



CYRUS R. VANCE, JR.
DISTRICT ATTORNEY

DISTRICT ATTORNEY – NEW YORK COUNTY

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DA VANCE: CONSTRUCTION COMPANY FOREMAN SENTENCED TO PRISON FOR DEATH OF WORKER ON SITE

Foreman Directed Workers to Perform Illegal Excavation Work, Ignored Repeated Warnings about Unsafe Conditions

Manhattan District Attorney Cyrus R. Vance, Jr., today announced the sentencing of WILMER CUEVA, 51, to 1-to-3 years in state prison for endangering several workers at the construction site he managed and causing the death of 22-year-old worker Carlos Moncayo. On November 4, 2016, the defendant was [convicted](#) by a New York State Supreme Court jury of Criminally Negligent Homicide and Reckless Endangerment.

“Wilmer Cueva knowingly and repeatedly risked his workers’ lives in service of an ambitious construction schedule,” said District Attorney Vance. “In the face of multiple warnings about the perilous conditions he created at 9-19 Ninth Avenue, Cueva personally directed—and then declined to stop—his illegal excavation work, and Carlos Moncayo, a young man working to support his family, perished needlessly as a result. I hope that the justice obtained for his preventable death will galvanize other construction supervisors to prioritize their workers’ safety ahead of expediency and profit.

“I encourage construction workers to report unsafe working conditions anonymously and directly to our Office using WhatsApp at 646-712-0298. The endangerment of workers is a crime, and this Office won’t let it stand.”

DOI Commissioner Mark G. Peters said: “Safety should be the paramount goal for anyone on construction sites. Sadly, as the foreman on a Ninth Avenue job in 2015, this defendant failed his duty to safeguard the site, disregarding important warnings about the fortification of a trench, indifference that ultimately resulted in a worker’s death. Justice can never fully answer for such a grave consequence, but it can appropriately call individuals and companies to account for willful neglect, as it did in this case. DOI continues to work with the Manhattan District Attorney on these important construction safety investigations, exposing

wrongdoing, rooting out fraud, and educating construction workers about safety through proactive initiatives.”

As proven at trial, CUEVA was employed by SKY MATERIALS, an excavation subcontractor, as an on-site foreman at 9-19 Ninth Avenue, where he was responsible for overseeing ongoing construction work and observing proper safety protocols at the active building site.

As required by the New York City Building Code and the Occupational Safety & Health Administration, excavations deeper than five feet must be fortified in order to protect workers and guard against collapse. Typically, fortification is achieved by sloping or shoring the walls of the trench. The trenches at the 9-19 Ninth Avenue, however, were not protected by any method of fortification, and in spite of repeated warnings, the unsecured trenches remained unaddressed by CUEVA.

On April 6, 2016, at approximately 9:45 a.m., an inspector observed that a trench – which measured approximately seven feet in depth -- was not secured, and alerted CUEVA, who was on site supervising construction work. The defendant, however, did not address the safety inspector’s warning nor halt ongoing excavation work, and less than an hour later, the unsecured trench had reached a depth of approximately 13 feet. The inspector later observed several workers inside the unprotected trench, issued another warning to CUEVA, and informed the defendant that the workers needed to get out of the trench immediately. The inspector also suggested an alternate method of completing the task that did not require workers to be inside the trench. CUEVA, however, rejected the inspector’s proposal and allowed work to continue in the unprotected trench for nearly two more hours.

At approximately 11:50 a.m., after CUEVA had received several warnings about these dangerous conditions, the trench collapsed, fatally crushing Moncayo.

Manhattan District Attorney’s Construction Safety Community Project

In January 2016, District Attorney Vance established the Office’s Construction Safety Community Project to train construction workers to recognize safety hazards and report them to law enforcement agencies. To date, prosecutors and community coordinators from the District Attorney’s Office have given more than two dozen presentations in English and Spanish to more than 850 workers.

Workers are additionally encouraged to report unsafe work conditions anonymously and directly to the District Attorney’s Office using WhatsApp at 646-712-0298. Workers should include as much available information as possible in their reports, including: photos or videos depicting the conditions; photos of work permits; the names of the contractor, subcontractor, and supervisors on the project; the project address; and the date and time of any incidents.

Assistant District Attorney Diana Florence, Attorney-in-Charge of the Construction Fraud Task Force and Senior Investigative Counsel of the Rackets Bureau, handled the prosecution of the case with the assistance of Assistant District Attorney Carey Ng and under the supervision of Assistant District Attorney Judy Salwen, Principal Deputy Chief of the

Rackets Bureau, Assistant District Attorney Jodie Kane, Chief of the Rackets Bureau, and Executive Assistant District Michael Sachs, Chief of the Investigation Division. Special Assistant District Attorney Kate Zdrojeski, Principal Community Coordinator for Immigrant Communities and Press Officer Hildalyn Colón Hernández, Investigative Analyst Conor Prior, and former Investigative Analyst Devon Rettew provided additional assistance with the case.

District Attorney Vance thanked the following agencies and individuals for their assistance with the investigation: DOI, and in particular, Deputy Commissioner and Chief of Investigations Michael Carroll, First Deputy Commissioner Lesley Brovner, Inspector General Gregory Cho, Chief Investigator James McElligott, Chief Investigator Barry Romm, Assistant Inspector General Tiffany Dumas, and Director of the Computer Forensics Unit Erskine Fleming; OSHA, and in particular, Assistant Area Director of the Manhattan Area Office Mitchel Konca; and NYPD, and in particular, the 6th Precinct Detective Squad, including Sergeant Kevin Blake and Detective Ryan Glas, and the Manhattan South Homicide Squad, including Detective John Flynn.

Defendant Information:

WILMER CUEVA, D.O.B. 6/22/1965
Elmwood Park, NJ

Convicted:

- Criminally Negligent Homicide, a class E felony, 1 count
- Reckless Endangerment in the Second Degree, a class A misdemeanor, 4 counts

Sentenced:

- 1-to-3 years in state prison

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