

On the morning of January 4, 1991, 15-year-old Tasheen Douglas was walking in Brooklyn, New York on his way to school when a red car pulled up alongside him. Inside the car were three acquaintances, Amir "YaYa" Johnson, Willie "Money-Will" Dawson and a guy he knew as Dequan. They told Douglas they were headed to see Nathaniel Cash to settle a dispute between Johnson and Cash. Hoping to mediate between Johnson and Cash, Douglas jumped in the car and rode to Cash's apartment.

Upon arriving Dawson called Cash to come downstairs to talk. When the conversation between Johnson and Cash in the building's vestibule got heated, Cash slapped Johnson in the face and told him to leave. Johnson responded by pulling out a pistol and shooting Cash several times. Wounded but still on his feet, Cash fled but was shot in the back by Dawson as he ran down the steps in front of the building. Cash then fell down and died.

Douglas, Johnson and Dequan left in the car they arrived in, while Dawson stayed behind.

911 called at 11:01 a.m.

At 11:01 a.m. a female caller to 911 reported that a male had been shot at 215 Monroe Street, and three male blacks were fleeing in a red Pontiac Grand Am southbound on Nostrand Avenue. The police arrived at 11:04 a.m. and saw a hysterical woman standing over Cash's body. When questioned by homicide Detective Delouisa the woman told him her name was Karen Smith and she had spent the previous night with Cash. She also told him that at 10:25 a.m. she went to the corner store, and upon returning about 11 a.m. she discovered Cash dead outside the building. Smith told Delouisa that she "did not witness the shooting." Delouisa made notes of his interview with Smith on two pages of his memo book.

After the police arrived Dawson came out of his hiding place and began telling onlookers that Derrick "Bush" Hamilton shot Cash. Dawson also spoke with Delouisa at the crime scene and identified himself as a friend of Cash. When Cash's two sisters arrived, Dawson told them that Smith was involved in their brother's murder. A brawl erupted between Smith and Cash's sisters. Police separated the women, and since Smith was being accused of involvement in the murder she was transported to the 79th police precinct to be interrogated.

Smith's precinct statement

When Delouisa questioned Smith at the precinct she told him that Hamilton shot Cash, which is what Dawson was spreading around

In Connecticut At Time Of Brooklyn Murder – The Derrick Hamilton Story

By Nicole Hamilton

at the crime scene. Although Smith's identification of Hamilton was contrary to her crime scene declaration to Delouisa that she "did not witness the shooting," Hamilton became the prime suspect based on Smith's claim. Smith also revealed that her name was Jewel Smith, not Karen Smith. She gave a false name at the crime scene because she was on probation and didn't want trouble for herself.

No investigation of Smith's two statements

The police detectives did not investigate Smith's crime scene declaration that she was not present during Cash's shooting. Nor was Smith questioned regarding her two inconsistent and incompatible statements on the day of the murder. The prosecutor subsequently relied on Smith's identification of Hamilton to obtain his grand jury indictment.

On March 21, 1991, a joint task force from the New Haven Police Department and the NY Police Department converged on the beauty salon that Hamilton co-owned in New Haven, Connecticut. Hamilton was arrested and later transported to New York for trial.

Smith's second recantation

Four days after Hamilton's arrest, Smith went to the office in New York of Hamilton's attorney George Sheinberg. She admitted to Sheinberg that she did not see Hamilton shoot Cash. However, she did not mention that she gave a crime scene statement under the name of Karen Smith.

The trial

The prosecution's case against Hamilton amounted to the evidence of one person: Smith. There was no other evidence even placing Hamilton at the crime scene. Smith did not want to testify during Hamilton's July 1992 trial, but Judge Edward M. Rappaport directed Smith to "cooperate fully" with the prosecutor or risk being jailed. Faced with the judge's order and possible perjury charges if she changed her grand jury testimony, Smith fabricated a story. She told the jury that Hamilton alone fired a gun at Cash.

Detective Delouisa reportedly retired prior to Hamilton's trial and he wasn't subpoenaed by the prosecution to testify. During jury selection the memo book notes of Delouisa's crime

scene interview of Karen Smith were provided by the prosecutor to Sheinberg. But Sheinberg didn't know who Karen Smith was. Prior to starting his cross-examination of Jewel Smith, Sheinberg "asked the Assistant District Attorney Anne Gutmann if Jewel Smith was Karen Smith, and she said no." Since Sheinberg didn't know that Karen and Jewel Smith were the same person, he didn't cross-examine her about the discrepancy between her crime scene statement and her statement hours later at the police station in which she identified Hamilton as the shooter. After Smith testified Sheinberg "asked Gutmann if she knew who Karen Smith was; she said she had no idea or she didn't know." (Quotes are from Sheinberg's direct testimony: *People v. Hamilton*, No 142/91, Kings County Supreme Court, Post-conviction hearing, October 19, 1992.)

The prosecution's ballistics expert was Thomas Natale, a technician with the Ballistics Section of the NYPD. On direct examination he testified:

Q. (By A.D.A. Gutmann) Based upon your examination of 1 through 15 and People's 7 and People's 8, did you come to a conclusion?

A. Yes, ma'am. ... Two separate firearms fired the discharged shells. ...

The Court: Let me ask you a question, Detective Natale, as an expert, are you saying based upon what you told us so far, that two separate guns were used in this, based upon the forensic evidence?

The Witness: That's correct, your Honor.

After several more pages of testimony in which Natale explained the process of microscopic examination of bullet fragments, the judge asked him:

The Court: Based upon all of this, your conclusion is that two different guns were used?

The Witness: That is correct. (*Derrick Hamilton v. State*, Trial transcript, 324-325, 327-328)

Natale's testimony was in direct conflict with Smith's testimony that she saw Cash shot by one person.

Sheinberg filed a Notice of Alibi Defense prior to Hamilton's trial that listed Alphonso Dixon, Kim Freeman and James Hamilton as witnesses, but they didn't testify.

Alibi evidence not revealed to jury

On the evening of January 3, 1991, Hamilton and his companion Kim Freeman attended a going away party for a friend at the

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Quality Inn Hotel in New Haven, Connecticut. The event was hosted by Alphonso Dixon, Hamilton's friend and his partner in the beauty salon where Hamilton was arrested eleven weeks later in March.

The next morning (January 4) at approximately 11 a.m., Hamilton and Kelly Turner drove in her car from the Quality Inn Hotel to her talent booking business in New Haven. Turner and Hamilton had met at the party the night before, and learned that they had mutual business interests. At Turner's office they discussed the music business and exchanged networking contacts. During their meeting one thing they discussed was Hamilton's contacts might be able to help Turner book talent at the Apollo Theater in Harlem.

Later that day (the 4th) Hamilton and Freeman were informed of Cash's murder in Brooklyn. Freeman is the mother of a daughter fathered by Cash. Although distraught that her child's father had been tragically killed, she was angry when told that people in Brooklyn were accusing Hamilton of shooting Cash.

Dixon, who organized the party on the evening of January 3 that ended the next morning around 2 am, wanted to testify as a defense witness. However he was unable to travel from New Haven to the trial because of his poor health. Dixon wrote in an affidavit submitted to the judge a week before Hamilton's trial began in July 1992:

I, Alphonso Dixon, being duly sworn deposes and says; that in January 1991, Me, Derrick Hamilton, and a few other relatives and friends gave a party at the Quality Inn Hotel ... in the town of New Haven, CT ... On January 3, 1991 which was the night of the party. Derrick and I stayed at the party, until approximately 2 or 3:00 a.m., which is when Derrick accompanied by a female (whom I know to be Kim) went to his room. ... Derrick and [his brother] James stayed with me from January 3, 1991 until January 5, 1991. ... He used the money his deceased father left to him and invested it in a Beauty Salon in New Haven, CT. ... On approximately March 21, 1991, Derrick was arrested in the Salon ...

Along with this affidavit is a letter from my Doctor, who advised me not to travel to New York to testify, due to my medical problems ...
(Affidavit of Alphonso Dixon, June 24, 1992.)

Dixon's doctor wrote a letter explaining Dixon's health condition:

Mr. Alphonso Dixon is followed at the Cardiology Clinic and is suffering from a severe dilated cardiomyopathy with congestive heart failure.

Sincerely,
Dr. Marc Moreau, M.D.
June 25, 1992

During Hamilton's trial there was no testimony regarding Dixon's affidavit or the doctor's letter.

Kim Freeman executed an affidavit several days prior to Hamilton's trial in which she stated in part:

[O]n Friday January 4, 1991, I was in New Haven, Connecticut with Derrick Hamilton. We went there on Thursday, January the 3rd ... to attend a party. I stayed there with Derrick for the weekend, and found out from Derrick that my child's father had been murdered and people were saying that Derrick committed the murder. If Nathaniel [Cash] was killed on January 4th, I know it was impossible for Derrick to do this because I was with him ... I will not testify in a court of law because I have been threatened by Nate's friends, that if I come to court I will be murdered like Money-Will (Willie Dawson) was killed. ... I trust this document will shed light on a matter I know is true. ... Please let this be enough to satisfy the court and Derrick's attorney, because I would flee if I thought I would be called and had to testify publicly to these events. My life means more to me and my child, than helping Derrick or anyone else. Thank you for listening.
(Affidavit of Kim Freeman, June 29, 1992.)

Kim Freeman didn't testify and there was no testimony regarding her affidavit.

So the jury convicted Hamilton without knowing there were credible witnesses who could establish an alibi defense for his presence in New Haven on the day of Cash's murder 82 miles away in Brooklyn.* Hamilton's attorney didn't present any witnesses, instead he relied on the strategy of trying to poke holes in the prosecution's case to demonstrate there was reasonable doubt of Hamilton's guilt.

The verdict

The jury advised the judge on July 17, 1992 that they were deadlocked and could not reach a verdict. The jury's note read: "Your Honor, after serious deliberation of the evidence presented, we are unable to reach a unanimous decision. The weight and burden of our deliberations are at the point of causing severe mental and emotional anguish. We

feel that we have conscientiously attempted to attain a unanimous decision." The judge ordered the jury to continue deliberating. Later that day they convicted Hamilton of second-degree murder. Hamilton was later sentenced to 25 years to life in prison.

Post-verdict and post-conviction testimony, affidavits and evidence

After Hamilton's conviction he began to obtain affidavits from people who either had knowledge he did not shoot Cash or that he was in New Haven at the time of the crime. He obtained an affidavit from Turner, who he was with at the time of Cash's murder, in which she states:

1. ... I am presently a police officer with the New Haven, Connecticut Police Department.

2. I have been a member of said police department since November 22, 1991.

...

6. I first met Derrick Hamilton (Hamilton) on the evening of January 3, 1991 when I was introduced to him at a party I attended in the Banquet Room at the Quality Inn located at Exit 59 of the Wilbur Cross Parkway in New Haven, Connecticut.

...

10. At the time, I ran a talent agency located at 1440 Whaley Avenue, New Haven, Connecticut.

11. It was my job to acquire jobs and book groups for shows, clubs, parties, etc.

12. I recall that I spoke for some time with Hamilton concerning my business, and Hamilton seemed to think he could help me with bookings in New York City where he said he had several contacts.

13. I made an appointment that evening with Hamilton to meet him at the Quality Inn the following morning between 11:00 a.m. and 11:15 a.m. in order to show him my office and further discuss business.

14. The party at the Quality Inn ended at approximately 1 or 2 a.m.

15. The following morning, January 4, 1991 I drove to the above Quality Inn and picked up Hamilton between 11 and 11:15 am.

16. Thereafter, we drove to my office at 1440 Whaley Avenue in New Haven, arriving there at approximately 11:20 am.

17. The meeting with Hamilton concluded at about 12 noon.

...

20. I recall the dates very clearly because, among other things, I clearly recall that the above going-away party was three days after New Year's Eve.
(Affidavit of Kelly Turner, May 1995.)

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Hamilton cont. from page 11

Davette Mahan, who worked with Turner at the talent agency, also executed an affidavit confirming from her personal knowledge that Turner met with Hamilton on the late morning of January 4. The Quality Inn's billing records show that Dixon was charged \$803.60 for a sixty to one hundred person party in the Washington South conference room on the evening of January 3. Their records also show payments for hotel rooms at the Quality Inn.

Several of the affidavits Hamilton obtained were by people who claimed to have given statements to the police or the prosecutor. However, those statements were not disclosed to Hamilton's attorney even though they were exculpatory. Darren Breeden provided an affidavit that states in part:

I recall speaking to A.D.A. Anne Gutmann about Derrick Hamilton ["Bush"] and the accusations of murder made against him by Jewel Smith.

I told A.D.A. Gutmann, Mr. Hamilton did not shoot Cash. I was on Nostrand and Gates the same day of the shooting speaking to a person named Money Will who told me that himself (Money Will) and a person named Yaya shot Nate after Nate slapped Yaya. They spread the word around saying Bush did it because they didn't want to get arrested for the crime. I also spoke to Jewel Smith, around March of 1991 ... Jewel told me that she never witnessed the crime, but had been forced to say Bush did it because the police had threatened to lock her up until she testified to having seen Bush shoot Nathaniel ...

I told Ms. Gutmann, about my conversation with Money Will and Jewel, yet she insisted if I wanted a deal with their office on my pending cases, I would have to testify on Derrick Hamilton ["Bush"] implicating him in Nathaniel Cash's murder. I thought about it for a while, then declined the offer ... I couldn't see myself lying on Derrick Hamilton, and [him] getting 20 years to life for my part in the subterfuge. (Affidavit of Darren Breeden, August 10, 1996.)

Tasheen Douglas was with Johnson ("YaYa") and Dawson ("Will"), and he saw them shoot Cash. Douglas' police statement wasn't provided to Hamilton's attorney. Douglas stated in an affidavit after Hamilton's trial:

1. That the affidavit I'm making is true and based on my recollection as to the best of my knowledge of an interview with law enforcement agencies of Kings County in the months of June or July 1992 or soon before said months.

2. That I was interviewed and stated in full what knowledge I had concerning the shooting death of Nathaniel. Cash on January 4, 1991. I told the people who questioned me that my friends YaYa and Will killed Nate.

3. The reason Nate died was because he slapped YaYa after they had an argument. On the day of the shooting nobody was conscious that Nate was gonna get shot or killed, it happened spontaneously. Nate slapped YaYa and the next thing I knew both Will and YaYa started shooting him (Nate).

4. Present on the scene of the crime was myself, Money Will (Will), YaYa and Daquan. Our purpose being there was to talk to Nate about threats he made against YaYa. ...

5. Once Nate slapped YaYa things got out of hand. We all left after the shooting except Will who stayed. YaYa had a red car which I believe was a Trans Am or something. Will later told me and YaYa that he made it look like "Bush" Derrick Hamilton, killed Nate, because everyone in the neighborhood knew that they had a dispute recently ...

7. I told the law enforcement agents what I knew when they came to see me. Which was that Derrick Hamilton was innocent and that YaYa and Will was guilty of the murder of Nate.

8. At the time of the shooting no one was present except Me, Will, YaYa and Daquan. Nobody else witnessed the shooting. ...

(Affidavit of Tasheen Douglas, September 10, 1993.)

Felicia Schuler was another person who provided an affidavit. She swore that Smith and her were at the grocery store at the time Cash was murdered. Felicia Schuler's affidavit was executed on December 8, 1992.

The most important affidavit was by the prosecution's key witness – Jewel Smith. Hamilton discovered after his conviction that Karen Smith who gave the crime scene statement and Jewel Smith who testified at his trial, are the same woman. A private investigator hired by Hamilton learned she was living in North Carolina and traveled there in April 1993 to interview her. Smith executed an affidavit in which she stated in part:

Q. Mrs. Smith did you testify ... against Derrick Hamilton?

A. Yes

Q. Was your testimony true?

A. No

...

Q. On January 4, 1991, did you in fact ever see Derrick Hamilton at anytime that day?

A. No

Q. Did you ever see Derrick Hamilton fire a gun which killed Nathaniel Cash in your presence?

A. No

Q. Did you testify truthfully when you stated that you saw Derrick Hamilton shoot Nathaniel Cash numerous times?

A. No

Q. Did you ever tell the police or the District Attorneys Office that what you were to testify to was untruthful?

A. Yes, several times

...

Q. When you made these revelations to these officials that the testimony you were going to give was false what did they do to make you falsely testify in this case?

A. They threaten me; gave me ultimatum, they would put me in jail for the murder until I was ready to testify, take my kids from me and I would never see them again and get me violated for being with a known felon.

...

Q. Has anyone made any threats or promise to you to conduct this interview and recant upon prior testimony?

A. No

(Jewel Smith Affidavit of April 21, 1993.)

At least 13 people have provided an affidavit or testified during post-conviction proceedings either that Hamilton wasn't at the crime scene, that individuals other than Hamilton are responsible for Cash's murder, or that Smith wasn't present at the time of the shooting.

Appeals denied

After Hamilton was found guilty in July 1992, he filed a *pro se* motion to set aside the verdict based on newly discovered evidence of his innocence. The key evidence was Smith's sworn recantation. Several evidentiary hearings were held regarding that motion. Smith testified that she did not see Hamilton shoot Cash, and Det. Delouisa testified that Smith was the woman who gave him the spontaneous crime scene statement that she "did not witness the shooting." On July 8, 1993 the judge denied the motion, ruling that Smith's recantation of her trial testimony wasn't credible. Four days later Hamilton was sentenced to 25 years to life in prison.

Hamilton filed a *pro se* motion on January 5, 1994 to vacate his judgment of conviction. He claimed prosecution *Brady* and *Rosario* violations, and that his trial lawyer was ineffective for failing to investigate witnesses or subpoena witnesses who could have established an alibi defense that Hamilton was in New Haven at the time of the crime. Judge Rappaport denied most of

Hamilton cont. on page 13

Dennis Maher Settles Rape Lawsuit For \$160,000



Dennis Maher the day of his release.

Dennis Maher was a 22-year-old Army paratrooper stationed at Fort Devens, Massachusetts when in December 1983 he was arrested for possessing one-half ounce of marijuana. At the time he was wearing a red sweatshirt, and during the search of his car a green Army jacket and a military knife were found. Those items matched descriptions given by a rape and an attempted rape victim in Lowell. Maher became a suspect in those crimes, in addition to the rape of a woman in the nearby town of Ayer. Although at the time of the Lowell rape Maher was meeting with his commanding officer 22 miles away at Fort Devens, his jacket and knife were common for Army personnel, and his eye and hair color didn't match the women's attacker, he was

charged with the crimes.

In the spring of 1984 Maher was tried and convicted of the Lowell rape and attempted rape based on the victim's identification of him, and the items of clothing and the knife. He was sentenced to 12 to 20 years in prison. He was then tried and convicted of the Ayer rape based on the victim's testimony. He was sentenced to life in prison for that crime.

Maher learned about DNA testing in 1993, but the prosecution denied for years that evidence from the Lowell rape trial still existed. The evidence was finally located in the Cambridge court house basement. In January 2001 DNA testing proved it was not Maher's semen on the Lowell rape victim's underpants. Prosecutors then disclosed that a slide from the Ayer victim's rape kit had been located. DNA testing also cleared Maher in that case. Maher was released on April 3, 2003 after his convictions were overturned and the charges were dismissed by Middlesex's D.A., who called the

convictions a "miscarriage of justice."

Maher filed a claim under Massachusetts' law providing compensation for wrongful incarceration. In September 2005 he settled with the state for \$550,000. In March 2006 Maher filed a federal civil rights lawsuit naming as defendants the city of Lowell, the town of Ayer and several police officers — including Edward Davis, who was the Lowell policeman who arrested Maher in 1983, and is now Boston's police commissioner. Maher alleged the defendants used improper identification techniques, failed to disclose evidence and investigate, and fabricated evidence.

In early December 2008 Maher settled his claims against Lowell for \$160,000. His claims against the town of Ayer and its police officer remain unresolved.

Sources: 19 years later, innocence comes home, *The Boston Globe*, October 12, 2003.

Lowell settles with man wrongly imprisoned in sex assaults, *Lowell Sun*, December 12, 2008.

Hamilton cont. from page 12

Hamilton's claims. Among his rulings were that neither the inability of Dixon to testify because of ill health, nor the failure of Freeman to testify because of fears for the safety of her and her child, had anything to do with the competence of Hamilton's attorney. The judge also denied Hamilton's *Brady* and *Rosario's* claims, ruling there was "insufficient proof the prosecution was in possession of this exculpatory evidence."

However, Judge Rappaport did grant Hamilton an evidentiary hearing regarding Tasheen Douglas' affidavit of September 1993. Douglas subsequently testified in detail about the events described in his affidavit. On April 2, 1996 Judge Edward M. Rappaport judge ruled there was no *Brady* violation regarding the four statements that Douglas claimed to have made to NYPD detectives, because of insufficient evidence that the prosecution was in possession of Douglas' exculpatory statements. Even though Hamilton's conviction was based solely on the trial testimony of Smith that she recanted, the judge also ruled that Douglas' affidavit wasn't "new evidence" warranting a new trial, because it wasn't sufficient by itself to have altered the jury's verdict. In addition, the judge refused to consider the exculpatory alibi affidavits of Turner and Mahan, who were not listed as witnesses on Hamilton's Notice of Alibi Defense.

The New York Appellate Division granted Hamilton leave to appeal the motion's denial, and consolidated his direct appeal into that appeal. In 2000 the appeals court denied

Hamilton's direct appeal and affirmed the dismissal of the motion to vacate his conviction he filed in 1994. (See, *People v. Hamilton*, 272 A.D.2d 553 (2000).) In its ruling the court determined that Hamilton's attorney wasn't ineffective for failing to investigate or subpoena alibi or exculpatory witnesses.

Federal habeas corpus petition

Having exhausted his state remedies, Hamilton filed a pro-se federal *habeas corpus* petition on March 16, 2001. U.S. District Court Judge Gleeson denied the petition on January 16, 2004. However, Gleeson did acknowledge that if Hamilton's attorney had known that Jewel Smith made crime scene declaration that she did not witness the shooting, it could have been used to undermine her trial testimony.

Coram nobis writ denied

Hamilton filed a *pro se* writ of error *coram nobis* in state court to vacate the appeals court's 2000 decision denying his direct appeal. Hamilton claimed ineffective assistance of his appellate counsel. On September 9, 2008 the New York Appellate Division denied Hamilton's writ in a one-line ruling, "The appellant has failed to establish that he was denied the effective assistance of appellate counsel." *People v. Hamilton*, 2008 NY Slip Op 06851 (N.Y. App. Div. 9/9/2008).

Smith supports Hamilton's release

In addition to Smith's admission during Hamilton's post-conviction hearing that she perjured herself during her grand jury and

trial testimony, and her affidavit admitting her perjury, she wrote letters to the appellate judges prior to their denial of Hamilton's direct appeal in 2000, and she wrote letters on his behalf to NY Attorney General Eliott Spitzer in 2007 and to the New York State Board of Parole.

Current status

Hamilton is gathering affidavits and letters to include with a pardon application. Hamilton's court appointed attorney in 1992 and 1993 during his post-trial challenge to his conviction was New York attorney Howard Weiswasser. Fifteen years later Weiswasser executed an Affirmation on April 25, 2008 that was based on his extensive knowledge of Hamilton's case. Weiswasser swore: "Based upon all I know about this matter it is my opinion that DERRICK HAMILTON is an innocent man with an unjust conviction."

Derrick Hamilton can be written at:
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Nicole Hamilton is Derrick Hamilton's wife and she is his outside contact. Email her at, Nickmickron@yahoo.com

* It is 82 miles from the Quality Inn in New Haven, CT to the location of Cash's murder in Brooklyn, according to Mapquest.com, and the travel time is 1 hr. 53 minutes.