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Father facing attempted first degree murder in case where father and son allegedly severely beat another local man

By ROBERT PIERCE • Daily Leader Judge Margaret Alford amended the charges of one of the suspects accused of allegedly beating a man on March 29.

Following the recommendation of prosecutor Russell Hasenbank that both Eliseo Avila Sr., 46, and Alexander Avila-Ortiz, 20, be charged with attempted first degree murder, Alford set the first degree charge against Avila Sr., but she left Avila-Ortiz's charge at attempted second degree murder. An arraignment has been set for Sept. 9 in Seward County District Court. The father and son were arrested March 29 for allegedly beating Anthony Martinez, 20, during an altercation in the 100 block of West Hickory in Liberal.

Hasenbank and attorneys for both Avila and Avila-Ortiz heard from three key witnesses Wednesday morning, including a neighbor, the lead investigator on the case and the emergency room doctor who treated Martinez following the incident.

Dr. James Wiley was the first to take the stand, and he first testified that Martinez was brought into the ER at Southwest Medical Center for head injuries. Due to the head injuries, Martinez was suffering from a lack of oxygen to the brain, according to Wiley.

Martinez was later flown to Wesley Medical Center in Wichita, and Wiley said without medical intervention, he would have died. Martinez appeared in the Seward County court room Wednesday morning and appeared to be in good condition.

Brian Tillson, a neighbor living in the area of where the alleged incident took place, then testified. Tillson said prior to the events, he had seen two people, later identified as Martinez and a friend, driving by his house at a slow pace. Tillson later went for a ride on his motorcycle, and when he came back, the vehicle Martinez was using had pulled into the house next door, with Avila and Avila-Ortiz on the front porch.

Tillson said after Martinez got out of the vehicle, he noticed the victim and the suspects, whom Tillson had known for a period of more than two years, walking to a car port on the property.

Tillson said shortly after the three reached the car port, another person had gotten out of Martinez's vehicle. He said he had seen Avila standing over Martinez with a 4 by 4 board and appeared to be beating him, with Avila-Ortiz sitting on top of the victim.

Tillson said he tried to stop the altercation, but Avila kept hitting Martinez, who later said he had enough, but according to Tillson, Avila-Ortiz continued the beating.

Eventually, Tillson got Avila-Ortiz off Martinez, and Tillson saw Martinez bleeding. Martinez, according to Tillson, was able to escape in his vehicle. A few seconds later, police arrived at the scene, and Tillson gave them his statement.

Tillson told the court Wednesday that he saw Martinez had been hit three or four times in both the front of his body and in his legs. He also stated that Avila looked like he wanted to “hurt somebody.”

Tillson said he had told Avila that he would go to jail. Avila said that he did not care, saying that Martinez had disrespected his son.

The final witness in Wednesday’s preliminary hearing was lead investigator Chris Head, a detective with the Liberal Police Department. Head said he first saw Martinez at SWMC in reference to a battery case being investigated by LPD.

Head said Martinez was very lethargic when he saw him at the hospital. He noticed the victim had large knots under his right eye and on the left side of his face, as well as a large scrape on his right thigh. He could identify no other injuries, however.

Head was later questioned about the origin of the fight, and he said events leading up to the altercation had taken place March 28 – the day prior to it.

“(Avila-Ortiz) and his girlfriend, Paola Naeve, were driving in a vehicle when they passed another vehicle,” Head said. “He said as they passed by, someone in the car called Paola a whore. He swerved toward them and got within a couple of inches of the vehicle. He told them to pull over. They talked. Alex was asking why they had said that. Someone else in the vehicle had said that no one was talking to him.”

Head said later on March 28, Martinez and Avila-Ortiz communicated via text message.

“During the text messaging, Anthony was wanting to meet with Alex in order to fight,” he said. “During the text messaging, Anthony was trying to get Alex to meet him at Blue Bonnet Park. Throughout the course of the texting, Alex told Anthony that he was looking for him, so he should meet at his house.”

Head said that Avila-Ortiz told Martinez that he was home alone, waiting for him. Head said Avila-Ortiz was not alone, rather he was there with Avila.

“I don’t know why (Avila) was there,” he said. “During my investigation, it appeared he was there at one point. He may have left. I know he was there just prior to Anthony showing up at the residence. I don’t know what time he got there or how.”

Head said he found this out through an interview with Naeve.

Later in his testimony, Head said through an interview with Avila-Ortiz it was revealed that Avila-Ortiz had seen Avila striking Martinez in the head with a 4 by 4.

“He also said that he had been swinging as if he had been swinging a golf club,” Head said. “He also said he knows he hit him at least once, maybe twice.”

Under cross examination from Avila’s attorney, Clint Floyd, Head said based on the suspect’s statement, Martinez had started both the physical and verbal confrontations. The detective also said he had interviewed other neighbors in addition to Tillson, but he believed most of them were intoxicated, and therefore, he did not feel comfortable doing interviews.

Head said Tillson had told him that both Martinez and Avila-Ortiz could have been injured from the way the board was swung. He said that Tillson had said there were multiple blows from the swings, while Avila-Ortiz said only one or two blows were given.

Floyd then asked Head if he believed this meant inconsistencies in the number of blows and how they were given. Head said he could not answer that question simply “yes” or “no,” rather stating that they were two different statements given from two different viewpoints.

Another allegedly inconsistent piece of testimony in Head’s time on the stand came from Martinez’s grandfather, Eddie Beaver, whose residence Martinez went to following the altercation. Beaver told Head that Martinez was hit with a rock rather than a board.

Under a cross examination from Avila-Ortiz’s attorney, Paul Kitzke, Head said the suspect and victim sent profane text messages to each other, before Martinez had said he wanted to fight at Blue Bonnet Park.

Head said he did not know who called 911, but he did say the call was made from the Avila residence and that Tillson could be heard in the background telling the fighters to stop.

After testimony from all of Wednesday’s witnesses, Hasenbank made his closing statement, first noting he wanted the charges on the pair raised from attempted second degree murder to attempted first degree murder. He said the alleged fight had gotten out of hand, and multiple hits were provided. He also said Martinez had sustained life threatening injuries.

He also said both should be bound over on aggravated intimidation of a witness, Naeve, because testimony given by Head had indicated that she had allegedly given two separate statements to two officers after being told to “stick to her story.” Hasenbank also said because Naeve was under the age of 18, that the case qualifies as a felony.

Alford ruled to raise the charge on Avila to attempted first degree murder, but kept Avila-Ortiz’s charge at attempted second degree murder.

## Judge amends charges against father

Thursday, 12 August 2010 10:16

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