

BRISTOL, SS SUPERIOR COURT  
FILED

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MARC J. SANTOS, ESQ.  
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COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT  
CRIMINAL #2013-983

COMMONWEALTH OF MASSACHUSETTS

v.

AARON HERNANDEZ

**MEMORANDUM OF LAW IN SUPPORT OF  
DEFENDANT'S RENEWAL OF MOTION FOR  
REQUIRED FINDING OF NOT GUILTY ON  
COUNTS ONE AND TWO OR FOR OTHER RELIEF**

**INTRODUCTION**

On April 15, 2015, the jury found defendant Aaron Hernandez ["Hernandez"] guilty of first degree murder with extreme atrocity or cruelty, unlawful possession of a firearm, and unlawful possession of ammunition. On or about April 17, 2015, Hernandez filed a *Renewed Motion for Required Finding of Not Guilty on Counts One and Two or For Other Relief* and was granted leave to file a supporting memorandum of law by May 7, 2015. Hernandez maintains that viewing the evidence in the light most favorable to the Commonwealth, no rational jury could have found every

essential element of Counts One and Two beyond a reasonable doubt. Rather, improper speculation, conjecture, and guesswork was required to reach a guilty verdict. Accordingly, these verdicts cannot stand without violating the defendant's state and federal constitutional rights to due process.

In the alternative, even if there were legally sufficient evidence to support a conviction of first degree murder, Hernandez submits that in light of the paucity of evidence that he acted with extreme atrocity or cruelty and in light of all the facts and circumstances of the case, a verdict of murder in the second degree would be more consonant with justice than a verdict of murder in the first degree. Under Mass. R. Crim. P. 25(b)(2), the Court clearly has the discretion to reduce the verdict to second degree murder, and such an exercise of discretion is warranted here.

## **I. SUMMARY OF APPLICABLE LAW.**

### **A. Sufficiency of the Evidence.**

A defendant's conviction of a criminal offense based on insufficient evidence violates the Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution and Article XII of the Massachusetts Declaration of Rights. *Jackson v. Virginia*, 443 U.S. 307, 316 (1979); *Commonwealth v. Latimore*, 378 Mass. 671, 676-678 (1979). The operative test under both federal and state law is whether, considering the evidence in the light most favorable to the prosecution, any rational trier of fact could find that the prosecution proved every essential element of the crime charged beyond a reasonable doubt. *Francis v. Franklin*, 471 U.S. 307, 313 (1985); *Commonwealth v. Forte*, 469 Mass. 469, 481 (2014).

While sufficiency of the evidence is necessarily a case-specific inquiry, a number of general principles have emerged. In order to pass this constitutional test, "[a] conviction may not rest upon the piling of inference upon inference or on conjecture or speculation." *Commonwealth v. Kelly*, 470

Mass. 682, 693 (2015). “If a rational jury necessarily would have had to employ conjecture in choosing among the possible inferences from the evidence presented, the evidence is insufficient to sustain the Commonwealth’s burden of proving guilt beyond a reasonable doubt.” *Id.* at 693-694, quoting *Commonwealth v. Rodriguez*, 456 Mass. 578, 582 (2010) (*internal quotations omitted*). It is well-settled that proof of a defendant’s presence at the scene of a crime and association with the principal is insufficient to support a conviction. Indeed, such evidence is insufficient to establish probable cause, much less proof of guilt beyond a reasonable doubt! *Commonwealth v. Ilya, A Juvenile*, 470 Mass. 625, 631 (2015) (probable cause not established); see also *Commonwealth v. Morris*, 422 Mass. 254, 257-258 (1996) (presence of plastic mask with defendant’s thumb print left at shooting scene insufficient to establish guilt); *Commonwealth v. Mazza*, 399 Mass. 395, 399 (1987) (proof of presence insufficient to convict since jury would have to engage in “impermissible conjecture or surmise.”).

In *Commonwealth v. Salemme*, 395 Mass. 594 (1985), there was evidence that the defendant was present at the scene of a murder and had an opportunity to commit the crime. There was also evidence of consciousness of guilt on the part of the defendant. 395 Mass. at 598. Nevertheless, the Supreme Judicial Court deemed the evidence insufficient to support a conviction. *Id.* at 602. *Salemme* illustrates the principle that “where an equal or nearly equal theory of guilt and a theory of innocence is supported by the evidence viewed in the light most favorable to the prosecution, a reasonable jury *must necessarily entertain* a reasonable doubt.” *O’Laughlin v. O’Brien*, 568 F.3d 287, 301 (1<sup>st</sup> Cir. 2009) (*emphasis in original*).

None of this constitutional precedent was altered by the SJC’s decision in *Commonwealth v. Zanetti*, 454 Mass. 449, 469 (2009), which effectively merged the concepts of principal and joint

venture liability into a single definition of criminal culpability. Under *Zanetti*, as the SJC recently explained: “The Commonwealth [has] to prove that the defendant knowingly participated in the commission of the crime charged and that the defendant had or shared the required criminal intent.”

*Commonwealth v. Simpkins*, 470 Mass. 458, 461 (2015). Post-*Zanetti*, as pre-*Zanetti*:

Mere knowledge that a crime is to be committed is not sufficient to convict the defendant.... Mere presence at the scene of the crime is not enough to find a defendant guilty. Presence alone does not establish a defendant’s knowing participation in the crime, even if a person knew about the intended crime in advance and took no steps to prevent it.... It is not enough to show that the defendant simply was present when the crime was committed or that he ... knew about it in advance.

*Zanetti*, 454 Mass. at 470 [Appendix].

After *Zanetti*, sufficient proof of criminal culpability for a substantive crime remains separate and distinct from sufficient proof of culpability for the crime of being an accessory-after-the-fact to that substantive crime. The distinction is clearly delineated in *Simpkins*. In that case, the victim was shot to death on the front porch of his residence by two assailants. Simpkins and others were charged with first degree murder, and Simpkins was also charged (and convicted) as an accessory after the fact. There was evidence about an incident a week before the shooting which involved, among others, the victim and Simpkins. The same car involved in that incident was observed on the victim’s street shortly before the shooting. Simpkins’ fingerprints were found on that car, which was registered to the brother of a co-defendant identified as one of the two shooters. There was evidence that, shortly before the shooting, a group of individuals, including Simpkins, got out of that car and went into Simpkins’ home, which was near the victim’s residence. There was evidence that immediately after the shooting, the assailants fled to Simpkins’ residence, and that he assisted in

concealing the firearms used in the shooting. *Simpkins*, 470 Mass. at 460.

The Court held that this evidence was insufficient to survive *Simpkins*' motion for a required finding of not guilty on the murder charge. With respect to the prior incident, the Court found: "There is insufficient evidence about the nature of the encounter one week before the shooting to imply an intent to kill or even a motive to kill on the part of anyone involved." *Simpkins*, 470 Mass. at 461. The Court further found a lack of evidence that "suggests knowing participation by the defendant in the shooting itself or the planning thereof." *Id.* at 461-462.

With respect to *Simpkins*' post-shooting conduct in providing refuge to the shooters and helping to conceal their weapons, the Court stated:

The defendant's role in hiding the murder weapons occurred after the commission of the crimes and explains his indictment charging him with being an accessory-after-the-fact. The Commonwealth presented no fact which could prove beyond a reasonable doubt that such involvement was contemplated prior to the shooting.... that the defendant gave aid and assistance to the shooters in their escape is true, but this conduct was correctly charged as accessory after the fact, not as "aiding and abetting."

The Court explained that the Commonwealth's effort to blur the distinction between substantive criminal culpability and accessory after the fact rested on a misreading of *Zanetti*:

The Commonwealth's argument parses our holding incorrectly for purposes of imposing liability under *Zanetti* for the crime of murder. In the jury instruction provided in that case, we said liability can be imposed on participation in a crime when the conduct "take[s] the form of *agreeing* to stand by, at, or near the scene of the crime to act as a lookout, or to provide aid or assistance in committing the crime, or in escaping, if such help becomes necessary." (*emphasis added* [by SJC]). *Id.* at 470 (Appendix).

The Court then emphasized the very holding of *Zanetti* that is quoted earlier in this memorandum, rejecting the view that presence and knowledge are sufficient to prove knowing

participation:

We went on to state: "Mere knowledge that a crime is to be committed is not sufficient to convict the defendant.... Mere presence at the scene of the crime is not enough to find a defendant guilty. Presence alone does not establish a defendant's knowing participation in the crime, even if a person knew about the intended crime in advance and took no steps to prevent it.... It is not enough to show that the defendant simply was present when the crime was committed or that he ... knew about it in advance."

*Id.* at 462.

The Court concluded:

The close proximity of the shooters to the defendant's home prior to the murder and their flight simply do not support a finding beyond a reasonable doubt of any express or implied agreement by the defendant before or during the commission of the crime to act in concert during or after the shooting. Accordingly, as a matter of law, the Commonwealth did not satisfy its burden of proof.

*Id.* at 462-463. *Simpkins* thus makes crystal clear that *Zanetti* preserved, indeed, reinforced, the important distinction between proof of joint participation in the crime itself and proof of providing assistance to the principal in the immediate aftermath of the crime.

#### **B. Extreme Atrocity or Cruelty.**

In 1858, the Legislature amended M.G.L.c. 265, § 1 to define first degree murder as "[m]urder committed with deliberately premeditated malice aforethought, or with extreme atrocity or cruelty, or in the commission or attempted commission of a crime punishable with death or imprisonment for life...." St. 1858, c. 154. That tripartite definition has remained unchanged for more than 150 years.

The phrase "extreme atrocity or cruelty" has never been precisely defined, drawing its meaning from the common law. In *Commonwealth v. Desmarteau*, 82 Mass. (16 Gray) 1, 10 (1860),

which appears to be the first reported decision construing the language, the Court stated:

[I]t is the barbarity and atrocity which attend such murder, that increase the guilt of the party, and that call for the highest degree of punishment known to our law.

In *Commonwealth v. Devlin*, 126 Mass. 253, 255 (1879), the Court wrote that first degree murder by extreme atrocity or cruelty requires “a degree of atrocity or cruelty which must be considered as peculiar and extreme.”

Nearly 100 years later, in *Commonwealth v. Connolly*, 356 Mass. 617, 628 (1970), the Court observed:

Since any destruction of human life invariably includes some atrocity or cruelty, one cannot easily separate degrees of cruelty or atrocity by precise legal rules.

In *Commonwealth v. Monsen*, 377 Mass. 245, 254 (1979), the Court added:

[W]e think the Legislature intended to exact the greater punishment of the principal solely on the basis of the shocking, unnecessary, and often painful manner in which death has been caused.

These and numerous other reported decisions essentially stand for the unremarkable proposition that extreme means unusual or exceptional, suggesting the end of a spectrum or furthest from the norm.

The Court’s more recent effort to add substance to the standard is exemplified by *Commonwealth v. Cunneen*, 389 Mass. 216, 227 (1983), where it delineated a number of specific factual characteristics which could be considered, including:

... indifference to or taking pleasure in the victim’s suffering, consciousness and degree of suffering of the victim, extent of physical injuries, number of blows, manner and force in which delivered, instrument employed, and disproportion between the means needed to cause death and those employed.

In *Commonwealth v. Hunter*, 416 Mass. 831, 837 (1994), the Court held that a jury may not convict a defendant of first degree murder by extreme atrocity or cruelty “without finding that any of the [Cunneen] factors was present.” That remains the law, though the Court has held that the jury does not have to agree unanimously that any particular *Cunneen* factor has been proven beyond a reasonable doubt. *Commonwealth v. Moses*, 436 Mass. 598, 606 (2002).

Finally, more for more than a century, the SJC has consistently held that the only *mens rea* which must be proved to convict a defendant of first degree murder by extreme atrocity or cruelty is malice. *E.g. Commonwealth v. Freiberg*, 405 Mass. 282, 288 (1989); *Cunneen*, 389 Mass. at 227; *Commonwealth v. Gilbert*, 165 Mass. 45, 59 (1895). However, several members of the Court have recently suggested in concurring opinions that a defendant who does not intend to commit a murder by extreme atrocity or cruelty should not be subject to conviction of first degree murder under that theory, and that the *Cunneen* factors, in and of themselves, are insufficient to distinguish between murder in the first degree and murder in the second degree. *Commonwealth v. Berry*, 466 Mass. 763, 773-778 (2014) (Gants, J., with Ireland and Duffly, JJ., *conc.*). *See also Commonwealth v. Reilly*, 467 Mass. 799, 828-829 (2014) (Duffly, J., *conc.*).

### **C. Discretionary Reduction of Verdict.**

Both Mass. R. Crim. P. 25(b)(2) and the underlying statute, M.G.L.c. 278, § 11, authorize the trial judge on a renewed motion for a required finding of not guilty following the verdict to order entry of a finding of guilty of any lesser offense included in the offense charged. The SJC has held that the trial judge’s power to reduce the verdict reflects a legislative policy “promoting judicial responsibility to ensure that the result in every criminal case is consonant with justice.” *Commonwealth v. Woodward*, 427 Mass. 659, 666 (1998) (affirming reduction of second degree



murder verdict to manslaughter). The trial judge's discretionary power in this regard is quite broad and may be exercised "even if the evidence warrants the jury's verdict." *Id.*; see also *Commonwealth v. Ghee*, 414 Mass. 313, 321 (1993); *Commonwealth v. Millyan*, 399 Mass. 171, 189 (1987).

Thus, a trial judge may reduce a first degree murder verdict to second degree murder based upon the judge's discretionary determination that a verdict of murder in the second degree is more consonant with justice than a verdict of murder in the first degree. *E.g.*, *Ghee*, 414 Mass. at 321; *Millyan*, 399 Mass. at 189. As the Court has explained:

The judge's power under Rule 25(b)(2), like our power under G.L.c. 278, § 33E, may be used to ameliorate injustice caused by the Commonwealth, defense counsel, the jury, the judge's own error or, as may have occurred in this case, the interaction of several causes.

*Woodward*, 427 Mass. at 666. The Court has specifically approved the propriety of a discretionary reduction of a verdict of murder in the first degree by deliberate premeditation because the evidence of premeditation was slim. *Ghee*, 414 Mass. at 321. Where a trial judge chooses to reduce the verdict, the argument that the judge has improperly substituted his or her view of the evidence for that of the jury is unavailing. *Woodward*, 427 Mass. at 669.

## **II. APPLICATION OF LAW TO FACTS.**

### **A. There Was Insufficient Evidence to Support a Murder Conviction.<sup>1</sup>**

Notwithstanding the testimony of more than 130 witnesses and the introduction of more than 430 exhibits at trial, the Commonwealth utterly failed to prove that Hernandez intentionally participated in the killing of Odin Lloyd and that he acted with malice. Significantly, the jury did not convict Hernandez of murder by deliberate premeditation. Thus, the jury did not accept the

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<sup>1</sup> The trial transcript has not yet been prepared, so the following assertions regarding what occurred at trial are based principally on undersigned counsel's contemporaneous notes.

Commonwealth's theory that Hernandez had some sort of *animus* towards Lloyd, that he summoned Ernest Wallace and Carlos Ortiz from Connecticut to assist him in carrying out a premeditated plan to murder Lloyd, and that Lloyd's death was the culmination of that plan. Nevertheless, by its verdict, the jury apparently concluded that Hernandez intentionally participated in the murder. Based on the evidence (and lack of evidence), the jury necessarily reached that conclusion by guesswork, speculation, and imagination. That does not satisfy constitutional due process.

While the Commonwealth is not required to prove motive, its utter failure to present any evidence that Hernandez had any reason to kill or injure Lloyd (or want him killed or injured) undermines the essential element of malice. If Hernandez were not the shooter (and there was absolutely no evidence that he was), the malice manifested by the principal (which could be inferred through the intentional use of a dangerous weapon) cannot be imputed to Hernandez. In order to be convicted, Hernandez had to possess the requisite state-of-mind (malice) himself. There was no evidence that he did so, particularly considering the jury's failure to endorse the Commonwealth's theory of deliberate premeditation, *i.e.*, that Hernandez had orchestrated the killing.

Another critical gap in the Commonwealth's case was the absence of any evidence, let alone proof beyond a reasonable doubt, that Hernandez personally participated in Lloyd's killing by pulling the trigger himself, agreeing to stand by to provide aid and assistance to the perpetrator(s), or in any other way.<sup>2</sup> Keeping in mind that proof of presence, association with the perpetrator(s), knowledge that the crime was going to occur, and failing to take steps to stop it is insufficient, there was no way for the jury to fill this gaping hole in the Commonwealth's proof except by speculation and

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<sup>2</sup> Although there was no evidence that Hernandez was the shooter, the prosecutor alleged otherwise in his closing argument. That may well have influenced the jury.

guesswork. That is impermissible. While there was substantial evidence placing Hernandez at the scene where Lloyd was killed, there was no evidence, let alone proof beyond a reasonable doubt, about what, if anything, Hernandez actually did at that scene or agreed to do. None of the evidence about actions undertaken by Hernandez twelve hours or more after the killing filled that void. Such evidence was sufficient to convict Hernandez of being an accessory after the fact, not murder. Absent proof beyond a reasonable doubt that Hernandez knowingly participated in the murder, his conviction cannot stand.

While every case is different, a close analysis of the evidence introduced at this trial places it squarely within the *Salemme*, *Mazza*, *Morris*, and *Simpkins* line of precedent. As in *Salemme*, *Mazza*, and *Morris*, there was evidence placing the defendant at the scene of the crime, so he **could** have been the perpetrator. As in *Salemme*, there was evidence of consciousness of guilt. As in *Simpkins*, there was evidence that the defendant assisted others after the shooting and took steps to conceal or destroy evidence. As in all of those cases, there was ample evidence pointing to the defendant as a **possible** participant in the crime.

Yet in each of those cases, the Supreme Judicial Court found the evidence insufficient as a matter of state and federal constitutional law to support a conviction for murder. That is because there were gaps in the Commonwealth's proof, gaps that could not constitutionally be filled in by speculation or guesswork. Proof of the defendant's presence at the scene or his association with other alleged perpetrators could not fill in those gaps, nor could the defendant's efforts to assist his alleged co-venturers after the fact. While it was possible in all of those cases to view the evidence as consistent with the defendant's guilt, a finding of guilt necessarily required speculation, guesswork, or the piling of inference upon inference. That, the Court held in each instance, does not

equate to proof beyond a reasonable doubt. More is required.

The same result is required in the instant case. Since the jury did not convict Hernandez of first degree murder by deliberate premeditation, it did not conclude that there was a plan. If there was no plan, Lloyd's killing was spontaneous. If it was spontaneous, there was absolutely no basis to conclude that Hernandez, rather than one or more other individuals present at the scene, played any role in that spontaneous event or agreed to do so. Guesswork, speculation, and imagination do not equate to guilt beyond a reasonable doubt. Accordingly, Hernandez's murder conviction was unsupported by the evidence and must be vacated.

**B. There Was Insufficient Evidence of Extreme Atrocity or Cruelty.**

**1. Testimony of Dr. William Zane.**

Since there was no direct testimony about what occurred during the shooting of Odin Lloyd, the key evidence respecting the manner and means of death came from the medical examiner, Dr. William Zane. (A transcript of Dr. Zane's testimony is appended hereto as *Exhibit 1*.) Dr. Zane testified that Lloyd suffered six gunshot wounds, but he was unable to say whether those wounds were caused by six separate bullets. *Ex. 1* at 51. He provided no testimony about the sequence of wounds. He testified that the gunshot wound to the left chest would have been "rapidly fatal," causing a loss of consciousness within seconds and death within "seconds to minutes." *Id.* at 24-26.<sup>3</sup> While Dr. Zane testified that "there would be pain" from these wounds, he did not quantify or describe that pain in any way and acknowledged that the victim would not have experienced pain once he lost consciousness. *Id.* at 53.

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<sup>3</sup> He testified that two other wounds would also have been fatal. *Id.* at 42.

**2. Evidence respecting *Cunneen* factors.**

**a. Indifference to or taking pleasure in victim's suffering.**

Since there was no evidence respecting what, if anything, Hernandez did or said at the scene of the shooting, there was no evidence that he was indifferent to or took pleasure in any suffering experienced by Lloyd. In this regard, it must be kept in mind that based upon the testimony of Dr. Zane, Lloyd lost consciousness within seconds after being shot and died rapidly, within a matter of seconds or minutes at most. Clearly, evidence that Hernandez was engaged in normal activities, such as holding his child, eating and drinking, and talking to others some 12 hours or more after Lloyd's death cannot be deemed to have demonstrated indifference to or taking pleasure in Lloyd's conscious suffering.

**b. Consciousness and degree of suffering of the victim.**

Based upon the undisputed testimony of Dr. Zane, Lloyd lost consciousness within seconds and died within a matter of seconds or minutes, at most. While he did experience pain, there is no evidence that such pain was extraordinary or extreme in any way when compared to any other shooting death.<sup>4</sup>

Two witnesses testified that they were in their cars at Needletech (near Corliss Landing) between 3:00 a.m. and 3:30 a.m. on June 17, 2013 when they heard loud noises, presumably gunshots. Barbara Chan heard two bangs, followed by three more. Michael Ribeiro heard six-to-eight bangs in rapid succession. There was no testimony about any yelling or screaming. This

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<sup>4</sup> As with the application of all the *Cunneen* factors, this is not to suggest in any way that the crime of murder is anything but a horrible and despicable act which devastates the victim and the victim's family. All murders are horrible and despicable. Virtually all murders involve suffering by the victim. Yet if those facts alone were sufficient to characterize a murder as being committed with extreme atrocity or cruelty, the distinction between first and second degree murder would be effectively eviscerated. That is not the law.

testimony further demonstrates that the killing occurred very quickly and that the victim did not endure protracted or extreme suffering.

**c. Extent of physical injuries.**

Lloyd suffered six bullet wounds, including five to the torso and one to the forearm. No other injuries were noted.

**d. Number of blows.**

While Lloyd suffered six bullet wounds, Dr. Zane could not say whether those wounds were caused by six different bullets. Although there was no specific testimony to this effect, it is reasonable to infer from the location of the wounds that the bullet which struck Lloyd's forearm could have subsequently penetrated his chest. In any event, he appears to have been shot either five or six times. That is consistent with many reported murder cases where the victim suffered multiple gunshot wounds. While there is no fixed number of shots which renders a shooting "extreme," this case can be readily distinguished from a number of recent shooting cases where the defendant was convicted of murder by extreme atrocity or cruelty. *E.g. Commonwealth v. Tassinari*, 466 Mass. 340 (2013) (victim sustained 18 gunshot wounds); *Commonwealth v. Walker*, 460 Mass. 590 (2011) (victim shot 15 times); *Commonwealth v. Gomes*, 459 Mass. 144 (2011) (18 shots); *Commonwealth v. DiBenedetto*, 458 Mass. 657 (2011) (two victims shot a total of 23 times).

**e. Manner and force with which blows were delivered.**

Since Lloyd was shot with a handgun, the manner and force with which the blows were delivered were consistent with the manner and force employed in any shooting death. The shots occurred quickly. There was no testimony regarding the sequence of shots, nor was there any

evidence about the respective positions of Lloyd and his assailant when the shooting occurred.<sup>5</sup>

Despite the total absence of evidence about the sequence of shots, the prosecutor, in closing argument, performed a purported reenactment of the shooting which may well have unfairly affected the jury's verdict. He claimed that the initial shot was fired by Hernandez as he sat inside the car, but there was no evidence to support that assertion or the rest of the dramatic scenario acted out by the prosecutor in closing. Defense counsel objected to the argument regarding the alleged sequence of shots.

**f. Instrument employed.**

Based on the evidence, the murder weapon was a .45 caliber Glock semi-automatic pistol. From the standpoint of "extreme atrocity or cruelty," there was no evidence distinguishing this weapon from any other handgun. The instrument employed in thousands of murders each year is a handgun. Unfortunately, there is nothing at all unusual about that in modern American society.<sup>6</sup>

**g. Disproportion between means needed to cause death and those employed.**

According to the testimony of Dr. Zane, three of the wounds suffered by Lloyd would have been fatal, two rapidly fatal and one not rapidly fatal. Thus, strictly speaking, more force was employed than was necessary to cause death. That is undoubtedly true in many, if not most, shooting deaths where more than one gunshot wound was inflicted on the victim. The disproportion here

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<sup>5</sup> According to the testimony regarding griesse testing, some of the shots appeared to have been fired from close range, though no specific distance could be established in the absence of test-firing the murder weapon.

<sup>6</sup> It should also be noted that criminal defendants sentenced to death have been executed by firing squad throughout the history of the United States, as recently as 2010, without running afoul of the Eighth Amendment's prohibition of cruel and unusual punishments. That remains a method of execution in use today in Indonesia and some other countries and has recently been restored in Utah. The point is that multiple gunshots do not equate to extreme atrocity or cruelty.

surely cannot be characterized as "extreme," "shocking," "peculiar," or unusual. There was no evidence to that effect.

### **3. Discussion.**

Since any murder invariably involves some atrocity or cruelty, the issue is whether this particular murder was so atrocious or cruel as to warrant its characterization as "extreme" under c. 265, § 1. The relevant comparison group is necessarily limited to other cases of murder. Within that group, it cannot fairly be said that the circumstances present here were so extreme as to warrant the elevation of the crime to first degree murder. There was no evidence that Lloyd was tortured or mutilated, that he experienced protracted suffering, or that Hernandez took any pleasure in his pain. There was no evidence that would significantly distinguish the manner and means of this murder from the manner and means of many other murders. It does not fall at the far end of the atrocity/cruelty spectrum for all murders, nor does it deviate in any drastic sense from the norm for such grave and tragic crimes. In sum, based upon the evidence, no reasonable jury could conclude beyond a reasonable doubt that Hernandez committed murder by extreme atrocity or cruelty, so his conviction for first degree murder under that particular rubric cannot stand.

#### **C. Even if There Were Sufficient Evidence to Permit a First Degree Murder Conviction, the Court Should Exercise Its Discretion to Reduce the Verdict to Second Degree Murder, a Result More Consonant with Justice.**

Even if this Court concludes that there was sufficient evidence under the *Jackson/Lattimore* standard to permit a first degree murder conviction in this case, the Court should exercise its discretion to reduce the verdict to second degree murder as more consonant with justice. There are several reasons why such a reduction is warranted. First, since the jury did not convict Hernandez of murder by deliberate premeditation, the sole basis for elevating the crime to first degree murder



was the jury's determination that the murder was committed with extreme atrocity or cruelty. As demonstrated above, there was a paucity of evidence supporting that determination, even if there were enough such evidence to meet the minimum legal standard. Second, even if the Court concludes that there was sufficient evidence to permit the jury to find that Hernandez committed murder, evidence of his knowing participation was scant, at best. The jury may well have relied on evidence of Hernandez's actions after the fact to substitute for what was missing. Finally, there was no evidence respecting the actual role Hernandez played in the crime, and the jury's acquittal on the theory of deliberate premeditation strongly suggests that it did not find that Hernandez was the shooter. Taken together, these considerations make a verdict of second degree murder more consonant with justice than a verdict of murder in the first degree.

The SJC has noted that the trial judge's discretionary authority to reduce the verdict under Rule 25(b)(2) is analogous to the SJC's power under G.L.c. 278, § 33E. While every case is different, the language used by the SJC in several of its cases reducing first degree murder verdicts to second degree murder verdicts is instructive. In *Commonwealth v. Colleran*, 452 Mass. 417 (2008), the Court considered, *inter alia*, "whether [t]he entire sequence reflects spontaneity rather than premeditation[.]" "whether the defendant and the victim had enjoyed a good relationship prior to the killing[.]" and "whether drugs or alcohol were involved." *Id.* at 431. All three of those factors are present here. Moreover, in *Colleran*, the Court noted: "No motive for the killing has surfaced." *Id.* at 432. The same is true here.

In *Commonwealth v. Caldwell*, 374 Mass. 308 (1978), the Court reduced the verdict in a case it described as "abhorrent." *Id.* at 319. In doing so, it acknowledged that a verdict of first degree murder was legally supportable, but added: "We can say, at least, that we have here a case much less

persuasive of extreme cruelty than is commonly found in convictions on that basis.” *Id.* at 318. The same can be said in the instant case, which surely does not fall at the extreme, unusual, or peculiar end of a continuum consisting of all murder cases. In *Commonwealth v. Ghee*, the SJC approved the reduction of a first degree murder conviction based on deliberate premeditation where evidence of premeditation was legally sufficient, but “slim.” 414 Mass. at 321. The same can be said of the evidence of extreme atrocity here, if it is legally sufficient at all.

Under the Massachusetts criminal justice system, there is no more consequential and drastic choice for a jury to make than between a first degree murder conviction and an acquittal. Rule 25(b)(2) provides the system with a mechanism for ameliorating the harshness of the jury’s decision in appropriate cases. Under the totality of the circumstances, this is such a case, and the Court should exercise its discretion to enter a verdict of second degree murder on Count One in the event that it finds the evidence legally sufficient to support the jury’s verdict.

**D. There Was Insufficient Evidence to Support a Conviction for Unlawful Possession of a Firearm.**

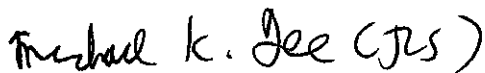
Hernandez is also entitled to a required finding of not guilty on Count Two, charging him with possession of a .45 caliber pistol outside his home on June 17, 2013. There was simply no evidence, let alone proof beyond a reasonable doubt, that Hernandez possessed such a weapon outside his home on that date. Even if the jury could infer that the object Hernandez was holding inside his home as depicted in the home surveillance video is a .45 caliber pistol, he was not charged with possessing such a firearm inside his home. As the Court stated to counsel during jury deliberations, any evidence of possession of such an object by Hernandez in his driveway (and Hernandez submits there was no such evidence) would not suffice to satisfy the elements of this offense. It would require speculation and guesswork to conclude beyond a reasonable doubt that

Hernandez was in possession of a .45 caliber pistol at Corliss Landing or elsewhere outside his home on the date in question. Speculation and guesswork are no substitute for proof. Accordingly, a required finding of not guilty must enter on this count.

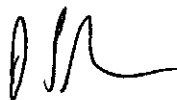
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**CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing document upon the Commonwealth by e-mail and by mailing a copy thereof, US mail, postage prepaid, to: William McCauley, First Assistant District Attorney, Bristol County, 888 Purchase Street, New Bedford, MA 02740 on May 7, 2015.



James L. Sultan

# EXHIBIT 1

1

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Exhibits: None

## COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT

\* \* \* \* \*

COMMONWEALTH OF MASSACHUSETTS \*

vs. \*

AARON HERNANDEZ \*

\* \* \* \* \*

Indictment  
No. BR CR2013-00983

## EXCERPT OF TRIAL TRANSCRIPT TESTIMONY OF WILLIAM ZANE BEFORE THE HONORABLE E. SUSAN GARSH

### APPEARANCES:

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Fall River Justice Center  
Fall River, Massachusetts  
April 2, 2015

LORI R. SAULNIER  
Official Court Reporter  
Certified Shorthand Reporter

## I N D E X

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1 MR. MCCAULEY: Your Honor, if I could call my next  
2 witness?

3 THE COURT: You may.

4 MR. MCCAULEY: Dr. William Zane, please.

5 THE COURT: While he's coming in, I do have one quick  
6 question for counsel.

7 (At side bar.)

8 THE COURT: I have given the instruction before about  
9 photographs, and I'll give it in the final charge.  
10 Sometimes defendants don't want that repeated and  
11 sometimes they do during the course of the trial.

12 MR. SULTAN: Let me ask my colleagues.

13 (Defense counsel conferred.)

14 MR. SULTAN: Yes, your Honor, please.

15 THE COURT: You want me to give it --

16 MR. SULTAN: Yes.

17 THE COURT: -- when they use the photographs? I  
18 will. Thank you.

19 (In open court.)

20 WILLIAM ZANE, Sworn

21 MR. MCCAULEY: May I, your Honor?

22 THE COURT: You may.

23 DIRECT EXAMINATION

24 BY MR. MCCAULEY:

25 Q Good morning, sir.

1 A Good morning.

2 Q Could you state your full name, please?

3 A It's William Zane, Z-A-N-E.

4 Q And, sir, where do you work?

5 A I work at the Office of the Chief Medical Examiner.  
6 Currently I work in the southeastern regional office,  
7 which is in Sandwich, Massachusetts.

8 Q How long have you worked for the Office of the Chief  
9 Medical Examiner?

10 A Since November of 1987.

11 Q Could you just describe your duties working for the  
12 medical examiner's office?

13 A There are two, essentially: one, as a medical  
14 examiner or medical doctor triaging cases, determining  
15 when deaths are sudden and unexpected, whether they need  
16 to be further investigated; and then there's the second  
17 part of the job, which is determining cause of death when  
18 it's sudden and unexpected.

19 Q Are you a medical doctor?

20 A Yes.

21 Q Where did you go to medical school?

22 A The University of Massachusetts, Worcester.

23 Q And after -- what year did you complete your medical  
24 schooling?

25 A 1981.

1 Q Can you tell us what you did upon getting your  
2 medical degree?

3 A I spent one year as a medical intern at a small  
4 hospital in New Haven, Connecticut, Hospital of Saint  
5 Raphael. Then I went into hospital pathology and spent  
6 three years training at Hartford Hospital. After that  
7 point, I elected to study or go into another area.  
8 Medicine has specialties, such as surgery and internal  
9 medicine. Pathology is a specialty. One of the  
10 subspecialties of pathology is forensic or legal  
11 pathology.

12 Q Can you tell us -- so what is pathology?

13 A Essentially, the study of tissue and fluids that have  
14 gone wrong in the body.

15 Q And what is forensic pathology?

16 A It's determining why someone has passed away, and the  
17 main laboratory tool is the autopsy.

18 Q Are you a forensic pathologist, sir?

19 A Yes.

20 Q And as a result, do you make determinations of the  
21 cause of death?

22 A Yes.

23 Q And in the course of making those determinations, do  
24 you conduct autopsies?

25 A Yes.



1 Q How many autopsies have you conducted?

2 A Between 7,000 and 8,000.

3 Q And is there a particular procedure that you follow  
4 with regard to conducting an autopsy?

5 A Yes.

6 Q And what is that procedure?

7 Well, let me ask you this first. Is it broken down  
8 into three essential parts.

9 A Yes.

10 Q And is one of the parts an external examination?

11 A Yes.

12 Q Is there an internal examination?

13 A Yes.

14 Q And is there also a toxicological examination?

15 A Yes.

16 Q Now, directing your attention to a case from June of  
17 2013, did you have an occasion to conduct an autopsy on an  
18 individual by the name of Odin Lloyd?

19 A Yes, I did.

20 Q And when did you conduct that autopsy?

21 A On June 18th, 2013.

22 Q And where was that autopsy conducted?

23 A At the Cape office.

24 Q And the Cape office, is that located in Sandwich?

25 A Yes.

1 Q Is that where you have worked out of since that  
2 office was set up?

3 A Yes.

4 Q Now, on that date, if you would just describe for us,  
5 please, your general observations prior to or as you began  
6 your autopsy on the body of Odin Lloyd.

7 A That --

8 Q Let me ask it this way, sir. With regard to -- was  
9 this a young man?

10 A Yes.

11 Q Of approximately what age?

12 A He was approximately 27 years of age.

13 Q And just a general description in terms of his  
14 ethnicity?

15 A He was black.

16 Q And in terms of height and weight?

17 A He was approximately 72 inches in height and 207  
18 pounds in weight.

19 Q 72 inches in height, is that six feet even?

20 A Yes.

21 Q And with regard to -- did you make general  
22 observations of -- well, let me ask it this way. When you  
23 first observed him, is he in a clothed or unclothed  
24 condition?

25 A He was not wearing clothes.

1 Q And at that time did you make general observations of  
2 the external portions of his body?

3 A Yes.

4 Q And just tell us generally, did you note any injuries  
5 to his body?

6 A Yes.

7 Q And had you seen similar types of injuries over the  
8 course of your career?

9 A Yes.

10 Q And what types of injuries were they?

11 A They were injuries caused by firearms.

12 Q Now, with regard to injuries caused by firearms, are  
13 there particular types of injuries that you can observe or  
14 distinguish based on either an entrance or an exit wound?

15 A Yes.

16 Q Can you first just describe the features of an  
17 entrance wound?

18 A An entrance wound usually is a punched-out wound.  
19 It's a wound where there's loss of tissue at the site  
20 where the bullet enters. The simple analogy is a paper  
21 punch. Because the skin is supported by tissue, the  
22 bullet itself causes a punched-out or sheared wound. And  
23 also with an entrance wound, you have an abrasion collar  
24 or a marginal abrasion which is caused by the bullet  
25 scraping the edges and the tissue in adjacent area

1 supporting the skin there.

2 Q And did you make -- when you externally examined the  
3 body of Odin Lloyd, did you make any observations of what  
4 appeared to be entrance wounds by gunshot?

5 A Yes.

6 Q With regard to exit wounds, can you describe the  
7 features of an exit wound?

8 A Your typical exit wound does not cause tissue loss,  
9 since usually the skin is not supported on the outer  
10 surface. And because the bullet is traveling through  
11 tissue, lacerating tissue, and then just expanding the  
12 skin, the skin usually tears and does not cause a loss of  
13 tissue at that area.

14 Q Did you make any observations of what appeared to be  
15 exit wounds on the body of Odin Lloyd when you began your  
16 external examination?

17 A Yes.

18 Q Now, just -- is there -- with regard to the procedure  
19 that you follow during the course of your external  
20 examination, what is that?

21 A Usually obtain some information as to why the person  
22 is there in front of us. Then I direct someone to remove  
23 clothing that's there. I make notes, I make diagrams, and  
24 I also take digital images or photographs. There's  
25 usually someone from a police agency taking photographs as

1 well or digital images. And I make notations as to the  
2 presence or absence of trauma or natural disease on the  
3 surface.

4 Q And at some point, sir, did you make notations and  
5 ultimately prepare a report with regard to trauma that you  
6 noted to the external portions of Mr. Lloyd's body?

7 A Yes.

8 Q Now, just with regard to -- do you start at a  
9 particular -- either from the head and work down, or how  
10 do you go about conducting or noting any injuries to the  
11 external portions of the body?

12 A I usually just stop on whim and start at a particular  
13 area. There's no --

14 Q In this case, where did you start?

15 A Well, I looked at the -- I mean, the chest, the  
16 torso.

17 Q The position of Mr. Lloyd's body when you first  
18 observed it, in what position was he?

19 A He was in a prone position, meaning that the anterior  
20 portion of his body was facing the ceiling.

21 Q And at some point were you able to make observations  
22 of his chest area?

23 A Yes.

24 Q And when you did that, did you note any injuries?

25 A Yes.

1 Q Can you describe the first injury you noted?

2 A Yes. That Mr. Lloyd had a gunshot wound on his right  
3 anterior chest about 17 inches below the head and about  
4 approximately two inches to the right of the anterior  
5 midline.

6 For the purposes of the Court, I'm now pointing on my  
7 body the approximate --

8 MR. MCCAULEY: Your Honor, if I could have the  
9 witness stand up, please?

10 THE COURT: You may.

11 THE WITNESS: For the purposes of the Court, I'm now  
12 pointing on my body the approximate area where this wound  
13 was.

14 BY MR. MCCAULEY:

15 Q Thank you, sir.

16 And with regard to what you observed there, just  
17 describe that wound.

18 A That there was a gunshot wound that had features of  
19 an entrance, that it was round. It was approximately a  
20 quarter of an inch in diameter, and that it had an  
21 abrasion collar about it, that there was no soot or powder  
22 evident on the skin or in the wound, and that it entered  
23 the skin.

24 Q Did you assign some notation or number to this  
25 injury?

1 A Yes.

2 Q And what number did you assign?

3 A Roman numeral I.

4 Q Now -- so Injury No. I, you said you noted it being  
5 an entrance wound?

6 A Yes.

7 Q Did you then make other observations of any other  
8 gunshot wounds in the chest area?

9 A Yes. On the left anterior chest, there was a gunshot  
10 wound approximately -- actually, let me start with saying  
11 there was a gunshot wound to the right abdomen.

12 And for the purposes of the Court, I'm now pointing  
13 on my right abdomen the gunshot wound. This wound was --  
14 sorry. I'm out of order. This wound was 24 inches below  
15 the top of the head and three inches from the anterior  
16 midline.

17 Q Now, just with regard to -- at some point did you  
18 assign a number of Roman numerals to the wounds that you  
19 observed to the body of Odin Lloyd?

20 A Yes. This was Roman numeral III.

21 Q So just going back, you've described No. I, which was  
22 on the right chest; is that right?

23 A That's correct.

24 Q Was there a Roman numeral No. II?

25 A Yes, there was.

1 Q Okay. And what injury did you note at Roman numeral  
2 II?

3 A There was a round gunshot wound -- actually, a  
4 slightly oval gunshot wound on the left anterior chest  
5 approximately 17 inches below the top of the head and two  
6 inches to the left of the anterior midline.

7 MR. MCCAULEY: And, your Honor, with the Court's  
8 permission, if I could have the witness stand up again?

9 THE COURT: You may.

10 BY MR. MCCAULEY:

11 Q Now, sir, if you would just indicate where this wound  
12 was on your body.

13 A I'm now pointing to my left chest.

14 Q And just with regard to -- if you'd just remain  
15 standing for one second, sir.

16 Roman numeral No. I that you just pointed out on the  
17 right chest, if you'd just indicate with both hands now  
18 the locations of those.

19 A I'm now pointing on my chest with both hands.

20 Q Okay. Thank you, sir.

21 And now you had indicated that there was -- you made  
22 an observation of and noted at Roman numeral No. III  
23 injury to the right flank; is that right?

24 A Yes.

25 Q And that I think you had pointed out on your own



1 body, true?

2 A Yes.

3 Q Was there a fourth injury that you noted to the  
4 external portion of Mr. Lloyd's body?

5 A Yes, there was.

6 Q And did you assign that Roman numeral No. IV?

7 A Yes.

8 Q And where was that one located?

9 A That wound was on the right clavicle, approximately  
10 11 inches below the top of the head.

11 MR. MCCAULEY: And, again, your Honor, if I could  
12 have the witness stand, please?

13 THE COURT: You may.

14 BY MR. MCCAULEY:

15 Q Could you just point to that, sir?

16 A I'm now pointing to my right clavicle the approximate  
17 area where this wound was.

18 Q And the clavicle is in the area of what, sir?

19 A It's the collarbone.

20 Q Thank you.

21 How about -- did you notice any other injuries to the  
22 body of Mr. Lloyd.

23 A Yes.

24 Q And was there -- the next injury, was that assigned  
25 Roman numeral No. V?

1 A Yes.

2 Q And just please describe that injury.

3 A That there was a gunshot wound to the right upper  
4 back that was located 12 inches below the top of the head,  
5 and it would be approximately two inches to the right of  
6 the posterior midline.

7 Q And if you wouldn't -- again, with the Court's  
8 permission, stand up and just point out that area of that  
9 injury, please.

10 A It's a little hard to do, but I'm now pointing on my  
11 right back pretty much at the shoulder where this gunshot  
12 entrance wound was.

13 Q Thank you, sir.

14 Now, with regard to -- was there one other wound that  
15 you also observed on the body of Odin Lloyd.

16 A Yes.

17 Q And with regard to -- did you assign that Roman  
18 numeral No. VI?

19 A Yes.

20 Q And if you could, can you show us where that is  
21 located?

22 A There was a gunshot wound to the right forearm, on  
23 the back of the right forearm. If you imagine that a  
24 person is standing straight up and the palms of the hands  
25 are facing forward, this is the usual position I describe

1 people in and --

2 MR. SULTAN: Well, I object to that, your Honor.

3 THE COURT: Objection sustained.

4 MR. SULTAN: He can describe where the injury was,  
5 please.

6 BY MR. MCCAULEY:

7 Q If you can just show us.

8 A I'm pointing on my right posterior forearm the area  
9 where this wound was.

10 Q Okay. When you say "the posterior forearm," is that  
11 the outer portion of the arm?

12 A Yes.

13 Q And is there an anterior portion of the arm?

14 A Yes.

15 Q And would that just be on the reverse side, the inner  
16 side of the forearm?

17 A That's correct. I'm pointing to my right forearm  
18 anterior surface.

19 Q Now, sir -- you may have a seat, please.

20 So did you note six gunshot wounds in total?

21 A Yes.

22 Q And then, as a result of noting those wounds, did you  
23 then make observations individually of them in an attempt  
24 to determine whether those six were either entrance or  
25 exit wounds?

- 1 A Yes.
- 2 Q Can you tell us -- I think you indicated the first  
3 injury, the gunshot wound to the right chest, was an  
4 entrance wound?
- 5 A Yes.
- 6 Q What about to the left chest, Roman numeral No. II?
- 7 A That was an entrance.
- 8 Q What about Roman numeral No. III, gunshot wound to  
9 the abdomen?
- 10 A That was an entrance.
- 11 Q What about Roman numeral No. IV, gunshot wound of  
12 right shoulder and back?
- 13 A I did not make a notation as to whether one was an  
14 entrance or an exit.
- 15 Q Sir, you had described earlier that there was a  
16 bullet injury to the clavicle, the one we're talking about  
17 now on Roman numeral No. IV?
- 18 A Yes.
- 19 Q And just describe the tissue in that area, the skin  
20 or the tissue.
- 21 A It's very thin skin.
- 22 Q And as a result of that, were there features that  
23 were -- were there not enough features for you to make a  
24 determination of entrance or exit?
- 25 A Beyond a reasonable doubt, yes.

1 Q Now, with regard to then Roman numeral No. V, the  
2 gunshot wound to the back, were you able to determine  
3 whether that was entrance or exit?

4 A I did make that determination.

5 Q And what did you find?

6 A That it was an entrance.

7 Q And the last, Roman numeral No. VI, gunshot wound of  
8 right forearm -- you indicated the posterior portion of  
9 the arm -- was that entrance or exit?

10 A That was entrance.

11 Q Now, after making these findings about entrance, or  
12 not being able to with regard to the clavicle gunshot  
13 wound, did you then move to conduct an internal  
14 examination of the body of Odin Lloyd?

15 A Yes, I did.

16 Q And if you could just describe, beginning with the  
17 gunshot wound of the chest, Roman numeral No. I, right  
18 chest, what did you do to determine any path that gunshot  
19 wound took through the body of Odin Lloyd?

20 A That it entered the chest cavity by fracturing the  
21 right third rib anteriorly. Then it went through the  
22 upper lobe of the right lung. It continued and left the  
23 chest cavity through the fifth rib, the posterior fifth  
24 rib on the right side, and eventually there was a gunshot  
25 exit wound found on the back.

1 Q When you said "there was a gunshot exit wound," was  
2 that consistent with the features you've already described  
3 for an exit wound?

4 A Some of the features, yes.

5 Q And were you able to then recover a projectile from  
6 the body relating to the injury beginning at the right  
7 chest, traveling, as you've described, through the body of  
8 Odin Lloyd?

9 A No. No bullet was recovered.

10 Q Now, with regard to gunshot wound of the left chest,  
11 Roman numeral No. II, if you would just describe, did you  
12 conduct an internal examination to determine the path of  
13 that projectile?

14 A Yes, I did.

15 Q And just tell us what you found.

16 A That there was an entrance through, I believe, the  
17 sixth rib -- let me double-check, please.

18 There was an entrance into the chest cavity through  
19 the sixth rib anteriorly on the left side, and the path  
20 was followed. It went through the upper lobe of the left  
21 lung, and then it went through the covering of the heart  
22 or the pericardium. It grazed the back of the heart on  
23 the right ventricle. It then exited the pericardial  
24 cavity and went through the diaphragm and went through the  
25 liver, the left side of the liver, and it went through

1 soft tissue or went into bone right at the 12th rib on the  
2 left side, right at the vertebral column, right at the  
3 back, almost at the midline.

4 Q So the rib you're describing there, is that in the  
5 back portion where the spine is?

6 A Yes.

7 Q Now, the pericardium -- can you explain to the  
8 jurors, what is that?

9 A It's a parchment-like area. It's a parchment-like  
10 piece of tissue which is firm, but it's also -- it has a  
11 lot of resilience and elasticity, and it covers the heart  
12 to provide some protection from the other organs. There's  
13 fluid in between the heart and the pericardium. And that  
14 way the heart can move to its content inside the  
15 pericardial sac.

16 Q Did you make certain observations about the condition  
17 of the pericardial sac on the body of Odin Lloyd?

18 A Yes.

19 Q And just describe what you observed.

20 A That there was a perforation in and a perforation  
21 out.

22 Q Was that consistent with the path of the bullet going  
23 from the left chest and moving through the body as you've  
24 described?

25 A Yes. It resulted in a two-by-four centimeter graze

1 wound to the back of the right heart.

2 Q And that type of injury, did that cause any bleeding  
3 in the body of Odin Lloyd?

4 A Yes.

5 Q How much bleeding?

6 A It caused approximately 500 ml of blood in the left  
7 chest cavity, and along with the other wound, there was  
8 approximately 250 ml of blood in the right chest cavity.

9 Q Okay. When you say "ml," what does that stand for?

10 A Milliliters.

11 Q And just give us an idea of the quantity of that  
12 blood in terms of by volume, some other form of volume.

13 A A cup would be a little bit more than a -- would be a  
14 little less than 500 milliliters, meaning that about 200  
15 millimeters [sic] of fluid is about -- fills in about half  
16 a cup. So there's half a cup of blood in the right chest  
17 cavity, and approximately more than a cup of blood was in  
18 the left chest cavity.

19 THE COURT: We're going to take a morning recess at  
20 this time. Please keep an open mind. Don't discuss the  
21 case among yourselves or with anyone else.

22 (The jury was recessed at 11:03 a.m.)

23 THE COURT: You may step down.

24 Mr. McCauley, I assume, to the extent you're asking  
25 the witness an opinion question, it will be to a



1 reasonable degree of certainty in the field of forensic  
2 pathology and not does he hold an opinion beyond a  
3 reasonable doubt.

4 MR. MCCAULEY: Yes, your Honor.

5 THE COURT: And if you could just maybe during the  
6 recess instruct him he should not indicate that any  
7 opinion he may have is, in his view, beyond a reasonable  
8 doubt.

9 MR. MCCAULEY: I'll do that, your Honor. Thank you.

10 THE COURT: Thank you. 15 minutes. And the same  
11 estimate of scheduling applies? So we don't have to order  
12 lunches?

13 MR. MCCAULEY: Yes, your Honor.

14 MR. FEE: Absolutely, your Honor.

15 THE COURT: Thank you.

16 (The Court recessed at 11:04 a.m. and reconvened at  
17 11:21 a.m., without the jury.)

18 THE COURT: You can bring the jury back.

19 (With the jury at 11:24 a.m.)

20 MR. MCCAULEY: May I, your Honor?

21 THE COURT: You may.

22 BY MR. MCCAULEY:

23 Q Sir, I think where I left off, I was asking you about  
24 the pericardial sac, and you described there was a  
25 perforation in that sac in the body of Odin Lloyd?

1 A Yes.

2 Q And you observed certain quantities of blood?

3 A Yes, I did.

4 Q And just if you would describe what effect those  
5 quantities of blood would have on the pericardial sac.

6 A If there was blood in the pericardial sac, it would  
7 cause inability of the heart to expand, and, therefore, it  
8 wouldn't be able to fill up with blood to pump elsewhere  
9 in the body.

10 Q And what effect would that have, the inability to  
11 pump blood elsewhere in the body?

12 A Well, blood would not be pumped to the brain and that  
13 at some point consciousness would be lost. Blood would  
14 not be going to the kidneys or to the other major organs.

15 Q Over what -- what amount of time would be required to  
16 lose consciousness?

17 MR. SULTAN: Well, I object to this being a  
18 hypothetical. If we're talking about time of death, I  
19 think we should get more concrete.

20 THE COURT: Objection sustained.

21 BY MR. MCCAULEY:

22 Q To the extent that this would have an impact on the  
23 heart's ability to pump blood and as a result cause loss  
24 of consciousness, how would that occur?

25 A The blood -- the heart would not -- the ventricle of

1 the heart, left heart, would not be able to fill up; and  
2 because it can't fill up, blood can't enter it to be  
3 ejected. Ergo, someone would finally lose consciousness  
4 over seconds and would not be able to perform purposeful  
5 activity.

6 Q And with regard to this injury, you said -- once it  
7 perforated the pericardium, did it hit some portion of the  
8 heart?

9 A Yes. It grazed the posterior heart.

10 Q And what effect would a bullet hitting that part of  
11 the heart have on the human body?

12 A It would -- it could cause bleeding into the  
13 pericardial sac. It would cause injury to the conduction  
14 system of the heart.

15 Q What is the conduction system of the heart?

16 A The heart requires that electrical impulses occur at  
17 sequential times. There are centers of the heart.  
18 There's one right where the atrium meets the ventricles,  
19 there's one inside the heart on the septum, and then there  
20 are centers of conduction on the outside and to the apex  
21 or the bottom of the heart. When you tear the heart and  
22 you cause the impulses to arrive at the bottom of the  
23 heart, so to speak, at a much later time or not at all  
24 because of the tear, then the heart can't beat  
25 effectively. If there was -- well -- excuse me. I've

1 answered the question.

2 Q Okay. And after it had struck that area of the  
3 heart, where did the bullet go from there?

4 A It went through the other side of the pericardium and  
5 diaphragm.

6 Q And after it went through those areas, where did it  
7 go?

8 A It went through the left lobe of the liver, traveling  
9 towards the back, and then went into the muscle of the  
10 back, in some way dislocating the 12th rib right at the  
11 vertebral column, and went through the muscle of the back.

12 Q And after going through the muscle of the back, did  
13 it exit the body?

14 A Yes, it did.

15 Q So did you recover any projectile or shrapnel from  
16 that projectile?

17 A Yes. Excuse me. No, I did not.

18 Q And with regard -- so I've asked you some questions  
19 about the direction, the path that Roman numeral I --  
20 Gunshot I and Gunshot II, right and left chest. Were  
21 either of those gunshot wounds independently fatal?

22 A The gunshot wound to the right chest would not be  
23 rapidly fatal, but it would be fatal. The gunshot wound  
24 to the left chest would be rapidly fatal.

25 Q When you refer to being rapidly fatal, what do you

1 mean?

2 A Seconds to minutes.

3 Q Now, going to gunshot wound to the abdomen, Roman  
4 numeral No. III, you indicated that from your external  
5 examination you observed an entrance wound?

6 A Yes.

7 Q And then later did you conduct an internal  
8 examination and follow the path of the projectile through  
9 the body of Odin Lloyd?

10 A Yes.

11 Q Just describe what you observed.

12 A It went through the skin and lateral abdominal wall  
13 on the right side, and then it disrupted the right lobe of  
14 the liver and disrupted the right kidney. The wound path  
15 continued into more soft tissue towards the back.

16 Q Was there a corresponding exit wound for this Roman  
17 numeral III, gunshot wound to the abdomen?

18 A No.

19 Q Were you able to recover then a projectile in the  
20 body of Odin Lloyd?

21 A Yes.

22 Q And when you recovered that projectile, did you do  
23 something with it?

24 A Yes. After it was diagrammed and images were taken  
25 of it, it was placed into an envelope.

1 Q And at some point was that turned over to a state  
2 trooper involved in this case?

3 A Yes.

4 Q Now, going to gunshot wound of the clavicle, Roman  
5 numeral No. IV, you described your observations and not  
6 being able to determine whether it was an entrance or an  
7 exit wound; is that true?

8 A That's correct.

9 Q And that was based on the limited amount of tissue in  
10 that area?

11 A One of the reasons, yes.

12 Q Okay. Were there other reasons?

13 A There was breakdown from the body starting to  
14 decompose.

15 Q And let me ask you about that. When you -- with  
16 regard -- can you describe what happens to the body once a  
17 person has died? Is there an initial stage of  
18 decomposition that begins?

19 A Yes.

20 Q And just describe what happens.

21 A The things that are pretty straightforward, such as  
22 settling of the blood or lividity, occurs. Then there is  
23 stiffening of the muscles from some of the chemical  
24 reactions. Pretty straightforward. Then --

25 Q Let me just interrupt you for a moment.

1           When you say "the stiffening," is there a name for  
2   that?

3   A     It's rigor.

4   Q     And if you'd just describe --

5   A     Rigor of the muscle.

6   Q     I'm sorry. And what is -- rigor mortis?

7   A     Yes.

8   Q     And just, if you would, describe what that is.

9   A     Chemicals in the muscle are depleted, and ergo, the  
10  muscle tightens up; it doesn't relax. And over a course  
11  of a day or so, it becomes very marked, very apparent in  
12  the larger muscle groups of the body, and then at its  
13  peak, it starts to decrease, and eventually, because the  
14  muscle itself is breaking down, the rigor mortis just  
15  dissipates, and you can move the muscles more easily.

16  Q     Okay. So this period of time that you're describing  
17  where there's stiffening and then at some point becoming  
18  unstiff; is that right?

19  A     Yes.

20  Q     What period of time does rigor occur over?

21  A     It usually starts immediately, but it's not -- or  
22  essentially it starts immediately. However, it's not  
23  noticed because it's not occurring in large muscle groups.  
24  It takes a while for that to be apparent. Over a course  
25  of hours. It's supposed to reach a peak at approximately

1 12 hours or more.

2 Q And when you say "a peak at 12 hours or more," is  
3 that peak with regard to stiffness?

4 A Stiffness, yes.

5 Q And what about over a time of approximately 14 hours?  
6 Would you expect to see rigor having -- either peaking or  
7 being near peak?

8 A It would be near peaking or peaking.

9 Q Now, you also described there are other -- in the  
10 initial stages of decomposition, is there something that's  
11 related to some effect that occurs on the skin?

12 A Because the skin is not viable and the body is losing  
13 temperature -- actually, is losing a high temperature and  
14 going to a lower temperature, it starts to break down, and  
15 you might get slippage or a situation where, if you apply  
16 too much pressure to the skin, it can tear, and  
17 superficial layers of the skin can break from the  
18 underlying connective tissue.

19 Q Can temperature have an impact on how quickly  
20 slippage of the skin will occur?

21 A Yes, it can.

22 Q And when you were conducting your autopsy, did you  
23 note any slippage of the skin on the body of Odin Lloyd?

24 A Yes.

25 Q And in what areas or to what extent?



1 A It was on the torso and extremities.

2 Q And would that be indicative of a certain amount of  
3 time that the body had been decomposing or begun to  
4 decompose, as well as have any significance with regard to  
5 the temperature the body was exposed to?

6 A It provides a very rough estimate.

7 Q And just, if you could, describe over what sort of  
8 time would you begin to see slippage of the skin.

9 A In a very hot room, maybe over hours. In the -- on  
10 the ground outside, depending on how much coverage there  
11 was from trees and bushes, also depending on how much  
12 exposure of the sun, the time of the year, whether -- the  
13 dryness or the moisture in the air can all affect  
14 slippage.

15 Q With regard to its effect with regard to a  
16 temperature of approximately 70, like a June day, what  
17 effect would that have on when slippage might begin?

18 A It'd occur within hours.

19 Q Now, with regard to the gunshot wound to the  
20 clavicle, you indicated you couldn't determine entrance or  
21 exit in terms of directionality. Were you able to follow  
22 the path of that injury through the body of Odin Lloyd?

23 A Yes.

24 Q And just describe, if you would, just starting from  
25 the front, the clavicle, what you noted.

1 A It went through the skin and some soft tissue. Then  
2 it went through the muscle on the right side of the neck  
3 and the back of the neck. It then went through muscle in  
4 the posterior right back.

5 Q And when it went through the muscle in the posterior  
6 right back, did you see another wound to the skin?

7 A Yes, I did.

8 Q And were you able to recover a projectile relating to  
9 this injury between the clavicle and that area of the  
10 right back?

11 A No.

12 Q Now, with regard to gunshot wound -- you had  
13 described gunshot wound to the back, Roman numeral No. V.  
14 Were you able to determine whether that was an entrance or  
15 an exit wound?

16 A That was an entrance.

17 Q And this was the one I think you had put your hand up  
18 over your shoulder to point to it?

19 A Yes.

20 Q And were you able to then track the directionality of  
21 this wound through the body of Odin Lloyd?

22 A Yes.

23 Q And just tell us, where did that wound go?

24 A This wound went under the skin, through muscle. It  
25 then crossed over from the right side of the body to the

1 left side. It caused fractures of the spinous processes  
2 of thoracic vertebrae 9 and 10 and then stopped in the  
3 lower left back.

4 Q When you say "the spinal [sic] process," can you just  
5 describe that area?

6 A It's in the center of the back. It's in the midline.  
7 Judging -- for my size -- excuse me. May I stand up?

8 THE COURT: You may.

9 THE WITNESS: I'm pointing on my back the center of  
10 the back and where the spinal -- excuse me -- where the  
11 vertebral column is.

12 BY MR. MCCAULEY:

13 Q And so if you would, just from where you saw the  
14 entrance where you pointed before, if you could use one  
15 hand to point that location and your other hand to show  
16 the --

17 A For the purposes of the Court, I'm now pointing to my  
18 lower back in the center, and I'm now moving it over to  
19 the right and to the left. And -- excuse me. There's  
20 a -- back in the midline there's an exit, and then in the  
21 left back there is a bullet underlying soft tissue.

22 Q So just from where you had described the entrance,  
23 the right shoulder and the back --

24 A Yes.

25 Q -- if you'd just show us, where did the bullet go?

1     Where did it wind up following that path from the upper  
2     right shoulder?

3     A     Approximately 20 inches below or 20-ish inches below  
4     the top of the head and in the skin of the left lower back  
5     approximately three inches or so from the midline of the  
6     back.

7     Q     Okay. Thank you.

8             And then, lastly, you had indicated there was an  
9     entrance wound on the posterior part of the right forearm?

10    A     Yes.

11    Q     Did you do an internal examination of the forearm --

12    A     Yes.

13    Q     -- of Odin Lloyd?

14             And just tell us what path that bullet followed.

15    A     It went through skin and soft tissue. It caused  
16     fracturing of the ulna bone, and it continued through  
17     muscle and exited the forearm anteriorly.

18    Q     And so the exit wound -- when you say "anteriorly,"  
19     was that on that inner side of the forearm?

20    A     Yes.

21    Q     Was any projectile recovered?

22    A     No.

23    Q     Now, with regard to all of these wounds that you've  
24     described, what, if any, feeling of pain would one note  
25     suffering these types of injuries?

1 A Well, the skin has nerves, obviously. There are  
2 nerves within the organs or on surfaces of the organs and  
3 in the organs themselves, such as the muscle has nerves  
4 surrounding it. So that if there's swelling, you would  
5 feel muscle discomfort or pain. You would also feel pain  
6 from swelling or tearing of tissue with the liver and the  
7 kidneys. So there would be pain.

8 Q What about some of the fractures of bones you  
9 described? What, if any, pain would somebody feel  
10 suffering injuries of those -- of that nature?

11 A Well, the ribs, or whatever bone, when they fracture,  
12 they move, and they may pinch nerves that travel below the  
13 ribs, on the undersurface of the ribs or in muscle groups,  
14 you know, right in that area. Other bone may pinch nerves  
15 elsewhere in the body.

16 MR. MCCAULEY: Your Honor, may I approach the  
17 overhead?

18 THE COURT: You may.

19 Oh. I thought you wanted to see me.

20 MR. MCCAULEY: I'm sorry, your Honor.

21 THE COURT: These are ones that are in evidence?

22 MR. MCCAULEY: They are in evidence, your Honor.

23 THE COURT: Thank you.

24 BY MR. MCCAULEY:

25 Q Sir, I'm just going to show you some -- you indicated

1       there were photos taken during the course of the autopsy?

2       A       Yes.

3       Q       And I'm just going to show you what's previously been  
4       marked 202A and ask you if you recognize this as the body  
5       of Odin Lloyd?

6       A       Yes.

7               THE COURT:  Let me just remind you, as I've told you  
8       before, that when you look at photographs that have been  
9       or will be introduced in evidence, please do not allow  
10      your verdict to be influenced in any way by the fact that  
11      some of the photographs may be unpleasant or graphic.  The  
12      defendant is entitled to a verdict based solely on the  
13      evidence and not one based on sympathy or pity that might  
14      be occasioned by a photograph.

15              Consider these exhibits only as they may draw  
16      attention to a clinical, medical status or to the nature  
17      of any injuries.

18              You may proceed.

19              MR. MCCAULEY:  Thank you, your Honor.

20      BY MR. MCCAULEY:

21      Q       Sir, do you see the two injuries you've described as  
22      the gunshot wounds to the right and left chest of Odin  
23      Lloyd?

24      A       Yes.

25      Q       And both of those were entry wounds?

1 A That's correct.

2 Q Sir, I'm showing you now what's been marked 202B.

3 I'm just going to orient it this way. Do you recognize  
4 this wound, sir?

5 A Yes.

6 Q And which wound is this?

7 A This is the wound at the clavicle.

8 Q And you indicated you were unable, because of the  
9 nature of the tissue, to be able to say whether it was  
10 entrance or exit; is that true?

11 A Yes.

12 Q Sir, I'm showing you now 202C. Do you recognize --  
13 let me orient this. Do you recognize this wound, sir?

14 A Yes, I do.

15 Q And what wound is this?

16 A This is a gunshot wound to the right side of the  
17 abdomen.

18 Q Okay. And earlier you had described slippage of the  
19 skin. Do you see any slippage present in this photograph?

20 A Yes.

21 Q Sir, I'm now showing -- putting on the overhead 203A.  
22 Do you recognize this, sir?

23 A Yes, I do.

24 Q And what do you recognize this to be?

25 A That is a gunshot wound on the front or anterior

1 surface of the right forearm.

2 Q And if I could just jump to 203C. Do you recognize  
3 that as the corresponding injury on the posterior aspect  
4 of Mr. Lloyd's right forearm?

5 A Yes.

6 Q And is that the entrance wound?

7 A This is a picture of the entrance wound.

8 Q And this other one the exit?

9 A Correct.

10 Q Sir, I'm just going to show you what's marked 204C.  
11 Do you recognize what's depicted in this photograph?

12 A Yes, I do.

13 Q What area of the body is this?

14 A This is a picture of Mr. Lloyd's back. It's -- his  
15 right back is at the inferior portion of the photograph.  
16 So we're actually looking at the right back, for the most  
17 part.

18 Q Okay. Now, I'm just going to -- do you see some of  
19 the gunshot wounds that you described on the back of Odin  
20 Lloyd?

21 A Yes.

22 Q Just beginning right here -- so towards his head-neck  
23 area -- just which -- you recognize this wound?

24 A Yes, I do.

25 Q What wound was this?



1 A This is the wound that correlates with the gunshot  
2 wound at the clavicle on the right side.

3 Q Okay. So the clavicle was the collarbone area?

4 A Yes.

5 Q And as you've indicated, it had traveled -- is that a  
6 relatively short distance?

7 A Yes.

8 Q And was any projectile recovered from this area?

9 A No.

10 Q This next injury here?

11 A Yes.

12 Q Okay. You recognize it?

13 A Yes.

14 Q Did it have a corresponding entrance wound?

15 I beg your pardon. You recognize this as what type  
16 of wound?

17 A That was an entrance wound.

18 Q And you described before the entrance wound to the  
19 upper right back. Is that this wound?

20 A Yes.

21 Q And you further described then a path through the  
22 body. Where did this go?

23 A It went under the skin, through muscle, and then  
24 terminated -- the wound path terminated in the left lower  
25 back under the skin.

1 Q And that -- was a projectile recovered in that area?

2 A That's correct.

3 Q I'm just going to direct your attention down to this  
4 area here. Do you see that area? The lower back now?

5 A Yes, I do.

6 Q I'm just going to direct your attention to this area  
7 here, sir.

8 A Yes.

9 Q Okay. Now, if I could just go to 204A and ask you if  
10 that shows a close-up of that?

11 A Yes.

12 Q I'm sorry. I'm going to just orient it.

13 A Yes.

14 Q Okay. Do you see -- can you see the projectile that  
15 you ultimately recovered from this wound traveling -- as  
16 you indicated, an entrance wound, traveling through the  
17 body down to the lower back?

18 A Unfortunately, I can't.

19 Q Okay. And with regard to this area here, sir, do you  
20 see -- were you able to recover a projectile from that  
21 area?

22 A Yes.

23 Q And that area, that projectile, were you able to  
24 track that from where it had entered the body?

25 A Yes.

1 Q And where had it entered?

2 A That entered on the right side of the abdomen.

3 Q Okay. So that was the right side. So is there any  
4 notation in the skin for the bullet that came from the  
5 upper right part of the back-shoulder?

6 Let me just go back to here. Is there any -- were  
7 you able to make any observations without actually  
8 recovering it from inside the body of Odin Lloyd.

9 A No. I had to recover the bullet.

10 Q Okay. Now, just going to this wound here, what is  
11 this, sir?

12 A That is a gunshot exit wound.

13 Q And was there a corresponding entrance wound?

14 A Yes.

15 Q And which wound was that?

16 A That was from the gunshot wound to the right anterior  
17 chest adjacent to the nipple.

18 Q I'm just going to show you this here. Is that  
19 corresponding to this wound, the gunshot wound here?

20 A Yes.

21 Q And now, as I had shown you before, down the lower  
22 back area, did you make observations of this injury?

23 A Yes.

24 Q And did that have a corresponding wound to it?

25 A Yes, it did.

1 Q In the lower back here, was this an entrance or exit?

2 A That's an exit.

3 Q Okay. And where was the corresponding entrance  
4 wound?

5 A On the left anterior chest, again, adjacent or in the  
6 area of the left nipple.

7 Q Okay. And is this just a close-up -- this is 204A --  
8 close-up of that exit wound in the lower back?

9 A Yes.

10 Q I'm just going to show you now this injury here. Is  
11 that the left entrance wound corresponding with that exit  
12 wound?

13 A That's correct.

14 Q And, sir, this is just 204B. Does that show just a  
15 close-up of the difference between the entrance and the  
16 exits?

17 A Yes.

18 Q Now, sir, I had asked you about the two chest wounds,  
19 whether either was independently fatal. Were any of those  
20 other four gunshot wounds you've described independently  
21 fatal?

22 A The gunshot wound to the right abdomen which resulted  
23 in injury to the right kidney and liver, that would have  
24 been fatal, rapidly fatal.

25 Q And, again, rapidly fatal meaning how long?

1 A Seconds to minutes.

2 Q So out of the six you've indicated, how many in total  
3 were independently fatal gunshot wounds?

4 A Three.

5 Q And with regard to those six injuries, the onset of  
6 death was what, or would be what, suffering those types of  
7 injuries?

8 MR. SULTAN: Objection. Asked and answered, your  
9 Honor.

10 THE COURT: Overruled.

11 A It would be, on the outside, minutes.

12 Q And just in terms of the mechanism, having an  
13 individual suffering those types of gunshot wounds, what  
14 would the mechanism of death be? What would ultimately  
15 lead to the death?

16 A It may be cardiac irregularity or dysrhythmias to the  
17 heart. It could be bleeding into the chest. It could be  
18 bleeding into the abdomen and could be bleeding into the  
19 pericardial sac.

20 Q Okay. And arrhythmias to the heart, what is that?

21 A That infers that the electrical system of the heart  
22 has been injured.

23 Q And based on your internal examination, your external  
24 examination -- and at some point did you also review  
25 toxicology reports?

1 A Yes, I did.

2 Q And based on your examination during the course of  
3 your autopsy, considering all of those things, with regard  
4 to -- were you able to determine, to a reasonable degree  
5 of certainty as a forensic pathologist, the cause of death  
6 for Odin Lloyd?

7 A Yes.

8 Q Okay. And what was the cause of death of Odin Lloyd?

9 A That Mr. Lloyd died as a result of injuries to the  
10 heart, the lungs, the liver, and kidney, and this was due  
11 to gunshot wounds of the torso.

12 Q Now, sir, at the autopsy, did you also recover other  
13 items that were turned over to the state police?

14 A Yes.

15 Q And what other items did you recover during the  
16 course of the autopsy of Odin Lloyd?

17 A Paper bags that were covering the hands, both hands,  
18 fingernail clippings, head hair -- bear with me, please --  
19 blood, and at the office we had also taken x-rays. The  
20 x-rays and blood were retained in our office. Blood,  
21 bags, hair, and fingernail clippings were submitted to the  
22 state police.

23 Q And, sir, with regard to the directionality, were you  
24 able to determine the directionality of the projectiles  
25 through the body of Odin Lloyd?

1 A Yes.

2 Q And when I say "directionality," do you make findings  
3 whether it is front to back, upward, downward, left to  
4 right?

5 A I describe paths in the body as to his right to his  
6 left or his left to his right, upward towards the head or  
7 downward towards the feet, and then back to front, as to  
8 whether it's from his abdomen to his back or his back to  
9 his abdomen.

10 Q And were you able to do that with regard to the  
11 injuries, the gunshot wounds, the six gunshot wounds that  
12 you found on the body of Odin Lloyd?

13 A To five of them, yes.

14 MR. MCCAULEY: And, your Honor, with the Court's  
15 permission, if he'd be allowed to approach the mannequin  
16 to indicate the directionality of the wounds to the body?

17 MR. SULTAN: Well, your Honor, at this point I  
18 object. I think we've done that twice already now.

19 THE COURT: Objection's overruled.

20 BY MR. MCCAULEY:

21 Q Sir, if you would, please.

22 Sir, if I could first have you just, if you would,  
23 place -- if we could just go by Roman numeral No. I, as  
24 you've described, just place a numbered -- a similar  
25 numbered sticker, and I'm just going to give you a red No.

1 1. If you'd place it for the entrance wound.

2 A (Witness complies.)

3 Q And with regard to -- I think you indicated you were  
4 able to determine the exit wound on the body; is that  
5 true?

6 A Yes.

7 Q And if you would, I'm just going to give you a  
8 yellow, this representing an exit. If you would place  
9 that in the location of the exit wound for Roman numeral  
10 No. I.

11 A (Witness complies.)

12 Q Okay. And, sir, if you could, I'm going to first  
13 just hand you this pointer and ask you just to show us --  
14 well, first point to the area of the entrance.

15 A (Witness complies.)

16 Q Okay. And if you could, maybe just -- let me turn  
17 this sideways. I'm not going to do that again. Okay.

18 Now, if you could, if you'd just use that pointer and  
19 try and show the directionality with the pointer aligning  
20 those two points, please.

21 A I believe it was slightly upward and front to back.

22 Q Okay. I'm just going to ask you to keep your voice  
23 up.

24 You say what direction?

25 A I believe it was front to back. It may have been



1 slightly upward.

2 Q Okay. Now, I'm going to ask you to do the same  
3 thing, if you would, as to Roman numeral -- gunshot wound  
4 No. II, which was left chest. If you would place the red  
5 dot in that location.

6 A (Witness complies.)

7 Q And if you would, with the corresponding yellow dot  
8 for the exit wound.

9 A (Witness complies.)

10 Q Okay. Now, could you show us, please, the  
11 directionality from the entrance to the exit of gunshot  
12 wound to the left chest?

13 A Front to back and downward.

14 Q Okay. Now, this time with regard to downward,  
15 what -- approximately what angle is that?

16 A I'm going to say approximately 45 degrees.

17 Q Okay. Now, with regard to the entrance, No. III,  
18 Roman numeral No. III, right abdomen, if you would place  
19 that in the location.

20 Let me move our mannequin. Okay. I'm sorry.

21 Is that right?

22 A That's the left. This is the right.

23 Q Okay. And if you would, was there an exit wound  
24 corresponding to the right flank entrance wound?

25 A No. There was no exit.

1 Q Okay. Where did you recover the projectile for the  
2 entrance wound No. III into the right abdomen?

3 A Bear with me. I'm going to turn this carefully.

4 It exited in the back. I'm sorry. Excuse me. It  
5 went into the body almost parallel and was recovered in  
6 soft tissue near the back.

7 Q Okay. So with regard to -- it would be right to  
8 left. What about in terms of up or down or front to back?

9 A It was slightly upward. It went in at 24 inches, and  
10 it was recovered approximately at 22 inches.

11 Q Okay. And with regard to now No. IV, which I believe  
12 you indicated was the -- is that the clavicle?

13 A That's right.

14 Q Let me give you that. If you would please place that  
15 in the area where you observed the entrance wound.

16 A I could not determine the entrance site.

17 Q I beg your pardon. I'm sorry. If you would just --  
18 I have a green sticker. I'm going to give that to you.  
19 If you would just put it at the location representing one  
20 of the injuries.

21 A (Witness complies.)

22 Q And I'm going to ask you to do the same with this  
23 green one for where you saw the corresponding.

24 A (Witness complies.)

25 Q Okay. So, now, I'm just going to turn -- can you

1 just show us now the directionality of those two wounds?  
2 And, again, without knowing which was entrance or exit,  
3 you can't determine whether it was front to back or back  
4 to front?

5 A That's correct.

6 Q Now, with regard to No. V, where was No. V located?

7 A (Witness indicates.)

8 Q Okay. And that represents entrance or exit?

9 A That represents entrance.

10 Q Okay. And were you able to recover -- or did you  
11 find a corresponding exit wound for No. V?

12 A No.

13 Q Did you recover a projectile from the body of Odin  
14 Lloyd corresponding to No. V?

15 A Yes.

16 Q And where was that found, sir?

17 A On the -- underneath the skin on the left side in  
18 approximately the same area as the exit. And I've just  
19 pointed to the mannequin in that area for the purposes of  
20 the Court.

21 Q And if you would, sir, could you use the pointer to  
22 show us the angle that that projectile followed through  
23 the body of Odin Lloyd?

24 A (Witness indicates.)

25 Q And ultimately -- it obviously didn't come out, so to

1 the location where you found it. Approximately there?

2 A Yes.

3 Q Okay. And with regard now to the last gunshot wound  
4 that you noted on the body of Odin Lloyd, is that in the  
5 area of the forearm?

6 A Yes.

7 Q Could you place this red No. 6 on the entrance?

8 A (Witness complies.)

9 Q Okay. And if you'd do the same thing for a  
10 corresponding exit wound that you've already described.

11 A (Witness complies.)

12 Q And just in terms of directionality, sir, can you  
13 just show with the pointer -- let me turn it this way for  
14 you.

15 Okay. Were they roughly even, or was there some --

16 A There was some -- I believe there was some deviation  
17 slightly upward.

18 Q Okay. Thank you.

19 So, sir, does this represent now, the mannequin in  
20 its current condition, absent the two projectiles that  
21 were in the body, the injuries that you noted to the back  
22 of Odin Lloyd.

23 A The approximate areas, yes.

24 Q And the forearm?

25 A Yes.

1 Q And also then the front?

2 A Yes.

3 Q Okay. Thank you, sir. You can resume the stand.

4 MR. MCCAULEY: May I approach, your Honor?

5 THE COURT: You may.

6 BY MR. MCCAULEY:

7 Q Sir, I'm just going to show you what was previously  
8 marked as Exhibit No. 67. Do you recognize this item as  
9 being consistent with one of the projectiles you recovered  
10 at the autopsy of Odin Lloyd?

11 A Yes.

12 Q Sir, I showed you 67. Now I'll show you 66.

13 Sir, I'm showing you this other item. Do you  
14 recognize that as being consistent with one of the items  
15 recovered from the body of Odin Lloyd.

16 A Yes.

17 MR. MCCAULEY: If I could have one moment, your  
18 Honor, please?

19 THE COURT: You may.

20 MR. MCCAULEY: I have nothing further. Thank you,  
21 sir.

22 **CROSS-EXAMINATION**

23 **BY MR. SULTAN:**

24 Q Good afternoon, Dr. Zane.

25 A Good afternoon.

1 Q So, sir, you've told us, based on your autopsy, that  
2 the cause of death in this case was gunshot wounds that  
3 caused various injuries internally, right?

4 A Yes.

5 Q Okay. But your autopsy can't tell us anything about  
6 who caused those injuries, can it?

7 A That's right.

8 Q And you told us that there were six bullet wounds in  
9 this case, right?

10 A Yes.

11 Q Okay. Can you tell us, to a reasonable degree of  
12 medical certainty, whether those six wounds were caused by  
13 six different bullets? That is, were there six -- well, I  
14 guess that's the question. Were those six -- can you tell  
15 us, to a reasonable degree of medical certainty, whether  
16 those six wounds were caused by six different bullets?

17 A No.

18 Q Okay. Now, am I correct, Dr. Zane, that if a person  
19 is alive and the person is bleeding, that there will be  
20 clotting of the blood?

21 A Yes.

22 Q Okay. And why is that?

23 A There's a response by different cells in the blood  
24 platelets, which aren't cells but fragments of cells.  
25 They go to an area to slow down bleeding. And there's

1     also factors that are secreted by the liver which start a  
2     coagulation pyramid, so to speak.

3     Q     So that's a natural process in all living human  
4     beings, right?

5     A     Yes.

6     Q     Okay. Now, you indicated on direct examination  
7     that -- I think you said approximately a cup and a half of  
8     blood you found inside Mr. Lloyd's right and left chest  
9     cavity, right?

10    A     Yes.

11    Q     Okay. And am I correct that you found an additional,  
12    I think, 100 to 200 milliliters of blood inside the  
13    abdominal cavity?

14    A     Yes.

15    Q     Okay. So that's less than a liter altogether, right?

16    A     That's correct.

17    Q     And there's nothing in your notes or in your autopsy  
18    report indicating that any of that blood was clotted,  
19    correct?

20    A     Correct.

21    Q     Now, you told us on direct examination that several  
22    of the injuries suffered by Mr. Lloyd would cause death, I  
23    think you said, from seconds to minutes, right?

24    A     That's right.

25    Q     Okay. But those wounds could cause unconsciousness

1 before death, right?

2 A Yes.

3 Q And from a medical standpoint, as far as we know, a  
4 person doesn't feel pain when they are unconscious or when  
5 they are deceased, right?

6 MR. MCCAULEY: Your Honor, I'd ask that that be  
7 broken into two questions.

8 MR. SULTAN: Okay. I'll be happy to separate it.

9 BY MR. SULTAN:

10 Q As far as we know, Dr. Zane, does an individual  
11 suffer -- does an individual suffer conscious pain when he  
12 or she is unconscious?

13 A No.

14 Q Okay. And as far as we know scientifically, does a  
15 person suffer conscious pain when he or she is deceased?

16 A No.

17 Q Okay. Now, are you aware, Dr. Zane, that Mr. Lloyd's  
18 body was found on the early evening of June 17th, 2013?

19 A Yes.

20 Q Okay. And am I correct that Mr. Lloyd's body was  
21 brought to the Office of the Chief Medical Examiner that  
22 night in Boston?

23 A Yes.

24 Q Okay. And you told us on direct examination that you  
25 conducted Mr. Lloyd's autopsy on June 19th, right?



1 A I believe 18, please.

2 Q Can you look at your report, please, and tell us when  
3 you conducted the autopsy?

4 A It says 19.

5 Q Is that correct, Dr. Zane, that you did it on the  
6 19th, or is that incorrect?

7 A It represents the date of the autopsy.

8 Q So you did it on the 19th; is that right?

9 A Yes.

10 Q Okay. And you conducted -- but you didn't conduct  
11 Mr. Lloyd's autopsy at the Office of the Chief Medical  
12 Examiner in Boston, right?

13 A That's right.

14 Q You did it on Cape Cod, right?

15 A Yes.

16 Q So Mr. Lloyd's body, which had been at the Office of  
17 the Chief Medical Examiner in Boston on the night of the  
18 17th, was transported to Cape Cod so you could do the  
19 autopsy there on the 19th, right?

20 A In actuality --

21 Q Well, am I right, sir, that it was transported to  
22 Cape Cod on the 19th, sir?

23 A Yes.

24 Q Okay. Can you tell us why the autopsy was not  
25 performed in Boston, sir, where his body had been

1 initially brought?

2 MR. MCCAULEY: I'm going to object unless he knows  
3 personally.

4 THE COURT: If you have knowledge. If you have  
5 personal knowledge.

6 THE WITNESS: Yes.

7 BY MR. SULTAN:

8 Q Okay. Tell us why.

9 A It was a Cape Cod case, so it was a Cape Cod doctor.

10 Q It was a Cape Cod case? Is that your testimony?

11 A Bristol County is covered by Cape Cod.

12 Q Well, sir, there are plenty of times when autopsies  
13 are conducted on bodies from other parts of Massachusetts  
14 in Boston, right?

15 A That's right.

16 Q Okay. Is it fair to say that it was done for your  
17 convenience, sir?

18 MR. MCCAULEY: I object, your Honor.

19 THE COURT: Overruled.

20 A No.

21 Q Now, you conducted your autopsy on June 19th, 2013,  
22 right?

23 A Yes.

24 Q Okay. And am I correct, sir, that your autopsy  
25 report was dated January 10th, 2014?

1 A Yes.

2 Q Some six months later?

3 A Yes.

4 Q Is that consistent with your regular practice, sir,  
5 to have a six-month delay between the autopsy and the  
6 report?

7 A Currently, yes.

8 Q Thank you, doctor. One more --

9 MR. SULTAN: May I have a moment?

10 THE COURT: You may.

11 MR. SULTAN: Thank you, doctor.

12 **REDIRECT EXAMINATION**

13 **BY MR. MCCAULEY:**

14 Q Sir, just with regard to the questioning about the  
15 clotting, what amount of time does it take before the body  
16 begins to clot?

17 A It takes minutes.

18 Q So the absence of any clotting didn't strike you as  
19 being unusual or inconsistent with your own determination  
20 that death could have occurred within minutes?

21 A Yes.

22 MR. MCCAULEY: Thank you.

23 MR. SULTAN: Nothing further.

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

25 THE WITNESS: Am I excused?

1 THE COURT: You are.

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## C E R T I F I C A T I O N

I, LORI R. SAULNIER, OFFICIAL COURT REPORTER, DO  
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND ACCURATE  
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