

**UNITED STATES COURT OF APPEALS
FOR THE
THIRD CIRCUIT**

No. 06-4536

PAUL KAMIENSKI,

Appellant,

-v.-

ROY L. HENDRICKS, ADMINSTRATOR;
ATTORNEY GENERAL OF THE STATE OF NEW JERSEY;
OCEAN COUNTY PROSECUTOR'S OFFICE

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
D.C. NO. 02-CV-03091(SRC)

**RESPONSE BY APPELLANT PAUL KAMIENSKI
TO CLERK OF COURT LETTER DATED APRIL 3, 2009**

TIMOTHY J. MCINNIS, ESQ.
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New York, New York 10175
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COUNSEL FOR APPELLANT PAUL KAMIENSKI

TIMOTHY J. MCINNIS, ESQ., affirms under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I am Appellant Kamienski's attorney and a member of this Court in good standing and make this response to the Clerk of Court's letter dated April 3, 2009 ("Court Letter"). See Attachment A. The Court Letter followed Appellant Kamienski's charge that Appellees had deliberately filed a false and misleading brief in this Court, as well as, two prior courts.

2. The Court Letter directs Appellees' counsel to submit a letter to the Court by April 8, 2009 via the "argument notices/acknowledgement—response" event in CM/ECF. It further directs Appellees' counsel to answer two specific questions: Did Appellees mean on page 52 of their principal brief (now on pages 54-55 of Brief for Appellees, revised April 8, 2009), see Attachment B, to include Appellant Kamienski in the term "defendants" when they stated, in effect, that: (1) on September 18, 1983, "defendants" lied to the victims about getting together money for the drug deal; and (2) between September 10 through 15, 1983, "defendants" promised Buddy Lehman high quality/low priced cocaine in the near future.

3. The Court Letter further directed Appellees' counsel that, if the answer to either or both of the above questions was affirmative, to provide record citations in the Appendix or any supplemental transcript pages to support his assertions.

4. Appellees' counsel has apparently chosen not to respond to the Court Letter by the specified deadline. The undersigned has not received any ECF notification of the submission. There is no record of it on the Court's docket. And, the Clerk's Office has advised the undersigned in a telephone call that there is no record of Appellees

seeking an extension of the due date or recession of the Court's directive.

5. Accordingly, Appellant Kamienski requests leave to file this response to the Court Letter (and attached transcript excerpts, see Attachment C), which show that the answer to both of the Court's substantive questions is simple and should be unequivocal. It should be, "No."

Appellant Kamienski Never Lied to the Victims about the Money

6. The answer to the Court's question about whether or not Kamienski ever lied to the victims about having trouble getting the drug deal money together (in order to "dupe" or "lure" them to co-defendant Alongi's house to be murdered), is found in the testimony of the State's key witness, Donna Duckworth.

7. Duckworth said she was in Kamienski's company 24 hours a day, seven days a week during the relevant time period. See Attachment C, SA 1993:18-19.

8. She describes a total of four conversations between Appellant Kamienski and one or both of the victims (Henry "Nick" and Barbara DeTournay) taking place in that time frame.

9. There were two meetings on September 3, 1983 that involved Appellant Kamienski buying a small amount of cocaine from the victims for his and Duckworth's use. See Attachment C, SA 2005-07.

10. There was a meeting and subsequent boat trip to co-defendant Alongi's house for a Labor Day party, where the stage was loosely set for the later drug transaction. *Id.* at 2010-16.

11. Lastly, there was a telephone call between Appellant Kamienski (who was in Garfield, NJ) and Nick DeTournay (who apparently was in or near Lavallette, NJ).

That call took place on September 9, 1983 at 2:00 p.m. The entire conversation, as recalled by Duckworth who heard only heard Kamienski speaking into the phone, was that Nick DeTournay apparently asked Appellant Kamienski if he had a drug scale on his boat (moored in Lavallette). And Appellant Kamienski responded by saying, in sum and substance, “No I don’t have a scale. And, get off my boat.” See Attachment C, SA 2020-23.

12. The telephone call on September 9 appears to be the last communication between Appellant Kamienski and either of the victims to which any trial witness testified at trial. (There is some testimony about Kamienski dialing a few telephone numbers later that evening in an attempt to reach Nick DeTournay, but there is no testimony as to whether he was ever successful, and, if so, what the substance of any conversation was.) To the best of the undersigned’s knowledge and belief, from a review of the entire trial transcript, no witness testified about the substance of any other communication between Appellant Kamienski and either of the victims after the September 9 telephone call.

13. In none of the four conversations described by Duckworth does Appellant Kamienski reportedly say anything to the victims which remotely resembles the conversation at issue in the Court Letter. If there had been such a conversation, Duckworth would be the most likely witness to have observed it, and, presumably, she would have recounted it as part of her cooperation with the authorities. The fact that it is not in her testimony establishes as conclusively as possible that Kamienski never lied to the victims about “getting the money together.”

14. Should one focus on the September 18, 1983 Holiday Inn happy hour

gathering among Appellant Kamienski, Duckworth, Marzeno, Alongi, Alongi's fiancée and possibly Lehman for a short while, Duckworth is the one witness to that event who testified about it. She said the victims were not there (at least when she and Kamienski were at the Holiday Inn). See Attachment C, SA 2024-26. She also said that she did not recall anything noteworthy about the conversation among the others who were present. *Id.* at SA 2025:15-17.

15. The absence of Appellant Kamienski's role in actively luring the victims to their deaths is thus readily established by reading the relevant portions of Duckworth's testimony.

Appellant Kamienski Never Promised Cocaine to Lehman

16. The answer to the Court's question about whether or not Kamienski ever promised "kilo quality coke" at low prices to Buddy Lehman is obviously found in the testimony of Lehman, who testified for the State at trial.

17. During his direct testimony Lehman had the conversation alluded to on page 53 of Brief for Appellees, (now on page 55 of Appellees' revised brief), see Attachment B, but he expressly identified the participants as "Marzeno" and "Alongi" — not Appellant Kamienski. See Attachment C, SA 2686-90.

18. Even more to the point, on cross examination Lehman explicitly excluded Kamienski as a participant in the conversations at issue. See Attachment C, SA 2852-53.

19. Indeed, Lehman goes on to say that Appellant Kamienski never acted as a drug dealer in any situation. See Attachment C, SA 2882.

20. Further support of Appellant Kamienski's lack of involvement in

Marzeno's and Alongi's promises of high quality cocaine to Lehman is found in the testimony of Duckworth. She describes a party at Alongi's house on either September 15 or 16 1983 (which Lehman also attended) and she overheard talk there about good coke coming to town soon. When asked at trial who was saying that, she answered "Joe [Marzeno]" and "Tony [Alongi]." See Attachment C, SA 2023-24, especially 2024:7.

21. It took only a short time on the computer (about 15 minutes) to get to the start of the Lehman testimony in the Appendix on CD, put in the search term "Kamienski," and then come up with the relevant transcript pages showing that Lehman never meant to include Kamienski as a participant in the conversation at issue in the Court Letter.

22. **FOR THE FOREGOING REASONS**, especially given the nature of Appellant Kamienski's accusations to which Appellees were directed to respond, I respectfully request that the Court draw the most adverse inference possible from the failure of Appellees' counsel to comply with the Court's directive dated April 3, 2009 requiring him to provide a responsive letter to the Court by ECF by April 8, 2009.

Executed on: April 9, 2009

S/_____
TIMOTHY J. MCINNIS, ESQ

ATTACHMENT A

OFFICE OF THE CLERK

MARCIA M. WALDRON

UNITED STATES COURT OF APPEALS

TELEPHONE

CLERK

FOR THE THIRD CIRCUIT

215-597-2995



21400 UNITED STATES COURTHOUSE
601 MARKET STREET

PHILADELPHIA, PA 19106-1790

Website: www.ca3.uscourts.gov

April 3, 2009

Via Facsimile
and Electronic Mail

Samuel J. Marzarella Esq.

RE: Kamienski v. Hendricks, et al

Case Number: 06-4536

District Case Number: 02-cv-03091

Listed: for Oral Argument on Thursday, April 16, 2009

Dear Counsel:

At the direction of the Court, "On Page 52 of the Brief for Appellees, Counsel for Appellees states: "Defendants never intended for the drug deal to have occurred. Defendants duped the DeTournays into thinking it would occur by lying about having trouble getting the nonexistent money. This is shown by the fact that there was never any money intended to be paid to the DeTounays." On Page 52, of the brief Counsel states: "Between September 10th and September 15th, . . . Defendants assured Buddy Lehman. . .". **Counsel is hereby directed to submit a letter to the Court no later than Wednesday, April 8**, stating whether "Defendants" as used in those paragraphs includes Appellant Kamienski, and if so, where in the Appendix the Court can find testimony to support this claim. If the testimony is not in the Appendix, but in the trial transcript, copies of the relevant pages of the transcript are to be included with the letter; the Court will accept those copies as a Supplemental Appendix, and Counsel should therefore comply with the requirements for submitting an Appendix (number of copies) when submitting the supplemental materials.

Please file the Letter using the "response event" under the argument notices and acknowledgment category in CM/ECF.

Finally, the Brief submitted by Counsel for Appellees refers only to portions of the trial transcript rather than to the Appendix that was submitted. It is therefore virtually useless insofar as it purports to support the representations made in the brief. Counsel is to submit a revised brief that replaces all citations to the trial transcript with citations to the Appendix. If counsel has cited portions of the trial transcript that are not included in the Appendix, **Counsel is hereby directed to provide those additional portions to the court in the form of a supplemental appendix no later than close of business on Friday, April 10th.**

Very truly yours,

Marcia M. Waldron

Marcia M. Waldron, Clerk

By: *Tiffany Washington*
Tiffany Washington, Calendar Clerk
267-299-4905

cc: Timothy J. McInnis Esq.

ATTACHMENT B

Eyewitness Duckworth put Kamienski at Alongi's house, assisting Alongi in preparing the bodies for concealment, (SA 2029-2030) (11T 42-4 to 43-8) – shortly after the murders had taken place – as stated above. Kamienski used blankets and towels which were similar to those used on his boat. (SA 2054-2055) (11T67-20 to 68-25) Kamienski removed his boat from the water during the week after the murders. (SA 2037-2038) (11T50-1 to 51-3)

Importantly, Kamienski knew this would be no mere drug deal since he found it necessary to send Duckworth, who was constantly with him, to a friend's house for the day. (SA 2184-2185) (12T114-10 to 115-28) Though the two were never apart, (SA 1992-1993) (11T5-10 to 6-19) it was necessary to send Duckworth away because Kamienski planned to be present at the scene and participated in the crime, sharing the intent of the others. (It should be noted that this argument will be extensively developed infra concerning premeditation of the murders). Therefore, any rational juror could have easily concluded that Kamienski was present at the scene.

B) Other Circumstances

Intent to promote or facilitate murder, participation, and shared intent:

Defendants never intended for the drug deal to have occurred. Defendants duped the DeTournays into thinking it would occur by lying about having trouble

getting the nonexistent money. This is shown by the fact that there was never any money intended to be paid to the DeTournays. Marsieno admitted he “didn’t intent to pay him anyway.” (SA 3029) (16T32-4 to 32-21; admissible against Marsieno only, but see SA 2971, 15T 343-1 to 343-14 instead)

Duckworth testified that all three defendants attended the September 18th failed deal at the Holiday Inn. Prior to the meeting Marsieno told Yurcisin “he would be carrying.” Inside Marsieno’s briefcase Yurcisin saw a gun without a “tumbler”, similar to a 9mm semi-automatic parabellum pistol which killed the DeTournays – but no money. Indeed Marsieno admitted he would “kill them before they got any of his money.” (SA 2971) (15T343-1 to 343-14) After the September 18 meeting, Henry DeTournay told Sid Jeffrey “he just came from the people that were getting the money together”, and that “the people still weren’t ready”, and that they were having “trouble” getting the money, so that the deal had to be postponed to the next day—September 19, 1983. (SA 2024-2026; 1471-1472; 1568; 1471-1472) (11T 37-17 to 39-8; 8T 139-9 to 140-21; 9T 16-8 to 16-23)

Between September 10th and September 15th, well before the murders, Defendants assured Buddy Lehman that he could have “kilo quality coke” for \$1,000 less per ounce than he was presently paying on credit. (SA 2687-2688) (15T59-1 to 60-8) Apparently, Defendants anticipated no cash flow problem – well before the murders took place – even though they told the DeTournays they were

ATTACHMENT C

1 photographs.

2 MR. CAMMARATA: No objection.

3 MR. RUSSELL: No objection.

4 THE COURT: Mr. Peduto.

5 MR. PEDUTO: No objection.

6 THE COURT: S-28 and 29 will be received
7 and marked in evidence.

8 (S-28 and S-29 marked.)

9 MR. MILLARD: Judge, I'd ask just quickly
10 that the jury be allowed to see the
11 photographs.

12 (Photographs are exhibited to the jury.)

13 BY MR. MILLARD:

14 Q Can you tell me a little bit about your
15 relationship with Paul Kamienski during that period of
16 time?

17 A I lived with him for close to seven years, I
18 guess -- six years, excuse me. We were together every
19 day, all the time, about 24 hours a day, I'd say.

20 Q Who paid the bills?

21 A Oh, Paul -- well, Paul did. I -- not until he
22 opened a car dealership did I start working. And I
23 worked there.

24 Q And -- so that you worked for him, also?

25 A Yes, I did. Six to seven days a week.

D169

1 THE CLERK: (Indicating.)

2 Q Now, looking at the calendar, 5 for
3 identification, does that refresh your recollection
4 are as to the specific date?

5 MR. CAMMARATA: Objection. She doesn't
6 need it refreshed. She gave us the date of
7 what she thought it was.

8 THE COURT: Sustained.

9 Q Okay. What day was it?

10 A The 3d.

11 Q Okay. Tell me what happened on that
12 particular date.

13 A Well, as I had said, Nick came over to the
14 boat. First he had stopped at Gary Stanberger's boat
15 which is right next door, I mean, all of a foot and a
16 half away. And then he came over onto our boat. And
17 he came inside. And --

18 Q What did he say when he came over?

19 A Well, first he said that he was up, he wasn't
20 with Barbara --

21 Q Barbara was not with him?

22 A No. There was someone with him, I think, but
23 they didn't come on our boat.

24 He came up and he said that they were up
25 visiting, and he was selling some coke. So we -- Paul

DIR2

SA 2005

1 and I had talked to him, and he asked Paul if he knew
2 anybody that wanted some. Paul said he did. And he
3 said he was going to come back later that day.

4 Q Okay. Let me show you 30 for
5 identification.

6 A Um-hum.

7 Q Can you tell me what that's a picture of?

8 A K Dock at Ocean Beach Marina.

9 Q The K Dock? This is where the boat was
10 docked?

11 A Um-hum.

12 Q Paul's boat?

13 MR. MILLARD: Your Honor, I would offer
14 this in evidence.

15 MR. CAMMARATA: Let me see it.

16 Judge, I have an objection, unless
17 there's more of a foundation laid with regard
18 to the picture.

19 THE COURT: Mr. Peduto?

20 MR. PEDUTO: It doesn't matter to me,
21 Judge.

22 THE COURT: Mr. Russell?

23 MR. RUSSELL:

24 MR. CAMMARATA: You know, I'll withdraw
25 the objection, Judge.

D 183

1 THE COURT: Mr. Russell?

2 MR. RUSSELL: I go along with Mr.
3 Cammarata, whatever he wants.

4 THE COURT: I'm sorry.

5 THE COURT: Picture will be received and
6 marked in evidence as S-30.

7 (S-30 marked.)

8 Q Did you see Nick again after that time?

9 A Yes. He stopped by that night with Barbara,
10 and he had some cocaine with him. Paul purchased
11 some. And he had said -- he stated that he was
12 looking to sell a lot of coke. And Paul said that he
13 might know someone that might want to purchase some
14 coke, but he'd have to check with them.

15 And they stayed for awhile, and then they left
16 later that night. First Barbara went out to the car,
17 and then Nick left after.

18 Q Okay. Did -- did anybody else come over
19 to the -- to the boat later that evening?

20 A Yes. Tony and his girlfriend Jackie.

21 Q When you say Tony?

22 A Tony Alongi and his girlfriend, Jackie.

23 THE COURT: Girlfriend who?

24 A Jackie.

25 Q Were they doing any of the cocaine?

D 184

1 (Side-bar concluded .)

2 BY MR. MILLARD:

3 Q Did Mr. Alongi do any of the cocaine that
4 night?

5 A No.

6 Q Did you ever see -- have you ever seen
7 Mr. Alongi do cocaine?

8 A No.

9 Q On any other occasion?

10 A No, I didn't. My knowledge was that he didn't
11 use it.

12 Q What's the -- after that evening, the
13 evening of the 3d, what's the next time that you see
14 Nick and Barb DeTournay?

15 A The Labor Day party.

16 Q You say the Labor Day party. What day
17 was that?

18 A I recall it being the 5th, I think.

19 Q Okay. Tell me about that.

20 A Oh, it was a big party at Ocean Beach Marina.
21 We had it going on our boat. Drinks, everything set
22 up. It was friends there, Jim McDougall, Jackie
23 Washwick, Nick and Barbara came --

24 Q Nick and Barbara DeTournay were there?

25 A Yes.

D 187

SA 2010

1 Q Okay.

2 A Well, they came down. They weren't -- they
3 came down in the afternoon.

4 Q Okay.

5 A We took a boat ride, and we took a boat ride
6 over to Tony's house --

7 Q When you say Tony, who are you referring
8 to?

9 A Tony Alongi.

10 Q Who was on the boat with you that day?

11 A Jimbo McDougall. Jackie Washwick, Nick and
12 Barbara and Paul and myself.

13 Q What happened when you got to Anthony
14 Alongi's house?

15 A Paul introduced Nick and Barbara. He -- I
16 remember -- at that time I think that Tony had already
17 met Jim at the marina.

18 Q Okay.

19 A And they made their introductions, and they
20 wanted --

21 Q Was -- was there some conversation that
22 you overheard?

23 A That they -- Nick and Barbara and Tony were
24 talking inside, and that they -- Barbara and Tony had
25 mutual agreements -- agreements, I mean acquaintances.

D I & P

1 Q Who had mutual acquaintances?

2 A Tony Alongi and Barbara. And one of the names
3 I heard mentioned was Bill Dickey.

4 Q Did you hear -- did the -- did you hear
5 what relationship that was or --

6 A It was her ex-husband, I believe.

7 MR. PEDUTO: Judge, Judge, excuse me.
8 Can we have some indication of who's saying
9 what, if this witness can say that?

10 THE COURT: It would be preferable, Mr.
11 Millard.

12 BY MR. MILLARD:

13 Q Who was this a conversation between?

14 A Tony Alongi and Barbara. I said that.

15 Q Okay. Do you know why Paul Kamienski
16 introduced the DeTournays to Anthony Alongi?

17 MR. CAMMARATA: Objection.

18 MR. RUSSELL: Objection, your Honor.

19 THE COURT: I think without a better
20 foundation, the question is objectionable.

21 Q Did you hear any conversation between
22 Paul Kamienski, Anthony Alongi and the DeTournays
23 specifically as to why they were there at Anthony
24 Alongi's house?

25 A I don't understand what you're asking.

D189

1 Q Okay. Was there any conversation -- you
2 indicated before that Mr. Kamienski introduced the
3 DeTournays, Nick and Barbara DeTournay, to Anthony
4 Alongi.

5 A Yes.

6 Q You recall that?

7 A Yes, I do.

8 Q Was there a conversation between Paul
9 Kamienski and the DeTournays and Anthony Alongi?

10 A Between all of them at once?

11 Q That's right.

12 A They were talking. I wasn't paying
13 attention -- listening closely to everything they
14 said.

15 Q Okay. Do you know what they were talking
16 about?

17 A A cocaine deal. I -- that was my impression.

18 MR. CAMMARATA: Judge, I'm going to
19 object to that.

20 MR. PEDUTO: Object.

21 MR. RUSSELL: Object.

22 MR. CAMMARATA: Ask that it be stricken.

23 THE COURT: Ladies and gentlemen, as you
24 have heard the cacophony of voices, impressions
25 are not evidential. The witness will, of

D190

1 course, be permitted to testify as to anything
2 that she saw, did see or heard, but what her
3 impressions are are, of course, not evidence
4 for the case. You will disregard that last
5 comment. You may proceed.

6 BY MR. MILLARD:

7 Q Can you recall specifically any aspects
8 of that conversation?

9 A Well, I recall Nick wanting to know if Paul
10 would vouch for Tony, and Paul did. And vice versa.

11 Q Okay.

12 A That, I heard.

13 Q All right. That wasn't at that time when
14 everybody was --

15 MR. CAMMARATA: Objection. I'm going to
16 object to him telling her what time it was.

17 MR. PEDUTO: Objection --

18 THE COURT: Gentlemen, I would prefer for
19 my own purposes to hear are the word objection.
20 If I have any questions about what I know the
21 purpose of the objection is, I'll make the
22 necessary inquiry.

23 THE COURT: But dialogue is
24 counterproductive. Objection is sustained.

25 Q When was this conversation that you

D 191

1 just -- you just testified to?

2 MR. PEDUTO: Which one?

3 A When we were --

4 MR. PEDUTO: Judge, when? Which one are
5 we are talking about now? The first?

6 THE COURT: I understand it to be the
7 vouch -- the the asking -- well the vouching,
8 one for the other.

9 Q You testified that they had approached
10 Mr. Kamienski about vouching one for the other. When
11 were those conversations?

12 MR. CAMMARATA: Judge, I object to that,
13 because that's not what she said.

14 THE COURT: Objection overruled.

15 Q When were those conversations?

16 A Of the vouching, I'm getting confused.

17 THE COURT: Mr. Millard --

18 Q The vouching. When -- these
19 conversations about vouching.

20 A As we were -- later that afternoon when we were
21 getting ready to leave.

22 Q Okay. And who -- tell me what you heard.

23 A Nick --

24 Q Tell me who was involved in the
25 conversation.

D192

1 A Well, Nick, and I think Barbara was there, I'm
2 not right up there, but I know he wanted to know if
3 Paul would vouch for Tony. And Tony wanted to know
4 several times whether Paul would vouch for them.

5 Q What'd Paul say?

6 A Yes. He vouched for both of them. He knew
7 Nick and Barbara for a year, and he knew Tony to be a
8 good guy.

9 Q About how long were you there at the
10 Alongi house? Do you recall?

11 A Couple hours.

12 Q Let me show you what's 27 in evidence.

13 A That's Tony Alongi's house.

14 Q Is this where you were at?

15 A Yes, it was.

16 Q At the Labor Day party?

17 A Yes, it was.

18 Q Did anyone else arrive, or was anyone
19 else there at the house?

20 A Well, there --

21 Q Was anyone else at Alongi's house?

22 A Jackie, his girlfriend was. I think his son
23 was.

24 MR. CAMMARATA: I'm sorry. I didn't hear
25 that.

D193

1 to that funeral home business?

2 A He's the president.

3 Q Did he run or operate the funeral home
4 business himself?

5 A Well, not really. He had his workers ran it.
6 We weren't there often. He oversaw their actions.

7 Q Okay. And that's -- you indicated that
8 he had a -- earlier you indicated that he had a -- an
9 auto business in Florida?

10 A Yes.

11 Q Okay. And that you also indicated that
12 you spent a lot of time in Florida?

13 A Yes, we did.

14 Q All right. So was he managing the
15 funeral business?

16 A No.

17 Q From Florida?

18 A No, he wasn't. He kept in contact, but he
19 didn't fly up like to oversee anything.

20 Q Okay. Do you recall being in the
21 presence of Mr. Kamienski up at the apartment in -- in
22 Garfield when Mr. Kamienski received a phone call?
23 I'm directing your attention to September 9th.

24 A Yes, I was.

25 Q Okay. Do you recall approximately what

D190

SA 2020

1 time that phone call was?

2 A Just before two, because we were going to the
3 viewing, which is at two to four, the viewing.

4 Q And what did you -- what did you hear on
5 the 9th at about quarter to two in this phone call?
6 What did you hear.

7 MR. CAMMARATA: Now, what? I didn't hear
8 what you said.

9 Q What did you hear, the phone
10 conversation?

11 A That --

12 Q First of all, let me ask it a different
13 way.

14 Was Mr. Kamienski talking on the phone?

15 A Yes, he was.

16 Q Okay. You couldn't hear, I assume, what
17 was being said to him?

18 A No.

19 Q What did you hear Mr. Kamienski say?

20 A That he -- no, he didn't have a scale and to
21 get off the boat.

22 Q Did he then indicate to you who had
23 called him?

24 A Yeah. I asked him who he was talking to, and
25 he said Nick.

D198

1 Q What did you do the rest of that -- you
2 and Mr. Kamienski do the rest of that day?

3 A Well, there was another viewing seven to nine.
4 So in between that I think we went back to Garfield,
5 I'm not sure, because we had to go from Garfield to
6 Wallington for the funerals -- I mean the viewings.
7 And then after the nine o'clock viewing, I had met his
8 friend, Tony's wife there, and Tony had his girlfriend
9 up at the time, so we had to go back to the apartment
10 and sort of juggle her --

11 Q When you say Tony?

12 A Tony Pagano.

13 Q Different person. Okay. What did you do
14 later that evening?

15 A Real late that night we went down the shore.

16 Q When you say real late, what's real late?

17 A 12, one.

18 Q Do you know if Mr. Kamienski made any
19 phone con -- phone calls that evening?

20 A Yeah. He was trying a couple numbers, looking
21 for Nick, I know that.

22 Q Did you have any -- when you got down to
23 the -- or strike that.

24 Where did you go when you left the -- the
25 apartment in Garfield late the evening of the 9th?

D 199

1 A Ocean Beach Marina.

2 Q That's where the boat is?

3 A Yes, it is.

4 Q Okay. Did you have any visitors that
5 weekend?

6 A Yes. Tony Pagano and his girlfriend came down
7 that weekend.

8 Q Now, let me direct your attention to the
9 following weekend. Do you recall being present at any
10 parties?

11 THE COURT: Excuse me. Excuse me. What
12 weekend now are we talking about?

13 MR. MILLARD: The weekend of the 16th,
14 17th.

15 Q Do you recall being present at a party?

16 A Yeah. I'm not sure if it's a Friday or a
17 Saturday, but we were at a party at Tony Alongi's
18 house.

19 Q And what was going on at that party?

20 A Drinking, partying, talk of a good deal coming
21 down, and everybody socializing.

22 Q When you say a good deal coming down,
23 what kind of deal?

24 MR. CAMMARATA: Well, I'm going to
25 object, Judge. We don't even know who was

D200

1 saying it.

2 Q Did you hear --

3 THE COURT: Sustained.

4 Q Okay. Can you indicate who was saying
5 this, first of all? Who did you hear saying something
6 about a good deal coming down?

7 A Joe and Tony.

8 Q And when they said deal, did they say --
9 did they just say deal or did -- were they more
10 specific?

11 A Good coke was coming into town.

12 Q Did anybody else show up that evening?

13 A Buddy Lehman stopped by that night.

14 Q Do you know why Buddy Lehman was there?

15 A Yeah. He had come to try and get some cocaine,
16 by some cocaine.

17 Q Let me direct your attention to Saturday,
18 September 18th.

19 A Right. Saturday -- you're confusing me 'cause
20 Sunday's the 18th.

21 Q I'm sorry. Sunday, September 18th.

22 A Um-hum.

23 Q Do you have a -- do you have a
24 recollection of being at the Holiday Inn on that day?

25 A Yeah. As to my best memory, we were there

D201

1 around six o'clock, around that time. I don't know if
2 it's five or six. Happy hours we went there.

3 Q Happy hour is the reason you went there?

4 A Yeah. Cocktails.

5 THE COURT: Is that in the afternoon or
6 the morning?

7 THE WITNESS: No. Five o'clock, like
8 dinner time.

9 Q And who else was there? Did you meet
10 anybody else there?

11 A Joe Marzeno, Tony Alongi, Jackie, myself, Paul.

12 Q Were you talking to Paul and Joe and --

13 A Not really. I was just -- I remember talking
14 to Jackie. I wasn't really talking to them.

15 Q Do you know what they talked about on
16 that day?

17 A I really wasn't listening.

18 MR. PEDUTO: Objection, Judge. She just
19 said that she wasn't privy to the conversation.

20 MR. MILLARD: That's what she just
21 answered.

22 MR. PEDUTO: So now he wants to know,
23 obviously now he wants to know what they talked
24 about. How could she know if she wasn't privy
25 to the conversation?

D202

1 THE COURT: Without a proper foundation,
2 Mr. Millard, I'm going to sustain the
3 objection.

4 BY MR. MILLARD:

5 Q Did anybody else show up?

6 A As I recall, Buddy stopped in, but it's not --
7 my -- the way I saw it, it's not like he stopped in to
8 meet anyone. I think he was there on his own.

9 MR. RUSSELL: Objection to what she
10 thinks, your Honor, please. Object.

11 MR. CAMMARATA: Yeah.

12 MR. RUSSELL: Object.

13 THE COURT: Sustained. She answered the
14 question anyway.

15 Q How long was Buddy there with you?

16 A Not long.

17 Q Well, what does that mean?

18 A He just came up to the table for a few minutes,
19 then went away.

20 Q Okay. Were you able to observe Joe
21 Marzeno's demeanor?

22 A He wasn't happy that he was there.

23 Q That who?

24 A That Buddy was there. He was really never
25 happy when Buddy was around though.

D 203

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MR. PEDUTO: Objection.

MR. RUSSELL: Objection.

MR. CAMMARATA: Objection.

THE COURT: Sustained.

Q I'm just asking you for your observations.

THE COURT: You have to listen carefully to his question. He asked you about your observations, and you're getting ready to tell him about things people told you on the telephone. Do you see what's wrong with it?

THE WITNESS: Yes, sir.

THE COURT: Stick with what he asked you. He asked you about what you saw.

THE WITNESS: Right.

A Yes. My observations, when I did see him, they had a very close comradeship.

Q Okay. Now, you indicated that you were purchasing cocaine off Mr. Alongi and Mr. Marzeno. Correct?

A Yes. Correct.

Q Did there come a point in time in September, 1983 that you had any conversations with Mr. Alongi or Mr. Marzeno respecting the purchase of cocaine?

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1 A Well, I got into a couple small disputes with
2 him, due to the fact that their cocaine was getting
3 less and less potent, and they were giving out garbage
4 for the money at that point.

5 So the -- that was around 10th to the 12th, the
6 15th, around the 10th or 12th of September. And they
7 said, "Well, don't worry about it. It's going to
8 improve. You're going to get a better product soon."

9 Of course, you know, I thought that was a con,
10 that they were trying to con me. And I pursued them,
11 and they said, "Well, within about a week's time we're
12 going to have kilo quality coke for you at about
13 \$1,000 less an ounce than you're paying now," 'cause I
14 was buying eights and paying \$300, which --

11

15 Q Okay. What's an eighth?

16 A An eighth is one eighth. There's eight eights
17 in an ounce. So one eighth would be an eighth of an
18 ounce, would be approximately 250 to \$300. So if you
19 bought an ounce at that rate, it would be 2,000 to
20 2,400. The way they had said they would sell it to me
21 in the future, it would be kilo quality coke at \$1,000
22 less than I was paying. If I would take an ounce at a
23 time, that would be 14, 1,500 or whatever.

24 Q Okay. Now, after you had that initial
25 conversation -- and who -- who do you recall having

11

1 that conversation with?

2 A I had that conversation -- well, with both --
3 with Mr. Alongi first, and he said to me, "Don't
4 worry. Within a week our stuff is going to improve.
5 You can have whatever you want. We'll extend you
6 credit. We're going to have south Florida coke, a ton
7 of it," or something to that effect. And you can bank
8 on it. That's my word on Tony Alongi's word. You can
9 take it to the bank.

10 Q Okay. Now, did you follow that up? I
11 mean --

12 A Well, if you're a drug user, naturally --

13 Q That's what I'm asking.

14 A Yes.

15 Q Did you?

16 A Yes. I did follow it up. I --

17 Q Did you have any other conversations with
18 Mr. Marzeno or Mr. Alongi?

19 A Yes. I met with Mr. Marzeno on a Saturday
20 afternoon at the Holiday Inn, in Toms River, our usual
21 meeting place. And I used, you know, the dates as a
22 point of reference. It was around the 17th, I
23 believe, 16th, 17th, on a Saturday of September. And
24 I said, "Well, where's the coke?" You know, about
25 seven days have gone by now. "You people keep telling

11

1 me you're going to have a better quality cocaine.
2 It's going to be kilo quality. I don't see anything.
3 Nothing." And that was latter part of the day, like
4 maybe six o'clock, you know, cocktail hour, seven
5 o'clock that Saturday afternoon. And naturally he
6 didn't have the new product yet. He gave me something
7 which was still the inferior product.

8 Q Okay.

9 A And then he said, "Call me tomorrow." So I
10 called him Sunday, which would probably be around the
11 18th, and I went over to his house. I went over to
12 where he lived.

13 Q His condo?

14 A Yes. His condo.

15 Q All right. Did you have conversation
16 with him then?

17 A Yes.

18 Q What did he tell you?

19 A He told me, he said, "Don't worry. I'm going
20 to have the coke," 'cause I kept pressing both him and
21 Mr. Alongi. And he said, "I'll have it within a few
22 days for you."

23 Q Okay.

24 A Which I thought was another con job, you
25 know --

11

1 Q All right.

2 A -- because they were selling me inferior
3 products right along.

4 Q Okay. Did you, thereafter -- after that
5 did you reach out to Mr. Marzeno again?

6 A Well, he said, you know, within a day or two.
7 I called him the next -- being persistent, I had
8 nothing, so I had to -- you know, like a drug addict
9 or an alcoholic, you got to have the product.

10 Q Right.

11 A So I did call him the next day, Monday, and
12 there was no response. I tried Monday and Tuesday, no
13 response.

14 I finally got ahold of Mr. Alongi, I think, on
15 Wednesday or Thursday of that week, and he said to me,
16 "Don't worry. I have the product. My partner's up in
17 Newark. He'll be back in a few days, and we'll meet
18 you at Harrah's down Atlantic City the middle of next
19 week." Something to that effect. And --

20 MR. CAMMARATA: I'm sorry, Judge, I
21 didn't get -- when this was?

22 THE WITNESS: Pardon? That was the
23 middle of the next week that they were going to
24 meet with me at Harrah's, sir.

25 MR. CAMMARATA: Thank you.

20

1 alcohol use, you ever had problems remembering what
2 you were doing -- what you had done on specific
3 occasions. That's what I'm asking you.

4 A No. I think my mind was clear.

5 In fact, you think you're more knowledgeable
6 than you are, because I believe the drug makes you
7 feel more grandeur.

8 Q Well, could you have remembered, for
9 example, in '87 when you went into the Prosecutor's
10 Office, could you actually remember, without looking
11 at a calendar, meeting, for example, Paul Kamienski on
12 September 24th, 1983? If you didn't have a calendar?

13 A Yeah.

14 Q Like this calendar in front of you?

15 A Which I'm using for reference.

16 Q Yeah. Suppose I had took the calendar
17 away from you, and I said to you --

18 A It would be a little more difficult. Yes.

19 Q A little more difficult?

20 A Yes. Absolutely.

21 Q But you think you could do it anyhow?

22 A To some degree, yes, depending on the situation
23 and how it's -- why this incident stood out in my mind
24 was because I was pressing these people for drugs
25 for -- for two weeks, and they were putting me off and

20 1 telling me they were going to deliver. And that sort
2 of sticks in your mind, something like that, when you
3 were a drug user.

4 Q What -- yeah, but I'm not talking about
5 these people. You weren't pressing Paul Kamienski for
6 drugs --

7 A No.

8 Q -- were you?

9 A No.

10 Q I'm talking to you about Paul Kamienski.
11 Okay?

12 A Fine.

13 Q And what I'm trying to find out from
14 you -- well, let me ask you another question: Do you
15 have a recollection of the week after the 24th of
16 September? That would be -- let's, for example, deal
17 with the date of October 1st, 1983. You have a
18 recollection of that day?

19 A October 1st, 1983.

20 Q Yes.

21 A That would probably be on a Saturday or Sunday,
22 correct.

23 Q Um-hum. Correct. If you look at the
24 calendar --

25 A On the weekend --

5

1 Q You had partied together?

2 A Yes.

3 Q And -- and unfortunately you had used
4 drugs together, correct?

5 A Absolutely correct.

6 Q All right. And Paul Kamienski was -- he
7 wasn't a seller but a user of drugs. Would that be a
8 fair statement?

9 A Absolutely.

6

10 Q Okay. He never sold -- for example, he
11 never sold you drugs, did he?

12 A Well, if it got -- if he did get me drugs, I
13 would pay him for them, but that's a friendship thing.
14 I wouldn't say it makes him a drug dealer.

15 Q Okay. But you can't remember any
16 specific things where he would sell you drugs. You
17 mean you'd basically just use drugs together, wouldn't
18 that be --

19 A We sold drugs back and forth to one another.

20 Q You shared them together?

21 A Yes. Shared them, if you want to use that.

22 Q But you didn't know Paul Kamienski --
23 certainly, you didn't know Paul Kamienski as a drug
24 dealer?

25 A No.

CERTIFICATION OF SERVICE UPON COUNSEL
(BY COUNSEL FOR APPELLANT PAUL KAMIENSKI)

I, Timothy J. McInnis, Esq., counsel for Appellant Paul Kamienski, certify that:

Service Upon Counsel
(Pursuant to Third Circuit Local Rule 32.1)

I served a copy of the accompanying Response of Appellant Paul Kamienski to Clerk of Court Letter Dated April 3, 2009, upon Filing User Samuel J. Marzarella, Esq., Office of Ocean County Prosecutor, Ocean County, 119 Hooper Avenue, P.O. Box 2191, Toms River, NJ 08753, smarzarella@co.ocean.nj.us, by filing it via the Court's Electronic Case Filing system.

Dated: New York, New York
April 9, 2009

/S _____
TIMOTHY J. MCINNIS, Esq.
Attorney for Appellant Paul Kamienski