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Circuit Court

St. Croix County, WI

2022CF000518

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

2 STATE OF WISCONSIN,)
3) CASE NO: 22 CF 518
4 Plaintiff,)
5) CASE TYPE:
6 vs.) CRIMINAL
7)
8 NICOLAE MIU,) PREPARED FOR:
9) **ORIGINAL**
10 Defendant.)
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Hudson, Wisconsin
April 10, 2024

BEFORE THE HONORABLE R. MICHAEL WATERMAN

REPORTER'S TRANSCRIPT OF PROCEEDINGS

JURY TRIAL - DAY 8

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APPEARANCES:

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

BRIAN SMESTAD, ESQ., 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.

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

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Hudson, Wisconsin
April 10, 2024

P R O C E E D I N G S

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

THE COURT: All right. We are back on the
record, State of Wisconsin versus Nicolae Miu. The
attorneys are present, Mr. Miu is present, we are outside
the presence of the jury.

The jury was summonsed in today at 8:30, so
they are probably assembling as we speak, but this gives
us some extra time to wrap up some of our work.

I do have a few things that I want to
address before we get back into the jury instructions. I
meant to make a record yesterday about the sidebar.
During Mr. Miu's direct examination Mr. Nelson asked
questions about nightmares, there was a State objection,
we had a sidebar.

It was my judgment that since Mr. Miu's
credibility was being attacked, Mr. Miu's life experiences
dealing with the traumatic events on July 30 were
relevant, so I limited the scope of the inquiry to the
fact that Mr. Miu was having nightmares, that they were
about July 30, 2022, and that he sought out treatment or
counseling for them.

1 I did not allow the Defense to get into
2 what the medical treatment was, including prescription
3 medication that he may have been given.

4 I also instructed the State that given the
5 objection and given my ruling, that the State would not be
6 permitted to make arguments that Mr. Miu's experiences
7 should be discounted because there's no evidence of a
8 medical provider, a psychiatrist, psychologist or
9 prescription medication because they had objected to that
10 evidence.

11 So that's my summary. If anybody wants to
12 add to it, you may do so.

13 MR. SMESTAD: That's my recollection, Judge.

14 MR. NELSON: Yes, Judge. Just to make it clear,
15 I wanted to -- as an offer of proof I wanted to ask
16 Nicolae about how his body responded to those nightmares;
17 that is, when he woke up what was his body feeling? Was
18 he in chills? Did he have sweat? Was he shaking? If I
19 had asked those questions I would anticipate that he would
20 have told me all of those things would have existed. I,
21 again, think that that would further support his claim
22 that the nightmares were real.

23 Secondly, I wanted to ask him about the
24 treatment, and I expected him to testify that, yes, he's
25 saw a doctor and a nurse, mostly a nurse, in the jail, and

1 that he received a prescription for Prazosin, which, it's
2 his understanding and confirmed by my research, that that
3 is a prescription for PTSD-related nightmares.

4 And so, again, as Your Honor somewhat
5 articulated, it's our position that if the State affects
6 his -- attacks his credibility on that, I should be able
7 to get that into evidence.

8 It's our position that since they're
9 attacking his credibility in general, any time I can have
10 his credibility supported on relevant matters I should be
11 allowed to do so. Your Honor gave the ruling that Your
12 Honor articulated.

13 THE COURT: All right. And the -- the attorneys
14 do have the ability to rehabilitate the credibility of
15 their witnesses. I just put limits on the extent that
16 we're going to go into it. That's largely how I arrived
17 at my ruling.

18 I'll also note too that we've had a number
19 of other sidebars where we didn't make records. Everybody
20 has the opportunity to make a record if they feel one is
21 necessary. It's been my recollection that most of the
22 substantive rulings have had records made in close
23 proximity to the time of the sidebars; others I may have
24 made rulings on form questions, foundation questions given
25 the attorneys' direction to move in a different direction

1 or approach a problem from a certain perspective. I don't
2 think they were substantive in nature, it was more
3 technical.

4 I think some of the other sidebars had to
5 do with the attorneys putting me on notice about things
6 that are likely to occur or may happen, but I don't
7 remember any other sidebars that involve the inclusion or
8 exclusion of meaningful substantive evidence over the
9 objection of one of the other parties.

10 Anybody remembers something that they want
11 to make a record of, you have an open invitation to do so.

12 I also want to circle back to Exhibit
13 Number 24. Yesterday there was a request to seal a trial
14 exhibit. Neither of the attorneys have provided me with
15 any law authorizing it, and unless you do so now I
16 conclude that you still do not have supporting authority.

17 You know, as a judge I --

18 MR. NELSON: I -- I believe yesterday I
19 articulated I think Exhibit Number 24, I would just note
20 Chapter 950. I appreciate it's probably not my space to
21 make that argument but I will nevertheless, and Chapter
22 950 involves the dignity of human beings, in particular
23 victims, and I -- my opinion, the photos in -- I think
24 we're talking about the photos --

25 THE COURT: Yes.

1 MR. NELSON: -- is that right?

2 Those photos being made public is contrary
3 to respecting the dignity of those people that have that
4 right.

5 THE COURT: And I understand the -- the thought
6 and the sentiment. In a way as a human being I agree;
7 however, as a judge I have to follow the law when it comes
8 to sealing records. And judges are very restricted, at
9 least in Wisconsin, about what records can be sealed from
10 the public. And they are -- the authority is defined
11 specifically by statute.

12 Things like juvenile records, trade
13 secrets, Social Security numbers, Presentence
14 Investigation Reports, psychological studies, things like
15 that are all defined in statute that a judge either is
16 permitted to or is required to seal.

17 Judges do not have broad authority to seal
18 records that the judge thinks would be appropriate or to
19 protect the interests of individuals, unfortunately.

20 So because this is a trial exhibit, it's
21 been received into evidence, because this is a public
22 trial, that does not involve a enumerated statutory basis
23 for sealing. I don't have the authority to do so even
24 though I may prefer to do so. I simply just don't have
25 the authority.

1 So the request for sealing is denied on
2 Exhibit 24.

3 I provided the attorneys with a printed
4 version of all of the proposed verdict forms. Did anybody
5 have any objections?

6 MR. ANDERSON: No.

7 MR. CHIRAFISI: I don't.

8 THE COURT: Okay. So those will stand and be
9 submitted to the jury.

10 Is there anything else you want to address
11 before we get back to the jury instructions? (No
12 response.) Okay. Hearing none --

13 MR. ANDERSON: Actually, could we approach quick,
14 Judge?

15 THE COURT: Yes.

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

17 THE COURT: All right. Let's take the sidebar
18 for a moment. I want to get these jury instructions done
19 so I can have them printed.

20 We left off at 1072, the attempted crimes
21 for Counts 2 through 5. Mr. Nelson, you had a lot of
22 objections yesterday that apply to 1070 -- correction,
23 1017. Those same objections would apply to 1072 because
24 the same issues exist in both instructions. So I noted
25 all of them for purposes of preserving the record.

1 Are there other matters that you want to
2 address in 1072?

3 MR. NELSON: Yes, Judge. In 1017, as well as in
4 1072, regarding the matter of second-degree reckless
5 homicide, on Page 10 when you're talking about the
6 homicide and on Page 20 when you're talking about the
7 recklessly endangering safety both in the second-degree
8 matter, both of them merely say the difference between
9 first and second is the additional element. There is no
10 mention in that discussion of second-degree reckless
11 homicide, nor mention in the second-degree reckless
12 endangering safety that it is the State's burden to prove
13 beyond a reasonable doubt.

14 I appreciate that it is in first-degree
15 reckless homicide and it is in first-degree recklessly
16 endangering safety; however, I think not including it in
17 the second to make sure and clear that the burden is on
18 the State is in direct contradiction to the State v.
19 Austin, 349 Wis. 2d 744, case that we've been discussing.

20 This mistake/error in the instructions that
21 were included is I think exactly what Austin says on
22 page -- or in Paragraph 7, mentioning the jury
23 instructions in Austin said however there was no mention
24 of the burden of proof relative to self-defense, and it
25 talks about that in the context of recklessly endangering

1 safety.

2 And then later on Page 17 it talks about
3 the standard instruction implies that the defendant must
4 satisfy the jury that he was acting in self-defense. In
5 doing so, the instruction removes the burden of proof from
6 the State to show that the defendant was engaging in
7 criminally reckless conduct.

8 So I asked that on Page 10 and on Page 20,
9 when discussing the second-degree reckless homicide and
10 the second-degree recklessly endangering, that Your Honor
11 add the words that I believe were added in other aspects
12 and that Mr. Miu was not acting lawfully in self-defense.

13 THE COURT: All right. The objection's noted. I
14 am declining the request for the modification. Again,
15 this comes from the pattern standard language from the
16 jury instruction book authored by the jury instruction
17 committee, the committee of multiple judges who have
18 studied these issues and have vetted appropriate language.

19 The self-defense language appears in
20 connection with first-degree reckless homicide and
21 first-degree recklessly endangering safety. The jury will
22 be instructed that one is not engaging in criminally
23 reckless conduct if they're acting in self-defense.

24 When we get to the second-degree versions
25 of those offenses, the instruction makes explicit

1 reference back to the wording from the first-degree
2 offense but simply tells the jury that the absence of
3 utter disregard for human life but the -- but the
4 instruction for the second-degree offenses instructs the
5 jury that they do not have to find utter disregard for
6 human life. So it's incorporating by reference the
7 first-degree language.

8 I think it is adequate. I think it is
9 accurate. The attorneys will have ample opportunity to
10 argue their respective points, including the importance of
11 the self-defense being disproved by the State beyond a
12 reasonable doubt.

13 What's next?

14 MR. NELSON: That was the only additional request
15 after reviewing the instructions, Judge.

16 THE COURT: Okay. And then last night we went
17 through all of the other instructions. I'll give it,
18 again, another open call to additional instructions that
19 you think additional -- or a -- or a removal of
20 instructions. Is there any changes, objections, concerns
21 that you have to the jury instructions as presented?

22 MR. ANDERSON: Judge, regarding the excuse
23 portion, I agree, you can take that out. I'm not going to
24 argue that in any way of provocation. So the -- that's
25 the -- it was one of the bracketed instructions. It's on

1 Page 3.

2 THE COURT: Yes.

3 MR. ANDERSON: So single sentence/paragraph.

4 THE COURT: It is removed.

5 Anything else from the State?

6 MR. ANDERSON: Not on jury instructions.

7 THE COURT: Mr. Nelson?

8 MR. NELSON: No, Judge.

9 THE COURT: Okay. So I'll have the -- the
10 instructions finalized.

11 My intent is to read before you argue.
12 I'll also have the instructions displayed on the monitors
13 so the jury can follow along. The jury will be provided
14 with a few copies of the printed instructions in the
15 deliberation room for their reference.

16 Mr. Anderson, at sidebar you said you had a
17 motion to make?

18 MR. ANDERSON: Yes, Judge, I have a motion to
19 strike one of the jurors. It was brought by -- to my
20 attention yesterday that during portions of testimony
21 yesterday one of the jurors was sleeping for an extended
22 period of time and the point of nodding off and then
23 jerking awake.

24 Both sides have a right to a fair trial,
25 which includes juries that are attentive. I'm looking at

1 Wisconsin Supreme Court case State v. Novy, 346 Wis. 2d
2 289. If -- if there's a conviction the defense could also
3 try to argue that it violated defendant's right to fair
4 trial.

5 So obviously we want jurors who are paying
6 attention to the evidence. So the -- it's a two-step
7 inquiry: One, it's a fact determination whether the juror
8 was actually inattentive to the point of potentially
9 undermining the fairness of the trial; and, two, whether
10 there's -- well, this is the appellate -- this is
11 appellate-reviewed standard, if there's prejudice as a
12 result.

13 THE COURT: Which juror?

14 MR. ANDERSON: 4021.

15 MR. NELSON: Judge, we don't agree. I -- I --
16 I'm not looking at them so I don't agree with the factual
17 basis.

18 THE COURT: Okay.

19 Mr. Anderson, if you want to pursue the
20 matter further you'll have to provide a witness.

21 MR. ANDERSON: State calls Investigator Shilts.

22 THE COURT: Investigator, please stand, raise
23 your right hand to be sworn.

24 INVESTIGATOR JOHN SHILTS, JR.,
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. Anderson.

6 DIRECT EXAMINATION

7 BY MR. ANDERSON:

8 Q. You've already testified, but can you state your
9 first and last name?

10 A. John Shilts.

11 Q. And were you present throughout testimony
12 yesterday?

13 A. Yes, sir.

14 Q. At portions of the trial were you watching the
15 jury?

16 A. I was.

17 Q. Was there a specific point during trial where
18 you -- period of time, I should say, where you noticed a
19 concern about whether a juror was paying attention?

20 A. Yes.

21 Q. What did you notice?

22 A. I observed one of the jurors with her head down
23 and would startle up with her head on numerous occasions.

24 Q. And did that -- was it -- what -- what kind of
25 time period, if you can recall? Was it like a ten-minute

1 time period? Half hour? Hour? Longer?

2 A. About an hour.

3 Q. And she was dozing off and appeared to startle
4 awake --

5 A. Yes.

6 Q. -- multiple -- multiple times?

7 A. Yes.

8 Q. And from the -- reviewing the -- our jury list
9 in -- in our office we believe that to be Juror 4021?

10 A. Correct.

11 MR. ANDERSON: Nothing else, Judge.

12 THE COURT: Mr. Nelson.

13 CROSS-EXAMINATION

14 BY MR. NELSON:

15 Q. What time did this occur?

16 A. I could tell you during what portion of the
17 trial, sir, but I don't recall the time. I apologize.

18 Q. Just yesterday this happened and you don't know
19 what time it was when it happened?

20 A. Correct. I can tell you the portion of the
21 trial.

22 Q. Let's start from there. During which witness?

23 A. Lieutenant Hart.

24 Q. And during Lieutenant Hart's direct examine or
25 cross-examine?

1 A. It would have been during her direct exam.

2 Q. And that was the -- before the video or after the
3 video?

4 A. During the video.

5 Q. So was it during the exam or during the playing
6 of the video?

7 A. I apologize. I think I'm getting confused. It
8 was during the playing of the video.

9 Q. Was it at any time other than during the playing
10 of the video?

11 A. Not that I observed.

12 Q. When you made these observations you were sitting
13 next to attorneys representing the State?

14 A. Yes.

15 Q. Did you make a note to them, pass a note, give an
16 elbow, whisper in a ear?

17 A. No, I told them after -- or during the break.

18 Q. So you made this observation while it was
19 happening and you just, for lack of a better term, sat
20 there and let it happen?

21 A. Yes.

22 Q. Didn't bring it to the attorneys' attention?

23 A. I did during the break.

24 Q. When you say the break, the break after the
25 playing of the video?

1 A. I believe so, yes.

2 Q. Was there a discussion about whether the State
3 thought the juror was on the State's side or the Defense
4 side?

5 A. No, sir.

6 Q. What was that discussion? Who did you tell?

7 A. During the break I just told the attorneys that I
8 observed a juror who I believed was sleeping. And I noted
9 that I believed she was sleeping and not just closing her
10 eyes because of her head quickly coming up like a -- you
11 would when you startle up from waking.

12 Q. And did you -- at the time you didn't -- your
13 estimate of the time is, fair to say, rough?

14 A. Yes, sir.

15 Q. You -- during the actual live testimony from
16 Brandie Hart you didn't make an observation of any of
17 this, correct?

18 A. Yes, sir --

19 Q. It was --

20 A. -- correct.

21 Q. -- it was only during the playing of the video?

22 A. Correct.

23 Q. And it was only during a portion of the playing
24 of the video?

25 A. Correct.

1 Q. And your observation was just as you said, she
2 had her chin tilted forward towards her chest at -- a
3 couple of times during the playing of the video?

4 A. Yes, sir. Her chin tilted, eyes closed, and then
5 head would come up quickly.

6 Q. And when her chin was down and her eyes would
7 close, would that last for a moment or would that last for
8 10 minutes or you don't know?

9 A. I was not watching her over 10 minutes so I would
10 say a moment.

11 Q. Okay. So her chin would go down for a brief
12 moment and then she would bring her head right back up,
13 that's what you observed?

14 A. Yes, sir.

15 Q. You didn't look over and see her chin down with
16 her eyes closed and then look over and see her chin down
17 with her eyes closed and then look over and see her chin
18 down with her eyes closed, agreed?

19 A. I'm sorry, I think I'm getting confused.

20 Q. Sure.

21 A. Yes, it is what I would see.

22 Q. What I'm trying to figure out is whether or not
23 you observed her chin down, eyes closed, and she stayed in
24 that position for some continued period of time or whether
25 you observed her chin go down, there was a startled

1 moment, her chin would come up, or whether you saw
2 something else?

3 A. I understand what you're saying now. So I was
4 intermittently looking over, and during that period of
5 time there was times where I would just see her chin down,
6 eyes closed, I would look back and it would be that way,
7 and then I would see her startle with her head up.

8 Q. Okay. So you're not in a position to tell the
9 Court the length of time that you observed her to have her
10 chin down with her eyes closed?

11 A. (No response.)

12 Q. Meaning --

13 A. Continuous, no, sir.

14 Q. All right. You don't know whether that was for
15 5 seconds, 10 seconds, 10 minutes, you can't say?

16 A. Correct.

17 Q. You just essentially noticed it a couple of
18 times?

19 A. Correct.

20 Q. And by couple, two to three, is that fair?

21 A. I'd say four to five.

22 Q. Okay. And of those four to five times, half of
23 them where you saw her with her chin down and she didn't
24 make a response and half of them were when she had her
25 chin -- you saw her make this, what you've called, a

1 startled reaction up?

2 A. Yes, sir.

3 Q. That would be a fair estimate?

4 A. That'll be fair, yes.

5 Q. And the times that you saw her with her chin down
6 and eyes closed, it was, again, just a brief glance, you
7 weren't dialed in focusing on her, agreed?

8 A. Yes.

9 Q. You agree with that?

10 A. I do agree.

11 MR. NELSON: Nothing else.

12 THE COURT: Mr. Anderson?

13 REDIRECT EXAMINATION

14 BY MR. ANDERSON:

15 Q. So the four or five times, is that when you saw
16 the head jerk?

17 A. It was both. At times I'd look over and she just
18 -- chin down, eyes closed, and then I would look over
19 again and I would see that and then see the head jerk.

20 Q. And did that -- did you see that for what -- what
21 period of time approximately from when you first noticed
22 that until the end? Was it a half hour period of time?
23 45 minutes? Hour?

24 A. Approximately over an hour.

25 Q. Were there -- when you looked over, if you

1 recall, was it one of those two states or were there
2 several times where you looked over and she was -- did
3 appear to be alert?

4 A. Those were the only times that I looked over.

5 Q. So when you looked over, during that period it
6 was either chin down or startling awake?

7 A. Yes.

8 MR. ANDERSON: Nothing else.

9 CROSS-EXAMINATION

10 BY MR. NELSON:

11 Q. You said it was only during the playing of the
12 video, agreed?

13 A. Yes.

14 Q. You understand that the video was less than an
15 hour, correct?

16 A. Approximately an hour, yes, sir.

17 Q. It's about 50 minutes.

18 A. Yes, sir.

19 Q. So based upon that, you couldn't have been
20 observing this for a whole hour, agree?

21 MR. ANDERSON: I object. We played it for
22 56 minutes so --

23 THE COURT: It's 56 minutes.

24 Q. (By Mr. Nelson, continuing) It wasn't over an
25 hour, agreed?

1 A. Yes, sir.

2 Q. And you can't tell the Judge during those
3 56 minutes when you made the first observation, agreed?

4 A. Agreed.

5 Q. So you don't know if it was 15 minutes into the
6 video, 30 minutes into the video, you can't say?

7 A. I cannot give an exact time, no, sir.

8 Q. And all you do is -- you said you saw it about
9 this four or five times, correct?

10 A. Correct, yes, sir.

11 Q. And you're not in a position to say whether her
12 head was down for any continuing -- continuous period of
13 time, agreed?

14 A. Agreed.

15 MR. NELSON: That's all, Judge.

16 THE COURT: Thank you, detective. You may step
17 down.

18 THE WITNESS: Thank you, Judge.

19 (Whereupon, the witness is excused.)

20 THE COURT: Is there anything else you want to
21 say in support of your motion?

22 MR. ANDERSON: Judge, the video is obviously very
23 important for the State's case. It was only played once.
24 Clearly we don't have enough time to play it again at
25 closing given the length of the -- of -- it would be our

1 entire closing argument.

2 Both sides are entitled to a fair trial
3 with an attentive jury, so I think I -- I ask that the
4 Court strike Juror 4021 as one of the alternates.

5 THE COURT: Mr. Nelson?

6 MR. NELSON: I don't think they've established a
7 factual basis that she was sleeping. I think that there
8 is reason to believe but I don't think that they've
9 established a factual basis of that.

10 THE COURT: I tend to agree. There are some
11 clues to suggest that the juror may have been nodding off
12 but there's certainly nothing conclusive, certainly
13 nothing that would allow me to make such a significant
14 finding.

15 I'll say for my part I was scanning the
16 juror from time to time during the playing of the video as
17 well, and my eyes were not fixed on them the entire time
18 obviously because I'm trying to pay attention to the video
19 but I also was watching the jurors.

20 I did not notice anything that would
21 suggest somebody was sleeping. I have a different
22 perspective than others. I'm not saying mine's better,
23 it's just different.

24 I did notice a number of occasions where
25 people were looking down because they're writing on their

1 notes where they were averting their eyes, but they
2 weren't sleeping. So I just say that to point out that
3 there can be other alternative explanations for certain
4 observations.

5 The other point too is that even if we did
6 have a sleeping juror and even if the juror slept the
7 entire presentation of the -- the jail interview, it is a
8 recorded interview. And if that juror ends up being one
9 of the 12, that juror has the ability to request to watch
10 the video.

11 So it's not like live testimony that is
12 lost forever. This juror, if they make it to the
13 deliberation room, has the ability to view the video again
14 and take that into consideration as part of her
15 deliberations.

16 So for those reasons the request is denied.

17 Is there anything else?

18 MR. ANDERSON: No.

19 THE COURT: All right.

20 Anything else from the Defense?

21 MR. NELSON: I'd just like a -- a break before we
22 get into openings.

23 THE COURT: We will, yes.

24 All right. Let's take a short break. We
25 will resume at 8:45.

1 (Whereupon, a break was held.)

2 (Whereupon, the jury enters the courtroom.)

3 THE COURT: All right. Members of the jury, good
4 morning. We are ready to deliver the jury instructions
5 and then the attorneys will make their closing arguments.

6 Here's how the day will work: I will
7 deliver the jury instructions to you. That'll take some
8 time. I will have them displayed up on the board so you
9 can follow along, but I will read them aloud in case you
10 prefer to listen.

11 After that, Mr. Anderson will deliver the
12 State's closing argument, we'll take about a 15-minute
13 break, and then Mr. Chirafisi will deliver Mr. Miu's
14 closing argument, and then the State will be up -- have
15 the opportunity for a brief rebuttal. After that you'll
16 begin your deliberations.

17 Members of the jury, the Court will now
18 instruct you upon the principles of law which you are to
19 follow in considering the evidence and in reaching your
20 verdict.

21 It is your duty to follow all of these
22 instructions. Regardless of any opinion you may have
23 about what the law is or ought to be, you must base your
24 verdict on the law I give you in these instructions.
25 Apply that law to the facts in the case which had been

1 properly proven by the evidence. Consider only the
2 evidence received during this trial and the law as given
3 to you by these instructions and from these alone, guided
4 by your soundest reason and best judgment, reach your
5 verdict.

6 If any member of the jury has an impression
7 of my opinion as to whether Mr. Miu is guilty or not
8 guilty, disregard that impression entirely and decide the
9 issues of fact solely as you view the evidence. You, the
10 jury, are the sole judges of the facts and the Court is
11 the judge of the law only.

12 The State filed an Information that alleges
13 that Nicolae Miu committed crimes in St. Croix County,
14 Wisconsin, on July 30, 2022. An Information is nothing
15 more than a written, formal accusation against a defendant
16 charging the commission of one or more criminal acts. You
17 are not to consider it as evidence against Mr. Miu in any
18 way. It does not raise any inference of guilt.

19 In Count 1 of the Information Nicolae Miu
20 is charged with first degree intentional homicide and you
21 must consider whether he is guilty of that offense. If
22 you are not satisfied that Mr. Miu is guilty of first
23 degree intentional homicide, you must consider whether or
24 not he is guilty of second degree intentional homicide or
25 first degree reckless homicide or second degree reckless

1 homicide, which are less serious degrees of criminal
2 homicide.

3 The crimes referred to as first and second
4 degree intentional homicide and first and second degree
5 reckless homicide are different degrees of homicide.
6 Homicide is the taking of a life of another human being.
7 The degree of homicide defined by law depends on the facts
8 and the circumstances of each particular case.

9 While the law separates homicides into
10 different types and degrees, there are certain elements
11 that are common to each crime. Both intentional and
12 reckless homicide require that Mr. Miu caused the death of
13 the victim. First and second degree intentional homicide
14 require the State to prove the additional fact that Mr.
15 Miu acted with intent to kill. First and second degree
16 reckless homicide require that Mr. Miu acted recklessly.
17 First degree reckless homicide requires proof of one
18 additional element: That the circumstances of Mr. Miu's
19 conduct showed utter disregard for human life. It will
20 also be important for you to consider the privilege of
21 self-defense in deciding which crime, if any, Mr. Miu has
22 committed.

23 The Criminal Code of Wisconsin provides
24 that a person is privileged to intentionally use force
25 against another for the purpose of preventing or

1 terminating what he reasonably believes to be an unlawful
2 interference with his person by the other person.
3 However, he may intentionally use only such force as he
4 reasonably believes is necessary to prevent or terminate
5 the interference. He may not intentionally use force that
6 is intended or likely to cause death unless he reasonably
7 believes that such force is necessary to prevent imminent
8 death or great bodily harm to himself.

9 The words great bodily harm means injury
10 which creates a substantial risk of death or which cause a
11 serious permanent disfigurement or which causes a
12 permanent or protracted loss or impairment of the function
13 of any bodily member or organ or other serious bodily
14 injury.

15 There is no duty to retreat. However, in
16 determining whether Mr. Miu reasonably believed the amount
17 of force used was necessary to prevent or terminate the
18 interference, you may consider whether Mr. Miu had the
19 opportunity to retreat with safety, whether such retreat
20 was feasible, and whether Mr. Miu knew of the opportunity
21 to treat -- excuse me, knew of the opportunity to retreat.

22 You should also consider whether Mr. Miu
23 provoked the attack. A person who engages in unlawful
24 conduct of a type likely to provoke others to attack and
25 who does provoke an attack is not allowed to use or

1 threaten force in self-defense against that attack.

2 However, if the attack that follows causes
3 the person reasonably to believe that he is in imminent
4 danger of death or great bodily harm, he may lawfully act
5 in self-defense. But the person may not use or threaten
6 force intended or likely to cause death unless he
7 reasonably believes he has exhausted every other
8 reasonable means to escape from or otherwise avoid death
9 or great bodily harm.

10 As applied to this case, the effect of the
11 law of self-defense is: Mr. Miu is not guilty of any
12 homicide offense if he reasonably believed that he was
13 preventing or terminating an unlawful interference with
14 his person and reasonably believed the force used was
15 necessary to prevent imminent death or great bodily harm
16 to himself.

17 Mr. Miu is guilty of second degree
18 intentional homicide if he caused the death of Isaac
19 Schuman with the intent to kill and actually believed the
20 force used was necessary to prevent imminent death or
21 great bodily harm to himself but the belief or the amount
22 of force used was unreasonable.

23 Mr. Miu is guilty of first degree
24 intentional homicide if he caused the death of Isaac
25 Schuman with the intent to kill and did not actually

1 believe the force used was necessary to prevent imminent
2 death or great bodily harm to himself.

3 Mr. Miu is guilty of first degree reckless
4 homicide if he caused the death of Isaac Schuman by
5 criminally reckless conduct and the circumstances of the
6 conduct showed utter disregard for human life.

7 Mr. Miu is guilty of second degree reckless
8 homicide if he caused the death of Isaac Schuman by
9 criminally reckless conduct.

10 You will be asked to consider the privilege
11 of self-defense in deciding whether the elements of first
12 and second degree reckless homicide are present.

13 Because the law provides that it is the
14 State's burden to prove all facts necessary to constitute
15 a crime beyond a reasonable doubt, you will not be asked
16 to make a separate finding of whether Mr. Miu acted in
17 self-defense. Instead, you will be asked to determine
18 whether the State has established the necessary facts to
19 justify a finding of guilty for first or second degree
20 intentional homicide or for first or second degree
21 reckless homicide. If the State does not satisfy you that
22 those facts are established by the evidence, you will be
23 instructed to find Mr. Miu not guilty.

24 The facts necessary to constitute each
25 crime will now be defined to you in greater detail.

1 First degree intentional homicide, as
2 defined in Section 940.01 of the Criminal Code of
3 Wisconsin, is committed by one who causes the death of
4 another human being with the intent to kill that person or
5 another. In this case first degree intentional homicide
6 also requires that Mr. Miu did not actually believe the
7 force used was necessary to prevent imminent death or
8 great bodily harm to himself.

9 Before you may find Mr. Miu guilty of first
10 degree intentional homicide, the State must prove by
11 evidence that satisfies you beyond a reasonable doubt that
12 the following elements were present: First, Mr. Miu
13 caused the death of Isaac Schuman. The word cause means
14 that Mr. Miu's act was a substantial factor in producing
15 the death.

16 Second, Mr. Miu acted with the intent to
17 kill Isaac Schuman.

18 Third, Mr. Miu did not actually believe
19 that the force used was necessary to prevent imminent
20 death or great bodily harm to himself.

21 The words intent to kill means that Mr. Miu
22 had the mental purpose to take the life of another human
23 being or was aware that his conduct was practically
24 certain to cause the death of another human being.

25 While the law requires that Mr. Miu acted

1 with intent to kill, it does not require that the intent
2 exists for any particular length of time before the act is
3 committed. The act need not be brooded over, considered,
4 or reflected upon for a week, a day, an hour, or even a
5 minute. There need not be any appreciable time between
6 the formation of the intent and the act. The intent to
7 kill may be formed at any time before the act, including
8 the instant before the act, and must continue to exist at
9 the time of the act.

10 You cannot look into a person's mind to
11 find intent. Intent to kill must be found, if found at
12 all, from Mr. Miu's acts, words, and statements, if any,
13 and from all of the facts and circumstances in this case
14 bearing upon intent.

15 Intent should not be confused with motive.
16 While proof of intent is necessary to a conviction, proof
17 of motive is not. Motive refers to a person's reason for
18 doing something. While motive may be shown as a
19 circumstance to aid in establishing the guilt of a
20 defendant, the State is not required to prove Mr. Miu's
21 motive in order to convict. Evidence of motive does not
22 by itself establish guilt. You should give it the weight
23 you believe it deserves under all of the circumstances.

24 The third element of first degree
25 intentional homicide requires that Mr. Miu did not

1 actually believe the force used was necessary to prevent
2 imminent death or great bodily harm to himself. This
3 requires the State to prove either, one, that Mr. Miu did
4 not actually believe he was in imminent danger of death or
5 great bodily harm; or, two, that Mr. Miu did not actually
6 believe the force used was necessary to prevent imminent
7 death of -- imminent danger of death or great bodily harm
8 to himself.

9 When first degree intentional homicide is
10 considered, the reasonableness of Mr. Miu's belief is not
11 an issue. You are not to be concerned -- I'll start over.

12 You are to be concerned only with what Mr.
13 Miu actually believed. Whether these beliefs are
14 reasonable is important only if you later consider whether
15 Mr. Miu is guilty of second degree intentional homicide.

16 If you are satisfied beyond a reasonable
17 doubt that Mr. Miu caused Isaac -- Isaac Schuman's death
18 with the intent to kill and that Mr. Miu did not actually
19 believe that the force used was necessary to prevent
20 imminent death or great bodily harm to himself, you should
21 find Mr. Miu guilty of first degree intentional homicide.

22 If you are not so satisfied, you must not
23 find him guilty of first degree intentional homicide and
24 you must consider whether he is guilty of second degree
25 intentional homicide, as defined in Section 940.05 of the

1 Criminal Code of Wisconsin, which is a lesser-included
2 offense of first degree intentional homicide.

3 You should make every reasonable effort to
4 agree unanimously on the charge of first degree
5 intentional homicide before considering the offense of
6 second degree intentional homicide. However, if after
7 full and complete consideration of the evidence you
8 conclude that further deliberation would not result in
9 unanimous agreement on the charge of first degree
10 intentional homicide, you should consider whether Mr. Miu
11 is guilty of second degree intentional homicide.

12 Before you may find Mr. Miu guilty of
13 second degree intentional homicide, the State must prove
14 by evidence that satisfies you beyond a reasonable doubt
15 that the following three elements were present: First,
16 Mr. Miu caused the death of Isaac Schuman.

17 Second, Mr. Miu acted with the intent to
18 kill Isaac Schuman.

19 Third, Mr. Miu did not reasonably believe
20 that he was preventing or terminating an unlawful
21 interference with his person or did not reasonably believe
22 that the force used was necessary to prevent imminent
23 death or great bodily harm to himself.

24 You have already been instructed on the
25 definitions of causing death and with intent to kill. The

1 same definitions apply to your consideration of second
2 degree intentional homicide.

3 The third element of second degree
4 intentional homicide requires that Mr. Miu did not
5 reasonably believe that he was preventing or terminating
6 an unlawful interference with his person or did not
7 reasonably believe the force used was necessary to prevent
8 imminent death or great bodily harm to himself. This
9 requires that the State prove any one of the following:

10 One, that a reasonable person in the
11 circumstances of Mr. Miu would not have believed that he
12 was preventing or terminating an unlawful interference
13 with his person;

14 Or, two, that a reasonable person in the
15 circumstances of Mr. Miu would not have believed he was in
16 danger of imminent death or great bodily harm;

17 Or, three, that a reasonable person in the
18 circumstances of Mr. Miu would not have believed that the
19 amount of force used was necessary to prevent imminent
20 death or great bodily harm to himself.

21 A belief may be reasonable even though
22 mistaken. In determining whether Mr. Miu's beliefs were
23 reasonable, the standard is what a person of ordinary
24 intelligence and prudence would have believed in Mr. Miu's
25 position under the circumstances that existed at the time

1 of the alleged offense. The reasonableness of Mr. Miu's
2 beliefs must be determined from his standpoint at the time
3 of the acts and not from the viewpoint of the jury now.

4 If you are satisfied beyond a reasonable
5 doubt that Mr. Miu caused the death of Isaac Schuman with
6 the intent to kill and did not reasonably believe that he
7 was preventing or terminating an unlawful interference
8 with his person or did not reasonably believe the force
9 used was necessary to prevent imminent death or great
10 bodily harm to himself, you should find Mr. Miu guilty of
11 second degree intentional homicide. If you are not so
12 satisfied, you must not find Mr. Miu guilty of second
13 degree intentional homicide and you should consider
14 whether he is guilty of first degree reckless homicide,
15 which is also a lesser-included offense of first degree
16 intentional homicide.

17 You should make every reasonable effort to
18 agree unanimously on the charge of second degree
19 intentional homicide before considering the offense of
20 first degree reckless homicide. However, if after a full
21 and complete consideration of the evidence you conclude
22 that further deliberation would not result in unanimous
23 agreement on the charge of first -- correction, on the
24 charge of second degree intentional homicide, you should
25 consider whether Mr. Miu is guilty of first degree

1 reckless homicide.

2 First degree reckless homicide, as defined
3 in Section 940.02(1) of the Criminal Code of Wisconsin, is
4 committed by one who recklessly causes the death of
5 another human being under circumstances that show utter
6 disregard for human life.

7 Before you may find Mr. Miu guilty of first
8 degree reckless homicide, the State must prove by evidence
9 that satisfies you beyond a reasonable doubt that the
10 following three elements were present:

11 First, Mr. Miu caused the death of Isaac
12 Schuman. The word cause means that Mr. Miu's act was a
13 substantial factor in producing the death.

14 Second, Mr. Miu caused the death by
15 criminally reckless conduct. Criminally reckless conduct
16 means the conduct created a risk of death or great bodily
17 harm to another person and the risk of death or great
18 bodily harm was unreasonable and substantial and Mr. Miu
19 was aware that his conduct created the unreasonable and
20 substantial risk of death or great bodily harm.

21 You should consider the evidence relating
22 to self-defense in deciding whether Mr. Miu's conduct
23 created an unreasonable risk to another. If Mr. Miu was
24 acting lawfully in self-defense, his conduct did not
25 create an unreasonable risk to another. The burden is on

1 the State to prove beyond a reasonable doubt that Mr. Miu
2 did not act lawfully in self-defense, and you must be
3 satisfied beyond a reasonable doubt from all the evidence
4 in this case that the risk was unreasonable.

5 The third element, the circumstances of Mr.
6 Miu's conduct showed utter disregard for human life.

7 In determining whether the circumstances of
8 the conduct showed utter disregard for human life,
9 consider these factors: What Mr. Miu was doing, why he
10 was engaged in that conduct, how dangerous the conduct
11 was, how obvious the danger was, whether the conduct
12 showed any regard for life, and all other facts and
13 circumstances relating to the conduct.

14 You should consider the evidence relating
15 to self-defense in deciding whether the circumstances of
16 Mr. Miu's conduct showed utter disregard for human life.
17 The burden is on the State to prove a reason -- the burden
18 is on the State to prove beyond a reasonable doubt that
19 Mr. Miu did not act lawfully in self-defense and you must
20 be satisfied beyond a reasonable doubt from all the
21 evidence in the case that the circumstances of Mr. Miu's
22 conduct showed utter disregard for human life.

23 Consider also Mr. Miu's conduct after the
24 death to the extent that it helps you decide whether or
25 not the circumstances showed utter disregard for human

1 life at the time the death occurred.

2 If you are satisfied beyond a reasonable
3 doubt that Mr. Miu caused the death of Isaac Schuman by
4 criminally reckless conduct and that the circumstances of
5 the conduct showed utter disregard for human life, you
6 should find him guilty of first degree reckless homicide.
7 If you are not so satisfied, you must not find him guilty
8 of first degree reckless homicide and you should consider
9 whether he is guilty of second degree reckless homicide,
10 which is a lesser-included offense of first degree
11 reckless homicide.

12 You should make every reasonable effort to
13 agree unanimously on the charge of first degree reckless
14 homicide before considering the offense of second degree
15 reckless homicide. However, if after a full and complete
16 consideration of the evidence you conclude that further
17 deliberation would not result in unanimous agreement on
18 the charge of first degree reckless homicide, you should
19 consider whether Mr. Miu is guilty of second degree
20 reckless homicide.

21 Second degree reckless homicide, as defined
22 in Section 940.06 of the Criminal Code of Wisconsin, is
23 committed by one who recklessly causes the death of
24 another human being.

25 The difference between first and second

1 degree reckless homicide is that the first degree offense
2 requires proof of one additional element: That the
3 circumstances of Mr. Miu's conduct showed utter disregard
4 for human life.

5 If you are satisfied beyond a reasonable
6 doubt that all of the elements of first degree reckless
7 homicide were present, except the element requiring that
8 the circumstances of the conduct showed utter disregard
9 for human life, you should find Mr. Miu guilty of second
10 degree reckless homicide.

11 In other words, if you are satisfied beyond
12 a reasonable doubt that Mr. Miu caused the death of Isaac
13 Schuman by criminally reckless conduct, you should find
14 him guilty of second degree reckless homicide. If you are
15 not so satisfied, you must find him not guilty.

16 You are not, in any event, to find Mr. Miu
17 guilty of more than one of those foregoing offenses.

18 Mr. Miu is charged with attempted first
19 degree intentional homicide of Alexander Martin in Count
20 2, Dante Carlson in Count 3, Anthony Carlson in Count 4,
21 and Ryhley Mattison in Count 5. For each count you must
22 first consider whether Mr. Miu is guilty of attempted
23 first degree intentional homicide. If you are not
24 satisfied that Mr. Miu is guilty of attempted first degree
25 intentional homicide, you must consider whether or not he

1 is guilty of attempted second degree intentional homicide
2 or first degree recklessly endangering safety or second
3 degree recklessly endangering safety, which are less
4 serious degrees of attempted homicide.

5 The crimes referred to as attempted first
6 and second degree intentional homicide and first and
7 second degree recklessly endangering safety are different
8 degrees of attempted homicide. The degree of attempted
9 homicide defined by the law depends on the facts and the
10 circumstances of each particular case.

11 While the law separates attempted
12 intentional homicides into two degrees, there are certain
13 elements which are common to each crime. Both attempted
14 first and second degree intentional homicide require that
15 Mr. Miu intended to kill another person and Mr. Miu did
16 acts toward the commission of that crime which indicate
17 unequivocally, under all of the circumstances, that he had
18 formed that intent and would have caused the death of the
19 intended victim except for the intervention of another
20 person or some extraneous factor.

21 First and second degree recklessly
22 endangering safety requires proof that Mr. Miu recklessly
23 endangered the safety of another human. First degree
24 recklessly endanger safety requires proof of one
25 additional element: That the circumstances of Mr. Miu's

1 conduct showed utter disregard for human life.

2 It will also be important for you to
3 consider the privilege of self-defense in deciding which
4 crime, if any, Mr. Miu has committed. For Count 1 you
5 were instructed on the law of self-defense. The same
6 self-defense standards apply to your consideration of the
7 charges of attempted intentional homicide that are alleged
8 in Counts 2 through 5.

9 If you find that the elements of the crime
10 had been proved in this case, the effect of the law of
11 self-defense is as follows: Mr. Miu is not guilty of
12 either attempted first or second degree intentional
13 homicide or first or second degree recklessly endangering
14 safety if he, one, reasonably believed that he was
15 preventing or terminating an unlawful interference with
16 his person; and, two, reasonably believed the force used
17 was necessary to prevent imminent death or great bodily
18 harm to himself.

19 Mr. Miu is guilty of attempted second
20 degree intentional homicide if he actually believed the
21 force used was necessary to prevent imminent death or
22 great bodily harm to himself but the belief or the amount
23 of force used was unreasonable.

24 Mr. Miu is guilty of attempted first degree
25 intentional homicide if he did not actually believe the

1 force used was necessary to prevent imminent death or
2 great bodily harm to himself.

3 Mr. Miu is guilty of first degree
4 recklessly endangering safety if he recklessly endangered
5 the safety of another human under circumstances that
6 showed utter disregard for human life.

7 Mr. Miu is guilty of second degree
8 recklessly endangering safety if he recklessly endangered
9 the safety of another human.

10 Because the law provides that it is the
11 State's burden to prove all the facts necessary to
12 constitute a crime beyond a reasonable doubt, you will not
13 be asked to make a separate finding on whether Mr. Miu
14 acted in self-defense. Instead, you will be asked to
15 determine whether the State has established the necessary
16 facts to justify a finding of guilt for attempted first or
17 second degree intentional homicide or first or second
18 degree recklessly endangering safety. If the State does
19 not satisfy you that those facts are established by
20 evidence, you will be instructed to find Mr. Miu not
21 guilty.

22 The elements of each crime will now be
23 defined to you in greater detail.

24 Before you may find Mr. Miu guilty of
25 attempted first degree intentional homicide, the State

1 must prove by evidence that satisfies you beyond a
2 reasonable doubt that the following three elements were
3 present: First, Mr. Miu intended to kill the named
4 person. For Count 2, the State must prove Mr. Miu
5 intended to kill Alexander Martin. For Count 3, the State
6 must prove that Mr. Miu intended to call Dante Carlson.
7 For Count 4, the State must prove that Mr. Miu intended to
8 kill Anthony Carlson. For Count 5, the State must prove
9 that Mr. Miu intended to kill Ryhley Mattison.

10 Intent to kill means that Mr. Miu had the
11 mental purpose to take the life of another human being or
12 was aware that his conduct was practically certain to
13 cause the death of another human being.

14 The second element: Mr. Miu did acts which
15 demonstrate unequivocally, under all of the circumstances,
16 that he had formed the intent and would have caused the
17 death of the named person except for the intervention of
18 another person or some other extraneous factor.

19 Unequivocally means that no other
20 interference or -- or I'll start over.

21 Unequivocally means that no other inference
22 or conclusion can reasonably and fairly be drawn from Mr.
23 Miu's acts, under the circumstances.

24 Another person means anyone but Mr. Miu and
25 may include the intended victim.

1 An extraneous factor is something outside
2 Mr. Miu's knowledge or control.

3 The third element: Mr. Miu did not
4 actually believe that the force used was necessary to
5 prevent imminent death or great bodily harm to himself.

6 While the law requires that Mr. Miu acted
7 with intent to kill, it does not require that the intent
8 exists for any particular length of time before the act is
9 committed. The act need not be brooded over, considered,
10 or reflected upon for a week, a day, an hour, or even a
11 minute. There need not be any appreciable time between
12 the formation of the intent and the act. The intent to
13 kill may be formed at any time before the act, including
14 the instant before the act, and must continue to exist at
15 the time of the act.

16 You cannot look into a person's mind to
17 find intent. Intent to kill must be found, if found at
18 all, from Mr. Miu's acts, words, and statements, if any,
19 and from all of the facts and circumstances in this case
20 bearing upon intent.

21 Intent should not be confused with motive.
22 While proof of intent is necessary to a conviction, proof
23 of motive is not. Motive refers to a person's reason for
24 doing something. While motive may be shown as a
25 circumstance to aid in establishing guilt of a defendant,

1 the State is not required to prove Mr. Miu's motive in
2 order to convict. Evidence of motive does not by itself
3 establish guilt. You should give it the weight you
4 believe it deserves under all of the circumstances.

5 The third element of attempted first degree
6 intentional homicide requires that Mr. Miu did not
7 actually believe that the force used was necessary to
8 prevent imminent death or great bodily harm to himself.
9 This requires that the State prove either, one, Mr. Miu
10 did not actually believe he was in imminent danger of
11 death or great bodily harm; or, two, that Mr. Miu did not
12 actually believe the force used was necessary to prevent
13 imminent death or -- I'll start over.

14 Two, that Mr. Miu did not actually believe
15 the force used was necessary to prevent imminent danger of
16 death or great bodily harm to himself.

17 When attempted first degree intentional
18 homicide is considered, the reasonableness of Mr. Miu's
19 belief is not an issue. You are to be concerned only with
20 what Mr. Miu actually believed. Whether these beliefs are
21 reasonable is important only if you later consider whether
22 Mr. Miu is guilty of attempted second degree intentional
23 homicide.

24 If you are satisfied beyond a reasonable
25 doubt that Mr. Miu intended to kill the person named in

1 each count, Alexander Martin for Count 2, Dante Carlson
2 for Count 3, Anthony Carlson for Count 4, and Ryhley
3 Mattison for Count 5, and that Mr. Miu's acts demonstrated
4 unequivocally that he intended to kill and would have
5 killed the named person except for the intervention of
6 another person or some other extraneous factor, and that
7 Mr. Miu did not actually believe that the force used was
8 necessary to prevent imminent death or great bodily harm
9 to himself, you should find Mr. Miu guilty of attempted
10 first degree intentional homicide.

11 If you are not so satisfied, you must
12 find -- you must not find him guilty of attempted first
13 degree intentional homicide and you must consider whether
14 Mr. Miu is guilty of attempted second degree intentional
15 homicide, as defined in Section 940.05 of the Criminal
16 Code of Wisconsin, which is a lesser-included offense of
17 attempted first degree intentional homicide.

18 You should make every reasonable effort to
19 agree unanimously on the charge of attempted first degree
20 intentional homicide before considering the offense of
21 attempted second degree intentional homicide. However, if
22 after a full and complete consideration of the evidence,
23 you conclude that further deliberation would not result in
24 a unanimous agreement on the charge of attempted first
25 degree intentional homicide, you should consider whether

1 Mr. Miu is guilty of attempted second degree intentional
2 homicide.

3 Before you may find Mr. Miu guilty of
4 attempted second degree intentional homicide, the State
5 must prove by evidence which satisfies you beyond a
6 reasonable doubt that the following three elements were
7 present: First, Mr. Miu intended to kill the named
8 person;

9 Second, Mr. Miu did acts which demonstrate
10 unequivocally, under all the circumstances, that he had
11 formed the intent and would have caused the death of the
12 named person except for the intervention of another person
13 or some extraneous factor;

14 Third, Mr. Miu did not reasonably believe
15 that he was preventing or terminating an unlawful
16 interference with his person or did not reasonably believe
17 that the force used was necessary to prevent imminent
18 death or great bodily harm to himself.

19 You have already been instructed on the
20 definitions of intent to kill, unequivocally, another
21 person, and extraneous factor. Use the same -- the same
22 definitions apply to your consideration of attempted
23 second degree intentional homicide.

24 The third element of attempted second
25 degree intentional homicide requires that Mr. Miu did not

1 reasonably believe that he was preventing or terminating
2 an unlawful interference with his person or did not
3 reasonably believe that the force used was necessary to
4 prevent imminent death or great bodily harm to himself.
5 This requires that the State prove any one of the
6 following: One, that a reasonable person in Mr. Miu's
7 circumstances would not have believed that he was
8 preventing or terminating an unlawful interference with
9 his person;

10 Or, two, that a reasonable person in Mr.
11 Miu's circumstances would not have believed he was in
12 danger of imminent death or great bodily harm;

13 Or, three, that a reasonable person in Mr.
14 Miu's circumstances would not have believed that the
15 amount of force used was necessary to prevent imminent
16 death or great bodily harm to himself.

17 A belief may be reasonable even though
18 mistaken. In determining whether Mr. Miu's beliefs were
19 reasonable, the standard is what a person of ordinary
20 intelligence and prudence would have believed in Mr. Miu's
21 position under the circumstances that existed at the time
22 of the alleged offense. The reasonableness of Mr. Miu's
23 beliefs must be determined from the standpoint of Mr. Miu
24 at the time of his acts and not from the viewpoint of the
25 jury now.

1 If you are satisfied beyond a reasonable
2 doubt that Mr. Miu intended to kill the person named in
3 each count, Alexander Martin for Count 2, Dante Carlson
4 for Count 3, Anthony Carlson for Count 4, Ryhley Mattison
5 for Count 5, and that Mr. Miu's acts demonstrated
6 unequivocally that he intended to kill and would have
7 killed the named person except for the intervention of
8 another person or some extraneous factor and that Mr. Miu
9 did not reasonably believe that he was preventing or
10 terminating an unlawful interference with his person or
11 did not reasonably believe the force used was necessary to
12 prevent imminent death or great bodily harm to himself,
13 you should find Mr. Miu guilty of attempted second degree
14 intentional homicide.

15 If you are not so satisfied, you must not
16 find him guilty of attempted second degree intentional
17 homicide and you must consider whether Mr. Miu is guilty
18 of first degree recklessly endangering safety, as defined
19 in Section 941.30 of the Criminal Code of Wisconsin, which
20 is a lesser-included offense of attempted first degree
21 intentional homicide.

22 You should make every reasonable effort to
23 agree unanimously on the charge of attempted second degree
24 intentional homicide before considering the offense of
25 first degree recklessly endangering safety. However, if

1 after full and complete consideration of the evidence, you
2 conclude that further deliberations would not result in
3 unanimous agreement on the charge of attempted second
4 degree intentional homicide, you should consider whether
5 Mr. Miu is guilty of first degree recklessly endangering
6 safety.

7 First degree recklessly endangering safety,
8 as defined in Section 941.30(1) of the Criminal Code of
9 Wisconsin, is committed by one who recklessly endangers
10 the safety of another human being under circumstances that
11 show utter disregard for human life.

12 Before you may find Mr. Miu guilty of first
13 degree recklessly endangering safety, the State must prove
14 by evidence that satisfies you beyond a reasonable doubt
15 that the following three elements were present: First,
16 Mr. Miu endangered the safety of another human being;

17 Second, Mr. Miu endangered the safety of
18 another by reckless -- I'll start over.

19 Mr. Miu endangered the safety of another by
20 criminally reckless conduct.

21 Criminally reckless conduct means the
22 conduct created a risk of death or great bodily harm to
23 another person and the risk of death or great bodily harm
24 was unreasonable and substantial and Mr. Miu was aware
25 that his conduct created the unreasonable and substantial

1 risk of death or great bodily harm.

2 You should also consider the evidence
3 relating to self-defense in deciding whether Mr. Miu's
4 conduct created an unreasonable risk to another. If Mr.
5 Miu was acting lawfully in self-defense, his conduct did
6 not create an unreasonable risk to another. The burden is
7 on the State to prove beyond a reasonable doubt that Mr.
8 Miu did not act lawfully in self-defense and you must be
9 satisfied beyond a reasonable doubt from all the evidence
10 in the case that the risk was unreasonable.

11 The third element: The circumstances of
12 Mr. Miu's conduct showed utter disregard for human life.

13 In determining whether the circumstances of
14 the conduct showed utter disregard for human life consider
15 these factors: What Mr. Miu is doing, why he was engaged
16 in that conduct, how dangerous the conduct was, how
17 obvious the danger was, whether the conduct showed any
18 regard for life, and all other facts and circumstances
19 relating to the conduct.

20 You should also consider the evidence
21 relating to self-defense in deciding whether the
22 circumstances of Mr. Miu's conduct showed utter disregard
23 for human life. The burden is on the State to prove
24 beyond a reasonable doubt that Mr. Miu did not act
25 lawfully in self-defense and you must be satisfied beyond

1 a reasonable doubt from all of the evidence in this case
2 that the circumstances of Mr. Miu's conduct showed utter
3 disregard for human life.

4 Consider also Mr. Miu's conduct after the
5 act alleged to have -- alleged to have endangered safety
6 to the extent that it helps you to decide whether or not
7 the circumstances showed utter disregard for human life at
8 the time the act allegedly to have endangered safety
9 occurred.

10 If you are satisfied beyond a reasonable
11 doubt that Mr. Miu recklessly endangered the safety of
12 another, those named in each count, Alexander Martin for
13 Count 2, Dante Carlson for Count 3, Anthony Carlson for
14 Count 4, and Ryhley Mattison for Count 5, and the
15 circumstances of the conduct showed utter disregard for
16 human life, you should find him guilty of first degree
17 recklessly endangering safety.

18 If you are not so satisfied, you must not
19 find him guilty of first degree recklessly endangering
20 safety and you should consider whether he is guilty of
21 second degree recklessly endangering safety, which is a
22 lesser-included offense of first degree recklessly
23 endangering safety.

24 You should make every reasonability effort
25 to agree unanimously on the charge of first degree

1 recklessly endangering safety before considering the
2 offense of second degree recklessly endangering safety.
3 However, if after full and complete consideration of the
4 evidence, you conclude that further deliberation would not
5 result in unanimous agreement on the charge of first
6 degree recklessly endangering safety, you should consider
7 whether Mr. Miu is guilty of second degree recklessly
8 endangering safety.

9 Second degree recklessly endangering
10 safety, as defined in Section 941.30(2) of the Criminal
11 Code of Wisconsin, is committed by one who recklessly
12 causes the death of another human being.

13 The differences between first and second
14 degree recklessly endangering safety is that the first
15 degree offense requires proof of one additional element:
16 That the circumstances of Mr. Miu's conduct showed utter
17 disregard for human life.

18 If you are satisfied beyond a reasonable
19 doubt that all of the elements of first degree recklessly
20 endangering safety were present except the element
21 requiring that the circumstances of the conduct showed
22 utter disregard for human life, you should find Mr. Miu
23 guilty of second degree recklessly endangering safety.

24 In other words, if you are satisfied beyond
25 a reasonable doubt that Mr. Miu endangered the safety of

1 Alexander Martin, Dante Carlson, Anthony Carlson, or
2 Ryhley Mattison by criminally reckless conduct, you should
3 find him guilty of second degree recklessly endangering
4 safety.

5 If you are not so satisfied, you must find
6 him not guilty.

7 You are not, in any event, to find Mr. Miu
8 guilty of more than one of the foregoing offenses for each
9 count.

10 THE JUROR: Sorry, Judge, could we take a brief
11 break, please?

12 THE COURT: Yes.

13 Please take the jury out.

14 (Whereupon, the jury exits the courtroom.)

15 THE COURT: Let's return in five minutes. About
16 9:50.

17 (Whereupon, a break was held.)

18 (Whereupon, the jury enters the courtroom.)

19 THE COURT: I think I speak for everyone in the
20 courtroom, that was a well-timed break.

21 All right. Is everyone ready to listen to
22 the judge talk some more? (Non-verbal response.)

23 All right. I'm picking up on Page 20.

24 In Count 6 of the Information, the Judge
25 (verbatim) alleged that Mr. Miu committed battery.

1 Battery, as defined in Section 940.19(1) of the Criminal
2 Code of Wisconsin, is committed by one who causes bodily
3 harm to another by an act done with the intent to cause
4 bodily harm to that person or another without the consent
5 of the person so harmed.

6 Before you may find Mr. Miu guilty of this
7 offense, the State must prove by evidence that satisfies
8 you beyond a reasonable doubt that the following four
9 elements were present.

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

11 THE COURT: Yes.

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

13 THE COURT: Every lawyer loves to tell the Judge
14 he made a mistake. I made a mistake. In Count 6 of the
15 Information the State alleged that Mr. Miu committed
16 battery.

17 So let me get to the elements. First, Mr.
18 Miu caused bodily harm to Madison Coen.

19 The word cause means that Mr. Miu's act was
20 done -- was a substantial factor in producing bodily harm.

21 Bodily harm means physical pain or injury,
22 illness, or any impairment of physical condition.

23 The second element: Mr. Miu intended to
24 cause bodily harm to Ms. Coen.

25 Intent to cause bodily harm means that Mr.

1 Miu had the mental purpose to cause bodily harm to another
2 human being or was aware that his conduct was practically
3 certain to cause bodily harm to another human being.

4 The third element: Mr. Miu caused bodily
5 harm without the consent of Ms. Coen.

6 The fourth element: Mr. Miu knew that Ms.
7 Coen did not consent.

8 You cannot look into a person's mind to
9 find intent and knowledge. Intent and knowledge must be
10 found, if found at all, from Mr. Miu's acts, words, and
11 statements, if any, and from all of the facts and
12 circumstances in this case bearing upon intent and
13 knowledge.

14 The State must prove by evidence that
15 satisfies you beyond a reasonable doubt that Mr. Miu did
16 not act lawfully in self-defense. You were instructed on
17 the law of self-defense in Count 1. The same self-defense
18 standards apply to your consideration of the charge of
19 battery alleged in Count 6.

20 If you are satisfied beyond a reasonable
21 doubt that all four elements of battery had been proved
22 and that Mr. Miu did not act lawfully in self-defense, you
23 should find him guilty.

24 If you are not so satisfied, you must find
25 him not guilty.

1 The Information alleges not only that Mr.
2 Miu committed the crimes charged in Counts 1 through 6 but
3 also that he did so while using a dangerous weapon. If
4 you find Mr. Miu guilty on any of these counts, you must
5 answer the following question: Did Mr. Miu commit the
6 crime while using a dangerous weapon?

7 Dangerous weapon means any device or
8 instrumentality which, in the manner it is used or
9 intended to be used, is likely to produce death or great
10 bodily harm. Again, bodily harm means injury which
11 creates a substantial risk of death or which causes
12 serious permanent disfigurement or which causes a
13 permanent or protracted loss or impairment of the function
14 of any bodily member or organ or other serious bodily
15 injury.

16 Before you may answer this question yes,
17 you must be satisfied beyond a reasonable doubt that Mr.
18 Miu committed the crime while using a dangerous weapon.

19 If you are not so satisfied, you must
20 answer the question no.

21 In reaching your verdict examine the
22 evidence with care and caution, act with judgment, reason,
23 and prudence.

24 Defendants are not required to prove their
25 innocence. The law presumes every person charged with the

1 commission of an offense to be innocent. This presumption
2 requires a finding of not guilty, unless in your
3 deliberations you find it is overcome by evidence that
4 satisfies you beyond a reasonable doubt that Mr. Miu is
5 guilty.

6 The burden of establishing every fact
7 necessary to constitute guilt is upon the State. Before
8 you can return a verdict of guilty, the evidence must
9 satisfy you beyond a reasonable doubt that Mr. Miu is
10 guilty.

11 If you can reconcile the evidence upon any
12 reasonable hypothesis consistent with Mr. Miu's innocence,
13 you must do so and return a verdict of not guilty.

14 The term reasonable doubt means a doubt
15 based upon reason and common sense. It is a doubt for
16 which a reason can be given, arising from a fair and
17 rational consideration of the evidence or lack of
18 evidence. It means such a doubt as would cause a person
19 of ordinary prudence to pause or hesitate when called upon
20 to act in the most important affairs of life.

21 A reasonable doubt is not a doubt which is
22 based on mere guesswork or speculation. A doubt which
23 arises merely from sympathy or from fear to return a
24 verdict of guilt is not a reasonable doubt. A reasonable
25 doubt is not a doubt such as may be used to escape the

1 responsibility of a decision.

2 While it is your duty to give Mr. Miu the
3 benefit of every reasonable doubt, you are not to search
4 for doubt. You are to search for the truth and give Mr.
5 Miu the benefit of any reasonable doubt that remains after
6 carefully considering all of the evidence in this case.

7 You are to decide the case solely on the
8 evidence offered and received at trial.

9 Evidence is, first, the sworn testimony of
10 witnesses, both on direct and cross-examination,
11 regardless of who called the witness;

12 Second, the exhibits the Court has
13 received, whether or not an exhibit goes to the jury room;

14 Third, any facts to which the lawyers have
15 agreed or stipulated or which the Court has directed you
16 to find.

17 Anything you may have seen or heard outside
18 the courtroom is not evidence.

19 It is not necessary that every fact be
20 proved directly by a witness or an exhibit. A fact may be
21 proved indirectly by circumstantial evidence.

22 Circumstantial evidence is evidence from which a jury may
23 logically find other facts according to common knowledge
24 and experience.

25 Circumstantial evidence is not necessarily

1 better or worse than direct evidence. Either type of
2 evidence can prove a fact.

3 Whether evidence is direct or
4 circumstantial, it must satisfy you beyond a reasonable
5 doubt that Mr. Miu committed the offense before you may
6 find him guilty.

7 Evidence has been presented relating to Mr.
8 Miu's conduct after the alleged crime was committed.
9 Whether the evidence shows a consciousness of guilt and
10 whether consciousness of guilt shows actual guilt are
11 matters exclusively for you to decide.

12 Remarks of the attorneys are not evidence.
13 If their remarks suggested certain facts not in evidence,
14 disregard the suggestion.

15 An exhibit becomes evidence only when
16 received by the Court. An exhibit marked for
17 identification and not received is not evidence. An
18 exhibit received is evidence, whether or not it goes to
19 the jury room.

20 Attorneys for each side have the right and
21 the duty to object to what they consider are improper
22 questions asked of witnesses and to the admission of other
23 evidence which they believe is not properly admissible.
24 You should not draw any conclusions from the fact an
25 objection was made.

1 By allowing testimony or other evidence to
2 be received over the objection of counsel, the Court is
3 not indicating any opinion about the evidence. You, the
4 jurors, are the judges of the credibility of the witnesses
5 and the weight of the evidence.

6 Disregard entirely any question that the
7 Court did not allow to be answered. Do not guess at what
8 the witness's answer might have been. If the question
9 itself suggested that certain information might be true,
10 ignore the suggestion and do not consider it as evidence.

11 The weight of the evidence does not depend
12 on the number of witnesses on each side. You may find
13 that the testimony of one witness is entitled to greater
14 weight than that of another witness or even of several
15 other witnesses.

16 In weighing the evidence you may take into
17 account matters of your common knowledge and your
18 observation -- I'll start over.

19 In weighing the evidence you may take into
20 account matters of your common knowledge and your
21 observations and experience in the affairs of life.

22 It is the duty of the jury to scrutinize
23 and to weigh the testimony of witnesses and to determine
24 the effect of the evidence as a whole. You are the sole
25 judges of the credibility, that is the believability, of

1 the witnesses and of the weight to be given to their
2 testimony.

3 In your determination of credibility, you
4 must avoid bias, conscious or unconscious, based on the
5 witness's age, race, national origin, religion, ability,
6 gender identity, sexual orientation, education, income
7 level, or any other personal characteristic.

8 In determining the credibility of each
9 witness and the weight you give to the testimony of each
10 witness, consider these factors:

11 Whether the witness has an interest or lack
12 of interest in the result of this trial;

13 The witness's conduct, appearance, and
14 demeanor on the witness stand;

15 The clearness or lack of clearness of the
16 witness's recollections;

17 The opportunity the witness had for
18 observing and for knowing the matters the witness
19 testified about;

20 The reasonableness of the witness's
21 testimony;

22 The apparent intelligence of the witness;

23 Bias or prejudice, if any has been shown;

24 Possible motives for falsifying testimony;

25 And all other facts and circumstances

1 during the trial which tend either to support or to
2 discredit the testimony.

3 Then give to the testimony of each witness
4 the weight you believe it should receive.

5 There is no magic way for you to evaluate
6 the testimony. Instead you should use your common sense
7 and experience. In every day life you determine for
8 yourselves the reliability of things people say to you,
9 you should do the same thing here.

10 We've now reached the stage where the
11 attorneys will deliver their closing arguments. Consider
12 carefully the closing arguments of the attorneys, but
13 their arguments and conclusions and opinions are not
14 evidence. Draw your own conclusions from the evidence and
15 decide upon your verdict according to the evidence under
16 the instructions given to you by the Court.

17 First, we'll hear from Mr. Anderson. When
18 he's done we'll take a short break. After that we'll hear
19 from Mr. Chirafisi, and then Mr. Anderson will be
20 permitted to give a short rebuttal.

21 Mr. Anderson.

22 MR. ANDERSON: Thank you, Judge.

23 Absolutely senseless and horrific acts of
24 violence, and all Nicolae Miu had to do was walk away.
25 All he had to do was walk away. That's what you've seen

1 in this case.

2 You saw he told Lieutenant Hart, They told
3 me I can't run away. Obviously not true.

4 Think about the result of his actions.
5 Everything you've seen in this trial, the horrific
6 injuries, the death of Isaac. Why didn't he just walk
7 away? His only explanation when testifying was I stood my
8 ground. I stood my ground. First of all, Wisconsin is
9 not a stand-your-ground state.

10 MR. CHIRAFISI: Objection.

11 THE COURT: Overruled.

12 MR. ANDERSON: I'll talk about that specifically
13 from your jury instructions.

14 Second, that's not true as I'll show you.
15 He didn't just stand his ground.

16 I'm not going to defend the actions of the
17 boys who testified. It was cruel what they were calling
18 Nicolae. They shouldn't have been mocking him, calling
19 him predator, raper. But their conduct did not justify
20 what Nicolae did.

21 You heard from Alina, Isaac's mother, about
22 her son Isaac. He was 17 years old when he was killed.
23 He enjoyed golfing, spending time with friends, recently
24 started a new business detailing cars. He was an honor
25 student looking forward to going to college. His death

1 was senseless.

2 One of the things Defense said in the
3 beginning of trial in their opening was they're glad
4 there's a video. So are we. Without the video, Nicolae
5 would have slipped away. The only reason he was
6 apprehended was because law enforcement had that
7 screenshot of him. The video doesn't fade with time, it's
8 not bias, it's not influenced by alcohol.

9 As I told you in the beginning of this
10 case, the violent episode from the video is about
11 25 seconds from the point he punches Madison until you see
12 him walking off after stabbing five people. He's not
13 seen -- Nicolae is not seen in that video for eight to
14 nine seconds until the point you see him walking away.
15 You don't see him stab Dante.

16 Some of you may wondered why we called
17 Larrion Davis. It certainly wasn't for his eyewitness
18 testimony, but he took a video. He took a video that
19 captured a different angle than Jawahn's video. It's
20 grainy, it's difficult to see, but you can see enough.
21 And it shows Nicolae seeking Dante out and stabbing him
22 when his group is in the opposite direction. Nicolae
23 walks into the crowd of people, stabbed Dan -- stabs
24 Dante.

25 Before I show you that video again, I need

1 to provide some context from Jawahn's video.

2 THE COURT: Take it off.

3 MR. ANDERSON: Could we have the screen, please?

4 So here at 2 minutes and 6 seconds, this is
5 after Nicolae has stabbed the four people that you do see
6 parts of on video. He's standing next to Ariel. Ariel's
7 there. Nicolae's not by himself.

8 (Whereupon, the video was played.)

9 MR. ANDERSON: 2 minutes 8 seconds, that's the
10 last you'll see of Nicolae until you see him walking off
11 in this video. You see Dante -- or A.J., the boys running
12 back to their tubes, and he see Larrion filming in the
13 background. Larrion captures what Dan -- what Nicolae was
14 doing at this point, even though this video didn't.

15 And here, in a moment, you can see the edge
16 of Dante's swim trunks on the right. You could see the
17 light on top, the dark on bottom. At this point in
18 Larrion's video Dante's just been stabbed.

19 (Whereupon, the video was played.)

20 MR. ANDERSON: The next you see of Nicolae he's
21 walking off. You can see Dante in the background holding
22 his stomach, looking down at his wound.

23 Could you take it down -- oh, actually, can
24 you keep it up for a second? Sorry.

25 And then for further context you see Alex

1 Vang running to Isaac.

2 Let's see Larrion's video.

3 Okay. Could we have the screen?

4 And remember Nicolae admitted he walked up
5 to Larrion -- I mean, excuse me, he walked up to Dante and
6 stabbed him. He admitted Dante was the last person he
7 stabbed.

8 Here you can see Nicolae, dark swim trunks,
9 bigger build. On the right you can see Dante, swim
10 trunks, lighter on top, darker on bottom. You'll see
11 Nicolae walk up to Dante and stab him in the chest.

12 (Whereupon, the video was played.)

13 MR. ANDERSON: You'll see Dante recoil from the
14 stab. You see the boys on the right running to their
15 tubes. And in a second here you'll see Alex Vang, it'll
16 zoom in on him as he runs to Isaac. I'm going to show
17 that again.

18 (Whereupon, the video was played.)

19 MR. ANDERSON: So few things to note: There's
20 nothing -- there's nothing between Nicolae and Larrion.
21 He's not surrounded. His friend Ariel's there at this
22 point. There's nothing to the left and behind Nicolae
23 except his group in the distance that you can't see on
24 video. He walks away from those directions towards a
25 group of people and stabs Dante in the chest. Not

1 standing his ground. He's seeking out Dante. That's
2 retribution, not self-defense.

3 And you'll recall too the DNA results.
4 Isaac's DNA and Dante's DNA was the only DNA on the knife.
5 They're also the last two that are stabbed. That makes
6 sense from how the analyst described DNA, how it can wash
7 off.

8 You probably noticed throughout this trial
9 not a lot of witnesses come off looking great after they
10 testify. There's some exceptions. Obviously the good
11 samaritans who went to aid Isaac and A.J., Eric Von
12 Williams included in that from Nicolae's group. He's the
13 only one who went to their aid.

14 Sheena Lowell, you heard her testify from
15 the Carlson Group. You saw her just standing in the
16 background watching what was going on -- on the whole
17 time. She was completely sober. You heard her testify
18 Nicolae punched Madison. She has zero connection with the
19 group anymore, zero contact. Her and Quinton broke up.

20 Tony is another one. He only comes in to
21 break up what he thinks is a fist fight. He's directing
22 Nicolae towards Nicolae's group. Nicolae turns and stabs
23 him twice.

24 Another one I submit to you is an exception
25 that acted admirably is Isaac. His death was tragic and

1 horrific. This is what you see of Isaac in the video. On
2 the left he's standing next to his tube, not moving away
3 from his tube. He's pointing at Nicolae to leave.

4 In the middle when Nicolae turns back to
5 Isaac, Isaac puts his hands up, fingers splayed.

6 The only other thing you see of Isaac is
7 him standing in the background. When the boys -- other
8 boys are mocking, calling names to Nicolae, Isaac is just
9 standing in the background. He's not saying anything,
10 he's not doing anything, he's not jeering, he's just
11 standing there holding their tubes.

12 There's been a pretty serious
13 mischaracterization of Isaac's actions with regard to when
14 he gets stabbed. Defense has tried to clarify it --
15 classify it as a strangulation.

16 Defense accused the State in openings of
17 being selective in the photos we used or frames to try to
18 show a certain narrative about Nicolae smiling. As you've
19 seen, he's smiling a lot in the video, but Defense is
20 actually doing that with when it comes to Isaac.

21 Nicolae never said anything about being
22 choked, never said anything about pain on his neck. Even
23 when specifically asked by the SART nurse, he never
24 mentions anything. And the video doesn't lie.

25 So on the left Nicolae has just stabbed

1 Ryhley, who you heard from multiple witnesses who was just
2 standing there.

3 Tony comes to try to break it up. Nicolae
4 stabs him twice. Isaac, just off frame, I submit to you
5 he just saw Nicolae stab those two people completely
6 unprovoked. Although he was in the background the whole
7 time not doing anything, he came -- he came to their aid
8 and he pushes Nicolae. You can clearly see it's a push.
9 He has one hand on the arm, other hand on the chest. It's
10 Nicolae's own action of thrusting the knife into Isaac's
11 heart that moves Isaac's hands. You can even see from the
12 release it's a push. He's not sitting there left holding
13 his hands out in a choking motion.

14 Can we take the screen down?

15 THE CLERK: Yes.

16 MR. ANDERSON: I'm going to show you the video so
17 you can see it's obviously a push.

18 While my computer is loading here, even if
19 it was a strangulation, which it clearly isn't, Isaac was
20 justified in using any level of force. He just saw
21 Nicolae stab two people who posed no threat to Nicolae.

22 Tony was breaking up the fight. He had
23 actually ignored Nicolae at first, walked past him, pushed
24 Dante out of the way. Ryhley was just standing there.
25 I'm at 2 minutes and 3 seconds.

1 Can we have the screen?

2 (Whereupon, the video was played.)

3 MR. ANDERSON: Clearly a push.

4 You can take it down.

5 Defense has mischaracterized the entire
6 situation as 13 on one. 13 on one, implying that it's
7 some sort of mob beating up Nicolae. It's not even 13
8 people yelling at Nicolae.

9 As you saw in the video, Gabby, Janell,
10 they're just standing in the background. Isaac, he's just
11 standing in the background not yelling anything. It's 13
12 people in the proximity, only two close to him, two tiny
13 females.

14 Nicolae's clearly not afraid of the boys.
15 He ran up on the boys. Turns his back on them and others
16 multiple times.

17 Even at worst, this is a two on one with
18 A.J. and Dante, but even then, as you saw in the video,
19 Ariel is right there. So it's more like a two on two.
20 Ariel's right there. Plus Tony comes in as the neutral
21 party to separate things. It's not 13 on one.

22 As soon as A.J. gets disemboweled you see
23 people start to move away, so it's not -- there's not even
24 13 people immediately around. You saw Owen way in the
25 background because he saw the knife. So why try to

1 mischaracterize the situation? Because there's some
2 things that are hard to explain otherwise for Defense.

3 Can you turn on the screen, please?

4 This is the second time you saw on the
5 video that Nicolae turns his back on the boys and people
6 from the Carlson Group. You don't turn your back on
7 somebody. It's common sense, you don't check your common
8 sense at the door when you serve as a jury. You don't
9 turn your back on somebody if you're afraid of them,
10 especially if you're so afraid you got to reach for your
11 knife. You can't be that afraid that he's got to reach
12 for his knife and so unafraid that he turns his back on
13 them. He was angry, not afraid.

14 That image on the right is only less than
15 30 seconds after he turns his back on them, touching his
16 knife.

17 The Defense tried to explain that change
18 from -- in that 30-second window by saying he was getting
19 pushed by Madison and Ryhley. He was getting pushed.
20 They're lightly touching his arms and they're tiny.
21 They're not in his face. You can see in the images
22 they're standing close. They're not in his face. They're
23 not shaking their fists at him. They're not even sticking
24 their fingers in his face. They're standing close to him,
25 touching his shoulders, pointing, yelling at him to leave.

1 I'm going to back up a little bit and talk
2 about Nicolae looking for the phone. So Eric Von
3 Williams, from Nicolae's group, you heard testify before
4 any of this happened he was concerned about Nicolae's
5 behavior, he was concerned that people were gonna think he
6 was a predator.

7 Ernesto told Nicolae not to go look for the
8 phone, the group -- others in the group told him not to.
9 You heard they didn't care about the phone. Ariel didn't
10 care about the phone. Nicolae went. Sandi said he went
11 twice, was back for five to ten minutes, then went again
12 over by the boys.

13 Defense argued in opening that the -- the
14 boys' goal, they're goal, was to humiliate Nicolae.
15 Clearly, he wasn't looking for little girls. But the boys
16 were not completely unreasonable in their belief. Eric
17 Von Williams thought the same thing. They reacted wrong.
18 But they just didn't invent this whole thing in order to
19 humiliate Nicolae.

20 What about Nicolae? 52 years old.
21 Apparently sober, according to I think what Defense will
22 argue. He didn't have any signs of intoxication when law
23 enforcement had contact with him but he certainly made a
24 point of telling Lieutenant Hart multiple times how much
25 he was boozing and drinking on the river.

1 He can't let it go that he was insulted, so
2 much so that as the boys are tubing away from him -- all
3 Nicolae has to do is stand there. He doesn't even have to
4 take a step back. He just has to stand there, let the
5 boys continue tubing. They're down in their tubes, he
6 starts walking up to them, touches his knife, and then
7 runs up to them.

8 You heard Nicolae's ridiculous description
9 or explanation for why he ran up on the boys, because one
10 was holding a phone. He thought it was Ariel's phone.
11 You also heard Nicolae had to concede, had to admit that
12 pretty much everyone on the river had those phone cases.

13 Another double standard from Defense is
14 physical attributes of those involved. They wanted to
15 elicit evidence that Nicolae is feeble. Sandi -- he
16 wasn't feeble according to Sandi. He had a surgery a
17 couple years ago, recovered in a few weeks, maybe things
18 took him longer -- a little longer than they did before.

19 He wasn't feeble according to Ernesto. You
20 heard Ernesto when he was being asked about the stabbings,
21 said he's a big guy, he was in the Army, he doesn't need a
22 knife to defend himself. He didn't say, oh, he's this
23 fragile old guy.

24 He's clearly not feeble as you see in the
25 video. He runs up on these boys in the water. He leaves

1 behind devastating, devastating injuries. Slices clean
2 through two of Isaac's ribs. He comes out of the whole
3 event essentially uninjured.

4 While Defense tries to argue that Nicolae
5 is this feeble old man, they ignore that the only two
6 people actually standing close to Nicolae are these two
7 females that are barely over a hundred pounds.

8 If the boys are a threat, why does Nicolae
9 run up on them? And clearly he knows they're not a threat
10 to him. When he ran up on them, grabbed their tubes,
11 standing over them, they did nothing. They didn't kick up
12 at him, they didn't punch at him, they jumped out of their
13 tubes and moved away from him. He knows they're not a
14 threat to him. They're mocking, saying cruel things, but
15 not violent.

16 You saw how awkward it was for Nicolae to
17 try to explain this transition from zero fear to ten out
18 of ten fear he's got to take out his knife. Tried to
19 explain it with what I submit to you is obviously
20 rehearsed testimony about his scales of fear.

21 You heard from witnesses recounting what
22 they recall of Nicolae, the demonic look in his face,
23 looking -- staring through people, smirking. Defense
24 argued in opening it's a slide two or here there. You
25 know after seeing the video so many times that's not the

1 case. When he's not glaring, he's smirking in the video.

2 Recall I asked Ernesto, his best friend,
3 when he was trying to describe the shock of Nicolae, I
4 asked, well, is he smiling? He didn't say, yeah, he
5 smiles when he's scared, he smiles when he's nervous. He
6 said who's gonna smile in a situation where they're in
7 shock or in fear?

8 Nicolae was angry, he wasn't afraid. He's
9 smirking even as he's holding the knife. Why didn't he
10 just walk away?

11 Defense will try to argue there's rocks,
12 he's feeble, his sandals were bad. It didn't stop him
13 from running up to the boys as they're tubing away from
14 him. Why didn't he just hold the knife up? Say, hey, I
15 got a knife, back up.

16 We saw Owen, is the only person who saw the
17 knife, and you saw his reaction. As everyone else is
18 moving forward in response to Nicolae punching Madison,
19 Owen's trying to pull people back. Next you see him, he's
20 off in the distance.

21 This whole thing would have ended if
22 Nicolae held up the knife instead of opening it, down by
23 his waist, without looking down, because it's human
24 nature, if you're ever looking down, people would look
25 down. He holds it down by his waist, opens it up, never

1 displays it or says he has a knife.

2 Nicolae did not act as any reasonable
3 person would in that situation if they were truly in fear
4 of their life or great bodily harm.

5 So let's talk -- here's -- here's Owen's
6 reaction as you see. Again, Isaac just standing in the
7 background in the middle. You see when other people are
8 moving forward Owen's trying to pull them back. You heard
9 him yell, bro, he's got a knife.

10 So let's talk about the punch to Madison.
11 I submit to you the evidence shows clearly beyond a
12 reasonable doubt Nicolae punched her, she fell backwards,
13 but caught herself.

14 Multiple witnesses testified to seeing her
15 falling backwards. Defense is saying -- arguing -- or on
16 cross, well, she's not wet, she didn't actually fall down.
17 If witnesses are all standing in that kind of semicircle
18 around Nicolae, she gets punched and falls backwards and
19 then their attention is back to Nicolae as Dante's hitting
20 him, they're not gonna see that she caught herself,
21 they're gonna think she fell down.

22 Look at her position next to Ryhley.
23 They're shoulder to shoulder in front of Nicolae before
24 the camera pans away. When the camera pans back, now
25 Dante's shoulder to shoulder with Ryhley and Mady is back.

1 She clearly got knocked backwards.

2 Her sunglasses aren't on her head anymore.

3 Defense has a double standard about that
4 too. If there's not a photo of it, it didn't happen.
5 There's not a photo of an injury, it didn't happen. We
6 know Nicolae got punched. He didn't have any injury.
7 Defense can't have it both ways.

8 So turn and talk a little bit about memory,
9 credibility. Obviously a witness's memory is better
10 closer to the event. That's obvious. Alcohol's gonna
11 affect memory, traumatic event is gonna affect memory, how
12 fast it happens is gonna affect memory, but crucially and
13 absolutely crucially there's a huge difference between
14 getting some details wrong, right hand, left hand,
15 sequence of events, and making up an entire story like
16 Nicolae did.

17 Defense has tried to are -- highlight
18 throughout the trial, Nicolae was in this traumatic
19 experience, give him a break. It's understandable he made
20 up this huge -- all these lies, told this whole story.
21 Even though he looks calm and collective in the videos,
22 he's convincing in the videos, talking to the sheriff,
23 talking to Lieutenant Hart, but don't give any sort of
24 credence to the theory that trauma affects memory for
25 anyone in the Carlsons' Group, any of the boys, any who

1 were stabbed, any who had to drag Isaac as he's bleeding
2 to death to the shore. A.J., who's disemboweled, don't
3 give any credence that trauma might affect their memory
4 and how accurately they can remember all the details, but
5 Nicolae, who invented an entire story, tried to skip
6 through the crowd, give him credence for that.

7 You saw what happened to all these
8 witnesses, how fast it happened. It's not surprising some
9 of the details are wrong. But the major point is -- is
10 accurate -- is consistent, this all started when Nicolae
11 punched Madison, whether it was a right hand or a left
12 hand. You heard the turmoil of the boys when they
13 realized Isaac is stabbed. Clearly a traumatic
14 experience.

15 There's a big difference between details
16 and invention. Think about the most basic example: You
17 and, say, your partner go to the grocery store. Park your
18 car, you're leaving the grocery store, you think your
19 car's parked over there, they think it's parked over here.
20 You still know the car's parked in the parking lot even if
21 you can't remember where it's park. The same is true for
22 the punch to Madison.

23 You heard from ten people from -- both from
24 the Carlson Group and the boys' group that Nicolae struck
25 Madison.

1 So what about -- let's talk a little bit
2 about witnesses from Nicolae's group. Ariel, what did he
3 say? At trial he says Nic defended himself. He can't
4 really say how. Never said that when interviewed with law
5 enforcement. He denied even being close to Nicolae.
6 Remember, Ariel was there when he stabbed Dante. He was
7 right there when Nicolae stabbed Ryhley, Tony, and Isaac.
8 Law enforcement went there with the frame of Ariel
9 standing next to Nicolae when Nicolae has the bloody
10 knife. Ariel denies seeing anything to law enforcement of
11 what Nicolae did.

12 Ernesto at trial testified he didn't see
13 Nicolae get hit, just saw him down in the water. Said he
14 couldn't remember Nicolae saying they took my knife. You
15 saw on the body cam, he said that repeatedly. He
16 testified that somebody was walking towards him, he
17 pointed at him, get back. Never said that to law
18 enforcement, although he did describe to law enforcement,
19 as you saw him saying, Nicolae, get out, Nicolae walking
20 out, and then he said and that's it. Never said anything
21 about anyone pointing at him and walking towards him.

22 When I asked he said I wasn't asked that
23 question, but he described that event. He also wasn't
24 asked more than ten times if Nicolae said they took my
25 knife.

1 So about the punch to Madison again.
2 Sergio, he's in Nicolae's group. He had walked out a
3 little ways. You can see him in the photo on the left in
4 the top right. He had the white shirt, white bucket hat.
5 He testified he saw the blonde girl in the black leotard
6 walk over to Nicolae and say go, go, go. He said it
7 repeatedly to law enforcement, and he said Nicolae pushed
8 her.

9 So this is what it would have looked like
10 from his perspective, although a lot farther back in that
11 photo on the right. How could he have seen Nicolae do
12 anything to Madison unless she got pushed back, punched
13 back, something violent? Not some light push, he's not
14 gonna see that from where he was.

15 Madison testified and you saw in the video
16 after she was hit, she goes back to her group. Why would
17 she walk away back to her group if Nicolae just lightly
18 maybe touched her, maybe didn't?

19 She told Quinton she was punched. She told
20 police at the scene she was punched. She told police in
21 the interview she was punched. She testified about
22 feeling the throbbing pain in her cheek, her heartbeat in
23 her cheek.

24 Mady testified she was told by law
25 enforcement/sheriff's office they deleted the photo. You

1 heard about that misunderstanding. She was -- had anxiety
2 about deleting the photo. In an effort to console her she
3 was told don't worry about it.

4 This is an important jury instruction in
5 your jury instructions. Although we're not a
6 stand-your-ground state, there's also not a duty to
7 retreat. But in determining whether Nicolae's actions,
8 whether his use of force was reasonable to prevent or
9 terminate the interference, you may consider whether he
10 had the opportunity to retreat with safety, whether such
11 retreat was feasible, and whether he knew of the
12 opportunity.

13 He turned his back on them multiple times,
14 facing open water. People are yelling at him to leave, to
15 walk away, to go, and he didn't. Instead he took out his
16 knife. That is not reasonable.

17 You heard from Sheena Lowell, Janell
18 Duxbury, Gabby Khazraeinazmpour, Dante Carlson, and A.J.
19 about the strike to Madison. You heard from the boys,
20 Ryan Nelson, Jawahn Cockfield, Landon Weyer, and Alex
21 Vang. Alex Vang originally described it as a slap. You
22 heard from Owen that he heard an impact and saw Madison
23 fall back and catch herself. Defense has to argue that
24 they're all either lying or mistaken, all these witnesses,
25 including Sergio.

1 If they're lying, why wouldn't -- why would
2 Quinton say I saw some -- some swelling and some slight
3 redness but didn't see the punch? Why wouldn't he just
4 say, yeah, I saw the punch too? Why wouldn't Tony say he
5 saw the punch? Why wouldn't Tony say he saw Ryhley get
6 stabbed when she's just standing there? They're -- they
7 try to explain what happened as best they could remember.

8 The punch isn't on video but you see the
9 reaction. You hear Dante yell you can't hit a woman
10 before Ryhley is stabbed. They obviously didn't plan this
11 lie in the chaos of the moment, so only thing Defense can
12 argue is they're mistaken, that all these people standing
13 around Nicolae in that half circle approximate shape,
14 they're all looking in that direction, including Sergio,
15 including Sheena, who is by the group, the -- the tubes
16 for the Carlson Group, they all were wrong in what they
17 saw.

18 Another Defense double standard, it's
19 relatively minor, but I submit to you that it shows that
20 they're grasping at straws, is this trying to put
21 Nicolae's group in a different category. There's the
22 drunks on the Apple River and then there's Nicolae 's
23 group. About half of you raised your hand that you've
24 been on the Apple River. That's what people do on the
25 Apple River, they go out, they tube, and they drink.

1 Nicolae's in the exact same boat they were in. He -- he
2 wasn't bird watching and this group of drunk teenagers ran
3 up on him. He knew what it was about, he'd been on the
4 river before.

5 Another thing about the punch to Madison.
6 You heard that they didn't get to see the video before
7 giving their statements. Even Jawahn, who took the video,
8 said he got it -- got far enough to get the screenshot of
9 Nicolae and then law enforcement took his phone. He
10 didn't get to see the video.

11 You saw what happens in this case if
12 somebody lies about something that happened on video,
13 because Nicolae got burned by that. He made up a complete
14 and total lies. Video showed he wasn't even telling the
15 truth. The video happens to not show the punch, but it
16 still corroborates what all those witnesses said.

17 So Count 6 is battery to Madison Coen. It
18 has four elements: Nicolae caused the battery to Mady --
19 or caused the injury, the harm, the pain. She testified
20 to that.

21 He intended to cause the harm despite his
22 denial. I submit to you that's clear. You don't punch
23 somebody without intending to cause harm.

24 She didn't consent. She testified to that.

25 He knew she didn't consent. She's a

1 stranger. Obviously she didn't consent when he did that.

2 Punching Madison was not self-defense.

3 Again, there's no duty to retreat, but you have to
4 consider the opportunity to retreat, the knowledge of the
5 opportunity to retreat, and whether the use of force was
6 necessary in preventing the unlawful -- or the
7 interference of Mr. -- in Nicolae's person.

8 So what is the interference at the time he
9 punches Madison? The boys are saying cruel things to him;
10 Mady and Ryhley are standing in tou -- in front of him,
11 lightly touching his shoulders; people are pointing and
12 laughing, the boys. They're not -- Mady and Ryhley aren't
13 in his face, they're standing close but they're not in his
14 face.

15 What amount of force was necessary to
16 prevent that interference? People yelling at him, Mady
17 and Ryhley standing close, what amount of force was
18 necessary? Absolutely zero. Just walk away. That's what
19 people are yelling at him to do, just walk away. Instead
20 he takes out his knife and punches Madison.

21 Regardless of whether you -- you were
22 convinced beyond a reasonable doubt it was a punch,
23 Nicolae essentially admit -- admitted to pushing her. You
24 heard Sergio said it was a push, although when asked he
25 couldn't remember if it was a push or a punch.

1 There's still provocation. Your jury
2 instructions talk about provocation and how that affects
3 self-defense. A person may not use or threaten force
4 intended or likely to cause death unless he or she
5 reasonably believes he or she has exhausted every other
6 reasonable means to escape or otherwise avoids death or
7 great bodily harm.

8 Remember Nicolae ran up on these boys who
9 were tubing away. They didn't run up on him. He ran up
10 on them as they're tubing away from him because they
11 insulted him. He was angry. He didn't walk away from the
12 boys to leave the situation, he went over to Mady, who was
13 yelling at him to leave, and he lies to her and says they
14 took my snorkel.

15 Can you take the screen down?

16 I'm going to play that for you so you can
17 hear it. All right. This is at 1:05 in the video.

18 I'm ready.

19 (Whereupon, the video was played.)

20 MR. ANDERSON: He didn't -- you can take it down.

21 He didn't go over there to extricate
22 himself from the situation, he went over there and accused
23 the boys of taking his snorkel, which was a lie, and he
24 had just ran up on the boys.

25 So after he runs up on the boys as they're

1 tubing away and goes and tells Mady they took my snorkel,
2 he's standing there smirking at people, takes out his
3 knife, either punches or pushes Mady. That's provocation.

4 Defense has zero reasonable argument,
5 especially when it comes to Tony, Ryhley, Isaac, and
6 Dante. Nicolae gets punched, he gets struck with an open
7 hand twice, he gets ineffectually pushed by A.J. It
8 doesn't do anything. Nicolae pops straight up and
9 disembowels A.J.

10 After Nicolae goes down in the water nobody
11 approaches him. Nobody. Nobody goes to kick him, nobody
12 goes to punch him, nobody goes to push him again.

13 Tony, with Nicolae down on the ground, Tony
14 walks by Nicolae with his back to Nicolae yelling get back
15 to Dante. He turns around to tell Nicolae to get away and
16 Nicolae turns around and stabs him. Nicolae was facing
17 his group with an open path of escape after provoking a
18 reaction.

19 He just stabbed Ryhley before stabbing
20 Tony. After stabbing those two he stabs Isaac. After
21 that, after Ariel's there, he walks over to Dante, stabs
22 Dante in the chest right below his ribs, right below his
23 heart.

24 So self-defense, I submit to you the State
25 has proven beyond a reasonable doubt this was not

1 justified self-defense and Nicolae knew it. He knew it
2 from the moment he did it.

3 First of all, imminent threat of death or
4 great bodily harm. He's not in an alley with no way out
5 with people blocking his exit. He's on an open river,
6 150 feet wide, with people yelling at him get away. None
7 of them are armed, punched, two open-hand strikes,
8 ineffectual push. Look at your def -- look at the
9 definition of great bodily harm and whether he reasonably
10 believed death or great bodily harm is imminent.

11 For attempted first degree homicide for
12 Dante, A.J., Tony, and Ryhley, the State has to prove that
13 he intended to kill each of them and the acts demonstrate
14 unequivocally, under all circumstances, that he had formed
15 the intent and would have caused the death of each of them
16 except for the intervention of some other person and an
17 extraneous factor.

18 Third, the Defendant not actually believed
19 that the force used was necessary to prevent death --
20 imminent death or great bodily harm.

21 So for the intent to kill -- but for
22 outside circumstances. A.J., it's beyond clear, he would
23 have died but for the blood and the helicopter. He would
24 have died but not for the surgery Dr. Myer performed. He
25 is lucky, extremely lucky, to be alive. What -- what else

1 was Nicolae's intent but to kill when he slices him up
2 like that? He had the knife blade up. That wasn't an
3 accident. He didn't not know. He -- the first thing he
4 does with it is slice up A.J.'s stomach.

5 Ryhley he slashes across the ribs. You saw
6 the horrific nature of those wounds. He cutting their
7 stomach, cutting their diaphragm. Luckily didn't hit any
8 major arteries or her heart or lung.

9 Tony blocked one stab so Nicolae stabbed
10 him again. The one he blocked, you saw the injury, he was
11 very close to where A.J.'s artery was severed.

12 Dante was stabbed again just below his
13 heart. But for Nicolae missing vital organs but for
14 medical intervention.

15 Miu claimed he had tunnel vision.

16 Oh, back up. So Dr. Myer also testified,
17 you heard about, any time there's a puncture -- stab --
18 puncture wound to the torso or stomach they have to go in
19 because there's so many major veins, arteries, organs,
20 they have to go in and make sure something major isn't
21 done.

22 Nicolae killed Isaac, almost killed A.J.,
23 Ryhley needed emergency surgery. Luckily, but for dumb
24 luck, he missed vital organs of Dante. But for A.J.
25 blocking one strike and missing vital organs, he survived.

1 Nicolae said he had tunnel vision.

2 Can we have the screen?

3 I thought everyone close to me was
4 attacking me. I thought every -- anyone touched me was
5 attacking me. He didn't stab Ariel when Ariel came up.
6 He makes the tunnel vision claim a little bit
7 unconvincing.

8 For first degree intentional homicide of
9 Isaac Schuman, Nicolae stabbed him so hard he cut clean
10 through two ribs, the wound was deeper than it was wide,
11 and he sliced Isaac's heart. There's no other intent when
12 you stab somebody directly in the heart than to kill.

13 And intent to kill doesn't need to be
14 planned ahead of time. Your jury instructions talk about
15 that. There -- it doesn't have to be formed a week, a
16 month, a day, even a minute in advance. As long as he had
17 that intent when he does the act, that's intentional
18 homicide.

19 The first el -- element is he caused
20 Isaac's death, that's obvious.

21 Acted with intent to kill, I've addressed
22 that.

23 Did not actually believe the force was
24 necessary to prevent imminent death or great bodily harm,
25 I'm going to get to that in a little bit for all the

1 counts.

2 Third element, he did not reasonably
3 believe the force was necessary. That also goes to -- oh,
4 I'm sorry, that's part of the third element.

5 So how do we know, how do you know, how can
6 you -- what Nicolae believed? What a reasonable person
7 would have believed? That -- there's only one person on
8 the planet who experienced what Nicolae experienced, saw
9 what he saw, was standing in his place. And what did
10 Nicolae believe? He believed he was unjustified.

11 The very first thing he does is walk away.
12 Doesn't run. Doesn't tell Ariel or Ernesto anything.
13 Doesn't tell them to run. He walks away from his group to
14 the other side of the river, at some point rinses the
15 knife because it wasn't (verbatim) covered in blood,
16 throws the knife onto the bank before walking back to his
17 group, says nothing to his group other than they took my
18 knife, puts on his hat, sunglasses, and shirt and sits
19 down in his tube.

20 He's the one, as he said in his interview,
21 let's go, let's get out of here. They can't right away
22 because Eric isn't there.

23 You saw -- and as they're tubing down the
24 river you saw the video of him casually paddling along.
25 You saw -- so Plan 1: Get away. Sneak away with the

1 crowd. That didn't work.

2 Play 2: Play dumb.

3 Can you take the screen down, please?

4 Okay.

5 (Whereupon, the video was played.)

6 MR. ANDERSON: I'm sure they're drunk. Kids
7 being kids. That's what he told Sheriff Knudson, and he
8 was acting like he has no idea what's going on. Clearly
9 not in shock.

10 You can take it down. Sorry.

11 Clearly not in shock, clearly Nicolae knows
12 that it was not justified, and he's looking out for
13 Nicolae.

14 Slinking away didn't work. Playing dumb
15 didn't work. He's told he's under arrest for homicide.

16 Plan 3: Completely lie about what happened
17 as to justify him using lethal force. The boys pull out
18 the knives. They twisted their arm. They poked him.
19 That's what he used, poked, with his own -- with their own
20 knife.

21 So first degree intentional homicide and
22 second degree intentional homicide are very similar.
23 The -- for first degree: Did act -- did Nicolae actually
24 believe, did he actually believe, that he was not
25 justified? For second degree it's the reasonable person

1 standard. I submit to you it doesn't make a difference in
2 this case. It's crystal clear he knew he wasn't
3 justified. He knew he wasn't justified. It's crystal
4 clear from his actions after the fact. Can't be explained
5 away by shock, he's clearly not in shock.

6 The use of force on A.J., stabbing Ryhley
7 just standing there, stabbing Tony trying to break it up,
8 stabbing Isaac directly in the heart, Ariel's there,
9 walking up to Dante and stabbing him, the injuries he left
10 behind, that all shows his intent.

11 Again, you have to consider whether he knew
12 he could retreat, whether there was a safe escape. He
13 could have just walked away. He could have just raised
14 his knife. He didn't do any of that. He just stood there
15 with the knife until he punched Madison.

16 He touched his knife when running up on
17 the boy -- before running up on the boys. He takes out
18 the knife, opens the blade up. Never says anything, never
19 walks away, never takes a step back, never raises the
20 knife, never yells for help. He's smirking with the knife
21 in his hand. Originally -- I mean, finally after stabbing
22 five people, then he walks away. Doesn't run. Walks.

23 It's shocking to see what Nicolae did in
24 this case, to see the injuries, and then see his calm,
25 cool demeanor after the fact, tubing downriver, sitting in

1 his tube at the scene in chaos, casually talking to
2 Sheriff Knudson, making out this huge lie to Lieutenant
3 Hart.

4 He even lied to the SART nurse at
5 9:00 p.m., so five hours after the incident, about a boy
6 pulling a knife, twisting his arm, poking him with his own
7 knife.

8 He even lied to Sandi after the arrest.
9 Nic recognizes that his -- what happened was not justified
10 self-defense, just standing there with the knife, not
11 walking away when you clearly can. So even to Sandi after
12 he was charged he casts blame on her and the group for not
13 hearing him yelling, for not hearing him yelling. He
14 never yelled.

15 Normally, it would be difficult to know
16 what a defendant believed in a self-defense case. Not in
17 this case. Nicolae was not in fear. He snapped. He was
18 angry and he snapped and he knew it.

19 His actions showed he knew he did not
20 reasonably believe the amount of force was necessary, he
21 was not actually in fear. If he was actually in fear, he
22 would have left.

23 How else do you know what other clues?
24 Think about his testimony.

25 We submit to you that this is first degree

1 intentional homicide and first degree attempted homicide.
2 His acts clearly show intent. But if you can't agree
3 unanimously on that, as your jury instructions tell you,
4 you have to consider second degree.

5 Again, the difference in second degree is
6 Nicolae's belief versus reasonable person. Here you know,
7 I submit to you, his belief from his own conduct
8 afterwards he knew it was not justified.

9 If you can't agree on second degree, you
10 consider first degree reckless homicide, first degree
11 reckless endangering safety. Element 1: Nicolae
12 endangered the safety of another human being. That's
13 obvious.

14 He endangered the safety of another by
15 criminally reckless -- reckless conduct. Your jury
16 instructions def -- define criminally reckless conduct.
17 Creating a risk of death or great bodily harm, it's
18 unreasonable and substantial, he was aware of the risk.
19 Again, obvious when he was stabbing people.

20 When you talk about reckless conduct, let's
21 say you believe his testimony that he just thought anyone
22 touching him, anyone closing to him is attacking him, and
23 he was stabbing him, that's reckless, that's criminally
24 reckless conduct, that's utter disregard for human life.

25 What other clues of utter disregard? He

1 just walks away. He just walks away. He doesn't call
2 911. He just sits on his tube as other people are helping
3 the victims and he tubes down the river.

4 The last -- your jury instructions talk
5 about the last -- the question, the special question, yes
6 or no, did he commit these crimes while possessing a
7 dangerous weapon? The pocketknife.

8 There's nothing inherently wrong with
9 carrying a pocketknife. A lot of people carry
10 pocketknives. Totally fine to carry it as a tool.
11 Totally fine to carry it in -- for self-defense. Totally
12 fine to carry any legal weapon, firearm, knife if it's
13 used legally. Nicolae did not use -- he was not justified
14 in self-defense when he attacked these people. So we'd
15 ask that you answer yes on that question.

16 In the end what is beyond clear, Nicolae
17 knew, he knew this was not self-defense. All of his
18 actions from the minute the stabbings are done, from the
19 second the stabbings are done, he knew it. It's obvious.
20 His actions were horrific. They were senseless. He
21 killed Isaac Schuman, stabbed him directly in the heart;
22 disemboweled A.J.; stabbed Tony, who was trying to break
23 up a fight; Ryhley, who was just standing there; and then
24 walks up to Dante. That -- walking up to Dante, stabbing
25 him when he's got a clear path to retreat, that destroys

1 any argument that this was self-defense. He was angry.

2 There's no rational reason Nicolae, his
3 group's over here, would walk this way towards the group
4 of people to stab Dante.

5 Senseless and horrific acts.

6 The State asks that you find Nicolae Miu
7 guilty of all charges. Thank you.

8 THE COURT: Thank you.

9 We will take a ten minute recess. We will
10 reconvene at 11:05.

11 Please take the jury out.

12 (Whereupon, the jury exits the courtroom.)

13 THE COURT: All right. 11:05.

14 (Whereupon, a break was held.)

15 (Whereupon, the jury enters the courtroom.)

16 THE COURT: All right. We are back in the
17 presence of the jury, with the attorneys and Mr. Miu.

18 Mr. Chirafisi.

19 MR. CHIRAFISI: Thank you, Your Honor.

20 May it please the Court. Counsel.

21 So, ladies and gentlemen, in his opening
22 statement Attorney Nelson said to you one of the things
23 you're gonna have to determine is what happened on
24 July 30th, 2022.

25 Well, what happened on July 30th, 2022, is

1 a group of drunk teenagers, led by the ringleader, Jawahn
2 Cockfield, saw an opportunity to torment a man who was by
3 himself. They taunted him. They called him names like
4 raper and pedophile and predator. They did this for no
5 legitimate purpose.

6 When they did this they're yelling and
7 carrying on. It attracted the attention of another group,
8 right, led by Madison Coen and Dante Carlson.

9 Six drunk teenagers quickly turned into 13.
10 13 against one.

11 They got in his face. They screamed at
12 him. They called him names. They swore at him. They put
13 their hands on him. And the group of six, they became
14 brave. The group of six became brave to the point that
15 they circle him and start taunting him. They do this to a
16 man who has done nothing, absolutely nothing, to them.

17 Then when that man, Mr. Miu, tries to
18 create some space between him and Madison Coen, they
19 pounce. They punch him. They push him. They slap him.
20 They hit him again. They choke him from all directions.
21 And Nicolae Miu acts in self-defense. That's what
22 happened on July 30th, 2022.

23 I just wanna give you guys a little bit of
24 an indication as to kind of where I'm gonna go and, more
25 importantly, what I think you need to think about when you

1 are back there thinking about the evidence, okay.

2 First is the law. One, there is no duty to
3 retreat. Period. That is the only requirement. In this
4 state bullies like Madison Coen don't get to tell us where
5 to go. Bullies like Madison Coen don't get to get in our
6 face and require that we leave. That's not a requirement
7 here. Keep that in mind.

8 Two, subjective beliefs, okay. When you're
9 listening to the -- or contemplating the evidence and
10 replaying it in your mind, you are to do that and consider
11 the beliefs, not the actions but the beliefs, of Mr. Miu.
12 And when you do that you are to do that from his
13 perspective at the time that the events were occurring.

14 So while we have a video, that video is
15 from the perspective of Jawahn Cockfield. The video
16 perspective that the jury's required to consider, it is as
17 Nic Miu is holding the camera.

18 I'm gonna address this a little bit later,
19 but the idea of provocation, whether or not Nic
20 intentionally caused harm to Madison Coen, that is
21 something that you should consider when you're considering
22 provocation. And the other main one I want to talk about
23 is what it means, because it's different here, beyond a
24 reasonable doubt.

25 So normally beyond a reasonable doubt is

1 this hurdle, and the State has to jump that hurdle in
2 order to prove a case. It's a little bit different here,
3 okay. Because in this case self-defense has been alleged.
4 Remember when you're back there, Nic Miu doesn't have to
5 prove he acted in self-defense. They have to prove beyond
6 a reasonable doubt that he didn't act in self-defense.
7 They have to prove that his beliefs were unreasonable,
8 okay.

9 So the way that I look at this video, the
10 main video of Jawahn Cockfield, we've already seen --
11 we've all seen the nine second video where he's screaming
12 at Mr. Miu, calling him a raper. I'm not talking about
13 that one. I'm talking about the video that you've seen
14 probably more than you want to, but I'm breaking that up
15 into really three parts, okay.

16 Zero to 1:49 is the first part, all right,
17 before anything actually happens in terms of the attack.
18 And what -- what is in dispute in that first minute and
19 49 seconds? I think two things were raised in the case
20 that are -- were in dispute, and that is, first, whether
21 or not these drunk teens were actually afraid of Mr. Miu,
22 right. They -- I think to a person they testified, yeah,
23 we were really concerned about Mr. Miu. Does -- and you
24 get to use your every day experiences in life when you
25 decide what to believe. Does that look to you like

1 teenagers who are afraid of that person? Is that what
2 that looks like to you?

3 Does this photo of drunk teenagers taunting
4 him, does that make you believe in your experiences in
5 life that they're afraid of him?

6 Or is this what drunk teenagers who are
7 terrified, is that what they look like? Does that make
8 sense to you? Because you heard this as: As the numbers
9 rose, as the number of people grew, their fear, it
10 decreased.

11 And you've heard Mr. Anderson say over and
12 over again, all Nic Miu had to do was walk away. Well,
13 you heard from each one of those tubers, those drunk
14 teenagers, we could have passed. When we walked over by
15 Madison Coen we could have passed.

16 And you heard Owen Peloquin, I didn't wanna
17 pass, I wanted to see how this was gonna play out. Why?
18 Because Jawahn Cockfield was recording this entire
19 incident. They wanted to see what was gonna happen.
20 They're not afraid, they wanna see how this is gonna play
21 out. And Jawahn Cockfield said it best of all: It's for
22 the culture. He wanted to put it on the internet so other
23 people could see it.

24 And when you're using your every day
25 experiences in life, ask yourself this: Do people who are

1 afraid of other people, do they walk up on them? Is that
2 what people do when you're afraid of someone? Or do you
3 try to get away from them? If you're afraid of someone,
4 do you taunt them? Do you call them names? Do you circle
5 around them? Those are questions that you all can answer.

6 Or an alternative hypothesis to them being
7 terrified is do they do those things because they're drunk
8 teenagers and what they wanna do is make a video and put
9 it on the internet? Which one of those two things, based
10 on the evidence that you've seen, which one of those
11 things makes more sense to you?

12 The second thing that I think is in dispute
13 or was at least raised in the first minute and 49 seconds
14 of that video is whether or not Nic Miu's looking for
15 little girls.

16 Now, Mr. Anderson gets up here and says,
17 no, he wasn't looking for little girls. But he also says
18 the boys didn't invent that. No, they pretty much
19 invented that. And why do we or how do we know that? So
20 that's not on video anywhere, right. They don't mention
21 it, they don't say anything about Nic Miu telling them
22 that, right. Every one of them who speaks to the police
23 provides a statement about what happened. Zero. Zero
24 mention to the police that he said he was looking for
25 little girls.

1 This gentleman over here, Investigator
2 Shilts, I think he said that he was a substantive crimes
3 investigator. He saw some of this stuff come across his
4 desk, that would have interested him.

5 Investigator Dittman who testified said he
6 would have -- if any of these kids would have mentioned
7 little girls, I would have taken note of that.

8 So what's the alternative? Why did they
9 say that? I would submit to you that what kind of person
10 does what these kids did to him and what would they look
11 like as people if all they did was pick a guy out and
12 start to torment him? What do we think of people who do
13 that? What do we think of people who call grown men
14 rapers and pedophiles and predators for kicks? What do
15 we -- what do we think of those people? They had to come
16 in and say that, because if they don't, we know what we
17 think of them. That's the reason they came in -- and they
18 said this to you guys under oath. They got on that
19 witness stand and swore to tell the truth and they told
20 you that he said he was looking for little girls. Well,
21 the cops got up under oath and told you, no, they never
22 mentioned that to me. What are the odds? What are the
23 odds of that actually happened and nobody mentioned it to
24 the police? What are the odds?

25 Two other little points on that. In your

1 every day experiences in life, would you expect a man that
2 you never met to walk up to you and say -- if you asked
3 them how's your day? What are you doing? Oh, I'm looking
4 for little girls. Would you expect someone to actually do
5 that? Does that make any sense to you?

6 He's with his wife. There -- he has lunch
7 with his wife and his friends. In order to believe what
8 these drunk teenagers are saying, you have to believe that
9 he has lunch with his wife, he's with his friends, they're
10 having a fine time, Ariel loses his phone, and Nic goes
11 this is my chance. My wife's right over there but this is
12 my chance to go look for little girls. And I'm gonna tell
13 a bunch of drunk teenagers I never met before that's what
14 I'm doing. Tell me that makes sense to you. Because you
15 get to judge the credibility of what people have said to
16 you, okay.

17 But I wanna talk about what we know in that
18 first minute and 49 seconds of the video. What do we
19 know?

20 We know based on the evidence that Nic's
21 looking for a phone. We know that. Ariel said that. Nic
22 said that. They find Ariel's phone in the river so we
23 know that.

24 We know that Nic comes up to the teenagers'
25 tubes and we know that Cockfield -- looking for a phone

1 and Cockfield's holding a phone, Jawahn Cockfield's
2 holding a phone.

3 We know that Nic Miu walks away from them
4 as he passes them. We know that.

5 We know, right, that the drunk teenagers
6 move toward him and start confronting him. We know that.

7 We also know that Nic sees what he believes
8 to be a reasonable, rational adult. So he heads over
9 there to talk to her. And what we know is you can see his
10 thumb, he's motioning back, trying to explain what
11 happened.

12 And we know that Madison Coen, who knows
13 nothing about what happened, zero, starts screaming at him
14 to leave. We know that Madison Coen feels comfortable
15 enough to put her hands on him for the first time and move
16 him because, well, she's queen of the river and she
17 decides where people go. So she's moving him. We know
18 that.

19 We know that Nic is uncomfortable so he
20 waves for his group to come over because, the State can
21 say whatever they want, he's by himself. So we know Nic
22 does that.

23 We know that when Nic waves to his group,
24 so does Madison Coen. But there's one big difference
25 here. Her group shows up and they show up in numbers.

1 We know that the group of teens are brave,
2 and as this is going on they start taunting this man who's
3 done nothing to them. We know that.

4 We know that Ryhley Matt -- Mattison comes
5 over and now she thinks it's necessary because she's been
6 anointed something in the river and she gets to tell him
7 where to go. So we know that she puts her hands on him.

8 We know that Nic's uncomfortable enough
9 that he waves the group over a second time, trying to get
10 someone to come to his aid. We know that.

11 We know that Madison Coen pushes him, puts
12 her hands on him again. He tells her not to touch him but
13 she does it anyway. We know at that point it's 13 against
14 one.

15 The other thing that we know, because we
16 heard it, was someone in the group, the brave group of
17 six, tells Nic Miu you got 10 seconds. In your every day
18 experiences in life when someone tells you that you have
19 10 seconds what normally comes after that? If we have
20 children, I'm gonna count to three. You got 10 seconds to
21 do this. Nothing good is coming after that. It's
22 reasonable in our experiences as adults to take that as a
23 threat, right.

24 And if you think about it, they are --
25 they -- they all blamed him. They didn't know it, but the

1 guy holding the bag is Isaac. We know it's not Jawahn
2 Cockfield, and everybody else denied it. So who's left?
3 Their buddy Isaac. They all blame, without saying his
4 name, they're saying wasn't me, wasn't me, wasn't me.
5 Well, they're saying it's the one person who isn't here,
6 right. That's what we know.

7 We know -- everything here I just told you
8 is what we know in the first minute and 49 seconds. And
9 why does that matter?

10 MR. SMESTAD: Judge, I -- Judge, I can't see
11 exhibits and I have to do a rebuttal so --

12 THE COURT: Well, step up and look at it from the
13 side.

14 MR. CHIRAFISI: What does that matter? Why does
15 this matter? Because one of the things you have to
16 consider when you consider self-defense is Nic Miu's
17 reasonable belief that there is going to be an imminent
18 interference with his person. And when you add all of
19 these things together, he has to subjectively believe
20 that.

21 As a jury, as you sit here today, we don't
22 get to look at it and say what would an objective
23 reasonable person do? Does Nic feel that way? Does Nic
24 feel, with all of these things listed here, that there is
25 an imminent inter -- unlawful interference with his

1 person? And I would submit to you he does. He told you
2 he did, okay.

3 We're gonna see the video one time,
4 promise, broken up into those parts.

5 (Whereupon, the video was played.)

6 MR. CHIRAFISI: The second part of the video that
7 I think is important, and Attorney Anderson's talked a
8 little bit about it, is the really one second that we
9 don't get to see, right. The one second where the State
10 is insinuating and is claiming that Madison Coen was
11 punched and where Nic Miu has testified that he raises his
12 arm to get her out of his space. So those are the two
13 possibilities as to what happened in the video that you
14 don't see. And I am, once again, asking that you use your
15 every day experiences in life when you make this
16 determination, okay.

17 And I understand that people in stressful
18 situations don't get everything perfect. I get that. I'm
19 not holding anybody to this exact standard. But what have
20 we heard in order to prove beyond a reasonable doubt that
21 this happened? Well, you heard A.J. Martin say that he
22 grabbed her by the back of the hair and was slugging her
23 from behind. Okay. No one else says that.

24 You hear Alex Vang say he slapped her with
25 a right hand in the face. Then I say, Mr. Vang, how can

1 that happen, he's got a knife in his hand? And he says,
2 you're right, that can't happen. He punched her.

3 You hear Jawahn Cockfield, who's not
4 looking at it, he's holding his camera in another
5 direction, says he threw a hook at her. I saw that.
6 Right?

7 Madison Coen says -- she said on direct
8 examination he hit me with a left hand to the left side of
9 my face. And it sat there set. And then when I asked her
10 questions and I said can you explain how that's humanly
11 possible? And her response was you're right. I get lefts
12 and rights wrong, he hit me on the other side. Okay.

13 But the State says she had a heartbeat in
14 her cheek. She should remember what side of her cheek the
15 heartbeat was in. She doesn't get that right.

16 But how about the things when you use your
17 every day experiences in life that the State, they didn't
18 talk about when he was up here talking about her injuries,
19 he talks about her falling back and people seeing things.
20 Okay. People can be wrong. How about the things that
21 make sense though?

22 We know that she's wearing sunglasses,
23 right. We know that. Her sunglasses are not broken. She
24 doesn't have a mark on her face from being cut by
25 sunglasses. None of that. Is that what would happen if a

1 250-pound man squared up on a woman and threw a hook to
2 her face?

3 She doesn't have redness on her face. She
4 doesn't have swelling on her face. She doesn't have
5 puffiness, a bruise, or a mark. How do we know that?
6 Investigator Shilts told us I saw her shortly thereafter
7 and she didn't have a mark on her. He says if I would
8 have seen a mark, I would have taken a photograph of that
9 mark. Makes sense, right?

10 She doesn't drop her drink. She doesn't
11 drop her vape. Her cell phone doesn't leave her bathing
12 suit. Is that what happens when a 250-pound man squares
13 up on a woman? She doesn't drop a thing and she doesn't
14 have a mark. Does that make sense to you all?

15 Or, or does it make more sense that Nic Miu
16 pushes her out of his face? Attorney Anderson said she's
17 not in his face. Well, most of her friends said, no, she
18 was. She was in his face. She was in his face. She was
19 in his face, right.

20 If he makes this motion, she's not gonna
21 have broken sunglasses. She's not gonna have a mark on
22 her face. She's not gonna have redness, puffiness,
23 swelling, a bruise. She's not gonna drop her drink.
24 Because he doesn't hit her. Which one of those two things
25 in your every day experiences in life makes more sense?

1 You get to decide that.

2 And I want you to think about this: She
3 knows the seriousness of the case. She tells the police
4 she takes a photograph or photographs. Then she claims to
5 have deleted them in a homicide case. Then the police say
6 that's okay, that happens. You give us your phone, we can
7 get the pictures. Right? Wrong. No. They do a
8 Cellebrite download extraction of her phone. Investigator
9 Shilts doesn't do it but he reviews it and says, ah,
10 there's no deleted photos that I saw in there.

11 He even goes so far as to reach out to
12 Madison Coen's mother because maybe she either took the
13 photos or were sent the photos. No, not there either.
14 You get to judge the credibility of people on whether or
15 not that makes any sense. That is not provocation.

16 And just briefly on retreat and
17 provocation. I told you when I started there is no duty
18 to retreat, and that is true. That's the first sentence
19 in the retreat instruction. If you want to it says you
20 may consider whether or not when he was retreating or if
21 he had to retreat, whether the defendant reasonably
22 believed the amount of force used was necessary to
23 terminate the interference, you may consider whether he
24 had the opportunity to retreat, okay.

25 Now, you don't have to, but when it starts,

1 when it matters is when he's using the force. And when
2 he's doing that, he's surrounded. He told you he was
3 surrounded. I asked Lieutenant Hart, do you have any
4 information that would be contrary to Nic Miu's belief or
5 statement that he was surrounded? She said, no, I don't.
6 Where is he gonna go?

7 So he doesn't have to go anywhere. We
8 don't let people dictate what we do, and the loudest voice
9 in the room doesn't have to win. Madison Coen doesn't get
10 to make these decisions for people.

11 He doesn't have to leave. The drunk
12 teenagers don't have to leave either. They told you they
13 could have left, but they wanted to see the show.

14 He doesn't have to go and there's nowhere
15 to go. That should be the beginning, middle, and end of
16 that evaluation on retreat.

17 Same analysis, same result on provocation,
18 okay.

19 You have to find that Nic Miu committed an
20 un -- an unlawful conduct against Madison Coen to provoke
21 this attack. He wanted her to get out of his personal
22 space. The bully in the room doesn't get to yell at you
23 and tell you to leave, and then when you don't leave
24 doesn't get to get in your personal space because you're
25 not leaving. That's not how this works.

1 The last part of the video is the 1:50 to
2 2:05 mark, okay. Now, you heard yesterday the State wants
3 to break this video, this last 15 seconds or so, down into
4 stills. One-24th of a second. No one lives their life in
5 one-24th of a second. And you're not supposed to in this
6 case because you're supposed to look at this case through
7 the eyes of Nic Miu.

8 And if you -- if you've watched that video
9 -- the first time I saw it, I didn't see what happened. I
10 didn't see him pull a knife. I didn't see some of these
11 people getting injured, because it's moving like this.
12 When you break it down to one-24th of a second, it's just
13 not how we live our lives.

14 You have to look at those 14 seconds
15 through Nic Miu's eyes as he was standing there in the
16 river. And remember, he told you yesterday that he
17 believed that he was gonna die. But he doesn't have to
18 believe that. He just has to believe that he's gonna
19 suffer serious bodily injury. That's what he has to
20 believe, okay?

21 And before I start this video I'm gonna ask
22 you this again: What do we know in those last 15 seconds?
23 We know that Anthony and Dante Carlson were asked by their
24 dad to go over there. Why? To help him. Quinton Carlson
25 testified that he was concerned that Nic Miu was gonna get

1 the brakes beat off of him. So Quinton Carlson wanted his
2 boys to go assist. I would submit to you that Quinton
3 Carlson was concerned that Nic Miu was gonna suffer
4 serious bodily injury if someone didn't help him.

5 Alex Vang told you he's getting -- Miu's
6 getting his butt kicked when this is going on.

7 And Owen Peloquin said those guys got on
8 his ass, right.

9 Anthony Carlson is yelling stop, stop,
10 stop. He's not yelling it to Nic Miu. Nic Miu's tail
11 down in the water. Presumably he's telling it to the
12 people who are beating him, right. That's what we know.

13 (Whereupon, the video was played.)

14 MR. CHIRAFISI: Now, Jawahn Cockfield found that
15 to be funny for quite some time. You can hear him
16 cackling on how he thinks it's funny that Miu's getting
17 punched in the face and knocked in the face, slapped,
18 okay. But what we know from that video is a 250-pound
19 man, a 250-pound man, has been knocked clean off his feet
20 backward into the water by getting punched in the jaw.
21 That's what we know.

22 We know that in one second Dante Carlson,
23 who throws that punch, runs around to the other side of
24 Nic Miu while he's still on his back, kind of on his
25 lower -- I'm sorry, on his butt, kind of on his lower

1 back, and he cracks him across the face. We know that.
2 That's not in dispute.

3 We know that A.J. Martin, who says he's
4 trying -- he's the peacekeeper, that's what he said, he
5 runs up from behind and shoves Nic Miu while Dante Carlson
6 comes in for thirds and smacks Nic Miu in the face again.
7 I would submit to you at this point it's coming from all
8 sides and from multiple people and this man, who had heart
9 surgery, is terrified as to what's going on.

10 We know -- well, let me just remind you of
11 this. At this point, after he's been punched, slapped,
12 pushed, slapped, he hasn't stabbed anyone, right. And if
13 you listened closely to what A.J. Martin said in his
14 testimony, when he was shown the picture of him making
15 contact with Mr. Miu before Mr. Miu stabbed him, he said
16 he got me before I got him, I guess. What does that tell
17 you about what A.J. Martin's intention is?

18 He's back in the water now for a third time
19 after getting pushed down by A.J. Martin. And what do we
20 see next? That's Anthony Carlson, he walks right by Miu.
21 Miu doesn't do a thing to him. Mr. Miu doesn't do a thing
22 to Anthony Carlson as he walks by.

23 You will then see Ant -- what we know is
24 Anthony Carlson comes up from behind him, appears to be
25 yelling at him, and putting his hands on him. So now Miu

1 has been touched at that point, punched, pushed, pushed
2 from behind, and slapped, and now Anthony Carlson comes up
3 to him. We know that.

4 And then we know one second later that
5 Isaac Schuman comes up to him. You guys get to make the
6 decision on whether or not he's choking him around the
7 neck. You get to make that decision. I'm not telling you
8 what that is. You get to decide if that looks like a
9 choke to you or not.

10 So at that point four people had attacked
11 Nic Miu. And why does it matter? Why does any of that
12 matter? Because if you find the following, Nic Miu is not
13 guilty of all the charges, okay. If you find that Nic Miu
14 believed, that he believed that there was an imminent,
15 unlawful interference with his person, if you believe that
16 he believed that, that that was coming, the 19 or 18
17 reasons that I put up there supports that and he told you
18 that, and that's his subjective beliefs, okay, if he
19 believed the amount of force that he used was necessary to
20 terminate that interference, okay, so if he believed that
21 he -- he did what he had to do, right, I would submit to
22 you there's only two answers to that, only two possible
23 answers: He either did what he had to do to survive or
24 this man, who you watched the video, who's never had a
25 speeding ticket, who decides to go out with his wife that

1 day, who's floating down the river and having lunch,
2 decides, well, today's the day I'm gonna start stabbing
3 people, I'm gonna leave my group, I'm gonna go over and
4 I'm gonna start stabbing people, Mr. Anderson says he
5 snapped, if he was in fear he would have left, I don't
6 think anybody would dispute that he was in fear, so when
7 you're determining whether or not what he did, if he
8 believed that he had to do that to terminate that
9 interference, I would submit to you why else would he do
10 it? He either believed that or he just lost his mind,
11 right. This 52-year-old engineer who's married just lost
12 his mind that day. Those are the two options I think that
13 you have on them.

14 And the final thing that you need to decide
15 is whether or not his beliefs were reasonable. And the
16 standard is would an ordinary person -- I'm sorry, an
17 ordinary -- a person of ordinary intelligence and prudence
18 would have believed standing in his shoes at that moment,
19 okay.

20 Quinton Carlson is about his age and
21 Quinton Carlson is concerned enough for his safety that he
22 sends his boys over. Quinton Carlson tells the police
23 that after his boys had been injured. He tells the police
24 I get it, they're injured, I sent them over there because
25 I was concerned for the old guy.

1 Brandie Hart. Did you watch that video
2 yesterday? There's a point in that video where Nic Miu
3 puts his hand in his head and says -- says something like
4 my life is over. And Brandie Hart says, I don't know
5 about that. There's self-defense. She says, I don't know
6 what I would have done, but I can tell you I would have
7 been scared shitless. She's been a police officer for
8 25 years and that is her response.

9 The State never followed up with her on
10 anything after that. That was her statement to the
11 police -- or that was her statement on the tape.

12 And as I mentioned, Alex Vang and Owen
13 Peloquin say he is getting his butt kicked. They're all
14 over him. Are those reasonable people? You get to decide
15 what a reasonable person would do in that situation, but I
16 would submit to you, you've got something to work with.
17 You've got something to work with.

18 Briefly on the charges, okay. Before you
19 even get to self-defense you get to intent. You have to
20 find intent on the homicide charges initially for Isaac
21 Schuman and you have to find them for the others involved,
22 okay. And the question on intent is mental purpose. Can
23 you watch that video and -- and say that Nic Miu's mental
24 purpose is to kill Isaac Schuman? Or is his mental
25 purpose to get another person off of him? You get to

1 decide that, okay.

2 Under those circumstances you heard
3 everybody say anybody who never touched him, he never
4 touched. Right? People were like I didn't want to get
5 near him. They didn't touch him, he didn't touch them.

6 He didn't say anything. You get to
7 consider all the facts and circumstances. He didn't say
8 anything to Isaac, right. Isaac grabs him by throat and
9 he stabs him one time. Is that an intent? Is that his
10 intention to kill Isaac Schuman?

11 And when you started this case you heard
12 that was the charge. Well, those charges have changed.
13 Now you get to consider all other kinds of charges with
14 all other kinds of mental states too, right. Maybe it was
15 intentional. Well, maybe not. Maybe it was reckless.
16 Pick a theory. Don't let them just throw things against
17 the wall and hope that you guys let something stick.
18 They're telling you they thought it was intentional. Now
19 it might not be. Now it might be reckless.

20 They don't have it. Nic Miu wanted to get
21 Isaac Schuman away from him. He didn't chase Isaac
22 Schuman down. He didn't move toward Isaac Schuman. Isaac
23 Schuman moved toward him.

24 And on the attempted homicides, read the
25 instruction on attempt, you guys. In order to convict

1 someone of an attempted homicide the State must prove to
2 you beyond a reasonable doubt that demonstrates
3 unequivocally that Nic wanted to kill these people and
4 would have except for the intervention of another person
5 or some other extraneous factor, okay. And unequivocally
6 means there can be no other inference which can reasonably
7 be drawn. No other inference. And an extraneous factor
8 is some -- something outside the control of Nic.

9 You heard DA Anderson say but for medical
10 intervention some of these people would have died. Well,
11 A.J. Martin would have.

12 Dante Carlson had a hernia. He repaired a
13 hernia. I'm sorry, the medical intervention doesn't
14 prevent him, he's not gonna die from that.

15 Anthony Carlson gets two stitches. He's
16 certainly not gonna die from that.

17 And Ryhley Mattison could have got an
18 infection they said.

19 And I understand that, but if he wanted to
20 kill them, why didn't he?

21 He's -- if you believe Attorney Anderson,
22 he's alone with Dante Carlson. Why did he stab him one
23 time if he wants to kill him? Why didn't he slash him up?
24 He wants what he wanted all along, to get away from these
25 people. He's leaving and Dante Carlson, who has beaten

1 him up, has hit him in the face repeatedly, confronts him
2 again, what does he think? What does Nic Miu believe is
3 about to happen? You don't have to let somebody beat you
4 before you respond. Doesn't that make sense?

5 And because we don't -- because they don't
6 have the attempts here, because there was nothing -- no
7 outside extraneous factor, they also say might not be
8 attempts, take a check -- take a chance on reckless, how
9 about that? Again, not really a theory, but you get to
10 make that decision.

11 I'm gonna comment on the video because I
12 think it's appropriate that it was played, the interview
13 with Nic and Brandie Hart. He lied about the knife. He
14 lied about the knife. What he and what Lieutenant Hart
15 says he's never wavered on is that this was self-defense,
16 that he was fearful, and that he was being attacked, okay.
17 That he's never wavered on that. He said it over 20 times
18 in the interview and it's the first words out of his mouth
19 when he's -- when he's interviewed by Lieutenant Hart.

20 Some people get some facts wrong, some
21 people lie about stuff. He's not telling you the truth
22 about the knife. But does it change one thing that you
23 saw on that video? That's the reason we want there to be
24 a video, is so you're not taking the word of 11 people --
25 sorry, 13 people who don't get it right. That video is

1 not subject to change. Attorney Anderson's right, it is
2 what it is, right.

3 What has persevered through this case is
4 Nic Miu's fear, how he felt, the shock you heard people
5 testify about, that the whiteness, the wide eyes, the
6 ghost-looking color of his skin, that has persevered
7 through this case. He lied about the knife. It doesn't
8 change one thing that's on that video.

9 You should feel sympathy for Isaac
10 Schuman's family. I have a 19-year-old son. He would be
11 in Isaac Schuman's grade right now. Everyone feels
12 sympathy for Isaac Schuman's family. I'm sure he was a
13 wonderful kid. And I know that his parents love him. But
14 you don't get to decide this case based on sympathy. The
15 Judge tells you that. You decide this case based on facts
16 and evidence. That's what you are required to do.

17 And put most succinctly in terms of the
18 burden of proof and what the State has to do is they have
19 to prove to you beyond a reasonable doubt it's not
20 self-defense.

21 And what does reasonable doubt mean? Well,
22 the Judge read it to you, you'll get to hear about it
23 again. But it's a doubt that would cause a person of
24 ordinary prudence to pause or hesitate when deciding the
25 most important affairs of life. And I would submit to you

1 the most important affairs is your -- your collective
2 lives: Are your health, your family's health, loved one's
3 health. When you're thinking about that in your -- and
4 you have to make hard decisions on those things. If there
5 is a pause or a hesitation about what you need to do
6 because you're getting information from various places and
7 you say I need a break, I need -- I need to figure this
8 out, that's reasonable doubt. It is a doubt for which a
9 reason can be given. That reason is self-defense.

10 And I just want you guys to know this:
11 When you go back there and you have those verdict forms,
12 if it's -- if you believe it's self-defense, he's not
13 guilty.

14 If you believe it's probably self-defense,
15 he's not guilty.

16 If you believe it's possibly self-defense,
17 he is not guilty.

18 If you're like it likely is, I don't know,
19 not guilty.

20 If you believe it might not be, not guilty.

21 If you believe it's probably not
22 self-defense, not guilty.

23 All of those considerations that you would
24 have require a verdict of not guilty because the State has
25 to prove to you beyond a -- beyond a reasonable doubt that

1 it wasn't self-defense.

2 So as I go to sit down, we, Attorney
3 Nelson, Nic Miu, and I, appreciate all of your time, the
4 time that you've taken away from your families and
5 friends, to do this, the attentiveness that you've given
6 us, and I think it's time for people to go home when
7 you're done, and what we're asking that you do is that you
8 send Nic Miu home, that you find him not guilty on all of
9 the charges.

10 Thank you.

11 THE COURT: While we swap people out, if you'd
12 like to stand and stretch for a moment, you may do so, and
13 then we'll hear a brief rebuttal from Mr. Smestad.

14 It looks like we're all seated and -- you
15 need to leave? No. Okay. We're all seated and we're
16 ready to go. Let's continue.

17 Mr. Smestad.

18 MR. SMESTAD: As you just heard Mr. Chirafisi
19 say, his entire defense is based on what Nic Miu told you
20 during his testimony was thoughts in his head, the beliefs
21 in his head.

22 What do we know about Nic Miu? We know
23 he's smart, he speaks multiple languages, has a couple of
24 degrees. One's in math. He's a calculating person. He's
25 a cunning person. He's a skilled and prolific liar. We

1 know that because every word that came out of his mouth
2 practically since he started walking away from this group
3 was a lie, including to his best friend who he said they
4 took my knife while the knife was still on him. The
5 things he said to Sheriff Knudson where he pretended to
6 not know what was going on, and then everything he said to
7 Investigator Hart, Lieutenant Hart.

8 He is skillful at crafting a story that
9 matches what he needs to say to avoid the consequences for
10 his actions. We all know that. It's undisputed. He told
11 you himself. He's a liar, all right.

12 He did not just not lie about the knife, he
13 lied about all kinds of crazy things. Bizarre things.
14 Why would he say that these boys pulled his pants down?
15 What a bizarre lie to make up, right. Why would he say
16 the two boys pulled knives on him? He's gotta say that
17 because he knows what he did wasn't justified. He thinks
18 to himself, if I say one boy pulled a knife, that would be
19 good, but if it's two, that would be better. So he crafts
20 this elaborate story.

21 His entire defense rests on you believing
22 what he said on the stand yesterday. His testimony was a
23 disaster. He got caught in several lies on the stand. He
24 changed his answers a couple of times when he realized
25 that what he said wasn't helpful to his defense, right.

1 He consistently remembered details from
2 July 30th, 2022, that benefits his defense but doesn't
3 remember anything about what he did, any of the facts, any
4 of the stories that he told Lieutenant Hart. How is that
5 possible, that he can only remember the facts, the beliefs
6 he had that assist his defense and nothing else? How many
7 times did he say on the stand I don't remember? I don't
8 remember. I don't remember. He repeated it over and over
9 and over again because he doesn't want to answer questions
10 about what he did because he knows dang well it wasn't
11 justified.

12 He's lying. He's lying. One of the many
13 things I'm gonna be grateful about when this is done is I
14 never have to hear again that the actions he took that day
15 was the fault of these boys. That's ridiculous. That's
16 despicable.

17 There has never been any explanation from
18 the Defense as to why Nic Miu ran up on these boys, why
19 they grabbed -- why he grabbed their tubes. Why he was
20 groping around through their legs were. They don't even
21 respond to it. They said they didn't -- they didn't bring
22 it up. There is no explanation. That behavior is
23 inexplicable. He's a bizarre person. He made bizarre
24 choices that day.

25 It is not their fault. It is not their

1 fault. I'll say it a hundred times. It's not their
2 fault. These boys have beat themselves up every day since
3 this happened. You saw the raw emotion on the stand.
4 Their best friend was murdered by this guy, and to say
5 that it's their fault is despicable. Nobody's responsible
6 for Nic Miu's choices but him himself. He chose violence
7 at every turn.

8 There's been some question about whether
9 he's fragile. Part of him is fragile. His ego is
10 fragile. As his attorney had said early last week when
11 he's questioning these boys, you were trying to humiliate
12 him, you were trying to insult him, you were taunting him.
13 He was humiliated. He was insulted. He didn't like these
14 boys treating him like that. He certainly didn't like
15 Madison Coen getting in his face so to speak, and
16 eventually he did just snap. He pulled his knife out,
17 getting ready for violence. Pulled it out, holds it down
18 where nobody can see it, holds it at his side, and then he
19 hits her. That started the violence. He prepared for the
20 violence before he started it. He felt humiliated and he
21 wasn't gonna let it go. I asked him, Did you ever take a
22 step back at any time when she was yelling at you? No.
23 With no explanation.

24 We're dealing with what we call a false
25 narratives in this case, things that the Defense repeats

1 over and over and over again hoping that you think it's
2 fact, okay. One of these is this 13 to 1 narrative, okay.
3 We've heard it a hundred times in this trial. This is not
4 a 13 to 1 situation. We've got the six teenage boys
5 standing on the side by their tubes. He's confronted by
6 the two girls. Everybody else is in the background. He
7 hits Madison Coen when he's only got two girls standing in
8 front of him.

9 After the fight it's one on one to start,
10 it's Dante hitting him, and then arguably two on one when
11 A.J. comes up and pushes him in the back. Tony breaks it
12 up. The fight's done. He gets lost. And A.J., of
13 course, is already tore open so he's laying in the river.
14 But that's the end of the fight. Mr. Miu continued the
15 violence. He chose more violence after that part of the
16 fight was done.

17 Tony, who did exactly what his dad told him
18 to do, came up to try to break it up. You can hear him
19 telling Dante, his brother, to get away, get back. Mr.
20 Miu turns around and stabs him and Tony blocks it and
21 stabs him again. He chose violence at every turn.

22 There's another false narrative. They
23 circle him. They surrounded him. Bologna. You've seen
24 the video how many times. There's open water everywhere.
25 That he was attacked from all directions. False

1 narrative.

2 He said that Owen Peloquin testified that
3 they stuck around because they wanted to see how it played
4 out. That's true, but what he didn't mention is that Owen
5 also said I wanted to make sure he didn't do anything to
6 this woman. And you know what? Those instincts were
7 exactly right. Those instincts were right.

8 He keeps talking about how these boys
9 wanted to make a video. Well, they're making a video.
10 What -- what does that matter? They didn't start the
11 violence. None of those boys laid a hand on him despite
12 the fact that he touched both Jawahn Cockfield and Landon
13 Weyer when he ran up on them in their tubes. Nobody laid
14 a hand on him until after he had already stabbed a number
15 of people. Isaac Schuman tried to stop him. He got
16 killed for his efforts.

17 He seems to be arguing -- the Defense seems
18 to be arguing that Isaac somehow deserved it. I don't
19 understand that argument. He's trying to protect people.

20 He calls Mady Coen the queen of the river
21 and calls her a bully, calls her a number of other unkind
22 things. Her testimony was, and it's clear from the video,
23 she was trying to protect these boys. She saw that he was
24 over there doing something, that it was freaking them out.
25 She tried to protect them, you know. Maybe if we had more

1 people on the river trying to protect people the world
2 would be a better place.

3 They've made over and over, they've argued
4 that Mady was never punched because she has no marks on
5 her face. Nic Miu, who, as Mr. Chirafisi said, was lifted
6 off of his feet by the punch from Dante and punched in the
7 jaw and fell in the river, gets up, and there's no marks
8 on his face. We have pictures from him. We have the --
9 the video. We have his interview with Lieutenant Hart
10 later. We have the -- the pictures that the jail nurse
11 took five hours after. There's no bruising. There's no
12 puffiness. There's no swelling. The fact that they're
13 arguing that Mady had no mark doesn't matter because he
14 didn't either. It happens.

15 They're trying -- they're trying to say
16 that he was terrified. His face tells a different story.
17 He has expressions of anger, he has expressions of, I
18 guess, humor. He's smiling. He's smirking. After he has
19 his knife out he clearly feels comfortable. There's no
20 look of terror in his face at any time.

21 A.J. Martin was not armed. He pushed Mr.
22 Miu in the back. We know that. He didn't kick him, he
23 didn't punch him, he didn't hold his head under water, he
24 pushed him in the back, and for that he got a incision on
25 his body from his belt line all the way up. You saw the

1 pictures. It's horrible. He used no weapon against Mr.
2 Miu.

3 They made a big deal about Lieutenant Hart
4 telling Mr. Miu in the interview that she would have been
5 scared too. Well, she made that response after he had
6 been feeding her a load of BS about all this stuff that
7 supposedly happened, about having two kids pulling knives
8 on him and pulling his pants down and all the bologna that
9 he -- that he fed her. Based on that she said, yeah, I
10 would have been scared too.

11 They're arguing that he had no intent to
12 kill Isaac. Isaac weighed 100 -- 134 pounds at the time.
13 He was 250. He rams his knife up. Up. Not down. Up.
14 Severing two of Isaac's ribs. Right into his heart. All
15 right. If he didn't intend to kill him, why not stab him
16 in the belly? He went right into his heart.

17 We've heard no explanation whatsoever as to
18 why he stabbed Ryhley Mattison. We know from the video
19 she's standing off in the background after Tony's trying
20 to break it up. He just walked over and stabbed her. She
21 wasn't attacking him. They don't explain that because
22 there is no explanation. None.

23 He wasn't in fear for his life from Ryhley
24 Mattison. She said she was 110 pounds now, might have
25 been 115 back then. There was no fear for his life. He

1 just was mad because she touched him.

2 They talked a little bit about the
3 extraneous factors. It's not just medical attention that
4 is -- can be an extraneous factor. As we know, multiple
5 people on the river stopped to help these folks. Putting
6 compressions on, one witness said they used a sandwich bag
7 to try to make a chest compression. There was a lot of
8 interventions for these folks. We know with Ryhley
9 Mattison specifically that Larrion Davis and his brother,
10 we saw on the video, got her to shore on a tube. People
11 went out of their way to help these folks. These are
12 extraneous factors.

13 But another extraneous factor is he just
14 got unlucky, you know. If he -- as -- as Mr. Anderson had
15 said, we've got arteries, we've got organs. Dr. Myer
16 said, you know, whenever you have a -- an abdomen wound
17 you have to check all those things. It's kind of a
18 miracle that more people didn't get killed. It's not by
19 anything he did, he just got lucky. He missed major
20 organs and arteries.

21 The bottom line is he had four hours from
22 the time that he was arrested to the time that he
23 concocted this ridiculous story about the -- the boys
24 pulling knives on him and pulling his pants down and all
25 this other bizarre bologna.

1 He used his intellect, because we know he's
2 smart, to craft this story. And he was very deliberate
3 and detailed because he wanted to come up with a story
4 that he thought would be sufficient to convince people
5 that he acted in self-defense. We know he lied about all
6 of it. So now today he's saying, well, sure I lied about
7 everything I said when I talked to Lieutenant Hart about
8 what happened, but now I'm telling the truth, so now
9 believe me. No. No. No.

10 You have my full confidence. I know you're
11 gonna return a just verdict of guilty and deliver justice
12 to Isaac Schuman and everybody else who got hurt by this
13 man. Thank you.

14 THE COURT: Now, members of the jury, the duties
15 of counsel and the Court had been performed. The case has
16 been argued by counsel. The Court has instructed you
17 regarding the Rules of Law which should govern you in your
18 deliberations. The time has now come when the great
19 burden of reaching a just, fair, and conscientious
20 decision of this case is to be thrown wholly upon you, the
21 jurors, selected for this important duty.

22 You will not be swayed by sympathy,
23 prejudice, or passion. You will be very careful and
24 deliberate in weighing the evidence. I charge you to keep
25 your duty steadfastly in mind and, as upright citizens, to

1 render a just and true verdict.

2 You are to decide only whether Mr. Miu is
3 guilty or not guilty of the offenses charged. Any
4 consequence of your verdict are matters for the Court
5 alone to decide and they must not affect your
6 deliberations.

7 Multiple forms of verdict will be submitted
8 to you concerning the charges against the Defendant,
9 Nicolae Miu.

10 For Count 1, five forms of verdict will be
11 submitted. They read: As to Count 1 of the Information,
12 Isaac Schuman, the jury finds Nicolae Miu guilty of first
13 degree intentional homicide, as charged.

14 Another form: As to Count 1 of the
15 Information, Isaac Schuman, the jury finds Nicolae Miu
16 guilty of second degree intentional homicide, as
17 submitted.

18 Another form: As to Count 1 of the
19 Information, Isaac Schuman, the jury finds Nicolae Miu
20 guilty of first degree reckless homicide, as submitted.

21 Another form: As to Count 1 of the
22 Information, Isaac Schuman, the jury finds Nicolae Miu
23 guilty of second degree reckless homicide, as submitted.

24 Lastly, as to Count 1 of the Information,
25 Isaac Schuman, the jury finds Nicolae Miu not guilty.

1 Return only one for your verdict. If you
2 return a guilty verdict, you must also answer this
3 question: Did Mr. Miu commit the crime while using a
4 dangerous weapon?

5 As to Count 2, five forms of verdict will
6 be submitted. They read: As to Count 1 of the
7 Information, Alexander Martin, the jury finds Nicolae Miu
8 guilty of attempted first degree intentional homicide, as
9 charged.

10 Another form: As to Count 2 of the
11 Information, Alexander Martin, the jury finds Nicolae Miu
12 guilty of attempted second degree intentional homicide, as
13 submitted.

14 Another form: As to Count 2 of the
15 Information, Alexander Martin, the jury finds Nicolae Miu
16 guilty of first degree recklessly endangering safety, as
17 submitted.

18 Another form: As to Count 2 of the
19 Information, Alexander Martin, the jury finds Nicolae Miu
20 guilty of second degree recklessly endangering safety, as
21 submitted.

22 Finally, as to Count 2 of the Information,
23 Alexander Martin, the jury finds Nicolae Miu not guilty.

24 Again, return only one for your verdict.

25 If you return a guilty verdict, you must

1 also answer the dangerous weapon question.

2 As to Counts 3, Dante Carlson; Count 4,
3 Anthony Carlson; and Count 5, Ryhley Mattison, the Court
4 will give you five verdict forms for each count that are
5 worded similar to the ones given to you for Count 2.

6 As to Count 6, Madison Coen, two forms of
7 verdict will be submitted.

8 One reading: As to Count 6 of the
9 Information, Madison Coen, the jury finds Nicolae Miu
10 guilty of battery, as charged.

11 Next, as to Count 6 of the Information,
12 Madison Coen, the jury finds Nicolae Miu not guilty.

13 Again, if you return a guilty verdict you
14 must answer the dangerous weapon question.

15 It is for you to determine whether Mr. Miu
16 is guilty or not guilty of each of the six counts
17 submitted to you. You must make a finding as to each
18 count of the Information. Each count charges a separate
19 crime and you must consider each one separately. Your
20 verdict for the crime charged in one count must not affect
21 your verdict on any other count.

22 This is a criminal, not a civil, case.
23 Therefore, before the jury may return a verdict which may
24 legally be received, the verdict must be reached
25 unanimously. In a criminal case, all 12 jurors must agree

1 in order to arrive at a verdict.

2 When you retire to the jury room, select
3 one of your members to preside over your deliberations.
4 The presiding juror's vote is entitled to no greater
5 weight than the vote of any other juror.

6 If you need to communicate with the Court
7 while you are deliberating, send a note through the
8 bailiff, signed by the presiding juror. To have a
9 complete record of this trial, it is important that you
10 communicate with the Court only by a written note.

11 If you have questions, the Court will talk
12 with the attorneys before answering so it may take some
13 time. You should continue your deliberations while you
14 wait for an answer. The Court will answer any questions
15 in writing or orally here in open court.

16 When you have agreed upon your verdict,
17 have it signed and dated by the person you have selected
18 to preside.

19 After you have reached a verdict, the
20 preceding juror will notify the bailiff that a verdict has
21 been reached, everyone will return to the courtroom, the
22 verdict will be read into the record in open court, the
23 Court may ask each of you if you agree with the verdict.

24 At this time please administer the oath to
25 the bailiff.

1 (Whereupon, the bailiff was sworn.)

2 THE BAILIFF: I will.

3 THE COURT: The bailiff has extra copies of the
4 jury instructions. I imagine you'll probably want to
5 consult with them during the course of your deliberations.
6 I believe he has four or five sets. If you need more, let
7 him know and I will print more for you.

8 He also has the verdict forms in each of
9 the manila envelopes. One envelope per count.

10 If you reach a verdict, please put that
11 verdict, signed by the foreperson, back into the envelope.
12 The other forms that you don't use can be discarded, but
13 there only should be one verdict form returned back in
14 each envelope.

15 Now, members of the jury, as I mentioned to
16 you at the beginning of the trial, only 12 jurors can
17 deliberate. Two alternates were seated in the event that
18 we lost jurors due to health, emergency, or some form of
19 misconduct.

20 The alternates have been termed -- had been
21 determined by lot by the Clerk of Court. The alternate
22 jurors are not released from jury duty. Alternate jurors
23 may be called upon to deliberate if we happen to lose one
24 of the 12 jurors during the course of deliberations. So
25 basically the alternates are needed to be at the ready and

1 stand by in the event that they are needed.

2 The alternate jurors will be free to leave
3 the building but you may not talk about this case with
4 anyone. You may not research or investigate the case on
5 your own. You may not read social media posts. You may
6 not read news reports about this case.

7 If we need an alternate juror to
8 participate in deliberations, the Clerk of Court will
9 contact you, so we'll need a phone number before you
10 leave. You will be expected to return relatively quickly.
11 So please stay close to home or close to your place of
12 work if it's nearby.

13 We will keep your personal notes safe in a
14 secure, private location in the event that you're called
15 upon to deliberate.

16 At this time I'll ask for the envelope.

17 The two alternate jurors are Darren Vergin
18 and Luke Oehlke.

19 The bailiff will take all 14 of you into
20 the back. Lunch has arrived. The alternate jurors, if
21 you would like to take your lunch and leave, you may. If
22 you'd like to have a private place where you can eat it
23 here in the courthouse we'll provide you with that
24 facility. But the alternate jurors may not eat with the
25 other 12 because the other 12 may begin their

1 deliberations once they are back in the delib -- back in
2 the deliberation room.

3 Please take the jury out.

4 (Whereupon, the jury exits the courtroom.)

5 THE COURT: Mr. Anderson, do you have any
6 objection to the manner in which I read the jury
7 instructions?

8 MR. ANDERSON: No.

9 THE COURT: Mr. Chirafisi, do you?

10 MR. CHIRAFISI: No, sir.

11 THE COURT: All right. The alternate juror
12 forms -- or the alternate -- how do I call this? The
13 jurors selected for 12 -- the 12 jurors selected for
14 deliberation are listed on the form if either of you need
15 to see it. The clerk has it. You may look at it.

16 Before we adjourn, attorneys please stay
17 close by in case there are questions.

18 I do want to compliment both of you --
19 actually, all of you on your conduct and demeanor during
20 the course of this trial. It is difficult subject matter.
21 It is difficult law to get your mind around. These are
22 tragic events, traumatic events, and I thought you carried
23 yourselves with dignity during these proceedings, and I
24 think your clients, the victims, and the community should
25 be proud of the way that you have administered justice

1 today. You both have given this jury a lot to think
2 about.

3 We stand in recess.

4 (Whereupon, a break was held.)

5 THE COURT: All right. We are back on the
6 record, State versus Miu, with the attorneys and Mr. Miu
7 present in the courtroom.

8 The jury has a question -- I guess a
9 request really. They'd like to see both of the Jawahn
10 Cockfield videos.

11 Mr. Anderson, your comments?

12 MR. ANDERSON: The nine-second video has been
13 played multiple times. It's only nine seconds. The other
14 video I don't think has been played in -- in entirety only
15 once, so I don't have any objection to the main video
16 being played.

17 THE COURT: Mr. Chirafisi?

18 MR. NELSON: Judge, if you may -- we're not
19 sitting in the right seats, I apologize. If it's played,
20 I think it needs to be -- they need to be brought back
21 into the courtroom --

22 THE COURT: Yes.

23 MR. NELSON: -- and it needs to be played in
24 here. We're fine with that.

25 THE COURT: In my judgment the jury is entitled

1 to see the evidence. This has been a multi-day trial,
2 there's lots of things to consider, there are lots of
3 nuances in the jury instructions. So I think it's
4 reasonable for the jury to re-examine the exhibits.

5 They can't have the video in the
6 deliberation room so they'll have to come out into the
7 courtroom to see it. If the jury thinks that watching
8 both videos will be helpful to their deliberations,
9 they're entitled to see both videos. So we'll have them
10 brought back in and we will play them both.

11 I'd like to have the videos played in
12 chronological order. So we'll start with the nine-second
13 video, watch it, and then we will move on to the next
14 video.

15 Now, when they come in, this won't be the
16 opportunity for Q and A or comment or discussion. The
17 opportunity for persuading the jury is over. I may ask
18 the jury if they want to see it again because it moves
19 fast. So if they want to see it again, we'll play it
20 again, but I will be the one doing the questioning.

21 Any questions about the process?

22 MR. ANDERSON: Who do you want to play it?

23 THE COURT: It doesn't matter.

24 MR. NELSON: I don't have my computer so -- I'm
25 happy to go get it but --

1 MR. ANDERSON: I can do it. That's fine.

2 THE COURT: Okay. So you'll play the video.
3 I'll give you the cues to start.

4 MR. NELSON: And, Judge -- I'm sure Your Honor
5 will, but I would imagine when they come in Your Honor's
6 going to tell the jury as well that this is not the time
7 for questions and answers?

8 THE COURT: Exactly.

9 MR. NELSON: All right. Perfect.

10 THE COURT: All right. We stand in recess until
11 they come back.

12 (Whereupon, a break was held.)

13 THE COURT: Okay. Let's bring the jury in.

14 (Whereupon, the jury enters the courtroom.)

15 THE COURT: All right. We are back in session.
16 The jury is present with the attorneys and Mr. Miu.

17 We did receive your request to see the
18 Jawahn Cockfield videos.

19 This is not the opportunity for persuading
20 you or for adding new arguments. So the attorneys are not
21 going to comment. We're essentially stepping into your
22 deliberations, but you are entitled to see these videos so
23 we are going to show them to you but you won't hear from
24 anybody else.

25 We're going to start with the nine-second

1 video because that was the first in time sequentially. We
2 will play it from beginning to end. I will check and see
3 if you want to watch it again. We can replay it.

4 Once you're satisfied with that video, then
5 we'll move on to the longer one. And we'll do the same
6 thing: If you want to watch it a second time or a third
7 time we can, but we're going to run it from beginning to
8 end in realtime.

9 Are you ready?

10 MR. ANDERSON: Yes.

11 THE COURT: All right. Let's pull up the video.
12 (Whereupon, the video started.)

13 THE COURT: Hold up. Hold. Hold. Start over,
14 please.

15 (Whereupon, the video started.)

16 THE CLERK: I'm going to have to reset the
17 system. You can't just play, otherwise it's going to pick
18 up everything, okay, so bear with me for a second.

19 Are you ready?

20 THE COURT: Yes.

21 THE CLERK: Okay.

22 THE COURT: All right. Action.

23 (Whereupon, the video was played.)

24 THE COURT: Okay. Anybody want to see it again?

25 (No response.) No hands. Let's move on to the next --

1 THE JUROR: I want to.

2 THE COURT: One more time?

3 THE JUROR: One more time, please.

4 THE COURT: Okay.

5 (Whereupon, the video was played.)

6 THE COURT: Anybody else? (No response.)

7 Okay. Let's move on to the next video
8 then.

9 (Whereupon, the video was played.)

10 THE COURT: Anybody need to see it again?

11 THE JUROR: Yes, please.

12 THE COURT: Want to see the entire --

13 THE JUROR: Yes.

14 THE COURT: -- or do you want to stop it at a
15 certain point?

16 THE JUROR: I'd like to stop -- I'd like to see
17 the beginning, the middle, but not the very end.

18 THE COURT: Not the very end?

19 Let's take the video down.

20 Mr. Anderson, if you can get the video --
21 actually, I can see it on my screen, they can't see it out
22 there. Put up the video and I'd like to get it to a point
23 where I can end it. But I want to see it first so I can
24 tell you where.

25 MR. ANDERSON: Keep going?

1 THE COURT: I can't see it.

2 MR. ANDERSON: Oh.

3 THE COURT: Oh. My mistake.

4 More. More. More. That's it.

5 So it's about 2 minutes 25 seconds,
6 27 seconds.

7 All right.

8 (Whereupon, the video was played.)

9 THE JUROR: I think that's okay.

10 THE COURT: That is where we're going to stop it.

11 THE JUROR: Okay.

12 THE COURT: Yeah. Thank you.

13 Anybody else need to see it or a different
14 part? (No response.) Everyone's good? (Non-verbal
15 response.)

16 All right. The jury -- or the bailiff will
17 take you back. Please continue your deliberations.

18 (Whereupon, the jury exits the courtroom.)

19 THE COURT: Mr. Anderson, anything for the
20 record?

21 MR. ANDERSON: No.

22 THE COURT: Mr. Chirafisi?

23 MR. CHIRAFISI: No.

24 THE COURT: All right. That's all. We're in
25 recess.

1 (Whereupon, a break was held.)

2 (Whereupon, the jury enters the courtroom.)

3 THE COURT: We are back in session. The
4 attorneys are present, Mr. Miu is present, 12 jurors are
5 present.

6 Members of the jury, the bailiff has
7 notified me that you would like to adjourn, go home, and
8 then come back tomorrow morning. You're nodding your
9 heads in agreement that's your preference. That is your
10 prerogative, so we will follow your wishes.

11 The warnings tonight are the same as
12 before: No independent research, no investigation about
13 the case, do not view any media reports, social media
14 posts, internet commentary, or video about this case. Do
15 not talk with anyone about the case either. It would be
16 highly improper for anybody to attempt to influence your
17 judgment at this stage or any stage for that matter of
18 these proceedings.

19 The bailiff will take you out. Let's come
20 back tomorrow morning at eight o'clock?

21 THE JUROR: Yes.

22 THE COURT: Okay. Eight o'clock. Same routine
23 as before.

24 Please take the jury out.

25 (Whereupon, the jury exits the courtroom.)

1 THE COURT: We're outside the presence of the
2 jury. I do have another note. They are requesting to see
3 the Cockfield video again. The exact wording is: Can we
4 see Cockfield video tomorrow morning from 10 seconds
5 before the confrontation with Mady Coen to 2:27 seconds?
6 Signed by the foreperson.

7 Comments, Mr. Anderson?

8 MR. ANDERSON: No objection.

9 MR. NELSON: No objection.

10 THE COURT: All right. Since there's no
11 objection, we will plan for that.

12 As soon as the jury arrives we'll assemble
13 in the courtroom. I'd like to have the video connected
14 and ready to go, and then we'll follow the same procedure
15 as we did earlier today: No comments, no commentary, no
16 opportunities to persuade or influence the jury. They're
17 simply coming in to view the video and then they will
18 return to the deliberation room.

19 MR. NELSON: Do we agree that it would start then
20 at 1:40?

21 THE COURT: I don't know what the time would be.
22 They're just asking for 10 seconds before the
23 confrontation with Madison Coen. So I'll let the
24 attorneys identify what point in the video that is and
25 then we'll display it.

1 MR. NELSON: I assume that --

2 THE COURT: I beg your pardon?

3 MR. NELSON: I would -- maybe you don't want us
4 to talk about it right now.

5 THE COURT: Yeah.

6 MR. NELSON: So I was going to talk but --

7 THE COURT: Yeah. You guys -- you guys can
8 figure that out, where in the sequence it should start
9 from.

10 Anything else from the Defense?

11 MR. NELSON: No, Judge.

12 MR. CHIRAFISI: No.

13 THE COURT: All right.

14 MR. NELSON: Can we --

15 THE COURT: Have a goodnight, everyone.

16 MR. NELSON: -- approach?

17 THE COURT: Yes. We'll see you tomorrow.

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

19 (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