

**PHILADELPHIA COUNTY COMMON PLEAS COURT
CRIMINAL DIVISION**

**COMMONWEALTH OF
PENNSYLVANIA**

Respondent,

v.

STANLEY GREEN

Defendant-Petitioner

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CP-51-CR-0009234-2008

PCRA: Third-Degree Murder

Judge: Sandy L.V. Byrd

Affidavit of Jonathan L. Arden, MD

1. I am a board certified forensic pathologist with more than thirty years of experience in forensic pathology:
 - a. From 1984 to 1986, I served as a Deputy Medical Examiner with the Suffolk County (NY) Office of the Medical Examiner.
 - b. From 1986 to 1989, I served as an Assistant Medical Examiner with Delaware Office of the Chief Medical Examiner.
 - c. From 1989 to 1998, I served as a Deputy Medical Examiner, Deputy Chief Medical Examiner and as the First Deputy Chief Medical Examiner in the New York City Office of Chief Medical Examiner.
 - d. From 1998 to 2003, I served as the Chief Medical Examiner for Washington, D.C.
 - e. From 2004 to present I have been in private practice, and I have served part-time as a Forensic Pathologist for West Virginia Office of the Chief Medical Examiner since 2008.

2. Over the course of my career, I have also held various academic positions:
 - a. From 1998 to 2003, I served as a Clinical Assistant Professor of Pathology at the George Washington University School of Medicine.
 - b. From 1989 to 1998, I served as a Clinical Assistant Professor of Pathology at the State University of New York Health Sciences Center at Brooklyn.
 - c. From 1989 to 1998, I served as a Clinical Assistant Professor of Forensic Medicine at the New York University School of Medicine.
3. Over the course of my career, I have presented numerous lectures and seminars relating to forensic pathology, and have published peer-reviewed articles relating to pathology and forensic pathology, including in the following medical journals: *Clinical Neuropathology*, and *Journal of the American Medical Association* (“JAMA”).
4. My resume is attached as Exhibit 1.
5. On July 10, 2015, Craig Cooley, Stanley Green’s court-appointed attorney, contacted me regarding Mr. Green’s case and my fee schedule. On November 17, 2015, Mr. Cooley contacted me once again after the Court granted him \$2,500 to retain an independent forensic pathologist to review Mr. Green’s case. I agreed to review Mr. Green’s case based on this amount and asked Mr. Cooley to send me all relevant information, including the autopsy report, crime scene reports, and autopsy and crime scene photographs.

Materials Reviewed

6. When Mr. Cooley retained me, he sent me the following documents, pleadings, and transcripts to review:
 - a. Autopsy Report for Jameil Martin by Dr. Bennett Preston, Philadelphia Office of the Medical Examiner.
 - b. Transcript of trial testimony of Dr. Gary Collins.
 - c. Mr. Green’s amended PCRA petition with exhibits.

7. He recently provided me the autopsy photographs, but I have not reviewed the crime scene photographs because, as I understand, the Commonwealth has yet to provide Mr. Cooley with color or digital copies of those photographs.

Questions Presented

8. In Dr. Bennett Preston's autopsy report, on page 2, under the **EVIDENCE OF INJURY AND CAUSE OF DEATH SECTION**, he discusses the two perforating gunshot wounds through Jameil Martin's right upper arm. In the very last sentence of this section, Dr. Preston wrote: **"These wounds are consistent with the subject raising his right arm up in a defensive posture to protect himself from the bullet."** At trial, Dr. Gary Collins served as a surrogate expert and piggy-backed off Dr. Preston's autopsy report regarding these two gunshot wounds and told the jury that (a) Dr. Preston said these wounds were **"consistent with a defense injury,"**¹ and (b) based on his, *i.e.*, Dr. Collins's, review of these two gunshot wounds, **"[I]t is quite possible that these injuries... were acquired or... receive[d]... in an attempt to shield his face or his chest from being shot."**²
9. Based on Dr. Preston's autopsy report and Dr. Collins's trial testimony, Mr. Cooley presented the following questions to me:
 - a. **First**, based on my education, training, and experience as a forensic pathologist, is it possible to render such an opinion based solely on examining the two gunshot wounds to Mr. Martin's right arm?
 - b. **Second**, based on my education, training, and experience as a forensic pathologist, is it standard practice and generally accepted in the forensic pathology community to limit the opinions presented in an autopsy report to the autopsy findings only?
 - c. **Third**, when reviewing gunshot wounds to a person's arms, is it standard practice and generally accepted in the forensic pathology community to incorporate such an opinion into an autopsy report? Meaning, when a person is shot in the arm once or multiple times, is it standard practice and generally accepted to immediately characterize

¹ NT, Trial, 12/16/2009, at 80-81.

² *Id.*

the arm wounds as “consistent with” defensive wounds or a defensive posture and to then incorporate this opinion into the autopsy report?

- d. *Fourth*, based on my review of the autopsy photographs, particularly the two gunshot wounds to Mr. Martin’s right arm, how would I have characterized these wounds had I written the autopsy report?
 - e. *Fifth*, had trial counsel retained and presented me at Mr. Green’s trial, and asked the following hypothetical, how would I have answered it: **“Based on your training, education, and experience as a forensic pathologist, and your review of the autopsy report and photographs in this case, if none of the eyewitnesses to Mr. Martin’s shooting said Mr. Martin placed his hands up in a defensive posture, could you conclude to a reasonable degree of medical certainty that it’s possible the two gunshot wounds to Mr. Martin’s arms are consistent with him raising his right arm up in a defensive posture to protect himself from the bullets?”**
10. Based on my review of the material presented to me by Mr. Cooley, as well as my education, training, and experience, I can answer Mr. Cooley’s questions, as follows:
- a. The **first three questions** presented by Mr. Cooley go hand-in-hand.
 - i. In regards to Mr. Cooley’s **second question**, it is generally accepted in the forensic pathology community that the findings recorded in an autopsy report were directly observed or were laboratory test results. The opinions and conclusions presented in an autopsy report are based on the autopsy findings and laboratory studies, but may also incorporate background data derived from an investigation; one salient example is that the investigation provides the circumstances surrounding death, which are necessary to making the determination of the manner of death. However, as a forensic pathologist I do not speculate on, or independently try to re-create, the circumstances of death, including how the victim acted or reacted during the events.
 - ii. With this limiting factor in mind, I turn to Mr. Cooley’s **first and third questions**. Based on my education, training, and experience relating to gunshot wounds, it is **unreasonable** to

opine or conclude that a particular gunshot wound to a victim's arm is, in fact, a defensive wound **based solely on the autopsy findings**. Such a conclusion, in my experience, is based on assumptions about the victim's positioning, posturing, and movement before, during, and after the shooting. Given that the forensic pathologist conducting the autopsy did not witness the shooting, he or she cannot possibly know the victim's position, posture, or movement at the time of a particular gunshot wound. Speculation as to the circumstances surrounding the shooting should be absent from the autopsy report. In contrast, in response to a properly posed hypothetical question, a forensic pathologist can opine as to whether a given gunshot wound is physically consistent with a specified set of circumstances, including whether a particular wound **could have** been incurred in a defensive maneuver or posture, but cannot opine whether it actually **did** happen in that way.

- iii. Based on my education, training, and experience relating to gunshot wounds, a forensic pathologist should describe and interpret gunshot wounds in the following manner:
 1. The characteristics of the wound, to determine whether it is an entrance or exit wound, and whether it is typical or atypical.
 2. The presence or absence of gunpowder residues, to determine the range of fire, i.e., whether it is a contact, close range, intermediate range, or distant wound.
 3. Whether a wound was created by a bullet (i.e., handgun or rifle) or by a shotgun.
 4. Whether the wound is penetrating or perforating, and if penetrating, what projectile(s) were recovered.
 5. What injuries were caused by the wound.
 6. The trajectory or directionality of the wound path.

b. In regards to Mr. Cooley's **fourth question**:

- i. Based on my education, training, and experience relating to gunshot wounds, however, if I were writing the autopsy report on Mr. Martin, the descriptions and conclusions or opinions in regards to the two gunshot wounds to his right arm would be limited to the features enumerated in ¶ 10(a)(iii), above.
 - ii. Thus, based on my education, training, and experience with gunshot wounds, **I would not and could not characterize the two gunshot wounds to Mr. Martin's right arm as defense wounds, nor could I express such an opinion to a reasonable degree of medical certainty.**
 - iii. Furthermore, based on my review, the appearances of the gunshot wounds to the right arm of Mr. Martin as depicted in the autopsy photographs **are inconsistent with the descriptions of those wounds in the autopsy report.** The descriptions in the autopsy report are not corroborated by the photographs, and in my opinion, **the autopsy report is not credible or accurate in this regard.** In fact, the gunshot wound to the front of the arm is decidedly **not** suggestive of having been incurred in a defensive posture. The other gunshot wound to the arm may be consistent with a defensive maneuver, **but is definitely consistent with many other scenarios, as well.**
- c. In regards to Mr. Cooley's **fifth question**, my answer would be **no**. I cannot state—**with a reasonable degree of medical certainty**—that the two gunshot wounds to Mr. Martin's right arm are consistent with him raising his right arm up in a defensive posture to protect him from the bullets, irrespective of whether any eyewitnesses to the shooting described him making such a motion with his right arm. My conclusion is based on the following facts and points:
- i. Based solely on the findings contained in the autopsy report and photographs, a forensic pathologist can, at most, opine whether the wounds are **consistent with** having been incurred in a defensive maneuver, but as noted above, **the forensic pathologist cannot independently divine what the decedent**

was actually doing or intending based solely on the autopsy findings. Furthermore, also as noted above, one of the gunshot wounds to his right arm is **inherently not consistent with being a defense wound.**


- ii. If trial counsel had proposed to ask me such a hypothetical, I would have asked trial counsel if the investigation of the circumstances of the shooting contained reliable or consistent eyewitness accounts of Mr. Martin having raised his right hand as if to defend himself while being shot. If such descriptions had been offered, I would have advised trial counsel that at least one of the two wounds to the arm was inconsistent with such a defensive posture, and, depending on the details of the offered account(s), that the other wound might or might not be consistent with the proposed scenario. **If none of the eyewitnesses to the shooting described Mr. Martin as raising his right hand to defend himself, then the hypothetical would be irrelevant and unnecessary, effectively precluding any usefulness of posing it.** I could **not opine—with a reasonable degree of medical certainty**—that the two gunshot wounds to Mr. Martin’s right arm are consistent with him raising his right arm in a defensive posture. I also would **not opine**, as Dr. Collins did at trial, that it is “**possible** that these injuries... were acquired or... receive[d]... in an attempt to shield his face or his chest from being shot,” **given that an opinion expressed as possible does not meet the requisite standard of reasonable medical certainty.**

Availability Between 2008 and 2009

11. While my opinions are based on my training, education, and experience, they are also based on information, literature, and scientific evidence that was available prior to Mr. Green’s trial in December 2009. I was available to

testify at Mr. Green's trial. Had trial counsel retained me, I would have provided the opinions contained in this affidavit and I would have asked to review the autopsy photographs.

Respectfully submitted this the 3rd day of **March, 2016**.



Jonathan L. Arden, MD