

**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)

**MOTION BY APPELLANT PAUL KAMIENSKI TO
FILE TRIAL RECORD CITATION KEY AND APPENDIX VOLUME IV**

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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 application for leave to file: (1) a key that shows the Court how to convert the parties' trial record citations in their briefs to the corresponding pages in Appellant's Special Appendix; and (2) Appendix Volume IV consisting of two briefs filed by Appellees in prior court proceedings.

2. This application relates to an appeal scheduled for submission on April 17, 2009. Therefore, Appellant respectfully requests that this motion be decided on an expedited basis.

A. Leave to File Trial Record Citation Key

3. The appeal itself concerns the sufficiency of the evidence used to obtain murder convictions in a New Jersey State trial. Review is plenary. Accordingly, the Court must review the entire trial record. It consists of 4773 pages. With prior leave of the Court, Appellant submitted the entire trial record on CD in pdf format as Appellant's Special Appendix. (This was in lieu of filing hard copies with the Court.)

4. It cannot be overemphasized that this appeal turns on the accuracy and truthfulness of the parties' record citations, which are sharply contended by each side.

5. Of course, the Court will be guided to the salient parts of the trial record by the parties' citations in their respective briefs.

6. However, there has been a continuing problem with the way the parties have cited to the trial record beginning as early as 1989, and this may explain, in part, why Appellant's murder convictions were wrongly reinstated, as he contends. That is:

the parties designated different numbers to the various trial “volumes” (which are individually numbered from page 1 to page N) and each has stuck with its numbering system over the years, making it practically impossible for a reviewing court to find the referenced record citation in the transcript itself. Both parties acknowledge this difficulty. See Appellant’s Opening Brief at p. 3, n. 2, and Appellee’s Opposition Brief at iv.

7. It appears that Appellees are responsible for this inconsistency. They made a numbering/designation error in their very first brief 20 years ago and Appellant’s state appeals counsel apparently did not pick up on it. Specifically, Appellees’ designation of volume “4T” (described as referring to the transcript of proceedings on “10/19/88”) actually refers to trial “Volume III,” which correlates to the proceedings that in fact took place on “October 20, 1988”). Compare Appellees’ Table of Transcripts, Appellees’ Opposition Brief at iv, with SA 0442 (cover page to Volume III). Thus, Appellees got both the volume number and date wrong in its designation to the trial record.

8. Having discovered this inconsistency around 2003, the undersigned tried on numerous occasions to devise and get Appellees to adopt a uniform number system at the District Court and in the parties’ briefs in this Court. However, Appellees counsel refused to even respond to Appellant’s counsel’s written requests to fix the problem.

9. Lacking any cooperation, the undersigned obtained leave here to submit the entire trial record on CD in pdf format and to consecutively bate stamp it from pages 1 to 4773 (with the prefix “SA” for Special Appendix). Appellees had a copy of the CD weeks before they submitted their opposition brief, but they chose to ignore the Court-

approved numbering system and continued to use in their opposition brief the citation numbers and nomenclature they had been using since 1989.

10. Thus, in this appeal we have ended up with three briefs using three different trial record citation arrangements. Obviously, this creates confusion on the most fundamental issue in this case: namely, whether the trial record is sufficient to sustain Appellant's murder convictions.

11. One solution to this problem would be to have the parties re-submit their briefs with a Court-mandated, uniform numbering process. However, as an alternative measure, Appellant believes a key can be created and used to help the Court, in effect, convert the parties' citations in the Opening and Opposition Briefs to the corresponding pages in the Special Appendix, which appendix Appellant submitted with, and utilized in, his Reply Brief.

12. Attached to this motion is a proposed key created by Appellant for the foregoing purpose of aiding the Court in locating within the Special Appendix the parties' trial record citations. See Attachment. While still cumbersome and confusing, at least with some effort, one can eventually get to, and more importantly, verify the parties' competing trial record citations.

13. Appellant can only apologize to the Court for this unnecessary confusion, and stresses that it is not of his making and he did everything possible to avoid it.

B. Leave to File Appendix Volume IV

14. Appellant also requests leave to file an Appendix Volume IV. Volume IV will consist of only two documents: (1) Appellees' U.S. District brief in support of its

answer to Appellant's habeas petition, dated August 18, 2005; and (2) Appellees' N.J. State Appellate Division brief, dated July 10, 1989. (Collectively referred to here as "Appellees' Prior Briefs.")

15. Both of Appellees' Prior Briefs have been explicitly or implicitly referred to by one or both of the parties in their briefs filed in this Court, as well as by one or both of the prior court decisions that are the subject of the instant appeal, which opinions are included in Appellant's Appendix Volume II, beginning A-21 and A-115, respectively.

16. Among other things, Appellant has argued here that Appellees' Prior Briefs are false and misleading and were used by Appellees improperly to obtain reinstatement and affirmation of his murder convictions at the State Appellate Court and U.S. District Court, respectively.

17. Since the accuracy and truthfulness of Appellees' Prior Briefs is an issue before this Court, it is incumbent that they be made available for the Court's review.

18. If leave is granted to file Appendix Volume IV, the undersigned will file four copies with the Court and serve one copy on Appellees by sending them via overnight courier upon being notified that this request has been granted.

19. **FOR THE FOREGOING REASONS**, I respectfully request that the Court grant Appellant Kamienski's Motion to file a trial record citation key and Appendix Volume IV.

S/_____
TIMOTHY J. MCINNIS, ESQ

Executed on: March 30, 2009

Kamienski v. Hendrix, 06-4536**Key: Translating Parties' Trial Record Citations to Special Appendix (CD) Page Numbers**

Kamienski Opening Brief Trial Record Citations	OCPO Opposition Brief Trial Record Citations	Special Appendix Pages (CD)
Volume [followed by page]	Volume [followed by page-line]	Bate Stamp Range
1T	1T and 2T	SA 0001 to 0194
2T	3T	SA 0195 to 0441
3T *	4T *	SA 0442 to 0657
4T *	5T *	SA 0658 to 0853
5T *	6T *	SA 0854 to 1102
6T *	7T *	SA 1103 to 1331
7T *	8T *	SA 1332 to 1552
8T *	9T *	SA 1553 to 1890
9T *	10T	SA 1891 to 1990
10T *	11T *	SA 1991 to 2070
11T	12T *	SA 2071 to 2259
12T *	13T *	SA 2260 to 2581
13T *	14T *	SA 2582 to 2628
14T *	15T *	SA 2629 to 2997
15T *	16T *	SA 2998 to 3295
16T	17T *	SA 3296 to 3477
17T *	18T *	SA 3478 to 3750
18T	19T *	SA 3751 to 4049
19T *	20T	SA 4050 to 4365
20T	21T	SA 4366 to 4497
21T *	22T	SA 4498 to 4535
22T	23T	SA 4536 to 4548
23T *	24T	SA 4549 to 4734
24T	---	SA 4735 to 4773

Example: Kamienski Opening Brief trial record citation (e.g., “3T123-45” at Opening Brief p. 3). Go to SA 0442 for page 1 of Kamienski’s designated volume 3T and then advance to pages 123 through 45 of that volume.

Example: OCPO Opposition Brief trial record citation (e.g., “4T131-4 to 131-19” at Opposition Brief. p. 3). Go to SA 0442 for page 1 of OCPO’s designated volume 4T and then advance to page 131, lines 4 through 19 of that volume.

Helpful hint when using Adobe: to go to a specific page in the Special Appendix, press Shift + Ctrl + N simultaneously, then in put the desired SA page number and hit Enter to go to the page immediately.

* Indicates that the respective party cited this volume of trial transcript in its brief.

CERTIFICATION OF SERVICE UPON COUNSEL
(MOTION BY 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 one copy of the accompanying Motion on Behalf of Appellant Paul Kamienski/Affirmation of Timothy J. McInnis, Esq., dated March 30, 2009, on Appellees by causing it to be sent by filing it via the Court's Electronic Case Filing system and by emailing it to Samuel J. Marzarella, Esq., Office of Ocean County Prosecutor, Ocean County, 119 Hooper Avenue, P.O. Box 2191, Toms River, NJ 08753 at smarzarella@co.ocean.nj.us.

Dated: New York, New York
March 30, 2009

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