

# Lawyer defies odds in securing habeas corpus ruling for client

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When Kenneth I. Seiger received a call from the Clerk's Office earlier this month informing him that the 1st U.S. Circuit Court of Appeals had overturned both the state and federal court rulings in his client's case, the Brookline lawyer was stunned.

His bid to have Michael O'Laughlin's assault conviction vacated by the Supreme Judicial Court failed, as did the habeas corpus petition he filed in U.S. District Court.

So when Seiger appealed to the 1st Circuit, he knew his chances of winning freedom for O'Laughlin - a maintenance man from Lee who had been convicted in 2000 for brutally assaulting a woman with a baseball bat - were slim to none. After all, the court rarely overturns state court decisions and even less frequently grants habeas petitions.

"I wasn't really sure whether to believe it or not," Seiger says of learning that the 1st Circuit had granted his client relief based on insufficient evidence of guilt. "This has been a long, long battle over the past decade."

Lawyers keeping tabs on O'Laughlin v. O'Brien say that the 1st Circuit ruling, which not only freed Seiger's client but also barred him from being retried, is unusual indeed.

"It's a pretty big deal," Boston appellate attorney Dana A. Curhan says. "You very rarely get anything on a habeas petition, and if you do manage to get something on a habeas petition, the 1st Circuit usually reverses and reinstates the conviction. This is the opposite. Normally, if you're going to get some kind of break, you're going to get it at the SJC."

Alison V. Douglass, a Boston litigator who had been pursuing DNA testing in O'Laughlin's case for several years on behalf of The Innocence Project, agrees with Curhan.

"It seems to be a really extraordinary result," the Goodwin Procter attorney says.

Meanwhile, Springfield lawyer John M. Thompson, who was granted a habeas petition in a case he handled in 1998, *Tejeda v. Dubois*, says the unusual ruling in the O'Laughlin case underlines the importance of making sufficiency-of-evidence arguments.

"Trial lawyers need to know that at the point in the trial when the government's case has been fully presented, that's the time to challenge the sufficiency of the evidence," he says. "The lawyers should prepare a very careful and factually detailed argument - and that is not a routine thing for most people."

Thompson also says that O'Laughlin should serve as a reminder to trial court judges that the responsibility for preventing invalid convictions lies with them.

"The trial judge can keep the defendant out of jail," he says. "In my opinion, trial judges shy away from it. This is a tough decision to make, but the trial judge has to knuckle down and make those tough decisions, because a person who cannot be legitimately convicted should not be convicted and sentenced and in prison, waiting for some other judge to correct the mistake."

Berkshire County District Attorney David F. Capeless, who helped prosecute O'Laughlin in 2000 and personally handled his appeals before the SJC and the federal courts, released a statement to Lawyers Weekly indicating that he is "not happy" with the decision and that the Attorney General's Office plans to petition the 1st Circuit for an en banc rehearing of the case.

'Inference upon inference'

In 2000, O'Laughlin became the prime suspect in the severe beating of Annmarie Kotowski, who lived two doors down from the maintenance man in an apartment complex in Lee.

O'Laughlin had smoked crack cocaine the night that Kotowski was beaten in her bedroom with an object shaped like a baseball bat. Nearly every bone in her face and skull was broken during the attack.

At trial, the prosecution introduced no physical evidence linking O'Laughlin to the crime but instead built a detailed circumstantial case against him.

Prosecutors argued that O'Laughlin had a motive (he needed money to buy drugs); a means (a blood-stained baseball bat belonging to him was found in the woods behind the complex); the opportunity (as a maintenance man, he had a master key to the complex's apartments and was known to have considered the victim wealthy); and consciousness of guilt (as indicated by lies he told about his whereabouts that night, a reluctance to talk to the police and other factors).

Although a bleach-soaked towel from the victim's apartment was discovered in the car of Kotowski's estranged husband, and wooden baseball bats were found in his garage, only O'Laughlin was charged in the beating.

In May 2002, a Superior Court jury found O'Laughlin guilty on all four counts of assault; he was sentenced to 35 to 50 years at the Massachusetts Correctional Institution at Cedar Junction-Walpole.

Three years later, the Appeals Court reversed the conviction based on insufficient evidence. The court found that, "in this case, evidence of motive, means, opportunity, and consciousness of guilt are not enough to establish guilt."

The Appeals Court added: "Nothing in the record sufficiently links the defendant to the crime to permit the conclusion beyond a reasonable doubt that he was the perpetrator. Piling inference upon inference does not amount to proof beyond a reasonable doubt."

A year later, the SJC reinstated the jury's verdict, writing that although the question "was a close one," there was "sufficient evidence to support the verdicts and affirm the convictions."

Seiger subsequently filed a petition of habeas corpus in 2007 in U.S. District Court, which was denied by Judge William G. Young. The lawyer then appealed the case to the 1st Circuit.

In its ruling, the 1st Circuit found that the SJC "unreasonably" applied the Jackson standard, which requires judges to screen out cases that are too weak to go to a jury.

"The instant facts may support a reasonable speculation that O'Laughlin was the assailant, but not sufficient evidence to establish his guilt," the panel wrote.

Other prosecutions threatened?

For Seiger, the 1st Circuit ruling validates the argument he has been making for years.

"We've been saying all along that the evidence was insufficient and that this was a case based on speculation and conjecture," he says. "We've argued this, and the Massachusetts Appeals Court agreed."

In the habeas petition, Seiger contended that the commonwealth's characterization of the crime as a robbery gone bad was flawed by the fact that no money or valuables had been taken from the victim's apartment.

"My argument to the 1st Circuit was that was just incredulous," he says. "They're creating a motive to get him in [the apartment] that doesn't make sense, and they're creating a motive to get him out that doesn't make sense."

The fact that the argument failed to convince the SJC or the U.S. District Court but was able to sway the 1st Circuit shows that "different panels of judges can view evidence in different ways," he says. "Reasonable minds can differ."

But DA Capeless says that the 1st Circuit misapplied the Jackson standard.

"The applicable legal standard is, 'whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt,'" Capeless said in a written statement. "In the present case, the Federal Appeals Court panel instead compared the evidence offered by the two sides, and then concluded that it was insufficient for conviction. That is the error that we will pursue on appeal of the decision."

In an interview with Lawyers Weekly, Capeless said that the 1st Circuit ruling read like a brief for the defendant.

"It appears as if they looked at it in the light most favorable to the defendant, rather than the prosecution," he says.

He also warns that the decision threatens other prosecutions that rest on circumstantial evidence rather than forensic evidence.

"I find it interesting that they made a significant fact of the lack of forensic evidence," he says. "Thirty years ago, nobody was bothered by the fact that we didn't have DNA evidence, and convictions were sustained, and considered to be overwhelming, in cases without it. The lack of forensic evidence in no way can be even compared to the proffer of evidence tending to show innocence."

'A close one'

Lawyers say that the facts of O'Laughlin, as well as its procedural history, led to the unusual ruling.

The fact that the Appeals Court reversed O'Laughlin's conviction and was then itself reversed by the SJC may have helped the case, Curhan says.

"You have a disagreement among appellate justices in the state courts as to whether the evidence is sufficient," he says. "Then you have a very strong potential suspect who was never charged, and it's an awfully thin case against the person who was charged and convicted. I think what it means is that there is hope in the federal courts."

Seiger points out that both the SJC and the U.S. District Court noted that the sufficiency of evidence in O'Laughlin was a close call.

"In the first paragraph of the SJC's decision, they say that the question is 'a close one,'" Seiger says. "That's extremely rare for the SJC to say. And when I argued this case before the District Court, Judge Young said: 'This is a close one' several times. I think having a few different judges say that may have helped."

Thompson believes that O'Laughlin represents the kind of case in which a review of the sufficiency of the evidence is critical.

"The judge under the Jackson rule is required to screen out cases that are too weak to allow the jury to make a rational decision to convict," he says. "The kind of case that is represented in O'Laughlin is where that judgment is particularly important. That is where you have a horrifying crime and an unattractive defendant, and the combination of those two elements can create an emotional impetus for the jury to convict - even when the evidence isn't that strong."