

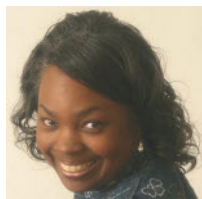
Derrick Hamilton's Alibi By Police Officer He Was 82 Miles From 1991 Murder Ignored By The Courts

The *New York Daily News* recently published a feature story about Derrick Hamilton's case of being convicted of a 1991 murder in Brooklyn, New York that occurred when he was 82 miles away in New Haven, Connecticut.

Many of the details in the story originated from the article about Hamilton's case published in Justice Denied Issue 41: "In Connecticut At Time Of Brooklyn Murder" – The Derrick Hamilton Story" by Nicole Hamilton.

Emergency 911 was called at 11:01 am on January 4, 1991, only moments after Nathaniel Cash was shot to death on a Brooklyn sidewalk. One of the shooters came out of hiding as a crowd gathered and started spreading the rumor that Derrick Hamilton shot Cash. Hamilton was eventually charged with the murder based on one of Cash's woman friends believing the rumor was true, and lying to the police that she had witnessed Hamilton shoot Cash. She was indispensable to Hamilton's prosecution because she was the only person who testified during his trial that she saw him shoot Cash.

Hamilton had several credible alibi witnesses that he was in New Haven at the time of the murder, but his lawyer didn't call any of them to testify during his trial.



Kelly Turner
(USmile Magazine)

Hamilton's most important alibi witness was Kelly Turner, who at the time of the murder was meeting with Hamilton in New Haven. Hamilton divided his time between New York City where he booked talent for clubs

such as the Apollo Theater in Harlem, and New Haven where he was a partner in a beauty salon. Turner owned a talent booking agency in New Haven. During a party at a New Haven hotel on the evening of January 3, 1991, Turner and Hamilton arranged to meet the next morning. Hamilton was with Turner for about an hour between 11 am and noon on January 4th to discuss booking musical talent in New York City. Davette Mahan worked at the talent agency and she saw Hamilton when he was meeting with Turner.



Derrick Hamilton

Between the time of the shooting and Hamilton's 1992 trial Turner joined the New Haven Police Department. However, Hamilton's lawyer not only didn't subpoena Turner or Mahan to testify during his trial that he was in New Haven at the exact time of the murder – but his lawyer didn't even include them on his list of alibi witnesses.

Turner provided a post-conviction Affidavit to Hamilton in 1995 detailing that she picked Hamilton up between 11 am and 11:15 on January 4, and that she drove him to her office where they met from about 11:20 am until about noon. Mahan also provided an Affidavit detailing that she saw Hamilton at the talent agency office that morning.

When Justice Denied was working on Hamilton's story Kelly Turner was contacted and she verified the accuracy of the information in her Affidavit. Turner is still a New Haven police officer. The failure of Hamilton's lawyer to subpoena Turner and Mahan to testify at his trial has proven catastrophic for Hamilton. It is not new evidence because it was known to him prior to his trial, so 19 years after his conviction, no state or federal court has agreed to even consider police officer Turner's unimpeachable alibi evidence that at the time of Cash's murder Hamilton was in New Haven.

The lone "eyewitness" the jury relied on to convict Hamilton of second-degree murder has long since recanted in sworn affidavits and in testimony during post-conviction proceedings that she was not present when Cash was shot and she has no knowledge of who committed his murder. Yet, Hamilton continues serving his sentence of 25 years to life for a murder it is positively known he didn't commit.

Sources:

"In Connecticut At Time Of Brooklyn Murder – The Derrick Hamilton Story" by Nicole Hamilton, Justice Denied, Issue 41, Summer 2008, pp. 10-13 at www.justicedenied.org/issue/issue_41/derrick_hamilton_jd41.pdf

"Inmate, locked up for 20 years for Brooklyn murder, says he'll be set free if witnesses testify," *New York Daily News*, February 13, 2011.

Kelly Turner, Compassionate Hands For Those In Need, USmile Magazine, December 10, 2009.

Publicity Leads To Tossing Of Enraged Judge's Contempt Conviction Of Man For Smiling In Court

Jeffrey Blount made the mistake of smiling when he was in court January 6, 2011, on a harassment charge. Although harassment is only a minor violation, like a traffic ticket — Utica City Court Judge Gerald Popeo became so enraged at the 20-year-old Blount that he yelled "You're standing there with a grin that I would love to get off the bench and slap off your face!" Popeo then charged Blount with contempt of court, summarily found him guilty, and sentenced him to 30 days in jail, ending his tirade with "Have a good day, Mr. Blount!"

Blount's public defender Tina Hartwell promptly filed a motion in the Oneida County Court to overturn his contempt conviction. She argued that Judge Popeo didn't go through the proper procedures before finding Blount guilty of contempt of court and imposing a 30-day jail sentence. The motion was heard on Friday, January 7 by Judge Barry Donalty. He ruled that the proper avenue to challenge Blount's contempt of court conviction was in the New York Supreme Court.

The local media picked up the story and covered it over the weekend. Hartwell explained that Blount didn't do anything wrong because he smiled when he thought the judge had cracked a joke.

On Monday morning Judge Popeo ordered an unscheduled hearing, during which he vacated Blount's contempt conviction. Popeo justified his action by saying, "In my effort to address what I felt was inappropriate conduct and being upset with that conduct, I reacted with some intemperate words and did not fully and completely follow the procedure in place in order to hold a person in contempt."

Public Defender Hartwell was pleased with the judge's decision that was in response to the media and legal storm that was brewing because she was aggressively challenging what she believed was his illegal action against her client. Hartwell told reporters after the hearing, "This is what we do. This is our job. We're here to protect the people's rights, and that's what we did. It's our responsibility to follow through on these matters." After the hearing Judge Popeo's clerk told reporters he couldn't comment on the case due to ethics laws.

Contempt cont. on p. 17

Scent Dogs Wrong 85% Of The Time Detecting Drugs And Explosives In Experiment

A double-blind experiment involving 18 drug and/or explosive detection dogs was reported in January 2011 in the journal *Animal Cognition*. The experiment didn't just discover that all 18 scent dogs were incapable of accurately detecting the presence of drugs and/or explosives, but overall the dogs were wrong *more than 100%* of the time.

All 18 dog/handler teams were trained and certified by a law enforcement agency for either drug detection, explosives detection, or both drug and explosives detection. The 18 dogs included a mixture of male and females, there were 4 different breeds plus mixes, and the dogs ranged from 2 to 10 years old.

Each of the 18 teams conducted two searches of four rooms that the dog's handlers were led to believe had hidden drugs and/or explosives depending on the dog's training. So a total of 144 searches were conducted.

However, unbeknownst to the dog handlers there were no drugs or explosives involved in the experiment. Half of the rooms did not have anything hidden in them, while the other half had "Two Slim-Jim sausages (removed from their wrappers and stored with their wrappers in an unsealed plastic bag) and a new tennis ball hidden in the bottom of a pot and placed in a metal cabinet with the doors closed." (3) Consequently, every "alert" by a dog to finding drugs or explosives would be a "false" alert. All the dogs were trained to signal an "alert" by barking and/or sitting where they



Belgian Shepherd (dogchannel.com)

had detected drugs or explosives. One of the things the experiment was intended to measure was the effect of a handler's non-verbal cues on their dog's "alert" to finding drugs or explosives. That is known as the "Clever Hans" effect. In the early 20th century a horse named Clever Hans was believed to have amazing knowledge and mathematical abilities because he so often tapped with a hoof the correct answer to a question. However, it was eventually discovered that Hans the horse was indeed clever, because he detected subtle cues from both bystanders and his owner about the correct answer.

To measure the "Clever Hans" effect, half of the rooms had a piece of 8-1/2" x 11" red construction paper taped to the location where the drugs and/or explosives were allegedly located, while the other half of the rooms had no visible indication of their location.

The experiment was double-blind because the persons stationed in each room to observe the dog/handler teams did not know any more than the dog's handlers did about the details, so they couldn't unintentionally transmit any information to a handler or their dog.

The dogs "alerted" that they found drugs or explosives a total of 225 times during the 144 searches -- even though the handlers had been told that in each search there was only one location that contained drugs or explosives. So the false "alert" rate was in excess of 100% ($225/144 = 156\%$). The dogs identified non-existent drugs or explosives in 123 searches (85%). Although the

number of false "alerts" varied by only two between the four rooms (ranging from 55 to 57), what was significant is that in the two rooms that had a cabinet marked with the red paper (visible to the dog's handler) that supposedly identified where the drugs or explosives were, over 50% of the false alerts were at that cabinet. So indeed, each dog's handler either consciously or unconsciously telegraphed those locations to their dog.

Overall the dogs identified non-existent drugs or explosives at 39 different locations in the four rooms.

All the dogs were certified, so the experiment provides evidence there are significant deficiencies with the process used to certify dog/handler teams for detection of drugs and/or explosives.

The experiments findings are significant because they provide evidence undermining the reliability of drugs or explosive evidence in a criminal case allegedly found by a dog. The experiment suggests that in a significant number of those cases the drugs or explosives may have been planted so they could be found by a dog given cues during the search. Consequently, the experiment could prove valuable for a defense attorney in a case involving key prosecution evidence of drugs or explosives allegedly "found" by a scent dog.

The article "Handler beliefs affect scent detection dog outcomes," by the researchers who conducted the experiment can be read at, www.springerlink.com/content/j477277481125291

Source:

Handler beliefs affect scent detection dog outcomes, *Animal Cognition* (journal), January 2011.



Contempt cont. from p. 16

A person accused of civil contempt of court has the due process rights of notice of the charge against them and the opportunity to defend him or herself, although the standard for a conviction is a preponderance of the evidence. By acting quickly to overturn Blount's summary contempt conviction that violated his due process rights, Judge Popeo may have avoided being disciplined by the New York State Commission on Judicial Conduct. The *Utica Observer-Dispatch* cited three recent cases in which a judge was admonished for abusing their contempt power:

- New Hartford Town Court Judge James Van Slyke was admonished in 2006 for holding Sebastiano Pagano and his attorney, Carl Scalise, in contempt of court without first warning either man of their

conduct. Instead, when Scalise attempted to note a comment on the record, Van Slyke simply replied, "That last remark just cost you 50 dollars." And when Pagano interrupted the judge by saying he knew he was going to be found guilty, Van Slyke said, "And you're in contempt, 50 dollars."

- A Rensselaer County family court judge was censured in 2008 after she told an individual in her courtroom, "If you don't shut your mouth right now, you'll be leaving in handcuffs." She then held the man in contempt without giving him an opportunity to defend himself.
- A state Supreme Court justice in Queens County was censured in 2005 after holding a plaintiff in contempt when the man's attorney stated on the record how his client

had approached the judge in a parking lot. The judge inappropriately tried to use the threat of contempt to intimidate the attorney into not speaking on his client's behalf.



Jeffrey Blount with his public defender Tina Hartwell on January 7, 2011. (Rocco LaCucca - Utica Observer-Dispatch)

Sources:

"Judge Popeo irked by smirk," *Observer-Dispatch* (Utica, NY), January 7, 2011.

"Utica City Court judge tosses contempt order against man who 'smiled' in court," WKTU (Utica, NY), January 10, 2011.

"Judge Popeo drops contempt charge for smirking," *Observer-Dispatch* (Utica, NY), January 10, 2011.

