

# Man Says He Was Real Killer In 21-Year-Old Murder Case

By DIANE CARDWELL

In the spring of 1980, Martell Hamilton, then 14, was shown a snapshot of a man named Collin Warner, who the police indicated was a suspect in the murder of Mr. Hamilton's brother. Grief stricken and exhausted, Mr. Hamilton said that he might have seen Mr. Warner before.

Based on that statement and a witness account, Mr. Warner was quickly arrested. He was eventually tried and convicted of killing Mario Hamilton with a single bullet to the head on a Brooklyn street. Like many other prison inmates, Mr. Warner insisted that he was innocent.

This week, nearly 21 years after Mr. Warner was imprisoned, Mr. Hamilton remains grief stricken, but not just over his brother's death. His statement, he now says, helped put an innocent man in jail. "That doubt lingered with me for all these years," said Mr. Hamilton, a city bus driver.

Now, testimony in a deposition may confirm Mr. Hamilton's doubts. After being contacted by Mr. Warner's lawyer, Norman Simmonds, who was convicted with Mr. Warner and was paroled after serving nine years in prison, came forward to help exonerate Mr. Warner with a startling statement: he, not Mr. Warner, was the true killer.

"I never understood anything and I felt like justice would have been justice," Mr. Simmonds said to Mr. Warner's lawyer during the deposition. "I knew Collin was innocent. I knew I did the crime."

Based on these statements and others, prosecutors in Brooklyn are considering reopening the case. Among the evidence before them are new statements from witnesses who say Mr. Warner was not at the scene of the shooting. But perhaps most compelling is the support from the Hamilton family and Mr. Simmonds for the effort to free Mr. Warner.

"I received a letter from the attorney and I read it and it brought back a lot of painful memories," Mr. Hamilton said of Mr. Warner's lawyer, William J. Robedee. "But what my mother remembered most from that time was me telling the police, 'I don't think this is the guy.' I just didn't have any concrete evidence."

And Mr. Simmonds, when asked by Mr. Robedee if he would be willing to testify in court, said: "I will be there and I will keep contact with you, because this is the end of it now. Twenty years is enough."

On Tuesday, a hearing was held in State Supreme Court in Brooklyn on Mr. Robedee's motion to vacate the conviction. In light of the new material, prosecutors plan to interview witnesses in the case, said Kevin Davitt, a spokesman for the Brooklyn district attorney's office. He stopped short of saying that the investigation into the murder would be reopened.

Assistant Chief Thomas P. Fahey, a police spokesman, said, "We will assist them in any way possible, but they have not informed us of any problem in the case."

The murder occurred April 10, 1980, near Erasmus Hall High School in Flatbush. Mario, then 16, was walking with a group of his friends. According to the defense motion, Mr. Simmonds, then 15, who was with the group, shot Mario because he believed Mario had killed a mutual friend, a charge Martell Hamilton denies.

According to the motion, investigators at the scene detained Martell, who arrived after the shooting, and a 14-year-old acquaintance, Thomas Charlemagne, who told the police that he saw what happened. The investigators took both boys to a police station for questioning, according to the court documents, where, Martell said, he heard the police pressuring Thomas to make an identification.

After several hours, Thomas picked Mr. Warner's picture out of a

mug book. "I don't know why he did that," Mr. Robedee said. "My honest suspicion? He wanted to go home."

Later that night, a detective went to Martell's house with several photographs. The detective asked him several times if he recognized anyone in the pictures. Mr. Hamilton answered no, he said.

Finally, he said, the detective pushed one of the pictures out of the line and said, "What about this guy?"

Mr. Hamilton said, "To let him stop pressuring me, I said I might have seen him before." The picture was of Mr. Warner.

Based on the two identifications, Mr. Warner was charged with the murder and tried two years later. "I felt kind of bad and guilty in some ways for saying I might have seen him before," Mr. Hamilton said. "Even though it wasn't a bad thing to say, it was still kind of me putting a nail in this man's coffin when I knew I hadn't seen him before."

Mr. Simmonds was arrested and charged as an accomplice in the killing six months later. The two were tried together twice; after the first trial ended in a hung jury, they were convicted in a second trial of second-degree murder. Because Mr. Simmonds was a juvenile at the time, he



Collin Warner is not guilty in a 1980 killing, another man says.

was sentenced to nine years to life, and was paroled in 1989. Mr. Warner, then 18, drew 15 to life.

Mr. Warner has survived these past two decades through a deep faith in God, those close to him said. Mr. Warner's best friend, Carl King, who visits him at the Peekskill correctional facility every two to three weeks, said that Mr. Warner recently completed a degree in art. Mr. King and Mr. Warner's wife of eight years, Catherine, who met him before the shooting, have helped him to mount a number of unsuccessful appeals. "When Collin got sentenced, I was a teenager," Mr. King said, "so I thought, Wow — is that how justice works?"

About a year ago, Mr. King brought the case to the attention of Mr. Robedee, who said he was struck by how Thomas Charlemagne had changed his story in several statements. There were also no corroborating witnesses or physical evidence presented, he said, and he has collected statements from two other men who were at the shooting who say that Mr. Simmonds acted alone.

While optimistic about his client's chances, Mr. Robedee said the case hinged on prosecutors and a judge agreeing with his interpretation of the new material. "It's always the easy ones where they find the magic DNA on the sock and he goes free and there's rejoicing," he said. "But in this case, there isn't anything like that. I wish there were."

# Murder Conviction Overturned for Man Behind Bars 20 Years

ANDY NEWMAN

*New York Times (1857-Current file); Feb 1, 2001;*

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## *Murder Conviction Overturned for Man Behind Bars 20 Years*

By ANDY NEWMAN

After serving 20 years in prison for a murder he did not commit, a 39-year-old Brooklyn man, Collin Warner, had his conviction overturned yesterday. Today, he could go free.

Mr. Warner's long struggle for freedom turned a corner when his co-defendant, Norman Simmonds, recently confessed to Mr. Warner's lawyer in a deposition that he, not Mr. Warner, was the young man who shot Mario Hamilton outside Erasmus Hall High School in Flatbush in April 1980. The lawyer, William J. Robedee, quickly filed a request to vacate the conviction.

Yesterday, the Brooklyn District Attorney's office joined in the re-

quest, said Kevin Davitt, a spokesman for the district attorney. And Justice John M. Leventhal of State Supreme Court in Brooklyn immediately granted it, the justice confirmed last night.

"This is a fantastic moment," Mr. Robedee said. "It's easy to become very cynical, but today we learned there is justice and compassion in the stone buildings downtown."

As for Mr. Warner, Mr. Robedee said, "The judge prepared an order for me that I have to take to Fishkill Correctional Facility, and, God willing, we're going to walk out the door with Collin Warner tomorrow."

Mr. Warner, who lived in Crown Heights, was 18 when he was accused of the murder, based on a witness

account and a statement by the dead boy's brother that the face in a snapshot of Mr. Warner looked slightly familiar. He and Mr. Simmonds were convicted, but because Mr. Simmonds was a juvenile at the time, he drew a shorter sentence and was paroled in 1989.

Mr. Warner's many appeals went nowhere until Mr. Simmonds confessed.

The Brooklyn District Attorney, Charles J. Hynes, said last night in a statement: "I'm pleased that as soon as this new evidence was brought to our attention, we launched an immediate investigation to ensure that justice was done. However, it remains tragic that Mr. Warner spent so many years in jail based on errone-

ous testimony."

If Mr. Warner is released today, he will return home to a borough he has not seen in nearly 21 years and to a wife, Catherine, who has not seen much of him in the 8 years of their marriage.

For the murder victim's brother, Martell Hamilton, the news stirred up a confusing mix of emotions. He has said he fingered Mr. Warner under pressure from detectives and has felt awful about it for years.

"I'm very happy for the man," Mr. Hamilton said. "He spent 21 years in jail for something he didn't do. On the other hand, it's kind of bitter-sweet. It brought back memories of how it was, and that my brother is gone and will never return."

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