

December 23, 2005

Hon. Stephen L. Braslow
Arthur M. Cromarty Court Complex
210 Center Drive
Riverhead, New York 11901

RE: People v. Tankleff, Ind. Nos. 1290/88 & 1535/88

Dear Hon. Judge Braslow:

On December 19, 2005, Joseph Guarascio testified that his father, Joey “Guns” Creedon, confessed to him his role in the murders of Arlene and Seymour Tankleff. In the context of this extraordinary hearing, this testimony, while remarkable, seemed almost ordinary: this Court has heard from five other witnesses, all of whom have testified that Creedon admitted the same thing to them. The burden for obtaining a new trial is, and should be, high. Rarely has a defendant amassed the amount of evidence of his innocence that Mr. Tankleff has provided this Court. Tankleff has presented a credible, compelling theory of how his parents were murdered. The original jury pronounced Marty guilty without the benefit of any of this evidence. If a jury were to hear it, there can be little doubt that it would probably change the verdict. Under these circumstances, New York law -- and indeed fundamental fairness -- mandate that a new trial be ordered.¹

Guarascio testified that Creedon told him what happened the night of the murders. Creedon, Peter Kent, and Glenn Harris drove to the Tankleffs’ home, where Jerry Steuerman -- the man the Tankleff family has always suspected of being the orchestrator of Seymour and Arlene’s deaths -- gave them a signal to enter. While Harris waited in the car, Creedon and Kent went inside.² Creedon used a stripped bike cable to choke Seymour, then used a gun to beat him.³ Kent, meanwhile, went to the

¹ As set forth in our prior briefs, Mr. Tankleff has met each of the criteria to merit a new trial under People v. Salemi, 309 N.Y. 208, 216 (1955), and, indeed, his convictions should be vacated under People v. Valance Cole, 1 Misc. 3d 531 (S. Ct., Kings County, Sept. 12, 2003), since he has proven his actual innocence.

² As heard on the tape of Guarascio’s telephone conversation with Jay Salpeter, Harris “knew what was going on” the night of the murders. It is not surprising that some of the details Harris has provided about that night -- like who discarded the pipe -- differ from the description Creedon gave Guarascio. Harris attempted to diminish his involvement, while Creedon likely never suspected that his son would report his admissions.

³ While the District Attorney may argue that Mr. Tankleff was not choked or garroted, he may have been disabled by a cable around his throat as the perpetrator came up behind him. Dr. Vernard Adams testified at trial that the front of Mr. Tankleff’s throat had been cut so deeply as to reach his voicebox, and that the back of his neck was cut so deeply that bone was exposed. Trial Tr. 3985. In addition, a tracheostomy had been performed, meaning that a breathing tube was inserted through a surgical incision in the front of Mr. Tankleff’s throat. Trial Tr. at 3987. Thus, by the time the autopsy was performed, any indication that a cable had been used would have been masked by the cuts or the tracheostomy, and because Mr. Tankleff’s neck wounds had healed during the month he was in a coma. See Trial Tr. at 3994. That Creedon beat Seymour Tankleff

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Tankleffs' bedroom, where he stabbed Arlene to death. Guarascio also testified Creedon said he went up "some steps" to Marty's room, and saw that Marty was asleep.⁴ Later that night, Creedon, Kent, and Harris went to the home of an individual whose street name was "Ronnie Reefer" and burned their clothes in his basement.

The District Attorney seems to believe that Guarascio intended to speak to Jay Salpeter privately and decided to testify before this Court only after receiving some unspecified "inducement" -- of which the District Attorney has no evidence other than his imagination. As with the other witnesses against whom the District Attorney has lodged similarly ludicrous attacks (*i.e.*, that the defense has induced them to testify falsely), this absurd theory cannot possibly be proven, because it is patently false. In fact, Guarascio's initial phone call with Salpeter provides a powerful rebuttal. When Guarascio first spoke with Salpeter, while engaged in what he believed to be a private conversation where he could be totally candid, Guarascio expressed great confidence he could get Creedon to confess to him on tape. There can only be one reason for this confidence: Guarascio was telling the truth that Creedon had already confessed to him once, and as Guarascio testified, "There was no reason why he wouldn't do it again."

The District Attorney's willingness to engage in sideshows based solely on innuendo very clearly shows he has no real answer to the abundance of new evidence that Marty Tankleff has presented during the course of this hearing, including Guarascio's testimony. In opposing Tankleff's § 440 motion based on Guarascio's affidavit, the District Attorney banked on the notion that Guarascio would not testify, going so far as to opine that Guarascio might "state that he had lied in exchange for some inducement from Tankleff." The People's Memorandum in Opposition to Martin Tankleff's August 2005 C.P.L. § 440 Motion to Vacate His Murder Convictions at 24. Yet when faced with Guarascio in person, and when faced with proving this allegation before the Court, the District Attorney could not muster so much as a good-faith question on the subject.

In spite of the District Attorney's attempts to distort the record, a clear picture of the events of September 7, 1988 has surfaced through the evidence presented at this hearing. Guarascio's testimony further corroborates all of the prior testimony. Ron Falbee and Paul Lerner have testified that Seymour Tankleff had become increasingly demanding about the hundreds of thousands of dollars that Jerry Steuerman owed them. Steuerman arranged to have Seymour and Arlene murdered. As Mark Callahan testified and Brian Glass admitted to Salpeter and counsel for Tankleff, Steuerman first approached Glass, who passed the job along to Creedon. Creedon has conceded that he knew Todd Steuerman, because he was the enforcer for his drug business. Creedon has previously given sworn testimony, corroborated by Robert Gottlieb, that Creedon had spoken with Jerry Steuerman on multiple occasions by telephone. Creedon and Joseph Graydon went to do the job, but, as Graydon testified, they missed their opportunity. Billy Ram testified that one night when Creedon was at his house, Creedon announced he had been hired to "rough up a Jew in the bagel business." According to Harris' sworn statement, which was corroborated by Ram's testimony, they left Ram's house to go to the Tankleffs'. Kent's testimony that he had an "alibi" only served to corroborate Harris and Ram, as it placed him within two miles of Ram's house on the day of the Tankleff murders. Steuerman admitted he was at the

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with a gun is consistent with the trial testimony of Dr. Adams, who stated that Mr. Tankleff's blunt-force head injuries could have been caused by more than one instrument. Trial Tr. at 4000-01. Thus, it is possible that both the barrel of the gun and the pipe were used to bludgeon Mr. Tankleff.

⁴ The Tankleff residence was a split-level home. One would need to walk up a partial flight of stairs to get from the office where Mr. Tankleff was murdered to Marty Tankleff's room.

Tankleffs' house that night, playing in a regularly scheduled poker game. This gave him the opportunity to leave the house with the last of the card players, feign that he was going home, but instead, as Guarascio testified, give Creedon and Kent a signal to come inside. Once inside, Creedon and Kent murdered the Tankleffs, leaving Marty asleep upstairs.

Unaware of this testimony, Marty Tankleff was convicted on the basis of an unreliable false confession that did not match the physical evidence. The defense is now able to do what it could not in 1990: present proof to a jury that at Steuerman's behest, Creedon and Kent -- not Marty Tankleff -- murdered Seymour and Arlene. It is precisely the sort of evidence that the United States Supreme Court addressed in Chambers v. Mississippi, 410 U.S. 284 (1973). Indeed, Guarascio's testimony about Creedon's confession to him, in combination with the testimony of Gaetano Foti, Billy Ram, Joseph Graydon, Karlene Kovacs and John Guarascio of Creedon's admissions to them, is eerily similar to the evidence the Supreme Court held was improperly excluded in violation of the defendant's right to due process. Under Chambers, state evidentiary rules cannot be used to exclude from a jury compelling evidence of a defendant's innocence. Prohibiting Marty Tankleff from presenting this testimony would violate his due process rights.

This summer, defense counsel studied 100 wrongful-conviction cases. A number of universal traits surfaced. In each case, the person convicted consistently maintained his innocence. These individuals spent an average of 15 years in prison, and in each case, evidence of the individual's innocence existed, but the evidence was either overlooked or deliberately ignored by the prosecution. In virtually all of the cases, the prosecution was the last to admit the mistake -- if at all. A staggering 2,500 judges and jurors heard evidence in these cases at trial, on appeal or on habeas and concluded, wrongly, the defendant was guilty. In each case, one judge finally had the courage to right the wrong. Marty Tankleff's legal struggle has been a long one and other judges have reviewed aspects of his case. None have heard the evidence heard by this Court. This Court has the opportunity, and the obligation, to present Mr. Tankleff, his family members, and the citizens of Suffolk County the opportunity to have this evidence heard by a jury. Only then can justice finally be served.

Respectfully submitted,

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