

Exhibit 31  
(Loevy Robinson Presentation)

# Tony Robinson Shooting

## March 5, 2017 Presentation of Evidence

Without the truth, there can be no justice.

March 5, 2017 Presentation

David Owens and Anand Swaminathan

Loevy & Loevy

# Why Are We Here Today?

- Truth
- Tony
- Opportunity for reform

# The Incident

- At 6:31 pm, Officer Kenny and another officer are dispatched to 1125 Williamson Street
- At 6:37 pm, Kenny arrives at 1125 Williamson Street
- At 6:38 pm, Tony is shot and killed

# What Happened?

Two competing theories...

## Theory 1: What Kenny tells us happened

- Based on Kenny's word

## Theory 2: What the evidence tells us happened

- Based on objective evidence - *e.g.*, audio-video from the scene
- Based on scientific evidence – *e.g.*, bullet holes, casings, bloodspatter, gunshot wounds, trajectories

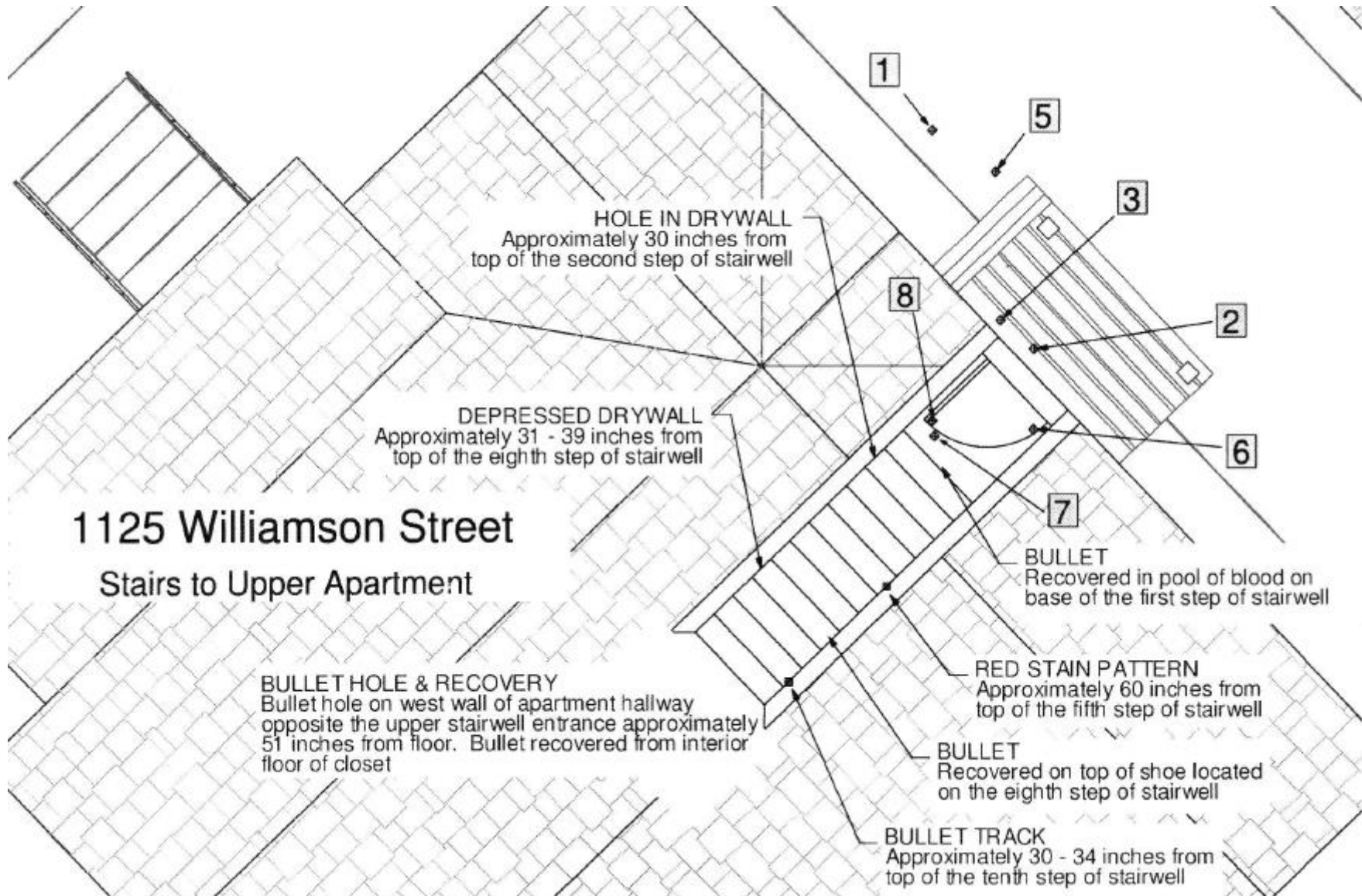
# An Important Caveat:

- Kenny's word does not *have* to be in competition or conflict with the forensic evidence
- It could be *consistent* with other evidence
- Kenny could have admitted his account doesn't work
- OR, the City of Madison could have *accounted for* the inconsistencies when assessing Kenny's actions
- OR, the City of Madison could have *investigated* the inconsistencies

→ None of that happened

# Key Concepts

- Bullets and bullet casings
- Bloodspatter
- Gunshot wounds
  - Searing = near-contact (less than  $\frac{1}{4}$ "")
  - Stippling = close range (less than 3-4 ft)
  - No stippling = distant (greater than 3-4 ft)



**1125 Williamson Street**  
**Stairs to Upper Apartment**

**HOLE IN DRYWALL**  
 Approximately 30 inches from top of the second step of stairwell

**DEPRESSED DRYWALL**  
 Approximately 31 - 39 inches from top of the eighth step of stairwell

**BULLET HOLE & RECOVERY**  
 Bullet hole on west wall of apartment hallway opposite the upper stairwell entrance approximately 51 inches from floor. Bullet recovered from interior floor of closet

**BULLET**  
 Recovered in pool of blood on base of the first step of stairwell

**RED STAIN PATTERN**  
 Approximately 60 inches from top of the fifth step of stairwell

**BULLET**  
 Recovered on top of shoe located on the eighth step of stairwell

**BULLET TRACK**  
 Approximately 30 - 34 inches from top of the tenth step of stairwell

1

5

3

2

8

6

7



# Kenny's Story

- Arrives, hears commotion coming from upstairs
- Believes someone upstairs in imminent risk of harm → warrants entering with weapon drawn, without backup
- Tony punches him at the top of stairs, and Kenny responds by firing the first three shots at the top of the stairs
- Ends up at bottom of stairs, not sure how
- Tony still “aggressing,” so Kenny fires final four shots

# Kenny's Story (cont'd)

## Key Claims

- First three shots fired at or near top of stairs
- Tony within “arms length”, or “a foot away” on first three shots
- Tony within “a few feet” on all seven shots
- Tony still “aggressing” during the last four shots at the base of the stairs

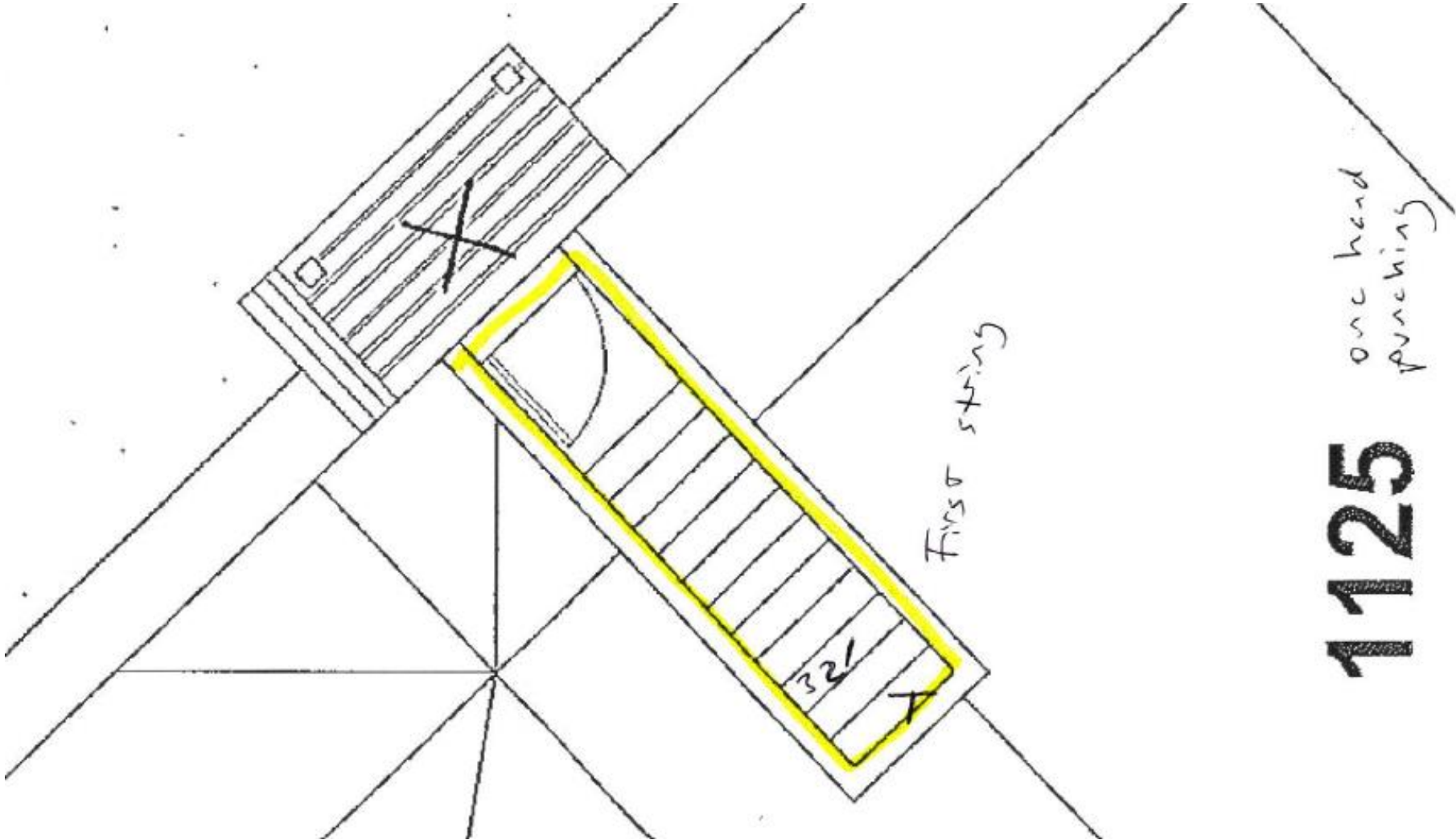
## In Kenny's Own Words, from DCI interview

Almost immediately after, that ah, that, um, and that was coming from the left as I'm facing up the stairs, and, um, as I'm, ah, moving towards my right trying to slice as much of the pie as I can to get a visual, um, the, um, subject, ah, immediately turned the corner, and, ah, struck me with a closed fist right, ah, on the left side of, ah, my head knocking me back and into, um, I – knocked me back and into the, ah, wall on my right.

Um, I struck the wall on my right, ah, with the right side of my head, and, um, my right side, um, and then he, ah, the subject continued to, ah, swing at me. Um, we were, um, closer than arms length distance. It was, um, I, ah, was rocked back, um, losing my balance on the stairs, and, um, I know I, um, was hit at least once, that initial hit, and he continued to swing, um, at me and then continued to, ah, aggress towards me. I was afraid that, um, I would be struck, um, again in the head, um, and lose consciousness, and that he would then, ah, take my pistol and shoot me and somebody else, possibly whoever else was up in the apartment. I had, um, tucked my weapon in tight to the center of my body, but I was still, um, ah, staggering backwards. Um, and I was afraid that I – he was either going to knock me out or I was going to strike my head when I fell backwards on the stairs, and that he would then be in a position to take my pistol and shoot me or someone else.

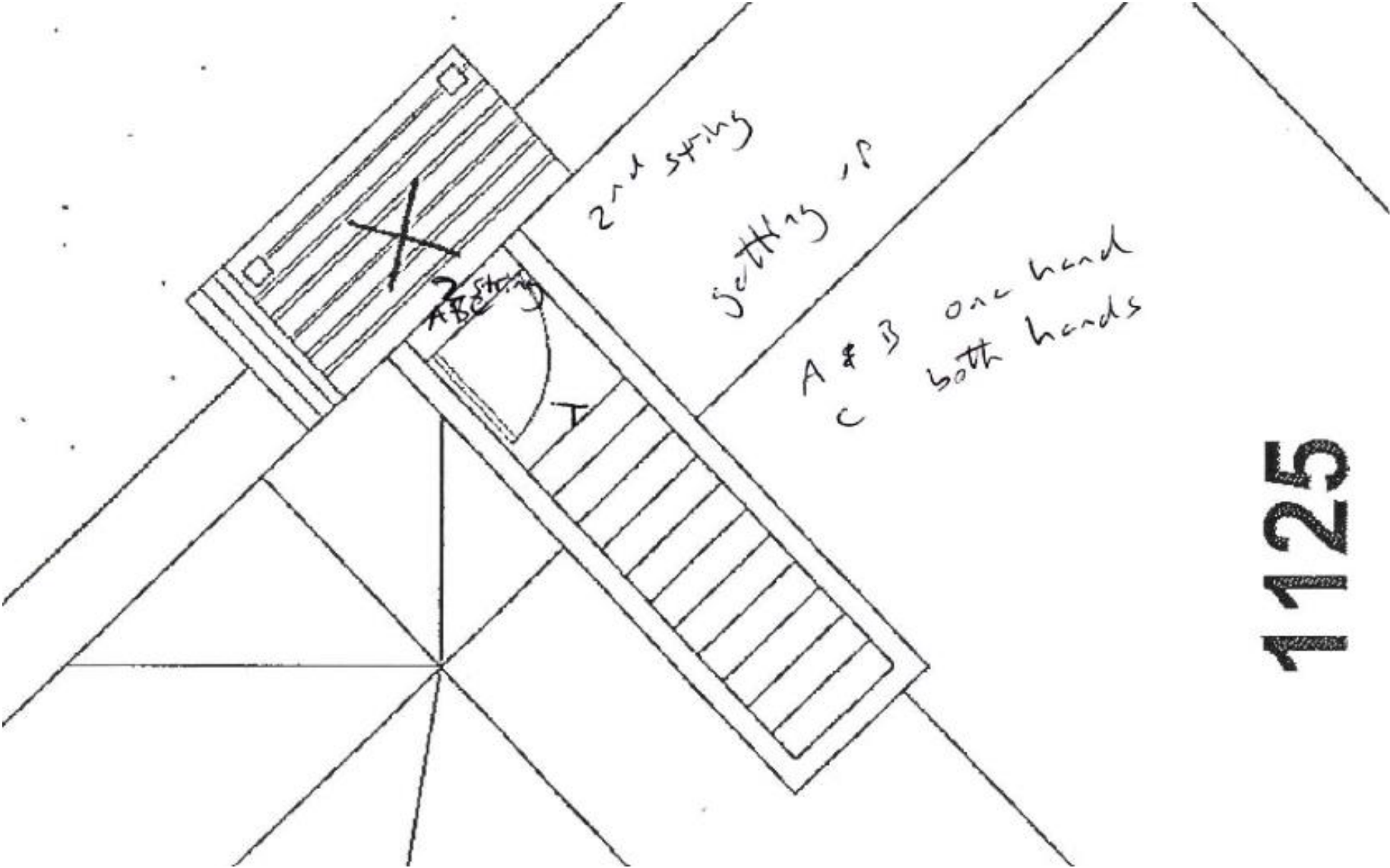
I shot, um, three times at the, um, when we were still fairly close to the top of the stairs. He was either at the top landing, ah, coming down toward, ah, coming down a step towards me, striking me as he came. Ah, I know I lost my balance at some point. I don't know how, ah, we ended up down at the base of the stairs, um, he was still aggressing towards me, and, um, I shot, ah, another string of fire, um, two, three rounds.

First string of shots, according to Kenny...



**1125**

Second string of shots, according to Kenny...



1125

## Problem #1: Kenny's Most Important Claim - that he was at top steps when he fired first three shots

- Audio-video sync **disproves** the claim that the first three shots were fired from the top of the stairs in response to a punch
  - Play audio-video
  - Show stillframe of shot 2

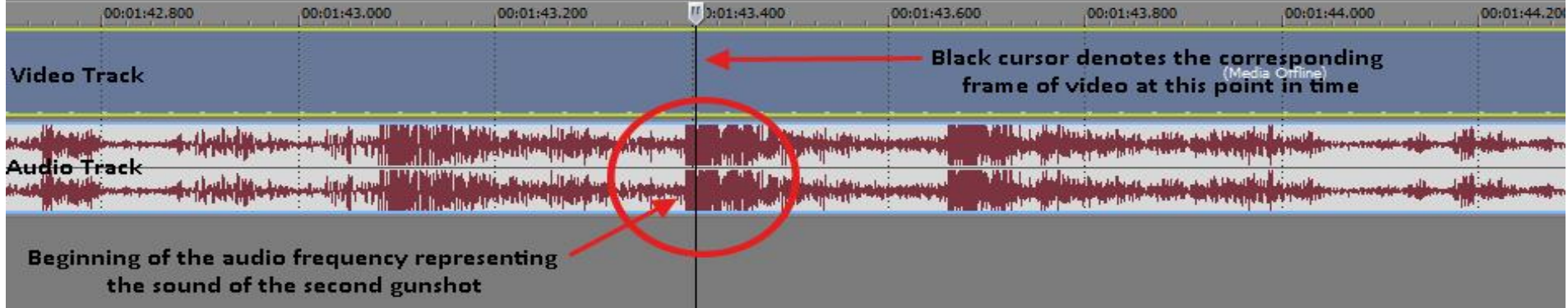
03/06/2015 18:38:42



Frame: 3,099  
Display: 882x480x32

The numbered frame that corresponds to this point in time on the video

Project: 1280x720x32, 29.970p  
Review: 1280x720x32, 29.970p



## Problem #1: Kenny's Most Important Claim - that he was at top steps when he fired first three shots

- Audio-video sync **disproves** the claim that the first three shots were fired from the top of the stairs in response to a punch
  - Play audio-video
  - Show stillframe of shot 2
- **In fact, first three shots fired at base of stairs**
- Additional evidence that shots fired from base of stairs:
  - All bullet casings found at base of stairs or outside
  - No high-impact blood spatter above halfway point of stairs
  - Low-angle bullet track near top of stairs



# Impact of First Three Shots Being Fired From Base of Stairs

- Kenny's story cannot be true
- Kenny's entire claim about what happened unravels...
- Without the punch at the top of the stairs, Kenny admits the shooting is **unjustified**

Kenny Depo at 88-89:

**Q** What you've told me so far is Tony Robinson did three things: He came around the corner fast, he was moving forward, and he was punching; correct?

**A** Correct.

**Q** And we're taking out the punching. So now, in that scenario, under Madison Police Department policy, would you have been justified to shoot?

**A** No.

**Q** Under your training, would you have been justified to shoot in that scenario?

**A** No

# Impact of First Three Shots Being Fired From Base of Stairs (cont'd)

- Because the shots were fired from the base of the stairs, there was room to backup and maneuver, and therefore use of deadly force **unjustified**

*Lieutenant Cory Nelson, Head of Internal Affairs Investigation of Shooting*

Q So, for example, if he's at the bottom of the stairs, he's got much greater ability to retreat, correct?

A Yes.

Q You care about the question, about whether he had the ability to retreat, because **if he did have the ability to retreat and used lethal force, that's a violation of policy, correct?**

A It could be, yes.

*Kipp Hartman, Madison Use of Force Trainer*

Q If he had been **somewhere like the bottom of the stairs where there was the ability to escape and maneuver, then other force options then became available?**

A Yes.

*Officer Kenny, in his own words:*

Q If I had had **a flat surface** where I could have back pedaled like mad and then holstered up and reengaged with my baton, then I would have done so.

# Problem #2: Kenny's Claim That Tony Right On Top of Him When He Fires First Three Shots

Kenny's Claim: when he fires the first three shots...

- Tony is within one foot
- Tony is swinging at him
- Tony is above him on the stairs
- Kenny has gun tucked in to chest, shooting “upward

11 Q How were you holding your gun at the time you fired  
12 your first shot?

13 A At the time, I believe it was one hand, closed tight  
14 into the chest, and we were very close and tight.

7 Q What was the trajectory of the gun? Was it upward?  
8 Downward? Straight ahead?

9 A I believe that as I'm going back, it would have been  
10 in line with my body going upward.

11 Q Shooting upward?

12 A I believe so.

## Problem #2: Kenny's Claim That Tony Right On Top of Him When He Fires First Three Shots (cont'd)

Evidence **Disproves** It

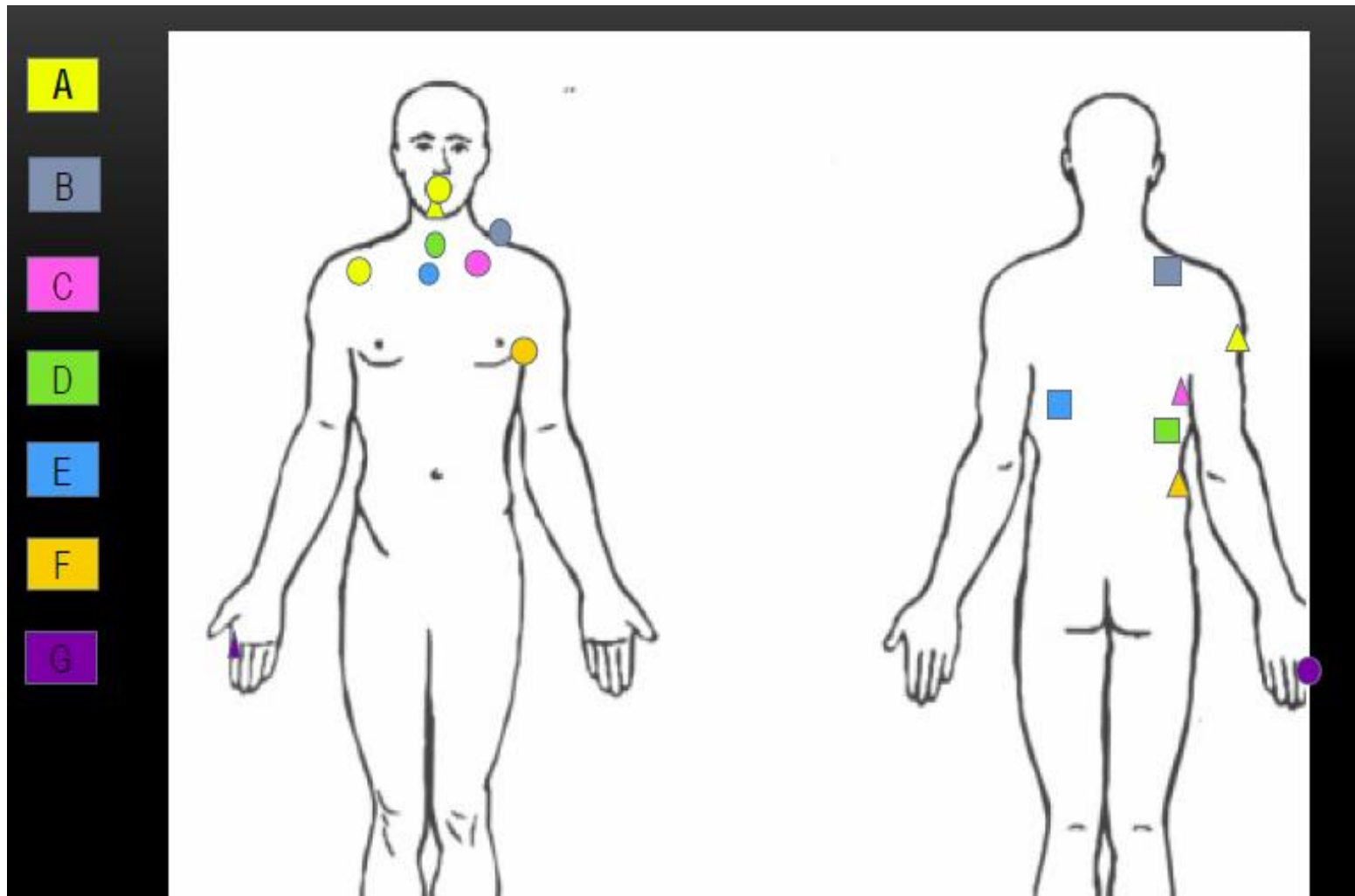
- All of the shots from close range (*i.e.*, with stippling) have downward or severe downward trajectory

# Shot Chart

(Shot letters correspond to Medical Examiner's report)

<b>Shot</b>	<b>Location</b>	<b>Trajectory</b>	<b>Distance</b>	<b>Fatal</b>
<b>First Three Shots (From Distance)</b>				
A	Mouth to right arm	Severe downward	> 3-4 ft	N
B	Traps/shoulder	Downward	> 3-4 ft	N
G	Finger	N/A	> 3-4ft	N
<b>Last Four Shots (From Close Range)</b>				
C	Chest	Downward	< 3-4 ft	Y
D	Chest/throat	Severe downward	< 3-4 ft	Y
E	Chest	Severe downward	Contact (searing)	Y
F	Chest (side)	Downward	< 3-4 ft	Y

# From Medical Examiner's Report



## Problem #2: Kenny's Claim That Tony Right On Top of Him When He Fires First Three Shots (cont'd)

Evidence **Disproves** It

- All of the shots from close range (*i.e.*, with stippling) have downward or severe downward trajectory
- Kenny 5'10", Tony 6'3" – yet, all of the shots enter at the level of Tony's nipples or higher

→ How do you fire upward with gun at chest, and get shots to enter above nipples of a taller, higher man, and create severe downward trajectories?

# Problem #3: Kenny Cannot Account for the Three Shots Fired From Distance

- Shots four through six are clearly fired from close range, well within 3-4 feet
  - Robinson lying on ground at base of stairwell
  - Shots 4-6: Kenny's body partially in base of stairwell, with muzzle of gun well within base of stairs
  - Base of stairs = 3 feet deep
  - Show stillframes of shots 4-7

→ So, at least two of the first three shots fired from distance → defies any claim that Tony within arms-length, punching and swinging



# Problem #4: The Last Four Shots Unjustified

- Kenny's claim:
  - Tony still “aggressing” during shots 4-7
- Evidence **disproves** this:
  - Tony's position “unchanged” during shots 4-7 (Kenny Depo at 34-35)
  - Tony lying on ground at base of stairs, feet out in front of him, toes to the sky
  - Shot stillframe of shot 7
- Kenny's own expert depicts Tony just lying on ground
  - Show recreation by Krenz (Kenny's engineering expert)



# Our Theory

- Based on science
  - Forensic scientist Sam Marso – law enforcement agent with expertise in shooting reconstruction
  - Forensic pathologist Dr. Jonathan Arden – renowned medical doctor
- Where is Kenny on first shots? At base of stairs
  - See above
- Where is Tony on first shots? Halfway point of stairs
  - Key evidence: First indication of high-impact bloodspatter at halfway point of stairs
  - Agreement?
    - Nick Stahlke, WI State Crime Lab
    - Lt. Nelson, in charge of MPD internal investigation

# Our Theory (cont'd)

→ Lt. Nelson ultimately conceded that the forensic evidence confirms our theory

Nelson Depo at 73-74

Q The conclusion you reached based on the evidence is that Tony Robinson would have been near where those -- where the blood spatter is found on the wall, correct?

A Correct.

Q And that that was halfway up the stairs, correct?

A Approximately halfway up the stairs.

Q And then the rest of the shots would have then been lower on the stairs, all the way down to the bottom of the stairs, correct?

A That's my understanding.

# Our Theory (cont'd)

## What really happened?

- Kenny at base of stairs, weapon drawn
- Tony enters stairwell and starts descending
- When Tony is approximately halfway down stairs, Kenny fires first three shots from base of stairs
- Tony falls down stairs before or during the first three shots
- Kenny fires last four shots at Tony lying on ground
- First three shots are non-lethal shots A, B and G - all fired from distance
- Last four shots are lethal shots C, D, E and F - all fired from close range

# Addressing Kenny's Scalp Abrasion

- Small cut on left side of head, above the hairline...
- At hospital the night of the shooting...
  - No medical testing whatsoever
  - Just clean the cut; no bandage or band-aid of any kind
- Kenny admits: no objective medical evidence (e.g., CT scans, MRIs, etc.) that he suffered a concussion
- Claim of concussion inconsistent with Kenny's actions after the incident
  - A few days after incident, riding horses
  - Within a week of incident, back on bike training for 270-mile ride

# A Number of Things Could Explain the Cut on the Head

- Recoil from gun
- Head hitting banister when lunging forward
- When Tony tumbles down stairs after first three shots, his legs hit Kenny's head while Kenny lunging forward
- Kenny backs into post on front porch

→ See, e.g., stillframe of shot 4

# How Do the Competing Theories Stack Up Against the Evidence?

<b>Evidence</b>	<b>Accounted For?</b>	
	<b>Kenny Story</b>	<b>Our Story</b>
Video: Kenny at base of stairs	No	Yes
Three shots from distance of > 3-4 ft	No	Yes
Bloodspatter at halfway point and below	No	Yes
Downward trajectories	No	Yes
Low-angle bullet track in left wall	No	Yes
Bullet casings	No	Yes
Distant shots all miss target	No	Yes



# Internal Investigation, Summarized

- *Zero questions* asked of Officer Kenny as part of MPD internal investigation
- *Less than 12 hours after the shooting*, MPD's lead investigator sent email saying that he wanted to *avoid interviewing Kenny*

# Lt. Nelson March 7 Email to DCI Investigators...

**From:** Nelson, Cory LT

**Sent:** Saturday, March 07, 2015 5:46 AM

**To:** 'delarosar@doj.state.wi.us'; Riesterer, Michelle

**Subject:** Questions for Off Kenny.docx

Raf and Michelle,

If you could make sure the following questions are answered in your interview with Off. Kenny, it would be very much appreciated. These are not policy questions but are questions regarding the Use of Force Continuum in the WI DAAT manual.

If you can make sure this is covered, **then I would not need to conduct a separate interview of Off. Kenny, which we would like to try to avoid.**

Please call me if you have any questions at 575-5009.

Thank you very much for your help on this!

**Lt. Cory Nelson**

**Madison Police Dept.**

**Professional Standards/Internal Affairs**

**211 S. Carroll St.**

**Madison, WI 53703**

**Office-608-266-6502**

**Fax- 608-266-4855**

# Internal Investigation, Summarized

- **Zero questions** asked of Officer Kenny as part of MPD internal investigation
- **Less than 12 hours after the shooting**, MPD's lead investigator sent email saying that he wanted to **avoid interviewing Kenny**
- Kipp Hartman, MPD use of force instructor, assigned to review Kenny's conduct; BUT, **in initial call** when assigned the task, he was **told to write memo justifying shooting**

Hartman Depo at 27-33, discussing his first conversation with Lt. Nelson about assignment...

Q And so part of his goal was for you to write something that would help the public understand **why the officer's conduct was appropriate in this case?**

**A Yes.**

# MPD Had Numerous Reasons to Scrutinize Kenny's Story...

- Objective and Scientific Evidence vs Kenny's Word
- Shifting Stories
- Access to Evidence

# Shifting Stories

→ Kenny changes his story in the first 72 hours...

- “Snapshot” shortly after the shooting on March 6th:
  - Kenny doesn’t draw weapon until after he is punched
  - Hears two sets of voices upstairs
  - Robinson yelling during attack
- Evidence shows each of these statements is **UNTRUE**
  - Kenny doesn’t draw weapon until after shots fired: **WRONG**, video shows drawing gun as enters
  - Hears two sets of voices upstairs: **WRONG**, no one else
  - Robinson yelling while punching: **WRONG**, nothing heard on Gary audio before shots fired

# Shifting Stories

→ Kenny changes his story in the first 72 hours...  
(cont'd)

- What do all of these errors have in common?
  - Exaggerate threat
  - Downplay Kenny's conduct
- That his snapshot was untrue is not subject to debate: Kenny's own words...

**Q And as you sit here today, there's information in this snapshot that you don't believe is true; correct?**

**A Correct.**

# Why Is Kenny's Story Shifting?

- Kenny knew he was in trouble...just shot unarmed teenager...
- But evidence contradicts snapshot, so after reviewing all of the key evidence available at the time, tells new story
  - March 9 walkthrough of scene with his attorney
  - Private room with his attorney to discuss walkthrough evidence
  - Review of Kenny dashcam video and Sgt. Gary audio (unsynced) for one hour, in private with his attorneys
  - THEN, DCI interview...

# DCI Interview: Now, Story is That First Shots Fired At Top of Stairs In Response to Punch...

- DCI interview on March 9<sup>th</sup>, after reviewing all of the evidence
  - disavows all of these claims
- Story now is, he is punched just below the top of the stairs, on the left side of his head, causing the right side of his head to hit the wall and cause dent.
  - Because at walkthrough, sees the dent in the wall near top of stairs
  - So, put himself at the location of that dent when he is punched, so now the dent corroborates his claim of being punched

(NOTE: the synchronized video-audio has not yet been created...)



# The Dent As Corroboration, Debunked...

- All of the evidence above: Kenny at base of stairs, Robinson at distance
  - Dent is from 30-39” above step (knee to waist level)
  - No drywall debris on Kenny’s head or clothing
- MPD internal investigation failed to acknowledge or address Kenny’s shifting stories and obvious problems with new story relying on dent in wall

# MPD Confronted With Other Obvious Problems With Kenny's Story...

## Kenny's decision to enter without backup...

- Kenny's Claim: he heard sounds of disturbance, thought someone upstairs in imminent danger
  - Claim: near top of stairs, announced MPD, Tony responded "PO-lice aggressively," then immediate punching and swinging at top of stairs
  - Claim: Kenny feared there was victim upstairs in such imminent danger that he didn't have time to wait for backup (at end of driveway)

# MPD Confronted With Other Obvious Problems With Kenny's Story...

Kenny's decision to enter without backup...

- Evidence to the contrary:
  - In minutes before shots fired, downstairs neighbor doesn't hear disturbance, or Kenny announce, or Tony respond
  - Never radios to other officers about imminent danger
  - Spent 20 seconds in stairwell he could've climbed in few seconds
  - Police practices expert Denny Waller (40+ yrs, police chief in WI):  
“Officer Kenny's stated necessity for entering the apartment without backup was contradicted by his actions.”

# MPD Confronted With Other Obvious Problems With Kenny's Story...

## Kenny's prior shooting - Ronald Brandon...

- Similar scenario: Kenny called to scene, 19 seconds later shoots and kills
  - At least two other officers already there for period of time, stay behind cover and talk to suspect/suicide risk
  - Kenny arrives, and within seconds he leaves cover for no reason with his rifle aimed and ready
  - Purported reason for charging ahead? Because he **mistakenly** thought he was further from suspect than he was
- Even taking him at his word: that's two cases where he has made a mistake that caused him to charge in → and moments later, a citizen is shot dead

# MPD Needs to Revisit This Shooting and Its Investigation Into It

- Despite all of the obvious question marks in Kenny's story, he is asked zero questions by MPD
  - Record settlement = assessment of high likelihood that jury would agree that the evidence supports our theory, not Kenny's
  - Yet, City's response reflexively defensive, unwilling to concede any errors...
- MPD needs to wrestle with this evidence...
- Unless MPD knows something we don't and so it can prove evidence means something different from what forensic experts have found, the shooting is not justified

# MPD Needs to Revisit This Shooting and Its Investigation Into It (cont'd)

*MPD Use of Force Trainer, Kipp Hartman*

Q Let's say [Tony] he's coming down the stairs fast, and let's say he doesn't say anything, okay?

A Uh-huh.

Q **But he's just coming down the stairs fast, and there Officer Kenny is at the bottom of the stairs still.**

A Uh-huh.

Q **Is that a sufficient basis to justify the use of deadly force?**

A **No.**

# Closing Thoughts

- Truth → Transparency → Informed Action
- Internal investigation process?
  - DCI investigation is not substitute for internal investigation
  - Reflexively defensive of officer
- Presentation and evidence will all be available at [www.tonyrobinsonshooting.com](http://www.tonyrobinsonshooting.com)