

Ruling frees man convicted of road-rage murder

By **STEVE LASH**

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A former Harford County prosecutor's change of heart led to the release Monday of a man serving a life sentence for a road-rage killing 32 years ago.

That change of heart was expressed in a 1994 letter in which former assistant Harford County State's Attorney Edward J. Lilly stated that Pete Nick Kosmos Jr. should not have been convicted of first-degree murder when he picked up a tire iron and struck and killed his victim. The conviction should have been for second-degree murder or even manslaughter, as Kosmos lacked the premeditation required to have made his act first-degree murder, Lilly wrote.

Based on that letter, defense attorney Erica J. Suter pressed for Kosmos' release on the basis of actual innocence. And, because of that letter, Harford County State's Attorney Joseph I. Cassilly raised no objection to Kosmos' release so long as his first-degree murder conviction remained on his record.

"We tried to resolve it with respecting the jury verdict ... but allowing [defense counsel and the court] to amend the sentence," essentially to time served, Cassilly said. "The jury knew all those facts ... and the jury did find first-degree murder."

According to court records, Kosmos sought post-conviction relief a number of times over the years.

"This was a good way of resolving the case," Cassilly said of Judge Stephen M. Waldron's release of Kosmos after a hearing Monday in **Harford County Circuit Court**.

Cassilly said he was an assistant prosecutor but not involved in the case when Kosmos was convicted in 1981.

Suter, a Greenbelt solo practitioner, said Kosmos lacked the premeditation required for a life sentence.

"It never should have been a first-degree murder case," she said. "It didn't have the element of premeditation."

The deadly encounter began with a case of mistaken identity. The driver of one car erroneously believed he had been cut off by the automobile in which Kosmos was a passenger.

The angry driver threw a beer bottle into Kosmos' car, hitting the driver in the face and knocking out his glass eye. The driver stopped the car so he and Kosmos could look for the glass eye, Suter said.

The other driver also stopped, words were exchanged and Kosmos — who claimed at trial that he thought a passenger in the other car was about to attack him — struck the man with a tire iron, killing him.

Kosmos, through his trial counsel, claimed self-defense, but the jury did not buy it.

Lilly, in his 1994 letter written at the request of Kosmos' family, stated that he found the jury's finding of first-degree murder "a harsh result. ... The fact that the victim confronted Mr. Kosmos after the altercation

had been broken off was a mitigating factor which should have excluded a first-degree murder verdict."

Lilly, now an attorney with the **Law Offices of Peter G. Angelos PC** in Baltimore, could not be reached for comment Monday evening.

Suter, in discussing Kosmos' case, said that "the jury just got it wrong."

Of the 18-year span between Lilly's letter and Kosmos' release, Suter said, "The wheels of justice turn slowly sometimes."

In retrospect, Kosmos' trial attorney should have argued "imperfect" self-defense, which occurs when a defendant has a sincere belief that his life was in danger but that his deadly response was not objectively reasonable or proportionate to the actual threat, Suter said.

She added that Kosmos, who turns 56 on Wednesday, has paid his debt to society.

"Thirty-two years is no small amount of time" to spend in prison, Suter said.

In addition, Kosmos still has a first-degree murder conviction on his record and will be on supervised probation for the next three years and parole for the next seven, she said.

Still, "he will have the opportunity to be with his family rather than spend the rest of his life in prison," she said.