



Former New England Patriots tight end Aaron Hernandez sits in the courtroom during a hearing on defense motions in advance of jury selection. Credit: Stephan Savoia/AP

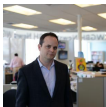
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## Legal Doctrine That Would Consider Hernandez Innocent Is Questioned

April 19, 2017

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The apparent suicide of Aaron Hernandez as he was in the process of appealing his conviction for the 2013 murder of Odin Lloyd has brought new attention to an archaic legal doctrine in Massachusetts. The doctrine means Hernandez will likely be cleared of any wrongdoing in the eyes of the law.

Ursula Ward, the mother of the victim, filed a wrongful death lawsuit against the former Patriots linebacker. Lawyers in that civil case say Hernandez's death shouldn't impact their case.

"We already have what is called a summary judgement in our favor," said attorney Doug Sheff, who is representing Lloyd's mother. "The issue of liability has been determined, and it has been determined that Mr. Hernandez is responsible for Odin Lloyd's death and the loss to Odin Lloyd's family."

Sheff said he hopes they can now proceed to the damages portion of the case, figuring out how much money from Hernandez's estate should go to Lloyd's family. But as far as the criminal case goes, Hernandez can now legally be considered an innocent man.

"Anything associated with that criminal trial is now as if it never happened," said Martin Healy, chief legal counsel to the Massachusetts Bar Association. "It's vanished, it's going to be nullified and void."

That's because of an old legal doctrine in Massachusetts called "abatement ab initio" that goes all the way back to our days as an English colony. It basically says it's unfair to consider someone guilty of a crime if they die before they've exhausted their appeals. Hernandez was in the process of appealing his murder conviction.



LEGAL EASE (/TAXONOMY/TERM/1402)

**The Impact Of Aaron Hernandez's Death On His Pending Appeal In The Odin Lloyd Murder Case** (/2017/04/19/news/impact-aaron-hernandezs-death-his-pending-appeal-odin-lloyd-murder-case)

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Healy said this doctrine was seen when John Salvi died while appealing his conviction for murders at Planned Parenthood in Brookline in 1994. And it doesn't just happen in Massachusetts.

"It happened federally in the Enron case, when you saw Ken Lay die of a heart attack before sentencing, resulting in \$44 million of restitution that was on the table basically nullified and disappeared, and the victims of that scandal were never fully compensated," he said. Even when there's no money at stake, this doctrine can be a slap in the face of victims.

"His family, his supporters get to say, 'well, was he really guilty? Because he didn't get to finish seeking that appeal, and maybe his conviction would have been overturned,'" said Meg Garvin, director of the National Crime Victim Law Institute. "And for the family, they are stuck with, 'we have an unfinished story about the murder of our family member.' And that is incredibly painful, and really a one-sided way to think about what happens in criminal justice."

Garvin says if there is a motion to abate Hernandez's conviction, she hopes the state considers opposing it on policy grounds.

"So that the debate can be brought to a head, and the state can consider whether it needs to change its policy," she said.

Healy agrees. "Given the fact that the country has more or less moved toward recognizing victim rights more forcefully, I think it's time to reexamine the doctrine," he said. He says he's not sure where he stands on what should be done to the doctrine, but the time for debate is now.

AARON HERNANDEZ (/TERM/AARON-HERNANDEZ)

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