

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: APRIL 4, 2012)

STATE OF RHODE ISLAND	:	
	:	
V.	:	C.A. NO. P1-2010-3825B
	:	
MAURICIO AREVALO	:	

DECISION

PROCACCINI, J. The defendant, Mauricio Arevalo (the “Defendant”), is charged with the crime of murder in the first degree of Juan Carlos Mejia Ixcuna (“Mr. Ixcuna” or “the victim”), in violation of G.L. 1956 §§ 11-23-1 and 11-23-2.<sup>1</sup> The Defendant is also charged with conspiracy to commit murder, in violation of § 11-1-6.<sup>2</sup>

The Defendant waived his right to a trial by jury. This Decision follows the non-

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<sup>1</sup> Section 11-23-1 states:

“The unlawful killing of a human being with malice aforethought is murder . . . Any other murder is murder in the second degree. The degree of murder may be charged in the indictment or information, and the jury may find the degree of murder, whether the murder is charged in the indictment or information or not, or may find the defendant guilty of a lesser offense than that charged in the indictment or information, in accordance with the provisions of § 12-17-14.”

At the same time, § 11-23-2 describes the penalties for murder as follows: “Every person guilty of murder in the first degree shall be imprisoned for life . . . Every person guilty of murder in the second degree shall be imprisoned for not less than ten (10) years and may be imprisoned for life.”

<sup>2</sup> Section 11-1-6 states the following with regard to the crime of conspiracy:

“Except as otherwise provided by law, every person who shall conspire with another to commit an offense punishable under the laws of this state shall be subject to the same fine and imprisonment as pertain to the offense which the person shall have conspired to commit, provided that imprisonment for the conspiracy shall not exceed ten (10) years.”

jury trial of this matter.<sup>3</sup>

## I

### FACTS & TRAVEL

There were fifteen murders in the city of Providence in 2010.<sup>4</sup> This is the story of one of the most brutal and senseless murders that year. On September 25, 2010, at approximately 3:00 a.m., an argument over a Corona beer ignited a violent confrontation that left Juan Carlos Mejia Ixcuna dead, the victim of twenty-one stab wounds.

Just prior to this confrontation, the Defendant was sitting on his front stairs at 200 Messer Street, Providence, Rhode Island. After a long evening of celebrating his birthday at several nearby restaurants and bars, the Defendant was joined by two acquaintances, Julio Arevalo and Jilber Cordova. On the stairs, with the three men, was a 12-pack of Corona beer. Shortly thereafter, Mr. Ixcuna approached and demanded a beer. When his demand was denied, he immediately expressed his displeasure by swinging a belt against a fence in front of the stairs in the direction of the three men. An escalating confrontation ensued that ended with Mr. Ixcuna lying in a pool of blood across the street.

This Court is now called upon to sort out the events of this tragic evening.

On December 22, 2010, the State of Rhode Island charged that on or about September 25, 2010, near 200 Messer Street in Providence, the Defendant conspired to murder and did murder Juan Carlos Mejia Ixcuna.

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<sup>3</sup> Three individuals, including the Defendant, were originally indicted for murder and conspiracy to commit murder. The Defendant's co-defendants, Jilber Cordova and Julio Arevalo, have since negotiated separate plea agreements and are not defendants in this trial.

<sup>4</sup> See Gregory Smith, *Homicides decline in Providence, figures show*, Providence Journal, Jan. 10, 2011 (reporting figures from the Rhode Island State Police).

On February 1, 2012, this matter was reached for trial. The Defendant submitted a written waiver of his right to trial by jury, which was signed both by the Defendant and his attorney. The Court confirmed the Defendant's signature and the fact that the Defendant knowingly, intelligently, and voluntarily waived his right to a jury trial. The Defendant thereafter was tried before the Court without a jury.

The trial commenced on February 2, 2012, and after the testimony of nineteen witnesses, the trial concluded on February 8, 2012. At the close of all of the evidence, this Court reserved decision with respect to the charge of first degree murder, the lesser-included offenses that fall under first degree murder, and conspiracy to commit murder. This written decision sets forth the Court's findings of fact and conclusions of law as required by Rule 23(c) of the Rules of Criminal Procedure.

## A

### **Description of Events of the Evening Occurring Prior to the Fatal Assault**

#### 1

#### *The Defendant's Statement to the Police*

On September 25, 2010 at 10:04 a.m., the Defendant gave a statement at the Providence Police Department in which he gave his account of the events that took place in the early morning hours of September 25, 2010. See Tr. 9/25/10 at 1. At the conclusion of the trial, by agreement of the parties, the transcript of this statement was entered as a full exhibit (State's Exh. 63).<sup>5</sup> Detectives Bill Matera and Emilio Matos, Jr. conducted the post-arrest interview with the Defendant, which required Spanish-to-

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<sup>5</sup> Exhibit 63 was offered after extensive discussion between Detective Emilio Matos, Jr., the state interpreter, and the Defendant's interpreter in an effort to reach agreement on the final interpretation of various portions of the Defendant's statement.

English translation. Detective Matos served as interpreter. Id.

The events as outlined by the Defendant occurred as follows.<sup>6</sup> The Defendant stated that on the evening of September 24, 2010, he was with a friend at Sonrisa Restaurant, where they had gone to have some beer. Id. at 6. In fact, the Defendant's companion was Mr. William Pacheco—the Defendant did not know him by name, but identified him as the person who occupies a room where the Defendant lives. Id. at 6, 25-26.

From there, the Defendant and Pacheco went to Gloria's Sports Bar on Cranston Street around 11:00 p.m. Id. at 7. There, they had several beers. Id. The Defendant indicated that he thought he was "really drunk" by this time. Id. at 8. The Defendant stated that he and Mr. Pacheco left the bar around 1:45 a.m., at which point the bar was about to close. Id. It is not entirely clear from the statement transcription, but it appears as though the Defendant then stated that as he and Mr. Pacheco were leaving, Jilber Cordova and Julio Arevalo joined them. Id. at 8-10. The Defendant believed that these two men had been at Gloria's as well. Id. at 10. The Defendant stated that while he was sitting alone on the stairs at the entrance to 200 Messer Street, Jilber and Julio arrived.

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<sup>6</sup> The statement made by Arevalo to the police is troubling in several respects. In particular, the statement itself is very challenging to read, and is often a confusing jumble of answers that are unresponsive to the questions posed. The Court is also surprised and concerned that the officer taking the statement was performing multiple roles: Detective Matos was simultaneously investigator, interrogator, and translator. Finally, there are a number of "inaudible" notations, questions that go unanswered after moments of disorder and interruptions among the three men, and a good deal of confusion with respect to what is being asked versus what is being translated. The Court takes issue with this approach and notes that the statement from this cooperative suspect surely would have been more comprehensible if the critical role of interpreter was not performed by the interrogator and/or investigator of this suspect. In all other respects, the Court found Detective Matos to be a highly competent and professional detective who was unfortunately and, in the Court's opinion, unfairly put in several very difficult roles that resulted in a statement that is impossible to decipher in some areas.

Id. at 11. The Defendant further stated that a 12-pack of beer had been provided, but he did not know who supplied it. Id. at 11-12.

At this point, the Defendant reported that “[a] guy got there, he was walking like this and he said, ‘Give me a beer.’” Id. at 12. The Defendant was unsure whether it was Julio or Jilber who replied “there is no beer,” but that reply caused “the guy” to get “really mad,” grab a belt, and hit the fence. Id. The Defendant “moved to the side” when he saw this, and ultimately “took off running” back to his house. Id. The other two men, Julio and Jilber, “got up to, to start hitting each other.” Id. Julio “went on top” of “the guy,” who was “really furious.” Id. at 14.

The Defendant told the police that as soon as the fight broke out, he thought “no this is going to be a problem, I don’t want any problems,” so he left. Id. He did not know whether the fight continued or what became of those fighting because he ran upstairs. Id.

When the police asked the Defendant about Julio in particular, the Defendant stated that he has known Julio for about four years and that they get together from time to time. Id. at 15. The Defendant was unable to tell the detectives Julio’s last name, but he did positively identify him when he was shown a picture. Id. The Defendant also stated that he has known Jilber for approximately six years. Id. at 17. As with Julio, the Defendant was unable to tell the detectives Jilber’s last name, but positively identified him when he was shown a picture. Id. at 26-27.

The detectives then asked the Defendant to describe the man who had the belt. The Defendant stated that his body type was similar to the Defendant’s, but he did not look at him “all that well.” Id. at 18. Likewise, the Defendant was unable to estimate the

man's age. Id.

2

*William Pacheco*

Mr. William Pacheco is the fourth floor tenant who answered the door at 200 Messer Street on September 25, 2010 when the police arrived. He rented one of the three bedrooms and shared the kitchen and bathroom with the other tenants. His fellow fourth floor tenants were "Juan" and Domingo Morales. He stated the Defendant was known as Juan, and an in-court identification of the Defendant was made by Mr. Pacheco.

The evening of September 24, 2010, Mr. Pacheco and the Defendant decided to go out for a beer. They went to Sonrisa Restaurant, which is located on Cranston Street, a few blocks away from 200 Messer Street. They stayed there for about twenty-five minutes. Mr. Pacheco had a couple of beers, but he did not recall how much the Defendant drank while at Sonrisa. They then walked to Gloria's Restaurant, staying there until it closed at 2:00 a.m.

At this time, two men approached Juan—that is, the Defendant. After speaking to them for a moment, the Defendant stated that he and Mr. Pacheco could ride home with these men. The Defendant also stated they would be stopping to get more beer. Mr. Pacheco was a little leery about the ride home, but the Defendant assured him it would be fine.

Mr. Pacheco and the Defendant sat in the backseat. Mr. Pacheco stated that a man in the front seat had a ponytail. After stopping somewhere on Atwells Avenue for some Corona beer, all four men returned to 200 Messer Street. Once Mr. Pacheco was back at 200 Messer Street, he declined an offer of more beer, went to his fourth floor bedroom,

6

took a few sips of beer in his room, and fell asleep.

**B**

**Direct Evidence and Eyewitnesses to the Assault**

1

*Conrado Urizar*

Mr. Conrado Urizar testified that he lives at 14 Kenwood Street on the second floor of the three-family house he owns. In the early morning of September 25, 2010, he was sleeping when he was awakened by noises and some yelling coming from the Union Avenue side of his house. He looked out his bedroom window and saw four people fighting. He described the whole group as moving along the street. One person had a belt; the others were trying to get to him. He estimated the distance between the person with the belt and the other as three to four feet. Mr. Urizar left his bedroom, and within five to six minutes, was outside his house where he observed three men walking towards the fire station at the intersection of Messer Street and Union Avenue. He described this group of three as exchanging blows—one grabbed the belt and the other grabbed the man wielding the belt with one hand and then “gave it to him.” As Mr. Urizar testified to this last description, he made a gesture of punching or thrusting into the other man’s stomach area.

Mr. Urizar was unable to explain where the fourth person went. While outside, he heard words and insults spoken in Spanish. When the victim fell to the ground, Mr. Urizar saw two people near him and heard someone yell “get up.” The two people near the victim crossed the street and ran towards a house. Mr. Urizar saw them in the driveway of that house.

Out of concern for his safety, Mr. Urizar did not move closer to the victim until the police arrived. He testified that he did not recognize any of the individuals involved in this confrontation but believed they were all men. The only identifying characteristics of these men that Mr. Urizar could recall were that they were speaking Spanish and the one who “gave it to” the victim was taller than the others. He estimated the duration of this fight to be fifteen to twenty minutes. He also told police officers at the scene that he saw the men involved run to a certain house and showed them the driveway where he last saw them.

On cross-examination, Mr. Urizar acknowledged that as he observed the fight, he was not wearing his prescription glasses, and it was dark outside. He also admitted originally estimating the size of the group he first saw out his window as four or five people. Further, he could not provide the approximate height, skin color, clothing color, or any other descriptive information because, in his words, “I was watching what they were doing—not wearing.”

2

*Felix Chingo*

The Court assisted witness Mr. Felix Chingo with an interpreter trained in a special Guatemalan dialect. Notwithstanding this assistance, Mr. Chingo struggled to communicate on the witness stand. At the outset, he was unable to fully spell his name; he acknowledged no formal schooling or education whatsoever; and he was unable to identify his country of origin without prompting by counsel.

In the early morning of September 25, 2010, Mr. Chingo was watching the movie, “Rambo,” on television. He heard a noise, looked out his window, and saw three men



fighting with an individual he recognized as his friend, "Juan Carlos." He believed that at some time prior to the evening in question, they had lived together for about one year. On the corner across from his house, he observed one man holding Juan Carlos by the neck while another man was beating him on the sides. He recalled seeing three men within an arm's length of his friend with one holding Juan Carlos and the other two men hitting him. He stated that he saw blood on Juan Carlos' white shirt while these men were around him.

Mr. Chingo was unable to identify any of the men involved in his friend's attack. However, he did see them go to a driveway between houses on Messer Street, as depicted in State's Exhibit 6. He further observed Juan Carlos fall to the ground at the corner of the street. At the time of this collapse, the three men had left and proceeded down the driveway.

On cross-examination, Mr. Chingo contradicted his direct testimony by stating that there was one man near Juan Carlos when he fell to the ground. He first estimated that ten minutes elapsed as he watched this incident and he later extended this period to fifteen minutes.

Mr. Chingo did not go outside his home until after Juan Carlos fell to the ground. He estimated the distance from his window to the corner where the attack occurred as forty meters or four lengths of Courtroom Three in the Licht Judicial Complex.

This Court notes that the appearance and demeanor of this witness was troubling. The State offered Mr. Chingo as one of two eyewitnesses to a portion of the sequence of events leading up to the stabbing of Mr. Ixcuna. Throughout his testimony, he appeared reluctant, uncomfortable, confused, and uncertain as he described the events he observed.

While this Court is both mindful and sensitive to the inherent difficulties in assessing the credibility of non-English speaking witnesses, this Court has substantial reservations about the accuracy, credibility, and overall competency of Mr. Chingo as a witness in this matter.<sup>7</sup>

3

*Ciera Santos*

On September 25, 2010 at approximately 3:00 a.m., Ms. Ciera Santos, a guest at a house party in the Messer Street and Union Avenue neighborhood, was driving home, accompanied by her best friend, Martzarely Tamarez, and three teenagers. As she proceeded down Messer Street, she observed two men fighting in the road. The shorter of the two men was wearing a white shirt with blue pants. The other man was taller, about 5’8”, and appeared to be Mexican or Guatemalan. His hair was in a ponytail, and he was wearing a gray collared shirt and blue jeans.

At first, Ms. Santos thought the two men were “play-fighting.” She described one as having a weapon and the other swinging a belt. As Ms. Santos continued to observe this confrontation from approximately ten to twelve feet away, she saw the shorter man swinging a belt in a circle and the ponytailed man was making stabbing motions with a knife. She did not observe anyone else around them as they were fighting.

She stated the two men moved towards the park on Messer Street and she eventually saw the man who had been stabbed fall to the ground. Ms. Santos estimated

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<sup>7</sup> This Court is not the first to acknowledge the challenges associated with evaluating witness credibility and interpreting the testimony of those who do not speak English. For a comprehensive discussion of the difficulty associated with evaluating the credibility of non-English-speaking witnesses, *see, e.g.*, Daniel J. Procaccini, *What We Have Here is a Failure to Communicate: An Approach For Evaluating Credibility in America’s Multilingual Courtrooms*, 31 B.C. THIRD WORLD L.J. 163, 169 (2011).

the man was stabbed two or three times while standing and another five to seven times after he fell to the ground. She also heard the man with the ponytail say, in English, “You know fuck him—he can die,” and “I don’t care if he dies.”

Ms. Santos placed a 911 call and circled around the incident scene to get a street name for the 911 operator. Ms. Santos testified that after the stabbing incident, she saw the man with the ponytail walk across the street—about twenty steps away—to join two other men. Ms. Santos positively identified Julio Arevalo as the man who stabbed the victim but could not identify the two men he joined after the stabbing.

On cross-examination, Ms. Santos stated that she was not drinking that evening and was scared as she watched this incident unfold. She was present for approximately ten to fifteen minutes. She did state that the two men standing across the street were Mexican or Guatemalan and that both men “just stood there.” She did not observe anyone holding the victim in any manner during this incident.

The Court notes that Ms. Santos was visiting the Messer Street neighborhood from out of state and was generally unfamiliar with this area. Her appearance, demeanor, and testimony as a whole were found to be more credible than the testimony of other eyewitnesses. She related the events of this incident clearly and without hesitation or contradiction.

4

*Martzarely Tamarez*

Ms. Martzarely Tamarez was in the Dominican Republic for the duration of this trial and therefore unavailable. The parties agreed to introduce a short excerpt of her bail hearing testimony for the Court’s consideration.

Ms. Tamarez was the other adult passenger in Ms. Santos' vehicle. Her observations of the fight on Messer Street are inconsistent with Ms. Santos' observations as to the number of participants involved in this confrontation.

Without any context or timeframe, Ms. Tamarez was asked, "Now you indicated there were four men, right?" She answered, "Yes." She further qualified this answer by stating that at some unknown point in her observations, two men were walking beside the victim and the man with the ponytail. They were within an arm's length of each other. She described no other conduct, words, or physical description of these two men.

## C

### **Evidence of Victim's Blood and Blood Transfer on Defendant's Jeans**

1

#### *Sergeant Joseph Donnelly*

Sergeant Joseph Donnelly is in charge of the Providence Police Department's Bureau of Criminal Identification. He was called to the scene of the stabbing, where he observed the blood pool left by the victim, three empty Corona beer bottles, six full Corona beer bottles, and a motor vehicle of interest. He also photographed blood swipes on the walls of 200 Messer Street. Additionally, Sergeant Donnelly took possession of four bags of clothing taken from the Defendant, Jilber Cordova, Julio Arevalo, and Domingo Morales.<sup>8</sup> Several days later, the clothing was removed from bags and inspected for blood transfer material. Three of the four pairs of pants seized appeared to have some blood on them. These stains were photographed; then swatches were cut from each pair of jeans and sent to the Rhode Island Department of Health. Two swatches

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<sup>8</sup> Mr. Morales, a resident of the same fourth-floor apartment as the Defendant, was eliminated as a suspect by the Providence Police Department.

were cut from the Defendant's jeans, one swatch was cut from Julio Arevalo's jeans, and one swatch was cut from Jilber Cordova's jeans.

Sergeant Donnelly also referenced additional items seized from the fourth floor apartment at 200 Messer Street. Pursuant to a search warrant executed later in the day of this incident, these items included sweatpants, two undershirts, and four regular shirts. These items were bagged and photographed, but never sent for DNA analysis.

On cross-examination, Sergeant Donnelly testified that the blood patterns on Julio Arevalo's jeans were markedly different from those found on the Defendant's and Jilber Cordova's jeans. He described a spatter pattern of blood approximately two inches long and an inch and a half wide on Julio Arevalo's jeans. He described the blood patterns on Defendant's and Jilber Cordova's jeans as swipe patterns found near and below the front pockets. He explained a swipe pattern as occurring when one object having blood on it is transferred to another object by contact with that blood-stained object.

During direct examination, Sergeant Donnelly explained why only five items were sent for DNA analysis. He cited a Rhode Island Department of Health policy that set a limit of five items related to any case submitted for analysis. He further stated that he believed the jean swatches were the top five candidates for analysis and did not send any shirts seized because he was not sure to whom they belonged.

On cross-examination, he further elaborated that since the shirts found on the fourth floor of the apartment and in the freezer could not be correlated to any suspect in particular, they were not as helpful to the investigation as the jeans. He was aware that the Defendant and Jilber Cordova were found lying on a bed together when apprehended. Finally, he did not know if the Defendant's clothing came in contact with anyone prior to

the Defendant's arrest.

2

*Sergeant Glenn Cassidy*

Sergeant Glenn Cassidy, with twenty-four years on the force and thirteen of those years spent serving as a sergeant with the Providence Police Department, first came into contact with the Defendant in the cellblock area of Central Station. The Defendant was wearing a white mesh shirt with blue jeans. The Defendant's clothing was seized, bagged, labeled, and stapled closed. Sergeant Cassidy noted one observation of possible injury to the Defendant: a skin irritation to the right elbow. He did not photograph this irritation and further noted that it was not bleeding in any manner.

3

*Marisa Fahner*

Ms. Marisa Fahner is the manager at Fairfax Identity Laboratories. She is a DNA analyst who performs contract work for the Rhode Island Department of Health Laboratory. Her lab analyzed five items seized by the Providence Police Department. Ms. Fahner testified that a blood sample taken from the Defendant's jeans had a 142 quadrillion (which equals twenty-eight times the Earth's population) to one probability that it was the victim's blood. Ms. Fahner acknowledged on cross-examination that her testing was limited to five items and none of the shirts seized in the fourth floor apartment were submitted to her lab for analysis.

4

*Cara Lupino*

Ms. Cara Lupino is the Forensic DNA Laboratory supervisor for the Rhode Island

Department of Health. The five items sent to Fairfax Identity Laboratory were sent there for analysis because of a backlog at her laboratory. She explained that nine items were sent to the state laboratory by the Providence Police Department, and she chose “the most probative” items to be sent for analysis. On cross-examination, Ms. Lupino acknowledged that she was unaware that shirts had been seized by the police. She also stated that such items may have been considered “probative” by her if she had been given the opportunity to examine them.

## **D**

### **Conflicting Testimony and Estimates of the Number of Participants Involved in the Assault**

At the close of evidence, the witnesses had recounted similar and yet fundamentally different versions of the events that transpired in the early morning hours of September 25, 2010. Each witness described a fight taking place, but one of the most important details central to the description of that fight—the number of people fighting—varied from witness to witness.

Conrado Urizar stated that when he looked out his bedroom window, he saw four people fighting. Later, however, he admitted originally estimating that there were four or five people fighting. Felix Chingo told the Court that he saw three men fighting with the victim. Specifically, Chingo indicated that one man was holding the victim by the neck, and either one other man was beating the victim on his sides, or the other two men were hitting him. Meanwhile, Ciera Santos stated that she saw two men fighting over a fifteen minute period. Indeed, throughout her testimony, she maintained that only two men were fighting, and she did not see anyone else nearby as they fought. Only after the fight was over did the ponytailed man—whom she positively identified as Julio Arevalo—join two

other men who were standing across the street. Finally, at the Defendant's bail hearing, Martzarely Tamarez, a passenger in the Santos vehicle, answered, "Yes" in response to the question "[T]here were four men, right?" Further, she indicated that at some point, she observed that two men were walking beside the victim and a man with the ponytail.

In addition to the uncertainty surrounding the number of people fighting, none of the witnesses were able to identify the Defendant as a participant in any manner whatsoever.

## **E**

### **Evidence Regarding Three Men Walking into 200 Messer Street or Driveway**

1

*Conrado Urizar*

Mr. Urizar told the responding police officers that he saw the men involved run to a certain house: 200 Messer Street. Thereafter, Mr. Urizar showed the police officers the driveway where he last saw the men he believed to have been involved in the fight.

2

*John P. Mangione*

John P. Mangione is a Providence Firefighter and EMT. He was one of the first responders assisting the victim at the scene. Firefighter Mangione testified that the victim was lying in a pool of blood approximately one block from the Messer Street Fire Station and across the street from 200 Messer Street. Firefighter Mangione stated that while he was treating the victim, a woman in a motor vehicle stopped and told him that some men ran across the street into the house at 200 Messer Street.



3

*Sergeant Edward Ryan*

Sergeant Edward Ryan has been with the Providence Police Department for twenty-three years. He was the Patrol Officer Supervisor on September 25, 2010 and responded to the call at 200 Messer Street. Upon arrival, he was told by firefighters that Hispanic males were seen going across the street to 200 Messer Street.

4

*Officer Karen Pacheco*

A patrol officer in the Providence Police Department for seven years, Officer Karen Pacheco's assignment on September 25, 2010 included the West End of Providence. In the early morning, she received a call to assist regarding a stabbing. Sergeant Ryan was the officer in charge at the scene. He advised that several subjects—one of whom was tall with a ponytail—were seen walking to the house across the street, which was 200 Messer Street. Officer Pacheco and a second officer, Patrol Officer Jessica Leone, proceeded to check the driveway and backyard area at 200 Messer Street.

5

*Felix Chingo*

Mr. Chingo testified that he observed the men who had been fighting with the victim go to a driveway between houses on Messer Street. This general area is depicted in State's Exhibit 6.

6

*Ciera Santos*

Ms. Santos stated that after the stabbing took place, she saw the man with the

ponytail walk across the street—about twenty steps away to join two other men. Those two men were standing in front of 200 Messer Street.

## F

### **Direct Observations of Julio Arevalo's Actions**

1

#### *Conrado Urizar*

Mr. Urizar was unable to offer any identifying characteristics of the men that he saw fighting with the victim. In fact, he told the Court that he did not observe any distinguishing features such as height, skin color, clothing color, or the like because he “was watching what they were doing—not wearing.” He did, however, state that they were speaking Spanish and the man who “gave it to” the victim was taller than the others.

2

#### *Ciera Santos*

Of the two men Ms. Santos saw fighting in the street that night, the shorter one was wearing a white shirt with blue pants while the taller man was about 5'8" and appeared to be Mexican or Guatemalan. The taller man's hair was in a ponytail, and he wore a gray collared shirt with blue jeans. The shorter man was swinging a belt in a circle while the ponytailed man was making stabbing motions with a knife. Ms. Santos testified that the shorter man was stabbed two or three times while standing, then another five to seven times after he fell to the ground. She also heard the man with the ponytail say, “You know fuck him—he can die” and “I don't care if he dies.” As previously noted, Ms. Santos positively identified the stabber as Julio Arevalo.

*Martzarely Tamarez*

Ms. Tamarez testified at the Defendant's bail hearing that she observed two men walking beside the victim and the man with the ponytail. They were within an arm's length of each other. However, she described no other conduct, words, or physical details of these two men.

**G****Post-Assault Events, Search of 200 Messer Street, and Arrest***Defendant Mauricio Arevalo*

In his statement to the police, the Defendant stated that after he arrived upstairs in his apartment, Jilber and Julio arrived roughly two minutes thereafter. Tr. 9/25/10 at 19. They were able to enter the apartment because the Defendant "had the door open." Id. at 19, 22. The Defendant described the apartment as having other bedrooms in which his housemates, Domingo Morales and William Pacheco, were living. Id. at 20, 24, 25. The Defendant offered Julio and Jilber beer, but they declined. Id. at 21. Jilber laid down on the Defendant's bed. Id. The Defendant went on to describe Julio as "walking like really red," "[r]eally hot and red." Id. The Defendant did not know whether Julio was mad, and could not recall whether Julio had blood on him. Id. Specifically, the Defendant stated that he did not see blood, but "honestly didn't notice." Id. at 22. When asked what Julio was wearing that night, the Defendant stated that he could not remember. Id. at 29. Further, the Defendant stated that neither Jilber nor Julio had been in his apartment before. Id. "Then all of a sudden boom, boom, the door, the police, the police." Id. at

23. The Defendant stated that Julio opened the door at that time, but then indicated that he was unsure who opened the door. Id.

2

*William Pacheco*

Sometime after Mr. Pacheco retired to his room and fell asleep, he was awakened by banging on his door along with the command, “Police, police, open the door.” Upon opening the door, uniformed and plainclothes officers entered the apartment. Mr. Pacheco was placed with his hands on the wall. He then observed the door to one of the bedrooms open. A man with a ponytail stood at the doorway to Juan’s room. The man was shirtless and was the same man Mr. Pacheco was with earlier in the car. While present in the apartment, Mr. Pacheco also saw the Defendant come out of the room.

After giving a statement at Central Station, Detective Matos gave Mr. Pacheco his telephone number for future reference. Several days later, Mr. Pacheco called Detective Matos to report finding a bloodstained shirt in his refrigerator’s freezer as he was reaching for some fish for dinner.

While Mr. Pacheco described the shirt Defendant had been wearing earlier on the evening of September 24 as a nice, button-front dress shirt, he was not shown any of the shirts seized, and there is no evidence establishing the shirt found in the freezer belonged to the Defendant.

3

*Sergeant Edward Ryan*

Shortly after Sergeant Ryan directed Officers Pacheco and Leone to respond to 200 Messer Street, he received a call from Officer Pacheco regarding her discovery of

blood in a hallway of the house. He then directed detectives at the scene to assist. He also took photographs of beer bottles on the front stairs of the house and the belts and blood pool area where the victim was found.

Sergeant Ryan stated that he did not see the Defendant at the scene that evening.

4

*Officer Karen Pacheco*

Upon arrival at the scene, Officers Pacheco and Jessica Leone were directed by Sergeant Ryan to search the 200 Messer Street property. First, the officers checked the driveway and backyard area at 200 Messer Street. Finding nothing unusual, they proceeded to enter the house, starting on the first floor. The first floor occupant identified herself as the landlord and advised Officer Pacheco that she rents each bedroom on each floor individually. Officer Pacheco proceeded to the second floor apartment and knocked on the door. The door was answered promptly, and one of the tenants identified himself as making a 911 call in response to the stabbing incident that had taken place outside the building. Officer Pacheco proceeded to the third floor. As she was knocking on the door, she observed what were described as blood streaks or stains in the hallway and around the corner leading to the fourth floor stairway. She immediately proceeded to the fourth floor door and knocked several times. When the door was not answered, she contacted Sergeant Ryan for further instructions.

Sergeant Ryan instructed Officer Pacheco to wait for detectives to arrive. When they arrived, they had keys supplied by the landlord for that apartment. Unfortunately, the keys did not work. After several unsuccessful attempts to kick the door open, someone finally answered it. This individual identified himself as William Pacheco, a

tenant of one of the fourth floor bedrooms. When asked, he also informed the officers that Hispanic males rented the other two bedrooms in the apartment. Officer Pacheco stated that she proceeded to knock on the left bedroom door, which was then opened by a tall, Hispanic male with a ponytail who was not wearing a shirt. She ordered him out of the room, and as he came out, she noticed abrasions on his back.

Officer Pacheco then looked into the bedroom. She observed two males lying on the bed, fully clothed with their shoes on. One of these males, who she stated was the Defendant, was wearing a tank top; the other male was wearing a regular shirt. For her protection, she ordered both men to show their hands, which appeared to be blood-stained.

On cross-examination, Officer Pacheco testified to observations made of the two co-defendants in this matter, Julio Arevalo and Jilber Cordova. She described Julio Arevalo as having shoulder abrasions and blood-stained pants. Jilber Cordova had a cut and blood behind his ear and in his neck area. Officer Pacheco stated that she observed no injuries to the Defendant. Importantly, and contrary to her previous testimony, she stated she could not say she saw blood on the Defendant's hands when he was apprehended in the fourth floor bedroom. She believes she saw some blood on his person but cannot say where it was located.

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*Officer Jessica Leone*

Officer Jessica Leone has been a patrol officer in the Providence Police Department for three and a half years. She was assigned to District Four, which includes the West End of Providence. She responded to the call at 200 Messer Street on

September 25, 2010. The victim's location was directly across the street from 200 Messer Street. Officer Leone noticed a light on and a window open near the top, or roofline, of the house. She stated that she found this to be unusual at 3:00 a.m.

On cross-examination, Officer Leone testified that she transported the Defendant from the scene to Central Station. When asked if the Defendant had any visible marks or injuries, Officer Leone stated that she did not really look, but vaguely recalled some scratches on his arms. She reiterated this observation of scratches on both arms on re-direct examination. On re-cross-examination, she revised her observation when she stated that she saw "a few" scratches on the Defendant's left arm. When pressed for further details of this observation, Officer Leone stated she did not know the number of scratches and could not recall if they appeared on the upper or lower portion of the Defendant's left arm. She was also confronted with her police report witness statement, which referenced an observation of scratches on both arms. She claimed this information was reported to Detective Sergeant Terrance Green and any photographs of these injuries would have been taken at Central Station.

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*Sergeant Terrance Green*

Sergeant Green also responded to the scene at 200 Messer Street on September 25, 2010. He observed visible injuries to two individuals in custody at that time: Julio Arevalo and Jilber Cordova. He does not recall a report of any injuries, including arm scratches, regarding the Defendant from Officer Leone, and his report regarding this incident makes no mention of injuries to the Defendant.

*Detective Paul Renzi*

Detective Paul Renzi has been with the Providence Police Department for twenty years, and for the past fourteen years, he has been a detective with the Bureau of Criminal Investigation. He was assigned to serve the search warrant for 200 Messer Street on September 25, 2010. He went to the fourth floor of the building at that address to search for evidence related to the early morning stabbing incident. Detective Renzi seized several shirts, two knives, a razor-type knife, and an identification card. No latent fingerprints were lifted from the knives, and the shirts were not sent for DNA analysis. Several items were directly linked to co-defendant Julio Arevalo. Those items were a spider-handle knife and a gray, striped shirt found on the floor of the apartment.

*Detective Emilio Matos, Jr.*

Detective Emilio Matos, Jr. has been a detective with the Providence Police Department for the last fifteen years. He assisted in the 200 Messer Street stabbing investigation. Since all the suspects were Spanish-speaking Hispanic males, Detective Matos was of valuable assistance to the investigation as he can read, write, and speak Spanish.

Detective Matos testified that he conducted an interview of the Defendant in the Spanish language for approximately thirty minutes. His impression was that the Defendant understood all the questions asked. Further, the Defendant never asked that the interview be stopped, nor did he request a lawyer. Detective Matos acknowledged, on cross-examination, that the Defendant was cooperative, non-combative, and did not



appear to be evasive in answering the questions asked.

## II

### DISCUSSION

Pursuant to the United States Constitution, the state in a criminal trial has the burden of proving beyond a reasonable doubt every element necessary to constitute the commission of a crime with which a defendant is charged. See, e.g., State v. DelBonis, 862 A.2d 760, 765 (R.I. 2004); State v. Hazard, 745 A.2d 748, 751 (R.I. 2000). Indeed, the Court is mindful of the quantum of proof necessary to establish guilt beyond a reasonable doubt. In a jury trial, this Court typically explains the concept as follows:

“[Guilt beyond a reasonable doubt] is a strict and heavy burden. It does not require, however, that a defendant’s guilt must be proved beyond all possible doubt. Rather, it requires that evidence exclude any reasonable doubt concerning a defendant’s guilt. A reasonable doubt is one that would make a reasonable person hesitate to act in regard to some transaction of importance and seriousness. A reasonable doubt may arise not only from the evidence produced but also from a lack of evidence. Reasonable doubt exists when, after weighing and considering all the evidence, using reason and common sense, the jury cannot say that it has a settled conviction of the truth of the charge.”

This Court bears these guidelines in mind as fact-finder in this matter.

## A

### First-Degree Murder

Under § 11-23-1 of the Rhode Island General Laws, murder is defined as “the unlawful killing of a human being with malice aforethought.” The statute provides that any kind of “willful, deliberate, malicious and premeditated killing” is murder in the first degree. Sec. 11-23-1. Any other murder is murder in the second degree. Sec. 11-23-1(c).

To prove first degree murder, the state must prove beyond a reasonable doubt that

a defendant, with malice aforethought, caused the death of another person willfully, deliberately, maliciously, and with premeditation. State v. Brown, 898 A.2d 69, 84 (R.I. 2006); State v. Garcia, 883 A.2d 1131, 1137 (R.I. 2005); State v. Diaz, 654 A.2d 1195, 1201 (R.I. 1995). Importantly, a defendant on trial for first degree murder is simultaneously on trial for all lesser-included offenses, including second degree murder. Sec. 11-23-1; State v. Sosa, 839 A.2d 519, 527 (R.I. 2003). Second degree murder is a lesser-included offense of first degree murder and is characterized as any killing of a human being committed with malice aforethought that is not defined by statute as first degree murder. State v. Teixeira, 944 A.2d 132, 142 (R.I. 2008); State v. Gillespie, 960 A.2d 969, 978 (R.I. 2008). To prove the commission of second degree murder, the state is required to prove beyond a reasonable doubt that defendant, with malice existing for less than of momentary duration, intended to unlawfully kill the victim. State v. Barrett, 768 A.2d 929, 944 (R.I. 2001) (reasoning that the very fact that the defendant used a gun was sufficient to prove his malice, and a reasonable inference could be drawn, directly and without speculation, that the defendant formed an intent to kill the victim).

This Court also takes note of the principle that although a co-defendant may have wielded the weapon that killed the victim, if the evidence demonstrates beyond a reasonable doubt that the defendant assisted in the murder and that he was present at the same, it would not be improper to convict and punish the defendant as a principal in the crime of murder. State v. McMaugh, 512 A.2d 824, 831 (R.I. 1986). To hold the several defendants, jointly indicted for murder, responsible for acts of co-defendants, it is not necessary to allege and prove a conspiracy; each may be held severally responsible as though the crime had been committed by any one of them acting alone. State v. Brown,

45 R.I. 9, 119 A. 324, 326 (1923).

Here, the State did not need to prove conspiracy to successfully prosecute the Defendant for murder. Instead, in addition to proving the elements of first degree murder or a lesser-included offense, the State needed only prove that the Defendant assisted and was present at the scene. See *McMaugh*, 512 A.2d at 831. The Court need not reach this analysis, however; the State failed to persuade this Court beyond a reasonable doubt that the Defendant committed either first degree murder or any of its lesser-included offenses.

Each and every element of first degree murder proves problematic in this regard, but most essentially and fundamentally, the State has not demonstrated that the Defendant caused or assisted in the causation of the death of another person. Of the eyewitnesses who gave testimony during this trial—Conrado Urizar, Felix Chingo, and Ciera Santos—not one could definitively place the Defendant at the scene of the crime. None of the witnesses recalled any identifying characteristics, nor could any witness even suggest that the Defendant was among those involved in the fight. As such, no witness was able to speak to the Defendant’s involvement in the homicide. Indeed, even the number of people involved in the initial skirmish and subsequent deadly assault varies from witness to witness. Mr. Urizar stated that either four or five people were involved; Mr. Chingo believed there were four people involved; Ms. Santos recalled that only two men were fighting while two others observed from across the street; and Ms. Tamarez observed three men walking beside the victim.

In weighing and evaluating the credibility of the four witnesses who made direct observations of the circumstances related to this assault, the Court finds that Ms. Santos was, without question, the most thoughtful, forthright, and articulate witness of this

group. She was closest to the location of the attack; she was able to make a positive identification of Julio Arevalo; and her testimony, when viewed in totality, is the most detailed and consistent. Furthermore, the Court cannot ignore a recurring inconsistency on a critical observation by Mr. Chingo. At various times during direct, cross, re-direct, and re-cross examinations, Mr. Chingo, who appeared to be a combination of anxious, confused, highly susceptible to suggestion, and inarticulate, provided blatantly contradictory evidence as to the number of individuals participating in the attack of Mr. Ixcuna during his approximately fifteen minutes of observation.

The State points to the existence of the victim's blood on the Defendant's pants as evidence of the Defendant's involvement in the murder. There were two "swipes" of blood below the front pockets on the Defendant's jeans. Sergeant Donnelly testified that swipes are entirely different than "spatter," which is a blood pattern that would occur when the blood comes directly from the victim. The evidence is uncontroverted that these swipes, however, were the result of the transfer of blood by contact with a blood-stained object. The record suggests that blood transfer could have happened in a variety of ways.

It is true that the fact of the victim's blood being found on the Defendant's garments certainly does not absolve the Defendant of any possible involvement in the crime, but neither does it prove his guilt beyond a reasonable doubt. "The pivotal question in determining whether circumstantial evidence is sufficient to prove guilt beyond a reasonable doubt is whether the evidence in its entirety constitutes proof beyond a reasonable doubt or is of such a nature that it merely raises a suspicion or conjecture of guilt." State v. Caruolo, 524 A.2d 575, 581 (R.I. 1987).

The Court acknowledges that “it is possible for the state to prove guilt by a process of logical deduction, reasoning from an established circumstantial fact through a series of inferences to the ultimate conclusion of guilt.” Id. at 581–82. At the same time, it must be noted that “[t]he pyramiding of inferences during this process of deduction becomes speculative, however, and thus insufficient to prove guilt beyond a reasonable doubt when the initial inference in the pyramid rests upon an ambiguous fact that is equally capable of supporting other reasonable inferences clearly inconsistent with guilt.” Id. at 582 (citing State v. Alexander, 471 A.2d 216, 218 (R.I. 1984) and In re Derek, 448 A.2d 765, 768 (R.I. 1982)).

Thus, here, while it is plausible that the blood stained the Defendant’s pants by virtue of his participation in some crime, it is equally plausible that the blood came to be on the Defendant’s jeans as a result of his being in close proximity to Julio Arevalo and Jilber Cordova subsequent to the stabbing. The initial inference the State suggests—that the Defendant participated in the commission of the crime because the victim’s blood was found on the Defendant’s jeans—rests too heavily on speculation. Id. There are a number of reasonable explanations for the blood swipes other than the one explanation the State argued and would have this Court accept as true. Because the finding of the victim’s blood on the Defendant’s clothing can be supported by “other reasonable inferences clearly inconsistent with guilt,” the State has merely raised a suspicion or conjecture of guilt. Id. at 581, 582.

The State also argued that based on the scratch marks found on the Defendant, this Court should infer that the Defendant had been not only present, but also physically involved in the deadly assault. To draw such an inference, however, would be

inappropriate since the underlying fact—the existence of scratches or injury to the Defendant—is unsupported by the evidence presented. Officer Jessica Leone stated that she vaguely recalled seeing scratches on the Defendant’s arms, though she was not looking closely. While she reiterated this observation of scratches on both arms on re-direct examination, she revised her observation during re-cross-examination when she stated that she saw “a few” scratches on the Defendant’s left arm. Ultimately, when pressed for further details of this observation, Officer Leone stated she did not know the number of scratches and could not recall if they appeared on the upper or lower portion of the Defendant’s left arm. Officer Pacheco, who was investigating alongside Officer Leone, described Julio Arevalo as having shoulder abrasions and blood-stained pants, and Jilber Cordova had a cut and blood behind his ear and in his neck area. Officer Pacheco observed no injuries to the Defendant.

Notably, Officer Leone’s police report witness statement referenced an observation of scratches on both arms. She indicated that this information was reported to Detective Sergeant Terrance Green, and any photographs of these injuries would have been taken at Central Station. Yet Sergeant Green does not recall Officer Leone making a report of any injuries, including arm scratches, regarding the Defendant, and his report regarding this incident makes no mention of injuries to the Defendant. Similarly, Sergeant Cassidy noted one observation of possible injury to the Defendant: a slight skin irritation to the right elbow which he observed but never photographed. Overall, the record on this issue is too inconsistent and unreliable to establish any injuries consistent with the State’s claim that the Defendant participated in this assault.

Meanwhile, the Defendant’s statement was offered into evidence by agreement.

This statement, while at times imprecise and unclear, indicates that the Defendant left as soon as the victim began yelling and Julio Arevalo began fighting with the victim. This assertion is neither contradicted nor discredited in the record. While the Court acknowledges some testimony that indicates four or even five men were involved in this confrontation, none of that testimony even remotely suggests that the Defendant was a participant.

The Defendant's presence at the inception of the fight—combined with circumstantial evidence that is not necessarily indicative of anything more than the fact that a small amount of the victim's blood was transferred to the Defendant's pants in some fashion—does not persuade this Court beyond a reasonable doubt of the Defendant's involvement in the murder. Caruolo, 524 A.2d at 582 (where the Court noted that while “the state is not required to disprove every reasonable hypothesis of innocence,” “the totality of circumstantial evidence offered [must] constitute[] proof beyond a reasonable doubt”). The Defendant demonstrated that the facts surrounding this spontaneous confrontation are ambiguous enough to be equally capable of supporting “inferences clearly inconsistent with guilt.” Id. This Court cannot and will not engage in speculation, nor will it endlessly stack inference upon inference to conclude that the Defendant was an actor for the purposes of a homicide prosecution. See id.; State v. Gazzero, 420 A.2d 816, 829 (R.I. 1980).

For purposes of discussion this Court notes that pursuant to the analysis set forth above, the Court is likewise satisfied that the elements of any lesser-included offense have not been proven beyond a reasonable doubt. The evidence simply does not prove that the Defendant was an actor. He was not sufficiently identified or connected with the

homicide. Thus the Court need not entertain the particulars of any lesser-included offense.

## **B**

### **Conspiracy To Commit Murder**

A criminal conspiracy conviction requires proof beyond a reasonable doubt that two or more persons combined to commit an unlawful act or to perform a lawful act for an unlawful purpose. State v. Mendoza, 889 A.2d 153, 160 (R.I. 2005); State v. DePina, 810 A.2d 768, 780 (R.I. 2002). Importantly, the crime of conspiracy is separate and distinct from the substantive offense, and once the agreement is made, the offense of conspiracy is complete. Secs. 11-1-1, 11-1-6; State v. Porto, 591 A.2d 791, 795 (R.I. 1991); State v. Brown, 486 A.2d 595, 601 (R.I. 1985); State v. LaPlume, 118 R.I. 670, 375 A.2d 938 (1977). The conspiracy may be entered into contemporaneously with the performance of the unlawful act. DePina, 810 A.2d at 780. Conspiracy may be established through circumstantial evidence, and the state is required to demonstrate only tacit understanding between conspirators. U.S. v. Garcia, 983 F.2d 1160, 1165 (1993). The agreement entered into need not be explicit; conspirators' goals may be inferentially established by proof of the relations, conduct, circumstances, and actions of the parties. State v. Mastracchio, 612 A.2d 698, 706 (R.I. 1992); State v. Barton, 427 A.2d 1311, 1313 (R.I. 1981). "Anyone, knowing of the conspiracy, who intentionally takes part in or does any act to further the illegal agreement becomes a participant in the conspiracy." State v. Gilman, 110 R.I. 207, 218, 291 A.2d 425, 432 (1972). Ultimately, proof of the agreement beyond a reasonable doubt, including proof of its existence and scope, is all that is required for a defendant to be found guilty of the conspiracy. State v. Graham,



941 A.2d 848, 863 (R.I. 2008), cert. denied 555 U.S. 848 (2008). In sum,

“[t]he rule is well[-]established that where several persons combine or conspire to commit an unlawful act . . . each is criminally responsible for the acts of his associates or confederates in the furtherance of any prosecution of the common design for which they combine. Each is responsible for everything done by one or all of his confederates, in the execution of the common design, as one of its probable and natural consequences, even though the act was not a part of the original design or plan, or was even forbidden by one or more of them.”

State v. Oliveira, 774 A.2d 893, 918 (R.I. 2001) (citing State v. Miller, 52 R.I. 440, 445-46, 161 A. 222, 225 (1932)).

Here, the alleged conspirators are Julio Arevalo, Jilber Cordova, and the Defendant. For the Defendant to be guilty beyond a reasonable doubt, he necessarily must have expressly or impliedly agreed to participate in or planned to commit the unlawful act. Graham, 941 A.2d at 863, cert. denied 555 U.S. 848 (2008). The Defendant need not have actually participated in the ultimate unlawful act, but there must be proof of the agreement beyond a reasonable doubt. Porto, 591 A.2d at 795; Brown, 486 A.2d at 601. Just as the State failed to prove that the Defendant was not an actor for the purposes of the charge of murder in the first degree, however, neither has the State proven that was he a participant in any perceived conspiracy. As to the existence and scope of the purported conspiracy, the Court finds that no conspiracy arose in the first place as to the Defendant, and any scope of the supposed conspiracy is unsupported by the evidence.

A critical component of any conspiracy is of course that two or more actors combined to commit some act, whether unlawful or for an unlawful purpose. Mendoza, 889 A.2d at 160; DePina, 810 A.2d at 780. Here, the State has not demonstrated that the Defendant combined with others or conspired to commit any act at all. True,

conspirators' goals may be inferentially established by proof of the relations, conduct, circumstances, and actions of the parties, but here there is no evidence of the Defendant's relations, conduct, or actions other than his own statement. Mastracchio, 612 A.2d at 706; Barton, 427 A.2d at 131. In fact, the only evidence offered to the Court with respect to the Defendant's actions is found in the Defendant's statement to the police, and that statement indicates repeatedly and clearly that the Defendant immediately left Julio, Jilber, and the victim when the fight began. There is no evidence that Julio, Jilber, and the Defendant undertook any plan to act as a group, nor did they hope to undertake any. Instead, this Court is persuaded that the fight began spontaneously, impulsively, without thought, and was most likely the product of an alcohol-induced verbal exchange that suddenly erupted into a confrontation.

While a conspiracy may be entered into contemporaneously with the performance of the unlawful act, the evidence is insufficient to prove beyond a reasonable doubt that the Defendant even participated in this unlawful assault. DePina, 810 A.2d at 780. While the Defendant's jeans were indeed stained with the victim's blood, the State has not tied that evidentiary finding to any act or plan on the part of the Defendant. The bloodied jeans may give rise to an inference that the Defendant was somehow involved, but by the same token (as discussed supra), the Court could likewise infer that the blood stained the Defendant's jeans in a variety of other ways. Ultimately, a conclusion that the Defendant conspired to commit murder, based on the finding of the victim's blood on the Defendant's jeans, would rest much too heavily on speculation. Caruolo, 524 A.2d at 581, 582. Because the finding of the victim's blood on the Defendant's clothing can be supported by "other reasonable inferences clearly inconsistent with guilt," the State has

merely raised a suspicion or conjecture of guilt. Id. at 582.

At the most elementary level of analysis, the conspiracy argument fails because the State has not demonstrated that the Defendant even tacitly understood that a conspiracy was afoot. U.S. v. Garcia, 983 F.2d at 1165. In fact, the Defendant indicated quite the opposite in his statement: as soon as the fight broke out, he thought “no this is going to be a problem, I don’t want any problems,” so he left and ran upstairs. Tr. 9/25/10 at 14. The Defendant distanced himself entirely from the unlawful act, and certainly did not intend to take part in the fight or further the unlawful actions such that he can be characterized as a co-conspirator. Gilman, 110 R.I. at 218, 291 A.2d at 432.

Although the State argued in its closing that the Defendant would be responsible for the acts of his co-conspirators even if the ultimate outcome was not part of the original plan, the Court need not evaluate that theory. Oliveira, 774 A.2d at 918 (citing Miller, 52 R.I. at 445-46, 161 A. at 225). The Court finds there was no plan or agreement, and therefore, no conspiracy arose between Julio Arevalo, Jilber Cordova, and the Defendant. The State originally posited that the fight was made possible by the Defendant restraining the victim or holding him down in some manner. The record is devoid of evidence supporting that theory. Mr. Chingo did describe three people surrounding the victim, but he never identified the Defendant as one of those three people. Moreover, as previously noted, this Court did not consider Mr. Chingo a reliable or credible witness. In fact, perhaps recognizing the lack of evidence on this issue, the State omitted in its closing argument its theory of the Defendant holding the victim down.

The Court must not substitute suspicion, speculation, or conjecture for probative evidence of guilt beyond a reasonable doubt. Gazzero, 420 A.2d at 829. Many of the

inferences the State would have this Court make constitute pure speculation, and it is axiomatic that “[p]roof based on conjecture and speculation does not support a criminal conviction.” State v. Wheeler, 496 A.2d 1382, 1390 (R.I. 1985); In re Derek, 448 A.2d at 768 (R.I. 1982); State v. Distant, 118 R.I. 532, 539, 375 A.2d 212, 216 (1977). Moreover, all inferences made always must be reasonable and legitimate. In this instance, the Court will not pile inference upon inference to amass a set of facts sufficient to support a conspiracy conviction. See Caruolo, 524 A.2d at 582 (a “pyramiding of inferences” is insufficient to prove guilt beyond a reasonable doubt when initial inferences rest upon ambiguous facts that are “equally capable of supporting other reasonable inferences clearly inconsistent with guilt”).

### III

#### CONCLUSION

This Court finds that the evidence offered by the State’s array of witnesses falls woefully short of establishing the Defendant’s participation in this homicide. The Italian adage—“fra il dire e il fare c’è di mezzo il mare” (an ocean lies between what is said and what is done)—best describes this critical lack of evidence.

The gaps in the evidence left unfilled by the State constrain this Court to conclude that what the State has offered is simply not sufficient to convince this Court of Defendant Mauricio Arevalo’s guilt beyond a reasonable doubt. Conflicting evidence on primary issues of fact—the number of participants in the murder, the lack of an identification in any manner of the Defendant as a participant, the complete absence of documentation or corroboration of scratch injuries to the Defendant, the contradictory observations by fellow investigating officers, and the failure to link the bloody shirts to

the Defendant—create a reasonable doubt in the mind of this Court, the fact-finder, leaving it to conclude that the State has fallen short of achieving its heavy evidentiary burden of proving guilt beyond a reasonable doubt.

Collectively, these issues create sufficient reasonable doubt such that the Court cannot say with conviction that the Defendant is guilty of these charges. The Defendant is found not guilty of the offenses of murder and conspiracy to commit murder as charged in the indictment.