

## Suffolk County District attorney Massachusetts

### DA Charges Manslaughter in South End Trench Deaths

BOSTON, Feb. 8, 2017—Suffolk County District Attorney Daniel F. Conley today delivered the following remarks on manslaughter and related indictments stemming from the Oct. 21, 2016, deaths of Robert Higgins and Kelvin Mattocks at a construction site in Boston's South End:

“On Oct. 21, 2016, 47-year-old Robert Higgins and 53-year-old Kelvin Mattocks were part of a work crew run by Atlantic Drain Services, Inc., excavating a trench below Dartmouth Street. At about 12:30 pm, dirt within the trench gave way and a nearby fire hydrant collapsed into the hole, suddenly filling it with water. The flood mixed with dirt and clay, trapping the men within seconds below the rising waterline, and ultimately claiming their lives.



Suffolk County District Attorney Dan Conley announces manslaughter charges in the 2016 deaths of two men in a South End trench collapse. With Conley (right) are ADA Michael V. Glennon (left), who responded to the scene, and ADA Lynn Feigenbaum (center) of the Senior Trial Unit, who led the grand jury investigation that culminated in criminal charges.

“As with all unnatural fatalities within the City of Boston, experienced prosecutors from my office responded to the scene and led the death investigation that followed, overseen by the chief of our Homicide Unit and assisted by Boston Police homicide detectives.

“Based on that investigation, the Suffolk County Special Grand Jury a short time ago returned indictments charging ATLANTIC DRAIN SERVICES, INC., and its owner and sole officer, KEVIN OTTO, each with two counts of manslaughter in connection with their employees' deaths. The grand jury also returned additional indictments charging the individual and corporate defendants with one count of misleading an investigator under the state's witness intimidation statute and six counts of concealing a record under the evidence tampering statute. The defendants will be summonsed to Suffolk Superior Court for arraignment at a later date.

“We allege that Mr. Otto and Atlantic Drain Services willfully, wantonly, and recklessly failed to take the standard safety precautions that could have averted that tragedy. And we further allege that they provided fraudulent records in response to federal subpoenas during the investigation that followed – and failed entirely to provide those records to the Suffolk County Special Grand Jury.

“On Oct. 21, Mr. Higgins and Mr. Mattocks were doing the work that every thriving city depends on. They were 14 feet underground, connecting a new water and sewer line to a nearby residence – a job that's crucial to urban development and public health. As they did so, the soil supporting a nearby fire hydrant

began to fall away, quickly burying the men up to their waists. The hydrant, no longer supported, collapsed into the earth – and water from the connecting pipe flooded the entire trench over their heads within seconds. Despite the desperate efforts of their co-workers to rescue them, neither man could escape, and both of them died at the scene.

“Federal regulations that require any excavation deeper than five feet, and any adjacent utilities, be shored up to prevent exactly the sort of cave-in that occurred here. The shoring can be done in any number of ways, including with wooden planks or metal trench boxes designed specifically for this purpose.

“The evidence has established that the defendants were well aware of this shoring requirement, as well as the grave danger that workers would be exposed to without it, because they’d incurred two separate OSHA violations in the past 10 years for failing to follow it. In fact, as a result of those violations, they were to undergo extensive training on how to implement cave-in protection. But there was no shoring in place at the Dartmouth Street dig site when Robert Higgins and Kelvin Mattocks were buried alive.

“We allege that Kevin Otto and Atlantic Drain Services knew the risk posed by a 14-foot trench without proper shoring – and that they chose to run that risk rather than take reasonable precautions.

“That isn’t an accident. That isn’t negligence. That’s wanton and reckless conduct, and we believe it cost two men their lives.

“In the weeks that followed the tragedy below Dartmouth Street, Suffolk prosecutors and federal safety inspectors subpoenaed certain documents from Atlantic Drain Services. In response, the defendants provided OSHA with paperwork we believe had been doctored.

“Those documents appear to bear forged dates and signatures indicating that employees had attended various safety trainings required after the earlier OSHA violations in 2007 and 2012 when in fact they had not. The defendants then concealed those documents from the Suffolk County Grand Jury.

“In short, the grand jury investigation not only revealed evidence of a crime at the Dartmouth Street dig site but also suggested a cover-up of past misconduct. The evidence in its totality suggests that Atlantic Drain Services and Kevin Otto gambled with their employees’ lives and safety, and that Robert Higgins and Kelvin Mattocks paid the ultimate price.

“The U.S. Department of Labor’s Occupational Safety and Health Administration and Office of the Inspector General were key partners throughout this complex investigation, and I want to recognize their immense contributions to our painstaking efforts over the past three and a half months. We could not have reached this point without their expertise and collaboration.

“I’d also like to thank Boston Police, and especially the homicide squad led by Sgt. Det. Gary Mitchell, for their outstanding work in this very complex investigation. And I want to thank the Boston Fire investigators and Boston Water and Sewer personnel who also lent their assistance as we worked to find the facts and apply the law to this tragedy for two families and the public at large. Finally, I want to commend ADAs Feigenbaum and Glennon for their professional, methodical work as they built this case page by page, witness by witness, in the grand jury.

“We can never relieve the pain and anguish of the two families that Mr. Higgins and Mr. Mattocks left behind. But we will do everything in our power to find some measure of justice for them in a Suffolk County courtroom. Moreover, we’re putting employers in Boston and Suffolk County on notice – if you defy the regulations meant to protect working men and women, you will answer for the consequences.

“Toward that end, right now, I’m calling on the Legislature to raise the maximum penalty for a corporate entity convicted of manslaughter. Massachusetts law currently caps corporate liability at \$1,000 in the event of a manslaughter conviction. That amount hasn’t been raised in almost 200 years, and it’s woefully inadequate to the circumstances of this case.

“As prosecutors, there is no requirement that we prove motive in our cases. Whether it was greed, haste, or indifference that led Kevin Otto and Atlantic Drain to forego their responsibilities isn’t for us to say. But Robert Higgins, Kelvin Mattocks, and generations of laborers just like them dug the tunnels, built the homes, and raised the towers that help make this city great. We won’t forget their sacrifice, and we won’t let their deaths go unanswered.

“Bearing in mind that we are in the pre-arraignment stage and have not yet brought the case before the court, I can try to answer a few of your questions.”