

COUNTY COURT OF SUFFOLK COUNTY
TRIAL TERM, PART 6 SUFFOLK COUNTY

THE PEOPLE OF THE STATE OF NEW YORK,

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BRASLOW, J. C. C.

VS

: DATE: October 3, 2005

MARTIN H. TANKLEFF,

: COURT CASE NO.: 1535-88
1290-88

Defendant,

THOMAS SPOTA, ESQ.
SUFFOLK COUNTY DISTRICT ATTORNEY
By: Leonard Lato, Esq.
Criminal Courts Building
Center Drive South
Riverhead, New York 11901

BRUCE A. BARKET, ESQ.
ATTORNEY FOR THE DEFENDANT
666 Old Country Road
Suite 100
Garden City, NY 11530

The defendant has served and filed another motion pursuant to CPL 5440 dated August 3, 2005 in which he provides the court with an affidavit dated July 28, 2005 of Joseph John Guarascio, son of Joseph Creedon. Mr. Guarascio asserts in that affidavit that his father admitted to him in or about April, 2004 that he participated in the murders of Seymour and Arlene Tankleff.

In their moving papers, the defendant's attorneys assert that they were aware of this information as early as February, 2005. The defendant's attorneys assert that they were unable to procure an affidavit from Mr. Guarascio, claiming that he was apprehensive about providing such an affidavit to the court because of his father's reputation for violence which could then be directed at him and members of his family. The defendant asserts that Mr. Guarascio eventually agreed to provide the affidavit, in spite of his fear of his father, which affidavit has now been submitted.

The People argue in their answering papers that it is in the very least suspect that the defendant did not specify the date in February

that the defendant's attorneys first learned of this information, since they could have had Mr. Guarascio testify at the hearing had they known about it prior to its conclusion on February 4, 2005. The defendant responds with the affidavit of his investigator Jay Salpeter who states that he first learned of this information on February 10, 2005. The defendant's attorneys claim they in turn met with Mr. Guarascio on February 12, 2005 and that it took them until July 28, 2005 to get Mr. Guarascio to provide the affidavit.

Before this court orders that the hearing be reopened it must first be convinced that the defense attorneys did not know of the information Mr. Guarascio could have provided to them, and thus could not have called Mr. Guarascio as a witness before the hearing was closed. Although the dates set forth in the defendant's reply papers indicate that the defense first learned of the information after the hearing closed, it appears that it was immediately after the hearing closed that Mr. Salpeter and then defendant's attorney met with Mr. Guarascio. It is rather telling, as the People point out, that the defense was not clear in their moving papers as to the date they learned of this new information, and that they waited until the People raised the issue before they came forward with more specific dates.

Accordingly, the court will first hear from defense counsel on the question as to whether the testimony of Joseph John Guarascio could have been available to them prior to the conclusion of the hearing. This will include an answer to the question as to why they chose to have their investigator, Jay Salpeter, meet with Joseph John Guarascio on February 10, 2005, which is immediately after the conclusion of the hearing.

Finally, while the court would not deprive this or any defendant of his right to be heard, the court reminds the defendant that successive and repetitive motions are discouraged and may be denied pursuant to CPL §440.10(3). If this court ultimately decides to reopen the hearing, it will be presumed that the defendant has marshaled and presented all the evidence that he has except for the anticipated testimony of this one witness, Joseph John Guarascio, and that there are no other witnesses waiting in the wings.

A conference will be held on October 24, 2005 at 9:30 a.m.

The foregoing shall constitute the decision and order of the court.

ENTER,



STEPHEN L. BRASLOW - J.C.C.