

**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)

**SUPPLEMENTAL BRIEF OF APPELLANT PAUL KAMIENSKI
RE EXHIBITS A-F FOR ORAL ARGUMENT
(per Court Order 4/2/09) Revised 4/13/09**

TIMOTHY J. MCINNIS, ESQ.
LAW OFFICE OF TIMOTHY J. MCINNIS
521 Fifth Avenue, Suite 1700
New York, New York 10175
(212) 292-4573
mcinnisesq@aol.com

COUNSEL FOR APPELLANT PAUL KAMIENSKI

Appellant Paul Kamienski submits this Supplemental Brief re Exhibits A-F for Oral Argument Revised 4/13/09, pursuant to the Court's Order, dated April 2, 2009, which granted Appellant's motion to submit them for use at oral argument. Exhibits A-F are attached hereto. They are identical to the proposed ones filed with the earlier motion (with revised citations).¹

SIGNIFICANCE OF EXHIBITS A-F

The sole issue certified to this Court is sufficiency of evidence. The standard of review is plenary.

This is a highly unusual state prisoner's habeas corpus petition concerning the sufficiency of evidence to support murder and felony murder convictions obtained under an accomplice liability theory. As Appellees' acknowledge the case against Appellant was entirely circumstantial and there is no evidence, direct or otherwise, Appellant had any hand in the

¹ A note on the abbreviations and citations used on Exhibits A-F:

"3d Cir. Br. R." refers to Brief for Appellees (Revised), filed in this appeal on 4/08/09.

"USDC Br." refers to Appellees' brief, dated 4/18/05, in the District Court proceedings below (see Appellant's Appendix Vol. IV beginning at A-352).

"App. Div. Br." refers to Appellees' brief, dated 7/10/89, in the New Jersey Appellate Division Proceedings (see Appellant's Appendix Vol. IV beginning at A-492).

"USDC Op." refers to the District Court's opinion below, dated 7/25/06 (see Appellant's Appendix Vol. I beginning at A-21)

"App. Div. Op." refers to the NJ Appellate Division's opinion dated 2/19/92 (see Appellant's Appendix Vol. I beginning at A-115). And,

"SA" refers to Appellant's Special Appendix (see CD filed with reply brief).

killings themselves. Appellant contends that to make up for the absence of evidence against him, Appellees have submitted false and misleading briefs to this Court as well as the two prior courts that purportedly reviewed the underlying trial record for sufficiency purposes.

Procedurally, upon post-trial motions, Appellant's murder convictions were dismissed by the New Jersey state judge who had presided over the trial. They were later reinstated by a state Appellate Division Court and most recently sustained by the United States District Court, which denied Appellant's habeas petition. That the trial judge granted the motion to dismiss j.n.o.v. should at a minimum cause one to greet with skepticism any suggestion that the evidence against Appellant was abundant and/or overwhelming.

Appellant contends that to present no reviewing court has properly read the underlying trial record or even reviewed it at all. Appellant further contends that the prior courts' rulings as to sufficiency relied on the description of the trial record contained in Appellees' briefs rather than the underlying trial transcript itself in determining what evidence was adduced or not adduced at trial. And finally, Appellant charges that Appellees' briefs were materially false in their recitation of the trial record and these falsehoods tainted the state appellate court's and District Court's findings as

to sufficiency of evidence. (With leave granted, Appellant filed with the Court on March 31, 2009, the briefs Appellees submitted to the state appellate court and District Court in 1989 and 2005, respectively. See Appellant's Appendix Vol. IV. All three briefs were authored principally by the same assistant county prosecutor.) In short, if Appellant is correct he is serving the twentieth year of a double life sentence that was obtained and secured by a fraud upon two courts.

Now a similar fraud is being deliberately perpetrated on this Court. There can be no question as to the deliberateness of Appellees' conduct because Appellant notified the Ocean County Prosecutor's Office in advance of the submission of its Opposition Brief of the factual errors it had presented to the prior courts and because Appellant formally moved in this Court for appointment of a special master under FRAP 48 to investigate his claim that the Opposition Brief is laden with false and misleading statements. These allegations, if true, should shock the conscience of any person concerned with justice in our society.

**Exhibits A-F Help Demonstrate That Appellant's
Convictions Were Obtained by Fraud Upon the Prior Courts**

In his reply brief, Appellant outlines how Appellees have replicated the same false and misleading representations in their Opposition Brief here that were submitted to the two prior reviewing courts. He identifies at least

106 such examples and organizes them into 11 categories, based on the subject matter of the misrepresentation.

In the six proposed exhibits attached to this motion, Appellant provides concrete examples of the types of misleading statements Appellees made to the state appellate court and District Court in their earlier briefs. (See Column one of each exhibit.) He then shows that the prior courts' opinions were influenced by Appellee's misrepresentations. (See Column two of each exhibit.) And, to support his allegation that Appellees misrepresented the trial record, Appellant provides detailed record citations which clearly demonstrate not only that Appellees' representations were misleading but also that the prior courts' findings as to critical facts were clearly erroneous. (See Column three of each exhibit.) Each of these exhibits is briefly discussed below.

Exhibit A is an example of Appellees presenting a half-truth. While they cite to testimony about a lay witness being able to match a particular knot on the victims' ligatures to Appellant, they omit the crucial testimony on cross-examination, where the witness admits that the knot was common place. Appellees also omit the trial court's finding that the knot was not unique, as well as, its conclusion that the knot had no evidentiary value and should be excluded from evidence on that basis. As an important aside,

Appellant submitted a forensic knot expert's affidavit with his habeas petition which concludes that the knot is an ordinary half-hitch or "overhand knot"--one typically used by any person tying a bundle. It is, incredibly under the circumstances here, a knot that can even be fashioned by birds and apes. See Appellant's Appendix Vol. III at Tab 11. Clearly, the knot was not unique and does not permit the prior courts' finding that it has identification value which permitted the reasonable inference that Appellant tied it. It is therefore particularly disturbing that the District Court virtually quotes verbatim from Appellees' brief, rather than from the record itself, with respect to the knot.

Exhibit B is an example of Appellees grossly distorting witness testimony. They claim that Appellant ("acting in concert" with co-defendant Alongi) threatened a witness' life over a number of days to obtain her silence. The prior courts adopted this representation and, accordingly, one can hardly be surprised at their lack of sympathy for Appellant. However, as a factual matter, as the witness said, and the prosecutor at trial confirmed during closing, Appellant *never* threatened the witness.

Exhibit C is one of two examples included here where Appellees recklessly used the word "defendants" at least 50 times in their briefs and thereby implicitly include Appellant in the described conduct, when, in fact,

Appellant had nothing to do with it. Exhibit C shows how Appellees state in their brief to this Court that “Defendants assured Buddy Lehman that he could have ‘kilo quality coke’ for \$1,000 less per ounce than he was presently paying on credit.” However, when one looks at the record (even the part cited by Appellees in their brief), it is unmistakable that “defendants” means and includes only co-defendants Alongi and Marzeno--not Appellant. What makes this instance of misusing “defendants” particularly troubling is that in the two earlier briefs Appellees correctly limited the statement to “Defendants Marsieno [sic] and Alongi.” This permits only one reasonable inference: Appellees consciously struck the co-defendants’ names here to purposely mislead the Court into thinking that Appellant had something to do with promising high-quality coke to Lehman, when actually there is nothing in the record to support that claim.

Exhibit D is another example of Appellees misusing the term “defendants.” Appellees state in all three briefs that “Defendants were friends with Barbara [DeTournay]’s ex-husband, Bill Rispoli [a/k/a Bill Dickey].” In fact, the only testimony on this topic is that co-defendant Alongi was an acquaintance of Rispoli. This is significant because, as the record further shows, Barbara DeTournay had identified the people she was dealing with as “friends of my former husband.” Clearly, she meant

specifically Alongi and probably Marzeno. She did not, by that phrase, mean to include Appellant, whom she knew socially and in a completely different way than she knew Alongi and Marzeno.

Exhibit E is an example of Appellees saying whatever they need to in order to secure Appellant's conviction upon review, even if it completely at odds with what the State represented during the trial court proceedings. (Exhibits B and F also demonstrate this tendency.) On review, Appellees repeatedly claim the evidence in the trial record permits an inference that Appellant "premeditated" the victims' murders and that he acted by pre-arrangement with his co-defendants to bring them about. Both prior courts mistakenly accepted this proffered inference. However, when one looks at the record itself, there is no reasonable basis in fact for this inference. Indeed, the State repeatedly conceded at trial (and in post-trial motions) that there was absolutely no evidence of foreknowledge, premeditation or coordinated planning on Appellant's part. The jury clearly came to the same conclusion, since it acquitted Appellant of the conspiracy to commit murder charge, finding him guilty solely as an accomplice, presumably based only on what they thought the evidence showed with respect to his conduct during or after the murders.

Exhibit F is an example of Appellees completely making up an event

that does not exist in the trial record. They create a meeting with the victims on September 18, 1983 at the Holiday Inn during happy hour (which they call the “failed meeting”). Then they put Appellant at that meeting with the victims. And, finally they have Appellant actively participate during the meeting in luring the victims to their deaths the following day. The District Court bought into this fiction hook, line and sinker when it concluded that not only was Appellant at the September 18 meeting, but also he “arranged the September 19, 1983 meeting.” No wonder the District Court found this to be sufficient evidence of accomplice liability. However, there is *nothing* in the record to support Appellees’ fictionalized scenario of a failed meeting at the Holiday Inn at happy hour with Appellant present. The only witness who testified about who was at the Holiday Inn (Duckworth) said the victims were not there. She also testified that there was no remarkable or memorable conversation at the table. The courier who interacted with the victims through the planned drug exchange (Jeffrey) conclusively stated that victim Henry [Nick] DeTournay “never once came into the grounds of the Holiday Inn.” The entire episode involving the pre-exchange negotiations and the lack of any connection between the happy hour gathering at the Holiday Inn and the so-called “failed meeting” was summarized by the prosecutor at closing. Even he acknowledged that the victims were not at

the Holiday Inn on the night of September 18 and that whatever the attendees discussed there that evening was of no significance. He also correctly notes that the meeting at which the victims were told that the hand-off needed to be postponed to the 19th in order to allow the buyers to get their money together took place at 10 a.m. on the morning of September 18, with only Alongi present with the victims. During that time, Appellant and his girlfriend Duckworth were alone on his boat, as the record clearly establishes.

Appellees' fabricated "failed meeting" is crucial to its claim of Appellant's premeditation and his antecedent conduct supporting accomplice liability for first degree murder. It is also completely unfounded. Appellees must be called to task for misrepresenting the entire episode to this and both prior courts, as Exhibit F helps make plain.

Conclusion

For the foregoing reasons, as well as those stated in all prior proceedings and submissions in the appeal, Appellant Kamienski's petition for *habeas corpus* should be granted.

Dated: New York, New York
April 13, 2009

/S _____
Timothy J. McInnis, Esq. [TM-7151]
Attorney for Appellant
Paul Kamienski
521 Fifth Avenue, Suite 1700
New York, New York 10175-0038
(212) 292-4573

Signature Knots

**Ocean County Prosecutor Misrepresentations
In Briefs Re: "Signature" Knots**

**District Court and NJ Appellate Court Findings
Re: "Signature" Knots**

**Actual Record
Re: No "Signature" Knots**

The rope that secured the blankets was tied in a peculiar "hitch" knot used by Kamienski to secure his boat. (SA 2049-2051) (11T 67-20 to 68-25). 3d Cir. Br. R. at 4.

Kamienski used a peculiar "hitch" knot to secure a boat, rather than that taught to Duckworth. S-35 in evidence depicted the bodies wrapped and secured by rope in hitch knots, the same knots that Kamienski tied. (11T67-20 to 68-25) USDC Br. at 49.

Kamienski used a peculiar "hitch" knot to secure a boat, rather than that taught to Duckworth. S-35 in evidence depicted the bodies wrapped and secured by rope in hitch knots, the same knots that Kamienski tied. (11T67-20 to 68-25) App. Div. Br. at 36.

Kamienski used a peculiar "hitch" knot to secure a boat, rather than that taught to Duckworth. S-35 in evidence depicted the bodies wrapped and secured by rope in hitch knots, the same knots that Duckworth stated Kamienski tied. (11T at 67:20-68:25.) USDC Op. at 10.

The bodies were tied with a hitch knot peculiar to the kind which Kamienski customarily made. The...the hitch knot permit[s] an inference that Kamienski lent assistance. App. Div. Op. at 103.

Duckworth's testimony on cross:

Q. Well, I take it that you've seen a knot like that -- A. Yes. Q--before? A. Yes. Q. You've seen it in --other people tie knots like that? A. In other many circumstances, yes. SA2518:5-12

Court colloquy during State's motion to preclude admission of the ligatures:

THE COURT: That they [the knots] were not unique. SA4044:19-20

THE COURT: My point is exactly that, the knots don't have PK--[i.e., Paul Kamienski's initials]. SA4045:13-14

Court denies admission of ligatures into evidence on relevance grounds.

"Threats" on Duckworth

**Ocean County Prosecutor Misrepresentations
In Briefs Re: Kamienski's "Threats" on Duckworth**

**District Court and NJ Appellate Court Findings
Re: Kamienski's "Threats" on Duckworth**

**Actual Record Re: Absence of
Kamienski's "Threats" on Duckworth**

Between September 19, 1983 and September 24, 1983, both Alongi and Kamienski threatened Duckworth's life. (SA 2400) (13T141-14 to 141-16; see also 136-2). 3d Cir. Br. R. at 39.

Between September 19, 1983 and September 24, 1983, both Alongi and Kamienski threatened Duckworth's life. (13T141-14 to 141-16; see also 136-2). USDC Br. at 48.

Between September 19, 1983 and September 24, 1983, both Alongi and Kamienski threatened Duckworth's life. (13T141-14 to 141-16; see also 136-2). App. Div. Br. at 35.

[Kamienski] took steps to ensure the secrecy of the crime (including alluding to physical harm to Duckworth if she told anyone what she saw). USDC Op. at 27.

Duckworth testified that Alongi and Kamienski later threatened her life. App. Div. Op. at 104

Duckworth's testimony:

And I kept saying [to Kamienski late on September 19, 1983] what happened? And he said if we didn't shut up that he wouldn't be able to save me or himself. SA2034:14-16.

Q. You said yesterday, Donna, that you never talked to Paul Kamienski again about what: you saw after the 19th.... A. Right. ... Q. [H]e never said to you, "Say this, but don't say this. Don't say you know Nick. Don't say you know Barbara." Never said anything like that? A. No, he did not. SA2400:21-24 & 2401:17-20.

Prosecutor's closing:

Does she [Duckworth] ever say that Paul came up to me and said don't say this, don't do that? Not at all. She's not out to get anybody. She's telling the truth. SA4340:25-4341:3

"Defendants" and Lehman

**Ocean County Prosecutor Misrepresentations
In Briefs Re: "Defendants" and Lehman**

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 having trouble raising the money for their deal. 3d Cir. Br. R. at 55.

Around September 10 to September 15, 1983, Lehman attempted to purchase cocaine from Defendants Marsieno and Alongi. Lehman had complained about the lack of potency of previous purchases. Defendant [sic] assured him that within the week they would have access to "kilo quantity Coke for you at about one thousand dollars less an ounce than you're paying now. . . ." (15T59-1 to 59-14) Alongi offered to extend Lehman credit on what Alongi described as "a ton[of] South Florida Coke. . . ." (15T60-2 to 60-8) USDC Br. at 33.

Defendants Marsieno and Alongi would also tell Arthur "Buddy" Lehman -- who had complained about the lack of potency of cocaine in previous purchases -- that within a week they would have access to "kilo quality coke for about one thousand dollars less an ounce than Lehman had been paying." [15T 59-1 to 59-14] App. Div. Br. at 75.

**District Court and NJ Appellate Court Findings
Re: "Defendants" and Lehman**

Limited to Alongi and Marzeno, as OCPO's prior briefs suggested. USDC Op. at 5; App. Div. Op. at 101.

**Actual Record Re: Only "Defendants"
Alongi and Marzeno" and Lehman**

Lehman testimony:

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? SA2686:18-25

A. I had that conversation -- well, with both [Alongi and Marzeno] -- with Mr. Alongi first, and he said to me, "Don't worry. Within a week our stuff is going to improve. You can have whatever you want. We'll extend you credit. We're going to have south Florida coke, a ton of it, "or something to that effect. And you can bank on it, That's my word on Tony Alongi's word. You can take it to the bank. SA2686:2-9.

“Defendants” and Rispoli

**Ocean County Prosecutor Misrepresentations
in Brief Re: “Defendants” and Rispoli**

**District Court and NJ Appellate Court Findings
Re: “Defendants” and Rispoli**

**Actual Record Re: Only “Defendants
Alongi and Marzeno” and Rispoli**

Also, he [Marzeno] had “hoped” to give Barbara some money to keep her quiet. (SA 3031) (16T34-1 to 34-10; limited to Marsieno only) This was probably because Defendants were friends with Barbara’s ex-husband, Bill Rispoli. (SA 889-891) (6T35-2 to 37-10; 11T23-12 to 25-6) 3d Cir. Br. R. at 55.

Also, he had “hoped” to give Barbara some money to keep her quiet. (16T34-1 to 34-10; limited to Marsieno only) This was probably because Defendants were friends with Barbara’s ex-husband, Bill Rispoli. (6T35-2 to 37-10; 11T23-12 to 25-6) USDC Br. at 73-74.

Also he had "hoped" to give Barbara money to keep her quiet. (16T34-1 to 34-10; limited to Marsieno only) This was probably because Defendants were friends with Barbara's ex-husband, Bill Rispoli. (6T35-2 to 37-10; 11T23-12 to 25-61) App. Div. Br. at 57.

None specifically, but both wrongly assume generally that Kamienski participated in the drug deal negotiations and transaction after September 5, 1983.

Duckworth’s testimony:

Q. Who had mutual acquaintances? A. Tony Alongi and Barbara. And one of the names I heard mentioned was Bill Dickey. Q. Did you hear -- did the -- did you hear what relationship that was or -- A. It was her ex-husband, I believe. SA 2011:23-2012:6.

C. Longo’s testimony:

A. Well, I had said to her [Barbara DeTournay]...do you know the people you are dealing with ...?” And she came back to me and said, “Well, I know these people from my former husband and I trust them.” Q. They were friends of her former husband. She told you that? A. Yes. Q. And who was your sister, Barbara’s former husband. A. ... Bill Rispoli [a/k/a Bill Dickey]. SA0889:2-0891:9

See also F. Adam’s testimony, SA1072:17-20, and K. Adam’s testimony, SA1151:16-1152:20. [Barbara said they had met in the afternoon of September 9, 1983 in Toms River with a friend or friends of her ex-husband to finalize the drug deal and that connection made things go “smoother.”]

Kamienski's Murderous "Premeditation"

**Ocean County Prosecutor Misrepresentations
Re: Kamienski's Murderous "Premeditation"**

Defendant Kamienski knew this "deal" would be much more than a drug deal – he knew it would be murder in advance of its occurrence. His actions are subtle. ... Kamienski premeditated about the murders and executed part of the murderous plan through the removal of a possible witness, Duckworth, before the murders occurred on the 19th. 3d Cir. Br. R. at 58-59.

Thus, the inference is that Defendants talked about this situation [Marzeno's plan to kill Nick DeTournay and buy off Barbara's silence] and in effect all premeditated about this murder. USDC Br. at 74.

Thus, though always together, she [Duckworth] was sent away whenever Defendants had murder on their minds. St A 58 Kamienski was present at the September 18th failed meeting (11T37-17 to 39-8) and took part in the subsequent change in plans....Alongi and Kamienski, at least as accomplices, hunted with the pack, in order to share in the kill. App. Div. Br. at 66.

**District Court and NJ Appellate Court Findings
Re: Kamienski's Murderous "Premeditation"**

Based on this evidence, and other evidence introduced at trial, a reasonable jury could have found Kamienski...arranged the September 19, 1983 meeting, ensured the absence of an eye witness...[and] furnished instrumentalities of the crime.[i.e., premeditated the murder] USDC Op. at 26-27.

The jury could have inferred that by prearrangement, Kamienski took steps to remove a potential eye witness from the scene of a robbery and murder and that his conduct constituted facilitating the commission of the crimes with the required shared intent or purpose. App. Div. Op. at 105.

**Actual Record Re: Kamienski's
Lack of Murderous Premeditation**

Prosecutor's closing:

[D]oes Paul Kamienski necessarily know that they're going to get killed? I don't think so. Not from the evidence and the testimony that I've heard....He never -- I'll say this, he never expected it to, happen, he didn't expect them to be murdered. SA4325:15-4326:16. And I've indicated to you that I don't think that Paul Kamienski...was a part of a conspiracy to murder those people....SA4345:17-20.

See also SA4611:4, 4612:13-20, 4619:10-17 & 4625-4631. [post trial argument: conceding Kamienski lacked foreknowledge and he cannot be found guilty on the basis of anything he did antecedent to the murders]; see also Jury's murder conspiracy acquittal.

“Failed Meeting”

**Ocean County Prosecutor Misrepresentations
Re: Kamienski’s Presence at the “Failed Meeting”**

Kamienski was present at the September 18th failed meeting in which there was a gun but no money ever existed, and he no doubt heard the lies told to Henry [Nick] DeTournay that the parties were merely having trouble getting the money together, thereby luring DeTournay into the belief that the parties fully intended to complete the deal they had arranged. ((SA 2024-2026) 11T37-17 to 39-8) Kamienski took part in the subsequent change in plans. 3d Cir. Br. R. at 67-68.

Kamienski was present at the September 18th failed meeting (11T37-17 to 39-8) and took part in the subsequent change in plans. USDC Br. at 85.

Kamienski was present at the September 18th failed meeting (11T37-17 to 39-8) and took part in the subsequent change in plans. App. Div. Br. at 66.

**District Court and NJ Appellate Court Findings
Re: Kamienski’s Presence at the “Failed Meeting”**

[A] reasonable jury could have found Kamienski...arranged the September 19, 1983 meeting. USDC Op. at 26.

A reasonable inference can be drawn that Marzeno had planned to rob and maybe kill the DeTournays to obtain the cocaine on the 18th because he had only a gun in the briefcase and because he had promised to obtain the cocaine on the 18th and to sell some to Lehman on the same day. But the Holiday Inn was rather public and Henry [Nick] did not bring the drugs, so a scheme was devised to get Henry and Barbara to Alongi's home [on the 19th] which was much more isolated. App. Div. Op. at 102.

**Actual Record Re: Kamienski’s Non-Presence
at the “Failed Meeting”**

Duckworth’s Testimony:

Q. And who else was [at the Holiday Inn on 9/18/83 at happy hour]? ... A. Joe Marzeno, Tony Alongi, Jackie [Alongi’s future wife], myself, Paul ...Q. Do you know what they talked about on that day? A. I really wasn't listening. SA2025:9-17. [For the entire day leading up to the happy hour gathering she and Kamienski were alone on his boat. They returned to the boat after spending a hour or two having drinks]. SA2144:8-2145:8 and 2179:13-2180:24.

Jeffrey’s Testimony:

A. He [Nick DeTournay] never came into the grounds of the Holiday Inn. SA 1566:20-22.

Prosecutor’s closing:

[At 11:30 a.m. on September 18, 1983, Nick and Barbara meet Jeffrey just after a meeting that had taken place at Alongi’s house between 10 and 11 a.m. where Alongi postponed the deal to get the money together]. Donna Duckworth tells you that there's a meeting at the Holiday Inn later on that day, cocktail hour...she doesn't see the DeTournays, they weren't there. SA4314:8-4315:24.

COMBINED CERTIFICATIONS OF COUNSEL

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

Font
(Pursuant to FRAP 32(a)(5))

Appellant's Supplemental Brief, Revised 4/13/09, complies with the typeface requirements of LAR 32.1(c) and Fed. R. App. P. 32(a)(5) and (6) because it has been prepared in a proportionally spaced typeface using MSWord in 14-point Times New Roman style font.

Filing and Service
(Pursuant to Third Circuit Local Rule 32.1)

I filed ten hard copies of the Supplemental Brief for Appellant Paul Kamienski, revised 4/13/09 (tan cover) with the Clerk of the United States Court of Appeals for the Third Circuit by causing them to be deposited on April 13, 2009, with Federal Express for overnight delivery addressed to: Clerk of the Court, United States Court of Appeals for the Third Circuit, Thurgood Marshall United States Court of Appeals for the Third Circuit, Attn: Tiffany Washington, Calendar Clerk, 21400 United States Courthouse, 601 Market Street, Philadelphia, PA 19106-1790, and further

I served two copies of the accompanying Supplemental Brief on Behalf of Appellant Paul Kamienski, revised 4/13/09 on Appellees by sending them by

Federal Express to Samuel J. Marzarella, Esq., Office of Ocean County Prosecutor, Ocean County, 119 Hooper Avenue, P.O. Box 2191, Toms River, NJ 08753, and by filing an identical version of the Supplemental Brief in PDF format via the Court's Electronic Case Filing system to Filing User Samuel J. Marzarella, Esq., and by emailing the same to Samuel J. Marzarella, Esq., at smarzarella@co.ocean.nj.us, all on the date indicated below.

Identical Compliance Brief
(Pursuant to Third Circuit Local Rule)

I filed an identical PDF version of the Supplemental Brief for Appellant Paul Kamienski via the Court's Electronic Case Filing system on the date indicated below.

Virus Check
(Pursuant to Third Circuit Local Rule)

I have scanned for viruses the PDF version of Appellant's Supplemental Brief that was submitted in this case via the Court's Electronic Case Filing system and no viruses were detected. I used the current version McAfee for AOL users to check for viruses.

Dated: New York, New York
April 13, 2009

/S _____

TIMOTHY J. MCINNIS, Esq.
Attorney for Appellant Paul Kamienski