

FILED

03-10-2026

Circuit Court

St. Croix County, WI

2022CF000518

STATE OF WISCONSIN: CIRCUIT COURT: ST. CROIX COUNTY:

STATE OF WISCONSIN,

Plaintiff,

vs.

NICOLAE MIU,

Defendant.

)

)

)

)

)

)

)

)

)

)

)

CASE NO: 22 CF 518

CASE TYPE:

CRIMINAL

PREPARED FOR:

ORIGINAL

Hudson, Wisconsin

April 5, 2024

BEFORE THE HONORABLE R. MICHAEL WATERMAN

REPORTER'S TRANSCRIPT OF PROCEEDINGS

JURY TRIAL - DAY 5

VANESSA M. MELSTROM, RMR, CRR

St. Croix County Government Center - Branch 4

Hudson, Wisconsin 54016

(715) 377-5824

vanessa.melstrom@wicourts.gov

APPEARANCES:

KARL E. ANDERSON, ESQ., District Attorney,
appeared on behalf of the Plaintiff.

BRIAN T. SMESTAD, Deputy District Attorney,
appeared on behalf of the Plaintiff.

AARON A. NELSON, ESQ., Nelson Defense Group, LLC,
appeared on behalf of the DEFENDANT, who was present.

COREY CHIRAFISI, ESQ., Chirafisi Law Office, S.C.,
appeared on behalf of the Defendant.

LIEUTENANT BRANDIE HART and INVESTIGATOR JOHN
SHILTS, JR., court officers, were also present.

1	<u>INDEX PAGE</u>	
2	<u>EXAMINATION OF:</u>	<u>PAGE</u>
3	GILMA CONSTANZA	
4	Direct Examination by Mr. Anderson	1225
5	Cross-Examination by Mr. Chirafisi	1232
6	Redirect Examination by Mr. Anderson	1243
7	Recross-Examination by Mr. Chirafisi	1244
8		
9	ALBA R. TORRES	
10	Direct Examination by Mr. Anderson	1245
11	Cross-Examination by Mr. Chirafisi	1251
12	Direct Examination by Mr. Anderson	1258
13		
14	SERGIO L. RUIZ-LEYVA	
15	Direct Examination by Mr. Anderson	1260
16	Cross-Examination by Mr. Chirafisi	1270
17	Redirect Examination by Mr. Anderson	1278
18	Recross-Examination by Mr. Chirafisi	1281
19		
20	TATIANA RUIZ-LEYVA	
21	Direct Examination by Mr. Anderson	1283
22	Cross-Examination by Mr. Chirafisi	1285
23	Redirect Examination by Mr. Anderson	1289
24	Recross-Examination by Mr. Chirafisi	1291
25		

INDEX PAGE CONTINUED

<u>EXAMINATION OF:</u>	<u>PAGE</u>
ERNESTO TORRES CHAGUEZ	
Direct Examination by Mr. Nelson	1293
Cross-Examination by Mr. Anderson	1313
Redirect Examination by Mr. Nelson	1331
Recross-Examination by Mr. Anderson	1337
ARIEL CHAGUEZ	
Direct Examination by Mr. Nelson	1346
Cross-Examination by Mr. Anderson	1357
Redirect Examination by Mr. Nelson	1372
Recross-Examination by Mr. Anderson	1380
AMBER LIND	
Direct Examination by Mr. Anderson	1385
Cross-examination by Mr. Chirafisi	1397
Redirect Examination by Mr. Anderson	1403
Recross-Examination by Mr. Chirafisi	1404

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX PAGE CONTINUED

<u>EXHIBITS:</u>	<u>MARKED:</u>	<u>OFFERED:</u>	<u>RECEIVED:</u>
19	--	1406	--
59	--	1406	1406
65	--	1406	1407
66	--	1406	1407
67	--	1406	1407
Ex. 71 - Pg. 19	--	1363	--
Ex. 71 - Pg. 18-24	--	1372	1372
Ex. 71 - Pg. 18-40	--	1378	1380
82	1222	--	1222
83	1222	--	1222
85	--	1249	1249
87	1415	--	--

Hudson, Wisconsin
April 5, 2024

P R O C E E D I N G S

(Whereupon, the following proceedings commenced
in open court.)

THE COURT: We are back on the record in State of
Wisconsin versus Nicolae Miu, 22 CF 518. Mr. Smestad and
Mr. Anderson appear for the State. Mr. Chirafisi and Mr.
Nelson are present. They represent Mr. Miu, who is
present. We are outside the presence of the jury.

There was an item or two that we need to
address before taking on the next witnesses.

The clerk retrieved the illustrations that
were used yesterday with some witnesses. Can we have
those identified, marked, and -- I guess just identified
and marked.

Who has the illustrations?

THE CLERK: I do.

THE COURT: Okay. Do you have them marked?

THE CLERK: I don't have them marked, but I have
the exhibits, if they want to tell me what numbers they
would like.

THE COURT: So let's start with the timeline that
was used with Terry Andersen. What exhibit number?

UNIDENTIFIED FEMALE: 83.

1 THE COURT: 83.

2 (Whereupon, Exhibit Number 83 was marked for
3 identification.)

4 THE COURT: Again, that's just for illustrative
5 purposes.

6 And the other drawing was the side view of
7 the riverbank I think with one of the deputies.

8 MR. ANDERSON: That was Schaeppi, Investigat --
9 Investigator Schaeppi.

10 UNIDENTIFIED FEMALE: 82.

11 THE COURT: We'll mark that as 82. Again,
12 illustrative purposes only.

13 (Whereupon, Exhibit Number 82 was marked for
14 identification.)

15 THE COURT: Is there anything else that we need
16 to address outside the presence of the jury, Mr. Anderson?

17 MR. ANDERSON: Not that I could think of.

18 THE COURT: Mr. Chirafisi?

19 MR. CHIRAFISI: No, sir.

20 THE COURT: Okay. We do have witnesses that will
21 involve interpreters.

22 Ms. Marin, we placed a microphone just to
23 your left. Are you able to use that?

24 INTERPRETER MARIN: Yes, Your Honor.

25 THE COURT: Okay. So that will amplify your

1 voice.

2 And yours, Mr. -- is it Diaz?

3 INTERPRETER DIAZ: Yes, Your Honor.

4 THE COURT: Okay. What I'd like to do is when we
5 bring the jury in I will give the brief instruction about
6 interpreter testimony, I will then administer the oath to
7 the interpreters in the presence of the jury, and then
8 we'll call the first witness.

9 All right. Any questions? (No response.)

10 All right. Hearing none, let's bring the jury in.

11 (Whereupon, the jury enters the courtroom.)

12 THE COURT: Members of the jury, good morning.
13 Welcome back. Again, thank you for being so prompt this
14 morning.

15 Before we begin with the next witness I
16 just have a few remarks to make. No matter what language
17 people speak, they have the right to have their testimony
18 heard and understood.

19 You are about to hear testimony from
20 witnesses who words will be translated by an interpreter.
21 The interpreter is required to remain neutral. The
22 interpreter is required to translate between English and
23 Spanish accurately and impartially to the best of the
24 interpreter's skill and ability.

25 The evidence you are to consider are the

1 words provided through the official court interpreter.
2 Although some of you may know Spanish, it is important
3 that all jurors consider the same evidence. Therefore,
4 you must base your decision on the evidence presented in
5 the English translation. You must disregard any different
6 meaning of the non-English words.

7 You must evaluate interpreter testimony as
8 you would any other testimony. That is you must not give
9 interpreted testimony any greater or lesser weight than
10 you would the witness -- than you would if the witness had
11 spoken English.

12 Keep in mind that a person might speak some
13 English without speaking it fluently. That person has the
14 right to the services of an interpreter. Therefore, you
15 shall not give greater or lesser weight to a person's
16 translated testimony based on your conclusions, if any,
17 regarding the extent to which that person speaks English.

18 Our interpreters are today are Monica Marin
19 and Andres Diaz.

20 INTERPRETER MARIN: Good morning.

21 INTERPRETER DIAZ: Good morning.

22 THE COURT: We will administer the oath to both
23 of them now and then we'll bring in the next witness.

24 Would you both please stand, raise your
25 right hand, and the clerk will deliver the oath.

1 (Whereupon, the interpreters were sworn.)

2 INTERPRETER DIAZ: I do.

3 INTERPRETER MARIN: I do.

4 THE COURT: Thank you.

5 Mr. Anderson, who is your next witness?

6 MR. ANDERSON: Gilma Constanza.

7 (Whereupon, the witness enters the courtroom.)

8 THE COURT: Ms. Constanza, please come forward.

9 INTERPRETER MARIN: Your Honor, my interpreter
10 please?

11 THE COURT: Yes. Yes.

12 Please raise your right hand. The clerk
13 will administer the oath.

14 GILMA CONSTANZA,
15 after having been first duly sworn on oath by the clerk,
16 testifies and says as follows:

17 THE WITNESS: Yes.

18 THE COURT: Please have a seat in the witness
19 chair.

20 Mr. Anderson.

21 DIRECT EXAMINATION

22 BY MR. ANDERSON:

23 Q. Can you please state your first and last name?

24 A. My name is Gilma Constanza.

25 Q. And can you spell your name?

1 A. G-i-l-m-a. My last name is c-o-n-s-t-a-n-z-a.

2 Q. How old are you?

3 A. 39 years old.

4 MR. ANDERSON: May I approach?

5 THE COURT: Yes.

6 Q. (By Mr. Anderson, continuing) Gilma, were you
7 tubing with this group on the Apple River on July 30,
8 2022?

9 A. Yes.

10 Q. Can you show us where you are in the photo?

11 A. I'm wearing a hat and dark glasses.

12 Q. Here?

13 A. Yes.

14 Q. And how do you know -- did -- did you know
15 Nicolae before that day?

16 A. No. I had only seen him twice.

17 Q. And who did you -- who were you close with out of
18 the people in that photo?

19 A. My -- I was dating Ariel, and he was the one who
20 invited me.

21 Q. And was he -- at -- at some point was there an
22 incident?

23 A. No.

24 Q. At some point -- how -- how was the trip in the
25 beginning, the tubing trip in the beginning?

1 A. There -- at the beginning was everything --
2 everything was normal. We were playing music, we were
3 telling jokes, and everything normal.

4 Q. And --

5 A. And also drinking.

6 Q. In the beginning was Nicolae snorkeling? Was
7 Nicolae --

8 A. Can you repeat the question?

9 Q. Was Nicolae snorkeling while you were on the
10 river?

11 A. I don't understand when you say snorkeling.

12 Q. Was he swimming with goggles and a tube to
13 breathe?

14 A. Yes. Two times that we stopped he went swimming
15 under the water.

16 Q. And was he by your group, doing that away from
17 your group, or both?

18 A. Close by.

19 Q. At some point did Ariel's phone get lost?

20 A. Yes. I dropped it. I had it on my legs.

21 Q. What happened after that?

22 A. We were trying to decide if we could look for the
23 phone or if we didn't have to look for the phone. And the
24 man decided to go look for it, and we were talking, we
25 were just discussing to -- to -- thinking that the

1 insurance would probably cover for the cost of the cell
2 phone. That's when we heard Mr. Nic's wife telling us
3 that he was in trouble.

4 Q. Did you see when Nicolae walked back to the
5 group?

6 A. Yes.

7 Q. Did he walk directly back to the group?

8 A. No, he went walking to the other side, to the
9 right side, where the other group was.

10 Q. And --

11 A. He was looking for where the edge of the river
12 was.

13 Q. Was that across the river from where your group
14 was?

15 A. Correct.

16 Q. And when you saw him -- when you saw him walking
17 back at first, did you see any people that were injured?

18 A. Yes. I saw a young man that had his hands on the
19 abdomen and he said look what he -- what he did to me. So
20 he took his hands off that area, and when he saw the blood
21 he just fainted.

22 Q. And that was -- was that while Nicolae was
23 walking back?

24 A. Yes.

25 Q. And when you saw Nicolae walk to the other side

1 of the river, did you see him do anything?

2 A. Yes. He threw something to -- to the grass on
3 the bank of the river.

4 Q. After that did he walk back to your group?

5 A. Yes. He walked straight to where -- where we
6 were.

7 Q. From where you were, was it obvious that there
8 were people seriously injured?

9 A. Yes, because they were -- they were shouting. It
10 was obvious.

11 Q. What happened after that?

12 A. He joined the group again and then he put on a
13 coat and I think his hat. And then he said he was going
14 to go over to the other side by some trees. And Ariel
15 told him to -- not to go, that he had to be there.

16 Q. So just so I'm understanding, Nicolae wanted to
17 go into the woods?

18 A. Correct.

19 Q. And Ernesto told him to stay with the group?

20 A. Yes. Everyone.

21 Q. After he came back and put on a hat and jacket,
22 do you remember him saying anything?

23 A. Nothing. He just had a -- a strange look and he
24 was pale.

25 Q. Do you remember him saying they took my knife?

1 A. Yes. That was the first thing, yes.

2 Q. And then after that did he say anything?

3 A. After that he said he was going to look for some
4 things over there.

5 Q. Are you talking about the -- what he said about
6 the woods?

7 A. Yes.

8 Q. After that do you remember Nicolae saying
9 anything?

10 A. No.

11 Q. Did he -- if you remember, was -- did your group
12 stay there for a while?

13 A. Yes.

14 Q. And what was Nicolae doing, do you remember?

15 A. Nothing. He was just sitting in the inner tube.

16 Q. Do you remember how long you stayed there for?

17 A. No, I don't remember.

18 Q. Did you see some officers arrive?

19 A. Yes. An ambulance and also some officers.

20 Q. And at -- at some point did you float to the
21 exit?

22 A. Yes.

23 Q. Were there still injured people there when you
24 floated by?

25 A. They were taking care of some people at the edge

1 of the bank up by the river.

2 Q. When you floated down the river, did you change
3 where you were seated among the tubing groups?

4 A. Yes. I decided to switch to a different place
5 because I was getting afraid because of the situation. I
6 -- I was sitting close to Nic at the beginning and then
7 I -- I didn't want to be sitting nearby.

8 Q. When you -- what -- what was the ride like to the
9 exit?

10 A. I -- I felt horrible because of what had
11 happened, but it was obvious that something bad had -- had
12 happened, and I didn't know what had happened and nobody
13 was talking about the situation. Everybody was quiet.

14 Q. Was Nic quiet on the tube -- tube ride to the
15 exit, too?

16 A. As far as I -- the little bit I remember, yes.

17 Q. What happened when you got to the exit?

18 A. We returned the inner tubes, then we started
19 walking toward the exit and there were police officers
20 there. We gave our names and our addresses.

21 Q. And were you -- were you able to communicate well
22 with the officers at the exit?

23 A. Yes, because we understand a little bit of
24 English, it's not that we don't know any English. And we
25 could communicate with basic language.

1 MR. ANDERSON: I don't have anything else.

2 THE COURT: Mr. Chirafisi.

3 CROSS-EXAMINATION

4 BY MR. CHIRAFISI:

5 Q. Good morning, Ms. Constanza. I'm going to show
6 you what has been moved into evidence as Exhibit 25, which
7 is a picture of the route that tubers take when they go
8 down the Apple River.

9 A. Um-hum.

10 Q. What I want to ask you is: Do you remember on
11 your trip on July 30th your group stopping at the Hideaway
12 Bar?

13 A. Yes.

14 Q. And when you stopped there, did you stop there
15 for lunch?

16 A. Yes.

17 Q. And on this trip Nic was with his wife, is that
18 right?

19 A. They were floating together in the river. She
20 was sitting in the inner tube.

21 Q. So in terms of the group that you were with, Nic
22 and his wife were present, is that right?

23 A. Yes.

24 Q. And Nic was spending time with his wife at the
25 Hideaway Bar, is that right?

1 A. Yes, they did.

2 Q. They were eating lunch together?

3 A. Yes.

4 Q. Did Nic Miu appear to be in a good mood to you
5 that day?

6 A. Yes, of course.

7 Q. He wasn't angry, correct?

8 A. No, never.

9 Q. And --

10 MR. CHIRAFISI: Is it okay, Judge, if I walk up?

11 THE COURT: (Non-verbal response.)

12 Q. (By Mr. Chirafisi, continuing) The -- the
13 picture that you were shown regarding your group, you seen
14 Nic with a shirt on and sunglasses, is that right? Can
15 you see that?

16 A. Yes.

17 Q. And did he have that shirt and sunglasses on at
18 different points during your trip?

19 A. I don't remember. I don't think so. I don't
20 remember well.

21 Q. While he was at the Hideaway Bar, there were
22 times that he would go out and snorkel in the water,
23 right?

24 A. Yes.

25 Q. So he was snorkeling --

1 A. Yes.

2 Q. -- he was snorkeling earlier in the day before
3 the incident happened, true?

4 A. Yes, that's true.

5 Q. And he would go out and snorkel by himself, your
6 group wouldn't go with him, right?

7 A. He was by himself.

8 Q. Now there comes a point where a phone gets lost,
9 air -- is that right, Ariel's phone gets lost in the
10 water?

11 A. Yes.

12 Q. And I think you said there was a conversation,
13 talk amongst the group, on whether or not you should look
14 for the phone?

15 A. Yes.

16 Q. And Mr. Miu wanted to look for the phone, is that
17 right?

18 A. Yes.

19 Q. When he did that, did your group move over to the
20 side of the river so you guys would stop floating down the
21 river?

22 A. When we realized that we didn't have the phone
23 with us we stopped. When we were discussing to see
24 whether we would look for phone or not, we were already
25 stopped in -- in one place.

1 Q. And when there was a discussion about looking for
2 the phone, Nic took his snorkel and goggles and went to
3 look for the phone, is that right?

4 A. I didn't see when he went looking for it but I
5 assumed that it was when he moved away from the group.
6 Because we arrived together, we stopped together.

7 Q. And your group waited for him when he was gone,
8 right?

9 A. We were there stopped, yes.

10 Q. Did you see Nic Miu looking for the phone when he
11 was snorkeling?

12 A. No.

13 Q. Did you see any -- any interaction on the river
14 regarding this fight?

15 A. No.

16 Q. Is the first time that you became aware that
17 something might be going on, was when Nic's wife said
18 Nic's in trouble?

19 A. Correct.

20 Q. And Nic was by himself, as far as you knew, is
21 that right?

22 A. Yes.

23 Q. Your group had stayed over on that sandbar kind
24 of area, right?

25 A. Yes.

1 Q. When Nic's wife said Nic's in trouble, what did
2 you do?

3 A. I said three times stop, stop, and I told Ariel
4 to look -- to go look -- to go help him.

5 Q. So when you said stop, stop, stop, who were you
6 talking to?

7 A. There was some -- some young men in a circle, and
8 then I assumed they were hitting Nic because I couldn't
9 see him. They were hitting somebody.

10 Q. So when you were saying stop, stop, stop, you
11 were talking to people that were far away from you, is
12 that right?

13 A. Yes.

14 Q. The people in your group, when Nic's wife said
15 Nic's in trouble, did anyone go to help him?

16 A. I remember it was Ariel, Ernesto, and Sergio.
17 But Ariel was the first one.

18 Q. And did they -- were they walking over to that
19 area?

20 A. Yes.

21 Q. Nobody, when I mean nobody, Ariel, Ernesto, and
22 Sergio, they didn't run over to help Nic, right?

23 A. No, I didn't see anybody running.

24 Q. Did you see Nic in trouble or did you just hear
25 that he was in trouble?

1 A. I heard that he was in trouble.

2 Q. And I think you said that you saw Nic walking
3 back toward your group, is that right?

4 A. Yes.

5 Q. And when he's walking back toward your group, you
6 saw him kind of go over to the edge of the riverbank, is
7 that right?

8 A. Yes.

9 Q. And a -- if you can tell us, about how far away
10 were you from that riverbank area that you saw Nic walk
11 over to?

12 A. It was like from here to the door. The width of
13 the river.

14 Q. And when you saw him walk over to that area, I
15 saw you make a motion with your hand, kind of like pushing
16 it out in front of you, is that fair?

17 A. Yes.

18 Q. Okay. So when -- and I think you said in your
19 statement to police that you believe he was discarding
20 something?

21 A. He -- yeah, he threw something out -- out there.
22 That is what I said.

23 Q. And when he threw -- you don't know what he
24 threw, is that right?

25 A. No, I don't know.

1 Q. But the way and manner in which he threw it was
2 the manner that I'm showing you right now, kind of in --
3 he moves his hand away from his body, kind of like that?

4 A. Correct.

5 Q. Did you see Mr. Miu walk over -- after he
6 discarded this object, did you see him walk over to the
7 object or did he head back toward your group?

8 A. He walked over to the group, to our group.

9 Q. Okay. And I think you told police that when he
10 walked back to your group he appeared white and pale, is
11 that right?

12 A. Yes.

13 Q. He really wasn't talking, is that right?

14 A. He said they took away the knife.

15 Q. Is that the only thing that he said to you?

16 A. And that he was going to go by the trees behind
17 us.

18 Q. Now, when you talked to the police, you never
19 told the police that Mr. Miu was looking to go into the
20 tree area, is that true?

21 A. When you say that I -- that I didn't say that
22 when I talked to the police, are you talking about the
23 time I talked to the police by the river or when they went
24 to see me at my home?

25 Q. When they went to your home, they sat with you

1 for a while and spoke to you, is that right?

2 A. Yes.

3 Q. And they were asking you questions about what you
4 saw and what you heard, right?

5 A. Yes.

6 Q. They wanted to get -- they were asking you
7 details about what Nic Miu did that day, right?

8 A. Yes.

9 Q. And during this interview that you gave with
10 police, you never mentioned to the police that Mr. Miu
11 wanted to walk into the area by the trees?

12 A. I honestly don't remember if I said that to that
13 woman.

14 Q. So you don't have a recollection, a memory, of
15 whether you told that to the police or not, is that fair?

16 A. No, I don't remember.

17 Q. Had Nic previously, that day, gone into the woods
18 to go to the bathroom?

19 A. No, I didn't see that.

20 Q. You describe to the police when Nic came back to
21 your group, you described his -- him as being -- looking
22 scared, is that fair?

23 A. Correct.

24 Q. And you knew that Nic had a knife with him that
25 day, is that right?

1 A. Yes.

2 Q. And you knew he had the knife to cut the rope on
3 the tubes, that's why he had brought it, is that right?

4 A. Yes, that's true.

5 Q. You told -- is it fair you told your group,
6 people in your group, to call 911, is that right?

7 A. I don't remember.

8 Q. Your group stayed at that location for some time,
9 is that true?

10 A. Yes.

11 Q. Did you see Nic -- Nic didn't run up into the
12 woods, true?

13 A. No.

14 Q. He sat in his tube, is that right?

15 A. Yes.

16 Q. How long do you think your group sat there before
17 moving on?

18 A. I don't know. I couldn't tell you about how much
19 time we were there.

20 Q. You had mentioned that you wanted to move where
21 you were sitting in your tube, is that true?

22 A. Yes.

23 Q. And I think you mentioned to the police that you
24 wanted to move in your tube because you were -- you were
25 concerned or afraid of the situation, is that right?

1 A. Yes.

2 Q. It wasn't anything that Nic had said or done to
3 you that made you want to move, right?

4 A. No, nothing like that.

5 Q. Do you remember whether or not Nic Miu had his
6 phone with him during that time?

7 A. No.

8 Q. Terrible question. You don't -- did he or did he
9 not have his phone, or don't you remember?

10 A. I don't remember. I don't -- I don't have a
11 clear recollection of that in my memory, yeah.

12 Q. When Nic came back to the tubes, I think you said
13 it became quiet?

14 A. Yes.

15 Q. No one was really talking?

16 A. No.

17 INTERPRETER DIAZ: May I ask for a repetition of
18 the --

19 A. Tatiana was the only one who said something
20 happened, but nothing else. Something must have happened.

21 Q. (By Mr. Chirafisi, continuing) Did Nic appear --
22 Nic appeared to be in shock to you, right?

23 A. Yes.

24 Q. When Nic came back to your tubes, did he just sit
25 in the tube?

1 A. Yes. As far as I remember, yes.

2 Q. You didn't see him run away from the tubes and
3 try to get away from you guys, is that right?

4 A. No.

5 Q. And your -- you were with a gentleman, if you
6 know, by the name of Eric, is that right, he was with your
7 group?

8 A. Yes, there was a guy there, but I didn't know
9 him.

10 MR. CHIRAFISI: Is it okay, Judge?

11 THE COURT: (Non-verbal response.)

12 Q. (By Mr. Chirafisi, continuing) Ms. Constanza, do
13 you remember seeing this gentleman --

14 A. Yes.

15 Q. -- with your group?

16 A. Yes.

17 Q. And that's Eric Von Williams. I don't know if
18 you know his name.

19 A. Yes, I remember the name when they interviewed
20 us.

21 Q. And Mr. Von Williams went over to -- to at least
22 try to render aid or help, is that right, do you remember
23 that?

24 A. I didn't see him walking at that -- I -- I didn't
25 see when he was walking.

1 Q. Did you see the number of people that were in the
2 other groups?

3 A. There were several people there, but I didn't pay
4 attention of the number of people.

5 Q. But you believe that Nic was the only member of
6 your group from over there, right?

7 A. Yes.

8 MR. CHIRAFISI: I don't have any other questions,
9 Judge. Thanks.

10 THE COURT: Mr. Anderson, do you have more
11 questions?

12 MR. ANDERSON: Yes.

13 REDIRECT EXAMINATION

14 BY MR. ANDERSON:

15 Q. Gilma, were you the only one who saw Nic throw
16 a -- throw something?

17 A. I never talked to the group about that. I don't
18 know if they saw that.

19 Q. Did you -- did you know that that was important
20 information to tell police?

21 A. Well, yes.

22 Q. When Nic came back, do you know if the look was
23 shock or fear or something else?

24 A. Like in shock.

25 Q. And when you were leaving, you specifically did

1 not want to sit by Nicolae because you were afraid to sit
2 close to him, right?

3 A. Yes.

4 MR. ANDERSON: Nothing else.

5 THE COURT: Mr. Chirafisi.

6 RECROSS-EXAMINATION

7 BY MR. CHIRAFISI:

8 Q. You weren't -- you didn't know what happened, is
9 that fair?

10 A. No.

11 Q. So you weren't afraid to sit next to him because
12 of anything he had done, correct?

13 A. No.

14 Q. You were afraid in part because of the look on
15 his face, right?

16 A. Correct.

17 Q. The shock that he had on his face concerned you,
18 right?

19 A. Yes.

20 Q. That's the reason that you didn't want to sit
21 next to him, right?

22 A. You could say that, yes.

23 MR. CHIRAFISI: That's all I have. Thank you,
24 ma'am.

25 THE COURT: Thank you, Ms. Constanza. You may

1 step down.

2 Is she released?

3 MR. ANDERSON: No.

4 THE COURT: Could someone please collect the
5 headset?

6 (Whereupon, the witness is excused.)

7 THE COURT: How is everyone doing? Does anybody
8 need a break? (Non-verbal response.) Let's continue
9 then.

10 Mr. Anderson, who is the next witness?

11 MR. ANDERSON: Could I have one minute, Judge?

12 THE COURT: Yes.

13 MR. ANDERSON: Actually, could we -- State calls
14 Alba Torres.

15 (Whereupon, the witness enters the courtroom.)

16 THE COURT: Ms. Torres, please raise your right
17 hand. The clerk will administer the oath.

18 ALBA TORRES,
19 after having been first duly sworn on oath by the clerk,
20 testifies and says as follows:

21 THE WITNESS: Yes.

22 THE COURT: Thank you. Please have a seat in the
23 witness chair.

24 Mr. Anderson.

25 DIRECT EXAMINATION

1 BY MR. ANDERSON:

2 Q. Can you please state your name for the record?

3 A. Alba Rosa Torres.

4 Q. And can you -- Alba, were you tubing with Nicolae
5 on July 30, 2022?

6 A. Yes.

7 Q. And I wanna direct your attention to about the
8 time the phone was lost, if you remember that?

9 A. Yes.

10 Q. Some time after the phone was lost, was there
11 some sort of disturbance?

12 A. Can you repeat that, please?

13 Q. Some time after the phone was lost, was there
14 some sort of commotion or a disturbance?

15 A. Yes.

16 Q. What do you remember about that?

17 A. Not much because I didn't see.

18 Q. You didn't see anything about what happened
19 downriver?

20 A. Everything had already happened.

21 Q. So you just weren't looking in that direction?

22 A. No.

23 Q. Do you remember hearing screaming or seeing
24 people with bloody injuries at all?

25 A. Somebody told me to call 911. That's it. They

1 said something was going on.

2 Q. And, Alba, I forgot to ask. Did you know Nic --
3 Nic -- Nicolae before that day on the river?

4 A. Yes.

5 Q. How long had you known him?

6 A. About five or six years.

7 Q. Were you friends?

8 A. Yes.

9 Q. So after -- did you say Tatiana told you to call
10 911?

11 A. Yes.

12 Q. After that did a person from your group leave to
13 go help with the injured?

14 A. Yes.

15 Q. And do you remember who that was?

16 A. Eric.

17 Q. And was the reason your group didn't leave sooner
18 because Eric was away helping with the victims?

19 A. No.

20 Q. You told police -- do you remember telling the
21 police about how you were impressed with how Eric react --
22 responded to the situation?

23 A. No.

24 Q. Do you remember anything you told law enforcement
25 about Eric and --

1 A. Only that he had gone there to help.

2 Q. Do you remember telling law enforcement that your
3 group called Eric back to your group so you could leave?

4 A. Yes.

5 Q. Do you remember telling law enforcement that that
6 man conducted himself very well and that's why we were
7 waiting so long until the police came?

8 A. Yes.

9 Q. Because he was away from your group so you had to
10 wait for him to come back, right?

11 A. Yes.

12 Q. And was -- when you saw people who were injured,
13 were you wondering or trying to figure out who did it, who
14 was the person who caused those injuries?

15 A. I didn't know, but yes.

16 Q. And when you eventually left from the sandbar,
17 Nicolae was wearing his hat, sunglasses, and jacket,
18 right?

19 A. When we were tubing?

20 Q. Yes.

21 A. His jacket. But I don't remember if he was
22 wearing sunglasses.

23 Q. What about a hat?

24 A. I don't remember.

25 Q. And when -- when you spoke with law enforcement,

1 you gave them a video you took after you left the sandbar.

2 Do you remember that?

3 A. Yes.

4 MR. ANDERSON: May I approach?

5 THE COURT: Yes.

6 MR. ANDERSON: This is Exhibit 85, Judge. I'm
7 just gonna show it to Alba.

8 MR. CHIRAFISI: Attorney Anderson, I'll -- you
9 don't have to lay foundation, I'll --

10 MR. ANDERSON: Gotcha.

11 MR. CHIRAFISI: Yeah.

12 MR. ANDERSON: Okay. I just ask to move to admit
13 85, ask to publish.

14 THE COURT: Any objection to 85?

15 MR. CHIRAFISI: No, sir.

16 THE COURT: Received.

17 You may publish.

18 (Whereupon, the video was played.)

19 Q. (By Mr. Anderson, continuing) Alba, that was a
20 video you took after you left the sandbar when you were
21 going to the exit, right?

22 A. Yes.

23 Q. And at the beginning of the video, is that Nic
24 that you see paddling with his hand?

25 A. (No response.)

1 Q. Do you remember or do you need to see it again?

2 Yeah, I --

3 INTERPRETER MARIN: Just a moment. The
4 interpreter needs a repetition.

5 A. I saw that he was there, he was there with us,
6 but I was taking the video because I was scared.

7 Q. (By Mr. Anderson, continuing) Were you scared
8 because you didn't know where the person was that had hurt
9 those people?

10 A. Yes.

11 Q. And you thought maybe the guy up on the shore was
12 the person who did it?

13 A. Yes.

14 Q. Did it turn out to be an employ -- an employee of
15 the tubing company?

16 A. I don't know.

17 Q. Do you remember telling law enforcement that it
18 turned out it was an employee of the tubing company?

19 A. I don't remember.

20 Q. And do you remember telling police that you were
21 wrong, that it was a hammer that was a -- because of your
22 poor English, you used the wrong word?

23 A. Yes.

24 Q. Do you remember what was in his hands?

25 A. I don't remember. But he had something.

1 Q. Was it maybe a radio, or couldn't you see?

2 A. I don't know. I don't remember.

3 Q. And was it -- did you hear in the video somebody
4 saying in English you're almost there?

5 A. No.

6 Q. When -- do you recall telling law enforcement
7 that when Nic came back to the group he appeared calm?

8 A. I saw him just normal.

9 Q. And that was the time that you remember seeing
10 blood everywhere and injured people?

11 A. I didn't see anybody injured. I only saw that
12 from -- something was going on far away.

13 Q. And Nic, when you saw Nic, you described him as
14 being calm?

15 A. I saw him normal. We were all scared.

16 MR. ANDERSON: I don't have anything else.

17 THE COURT: Mr. Chirafisi.

18 CROSS-EXAMINATION

19 BY MR. CHIRAFISI:

20 Q. Alba, you and your group were tubing with Nic and
21 his wife on the Apple River that day, is that right?

22 A. Correct.

23 Q. And do you remember your group stopping at the
24 Hideaway Bar before all of this happened? Do you remember
25 that?

1 A. Can you please repeat the question?

2 Q. Do you remember your group stopping and --

3 A. Yes.

4 Q. -- prior to anything that happened with the other
5 group?

6 A. Before?

7 Q. Yes.

8 A. Correct.

9 Q. And when your group had stopped earlier in the
10 afternoon, Nic was snorkeling around the area, is that
11 right?

12 A. Yes.

13 Q. And when your group is -- does there come a point
14 where Ariel loses his phone?

15 A. No, not at that moment, no.

16 Q. Is there some point later on on the trip where
17 Ariel loses his phone?

18 A. Yes.

19 Q. And you know that Nic, because he has a snorkel
20 and goggles, offers to go look for that phone, is that
21 right?

22 A. Yes.

23 Q. So Nic leaves your group and goes away looking
24 for the phone, is that right?

25 A. Correct.

1 Q. Your group waits for Nic, is that true?

2 A. Correct.

3 Q. To your knowledge, is Nic by himself; meaning,
4 nobody else from your group goes with Nic?

5 A. By himself, yes.

6 Q. And I think that you talked -- when you spoke to
7 the police you mentioned that you saw this other group of
8 people pushing Nic, is that right?

9 A. No. It's because I didn't see.

10 Q. Okay. Do you hear Nic's wife say that Nic's in
11 trouble?

12 A. Correct.

13 Q. And when his wife says Nic's in trouble, do you
14 look to see how Nic's in trouble?

15 A. Not at that moment because my back was facing
16 that direction.

17 Q. Do you turn around to see what's happening?

18 A. No.

19 Q. Okay. Do you see anyone else in your group
20 respond when Mr. Miu's wife says Nic's in trouble?

21 A. My brother? Um-hum.

22 Q. And what's your brother's name?

23 A. Ernesto.

24 Q. So you see -- you see Ernesto respond. How do
25 you see him respond?

1 A. I told him go see what's going on.

2 Q. And to your knowledge, does Ernesto listen to you
3 and do that?

4 A. Yeah.

5 Q. To your knowledge, does Ernesto walk over there
6 or does he run over there? How does he get over there?

7 A. I just saw him walking over there in that
8 direction, and all -- almost at that moment Nic was coming
9 back.

10 Q. Do you see Nic walking back to your group?

11 A. Yep.

12 Q. And when Nic comes back to your group, he tells
13 you that he's been attacked, right?

14 A. I asked.

15 Q. Okay. You asked what happened and he told you
16 that he'd been attacked, right?

17 A. They were pushing. That was the word that he
18 used.

19 Q. Okay. Do you remember telling the police that
20 Nic said five people attack -- five people attacked him?

21 A. I don't remember.

22 Q. What you do remember is him telling you they were
23 pushing him?

24 A. Yeah.

25 Q. Okay. And you described him as calm. Was he

1 quiet?

2 A. Quiet.

3 Q. Did he appear to be in shock to you?

4 A. Can you repeat?

5 Q. Did he appear to be in shock to you?

6 A. You're talking about me?

7 Q. No. Well, first I'm talking about Nic.

8 A. Oh.

9 Q. What did you see Nic doing? How was he behaving?

10 A. Quiet.

11 Q. Do you know -- have you ever seen someone in
12 shock before?

13 A. No.

14 Q. Did he appear to be -- was he angry or upset?

15 A. No.

16 Q. So he tells you that he'd been pushed. Is that
17 all he says to you about what had happened?

18 A. Correct.

19 Q. You described you being in shock to the police,
20 is that right?

21 A. Of course. All of us.

22 Q. Okay. And can I ask you at -- at that point, why
23 did you feel the way you felt?

24 A. Because we didn't know what was going on. We
25 didn't know many things. We didn't know anything. We

1 were really far away.

2 Q. At that point, when Nic walked backed -- back to
3 your tubes, were you in -- were you in fear of the
4 situation?

5 A. Also when he wasn't there because we were all
6 scared.

7 Q. When you say we were all scared, did Nic appear
8 to be scared to you?

9 A. I didn't pay attention to Nic.

10 Q. Did your -- and your group stayed there for some
11 period of time after Nic came back to the tube, is that
12 right?

13 A. Correct.

14 Q. And do you remember about how long you were
15 there?

16 A. I don't remember, but it was for a long time.
17 Yep.

18 Q. You didn't see Nic attempt to run away from you
19 guys, like up into the woods or anything, did you?

20 A. No.

21 Q. He just sat on his tube, is that right?

22 A. Correct.

23 Q. When your group headed back down the river after
24 Nic came back, were there already police there?

25 A. Oh, everything had already happened basically.

1 Q. Had -- did your group have any contact with
2 police at all when you were on the river?

3 A. We just called 911. Tatiana did.

4 Q. And was that the -- was that the only contact
5 that you guys had with police or law enforcement of any
6 kind while you were on the river?

7 A. Correct.

8 Q. On that day, do you remember seeing Nic with
9 sunglasses on at some point?

10 A. I don't remember.

11 Q. Okay.

12 A. I don't remember.

13 Q. I'm going to show you Exhibit 12A. Are you in
14 this picture?

15 A. Yeah. Rosie, yeah.

16 Q. You're right there with the pink shoes on?

17 A. Um-hum.

18 Q. Okay. Do you see Mr. Miu in that picture?

19 A. Yep.

20 Q. Okay.

21 A. Yep.

22 Q. If I said he's wearing sunglasses, would you
23 agree with me?

24 A. Yes.

25 Q. If I said he's wearing a -- like a -- the -- the

1 shirt that he was wearing later on, would you agree with
2 me?

3 A. Yes.

4 Q. Okay. So --

5 A. Um-hum.

6 Q. -- if I asked you at various points during that
7 trip, were there times that he was wearing the things you
8 see in this picture?

9 A. Can you repeat the question?

10 Q. If I asked you at various points on your trip
11 that day, were there times that he was wearing sunglasses?

12 A. Yes.

13 Q. Are there times that he was wearing this shirt?

14 A. Yes.

15 THE COURT: Do you need help with the device?

16 THE WITNESS: Moment.

17 THE COURT: Can somebody help her?

18 Thank you.

19 MR. CHIRAFISI: I don't have any other questions
20 for you, ma'am. Thank you for your time today.

21 THE COURT: Mr. Anderson, do you have more
22 questions?

23 MR. ANDERSON: Just one question.

24 REDIRECT EXAMINATION

25 BY MR. ANDERSON:

1 Q. Alba, was there -- did you ever hear Nic say he
2 wanted to leave and go into the woods and -- but Ernesto
3 told him to stay with the group?

4 A. No.

5 Q. Okay.

6 MR. ANDERSON: Nothing else.

7 THE COURT: Mr. Chirafisi?

8 MR. CHIRAFISI: Not on that, sir.

9 THE COURT: Okay.

10 Thank you, Ms. Torres, your testimony's
11 finished.

12 THE WITNESS: Thank you.

13 (Whereupon, the witness is excused.)

14 THE COURT: It's almost 9:30. Let's take our
15 morning recess. We'll come back in about 15 minutes.

16 (Whereupon, the jury exits the courtroom.)

17 THE COURT: We will return at 9:40. We're in
18 recess.

19 (Whereupon, a break was held.)

20 (Whereupon, the jury enters the courtroom.)

21 THE COURT: Who is the next witness?

22 MR. ANDERSON: Sergio Ruiz-Leyva.

23 (Whereupon, the witness enters the courtroom.)

24 THE COURT: Could you spell his last name?

25 MR. ANDERSON: It's r-u-i-z-l-e-y-v-a.

1 THE COURT: Mr. Ruiz-Leyva, would you please
2 raise your right hand, she'll administer the oath.

3 SERGIO L. RUIZ-LEYVA,
4 after having been first duly sworn on oath by the clerk,
5 testifies and says as follows:

6 THE COURT: You need to answer out loud, please.

7 THE WITNESS: Yes.

8 THE COURT: Thank you. Please have a seat in the
9 witness chair.

10 Mr. Anderson.

11 DIRECT EXAMINATION

12 BY MR. ANDERSON:

13 Q. Can you please state your name?

14 And can you --

15 THE COURT: Wait for interpretation.

16 A. Sergio Liuvan Ruiz-Leyva.

17 Q. (By Mr. Anderson, continuing) Can you spell your
18 middle name?

19 A. L-i-u-v-a-n.

20 Q. Sergio, were you tubing with a group of people,
21 including Nicolae, on July 30, 2022?

22 A. Yes.

23 MR. ANDERSON: Approach?

24 THE COURT: Yes.

25 Q. (By Mr. Anderson, continuing) Are you in that --

1 are you on that image somewhere?

2 A. Yes.

3 Q. Where?

4 A. I have the yellow shorts.

5 Q. And white shirt and white bucket hat?

6 A. Yes.

7 Q. Do you remember a time when you were tubing when
8 Ariel's phone got lost?

9 A. Yes.

10 Q. And do you remember a discussion about looking
11 for the phone or just leaving it?

12 A. Yes, and at that point -- at some point they --
13 they decided they didn't have to look for the phone
14 because the insurance would pay for the phone.

15 Q. Did Nicolae go look for the phone?

16 A. Yes.

17 Q. After he -- do you remember how long -- strike
18 that.

19 At some point after he went to look for the
20 phone, did you hear Sandi yell something about he's in
21 trouble?

22 A. No.

23 Q. Did something catch your attention downriver?

24 A. Well, there was a group of people there.

25 Q. And what about it caught your attention?

1 A. They were around Nic.

2 Q. Was there a time you saw Nic down in the water?

3 A. No, because there were many people. It was a
4 large group.

5 Q. Was -- did you ever remember seeing Nic
6 interacting with a blonde girl?

7 A. No.

8 MR. ANDERSON: Can we have Exhibit 45?

9 Q. (By Mr. Anderson, continuing) Sergio, do you
10 remember telling police there was a girl, if I'm not
11 mistaken, with a black leotard?

12 A. Yes.

13 Q. Who said go, go, go, go to Nic?

14 A. I saw her when she was around that group because
15 she was the easier to identify because of the black
16 leotard. But I was far away from that group but I -- I
17 just didn't move from my inner tube.

18 Q. And do you remember telling police that Nic
19 pushed her?

20 A. I don't remember that.

21 MR. ANDERSON: May I approach?

22 THE COURT: Yes.

23 MR. ANDERSON: For the record, Judge, I handed
24 the witness Exhibit 45, on Page 15.

25 Q. (By Mr. Anderson, continuing) Sergio, do you see

1 this transcript?

2 A. Yes.

3 Q. And about the middle of the page do you see where
4 you said, The woman yelled go, go, go, and then Nic goes
5 and pushes her?

6 A. Yes. Yes.

7 Q. And you were -- you were far away you said?

8 A. Yes.

9 MR. ANDERSON: Judge, I'm going to pull up some
10 screenshots or frames. I'm going to start with 2820.
11 I'll let you know when we're ready. And we're gonna zoom
12 in on the top left.

13 Q. (By Mr. Anderson, continuing) Sergio, is that
14 you in the top left?

15 A. Yes.

16 Q. And if -- if you know, is that about where you
17 were when you were watching what was happening?

18 A. I was right by my inner tube.

19 Q. Do you remember telling police that you walked
20 about five meters from your group and that someone told
21 you to stop?

22 A. When I was going to move my sister told me not to
23 move, that she said don't go to the other side, just --
24 and at that's why I returned to my inner tube.

25 Q. Do you remember, did you see the girl in the

1 black -- the blonde girl in the black swimsuit, did you
2 see her fall or stumble backwards when Nic pushed her?

3 A. No, I don't remember.

4 Q. And did you -- did you actually see if it was a
5 push or a punch?

6 MR. CHIRAFISI: Objection. It's been asked and
7 answered.

8 THE COURT: Sustained.

9 MR. ANDERSON: Well, can we approach?

10 THE COURT: Yes.

11 (Whereupon, a discussion was held at the bench.)

12 THE COURT: I'm sorry, I'll change my ruling.
13 Overruled. You may ask the question.

14 Q. (By Mr. Anderson, continuing) Do you remember if
15 it was actually a push or if it was a punch or something
16 else that Nic did to the blonde woman?

17 A. No, I don't remember that.

18 Q. And, Sergio, do you see on Page 15 -- I'll direct
19 you.

20 So I asked you about the paragraph on the
21 middle. You remember that?

22 Now the next --

23 A. Yes.

24 Q. -- the next paragraph, we were describing what
25 happened, do you see that?

1 A. Yes.

2 Q. And you said -- you described that it was after
3 Nic got out of the water and that's when the girl said go,
4 go, go, and he pushed her. Do you see that?

5 A. Oh, yes.

6 Q. And then below that you reiterate that it was
7 after she said go, go, go, go that Nic pushed her. Do you
8 see that?

9 A. Yes.

10 Q. Can you turn to Page 16? On Page 16 you describe
11 that she was wearing a black leotard and you clarified
12 that that was a black one-piece swimsuit?

13 A. Yes.

14 Q. And then you -- further down you describe again
15 seeing her -- hearing her say go, go, go, go and he pushed
16 her. Do you see that?

17 A. Yes.

18 Q. And from your memory, when you're telling this to
19 police, you thought that was the last thing that happened
20 and Nic walked back to your group?

21 A. Yes.

22 Q. And you thought he was down in the water before
23 the girl said go, go, go and he pushed her, right?

24 A. Yes.

25 Q. And, Sergio, have you ever seen a video from this

1 incident?

2 A. No.

3 Q. And so your -- you were trying to recount what
4 happened to the police as best you could remember?

5 A. Yes. Yes, at that time.

6 Q. Did it happen fast?

7 A. Yep.

8 Q. Was it difficult to remember in what order things
9 happened?

10 A. What I remember is that at the moment when we
11 lost the telephone Rosie started looking for the phone by
12 the edge of the river. Yeah, I said there because they
13 were talking about it and they said just leave it, the
14 insurance will pay for it. And I don't remember anything
15 else except that Nic took the snorkel and started diving
16 in there to look for the phone. And then I left, and then
17 that's when I saw the other side of the group of people.
18 That's what I remember.

19 Q. So you may have forgotten a lot of what you
20 remembered then?

21 A. Can you repeat that, please?

22 Q. You -- you can see the transcript where you
23 describe seeing more to law enforcement?

24 A. I didn't see, I -- I just heard things.

25 Q. But you can see in the transcript you told police

1 multiple times that when she yelled go, go, go Nic pushed
2 her?

3 MR. CHIRAFISI: Objection. Asked and answered.

4 THE COURT: Overruled.

5 A. Because I heard the voice of a woman, and I am
6 not sure if it was her.

7 Q. (By Mr. Anderson, continuing) You described her
8 as a blonde woman in a black one-piece swimsuit?

9 A. Yes. And I see it here, yeah.

10 Q. And when you described seeing Nic down in the
11 water, you -- you describe that you believe they -- they
12 must have hit him or you thought they must have hit him
13 because he was down in the water. Do you remember that or
14 do you -- did you say that to law enforcement?

15 A. No, I didn't -- I never said that, no.

16 Q. Do you remember ever seeing anyone hit Nic?

17 A. No.

18 Q. When Nic came back -- did Nic -- did -- did Nic
19 come back to the group at some point?

20 A. Yes.

21 Q. And as he was coming back, did you see people
22 that were injured?

23 A. Yes, I saw them. Yes.

24 Q. Did you see blood?

25 A. From the place where I watched I could see the

1 girl with her hand over here and you could see blood, yes,
2 but you couldn't distinguish it that clearly. She was the
3 one asking for help to call 911, she was asking my
4 sister -- my sister to call. And I didn't want to
5 continue looking, I just turned around.

6 Q. Turned away from the injured person you saw?

7 A. So I -- so I didn't see any of those things, yes.

8 INTERPRETER MARIN: Just a moment, Your Honor.

9 A. So then I didn't see what was happening.

10 Q. (By Mr. Anderson, continuing) It was something
11 -- it was something that was hard to watch or see?

12 A. Yes.

13 Q. When Nic came back, did you hear him say
14 anything?

15 A. No.

16 Q. Did you hear him say they took my knife?

17 A. Nic asked -- asked him and he did ask what he
18 said -- what did she said. Can you -- then he asked him
19 what had happened and he said that they had taken the
20 knife away. And then I asked Nettie, What did Nic say?
21 And she said that they had taken away his knife, and we
22 didn't talk about it anymore.

23 Q. Did you see Nic say anything or hear him talk
24 anymore after that?

25 A. No.

1 Q. What was Nic like? What did he look like? How
2 was he acting?

3 A. He looked pale when he got close to us and his
4 eyes wide open. He just sat there and he didn't talk
5 anymore.

6 Q. Do you remember when he came back and got back to
7 your group, him putting on his hat and jacket?

8 A. Yes.

9 Q. And do you remember telling police you didn't
10 look at Nic too much because you didn't dare to look at
11 him?

12 A. I didn't dare, but he was also in the back of the
13 inner tube. I was in the back.

14 Q. Sergio, can you turn to Page 21?

15 MR. ANDERSON: May I approach?

16 THE COURT: Yes.

17 A. Yes.

18 Q. (By Mr. Anderson, continuing) Do you see where
19 you said, I didn't look at him because the truth is I
20 didn't dare to look at him?

21 A. Yes.

22 Q. Do you remember how long you guys stayed at the
23 sandbar?

24 A. No. I don't remember that. I don't remember the
25 time.

1 Q. Do you remember seeing police come?

2 A. I know that Eric went looking for them. Eric
3 went to -- Eric went to look for the police and guide
4 them.

5 Q. After Eric came back to your group, did your
6 group leave?

7 A. Yes.

8 Q. What was the -- what do you remember of the time
9 when you guys were tubing to the exit?

10 A. Can you repeat that, please?

11 Q. What -- can you describe what -- what it was
12 like, what you remember, from tubing to the exit?

13 A. Well, Nic -- Nic put on his hat and then his
14 jacket and we didn't talk about anything else. Nobody
15 talked. Everyone -- everyone was quiet.

16 MR. ANDERSON: I don't have anything else.

17 THE COURT: Mr. Chirafisi.

18 CROSS-EXAMINATION

19 BY MR. CHIRAFISI:

20 Q. Sir, you -- do you remember giving an interview
21 to the police on August 3rd of 2022?

22 A. Yes. They went to my home.

23 Q. And was your memory of what happened better in
24 August of 2022 or is it better today?

25 A. Well, it was better back then. I am very nervous

1 now.

2 Q. Okay. So when you spoke to the police in
3 August -- on August 3rd, about five days or four days
4 after this happened, fair to say your memory is better of
5 those events than it is right now?

6 A. Yes.

7 Q. And when you were interviewed by the police,
8 there was a Spanish-speaking officer that was talking to
9 you, is that right?

10 A. Yes.

11 Q. And you tried to answer that officer's questions
12 as truthfully as possible, is that right?

13 A. Yes.

14 Q. And you said that was at your house?

15 A. Yes.

16 Q. A less -- was it less stressful than it is here
17 today?

18 A. Yes.

19 Q. And that officer had asked you questions about
20 what happened on Aug -- on July 30th of 2022?

21 A. Yes.

22 Q. I want to ask you if I can about that date and
23 maybe some of the things you answered when you were
24 speaking to the officer, okay?

25 A. Yes.

1 Q. So I'm gonna start with this: You knew that Nic
2 Miu had a knife with him that day because you saw him
3 fixing his shoe or his sandal, is that right?

4 A. Yes.

5 Q. So before any of this incident happened, he had
6 been using that knife to fix something, right?

7 A. Yes.

8 Q. And you knew that Mr. Miu or Nic was looking for
9 a phone that your group had lost, is that true?

10 A. Yes.

11 Q. And you also knew that Nic, on that day, Mr. Miu,
12 was with your group and your group included his wife, is
13 that right?

14 A. Yes.

15 Q. Can you look at that picture right there, sir?

16 A. Um-hum.

17 Q. You had mentioned you're in this picture,
18 correct?

19 MR. CHIRAFISI: Is it okay, Judge, if I approach?

20 THE COURT: Yes.

21 A. Yes.

22 Q. (By Mr. Chirafisi, continuing) And you see Mr.
23 Miu here?

24 A. Yes.

25 Q. Do you see Mr. Miu here?

1 A. Yes.

2 Q. Okay. This is the -- the -- the shirt that he's
3 got on is the same shirt you saw him wearing at the end of
4 the day, right?

5 A. Yes.

6 Q. And this is -- and this picture is taken before
7 you guys head down the river, is that right?

8 A. Yes.

9 Q. And he's wearing sunglasses in this picture,
10 right?

11 A. Yes.

12 Q. Okay. So is it fair to say that when he got off
13 the river he looked the same or close to the same as he
14 did when he got on the river?

15 A. Yes.

16 Q. Now, you know that Nic is looking for this phone
17 that had been lost that was Ariel's phone, right?

18 A. Yes.

19 Q. And you were also aware that he had brought
20 snorkeling gear and goggles with him on that day, is that
21 true?

22 A. Yes.

23 Q. You had seen him on that day snorkeling around
24 the areas where you guys were tubing, is that right?

25 A. Yes, at the beginning that was the case in the

1 morning.

2 Q. And when you speak to the officer about the
3 specific incident, meaning what had happened, you recall
4 telling that officer that you saw a group of people
5 surrounding Nic?

6 A. Can you repeat the question, please?

7 Q. Sure. You told the officer on August 3rd of 2022
8 when you were being asked about what you remember, that
9 you had remembered that they were surrounding Nic?

10 A. Yes.

11 Q. You told this officer that they were falling on
12 him, is that right?

13 INTERPRETER MARIN: Your Honor, the interpreter
14 needs a repetition.

15 MR. CHIRAFISI: I'm sorry?

16 INTERPRETER MARIN: The interpreter needs a
17 repetition.

18 MR. CHIRAFISI: -- repeat the question? Sure.

19 Q. (By Mr. Chirafisi, continuing) You told the
20 officer that you observed those people falling on him, is
21 that right?

22 A. Yes, when they pushed him.

23 Q. You told the officer that they put Nic in the
24 middle of them, is that right?

25 A. Yes, they had him there and it was a group of

1 people and you could see that they have a knife in there.

2 Q. Could you see Nic -- with the group around him,
3 could you see him?

4 A. No, I couldn't see him, I could just see the
5 group. Just the group.

6 Q. You told the police that they hit him, meaning
7 they hit Nic, is that right?

8 A. Yes, when he got close and they pushed him and
9 then they surrounded him.

10 Q. And you -- you remember the blonde girl with the
11 black suit on, is that true?

12 A. I don't remember her very well. I don't -- but I
13 have an idea. I don't remember her.

14 Q. Well, do you remember telling the police that you
15 heard the blonde girl telling Nic go, go, go?

16 A. Yes. Yes.

17 Q. You told the police that Nic pushed her, is that
18 right?

19 A. Yes.

20 Q. Did you see the rest of what happened?

21 A. No.

22 Q. You see Nic walking back to your group though, is
23 that right?

24 A. Yes. When he was coming, yes, I saw him.

25 Q. And you described him to police as being white,

1 pale, and scared, is that right?

2 A. Yes.

3 Q. You described him as having wide or open eyes, is
4 that right?

5 A. Yes.

6 Q. And at one point I think you said that Tatiana
7 told you don't go over there, is that true?

8 A. Yes, my sister.

9 Q. So Nic, to your knowledge, what you know, Nic was
10 by himself against that other group, is that right?

11 A. Yes.

12 Q. No one -- you said to the police, as far as you
13 know, no one in your group went over to help him, is that
14 right?

15 A. No, nobody moved, and only at the end Ariel and
16 Eric went over there to see what was happening.

17 Q. But that was after it was over, is that right?

18 INTERPRETER MARIN: Please repeat.

19 MR. CHIRAFISI: Sure.

20 Q. (By Mr. Chirafisi, continuing) When Ariel and
21 Eric went over, the incident had ended, is that right?

22 A. Yes.

23 Q. So in terms of assistance or help, Mr. Miu was by
24 himself, Nic was by himself?

25 A. Yes.

1 Q. Did it appear to you that Nic -- that Nic was in
2 shock when he came back to you?

3 MR. ANDERSON: Judge, I --

4 A. Yes, he -- he looked in shock. I said in shock
5 and -- or in -- something had impacted him, yes. In
6 shock.

7 Q. (By Mr. Chirafisi, continuing) Do you remember
8 waiting some time before your group moved on down the
9 river after the incident?

10 A. Can you repeat, please?

11 Q. Do you remember there being some time that your
12 group waited when Nic came back before going back down the
13 river?

14 A. No, I don't remember that. When Nettie came
15 back -- when he -- when he came back Nettie said let's go.

16 Q. Do you remember telling the police that you
17 waited until you were told to leave the area? Do you
18 remember that?

19 A. No, I don't remember, but if I said that it must
20 be right.

21 Q. You were asked by Attorney Anderson about a
22 statement that you said that you didn't dare look at Nic.
23 Do you remember that?

24 A. Yes.

25 Q. He wasn't threatening toward you, right?

1 A. No. No.

2 Q. He wasn't being aggressive or angry toward you,
3 right?

4 A. No.

5 Q. You said the group was pretty quiet once he got
6 back?

7 A. Yes.

8 Q. So when you said that you didn't want to look at
9 him, it wasn't out of fear of him, right?

10 A. No. No.

11 Q. It was because everyone was in shock?

12 A. Yes. We didn't know what had -- had happened so
13 we were in shock, yes. We didn't know about anything of
14 the -- that incident.

15 MR. CHIRAFISI: Just one moment, Judge.

16 I'm finished, Your Honor. Thank you.

17 THE COURT: Mr. Anderson?

18 REDIRECT EXAMINATION

19 BY MR. ANDERSON:

20 Q. A few times -- or a couple times you said Nettie.
21 Who's Nettie?

22 A. I'm -- I'm referring to Ernesto. I call him like
23 that, yeah.

24 MR. CHIRAFISI: I'm sorry, Judge, I didn't hear
25 that.

1 THE COURT: Could the answer be repeated?

2 THE WITNESS: I call him Nettie, but I'm
3 referring to Ernesto.

4 MR. CHIRAFISI: Okay. Thank you.

5 Q. (By Mr. Anderson, continuing) How do you know
6 Ernesto?

7 A. From the time I was in Cuba.

8 Q. And are -- friends?

9 A. Yes, we were neighbors in Cuba.

10 Q. How long have you known Ernesto?

11 A. He -- well, he -- basically we grew up together.

12 Q. Close friends?

13 A. Yes.

14 Q. How long have you known -- had you known Nicolae
15 Miu?

16 A. When I came to this country I met Nic Miu. He
17 worked with Nettie, so I met him at Nettie's house.

18 Q. Is Nic a friend, too?

19 A. We were acquaintances. We met one, twice a year.

20 Q. Are Ernesto and Nic good friends?

21 A. Yes, they are.

22 Q. You -- Defense asked if Nic looked like he was in
23 shock. Do you remember that?

24 A. Yes.

25 Q. What you told police was, I don't know if he was

1 scared or worried.

2 A. Because you see somebody, when that person is
3 worried, you can see in his face.

4 Q. Obviously you didn't know what he's thinking at
5 that time?

6 A. No.

7 Q. You don't know if he's in shock or worried about
8 what just happened?

9 A. No. No. I just saw he was white, he was pale,
10 his eyes wide open.

11 Q. And I just wanna clarify. Defense asked you
12 about the interview with the Spanish-speaking detective on
13 August 3rd at your house.

14 A. Yes.

15 Q. That transcript I was asking you questions about,
16 that's from that interview, right?

17 A. Yes.

18 Q. And I just wanna make sure I understand what you
19 saw. You saw Nic -- I think on cross you said you saw Nic
20 push blonde girl and Nic -- someone pushed Nic. Did you
21 see anything else besides that that you remember?

22 A. No.

23 Q. You said in your interview you didn't dare look
24 at Nic, and Defense asked if that was because the group
25 was in shock. Do you remember that?

1 A. Yes. I was nervous.

2 Q. You didn't say about anyone else, that you didn't
3 dare look at them, right?

4 A. No, I only talked about me. I don't -- I didn't
5 know what the other people were thinking.

6 Q. When Nic came back, did you see any injuries on
7 him?

8 A. No, I didn't notice.

9 MR. ANDERSON: Nothing else.

10 THE COURT: Mr. Chirafisi.

11 RECROSS-EXAMINATION

12 BY MR. CHIRAFISI:

13 Q. Sir, I'm gonna just ask you, you were just asked
14 about what you saw, and you told police that you saw Mr.
15 Miu get hit, correct?

16 A. Yes.

17 Q. You saw people surrounding him?

18 A. I saw the group of people. I don't know if they
19 were surrounding him. I saw a group of people.

20 Q. You agree that you told police they were
21 surrounding him though, right?

22 A. Can you repeat that, please?

23 Q. When you spoke to the Spanish interpreter -- or
24 when you spoke to the Spanish-speaking officer, you told
25 that officer that you observed people surrounding him,

1 correct?

2 A. Yes.

3 Q. You told that officer that they -- those people
4 jumped on him, correct?

5 A. Yes.

6 Q. And you told them that you saw Nic on the ground,
7 correct?

8 A. Yes, when they pushed him.

9 MR. CHIRAFISI: I don't have any other questions.

10 THE COURT: Thank you, Mr. Ruiz-Leyva. You may
11 step down.

12 (Whereupon, the witness is excused.)

13 MR. ANDERSON: Judge, can we approach quick?

14 THE COURT: Yes.

15 (Whereupon, a discussion was held at the bench.)

16 THE COURT: Members of the jury, we need about
17 five minutes before the next witness, so we will excuse
18 you for that moment.

19 (Whereupon, the jury exits the courtroom.)

20 THE COURT: We are in recess until, let's just
21 say, 10:45.

22 (Whereupon, a break was held.)

23 (Whereupon, the jury enters the courtroom.)

24 THE COURT: We are back on the record. The
25 attorneys and Mr. Miu are present, along with 14 jurors.

1 Mr. Anderson, who's next?

2 MR. ANDERSON: Tatiana Ruiz-Leyva.

3 (Whereupon, the witness enters the courtroom.)

4 THE COURT: Ms. Ruiz-Leyva, please come forward.
5 Please face the clerk, raise your right hand, she'll
6 administer the oath.

7 TATIANA RUIZ-LEYVA,
8 after having been first duly sworn on oath by the clerk,
9 testifies and says as follows:

10 THE WITNESS: Yes.

11 THE COURT: Please have a seat in the witness
12 chair.

13 Mr. Anderson.

14 DIRECT EXAMINATION

15 BY MR. ANDERSON:

16 Q. Can you please state your full name?

17 A. Tatiana Ruiz-Leyva.

18 Q. Tatiana, were you tubing with a group, including
19 Nicolae, on the Apple River on July 30, 2022?

20 A. Yes.

21 Q. Do you see yourself in that photo over there?

22 A. Yes.

23 Q. Can you -- which one are you?

24 A. I'm the one wearing the hat right next to the guy
25 in the white T-shirt. Ernesto, Amy.

1 INTERPRETER MARIN: Oh. Correction from the
2 interpreter. Next to Amy.

3 Q. (By Mr. Anderson, continuing) Who is Amy?

4 A. The one -- the one that is right next to me, the
5 white girl who is short, and she is Nettie's wife.

6 Q. And do you -- do you recall a time when you were
7 on the river that day where you saw people with bloody
8 injuries?

9 A. Yes.

10 Q. Did you see anything before that on what led to
11 that?

12 A. No.

13 Q. And when you interviewed -- when you spoke with
14 police you told them you didn't see anything, you weren't
15 looking in that direction?

16 A. Correct.

17 Q. Did you -- after you saw people with the
18 injuries, did you call 911?

19 A. Yes.

20 MR. ANDERSON: Can I have Exhibit 63?

21 Q. (By Mr. Anderson, continuing) Tatiana, do you
22 remember, did you have trouble speaking with the person on
23 911?

24 A. Yes.

25 Q. Did you hand the phone to someone else?

1 A. Yes, I handed it to Rosie.

2 Q. And then does Rosie speak fluent English?

3 A. Rosie handed it to Amy later.

4 Q. And just to clarify, this is Amy?

5 A. Yes.

6 Q. In the purple T-shirt?

7 A. Yes.

8 Q. Did you have any idea what happened?

9 A. No.

10 Q. Do you remember seeing Nic come back to the
11 group?

12 A. Yes.

13 Q. Did you notice anything about him? Was he calm?
14 Worried? Angry?

15 A. No, just normal. He was coming from the water
16 and just normal.

17 Q. And what were -- what was the tube ride to the
18 exit like? Was it you guys talking? Was it quiet?

19 A. Very quiet.

20 Q. Do you remember Nic saying anything on the tube
21 ride out?

22 A. No, never.

23 MR. ANDERSON: I don't have anything else.

24 THE COURT: Mr. Chirafisi.

25 CROSS-EXAMINATION

1 BY MR. CHIRAFISI:

2 Q. Good morning.

3 A. Good morning.

4 Q. Ma'am, do you remember being interviewed
5 initially -- well, do you remember being interviewed by a
6 Spanish-speaking police officer on August 3rd of 2022?

7 A. Yes.

8 Q. Do you remember where you were interviewed?

9 A. Yes.

10 Q. Do you -- can you tell me where that was?

11 A. At my brother's house.

12 Q. Okay. And that officer was asking you questions
13 about what happened about three or -- about four or
14 five days earlier when you were on the river with Nic Miu,
15 right?

16 A. Yes. Yes.

17 Q. And your memory was better in August of 2022 than
18 it is today, is that fair?

19 A. Yes.

20 Q. Okay. And you knew on July 30th of 2022 that at
21 some point on your trip Nic was looking for a phone, is
22 that right?

23 A. Yes.

24 Q. And you knew that he had left your group to go
25 look for that phone, correct?

1 A. Yes.

2 Q. You knew that Nic was by himself, separated from
3 your group while he was looking for that phone, is that
4 right?

5 A. Yes.

6 Q. And Nic was with you guys, in terms of that
7 group, but he was also with -- I mean, his wife is in that
8 picture, is that right?

9 A. Yes.

10 Q. So it was Nic and his wife were part of the group
11 that was tubing?

12 A. Yes.

13 Q. Did -- did Nic appear to be in a good mood that
14 day, he didn't appear to be angry or anything?

15 A. No, he was never angry. He was just fine.

16 Q. And when Nic is -- you see that he -- that he has
17 a snorkel and goggles, is that right?

18 A. Yes.

19 Q. And when he's looking for the phone he goes off
20 with those snorkel and goggles looking, right?

21 A. Yes.

22 Q. Your group is waiting for him to come back.
23 You're over on the side of the river at that point, right?

24 A. Yes.

25 Q. And you were asked by Attorney Anderson if you

1 saw what happened, and your answer was that you didn't see
2 anything?

3 A. No, nothing.

4 Q. Okay. Did you hear anything?

5 A. What do you mean if I heard anything? At what
6 time -- moment?

7 Q. Did you hear anything that sounded like an
8 altercation or a fight?

9 A. But at what moment? When Nic -- when -- came
10 down or when? No, I didn't hear anything. What are
11 you -- what time -- time are you talking about?

12 Q. There's a time when Nic's gone, away from you
13 guys, with his snorkel, right?

14 A. Um-hum.

15 Q. And -- and then there's a time that you see him
16 come back, right?

17 A. Uh-huh.

18 Q. You see him come back to your tubes.

19 A. Uh-huh.

20 Q. In-between those two times, do you hear people
21 yelling or fighting?

22 A. When he came back things had happened. You could
23 hear the loud noise, yes.

24 Q. And you were asked when Nic came back did he say
25 anything to you, to the group, do you remember being asked

1 that?

2 A. Yes, but we didn't talk about anything. We
3 didn't talk about anything. Nothing was asked.

4 Q. Do you remember telling that Spanish-speaking
5 police officer that when Nic came back to your group he
6 told you the kids jumped me?

7 A. No, I don't remember. Everybody was quiet.

8 Q. So I just wanna make sure. You don't remember
9 telling that to the officer back on August 3rd of 2022?

10 A. No, I don't remember.

11 Q. And you described Nic as, when he came back, he
12 was quiet?

13 A. Yes, quiet.

14 Q. Before he left to go look for this phone, was
15 your group talking and laughing and having fun?

16 A. Yes.

17 Q. And when he came back to your group, the talking,
18 the fun, that all stopped, is that right?

19 A. Yes, everything was over.

20 MR. CHIRAFISI: I don't have anything else,
21 Judge.

22 THE COURT: Mr. Anderson?

23 REDIRECT EXAMINATION

24 BY MR. ANDERSON:

25 Q. You -- you spoke with a Spanish-speaking

1 detective at your house some days after the incident,
2 right?

3 A. Yes.

4 Q. You also spoke to an officer right after you got
5 out of the river?

6 A. When we got out of the river they stopped us
7 there, but I don't remember. There were a lot of police
8 presence. It was a lot of police presence.

9 Q. You -- the -- the officers that -- when you got
10 to the exit, didn't speak Spanish, right?

11 A. No. No, we didn't say anything. Nothing was
12 said. I didn't say anything.

13 Q. You told an officer there the -- you heard boys
14 yelling help, help, help. Do you remember that? You said
15 that in English?

16 A. Oh, yeah, that I -- I did, yes.

17 Q. Do you remember when you heard the boys yelling
18 help, help, help?

19 A. Yes, a girl.

20 Q. Oh, was it -- was it a girl who was injured?

21 A. Yes. She had her hand on her stomach.

22 Q. Do you know why you said boys?

23 INTERPRETER MARIN: Can you repeat the question
24 for the interpreter?

25 Q. (By Mr. Anderson, continuing) Do you know why

1 you said boys were yelling for help?

2 INTERPRETER MARIN: Please could you please
3 repeat the question?

4 Q. (By Mr. Anderson, continuing) Do you know why
5 you said boys were yelling for help?

6 A. Yes.

7 Q. Why?

8 A. I was getting off and I -- there was a group
9 there and the -- the kids there were yelling help, help,
10 but I was kind of far away, but that's when I called the
11 police.

12 Q. When you heard the boys yelling for help, was
13 that before Nic came back to the -- to your group?

14 A. Yes.

15 MR. ANDERSON: Nothing else.

16 THE COURT: Mr. Chirafisi.

17 RECROSS-EXAMINATION

18 BY MR. CHIRAFISI:

19 Q. Ma'am, do you know -- you know that people were
20 injured on the river, right?

21 A. Yes.

22 Q. Okay. And one of the people that was yelling or
23 asking for help was this girl that had been injured, is
24 that right?

25 A. Yes.

1 Q. Do you know now that there were some males that
2 had been injured?

3 A. Yes.

4 Q. Do you know when you heard help, if that was
5 after those males had been injured?

6 A. Yes.

7 Q. So if I -- if I'm hearing you right, those males
8 are injured, then they're yelling or somebody is yelling
9 for help, is that right?

10 A. Um-hum. Yes.

11 MR. CHIRAFISI: That's all I have.

12 THE COURT: Thank you, Ms. Ruiz-Leyva. You may
13 step down. You are excused.

14 (Whereupon, the witness is excused.)

15 THE COURT: Who is the next witness?

16 MR. ANDERSON: Can we approach?

17 THE COURT: Yes.

18 (Whereupon, a discussion was held at the bench.)

19 THE COURT: All right. Members of the jury, you
20 may remember at the beginning of the trial I explained
21 that the State will proceed first because the State has
22 the burden of proof. Once the State finishes its evidence
23 then the Defense may, if they choose, present evidence of
24 their own.

25 Sometimes we deviate from that rule to

1 accommodate a witness. Today we're making an accomodation
2 because we have interpreters present. So rather than
3 waiting until some other day, we're going to take those
4 witnesses today even though they're being called by
5 attorneys for Mr. Miu.

6 Mr. Nelson, who will be the witness?

7 MR. NELSON: Ernesto -- I apologize. I'll --
8 Torres.

9 THE COURT: Ernesto Torres.

10 (Whereupon, the witness enters the courtroom.)

11 THE COURT: Mr. Torres. Right here. Please
12 raise your right hand, she will administer the oath.

13 ERNESTO TORRES CHAGUEZ,
14 after having been first duly sworn on oath by the clerk,
15 testifies and says as follows:

16 THE WITNESS: Yes.

17 THE COURT: Please have a seat in the witness
18 chair.

19 Mr. Nelson.

20 DIRECT EXAMINATION

21 BY MR. NELSON:

22 Q. Good morning.

23 A. (Non-verbal response.)

24 Q. Could you tell the -- all of us your name,
25 please?

1 A. Ernesto Torres Chaguez.

2 THE WITNESS: Chaguez.

3 INTERPRETER DIAZ: Chaguez.

4 THE WITNESS: Correct.

5 Q. (By Mr. Nelson, continuing) Can I call you by --
6 Ernesto?

7 A. Yes.

8 Q. Ernesto, do you know this man over here?

9 A. Yes.

10 Q. Who's this?

11 A. Nic.

12 Q. Nic. Nic who?

13 A. Nic Miu.

14 Q. How long have you known Nic Miu?

15 A. Approximately -- well, it's over 10 years.

16 Q. Do you -- did you work with Nic?

17 A. Yes.

18 Q. Are you married?

19 A. Yes.

20 Q. Who's your wife?

21 A. Amy.

22 Q. Up here, is this a picture of you and Amy?

23 A. Yes.

24 Q. Do you have any family in here other than that?

25 A. My sister on the right side. Rosie.

1 Q. That's your sister?

2 A. Yes.

3 Q. Anybody else family?

4 A. Not relatives, all friends.

5 Q. Okay. Did your wife Amy work with Nic as well?

6 A. Yes.

7 Q. And when you -- you said you're friends with Nic.
8 Obviously sometimes we're adults we have different -- lots
9 of different friends. How close would you consider Nic as
10 a friend?

11 A. He's my best friend.

12 Q. You're at his house; he's at your house?

13 INTERPRETER MARIN: Please for the interpreter,
14 could you please --

15 MR. NELSON: Sure.

16 INTERPRETER MARIN: -- repeat the question?

17 Q. (By Mr. Nelson, continuing) You've been to his
18 house, he's been to your house, you guys hang out
19 together?

20 A. Yes.

21 Q. Would you consider Nic to be kind of a handyman?

22 A. Yes.

23 Q. Why do you say that?

24 A. Because -- because he's always there helping
25 things in his house or he goes to other house to help fix

1 things.

2 Q. Have you ever seen him use tools to fix things?

3 A. Yes.

4 Q. Have you ever seen him with a pocketknife?

5 A. Yes.

6 Q. Have you ever seen him use the pocketknife as a
7 tool to fix things?

8 A. Yes.

9 Q. Can you tell me about some of those things that
10 you've seen him do with the pocketknife to fix things?

11 A. I seen him fix things at his house and -- and at
12 my house. When I bought my pool he helped me fix the --
13 the pool. In general fixing things.

14 Q. I wanna ask --

15 A. And he -- and he used the knife.

16 INTERPRETER: Sorry.

17 Q. (By Mr. Nelson, continuing) I want to ask you
18 some questions about the trip down the river on July 30th
19 of 2022, okay?

20 A. Yes.

21 Q. Is that a trip you and your wife have made
22 before?

23 A. Yes.

24 Q. Prior to leaving your house that day, did you
25 have a call -- did you call Nic Miu that day and ask him

1 to bring anything?

2 A. Yes.

3 Q. What did you ask Nic to bring?

4 A. To bring his knife.

5 Q. Why did you ask Nic to bring -- and when you say
6 his -- start over.

7 His knife, is that a pocketknife or some
8 other knife?

9 A. No, the pocket.

10 Q. And why did you ask Nic to bring his pocketknife?

11 A. Because the last time we went -- went to the
12 river we had all the inner tubes tied together and we
13 couldn't cut the cord, so we had to pull them out of the
14 river all together and -- and bring them up to the place
15 where we had to leave them.

16 Q. So you wanted him to have the knife to help cut
17 the cords at the end of the trip?

18 A. And at the beginning, too, it's useful to tie
19 them up.

20 Q. Why didn't you just bring your own pocketknife?

21 A. I don't have one.

22 Q. And if -- who's the guy that tends to have a
23 pocketknife in your group of friends?

24 A. Nic.

25 Q. Is he -- is the handyman amongst your group of

1 friends?

2 A. Yes.

3 Q. Is he -- you said he had that pocketknife with
4 him sometimes when he's come over to your house, right?

5 A. Yes.

6 Q. Okay. That day when you called him and asked him
7 to bring the knife, were you worried about Nic Miu having
8 a knife?

9 A. No. There's no reason for that.

10 Q. You've known him for a long time?

11 A. Yes.

12 Q. You've seen him at -- you've seen him in your
13 home, seen him in his home?

14 A. Yes.

15 Q. Seen him at work, work with him?

16 A. Yes.

17 Q. Fair to say you've had opportunities to observe
18 his character, would you agree with that?

19 A. Yes.

20 Q. Would you agree Nic Miu has a character for
21 peacefulness?

22 A. Yes.

23 Q. Were you worried at all about Nic Miu bringing a
24 knife based upon what you knew about Nic?

25 MR. ANDERSON: Object on relevance of whether he

1 was worried.

2 THE COURT: Overruled.

3 You can answer the question.

4 A. Repeat the question, please.

5 Q. (By Mr. Nelson, continuing) Were you worried at
6 all about Nic Miu having a knife out on the river?

7 A. No.

8 Q. Okay. So now I'm gonna talk -- ask you some more
9 questions about the river, okay, being on the river?

10 A. Yes.

11 Q. When you were on the river, was Nic there with
12 his wife?

13 A. Yes.

14 Q. You see the picture there of -- I think it's 26.
15 Sorry. It's 12A. Do you see that big photo?

16 A. Yes.

17 Q. And do you see Nic in that photo?

18 A. Yes.

19 Q. Nic's wearing a shirt and sunglasses in that
20 photo. Is that what he looked like on July 30th?

21 A. Yes.

22 MR. NELSON: Can I approach?

23 THE COURT: Yes.

24 Q. (By Mr. Nelson, continuing) Showing you what's
25 been marked as Exhibit 110. Do you see this picture?

1 A. (Non-verbal response.)

2 Q. Do you see the picture?

3 A. Yeah.

4 Q. And do you see Nic is wearing a hat in this
5 picture?

6 A. Yes.

7 Q. So in -- in this picture Nic doesn't have -- and
8 in 12A he doesn't have a hat but on 110 he does have a
9 hat, would you agree?

10 A. Yes.

11 Q. Were there times that day that you saw Nic
12 wearing a hat?

13 A. Yes.

14 Q. Were there -- were there times that day where you
15 saw that Nic had taken the hat off?

16 A. Yes.

17 Q. Did you see Nic with some goggles and a snorkel?

18 A. Yes.

19 Q. Did you see him use that goggles and snorkel
20 prior to Ariel losing his phone?

21 A. Yes.

22 Q. Would he use the snorkel to swim in the river?

23 A. Yes.

24 Q. When he used the snorkel to swim in the river, do
25 you remember, was he wearing his hat?

1 A. No.

2 Q. Was he -- when he had on his goggles and snorkel,
3 was he wearing sunglasses?

4 A. Can you repeat the question?

5 Q. Sure. When he went swimming in the river using
6 the goggles and snorkel, did he also wear his sunglasses?

7 A. No.

8 Q. Was there a time when you were on the river that
9 you saw -- or that you came to learn Ariel had lost his
10 phone?

11 A. Yes.

12 Q. When he lost his phone, did you guys stop and
13 have a discussion?

14 A. We -- we -- no, we didn't -- we didn't stop, we
15 continued, and then he said I'm going to go look for the
16 phone, and I said, no, don't go. And then he said I'm
17 going to go look for -- for it.

18 Q. The he you're referring to is Nic Miu?

19 Did you eventually --

20 A. Correct.

21 Q. Did you eventually see Nic go look for the phone
22 with his goggles and snorkel?

23 A. Yes.

24 Q. Did you see him go in the same direction that the
25 water was flowing?

1 A. Yes.

2 Q. Would you -- can we call that downriver?

3 A. Yes.

4 Q. Do you know why he went downriver to look for the
5 phone?

6 A. I think that he went down the river because the
7 telephone was inside a pouch, those bags that you use to
8 put in the water.

9 Q. On Exhibit 12A, that photo, do you see some
10 people have lanyards with, it looks like, maybe a phone
11 inside of them?

12 A. Yes.

13 Q. Do you even see Ariel and Gilma right there, the
14 same?

15 A. Yeah. Yes.

16 Q. Is that -- is that what you're describing?

17 A. Yes.

18 THE COURT: Let's just slow down, wait for the
19 interpretation.

20 Q. (By Mr. Nelson, continuing) I was going too
21 fast. I'm going to slow down.

22 When Nic then left to go look for the
23 phone, were you watching him?

24 A. Yes.

25 Q. Did you look for the phone at all?

1 A. No.

2 Q. Were you sitting in the tube, standing near the
3 tube, or doing something else?

4 A. Sitting down.

5 Q. Did you eventually see Nic and another group of
6 people or multiple people interacting in some way?

7 A. No.

8 Q. Did you eventually learn that Nic was interacting
9 or people were interacting with Nic?

10 A. Yes.

11 Q. How did you learn that, from something you saw or
12 from something you heard?

13 A. His wife said Nic is in trouble -- in trouble.

14 Q. When you heard, did that surprise you?

15 A. Yes.

16 Q. Have you ever -- do you know -- you know Nic, you
17 must know his wife Sandi?

18 A. Yes.

19 Q. Have you -- you guys must hang out together as a
20 couple often? Or as couples.

21 A. Yes.

22 Q. Had you ever heard Sandi express concern about
23 the safety of her husband like she did on that day?

24 MR. ANDERSON: Object on relevance.

25 THE COURT: Overruled.

1 A. During that day? I don't understand the
2 question.

3 Q. (By Mr. Nelson, continuing) Sure. When Sandi
4 said Nic's in trouble, you took that as Sandi expressing
5 concern for Nic's safety?

6 A. Yes.

7 Q. Had you ever, prior to that, that day or any time
8 before that, heard Sandi express concerns about her
9 husband's safety when you were around?

10 A. Never.

11 Q. That must have surprised you then on that day
12 when you heard that?

13 A. Yes.

14 Q. What'd you do?

15 A. So I look down where people was and I saw Nic in
16 the water and I stand up and I tried to get there.

17 Q. When you saw Nic in the water, did he appear to
18 be snorkeling and looking for the phone or was something
19 else going on?

20 A. No, he was in the water and there were people
21 around him.

22 Q. How many people?

23 A. I can't tell you the number, but there were many.
24 Maybe 10, 15. I don't know.

25 Q. When -- when you made that observation, were you

1 worried for Nic's safety?

2 A. Yes.

3 Q. What did it look like that group of 10 or 15
4 people was doing to Nic?

5 A. He -- they were shouting at him, and when he was
6 in the water somebody -- somebody was yelling at him.

7 Q. Did you ever see anybody have physical contact
8 with Nic?

9 A. When I -- at that moment when I saw Nic in the
10 water I saw somebody hitting him. That's the only thing I
11 saw.

12 Q. After you saw him in the water, did you keep
13 watching?

14 A. Well, I tried to get over there but I lost my
15 shoes in the middle of the river.

16 Q. So on your way were you able to continue to walk
17 or did you need to tend to your footwear?

18 A. I tried to keep walking but I couldn't, and I did
19 watch the group at some point and -- but not always.

20 Q. Did you see anybody being violent to or at Nic?

21 A. After I saw him in the water I didn't see
22 anything else.

23 Q. And it sounds like you don't know how he got down
24 into the water. When you first looked he was already in
25 the water?

1 A. Correct.

2 Q. At some point did Nic -- did you see Nic walking
3 back to you in the group?

4 A. After I saw him standing there I told him to come
5 back, and then he came back.

6 Q. And so if we're on the river, you're Ernesto and
7 I'm standing where Nic is roughly. Does that make sense?

8 A. Um-hum.

9 Q. The river flows that way to downstream. Does
10 that make sense?

11 A. Correct.

12 Q. And you see Nic walking somewhere in your
13 direction, not exactly this angle, but somewhere towards
14 you, correct?

15 A. Correct.

16 Q. And what had happened is behind Nic by the time
17 he's walking to you, agreed?

18 A. You mean before? Repeat the question, please.

19 Q. After you saw Nic down in the water, eventually
20 you see Nic coming back to you because you called him
21 back?

22 A. Yes.

23 Q. I want to ask you about that moment in time.

24 A. I don't understand your question.

25 Q. I want to ask you about what you saw when Nic was

1 walking back to you when you called him back.

2 A. Oh.

3 Q. Does that make sense?

4 A. Did I tell him to come back?

5 Q. I want to ask about that moment in time, what you
6 saw.

7 A. Okay. Okay.

8 Q. When Nic's walking back towards you, is he
9 looking at you in the group or is he walking backwards
10 looking behind him?

11 A. I'm not sure.

12 Q. You're looking in Nic's direction, correct?

13 A. Yes.

14 Q. When you look in that direction, do you see
15 somebody else other than Nic approaching you in your group
16 or you focus your -- do you see somebody else that draws
17 your attention?

18 A. Yes.

19 Q. What do you see?

20 A. When Nic was coming over on my left side, someone
21 else tried to approach and pointed at me with a finger.

22 Q. When you say the finger, that might have
23 different connotation. So do you mean like a pointing
24 finger or something else?

25 A. Pointing with my -- with the finger.

1 Q. And when they're pointing with your -- their
2 finger, is Nic near you?

3 A. He was going by me. By me.

4 Q. So if I'm Nic in that scenario, Nic is walking
5 this way, you're pointing in that direction?

6 A. I'm looking at the person who was there and say
7 stay there. Stay there.

8 Q. Can you describe that person?

9 A. I have no idea.

10 Q. Why were you telling that person stay there, stay
11 there, stay there?

12 A. Because the person pointing -- because there was
13 a person there pointing. I don't know if they were
14 pointing at me or at Nic, but they were approaching.

15 Q. Did you think it was safe for that person to come
16 towards you and Nic?

17 A. I tried to prevent that person from approaching
18 us because I thought maybe the problem will -- was going
19 to continue.

20 Q. And you thought the solution to that problem was
21 to keep Nic separated from the group that was pointing at
22 you?

23 A. Yes.

24 Q. When Nic -- I'm gonna now ask you about when
25 Nic's back at the tubes with you after you've pointed at

1 this person, okay?

2 A. (No response.)

3 Q. Make sense?

4 A. Yes.

5 Q. In that time, what did Nic look like?

6 A. He looked worried and he was pale.

7 Q. I think there was a time you -- you -- you also
8 used the word he looked white or he looked wide-eyed?

9 A. Yes.

10 Q. Did you see those things when you looked at Nic?

11 A. Yes.

12 Q. You said you've known Nic for a long time, he's
13 your best friend. You ever seen him scared before?

14 A. Never.

15 Q. Did he look like he was scared then?

16 A. Yes.

17 Q. Had you seen people when they're in shock before?

18 A. Yes.

19 Q. Did he look to you like he was in fear and in
20 shock?

21 A. Yes.

22 Q. Were you worried about him?

23 A. Yes.

24 Q. And is that why you were pointing at other
25 people, because you wanted to protect your friend and keep

1 him there because you were worried about him?

2 A. Yes.

3 Q. Would it be fair to say you didn't really know
4 what had happened down there at that other group, you just
5 didn't want anything more to happen?

6 A. No. I mean -- I mean, yes, that's correct,
7 because I knew what -- what had happened -- I didn't know
8 what had happened.

9 Q. Did Nic stay then with the group at the tubes,
10 did he stay there that whole time?

11 A. Yes.

12 Q. Did he ever ask you or make any motions to -- or
13 indicate in any way, tell you in any way that he wanted to
14 go onto the shore or on the woods or sit anywhere other
15 than in his tube?

16 A. No.

17 Q. What did you see him do while you guys were
18 waiting there?

19 A. He just sat in the inner tube and he didn't say
20 anything. No words.

21 Q. Did your impressions about him being in fear and
22 in shock, did that change over that time or did he
23 continue to look like he was in fear and shock?

24 A. No, he continued in shock.

25 Q. How long did you guys, in your group, wait there

1 at the tubes before you event -- eventually floated down
2 the river?

3 A. I would say 30 minutes, 35 minutes. I don't know
4 exactly. It was awhile.

5 Q. Why did you eventually go back down -- float down
6 the river? Did anything prompt you?

7 A. I don't know if it was --

8 INTERPRETER DIAZ: The interpreter needs the --
9 the witness to repeat his answer.

10 A. I don't know -- I'm not sure if it was the police
11 or if it something else -- somebody else who was trying to
12 guide people. They were telling people to move, move, and
13 to continue.

14 Q. (By Mr. Nelson, continuing) And based upon what
15 you saw then, you kind of helped your -- your group say we
16 gotta go and you moved down the river?

17 A. Correct.

18 Q. During the float down the river, it continued to
19 be quiet?

20 A. Totally quiet. I -- as far as I remember, nobody
21 talked until we got to the exit.

22 Q. What happened at the exit?

23 A. When we got to the exit I don't know if it was
24 the policeman who was there, somebody was cutting the
25 ropes. Then we crossed -- we passed the bridge. When we

1 passed the bridge there -- we noticed there was policemen
2 there. There were -- they were over here and we were on
3 the other -- over here, and then we -- they approached the
4 group where we were.

5 Q. And when they approached the group, did you see
6 them somehow indicate or say something to Nic?

7 A. Who? The policemen?

8 Q. (Non-verbal response.)

9 A. The -- the -- right at that moment when we --
10 they stopped us, I don't know if they were policemen or
11 not, but then one of them came and he said he has to come
12 with us.

13 Q. The policeman asked Nic to come with them?

14 A. Um-hum.

15 Q. Is that a yes?

16 A. Yes.

17 Q. Did you then see Nic go with the police?

18 A. Yes. He was walking normal -- normally with
19 them.

20 Q. Were you surprised at that point?

21 A. We -- yes, we were in shock because we didn't
22 know why they was detaining him. We didn't know what had
23 happened.

24 Q. And you couldn't believe your friend, who's
25 peaceful, would have done anything to harm someone?

1 A. Never.

2 MR. NELSON: That's all.

3 THE COURT: Mr. Anderson, do you have any
4 questions?

5 CROSS-EXAMINATION

6 BY MR. ANDERSON:

7 Q. You've tubed on the Apple River several times,
8 including with Nic, right?

9 A. We have, but it was the second time with him.

10 Q. And the Apple River, it's kind of a party scene,
11 agreed?

12 INTERPRETER MARIN: Please repeat for the
13 interpreter.

14 Q. (By Mr. Anderson, continuing) The Apple River,
15 it's kind of a party scene, lots of people on the river
16 drink?

17 A. Yes.

18 Q. You got -- your group was drinking?

19 A. Yes.

20 Q. Probably most of the groups you saw on the river
21 were drinking?

22 A. Yes.

23 Q. Were you intoxicated?

24 A. No.

25 Q. How many drinks did you have, do you know?

1 A. Probably like four beer.

2 Q. And you said -- you told Nic not to go look for
3 the phone but he insisted, right?

4 A. Correct.

5 Q. And Ariel wasn't worried about his phone because
6 he had insurance, right?

7 A. Correct.

8 Q. And after Sandi said Nic's in trouble, you
9 started walking towards Nic, right?

10 A. Correct.

11 Q. And you got pretty close to where Nic was, right?

12 A. No.

13 Q. You got a lot closer than Sergio did, right?

14 A. No, I -- I don't know because I don't know where
15 Sergio was at that moment but, yes, I was close.

16 Q. And you saw Nic in the water you said, right?

17 A. Yes.

18 Q. You never saw Nic do anything to anyone?

19 A. No.

20 Q. You said you were concerned for Nic's safety,
21 right?

22 A. Correct.

23 Q. You -- you walked over there, right?

24 A. Yes.

25 Q. And you told police I didn't see -- we -- we

1 don't know what happened because Nic didn't tell us
2 anything, right?

3 A. Correct.

4 Q. And you said that multiple times?

5 A. Correct.

6 Q. You told police multiple times that Nic ran away?

7 A. When you referring to running or -- or running
8 away, I am referring to when he left our group and
9 approached our group.

10 Q. When he --

11 A. On this -- on this side.

12 Q. When he went back to your group, you said he ran
13 back to your group, right?

14 A. Correct.

15 Q. You told that to the police multiple times?

16 A. Correct.

17 Q. So you remember him running back to your group?

18 A. I'm -- I mean, I -- he didn't come running, he
19 was walking fast, he was just coming back.

20 Q. He actually just walked casually back --

21 MR. NELSON: Objection.

22 Q. (By Mr. Anderson, continuing) -- right?

23 THE COURT: What's the objection?

24 MR. NELSON: Vague as to the use of the word
25 casual.

1 THE COURT: Overruled. He can answer if he
2 understands.

3 Do you understand the question?

4 THE WITNESS: No, I don't understand the
5 question.

6 THE COURT: You'll need to rephrase then.

7 Q. (By Mr. Anderson, continuing) He wasn't walking
8 fast back to your group, was he?

9 A. He came -- he was walking.

10 Q. But not quickly, right?

11 A. No. No.

12 Q. And then after he walked passed you, you told
13 police the groups were fighting each other?

14 A. I couldn't say they were fighting. Everybody was
15 shouting. We didn't know what was happening there.

16 Q. But what you told police was that the groups were
17 fighting each other after Nicolae left?

18 A. I don't remember right now, but in my opinion
19 they -- because of the way they were talking and they were
20 loud, they may have been fighting.

21 Q. You didn't see any injuries on Nic when he walked
22 back, right?

23 A. No.

24 Q. And your group stayed at the sandbar for a while
25 because Eric was helping with the victims, right?

1 A. I don't know.

2 Q. Was Nic helping with the victims -- was Eric --
3 sorry. Was Eric helping with the injured?

4 A. I don't know.

5 Q. Eventually when you did leave, it was because Nic
6 said let's go, right?

7 A. Can you repeat the question?

8 Q. Eventually when you did leave, it was because
9 Nicolae Miu says let's go?

10 A. No.

11 Q. When you got to the exit there was a lot of
12 police there you said, right?

13 A. Yes.

14 Q. There -- there wasn't any belligerent people
15 approaching you or anything like that?

16 A. I couldn't -- I couldn't tell you if there were
17 people approaching us or getting closer to us. There were
18 people in front, there were people behind us. I don't
19 know what you're referring to.

20 Q. You didn't -- you didn't get threatened or
21 anything when you got out to the exit, right?

22 A. No.

23 Q. When Nic came back to your group, he told you
24 they took my knife, right?

25 A. I don't remember.

1 Q. You told police -- you told police multiple times
2 they took Nic's knife out of his pocket, right?

3 A. If the -- if he give it to the policeman -- I
4 don't know.

5 INTERPRETER DIAZ: Interpreter needs to correct.
6 If I told that to the policeman, maybe, but I don't
7 remember.

8 Q. (By Mr. Anderson, continuing) You don't remember
9 if Nic told you they took my knife?

10 A. I don't remember a word because when we sit down
11 in the -- in the tube we don't talk nothing.

12 Q. You saw Nic among the group of people when you
13 were walking up, right?

14 A. Correct.

15 Q. You could see how the group was acting, you could
16 hear them, right?

17 A. Yes. They were yell -- yelling.

18 Q. And when police talked to you about it, you
19 didn't believe Nic stabbed anyone, right?

20 A. Never.

21 Q. And you said he's a big guy, he was in the Army,
22 he doesn't need a knife to defend himself, right?

23 A. Yes.

24 Q. And he was -- he was in the Army in Romania
25 before coming to the U.S., right?

1 A. I'm not sure if I said that, but I know that he
2 comes from a communist country and the military service is
3 mandatory. I come from a communist country too where you
4 have the mandatory military service.

5 Q. And you answered questions about Nic had his
6 knife because he used it to cut ropes, he was gonna use it
7 at the beginning and gonna use it at the end. Do you
8 remember that?

9 A. Correct.

10 Q. Well, you told police that you thought Nicolae
11 put his knife back in the vehicle before floating down the
12 river, right?

13 A. Correct.

14 Q. And you also told police you never saw Nicolae
15 with a knife on the river, right?

16 A. No -- well, when we were in the river. I only
17 saw him with a knife at the beginning when we were tying
18 the tubes.

19 Q. When -- when Nicolae got back to the tubes after
20 he walked passed you, did you walk back to the tubes?

21 INTERPRETER MARIN: I'm sorry, please -- the
22 interpreter needs a repetition.

23 Q. (By Mr. Anderson, continuing) Nicolae walked
24 passed you going back to the tubes, right?

25 A. Yes.

1 Q. And he didn't say anything to you then?

2 A. I don't remember because I pay attention to the
3 guy point to us and I say stay there, stay there. I don't
4 want him coming to us.

5 Q. Nicolae didn't ask for your help or anything?

6 A. Help when?

7 Q. Ever. He never yelled for help, right?

8 A. I didn't see anything until the lady told me that
9 he was in trouble.

10 Q. You also didn't hear him yell anything, right?

11 A. No.

12 Q. When Nicolae got back to his -- the tubes, did
13 you walk back to the tubes, too?

14 A. Yes.

15 Q. No one followed you, right?

16 A. When -- when Nic -- he was walking by me on this
17 side, I stayed standing there and I told guy who was
18 approaching us stay there, stay there, and pointing, and
19 then I followed Nic.

20 Q. You didn't answer my question. I asked when you
21 walked away, nobody followed you, right?

22 A. As far as I remember, no. If I'm look -- walking
23 I can't see in my -- from my back. I can't see in the
24 back.

25 Q. And once Nicolae got back to the tubes he put on

1 his shirt, right?

2 A. Correct.

3 Q. And you didn't see what happened before Nic --
4 you saw Nic in the water, right?

5 A. No.

6 Q. So you don't know if he did something violent
7 before you saw him in the water?

8 A. No.

9 MR. NELSON: Objection.

10 Q. (By Mr. Anderson, continuing) You said Nic
11 appeared very scared/worried after he walked back, right?

12 A. Yes. That's normal.

13 Q. And you'd never seen him scared like that before,
14 right?

15 A. Never.

16 Q. And he wasn't smiling, right?

17 A. What do you mean?

18 Q. He wasn't smiling?

19 A. No.

20 Q. That would be -- you wouldn't expect him to be
21 smiling if he was afraid, right?

22 A. Who's going to smile when you're in the middle of
23 trouble?

24 Q. I want to show you some slides -- some frames.

25 THE COURT: All right. Why don't we break here

1 for lunch since there seems to be more questions.

2 Members of the jury, we're going to break
3 until one o'clock. Same reminders: No independent
4 investigation, no research, do not speak with anyone,
5 including yourselves about this case. We will resume at
6 1:00 p.m.

7 (Whereupon, the jury exits the courtroom.)

8 THE COURT: We are in recess until one.

9 (Whereupon, a break was held.)

10 THE COURT: All right. We're ready for the jury.

11 (Whereupon, the jury enters the courtroom.)

12 THE COURT: Members of the jury, welcome back.
13 We're ready to resume the afternoon with the attorneys,
14 Mr. Miu, and all whom are present.

15 Thank you for your patience. Sometimes
16 during the course of a trial unexpected things come up.
17 One did and I had to meet with the attorneys to sort out
18 the solution, which we have reached, and we're ready to
19 continue.

20 Mr. Chaguez, please retake the witness
21 stand. You're still under oath.

22 Mr. Anderson.

23 Q. (By Mr. Anderson, continuing) Ernesto, you
24 recall you said you don't know if you said to the officer
25 on shore that Nicolae said they took his knife?

1 A. Yes.

2 MR. ANDERSON: May I approach?

3 THE COURT: Yes.

4 MR. NELSON: Judge, can we approach?

5 THE COURT: Yes.

6 (Whereupon, a discussion was held at the bench.)

7 Q. (By Mr. Anderson, continuing) When -- when you
8 spoke with the officer at the exit, that was -- you spoke
9 in English, right?

10 A. I think so.

11 Q. I'm going to show you a transcript. Can you just
12 take your time and look at that. Read through it enough
13 to see if you know what it is.

14 A. Want me to read through everything?

15 Q. No. Does it appear that it's a transcript of
16 your conversation with the officers at the shore?

17 A. Yes.

18 Q. Okay. And now I'm just gonna show you. Can you
19 read that? No, just read it to yourself.

20 A. Yeah.

21 Q. Okay. Down here.

22 A. (No response.)

23 Q. I'll just read it.

24 A. Yeah, I got it.

25 Q. You said, He said that somebody took his knife in

1 his pocket, right?

2 A. I said I don't remember, but if that's what I
3 say, it's okay.

4 Q. So are you -- are you saying you don't think --

5 A. I don't remember.

6 Q. Okay.

7 MR. ANDERSON: Judge, can we approach?

8 THE COURT: Yes.

9 (Whereupon, a discussion was held at the bench.)

10 Q. (By Mr. Anderson, continuing) So you remember --
11 you don't remember if you said they took my knife but you
12 remember somebody pointing and walking towards you?

13 A. I don't remember.

14 Q. Didn't you testify to that, somebody pointed and
15 walked towards you and you told them to get back?

16 A. Yeah. Yes, that I did.

17 Q. But you never told that to the police, right?

18 A. Well, they don't -- they don't ask me.

19 Q. You never said it either though, right?

20 A. So in -- in that moment, you can say or remember
21 everything you said. I answer whatever they ask me.

22 MR. ANDERSON: Can we --

23 Q. (By Mr. Anderson, continuing) You also testified
24 that -- remember when I asked you if Nic said anything
25 when he was walking by you on his way back to your group?

1 A. I don't remember.

2 Q. And you said you weren't paying attention because
3 you were looking at the guy who was walking towards you or
4 the person?

5 A. Correct.

6 Q. Okay. I want to go to some frames.

7 MR. ANDERSON: I'll let the clerk know when I'm
8 ready.

9 Q. (By Mr. Anderson, continuing) And you -- you
10 did -- the officer never asked if somebody was pointing at
11 him -- anyone but -- at you but you did say, I told Nic to
12 come and he came and that's it, right?

13 A. Correct.

14 MR. ANDERSON: This is from the video. There's
15 some graphic parts in it. This is 3291. I'm ready.

16 Q. (By Mr. Anderson, continuing) I'm going to
17 scroll and then I'm going to ask you -- ask you some
18 questions.

19 On 3318, that's Ariel in the American flag
20 shorts and black shirt, right?

21 A. Repeat that. Correct. Correct.

22 Q. This is -- this is Nic here?

23 A. Correct.

24 Q. And this is you?

25 A. Correct.

1 Q. And Nic is standing right next to you and you're
2 touching his arm?

3 A. Yes, when he was passing by.

4 Q. Do you see anyone in this frame walking towards
5 you? Okay.

6 A. At that very moment in that picture I don't see
7 anybody.

8 Q. How about here on 3322?

9 A. That is somewhere in there somebody is coming and
10 pointing at us. I don't see it there, but I saw that day.

11 Q. Okay. I've scrolled a little ways until 333 --
12 3333. See anyone pointing or walking towards you?

13 A. I don't see anybody.

14 Q. Does it even look like anyone's looking at you?

15 A. I don't see anybody at that time. But
16 depending -- I don't see those people there. I was down
17 there. It depends on the time of the video or the point
18 of view of the person who was taking the video.

19 MR. ANDERSON: Stopped at 3359.

20 We can turn off the screen. I'm going to
21 go to another frame.

22 I'm on 3471.

23 Q. (By Mr. Anderson, continuing) That's you right
24 here, right?

25 A. Um-hum.

1 Q. And --

2 A. Yes.

3 Q. -- you're actually walking towards the camera?

4 A. Yes.

5 Q. Nobody is approaching you and walking towards
6 you?

7 A. No.

8 Q. Nicolae isn't in this, right?

9 A. I don't see him.

10 MR. ANDERSON: Okay. You can turn off the
11 screen. I'm going to another one.

12 Okay.

13 Q. (By Mr. Anderson, continuing) This is 3936. Is
14 that you, Ariel, and Sergio on the top left?

15 A. Where?

16 Q. Right here. Sergio, Ariel, you?

17 A. Yep. Yes.

18 Q. You still haven't walked back to your tubes?

19 A. I don't remember.

20 Q. Well, on the photo --

21 A. We standing there, but in the picture I don't
22 know if this is after or before.

23 Q. Sure. Okay.

24 A. Right?

25 MR. ANDERSON: You can turn it off.

1 I got one more set of frames to ask you
2 about.

3 So this is 3926. I'm going to go later in
4 the video.

5 I'm ready.

6 Q. (By Mr. Anderson, continuing) Do you think this
7 is what you were thinking of after Nic was long gone?

8 A. (No response.)

9 Q. This is you, right?

10 A. Yes, that's me.

11 Q. And here's a girl standing by a group of other
12 women pointing at you from a ways away?

13 A. Right.

14 Q. Or in your direction?

15 A. I not sure, but this guy is coming this way from
16 there probably one -- wasn't -- wasn't the male. I say,
17 hey, just stay there. Stay there. The guys behind the
18 yellow T-shirt, I probably -- probably was that one. It
19 was right him, right in the front with this guy right
20 here, like from here.

21 Q. Right here?

22 A. Yeah, no, he's walking here in the picture. You
23 say -- you can see he's walking. When I say stay there,
24 stay there, and he walks the other way but -- in that time
25 he probably was right here on the hammer -- my -- my

1 finger, something like that.

2 Q. Let's keep going. I'll see.

3 And you -- you said before you didn't know
4 if it was a man or a woman, right, who was pointing and
5 that you -- walking towards you and pointing and then --

6 A. No, it was a man.

7 Q. It was a man?

8 A. It was a man.

9 Q. Okay. If it was here, it would have been after
10 Miu -- Nicolae was long gone, right?

11 A. What you say?

12 Q. It would have been after Nicolae -- sorry.

13 THE COURT: You got to wait for the
14 interpretation.

15 Q. (By Mr. Anderson, continuing) It -- it would
16 have been long after Nicolae was gone, right?

17 MR. NELSON: Objection. Vague as to the use of
18 the term long.

19 A. Yeah, but the -- the person, when had start
20 pointing me -- started pointing towards me, that's a start
21 when Nic coming this way. So that's what I'm say, I am
22 not sure he was in the picture or whatever the picture was
23 like right there, he's has like -- he turning his way to
24 other people, but before he was little more far and he
25 point to us.

1 Q. (By Mr. Anderson, continuing) So before when I
2 asked what -- what did Nicolae say, if anything, to you
3 and you guys -- when he passed you, you said you didn't
4 know because the guy was coming towards you. Now your
5 testimony is that it was later in the video. So do you
6 know what he said to you or no, if anything, Nicolae?

7 A. I don't remember.

8 Q. And you'd agree you got pretty close to where
9 Nicolae was with the group, right?

10 A. At what time? What moment?

11 Q. I'll go back.

12 MR. ANDERSON: Can we have the screen?

13 Q. (By Mr. Anderson, continuing) 3321. You got --
14 you -- you said -- what did you say you saw for injured
15 people?

16 A. What was the question?

17 Q. What did you see as far as injured people?

18 A. I saw some women the other side. That's -- that
19 woman was behind probably right this guy. It was like in
20 the middle of river and I say, What's going on? Because I
21 don't know what's happening. I saw her and I say, What's
22 going on?

23 Q. You -- did you see this man here on 3321 --

24 A. No.

25 Q. And you didn't see Nic do anything?

1 A. No.

2 MR. ANDERSON: I don't have anything else.

3 THE COURT: Mr. Nelson.

4 MR. NELSON: Can I have the screen?

5 REDIRECT EXAMINATION

6 BY MR. NELSON:

7 Q. You were asked some questions about slide 3321
8 that's in front of you.

9 A. Yes.

10 Q. Again, this is you?

11 A. Yes.

12 Q. It looks like you're reaching out to Mr. Miu,
13 who's standing next to you?

14 A. Correct.

15 Q. Mr. Miu is walking?

16 A. Yes.

17 Q. He's walking upriver?

18 A. Yes.

19 Q. Ariel, in the flag shorts, is walking upriver
20 behind Mr. Miu?

21 A. At -- at this moment, I -- I don't remember what
22 it was. In the video I can see him, but before I don't
23 remember where he was.

24 Q. I appreciate that. I'm not going to ask you
25 about that. I want to -- I'm gonna ask you about this

1 person here. Do you see the person in the two-tone
2 shorts?

3 A. Who he is?

4 Q. Do you see that person in the two-tone shorts?

5 A. I'm not sure.

6 Q. I'm not asking you if you know who he is, I'm
7 just asking you, do you see the person that I'm pointing
8 to in the two-tone shorts?

9 A. No.

10 Q. Right now on the screen, do you see them?

11 A. Oh, now I do. Now I do.

12 Q. Next to that person is a man in a yellow shirt?

13 A. Yes.

14 Q. All right. I want to now ask you questions about
15 slide 3922, okay?

16 A. Yes.

17 Q. You haven't watched the video, have you?

18 A. Yes.

19 Q. You agree that you have not?

20 A. No.

21 Q. It was a poor question on my part. Have you
22 watched the video or have you not watched the video?

23 A. No.

24 Q. Okay. The screens -- the slides that we're
25 showing you go in sequential order. So the first one is

1 zero, the last one is 4,819. Does that make sense?

2 A. Yes.

3 Q. I previously showed you 3321 and now we're
4 showing you something later, 3922. Does that make sense?

5 A. Yes.

6 Q. I'm gonna blow this up. In the upper left-hand
7 corner that appears to be you and Ariel and Sergio
8 standing next to each other, agreed?

9 A. Correct. But what I say before, in this moment I
10 don't know if this is before or after the problem because
11 I haven't seen the whole video.

12 Q. If I were to tell you, hypothetically, this is
13 after, because we can see a victim or two victims or two
14 people with injuries down, agreed? Make sense?

15 A. Okay.

16 Q. And then over here way on the right do you see
17 this blur that may be a person without a shirt on walking
18 from a different direction over to your group? Do you see
19 that?

20 A. Yeah.

21 Q. Okay. I'm now going to scroll through the --
22 forward in time and I want to show you stuff, okay? I'm
23 going to stop at 3953. I'm going to blow this up. Do you
24 see somebody here on the left-hand side?

25 A. Yeah.

1 Q. Is that a man in two-tone shorts that I had
2 previously shown you?

3 A. Yes.

4 Q. Had that man ran up to you and then you --

5 MR. ANDERSON: Objection. Leading, Judge.

6 A. So --

7 THE COURT: Wait. Wait. Wait. Wait. Please.

8 Objection sustained. Please rephrase.

9 Q. (By Mr. Nelson, continuing) Is this the person
10 that you saw come up to you that you pointed to to say go
11 away?

12 A. Yes.

13 Q. And as we move forward here in time, the person
14 in the yellow shorts that was in a different spot before
15 is there too, correct?

16 A. Yes.

17 Q. And as we move forward to 4012, excuse me, you
18 now see the woman pointing the finger at you, correct?

19 A. Correct. That's when I'm say, What's going on?

20 Q. Understood. When you previously -- when you
21 spoke to the police, was there a Spanish interpreter
22 there?

23 A. No.

24 Q. Sometimes when you've spoken today you've
25 answered in English, agreed?

1 A. Yes.

2 Q. You -- fair to say your preferred language is
3 Spanish?

4 A. Spanish.

5 Q. You know some English?

6 A. Yes.

7 Q. If you wanted to communicate something really
8 important and make sure you were accurate, would you say
9 it in Spanish or would you say it in English or would you
10 say it in some other language?

11 A. Spanish.

12 Q. Why?

13 A. Because there are many words in English that have
14 different meanings, and when one answer is maybe the
15 answer is not the correct one.

16 Q. Also when you hear words is it easier for you to
17 understand the words spoken to you when the words spoken
18 to you are in Spanish rather than in English?

19 A. Yes.

20 Q. You answered some questions about your knowledge
21 about your friend Nic being from Romania. I want to ask
22 you about that, okay?

23 A. Correct.

24 Q. Do you -- do you know exactly when Nic Miu
25 immigrated to the United States?

1 A. No.

2 Q. Do you know what age he was?

3 A. I don't remember.

4 Q. Do you know whether in fact he was or was not in
5 the military at any point?

6 A. No.

7 Q. When you spoke with the police, you told them you
8 thought he might have been in the military for the reasons
9 that you said here, because communist countries sometimes
10 require that, correct?

11 A. Mandatory, yes.

12 Q. You also told the police that you didn't actually
13 know. You told them several times I don't know, I don't
14 know, I don't know?

15 A. Correct.

16 Q. Do you have actual knowledge as to whether Nic
17 Miu was in Romania and served mandatory service for his
18 country?

19 A. No.

20 Q. Okay. Last area here. You said you were able to
21 remember some things that you saw but you couldn't
22 remember everything that you heard. Would that be fair?

23 A. Um-hum. Yes.

24 Q. Do you find it, for you, ease --

25 MR. ANDERSON: Judge, I'm going to object. These

1 are all leading questions.

2 THE COURT: Sustained.

3 Q. (By Mr. Nelson, continuing) Do you find it
4 easier to remember things that you see or do you find it
5 easier to remember things that you hear?

6 A. That I see.

7 MR. NELSON: That's all.

8 THE COURT: Mr. Anderson?

9 RECROSS-EXAMINATION

10 BY MR. ANDERSON:

11 Q. Is your testimony today important?

12 A. It's very important.

13 Q. And sometimes -- sometimes you answer in English?

14 A. Oh, yes.

15 Q. Because you're also comfortable speaking in
16 English?

17 A. Sometimes I understand it, sometimes I don't.

18 Q. If you told the officer he said that somebody
19 took his knife in his pocket, that's something you can
20 easily understand in English, right?

21 A. Repeat, please.

22 Q. He said that somebody took his knife in his
23 pocket. You understand that in English, right?

24 A. I don't remember.

25 Q. Do you understand what that means in English?

1 A. Yes.

2 Q. And if you told that to the officer 17 times, do
3 you think you said that because you remembered it at the
4 time?

5 A. I don't know how many times you say 17 times.
6 I -- I don't remember.

7 Q. Do you want to see the transcript?

8 A. You can show me.

9 Q. Okay. It's highlighted and there's numbers next
10 to it.

11 A. Well, that's what it say I said, but I don't
12 remember saying it that many time. I don't know.

13 Q. Do you agree or not agree that you told the
14 officer that 17 times?

15 A. I don't remember.

16 Q. You don't remember that, but you remember
17 something you didn't tell the police from almost
18 two years?

19 A. What -- what do you mean? What do you mean
20 something that I didn't tell the police two years ago?

21 Q. This is a 13-page transcript and there's 17 times
22 on here where it says something about he said they took my
23 knife. Are they --

24 MR. NELSON: Objection. Asked and answered.
25 Cumulative.

1 THE COURT: Sustained. He said he didn't
2 remember.

3 MR. ANDERSON: Nothing else, Judge.

4 THE COURT: All right.

5 Thank you, Mr. --

6 THE WITNESS: Torres.

7 THE COURT: Torres. My apologies. You are
8 excused. You may step down.

9 THE WITNESS: Thank you.

10 THE COURT: Torres Chaguez?

11 THE WITNESS: Yes.

12 THE COURT: Yes. Apologies. The part I mixed
13 up.

14 (Whereupon, the witness is excused.)

15 MR. NELSON: Judge, we have one more witness. I
16 don't know if you want to take a quick five-minute break
17 before we call the next? Our last Spanish-speaking
18 witnesses.

19 THE COURT: Are the interpreters prepared to go
20 forward?

21 INTERPRETER DIAZ: I'm fine.

22 INTERPRETER MARIN: I'm fine, Your Honor.

23 THE COURT: Good. Let's continue.

24 MR. NELSON: All right.

25 MR. SMESTAD: Judge, can I approach quickly?

1 (Whereupon, a discussion was held at the bench.)

2 THE COURT: All right. We need about
3 five minutes outside your presence, members of the jury.

4 Please take the jury out.

5 (Whereupon, the jury exits the courtroom.)

6 THE COURT: We are outside the presence of the
7 jury, meeting with the attorneys and Mr. Miu.

8 Mr. Smestad asked to approach with a
9 concern. Mr. Smestad.

10 MR. SMESTAD: Your Honor, we were informed by our
11 victim-witness staff that some of the witnesses were out
12 in the hall live-streaming the trial. They're under a
13 sequestration order. Apparently one of the folks is the
14 gentleman who was just about to testify. I forget his
15 last name, but his first name is Ariel. Obviously that's
16 of concern because if he was watching other folks testify,
17 it defies the purpose of the sequestration order. We'd
18 like to have the Court instruct the witnesses again to not
19 be watching the trial.

20 THE COURT: Did the State's attorneys instruct
21 the witnesses about the sequestration order?

22 MR. ANDERSON: We -- we provided written notice
23 to every witness that met with us. Ariel would not meet
24 with us. But the Spanish speakers we met with, which was
25 Sergio, Tatiana, and Gilma, we gave them written

1 instructions in Spanish not to watch the trial, can't be
2 in the trial, don't read the news.

3 THE COURT: Okay. Did they understand or did
4 your written instructions include that this was a court's
5 order?

6 MR. ANDERSON: Yes.

7 THE COURT: All right.

8 MR. ANDERSON: We also told them verbally when we
9 met with them, but again, Ariel refused to meet with us
10 so -- I don't know if Defense told him. He's on their
11 witness list.

12 MR. SMESTAD: Ariel is a Defense witness, Your
13 Honor.

14 THE COURT: Mr. Nelson, was the sequestration
15 order given to --

16 MR. NELSON: Not to Spanish-speaking witness, no,
17 Judge. I did not have a translation service. Obviously
18 it's an oversight and I will change my practice in the
19 future.

20 THE COURT: All right. Well, what I'll do then
21 -- well, let me ask: Is there anything else besides tell
22 the witnesses about the sequestration order that you want
23 me to do?

24 MR. SMESTAD: I don't know that there is anything
25 you can do at this point, Judge.

1 THE COURT: Okay. I just want to make sure that
2 we're on the same page. I'm -- I'm happy to remind them
3 about the sequestration order, but as long as you're
4 satisfied with that being a limit of my involvement, I'll
5 stop.

6 MR. ANDERSON: I -- I'd like to --

7 THE COURT: I'm not inviting more, let's put it
8 that way.

9 MR. ANDERSON: Sure. But I --

10 THE COURT: I'm making sure I'm not missing
11 something.

12 MR. ANDERSON: Sequestration is important,
13 obviously. We don't want witnesses forming their
14 testimony based on what other witnesses have said,
15 especially in this case. The gentleman who did just
16 testify, the cross-examination is gonna be about the same.
17 They're the -- both the two that walked up to the scene
18 and either saw things or didn't see things. He now knows
19 what to expect on cross-examination. He's seen his friend
20 go through it and heard he go through it. I think -- and
21 Defense did not tell them about the sequestration order,
22 which is just as much their duty as it is our duty. So I
23 think it is a pretty big problem. I might ask for some
24 sort of curative instruction that Defense did not inform
25 their witnesses of the sequestration order, but I think we

1 can address that later. For now I think it would be a
2 point for cross.

3 THE COURT: Mr. Nelson, anything to add?

4 MR. NELSON: No, Judge.

5 THE COURT: All right. What I plan to do is
6 invite the witnesses in, I will assume that they had not
7 received or fully appreciated the extent of the
8 sequestration order. I'll explain it to them with the
9 benefit of the interpreters.

10 If the State wishes to cross-examine, you
11 may.

12 So would somebody bring the witnesses in,
13 please?

14 (Whereupon, the Spanish-speaking witnesses enter
15 the courtroom at this time.)

16 INTERPRETER MARIN: And, Your Honor, the --
17 question from the interpreters. Are we just gonna
18 interpret right next to them?

19 THE COURT: We'll just do sequential
20 interpretation.

21 INTERPRETER MARIN: Okay.

22 THE COURT: All right. Welcome back, everyone.
23 We have Ms. Constanza. There she is. Ms. Torres?

24 MS. TORRES: Yes.

25 THE COURT: Mr. Ruiz-Leyva?

1 MS. TORRES: Leyva.

2 THE COURT: Leyva.

3 INTERPRETER MARIN: Leyva.

4 MS. TORRES: He left. My brother left.

5 THE COURT: He left.

6 Okay.

7 INTERPRETER MARIN: He left.

8 THE COURT: Ms. Ruiz-Leyva.

9 MS. RUIZ-LEYVA: Here.

10 THE COURT: Mr. Torres Chaguez?

11 MR. TORRES CHAGUEZ: Here.

12 THE COURT: And Ariel --

13 MR. CHAGUEZ: Here.

14 THE COURT: What is your last name?

15 MR. CHAGUEZ: Chaguez.

16 THE COURT: Okay. Ariel Chaguez.

17 At the beginning of the trial I told the
18 attorneys to tell all of the witnesses that they were not
19 to discuss their testimony with other witnesses. I also
20 told the attorneys to tell the witnesses that they were
21 not allowed to watch the trial either in person or on the
22 internet or television because we didn't want the
23 witnesses to conform their testimony to what they hear
24 from the others. I was told that one or more of you may
25 be watching the trial while you're sitting in the hallway.

1 I invited you in today so that I could
2 explain to you personally that you may not do so because
3 we want to preserve your memories about what happened from
4 July 2022 and we don't want your memories to be tainted by
5 something that you may see or hear about this trial.

6 So please, as long as you're needed as
7 witnesses, do not talk about the case with each other or
8 with other witnesses, please do not watch any of the TV or
9 internet accounts of this trial.

10 Will you all do that?

11 (Whereupon, the Spanish-speaking witnesses spoke
12 simultaneously.)

13 SPANISH-SPEAKING WITNESSES: Yes.

14 THE COURT: Excellent. They've all answered in
15 the affirmative.

16 Thank you, everyone. You can go back to
17 the hallway.

18 UNIDENTIFIED FEMALE: Thank you.

19 MR. NELSON: Ariel, could you stay? We're going
20 to call you next, so you may as well just wait in here.

21 THE COURT: Is there anything else we need to
22 address outside the presence of the jury?

23 MR. NELSON: No, Judge.

24 MR. ANDERSON: No.

25 THE COURT: All right. Let's bring them in then.

1 (Whereupon, the jury enters the courtroom.)

2 THE COURT: All right. Members of the jury,
3 thank you for your patience. We are ready to move on.

4 Again, this will be another witness called
5 by Defense, taken out of order to accommodate the
6 Spanish-speaking interpreters.

7 Mr. Nelson, who's next?

8 MR. NELSON: Ariel Chaguez Leyet, please.

9 THE COURT: Please raise your right hand, the
10 clerk will administer the oath.

11 ARIEL CHAGUEZ,
12 after having been first duly sworn on oath by the clerk,
13 testifies and says as follows:

14 THE WITNESS: Yes.

15 THE COURT: Please have a seat in the witness
16 chair. Right over here.

17 It looks like it's falling off his head.
18 Could somebody maybe adjust the size of the wrap around?

19 Perfect.

20 Mr. Nelson.

21 DIRECT EXAMINATION

22 BY MR. NELSON:

23 Q. Afternoon, sir.

24 A. Good afternoon.

25 Q. Can you tell us your name, please?

1 A. Ariel Chaguez.

2 Q. Ariel, do you know this man here to my right
3 wearing the blue shirt and the red tie and the green
4 jacket?

5 A. Yes.

6 Q. Who is that?

7 A. Nic.

8 Q. How do you know Nic?

9 A. I met him through my cousin, Ernesto.

10 Q. Have you -- how long have you known Nic?

11 A. A little over five years.

12 Q. During that time have you had an opportunity to
13 observe his character, his person?

14 MR. ANDERSON: Judge, can we approach actually?

15 THE COURT: Yes.

16 (Whereupon, a discussion was held at the bench.)

17 THE COURT: Let's continue.

18 Mr. Nelson.

19 Q. (By Mr. Nelson, continuing) I'm just going to
20 repeat the question. During the time that you've known
21 him for over those five years, have you had an opportunity
22 to observe his person, his character?

23 A. Yes, of course.

24 Q. Do you consider him to have a character for
25 peacefulness?

1 A. Yes.

2 Q. In fact, when the police talked to you about
3 this, you even mentioned that to them, did you not?

4 A. Yes.

5 Q. I think when you spoke with the police you --
6 they used terms, which you agreed with, along the lines
7 of --

8 MR. ANDERSON: Judge, I'd object as beyond the
9 scope. Can we approach?

10 (Whereupon, a discussion was held at the bench.)

11 MR. ANDERSON: Is it sustained, Judge?

12 THE COURT: Yes. I'm sorry. The objection is
13 sustained.

14 Next question, please.

15 Q. (By Mr. Nelson, continuing) You spoke with the
16 police in August of 2022 to a Spanish-speaking police
17 officer. Do you remember that?

18 A. Yes.

19 Q. And I want to ask you some questions that that
20 Spanish-speaking police officer asked you about your
21 observations of Nic on that day, okay?

22 A. Okay.

23 Q. Just so we're clear, it's in August of '22 that
24 police officer's asking you questions about Nic in
25 July 30th of '22. Does that make sense?

1 A. Yes.

2 Q. And do you remember the officer asking you if Nic
3 was calm or angry on that day, July 30th, 2022?

4 A. I don't remember if the officer asked me that or
5 not.

6 Q. Let me just ask you this: As you sit here today,
7 do you remember on July 30th, was Nic Miu angry or was he
8 calm or did he have some other character or demeanor that
9 you noticed?

10 A. No, he was calm. He was calm.

11 Q. Okay. On that day, July 30th, did you see Nic
12 with a pair of goggles and a snorkel?

13 A. Yes.

14 Q. At some point that day did your girlfriend drop
15 your phone so your phone was lost in the river?

16 A. Yes.

17 Q. I want to ask you questions before the phone was
18 lost, okay?

19 A. Okay.

20 Q. Before the phone was lost, do you remember Nic
21 using the goggles and snorkel to swim in the river at
22 different times?

23 A. Yes.

24 Q. When he did that, was he wearing his hat?

25 A. I don't remember.

1 Q. Was he wearing his sunglasses when he snorkeled?

2 A. I remember he had them on before using it.

3 Q. Do you remember that he put his glasses back on
4 after he was done snorkeling?

5 A. No, I don't remember.

6 Q. Okay. I want to just jump ahead now to the phone
7 and it being lost, okay. What did you guys do when you
8 lost your phone?

9 A. We started looking for it near the area where it
10 happen -- got lost.

11 Q. Did Nic volunteer to do anything?

12 A. Yes. He started swimming and looking for it with
13 the snorkel.

14 Q. Did he go in the direction that the water was
15 flowing?

16 A. Yes.

17 Q. There's a picture there to your left that's
18 marked as Exhibit 12A. Do you see yourself there in the
19 flag shorts?

20 A. Yes.

21 Q. Is that the phone or -- in a lanyard around your
22 neck?

23 A. Yes.

24 Q. What's your phone -- what is your phone in? Is
25 it in some protective package? What's that in?

1 A. Yes, a cover.

2 Q. Does that -- does your flown -- does your flown.
3 Does your phone float when it's in that?

4 A. I suppose it does.

5 Q. You lost your phone that day, correct?

6 A. Yes.

7 Q. Do you have that phone now?

8 A. No.

9 Q. Did you get it returned to you at some point?

10 A. Yes.

11 Q. Who returned it to you?

12 A. A sheriff I believe from here.

13 Q. Do you understand the police found your phone
14 eventually?

15 A. Yes.

16 Q. And you got it back?

17 A. Yes.

18 Q. Before the police found your phone, did you see
19 Nic go and look for it?

20 A. Repeat the question.

21 Q. That was a poor question. You lost the phone,
22 you said you saw Nic go snorkeling or go swim for it.
23 What did you see?

24 A. He was looking for it with the snorkel down the
25 river.

1 Q. At some point did you learn that Nic had -- was
2 in contact with other people on the river?

3 A. Yes.

4 Q. Was that because something you saw or something
5 you heard?

6 A. I heard it from his wife.

7 Q. What did you hear from his wife?

8 A. She said that Nic was in trouble.

9 Q. What did you do when you heard that?

10 A. My girlfriend told me to go and look and see what
11 was going on.

12 Q. Did you go look and see?

13 A. Yes.

14 Q. Did you walk downriver towards where Nic was?

15 A. Yes.

16 Q. As you were walking there, what did you see?

17 A. Well, at first we were -- we were very far away.
18 I don't know the distance exactly, but we were very far
19 away. So I started walking. I had my beer on my hand and
20 I was getting closer a little bit and I saw that Nic was
21 close or near a group of people, young people. And what I
22 was able to understand from the distance where I was at is
23 that they were joking or -- oh, bullying him. Somebody
24 had taken his snorkel and had thrown it down the river.
25 Something like that. And that's what I was seeing as I

1 was getting closer.

2 I am -- so then I was think -- thinking
3 that it was just a game for them, but as I got closer I
4 see that a lot of people -- that many people started
5 hitting him.

6 Q. Let me stop you there for a second.

7 A. Okay.

8 Q. Can you describe, when you say they were hitting
9 him, was it with their hands, their feet, they're knees,
10 fists? Can you just tell me what you saw?

11 A. With the hands.

12 Q. One person? More than one person?

13 A. Several people. There -- there were many people
14 around.

15 Q. And when you saw them hit Nic, what happened to
16 Nic?

17 A. (No response.)

18 Q. Did he stay standing or did something else
19 happen?

20 A. I remember that he fell to the river, to the
21 water.

22 Q. What happened -- what did you see next after Nic
23 had fallen into the water?

24 A. I think that somebody was kind of, like, pushing
25 him down. But I was still getting closer, but I was

1 basically walking.

2 Q. As you got closer, what did you see next?

3 A. As I was getting closer I saw that somebody
4 started bleeding.

5 Q. What do you remember next?

6 A. Then I saw -- well, Nic was kind of standing up.
7 I was over here, he was to my left, and I --

8 THE INTERPRETER: May interpreter -- oh.

9 A. And I believe a woman came over towards him to
10 hit him.

11 Q. (By Mr. Nelson, continuing) And then what did
12 you see?

13 A. Nic responded. He defended himself. There were
14 many people around, and what I saw was -- happened really
15 quickly, really fast. And I think later I went to where
16 Nic was or I got to where Nic was.

17 Q. And when you got to where Nic was, what did you
18 do or what did you see?

19 A. I only saw that he was -- I think he had gotten
20 up. I touch his arm, but at that moment there was a lot
21 of blood right in front of me, blood that belonged to the
22 other people. That happened very quickly. I'm just
23 trying to say what I remember the most. So we -- we went
24 back.

25 Q. Was it hard for you to make sense of what you

1 were seeing and what was happening?

2 A. Yes. It was very fast. There were many people
3 around, there was a big disturbance, and it was a little
4 difficult to assimilate or -- what had happened or to let
5 it sink in.

6 Q. Are you able now, after some time, to pick out
7 every detail, or do you just remember what you've said?

8 A. No, I only remember that, what I am telling you
9 now because some -- some time already went by.

10 So we walked back --

11 MR. ANDERSON: Objection. Objection. There's no
12 question.

13 THE COURT: Please wait.

14 Question, please.

15 Q. (By Mr. Nelson, continuing) What happened next?

16 A. Can I continue?

17 THE COURT: Yes, you may.

18 A. When we started walking back in -- in -- in the
19 direction towards the group, straight towards the group, I
20 was on the left side, Nic was on the right side, and at
21 that moment when we had walked a little I see that on the
22 other side of the river it was -- was the young man with
23 the injury to his stomach. He was shouting, Look what you
24 did to me. He was kind of yelling or shouting at Nic.
25 And at that moment the young guy fell to the water.

1 So we continued walking and I was -- I kept
2 going towards the group and Nic kept going to the other
3 side of the river. Straight.

4 Q. (By Mr. Nelson, continuing) Did you see Nic do
5 anything at the other side of the river?

6 A. I did not keep an eye on him because I went to
7 see my girlfriend.

8 Q. Did you see Nic -- did Nic join you back at the
9 tubes where your group of friends were?

10 A. Yes.

11 Q. At some other point when you're walking back to
12 the tubes, did anybody yell or scream or run up near where
13 you were?

14 A. There were many people running and -- and
15 screaming. They -- some people came towards the group but
16 they didn't get too close. I don't remember what they --
17 they were just yelling and screaming and I don't remember
18 what they were saying.

19 Q. Did you respond to them in any way?

20 A. No, I did not.

21 Q. Did you -- did you see Ernesto or Sergio or Nic
22 or anyone else from your group respond to them in any way?

23 A. No.

24 Q. When you were back at the tubes, I want to ask
25 you questions about that, okay. Did you get a chance to

1 kind of make some observations of Nic? Did you see him?

2 A. Yes, somewhat.

3 Q. What did he look like?

4 A. He looked like kind of scared, pale.

5 MR. NELSON: Those are the only questions I have.

6 Thank you.

7 THE COURT: Mr. Anderson.

8 CROSS-EXAMINATION

9 BY MR. ANDERSON:

10 Q. Ariel, is it fair you're pretty uncomfortable
11 testifying here today?

12 A. No.

13 Q. You -- you don't -- you're -- you're comfortable
14 up there on the stand?

15 A. I don't understand your question.

16 Q. Ernesto is your uncle?

17 A. My cousin.

18 Q. Cousin. Okay.

19 And he's best friends with Nic?

20 A. Yes.

21 Q. Are you friends with Nic or do you just know Nic
22 through Ernesto?

23 A. It could be said that we're friends. Not close
24 friends but kind of friends.

25 Q. I wanna walk through your testimony. So you saw

1 the young guys, the boys, knock the goggles out of Nic's
2 hands?

3 A. That's what I was able to distinguish. That's
4 the first thing that I distinguished.

5 Q. And you were -- were you -- were you already
6 walking towards Nic when you saw that?

7 INTERPRETER DIAZ: Could you please repeat the
8 question?

9 Q. (By Mr. Anderson, continuing) Were you already
10 walking towards Nic when you saw that?

11 A. Yes, I was starting to walk.

12 Q. And the ki -- the young guys were still in their
13 tubes, right?

14 A. Oh, I cannot answer that. I don't know. I don't
15 remember. I think they were standing up around Nic, I
16 think.

17 Q. So they are standing around Nic and they knocked
18 his goggles out of his hands as you were walking up?

19 A. Yes.

20 Q. Did you see Nic run up to those young guys before
21 that happened?

22 A. I really didn't, no.

23 Q. Okay. So the next -- what -- what was the next
24 thing you saw?

25 A. Well, like I said before, I wasn't paying too

1 much attention because I thought they were just playing
2 with him, they -- they were just bullying him.

3 Q. But you're already walking over there because you
4 thought he was in trouble, right?

5 A. Yes.

6 Q. So you didn't think it was -- they were just
7 playing, you already were worried about him?

8 A. When I was getting closer, yes, because I saw
9 that they were hitting him, but there were many people
10 around him.

11 Q. But why were you walking there if you weren't
12 worried about him until you saw him getting hit?

13 A. It was the way that I reacted because I was
14 nervous.

15 Q. About what?

16 A. Because of what was happening.

17 Q. What was happening that made you start walking
18 over there before you saw his knock -- goggles get knocked
19 out?

20 A. I don't understand your question. Before that
21 happened I had not seen anything.

22 Q. You said you were walking over, and as you're
23 walking over you saw the goggles get knocked out of his
24 hand, right?

25 A. Yes.

1 Q. And you were walking over there because you were
2 worried about Nic, right?

3 A. Yes.

4 Q. What happened before the goggles that made you
5 start walking over there?

6 A. (No response.)

7 Q. Did you see anything that happened before that?

8 A. I started to walking all -- in that direction
9 when his wife said that he was in trouble.

10 Q. Okay. So his wife said he's in trouble, you
11 start walking there, and you see his goggles knocked --
12 knocked out of his hands while they're all standing up.
13 What did you see next?

14 A. After they took the goggles from him they -- it
15 was kind of like they were starting to hit him, to give
16 him blows.

17 Q. And you said several people before. Does that
18 mean three? Four? Five?

19 Okay?

20 A. No, I can't answer that. I don't remember how
21 many people.

22 Q. And are you far away and still walking there at
23 this point?

24 A. Yes, I was still far away.

25 Q. Okay. But were you closer than when you saw the

1 goggles get knocked off?

2 A. That was at the beginning when I had just started
3 walking.

4 Q. When people were hitting Nic, what kind of
5 strikes were they? What do you remember?

6 A. Well, like slapping him with the hands.

7 Q. Was -- was he standing or what was he doing?

8 A. He was standing.

9 Q. Okay. And then what happened? What do you --
10 what do you remember next?

11 A. Well, somebody knocked him down.

12 Q. Okay. And then you said he got up and defended
13 himself?

14 A. Well, that's what I saw next. What I was able to
15 see with all the people that were there.

16 Q. What do you mean he defended himself? What did
17 you see?

18 A. I saw that -- can you repeat the question,
19 please?

20 Q. You said you saw him defend himself. What did
21 you see?

22 A. I saw that when he defended himself -- well, it's
23 because this happened so quickly I really can't tell
24 exactly when it happened. When I was closer I saw that
25 a -- a girl went to attack him and he defended himself, he

1 responded.

2 Q. How?

3 A. Well, I think that with his hands, but it
4 happened so quickly.

5 Q. Then what happened?

6 A. When I got closer I started to see the blood
7 basically everywhere. And at that moment I went and
8 touched Nic on his arm. But it happened very quickly.

9 Q. Ariel, did somebody tell you to say these things?

10 A. What do you mean? Who's gonna tell me? That's
11 what I remember, what I lived, what I saw.

12 MR. ANDERSON: Can I have Exhibit 71?

13 MR. NELSON: What's the -- sorry, can I just see
14 that, Mr. Anderson?

15 Q. (By Mr. Anderson, continuing) Ariel, Nic's the
16 one who told you about the goggles, you didn't actually
17 see that, right?

18 A. Can you please repeat the question? I was not
19 able to hear well.

20 Q. Nic told you somebody knocked the goggles off,
21 you didn't actually see that, right?

22 A. No, nobody told me that.

23 Q. Can you turn to Page 18 in that transcript?

24 INTERPRETER MARIN: For the interpreter, did you
25 say 18 or 19?

1 MR. ANDERSON: 18.

2 Q. (By Mr. Anderson, continuing) You said on Page
3 18, towards the bottom, Well, we couldn't really see
4 because there was a lot of people, right?

5 A. Yes.

6 Q. And then on Page 19 you said, He thought they
7 took off his mask and snorkel.

8 MR. NELSON: Objection. That's --

9 MR. ANDERSON: Grounds?

10 MR. NELSON: Objection.

11 THE COURT: Wait. Wait. Wait. Wait a second.

12 MR. NELSON: Objection. I just move for the
13 admission of Page 19 of Exhibit 71, let's publish it and
14 see what it really says so --

15 THE COURT: I mean, he's entitled to present his
16 evidence the way he chooses. Overruled.

17 Mr. Anderson.

18 Q. (By Mr. Anderson, continuing) On -- on the
19 bottom of Page 19 you said, He thought they took his mask
20 and snorkel off. Do you see that?

21 A. I don't understand your question or where you're
22 trying to tell me.

23 Q. Actually, you're right, I was misreading that.
24 Sorry.

25 Can you turn to Page 20. And do you --

1 I'll just let you look over it quickly.

2 A. Okay.

3 Q. You talk about what you're seeing as you're
4 walking up kind of like today, agreed? Right?

5 A. Yes.

6 Q. Okay. And then on Page 21 -- actually, go back
7 to Page 20.

8 You never said he got knocked down and
9 attacked a girl when he got back -- or a girl attacked him
10 when he got back up, right?

11 A. Can you repeat? I didn't -- did not understand
12 the interpreter.

13 Q. You told the police that you saw the goggles get
14 knocked out of his hands?

15 A. Yes.

16 Q. You -- you said people were hitting him?

17 A. Yes.

18 Q. You never said anything about him getting knocked
19 down and then getting up and a girl trying to attack him,
20 right?

21 A. Yes, I said that they were hitting him.

22 Q. You said -- the description you gave was they --
23 they started beating him, women as well -- as well as men.
24 That's the description you gave, right?

25 A. Yes.

1 Q. And then you said -- you told law enforcement you
2 never got close to Nic?

3 A. Yes, I said that.

4 Q. And when law enforcement were talking to you, you
5 said you got about here to -- you pointed to a house
6 across the street, right?

7 A. I think it was farther.

8 Q. Your -- so you -- you test -- you testified
9 earlier you got up and touched Nic's shoulder, right?

10 A. Yes.

11 Q. But when you spoke with police you said you never
12 got close to him, you said the closest you got was -- and
13 you pointed to a house across the street, but that's the
14 closest you got to him, right?

15 A. No, I did tell them that I had gotten closer to
16 him but I do not remember if I had got in close to him or
17 not. And so the police show me a picture showing me that
18 I had actually gotten close to him. Like I said,
19 everything happened so quickly. Even now it's been
20 difficult to realize how every -- everything happened.

21 Q. Police asked you, Did you get -- stop close to
22 Nic? And you said, No, because I didn't get to Nic from
23 here to the other house. You never came close to Nic?
24 Not close, close. Right?

25 A. I told them that I had not got any -- come close

1 or too close to -- to him, but I don't remember the
2 distance.

3 Q. Then you said, No, I didn't get to maybe from
4 here to that other house, and you pointed to a house
5 across the street, right?

6 MR. NELSON: Objection. Asked and answered.
7 Cumulative.

8 THE COURT: Sustained.

9 Q. (By Mr. Anderson, continuing) And then you say
10 once you get close to him, that's when he started running,
11 right?

12 A. No, I don't remember saying that.

13 Q. Look at -- can you turn to Page 24? You were
14 asked, Are you close to him? Look, you're together right
15 there with him, right?

16 A. Yes.

17 Q. And that's -- that's because you said you never
18 got close so police showed you a photo of you touching his
19 shoulder, right?

20 A. Yes.

21 Q. And then you said, But that was when he started
22 running by then?

23 A. I really don't remember.

24 Q. It's in the transcript, right?

25 A. Maybe.

1 Q. Do you see it?

2 A. I don't remember that he was running.

3 Q. But that's what you said?

4 A. Yes, I said that, but I don't remember well.

5 Q. And you told law enforcement you never saw Nic do
6 anything to anyone, right?

7 A. At some point I -- yes, I did say that he had
8 done nothing, but I did see that he was defending himself.

9 Q. When you were shown a picture of Nic with a knife
10 you said, I never sat -- I never saw that, right?

11 A. Yes.

12 MR. ANDERSON: I'm going to show some stills,
13 Judge.

14 THE COURT: How much more do you have?

15 MR. ANDERSON: I'm almost done. Well --

16 THE COURT: You're almost done?

17 MR. ANDERSON: Do you want to --

18 THE COURT: I'd like to get through this witness
19 before breaking.

20 MR. ANDERSON: Gotcha. That's what I was
21 wondering.

22 I'll let the clerk know when I'm ready.

23 Can we have the monitor?

24 Q. (By Mr. Anderson, continuing) Ariel, that's you
25 in the background, right, on 2864?

1 A. Where?

2 Q. Right here.

3 A. Oh, yes.

4 Q. I'm gonna scroll.

5 And police --

6 MR. ANDERSON: I stopped on 3032.

7 Q. (By Mr. Anderson, continuing) Police showed you
8 this and asked you about it and you said you never saw any
9 of that, right?

10 A. No, I told them that I did not remember getting
11 there.

12 Q. So when you're really far away on your way there,
13 you see the goggles get knocked out of his hands, right?

14 A. Your --

15 INTERPRETER MARIN: The interpreter needs
16 repetition.

17 A. Yes, that's what I could distinguish or could
18 I -- that's -- that's what I could see.

19 Q. (By Mr. Anderson, continuing) And then as you're
20 getting closer to him, those other -- you start to see
21 other things happening, right?

22 A. I had mentioned that he was getting victim.

23 Q. But then when police asked you about what
24 happened when you're there, you said you didn't see any of
25 that, correct?

1 A. Yes, I did not remember that I had gotten there.

2 Q. You forgot about that?

3 A. Because of what I lived, I did not remember
4 exactly what had happened. Because of what I went
5 through.

6 Q. Nicolae never yelled help, right?

7 A. We never heard. We were too far.

8 Q. Even when Nicolae came right next to you he
9 didn't say anything to you, he didn't say help?

10 A. No, he never spoke to me. He never talked to me.

11 Q. He never said we need to get out of here?

12 A. As far as I remember we didn't talk, we just
13 started walking.

14 Q. Well, Nicolae walked off first, right, and you
15 stayed there?

16 A. I don't remember well.

17 MR. ANDERSON: Can we have the monitor again?

18 THE COURT: Why don't we take a break.

19 We're going to take about a ten-minute
20 recess.

21 Please take the jury out.

22 (Whereupon, the jury exits the courtroom.)

23 THE COURT: Let's come back at 3:15.

24 (Whereupon, a break was held.)

25 (Whereupon, the jury enters the courtroom.)

1 THE COURT: Mr. Chaguez, please retake the
2 witness stand. You are still under oath.

3 Mr. Anderson.

4 Q. (By Mr. Anderson, continuing) Do you remember
5 the officer asking -- or -- that if it was this attack,
6 why didn't you run? You didn't look afraid. Do you
7 remember that question?

8 A. Yes.

9 Q. And you said, We didn't know what was happening.
10 Right?

11 A. (No response.)

12 Q. I'll read the question --

13 INTERPRETER MARIN: The interpreter needs a
14 repetition of the answer. She was not able to hear.

15 MR. ANDERSON: Oh.

16 A. Can you repeat the question?

17 Q. (By Mr. Anderson, continuing) The officer asked,
18 You walked on one side but you never ran as if you were
19 afraid. Like the others in the other two groups, they
20 ran, they were afraid, but you didn't run, you didn't look
21 so afraid, either did your group. And -- and you
22 responded, We didn't know what was happening. Right?

23 A. I don't remember having said that.

24 Q. It's in the transcript on Page 31, right, that
25 you did in fact say that? I'll show ya, just to speed it

1 up.

2 MR. ANDERSON: May I approach?

3 A. My question is are you talking about after the
4 problem or before? I don't understand your question.

5 Q. (By Mr. Anderson, continuing) You didn't tell
6 the officer you didn't understand, right?

7 INTERPRETER DIAZ: Could you repeat the question?
8 We couldn't hear you.

9 Q. You didn't tell the officer he didn't understand
10 the question.

11 A. I don't understand your question. You're first
12 asking me one thing and then another thing. Could you
13 please be more specific?

14 Q. I'll move on.

15 You were watching the trial and the
16 testimony of Ernesto while out in the hallway, right?

17 A. No.

18 Q. Were you sitting on the bench with the other
19 Spanish-speaking witnesses while Rosie was playing the
20 trial with the volume on?

21 A. I was on the other side.

22 Q. Were you told by Defense that you're not allowed
23 to watch the trial?

24 A. Yes.

25 MR. ANDERSON: Nothing else.

1 THE COURT: Mr. Nelson.

2 MR. NELSON: Judge, I'd move for the admission of
3 Exhibit 71, Pages 18 through 24, for 908.01(4)(a)(c).

4 THE COURT: Any objection?

5 MR. ANDERSON: Yes. I don't object to admitting
6 parts we've gone over.

7 THE COURT: Okay. It's Number 71?

8 MR. NELSON: Exhibit 71, those pages, 18 through
9 24.

10 THE COURT: All right. I'll receive the exhibit,
11 the pages referenced, for purpose of impeachment.

12 MR. NELSON: Permission to publish those pages.

13 THE COURT: Yes.

14 MR. ANDERSON: Judge, I guess I just move to
15 admit all the transcripts then.

16 THE COURT: Well, it's not your turn, it's his
17 so --

18 MR. ANDERSON: Sure. Sorry.

19 THE COURT: You can wait.

20 MR. NELSON: I should have turned it on. That's
21 my user error.

22 REDIRECT EXAMINATION

23 BY MR. NELSON:

24 Q. Ariel, you were asked a lot of questions about a
25 transcript.

1 A. Yes.

2 Q. I'm gonna go through Pages 18 through 24 of that
3 transcript as quick as we can, okay? Is it up on the
4 screen there? Can you see it?

5 A. Yes.

6 Q. On Page 18 did you say, We all looked over there
7 and we saw a lot. There were two groups in front of us?

8 A. Yes.

9 Q. Did you say you couldn't really see what was
10 happening?

11 A. Yes.

12 Q. Did you say you couldn't see because there was a
13 lot of people and then -- so then you got a little closer?

14 A. Yes.

15 Q. Did you tell them, It was like they were bullying
16 him, something like that?

17 A. Yes.

18 Q. Did you tell them, They took off his snorkel and
19 that stuff?

20 A. Yes.

21 Q. Did you tell them that they were pushing him and
22 that there were a lot of people?

23 A. Yes.

24 Q. Did they ask you more questions about the snorkel
25 and you said, Ah, no, I saw that they took it off of him?

1 A. No.

2 Q. Did you say the words, I saw that they took it
3 off him?

4 A. Yes.

5 Q. And then they asked you to explain, and did you
6 say, From his hand or they took it from him or they took
7 it out of his hand or something like that?

8 A. From his hands.

9 Q. You said the words that are on Page 20 of this
10 document?

11 A. Yes.

12 Q. You told them, They pushed him, he fell, he fell?

13 A. Yes.

14 Q. You told them, He got up and they started beating
15 him, women as well as men. Were those your words?

16 A. Yes. Yes.

17 Q. They asked, Everyone was hitting him from what
18 you could tell? And you said, Uh-huh?

19 A. Yes.

20 Q. You told them you weren't able to see so you kept
21 walking up there and that's when you stopped?

22 A. Yes.

23 Q. And you said you -- you saw that he was running
24 away. That's what you initially told them, correct?

25 INTERPRETER MARIN: Could you please repeat for

1 the interpreters?

2 MR. NELSON: Sure.

3 Q. (By Mr. Nelson, continuing) You initially told
4 the police on August 2nd, on Page 22, in this line, that
5 you saw that he, meaning Nic Miu, was running away from
6 there?

7 A. I don't remember if I said that. I don't
8 understand the question that was asked of me there.

9 Q. Okay. And is that probably why you formed it
10 with a question afterwards when you made that statement?

11 A. Perhaps.

12 Q. You said, I only saw that they were beating him?

13 A. I did say that.

14 Q. And then eventually the police showed you a
15 picture, is that right?

16 A. Yes.

17 Q. And it was a picture of you standing next to Nic
18 on July 30th, 2022, when he was -- had the knife in his
19 hand, agreed?

20 A. Yes.

21 Q. And that picture refreshed your memory as to
22 where you were and --

23 MR. ANDERSON: Objection. Leading, Judge.

24 THE COURT: Sustained.

25 Q. (By Mr. Nelson, continuing) Did that picture

1 help you remember things that you hadn't remembered
2 before?

3 A. Somewhat, yes.

4 Q. Nevertheless, even when you saw the picture you
5 said you didn't see him with the knife?

6 INTERPRETER MARIN: Repeat that last question.

7 A. I was never able to see him with a knife.

8 Q. (By Mr. Nelson, continuing) You were asked some
9 questions about some slides. Do you remember the slides
10 that they showed where they kind of moved it along?

11 A. You're asking me if I saw the picture?

12 Q. Today, when this man was asking you questions,
13 they put up on the screen the time when you were walking
14 towards Nic, and I want to ask you about what you remember
15 from that. Does that make sense?

16 A. Yes, a little.

17 Q. When you spoke with the police you told them, He
18 got up and they started beating him, women as well as men,
19 is that right?

20 A. Yes.

21 Q. And then today in your testimony you said, When
22 closer I saw a girl went to attack him and he defended
23 himself. I think that it was with his hands, but it
24 happened too quickly. That's what you said earlier today?

25 A. Yes.

1 Q. When we watched the -- the pictures today where
2 you were walking up, is that what you were describing, the
3 woman in that photo going towards Nic, went to attack him,
4 you --

5 MR. ANDERSON: Objection. Leading, Judge.

6 THE COURT: Sustained.

7 Q. (By Mr. Nelson, continuing) Did you see some
8 photos today?

9 A. (No response.)

10 Q. I'll show them to you. Let's do that.

11 MR. NELSON: Can I have the screen, please?

12 Q. (By Mr. Nelson, continuing) Do you see the slide
13 that I have up on the screen there, sir?

14 A. Yes.

15 Q. Is that you in the red shorts, the red, white,
16 and blue shorts?

17 A. Yes.

18 Q. I want to show you a section of slides here and
19 then ask you a question about them, okay?

20 A. Okay.

21 Q. Starting at 2529. I'll move through them.

22 Stopping at 2859. Is that you again in the
23 shorts?

24 A. Yes. Yes.

25 Q. I'm stopping at 2949. Is that you up in the

1 corner there that we can see the shirt with the glasses?

2 A. Yes.

3 Q. Do you see that there's a girl there in front of
4 the view here, which would be in front of you?

5 A. Can the interpreter repeat?

6 Yes.

7 Q. Is this the girl that you saw attack Nic Miu?

8 MR. ANDERSON: Objection. Leading. I think he
9 could ask if that was covered in that frames.

10 THE COURT: Overruled or -- overruled.

11 You can answer.

12 A. I don't remember if it was her.

13 MR. NELSON: That's all.

14 THE COURT: Mr. Anderson.

15 MR. ANDERSON: Judge, I'd ask to publish some
16 more pages of it, and I would propose I'd just read it for
17 the sake of brevity or I can go through it again with him
18 like Attorney Nelson did.

19 THE COURT: Any objection to the admission of the
20 rest of the pages?

21 INTERPRETER MARIN: Mr. Anderson, the
22 interpreters are not able to hear you.

23 MR. ANDERSON: I move to admit the whole
24 transcript.

25 THE COURT: Any objection to the rest of the

1 pages of Exhibit 71?

2 MR. NELSON: Yes. I don't have an objection to
3 the pages that were covered during the cross-examination.
4 And if those pages are admitted, I have no objection to
5 them being published on the ELMO now or at a later time.

6 THE COURT: What portions do you want to publish?

7 MR. ANDERSON: So I think up to 21 was entered.

8 I --

9 THE COURT: 24.

10 MR. ANDERSON: Up to -- then the rest of it. Up
11 to Page 38 they cover the same topics that had been --
12 actually, Page 40 they cover all the same topics that
13 we've been covering on direct and cross.

14 MR. NELSON: He was not asked questions about the
15 Page 25 through 40.

16 MR. ANDERSON: So I can do that now.

17 THE COURT: I -- I -- honestly, I was not keeping
18 track of what pages you were looking at, so I'm not in a
19 good position to say yes or no to specific pages. And I
20 don't have a copy of the transcript, so I'm at a
21 disadvantage.

22 MR. ANDERSON: Can we approach?

23 THE COURT: Yes.

24 (Whereupon, a discussion was held at the bench.)

25 THE COURT: All right. The objection's

1 overruled. I will receive the portions referenced by Mr.
2 Anderson. I think in total it's going to be Pages 18
3 through 40?

4 MR. ANDERSON: Yes.

5 THE COURT: All right. You may proceed.

6 RECROSS-EXAMINATION

7 BY MR. ANDERSON:

8 Q. So when you spoke with the officer, you said Nic
9 walked up to you, walked over, and then you saw people
10 bleeding, right?

11 A. Yes.

12 Q. You didn't talk about seeing anything else, you
13 didn't talk about seeing Nic do anything?

14 A. No.

15 Q. And when you -- law enforcement confronted you
16 with the photo of being right there, you still denied
17 seeing anything from when you were up close?

18 A. Okay.

19 Q. Yes or no?

20 A. Repeat the question.

21 Q. You told the officer you didn't get close enough
22 to see what Nic was doing, right?

23 MR. NELSON: Objection. Asked and answered.

24 THE COURT: Overruled.

25 Q. (By Mr. Anderson, continuing) Right?

1 A. At some point, yes.

2 Q. And then the officer showed you the photo of you
3 touching Nic, right?

4 A. Yes.

5 Q. And you still denied seeing and doing anything?

6 A. I still not understanding your question.

7 MR. NELSON: Judge, I have no objection to
8 publishing Page 24, which has already been published,
9 which is the exact response that he gives.

10 Q. (By Mr. Anderson, continuing) You never tell
11 police that you saw Nic defend himself, right?

12 A. I don't remember that day, no.

13 Q. Did you ever use the word defend at all in your
14 entire interview?

15 A. To defend himself? I don't remember. It's been
16 a long time.

17 Q. Today you remember seeing him de -- saying you
18 saw him defend himself?

19 A. Yes. Yes, a little.

20 Q. That's the first time you ever said that?

21 A. I said, when you asked me, that I saw that he was
22 defending himself. But that it happened so quickly.
23 There were many people around.

24 Q. Is your better -- memory better now than it was
25 two years ago when you were interviewed?

1 A. I remember a little I -- I said because of the
2 picture that was shown to me.

3 Q. I want to -- I want to show Page 28.

4 MR. ANDERSON: Do you have the transcript?

5 May I publish Page 28, Judge?

6 THE COURT: Yes.

7 Q. (By Mr. Anderson, continuing) You were asked,
8 You never spoke to, not with, amongst yourselves, as
9 friends, cousins, wife?

10 INTERPRETER MARIN: Mr. Anderson, the
11 interpreters are not able to hear you.

12 MR. ANDERSON: Sure.

13 Q. (By Mr. Anderson, continuing) You were asked if
14 you ever spoke amongst yourselves or with Nic about what
15 happened and you said --

16 A. No.

17 Q. -- it's just that we don't know because we didn't
18 see anything. We can't say, oh, something happened,
19 right, we didn't see anything.

20 A. (No response.)

21 Q. Right?

22 A. If I said that it's because we had not seen what
23 had happened very well.

24 Q. And you -- you saw Nic getting attacked by all
25 these people and you -- nobody came after you, did they?

1 A. No.

2 Q. And you --

3 A. No.

4 Q. -- you and Nic didn't run away, right?

5 MR. NELSON: Objection. Beyond the scope.

6 Repetitive. Cumulative.

7 THE COURT: Sustained.

8 MR. ANDERSON: I'll move on, Judge. I'm -- I'm
9 done.

10 Oh, I said I was done. Sorry.

11 THE COURT: Oh.

12 MR. ANDERSON: I didn't --

13 THE COURT: I thought you were moving on to
14 another topic. I'm sorry.

15 MR. ANDERSON: No.

16 THE COURT: Thank you, Mr. Chaguez. Your
17 testimony is finished. You may step down.

18 THE WITNESS: Thank you.

19 Can I go home or --

20 THE COURT: Yes, you may. Enjoy your weekend.

21 THE WITNESS: Thank you.

22 THE COURT: Goodbye.

23 (Whereupon, the witness is excused.)

24 THE COURT: Are there more witnesses who require
25 interpretation?

1 MR. NELSON: The Defense has no more witnesses
2 that require interpretation, no, Judge.

3 THE COURT: Mr. Anderson?

4 MR. ANDERSON: No more interpretation witnesses.

5 THE COURT: All right.

6 On behalf of our courts, Ms. Marin, Mr.
7 Diaz, thank you for yourself today.

8 INTERPRETER MARIN: Thank you, Your Honor. If I
9 may?

10 THE COURT: Yes, you may retrieve your device.

11 Mr. Anderson, do you have more witnesses?

12 MR. ANDERSON: Can we approach quick?

13 THE COURT: Yes.

14 (Whereupon, a discussion was held at the bench.)

15 THE COURT: Mr. Anderson.

16 MR. ANDERSON: State calls Amber Lind.

17 (Whereupon, the witness enters the courtroom.)

18 THE COURT: Ms. Lind, please come forward.

19 Please face the clerk, raise your right hand, she will
20 administer the oath.

21 AMBER LIND,
22 after having been first duly sworn on oath by the clerk,
23 testifies and says as follows:

24 THE WITNESS: Yes, I do.

25 THE COURT: Please have a seat in the witness

1 chair.

2 Mr. Anderson.

3 DIRECT EXAMINATION

4 BY MR. ANDERSON:

5 Q. Can you please state your name and spell your
6 last name?

7 A. Amber Lind, l-i-n-d.

8 Q. And how are you employed?

9 A. I am a forensic scientist in the DNA Analys --
10 Analysis Unit at the Wisconsin State Crime Lab in Madison.

11 Q. And how long have you been employed at the State
12 Crime Lab?

13 A. About 13 years.

14 Q. What do you -- what's your educational background
15 for your position?

16 A. I received a bachelor of science degree in
17 chemistry, with a emphasis in criminalistics and DNA
18 analysis.

19 Q. And have you received training specifically
20 related to DNA testing?

21 A. Yes, I have.

22 Q. And what -- what did you say your actual position
23 is?

24 A. I am a DNA analyst.

25 Q. What do you do in that position?

1 A. I examine evidence for the presence of biological
2 materials. I then attempt to develop a profile from those
3 D -- a DNA profile from those specimens. I would then
4 compare that to any known standards that are submitted to
5 the laboratory and write a report of my findings.

6 Q. And can you just, in a broader sense, what is
7 DNA?

8 A. DNA is the genetic material that is inherited
9 from parent to child. It controls how all living things
10 are made and gives us unique traits, such as our eye and
11 hair colors.

12 Q. And where is DNA found?

13 A. DNA is found in the nucleus in most cells of the
14 body, including white blood cells, skin -- skin cells,
15 hair roots.

16 Q. And are you able to do a pretest for certain
17 types of bodily fluids?

18 A. Yes, we are.

19 Q. And what kind of fluids?

20 A. We can do tests for blood, semen, and saliva.

21 Q. And what's the utility in doing those pretests?

22 A. That helps us to identify if there are any bodily
23 fluids on the item as a bodily fluid is more likely to
24 give us a DNA profile.

25 Q. And what's the difference between a bodily fluid

1 DNA versus touch DNA?

2 A. So DNA from the body fluid is going to be from
3 the blood cells or semen cells, and touch DNA is from the
4 skin cells. So it's left like when somebody comes in
5 contact with an item and they leave skin cells behind.

6 Q. So if I pick up this marker and you test it for
7 touch DNA, are you gonna find my DNA?

8 A. It's possible.

9 Q. Is it guaranteed?

10 A. No.

11 Q. Does it depend on a lot of factors?

12 A. Yes, it does.

13 Q. Such as if it's washed or submerged in water or
14 things like that?

15 A. Yes.

16 Q. Isn't it -- is -- is a person's DNA the same
17 throughout their entire body?

18 A. Yes, it is.

19 Q. And what makes DNA useful?

20 A. (No response.)

21 Q. Do you -- can people share DNA? Have the same
22 DNA?

23 A. Identical twins would have the same DNA.

24 Q. And so what are the procedures at the crime lab
25 when you receive an item of evidence?

1 A. So the item is taken in at the laboratory. One
2 of our evidence technicians will go through the
3 transmittal that's submitted with the items and they will
4 enter it all into our laboratory information management
5 system.

6 MR. ANDERSON: May I approach?

7 THE COURT: Yes.

8 Q. (By Mr. Anderson, continuing) I'm handing you
9 what's been marked as Exhibit 65. Can you identify that?

10 A. This is the transmittal of evidence that was
11 submitted for this case.

12 Q. And does it list the items that the lab received?

13 A. Yes, it does.

14 Q. And does it list the agency identifier number?

15 A. Yes.

16 Q. Does the lab then give it a new identifier
17 number?

18 A. Yes, we do.

19 Q. And does that document also identify the lab
20 numbers?

21 A. No, it does not.

22 Q. Or is that on a different document?

23 A. That's different.

24 Q. Okay. What's on Page -- and I -- let me ask
25 this: So does this say how the lab received the evidence?

1 A. No, it doesn't.

2 Q. Okay. And then Exhibit 66, what's that?

3 A. This is the laboratory's receipt of evidence.

4 Q. And what -- when is that generated?

5 A. That is generated when the items of evidence are
6 entered into our lab information system.

7 Q. And is there another receipt generated when the
8 items are returned from the lab to the submitting law
9 enforcement agency?

10 A. Yes, there is.

11 Q. And I -- I -- just to clarify, 65 is the receipt
12 of evidence for this case; 66 is the one the lab
13 generates -- sorry. 65 the transmittal; 66 the receipt
14 for the lab?

15 A. Correct.

16 Q. 67?

17 A. That is the list of items that are being released
18 back to the agency.

19 Q. Okay. So when -- after you're done testing it
20 you send it back to the agency and generate that document
21 for chain of custody?

22 A. Yes.

23 Q. And then Exhibit 19.

24 A. That is my report of my lab findings for this
25 case.

1 Q. And I'll just back up a little bit. So when you
2 run a DNA profile, is it always a single source or can it
3 be multiple source?

4 A. It can be DNA from multiple individuals.

5 Q. And is there a term you use for that?

6 A. We call that a mixture DNA profile.

7 Q. And how do you determine then if a person's DNA
8 is on a specific item of evidence?

9 A. We will compare the DNA profile that we obtain
10 from the evidence to a known DNA standard that is
11 submitted to the lab from an individual.

12 Q. And did you -- do you perform statistical
13 analysis on the profile you develop?

14 A. Yes, we do.

15 Q. And how do you evaluate the significance of the
16 profile?

17 A. If it is a single source profile, we are able to
18 determine how rare that profile would be in the general
19 population.

20 Q. Do you use computer software to help with that?

21 A. Yes, we do.

22 Q. And if you have DNA, can you say that this DNA is
23 from skin, this DNA is from blood, this DNA is from hair?

24 A. No, we can't.

25 Q. Are you able to determine how long DNA's been on

1 an item?

2 A. No.

3 Q. All right. Turning to the specifics of this
4 case, did you test some evidence items?

5 A. Yes.

6 Q. And what -- what items did you test?

7 A. I examined a pair of swim trunks; a knife; DNA
8 standards, hair and nails, that were reportedly recovered
9 from Isaac Michael Schuman; a buccal swab standard
10 reportedly recovered from Alexander James Martin; a buccal
11 swab standard reportedly recovered from Ryhley Lou Ann
12 Mattison; a buccal swab standard reportedly recovered from
13 Dante Austin Carlson; a buccal swab standard that was
14 reportedly recovered from Anthony Ernest Carlson; and a
15 Wisconsin State Crime Lab Bureau Medical Forensic Evidence
16 Collection Kit that was reportedly recovered from Nicolae
17 Miu.

18 Q. And for those, for Isaac Schuman, A.J. --
19 Alexander Martin, Ryhley Mattison, Dante Carlson, and
20 Anthony Carlson, were you able to develop DNA profiles?

21 A. Yes, I was.

22 Q. And did you make comparisons with those profiles
23 to swabbings from the knife?

24 A. Yes, I did.

25 Q. And are those swabbings, is that something that

1 you get from law enforcement or did you do those swabs?

2 A. I took the swabbings from the knife.

3 Q. What areas of the knife did you swab?

4 A. I swabbed the handle of the knife, the inside of
5 the handle where the -- the blade would fold into, I
6 swabbed a stain that I observed on the blade of the knife,
7 and I also swabbed the remainder of the blade of the
8 knife.

9 Q. And then did -- were you able to develop DNA
10 profiles from those swabbings of the knife?

11 A. Yes, I was.

12 Q. And were all of them or only some suitable for
13 comparison?

14 A. (No response.)

15 Q. I'll ask it a different way.

16 So let's talk about swabbings of the handle
17 of the knife. And for the lab identified as D1
18 (verbatim), right?

19 A. Yes, it is.

20 Q. Okay. And did you compare the -- or -- or -- and
21 the DNA profile for the handle of the knife, was that a
22 mixture or single profile?

23 A. That was a three-person mixture.

24 Q. And did you compare that to the profiles of
25 Isaac, Alexander, Ryhley, Dante, Anthony, and Nicolae?

1 A. Yes, I did.

2 Q. What was the result for the comparison to the DNA
3 profile for Isaac?

4 A. It was at least one quadrillion times more likely
5 to observe this DNA profile. It is a mixture of DNA from
6 Isaac Schuman and two unknown individuals than if it is a
7 mixture resulting from three unknown individuals.

8 Q. And so the conclusion is very strong support for
9 inclusion; meaning, that Isaac's DNA is included in that
10 mixture?

11 A. Correct.

12 Q. Does the lab ever say we never conclude it's a
13 match or his DNA is on this knife?

14 A. We don't say that it's this specific individual,
15 we will just provide the statistic on how likely it is
16 that that is their DNA.

17 Q. And does it have to be in a certain likelihood
18 threshold for you to say strong support for inclusion?

19 A. Yes, it does.

20 Q. And this is greater than -- what did you say the
21 likelihood ratio is?

22 A. It is at least one quadrillion times more likely.

23 Q. And then for Alexander Martin, were you able to
24 draw any conclusion?

25 A. The contribution of Alexander Martin's DNA is

1 uninformative. So we cannot make a conclusion regarding
2 inclusion or exclusion.

3 Q. And was that the same for Ryhley, Dante, Anthony,
4 and Nicolae?

5 A. Yes.

6 Q. And then swabbings from the inside of the knife
7 handle B2, did you compare that -- did you develop a
8 profile for that swabbing?

9 A. Yes, I did.

10 Q. Mixture again?

11 A. Yes.

12 Q. And did you compare that to Isaac's profile?

13 A. Yes, I did.

14 Q. And what was the result?

15 A. It is at least 320 billion times more likely to
16 observe the DNA profile if it is a mixture of DNA from
17 Isaac Schuman and three unknown individuals than if it is
18 a mixture of DNA from four unknown individuals.

19 Q. And so very strong support for inclusion?

20 A. Yes.

21 Q. And then what about for that knife handle did you
22 compare it to Dante Carlson?

23 A. Yes, I did.

24 Q. And what was the result?

25 A. It is at least 368,000 times more likely to

1 observe this DNA profile if it is a mixture resulting from
2 Dante Carlson and three unknown individuals than if it is
3 a mixture of four unknown individuals.

4 Q. So strong support for inclusion?

5 A. Yes.

6 Q. Were the compares -- did you compare the other
7 individuals for that swabbing also?

8 A. Yes, I did.

9 Q. And were they either exclusion or uninformative?

10 A. Yes, they were.

11 Q. And then the -- let me back up, I forgot to ask.

12 Before you took the DNA swabbings, did you
13 test the knife for blood?

14 A. I tested the stain that I observed on the blade.

15 Q. And what was the results?

16 A. It was a positive indication for blood.

17 Q. And did you develop a DNA profile for the stain?

18 A. Yes, I did.

19 Q. That's Item B3?

20 A. Yes.

21 THE REPORTER: Item?

22 MR. ANDERSON: B3.

23 Q. (By Mr. Anderson, continuing) And was there any
24 of those individual profiles you compared them to a strong
25 support for inclusion on the stain?

1 A. Yes.

2 Q. Who was that?

3 A. That was for Dante Carlson.

4 Q. And then the blade of the knife, Item B4, did you
5 develop a DNA profile?

6 A. Yes, I did.

7 Q. And was there comparing it to Isaac, Alexander,
8 Ryhley, Dante, Anthony, and Nicolae, were any of their
9 profiles very strong for support for inclusion on that
10 swabbing?

11 A. Yes, there was.

12 Q. And who were those?

13 A. That was for Isaac Schuman and Dante Carlson.

14 Q. So is it fair to summarize that of the people --
15 those six profiles you compared to the knife swabbings,
16 the two that had strong supports for inclusions in -- on
17 any of the swabs was Isaac Schuman and Dante Carlson?

18 A. Correct.

19 Q. Does that mean that the other individuals' DNA
20 wasn't on the knife?

21 A. It just means that it wasn't detected in the
22 samples that I had taken.

23 Q. And it not only not detected, but it -- it --
24 even if it was, it wasn't -- it didn't reach the threshold
25 where you would characterize it as a strong support for

1 inclusion?

2 A. Correct.

3 Q. And I forgot an exhibit here. Handing you what's
4 been marked as Exhibit 59. What is that?

5 A. This is my curriculum vitae.

6 Q. Fair it just summarizes your experience and
7 education to qualify you for your position?

8 A. Yes.

9 Q. I don't know if I -- if I asked, how long have
10 you been at the lab?

11 A. About 13 years.

12 Q. Okay. And for Nicolae, for all the swabbings you
13 did as compared to Nicolae's profile, was he ever
14 excluded? Looking at Exhibit 19.

15 A. He was uninformative for all of the swabbings
16 from the knife.

17 Q. Okay.

18 MR. ANDERSON: I don't have anything else.

19 THE COURT: Mr. Chirafisi.

20 CROSS-EXAMINATION

21 BY MR. CHIRAFISI:

22 Q. So, Ms. Lind, would you agree there's levels --
23 your lab uses levels of support in your determinations, is
24 that right?

25 A. Correct.

1 Q. So it's very strong, strong, moderate,
2 uninformative, and then it works backwards for exclusion,
3 right?

4 A. Correct.

5 Q. Okay. And you had mentioned on direct
6 examination there's different types of DNA that you
7 could -- that you're testing for; meaning, there's DNA in
8 blood, there's DNA in semen, and then there's touch DNA,
9 is that true?

10 A. Correct.

11 Q. Okay. And Attorney Anderson held up his Sharpie
12 there and said could my DNA be on this Sharpie that
13 I've -- that I've touched? And you said it could be. Is
14 that true?

15 A. Yes.

16 Q. Okay. Would the more that Attorney Anderson held
17 on to that Sharpie, the more he used it, make it more
18 likely that his touch DNA would be on there?

19 A. Yes, it would.

20 Q. So if it was something that he used in his -- in
21 his daily life and that he carried with him, is that
22 something that would make it more likely you would expect
23 to see either moderate, strong, or very strong support for
24 inclusion if you tested that?

25 A. Yes, it would.

1 Q. Okay. Now, you tested -- I just want to make
2 sure I have it right. You tested the handle of the knife
3 that was provided to you, is that right?

4 A. Correct.

5 Q. Okay. And your results, as it relates to Mr.
6 Miu, show uninformative, right?

7 A. Yes.

8 Q. Okay. And what -- tell me if this is fair: DNA
9 is -- I view it more -- you might disagree. You see me
10 touching this. If my DNA's not on there, that doesn't
11 mean I didn't touch it, right?

12 A. Correct.

13 Q. It just means my DNA's not there?

14 A. That it wasn't detected in our sampling, yes.

15 Q. Okay. But if my DNA is on here, you're
16 comfortable then saying if there's support for it that you
17 believe that I've made contact with this, right?

18 A. Correct.

19 Q. Okay. So I know you know nothing about this case
20 presumably in terms of factually, but there's information
21 that -- and there's photographs of subject -- of Mr. Miu
22 holding that knife. And there's information that it was
23 his personal knife, that he used it, he carried it with
24 him. Would that make it more likely then that his DNA
25 profile should show up on that -- on the handle of that

1 knife?

2 A. It would be more probable to find his DNA, yes.

3 Q. Okay. And you also tested -- is the -- is the
4 inside part of that just what it sounds like, there's two
5 sides to the knife. You view one as the outside and one
6 as the inside?

7 A. It was like the part where the blade would fold
8 in when the knife was folded up.

9 Q. So the blade folding up would be the inside?

10 A. It's like the chamber that --

11 Q. Okay.

12 A. -- it folds into.

13 Q. Okay. And you test that. That is also
14 uninformative for Mr. Miu even though it's something that
15 he possessed daily?

16 A. Correct.

17 Q. Okay. I want to ask you, if I can, a little bit
18 about Items -- what I think is Item H5 and H6. I just
19 want to make sure I understand it, okay. Skin-to-skin
20 contact swabs reportedly from the upper back and
21 skin-to-skin contact swabs reportedly from the lower back
22 of Mr. Miu, is that right?

23 A. Correct.

24 Q. Okay. So can you tell me what you believe you
25 received in terms of -- was it somebody running a buccal

1 swab over his back? Do you know how that was collected?

2 A. I do not know how it was collected.

3 Q. But are we on the same page that that's where it
4 reports to be?

5 A. It was labeled as a swabbing from the upper back
6 and a swabbing from the lower back.

7 Q. Of Mr. Miu?

8 A. Correct.

9 Q. Okay. And would it be fair then, one of the
10 things you're testing for in that situation would be touch
11 DNA, right?

12 A. Possibly, yes.

13 Q. Okay. And the lower back and upper back of Mr.
14 Miu said all other individuals with the standards that you
15 examined were excluded, is that right?

16 A. Correct.

17 Q. Okay. If I told you that there's photographic
18 evidence of at least two of these people that you received
19 samples for putting their hands on Mr. Miu's back with
20 their skin, skin-to-skin contact, are you saying that
21 it -- they just didn't leave enough DNA?

22 A. That is possible, yes.

23 Q. Okay. But you're not saying that it touched it?

24 A. No, I'm not.

25 Q. And because -- I guess I want to make sure I just

1 have it right. I only have a couple questions.

2 We've seen in this case what I told you
3 about, okay. We've seen physical contact between at least
4 two of these -- of these samples that you tested and Mr.
5 Miu's back. Do you know where they specifically swabbed
6 for the DNA?

7 A. I do not.

8 Q. So you just get it -- and that's not your -- you
9 don't make that determination, do you?

10 A. No.

11 Q. Okay. You just -- your -- you're given the
12 information from law enforcement, law enforcement makes
13 that decision, you just do the testing?

14 A. Correct.

15 Q. Okay. I didn't see -- can you tell me, I didn't
16 see a sample of Mr. Miu's -- of a DNA sample for Mr. Miu's
17 throat area. Do you see that?

18 A. No, I do not.

19 Q. To your knowledge, could have I -- is that any
20 different than anything else? Could you swab my neck to
21 see if there would be touch DNA there from one of these
22 people?

23 A. We can, yes.

24 Q. Okay.

25 MR. CHIRAFISI: Ms. Lind, thank you for your

1 time.

2 THE COURT: Mr. Anderson.

3 MR. ANDERSON: Can I get Exhibit 10? Exhibit 4.

4 Sorry.

5 REDIRECT EXAMINATION

6 BY MR. ANDERSON:

7 Q. So first of all, real quick before I ask you more
8 questions about it, is this the -- the knife you examined?

9 A. Yes, it is.

10 Q. How do you know that?

11 A. It has our lab case and item number on it?

12 Q. Okay. So this is what you swabbed yourself?

13 A. Correct.

14 Q. All the other swabs you got sent from the
15 sheriff's office?

16 A. The swabs from Mr. Miu, yes.

17 Q. Okay. And actually I should correct myself
18 because I believe the receipt -- does the receipt actually
19 show how you received the items?

20 A. They were delivered in person.

21 Q. By who?

22 A. A Sally Standaert.

23 Q. Okay. And the -- the questions from Defense
24 about there not being anyone else -- any other matches for
25 DNA from the swabs from Nicolae Miu's back, do you recall

1 that?

2 A. Yes.

3 Q. We know somebody touched his back, so is that an
4 example of just not being able to recover DNA?

5 A. That's possible, yes.

6 Q. Is touch DNA skin cells?

7 A. Yes.

8 Q. Or I suppose could it be sweat or something else
9 or is it just skin cells?

10 A. The DNA profile would be coming from the skin
11 cells left behind.

12 Q. And so if something washes the skin cells off the
13 surface of whatever you're testing, knife, some other
14 skin, or if there's just not enough of it, you're not able
15 to match, is the word probably most people use, but get a
16 strong support for inclusion?

17 A. If the DNA is washed off, then we would not
18 detect that DNA there.

19 MR. ANDERSON: Nothing else.

20 THE COURT: Mr. Chirafisi?

21 RECROSS-EXAMINATION

22 BY MR. CHIRAFISI:

23 Q. Is the -- if I touch another person, the more
24 force I use to touch that person would it make -- would it
25 make it more likely the D -- that my touch DNA would be

1 left behind?

2 A. That would be dependent on a lot of factors.

3 Q. Well, if I -- if I lay my hand on something for
4 the same amount of time, if I smack my hand on something,
5 is smacking my hand on something more likely to leave
6 touch DNA because of the force that I've used?

7 A. I don't really know if it would be more likely.

8 Q. Is it more likely if I grab something, more
9 likely to leave DNA than if I touch something?

10 A. If more of your hand is in contact with the item,
11 then yes.

12 Q. Okay. And the more often I do it too, right?

13 A. Correct.

14 Q. Okay. My last one or two questions, ma'am.
15 There was a question about washing DNA off and things like
16 that. Do you have any experience or do you have any
17 knowledge of what the -- the level of effort that has to
18 be used to do that?

19 A. No, I don't.

20 Q. So you don't know if I dropped something in -- in
21 a glass of water, whether or not that's gonna remove the
22 DNA that might be on that object versus if I'm, you know,
23 scrubbing it with soap, do you know the difference?

24 A. Scrubbing it would be a lot more likely to remove
25 the DNA.

1 Q. Okay. So if -- if I'm holding something and I
2 fall into the water and then get up and I'm still holding
3 that object, do you have any opinion as to whether or not
4 the likelihood of that DNA being removed from that water,
5 do you have any opinion on that?

6 A. I don't.

7 Q. Okay.

8 MR. CHIRAFISI: That's all I have, Judge.
9 Thanks.

10 THE COURT: All right.

11 Thank you, Ms. Lind. You are excused.

12 (Whereupon, the witness was excused.)

13 MR. ANDERSON: Judge, I move for the admission of
14 66, 19, 67, 65, and 59.

15 MR. CHIRAFISI: Before we go there, Judge, can I
16 just have one?

17 THE COURT: Yes.

18 (Whereupon, a discussion was held at the bench.)

19 MR. ANDERSON: So 19, I think we have an
20 agreement, is reserved.

21 THE COURT: All right. So I'll reserve a ruling
22 on 19 for further testimony.

23 No objection to 59, the resume?

24 MR. CHIRAFISI: No.

25 THE COURT: That's received.

1 The crime lab receipt, crime lab release,
2 Exhibit 66 and 67?

3 MR. CHIRAFISI: I -- I don't have an objection to
4 that.

5 THE COURT: All right. Both received.

6 Was there a fourth document?

7 MR. ANDERSON: Yes. It was the receipt, the
8 release, and the transmittal. Transmittal is 65.

9 THE COURT: Any objection?

10 MR. CHIRAFISI: I don't think so, Judge. Yeah,
11 no.

12 THE COURT: All right. 65 is received as well.

13 All right. Members of the jury, we are
14 going to adjourn for the weekend. I just wanna say a
15 thing or two before I let you go.

16 One of the cornerstones of our judicial
17 system is the oath. Judges take oaths, the attorneys took
18 an oath, you've seen the witnesses take oaths, and you
19 took one before we started your jury service.

20 In the juror's oath you promised to render
21 a true verdict according to law and facts in this case.
22 That is why I have emphasized at nearly every break the
23 importance of not conducting your own research, the
24 importance of not talking with others about the case, the
25 importance of not reading news reports or social media

1 accounts about this case. To protect the fairness and the
2 integrity of these proceedings, outside sources cannot be
3 used to influence your judgment in any way, shape, or
4 form.

5 The same rules are going to apply over the
6 weekend, but there won't be a judge and there won't be a
7 bailiff watching what you do. I still expect that you
8 follow the Court's rules to ensure that we have a true
9 verdict, and all there will be to ensure that is you and
10 the oath that you took.

11 So I'll leave you with that. Please enjoy
12 your weekend and come back rested Monday morning,
13 8:00 a.m.

14 Please take the jury out.

15 (Whereupon, the jury exits the courtroom.)

16 THE COURT: I just want to address a few
17 administrative things before we wrap up. We had a few
18 sidebars. One had to do with the character for
19 peacefulness. I think I sustained the State's objection
20 when Mr. Chaguez was on the witness stand regarding other
21 ways of describing his peacefulness, Mr. Miu's
22 peacefulness, but I did allow Mr. Nelson to get into Mr.
23 Miu's demeanor and things of that sort on the day in
24 question.

25 Mr. Nelson, if there's more you want to

1 add, you may do so.

2 MR. NELSON: Not regarding that specific topic on
3 --

4 THE COURT: Was there something else?

5 MR. NELSON: I believe at that -- during that
6 sidebar the State raised the issue that they might object
7 in the future to any other witnesses, and I think we were
8 punting it for another time and so I just -- we didn't
9 make any decisions other than we noted that there might be
10 future things to discuss.

11 THE COURT: Let me ask this: Do you have any
12 witnesses whose only testimony will be character for
13 peacefulness?

14 MR. NELSON: We have them on the witness list,
15 yes. We have not yet made a decision on whether --
16 whether that we're going to call them. So for now I would
17 say, yes, we do.

18 THE COURT: Okay.

19 MR. NELSON: We may reevaluate that over the
20 weekend.

21 THE COURT: Here's my sense: I'm not making a
22 ruling but I'm just giving you some idea of where the
23 winds are blowing. If we have a fact witness who is able
24 to testify to pertinent character traits, it may be a
25 repeat of earlier testimony, but I don't think it is

1 repetitive to the point where it has to be excluded. It's
2 not a huge waste of time to ask two questions. So if it's
3 a fact witness, I'll allow it to be presented even though
4 other witnesses have testified to character.

5 In my opinion, the usefulness of the
6 testimony is limited to the individual who's delivering
7 the opinion. So I think it makes sense to allow a little
8 broader perspective when asking witnesses about that
9 character trait.

10 If there are witnesses who are going to be
11 called for the sole purpose of testifying to that fact,
12 that may be a waste of time. So perhaps we can revisit it
13 on a later date depending on your re-evaluation.

14 MR. NELSON: Just -- yeah, I appreciate. I
15 disagree, but we'll deal with it later.

16 THE COURT: We'll deal with it later, right.

17 There was a sidebar about Exhibit 71 and
18 the additional pages coming in. Ultimately, I heard from
19 the attorneys, I allowed it to come in. Both sides
20 impeached and tried to rehabilitate the witness regarding
21 prior consistent and inconsistent statements, and although
22 it may have exceeded the scope of the redirect -- or
23 excuse me, the re-cross, I allowed it. I thought more so
24 for expediency than anything else.

25 If there's more you want to add, you may.

1 MR. NELSON: I did object for those reasons. My
2 concern is the admissibility of those pages that weren't
3 published or specifically referenced in cross-examination
4 going forward. I would object to the State being able to
5 make reference to that transcript since it wasn't
6 published, since the jury -- since the witness didn't get
7 an opportunity to be asked specifically about it.

8 So I understand Your Honor -- Your Honor's
9 ruling, I just -- going forward I don't think they just
10 get to read from that transcript if it wasn't --

11 THE COURT: Okay. And we can --

12 MR. NELSON: -- discussed.

13 THE COURT: -- take up that concern in the event
14 that it ever arises.

15 MR. NELSON: Sure.

16 THE COURT: Because we're not there at that --
17 this moment.

18 The bigger issue had to do with
19 interpreters. Over the lunch hour the attorneys met with
20 me in chambers to alert me about concerns that one or more
21 attorneys had about the accuracy of the Spanish
22 translation.

23 After some discussion I permitted the
24 attorneys to meet with both of the interpreters to talk
25 about their concerns and see what, if anything, could be

1 done about it. That was the reason for the lengthy delay
2 after the lunch hour.

3 The attorneys did meet the interpreters,
4 came back in, we had a sidebar. It sounded like the
5 concerns were addressed. I'm okay with the details but
6 I'll invite the attorneys to speak more about it since you
7 were party to the conversation with the interpreters.

8 MR. ANDERSON: I'll -- I'll defer to Attorney
9 Nelson.

10 MR. NELSON: Yes, Judge, we had concerns, we
11 brought them up in chambers, Your Honor encouraged us to
12 make a motion before Your Honor ruled on anything. Your
13 Honor encouraged us to solve it in some other way. We
14 spoke with interpreter. Based on that discussion, I was
15 confident going forward in the manner in which we did so
16 we did not make a motion.

17 THE COURT: All right. Is it fair to say that
18 there were some nuances that weren't being --

19 MR. NELSON: We --

20 THE COURT: -- reported?

21 MR. NELSON: -- it's my understanding that --
22 from the interpreter that I spoke with, that the witnesses
23 who spoke Spanish who were -- learned their Spanish or --
24 or in Cuba, that is for the interpreters sometimes more
25 difficult to understand. This is -- this is coming from a

1 non-Spanish speaking person so I might be screwing all
2 this up. I apologize. And that's -- that's where the
3 concern came up.

4 For us she acknowledged that that is a more
5 difficult task, and it sounds like they did the best they
6 could.

7 THE COURT: Mr. Anderson, do you have anything to
8 add?

9 MR. ANDERSON: And what was relayed is that they
10 helped each other out, so if one misses something they'll
11 -- the other one will say, oh, it's this too and -- it was
12 relayed to us that that's what they're doing. They're
13 both court certified.

14 I didn't notice any issues. I -- I did
15 notice some points where they -- one was chiming in with
16 the other one to elaborate so I think -- I don't -- I
17 don't have any concerns.

18 THE COURT: Was there more?

19 MR. ANDERSON: I also speak Spanish and I
20 thought -- I didn't notice anything. I -- the Court might
21 have noticed I kept having to catch myself, I'd start
22 answering the question before the translation, and I
23 thought the translations were fine.

24 THE COURT: From what I understand, court
25 interpretation is a very difficult and challenging skill.

1 Not all people who are bilingual can interpret in a
2 courtroom setting because of the technical words that are
3 used and the sequencing of language. So it is a technical
4 skill, it is a learned skill, and not a precise science.
5 So the meaning lost in interpretation has some meaning
6 here.

7 In any event, the attorneys are satisfied,
8 I'm satisfied that a complete and accurate record was made
9 today, and will close the books on that issue.

10 Is there anything else that we need to talk
11 about outside the presence of the jury before next week?
12 Mr. Anderson?

13 MR. ANDERSON: I don't think so.

14 THE COURT: Mr. Chirafisi?

15 MR. NELSON: Judge, there was a -- a witness that
16 we discussed in chambers. I --

17 MR. CHIRAFISI: Oh.

18 MR. NELSON: -- I want to just make sure that
19 that witness is available. There might be other
20 solutions, and we're open to those solutions, but until
21 then I ask that that -- sounds like the State's probably
22 not going to finish on Monday, it would be sometime on
23 Tuesday, I'm guessing but -- so we can take it up on
24 Monday. But as it stands right now we'd like that witness
25 to be available for the Defense to call on Tuesday.

1 THE COURT: Okay. This witness is under
2 subpoena?

3 MR. NELSON: Yes. It's -- they're under the
4 State's subpoena, yes, which Your Honor has previously
5 said is a court subpoena.

6 THE COURT: All right. So the way -- the way I
7 look at it right now is a witness under subpoena to
8 testify is expected and obligated to come to court and
9 testify. That's the rule.

10 If I'm being asked to do something
11 different, I need a motion and some authority to do
12 something different. But a subpoena is a subpoena and
13 everyone's expected to adhere to it.

14 All right. That concludes our business.
15 We are adjourned.

16 Oh, yes, make sure the clerk has all of the
17 exhibits and please make -- have the illustration on the
18 easel marked as an exhibit.

19 (Whereupon, Exhibit Number 87 was marked for
20 identification.)

21 THE COURT: Okay. So 87 is the illustration Mr.
22 Anderson created with -- which witness?

23 MR. ANDERSON: Ariel.

24 THE COURT: All right. That's all. We are
25 adjourned.

1 (The proceedings came to a close at this time.)

2 * * *

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

I, **VANESSA M. MELSTROM**, Official Court Reporter
for the State of Wisconsin, St. Croix County, hereby
certify that the foregoing is a true and accurate
transcript of the proceedings herein all done to the best
of my skill and ability.

Dated at Hudson, Wisconsin, this 10th day
of March, 2026.

/s/ Vanessa M. Melstrom

Vanessa M. Melstrom, RMR, CRR

Official Court Reporter - Branch 4

St. Croix County Government Center