



CYRUS R. VANCE, JR.
DISTRICT ATTORNEY

DISTRICT ATTORNEY – NEW YORK COUNTY

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DA VANCE: CONSTRUCTION COMPANY CONVICTED AT TRIAL FOR DEATH OF 22-YEAR-OLD WORKER AT MEATPACKING DISTRICT SITE

Harco Construction Failed to Address Unsafe Working Conditions, Leading to Fatal Cave-In

Manhattan District Attorney Cyrus R. Vance, Jr., today announced the trial conviction of HARCO CONSTRUCTION LLC (“HARCO”), a/k/a “H&H Builders, Inc.” for recklessly causing the death of a 22-year-old construction worker, Carlos Moncayo, by failing to heed and address unsafe work conditions at a construction site in the Meatpacking District, contributing to the collapse of an excavation pit and the death of the victim. HARCO was convicted following a bench trial in New York State Supreme Court of the top count of Manslaughter in the Second Degree, as well as Criminally Negligent Homicide and Reckless Endangerment, and is expected to be sentenced on July 13, 2016.

“Carlos Moncayo’s death at a Manhattan construction site may have been foreseeable and preventable, but his family can be assured that it will not be in vain. Today’s guilty verdict should signal to the construction industry that managing a project from afar does not insulate a corporation or general contractor from criminal liability. Just as a supervisor can be held accountable for a safety lapse resulting in a fatality at a factory, construction companies are responsible for the safety of the individuals that work on their projects, regardless of union or immigration status. The safety of our city begins with the safety of those who lay the foundation. I want to thank Judge Bartley for his careful attention to the facts of this case. I also want to thank the Moncayo family, whose strength throughout this trial has been remarkable: Carlos’ mother traveled to New York from Ecuador at great personal sacrifice and, over the past several weeks, the family has endured days of grueling testimony about the horrific death of a loved one buried alive in an unsecured trench more than 13 feet deep.

“My Office’s Rackets Bureau and our partners at the Department of Investigation, the Occupational Safety & Health Administration, the New York Police Department, and in the [Construction Fraud Task Force](#) will continue to pursue criminal charges against those who place expediency and profit above individual safety. It is my sincere hope that today’s

conviction inspires significant change in the construction industry, prompted by the kind of tragedy that can and must be prevented as New York experiences historic growth and expansion.”

Department of Investigation (“DOI”) Commissioner Mark G. Peters said: “Today’s conviction delivers the important message that we will hold construction companies accountable when they callously disregard their workers’ safety. The evidence presented at trial underscored a troubling reality: Harco Construction LLC, like too many others throughout the City, disregarded repeated warnings about hazards that endangered its workers, leading to a tragic and preventable death. DOI will continue to work with the Manhattan District Attorney and our other law enforcement partners to investigate systemic construction safety issues and provide independent oversight that protects workers.”

As proven at trial, between December 2014 and March 2015, HARCO, a general contractor, was hired to manage and oversee construction at 9-19 Ninth Avenue in the Meatpacking District, which included observation of basic safety precautions such as those specified by the New York City Building Code and the Occupational Safety & Health Administration (“OSHA”). For example, safety regulations require excavations deeper than five feet to be fortified in order to protect workers and prevent structural collapses prior to the implementation of permanent support systems. Common methods of fortification including shoring, which prevents ground movement by bracing trench walls with physical barriers, and sloping, which lessens the gradient pressure of trench walls and decreases the chances of a cave-in.

The trenches at 9-19 Ninth Avenue, however, were not secured by sloping, shoring, or any other method of fortification. In February 2015, repeated warnings were given about the lack of required fortification, but in spite of those concerns, safety practices did not improve and remained unresolved for a period of several months.

At approximately 9:45 a.m. on April 6, 2015, several construction workers were performing work inside an unsecured trench, which was approximately seven feet in depth—two feet deeper than the minimum required for basic fortification. Less than one hour later, the unprotected trench had reached a depth of approximately 13 feet. Despite the lack of fortification and the increasing depth of the trench, ongoing work did not cease at the excavation pit.

At approximately 11: 50 a.m., the trench collapsed and fatally crushed one of the workers, a 22-year-old young man named Carlos Moncayo.

The cases against the other defendants [indicted](#) in connection with the case—ALFONSO PRESTIA, WILMER CUEVA, and SKY MATERIALS CORP., an excavation subcontractor—are open and pending.

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 Attorney David Szuchman, Chief of the Investigation Division. Special Assistant District Attorney Kate Zdrojeski, Principal Community Coordinator for Immigrant Communities and Press Officer Hildalyn Colón Hernández, and 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, Associate Commissioner Michael Carroll, 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:

HARCO CONSTRUCTION LLC, a/k/a “H&H Builders, Inc.”
New York, NY

Convicted:

- Manslaughter in the Second Degree, a class C felony, 1 count
- Criminally Negligent Homicide, a class E felony, 1 count
- Reckless Endangerment in the Second Degree, a class A misdemeanor, 3 counts

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