

\$3.2 Million To Stephan Cowans For Conviction Based On False Fingerprint Evidence

By Douglas Scott Arey



Stephan Cowans
in May 2004

In a victory by the New England Innocence Project (NEIP), new DNA evidence first led to the reinvestigation of Stephan Cowans' 1988 criminal case, then his freedom in January 2004 after 6-1/2 years of wrongful imprisonment, and finally a \$3.2 million settlement of his federal civil rights lawsuit 2-1/2 years after his release.

On May 30, 1997, Boston Police Sergeant Gregory Gallagher was shot in his leg with his own gun during a confrontation and scuffle in a backyard. The perpetrator fled into a nearby residence where he held a mother and two children hostage. Before fleeing the house the perpetrator drank water from a glass cup. Boston police fingerprint analysts Dennis LeBlanc and Rosemary McLaughlin both identified Cowans' as the source of a fingerprint lifted from that cup.

In 1998 Cowans was convicted of armed assault with intent to murder, home invasion and related charges. The prosecution's key evidence was LeBlanc and McLaughlin's testimony that Cowans' fingerprint matched the perpetrator's recovered from the cup. Sergeant Gallagher confirmed their testimony by identifying Cowans as his assailant. Cowans was sentenced to 35 to 50 years in prison.

In 2003 NEIP lawyers requested DNA testing on a sweatshirt and baseball cap the shooter had discarded before fleeing. The DNA tests excluded Cowans. His convictions were then overturned on the basis of the new exculpatory evidence. The Suffolk County District Attorney's office vowed to retry Cowans, but discovered two days later that the fingerprint evidence also failed to match Cowans as originally claimed by the police analysts. At that point the District Attorney's office reversed its position and dismissed the charges against Cowans.

Cowans contracted hepatitis C while he was in prison. Further, his mother passed and his request to attend her funeral was refused. In a January 2004 interview with the *Boston Globe* after being exonerated by the exclusionary DNA and fingerprint evidence,

Cowans attributed his release to persistence, noting, "I was one who never gave up on myself."

The case put the BPD's fingerprint identification unit under a microscope. In October 2004 a private consultant issued a scathing report that concluded the BPD's fingerprint

analysts were poorly trained, had low performance standards, and weren't keeping up with advanced fingerprinting techniques. Moreover, according to an outside forensics team consulted by the BPD, LeBlanc knew that the fingerprint didn't match Cowans when he testified at Cowans' 1998 trial. This led to grand jury proceedings investigating LeBlanc and McLaughlin, but no criminal indictments resulted.

These explosive findings in turn sent shock waves through Boston's police and legal system. Police Commissioner Kathleen O'Toole was eventually compelled to close the fingerprint unit for more than a year. It was reopened only after a complete overhaul that included sweeping changes in how the fingerprint evidence is collected and analyzed.

A veteran analyst now supervises the fingerprint unit under strict protocols and standards in a state-of-the-art facility with six seasoned analysts, according to BPD spokeswoman Elaine Driscoll, who said, "They took great pains to guard against ever being faced with a similar situation." Driscoll also noted all analysts, including police officers, are now subject to continuing education and training requirements, with yearly proficiency tests.

Interestingly, Cowans monetary civil settlement does not cover claims against the two analysts who wrongly matched the shooter's fingerprint to Cowans. Kenneth Anderson, the lawyer representing LeBlanc, said the city is trying to "scapegoat" LeBlanc and McLaughlin by implying they were rogue officers who acted on their own.

Anderson said about the lawsuit, "Certainly the defense is that a mistake was made and [LeBlanc] was working in an inadequate facility with inadequate training." McLaughlin's lawyer, Fran Robinson, said she "had minimal involvement" in the case and opined that the city settlement should have covered the technician's actions. Cowans' civil claims against LeBlanc and McLaughlin remain unresolved as of late September 2006.

Massachusetts Attorney General Thomas Reilly agrees with the lawyers for the two fingerprint analysts, blaming Cowans' mis-

identifications on "personal and systemic" failures. These rationalizations for the BPD's errors that resulted in Cowans' wrongful conviction pale when contrasted with the fact that Boston has now paid out more than \$12 million in a little over a year to make amends for various misdeeds of its police officers.

Boston recently agreed to pay \$5.1 million to the family of Victoria Snellgrove, who was killed by the police in a Red Sox post-pennant clinching melee, and smaller sums to two others injured the same evening.

In March 2006 the City of Boston also agreed to a \$3.2 million settlement with Neil Miller, who was wrongfully convicted for rape and served 10 years in prison. The rape was linked to two other cases that Miller could not have committed, but the BPD never informed the prosecutor or defense attorneys about the links to those cases, that DNA tests eventually proved another man had committed. Howard Friedman, the lawyer who represented Miller, said these recent settlements are significant because proving liability for a federal civil rights violation is difficult in these types of cases.

As for Cowans, his release has been tempered by a continuing series of brushes with the legal system. In February 2004, a month after his release, Massachusetts State Police arrested him for assault and battery and breaking and entering in the nighttime; he was charged with breaking into his former girlfriend's house and beating her with a boot. In addition, Cowans was charged with operating a motor vehicle with a suspended license in April 2006.

Although Cowans has had a difficult personal readjustment after his release from almost seven years of wrongful imprisonment, the fallout from his case has had the positive effect of causing significant changes in the handling of fingerprints and their analysis by the Boston PD.

Sources:

Boston agrees to pay \$3.2 million to Stephan Cowans, *The Phoenix*, August 10, 2006.
\$3.2 million award in wrongful jailing, *Boston Globe*, August 11, 2006.



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