

In the summer of 1983 Paul Kamienski was a successful 35-year-old New Jersey entrepreneur living the high life, partying and recreationally using cocaine.

## Paul Kamienski's Murder Convictions Based On Speculation Tossed

Around Labor Day, Kamienski was asked by his friends Henry ("Nick") and Barbara DeTournay, if he knew anyone interested in buying a large quantity of cocaine. The DeTournays were a middle-class couple — but they wanted to be financially set for life by making a one-time sale of cocaine they could buy wholesale in Florida.

Kamienski introduced the DeTournays to his cocaine suppliers, Anthony Alongi and Joseph Marsieno. Alongi and the DeTournays made a deal, and Kamienski agreed to be present during the exchange that was finally set for September 18, 1983.

On September 24 Nick's body was recovered from Barnegat Bay, about 50 miles north of Atlantic City. The next day Barbara's body was recovered near where Nick's body was found. Autopsies determined they both died from multiple gun shot wounds.

The murder investigation centered on Alongi, Marsieno and Kamienski — but it wasn't until four years later in October 1987 that the three were indicted by an Ocean County grand jury. The prosecution's theory was Alongi intended to steal the cocaine, Kamienski lured the DeTournays to the meeting, and Marsieno was the shooter.

The three men were jointly tried in 1988. Kamienski's defense was he arranged a straight-forward cocaine for money deal. There was no testimony that Kamienski knew Alongi and Marsieno intended to kill the DeTournays and steal their cocaine. The prosecutor conceded that during closing arguments when he stated:

"Paul Kamienski was there when [the DeTournays] were murdered. ...

Am I going to say does Paul Kamienski know that they're going to get killed? I don't think so. Not from the evidence and testimony that I've heard. ...

I'll say this, he never expected it to happen, he didn't expect them to be murdered. He said that to [his girlfriend] Donna as soon as they got outside. I couldn't control the situation, but it happened."

The jury convicted the three men of first-degree murder, felony murder, and conspiracy to possess cocaine with the intent to distribute. Kamienski's murder convictions were as an accomplice.

Kamienski filed a post-verdict motion for a judgment of acquittal, claiming the jury instruction on "accomplice liability" erroneously permitted the jury to convict him without the prosecution presenting evidence beyond a reasonable doubt he was an accomplice to the murders. The trial judge agreed. He granted Kamienski's motion and entered a judgment of acquittal for his murder convictions.

In 1992 New Jersey's Court of Appeal ruled the accomplice liability instruction was adequate and reinstated Kamienski's convictions. Kamienski was jailed during his appeal, and in April 1992 he was sentenced to 30-years to life in prison. The New Jersey Supreme Court declined review and Kamienski's state post-conviction appeal was denied after protracted proceedings.

In denying Kamienski's timely filed federal habeas corpus petition, the U.S. District Court judge ruled "There is evidence from which a reasonable jury could have found efforts by Kamienski to facilitate the robbery and murder." The judge's ruling permitted Kamienski to be convicted of first-degree and felony murder based on the evidence he arranged the drug deal, and his lack of advance knowledge, participation, or intent for the murders to occur was irrelevant.

Kamienski appealed to the federal Third Circuit Court of Appeals. In its unanimous opinion released on May 28, 2009, the appeals court emphasized the prosecution's admissions during closing arguments and in post-conviction briefs that Kamienski did not intend for the DeTournays to be robbed and killed. The appeals court wrote:

"Thus, to find Kamienski guilty as an accomplice to first-degree murder, the state must show that Kamienski shared the specific intent to kill the DeTournays."

Moreover, there is nothing other than rank speculation to suggest that he shared Marsieno's intent to rob and/or murder the DeTournays. ... Deference to a jury verdict...does not allow rank speculation to substitute for proof beyond a reasonable doubt.

We realize that "[i]nferences from established facts are accepted methods of proof when no direct evidence is available. It is [nevertheless] essential...that there be a logical and convincing connection be-



Paul Kamienski after his June 16, 2009 release

tween the facts established and the conclusion inferred.

However, based on our review of the evidence, the picture is simply not there and its existence can not be inferred absent the kind of guesswork that due process prohibits. Indeed, we can not accept the state's view of the evidence without choking all vitality from the requirement of proof beyond a reasonable doubt.

As we have noted, there was more than ample evidence of Kamienski's role in brokering a drug transaction. However, the [State's] Appellate Division conflated that proof into its inquiry into evidence of murder and felony murder. Doing so was not only error, it was unreasonable; it allowed Kamienski to be convicted on something less than proof of "every element of the offense" of conviction beyond a reasonable doubt.

[T]he record simply does not allow a reasonable juror to infer that Kamienski intended that the DeTournays be robbed or killed." *Kamienski v. Hendricks*, No. 06-4536 (3rd Cir., May 28, 2009)

Having found that Kamienski's murder convictions were based on the jury's speculation about his intent beyond simply arranging a drug deal, the appeals court ordered the district court to grant Kamienski's writ of habeas corpus.

Kamienski was released on \$1 million bail on June 16, 2009, pending the Ocean County prosecutors decision to either appeal the Court's ruling or dismiss the charges.

Hours after his release Kamienski told a *New York Times* reporter: "I'm still vibrating. It doesn't feel real." He also said, "Back then everyone was doing drugs — athletes, lawyers, doctors, stockbrokers, everyone. When you look at it now, it's almost as if we're in the 1940s looking back on the Prohibition. But it's a different time now, and I want to help educate people to avoid getting involved with the people I did."

On July 2, 2009 the Third Circuit Court of Appeals issued a one-word decision — "DENIED" — in response to the Ocean County prosecutor's motion for reconsideration and an *en banc* hearing.

Marsieno died in prison, and the 79-year-old Alongi remains behind bars.

Additional source:

After 22 Years in Prison, Man Convicted of Role in 2 Murders Is Freed, *The New York Times*, June 17, 2009.