

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION: SECOND DEPARTMENT

*Argument Requested By:*  
JENNIFER M. O'CONNOR AND  
STEPHEN L. BRAGA

*60 Minutes Requested*

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PEOPLE OF THE STATE OF NEW YORK

– against –

Docket No. 2006-03617

Suffolk County Indictment  
Nos. 1290/88 & 1535/88

MARTIN H. TANKLEFF,

Defendant-Appellant.

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**BRIEF FOR DEFENDANT-APPELLANT MARTIN H. TANKLEFF**

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**STATEMENT REQUIRED BY CPLR § 5531  
AND 22 NYCRR § 670.10.3(g)(2)(i),(viii)**

1. The index numbers of the case in the court below were 1290/88 & 1535/88. There were no co-defendants at Defendant-Appellant Martin H. Tankleff's trial.
2. The full names of the original and current parties are People of the State of New York against Martin H. Tankleff.
3. Defendant-Appellant commenced this action in County Court, Suffolk County.
4. Defendant-Appellant was convicted and sentenced upon a judgment entered on October 23, 1990 (Tisch, *J.*). On December 22, 1994, the New York Court of Appeals affirmed that judgment on direct review. Following post-conviction proceedings in state and federal courts, Defendant-Appellant commenced the instant action on October 3, 2003, by filing a motion to vacate his convictions pursuant to C.P.L. § 440.10 and an accompanying memorandum of law. On December 12, 2003, the District Attorney filed a response. Following a hearing on the newly discovered evidence, which began on July 19, 2004, and was completed on February 4, 2005, on March 21, 2005, Defendant-Appellant filed a Memorandum of Supplemental Authority, and, on June 14, 2005, the District Attorney filed a response. On August 25, 2005, Defendant-Appellant filed his reply. After the hearing was reopened to take additional testimony pursuant to the court's order dated October 26, 2005, Defendant-Appellant and the District Attorney filed letter briefs on December 23, 2005.
5. Defendant-Appellant's motion under C.P.L. § 440.10 brought forward newly discovered evidence showing conclusively that he had nothing to do with the murder of his parents, including evidence, corroborated by eyewitness testimony, that the true assailants confessed on multiple occasions that they committed the murders. This evidence of Defendant-Appellant's actual innocence entitles him to release under the federal and state constitutions, or, alternatively, to a new trial pursuant to C.P.L. § 440.10(1)(g). In addition, Defendant-Appellant presented three independent claims for relief under the federal and state constitutions.

6. This appeal is from a decision and order of the County Court (Stephen L. Braslow, *J.C.C.*), entered on March 17, 2006, denying all of Defendant-Appellant's claims.
7. On April 17, 2006, Defendant-Appellant filed a motion for leave to appeal the County Court's March 17, 2006 decision pursuant to C.P.L. § 450.15 and § 460.15. On May 25, 2006, the Appellate Division, Second Department (Rivera, *J.*), issued an order and certificate granting that motion. Defendant-Appellant is prosecuting this appeal using the appendix method, pursuant to 22 NYCRR Part § 670.9(b).

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## QUESTIONS PRESENTED

1. Whether new evidence that a violent career criminal admitted to six different witnesses that he and a criminal associate murdered Appellant's parents at the behest of a disgruntled business partner of Appellant's father, where those admissions are corroborated by other testimonial evidence—verified by polygraph examination—as well as by physical evidence, and where those admissions are considered together with other new evidence, including un rebutted expert testimony that appellant's un-Mirandized “confession” to committing these murders is almost certainly a false product of police deception and coercion, as well as Appellant's own positive polygraph examination denying involvement in those murders, establishes a federal and/or state constitutional claim of Appellant's “actual innocence” of these crimes?
2. Whether the newly discovered evidence described above, viewed in its totality, would—at the very least—create a reasonable probability of a more favorable verdict for Appellant, thereby entitling him to a new trial under C.P.L. § 440.10(1)(g)?
3. Whether the admission of Appellant's “confession” against him at trial violated his federal and/or state *Miranda* rights when the U.S. Court of Appeals for the Second Circuit has already determined that Appellant was being aggressively—and deceptively—interrogated “in custody” before receiving belated *Miranda* warnings, where there was no break in that custodial interrogation between its pre-warning and post-warning phases as required by New York law for such a “confession” to be admissible and where the Supreme Court's recent decision in *Missouri v. Seibert* similarly outlaws the use of such an unbroken two-step “confession” as a matter of federal law?
4. Whether the prosecution's failure to disclose unchallenged and exculpatory impeachment evidence demonstrating that the lead detective in Appellant's case had a secret, longstanding friendship and business relationship with the most obvious suspect in the case—Appellant's father's disgruntled business partner, who faked his own death, changed his appearance, fled the jurisdiction, and began living under an alias a week after the murders—transgressed Appellant's federal and/or state due process rights under *Brady v. Maryland* and *Giglio v. United States*, where the lead detective repeatedly lied at trial by denying this relationship and the prosecution failed to take any steps to disclose this relationship to the defense or to otherwise correct this repeated perjury?

5. Whether defense counsel provided constitutionally ineffective assistance of counsel to Appellant at trial where counsel promised in his opening statement to call numerous knowledgeable family member witnesses to testify to Appellant's close and loving relationship with his parents—and, thus, his utter lack of any motive to brutally murder them—and then failed even to contact or investigate these witnesses, although they were ready and willing to testify for Appellant, and where that failure thereafter formed the basis of a devastatingly effective closing argument by the prosecutor in which he suggested—falsely—that these witnesses did not testify because they believed Appellant to be guilty?

The County Court answered all of these questions in the negative, and, with respect to questions 3-5, without discussion.

## INTRODUCTION

Following a controversial and highly publicized trial in 1990, Marty Tankleff (“Marty”), who was then a teenager, was convicted of murdering his parents, Seymour and Arlene Tankleff. As a result, for the past sixteen years, Marty has been incarcerated in a New York state correctional facility. But Marty did not kill his parents. *He is an innocent man serving a sentence for crimes he did not commit.* Since the moment of his convictions, Marty has been relentless in his efforts to prove that he is actually innocent of these horrible crimes, and he has now developed extraordinary new evidence not heard by the jury at his original trial. This new evidence identifies the actual killers through their own admissions, corroborated by extensive eyewitness testimony. Straying far from precedent, the County Court declined to vacate Marty's convictions and release him, or even to grant Marty a new trial so a jury may consider the new evidence.

**A. Numerous Witnesses Establish that Joseph Creedon and Peter Kent Committed the Tankleff Murders**

In 2003, Marty filed a C.P.L. § 440.10 motion presenting powerful new evidence that another man, Joseph Creedon, and his associate, Peter Kent, were the real killers of Marty's parents. The County Court heard testimony from six witnesses—Joseph Guarascio (Creedon's son), Karlene Kovacs, John Guarascio, Gaetano Foti, Billy Ram, and Joseph Graydon—who all testified that, on various occasions and over a number of years, Creedon admitted to having committed the Tankleff murders.<sup>1</sup> Faced with this wealth of evidence, even the Suffolk County District Attorney's investigative report was compelled to concede that Creedon, a career criminal, made these damaging admissions. Additionally, Creedon's accomplice, Peter Kent, admitted to James Moore, his former co-worker on a construction crew, that he and a friend were hired to commit the Tankleff murders.

Creedon and Kent's admissions were corroborated by Glenn Harris, who admitted in a sworn statement that he drove Creedon and Kent to a house in Belle Terre, Long Island (the Tankleffs' neighborhood), on the night in question,

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<sup>1</sup>Since the completion of the 440 hearing, new witnesses have come forward with evidence of Marty's innocence. As a result, Marty filed a second § 440.10 motion in March 2006, which was supported by statements from Lisa Harris, William Vincent Sullivan, James Moore, and Frank Messina Jr. The County Court denied that motion, this time without holding a hearing. A.3905 (County Court's Decision Denying Defendant's March 2006 440.10 Motion, April 27, 2006, hereinafter "April Decision"). As a result, Marty filed a motion in this Court for leave to appeal that decision and to consolidate these appeals. A.3910. The District Attorney has stipulated to that motion, *see* A.3933, which is still pending. Where relevant, this brief discusses the evidence submitted in the second § 440.10 motion, which is judicially noticeable evidence from a related proceeding.



thinking that they were going to commit a robbery. When Creedon and Kent emerged from the house, however, Harris saw that they were covered with blood, and he learned the next day that their victims were the Tankleffs. Harris has given this account to at least nine different people, including his wife, his mother, a priest, and two wired informants sent by the District Attorney's office. Further, Harris passed a polygraph examination, verifying his truthfulness.

**B. New Evidence Shows that Jerry Steuerman Hired Creedon to Commit the Murders**

Marty also introduced new evidence showing that Jerry Steuerman—Seymour Tankleff's business partner—hired Creedon to commit the murders. Even at the time of Marty's trial, Steuerman was highly suspicious: he owed Seymour hundreds of thousands of dollars and was the last non-family member present at the Tankleff house on the night of the murders. Several of the surviving family members immediately suspected Steuerman upon learning of the attacks and conveyed these suspicions to the police, including information that Steuerman had recently threatened Seymour Tankleff. What is more, a week after the attacks, Steuerman *faked his own death, changed his appearance, and fled to California under an alias*. New, undisputed evidence now shows that Steuerman was connected to Creedon through his cocaine-dealing son, Todd Steuerman, who employed Creedon as one of his "enforcers." Creedon has admitted that he was hired by Jerry Steuerman to kill the Tankleffs, and that, on the night in question,

Steuerman was at the Tankleff house and signaled to him and Peter Kent to enter the house to commit the murders. Moreover, another witness, Neil Fisher, testified that shortly after the murders Steuerman admitted during a fit of anger that he had killed two people.

### **C. The Lead Detective Perjured Himself at Trial**

Additionally, Marty presented new evidence showing that the lead detective in the case, K. James McCready, perjured himself at trial. McCready was a crucial prosecution witness, and he was the detective who obtained Marty's unrecorded false confession after aggressively interrogating him for hours without *Miranda* warnings and telling him a series of lies—the most appalling of which was that his father had awoken from his coma at the hospital and accused Marty of being the attacker (in fact, his father never regained consciousness before dying). At trial, defense counsel attempted to elicit a motive for McCready's decisions to ignore Steuerman as a suspect despite numerous indications of his guilt and to aggressively pressure Marty for a confession only hours into the investigation. In response to questions by defense counsel, McCready *repeatedly and categorically* denied that he knew Jerry Steuerman prior to the day of the murders.

This testimony was blatantly false. New, undisputed evidence from two witnesses establishes that McCready and Steuerman were in fact friends and business associates years before the murders. Thus, Detective McCready, the lead

investigator and lead interrogator in Marty's case, knowingly covered up his longstanding friendship with the man whom Marty and his family had accused from the beginning. The District Attorney ("DA"), in its submissions in the court below, never denied that McCready perjured himself, and a State-level investigation of the Suffolk County Police Department and DA's office found that McCready committed perjury in another murder trial.

**D. Expert Evidence Establishes that Marty's "Confession" Was False**

Finally, Marty's new evidence also answers a question that no doubt haunted the original jury: If Marty is innocent, how could he have confessed to such horrible crimes? Fortunately, in the decade and a half since Marty's trial, a wave of exonerations and advances in social science research have opened society's eyes to the reality of false confessions. Approximately one-fourth of those wrongfully convicted had given false confessions, many of which were vividly detailed in a way that seemed to assure their authenticity. Two leading experts in the field, Professors Richard J. Ofshe and Richard A. Leo, reviewed the circumstances of Marty's confession and concluded that it was "unreliable" and "almost certainly false." A third expert, Professor Saul Kassin, found that the County Court's rejection of this evidence was "grossly out of step with basic, widely accepted principles of psychology." Marty also passed a polygraph examination that established that he had nothing to do with the murder of his parents. Moreover, the

physical evidence wholly contradicts the details of his “confession,” providing yet further confirmation that it was false.

**E. The County Court Committed Multiple Legal and Factual Errors in Considering the New Evidence**

Despite Marty’s extraordinary wealth of new evidence, the County Court determined that he had not met his burden of showing that he is actually innocent, nor even the lesser burden of showing that his newly discovered evidence warrants a new trial pursuant to C.P.L. § 440.10(1)(g). In so holding, the court committed a series of legal and factual errors that cry out for this Court’s correction.

Most fundamentally, the court examined and rejected each witness’ testimony in isolation, and thus failed to consider Marty’s new evidence in its totality and from the perspective of a reasonable, properly instructed juror. In contrast to the court’s mode of analysis, a reasonable juror would consider the ways in which the multiple witnesses corroborated one another and were supported by other evidence. The court also erred in rejecting witnesses based on minor inconsistencies in their testimony, and in establishing a virtual *per se* rule that witnesses with criminal records are unworthy of belief. In committing these errors, the court astonishingly refused even to accept the concession of the DA’s investigative report that Creedon had confessed to multiple people over the years.

The court’s analysis was also marked by significant omissions. The court did not even mention key pieces of new evidence, such as un rebutted polygraph

results establishing that the statements of Marty and the first two witnesses he identified—Karlene Kovacs and Glenn Harris—were truthful. Moreover, the court ignored its responsibility to consider the new evidence in relation to the original trial evidence. As a result, it addressed none of the exculpatory physical evidence presented at trial.

**F. Marty’s Constitutional Claims Were Ignored By the County Court**

In addition to his new evidence, Marty advanced three constitutional claims that the court dismissed as “lacking in merit” without so much as a word of discussion. Each claim, however, constitutes an independent ground for vacating Marty’s convictions and ordering a new trial. First, the introduction of Marty’s confession at trial violated his federal and state *Miranda* rights. Detectives McCready and Rein interrogated Marty in a small windowless room at the police station, explicitly and repeatedly accused him of murder, and confronted him with patently false eyewitness evidence from his own father (who was actually comatose) accusing Marty of the crimes. Nevertheless, the detectives notified Marty of his *Miranda* rights only *two hours* into the interrogation and only *after* Marty was finally coerced into making a “confession.” As the U.S. Court of Appeals for the Second Circuit determined in reviewing this case on federal habeas, Marty was undoubtedly in “custody” prior to the time that he received

*Miranda* warnings. Moreover, the detectives' failure to give warnings earlier was plainly not a good-faith mistake.

Second, the prosecution violated Marty's federal and state due process rights by failing, under *Brady v. Maryland*, 373 U.S. 83 (1963), to disclose evidence that Detective McCready and Jerry Steuerman were longstanding friends and business associates, and by failing, under *Giglio v. United States*, 405 U.S. 150 (1972), to correct McCready's perjury in this regard. If revealed at trial, these facts would have exposed the lead detective's biased interest in inculcating Marty and clearing Steuerman, thus casting doubt on the integrity of the entire police investigation. The prejudice suffered by the defense clearly satisfies the *Giglio* standard, as well as the more demanding *Brady* standard.

Third, Marty has demonstrated compelling claims of ineffective assistance of counsel under the federal and state constitutions. Marty's defense attorney failed to investigate and call to the stand numerous family members who would have given crucial testimony about Marty's happy family life, his loving and non-violent character, and his lack of motive. This error was compounded by the fact that the defense attorney promised to call these witnesses during his opening statement, but then failed to do so despite their desire to testify on Marty's behalf. This left the jury with the damning impression that these family members believed

Marty to be guilty—an impression that the prosecutor aggressively encouraged during his closing statement.

**G. This Court Should Immediately Vacate Marty’s Convictions**

Although it is the DA’s responsibility to see that “justice shall be done,” *Berger v. United States*, 295 U.S. 78, 88 (1935), it has wrongly fallen to Marty and his family to investigate tenaciously those actually responsible for the brutal murders of Seymour and Arlene Tankleff. Because Marty is innocent, it is unsurprising that this investigation continues to yield results; in fact, since the completion of the 440 hearing below, the defense investigator obtained statements from six additional exculpatory witnesses.<sup>2</sup> There will no doubt be additional witnesses identified in the future. But Marty has already gathered a critical mass of evidence showing his innocence; he is legally entitled to relief *now*. Accordingly, this Court should vacate the conviction and immediately release Marty from prison, or, alternatively, vacate the conviction and order a new trial.

**FACTUAL AND PROCEDURAL BACKGROUND**

**A. Marty Discovers His Parents**

On September 7, 1988, on what was to have been the first day of his senior year of high school, Marty Tankleff, who had just turned seventeen, awoke at

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<sup>2</sup>As noted, Marty’s second § 440.10 motion, filed in March 2006, contained evidence from four additional witnesses. *See supra* n. 1. In October 2006, Marty filed a third § 440.10 motion after two additional witnesses—Daniel Raymond and Patrick Touhey—came forward. A.3977. That motion is currently pending before the County Court.

around 6:00 a.m. in his family's house in Belle Terre, Long Island. Seeing no one in his parents' dark bedroom, he proceeded to his father's study, where the lights were still on from a late-night poker game that his father had hosted the night before. There, Marty discovered his father bloodied and unconscious, the victim of a vicious stabbing. Seymour Tankleff was wearing the same clothes he had on at the poker game, which had broken up at around 3:00 a.m. A.3756-3757.<sup>3</sup> The last poker player to leave the Tankleff house that night was Jerry Steuerman, Seymour's business partner in a chain of bagel stores and other ventures.

Marty immediately called 911, and rendered first aid to his father according to the 911 operator's instructions.<sup>4</sup> Marty then looked for his mother, Arlene Tankleff, and found her body lying on the floor of her bedroom. She had been fatally stabbed. A.3757-3761.

### **B. The Police Immediately Suspect Marty**

When the police arrived at the scene, they almost immediately focused their suspicion on Marty. Two weeks earlier, Marty had undergone plastic surgery and follow-up treatments on his nose, which left his face discolored and his eyes blood-spotted and reddened. As a result, one could easily mistakenly conclude that he had just been in a struggle. A.3664, 3797-3799. Although Marty immediately told

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<sup>3</sup>“A. \_\_\_” refers to the Appendix, which contains the relevant excerpts from the trial and *Huntley* hearing transcripts.

<sup>4</sup>See A.3159-3164 (testimony of Patricia Flanagan, the Suffolk County emergency services dispatcher who took the 911 call).



the officers that he believed his father's business partner, Jerry Steuerman,<sup>5</sup> committed the crimes, these statements ironically only served to reinforce the officers' suspicion of Marty himself.

Officer Aki separated Marty from the only relative who had arrived by that time, his brother-in-law, Ronald Rother. At approximately 6:37 a.m, Officer Aki placed Marty in his police car and refused to permit Marty to return to the house. A.3762-3763. At 7:39 a.m., lead Detective McCready arrived at the scene. After walking through the house, McCready questioned Marty in his police car. A.3624-3626, 3652-3653.

### **C. Detective McCready and Other Officers Interrogate Marty at the Scene**

Detective McCready asked Marty what he had done the evening before and what had happened that morning. Marty recounted going to a shopping mall with friends the evening before, and then returning home to eat dinner, shower, and go to bed. He then described waking up that morning, finding his father, calling 911, performing first aid, and then discovering his mother's body. Marty also told McCready that he believed Jerry Steuerman was responsible because he and his father had been fighting over money. A.3627-3632, 3667-3668. Still sitting in the

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<sup>5</sup>Jerry Steuerman and Seymour Tankleff were partners in numerous businesses, including the Strathmore Bagel chain of bagel stores.

police car, Marty then recounted these events to Sergeant Doyle and then again to Detective Rein. A.3764-3765.

**D. Detective McCready Takes Marty To The Police Station, Where Marty is Interrogated for Hours Without *Miranda* Warnings**

Detective McCready testified that Marty did not appear appropriately grief-stricken and that he and other officers perceived “inconsistencies” in Marty’s multiple retellings of the morning’s events.<sup>6</sup> Already considering Marty a suspect, McCready “asked” Marty to accompany him to police headquarters, purportedly to obtain more information about his father’s relationship with Steuerman. A.3633-3635, 3666, 3765-3766. During the drive to the police station, Marty informed McCready, among other things, that two weeks earlier his mother had expressed fear that Steuerman would do something violent to them. McCready, however, ignored this information and continued in his single-minded focus on Marty. A.3668-3684. The U.S. Court of Appeals for the Second Circuit, which heard the case on habeas before any of the new evidence presented to the County Court had been discovered, aptly described the interrogation that ensued:

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<sup>6</sup>These “inconsistencies” were minor or simply unfounded. For example, Marty said that he did not see his mother when he first looked into his parents’ bedroom, while the detectives said that they could easily see her body when they looked into the room. However, Marty looked into the room before he called 911 at 6:11 a.m. Sunrise that morning did not occur until 6:25 a.m. A.3651. Obviously, it was much brighter in the room when the detectives arrived at the scene. Also, Marty was not wearing his glasses at the time, and, unlike the detectives, he did not know to be looking for a body on the floor. Further, his mother’s body was located on the side of the bed opposite the doorway, and only her head was visible from the doorway. A.3196, 3209.

At 8:40 a.m., Tankleff agreed to go with Detective McCready to the police station. McCready questioned him further during the forty-minute drive. At 9:40 a.m., Detectives McCready and Rein took Tankleff to a ten-foot by ten-foot, windowless room where he was interviewed continuously for the next two hours.

The defense has characterized this interview as “increasingly hostile.” The government disputes this interpretation, but acknowledges that *Tankleff was questioned in detail about inconsistencies in his story and that the detectives openly expressed their disbelief with his version of the morning’s events*. At one point, they asked him to demonstrate how he performed first aid on his father. *Detective McCready then leaned forward and said that he found Tankleff’s account “ridiculous and unbelievably absurd.”* The government asserts that while the detectives “at times raised and lowered their voices as they related inconsistencies in [Tankleff’s] account to [them],” and indeed quickened the pace of the interview at approximately 11:30 to 11:40 a.m., they never yelled at or somehow “browbeat” Tankleff.

*Tankleff v. Senkowski*, 135 F.3d 235, 240-242 (2d Cir. 1998) (emphasis added) (alterations in original).<sup>7</sup> Remarkably, even at this point, the detectives had still not administered *Miranda* warnings to Marty.

#### **E. Detective McCready’s Hoax Produces a “Confession”**

At approximately 11:45 a.m., Detective McCready, who was the lead interrogator, A.3685, dramatically intensified the interrogation with a cruel hoax—one of many lies designed to force a confession. Again, in the Second Circuit’s words:

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<sup>7</sup>The relevant *Huntley* hearing testimony describing Marty’s interrogation may be found at A.3134-3146.

At approximately 11:45 a.m., McCready left the interview room and faked receiving a telephone call. On the phone, he spoke in a voice loud enough to be overheard by Rein, who was still in the interview room with Tankleff, and presumably was overheard by Tankleff as well. After a few minutes, McCready hung up the phone and returned to the interview room. He said that he had just spoken with a detective at the hospital and that the doctors had pumped Seymour Tankleff full of adrenaline, that he had come out of the coma, and that he had accused his son, Marty. This story was not true. Seymour remained in a coma until his death a few weeks later, never awakening and never accusing his son of the crime.

*Tankleff*, 135 F.3d at 241.<sup>8</sup> Thus, Marty—who was barely seventeen, who had hours earlier discovered his parents’ bloodied bodies, who had been isolated from his remaining family members, who was still barefoot and had not eaten all day, and who had been questioned repeatedly at the crime scene and again at the police station—was now directly accused by the detectives of murdering his mother and gravely injuring his father. Further, he was told that *his own father* was an eyewitness implicating him in the bloody assaults. Still, no *Miranda* warnings were furnished.

Faced with this accusation, Marty “continued to deny having committed the crime,” 135 F.3d at 241, saying that his father might have said this because Marty was the last person he saw before falling unconscious, *id.* At this point, Detective

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<sup>8</sup>McCready’s hoax was so convincing that even detective Rein initially believed that it was true. A.3617-3618. In addition to the hoax about Marty’s father, McCready also told Marty, falsely, that Marty’s hair was found in his mother’s hand. Additionally, McCready said that he did not believe that Marty had not showered on the morning of the murders because the police had done a “humidity test” that proved otherwise (in fact, there was no such test). A.3767-3768.

Rein again intensified the interrogation, asking Marty if his father was still conscious when he “beat and stabbed” him. *Id.* The Second Circuit described Marty’s response:

Tankleff then offered to take a lie detector test, which the police refused to administer. Rein asked, “Marty, what should we do to a person that did this to your parents?” Tankleff responded, “Whoever did this to them needs psychiatric help.” At this point, Tankleff said, “Could I have blacked out and done it?” and asked whether he could have been “possessed.” The detectives encouraged him to say more, and Tankleff uttered, “[I]t’s coming to me.”

*Id.*<sup>9</sup> Only then, at 11:54 a.m., when the detectives finally achieved their goal of producing an inculpatory statement, did the detectives administer *Miranda* warnings. A.3646-3649, 3770-3773.

*With no break whatsoever in the interrogation*, the detectives then elicited a tale from Marty about how he supposedly killed his mother and attacked his father. Detective McCready “assisted” Marty by providing information that he had gleaned from the crime scene. In his supposed confession, Marty said that he awoke at 5:35 a.m. and went into his parents’ bedroom, naked, with a barbell from a set of weights in his room. Marty, at 150 pounds, supposedly planned to overpower his mother and father, who weighed 190 pounds and 250 pounds, respectively, and to kill them both with a barbell. Only his mother was in the

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<sup>9</sup>McCready admitted that they denied Marty’s request to take a lie detector test despite the fact that such a test could have readily been administered by the polygraph expert on staff at police headquarters. A.3693.

room. He supposedly hit her on the head repeatedly with the barbell, but according to the confession, this did not kill her. He then supposedly went to the kitchen and took a knife that Detective McCready had observed on the counter next to a piece of watermelon, returned to the bedroom, and stabbed his mother. Marty next supposedly went through the length of the house without leaving any blood anywhere (including the white wall-to-wall carpet), found his father, and repeatedly beat and stabbed him. Marty then agreed that he went to the bathroom by his bedroom, and showered, washed off the knife and barbell, returned them to their respective locations, and called 911. A.3770-3779.

Although the interrogation could have readily been recorded without Marty's knowledge, the detectives chose not to use this equipment and instead took it upon themselves to write out the "confession." The interrogation finally ended at 1:22 p.m., when an attorney retained by the Tankleff family called the police station and insisted that the interrogation cease.<sup>10</sup> Marty immediately repudiated the confession, which remained unsigned. A.3612-3614, 3686-3688, 3695-3697.

#### **F. The "Confession" Is Not Supported By The Physical Evidence**

Significantly, none of the Government's forensic testing supported Marty's confession. Despite a three-day search of both the inside of the Tankleff residence

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<sup>10</sup>Marty's family members were at the hospital with Seymour and were never told that Marty was being interrogated as a suspect. Rather, the police repeatedly told them that Marty was providing background information at the police station and would be taken to the hospital shortly. A.98 (Affidavit of Ronald Falbee, June 21, 2002).

and its grounds, involving teams from Homicide, the Crime Laboratory, the Identification Section, the K-9 Unit, the Emergency Services Squad, and the Crime Scene Unit, no physical evidence was unearthed to corroborate Marty's confession. A.3402-3417.

All knives in the kitchen (and those found elsewhere in the house) and the barbells in Marty's room were disassembled and tested microscopically and chemically for the presence of even the most minute quantity of blood or human tissue. Each tested negative. A.3534-3535, 3542-3543.<sup>11</sup> Forensic experts did, however, find a non-human pink substance on the knife that Marty supposedly used to commit the attacks. A.3549-3550. It is undisputed that this knife had been used the night before to cut watermelon in the kitchen during the poker game. Although the knife still had watermelon residue on it, the prosecution remarkably claimed that it had been used in a double murder and then washed thoroughly of any trace of blood.

Moreover, although whoever committed the brutal attacks on Marty's parents would have been covered with blood, there was absolutely no evidence

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<sup>11</sup>Robert Baumann, the prosecution's forensic serologist, testified that the knives and barbells were completely disassembled for testing because blood generally travels into small nooks and crannies to find its lowest point of gravity. A.3549. With respect to the watermelon knife—one of the supposed murder weapons—its wooden handle was removed “[t]o examine for possible traces of blood that may be washed underneath,” and no trace was found. A.3548-3549. Likewise, the collars and screws were removed from the barbells, and each tested negative. A.3551-3556.

found to support the assertion that Marty cleaned himself or any murder weapons of blood in Marty's shower—or anywhere else in the house. Indeed, despite an exhaustive search, there was *no trace* of blood found on the door to Marty's bathroom; his bathroom towels; his bathmat; the stopper, grout, and tile in Marty's shower; or Marty's bathroom floor. The trap from Marty's shower drain was removed and inspected, and although it contained hairs and debris that would have likely collected at least a trace of blood, no traces were found. A.3453-3454, 3523-3524, 3556-3557. Nor was there any blood detected in ten other drains and water traps, including from the two sinks in Marty's bathroom, two kitchen sinks, a slop sink in the utility room, a sink in the guest bathroom, two sinks in the master bedroom, a sink next to the pantry, and the storm drain outside the garage. A.3411-3412, 3448-3452, 3518-3526, 3556-3565.

Bloody glove prints with a “chain link” or “honeycomb” pattern were found at the crime scene, indicating that the assailant or assailants wore gloves. But despite a thorough three-day search inside and outside of the house, *no gloves were ever found*. A.3576-3591. Moreover, because the detectives were not yet aware of the glove prints at the time of Marty's interrogation, Marty's otherwise detailed “confession” made no mention of wearing or disposing of gloves.<sup>12</sup>

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<sup>12</sup>The mystery of the missing gloves was solved when Glenn Harris reported that Joseph Creedon was carrying gloves as he returned to Harris' car after the murders. A.35 (Sworn Statement of Glenn Harris, August 29, 2003); *see also infra* Background Part K.2.



Despite forensic testimony that Arlene Tankleff put up a significant struggle during the attack, Marty had no cuts, scratches, or bruises on his body. A.3546, 3731-3734, 3739-3746. Scrapings of Marty's fingernails revealed no evidence of a struggle, and scrapings of Arlene's fingernails produced no sign of Marty's skin. A.3516-3617, 3540-3541. No blood, hairs, or fibers identified as belonging to Marty were found on or around his parents' bodies. A.3469-3502.

Finally, contrary to Marty's "confession" that he murdered Arlene first and then murdered Seymour, Seymour's blood was found in the master bedroom where Arlene's body was found, thereby indicating that Seymour was killed first. A.3504-3505.

#### **G. The Police Fail To Investigate Jerry Steuerman**

Because Detective McCready had obtained a "confession" from Marty within hours of arriving at the scene, McCready and the other officers never pursued any other leads or suspects. Indeed, they were locked into the notion of Marty's guilt—identifying a different assailant would only have exposed Marty's interrogation as blatant police coercion and provided powerful exculpatory evidence to the new suspect.

Steuerman was never considered a suspect despite the fact that each of the participants at the late-night poker game stated that the game broke up at around 3:00 a.m. and that they each left the Tankleff house before Steuerman. A.3232,

3255-3261.<sup>13</sup> In fact, poker player Joseph Cecere testified that when he left, Steuerman, who moments before had been engaged in a serious and private conversation with Seymour Tankleff, waved him to go ahead even though this required Cecere to back his car delicately around Steuerman's, which "just didn't make any sense." A.3262.

Most importantly, after the attacks, Steuerman engaged in behavior so bizarre that it should have in and of itself raised serious suspicions about his involvement. The day after the attacks took place, Steuerman withdrew \$15,000 from his and Seymour Tankleff's joint bank account. Then, several days later, while Seymour was still alive, *Steuerman feigned his own death, changed his appearance, and fled to California under an alias.* A.3355-3363, 3366-3384.<sup>14</sup>

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<sup>13</sup>Evidence at trial suggested that the assaults occurred closer to 3:00 a.m., rather than the 6:00 a.m. timeframe described in Marty's "confession." Ethel Curley, who was the first of the medical personnel to examine Arlene at approximately 6:30 a.m., testified that the blood on Arlene's head, her forearm, and on her nightgown was already dried and crusted at that point, and that Arlene's skin appeared pale, indicating the passage of time. A.3206-3207, 3210-3215. Likewise, Seymour was covered with dry blood, and, when Curley moved him, a large golf-ball-sized clump of blood fell from Seymour's body to the floor, which was so coagulated that it sounded like a piece of equipment had fallen. A.3219-3220. Thus, the evidence indicated that hours passed between the attacks and the arrival of medical help at around 6:30 a.m. A.3206-3207.

<sup>14</sup>To create a plausible motive for his supposed death, Steuerman falsely told his attorney that he had started to receive death threats after the attacks on the Tankleffs. A.3366-3368 (Steuerman). Then, on September 14, 1988, Steuerman drove to Hauppauge, New York, where he parked his car across the street from a hotel, left the engine running and the door open, went into the hotel long enough to change his clothes and shave his beard, and then took a bus to Atlantic City. From there, he went to Newark and then flew to Los Angeles under the alias "Jay Winston." A couple of days later he made his way to San Francisco, where he called his girlfriend back home and uttered a single codeword, "pistachio." A.3289-3291, 3371-3384 (Steuerman).

When Detective McCready traveled to California two weeks later to talk to Steuerman, it was not because Steuerman's behavior had changed his status into that of a suspect, *but because he was wanted as a witness against Marty*. A.3384-3385, 3387-3396.

At the time of the murders, Jerry Steuerman owed Seymour Tankleff over \$400,000, which was secured by an interest in Steuerman's Strathmore Bagels chain and in other ventures. A.3305-3307, 3309, 3311-3325, 3332-3335. Steuerman had been paying his debt through weekly cash payments, which he would deliver to Seymour at the poker games or which Seymour would pick up from one of the bagel stores. However, in the months preceding the murders, Steuerman was experiencing serious financial difficulties that were affecting his ability to pay. A.3279-3285, 3317. During this period, Steuerman's relationship with Seymour was hostile and deteriorating, and they had heated arguments about Steuerman's debt and their various business dealings. For example, Steuerman had wanted to enter into a new business with his son, Todd, but Seymour insisted that Steuerman could only do so with Seymour's participation. A.3285-3287, 3344-3346, 3861-3863.<sup>15</sup> As Steuerman testified, Seymour seemed to think that he not

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<sup>15</sup>Mike McClure, an attorney in California (and Arlene's brother in law), testified at trial that Seymour Tankleff had talked to him that summer about his business relationship with Steuerman. Seymour told him that Steuerman had recently attempted to get out from under his weekly payment obligations and that Seymour had insisted that Steuerman continue making his payments as usual. Seymour had pointedly told Jerry not to "fuck with" him. A.3861-3863.

only owned half of the partnership, but “one-half of me.” A.3331. Finally, it is undisputed that, on the morning after the attacks, Marty and other family members told the police that Steuerman was reneging on his sizable debt, that Steuerman had recently threatened Seymour Tankleff, and that Arlene Tankleff had recently voiced her fear that Steuerman would do them violence. A.3432-3440 (Officer Pfalzgraf); A.3668-3684 (McCready).

Despite all of these highly suspicious circumstances, Detective McCready never treated Steuerman as a suspect and never revisited his initial conclusion as to Marty’s guilt.

#### **H. The Verdict Is Close**

The verdict at Marty’s trial was terribly close—even after a full week of deliberations, three jurors initially voted to acquit Marty the morning of the day the verdict was ultimately returned, and one of the jurors recanted his guilty votes during post-trial hearings.<sup>16</sup> The jury acquitted Marty of intentionally murdering his mother, but convicted him of killing his mother with depraved indifference to human life and intentionally killing his father. In October 1990, Marty was sentenced to two consecutive 25-to-life terms.

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After Seymour’s death, Jerry immediately stopped making the payments to the Tankleff estate. A.3311-3317.

<sup>16</sup>See A.3894-3895 (Juror Barnett’s testimony at post-trial hearing), 3897-3904 (Juror Baczynski).

## **I. A Sharply Divided Appellate Division Upholds the Convictions**

On December 27, 1993, a sharply divided panel of the Supreme Court, Appellate Division, Second Department, affirmed the convictions by a vote of 3-2. *See People v. Tankleff*, 199 A.D.2d 550, 606 N.Y.S.2d 707 (2d Dep't 1993). The majority held that Marty was not entitled to *Miranda* warnings earlier than he received them, finding that he was not in "custody" until the very second that he "confessed." *Id.* at 553.

The two-judge dissent found that the confession was obtained in violation of *Miranda*, because, *at the latest*, Marty was in custody at the time that Detective McCready told him that his father had identified him as the assailant. As the dissent observed, "no reasonable, innocent person who found himself identified as the perpetrator in this manner would have believed that he was free to leave." 199 A.D.2d at 556, 606 N.Y.S.2d at 712. The dissent concluded: "In view of the absence of any other evidence connecting the defendant to the murders, except for the confession which he disavowed at the trial, the indictments should be dismissed." *Id.* at 556-557.

The New York Court of Appeals deferred to the decision of the divided Appellate Division and affirmed in a perfunctory one-page opinion. *See People v. Tankleff*, 84 N.Y.2d 992, 646 N.E.2d 805 (1994).

**J. The U.S. Court of Appeals for the Second Circuit Finds a *Miranda* Violation, But Is Unable To Provide a Remedy**

Following the denial of federal habeas relief in the district court, Marty sought review in the Second Circuit. Contrary to the holdings of the state courts, the Second Circuit determined that Marty plainly was in “custody” prior to 11:54 a.m. See *Tankleff v. Senkowski*, 135 F.3d 235, 243-244 (2d Cir. 1998). The court concluded that Marty, “should, therefore, have been advised of his rights as required by *Miranda* much earlier than he was, and all of the inculpatory statements he made before receiving the warnings should have been suppressed.” *Id.* at 244. Nevertheless, the court held that it could not grant Marty any *federal* remedy. Citing *Oregon v. Elstad*, 470 U.S. 298 (1985), the court held that “the interrogation that took place before the reading of the *Miranda* warnings *barely* did not entail that degree of coercion that would irredeemably taint Tankleff’s ‘second,’ *Mirandized* confession.” *Tankleff*, 135 F.3d at 245 (emphasis added).

The Second Circuit, however, recognized that, according to *New York* law, all of Marty’s statements should have been ruled inadmissible. Under *New York* law, the belated provision of the warnings could not cure the *Miranda* violation unless there was a “pronounced break” in the interrogation. Because there was no such pronounced break in Marty’s interrogation, both Marty’s pre-warning and post-warning statements should therefore have been suppressed. See 135 F.3d at 246 (citing *People v. Chapple*, 38 N.Y.2d 112 (1975)). Although the Second

Circuit could not provide relief for this apparent violation of *state* law, the court suggested that the New York courts should provide such relief. *Id.* When Marty sought reargument in the state courts, however, his requests were denied without comment.<sup>17</sup>

**K. Marty Files the Present C.P.L. § 440.10 Motion in County Court**

By 2003, a retired New York detective named Jay Salpeter, who was working on behalf of Marty and his family, gathered sufficient evidence of Marty's innocence to present to a court. Accordingly, on October 3, 2003, Marty returned to County Court and asserted the claims at issue in this appeal. Initially, his § 440.10 motion relied primarily on the statements of Karlene Kovacs and Glenn Harris. *See* A.34 (Affidavit of Karlene Kovacs); A.35 (Sworn Statement of Glenn Harris). At the 440 hearing, however, ultimately dozens of witnesses gave testimony or submitted affidavits supporting Marty's innocence. Taken together, Marty's new evidence convincingly establishes that Joseph Creedon and Peter Kent killed Marty's parents at the behest of Jerry Steuerman. The most significant new evidence is as follows:

**1. Joseph Creedon Admitted to Multiple Witnesses That He Committed the Tankleff Murders**

Creedon, who is known as "Joey Guns," is a violent career criminal, with convictions for assault with a deadly weapon, grand larceny, and the forcible rape

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<sup>17</sup>*See, e.g., People v. Tankleff*, 93 N.Y.2d 1034, 719 N.E.2d 916 (1999).

of a 14-year-old girl. At the 440 hearing, he admitted that between 1986 and 1991 he collected money for drug dealers, including for Todd Steurman, and that he was accustomed to using force to do his job. A.1396-1402, 1404, 1409-1411, 1445-1456 (Creedon); A.1884-1885 (Graydon).<sup>18</sup> Creedon cannot account for his whereabouts on the night of the murders.

Multiple witnesses, including Creedon's own son, testified that Creedon admitted to them that he committed the Tankleff murders. Many of these witnesses did not know one another or had not spoken in years:

- Joseph Guarascio: Joseph Guarascio is Creedon's seventeen-year-old son. He testified that when he and his mother, Teresa Covias (Creedon's ex-girlfriend), went to New York for a funeral in April 2004, he spent time with his father. Having heard Creedon's name in media reports, Guarascio asked his father whether he was involved in the Tankleff murders. Although he was hesitant at first, Creedon eventually told his son of his involvement in the murders, including details such as that it was Jerry Steurman who motioned for Kent and him to enter the Tankleff house after the poker game. A.2907-A.2908, 2913-2925 (Joseph Guarascio).
- Gaetano Foti: Foti worked at a bar that Creedon frequented in the early 1990s. He testified that Creedon admitted his involvement in the Tankleff murders on two occasions. On the first occasion, the subject of the Tankleff case came up in conversation, and Foti said that it was a shame and that he thought the "kid" was innocent. Creedon said that he knew Marty was innocent because "I did it."

On the second occasion, Creedon was telling another person at the bar, Billy, that somebody owed him money and that he was going to "take care of him" and shoot him if necessary. Billy expressed his disbelief, saying that Creedon wasn't going to shoot him. Foti responded, "Why isn't he going to shoot him?" and then stated that

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<sup>18</sup>A complete transcript of the 440 hearing is included in the Appendix.



Creedon had said that he committed the Tankleff murders. Creedon then nodded his head yes and said, “yes, I did.” A.1715-1716 (Foti).

A Suffolk County detective, Robert Trotta, testified that Foti is a reliable source, upon whom Suffolk County has relied in the past. A.2626 (Trotta).

- Karlene Kovacs: Kovacs testified that in 1990 or 1991 she accompanied John Guarascio to the home of Creedon and Teresa Covias for Easter dinner. While they were talking and smoking a joint of marijuana together, Creedon told her that he was involved in the Tankleff murders. He said that he hid outside the Tankleffs’ house watching a card game, and that at some point he entered the house and was there with one of the Steuermans, “pumped up” with adrenaline. He also said that he needed to get rid of his clothes afterwards. A.1525, 1530-1531, 1564 (Kovacs). Kovacs passed a polygraph examination, verifying the truthfulness of her statements. A.144 (Polygraph Report for Karlene Kovacs, April 23, 2002).
- John Guarascio: John Guarascio, who is Teresa Covias’ brother and Joseph Guarascio’s uncle, was dating Kovacs at the time of the Easter dinner. He corroborated Kovacs’ account of what Creedon had told her, though he testified that, out of fear of Creedon, he had initially denied Kovacs’ account when asked by a DA investigator. He also testified that he had not spoken to Kovacs since they stopped dating over a decade ago. A.1682-1687 (John Guarascio).
- Billy Ram: Billy Ram, who had dealt drugs with Creedon in the past, testified that on the night of the murders Creedon, Peter Kent, and Glenn Harris were at his house. Creedon told Ram that he was going to “rough up” a “Jew in the bagel business” who lived in Belle Terre. Creedon asked Ram to help with the job and to borrow his mother’s car, and Ram declined. Later that night, Ram saw Creedon leave with Kent and Harris. The next day, Harris was distraught and he told Ram what had happened in Belle Terre. A.1960-1968, 1971-1973 (Ram).

Ram also testified that when he saw Creedon a few years later, Creedon mentioned that Kent and Harris were snitching on each other. Ram said something to the effect that they probably weren’t snitching because, if they were, Creedon himself would be in prison for murder, and Creedon agreed. A.1968-1969 (Ram).

Additionally, Ram's girlfriend, Heather Paruta, confirmed at the hearing that years earlier, either in or around 1999, Ram told her about an innocent person who was serving 25-to-life for killing his parents and said that he knew who in fact committed the crimes. A.2028-2029, 2031a, 2035 (Paruta).

- Joseph Graydon: Graydon was another of Creedon's criminal associates. He testified that in 1992 or 1993 he talked to Creedon at a bar, and Creedon told him that he had committed a couple of murders and gotten away with it. Because several years earlier, in June 1988, Graydon had joined Creedon in an unsuccessful attempt at murdering one of the "partners" of "Strathmore Bagels," Graydon believed that Creedon was referring to the Tankleff murders. A.1870-1871 (Graydon).

## **2. Glenn Harris Drove Creedon and Peter Kent to the Tankleff House On the Night of the Murders**

Another witness, Glenn Harris, provided crucial eyewitness proof of Creedon and Kent's role in the Tankleff murders. Harris, a career criminal, gave a sworn affidavit in August 2003, stating that on the night of the murders he left the house of Billy Ram with Creedon and Peter Kent to commit a robbery in the Belle Terre neighborhood. As noted above, Harris is corroborated by Ram, who testified that Harris, Creedon, and Kent left his house after Creedon had unsuccessfully attempted to recruit Ram to help him "rough up" a "Jew in the bagel business." According to Harris' sworn affidavit, while Harris waited in the car, Creedon and Kent went into the backyard of the house and emerged 20 minutes later, agitated and covered in blood. Kent was white as a ghost, and Creedon was carrying a pair of gloves. At this point, Harris understood that this had not been a robbery. The next day, Harris heard news reports of the crimes at the Tankleff house, and he

realized that he had been the getaway driver in those murders. A.146 (Sworn Statement of Glenn Harris, August 29, 2003); A.1177-1179, 1189-1190, 1258, 1358 (Salpeter); A.1965-1968 (Ram); A.1799-1801 (Lemmert). Later that day, Harris went to Ram's house to tell him what had taken place, which Ram verified in his testimony. A.1965-1966 (Ram).<sup>19</sup>

Harris has given this account to multiple witnesses over a course of years, including to his wife, his mother, Salpeter, Father Ronald Lemmert, Sister Angeline Matero, his co-residents at a "sober" house, and two wired inmates who the DA recruited to prod Harris into recanting. *See infra* Section I.B.2.<sup>20</sup> In particular, Harris' wife, Lisa Harris, stated in her affidavit that Harris confessed to her and to his mother on multiple occasions and mentioned various details,

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<sup>19</sup>While Harris was in prison for a parole violation, Walter Warkenthien, the DA's investigator, threatened Harris that he could go to prison for life if he stuck to his story proving Marty's innocence. A.2663 (Warkenthien) (testifying that he told Harris that "if the statement that you gave to Mr. Salpeter is true . . . you may be very well changing places with Marty Tankleff."). Harris was then improperly taped by two wired inmates at the direction of the DA and was threatened by one of Kent's friends in prison. A.1803-1807 (Lemmert). Nevertheless, Harris said he would testify at the 440 hearing. But when he asked for use immunity, and the DA denied his request and the court refused to order immunity, Harris refused to testify. Based in part on the DA's conduct with regard to Harris, Marty's counsel filed a motion requesting that the DA be disqualified from further participation in this case, which the court denied. *See* A.910-911, 937-940.

<sup>20</sup>Additionally, a recently discovered witness, Patrick Touhey, recounts that, in 1996, while he and Harris were in prison together, Harris approached him for advice on a problem—that he knew about someone who was in jail "for committing murder but didn't do it." A.4005 (Affidavit of Touhey). This discussion, which occurred *years* before Harris came into contact with Marty's defense team, further undermines the DA's accusation below that Harris was somehow induced to fabricate his account. Touhey's affidavit was submitted in support of Marty's third § 440 motion, which was filed in October 2006. *See supra* n.2.

including that Kent was covered with blood when he emerged from the Tankleff house. Lisa Harris also stated that Harris looked guilty and ashamed when he made these statements and that she is certain that he was telling her the truth. A.3934-3935 (Affidavit of Lisa Harris, February 23, 2006). Additionally, Glenn Harris passed a polygraph test, verifying the truthfulness of his statements. *See* A.146 (Polygraph Report for Glenn Harris, June 25, 2002).

**3. Peter Kent Admitted to Committing the Tankleff Murders, and His “Alibi” Is In Fact Highly Incriminating**

Another witness, James Moore, gave an affidavit stating that Kent admitted to the Tankleff murders on two occasions. In 2002, Moore and Kent were working on a construction crew building a swimming pool. They had an argument, and Kent threatened to kill Moore. Moore said, “[H]ow you going to kill me? You never killed nobody,” and Kent said that he had beaten the Tankleffs to death with a pipe out in Belle Terre. A.3940 (Affidavit of Moore). At that time, Moore had not heard of the Tankleffs and did not believe Kent. A.3939-3940.

Later, in 2003 or 2004, Moore encountered Kent at a Walmart, while Moore was there with his wife and son. Kent had just been released from jail, and he again referred to his participation in the Tankleff murders, saying that he and his friend were “paid to do the deed.” A.3940. Kent said that the police questioned him about the Tankleff murders while he was in jail, but that he wasn’t that

worried because, if the police had anything on him, they would not have released him. *Id.*

Moore's account is corroborated by the testimony of Ram, who not only saw Kent, Creedon, and Harris leave together on the night of the murders, but also later had a conversation with Kent in which Kent acknowledged that if Harris were snitching on him, he would go to jail for a long time. A.1969-1971 (Ram).<sup>21</sup>

Like Creedon, Kent admitted during the 440 hearing to an extensive criminal career that includes over fifty burglaries. A.2292 (Kent). Unlike Creedon, however, Kent attempted to establish an alibi, testifying that he and his friend, Danny Raymond, were in the middle of a week-long spree of armed robberies at the time of the Tankleff murders. But this testimony was in fact highly incriminating. Kent testified that he stayed at his sister's house in Ronkonkoma—which is just seven miles from Billy Ram's house in Selden—on September 6, 1988, and that he committed a robbery in Farmingville, only four miles from Selden, the next night. Significantly, this corroborates Ram's and Harris' statements that Kent was with them (along with Creedon) at Ram's house in

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<sup>21</sup>Moore's account is further supported by Frank Messina, the owner of Truly Blue Pools, who stated that Kent and Moore worked for him building pools during the time in question. Messina also described an incident in 2002, in which Kent was working on a pool at 33 Seaside Drive, which Kent identified to Messina as the "Tankleff house." Remarkably, Kent told Messina that he had been there before, and, when Messina inquired further, Kent cryptically said, "I had business there" and "I had my business." Only later did Messina connect Kent's statements to the Tankleff murders. A.3942-3944 (Statement of Frank Messina Jr.).

Selden on the night of September 6. When Creedon, Kent, and Harris left Ram's house together that night, the Tankleff house in Belle Terre was just ten miles away. A.2357-2359, 2385-2389, 2391-2412 (Kent); A.1965-1966 (Ram).<sup>22</sup>

#### 4. Jerry Steuerman Hired Creedon to Commit the Murders

In addition to identifying Creedon and Kent as the murderers, Marty's new evidence also establishes that Jerry Steuerman was connected to Creedon through Steuerman's son, Todd; that Jerry Steuerman hired Creedon to commit the murders; and that Jerry Steuerman once admitted in a spontaneous moment of

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<sup>22</sup>Kent also testified that he could not have committed the Tankleff murders because, at around 3 a.m. on September 7, he and Danny Raymond were in New York City buying and taking drugs. A.2398-2399 (Kent). However, Raymond was recently located and has executed an affidavit repudiating Kent's account and stating that, in fact, Kent had coerced Raymond into supporting his false alibi. Marty brought Raymond's statements to the County Court's attention in his most recent § 440.10 motion, filed October 2006. *See supra* n.2. Specifically, Raymond states: "[Kent's] testimony is false. Peter Kent was not with me on September 7, 1988 between the hours of 12:00 a.m. and 6:00 a.m." A.4000 (Affidavit of Raymond, August 22, 2006). Raymond describes last seeing Kent several days before September 7 and then meeting up with him again at approximately 6:30 p.m. on September 7—some 12 to 15 hours after Marty's parents were murdered. *Id.* As a result, Raymond "cannot account for Peter Kent's whereabouts at the time of the murder of the Tankleffs." *Id.*

Raymond's affidavit explains that Kent made a surprise visit to see him in prison in 2004. During this visit, Kent told Raymond that he had been named in the Tankleff murders, and he proceeded to pressure Raymond into supporting his alibi, telling Raymond that there are "serious people involved with this" (he named Creedon and Jerry Steuerman) and that "[t]hey are watching your family. They know that you have three kids that live with your wife in Hicksville." A.4001. Kent's knowledge about Raymond's family frightened Raymond because he and Kent had not been in contact for approximately 14 years, and Raymond's first child was not born until 1993. Raymond told Kent that he would support his alibi and provided Kent a July 12, 2004 affidavit to that effect, but Raymond now confirms that that affidavit was false. A.4081-4082 (Affidavit of Raymond, October 31, 2006); *see also* A.4084-4085 (Affidavit of Helen Bezgamblick, November 1, 2006) (Raymond's grandmother stating that Raymond told her of Kent's visit and request that he lie about his alibi). Raymond later told Assistant DA Lato that he could not support Kent's alibi, but because Raymond was afraid for his family and scared of the DA's office due to his parole status, Raymond and Lato ultimately agreed that Raymond would not testify at the 440 hearing. A.4083.

anger that he murdered two people. Also, the new evidence sheds further light on Steuerman's financial motive and his violent character.

When Steuerman decided to resort to violence to deal with his problems with his partner, Seymour Tankleff, he had a gang of criminals ready at hand. As Marty's new evidence revealed, Steuerman's son, Todd, dealt cocaine and marijuana out of one of the bagel stores owned by Jerry Steuerman and Seymour Tankleff, and Todd Steuerman used Joseph Creedon and other criminals as his "enforcers." A.1396-1397, 1401-1402 (Creedon); A.2057, 2094 (Glass); A.1681 (Guarascio); A.1249 (Salpeter).

Jerry Steuerman first turned to Brian Scott Glass, one of Todd Steuerman's enforcers. As Glass recounted to Marty's investigator, sometime in 1988, Jerry Steuerman met with Glass at the bagel store and asked him to physically threaten or injure Seymour Tankleff, saying that *Tankleff* owed *him* money. A.2050-2052, 2118 (Glass). Because Glass thought it was odd that Steuerman wanted to have Tankleff "roughed up" when he could just collect the money that was supposedly owed, he turned Steuerman down.<sup>23</sup>

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<sup>23</sup>When Glass met with defense counsel in July 2004, he recounted this version of events and agreed to testify at the 440 hearing. A few days later, however, Glass became worried that if he appeared in court he would be arrested on an outstanding robbery charge. A.2065 (Glass). He had a meeting with the DA's office on October 22, 2004, and was told that the DA would make things tough for him if he testified as planned. As a two-time offender, he would be facing 25 years to life on the robbery charge. A.2787 (Callahan); A.2061-2062 (Glass). After that meeting, Glass changed his story. A.2786 (Callahan). Glass was arraigned for the robbery and released on recognizance upon the motion of the DA. Later, Glass was arrested on a different

Glass, however, passed the job on to a long-time friend and another of Todd's enforcers, Joseph Creedon. A.2790-2791 (Callahan); A.2055-2056, 2118-2119 (Glass). According to the testimony of Joseph Graydon, in June 1988, Creedon told him that he had been hired to kill one of the partners of Strathmore Bagels and asked for Graydon's help. The following Sunday, Graydon drove Creedon to one of the Strathmore Bagels stores—expecting to find Seymour Tankleff and planning to make the hit look like a robbery—but the store was closed, so they drove away. A.1865-1869, 1897-1901 (Graydon). Thus, Creedon's first attempt on Tankleff's life was unsuccessful.

Jerry Steuerman's ties to Creedon were further highlighted by an incident that occurred after the murders, in 1989. According to affidavits signed by Creedon himself, Jerry Steuerman attempted to hire Creedon to "cut out" Marty's tongue, because Marty had been accusing Steuerman of the murders. When Creedon declined, Steuerman's son, Todd, shot Creedon in the arm. After Todd

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charge, and while he was awaiting arraignment he relayed this series of events to Mark Callahan, an acquaintance from high school. A.2785-2786, 2805 (Callahan). Glass has since denied knowing Steuerman and denied that Steuerman ever asked him to attack Seymour. A.2059-2060, 2094 (Glass). The apparent improper threat and inducement offered by the DA's office to Glass to recant his statements was raised by Marty's counsel along with Warkenthein's improper threat to Harris in a motion to disqualify the DA's office. *See* A.1015-1016.



Steuerman was arrested, Jerry Steuerman offered Creedon \$10,000 if he agreed not to press charges.<sup>24</sup>

During this same period, Jerry Steuerman made a damaging admission during a fit of anger. Neil Fischer, a cabinetmaker, testified at the 440 hearing that in the spring of 1989 he was installing counters at Steuerman's bagel store in Oakdale. Also at the store was a man who had sold Steuerman a bagel oven. According to Fischer, the oven was malfunctioning, and Steuerman "lost his temper" and was "very angry," screaming that he had "already killed two people and that it wouldn't matter to him if he killed him [the oven salesman]." Fischer believed Steuerman was referring to the Tankleffs. A.1833-1834 (Fischer).

Bruce Demps' testimony also connects Jerry Steuerman to the murders. Demps knew Todd Steuerman from their time in prison in the late 1980s and early 1990s. In prison, they discussed the Tankleff murders on two separate occasions. Both times, Todd Steuerman said that Marty did not kill his parents and that his father had hired someone to kill them. A.1761-1764 (Demps).

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<sup>24</sup>See A.39 (Affidavit of Creedon, September 17, 1990); A.40 (Sworn Statement of Creedon, April 23, 1989). At the hearing, Creedon backed away from his September 17, 1990 affidavit, saying that he only had talked to Todd Steuerman, not Jerry Steuerman, and that he had failed to notice this repeated mistake in the affidavit. A.1412-1416 (Creedon). Robert Gottlieb, Marty's trial lawyer who prepared the affidavit, rebutted Creedon's testimony. He testified that he was certain that Creedon told him that he had spoken to Jerry, and he produced contemporaneous notes corroborating his recollection and contradicting Creedon's testimony. A.1665 (Gottlieb).

The new evidence also shows how hostile the relationship between Jerry Steuerman and Seymour Tankleff had become in the months preceding the murders. Arlene Tankleff's nephew, Ronald Falbee, testified at the 440 hearing that when he was at the Tankleff house for a family reunion in July, 1988—only weeks before the murders—he observed Seymour having a “very angry, loud, aggressive” conversation with Jerry Steuerman on the phone, and he learned that the situation with Steuerman had gotten “almost out of control.” A.2193-2194.<sup>25</sup>

In addition, Arlene Tankleff's sister, Marcella Alt Falbee, who spent most of the summer of 1988 at the Tankleff house, stated that in the week or two before the murders, Jerry Steuerman threatened Seymour Tankleff during a morning visit to the bagel store. Specifically, during an argument about Steuerman's debt, Steuerman lunged across the counter, grabbed Seymour by the neck, and said, “You son of a bitch. You want to own me. I'll see you dead first.” The incident left Seymour and Arlene frightened for their safety. A.74, 77-80 (Affidavits of Marcella Alt Falbee, June 21, 2002 & March 21, 2005).

Finally, despite Jerry Steuerman's protestation at trial that he would “never do anything like that” (in referring to the murders), A.3291, it is now known that Steuerman has previously resorted to violence to settle a business dispute. When

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<sup>25</sup>Paul Lerner also testified to this growing hostility. For example, in the spring or summer of 1988, Seymour and Steuerman had a falling out when Steuerman invested \$30,000 in a horse. Seymour was furious that Steuerman would spend that kind of money when he owed him so much. A.2150-2152.

Steuerman first went into the bagel business, he hired Hell's Angels to attack union members who were protesting outside his store. Although the government was aware of this valuable information, it was never disclosed to the defense.<sup>26</sup>

**5. Detective McCready Perjured Himself at Marty's Trial By Falsely Denying His Longstanding Relationship with Jerry Steuerman**

At trial, Marty's defense counsel argued that the police investigation was rushed and grossly incomplete, and he intensely questioned lead Detective McCready as to why he never treated Jerry Steuerman as a suspect. During this questioning, McCready repeatedly and categorically denied that he knew Steuerman before the day of the murders.<sup>27</sup> However, two new witnesses—whose

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<sup>26</sup>While the Second Circuit found this to be a *Brady* violation, it determined that there was insufficient prejudice to warrant relief. *See Tankleff*, 135 F.3d at 251. Other instances from Steuerman's past show his willingness to lie in judicial proceedings and his penchant for taking extreme measures even over modest financial disputes. The year before Marty's trial, in 1989, Steuerman pled guilty to committing fraud on the court. A.3292-3294; A.3300-3302. And, in 1978, he was arrested for criminal trespass for handcuffing himself to the front door of a Merrill Lynch office in an attempt to reclaim the \$3,000 that his stockbroker had allegedly caused him to lose. A.3280-3281, 3304.

<sup>27</sup>Defense counsel's cross-examination of McCready, A.3672-3673, went as follows:

Q: Well, you—Detective, did you know Jerry Steuerman before you heard his name?

A: No, sir, I did not.

Q: Have you ever met Jerry Steuerman?

A: No, sir, I did not.

Q: Did you know anything about Jerry Steuerman?

A: Not at that point, sir, no, sir.

Q: Did you know anything about his background?

A: No, sir, not at that point, sir.

Q: Did you know anything about his business relationship with other individuals other than Seymour Tankleff before he mentioned it?

A: Not at that point. I didn't know one thing about Jerry Steuerman at that point.

credibility has never been questioned—establish that McCready blatantly perjured himself.

At the 440 hearing, Leonard Lubrano testified that Steuerman and McCready knew each other as early as 1984. During that period, Lubrano operated a distribution company that supplied baked goods to area restaurants, and he would pick up bagels from Steuerman’s store on a daily basis. During these visits, he saw McCready and Steuerman conversing at the bagel store on more than one occasion. McCready, who moonlighted as a construction contractor, also told Lubrano that his construction crew was doing work for one of Steuerman’s businesses. A.1930-1934.

Marty also submitted an affidavit from William Vincent Sullivan, who was formerly the manager of Carrington’s, a restaurant and nightclub in Stonybrook, New York. Sullivan stated that between the fall of 1987 and February of 1988—in other words, *within the year preceding the murders*—he saw McCready and

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Q: Did you have any background data on Jerry Steuerman or the people who he does business with?

A: At that point?

Q: At that point.

A: Absolutely not, sir.

Q: Did you know anything about Jerry Steuerman’s children or his family?

A: Absolutely not, sir.

Similarly, at the *Huntley* hearing, when McCready was asked whether he had ever heard of Steuerman before the Tankleff murders, he testified: “Oh, God, no. I never heard of him.” A.3147-3148.