



The Commonwealth of Massachusetts
Committee for Public Counsel Services
44 Bromfield Street, Boston, MA 02108-4909

TEL: (617) 482-6212
FAX: (617) 988-8495

ANTHONY J. BENEDETTI
CHIEF COUNSEL

LISA M. HEWITT
GENERAL COUNSEL

FOR IMMEDIATE RELEASE
August 8, 2017

FOR FURTHER INFORMATION CONTACT:
Lisa Hewitt – 617-910-5717

Second Person in Two Days Has more than 30 Year-Old Conviction Vacated
Boston Man's Teen Conviction Vacated after He Serves 38 Years in Prison

Boston – The second man in two days to have a 30+ year conviction vacated was released today. Frederick Clay, convicted of the 1979 murder of a Boston cab driver, had his conviction vacated earlier today and was released from prison after 38 years.

Last year, Clay's attorney, Director of the Committee for Public Counsel Services (CPCS) Innocence Program Lisa Kavanaugh, along with co-counsel Atty. Jeff Harris of the Boston law firm Good, Cormier, Schneider and Fried, filed a motion for a new trial on the basis of newly available identification (ID) science and ineffective assistance of counsel due to trial counsel's failure to investigate a viable third party culprit. After reviewing the pleadings and additional research, the Suffolk Conviction Integrity Program assented to the new trial motion and to vacating Clay's conviction.

Kavanaugh explained, "Clay was convicted on the evidence of two eye witnesses who confirmed his identity only after being hypnotized by police investigators and shown the same array of photos several times. New identification science reveals that this type of identification is profoundly flawed." In addition, other witness statements that should have led police to investigate other suspects who more accurately fitted descriptions of the perpetrators were never followed up by them or by Clay's trial attorney.

On November 16, 1979, the day of the murder, Frederick Clay was just barely 16 years old. Although a juvenile, two years later he was tried as an adult, assuring that if convicted he would be sentenced to life in prison without the possibility of parole. On the strength of two witness IDs, Clay was convicted of shooting cab driver Jeffrey Boyajian adjacent to the Archdale Housing Projects in Roslindale, MA.

One witness, a twenty-four year old man with the mental age of a 10-year old, who like his mother and another witness, at first said he could not make out the suspects from the window of his second-story apartment, eventually identified Clay. His identification was made after at least three separate occasions of viewing a photo array of people familiar to him and learning from police that they already had a good idea who was responsible; that the suspects were in the array; and that if he helped them out the police would relocate him and his family from the Archdale Projects at the City of Boston's expense.

-more-

The second witness identified Clay as one of three men he saw enter Boyajian's cab. At first, he gave police only vague descriptions of the three men, but after being hypnotized using a technique premised on the deeply problematic myth that human memory works like a video camera, he altered his account and positively identified Clay.

Since his arrest, Clay has maintained his innocence asserting he was incorrectly identified because at the time of the murder he was in a foster home. His alibi was supported at trial by his foster mother, but, on the word of two children from the same home who disclosed a way of getting out without her knowledge, her evidence was rejected. Clay's claim of innocence is further supported by witness statements identifying the shooter as left-handed. Clay is right-handed.

Although sentenced to life without the possibility of parole, Clay was afforded the opportunity for parole as a result of the Massachusetts Supreme Judicial Court's decision in *Diatchenko v. District Attorney for the Suffolk District & Others*, 466 Mass 655 (2013). The Parole Board agreed that Clay's efforts at rehabilitation appeared to be both genuine and beneficial; yet, he was initially denied parole based on the board's belief that he "did not accept responsibility for his actions, opting instead to struthiously avoid the fundamental question of his guilt". Upon appeal, the board's 4-3 vote in favor was deemed sufficient to grant Clay parole. He would have been released on parole in a few days, but because his conviction has been vacated he leaves prison an innocent man.

Clay's exoneration is not unique. Across the country, numerous convictions are being overturned as a result of advancements in forensic science involving DNA, eye witness identifications, and more. According to Atty. Kavanaugh, two pending pieces of legislation, H.1285 – An Act to Establish a Forensic Science Commission and S.877 – An Act Updating the Wrongful Conviction Compensation Law, would address aspects of the flawed conviction raised in this case. "Even one innocent person being found guilty is unjust and far too costly to that person, their family, and the Commonwealth. The 38 years Frederick Clay lost behind bars makes it crystal clear that the need for reform is long overdue."

##