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Circuit Court

St. Croix County, WI

2022CF000518

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

STATE OF WISCONSIN,

Plaintiff,

vs.

NICOLAE MIU,

Defendant.

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CASE NO: 22 CF 518

CASE TYPE:

CRIMINAL

PREPARED FOR:

ORIGINAL

Hudson, Wisconsin

April 9, 2024

BEFORE THE HONORABLE R. MICHAEL WATERMAN

REPORTER'S TRANSCRIPT OF PROCEEDINGS

JURY TRIAL - DAY 7

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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.

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Hudson, Wisconsin
April 9, 2024

P R O C E E D I N G S

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

(Whereupon, the jury enters the courtroom.)

THE COURT: All right. Good morning, everyone.
We are back on the record in State of Wisconsin versus
Nicolae Miu. The attorneys are present, Mr. Miu is
present, 14 jurors are present. We are ready to resume
testimony.

Mr. Smestad, who is the next witness?

MR. SMESTAD: We call Dr. Froloff.

(Whereupon, the witness enters the courtroom.)

THE COURT: Dr. Froloff, please come forward.

DR. FROLOFF: Thank you.

THE COURT: Please face the clerk, raise your
right hand, she will administer the oath.

DR. VICTOR FROLOFF,
after having been first duly sworn on oath by the clerk,
testifies and says as follows:

THE WITNESS: I do.

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

THE WITNESS: May I have a water, Your Honor?

1 THE COURT: Yes, you may.

2 THE WITNESS: Thank you.

3 THE COURT: Mr. Smestad.

4 DIRECT EXAMINATION

5 BY MR. SMESTAD:

6 Q. Will you state your name and spell your last
7 name, please?

8 A. My name is Victor Froloff. First name Victor,
9 v-i-c-t-o-r. Last name f-r-o-l-o-f-f.

10 Q. And what's your occupation?

11 A. I'm an Assistant Medical Examiner for Ramsey
12 County.

13 Q. And generally what --

14 THE COURT: Hold on.

15 Is there a phone? I hear music.

16 UNIDENTIFIED FEMALE: Yes, sorry.

17 THE COURT: Please turn --

18 UNIDENTIFIED FEMALE: I had it off and it -- for
19 some reason it's playing.

20 THE COURT: All right. Maybe you should step out
21 or --

22 UNIDENTIFIED FEMALE: Sorry.

23 THE COURT: -- look at it.

24 Again, it's amazed -- I am amazed that we
25 gotten this far in the trial without a cell phone, so I

1 compliment you all. But please make sure all devices are
2 turned off. They can be a distraction to the attorneys
3 and the witnesses during their important work.

4 Mr. Smestad.

5 Q. (By Mr. Smestad, continuing) Dr. Froloff, what
6 are your general duties as a medical examiner?

7 A. We have multiple duties. I was hired by Dr.
8 Mills to perform autopsy. Autopsy, it's a examination of
9 dead bodies. Of course we have to sign death certificates
10 when physician -- physician refuse to sign. We have
11 provocinations (verbatim) in the State of Minnesota, and
12 of course I have to do the autopsy. I have to express my
13 opinion about cause and manners of the death, and
14 sometimes I have to give my opinion about cause and
15 manners of death in the court.

16 Q. Are you occasionally asked by St. Croix County to
17 complete autopsies for deaths that are -- occur in St.
18 Croix County?

19 A. Yes. St. Croix County is our neighbors across
20 the river, so they usually send cases, complicated cases,
21 to us.

22 Q. How long have you been a medical examiner?

23 A. My official position, Assistant Medical Examiner,
24 I employed in this position for 19 years.

25 MR. SMESTAD: If I can approach, Your Honor?

1 THE COURT: Yes.

2 Q. (By Mr. Smestad, continuing) Doctor, I'm going
3 to show you what's been marked as Exhibit 61. Do you
4 recognize that document?

5 A. Yes. It's a -- Exhibit 61, it's a hard copy of
6 my CV.

7 Q. And by CV you -- you mean curriculum vitae?

8 A. That's correct.

9 Q. Does it set forth your credentials, training,
10 that type of thing?

11 A. Yes.

12 Q. Does it also set forth teaching jobs you've had
13 and publications that you've contributed to or wrote
14 yourself?

15 A. Yes.

16 Q. Can you base -- please just summarize your
17 education.

18 A. A physician for 39 years. I graduate medical
19 school. I did one year of internship in internal
20 medicine. I practice emergency medicine for many years.
21 And 30 years ago I immigrate to United States. Basically
22 I have to start all over. So I passed all my test. In
23 order -- I decided I like to do forensic pathology. In
24 order to do forensic pathology you need to do some
25 specialized training. I graduate from University of

1 Minnesota in pathology, and I did two fellowships in
2 Milwaukee, so I trained in Wisconsin. So it's medical
3 college of Wisconsin and Milwaukee County Medical Examiner
4 Office, and I get back to Minnesota.

5 Q. Have you been working at the Ramsey County
6 Medical Examiner's Office you said 19 years, has that been
7 continuously with Ramsey County?

8 A. Yeah. I don't work for Ramsey County, I work for
9 Dr. Mills, who's the Ramsey County medical examiner. She
10 hired me to perform autopsy. But yes, continuously for
11 19 years, yes.

12 Q. You have a general idea of how many autopsies
13 you've performed in that time?

14 A. I don't count autopsies anymore. It's over 4,000
15 autopsies, and now it's approximately right 300 autopsies
16 per year.

17 Q. Can you tell the jury what the field of pathology
18 entails, what's all involved with it?

19 A. Pathology, it's the branch of the medicine study.
20 Basically nature of the disease, such as cancer, for
21 example.

22 Q. And what's forensic pathology?

23 A. Forensic pathology and forensic pathologists use
24 medical knowledge in legal cases, cases unusual deaths,
25 unusual circumstance, and violent deaths.

1 Q. And are you licensed to practice medicine?

2 A. I have full tool and unrestricted licenses for
3 State of Minnesota and State of Wisconsin.

4 Q. And obviously is performing autopsies on folks
5 that have been killed, that's part of your duties?

6 A. Yes. We perform -- you know, we involved in
7 investigation, perform autopsy in homicidal deaths.

8 Q. For those who might not know, can you describe
9 what an autopsy is?

10 A. Autopsy, it's a complex procedure. First of all,
11 we like to know what happened with the body. Second, I
12 perform external examination. At the time of the external
13 examination we collect trace evidence: DNA, sexual
14 assault kit, some of the, you know, specimens if I have
15 to.

16 Then I perform internal examination of the
17 body. It's called evisceration. Basically, we open body,
18 we'll look for damage, we'll look for any type of
19 injuries, we'll look for diseases. At the same time I'm
20 taking photographs.

21 And then another large part of autopsy is
22 performing toxicology. At the time of the examination we
23 collect body fluids such as blood, bile. We'll collect
24 urine if it's available. We collect fluid from eyes
25 called vitreous humor, and I collect tissue samples for

1 toxicology, such as liver.

2 Q. Did you perform an autopsy on Isaac Schuman back
3 in 2022?

4 A. I perform autopsy on Isaac Schuman on July 31st,
5 2022, you're correct, yes.

6 Q. And you prepared reports regarding -- or did you
7 prepare reports regarding the autopsy that you completed
8 of Isaac Schuman?

9 A. Yes. We usually issue, like, provisional
10 reports, like my initial diagnosis, initial thinking,
11 without toxicologist the same day; and when I'm done with
12 full investigation and toxicology I sign a final autopsy
13 report.

14 MR. SMESTAD: If I can approach, Your Honor?

15 THE COURT: Yes.

16 MR. SMESTAD: Your Honor, if we could have a
17 minute here.

18 (Whereupon, a discussion was held off the record
19 between counsel.)

20 Q. (By Mr. Smestad, continuing) All right, Dr.
21 Froloff, I'm going to show you what's been marked as
22 Exhibit Number 60. Do you recognize that document?

23 A. Yes. Exhibit 60, it's, again, hard copy of my
24 Provisional Report.

25 Q. And is that the report you do before the

1 toxicology has come back?

2 A. That is correct.

3 Q. I'm going to show ya what's been marked as
4 Exhibit 17. I'll ask if you recognize that?

5 A. Exhibit 17, it's, again, a hard copy of my final
6 autopsy protocol.

7 Q. I'm going to ask you some questions about those
8 documents, doctor. When you did the autopsy of Isaac
9 Schuman, did you follow your normal autopsy protocol that
10 you described earlier?

11 A. Yes. We follow, you know, some general rules,
12 yes.

13 Q. Did you complete an external examination of his
14 body?

15 A. Yes.

16 Q. What findings did you make on the external
17 examination of his body?

18 A. Before start external -- external examination of
19 the body I just need to tell you that I got body from the
20 hospital. He was pronounced dead at the hospital. He had
21 a medical -- medical artifacts. He had a tube inside of
22 his oral cavity to help him to breath; he had two IV
23 lines, intravascular access, but it was inserted in his
24 bones; and he had multiple surgical impacting material
25 saturated with body; and I observed body on my table.

1 There was some blood present on his body, and I observed
2 sharp incision to his left chest.

3 Q. Did you take photographs during the external
4 examination of Isaac's body?

5 A. Yes, I did attempt to take, you know, many
6 photographs.

7 Q. All right. Did you complete an internal
8 examination of Isaac's body?

9 A. Yes.

10 Q. And is that part of the usual autopsy procedure?

11 A. Yes, you're correct.

12 Q. Can you summarize the results of your internal
13 examination of Isaac's body?

14 A. Sure. As I said, I observe -- most important I
15 observe sharp force injury to his left chest. Later I
16 classify this wound as a stab wound. Stab wound, it's --
17 it's a -- basically it's sharp force injury. Stab wound,
18 when -- when its depths of the wound exceeds length of the
19 wound on the skin.

20 So the stab to the left chest, the stab
21 wound penetrated his left chest cavity. He had a damage,
22 call it sharp force injury, to the -- to his fifth and
23 sixth ribs on the left chest cavity.

24 And then wound kind of continues and goes
25 to the left lung. I was able to identify sharp force

1 injury to lower lobe of the left lung. He had a blood in
2 his left -- left chest cavity. I recovered 200 cubic
3 centimeters. It's approximately glass of the blood in his
4 left chest cavity; and he had damage, sharp force injury,
5 to his pericardium. Pericardium, it's a cartilage kind of
6 like a sack around his heart. And he had a sharp force
7 injury to the apex of the heart. Apex, it's a pointy part
8 of the heart like -- that he had damage, sharp force
9 injury, to the left ventricle of the heart; and he had
10 condition -- and I didn't find this condition on the x-ray
11 I performed before autopsy. He had a condition called
12 pneumothorax. Pneumothorax is present of air in the chest
13 cavity.

14 So two condition: Pneumothorax, air, and
15 hemothorax present in the blood.

16 And his organs, midline organs, was kind of
17 shifted to the right. It's called deviation to the right.
18 It's because its collection was air in the left chest
19 cavity.

20 MR. SMESTAD: If I can approach again, Your
21 Honor?

22 THE COURT: Yes, you may.

23 Q. (By Mr. Smestad, continuing) Doctor, I'm going
24 to show you what's been marked as Exhibit 24, and I'll ask
25 if you recognize that document -- or I guess that group of

1 documents?

2 A. Yes. Exhibit 24, it's hard copy for some of my
3 images I took at the time of the examination.

4 Q. Those are the photographs you took during your
5 examination of Isaac Schuman?

6 A. Some of them, yes.

7 Q. All right. And I want to go through this page by
8 page --

9 MR. NELSON: Judge, can we approach?

10 THE COURT: Yes, you may.

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

12 Q. (By Mr. Smestad, continuing) Dr. Froloff, I'm
13 going to go through each of the 12 photos that are in
14 Exhibit 24. Page 1, what is that a photo of?

15 A. I believe it's Page 1, it's hard copy of the
16 swimming trunk or swimsuit which I took from the body.

17 Q. Was Isaac Schuman wearing anything else other
18 than this -- this swim trunks when you received his body?

19 A. No.

20 Q. Page 2, can you tell us what that is?

21 A. Page 2, that's image of the body taken from the
22 left side. So the gentleman is on my table. I took this
23 photographs, he covered by medical -- just basically
24 hospital type of sheet. His hands covered by brown bags.

25 Q. Why are his hands covered, if you know?

1 A. This is part of the -- our requirement in case it
2 was a suspicious case we ask law enforcement or medical
3 personnel cover hands with bag to protect trace evidence
4 because we have to collect trace evidence at the time of
5 the autopsy, so it's part of standard procedure.

6 Q. All right. Page 3, what does that show?

7 A. One is the same page. I believe this is when I
8 took bag from his hands, this is image of the wrist, left
9 wrist, and I just document that he had a -- it's my name
10 tag and it's hospital number. He was ID'd by hospital
11 number. And he had a golden color chain or bracelet on
12 his left wrist.

13 Q. Did -- when -- when his body came to you did he
14 have that -- that bracelet on?

15 A. Yes. I had recovered later it was -- because his
16 hands were in bag, but he had a bracelet, yes.

17 Q. All right. Page 4, can you tell us what that is?

18 A. Page 4, I believe this is image of the back of
19 his right hand.

20 Q. Page 5.

21 A. Page 5, that's, again, it's a photograph of the
22 front of his right hand.

23 Q. Page 6.

24 A. Page 6, it's, again, it's a photograph of the
25 front of his right hand. I just trying to take a picture

1 on the different angle to see how it stands.

2 Q. All right. And then Page 7, can you tell us what
3 that is?

4 A. Page 7. Page 7, it's a hard copy of the image of
5 his left hand, back of his left hand.

6 Q. And then Page 8.

7 A. Page 8, it's, again, image of the front of his
8 left hand.

9 Q. Page 9, can you tell us what that is?

10 A. Page 9. On the Page 9 when we collect trace
11 evidence, again, I wash the body and photograph body.
12 Again, this is picture of the front of his body, anterior
13 chest, we call anterior chest, but basically from the
14 body. Now, in his left chest you can see oblique, it's
15 meaning running a different angle, sharp force injury. In
16 this case it's a stab wound to the left chest.

17 On this one he had a small -- I had a hard
18 time to subclassify tiny, kind of like abrasion, I
19 describe in final report that this is abrasion. It's
20 superficial injuries.

21 In the sharp force injury, it's -- again,
22 it's fairly large. I measure it 10 centimeters. It's
23 approximately 3.9 inches in length.

24 Q. The next page, can you tell us what that is?

25 A. Next page, that's a close-up of his stab wound to

1 the left chest. It's located below the left nipple. And
2 again, just close-up. I just want to show jury, I don't
3 know defense attorney, prosecutor, that this is indeed
4 sharp force injury, and both ends of the wound is sharp.
5 That's could be important in some cases we describe exact,
6 you know, details of the stab wound.

7 Q. On the next page, is that from your internal
8 examination of Isaac's body?

9 A. Next page, yes, that's image of the left chest.
10 When I remove his skin from the left chest I observed that
11 he had a sharp force injury to two ribs. So two ribs was
12 completely kind of like transected. So weapon went
13 through his rib cage. I just want to show you that that's
14 damage of the two ribs.

15 Q. All right. Make sure I understand you, Dr.
16 Froloff. When you say that his ribs were transected, what
17 do you mean by that?

18 A. It's a sharp force injury to the ribs.

19 Q. And what was the damage to the ribs?

20 A. It's completely cut -- well, I can say cut off.

21 Q. How many ribs were completely cut?

22 A. Two.

23 Q. All right. And the next page, if you can tell us
24 what that is?

25 A. Next page, it's, again, hard copy of the image of

1 the heart. I mentioned to you when examine his body I
2 observe that he had a sharp force injury to the apex of
3 the heart, it's like pointy part of the heart. So I
4 measure, it's five centimeters. It's approximately
5 two inches in length.

6 MR. SMESTAD: Your Honor, I'm going to ask for
7 permission to publish the photos to the jury. It's my
8 intention just to give the hard copies to the jurors
9 rather than putting anything on the screen.

10 THE COURT: Mr. Nelson, any objection to
11 Exhibit 24?

12 MR. NELSON: Yes, as we discussed, but I
13 understand Your Honor's ruling.

14 THE COURT: Yes, I've overruled the objection.
15 We can talk more later.

16 Members of the jury, Mr. Smestad is going
17 to hand you the paper photographs from Dr. Froloff's
18 examination. The photographs are evidence. Consider it
19 as much as your sensibilities allow. It may be difficult
20 to look at, so if you need to avert your eyes or set it
21 aside, you may do so, but it is evidence and I ask that
22 you consider it as much as you are able to.

23 Please share photos.

24 MR. SMESTAD: Thank you, Your Honor.

25 Put them back in the order they were in to

1 depict it's clear.

2 THE COURT: It would be a good idea to have them
3 stapled so they don't become shuffled. Or paginate them.

4 Q. (By Mr. Smestad, continuing) Dr. Froloff, were
5 any laboratory tests performed as part of the autopsy
6 process?

7 A. Yes, I performed thorough toxicology on this
8 gentleman.

9 Q. And what were the results of the toxicology that
10 was done for Isaac Schuman?

11 A. He was positive for ethanol, and BAC, blood
12 alcohol concentration, it's 0.219.

13 Q. Did he have any other substances in his blood?

14 A. No, there's no other substances or drugs.

15 Q. In your field, forensic pathology, what does the
16 term cause of death refer to?

17 A. We have to express being what cause of the death,
18 basically is how people die in case of -- for example, you
19 know, people die from heart attack, that's cause of the
20 death.

21 Q. And what does the term manner of death mean in
22 your field?

23 A. And manner of the death, it's how cause of the
24 death came to be, and in the case of the heart attack that
25 could be natural death.

1 Q. Based on the autopsy you performed of Isaac
2 Schuman, were you able to determine a cause of death?

3 A. Yes.

4 Q. And what was his cause of death?

5 A. In my opinion, cause of the death, it's stab
6 wound to the left chest.

7 Q. And based on the autopsy you performed of Isaac's
8 body, were you able to determine a manner of death?

9 A. Yes.

10 Q. And what was that conclusion?

11 A. In my opinion, manner of the death in this case,
12 it's a homicide.

13 MR. SMESTAD: Your Honor, I don't have any other
14 questions for the doctor. I'm going to move -- oh, pardon
15 me.

16 Q. (By Mr. Smestad, continuing) As part of your
17 examination of Isaac, did you measure his height and
18 weight?

19 A. Yes. We measure length of the body, not height
20 but length of the body, and weight, yes.

21 Q. And what was the length of the body and the
22 weight for Isaac Schuman?

23 A. He was weighted 134 pounds.

24 Q. Do you remember how tall he was -- how long he
25 was?

1 A. And again, we measure length of the body. It's a
2 little bit different than height. It's 6.1.

3 Q. And the evidence that you gathered from Mr.
4 Schuman, was that turned over to the sheriff's office?

5 A. I believe, you know, evidence -- and we collect,
6 you know, trace evidence in this case was released to a
7 different -- a second of off -- office, the sheriff's
8 office, yes.

9 Q. Did you, as part of your examination of Isaac,
10 take any DNA samples?

11 A. Again, in every case we collect -- in this case
12 we collect sexual assault kit, but basically we collect
13 hair, buccal swabs, swabs inside of the oral cavity, and
14 buccal swabs suitable for DNA, yes.

15 Q. And were those items also turned over to the
16 sheriff's department?

17 A. I believe so, yes.

18 Q. Getting back to the -- the injury to Isaac's
19 chest, you measure how deep that injury is?

20 A. Yes, I measure depths of the wound. That's 11
21 centimeters. It's approximately 4.3 inches.

22 MR. SMESTAD: All right. I don't have any other
23 questions, Your Honor. I'm going to move for admission of
24 Exhibit 24, 61, and the two on the bench here, if I can
25 approach.

1 THE COURT: 24 is already received.

2 Any objection to 61? I think that's the
3 preliminary report.

4 MR. NELSON: No, no objection to the CV.

5 MR. SMESTAD: 17 and 60.

6 THE COURT: Oh, excuse me, 61 was the CV. That's
7 received.

8 And what was the other exhibit?

9 MR. NELSON: 60 is the Provisional Report. No
10 objection. 17 is the final report. No objection.

11 THE COURT: Both received.

12 MR. SMESTAD: Thank you.

13 THE COURT: Mr. Nelson.

14 CROSS-EXAMINATION

15 BY MR. NELSON:

16 Q. You're a medical examiner?

17 A. Good morning, counselor.

18 Q. Good morning.

19 A. I'm not medical examiner. Official position,
20 Assistant Medical Examiner.

21 Q. And in general, your role is you're a medical
22 examiner. I understand you take a -- you have a title and
23 a position, but your role is you -- you're an ME, right?

24 A. I am an Assistant Medical Examiner, yes, for
25 Ramsey County.

1 Q. Okay.

2 A. That's official position.

3 Q. Okay. And you're here to tell us essentially two
4 things: One is that Isaac Schuman's deceased, right?

5 A. He was --

6 Q. You agree with that?

7 A. Yes. I agree he was deceased before I started
8 autopsy, yes.

9 Q. And another, essentially what you're here to say,
10 is how he died, correct?

11 A. Yes.

12 Q. As you said, you want to know what happened,
13 correct?

14 A. We would like to know what happened, yes.

15 Q. And as part of that you do an autopsy, you
16 examine the body, correct?

17 A. Yes.

18 Q. Because sometimes that helps to figure out what
19 happened, correct?

20 A. You're correct, yes.

21 Q. You would agree that it's unusual in your field
22 to, like, have a video of what happened, agreed?

23 A. Well, lately we have more and more videos because
24 there is no cameras, but yes, sometimes video's taken at
25 the time of the incident, yes.

1 Q. And obviously you would agree that a video is
2 helpful for all of us to determine what happened, right?

3 A. Again, my job to determine cause and manner of
4 the death, I express my opinion, and video sometimes
5 important, yes.

6 Q. Correct. Did you see the video in this case?

7 A. I did not observe any videos.

8 Q. Had you ever observed any photos or frames from
9 that video?

10 A. I prefer not to. I was not offered, but I was
11 told by prosecution that video available but I deny. I
12 didn't observe video.

13 Q. Okay. And again, just to summarize, your opinion
14 is he died due to a -- due to a penetrating stab wound to
15 his left chest, correct?

16 A. In the final report I said examination basically
17 bleeding to the death due to the stab wound to the left
18 chest, you're correct.

19 Q. Medical examiners, even assistant medical
20 examiners, there's a -- is there a board certification
21 process for that position?

22 A. It's some -- it depends on which field, yes.

23 Q. Okay. In your field, there's a board
24 certification process, sir?

25 A. Yes.

1 Q. Are you board certified?

2 A. I'm a diplomat of the American Board of
3 Medicolegal Legal Death Investigators.

4 Q. Are you board certified for -- as a medical
5 examiner?

6 A. There is no board certification for medical
7 examiners. Board certification for forensic pathology.

8 Q. Okay. The -- you talked about manner of death
9 and cause of death, is that right?

10 A. Yes.

11 Q. And I think, just so we know, again, just cause
12 of death is stab wound to the left chest, in simple terms,
13 correct?

14 A. You are correct, yes.

15 Q. And then the manner is, as you said, how that
16 cause came to be, agreed?

17 A. Yes.

18 Q. And that's a medical term, correct?

19 A. It's a forensic -- forensic term, yes.

20 Q. A forensic medical term, correct?

21 A. Sure.

22 Q. It's not a legal term, correct?

23 A. It's not a legal term, no.

24 Q. And the cause of death, there are -- essentially
25 you have four options, five options?

1 A. No, for manner of the death we have --

2 Q. Yes.

3 A. -- for cause of death it's definitive. You know,
4 for manner of death we have limited options, yes.

5 Q. Absolutely. So manner of death there is limited
6 options. Only five?

7 A. We have -- we can choose from the natural death,
8 accidental death, suicidal death, homicidal death, and if
9 I cannot determine I can say it is undetermined death,
10 you're correct.

11 Q. Okay. So there is no determination that you can
12 make that you're qualified to do as to whether or not the
13 homicide occurred as a result of self-defense, agreed?

14 A. I never testify that the self-defense or a
15 homicide basically from forensic point of view; meaning,
16 life taken by another person.

17 Q. Sure. And again, that's outside of your field,
18 whether it's self-defense, agreed?

19 A. Yes. I never testified about self-defense, yes.

20 Q. Okay. In this situation you examined Isaac
21 Schuman's body, and part of that was the toxicology, is
22 that right?

23 A. Yes.

24 Q. And you determined that his blood alcohol
25 concentration was 0.219, agreed?

1 A. It's not me, it's lab.

2 Q. A lab that you rely on and you -- in your work,
3 correct?

4 A. Yes.

5 Q. So based upon your relying on that lab, you agree
6 his blood alcohol concentration was .219?

7 A. That's correct.

8 Q. And the -- you're aware that the legal limit for
9 adults permitted to drink alcohol is .08, correct?

10 A. In the State of Wisconsin driving legal limit
11 it's .08, you're correct.

12 Q. So this would be over two and a half times the
13 legal limit, correct?

14 A. Yes.

15 Q. All right. Now, you talked about the -- the
16 wound and you described that, agreed?

17 A. Yes.

18 Q. The manner in which somebody would receive a stab
19 wound is a dynamic process, you agree?

20 A. You are correct, yes.

21 Q. There would be -- you're not here to tell anybody
22 about the amount of force that was used to cause that
23 wound, agreed?

24 A. It's usually hard to determine force in a cases
25 like that, yes.

1 Q. And part of the reason that it's hard to
2 determine is because the process is so dynamic, correct?

3 A. It's not just dynamic, it's nature of the weapon
4 and so on and so on.

5 Q. And at least part of it, and I understand there
6 might be more complications, part of it is that it might
7 be one object going into another object, it might be two
8 objects moving towards each other, correct? Those are at
9 least two of the possible dynamics involved?

10 A. If you mean objects, it's a humans, right?

11 Q. Correct. And I apologize.

12 A. People.

13 Q. A person and --

14 A. And person.

15 Q. -- and -- and the knife, you're absolutely right.
16 I apologize. You agree?

17 A. It's dynamic process, yes.

18 Q. And so part of that, to try to measure -- if one
19 was to try to think about that force, you would have to
20 know whether the person who's receiving that wound, in
21 what direction they're moving, correct?

22 A. It's -- again, it's so many things you need to
23 consider --

24 Q. Absolutely.

25 A. -- yes.

1 Q. You would agree, though, if the person receiving
2 the wound is moving towards the knife, that's gonna impact
3 how the injury occurs, agreed?

4 A. Yes.

5 Q. If the person receiving the wound is reaching
6 out, that's gonna impact the wound that is received?

7 A. You know, I can't speculate because, you know,
8 it's -- it's possibility, but again, I'm here to express
9 opinion about cause and manner of the death and I never,
10 you know, observed this incident. Sure -- sure, but
11 again, it's really hard to tell what happened because I
12 don't know what happened exactly.

13 Q. I understand. But you were here to say a certain
14 depth of the wound, and that was something that you
15 pointed out to the jury, correct?

16 A. Depths of the wound, it's easy to measure --

17 Q. Absolutely.

18 A. -- and it's objective kind of things.

19 Q. Sure. So you would agree, though, it's fair for
20 me to ask you questions about how it may have came to be
21 that the wound became that deep, that's a fair question,
22 you agree?

23 A. Sure.

24 Q. Okay. So let's talk about that. Are you fine
25 with that?

1 A. Just, you know, some points, yes.

2 Q. Yeah. And so that may have occurred if a body is
3 moving towards that knife, that's gonna impact the depth
4 of the wound, agreed?

5 A. Yes.

6 Q. If a -- and if a six-foot-one, 135-pound -- 34
7 person is moving towards into that knife, that might make
8 it -- the knife go deeper, correct?

9 A. It's -- again, I can't predict how deep exactly,
10 but it's possibility, yes.

11 Q. Sure. And certainly if that person,
12 six-foot-one, 134 pounds, is falling forward, so all their
13 weight is going forward onto that knife, that's going to
14 impact the force as well correct?

15 A. That's a possibility, yes.

16 Q. And certainly if the person who's holding the
17 knife is falling backwards, that might impact the force
18 involved to the wound, correct?

19 A. My guess it's possibility, yes.

20 Q. And if the person with -- holding the knife who
21 is falling backward, if they only reach out a small
22 amount, that's gonna impact the force that causes the
23 depth of the wound, correct?

24 A. As I said, it's so many variables I can't
25 speculate. It's -- I don't know. I'm in pathology.

1 Again, I have to express opinion about cause and manner of
2 the death and this is just like what potential could
3 happen if I -- I -- I don't have a straight answer.

4 Q. Correct. And part of what you do in medicine is
5 sometimes you come up with hypotheses, right?

6 A. I don't come with hyp -- with hypotheses, it's
7 just like I can't official statement. You know, like
8 depth of the wound could be, you know, like deeper than
9 length of the blade or shorter or it's gonna be equal.
10 This a question I can't answer but what's potential happen
11 at the time of the incident. It's endless possibilities.
12 I -- I don't know.

13 Q. And you agree that the possibilities that I
14 talked with you about, those are reasonable possibilities
15 that if someone were to try to consider the force should
16 be considered, agreed?

17 A. Sure.

18 MR. NELSON: Those are the only questions I have.

19 THE COURT: Mr. Smestad?

20 MR. SMESTAD: Nothing further.

21 THE COURT: All right.

22 Thank you, Dr. Froloff. You may step down.

23 THE WITNESS: Am I excused, Your Honor?

24 THE COURT: You are excused.

25 THE WITNESS: Thank you.

1 (Whereupon, the witness is excused.)

2 THE COURT: How's everyone doing? Anybody need a
3 short recess? (No response.) Everyone looks okay.

4 MR. NELSON: Judge, I -- I'd suggest a break now.
5 Sorry.

6 MR. SMESTAD: The next witness I think will be
7 lengthy, so it might be a good idea to take a break now.

8 THE COURT: Okay. In that event then, let's
9 recess for 10 minutes. We'll come back at 8:55.

10 (Whereupon, the jury exits the courtroom.)

11 THE COURT: We are in recess. 10 minutes.

12 (Whereupon, a break was held.)

13 THE COURT: We are outside the presence of the
14 jury, back on the record. I'm meeting with the attorneys
15 and Mr. Miu. We do have to make a record on the sidebar.

16 Mr. Smestad, I understand you wanted to
17 talk about something, too?

18 MR. SMESTAD: Well, we -- there's an issue with
19 regard -- our next witness will be Lieutenant Hart. There
20 were some things that occurred with regard to that
21 testimony prior to me being on board, so District Attorney
22 Anderson has some --

23 THE COURT: Okay.

24 MR. SMESTAD: -- has some things to clear up
25 before we start her testimony.

1 THE COURT: All right. Let's -- before we get
2 ahead let's talk about the Exhibit 24.

3 Mr. Nelson, you objected to two of the
4 photographs.

5 MR. NELSON: Yes, Judge. I approached, made an
6 objection under 904.03 to the last two photographs of the
7 12-photograph package. Your Honor overruled my objection.

8 THE COURT: Mr. Smestad, anything you want to
9 add?

10 MR. SMESTAD: No.

11 THE COURT: The way I looked at it is the
12 photographs were -- I don't even know what the right word
13 is, but they were part of the internal examination, and I
14 understand Mr. Nelson believed that they were potentially
15 unfairly prejudicial against his client. I overruled the
16 objection because the State has the burden of proof. One
17 of the elements of proof is death at the hands of Mr. Miu.

18 Although the Defense may not be
19 aggressively contesting that point, the State still has
20 the burden of proving it. The photographs in question
21 went directly to the cause of death and Dr. Froloff's
22 opinions. So for that reason I concluded that it was
23 relevant, and because it was so relevant it outweighed the
24 potential prejudice to Mr. Miu.

25 All right.

1 MR. NELSON: Judge, lastly, the Defense has no
2 objection to those photos being sealed.

3 MR. ANDERSON: It's fine with us.

4 THE COURT: All right. Okay. I'll --

5 MR. SMESTAD: Actually, no, Judge, it -- not all
6 the jurors have seen the photos yet. I think that they
7 went out for their break before --

8 THE COURT: Right.

9 MR. SMESTAD: So when they come in, I'll give
10 them back to whoever hasn't seen them yet.

11 THE COURT: All right. I'll make a note of that
12 and make sure that the photos are available.

13 What's the next issue?

14 MR. NELSON: Are they -- just -- sorry. Are they
15 being sealed then?

16 THE COURT: Give me a legal basis. I need more
17 than just --

18 MR. NELSON: Chapter 950.

19 THE COURT: We're not going to deal with it right
20 now.

21 MR. NELSON: Okay.

22 THE COURT: I don't want to deal with it right
23 now. There are considerations beyond the attorneys
24 agreeing with sealing records. There's very few
25 circumstances where I can seal records from the public,

1 and I will be mindful of that because there is more
2 interests at play here than just the attorneys, Mr. Miu's,
3 and mine.

4 Next topic. Mr. Smestad? Mr. Anderson?

5 MR. ANDERSON: So at -- Lieutenant Hart testified
6 at the preliminary hearing. Pretty much -- part of it was
7 about her interview. A good chunk of it was summarizing
8 the video. So I just want to make sure, given the Court's
9 ruling previously, that there's not gonna be questions of
10 her interpretation of the video when she wasn't there.
11 That's a question for the jury.

12 Also there -- we're gonna play the entire
13 interview from the very start until the interview ends
14 when Lieutenant Hart leaves. There's like approximately
15 15 minutes or so after that where the camera keeps
16 running, but we're not gonna play. But it incorporates
17 part -- you know, going over Miranda with Miu. So I just
18 want to make sure there's not going to be any questions
19 suggesting that his right to an attorney was violated.
20 It's irrelevant. The Court has already ruled that it
21 wasn't, that he waived knowingly, intelligently his right
22 to counsel.

23 THE COURT: Who wants to speak?

24 MR. CHIRAFISI: I'm not -- I wasn't planning on
25 challenging the Miranda issue at this point.

1 I do think, however, that the last -- that
2 the video should be played in its entirety. And what I
3 mean by that is there's a period of time where the video
4 is still running, Lieutenant Hart leaves the room, and Mr.
5 Miu's speaking on the tape, and he makes some statements
6 on that. There's no reason that the jury shouldn't get to
7 hear those. They're relevant. They go to his state of
8 mind, and I -- I'm asking that the Court -- if they're
9 going to play the tape, they play the entirety of the
10 tape.

11 I'm gonna play it if they don't play it, I
12 guess. And I think that the rule of completeness would
13 require that the entirety of the video be played for the
14 fact finder.

15 THE COURT: Mr. Anderson?

16 MR. ANDERSON: They have no legal basis. If we
17 didn't want to admit the video at all, they'd have no
18 legal basis to admit the hearsay statements of their
19 client. He's not a party opponent for them.

20 Rule of completeness is not a trojan horse
21 around hearsay. There's a case that I cited to in our
22 motion in limine where it was a tax evasion case and the
23 defendant said -- admitted to not paying taxes but said it
24 was because the accountant has access to all the records.
25 The State admitted the first statement that he admitted to

1 not paying and the defense was not allowed to get in the
2 but because it's self-serving.

3 Here it's not even part of the interview.
4 I think, from my stance, I -- I thought about playing it
5 because he's clearly putting on -- continuing an acting
6 show, but it's 15 minutes of him sitting there and
7 mumbling to himself, and I think it's not a good use of
8 our time so I'm not putting it in. They have no authority
9 to put it in. It's hearsay.

10 THE COURT: What is the authority beyond the
11 completeness?

12 MR. CHIRAFISI: Well, I think that's what it is,
13 Judge. It's -- if they play a portion of the video I
14 think the rule of completeness would allow me to play the
15 rest of it to put it into context.

16 THE COURT: Yeah, what's the context that's
17 missing though?

18 MR. CHIRAFISI: The context that's missing is I
19 don't believe -- Lieutenant Hart didn't tell Mr. Miu that
20 he was being recorded upon leaving. He makes statements,
21 which support his defense, okay. He makes statements to
22 himself not knowing he's recorded about why would they
23 attack me? Why would they attack me? He's saying that
24 himself unbeknownst, I think, that he's being recorded.
25 And I think if you're going to play portions of it which

1 are, according to the State, would be considered
2 incriminating, the idea that the -- the video in its
3 entirety should be played in order to give the jury a
4 complete and accurate record of in fact what he said.

5 MR. ANDERSON: The rule of completeness is meant
6 to prevent distortion. So an example of where the rule of
7 completeness would perfectly apply is if, say, a robbery
8 defendant says, yeah, I was at the bank but that was a
9 month before. If we just admitted, yeah, I was at the
10 bank and then argued, oh, he's admitting to being at the
11 scene, rule of completeness would allow the rest of the
12 statement because otherwise we're clearly distorting his
13 statement. So nothing about this implicates the rule of
14 completeness.

15 THE COURT: All right. At this time I'm going to
16 rule that the State is not obligated to play the entire
17 video. It's part of the State's case. The State is
18 entitled to play the portions that it believes support its
19 case and the State is under no legal obligation to play
20 the entire video.

21 I disagree that the rule of completeness
22 applies in this circumstance. My understanding of the
23 rule of completeness is to prevent words from being taken
24 out off context similar to the example that Mr. Anderson
25 gave. It doesn't mean that if you play part of the video

1 you have to play all of the video. Clearly Mr. Miu's
2 statements to himself are hearsay and it would otherwise
3 be inadmissible if offered by Mr. Miu.

4 So that's my ruling. If circumstances
5 require revisiting that ruling, we may.

6 Anything else?

7 MR. ANDERSON: I didn't hear anything from
8 Defense that they're not going to be asking Lieutenant
9 Hart's interpretation of the video. She also hadn't seen
10 the video at the time of the interview.

11 MR. CHIRAFISI: She testified at the preliminary
12 examination. She provided a statement under oath. And I
13 think if she denies certain things I should be able to
14 impeach her with that.

15 And I think the area that the State doesn't
16 want me to get into is when Lieutenant Hart says he's
17 surrounded on all sides, he has no route of escape. They
18 want that because it affects the retreat instruction, and
19 she testified to that under oath that that in fact was
20 true.

21 THE COURT: How is it relevant though? How is --
22 how is Lieutenant Hart's conclusions and observations from
23 watching the video relevant?

24 MR. CHIRAFISI: Because it goes to what a
25 reasonable person believed.

1 THE COURT: Well, I don't mean to be flippant
2 here --

3 MR. CHIRAFISI: No.

4 THE COURT: -- but she's not the reasonable
5 person standard.

6 MR. CHIRAFISI: I --

7 THE COURT: If she's more objective than that
8 then --

9 MR. CHIRAFISI: I'm sorry, Judge.

10 THE COURT: -- it's more -- it's broader than
11 what Lieutenant Hart thinks.

12 MR. CHIRAFISI: Right. But I think that her --
13 her observations that he had no -- that he had no means of
14 escape. The State's going to argue that he had -- that he
15 could have left.

16 THE COURT: And they can still argue it.

17 MR. CHIRAFISI: I understand they can argue it.
18 But one of their investigators is saying that's not true,
19 he didn't have a means of escape. Once the attack
20 started, which is where the retreat instruction kicks in,
21 she testified under oath at a preliminary examination the
22 crowd worked his -- their way behind him. I asked her:
23 So would you agree at that point there was no means of --
24 of leaving? And she said: Yes, that's true.

25 THE COURT: All right. Again, I'm ruling that to

1 be inadmissible, and this is a -- a ruling that I've made
2 with all of the witnesses, and that is we're not
3 commenting on what the witness observes in the video.
4 We're not taking a poll of witnesses to get their opinions
5 and their conclusions about what they see and what they
6 think happened.

7 Lieutenant Hart was not a participant. She
8 had played no role in the events on the Apple River. She
9 is an observer of the video, just like anybody else in
10 this courtroom, just like anybody sitting on the jury.
11 And it is the jury's opinion about what they see that
12 matters, not what Lieutenant Hart thinks or what I think
13 or what some other witness thinks they see in the video.

14 So that's why I don't think it's relevant
15 and that's why I've not allowed the witnesses to ask -- or
16 the attorneys to ask witnesses to comment on what they
17 think and conclude based on observations in the video.

18 Anything else?

19 MR. ANDERSON: No.

20 THE COURT: Mr. Chirafisi?

21 MR. CHIRAFISI: We're not going to try to move
22 any transcript, correct?

23 MR. ANDERSON: I -- we weren't planning on it,
24 but I guess it depends on how it goes.

25 MR. CHIRAFISI: Well, it's an inaccurate

1 transcript with 10 minutes cut out of the video, the one
2 that we received, so I would object to the transcript
3 being provided.

4 THE COURT: Okay. So it's noted. If we get to
5 that point, we'll have to take it up outside the presence
6 of the jury.

7 All right. Let's bring them in.

8 (Whereupon, the jury enters the courtroom.)

9 THE COURT: We're back in session with the
10 attorneys, Mr. Miu, and 14 jurors.

11 Members of the jury, we took our break
12 before all of you looked at the Exhibit Number 24. It's
13 there on the rail. If you want to continue passing it
14 amongst yourselves, you may. Once you are finished --
15 once everyone has seen it and you're finished with the
16 exhibit, just turn it upside down. Place it on the rail
17 or place it on floor so that we know that you're done.

18 Mr. Smestad, who is the next witness?

19 MR. SMESTAD: We call Lieutenant Hart.

20 THE COURT: Lieutenant, please come forward.
21 Please face the clerk, raise your right hand to be sworn.

22 LIEUTENANT BRANDIE HART,
23 after having been first duly sworn on oath by the clerk,
24 testifies and says as follows:

25 THE WITNESS: I do.

1 THE COURT: Please have a seat in the witness
2 chair.

3 Mr. Smestad.

4 DIRECT EXAMINATION

5 BY MR. SMESTAD:

6 Q. Will you state your name for the record, please?

7 A. Yes. Brandie Hart, h-a-r-t.

8 Q. And what's your occupation?

9 A. I am a Special Services Lieutenant for the St.
10 Croix County Sheriff's Office.

11 Q. What are your general duties as a Special
12 Services Lieutenant?

13 A. I supervise our nine investigators, our seven
14 deputies, and Court Services and the evidence room.

15 Q. How many years have you been with the St. Croix
16 County Sheriff's Office?

17 A. 25.

18 Q. What roles have you held over those years?

19 A. I started in the jail. I worked there for
20 three years. I went to patrol for six years. After that
21 I was promoted to investigations where I spent 14 years
22 before I became a lieutenant.

23 Q. How many years have you been a lieutenant?

24 A. Two and a half.

25 Q. Do you recall July 30th, 2022?

1 A. I do.

2 Q. Were you on duty that day?

3 A. No.

4 Q. Did you get called in?

5 A. I did.

6 Q. In your current role, would you normally be
7 involved in an investigation of this sort?

8 A. Yes.

9 Q. Did you get contacted regarding the stabbings on
10 the Apple River that day?

11 A. I did.

12 Q. What was the information you were initially told?

13 A. Investigator Shilts called me and told me that
14 there's been multiple stabbings on the Apple River.

15 Q. Were you at home at the time?

16 A. I was. I was doing yard work.

17 Q. Did you get asked to come in?

18 A. Yes.

19 Q. Were you given any specific duties or
20 assignments?

21 A. At that point we were just looking for manpower.
22 Suspect hadn't been located and we were gonna formulate a
23 plan.

24 Q. What did you do? What was your part in the
25 investigation?

1 A. I got to the Apple River about an hour after the
2 first call came in, and at that point Mr. Miu had been
3 taken into custody and his group had -- was standing along
4 at the end of the river.

5 Q. All right. What did you do when you got to the
6 river?

7 A. I believe I spoke with some of my colleagues, and
8 then I ended up taking Sandi Miu to the Somerset Police
9 Department to interview her.

10 Q. All right. And did you interview Sandi?

11 A. I did.

12 Q. What did you do after that?

13 A. After that I coordinated her getting back with
14 her group. Some of them had come to the police
15 department, and because of the other investigators were
16 interviewing witnesses, I went to the jail.

17 Q. All right. And were you asked to do anything
18 specific at the jail?

19 A. I interviewed Mr. Miu.

20 Q. Was that interview recorded?

21 A. It was.

22 Q. How was it recorded?

23 A. Audio and video.

24 Q. Were you wearing a body cam or is there some
25 other system?

1 A. I have a recording device on my cell phone, and
2 so I recorded the audio version that way, and there's an
3 overhead camera at the jail that recorded the video.

4 Q. Do you remember what time it was that you
5 interviewed Mr. Miu at the jail?

6 A. Yeah. It was about ten to eight.

7 Q. P.m.?

8 A. Yes.

9 Q. At that point had you seen Jawahn Cockfield's
10 video of what happened on the river?

11 A. I had not.

12 Q. Did you know there was a video?

13 A. I did.

14 Q. Did Mr. Miu know that?

15 MR. CHIRAFISI: Objection. Speculation.

16 THE COURT: Sustained.

17 Q. (By Mr. Smestad, continuing) Did you ever --
18 prior to your interview with him, did you tell him there
19 was a video of the incident?

20 A. I did not.

21 Q. And have you -- have you reviewed Exhibit 15?

22 A. I did.

23 Q. Could you tell us what it is?

24 A. Yeah. It's a copy of my interview with Mr. Miu
25 at the jail.

1 Q. Is it recorded on a specific kind of device?

2 A. Yes. It's on a thumb drive.

3 Q. All right.

4 MR. SMESTAD: Your Honor, permission to publish
5 Exhibit 15 to the jury on the digital system.

6 THE COURT: Any objection to 15?

7 MR. CHIRAFISI: No.

8 THE COURT: All right. 15 is received.

9 (Whereupon, the video was played.)

10 Q. (By Mr. Smestad, continuing) Lieutenant Hart,
11 was that the interview that you did with Nicolae Miu at
12 the jail?

13 A. Yes.

14 Q. And at the point where you left, was that the end
15 of your questioning of him?

16 A. Yes.

17 Q. While you were talking to him, you showed Mr. Miu
18 a photo on your phone?

19 A. Yes.

20 Q. What -- what was that photo?

21 A. That was a photo that had been disseminated to us
22 of the suspect.

23 Q. Do you know where it came from?

24 A. Uhm --

25 Q. At the time did you know where it came from?

1 A. Probably. I -- I believe dispatched had e-mailed
2 it out.

3 Q. All right. What is it -- was it a photo from the
4 video?

5 MR. CHIRAFISI: Objection. Leading.

6 Q. (By Mr. Smestad, continuing) Or from something
7 else?

8 THE COURT: Sustained.

9 Q. (By Mr. Smestad, continuing) Do you know where
10 the -- the -- the photo originated from?

11 A. I do.

12 Q. Where did it originate?

13 A. From Jawahn Cockfield's video.

14 Q. All right. Did -- strike that.

15 While you're talking to Mr. Miu you were
16 referring to a diagram?

17 A. Yep.

18 MR. SMESTAD: If I can approach, Your Honor?

19 THE COURT: Yes.

20 Q. (By Mr. Smestad, continuing) Lieutenant Hart,
21 I'm showing you what's been marked as Exhibit 16. Do you
22 recognize that?

23 A. I do.

24 Q. And what is it?

25 A. This is the diagram I asked him to draw me while

1 we were talking.

2 Q. All right. Did he draw portions of that?

3 A. He drew all of it. I made -- I put the words on
4 there.

5 Q. All right.

6 MR. SMESTAD: Your Honor, I move for admission of
7 Exhibit 16.

8 THE COURT: Any objection?

9 MR. CHIRAFISI: No.

10 THE COURT: 16 is received.

11 MR. SMESTAD: If I can publish to the jury on the
12 ELMO?

13 THE COURT: Yes, you may.

14 While you're standing there. Would you
15 also retrieve the Exhibit 24? Thank you.

16 Q. (By Mr. Smestad, continuing) And -- and just to
17 clarify, is the only thing you added the words on the
18 diagram?

19 A. Yes. He put the 100 feet or inches, but I wrote
20 Amy, the mostly girls, shallow, all males, and female; and
21 that is my handwriting on the lower, right-hand portion
22 where I put the date, and it had the case number.

23 Q. All right. Also in the video you appear to be
24 taking a -- a buccal swab?

25 A. Yes.

1 Q. Did you do anything with those swabs?

2 A. I logged them into evidence at the sheriff's
3 office.

4 Q. Were those the swabs that were sent to the crime
5 lab?

6 A. No.

7 Q. Which swabs were sent to the crime lab?

8 A. The one in the kit that the SART nurse had taken.

9 Q. While you were speaking with Mr. Miu, did you
10 notice any signs of impairment?

11 A. No.

12 MR. SMESTAD: That's it. Nothing else. Nothing
13 further.

14 THE COURT: Anyone need a break? Still doing
15 good?

16 MR. NELSON: (Non-verbal response.)

17 THE COURT: All right. One vote for break?
18 (Non-verbal response.)

19 All right. Let's take a short recess then.
20 We'll come back at 10:25.

21 (Whereupon, the jury exits the courtroom.)

22 THE COURT: We're in recess. Ten minutes.

23 (Whereupon, a break was held.)

24 (Whereupon, the jury enters the courtroom.)

25 THE COURT: All right. We were about to start

1 cross, correct?

2 MR. CHIRAFISI: (Non-verbal response.)

3 THE COURT: Cross. Mr. Chirafisi.

4 CROSS-EXAMINATION

5 BY MR. CHIRAFISI:

6 Q. Good morning, lieutenant.

7 A. Good morning.

8 Q. In your 25 years in law enforcement, I -- is it
9 fair to say that you've had the opportunity numerous times
10 to question both victims of crimes and people accused of
11 crimes?

12 A. Yes.

13 Q. And in this particular case, if I have it right,
14 the interview with Mr. Miu takes place approximately
15 four -- a little more than four hours after the incident,
16 is that fair?

17 A. Yeah.

18 Q. And to your knowledge, for most of those
19 four hours he was in -- the majority of those four hours
20 he was in police custody somewhere, right?

21 A. I believe so.

22 Q. Okay. And in situations like this where they
23 call you in, which would be considered a -- would that be
24 considered a serious situation when you get called in?

25 A. Yeah.

1 Q. Okay. And in those situations you're trying to
2 gather as much evidence and as much information as quickly
3 as possible, is that correct?

4 A. Yes.

5 Q. Okay. And in your 25 years in law enforcement
6 have you been involved in situations that you would
7 consider to be highly stressful events?

8 A. Yes.

9 Q. Would you consider this to be a highly stressful
10 event?

11 A. Yes.

12 Q. And would you agree that in those highly
13 stress -- have you interviewed of offenses and people who
14 were accused of offenses involving highly stressful
15 events?

16 A. Yes.

17 Q. And in those highly stressful events, both the
18 victim and the accused can be feeling kind of the same
19 emotions sometimes, is that right?

20 A. Sure.

21 Q. Okay. And would you agree in your training and
22 experience that highly stressful events can impact
23 someone's ability to recall what had happened?

24 A. Yes.

25 Q. Okay. Both, for the complaining witness or

1 victim, as well as the person who's accused, would that be
2 fair?

3 A. Fair.

4 Q. And you'd agree that doesn't mean that the person
5 is necessarily lying, sometimes these stressful events
6 kind of cloud memories and make it difficult for them to
7 recall events, correct?

8 A. Yes.

9 MR. SMESTAD: Objection. Speculation.

10 THE COURT: Overruled.

11 Q. (By Mr. Chirafisi, continuing) I think you said
12 yes?

13 A. Yes.

14 Q. And would you agree that based on your training
15 and experience, how long someone suffers from a stressful
16 event, meaning, how they react to it, that can depend
17 upon -- I mean, it can differ in terms of timing, right?
18 What I mean by that is you might suffer the same stressful
19 event as I suffer, you might be over that stressful event
20 in a much shorter time than I would be over it, is that
21 fair?

22 A. Yes.

23 Q. And because it's a -- it's a criminal
24 investigation and you're working at a -- at a quick pace
25 here, you're not given the opportunity to kind of let

1 things calm down before you do your investigation, right?

2 A. I don't -- I don't know if I understand the
3 question.

4 Q. Okay. So let me give you an example. So an
5 example, if this fact pattern involved an officer, that
6 officer would have an opportunity before they had to give
7 a statement, correct?

8 A. (No response.)

9 Q. Officers don't have to give statements
10 immediately after stressful events, they're allowed to
11 kind of calm down and think about it before they're
12 required to provide a statement, true?

13 MR. SMESTAD: Objection. Irrelevant.

14 THE COURT: Sustained.

15 Q. (By Mr. Chirafisi, continuing) Did you give --
16 or Mr. Miu given an opportunity, in terms of timing, to
17 calm down from the situation, kind of make sure that he
18 had all his faculties before he provided a statement?

19 A. I -- I don't know, other than the four hours
20 between the time he was taken into custody and I spoke
21 with him.

22 Q. And those -- and I'm not being critical of you
23 here, I'm asking you. You're not -- you don't know
24 whether or not those four hours he was still under the
25 stress of the event, right?

1 A. I don't know.

2 Q. Okay. I'm not going to ask you about what you
3 saw in the video, but what I'm going to ask you about is
4 you're aware there's a video in the case, right?

5 A. Yes.

6 Q. Okay. And when someone gives you a statement
7 about what had happened, it's helpful for you, as an
8 investigator, to be able to go back to that video and kind
9 of determine the accuracy of that person's statement,
10 right?

11 A. Sure.

12 Q. Okay. And while you're able to determine whether
13 or not the person's statements are accurate, what the
14 video really doesn't capture and what you need to try to
15 figure out is what the person was feeling or what their
16 beliefs were at the time, correct?

17 A. I don't know if that's up for me to decide.

18 Q. No, but in terms of your investigation you'll ask
19 people things like how did that make you feel when
20 something was happening. That -- you'll ask them
21 questions about their emotions because their emotions
22 might not be borne out on the video, true?

23 A. True.

24 Q. And -- and they -- people will tell you I was
25 afraid, I was worried, I was stressed. They'll -- they'll

1 make those statements to you when you ask those questions,
2 correct?

3 A. Yes.

4 Q. Okay. And tell me if this is fair: So you,
5 after conducting the interview with Mr. Miu -- you've
6 watched the video, right?

7 A. The video of the incident?

8 Q. The video of the incident.

9 A. Yes.

10 Q. Okay. And you agree his statements regarding how
11 he got the knife, those are inaccurate, correct?

12 A. Yes.

13 Q. Okay. And you did ask Mr. Miu what his beliefs
14 were or how he was feeling while all this was going on,
15 correct? Do you remember that during the interview?

16 A. I guess I don't recall if I asked him how he was
17 feeling, but he articulated that to me.

18 Q. Okay. He had mentioned to you how he was
19 feeling, true?

20 A. Yes.

21 Q. Okay. And would you agree that once you kind of
22 get into the meat of the interview, first thing out of Mr.
23 Miu's mouth is that he was acting in self-defense, right?

24 A. Yes.

25 Q. Okay. And he says that, if I have it right,

1 three times in his first statement to you was it was
2 self-defense --

3 A. Yes.

4 Q. -- correct?

5 Okay. And he told you in that first
6 portion of the interview that they were hitting him,
7 right?

8 A. Yes.

9 Q. And that's true, correct?

10 A. (No response.)

11 Q. That's borne out on the video, yes?

12 MR. SMESTAD: Objection, Your Honor. The video
13 speaks for itself.

14 THE COURT: Sustained. Sustained.

15 Q. (By Mr. Chirafisi, continuing) Can I ask you
16 this: Although some of the things that Mr. Miu had talked
17 to you about regarding how he obtained the knife, we agree
18 that was incorrect, would you agree, based on your
19 interview with Mr. Miu, he never wavered in his claim it
20 was self-defense, correct?

21 A. Correct.

22 Q. He never wavered in his claim that he was
23 fearful, correct?

24 A. Correct.

25 Q. And he never wavered in his claim that he was

1 attacked, correct?

2 A. Correct.

3 Q. If I told you -- and I don't know if you've
4 counted. I counted approximately 20 times during that
5 interview that he claimed it was self-defense, he was
6 fearful, or they attacked him. Sound about right?

7 A. Yes.

8 Q. Okay. And you've sat through -- I know you
9 weren't here yesterday because you weren't feeling well,
10 but you sat through the trial of every other witness other
11 than when you weren't here, right?

12 A. Yes.

13 Q. Okay. And you've listened time -- to times when
14 witnesses had to be corrected or shown something that
15 turned out not to be true based on the video, right?

16 A. Yes.

17 Q. Okay. Do you have any information through your
18 investigation that contradicts Nic Miu's belief that he
19 was in fear during that incident?

20 MR. SMESTAD: Objection, Your Honor.

21 THE COURT: Come on up.

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

23 MR. SMESTAD: Objection sustained, Judge?

24 THE COURT: The objection is sustained.

25 Q. (By Mr. Chirafisi, continuing) Lieutenant Hart,

1 in terms of what had happened that -- that day in your
2 interview with Mr. Miu, okay, your recorded interview we
3 just watched, he didn't make any other statements to you
4 that would give you any reason to believe that he wasn't
5 in fear, correct?

6 MR. SMESTAD: Objection, Your Honor. Same
7 grounds.

8 THE COURT: Overruled.

9 A. Can you ask that again?

10 Q. (By Mr. Chirafisi, continuing) I don't know.

11 Based on your interview with Mr. Miu on the
12 day in question, right, when you interviewed him on the
13 day --

14 A. Yes.

15 Q. -- he told you he was in fear, yes?

16 A. He did.

17 Q. Okay. Did he provide any other statements to you
18 that would contradict that statement that he was in fear?

19 A. No.

20 Q. And to be fair, he told you multiple times in
21 that interview that he was in shock about what happened
22 and didn't remember everything, is that right?

23 A. Correct.

24 Q. Okay. And that -- based on your training and
25 experience, that wouldn't be unusual, would it?

1 A. No.

2 Q. Okay. You've had that with other people who have
3 been complaining witnesses or victims of offenses?

4 A. Yes.

5 Q. And have you had that with people who have been
6 accused of crimes?

7 A. Probably.

8 Q. Okay. Tell -- if -- if you can answer this: So
9 he never denied that he defended himself with a knife,
10 correct?

11 A. Correct.

12 Q. He got -- what he got wrong was how he got the
13 knife, but he told you that he used it on other people,
14 correct?

15 A. Yes.

16 Q. Okay. And he told you other things that you
17 actually found out to be true, right, like he had a
18 snorkel and goggles, right?

19 A. Yes.

20 Q. Okay. And you found those. Not you, but your --
21 police found those, right?

22 A. Yes.

23 Q. Okay. So that's true, right?

24 A. Yes.

25 Q. He told you that he was looking for Ariel's

1 phone, correct?

2 A. Yes.

3 Q. You guys found Ariel's phone, right?

4 A. Yes.

5 Q. Okay. He told you that people were calling him
6 a -- a -- I think he says the word child molester, but
7 it's true people were calling him names, correct?

8 A. Yes.

9 Q. Okay. And I think he also told you on the tape
10 that they were attacking me from all directions, is that
11 right?

12 A. He did say that.

13 Q. Okay. Do you -- in your investigation, do you
14 have any evidence through interviews of witnesses or
15 anything else that that's not correct?

16 MR. SMESTAD: Objection, Your Honor. Can we
17 approach again?

18 THE COURT: Yes.

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

20 THE COURT: I'll sustain the objection on
21 foundation grounds.

22 Mr. Chirafisi, you may continue.

23 Q. (By Mr. Chirafisi, continuing) Lieutenant Hart,
24 have you -- can you just give me a brief synopsis of the
25 investigation that you've done in this case?

1 A. Yes. I interviewed Sandi.

2 Q. Okay.

3 A. I interviewed Mr. Miu.

4 Q. Okay.

5 A. And I coordinated the translation -- or the
6 transcription of Hispanic-speaking statements and 911
7 calls.

8 Q. Okay. Do you -- so the investigators that -- who
9 have testified, you're their boss?

10 A. I'm their supervisor, yes.

11 Q. Okay. In an investigation like this, do those
12 reports pass over your desk? Do you see those?

13 A. I would say a majority of them. Not all of them.

14 Q. Okay. Do you -- so you're aware -- well, tell me
15 if you're aware that there has been multiple interviews
16 conducted in this case by your investigators, right?

17 A. Yes.

18 Q. Multiple eye witnesses or people who claim to be
19 eye witnesses to what has happened, right?

20 A. Yes.

21 Q. And those -- have those reports passed over your
22 desk?

23 A. Not all of them.

24 Q. Have some of them passed over your desk?

25 A. Yes.

1 Q. Okay. Based on the information that you have
2 seen, the reports that you've seen, the interviews that
3 you've conducted, any other evidence that you've been able
4 to look at -- my question to you was: Is there any
5 evidence that contradicts the statement that Mr. Miu had
6 made to you on that interview that he was surrounded on
7 all directions?

8 A. I don't know.

9 Q. You don't know?

10 A. Well, I haven't read every single report of this
11 case.

12 Q. On the stuff that you've read. I can't ask you
13 about things you don't know. What I can ask you is on the
14 things that you've read, the reports that you've reviewed,
15 the interviews that you've conducted, there's nothing that
16 contradicts his statement that he was surrounded, right?

17 MR. SMESTAD: Your Honor, I'm going to object
18 because it's vague as to time. There's a three-minute
19 period here.

20 THE COURT: Overruled.

21 Can you answer the question?

22 A. So your question is if I've seen any of the
23 reports that I've read --

24 Q. (By Mr. Chirafisi, continuing) I'm asking you if
25 any of the evidence that you've reviewed in totality,

1 whatever you've reviewed in the totality, okay, there's
2 nothing in the evidence that you've reviewed, the
3 witnesses that you've spoken to that contradicts Nic's
4 statement that he was surrounded when he told you that,
5 right?

6 A. Yeah, he's the only interview I've conducted.

7 Q. You've reviewed other reports though, right?

8 A. Yes.

9 Q. Okay. And he -- I think he said in his interview
10 with you that he -- he said, All I want, guys, did you
11 find a phone? Right? Do you remember that?

12 A. Yes.

13 Q. Okay. And through testimony you've seen and
14 witness statements that you've read, you know Jawahn
15 Cockfield's holding a phone, correct?

16 A. Yes.

17 Q. Okay. And through your investigation, you'd
18 agree there were no little girls in that area at the time,
19 right?

20 A. Not that I'm aware of.

21 Q. Okay. So would you agree there's nothing
22 factually in terms of evidence that would -- that you know
23 about that would support the claim that people have said
24 that he was looking for little girls? There were none,
25 right?

1 A. There were none, no.

2 Q. If you would have suspected he was impaired,
3 would you have followed up on that?

4 A. Yes.

5 Q. Okay. How? I mean, what would -- just tell me
6 what you would have done.

7 A. Well, I probably would have applied for a search
8 warrant for his blood.

9 Q. Okay. Because that would -- if a person's
10 intoxicated in this situation -- in the situation that
11 happened, this incident, knowing that would be -- would
12 matter to you, right?

13 A. Yes.

14 MR. CHIRAFISI: Just one moment, Judge.

15 THE COURT: Yes.

16 MR. CHIRAFISI: That's all, Judge. Thank you.

17 THE COURT: Mr. Smestad.

18 REDIRECT EXAMINATION

19 BY MR. SMESTAD:

20 Q. Lieutenant Hart, as you were interviewing Mr.
21 Miu, did he at any point say anything about being
22 strangled?

23 A. No.

24 Q. Did he say anything about having an injury or
25 pain to his neck or throat?

1 A. No.

2 Q. Did you see any injuries on his face at all?

3 A. No.

4 Q. How -- how many feet away from him were you
5 during that interview?

6 A. However wide a table is.

7 Q. Can you describe the lighting in the interview
8 room?

9 A. It was well lit.

10 Q. Did Mr. Miu say anything about hearing anybody
11 threaten him with a phrase similar to you've got
12 10 seconds?

13 A. No.

14 Q. At the time that you interviewed Mr. Miu towards
15 the end, when he asks you what happened, did you know that
16 he had already been informed that he was under arrest for
17 homicide and attempted homicide?

18 MR. CHIRAFISI: Objection. Speculation.

19 MR. SMESTAD: I'm asking if she knew.

20 THE COURT: I'll sustain the objection. You'll
21 have to refrain the question.

22 Q. (By Mr. Smestad, continuing) Did you have any
23 knowledge as to what he had been informed of with regard
24 to charges when he was arrested?

25 A. No.

1 Q. When you asked -- when Mr. Miu asked you what
2 happened and you told him that someone had died, what was
3 his response?

4 A. I believe he said, Oh, no.

5 Q. Did he appear to be surprised?

6 MR. CHIRAFISI: I'm going to object.

7 THE COURT: Sustained. Speculation.

8 Q. (By Mr. Smestad, continuing) At one point in the
9 video did you see him put his head in his hands?

10 A. Yes.

11 Q. Did you see any tears?

12 A. No.

13 Q. Mr. Chirafisi asked you about the stress that a
14 victim can go -- can undergo, and in your opinion you
15 said, yeah, that -- sometimes that happens. The same go
16 for 17-year-old kids who saw their best friend get stabbed
17 to death?

18 A. Yes.

19 Q. And the same goes for the people who actually
20 were stabbed?

21 A. Yes.

22 Q. Did Mr. Miu ever waver in his claim that he did
23 not himself have a knife on the river?

24 A. No.

25 Q. Did he -- do you know how many times he denied

1 having a knife on the river, if you remember?

2 A. I don't remember, but it was more than once.

3 Q. Did he ever waver in his claim that two of these
4 boys pulled knives on him?

5 A. No.

6 Q. Did he appear to recall details about how -- how
7 that all happened?

8 A. Yes.

9 Q. At one point in the video he asked if anybody had
10 found a phone. Do you recall that?

11 A. I do.

12 Q. Do you know what phone he was talking about at
13 that point of the interview?

14 MR. CHIRAFISI: Objection. Speculation.

15 THE COURT: Sustained.

16 Q. (By Mr. Smestad, continuing) During your
17 interview, did he specify whose phone he was looking for?

18 A. Yes. I believe he told me it was Ariel's.

19 MR. SMESTAD: Nothing further.

20 THE COURT: Mr. Chirafisi.

21 RECROSS-EXAMINATION

22 BY MR. CHIRAFISI:

23 Q. Because he didn't tell you anything about hearing
24 somebody say you got 10 seconds, you're not saying that
25 means it didn't happen, right, that somebody didn't say

1 that?

2 A. Right.

3 Q. Okay. And because he didn't mention to you that
4 he had been strangled, you're not saying that that means
5 it didn't happen, right?

6 A. No.

7 Q. Or complain about neck pain or being hit in the
8 face, you're not saying that because he didn't say he
9 wasn't hit in the face or however he was hit, you're not
10 saying because he left something out that that didn't
11 occur, right?

12 A. Right.

13 MR. CHIRAFISI: That's all.

14 THE COURT: All right.

15 Thank you, Lieutenant Hart. You may step
16 down.

17 (Whereupon, the witness is excused.)

18 THE COURT: Mr. Anderson, does the State have
19 more evidence?

20 MR. ANDERSON: No, Judge.

21 THE COURT: All right. The State rests.

22 Members of the jury, there are a few items
23 that I need to discuss with the attorneys in private, so
24 we're going to have a recess. This may be a little bit
25 longer than some of the earlier recesses, so please be

1 patient. We will get back to you before the lunch hour.

2 Please take the jury out.

3 (Whereupon, the jury exits the courtroom.)

4 THE COURT: We are outside the presence of the
5 jury. I am meeting with the attorneys and with Mr. Miu in
6 open court.

7 Mr. Nelson, is there anything that you want
8 to address?

9 MR. NELSON: Yes, Judge.

10 MR. CHIRAFISI: So, Judge, I would -- and I --
11 I'm not looking at the Information, so I apologize. But
12 as it relates to -- I'm going to do it by the names.

13 THE COURT: Yes.

14 MR. CHIRAFISI: As it relates to Dante Carlson
15 and Anthony Carlson and Ryhley Mattison, those three
16 people, Mr. Miu is charged with an attempt -- attempted
17 homicide on those counts. And in reviewing the
18 requirements for an attempted homicide -- and this will be
19 short, Judge, I'm not gonna waste your time. But what it
20 says is it requires the defendant did acts toward the
21 commission of that crime which indicate unequivocally --
22 and unequivocally is defined as it means no other
23 inference or conclusion can reasonably and fairly be drawn
24 from the defendant's acts under the circumstances. -- so
25 which indicate unequivocally under all the circumstances

1 that he had formed that intent and would have caused the
2 death of the intended victim except for the intervention
3 of another person or some extraneous factor. Extraneous
4 factor is defined as something outside the knowledge of
5 the defendant or outside of the defendant's control.

6 There has been testimony from Dr. Myer
7 yesterday. Dr. Myer was only asked about one of these
8 people, and that was A.J. Martin, and that question to
9 A.J. -- about A.J. Martin was would -- without medical
10 intervention, would A.J. Martin have died? And his answer
11 was yes.

12 As it relates to Dante Carlson, my
13 recollection of the evidence was he said he fixed a
14 hernia.

15 There was no testimony as to anything
16 regarding Anthony Carlson.

17 As it relates to Ryhley Mattison, I believe
18 there was questions surrounding that, and what he had said
19 was that eventually she could have suffered an infection.
20 I think he mentioned sepsis could have been something that
21 would have occurred.

22 But I would argue to the Court that based
23 on the evidence, and you have to take the evidence under
24 all the facts and circumstances, that based on the actions
25 of Mr. Miu, based upon the testimony regarding the

1 injuries to the people I'm mentioning, Dante Carlson,
2 Anthony Carlson, and Ryhley Mattison, it is -- I would
3 argue that it is not possible to say that no other
4 inference can be drawn but that he intended to kill those
5 people. And there's actually no information that Dante
6 Carlson or Anthony Carlson would have died from their
7 injuries anyway.

8 So without any other extraneous factor,
9 which would have prevented Mr. Miu from doing this, so we
10 have one -- you -- you heard the evidence, you can figure
11 out how you would view the movements, but I would argue
12 that the facts and circumstances presented to the Court
13 and to the jury here do not support the claim that he
14 unequivocally intended to kill these people.

15 Ryhley Mattison said she thought she was
16 punched, that she initially believed it was a punch, and I
17 don't think there -- alone, not the deciding factor, I
18 don't think their injuries support the claim of an
19 attempted first-degree intentional homicide.

20 So I would move for dismissal on those --
21 what -- whoever those -- whatever those counts are, Your
22 Honor.

23 THE COURT: Thank you.

24 Who's going to argue for the State?

25 MR. ANDERSON: I can, Judge.

1 So I think this case, it's similar to if
2 you compare it to, say, a shooting case where somebody
3 walks up to somebody, shoots them in the torso, in the
4 chest, and it happens to miss vital organs and they just
5 need stitches. I don't think -- I think it's a difficult
6 argument to make that they didn't intend to kill them.

7 It's the same thing here, he's stabbing all
8 these people in the area of vital organs, veins, blood
9 vessels.

10 His intent can be -- intent is based on all
11 facts and circumstances. He sliced A.J. up the belly; he
12 stabbed Isaac directly in the heart; he stabbed Tony,
13 Dante, and Ryhley in the area of all the vital organs.
14 Dante was stabbed right below where his heart is. Tony
15 was stabbed twice; one he blocked. That's certainly
16 something out of Nicolae's control. Ryhley was sliced
17 across her side, damaging her stomach and her diaphragm
18 and --

19 So I think given all the facts and
20 circumstances it's -- there's clearly enough for it to go
21 to the jury.

22 The -- and but for the chance that he
23 didn't happen to hit vital organs, I think the jury can
24 still conclude his intent was to kill them.

25 THE COURT: All right. This motion is being made

1 after the close of State's evidence. There is a
2 particular standard that I have to apply. In fact, the
3 motion must be denied if, considering the State's evidence
4 in the most favorable light, the evidence deduced,
5 believed, and rationally considered is sufficient to prove
6 guilty beyond a reasonable doubt.

7 As to the three individuals that pertain to
8 this motion, I am satisfied that the motion must be
9 denied. There is -- the State has presented credible
10 evidence that Mr. Miu formed the intent to kill by
11 inserting a knife into the torso of the three individuals
12 during a physical confrontation.

13 The torso, as we all know, contains vital
14 organs, blood supply, nerves, and other anatomy that if
15 injured could lead to death. I believe that the -- the
16 risk of death is self-evident when faced with a knife
17 stabbed to that area.

18 There was an intervening event, and I think
19 the State has presented evidence about the individuals'
20 fortitude to defend themselves, to resist injury, the
21 intervention of first responders, and intervention of
22 formal medical treatment in a hospital setting.

23 So for all of those reasons I am satisfied
24 that the State has presented sufficient evidence to
25 warrant the case to continue. The motion is denied.

1 Is there anything else at this moment?

2 MR. NELSON: Judge, at the -- when it's the
3 Defense's opportunity, the Defense intends to call Nic Miu
4 to testify. If we could just take a five-minute break to
5 make sure I go through the colloquy with him privately,
6 and then we can come back and do that here in court.

7 THE COURT: Very good. Have your conversation.
8 We'll come back at 11:05.

9 (Whereupon, a break was held.)

10 THE COURT: Okay. We are back on the record with
11 the attorneys and Mr. Miu. We are sitting in open court,
12 outside the presence of the jury.

13 Mr. Nelson, did you and your client have
14 enough time to talk?

15 MR. NELSON: Yes, Judge. It's my understanding
16 that Mr. Miu wants to waive his right to remain silent and
17 assert his right to testify.

18 THE COURT: Mr. Miu, the conversation I am about
19 to have with you happens in every criminal case -- every
20 criminal trial in Wisconsin. Every person charged with a
21 crime has a constitutional right to remain silent and a
22 constitutional right to present evidence, including
23 testifying.

24 You are at the crossroads faced by every
25 person on trial for a crime. You need to give up one

1 right to exercise the other, and I need to ask you some
2 questions to verify that you're making a free, voluntary,
3 and intelligent decision.

4 First, do you understand that you have both
5 a constitutional right to testify and a constitutional
6 right to remain silent?

7 THE DEFENDANT: Yes, I do.

8 THE COURT: Do you understand that you do not
9 have to prove your innocence, rather the State must prove
10 your guilt beyond a reasonable doubt? Do you understand?

11 THE DEFENDANT: Yes.

12 THE COURT: Do you understand that if you choose
13 to testify you will be subject to cross-examination by the
14 prosecutor?

15 THE DEFENDANT: Yes.

16 THE COURT: Do you understand that if you choose
17 to remain silent, the State cannot refer to that fact?

18 THE DEFENDANT: Yes.

19 THE COURT: Do you understand that your silence
20 cannot be used against you in any way, shape, or form?

21 THE DEFENDANT: Yes.

22 THE COURT: Have you had an opportunity to
23 discuss your decision to testify with your attorney?

24 THE DEFENDANT: Yes.

25 THE COURT: Have you had enough time to discuss

1 your decision?

2 THE DEFENDANT: Yes.

3 THE COURT: And have you made a decision about
4 whether you'll testify?

5 THE DEFENDANT: Yes.

6 THE COURT: And what is your decision?

7 THE DEFENDANT: To testify.

8 THE COURT: Has anybody forced you or threatened
9 you into making that decision?

10 THE DEFENDANT: No.

11 THE COURT: Has anybody made any promises to you
12 or offered you anything of value to arrive at that
13 decision?

14 THE DEFENDANT: No.

15 THE COURT: Are you presently under the influence
16 of any drugs or alcohol?

17 THE DEFENDANT: No.

18 THE COURT: Do you suffer from a mental health
19 condition that is affecting your ability to think or
20 process information today?

21 THE DEFENDANT: No.

22 THE COURT: Have you had enough time to make your
23 decision?

24 THE DEFENDANT: Yes.

25 THE COURT: Do you need any more time?

1 THE DEFENDANT: No.

2 THE COURT: Have all of your questions been
3 answered by your attorneys?

4 THE DEFENDANT: Yes.

5 THE COURT: All right.

6 At this time I find that Mr. Miu has made a
7 free, voluntary, and intelligent decision to waive his
8 right of silence. He's choosing to exercise his right to
9 testify and present evidence on his own behalf.

10 Mr. Chirafisi, Mr. Nelson, how do you
11 intend to proceed from here? Will Mr. Miu be the next
12 witness or do you have others?

13 MR. NELSON: Yes, Judge, the plan is to call Mr.
14 Miu. I have a PowerPoint that I would like to go through.
15 The PowerPoint includes Exhibit Number 104, which is the
16 photo of the -- the map; it includes Exhibit 108, which is
17 the photos of Mr. Miu in the hospital, previously entered;
18 there is three screenshots from the nine-second video in
19 Exhibit Number 2; and then the rest of them are
20 screenshots from the frames in the video, which we -- are
21 from Exhibit Number 2.

22 So all of the items in the PowerPoint
23 are -- have already been exhibited. I've tried to put up
24 some white screens in-between so that pictures don't
25 linger. So my preference would be to just have it on my

1 computer the entire time and I'll -- if there's a long
2 break I can move to a white screen.

3 THE COURT: Okay. Because what we have been
4 doing is once the video is no longer being used, we
5 usually take it down.

6 MR. NELSON: That's -- I'm not going to use the
7 video at all, I'm just using the screenshots --

8 THE COURT: Monitoring it.

9 MR. NELSON: Sure. However to -- and again, my
10 hope is to not have things linger. If you want to take it
11 down, obviously the Court controls that. If you want me
12 to move it to a blank screen, just tell me to do so and I
13 will.

14 THE COURT: Let's just follow our regular
15 practice, and hopefully the two of you will get into a
16 rhythm and --

17 MR. NELSON: That's fine.

18 THE COURT: -- it'll be presented to --

19 MR. NELSON: Very good.

20 THE COURT: Any objection to the materials that
21 he intends to present?

22 MR. SMESTAD: No.

23 THE COURT: It sounds like it's already been
24 received into evidence.

25 Is there anything else that we can do

1 outside the presence of the jury?

2 MR. ANDERSON: Real quick. We forgot to make a
3 record. We ended the video of the jail interview of
4 Nicolae at 56 minutes and 10 seconds.

5 Two other things regarding his testimony.
6 Because he's waiving his right to remain silent, the rest
7 of Sheriff Knudson's body camera would be proper subject
8 for impeachment, so we plan to publish that during his
9 cross.

10 And then we have a number of jail phone
11 call translated transcripts, which Defense also has. I
12 think it's gonna be difficult to cross him on that without
13 saying they're jail phone calls.

14 With Sandi it was easy because she was the
15 other person on the calls, so we could just ask her what
16 was -- what he's told her, but jail phone calls -- part of
17 the relevance is how long it's been because part of their
18 claim is when he was in shock.

19 So if it's six weeks later that he's saying
20 things, I don't want the jury to wonder if we have his
21 phone wiretapped or something like that. I think they
22 should -- I think -- I think, frankly, it's probably
23 obvious. I mean, we just did his jail interview. Some of
24 them had raised their hands that they had seen some of
25 this on the news. It's been well published that he is in

1 custody so --

2 THE COURT: All right. Let's break this down.

3 First part was the rest of Sheriff
4 Knudson's conversation. Mr. Nelson, any objection or
5 comment?

6 MR. NELSON: I think Your Honor's already made
7 rulings on that so nothing -- no additional objections,
8 other than the objections that we've originally filed, and
9 Your Honor's made rulings, and I believe your ruling was
10 it was a Miranda violation but it was voluntary and,
11 therefore, that's Your Honor's ruling, and I think the
12 State's recitation of the law is correct.

13 THE COURT: Yeah, I don't remember making that
14 express ruling because I've been holding back because I
15 wasn't -- I didn't want to start judging things that
16 aren't performing. If I made that suggestion it was
17 intentional because that's where this was all heading.

18 I mean, I -- I saw the video. I made the
19 ruling. I did not see anything in the video that would
20 suggest that the statement was coerced or forced or made
21 under some sort of threat. It was a voluntary statement.

22 So although there was a Miranda violation,
23 Mr. Miu's decision to testify means that the balance of
24 the statement could be used for purposes of impeachment.

25 So I will allow the State to show the

1 balance of the Sheriff Knudson video.

2 And then the second part?

3 MR. NELSON: Jail calls, Judge.

4 THE COURT: Oh, jail calls.

5 MR. NELSON: If --

6 THE COURT: Yes.

7 MR. NELSON: I expect my direct's going to be
8 45 minutes, so I expect it's going to take us to lunch.
9 So if we can take -- certainly take it up now or we can
10 take it up over the lunch hour, I'll defer to Your Honor,
11 but I'd like to be heard on it, whenever we take it up.

12 THE COURT: Yeah, how -- how long are the jail
13 recordings?

14 MR. ANDERSON: We wouldn't be admitting the
15 actual recordings because they're in Romanian. So we
16 have -- they're translated by a translator. He's on our
17 witness list. So if Nicolae denied saying the things in
18 there we can call him on rebuttal more than likely.

19 But it would be using the transcripts that
20 that translator prepared from listening to the jail phone
21 calls for impeachment.

22 THE COURT: Okay. So let --

23 MR. NELSON: When we get there we're going to
24 object to those transcripts because unlike the Spanish
25 transcripts, which have transcribed the Spanish words and

1 then translated the Spanish words into English, these
2 transcripts leave out the Romanian words. And so we're
3 not -- we're not agreeing to the accuracy of the
4 transcripts in any way, shape, or form.

5 THE COURT: Okay. So what I'd like to do then is
6 get through the direct examination, break for lunch,
7 hopefully at the conclusion of the direct exam, and then
8 we can take up the outstanding matter of cross-examination
9 over the lunch hour.

10 All right. Anything else?

11 MR. ANDERSON: No.

12 THE COURT: All right. Hearing none, let's bring
13 the jury in.

14 (Whereupon, the jury enters the courtroom.)

15 THE COURT: Thank you, members of the jury, for
16 your patience. We are ready to resume.

17 The State has rested its presentation of
18 evidence and now we'll turn to the Defense and see if they
19 have evidence to present.

20 Mr. Nelson.

21 MR. NELSON: Judge, the Defense calls Nic Miu.

22 THE COURT: Mr. Miu, please stand, raise your
23 right hand, the clerk will administer the oath.

24 NICOLAE MIU,
25 after having been first duly sworn on oath by the clerk,

1 testifies and says as follows:

2 THE WITNESS: I do.

3 THE COURT: Please have a seat in the witness
4 chair.

5 Mr. Nelson.

6 DIRECT EXAMINATION

7 BY MR. NELSON:

8 Q. You're the Nic Miu we've been talking about for
9 the past seven days?

10 A. Yes, sir.

11 Q. Nic, I want to right away talk to you about
12 Exhibit Number 104.

13 MR. NELSON: If I could have the screen.

14 Q. (By Mr. Nelson, continuing) You were on the
15 Apple River on July 30th?

16 A. Yes.

17 Q. I want to ask you about this exhibit which says
18 it's from Frame 2592 at 1:49 into the video. Have you
19 seen this before?

20 A. Yes.

21 Q. Do you remember that time in your life when you
22 were on the river in that position as shown in that
23 photograph?

24 A. Yes.

25 Q. Sometime after that did something happen to you?

1 A. Yes.

2 Q. Were you punched?

3 A. Not --

4 Q. In fact, after --

5 A. -- not before that --

6 Q. -- sometime after this were you punched?

7 A. After that, yes.

8 Q. Okay. I want to talk about the time between this
9 and the time that you get punched, okay?

10 A. Okay.

11 Q. Exhibit Number 104 there is on the -- with it,
12 where are you on that?

13 A. I'm standing in front of two -- two ladies.

14 Q. And which -- if you were gonna just describe the
15 symbol on Exhibit 104 symbolizing you, which one is that?

16 A. The one with the M.

17 Q. Okay. We'll call that --

18 THE COURT: Do you want the -- do you want the
19 annotator?

20 Q. (By Mr. Nelson, continuing) At that point in
21 time, you said there's two people in front of you. Who
22 are those two people in front of you?

23 A. A blonde lady to my left and a red head -- the
24 red hair lady to my right.

25 Q. Were there other -- does this accurately reflect

1 how you remember, roughly, people in general around you?

2 A. Yes.

3 Q. The blonde lady in front and the other woman, you
4 understand now that through the trial that the -- the
5 blonde woman is named Madison Coen?

6 A. Yes.

7 Q. Can we use her name when possible?

8 A. Yes.

9 Q. And you said red-haired woman. Her name's Ryhley
10 Mattison. Can we use her name when possible -- possible?

11 A. Yes.

12 Q. So when Ryhley and Madison are standing in front
13 of you at that point just before you get punched, right,
14 what are they doing?

15 A. They're yelling at me. At one point they were
16 pointing downriver and saying go, go, get away, so I --

17 Q. What are they doing with their hands?

18 A. They're touching me.

19 Q. When you say touching you, is that something
20 gentle?

21 A. No. They're pushing -- so Madison, she pushed
22 against my left shoulder. She -- she pushed against my
23 chest. She was pointing her finger right at my face. She
24 was yelling at me. Very close to my face. Ryhley had her
25 left -- had one of her arms, I believe it was left hand,

1 on my right arm squeezing and pushing me back.

2 Q. And you had -- when you had just gave that
3 description you put your hands a distance apart. Can you
4 show us that again?

5 A. (Complied.)

6 Q. How far away were they?

7 A. About a foot.

8 Q. Okay.

9 A. Less than a foot.

10 Q. You heard it described through trial as in your
11 personal space. Would you agree with that?

12 A. Yes, right in my face I would describe it.

13 Q. When that was happening, what did it sound like
14 to you?

15 A. The volume was very, very high.

16 Q. Let me ask you about how your body was responding
17 in that moment when people are pushing you, poking at you,
18 the volume is high. How's your heart -- could you tell us
19 about what your heart rate was?

20 A. Oh, yeah, my heart rate was getting really high.
21 My -- my breathing was getting very high. I was --

22 Q. How about your vision? Did --

23 A. Yeah.

24 Q. -- did you have normal vision in that moment?

25 A. No. No. At that moment, because of the

1 situation, I was getting tunnel vision.

2 Q. And can you describe what you mean by you saying
3 tunnel vision?

4 A. I could see peripheral vision but I could see
5 center in -- in -- right before my eyes.

6 Q. How about hearing? How was your -- could you
7 hear the noises?

8 A. I could hear the volume very high but I couldn't
9 understand what they were saying. There was -- the noise
10 became garbled. I mean, the -- the sound became garbled.

11 Q. Did you feel threatened at that point?

12 A. Yes.

13 Q. Did you have your knife in your right hand?

14 A. Yes.

15 Q. What did you do with your left hand? Tell us
16 what you did with your left hand.

17 A. Yeah, I -- yeah, with -- so with my left hand I
18 pushed her away from my face.

19 Q. Can you show us what you did with your left hand?

20 A. (Demonstrating.)

21 Q. Why did you do that?

22 A. She was very close to my face. She was in my
23 personal space. She been -- had been there for a while
24 and I felt threatened.

25 Q. Were you -- did you intend to harm her in some

1 way?

2 A. No.

3 Q. Did you try to harm her in some way?

4 A. Absolutely not.

5 Q. Do you know where, if at all, you had contact
6 with her body when you raised your left hand in that
7 manner?

8 A. No.

9 Q. Do you think you had contact with her?

10 A. No.

11 Q. I want to take us out of that space now for a
12 second, okay, Nic?

13 A. Okay.

14 MR. NELSON: If I could have the screen again.

15 Q. (By Mr. Nelson, continuing) You -- you were here
16 in court when we talked about -- when we watched the video
17 you speaking with Brandie Hart, is that right?

18 A. Yes.

19 Q. And I think you told her about your health
20 condition. Can you just tell the jury now, what was your
21 health like on July 30th of 2022?

22 A. It was very poor.

23 Q. Okay.

24 A. Yeah.

25 Q. Had you -- I think you mentioned to her again,

1 had quadruple bypass surgery before?

2 A. Yes, sir.

3 Q. And how -- when did you have that?

4 A. 2020. About the same month. So about --

5 Q. Showing you here what's been marked as Exhibit
6 Number 108. Can you tell us what those are pictures of,
7 starting on the -- on the left?

8 A. Yep. On the left it's me right after the surgery
9 holding a red heart pillow against my surgery.

10 Q. And what was the purpose that you knew for that
11 red heart pillow?

12 A. There was to protect my -- my surgery from hits,
13 bumps.

14 Q. Was that something that the hospital provided?
15 It looks like there's like almost a picture of a heart and
16 lungs on there.

17 A. It is. The -- the -- the hospital provided that.

18 Q. And then the picture in the middle, what is that?

19 A. My first walk. My new life.

20 Q. Did it take you sometime to recover and be as
21 active and mobile as you were before?

22 A. Oh, yeah.

23 Q. Do you think you ever reached the same level of
24 mobility and fitness that you were prior to the quadruple
25 bypass?

1 A. Never.

2 Q. What's the picture of you on the right there?

3 A. (No response.)

4 Q. You can tell us.

5 A. My baby.

6 Q. Okay. Is that a dog?

7 A. Yeah.

8 Q. Is that dog important to you?

9 A. He my angel.

10 Q. Okay. And that's -- the cushion's helping you to
11 enjoy time with her but still keeping your chest safe?

12 A. Yes, sir.

13 Q. Okay. You've had other surgeries in the past, is
14 that right?

15 A. Yes.

16 Q. Did you have a hernia surgery?

17 A. Two hernia surgeries.

18 Q. Have you had back surgery?

19 A. Yes.

20 Q. And again, in general, would you consider your
21 fitness on -- if you were going to put it on a scale for
22 July 30th, what would you consider your overall health and
23 fitness on July 30th of 2022?

24 A. With my weight and -- very poor.

25 Q. I want to ask you now about moving on to the

1 Apple River on July 30th, okay?

2 A. Okay.

3 Q. On that -- this was a planned trip, is that
4 right?

5 A. Yes.

6 Q. Did you get a call from your friend Ernesto
7 sometime before that trip?

8 A. Yes, sir.

9 Q. What was that call about?

10 A. He wanted to remind me to bring my knife to cut
11 string when -- when we tie the -- the tubes together.

12 Q. Okay. And when you say -- do you have a
13 pocketknife?

14 A. Yes.

15 Q. Okay. Can you tell us about that pocketknife?

16 A. I owned it for about 10 years. I've had it a lot
17 on me. I use it as a -- basically a dual tool. I call it
18 my Swiss Army knife. Basically because I use it as a
19 screwdriver, I cut insulation when I do electrical work,
20 I -- I do -- I -- I use it pretty much everywhere.

21 Q. Okay.

22 A. I'm an engineer. My tool.

23 Q. Is it something that you carried on your person
24 -- I don't want to say all the time but somewhat
25 routinely?

1 A. Yeah. When I knew I was going to work on
2 something or need it for something, yes.

3 Q. Okay. Now I wanna skip ahead again now to -- to
4 the river, okay? At some point did Ariel lose his phone?

5 A. Yes, he did.

6 Q. Did you go to look for that phone?

7 A. I volunteered to go look for it.

8 Q. When you went to go look for that phone did
9 you -- what were you wearing?

10 A. Before that?

11 Q. No. Right when you --

12 A. Oh.

13 Q. -- when you left your group to go look for that
14 phone what were you wearing?

15 A. So I took my goggles, my snorkel, and my swimming
16 trunks.

17 Q. Did you have anything on your feet?

18 A. Yes. I had on my feet, I had a pair of really,
19 really torn up sandals.

20 MR. NELSON: Can I approach, Judge?

21 THE COURT: Yes.

22 Q. (By Mr. Nelson, continuing) Showing you what's
23 been marked as Exhibit 113. Is this a packet of nine
24 photos of your sandals?

25 A. Yes.

1 Q. You've seen those?

2 A. Yes.

3 Q. Does that accurately show the condition of the
4 sandals that you had?

5 A. Yes.

6 Q. Can you just --

7 MR. NELSON: Move for the admission of Exhibit
8 113.

9 THE COURT: Any objection?

10 MR. SMESTAD: I don't think I've seen them,
11 Judge. If I can take a look at them?

12 THE COURT: Yeah.

13 MR. SMESTAD: Oh, pardon me. Never mind, Mr.
14 Anderson's seen them. No objection.

15 THE COURT: All right. 113 is received.

16 Q. (By Mr. Nelson, continuing) These weren't taken
17 by you, were they?

18 A. Pictures, no.

19 Q. No. These were taken by the sheriff's
20 department, correct?

21 A. Yes.

22 MR. NELSON: Permission to publish, Judge.

23 THE COURT: Yes.

24 MR. NELSON: Can I just -- because we're going to
25 go through the PowerPoint, can I --

1 THE COURT: Yeah, just pass them to the jury.

2 Q. (By Mr. Nelson, continuing) Can you use your
3 words? I know we have a picture that better does it, but
4 just briefly describe the condition of those sandals.

5 A. Horrible.

6 Q. Okay.

7 A. They -- they were -- they were just coming apart.
8 They -- they -- I couldn't walk on them unless I tried to
9 mend them.

10 Q. Okay.

11 A. As you can see, I used string, leftover string,
12 to mend them.

13 Q. When you left wearing those sandals and your
14 shorts, did you have your pocketknife with you?

15 A. Yes.

16 Q. Where was it?

17 A. In my right pocket --

18 Q. Okay.

19 A. -- clipped to my --

20 Q. Did you have that there pretty much all day?

21 A. Yes.

22 Q. You were here when we watched the video of your
23 interview with Brandie Hart, is that right?

24 A. Yes.

25 Q. When you spoke with Brandie Hart were you

1 truthful to her about the knife?

2 A. No. I lied about the knife.

3 Q. Was that your knife?

4 A. Yes, it is -- it was.

5 Q. Did you bring it with you when you -- when you
6 went to go look for the phone?

7 A. Yes, I did.

8 Q. When you went to go look for the phone did you
9 have any intent to harm anybody?

10 A. No.

11 Q. Why did you go leave your group?

12 A. To go look for the phone.

13 Q. Okay. At some point did you have some contact
14 with a group of teenagers?

15 A. Yes.

16 Q. And you were here in court when we saw the
17 nine-second video, is that right?

18 A. Yes.

19 Q. I want to show you just a couple of slides from
20 that, if I could. Do you -- do you see those slides up
21 there?

22 A. Yes.

23 Q. Are those from that video?

24 A. Yes.

25 Q. What are you doing in those three slides, in

1 general?

2 A. I was scanning the water, looking for the phone.

3 Q. Okay. And are you -- in that position, are you
4 walking upriver or downriver?

5 A. Upriver, away from the -- that group of boys.

6 Q. Did you hear them say some things to you?

7 A. Yes.

8 Q. Prior to your walking upriver and them -- did you
9 hear those words that I have written on that slide?

10 A. Yes.

11 Q. Prior to your hearing those words when you were
12 walking upriver, had you had verbal contact with that
13 group?

14 A. I think so.

15 Q. They --

16 A. They asked me what I was looking for and I told
17 them I'm -- I'm looking for a phone, a lost phone.

18 Q. Did you ever tell them that you were looking for
19 little girls?

20 A. No.

21 Q. Were you looking for little girls?

22 A. Absolutely not. It's pathetic.

23 Q. When you -- at the end of this, when you -- you
24 watched the video, at the end of the video where -- I'm
25 not going to play it, but do you remember what you did

1 right there at the end?

2 A. At the end I was walking away.

3 Q. Okay. Did you eventually turn around and face in
4 the direction of the group that was yelling at you and
5 calling you a raper?

6 A. Yes.

7 Q. When you --

8 MR. SMESTAD: Object, Your Honor. Can we
9 approach?

10 THE COURT: Yes.

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

12 THE COURT: I'll sustain the objection. The
13 question is leading. Please continue.

14 Q. (By Mr. Nelson, continuing) What did you do at
15 the end of the video?

16 A. I -- I was walking away.

17 Q. At some point did you ever become in a position
18 where you were looking at that group of teenagers that had
19 yelled at you?

20 A. Yes.

21 Q. What did you see when you were looking at that
22 group of teenagers after the end of this video?

23 A. I mean, I saw them -- I saw one of them holding a
24 -- a phone in a bag and I believed it was what I was
25 looking for so I turned around and I started approaching

1 them.

2 Q. Why did you approach them?

3 A. I wanted to get a closer look at the phone to see
4 if it was the one that I was -- that belonged to Ariel.

5 Q. Did you eventually get near them?

6 A. Yes. I -- I -- I started walking, then I rushed
7 the base, stumbled, and fell on my knees, held onto their
8 tube, at which point I lost my -- my goggle and snorkel
9 kit in the water.

10 Q. Did -- you saw in the video -- or excuse me, you
11 saw during your interview with Brandie Hart that you said
12 things different than what you just said now about what
13 happened to your snorkel and goggles?

14 A. Um-hum.

15 Q. Is that right?

16 A. I -- yes.

17 Q. Okay. Is your memory sometimes different than
18 what you see in the video?

19 A. Yes.

20 Q. Was your memory -- in your memory, what happened
21 to your goggles?

22 A. In my memory the goggles got --

23 Q. Knocked away?

24 A. -- knocked away, yeah.

25 MR. SMESTAD: Objection. Leading.

1 A. So --

2 THE COURT: Hold on. No. One second. When
3 there's an objection, just wait on your answer.

4 It is leading. Sustained.

5 Next question, please.

6 MR. SMESTAD: I'd ask that his answer be
7 stricken.

8 THE COURT: It's a leading question. Let's move
9 on.

10 Q. (By Mr. Nelson, continuing) Is your memory
11 perfect?

12 A. No.

13 Q. Now that you've watched the video, do you realize
14 that you were wrong about that?

15 A. Yes.

16 Q. What happened to your goggles?

17 A. My goggles fell -- fell in the water.

18 Q. And when they fell in the water, what did you do?

19 A. I started looking for them, searching right where
20 they fell.

21 Q. If I -- oops, it's on already.

22 Showing you here some slides, 220, 225, and
23 279. Can you tell us what you're doing?

24 A. I'm searching for the -- the goggle kit.

25 Q. And where are you in relation to the six

1 teenagers' tubes? Are you on the side? Are you upriver?
2 Are you downriver? Are you in some other position?

3 A. I'm upriver. So I'm -- yeah.

4 Q. I'm gonna then show you another group of slides,
5 575, 600, and 625. What does that show you doing?

6 A. It's -- so what I did from that point, I went
7 around the -- the intertubes to the other side and I
8 continued looking for the goggle and snorkel set.

9 Q. Why did you walk around from the one side to get
10 to the other side of the tubes?

11 A. Well, I -- I -- I thought that the water
12 current -- current would -- would bring them over to the
13 other side and I was walking away from the boys at the
14 same time.

15 Q. Okay. During that time that you walked in that
16 direction, did you have any physical contact with them?

17 A. No.

18 Q. Were you confronting them?

19 A. No. I didn't say a word.

20 Q. This next set of slides, what does this show you
21 doing here?

22 A. I'm walking away from -- from the group.

23 Q. Walk --

24 A. Still --

25 Q. Go ahead.

1 A. I'm looking -- I'm looking -- still looking for
2 my goggle set at that time.

3 Q. When you were doing that, did you ever hear the
4 kids say anything?

5 A. They gave me a warning.

6 Q. What they say?

7 A. You got 10 seconds.

8 Q. In response to that, what did you do?

9 A. I ignored them and I actually continued doing
10 what I was doing.

11 Q. Okay. I'm going to show you the next set of
12 slides here. Were you in a position to see here 963,
13 1140, and 1155, what the teenagers were doing behind you?

14 A. They were getting closer and closer to me. They
15 were walking toward me.

16 Q. Were you in a position to see that? Was that
17 behind you or had you turned around?

18 A. Well, I could hear their voices. I could hear
19 that they were getting closer. At some point I may have
20 turned my head and witnessed that, their coming towards
21 me.

22 Q. Showing you 1170, 1213, and 1284. What do you --
23 what's happening here?

24 A. I'm a -- I have -- basically I'm at an angle to
25 them but I could say I had my back at them still scanning

1 the water and they were right behind me. I got that
2 close. They -- within seconds they were right behind me.

3 Q. At some point did you see other people from
4 another group?

5 A. Yes.

6 Q. What did you see?

7 A. I saw what I seemed to me at the time adults
8 coming over from the other side of the river.

9 Q. And when you saw adults coming over from the
10 other side of the river, what did you do?

11 A. I walked towards them. I walked towards the --
12 the first one was a -- a -- was Madison.

13 Q. When you walked towards Madison, where were the
14 six teenage boys that had been yelling at you?

15 A. They were following me.

16 Q. Okay. Were you in their path as you walked
17 across the river towards Madison?

18 A. No.

19 Q. Did they have a clear -- as far as you know, did
20 they have a clear path downriver if they wanted?

21 A. More than plenty.

22 MR. NELSON: Can I --

23 Q. (By Mr. Nelson, continuing) Showing you this
24 next group of photos. What did you -- what's going on
25 here?

1 A. So in this frame here the left -- the first adult
2 that came to me was Madison. She already had her finger
3 pointing downriver and yelling at me and -- and used some
4 awkward words. They were ordering me to go down.

5 Q. We see your -- it looks like you're doing
6 something with your right hand. Do you remember, what are
7 you doing with your right hand?

8 A. Yep. I was trying to explain to her what I'm
9 looking for.

10 Q. When you tried to explain to her what you were
11 looking for, did you get the impression she was listening
12 to you?

13 A. No. Her voice was too loud --

14 MR. SMESTAD: Objection as to what Madison had as
15 an impression.

16 THE WITNESS: Okay.

17 THE COURT: Hold on. Hold on. Wait a second.

18 Sustained. Speculation.

19 MR. NELSON: I'm asking about his impression, so
20 I'll rephrase. I'll just --

21 Q. (By Mr. Nelson, continuing) Did you get the
22 impression that Madison Coen was going to listen to your
23 words?

24 A. No.

25 Q. Why not?

1 A. Because she was too loud, she never stopped to
2 give me a chance to talk, and she kept pointing and
3 ordering me to go down, downriver.

4 Q. We've all heard the tape, but just to be -- was
5 she using polite language?

6 A. Polite? No.

7 Q. Okay. Did you hear anyone saying anything behind
8 you when you walked over to Madison Coen?

9 A. Yes. They were all calling me names.

10 Q. Okay. Showing you the next set of slides here,
11 1776, 1840, and 1824. What are you doing here in this set
12 of slides?

13 A. I'm turning my back towards Madison and the rest
14 of the people.

15 Q. Why did you turn your back to Madison and the
16 rest of the people?

17 A. It felt to me like I couldn't have a conversation
18 with her at that point. She was not listening and I
19 didn't want to -- I didn't want to interact any further.

20 Q. Had you at that point found your snorkel or
21 goggles?

22 A. No.

23 Q. Had you at that point found the phone?

24 A. No.

25 Q. Did you hear anybody saying anything while you

1 stood there with their back to them?

2 A. Oh, yeah.

3 Q. What did you hear?

4 A. They were still yelling he's looking for little
5 girls.

6 Q. Were you looking for little girls?

7 A. Absolutely not.

8 Q. When you heard them, did you consider that to be
9 a lie?

10 MR. SMESTAD: Objection, Your Honor. Leading
11 again.

12 THE COURT: Sustained.

13 MR. NELSON: I asked did you consider that to be
14 a lie, I don't think --

15 THE WITNESS: Yes, I --

16 THE COURT: Hold on. Please.

17 MR. NELSON: -- that --

18 THE COURT: Please.

19 MR. NELSON: I don't think that's leading.

20 THE COURT: I sustained -- I sustained the
21 objection. Please move on.

22 Q. (By Mr. Nelson, continuing) When you heard that,
23 did you consider it to be truthful or did you consider it
24 to be untrue?

25 A. Untrue.

1 Q. And when you heard someone saying an untruth
2 about you, did that change how you were feeling?

3 A. I felt frustrated. It felt annoyed. They kept
4 saying it over and over so it annoyed me and frustrated
5 me.

6 Q. And when you heard them say this untruth about
7 you, did it appear to you as if the other group that had
8 come over agreed with what these kids -- the -- the
9 teenagers were yelling about you?

10 MR. SMESTAD: Objection. Leading.

11 THE COURT: Sustained.

12 Q. (By Mr. Nelson, continuing) Did you think
13 anybody in the other group was going to help you or listen
14 to you when you were being called these names and accused
15 of being a pedophile?

16 MR. SMESTAD: Objection. Leading.

17 THE COURT: Sustained.

18 Q. (By Mr. Nelson, continuing) How did you feel?

19 A. Well, I -- I felt overwhelmed at that point. I
20 felt still annoyed, frustrated. I felt like she wasn't
21 listening and she was the adult that I thought I was going
22 to -- to reason with or get help from. She didn't --
23 obviously didn't even attempt to reprimand the children
24 from yelling.

25 Q. Showing you another slide here, 1838, 1846, and

1 1865. Is that you?

2 A. Yes.

3 Q. What are you doing?

4 MR. SMESTAD: Judge, can we approach?

5 THE COURT: Yes.

6 MR. SMESTAD: I have an objection.

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

8 THE COURT: Just one moment.

9 Ready?

10 MR. NELSON: Yes, sir.

11 THE COURT: Let's continue.

12 Q. (By Mr. Nelson, continuing) Showing you Photos
13 1838, 1846, 1865. What are you doing in those? Do you
14 remember what you were doing?

15 A. Yeah, I had my back towards the -- the group of
16 people.

17 Q. In the two photos there, which direction are you
18 looking?

19 A. I'm looking downriver.

20 Q. Okay. Are you looking at -- there's two
21 different groups, if I recall, from Exhibit 104, is that
22 right?

23 A. Yes.

24 Q. One came from one side of the river and the other
25 one's on the other side of the river?

1 A. Correct.

2 Q. Which -- where are you -- in the photo in the
3 upper left, are you looking at one particular group as
4 opposed to another group?

5 A. Yes. I'm looking at the -- the boys' group.

6 Q. And why are you looking at the boys' group?

7 A. Because they were yelling at me.

8 Q. And what were they yelling at you?

9 A. They were yelling things that were not true and
10 pointing at me.

11 Q. When this -- I want to -- after that happened,
12 showing you the next group of slides, 1875, 1883, and
13 1889, do you remember what Madison did, if anything, to
14 you?

15 A. Yeah.

16 Q. What did she do?

17 A. She grabbed my right arm and she pulled me
18 towards her and I lost my balance, so I moved towards her.

19 Q. Did you consider that in that circumstance to be
20 a gentle or a gracious touch?

21 A. No. That was not a gracious touch, no, not at
22 all.

23 Q. Had she been using any gentle or gracious words
24 with you?

25 A. Not that -- no, not that I remember.

1 Q. In those photos, can we see the footwear that you
2 were wearing on that day?

3 A. Yep, those sandals that we saw earlier.

4 Q. Did you have confidence in your footing in that
5 area with those sandals?

6 MR. SMESTAD: Objection. Leading.

7 THE COURT: Sustained.

8 Q. (By Mr. Nelson, continuing) How did you feel
9 about your footing in that area?

10 A. Very unstable.

11 Q. I want to show you the next set of slides here.
12 Do you remember what you say to Madison after she pulled
13 on your right arm?

14 A. Yeah. I told her not to touch me.

15 Q. And why did you tell her that?

16 A. Because she pulled on me without my -- my -- my
17 invitation.

18 Q. Were you -- did you say that in any particular
19 tone?

20 A. No, not in a mean tone, but I -- I made it sound
21 so she could hear me. Don't touch me.

22 Q. Okay. Why didn't you want her to touch you?

23 A. I didn't give her permission to do so.

24 Q. Sure. But why did you not want to give her
25 permission to do so?

1 A. Because she was one mind -- one track mind. She
2 just wanted to get me away from that, pointing me
3 downriver, and tell me to go there.

4 Q. What's your comfort level at this point?

5 A. On a scale from one to -- to ten, comfort level
6 is very low.

7 Q. Okay. Are you -- if you had that same thing, a
8 scale, of like a fear scale, a one to ten fear scale,
9 right --

10 A. Yeah.

11 Q. -- and so with ten being the most fearful you
12 ever been in your life and -- and zero -- let's call zero
13 to ten -- being the most safe you've ever been --

14 A. Um-hum.

15 Q. -- where are you at here on a fear scale?

16 A. In that particular --

17 Q. Yeah.

18 A. About one.

19 Q. Okay. So you're more uncomfortable but not
20 necessarily afraid, is that what I understand?

21 A. Correct.

22 Q. At -- where was your group in relation to you
23 then?

24 A. Was upriver.

25 Q. And did you do anything in order -- in relation

1 to your group?

2 A. Yep.

3 Q. What did you do?

4 A. I -- I turned to them and I -- I called them. I
5 was trying to call them to -- to come over and help me.

6 Q. Is -- are these slides, does this 2127 and 2140,
7 2131, what does that show you doing?

8 A. I was waving at them and calling them to come
9 over.

10 Q. When you say you were calling them, did you do
11 something physical or did you do some -- something verbal
12 or did you do both?

13 A. Physical.

14 Q. Did you make any verbal comments at that point?

15 A. No.

16 Q. Why not?

17 A. It was very loud. All around me was very loud.
18 I don't think that anybody could have heard me 100 and
19 some feet away.

20 Q. With everybody else yelling did you think your
21 yelling was going to de-escalate or escalate the
22 situation?

23 A. When everybody's raising their voice I don't
24 think having another raised voice would help the
25 situation.

1 Q. After you raised your hand to call for your
2 friends, did you see Madison Coen doing anything?

3 A. Oh, yeah. She was looking at -- towards her
4 group and then she waved to them to come over to -- to
5 her.

6 Q. Did -- is that what we're seeing here in 2261,
7 2262, and 2263? What do you see?

8 A. Yep, she's calling her -- her group over.

9 Q. Did you remember, when she called her group over
10 did her group respond?

11 A. Yes.

12 Q. Did they join that?

13 A. Yes.

14 Q. Showing you now these slides. Is that what you
15 saw?

16 A. Yes.

17 Q. I think we asked you questions before about
18 Exhibit 104 with you the blue dot and the other red dots.
19 When you were -- and eventually were you standing there
20 were other people around you?

21 A. Yes.

22 Q. When you were standing there in that moment with
23 the other people around you after you've called your
24 friends once, was that other group, did they appear to be
25 afraid to you?

1 A. Afraid from me?

2 Q. Afraid. Did they appear, when you look at them,
3 did they look like they're in fear?

4 A. No, absolutely not.

5 Q. What did it look like to you?

6 A. They were all laughing and enjoying themselves.

7 Q. At whose expense?

8 A. At my expense.

9 MR. SMESTAD: Objection.

10 Q. (By Mr. Nelson, continuing) And --

11 THE COURT: Wait. Wait.

12 MR. SMESTAD: It's speculation as to what
13 these other --

14 THE COURT: Sustained. It's speculation as to
15 what other people think.

16 Next question.

17 Q. (By Mr. Nelson, continuing) How did you feel in
18 that moment when they were around you saying those things?
19 Did you think they wanted you to join in their laughter?

20 A. No, I --

21 Q. Did you want to join in their laughter?

22 A. No, absolutely not. I was not --

23 Q. Where -- if this fear scale is going, is it
24 staying at one or is it moving in a particular direction?

25 A. It's creeping up.

1 Q. Showing you another set of slides here, 2328,
2 2311, 2382. Do you remember -- what do you remember about
3 that?

4 A. I remember the young boys a -- were yelling,
5 pointing at me, saying things that are not true.

6 Q. Did you -- were you able to see, like in this
7 next slide, this 2429, 2440, 2401, were you able to see as
8 you stood there what everybody was doing? Were you able
9 to scan and see that?

10 A. For a brief second, yes.

11 Q. Okay.

12 A. They were very close. They were really close to
13 me. I could -- I could see and hear them, yes.

14 Q. How about your fear scale there, where -- where
15 is it -- where is it?

16 A. About two or three.

17 Q. Okay. I see in the one on the right there you
18 have your hand some place. Can you tell me what you're
19 doing with your right hand?

20 A. Yes, I'm reaching for my pocketknife.

21 Q. Why?

22 A. Because at one point my fear was getting really
23 high and --

24 Q. Okay.

25 A. -- and I -- I -- I was getting ready to pull it

1 out.

2 Q. Okay. Do you remember, other than what you've
3 talked about with Madison Coen pulling you, which we saw,
4 do you remember anybody else touching, pushing, grabbing
5 you in any way?

6 A. The -- the two ladies, yeah, and Madison.

7 Q. Showing you here what's 2472, 2478, 2481. Do you
8 remember what's happening in those photos?

9 A. Yes. Yes. This one, the lady on my right side,
10 she -- she grabbed my -- my arm and she was pushing
11 against my -- my arm.

12 Q. And did that increase your level of comfort or
13 increase your level of fear or something different?

14 A. So it decreased my level -- the level of comfort
15 and increased my -- my fear.

16 Q. Do you know, do you remember at some point do you
17 take your knife out of your pocket?

18 A. Yes, I -- I do.

19 Q. Do you know when it is in relation to these
20 slides? Do you have a memory exactly of when that is?

21 A. Not exactly, but when they were pushing and --
22 and poking at me I remember I pulled it out then.

23 Q. Okay. Do you remember, did you have it out
24 before you were punched or after you were punched?

25 A. Before I was punched.

1 Q. Okay. Showing you another set of slides here.
2 It looks like you're -- do you remember doing something
3 with your left hand?

4 A. Yeah. At that moment I really needed my -- my
5 people to come over and -- and help me so I was trying to
6 get their attention.

7 Q. Okay. One more slide here. Do you -- what's
8 happening here in this slide?

9 A. Madison is pushing on my left shoulder and
10 basically yelling at me right in my face.

11 Q. And then on the next slide we see something in
12 your hand, is that right?

13 A. That's the knife.

14 Q. Why did you take out your knife at that point?

15 A. I was beginning to be afraid.

16 Q. And what was it about that moment where everybody
17 is that made you so fearful that you took out your knife?

18 A. I was surrounded. They -- they were yelling,
19 they were -- they had just pushed me. Well, the lady.
20 They -- they squeezed my arm. I mean, it seemed like they
21 were not backing away.

22 Q. Previously you've turned around, is that right?

23 A. Yes.

24 Q. Did you feel comfortable turning around in this
25 situation?

1 A. No.

2 Q. Why not?

3 A. They were too close to -- to me.

4 Q. What happened the last time that you turned
5 around?

6 A. Nothing good.

7 MR. NELSON: Judge?

8 THE COURT: Is this a good place to break?

9 MR. NELSON: It may as well be.

10 THE COURT: All right. It's 12 noon, let's break
11 for lunch. You'll be taken downstairs to the assembly
12 room again. Please, no conversation about the case
13 amongst yourself or with anybody else. Do not conduct any
14 independent research or investigation and, excuse me, do
15 not use your devices to access any news reports or social
16 media accounts about this trial.

17 Please take the jury out.

18 (Whereupon, the jury exits the courtroom.)

19 THE COURT: We are outside the presence of the
20 jury. We had a couple of sidebars --

21 MR. NELSON: Can Mr. Miu -- sorry.

22 THE COURT: Oh, yeah, I'm sorry, Mr. Miu. You
23 can sit down at the table.

24 We had a couple of sidebars concerning the
25 PowerPoint presentation. Mr. Smestad objected to the text

1 that was superimposed on the photographs. We believe that
2 they prompted Mr. Miu's answers and thus formulated a
3 leading style of examination. Mr. Nelson agreed to simply
4 remove the text and I believe that solved the problem.

5 Anything you want to add?

6 MR. SMESTAD: No.

7 THE COURT: Mr. Nelson?

8 MR. NELSON: Yes, but I'll refrain.

9 THE COURT: I'd like to have the transcripts of
10 these conversations so I can review them over the lunch
11 hour and get a better understanding about what it is that
12 you want to introduce and what the objections may be. So
13 do you have those available?

14 MR. ANDERSON: Yes.

15 THE COURT: Okay. Please give them to the clerk
16 so I can read them over the lunch hour.

17 How much more do you have?

18 MR. NELSON: I think I'm on Slide 27. I have a
19 40-slide presentation, so 15 minutes.

20 THE COURT: Okay. So let's come back at 12:45 so
21 I can take up the issue about the recorded conversations.
22 Okay?

23 MR. NELSON: Understood.

24 THE COURT: All right. That's all.

25 (Whereupon, a break was held.)

1 THE COURT: We are back on the record, State
2 versus Miu, with the attorneys and Mr. Miu in open court.

3 I was provided a copy of the jail
4 transcripts for my review. Part way through my judicial
5 assistant told me to stop reading and that the State no
6 longer intends to use it.

7 MR. ANDERSON: That's correct.

8 THE COURT: So is there anything else to discuss?

9 MR. NELSON: Can I just have a brief moment --

10 THE COURT: Yes.

11 MR. NELSON: -- with Mr. Anderson?

12 (Whereupon, a discussion was held off the record
13 between counsel.)

14 THE COURT: Mr. Nelson, was there something else?

15 MR. NELSON: Not for the Court, no.

16 THE COURT: All right. Thanks for coming back so
17 early.

18 MR. NELSON: All right.

19 THE COURT: We're in recess for another
20 15 minutes. Jury won't be back until one.

21 (Whereupon, a break was held.)

22 (Whereupon, the jury enters the courtroom.)

23 THE COURT: All right. Mr. Miu, would you please
24 retake the witness stand? You are still under oath.

25 Mr. Nelson.

1 MR. NELSON: Thank you.

2 Can I have the screen, please?

3 Q. (By Mr. Nelson, continuing) Mr. Miu, when we
4 finished I think we were getting to the chronological
5 space that we had begun the morning on, and so I want to
6 start from there again and then move forward from there.
7 Does that make sense?

8 A. Yes.

9 Q. When I had asked you before you talked about how
10 you felt, but since that time you've told the jury that
11 you had this fear scale, okay?

12 A. Um-hum.

13 Q. So at -- I want to ask you about at this time
14 what we see here where you previously described the scene
15 -- right?

16 A. Um-hum.

17 Q. -- how were you feeling on the fear scale?

18 A. About the six, seven.

19 Q. Okay. And at some point I think you told them
20 before, but just so we can put it into the context here,
21 did you do something in response to something that was
22 done to you when you're standing there in this moment?

23 A. Yes. After I was pushed and -- and both sides, I
24 would say, you know, squeezed, I -- I was afraid, so I
25 pulled out my knife.

1 Q. Okay. Did you do something with your left hand
2 at some point?

3 A. Yes, I did.

4 Q. What'd you do with your left hand?

5 A. I pushed her away.

6 Q. And when you say --

7 A. I pushed Madison away.

8 Q. You pushed Madison away. Were you -- was the
9 purpose in that to have contact with her and to get her to
10 back up?

11 A. Yes.

12 Q. Did you have a purpose to cause her pain?

13 A. No.

14 Q. Were you trying to hurt her?

15 A. No.

16 Q. What were you trying to do?

17 A. I was trying to push her away from my space. She
18 was right in my space and my face.

19 Q. Could you -- why didn't you just back up?

20 A. I couldn't back up at that moment.

21 Q. Okay. When you say you couldn't back up, did --
22 why not?

23 A. I --

24 Q. Because you felt uncomfortable or --

25 MR. SMESTAD: Object -- objection. Leading.

1 A. Because I was --

2 THE COURT: No. Wait. Wait. There was an
3 objection.

4 Sustained on leading. Next question.

5 MR. NELSON: I wasn't done with it.

6 Q. (By Mr. Nelson, continuing) Were you
7 uncomfortable or was there a wall behind you or was there
8 some other reason? Why did you feel like you couldn't
9 back up?

10 A. I didn't felt -- feel safe turning my back on --
11 on those people.

12 Q. Okay. How about just taking a step backwards?

13 A. I was standing my ground. I didn't move towards
14 anybody.

15 Q. Okay.

16 A. They were coming at me.

17 Q. When they -- when you raised your left hand did
18 (verbatim) you did that, do you recall when you pushed her
19 away having contact with her?

20 A. I may have, yes.

21 Q. Okay. Do you remember in particular where, if at
22 all, you touched her?

23 A. No.

24 Q. Okay. Would it surprise you if you touched her?

25 A. No.

1 Q. Was that in fact your purpose in pushing her
2 away?

3 A. Absolutely.

4 Q. Okay.

5 A. She was in my space.

6 Q. I want to move forward here and --

7 MR. NELSON: And you can turn the slide off, I
8 guess.

9 Q. (By Mr. Nelson, continuing) At -- after you did
10 that, right, did you -- did something happen to you?

11 A. Yeah.

12 Q. Did people do something to you?

13 A. Yeah.

14 Q. What was done to you?

15 A. Yeah, almost right away I got punched and --

16 Q. And --

17 A. -- fell in the water.

18 Q. -- where did you get punched?

19 A. On my face. On my side of the --

20 Q. Now, you've had a chance to watch this video,
21 correct?

22 A. Yes.

23 Q. Have you had a chance to see these 4,800 slides?

24 A. Yes.

25 Q. Prior to seeing that, did you remember

1 everything?

2 A. No.

3 Q. Have the video or the slides helped you to
4 refresh your memory in some way?

5 A. A lot.

6 Q. Have you remembered everything because you've
7 seen that?

8 A. Not everything, no.

9 Q. Okay. Do you remember some things different than
10 what you see in the video?

11 A. No.

12 Q. You don't remember any of the things different
13 than -- than you see in the video? Like you talked about
14 the goggles.

15 MR. SMESTAD: Objection. Leading.

16 THE COURT: Overruled. We're just trying to
17 reorient the witness to a place where examination can
18 continue.

19 Q. (By Mr. Nelson, continuing) Are there some times
20 when your memory is different from what the video is?

21 A. Yes, of course.

22 Q. Okay. Now, this series that I want to show you
23 is about things that were done to you, okay?

24 A. Yes.

25 Q. Do you have a specific memory about everything

1 that was done to you?

2 A. No.

3 Q. Do you have a specific memory about everything
4 that you did in response to what was done to you?

5 A. No.

6 Q. Do you have a memory about how you felt in those
7 moments?

8 A. I would say, yes, I do.

9 Q. Do you have a memory of what you believed in
10 those moments based upon those feelings?

11 A. Of course.

12 Q. Okay. So I want to show you the -- the slide
13 here. Again, this is Slide 2661, 2662, and 2681.

14 THE CLERK: Are you ready?

15 MR. NELSON: Yes.

16 THE CLERK: Okay.

17 Q. (By Mr. Nelson, continuing) Do you remember how
18 you felt when you fell back into the water?

19 A. I was -- Number 1, I was stunned, that's why I
20 fell backwards. I was very afraid, of course.

21 Q. On this fear scale that you've talked about
22 before, where are you on that scale from zero to ten?

23 A. Right at the top. Ten.

24 Q. Had you ever been at that ten before in your
25 life?

1 A. Never been in a situation like this or a fight in
2 my life.

3 Q. Have you ever been at a ten?

4 A. Never.

5 Q. When you did that as we see on the right, what
6 happened to your head?

7 A. Oh, well, I fell in the water, obviously that's a
8 river, and I hit my head on -- on river rock and my whole
9 body went under.

10 Q. Okay.

11 A. Well, my head went under water.

12 Q. When you say your head went under, is that what
13 it felt like?

14 A. Yes.

15 Q. Did you feel water come over your face?

16 MR. SMESTAD: Objection.

17 A. Over my entire body, yes.

18 THE COURT: Hold on. Hold on.

19 What's the objection?

20 MR. SMESTAD: Leading.

21 THE COURT: Sustained.

22 Q. (By Mr. Nelson, continuing) Where did you feel
23 the water on your body?

24 A. Over my face and my -- my mouth. I felt like I
25 was submerged in water at that moment.

1 Q. Did you try to get up?

2 A. Yes.

3 Q. Why did you want to get up? Why didn't you just
4 lay down there peacefully in the water?

5 A. To drown? No, I wouldn't want to do that. I
6 wanted to get up out of the water.

7 Q. At that moment when you're down in the water, had
8 anybody like A.J. Martin come up to you and said just lay
9 there and rest?

10 A. Somebody came from behind, yes. I found out
11 later who he was and --

12 Q. Okay.

13 A. -- pushed me down and to keep me in the water.

14 Q. Before that, when you tried to get up, do you
15 remember feeling anything before that? Did you -- you
16 told the --

17 A. Yeah.

18 Q. Did you feel anything to any part of your head?

19 A. Yes, of course.

20 Q. What did you feel?

21 A. I felt punched in the -- in the head.

22 Q. Showing you the next slides. Is that -- 2701,
23 2705, 2706. What's happening to you there?

24 A. I -- I'm getting hit on -- on the head.

25 Q. How many times at that point is your memory of

1 watching the video and your memory of experiencing this,
2 have you been hit in the head now but either by people or
3 by ground or by the water?

4 A. Four times at least.

5 Q. Okay. At this point in time, where's your fear
6 scale?

7 A. At ten.

8 Q. When this happened to you, did you immediately
9 get up or did you fall back in the water or did something
10 else happen?

11 A. I tried getting up and I couldn't.

12 Q. Did you -- at some point did you feel something
13 on your backside?

14 A. There was somebody pushing me down.

15 Q. And when you felt that on your backside, did you
16 feel anything else anywhere else?

17 A. I got hit in the face in the front of my head.

18 Q. And is that exhibit here, 2147, do you see that
19 hand through the underarm there?

20 A. Yes.

21 Q. Do you remember getting hit in the head there?

22 A. Yes.

23 Q. Was that a gentle hit?

24 A. No.

25 Q. When you're getting hit in the head here, again,

1 where are you at on the fear scale at that point?

2 A. Ten.

3 Q. Have you been able to get up out of the water?

4 A. No.

5 Q. How many people -- do you know how many people
6 are attacking you?

7 A. At the time I didn't know but I knew -- I knew
8 there were more than I could handle.

9 Q. Did it feel like it was -- how many people did it
10 feel like?

11 A. Like ten.

12 Q. Okay. You've seen the video and you responded at
13 some point, is that right?

14 A. Yes.

15 Q. And you used your knife in response?

16 A. Yes.

17 Q. Why'd you use your knife?

18 A. I feared for my life at that point.

19 Q. Did you think you could get out of there without
20 using your knife?

21 A. I couldn't even get up. They were pushing me
22 down. No -- so the answer is no.

23 Q. In that time when you're down on the ground, did
24 you think there was a way for you to escape?

25 A. No.

1 Q. Did you feel like you could just crawl away or
2 run away or walk away or do anything else to escape?

3 A. Not in that position.

4 Q. The next day after this, July 31st, were you in
5 the -- did you feel -- how did your body feel the next
6 day?

7 A. I hurt everywhere. My head hurt, my throat hurt,
8 obviously my back hurt. I hurt everywhere.

9 Q. You say your throat hurt. Is that something you
10 remembered that day before when you were speaking with
11 Brandie Hart?

12 A. Yes.

13 Q. Okay.

14 A. Yes.

15 Q. Did you mention it to Brandie Hart?

16 A. I don't remember.

17 Q. Okay. Have -- did -- did you see anything --
18 when you felt the pain about your throat, did you see
19 anything that refreshed your memory about what caused that
20 pain to your throat?

21 A. After watching the video, yes.

22 Q. Okay. What happened?

23 A. I got hit in the -- in the throat --

24 Q. Do you remember --

25 A. -- really hard.

1 Q. -- that now?

2 A. Yes.

3 Q. If I can -- showing you the Slides 2993, 2994,
4 and 2997. Is that you?

5 A. Yes.

6 Q. What's happening to you there?

7 A. Somebody is going for my throat, squeezing my
8 throat.

9 Q. Do you remember how that felt?

10 A. I felt pain. I couldn't breathe. Scared. I
11 prayed.

12 Q. I'm showing you the next set of slides here,
13 2998, 99, and 3000. What did you think was going to
14 happen to you in that moment?

15 A. The whole time I -- I -- I felt like I was going
16 to die so he -- I -- basically I feared for my life.

17 Q. And in response to that -- here's Slide 3000 --
18 did you do something in response to that?

19 A. I reached out and -- and stabbed him.

20 Q. When you used your knife -- and again, this is
21 open-ended, you can ask it any way you want. Did you --
22 were you trying to kill somebody?

23 A. Absolutely not.

24 Q. What were you trying to do?

25 A. I was just trying to defend myself.

1 Q. After this was -- again, we've seen the video.
2 You talked to Investigator Hart, so I want to ask you a
3 little bit about that for a moment.

4 A. Um-hum.

5 Q. Make sense?

6 A. Um-hum.

7 Q. Do you independently -- well, let me say. You
8 watched the video here in court, correct?

9 A. Yes.

10 Q. And you watched the video prior to that. We
11 watched it together, right?

12 A. Yes.

13 Q. Does watching that video refresh your memory? Do
14 you have an independent memory of that conversation with
15 Investigator Hart?

16 A. No.

17 Q. Do you remember what it is you said other than
18 seeing things on the video?

19 A. Other than I lied about the knife. That's what I
20 remember, you know, afterward, yeah. I lied about the
21 knife.

22 Q. Okay. Do you remember actually saying that in
23 that moment or do you just remember seeing that and that's
24 what you remember, seeing it?

25 A. I remember seeing it in the video.

1 Q. Okay. Do you remember how you were feeling
2 during that time at all? Do you have any memory about
3 that?

4 A. Not much.

5 Q. Okay.

6 A. No.

7 Q. Just one other thing out of the timeline here.
8 Since that time have you -- we've heard testimony you have
9 a twin brother.

10 A. Yes.

11 Q. Is he here in the courtroom?

12 A. Yes.

13 MR. SMESTAD: Objection. Relevance, Your Honor.

14 I --

15 THE COURT: Overruled.

16 You may continue.

17 Q. (By Mr. Nelson, continuing) Just briefly,
18 because I wanna ask you about conversations that you may
19 have had with your twin brother, just briefly.

20 A. Yep.

21 Q. How do you feel about your twin brother?

22 A. I love him.

23 MR. SMESTAD: Objection. That's irrelevant, Your
24 Honor.

25 THE COURT: Overruled.

1 Q. (By Mr. Nelson, continuing) During this time
2 have you had conversations with your twin brother?

3 A. Yes.

4 Q. Do you consider there to be anybody that you're
5 really -- maybe your wife -- anybody you're closer to than
6 your twin brother?

7 A. No.

8 Q. The -- you and your twin brother, when you speak,
9 what language do you speak in?

10 A. Romanian.

11 Q. Why do you speak in Romanian with your twin
12 brother?

13 A. It's the easiest way to find words to describe
14 what we're thinking.

15 Q. Okay. Is that where you grew up?

16 A. That's the first language.

17 Q. Are there times when you've spoke with your
18 brother that you've talked about this, what happened to
19 you on the river?

20 A. Yes.

21 Q. Is your memory about what you did or what was
22 done to you, is it any better when you talk to your
23 brother than it is when you talk about it at other times?

24 A. No.

25 Q. Are you always getting it right?

1 A. No.

2 Q. How about your feelings, your memory about your
3 feelings --

4 A. Um-hum.

5 Q. -- do you get those right?

6 A. Yes. But almost all the time I -- the feeling is
7 imprinted in my -- my -- my heart, my soul, my mind.

8 Q. Let me -- just for a moment. I'll bring us back
9 to the river on July 30th, okay?

10 A. Um-hum.

11 Q. At some -- well, I think you had said on the
12 video and maybe you testified that people attacked you, is
13 that right?

14 A. Correct.

15 Q. At some point did people stop attacking you?

16 A. No.

17 Q. At some point did people stop attacking you?

18 A. Yes.

19 Q. Okay.

20 A. Yeah.

21 Q. When people stopped attacking you, what did you
22 do?

23 A. I walk away.

24 Q. Okay. Why didn't you stay?

25 A. Oh, god. I -- I walked away towards my group

1 where it was safe. I was afraid of the people that I just
2 had contact with.

3 Q. When you're walking away, where -- you've talked
4 about this fear scale. Where are you on the fear scale?
5 Does it just go down right to zero? Does it stay at ten?
6 Does something else happen?

7 A. No, as soon as I saw the -- the people that I
8 trusted my fear level started creeping down.

9 Q. When you say creeping down, when you're walking
10 back, can you give us -- where are you on that scale?

11 A. As I was getting closer to my group the fear
12 factor was going lower and lower.

13 Q. But when you first started walking back, what's
14 the number at?

15 A. About eight.

16 Q. When you get back to the tubes, what's the number
17 level?

18 A. About four, five.

19 Q. Okay. At -- I think we didn't talk about it.
20 We've talked a little bit about your body response during
21 this --

22 A. Um-hum.

23 Q. -- brief time. When you start walking back,
24 how's your body responding to you?

25 A. Oh, I had cramps. I felt like I've lost -- I --

1 I had diarrhea so I feel like I lost my ball (verbatim) --

2 Q. Was that --

3 A. -- which I didn't.

4 Q. Was that when you were walking back or was that
5 when you were in that 10 seconds of things happening to
6 you and you responding?

7 A. I was -- when -- when the -- the action was going
8 on, you know, in the ten-second frame when --

9 Q. You got diarrhea?

10 A. Yes.

11 Q. Okay. When you were walking back?

12 A. Yeah.

13 Q. What else is your body -- what are you feeling
14 with your body?

15 A. My heartbeat is getting -- when I'm walking back
16 the heartbeat was very, very high now, it's just going
17 down a little bit, breathing, you know, that's what I
18 remember. I remember I -- I was super, super stressed.

19 Q. How about your head? As you're going back is
20 your head clear? Is your head in a different state? How
21 can you describe --

22 A. No.

23 Q. -- like what's going on in your head?

24 A. My head was in a fog. It was like thick fog.
25 Like I couldn't think. I couldn't realize what -- what --

1 what I been through.

2 Q. Were you trying to make sense of it?

3 A. I was trying, but there was no sense to be made.
4 I was completely confused and in a fog.

5 Q. At -- when you walked away you had the knife in
6 your hand, is that right?

7 A. Yeah.

8 Q. When you got to your group did you still have the
9 knife?

10 A. No.

11 Q. What happened to the -- to the knife?

12 A. I -- on the way back I tossed it on the -- on the
13 bank.

14 Q. And you just made with your right hand kind of a
15 underhand motion --

16 A. Yeah.

17 Q. -- with your right hand from, you know, at your
18 side raising up to maybe level with you, is that a fair
19 representation of what you were describing?

20 A. Correct.

21 Q. Why'd you toss the knife?

22 A. I don't know. I was afraid. It felt like I had
23 to throw it away.

24 Q. What were you afraid of at that point?

25 A. I was overwhelmed with -- with just fear, you

1 know, residual feel -- fear and I didn't want to have
2 anything to do with it.

3 Q. Okay. We've heard testimony that eventually you
4 get back to the tubes. Does that happen?

5 A. Yeah.

6 Q. Do you -- where's your memory about that? Right
7 now as you sit here, because we don't have a video about
8 that, we don't have photos of that, is there -- what's
9 your memory like about that?

10 A. It's barely remember anything.

11 Q. Do you remember talking to people?

12 A. I remember people trying to talk to me but I
13 don't know. I don't remember what I said.

14 Q. Okay. You've heard some testimony about things
15 that you might have said. Are you denying you said any of
16 those things?

17 A. No.

18 Q. Do you know what you said?

19 A. After watching the video, yes.

20 Q. Okay. The video isn't of a -- I'm confused.
21 When you -- the tubes, there's no video of you at the
22 tubes. When you say --

23 A. Oh. After -- well, after --

24 Q. Were you talking about Brandie Hart's statements?

25 A. Yes. Yes.

1 Q. Okay. About what you said to the people at the
2 tubes, do you have any memory of that?

3 A. No. No.

4 Q. Okay. When you're sitting there at the tubes,
5 how were you feeling in your head? You talked about this
6 fog, right? If you could put that on a scale, where is
7 that?

8 A. I still couldn't -- my -- my head was in a thick
9 cloud, I couldn't understand what -- what just happened.
10 Still trying to process everything.

11 Q. Okay.

12 A. I was overwhelmed.

13 Q. Did you think at any point you were just casual
14 about what had happened?

15 A. No.

16 Q. Did this feel casual to you in any way?

17 A. No.

18 Q. At some point you saw the video here. You had
19 contact with the police, is that right?

20 A. Yes.

21 Q. You had sat in the back of a squad car of the
22 Sheriff Knudson, is that right?

23 A. Yes.

24 Q. Do you remember much, if anything, about that?

25 A. No.

1 Q. Do you remember -- you've seen some of the videos
2 today. Can you tell us, what do you remember?

3 A. Nothing.

4 Q. Okay. Nothing at all?

5 A. (No response.)

6 Q. How about a feeling? Do you remember a feeling
7 at all?

8 A. Yeah, I was very -- still very afraid.

9 Q. Okay. When you say very afraid, what were you
10 afraid of at that point?

11 A. Well, I just seen -- I been through a horror
12 situation, but in their present I wasn't that afraid but I
13 was stunned. I don't remember much about it.

14 Q. Do you remember watching the video here in court
15 when the police were talking about a guy with a bat?

16 A. Oh, yeah.

17 Q. Do you remember anything about that?

18 A. A little bit.

19 Q. Do you remember how you -- how that made you
20 feel?

21 A. Oh, yeah. I -- I -- I felt very afraid of it.
22 Very afraid.

23 Q. We watched the video of you with Sheriff Knudson.
24 That was about 23 seconds long. Do you remember that?

25 A. Yeah.

1 Q. Had you watched a longer portion of that video
2 with your attorneys?

3 A. I don't remember.

4 Q. Okay. Do you remember saying more things to
5 Sheriff Knudson after that?

6 A. I don't remember.

7 Q. Okay. That's fine.

8 A. Yeah.

9 Q. We saw a video here about your being arrested and
10 told that you were arrested for homicide. Did you
11 remember that?

12 A. After watching the video my memory came back, but
13 I don't remember that --

14 Q. Okay.

15 A. -- naturally.

16 Q. When you -- when you're talking with either --
17 and at some point you go and you meet with Investigator
18 Hart, is that right?

19 A. Yeah.

20 Q. When they were talking about homicides and
21 injuries, can you tell me what you were -- what's your
22 mindset? Did that make sense to you? Did you understand
23 that?

24 A. No. I -- it -- it -- I -- I couldn't make any
25 sense of it, anything that she was telling me. I just

1 couldn't make sense of it.

2 Q. Okay.

3 A. Plus I don't remember the -- the -- the meeting
4 with her.

5 Q. Okay. Right now as you sit here you're like I
6 don't remember that?

7 A. Right.

8 Q. The feelings, now some of the times that you
9 talked with Brandie Hart you talk about what you saw
10 happening or heard happening or what you did. Do you
11 remember that?

12 A. Yes. Yeah. I --

13 Q. Did you get all of that right?

14 A. No.

15 Q. Your feelings, when you were talking about your
16 feelings, about how you believed and your fear --

17 A. Yeah, I -- I -- I feared for my life. That's one
18 thing I can't deny. I -- that's imbedded in my head
19 forever. I feared for my life. I know that. I have
20 nightmares about it.

21 Q. You've -- you've talked -- or tell us about those
22 nightmares.

23 A. I have them every night.

24 Q. What -- what happens in those nightmares?

25 MR. SMESTAD: Objection, Your Honor. At this

1 point it's -- it's irrelevant.

2 THE COURT: His -- his nightmares are irrelevant.
3 The fact that he had them may be, but not the content.

4 THE WITNESS: I --

5 THE COURT: No.

6 MR. NELSON: Can I approach?

7 THE COURT: Yes.

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

9 Q. (By Mr. Nelson, continuing) Nic, I want to ask
10 you some questions about those nightmares, okay, just to
11 put it in just a tight little box, okay. You've had
12 nightmares?

13 A. Yes.

14 Q. And the nightmares have been about what happened
15 to you on the Apple River when you were attacked?

16 A. Correct.

17 Q. And the nightmares are essentially a replaying of
18 what it is that happened, agreed?

19 A. Correct.

20 Q. And when you have those nightmares your body
21 responds --

22 MR. SMESTAD: Objection, Your Honor. Can we
23 approach?

24 THE COURT: Yes.

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

1 THE COURT: Objection sustained. Let's continue.

2 Q. (By Mr. Nelson, continuing) Nic, those
3 nightmares that you had about what happened on July 30th,
4 have you sought medical treatment for that?

5 A. Yes.

6 Q. Just a couple of -- I want to just make sure we
7 check a couple of legal boxes, okay?

8 A. Um-hum.

9 Q. When you used the knife, did you believe you were
10 under attack?

11 A. Yes.

12 Q. Why?

13 A. Because they had -- at that point they -- they
14 already been pushing and tugging and --

15 Q. When you used --

16 A. -- shoving.

17 Q. -- the knife, had they done anything more than
18 pushing or tugging?

19 A. They -- they punched me. They -- they push me
20 down. They -- they -- they threw me in the water. I hit
21 my head. Yes, so --

22 Q. When you decided to use your knife, were you
23 using it to prevent an attack or stop the attack that was
24 happening?

25 A. To defend myself.

1 Q. Okay. Did you believe you needed to use that
2 knife?

3 A. Absolutely.

4 Q. In that moment in time, again, as you've
5 described it, they pushed you down into the water and
6 you've been punched, that's the moment of time I want to
7 ask you about, okay?

8 A. Yeah.

9 Q. In that moment of time when you were down in the
10 water, did you believe you could escape?

11 A. No.

12 Q. What do you believe would have happened to you
13 had you not used your knife?

14 A. I would have died. I believe I would have been
15 killed that day.

16 Q. Why did you --

17 A. Or at that specific time.

18 Q. Why'd you use your knife?

19 A. To defend myself.

20 MR. NELSON: Those are the only questions I have,
21 Judge.

22 THE COURT: Mr. Smestad.

23 MR. SMESTAD: If I can approach, Judge.

24 CROSS-EXAMINATION

25 BY MR. SMESTAD:

1 Q. Mr. Miu, you'd been drinking that day, right?

2 A. Yeah, I had a little.

3 Q. And I'm showing you what's been marked as

4 Exhibit 12A. You recognize that?

5 A. Yes.

6 Q. That's the group photo of you -- you folks from
7 the beginning of the river?

8 A. Yeah.

9 Q. In fact, you're holding a beer?

10 A. Correct.

11 Q. It looks like everybody in your group has some
12 sort of alcoholic beverage?

13 A. Looks like it.

14 Q. Do you see numerous people at your group with
15 these phone cases around their necks?

16 A. Yes.

17 Q. And as you're going down the river you saw lots
18 of people with phone cases around their necks, right?

19 A. Um-hum.

20 Q. All day long?

21 A. Yeah.

22 Q. In fact, Rivers Edge sells or rents out those
23 phone cases, right?

24 A. I don't know that.

25 Q. Did people in your group rent or buy phone cases

1 from the tube rental stand?

2 A. I have no idea.

3 Q. All right. You testified that you were told to
4 bring the knife before you left your home, right?

5 A. Correct.

6 Q. And the reason for bringing your knife on the
7 river was to cut strings or ropes for the tubes, right?

8 A. Correct.

9 Q. And that was -- that was the reason you brought
10 it?

11 A. Correct.

12 Q. In fact, you told the police that after your
13 tubes were tied together you thought you put your knife
14 back in the car --

15 A. Correct.

16 Q. -- right?

17 A. Correct.

18 Q. But in fact, it was in your pocket?

19 A. Yes.

20 Q. Was it in your pocket the whole day?

21 A. No.

22 Q. All right. Well, we're going to get to that.

23 Once the tubes are tied together with the
24 rope and you said that you thought you put it back in your
25 car, you don't have a reason to have the knife anymore,

1 right?

2 A. (No response.)

3 Q. It accomplished its purpose, right?

4 A. I didn't know that at the time.

5 Q. All right. Did you tell the cops that -- the
6 police that you didn't think you were going to need it and
7 that's why you thought you put it in the car?

8 A. I may have.

9 Q. All right. Were you present when Steve Kaufman,
10 who owns Rivers Edge, testified first day of the trial?

11 A. Yes.

12 Q. And you heard him say that they -- they sell
13 precut cords for a dollar, right?

14 A. Right.

15 Q. All right. And then as you see in the picture
16 when you got on the river you were wearing that long
17 sleeve camo shirt, right?

18 A. Um-hum.

19 Q. And a hat and sunglasses?

20 A. Correct.

21 Q. All right. Ariel's phone was in one of those --
22 those cases, right?

23 A. Yeah. Yeah, I can see it.

24 Q. All right. And is it your understanding that
25 those cases are float cases?

1 A. That's what I was told.

2 Q. All right. And you told -- in fact, you told
3 Lieutenant Hart that it was in a float case, right?

4 A. Correct.

5 Q. Once the phone disappeared, there was
6 conversation amongst the folks in your group about whether
7 it was even worth it to go look for it, right?

8 A. That's what I learned.

9 Q. And in fact, you were told that they didn't care
10 about the lost phone because they had insurance to cover
11 it, right?

12 A. That's what I learned here, but I don't remember
13 that as a conversation.

14 Q. Nobody asked you to go look for the phone, right?

15 A. Correct.

16 Q. You chose to do that on your own?

17 A. I volunteered.

18 Q. And in fact, members of your group were a little
19 annoyed that you were stopping again so -- so quickly
20 after having been at the Hideaway where you had stopped
21 for lunch?

22 MR. NELSON: Objection. Speculation.

23 THE COURT: Sustained.

24 Q. (By Mr. Smestad, continuing) Did you hear
25 anybody in your group say why are we stopping again?

1 A. I didn't stop the group.

2 Q. The group stopped when you decided to go off on
3 your own to look for this phone, right?

4 MR. NELSON: Objection. Speculation.

5 THE COURT: Overruled.

6 Q. (By Mr. Smestad, continuing) Right?

7 A. They were already stopped. I got off the tube to
8 look for the -- so I didn't stop.

9 Q. In any event, you're the one who insisted on
10 looking for it, nobody asked you to do that, right?

11 MR. NELSON: Objection. Asked and answered.

12 THE COURT: Sustained.

13 Q. (By Mr. Smestad, continuing) And when you left
14 to go look for the phone, you had your goggles and your
15 snorkel, right?

16 A. (No response.)

17 Q. You knew that the phone was in a float bag, at
18 least that's what you told police afterwards, right?

19 A. Um-hum.

20 Q. Is that a yes?

21 A. Yes.

22 Q. So the bag -- the phone and the float bag would
23 have been floating, right?

24 A. Supposedly, yeah.

25 Q. All right. And so you wouldn't need a snorkel

1 and goggles to find a -- a phone float -- floating on top
2 of the water, right?

3 A. I wasn't sure if it was actually floating or not.
4 I never tested it.

5 Q. All right. Well, you would agree that a phone
6 has some weight to it?

7 A. Yes.

8 Q. And if it was in a float bag, it would sink to
9 the bottom, right?

10 A. Yes.

11 Q. Where it was dropped?

12 A. Correct -- well, or remember, it's a river.

13 Q. Correct.

14 A. So it could have floated down.

15 Q. And a river has current, right?

16 A. Right --

17 MR. SMESTAD: Your Honor, if I could approach?
18 I'm gonna draw something here.

19 THE COURT: Yes.

20 Q. (By Mr. Smestad, continuing) Now, you remember
21 when you met with Lieutenant Hart you drew a diagram of
22 the river. All right. And this is your group up here at
23 the sandbar, right?

24 A. Um-hum.

25 Q. And this is the boys' group down here. And I'll

1 put the initials I.S. for Isaac Schuman, right?

2 A. Correct.

3 Q. This is what you -- this is the diagram that you
4 wrote --

5 A. Um-hum.

6 Q. -- or drew for Lieutenant Hart. The phone was
7 lost over here, right?

8 A. Um-hum.

9 Q. Instead of looking downstream for it where the
10 current was going, you went this way across the current --

11 A. No.

12 Q. -- to look for the phone. You made contact with
13 Isaac Schuman's group on the other side of the river.

14 A. That's -- that's -- that's not where I started
15 looking for it straight across the river.

16 Q. That's where you ended up making contact with
17 them.

18 A. I ended up there but I didn't start there.

19 Q. All right. The phone would not have floated
20 across the current, right?

21 A. Well, I don't know where he lost it. That's
22 where we pulled over. He could have lost it minutes
23 before we even anchored.

24 Q. So when you testified a minute ago that the phone
25 was lost where your group was labeled M, now you're

1 changing that story?

2 A. In that vicinity.

3 MR. NELSON: Objection. Objection.

4 Mischaracterizes the testimony.

5 THE COURT: Again, members of the jury, what the
6 attorneys say is not evidence. Rely on the witness's
7 testimony.

8 Next question, please.

9 Q. (By Mr. Smestad, continuing) In any event, it's
10 your testimony that you had reason to go over to the south
11 side of the river where Isaac Schuman's group was?

12 A. (No response.)

13 Q. To look for a phone. That's your story?

14 A. I had reason to search in that area. I didn't
15 know where that phone fell in the water. I don't think
16 even Ariel knew where he lost it. We didn't drop the
17 phone when we anchored, we dropped it -- he dropped the
18 phone before we got there.

19 Q. Fair to say that at that point in the river the
20 river is 150 feet wide?

21 A. Yeah.

22 Q. And Isaac Schuman's group was on the south side
23 of the river?

24 A. Correct.

25 Q. Your group's on the north side of the river?

1 A. 100 feet.

2 Q. Rather than searching the north side you went to
3 the south side of the river, is that fair to say?

4 A. I -- I already looked in the -- in that area.

5 Q. That's not what I'm asking. You went over to the
6 south side of the river, right?

7 MR. NELSON: Objection. Asked and answered.

8 THE COURT: Overruled.

9 You can answer the question.

10 Q. (By Mr. Smestad, continuing) You did, right?

11 A. What was that question?

12 Q. You went over to the south side of the river to
13 supposedly look for this phone, right?

14 A. I ended up there at that point, yes.

15 Q. And you chose to go over there and look for it --

16 MR. NELSON: Objection.

17 Q. (By Mr. Smestad, continuing) -- where these boys
18 were?

19 MR. NELSON: Asked and answered.

20 THE COURT: Overruled.

21 You can answer the question.

22 THE WITNESS: Oh.

23 Q. (By Mr. Smestad, continuing) You chose to go
24 over to where these boys were to look for -- supposedly
25 look for this phone, right?

1 A. I chose to look in the area, yes.

2 Q. There was other areas of the river where there
3 was -- these boys weren't located that you could have
4 searched until they floated past -- past?

5 A. (No response.)

6 Q. Right?

7 A. A million other spots.

8 Q. Sure. But you chose to go to that spot?

9 A. I didn't even notice those boys there at the time
10 when I was searching.

11 Q. You were present in court when Eric Williams, who
12 was a member of your group, testified, right?

13 A. Right.

14 Q. You heard -- you heard him testify?

15 A. Yes.

16 Q. And you were here when he testified that he had
17 some concerns about you going over to snorkel by this
18 group, Isaac's group?

19 A. I heard him.

20 Q. And one of his concerns is that he thought that
21 they would think you were a predator, right?

22 MR. NELSON: Objection. Irrelevant.

23 THE COURT: Sus -- sustained.

24 Q. (By Mr. Smestad, continuing) You testified that
25 you didn't have your knife in your pocket the whole time,

1 right?

2 A. Correct.

3 Q. When you decided to go snorkel over by Isaac
4 Schuman's group, you had the knife in your pocket?

5 A. Yes.

6 Q. Did you go back to your group and get it?

7 A. No, I had the knife -- I testified I did not have
8 the knife in my pocket the whole time. When we pulled
9 over there, I fixed my shoes, then I left it in my pocket.

10 Q. All right. But somehow -- so when you get ready
11 to snorkel --

12 A. Yes.

13 Q. -- you got -- you've taken off your shirt, right?

14 A. Yes.

15 Q. Your hat?

16 A. Yes.

17 Q. Your sunglasses?

18 A. Correct.

19 Q. You left the knife in your pocket?

20 A. I forgot it in my pocket.

21 Q. Well, on the video we can see you touching your
22 knife, right?

23 A. (No response.)

24 Q. You knew it was in your pocket?

25 A. Well, when you walk it starts, yeah, but --

1 Q. It has weight --

2 A. Right.

3 Q. -- right?

4 A. Yeah.

5 Q. So you -- you can't forget it's there because
6 it's got weight, correct?

7 A. At some point I forgot I had it in my pocket when
8 -- yeah.

9 Q. You weren't --

10 A. When you walk --

11 Q. -- you were not going to need your knife to
12 snorkel and look for a lost phone?

13 MR. NELSON: Objection.

14 A. Correct.

15 MR. NELSON: Asked and answered.

16 THE COURT: Overruled.

17 Q. (By Mr. Smestad, continuing) You weren't -- you
18 weren't going to the knife for that -- for that task as
19 you set out to do, right?

20 A. I wouldn't even need anything.

21 Q. But you brought it with you anyhow?

22 A. It happened to be in my pocket, yes.

23 Q. Once you got over to where Isaac Schuman's group
24 was, they made it readily apparent they did not want you
25 over by them, correct?

1 A. That's not true.

2 Q. They didn't call you names?

3 A. Yes, but they -- they -- they asked me what I was
4 looking for, and I thought they were polite people. I
5 said I'm looking for my lost phone.

6 Q. They -- they did not want you by them and they
7 told you that, right?

8 A. At some point, yes.

9 Q. And that's the short video, you turn around and
10 you're walking away, right?

11 A. Yes.

12 Q. But then Jawahn Cockfield calls you a raper,
13 right?

14 A. Yes.

15 Q. And then you turn around?

16 A. Yes.

17 Q. And you were angry?

18 A. I was not angry.

19 Q. Well, you were not angry that someone called you
20 a raper?

21 A. No.

22 Q. All right. You look at Jawahn, who's filming
23 you, right?

24 A. Yeah.

25 Q. And for some reason your testimony is that even

1 though many people on the river have these phones in these
2 float cases, you decided that was the phone and you needed
3 to run up and check?

4 MR. NELSON: Objection. Argumentative.

5 THE COURT: Sustained.

6 Q. (By Mr. Smestad, continuing) Well, did you --
7 your testimony earlier was you thought he had the phone,
8 right?

9 A. I thought he had the phone, yes.

10 Q. Right.

11 A. I wanted to investigate.

12 Q. And you, instead of walking up and saying, hey,
13 is that the phone I'm looking for, you ran up on these
14 boys, didn't you?

15 A. I ran up and stumbled and then I stood right --
16 right by there, yes.

17 Q. That's my next question. You were claiming now
18 that you stumbled?

19 A. Yes.

20 Q. You never said that before today ever to
21 anybody -- any law enforcement or anybody else?

22 A. (No response.)

23 Q. Right?

24 A. But I have seen the videos now.

25 Q. Well, we're going to take a look at the video.

1 And since you reviewed the video you know
2 that before you ran up on them you were touching your
3 knife in your pocket to make sure it was there, right?

4 A. I don't remember that.

5 Q. Well, let's take a look.

6 (Whereupon, the video was played.)

7 Q. (By Mr. Smestad, continuing) That's you with
8 your right hand touching your pocket where your knife was
9 clipped in, right?

10 A. It appears so.

11 (Whereupon, the video was played.)

12 Q. (By Mr. Smestad, continuing) So you're claiming
13 today that where you reached down and grab at these boys'
14 legs where their tubes are, that that was a stumble?

15 A. (No response.)

16 Q. Is that your story?

17 MR. NELSON: Objection. Argumentative.

18 THE COURT: Overruled.

19 You can answer the question.

20 A. I -- I -- I know I hit a stone, yes, but I --
21 I -- I grabbed onto their -- the intertubes.

22 Q. (By Mr. Smestad, continuing) And you know where
23 you grabbed onto their intertube is where two of these
24 boys had their legs draped over these intertubes, right?

25 A. I see that.

1 Q. And you made contact with their legs, didn't you?

2 A. I don't remember that.

3 Q. Did you see it on the video?

4 A. I see it on the video. I don't remember actually
5 making contact.

6 Q. And as soon as you did that these boys jumped out
7 of their tubes to get away from you, right?

8 A. (No response.)

9 Q. You remember that?

10 A. Yeah.

11 Q. And you held onto their tubes so that their tubes
12 couldn't float away?

13 A. For how long?

14 Q. Well, I'm asking you. You did?

15 A. Yeah, it looks like for a brief one second.

16 Q. And you were searching through their tubes?

17 A. For what?

18 Q. You walked around their tubes. Rather than
19 letting their tubes go so they could get back in their
20 tubes and be on their way, you walked around their tubes.

21 A. So after my goggles dropped in the water I went
22 around their tubes to go to the other side and look for --
23 for -- for my goggles.

24 Q. Let's talk about your goggles for a second,
25 because you told the police, and specifically Lieutenant

1 Hart, that these boys knocked your goggles off your face
2 and that you were looking for your goggles at that point,
3 right?

4 A. I don't remember my -- the interview with her,
5 correct.

6 Q. Yeah. But you heard yourself say it in the
7 interview?

8 A. Yes. Yes.

9 Q. And in fact, that nothing of the sort ever
10 happened, right?

11 A. So the -- they -- the interview with -- with
12 Brandie Hart was not accurate.

13 Q. What you said at the time is what you wanted the
14 police to believe happened, right?

15 A. That's what I remembered --

16 Q. Okay.

17 A. -- at the time.

18 Q. And from the video you can see that you actually
19 put your goggles in your mouth so you have two free hands
20 to be able to grab onto these boys' tubes, right?

21 A. Yes.

22 Q. So you were preparing for your stumble before it
23 actually even happened?

24 A. I wasn't prepared for anything.

25 Q. These boys were calling you names to go away,

1 right?

2 A. (No response.)

3 Q. After you grabbed onto their tubes, touched their
4 legs --

5 A. I don't remember any of that stuff.

6 Q. All right. You don't remember them calling
7 you -- well, asking you what you were doing?

8 A. Watching the videos, yes, but before -- but a
9 natural remembering, no.

10 Q. Do you remember as you're running up they're
11 saying whoa, whoa, whoa, what's he doing?

12 A. I don't remember that.

13 Q. All right. You've seen it on the video?

14 A. Yes.

15 Q. And then once you've made contact with two of
16 these boys' legs and grabbed onto their tubes, they
17 started calling you pedophile, right?

18 A. I don't remember when they started calling me
19 pedophile.

20 Q. Do you remember them calling you pedophile at all
21 or do you just know that from watching the video?

22 A. Correct.

23 Q. You testified that they were calling you names
24 earlier, right?

25 A. Right.

1 Q. And that upset you?

2 A. It did not upset me.

3 Q. Okay. We've talked -- your attorneys talked
4 about your comfort scale and your fear scale. Let's talk
5 about your anger scale, okay?

6 A. Um-hum.

7 Q. At the time you were called a rapier, what was
8 your anger scale at?

9 A. Maybe one.

10 Q. One out of ten?

11 A. Yeah.

12 Q. And that was enough to get you to run up on these
13 boys, grab onto them, stop their tubes, at a one, is that
14 what you're saying?

15 MR. NELSON: Objection. Argumentative. That's
16 not what he said.

17 THE COURT: Sustained.

18 Q. (By Mr. Smestad, continuing) You don't like
19 being humiliated, right?

20 A. Nobody does.

21 Q. Your attorney has said that these boys were
22 humiliating you.

23 MR. NELSON: Objection as to his making comments.

24 THE COURT: Sustained on the form.

25 Q. (By Mr. Smestad, continuing) You're claiming

1 that you were being taunted?

2 MR. NELSON: Objection. He did not testify to
3 that.

4 THE COURT: Sustained. Form.

5 Q. (By Mr. Smestad, continuing) You had testified
6 earlier that your shoes, there was a problem with your
7 shoes, but as you can see from the portion of the video we
8 played so far that didn't -- those shoes didn't prevent
9 you from running up on these boys, right?

10 A. Yes, they did. There was -- if -- if I had
11 better shoes and I -- I could walk better, but I -- I
12 could still walk.

13 Q. If you had better shoes you would have been able
14 to run up on them faster?

15 A. No. I mean, I could walk better. I wouldn't
16 stumble. I wouldn't have a hard time walking.

17 Q. All right. We're gonna watch the video again and
18 I want you to, if you can, point out for everybody where
19 you stumbled.

20 (Whereupon, the video was played.)

21 Q. (By Mr. Smestad, continuing) Did you watch it?

22 A. Yes.

23 Q. So the stumble, is that something that you
24 remember or something that you think you see in the video?

25 A. Something I -- I remember.

1 Q. After you grabbed onto their tubes, stopped them,
2 walked around their -- their tubes, you took a few steps
3 downriver and stood in the path they were floating in,
4 right?

5 MR. NELSON: Objection as to form. Multiple.

6 THE COURT: Overruled.

7 Do you understand the question, Mr. Miu?

8 A. Could you say it again?

9 Q. (By Mr. Smestad, continuing) After you left
10 their tubes that first time, you took a few steps
11 downstream and stood in their path where they would need
12 to float, where they were floating, right?

13 A. For a few seconds, yes.

14 Q. You didn't walk off to the south shore, which was
15 close at that point, right?

16 A. I thought I walked farther -- far away from them
17 that they -- I mean, I didn't even watch them anymore at
18 that point, so I don't know where they were and -- you
19 know, at that point on. But I was still looking for my
20 goggles now.

21 Q. Are you denying that you stood right in the path
22 of their tubes?

23 MR. NELSON: Objection. Argumentative.

24 THE COURT: Overruled.

25 You can answer the question.

1 A. At that moment in time, yes.

2 Q. (By Mr. Smestad, continuing) Now, when you ran
3 up on these boys and grabbed onto their tubes and made
4 contact with their legs, you weren't saying anything at
5 that point, right?

6 A. No.

7 Q. You didn't say anything like, hey, I think that's
8 my phone or Ariel's phone?

9 A. I don't remember saying anything.

10 Q. You've seen the video?

11 A. Right.

12 Q. You just ran up and grabbed onto them, right?

13 A. It appears that.

14 Q. With saying nothing.

15 MR. ANDERSON: Could we have the screen?

16 MR. SMESTAD: If we can pull up the screen?

17 We're going to look at some more frames here. We're
18 starting at the 20 second mark, I believe.

19 (Whereupon, the video was played.)

20 Q. (By Mr. Smestad, continuing) You stood in front
21 of their tubes, right? This is at the 23-second mark.

22 A. For a brief moment.

23 Q. All right.

24 MR. SMESTAD: Keep going.

25 (Whereupon, the video was played.)

1 MR. SMESTAD: Stop.

2 Q. (By Mr. Smestad, continuing) At that point you
3 had the entire river open to move in any direction, right?

4 A. Right.

5 Q. And you chose to just walk a few steps directly
6 downstream from where their tubes were, right?

7 A. Correct.

8 Q. The boys were yelling at you at this point,
9 right? You remember that?

10 A. Yep.

11 Q. They were making a commotion, right?

12 A. (No response.)

13 Q. They were loud?

14 A. Um-hum.

15 Q. And that attracted the attention of the folks in
16 the Carlson Group, right?

17 A. Um-hum.

18 Q. You've testified that Mady -- Mady Coen walked
19 over, right?

20 A. Yep.

21 Q. You walked towards her, right?

22 A. Yes.

23 Q. And the water level at the spot that you had
24 contact with Mady was about ankle deep from the video?

25 A. From the video, yes.

1 Q. You told Lieutenant Hart you were standing in
2 really shallow water, right?

3 A. Yeah.

4 Q. Mady told you to leave the area, right?

5 A. She didn't say -- say it that way, but yes.

6 Q. She said go, go, go?

7 A. And --

8 Q. She swore -- she swore at you too but she was
9 telling you to go, right?

10 A. Yeah.

11 Q. You didn't go?

12 A. I was trying to communicate with her what I was
13 doing in the river.

14 Q. You didn't leave, right?

15 A. No --

16 MR. NELSON: Objection. Irrelevant.

17 A. -- not down the river.

18 THE COURT: Hold on.

19 MR. NELSON: Objection. Irrelevant. There's no
20 legal basis that he had to leave.

21 THE COURT: Overruled. It's relevant.

22 Q. (By Mr. Smestad, continuing) You did not leave,
23 right?

24 A. I didn't --

25 Q. If I was --

1 THE COURT: No.

2 THE REPORTER: One at a time.

3 Q. (By Mr. Smestad, continuing) When she came up
4 and said go, go, go, you chose to stay, right?

5 A. I wanted to talk.

6 Q. You didn't like that she was yelling at ya,
7 right?

8 A. I only had like two or three seconds of con -- of
9 direct verbal or whatever --

10 Q. And you clearly --

11 A. Interaction.

12 Q. -- you clearly didn't like that she was swearing
13 at ya, right?

14 A. Right.

15 Q. And what you told her was not that you were
16 looking for a phone, but that these boys took your
17 goggles, right?

18 A. I don't remember what I told her.

19 Q. All right. If it's on the video, did you say it?

20 A. If it's on the video, yeah.

21 Q. You never mentioned that you were looking for a
22 phone?

23 A. I don't remember my conversation with her.

24 Q. And in fact, after you told her that they took
25 your goggles you never said another word, right?

1 A. After that?

2 Q. Right.

3 A. Of course I did.

4 Q. Talking about your anger scale at the point where
5 Mady Coen was yelling at you and pointing at you and
6 swearing at you, where was your angry scale?

7 A. One.

8 Q. Okay. And even with your anger scale being only
9 one, you started touching, fidgeting with the knife in
10 your pocket, right?

11 A. I don't remember that.

12 Q. All right. Let's take a look at the video.

13 MR. SMESTAD: We're ready. It's timestamp 1:35.

14 Q. (By Mr. Smestad, continuing) That's you touching
15 your knife in your pocket, right?

16 A. Correct.

17 Q. At this point you've got your back to the two
18 girls who were yelling at ya, right?

19 A. It -- it -- it's possible.

20 Q. So even though you were fearing for your life --

21 MR. NELSON: Objection. It's not what he said at
22 that time.

23 THE COURT: Overruled. Let's get the question
24 out.

25 Q. (By Mr. Smestad, continuing) You turned your

1 back on these folks, right?

2 A. Where am I in that location as reference to the
3 other people?

4 Q. I get to ask the questions at this point, okay?

5 A. All right.

6 Q. Your back at the -- at the 1:35 mark that we just
7 watched, you've turned your back on these folks, right?

8 A. Okay.

9 Q. Is that -- is that true?

10 A. Yes, I see that.

11 Q. You saw it --

12 A. Yeah.

13 Q. -- right?

14 You're touching your knife but you got your
15 back to them, right?

16 A. I see that in the picture.

17 Q. And so at that point you wouldn't have turned
18 your back on these folks if you had fear of them, right?

19 MR. NELSON: Objection. Mischaracterizes his
20 testimony.

21 THE COURT: Overruled. Overruled. He can answer
22 the question.

23 MR. NELSON: Can we approach?

24 THE COURT: Yes.

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

1 THE COURT: Mr. Smestad, next question, please.

2 MR. SMESTAD: We're going to play a clip here,
3 Judge. We're starting at 1:26. Just play it.

4 If we can have the screen.

5 (Whereupon, the video was played.)

6 MR. SMESTAD: Stopping at 1:35.

7 Q. (By Mr. Smestad, continuing) So in that clip
8 that's the point where you had waved at your friends,
9 right, you turned your back on the groups of people that
10 were in the area, and you're touching your knife --

11 A. Um-hum.

12 Q. -- right?

13 And at that point you called out to your
14 friends because you were -- your -- I think you had said,
15 and maybe I'm wrong, that your fear scale was going up at
16 that point, is that not right?

17 A. I see lots of people around me and I wanted
18 somebody to be on my side.

19 Q. Right. Your -- your fear scale was going up so
20 you tried to wave your buddies over, right?

21 A. Creeping up, yeah.

22 Q. And as it's creeping up, you're fidgeting with
23 your knife?

24 A. It appears that way.

25 Q. At some point -- and even though your fear level

1 is creeping up at that point and you called for help from
2 your friend or at least waved for help, you turned your
3 back --

4 A. Yes.

5 Q. -- right?

6 At one point you turned your head and you
7 stare at the group of 17-year-old boys, right? Do you
8 remember doing that?

9 A. I don't remember, but I -- I -- I believe you.

10 Q. And put it into context, it would have been at
11 the -- when Mady Coen tried to turn you away from those
12 boys. Do you remember doing that?

13 A. Yes.

14 Q. And -- one second.

15 MR. SMESTAD: If we can get the frame up. We're
16 at timestamp 1:16.

17 Q. (By Mr. Smestad, continuing) That's the look
18 that you gave to those boys, right, at that time, at 1:16?

19 A. Yes.

20 Q. That's the look on your face?

21 A. Yeah.

22 Q. That's an angry look?

23 A. Not to me. I was annoyed more and frus --
24 frustrated, but not angry.

25 Q. At the point where you -- you looked at the boys

1 with that expression on your face, whatever it was, you
2 had the entire river in front of you open to walk to,
3 right?

4 A. (No response.)

5 Q. That's true?

6 A. Correct.

7 Q. And instead you chose to turn back around where
8 Mady Coen was, right?

9 A. I stood my ground. I basically stayed in the
10 same location.

11 Q. Right.

12 A. I didn't go towards anybody at that point.

13 Q. You -- you didn't take a step away either, did
14 ya?

15 A. No.

16 Q. And at that point then that's when Ryhley
17 Mattison joins her and you've got Madison and Ryhley
18 standing in front of you, right?

19 A. I suppose that's the time, yeah.

20 Q. Two girls?

21 A. Yeah.

22 Q. And these two girls standing in front of you
23 touched your shoulders somewhat, right?

24 A. Um-hum.

25 Q. You never -- is that a yes?

1 A. Yes.

2 Q. You never stumbled backwards or anything like
3 that?

4 A. It wasn't a somewhat but --

5 Q. Well, let's take a look at the video.

6 MR. SMESTAD: We're going to start a little
7 earlier than the part I wanted to start at. It's at the
8 1:35 mark again. If we can put the screen up.

9 (Whereupon, the video was played.)

10 MR. SMESTAD: We can take the screen down.

11 Starting at 1:34.

12 (Whereupon, the video was played.)

13 Q. (By Mr. Smestad, continuing) So at that point
14 you're touching your knife before Mady and Ryhley are
15 standing in front of you, right?

16 A. It appears that way.

17 (Whereupon, the video was played.)

18 MR. SMESTAD: Stop.

19 Q. (By Mr. Smestad, continuing) You had said that
20 your fear level was rising?

21 A. Um-hum.

22 Q. You were waving to your friends, right?

23 A. (No response.)

24 Q. That was the look on your face at the time,
25 correct?

1 A. Um-hum.

2 Q. You're smiling?

3 A. I'm confused.

4 Q. You're smiling?

5 A. I'm confused.

6 Q. You're not smiling?

7 MR. NELSON: Objection.

8 A. That's not a smile.

9 MR. NELSON: Asked and answered.

10 THE COURT: Let's move on, please.

11 MR. SMESTAD: Can we get the screen back?

12 (Whereupon, the video was played.)

13 Q. (By Mr. Smestad, continuing) All right. So you
14 had been fidgeting with your knife multiple times, you've
15 got Ryhley Mattison in front of you. I believe her
16 testimony was she was a 115-pound woman, you got Mady Coen
17 on your other side. This is when you choose to pull out
18 your knife, right?

19 MR. NELSON: Objection as to form.

20 THE COURT: Overruled.

21 You understand the question?

22 A. What does her weight have to do with me --

23 Q. (By Mr. Smestad, continuing) Sir, you don't get
24 to ask the questions --

25 A. I'm sorry.

1 Q. -- at this point.

2 You pulled out your knife at this point
3 with these two girls standing in front of you, right?

4 A. Yes.

5 Q. And you held it down by your belt, belt line,
6 right?

7 A. Yes.

8 Q. And you open it up, right?

9 A. Yes.

10 Q. And this is before you had been punched or
11 anything like that, you had that knife ready with these
12 two girls standing in front of you?

13 MR. NELSON: Objection as to the use of the term
14 girls. They're women.

15 MR. SMESTAD: Women. Pardon me.

16 Q. (By Mr. Smestad, continuing) Right?

17 A. Um-hum.

18 Q. And you didn't hold it up and say, hey, I have a
19 knife, right?

20 A. To me that would be a threat.

21 Q. Well, I'm not asking you that. You did not hold
22 it up --

23 A. No.

24 Q. And you didn't -- in fact, you held it down by
25 your side, right?

1 MR. NELSON: Objection. Asked and answered.

2 THE COURT: Overruled.

3 Q. (By Mr. Smestad, continuing) Isn't that what you
4 did?

5 A. Yes.

6 Q. You didn't take a step back and brandish it and
7 say, hey, back up I have a knife, right?

8 A. Correct.

9 Q. You opened it down low and then you held it down
10 low by your side, right?

11 A. Correct.

12 Q. And as you're doing that, you're smiling, right?

13 A. That's not a smile.

14 Q. Well, let's take a look at the video.

15 A. I'm -- I'm -- I'm overwhelmed. And annoyed.

16 (Whereupon, the video was played.)

17 Q. (By Mr. Smestad, continuing) And that's you
18 holding your knife down by your belt line, right?

19 A. Yes.

20 Q. When you pulled it out and opened it up, you held
21 it with the blade facing up, right?

22 A. I didn't pay attention, but in the video, yes.

23 Q. And it -- it becomes important later when you
24 are -- when you stab A.J. because you didn't try to cut
25 him down, you cut him up, right?

1 A. (No response.)

2 Q. Right?

3 A. That was not my intent.

4 MR. NELSON: Objection as to form.

5 THE COURT: Overruled.

6 I believe the witness answered the
7 question.

8 Q. (By Mr. Smestad, continuing) You've had the nuff
9 -- knife blade up and you're saying you didn't know that?

10 A. I didn't pay attention.

11 Q. As you're holding it there, you've got your thumb
12 on the bottom of the handle, right?

13 A. (No response.)

14 Q. Right?

15 A. Yeah.

16 Q. Blade up?

17 A. I see that.

18 Q. Blade's pointing at -- it looks like at Mady
19 Coen, right?

20 A. Yes.

21 Q. Nobody else -- well, strike that.

22 After you opened that knife, would it be
23 fair to say that your fear level went down a little bit
24 because now you had your knife open?

25 A. No.

1 Q. All right. Was -- was your fear level going up
2 at that point? I think you said that earlier.

3 A. The -- the whole situation, it was -- it was
4 boiling up.

5 Q. So when you have your knife open you take a
6 couple steps -- step backwards to get away from the
7 situation?

8 A. I stood my ground. I stayed still.

9 Q. You never backed up one step, did ya?

10 A. No.

11 Q. You had your knife out and you were prepared to
12 use it?

13 A. To defend myself.

14 Q. At that point there's nothing to defend yourself
15 from, right?

16 A. I didn't know that.

17 Q. If I understand your testimony today, now you're
18 acknowledging that you did do something to Mady Coen,
19 which started off this fight, right?

20 MR. NELSON: Objection. Argumentative.

21 THE COURT: Overruled.

22 You can answer the question.

23 MR. NELSON: Objection. Can we approach?

24 THE COURT: Yes.

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

1 THE COURT: All right. Mr. Smestad, would you
2 please rephrase the question?

3 MR. SMESTAD: I will, Your Honor.

4 Q. (By Mr. Smestad, continuing) You're testifying
5 today that you did actually make physical contact with
6 Mady Coen, right?

7 A. (No response.)

8 Q. Before you were punched or anything else, right?

9 A. I may have. Well --

10 Q. You don't remember that?

11 A. Well, I remember what I said, but I went over to
12 push -- she was right in my -- my face, right in my space,
13 yelling at me. I could smell the alcohol in her breath.

14 Q. But you had been drinking too, so it might have
15 been your breath?

16 A. I didn't have vodka and all the other garbage
17 but --

18 Q. My point is today you testified that you did
19 something physical to Madison Coen before you were
20 punched, right?

21 A. (No response.)

22 Q. Correct?

23 A. I didn't -- I don't know if I touched her or not.
24 It's possible that I did.

25 Q. If your friend Sergio testified last week that he

1 saw you push her and she went flying back a couple of
2 steps, that's what happened, right?

3 MR. NELSON: Objection as to form.

4 THE COURT: Sustained.

5 Q. (By Mr. Smestad, continuing) Were you present
6 when Sergio testified?

7 A. Um-hum.

8 MR. NELSON: Objection as to form. Irrelevant.

9 THE COURT: Sustained.

10 Q. (By Mr. Smestad, continuing) After you pushed
11 Mady Coen, only one person ever punched you, right?

12 A. From the video?

13 Q. Right.

14 A. That's what I see. I -- I don't remember what
15 happened in -- at that time.

16 Q. I'm not asking you what -- what you remember, I'm
17 asking what you actually happened.

18 A. I got punched.

19 MR. NELSON: Objection. No foundation.

20 THE COURT: Sustained.

21 Rephrase the question and start over.

22 Q. (By Mr. Smestad, continuing) You saw on the
23 video that only one person ever punched you, right?

24 A. Yes.

25 MR. NELSON: Objection. Can we --

1 MR. SMESTAD: It's cross.

2 THE COURT: Hold on.

3 MR. NELSON: Can I approach?

4 THE COURT: Yes.

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

6 THE COURT: Objection sustained.

7 Let's move on.

8 Q. (By Mr. Smestad, continuing) You testified that
9 you went down and -- you fell down in the water when you
10 were punched, right?

11 A. Yes.

12 Q. And you indicated I think that you were punched
13 in your jaw I think on your left side of your body?

14 A. Yes.

15 Q. You testified that you fell back in the water and
16 hit your head, right?

17 A. Yes.

18 Q. You did not drop your knife?

19 A. No.

20 Q. Right?

21 You held onto it when you fell down in the
22 water?

23 A. Yes.

24 Q. When Dante Carlson hit you, he was holding a can
25 of beer in one hand, right?

1 A. Yes.

2 Q. He was fighting you with one hand?

3 A. Yes.

4 Q. You never suffered any kind of bruising or cuts
5 to your face from this incident, right?

6 A. On the inside of my cheek.

7 Q. You cut the inside of your cheek?

8 A. Yes.

9 Q. Did you have -- you never had any bruising on
10 your jaw, right?

11 A. I don't remember. I mean, I had a beard -- a
12 beard. I couldn't tell.

13 Q. You weren't bleeding from your face anywhere?

14 A. No, not that I know.

15 Q. Once you're knocked down in the water, A.J.
16 Mattison (verbatim) comes up to you and press -- pushes on
17 your back, right?

18 MR. NELSON: Objection. No foundation.

19 THE COURT: Sustained.

20 MR. SMESTAD: Well, we'll play the video.

21 (Whereupon, the video was played.)

22 Q. (By Mr. Smestad, continuing) You were pushed in
23 the back by A.J. Mattison, right?

24 MR. NELSON: Objection. No foundation.

25 THE COURT: Overruled.

1 Q. (By Mr. Smestad, continuing) In response you got
2 up out of the water, right?

3 A. Um-hum.

4 Q. You take your knife in your right hand with the
5 blade up, right?

6 MR. NELSON: Objection. It's in narration,
7 Judge.

8 THE COURT: Overruled.

9 Q. (By Mr. Smestad, continuing) That's what you
10 did, right?

11 A. Still in my hand, yes, that was.

12 Q. You jabbed it into his belly?

13 A. About the same time he hit me in the throat.

14 Q. That's not what I'm asking.

15 A. Yes.

16 Q. You jabbed it into his belly, right?

17 A. Yes.

18 Q. Instead of pulling it out, you pulled, right?

19 A. Because I had so much time to think about it.

20 Q. Yeah. You pulled up?

21 A. I did not pull up.

22 Q. Okay.

23 A. Look at the angle of my arm.

24 Q. We're at -- we're stopped at timestamp 1:56. You
25 see your knife?

1 A. Yes.

2 Q. How close it is to his jaw, his chin?

3 A. Yes.

4 Q. That's because when you stabbed him, instead of
5 pulling out you went up, right?

6 A. I was falling backwards with the knife in my
7 arm -- in my hand and the angle of my arm was about the
8 same. I -- I just got hit in the throat.

9 Q. In this frame of the video the knife's pointing
10 straight up, right?

11 A. Yes.

12 Q. It went in, pulled up, and it's -- it's -- by the
13 time you got done up by his face, your knife's pointing
14 straight up?

15 MR. NELSON: Objection. Asked and answered.

16 THE COURT: Overruled.

17 You can answer the question.

18 A. It's straight up.

19 Q. (By Mr. Smestad, continuing) At that point Tony
20 Carlson came in to break up the fight, right?

21 MR. NELSON: Objection. Speculation. He doesn't
22 know what Tony Carlson's doing or why.

23 THE COURT: Overruled.

24 You can ask the question and he can answer.

25 A. I don't know what he was doing.

1 Q. (By Mr. Smestad, continuing) Your -- you know
2 that he told Dante Carlson to back up, right?

3 MR. NELSON: Objection. No foundation.

4 THE COURT: Overruled.

5 A. Do I know from video and from testimony, yes. At
6 the time, I didn't know.

7 Q. (By Mr. Smestad, continuing) In -- after you
8 stabbed A.J. Mattison (verbatim), you were pushed back
9 into the water, right?

10 MR. NELSON: I'm just -- sorry. It's A.J.
11 Carlson.

12 MR. SMESTAD: Pardon me.

13 MR. NELSON: I just want to make --

14 MR. SMESTAD: No, it's not. It's not.

15 THE COURT: A.J. Martin.

16 MR. SMESTAD: It's A.J. Mattison -- he's part of
17 -- not part of the Carlson family.

18 MR. NELSON: A.J. Martin.

19 MR. SMESTAD: A.J. Martin.

20 THE COURT: Thank you.

21 MR. SMESTAD: Pardon me.

22 Q. (By Mr. Smestad, continuing) After you stabbed
23 A.J. Martin you were pushed back into the water, right?

24 A. Yes.

25 Q. Nobody jumped on top of ya?

1 A. No.

2 Q. Nobody was kicking at ya or punching ya?

3 A. No.

4 Q. You were just in the water by yourself, right?

5 A. Apparently, yes.

6 Q. We're going to take look at the video starting at
7 1: -- 1:55. That's you in the water still holding your
8 knife, right?

9 A. (No response.)

10 Q. Pardon me. This is before you -- you got up.

11 (Whereupon, the video was played.)

12 Q. (By Mr. Smestad, continuing) At this point
13 you're standing there. There's nobody hitting you,
14 nobody's punching you, nobody's kicking you, right?

15 MR. NELSON: Objection. That's not what the
16 video shows. He's not standing.

17 THE COURT: Fellas, please come up.

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

19 THE COURT: Let's continue.

20 Next question, please.

21 Q. (By Mr. Smestad, continuing) In any event, you
22 were sitting in the water after A.J. Martin pushed you
23 over, right?

24 A. I landed on my -- on my butt --

25 Q. Right.

1 A. -- and in -- down in the river.

2 Q. But at that point the fight didn't continue,
3 people weren't punching on ya, right?

4 A. I -- at that time I couldn't tell what was going
5 on.

6 Q. Sure. That's at the point that Tony Carlson came
7 over, was yelling to people to back up. Do you remember
8 that?

9 A. From the video.

10 Q. You don't -- you don't have a memory of that in
11 your head?

12 A. (No response.)

13 Q. He -- he separated Dante from you, right?

14 MR. NELSON: Objection. No foundation.

15 THE COURT: Overruled.

16 Q. (By Mr. Smestad, continuing) Right?

17 A. It's from my memory. I don't remember that.

18 Q. All right. Tony Carlson never punched you,
19 correct?

20 A. Correct.

21 Q. He never kicked you, never pushed you?

22 MR. NELSON: Objection. Mischaracterizes the
23 evidence.

24 THE COURT: Overruled.

25 A. No.

1 Q. (By Mr. Smestad, continuing) And you turned
2 around and you stabbed him twice, right?

3 A. I couldn't see. I couldn't hear. I didn't know
4 who was punching me, touching me, shoving me. Nothing. I
5 was fearing for my life.

6 Q. You stabbed the guy who tried to break up the
7 fight twice, right?

8 MR. NELSON: Objection. Form.

9 THE COURT: Overruled.

10 Q. (By Mr. Smestad, continuing) That's what
11 happened, right?

12 A. That's what happened.

13 Q. And luckily for him he was able to block your
14 first stab so you stabbed him again, right?

15 A. I had milliseconds to think.

16 Q. Ryhley Mattison -- after you stabbed Tony
17 Carlson, you turned around -- you got up, you turned
18 around and you sliced Ryhley Mattison through the -- her
19 left side of her body, right?

20 A. Yes.

21 Q. She wasn't punching you or kicking you?

22 A. She came at me and she had her hands on me.

23 Q. At the time you stabbed her she had your hands --
24 her hands on you?

25 A. Yes.

1 Q. This -- this -- this 115-pound woman attacked you
2 while you're standing there holding a knife?

3 A. She could have been 500 pound. I don't know.
4 I -- I'm sorry, sir, but I -- I --

5 Q. You -- you never told anyone ever that Ryhley
6 Mattison attacked you and that's why you stabbed her,
7 right?

8 A. No.

9 Q. You're saying it today for the first time?

10 A. I don't remember this whole thing.

11 Q. After you've stabbed Ryhley Mattison, Isaac
12 Schuman tries to push you, right?

13 A. And he lands his hands on my throat, yes.

14 Q. Yeah. But his hands originally weren't anywhere
15 near your throat, they were on your shoulder and your
16 chest, right?

17 A. I didn't take measurements with -- but, yeah,
18 from the -- from the picture, yes.

19 Q. And as soon as he touches you, you stab up into
20 his heart with your knife, right?

21 MR. NELSON: Objection. No foundation.

22 THE COURT: Overruled. Overruled.

23 A. He went for my throat and I defended myself, yes.

24 Q. (By Mr. Smestad, continuing) Are you saying --
25 we're going to look at the video.

1 MR. SMESTAD: We're going to start at 2:02, and
2 for anybody who doesn't want to watch, you might want to
3 avert your eyes.

4 THE CLERK: Ready?

5 MR. SMESTAD: Ready.

6 (Whereupon, the video was played.)

7 Q. (By Mr. Smestad, continuing) We're at 2:05, the
8 -- the timestamp on the video, that's Isaac Schuman,
9 right?

10 A. (No response.)

11 Q. If you know.

12 A. Right. Right.

13 Q. His left hand on your arm, right?

14 A. Right.

15 Q. His right hand on your chest, right?

16 A. Right.

17 Q. They're not on your throat?

18 A. In that particular frame, correct.

19 Q. And your right hand is cocked, your elbow's bent,
20 right?

21 A. Okay.

22 Q. And you've got the knife in your hand?

23 A. Yes.

24 MR. SMESTAD: Play it through, please.

25 (Whereupon, the video was played.)

1 Q. (By Mr. Smestad, continuing) And as he's pushing
2 you, you jam your knife up into his heart, through his rib
3 cage, right?

4 A. After he touches my throat and pushes me back,
5 yes, correct.

6 Q. As your arm is moving up to stab him, you
7 actually moved his arm closer up to your -- or farther up
8 your body with your own movement, right?

9 A. I don't know how to answer that. I -- I didn't
10 see that.

11 Q. At the time that this incident happened, you
12 agree you weighed 248 pounds?

13 A. Yes.

14 Q. Not one of these people that you stabbed so far
15 in the video were armed in any fashion, right?

16 A. Right.

17 Q. You told an elaborate story about people
18 pouring -- pulling knives on you, right?

19 MR. NELSON: Objection. Argumentative as to
20 form.

21 THE COURT: Overruled.

22 Q. (By Mr. Smestad, continuing) Right, you made up
23 that story?

24 A. To Brandie Hart?

25 Q. To Lieutenant Hart, yes.

1 A. I don't remember that, but I saw the video, yes.

2 Q. At no point did anybody pull any knife on you,
3 right?

4 A. Correct.

5 Q. You're the only person who had a knife?

6 A. Correct.

7 Q. You had said earlier that you had waved for your
8 friends to come over because you were so scared, right?

9 A. (No response.)

10 Q. Right?

11 A. During the -- we are moving back in time now?

12 Q. Oh, yeah. Earlier you had waved.

13 A. Yes.

14 Q. You saw the video.

15 A. Yes.

16 Q. You said you waved --

17 A. Yes.

18 Q. -- for your friends --

19 A. Yes.

20 Q. -- because you were scared, your fear level was
21 at whatever. In fact, Ariel came over, right?

22 A. Yes.

23 Q. And he's in the group at the point that Ryhley
24 Mattison's standing there bleeding into the river, right?

25 A. Yes.

1 Q. He's standing right behind ya.

2 A. Yeah. Yep.

3 Q. And at the time that you stabbed Tony Carlson,
4 Ariel's right there right in the group, correct?

5 A. I see that in the video, yes.

6 Q. And when you stabbed Isaac Schuman he's also
7 standing there, right?

8 A. I didn't see him there at the time but, yes, in
9 the video, yes.

10 Q. Yeah. So this narrative about it being 13 on
11 one, you had a friend there, right?

12 MR. NELSON: Objection. Argumentative. Form.

13 THE COURT: Overruled.

14 Q. (By Mr. Smestad, continuing) Your friend was
15 standing right there, he's in the video, right?

16 A. In the video. I don't remember him being there.

17 Q. But you saw him coming, walking downstream.

18 A. I don't remember.

19 Q. You waved for him, right?

20 A. I waved at my group.

21 Q. At no point when you stabbed Tony, Ryhley, and
22 Isaac did you call out to your friend and say, hey, help
23 me, they're attacking me, right? Even though he's in the
24 frame and he's -- he's close to the action so to speak,
25 you never said that, right?

1 A. I was stunned. I had -- couldn't talk.

2 Q. The last person you stabbed was Dante Carlson,
3 right?

4 A. Yes.

5 Q. And this is -- in the sequence of events
6 everything else had happened, right?

7 A. Yes.

8 MR. NELSON: Objection as to form. I don't know
9 what everything else is.

10 THE COURT: Sustained.

11 Q. (By Mr. Smestad, continuing) All the other
12 stabbings had already occurred, right, at the point that
13 you stabbed Dante Carlson?

14 A. Yes.

15 Q. He wasn't punching you at that point?

16 A. I was surrounded. People were coming at me. I
17 was very -- I just came -- came up a couple of times being
18 punched in the head, punched in the mouth. I fell on --
19 on river rocks. I was in pain. I was hurting.

20 Q. Tony Carlson had broken up the fight between you
21 and Dante and Dante never hit you again after that, did
22 he?

23 MR. NELSON: Objection. That's form.

24 THE COURT: Sustained. Form.

25 MR. NELSON: Argumentative.

1 THE COURT: Please rephrase.

2 Q. (By Mr. Smestad, continuing) At the point that
3 you stabbed Dante Carlson he was not fighting with you,
4 right?

5 A. Correct.

6 Q. He had not punched you immediately before you
7 decided to stab him?

8 A. Correct.

9 Q. In fact, you took a couple steps toward him to
10 stab him, didn't ya?

11 A. I thought he was attacking me.

12 Q. So at that point you stabbed five people and you
13 decide to leave the area, is that true?

14 A. I walked away.

15 Q. You walked up to Ernesto, right?

16 A. Yes.

17 Q. You didn't say anything about being attacked,
18 right?

19 A. I didn't -- I was in shock.

20 Q. You said they took my knife, right, to Ernesto?

21 A. I don't remember that, but that's what I said
22 according to all the video and --

23 Q. Well, if -- if Ernesto said that --

24 A. Yes.

25 Q. -- that's what he said?

1 A. Yes.

2 Q. You still got the knife on your person, right?

3 A. (No response.)

4 Q. Even though you just told him they took your
5 knife you still had it.

6 A. (No response.)

7 Q. Right?

8 A. No. When I -- when I reached the tubes?

9 Q. No. No. When Ernest -- Ernesto came walking up
10 and you walked up to him, you told him they took my knife,
11 the first thing out of your mouth, right?

12 A. That's -- I don't remember that.

13 Q. Okay. Instead of walking to your group, you
14 walked up to the south side, south shore of the lake -- of
15 the river, right?

16 A. Yes.

17 Q. And on the way you washed off the knife in the
18 river?

19 A. I don't remember that.

20 Q. Well, you had blood on your hand and on the
21 knife, right?

22 A. Yes.

23 Q. When you left the -- the area, right?

24 A. Yeah.

25 Q. When you got back to your group nobody saw any

1 blood on your hands or -- right?

2 MR. NELSON: Objection. Foundation. He had no
3 other --

4 THE COURT: Sustained.

5 Q. (By Mr. Smestad, continuing) At some point you
6 rinsed your hand and the knife in the water, right?

7 A. I don't remember that, but yeah.

8 Q. Okay. But what you do remember is throwing the
9 knife up into the bushes on the south bank?

10 A. Right on the bank, yes.

11 Q. And then you finally walked over to your group,
12 right?

13 A. As I was walking I threw it away, yes.

14 Q. No. No. No. You walked out of your way to get
15 to the south bank to get rid of it and then walked back
16 across the river to your group, right?

17 MR. NELSON: Objection. Argumentative.

18 THE COURT: Overruled.

19 Q. (By Mr. Smestad, continuing) That's what you
20 did, right?

21 A. Yes.

22 MR. SMESTAD: We're going to take a -- play the
23 video taken by Larrion Davis, Judge. It's grainy but it's
24 of some value.

25 THE COURT: You have anymore questions?

1 MR. SMESTAD: Yes.

2 THE COURT: All right. Well, maybe this would be
3 a good time to take a break. Let's recess and we'll come
4 back at 2:50.

5 Please take the jury out.

6 (Whereupon, the jury exits the courtroom.)

7 THE COURT: We're in recess until 2:50.

8 (Whereupon, a break was held.)

9 (Whereupon, the jury enters the courtroom.)

10 THE COURT: All right. Mr. Miu, please retake
11 the witness stand. You are still under oath.

12 Mr. Smestad.

13 Q. (By Mr. Smestad, continuing) Well, Mr. Miu, I
14 want to ask you some more questions about the stab and
15 Dante Carlson. Is it fair to say that you did not know
16 Larrion Davis was recording that part of it?

17 A. No.

18 Q. And you've seen that -- that video here in court?

19 A. Yeah.

20 Q. You are the person in the dark shorts, correct?

21 A. (No response.)

22 Q. In that video?

23 A. It was not very clear so I couldn't make out who
24 was who.

25 Q. All right. If there's a person wearing dark

1 shorts with the same body type as you in the video, is it
2 you?

3 MR. NELSON: Objection.

4 A. Fair --

5 THE COURT: Hold on. Hold on.

6 MR. NELSON: Objection.

7 THE COURT: Sustained.

8 MR. SMESTAD: Well, we're gonna watch the video.
9 We're gonna watch it through the full speed.

10 (Whereupon, the video was played.)

11 MR. SMESTAD: We're gonna play part of it but
12 slower but not the -- not the end part.

13 We're ready. It's at the very beginning.

14 (Whereupon, the video was played.)

15 Q. (By Mr. Smestad, continuing) And, Mr. Miu, do
16 you see yourself in the left-hand side foreground wearing
17 the dark shorts where the cursor's pointed?

18 A. I can't make out.

19 Q. You don't know if that's you?

20 A. No.

21 Q. Did anyone else on the river have the same body
22 shape that you had at the time?

23 MR. NELSON: Objection. No foundation.

24 THE COURT: Sustained.

25 Q. (By Mr. Smestad, continuing) You've been in

1 court since the beginning of the trial, right?

2 A. Correct.

3 Q. You've seen all these people testify?

4 A. Yes.

5 Q. The people that were all involved in the
6 incident, right?

7 A. Yes.

8 Q. At the time that you stabbed these folks, there
9 wasn't anybody else in that area of the river that had the
10 same body shape as you, correct?

11 MR. NELSON: Objection. No foundation.

12 THE COURT: Sustained. It's the same question.

13 Q. (By Mr. Smestad, continuing) You're aware that
14 Dante Carlson's wearing shorts that are black on the
15 bottom and light gray on top, right?

16 A. That's what I learned.

17 MR. ANDERSON: Could we have the screen?

18 MR. SMESTAD: We're going to go through it
19 slowly.

20 MR. NELSON: Judge, can we approach?

21 THE COURT: Yes.

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

23 THE COURT: Objection sustained. Lack of
24 foundation.

25 Q. (By Mr. Smestad, continuing) In any event, after

1 you got rid of the knife on the south side of the river,
2 you walked back to the north side of the river where your
3 group was in the -- at the sandbar, right?

4 A. Yes.

5 Q. Stand in your tube?

6 A. (No response.)

7 Q. Did you sit down in your tube?

8 A. Yes.

9 Q. Eric Williams from your group, realizing that
10 people were hurt, left?

11 MR. NELSON: Objection. Form. His lack of
12 foundation to Eric Williams.

13 THE COURT: Sustained.

14 Q. (By Mr. Smestad, continuing) Did you see Eric
15 Williams leave your group?

16 A. No.

17 Q. At some point did you notice he wasn't with your
18 group anymore?

19 A. I didn't do a head count, sir --

20 Q. Okay.

21 A. -- so --

22 Q. Did anyone else from your tubes go to help with
23 the folks on the river --

24 MR. NELSON: Objection. No foundation.

25 THE COURT: Overruled.

1 You can answer the question.

2 A. I don't remember. I wasn't paying attention to
3 anybody in my group.

4 Q. (By Mr. Smestad, continuing) When you went back
5 to your tube, you put your shirt back on, right?

6 A. I was cold, yes.

7 Q. And you put on your -- your hat, right?

8 A. Yes.

9 Q. And your sunglasses?

10 A. Yes.

11 Q. Eventually you saw police officers and emergency
12 medical technicians show up on the river, right?

13 A. Yes.

14 Q. Wading up the river, right?

15 A. Yes.

16 Q. Trying to help people that had been injured
17 and --

18 MR. NELSON: Objection. No foundation.

19 THE COURT: Overruled.

20 Q. (By Mr. Smestad, continuing) You saw that
21 happen, right?

22 A. Yes.

23 Q. You didn't approach anybody to say you were
24 attacked, as far as law enforcement or EMTs or anything
25 like that, right?

1 A. No, I just put myself. I was afraid to go in
2 that area. I'm sorry.

3 Q. Even though there was police presence everywhere,
4 you were afraid to walk over there and tell them, hey,
5 this is what happened?

6 A. Yes, sir.

7 Q. So you got in your tube and you floated
8 downriver?

9 A. Not immediately. We waited there. We had people
10 -- from what I -- from what I learned, not that I
11 remember, that called 911 and -- yeah. I don't remember
12 any of that stuff. So I don't remember.

13 Q. So you had -- do you remember waiting for Eric
14 Williams to come back to join your group so you could
15 leave?

16 A. I don't remember.

17 Q. Do you remember saying let's go, you yourself
18 saying that?

19 MR. NELSON: Objection. Asked and answered.
20 Cumulative. He said he doesn't --

21 THE COURT: Overruled. Overruled.

22 A. I don't remember.

23 Q. (By Mr. Smestad, continuing) Ernesto Torres,
24 he's your best friend?

25 A. Yes.

1 Q. You didn't tell him what happened as you were
2 floating away?

3 A. I didn't talk to -- I -- I don't remember talking
4 to anybody. I don't even remember going down -- down the
5 river or up the river. I was just stunned. I don't
6 remember anything.

7 Q. And you didn't tell Ernesto I was afraid for my
8 life and I did this?

9 A. No.

10 Q. And you never told Ernesto that I acted in
11 self-defense?

12 A. I didn't -- I don't remember talking to anybody.

13 Q. You didn't say I was -- I was afraid they were
14 gonna kill me, these folks?

15 MR. NELSON: Objection. No foundation. He said
16 he doesn't remember.

17 THE COURT: Overruled.

18 A. I don't remember.

19 Q. (By Mr. Smestad, continuing) As you were leaving
20 the area you saw folks giving CPR to Isaac Schuman, right?

21 A. I didn't see that.

22 Q. All right. Eventually, you made it down to
23 Village Park where the exit was, right?

24 A. Eventually.

25 Q. And there's some video of you relaxed in your

1 tube, kind of playing in the water with your -- your hand,
2 right?

3 MR. NELSON: Objection as to form.

4 THE COURT: Sustained.

5 Q. (By Mr. Smestad, continuing) Do you remember
6 seeing the video of you --

7 A. I remember seeing the video.

8 Q. -- relaxing in your tube before you got back to
9 the end?

10 MR. NELSON: Objection as to form.

11 THE COURT: Sustained.

12 Q. (By Mr. Smestad, continuing) Did you see the
13 video or not?

14 A. I said I did.

15 Q. When you got to Village Park your group exited
16 the river, right?

17 A. Yes.

18 Q. There was multiple police in the area, right?

19 A. Yes.

20 Q. You saw a uniformed officer with his gun drawn
21 walking towards you, right?

22 A. Right.

23 Q. You didn't approach that officer?

24 A. I was afraid of everybody at that time.

25 Q. You were afraid -- you were afraid of the

1 officer?

2 A. I was afraid of anything and everybody. I was
3 afraid of anything. I -- I couldn't -- I couldn't -- I
4 was still in shock, so I was afraid of everything, yes.

5 Q. You didn't approach the officer and say they
6 tried to kill me, I defended myself, nothing like that,
7 right?

8 A. I don't remember saying anything like that to
9 anybody.

10 Q. You walked right by him, right?

11 A. All that is -- is a blur. I don't remember it.

12 Q. Once you got further up the path, though, other
13 officers were able to pick you out of your group, right?

14 A. Apparently, yes.

15 Q. They -- they stopped you?

16 A. (No response.)

17 Q. Right, before you could leave the park?

18 A. I don't remember that.

19 Q. You don't remember the police stopping you and
20 detaining you in the park after this incident?

21 A. I remember being stopped but I don't remember the
22 details.

23 Q. Sure. You were aware that the police had a
24 picture of you from the river, right?

25 A. Okay.

1 Q. Do you remember that?

2 A. I don't remember.

3 Q. Do you remember the police had to take your hat
4 and glasses off to make sure that it was you in the
5 picture?

6 A. No. I was focused on one thing only, somebody
7 with a -- with a bat that I've seen in the woods and
8 across that whatever bridge, the little bridge. Rainbow
9 bridge. Whatever. I was -- I was -- I was focused on
10 him. I was very afraid of that person.

11 Q. Did you ever say to the officer, hey, there's a
12 guy over there with a bat that's concerning me, can you do
13 something about it?

14 A. No.

15 Q. You were put into a squad car, right?

16 A. Um-hum.

17 Q. Is that a yes?

18 A. Yes.

19 Q. Sheriff Knudson came over to make sure you were
20 comfortable, right?

21 A. I saw that in the video, yes.

22 Q. You don't remember talking to Sheriff Knudson?

23 A. No.

24 Q. Do you remember him asking you -- well, if you
25 don't remember, you don't remember.

1 We're going to play that video and then I
2 have some questions for you.

3 MR. SMESTAD: Your Honor, this is the longer
4 version of the video that's been referenced. It's a
5 minute and 59 seconds.

6 THE COURT: Tell us when you're ready.

7 MR. ANDERSON: Ready.

8 (Whereupon, the video was played.)

9 Q. (By Mr. Smestad, continuing) You lied to Sheriff
10 Knudson, right?

11 A. I don't remember that conversation, but yes.

12 Q. You -- you -- in fact, you told him that you
13 heard there was a stabbing, right?

14 A. I don't remember any of this stuff.

15 Q. You're fishing for information about what
16 happened, right?

17 A. I don't know what you could say I was fish --
18 I -- I don't know. I don't know.

19 Q. You asked him some questions about what had
20 happened, right?

21 A. Again, I don't remember this conversation.

22 Q. But you were pretending that you didn't know what
23 happened, isn't that true?

24 A. No.

25 Q. At the point that you were talking to Sheriff

1 Knudson and saying these things, you didn't know there was
2 a video of what happened on the river, did ya?

3 A. I didn't even know whether I was dead or alive at
4 that point.

5 Q. But you also didn't know that you -- that there
6 was a video, right?

7 A. No.

8 Q. When the sheriff asked you what had happened, one
9 of your responses was it was kids being kids, right?

10 A. I don't remember any of that conversation.

11 Q. You just heard yourself say it on the video
12 though?

13 A. So --

14 MR. NELSON: Objection. No foundation.

15 THE COURT: Sustained.

16 MR. SMESTAD: I'll move on.

17 Q. (By Mr. Smestad, continuing) Well, prior to
18 being taken to jail you were transferred from that squad
19 car that you were in to a different squad car, right?

20 A. (No response.)

21 Q. You remember that?

22 A. (No response.)

23 Q. Do you remember at some point Deputy Thomason
24 telling you that you were under arrest for homicide and
25 attempted homicide?

1 A. I don't remember any of that.

2 Q. You don't remember.

3 When you spoke with Lieutenant Hart, even
4 though you had been informed that you were being arrested
5 for homicide, you pretended to know that -- could not be
6 aware that someone had died, right?

7 MR. NELSON: Objection as to form.

8 THE COURT: Overruled.

9 Q. (By Mr. Smestad, continuing) Right? When you
10 were talking to Lieutenant Hart you --

11 A. Over here at the jail?

12 Q. Yeah.

13 A. I don't remember any of that conversation.

14 Q. You don't recall pretending to not be aware that
15 someone had died?

16 MR. NELSON: Objection. Assumes a fact.

17 THE COURT: Sustained.

18 Q. (By Mr. Smestad, continuing) When you're talking
19 to Lieutenant Hart, that was about four hours after you
20 had been arrested, right?

21 A. Yeah, that's what I learned.

22 Q. And so you had time to put together a story,
23 right?

24 MR. NELSON: Objection.

25 A. No.

1 MR. NELSON: Argumentative.

2 THE COURT: Overruled.

3 Q. (By Mr. Smestad, continuing) You had four hours
4 to come up with a story about what happened on the river
5 before you were interviewed by Lieutenant Hart, right?

6 A. No.

7 Q. You didn't have that time?

8 A. I didn't put a story together.

9 Q. Okay. So when you told her things like two of
10 these boys pulled knives on me, you were telling the
11 truth?

12 A. No.

13 Q. That was a story, right?

14 A. Correct.

15 Q. And when you said that you somehow managed to
16 grab one of the boys' arms and bent their wrists back and
17 stab them with their own knife, that's a story you made
18 up, right?

19 A. I told her what I remembered.

20 Q. Do you remember doing that?

21 A. No, I -- everything I told her is what I
22 remembered at that time.

23 Q. At the time you told her these things you -- you
24 thought that you would grab someone's arm and stab them
25 with their own knife?

1 A. As you can see I was very confused.

2 Q. Did you not testify earlier that you lied about
3 the knife?

4 A. That I -- I -- I did.

5 Q. And that nobody --

6 A. I did.

7 Q. -- nobody else had a knife on the river except
8 for you?

9 A. That I lied about the knife.

10 Q. So it's impossible then for you to have twisted
11 someone's arm and stabbed them with their own knife,
12 right?

13 A. I saw the video.

14 Q. Yeah. Well, I'm asking what you said to
15 Lieutenant Hart.

16 A. I don't remember the interview but I saw video
17 and --

18 Q. You're aware --

19 A. -- I -- I -- I know that it's not right. It's
20 not true.

21 Q. Not just a couple of little lies, but lie on top
22 of a lie to Lieutenant Hart, right?

23 MR. NELSON: Objection. Argumentative.

24 THE COURT: Sustained.

25 Q. (By Mr. Smestad, continuing) Well, let's talk

1 about some of the things you told her. You said these
2 boys took the goggles off my head and threw them down the
3 river, right? You told her that?

4 A. If that's what the video recorded, yes.

5 Q. All right. You told them -- you told her that
6 these boys tried to pull down your shorts, right?

7 A. That's what I saw on the video, but I don't
8 remember the interview.

9 Q. That's a detail you added for your benefit,
10 right?

11 A. No.

12 Q. You said these boys attacked you, right?

13 A. (No response.)

14 Q. You told her that?

15 A. (No response.)

16 Q. Multiple times, right?

17 A. I saw the video.

18 Q. Did you say that or not: Yes or no?

19 A. I said that in the video, yes.

20 Q. And -- and you knew that wasn't true, right?

21 A. So in the video I lied -- I -- I totally lied
22 about the -- the -- the -- the knife. I -- I didn't
23 remember a lot of details. I didn't remember of -- of
24 any -- I don't even remember the interview. I just --
25 looking at the video it's -- it's -- I can look at it like

1 anybody would look at it for the first time. I don't
2 remember any of that.

3 Q. You told Lieutenant Hart that these boys told you
4 don't run away from us. You remember saying that?

5 MR. NELSON: Objection. No foundation.

6 THE COURT: Overruled.

7 A. No.

8 Q. (By Mr. Smestad, continuing) In fact, it's just
9 the opposite, they were telling you to go, right?

10 A. I don't remember.

11 Q. You told her that a second boy had a knife,
12 attacked you with the knife, and you took that from him,
13 right?

14 A. That's what I saw on the video.

15 Q. That's not true either, right?

16 A. (No response.)

17 Q. Right?

18 A. That's not true.

19 Q. You said that when you walked back to your group,
20 and this is talking to Lieutenant Hart, that Ernesto asked
21 you if you had found the phone, right?

22 A. (No response.)

23 Q. You remember saying that to her?

24 A. I don't remember any of that conversation I had
25 with her.

1 Q. And that wasn't true either, right?

2 A. If this is all part of that interview I don't
3 remember anything so --

4 Q. Yeah. That's what we're talking about --

5 A. Right.

6 Q. -- we're talking about --

7 A. Right.

8 Q. -- interview with Lieutenant Hart.

9 A. Then I don't remember interview.

10 Q. Okay. I still get to ask you questions about it.

11 A. Sure.

12 Q. You were specifically asked, Did you have a
13 knife? Right?

14 A. (No response.)

15 Q. Do you remember being asked that?

16 A. I don't remember that, but I know I was.

17 Q. Your answer to Lieutenant Hart was no, no,
18 absolutely no, right?

19 A. Right. Which I lied -- I know I lied about the
20 knife.

21 Q. You said to her, Why did they want to scare me
22 with a knife? Right? Talking about the boys I mean, the
23 17-year olds.

24 A. (No response.)

25 Q. When none of them had a knife, right?

1 A. (No response.)

2 Q. Is that right?

3 A. Apparently not.

4 Q. You said I grabbed it, meaning the knife, from
5 him as he tried to poke me with it. Do you remember
6 saying that?

7 A. No.

8 Q. You said a woman hit you in the ear. Do you
9 remember saying that?

10 A. No.

11 Q. You know that's not true, right?

12 MR. NELSON: Objection. Foundation.

13 THE COURT: Overruled.

14 Q. (By Mr. Smestad, continuing) You know that's not
15 true as you sit here now, right?

16 A. Right.

17 Q. You told the cop -- the police and Lieutenant
18 Hart I think that you thought it was two different groups
19 of people fighting against each other, right?

20 A. I don't remember telling her that.

21 Q. All right. You know as you sit here today that
22 that's complete -- completely made up, right?

23 A. Again, I don't remember any of that you're
24 talking about right now --

25 Q. You told --

1 A. --- if it's in the interview.

2 Q. You told Lieutenant Hart that you wanted to stay
3 in the area and watch the police come and arrest these
4 people for fighting, right?

5 A. (No response.)

6 Q. That's what you told Lieutenant Hart?

7 A. That's what's in the transcript, yes.

8 Q. When you were told that a person had died, your
9 response was, Is it because they fought each other?
10 That's what you told her, right, that's how you responded?

11 A. If it's in the transcript, but I don't remember.

12 Q. You -- you never told Lieutenant Hart that --
13 that you punched or pushed or did anything to Mady Coen,
14 right, you left that part out?

15 A. Is that what's in there? Then --

16 Q. I'm asking if you ever told her that.

17 A. I don't remember.

18 Q. And you didn't mention that you had stabbed and
19 severely injured another woman, Ryhley Mattison, you
20 didn't mention that to Lieutenant Hart, right?

21 MR. NELSON: Objection. Form.

22 THE COURT: Overruled.

23 Q. (By Mr. Smestad, continuing) Never mentioned
24 that part?

25 A. I don't remember.

1 Q. You didn't mention being strangled at any point,
2 right?

3 A. If that's the -- in the transcript, then that --
4 we go by that, but I don't remember that interview.

5 Q. And I think what you said earlier is that you
6 were afraid you were going to die from being strangled and
7 that's why you stabbed Isaac Schuman in the heart, right?
8 That was your testimony early -- earlier?

9 A. (No response.)

10 Q. Didn't you say that today, this afternoon here in
11 court?

12 A. Yes.

13 Q. That's not anything you mentioned to any police
14 officer, right?

15 A. If I didn't mention it, I didn't mention it. I
16 don't remember that.

17 Q. That -- that's not an important detail that you
18 thought you might want to point out?

19 MR. NELSON: Objection. Argumentative.

20 THE COURT: Overruled.

21 A. Everything is a -- every detail is important, we
22 all know that, but I don't remember saying those things to
23 Lieutenant Hart.

24 Q. (By Mr. Smestad, continuing) Because you didn't
25 say them, right, that's why you don't remember?

1 A. Because what?

2 Q. You didn't say those things to her, that's why
3 you don't remember, correct?

4 A. I -- I don't remember what I said or what I
5 didn't say to her. I don't remember even having an
6 interview with her.

7 Q. So you can't remember anything about what you
8 told her, but when Mr. Nelson's asking you questions you
9 could remember all these feelings you had at the time --

10 MR. NELSON: Objection --

11 Q. (By Mr. Smestad, continuing) -- is that true?

12 MR. NELSON: -- as to form. Argumentative.

13 THE COURT: Overruled.

14 Q. (By Mr. Smestad, continuing) Do you remember
15 answering his questions about how you were feeling that
16 day?

17 A. The feelings I had when I'm being -- I was
18 attacked?

19 Q. And when you were meeting with Lieutenant Hart.

20 MR. NELSON: Objection. That's -- can we
21 approach?

22 THE COURT: Yes.

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

24 THE COURT: Objection sustained.

25 Please rephrase the question.

1 Q. (By Mr. Smestad, continuing) You testified today
2 a lot about remembering what you were feeling that day,
3 right?

4 A. Um-hum.

5 Q. When Mr. Nelson was questioning you, right?

6 A. Um-hum. Um-hum.

7 Q. Is that a yes?

8 A. Yes.

9 Q. But when you were asked other details that might
10 not be so useful, you don't remember them, right?

11 A. Certain feelings and certain they -- they stick
12 to you forever.

13 Q. Sure.

14 A. They affect --

15 Q. Ones that are helpful to your defense, those
16 stick to you, right?

17 MR. NELSON: Objection. Argumentative.

18 THE COURT: Sustained.

19 Q. (By Mr. Smestad, continuing) You were examined
20 by the jail nurse, the -- pardon me, the SART nurse
21 several hours after the incident, right?

22 A. Yes.

23 Q. You never mentioned to her that you had been
24 strangled, right?

25 A. Didn't mention to her a lot --

1 Q. Sure.

2 A. -- and not because I intentionally didn't want to
3 do it, I didn't remember. I was still in shock.

4 Q. You didn't mention anything about your throat
5 hurting?

6 A. I don't remember what I mentioned to her.

7 Q. I understand. You never, at any point, told
8 anybody other than today that you had a sore throat or
9 your throat was sore from after this incident, right?

10 A. I didn't tell anybody. I --

11 Q. At any point during the day after you were
12 arrested and your interview with people when the jail --
13 or the SART nurse is talking to you, you never once said,
14 oh, my throat is sore because Isaac Schuman strangled me,
15 right?

16 A. I don't remember what I told those guys either.
17 I was -- like I said, I don't remember lots of inter --
18 interaction I had with anybody here at -- at the jail.

19 Q. But today --

20 A. Yeah.

21 Q. -- almost two years later, you remember that the
22 next day your throat hurt?

23 A. Yes.

24 Q. That's what you testified about earlier?

25 A. Yes, I -- I -- yeah. And my back. I still

1 have --

2 Q. You can remember that detail but none of -- not
3 the other details?

4 A. My -- my back still hurts right now.

5 Q. The SART nurse specifically asked you when she
6 was doing the exam, Where are you hurt? And you pointed
7 out some things to her, right?

8 A. I may have.

9 Q. Yeah. But you never once said I had been
10 strangled, I have an injury to my throat, my throat hurts,
11 nothing like that?

12 MR. NELSON: Objection. Asked and answered.

13 THE COURT: Overruled.

14 A. I don't remember.

15 Q. (By Mr. Smestad, continuing) When she asked you
16 what hurt you said your butt hurt from the rocks.
17 That's -- that was your response to the nurse, right?

18 A. I don't remember.

19 Q. You had said that -- now you're not -- you're in
20 poor health or you were at least in poor health back on
21 July 30th of 2022, you had had your -- your bypass surgery
22 two years prior to that, right?

23 A. Um-hum.

24 Q. Is that a yes?

25 A. Yes.

1 Q. And typically people that have medical procedures
2 like that are given restrictions on what they can do and
3 their activities, right?

4 A. Yeah.

5 Q. And you apparently weren't restricted from
6 swimming, snorkeling, doing outdoor sports on a river,
7 right?

8 A. I was for a while, but two years later lots of
9 the restrictions I believe got lifted.

10 Q. Those restrictions got lifted because you were --
11 you got better, right?

12 A. I -- I -- you -- you can say the doctor make that
13 decision, but he says if you feel a little better, do as
14 much as you can.

15 Q. Yeah. And then you were in fact snorkeling and
16 swimming and doing things that day, physical activities,
17 right?

18 A. Snorkeling in 15 inches of water? I was mostly
19 just -- I didn't even snorkel, snorkel. That's -- that
20 was not a lake or -- but I was just -- my whole plan for
21 the day was to just float down the river and relax.

22 Q. You're able to run, at least you were back on
23 July 30th of 2022, right?

24 A. Run?

25 Q. You were able to run at that time, right? You

1 weren't restricted from running.

2 A. Mean?

3 Q. You didn't have a medical restriction to keep you
4 from running, right?

5 A. Not in -- no.

6 Q. And in fact, you did run when you ran up on Isaac
7 Schuman's group, correct?

8 A. You call that run? Okay. That's not a run, but
9 I wasn't running. I'm not allowed -- I wasn't allowed to
10 run or do any activities like that, so I wasn't running.

11 Q. At the time that this all happened, July 30th,
12 2022, you felt sufficiently healthy to go off on your own,
13 away from your well -- your wife and your group to go do
14 snorkeling on your own, right?

15 A. It's what I felt.

16 MR. SMESTAD: Your Honor, I just want to check my
17 notes. I think I'm almost done.

18 If we can have Exhibit 4, Item 10. I'm
19 going to ask Investigator Shilts to actually handle it
20 since it's evidence, physical evidence.

21 THE COURT: Can you retrieve the exhibit?

22 MR. SMESTAD: If investigator can approach the
23 witness, Your Honor?

24 THE COURT: Yes.

25 Q. (By Mr. Smestad, continuing) We're showing you

1 what's been marked as Exhibit 4, I guess Item 10. That's
2 your knife, right?

3 A. Yes.

4 Q. That's the knife you used to stab these people?

5 A. That's the knife I used to defend myself with,
6 yes.

7 Q. I asked you earlier about when you stabbed Dante
8 Carlson. You agreed that he was not attacking you at the
9 point that you stabbed him, he was the last person
10 stabbed, right?

11 A. He attacked me.

12 Q. Earlier when you stabbed him, Tony Carlson had
13 already broke up the fight, right? You said -- you agreed
14 to that earlier?

15 A. At that time everybody that came in contact with
16 me attacked me.

17 Q. Anybody that looked at ya?

18 A. No. Anybody that came in contact with me I felt
19 attacked.

20 Q. You felt attacked whether you were being
21 physically attacked or not, right?

22 A. I was in the -- in the -- in the moment, so I
23 felt attacked by anybody that had either previously
24 attacked me or was approaching to attack me.

25 Q. So you felt like you could stab folks who were

1 not attacking you at the moment that you stabbed them?

2 MR. NELSON: Objection. Argumentative.

3 THE COURT: Sustained.

4 MR. NELSON: Misstates the --

5 THE COURT: Sustained.

6 Q. (By Mr. Smestad, continuing) You walked up to
7 Dante Carlson and stabbed him in the belly, right?

8 A. I did not walk up to Dante Carlson and stab him
9 in the belly.

10 MR. SMESTAD: I don't have any other questions,
11 Your Honor.

12 THE COURT: Mr. Nelson.

13 REDIRECT EXAMINATION

14 BY MR. NELSON:

15 Q. Mr. Miu, you were asked some questions about your
16 fitness on July 30th. I want to ask you some questions
17 about that, okay?

18 A. Okay.

19 Q. Just maybe we can get it done in one question.
20 Did you feel fit enough to take on 13 teenagers and adults
21 in a fight by yourself without a weapon?

22 A. I didn't, no.

23 Q. You were asked some questions about what happened
24 with each of these people, right, and you were shown some
25 stills.

1 A. Um-hum.

2 Q. Were you in court when -- do you know how many
3 frames are in per second of these videos?

4 A. I learned there were like 24, 25.

5 Q. Okay. So one frame is a 24th of a second, is
6 that right?

7 A. Correct.

8 Q. When you were in that -- and let me play the
9 video, I guess.

10 MR. NELSON: I'm going to play Exhibit 2 at 1:50.

11 THE COURT: Are you connected?

12 MR. NELSON: I think so. I was before.

13 THE CLERK: Something kicked off. Hold on.

14 MR. NELSON: Want me to start over?

15 THE COURT: Yeah, start over. I don't have
16 anything on my monitor either.

17 MR. NELSON: That's not the screen I'm looking
18 at, Judge. I apologize. My screen looks like that.

19 THE COURT: Whose screen is this, the library?

20 MR. NELSON: That was my -- that's my home screen
21 but -- let me take another chance here, Judge. Sorry.

22 All right. Can we just see what it looks
23 like for a second? Okay. That's -- I don't -- Judge,
24 maybe I need to take a break. I -- I'm looking at my
25 screen and it shows the video and so I apologize. I --

1 I'm flummoxed.

2 THE COURT: This is Exhibit 2, the --

3 MR. NELSON: This is Exhibit 2. I want to play
4 it from the 1:50 mark where you -- and for 14 seconds
5 so --

6 THE COURT: In the spirit of cooperation, are you
7 able to use your exhibit?

8 MR. ANDERSON: Sure.

9 MR. NELSON: I apologize. Sorry. I --
10 If we could start the video at 1:50, just
11 when he's --

12 Q. (By Mr. Nelson, continuing) All right. Before
13 we press play, Mr. Miu, do you see what's on the screen
14 there at 1:49?

15 A. Yes.

16 Q. Is that you falling backwards?

17 A. Yes.

18 Q. I want to press play and ask him to stop it at
19 2:05, okay?

20 A. Okay.

21 MR. NELSON: Please press play.

22 (Whereupon, the video was played.)

23 Q. (By Mr. Nelson, continuing) Did you observe
24 those 16 seconds or so?

25 A. Yes.

1 Q. Were you -- if there's 24 frames a second and we
2 watched for 16 seconds, as you sit here now are you able
3 to break down exactly what happened in each of those 284
4 frames?

5 A. (No response.)

6 Q. I mean, do you have a memory --

7 A. No.

8 Q. -- of one-24th of a second or --

9 A. No, absolutely not.

10 Q. How -- as far as time goes, if you can, I
11 apologize, but if you can just put yourself back in that
12 space for a moment.

13 A. Um-hum.

14 Q. Can you do that?

15 A. Yes.

16 Q. When you're back in that space on that river, in
17 that time, did you seem like you had 284 different chances
18 to do different things and feel different things?

19 A. No.

20 Q. How did time feel in that moment?

21 A. It was -- it was not real. Everything was not
22 real. Time wasn't following the same rules. It was --

23 Q. When you --

24 A. -- slow. Very slow.

25 Q. When you said you didn't have a memory of some of

1 the details but you had a memory of the feelings, can you
2 explain? How is that?

3 A. So feelings are brought on by -- by -- by what's
4 happening. At least with me if you get hit in the head,
5 that's a feeling of hurt. If you fall back and you hit
6 your head and you fall back on a river rock and -- and --
7 and you get hurt, you feel pain. When you know you can't
8 get away and you feel like you're drowning and they've --
9 they're -- people on top of you, pounding you and holding
10 you in the water, that's -- that's a -- a timestamp in a
11 feeling -- filing -- filing cabinet that says this is --
12 this is what I suffered.

13 Q. Do you exactly --

14 A. It's a --

15 Q. Go ahead. Sorry to interrupt you.

16 A. Yeah. It -- it -- it -- it's something I would
17 like to -- to erase from your memory -- memory but
18 unfortunately there are lots of those feelings, very
19 strong feelings, I can't erase.

20 Q. How confident in -- are you in accuracy of your
21 feelings?

22 A. I know my feelings. I live with my feelings for
23 54 years.

24 Q. How about this feeling, how confident are you in
25 the accuracy of this feeling --

1 A. 100 percent confident that that is my feeling.

2 100 percent confident.

3 Q. Even if you can't remember the details of
4 everything you saw?

5 A. Correct.

6 Q. Even if you can't remember the details of
7 everything you heard?

8 A. Right.

9 Q. Let me -- because there was some questions, and I
10 want to just make sure that we cover it, right?

11 A. Um-hum.

12 Q. A.J. Martin, do you remember each of these acts
13 that you're charged with, each of these acts of stabbing?

14 A. No.

15 Q. Do you remember the particulars, that is I should
16 say, the particulars of like X person did this or Y person
17 did this or Z person did this?

18 A. No.

19 Q. Do you remember, do you have any memory of just
20 randomly stabbing people?

21 A. No.

22 Q. What is your memory as to why you did what you
23 did?

24 A. I was afraid for my life and -- and what I -- I
25 did I had to do to defend myself.

1 Q. Did you -- do you have a memory of stabbing
2 anybody that didn't come towards you or attack you or
3 touch you or push you or hit you?

4 A. No.

5 Q. Did you ever just randomly go up and hit
6 somebody?

7 A. No.

8 Q. Do you have any memory of Tony Carlson trying to
9 break anything up?

10 A. No.

11 Q. Do you -- you weren't -- you were asked about
12 that but I know there's some frames on that. Do you
13 remember the frame in which Tony Carlson's coming up from
14 behind and pushing you?

15 A. I didn't know who he was, but I remember being
16 held in the water. I mean, it's a feeling that I -- it
17 keeps -- it gives me the nightmares, the trauma that was
18 caused by that. That -- that's the trauma that I -- that
19 -- that I remember.

20 Q. They were asked some questions there at the end
21 about the Larrion Davis video. Could you make anything
22 out in there?

23 A. No. I thought I was looking at Sasquatch.

24 Q. Do you remember -- do you remember anything about
25 Dante -- Dante Carlson is the person on the video

1 previously that we saw here that had hit you. You know
2 that, correct?

3 A. Yeah.

4 Q. And he's the person in those two-tone shorts,
5 correct?

6 A. Yeah.

7 Q. Do you have a memory of how it came to be that
8 you defended yourself against him that's not on the Jawahn
9 Cockfield video?

10 A. No.

11 Q. Do you remember him coming up to you?

12 A. I remember lots of people coming on -- onto me.
13 I couldn't distinguish who. I -- I don't remember color
14 of -- of shorts or anything like that.

15 Q. Did you ever swing or hit the knife out of anger?

16 A. No.

17 Q. Why'd you use the knife?

18 A. I use -- because I'm a mechanical engineer, I use
19 it as a tool. But what I use it for that day, I used it
20 to save my life for self-defense.

21 MR. NELSON: That's all.

22 THE COURT: Mr. Smestad.

23 RECROSS-EXAMINATION

24 BY MR. SMESTAD:

25 Q. So, Mr. Miu, you hear over and over again it was

1 13 people there and you're there by yourself, right?

2 A. Apparently, yes.

3 Q. But we know that's not true because Ariel is
4 behind ya?

5 MR. NELSON: Objection.

6 THE COURT: Sustained.

7 MR. NELSON: Argumentative.

8 Q. (By Mr. Smestad, continuing) 13 people did not
9 attack you, correct?

10 A. Looking at the evidence, correct. In the picture
11 at the time, I didn't know that.

12 Q. 13 people were using words that you didn't like,
13 right?

14 A. And action, right.

15 Q. Two women touched you on your shoulders and arms,
16 right?

17 A. They didn't just touch me on my shoulders and
18 arms. You know that.

19 Q. You were 250 pounds at the time, right?

20 A. Yes.

21 Q. And these women touching your arms caused you to
22 fear for your life?

23 MR. NELSON: Objection.

24 A. They're not touching --

25 MR. NELSON: Objection.

1 THE COURT: What's the objection?

2 MR. NELSON: That's not the evidence. That's not
3 what he said.

4 THE COURT: Again, members of the jury, disregard
5 what the attorneys say because what they say is not
6 evidence. What the witness says is the evidence that you
7 rely on.

8 Next question.

9 Q. (By Mr. Smestad, continuing) You said that the
10 time slowed down for you on redirect, right?

11 A. (No response.)

12 Q. You said the rules didn't apply, time slowed
13 down?

14 A. It -- to me at that time everything looked --
15 felt different.

16 Q. If time had slowed down, you would have time to
17 consider your actions, right?

18 A. If it did slow down, yes. I was wrong when I
19 said it slowed down, but yes.

20 Q. But that's what you said, right?

21 A. I understand.

22 Q. You never told the SART nurse that you had been
23 drowning, right?

24 MR. NELSON: Objection. Beyond the scope.

25 THE COURT: Overruled.

1 A. I don't remember what I told the doctor -- or
2 nurse.

3 Q. (By Mr. Smestad, continuing) You never told
4 Lieutenant Hart that you had been drowning?

5 A. I don't remember.

6 MR. SMESTAD: Nothing further.

7 THE COURT: Thank you, Mr. Miu. You may step
8 back to the table.

9 (Whereupon, the witness was excused.)

10 THE COURT: Do you need a few minutes?

11 MR. NELSON: Just a couple minutes, yes, please.

12 THE COURT: All right. Let's come back at 3:45.

13 Please take the jury out.

14 (Whereupon, the jury exits the courtroom.)

15 THE COURT: We're in recess. 3:45.

16 (Whereupon, a break was held.)

17 (Whereupon, the jury enters the courtroom.)

18 THE COURT: Mr. Chirafisi, is there another
19 witness?

20 MR. CHIRAFISI: Judge --

21 THE COURT: Mr. Nelson.

22 MR. NELSON: The Defense rests.

23 THE COURT: All right. Defense rests.

24 Mr. Anderson, will there be a rebuttal?

25 MR. ANDERSON: No.

1 THE COURT: All right.

2 Members of the jury, that means the
3 evidence is closed. We're almost at the end. I have some
4 matters to discuss with the attorneys. It would not be
5 practical to keep you here and try to push through closing
6 arguments and end up working into the night. So I'm going
7 to release you now. I'd like you to come back tomorrow
8 morning 8:00 a.m.

9 What is going to happen tomorrow morning is
10 we'll all come back into the courtroom, I will give you
11 the jury instructions, the attorneys will deliver their
12 arguments, and then the matter will be handed over to you
13 for your deliberations.

14 Again, the reminders are the same: No
15 independent research or investigation, do not talk about
16 this case among yourselves or with anybody else, do not
17 consult news reports or social media posts about this
18 case.

19 Enjoy the rest of your night, and we'll see
20 you tomorrow morning at --

21 MR. NELSON: Judge? Can we just approach --

22 THE COURT: Yes.

23 MR. NELSON: -- real quickly about timing?

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

25 THE COURT: Correction. 8:30. 8:30 tomorrow

1 morning, all right.

2 Anything else?

3 MR. ANDERSON: No.

4 THE COURT: All right. Please take the jury out.

5 (Whereupon, the jury exits the courtroom.)

6 THE COURT: We are outside the presence of the
7 jury.

8 Mr. Nelson, Mr. Chirafisi, do you have
9 anything else concerning the evidence? Motions?

10 MR. NELSON: Yes, Judge, we would renew the
11 motion that we've made before. The arguments are the
12 same. I believe the burden is different. And so if Your
13 Honor wants additional argument I don't -- the facts
14 haven't really changed, it's just the -- the burden has.

15 THE COURT: I think the burden is the same but
16 the evidence that I can consider has expanded, correct? I
17 can consider the entire body of the evidence, not just
18 what the State offered.

19 MR. NELSON: Fair enough.

20 THE COURT: All right.

21 Mr. Anderson, is there anything that you
22 want to add?

23 MR. ANDERSON: No.

24 THE COURT: All right.

25 Again, that motion is denied. I stand by

1 my earlier rulings. I think the evidence that has been
2 presented thus far is sufficient to warrant this case
3 going to the jury.

4 This morning I handed the attorneys rough
5 draft Number 3 of the jury instructions. Have you had an
6 opportunity to look at it or do you need some time?

7 MR. NELSON: I have not even -- I need some time.

8 MR. ANDERSON: Same.

9 MR. SMESTAD: Me too, Judge. I -- I haven't
10 looked at a page of it.

11 MR. NELSON: Are we going on the record or --

12 THE COURT: Well, I'd really like to get it done,
13 if we could. I don't know how much time you need?

14 MR. NELSON: I haven't even -- I haven't even
15 looked at it, I apologize, but obviously it's been a full
16 day. And so they are 29 pages, you know, can you give me
17 at least until 4:15?

18 THE COURT: Will that be enough time for you?

19 MR. SMESTAD: Well, I'll have defer to Mr.
20 Anderson. He's looked at them a little closer than I
21 have.

22 MR. ANDERSON: Should be, Judge. I -- I know
23 that the one -- it doesn't need to be lengthy, but I think
24 would be appropriate is something on defense of others,
25 because his testimony that Dante and A.J. were defending

1 or responding to Miu punching Mady when they responded
2 so --

3 THE COURT: Okay. Let me just -- I'm going to
4 recap where I think we are. I had initiated a rough draft
5 of the jury instructions. It included the instructions
6 that I -- I knew were going to be required, ones that I
7 anticipated that the attorneys would want, and
8 instructions I thought the evidence would justify.

9 The attorneys and I have discussed the
10 draft, we spoke most recently yesterday. There was some
11 areas of where I needed input. I got the input.

12 In the draft you have now it reflects the
13 changes that we discussed yesterday. The areas that are
14 in red are areas that remain unresolved from yesterday or
15 were added based on Mr. Anderson's submission late
16 yesterday regarding the lesser-included charges for Counts
17 2 through 5. So it should look familiar to everybody,
18 with the exception of the portions in red.

19 Just give me a better understanding about
20 defense of others instruction, how you see it fitting in,
21 where do you want it?

22 MR. ANDERSON: So the testimony from Dante and
23 A.J. was they saw Miu punch Mady, so they were defending
24 her. So I think the jury should be able to know that not
25 only is it legal -- is self-defense legal when justified,

1 so is defense of others.

2 THE COURT: What's your reaction, Mr. Chirafisi?

3 MR. CHIRAFISI: I never heard of an affirmative
4 defense being given in a criminal case for a victim. And
5 I'm -- I -- I haven't looked at it. It strikes me as
6 completely convoluting everything we're doing. But I
7 would need to know -- are they saying that gets rid of the
8 right of self-defense? I -- I don't know what it means in
9 terms of how it -- how the jury's supposed to consider
10 that evidence.

11 If they consider that, are they saying if
12 you find it's defense of others, then self-defense doesn't
13 apply? I don't think it strikes a self-defense.

14 THE COURT: Yeah.

15 Mr. Anderson, how -- how does it fit into
16 your argument?

17 MR. ANDERSON: I think -- when I was reading this
18 before, I think there's a spot where it can be added in
19 very succinctly, but I just want to be able to tell the
20 judge -- the jury that when you got these jury
21 instructions in Wisconsin it's illegal -- it's legal to
22 come to the aid of others, and that's what -- exactly what
23 Dante and A.J. did.

24 And it comes -- it also intertwines with --

25 THE COURT: But how does it reflect on Mr. Miu's

1 guilt or not guilt?

2 MR. ANDERSON: His provocation is what responded
3 them to come to the defense of Mady, and then he starts
4 stabbing people. And they had a legal right to come to
5 her defense under the theory of defense of others.

6 MR. NELSON: So -- if I may, Judge?

7 THE COURT: One question. Are you proposing the
8 pattern instruction or do you have something custom-made?

9 MR. ANDERSON: I think it could be more succinct,
10 so I could come back with a --

11 THE COURT: Yeah, why don't you do that so we're
12 all looking at the same language.

13 What did you want to add?

14 MR. NELSON: The only way -- again, I agree with
15 Mr. Chirafisi. I just don't see how this comes in. The
16 only way we can get it to come in under that red paragraph
17 on Page 3 under provocation in some way, but then it
18 doesn't make sense because it's -- the issue is whether
19 Mr. Miu's conduct was unlawful.

20 It -- whether Dante Carlson's conduct was
21 lawful or unlawful has no bearing whatsoever on whether
22 provocation occurred and whether Mr. Carlson or A.J.
23 Martin's behavior is lawful or defense of others. That
24 has no bearing on Mr. Miu's beliefs or the reasonableness
25 of his beliefs because there's zero evidence that has been

1 presented that Mr. Miu had any impression, understanding,
2 or knowledge that what was being done to him was legally
3 the defense of others.

4 And so it -- it's just -- it's irrelevant,
5 it's prejudicial, it's confusing, it has nothing to do
6 with Mr. Miu's beliefs, which this entire case is about.

7 THE COURT: Let's put it on hold. Get me the
8 proposed language that you want to have me consider.

9 I'll give you 20 minutes to review the most
10 recent draft. I'd like to -- if we could, I'd like to
11 finish the instruction conference today so that we can
12 come in fresh tomorrow morning. But if the clock prevents
13 us from doing so we may have to adjourn until tomorrow
14 morning.

15 So we'll reconvene at 4:15.

16 MR. NELSON: And are we on the record at 4:15
17 or are we --

18 THE COURT: That's my intention, yes.

19 MR. NELSON: Okay.

20 THE COURT: Yeah.

21 (Whereupon, a break was held.)

22 THE COURT: All right. We are back on the
23 record. Mr. Smestad, Mr. Anderson are present. Mr.
24 Nelson is present with Mr. Miu.

25 I understand Mr. Chirafisi had to leave?

1 MR. NELSON: Mr. Chirafisi is doing the closing
2 tomorrow so we've decided to divide and concur. I spoke
3 with Mr. Miu. Mr. Miu gave me permission to tell Your
4 Honor that he's comfortable with me proceeding --

5 THE COURT: All right.

6 MR. NELSON: -- while Mr. Chirafisi is doing
7 other tasks to represent him.

8 THE COURT: I guess the first question I have
9 before we dive into the instructions is this: Are either
10 of the parties requesting lesser-included offenses?

11 MR. ANDERSON: Yes.

12 THE COURT: Okay. All right.

13 MR. NELSON: No.

14 THE COURT: I'm sorry, I missed that. Yes by the
15 State. No by --

16 MR. NELSON: No.

17 THE COURT: -- the Defense.

18 Mr. Anderson, which lesser-includeds?

19 MR. ANDERSON: I -- I'm satisfied with -- with
20 the ones in the draft instructions, Judge.

21 THE COURT: Okay. So I want to make sure we're
22 clear on the record here. You're requesting
23 lesser-includeds for Count 1 to include second-degree
24 intentional homicide, first-degree reckless homicide,
25 second-degree reckless homicide?

1 MR. ANDERSON: Correct.

2 THE COURT: Then for Counts 2, 3, 4, and 5 you're
3 requesting lesser-includeds for attempted second-degree
4 homicide, for first-degree recklessly endangering safety,
5 and second-degree recklessly endangering safety?

6 MR. ANDERSON: Correct.

7 THE COURT: Mr. Nelson, any comment?

8 MR. NELSON: We object.

9 THE COURT: Any basis?

10 MR. NELSON: The law and the facts. I mean, I
11 don't want to try -- try to be efficient here, but I don't
12 think it's supported by the facts that had been presented
13 here.

14 Certainly as to -- I understand -- I
15 understand Count 1, second degree, we prefer not, but I
16 don't think there is a basis involved that -- for me to
17 make an argument that he doesn't get second-degree
18 intentional.

19 As to Count 1, first-degree reckless, I
20 don't think that there's a basis in fact that there was
21 any evidence that it was utter disregard for human life in
22 this situation where the person, Mr. Schuman, died
23 instantly.

24 So for those -- so -- so we object to
25 first-degree reckless as to Count 1.

1 Want me to go through the other counts or
2 just deal with Count 1 first?

3 THE COURT: No, go through the other counts.

4 MR. NELSON: As to Counts 2 through 5, again, I
5 understand that second-degree intentional is a
6 lesser-included of first-degree intentional. So I'm not
7 objecting to that. While we prefer that it not be
8 offered, I agree that there's a factual and legal basis
9 for it.

10 As to the reckless endangerment,
11 first-degree reckless endangerment, again, there is no
12 evidence that it was utter disregard. I believe in these
13 cases I do concede that the case law that I have seen
14 supports the fact that reckless endangerment is a
15 lesser-included of attempted homicide.

16 THE COURT: Mr. Anderson.

17 MR. ANDERSON: So basically the -- both the State
18 and Defense are entitled to ask for a lesser-included
19 offense, and it's error for the Court not to include
20 lesser-included offense -- offenses as long as there's a
21 basis.

22 So a jury could -- a jury could conclude
23 that although he was reckless in stabbing these people, he
24 didn't actually have the intent to kill them; hence, the
25 reckless charges.

1 The self-defense is still at issue in all
2 of them, but I think it's appropriate to have the
3 lesser-includedes.

4 THE COURT: Okay. My understanding of the law is
5 that either party may make a request for lesser-includedes.
6 One party's decision to request lesser-includedes cannot be
7 challenged by the other party. So here the State is
8 making the request. It's entitled to the instruction as
9 long as the evidence supports it.

10 In my judgment the crimes that are being
11 requested as lesser-includedes are in fact all
12 lesser-included offenses. The homicide is in Count 1. A
13 lesser degree of homicide certainly are, same with offense
14 of homicide in Counts 2 through 5.

15 There's also case law that says that the
16 reckless conduct for each of the classes of offenses are
17 lesser-includedes.

18 So I'm satisfied that the charges
19 themselves are lesser-included offenses.

20 I'm also satisfied that the facts support
21 the lesser-included crimes that had been requested. I
22 think Mr. Anderson's assessment is correct that the jury
23 could conclude that Mr. Miu did not have the intent to
24 kill but he did engage in reckless conduct by
25 indiscriminately jabbing and swinging his knife around

1 people.

2 He testified today that he really didn't
3 know what was going on, he didn't who was hitting him, he
4 didn't know where people were necessarily, it all happened
5 very fast, yet the knife was used in a way that would show
6 utter disregard for human life. It was certainly reckless
7 in nature.

8 When considering utter disregard for human
9 life there are a number of factors to consider: What he
10 was doing, why he was engaged in the conduct, how
11 dangerous the conduct was, how obvious the danger was,
12 whether the conduct showed any regard for life, and all
13 other facts and circumstances relating to the conduct.

14 Again, we have a man who is using a knife
15 in a dangerous way, indiscriminately brandishing it
16 against others, others were injured. Mr. Miu left the
17 scene, left the wounded behind.

18 After a delay he tubed past them without
19 rendering aid, without notifying the police what happened.
20 I think those are all facts that one could conclude are
21 utter disregard for human life.

22 So I'm satisfied that the facts support
23 each of the lesser-included instructions that had been
24 requested by State.

25 All right. What I'd like to do is walk

1 through the instructions that I have. If there's an
2 objection or something you think it warrants discussion,
3 please stop me and then we can have a conversation about
4 it.

5 I intend to issue 100, opening
6 instructions;

7 145, information not evidence;

8 1017, first-degree intentional homicide
9 with self-defense and the three lesser-includeds that I
10 mentioned.

11 MR. NELSON: I do have objections about that,
12 just I'm not sure when you want to --

13 THE COURT: Yes.

14 MR. NELSON: -- take them up.

15 THE COURT: What's the objection?

16 MR. NELSON: On Page 3, I don't have objection to
17 1017 in general, Judge, just some of the wording within
18 1017.

19 On Page 3, the first paragraph, the
20 definition of great bodily harm is included based upon our
21 request. We're comfortable with great bodily harm means
22 other serious permanent bodily injury as opposed to the
23 entire definition. I -- my understanding the State wants
24 the entire definition.

25 THE COURT: Mr. Anderson?

1 MR. ANDERSON: We have a legal definition. I
2 think it makes sense to use the legal definition.

3 THE COURT: I believe that the -- this is the
4 legal definition, it's out of the statute. There's also a
5 jury instruction with this definition. That's what I
6 used. I didn't feel comfortable taking parts out of it
7 because I didn't know how the attorneys intended to argue.

8 So the entire definition is in there. I
9 think the attorneys can use whichever portions they choose
10 to use, but it is a correct statement of the law.

11 Next objection.

12 MR. NELSON: The paragraph in red regarding
13 provocation. I previously filed Document 318 in which we
14 had submitted a modified version of jury instruction 815.
15 I sent that again last night via e-mail to everybody at
16 the Court's request. I believe that that is a more
17 accurate rendition of the law.

18 It's our position, as is outlined in
19 Document 318, that the State needs to specify what was the
20 unlawful conduct which was of the type to provoke others
21 to attack, and that I also -- that there is a need in this
22 paragraph for the Court to tell the jury that it is -- the
23 law that they have to prove, the unlawful conduct, which
24 is the basis for the provocation beyond a reasonable
25 doubt.

1 I appreciate they have to disprove
2 self-defense, but since provocation is the State's attempt
3 to put a hurdle in front of whether we even get
4 self-defense, I think it needs to be made clear in that
5 paragraph that it's the State's burden to prove the
6 provocation occurred beyond a reasonable doubt.

7 And again, I'm happy to go on in more
8 detail, but I think the Document Number 318 with the case
9 law that's cited in footnotes is a better argument than
10 what I'm verbally making right now.

11 THE COURT: Mr. Anderson.

12 MR. ANDERSON: It's a pattern jury instruction.
13 I looked at the motion filed by Defense. The authority
14 they used were two Washington State cases from the 1980's
15 that's -- there's been -- I didn't see that it's been
16 adopted in any other state since the 1980s.

17 I saw a couple California cases that cited
18 to them that were overturned. There's no such authority
19 in Wisconsin to -- to modify the pattern jury instruction
20 that's drafted by the Jury Instruction Committee to
21 conform with Wisconsin law.

22 So the closest thing I could found -- find
23 I included in my response, which is directly negated to a
24 Minnesota court case that was cited. So I don't see the
25 reason or the authority to modify.

1 MR. NELSON: Just so we're clear, the jury
2 instructions aren't law. The jury instructions are a
3 committee's recommendations as to what the court can
4 instruct to the jury as to what the law is.

5 But -- and I appreciate we're asking for a
6 modification, but in response to the State it seems like
7 the State is saying I need to have some authority to say
8 why we shouldn't use 815 in the manner that is here.

9 And, A, I've provided authority. I agree
10 that it's not Wisconsin because there's no issue on point
11 in Wisconsin, but I think we all agree, at least we did
12 yesterday in chambers, that the burden is upon the State
13 to prove the provocation beyond a reasonable doubt.

14 So if we all agree that that's the law,
15 we -- and the purpose of the jury instructions is to tell
16 the jury the law, then why wouldn't we want to include
17 that in this paragraph to make it clear?

18 I can tell you, Judge, and I understand my
19 understanding is not the basis but, you know, lots of
20 lawyers involved in this case and I think we all agree
21 that this 29 pages of jury instructions is probably some
22 of the most complicated reading we've ever done in our
23 legal careers, and so anything we can do to simplify it I
24 think is -- is worthwhile for a group of eventually 12
25 people who do not have law degrees.

1 THE COURT: So under the self-defense statute Mr.
2 Miu loses the privilege of self-defense if he provokes an
3 attack by unlawful conduct.

4 So I'm hearing two arguments: One is that
5 the phrase unlawful conduct must be identified and
6 defined; the other is that the instruction should include
7 some reference to the burden of proof of beyond a
8 reasonable doubt.

9 In terms of the modifications requested by
10 the Defense, no Wisconsin case law supports the request.
11 The reference to unlawful conduct is part of the
12 self-defense statute, Section 939.48. The phrase is not
13 an element of a crime that may require more specificity.

14 Second, the phrase is not limited to a
15 single act. It is broad enough to include multiple acts,
16 whether they be criminal acts or tortious acts, but acts
17 nonetheless that would cause a reasonable person to
18 physically react.

19 In this case there is credible evidence
20 that Mr. Miu engaged in unlawful conduct during his
21 encounter with the tubers. There is credible evidence
22 that his conduct was of a type likely to provoke an attack
23 by others. The jury will need to evaluate that conduct
24 and the conduct of others and determine how it affects the
25 self-defense claim.

1 So while I understand some of the issues
2 that other states have wrestled with, in Wisconsin we do
3 not have any authority to support the specificity that is
4 being requested by the Defense.

5 As far as the burden of proof, I also
6 decline to modify the language. In my judgment the
7 pattern instruction is adequate and it correctly states
8 the law. I don't want to make modifications that could
9 potentially be confusing or misleading, and I think by
10 adding additional language about the burden of proof with
11 regard to provocation could do just that.

12 It is true that the State has the burden of
13 disproving self-defense beyond a reasonable doubt. The
14 State has the burden of proving every fact necessary for a
15 finding of guilt beyond a reasonable doubt.

16 I relied on the pattern instructions.
17 Those instructions repeatedly instruct the jury on these
18 basic points. Adding more language about the burden of
19 proof to the provocation paragraph could confuse the jury
20 because it would imply an obligation to prove provocation.
21 The State is not required to prove provocation, the State
22 is required to disprove self-defense. The State may
23 achieve that in a number of ways. Provocation is one of
24 them.

25 If the State elects to disprove

1 self-defense by way of provocation, then the State will
2 need to prove it beyond a reasonable doubt and the pattern
3 instruction adequately instructs the jury about that
4 burden. So those are the reasons why I am denying any
5 additional modifications.

6 Were there other objections to 1017?

7 MR. NELSON: Yes, Judge. The next paragraph, I
8 don't believe that there is a factual basis for that,
9 which would normally be a bracketed portion of 815, and
10 that is that paragraph, a person who provokes an attack,
11 whether by lawful or unlawful conduct, with intent to use
12 such an attack as an excuse, and then goes on. That's the
13 sentence which I don't believe there is a factual basis to
14 support its inclusion in 1017.

15 THE COURT: Mr. Anderson.

16 MR. ANDERSON: Before he even ran up on the boys
17 he touched his knife in his pocket. He kept touching his
18 knife in his pocket while people were telling him to
19 leave. He took out his knife and still nothing happened,
20 and then witnesses say he punched Mady. After they
21 responded he started stabbing people. So I think it's --
22 it's not a huge stretch to argue that he punched Mady to
23 provoke the response, and that would give him an argument
24 for self-defense.

25 THE COURT: Is that really the State's theory?

1 MR. ANDERSON: I think there's an argument.

2 THE COURT: Sure. Is that the State's theory?

3 MR. ANDERSON: I don't think it's what I am going
4 to argue to the jury but I would mention if they believe
5 that.

6 THE COURT: Again, the optional paragraph that
7 we're talking about is an accurate statement of the law.
8 A judge's decision to give an instruction is
9 discretionary, but it has to be based on the facts of the
10 case.

11 So are there facts to believe that Mr. Miu
12 was looking to stab people but just needed the right
13 excuse? And he punched Madison Coen so he'd have that
14 excuse, that's what you're saying?

15 MR. ANDERSON: Yes. That's an argument we could
16 make.

17 THE COURT: And help me better understand the
18 facts then that leads you to that argument. And also is
19 it an argument you're going to make? Because if you're
20 not going to make it, I'm not going to include it because
21 it's not relevant.

22 MR. ANDERSON: I was planning on briefly
23 mentioning it and then moving on to other theories or --
24 other theories of the case. But I -- I think I gave my
25 argument, Judge, if --

1 THE COURT: Well --

2 MR. NELSON: I mean, we're asking that it not be
3 included. These are complicated instructions. The -- I
4 don't think they've met their burden to prove that a
5 reasonable jury could think that.

6 Your Honor, I know his theory, judicial in
7 letting juries decide things that are jury matters, but it
8 sounds like Your Honor has, even in that interpretation,
9 skepticism as to how any reasonable jury could think that.
10 And there --

11 THE COURT: No, not necessarily that. It seems
12 to run in the face contrary to the -- the theory that I've
13 heard. But, you know, it's the State's case, and if you
14 want to give them a menu of options, it's your choice,
15 I'll include it.

16 Next.

17 MR. NELSON: Next, Judge, and I -- this is -- I
18 know this is not efficient but this -- as it applies to
19 this case, the effective law of self-defense, I think
20 those next five bullet points, the wording of it while --
21 implies that the burden of proof is with Mr. Miu, and he
22 doesn't have to prove that his belief was reasonable.

23 THE COURT: So you're talking about Pages 3 and
24 4?

25 MR. NELSON: Correct.

1 THE COURT: The bullet points?

2 MR. NELSON: Correct. Those five bullet points
3 under as the -- the -- as applies to this case the
4 effective law of self-defense is. And again, it's a
5 summary. I don't think it's necessary. I appreciate that
6 it's part of the standard, but I think it flips the burden
7 within those five bullet points because it implies that
8 it's our -- they have to be -- the jury has to find his
9 belief was reasonable, which isn't what they have to find.
10 The jury has to find that the State has proven his belief
11 was unreasonable. That's different.

12 THE COURT: I understand the objection. I -- I'm
13 going to include it. It's part of the pattern
14 instruction. While I have discretion to deviate from the
15 pattern instruction, I see no reason for doing so here.

16 What the bullet points do, in my opinion,
17 is put all of this law into context and how it fits
18 together with the lesser-included and a finding of not
19 guilty, it puts it in five bullet points, and I think it
20 encapsulizes a lot of different concepts and gives the
21 jury a understandable road map for the thought process
22 that they can utilize in reaching their verdict.

23 In no way does it suggest that Mr. Miu has
24 the burden of proving any of these elements. It just
25 describes the way it all fits together.

1 In fact, on Page 4, the paragraph
2 immediately after the bullet point refers to the State's
3 burden of proving all facts necessary to constitute the
4 crime is beyond a reasonable doubt.

5 Later in the instruction the Court provides
6 much greater detail on the elements of proof and what
7 needs to be considered. Again, there's more reference to
8 the burden of proof being on the State, so I think that
9 the law is accurate and it does not mislead the jury.

10 Anything else?

11 MR. NELSON: Yes. The next paragraph, the use of
12 the word established. I think it should be -- so the
13 paragraph reading instead, I think it should read instead
14 you will be asked to determine whether the State has,
15 cross out established and put proven beyond a reasonable
16 doubt, and then go back to the standard language.

17 THE COURT: You lost me. Which page?

18 MR. NELSON: Page 4, the paragraph underneath the
19 five -- the four bullet points, the second sentence
20 beginning with the word instead. The fourth line down,
21 second word in is established. I think that that word
22 should be crossed out and we should use the word proven,
23 and then we should include beyond a reasonable doubt.

24 Just -- we use proof all the other times
25 and now here in this section we use established. I just

1 think it's, A, more accurate to say proven; and obviously
2 it is their burden to prove it -- the necessary facts
3 beyond a reasonable doubt so --

4 THE COURT: Exactly what was said in the sentence
5 right before it.

6 MR. NELSON: Which is why I'm -- that's why it
7 doesn't make sense to me. If we use the word prove in the
8 first sentence, why are we using the word established in
9 the second sentence and the word establish in the third
10 sentence?

11 Even if you don't include beyond a
12 reasonable doubt, which I understand Your Honor says the
13 first sentence covers that, just change the word
14 established to proven, at least then we're consistent with
15 that language.

16 THE COURT: I'm going to leave it as is. I don't
17 want to wordsmith too much. It's not misleading. I think
18 it's accurate. The first sentence clearly stated the
19 State's burden to prove all facts necessary to constitute
20 a crime beyond a reasonable doubt, and then I think for
21 probably flow and just general understanding it uses the
22 word established. And I think it is implicit that it is
23 established beyond a reasonable doubt. There's really no
24 other way of reading those following sentences.

25 What's next?

1 MR. NELSON: Page 6, the last paragraph. I
2 appreciate that the standard language says you must not
3 find him guilty. I think the simpler language is you must
4 find him not guilty?

5 THE COURT: How? How can that possibly be
6 correct?

7 MR. NELSON: Because the verdicts are guilty and
8 not guilty and so --

9 THE COURT: But it completely ignores the
10 lesser-included.

11 MR. NELSON: No. It says if you are not so
12 sat -- in my reading it would say if you are not so
13 satisfied you must find him not guilty of first-degree
14 intentional and you must consider the next one.

15 THE COURT: But they're not returning a not
16 guilty verdict.

17 MR. NELSON: I appreciate that they're not
18 putting out a verdict, but I think that that's the
19 finding.

20 THE COURT: I'm going to leave it as is.

21 MR. NELSON: Okay.

22 THE COURT: I -- if there's a lesser-included,
23 there's a sequence, they start with first-degree. If they
24 don't agree there, they go to second-degree, and so on and
25 so forth, and at the end is when they would reach the not

1 guilty if they are not persuaded on guilt for any of the
2 charged or lesser-included offenses. Putting in you must
3 find him not guilty I think would be misleading and
4 contrary to law.

5 Anything else in that instruction?

6 MR. NELSON: No, Judge -- oh, well, I mean -- I'm
7 sorry.

8 Next is Page 8 on the paragraph determining
9 whether beliefs were reasonable, the last sentence of that
10 paragraph. Instead of his acts it should -- I think it
11 should say the alleged crimes because we're not assessing
12 his beliefs about anything other than his beliefs at the
13 time that he committed these alleged crimes.

14 So if you include from the standpoint at
15 the time of his acts, it's much broader and that's --
16 we're not trying to establish the reasonableness of his
17 beliefs at -- in the first 1 minute and 49 seconds of that
18 video. There's nothing about the reasonableness of his
19 beliefs then, it's only about the reasonableness of his
20 beliefs when he committed these crimes. So I'm just
21 asking that his acts be crossed out and replaced by the
22 alleged crimes or the charged crimes.

23 THE COURT: I'm going to leave it as is. I don't
24 want to wordsmith. It's -- it's an accurate statement of
25 the law. This is a pattern instruction by the jury

1 instruction committee, which is a committee of I think at
2 least ten judges. These instructions have been vetted and
3 reviewed and studied, and in my judgment ten minds are
4 better than one, and I just don't feel comfortable
5 wordsmithing and changing words without fully appreciating
6 and understanding the effect that those changes may have
7 to the broader meaning of the instruction.

8 MR. NELSON: And again, I'm not -- I -- I
9 understand, I just want to make my point is clear for the
10 record. I disagree, I don't think it's an accurate
11 statement of the law, but I heard Your Honor and we'll
12 move on.

13 THE COURT: Okay. Anything else?

14 MR. NELSON: Same complaint on Page 8 about
15 the -- the wording of not find Mr. Miu guilty as it goes
16 to find Mr. Miu not guilty, but I, again, understand Your
17 Honor's previous ruling, but to be consistent to overrule
18 my objection.

19 THE COURT: Next?

20 MR. NELSON: If I'm -- working through this,
21 Judge, I'm going as fast as I can.

22 Page 10, under jury's decision, again, same
23 issue comes up as Your Honor had previously mentioned.
24 That's all on 1017, Judge.

25 THE COURT: Okay.

1 MR. NELSON: I believe I previously mentioned
2 State v. Austin; and while I would prefer the elements of
3 the crime on Page 9 includes self-defense, I appreciate
4 that consistent with Austin, Element Number 2 includes the
5 language required by Austin; and Element Number 3 includes
6 the language required by Austin so -- I'll just leave it
7 at that.

8 THE COURT: All right. That was my assessment as
9 well when I read Austin and considered your comments from
10 yesterday. It looks like those pieces of law were already
11 incorporated into the pattern instruction. It just may
12 not be in the position that you preferred.

13 MR. NELSON: 1072, I'm --

14 THE COURT: Oh, wait.

15 MR. NELSON: Sorry.

16 THE COURT: Any objections, Mr. Anderson, on --

17 MR. ANDERSON: No.

18 THE COURT: -- from the State?

19 MR. ANDERSON: No.

20 THE COURT: 1072.

21 MR. NELSON: First paragraph, second sentence,
22 the word attempted is left out.

23 THE COURT: All right. Thank you.

24 Anything else in that paragraph?

25 MR. NELSON: No, Judge.

1 THE COURT: All right. I imagine you have
2 similar objections to 1072 that you had in 1017?

3 MR. NELSON: Yes, Judge. The bullet points on
4 Page 12, and in particular which -- again, I'm not trying
5 to -- I make the same arguments. I appreciate Your
6 Honor's previous ruling, but nevertheless I make those
7 arguments.

8 At the bottom of Page 12 in red where it
9 talks about first-degree recklessly endangering safety, I
10 believe you would need to add at the end of that sentence
11 and as -- at the end of the bullet point, at the top of
12 Page 13, to be consistent with Austin, which we previously
13 stated, you should add the words at the end of that and
14 did not act lawfully in self-defense.

15 THE COURT: So what I did when -- because 1017
16 provided a nice pattern instruction for first-degree
17 intentional homicide with the three lesser-includeds and
18 self-defense. There wasn't a similar pattern instruction
19 for attempted first-degree homicide with the
20 lesser-includeds and self-defense.

21 So what I did is I tried to mirror the
22 modifications in red to what exists in 1017, basically
23 follow the same flow, the same thought process, and that's
24 where I came up with the language in red.

25 The Austin language is included where I

1 define the crime in more detail. The bullet points on
2 Pages 12 and 13 are simply the instruction's effort to put
3 everything into context in a way that is simple and
4 understandable for the jury. This isn't the instruction
5 itself about the elements of the offense or the things
6 that the State has to prove beyond a reasonable doubt,
7 this is just an explanation like the introductory language
8 that precedes it to help the jury better understand how
9 these lesser-included offenses all fit together.

10 MR. NELSON: If I may, my concern is -- well, I
11 hear Your Honor. The argument that I'm making now, I
12 would go back on 1072, Page 4, and request -- and again, I
13 understand Your Honor's -- the same seven words and did
14 not act lawfully in self-defense be added on Page 4 in the
15 summary of first-degree reckless homicide and
16 second-degree reckless homicide.

17 Otherwise, when we talk about both in
18 1070 -- 1017 as -- and in 1072, when we talk about the
19 intentional crimes, self-defense is included in that
20 summary. When you talk about the reckless it isn't, which
21 is if somebody does -- goes and does a quick glance
22 without doing a deep dive, it may -- I'm worried the jury
23 would think -- they just look at that and then they don't
24 have to think about self-defense.

25 So to add those seven words I don't think

1 is contrary to the law and I don't think it's confusing, I
2 think it's just correct.

3 THE COURT: I disagree because Austin didn't say
4 you need to look at utter disregard for human life and
5 self-defense separately. What Austin said is that someone
6 does not act in utter disregard for human life when they
7 are acting in self-defense.

8 Now that may be a small subtle nuance, but
9 I think it's an important one, and the concept of
10 self-defense is subsumed in the term utter disregard for
11 human life. That's the way that Austin presented it and
12 that's how the instruction reads when you get to the
13 detailing of the elements of the offense.

14 All right. What else do you have?

15 MR. NELSON: On the paragraph on Page 13, the
16 same arguments I made before about the difference between
17 the use of the word established as opposed to proven.
18 Just, again, note the similar objection.

19 THE COURT: Noted.

20 MR. NELSON: At the last sentence, which I also
21 -- on Page 13, it's the same last sentence as is on Page 4
22 in 1017 and so I want to incorporate this argument for
23 both.

24 Instead of using the words you will be
25 instructed to find Mr. Miu not guilty, I think this is the

1 instructions, so I think you should just say you must find
2 Mr. Miu not guilty. I don't know --

3 THE COURT: I'm -- I'm sorry, you lost me. Where
4 are you on Page 13?

5 MR. NELSON: The last -- on the -- on Page 13,
6 the paragraph beginning because the law provides. Are you
7 with me?

8 THE COURT: No.

9 MR. NELSON: The top of Page 13 and under the
10 red --

11 THE COURT: Oh.

12 MR. NELSON: -- bullet point. The last sentence
13 of that paragraph, the words will be instructed. I think
14 those words should be crossed out and say must. It
15 implies you will be instructed to find Mr. Miu not guilty.
16 The little meaning is that is I'm not telling you that
17 now, I'm gonna tell it to you later, and I get it, it's --

18 THE COURT: Is it meaningful?

19 MR. NELSON: It is to me.

20 THE COURT: How?

21 MR. NELSON: I think the word should be you must
22 find Mr. Miu not guilty because you're instructing them
23 now in this moment. You're not telling them about what
24 you're going to do at a future moment, which is what it
25 implies in this sense.

1 THE COURT: What difference does it make? That's
2 what I'm not -- that's what I don't understand.

3 MR. NELSON: The -- if it doesn't make a
4 difference, then why wouldn't we agree? Why --

5 THE COURT: No, that's not the way it works.

6 MR. NELSON: Well --

7 THE COURT: You tell me why it's different and
8 then I'll consider making the changes.

9 MR. NELSON: Because this implies I'm not telling
10 you that right now, right, I'm going to tell you that
11 later, but we don't actually tell them that later.

12 THE COURT: We do.

13 MR. NELSON: When do you say if the State does
14 not satisfy those facts as established by the evidence you
15 will be instructed, when do you give that instruction?

16 THE COURT: It's in a -- I'm looking at Page 20.
17 For one, if you are not so satisfied, referring back to
18 the previous paragraph, you must find him not guilty. And
19 then I believe it's also in 140.

20 MR. NELSON: Okay. I stand by my argument.

21 THE COURT: Sure. All right.

22 MR. NELSON: I appreciate Your Honor's comments
23 but I --

24 THE COURT: Anything else in this instruction?

25 MR. NELSON: Same -- on Page 16, determining

1 whether beliefs were reasonable, the same arguments that I
2 had made previously when discussing 1017.

3 THE COURT: Okay. The objection's noted.

4 MR. NELSON: I just need to -- I got about this
5 far, Judge, so I -- I know it's not fun to watch anybody
6 read, but that's as far as I got in my in-depth reading
7 before.

8 THE COURT: Mr. Anderson, do you have any
9 concerns or objections to 1072?

10 MR. ANDERSON: No, Judge.

11 I'll also say too, I change my mind on the
12 -- asking for a special change -- or instruction on
13 defense of others. I think I can make the argument with
14 the provocation instruction.

15 THE COURT: Thank you. You weren't going to get
16 it anyway.

17 All right. Let's -- I don't want to just
18 gloss over the rest of 1072, but we'll put it aside for
19 the moment. Let's continue on because I think the others
20 are probably pretty easy.

21 There was a request yesterday to use 1220A,
22 with the self-defense battery. Any objection?

23 MR. ANDERSON: No.

24 MR. NELSON: And this -- I -- I trust this is
25 1220A and so --

1 THE COURT: It should be.

2 MR. NELSON: Okay. Yes, then. Thank you. We
3 agree.

4 THE COURT: I think the -- the red language is
5 the new stuff.

6 MR. NELSON: Sure.

7 THE COURT: That's the difference.

8 Continuing on, 990. I think there was a
9 request last night to include the more robust definition
10 of great bodily harm, which I included. It's in the red
11 text. It's the same definition that you saw earlier.
12 It's repetitive but one came at the beginning, this one
13 comes at the end. So the rest are kind of sandwiched
14 in-between.

15 No objection, I'll continue on.

16 140, burden of proof. There was a request
17 last night for a modification to the last sentence, which
18 I made. It's in the red text.

19 MR. ANDERSON: No objection from the State.

20 MR. NELSON: We filed our previous objections in
21 writing and I appreciate the modification. Thank you.

22 THE COURT: Okay.

23 Continuing on, 103, evidence defined;

24 170, circumstantial evidence.

25 Last night -- again, this is -- when I'm

1 referring to last night, I'm talking about the chambers
2 conversation off the record. Mr. Anderson requested 172,
3 so I included that. Any comment?

4 MR. NELSON: We object.

5 THE COURT: Mr. Anderson, why do you think it's
6 justified?

7 MR. ANDERSON: The evidence is that he walked
8 away, changed his appearance, tubed past the chaos, yeah,
9 discarded the knife, tried to walk past an officer, and
10 essentially was only apprehended because he was recognized
11 from the photo, so I think it's appropriate.

12 THE COURT: I think the facts support the
13 instruction. Obviously there's competing inferences,
14 different arguments can be made, but this instruction is
15 an accurate statement of the law and will give the
16 attorneys a platform for making those instructions -- or
17 those arguments.

18 Continuing on, 157, remarks of counsel;

19 155, exhibits;

20 148, objections;

21 147, improper questions;

22 190, weight of evidence;

23 195, jurors knowledge;

24 300, credibility;

25 160, closing arguments;

1 460, closing instruction;

2 485, verdicts submitted with
3 lesser-included counts;

4 And concluding with 515.

5 Mr. Nelson, does your client request any
6 special instructions regarding his decision to testify?

7 MR. NELSON: No, Judge.

8 THE COURT: I think it's 315?

9 MR. NELSON: Correct, Judge.

10 THE COURT: You do not want it?

11 MR. NELSON: We do not want it.

12 THE COURT: Okay.

13 MR. NELSON: Hold on.

14 (Whereupon, a discussion was held off the record
15 between counsel and client.)

16 MR. NELSON: Just so we're clear, Judge, I'm not
17 asking for the instruction. Obviously the law is the law
18 is the law and either side -- while they won't quote from
19 315, they can make arguments consistent with 315.

20 THE COURT: Absolutely. Absolutely.

21 Did either of you look at the wording of
22 the verdict?

23 MR. NELSON: I did and I --

24 THE COURT: Or verdicts.

25 MR. NELSON: -- and as -- and I appreciate it's

1 perhaps different with lesser-included, but it's, you
2 know, our position that since he's presumed innocent that
3 the verdict of not guilty is the -- is the first choice.

4 THE COURT: Mr. Anderson?

5 MR. ANDERSON: I -- I don't have anything to add,
6 Judge. I know that this is the standard way and I don't
7 see a reason to change it.

8 THE COURT: Yeah, I understand the -- the
9 sentiment of wanting to have the not guilty read first. I
10 don't think it makes a difference one way or the other. I
11 don't think it is suggestive which verdict is read first.

12 The reason why I organize it the way I do
13 is because I think it's consistent with the order of
14 proof: The State going first, Defense going second. So
15 that's the way I order it.

16 Is there anything that you think I missed
17 that should be included?

18 MR. NELSON: No, Judge.

19 MR. ANDERSON: No.

20 MR. NELSON: I just want a chance to finish
21 reading 1072.

22 THE COURT: Yes. And what I propose we do is
23 adjourn for the night since it's five o'clock. I'd like
24 to have the attorneys come back tomorrow at eight, and
25 then we can pick up the instruction conference. That'll

1 give the attorneys a little bit of extra time to look at
2 1072 since that instruction did have a substantial amount
3 of additions given the late addition of the
4 lesser-included offenses.

5 So we can pick up where we left off, but at
6 least this gives me a clear indication that most of what's
7 been prepared is going to be delivered.

8 So anything else that you think we need to
9 address?

10 MR. ANDERSON: Not that I can think of -- oh, I
11 guess we did have the -- I think these might not have
12 gotten numbers. The large -- maybe I --

13 MR. SMESTAD: Judge, I had a diagram with Mr.
14 Miu. I'll have that marked. You did.

15 THE CLERK: Yeah, that's -- my question was if it
16 was offered or received or not?

17 THE COURT: What was it marked as?

18 THE CLERK: This is Exhibit 90.

19 THE COURT: 90?

20 THE CLERK: Yes, Exhibit 90.

21 THE COURT: 90.

22 And that was the illustration you used with
23 Mr. Miu?

24 MR. SMESTAD: Right.

25 THE COURT: So 90 will be received just for

1 purposes of illustration. It's not evidence of course.

2 MR. SMESTAD: Right.

3 MR. ANDERSON: 62A is the blown-up photos of the
4 boys.

5 THE COURT: Do you have any objection?

6 MR. NELSON: No.

7 THE COURT: That's 62A, correct?

8 MR. ANDERSON: Yes.

9 THE COURT: All right. 62A is received.

10 Anything else from the State?

11 MR. ANDERSON: We have the blown-up photo of
12 Isaac, but we also admitted the normal size so I don't --
13 unless Defense -- I don't think we have to mark it and
14 admit it.

15 MR. NELSON: No position, Judge.

16 THE COURT: It's up to you.

17 MR. ANDERSON: I guess we might as well.

18 THE COURT: All right.

19 MR. ANDERSON: So we up to 91?

20 THE CLERK: Yes.

21 THE COURT: So 91 is the portrait of Isaac
22 blown-up.

23 (Whereupon, Exhibit Number 91 was marked for
24 identification.)

25 THE COURT: The eight-by-eleven was already

1 received into evidence.

2 Anything else, Mr. Anderson?

3 MR. ANDERSON: No.

4 THE COURT: Mr. Nelson, anything else?

5 MR. NELSON: No, Judge.

6 THE COURT: All right. So we'll pick up on the
7 instructions and then be prepared to start instructions at
8 8:30, with arguments shortly following.

9 Have a good night, everyone. We are
10 adjourned.

11 (The proceedings came to a close at this time.)

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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 11th day
of March, 2026.

/s/ Vanessa M. Melstrom

Vanessa M. Melstrom, RMR, CRR

Official Court Reporter - Branch 4

St. Croix County Government Center