

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

SEP 15 2017

Appeal from Charleston County
Honorable Kristi Lea Harrington, Circuit Court Judge

S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

DENNIS E. CERVANTES-PAVON,

APPELLANT

APPELLATE CASE NO. 2015-002472

RECORD ON APPEAL

SUSAN B. HACKETT
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

SUSANNAH R. COLE
Assistant Attorney General
S.C. Bar No. 68383
South Carolina Office of Attorney General
P.O. Box 11549
Columbia, SC 29211-1549

SCARLETT A. WILSON
Solicitor, Ninth Circuit
101 Meeting Street, Suite 400
Charleston, SC 29401
(843) 958-1900

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED NOVEMBER 9-11, 2015	1
IMMUNITY FROM PROSECUTION HEARING	
TESTIMONY	
HERBIE EVANS	
Direct examination by Ms. Parnall	10
Cross examination by Mr. Durant	14
JOSE TOMAS SOMOSA	
Direct examination by Mr. Cochran	18
Cross examination by Mr. Durant	28
Redirect examination by Mr. Cochran	42
Recross examination by Mr. Durant	44
DENNIS CERVANTES-PAVON	
Direct examination by Ms. Parnall	45
Cross examination by Mr. Durant	59
ARGUMENT BY MS. PARNALL	66
ARGUMENT BY MR. DURANT	70
RULING BY THE COURT	72
OPENING STATEMNT BY MS. DURANT	74
OPENING STATEMENT BY MS. PARNALL	80
TESTIMONY	
MICHELLE JOHNSON	
Direct examination by Mr. Durant	84
WILLIAM HEPP	
Direct examination by Mr. Durant	94
LOGAN FEY	
Direct examination by Mr. Durant	101
Cross examination by Mr. Cochran	113

TRAVIS FLOWERS	
Direct examination by Mr. Durant.....	115
Cross examination by Mr. Cochran	143
JEREMIAH OXENDINE	
Direct examination by Mr. Durant.....	155
Cross examination by Mr. Cochran	174
RONNIE HUNT	
Direct examination by Mr. Durant.....	181
Cross examination by Ms. Parnall	194
RAFAEL PUENTES	
Direct examination by Mr. Durant.....	199
Cross examination by Ms. Parnall	206
HERBERT EVANS	
Direct examination by Mr. Durant.....	207
Cross examination by Ms. Parnall	214
A.J. SANTOS	
Direct examination by Mr. Durant.....	215
Cross examination by Ms. Parnall	225
ROBERT FARRELL	
Direct examination by Mr. Durant.....	227
Cross examination by Ms. Parnall	250
ASHLEY SMITH	
Direct examination by Mr. Durant.....	252
Cross examination by Ms. Parnall	263
TRIAL TRANSCRIPT DATED NOVEMBER 12-13, 2015	264
TESTIMONY	
NICHOLAS BATALIS	
Direct examination by Mr. Durant.....	266
Cross examination by Mr. Cochran	280
DEFENSE MOTION FOR DIRECTED VERDICT	282
RULING BY THE COURT.....	287
CHARGE CONFERENCE.....	288

TESTIMONY

DENNIS CERVANTES-PAVON	
Direct examination by Ms. Parnall	292
Cross examination by Mr. Durant.....	313
CHARGE CONFERENCE.....	335
CLOSING ARGUMENT BY MS. PARNALL.....	338
CLOSING ARGUMENT BY MR. DURANT	344
CHARGE ON THE LAW	353
JURY QUESTIONS	369
JURY QUESTIONS	371
VERDICT	379
POLLING OF THE JURY.....	379
SENTENCING	380
DEFENDANT’S MOTION FOR PRE-TRIAL HEARING TO DETERMINE § 16-11-450 IMMUNITY FILED OCTOBER 19, 2015.....	382
COURT’S EXHIBIT # 3 (JURY NOTE).....	384
COURT’S EXHIBIT # 4 (JURY NOTE).....	385
COURT’S EXHIBIT # 5 (JURY NOTE).....	386
COURT’S EXHIBIT # 6 (JURY NOTE).....	387
NOTICE OF APPEAL.....	388
INDICTMENT.....	391
SENTENCE SHEET.....	393
CERTIFICATE OF COUNSEL	387

THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

**TRIAL EXHIBITS: STATE'S EXHIBITS #11-13, 16, 40-44, 46, 60, 62-63 (ALL PHOTOS)
DEFENDANT'S EXHIBIT #2 (PHOTO)**

IMMUNITY HEARING EXHIBIT: DEFENDANT'S EXHIBIT #1 (PHOTO)

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF CHARLESTON	)	DOCKET NO. 2015-GS-10-0418
	)	
	)	
STATE OF SOUTH CAROLINA	)	
	)	
	)	
vs.	)	
	)	
DENNIS E. CERVANTES-PAVON	)	
	)	
Defendant	)	
	)	
	)	
	)	
	)	TRANSCRIPT OF RECORD

November 9, 2015
Charleston, South Carolina

VOLUME 1

B E F O R E:

THE HONORABLE KRISTI L. HARRINGTON, JUDGE

A P P E A R A N C E S:

BRUCE DURANT, ESQ.
Attorney for the State

CHRISTINA D. PARNALL, ESQ.
CHARLES COCHRAN, ESQ.
Attorneys for the Defendant

Court Interpreters:
LUNA GAINER
CARLA COLLINS

JOYCE C. RUEGER, CVR-M
Circuit Court Reporter

INDEX TO EXHIBITS

[All exhibits pre-marked prior to start of trial unless otherwise indicated in transcript]

STATE - DUNCAN HEARING

PAGE

<u>No.</u>	<u>Description</u>	<u>Marked / Admitted</u>
1	Somosa statement 8-13-15	72
2	Somosa statement 8-15-14	75
3	Immigration Interview	101

DEFENDANT

<u>No.</u>	<u>Description</u>	<u>Marked / Admitted</u>
1	Photograph	4 97

State v Dennis Cervantes-Pavon
Proceedings
November 9, 2015

1 PROCEEDINGS

2 [Whereupon, defendant's exhibit number 1 is marked
3 by the court reporter]

4 THE COURT: Thank you.

5 CLERK OF COURT: Do you swear or affirm that you
6 shall truthfully interpret for the defendant and
7 witnesses all statements made by the court and its
8 officers directed to the defendant and thereon fully
9 interpret for the court and it's officers all responses
10 made by the defendants so help you God?

11 MS. COLLINS: I do.

12 MS. GAINER: I do. Luna Gainer.

13 THE COURT: And if you could state your name for
14 the record?

15 MS. COLLINS: Yes, ma'am. Carla Collins.

16 THE COURT: And spell your last name.

17 MS. COLLINS: C-O-L-L-I-N-S.

18 MS. GAINER: Luna Gainer, G-A-I-N-E-R.

19 THE COURT: All right. And tell me how we are
20 going to -- where is the defendant?

21 SHERIFF'S OFFICE DEPUTY: He's coming up now. He's
22 on his way.

23 THE COURT: Okay. Can we go ahead and get the
24 procedural stuff out of the way?

25 MS. PARNALL: That's fine, Your Honor.

State v Dennis Cervantes-Pavon
Proceedings
November 9, 2015

1 THE COURT: Tell me how we're going to do this?

2 INTERPREPER GAINER: We have -- Your Honor and
3 there are some headsets that the defendant will have
4 while the two interpreters will be probably switching
5 like every half hour or whenever we need to.

6 THE COURT: Okay.

7 INTERPREPER GAINER: So for the part that is just
8 courtroom conversations or Your Honor speaking or just
9 anything that is going on in English we will be
10 interpreting everything that is being heard in the
11 courtroom that is going on the record to the defendant.
12 Also, we have extra headsets in case the victim or any
13 other next of kin would like to ---

14 INTERPRETER COLLINS: --- for the victim; next of
15 kin to the victim.

16 INTERPREPER GAINER: Next of kin of the victim if
17 they need to be listening we have headsets. And then of
18 course when there is a witness who speaks Spanish we will
19 be coming up to the witness stand with that witness to
20 interpret for the record what is being said in Spanish.

21 THE COURT: All right. Do we have Spanish
22 speaking witnesses?

23 MR. DURANT: Not from me but maybe from them.

24 THE COURT: All right. And you will let me know
25 if I am speaking too rapidly?

State v Dennis Cervantes-Pavon
Proceedings
November 9, 2015

1 INTERPREPER GAINER: We will, Your Honor. And one
2 more thing if it is possible at some point we might not
3 be hearing well from back here especially if there is a
4 witness there so is there a possibility to maybe put a
5 chair right in front of Your Honor and we would speak so
6 softly you would never hear us just for one of us to kind
7 of ---

8 THE COURT: --- let's see how this goes ---

9 INTERPREPER GAINER: --- we'll see how it goes.

10 THE COURT: Right now I'm going to say no, but I do
11 want the trial to run smoothly so if it becomes an issue
12 either maybe put you on the other side of the witness
13 chair.

14 INTERPREPER GAINER: Okay. Thank you, Your Honor.

15 THE COURT: If that becomes an issue and if you
16 can't hear that means Mr. Cochran really can't hear
17 either so. Mr. Cochran because you will be the closest
18 one to the interpreters if you will just let me know that
19 they are having a hard time hearing.

20 INTERPREPER GAINER: Your Honor, it is a little
21 different because we are speaking and our voices ---

22 INTERPRETER COLLINS: --- can't hear over our
23 voices and hear the person who is speaking at the same
24 time so it's a little bit more challenging for us to
25 hear.

State v Dennis Cervantes-Pavon
Proceedings
November 9, 2015

1 THE COURT: He would be a good gauge is what I'm
2 saying.

3 INTERPRETER COLLINS: Okay. So just let him?

4 THE COURT: Right. So he is going to monitor. If
5 he can't hear he'll let me know and if you can't hear you
6 tell him and he'll let me know. All right?

7 INTERPRETER COLLINS: Yes, ma'am. Thank you.

8 THE COURT: Thank you. Mr. Durant anything before
9 we bring in the jury?

10 MR. DURANT: I don't think so, Your Honor.

11 THE COURT: And what I understand the plan to be is
12 we'll pick the jury then break for lunch and let the jury
13 go for the day, finish our pretrial motions lunchtime is
14 that correct?

15 MR. DURANT: I believe so, that would be a good
16 plan, Your Honor.

17 MS. PARNALL: That's my understanding as well, Your
18 Honor. I did want to add my investigator to the witness
19 list. I think you also wanted a list of the attorneys
20 and personnel in our office just for the witnesses -- I
21 mean for the jury pool.

22 THE COURT: Do you want me to have y'all read out
23 your employees---

24 MR. DURANT: --- I don't particularly care to read
25 out the employee list Your Honor because I don't have one

State v Dennis Cervantes-Pavon
Proceedings
November 9, 2015

1 MS. PARNALL: I understand, Your Honor.

2 THE COURT: And have we invoked the rule or is that
3 applicable here? The rule of sequestration does that
4 apply at this point?

5 MS. PARNALL: Your Honor, if we may at this point
6 in time I think we probably should.

7 THE COURT: Any objection?

8 MR. DURANT: I think the only person I have in here
9 that is a potential witness is Mr. Puentes and he's the
10 victim's father so I think he has a right to be here.

11 THE COURT: All right. Anything before we get
12 started?

13 MS. PARNALL: Your Honor, I would just ask that Mr.
14 Puentes be sequestered as well as the other witnesses if
15 he is going to be presenting testimony ---

16 THE COURT: --- I think he has a right to be here
17 as the victim. I'll note your objection. Anything
18 before we get started?

19 MR. DURANT: Nothing from the State, Your Honor.

20 MS. PARNALL: Nothing further from the defense,
21 Your Honor.

22 THE COURT: All right.
23
24
25

State v Dennis Cervantes-Pavon
Duncan Hearing-Remarks by Ms. Parnall
November 9, 2015

1 DUNCAN HEARING

2 MS. PARNALL: To begin, Your Honor, the defense
3 would call Herbie Evans.

4 THE COURT: If you will just outline what we're
5 doing for your first motion.

6 MS. PARNALL: Yes, Your Honor. The defense is
7 bringing a motion for a pretrial Duncan Hearing for
8 immunity. And Your Honor we would like to present
9 testimony from several witnesses to show that the
10 defendant not only met all of the factors of self-defense
11 but in addition that he falls under subsection C of the
12 Protection of Persons and Property Act and that due to
13 him falling under subsection C the fact that he was
14 acting lawfully in a place where he had a right to be
15 that he does not have any duty to retreat.

16 And we believe that he would be able to meet those
17 other factors for self defense that the testimony will
18 establish that and for those reasons that he should be
19 immune from prosecution under the Protection of Persons
20 and Property Act.

21 THE COURT: Okay. Do you wish to have any outline
22 of argument?

23

24

25

State v Dennis Cervantes-Pavon
Duncan Hearing-Reply by Mr. Durant
November 9, 2015

1 MR. DURANT: Just a brief response, Your Honor.
2 Number one I would argue that the Protection of Persons
3 and Property Act does not apply because he is an illegal
4 alien and has no right to be in the country at all much
5 less over there. Secondly I believe the evidence will
6 show that there will be a jury issue as to whether or not
7 it was self defense in this case.

8 THE COURT: All right. Call your first witness.

9 MS. PARNALL: Thank you, Your Honor.
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

State v Dennis Cervantes-Pavon
Duncan Hearing-Herbie Evans-Direct Examination by Ms. Parnall
November 9, 2015

1 MS. PARNALL: The State [sic] would call Herbie
2 Evans to the stand.

3 ; [Whereupon, Mr. Evans comes forward]

4 [Whereupon, the witness is duly sworn by the Clerk
5 of Court]

6 CLERK OF COURT: Please state your first and last
7 name and then spell your last name loudly and clearly
8 into the microphone.

9 THE WITNESS: Herbie Evans, E-V-A-N-S.

10

- - - - -

11

HERBIE EVANS,

12

Having been first duly sworn,

13

Was examined and testified as follows:

14

DIRECT EXAMINATION

15

BY MS. PARNALL:

16

Q. Thank you Mr. Evans. Where were you working on the
17 date of August the 13th, 2014?

18

A. I was working at the Belk for Frisch and Associates.

19

Q. And what was your job title?

20

A. Superintendent.

21

Q. And that would be a form of boss?

22

A. Yes.

23

Q. Were you familiar with Raymond Muniz?

24

A. Yes, I was.

25

Q. And also familiar with Dennis Elvin Cervantes-Pavon?

State v Dennis Cervantes-Pavon
Duncan Hearing-Herbie Evans-Direct Examination by Ms. Parnall
November 9, 2015

1 A. Yes.

2 Q. And did you become aware of a problem between Mr.
3 Muniz and Mr. Cervantes on the day of August the 13th?

4 A. Yes, I did.

5 Q. And how did you become aware of that problem?

6 A. Mr. Pavon had come to me and had stated to me that
7 Raymond ---

8 MR. DURANT: --- objection, hearsay.

9 THE COURT: Any exception?

10 MS. PARNALL: Your Honor, I believe that I can if I
11 may lead the witness a little bit through the hearsay.

12 THE COURT: I'm going to sustain the objection as
13 to hearsay. Just rephrase your question. Sir, you can't
14 testify as to what somebody told you unless there is an
15 exception so please listen carefully to Ms. Parnall's
16 questions.

17 THE WITNESS: Okay.

18 Q. [Ms. Parnall] I apologize, Mr. Evans. Without using
19 exact words can you tell me why my client Elvin had come
20 to your attention that day?

21 A. He said that Raymond was picking on him ---

22 MR. DURANT: --- same objection, Your Honor.

23 THE COURT: Again you cannot -- is there an
24 exception?

25 MS. PARNALL: No exception, Your Honor.

State v Dennis Cervantes-Pavon
Duncan Hearing-Herbie Evans-Direct Examination by Ms. Parnall
November 9, 2015

1 THE COURT: Okay. Again, you cannot testify as to
2 what somebody told you. If you will listen carefully she
3 is trying to lead you down the applicable way for you to
4 answer so listen carefully to her questions. Do you play
5 sports? You watch football?

6 THE WITNESS: No, ma'am. Motor cross is the only
7 sport in my house.

8 THE COURT: All right. So there are some rules
9 right?

10 THE WITNESS: Yes.

11 THE COURT: You can't pass only on certain ways and
12 certain times right so she's going to follow those rules.
13 Thank you.

14 THE WITNESS: Thank you.

15 Q. [Ms. Parnall] Mr. Evans if you can tell me the
16 general complaint that Elvin Cervantes had?

17 A. That he was being picked on.

18 Q. Okay. Specifically who was it he said was picking
19 on him?

20 A. Raymond.

21 Q. And what was he asking you to do?

22 A. He asked me to speak to him to stop him from picking
23 on him and messing with him.

24 Q. At that point in time did Elvin Cervantes speak
25 English?

State v Dennis Cervantes-Pavon
Duncan Hearing-Herbie Evans-Direct Examination by Ms. Parnall
November 9, 2015

1 A. Very little.

2 Q. And was he able to communicate with you in English?

3 A. Yes ma'am, to the point that I understood.

4 Q. And did you end up speaking to Raymond Muniz?

5 A. Yes, ma'am.

6 Q. And generally what did you say to Mr. Muniz after
7 this?

8 A. That I would not allow conflict or any problems on
9 the project that we were working on and if there was
10 going to be conflict between any employees that I would
11 immediately send them home.

12 Q. And did you witness what actually happened between
13 Raymond Muniz and Elvin Cervantes that day?

14 A. No, ma'am.

15 Q. And why were you not able to witness that?

16 A. As a superintendent I was all over the project.
17 It's a huge responsibility and at that time I was in the
18 back section of Belk in a different location when that
19 incident took place.

20 Q. Thank you Mr. Evans.

21 MS. PARNALL: No further questions for the witness,
22 Your Honor.

23 THE COURT: Mr. Durant?

24 MR. DURANT: Thank you, Your Honor.

25

State v Dennis Cervantes-Pavon
Duncan Hearing-Herbie Evans-Cross-Examination by Mr. Durant
November 9, 2015

1 CROSS-EXAMINATION

2 BY MR. DURANT:

3 Q. Hello Mr. Evans. We've talked on the phone but I

4 haven't had the opportunity to meet you. This occurred I

5 believe you told me around lunchtime that day is that

6 correct?

7 A. Yes, sir.

8 Q. Around one o'clock?

9 A. Yes sir, approximately.

10 Q. And Mr. Pavon came to you correct?

11 A. Yes, sir.

12 Q. And he was complaining?

13 A. Yes, sir.

14 Q. Okay. And isn't it also possible he was

15 complaining because he was trying to get Mr. Muniz in

16 trouble?

17 A. Possibly ---

18 MS. PARNALL: --- Your Honor, objection.

19 THE COURT: What's your objection?

20 MS. PARNALL: That that answer would call for

21 speculation ---

22 THE COURT: --- I believe he testified that he

23 didn't know.

24 Q. [Mr. Durant] And you in fact didn't not just counsel

25 Mr. Muniz that day did you counsel Mr. Pavon as well?

State v Dennis Cervantes-Pavon
Duncan Hearing-Herbie Evans-Cross-Examination by Mr. Durant
November 9, 2015

1 A. Yes sir, I sure did.

2 Q. And basically told because you were aware that they
3 had been mouthing off at each other all day?

4 A. Once Mr. Pavon brought it to my attention yes, sir.

5 Q. Okay. And you were aware from other sources that
6 they had both been mouthing off at each other correct?

7 A. Yes, sir.

8 Q. Okay. And you counseled both of them did you not?

9 A. Yes, sir.

10 Q. And you told both of them that if they didn't cut it
11 out you were kicking them off the job?

12 A. Yes, sir.

13 MR. DURANT: I don't have anything further.

14 THE COURT: Redirect?

15 MS. PARNALL: Nothing further, Your Honor.

16 THE COURT: You may step down. Is he free to go?

17 MS. PARNALL: Yes, Your Honor.

18 MR. DURANT: He is under subpoena for tomorrow,
19 Your Honor.

20 THE COURT: What time does he need to return
21 tomorrow?

22 MR. DURANT: We'll call tonight to let him know.

23 THE COURT: You'll receive further information.
24 You are still under subpoena but you are free to go
25 today.

State v Dennis Cervantes-Pavon
Duncan Hearing-Herbie Evans-Cross-Examination by Mr. Durant
November 9, 2015

1 THE WITNESS: Okay. Thank you.

2 THE COURT: Thank you Mr. Evans.

3 [Whereupon, the witness is excused and exits the
4 witness stand]

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

State v Dennis Cervantes-Pavon

Duncan Hearing-Jose Tomas Somosa-Direct Examination by Mr. Cochran

November 9, 2015

1 MR. COCHRAN: Your Honor, the defense calls Jose
2 Tomas Somosa. And Your Honor this witness will require
3 an interpreter.

4 THE COURT: All right.

5 [Whereupon, Mr. Somosa comes forward]

6 [Whereupon, the witness is duly sworn through the
7 Interpreter by the Clerk of Court]

8 CLERK OF COURT: Please be seated. Please state
9 your first and last name and spell your last name loudly
10 and clearly into the microphone.

11 THE WITNESS: [through Interpreter] Jose Tomas
12 Somosa.

13 THE INTERPRETER: Jose Tomas Somosa. The
14 interpreter would like to ask a repetition of the second
15 last name?

16 [Whereupon, the Interpreter confers with the
17 witness]

18 THE WITNESS: [through Interpreter] Thomasino
19 [phonetic].

20 THE COURT: We need to spell the last name.

21 THE WITNESS: [Through Interpreter] I spell -- I
22 don't...

23 THE COURT: Ms. Collins, do you need a chair.

24 THE INTERPRETER: That would be nice, Your Honor.

25 MR. COCHRAN: May it please the court?

State v Dennis Cervantes-Pavon
Duncan Hearing-Jose Tomas Somosa-Direct Examination by Mr. Cochran
November 9, 2015

1 THE COURT: Mr. Cochran?

2

- - - - -

3 JOSE TOMAS SOMOSA,

4 Having been first duly sworn,

5 Was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. COCHRAN:

8 Q. Mr. Somosa, were you working construction at the
9 Belk in Mount Pleasant on August 13th, 2014?

10 A. [Through Interpreter] Yes.

11 Q. And while you were working there did you work with
12 Elvin Pavon and Raymond Muniz?

13 A. [Through Interpreter] Yes.

14 Q. Were y'all from Charleston or did you travel to work
15 here?

16 A. [Through Interpreter] We are from Richmond,
17 Virginia.

18 Q. Where were y'all living while working this job?

19 A. [Through Interpreter] In a hotel. I don't know what
20 it's called.

21 Q. Who were you living with at the hotel?

22 A. [Through Interpreter] With Elvin and the other guy.

23 Q. And on the night of August 12th, 2014 were you aware
24 of any incidents between Elvin and Raymond?

25 A. [Through Interpreter] One day before when we got to

State v Dennis Cervantes-Pavon
Duncan Hearing-Jose Tomas Somosa-Direct Examination by Mr. Cochran
November 9, 2015

1 the hotel he took off his shirt trying to fight with
2 Elvin but Elvin didn't want to.

3 Q. When you say he who are you referring to?

4 A. [Through Interpreter] Raymond took off his shirt.

5 THE INTERPRETER: The Interpreter would actually
6 like to clarify a name.

7 [Whereupon, the Interpreter confers with the
8 witness]

9 A. [Through Interpreter] And Melvin did not want to
10 fight.

11 MR. COCHRAN: And for the record Your Honor I'd
12 just like to point out the defendant is referred to as
13 both as Elvin and Melvin so those two are
14 interchangeable.

15 THE COURT: Okay. Counsel approach.

16 [Whereupon, an off the record bench conference is
17 held]

18 THE COURT: Mr. Cochran, I apologize. You were
19 indicting that the defendant is known as?

20 MR. COCHRAN: Both Melvin and Elvin.

21 THE COURT: And his first name is Dennis is that
22 correct?

23 MR. COCHRAN: Yes.

24 THE COURT: Okay. So the "E" would be Elvin or
25 Melvin?

State v Dennis Cervantes-Pavon
Duncan Hearing-Jose Tomas Somosa-Direct Examination by Mr. Cochran
November 9, 2015

1 MR. COCHRAN: Yes.

2 THE COURT: Okay. Thank you.

3 Q. [Mr. Cochran] Mr. Somosa you were describing to us
4 an incident that took place on the evening of August 12,
5 2014 at the hotel. Could you please describe that to the
6 court?

7 A. [Through Interpreter] Yes.

8 Q. Proceed.

9 A. [Through Interpreter] That day coming arriving from
10 work Raymond was in the hotel parking lot and we got out
11 of the car. Raymond took off his shirt and was yelling
12 to Elvin to fight with him and Elvin told him no and we
13 went to the bed at the hotel that day. :

14 Q. Did Elvin and Raymond fight that evening at the
15 hotel?

16 A. [Through Interpreter] No.

17 Q. The next day were you working at the Belk with
18 Elvin?

19 A. [Through Interpreter] Yes.

20 Q. What job were you two performing?

21 A. [Through Interpreter] Framing.

22 Q. Describe that job to me.

23 A. [Through Interpreter] Framing is the remodeling of a
24 wall.

25 Q. Did that require you to be up on a ladder?

State v Dennis Cervantes-Pavon

Duncan Hearing-Jose Tomas Somosa-Direct Examination by Mr. Cochran

November 9, 2015

1 THE INTERPRETER: The Interpreter needs to ask for a
2 repetition of a word.

3 [Whereupon, the Interpreter confers with the
4 witness]

5 A. [Through Interpreter] Oh, I was his helper. Elvin
6 was up on the ladder.

7 Q. [Mr. Cochran] So Elvin was up on the ladder and you
8 were down on the ground?

9 A. [Through Interpreter] Yes.

10 Q. Was Raymond working in the same area?

11 A. [Through Interpreter] Yes, he was doing concrete.

12 Q. At some point did Raymond speak to Elvin?

13 A. [Through Interpreter] Yes. Every time he passed by
14 them he would say to them to fight.

15 Q. Was Raymond asking Elvin to fight?

16 A. [Through Interpreter] Yes.

17 Q. When Raymond was saying this was Elvin on the
18 ladder?

19 A. [Through Interpreter] Yes.

20 Q. About how high up in feet was Elvin from the ground?

21 A. [Through Interpreter] About ten feet.

22 Q. Did Elvin come down from the ladder?

23 A. [Through Interpreter] Well no, he said he didn't
24 want any trouble.

25 Q. At any point did he come down from the ladder that

State v Dennis Cervantes-Pavon
Duncan Hearing-Jose Tomas Somosa-Direct Examination by Mr. Cochran
November 9, 2015

1 day?

2 A. [Through Interpreter] Just at lunchtime.

3 Q. Okay. And about -- let me ask you this. On August
4 13, 2014 did Elvin and Raymond have a physical
5 altercation at the worksite?

6 A. [Through Interpreter] Yes.

7 Q. About what time of day was that?

8 A. [Through Interpreter] About five.

9 Q. So when Elvin came down the ladder at lunchtime they
10 did not fight?

11 A. [Through Interpreter] No.

12 Q. Did Elvin come down the ladder toward the end of the
13 shift around five?

14 A. [Through Interpreter] 5:30.

15 Q. And at that time was Raymond still confronting Elvin
16 trying to get him to fight?

17 A. [Through Interpreter] Yes. He said for them to go
18 outside and he told him no.

19 Q. When Elvin came down from the ladder at the end of
20 the day was Raymond down in that area?

21 THE INTERPRETER: The Interpreter would like to ask
22 for repetition of the response.

23 [Whereupon, the Interpreter confers with the
24 witness]

25 A. [Through Interpreter] Yes. He passed by him and

State v Dennis Cervantes-Pavon

Duncan Hearing-Jose Tomas Somosa-Direct Examination by Mr. Cochran

November 9, 2015

1 said for them to fight. Elvin got angry and came down
2 and then he later went over to the tools and grabbed that
3 steel thing.

4 Q. [Mr. Cochran] Describe the steel thing.

5 A. [Through Interpreter] It's a saw that we use when we
6 work with sheetrock. It's about ten inches long.

7 Q. Did he have anything else in his hands?

8 A. [Through Interpreter] No.

9 Q. Did he ever pick up a pipe or a piece of metal
10 hanger?

11 THE INTERPRETER: The Interpreter actually needs to
12 ask what is a metal hanger.

13 Q. [Mr. Cochran] I'll rephrase. Did he ever pick up a
14 pipe or other long metal object?

15 A. [Through Interpreter] Melvin grabbed a pipe and
16 then Raymond grabbed like a metal thing for framing and
17 then the two of them went at each other.

18 Q. So they both had metal objects in their hands?

19 A. [Through Interpreter] Yes.

20 Q. At this time was the sheetrock saw in Elvin's hand
21 or somewhere else?

22 A. [Through Interpreter] No. He had it on his tool.

23 Q. Do you mean on his tool belt?

24 A. [Through Interpreter] Yes, a belt.

25 Q. At some point did either Raymond or Elvin or both of

State v Dennis Cervantes-Pavon
Duncan Hearing-Jose Tomas Somosa-Direct Examination by Mr. Cochran
November 9, 2015

1 | them drop their metal objects?

2 | A. [Through Interpreter] Yes, both of them threw them.

3 | THE INTERPRETER: Interpreter correction; both of
4 | them dropped them.

5 | Q. [Mr. Cochran] What did they do after they dropped
6 | their metal objects?

7 | A. [Through Interpreter] Well, they started to fight.
8 | They were grabbing each other and that's when it started.

9 | Q. They were grabbing each other?

10 | A. [Through Interpreter] Yes.

11 | Q. Where was Elvin grabbing Raymond?

12 | A. [Through Interpreter] On the waist.

13 | Q. Where was Raymond grabbing Elvin?

14 | A. [Through Interpreter] He had him like here
15 | [indicates] on his shoulders. He was a little bit
16 | taller.

17 | Q. Raymond was taller?

18 | A. [Through Interpreter] Yes.

19 | Q. And he had Elvin around the shoulders?

20 | A. [Through Interpreter] Around the neck, yes.

21 | Q. So Raymond put his arm or arms or hands around
22 | Elvin's neck?

23 | A. [Through Interpreter] Yes.

24 | Q. Which did he put his hands on his neck or did he put
25 | his arm around his neck?

State v Dennis Cervantes-Pavon
Duncan Hearing-Jose Tomas Somosa-Direct Examination by Mr. Cochran
November 9, 2015

1 A. [Through Interpreter] The arms.
2 Q. Like in a headlock?
3 A. [Through Interpreter] Yes, like around his neck.
4 Q. And then what happened?
5 A. [Through Interpreter] Then that's when the guy
6 Elvin grabbed the saw and put it in.
7 Q. Did you see where Elvin grabbed the saw from?
8 A. [Through Interpreter] From his waist.
9 Q. And when you say he put the saw in what do you mean?
10 A. [Through Interpreter] Well he had it under his
11 shirt on his waist.
12 Q. And what did he do with the saw at that time?
13 A. [Through Interpreter] Well he took it out when they
14 were holding on to each other and then he put it in.
15 Q. Do you mean he stabbed Raymond?
16 THE COURT: Mr. Cochran, can I ask you to not use
17 pronouns; to use the names.
18 MR. COCHRAN: I'm sorry; yes.
19 Q. [Mr. Cochran] Do you mean that Elvin stabbed
20 Raymond?
21 A. [Through Interpreter] Yes.
22 Q. Did you see how many times Elvin stabbed Raymond?
23 A. [Through Interpreter] It was only one time what I
24 saw.
25 THE COURT: Mr. Cochran, just trying to get it

State v Dennis Cervantes-Pavon
Duncan Hearing-Jose Tomas Somosa-Direct Examination by Mr. Cochran
November 9, 2015

1 clarified who had something under their shirt around
2 their waist if you could ask that.

3 MR. COCHRAN: Elvin, the defendant -- oh, I'm
4 sorry.

5 Q. [Mr. Cochran] And Mr. Somosa who was it that had an
6 object in their waist underneath their shirt Elvin or
7 Raymond?

8 A. [Through Interpreter] Elvin.

9 Q. When Elvin stabbed Raymond did Raymond still have
10 his arm around Elvin's neck?

11 A. [Through Interpreter] No, he let him go and he ran
12 outside.

13 Q. Did he have -- did he let him go after he was
14 stabbed? I'm sorry; did Raymond let Elvin go after
15 Raymond was stabbed?

16 A. [Through Interpreter] Yes, they took off running
17 and from there I didn't see anything else.

18 Q. So at the moment Elvin took out his saw and stabbed
19 Raymond at that moment was Raymond still holding onto
20 Elvin around the neck?

21 A. [Through Interpreter] Yes, he still was holding
22 onto him but when he stabbed him with the saw he let go
23 and they took off running.

24 Q. Mr. Somosa, did you see this incident between
25 Raymond and Elvin from beginning to end?

State v Dennis Cervantes-Pavon

Duncan Hearing-Jose Tomas Somosa-Direct Examination by Mr. Cochran

November 9, 2015

1 A. [Through Interpreter] Yes.

2 Q. Did Elvin or Raymond start the fight?

3 A. [Through Interpreter] It was Raymond.

4 MR. COCHRAN: Beg the court's indulgence.

5 [Whereupon, Mr. Cochran reviews documents]

6 MR. COCHRAN: Nothing further, Your Honor.

7 THE COURT: Mr. Durant?

8 MR. DURANT: Thank you, Your Honor. Your Honor, at
9 some point I'm probably going to have to approach the
10 witness because there is a written statement.

11 THE COURT: That's fine.

12 MR. DURANT: I'll need him to refer to it.

13

14

15

16

17

18

19

20

21

22

23

24

25

State v Dennis Cervantes-Pavon
Duncan Hearing-Jose Tomas Somosa-Cross-Examination by Mr. Durant
November 9, 2015

1 CROSS EXAMINATION

2 BY MR. DURANT:

3 Q. Do you recall giving two statements to the police?

4 A. [Through Interpreter] Yes.

5 Q. Okay. And the first statement was on August 13,

6 2014 shortly after the stabbing correct?

7 A. [Through Interpreter] Yes.

8 Q. And you told the policeman that the three of you

9 were from Virginia?

10 A. [Through Interpreter] Yes.

11 Q. And by those three you meant yourself and Elvin and

12 Nolberto Rodriguez correct?

13 A. [Through Interpreter] Yes.

14 Q. And the three of y'all were friends?

15 THE INTERPRETER: The Interpreter would like the

16 repetition of the last word.

17 [Whereupon, the Interpreter confers with the

18 witness]

19 A. [Through Interpreter] We worked together since from

20 Richmond.

21 Q. Okay. Y'all were roommates?

22 A. [Through Interpreter] Yes.

23 Q. You gave them a ride to work every morning?

24 A. [Through Interpreter] Yes.

25 Q. Okay. And you had mentioned in that first

State v Dennis Cervantes-Pavon

Duncan Hearing-Jose Tomas Somosa-Cross-Examination by Mr. Durant

November 9, 2015

1 statement that the day before Raymond had asked Elvin to
2 fight at the hotel?

3 A. [Through Interpreter] Yes.

4 Q. Okay. And Raymond was not armed was he?

5 A. [Through Interpreter] No.

6 Q. And Mr. Pavon was not armed correct?

7 A. [Through Interpreter] No.

8 Q. And that's not the first time that they had had an
9 altercation was it?

10 A. [Through Interpreter] They had fought one week
11 before.

12 Q. Okay. And you told the police officer about that
13 in the first statement correct?

14 A. [Through Interpreter] Yes.

15 Q. And I believe you told her they were fighting over a
16 tool?

17 A. [Through Interpreter] Yes.

18 Q. Okay. And is it true that the first time you
19 talked to the police officer you told them you did not
20 see this stabbing at all?

21 A. [Through Interpreter] No.

22 Q. Okay. If I refer you to your statement could you
23 show me where you told the police officer that you had
24 seen the stabbing?

25 A. [Through Interpreter] Yes.

State v Dennis Cervantes-Pavon
Duncan Hearing-Jose Tomas Somosa-Cross-Examination by Mr. Durant
November 9, 2015

1 MR. DURANT: Should I mark this as a court's
2 exhibit, Your Honor?

3 THE COURT: You can mark it for purposes of this
4 hearing if you want to mark it as a State's exhibit.

5 [Whereupon, State's exhibit number 1 for purposes of
6 the Duncan hearing is marked by the court reporter]

7 Q. [Mr. Durant] Mr. Somosa, I hand you what has been
8 marked as State's exhibit number 1 for purposes of this
9 hearing.

10 I would ask that you go through that with the
11 Interpreter or have the Interpreter go through that with
12 you and show her where in that statement you said you had
13 seen the stabbing?

14 THE INTERPRETER: Your Honor, the Interpreter is
15 not sure how to proceed. The Interpreter is not able to
16 go through the document but she could cite translate into
17 the record. "I'm not sure..."

18 THE COURT: So just -- pretend she is not there and
19 just state your questions.

20 MR. DURANT: Okay. It's going to be kind of hard
21 to do without reading the statement. I could read the
22 statement in English.

23 THE COURT: Didn't you just want him to locate
24 something in the statement?

25 MR. DURANT: Yes, but the statement is written in

State v Dennis Cervantes-Pavon
Duncan Hearing-Jose Tomas Somosa-Cross-Examination by Mr. Durant
November 9, 2015

1 English. It was translated from Spanish.

2 THE COURT: So if you will hand him the document
3 and tell him what you want him to tell you she will
4 translate it and then he will tell her and she will tell
5 you.

6 MR. DURANT: Okay.

7 THE COURT: Is that correct Madame Interpreter?

8 THE INTERPRETER: Yes ma'am Your Honor, that is
9 correct.

10 Q. [Mr. Durant] Can you tell me where in this statement
11 you told the police officer that you had seen this
12 statement -- this stabbing; excuse me. That's the
13 question.

14 THE COURT: Sir, you're going to need to look
15 through the statement and answer his question.

16 THE WITNESS: [Through Interpreter] Yes.

17 MR. COCHRAN: Your Honor, I would -- my only
18 objection I guess would be that he can't read the
19 statement if he can't read English.

20 MR. DURANT: That's why I kind of couched it the
21 way I did to begin with that she read the statement to
22 him and ask him where in there he made that statement.

23 THE COURT: Can you do that?

24 THE INTERPRETER: The Interpreter could cite
25 translate whatever portion or the whole thing. The

State v Dennis Cervantes-Pavon
Duncan Hearing-Jose Tomas Somosa-Cross-Examination by Mr. Durant
November 9, 2015

1 Interpreter is not allowed to ask questions of the
2 witness but the Interpreter can absolutely cite translate
3 or translate what the Solicitor is saying.

4 MR. DURANT: May I'll do it this way, Your Honor.

5 THE COURT: All right.

6 Q. [Mr. Durant] Is this the statement you gave to the
7 police?

8 [Whereupon, the witness is shown document]

9 A. [Through Interpreter] Yes.

10 Q. Is that your signature?

11 A. [Through Interpreter] Just that when they took me
12 to give the statement I was there for about two hours. I
13 told them from the beginning that I did not speak
14 English. And they were like wanting me to confuse me to
15 say things that I didn't say.

16 Q. Okay. Is this the first statement that you gave to
17 the police on August 13, 2014 at 6:58 p.m.?

18 A. [Through Interpreter] Yes.

19 MR. DURANT: Your Honor, I'll let you read the
20 statement.

21 THE COURT: Mr. Cochran, you want to approach?

22 [Whereupon, an off the record bench conference is
23 held]

24 Q. [Mr. Durant] Do you recall giving a second statement
25 to the police on August 15, 2014 at 4:44 in the

State v Dennis Cervantes-Pavon
Duncan Hearing-Jose Tomas Somosa-Cross-Examination by Mr. Durant
November 9, 2015

1 afternoon.

2 [Whereupon, State's exhibit number 2 for purposes of
3 the Duncan hearing is marked by the court reporter]

4 A. [Through Interpreter] Yes.

5 Q. I hand you what has been marked now as State's
6 exhibit number 2 for identification and ask you if that
7 is the statement that you gave to the police on that date
8 and time?

9 [Whereupon, the witness is shown document]

10 A. [Through Interpreter] Yes. It's that and it's what
11 I was saying that they were forcing me to say things that
12 I did not say.

13 Q. Okay. So you did not give this statement is what
14 you're saying?

15 A. [Through Interpreter] Yes, I did give that
16 statement but as I'm saying they were speaking to me in
17 English and I was not understanding.

18 Q. But they also had an Interpreter that was
19 translating in Spanish for you just like she is doing now
20 correct?

21 A. [Through Interpreter] No, no there wasn't. There
22 was a police officer but he didn't speak more Spanish
23 than English.

24 Q. He spoke both did he not?

25 A. [Through Interpreter] Yes, but he spoke more

State v Dennis Cervantes-Pavon
Duncan Hearing-Jose Tomas Somosa-Cross-Examination by Mr. Durant
November 9, 2015

1 English than Spanish and I was telling him I wasn't
2 understanding.

3 Q. So your testimony today is that they completely made
4 this up as to what you said?

5 MR. COCHRAN: I object at this point, Your Honor.
6 The problem with this line of questioning is that Mr.
7 Somosa cannot verify the document that Mr. Durant has in
8 his hands because it's written in English. That's sort
9 of the whole crux of the problem. He can't answer
10 questions about that document because he doesn't
11 understand it.

12 THE COURT: Mr. Durant?

13 MR. DURANT: As I understood his testimony he said
14 this is the statement he signed and the police made him
15 say it or made it up one or the other; I don't know what
16 he said.

17 THE COURT: Your objection is noted for the record.

18 Q. [Mr. Durant] So is your testimony that the police
19 completely made this up?

20 A. [Through Interpreter] Well, I would say yes.

21 Q. Okay. Even though it contains much of what you
22 just testified to in front of the court here?

23 MR. COCHRAN: I would object.

24 THE COURT: Sustained.

25 Q. [Mr. Durant] Let me ask -- let me get specific. Did

State v Dennis Cervantes-Pavon
Duncan Hearing-Jose Tomas Somosa-Cross-Examination by Mr. Durant
November 9, 2015

1 you tell them you gave your roommates a ride to work in
2 your Ford Explorer?
3 A. [Through Interpreter] Yes.
4 Q. Did you tell them you allowed the police to search
5 your Ford Explorer?
6 A. [Through Interpreter] Yes.
7 Q. And did you tell them you drove Elvin and Nolberto
8 to and from work?
9 A. [Through Interpreter] Yes.
10 Q. Okay. Did you tell them that Raymond picked a
11 fight with Elvin?
12 A. [Through Interpreter] Yes.
13 Q. Did you tell them that they had fought a week prior?
14 A. [Through Interpreter] Correct.
15 Q. Did you tell them that last week they had a
16 fistfight?
17 A. [Through Interpreter] Yes.
18 Q. Did you tell them they were fighting over a broom
19 while cleaning?
20 A. [Through Interpreter] Yes.
21 Q. Did you tell them that Elvin had the broom and
22 Raymond took it from him?
23 A. [Through Interpreter] He took it away forcefully.
24 Q. Okay. Did you tell them that Raymond snatched the
25 broom from Elvin?

State v Dennis Cervantes-Pavon
Duncan Hearing-Jose Tomas Somosa-Cross-Examination by Mr. Durant
November 9, 2015

1 A. [Through Interpreter] Yes.

2 Q. And then they had a fistfight?

3 A. [Through Interpreter] Yes.

4 Q. Okay. They both punched each other did you tell
5 them that?

6 A. [Through Interpreter] Yes.

7 Q. Specifically they both punched each other in the
8 face did you tell them that?

9 A. Yes.

10 Q. Okay. Did you tell them that on August the 12th
11 Raymond took his shirt off in the parking lot of the
12 hotel and said to Elvin let's fight?

13 A. [Through Interpreter] Yes.

14 Q. Did you tell them that Elvin said no problem?

15 A. [Through Interpreter] Yes.

16 Q. Did you tell them that we meaning you and Nolberto
17 and Elvin went into the hotel room and there was no
18 fight?

19 A. [Through Interpreter] Yes.

20 Q. Okay. Now let's move on to what you told them
21 happened on August the 13th. Did you tell them that
22 Elvin was working up on the scaffolding?

23 A. [Through Interpreter] Yes.

24 Q. Did you tell them that during the day Raymond would
25 walk by Elvin and taunt him?

State v Dennis Cervantes-Pavon
Duncan Hearing-Jose Tomas Somosa-Cross-Examination by Mr. Durant
November 9, 2015

- 1 A. [Through Interpreter] Yes.
- 2 Q. Make the finger?
- 3 A. [Through Interpreter] Yes.
- 4 Q. Try to start a fight?
- 5 A. [Through Interpreter] Yes.
- 6 Q. By running his mouth right?
- 7 A. [Through Interpreter] Yes.
- 8 Q. Did you tell them that Elvin was framing on the
- 9 ground?
- 10 A. [Through Interpreter] Yes.
- 11 Q. Framing the studs?
- 12 A. [Through Interpreter] Yes.
- 13 Q. At one point Elvin turned towards Raymond and said
- 14 let's fight?
- 15 A. [Through Interpreter] No.
- 16 Q. You didn't tell them that?
- 17 A. [Through Interpreter] No.
- 18 Q. Everything else before that you told them you said
- 19 you just didn't tell them that sentence?
- 20 A. [Through Interpreter] No.
- 21 Q. Did you tell them that Elvin had enough?
- 22 A. [Through Interpreter] Yes.
- 23 Q. Did you tell them that he was tired of Raymond?
- 24 A. [Through Interpreter] Yes.
- 25 Q. Did you tell them that Elvin had a black round pipe?

State v Dennis Cervantes-Pavon
Duncan Hearing-Jose Tomas Somosa-Cross-Examination by Mr. Durant
November 9, 2015

- 1 A. [Through Interpreter] Yes.
- 2 Q. And did the black round pipe look something like
- 3 this [indicates]?
- 4 A. [Through Interpreter] Yes, correct.
- 5 Q. Did you tell them that Elvin took off his belt
- 6 before the fight?
- 7 A. [Through Interpreter] Yes.
- 8 Q. And did you tell them that Raymond does not have a
- 9 work belt?
- 10 A. [Through Interpreter] Yes.
- 11 Q. And did you tell them that Raymond had a piece of
- 12 metal too after Mr. Pavon picked up the pipe?
- 13 A. [Through Interpreter] Yes.
- 14 Q. Where did this fight take place inside Belk?
- 15 A. [Through Interpreter] Inside where we were working.
- 16 Q. Over by the cement mixer?
- 17 A. [Through Interpreter] Yes.
- 18 Q. And the cement mixer, was where Raymond was working
- 19 correct?
- 20 A. [Through Interpreter] Yes.
- 21 Q. And the cement mixer was not where the ladder was
- 22 that Elvin was working is it?
- 23 A. [Through Interpreter] No. It was like 15 feet
- 24 away.
- 25 Q. Did you tell them they swung the pipes at each

State v Dennis Cervantes-Pavon
Duncan Hearing-Jose Tomas Somosa-Cross-Examination by Mr. Durant
November 9, 2015

1 other?
2 A. [Through Interpreter] Yes.
3 Q. And did you tell them that the pipes were knocked
4 down?
5 A. [Through Interpreter] Yes.
6 Q. And did you tell them they started wrestling with
7 one another?
8 A. [Through Interpreter] Yes.
9 Q. Did you tell them they were equal?
10 THE INTERPRETER: Pardon, for the Interpreter did
11 you tell them?
12 Q. [Mr. Cochran] They were equal; no one was winning?
13 A. [Through Interpreter] No.
14 Q. You didn't tell them that?
15 A. [Through Interpreter] No.
16 Q. Why was it not equal?
17 A. [No response]
18 Q. That's a question.
19 A. [Through Interpreter] No.
20 Q. I beg to differ it is a question. Why was it not
21 equal?
22 A. [Through Interpreter] No, I don't know.
23 Q. You don't know?
24 A. [No response]
25 Q. After they dropped what they had was Raymond --

State v Dennis Cervantes-Pavon
Duncan Hearing-Jose Tomas Somosa-Cross-Examination by Mr. Durant
November 9, 2015

1 THE INTERPRETER: Was Raymond ---
2 Q. [Mr. Durant] --- after they dropped the pipes or the
3 metal that they had was Raymond armed?
4 A. [Through Interpreter] No.
5 Q. And Elvin was not armed either?
6 A. [Through Interpreter] No.
7 Q. And they were wrestling?
8 A. [Through Interpreter] Yes.
9 Q. And did you tell them chest to chest?
10 A. [Through Interpreter] Yes.
11 Q. Did you tell them I saw Elvin with his right hand
12 either pull something from his right pocket or waistband?
13 A. [Through Interpreter] No, I did not say that I had
14 seen it. I said that he had got him with the saw but I
15 did not say that I saw where he got it from.
16 Q. I believe you testified on direct examination that
17 he pulled it out of his waistband when Mr. Cochran asked
18 you the question.
19 A. [Through Interpreter] Yes, I said he took it from
20 his waist not from his pocket.
21 Q. But you saw him -- you also said you saw him lift
22 his shirt and pull it out.
23 A. [Through Interpreter] No, I didn't say that.
24 Q. The Judge heard the testimony. Did you tell them
25 that Elvin's left hand was in the small of Raymond's

State v Dennis Cervantes-Pavon
Duncan Hearing-Jose Tomas Somosa-Cross-Examination by Mr. Durant
November 9, 2015

1 back?

2 A. [Through Interpreter] Yes.

3 Q. Did you tell them they were touching chest to chest?

4 A. [Through Interpreter] Yes.

5 Q. Did you tell them Elvin was holding him close?

6 A. [Through Interpreter] Yes.

7 Q. Did you tell them Elvin was holding -- Elvin had
8 grabbed something in his hand?

9 A. [Through Interpreter] Yes.

10 Q. And did you tell them that Elvin thrust upward with
11 the item into the chest of Raymond?

12 A. [Through Interpreter] Yes.

13 Q. Okay. One other question. Did you and Mr.
14 Rodriguez remove Elvin's tool belt from the job site?

15 A. [Through Interpreter] Yes, I took it to the car to
16 give it to his family.

17 Q. Okay. So just to summarize what you testified to
18 today and what you told the police in your second
19 statement that at the time that Mr. Muniz was stabbed he
20 was not armed and he and Elvin were wrestling?

21 A. [Through Interpreter] Yes.

22 MR. DURANT: I have nothing further, Your Honor.

23 THE COURT: Mr. Cochran?

24 MR. COCHRAN: Thank you, Your Honor.

25

State v Dennis Cervantes-Pavon
Duncan Hearing-Jose Tomas Somosa-Redirect Examination by Mr. Cochran
November 9, 2015

1 REDIRECT EXAMINATION

2 BY MR. COCHRAN:

3 Q. Mr. Somosa why did you take Elvin's belt from the

4 work site?

5 A. [Through Interpreter] Because I was going to

6 deliver it to the family.

7 Q. Was the saw still in the belt?

8 A. [Through Interpreter] No, that wasn't.

9 Q. Were you trying to hide anything for Elvin?

10 A. [Through Interpreter] No, me nothing.

11 Q. And Mr. Somosa you spoke with police on at least two

12 occasions right?

13 A. [Through Interpreter] Yes.

14 Q. Did the police write down notes while they were

15 having a conversation with you?

16 A. [Through Interpreter] Yes, they took photographs of

17 my car a lot.

18 Q. And when they took notes did you end up signing the

19 statements that they took down for you?

20 A. [Through Interpreter] Yes.

21 Q. Were the statements that they wrote down written in

22 English?

23 A. [Through Interpreter] Yes.

24 Q. Did you have any way of knowing what they had

25 written down?

State v Dennis Cervantes-Pavon
Duncan Hearing-Jose Tomas Somosa-Redirect Examination by Mr. Cochran
November 9, 2015

1 A. [Through Interpreter] No.

2 Q. Did you feel that the policeman who was interpreting
3 for you was doing a good job?

4 A. [Through Interpreter] Yes.

5 Q. Do you feel that he was saying everything you wanted
6 him to say on your behalf?

7 A. [Through Interpreter] Yes, I just said what I knew;
8 that was all.

9 Q. Did you feel that the officer who was speaking
10 Spanish with you was translating for you correctly?

11 A. [Through Interpreter] Yes, in the first statement
12 yes.

13 Q. But not in the second statement?

14 A. [Through Interpreter] Well no, in the second one I
15 was saying that they were forcing me to say things that I
16 hadn't said.

17 Q. In what way?

18 A. [Through Interpreter] Because they would say things
19 to me and I would tell them that I wasn't understanding
20 and they would repeat it again to me and I would say no,
21 I don't understand.

22 MR. COCHRAN: No more questions, Your Honor.

23 THE COURT: Mr. Durant?
24
25

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

RECROSS-EXAMINATION

BY MR. DURANT:

Q. Mr. Somosa didn't you just admit that everything in that statement was true except for two things?

A. [Through Interpreter] Yes.

Q. Thank you.

THE COURT: You may step down. Thank you.

[Whereupon, the witness is excused and exits the witness stand]

THE COURT: Do you have another witness?

MS. PARNALL: Yes, Your Honor.

State v Dennis Cervantes-Pavon
Duncan Hearing-Dennis Elvin Cervantes-Pavon-Direct Examination by Ms. Parnall
November 9, 2015

1 MS. PARNALL: At this time the State -- I'm sorry;
2 the defense would call Dennis Elvin Cervantes-Pavon to
3 the stand.

4 [Whereupon, Mr. Cervantes-Pavon comes forward]

5 [Whereupon, the witness is duly sworn through the
6 Interpreter by the Clerk of Court]

7 CLERK OF COURT: Please state your first and last
8 name and spell your last name loudly clearly into the
9 microphone.

10 THE WITNESS: [Through Interpreter] My name is
11 Dennis Elvin Cervantes-Pavon and I'm sorry what did you
12 want me to spell? My last name?

13 THE COURT: Yes.

14 THE WITNESS: [Through Interpreter] C-E-R-V-A-N-T-
15 E-S, P-A-V-O-N.

16 THE COURT: Ms. Parnall?

17 - - - - -

18 DENNIS ELVIN CERVANTES-PAVON,

19 Having been first duly sworn,

20 Was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MS. PARNALL:

23 Q. Thank you Mr. Cervantes. Where are you from?

24 A. [Through Interpreter] From Honduras.

25 Q. And how long have you been in the United States?

State v Dennis Cervantes-Pavon
Duncan Hearing-Dennis Elvin Cervantes-Pavon-Direct Examination by Ms. Parnall
November 9, 2015

1 A. [Through Interpreter] Now up until this time I have
2 about 13 years.
3 Q. And what state have you been residing in?
4 THE INTERPRETER: The Interpreter needs to ask for
5 repetition of the...
6 A. [Through Interpreter] Richmond, Virginia -- 1217
7 Interpreter phonetic pronunciation Tifton [phonetic] --
8 I'm going to repeat it again please. [REDACTED]
9 [phonetic] Court Richmond, Virginia 23224.
10 Q. Thank you Mr. Cervantes. What kind of work do you
11 do?
12 A. [Through Interpreter] Oh, I work in construction.
13 Q. And how did you end up in Charleston, South
14 Carolina?
15 A. [Through Interpreter] I was contracted by a person.
16 Q. And contracted to do what?
17 A. [Through Interpreter] Contracted to do construction
18 work in framing and sheetrock.
19 Q. Where was the job site?
20 A. [Through Interpreter] Mount Pleasant.
21 Q. And about how long did you end up getting to work on
22 that job site?
23 A. [Through Interpreter] Oh two and a half weeks.
24 Q. Was Herbie Evans one of the bosses on that job site?
25 A. [Through Interpreter] Yes, correct.

State v Dennis Cervantes-Pavon

Duncan Hearing-Dennis Elvin Cervantes-Pavon-Direct Examination by Ms. Parnall
November 9, 2015

1 Q. Please tell me about Raymond Muniz. How did you get
2 along with him?

3 A. [Through Interpreter] Not well.

4 Q. And when did the problems start with Mr. Muniz?

5 A. [Through Interpreter] He started to assault me over
6 a broom.

7 Q. And how did he assault you?

8 A. [Through Interpreter] I was cleaning the floor up
9 to make a line or a mark on the wall when he came and he
10 snatched the broom away from me.

11 Q. And did anyone else get involved in that argument?

12 A. [Through Interpreter] Oh in that time, no.

13 Q. Were there any future problems with Mr. Muniz?

14 A. [Through Interpreter] Yes, there were more problems
15 in the future.

16 Q. And can you tell me about some of those?

17 A. [Through Interpreter] After the broom by chance I
18 was going to my boss look for the office to fix the
19 problem. And when we were in the office the boss by
20 chance wasn't there. And --

21 THE INTERPRETER: The Interpreter would like to
22 clarify.

23 [Whereupon, the Interpreter confers with the
24 witness]

25 A. [Through Interpreter] And he looked up and there

State v Dennis Cervantes-Pavon
Duncan Hearing-Dennis Elvin Cervantes-Pavon-Direct Examination by Ms. Parnall
November 9, 2015

1 were cameras and so he said today there is no cameras and
2 that's when he grabbed me and it started. And you know
3 so the first time I denied the fight -- refused the fight
4 -- Interpreter correction. He continued to verbally
5 assault me wherever he would see me.

6 Q. [Ms. Parnall] And when you say verbally assault what
7 kind of statements was he making?

8 A. [Through Interpreter] He called me a faggot that he
9 was going to kill me. There were a lot more but -- there
10 were many more threats all the time after the incident
11 with the broom.

12 Q. Did any other co-workers get involved when Raymond
13 Muniz was saying these things to you?

14 A. [Through Interpreter] Yes, correct.

15 Q. And who was getting involved?

16 A. [Through Interpreter] Also one person got involved;
17 an American.

18 Q. Do you remember his name?

19 A. [Through Interpreter] His name is -- well since
20 it's in English sometime like I get it and sometimes I
21 don't but I think his name is Travis.

22 He's white, almost hair like my defense attorney,
23 and his height is like a little bit like mine or maybe a
24 little bit taller. And a bigger build.

25 Q. And how was Mr. Travis getting involved in these

State v Dennis Cervantes-Pavon
Duncan Hearing-Dennis Elvin Cervantes-Pavon-Direct Examination by Ms. Parnall
November 9, 2015

1 disputes?

2 A. [Through Interpreter] Oh, well supposedly he got
3 along well with Raymond because they would greet each
4 other not like friends but like gang members.

5 Q. Specifically how was Mr. Travis getting involved in
6 these disputes with Raymond Muniz?

7 A. [Through Interpreter] Well, from what I could tell
8 he and Raymond got along like friends like they really
9 loved each other like they were friends.

10 Q. Did Travis ever assault or threaten you?

11 A. [Through Interpreter] Yes, correct.

12 Q. In what manner?

13 A. [Through Interpreter] On the day that the accident
14 happened at 9:00 in the morning I was working
15 approximately; I'm not sure of the exact time he came
16 over to where I was working. And when he came over he
17 came on top of me like he wanted to hit me. So what I
18 did was I moved away.

19 Q. And to be clear we're talking about Travis right now
20 correct?

21 A. [Through Interpreter] Yes, correct.

22 Q. And can you tell me how did the problems begin with
23 Raymond Muniz on the morning of August 13th?

24 A. [Through Interpreter] From the morning the same
25 thing started over again of what he was saying to me

State v Dennis Cervantes-Pavon
Duncan Hearing-Dennis Elvin Cervantes-Pavon-Direct Examination by Ms. Parnall
November 9, 2015

1 after the incident with the broom he was threatening me.
2 Every time he would look at me he would threaten me.
3 Like at 9:00 Travis started to threaten me of beating me
4 up. That was the first time that day that had to do
5 anything with wanting to assault me.

6 They weren't happy with that because they were
7 laughing at me. Then by lunchtime when we were going to
8 lunch at the exit door of that building at the work site
9 --

10 THE INTERPRETER: The Interpreter needs to ask for
11 repetition.

12 [Whereupon, the Interpreter confers with the
13 witness]

14 A. [Through Interpreter] There was only one that
15 wanted to -- there wasn't only one that wanted to assault
16 me there was Raymond and Travis.

17 Q. [Ms. Parnall] Did you seek any form of help?

18 A. [Through Interpreter] Yes, correct.

19 Q. From who?

20 A. [Through Interpreter] I went to Mr. Herbie.

21 Q. Are we talking about Herbie the boss?

22 A. [Through Interpreter] Yes, correct.

23 Q. Does Herbie speak Spanish?

24 A. [Through Interpreter] No.

25 Q. And what did you ask Herbie to do?

State v Dennis Cervantes-Pavon
Duncan Hearing-Dennis Elvin Cervantes-Pavon-Direct Examination by Ms. Parnall
November 9, 2015

1 A. [Through Interpreter] I asked him to help me
2 because there really were people assaulting me and
3 truthfully I felt terrified, afraid.

4 Q. And what did Mr. Herbie do about this?

5 A. [Through Interpreter] Oh I think he called
6 attention to it. But truthfully they did not respect his
7 authority. But I know Raymond and if he doesn't respect
8 his dad he's not going to respect any other person that
9 he knows.

10 Q. On August the 13th can you tell me how things first
11 got physical with Raymond Muniz?

12 A. [Through Interpreter] It was after 12 o'clock I
13 went back to my work site, I went back up the ladder to
14 do my job.

15 When it's the afternoon and the work is almost over
16 the threats continued. The threats with signs, with hand
17 signs continued and verbal threats.

18 Q. And did these verbal threats become physical?

19 A. [Through Interpreter] Yes, later what happened was
20 physical.

21 Q. And can you tell me about what happened later that
22 became physical?

23 A. [Through Interpreter] He had a pipe in his hand.
24 He was threatening me with that pipe. I didn't come down
25 from the ladder because I didn't want any trouble. The

State v Dennis Cervantes-Pavon
Duncan Hearing-Dennis Elvin Cervantes-Pavon-Direct Examination by Ms. Parnall
November 9, 2015

1 time that I came down from the ladder was because the job
2 was finishing up.

3 Q. And when you came down from the ladder what happened
4 next?

5 A. [Through Interpreter] That's when he came with the
6 pipe. That's when I grabbed the pipe and that's when he
7 started to assault me. And that's when I started to
8 defend myself.

9 Q. When you say you grabbed the pipe you mean that you
10 grabbed another pipe?

11 A. [Through Interpreter] Yes, when he came at me.

12 Q. While you two had pipes did anyone get injured?

13 A. [Through Interpreter] Yes.

14 Q. Please tell me who got injured?

15 A. [Through Interpreter] He hit me on my stomach and
16 there is another injury here -- the Interpreter needs to
17 clarify.

18 [Whereupon, the Interpreter confers with the
19 witness]

20 A. [Through Interpreter] Something here [indicates].

21 Q. By here do you mean in the jaw area?

22 A. [Through Interpreter] Correct. That's why I
23 thought better to show you with my hand.

24 Q. Did Raymond Muniz get injured by your pipe?

25 A. [Through Interpreter] No.

State v Dennis Cervantes-Pavon

Duncan Hearing-Dennis Elvin Cervantes-Pavon-Direct Examination by Ms. Parnall
November 9, 2015

1 Q. What kind of injury did you receive to the gut?

2 A. [Through Interpreter] It was a big bruise on my
3 stomach and by coincidence the police took a photograph
4 of it.

5 Q. And if I were to show you that photograph of your
6 injury would you be able to identify it as the injury to
7 your stomach?

8 A. [Through Interpreter] Yes, correct.

9 MS. PARNALL: Your Honor, may I approach the
10 witness with this photograph? It is premarked.

11 THE COURT: You may.

12 Q. [Ms. Parnall] Mr. Cervantes if you will take a look
13 at this?

14 [Whereupon, the witness is shown photograph]

15 A. [Through Interpreter] Yes, correct those are --
16 those are two injuries, one on the stomach, one on the
17 right side and also on the jaw as well. The only thing
18 that I was given when I went in there they gave me
19 medicine for this [indicates].

20 Q. And which injuries are shown on those two photos?

21 A. [Through Interpreter] I'm sorry, could you repeat
22 that.

23 Q. Which of the injuries are shown in those two photos?

24 A. [Through Interpreter] Which one of these up here?

25 MS. PARNALL: I'm sorry, Your Honor.

State v Dennis Cervantes-Pavon

Duncan Hearing-Dennis Elvin Cervantes-Pavon-Direct Examination by Ms. Parnall
November 9, 2015

1 A. [Through Interpreter] I'm sorry, I'm sorry.

2 Q. [Ms. Parnall] Which one of the injuries that you
3 received are shown in the photos on that page?

4 A. [Through Interpreter] It's this one [indicates] and
5 this one [indicates]. I didn't have any.

6 Q. Can you describe the parts of the body that are
7 shown there?

8 A. [Through Interpreter] One above the stomach and
9 then another one that is on this side [indicates] of the
10 chest.

11 Q. And those are photos of your body?

12 A. [Through Interpreter] Yes, correct.

13 Q. And they were the ones that you described being
14 taken by the police?

15 A. [Through Interpreter] Yes, correct.

16 MS. PARNALL: Your Honor, if I may approach the
17 witness again.

18 THE COURT: You may.

19 MS. PARNALL: At this time I would like to
20 introduce this as an exhibit for the purposes of the
21 pretrial hearing.

22 THE COURT: What's the number?

23 MS. PARNALL: It is marked as defendant's exhibit
24 number 1.

25 THE COURT: For purposes of this hearing any

State v Dennis Cervantes-Pavon

Duncan Hearing-Dennis Elvin Cervantes-Pavon-Direct Examination by Ms. Parnall
November 9, 2015

1 objection?

2 MR. DURANT: No objection, Your Honor.

3 THE COURT: So admitted.

4 [Whereupon, defendant's exhibit number 1 for
5 purposes of the Duncan hearing is entered into evidence
6 by the court]

7 MS. PARNALL: May I approach?

8 THE COURT: You want me to see it? Is that what
9 you want?

10 MS. PARNALL: Yes, Your Honor.

11 THE COURT: Thank you.

12 [Whereupon, Ms. Parnall provides photograph to the
13 court]

14 Q. [Ms. Parnall] Mr. Cervantes can you tell me what
15 happened to the piece of metal that you were holding in
16 your hand?

17 A. [Through Interpreter] Well when he assaulted me he
18 tossed it because really he was taller and stronger than
19 me.

20 Q. And by tossed it you mean that the pipe flew out of
21 your hands?

22 A. [Through Interpreter] Correct. He took it away
23 from me because he was stronger than me.

24 Q. And what happened next?

25 A. [Through Interpreter] After that he came and he

State v Dennis Cervantes-Pavon
Duncan Hearing-Dennis Elvin Cervantes-Pavon-Direct Examination by Ms. Parnall
November 9, 2015

1 tossed that away from me and that's when he grabbed me
2 around the neck.

3 Q. And is this the point in time in which you pulled
4 out that saw?

5 A. [Through Interpreter] Yes, correct.

6 Q. About how tall are you Mr. Cervantes?

7 A. [Through Interpreter] Oh, I don't know exactly my
8 height but I know that I'm about the same height as her
9 approximately if it's possible.

10 Q. And about how tall was Raymond Muniz?

11 A. [Through Interpreter] I would be looking up to him.
12 He was a little bit taller than me.

13 Q. And when he grabbed you by the neck you were both
14 facing chest to chest?

15 A. [Through Interpreter] No, he was grabbing me like
16 this [indicates]. He grabbed me tightly.

17 Q. When you say like this you mean with hooking with
18 the elbow?

19 A. [Through Interpreter] Yes, he was like strangling
20 me.

21 Q. And what did you do?

22 A. [Through Interpreter] The only thing left for me to
23 do was to grab something to defend myself from my tool
24 belt.

25 Q. And what did you grab?

State v Dennis Cervantes-Pavon

Duncan Hearing-Dennis Elvin Cervantes-Pavon-Direct Examination by Ms. Parnall
November 9, 2015

- 1 A. [Through Interpreter] A saw.
- 2 Q. And what is that saw used for?
- 3 A. [Through Interpreter] To cut sheetrock.
- 4 Q. Is that something you would normally keep in a tool
- 5 belt?
- 6 A. [Through Interpreter] Correct.
- 7 Q. What did you do when you grabbed the saw?
- 8 A. [Through Interpreter] When I grabbed the saw I just
- 9 grabbed it and all I wanted to do was stop him but...
- 10 Q. How many times did you stab him with that saw?
- 11 A. [Through Interpreter] It was just one time because
- 12 he was strangling me and all I wanted was for us to
- 13 separate.
- 14 Q. After that did he let go of you?
- 15 A. [Through Interpreter] Yes, correct that's when he
- 16 let me go.
- 17 Q. And was he still standing at that point in time?
- 18 A. [Through Interpreter] Yes, correct.
- 19 Q. And what did Raymond Muniz do next?
- 20 A. [Through Interpreter] He ran outside. He went
- 21 running off and I also went outside because I was afraid.
- 22 And then when we went out the door he went to the left
- 23 and I kept walking straight. And the reason why I left
- 24 there is because his friend was also behind me and I
- 25 didn't want to have any more problems with anybody.

State v Dennis Cervantes-Pavon

Duncan Hearing-Dennis Elvin Cervantes-Pavon-Direct Examination by Ms. Parnall
November 9, 2015

1 Q. And which friend was that?

2 A. [Through Interpreter] Mr. Travis. When I was
3 walking he was also walking and he was by the door so I
4 kept walking. Travis was still threatening me.

5 MS. PARNALL: \Thank you, Your Honor. I have no
6 more questions for this witness.

7 THE COURT: Mr. Durant?

8 MR. DURANT: Thank you, Your Honor. I will be very
9 brief.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

State v Dennis Cervantes-Pavon
Duncan Hearing-Dennis Elvin Cervantes-Pavon-Cross-Examination by Mr. Durant
November 9, 2015

1 CROSS-EXAMINATION

2 BY MR. DURANT:

3 Q. I just have a couple of questions. Are you in this
4 country legally?

5 A. [Through Interpreter] Yes, correct.

6 Q. You're a citizen?

7 A. [Through Interpreter] No.

8 Q. Do you have papers?

9 A. [Through Interpreter] No.

10 Q. Then how are you here legally?

11 A. [Through Interpreter] I'm sorry I said illegally,
12 not legally.

13 Q. There is a big difference correct?

14 A. [No response]

15 Q. The fact of the matter is you are an illegal alien
16 Si?

17 A. [Through Interpreter] I could not respond to that.

18 Q. Why not?

19 MR. DURANT: Could I have this marked as an exhibit
20 please?

21 A. [Through Interpreter] First of all as far as laws
22 from here I don't know a lot.

23 [Whereupon, State's exhibit number 3 for purposes of
24 the Duncan hearing is marked by the court reporter]

25 Q. [Mr. Durant] I hand you what has been marked as

State v Dennis Cervantes-Pavon
Duncan Hearing-Dennis Elvin Cervantes-Pavon-Cross-Examination by Mr. Durant
November 9, 2015

1 State's exhibit number 3 for purposes of this hearing
2 only and ask if you recognize that document.

3 [Whereupon, the witness is shown document]

4 A. [Through Interpreter] There I'm looking at a
5 document there that as a matter of fact has my name.

6 Q. Okay. And whose writing is this?

7 A. [Through Interpreter] It is mine.

8 Q. Okay. When asked where you are from you said
9 Honduras right?

10 A. [Through Interpreter] Yes, yes.

11 Q. You were asked where you entered the United States
12 correct?

13 THE INTERPRETER: The Interpreter asks for
14 repetition Your Honor.

15 Q. [Mr. Durant] You were asked where you entered the
16 United States. Were you?

17 A. [Through Interpreter] I'm sorry. Before we
18 continue saying this first of all when the police got me
19 I was not doing well. As a matter of fact I had not
20 known everything that had happened well. But even
21 besides that I was not feeling well.

22 So when they took me, the police arrested me when
23 they took me to the police station to me there was
24 someone there that was like translating that that it was
25 okay. But I could feel that there was nothing that was

State v Dennis Cervantes-Pavon
Duncan Hearing-Dennis Elvin Cervantes-Pavon-Cross-Examination by Mr. Durant
November 9, 2015

1 okay. Why am I telling you this? Because he told me to
2 sign this and supposedly this is a paper from the police
3 and then from there the immigration man came and he told
4 me to sign also. And I asked him what was it that this
5 thing said and he would say that it said the same thing.

6 Q. Can you read Spanish?

7 A. [Through Interpreter] Spanish? Yes.

8 Q. Good. What does that say [indicates]?

9 A. [Through Interpreter] I did not read anything in
10 Spanish. There was someone translating it.

11 Q. You just told me you read Spanish?

12 A. [Through Interpreter] Correct ---

13 Q. --- what does that say ---

14 A. [Through Interpreter] --- I read Spanish but I
15 didn't read any of it ---

16 THE COURT: --- Mr. Durant, she's got to translate
17 it back. I understand we all understand a little bit of
18 Spanish but I need you to utilize the Interpreters as
19 provided. What does that say?

20 MR. DURANT: It's in Spanish, Your Honor. Let him
21 read it.

22 A. [Through Interpreter] Do you want me to read it?

23 THE COURT: Mr. Durant, do you want him to read the
24 document?

25 Q. [Mr. Durant] Yes. I want you to read that question

State v Dennis Cervantes-Pavon
Duncan Hearing-Dennis Elvin Cervantes-Pavon-Cross-Examination by Mr. Durant
November 9, 2015

1 did you enter the United States legally -- or illegally
2 and you said yes.

3 A. [Through Interpreter] Correctly that I did come in
4 illegally.

5 Q. And you were asked right after that if you had
6 papers and you said no correct?

7 A. [Through Interpreter] Correct. I did not say that I
8 have them when I don't have them.

9 Q. And the reason you don't have them is because you're
10 not in this country legally.

11 A. [Through Interpreter] Correctly.

12 Q. That wasn't so hard. Now you said that Raymond was
13 strangling you.

14 A. [Through Interpreter] Yes, correct.

15 Q. And that's why you stabbed him right?

16 A. [Through Interpreter] Yes, correct.

17 Q. Was he strangling you with his hands or with his
18 arm?

19 A. [Through Interpreter] Excuse me, can you repeat it.

20 Q. You had mentioned something he had his arm around
21 your neck is that correct?

22 A. [Through Interpreter] He took me ---

23 Q. --- like this [indicates]?

24 A. [Through Interpreter] He took me by the neck.

25 Q. Okay. Like this [indicates]? So he was behind

State v Dennis Cervantes-Pavon
Duncan Hearing-Dennis Elvin Cervantes-Pavon-Cross-Examination by Mr. Durant
November 9, 2015

1 you?

2 A. [Through Interpreter] No, he was holding me by the
3 neck.

4 Q. That's what I'm trying to figure out. How as he
5 holding you by the neck?

6 A. [Through Interpreter] He held me here [indicates]
7 when he threw my pipe. When he threw my pipe we were
8 face to face.

9 Q. Okay.

10 A. [Through Interpreter] That's when he started that
11 he grabbed me by the neck. Obviously he grabbed me right
12 here [indicates].

13 Q. Were y'all still face to face?

14 A. [Through Interpreter] Yes, correct.

15 Q. And so you were face to face with him still while he
16 was strangling you correct?

17 A. [Through Interpreter] Correct.

18 Q. With his arm?

19 A. [Through Interpreter] He had me held right here
20 [indicates].

21 MR. DURANT: May I get somebody to demonstrate Your
22 Honor? I'm just trying to figure it out.

23 THE COURT: Counsel let's just approach here.

24 [Whereupon, an off the record bench conference is
25 held]

State v Dennis Cervantes-Pavon
Duncan Hearing-Dennis Elvin Cervantes-Pavon-Cross-Examination by Mr. Durant
November 9, 2015

1 THE COURT: Do you have any more questions?

2 MR. DURANT: In that case, no.

3 THE COURT: Okay, great. Thank you. Ms.

4 Parnall, any need for redirect?

5 MS. PARNALL: No, Your Honor.

6 THE COURT: Thank you. You may step down.

7 [Whereupon, the witness is excused and exits the
8 witness stand]

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

State v Dennis Cervantes-Pavon
Duncan Hearing
November 9, 2015

1 THE COURT: Any additional witnesses?

2 MS. PARNALL: None from the defense, Your Honor.

3 THE COURT: Does the State intend to call any
4 witnesses for the purpose of this hearing?

5 MR. DURANT: Your Honor, if the court is inclined
6 to deny immunity under the Act I don't think there has
7 been a showing by a preponderance of the evidence ---

8 THE COURT: --- so that would be a no?

9 MR. DURANT: Based upon his testimony that he acted
10 in self defense in this case.

11 THE COURT: Ms. Parnall, I'll be happy -- I
12 indicated to you that I believed there had been enough
13 testimony for me to make a ruling. I'm happy to hear
14 from you concerning any argument. And as I also
15 indicated to you Mr. Durant has raised an issue that your
16 client would not necessarily be entitled to protection
17 under the Act because he is not here legally. I am not
18 going to address that issue at this time. I believe the
19 statute was indicated to protect all persons and so I am
20 not going to in and of itself deny your client immunity
21 because of the fact that he is here illegally.

22

23

24

25

State v Dennis Cervantes-Pavon
Duncan Hearing Arguments-Remarks by Ms. Parnall
November 9, 2015

1 MS. PARNALL: Thank you, Your Honor. I will move
2 forward and keep it fairly brief then. My understanding
3 of the statute is that so long as a person is in a place
4 where they have a right to be such as their place of
5 business in Mr. Cervantes' case then so long as they also
6 meet the first three elements of self-defense that they
7 were not at fault in bringing about the difficulty. That
8 they had an imminent fear of serious bodily harm or death
9 and that that imminent, that fear, that threat of
10 imminent serious bodily harm or death was one that a
11 reasonable man would have entertained in the same
12 circumstances that that person is then not required to
13 show that they had no other alternatives; that they do
14 not have a duty to retreat so to speak.

15 I believe that in the three witnesses that have been
16 presented that very basically it has been shown that not
17 only was Mr. Pavon in a place where he had the right to
18 be, that he was not causing this problem with Mr. Muniz;
19 that it was in fact the other way around, that there has
20 been testimony from two witnesses now, Mr. Cervantes as
21 well as the co-worker which was Jose Tomas Somosa, that
22 there was continual harassment, bullying upon Mr.
23 Cervantes, that there were actually physical altercations
24 before. You heard Mr. Cervantes testify that in addition
25 to Mr. Muniz assaulting and threatening him there was

State v Dennis Cervantes-Pavon
Duncan Hearing Arguments-Remarks by Ms. Parnall
November 9, 2015

1 another friend of Mr. Muniz at the job site that was also
2 joining in so this became a situation where there were
3 multiple people against Mr. Cervantes in just minutes or
4 hours leading up to the actual stabbing of Raymond Muniz.

5 We have heard that Travis Flowers the other co-
6 worker had confronted him, that Raymond Muniz kept
7 threatening him, that he was on top of a ladder and was
8 in a very vulnerable position and he did come down from
9 that ladder. Mr. Cervantes who I would put him at about
10 five foot three is very small in stature to Mr. Muniz who
11 was at about six feet, that Mr. Muniz came at him with a
12 piece of metal, a large piece of metal and was swinging
13 it at him.

14 Mr. Cervantes testified that at that point in time
15 he was afraid that he had picked up his own piece of
16 metal, that essentially there was a clash of metal and he
17 was trying to defend himself from being struck by that
18 rod that Mr. Muniz was holding, that he in fact was
19 struck by that rod a few times and received injuries to
20 his jaw and also to just below his ribcage area and
21 that's the photo that we introduced earlier, Your Honor,
22 that Mr. Muniz had essentially bested him at this point
23 because Mr. Muniz had not received any injuries. He had
24 even managed to knock the pipe out of Mr. Cervantes's
25 hand. And at that moment it was testified by two

State v Dennis Cervantes-Pavon
Duncan Hearing Arguments-Remarks by Ms. Parnall
November 9, 2015

1 witnesses that Mr. Muniz, Raymond, was able to put his
2 arm around Mr. Cervantes's neck who was smaller. It was
3 that incident that he then pulled the saw which was a
4 tool out of his tool belt, put it up one time and stabbed
5 Mr. Muniz with it and he did let him go. And it was then
6 that Mr. Cervantes was able to leave. He did walk out
7 and leave the scene. He was afraid he testified. We do
8 know that Mr. Muniz was still up and moving at the time
9 when Mr. Cervantes exited the building.

10 Your Honor, I think that between those three
11 witnesses and those facts he's been able to establish
12 that not only was he in a place where he had a lawful
13 right to be but also that he was he did testify that he
14 was in imminent fear of being injured and he had just
15 been injured and that due to this course of conduct
16 between these individuals he had a constant fear for
17 himself on the job and that's why he had gone to his boss
18 that morning to seek help to get someone to stop it.

19 I think that that fear would be reasonable for
20 someone similarly situated not only because of the huge
21 size differences because also there were multiple people
22 against him, because he was having to work up and down on
23 a ladder leaving him in a vulnerable position. Your
24 Honor, I believe that was a reasonable fear and for those
25 reasons and the fact that assuming that he meets those

State v Dennis Cervantes-Pavon
Duncan Hearing Arguments-Remarks by Ms. Parnall
November 9, 2015

1 three he does not have to show a duty to retreat I think
2 he should be granted immunity under the statute, that he
3 should not be prosecuted for this murder. That's all,
4 Your Honor.

5 THE COURT: Mr. Durant?
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

State v Dennis Cervantes-Pavon
Duncan Hearing Arguments-Remarks by Mr. Durant
November 9, 2015

1 MR. DURANT: Just briefly, Your Honor. I think
2 there is a clear question of fact in this case concerning
3 self defense just from Mr. Somosa's testimony and Mr.
4 Pavon's testimony. I think Mr. Somosa's testimony he
5 basically told about the prior spat over the shovel or
6 whatever it was; the broom I think it was, that there had
7 been an offer to fight the night before, that at no time
8 other than mouthing off at each other at no time was Mr.
9 Muniz armed until he came after him with a pipe in which
10 point he picked up the piece of pipe.

11 And at the time that both of them were unarmed when
12 both of them didn't have the metal that is when he
13 stabbed him in the chest and killed him and not under
14 circumstances where Mr. Pavon was striking. I think
15 based upon just his testimony alone you could find that
16 he has not established self-defense at all, and I'm
17 saying Mr. Somosa's testimony. I think it is clearly a
18 question of fact here and certainly it is not a
19 preponderance of the evidence that Mr. Pavon acted in
20 self-defense.

21 THE COURT: Ms. Parnall, any further argument?
22
23
24
25

State v Dennis Cervantes-Pavon
Duncan Hearing Arguments-Reply by Ms. Parnall
November 9, 2015

1 MS. PARNALL: No further argument, Your Honor, just
2 one quick comment I'm not sure that I understand exactly
3 what the question of fact is regarding the assault
4 incident. I would like to add briefly that I do believe
5 that a man of his size compared to a man of Raymond
6 Muniz's size when he held around the neck after already
7 having been assaulted and injured twice would absolutely
8 potentially be at risk of serious bodily harm by another
9 man who is larger and has his by the neck and has already
10 assaulted him. I don't think there is any question that
11 that falls under the imminent fear of serious bodily
12 harm. That would be all I have to add, Your Honor.

13
14
15
16
17
18
19
20
21
22
23
24
25

State v Dennis Cervantes-Pavon
Duncan Hearing Ruling
November 9, 2015

1 THE COURT: In a case which the defendant does
2 claim immunity under the Protection of Persons and
3 Property Act a valid case of self-defense must exist and
4 the trial court must consider the elements of self-
5 defense in determining the entitlement to immunity
6 including all of the elements except for the duty to
7 retreat. The Persons and Property Act gives complete
8 immunity from criminal prosecution if by a preponderance
9 of the evidence I find that those factors do exist.

10 Based upon the testimony presented today I deny the
11 defendant's request for immunity based upon the
12 Protection of Persons and Property Act. The intent of
13 the Act is for defensive not offensive protections.
14 There must be an absence of aggression. The testimony
15 that has been presented today is that the boss Mr. Evans
16 had told both of them to cut it out, that there had been
17 a mutual confrontation. Both the defendant and the
18 victim had discarded the tools according to Mr. Somosa
19 and at the time the victim was stabbed the victim was not
20 armed and that the witness believed that the victim and
21 defendant were merely wrestling.

22 The issue of self-defense presents itself as a jury
23 question. I am denying your motion. I do not believe
24 the testimony rises to a level beyond a preponderance of
25 the evidence to grant the immunity designed by the

State v Dennis Cervantes-Pavon
Duncan Hearing Ruling
November 9, 2015

1 legislature to protect someone from criminal prosecution.
2 I'll note your exception to my ruling. And in no way
3 does that affect the ability for you to have the
4 affirmative defense of self-defense assuming that it is
5 presented during trial. Any other motions or matters
6 before we break for the day.

7 MS. PARNALL: Your Honor, there was one first brief
8 motion that was filed and that was a motion in limine to
9 exclude the photographs of the body of the deceased on
10 the grounds that under the rule of evidence 403 they were
11 unduly prejudicial ---

12 THE COURT: --- do we have those photographs or did
13 you come to some resolution ---

14 MR. DURANT: --- I do, Your Honor, and I'll be more
15 than happy to show them to you right now although it may
16 require a little bit of testimony from the medical
17 examiner for you to...

18 THE COURT: Why don't we address that when the
19 medical examiner is here.

20 MS. PARNALL: Absolutely, Your Honor. If I may one
21 more thing I'd like to address whether or not there is
22 going to be any mention made in front of the jury about
23 Mr. Cervantes's status of being illegal in the country.
24 I don't believe that is something that would be relevant
25 to the case and I would like to just address that before

State v Dennis Cervantes-Pavon
Opening Statement-Remarks by Mr. Durant
November 10, 2015

1 OPENING STATEMENT

2 BY MR. DURANT:

3 Good morning ladies and gentlemen. In August of
4 last year, August of 2014 the Belk women's store over in
5 Towne Centre in Mount Pleasant right there on Highway 17
6 where the Isle of Palms connector is right there in that
7 little intersection they were doing some renovation work
8 on their women's store. And they had hired a local
9 contractor I believe it was named Frisch and Associates
10 to do the work on the renovation.

11 It wasn't a complete shutdown. They were kind of
12 renovating this place in phases so part of the store was
13 open and part of the store was being renovated and the
14 construction areas were separated from the actual retail
15 part of the store. Due to a lack of manpower Frisch and
16 Associates was required to sub out some of the labor,
17 construction labor, to other companies. And one of the
18 companies they subbed out the work to do was C and D
19 Construction or C and D Contractors, a construction
20 company out of Richmond, Virginia.

21 Two of the people that worked for that company were
22 this defendant; his full name is Dennis Elvin Cervantes-
23 Pavon. He goes by Elvin sometimes, but most people I
24 think call him Elvin or Melvin. Another person that came
25 down on the job from Richmond at the same time as Mr.

State v Dennis Cervantes-Pavon
Opening Statement-Remarks by Mr. Durant
November 10, 2015

1 Pavon was the victim in this case, Raymond Muniz. We are
2 here today because on August the 13th of 2014 on the
3 jobsite at Belk after the parties, Mr. Pavon and Mr.
4 Muniz had been squabbling with one other all day Mr.
5 Pavon took a keyhole saw and stabbed Mr. Muniz in the
6 chest through his heart and killed him. They had only
7 been on this job maybe two to three weeks at the time
8 this happened but it was kind of apparent to everybody
9 that they -- these two people did not get along with one
10 another. It was clear that they had had problems in the
11 past.

12 On the date that this happened they were working in
13 close proximity to one another in what was called phase
14 four renovation at Belk. It was like in one of the
15 little corners of the store that was being renovated at
16 the time. Mr. Pavon is a framer. There was a wall in
17 the middle of the construction area that he was framing.
18 We used to use wood to frame a wall. They use kind of
19 metal studs now and that's what he was doing, that's what
20 his job was.

21 The victim Raymond Muniz was mixing and pouring
22 concrete. Some trenches had been dug in the floor for
23 plumbing purposes. Mr. Muniz's job was to mix and pour
24 concrete into those trenches to fill them back up and be
25 smoothed over prior to having the floor retiled. Their

State v Dennis Cervantes-Pavon
Opening Statement-Remarks by Mr. Durant
November 10, 2015

1 jobs required them to be within relatively close
2 proximity to one another and they had been doing this at
3 each other all day; jawing at each other, taunting each
4 other, the whole day or at least all that morning to the
5 point that the superintendent around lunchtime came in
6 and counseled both of them and basically told them that
7 if you don't cut it out I'm kicking you off the job. He
8 told that to Mr. Pavon and told that to Mr. Muniz.

9 Well, that was around lunchtime and that seemed to
10 calm things down a good bit and things stayed relatively
11 calm until around closing time or quitting time. At
12 around 5:50 p.m., shortly before 6 p.m. they started it up
13 again jawing at one another. Mr. Pavon who was up on the
14 ladder came down from the ladder, he picked up a piece of
15 heavy sprinkler pipe and approached the victim where the
16 victim was mixing concrete as though he was going to
17 strike him with the pipe.

18 Mr. Muniz picked up a hammer to defend himself. At
19 this time they did not come to blows. Mr. Pavon
20 apparently thought better of it and he turned around and
21 went back to his work area, leaned the pipe up against
22 the ladder, took off his tool belt and dropped it to the
23 ground, reached down and took the keyhole saw out of his
24 tool belt put it in his belt on the right side and pulled
25 his shirt over it. At that point he picked the pipe back

State v Dennis Cervantes-Pavon
Opening Statement-Remarks by Mr. Durant
November 10, 2015

1 up and approached where Mr. Muniz was working up by the
2 concrete as though he was going to strike him with the
3 pipe. Mr. Muniz picked up a big piece of angle iron.
4 It's not really iron but it's the same kind of metal like
5 they use to frame the walls with to defend himself with.
6 Mr. Pavon attempted to strike him a couple of times with
7 that pipe and Mr. Muniz was able to block the blows with
8 a piece of angle iron, and at one point was either able
9 to pin the pipe to the ground or knock it out of Mr.
10 Pavon's hands.

11 At that time Mr. Muniz dropped his piece of angle
12 iron and neither one of them had metal in their hands.
13 They locked up with one another as though wrestling face
14 to face, chest to chest. During this Mr. Pavon was able
15 to get his arm around behind Mr. Muniz with his right
16 hand, he took the keyhole saw out of his belt and jabbed
17 it in his chest. He hit him about right here [indicates]
18 and it went six inches into his chest and straight into
19 his heart.

20 Mr. Muniz screamed and he pushed Mr. Pavon away. He
21 ran out the door and stumbled out on the sidewalk around
22 the corner where he collapsed on the ground. Employees
23 attempted to put pressure on the wound but it was
24 unavailing. He essentially bled out before E-M-S even
25 arrived and he was dead by the time E-M-S got there.

State v Dennis Cervantes-Pavon
Opening Statement-Remarks by Mr. Durant
November 10, 2015

1 They attempted to revive him but they were unsuccessful.
2 Mr. Pavon follows him out the door and you will see I
3 believe a video of him leave the building though there is
4 no video of the fight that happened inside. There is
5 video of them leaving the building. You'll see Mr. Muniz
6 run out with the blood on his chest. You'll see Mr.
7 Pavon saunter out of the building across the parking lot
8 as though he is going to the grocery store.

9 He's followed by a couple of employees who lose him
10 over in the area of Lowe's. He's not immediately
11 apprehended but the rest of that evening the Mount
12 Pleasant Police Department attempts to locate him.
13 They're able to track him going in the general direction
14 of the marsh that separates Isle of Palms and Mount
15 Pleasant but are unable to actually get him into custody.
16 At 3:30 the next day he turns up on the beach at Isle of
17 Palms. He is arrested by the Isle of Palms police
18 department and his custody is transferred to Mount
19 Pleasant.

20 There really is no issue in this case as to who
21 killed Raymond Muniz. Mr. Pavon killed Raymond Muniz. I
22 believe that even the defense would tell you that Mr.
23 Pavon killed Raymond Muniz. However, I believe that they
24 will claim that Mr. Pavon was acting in self-defense.
25 This is not a who did it. Often times jurors will have

State v Dennis Cervantes-Pavon
Opening Statement-Remarks by Mr. Durant
November 10, 2015

1 to answer that question is this the right person. You
2 don't have to worry about that. This is not a who did
3 it; this is a what is it. That is your role as jurors in
4 this case. That is the question you will have to answer;
5 what is it? Is it murder? Is it perhaps something less
6 than murder or is it a justifiable homicide because Mr.
7 Pavon acted in self-defense?

8 I am confident that once you've heard the testimony
9 that you will arrive at the inescapable conclusion that
10 Mr. Pavon in the absence of any kind of legal provocation
11 made a conscious decision to arm himself with that
12 keyhole saw with the intention of using it to kill or
13 severely injure Raymond Muniz. And when he made that
14 decision it was not made out of fear; it was made out of
15 anger. And that ladies and gentlemen is known in
16 parlance as malice aforethought. And that ladies and
17 gentlemen under the law of this state is murder. Thank
18 you.

19 THE COURT: Ms. Parnall?

20 MS. PARNALL: Thank you, Your Honor. May it please
21 the court?

22

23

24

25

1 OPENING STATEMENT

2 BY MS. PARNALL:

On August 13th my client Elvin Cervantes stood in the shadow of man who had the ability and the intention to snub out his life. My client saved himself and he killed Raymond Muniz with a work tool, a keyhole cutter to cut the drywall; a small saw.

8 The witnesses in the case are going to tell you that
9 there were threats directed at my client from Raymond
10 Muniz; threats that endured over the course of weeks on
11 his jobsite that my client tried to ignore these threats,
12 that he tried to stop this but he had to keep working.
13 He had to support himself. He also had to support his
14 aging parents. My client is much smaller in stature than
15 Raymond Muniz was. He stood at about six foot tall
16 approximately 250 pounds.

17 My client speaks little to no English. You'll hear
18 that he was quickly targeted by Raymond Muniz as well as
19 Raymond's co-worker and friend Travis Flowers. What
20 began with insults and humiliation rose to the level of
21 threats and violence and the bullying increased in
22 intensity. Raymond had struck my client on previous
23 occasions and according to witnesses Raymond tried to
24 fight my client on the night before August the 13th
25 outside a motel room at night. This was a motel where

State v Dennis Cervantes-Pavon
Opening Statement-Remarks by Ms. Parnall
November 10, 2015

1 all the workers were staying. My client refused to fight
2 and will tell you he went back in his room because he was
3 too scared of Raymond. The morning of August 13th the
4 threats began anew. Witnesses will tell you that both
5 Raymond Muniz as well as his co-worker Travis had
6 confronted my client Elvin that my client went to his
7 boss Herbie and my client asked Herbie for help; asked
8 him in broken English for someone to help stop Raymond
9 from harassing and messing with him. But nothing stopped
10 Raymond Muniz.

11 My client kept working, doing his framing job where
12 he had to get up and down the ladder. Near the end of
13 the day he was coming down the ladder when he ran into
14 another confrontation with Raymond Muniz. Raymond had an
15 almost eight foot long metal rod making as if to hit my
16 client with it. My client had a nearby pipe to defend
17 himself. There was a clash of metal and my client was
18 hit. My client received two injuries. We'll tell you
19 one of them was to his jaw and another injury you're
20 going to hear about was to his abdomen.

21 Raymond was a large man, Raymond was a very strong
22 man. Raymond did not receive any injuries from my
23 client's pipe. In fact Raymond was able to knock my
24 client's pipe to the ground. Raymond grabbed my client
25 about the neck and at this point my client Elvin made a

State v Dennis Cervantes-Pavon
Opening Statement-Remarks by Ms. Parnall
November 10, 2015

1 desperate move, grabbed that small saw and plunged it
2 upward into Raymond's chest one time; a single blow.
3 Raymond was still standing at this point. In fact he was
4 running furiously out the door and my client as if in a
5 daze walked away from all the chaos. You'll hear that he
6 walked and he wandered for almost 24 hours in an area
7 that he was completely unfamiliar with. That he
8 basically waited for authorities to find him on the beach
9 at the Isle of Palms the next day.

10 Raymond Muniz had friends and family on that
11 jobsite. You will hear from them. You will hear their
12 anger. You will hear their grief. You will also
13 probably hear from Raymond's friend and another
14 persecutor of my client Travis Flowers. These witnesses
15 will probably portray Raymond Muniz in a much more
16 positive light.

17 But you will remember that my client Elvin tried to
18 stop this that he tried to get help that his boss Herbie
19 was unable to protect him and that ultimately my client
20 had to defend his own life.

21 The State has presented this as if only Raymond's
22 life matters. But you will be given the chance to say
23 that my client's life matters; that it has value too.
24 That no man should be forced to submit himself at his
25 work place to an assault that puts his life at risk and

State v Dennis Cervantes-Pavon
Opening Statement-Remarks by Ms. Parnall
November 10, 2015

1 that any man who reacts the way that my client Elvin did
2 is innocent of any wrongdoing. And I rely upon you to
3 make that point very clear when you find him innocent.

4 THE COURT: Call your first witness.
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

State v Dennis Cervantes-Pavon
Michelle Johnson-Direct Examination by Mr. Durant
November 10, 2015

1 MR. DURANT: The State would call Michelle Johnson.

2 [Whereupon, Ms. Johnson comes forward]

3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]

5 CLERK OF COURT: Please state your first and last
6 name and spell your last name loudly and clearly into the
7 microphone.

8 THE WITNESS: Michelle Johnson, J-O-H-N-S-O-N.

9 - - - - -

10 MICHELLE JOHNSON,

11 Having been first duly sworn,

12 Was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. DURANT:

15 Q. Good morning.

16 A. Good morning.

17 Q. Could you tell our jury where you are employed?

18 A. Mount Pleasant Police Department.

19 Q. And how long have you been with Mount Pleasant?

20 A. It will be 12 years December 1st.

21 Q. Okay. And what are your current duties with Mount
22 Pleasant? I believe you are on light duty is that
23 correct?

24 A. That's correct, an on the job injury. I'm on light
25 duty.

State v Dennis Cervantes-Pavon
Michelle Johnson-Direct Examination by Mr. Durant
November 10, 2015

1 Q. Okay. And what were you doing on August the 13th
2 2014?

3 A. I was on patrol at the Mount Pleasant Towne Centre.

4 Q. Okay. And was that your normal area of patrol?

5 A. Yes, sir.

6 Q. You were pretty much assigned there permanently
7 right?

8 A. Yes, sir.

9 Q. You're also somewhat of a Spanish speaker is that
10 correct?

11 A. Yes, sir.

12 Q. And I believe you often assist the Mount Pleasant
13 Police Department in translation duties when they are
14 dealing with persons of Hispanic descent is that correct?

15 A. Yes, sir.

16 Q. And can you tell our jury where Towne Centre is
17 located?

18 A. It's on 17 right before the Isle of Palms connector
19 in the town of Mount Pleasant, the county of Charleston.

20 Q. And were you on duty shortly before 6 p.m. that day?

21 A. Yes, sir.

22 Q. And could you tell our jury what happened.

23 A. We have a precinct office in the Towne Centre and I
24 had just walked in and sat down and I got a call over the
25 radio from the dispatcher that there was an active

State v Dennis Cervantes-Pavon
Michelle Johnson-Direct Examination by Mr. Durant
November 10, 2015

1 shooting -- excuse me; a stabbing at the Belk. So I
2 looked out to the right of the glass door that we have in
3 our precinct office and I ran out and ran towards the
4 direction towards Belk.

5 Q. Okay.

6 MR. DURANT: Your Honor, at this time we'd offer
7 State's exhibit number 76 an aerial photograph I believe
8 without objection.

9 THE COURT: Any objection?

10 MS. PARNALL: No objection, Your Honor.

11 THE COURT: State's 76 into evidence without
12 objection.

13 [Whereupon, State's exhibit number 76 is entered
14 into evidence by the court]

15 MR. DURANT: May I approach the witness, Your
16 Honor?

17 THE COURT: You may. You have continued
18 permission.

19 MR. DURANT: Thank you.

20 Q. [Mr. Durant] Ms. Johnson, it may be better --

21 MR. DURANT: May the witness come around, Your
22 Honor?

23 THE COURT: She may although she is very soft
24 spoken and considering everything that is going on I
25 think that it may be...

State v Dennis Cervantes-Pavon
Michelle Johnson-Direct Examination by Mr. Durant
November 10, 2015

1 MR. DURANT: I'm trying to get a place where she
2 can see this and the jury can see it too.
3 Q. [Mr. Durant] Can you see that now?
4 [Whereupon, the photograph is shown]
5 A. Yes, sir.
6 Q. Okay. And also I have -- it might help you if I
7 gave you this laser pointer. If you would -- what is
8 this a photograph of?
9 A. That is the Mount Pleasant Towne Centre the Belk
10 area.
11 Q. Okay. And could you show the jury where Belk Drive
12 is.
13 A. This is this area here [indicates].
14 Q. And the one that goes out this way [indicates] too?
15 A. Yes, sir.
16 Q. And that leads out to where?
17 A. To 17.
18 Q. Highway 17?
19 A. Yes, sir.
20 Q. Okay. And would you show the jury where the Belk
21 women's store is.
22 A. That would be this area right here [indicates].
23 Q. Okay. And what is this building over here
24 [indicates]?
25 A. This is the Belk men's store.

State v Dennis Cervantes-Pavon
Michelle Johnson-Direct Examination by Mr. Durant
November 10, 2015

1 Q. Okay. And could you show them where the substation
2 was, the Mount Pleasant Police Department substation?
3 A. Our Mount Pleasant substation is right here
4 [indicates].
5 Q. Okay. So you basically when you got this call you
6 came out of the door where?
7 A. I came from right here [indicates] and ran straight
8 this way [indicates].
9 Q. Okay. And what did you observe when you were
10 running over that way?
11 A. There were several individuals in a parking lot and
12 they were screaming at me that there was a subject that
13 was running towards into the parking lot area towards
14 Hungryneck.
15 Q. Okay. And show them where Hungryneck Boulevard is.
16 A. This is Hungryneck Boulevard here [indicates].
17 Q. Okay. And they indicated somebody was running
18 where?
19 A. In this direction [indicates].
20 Q. Okay. And what did you see at the corner of the
21 building there?
22 A. There were several individuals that were running
23 around the corner of the building on the Hungryneck side,
24 construction workers and others, and when I ran around
25 the corner I found the victim lying on the ground in this

State v Dennis Cervantes-Pavon
Michelle Johnson-Direct Examination by Mr. Durant
November 10, 2015

1 area [indicates].

2 Q. Okay. Did you see anybody out in this direction
3 [indicates] that the employees -- the other people were
4 directing you to?

5 A. When I was running towards passing the front of the
6 Belk I looked because everybody was pointing this way
7 [indicates] and I could see a red shirt running -- a male
8 with a red shirt running in that direction.

9 Q. And what did you do with that information?

10 A. I got on the radio and advised dispatch that I had a
11 possible male subject running towards the Hungryneck
12 Venning area.

13 Q. Okay. Now when you got around the corner of the
14 building what did you observe?

15 A. I observed a male subject on the ground.

16 Q. And was anyone attending to him at the time?

17 A. There were several construction workers. There was
18 one that was actually kneeling down over him.

19 Q. And what did you do?

20 A. I also kneeled -- I got on my knees and I put
21 pressure on his wound on the chest.

22 Q. And where was the victim's injury?

23 A. It was in the chest area.

24 Q. And what was his condition when you got there?

25 A. He was pale in the face, his eyes were open, he was

State v Dennis Cervantes-Pavon
Michelle Johnson-Direct Examination by Mr. Durant
November 10, 2015

1 looking at me and I could pretty much feel his heart stop
2 in my hands.

3 Q. What happened next?

4 A. There was a lot of chaos. His father Raphael
5 Puentes was on scene also.

6 Q. That was Mr. Muniz's father?

7 A. That's correct, Raymond Muniz. So I was trying to
8 let everyone stand back but I held pressure until E-M-S
9 arrived and they took over the scene. Then I attended to
10 Mr. Puentes as best I could until I was told to secure
11 the area.

12 Q. Okay. And based upon your conversation with Mr.
13 Puentes were you able to identify the deceased.

14 A. Yes, sir. E-M-S of course was asking me for any
15 information. I was at that time getting that information
16 from his father.

17 Q. And what was the victim's name?

18 A. Raymond Ramon [phonetic] Muniz.

19 Q. Okay. And old was he?

20 A. I want to say he was ---

21 Q. --- if you were told?

22 A. Twenty eight I believe.

23 Q. So what did you do after E-M-S arrived?

24 A. I let them take over and continue working on the
25 victim and I secured the area.

State v Dennis Cervantes-Pavon
Michelle Johnson-Direct Examination by Mr. Durant
November 10, 2015

- 1 Q. Okay. Did you later report to Corporal Eckert?
- 2 A. Yes, sir.
- 3 Q. For what purpose?
- 4 A. There were several individuals in the area that
- 5 didn't speak English well so I assisted with translating
- 6 for that.
- 7 Q. Okay. And based upon the conversations with the
- 8 co-workers there were y'all able to obtain the name of a
- 9 suspect?
- 10 A. Yes, sir.
- 11 Q. And what was that name?
- 12 A. Elvin Pavon.
- 13 Q. Moving ahead to the next day did you have occasion
- 14 to be at Mount Pleasant Police Department when Mr. Pavon
- 15 was arrested?
- 16 A. Can you repeat that?
- 17 Q. The next day, August the 14th did you have occasion
- 18 to go to Mount Pleasant Police Department when Mr. Pavon
- 19 was arrested?
- 20 A. Yes, sir.
- 21 Q. For what purpose were you summoned to Mount
- 22 Pleasant?
- 23 A. To translate.
- 24 Q. Okay. And I believe this was in the afternoon of
- 25 August the 14th is that correct?

State v Dennis Cervantes-Pavon
Michelle Johnson-Direct Examination by Mr. Durant
November 10, 2015

1 A. Yes, sir.

2 Q. Do you recall what he was wearing that day?

3 A. He had on a red polo shirt and blue jeans. They
4 were very soiled and wet.

5 MR. DURANT: Your Honor, at this time we would
6 offer State's exhibit number 58 I believe without
7 objection.

8 MS. PARNALL: That's correct, Your Honor.

9 THE COURT: State's 58 into evidence without
10 objection.

11 [Whereupon, State's exhibit number 58 is entered
12 into evidence by the court]

13 Q. [Mr. Durant] And I direct your attention to State's
14 exhibit 58.

15 [Whereupon, the photograph is shown]

16 Q. This was a photograph that was taken right after Mr.
17 Pavon's arrest is that correct?

18 A. Yes, sir.

19 Q. And that's what he was wearing that day?

20 A. Yes, sir.

21 Q. And why is there plastic on the chair?

22 A. His clothes were very dirty and wet.

23 Q. Okay. I don't believe I have any additional
24 questions. Could you please answer any questions that
25 defense counsel may have?

State v Dennis Cervantes-Pavon
Michelle Johnson-Direct Examination by Mr. Durant
November 10, 2015

1 MS. PARNALL: Thank you, Your Honor. I don't have
2 any questions for this witness.

3 THE COURT: You may step down. Feel free to stay
4 with us but you're also free to leave. Thank you.

5 [Whereupon, the witness is excused and exits the
6 witness stand]

7 THE COURT: Call your next witness.
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

State v Dennis Cervantes-Pavon
William Hepp-Direct Examination by Mr. Durant
November 10, 2015

1 MR. DURANT: The State would call William Hepp.
2 [Whereupon, Mr. Hepp comes forward]
3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]

5 CLERK OF COURT: State your full name loudly and
6 clearly into the microphone and spell your last name for
7 the record.

8 THE WITNESS: My first name is William; my last
9 name is Hepp, H-E-P-P.

10 - - - - -

11 WILLIAM HEPP,

12 Having been first duly sworn,

13 Was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. DURANT:

16 Q. Mr. Hepp, would you tell our jury where you are
17 employed?

18 A. Charleston County Sheriff's Department.

19 Q. What do you do at the Sheriff's Department?

20 A. I'm currently a detention officer.

21 Q. Okay. But that's not what you were doing in August
22 of 2014 is that correct?

23 A. No, sir.

24 Q. And could you tell our jury what you did for a
25 living in August of 2014?

State v Dennis Cervantes-Pavon
William Hepp-Direct Examination by Mr. Durant
November 10, 2015

- 1 A. I was a Belk lost prevention associate.
- 2 Q. At what store did you work?
- 3 A. Belk Drive, 1200 Belk Drive, Mount Pleasant.
- 4 Q. And in your capacity as a loss prevention officer
- 5 with the Belk store were you familiar with the video
- 6 surveillance working there?
- 7 A. Yes, sir.
- 8 Q. And do you recall how many surveillance cameras they
- 9 had at that location?
- 10 A. Yes, sir. At that time there were 15 internal and
- 11 one external.
- 12 Q. Okay. And where was the external camera located?
- 13 A. On the side wall of the men's store.
- 14 Q. And in what direction was it oriented?
- 15 A. It was pointed -- it was angled across the parking
- 16 lot facing the main entrance for the women's store.
- 17 Q. Okay. And referring you to State's exhibit number
- 18 76 what store is this right here [indicates]?
- 19 A. That's the women's store.
- 20 Q. And what is this store right here [indicates]?
- 21 A. That would be the men's store.
- 22 Q. Okay. Now which one of those stores was the
- 23 external camera on?
- 24 A. The outer wall of the men's store.
- 25 Q. Okay. It was over here [indicates]?

State v Dennis Cervantes-Pavon
William Hepp-Direct Examination by Mr. Durant
November 10, 2015

1 A. Yes, sir.

2 Q. And directed back this way [indicates]?

3 A. Yes, sir.

4 Q. And what is located on this side [indicates] of the
5 women's store?

6 A. That would be the main entrance to the parking lot
7 and the area where the construction is going on.

8 Q. Okay. How many doors are there right there going
9 into Belk at that location?

10 A. There are two sets; four doors total.

11 Q. Okay. And once you go through those doors there is
12 a little atrium is that correct?

13 A. Correct.

14 Q. And where did the left door -- going in from the
15 outside where did the left door lead to?

16 A. The left door went to the main store and the right
17 door went to construction.

18 Q. Okay. So the right side was blocked off to the
19 public. It was just for construction workers is that
20 correct?

21 A. Yes, sir.

22 Q. What was going on in this area of the store right
23 here [indicates]?

24 A. They were doing demolition and rebuilding for the
25 new cosmetic wing.

State v Dennis Cervantes-Pavon
William Hepp-Direct Examination by Mr. Durant
November 10, 2015

1 Q. Okay. And that was designated phase four of the
2 renovation I believe?

3 A. Yes, sir.

4 Q. Where are the images captured by the video system
5 stored?

6 A. They are captured on three interlexers [phonetic]
7 that that hold three months of footage.

8 Q. Pardon me?

9 A. They are captured on three separate interlexers
10 [phonetic] that split up the cameras that hold three
11 months footage.

12 Q. Okay. These are kind of like servers or DVR's or
13 something like that?

14 A. Yes sir, they are digital DVR's.

15 Q. Okay. And were you working on August the 14th or
16 August the 13th of 2014 when the victim in this case was
17 stabbed to death?

18 A. Yes, sir.

19 Q. And what -- and were you approached by the Mount
20 Pleasant Police Department?

21 A. Yes, sir.

22 Q. Regarding what?

23 A. Footage I would have had regarding the incident of
24 the stabbing.

25 Q. Okay. Did you have any footage of anything that

State v Dennis Cervantes-Pavon
William Hepp-Direct Examination by Mr. Durant
November 10, 2015

1 was going on inside of the construction area?

2 A. No, sir. The cameras for the construction area were
3 recently torn down for renovation.

4 Q. Okay. They had been disabled because of the
5 renovation?

6 A. Yes, sir.

7 Q. Were you able to locate any footage from the
8 external camera?

9 A. Yes, sir.

10 Q. And what did your footage capture?

11 A. The footage captured the front door and basically it
12 showed the victim running out of the building and running
13 to the left of the building and then the defendant
14 exiting the building and walking toward the camera
15 through the parking lot.

16 Q. Okay. And what did you do with the footage that
17 you observed on the DVR?

18 A. I isolated it and put it to a DVR disk.

19 Q. Okay. And that would -- you burned it to a C.D. or
20 something?

21 A. Yes, sir.

22 Q. And you did that on a couple of different occasions
23 is that correct?

24 A. Yes, sir.

25 Q. I believe you gave them one that day and then one

State v Dennis Cervantes-Pavon
William Hepp-Direct Examination by Mr. Durant
November 10, 2015

1 three or four days later is that correct?

2 A. Yes, sir.

3 Q. Or three disks three or four days later is that
4 correct?

5 A. Yes, sir.

6 Q. In transferring the images from the DVR to the video
7 disk did you alter or tamper with the images in anyway?

8 A. No, sir.

9 Q. I hand you what has been marked as State's exhibit
10 number 77 for identification purposes and ask you if you
11 recognize that item?

12 [Whereupon, the witness is shown exhibit]

13 A. Yes, sir.

14 Q. And what is that?

15 A. That's my handwriting.

16 Q. Okay. That was one of the three disks that you
17 prepared for the Mount Pleasant Police Department on
18 August the 15th I believe is that correct?

19 A. Yes, sir.

20 Q. And that captures the victim and defendant leaving
21 the store and a few seconds after that is that correct?

22 A. That's correct, sir.

23 Q. And is this an exact copy of the video that appeared
24 on the DVR and the digital images captured by Belk
25 surveillance system at that time?

State v Dennis Cervantes-Pavon
William Hepp-Direct Examination by Mr. Durant
November 10, 2015

1 A. Yes, sir.

2 MR. DURANT: Your Honor, at this time we would
3 offer State's exhibit number 77 into evidence.

4 THE COURT: Any objection?

5 MS. PARNALL: No objection, Your Honor.

6 THE COURT: State's 77 into evidence without
7 objection. You may publish.

8 [Whereupon, State's exhibit number 77 is entered
9 into evidence by the court]

10 MR. DURANT: I believe I'm going to publish it with
11 the next witness, Your Honor.

12 THE COURT: All right. Thank you.

13 Q. [Mr. Durant] I don't believe I have any other
14 questions Mr. Hepp. Thank you for coming. Could you
15 please answer any questions defense counsel may have?

16 MS. PARNALL: No questions for the witness, Your
17 Honor. Thank you.

18 THE COURT: Mr. Hepp, you are free to go but feel
19 free to stay with us.

20 [Whereupon, the witness is excused and exits the
21 witness stand]

22 THE COURT: Call your next witness.
23
24
25

State v Dennis Cervantes-Pavon
Logan Fey-Direct Examination by Mr. Durant
November 10, 2015

1 MR. DURANT: The State would call Logan Fey.

2 [Whereupon, Mr. Fey comes forward]

3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]

5 CLERK OF COURT: Please state your first and last
6 name and spell your last name loudly and clearly into the
7 microphone.

8 THE WITNESS: Detective Logan Fey, my last name is
9 spelled F-E-Y.

10 - - - - -

11 LOGAN FEY,

12 Having been first duly sworn,

13 Was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. DURANT:

16 Q. Good morning detective.

17 A. Good morning sir.

18 Q. Could you tell our jury where you work?

19 A. I work for the town of Mount Pleasant as a
20 detective.

21 Q. And how long have you been with Mount Pleasant
22 Police Department?

23 A. Since August of 2011.

24 Q. And you already indicated you were a detective.

25 Were you so employed on August the 13th of 2014?

State v Dennis Cervantes-Pavon
Logan Fey-Direct Examination by Mr. Durant
November 10, 2015

1 A. At that time I was actively working as a detective
2 for the town.

3 Q. Okay. And in that capacity did you have the
4 occasion to become involved in the investigation
5 involving the stabbing death of Raymond Muniz?

6 A. I did.

7 Q. How did you become involved?

8 A. I was responding as one of the call out detectives.
9 Due to the type of crime that it was we all responded
10 from our office.

11 Q. And do you recall about what time it was when you
12 arrived at Belk?

13 A. It was about 7 p.m. that I arrived from my
14 residence.

15 Q. And what were you tasked to do?

16 A. Upon arriving on the scene I was tasked to relieve
17 patrol officer Michelle Johnson who was securing one of
18 the crime scenes where the victim had collapsed. And I
19 was tasked to relieve her so that she could translate for
20 some of the Hispanic workers on the scene.

21 Q. Okay. And moving on to the next day August the
22 14th -- I believe the 13th was a Wednesday?

23 A. Correct.

24 Q. So moving on to Thursday August the 14th did you
25 have an occasion to return to the Belk that morning?

State v Dennis Cervantes-Pavon
Logan Fey-Direct Examination by Mr. Durant
November 10, 2015

1 A. I did. The next morning I was tasked with
2 responding back to the incident location to arrive with
3 one of our crime scene technicians CSI Farrell so that we
4 could photograph the crime scene and again interview some
5 of the workers.

6 Q. Okay. And did you meet with Detective Farrell I
7 mean CSI Farrell?

8 A. I did. Upon arrival I did meet with him. At that
9 time I observed as he was setting up the individuals who
10 responded to work that next morning and I watched as he
11 photographed the crime scene with them in the places and
12 their positions where they identified that they were.

13 Q. Okay. And did you talk to the employees that were
14 there that day?

15 A. Yes. After we finished photographing I did speak
16 with the employees that were on scene.

17 Q. And of the employees that were on the scene that day
18 was one of them Jeremiah Oxendine?

19 A. Yes.

20 Q. Okay. And had Mr. Oxendine indicated whether or
21 not he had seen the incident?

22 A. Yes.

23 Q. He had seen it or had not seen it?

24 A. He had seen the incident.

25 Q. Okay. Was there a Mr. Ronnie Hunt there that day?

State v Dennis Cervantes-Pavon
Logan Fey-Direct Examination by Mr. Durant
November 10, 2015

1 A. Yes. I identified Mr. Ronnie Hunt through
2 interviewing different employees that he also had
3 information to provide about the incident.

4 Q. Was that Ronnie Hunt or Travis Flowers?

5 A. Ronnie did not -- let me correct myself. I
6 identified Ronnie as being a person who did have
7 information but Ronnie was not on scene that next
8 morning. He did not respond to work.

9 But I also identified Travis Flowers as an
10 individual who also had seen the incident and he did
11 return to work the next morning.

12 Q. Okay. So Mr. Flowers was there and you interviewed
13 him is that correct?

14 A. Correct.

15 Q. Did you obtain a statement from him?

16 A. I did.

17 Q. Did you have occasion to talk to Mr. Herbie Evans --
18 Herbie Evans?

19 A. I did.

20 Q. And who is he?

21 A. Herbie Evans is the foreman for the job that was
22 taking place and is Travis Flowers' supervisor.

23 Q. And he helped I believe put you -- asked him about
24 providing you with a building plan of Belk?

25 A. That's correct.

State v Dennis Cervantes-Pavon
Logan Fey-Direct Examination by Mr. Durant
November 10, 2015

1 Q. Okay. And did he provide you with a building plan?

2 A. He did.

3 Q. Of the Belk?

4 A. He did, sir.

5 Q. Okay.

6 MR. DURANT: And Your Honor at this time I would
7 offer State's exhibit number 78 I believe without
8 objection.

9 MS. PARNALL: That's correct, Your Honor, no
10 objection.

11 THE COURT: Okay. State's 78 into evidence
12 without objection.

13 [Whereupon, State's exhibit number 78 is entered
14 into evidence by the court]

15 Q. [Mr. Durant] Okay. And referring to State's
16 exhibit number 78 what does that depict generally?

17 A. That is the depiction of the plans that I received
18 from Mr. Herbie Evans.

19 Q. Okay. And this whole building is what?

20 A. That is Belk; the project plans for Belk.

21 Q. Okay. And what was going on in this little
22 quadrant right here [indicates]?

23 A. That area is identified as phase four which
24 encompasses the incident location.

25 Q. Okay. And is that where the construction was going

State v Dennis Cervantes-Pavon
Logan Fey-Direct Examination by Mr. Durant
November 10, 2015

1 on?
2 A. That's correct.
3 Q. Okay. And I believe there was a door there
4 [indicates] that went into the construction area is that
5 correct?
6 A. That's correct.
7 Q. And a door that went into the left side which was
8 still open is that correct?
9 A. That's correct.
10 Q. All right. Do you know what this little thing is
11 right there [indicates]?
12 A. Yes, that is the wall that was being built.
13 Q. Okay. It was being framed?
14 A. Framed up at the time.
15 Q. Okay. I did want to ask you somewhere else and you
16 can use this top one as the laser pointer. You've
17 already identified this [indicates] as being the wall.
18 A. That's correct.
19 Q. Based upon your investigation were you able to
20 ascertain the general area of where the stabbing had
21 taken place?
22 A. That's correct.
23 Q. And could you point that out?
24 A. It would be in this area right there [indicates].
25 Q. Okay. Moving on to the next day I think was

State v Dennis Cervantes-Pavon
Logan Fey-Direct Examination by Mr. Durant
November 10, 2015

1 Friday?

2 A. Yes, sir.

3 Q. What did you do relative to this case?

4 A. On Friday I was tasked with responding back out to
5 the incident location to conduct a dive of the pond and a
6 search of the area in which the defendant fled.

7 Q. And what were you searching for?

8 A. We were searching for a weapon that was identified
9 in this incident which was identified as a keyhole saw.
10 So it is a small bladed knife instrument that we were
11 looking for and they identified through investigation
12 that it was a red and black handle knife that we were
13 looking for.

14 Q. And it was not at the scene?

15 A. It was not found at the incident scene.

16 Q. And where did you look -- where did you look for the
17 keyhole saw?

18 A. We looked for the keyhole saw in the pond that the
19 defendant passed by as well as on top of Conex [phonetic]
20 trailers that were stationed out there with the
21 construction project and on top of some low lying areas
22 of the building; so awnings that I could reach.

23 Q. And what were the results of the search?

24 A. We did not locate the knife.

25 Q. Okay. It was not located by the dive team either

State v Dennis Cervantes-Pavon
Logan Fey-Direct Examination by Mr. Durant
November 10, 2015

1 is that correct?

2 A. That is also correct.

3 Q. And referring to State's exhibit number 76 could you
4 please show the jury the areas that you were searching
5 for the knife or the saw being the Belk right here
6 [indicates] the men's store over there [indicates].

7 A. So what happened was through the depiction of the
8 video we observed that the defendant fled in the
9 direction this way [indicates]. So we searched with the
10 dive team in this pond [indicates] the entire length of
11 the pond and in this area [indicates] particularly.

12 And this area right here [indicates] with the Conex
13 [phonetic] trailers that I searched on top of as well as
14 I searched on top of this building right here [indicates]
15 and did not find the object.

16 Q. Okay. The next day -- I mean that same day did you
17 have an occasion to talk with a fellow named Jose Somosa?

18 A. That's correct.

19 Q. And who is Jose Somosa?

20 A. Mr. Somosa was identified as an individual that was
21 a friend of the defendant and also provided him a ride to
22 and from work. He was also identified as an individual
23 that would have more information about the incident.

24 Q. Okay. Did you interview Mr. Somosa that day?

25 A. I did.

State v Dennis Cervantes-Pavon
Logan Fey-Direct Examination by Mr. Durant
November 10, 2015

1 Q. And who else was there?

2 A. Present with me was Detective Vance Stephenson and
3 one of our translators at that time Corporal Santos.

4 Q. Okay. And what was Corporal Santos used for?

5 A. Primarily for translation.

6 Q. Okay. And so Corporal Santos was translating for
7 you and Detective Stephenson as you questioned Mr. Somosa
8 is that correct?

9 A. That's correct.

10 Q. And using that process did you obtain a statement
11 from Mr. Somosa?

12 A. That's correct.

13 Q. And was the statement gone over with Mr. Somosa
14 after it was taken?

15 A. That's correct.

16 Q. And did he agree that that was his statement ---

17 MR. COCHRAN: --- I'd object to hearsay.

18 THE COURT: Is there an exception?

19 MR. DURANT: I'm not sure which question he's
20 objecting to.

21 THE COURT: Counsel approach.

22 [Whereupon, an off the record bench conference is
23 held]

24 THE COURT: Sustained; you may rephrase.

25 Q. [Mr. Durant] Was there an affirmation of his

State v Dennis Cervantes-Pavon
Logan Fey-Direct Examination by Mr. Durant
November 10, 2015

1 statement?

2 A. Yes sir, it was.

3 Q. Was -- did he sign his statement?

4 A. Yes, he did.

5 Q. Based upon your conversation with Mr. Somosa were
6 you able to locate Mr. Pavon's tool belt?

7 A. That's correct.

8 Q. And where was his tool belt?

9 A. The tool belt was located in the trunk area of his
10 vehicle.

11 Q. And who had removed it?

12 A. He identified himself as the individual that removed
13 it from the crime scene.

14 Q. Did you search the vehicle?

15 A. I searched the vehicle.

16 MR. DURANT: Your Honor, at this time we would
17 offer State's exhibits 64 through 70 I believe without
18 objection.

19 THE COURT: Mr. Cochran?

20 MR. COCHRAN: No objection, Your Honor.

21 THE COURT: State's 64 through 70 into evidence
22 without objection.

23 [Whereupon, State's exhibit numbers 64, 65, 66, 67,
24 68, 69, and 70 are entered into evidence by the court]

25 Q. [Mr. Durant] Can you see? Can you tell the jury who

State v Dennis Cervantes-Pavon
Logan Fey-Direct Examination by Mr. Durant
November 10, 2015

1 that is -- this is State's exhibit 64 that we are
2 referring to. Who is that [indicates]?

3 A. Mr. Somosa.

4 Q. And State's exhibit 65 what does that depict?

5 A. This depicts his vehicle.

6 Q. And what is that [indicates] leaning up against his
7 vehicle?

8 A. That is a slide rule that was removed from the
9 vehicle by him before we advised him to hold on.

10 Q. State's 66?

11 A. This is a slide rule and I photographed it due to
12 the fact that it had the defendant's name on it, Elvin.

13 Q. Okay. And State's 67?

14 A. This is when we opened the trunk area and I
15 photographed prior to looking inside.

16 Q. Sixty-eight?

17 A. This begins a series of photographs looking inside
18 the vehicle. And at this time I identified that the tool
19 belt was visually present.

20 Q. Okay. And that tool belt was identified as
21 belonging to Mr. Pavon?

22 A. That's correct.

23 Q. And is that the same thing that is shown in State's
24 exhibit number 69?

25 A. That is also correct.

State v Dennis Cervantes-Pavon
Logan Fey-Direct Examination by Mr. Durant
November 10, 2015

1 Q. And in State's exhibit number 70?

2 A. That's correct.

3 Q. Was there a keyhole saw in his belongings?

4 A. No, there was not.

5 Q. I don't believe I have any further questions

6 detective. Could you please answer any questions defense
7 counsel may have for you?

8 THE COURT: Mr. Cochran?

9 MR. COCHRAN: Thank you, Your Honor. May it please
10 the court?

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

State v Dennis Cervantes-Pavon
Logan Fey-Cross-Examination by Mr. Cochran
November 10, 2015

1 CROSS-EXAMINATION

2 BY MR. COCHRAN:

3 Q. You said that you spoke with Mr. Somosa and
4 determined that he did not speak English is that correct?

5 A. That's correct.

6 Q. And so you had another police officer who speaks
7 some Spanish come over; that's Officer Santos is that
8 correct?

9 A. That's correct.

10 Q. Are you aware of any of the specific level of
11 Spanish that Mr. Santos speaks?

12 A. His primary language is Portuguese but he -- it was
13 the most readily available officer to speak that language
14 and he identified himself as being able to speak Spanish.

15 Q. And he is not employed by the police department as
16 an interpreter he's a police officer correct?

17 A. That's correct.

18 Q. And you had Mr. Somosa -- you spoke to Mr. Somosa
19 with the help of Mr. Santos or Officer Santos and a
20 statement was handwritten correct?

21 A. That's correct.

22 Q. Was that handwritten by you?

23 A. That is also correct.

24 Q. Okay. So that was handwritten in English correct?

25 A. That's correct.

State v Dennis Cervantes-Pavon
Logan Fey-Cross-Examination by Mr. Cochran
November 10, 2015

1 Q. And Mr. Somosa signed that statement correct?
2 A. That's correct.
3 Q. But he was signing a statement that was written in
4 English correct?
5 A. That's correct.
6 Q. So he could not read through the statement prior to
7 signing it correct?
8 A. The statement was read back to him in Spanish.
9 Q. By Mr. Santos?
10 A. Correct.
11 MR. COCHRAN: Nothing further, Your Honor.
12 THE COURT: Mr. Durant?
13 MR. DURANT: I have nothing further, Your Honor.
14 THE COURT: You may step down. You are free to
15 leave but feel free to stay with us.
16 THE WITNESS: Thank you, Your Honor.
17 [Whereupon, the witness is excused and exits the
18 witness stand]
19
20
21
22
23
24
25

State v Dennis Cervantes-Pavon
Travis Lee Flowers-Direct Examination by Mr. Durant
November 10, 2015

1 MR. DURANT: The State would call Travis Lee
2 Flowers.

3 [Whereupon, Mr. Flowers comes forward]

4 [Whereupon, the witness is duly sworn by the Clerk
5 of Court]

6 CLERK OF COURT: Please state your first and last
7 name and spell your last name loudly and clearly into the
8 microphone.

9 THE WITNESS: Travis Flowers, F-L-O-W-E-R-S.

10 - - - - -

11 TRAVIS FLOWERS,

12 Having been first duly sworn,

13 Was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. DURANT:

16 Q. Good morning Mr. Flowers.

17 A. Good morning.

18 Q. I'm going to have to ask you to speak up and speak
19 into that microphone because these ladies and gentlemen
20 need to hear everything you have to say okay?

21 A. All right.

22 Q. Could you tell the jury how old you are?

23 A. Twenty-six.

24 Q. And what kind of work do you do for a living?

25 A. Construction work.

State v Dennis Cervantes-Pavon
Travis Lee Flowers-Direct Examination by Mr. Durant
November 10, 2015

- 1 Q. And how long have you been working construction?
2 A. For about five years now.
3 Q. Okay. Pretty much every since you got out of high
4 school?
5 A. Yes, sir.
6 Q. What company do you work with?
7 A. H-B Construction.
8 Q. And H-B stands for Hunt Brothers is that correct?
9 A. Yes, sir.
10 Q. And where is Hunt Brothers headquarters?
11 A. In Lumberton, North Carolina.
12 Q. And is Lumberton, North Carolina where you are from?
13 A. Yes, sir.
14 Q. Where were you working on August 13th of 2014 the
15 day that Raymond Muniz was stabbed by Mr. Pavon?
16 A. At the Belk store in Mount Pleasant.
17 Q. Okay. And how long had the Hunt Brothers been on
18 the job at that location if you know or remember?
19 A. About five months.
20 Q. And you were a general laborer on the job is that
21 correct?
22 A. Yes, sir.
23 Q. And who is Ronnie Hunt?
24 A. That's a fellow co-worker of mine.
25 Q. Okay. He's from Lumberton as well?

State v Dennis Cervantes-Pavon
Travis Lee Flowers-Direct Examination by Mr. Durant
November 10, 2015

- 1 A. Yes, sir.
- 2 Q. Okay. Did you know the victim Raymond Muniz?
- 3 A. Yes, sir.
- 4 Q. How did you know him?
- 5 A. Just from working together.
- 6 Q. Okay. How long had Mr. Muniz been on the job?
- 7 A. About three to four weeks.
- 8 Q. Okay. Did he work for the same company you worked
- 9 for?
- 10 A. No, sir. He worked for Wall Masters.
- 11 Q. Okay. And was he from Lumberton?
- 12 A. No, sir.
- 13 Q. Did you know him before he showed up on the job?
- 14 A. No, sir.
- 15 Q. What was your relationship with him?
- 16 A. We were just good co-workers. We had jobs that we
- 17 did; we were assigned together.
- 18 Q. Okay. So your entire contact with him was through
- 19 work?
- 20 A. Yes, sir.
- 21 Q. Did y'all hang out together at night?
- 22 A. No, sir.
- 23 Q. Did y'all stay at the same hotel?
- 24 A. No, sir.
- 25 Q. Would you consider him a friend or a work

State v Dennis Cervantes-Pavon
Travis Lee Flowers-Direct Examination by Mr. Durant
November 10, 2015

1 acquaintance?
2 A. I would consider him a friend. We talked a lot at
3 work.
4 Q. Okay. Did you know Mr. Pavon?
5 A. No, sir.
6 Q. Okay. You knew who he was right?
7 A. Just from seeing him around the job.
8 Q. Okay. In fact he worked for the same company that
9 Mr. Muniz worked for correct?
10 A. Yes, sir.
11 Q. And had they arrived on the job at the same time?
12 A. Yes, sir.
13 Q. So you knew who he was; you just didn't know what
14 his name was?
15 A. Yes, sir.
16 Q. What was the relationship between Mr. Pavon and Mr.
17 Muniz?
18 A. The only thing I could say is there was bad blood.
19 Q. And you are aware of that how?
20 A. Through the conversations of me and Mr. Muniz.
21 Q. Okay. Let's talk about August the 13th, the day
22 that Raymond was stabbed. Do you recall what time you
23 got to work that day?
24 A. Six a.m.
25 Q. And what did y'all do -- was that the gathering time

State v Dennis Cervantes-Pavon
Travis Lee Flowers-Direct Examination by Mr. Durant
November 10, 2015

1 so to speak?

2 A. Yes, sir. We meet at an area and the superintendent
3 comes and assigns us our jobs for the day.

4 Q. Okay. And that superintendent I believe was...

5 A. Herbie Evans.

6 Q. Is that what happened that day?

7 A. Yes, sir.

8 Q. Now what were you assigned to do that day?

9 A. I was assigned to remove concrete blocks we cut out
10 of trenches and to fill them back up with concrete after
11 the electricians put their conduit down.

12 Q. Okay. What was Raymond assigned to do that day?

13 A. To mix my concrete for the trenches.

14 Q. So you were working in the trenches and he was
15 filling the trenches up with the concrete.

16 A. Yes, sir.

17 Q. How about Mr. Pavon? What was he doing that day?

18 A. He was putting cold row clips on a wall that he was
19 -- him and his buddies just got done framing.

20 Q. Okay. So he was a framer?

21 A. Yes sir, to my knowledge.

22 Q. Now did you observe any -- I'm not talking about the
23 stabbing but did you observe any conflict between Mr.
24 Pavon and Mr. Muniz during that day?

25 A. Just little bits of verbal arguing. They exchanged

State v Dennis Cervantes-Pavon
Travis Lee Flowers-Direct Examination by Mr. Durant
November 10, 2015

1 words verbally but that was it.
2 Q. Okay. That's all it had been? Did that happen on
3 more than one occasion?
4 A. To hear Raymond talk yes, but that day no.
5 Q. Okay. So was it Raymond talking to him or him
6 talking to Raymond or both?
7 A. It was kind of I believe both were talking to each
8 other.
9 Q. Okay. And based upon what you observed was it a
10 friendly conversation or not?
11 A. No, no it wasn't friendly.
12 Q. Okay. Now at one point I believe you told me that
13 you talked to Mr. Pavon that day around 12:00 is that
14 right?
15 A. Yes, sir.
16 Q. Could you tell us how that came about?
17 A. Raymond had informed me that ---
18 MR. COCHRAN: --- objection, hearsay.
19 THE COURT: Is there an exception?
20 MR. DURANT: I was not offering it for its truth.
21 I was just offering it to show why he went to talk to Mr.
22 Pavon.
23 THE COURT: Just rephrase your question.
24 Q. [Mr. Durant] Why did you confront Mr. Pavon and
25 without...

State v Dennis Cervantes-Pavon
Travis Lee Flowers-Direct Examination by Mr. Durant
November 10, 2015

1 A. I was informed that he was talking trash about me in
2 Spanish.
3 Q. What did you do?
4 A. I approached him on his ladder and calmly calmed him
5 down to ask him if he was talking anything about me and
6 he said no, he didn't have no problems with me. Then
7 that was it. I didn't say anything else. I just went
8 back to my work area and continued working.
9 Q. And who was he having problems with?
10 A. Raymond.
11 Q. So did you bear a grudge against him because of
12 that?
13 A. No, when I asked him what I had to ask him that was
14 all I had left in the situation.
15 Q. Okay. And just so we're clear the fellow you
16 talked to is he in the courtroom today?
17 A. Yes, sir.
18 Q. And could you point him out for the jury?
19 A. [Indicates].
20 Q. The guy wearing the earphones?
21 A. Yes, sir.
22 Q. Okay. Now could you tell the jury what happened?
23 When is y'all's final break of the day or was your final
24 break of the day?
25 A. Five o'clock.

State v Dennis Cervantes-Pavon
Travis Lee Flowers-Direct Examination by Mr. Durant
November 10, 2015

1 Q. And how late did y'all generally work?

2 A. Six, six-thirty.

3 Q. And could you tell the jury what happened between
4 Raymond and Mr. Pavon after y'all's final break but before
5 y'all knocked off for the day?

6 A. Raymond was bringing me my last wheelbarrow full of
7 concrete mix and when he dumped it in my trench he walked
8 around to the wall that Mr. Pavon was framing and they
9 got into a verbal argument.

10 And I had the earphones in and I pulled my earphones
11 out and all I could hear was mono mono. When Mr. Pavon
12 and Mr. Muniz was arguing and I heard mono mono Mr. Pavon
13 came off his ladder and seen a sprinkler pipe on the
14 ground.

15 And he picked the sprinkler pipe up and went to
16 advance toward Mr. Muniz and then stopped and went back
17 to his ladder ---

18 Q. --- where was Mr. Muniz?

19 A. He was maybe about maybe 20 feet away from Mr. Pavon
20 where my concrete mixer ---

21 Q. --- what was he over near if you recall?

22 A. He was near the concrete mixer.

23 Q. Okay. So anyway he picked up -- Mr. Pavon picked
24 up the sprinkler pipe and went toward Mr...

25 A. Muniz.

State v Dennis Cervantes-Pavon
Travis Lee Flowers-Direct Examination by Mr. Durant
November 10, 2015

1 Q. Muniz.

2 A. Yes, sir.

3 Q. Then what happened?

4 A. He stopped and went back to his ladder that he was
5 working on and he propped his pole up there and then ---

6 Q. --- before that you said he approached Mr. Muniz
7 with the pipe. Did Mr. Muniz have anything in his hand?

8 A. He had picked up a hammer but Mr. Pavon hadn't made
9 it all the way to Mr. Muniz yet.

10 Q. Okay. And what happened after he picked up the
11 hammer?

12 A. Mr. Pavon he stopped about halfway to Mr. Muniz and
13 he went back to his ladder and he propped his sprinkler
14 pipe up and he took off his tool belt and set it on the
15 ground.

16 And he went to step away from his tool belt one foot
17 came off the ground but the other one stayed like he
18 realized he forgot something. He put his foot back in
19 the line of the belt and he reached down and picked up
20 his keyhole saw and he stuck it in his right side in
21 between his pants and his skin. Then he put his shirt
22 over it.

23 Then he picked up his sprinkler pipe and then
24 quickly advanced towards Mr. Muniz and swung the pipe.
25 He swung two times and Mr. Muniz was able to block it.

State v Dennis Cervantes-Pavon
Travis Lee Flowers-Direct Examination by Mr. Durant
November 10, 2015

1 After the third swing ---

2 Q. --- what was he blocking it with?

3 A. Mr. Muniz had a piece of angle metal and it was
4 about maybe seven feet long. After Pavon swung that last
5 time Mr. Muniz was able to kind of pin his sprinkler pipe
6 on the ground and then he began punching him in the face
7 a couple of times.

8 At this point Mr. Pavon had wrapped his hand up
9 under Raymond's arm and grabbed his neck right here
10 [indicates] like he was trying to keep Raymond from
11 running and he took out his knife and he stabbed him in
12 the chest one time.

13 When he pulled the knife out Raymond pushed him off
14 of him and ran out of the Belk store where he collapsed
15 on the sidewalk shortly after.

16 Q. What is a keyhole saw?

17 A. It's used to cut sheetrock.

18 Q. Can you describe to the jury what one looks like or
19 what this one looked like I should say?

20 A. The one Mr. Pavon was wielding it had a red and
21 black handle about three to four inches long and the
22 blade itself is maybe seven to eight inches long. It's
23 got teeth on it that go different ways like one goes one
24 way and one goes the other way.

25 Q. Teeth on both side of the blade or just one?

State v Dennis Cervantes-Pavon
Travis Lee Flowers-Direct Examination by Mr. Durant
November 10, 2015

1 A. Just one side.

2 Q. Okay. Is the blade flat or tapered?

3 A. I don't understand the question. What do you mean
4 tapered?

5 Q. I mean did it come to a point or not?

6 A. Yes. It was wide near the handle and as it went
7 towards the tip it narrowed out.

8 Q. Okay.

9 MR. COCHRAN: Your Honor, may we approach?

10 THE COURT: You may.

11 [Whereupon, an off the record bench conference is
12 held]

13 THE COURT: What number is that?

14 MR. DURANT: That's State's 84.

15 THE COURT: All right.

16 MR. DURANT: May I approach the witness?

17 THE COURT: You may.

18 Q. [Mr. Durant] Raymond [sic], I'm going to show you
19 what ---

20 THE COURT: --- hold one second. What's your
21 number?

22 MR. DURANT: It's 84.

23 [Whereupon, an off the record bench conference is
24 held]

25 [Whereupon, State's exhibit number 85 is marked for

State v Dennis Cervantes-Pavon
Travis Lee Flowers-Direct Examination by Mr. Durant
November 10, 2015

1 identification only by the court reporter]
2 Q. [Mr. Durant] I think we're set on the number now. I
3 want to show you what has been marked as State's exhibit
4 number 85 for identification purposes.
5 [Whereupon, the witness is shown exhibit]
6 Q. Could you tell us what that tool is?
7 A. It's a keyhole saw.
8 Q. Is that the keyhole saw?
9 A. No sir, that's not the keyhole saw that was used.
10 Q. Okay.
11 A. It's similar to it in shape and design.
12 Q. Okay. So sometimes keyhole saws have like a pistol
13 grip and sometimes they have like a knife grip is that
14 correct?
15 A. That's correct.
16 Q. And was the one you saw did it have the pistol grip
17 or the knife grip?
18 A. The knife grip.
19 Q. And about the same length as that one except it was
20 red and white is that correct?
21 A. Red and black.
22 Q. Red and black; excuse me. Was the blade about the
23 same length?
24 A. Yes, sir.
25 Q. And was the blade come to a point as that one does?

State v Dennis Cervantes-Pavon
Travis Lee Flowers-Direct Examination by Mr. Durant
November 10, 2015

1 A. Yes, sir.

2 Q. And so this is a fair representation of the saw that
3 you saw that day?

4 A. Yes, sir.

5 Q. Okay. Thank you. Now just to clarify you said
6 Mr. Pavon approached him twice with the pipe. The first
7 time Mr. Muniz picked up what?

8 A. He had picked up a hammer but Raymond he didn't
9 fully approach him the first time. He made it about
10 halfway and then he had stopped like he wanted to go pick
11 up -- like he forgot something.

12 Q. Okay. And what did Raymond do with the hammer?

13 A. He put it down when Mr. Pavon had went back to his
14 ladder.

15 Q. Okay. And when Mr. Pavon approached him the second
16 time what did he pick up?

17 A. Mr. Muniz had picked up a piece of angle metal.

18 Q. Okay. Now what did Raymond do after Mr. Pavon
19 stabbed him in the chest?

20 A. Whenever he was able to free himself from Pavon's
21 grip he made his way out the building.

22 Q. And do you know where he went when he went outside
23 the building?

24 A. When he came out the door he made a left like he was
25 going towards the road and he made another left as the

State v Dennis Cervantes-Pavon
Travis Lee Flowers-Direct Examination by Mr. Durant
November 10, 2015

1 sidewalk goes alongside the road and the building of Belk
2 and he made it about 30 feet and collapsed on the dirt
3 beside the sidewalk.

4 Q. And what did Mr. Pavon do after he stabbed Raymond?

5 A. He left the premises.

6 Q. Through the same door?

7 A. Yes sir, behind Raymond.

8 Q. And which direction did he go?

9 A. Straight out the parking lot towards the mens Belk
10 store beside it and the back of Lowes.

11 Q. And how do you know that ---

12 A. --- or behind Lowes. I was following him.

13 MR. DURANT: Your Honor, with the court's
14 permission I'd like to publish State's exhibit number 77
15 approved previously.

16 THE COURT: You may.

17 MR. DURANT: Entered into evidence.

18 THE COURT: You may publish.

19 [Whereupon, State's exhibit 77 plays]

20 Q. [Mr. Durant] This is State's exhibit 77. Travis, do
21 you recognize what is depicted in this view right here?

22 A. That's the front of the Belk store we were working
23 on.

24 Q. And as you're looking at it from that perspective
25 where does the left hand door go?

State v Dennis Cervantes-Pavon
Travis Lee Flowers-Direct Examination by Mr. Durant
November 10, 2015

- 1 A. That goes into the open part of the store for
2 customers.
- 3 Q. And where does the right hand door go?
- 4 A. That goes into phase four of our construction area.
- 5 Q. Okay. Who is that running out of the door?
- 6 A. Mr. Muniz.
- 7 Q. And who is that?
- 8 A. Mr. Pavon.
- 9 Q. And who is that walking around the corner there if
10 you know?
- 11 A. The one to your right is Jeremiah Oxendine.
- 12 Q. Okay. And who is the one on the phone there?
- 13 A. Ronnie Hunt.
- 14 Q. And who is that coming out of the door now?
- 15 A. That's me.
- 16 Q. It's you?
- 17 A. That's me.
- 18 Q. And is that when you started following behind Mr.
19 Pavon?
- 20 A. Yes, sir.
- 21 Q. Now tell me what happened after you started
22 following Mr. Pavon? Where did you follow him to?
- 23 A. Towards the Conex that was at the end of the parking
24 lot.
- 25 Q. Okay. And do you know what he had done with the

State v Dennis Cervantes-Pavon
Travis Lee Flowers-Direct Examination by Mr. Durant
November 10, 2015

1 keyhole saw that he had?

2 A. At that point in time I don't believe he was
3 wielding it at the time.

4 Q. You don't think he was what?

5 A. Wielding it. I don't believe he had it at that
6 time.

7 Q. Or he didn't have it in his hands?

8 A. Yes, I didn't see it out.

9 Q. Okay. Do you know if he had it when he left the
10 building or?

11 A. Yes sir, before he exited the doors of the Belk
12 store I seen it in his hand.

13 Q. Okay.

14 A. But once the doors closed they have brown paper on
15 them and when they closed before I came out I don't know
16 where he put it after that.

17 Q. Okay. Was anybody with you when you were following
18 along behind him?

19 A. Ronnie Hunt.

20 Q. Okay. And did y'all attempt to apprehend him?

21 A. No. Mr. Pavon was too far ahead of me. I was just
22 trying to keep eyes on him until I seen police cars get
23 near where he was.

24 Q. Okay. And do you know whether or not he was
25 apprehended that day?

State v Dennis Cervantes-Pavon
Travis Lee Flowers-Direct Examination by Mr. Durant
November 10, 2015

1 A. No, sir. It was around 5 o'clock the following day
2 before they caught him; Mr. Pavon.

3 Q. Now after you and Mr. Hunt stopped following Mr.
4 Pavon what did you do?

5 A. I went back to check on Mr. Muniz.

6 Q. And where was Mr. Muniz located?

7 A. On the sidewalk.

8 Q. And that was kind of back behind the store?

9 A. Yes, sir.

10 Q. Between the store and Hungryneck Boulevard?

11 A. Yes, sir.

12 Q. What was Raymond's condition when you got there?

13 A. Unresponsive but still breathing barely.

14 Q. And what happened while you were there?

15 A. Maybe a minute after I had got back near him his
16 eyes had rolled back in his head and I guess he took his
17 last breath and that was it. His dad just went crazy.
18 He died on the sidewalk.

19 Q. What was your state of mind at the time?

20 A. I wanted to leave. I wanted to get away from there.

21 Q. Why did you want to leave?

22 A. I never seen somebody die before especially not with
23 a parent beside them. It troubled me.

24 Q. I'm sorry?

25 A. It troubled me to have to see that.

State v Dennis Cervantes-Pavon
Travis Lee Flowers-Direct Examination by Mr. Durant
November 10, 2015

1 Q. Is that the first time you'd ever seen anything like
2 that?

3 A. Yes, sir.

4 Q. How did you go home or y'all were staying at a hotel
5 is that correct?

6 A. Yes, sir.

7 Q. How did you get back to the hotel?

8 A. I talked a buddy of mine into carrying me back to
9 the motel.

10 Q. Okay. Did you talk to the police at all that day?

11 A. No, sir. I didn't want to talk to anybody.

12 Q. Now did you go back to work the next morning?

13 A. Yes, sir.

14 Q. Did you talk to the police that day?

15 A. Yes, sir.

16 Q. And did you provide them with a written statement?

17 A. Yes, I did.

18 Q. I'd like to refer to you --

19 MR. DURANT: May the witness come down, Your Honor?

20 THE COURT: Yes, sir. You're going to need to
21 speak loudly. Can you do that if you step down?

22 THE WITNESS: Yes, ma'am.

23 THE COURT: Mr. Flowers, you may step down.

24 [Whereupon, the witness exits the witness stand]

25 MR. DURANT: This is State's exhibit number 78,

State v Dennis Cervantes-Pavon
Travis Lee Flowers-Direct Examination by Mr. Durant
November 10, 2015

1 Your Honor.

2 Q. [Mr. Durant] Travis, I'm going to ask you to stand
3 like right here [indicates] so you won't obstruct anybody
4 on the jury. This has previously been identified as a
5 building plan of the Belk women's store. Is that what
6 you recognize it as?

7 A. Yes, sir.

8 Q. And this area [indicates] is what was known as phase
9 four renovation?

10 A. Yes, sir.

11 Q. Is that were y'all were working that day?

12 A. Yes, sir.

13 Q. And do you recognize what this little item is right
14 there [indicates]?

15 A. That's that wall that Mr. Pavon was framing.

16 Q. Okay. And which side of the wall were you on?

17 A. I was on this side [indicates].

18 Q. Okay. And the doorway is over here [indicates] is
19 that correct?

20 A. Yes sir, over here [indicates].

21 Q. Okay. Now if you were on that side of the wall how
22 were you able to see what was going on on the other side?

23 A. Because that wall was a skeleton at the time. It
24 had no sheetrock on it.

25 Q. Okay. So it just had studs but nothing ---

State v Dennis Cervantes-Pavon
Travis Lee Flowers-Direct Examination by Mr. Durant
November 10, 2015

1 A. --- you were easily able to see through that wall.

2 Q. Okay. And do you know where the concrete -- if you
3 remember do you know where the concrete mixer was?

4 A. It's like right in here [indicates].

5 Q. Okay. So it was right in this area [indicates]?

6 A. Yes, sir.

7 Q. And what was right over here [indicates]?

8 A. That was the ladder that Mr. Pavon was working on.

9 Q. Okay. And can you show the jury where the actual
10 fight took place, where the swinging of the pipes and all
11 that?

12 A. The concrete mixer was right here [indicates] so it
13 was right over right over in this area ---

14 THE COURT: --- they can't hear or see Mr. Durant.
15 This is not an effective demonstration.

16 MR. DURANT: Who can't?

17 THE COURT: The jury. Mr. Flowers, I need you to
18 take a seat back on the witness stand and let's try
19 something else.

20 MR. DURANT: Okay.

21 [Whereupon, Mr. Flowers resumes the witness stand]

22 THE COURT: This is kind of awkward.

23 MR. DURANT: I'm sorry. Maybe I can do it -- may
24 I get around this way, Your Honor?

25 THE COURT: You may. Just be mindful of the jury.

State v Dennis Cervantes-Pavon
Travis Lee Flowers-Direct Examination by Mr. Durant
November 10, 2015

- 1 MR. DURANT: Okay.
- 2 Q. [Mr. Durant] I'm going to be your easel, okay.
- 3 Can you show the jury where phase four is?
- 4 A. This is phase four right here [indicates].
- 5 Q. Okay. And where is the wall that Mr. Pavon was
- 6 framing?
- 7 A. This is the wall right here [indicates].
- 8 Q. Okay. And where was the ladder located that Mr.
- 9 Pavon was working on?
- 10 A. Right there [indicates] beside the word phase four
- 11 on that wall right there [indicates].
- 12 Q. Okay. And where was the cement mixer that Mr.
- 13 Muniz was working at?
- 14 A. Right here [indicates] near that H in this aisle
- 15 right here [indicates]; right up under phase it was right
- 16 in there [indicates].
- 17 Q. Okay. And where was the actual -- where did the
- 18 actual stabbing take place?
- 19 A. Right in here [indicates].
- 20 Q. Okay. So the stabbing took place in Mr. Muniz's
- 21 work area?
- 22 A. Yes, sir.
- 23 Q. How did Mr. Pavon get to Mr. Muniz's work area?
- 24 A. He walked over there.
- 25 Q. And what did he have -- how many times did he walk

State v Dennis Cervantes-Pavon
Travis Lee Flowers-Direct Examination by Mr. Durant
November 10, 2015

1 over there?

2 A. One time he walked back over fully one time. There
3 was another attempt to that's when he stopped and went
4 back and got his knife.

5 Q. Okay. So he approached that area once, then
6 returned and then approached the area a second time
7 correct?

8 A. Yes, sir.

9 Q. And how did he approach the area when he came the
10 second time?

11 A. A quick pace.

12 Q. Quick pace. And what was he holding?

13 A. The sprinkler pipe.

14 Q. And how was he holding the sprinkler pipe?

15 A. Like that [indicates] like he was getting ready to
16 swing.

17 Q. Okay. And what did Mr. Muniz do when he came at
18 him with that sprinkler pipe cocked back like that?

19 A. He grabbed his angle metal, and picked up to deflect
20 any swings from the sprinkler pipe.

21 Q. Okay. Now the next day when the police talked to
22 you was the sprinkler pipe still there?

23 A. Yes, sir.

24 Q. And was the piece of metal that Mr. Muniz had still
25 there?

State v Dennis Cervantes-Pavon
Travis Lee Flowers-Direct Examination by Mr. Durant
November 10, 2015

1 A. Yes, sir.

2 Q. And did you point those items out to the crime scene
3 investigator?

4 A. Yes, sir.

5 Q. Mr. Flowers let me show you what has been marked as
6 State's exhibit number 79 for identification purposes and
7 ask if you recognize that item.

8 [Whereupon, the witness is shown exhibit]

9 A. Yes sir, I do.

10 Q. And what is that?

11 A. That's the sprinkler pipe that Mr. Pavon was holding
12 when he attacked Mr. Muniz.

13 Q. Okay. And I believe you previously testified when
14 he went over there he was holding it like this
15 [indicates]?

16 A. Yes, sir.

17 Q. And what pace did he approach Mr. Muniz at?

18 A. It was a quick pace.

19 Q. Let me show you what has been marked as State's
20 exhibit 80 for identification purposes and let me ask you
21 if you recognize this item?

22 [Whereupon, the witness is shown exhibit]

23 A. That is what Mr. Muniz was holding to defend
24 himself.

25 Q. Okay. And could you demonstrate how he was using

State v Dennis Cervantes-Pavon
Travis Lee Flowers-Direct Examination by Mr. Durant
November 10, 2015

1 this to defend himself?

2 A. I don't know his exact motions but he was using it
3 to fend off Mr. Pavon.

4 Q. Okay.

5 A. You could see where he took a couple of swings at
6 Mr. Pavon and that's where Mr. Muniz blocked it.

7 Q. These two dents in here [indicates]?

8 A. Yes, sir.

9 Q. And you pointed out this item to the crime scene
10 investigator for Mount Pleasant Police Department is that
11 correct?

12 A. Yes, sir.

13 [Whereupon, Mr. Durant, Ms. Parnall, and Mr. Cochran
14 review photographs]

15 MR. DURANT: Your Honor, at this time we would
16 offer State's exhibit's 40, 41, 42, 43, 44, and 49 ---

17 MR. COCHRAN: --- without objection ---

18 MR. DURANT: --- I believe all without objection.

19 THE COURT: So entered. You may publish.

20 [Whereupon, State's exhibit numbers 40, 41, 42, 43,
21 44, and 49 are entered into evidence by the court]

22 MR. DURANT: Thank you, Your Honor.

23 Q. [Mr. Durant] I'd like to first refer you to State's
24 exhibit's number 40.

25 [Whereupon, the witness is shown photograph]

State v Dennis Cervantes-Pavon
Travis Lee Flowers-Direct Examination by Mr. Durant
November 10, 2015

1 Q. Who is this right here [indicates]?

2 A. That's me.

3 Q. Okay. And what is that right down there
4 [indicates]?

5 A. The dark area is the concrete that I was troweling
6 out.

7 Q. Okay. And these were -- do you know who these two
8 [indicates] fellows were?

9 A. I just -- I know they worked with us. I don't know
10 their name or anything like that.

11 Q. Okay. And moving on to State's exhibit number 41.
12 [Whereupon, the witness is shown photograph]

13 Q. This would be you again over here [indicates]?

14 A. Yes, sir.

15 Q. And this [indicates] would be the wall is that
16 correct?

17 A. That's correct.

18 Q. Moving around to State's exhibit number 42.

19 [Whereupon, the witness is shown photograph]

20 Q. That's where you are getting about adjacent to the
21 wall is that correct?

22 A. Yes, sir.

23 Q. And then 43?

24 [Whereupon, the witness is shown photograph]

25 Q. That's when you get on the other side of the wall is

State v Dennis Cervantes-Pavon
Travis Lee Flowers-Direct Examination by Mr. Durant
November 10, 2015

1 that correct?

2 A. That's correct.

3 Q. And what is this item right here [indicates]?

4 A. That's the ladder Mr. Pavon was on.

5 Q. Okay. And what is this item right here

6 [indicates]?

7 A. That was a cement mixer.

8 Q. Okay. And that's the cement mixer that Mr. Muniz

9 was working at is that correct?

10 A. Yes, sir.

11 Q. Do you recognize this item right here [indicates]?

12 A. That's the piece of angle metal Mr. Muniz used to

13 defend himself with.

14 Q. And this piece of metal right here [indicates]?

15 A. That was the sprinkler pipe Mr. Pavon had when he

16 advanced toward Mr. Muniz.

17 Q. Okay. And does this photograph depict the general

18 area where this fight occurred?

19 A. Yes, sir.

20 Q. And so this is just moving a little further to the

21 right is that correct? This would be State's exhibit

22 number 44.

23 [Whereupon, the witness is shown the photograph]

24 A. Yes, sir.

25 Q. Do you recognize and if you can you can and if you

State v Dennis Cervantes-Pavon
Travis Lee Flowers-Direct Examination by Mr. Durant
November 10, 2015

1 can't you can't do you recognize what that item is right
2 there [indicates]?

3 A. That was the hammer than Mr. Muniz had when Mr.
4 Pavon was approaching him the first time with the
5 sprinkler pipe.

6 Q. Okay. And is this [indicates] the general area
7 where the fight took place?

8 A. Yes, sir.

9 Q. And this is State's exhibit number 49.

10 [Whereupon, the witness is shown photograph]

11 Q. Who does that depict?

12 A. That's me.

13 Q. Okay. And that's the area that you were standing
14 on where this fight was going on is that correct?

15 A. Yes, sir.

16 Q. And it was going on right on the other side of this
17 wall [indicates] is that correct?

18 A. Yes, sir.

19 Q. Could you even get closer while it was going on?

20 A. No, sir. By the time I got up and got around the
21 wall both of them were making their way out the building.

22 Q. Okay. And to make their way out of the building
23 what is this right here [indicates]?

24 A. It's the exit doors.

25 Q. Thank you Mr. Flowers. Could you please answer any

State v Dennis Cervantes-Pavon
Travis Lee Flowers-Direct Examination by Mr. Durant
November 10, 2015

1 questions that defense counsel may have for you?

2 A. Yes, sir.

3 MR. COCHRAN: May it please the court?

4 THE COURT: Mr. Cochran? Do you need any water or
5 anything?

6 THE WITNESS: I'm good.

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

State v Dennis Cervantes-Pavon
Travis Lee Flowers-Cross-Examination by Mr. Cochran
November 10, 2015

1 CROSS-EXAMINATION

2 BY MR. COCHRAN:

3 Q. So this bad blood as you described it had been going
4 on for at least a few days between Raymond and Elvin
5 correct?

6 A. Yes, sir.

7 Q. When I say Elvin I mean Mr. Pavon.

8 A. Okay.

9 Q. And were they staying at the same hotel?

10 A. Yes, sir.

11 Q. Okay. You were not staying at that hotel though?

12 A. No, sir.

13 Q. And they had actually come to blows a few days prior
14 to this right?

15 A. That's what I heard.

16 Q. And they got into a fist fight?

17 A. That's what I heard.

18 Q. And it was your understanding that Mr. Muniz,
19 Raymond got the best of Elvin in that fight correct?

20 A. Yes, sir.

21 Q. And it was your understanding that during that fight
22 he got the best of him and he was laughing during the
23 fight Raymond was? That he wasn't taking it seriously
24 while he was getting the best of Elvin is that correct?

25 A. I wasn't there to ---

State v Dennis Cervantes-Pavon
Travis Lee Flowers-Cross-Examination by Mr. Cochran
November 10, 2015

1 MR. DURANT: --- Your Honor, I have an objection ---
2 A. --- I wasn't there to witness that ---
3 THE COURT: --- hold on one second.
4 MR. DURANT: I have an objection.
5 THE COURT: I heard you. What is your basis?
6 MR. DURANT: On the basis that he already said he
7 did not see the fight.
8 THE COURT: So that would be...
9 MR. DURANT: So it's speculation on his part.
10 THE COURT: Sustained.
11 Q. [Mr. Cochran] You had conversations with Raymond
12 about these incidents correct?
13 A. Yes, sir.
14 Q. Okay. And you gave statements to police about
15 these incidents correct and about those conversations
16 that you had with Raymond correct?
17 A. That's correct.
18 Q. And in those statements you noted that Raymond had
19 been laughing during this fight, that he had gotten the
20 best of Elvin during this fight and you told that to
21 police correct?
22 A. If it's written down then yes sir, I did.
23 Q. Would you like to see your statement?
24 A. No, sir.
25 Q. And you were friends with Raymond you said? You

State v Dennis Cervantes-Pavon
Travis Lee Flowers-Cross-Examination by Mr. Cochran
November 10, 2015

1 hadn't known him for a long time but you considered him a
2 friend by that point?

3 A. Uh Huh.

4 THE COURT: Was that a yes?

5 A. Oh, yes, yes sir.

6 Q. [Mr. Cochran] And you said while you were working in
7 this trench and he was bringing you concrete and pouring
8 it in you got to talk a lot correct basically working
9 together all day long?

10 A. Well, that day I had my headphones in so we weren't
11 really talking that much that day.

12 Q. But you were talking right?

13 A. Yes sir, on and off.

14 Q. Of course because that day he had been telling you
15 that he had problems with Elvin right?

16 A. Yes, sir.

17 Q. And he even tried to get you into the mix by telling
18 you that Elvin was talking trash about you too right?

19 A. No, sir. I wouldn't consider it getting me in the
20 mix. He was just informing me that someone was talking
21 about me.

22 Q. And it happened to be Elvin correct?

23 A. Yes, sir.

24 Q. And he discussed this with you to the point where
25 you felt it was necessary during a work day to go over

State v Dennis Cervantes-Pavon
Travis Lee Flowers-Cross-Examination by Mr. Cochran
November 10, 2015

- 1 and confront Elvin while he was up working on a ladder
2 correct; to call him down to you to confront him about
3 this accusation correct?
4 A. Yes, sir.
5 Q. And that was based on what Raymond told you correct?
6 A. Yes, sir.
7 Q. And from talking to Raymond about all this stuff
8 about these confrontations you had actually learned that
9 he had, Raymond had, confronted Elvin the night before at
10 the hotel right?
11 A. Yes, sir.
12 Q. And tried to get Elvin to fight right?
13 A. Yes, sir.
14 Q. But that Elvin would not fight him correct?
15 A. No. What led up to the fight was them bickering.
16 It wasn't that Raymond just felt it on himself to
17 approach him. He told me that they had words and it led
18 up to him wanting to fight Mr. Pavon.
19 Q. But Mr. Pavon would not fight him correct?
20 A. No, sir.
21 Q. And Raymond was larger in stature than Mr. Pavon
22 correct?
23 A. Correct.
24 Q. Taller and heavier correct?
25 A. Correct.

State v Dennis Cervantes-Pavon
Travis Lee Flowers-Cross-Examination by Mr. Cochran
November 10, 2015

1 Q. The first time or I guess it might have been the
2 last time that Elvin got off of his ladder was because
3 Raymond had come over to his ladder and was confronting
4 him correct?

5 A. No, sir.

6 Q. You testified on direct examination that Raymond at
7 some point went to Elvin's ladder and confronted him?

8 A. No, sir.

9 Q. You gave a statement to police correct?

10 A. That's correct. I approached Mr. Pavon on the
11 ladder but not Mr. Muniz.

12 Q. You said that Raymond was getting loud and
13 confronting Elvin while he was up on the ladder correct?

14 A. I said that he was getting loud with Mr. Pavon.

15 Q. While Mr. Pavon was up on the ladder?

16 A. Yes, sir.

17 Q. Doing framework?

18 A. Yes, sir.

19 Q. Okay. And he was over by the cement mixer when he
20 was doing this or what?

21 A. When I noticed the verbal confrontation he was on
22 his way to the cement mixer.

23 Q. So he was walking back from your trench through the
24 frame.

25 A. Around the frame.

State v Dennis Cervantes-Pavon
Travis Lee Flowers-Cross-Examination by Mr. Cochran
November 10, 2015

- 1 Q. Around the frame around past the ladder?
- 2 A. No, sir. The ladder was on the opposite side of
3 where I was working at.
- 4 Q. He must have been yelling pretty loud from the
5 opposite end of this work space for Elvin to hear him up
6 on top of the ladder doing framing.
- 7 A. Yes, sir.
- 8 Q. So he was getting loud?
- 9 A. I don't know if Mr. Pavon said anything first. Like
10 I said I had my headphones in. I just happened to hear
11 Raymond because he was also closer to me.
- 12 Q. Was Raymond speaking Spanish or English at this
13 point?
- 14 A. Spanish.
- 15 Q. It's your understanding that Elvin speaks Spanish as
16 well correct?
- 17 A. I would assume so.
- 18 Q. And while Raymond was getting loud Elvin came down
19 from the ladder?
- 20 A. That's correct.
- 21 Q. And was Raymond angry seeming when he was loud?
- 22 A. He wasn't making no kind of physical movements. He
23 just seemed like he might have wanting to talk to him
24 about what was going on.
- 25 Q. He just wanted to have a chat?

State v Dennis Cervantes-Pavon
Travis Lee Flowers-Cross-Examination by Mr. Cochran
November 10, 2015

1 A. Yes, sir. I would assume because we have spats at
2 work all the time where we get loud and then nothing like
3 this ever happens. We normally talk about our stuff and
4 as men we just go on and get our work done.

5 Q. So it's your impression that Raymond just wanted
6 Elvin to come down from the ladder so they could talk it
7 out, have a cup of coffee and hash out their problems.

8 A. I would hope so. I wouldn't have ever thought that
9 was going to come out from it.

10 Q. You said Elvin picked up a pipe at that point
11 correct?

12 A. That's correct.

13 Q. And Raymond picked up a hammer correct?

14 A. Yes, sir.

15 Q. You don't use a hammer to pour and spread concrete
16 do you?

17 A. No, sir. Raymond picked up the hammer after he seen
18 Pavon pick his sprinkler pipe up and begin to advance
19 towards him. So Raymond picked up a weapon to defend
20 himself.

21 Q. And then Elvin turned back around and went back to
22 his ladder correct?

23 A. That's correct.

24 Q. But he didn't go back up the ladder?

25 A. No.

State v Dennis Cervantes-Pavon
Travis Lee Flowers-Cross-Examination by Mr. Cochran
November 10, 2015

- 1 Q. Was Elvin saying anything at this point?
- 2 A. No, sir. I didn't hear him say anything.
- 3 Q. And then he turned back around and dropped his tool
- 4 belt at that point?
- 5 A. Yes. He took his tool belt off and he went to step
- 6 away from it and then stopped as if he forgot something.
- 7 He stepped back in his tool belt where his belt was
- 8 laying on the floor and he bent down and he picked up his
- 9 keyhole saw and stuck it in his pants.
- 10 Q. Stuck it in his pants without a sheath?
- 11 A. Without a sheath.
- 12 Q. Between his pants and his skin you said?
- 13 A. Yes, sir.
- 14 Q. And it was like a saw like that [indicates]?
- 15 A. It was similar to the one in front of me.
- 16 Q. And he picked the pipe back up; the same pipe?
- 17 A. Yes, sir.
- 18 Q. And at that point where was Raymond?
- 19 A. Still in his same spot.
- 20 Q. Okay. Pouring cement or spreading cement or trying
- 21 to help ---
- 22 A. --- I guess he was waiting to see what Mr. Pavon was
- 23 going to do.
- 24 Q. Okay. And Mr. Pavon had done what he wanted him to
- 25 do at that point which was come down from the ladder

State v Dennis Cervantes-Pavon
Travis Lee Flowers-Cross-Examination by Mr. Cochran
November 10, 2015

1 correct?

2 A. If that's what he was wanting then yes sir; I guess
3 he got what he was wanting for Pavon to come off the
4 ladder.

5 Q. And Raymond did not leave at that point?

6 A. No, sir.

7 Q. Did he say hey I'm not trying to fight you or
8 anything like that?

9 A. No, sir.

10 Q. He picked up that about eight or nine foot piece of
11 metal right?

12 A. Yes, sir.

13 Q. And he never hit Elvin with the metal is that your
14 testimony?

15 A. Yes, sir. Pavon approached him with the sprinkler
16 pipe and he swung the sprinkler pipe at Mr. Muniz and Mr.
17 Muniz never swung the angle to try to hit Mr. Pavon.

18 Q. But neither of them were ever actually struck on
19 their body with either piece of metal is that right?

20 A. No, sir.

21 Q. Okay. And Mr. Muniz, Raymond was able with that
22 silver piece of metal to pin the pipe down and knock it
23 out of Elvin's hands correct?

24 A. That's correct.

25 Q. So then Elvin had nothing in his hands at that

State v Dennis Cervantes-Pavon
Travis Lee Flowers-Cross-Examination by Mr. Cochran
November 10, 2015

1 point.

2 A. That's correct.

3 Q. And then they engage in kind of grappling I guess
4 you said?

5 A. Well Mr. Muniz was punching Mr. Pavon.

6 Q. Okay. Mr. Muniz I think you said punched him twice
7 on the face right?

8 A. It was two or three times.

9 Q. Two or three times. And Raymond was taller than
10 Elvin right?

11 A. Yes, sir.

12 Q. So if he's punching him I'm picturing like a boxing
13 match did Elvin hug up on him while he was getting
14 punched?

15 A. No. No, he didn't hug him at the time. When he
16 first began getting punched Mr. Pavon's hands from where
17 he had dropped the sprinkler pipe he was readjusting.
18 Then I seen him reach up under Raymond's arm and grab his
19 neck and then he pulled out his knife.

20 Q. So Mr. Pavon who was shorter than Raymond is getting
21 punched in the face ---

22 A. --- after he attacked Raymond ---

23 Q. --- and he is able to reach down and get his knife
24 and simultaneously grab Raymond around the neck?

25 A. Yes, sir. He was doing all this while he was being

State v Dennis Cervantes-Pavon
Travis Lee Flowers-Cross-Examination by Mr. Cochran
November 10, 2015

1 punched.

2 Q. Raymond was over six feet tall correct or around six
3 feet tall:

4 A. I think. He was about the same height as me and I'm
5 six foot.

6 Q. Okay. And Elvin is shorter than that correct?

7 A. That's correct.

8 Q. Five four, five five; something like that?

9 A. Somewhere around there.

10 Q. And he's reaching down getting punched in the face
11 two or three times reaching down getting a knife
12 readjusting and grabbing Raymond around the neck that's
13 your testimony? He didn't have him around the waist?

14 A. No.

15 Q. And then were they chest to chest? How were they
16 when he actually stabbed him?

17 A. Mr. Pavon he had Mr. Muniz like that [indicates].
18 So they weren't exactly like me and you. They were kind
19 of turned slightly.

20 Q. Okay. Where were -- you said Mr. Pavon has one
21 hand reaching for the blade and the other arm around
22 Raymond's neck. Raymond is punching him and where is
23 Raymond's other arm? What is that arm doing?

24 THE INTERPRETER: I'm sorry, Your Honor, the
25 interpreter didn't hear the last -- where was...

State v Dennis Cervantes-Pavon
Travis Lee Flowers-Cross-Examination by Mr. Cochran
November 10, 2015

1 Q. [Mr. Cochran] Where was Raymond's other arm?

2 A. It was free.

3 Q. Free? Not touching Elvin?

4 A. No, sir.

5 Q. Okay. And after he was stabbed -- you remember he
6 was stabbed through the heart Mr. Muniz, Raymond was
7 still powerful enough to shove Elvin away and run out of
8 the building and through the parking lot correct?

9 A. Correct.

10 Q. And Elvin walked out?

11 A. Well Mr. Muniz never made it to the parking lot. He
12 went to the sidewalk in front of the door and made a left
13 towards the road and made another left on the sidewalk
14 and collapsed in between the building and the road beside
15 the sidewalk.

16 Q. So he didn't make it through the parking lot? He
17 made it out of the building and into the parking lot on
18 the side?

19 A. Yes, sir.

20 MR. COCHRAN: Beg the court's indulgence.

21 THE COURT: Take your time.

22 MR. COCHRAN: I have nothing further Your Honor.

23 Thank you.

24 THE COURT: Mr. Durant?

25 MR. DURANT: I have nothing further, Your Honor.

State v Dennis Cervantes-Pavon
Jeremiah Oxendine-Direct Examination by Mr. Durant
November 10, 2015

1 MR. DURANT: The State would call Jeremiah
2 Oxendine.

3 [Whereupon, Mr. Oxendine comes forward]

4 [Whereupon, the witness is duly sworn by the Clerk
5 of Court]

6 CLERK OF COURT: Please state your first and last
7 name and spell your last name loudly and clearly into the
8 microphone.

9 THE WITNESS: Jeremiah Oxendine.

10 THE COURT: Please spell your last name.

11 THE WITNESS: O-X-E-N-D-I-N-E.

12 - - - - -

13 JEREMIAH OXENDINE,

14 Having been first duly sworn,

15 Was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. DURANT:

18 Q. Good afternoon Mr. Oxendine. Could you please tell
19 our jury how old you are?

20 A. Twenty.

21 Q. And how far did you go in school?

22 A. Graduated high school.

23 Q. And where did you go to high school.

24 A. Purnell Swett.

25 Q. Pardon?

State v Dennis Cervantes-Pavon
Jeremiah Oxendine-Direct Examination by Mr. Durant
November 10, 2015

- 1 A. Purnell Swett.
- 2 Q. Purnell Swett? And where is that located?
- 3 A. Pembroke, North Carolina.
- 4 Q. Okay. Is that near Lumberton, North Carolina?
- 5 A. It's about 20 minutes.
- 6 Q. Okay. And when did you graduate from high school?
- 7 A. 2013.
- 8 Q. And what have you been doing since you graduated
- 9 from high school?
- 10 A. Construction and electrical work.
- 11 Q. I believe you are now working with a company called
- 12 A and R Drywall is that correct?
- 13 A. Yes, sir.
- 14 Q. Could you tell the jury what company you were
- 15 working for on August 13th of 2014?
- 16 A. Frisch.
- 17 Q. Frisch?
- 18 A. Frisch, yes.
- 19 Q. Okay. And was that the company you worked for or
- 20 were you working for another company that was subbing for
- 21 Frisch?
- 22 A. We was working for another company that was subbing
- 23 with Frisch.
- 24 Q. And that company would be what?
- 25 A. Hunt Brothers.

State v Dennis Cervantes-Pavon
Jeremiah Oxendine-Direct Examination by Mr. Durant
November 10, 2015

- 1 Q. Hunt Brothers Construction? And what project were
2 y'all working on at that time?
- 3 A. Remodeling for Belk.
- 4 Q. That would be the Belk over in Mount Pleasant here
5 in town?
- 6 A. Yes, sir.
- 7 Q. Do you recall -- who is Ronnie Hunt by the way?
- 8 A. My cousin.
- 9 Q. And he was also working with Hunt Brothers?
- 10 A. Yes, sir.
- 11 Q. Where is Hunt Brothers headquartered?
- 12 A. They live in Lumberton.
- 13 Q. Lumberton, North Carolina? Okay. And how far is
14 Pembroke from Lumberton? I think I asked you the
15 wrong...
- 16 A. Ten, fifteen minutes.
- 17 Q. Okay. So those people who were working for Hunt
18 Brothers came from that area of North Carolina?
- 19 A. Yes, sir.
- 20 Q. Is that correct?
- 21 A. Yes, sir.
- 22 Q. Do you recall how long y'all had been on this job at
23 Belk when the stabbing of Mr. Muniz took place?
- 24 A. I think I got there like July I want to say; I
25 think, I'm not sure.

State v Dennis Cervantes-Pavon
Jeremiah Oxendine-Direct Examination by Mr. Durant
November 10, 2015

- 1 Q. July of 2015 or so?
- 2 A. 2014.
- 3 Q. 2014? Were -- do you know this fellow?
- 4 A. Yes.
- 5 Q. His name is Elvin Pavon is that correct?
- 6 A. Yes, sir.
- 7 Q. Was he on the job when you got there or did he
- 8 arrive on the job after you got there?
- 9 A. I ain't sure because everybody was working in
- 10 different areas.
- 11 Q. Okay. Did you know the fellow that got stabbed,
- 12 Raymond Muniz?
- 13 A. As far as work, no.
- 14 Q. As far as work what?
- 15 A. As far as work I didn't know him.
- 16 Q. Okay.
- 17 A. I only knew him at work.
- 18 Q. Okay. You knew him as what?
- 19 A. I knew him from work, that was it.
- 20 Q. I'm not talking about him [indicates] now. I'm
- 21 talking about the guy who got stabbed ---
- 22 A. --- yes, you're talking about Raymond.
- 23 Q. So did you know Raymond?
- 24 A. From work, yes.
- 25 Q. Okay. How long had you known Raymond?

State v Dennis Cervantes-Pavon
Jeremiah Oxendine-Direct Examination by Mr. Durant
November 10, 2015

- 1 A. About a week maybe.
- 2 Q. Okay. Were you and him great friends?
- 3 A. No, I just talked to him at work.
- 4 Q. And did you have any relationship with him outside
5 work?
- 6 A. No.
- 7 Q. Did Raymond work for Hunt Brothers too or did he
8 work for another company?
- 9 A. I think they was subbing through another person.
- 10 Q. Okay. But he didn't come in with the same company
11 that you came on?
- 12 A. No, sir.
- 13 Q. Did you observe Mr. Muniz get stabbed on August the
14 13th of 2014?
- 15 A. Yes, sir.
- 16 Q. And is the person that stabbed Mr. Muniz in the
17 courtroom today?
- 18 A. Yes, sir.
- 19 Q. Could you please point him out to the jury?
- 20 A. Sitting there [indicates].
- 21 Q. The fellow with the earphones in?
- 22 A. Yes, sir.
- 23 Q. Were you aware of any bad blood between him and
24 Raymond Muniz?
- 25 A. No, sir.

State v Dennis Cervantes-Pavon
Jeremiah Oxendine-Direct Examination by Mr. Durant
November 10, 2015

1 Q. That day of the stabbing were you aware of any
2 disagreement between the two of them?

3 A. No, sir. As far as just what happened that was it.

4 Q. Okay. You didn't hear any argument between them
5 earlier in the day or anything like that?

6 A. No, sir.

7 Q. Okay. Now what were you doing that day?

8 A. Grinding the floors.

9 Q. Pardon?

10 A. Grinding the floors.

11 Q. Grinding the floor?

12 A. Yes, sir.

13 Q. What were you using to grind the floor with?

14 A. A grinder.

15 Q. That's one of those things with the handle and the
16 big round thing that spins around ---

17 A. --- yes sir.

18 Q. Do you remember what Raymond was doing that day?

19 A. Pouring concrete.

20 Q. And do you remember what the defendant Mr. Pavon was
21 doing that day?

22 A. He was framing the walls.

23 Q. Okay. And were y'all -- where were y'all all
24 working in proximity to each other? Were y'all working
25 closely to each other or?

State v Dennis Cervantes-Pavon
Jeremiah Oxendine-Direct Examination by Mr. Durant
November 10, 2015

1 A. Yes, it was maybe about five feet away, ten feet
2 away from each other.

3 Q. Okay. Now could you tell the jury you said you saw
4 this incident. Could you tell the jury what you saw that
5 day shortly before it was time to knock off?

6 A. They just started -- when Raymond walked by he was
7 like y'all just need to not try to start with me.

8 Q. When Raymond walked by who?

9 A. Him.

10 Q. Mr. Pavon?

11 A. Yes.

12 Q. The defendant? Where was Mr. Pavon when Raymond
13 walked by?

14 A. In the doorway of the wall.

15 Q. In the wall that he was framing?

16 A. Yes. There was a doorway there.

17 Q. Okay. And you said Raymond walked by. Did Raymond
18 have anything with him? Did he have a wheelbarrow or
19 anything?

20 A. Yes, the wheelbarrow to pour the concrete in.

21 Q. Okay. And where was he headed with the
22 wheelbarrow?

23 A. Back to the mixer.

24 Q. Okay. And what happened as he walked by Mr. Pavon?

25 A. He started saying something to him, to Raymond. And

State v Dennis Cervantes-Pavon
Jeremiah Oxendine-Direct Examination by Mr. Durant
November 10, 2015

- 1 Raymond was like you see him trying to start with me.
- 2 Q. Okay. Did Mr. Pavon say something to Raymond?
- 3 A. Yes.
- 4 Q. And did Raymond say something back to him?
- 5 A. He was looking at me saying you see him trying to
- 6 start with me.
- 7 Q. Okay. Did this seem like to you it was a good
- 8 natured conversation?
- 9 A. No.
- 10 Q. What did it appear to be like to you?
- 11 A. Like an argument.
- 12 Q. And why do you say that?
- 13 A. I mean you can tell the difference between a good
- 14 conversation and an argument; anybody can.
- 15 Q. Okay. Were voices raised?
- 16 A. No, sir.
- 17 Q. Did they appear angry?
- 18 A. Raymond did.
- 19 Q. Okay. And so Raymond went by him with a
- 20 wheelbarrow, Mr. Pavon said something to him and Raymond
- 21 said something to the effect of you hear him trying to
- 22 start something correct?
- 23 A. Yes.
- 24 Q. What happened then?
- 25 A. Then he turned around and you could see him being --

State v Dennis Cervantes-Pavon
Jeremiah Oxendine-Direct Examination by Mr. Durant
November 10, 2015

1 Raymond was like what you trying to say you want to fight
2 me and he was like yeah.

3 Q. So who -- now you need to be clear. You said
4 Raymond was walking by and they had an exchange of words
5 correct?

6 A. Yes, sir.

7 Q. And then you said somebody turned around. Who
8 turned around?

9 A. He turned around and Raymond was still standing
10 where I was at.

11 Q. Okay. So where was Raymond at that point?

12 A. Still over toward the mixer.

13 Q. Was he over by the cement mixer?

14 A. Yes.

15 Q. Okay. And where was Mr. Pavon?

16 A. Still standing between his wall.

17 Q. Okay. And what did you see Mr. Pavon do?

18 A. He could see him bend down and start digging for
19 something.

20 Q. Okay. Did you see him -- bend down where?

21 A. Beside the wall.

22 Q. Okay. And what did you see him do?

23 A. You could see him grabbing for stuff.

24 Q. And what did you see him do with whatever he
25 grabbed?

State v Dennis Cervantes-Pavon
Jeremiah Oxendine-Direct Examination by Mr. Durant
November 10, 2015

- 1 A. When he stood back up he had his hand here
2 [indicates] and then when he had the pipe he started
3 walking towards Raymond.
4 Q. Okay. So he put something where?
5 A. To the side.
6 Q. On his right side?
7 A. Yes.
8 Q. And he picked up a what?
9 A. Sprinkler pipe.
10 Q. Okay. And what did he do after he picked up the
11 sprinkler pipe?
12 A. He started walking towards Raymond.
13 Q. Okay. And how as he holding the sprinkler pipe?
14 A. Dragging it.
15 Q. Okay. And he approached where Raymond was?
16 A. Yes.
17 Q. Was Raymond still over by the cement mixer at that
18 time?
19 A. He was a few steps back from it.
20 Q. Back toward where you were?
21 A. Uh Huh.
22 THE COURT: Was that a yes?
23 THE WITNESS: Yes.
24 Q. [Mr. Durant] And what did Raymond do when he saw Mr.
25 Pavon coming toward him with the pipe?

State v Dennis Cervantes-Pavon
Jeremiah Oxendine-Direct Examination by Mr. Durant
November 10, 2015

1 A. He was looking around and picked up the piece of
2 metal.

3 Q. Okay. And then what happened?

4 A. When he swung the pipe he had the metal up.

5 Q. Who swung the pipe?

6 A. When he swung the pipe.

7 Q. Okay. Raymond had the piece of metal to block it
8 and he swung it again. And Raymond blocked it again.

9 Q. Okay. So he blocked it twice?

10 A. Uh Huh.

11 THE COURT: Was that a yes?

12 THE WITNESS: Yes.

13 Q. [Mr. Durant] And then what happened?

14 A. Whenever they dropped the metal both of them wrapped
15 up. Raymond had him by the top of his head.

16 Q. Okay. Where they face to face at that time?

17 A. Yes.

18 Q. Okay. So Raymond had him around his head like this
19 [indicates] kind of in a wrestling hold?

20 A. Yes.

21 Q. And then what did you see?

22 A. Then you see him swing out -- see him swing around
23 like this and when he did that's when Raymond jumped back
24 and was holding his side. And he said he stabbed me and
25 when he turned around you seen blood down the shirt.

State v Dennis Cervantes-Pavon
Jeremiah Oxendine-Direct Examination by Mr. Durant
November 10, 2015

1 Q. Okay. Did you know he had been -- when you saw Mr.
2 Pavon do that did you think he had stabbed him at first?

3 A. At first no.

4 Q. What did you think he had done?

5 A. I didn't really think. I just thought he hit him
6 then when he turned around there was blood everywhere on
7 his shirt.

8 Q. Okay. And what happened after Raymond said he
9 stabbed me and broke away?

10 A. He took off running by me and he fell over the door
11 in the entranceway.

12 Q. Okay. And what did Mr. Pavon do when Raymond ran
13 out?

14 A. Ran after him or ran towards the way Raymond had
15 run.

16 Q. Okay. And how could you tell that Raymond was
17 injured?

18 A. Because of the wound when he turned around he had
19 blood all over his shirt. Then when he hit the glass
20 door blood splattered all over the glass.

21 Q. Okay. Did you see Mr. Pavon with anything in his
22 hand after that?

23 A. When he walked out he still had it.

24 Q. Do you recall what it was that he had?

25 A. A keyhole saw.

State v Dennis Cervantes-Pavon
Jeremiah Oxendine-Direct Examination by Mr. Durant
November 10, 2015

- 1 Q. And what did you do?
- 2 A. After they had left and walked out I walked out
3 behind them and followed Raymond down the sidewalk.
- 4 Q. Okay. Which way did Raymond go when he went out
5 the door?
- 6 A. Left.
- 7 Q. And which way did Mr. Pavon go when he went out the
8 door?
- 9 A. Through the parking lot straight.
- 10 Q. Now where did you find Raymond?
- 11 A. When you walk out make a left, go down the sidewalk
12 and he was laying beside a bush.
- 13 Q. And what was his condition when you got to him?
- 14 A. He was -- it looked like he was choking when I got
15 there.
- 16 Q. But he was still alive at that time?
- 17 A. Yes, he was still alive.
- 18 Q. How long did you stay there with Raymond?
- 19 A. Not very long. Two boys come out there with rags
20 and then I walked off.
- 21 Q. Okay. They were trying to what put pressure on the
22 wound or something?
- 23 A. Yes.
- 24 Q. Now did you talk to the police that day?
- 25 A. Yes, I talked to them. I had to fill out a

State v Dennis Cervantes-Pavon
Jeremiah Oxendine-Direct Examination by Mr. Durant
November 10, 2015

1 statement.

2 Q. Okay. You did provide them a written statement
3 thought right?

4 A. Yes.

5 Q. The next day did you return to work?

6 A. Yes.

7 Q. And do you recall some guy from the Mount Pleasant
8 Police Department coming by and asking y'all to stand
9 where y'all were when this happened?

10 A. Yes.

11 Q. Did you do that?

12 A. [Indicates negatively].

13 Q. And were pictures taken?

14 A. Yes.

15 Q. Mr. Oxendine let me show you what has previously
16 been marked as State's exhibit number 79 and ask if you
17 recognize this.

18 [Whereupon, the witness is shown exhibit]

19 A. Yes.

20 Q. What is that?

21 A. A sprinkler pipe.

22 Q. Okay. And who had this sprinkler pipe?

23 A. He did.

24 Q. And he had this sprinkler pipe and which way was he
25 walking with this sprinkler pipe?

State v Dennis Cervantes-Pavon
Jeremiah Oxendine-Direct Examination by Mr. Durant
November 10, 2015

1 A. Toward Raymond.

2 Q. Okay. When he began walking toward Raymond with
3 this sprinkler pipe did Raymond have anything in his
4 hand?

5 A. Not at the time.

6 Q. Did he pick up something?

7 A. A piece of metal.

8 Q. And I hand you what has been marked as State's
9 exhibit number 80 for identification and ask you if you
10 recognize this item?

11 [Whereupon, the witness is shown exhibit]

12 A. Yes.

13 Q. And you demonstrated earlier that Mr. -- Raymond was
14 holding the pipe like this [indicates] to block the
15 blows?

16 A. Yes.

17 Q. Is that accurate?

18 A. Well, it would have been the other way because...

19 Q. Okay. The other way like that [indicates]?

20 A. Uh Huh.

21 Q. And how many times did you see Mr. Pavon try to
22 strike Raymond with that pipe?

23 A. Twice.

24 Q. And I'd like to direct your attention to State's
25 exhibit number 77.

State v Dennis Cervantes-Pavon
Jeremiah Oxendine-Direct Examination by Mr. Durant
November 10, 2015

1 [Whereupon, the video plays]
2 Q. This is showing the door to Belk is that correct?
3 A. Yes, sir.
4 Q. And which door led to the construction area?
5 A. On the right side.
6 Q. Okay. And who is that running out the doorway?
7 A. Raymond.
8 Q. What is that on his chest?
9 A. Blood.
10 Q. And who is that?
11 A. Him.
12 Q. And you were referring to Mr. Pavon sitting at the
13 table over here [indicates]?
14 A. Yes, sir.
15 Q. And who is that up around the corner where that
16 trash can is right here [indicates]?
17 A. Me.
18 [Whereupon, the video stops].
19 MR. DURANT: Your Honor, at this time I want to
20 refer the jury to State's exhibit 44 that is already into
21 evidence. And I would offer State's exhibits 45, 46, 47
22 I believe without objection.
23 MR. COCHRAN: Without objection, Your Honor.
24 THE COURT: They will be so entered.
25 [Whereupon, State's exhibit numbers 45, 46, and 47

State v Dennis Cervantes-Pavon
Jeremiah Oxendine-Direct Examination by Mr. Durant
November 10, 2015

1 are entered into evidence by the court]
2 Q. [Mr. Durant] Let's refer to State's exhibit number
3 44.
4 [Whereupon, the photograph is shown]
5 Q. Do you see it up there on your screen?
6 A. Yep.
7 Q. What is this over here [indicates]?
8 A. The grinder I was using.
9 Q. Okay. And you would have been from where this
10 actual picture is being taken you would have been over to
11 the right of that?
12 A. Yes, off the screen.
13 Q. Just off the screen? And what is this right here
14 [indicates]?
15 A. A concrete mixer.
16 Q. Okay. And if you could what area did the fight
17 take place in?
18 A. Right up -- yes,
19 Q. --- was it here ---
20 A. --- right up in here [indicates].
21 Q. Right there [indicates]? Okay. And where had Mr.
22 Pavon been working?
23 A. To the doorway over here [indicates].
24 Q. Okay. So how did he get over there to where the
25 fight occurred?

State v Dennis Cervantes-Pavon
Jeremiah Oxendine-Direct Examination by Mr. Durant
November 10, 2015

1 A. Walked.

2 Q. And that's when you saw him walking over there with
3 the pipe?

4 A. Yes, sir.

5 Q. Okay. Now going to State's exhibit number 45.

6 [Whereupon, the photograph is shown]

7 Q. This is State's exhibit 45. Who is that fellow in
8 the middle there [indicates]?

9 A. Me.

10 Q. Okay. And this [indicates] is the grinder we saw
11 previously right here [indicates] is that correct?

12 A. Yes.

13 Q. Okay. And does this picture depict about where you
14 saw them fighting?

15 A. Yes, because that's where I was standing. They was
16 over towards this way [indicates].

17 Q. Okay. Right there around where that concrete was?

18 A. Yes.

19 Q. And this is State's exhibit number 46.

20 [Whereupon, the photograph is shown]

21 Q. That's just kind of a different view. This is kind
22 of to your right is that correct?

23 A. Yes.

24 Q. How far do you reckon you were from them when they
25 were fighting?

State v Dennis Cervantes-Pavon
Jeremiah Oxendine-Direct Examination by Mr. Durant
November 10, 2015

1 A. Maybe ten feet.

2 Q. Okay. And you say they were fighting right in this
3 area right here [indicates]?

4 A. Yes, just right up on the back side of that column.

5 Q. Okay. And Mr. Pavon had been working over here
6 [indicates]?

7 A. Yes.

8 Q. And lastly State's exhibit number 47.

9 [Whereupon, the photograph is shown]

10 Q. That's you right?

11 A. Yes.

12 Q. I don't believe I have any other questions. Could
13 you please answer any questions that defense counsel may
14 have?

15 MR. COCHRAN: May it please the court?

16 THE COURT: Hold on one second Mr. Cochran. Mr.
17 Cochran?

18 MR. COCHRAN: Thank you, Your Honor.

19

20

21

22

23

24

25

State v Dennis Cervantes-Pavon
Jeremiah Oxendine-Cross-Examination by Mr. Cochran
November 10, 2015

1 CROSS-EXAMINATION

2 BY MR. COCHRAN:

3 Q. So your attention was I guess drawn to the area or
4 drawn to Raymond and Elvin when you heard Raymond
5 talking?

6 A. Yes.

7 Q. Okay. And you said that Raymond -- I believe the
8 first thing you heard him say was that he was talking to
9 you?

10 A. When he walked around you could hear him say you
11 hear him starting with me.

12 Q. Okay. So he said to you do you hear him starting
13 something with me or something to that effect?

14 A. Yes, sir.

15 Q. Okay. And was saying that he was referring to
16 Elvin?

17 A. Yes.

18 Q. Okay. And at that time was Elvin up on a ladder or
19 just in his work area?

20 A. He was just standing there.

21 Q. Okay. And was he in the area where he was doing
22 framing?

23 A. Yes, sir.

24 Q. Okay. And Raymond was walking past him?

25 A. He was already standing over there where I was at.

State v Dennis Cervantes-Pavon
Jeremiah Oxendine-Cross-Examination by Mr. Cochran
November 10, 2015

- 1 Q. Okay. So he had just walked past?
- 2 A. He has to walk from -- the picture?
- 3 Q. Yes.
- 4 A. He has to walk around towards where I was at.
- 5 Q. Okay. So he was taking concrete back and forth to
- 6 another place right?
- 7 A. Yes.
- 8 Q. And he had to walk around that skeleton wall?
- 9 A. Yes. He had to walk that way around. He had to
- 10 walk past me to go around.
- 11 Q. Okay. And then you said at some point he was
- 12 walking by Elvin?
- 13 A. Over when he went to go get the concrete because the
- 14 concrete was maybe this far [indicates] away from him.
- 15 Q. Okay. And when he was walking by Elvin was he
- 16 talking to you or did he?
- 17 A. He hadn't said nothing yet.
- 18 Q. Okay. And to your best recollection Elvin was not
- 19 on the ladder at that time?
- 20 A. No.
- 21 Q. And did you hear Elvin saying anything to Raymond?
- 22 A. I mean he was speaking Spanish.
- 23 Q. Okay. And was Raymond talking to Elvin in Spanish
- 24 as well?
- 25 A. No.

State v Dennis Cervantes-Pavon
Jeremiah Oxendine-Cross-Examination by Mr. Cochran
November 10, 2015

- 1 Q. Okay. And you then say that Raymond asked Elvin if
2 he wanted to fight him?
- 3 A. He said what you trying to say fight? And he was
4 like yeah fight.
- 5 Q. Elvin said yeah fight?
- 6 A. Yes, sir.
- 7 Q. You filled out a statement for the police right?
- 8 A. Yes, sir.
- 9 Q. But you did not include that detail to your
10 statement to the police did you? Would it refresh your
11 recollection if you looked at this?
- 12 [Whereupon, the witness is shown document]
- 13 Q. And you wrote and signed that statement right?
- 14 A. Yes, sir.
- 15 Q. And when you were writing that statement you were
16 cooperating with the police right?
- 17 A. Yes, sir.
- 18 Q. You were trying to give them all the essential
19 details you felt would have been important about what you
20 saw and heard that day?
- 21 A. Yes, sir.
- 22 Q. But you did not include in this statement that Elvin
23 had agreed to fight with Raymond did you?
- 24 A. No, sir.
- 25 Q. You said that when Elvin picked up the black pipe

State v Dennis Cervantes-Pavon
Jeremiah Oxendine-Cross-Examination by Mr. Cochran
November 10, 2015

1 right?

2 A. Yes, sir.

3 Q. And you said -- you were asked how he was holding it
4 and you said he was dragging it?

5 A. Yes, sir.

6 Q. Okay. So he was not holding it up like this
7 [indicates] in a swinging stance right?

8 A. It was --

9 Q. So like this [indicates]?

10 A. Walking towards him.

11 Q. Okay. And then while he is walking towards him
12 with this dragging behind him Raymond picks up this metal
13 piece?

14 A. Yes, sir.

15 Q. Okay. And he holds the metal piece up like this
16 [indicates]?

17 A. At the time he is holding it then when he gets ready
18 to swing the pipe --

19 Q. So Elvin is dragging the pipe and Raymond picks up a
20 pipe like this [indicates] or like this [indicates] or
21 how?

22 A. Yes.

23 Q. Like this [indicates]. And nobody actually gets hit
24 on their body with the piece of metal to what you saw?

25 A. No, sir.

State v Dennis Cervantes-Pavon
Jeremiah Oxendine-Cross-Examination by Mr. Cochran
November 10, 2015

1 Q. Okay. And at some point they both drop their
2 pieces of metal you said right?

3 A. Yes, sir.

4 Q. Now did Elvin get his metal knocked out of his hand?

5 A. When he was swinging it when he would swing back
6 Raymond would push towards the pipe like that
7 [indicates]. It looks like he was trying to knock it
8 away from him.

9 Q. Okay. And was he successful in knocking it away
10 from him?

11 A. Yes, because it fell out his hands and that's when
12 Raymond dropped his.

13 Q. And then Raymond grabbed Elvin around the head?

14 A. Yes, he just like with his fingers locked behind.

15 Q. Locked behind his head? Okay. So Elvin's face was
16 like in his chest or what?

17 A. His head was just pointed down so I mean you might
18 as well say looking towards his chest.

19 THE INTERPRETER: I'm sorry, Your Honor, the
20 interpreter did not hear the witness's response.

21 THE COURT: Could you repeat what you just said.

22 THE WITNESS: He had his head about towards his
23 chest.

24 Q. [Mr. Cochran] Okay. And was he like pressing his
25 head against his chest?

State v Dennis Cervantes-Pavon
Jeremiah Oxendine-Cross-Examination by Mr. Cochran
November 10, 2015

- 1 A. No, sir.
- 2 Q. Was he holding his head?
- 3 A. No, he was just -- they was a good distance apart.
- 4 They were probably this far [indicates] because Raymond
- 5 had his arms extended out.
- 6 Q. Okay. And then Elvin had him around the waist or
- 7 what?
- 8 A. He didn't have his hands on him. He just had his
- 9 hands like this [indicates].
- 10 Q. And did you see Raymond punching Elvin?
- 11 A. He didn't punch him.
- 12 Q. He did not?
- 13 A. No, sir.
- 14 Q. And you then saw Elvin reach around and pull
- 15 something from the waistband?
- 16 A. Yes, when he pulled like this right here [indicates]
- 17 you could see him swing it.
- 18 Q. He swung it out like that?
- 19 A. Yes, sir.
- 20 Q. Okay. And at that time when he swung Raymond had
- 21 him by the neck?
- 22 A. He had his arms extended out like this right here
- 23 [indicates] grabbing the back of his head.
- 24 Q. Okay. And Raymond was taller than Elvin?
- 25 A. Yes, sir.

State v Dennis Cervantes-Pavon
Jeremiah Oxendine-Cross-Examination by Mr. Cochran
November 10, 2015

1 Q. Was he larger in terms of just weight as well?

2 A. He appeared to be yes, sir.

3 MR. COCHRAN: Beg the court's indulgence.

4 [Whereupon, Mr. Cochran and Ms. Parnall confer]

5 MR. COCHRAN: No more questions, Your Honor.

6 THE COURT: Redirect?

7 MR. DURANT: I have nothing further.

8 THE COURT: You may step down. Thank you.

9 MR. DURANT: Could I ask that Mr. Oxendine be
10 excused from his subpoena if there is no objection?

11 THE COURT: Any objection?

12 MR. COCHRAN: No objection, Your Honor.

13 THE COURT: Sir, you are free to go but feel free
14 to stay with us.

15 [Whereupon, the witness is excused and exits the
16 witness stand]

17 THE COURT: Call your next witness.

18

19

20

21

22

23

24

25

State v Dennis Cervantes-Pavon
Ronnie Hunt-Direct Examination by Mr. Durant
November 10, 2015

1 MR. DURANT: The State would call Mr. Ronnie Hunt.

2 [Whereupon, Mr. Hunt comes forward]

3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]

5 CLERK OF COURT: Please state your first and last
6 name and spell your last name loudly and clearly into the
7 microphone.

8 THE WITNESS: Ronnie Hunt, H-U-N-T.

9 - - - - -

10 RONNIE HUNT,

11 Having been first duly sworn,

12 Was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. DURANT:

15 Q. Good afternoon Mr. Hunt.

16 A. Good afternoon.

17 Q. Could you tell our jury your age?

18 A. I'm 20 years old.

19 Q. And how far did you go in school?

20 A. I finished high school and went one semester in
21 college.

22 Q. Okay. And where did you go to high school?

23 A. Purnell Swett High School.

24 Q. And that's the same place that Mr. Oxendine went
25 that just testified is that correct?

State v Dennis Cervantes-Pavon
Ronnie Hunt-Direct Examination by Mr. Durant
November 10, 2015

- 1 A. Yes, sir.
- 2 Q. Where is that located?
- 3 A. Lumberton, North Carolina -- well Pembroke, North
4 Carolina.
- 5 Q. Which is close to Lumberton as I understand?
- 6 A. Yes sir, maybe ten minutes.
- 7 Q. And what have you been doing since you graduated
8 from high school and your semester of college?
- 9 A. I'm a subcontractor.
- 10 Q. Okay. I believe you own your own company right?
- 11 A. Yes, sir.
- 12 Q. And with -- is it with your father or your uncle?
- 13 A. My father.
- 14 Q. What kind of business are y'all in?
- 15 A. Metal studs, drywall; stuff like that.
- 16 Q. Framing, drywall; that kind of stuff?
- 17 A. Yes, sir.
- 18 Q. Okay. Is that where you were working in August of
19 2014, last year?
- 20 A. No, sir. I was working with my uncle.
- 21 Q. Okay. And what company did your uncle own?
- 22 A. Hunt Brothers Construction.
- 23 Q. And Hunt Brothers was located where?
- 24 A. Lumberton, North Carolina.
- 25 Q. And what project were y'all working on on August the

State v Dennis Cervantes-Pavon
Ronnie Hunt-Direct Examination by Mr. Durant
November 10, 2015

- 1 13th of 2014?
- 2 A. The Belk in Mount Pleasant.
- 3 Q. And I believe Hunt Brothers was subbing out to
- 4 Frisch and Associates is that right?
- 5 A. Subbing from Frisch.
- 6 Q. Subbing from?
- 7 A. Yes.
- 8 Q. Do you recall how long y'all had been working at
- 9 this Belk job at the time that Raymond Muniz was stabbed?
- 10 A. Maybe a few weeks -- yes, a few weeks because we
- 11 were in phase four.
- 12 Q. Okay. Do you remember what month it was y'all got
- 13 there?
- 14 A. We got there around May I think; May or June.
- 15 Q. Okay. And this actually occurred in August so
- 16 y'all had been in there for three or four months?
- 17 A. Yes, maybe months.
- 18 Q. Did you know the guy that got stabbed, Raymond
- 19 Muniz?
- 20 A. From the job site.
- 21 Q. Okay. How long had you known him do you know?
- 22 A. A few weeks.
- 23 Q. Okay. What was your relationship with him?
- 24 A. We worked together. I just met him on the job.
- 25 Q. So was your association with him strictly work

State v Dennis Cervantes-Pavon
Ronnie Hunt-Direct Examination by Mr. Durant
November 10, 2015

- 1 related or did you have any friendship with him that
2 extended outside the workplace?
- 3 A. Strictly work.
- 4 Q. Did you know this fellow?
- 5 A. Just from work.
- 6 Q. Okay. Do you know what company Mr. Muniz worked
7 for?
- 8 A. I can't remember the name of it. Diego I want to
9 say; it might have been.
- 10 Q. Diego what?
- 11 A. Diego I think that might have been his name; his
12 boss.
- 13 Q. Okay. Do you know where he worked? Did he work
14 for the same company?
- 15 A. Yes, he worked for the same company as Raymond.
- 16 Q. Do you remember how long they had been on the job?
- 17 A. Maybe a few weeks.
- 18 Q. Okay. So you didn't know either one of them very
19 well?
- 20 A. No, sir.
- 21 Q. Had you ever had any problems or disagreements with
22 Mr. Pavon?
- 23 A. No, sir.
- 24 Q. Had he ever had any problems or disagreements with
25 you?

State v Dennis Cervantes-Pavon
Ronnie Hunt-Direct Examination by Mr. Durant
November 10, 2015

1 A. No, sir.

2 Q. Were you aware of any disagreements or problems
3 between him and the victim in this case Raymond Muniz?

4 A. Yes, sir.

5 Q. How were you aware of those problems?

6 A. I had heard they had got into a little argument such
7 and such.

8 Q. Okay. Do you know when that was in relation to
9 this stabbing?

10 A. I know the same day they had gotten into an
11 argument.

12 Q. Okay. And how do you know that?

13 A. Because I was in the same area. I just couldn't
14 tell exactly what they were saying because it was in
15 Spanish.

16 Q. Okay. Was it all one sided or were they arguing
17 with each other?

18 A. With each other.

19 Q. So both Raymond and Mr. Pavon were talking at each
20 other?

21 A. Yes.

22 Q. And what was their demeanor when they were doing
23 this? Did they appear to be happy or did they appear to
24 be angry?

25 A. Angry.

State v Dennis Cervantes-Pavon
Ronnie Hunt-Direct Examination by Mr. Durant
November 10, 2015

- 1 Q. What did you do when this was going on? Did you try
2 to do anything or stop them or anything?
- 3 A. I mean I didn't, no. I didn't do anything.
- 4 Q. Okay. Did somebody else do anything?
- 5 A. Yes.
- 6 Q. Who was that?
- 7 A. The superintendent on the job.
- 8 Q. Do you recall what his name was?
- 9 A. Herbie.
- 10 Q. And what did Herbie do?
- 11 A. He took both of them outside and had a talk with
12 both of them and let them know that if they didn't stop
13 that they would both be gone.
- 14 Q. Okay.
- 15 A. If there was any more problems.
- 16 Q. So your only knowledge of any problems that they
17 might have had between them was from seeing them argue
18 that day.
- 19 A. Yes.
- 20 Q. Do you recall what time it was when Mr. Herbie Evans
21 came by and took them outside?
- 22 A. No, sir.
- 23 Q. Okay. What happened after Mr. Evans talked to
24 them; took them outside and talked to them?
- 25 A. They went back in and went back to work.

State v Dennis Cervantes-Pavon
Ronnie Hunt-Direct Examination by Mr. Durant
November 10, 2015

1 Q. And how did things go after that?

2 A. They didn't -- I didn't see them fuss or anything
3 after that until later on that day when the incident
4 occurred.

5 Q. Okay. And let's talk a little bit about that.
6 What were you doing when the incident occurred?

7 A. I was using a machine to scrape the floor.

8 Q. Okay. And where were you located in the building?

9 A. Right at the front window right next to the door.

10 Q. Okay. And referring if I could to State's exhibit
11 number 78, which is a building plan and I believe this
12 has been identified as phase four.

13 [Whereupon, the witness is shown exhibit]

14 Q. This is the doorway going out in the parking lot is
15 that correct?

16 A. Yes, sir.

17 Q. And you were on this side [indicates] -- this has
18 been identified as a wall and you were on this side
19 [indicates] of that wall is that correct?

20 A. Yes, sir.

21 Q. So you would have been on the same side of the wall
22 that Mr. Oxendine was on?

23 A. Yes.

24 Q. Okay. So you were grinding the floor and what
25 happened? What brought your attention to what was going

State v Dennis Cervantes-Pavon
Ronnie Hunt-Direct Examination by Mr. Durant
November 10, 2015

1 on?

2 A. I heard a loud noise and I turned and I seen the
3 suspect swinging a sprinkler pipe.

4 Q. Okay. Swinging a sprinkler pipe at who?

5 A. Mr. Raymond.

6 Q. And what did Mr. Raymond do when he swung the
7 sprinkler pipe at him?

8 A. He picked up a piece of metal that was on the floor
9 over here [indicates] and blocked it.

10 Q. Okay. So that was the first you saw of it when Mr.
11 Pavon was swinging that pipe?

12 A. Yes, sir.

13 Q. Then what happened? What did you see?

14 A. They scuffled a little bit and locked up with each
15 other. And I seen the suspect do this [indicates] move
16 his arm and then Raymond took off running.

17 And you could see the blood because he had a white
18 shirt on you could see the blood dripping out of his
19 shirt.

20 Q. Okay. And after that happened did you see Mr.
21 Pavon with anything in his hand?

22 A. A keyhole saw.

23 Q. And where did Mr. Raymond run?

24 A. He ran straight out the doors and ran around the
25 left side of the building.

State v Dennis Cervantes-Pavon
Ronnie Hunt-Direct Examination by Mr. Durant
November 10, 2015

1 Q. Okay. And where did Mr. Pavon run?

2 A. He walked straight out the building and went
3 straight through the parking lot to I think it was past
4 Walmart and stuff -- no, Lowes.

5 Q. It was Lowes out that way?

6 A. Yes, sir.

7 Q. Did you make -- what did you do?

8 A. I walked out to see where he was headed because
9 there was two people who ran where Raymond was so I
10 watched to see where he was going.

11 Q. Okay. And what did you do after that?

12 A. Called the cops -- tried to call them.

13 Q. Okay. Did you follow along behind him?

14 A. I followed him until we got to Lowes and then I seen
15 a cop pull in so I walked back to try to get the cop's
16 attention and he was already gone.

17 Q. Do you know what he did with the keyhole saw?

18 A. No, sir.

19 Q. Okay. Do you remember seeing the keyhole saw after
20 seeing him holding it in his hand inside the construction
21 area?

22 A. I mean he walked right out the building with it.

23 Q. So he had it with him when he walked out the
24 building?

25 A. Yes, sir. He never put it down.

State v Dennis Cervantes-Pavon
Ronnie Hunt-Direct Examination by Mr. Durant
November 10, 2015

1 Q. Now so you followed him until you saw some police
2 officers and then you went over and talked to the police
3 officers. What happened then?

4 A. Then they basically just made us sit down -- made me
5 sit down on the sidewalk and took my statement. They
6 wouldn't let me leave for a few hours.

7 Q. So you gave a short statement that day is that
8 correct?

9 A. Yes, sir.

10 Q. Okay. And that was on August the 13th and I
11 believe you gave them a more lengthy statement on August
12 the 18th does that sound correct?

13 A. Yes.

14 Q. How did that come about?

15 A. They just came and got me off the job and took me to
16 their office.

17 Q. Okay. Just like to get some more detail?

18 A. Yes.

19 Q. And how did this affect you? Had you ever seen
20 anything like this before?

21 A. No, sir.

22 Q. Were you upset?

23 A. Yes. I was a little shocked.

24 Q. Did you go to work the next day?

25 A. No, sir.

State v Dennis Cervantes-Pavon
Ronnie Hunt-Direct Examination by Mr. Durant
November 10, 2015

1 Q. You indicated earlier that you had seen -- I'm going
2 to show you what's been marked as State's exhibit number
3 79 and ask if you recognize that?

4 [Whereupon, the witness is shown exhibit]

5 A. Yes, sir.

6 Q. Okay. And who had this?

7 A. The suspect.

8 Q. Okay. The suspect you mean Mr. Pavon over here
9 [indicates]?

10 A. Yes.

11 Q. And that's the guy sitting in the middle with the
12 earphones on correct?

13 A. Yes.

14 Q. And what was he doing with this when you saw him?

15 A. Swinging at Raymond.

16 Q. Swinging it like this [indicates]?

17 A. Yes.

18 Q. And State's exhibit number 80 do you recognize this?

19 [Whereupon, the witness is shown exhibit]

20 A. It's what Raymond was blocking with.

21 Q. Okay. And how was he holding it? Was he holding
22 it like this [indicates]?

23 A. Like this [indicates].

24 Q. Like this [indicates]?

25 A. Yes.

State v Dennis Cervantes-Pavon
Ronnie Hunt-Direct Examination by Mr. Durant
November 10, 2015

- 1 Q. Is that how it got dented?
- 2 A. Yes, sir.
- 3 Q. Where in the area did this fight take place?
- 4 A. In phase four.
- 5 Q. Okay. Was it where Mr. Pavon was working or was it
- 6 where Mr. ---
- 7 A. --- where Raymond was working.
- 8 Q. Okay. Raymond was working over there near the...
- 9 A. Where they were mixing mud; concrete.
- 10 Q. So you didn't see how Mr. Pavon got over there but
- 11 that's where the fight took place?
- 12 A. No, sir. I didn't actually see him walk there but I
- 13 knew he was in Raymond's work area.
- 14 Q. Okay. And you've seen the video of them coming
- 15 out? I'm not going to show it to you again but you
- 16 recognize yourself coming out and talking on the phone?
- 17 A. Yes, sir.
- 18 Q. Is that correct?
- 19 A. Yes.
- 20 Q. And then you ended up following around behind Mr.
- 21 Pavon is that correct?
- 22 A. Yes.
- 23 Q. Could you please answer any questions that defense
- 24 counsel has for you?
- 25 A. Yes, sir.

State v Dennis Cervantes-Pavon
Ronnie Hunt-Direct Examination by Mr. Durant
November 10, 2015

1 THE COURT: Ms. Parnall?

2 MS. PARNALL: Thank you, Your Honor. May it please
3 the court?

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

State v Dennis Cervantes-Pavon
Ronnie Hunt-Cross-Examination by Ms. Parnall
November 10, 2015

1 CROSS-EXAMINATION

2 BY MS. PARNALL:

3 Q. Now Mr. Hunt you mentioned that the job boss Herbie

4 had spoken to both Raymond and Elvin.

5 A. Yes.

6 Q. And that was because Elvin, my client, had actually

7 gone to Herbie that morning correct?

8 A. I don't know which one went to him. I just knew

9 that he talked to them.

10 Q. So you're not actually aware what prompted Herbie to

11 speak to these two?

12 A. Are you asking why he talked to them? That's what

13 you're asking me?

14 Q. Are you aware of that?

15 A. Yes, because they were arguing.

16 Q. But you do not know who went to Herbie?

17 A. No.

18 Q. And when this incident happened you said you were

19 scraping the floor?

20 A. Yes.

21 Q. And that you were about ten feet away from both

22 Elvin and Raymond?

23 A. When the fight took place?

24 Q. Correct.

25 A. I may have been a little further. I'm not sure

State v Dennis Cervantes-Pavon
Ronnie Hunt-Cross-Examination by Ms. Parnall
November 10, 2015

1 exactly.

2 Q. But ten might be an accurate estimate?

3 A. Maybe.

4 Q. You said that you heard some conversation between
5 them.

6 A. Yes, ma'am.

7 Q. And that that conversation was in Spanish?

8 A. Yes.

9 Q. And you do not speak Spanish correct?

10 A. No, ma'am.

11 Q. Now you did speak to police?

12 A. Yes.

13 Q. And you told them in your statement that you heard a
14 loud noise.

15 A. Uh Huh.

16 Q. And that that's what made you look towards both
17 Raymond and Elvin.

18 A. Yes.

19 Q. And by then things had gotten physical.

20 A. Yes.

21 Q. So you didn't catch the beginning of this did you?

22 A. No.

23 Q. Now you also just now stated that this fight took
24 place where Raymond was working.

25 A. Yes, ma'am.

State v Dennis Cervantes-Pavon
Ronnie Hunt-Cross-Examination by Ms. Parnall
November 10, 2015

1 Q. You told police earlier that Raymond and Elvin were
2 working right next to each other correct?

3 A. No, ma'am.

4 Q. You did not?

5 A. I mean it's technically not beside each other. Like
6 there was a wall, there was a framed wall here
7 [indicates], Raymond was here [indicates], the suspect
8 was here [indicates].

9 So it's kind of beside each other but at the same
10 time it's not. You have to walk through a wall to
11 actually get to where the other person was at.

12 Q. Mr. Hunt when you spoke to police and you gave them
13 a statement did you tell police that Raymond and Elvin
14 were working right next to each other?

15 A. I do not recall.

16 Q. Okay. If I were to show you your statement would
17 that help refresh your memory?

18 A. More than likely.

19 Q. Would you like to see that?

20 A. That will work.

21 MS. PARNALL: Your Honor, may I approach the
22 witness?

23 THE COURT: You may. Thank you for asking.

24 Q. [Ms. Parnall] Mr. Hunt, it's just towards the bottom
25 of this page.

State v Dennis Cervantes-Pavon
Ronnie Hunt-Cross-Examination by Ms. Parnall
November 10, 2015

1 [Whereupon, the witness reviews document]

2 A. I see it.

3 Q. Mr. Hunt upon looking at this statement do you
4 believe that you told police that Raymond and Elvin were
5 working next to each other?

6 A. Yes. But like I said it is next to each other but
7 at the same time you have to walk through a wall to
8 actually get to where the other person was at. You could
9 still be next to somebody like I'm next to her. You know
10 what I mean? But you still have to walk through a spot
11 to actually get to that person.

12 MS. PARNALL: Your Honor, may I approach the
13 witness?

14 THE COURT: You may.

15 Q. [Ms. Parnall] And you didn't actually see the
16 keyhole cutter go into Mr. Muniz did you?

17 A. No, ma'am.

18 Q. You did see them wrapped up together?

19 A. Yes, ma'am.

20 Q. After Raymond grabbed Elvin?

21 A. Yes, ma'am.

22 Q. And then you saw Raymond running?

23 A. Yes, and I saw the suspect walking with the keyhole
24 saw with blood on it so I was pretty sure that's what
25 happened.

State v Dennis Cervantes-Pavon
Ronnie Hunt-Cross-Examination by Ms. Parnall
November 10, 2015

1 Q. And you actually saw my client Elvin walking you
2 just said?

3 A. Yes.

4 Q. Not running?

5 A. Well walking, running I mean -- I just know that I
6 saw him with a keyhole saw walking out the front of the
7 building with blood coming off it and the other guy
8 bleeding. I just know that.

9 Q. Thank you Mr. Hunt.

10 MS. PARNALL: Beg the court's indulgence.

11 THE COURT: Take your time.

12 [Whereupon, Ms. Parnall and Mr. Cochran confer]

13 Q. [Ms. Parnall] Thank you very much Mr. Hunt.

14 A. You're welcome.

15 MS. PARNALL: No further questions, Your Honor.

16 THE COURT: Redirect?

17 MR. DURANT: I have nothing on redirect and I would
18 ask that Mr. Hunt be excused.

19 THE COURT: Any objection?

20 MS. PARNALL: No objection, Your Honor.

21 THE COURT: You may step down. You are excused but
22 feel free to stay with us if you would like.

23 [Whereupon, the witness is excused and exits the
24 witness stand]

25 THE COURT: Would y'all like a break?

State v Dennis Cervantes-Pavon
Rafael Puentes-Direct Examination by Mr. Durant
November 10, 2015

1 MR. DURANT: The State would call Rafael Puentes.

2 [Whereupon, Mr. Puentes comes forward]

3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]

5 CLERK OF COURT: Please state your first and last
6 name and spell your last name loudly and clearly into the
7 microphone.

8 THE WITNESS: My name is Rafael Puentes, P-U-E-N-T-
9 E-S.

10 - - - - -

11 RAFAEL PUENTES,

12 Having been first duly sworn,

13 Was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. DURANT:

16 Q. Good afternoon Mr. Puentes.

17 Q. Good afternoon sir.

18 Q. Could you please tell our jury how old you are?

19 A. I'm 58 years old sir.

20 Q. I believe you -- where do you live currently?

21 A. I live in Richmond, Virginia. [REDACTED]

22 [REDACTED].

23 Q. I believe you work for a hospital up there now is
24 that correct?

25 A. I work with BCU Hospital. It's BCU; it's a

State v Dennis Cervantes-Pavon
Rafael Puentes-Direct Examination by Mr. Durant
November 10, 2015

- 1 hospital.
- 2 Q. And in the maintenance department is that correct?
- 3 A. I'm a mechanic.
- 4 Q. A mechanic? But that's not where you were working
- 5 back in August of last year is that correct?
- 6 A. Yes sir, that's correct.
- 7 Q. Who did you work for in August of 2014?
- 8 A. I worked for C and D Services. It is located on
- 9 Richmond, Virginia.
- 10 Q. And who -- what kind of business is C and D
- 11 Services?
- 12 A. Construction.
- 13 Q. You have children is that correct?
- 14 A. Yes, sir.
- 15 Q. How many children did you have all together?
- 16 A. Four.
- 17 Q. And I believe you told me two boys and two girls is
- 18 that right?
- 19 A. Yes, sir.
- 20 Q. And one of those boys was who?
- 21 A. Raymond Muniz.
- 22 Q. Your son was stabbed to death on August the 13th
- 23 correct?
- 24 A. The baby one.
- 25 Q. Do you know him?

State v Dennis Cervantes-Pavon
Rafael Puentes-Direct Examination by Mr. Durant
November 10, 2015

- 1 A. Yes, sir.
- 2 Q. And how do you know him?
- 3 A. We worked for the same company. On a previous job
4 before we come over here we was working at Virginia Tech
5 and he used to ride with me.
- 6 Q. Okay. So he worked for the same company?
- 7 A. Yes, sir.
- 8 Q. And Raymond worked for the same company correct?
- 9 A. Yes, sir.
- 10 Q. And before y'all worked at the Belk where was your
11 company working at?
- 12 A. Pardon me, sir?
- 13 Q. Before y'all came to the Belk job where was your
14 company working at? You said Virginia Tech?
- 15 A. No, it was about a year ago. Before we came over
16 here I was working in downtown Richmond. There was a
17 building for the same company.
- 18 Q. Okay. But you had worked with him previously at
19 Virginia Tech?
- 20 A. Yes, sir.
- 21 Q. Okay. I'm sorry; I misunderstood your testimony.
22 What job were you working at on August the 13th of 2014?
- 23 A. I was doing the drywall hanging in the new section
24 of the store Belk.
- 25 Q. Okay. Over in Mount Pleasant?

State v Dennis Cervantes-Pavon
Rafael Puentes-Direct Examination by Mr. Durant
November 10, 2015

1 A. Yes, sir.

2 Q. You sat here during this trial. That's the store
3 renovation you were working at correct?

4 A. Yes. I was working in the new section. My son was
5 working in the renovations.

6 Q. Okay. There was work going on in more than one
7 area of the store correct?

8 A. Yes, sir.

9 Q. Do you recall how long y'all had been on that job at
10 the time that your son was killed?

11 A. I believe it was three weeks; between three and four
12 weeks.

13 Q. Okay. And had y'all all come down at same time?

14 A. Me and Raymond, yes. Pavon he arrived probably a
15 week after we got here.

16 Q. A week after y'all got there?

17 A. Yes, sir.

18 Q. Were y'all staying at the same hotel or different
19 hotel?

20 A. No, we stayed at the same motel. I believe it was
21 Value City on River Road or River Street; something like
22 that.

23 Q. Okay. Prior to this job at Belk have you ever been
24 aware of any problem between your son and Mr. Pavon?

25 A. I just hear about it for ---

State v Dennis Cervantes-Pavon
Rafael Puentes-Direct Examination by Mr. Durant
November 10, 2015

1 Q. --- I'm talking about prior to y'all coming to
2 Charleston or Mount Pleasant were you aware of any
3 problems between the two of them?

4 A. Not that I know of.

5 Q. Okay. Now after y'all came to Charleston did you
6 become aware of any problem between the two of them?

7 A. I believe before he got stabbed ---

8 Q. --- I'm not talking about the day he stabbed him.
9 You said you had been there for three or four weeks.
10 Were you aware of any prior incident between them where
11 they had argued with each other?

12 A. Not that I know.

13 Q. Okay. Had you heard that there had been an
14 argument between the two of them?

15 A. Over the job I hear from Raymond he was telling me
16 he got some problem with him.

17 Q. Okay. And do you know what that problem was over?

18 A. I believe it's over a broom and a shovel.

19 Q. So they had a problem over a broom and a shovel?

20 A. Yes, sir.

21 Q. Do you know how long before this incident -- how
22 long did this occur before the day that Raymond was
23 stabbed?

24 A. I believe about four days.

25 Q. Okay. Did you actually observe any problem between

State v Dennis Cervantes-Pavon
Rafael Puentes-Direct Examination by Mr. Durant
November 10, 2015

1 Raymond and Mr. Pavon at any time while you were working
2 on the Belk job?

3 A. I believe it was on Sunday the 10th. It was six
4 o'clock in the morning when I arrived at the job. I was
5 in the game [phonetic] box.

6 Q. You were in the what?

7 A. In the game box [phonetic] so I could get my tool
8 bag and I see Mr. Pavon approach Raymond and try to
9 provoke him.

10 Q. What do you mean try to provoke him?

11 A. Try to provoke him calling him names. He told
12 because he had fight I think two days or one day before
13 and he told Raymond that he like a pussy and he is
14 crushed like a faggot.

15 He told my son that. So I turned around and told my
16 son to ignore it and don't pay no mind. And my son told
17 me I don't want to lose my job and he ignored it.

18 Q. Did you say anything to Mr. Pavon?

19 A. No, sir.

20 Q. Was that the only incident you observed?

21 A. Yes, sir.

22 Q. And that was the Sunday before the Wednesday your
23 son was stabbed?

24 A. Yes, sir.

25 Q. Could you tell us what happened on August the 13th?

State v Dennis Cervantes-Pavon
Rafael Puentes-Direct Examination by Mr. Durant
November 10, 2015

1 A. I was working in the new section and I see a lot of
2 co-workers start running. And I see a commotion running
3 up to the door and I told my co-workers let's see what
4 happened.

5 When I was close to the door I hear somebody said
6 that a long haired guy got stabbed. So I assume it was
7 my son because he was the only long haired guy in that
8 area. So I started running out to the door and I see my
9 son laying down on the ground and he was bleeding and he
10 was shaking.

11 His vision was up to the sky and I screamed a couple
12 of times please, please because I didn't know where he
13 got stabbed. I thought he got stabbed in the side or
14 somewhere else and they mentioned that he got stabbed in
15 the heart.

16 So I was screaming to my boy to breathe hard and all
17 I see is he just died in my arms. And everything blocked
18 out on me. I just -- everything just...

19 Q. Thank you Mr. Puentes. I don't have any additional
20 questions. Could you please answer any questions defense
21 counsel may have for you?

22 THE COURT: Ms. Parnall?

23 MS. PARNALL: Thank you, Your Honor.
24
25

State v Dennis Cervantes-Pavon
Rafael Puentes-Cross-Examination by Ms. Parnall
November 10, 2015

1 CROSS-EXAMINATION

2 BY MS. PARNALL:

3 Q. Mr. Puentes, you said earlier that you were staying

4 at the same hotel as your son and as my client, Elvin?

5 A. Yes, ma'am.

6 Q. And were you present outside the hotel the night

7 before when your son was trying to fight my client,

8 Elvin?

9 A. No, ma'am.

10 Q. Mr. Puentes, you did speak to police and you gave

11 them a statement?

12 A. Yes, ma'am.

13 Q. And was one thing you said in your statement the

14 fact that my client Elvin was trying to get your son

15 Raymond fired from the job?

16 A. Yes, ma'am.

17 Q. And that made you and Raymond very angry, correct?

18 A. Kind of, yes ma'am.

19 MS. PARNALL: Beg the court's indulgence.

20 Q. [Ms. Parnall] Thank you, Mr. Puentes. That's all

21 the questions I have for you at this time.

22 MR. DURANT: I have no additional questions.

23 THE COURT: You may step down. Thank you.

24 [Whereupon, the witness is excused and exits the

25 witness stand]

State v Dennis Cervantes-Pavon
Herbert Evans-Direct Examination by Mr. Durant
November 10, 2015

1 THE COURT: Call your next witness.

2 MR. DURANT: The State would call Herbie Evans,
3 Herbert Evans.

4 [Whereupon, Mr. Evans comes forward]

5 [Whereupon, the witness is duly sworn by the Clerk
6 of Court]

7 THE COURT: Please state your first and last name
8 and spell your last name loudly and clearly into the
9 microphone.

10 THE WITNESS: Herbie Evans, E-V-A-N-S.

11 - - - - -

12 HERBERT EVANS,

13 Having been first duly sworn,

14 Was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. DURANT:

17 Q. Good afternoon Mr. Evans.

18 A. Good afternoon.

19 Q. Could you tell our jury where you are employed?

20 A. I'm employed at this time with Seacon [phonetic].

21 Q. And what is Seacon [phonetic]?

22 A. Seacon [phonetic] is a general contracting company
23 in Columbia, South Carolina.

24 Q. Okay. And you pretty much been in the construction
25 industry a while is that correct?

State v Dennis Cervantes-Pavon
Herbert Evans-Direct Examination by Mr. Durant
November 10, 2015

- 1 A. Yes, sir.
- 2 Q. And in what capacity?
- 3 A. As a superintendent.
- 4 Q. Okay. So you're the boss right?
- 5 A. Yes, sir.
- 6 Q. And so you're one of the bosses at Seacon [phonetic]
- 7 and you are a superintendent at Seacon [phonetic]
- 8 correct?
- 9 A. Yes, sir.
- 10 Q. And you were also a superintendent in August of 2014
- 11 correct?
- 12 A. Yes, sir.
- 13 Q. What company were you working for at that time?
- 14 A. Frisch and Associates.
- 15 Q. Okay. And what job were you working on or was
- 16 Frisch working on in August of 2014 to include August the
- 17 13th of 2014?
- 18 A. The Belk store in Mount Pleasant.
- 19 Q. In your capacity as the superintendent of the job
- 20 did you know the defendant Elvin Pavon?
- 21 A. Yes.
- 22 Q. And did you know the victim in this case Raymond
- 23 Muniz?
- 24 A. Yes.
- 25 Q. Were they employees of Frisch?

State v Dennis Cervantes-Pavon
Herbert Evans-Direct Examination by Mr. Durant
November 10, 2015

1 A. No, sir.
2 Q. Who did they work for?
3 A. C.D. Contractors.
4 Q. Do you recall where C.D. Contractors were from?
5 A. Not off hand.
6 Q. Okay. Do you know how long they had actually been
7 on the Belk job?
8 A. Approximately a month; about a month.
9 Q. Okay. And I believe that was due to a manpower
10 shortage. Y'all were subbing other companies to provide
11 laborers is that correct?
12 A. Yes, sir.
13 Q. Now in your capacity as superintendent at this job
14 were you aware of any prior difficulties between Mr.
15 Pavon and Mr. Muniz?
16 A. No sir, not until that day.
17 Q. Okay. Had you heard something?
18 A. No.
19 Q. Okay. You hadn't heard anything about them having
20 problems before that?
21 A. No.
22 Q. Okay. Now the day of the stabbing were you working
23 -- what area of the renovation were they working in?
24 A. Phase four up toward the parking lot side of the
25 store.

State v Dennis Cervantes-Pavon
Herbert Evans-Direct Examination by Mr. Durant
November 10, 2015

1 Q. Okay. And where were you working, what part of the
2 renovation?

3 A. At that time I was in what I would call the egress
4 hallway.

5 Q. Did you become aware of any problem between the two
6 of them that day?

7 A. Yes.

8 Q. And how did you become aware of that?

9 A. I was approached by Mr. ---

10 Q. --- Mr. Pavon?

11 A. Mr. Pavon and he had asked me or had mentioned to me
12 the best that I could understand him that he was being
13 messed with or picked on by Raymond.

14 Q. Okay. And what did you do in response to that?

15 A. I at that time had spoke to Mr. Pavon and told him
16 that I would not tolerate conflict or disagreements or
17 anything like that that might lead to any altercations on
18 the job and told him that if it would happen they would
19 be fired from the job; they would be totally gone.

20 Q. Okay. You told this to Mr. Pavon or Mr. Muniz?

21 A. I told that to Mr. Pavon first and probably within
22 fifteen minutes I spoke to Raymond and told him the same
23 thing.

24 Q. Okay. And based upon your counseling with both of
25 them -- why did you counsel both of them if Mr. Pavon was

State v Dennis Cervantes-Pavon
Herbert Evans-Direct Examination by Mr. Durant
November 10, 2015

1 the one that had complained to you?

2 A. Just so they would both have an understanding of the
3 same conversation and there would be no conflict between
4 either one.

5 Q. Okay. Do you recall what time of the day that
6 conversation took place, those conversations took place?

7 A. Around 1:00 or 1:30.

8 Q. Okay. So it was around lunchtime sometime?

9 A. Yes, sir.

10 Q. Before or after perhaps? What is the next
11 indication that you had that there had been a problem?

12 A. Later than day I received a phone call in the egress
13 hallway from one of our subcontractors saying that there
14 had been a stabbing on the job.

15 Q. And do you recall about what time of the day that
16 was?

17 A. Somewhere around 5:30 or so.

18 Q. Okay. So it was later in the day several hours
19 after you had talked to them?

20 A. Yes, sir.

21 Q. And what did you do in response to that phone call?

22 A. In the phone call he said that someone had been
23 stabbed and I needed to call 911. I immediately hung up
24 my phone with him and dialed 911 and went out the egress
25 doors, the temporary egress doors to Hungryneck and ran

State v Dennis Cervantes-Pavon
Herbert Evans-Direct Examination by Mr. Durant
November 10, 2015

- 1 down Hungryneck as I was talking to the 911 operator
2 going toward where Raymond was on the ground. And at
3 that time as I was talking to the operator I actually had
4 waved down a police officer on Hungryneck and I stayed on
5 the phone with the 911 operator for a few minutes sort of
6 explaining what was going on and requesting an ambulance.
- 7 Q. And where was Raymond? Where did you find Raymond?
8 A. Raymond was laying on the grass close to the
9 sidewalk more toward the parking lot side of the store on
10 Hungryneck.
- 11 Q. Okay. So kind of back behind the store between the
12 store and Hungryneck Boulevard?
- 13 A. Yes, sir.
- 14 Q. And what was his condition when you found him there?
15 A. He was struggling a little bit to breathe. He was
16 just having a hard time. He couldn't hardly breathe. He
17 was having a hard time trying to talk or do anything.
18 And I got to watch that young man's eyes just glass over
19 as he took his last breath.
- 20 Q. That was before E-M-S even got there?
21 A. Yes, sir.
- 22 Q. Where was Mr. Pavon?
23 A. I wasn't sure at that time.
- 24 Q. Was he around?
25 A. I don't know at that time.

State v Dennis Cervantes-Pavon
Herbert Evans-Direct Examination by Mr. Durant
November 10, 2015

1 Q. Did you see him around?

2 A. No, sir. He wasn't there anywhere close to Raymond
3 not at that time.

4 Q. Okay. How did you learn who had done the stabbing?

5 A. Somebody had mentioned to me that the altercation
6 took place between those two.

7 Q. Okay. And when I say Mr. Pavon and you were
8 referring to Mr. Pavon were you talking about the
9 gentleman with the earphones on?

10 A. Yes, sir.

11 Q. Thank you, sir. Could you please answer any
12 questions that defense counsel may have.

13 MS. PARNALL: Beg the court's indulgence.

14 THE COURT: Take your time.

15 [Whereupon, Ms. Parnall and Mr. Cochran confer]

16 MS. PARNALL: May it please the court?

17 THE COURT: Yes, ma'am.

18

19

20

21

22

23

24

25

State v Dennis Cervantes-Pavon
Herbert Evans-Cross-Examination by Ms. Parnall
November 10, 2015

1 CROSS-EXAMINATION

2 BY MS. PARNALL:

3 Q. Mr. Evans, you said that on the morning of August

4 13th that Elvin was the one that came ---

5 THE COURT: --- I need you to speak loudly for the

6 interpreter.

7 MS. PARNALL: Yes, Your Honor.

8 Q. [Ms. Parnall] Mr. Evans, you said that on the

9 morning of August the 13th that Elvin was the one that

10 came and asked you for help?

11 A. Yes, ma'am.

12 Q. And he asked you for help because he said generally

13 that Raymond Muniz was messing with him?

14 A. Yes, ma'am.

15 Q. And you just testified that you spoke to my client

16 Elvin first?

17 A. Correct.

18 Q. And did you speak to him in English?

19 A. Very slowly to the best that I could to where he

20 could understand what I was saying. I believe he could

21 understand what I was saying?

22 Q. Mr. Evans Raymond Muniz never came to you asking for

23 help or protection from my client Elvin did he?

24 A. No, ma'am.

25 MS. PARNALL: No further questions of this witness,

State v Dennis Cervantes-Pavon
Arthur Santos-Direct Examination by Mr. Durant
November 10, 2015

1 MR. DURANT: The State would call Arthur Santos.

2 [Whereupon, Mr. Santos comes forward]

3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]

5 CLERK OF COURT: Please state your first and last
6 name and spell your last name loudly and clearly into the
7 microphone.

8 THE WITNESS: A.J. Santos, S-A-N-T-O-S.

9 - - - - -

10 A.J. SANTOS,

11 Having been first duly sworn,

12 Was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. DURANT:

15 Q. Good afternoon Corporal Santos.

16 A. Good afternoon sir.

17 Q. You are employed by Mount Pleasant Police
18 Department?

19 A. I am.

20 Q. And you have been so employed for how long?

21 A. Since 2001.

22 Q. And what are your current rank and duties?

23 A. I am a corporal and at this moment I'm a corporal at
24 the schools, an SRO corporal.

25 Q. Okay. School resource officer?

State v Dennis Cervantes-Pavon
Arthur Santos-Direct Examination by Mr. Durant
November 10, 2015

1 A. Yes, sir.

2 Q. Is that what you were doing in August of 2014?

3 A. It was not.

4 Q. What were you doing back then?

5 A. I was a patrol corporal.

6 Q. And in that capacity did you have an opportunity to
7 respond to the Belk in Towne Centre on August the 13th,
8 2014 shortly after 6 p.m.?

9 A. Yes, sir. I believe it was shortly before 6 p.m.

10 Q. In reference to what?

11 A. A stabbing.

12 Q. What did you do when you got there?

13 A. I positioned my vehicle at the exit door of the
14 south side of Belk at Towne Centre.

15 Q. And what did you see?

16 A. I saw people coming out of the Belk exit. I saw
17 people running towards Hungryneck Boulevard to the corner
18 of Hungryneck ---

19 Q. --- the corner of the building?

20 A. Yes, sir. Officer Johnson advised that she was
21 there with the victim.

22 Q. Okay. And where did you go?

23 A. I ran to the corner of the building. I made a left
24 turn and about 30 feet in front of me was a group of
25 people that gathered.

State v Dennis Cervantes-Pavon
Arthur Santos-Direct Examination by Mr. Durant
November 10, 2015

1 Q. Okay. And that's where the victim in this case Mr.
2 Muniz was is that correct?

3 A. Yes, sir.

4 Q. And referring just briefly to State's exhibit number
5 76 which appears to be an aerial photograph. Could you
6 tell the jury where you parked your car and where you
7 found Mr. Muniz?

8 A. This is Belk right here [indicates]. This is
9 Hungryneck Boulevard [indicates]. I was parked at the
10 exit doors at this location [indicates] between these
11 palm trees [indicates].

12 Q. Okay. And where is Mr. Muniz?

13 A. He was right here [indicates] at this spot. I ran
14 around the corner and he was right at this opening
15 [indicates] on the grass.

16 Q. Had the E-M-S already arrived by that time?

17 A. They did not.

18 Q. Do you recall the father Mr. Puentes being there?

19 A. I do.

20 Q. And what was the victim's condition when you arrived
21 on scene?

22 A. I could see that his shirt was up. I could see that
23 there was Officer Johnson and another individual
24 performing CPR.

25 Q. Was the victim responsive at the time?

State v Dennis Cervantes-Pavon
Arthur Santos-Direct Examination by Mr. Durant
November 10, 2015

- 1 A. He was not.
- 2 Q. Were you able to locate a blood trail?
- 3 A. I was.
- 4 Q. And where did the blood trail lead?
- 5 A. It led from the victim down the sidewalk, around the
6 corner, down the sidewalk in front of Belk to the
7 entrance doors or exit doors.
- 8 Q. To the construction area?
- 9 A. Yes sir, the two sets of double doors.
- 10 Q. What did you do when you realized or found out that
11 the stabbing had actually occurred inside the Belk?
- 12 A. I asked for the supervisor for the work site and
13 advised him that I needed everyone out of the
14 construction area.
- 15 I advised Belk supervisor that the exit doors that
16 go into the store to the shopping area be closed off and
17 if they could post a person for the time being to keep
18 them from coming out.
- 19 Q. Okay. Now, what did you do after that?
- 20 A. I went back outside and assisted with setting up a
21 crime scene tape around the front of the building around
22 the side and tried to keep customers from trying to come
23 in, get all the people from inside the store in that work
24 area past the crime scene tape into the parking lot.
- 25 Q. Did you assist in interviewing any potential

State v Dennis Cervantes-Pavon
Arthur Santos-Direct Examination by Mr. Durant
November 10, 2015

1 witnesses?

2 A. Yes. It was a large group of people. I helped
3 translate some.

4 Q. Translate from what to what?

5 A. Spanish to English. I tried to get a sense of where
6 -- of what happened. And at that time I also was dealing
7 with my regular duties plus we had a suspect on the run.

8 Q. So you are a Spanish speaker?

9 A. I speak Portuguese, I speak Spanish reasonably well
10 to carry a conversation yes, sir.

11 Q. And also obviously English very well.

12 A. I learned that when I moved here at 11 yes, sir.

13 Q. Okay. And it's not unusual for you to translate
14 for Spanish speakers in their dealings with Mount
15 Pleasant Police Department?

16 A. I've been doing that since I started here in 2001
17 yes, sir.

18 Q. Now what did you do when you cleared the scene at
19 Belk?

20 A. I was there rather late. At that time I had other
21 things to attend, reports at the end of shift. I went
22 back to the station and completed all of that.

23 And at that time we were still dealing with a
24 suspect on the run somewhere in Mount Pleasant. After I
25 left that I went and took post.

State v Dennis Cervantes-Pavon
Arthur Santos-Direct Examination by Mr. Durant
November 10, 2015

1 Q. Were y'all able to locate him that night; the
2 suspect I'm talking about?

3 A. No, we did not. The last siting was around the
4 Target area about one in the morning.

5 Q. Okay. And what general area was he headed towards?

6 A. It seemed to me that he was running past Target
7 towards the marsh area dividing Isle of Palms and Mount
8 Pleasant.

9 Q. Now moving ahead to the next day what happened about
10 3:30 in the afternoon?

11 A. We received a dispatch call from our dispatcher
12 advising that Isle of Palms and Sullivan's Island was out
13 with our possible suspect from earlier that day at the
14 beach access.

15 I was in the area of Towne Centre at Isle of Palms
16 connector. I believe I was the closest one, me myself
17 and Officer Odom responded.

18 Q. Okay. And you went over there for what purpose?

19 A. A transport. By the time I arrived there was a
20 possible certainty that this was our suspect and I was
21 just transporting him to the station.

22 Q. Okay. And were you also sent over there to
23 identify him?

24 A. Yes.

25 Q. How did you know what he looked like?

State v Dennis Cervantes-Pavon
Arthur Santos-Direct Examination by Mr. Durant
November 10, 2015

1 A. We had surveillance video from the day before. I
2 had seen the surveillance video with the incident.

3 Q. Okay.

4 A. We had a BOLO of the suspect put out by the end of
5 the night.

6 Q. Okay. And when you went over there to pick him up
7 were you operating your dash cam video?

8 A. I was.

9 Q. And I'll hand you what has been marked as State's
10 exhibit number 82.

11 [Whereupon, the witness is shown exhibit]

12 Q. I'll ask you if you recognize that item?

13 A. I do.

14 Q. And what is that?

15 A. This is a C.D. copy of the in-car video from my car
16 which I initialed and dated.

17 Q. Okay. And you watched that in my office as a
18 matter of fact did you not?

19 A. I did.

20 Q. And is that a copy of what was shown on your dash
21 cam video from when you picked up Mr. Cervantes-Pavon on
22 August the 14th of 2015?

23 A. It is.

24 Q. Excuse me; 2014.

25 MR. DURANT: Your Honor, at this time we would offer

State v Dennis Cervantes-Pavon
Arthur Santos-Direct Examination by Mr. Durant
November 10, 2015

1 State's exhibit 82 if there is no objection.

2 THE COURT: Any objection?

3 MS. PARNALL: No objection, Your Honor.

4 THE COURT: State's 82 into evidence without
5 objection.

6 [Whereupon, State's exhibit number 82 is entered
7 into evidence by the court]

8 THE COURT: Are you going to publish at this time?

9 MR. DURANT: Thank you, Your Honor. Unfortunately
10 this might take a while because this video just seems to
11 take an awfully long time to run but we will give it a
12 try.

13 [Whereupon, the video plays]

14 Q. Okay. I'm just going to play a portion of this
15 video. And first of all this is the dash cam from your
16 car is that correct?

17 A. Yes, sir.

18 Q. That's an Isle of Palms police car in front of you?

19 A. Yes, sir.

20 Q. And where is this located over on the Isle of Palms?

21 A. I believe it is the 5th Avenue beach access.

22 Q. Okay. And that is the gentleman you picked up is
23 that correct?

24 A. It is.

25 Q. It appears to be Mr. Pavon here is that correct?

State v Dennis Cervantes-Pavon
Arthur Santos-Direct Examination by Mr. Durant
November 10, 2015

1 A. It does.

2 Q. It appears to be the same person that you observed
3 on the surveillance video leaving the day before?

4 A. Yes, sir.

5 Q. I just want to ask you about one other thing. On
6 August the 15th, this would be the day after Mr. Pavon
7 was arrested, did you assist in translating in the
8 interview of a statement given by a fellow named Jose
9 Somosa?

10 A. I did. I assisted Officer Fey. David Fey; I'm
11 sorry.

12 Q. And where did that statement take place?

13 A. At our Towne Centre office next to Belk. They were
14 still working so it was just easier just to go to our
15 office.

16 Q. I'm not asking about anything Mr. Somosa said. How
17 did you actually do the translation?

18 A. Officer Fey asked the questions. Some of the --
19 they understood some parts of the questions. Whatever
20 part they didn't understand or wasn't clear I helped.

21 Q. Now I'm talking about Mr. Somosa here?

22 A. Yes, sir. Officer Fey -- Detective Fey and whatever
23 conversation they couldn't understand I helped.

24 Q. So Detective Fey would ask a question and you would
25 translate that to Spanish?

State v Dennis Cervantes-Pavon
Arthur Santos-Direct Examination by Mr. Durant
November 10, 2015

1 A. Detective Fey would ask the question. If the
2 gentleman didn't understand or he understood some
3 English, whatever part he didn't understand I would plug
4 in and rephrase if needed and translate into Spanish.
5 Q. And you would translate to Spanish and if necessary
6 he would speak back to you in Spanish?
7 A. Or in broke up English and Officer Fey if he didn't
8 get it I would help out and fill in the gaps.
9 Q. Okay. And basically what was told to you was
10 reduced to a written statement is that correct?
11 A. Yes, sir.
12 Q. And when you were performing the translation did you
13 translate accurately?
14 A. Yes, sir.
15 Q. Did you tell Detective Fey to put down anything that
16 he had not told you?
17 A. No, I did not.
18 Q. Would you have any reason to do it?
19 A. No reason, sir.
20 Q. Thank you very much. Could you please answer any
21 questions defense counsel may have for you?
22 A. Yes, sir.
23 MS. PARNALL: Thank you, Your Honor. May it please
24 the court?
25

State v Dennis Cervantes-Pavon
Arthur Santos-Cross-Examination by Ms. Parnall
November 10, 2015

1 CROSS-EXAMINATION

2 BY MS. PARNALL:

3 Q. Good afternoon Mr. Santos. You just testified that

4 you assisted the detectives by translating some of their

5 questions into Spanish correct?

6 A. Yes, ma'am.

7 Q. And that's because they don't speak Spanish?

8 A. Who doesn't?

9 Q. The detectives ---

10 A. --- Detective Fey doesn't; I don't believe he does.

11 Q. And in addition to translating their questions into

12 Spanish for Mr. Somosa you also had to translate his

13 answers back into English for the detectives correct?

14 A. Yes. Whatever part they couldn't speak in English

15 they would say it in Spanish and I would translate that

16 to Detective Fey.

17 Q. And then when you would translate those answers back

18 into English they were writing down those answers in

19 English correct?

20 A. Yes.

21 Q. And the Spanish version of Mr. Somosa's answers was

22 not recorded correct?

23 A. I don't believe so.

24 Q. So without that recording we would not be able to

25 verify the accuracy of your translation correct?

State v Dennis Cervantes-Pavon
Arthur Santos-Cross-Examination by Ms. Parnall
November 10, 2015

1 A. Yes, ma'am.

2 Q. You've not taken any courses in translation have
3 you?

4 A. No.

5 Q. And you're not a certified interpreter?

6 A. I'm not.

7 Q. You're not a certified translator into Spanish?

8 A. I'm not.

9 Q. In fact the languages that you are fluent in are
10 English and Portuguese.

11 A. I speak Spanish. I spent three years in El Paso,
12 Texas. Spanish and Portuguese are very close.

13 Q. But they are in fact different languages correct?

14 A. Yes, ma'am.

15 MS. PARNALL: Beg the court's indulgence.

16 THE COURT: Take your time.

17 [Whereupon, Ms. Parnall and Mr. Cochran confer]

18 Q. [Ms. Parnall] Thank you very much Corporal Santos.
19 No further questions.

20 A. Thank you.

21 MR. DURANT: I have nothing on redirect, Your
22 Honor.

23 THE COURT: You may step down. Feel free to leave
24 or stay with us but you are also free to go.

25 [Whereupon, the witness is excused and exits the

State v Dennis Cervantes-Pavon
Robert Farrell-Direct Examination by Mr. Durant
November 10, 2015

1 THE COURT: You may swear the witness.

2 [Whereupon, the witness is duly sworn by the Clerk
3 of Court]

4 THE COURT: Please state your first and last name
5 and then spell your last name loudly and clearly into the
6 microphone.

7 THE WITNESS: My first name is Robert Farrell, F-A-
8 R-R-E-L-L.

9 - - - - -

10 ROBERT FARRELL,

11 Having been first duly sworn,

12 Was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. DURANT:

15 Q. Could you tell our jury where you are employed?

16 A. Yes. I'm with the Mount Pleasant Police Department.

17 Q. And how long have you been with Mount Pleasant?

18 A. It will be 20 years in March.

19 Q. And you are currently in the crime scene office is
20 that correct?

21 A. Yes, sir.

22 Q. And you've been doing that for how many years?

23 A. Approximately 12 years.

24 Q. And in that capacity did you have the occasion to be
25 dispatched to the Belk at Towne Centre on August the 13th

State v Dennis Cervantes-Pavon
Robert Farrell-Direct Examination by Mr. Durant
November 10, 2015

1 of 2014?

2 A. I did. I was.

3 Q. In reference to what?

4 A. In reference to a stabbing between two construction
5 workers that involved a fatality.

6 Q. Okay. And do you recall what time it was you
7 responded to that location?

8 A. Yes. I was called at approximately 6:05 p.m. that
9 evening and arrived shortly after.

10 Q. And what did you do upon arriving at the Belk?

11 A. Upon arrival I met Chief Richey [phonetic] at the
12 scene who gave me a brief explanation and a brief walk
13 through of the scene just to kind of let me know what was
14 going on.

15 Q. And based upon your examination of the scene were
16 you able to determine where the actual stabbing incident
17 had occurred?

18 A. Yes, sir.

19 Q. And how did you reach that conclusion?

20 A. Upon -- when I was inside the building the
21 construction phase of Belk I noticed a blood trail that
22 started near the cement mixer that led to the outside
23 door.

24 Q. Okay. Mr. Muniz the victim was found out back
25 behind the store and basically there was a blood trail

State v Dennis Cervantes-Pavon
Robert Farrell-Direct Examination by Mr. Durant
November 10, 2015

1 all the way inside the building?

2 A. Correct.

3 Q. And based upon a request of my office did you
4 prepare a crime scene diagram?

5 A. Yes, sir I did.

6 MR. DURANT: Your Honor, at this time we would
7 offer State's 81 I believe without objection by defense
8 counsel.

9 MS. PARNALL: No objection, Your Honor.

10 THE COURT: State's 81 into evidence without
11 objection.

12 [Whereupon, State's exhibit number 81 is entered
13 into evidence by the court]

14 Q. [Mr. Durant] And if I could Mr. Farrell I'm going to
15 come up there behind you just to have you show some
16 things to the jury. This is not to scale correct?

17 A. Correct.

18 Q. And if you would what does this diagram depict?

19 [Whereupon, the witness is shown exhibit]

20 A. Right here [indicates] there are several phases of
21 Belk. This particular phase four here [indicates] is the
22 construction phase of Belk.

23 Q. Okay. And what is this item right here?

24 A. That is a wall that is under construction. It's
25 basically the metal beams but they had no drywall up yet.

State v Dennis Cervantes-Pavon /
Robert Farrell-Direct Examination by Mr. Durant
November 10, 2015

- 1 Q. Okay. So just kind of a skeleton of a wall?
2 A. Yes sir, a frame.
3 Q. And this [indicates] indicates a what?
4 A. A ladder.
5 Q. And this [indicates] indicates a what?
6 A. A ladder.
7 Q. And what is this item right here [indicates]?
8 A. A cement mixer.
9 Q. Okay. And this item right there [indicates]?
10 A. An electric floor sander.
11 Q. Okay. And then what is this?
12 A. That is the exterior sidewalk of Belk and that is a
13 blood trail that is going along the sidewalk down around
14 to the rear of the business.
15 Q. And this [indicates] is where Mr. Muniz was
16 basically found or ended up is that correct?
17 A. Yes, sir.
18 Q. And the blood trail began at this general area
19 [indicates]?
20 A. Yes, sir.
21 Q. And what is this little area right there
22 [indicates]?
23 A. That was like an L shaped wet cement that it
24 appeared that they were putting down.
25 Q. And this item right here [indicates]?

State v Dennis Cervantes-Pavon
Robert Farrell-Direct Examination by Mr. Durant
November 10, 2015

- 1 A. Is an angle pole or an angle iron; a piece of metal.
2 Q. And this item right here [indicates]?
3 A. A black pole.
4 Q. Okay. Like a sprinkler ---
5 A. --- a sprinkler pipe ---
6 Q. --- a sprinkler pipe correct?
7 A. Yes, sir.
8 Q. So it's not to scale but it shows the relative
9 location of all items is that correct?
10 A. Yes, sir.
11 Q. And as part of your examination of the scene did you
12 take photographs?
13 A. Yes sir, I did.
14 Q. Okay.
15 MR. DURANT: With the court's permission I would
16 like to go through certain exhibits with the witness,
17 Your Honor.
18 THE COURT: You may.
19 Q. [Mr. Durant] We're going to start out with State's
20 exhibit number 1.
21 [Whereupon, photographs are shown]
22 Q. If you need you can -- it should be on your monitor
23 up front and it's on either wall and you can actually
24 make marks on a photograph if you need to make marks on a
25 photograph with your finger.

State v Dennis Cervantes-Pavon
Robert Farrell-Direct Examination by Mr. Durant
November 10, 2015

- 1 A. All right. Thank you.
- 2 Q. Basically what does State's exhibit 41 [sic] show?
- 3 A. This is the side entrance to Belk where the
- 4 construction phase is. This would be the service door
- 5 there [indicates].
- 6 Q. Okay. And that door right there [indicates] goes
- 7 into the construction area. Where does this door
- 8 [indicates] right here go to?
- 9 A. That actually goes into part of the retail phase
- 10 that is open to the public.
- 11 Q. Okay. Moving on to State's exhibit number 2. And
- 12 this is just going down the sidewalk is that correct?
- 13 A. Correct.
- 14 Q. Toward the right rear corner of the building?
- 15 A. Yes, sir. It's toward Hungryneck Boulevard.
- 16 Q. State's exhibit 3?
- 17 A. Another picture of the sidewalk.
- 18 Q. State's exhibit 4?
- 19 A. That's still another picture of the sidewalk that is
- 20 going to the rear of Belk. That's Hungryneck Boulevard
- 21 that you see on the right hand side.
- 22 Q. Okay. Where that car is?
- 23 A. Yes, and electrical box on the other side.
- 24 Q. Okay. State's exhibit 5?
- 25 A. That is at the corner of Hungryneck Boulevard and

State v Dennis Cervantes-Pavon
Robert Farrell-Direct Examination by Mr. Durant
November 10, 2015

1 the entrance to Belk looking toward the entrance and exit
2 doors to the construction phase.

3 Q. Okay. And State's exhibit 6?

4 A. That is again standing on the corner of Hungryneck
5 Boulevard and the parking lot of Belk but looking down
6 Hungryneck Boulevard looking north on Hungryneck.

7 Q. Okay. And what is this area right here
8 [indicates]?

9 A. That is where the victim was found, located.

10 Q. Okay. State's exhibit 7?

11 A. That is just another view. Actually this is where
12 the victim was located right there [indicates]. This is
13 Hungryneck Boulevard here [indicates]. I had just come
14 down to take another angle view picture.

15 Q. Okay. State's exhibit 8?

16 A. That is the atrium or foyer area that goes into the
17 construction phase of Belk.

18 Q. Okay. And so these are the doors to the
19 construction area there [indicates]?

20 A. Yes, sir.

21 Q. And the doors over to the left are I guess ---

22 A. --- for the customers ---

23 Q. --- to the left of that side where it says customers
24 correct?

25 A. Yes, sir.

State v Dennis Cervantes-Pavon
Robert Farrell-Direct Examination by Mr. Durant
November 10, 2015

- 1 Q. State's exhibit 9?
- 2 A. That is inside the glass doors that you just saw on
3 the previous slide. If you were to walk in through those
4 doors this is the view you would see when you walk inside
5 the door at phase ---
- 6 Q. --- that's your view when you first come through
7 that door?
- 8 A. Yes, sir.
- 9 Q. And State's exhibit 10?
- 10 A. That is just another angle picture of the
11 construction phase of where ---
- 12 Q. --- the same area just angled to the right correct?
- 13 A. Yes, sir.
- 14 Q. Okay. State's exhibit 11?
- 15 A. Again that's another -- that's me moving around the
16 room just taking different angle photographs. That's the
17 cement mixer there [indicates].
- 18 Q. Okay. And that [indicates] is the wall. And this
19 is taken from the side of the wall that the doors are on
20 is that correct?
- 21 A. Correct.
- 22 Q. And this item here [indicates] is one of the ladders
23 from your crime scene diagram is that correct?
- 24 A. Yes, sir.
- 25 Q. And here [indicates] is the other ladder is that

State v Dennis Cervantes-Pavon
Robert Farrell-Direct Examination by Mr. Durant
November 10, 2015

1 correct?

2 A. Yes, sir.

3 Q. State's exhibit 12?

4 A. Again, that's inside the construction phase of Belk.
5 That is the other side of the ---

6 Q. --- taken from the other side of that skeleton wall
7 is that correct?

8 A. Yes, sir.

9 Q. Just to orient the jury this [indicates] would be
10 the ladder and the other ladder correct?

11 A. Correct. And the cement mixer would be
12 approximately in that area [indicates] on the other side
13 of the wall.

14 Q. Okay. And the door way out to the exit would be in
15 this [indicates] area?

16 A. Yes, sir.

17 Q. State's exhibit 13?

18 A. Again, that's another angle of the cement mixer with
19 a wall to the left and this [indicates] also too is the
20 wet cement area that was shown in the diagram.

21 Q. What is this item right here [indicates]?

22 A. That is an angle iron or a piece of metal, silver
23 metal.

24 Q. What is this item over here [indicates]?

25 A. A black pole or a sprinkler pipe type item.

State v Dennis Cervantes-Pavon
Robert Farrell-Direct Examination by Mr. Durant
November 10, 2015

1 Q. Okay. And did you collect those items on August
2 the 13th when you were initially at the scene?

3 A. No sir, I didn't.

4 Q. And why not?

5 A. Because I didn't have any information at the time
6 that they were even involved in the incident.

7 Q. Okay. State's exhibit 14?

8 A. Again, another picture of the cement mixer and the
9 black pole and the angle iron.

10 Q. Okay. And this is once again the ladder over here
11 [indicates] and the cement you talked about there
12 [indicates] and the cement mixer. Does this depict the
13 general area of where the altercation took place?

14 A. Yes, sir.

15 Q. State's exhibit 15?

16 A. That's just a little more up close picture of the
17 cement mixer and of the wet cement area there
18 [indicates].

19 Q. That's kind of taking a picture from the side of
20 that skeleton wall going back towards the door is that
21 correct?

22 A. Yes, sir.

23 Q. State's exhibit 16 we start getting some yellow
24 things there [indicates]. What are those?

25 A. Those are evidence markers or evidence placards.

State v Dennis Cervantes-Pavon
Robert Farrell-Direct Examination by Mr. Durant
November 10, 2015

1 Q. Okay. And to orient the jury once more this
2 [indicates] is the wet concrete that you were talking
3 about?

4 A. Yes, sir.

5 Q. Is that the piece of angle iron there [indicates]?

6 A. Yes, sir.

7 Q. Okay. And these depict the start of the blood
8 trail is that correct?

9 A. Correct.

10 Q. State's exhibit 17?

11 A. I'm taking closer photographs of blood drops that
12 are inside the construction phase next to the floor
13 sander. That's [indicates] the electric floor sander I
14 was referring to in the diagram.

15 Q. Okay. And these are moving towards the door is
16 that correct?

17 A. Yes sir, towards the exit door of the business.

18 Q. State's exhibit 18?

19 A. Again, that's moving closer to the exit door.
20 Again, another marker just indicating another blood drop.

21 Q. State's exhibit 19?

22 A. That is just a close up of the actual exit door
23 going out into the atrium foyer area. And so number 13
24 placard there would indicate that there was blood on the
25 hand rail of the door.

State v Dennis Cervantes-Pavon
Robert Farrell-Direct Examination by Mr. Durant
November 10, 2015

1 Q. Okay. State's exhibit 20?

2 A. Now we've gone through the door. We're in the foyer
3 or atrium area of the Belk construction phase and this is
4 a photograph of there is blood on the floor and on the
5 door.

6 Q. Okay. It was kind of hard to see from that
7 distance.

8 A. Yes, sir.

9 Q. State's 21?

10 A. A close up of the glass door that shows blood on the
11 handle and on the actual door and also a crack in the
12 glass as well.

13 Q. Okay. State's exhibit 22?

14 A. Those were signs that were knocked down on the
15 floor. And it's probably hard to see but there is a set
16 of earphones, music earphones that are covered in blood
17 but there is blood all over the door here [indicates] and
18 then on the signs and on the floor and ear buds.

19 Q. Okay. State's 23?

20 A. That's a close up of the music headphones or ear
21 buds with blood on them.

22 Q. State's exhibit 24?

23 A. Another picture of the glass door, the 16 placards
24 indicating that there is more blood on the handle and on
25 the door.

State v Dennis Cervantes-Pavon
Robert Farrell-Direct Examination by Mr. Durant
November 10, 2015

1 Q. Okay. And you've got blood all down here
2 [indicates] and break up there [indicates] is that
3 correct?

4 A. Yes, sir.

5 Q. State's 25?

6 A. Now we've moved to the exterior side of the doors so
7 we're outside kind of on the sidewalk looking at the
8 entrance exit doors to Belk.

9 Q. Okay. And State's 26?

10 A. That is blood that was found outside on the sidewalk
11 and you can see the earphones sticking out of the door
12 there [indicates] and then just blood on the sidewalk
13 there.

14 Q. Okay. State's exhibit 27?

15 A. Again, just showing blood on the door and item --

16 Q. And that's on the exterior side?

17 A. Yes, sir.

18 Q. State's 28?

19 A. Okay. That's just taking a different angle picture
20 of the exterior door and of the kind of sidewalk
21 included.

22 Q. That's the sidewalk going down toward Hungryneck
23 Boulevard?

24 A. Yes sir, this way [indicates].

25 Q. And State's 29?

State v Dennis Cervantes-Pavon
Robert Farrell-Direct Examination by Mr. Durant
November 10, 2015

- 1 A. That is looking down the sidewalk towards Hungryneck
2 Boulevard. That [indicates] is a trail of blood going
3 down the sidewalk.
- 4 Q. That's what all those markers are for?
- 5 A. Yes, sir.
- 6 Q. State's 30?
- 7 A. Just more close up pictures of the blood trail.
- 8 Q. State's 31?
- 9 A. Again, another picture close up of blood on the
10 sidewalk.
- 11 Q. State's 32? These are all as you are approaching
12 that corner?
- 13 A. Yes, sir. I'm just kind of walking to where the
14 victim was found. I'm just following the trail to him.
15 Again, more photographs of more blood.
- 16 Q. State's exhibit 33?
- 17 A. Again, blood. This is now looking again toward
18 where the victim was located here [indicates] and just
19 kind of at the corner of Hungryneck and the entrance to
20 Belk.
- 21 Q. If you were cutting across that corner [indicates]?
- 22 A. Yes, sir.
- 23 Q. And State's 34?
- 24 A. Just more evidence placards showing where blood was
25 located.

State v Dennis Cervantes-Pavon
Robert Farrell-Direct Examination by Mr. Durant
November 10, 2015

- 1 Q. State's 35?
- 2 A. More placards showing more blood.
- 3 Q. State's 36?
- 4 A. A close up of the blood trail leading to the final
5 resting place.
- 6 Q. State's 37?
- 7 A. More blood from the victim.
- 8 Q. State's 38?
- 9 A. This is the area where Officer Johnson when she
10 arrived on the scene this is where she found the victim
11 laying on the ground.
- 12 Q. And State's 39?
- 13 A. This actually is the area where the victim was
14 located. This is actual I guess medical waste from E-M-S
15 when they were trying to give him, the victim, medical
16 aid. That was from their supplies that they left behind.
- 17 Q. I believe as part of your processing you swabbed
18 some of those blood stains is that correct?
- 19 A. Yes sir, I did.
- 20 Q. For what purpose?
- 21 A. To have them in case we needed them for
22 identification.
- 23 Q. Was there ever any effort to send them to SLED for
24 analysis?
- 25 A. No sir, there wasn't.

State v Dennis Cervantes-Pavon
Robert Farrell-Direct Examination by Mr. Durant
November 10, 2015

1 Q. Why was that?

2 A. There wasn't any indication that anybody had a wound
3 or that the defendant had a wound other than the victim
4 himself. But the swabs were just taken to have.

5 Q. Okay. Moving on to the next day August the 14th.
6 Did you have the occasion to return to the Belk at about
7 6 o'clock in the morning?

8 A. For what purpose?

9 Q. I met with Frisch and Associates construction
10 superintendent, his name was Herbie Evans. I met with
11 him and explained to him that I wanted to meet with other
12 employees who were at the scene when the incident
13 occurred the day before and that I wanted to take
14 photographs of where they were standing when the incident
15 occurred.

16 Q. Okay. Just so you would know where they were.

17 A. Yes, sir.

18 Q. Were all the employees back that day or were some of
19 them missing or do you know?

20 A. From what I understand most of them were there on
21 the second day.

22 Q. Okay. And did you take those photographs?

23 A. Yes sir, I did.

24 Q. And I'm just going to go through those briefly with
25 you as well starting with State's exhibit 40.

State v Dennis Cervantes-Pavon
Robert Farrell-Direct Examination by Mr. Durant
November 10, 2015

1 [Whereupon, photographs are shown]

2 Q. What does that depict?

3 A. Again we are inside the construction phase of Belk
4 and this is looking from the back side of the wall. The
5 cement mixer would be on the other side of the wall
6 approximately in that area [indicates].

7 Q. Okay. And do you remember talking to this fellow
8 right here [indicates] his name is Travis Flowers?

9 A. Yes, sir.

10 Q. Okay. Do you remember this gentleman's [indicates]
11 name right here? I believe he was designated as number
12 two in your photographs.

13 A. I believe so. I'd have to look at a picture with
14 him holding the placard to positively ---

15 Q. --- well take my word for it. If it's number two,
16 who would it be?

17 A. Mr. Somosa.

18 Q. Okay. Do you recall this guy's name right here
19 [indicates]?

20 A. I'm not sure exactly -- he might have been -- is
21 that Mr. Rodriguez I believe.

22 Q. Yes.

23 A. Okay.

24 Q. Moving on to 41. Just describe these pictures as
25 you took them.

State v Dennis Cervantes-Pavon
Robert Farrell-Direct Examination by Mr. Durant
November 10, 2015

1 A. Okay. This is a side picture of the wall where Mr.
2 Flowers and Mr. Rodriguez and Mr. Somosa were standing at
3 the time of the incident. The incident would have
4 occurred just on the other side of this wall.

5 Q. And this is just continuing to move around that
6 wall?

7 A. Yes, sir.

8 Q. This would be State's exhibit number 42 correct?

9 A. Yes, sir.

10 Q. State's exhibit 43?

11 A. Another picture of where the cement mixer was and
12 still with everybody in place when the incident occurred.

13 Q. Okay. And once again this item right here
14 [indicates] is what?

15 A. It's a black pole, the sprinkler pipe item.

16 Q. And this item [indicates] is the piece of angle
17 pipe?

18 A. Yes, sir.

19 Q. Did you collect them that day?

20 A. That day I did, yes sir.

21 Q. And that was based upon what?

22 A. I had talked to the people at the scene and asked
23 them if they had given statements and all of them did
24 except Mr. Flowers. And Mr. Flowers went on to tell me
25 what he saw. At that time I notified one of our

State v Dennis Cervantes-Pavon
Robert Farrell-Direct Examination by Mr. Durant
November 10, 2015

- 1 investigators to respond to the scene to talk with him.
2 Q. Okay. So you collected those items based upon your
3 interview with Mr. Flowers?
4 A. Correct.
5 Q. State's exhibit 44?
6 A. Just another view of the cement mixer and the angle
7 iron and the black pole, which is right there
8 [indicates].
9 Q. State's exhibit 45?
10 A. The electric floor sander.
11 Q. Okay. And that would be Mr. Oxendine right there
12 [indicates]?
13 A. Oxendine, yes sir. Correct.
14 Q. State's exhibit 46?
15 A. Just kind of a frontal view of the wall and the
16 cement mixer.
17 Q. Okay. So basically you're just moving around.
18 A. Yes, sir.
19 Q. In a counterclockwise motion around where the fight
20 is, is that correct?
21 A. Yes, sir.
22 Q. We've got 47?
23 A. That would be Mr. Oxendine.
24 Q. State's exhibit 48?
25 A. That was Mr. Somosa.

State v Dennis Cervantes-Pavon
Robert Farrell-Direct Examination by Mr. Durant
November 10, 2015

- 1 Q. State's exhibit 49?
- 2 A. That's Mr. Flowers.
- 3 Q. State's exhibit 50?
- 4 A. Those are evidence placards that I put down on
- 5 August 14th. Those are shoe prints that were located
- 6 kind of in the wet cement where the altercation
- 7 apparently took place.
- 8 Q. Okay. And 51?
- 9 A. That is just a shoeprint in the wet cement.
- 10 Q. State's exhibit 52?
- 11 A. Another shoeprint in the wet cement.
- 12 Q. State's exhibit 53?
- 13 A. Another shoeprint in the wet cement.
- 14 Q. State's exhibit 54?
- 15 A. Another wet shoeprint in the wet cement.
- 16 Q. And State's exhibit 55?
- 17 A. The same; another shoeprint in the wet cement.
- 18 Q. And at my request did you go back and prepare
- 19 compare those prints to boots that had been collected
- 20 from the defendant and the deceased in this case?
- 21 A. Yes sir, I did.
- 22 Q. And what conclusion did you reach?
- 23 A. That those shoeprints appear to belong to the
- 24 victim.
- 25 Q. Mr. Muniz, correct?

State v Dennis Cervantes-Pavon
Robert Farrell-Direct Examination by Mr. Durant
November 10, 2015

1 A. Yes, sir.

2 Q. And moving on to 56? That's a picture of the bottom
3 of Mr. Muniz's boot?

4 A. Correct.

5 Q. And 57 a picture of Mr. Pavon's boot correct?

6 A. Yes, sir.

7 Q. Referring you to State's exhibit 79 and 80 I believe
8 they are.

9 [Whereupon, the witness is shown exhibits]

10 Q. Are these -- is this the pipe and piece of angle
11 iron that you collected at the scene?

12 A. Yes, sir.

13 Q. And this was based upon your interview with Mr.
14 Flowers is that correct?

15 A. Correct.

16 Q. And are they in substantially the same condition now
17 as they were when you collected them?

18 A. Yes, sir.

19 MR. DURANT: Your Honor, at this time we would
20 offer State's exhibit 79 and 80.

21 THE COURT: Any objection?

22 MS. PARNALL: No objection, Your Honor.

23 THE COURT: State's exhibits 79 and 80 into
24 evidence without objection.

25 [Whereupon, State's exhibit numbers 79 and 80 are

State v Dennis Cervantes-Pavon
Robert Farrell-Direct Examination by Mr. Durant
November 10, 2015

1 entered into evidence by the court]

2 Q. [Mr. Durant] Did you attempt to do any kind of
3 forensic testing on those items once you collected them?

4 A. Yes, sir.

5 Q. What exactly did you attempt?

6 A. I did look for blood on the items to see if I could
7 locate any and I did not. I then fingerprinted both
8 items which I didn't find any identifiable type latent
9 prints.

10 Q. Okay. Also you are aware of the defendant was
11 arrested on August the 14th the same day you were out
12 there the second time? Were you aware of that?

13 A. Yes, sir.

14 Q. And were his clothes taken into evidence?

15 A. Yes, sir.

16 Q. What were you asked to do regarding those clothes by
17 my office?

18 A. I was asked to look at the clothes for blood.

19 Q. And did you do so?

20 A. Yes sir, I did.

21 Q. What were the results of that examination?

22 A. We did not find any blood on the clothing.

23 Q. And what clothing exactly did you examine?

24 A. We looked at a collared shirt, like a striped
25 collared shirt, a pair of blue jeans, and a pair of work

State v Dennis Cervantes-Pavon
Robert Farrell-Direct Examination by Mr. Durant
November 10, 2015

1 boots.

2 Q. Okay. And you located no blood on any of those
3 items?

4 A. No, sir.

5 Q. What method did you use to try to find blood?

6 A. We first just visually looked at the items to see if
7 we could see anything. Then we used an alternate light,
8 excuse me an alternate light source to see if it would
9 enhance any possible blood on the clothes. We did not
10 see any at that time.

11 Then any areas that were possibly suspicious we used
12 a blood presumptive chemical test kit on them and swabbed
13 them on them to see if they were possibly blood but
14 nothing came back positive for blood.

15 Q. Okay. I don't believe I have anything else. Could
16 you please answer any questions defense counsel may have
17 for you?

18 THE COURT: Ms. Parnall?

19 MS. PARNALL: Thank you, Your Honor. May it please
20 the court?

21

22

23

24

25

State v Dennis Cervantes-Pavon
Robert Farrell-Cross-Examination by Ms. Parnall
November 10, 2015

1 CROSS-EXAMINATION

2 BY MS. PARNALL:

3 Q. Good afternoon.

4 A. Good afternoon.

5 Q. Investigator, one of the items that was recovered

6 from the scene of the altercation was a Kyocera cell

7 phone correct?

8 A. Correct.

9 Q. And that item was recovered because it was the phone

10 that belonged to Raymond Muniz?

11 A. Yes, ma'am.

12 Q. And you collected that item?

13 A. I did.

14 Q. And then you secured that phone in evidence correct?

15 A. Correct.

16 Q. And do you recall my investigator and myself coming

17 by to view the evidence with you one day?

18 A. Yes.

19 Q. And the cell phone was one of the items that we

20 examined correct?

21 A. Yes, ma'am.

22 Q. And we were able to power up that cell phone?

23 A. Correct.

24 Q. And examine the contents of the cell phone.

25 A. Yes, ma'am.

State v Dennis Cervantes-Pavon
Robert Farrell-Cross-Examination by Ms. Parnall
November 10, 2015

1 Q. Messages?

2 A. Yes, ma'am.

3 Q. Phone calls?

4 A. Yes, ma'am.

5 MR. DURANT: Your Honor, I have a matter of law I
6 need to take up with the court.

7 THE COURT: You may approach.

8 [Whereupon, an off the record bench conference is
9 held]

10 MS. PARNALL: Thank you, Your Honor. I have no
11 further questions of this witness.

12 THE COURT: Redirect Mr. Durant?

13 MR. DURANT: I do not. I would ask that Mr.
14 Farrell be excused.

15 THE COURT: Any objection?

16 MS. PARNALL: No objection, Your Honor.

17 THE COURT: Sir, you are free to go. Feel free to
18 stay with us.

19 [Whereupon, the witness is excused and exits the
20 witness stand]

21 THE COURT: Call your next witness.
22
23
24
25

State v Dennis Cervantes-Pavon
Ashley Smith-Direct Examination by Mr. Durant
November 10, 2015

1 MR. DURANT: The State would call Ashley Smith.

2 [Whereupon, Ms. Smith comes forward]

3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]

5 CLERK OF COURT: Please state your first and last
6 name and then spell your last name loudly and clearly
7 into the microphone.

8 THE WITNESS: Ashley Smith, S-M-I-T-H.

9 - - - - -

10 ASHLEY SMITH,

11 Having been first duly sworn,

12 Was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. DURANT:

15 Q. Good afternoon. Could you please tell our jury
16 where you are employed?

17 A. The Mount Pleasant Police Department.

18 Q. And you've been with Mount Pleasant how long?

19 A. Since September of 2010.

20 Q. And what are your current duties with Mount Pleasant
21 Police Department ---

22 MR. COCHRAN: --- Your Honor may we have one
23 moment...

24 MR. DURANT: I'm sorry.

25 [Off the record momentarily]

State v Dennis Cervantes-Pavon
Ashley Smith-Direct Examination by Mr. Durant
November 10, 2015

1 THE INTERPRETER: Thank you, Your Honor.

2 THE COURT: Are you ready?

3 THE INTERPRETER: Yes, Your Honor.

4 THE COURT: Mr. Durant, why don't you just start
5 over.

6 MR. DURANT: I surely will.

7 Q. [Mr. Durant] You are employed by the Mount Pleasant
8 Police Department?

9 A. Yes, I am.

10 Q. And have been so since 2010?

11 A. Yes.

12 Q. And what are your current duties?

13 A. I'm a detective in the Criminal Investigations
14 Bureau.

15 Q. And in that capacity did you have the occasion to
16 become involved in the investigation involving the
17 stabbing death of Raymond Muniz, the victim in this case,
18 on August the 13th of 2014?

19 A. Yes, I did.

20 Q. What was your role in the case?

21 A. I was the case agent.

22 Q. And what is a case agent and what are their
23 responsibilities?

24 A. To manage the case file and direct others.

25 Q. Okay. How did you become involved in the

State v Dennis Cervantes-Pavon
Ashley Smith-Direct Examination by Mr. Durant
November 10, 2015

1 investigation?

2 A. I received a phone call from Detective Paul Wilson
3 in reference to the stabbing at Belk.

4 Q. And when did you receive that call from Detective
5 Wilson?

6 A. It was approximately 6:30.

7 Q. And what did you learn while you were in route to
8 the Belk at Towne Centre?

9 A. While I was in route to the Belk at Towne Centre I
10 had learned that the victim had passed away.

11 Q. And what was the victim's name?

12 A. Raymond Muniz.

13 Q. And his age?

14 A. Twenty eight.

15 Q. And during the course of the investigation ---

16 THE COURT: --- hold on one second.

17 [Off the record momentarily]

18 THE COURT: All right, Mr. Durant?

19 MR. DURANT: Thank you, Your Honor.

20 Q. [Mr. Durant] And during the course of the
21 investigation did y'all come into possession of a copy of
22 Mr. Muniz's identification?

23 A. Yes, we did.

24 Q. And is that depicted in State's exhibit number 75?

25 A. Yes, it is.

State v Dennis Cervantes-Pavon
Ashley Smith-Direct Examination by Mr. Durant
November 10, 2015

1 MR. DURANT: Your Honor, I would offer State's
2 exhibit 75 I believe without objection.

3 MS. PARNALL: No objection, Your Honor.

4 THE COURT: State's exhibit's 75 into evidence
5 without objection.

6 [Whereupon, State's exhibit number 75 is entered
7 into evidence by the court]

8 Q. [Mr. Durant] And that is a Virginia identification
9 card correct?

10 A. I'm sorry?

11 Q. It's a Virginia identification card is that correct?

12 A. Yes.

13 Q. What did you do once arriving at Belk?

14 A. Once I arrived on the scene the initial responding
15 officers were already there. My supervisor was already
16 there. I was briefed by Corporal Santos about what
17 happened on the incident and I was briefed by my
18 supervisor as well Corporal Eckert.

19 Then after being briefed by them I assisted in
20 interviewing some witnesses because the scene was pretty
21 chaotic.

22 THE COURT: I'm going to need you to slow down.

23 THE WITNESS: I'm sorry.

24 Q. [Mr. Durant] And who was identified as the suspect
25 that had stabbed the victim?

State v Dennis Cervantes-Pavon
Ashley Smith-Direct Examination by Mr. Durant
November 10, 2015

- 1 A. Elvin Pavon.
- 2 Q. And how did you obtain that information?
- 3 A. From witnesses and co-workers on the scene.
- 4 Q. And were you able to ascertain what the suspect
- 5 would have been wearing?
- 6 A. Yes, we were able to.
- 7 Q. How?
- 8 A. From witnesses and surveillance footage.
- 9 Q. Okay. Did y'all have that surveillance footage
- 10 from Belk pretty closely after this stabbing?
- 11 A. Yes, it was very quick.
- 12 Q. And I believe you interviewed some of the witnesses
- 13 at the scene is that correct?
- 14 A. Yes, I did.
- 15 Q. Do you recall interviewing Jeremiah Oxendine?
- 16 A. Yes, I did.
- 17 Q. And was a statement taken from him?
- 18 A. Yes.
- 19 Q. And how about a Ronnie Hunt?
- 20 A. Yes.
- 21 Q. And was a statement taken from Mr. Hunt?
- 22 A. Yes, there was.
- 23 Q. Now based upon the interviews you conducted at the
- 24 scene what did you do?
- 25 A. Based upon the interviews that I obtained I returned

State v Dennis Cervantes-Pavon
Ashley Smith-Direct Examination by Mr. Durant
November 10, 2015

1 back to the Mount Pleasant Police Department headquarters
2 where I drafted an arrest warrant for the defendant.

3 Q. And what did you draft an arrest warrant for?

4 A. Murder.

5 Q. And how were you able to learn the defendant's full
6 name?

7 A. We learned from the witnesses and the co-workers on
8 scene that he was staying at the Value Place Inn in North
9 Charleston and officers responded to that area.

10 And the hotel there had copies of identifications of
11 the individuals that were staying in the rooms and the
12 defendant's identification was with the hotel.

13 Q. Okay. And that was a Honduran identification I
14 believe.

15 A. Yes, it was.

16 Q. And what was his full name?

17 A. Dennis Elvin Cervantes-Pavon.

18 Q. And how old was he?

19 A. Thirty three.

20 Q. Moving ahead to the next day August the 14th what
21 did you do relative to the investigation?

22 A. I attended the autopsy of the victim.

23 Q. Okay. And do you recall who the medical examiner
24 was?

25 A. Nick Batalis.

State v Dennis Cervantes-Pavon
Ashley Smith-Direct Examination by Mr. Durant
November 10, 2015

- 1 Q. Okay. And did you learn the cause of death?
- 2 A. A stab wound to the heart.
- 3 Q. And did you have the occasion to collect some
- 4 evidence from the medical examiner?
- 5 A. Yes, I did.
- 6 Q. And what did that evidence consist of?
- 7 A. I collected from the medical examiner personal
- 8 belongings of the victim, clothing, fingernail clippings
- 9 and a blood spot.
- 10 Q. What's a blood spot?
- 11 A. It's a blood sample that has been put on a dish for
- 12 a sample.
- 13 Q. And what is the purpose of collecting the blood spot
- 14 and fingernail clippings?
- 15 A. For possible D-N-A analysis.
- 16 Q. Moving ahead to around 3:30 that afternoon what
- 17 happened regarding this case?
- 18 A. I was informed by Isle of Palms Police Department
- 19 that they had our defendant in custody.
- 20 Q. And who was dispatched to pick him up?
- 21 A. Corporal Santos.
- 22 Q. And did you have the occasion to meet with him when
- 23 he was transported to the Mount Pleasant Police
- 24 Department?
- 25 A. Yes, I did.

State v Dennis Cervantes-Pavon
Ashley Smith-Direct Examination by Mr. Durant
November 10, 2015

1 Q. And what was he wearing?

2 A. The clothing that was seen on the surveillance
3 footage.

4 Q. It would be the same person who was shown walking
5 across the parking lot?

6 A. Yes, sir.

7 Q. Okay. What was the condition of his clothing at
8 the time?

9 A. They were very wet and dirty.

10 Q. Do you know how he got over to the Isle of Palms
11 from Mount Pleasant?

12 A. We believe that he swam across the Intercoastal
13 waterway right there and through the marsh over to the
14 beach on Isle of Palms.

15 Q. Why do you think he just didn't go across the
16 bridge?

17 A. Well we had during the course of tracking him
18 through the night we utilized an emergency cell phone
19 pinging they call it. It's just an emergency cell phone
20 tracker if you will. And in addition to that we had
21 canines tracking in the area.

22 We had additional sightings from concerned citizens
23 calling in. The canine was tracking in that direction
24 and additional we had patrol units staged on the bridge
25 through the night. He was not located walking across the

State v Dennis Cervantes-Pavon
Ashley Smith-Direct Examination by Mr. Durant
November 10, 2015

1 bridge.

2 Q. So y'all watched the bridge right?

3 A. Yes.

4 Q. Okay. And he didn't get over there that way is
5 that correct?

6 A. I'm sorry? I didn't hear you; I'm sorry.

7 Q. I said you all were watching the bridge and he did
8 not get over there that way is that correct?

9 A. Yes, correct.

10 MR. DURANT: Your Honor, at this time we would
11 offer -- 58 is already in evidence, we would offer 59
12 through 63 I believe without objection.

13 MS. PARNALL: No objection, Your Honor.

14 THE COURT: 59 through 63 into evidence without
15 objection.

16 [Whereupon, State's exhibit numbers 59, 60, 61, 62,
17 and 63 are entered into evidence by the court]

18 Q. [Mr. Durant] And detective did you cause photographs
19 to be taken of Mr. Pavon on that day after he was taken
20 into custody?

21 A. Yes.

22 Q. I'm just going to run through these and have them --
23 starting with State's exhibit 58.

24 [Whereupon, the photographs are shown]

25 Q. That's how he appeared that day?

State v Dennis Cervantes-Pavon
Ashley Smith-Direct Examination by Mr. Durant
November 10, 2015

- 1 A. Yes.
- 2 Q. And once again why is there plastic on that chair?
- 3 A. Because all of his clothing was very wet.
- 4 Q. State's 59?
- 5 A. That's just a close up of the defendant as he
- 6 appeared when we took him into custody.
- 7 Q. State's 60?
- 8 A. A close up of his hands.
- 9 Q. State's 61?
- 10 A. That was his identification that was removed from
- 11 his person.
- 12 Q. Okay. From the Honduras?
- 13 A. Yes.
- 14 Q. State's 62?
- 15 A. That is a photo of the defendant close up with his
- 16 shirt removed.
- 17 Q. And State's 63?
- 18 A. A close up of a marking that we located on the side
- 19 of his body.
- 20 Q. Did y'all obtain a search warrant to obtain buccal
- 21 swabs from the defendant?
- 22 A. Yes, we did.
- 23 Q. And was there anything sent to SLED for analysis in
- 24 this case?
- 25 A. Yes, there was.

State v Dennis Cervantes-Pavon
Ashley Smith-Direct Examination by Mr. Durant
November 10, 2015

- 1 Q. What was sent to SLED for analysis?
- 2 A. The stuff that was preserved from the autopsy; the
- 3 fingernail clippings.
- 4 Q. And the blood spot?
- 5 A. Yes.
- 6 Q. And y'all took buccal swabs from Mr. Pavon is that
- 7 correct?
- 8 A. Yes, correct.
- 9 Q. What is a buccal swab?
- 10 A. A buccal swab basically looks like a Q-tip and it's
- 11 used to obtain D-N-A from the inside of the defendant's
- 12 mouth.
- 13 Q. And those items were sent to SLED?
- 14 A. Yes, they were.
- 15 Q. Are you aware of the results of that examination?
- 16 A. Yes, I am.
- 17 Q. And what are those results?
- 18 A. They were unable to be matched with the defendant.
- 19 Q. Okay. Thank you. Please answer any questions
- 20 defense counsel may have.
- 21 MS. PARNALL: If I may just have a moment?
- 22 THE COURT: Take your time.
- 23 [Whereupon, Ms. Parnall and Mr. Cochran confer]
- 24
- 25

State v Dennis Cervantes-Pavon
Ashley Smith-Cross-Examination by Ms. Parnall
November 10, 2015

1 CROSS-EXAMINATION

2 BY MS. PARNALL:

3 Q. Detective Smith, when Mr. Muniz was taken into
4 custody he was wearing boots correct?

5 A. When Mr. Muniz was ---

6 Q. --- I apologize.

7 THE COURT: You're going to need to speak loudly.

8 MS. PARNALL: I will, Your Honor.

9 Q. [Ms. Parnall] When my client Elvin was taken into
10 custody he was wearing boots correct?

11 A. He was carrying boots.

12 Q. And those boots were entered into evidence?

13 A. Yes, they were.

14 Q. And it would be your testimony that you believe that
15 he swam across the channel in those boots.

16 A. I don't know if he was holding them or wearing them.
17 I wasn't with him when he was swimming across the marsh;
18 I don't know.

19 Q. Thank you Detective Smith. I have no further
20 questions.

21 THE COURT: Mr. Durant?

22 MR. DURANT: I have nothing on redirect, Your
23 Honor.

24 THE COURT: You may step down. I don't believe you
25 are free to go.

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHARLESTON) Court of General Sessions
3) Case No. 2015-GS-10-0418
4)
5)
6 STATE OF SOUTH CAROLINA)
7)
8 vs.) Transcript of Record
9)
10 DENNIS ELVIN CERVANTES)
11 PAVON,)
12)
13 Defendant.)
14)
15) DATE: November 12 - 13, 2015
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)

B E F O R E:

The Honorable Kristi Lea Harrington

A P P E A R A N C E:

Bruce DuRant
Attorney for the State

Christina D. Parnall and Charles W. Cochran
Attorney for the Defendant

Karen V. Andersen, RMR, CRR
Circuit Court Reporter

1 address the most recent case he handed up, the Traylor case.
2 That was on demonstrative evidence. I do believe in that
3 particular case, it appears that the reason they admitted
4 that rifle for demonstrative purposes was because there was a
5 question of whether or not the rifle could have been
6 concealed from the witness who was stating she didn't see it
7 in the vehicle. So they wanted it for size because that made
8 it less likely that it could have been concealed and outside
9 of the witness's sight. So I believe that this case is
10 different in that there's not a particular issue about the
11 assault that has been raised. Thank you, Your Honor.

12 THE COURT: As to State's 85, which was exhibited to
13 and used during the witness as demonstrative evidence, I
14 decline to allow. It will not be entered into evidence.

15 The State has been allowed to show it to the jury.
16 There was no indication that -- I don't believe that the
17 State has met the sufficiency in entering it into evidence.
18 There is -- there was enough differences in what the witness
19 testified as to State's 85 as to this one. Then I am not
20 going to allow that to be admitted into evidence. Note your
21 exception to my ruling, Mr. Durant.

22 As to State's 71, 72 and 73, they will be entered
23 into evidence noting your objection. I do not find that they
24 are more prejudicial than probative. And they are relevant.
25 The appropriate value is substantially -- is not

1 substantially outweighed. Note your exception to your
2 ruling.

3 Anything before we bring the jury?

4 MR. DURANT: Not from the State?

5 MS. PARNALL: Nothing from the Defense, Your Honor.

6 (State's Exhibits 71, 72, and 73 was received in
7 evidence.)

8 (Whereupon, the jury returns to open court at 09:57
9 AM.)

10 THE COURT: Thank you. Be seated. Call your next
11 witness.

12 MR. DURANT: The State will call Nick Batalis.

13 NICHOLAS BATALIS,

14 having been duly sworn, testifies as follows:

15 THE CLERK: Please state your first and last name.

16 And spell your last name loudly and clearly into the
17 microphone.

18 THE WITNESS: My name is Nicholas Batalis,
19 B-a-t-a-l-i-s.

20 THE COURT: Mr. Durant, your witness.

21 DIRECT EXAMINATION

22 BY MR. DURANT:

23 Q. Good morning, Dr. Batalis. Can you please tell our
24 jury what you do?

25 A. I'm a forensic pathologist at the Medical University

1 of South Carolina.

2 Q. And how long have you been affiliated with the
3 Medical University of South Carolina?

4 A. I've been on faculty there for about 7 1/2 years at
5 this point.

6 Q. And you are a licensed physician in the State of
7 South Carolina?

8 A. Yes, I am.

9 Q. And you've been practicing medicine also for about
10 eight years; is that correct?

11 A. About eight years as faculty. And then four to five
12 years -- five years before that as a trainee.

13 Q. Okay. And if you could briefly just go through your
14 medical training with the jury.

15 A. Sure. So I graduated medical school in Indiana
16 University in 2003. I then came down to Charleston to do a
17 residency in general anatomic and clinical pathology for four
18 years. After completing that training, I passed our national
19 board exam to become certified --

20 THE COURT: Dr. Batalis, I'm going to have to ask
21 you to slow down. We have interpreters for this particular
22 trial. While I can understand you, you are speaking fairly
23 rapidly. So out of courtesy to my interpreter, if you could
24 slow down a little.

25 THE WITNESS: Yes, ma'am.

1 A. After graduating medical school, I came to
2 Charleston to perform a residency in anatomic and clinical
3 pathology or general pathology. I finished that training and
4 passed a national board exam to become certified. Then went
5 to Dallas, Texas, to the Dallas County Medical Examiner's
6 office to perform a one-year fellowship in forensic
7 pathology.

8 A. Following that fellowship, I also passed a
9 certification exam to become certified in forensic pathology.
10 And at that point, I then returned to Charleston to take my
11 current position.

12 Q. And in general terms, what is forensic pathology?

13 A. So to take a step back, general pathology is the
14 study of disease. So a pathologist would be the one, if your
15 surgeon, takes a biopsy or takes out a tumor. The
16 pathologist would be the one to look at it and tell them
17 whether it's cancer or not cancer.

18 We also help physicians. When you get your blood
19 drawn, a pathologist is the doctor who runs the laboratory to
20 oversee that. So forensic pathology is a subset of that
21 field that really deals with the legal aspects of medicine,
22 specifically performing autopsies to determine the cause and
23 manner of death.

24 Q. And as part of your duties at the Medical University
25 of South Carolina, do you perform autopsies?

1 A. Yes, I do.

2 Q. And, roughly, how many autopsies do you perform a
3 year at the Medical University?

4 A. Approximately 200 to 250 autopsies a year.

5 Q. And you previously indicated you are board-certified
6 in the field of forensic pathology; is that correct?

7 A. Yes.

8 Q. And that is a national certification?

9 A. Yes, it's national by the American Board of
10 Pathology.

11 Q. And you indicated you taught at M.U.S.C. What do
12 you teach?

13 A. I'm involved in teaching in a couple different ways.
14 We have the medical students who are trained to be doctors.
15 So I help teach them and lecture about general pathology,
16 heart disease, lung disease, those types of things. We also
17 have students who will rotate through our autopsy service and
18 learn how to perform autopsies. So we do kind of one-on-one
19 teaching there. And then we also have trainees in our
20 department who are already physicians who are training to be
21 pathologists or forensic pathologists. That, again, is more
22 at the table-side during the course of the autopsy.

23 Q. And have you been previously been qualified as an
24 expert witness in the field of forensic pathology?

25 A. Yes, in South Carolina, several times, along with

1 North Carolina and Texas.

2 MR. DURANT: Your Honor, at this time, we would
3 offer Dr. Batalis as an expert in the field of forensic
4 pathology.

5 THE COURT: Any objection? Any objection?

6 MR. COCHRAN: No, Your Honor.

7 THE COURT: Is this your witness, Mr. Cochran?

8 MR. COCHRAN: Yes, Your Honor.

9 THE COURT: Ladies and gentlemen, normally, a person
10 cannot give opinion testimony. Typically, when a person
11 testifies, they must testify as to either what they've heard
12 or saw or sensed by smell or something of that nature. There
13 is an exception in our law. If someone is qualified because
14 of their education and experience, they are permitted to give
15 their opinion in certain areas if the Court qualifies them in
16 that area. Dr. Batalis will be qualified in the area of
17 forensic pathology to give opinion testimony in that area.
18 That does not mean that you must accept his opinion. It is
19 simply evidence for you to use in any way which you see fit.

20 Mr. Durant.

21 MR. DURANT: Thank you, Your Honor.

22 BY MR. DURANT:

23 Q. As a part of your affiliation with the Medical
24 University, did you have the occasion to perform an autopsy
25 on a Raymond Muniz on August the 14th of 2014?

1 A. Yes, I did.

2 Q. And what was Mr. Muniz's age?

3 A. At the time of the autopsy, he was 23 years old --
4 sorry, 27 years old.

5 Q. And what was his height?

6 A. Excuse me one second here, please. I apologize. He
7 was 28 years old at the time of the examination.

8 Q. And does your autopsy report indicate his height and
9 weight?

10 A. Yes. He was 70 inches in length, so that would be
11 5' 10", and weighed 244 pounds.

12 Q. As part of your autopsy, were photographs taken
13 which depicted the location of the stab wounds suffered by
14 the victim in this case?

15 A. Yes.

16 Q. I hand you what's previously been marked as State's
17 Exhibit 71, 72, 73, 74, and ask if you recognize those
18 photographs?

19 A. Yes. I do. These are copies of the photographs I
20 took during the autopsy.

21 Q. Would reference to those photographs -- first of
22 all, do those photographs truly and accurately depict the
23 victim and the location of the wounds suffered by the victim
24 in this case?

25 A. Yes, they do.

1 Q. And would reference to those photographs assist you
2 in explaining your findings to the jury in this case?

3 A. I believe they would.

4 MR. DURANT: Your Honor, at this time we would offer
5 State's Exhs. 71 through 74.

6 THE COURT: Noting your objection, they will be
7 entered.

8 MS. PARNALL: Thank you, Your Honor.

9 (State's Exhibit 71 and 74 was received in
10 evidence.)

11 Q. Now, as part of your examination, or your autopsy,
12 did you perform an external examination of the body of
13 Raymond Muniz?

14 A. Yes.

15 Q. And other than the stab wound that we are going to
16 talk about momentarily, was there any other evidence of
17 recent injury?

18 A. No, there was not.

19 Q. And, obviously, your autopsy report indicates stab
20 wound. Could you tell the jury where that stab wound was
21 located referencing State's Exhibit No. 71? And you could
22 also use that in front of you to -- if you touch it, it will
23 put mark on there.

24 A. Sure. So this is a photograph of the decedent at
25 autopsy. We do a first set of photographs when we receive

1 the body before it's been cleaned up with the clothes on. We
2 then clean the body, take the clothes off, inventory that.
3 Then take another set of photos once the body has been
4 cleaned. And so that's what we are looking at here.

5 When you are looking at the body on the left side of
6 his chest, where I've circled here, is where we had a single
7 stab wound. You also notice on the further on the left side
8 of the chest over here, there's some medical equipment. So
9 that was a chest tube that had been put in by responders
10 to -- in the resuscitation attempts. But the major finding
11 again was the stab wound that's located here on the left side
12 of the chest.

13 Q. So the one underneath the armpit really had nothing
14 to do with the actual cause of death? It was more an effort
15 to resuscitate?

16 A. Correct.

17 Q. Okay. And I believe you indicated that it was 4
18 inches left of midline, 17 inches from the top of the head;
19 is that correct?

20 A. Correct.

21 Q. Now, what was the length of the wound?

22 A. The wound had a length of three-quarters of an
23 inch.

24 Q. Okay. And referring to State's 72, let me clear
25 those circles. From top to bottom, left to right, what is

1 the actual orientation of that?

2 A. So this image is a little bit deceiving. The body
3 has all sorts of elastic fibers that run through it.
4 Sometimes when you perforate the skin, like a stab wound, you
5 have a perfectly straight line as the weapon went through the
6 skin. Other times, if the weapon goes through at an angle
7 through the elastic fibers, it becomes somewhat distorted.
8 So when you look at this from a distance, it almost looks
9 like it's kind of angulated or oriented in a triangle almost.
10 But I believe one of the later exhibits shows where I've kind
11 of pinched the edges together. But it's a nearly vertical
12 wound.

13 So, essentially, the bottom of the wound is here.
14 If you are on a clock -- sorry. Bottom of the wound was just
15 to the right. So it would be kind of at the five o'clock
16 position if you are looking at a clock. And top of the wound
17 is going to be up there around the eleven o'clock position.
18 So not quite straight up and down, just a little bit
19 oblique.

20 Q. Okay. And I also note in your autopsy that you
21 indicated that the margins are slightly jagged. And I'm
22 going to refer to State's 73. And if you would tell the jury
23 what you mean by that.

24 A. Sure. So, again, we are looking at the wound. And
25 this is the same orientation. So the bottom of the wound is

1 down here. The top of the wound up here. So we talk about
2 the stab wound, we talk about the angles and the margins. So
3 that the angles are basically the top and the bottom aspects
4 of the wound. So we evaluate those for certain
5 characteristics.

6 The margin is then basically the rest of the wound,
7 so the size of the wound, if you will. And so particularly
8 on the -- this side of the wound -- I don't want to draw on
9 the wound itself -- you can see that instead of just being
10 kind of a straight line, there's some kind of subtle scalping
11 or a little bit of waviness to that border. And what that
12 can tell us is that the weapon had a serrated edge instead of
13 being just a flat blade.

14 Q. Would that be consistent with someone having been
15 stabbed by a saw blade?

16 A. If the saw blade met the characteristics as far as
17 the length of the wound and was serrated, yes.

18 Q. Okay. Finally, I think you mentioned this earlier,
19 so we will just go ahead and get State's Exhibit 74.

20 A. Correct. So this is after I've taken the wound and
21 trying to re-approximate, to take out those elastic fibers
22 that were cut during the stabbing process to orient it to how
23 it would have truly looked at the time of the incident,
24 showing that it was a, you know, basically a straight line or
25 straight up-and-down wound. But, again, you can still

1 appreciate there is some kind of bumps or ridges or
2 scalloping of that border. But just to kind of pull it
3 together to show it was very thin and, again, about
4 three-quarters of an inch from here to here.

5 Q. And how deep was the wound?

6 A. The wound actually went pretty significantly deep
7 into the body to a depth of about six inches.

8 Q. During the course of your autopsy, were you able to
9 determine what injuries were caused by that stab wound?

10 A. Yes. So, after the weapon went through the skin of
11 the chest, it then went between the 6th and 7th ribs, so kind
12 of slipped right between two of the ribs on the front side of
13 the chest. The weapon then continued through the
14 pericardium, which is the sac that surrounds your heart. It
15 then went all the way through the heart. So it went into the
16 right side of the heart. You then had a septum that
17 separates the left and right side. Went through that and
18 then came out the back side of the heart. And then that sack
19 or that pericardium that wraps around the heart went and just
20 barely perforated through that on the backside. So,
21 essentially, the path of the weapon went through the skin,
22 between the ribs, and entirely through the heart before it
23 came to a stop.

24 Q. What were the results of that kind of injury that
25 caused death in a case like that?

1 A. So there's a couple different things that happens.
2 Some people, because of the damage to the heart muscle, can
3 have a sudden death. Your heart has an electrical system.
4 So if you kind of go straight through part of that system,
5 somebody could just drop dead. The heart may stop
6 functioning right away. What happened in this case, though,
7 essentially, excessive bleeding or exsanguination.

8 From within the body, at the time of the autopsy, we
9 recovered about 150 milliliters of blood from around the
10 heart. And then about 200 milliliters of blood in the left
11 pleurocavity, so around the left lung. So that blood would
12 have spilled out from the heart into the left side of the
13 chest.

14 And just to kind of put those together, that's about
15 350 milliliters of blood that remained in the body. That is
16 about the same as in a 12-ounce can of soda.

17 Q. That's clearly the blood, obviously, that he lost
18 externally, correct?

19 A. Correct. At the scene, we saw one of the first
20 pictures that there was a chest tube in into the left side of
21 the chest. Those responders could have sucked out blood or
22 drained blood from the left side there. So, yeah, 350 was
23 just what remained at the autopsy.

24 Q. And there's been some testimony that after the
25 victim was stabbed in this case, he ran out of the building,

1 down the sidewalk, around the corner of the building, and
2 collapsed. How is it possible for somebody to do that if
3 they had been stabbed in the heart?

4 A. Yes. So, again, there's some circumstances where
5 again you do get the sudden death. But in most cases, trauma
6 of the heart, you are still able to perform, to run, to move,
7 for a fairly short period of time. In this case there was a
8 stab wound through the heart, but it wasn't -- the heart
9 wasn't essentially exploded. So there would still be some
10 function of blood that's still being -- the heart is still
11 beating, pumping that blood to different organs. Also, even
12 if the heart does explode, your body is still going to have a
13 reserve for a few seconds of blood that already reached your
14 brain, already reached the rest of your body. So it is not
15 uncommon for someone to have a significant injury to the
16 heart to perform some sort of physical activity, running,
17 walking, crawling, for a relatively short period of time.

18 Q. And could you describe the orientation of the wound
19 pathway for the jury?

20 A. So the direction or pathway of the wound, the main
21 direction was from front to back. And it also went from left
22 to right. So, again, this wound, we said came in about 4
23 inches to the left of midline. And the previous photo you
24 could see was just inside the left nipple. And the tip of
25 the blade essentially ended up straight in the midline. So

1 that blade was coming front to back and then from the
2 decedent's left to his_right, kind of angling towards the
3 center.

4 Q. Left side, kind of angling toward the heart?

5 A. Correct.

6 Q. And I believe you noted no significant upward or
7 downward deviation; is that correct?

8 A. I did not, no.

9 Q. Also, you reviewed toxicology results as a part of
10 this autopsy. What did the toxicology results indicate?

11 A. So during the course of the autopsy, we collect
12 samples and send to it a nationally accredited lab. They
13 look for 3- to 400 different drugs. Some are illegal drugs.
14 Many are medications that individuals will take.

15 His toxicology was positive for three different
16 things. The first was caffeine, which as we know, is in all
17 sorts of food and beverages. He also had delta-9-THC, which
18 is the parent drug in marijuana. And then
19 delta-9-carboxy-THC, which is a breakdown product or
20 metabolite of marijuana.

21 Q. And as a general rule, is marijuana a depressant or
22 stimulant?

23 A. It's classified as a depressant.

24 Q. Based upon the history you obtained and your
25 findings from your autopsy, do you have an opinion based upon

1 a reasonable degree of medical certainty as to the cause of
2 death in this case?

3 A. Yes, I do.

4 Q. And what is that opinion?

5 A. The cause of death was a stab wound at the chest.

6 Q. And, basically, pierced the heart and caused him to
7 bleed to death?

8 A. Correct.

9 MR. DURANT: Thank you very much. Could you please
10 answer any questions defense counsel may have for you.

11 MR. COCHRAN: May it please the Court, Your Honor.

12 THE COURT: Mr. Cochran.

13 CROSS-EXAMINATION

14 BY MR. COCHRAN:

15 Q. So you noted that THC was present in the patient?

16 A. Yes.

17 Q. Okay. And you noted that there were two different
18 types of THC. And one was the active ingredient, which would
19 indicate that he was potentially under the influence at the
20 time of death of marijuana?

21 A. Correct.

22 Q. And you said marijuana would be classified as a
23 depressant as opposed to a stimulant; is that correct?

24 A. Correct.

25 Q. Okay. And alcohol would be classified as a

1 depressant as well rather than a stimulant, correct?

2 A. Correct.

3 Q. And you noted that there were no other recent
4 injuries other than the stab wound that you noted?

5 A. Correct.

6 Q. Nothing that you would term a defensive wound?

7 A. No. He had not recent or remote injuries. He had
8 no injuries on him other than the stab wound.

9 MR. COCHRAN: Thank you, sir. Nothing further, Your
10 Honor.

11 MR. DURANT: Your Honor, I would ask Dr. Batalis be
12 excused.

13 THE COURT: Any objection?

14 MR. COCHRAN: No.

15 THE COURT: You are excused. Feel free to stay with
16 us, but you are also free to leave. Call your next
17 witness.

18 MR. DURANT: Your Honor, if I may momentarily check
19 with the court reporter, I believe I'm going to rest.

20 THE COURT: All right. I will allow you. Ladies
21 and gentlemen, that signifies to the Court that there's a
22 matter of law I must take up outside of your presence. Do
23 not begin your deliberations. Do not discuss the case among
24 yourselves. Leave your note pads or take them with you.
25 Please rise for the jury.

1 (Whereupon, the jury leaves open court at 10:18 AM.)

2 THE COURT: Mr. Durant, I thought you said that
3 witness was going to take over an hour.

4 MR. DURANT: No, I didn't say he was going to take
5 over an hour; I don't believe I did.

6 THE COURT: All right. Reserving all the
7 introduction into evidence, who's arguing? Any motions or
8 matters?

9 MS. PARNALL: Yes, Your Honor. There would be a
10 defense motion for a directed verdict at this time.

11 THE COURT: On what basis?

12 MS. PARNALL: Your Honor, first on the basis that I
13 do not believe there has been any evidence put in to
14 demonstrate that my client held and had a criminal intent
15 necessary for a murder, malice aforethought. And in absence
16 of any evidence that has been put in to show that there was
17 any level of malice on his part, any kind of criminal mens
18 rea, I believe that the defense is entitled to directed
19 verdict.

20 Secondary to that would be that at this time I would
21 like to renew the motion made previously that I believe that
22 my client is immune under the South Carolina Protection of
23 Person and Property Act. I believe, once again, that all of
24 the evidence that has been presented by the State, taken in
25 the light most favorable to the State, still does not

1 demonstrate that my client brought on the difficulty that he
2 was an initial aggressor, which is the first prong.

3 It has not challenged the defense theory that my
4 client believed that he was in imminent fear of great bodily
5 injury or death.

6 It also has not challenged that a reasonable person
7 in that position of being basically in a chokehold by a
8 larger man, being punched in the face, would not also
9 consider themselves in imminent fear of great bodily injury
10 or death.

11 And, Your Honor, under the Protection of Person and
12 Property Act, I don't believe that should those first three
13 be satisfied, that my client has the need to address the
14 normal fourth prong of self-defense, which would be the duty
15 to retreat or no other way to escape. But if I did need to
16 address that, Your Honor, that would be very simply put that,
17 you know, my client only had one exit which he could leave
18 that place. And I don't believe there's any evidence, once
19 again, put in by the State to show that my client had any
20 other means to leave or avoid this danger.

21 Your Honor, I would also just briefly mention two
22 cases. And that was the Dickey case, as well as the Douglas
23 case. The Douglas case is the one that's oft cited for the
24 Duncan's hearings, Protection of Person and Property Act. The
25 Dickey case is one that came out of Richland County.

1 In both of those cases, the person was found
2 justified to have used deadly force against another person
3 who was not harmed. And in both of those cases, the person
4 who was found justified in using that deadly force was, in
5 fact, harmed with a gun. But due to the court finding that
6 there was an imminent fear of serious bodily harm by the
7 person who was unarmed, and feeling that a reasonable person
8 would have felt the same, the court found both of these
9 defendants to be justified under the use of deadly force.

10 And more specifically in the Dickey case, it was a
11 security guard outside an apartment complex on the door
12 stoop. And he had basically just asked a person to leave, a
13 social guest of this apartment complex. When he saw the
14 person turn around and start back towards him, he then fired.
15 And that was found to have been justified considering the
16 fact that the person approaching him was a younger person,
17 potentially more agile than this security guard who was
18 carrying a gun.

19 And, Your Honor, I would mention that the gun was
20 not something that was required as part of his duties. That
21 was a concealed weapon he had a permit for.

22 And in the other case, in the Douglas case, a man
23 was basically thrown up against the wall by another man who
24 was highly intoxicated and aggressive. He was being punched
25 and beaten and assaulted. And he pulled out a gun and shot

1 that assailant, who was a social guest in his home. And that
2 person was also found justified based on the assault that
3 they were enduring, that they could have presumed, based on
4 whether he be assaulted by the person's intoxication, but
5 also by the reputation of violence, it was found they were in
6 reasonable fear of imminent great bodily injury or death.

7 So, Your Honor, that would conclude my argument as
8 to why I believe he's immune. We also believe we are
9 entitled to a directed verdict at this stage.

10 MR. DURANT: Your Honor, the evidence in the light
11 most favorable to the State basically establishes this, that
12 these parties had argued that day, that this defendant
13 attacked or went at the victim with a pipe, that the victim
14 initially defended himself with a hammer, that after that, he
15 returned to his ladder, he took off his tool belt and took a
16 deadly weapon out of his tool belt and put it in his
17 waistband, picked up the pipe again, went over to the
18 victim's workplace, and attempted to cave his head in with a
19 pipe.

20 Now, where Ms. Parnall says there's no evidence of
21 malice aforethought there, I don't know where that comes
22 from. Because you take the evidence in the light most
23 favorable to us, he arms himself with that keyhole saw with
24 the intent of killing or injuring Mr. Muniz, having been
25 prompted by nothing else other than talk.

1 Quite frankly, I'm not going to go into the
2 Protection of Person and Property Act again. This Court
3 basically has no testimony before it that this defendant --
4 in terms of the case in chief, that this defendant was not
5 the aggressor other than him. You've heard the testimony in
6 the case. The State's witnesses obviously establish that he
7 was the aggressor, that he armed himself, that he engaged in
8 mutual combat, that he is at fault in bringing about the
9 difficulties that resulted in Mr. Muniz's death. And he's
10 not entitled to self-defense.

11 I would also argue that he does have, at least under
12 the Protection of Persons And Property Act, he is not
13 entitled to disregard the fourth prong of the self-defense,
14 elements of self-defense, because he was not in a place that
15 he had the right to be, which the statute requires.

16 THE COURT: Anything further?

17 MS. PARNALL: Thank you, Your Honor. If I may, just
18 briefly on that fourth prong, I do believe I would reiterate
19 just very quickly, Your Honor, that what the Protection of
20 Person and Property Act actually says is that the person may
21 not be acting unlawfully, and that the person is at a place
22 where they have a lawful right to be. I don't believe
23 anything else such as my client's status is an actual bad act
24 or conduct on his part that would cause him to be acting
25 unlawfully.

1 And the only other thing I could mention, Your
2 Honor, is that there has been evidence put in about the
3 facility disparity between my client and Mr. Muniz.

4 Your Honor, furthermore, Mr. Durant just just stated
5 that the testimony taken in the light most favorable to the
6 State is that my client was basically trying to attack
7 Mr. Muniz with a sprinkler pole. But I would point out that
8 one of the State witnesses actually said that my client was
9 dragging the sprinkler pole behind him on the ground. So
10 there was a question presented between the two State's
11 witnesses as to whether a pole was actually being held up,
12 whether it was down, but certainly no evidence that pole was
13 being used actively to attack someone. There was a
14 contradiction in where and how a pole was being held by my
15 client.

16 That would be it, Your Honor.

17 THE COURT: Under Rule 19 of the Rules of Criminal
18 Procedure, I'm concerned only with the existence or
19 nonexistence of the evidence. Based upon the testimony that
20 I have heard, your motion for directed verdict is denied.
21 Note your exception to my ruling.

22 Any witnesses?

23 Please stand.

24 MS. PARNALL: Your Honor, I believe at this time I
25 have to renew all of my objections and motions that I

1 MR. DURANT: Can you at least give us lunch before
2 you argue?

3 THE COURT: I will give you a break. I don't know
4 that I will give you a lunch hour, but I will give you a
5 break.

6 MR. DURANT: Okay. How about ten minutes?

7 MS. PARNALL: Thank you, Your Honor.

8 (Whereupon, recess transpired.)

9 THE COURT: Anything before we bring in the jury?

10 MR. DURANT: The only other issue I'm aware of
11 regards the immigration status. And, actually, I don't
12 really have any reason to go in that unless you are charging
13 that section, Protections of Personal and Property Act.

14 THE COURT: Well, I'm not charging it, but even if I
15 were charging it, I don't know that that in and of itself
16 entitles you to do that. So we are not going to address that
17 issue.

18 MR. DURANT: You are not charging Subsection C?

19 THE COURT: No.

20 MR. DURANT: Okay.

21 (Whereupon, the defendant is present.)

22 MR. COCHRAN: We do request that charge, though.
23 Put that on the record.

24 THE COURT: Please approach.

25 (Whereupon, a bench conference takes place off the

1 record.)

2 THE COURT: So in addressing the issue of the
3 immigration status of the defendant, it has come to my
4 attention, because it was not included in your request to
5 charge that you gave to my clerk, Ms. Parnall, that you also
6 were requesting that charge under the C provision. What I
7 had included in my charge, and what was in your request, was
8 the -- if the defendant was in his place of business, the
9 defendant had no duty to retreat before acting in
10 self-defense. That is what I was inclined to charge; thus,
11 that would negate any relevant topic discussing the
12 immigration status.

13 I do not -- had not planned to charge under the C
14 provision. So let me hear you on that matter.

15 MS. PARNALL: Thank you, Your Honor. It is
16 Subsection C of the Persons and Property Protection Act, Your
17 Honor, 16-11-440, does state a person that is not engaged in
18 an unlawful activity who is attacked in another place where
19 he has a right to be, clearly not limited to the place of
20 business, has no duty to retreat, has a right to stand his
21 ground. And there is additionally the segment about "and
22 meet force with force", including deadly force.

23 So, Your Honor, I apologize that I did not include
24 that part of it in my initial advanced request to charge, but
25 I would ask that that also be added onto the language that he

1 has no duty to retreat, because that is in the Subsection C
2 right after the fact that he has no duty to retreat.

3 THE COURT: Mr. Durant --

4 MR. DURANT: It is still my position that he has no
5 right. The key word in Subsection C is that he's in a place
6 that he has a right to be. He does that not have a right to
7 be at the Belk at Towne Centre in South Carolina or this
8 country.

9 THE COURT: I am not going to address that issue.
10 As I indicated earlier in my ruling under whether or not that
11 he would be entitled to immunity under this provision, I
12 decline to address that issue. As I indicated, the
13 legislature indicated that a person who's engaged in the
14 argument, I'm not going to engage in that argument. I will
15 not include the language under C.

16 I am going to include the language that is in the
17 standard duty to retreat charges that I typically give and
18 what was in your request that you initially provided. I
19 think that it addresses the facts that have been presented
20 without getting into the need, also touching into whether he
21 was there legally or illegally. But it does capture the
22 facts as presented and the law as it is in the state of South
23 Carolina. Note your objection.

24 Anything further?

25 MS. PARNALL: Nothing from the Defense, Your Honor.

1 THE COURT: Do you have a copy of your -- I'm going
2 to mark it as Court's -- mark your request as Court's 1.

3 With that, anything further?

4 MS. PARNALL: Nothing from the Defense, Your Honor.

5 (Court's Exhibit 1, Defendant's Request for Jury
6 Charge, was marked for identification.)

7 THE COURT: Please rise for the jury.

8 (Whereupon, the jury returns to open court at 10:57
9 AM.)

10 MS. PARNALL: Thank you, Your Honor. At this point
11 in time, the defense would call Dennis Alvin Cervantes Pavon
12 to the stand.

13 DENNIS ELVIN CERVANTES PAVON,
14 having been duly sworn, testifies as follows:

15 THE CLERK: Please state your first and last name
16 and spell your last name, loudly and clearly into the
17 microphone.

18 THE WITNESS: My name is Dennis Elvin Cervantes
19 Pavon. Excuse me. What is it that you wanted me to spell?

20 THE COURT: Your last name.

21 THE WITNESS: C-e-r-v-a-n-t-e-s.

22 MS. PARNALL: Thank you, Your Honor. May it please
23 the Court.

24 THE COURT: Yes.

25 DIRECT EXAMINATION

1 BY MS. PARNALL:

2 Q. Mr. Cervantes, in what state have you been living
3 these past few years?

4 A. Richmond, Virginia.

5 Q. Who were you living with in Richmond, Virginia?

6 A. Oh, with my sister, my brother-in-law and my
7 niece.

8 Q. What kind of work do you do in the United States?

9 A. Sheetrock and framing.

10 Q. And for what company do you find your work?

11 A. Through the company CB Contractors.

12 Q. Where is that company located?

13 A. In Richmond, Virginia. The complete address I don't
14 know it, but it's there.

15 Q. How did you end up in Charleston, South Carolina?

16 A. I was hired by a contractor to come and do a job
17 here.

18 Q. And what part of Charleston was that job site?

19 A. Mount Pleasant is the only thing I can understand
20 from that address.

21 Q. And about how long did you get to work on that job
22 site?

23 A. Approximately two and a half weeks.

24 Q. Who were some of your bosses or supervisors on that
25 job site?

1 A. Oh, his name was Mr. Herbert. And there was another
2 name also, another man; his name was Aaron.

3 Q. And how did you get along with your bosses?

4 A. Well, a good relationship.

5 Q. Were there a lot of Spanish-speaking co-workers on
6 the job site?

7 A. There were approximately some 10 people.

8 Q. And how did you get along with your Spanish-speaking
9 co-workers?

10 A. Well, with the majority, except for one person I did
11 not.

12 Q. Who was the one person you didn't get along well
13 with?

14 A. His name is Raymond.

15 Q. Were there a lot of English-speaking co-workers on
16 this job site?

17 A. Yes, correct.

18 Q. How did you get along with those English-speaking
19 co-workers?

20 A. With the majority, well, except for one person that
21 I did not get along so well.

22 Q. And who was that person?

23 A. His name is Travis. I just know him like that, by
24 his first name. And I don't know if it's exactly that is his
25 name because it's in English, and my English is not exact.

1 Q. Please tell me about Raymond, what kind of problems
2 happened with him.

3 A. It had been a week when I got to my work. I went
4 and got a tool for my work, which is a broom and a shovel.
5 As I was sweeping the area where I was going to work, he came
6 by and tried to take my broom by force.

7 Q. In addition to physical problems, were there any
8 verbal problems with Raymond?

9 A. Correct.

10 Q. Can you tell me about those?

11 A. After what happened with the broom, that thing that
12 happened, I went to my boss, Herbie. We went to the office.
13 When we went into the office, I went in and Raymond. And he
14 was not there. Coincidentally, he was not there. So Raymond
15 came and looked out to see if there were any cameras. And he
16 said to me, oh, there is no cameras, so now I will. And then
17 he started assaulting me with blows. That was one of the
18 problems of the first one.

19 Q. Were these problems rare or did they happen
20 regularly?

21 A. Oh, that happened regularly.

22 Q. Did any co-workers other than Raymond ever harass
23 you?

24 A. Yes, correct.

25 Q. Who?

1 A. His name is Travis.

2 Q. And what kind of problems did you have with Travis?

3 A. Yes. He had a very good relationship with Raymond.

4 I don't know. From the very beginning, from the very

5 beginning, he and Raymond had an early friendship. So on

6 August 13th, it was like around 9 in the morning, he came to

7 the work area where I was and he threatened me. He

8 threatened me verbally and he also wanted to hit me.

9 Q. When you say he threatened you, are you talking
10 about Raymond or Travis?

11 A. Travis.

12 Q. Now, were you and Raymond staying in the same motel?

13 A. Yes, correct.

14 Q. Did you ever have any problems at this motel?

15 A. Oh, of course, there were lots of problems also.

16 Q. And did you have any problem at this motel on the
17 nights leading up to August 13th?

18 THE INTERPRETER: Interpreter did not hear the
19 question.

20 THE COURT: Repeat the question.

21 MS. PARNALL: Thank you, Your Honor.

22 BY MS. PARNALL:

23 Q. Did you have any problem with Raymond at this motel
24 on the nights leading up to August 13th?

25 A. Yes, correct.

1 Q. Can you tell me about what happened?

2 A. After we left work on August 12th, my co-workers and
3 I, we went to the hotel. When we got to the hotel, across
4 from it there was Raymond and there were two black ladies
5 there. I apologize if I offended anyone, because for us,
6 that's not an offense. I don't know if that's offensive as
7 far as the color of the people, what I just said.

8 When we got there, he was there in front of the
9 hotel. We went over to the backside. I told the driver to
10 drop us off and let's just go to the back so we could avoid
11 problems. When I got off the truck, he came to me. He took
12 his shirt off and he was coming towards me to, one, to hit
13 me, but nothing happened because at that time I moved away
14 again.

15 Q. Did you go back into your motel?

16 A. Yes, correct, I went in to the back door to avoid
17 him.

18 Q. What were you thinking or feeling when Raymond would
19 assault you?

20 A. I really was terrified. I was very scared because I
21 could lose my life.

22 Q. What reasons did you have to be so afraid of
23 Raymond?

24 A. There were several reasons. There were several
25 things. They were bigger than me. They were stronger than

1 me. And also, he was doing gang signs, and that was the fear
2 I had to lose my life.

3 Q. Raymond -- I would like to focus on August the 13th,
4 2014. How did that morning begin?

5 A. Well, that morning started -- they started -- I
6 arrived to my work. I picked up my tools. I went to
7 continue working on my wall that I was making framing, and
8 the threats began again.

9 Q. What kind of work were you doing that morning?

10 A. Framing wall.

11 Q. And were there any co-workers working on that with
12 you?

13 A. Yes.

14 Q. And who were they?

15 A. His name is Jose Noberto.

16 Q. Can you tell me specifically, how did the problem
17 with Raymond start that day?

18 A. Yes, correct.

19 Q. Can you describe for me how the problem with Raymond
20 began that day?

21 A. I was continuing -- well, this was by now afternoon,
22 maybe -- I don't know the exact time, 5 or 6 in the
23 afternoon. When I was working on the ladder, he was
24 threatening me. He was threatening me with his words and
25 also doing signs with his hands and all that. When I already

1 went down the ladder because I finished my work, he already
2 had big metal in his hand. And so since I had to go over
3 there because that was close to where my tools were, as
4 protection, I went ahead and picked up a pipe. I was
5 bringing it, dragging it. As I was going a little close by
6 to him, he came and swang two times with the metal. But
7 since he was stronger than me, he came and threw the metal at
8 me. And that's when he came.

9 And after he threw the metal, he came and grabbed me
10 with his right arm, like this. (Witness indicates.) We were
11 face-to-face. He was holding me with his hand here and he
12 was hitting me with his right here. (Witness indicates.)
13 When he was holding me here, I was already feeling with no
14 air. Each time he was tightening more and more. And that's
15 when I had no other option, so I took out my work tool and
16 that's when I stabbed him.

17 Q. Did you have any problems with Raymond on the day of
18 August the 13th prior to the attack with the long piece of
19 metal?

20 A. Yes, they had -- there had been another problem
21 more.

22 Q. Before the attack with the metal piece?

23 A. Yes, correct. This was at noon.

24 Q. Can you tell me what happened?

25 A. Oh, at noontime, when it was the lunchtime? Right

1 there at the entrance of that door where you could note that
2 all of us left, there Raymond and Mr. Travis, both of them
3 also wanted to hit me.

4 Q. Did you seek any kind of help from your bosses?

5 THE INTERPRETER: I apologize, Your Honor.

6 Interpreter made a mistake.

7 A. Yes, correct.

8 Q. Who did you go to?

9 A. I went to the superintendent boss of the
10 construction.

11 Q. What is his name?

12 A. His name is Mr. Harveys.

13 Q. And what did you say to him?

14 A. I told him that those people were assaulting me at
15 all times and that I had fear because what they were doing
16 was continually.

17 Q. Did the problem stop after that?

18 A. No, the problem always continued.

19 Q. When Raymond confronted you with a long piece of
20 metal, what were you thinking or feeling?

21 A. I was feeling really terrified. I was scared
22 because I could lose my life at any time.

23 Q. Did you get injured at all by Raymond's long piece
24 of metal?

25 A. Yes. There were two blows that went through that --

1 as a matter of fact, the police took pictures of those blows.

2 Q. Mr. Cervantes, if I were to show you a photo, would
3 you be able to recognize whether it was one of the injuries
4 that you received that day?

5 A. Of course, yes.

6 MS. PARNALL: Your Honor, may I approach the
7 witness?

8 THE COURT: You may.

9 BY MS. PARNALL:

10 Q. Mr. Cervantes, will you please take a look at this
11 photo? Does this appear to be a photo of the injury, one of
12 the injuries that you received that day?

13 A. Yes, correct.

14 Q. And this is one of the photos that the police took?

15 A. Yes, correct.

16 MS. PARNALL: Your Honor, may I approach the witness
17 again?

18 THE COURT: You may.

19 MS. PARNALL: Your Honor, at this point I would like
20 to introduce Defendant's Exhibit No. 2 as evidence and be
21 able to publish that to the jury.

22 THE COURT: Any objection?

23 MR. DURANT: No objection.

24 THE COURT: Defendant's Exhibit 2 into evidence
25 without objection. You may publish.

1 (Dft. Exh. 2 is moved into evidence.)

2 BY MS. PARNALL:

3 Q. Mr. Cervantes, if you would please take a look at
4 the photo on the screen.

5 A. Yes, yes, I do.

6 Q. And is that one of the injuries that you received
7 from Raymond Muniz after this attack?

8 A. Yes, correct.

9 MS. PARNALL: Thank you, Your Honor.

10 BY MS. PARNALL:

11 Q. Mr. Cervantes, did you receive another injury from
12 Raymond that day?

13 A. Yes, correct.

14 Q. And can you describe the other injury?

15 A. When he was hitting me with his right hand, there
16 was another one here. (Witness indicates.) And if you
17 observe, there was one here and also another one over here.
18 (Witness indicates.)

19 Q. Mr. Cervantes, when you just now described an injury
20 here, can you please tell the jury where that injury was that
21 you just pointed?

22 A. The one here?

23 Q. You also pointed towards your head.

24 A. Yes. One was here on my jaw.

25 THE INTERPRETER: The interpreter would like to ask

1 for interpretation of the last part, Your Honor.

2 A. We call it quijada. But that's why I'm showing you
3 with my hand so that you can understand, more or less.

4 Q. Thank you, Mr. Cervantes. Did you state that you
5 had a pipe in your hands when Raymond had the large piece of
6 metal?

7 A. Yes. When -- he had the metal first when I grabbed
8 the pipe.

9 Q. And what ended up happening to that pipe that you
10 had in your hands?

11 A. Oh, when we got close to each other and he started
12 to attack me, and I went like this (witness indicates) and he
13 knocked it out of my hand.

14 Q. And then did the pipe land on the ground?

15 A. Yes. Correct.

16 Q. And then what happened after that?

17 A. That's when he came. He came and grabbed me with
18 his left hand. We were face-to-face, when he grabbed me with
19 his left hand and started to hit me.

20 Q. And what was happening to cause to you pull out that
21 saw?

22 A. Really, he was grabbing me tightly. And every time
23 it was tighter and tighter. And I was furious. I was
24 angry.

25 Q. Mr. Cervantes, what did you end up doing with that

1 saw?

2 A. I'm sorry?

3 Q. What did you end up doing with that saw?

4 THE INTERPRETER: Interpreter would like to ask for
5 interpretation of the witness.

6 A. When he had me like this, I didn't have any other
7 option but to take it out and do like this. (Witness
8 indicates.) That was the only way I was able to separate
9 from him.

10 Q. Mr. Cervantes, I would like to step back just one
11 question. When you described why you pulled out that saw,
12 did you use the word "furious" or did you use the word
13 "angry"?

14 A. I'm sorry, could you please repeat the question?

15 Q. Yes. Mr. Cervantes, when I asked you what happened
16 to cause you to pull out that saw, did you respond with the
17 word "furious" or the word for "angry"?

18 A. Oh, I responded like that because he was the one who
19 was angry, but I was afraid. I was terrified.

20 Q. And is that how you were answering that question,
21 Mr. Cervantes?

22 A. I'm sorry?

23 MR. COCHRAN: Your Honor, may I approach?

24 THE COURT: You may.

25 (Whereupon, a bench conference takes place off the

1 record.)

2 THE COURT: Ladies and gentlemen, there's a matter I
3 must take up outside of your presence. Do not begin your
4 deliberations. Do not begin discussing this case. Take your
5 note pads with you or leave them in the chair. Please rise
6 for the jury.

7 (Whereupon, the jury leaves open court at 11:29 AM.)

8 THE COURT: Thank you. Be seated.

9 MR. COCHRAN: The reason I asked to approach is
10 because immediately after the translator translated
11 Mr. Pavon's response, Santiago said to me, no, he said
12 Raymond was furious and angry, and she translated as "I was
13 furious and angry" and that was a mistranslation.

14 (Mr. Durant, I would also like to point out, was
15 visibly grinning at the jury and responding to Ms. Parnall's
16 question, saying both --

17 THE COURT: Let's address one issue at a time.

18 Madame Interpreter, there have been now some
19 indication -- and I do not speak Spanish. Ms. Parnall, you
20 have now informed the Court that you also speak enough
21 Spanish to understand that there was some discrepancy in the
22 translation. Is that correct?

23 THE INTERPRETER: That's correct, Your Honor.

24 Your Honor, the interpreter does stand corrected.

25 And the interpreter should have clarified at that point. He

1 said -- it was not clear to the interpreter whether it was --
2 who was the subject of that sentence. And the interpreter
3 should have clarified. She does stand corrected, and is
4 happy to have the question repeated. It does seem after the
5 next line of questioning that Santiago is absolutely correct.

6 MR. COCHRAN: Your Honor, if we may, the other
7 interpreter is here, could we ask her --

8 THE INTERPRETER: Interpreter definitely stands
9 corrected.

10 THE COURT: I don't know what that is going to
11 accomplish.

12 MR. COCHRAN: What I was going to say is, what I'm
13 concerned about is that she's going to say she stands
14 corrected, but that she's not positive that she made a
15 mistake. If she is, I think we can move on.

16 THE COURT: I don't know what she stands
17 corrected -- how that is not a mistake.

18 MR. COCHRAN: Okay. I'm sorry.

19 THE COURT: That's what I interpreted from your
20 statement.

21 THE INTERPRETER: Absolutely, yes, that's correct.

22 THE COURT: So now the question becomes how are we
23 going to correct it for the jury?

24 MS. PARNALL: Your Honor, the problem being that
25 while I was trying to figure out how to call to the Court's

1 attention and try to subtly correct it, I could hear
2 Mr. Durant behind me making comments like, oh, of course, of
3 course.

4 THE COURT: I need everybody to stay on one issue at
5 a time. I understand there's a lot going on, but I can only
6 put on the record one issue at that time. So let's stay
7 focused, all right, so that we get everything corrected on
8 the record.

9 What would you like for me to do, Ms. Parnall?

10 MR. COCHRAN: May we confer?

11 MS. PARNALL: Your Honor, I think that an
12 instruction from Your Honor that there was a mistranslation
13 and that we would be able to go back into questioning and
14 they are to disregard what was said, which was translated as
15 my client being furious or angry. If Your Honor would ask
16 them to disregard that and explain to the jury that that was
17 actually a mistranslation, that we now have confirmed that.
18 I think that will allow us to move forward regarding that
19 issue.

20 THE COURT: All right. Well, the problem with doing
21 that is that sometimes we draw more attention to the
22 questions or to the answer that was incorrectly translated.
23 So what I need is -- what was the question that you asked
24 that elicited the mistranslation?

25 MS. PARNALL: Yes, Your Honor. I asked him what was

1 happening at that time that caused him, my client, to pull
2 out that saw. And then he gave a somewhat involved answer
3 and that was one of the parts of that answer.

4 THE COURT: Mr. Durant, happy to hear from you.

5 MR. DURANT: Your Honor, whatever y'all want to do
6 is fine with me.

7 THE COURT: All right. Mr. Durant, I also need you
8 not to make comments out loud.

9 MR. DURANT: I'm sorry. I was talking to the
10 Detective Smith. I apologize. Won't happen again.

11 THE COURT: Thank you.

12 MS. PARNALL: Your Honor, if I may also bring up the
13 other issue involving the comment in front of the jury.

14 THE COURT: That's what we just did.

15 MS. PARNALL: Yes, Your Honor. I think I would have
16 to make a motion for a mistrial at this point. I feel that
17 comment at that point drew so much attention to this that it
18 suggested that there was some kind of impropriety on my part
19 in even reframing the question, much less bringing it to the
20 Court's attention.

21 THE COURT: Tell me what you heard Mr. Durant say
22 that you feel rises to the level that you should be granted a
23 mistrial.

24 MS. PARNALL: Your Honor, what I heard was the "of
25 course" remark, when I was trying to go back and re-ask the

1 question. I'm not sure if anyone else heard anything else
2 from here. I couldn't see what was going on behind me but I
3 understand it was drawing attention of the jurors.

4 MR. COCHRAN: He said "of course" sort of
5 sarcastically in terms of us trying to correct the situation.
6 But then she also asked Mr. Pavon did you say furious or
7 angry and Mr. Durant said both audibly, which is true, he did
8 say both, but that's not Mr. Durant's place to be basically
9 testifying to the jury.

10 THE COURT: I had addressed it. I addressed it when
11 it happened the second time. The first time, what I assumed
12 happened is that Mr. Durant was attempting to be helpful in
13 the translation, and so I'm going on that assumption.

14 The second time I called him out on it. And the
15 third time will result in a finding of contempt. He's
16 indicated that he understands he cannot do that. I do not
17 find -- I note your request for a mistrial. I do not find
18 this rises to a level that would require a mistrial.

19 I'm going to give a curative instruction as to the
20 question that there was a mistranslation, what was happening
21 at the time. And they are to strike that so that you will
22 begin from that point. You will begin that question.

23 And just so I have, the question that you were going
24 to ask, what was happening at the time, at that time that
25 caused --

1 MS. PARNALL: Yes, Your Honor. The question was
2 what was happening -- he had just finished answering about
3 being grabbed by the neck. And my next question was -- so I
4 don't know if you need me to go back to the neck to clarify.
5 He just answered about how --

6 THE COURT: I just want the full question of what
7 was happening at that time that caused --

8 MS. PARNALL: Yes. What was happening at that time
9 that caused you to pull out that saw?

10 Your Honor, I apologize. Would your curative
11 instruction also specifically instruct the jury as to what
12 the mistranslation was, so that they are not left wondering
13 what part of their received mistranslation -- is it even
14 going to address the answer that he gave that was
15 mistranslated?

16 THE COURT: How I understood the testimony is that
17 we spent a substantial amount of time going back and
18 clarifying it. So really I'm going to tell them after that
19 question was asked, they need to strike everything from their
20 notes, which should be everything from that question on.

21 MS. PARNALL: Okay. Yes, Your Honor.

22 THE COURT: Do you agree, Mr. Durant?

23 MR. DURANT: Whatever y'all like.

24 THE COURT: All right. Thank you. Madam Court
25 Reporter, this is directed specifically at you -- I'm sorry,

1 Madame Interpreter, do you feel that you can continue the
2 translation?

3 THE INTERPRETER: Yes, ma'am. The interpreter does
4 feel competent that she can continue the translation,
5 interpretation rather.

6 THE COURT: Thank you. Anything before we bring in
7 the jury on? Do you all need a comfort break or anything?

8 MS. PARNALL: I could use a break.

9 THE COURT: Okay. I will step down just a few
10 minutes.

11 (Whereupon, a recess transpired.)

12 THE COURT: Anything before we bring in the jury?

13 MS. PARNALL: If I may, just for clarification, are
14 you actually going to instruct the jury that there was a
15 mistranslation?

16 THE COURT: Yes.

17 MS. PARNALL: Thank you, Your Honor.

18 THE COURT: Anything else? All right. Let's bring
19 in the jury.

20 (Whereupon, the jury returns to open court at 11:45
21 AM.)

22 THE COURT: Ladies and gentlemen, as you are aware,
23 there is the need for a translator, an interpreter in this
24 case. You cannot rely on your own knowledge of the Spanish
25 language. Some of you may have an understanding and an

1 ability. But even if you disagree with the interpreter's
2 translation, you must accept the translation that was given.
3 Unfortunately, there was a mistranslation of some of the
4 defendant's responses to the question from Ms. Parnall: What
5 was happening at that time that caused you to pull out that
6 saw?

7 I need for you to go through your notes at this
8 time. And any response that was made by the defendant as to
9 that -- to the -- responding to that question, needs to be
10 stricken from your notes at this time.

11 Madam Foreperson, you also need to make sure during
12 the deliberations that if there was any notes that were
13 taken, that they were stricken at that time from each of the
14 jurors' notes. And there cannot be any discussion about the
15 mistranslation or the cause of the mistranslation. If you
16 will take just a moment to look through your notes.

17 Mr. Durant, any direction, admonition given to the
18 jury?

19 MR. DURANT: No, ma'am.

20 THE COURT: From the Defendant?

21 MS. PARNALL: No, Your Honor.

22 THE COURT: That was sufficient?

23 MS. PARNALL: Yes, Your Honor.

24 THE COURT: Thank you. You may continue.

25 MS. PARNALL: Thank you, Your Honor.

1 BY MS. PARNALL:

2 Q. Mr. Cervantes, what was happening to you while you
3 were being choked that caused you to pull out that saw?

4 A. Oh, I was terrified. I felt afraid.

5 Q. Mr. Cervantes, why did you feel so afraid of Raymond
6 Muniz?

7 A. Oh, I felt afraid really because he was a lot taller
8 than me, stronger, and he made a lot of gang signs.

9 Q. And, Mr. Cervantes, what was Raymond Muniz doing to
10 you while he was holding you in a chokehold?

11 A. When he was -- when we were like face-to-face, he
12 had me in a headlock like this and he was hitting me with his
13 right hand.

14 Q. How many times did you stab Mr. Muniz with that saw?

15 A. One time.

16 Q. And what did Raymond do after he got stabbed?

17 A. That was the only way for me to -- for me to get him
18 to let go of me, and he let go of me.

19 Q. And was he still standing at that point in time?

20 A. Yes, correct.

21 Q. Did you stay around or did you leave?

22 A. Oh, I left work.

23 Q. Why?

24 A. Oh, I was afraid also because his friend was there,
25 the other guy, Travis, and he was following me.

1 Q. And did you walk out with that small saw in your
2 hands?

3 A. Yes.

4 Q. And what happened to that saw?

5 A. Oh, I had to throw it away.

6 Q. Why did you throw it away?

7 A. I threw it away because I didn't have anywhere to
8 keep it.

9 Q. Did you want to stab Raymond Muniz?

10 A. No.

11 Q. Why did you stab Raymond Muniz?

12 A. It was self-defense.

13 Q. Mr. Cervantes, if you would please answer any
14 questions that the prosecutor may have for you.

15 THE COURT: Mr. Durant.

16 MR. DURANT: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. DURANT:

19 Q. Mr. Pavon, how long have you been in this country?

20 A. Approximately 13 years.

21 Q. And you've lived in this country continuously since
22 then?

23 A. Yes, correct.

24 Q. Did you know Raymond Muniz before you came to
25 Charleston?

1 A. Yes, I had seen him over there in Virginia.

2 Q. Do you all work for the same company?

3 A. Oh, yes, correct.

4 Q. Did you all come to South Carolina at the same time?

5 A. No.

6 Q. Who did you come to South Carolina with?

7 A. I came here with two other guys whose names I
8 mentioned before, Jose and another guy, Noberto.

9 Q. So you had only been in Charleston for two and a
10 half weeks at the time, correct?

11 A. I'm not sure that it was two and a half weeks, but
12 it was about that time.

13 Q. And do you know whether -- how long -- if Raymond
14 had been on the job longer than that or shorter than that?

15 A. When we arrived, he was already here. The time I
16 wouldn't know.

17 Q. You mentioned something about a broom and a shovel
18 during your testimony. When did that occur?

19 A. Oh, that happened one week after I had come from
20 Virginia when I started working here.

21 Q. Okay. And you said that he took a broom from you or
22 a shovel from you or both?

23 A. He took the broom away from me, but he was going
24 after both things, the broom and the shovel.

25 Q. Why was he taking the broom and shovel?

1 A. Well, really, was -- he snatched it from me. He
2 wanted it.

3 Q. And then what happened?

4 A. After he took the broom away from me, I went to my
5 boss. I went to the office, and by coincidence, when we got
6 to the office, my boss wasn't there. His name is Herbie.
7 And that's when he turned around to look up to see if there
8 were cameras. And he said, there's no camera in here, and so
9 he started to hit me.

10 Q. And what did you do when he started to hit you?

11 A. Well, he was assaulting me, so I had to lift up my
12 hands. I wanted to, but I couldn't. He was stronger than
13 me.

14 Q. So you just sat there and let him beat on you?

15 A. Not sitting down; we were standing up.

16 Q. So you just stood there and let him beat on you?

17 A. Yes. Well, I'm sorry. You know, imagine somebody
18 bigger than me and I'm smaller, what could I have done?

19 Q. That's what I'm trying to find out. That's what I'm
20 asking.

21 A. That's why I'm saying I put my hands like this,
22 because he was hitting me in the face.

23 Q. Did you try to hit him back?

24 A. No.

25 Q. You didn't say anything to him, did you?

1 A. No, correct.

2 Q. You didn't say anything to him when he snatched the
3 broom from you, did you?

4 A. No.

5 Q. The night before this happened at the hotel, you
6 didn't say anything to him that night either, did you?

7 A. That night, the only thing I did was to remove
8 myself from him.

9 Q. So -- and the day that you killed Mr. Muniz, you
10 didn't say anything to him that day either, did you?

11 A. Oh, no, I don't think.

12 THE INTERPRETER: Interpreter would like to clarify.

13 A. I don't like how you asked me the question.

14 Q. That's the question?

15 A. Do I tell you the reason why?

16 Q. No, it's up to your lawyer, I believe, if I asked an
17 improper question.

18 THE COURT: Are you objecting to the form of the
19 question or the fact that you had to answer the question or
20 something else?

21 THE WITNESS: I'm sorry, because -- may I speak?

22 THE COURT: Can you answer my question?

23 THE WITNESS: I'm sorry, could you repeat it?

24 THE COURT: You don't get to object or not answer
25 questions just because you don't like them. Do you need

1 Mr. Durant to rephrase the question?

2 THE WITNESS: Correct.

3 THE COURT: Rephrase your question.

4 BY MR. DURANT:

5 Q. The day that you killed Mr. Muniz, you never said
6 anything to Raymond that day either, did you?

7 A. That day, there wasn't -- he was the one who was
8 assaulting me.

9 Q. But you never said anything to him to provoke him,
10 right?

11 A. No.

12 Q. You never said anything to him to provoke him the
13 night before?

14 A. No.

15 Q. You never said anything to him about the broom and
16 the shovel that might have provoked him, did you?

17 A. No.

18 Q. Okay. On any of those occasions, had he ever
19 threatened you with a weapon?

20 A. Weapons, and at the end, the end.

21 Q. You are talking about the piece of metal that he
22 had?

23 A. Yes, correct.

24 Q. Other than that, he had never threatened you with a
25 weapon before, had he?

1 A. Yes, he also had a hammer in his hand.

2 Q. I'm talking about the day other than this happened.

3 Had he ever done anything with you other than offer to fist
4 fight?

5 A. Not with weapons, just to beat me up.

6 Q. Okay. And just to be clear, all of this was without
7 any fault of your own, correct?

8 A. Correct.

9 Q. So, Mr. Muniz was this angry with you because you
10 had a broom and a shovel 10 days before?

11 A. Yes, correct.

12 Q. And you had done nothing in the meantime to
13 aggravate the situation or to aggravate Raymond?

14 A. No, because he was the one who was trying to assault
15 me.

16 Q. And you never tried to fight him back at any time
17 other than the day you killed him?

18 A. No.

19 Q. Okay. And today you tried to make him and Travis be
20 in cahoots together, right? Raymond I'm talking about.

21 A. Yes, correct.

22 Q. And you want this jury to believe that Travis
23 threatened you, correct?

24 A. Could you ask the question differently?

25 Q. And you want this jury to think, as you testified,

1 that Travis threatened you too?

2 A. It's not that I want them to. It's that it was like
3 that. He did threaten me.

4 Q. Despite the fact that you don't speak English and he
5 doesn't speak Spanish, how did he threaten you?

6 A. Oh, can I say the word?

7 Q. I don't know what the word is.

8 A. Well, for me it's a word. I mean, I don't know. I
9 don't know a lot of English, but for me he said "fucking
10 Spanish".

11 THE INTERPRETER: Interpreter phonetic pronunciation
12 of the testimony.

13 BY MR. DURANT:

14 Q. Are you saying that Travis doesn't like Hispanics?

15 A. I don't know. The only thing I know is that he
16 threatened me.

17 Q. You just tried to get this jury to believe that
18 Raymond Muniz was his best friend, didn't you?

19 A. Yes, they were supposedly friends because they would
20 be together.

21 Q. And Raymond Muniz is Hispanic, isn't he?

22 A. Yes, but he speaks English specifically. He was
23 born here.

24 Q. Are you weak?

25 A. I'm sorry?

1 Q. Are you weak?

2 A. Yes, a little.

3 Q. Are you a baby?

4 A. I am not a child.

5 Q. Where were you working in phase four?

6 A. Specifically what day, I don't know, because there
7 were several places where we were.

8 Q. The day this happened, the day he (sic) killed
9 Mr. Muniz, where was he (sic) working?

10 A. I was making the framing wall. I couldn't tell you
11 the area because I'm not very familiar with plans.

12 Q. Were you working on a ladder?

13 A. Yes.

14 Q. Were you working on this ladder?

15 A. Yes, correct.

16 MR. DURANT: May I put up State's 13, Your Honor.

17 THE COURT: You may.

18 BY MR. DURANT:

19 Q. Okay. So referring to State's 13, you indicate that
20 this ladder over here was your work area, correct?

21 A. Yes, up there. I was on there -- I was working
22 there.

23 THE INTERPRETER: Interpreter correction.

24 BY MR. DURANT:

25 Q. And Mr. Muniz's work area was over here, correct?

1 A. He was closer than that, even closer than that. He
2 was close to the machine.

3 Q. To the cement mixer?

4 A. Yes, over there.

5 Q. In fact, he pushed that wheelbarrow there to that
6 position; is that correct?

7 A. Well, I couldn't say, because I was looking in front
8 of the wall.

9 Q. You did not have your tool belt on during this
10 fight, did you?

11 A. I'm sorry; could you repeat the question?

12 Q. You did not have your tool belt on during this
13 fight, did you?

14 A. Yes, I did.

15 Q. Oh, okay. So you didn't have a tool belt on when
16 you walked out the door on the video, did you?

17 A. When I went outside, I didn't have it anymore.

18 Q. So your testimony is that you stopped after you
19 stabbed him in the chest.

20 MR. DURANT: Go ahead and translate that, please.

21 BY MR. DURANT:

22 Q. Took off your tool belt. Decided you would just
23 keep the saw for old times' sake and walked out the building
24 after Raymond within five seconds; is that your testimony?

25 A. Can I respond or what?

1 Q. Pardon me?

2 A. I'm sorry. May I respond to a little bit about what
3 he did to me? Because he's doing the testimony, like,
4 differently.

5 Q. No.

6 A. After the problem happened, what I did was, it's
7 like a girdle type, and so I unfastened it. And I was not
8 following Raymond. Because if I would have followed him, he
9 was going to the left and I continued straight. If you guys
10 could have seen in the video yesterday.

11 Q. So what's the answer to my question? Did you --
12 after you plunged that saw in his chest, Raymond ran away
13 from you, correct?

14 A. No, he walked out.

15 Q. Just like it showed on the video yesterday as he ran
16 out the door?

17 A. If you saw the video correctly, he left walking.

18 Q. Who was walking going out that door?

19 MS. PARNALL: Your Honor, matter of law, Your Honor,
20 a translation.

21 THE COURT: Please approach.

22 (Whereupon, a bench conference takes place off the
23 record.)

24 THE COURT: Ladies and gentlemen, we are going to
25 take a short recess. Please remember all my admonitions.

1 Please rise for the jury.

2 (Whereupon, the jury leaves open court at 12:15 PM.)

3 THE COURT: Ms. Parnall?

4 MS. PARNALL: Thank you, Your Honor. I just brought
5 to the Court's attention, I believe that I had heard a word
6 in Spanish that refers to "I was walking". And so I waited
7 and then I heard again as he was explaining again, I heard
8 the word again. I believe it was "I was" as opposed to "he
9 was".

10 And at the same time, I heard Mr. Santiago, the
11 defense interpreter, that he also heard the same thing. He
12 heard the conjunctive "and I was", "and I was walking".
13 And the interpretation I believe I heard was he was. And so,
14 Your Honor, I think that that was the confusion. That's why
15 Mr. Durant was trying to help with another question because
16 he was trying to suggest that my client was saying that
17 Raymond Muniz was walking, when, in fact, what I heard twice
18 was "I was". I would defer to Mr. Albenes; he's actually a
19 certified interpreter.

20 THE COURT: Then why isn't he doing it? He's the
21 one that brought it to our attention twice.

22 MS. PARNALL: Yes, Your Honor, he's not permitted to
23 interpret for the Court because they have to be impartial
24 when doing simultaneous court interpretation. But for the
25 purposes of defense-table conversations, especially with

1 Mr. Cochran being able to speak to my client, we have to have
2 an interpreter there. But that interpreter becomes tainted
3 by the fact that they were able to participate at the defense
4 table conversations, so they are not permitted to interpret
5 for the Court.

6 THE COURT: Madame Interpreter, same question:
7 You've heard what defense counsel -- okay. I'm going to
8 need -- I'm going to remove you at this point. So switch out
9 because I need to talk to you and I can't have you
10 translating. All right?

11 So, Ms. Gainer, if you will take Ms. Collins' place.

12 Ms. Collins, if you will just come stand at the
13 podium. Did you understand what Ms. Parnall was indicating
14 to me as to your translation?

15 THE INTERPRETER: I did understand what was being
16 said to you. Unfortunately, I don't recall what was being
17 said at the time, don't recall the interpretation. It is
18 possible. I just don't recall what exactly was said, what
19 the question was or what the response was, which is very
20 typical when you are interpreting not to remember everything
21 that is going on afterwards. So I'm not saying that they are
22 wrong. I just can't state what I said. It would have to be
23 read back and, you know, if that's what they heard, I am
24 not -- I'm not saying that they didn't hear that,
25 basically.

1 THE COURT: What is it that you would like for me to
2 do at this point? Because this -- we have gone well beyond
3 that question and answer now. So you can't simply say strike
4 the last one from your notes.

5 MS. PARNALL: I think, Your Honor, that the most
6 appropriate way to remedy it would be if the line of
7 questioning about the walking versus running, if the jury was
8 instructed that there was potentially a translation error
9 that we had, in fact -- you know, we believe there was a
10 translation error and that that whole line of question and
11 answer is to be disregarded. And then if Mr. Durant was to
12 resume that, I think it would have to be broken down because
13 it was so compound what the question was being asked that I
14 was even having trouble matching up the translation to words
15 because of how long the questions were getting before he was
16 actually permitted to respond.

17 So I would ask that, you know, he maybe try to break
18 down his questions a little bit easier for the translator.
19 But I do think that would be the way to remedy, to address
20 that fact that there was a question and answer about who was
21 walking or running on the way out, that there was a potential
22 for translation error. And for that reason we are asking
23 that they please disregard that testimony.

24 THE COURT: All right. At this point, I don't know
25 that there was an error or not an error. So we are going to

1 move forward. And I need for you -- if you believe that
2 there's an error, then I need you to state an objection
3 immediately. If you are incorrect, we will address it at
4 that point. But I can't keep doing this and going back just
5 because -- and with all due respect, I don't know your level
6 of Spanish and I don't know your level, you are not a
7 certified court reporter, so I have to trust -- I mean, I'm
8 sorry, interpreter -- you are not in this case. I have to
9 trust that the person who we have hired and court
10 administration has said is qualified to be here is doing her
11 job. And that is what I have to go on.

12 THE INTERPRETER: Your Honor, may --

13 THE COURT: I don't need any more. You are having a
14 break for this witness.

15 THE INTERPRETER: Yes, ma'am. Absolutely.

16 THE COURT: All right. Sit over there in case
17 there's an emergency. Thank you. Let's bring them in. And
18 I apologize, I keep saying court reporter. And I clearly
19 know you are an interpreter and you are a certified
20 interpreter and not a court reporter. So I apologize. Thank
21 you. It's going to be a moment.

22 (Whereupon, Luna Gainer interprets.)

23 (Whereupon, the jury returns to open court at 12:21
24 PM.)

25 THE COURT: Mr. Durant, you may continue.

1 MR. DURANT: Thank you, Your Honor.

2 BY MR. DURANT:

3 Q. Now, according to your direct testimony, the day you
4 stabbed Raymond, he was threatening you, and you did not say
5 or do anything to him, correct?

6 A. Correct.

7 Q. Okay. And despite the fact that you had not done or
8 said anything, he picked up -- are you talking about this
9 piece of metal right here?

10 A. He had it in his hand, yes.

11 Q. Okay. And you picked up this (indicating)?

12 A. Yes.

13 Q. And he did that despite the fact that you had not
14 said anything to him at all that day, correct?

15 A. Oh, can you please repeat the question, please?

16 Q. And he picked that up and threatened you with it
17 despite the fact that you had not done or said anything to
18 him that day that would justify him doing that?

19 A. He only had that metal held, but his intention was
20 not good.

21 MR. DURANT: I'm sorry, I didn't understand you.

22 I'm talking about you, Madame Interpreter, I didn't.

23 THE COURT: I think you need to repeat what -- just
24 repeat what you've just said, what you've just interpreted.

25 THE INTERPRETER: Can the interpreter ask the court

1 reporter to repeat it? I do not recall.

2 (Whereupon, the answer is read by the court
3 reporter.)

4 BY MR. DURANT:

5 Q. How do you know that?

6 A. Because it was obvious.

7 Q. Okay. Now, you said -- well, going to State's
8 Exhibit No. 13 again, you stabbed him over here, right?

9 A. No.

10 Q. Okay. So where the blood trail starts is not where
11 he got stabbed?

12 A. It was lower -- further back where he assaulted me.

13 Q. This way?

14 A. I couldn't say, but a little bit further back
15 towards the wall.

16 Q. This is the piece -- let me put this up. I believe
17 referring to State's Exhibit 13, this is where you were
18 working on this ladder, correct?

19 A. Yes, in that ladder back there, that whole wall,
20 that wall was where I was working that day. That was my work
21 area that day.

22 Q. Where the ladder is, the portion of the wall where
23 the ladder is, correct?

24 A. All that side over there.

25 Q. Okay. And this is State's Exhibit No. 8 right

1 there. And this is State's Exhibit 79 right here. And you
2 have Mr. Muniz's footprints in that wet cement right there.
3 So where did the fight take place?

4 A. He was more that way, like almost to where the
5 wheelbarrow is.

6 Q. Point it out. You can put it on the -- it's a touch
7 screen.

8 A. More or less around here, not exactly.

9 Q. Where that red dot is?

10 A. Correct.

11 Q. So right around that area. And correct me if I'm
12 wrong, you said he threw the angle iron at you?

13 A. Yes, correct.

14 Q. And where was he when he threw the angle iron at
15 you?

16 A. After he knocked the pipe down, he threw it
17 backwards.

18 Q. Did he throw it backwards or did he throw it at you?

19 A. No. He, after he knocked down my pipe, like he
20 stroked twice and knocked down the pipe, he came and threw it
21 behind him and that's when he held me here.

22 Q. So when you said in your direct testimony that he
23 threw that piece of metal at you, that was not true?

24 A. Yes, correct, he threw it, that's what I'm
25 explaining to you. He struck at me twice with the metal.

1 That's when he knocked out my pipe. He threw the metal
2 backwards and that's when he held me like this.

3 Q. Okay. Well, let's start at the part that you say
4 that happened. And then you didn't have a pipe, correct?
5 And he didn't have the piece of metal, correct?

6 A. When is -- I'm sorry. When are you talking about
7 that?

8 Q. I'm talking about after your pipe was gone and his
9 piece of metal was gone. Let's start at that point. Okay?

10 A. Okay.

11 Q. You said he grabbed you and punched you, correct?

12 A. No, that's not correct. That was before, because he
13 hit me after he had thrown out the tube.

14 Q. I thought that's what I had just asked. He knocked
15 the pipe out of your hand, correct?

16 A. Yes, he knocked it off.

17 Q. Then he threw down the piece of metal he had?

18 A. After he knocked down my pipe, that's when he threw
19 his.

20 Q. But he didn't throw it at you?

21 A. No. He threw it backwards after the blows.

22 Q. And you said that's when he grabbed you with his
23 left hand and punched you with his right hand?

24 A. Yes.

25 Q. And, of course, once again, you were not fighting

1 back?

2 A. That's when he was holding me tightly.

3 Q. Holding you tightly where?

4 A. We were face-to-face when he had me in a hold like
5 this. (Witness indicates.)

6 Q. So you were face-to-face with him and he was choking
7 you?

8 A. He was --

9 Q. So he was hitting? Okay.

10 A. Correct.

11 Q. Then why before when I asked you that question, did
12 you have your arm like that?

13 A. I have not said that now.

14 Q. And once again, you were not fighting back, correct?

15 A. When he had me like that, because I couldn't do
16 anything, he was holding me.

17 Q. And besides, you don't have a violent bone in your
18 body, do you?

19 THE INTERPRETER: Interpretation of the question,
20 Your Honor?

21 THE COURT: Just ask him to repeat it. Repeat your
22 question.

23 THE INTERPRETER: Can you repeat your question.

24 BY MR. DURANT:

25 Q. In addition, you do not have a violent bone in your

1 body, do you?

2 A. I'm not going to say that I'm a saint, but I did not
3 have intentions to do anything to him either.

4 Q. Let's talk about the choking part. You say you were
5 face-to-face, correct?

6 A. Face-to-face, but he had me here. Because
7 face-to-face means to see each other like this. But he had
8 me held and my head was under.

9 Q. Under what?

10 A. Under his arm.

11 Q. So he had you around the back of your hand?

12 A. Yes, he had me here. (Witness indicates.)

13 Q. I'm not talking about when he punched you. You said
14 he choked you and you said he had his arm -- y'all were
15 face-to-face and he had his arm around the back of your head.

16 A. Yes. Correct.

17 Q. Okay. So he was standing in front of you as I am
18 standing in front of you, correct?

19 A. We were face-to-face, correct.

20 Q. Except much closer, correct?

21 A. Correct.

22 Q. And he had his arm around the back of your head?

23 A. Yes, correct.

24 Q. So how is he choking you?

25 A. He was choking me because he had me held from the

1 back. He was very strong.

2 Q. The most he could do was pull your head down like
3 that. And I don't know about you, but I can breathe fine.

4 A. You can breathe fine because you don't have a strong
5 arm around the back of your neck like I did.

6 Q. I don't care how hard you press my head down, you
7 are not going to choke me like that, Mr. Pavon.

8 MS. PARNALL: Objection, Your Honor.

9 THE COURT: What's your basis?

10 MS. PARNALL: I believe the solicitor is providing
11 testimony at this point.

12 MR. DURANT: I'm leading the witness, Your Honor.

13 THE COURT: I'm going to sustain it.

14 MR. DURANT: Pardon me?

15 THE COURT: Sustained.

16 BY MR. DURANT:

17 Q. And when did you get this horrible injury, the
18 bruise to your stomach?

19 A. Well, I didn't notice, but the only thing I know is
20 I did not have that before the fight.

21 Q. Did you have it before you spent a day in the marsh
22 running from the police?

23 THE INTERPRETER: Interpreter starts over.

24 A. That I did not have. That happened when he
25 assaulted me.

1 Q. With what?

2 A. Well, when he was hitting me, I mean, he grabbed me,
3 I cannot be checking how he was hitting me.

4 Q. And you left with the keyhole saw, correct?

5 A. Yes, correct.

6 Q. And where did you throw it away?

7 A. I don't remember where I threw it.

8 MR. DURANT: Court's indulgence.

9 THE COURT: Take your time.

10 MR. DURANT: I don't believe I have anything else at
11 this time, Your Honor.

12 MS. PARNALL: No redirect, Your Honor.

13 THE COURT: You may step down. Thank you. Call
14 your next witness.

15 MS. PARNALL: We have no further witnesses, Your
16 Honor.

17 THE COURT: Reserving all motions and matters.

18 Mr. Durant, do you have a rebuttal?

19 MR. DURANT: I don't think so, Your Honor.

20 THE COURT: All right. Do you need a moment?

21 MR. DURANT: No, no, I thought about it. I'm not
22 going to call a rebuttal witness.

23 THE COURT: Okay. Ladies and gentlemen, you have
24 now heard all of the testimony that you will hear in this
25 case and received into evidence all of the exhibits that have

1 for a directed verdict, stand by all my previous rulings.

2 Any other motions or matters? Are you requesting
3 voluntary?

4 MS. PARNALL: I am not requesting voluntary
5 manslaughter charge.

6 MR. DURANT: Your Honor, I think, obviously, the law
7 requires you to charge anything that the evidence could
8 potentially raise. Up until the time that Mr. Pavon
9 testified, I did not think that a voluntary manslaughter
10 charge applied. But now I think that potentially one would
11 because of the fact the jury could believe, based on the
12 testimony, the jury could believe that he was the aggressor
13 in the case.

14 THE COURT: "He" being the victim?

15 MR. DURANT: Mr. Pavon, the jury could believe that
16 Mr. Pavon was the aggressor in the altercation and,
17 therefore, not entitled to claim self-defense. But it's kind
18 of an imperfect self-defense thing. If they believed him
19 when he said the guy was punching him or they believed him
20 when he said the victim was choking him, that potentially
21 could be legal provocation. My only issue with -- I think
22 there was clearly heat of passion between these two. But
23 until such time as he said that, there really was nothing
24 that could be considered legal provocation.

25 MS. PARNALL: Thank you, Your Honor. Just yesterday

1 afternoon when we had a brief conference about this, I recall
2 Mr. Durant saying that there was nothing that would merit us
3 being able to receive a voluntary manslaughter charge should
4 we request one. Since then, we've heard from the medical
5 examiner. We've heard from my client. I don't think there
6 was anything presented by the medical examiner or my client
7 to suggest any kind of heat of passion provocation.
8 Furthermore, I don't believe there was anything my client
9 said to suggest there was any kind of loss of control over
10 his actions or trying to cast it in some kind of, you know,
11 involuntary response.

12 So I don't believe that anything has been entered in
13 today in his testimony since we last discussed this that
14 should change Mr. Durant's mind or the Court's mind on this
15 matter, Your Honor.

16 THE COURT: Anything further on that matter, Mr.
17 Durant?

18 MR. DURANT: No, except I will answer her question.
19 When I made that comment yesterday, I specifically said as
20 the evidence stands right now, I do not believe a voluntary
21 manslaughter charge is warranted. After her client testified
22 and claimed that he had been choked and that he had been
23 dipped, there was no testimony as to that from any other
24 source except perhaps Travis, but a jury could believe, based
25 upon the testimony of the State's witnesses, that Mr. Pavon

1 was the aggressor, that Mr. Pavon engaged in mutual combat,
2 that Mr. Pavon was not entitled to claim self-defense. But
3 that they may have thought that based upon the fight, that
4 maybe it was a sudden heat of passion and sufficient legal
5 provocation when the victim punched him and/or choked him.
6 That was my only point.

7 THE COURT: All right. Final word?

8 MS. PARNALL: Yes, Your Honor. As Mr. Durant just
9 informed the Court, there was prior testimony yesterday
10 afternoon from Mr. Travis Flowers to the effect that my
11 client was being punched. There was also testimony from
12 Jeremiah Oxendine that my client was being held around the
13 neck. Those were not new items entered into today. So I
14 don't believe that they would justify any change in the
15 State's position on whether or not a voluntary manslaughter
16 charge was warranted.

17 THE COURT: All right. Based upon the testimony
18 that was presented, I must charge that it is reasonably
19 testified to, and so I am including voluntary manslaughter.
20 Note your objection. I do believe there has been testimony
21 presented specifically by the defendant that would indicate
22 that he acted in a sudden heat of passion.

23 All right. Please come look at the verdict form.

24 THE COURT: Anything before we bring the jury?

25 MR. DURANT: I would like to close in full.

1 MS. PARNALL: Your Honor, if I may just make sure
2 that my objection to the voluntary manslaughter charge was on
3 the record.

4 THE COURT: It is.

5 (Whereupon, the defendant is present.)

6 THE COURT: Is that the only thing we need to
7 address?

8 MS. PARNALL: Yes, Your Honor. I apologize.

9 THE COURT: Let's bring in the jury.

10 (Whereupon, the jury returns to open court at 01:44
11 PM.)

12 THE COURT: Ladies and gentlemen, we have reached
13 the stage in the trial where you will hear closing arguments
14 from opposing counsel. In this case, the State has waived
15 their first opening. So you will hear closing arguments on
16 behalf of the defendant and then the State has the
17 opportunity for rebuttal. Please remember what the attorneys
18 tell you in their closing arguments is not evidence and is
19 merely their contention as to what the evidence has shown
20 here. After you have heard closing arguments, I will
21 instruct you on the law applicable to this case and then you
22 will retire to consider your verdict. Please give your
23 strict attention, Ms. Parnall.

24 MS. PARNALL: Thank you, Your Honor. May it please
25 the Court.

1 This case started out with my client's plea for help
2 and it ended with him seeking some peace and calm. The State
3 has not shown that my client had any evil intent when he
4 grabbed the saw. In fact, it's the opposite. It's pretty
5 clear that my client stabbed Raymond because he was terrified
6 of him. The sad thing is that this fight began over a broom.

7 Then there was testimony from the State's witness
8 Travis Flowers that Raymond beat my client up in a fight that
9 was so lopsided that Raymond was laughing while beating my
10 client. My client was no match for Raymond who stood at
11 5' 10" and nearly 250 pounds.

12 The night before August 13th, Raymond tried to fight
13 my client outside the motel where they were all staying. And
14 the State's witness Travis admitted that my client would not
15 fight Raymond. My client went into his motel room because he
16 was afraid. The next morning, my client pled for help from
17 his boss, Herbie. In broken English, he asked for help to
18 stop Raymond from messing with him. And he didn't get any
19 help. And Raymond was angry that my client was going to the
20 boss. And Raymond was angry, in his father's words, that my
21 client was trying to get him fired.

22 The next day, the offense continued because Raymond
23 was trying to start a fight again and trying to get his
24 friends in on the action. Raymond told his buddy Travis that
25 my client was talking junk about him in Spanish. And Travis

1 admitted that he confronted my client that morning while my
2 client was on a ladder. And that's the thing, my client was
3 up and down a ladder on his job. And that's a vulnerable
4 position to be in, surrounded by all those threats and
5 hostilities. Raymond was in and around my client's work
6 area. They were practically next to each other, as you heard
7 from Ricky Hunt.

8 This happened near the end of a workday. My client
9 came down from his ladder. He grabbed a pipe to protect
10 himself because he was scared and he was still being
11 threatened. And I'm glad that you have access to these large
12 diagrams and photos, because you can look at that cement
13 mixer. You can look at those trenches that Raymond was
14 helping to build. You can also look at the access way. And
15 you can determine that as Ronnie Hunt admitted, Raymond would
16 have been near my client.

17 You can also see that my client had one way to exit
18 that work area and that that path took him right by Raymond's
19 cement mixer and right by Raymond's footsteps. The State
20 witnessed Jeremiah Oxendine admits that my client was
21 dragging a pipe behind him. But Raymond had an
22 eight-foot-long piece of metal and he was clearly doing more
23 than just deflecting blows from my client.

24 My client is the only one that ended up with
25 bruises. Raymond was swinging that piece of metal and

1 swinging it so hard that he managed to knock a pipe out of my
2 client's hands. Travis Flowers admits this much. And
3 Jeremiah Oxendine admits that Raymond had grabbed my client
4 about his head area.

5 Travis tried to suggest that my client had grabbed
6 Raymond around Raymond's neck while getting punched in the
7 face. But that just doesn't make sense considering that my
8 client is much shorter than Raymond Muniz. Raymond was a big
9 and strong guy and he could have easily thrown my client
10 aside, but he didn't. Raymond was holding my client close
11 because he was whaling on him.

12 As my client pulled that saw out of his belt, it was
13 because he didn't have any other choice, because he was
14 scared, not because he had any kind of evil or malicious
15 intent to kill anyone. If my client had wanted to fight with
16 Raymond or if my client had wanted to kill him, why didn't my
17 client take advantage of that opportunity outside of a motel
18 at nighttime? There would have been a lot less people around
19 to see.

20 The State claims that my client pulled that saw out
21 of his tool belt only to then put it under the waistband of
22 his pants without a sheet or cover to prepare for a fight.
23 If my client had done that and intended to use that saw, then
24 why did he later pick up a pipe? Because certainly a pipe
25 would be much less effective.

1 And what kind of injury would my client risk by
2 putting that saw with its jagged dual-tooth blade against his
3 body and then engaging in a fight? It just doesn't make
4 senses.

5 We cannot assume that Travis, Jeremiah or Ronnie
6 Hunt were going to tell us everything that they did. Travis
7 had to admit to certain details because, as you heard, he
8 gave a statement to police. But Travis's statement was not
9 given until the day after, because Travis didn't stick
10 around. Perhaps that was because he felt responsible for
11 egging on his friend Raymond, pushing it towards its final
12 resolution. There is a connection between these three
13 witnesses that goes beyond them being present on August 13th.

14 We now know Jeremiah and a Travis are from the same
15 town, that they went to the same high school. Furthermore,
16 we know that these two witnesses have been working for HB
17 Construction, which was a company owned by Ronnie Hunt's
18 family. But for the most part, what these guys said is just
19 further proof that my client had a reason to be afraid, that
20 my client had no choice but to pull out that saw and to get
21 Raymond off of him.

22 Do you recall when Jeremiah Oxendine testified about
23 Raymond Muniz walking by my client's ladder? Jeremiah said
24 that my client and Raymond were talking back and forth. The
25 solicitor asked Jeremiah if Raymond and my client appeared

1 angry. Jeremiah answered that Raymond appeared angry,
2 because Raymond was angry. He was angry that my client was
3 reporting him for the abuse and the threats, but not my
4 client.

5 My client's heart was not filled with anger. He
6 wasn't feeling malice when he stabbed Raymond. My client was
7 simply afraid, as he had been afraid for weeks on that job
8 site.

9 The State has the burden to prove that my client
10 Elvin had evil intent beyond a reasonable doubt. If the
11 State does not prove that my client had evil intent beyond a
12 reasonable doubt, you must find him not guilty. Reasonable
13 doubt can also be looked at as hesitation to act. Murder
14 would mean that my client had malice, evil intent, when he
15 armed himself and stabbed Raymond. Instead, what the State
16 has proven is that Raymond was the one with malice, that my
17 client was working in a state of fear even after he stabbed
18 Raymond.

19 If the State asks you to convict my client of
20 manslaughter rather than murder, that means that they are
21 worried that you will not convict my client of murder and
22 that they want to make sure that they get something out of
23 this. But manslaughter requires that my client was in such a
24 heat of passion that he was out of all control. None of the
25 witnesses that you have heard from have even suggested that

1 my client, Elvin, was in a heat of passion. Rather, my
2 client was the one that started this is with his plea for
3 help, and that plea for help went unanswered. He had to stab
4 a man to save himself.

5 And then he just walked away from all that
6 hostility, all that chaos, and he tried to find some peace.
7 He walked all the way to a beach where they found him the
8 next day. My client is not a malicious or an evil man. Will
9 you condemn my client as a murderer?

10 Thank you, Your Honor.

11 THE COURT: Mr. Durant.

12 MR. DURANT: Thank you, Your Honor. Ladies and
13 gentlemen, thank you for your service as jurors in this case.
14 I've been kind of impressed with the attention you've paid in
15 this case. It's an important case for Mr. Pavon. It's an
16 important case for the State. It's an important case for the
17 family of the victim, Raymond Muniz.

18 As I told you in opening, your role in this case is
19 pretty clearly defined. There's much in this case that is
20 not in dispute. It's not disputed that Raymond Muniz and
21 Elvin Pavon didn't like each other. It's not disputed that
22 Elvin Pavon killed Raymond Muniz. It's not disputed that
23 there have been previous problems between these two people.
24 It's not disputed that he killed Raymond Muniz by jamming a
25 keysaw hole (sic) through his heart. And it's not disputed

1 that Raymond Muniz died as a direct result of the blow
2 inflicted by Mr. Pavon.

3 What you have to decide in this case is if what he
4 did was murder or voluntary manslaughter or whether he goes
5 home because he was acting in self-defense and what he did on
6 that day was justified.

7 These two people that didn't like each other, were
8 in close proximity to one another due to their job
9 assignments on August the 13th of 2014. Because of their
10 prior difficulties, they had been bickering at one another
11 all day. Now, as much as the defense or Mr. Pavon would have
12 you think that this was all one-sided, your common sense and
13 your understanding of human behavior tells you otherwise.
14 The fact of the matter is, if he had not been engaging in
15 this bickering and mouthing off at one another, this would
16 have never occurred.

17 He wants you to believe that this deadly encounter
18 occurred because 10 days before that, Raymond had grabbed a
19 broom from him. And that in that -- that 10 days' time, he
20 never did a thing to provoke this, he never did a thing to
21 fight back against Raymond Muniz, he is completely living
22 pure. And you know that didn't happen.

23 The fact of the matter is that that is what had
24 occurred. If the only thing that occurred between these two
25 people was him having a broom or a shovel grabbed out of his

1 hand 10 days before, there would have not been a fight on
2 August the 13th of 2014, period. The fact of the matter was
3 that he was running his mouth just as much as Raymond was
4 running his mouth. The fact of the matter is, he was
5 stirring the pot just as much as Raymond was stirring the
6 pot. And by all accounts, this did not turn into a deadly
7 encounter until he introduced this into the mix.

8 You will have this in the jury room. It's an iron
9 pipe. It is a deadly weapon. It is capable of killing
10 someone with a single blow. Pick it up. Feel if you have
11 any questions about whether or not that is a deadly weapon.
12 He is the one that brought a gun to a fist fight, so to
13 speak.

14 In the State's case you heard testimony of Travis
15 Flowers. As the judge will tell, you are the judges of the
16 facts of this case. Who you believe, who you don't believe,
17 so on and so forth is completely up to you because you are
18 the sole judges of the credibility of the witnesses.

19 Now, defense would have you believe that you can't
20 believe anything Travis Flowers said because he and Raymond
21 were just such good buddies, just great friends and
22 inseparable just by the fact that they've known each other,
23 just by the fact that they had no relationship outside of the
24 job.

25 They had no social relationship. They didn't stay

1 in the same hotel. They were friendly work acquaintances,
2 period. That was it. But they want you to think that he was
3 in cahoots with Raymond to try to make you think, well, I
4 can't believe what he said. The fact of the matter is, they
5 were not that close. And the fact of the matter is that
6 Travis told you the truth to the best that he could. And I
7 think you saw that when he testified for the State, contrary
8 to the defendant.

9 The real reason that you can trust what Travis told
10 you is that his testimony was corroborated by Ronnie Hunt and
11 Jeremiah Oxendine. These people had only been on the job
12 together three to four weeks. There's no question that
13 Ronnie Hunt and Jeremiah Oxendine didn't have a friendly
14 relationship with either one of them. They didn't have a dog
15 in this fight. They were not good friends with Raymond.
16 They were not good friends with Elvin. They came here and
17 told you what they saw. And what they told you they saw
18 matched what Travis saw.

19 And what did we learn from Travis Flowers and
20 Jeremiah Oxendine and Ronnie Hunt? We learned that the two
21 of them, Mr. Pavon and Raymond, had been bickering on the
22 job, been bickering on the job all morning, and that the
23 super came in and called both of them in during the day
24 because of it. Oh, they want you to believe that, oh, he
25 went to the supervisor because he was scared. He went to the

1 supervisor because he wanted to get Raymond fired. It was
2 not out of fear. It was out of self interest. They had been
3 arguing with one another in Spanish.

4 Towards the end of the workday, Elvin picks up that
5 pipe and he approaches Raymond where Raymond is working with
6 the pipe in his hand. One said it was like this. One said
7 he was dragging the pipe, and then tried to hit him twice
8 with the pipe.

9 She makes a big deal because one said he dragged and
10 one said he had it back like that. But both of them said he
11 had it back like that as he tried to hit Raymond with that
12 pipe two times during which he used this to defend himself.
13 And the two dents from his pipe are on State's Exhibit No. 8.

14 But before we got to that point, he picked up that
15 pipe the first time -- and this is very important -- and he
16 goes toward where Raymond is working in Raymond's work area.
17 And Raymond picks up a hammer. And you can see that hammer
18 in State's Exhibit 44, way over here.

19 But when he picks up that hammer because he is
20 coming after him with a pipe, he thinks cover-up. And he
21 turns around and he goes back to his work area, which is this
22 ladder way over here. Drops his tool belt on the ground,
23 bends down, picks up that keyhole saw. And nobody said he
24 put it inside his pants. They say he put it in his pants or
25 his belt. Nobody said it was up against his skin. And he

1 covers it with his shirt.

2 Then he picks up that pipe again and goes after
3 Raymond at a quick pace and tries to hit Raymond with that
4 pipe twice. When he comes at him a second time, Raymond
5 picks up State's 8, that piece of iron enter into defense's
6 exhibits. Just as the witnesses said, and not just Travis,
7 holding it up like this to fend off blows. (Indicating.)
8 And he does, in fact, fend off his two blows.

9 And during this altercation he is either unable to
10 knock the pipe out of Pavon's hands or they both drop what
11 they have, but in any event, they end up locked up to one
12 another face-to-face. During that time maybe Raymond did
13 punch him. Raymond had every reason in the world to punch
14 him at that time.

15 And while they are grappled face-to-face like that,
16 Mr. Pavon gets his arm around his back, gets the saw out of
17 his belt that he put there for a reason, for a reason that he
18 knew at the time he put it in his belt, and he goes in
19 through his heart.

20 And this version is also corroborated by the fact of
21 where this occurred. He accosted -- Raymond had accosted
22 Mr. Pavon over in his work area. This is where the fight
23 took place. You've got the pole here. You've got the angle
24 iron there. You've got the hammer over here. That shows you
25 that Raymond didn't go to Elvin. Elvin came to Raymond.

1 Elvin came to Raymond and stabbed him. And Elvin came to
2 Raymond with not this, but something very similar to this in
3 the belt of his pants with his shirt over it. And we know
4 that not because Travis said it, because Oxendine saw him put
5 something in his belt too.

6 And up against that you have Mr. Pavon's version,
7 which, quite frankly, is preposterous. His version of what
8 went on is not corroborated by any other evidence or
9 testimony in this case. He, above all that appeared before
10 you, has a reason not to tell you the truth. And I would
11 submit, ladies and gentlemen, he has got to tell you the
12 truth. He wants you to think that there was no fault of his
13 involved in the -- that resulted in this deadly encounter.
14 And you know that that's just not true. He wants you to
15 think that Raymond attacked him rather than the other way
16 around. He wants you to think that he was afraid.

17 Did he appear to you to be the fearful type on the
18 stand? Does he appear to be the fearful type sitting in this
19 courtroom this week? Did he appear to be timid and afraid as
20 he walked away after jamming that saw through Mr. Muniz's
21 heart? Did he look like a man that was panicked or scared,
22 or was he cool as a cucumber just sauntering off? He had
23 done his job and he was getting the heck out of here.

24 And that, ladies and gentlemen, is seconds after he
25 killed Raymond Muniz. Raymond came running out the door. He

1 was three or four seconds behind. Looked over there where
2 Raymond just sauntered off across the parking lot, obviously
3 terrified.

4 He wants you to think he was being choked. It was
5 physically impossible for him to have been choked the way he
6 said he was. The only way he could have been choked by
7 Mr. Muniz is if Mr. Muniz was behind him. And it would have
8 been impossible for him, Mr. Muniz, to get stabbed in the
9 chest if that was the case.

10 It is equally impossible for him to be choked with
11 his head down against his chest like that. He was not
12 choked. That is not what prompted this deadly blow. What
13 prompted this deadly blow was anger.

14 The real reason, you know, when he testified he
15 wants you to believe that he got that tool belt -- that saw
16 out of his tool belt during the fight, because he knows that
17 indicates premeditation. He knows that that means malice
18 aforethought. So he wants you to believe that when this
19 fight took place and after he killed Raymond with that saw,
20 that he took off his tool belt and left his tool belt there
21 and took the saw. And that, ladies and gentlemen, did not
22 happen. That only happened in the mind of Elvin Pavon.

23 The judge will charge you the law in this case. And
24 your options are murder, voluntary manslaughter or not guilty
25 by virtue of the self-defense. Murder is the killing of

1 another with malice aforethought expressed or implied.

2 Malice is an evil intent.

3 And the evidence that you have of malice in this
4 case is not just from Travis, but Jeremiah Oxendine, is when
5 he took that keyhole saw and he put it in his belt, but
6 nothing having happened before that time other than just
7 talk. That's all that had gone on, bickering, bickering,
8 bickering. Nobody had threatened anybody with any kind of
9 element. Nobody had threatened anyone with any kind of
10 instrument. They were just jarring. And the fact of the
11 matter is that he had a knife and that he was going to put it
12 into him. And he was going to put an end to it by killing
13 him. And that, ladies and gentlemen, is malice aforethought.
14 And that's why this is a murder case. And this is why it's
15 not self-defense.

16 The judge will charge you on the elements of
17 self-defense. The first element of self-defense is that the
18 defendant had no fault bringing about the incident which
19 resulted in the death. So that is why he wants you to
20 believe that he had no part in this over the previous 10
21 days. That's why he wants you to believe that Raymond
22 attacked him instead of him attacking Raymond.

23 The fact of the matter is that they didn't like each
24 other. He armed himself with the intention of hurting or
25 killing Raymond. He went to Raymond's place of work and

1 encountered him, not out of fear, not due to any legal
2 provocation -- because the judge will tell you that words
3 alone are never legal provocation for a homicide -- because
4 he was tired of it and he wanted to take the law in his hands
5 and he did. And he killed Raymond.

6 And then he was so convinced that he was right in
7 his position that rather than stay there, he goes on the
8 lamb, runs from the cops for a day, although he tries to
9 claim that it was because he was scared of Travis. And he
10 doesn't turn himself in. He's found on the beach. And he's
11 gotten rid of murder weapon. Once again, the behavior of an
12 innocent man?

13 Just to affirm what I told you in opening, when he
14 took that saw and he put it in his pants or his belt, he did
15 so not out of fear, but out of anger, out of hatred; that he,
16 not Raymond, instigated this thing; that he, not Raymond, was
17 the aggressor; that he, not Raymond, brought the gun to this
18 fight. Ladies and gentlemen, that's malice aforethought and
19 that is murder.

20 THE COURT: Ladies and gentlemen, I remind you that
21 during this trial, you and I have had certain duties to
22 perform. As the trial judge, it is my responsibility to
23 preside over the trial of this case. And I have the duty to
24 rule on the admissibility of the evidence offered during this
25 trial. You are to consider only the evidence before you. If

1 there was any testimony ordered stricken from the record, you
2 must disregard that testimony. You are to consider only the
3 testimony that you've heard from the witness stand, the
4 exhibits that have been made part of the record of this case,
5 as well as any stipulations of counsel.

6 I have the additional duty to charge you the law
7 applicable to this case. As the presiding judge, I am the
8 sole judge of the law in this case. It is your duty to
9 accept the law and apply the law exactly as I state it to you
10 now. If you have any idea as to what the law is or what the
11 law ought to be and it does not agree with what I'm about to
12 tell you, you must abandon your own ideas because you are
13 sworn to accept the law and apply the law exactly as I state
14 it to you now.

15 In every case tried in this court before a jury, the
16 jury becomes the sole and exclusive judges of the facts. A
17 trial judge may not make any comment regarding the facts of
18 this case. You are not to infer from anything that I have
19 said or done throughout the progress of this case that I have
20 any opinion about the facts in this case. The law does not
21 allow me to have opinion about the facts in this case. This
22 is a matter solely for you to determine.

23 The indictment in this case charges the defendant
24 with murder. I remind you, the fact that the defendant was
25 arrested, charged and indicted in this case is not evidence

1 in this case and cannot be considered by you as evidence of
2 guilt, nor does it create any presumption or inference of
3 guilt. An indictment is simply the formal written instrument
4 which contains the charge made against the defendant. It is
5 the formal document by which this case is brought into court.

6 Just as the indictment in this case is not evidence,
7 any terminology or labels you used to refer to the
8 individuals involved in this case cannot be considered as
9 evidence. For example, the use of the words "defendant" and
10 "victim" are merely labels and may not be considered by you
11 as evidence.

12 The defendant has pled not guilty to this
13 indictment. A person charged with committing a criminal
14 offense in South Carolina is never required to prove himself
15 innocent. I charge you it is an important rule of law that
16 the defendant in a criminal trial, no matter what the
17 seriousness of the charge may be, will always be presumed to
18 be innocent of the crime for which the defendant was charged
19 and indicted unless guilt has been proven by evidence
20 satisfying you of that guilt beyond a reasonable doubt.

21 The presumption does not end when you begin your
22 deliberations but it accompanies the defendant throughout the
23 trial until you reach a verdict of guilt based upon evidence
24 satisfying the standard of guilt beyond a reasonable doubt.
25 The presumption of innocent is not mere legal theory. It is

1 not just a legal phrase. It is a substantial right to which
2 every defendant is entitled unless you the jury are satisfied
3 from the evidence of the defendant's guilt beyond a
4 reasonable doubt.

5 The State has the burden of proving the defendant
6 guilty beyond a reasonable doubt. Some of you may have
7 served as jurors before in civil cases where you were told it
8 is only true and necessary to prove that a fact is more
9 likely true than not true, such as by a greater weight or
10 preponderance of the evidence. Proof beyond a reasonable
11 doubt is proof that leaves you firmly convinced of the
12 defendant's guilt. There are very few things in this world
13 that we do know with absolute certainty. And in criminal
14 cases, the law does not require the burden of proof that
15 overcomes every possible doubt.

16 If based upon your consideration of the evidence you
17 are firmly convinced that the defendant is guilty of the
18 crime charged, you must find the defendant guilty. If, on
19 the other hand, you think there's a real possibility the
20 defendant is not guilty, you must give the defendant the
21 benefit of the doubt and find him not guilty.

22 Throughout this trial you have heard testimony
23 presented through an interpreter. Some of you may have some
24 knowledge of Spanish. However, you cannot rely on your own
25 knowledge of Spanish. Even if you disagree with the

1 interpreter's translation, you must accept the translation of
2 the interpreter as she interpreted the witnesses testimony.

3 Ladies and gentlemen, there are typically two types
4 of evidence that are presented throughout a trial, direct
5 evidence and circumstantial evidence. Direct evidence
6 directly proves the existence of a fact and does not require
7 deduction.

8 Circumstantial evidence is proof of chain of facts
9 and circumstances indicating the existence of a fact. Crimes
10 may be proven by circumstantial evidence. The law makes no
11 distinction between the weight or value to be given either
12 direct or circumstantial evidence. However, to the extent
13 the State relies on circumstantial evidence, all of the
14 circumstances must be consistent with each other, and when
15 taken together, point conclusively to the guilt of the
16 defendant beyond a reasonable doubt. If these circumstances
17 merely portray the defendant's behavior as suspicious, the
18 proof has failed.

19 The State has a burden of proving a defendant guilty
20 beyond a reasonable doubt. This burden rests with the State
21 regardless of whether the State relies on direct evidence,
22 circumstantial evidence or a combination of the two.
23 Necessarily, you must determine the credibility of the
24 witnesses who have testified in this case. Credibility
25 simply means believability. It becomes your duty as jurors

1 to analyze the facts and determine which evidence convinces
2 you of its truth. In determining the believability of the
3 witnesses who have testified in this case, you may believe
4 one witness over several witnesses or several witnesses over
5 one witness. You may believe a part of the testimony of one
6 witness and reject the remaining part of the testimony of
7 that same witness. You may believe the testimony of a
8 witness in its entirety or reject the testimony of a witness
9 in its entirety.

10 You may consider whether the witness has exhibited
11 to you any motive, interest, bias or other prejudice in this
12 case. You may also consider the manner and appearance of a
13 witness while he or she was on the witness stand.

14 There has been evidence presented that witnesses
15 have made prior statements which are not consistent with the
16 witness's present testimony. You may decide and use this
17 evidence to determine whether to believe the witness. You
18 may also use evidence of the earlier contradictory statements
19 to determine the truth of those statements. It is up to you
20 to decide whether to believe the earlier statements or to
21 believe the testimony given at trial. If a witness is shown
22 to have knowingly testified untruthfully concerning any
23 material matter, you may consider this in determining whether
24 to trust the witness's testimony as to other matters. You
25 may reject all testimony of that witness or give it the

1 weight which you think it deserves to any or all of the
2 testimony.

3 The rules of evidence ordinarily do not permit
4 witnesses to testify to opinions or to conclusions. An
5 exception to this rule is witnesses we call expert witnesses.
6 A witness who by some education and experience has become an
7 expert in some art, science, profession or calling may state
8 an opinion as to relevant and material matter in which the
9 witness claims to be an expert. It may also state the
10 reasons for that opinion. You should consider any expert
11 opinion received in evidence in this case like any other
12 evidence, give it the weight you think it deserves. If you
13 decide that the opinion of an expert witness is not based on
14 sufficient education and experience or if you conclude that
15 the reasons given in support of the opinion are not sound or
16 that the opinion is outweighed by other evidence, you may
17 disregard the opinion entirely. An expert witness's
18 testimony is to be given no greater weight than that of other
19 witnesses simply because the witness is an expert. Further,
20 you are not required to accept an expert's opinion even
21 though it is not contradicted.

22 In order to establish criminal liability, criminal
23 intent is required. For example, the mental state required
24 to be proven by the State for a particular crime, that being
25 purpose, intent, knowledge, recklessness or criminal

1 negligence, criminal intent must be proven by the State
2 beyond a reasonable doubt. Criminal intent is always a
3 matter that must be determined by the jury from the
4 circumstances surrounding the situation.

5 There is no way to prove intent to a mathematical
6 certainty. Because there is no way to tell with exact
7 certainty what the person intended to do, the law says that
8 criminal intent may be inferred under the circumstances shown
9 to have existed. This is how you make a determination of
10 whether or not the element requiring intent was present.

11 It is not necessary to establish intent by direct
12 and positive evidence, but intent may be established by
13 inference in the same way as any other fact, by taking into
14 consideration the actions of the parties and all facts and
15 circumstances in this case.

16 Criminal intent is a mental state. It is a
17 conscious wrongdoing. It is up to you to determine what the
18 defendant intended to do based upon the circumstances shown
19 to have existed.

20 The defendant is charged with the crime of murder.
21 In order to prove this crime, the State must prove beyond a
22 reasonable doubt that the defendant killed another person
23 with malice aforethought. Malice is hatred, ill will or
24 hostility forwards another person. It is the intentional
25 doing of a wrongful act without just cause or excuse and with

1 an intent to inflict an injury or under the circumstances the
2 law will infer legal intent.

3 Malice aforethought does not require that malice
4 exists for any particular time before the act is committed.
5 But malice must exist in the mind of the defendant just
6 before and at the time the act is committed. Therefore,
7 there must be a combination of the previous evil intent in
8 the act.

9 Malice aforethought may be expressed or inferred.
10 The terms "expressed" and "inferred" do not mean different
11 kinds of malice but merely the manner in which malice was
12 shown to exist, that is either by direct evidence or by
13 inference from the facts and circumstances which are proved.

14 Expressed malice is shown when a person speaks words
15 which express hatred or ill will toward another or person
16 prepared beforehand to do the act which was later
17 accomplished. Malice may be inferred from conduct showing a
18 total disregard for human life. If facts are proved beyond a
19 reasonable doubt sufficient to raise an inference of malice
20 to your satisfaction, this inference will simply be an
21 evidentiary fact to be considered by you along with the other
22 evidence along in this case. And you may give it the weight
23 that you decide it should be received.

24 If you find that the State has failed to prove
25 beyond a reasonable doubt that the defendant committed

1 murder, you may consider whether the State has proved beyond
2 a reasonable doubt that the defendant committed voluntary
3 manslaughter, a lesser-included offense.

4 To prove voluntarily manslaughter, the State must
5 prove beyond a reasonable doubt that the defendant took the
6 life of another in the sudden heat of passion based upon
7 sufficient legal provocation. Both heat of passion and
8 sufficient legal provocation must be present at the time of
9 the killing to constitute voluntary manslaughter. Sudden
10 heat of passion may for a time affect a person's self-control
11 and temporarily disturb a person's reason. The sudden heat
12 of passion must be the type that would make an ordinarily
13 person unable to coolly reflect on his actions and produce an
14 uncontrollable impulse to be violent.

15 Sufficient legal provocation must be the type that
16 would make a person of ordinary reason and caution become
17 enraged and to lose control temporarily. The provocation
18 needed for voluntary manslaughter must come from some act of
19 or related to the victim.

20 The exercise of a legal right no matter how
21 offensive it is to another is never sufficient legal
22 provocation for voluntary manslaughter. If in the heat of
23 passion had cooled or if there was enough time between the
24 provocation, if any, and the killing for the passion of a
25 reasonable person to cool, the killing would not be voluntary

1 manslaughter. In deciding whether a reasonable person would
2 have had enough time to cool off, you should consider all of
3 the circumstances surrounding the killing. You may consider
4 the nature of the provocation, if any, the defendant's mental
5 and physical state, and the circumstances and relationship
6 between the parties.

7 The defendant has raised the defense of
8 self-defense. Self-defense is a complete defense. And if it
9 is established, you must find the defendant not guilty. The
10 State has the burden of disproving self-defense by proof
11 beyond a reasonable doubt. If you have a reasonable doubt of
12 the defendant's guilt after considering all of the evidence,
13 including the evidence of self-defense, then you must find
14 the defendant not guilty.

15 On the other hand, if you have no reasonable doubt
16 of the defendant's guilt after considering all of the
17 evidence, including the evidence of self-defense, then you
18 must find the defendant guilty.

19 The following elements are required to establish
20 self-defense. First, the defendant must be without fault in
21 bringing on the difficulty. If the defendant's conduct was
22 the type which was reasonably calculated to and did provoke a
23 deadly assault, the defendant would be at fault in bringing
24 on the difficulty and would not be entitled to acquittal
25 based upon self-defense.

1 We also have the law in this state regarding what is
2 sometimes referred to as mutual combat, where two persons
3 mutually engage in combat and one kills another, and at the
4 time of the killing it was maliciously done. It is murder.
5 If it is done in sudden heat and passion upon sufficient
6 provocation without premeditation or malice, it would be
7 voluntary manslaughter.

8 If the defendant voluntarily participated in mutual
9 combat for the purpose other than protection, the killing of
10 the victim would not be self-defense. This is true even if
11 during the combat, the defendant feared death or serious
12 bodily injury.

13 However, if before the killing is committed the
14 defendant withdraws and tried in good faith to avoid further
15 conflict, and either by word or act, makes that fact known to
16 the victim, he would be without fault in bringing on the
17 difficulty. For mutual combat, there must be a mutual intent
18 and willingness to fight. This intent may be shown by the
19 acts and conduct of the parties and the circumstances
20 surrounding the combat. In addition, it must be shown that
21 there was a pre-existing ill will between the parties and
22 both parties were armed with deadly weapons.

23 The second element of self-defense is that the
24 defendant was actually in imminent danger of death or serious
25 bodily injury or that the defendant actually believed he was

1 in imminent danger of death or serious bodily injury. If the
2 defendant was actually in imminent danger, it must be shown
3 that the circumstances would have warranted a person of
4 ordinary firmness and courage to strike the fatal blow to
5 prevent death or serious bodily injury. If the defendant
6 believed he was in imminent danger of death or seriously
7 bodily injury, must be shown that a person reasonable prudent
8 of ordinarily firmness and courage would have had the same
9 believe.

10 In deciding whether the defendant was actually or
11 believed he was in imminent danger of death or serious bodily
12 injury, you should consider the facts and circumstances
13 surrounding the crime, including the physical and condition
14 and characteristic of the defendant and the victim.

15 The defendant does not have to show that he was
16 actually in danger. It is enough that the defendant believes
17 he was in imminent danger and a reasonably prudent person of
18 ordinary firmness and courage would have had the same
19 believe. The defendant has a right to act on appearances
20 even though the defendant's beliefs may have been mistaken.
21 It is for you to decide whether the defendant's fear of
22 immediate danger of death or serious bodily injury was
23 reasonable and would have been felt by an ordinary person in
24 the same situation.

25 Words accompanied by hostile acts may, depending

1 upon the circumstances, establish self-defense. Voluntary
2 manslaughter is the unlawful killing of a human being in
3 sudden heat of passion upon sufficient legal provision. When
4 death is caused by the use after deadly weapon, words alone,
5 however offensive, cannot constitute sufficient legal
6 provocation. Rather, the offending words must be accompanied
7 by some overt threatening act which would have produced the
8 heat of passion. Merely displaying a willingness to fight
9 and accompanied by any overt threatening act towards the
10 defendant does not constitute sufficient legal provocation.

11 Evidence of prior difficulties between the defendant
12 and the victim may be considered in deciding whether a threat
13 existed or the defendant had a reason to believe a threat
14 existed and how serious that threat was. The relative sizes,
15 ages and weights of the defendant and victim may be
16 considered in deciding the apparent or actual need for force
17 of defense and the amount of force needed.

18 The reputation of the victim as a violent person may
19 be considered in deciding whether there was a need for force,
20 whether the defendant had reason to believe there was a need
21 for force, and whether deadly force was reasonably necessary.

22 Prior incidents of violent by the victim may be
23 considered in deciding whether the defendant actually
24 believed he was in imminent danger of death or serious bodily
25 injury or was actually in imminent dangerous. Threats made

1 by the victim may be considered in determining whether the
2 defendant actually was or believed he was in imminent danger.

3 The final element of self-defense is that the
4 defendant had no other probable way to avoid the danger of
5 death or serious bodily injury other than to act as the
6 defendant did in this particular -- other than to act as the
7 defendant did in this particular instance. If the defendant
8 was in his place of business, the defendant had no duty to
9 retreat before acting in self-defense. The defendant had no
10 duty to retreat if by doing so the danger of being killed or
11 suffering serious bodily injury would increase.

12 A person cannot continue required to make an exact
13 calculation as to the degree or amount of force which may be
14 needed to avoid death or serious bodily injury. Therefore,
15 in self-defense, the defendant has the right to use the force
16 needed to avoid death or serious bodily harm. The force used
17 in self-defense does not have to be limited to the degree or
18 amount of force used by the victim. The defendant has the
19 right to use so much force as appears to be necessary for the
20 complete self-protection, and which a person of ordinary
21 reason and firmness would have believed to be needed to
22 prevent death or serious bodily harm.

23 Ladies and gentlemen, I'm going to go over the
24 verdict form with you. Madam Foreperson, it is your
25 responsibility to complete the verdict form. There's

1 absolutely no significance in the way that I go over this
2 verdict form with you. It's simply something has to go on
3 the paper first.

4 In the court of general sessions, for the Ninth
5 Judicial Circuit, 2015-GS-10-418, the State of South Carolina
6 vs. Dennis Elvin Cervantes Pavon, we the jury find the
7 defendant not guilty, or, we the jury find the defendant
8 guilty of murder, or, we the jury find the defendant guilty
9 of voluntary manslaughter. You make a selection."

10 Once you have completed and made a unanimous
11 decision, meaning all twelve of you agree, you must sign and
12 date the verdict form indicating you have made a decision.

13 To my two alternates, this completes your service to
14 this case.

15 This is the last time that I say this to any of you.
16 Do not begin your deliberations. Do not discuss this case
17 among yourselves. We will gather the verdict form and the
18 evidence to go back with you. Once we have done that, the
19 bailiffs will indicate to you that you may begin your
20 deliberations. The alternates will be put in a separate room
21 with each other. Again, the same admonitions. Once the
22 first 12 have begun their deliberations, I will release you
23 from your service.

24 Please rise for the jury.

25 (Whereupon, the jury leaves open court at 02:42 PM.)

1 THE COURT: Any objections, corrections to the
2 charges from the State?

3 MR. DURANT: No, Your Honor.

4 THE COURT: From the Defendant?

5 MS. PARNALL: No, Your Honor.

6 THE COURT: Reserving all your previous objections?

7 MS. PARNALL: Correct.

8 THE COURT: All right.

9 (Whereupon, the jury deliberates at 03:03 PM.)

10 (Court's Exhibit 2, Duties of jury and trial judge,
11 was marked for identification.)

12 (Court's Exhibit 3, Jury Note asking to see the
13 keyhole saw and explanation of charges, was marked for
14 identification.)

15 THE COURT: I have a note from the jury. They
16 indicated they wish to break for the evening. So we are
17 going to break for the evening, have them come back in the
18 morning at 9 a.m.

19 (Whereupon, the jury returns to open court at 04:59
20 PM.)

21 THE COURT: Madam Foreperson, ladies and gentlemen
22 of the jury, I received information y'all wish to break for
23 the evening; is that correct, madam?

24 THE FOREPERSON: Yes, ma'am. Yes, Your Honor.

25 THE COURT: Is there any member of the jury panel

1 who cannot return tomorrow at 9 a.m. and stay to continue
2 your deliberations? If you cannot stay, please stand.

3 (No response from the jury.)

4 THE COURT: Thank you. All twelve have indicated
5 they are able to stay. Ladies and gentlemen, we typically
6 keep you late, but you've indicated that you would like to go
7 ahead and break for the evening. You must stop your
8 deliberations. You cannot -- I understand you will be alone,
9 but all the admonitions remain. You must not think about
10 this case or continue deciding any issue in this case. You
11 cannot talk about this case with anyone in any form or
12 fashion. You may not do any independent research.

13 Any questions? Madam Foreperson, are there any
14 questions or concerns that your jury would have; that your
15 jury members have before we break for the evening?

16 THE FOREPERSON: No, Your Honor.

17 THE COURT: Please report back to your jury room at
18 9 a.m., 9 a.m. to continue your deliberations. Please rise
19 for the jury.

20 (Whereupon, the jury leaves open court at 05:01 PM.)

21 THE COURT: Thank you. Anything before we break for
22 the evening, from the State?

23 MR. DURANT: No, ma'am.

24 THE COURT: From the Defendant?

25 MS. PARNALL: Nothing from the Defense, Your

1 Honor.

2 THE COURT: Thank you. We are at ease. Jury will
3 come back, at 9 a.m.

4 (Court's Exhibit 4, Jury Note asking to take home
5 the explanation of charges, was marked for identification.)

6 (Court's Exhibit 5, Jury Note asking what hand did
7 the defendant stab the victim with and asking for written
8 statement to police, was marked in evidence.)

9 (Whereupon, the trial is adjourned for the day.)

10 (Whereupon, the trial continues on November 13,
11 2015.)

12 (Whereupon, the jury returns to open court at 09:14
13 AM.)

14 THE COURT: Ladies and gentlemen, did every member
15 of the jury panel comply with my instructions over the
16 evening hour? If you did not, please stand.

17 (No response from the jury.)

18 THE COURT: Thank you. Everyone complied with my
19 instructions over the evening hour. You have sent a note
20 that you wish to watch the video.

21 Ladies and gentlemen, I assume there's people in the
22 courtroom unrelated to this case, and so we will bring you
23 back in to watch the video. So understand that we've been
24 working while y'all were back there. So, Mr. Durant, please
25 play the video.

1 (Video Playing.)

2 MR. DURANT: That is it, Your Honor, unless they
3 would like me to play it again.

4 THE COURT: Madame Foreperson?

5 THE FOREPERSON: Yes, if you could please play it
6 again.

7 (Video Playing.)

8 MR. DURANT: Again?

9 THE COURT: Mr. Durant, Madam?

10 THE FOREPERSON: We are good, Your Honor. Thank
11 you.

12 THE COURT: Please go and continue your
13 deliberations. Please rise for the jury.

14 (Whereupon, the jury leaves open court at 09:17 AM.)

15 (Court's Exhibit 6, Jury's request to watch video,
16 was marked for identification.)

17 THE COURT: Anything before we bring in the jury,
18 from the State?

19 MR. DURANT: No, ma'am.

20 THE COURT: From the Defendant?

21 MS. PARNALL: Nothing, Your Honor.

22 (Whereupon, the defendant is present.)

23 THE COURT: Let's bring in the jury.

24 (Whereupon, the jury returns to open court at 02:29
25 PM.)

1 THE COURT: Please be seated. Madame Foreperson, I
2 understand you have reached a verdict. If you will fold your
3 verdict form, please, and hand it to the bailiff. Please
4 stand.

5 THE CLERK: In the court of General Sessions, Case
6 No. 2015-GS-10-00418, State of South Carolina vs. Dennis
7 Elvin Cervantes Pavon, we the jury find the defendant Dennis
8 Elvin Cervantes Pavon guilty of murder, signed by the
9 foreperson, dated November 13th, 2015.

10 THE COURT: Anything further required of the jury
11 from State?

12 MR. DURANT: No, ma'am.

13 THE COURT: From the defendant?

14 MS. PARNALL: We just ask that the jury be polled,
15 Your Honor.

16 THE COURT: Mr. Clerk, if you will poll the jury
17 using the jury numbers.

18 THE CLERK: When I call your juror number, please
19 raise your hand to identify yourself. And I will ask you two
20 questions. Please answer yes or no.

21 Juror No. 34?

22 JUROR NO. 34: Yes.

23 THE COURT: Is this your verdict?

24 JUROR NO. 34: Yes, sir.

25 THE COURT: Is it still your verdict?

1 Mr. Cochran, did you advise Mr. Pavon that this is a
2 violent and a most serious offense?

3 MR. COCHRAN: I believe he's been advised of that,
4 Your Honor.

5 THE COURT: And, Ms. Parnall, did you advise
6 Mr. Pavon of his right to appeal?

7 MS. PARNALL: Your Honor, I think we have at some
8 point in the past, but if I may just once again tell him
9 again.

10 THE COURT: Please do.

11 MS. PARNALL: Thank you, Your Honor.

12 THE COURT: Mr. Pavon, do you wish to address the
13 Court? You do not have to. I understand you probably have
14 been advised not to address the Court at this time.

15 THE DEFENDANT: No.

16 THE COURT: Anything further, Ms. Parnall?

17 MS. PARNALL: Nothing further.

18 THE COURT: Anything further, Mr. Cochran?

19 MR. COCHRAN: No, Your Honor.

20 THE COURT: It's the order of the Court on
21 2015-GS-10-418 that you be committed to the State Department
22 of Corrections for a term of 30 years. I give you credit for
23 time that you have served. Good luck to you, sir.

24 MR. COCHRAN: Thank you, Your Honor.

25 (Whereupon, proceedings are adjourned.)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
	)	Charge: Murder
State of South Carolina,	)	Warrant No: 2014A1020900179
v.	)	
DENNIS ELVIN CERVANTES PAVON,	)	DEFENDANT'S MOTION FOR PRE-TRIAL HEARING
DEFENDANT	)	TO DETERMINE § 16-11-450 IMMUNITY

TO BRUCE DURANT, CHIEF DEPUTY SOLICITOR FOR THE NINTH JUDICIAL CIRCUIT

YOU WILL PLEASE TAKE NOTICE THAT the Defendant will move the Court, through his attorney Christina Parnall, for a pre-trial hearing to determine if the defendant qualifies for immunity from prosecution based on the Protection of Persons and Property Act (the "Act"), found in § 16-11-410, *et seq.*, of the S.C. Code and *State v. Duncan*, 392 S.C. 404, 709 S.E.2d 662 (2011).

Respectfully submitted,

Christina Parnall

Christina D. Parnall

ATTORNEY FOR DENNIS E. CERVANTES PAVON

101 Meeting Street, Fifth Floor

Charleston, SC 29401

(843) 958-1850

FILED
2015 OCT 19 AM 11:54
JULIE W. STRONG
CLERK OF COURT
BY MS

Charleston, South Carolina

October 19, 2015

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the attached copy of the Motion for Pre-Trial Hearing on Immunity in the case of State v. Dennis Elvin Cervantes Pavon was served by me upon the Solicitor's Office on the 19th day of October 2015, and leaving a copy thereof with Adisha R. Charles, a person of discretion working there.

Rebecca Williams
AFFIANT OF SERVICE

FILED

2015 OCT 19 AM 11:54

JULIA A. STRONG
CLERK OF COURT

BY

PRF

Requests

① Can we see the Penhale Skw?

② Explanation of charges

[Signature]

You have received all
the evidence admitted.

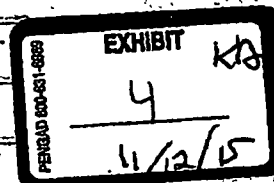
[Signature]



Request

① Can we take home the
Explanation of Charges?

for



Questions

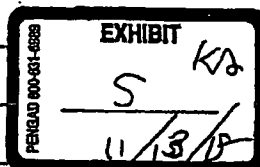
① What ~~kind~~ led the defendant
stab the victim?

② ~~What~~ Simsa's written state-
ment to police?

[Signature]

You have heard all the
testimony in this case
and received into
evidence all exhibits
that are part of
the record.

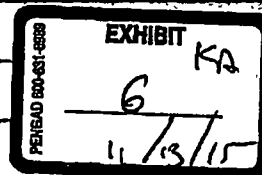
[Signature]



Request —

We would like to watch the
video again of the victim and
defendant leaving the store following
the stabbing.

[Signature]



THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions

The Honorable Kristi Harrington, Presiding Judge

INDICTMENT NO.: 2015GS1000418
WARRANT NO.: 2014A1020900179

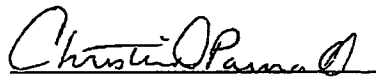
STATE OF SOUTH CAROLINA, RESPONDENT

vs.

DENNIS ELVIN CERVANTES-PAVON

NOTICE OF APPEAL

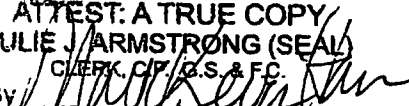
Dennis Elvin Cervantes-Pavon appeals his conviction(s) and sentence(s) following the jury trial held before the Honorable Kristi Harrington, wherein he was found guilty and sentenced on November 13, 2015.



Christina D. Parnall
Assistant Public Defender
Attorney for Dennis Elvin Cervantes-Pavon
Charleston County Public Defender's Office
101 Meeting Street, Suite 500
Charleston, SC 29401
(843) 958-1850

Other counsel of record are:

Bruce Durant, Chief Deputy Solicitor
Office of the Solicitor, Ninth Judicial Circuit
O.T. Wallace County Office Building
101 Meeting Street, 4th Floor
Charleston, SC 29401
(843) 958-1900

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., S.S. & F.C.
By: 
DEPUTY CLERK

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

FILED
 2015 NOV 18 AM 11:14

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions

CLERK OF COURT
 BY _____

The Honorable Kristi Harrington, Presiding Judge

INDICTMENT NO.: 2015GS1000418
WARRANT NO.: 2014A1020900179

STATE OF SOUTH CAROLINA, RESPONDENT

vs.

DENNIS ELVIN CERVANTES-PAVON, APPELLANT

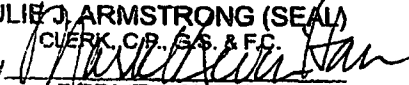
PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Bruce Durant, Chief Deputy Solicitor for Charleston County, by hand delivering a copy of it to the Charleston County Solicitor's Office at 101 Meeting Street, Charleston, South Carolina 29401, on November 18, 2015.



Rebecca A. Williams
 Paralegal to Attorney Christina D. Parnall
 Charleston County Assistant Public Defender
 O. T. Wallace County Office Building
 101 Meeting Street, 5th Floor
 Charleston, SC 29401
 (843) 958-1850

Dated: 11/18, 2015.

ATTEST: A TRUE COPY
 JULIE J. ARMSTRONG (SEAL)
 CLERK, C.P., S.S. & F.C.
 By 
 DEPUTY CLERK

CERTIFICATE OF SERVICE BY HAND DELIVERY

I hereby certify that the Notice of Appeal regarding the case of: **Dennis Elvin Cervantes-Pavon**

has been served on Roberto Brock of the Ninth Circuit Solicitor's Office, in receipt for Bruce Durant, Chief Deputy Solicitor for the Ninth Judicial Circuit on November 18, 2015.

Rebecca Williams
AFFIANT

FILED
CLERK OF COURT
JULIE J. ARMSTRONG

2015 NOV 18 AM 11:14

1000

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., C.S. & EC
By Julie J. Armstrong
DEPUTY CLERK

384
DBB20140808827

WITNESSES

Mt. Pleasant Police Department

AGENCY CASE NUMBER

2014P0007144

ARREST WARRANT NUMBER

2014A1020900179

DATE OF ARREST

August 14, 2014

ACTION OF GRAND JURY

TRUE BILL

Nancy McKee
Foreperson of Grand Jury
Date

FEB 10 2015

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2015GS1000418

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

February 2015 Term

THE STATE

vs.

DENNIS ELVIN CERVANTES-PAVON

DOB: [REDACTED]

H/M

Indictment for

MURDER

FILED

2/19/2015 2:18:29 PM
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

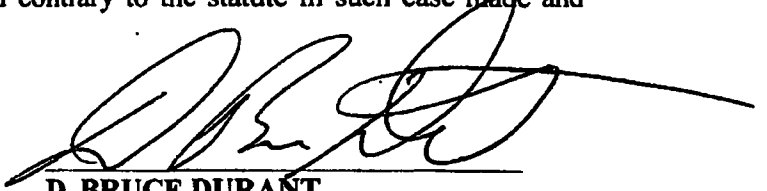
INDICTMENT

At a Court of General Sessions, convened on February 9, 2015, the Grand Jurors of Charleston County present upon their oath:

MURDER

That in Charleston County on or about August 13, 2014, with malice aforethought, **DENNIS ELVIN CERVANTES- PAVON** did kill and murder Raymond Muniz by means of stabbing him in the chest, and that Raymond Muniz did die in Charleston County as a proximate result thereof on August 13, 2014; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



D. BRUCE DURANT
CHIEF DEPUTY SOLICITOR

COUNTY OF CHARLESTON

STATE VS

DENNIS ELVIN CERVANTES-PAVONAKA. Dennis Elvin Cervantes- PavonRace: Sex: Age: DOB: SS#: Address: City, State, Zip: DL# SID# *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO MurderIn violation of § 16-03-0010, 0020 of the S.C. Code of Laws, bearing CDR Code # 0116☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is ☒ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury

(def's initials)

The plea is ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State

ATTEST

1801

D Bruce DuRant, Chief Deputy Solicitor SC Bar #

Defendant

Attorney for Defendant

79005

SC Bar #

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections☐ County Detention Center,for a determinate term of 30 days/months/years or☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$, provided that upon the service of days/months/years and or paymentof \$, plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: ☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ Ordered

PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service EmploymentPayment Terms Obtain GED ☐☐ Set by SCDPPPS Attend Voc. Rehab. Or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning \$ Paid to Public Defender FundOther: Recipient: *Fine: \$

§14-1-206 (Assessments 107.5%)

\$

§14-1-211 (A)(1)(Conv. Surcharge)

\$100

\$ 100.00

§14-1-211 (A)(2)(DUI Surcharge)

\$100

\$

§56-5-2995 (DUI Assessment)

\$12

\$

§56-1-286 (DUI Breath Test)

\$25

\$

Proviso 47.9 (Public Def/Prob)

\$500

\$

§14-1-212 (Law Enforce. Funding)

\$25

\$ 25.00

§14-1-213 (Drug Court Surcharge)

\$150

\$

§50-21-114 (BUI Breath Test Fee)

\$50

\$

§56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$

Proviso 90.5 (SCCJA Surcharge)

\$5

\$ 5.00

3% to County (if paid in installments)

\$

\$ 3.50

TOTAL

\$ 133.50Clerk of Court/Deputy Clerk. Court Reporter: Karen AndersonPresiding Judge: Judge Code: Sentence Date: 11/03/15

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,


Susan B. Hackett
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 14th day of October, 2016.