

Exhibit

A

Applicant Affidavit

AFFIDAVIT OF TESTIMONY

COMES NOW, CARLOS LOZANO (TDCJ No. 02156992), and makes the following statement under oath, and further asserts that the facts contained therein are true and correct and within his personal knowledge.

There is – or at least was – another “surveillance camera video” captured by a “surveillance camera” at a building/business – that I believe was a pharmacy at the time of the incident for which I am currently incarcerated – next to the Pocket’s Pool & Bar where the incident for which I am incarcerated occurred on September 26th, 2015, which was wrongfully withheld by the El Paso County District Attorney’s Office. The “surveillance video” that was withheld clearly shows/showed the whole incident from the vantage point of the driver’s side of the truck I was attempting to drive away in and would have demonstrated the necessity for my use of a firearm in defending myself from an attack by multiple assailants, or potential assailants, who had cut off my exit by surrounding the front of my vehicle and assailing me. Indeed, one of the men who attacked me threw a full beer can at me through my open passenger-side window that struck me in my temple-area while another one of them nearly simultaneously ran up to the driver-side window; hit me in the back of the head with another bottle, or possibly full can of beer; and then started punching me in the face repeatedly and trying to open the door and drag me out of my truck.

This pharmacy store “surveillance video” was viewed by a friend of mine, MARCELA MORIEL, who is submitting her own affidavit for the court’s consideration, the day after the incident on the mobile phone of a Pocket’s employee who she knew from being somewhat of a regular customer when she stopped by the said establishment after work to meet some friends for dinner and drinks; and she called me to tell me about the “mobile phone video” recording of the other pharmacy/business’ “surveillance camera video” and what it showed on her way home that evening, which was in line with exactly what I just described in the foregoing paragraph. Furthermore, when I was out on appellate bond after my conviction was reversed by the El Paso Court of Appeals, I was able to show MARCELLA MORIEL a copy of the “surveillance video” from the Pocket’s establishment that was used at trial, which had been provided by my trial attorney with my file; and she confirmed that it was not the video she had seen from the pharmacy/business next door’ “surveillance video” the day after the incident.

My aging trial attorney, MICHAEL GIBSON, who retired shortly after my trial, made a feeble attempt to ask for the “surveillance video” from the adjacent business/pharmacy, in addition to the footage from the other one of the two “surveillance cameras” on the other side of the front Pocket’s Pool & Bar, at a pretrial hearing but simply accepted then Assistant District Attorney Pages explanation that the other cameras “did not record...they are just looping” without doing anything further to verify the existence of the video from the adjacent business/pharmacy or call into question the State’s evidentiary assertions regarding its existence. My trial attorney could have easily talked with the owners of the adjacent business/pharmacy – or even just the specific employee who showed my friend the recording of the second video he had made on his phone – to verify the existence of the additional video but did nothing except put me off and tell me that “we don’t need all that...all we need to prove is that the guy you shot was breaking into your truck... and that is what all their [the State’s] witnesses say already.” Indeed, my trial counsel even refused my repeated requests to call my friend, MARCEL MORIEL, who he knew was ready and willing to testify about the existence of the other video she had seen, stating “all we need to do is have the State’s witnesses confirm [my deceased assailant] was breaking into my truck,” to show that I was “*justified as a matter of law*” in using my gun to defend myself.

Moreover, the “surveillance video” from Pockets that the prosecutor provided in discovery and presented at trial has quite clearly been tampered with and edited by somebody affiliated with the State – most likely the El Paso County District Attorney’s Office – to strengthen the State’s case against me by removing a critical portion of the “surveillance footage” that would have shown the multiple attackers exiting the bar, talking with each other briefly while “signaling” towards my truck, and then running over to get in front of my truck to keep me from leaving and initiate the attack. Indeed, I brought the video tampering issue with the State’s proffered video to my trial attorney’s attention shortly after the District Attorney’s Office finally provided us with a copy of it months before trial by showing him that the footage jumped from a frame just as I am turning on my truck’s headlights to drive home to a frame some 10 to 15 seconds later where my truck is completely gone and out of the view – which is “incidentally” the short window of time where all of the critical action showing the beginning of the “coordinated attack” on my person with multiple assailants communicating with each other quickly as they left the bar before running over towards

my vehicle to prevent me from leaving and initiate the attack would have been visible from that “surveillance camera.”

After realizing that the State had illegally altered the “surveillance video” footage they were intending to introduce at trial, I immediately started urging my trial attorney to challenge the integrity of the State’s “surveillance video” by whatever means possible including bringing in an expert to substantiate the illegal removal of key footage at the most critical juncture in the recording. Indeed, I was so persistent in bothering my trial attorney about the video tampering issue and a number of other evidentiary matters that it appeared he was unwilling to exert any effort to pursue, he got aggravated and allowed me to have access to my entire file on the compact and/or DVD discs provided to him by the State in discovery, which I promptly copied onto a thumb drive so that I could continue working to find exculpatory evidence and exonerate myself. To that end, I took a copy of the State’s “surveillance video” from Pocket’s to a friend of mine, FRANCISCO MARTINEZ, who was a video production manager for Entravision/Univision, a Spanish television and broadcast news network in El Paso, to give me his “expert” opinion on the video tampering matter; and he unequivocally concluded that the video had been altered by deleting not only the critical section of the footage referenced above, but also scrubbing the time/date stamps from the video feed. I implored my trial attorney to talk with FRANCISCO MARTINEZ, who is also providing his own affidavit for the court’s consideration, about his “expertise” and conclusions as well as his willingness to testify at my trial in order to substantiate the video tampering allegations; but he never even made the effort to talk to this potential “expert” witness. And instead of doing what I now know is proper and required for competent representation by either finding a properly credentialed expert that I could afford to hire privately or filing a motion requesting court funding for a forensic evaluation of the “surveillance video” to expose the State’s malfeasance in “doctoring” the “surveillance video” – like the expert opinion from that my habeas attorney is presenting with this writ from ADAM KEY, PhD, MFA Forensic Communications; MICHAEL GIBSON, waited until the last second to even attempt to raise the video tampering issue by simply orally asserting that there is a “spoilation issue” because of “a clear jump in the video footage” and then capitulating to the admission and use of the illegally edited video at trial without even mentioning the tampering issue.

The missing portion of the State’s “surveillance video” would have also revealed that I did not, in fact, “speed off” and “almost run over someone” as the decedent and his girlfriend and other friends testified at trial for the first time – having not included these important details in any of their original statements. Moreover, the said missing video footage would have clearly shown that both of the front-seat windows to my truck were still up as I started driving away, and were only rolled down just before I was attacked in response to the decedent and several of his friends banging on my truck and yelling curses, challenges, and threats at me to try to get them to stop and move out of the way along with the rest of their group – which included all of the supposed eye witnesses who testified against me at trial and a number of other people – who were physically impeding my truck’s forward progress as I tried to leave the Pocket’s parking lot. Indeed, if you look closely at the State’s “surveillance video” before it cuts out and my truck disappears, you can see that my windows were still rolled up as well as the shadows of the group of people who were blocking me from leaving the premises as at least three men out of that group ran up to my truck from different angles to start pounding on it and threatening to hurt me badly and even kill me. And I would literally have had to hit or run over one of these other three-plus participants in the altercation that precipitated the murder charge I was ultimately convicted of, or one or more of the other people with them to get clear of the situation – which would have only served to get my thrown in jail for *Aggravated Assault with a Vehicle*, at a minimum, or quite possibly the murder of a different one of my assailants or someone else with my truck without any clear legal “justification” for the use of deadly force.

Moreover, the State compounded the negative impact of what the missing video footage would have revealed about the coordinated nature of the attack on my person by multiple assailants by relying heavily on the argument that I “could have retreated” by just driving away, and then intentionally submitting a proposed charge with a “duty to retreat” jury instruction that hadn’t been the law since the statutory implementation of the Texas “Castle Doctrine” in 2007 ten (10) years prior to my trial in an obvious attempt to discredit my ability to effectively rely on it to justify my use of “deadly force” in self-defense while being attacked in my vehicle. And when we got a chance to review the proposed jury charge with this gross misstatement of the law that the jury was ultimately instructed to follow at trial, I confronted my trial attorney about the apparent discrepancy with my understanding of the law by asking him very specifically if the “duty to retreat” was still the

law in light of the “Castle Doctrine” and asking him to object to that portion of the jury charge. But once again, my trial counsel, MICHAEL GIBSON, didn’t seem to care – or even be aware of the impact that the injection of the legally abrogated “duty to retreat” might have on the jury’s evaluation of my self-defense claim – by refusing to object to the inclusion of this prejudicial misstatement of the law in the jury charge and telling me that “it doesn’t matter...the State can argue whatever the [expletive] they want!”

The State further exhibited its determination to secure a conviction by any means necessary by making sure that blood splatter evidence that was in my truck, which would have further demonstrated the extent to which my primary assailant was inside of my truck as he tried to pull me out into the parking lot so he and his friends could continue beating me, never got analyzed or made it to trial. The State mentioned needing to test this blood splatter several times over the course of the hearings leading up to my trial and even attempted to use the need for testing it as a justification for refusing to return my truck to me for several months. But the State never actually conducted the testing of the blood splatter evidence, and I discovered too late that what the State was really doing was leaving my truck windows open so that the weather would render any evidence that was in the vehicle useless as you can clearly see from the pictures of my truck before it was impounded and afterwards. And interestingly, a key portion of the Court’s transcript record in my case that corroborated the fact that the State was insisting on testing blood splatters in my truck disappeared and was not a part of my appellate record until more than five (5) years after my trial; and even then only after my habeas corpus attorney spent the better part of a year haranguing the trial judge’s office about getting access to the original audio recording trying to locate precisely that type of testimonial affirmation for the existence of important, untested blood splatter evidence I remembered from my pretrial proceedings.

The State also went even further to manipulate the evidence to ensure a conviction by coaching the three eyewitnesses the prosecution presented at trial to emphasize an unsubstantiated reckless driving allegation that I had almost hit or run over two of them in a transparent attempt to cut me off from the self-defense argument they knew was coming; but they were not able to keep their stories straight on the stand. Indeed, one of the State’s key witnesses, DIANA RUIZ, who was the decedent’s fiancée, testified consistently with her written witness statement that I was “driving very fast...and had almost run over Carolina [another State’s witness]; but then contradicted herself

on cross-examination by admitting that the other witness, CAROLINA ROCHA, was able to get to a safe place well on the other side of parking lot lane by “walking a little faster” to get out of the way, even though she “didn’t have time to look” because she was texting, or otherwise distracted, by her phone; and I was able to safely stop to “stare at her with an ugly look” without doing or saying anything else that was even derogatory, much less threatening. Moreover, DIANA RUIZ’ testimony that CAROLINA ROCHA was the only one who was endangered by my purported reckless driving because she was “walking ahead” of her and the decedent contradicts CAROLINA ROCHA’s assertion that they were together, and both endangered by my purported reckless driving. Needless to say, CAROLINA ROCHA’s testimony that she was right next to the Decedent’s fiancée, DIANE RUIZ, when I drove up and stopped to make sure that she was going to make it to her car safely due to her obvious level of intoxication as she meandered tipsily towards her vehicle also conflicts with DIANA RUIZ’ solo accounting of events, and even goes so far as to assert that she and CAROLINA ROCHA also were actively trying to hold the Decedent back and then pull him back off of my truck to no avail while he was viciously attacking me by repeatedly punching me in the face through the open window of my truck, trying to pull me out of my truck at first, and then crawl through the window and wrest my gun away presumably to shoot me with it. And mind you, both of these women, who were friends and/or intimately involved with the Decedent, still tried to minimize the severity his attack on me in my vehicle in every way possible from saying that they did not see whether he was hitting me or not to contending that he only punched at me once, which was completely inconsistent with their other testimony about being able to see me, talk to me, and see me pull out my target pistol as well as their testimony about being unable to pull him back out of my truck and stop him from assaulting me.

Further, the testimony of the State’s third eyewitness, DAVID TORRES (aka: David Torres Gomez) had to have been fabricated as it contradicts his own written statement by changing his story from saying I “pulled up...looking for chicks or something...with his windows down” to matching the State’s two female eyewitnesses’ version of events by contending for the first time that I “almost ran over the girls” and embellishing his story to include four to five shots, two of which were directed directly at him, in contradiction to almost all of the other testimony and physical and ballistic evidence. Interestingly, however, DAVID TORRES (aka: David Torres Gomez) did at least partially tell the truth about one crucial detail on cross-examination by admitting that he threatened

me with an attack by multiple (three) assailants if I refused to leave when he states “That’s when I got close to him [me] and I told him...’Hey, there *are several of us*...You had better leave’...because these guys [plural] were getting aggressive” just before the Decedent threw the full can of beer through my open window and ran up to start physically pummeling me through the window of my truck.

I wanted to testify at trial, and all but insisted that I be allowed to do so to tell my side of the story and show the jury that I was an innocent victim of a viscous attack, but was told in no uncertain terms by my trial attorney that he wasn’t going to allow me to testify because “I didn’t need to testify” and that “giving the State a crack at me” would only hurt our chances of winning. In fact, my trial attorney even went so far as to tell me that the “judge said we had already won and he [my trial attorney, MICHAEL GIBSON] shouldn’t put me on the stand.” But I want this Honorable Court to know that I wanted to and would gladly have testified at my trial – and will testify if the Court sees fit to give me an opportunity to do so at any hearings related to this habeas corpus action or any subsequent new trial settings that may be granted as a result of habeas corpus relief in this matter – as follows:

- (1) that I absolutely was not intoxicated and had only had one beer as evidenced by a receipt from the Pocket’s Billiards where the incident at issue occurred showing I only purchased one beer that was in the possession of the State and my trial attorney;
- (2) that there were “at least” three (3) men who tried to prevent me from leaving and ultimately attacked me;
- (3) that I believe the beer one of these men threw through the already open window of my truck and hit me in the head was a full, closed can of beer – which is why it “exploded” when it hit me even according to the State’s witnesses – and probably should have been considered as a “deadly weapon” in the manner of its use that would have independently justified my use of “deadly force;”
- (4) that one of these men not only attacked me through the open window of my truck by punching me repeatedly (see the pictures of my face), but also climbed most of the way through the window and was attempting to open the door and pull me out into the parking lot where he and his friends could continue beating the crap out of me;”

- (5) that I was legitimately scared for my life when I fired all three of the shots I took and that all three of the shots were necessary from my perspective to stop my attacker – and his friends – from pulling me out of my vehicle and then prevent them from taking my gun from me and shooting me with it;
- (6) that I believe I was hit with beer bottle in back of head and do, in fact, still have a circular indentation on the back of my head consistent with the bottom of a beer bottle from being hit a second or two after the beer can that the Decedent threw through my truck's open hit me in the right cheek of my face and exploded;
- (7) that there was no viable way for me to escape once the attack had begun because the Decedent had gotten the door partially open and was trying to pull me out my truck where he and his friends could all get at me;
- (8) that at one point towards the end of the trial right after the judge denied my trial attorney, Michael Gibson's, *Motion for Directed Verdict*, my attorney told the Presiding Judge, Patrick Garcia, that I was going to testify and bring in some evidence about the dilapidated condition of my truck in police custody which prompted the judge to quickly announce that we were taking a break and asked to talk to counsel in chambers;
- (9) that as the attorneys made their way across the courtroom to follow the judge to chambers, my trial attorney, Michael Gibson, continued talking loudly about a few other things I was going to testify about including the existence of another video that had not been turned over by the District Attorney's Office, which seemed to agitate the judge even more;
- (10) that when my trial attorney, Michael Gibson's, came back from the judge's chambers about ten minutes later, he told me that he had changed his mind after talking with the judge and "I didn't need to testify [after all] because we had it in the bag;"
- (11) that I was extremely upset about the prospect of not getting to explain to the jury what happened from my perspective and ask for justice, but was told by my attorney in no uncertain terms that he was not going to put me on the stand and "give the State a crack at me;" and

(12) that after much consternation and argument about me taking the stand to testify, I reluctantly chose to defer to my attorney's supposed expertise – which I now know was extremely lacking, at least at the tail end of his career when he tried my case – and concede to his directive to not testify on my own behalf against my better judgment.

SIGNED BY: _____

(Printed Name of Affiant)

STATE OF TEXAS

§

§

COUNTY OF _____

§

SWORN TO and SUBSCRIBED BEFORE ME on this the ____ day of April 2025 by
CARLOS LOZANO.

Notary Public,
State of Texas

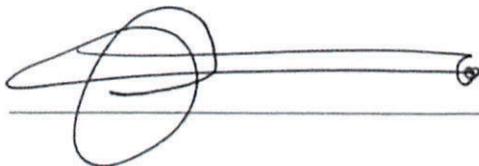
**Exhibit
B**

Jiminez Affidavit

AFFIDAVIT OF TESTIMONY

COMES NOW, PEDRO JIMENEZ, and makes the following statement under oath, and further asserts that the facts contained therein are true and correct and within his personal knowledge.

1. I have lived in El Paso, Texas for eleven years.
2. I knew Carlos Lozano as a customer at Mas Tequila Bar, where I worked. We did not socialize on a personal level, just when he was a patron at my work.
3. In 2015, while working at Mas Tequila Bar, several of us had heard about the shooting at Pockets involving Carlos Lozano.
4. Anna Quecada worked with me as a bartender.
5. Anna Quecada told me she had a video of the shooting taken from the Pockets' camera system. She showed me the video on her cellphone. It appeared to be filmed from the Pockets building.
6. The video clearly shows what I believe was Carlos Lozano's Ford truck. It was facing towards the Pockets building and had the driver's side door open. I could see about four people attacking him from the driver's side of the vehicle. There were also a few other people near the front of the truck. These people prevented him from leaving, unless Carlos was willing to run someone over.
7. I was and still am willing to testify to what I witnessed.
8. I was never contacted by any attorney or prosecutor to discuss this case prior to trial.



SIGNED BY:

PEDRO JIMENEZ Sr
(Printed Name of Affiant)

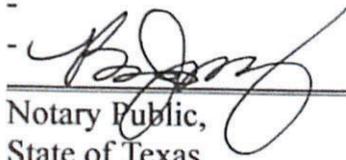
NEW MEXICO
STATE OF ~~TEXAS~~ §

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COUNTY OF §

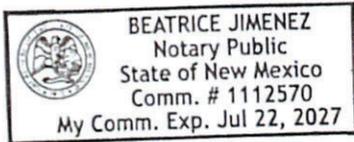
DONA ANA §
~~EL PASO~~ §

SWORN TO and SUBSCRIBED BEFORE ME on
this the 1st day of July 2025

by PEORO JIMENEZ

-
- 

Notary Public,
State of Texas



**Exhibit
C**

Trial Counsel Call

Phone conversation of Tate N. Saunders and Michael Roy Gipson

November 11, 2021, 2:02 PM

[New Recording 5.m4a](#)

Transcript

00:00:12 TATE N. SAUNDERS (“SAUNDERS”)

Hi is this Mr. Gibson? This is Tate Saunders. How are you?

00:00:17 MICHAEL ROY GIPSON (“GIPSON”)

Doing I'm glad. Are you Sir.

00:00:20 SAUNDERS

I'm Carlos Lozano's, habeas attorney. I guess is what you could think of me as.

00:00:28 SAUNDERS

He he had he, he said that he tried to talk to you and and that you didn't want to talk to him and that you would, that you would prefer to talk to me. So I'm giving you a call to pick your brain a little bit about a few issues that he's raised that might be potential winners for us on habeas.

00:00:28 GIPSON

OK.

00:00:48 GIPSON

I'm retired.

00:00:50 GIPSON

So I don't.

00:00:52 GIPSON

I'll be glad to help whatever do, but I don't. I don't do anything anymore. I'm 82 years old. I'm just retired. Ohh. Wow. Good. Good for you, man. If if God said I had to retire tomorrow, I wouldn't be ready.

00:01:11 SAUNDERS

And by that I mean finance.

00:01:13 SAUNDERS

Really, when you raise six kids, money kind of evaporates on you.

00:01:21 GIPSON

If there's any way I can help I'm I'm in a place buying food for my pet cat right now.

00:01:28 SAUNDERS

Oh yeah.

00:01:29 GIPSON

I don't I.

00:01:30 GIPSON

Don't. Yeah, I don't even go into the office anymore. I'll maintain it. I still get.

00:01:35 GIPSON

Some mailing stuff there, but I have I haven't done anything there at months and it's all. It's all closed out. I got a couple things down in share Blanca, but when those gone, I don't have anything else. So.

00:01:46 SAUNDERS

We got time for a couple of quick questions.

00:01:51 SAUNDERS

Alright. Well, he's Carlos, you know, seems to think that the he seems to think that everybody's against him. Really. But but he he seems to think that the record doesn't reflect what was actually said when y'all y'all had a hearing about getting his truck back, it had been.

00:02:10 SAUNDERS

Quite some time and he says that there, the DEA claimed there was blood evidence they needed to test in there. But the record does not reflect that. Do you remember any mention or any evidence of blood in the being in the truck?

00:02:28 GIPSON

No, I don't even. I only have a vague recollection of something similar. I don't know if it's the same.

00:02:36 GIPSON

If it's the same one and this this my guy.

00:02:43 GIPSON

He shot the guy and killed him in the in the yeah, in the parking lot of the place down there.

00:02:48 SAUNDERS

Yeah, the parking lot of pocket over there. The guy was, you know, they threw a beer can.

00:02:53 GIPSON

OK.

00:02:56 SAUNDERS

This car, the the record, says it was mostly full, Carlos says it was full and closed and gosh, honestly could have been considered a deadly weapon if that was the case. And then the guy jumped in his car and was hitting him and he he shot him and.

00:02:58 GIPSON

Yeah.

00:03:15 SAUNDERS

Killed him.

00:03:17 GIPSON

Yeah.

00:03:19 SAUNDERS

Remember that one.

00:03:21 GIPSON

What? What do you need? Yeah, what do you need from me?

00:03:25 SAUNDERS

Well, I was. I was. I was want I I want to. I guess I'm trying to avoid a goose chase, you know, on the record. You know, if you remember there being something about blood somewhere at some point then I'm gonna follow up on it. You know, I may I may go get the recording from the court reporter and see if maybe there's something on there that didn't.

00:03:43 SAUNDERS

Make it into the transcription.

00:03:46 SAUNDERS

But just as a starting point, I wanted to know if you maybe remembered anything about there being some blood in the truck that would tell me I'm headed in the right.

00:03:55 SAUNDERS

Direction or not?

00:04:01 GIPSON

I have some vague recollection that the guy.

00:04:05 GIPSON

The guy who attacked my client.

00:04:08 SAUNDERS

Uh-huh.

00:04:09 GIPSON

Was slugging him the way he rolled the window down to see what was going on. The guy runs up there and starts slugging him and he hits him.

00:04:19 GIPSON

In the head or the air in the face, and he was bleeding.

00:04:21 SAUNDERS

Ah.

00:04:23 GIPSON

I think he was bleeding some.

00:04:27 GIPSON

There was some blood, you know, from his nose or something where the guy slugged it and slugged him.

00:04:33 GIPSON

Right. And then at that point, he pulled out and of course that that's a very unusual case because you have a right to use deadly force if somebody is trying to come into your car or your home or your business and.

00:04:47 SAUNDERS

Well, that's yeah. And that's that's another question I had for you. Why didn't you put Carlos on the stand to testify about, you know, to to, I guess, to to, you know, to testify about the facts that justified self-defense, particularly with deadly force?

00:05:04 GIPSON

Well, #1, as my recollection is he had some prior criminal convictions or criminal activity that could have been used against him.

00:05:13 GIPSON

And I didn't. He didn't need to testify because the girlfriend of the.

00:05:20 GIPSON

Of the guy he shot was standing right there trying to get him to leave, trying to get him to leave. If I recall correctly. Mm-hmm. And he was good, and he's he's slugging my guy and the girlfriend is trying to get him away.

00:05:36 GIPSON

Uh.

00:05:37 SAUNDERS

So he's asked.

00:05:37 GIPSON

That was in court we have.

00:05:39 SAUNDERS

Thought that their testimony would.

00:05:43 SAUNDERS

Would support his defensive theories.

00:05:47 GIPSON

Well, yeah, yeah. Because you have, you have a right to use deadly force if somebody's trying to get into your car or your house or your business. And the guy was trying to get into his car and had actually, you know, it was slugging him through the thing, which makes him, which authorizes the use.

00:06:07 GIPSON

Of deadly force.

00:06:08 SAUNDERS

Well.

00:06:09 GIPSON

That was my whole situation. I did. I did need to put him on to testify because he had some criminal activity in his background, as I recall that I didn't want him to know about and the and the.

00:06:24 GIPSON

The girlfriend of the guy he shot is standing there telling the guy to quit hitting him to get out there and.

00:06:30 GIPSON

Trying to get him.

00:06:31 GIPSON

Get him away and he wouldn't. He keeps trying to get into the car.

00:06:36 GIPSON

And so deadly deadly force is authorized then.

00:06:39 SAUNDERS

You know, I asked him about his criminal history and I think.

00:06:42 SAUNDERS

He told me.

00:06:43 SAUNDERS

He had.

00:06:45 SAUNDERS

Maybe some a DWI issue or two?

00:06:50 SAUNDERS

And there might have been some sort of a of a deal with a girlfriend or something like that in a different state, but I don't think it was that serious. I'll have to check.

00:06:58 SAUNDERS

With him on that, but.

00:07:01 SAUNDERS

I guess you'd be surprised to hear that the Court of Criminal Appeals, in ruling on his PDR, said that there was no evidence produced by anyone that would, would you know, regarding his subjective.

00:07:19 SAUNDERS

Feeling that he needed to use deadly force.

00:07:23 GIPSON

Avoidance producers to what?

00:07:25 SAUNDERS

As as the corner Crowfield said that he had to put on some evidence that that subjectively, from his standpoint he felt like he was in danger and needed to use deadly force, and that there was no evidence in the record to support that.

00:07:46 SAUNDERS

So and and that's what they rule. I've got a motion for rehearing pending sort of centered around the the castle defense and and its intent.

00:07:46 GIPSON

Well.

00:07:55 GIPSON

Yeah, the the only thing he was.

00:07:56 SAUNDERS

And all that.

00:07:58 GIPSON

The guy had slugged him and he was bleeding.

00:08:01 GIPSON

From the nose or the eye or the ear or something where he'd been slug.

00:08:07 GIPSON

And and I think that was in the I think that was in the record.

00:08:14 GIPSON

That there was some some blood in the in the truck and that was from him.

00:08:19 GIPSON

I'm sort of vaguely recalling that now.

00:08:22 SAUNDERS

Yeah, I haven't been through the whole record. The record as a whole. I went through that hearing and didn't didn't see anything from the hearing to get the truck back regarding the blood. He thinks the record was scrubbed. I tried to explain to him that, you know, I've had it happen many times where court reporters.

00:08:40 SAUNDERS

You know, you're you're absolutely sure something was said a certain way and it doesn't come across that way in the transcript and you know, it sometimes could.

00:08:48 SAUNDERS

BA not quite perfect translation or rendition of what was said in the court. Do you remember any of this? He said he he said. He also said that the judge pulled you guys back into Chambers and said he didn't need to testify and that they they had won already and a bunch of crap like that. Do you remember any of that?

00:08:51 GIPSON

Yeah.

00:09:09 GIPSON

No, I do not.

00:09:12 GIPSON

All right. How did not remember that if I do, I'll give you a call.

00:09:18 SAUNDERS

Do you remember if you know about, do you remember Carlos telling you he wanted to testify or did did what was the what was his take?

00:09:18 GIPSON

And and.

00:09:19 GIPSON

Know.

00:09:28 SAUNDERS

On that.

00:09:30 GIPSON

John Carlos telling me what that he wanted to testify.

00:09:33 SAUNDERS

Yeah, that he wanted to testify about everything or.

00:09:37 SAUNDERS

Do you remember?

00:09:37 GIPSON

Oh, I'm sure he would. But like I say, the reason that he had a crime, either a criminal conviction or some criminal history.

00:09:45 GIPSON

In in in the background that would have come in.

00:09:50 GIPSON

And I and I with that not there. He's just an innocent guy being attacked by a group of people in the parking lot. He hadn't done anything.

00:10:00 SAUNDERS

All right. Do you do you? Do you remember going out to look at to?

00:10:03 SAUNDERS

Look at the truck.

00:10:05 SAUNDERS

I guess a ways into the case with some investigator named Sam Streep and that guy taking pictures of.

00:10:12 SAUNDERS

It.

00:10:14 GIPSON

Yeah, I have some vague recollection of that.

00:10:18 SAUNDERS

OK.

00:10:20 GIPSON

I'll.

00:10:22 GIPSON

Seemed like seemed like there were some. There was blood and there was some blood in the truck.

00:10:27 SAUNDERS

Yeah, and that that's going to be a central issue, I think. Do you?

00:10:31 SAUNDERS

Do did do. Do you recall? Was there any sort of DNA testing or, you know like a, you know, like an inventory form or something that said, you know, blood sample, you know the the maybe never got sent off. You remember anything like that about about.

00:10:48 GIPSON

I don't. I don't. I don't remember and I don't.

00:10:50 SAUNDERS

Yeah.

00:10:51 GIPSON

Think there were?

00:10:52 SAUNDERS

OK.

00:10:54 SAUNDERS

Alright. Well, I'll I'll check the record. I appreciate your time, Mr. Gibson. What kind of catch? What kind of catch you got?

00:10:59 GIPSON

OK.

00:11:02 SAUNDERS

I'm sorry. What kind of cats you got? You said you were getting a sweater for your cat or some.

00:11:11 GIPSON

I've got. I've got 4 cats, so I get different things for all of them.

00:11:17 SAUNDERS

Oh.

00:11:17 SAUNDERS

Oh yeah. You got any any any cool breeds or are they all just kind of tabby cats?

00:11:19 GIPSON

Yeah.

00:11:23 GIPSON

Yeah, that, no, their their cats that were either born in my yard or the cats that up I've got from the from the from the you know they've been disposed and the they had them in the right in the.

00:11:37 GIPSON

Pit, whatever they call it, and I've got those.

00:11:40 GIPSON

Deals and I'm.

00:11:40 SAUNDERS

Sorry, yeah, I've I've sort of bounced it.

00:11:43 GIPSON

I'm sorry I can't be much help J. It's been a long time ago and I'm old and I don't.

00:11:47 SAUNDERS

No, no, I I I appreciate your time. You taking the time to to tell me what you did.

00:11:53 SAUNDERS

And good luck with your cat. I've sort of bounced my in my lifetime. I've had cats at various points and dogs at various points. I guess to some degree, depending on what what woman I was with. But my last ex-wife got with a boyfriend and and we got divorced and she called me about.

00:11:54 GIPSON

Yeah.

00:12:02 GIPSON

Yeah.

00:12:13 SAUNDERS

So much later, you know.

00:12:14 SAUNDERS

And she wouldn't let me. Wouldn't let me touch it. Any of the dogs, even the ones that were super attached to me until when we were getting divorced. And then she's, like, my boyfriend didn't want the dogs. Come get them, or they're going to the pound. Yeah. So I've got three dogs in an apartment with a waiver for one of them, cause you're only supposed to be allowed.

00:12:22 GIPSON

Yeah.

00:12:31 SAUNDERS

To have two pets.

00:12:33 SAUNDERS

But.

00:12:35 GIPSON

Listen, I'm sorry. You know, I was 80.

00:12:39 GIPSON

Last month, and now that there was, I don't remember my own name some time, so I'm sorry if I couldn't help you anymore, but.

00:12:45 SAUNDERS

That's alright. Well, I appreciate your time and I hope you have a great day and a great Thanksgiving and and a great veteran's day if you're a veteran, alright?

00:12:49 GIPSON

Opens.

00:12:56 SAUNDERS

All right. Thank you. Bye.

00:12:57 GIPSON

Good luck.

**Exhibit
D**

Martinez Affidavit

AFFIDAVIT OF TESTIMONY

COMES NOW, FRANCISCO MARTINEZ, and makes the following statement under oath, and further asserts that the facts contained therein are true and correct and within his personal knowledge.

1. In 2015, I was working in video production for Entravision, a Univision affiliate.
2. In 2015, I had approximately 11 years of experience in video editing and production.
3. In 2015, I was approached by Carlos Lozano to review a surveillance video he claimed was provided by his attorney for an upcoming trial.
4. I was told that the video was recorded on a surveillance system that included time and date stamps and was asked to review the recording to determine if it was a true and correct recording, or if it had been modified.
5. Upon review, I noticed that there are no time or date stamps. If the original recording had these, the framing of the video would have been cropped to remove the time and date stamps.
6. I noticed several parts of the video where objects disappeared almost immediately. This indicates that the scenes were cut together and not a consistent recording of the events.
7. It is my expert opinion that the video I reviewed is not the original recording or a direct copy and was edited to remove information and scenes.
8. I was and still am willing to testify to what I witnessed.
9. I was never contacted by any attorney or prosecutor to discuss this case prior to trial.
10. I am willing to review the video again and provide a more detailed opinion.

SIGNED BY:



Francisco V MARTINEZ

(Printed Name of Affiant)

NEW MEXICO
STATE OF ~~TEXAS~~ §

§
COUNTY OF §

DONA ANA §
~~EL PASO~~ §

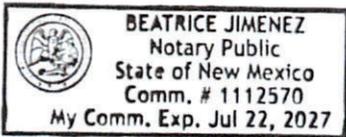
SWORN TO and SUBSCRIBED BEFORE ME on
this the 1st day of July 2025

by Francisco MARTINEZ

-
-


Notary Public,
State of ~~Texas~~ NEW MEXICO

Page 2 of 2



Exhibit

E

Video Expert Report

Video Footage Review

Case # 20160D00209

Adam Key, Ph.D., MFA

11/4/2021

Having performed a review of the files provided in Case # 20160D00209 involving Carlos Lozano, I have identified several concerning factors that indicate the video provided has been edited. Notably, the file type is not one produced by the camera system utilized; the two files that are allegedly contiguous have different bitrates and framerates; there is a 33-minute gap between the creation of each video; and there is a clear jump in the footage in the Part 2 file.

1. File types are not produced by the device

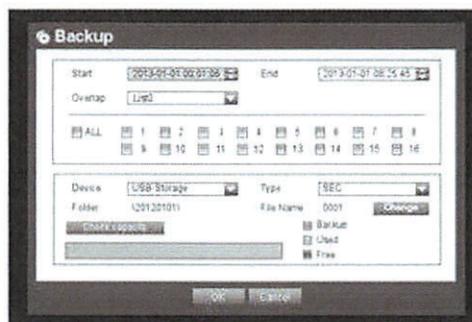
Based on photographs supplied to me of both the camera and the label, the recording device has been identified as a Samsung 8440BCN. This HD security camera is only compatible with two DVR devices, Samsung SDH-C5100 and SDH-B3040. Upon review of the manuals of both devices, shown in part below, both devices are only capable of producing files in three formats: DVR (.bu), AVI at H.264 (.avi), and Samsung's proprietary security camera filetype (.sec). Neither device is capable of producing .m4v files, the file type supplied to me. This indicates that the files supplied were produced by another program, which can range from a converter to a video editor. Numerous conversion and editing programs can produce .m4v files and nothing in the metadata indicates which program was utilized.

SDH-B3040 manual:

A backup window appears.

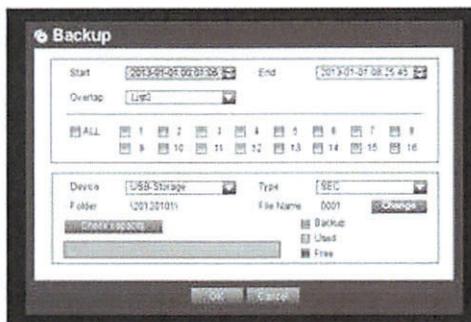
You can directly access it from the "Live screen menu".
(Page 23)

4. Use direction buttons (▲▼◀▶) to move to a desired item, and set the value.
 - Backup Range : Sets the <Start> and <End> time for the backup.
 - Channel : Sets the channel to backup.
You can select multiple channels.
 - Device : Select a backup device from the recognized devices.
 - Type : Sets the backup data format.
 - DVR : Saved data can be played back only by the DVR.
 - AVI : You can set recording options when sensor, motion, image loss detection or tampering event occurs.
 - If you need to install a codec in Windows, run the x264_dvr.exe file in the codec folder that is created when you back up an AVI file.
 - SEC : Saves data in the Samsung's proprietary format with built-in viewer, which supports immediate playback on a PC.



SDH-C5100 manual:

A backup window appears.
 You can directly access it from the "Live screen menu".
 (Page 23)



4. Use direction buttons (▲▼◀▶) to move to a desired item, and set the value.
 - Backup Range : Sets the <Start> and <End> time for the backup.
 - Channel : Sets the channel to backup. You can select multiple channels.
 - Device : Select a backup device from the recognized devices.
 - Type : Sets the backup data format.
 - DVR : Saved data can be played back only by the DVR.
 - AVI : You can set recording options when sensor, motion, image loss detection or tampering event occurs.
 - If you need to install a codec in Windows, run the x264_dvr.exe file in the codec folder that is created when you back up an AVI file.
 - SEC : Saves data in the Samsung's proprietary format with built-in viewer, which supports immediate playback on a PC.

2. The files have different bitrates and frame rates

The files are both 352x240, which while a non-standard file size, are capable of being produced by the compatible DVRs. Utilizing the NTSC codec, both DVRs can produce up to 400 frames per second. The relevant portions of each manual are included below. While these rates can be lowered in the recording settings, the frame and bit rates should be the same on files produced from the same DVR from the same recording. Here, they are substantially different. Part 1 has 11kb per second and a frame rate of 7 frames per second. Part 2 has 14 kb per second and 8.53 frames per second. This strongly indicates that the files were produced differently, despite being contiguous.

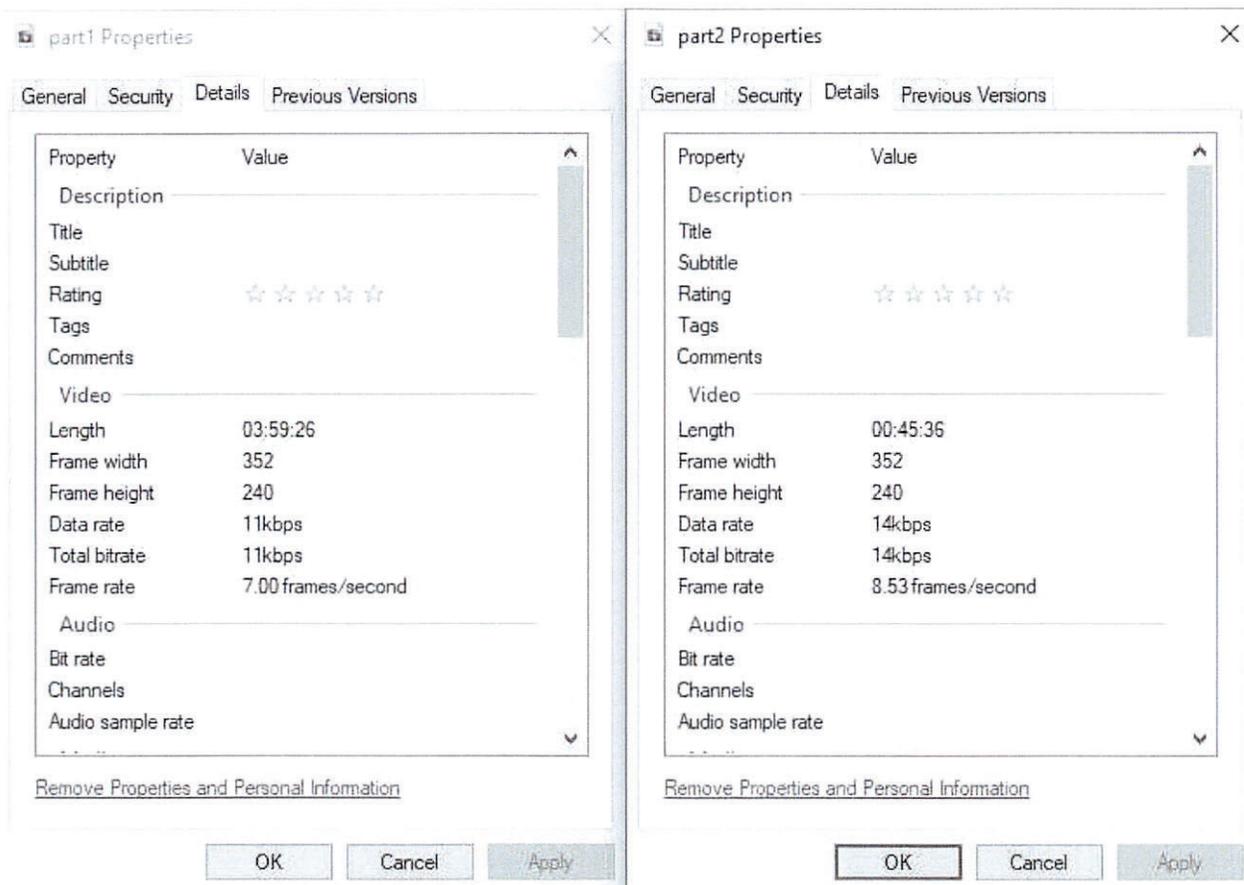
SDH-B3040 manual:

Performance		
OS	Embedded	Linux
	Compression	H.264
Recording	Record Rate	<ul style="list-style-type: none"> • SDR-5102 NTSC : Up to 480fps @ 960x480 / PAL : Up to 400fps @ 960x576 NTSC : Up to 480fps @ 704x480 / PAL : Up to 400fps @ 704x576 NTSC : Up to 480fps @ 704x240 / PAL : Up to 400fps @ 704x288 NTSC : Up to 480fps @ 352x240 / PAL : Up to 400fps @ 352x288
		<ul style="list-style-type: none"> • SDR-4102 NTSC : Up to 240fps @ 960x480 / PAL : Up to 200fps @ 960x576 NTSC : Up to 240fps @ 704x480 / PAL : Up to 200fps @ 704x576 NTSC : Up to 240fps @ 704x240 / PAL : Up to 200fps @ 704x288 NTSC : Up to 240fps @ 352x240 / PAL : Up to 200fps @ 352x288

SDH-C5100 manual:

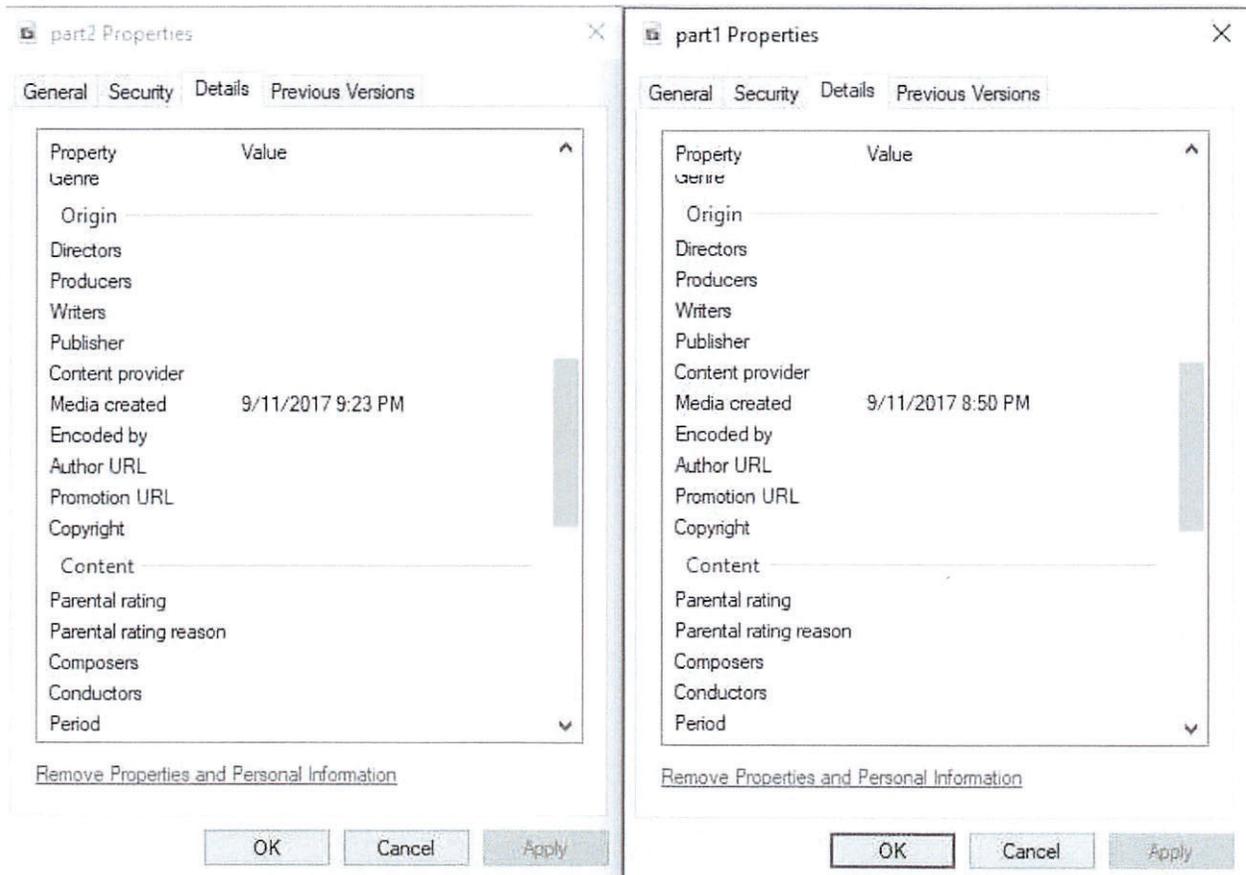
Performance		
OS	Embedded	Linux
Recording	Compression	H.264
	Record Rate	<ul style="list-style-type: none"> • SDR-5102 NTSC : Up to 480fps @ 960x480 / PAL : Up to 400fps @ 960x576 NTSC : Up to 480fps @ 704x480 / PAL : Up to 400fps @ 704x576 NTSC : Up to 480fps @ 704x240 / PAL : Up to 400fps @ 704x288 NTSC : Up to 480fps @ 352x240 / PAL : Up to 400fps @ 352x288 • SDR-4102 NTSC : Up to 240fps @ 960x480 / PAL : Up to 200fps @ 960x576 NTSC : Up to 240fps @ 704x480 / PAL : Up to 200fps @ 704x576 NTSC : Up to 240fps @ 704x240 / PAL : Up to 200fps @ 704x288 NTSC : Up to 240fps @ 352x240 / PAL : Up to 200fps @ 352x288
	Mode	NTSC : Manual, Schedule (Continuous / Event), Event(Pre / Post), Time Laps(1~30fps) PAL : Manual, Schedule (Continuous / Event), Event(Pre / Post), Time Laps(1~25fps)
	Event	Video Loss, Motion(Level 1~10), Tampering
	Overwrite modes	Stop/Continuous
	Pre Event	Off/5 sec
	POST Event	Up to 6 hour (Off, 5, 10, 20, 30 sec, 1, 3, 5, 10, 20 min, 1, 2, 3, 4, 5, 6 hour)
	Search & Playback	Search mode
Playback function		Fast Forward/Backward, Slow Forward/Backward, Step Forward/Backward ※ Backward Play with I-frame Only

Part 1 and Part 2 Metadata



3. Time gap in file creation

Both files were created on 9/11/17. There is, however, a 33-minute gap in the creation time. Part 1 was created at 8:50pm and Part 2 was created at 9:23pm. This gap indicates that the files were rendered separately and, combined with the file types not being produced by the DVRs, on either conversion or editing software. Furthermore, I can find nothing in either manual indicating a time limit in file production. Part 1 is 3:59:26, while Part 2 is 45:36:02. There is no reason these files could not have been produced together.

Part 1 and Part 2 Metadata**4. Clear jump in Part 2 footage**

The most obvious indication that these files are not original is the jump that appears in Part 2. Utilizing Sony Vegas 13, I added timestamps to the video for clarity. In the bottom left is a count by seconds, while the bottom right has the industry standard hour:minute:second:frame. At 942.232 seconds/00:15:42;06, there are two vehicles in the upper left corner with headlights on. The lights from one vehicle can be shown on the parking lot and sidewalk. There are also multiple people on what appears to be a patio near upper top right corner. A mere .117 seconds later at 942.439 seconds/00:15:42;10, both vehicle headlights are off, there is a vehicle in the top center with headlights on, and the people previously on the patio are no longer there. If this were a skip in the video, which is extremely unlikely in digital formats, there should be some static or other indication, but there is not. Furthermore, a review of both files found no other jumps like this. On information and belief, the only way for this jump to occur is if the file was edited and the intervening time removed.

942.232 seconds/00:15:42;06



942.439 seconds/00:15:42;10



Conclusion

Based on the conglomeration of my observations, it is my expert opinion that the Part 2 video was edited and is non-original. An original video would have been in the H.264 .avi file type the DVR could produce, rather than the .m4v. The bitrates and framerates between the files would be the same and they would be created at the same time. Most importantly, the jump in the footage strongly indicates that this footage is not original and was edited.



Adam Key, Ph.D., MFA

Date: 11/4/21

Exhibit

F

State's Exhibit 5: Trial Videos

[Trial video part 1](#)

[Trial video part 2](#)

(click link to play)

Exhibit

G

Video Expert C.V.

01/29/2020

Curriculum Vita for
Adam Matthew Key

Assistant Professor of Communication
School of Arts and Humanities
University of Arkansas at Monticello
Monticello, AR

Education

- Ph.D. Communication
Texas A&M University, 2018
- M.F.A. Communication Studies - Forensics
Minnesota State University at Mankato, 2014
- M.A. Communication Studies
Sam Houston State University, 2010
- M.I.S. Interdisciplinary Studies
Public Administration, Communication Studies,
Business, and Criminal Justice
Stephen F. Austin State University, 2009
- B.A. Speech Communication, Minor in Cinematography
Stephen F. Austin State University, 2005

Relevant Experience

Audio/Visual

- Certified as an expert witness in visual media analysis, Texas Criminal Court System
- 20 years of experience in video production and editing
- 13 years of experience producing images, video, and audio for use in litigation