

Official Trial Transcript

Volume V of VIII

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Testimony of [Name Redacted] (Part 1)

Direct Examination by Mr. Baiamonte, Page 68 -75

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Q: Did you see or hear Damacio Montano say or do anything?

A: No. He was just running towards the car.

Q: When he got to the car, what happened?

A: Nestor got out, and then he started fighting.

Q: Where was Eric Montano?

A: He was there. And as soon as he sees Eric—Damacio running, that's when he runs over there, and I run over there.

Q: Was Damacio saying anything to Nestor?

A: No. I don't even know.

Q: Did you hear if Nestor said anything to Damacio?

A: No.

Q: Could you hear any words spoken by anybody?

A: No.

Q: What happened next?

A: They started fighting. It escalated and went to the front of the car. Damacio is on the front of the car, and he is beating the shit out Nestor bad. I mean, he has him and he's beating him. And that's when Eric goes over there, and they both have at him. They're not trying to detain them or stop them from fighting. They're beating him up bad.

Q: What is Nestor doing

A: He's just taking it. They have him down like that, and they are socking him. Socking him hitting him.

Q: When you say, "They had him down like that," you leaned back in your chair and put your hands up to your shoulders about at your ears. What, if anything, was restraining Nestor from resisting or restraining himself?

A: Nothing. They both had him down.

Q: Was somebody holding Nestor's hands?

A: They were both holding them, yeah. One of them was holding him like this, and they were like both going full force at him.

Q: Was Nestor saying anything?

A: No.

Q: Had anybody identified themselves as a police officer at this time?

A: Nope.

Q: What are you doing?

A: We were actually—we were trying—we actually got them—trying to, you know, get them off of them. And I even went up to Eric and told him, "Please stop fighting. Stop fighting already." It wouldn't happen. They wouldn't stop fighting.

Q: When you said, "We were trying to stop them," who do you mean?

A: Me, Vangie, and Annette.

Q: And you actually spoke to Eric Montano?

A: I did.

Q: Did he respond in any way?

A: No.

Q: What happened next?

A: They just kept on beating him up, kept on and kept on. And they were like flies on, you know, dog caca. It was bad. They were not getting off. They were not letting him loose. That's why the whole thing escalated. That's when they got them pulled down there.

Q: One step at a time. At any time, did Nestor get rolled over or roll himself over on the belly of the car?

A: Yes, they did.

Q: How did that happen?

A: Trying to turn him over, and they were just hitting him on the back of the head. And that's when Damacio bit Nestor in the back.

Q: How close were you to that?

A: We were actually right there. Right in front of the hood of car, like on the side.

Q: Are you closer to it than you are to me right now?

A: Probably.

Q: Well, please describe this bite of Damacio to Nestor.

A: He just bit him. Just like—he was like hitting him, and then he just went back. I don't know if Nestor came up, like, you know, try to come up and that's when he bit him, but Nestor had a big 'ol bite on his back. And you could see it, the blood.

Mr. Lopez: Judge, Objection. I think she's speculating at this point. I don't think that she testified she actually saw the bite. I think this is what Nestor told her.

The Court: Rephrase the question.

Q: (By Mr. Baiamonte) You see Damacio's mouth make contact with Nestor's body, correct?

A: Correct.

Q: Was there anything obstructing your view?

A: No.

Q: And the lighting was how?

A: Fine.

Q: How long was Damacio Montano's mouth on Nestor Chavez' back?

A: Probably not that long, just long enough to bite him and let go.

Q: What did Nestor say?

A: He was just like—you know, there was nothing. They were holding him down. They was nothing like he could, you know, hit him. They were holding him down.

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Q: (By Mr. Baiamonte) All right. So after the bite, what happened next?

A: They were just still beating him up, still> They got turned like—turned him over, and Nestor was totally bleeding all over. You know, his nose, his face, and his eyes were like black, like they were beating him up.

Q: Was blood coming out of his back from the bite?

A: They had turned him around. When he bit him, you could see where the blood came through the shirt, but other than that, he turned back around.

Q: What happened next?

A: When Michael actually came up and he was helping, you know, he tried to get them to stop beating him up, but—we were all trying to, you know, and nothing was happening. Nothing was working.

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Q: What did Michael do, if anything, to break the fight up? Just try to stop him? Just try to like, you know, not—get him off of him? Did he touch either Eric or Damacio with his hands?

A: He might have, yeah.

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Q: What happened next?

A: Michael disappeared. I don't know where he went. He came back around—he came back around and he had the gun.

Q: What did he say?

A: He points at the gun, and he says, "Back up. Just back up."

And Eric did. Eric backed up, and he put his hands up, and he said, "Okay, okay, okay. All right. We're backing up.

But Damacio didn't back up at all. He said, "What? You're fucking with two cops. What?" And he just kept on going at him, kept on going at him.

Q: What happened next?

A And Michael kept telling him, "Just back up. Just back up."

And he says, "All right. Brother. Are you all right? Get up." And that's when he helped Nestor get up. And still he kept—he had the gun and told him, "Just back up." And Damacio kept coming towards him, kept coming towards him, wouldn't let go, wouldn't let him leave or nothing. Started shooting him.

Q: Who's the first person that got shot?

A: The gun was never pointed at Eric. To my thinking, I think that it ricocheted. I was standing there the whole time, and I never seen the gun pointed at Eric. Never. It was always pointed at Damacio.

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Q: Well, I probably didn't ask a very good question. I apologize, [Name Redacted]. We're at the point where Michael is holding a weapon, and Damacio said, "What? What? Do you know—I'm sorry, tell us what he said.

A: He just put his hands up—you know, Eric backed up. Eric put his hands up and backed up. And he said, "Okay. We're backing up." But Damacio never backed up.

Q: And Damacio said what?

A: He just put his hands up and he says, "What? You're fucking with two cops. What?" And he just keeps on going.

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