS: Oh, okay. Back to the  
6 question as far as why that was not done. Because  
7 I went over on the 10th, the crime happened on the  
8 6th. The crime scene is not as it was when it  
9 happened. To me, to do that would be very unfair  
10 to the defendant.

11 I would not do that, because people are  
12 in there cleaning and do -- you know, clean it up  
13 and do all that, and things were moved, the boards  
14 were up, of course everything cleaned up. For me  
15 to do that would be very unfair to the defendant  
16 because it wouldn't be an accurate representation  
17 of what happened.

18 That's why I was not -- that's why SLED  
19 wasn't called. There was no bullet. I tried to  
20 look for the bullet; I couldn't find the bullet. I  
21 did search for the bullet. You know, other things  
22 could have happened.

23 I mean, it could have hit something  
24 else in there and fell apart. I don't know. I did  
25 search, but I cannot -- I didn't do it for that

*FLOR REYES - CROSS EXAM BY MS. TOLLEY*

1     reason because it was four days later. I mean,  
2     there was no active crime scene to process at that  
3     time besides what I did, what I was able to do.

4     BY MS. TOLLEY:

5             Q.     Okay. So no bullet?

6             A.     No.

7             Q.     No gun?

8             A.     No physical gun. Just what I saw in  
9     the video.

10            Q.     Okay. And you haven't recovered a gun?

11            A.     No. No, ma'am.

12            Q.     And you inspected his car. You didn't  
13     find a gun in his car?

14            A.     No, I didn't inspect his car, no,  
15     ma'am. I didn't go in the car and look.

16            Q.     Okay. You went to his house. Did you  
17     go and look for a gun?

18            A.     No, ma'am. Again, it was four days  
19     later, so --

20            Q.     Okay. So, but still no gun?

21            A.     No gun.

22            Q.     Okay. You have the ability to obtain  
23     search warrants; is that right?

24            A.     Correct.

25            Q.     Did you get a search warrant to search

## FLOR REYES - CROSS EXAM BY MS. TOLLEY

1 his house for a gun?

2 A. No, I did not.

3 Q. Did you get a search warrant to search  
4 his car for a gun?

5 A. No, I did not.

6 Q. In fact, you talked to him and he  
7 cooperated with you to take pictures of his car; is  
8 that correct?

9 A. Correct.

10 Q. And if you had asked him if you could  
11 search his car, he probably would have said yes?

12 A. He probably -- again, it was four days  
13 later, so...

14 Q. Okay. And -- okay. You have other  
15 resources at your disposal as well. Do you have  
16 the ability to -- isn't it possible to run a search  
17 on the number of Hummers in the area?

18 A. It depends on -- the only ability we  
19 have on that is the ALPR. It's a system that  
20 records plate -- car plate reader, basically.

21 Q. Doesn't NCIS (sic) have a way for you  
22 to search the number of vehicles in the state and  
23 in the county and in the town of Hanahan?

24 A. The only one I am aware of is the plate  
25 reader, and there's only one in that area.

*FLOR REYES - CROSS EXAM BY MS. TOLLEY*

1 Q. No. No. No. My question is. The  
2 number of vehicles in the area -- the number of  
3 people who actually own Hummers in the area?

4 A. Oh, I got what you're saying. Okay.  
5 You're talking about DMV as far as registered  
6 people who own Hummers.

7 Q. Right.

8 A. Yes. DMV has that information for  
9 every resident in Hanahan, if that's what you're  
10 talking about.

11 Q. Did you do one of those searches?

12 A. No, ma'am. I'm not familiar with a  
13 search like that unless I have tags. That's the  
14 only access I have, if I have tags, names,  
15 addresses. That's the only resources that I have.

16 Q. Okay. You have access to NCIC,  
17 correct?

18 A. Correct.

19 Q. Okay. Got you. Would it surprise you  
20 to know that there are at least 23 Hummers in the  
21 area?

22 MR. DUQUETTE: Objection, Your Honor.

23 THE COURT: Basis?

24 MR. DUQUETTE: Lack of personal  
25 knowledge; asked and answered.

## FLOR REYES - CROSS EXAM BY MS. TOLLEY

1 THE COURT: I think it's appropriate  
2 cross examination. It's within the ambit of his  
3 training and experience.

4 Sir, you may answer the question. The  
5 objection is overruled.

6 THE WITNESS: No. I'm not aware of 23  
7 Hummers in the area.

8 BY MS. TOLLEY:

9 Q. Well, let's take a look at your report.  
10 You testified that you've been an officer for a  
11 number of years; is that correct?

12 A. Yes, ma'am.

13 Q. And that you've had significant  
14 training. You went to the police academy?

15 A. Yes, ma'am.

16 Q. And you've had other training?

17 A. Yes, ma'am.

18 Q. And they talked to you about how to  
19 write written reports?

20 A. Yes, ma'am.

21 Q. Regarding your investigations?

22 A. Yes, ma'am.

23 Q. Okay. And the importance of these  
24 reports because people rely on them; is that right?

25 A. Documentation.



*FLOR REYES - CROSS EXAM BY MS. TOLLEY*

1           Q.     Right. For times like this when we  
2 come to court? Is that a yes?

3           A.     Yes, ma'am.

4           Q.     Got you. Okay. And in your report, it  
5 lists the complainant as Arelis Santos; is that  
6 correct?

7           A.     I don't have the report with me.

8           Q.     If I were to hand it up, would it  
9 refresh your recollection?

10          A.     Yes, ma'am. Okay.

11          Q.     (Indicating)

12          A.     Arelis Santos is the complainant, yes.

13          Q.     Thank you. And in your report does it  
14 state, I asked Arelis Santos why did they wait to  
15 report the incident?

16                   I'm going to hand it up for you again.

17          A.     Yes, why did they wait. I did ask that  
18 question.

19          Q.     And what was the response that you  
20 wrote?

21          A.     They were out of town, employees -- had  
22 employee board up the window so they could get back  
23 to look into the incident.

24          Q.     Okay. So I'm going to read it just so  
25 we're clear on what it says exactly. It says, I

## FLOR REYES - CROSS EXAM BY MS. TOLLEY

1 asked --

2 MR. DUQUETTE: Objection, Your Honor.

3 THE COURT: Basis?

4 MR. DUQUETTE: May we approach?

5 THE COURT: Sure.

6 (Bench conference.)

7 THE COURT: What's the basis of the  
8 objection?

9 MR. DUQUETTE: We would argue against  
10 defense counsel entering evidence through  
11 testimony.

12 THE COURT: Is it his statement?

13 What is it you're having him read?

14 MS. TOLLEY: His report.

15 THE COURT: Did you ask him the  
16 question directly and give him the opportunity to  
17 admit or refute it?

18 MS. TOLLEY: Yeah.

19 THE COURT: Did he answer consistently  
20 or inconsistently?

21 MS. TOLLEY: Consistently.

22 THE COURT: Okay. So you can't have  
23 him read it into the record. You can let him use  
24 it to refresh his memory.

25 MS. TOLLEY: That's what I will do.

FLOR REYES - CROSS EXAM BY MS. TOLLEY

1 THE COURT: If he answers  
2 inconsistently you can use it as an extrinsic  
3 source to impeach him. But if he answers  
4 consistently, you need to give him the opportunity  
5 to refresh his memory and then ask him the question  
6 again.

7                   Did he indicate he didn't remember, or  
8    did he indicate he remembered?

9 MS. TOLLEY: He didn't indicate -- I  
10 had to show him the report in order for him to  
11 remember I think is what he said.

12 THE COURT: So then ask him the  
13 question directly and give him a chance to answer.

14 (End of conference.)

15 THE COURT: You may proceed.

16 BY MS. TOLLEY:

17 Q. Okay. So that question was directed at  
18 Arelis Santos, why did you wait to report the  
19 incident; is that correct?

20           A.     That question -- I learned from  
21 Benjamin that they were out of town when they first  
22 called me.

23 Q. Right.

24                    A.     Okay.

25 Q. But in your report it says: I asked

## FLOR REYES - CROSS EXAM BY MS. TOLLEY

1     Arelis Santos why did they wait to report the  
2     incident. That's what it says in your report; is  
3     that correct?

4             A.     That's in there, yes, ma'am.

5             Q.     Okay. And she said -- according to  
6     your report, it says, she said; is that correct?

7             A.     If that's what it says, ma'am. I'd  
8     have to look at it again.

9             Q.     She stated that they were out of town  
10    and had their employees board the window up until  
11    they could get back to look into the incident; is  
12    that correct?

13            A.     That's what they told me.

14            Q.     So they, meaning Benjamin and Arelis?

15            A.     Correct.

16            Q.     Okay. Got you. Did you talk to any of  
17    the other employees?

18            A.     On the 10th, when I was there?

19            Q.     Any time?

20            A.     No, ma'am.

21            Q.     Okay. And you talked about relying  
22    some on the videos; is that correct?

23            A.     I'm sorry?

24            Q.     The video from Kwik Fill and the video  
25    from El Alamo?

*FLOR REYES - CROSS EXAM BY MS. TOLLEY*

1 A. Yes, ma'am.

2 Q. Okay. The date and time stamps are on  
3 the videos?

4 A. There is dates and time stamps on the  
5 video, yes, ma'am, both of them, but they're not --  
6 of course, the -- one of them is off.

7 Q. Okay.

8 A. Which is not uncommon for some  
9 businesses.

10 Q. Right. So the jury will be able to see  
11 that?

12 A. Yes.

13 Q. Okay. Got you. Because one of the  
14 them actually says June 10th?

15 A. Well, I think it's backwards. It's  
16 October 6th. It's the way they set it up, that's  
17 what it is. I know what you're talking about.

18 Q. It could be that or --

19 A. Yeah, it is.

20 Q. -- it could be just it's not the right  
21 day?

22 A. Well --

23 MR. DUQUETTE: Objection, Your Honor.

24 THE COURT: Basis?

25 MR. DUQUETTE: Argumentative.

## FLOR REYES - CROSS EXAM BY MS. TOLLEY

1 THE COURT: Rephrase the question,  
2 please.

3 BY MS. TOLLEY:

4 Q. Okay. I'm going to skip that question.  
5 I'm going to go to another question. Not only is  
6 the date wrong, but the time is wrong also?

7 A. Which video are you talking about, the  
8 one for the El Alamo? That's an hour and eight  
9 minutes off which is -- some businesses that has  
10 happened. Everybody doesn't have the same exact  
11 time, so...

12 Q. That's possible, or it's possible that  
13 the time is right.

14 A. No -- no, ma'am, I don't see that.

15 MR. DUQUETTE: Objection, Your Honor.

16 THE COURT: Basis?

17 MR. DUQUETTE: May we approach?

18 THE COURT: Sure.

19 (Bench conference)

20 MR. DUQUETTE: Your Honor, I would  
21 request the defense counsel refrain from arguing --

22 THE COURT: She's not arguing.

23 MR. DUQUETTE: I would ask that she  
24 limit her --

25 THE COURT: She can question the

*FLOR REYES - CROSS EXAM BY MS. TOLLEY*

1     veracity of what they've done in their  
2     investigation and whether those times and date  
3     stamps are right.  Nobody tried to call an IT  
4     expert to explain or the person who is -- who  
5     created this program or who services it.

6                     MR. DUQUETTE:  I don't disagree with  
7     the content of her questioning.  I would just ask  
8     that defense counsel be limited to questions rather  
9     than argument.

10                    MS. TOLLEY:  I can do that.

11                    (End of bench conference.)

12                    THE COURT:  Proceed.

13                    THE WITNESS:  Am I allowed to finish  
14     the question?

15                    MS. TOLLEY:  I think you've answered  
16     it.  I don't have any --

17                    THE WITNESS:  Oh.

18                    THE COURT:  Do you have any further  
19     questions?

20                    MS. TOLLEY:  I don't have a need for  
21     you to answer that any further.  If you'll give me  
22     just a minute, I'll see if I have anything else.

23                    THE COURT:  Uh-huh.

24                    MS. TOLLEY:  No more questions.

25                    THE COURT:  Any redirect for the

## FLOR REYES - REDIRECT EXAM BY MR. DUQUETTE

1 witness?

2 MR. DUQUETTE: Yes, Your Honor.

3 THE COURT: You may proceed.

4 REDIRECT EXAMINATION

5 BY MR. DUQUETTE:

6 Q. Detective, during defense counsel's  
7 questions, you mentioned ALPR. Can you tell us  
8 what that stands for?

9 A. It's a tag reader. That's what it is.  
10 In certain locations the state designated that when  
11 cars go by, it reads the plate. It takes a picture  
12 of the car and everything from -- you know, usually  
13 from behind because we only have tags in the back.

14 MS. TOLLEY: Objection.

15 THE COURT: Basis of the objection?

16 MS. TOLLEY: May we approach?

17 THE COURT: Yes.

18 (Bench conference)

19 MS. TOLLEY: He's going into new  
20 territory that was not introduced initially in his  
21 direct exam, and I don't think it's appropriate.

22 THE COURT: What's the question again?

23 MR. DUQUETTE: I asked him about the  
24 ALPR that was brought up on cross.

25 MS. TOLLEY: I didn't bring it up.



*FLOR REYES - REDIRECT EXAM BY MR. DUQUETTE*

1                   MR. DUQUETTE: As the defense counsel  
2 was asking about running vehicles and mentioned the  
3 ALPR system.

4                   MS. TOLLEY: I asked him about whether  
5 or not it's possible to run the number of vehicles  
6 and the number of Hummers in the area --

7                   MR. DUQUETTE: Correct.

8                   MS. TOLLEY: -- of people who actually  
9 own Hummers in the area. That was my question.

10                  THE COURT: So how is your question  
11 responsive?

12                  MR. DUQUETTE: Your Honor, it's the  
13 State's understanding that she asked about any way  
14 to determine the number of Hummers in the area.  
15 And he mentioned the ALPR camera. And I think that  
16 she opened the door to --

17                  THE COURT: Actually, she referred to  
18 property records and the ability to run those.  
19 What you can do is public records.

20                  MR. DUQUETTE: It's in that same vein  
21 that you can run property records.

22                  THE COURT: Exactly what are you trying  
23 to elicit from him?

24                  MR. DUQUETTE: If he looked at the ALPR  
25 cameras.

*FLOR REYES - REDIRECT EXAM BY MR. DUQUETTE*

1 THE COURT: What is that?

2 MR. DUQUETTE: It's a camera system  
3 that shows the area to see if his Hummer was in the  
4 area.

5 MS. TOLLEY: The reason he's wanting to  
6 ask this is he didn't bring it out in --

7 THE COURT: That's not responsive to  
8 her question. If there's some other record-keeping  
9 system, I think it would be appropriate, but I  
10 think that would go beyond the scope of  
11 cross-examination.

12 MR. DUQUETTE: Okay.

13 THE COURT: The objection is sustained.

14 (End of bench conference.)

15 THE COURT: You may proceed with your  
16 next question.

17 BY MR. DUQUETTE:

18 Q. Detective, defense counsel mentioned  
19 the date on the video. Can you elaborate as to how  
20 you read the date on the video? Did you say one  
21 might be backwards? Could you explain that?

22 A. Right. Instead of saying October 6th,  
23 it says, 6-10. So that means October 6th. Not  
24 only that, but the videos match the same sequence  
25 of events. I mean, it's not different.

*FLOR REYES - REDIRECT EXAM BY MR. DUQUETTE*

1                   So, it's not like one happened one time  
2   and -- and it's the same exact events you'll see on  
3   both videos so -- you know, they're both the same,  
4   showing the same sequence of events.

5           Q.    So it's your position that both cameras  
6   from businesses, despite the time difference,  
7   captured the same event --

8           A.    Yes.

9           Q.    -- is that correct?

10          A.    Yes, sir.

11          Q.    Okay.

12               MR. DUQUETTE:  No further questions,  
13   Your Honor.

14               THE COURT:  Sir, you may step down.  
15   The State may proceed.

16               MR. DUQUETTE:  Your Honor, the State  
17   rests.

18               THE COURT:  Madam Forelady, ladies and  
19   gentlemen, the State has rested their case.  I have  
20   some brief matters of law to take up with counsel.  
21   We appreciate your indulgence, and then I'll let  
22   you know how we will be proceeding for the  
23   remainder of the day.

24               If you would go with the bailiffs,  
25   please.  And please leave your notepads in your

1 seats. We appreciate your patience.

2 (Jury out, 4:05 p.m.)

3 THE COURT: You may be seated. The  
4 State has rested. Are there any motions?

5 MS. TOLLEY: We would move for a  
6 directed verdict, Your Honor. Based on the  
7 evidence presented, we believe there's not  
8 sufficient evidence to go forward or take this to  
9 the jury, and we would ask the Court to direct a  
10 verdict based on all of that.

11 THE COURT: Would the State like to  
12 respond?

13 MR. DUQUETTE: Your Honor, the State  
14 understands that the Court is concerned not with  
15 the weight of any evidence, but the existence of  
16 any. We would submit that there is ample evidence  
17 in this case presented that the defendant's vehicle  
18 was involved in shooting out the window at the El  
19 Alamo in that the defendant has stated that nobody  
20 else drives his vehicle.

21 THE COURT: Anything further from the  
22 defense?

23 MS. TOLLEY: Nothing, Your Honor.

24 THE COURT: In considering a motion for  
25 directed verdict, the Court is concerned with the

1   existence or nonexistence of evidence and not its  
2   weight.  It's not for the Court to act as the  
3   finder of fact.

4               There is both direct evidence in the  
5   nature of the video, as well as substantial  
6   circumstantial evidence reasonably tending to prove  
7   the defendant's guilt which rises above mere  
8   suspicion.

9               The State is not required to prove  
10   guilt to the exclusion of every other reasonable  
11   hypothesis.

12              The defendant's statement in and of  
13   itself in the audio-recorded statement after being  
14   Mirandized, inculcates him as being involved in the  
15   incident, as well as the video.

16              So, as such, there is direct and  
17   substantial -- or circumstantial evidence  
18   reasonably tending to prove his guilt, and the  
19   motion is denied.

20              Sir, if you would stand for me, please,  
21   and raise your right hand to be sworn?  Do you  
22   swear or affirm -- I need you to raise your right  
23   hand first.  Right hand.

24              Do you swear or affirm the testimony  
25   you give will be the truth?  You need to answer my

## EVODIO HERNANDEZ-SANTO - EXAM BY THE COURT

1 question.

2 THE DEFENDANT: I'm not going to  
3 testify.

4 THE COURT: I still have to question  
5 you about it.

6 EVODIO HERNANDEZ-SANTO,  
7 being first duly sworn, testified as follows:

8 THE DEFENDANT: I do.

9 THE COURT: You can put your right hand  
10 down.

11 EXAMINATION

12 BY THE COURT:

13 Q. Sir, state your full name for the  
14 record.

15 A. Evodio Hernandez-Santo.

16 Q. And, Mr. Santo, we have reached the  
17 stage of the trial where I need to advise you of  
18 certain of your rights. If you don't understand  
19 something I say, please let me know. If you need  
20 me to repeat something that I say, let me know.

21 Do you understand?

22 A. I do, ma'am.

23 Q. Sir, we have now reached the stage of  
24 the trial where you may present your defense. You  
25 have the right to claim the protections given to

*EVODIO HERNANDEZ-SANTO - EXAM BY THE COURT*

1     you by the Fifth Amendment to the Constitution of  
2     the United States.

3                 And that Amendment states in pertinent  
4     part that no person shall be compelled in any  
5     criminal case to be a witness against himself.  
6     This means that you cannot be required to testify  
7     in this case.

8                 You have the right to testify on your  
9     own behalf; however, no one can make you testify.  
10    This is a personal right and no one can waive this  
11    right except you. If you decide to testify, you  
12    would be subject to the same rules that govern  
13    other witnesses, and you may be examined and cross  
14    examined on any relevant issue in this case.

15                In addition, if you have any  
16    convictions involving dishonesty or false  
17    statements or for crimes punishable by imprisonment  
18    for more than one year and the Court determines  
19    that the probative value of admitting this evidence  
20    outweighs its prejudicial effect to you, the  
21    Solicitor will be able to introduce your record to  
22    attack your credibility.

23                If you decide to testify, this decision  
24    must be made freely, voluntarily, knowingly, and  
25    intelligently with knowledge of the protections

## EVODIO HERNANDEZ-SANTO - EXAM BY THE COURT

1 given to you by the Fifth Amendment and the  
2 consequences of your decision to testify.

3 If you decide not to testify, I will  
4 instruct the jury that they cannot give that fact  
5 any consideration whatsoever, that you have the  
6 constitutional right to remain silent, that you do  
7 not have to in any way testify, that you have no  
8 burden of proof in this case, and that the burden  
9 of proof remains on the State to prove your guilt  
10 to each and every element of the offenses beyond a  
11 reasonable doubt, and the fact that you did not  
12 testify cannot be discussed in any manner  
13 whatsoever during their deliberations, and that  
14 there is to be absolutely no prejudice to you.

15 Whether or not you testify is a matter  
16 solely for you to determine. You can speak with  
17 your attorneys, your family members, and others,  
18 but ultimately that decision is yours.

19 Sir, do you understand your rights as  
20 I've just explained them to you?

21 A. I do, ma'am.

22 Q. Do you have any questions about your  
23 rights as I've just explained them to you?

24 A. No, ma'am.

25 Q. Have you spoken with your attorneys



*EVODIO HERNANDEZ-SANTO - EXAM BY THE COURT*

1     whether you should or should not testify?

2             A.     I have, ma'am.

3             Q.     Do you need to speak with them any  
4     further at this time?

5             A.     No, ma'am.

6             THE COURT:   And, Ms. Tolley and  
7     Mr. Goodwyn, have you fully discussed with Mr.  
8     Santo whether he should or should not testify?

9             MS. TOLLEY:   Yes, ma'am, we have.

10            THE COURT:   Do you need to speak with  
11   him any more at this time?

12            MS. TOLLEY:   No, ma'am, we don't.

13            THE COURT:   And I'm not really aware of  
14   any record the State would be able to utilize to  
15   impeach his credibility.   I know we discussed  
16   something earlier, but we never got to the root of  
17   whether it could be used to impeach him because we  
18   would have had to have a hearing to determine if it  
19   involved theft or dishonesty.   So I guess that's  
20   really a moot issue at this point.

21            Do you feel the need to explore that  
22   any further to make sure your client is fully  
23   informed of his rights?

24            MS. TOLLEY:   I do not.   I think the  
25   fact that it was discussed in the video, and I

## EVODIO HERNANDEZ-SANTO - EXAM BY THE COURT

1 think we made a decision together about the  
2 introduction of the video, so he was very much  
3 aware of, you know, what might come in under those  
4 circumstances.

5 THE COURT: So you feel it's a moot  
6 issue at this point --

7 MS. TOLLEY: That's correct.

8 THE COURT: -- to explore any further.

9 MS. TOLLEY: That's right.

10 BY THE COURT:

11 Q. And, sir, again, I ask, do you need to  
12 discuss with your attorneys any further whether you  
13 should or should not testify?

14 A. No, ma'am.

15 Q. And, sir, do you wish to testify?

16 A. No, ma'am.

17 THE COURT: You may take your seat.

18 Are there any other witness on this  
19 list that the defense plans to call? I have listed  
20 Kristy Gore, Ramundo Jimenez, and Carlos Reyna  
21 Hernandez.

22 MS. TOLLEY: No other witnesses, Your  
23 Honor.

24 THE COURT: Does the defense then rest?

25 MS. TOLLEY: The defense rests.

1           THE COURT: So I will allow you to rest  
2 in the presence of the jury, and then we will take  
3 up any further motions and charge conference and  
4 close and charge in the morning.

5           Any exceptions from the State.

6           MR. DUQUETTE: I'm sorry, can you  
7 repeat that, Your Honor?

8           THE COURT: I said, I'll let the  
9 defense rest in the presence of the jury, we'll  
10 take up any further motions -- and I apologize, I  
11 had my head down -- take up any further motions,  
12 we'll have the charge conference, and then close  
13 and charge in the morning because it's 4:14. Too  
14 late to be closing.

15          MR. DUQUETTE: No objection, Your  
16 Honor.

17          THE COURT: Any exception?

18          MS. TOLLEY: None.

19          THE COURT: Please bring in the jury.

20          (Jury in, 4:13 p.m.)

21          THE COURT: You may be seated. The  
22 defense may proceed.

23          MS. TOLLEY: Your Honor, the defense  
24 rests.

25          THE COURT: Madam Forelady, ladies and

1 gentlemen, both the State and the defense have  
2 rested their cases. There are some matters of law  
3 that I need to take up with counsel that will take  
4 us until 5:00, and at that point it would be a  
5 little late to close and have -- have closing  
6 argument and the instruction.

7                   So we will have closing argument and  
8 instruction in the morning beginning at 9:30.

9                   During this break, it is absolutely  
10 essential that you have no discussion about this  
11 case among yourselves or with anyone else. I know  
12 it might seem innocent to discuss it, but to allow  
13 yourself to discuss any matter that you've heard  
14 would be deliberations by its very nature, because  
15 it requires you to process what you've heard and  
16 draw conclusions based upon it.

17                   And you should only do that after  
18 hearing closing arguments and the Court's  
19 instructions and within the sanctity of your jury  
20 room and the privacy of that process. So I would  
21 instruct you to strictly abide by that instruction.

22                   Also, please, when you return in the  
23 morning, do not have any contact with anyone in or  
24 about the courthouse. It is even more essential  
25 that you have no conversations that could be

1 misinterpreted regarding the facts of the case.

2           Please don't make any comments  
3 regarding your status on any social networking  
4 sites, and if there are any media accounts about  
5 this, I would ask that you guard yourselves not to  
6 read, watch, or listen to them.

7           In addition, do not do any independent  
8 research of any type regarding any issue or matter  
9 involved in this case on the Internet. I know that  
10 we like to believe what we read on the Internet is  
11 accurate, but I think that we know that it is not.

12           In addition to that, by your oath, you  
13 are sworn to decide this case according to the  
14 testimony from the sworn witnesses and the other  
15 evidence that has been introduced.

16           You all have been incredibly patience  
17 with us today. As I told you all when we took the  
18 break, that the more we rely on technology, the  
19 more we believe it is perfect and it never has  
20 problems; but as we learned today, sometimes it has  
21 hiccups. And I know that your time is precious to  
22 you, and we appreciate you all being so very  
23 patient and indulgent with us.

24           I hope you all have a great evening.  
25 We'll see you in the morning at 9:30. If you would

1 leave your notepads in your seats, we'll secure  
2 them during the break. Have a good evening.

3 THE JURY: Thank you, Your Honor.

4 THE COURT: You're welcome.

5 (Jury out, 4:16 p.m.)

6 THE COURT: You can take your seats.

7 Are there any motions? The defense has  
8 rested.

9 MR. DUQUETTE: None from the State,  
10 Your Honor.

11 MS. TOLLEY: We would renew our motion  
12 for a directed verdict at this time, Your Honor.

13 THE COURT: Any argument, or do you  
14 just want to incorporate your previous argument?

15 MS. TOLLEY: I want to incorporate the  
16 previous arguments.

17 THE COURT: I need that door closed  
18 please. Does the State want to make any additional  
19 argument?

20 MR. DUQUETTE: No, Your Honor.

21 THE COURT: The Court would deny the  
22 motion and incorporate its previous rulings in this  
23 portion of the record as I stated them verbatim.

24 All right. We are going to -- I'll  
25 give the jury a general instruction regarding their

1 responsibility and my responsibility, how they are  
2 to judge witness credibility and believability.

3 I'll give them a general instruction  
4 regarding the prior record of a witness, because  
5 one of the witnesses testified that he had pled  
6 guilty in Federal Court and was awaiting  
7 sentencing.

8 I'll also give a prior act curative  
9 instruction dealing with references to prior acts  
10 not the subject of the conviction which were  
11 referenced during the defendant's video statement,  
12 which in essence just says that there have been  
13 references that the defendant may have committed a  
14 bad act not the subject of a conviction, other than  
15 one for which he is on trial; that the evidence is  
16 to be disregarded by you and you're not to give it  
17 any considerations in your deliberations of this  
18 case; and, that you are not to discuss it in any  
19 manner whatsoever in your deliberations.

20 Basically, it's just a curative  
21 instruction regarding prior bad acts because it has  
22 not been admitted for the purpose of his  
23 credibility.

24 I'll give a general instruction  
25 regarding direct and circumstantial evidence, as

1 well as the charge, the arrest, and the indictment  
2 not being evidence, as well as on the presumption  
3 of innocence. I'll charge Victor v. Nebraska on  
4 reasonable doubt.

5 And I will give a general instruction  
6 in the nature of Jackson v. Denno on the statement  
7 of the defendant. And, that, while the Court has  
8 admitted the statement, they make the ultimate  
9 decision regarding any credibility or otherwise to  
10 be afforded to the statement.

11 I'll give a general instruction  
12 regarding the defendant not testifying, and I will  
13 charge the elements of 16-23-440, which is  
14 discharging firearms at or into dwellings,  
15 structures, enclosures, vehicles, or equipment  
16 which would -- is very simple.

17 The defendant is charged with charging  
18 firearms into a dwelling. The State must prove  
19 beyond a reasonable doubt that the defendant  
20 discharged or caused to be discharged unlawfully a  
21 firearm at or into a dwelling, house, other  
22 building, structure, or enclosure regularly  
23 occupied by a person.

24 I'll then instruct the elements of  
25 16-23-20, which is unlawful carrying of a pistol.



1 And we know the elements of that, which is the  
2 defendant -- the State must prove beyond a  
3 reasonable doubt that the defendant carried a  
4 pistol about his person, whether concealed or not,  
5 and then defining how a weapon is about the person  
6 -- about a defendant's person.

7 I don't think he fits within any of the  
8 exceptions which are listed in the statute, 1  
9 through 12. Because there is -- the only two that  
10 he would remotely fall into would be subsection  
11 (9), which is, a person in a vehicle where the  
12 pistol is secured in a closed glove compartment, a  
13 closed console, or closed trunk because I haven't  
14 heard any testimony to that effect; or, subsection  
15 (12) which is, a person who is granted a permit by  
16 the State Law Enforcement Division to carry a  
17 pistol about his person under the conditions set  
18 forth in the permit because there's been no  
19 testimony that he had a permit.

20 I'm going to give a general instruction  
21 on identification, which is, the State has to prove  
22 ID beyond a reasonable doubt. And I'm  
23 contemplating charging mere presence because there  
24 is testimony that it was the defendant's vehicle  
25 that was involved in this incident, and there is

1 testimony in the record of an individual who could  
2 conceivably fit the defendant's description in the  
3 record.

4 I'll then instruct on multiple charges,  
5 which is, he has two charges and he can be  
6 convicted or acquitted on either, both, or neither.  
7 And that the State has to -- that they have to make  
8 a separate and distinct decision on each offense  
9 based on the elements.

10 And then I will instruct on the form of  
11 the verdict.

12 Any exceptions to the charge as  
13 proposed? From the State.

14 MR. DUQUETTE: None from the State,  
15 Your Honor.

16 THE COURT: From the defense?

17 MS. TOLLEY: None from the defense,  
18 Your Honor.

19 THE COURT: All righty, guys. Get some  
20 rest. See you in the morning, 9:30. Can you all  
21 make sure that the Court Reporter has all the  
22 evidence for me before you all leave just to make  
23 sure nobody picked anything up.

24 MR. DUQUETTE: Yes, Your Honor.

25 THE COURT: Any exceptions to the form

1 of the verdict? From the State?

2 MR. DUQUETTE: No, Your Honor.

3 THE COURT: From the defense?

4 MS. TOLLEY: No, ma'am.

5 THE COURT: Thank you all very much.

6 Have a good evening. See you in the morning.

7 (These proceedings were recessed at  
8 4:39 p.m., to be continued 9:30 a.m., 11/16/2019.)

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1 (The following proceedings took place  
2 January 16, 2019, in re State v. Santo, 9:55 a.m.)

3 THE COURT: Is the State ready to  
4 proceed?

5 MR. DUQUETTE: Yes, Your Honor.

6 THE COURT: Is the defense ready to  
7 proceed?

8 MS. TOLLEY: Yes, Judge.

9 THE COURT: Madam Court Reporter, have  
10 you got all of the exhibits --

11 COURT REPORTER: Yes, ma'am.

12 THE COURT: -- accounted for?

13 COURT REPORTER: Yes, ma'am.

14 THE COURT: All right. I assume that  
15 since the defense presented no evidence they will  
16 be -- their position is that you've preserved last  
17 argument, correct?

18 MS. TOLLEY: That's correct, Judge.

19 THE COURT: All righty. Bring in the  
20 jury.

21 (Jury in, 9:57 a.m.)

22 THE COURT: You may be seated. Good  
23 morning.

24 THE JURY: Good morning.

25 THE COURT: I hope everybody had a

*CLOSING ARGUMENT BY MR. DUQUETTE*

1   pleasant evening. As I indicated on yesterday,  
2   both the State and the defense have rested their  
3   cases. We will now have closing argument and then  
4   the Court's instructions. I would ask that you  
5   give counsel your undivided attention.

6                   You may proceed.

7                   MR. DUQUETTE: Thank you, Your Honor --

8                   THE COURT: You're welcome.

9                   MR. DUQUETTE: -- defense counsel. May  
10   it please the Court.

11                  THE COURT: Yes, sir.

12                  MR. DUQUETTE: Nobody else drives my  
13   car. I'm the only one that drives my car. I'm not  
14   saying I did it, I'm not saying I didn't. We can  
15   always work out something. I'll pay for the  
16   damages.

17                  Ladies and gentlemen, this is a clear  
18   and simple case. This is not a who-done-it  
19   mystery, because the person who done it in this  
20   case has been sitting in the courtroom all week;  
21   the Defendant Evodio Hernandez-Santo.

22                  And what the defendant has done in this  
23   case is, on October 6, 2017, in his distinctive  
24   gray, damaged Hummer stalked the El Alamo, parked  
25   across the street and watched it, and then drove by

*CLOSING ARGUMENT BY MR. DUQUETTE*

1 and shot out the window. You saw it on video. You  
2 heard the testimony.

3 At the beginning of this case, defense  
4 counsel referenced paying attention to the  
5 evidence. Show me the evidence. We often hear of  
6 direct and circumstantial evidence. In this case  
7 you have some of each.

8 Direct evidence: The video of the  
9 incident. The screen shot of the defendant with a  
10 handgun across the street watching the business.  
11 The video of the window being shot out.

12 Circumstantial evidence: If you walk  
13 outside in the morning and the ground is wet, the  
14 sky is dark, people are walking by with umbrellas  
15 that are wet, raincoats that are wet, you can  
16 reasonably conclude that it has rained.

17 Even though you may not have been  
18 outside when it rained, that's a reasonable  
19 conclusion you can draw.

20 In this case you have circumstantial  
21 evidence and direct evidence tending to show the  
22 guilt of the defendant in several different forms.

23 Shortly, the Judge is going to instruct  
24 you on the law, so I'd like to go over the elements  
25 of the offenses the defendant is facing that

*CLOSING ARGUMENT BY MR. DUQUETTE*

1 Mr. Myers introduced you to at the beginning of  
2 this trial.

3 The first charge is discharging a  
4 firearm into a building. To be found guilty  
5 several elements must be met. You must find that  
6 the defendant discharged or caused to be discharged  
7 a firearm at or into a building, or structure,  
8 regularly occupied by people.

9 I don't think there is any debate that  
10 the El Alamo is a building regularly occupied by  
11 people. You heard Mr. Benjamin, the former  
12 manager, up here telling you that they were opened  
13 that night, and they're open in the evening. You  
14 saw the video of the car drive by. You saw the  
15 window shatter.

16 You saw the screen shot where the  
17 defendant was holding a gun across the street.  
18 It's reasonable for you to conclude what happened  
19 is the car drives by and shot out that window.

20 The next charge, unlawful carrying of a  
21 handgun. Elements that must be met for this  
22 charge, the defendant carried about his person a  
23 handgun. In this case, not only do you see in the  
24 video the defendant driving through the gas station  
25 with a handgun in his hand, not only do you have

## CLOSING ARGUMENT BY MR. DUQUETTE

1 the picture that's going to be in evidence for you  
2 to look at where he's holding the gun, you see on  
3 the video where he drives by and shoots out the  
4 window of the El Alamo.

5 I want to remind you of the burden that  
6 we must meet today, and that is a reasonable doubt.  
7 That is not beyond all doubt. That is not an  
8 absolute certainty, but we must leave you firmly  
9 convinced of what happened. And you can be firmly  
10 convinced because you saw the video, you saw the  
11 pictures, you heard the testimony.

12 I'd like to review some of the evidence  
13 that was presented over the last few days. In the  
14 form of testimony you heard from Benjamin, the  
15 former manager of the bar. He immediately  
16 recognized the Hummer upon viewing the security  
17 footage. He recognized it as the defendant's  
18 vehicle.

19 You heard from Detective Reyes  
20 yesterday. He also recognized the Hummer as  
21 belonging to the defendant from previous  
22 interactions he'd had with the defendant. He  
23 identified through his investigation that that  
24 Hummer in the video shooting out the window is, in  
25 fact, the defendant's Hummer.



*CLOSING ARGUMENT BY MR. DUQUETTE*

1                   You had statements during the interview  
2   with Detective Reyes from the defendant himself.  
3   Some of the things he told you: I'm not saying I  
4   did it. I'm not saying I didn't. We can always  
5   work something out. I'll pay for the damages.

6                   You also have Detective Reyes who maybe  
7   assists in helping Benjamin work out a deal. It  
8   was a long interview, but throughout the whole  
9   thing he gives you his motive.

10                  He always used to fight with his  
11   girlfriend about working at the El Alamo. He  
12   didn't like the fact that she worked there. He  
13   claims that Benjamin had lied to him and that they  
14   had called him trash. He wasn't allowed to go in  
15   the El Alamo.

16                  He gave you the reasons why he had done  
17   it. It's all throughout the interview. And you're  
18   going to have that if you want to watch it again.

19                  He tells Detective Reyes, nobody else  
20   drives his car. He's the only one that drives that  
21   car. We also had some video surveillance you got  
22   to watch from both the El Alamo and the gas  
23   station. That will be in evidence. You'll be able  
24   to take that back and watch it.

25                  That showed you the Hummer driving by

## CLOSING ARGUMENT BY MR. DUQUETTE

1 the business several times, stalking the business.  
2 It shows the Hummer drive by and shoot out the  
3 window. You can see a flash in the window. You  
4 see the gun in his hand not only in the video, but  
5 in the screen shot captured by Detective Reyes.  
6 And it's in evidence. So it'll be a quick  
7 reference for you to go look at it.

8               You also had a chance to look at some  
9 photographs. Detective Reyes took photographs of  
10 bullet holes in the business, he took screen shots  
11 from the video, and he later followed up and  
12 matched that video to the defendant's gray Hummer.

13              He told you all about how it matched  
14 and how the damaged matched on it. Look at the  
15 pictures when you get back there and look for  
16 yourself. It's the same car; stickers, paperwork,  
17 damage.

18              Now, I appreciate your time and your  
19 attention over the last few days. I have four  
20 simple requests for you as you go back to  
21 deliberate. The first one is, don't be distracted.  
22 It is true there was not a gun recovered in this  
23 case. But what we do have in this case is video of  
24 the defendant driving through the gas station  
25 across the street with a gun in his hand. You have

*CLOSING ARGUMENT BY MR. DUQUETTE*

1 a screen shot of it. Don't be distracted by that.

2 Does the time on the video from El  
3 Alamo match the same exact time as the Kwik Fill?  
4 No; it's off. Does that change the fact that it  
5 shows the exact same incident on the exact same  
6 day? It does not. That's the same incident from  
7 two different angles. That's all that is.

8 So does it matter that the video from  
9 the Kwik Fill says 6-10 instead of 10-6? Somebody  
10 put the month before the year or the day before the  
11 month. Those two videos show you the exact same  
12 thing. They show you the defendant stalked the  
13 business, drive by with a gun in his hand and shoot  
14 out the window. Don't be distracted.

15 We did have a witness up here who used  
16 to manage the El Alamo, and he told you he has a  
17 conviction. He didn't hide that. But you're also  
18 going to notice he's not here today because he's  
19 had his day in court. He told you he's facing his  
20 punishment. Don't be distracted by that.

21 His involvement in this case is limited  
22 to the fact that the window is shot out, he called  
23 Detective Reyes, and he tells him, hey, my window  
24 was shot out, it was the defendant's Hummer. Don't  
25 be distracted by that stuff.

## CLOSING ARGUMENT BY MS. TOLLEY

1 I'd like you to take your time and  
2 review the evidence. You have a number of exhibits  
3 here that you're welcome to take back there with  
4 you. Look over them carefully. If you want to  
5 re-watch the video, pause it, rewind it, slow it  
6 down, whatever you have to do. Look at the  
7 pictures closely and make sure you have a full  
8 understanding of what happened.

9 And, lastly, I would like for you to  
10 use the most important tool that you have, that's  
11 something that you walked in here with on Monday,  
12 and that is your common sense. And if you apply  
13 that common sense to the facts and evidence, you're  
14 going to find the defendant is guilty of  
15 discharging a firearm into a building and unlawful  
16 carrying. Thank you.

17 THE COURT: Ms. Tolley.

18 MS. TOLLEY: May it please the Court --

19 THE COURT: Yes, ma'am.

20 MS. TOLLEY: -- counsel.

21 Good morning, ladies and gentlemen.

22 This is not a clear and simple case. No gun, no  
23 bullet, no eyewitness. Show me the evidence.

24 In a case like this, at the very least  
25 you should have a gun. How can he be found guilty

*CLOSING ARGUMENT BY MS. TOLLEY*

1 of possession of a gun when there is no gun.  
2 Officer Reyes had plenty of opportunity to search  
3 for, to look for, to find a gun. No gun was found.  
4 The only evidence that they've presented to you  
5 saying there was a gun is supposedly this screen  
6 shot that showed a gun and the person in the  
7 vehicle with a gun. (Indicating)

8 I don't think you can see anything in  
9 there. I don't think you can make out a gun. I  
10 don't think you can make out a flash. That's their  
11 evidence of a gun. Show me the evidence.

12 We talked -- you heard the Solicitor  
13 talk about Benjamin. He comes across as a nice  
14 enough guy, but he clearly has things to hide. You  
15 heard him talk about the fact that he was out of  
16 town when this incident occurred. Yeah, that's  
17 convenient. He was out of town.

18 He says that Arelis, who was his  
19 girlfriend, came to the club about midnight to get  
20 things set up so they could open the club at 1:00.  
21 He says when Arelis got there, she called him  
22 because she saw the window was out.

23 The problem with that is that Detective  
24 Reyes testified and wrote in his written report  
25 that Arelis said that Arelis and Benjamin were out

## CLOSING ARGUMENT BY MS. TOLLEY

1 of town. So who called Benjamin? Which employee  
2 boarded up the window? Was anyone there when this  
3 happened? We don't know any of that. I don't know  
4 that Benjamin is believable.

5 The Solicitor glossed over the fact  
6 that he'd been arrested before. This is not just  
7 some ordinary charge. There are lots of incidents  
8 that have happened at this club. There could be  
9 any number of reasons why something happened to  
10 this window. We don't know.

11 The problem is the State has not met  
12 its burden. They have not provided you with enough  
13 evidence to find Mr. Hernandez-Santo guilty of this  
14 charge. And the burden is on them. We have to do  
15 nothing. We can just sit here and do nothing, but  
16 we've done more than that. We've presented  
17 questions to you that need to be answered by the  
18 State before you can find him guilty.

19 You heard testimony from Detective  
20 Reyes. I'm sure he did the best he could, but it  
21 was not a good investigation. It was just a poor  
22 investigation. He started with information given  
23 to him by Benjamin, who possibly can't be relied  
24 upon based on everything that we've heard.

25 He started with an idea in his mind of

*CLOSING ARGUMENT BY MS. TOLLEY*

1    who did this and went down a path of solely trying  
2    to say, yes, this is who did it because that's the  
3    easy thing to do. To go out and investigate, to  
4    talk to witnesses, to get a search warrant, to call  
5    SLED to possibly reconstruct the scene, all of that  
6    would have taken some work. And none of that was  
7    done here.

8                   He testified that he went to Mr.  
9    Hernandez-Santo's house. Mr. Hernandez-Santo  
10   voluntarily let him come to the house. He didn't  
11   have a search warrant. He didn't have anything.  
12   He let him take pictures of his car.

13                  Detective Reyes says he didn't search  
14   the car. That's just ridiculous. He's taking  
15   pictures of the outside of the car, and he doesn't  
16   look inside the car? He doesn't ask to open the  
17   doors or anything like that? That's just  
18   ridiculous.

19                  If there were a gun, if he were looking  
20   for a gun, the car would have been the obvious  
21   place to search for it. He's at Mr. Hernandez's  
22   house. That would have been an obvious place to  
23   search. Did he search there? No. Did he find a  
24   gun? No.

25                  The things that he says make it

## CLOSING ARGUMENT BY MS. TOLLEY

1 Mr. Hernandez-Santo's car are just ridiculous  
2 things. Ridiculous things. Papers on the  
3 dashboard. Who doesn't have papers on the  
4 dashboard occasionally? Possible damage to the  
5 car. These are just ridiculous things.

6 The easiest way to identify a car would  
7 be based on the license plate. Do any of the  
8 videos show a license plate? Do any of the  
9 witnesses identify his car via that method? No.  
10 There's lots of other ways to identify a car. Did  
11 he identify it by a VIN number? No, he didn't do  
12 that. These are just ridiculous things, not enough  
13 to find somebody guilty of this particular charge.

14 There are any number of other Hummers  
15 in the area. Did he check out any of those? No.  
16 He didn't even run a report to see if there were  
17 other Hummers in the area. Did he go to those  
18 people's houses, did he take pictures of those  
19 cars? No. It just doesn't make any sense.

20 We have the videos. We have the one  
21 from El Alamo, we have the Kwik Fill video, and we  
22 have the interview. Those are just much to do  
23 about nothing. You can't make out who's in this  
24 car; you can't make out whose car this is; and  
25 Mr. Hernandez-Santo never says, I did this.



*CLOSING ARGUMENT BY MS. TOLLEY*

1                   That video interview was not a  
2   confession. That was not a confession. He's there  
3   because Detective Reyes says, come here and let me  
4   talk to you. What's he going to say? No, I'm not  
5   going to come talk to you? Detective Reyes is  
6   basically saying, we can either do this the easy  
7   way or we can do this the hard way.

8                   And what does Mr. Hernandez-Santo do?  
9   He comes in voluntarily, talks to him calmly, talks  
10   to him for over 45 minutes, and during the course  
11   of that interview never says I did this. He's just  
12   trying to get through the interview.

13                  Do you think that's not a stressful  
14   situation? He's called into the police department.  
15   He's on the second floor of the police department  
16   with the detective talking to him about a crime  
17   that he might possibility be arrested for. He's  
18   stressed. He's just trying to get through the  
19   interview.

20                  They make a big to do about -- he says,  
21   I'll pay for it. What else is he going to do? The  
22   detective is saying to him, we've got to get this  
23   taken care of, let me help you, I'll go talk to  
24   Benjamin. And what does he think? He's thinking,  
25   if this can take care of it, of course I'll just

## CLOSING ARGUMENT BY MS. TOLLEY

1 pay it and let's be done with it.

2 And Benjamin does not sound like the  
3 kind of person you want to trifle with. I mean, if  
4 Benjamin says you did it, you need to pay the  
5 money. He's just trying to get through the  
6 interview.

7 The Kwik Fill video: Notice that we  
8 never heard from anybody from Kwik Fill. Did  
9 Detective Reyes actually interview anybody from the  
10 Kwik Fill? Did anybody from the Kwik Fill actually  
11 see anything? Did they hear anything? Did they  
12 see a flash? Did they hear a gunshot? Did they  
13 call the police? No.

14 Nobody called the police until four  
15 days later. Does any of that makes sense? Does  
16 any of that make sense? Allegedly, the only person  
17 they called was Benjamin. That doesn't make any  
18 sense.

19 They talked about no one drives my car.  
20 So what? Apparently -- or, allegedly, that  
21 statement was made to Detective Reyes while he was  
22 at Mr. Hernandez-Santo's house. Notice that we  
23 have video of everything except that conversation.  
24 Where's the body cam? Why don't we have a picture  
25 of that? Why don't we have an audio of that

*CLOSING ARGUMENT BY MS. TOLLEY*

1 conversation? We don't.

2 Show me the evidence. You've got no

3 evidence; no gun, no bullet, no gunshot residue.

4 They could have called SLED. SLED could have

5 taken, you know, hand -- bagged the hands and

6 figure out whether or not there was gunshot residue

7 on it. SLED could have tested the car to see if it

8 had gunshot residue on it. SLED could have tested

9 his clothes to see if it had gunshot residue on it.

10 We have none of that.

11 You need at least -- you need evidence,

12 real evidence. Not this. Not this. This is not

13 real evidence. You need an eyewitness. You need a

14 weapon. You need a bullet. You need a timeline

15 that makes sense, and this one just does not make

16 sense.

17 Then they try to gloss over the fact

18 that the videos have different times on it. Well,

19 if they had solid evidence on everything else, that

20 would be no big deal, but when everything else is

21 just, well, maybe, well, maybe, circumstantial,

22 well, maybe, that is simply another thing to

23 question.

24 I'm going to ask you to think about all

25 of these things, and I'm going to ask you to go

## JURY CHARGE

1 back and find Mr. Hernandez-Santo not guilty.

2 Thank you.

3 THE COURT: During this trial, ladies  
4 and gentlemen, you and I have certain duties to  
5 perform. As the trial judge, it is my  
6 responsibility to preside over the trial of this  
7 case. I also have the duty to rule upon or pass  
8 upon the admissibility of evidence offered during  
9 the trial.

10 You are to consider only the competent  
11 evidence that is before you. And you are to  
12 disregard and disabuse from your mind any testimony  
13 which was ordered stricken from the record in this  
14 case during the progress of this trial if there has  
15 been any.

16 You are to consider only the testimony  
17 which has been presented from the witness stand,  
18 together with any exhibits which have been made a  
19 part of the record in this case.

20 I have the additional duty to charge or  
21 instruct you on the law of this case. And so that  
22 you know, charge is a legal term of art that simply  
23 means instructions. So when you hear me say  
24 charge, I'm simply referring to the Court's  
25 instructing you on a particular matter.

*JURY CHARGE*

1                   And as I've indicated, I have the  
2 additional duty to charge you on the law of this  
3 case.

4                   As the presiding judge, I'm the sole  
5 judge of the law of this case, and it is your duty  
6 as jurors to accept and apply the law as I now  
7 state it to you.

8                   If you have a preconceived idea as to  
9 what the law is or what the law ought to be in a  
10 case, or in this case, and it should not agree with  
11 what I now tell you the law is, you are obligated  
12 under your oath as jurors to abandon this  
13 preconception on your part, because you are sworn  
14 to accept the law and apply the law precisely as I  
15 now state it to you.

16                  In every case tried in this court  
17 before a jury, the jury becomes the sole and  
18 exclusive judges of the facts in a case. You are  
19 the judges of the facts in this case. This Court  
20 is the judge of the law.

21                  The Constitution of our State has  
22 declared that a trial judge shall not intimate,  
23 state, comment upon or make any statement to a  
24 trial jury about the facts in a case. Since you,  
25 the jury, are the sole judges of the facts in this

## JURY CHARGE

1 case, you are not to infer anything from what I  
2 have said during the progress of this trial in  
3 ruling upon the admissibility of evidence or  
4 otherwise, or anything that I say now to you during  
5 the course of this instruction that I have any  
6 opinion about the facts. The law does not allow me  
7 to have an opinion about the facts.

8               This is a matter solely for you, the  
9 jury, to determine. As jurors, then, it is your  
10 duty as I have instructed for you to determine the  
11 effect, the value, the weight, and the truth of the  
12 testimony which has been presented during this  
13 trial.

14              Necessarily, you must assess the  
15 credibility of witnesses who have testified.  
16 Credibility is simply a legalistic term which means  
17 believability. It becomes your duty as jurors to  
18 analyze and to evaluate the evidence.

19              Some of the things you may consider as  
20 you decide whether or not to believe a witness's  
21 testimony about a particular matter include: What  
22 was the manner and appearance of the witness who  
23 testified? Was he or she straightforward or  
24 hesitant in answering? Was the testimony of the  
25 witness consistent or inconsistent? How did the

*JURY CHARGE*

1 witness come to know the facts that he or she  
2 testified to, or what was his or her ability to  
3 know these facts? Is there some reason a witness  
4 would want to give testimony which would help or  
5 hurt one side or the other?

6 In other words, was the witness biased  
7 or prejudiced? And was the testimony of a witness  
8 strengthened or weakened by other testimony or  
9 evidence? You can believe as much or as little of  
10 each witness's testimony as you think proper.

11 I further instruct you that in  
12 determining the question of the credibility of  
13 witnesses who have testified you may believe one  
14 witness as against several witnesses. You may  
15 believe a part of the testimony of a witness and  
16 reject the remaining part of the testimony of that  
17 same witness.

18 If you have a good and sound reason,  
19 you may believe the testimony of a witness in its  
20 entirety or reject the testimony of a witness in  
21 its entirety.

22 As I have instructed, you can believe  
23 as much or as little of each witness's testimony as  
24 you think proper.

25 You may also consider the demeanor of a

*JURY CHARGE*

1 witness. That is the manner and appearance of the  
2 witness from the witness stand.

3 Ladies and gentlemen, you can believe  
4 as much or as little of each witness's testimony as  
5 you think proper. You have but one objective, to  
6 determine the facts in this case and give the  
7 evidence the weight, value, and effect you decide  
8 it should receive.

9 I instruct you that a person who has a  
10 past criminal record is competent to testify during  
11 a trial. A past record does not affect the ability  
12 of that witness to testify. The past record may  
13 only be considered by you, if at all, in  
14 determining the witness's believability.

15 Remember, ladies and gentlemen, you are  
16 the sole judges of the facts in this case and of  
17 the believability of any and all witnesses.

18 I further instruct you that you have  
19 heard testimony that may have made reference that  
20 the defendant may have committed a bad act not the  
21 subject of a conviction other than the one for  
22 which the defendant is now on trial.

23 This evidence is to be disregarded by  
24 you, and you are not to give it any consideration  
25 in your deliberation in this case. You are not to



*JURY CHARGE*

1 discuss it in any manner whatsoever in your  
2 deliberation of this case and in determining  
3 whether the State has met its burden of proof. I  
4 repeat, you must not consider this reference to a  
5 prior bad act which is not the subject of a  
6 conviction in any manner whatsoever as any evidence  
7 of the defendant's guilt of the charges we are  
8 trying today and in your deliberations and verdict  
9 in this case.

10 Ladies and gentlemen, there are two  
11 types of evidence which are generally presented  
12 during a trial, direct evidence and circumstantial  
13 evidence. Direct evidence is the testimony of a  
14 person who asserts or claims to have actual  
15 knowledge of a fact, such as an eyewitness.

16 Circumstantial evidence is proof of a  
17 chain of facts and circumstances indicating the  
18 existence of a fact.

19 The law makes absolutely no distinction  
20 between the weight or value to be given to either  
21 direct or circumstantial evidence, nor is a greater  
22 degree of certainty required of circumstantial  
23 evidence than of direct evidence.

24 Crimes may be proven by circumstantial  
25 evidence, and, again, the law makes no distinction

*JURY CHARGE*

1 between the weight or value to be given to either  
2 direct or circumstantial evidence. However, to the  
3 extent the State relies on circumstantial evidence,  
4 all of the circumstances must be consistent with  
5 each other, and when taken together, point  
6 conclusively to the guilt of the accused beyond a  
7 reasonable doubt.

8           If these circumstances merely portray  
9 the defendant's behavior as suspicious, the proof  
10 has failed.

11           The State has the burden of proving the  
12 defendant guilty beyond a reasonable doubt. This  
13 burden rests with the State regardless of whether  
14 the State relies on direct evidence, circumstantial  
15 evidence, or some combination of the two.

16           Ladies and gentlemen, you should weigh  
17 all of the evidence in this case. After weighing  
18 all of the evidence, if you are not convinced of  
19 the guilt of the defendant beyond a reasonable  
20 doubt, you must find the defendant not guilty.

21           Conversely, if you are convinced of the  
22 guilt of the defendant beyond a reasonable doubt,  
23 then you must find him guilty.

24           I instruct you that the fact that the  
25 defendant was arrested, charged, and indicted is

*JURY CHARGE*

1 not evidence in this case and cannot considered by  
2 you as evidence of guilt in this case, nor does it  
3 create any presumption or inference of guilt.

4           The indictments, ladies and gentlemen,  
5 are simply the documentation or formal written  
6 instrument which contain the charge or charges  
7 against the defendant. They simply serve as the  
8 formal documentation by which the case is processed  
9 or brought into the court.

10           The defendant has pled not guilty to  
11 this indictment, and that plea casts the burden on  
12 the State to prove the defendant guilty. A person  
13 charged with committing a criminal offense in South  
14 Carolina is never required to prove himself  
15 innocent.

16           I instruct you that it is a cardinal  
17 and important rule of the law of evidence that a  
18 defendant in a criminal trial, no matter what the  
19 seriousness of the charge or charges made against  
20 him may be, will always be presumed to be innocent  
21 of the crime for which he is indicted unless his  
22 guilt has been proven by evidence satisfying you of  
23 that guilt beyond a reasonable doubt.

24           This presumption of innocence doesn't  
25 cease when you retire to deliberate, but it

## JURY CHARGE

1 accompanies the defendant from the time of his  
2 arraignment throughout the trial until you reach a  
3 verdict in this case.

4               Our supreme court has said that the  
5 presumption of innocence is like a robe of  
6 righteousness placed about the shoulders of the  
7 defendant and it remains with him and assigns him  
8 to that class, the innocent, until that presumptive  
9 robe of righteousness has been stripped from his  
10 person by evidence satisfying you of that guilt  
11 beyond a reasonable doubt.

12              The presumption of innocence is not  
13 mere legal theory. It is not just a legal phrase.  
14 It is a substantial right to which every defendant  
15 is entitled unless you, the jury, are satisfied  
16 from the evidence of his guilt beyond a reasonable  
17 doubt.

18              The State has the burden of proving the  
19 defendant guilty beyond a reasonable doubt. Some  
20 of you may have served as jurors in civil cases  
21 where you were told that it is only necessary to  
22 prove that a fact is more likely true than not  
23 true, such as by the greater weight or the  
24 preponderance of the evidence. In criminal cases,  
25 the State's proof must be more powerful than that.

*JURY CHARGE*

1 It must be beyond a reasonable doubt.

2 Proof beyond a reasonable doubt is  
3 proof that leaves you firmly convinced of the  
4 defendant's guilt. There are very few things in  
5 this world that we know with absolute certainty,  
6 and in criminal cases the law does not require  
7 proof that overcomes every possible doubt.

8 If based on your consideration of the  
9 evidence you are firmly convinced that the  
10 defendant is guilty of the crime charged, you must  
11 find the defendant guilty. If, on the other hand,  
12 you think there is a real possibility that the  
13 defendant is not guilty, you must give him the  
14 benefit of that doubt and find him not guilty.

15 Ladies and gentlemen, a statement is  
16 alleged to have been made by the defendant which  
17 has been admitted into evidence in this case.  
18 While the Court has determined that the statements  
19 are admissible, I instruct you that you make the  
20 ultimate decision of whether or not the defendant  
21 made the statement.

22 If the defendant did make the  
23 statement, you must determine whether the statement  
24 was made by the defendant voluntarily and of his  
25 own free will. This means that the statement was

## JURY CHARGE

1 not caused by pressure, force, fear, threats,  
2 coercion, or intimidation, or by hope or a promise  
3 of leniency, or a reward of any kind.

4           In determining whether the statement  
5 was voluntary, you should consider both the  
6 characteristics of the defendant and the details of  
7 the questioning. Some of the factors that you must  
8 consider are: The age of the defendant, the  
9 defendant's education or lack of education, the  
10 defendant's mental ability or capacity, the  
11 defendant's IQ or intelligence, the defendant's  
12 background and environment, the place and length of  
13 detention, the nature of the questioning, and the  
14 advice or lack thereof to the defendant of his  
15 constitutional rights, including, but not limited  
16 to, the right to remain silent, that any statement  
17 could be used against him in a court of law, the  
18 right to have a lawyer present, that if he could  
19 not afford a lawyer, a lawyer would be appointed to  
20 represent him without any cost, and that he could  
21 stop making a statement at any time.

22           You must carefully consider all of the  
23 surrounding circumstances before you give any  
24 weight to an alleged statement.

25           The State has the burden of proving

*JURY CHARGE*

1   beyond a reasonable doubt that the alleged  
2   statement was voluntary. If you determine it was,  
3   you may give the statement any further  
4   consideration that you deem proper. You must  
5   decide what weight, if any, should be given to the  
6   alleged statement.

7               If you determine the statement was not  
8   the free and voluntary statement of the defendant,  
9   you should not consider the statement at all.

10              I instruct you and emphasize that the  
11   fact that the defendant did not testify is not a  
12   factor to be considered by you in any manner  
13   whatsoever in your deliberations of this case and  
14   in your consideration on the question of whether  
15   the State has met their burden of proof in this  
16   case. It must not be considered by you in any  
17   manner whatsoever.

18              A defendant has the constitutional  
19   right to remain silent, and the assertion of this  
20   right must not be considered by you in your  
21   deliberations. I repeat, under your oath you are  
22   to draw no conclusion whatsoever from the fact that  
23   the defendant in this case did not testify. The  
24   fact that this defendant did not testify should not  
25   be discussed in any way in the jury room.

## JURY CHARGE

1           The burden of proof, as I have stated  
2 to you, is on the State. The defendant is not  
3 required to prove his innocence. The burden of  
4 proof remains on the State to prove guilt beyond a  
5 reasonable doubt.

6           The defendant is charged with  
7 discharging firearms into a dwelling. The State  
8 must prove beyond a reasonable doubt that the  
9 defendant discharged or caused to be discharged  
10 unlawfully a firearm at or into a dwelling house,  
11 other building, structure, or enclosure regularly  
12 occupied by persons.

13           The defendant is charged with unlawful  
14 carrying of a pistol. The State must prove beyond  
15 a reasonable doubt that the defendant carried a  
16 pistol about his person, whether concealed or not.

17           A weapon is about the defendant's  
18 person if it is readily accessible and convenient  
19 for immediate use. The pistol need not be actually  
20 -- need not be actually touching the person of the  
21 defendant.

22           An issue in this case, ladies and  
23 gentlemen, is the identification of the defendant  
24 as the person who committed the crime charged. The  
25 State has the burden of proving identity beyond a



*JURY CHARGE*

1 reasonable doubt. You must be satisfied beyond a  
2 reasonable doubt of the accuracy of the  
3 identification of the defendant before you may  
4 convict the defendant.

5 Identification is an expression of  
6 belief or impression by a witness. You must  
7 determine the accuracy of the identification of the  
8 defendant.

9 You must consider the believability of  
10 each witness in the same way as any other witness.  
11 You may consider whether the witness had an  
12 adequate opportunity to observe the offender at the  
13 time of the offense. This will be affected by  
14 things like how long or short a time was available,  
15 how far or close the witness was, the lighting  
16 conditions, and whether the witness had the chance  
17 to see or know the person in the past.

18 Once again, I instruct you the burden  
19 of proof on the State extends to every element of  
20 the crimes charged, and this specifically includes  
21 the burden of proving beyond a reasonable doubt the  
22 identity of the defendant as the person who  
23 committed the crime.

24 If, after examining the testimony, you  
25 have a reasonable doubt as to the accuracy of the

## JURY CHARGE

1 identification, you must find the defendant not  
2 guilty.

3 I instruct you that mere presence at  
4 the scene of a crime is not sufficient to prove  
5 someone guilty of a crime. A defendant's presence  
6 where a crime is being committed or mere  
7 association with a person who commits a crime does  
8 not make a person an accomplice or an aider and  
9 abetter of the person committing the crime.

10 The burden is on the State to prove  
11 every element of the crime charged. If you find  
12 after reviewing all the evidence that the State has  
13 proven that the defendant was only present at the  
14 scene of a crime and that they have not proven  
15 beyond a reasonable doubt any other participation  
16 in the crime, then you must find the defendant not  
17 guilty.

18 The law is that proof of at the scene  
19 of the crime is not sufficient to find someone  
20 guilty.

21 Ladies and gentlemen, there are two  
22 Indictments in this case, and they are  
23 2018-GS-08609 and 610. And the offenses indicted  
24 are guilty of discharging firearms into a dwelling  
25 and unlawful carrying of a pistol.

*JURY CHARGE*

1           Each indictment charges a separate and  
2     distinct offense. You must decide each indictment  
3     separately on the evidence and the law applicable  
4     to it, uninfluenced by your decision as to any  
5     other indictment.

6           The defendant may be convicted or  
7     acquitted on any or all of the offenses charged.  
8     You will be asked to write a separate verdict of  
9     guilty or not guilty for each indictment.

10          Ladies and gentlemen, there are four  
11     potential verdicts in this case, and I'm going to  
12     read them to you. They are on the verdict form, so  
13     you don't have to try to write this down. And  
14     there is no significance whatsoever to the order in  
15     which I publish each of these potential verdicts.  
16     It is simply that one must be stated first.

17          And they are as follows: As to  
18     Indictment Number 2018-GS-08609, we, the jury, by  
19     unanimous consent, find the defendant guilty of  
20     discharging firearms into a dwelling, or not  
21     guilty.

22          And as to Indictment 2018-GS-08610, we,  
23     the jury, by unanimous consent, find the defendant  
24     guilty of unlawful carrying of a pistol, or not  
25     guilty.

*JURY CHARGE*

1                   And, again, there is no significance to  
2   the order in which I state these potential  
3   verdicts. It is simply that one must be stated  
4   first.

5                   Madam Forelady, it is your  
6   responsibility to fill out the verdict forms, to  
7   sign and date the forms once the jury has reached a  
8   unanimous verdict, and to knock on the door and  
9   advise the bailiffs that the jury has reached a  
10   unanimous verdict.

11                  It is also your responsibility to write  
12   out any questions the jury may have during  
13   deliberations, to sign and date that note, and  
14   follow the same procedure by knocking on the door  
15   and advising the bailiffs that the jury has a  
16   question.

17                  Ladies and gentlemen, your verdict must  
18   be unanimous, which means all 12 of you must agree  
19   in order to reach a verdict in this case.

20                  I will advise you that if you have any  
21   questions during deliberations, there will be a  
22   delay in our response given there is a procedure  
23   that we must follow in answering your questions.  
24   So know if there is a question, there will be a  
25   delay and we're not ignoring you.

*JURY CHARGE*

1                   Again, ladies and gentlemen, your  
2   verdict must be unanimous, which means that all 12  
3   of you must agree in order to reach a verdict in  
4   this case.

5                   Also, Madam Forelady, any notes from  
6   the jury should never indicate a numerical  
7   breakdown of the jury, as the jury deliberations  
8   should remain secret so that we should not invade  
9   the province of the jury by knowing any numerical  
10   breakdown. So please refrain from placing those in  
11   any notes.

12                  Ladies and gentlemen, I'm going to ask  
13   that you return to your jury room, but do not yet  
14   begin your deliberations. I have some brief  
15   matters of law to take up with counsel that may  
16   require clarification of an instruction or further  
17   instruction.

18                  However, if there is no further  
19   instruction, we will send in your notepads, we will  
20   dismiss the alternate, and send the evidence and  
21   the verdict forms, and at that time you will be  
22   allowed to begin your deliberations.

23                  If you would leave your notepads in  
24   your seats for me, please, and go with the  
25   bailiffs.

## JURY CHARGE

1 (Jury out, 10:37 a.m.)

2 THE COURT: You may take your seats.

3 Any exception from the State?

4 MR. DUQUETTE: None, Your Honor.

5 THE COURT: Any exceptions from the  
6 defense?

7 MS. TOLLEY: None, Your Honor.

8 THE COURT: If you all could make sure  
9 that all of the evidence is accounted for. And you  
10 can go ahead and get all the notebooks together,  
11 Mr. Bailiff, for me, except put the alternate's  
12 notes at the end of the banister so I can excuse  
13 her.

14 BAILIFF: Yes, ma'am.

15 THE COURT: And the verdict forms are  
16 right here.

17 (Alternate juror in, 10:40 a.m.)

18 THE COURT: Ma'am, we want to thank you  
19 for your time and attention to this case. I hope  
20 it's been educational for you. I know being an  
21 alternate can seem thankless, but if someone gets  
22 ill or is unable to proceed, it is such a valuable  
23 service that you provide to us.

24 And true to my word, I'm able to excuse  
25 you for the remainder of the week. If you want to

*JURY CHARGE*

1 hang around with us, you're welcome to. We'll find  
2 a comfortable place for you to sit; otherwise, you  
3 are free to leave and go about your life as you  
4 like.

5 I would ask that you not discuss the  
6 case, however, until the entire panel is dismissed.  
7 After that, you're welcome to discuss the case if  
8 you would like; however, if someone should exceed  
9 your comfort level, please make the clerk's office  
10 aware of it so we can take the appropriate action  
11 to protect your privacy.

12 Do you want us to destroy your notes,  
13 or do you want to destroy them?

14 ALTERNATE JUROR: You can destroy them,  
15 that's fine.

16 THE COURT: Perfect. Well, I hope it  
17 was educational, and I hope you have a great week.

18 ALTERNATE JUROR: Thank you.

19 THE COURT: You can let the bailiffs  
20 know if you want to hang around, and we'll find a  
21 place for you to sit.

22 ALTERNATE JUROR: Okay.

23 THE COURT: The record should reflect  
24 that the alternate was excused at 10:29, and that  
25 the jury has begun its deliberations at 10:29.

1 (Jury deliberating)

2 THE COURT: The jury would like  
3 clarification on 16-23-10, unlawful carry. And in  
4 response to that request I'm going to reinstruct  
5 them on the elements of the statute.

6 Any exceptions from the State.

7 MR. DUQUETTE: None from the State,  
8 Your Honor.

9 THE COURT: From the defense?

10 MS. TOLLEY: None, Your Honor.

11 THE COURT: Madam clerk -- Court  
12 Reporter, if you could mark that as a court's  
13 exhibit.

14 (COURT EXH. 1, Jury note, was marked  
15 for identification.)

16 (Jury in, 11:59 a.m.)

17 THE COURT: You may be seated. Ladies  
18 and gentlemen, I received your note that says:  
19 Clarification on 16-23-20, unlawful carry.

20 And in that regard, I will reinstruct  
21 you as follows.

22 The defendant is charged with unlawful  
23 carrying of a pistol. The State must prove beyond  
24 a reasonable doubt that the defendant carried a  
25 pistol about his person, whether concealed or not.



1                   A weapon is about the defendant's  
2 person if it is readily accessible and convenient  
3 for immediate use. The pistol need not be actually  
4 touching the person of the defendant.

5                   That concludes the additional  
6 instruction. If you need anything further, please  
7 let us know.

8                   (Jury out, 5:24 p.m.)

9                   THE COURT: You may be seated. Any  
10 exception from the State?

11                  MR. DUQUETTE: No, Your Honor.

12                  THE COURT: From the defense?

13                  MS. TOLLEY: None, Your Honor.

14                  THE COURT: All right, guys. We'll  
15 await further instructions from the jury.

16                  (A recess transpired.)

17                  THE COURT: The jury has reached a  
18 verdict. Anything to take up before we proceed  
19 with the verdict? From the State?

20                  MR. DUQUETTE: No, Your Honor.

21                  THE COURT: From the defense?

22                  MS. TOLLEY: No, Your Honor.

23                  THE COURT: Please bring in the jury.

24                  (Jury in, 12:14 p.m.)

25                  THE COURT: You may be seated.

## VERDICT

1                   Madam Forelady, is it correct that the  
2 jury has reached a verdict?

3                   FOREPERSON: Yes.

4                   THE COURT: If you'll give the verdict  
5 forms to the bailiff, please.

6                   Thank you, sir.

7                   Do you want to publish the verdict,  
8 Madam Clerk?

9                   Sir, stand for publication of the  
10 verdicts.

11                  THE CLERK: The State of South Carolina  
12 versus Evodio Hernandez-Santo. As to Indictment  
13 2018-GS-0800610, we, the jury, by unanimous  
14 consent, find the defendant guilty of unlawful  
15 carrying of a pistol. Signed by the foreperson,  
16 Maddie Mitchell, January 16th, 2019.

17                  The State of South Carolina versus  
18 Evodio Hernandez-Santo. As to indictment  
19 2018-GS-0800609, we, the jury, by unanimous  
20 consent, find the defendant guilty of discharging a  
21 firearm into the dwelling. Signed, Maddie  
22 Mitchell, January 16th, 2019.

23                  THE COURT: Is there any request --  
24 ladies and gentlemen, if this be your verdict,  
25 please indicate by raising your right hand.

## VERDICT

1 THE JURY: (Raised hands)

2 THE COURT: Let the record reflect that  
3 all 12 raised their right hand and the verdict  
4 stands. You may put your right hand down.

5 Is there any request to poll the jury,  
6 from the State?

7 MR. DUQUETTE: Not from the State, Your  
8 Honor.

9 THE COURT: From the defense?

10 MS. TOLLEY: Yes.

11 THE COURT: Ladies and gentlemen, the  
12 clerk -- you can take your seats. The clerk is  
13 going to ask you two questions as she calls your  
14 name and your juror number: Is this your verdict  
15 and is this still your verdict.

16 If you would, as she calls your name,  
17 raise your right hand and answer accordingly. You  
18 may proceed, Madam Clerk.

19 THE CLERK: Juror Number 146, Alaysia  
20 Robertson, is this your verdict?

21 JUROR: Yes.

22 THE CLERK: Is this still your verdict?

23 JUROR: Yes.

24 THE CLERK: Juror Number 86, Bobby  
25 King, is this your verdict?

## VERDICT

1 JUROR: Yes.

2 THE CLERK: Is this still your verdict?

3 JUROR: Yes.

4 THE CLERK: Juror Number 10, Nickie

5 Bennett, is this your verdict?

6 JUROR: Yes, it is.

7 THE CLERK: Is this still your verdict?

8 JUROR: Yes, it is.

9 THE CLERK: Juror Number 40, Ronald

10 Cochran, is this your verdict?

11 JUROR: Yes.

12 THE CLERK: Is this still your verdict?

13 JUROR: Yes, ma'am.

14 THE CLERK: Juror Number 38, Dale

15 Cliborne, is this your verdict?

16 JUROR: Yes.

17 THE CLERK: Is this still your verdict?

18 JUROR: Yes.

19 THE CLERK: Juror Number 9, Elizabeth

20 Bauer, is this your verdict?

21 JUROR: Yes.

22 THE CLERK: Is this still your verdict?

23 JUROR: Yes.

24 THE CLERK: Juror Number 8, Paul

25 Barter, is this your verdict?

## VERDICT

1 JUROR: Yes.

2 THE CLERK: Is this still your verdict?

3 JUROR: Yes.

4 THE CLERK: Juror Number 135, Jacob

5 Pues, is this your verdict?

6 JUROR: Yes.

7 THE CLERK: Is this still your verdict?

8 JUROR: Yes.

9 THE CLERK: Juror Number 111, Mattie

10 Mitchell, is this your verdict?

11 JUROR: Yes.

12 THE CLERK: Is this still your verdict?

13 JUROR: Yes.

14 THE CLERK: Juror Number 120, Sylvia

15 Moyd, is this your verdict.

16 JUROR: Yes.

17 THE CLERK: Is this still your verdict?

18 JUROR: Yes.

19 THE CLERK: Juror Number 137, Sierra

20 Randolph, is this your verdict?

21 JUROR: Yes.

22 THE CLERK: Is this still your verdict?

23 JUROR: Yes.

24 THE CLERK: And Juror Number 52, Jason

25 Hoppock, is this your verdict?

1 JUROR: Yes.

2 THE CLERK: Is this still your verdict?

3 JUROR: Yes.

4 THE CLERK: The jurors have been  
5 polled. The verdict stands, Judge.

6 THE COURT: Okay. Madam Forelady,  
7 ladies and gentlemen, we thank you for your time  
8 and your attention to this case. I know jury  
9 service may seem thankless, and people often  
10 chuckle when -- because usually I use the example  
11 of Judge Judy and it's comical, but I'm really  
12 quite serious.

13 Unfortunately, most people learn what  
14 they learn from television, and television by its  
15 very nature is entertaining. It is nothing like  
16 the real process. So I hope you all have learned  
17 how very valuable and vital your service is to us.

18 We hold court -- Berkeley is fast  
19 catching up with Charleston, but we hold court in  
20 Charleston every week, three civil terms, three  
21 criminal jury terms every week except holidays.

22 Berkeley, however, I remember when I  
23 started on the family court in 1996, we held court  
24 here every other month, sometimes once every two  
25 months. Family court a little more frequency, but

1 circuit court less frequency. And as I've said,  
2 because of the exponential growth in Berkeley  
3 County, we are catching up almost heels -- on  
4 Charleston's heels in terms of holding courts.

5 And while there are many things that  
6 circuit judges hear in a nonjury capacity, the bulk  
7 of our work which needs to be disposed of really  
8 requires your willingness -- requires your  
9 willingness to serve as jurors.

10 So I hope it has been educational for  
11 you. I hope you've learned, again, how vital your  
12 service is to us. You are welcome to discuss this  
13 case if you would like.

14 Sometimes lawyers will contact you  
15 because they want to know how they can do things a  
16 little bit better. That's what why we call it the  
17 practice of law. And you are welcome to discuss  
18 the case.

19 By the same token, if you don't want to  
20 discuss the case and you feel uncomfortable, please  
21 contact us so that we can take the appropriate  
22 actions to protect your privacy.

23 We have work excuses for you. We will  
24 send your checks out to you I think later, or do  
25 they have checks too? We have excuses, no, checks,

1     sorry.   Those will be mailed to you.

2                 And true to my word, you are excused  
3     for the remainder of the week.  And, again, we  
4     appreciate your service.  If anyone wants to remain  
5     for sentencing -- is there anyone that wants to  
6     remain for sentencing?  If not, you're excused with  
7     the Court's profound thanks.

8                 And I need the foreperson to stay right  
9     here for me so I can have you sign the actual  
10    indictments.  Thank you so much.  Have a great day.

11                (Jury excused)

12                THE COURT:  Any post-trial motions?

13                MR. DUQUETTE:  No, Your Honor.

14                THE COURT:  From the defense?

15                MS. TOLLEY:  No, Your Honor.

16                THE DEPUTY:  Your Honor?

17                THE COURT:  Yes, sir.

18                THE DEPUTY:  We have a few that want to  
19    stay.

20                THE COURT:  Sure.  Have them come in.  
21                Do you all have the sentencing sheets?

22                MR. DUQUETTE:  Yes.  May I approach?

23                THE COURT:  Yes, sir.

24                Anything further from the defense?

25    I'll be glad to hear from you.  Do we have any



1 record other than -- I'm trying to remember what it  
2 was.

3 MS. TOLLEY: Unlawful use of 911, that  
4 was the only record.

5 THE COURT: Okay. Unlawful use of 911.  
6 And what year was that?

7 MS. TOLLEY: 2016.

8 THE COURT: That resulted in a  
9 conviction?

10 MS. TOLLEY: Yes, ma'am.

11 THE COURT: Okay.

12 MS. TOLLEY: It was a 30-day offense in  
13 magistrate court.

14 THE COURT: And he has an ICE hold on  
15 him, correct?

16 MS. TOLLEY: That's correct.

17 THE COURT: Do you have any idea what  
18 the status of that ICE hold is?

19 MS. TOLLEY: It is still outstanding  
20 and that it may be executed shortly.

21 THE COURT: If the government starts  
22 working again.

23 MS. TOLLEY: If we ever reopen.

24 THE COURT: Does the State take any  
25 position on sentence?

1                   MR. DUQUETTE: Your Honor, based on the  
2 previous offer that was extended to the defendant,  
3 the State would like to see at least five years  
4 active time.

5                   THE COURT: And that was for one year  
6 time served?

7                   MR. DUQUETTE: Yes, Your Honor. That  
8 -- that was for one year time served on the  
9 misdemeanor unlawful carry, dismissing the  
10 discharge.

11                  THE COURT: Now, my other -- I had  
12 another question because it wasn't clear from the  
13 evidence. Was anybody in the building at the time  
14 this happened?

15                  MR. DUQUETTE: Not at the time, Your  
16 Honor.

17                  THE COURT: But no one was injured,  
18 correct?

19                  MS. TOLLEY: No, ma'am.

20                  MR. DUQUETTE: Correct.

21                  THE COURT: And is there any  
22 restitution for the window?

23                  MR. DUQUETTE: No, Your Honor.

24                  THE COURT: Ms. Tolley, I'll glad to  
25 hear from you.

1 MS. TOLLEY: Thank you, Your Honor.  
2 May it please the Court.

3 THE COURT: Yes, ma'am.

4 MS. TOLLEY: We believe that this is  
5 not a case where more jail time is appropriate. He  
6 is only 25 years old. He is from Mexico, but he's  
7 lived here since he was 13 years old. He graduated  
8 from Hanahan High School. He was working doing  
9 construction work.

10 He, as the Court has indicated, has  
11 only had a minor infraction with the law, and that  
12 was the unlawful carry -- unlawful use of 911. He  
13 under normal circumstances would be eligible for a  
14 probationary sentence or a youthful offender  
15 sentence. And he --

16 THE COURT: Well, he's beyond the age  
17 of a youthful. Isn't the cut off for that 24?

18 MS. TOLLEY: He's 25. That may be --

19 THE COURT: But I may have my years  
20 wrong. I know you can do it up to a certain age  
21 without consent, but after a certain age it  
22 requires consent. But I just can't remember what  
23 the age is.

24 MS. TOLLEY: I thought it was 26, but I  
25 could be mistaken as well, Your Honor.

1 MR. DUQUETTE: It's 24, Your Honor.

2 THE COURT: Okay.

3 MS. TOLLEY: He has, however, Your  
4 Honor, been in jail for 398 days already. Given  
5 the fact that he has already been in jail for  
6 398 days, given the fact that he is facing  
7 deportation, we would ask the Court to consider  
8 imposing a sentence of one year and giving him  
9 credit for the time that he's already served.

10 We believe that's appropriate. It's in  
11 proportion to the crime committed. It's in  
12 proportion to the record that he has or lack  
13 thereof. It's in proportion to his age, and all of  
14 the other circumstances. We would ask the Court to  
15 consider that.

16 He's also in the courtroom with his  
17 mother and father today and a neighbor, friend of  
18 the family, Walter Cobbs who's here. His father  
19 wanted to address the Court, but we don't have a  
20 translator today so Mr. Cobbs would like to address  
21 the Court in his place.

22 THE COURT: Sure. Would be glad to  
23 hear from him.

24 Yes, sir, tell us your name.

25 MR. COBBS: Walter Cobbs.

1                   THE COURT: Spell your last name for  
2 us.

3                   MR. COBBS: C-O-B-B-S.

4                   THE COURT: Thank you, sir. Would be  
5 glad to hear from you.

6                   MR. COBBS: Yes. I've known  
7 Mr. Hernandez since he was a teenager. I live  
8 across the street from them, and I watched him  
9 every day go to school diligently. And I remember  
10 the day he graduated.

11                   Everybody call me Pop Pop in the  
12 neighborhood. And he was so excited, he called me  
13 over and showed me his diploma. And he's not a bad  
14 guy. He's not a bad kid. He just somehow or  
15 another got mixed up in all this.

16                   But I'd just like to say, if he had a  
17 chance to do it all over again, I know he wouldn't.  
18 Thank you.

19                   THE COURT: You're welcome, sir. Do  
20 you how this came about to happen, Ms. Tolley,  
21 like, what precipitated all this?

22                   MS. TOLLEY: According to, I guess, the  
23 other people involved in the incident,  
24 Mr. Hernandez-Santo had some issues with the people  
25 at El Alamo. His girlfriend used to work at El

1 Alamo. His girlfriend -- they required, I guess,  
2 Benjamin and Arelis, the owners of El Alamo,  
3 required her to work in the bar area, and the bar  
4 was operating without a liquor license, and he was  
5 afraid that she was going to get arrested.

6 And she did come to be arrested, and  
7 that's how he came to be arrested as well, because  
8 he was in the bar when the police raided the bar.  
9 And so they all got charged. He was afraid -- he  
10 was also concerned because there were promises made  
11 to his girlfriend by Benjamin and Arelis about  
12 selling the bar to her.

13 And they apparently had paid them some  
14 money in order to purchase the bar, but then it  
15 never came to fruition. They just kept working the  
16 girlfriend and -- so that became problematic. And  
17 he and the girlfriend would have arguments about  
18 that.

19 He, of course, has denied this, but  
20 those are the accusations, and --

21 THE COURT: Yeah. And even if he were  
22 to admit he did it today, if there was some error  
23 in the trial --

24 MS. TOLLEY: Uh-huh.

25 THE COURT: -- the Supreme Court --

1     somebody is going to reverse it. It doesn't matter  
2     whether he did it. I mean, that's not like a  
3     barometer.

4                     MS. TOLLEY: Right.

5                     THE COURT: But it helps me to  
6     understand that somebody didn't just randomly shoot  
7     a window out.

8                     MS. TOLLEY: Right.

9                     THE COURT: I mean, people don't just  
10    sort of do that unless they're aberrant. And  
11    that's probably like 1 percent of what we see, just  
12    shooting something with no reason. There has to be  
13    some motivation behind it that precipitated  
14    something happening.

15                    MS. TOLLEY: Right.

16                    THE COURT: So that this just happened  
17    out of the blue.

18                    MS. TOLLEY: No. And, you know, I  
19    think there was also some indication that maybe  
20    Benjamin had disrespected him in front of some  
21    other people by calling him names and some other  
22    things. So there were some issues between the two  
23    of them, and I don't think he denies that.

24                    I think he talked freely about it in  
25    the interview with Detective Reyes. So, yes, there

## SENTENCING

1     were issues between them and certainly if there  
2     were a motive to do this, those would be things to  
3     consider.

4                   THE COURT:  Does he wish to say  
5     anything for the record?

6                   MS. TOLLEY:  No, ma'am.

7                   THE COURT:  Anything further from the  
8     State?

9                   MR. DUQUETTE:  No, Your Honor, other  
10    than we would slightly disagree with that  
11    recitation of what preceded this, but understand  
12    that's immaterial at this point.

13                  MS. TOLLEY:  Your Honor, I think, even  
14    though I haven't asked for this, he clearly would  
15    be somebody who could do a probationary sentence.  
16    And I know that that may not be an option given the  
17    ICE hold, but, you know, that's something that he  
18    would be eligible for under normal circumstances.

19                  THE COURT:  Sir, if you would stand for  
20    sentencing.

21                  On Indictment 2018-GS-08610, you are  
22    sentenced to the State Department of Corrections  
23    for a period of one year.  On discharging the  
24    firearm, you're sentenced to two years.  These  
25    sentences are concurrent.



*SENTENCING*

1                   You'll get credit pursuant to 24-13-40  
2   to be applied by the Department of Corrections.

3                   MS. TOLLEY: Thank you, Your Honor.

4                   THE COURT: Thank you very much.

5                   (These proceedings were concluded at  
6   12:43 p.m.)

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## 1 CERTIFICATE OF REPORTER

2

3 I, Carol Denise Lauder, Registered  
4 Professional Reporter and Notary Public for the  
5 State of South Carolina at Large, do hereby certify  
6 that the foregoing transcript is a true, accurate,  
7 and complete record.

8 I further certify that I am neither related  
9 to nor counsel for any party to the cause pending  
10 or interested in the events thereof.

11 Witness my hand, I have hereunto affixed my  
12 official seal this 31st day of March, 2019 at  
13 Charleston, Charleston County, South Carolina.

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S/DENISE LAUDER  
Carol Denise Lauder  
Registered Professional  
Reporter, CP  
My Commission expires  
February 27, 2028

KSS/0337804  
WITNESSES

Hanahan Police Department

01. *S. [Signature]*

AGENCY CASE NUMBER

2017-002147

ARREST WARRANT NUMBER

2017A0820300445

DATE OF ARREST

12/15/2017

ACTION OF GRAND JURY

**True Bill**

*Regan Arnold*  
person of Grand Jury

*4/11/18*  
Date:

VERDICT

*2017*

*Nattie Mitchell*  
person of Petit Jury

*1/16/2019*  
Date:

DOCKET NO. 2018-GS-08-00609

**The State of South Carolina**

County of Berkeley

COURT OF GENERAL SESSIONS

APRIL TERM 2018

THE STATE

VS.

EVODIO HERNANDEZ-SANTO  
W/M [REDACTED]

Indictment for

**DISCHARGING FIREARMS INTO A  
DWELLING**

SC Code: § 16-23-0440(A)  
CDR Code: 0052

**FILED**

18 APR 11 PM 1:15

CLERK OF COURT  
JANUARY 11, 2019

**RECEIVED**

JAN 31 2019

SC Court of Appeals

*11*

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

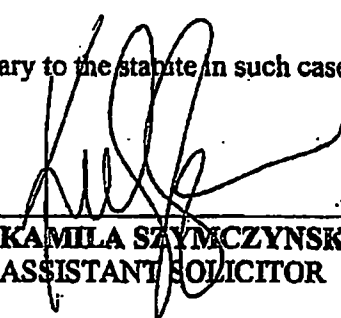
INDICTMENT

At a Court of General Sessions, convened April 2018, the Grand Jurors of Berkeley County present upon their oath:

DISCHARGING FIREARMS INTO A DWELLING

That in Berkeley County, South Carolina on or about October 6, 2017, the Defendant, Evodio Hernandez-Santo, unlawfully did discharge, or cause to be discharged, a firearm into a dwelling, building, structure or enclosure regularly occupied by persons in violation of § 16-23-440(A), Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



---

KAMILA STYMCZYŃSKA-SAS  
ASSISTANT SOLICITOR

KSS/0337804  
WITNESSES

Hanahan Police Department

AGENCY CASE NUMBER

2017-002147

ARREST WARRANT NUMBER

2017A0820300446

DATE OF ARREST

12/15/2017

ACTION OF GRAND JURY

True Bill

*Respy O'Neal*  
person of Grand Jury

4/11/18  
Date:

VERDICT

*Guilty*

*Nathan Mitchell*  
person of Petit Jury

1/16/2019  
Date:

DOCKET NO. 2018-GS-08-00610

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

APRIL TERM 2018

THE STATE

VS.

EVODIO HERNANDEZ-SANTO

W/M *[REDACTED]*

Indictment for

UNLAWFUL CARRYING OF A PISTOL

SC Code: § 16-23-0020

CDR Code: 0044

FILED  
CLERK OF COURT  
SOUTH CAROLINA

10 APR 11 PM 1:15

FILED

RECEIVED  
JAN 31 2019  
SC Court of Appeals

AAH

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

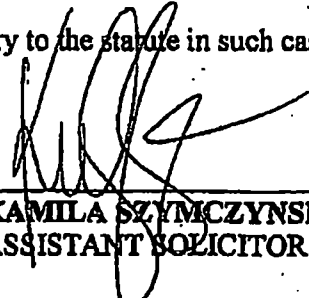
INDICTMENT

At a Court of General Sessions, convened April 2018, the Grand Jurors of Berkeley County present upon their oath:

UNLAWFUL CARRYING OF A PISTOL

The Defendant, Evodio Hernandez-Santo, did in Berkeley County, on or about October 6, 2017, willfully and unlawfully carry about his person a handgun, whether concealed or not, in violation of §16-23-20 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



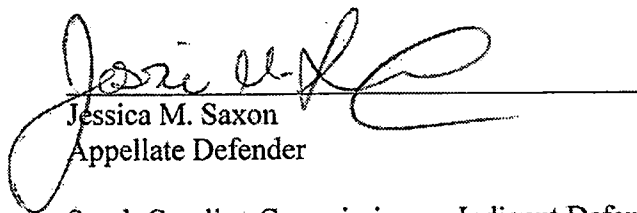
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KAMILA SZYM CZYNSKA-SAS  
ASSISTANT SOLICITOR

## CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Jessica M. Saxon  
Appellate Defender

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

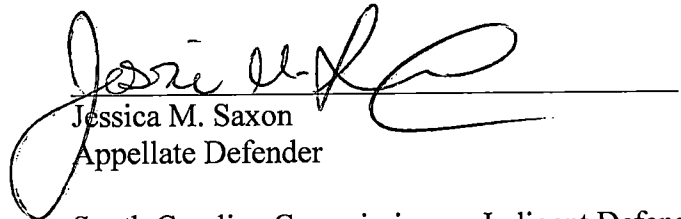
ATTORNEY FOR APPELLANT

This 27th day of November, 2019.

## CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Jessica M. Saxon  
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 27th day of November, 2019.