



July 12, 2019

The release of previously sealed files from the Nova Scotia Supreme Court in the case of *R. v. Glen Assoun*

Today, Mr. Justice James Chipman of the Nova Scotia Supreme Court ordered the release of the Court's previously sealed files respecting an application for bail made on behalf of Glen Assoun in 2014. In the files are documents which tell an extraordinary story about a failed police investigation, the suppression of exculpatory evidence, and a profound miscarriage of justice.

Specifically, Justice Chipman's order allows for public review of the Application for Ministerial Review under s.696.1 of the *Criminal Code* filed on behalf of Glen Assoun in 2013, which contains details of the new evidence discovered during Innocence Canada's investigation of this case, and the Preliminary Review by the Criminal Cases Review Group (CCRG) of the federal Department of Justice.

Justice Chipman also lifted a five-year-old publication ban which has prevented this story from being told until today

Glen Assoun is an innocent man whose case represents one of the most disturbing examples of wrongful conviction in Canadian history. From 1995 when he was first interviewed by police, through his arrest in 1998 and his ultimate exoneration, 21 years later in March 2019, he has steadfastly asserted his innocence. His case represents a shocking failure of accountability on the part of many individuals and institutions.

The Murder of Brenda Way

In the early morning hours of November 12, 1995, Brenda Way was brutally murdered and her body disposed of in a parking lot behind an apartment building at 109 Albro Lake Road in Dartmouth. She had been repeatedly stabbed, her throat had been sliced and she had been viciously beaten. Brenda, age 28, had been a crack addict supporting her habit through street prostitution.

The Police Investigation

Glen Assoun was Brenda's estranged boyfriend. When the police spoke to Glen later that day, he gave them an account of his whereabouts the night before that was confirmed by a friend, Isabel Morse, and her two housemates. Glen had recently been charged with assaulting Brenda, though they remained in contact after the charge was laid. No physical evidence, at the time or since, has tied Glen Assoun to Brenda's murder.

The original detectives on the case concluded that Glen Assoun was not a viable suspect in the murder and turned their attention elsewhere.

In the summer of 1996, however, two new investigators were assigned to the file and began attempting to collect evidence against Glen Assoun. They eventually came up with five witnesses whose evidence constituted the entire Crown case against Glen Assoun at his 1999 trial. Glen agreed to meet with police in 1998 and was immediately arrested and detained in custody, where he remained until released on bail in 2014.

The Trial

Glen defended himself without a lawyer at his trial which ran from April to September 1999. He was unable to obtain a lawyer and was not able to get legal aid. He lacked the education and skill to act as his own counsel at a murder trial against two experienced prosecutors. Following his conviction on September 17, 1999 for second degree murder, he was sentenced to life imprisonment without eligibility for parole for 18 1/2 years.

Evidence of the Prosecution Witnesses

The evidence given by these five witnesses, and the results of Innocence Canada's investigation into their testimony, are detailed in the *Memorandum on Behalf of Glen Eugene Assoun*, submitted in 2013 under s.696.1 of the *Criminal Code* to the federal Minister of Justice which is being released today by the Nova Scotia Supreme Court. This Memorandum, and the Preliminary Assessment of the case by Mark Green, of the Department of Justice's Criminal Conviction Review Group (CCRG), dismantle the prosecution case presented at trial, and expose evidence that was based on collusion, perjury, undisclosed particulars of a deal with a jailhouse informant, and a witness prone to relating her "psychic visions" as evidence to the police.

The Appeal

Despite the weakness of the evidence against him, and several significant grounds of appeal, Glen Assoun struggled to obtain counsel to represent him on appeal. Finally, in 2004, Jerome Kennedy, a distinguished criminal lawyer from Newfoundland and Labrador, was appointed to act for him. Mr. Kennedy began by trying to acquire fresh evidence.

One of his primary strategies was to attempt to identify Brenda Way's real killer. He made requests for disclosure from the Crown for information about criminal profiling of the murder by the RCMP ViCLAS Unit, which worked cooperatively with the Halifax Regional Police on major murder investigations. He posed direct questions to the Crown about ViCLAS's work regarding a possible suspect, Michael McGray, who had recently been exposed as a prolific serial killer based in Nova Scotia with victims in

four provinces. It is clear that incomplete and misleading answers were provided to these requests for disclosure, specifically with respect to the inquiries about the police investigation of Michael McGray.

Without significant evidence establishing anyone else as the killer, and with his legal arguments rejected by the Court of Appeal, Glen Assoun's appeal was dismissed on April 20, 2006. The Supreme Court of Canada declined to hear a further appeal on September 14, 2006. Glen had been in custody for eight years by this point.

The Investigation by Innocence Canada

With his appeals exhausted, his case was taken up by Innocence Canada (at the time, the Association in Defence of the Wrongly Convicted – AIDWYC). Innocence Canada spent years re-examining the physical evidence, re-interviewing the key trial witnesses, attempting to uncover previously undisclosed documentation and looking for the real killer of Brenda Way.

The investigation by Innocence Canada led to compelling evidence that convicted serial killer Michael McGray was likely the real killer. For example, at the time of the murder, he lived just a few houses from the location where Brenda's body was found, on Jackson Road, the neighbouring street. He told his own family that he attacked prostitutes for his own amusement and would "leave them for dead". Beating, stabbing and throat-cutting were prominent among his modes of murder. In a police interview, while denying that he had killed Brenda, he admitted that he had been personally acquainted with her.

Significantly, one of the trial witnesses, a young, vulnerable prostitute, who had recounted at trial being attacked in a remote industrial park by a man who admitted that he had killed Brenda, subsequently expressed doubts about whether Glen Assoun was the man who assaulted her. She testified that she had seen the arrest of Glen Assoun on television, and initially told the police that Glen was the man who had attacked her and boasted about Brenda's murder. McGray, like Glen Assoun, broadly fit the description of her attacker—the man who had admitted killing Brenda. McGray, however, was a much bigger man than Glen. She recollected in a subsequent interview that during her testimony in court she had felt that Glen was smaller than her assailant. The most striking aspect of her original description of her attacker to the police was that, in the winter, with snow covering the ground, her attacker had been wearing socks and sandals on his feet. This very distinctive form of footwear, multiple witnesses confirmed, was characteristic of Michael McGray. Meanwhile, the evidence at trial showed Glen had been living in British Columbia when the young prostitute was attacked in Halifax. New evidence collected by Innocence Canada disproved the Crown's speculation about how he might have made it to Nova Scotia to commit the attack.

During the course of Innocence Canada's investigation, two people who had known McGray in prison came forward to say he had admitted to them that he killed Brenda Way.

Matters of new significance submitted to the Minister of Justice by Innocence Canada pursuant to s. 696.1 of the Criminal Code

Innocence Canada's Memorandum was submitted to the Minister of Justice on April 14, 2013 along with a multi-volume application record. It quickly became the subject of an investigation spearheaded by Mark Green, of the Minister's Criminal Conviction Review Group.

During the CCRG investigation, an extraordinary story began to emerge. Initially Glen Assoun's lawyers thought the additional new evidence regarding serial killer Michael McGray was extremely cogent and provided sufficient grounds for overturning Glen Assoun's conviction. At the time they submitted the application to the Minister, however, they had no reason to believe that any police agency had seriously investigated McGray as a possible suspect in Brenda's murder, much less developed any grounds to believe he had killed her. The position of the Crown at the 2006 appeal had been that McGray denied his culpability in Brenda's murder and was not regarded as a suspect by the officer-in-charge of the case, Constable Dave MacDonald.

The CCRG's Preliminary Assessment by Mr. Green sets out in detail the requests made by Jerome Kennedy to the Crown during the 2004-2006 appellate process. It also documents internal discussions by the RCMP and HRP about how to address these inquiries and makes clear that they never contemplated providing all of the relevant information.

The truth was that a criminal profiling specialist in the ViCLAS Unit, RCMP Constable Dave Moore, had concluded in 2002-03, while looking into behavioural patterns in the murders of Michael McGray, that McGray was the *top suspect* in Brenda's murder even though by that time Glen Assoun had been tried and convicted for the crime and had been in custody since 1998. Constable Moore had conducted an independent and wide-ranging investigation, going beyond the ViCLAS mode of analysis, and communicating by mail with McGray personally. He had produced an in-depth investigative digital file alongside boxes of hard copy evidence that charted McGray's movements, associates and patterns of behaviour.

In the course of his inquiries, Constable Moore also developed other potential suspects in Brenda's murder, one of whom – Avery Greenough – he came to view as a very strong candidate for having committed the crime. Evidence uncovered by Constable Moore suggested that Greenough, a violent sexual predator, had Brenda in his truck on the evening of her death.

However, despite the specific request by Mr. Kennedy for disclosure of ViCLAS information in general, and information about Michael McGray in particular, none of Constable Moore's work was provided to the Crown or defence, or to the Court of Appeal, during the appellate process.

The determined inquiries of Mr. Green, on behalf of the Minister, ultimately revealed that the reason behind this was that the digital files recording Moore's work had been deliberately deleted by his ViCLAS colleagues, on order of their superiors, and his hard copy files had been destroyed or irretrievably lost. Given the passage of time, the information he acquired during his extensive investigation into McGray has become permanently unrecoverable and we will never know everything Constable Moore uncovered in his ViCLAS analysis and his follow-up investigation.

This systematic destruction of files (hard copies and digital) was directly contrary to ViCLAS policy; some of the analysts directed to do it protested at the time. It was also a tragic loss to the administration of justice—Constable Moore told Mark Green that he believed he would have solved Brenda's murder if permitted to keep working on it. Unfortunately, he was not.

While Mr. Kennedy was seeking disclosure of ViCLAS information related to McGray from the outside, Constable Moore was imploring his RCMP and HRP superiors to share his analysis from the inside. Rather than making the information available, however, his superiors told him that he was "wasting his time". He was directed to stop working on Brenda's murder. He took his concerns up the RCMP chain of command and eventually to Inspector Leo O'Brien, the head of ViCLAS in Ottawa. No one authorized disclosure of his work, nor of the fact that it had been deleted and destroyed.

Glen's lawyer and the Nova Scotia Court of Appeal were deliberately denied highly probative information, from an objective expert analyst, about a brutal serial killer, acquainted with the victim and living in her neighbourhood at the time of her murder – despite diligent efforts by appellate counsel to acquire exactly that information. If the Court of Appeal had known in 2006 about the profiling of Michael McGray (and Avery Greenough), it would never have upheld Glen's conviction and life sentence. As it was Glen remained in custody for eight more years following an appeal that ought to have freed him.

The RCMP have attempted, since the CCRG investigation, to distance themselves from Constable Moore with challenges to his character and competence. He was moved out of ViCLAS in 2004 after a negative performance appraisal. This occurred, however, when it was clear that Constable Moore's work on McGray and Brenda Way was going to be very awkward for the Crown and police on the pending appeal. His performance appraisal in 2003, when he was working on McGray and the Brenda Way case, was highly favourable and commended him specifically for this work. While Constable Moore was known for going beyond the strict confines of ViCLAS computer-based methodology (as he did in this case) he was widely regarded among fellow analysts as a talented and committed behavioral profiler.

Innocence Canada believes that much more remains to be discovered about this case. Starting in 1998, police tunnel vision fixated on Glen Assoun leading to a seriously flawed initial police investigation and

leading ultimately to the deliberate destruction and non-disclosure of relevant information – one of the most serious breaches of public trust that it is possible to imagine. Responsibility for the decisions made during the initial police investigation and the subsequent decision-making regarding the destruction of Constable Moore's work and the failure to make disclosure of it upon request lies with both Halifax Regional Police and RCMP officers. It extended to senior officers in the two agencies. Suppression of the information collected by Constable Moore occurred in the face of specific requests by the defence for the very information that had been destroyed. The impact of this outrageous behavior distorted and subverted the judicial process.

For Glen Assoun, the effects were catastrophic. He and Innocence Canada are grateful for the efforts of the individuals whose commitment to the pursuit of justice assisted in his exoneration. These include the CCRG for their highly professional and comprehensive investigation, former Minister of Justice Peter MacKay who oversaw the investigation at its most critical point, current Minister of Justice David Lametti for immediately recognizing the gravity of the injustice and taking swift and decisive action to remedy it, and Justice James Chipman for judicially restoring the integrity of the process.

The quest for accountability should not, however, end with the release of the court file today.

In September 2014, counsel for Innocence Canada, representing Glen, brought before Justice James Chipman, of the Nova Scotia Supreme Court, both their original Memorandum to the Minister of Justice, establishing the unreliability of the trial evidence, and the findings of the Preliminary Assessment by the CCRG. They argued that Glen should be released from custody. On November 24, 2014, Justice Chipman agreed and Glen stepped out of the cells at the Halifax Courthouse for the first time since 1998. After his release, the Ministerial Review process continued.

On February 28, 2019, the Minister of Justice, David Lametti, signed a brief order quashing the 1999 conviction and directing a new trial for Glen. The Minister noted that *"there are new matters of significance as well as relevant and reliable information that was not disclosed to Mr. Glen Assoun during his criminal proceedings."*

Today, Justice Chipman, on application by the CBC, Canadian Press and the Halifax Examiner, has opened to the public the previously sealed files of the court which set out at length the information summarized here. It is hoped that today marks the conclusion of legal proceedings involving Glen Assoun and the beginning of a searching examination by the public and the agencies involved of how his case led to such a terrible and prolonged injustice.

It is long past time for a proper investigation into the murder of Brenda Way to identify and bring to justice her murderer.

This is also a day for those responsible for upholding the administration of justice in Canada and in Nova Scotia to reflect on how Glen Assoun can be fairly and quickly compensated for the wrongs done to him. He is unable to work, his health is poor, he lives in near-penury, and the blame lies squarely with those who are responsible for the failings of the police and Crown from the time of Brenda's murder in 1995 until today.

For more detailed information on the case, contact Innocence Canada counsel Sean MacDonald (416-606-3017; seanm@passport.ca) or Philip Campbell (416-847-2560; Skype: phil.lcp; pcampbell@lcp-law.com).