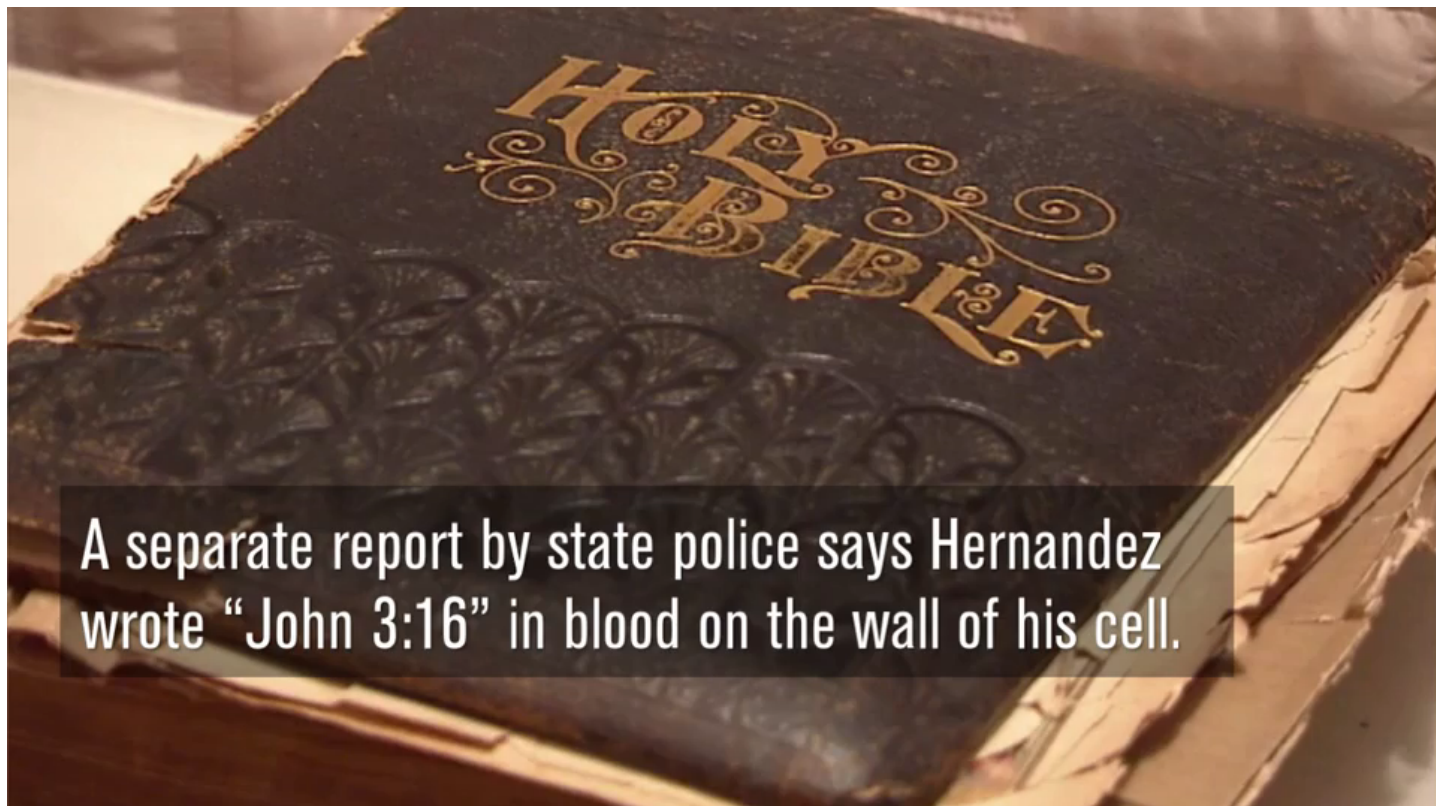


Massachusetts Will Appeal Judge's Decision To Vacate Aaron Hernandez Murder Conviction



A separate report by state police says Hernandez wrote "John 3:16" in blood on the wall of his cell. (May 5, 2017) (Sign up for our free video newsletter here <http://bit.ly/2n6VKPR>)



By **Dave Altimari**

MAY 9, 2017, 9:22 PM | FALL RIVER, MASS.

Citing precedent that goes back more than a century, a Superior Court judge Tuesday vacated **Aaron Hernandez's** conviction for the 2013 murder of **Odin Lloyd** because the former New England Patriots star from Bristol died while his appeal was pending.

It is unclear if the decision will have implications for the pending civil lawsuit against Hernandez's estate filed by Lloyd's mother. Her lawyer said Tuesday he did not believe a vacated murder conviction would affect the civil case.

The legal principle that reversed Hernandez's conviction posthumously is known as "abatement ab initio" — a Latin phrase meaning "from the beginning."

The abatement doctrine states that it is discriminatory to a defendant or survivors to allow a conviction to stand before they have a chance to fully appeal it. Hernandez hanged himself in a Massachusetts prison last month.

The prosecutor said Massachusetts would appeal the ruling.

"Aaron Hernandez did consciously and voluntarily take his own life. He died a guilty man and a convicted murderer," said Bristol County District Attorney Thomas Quinn. "You can't just snap your fingers and say he wasn't convicted, and an antiquated, medieval doctrine shouldn't change that."

Lloyd's mother, Ursula Ward, attended the hearing and spoke afterward outside the courthouse.

"I know you are looking for me to be angry, but I am not. In our book he is guilty and will always be guilty," Ward said as she fought back tears.

"No one wins today," Ward said. "One day I will get to see my son, and that is the victory I am going to take with me."

Assistant District Attorney Patrick Bomberg had argued that Hernandez forfeited his legal rights by committing suicide and that he killed himself aware of the archaic law that would lead to his conviction being overturned.

But Judge E. Susan Garsh, who had sentenced Hernandez to life in prison after overseeing his trial in the same courtroom, didn't accept the state's argument.

Garsh ruled the abatement doctrine is well established in Massachusetts and other states. She said it has been practiced for more than a century and she had no choice but to follow the law.

She said the Commonwealth of Massachusetts was incorrect that the U.S. Supreme Court had rejected the doctrine last year.

Garsh mentioned that the commonwealth argued Hernandez's intention when he killed himself was to abandon his right to appeal. But she rejected that position, saying the cases the commonwealth used to argue the point were not relevant to this case.

She said it is unclear why Hernandez killed himself and that a recently released correction department report provides no clear evidence of his motive. The commonwealth had pointed to part of a correction department report that said inmates had heard Hernandez talk about the abatement doctrine.

Garsh said that inmates also told investigators Hernandez had become spiritual and that a religious motive can't be dismissed given the evidence found in his cell. She also brought up rumors that he was gay as a possible motive for suicide.

Earlier, Hernandez's lawyer, John Thompson, told Garsh the prosecution had presented no evidence that would require the conviction to stand.

"There is not a final conviction," he said. "And that's what matters."

There was no one from Hernandez's family present during the court session. Lloyd was dating the sister of Hernandez's fiancée Shayanna Jenkins Hernandez at the time of the murder.

Quinn had opposed the motion to vacate Hernandez's conviction based on the argument that Hernandez forfeited his legal rights when he killed himself and that courts across the country were realizing the law was antiquated.

Prosecutors argued in a brief filed last week that erasing the convictions would "reward [his] conscious, deliberate and voluntary act," adding that he had a poor chance of overturning his conviction in the appeal process.

There is no constitutional right or statutory right to abatement, Bomberg told the judge Tuesday.

"This is not a defendant who has arrived at killing himself by happenstance; that is not what the evidence shows," said Bomberg. "The defendant should not be able to accomplish in death what he could not accomplish in life."

The abatement doctrine has been used previously in high-profile Massachusetts cases.

In 2003, former priest John Geoghan was murdered in prison and the court vacated his conviction for indecent assault and battery. The court also ordered the original indictment in the case dismissed. Geoghan was accused of molesting as many as 150 boys while he was a priest. He was serving a sentence for groping a 10-year-old boy when he was killed in his cell.

John Salvi, convicted of murdering two abortion clinic workers in a 1994 Boston shooting rampage, killed himself in 1996 and his conviction was vacated in early 1997.

After the Salvi case, some Massachusetts legislators tried unsuccessfully to change the law.

Last month, Hernandez, 27 at the time of his death, was acquitted in a separate trial of murdering Daniel de Abreu and Safiro Furtado outside a Boston nightclub in 2012.

Less than a week after that court victory, Hernandez was found hanging by a bed sheet in his cell at the Souza-Baranowski Correctional Center in Shirley, Mass.

Ward's lawyer, Douglas Sheff, said he did not believe Garsh's decision would affect the civil lawsuit.

"The abatement issue doesn't impact our case because we already have a summary judgment in our favor," he said.

The suit does not specify the amount of damages Ward is seeking. Her lawyers had asked a court to reserve some of Hernandez's assets, including the house he owns in North Attleborough, Mass., and payments of \$3.25 million and \$82,000 that are subjects of a labor grievance the **NFL Player's Association** brought against the Patriots on Hernandez's behalf.

Sheff said he was interested to learn that in Hernandez's suicide note to his fiancée, he wrote "you're rich."

"We have already wanted to learn if there are other assets, and now that we can move forward with discovery in our case, we can try and find where the money may be," he said.

Sheff said it is unclear what effect the ruling will have on the Patriots payments.

"What happens in civil matters isn't part of the criminal process," Linda Thompson, one of Hernandez's appellate lawyers, said Tuesday. "What his death has to do with civil cases or with the Pats I can't say."

Hernandez's death has been ruled a suicide by the Worcester district attorney's office, although his family is conducting its own investigation and they have said they don't believe he killed himself.

State police released a 71-page report last week concluding that the death was a suicide.

Investigators found three handwritten notes next to a Bible in Hernandez's cell and the message, "John 3:16," written on the wall, apparently in his own blood. Hernandez also wrote "John 3:16" on his forehead, highlighted a passage in an open Bible and drew circular marks on each of his feet, all using his own blood, according to police.

One of those notes was to Jenkins Hernandez.

"I told you what was coming indirectly! I love you so much and know you are an angel - Eternally," Hernandez wrote to Jenkins. "... This was the supremes, the almighty's plan, not mine!"

Investigators have reported that Hernandez jammed cardboard into the door tracks of his cell to prevent anyone from entering. He also slicked the floor with shampoo and hung a second bed sheet outside of his door, blocking officers' view inside, according to the state police report.

Copyright © 2018, Hartford Courant

This article is related to: [Crime](#), [Homicide](#), [Trials and Arbitration](#), [Mental Health Research](#), [Aaron Hernandez](#), [Medical Research](#), [Odin Lloyd](#)