

# Surveillance images may shape Hernandez case

By [Travis Andersen](#) | GLOBE STAFF JUNE 27, 2013



DOMINICK REUTER /REUTERS

New England Patriots tight end Aaron Hernandez on his way to the North Attleborough police station.

There is video, prosecutors say, from inside Aaron Hernandez's home showing the football star with a gun. Video of him near a gas station in Dorchester and at one in North Attleborough. Video of Hernandez and the man he is accused of killing, Odin Lloyd, entering an industrial yard where Lloyd's bullet-pocked body was later found.

The case against Hernandez, laid out by prosecutors Wednesday, was largely assembled using swatches of video, the often unseen eyes of our era used by investigators to reconstruct crimes they cannot solve with more traditional methods.

In fact, during Hernandez's arraignment, the only key image prosecutors did not mention having is of the shooting itself.

Hernandez, a New England Patriots tight end until the team cut him Wednesday, was arrested just two months after video clips helped investigators identify the suspects in the Boston Marathon bombings. But while the case against Hernandez appears strong, it will not guarantee prosecutors a conviction, legal specialists said.

"Big Brother is watching today, right?" said Chris Dearborn, a criminal defense lawyer and professor at Suffolk University Law School. "You can't go anywhere without there being a video camera somewhere that shows something. So I think it's becoming increasingly more common to have surveillance footage for a lot of different situations."

Dearborn said it was "maybe a little bit fortuitous" for investigators that some of the video evidence came from the surveillance system inside Hernandez's own home.

"The detail that the prosecutor laid out, at least on first blush, was impressive," said Dearborn, a former associate at one of the law firms representing Hernandez. "But when you unpack it a little bit, it is, in fact, at this point circumstantial. Someone can definitely be found guilty based on circumstantial evidence, but it has to be very strong."

Gerard T. Leone Jr., a partner at Nixon Peabody and the former Middlesex district attorney, said prosecutors have reason to be optimistic.

"Based upon the evidence that was outlined today in court and other evidence that I'm assuming exists or will be developed, then I think any prosecutor would have a level of confidence in a conviction," he said.



BARRY CHIN/GLOBE STAFF

Bristol District Attorney C. Samuel Sutter met with reporters outside the Attleboro courthouse, following the arraignment of Aaron Hernandez Wednesday.

Leone said the fact that some of the video evidence comes from Hernandez's home is not unusual.

“We even had cases where somebody was in the middle of a video chat and happened to create evidence against themselves because a criminal act occurred” during the chat, he said. “In the year 2013, we have more access to more types of video than we ever had before.”

Thomas Nolan, a former Boston police lieutenant, said he is not persuaded by the contention of Michael K. Fee, a lawyer for Hernandez, that the evidence is weak.



JOHN TLUMACKI/GLOBE STAFF

Attorney Michael Fee

“The abundance of video surveillance footage of this defendant carrying a firearm is potentially something that is going to be very difficult for defense counsel to overcome at trial,” said Nolan, the incoming chairman of the criminal justice program at the State University of New York at Plattsburgh.

But even in the face of daunting circumstantial evidence, video or otherwise, defense lawyers have a powerful weapon in their arsenal, the presumption of innocence, said Martin Weinberg, a prominent Boston attorney whose former clients include notorious hitman John Martorano.

“Remember, if there's a single reasonable doubt, a single break in the chain of circumstances, that is enough under the criminal justice system to end the charges,” Weinberg said. “If any part of a link in the chain is compelling, you accept it and then you try to de-link other pieces of the chain that are less compelling.”

That will probably prove difficult in the Hernandez case, said Suffolk Law professor Rosanna Cavallaro, a former assistant attorney general who also worked in the law office of attorney Alan M. Dershowitz, the famed defense lawyer and Harvard professor.

“It's an uphill battle, unless there's reason to think somebody's been messing with it, splicing it,” she said of the video footage.

She said prosecutors may ultimately rely on the two men who police say were with Hernandez the morning Lloyd was killed to fill in gaps in the video evidence.

However, she said, those men might testify in exchange for a reduced sentence, which could provide Hernandez's lawyers with an opening to attack their credibility.

Harvey Silverglate, a criminal lawyer and civil libertarian, said the case touches on a larger question of surveillance in society. He has no objection to private businesses voluntarily using surveillance cameras and said it appears that police lawfully obtained the video evidence against Hernandez.

But, Silverglate said, he is troubled by the increasing prevalence of cameras installed by law enforcement and other groups that record citizens on public streets.

“The overriding question is, do you want to live in a society where Big Brother knows where you are at any given time?” he said.

Travis Andersen can be reached at [tandersen@globe.com](mailto:tandersen@globe.com). Follow him on Twitter [@TAGlobe](https://twitter.com/TAGlobe).