

COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

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PEOPLE OF THE STATE OF NEW YORK

- against -

SUPPORTING MEMORANDUM
Indictment Nos.: 1535-88/1290-88

MARTIN H. TANKLEFF,

Defendant.

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**MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANT'S MOTION TO VACATE HIS CONVICTION
PURSUANT TO C.P.L § 440.10(1)(g)**

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INTRODUCTION

Martin Tankleff, has already produced a wealth of evidence proving that his parents were murdered, not by him, but by Joseph Creedon, and Peter Kent, with the participation of Glenn Harris, at the request of Jerry Steuerman.¹ Mr. Tankleff now has yet another piece of powerful evidence establishing his innocence. Joseph J. Guarascio, Joe Creedon's 17 year old son, has disclosed that his father admitted that he participated in the murder of Marty Tankleff's parents. Joseph Creedon described to his son how he, Joe Creedon, along with Peter Kent and with Glenn Harris' knowledge and assistance, murdered Arlene and Seymour Tankleff.

When asked point blank by Joseph Guarascio if he murdered the Tankleffs, Joe Creedon responded, to his son "Yeah I did it." Creedon then went on to admit how they entered the house on a "signal" from Jerry Steuerman, how a brake line from a bicycle was used to immobilize Mr. Tankleff while he was struck with a gun, how Peter Kent stabbed Arlene Tankleff in her bedroom, how Kent and Creedon burned their clothes, how Glenn Harris discarded a pipe that was used in the murders, and, finally, that Glenn Harris knew of their murderous plans prior to driving the three people to Belle Terre.

¹During the evidentiary hearing relating to the pending 440 petition of Martin Tankleff introduced evidence demonstrating that Mr. Tankleff was wrongfully convicted of murdering his parents Seymour and Arlene Tankleff, and that his parents were in fact murdered by career criminals hired by Seymour's business partner, Jerry Steuerman. Mr. Tankleff's final brief in support of his petition will be filed on August 22, 2005 and will further detail how the evidence at the 440 hearing demonstrated that Joseph Creedon, a criminal associate of Jerry Steuerman's son, committed the murders with the assistance of his criminal colleagues, Peter Kent and Glenn Harris.

This new evidence standing alone is sufficient to justify vacature of Martin Tankleff's conviction. But of course, this evidence does not stand by itself. It is just the latest discovery in what has become an avalanche of interlocking and corroborated evidence proving what Marty and other family members told the police on September 7, 1988 - that Jerry Steuerman was behind the murder of Arlene and Seymour Tankleff.

As this Court knows, Joseph Creedon has already been implicated in these murders by no less than six other people.² To that list the Court can now add Creedon's own flesh and blood, his seventeen-year-old son. The admission is startling because it provides the first window into what took place inside the Tankleff home the night of Seymour and Arlene's murder. It is consistent with much of the testimony heard by the Court during the most recent post judgment hearing, and proffered by a witness with no personal interest in the outcome of Martin Tankleff's case.

If members of a jury were to hear that Creedon made these admissions to his own son, it is simply inconceivable that they would convict Martin Tankleff. The time has come to open the Martin Tankleff's prison cell and free Martin Tankleff – an innocent man wrongfully convicted of murder. The time has also come for justice to find its way to the door of Jerry Steuerman, Joseph Creedon, Peter Kent and Glenn Harris. This Court may not be able to compel the prosecution of Steuerman and his henchmen, but it can and should order that Martin Tankleff's conviction be vacated and that he be released.

²Glenn Harris, Karlene Kovacks, Brian Scott Glass, Joseph Greydon, Gaetano Foti, and William Ram.

STATEMENT OF FACTS AND BACKGROUND

On April 12, 2004, Joseph Guarascio traveled to Long Island for a funeral (A ¶ 3).³ While in New York, Joseph Guarascio made arrangements to spend some time with his father, Joseph Creedon (A ¶ 4). Guarascio had been separated from his father for almost 10 years because of his father's abusive treatment of Theresa Guarascio Covais, Joseph Guarascio's mother (A ¶ 4). Prior to making the trip, Joseph Guarascio watched a "48 Hours" news segment which depicted Glenn Harris implicating his father in the murder of Arlene and Seymour Tankleff (A ¶ 2). Over the course of his visit, Joseph Guarascio had a number of conversations with his father regarding the Tankleff murders (A ¶ 11, 12, 13).

During one of their meetings, Joseph Guarascio accompanied Creedon to Creedon's mother's house. Creedon still had a room there, and showed Joseph Guarascio his safe, which contained money and jewelry. He also showed Joe Guarascio a black bag which contained a .357 pistol, hand cuffs and leg shackles. When displaying these items Creedon said "this is for Glenn Harris if he testifies."⁴

It was the next day Creedon made his most damning admissions. Joe Guarascio described what his father told him in Paragraph 11 of his Affidavit:

³ Numbers in parentheses preceded by "A" ¶ refer to paragraph citations from a sworn Affidavit signed by Joseph Guarascio on July 28, 2005, which is annexed hereto as **Exhibit "A"**.

⁴ This information is significant because, later in 2004, a hearing was scheduled to begin and Glenn Harris was scheduled to testify. In addition, Glenn Harris' name was prominent at the time because he was the center piece of the news segment aired by "48 Hours" involving the murders.

The next day my dad and I were driving around and I asked him, “Did you really do that?” We both knew that I meant the Tankleff murders. He said “Yeah, I did it.” Over the course of the day he slowly began to tell me more and more about the murders and I began to ask more and more questions. He began to explain to me how the murders occurred. He said that it was him, Peter Kent and Glenn Harris. He told me that Harris knew that they were going to kill people. According to my father, Joseph Creedon, he and Peter Kent waited outside of the house until Jerry Steurman gave them a signal. My father told me that [he] brought a cable from a bicycle brake line with him that he had stripped of the black plastic cover. He told me that he used the cable to choke him, which I understood to be Mr. Tankleff. He also told me that they (he did not say who) hit Mr. Tankleff with a snub nose .38 special. He told me that it was Kent who stabbed the “lady,” which I understood to be Mrs. Tankleff. According to my father Kent stabbed “her” by or in the bed. He then told me that he had to go back into the house after they left because they had forgotten something. He also said that at some point he went up some steps and looked into Marty’s room and saw he was asleep (A ¶ 11).

These statements made by Joseph Guarascio confirm what Glenn Harris claimed in his affidavit, with the notable exception that it contradicts Harris’ assertions that he was there only to do a burglary, and did not know anyone was going to get hurt. Joseph Guarascio’s statement also explains how Kent and Creedon gained access to the Tankleff residence - on a signal by Jerry Steurman (A ¶ 11). This fact supports the assertion that Steurman was involved with the murders and either let Creedon and Kent in, or told them how to get in. It corroborates both what Brian Scott Glass told defense counsel (that Jerry Steurman offered him “work” in the form of hurting or killing Seymour Tankleff), and what Joseph Graydon told the Court (that he and Creedon at Steurman’s request set out to kill Seymour Tankleff).

Creedon, directly contradicting Harris’s assertions, told his son that Harris not only knew of their plans to murder Seymour Tankleff before they arrived at the Tankleff home, but actually participated in concealing evidence himself by discarding the pipe used in the murders (A ¶ 12).

Creedon also contradicted Harris on the location where they burned the clothes belonging to Kent and Creedon. According to Harris it was in the back yard of Peter Kent in Selden, New York. On the other hand, according to Creedon, it was in the basement of yet another criminal associate, known as “Ronnie Refer” (A ¶ 12). Creedon told his son that the basement was a place he used to torture people in the course of his “work” as a “collector” (A ¶ 12). In a particularly chilling statement, Creedon boasted that he “burned someone with a lighter and that he never heard anyone scream so loud” (A ¶ 12).

Creedon added some details that to date no one has revealed. He said that they actually had to return to the Tankleff home after the murders to retrieve something they had forgotten (A ¶ 11). He also told his son that he observed Marty Tankleff sleeping in his bed (A ¶ 11). Creedon further stated Kent was directly involved in the murder of Arlene Tankleff. According to Creedon, it was Kent who “stabbed the lady” “in or by the bed” (A ¶ 11). We already knew that Arlene was beaten, stabbed and had her throat slashed in her bedroom. Her body was found twisted in her bed-sheets and the forensic evidence indicates that the attack began while she was actually in her bed. What we did not know until today, is that it was Peter Kent who used a knife to inflict the fatal wounds on Arlene Tankleff. Creedon also told his son that a stripped cable from a bicycle brake was used to “choke” Mr. Tankleff and that Mr. Tankleff was struck with a “snub nose .38 special” (A ¶ 11).

Creedon boasted that he was assured by his attorney that he had “nothing to worry about” (A ¶ 10). He also openly laughed at Jay Salpeter (A ¶ 10). The Court will recall that, surprisingly, Creedon testified at the hearing with his lawyer, Anthony LaPinta, at his side despite having the ability to assert his Fifth Amendment rights. Kent and Creedon’s willingness

to testify was born of assurances given to them by his lawyer in Creedon's case and by the prosecutor in Kent's case.⁵ Lastly, nowhere in Joe Guarascio's statement is there any evidence of animus toward his father or any motive to lie about the events. On the contrary, Joe Guarascio spoke openly about being excited to meet with and get to know his father (A ¶ 4). He also talked about how pleasant Joe Creedon initially seemed and was how good it was to get to know family he had never met (A ¶ 5). It is only after his father began to boast of his criminal exploits that young Joe began to recognize the truth about his father. Ultimately, Joe Guarascio left New York afraid of his father. He feared not only for himself but also for his mother (A ¶ 13). It took months before he revealed what his father had told him and even then, he did so only reluctantly (A ¶ 13). His affidavit, which reveals the details of a trip New York in April of 2004 and a meeting with his father, provides this Court with a bone chilling account of how his father participated in the murder of Arlene and Seymour Tankleff.

ARGUMENT

THIS COURT SHOULD VACATE MARTIN TANKLEFF'S CONVICTION BASED ON NEWLY DISCOVERED EVIDENCE CONSISTING OF THE STATEMENT OF THE ACTUAL KILLER'S OWN SON, RESTATING HIS FATHER'S DETAILED ACCOUNTS OF GOING TO THE TANKLEFF HOME AND KILLING SEYMOUR AND ARLENE TANKLEFF. C.P.L. § 440.10; N.Y. CONST. ART. I §6; U.S. CONST. AMEND. XIV.

A seventeen-year-old young man, desperate for the new-found attention and affection of his estranged father, has instead been forced come forward and disclose information his father told him in confidence regarding the murders of Seymour and Arlene Tankleff. Joseph Guarascio had only recently seen his father, Joseph Creedon, for the first time since he was seven years old. He well-meaningly sought to again reunite with his father during a trip to New York. Eager to make up for lost years, Joseph Guarascio contacted his father when he arrived in New York and spent at least one blissful day with him before a host of frightening information was unloaded on the then fifteen-year-old boy. Creedon admitted to his son that he and two other men had killed Seymour and Arlene Tankleff, and disclosed further details of the crime. After struggling to decide what to do with the information imparted on to him, Joseph Guarascio eventually gave a sworn statement to attorneys representing Martin Tankleff, recounting the details told to him by his father. This sworn statement constitutes newly discovered evidence establishing Martin Tankleff's innocence under Criminal Procedure law section 440.10 (1)(g), and this Court should, accordingly, vacate Martin Tankleff's conviction and order a new trial. C.P.L. § 440.10; N.Y. Const. Art. I §6; U.S. Const. Amend. XIV. In the alternative, this Court

should reopen the hearing recently conducted pursuant to Martin Tankleff's most pending motion pursuant to CPL 440.10, which has not yet been decided, to consider testimony from Joseph Guarascio before making a determination.

New York Criminal Procedure Law section 440.10 provides, in relevant part, that a defendant may move the court in which his judgment of conviction was reached to vacate that judgment on the ground that:

New evidence has been discovered since the entry of a judgment based upon a verdict of guilty after trial, which could not have been produced by the defendant at the trial even with due diligence on his part and which is of such character as to create a probability that had such evidence been received at the trial the verdict would have been more favorable to the defendant. CPL § 440.10 (1)(g).

In addition, the section provides that a defendant must make such a motion "with due diligence after the discovery of such alleged new evidence." CPL § 440.10 (1)(g).

Although the determination of what constitutes "newly discovered evidence" is within the discretion of the trial court, People v. Santos, 306 A.D.2d 197, 198 (1st Dept. 2003), the Court of Appeals enunciated factors which must be considered in making that determination. In People v. Salemi, our high Court held that in order establish a successful claim of newly discovered evidence, a defendant must prove that the new material meets all the following requirements: "it must be such as will probably change the result if a new trial is granted; must have been discovered since the trial; must be such as could have not been discovered before the trial by the exercise of due diligence; must be material to the issue; must not be cumulative to the former issue; and, must not be merely impeaching or contradicting the former evidence." See People v. Salemi, 309 N.Y.2d 208, 215-216 (1955); People v. Burton, 2005 WL 1639191 (N.Y.

Sup. Ct. July 11, 2005); People v. Caba, 2004 WL 2612880 *10 (N.Y. Sup. Nov. 16, 2004); People v. Wise, 752 N.Y.S.2d 837, 841 (N.Y. Sup. Ct. Dec. 19, 2002); People v. Mazred, 613 N.Y.S.2d 826, 830 (N.Y. Co. Crim. Ct. 1993). As one court reasoned, these requirements “can be condensed into three basic questions: (1) could an exercise of due diligence have led to discovery of the evidence before trial? (2) is the evidence material, not cumulative and not merely impeaching of former evidence? and (3) would the evidence probably have changed the verdict at trial?” People v. Mazred, 613 N.Y.S.2d at 830.

More succinctly, the determination of newly discovered evidence “requires an examination of two aspects.” People v. Wise, 752 N.Y.S.2d 837 at 842. The first aspect is the conduct of the defendant - could he have discovered the evidence at the time of trial, and did he move pursuant to 440 with due diligence once the evidence was discovered. Id. The second aspect deals with the nature of the evidence - is it of such character that would have changed the result had it been present at trial, and is it more than simply cumulative or impeaching. Id.

Notably, where newly discovered evidence goes to the heart of the defendant’s trial defense, it cannot be viewed as collateral or cumulative. People v. Santos, 306 A.D.2d 197, 198 (1st Dept. 2003). The court in Santos further noted that the goal in determining newly discovered evidence should not “only involve a procedural nicety, but beyond that ... [it should] touch the very essence of a trial’s truth finding goal; namely, to accord an accused a full and fair opportunity to present highly relevant evidence in his or her defense.” Id. at 198-199.

Recently, a case from the Third Department resulted in the reversal of the trial court’s determination of a defendant’s motion. In People v. Wong, the defendant was identified at trial by two purported eye witnesses. People v. Wong, 11 A.D.3d 724, 724-725 (3rd Dept. 2004).

The first eye witness was a correctional officer who claimed to have observed the defendant, with binoculars, commit the murder, while the witness stood atop “an 80-foot tower, the base of which was approximately 120 yards from the crime scene.” Id. at 725. The other witness was a fellow inmate who testified that he saw the defendant commit the crime from fifteen feet away. Id. The newly discovered evidence consisted of the inmate’s recantation of his trial testimony, and statements of other witnesses who identified a different inmate as the perpetrator. Id.

In analyzing the evidence, the Appellate Division noted that testimony declaring that the defendant did not commit the crime would not constitute newly discovered evidence, because that was the defense theory at trial, and, it was also the basis of another 440 motion brought by the defendant. The court further reasoned that disclosure of the name of the inmate who was the actual killer also failed to constitute newly discovered evidence, because that name had been referenced in document which was in trial counsel’s possession. On the other hand, the court held that, “what is newly discovered evidence is the recantation of Dellfava, who now claims that his entire story was a fabrication, as well as admissions of Gutierrez to various inmates that he, in fact, committed the murder and the evidence of a motive for him to have done so.” Id. at 725 [emphasis added]. Under the court’s analysis, while the other materials did not, each of those two pieces of evidence would satisfy the Salemi inquiry to constitute newly discovered evidence under 440.10 (1) (g), and require vacature of the defendant’s conviction. Id.

Martin Tankleff has come into possession of evidence that indisputably survives the inquiry set forth to require vacature of his conviction under 440.10 (1)(g). In April 2004, Joseph Guarascio and his mother came to New York in order to attend the funeral of his aunt Marilyn “Mimi” Guarascio, who died April 12, 2004. During the trip to New York, Joseph

Guarascio made plans to see his father, Joseph Creedon. Two weeks prior to Joseph Guarascio's trip to New York, Guarascio's father came to Florida and visited with Guarascio. That visit was the first time in approximately nine years that Joseph Guarascio had seen his father. Thus, Guarascio was excited at the idea of again meeting with his father during his trip to New York.

During the first day the two met, Joseph Guarascio and Joseph Creedon spent a time with other family members, and Guarascio enjoyed being with his father. The following days, however, entailed a sorted series of events and stories which left Joseph Guarascio speechless, afraid and wondering. Joseph Creedon took his son to see his paternal grandmother. During that visit, Creedon escorted his son to a room within his mother's home and showed Joseph Guarascio a three to four-foot-tall combination safe. The bottom shelf of the safe was stacked with money, and there was some jewelry in other parts of the safe. Creedon attempted to entice his son by telling him that some day, the contents of the safe would all be his.

Creedon removed a black zippered bag from under the bed in the same room. Inside the bag was a gun, some hand cuffs and leg shackles. Creedon told his son that the gun was for Glenn Harris if he testified. Creedon also showed Guarascio additional weapons which were hidden under the mattress. Upon showing Joseph Guarascio a file that Creedon had compiled with personal information about his ex-wife, Joseph Guarascio's mother, Guarascio began to fear his father, a man he had once been excited to get reacquainted with.

Joseph Guarascio had seen a television show about Martin Tankleff's case, and, during that show, there were allegations that Joseph Creedon had been involved in the murders somehow. Creedon told his son that his attorney assured him he had nothing to worry about

regarding the Tankleff case, and if he was worried, he would not still be in New York.⁶

The following day, Joseph Guarascio was driving around with Joseph Creedon. After the weapons, money and jewelry display at grandma's house, accompanied by comments about what would happen to one Glenn Harris if he testified, Joseph Guarascio decided to ask his father whether he really was the killer he claimed to be. With the simple question, "Did you really do that?" Joe Guarascio received an answer he probably already knew but certainly dreaded. "Yeah, I did it" came the reply. Joe Creedon, with four simple words, has put to rest any lingering doubt about whether he was responsible for the Tankleff murders and at the same time should guarantee Martin Tankleff's exoneration and more importantly his freedom.

Over the course of the day, Creedon slowly revealed more and more about his involvement in the Tankleff murders. Details included Creedon's confession that he, Peter Kent and Glenn Harris were the ones who carried out the murders, which were ordered by Jerry Steurman. Creedon brought a gun and a cable from a bicycle brake line with him to the Tankleff residence. The cable was used to choke Seymour Tankleff, and a "snub nose .38 special" was used to hit Mr. Tankleff. According to Creedon's accounts, it was Kent who

⁶This truly bizarre statement reveals, perhaps as well as any other fact, how widely known it is that the Suffolk law enforcement community is unwilling or unable to pursue any lead or suspect in the Tankleff murders. In what other context would a career criminal, who was named by a half a dozen people as a murderer, waive his right to remain silent, testify in open court (further implicating himself by admitting to being a "collector" of drug money from the other main suspect's son) and tell his family that he was not "worried." Even an innocent man would be "worried" if he was accused of murder and even the lawyer of an innocent man would prevent him from adding fuel to the fire by testifying. It begs the question: why is Creedon so sure that he will not be prosecuted?

stabbed Arlene Tankleff, and he did so while Mrs. Tankleff was near her bed.

Creedon also told his son that after the murders, the three involved left the house, threw a pipe they had also used out of the car, and went to “Ronnie Reefer’s” house where they burned their clothes in the basement. Creedon added that they had used that basement to torture people.

Impressionable, **fifteen-year-old**, Joseph Guarascio was shocked and scared at the information imparted onto him by his father. Torn between a desire to rekindle a relationship with his estranged father and being drawn into an unfamiliar world of murder, weapons and deceit, Joseph Guarascio was unsure what exactly he should do. He resolved not to tell a soul, but was riddled with the guilt knowing what he knew.

In February 2005, the burden of knowing about his father’s direct involvement in the death of two people became too much to bear for the young, teenage, Joseph Guarascio. One February night in 2005, Guarascio’s mother found him crying in bed. Upon asking her son what was troubling him, Guarascio eventually revealed to his mother all of the information that his father had told in April 2004.

Joseph Guarascio’s mother immediately contacted the investigator working for Martin Tankleff. Several days later, the investigator went to Florida, interviewed Joseph Guarascio and convinced him to meet with attorneys for Martin Tankleff. During that meeting with the attorneys Joseph Guarascio repeated what he knew, but expressed a deep concern of what his father would do to him and his family if his father knew that he had come forward with the information. His reluctance to go on the record with the information he had was based on fear of his father’s retaliation, particularly since he knew his father was capable of murder, and also because his father informed him that he would harm or kill Glenn Harris if he testified.

Five months after his meeting with the attorneys Joseph Guarascio traveled to their offices and gave a sworn statement recounting the details of his father's confession to him. Guarascio exhibited incredible courage in agreeing to give his sworn statement, because he did so despite the inability of those present to offer any assurance of his future well-being, or the safety of his mother, sister and other family members.

Not only does this newly discovered evidence survive the inquiry set forth under CPL section 440.10 (1) (g), but the nature of the evidence is akin to that of the evidence reviewed by the Appellate Division in People v. Wong, where the court reversed the trial court's denial of the defendant's motion.

With regard to surviving CPL 440.10 (1)(g) standards, Salemi requires that the sworn statement of Joseph Guarascio could not have been produced by attorneys for Martin Tankleff at the time of trial, even with due diligence. See People v. Salemi, 309 N.Y.2d at 215-216; see also People v. Burton, 2005 WL 1639191; People v. Caba, 2004 WL 2612880; People v. Wise, 752 N.Y.S.2d at 841; People v. Mazred, 613 N.Y.S.2d at 830. Primarily, the Tankleffs' actual killer did not confess the crime to his son until April 2004. In addition, the existence of Joseph Guarascio, in the context of his having information regarding Martin Tankleff's case, was unknown to the defense until his mother contacted the investigator working for Martin Tankleff in February of 2005. There is no way that anyone would or could have discovered that Creedon confessed to committing the murders to his son, unless either Creedon himself, or his son, disclosed that fact.

Second, if a new jury were presented with testimony from Joseph Guarascio accounting the above-described details imparted onto him by his father, there is no question that such

testimony would “probably change” the verdict. See People v. Salemi, 309 N.Y.2d at 215-216; see also People v. Burton, 2005 WL 1639191; People v. Caba, 2004 WL 2612880; People v. Wise, 752 N.Y.S.2d at 841; People v. Mazred, 613 N.Y.S.2d at 830. Martin Tankleff has always maintained that he is innocent, and never killed his parents. Even if the prosecution were able to present the same witnesses, and introduce the very evidence they had at the first trial, a jury, upon hearing from the killer’s own son, would undeniably be presented with sufficient reasonable doubt to vote for Martin Tankleff’s acquittal. Not only would Joseph Guarascio testify that his father admitted killing Seymour and Arlene Tankleff, but he would also provide intimate details of the crime itself and the crime scene, the particulars of which were furnished to him in confidence by his very own father. This evidence would not involve second hand information or a case of mistaken identity. To the contrary, it represents compelling, detailed, and trustworthy accounts by a witness who could not have mistaken the source of the information.

Another Salemi consideration requires that the evidence have been discovered since trial. See People v. Salemi, 309 N.Y.2d at 215-216; see also People v. Burton, 2005 WL 1639191; People v. Caba, 2004 WL 2612880; People v. Wise, 752 N.Y.S.2d at 841; People v. Mazred, 613 N.Y.S.2d at 830. That consideration is met by the annexed statement of Joseph Guarascio, who swore that he never revealed this information to anyone until five months ago, some 17 years subsequent to Martin Tankleff’s conviction and was unwilling to provide an affidavit until now. Joseph Guarascio’s statement also notes that his father did not reveal this information to him until last year. As such, this information was discovered after the trial of Martin Tankleff.

The next element is that the new evidence be material to the issue and not cumulative.

See People v. Salemi, 309 N.Y.2d at 215-216; see also People v. Burton, 2005 WL 1639191; People v. Caba, 2004 WL 2612880; People v. Wise, 752 N.Y.S.2d at 841; People v. Mazred, 613 N.Y.S.2d at 830. One can scarcely image evidence more material than that which credibly identifies another perpetrator of the crime, and does so by recounting statements from that perpetrator's own mouth. Joseph Guarascio is a witness with no rationally conceivable motive to fabricate this information against his father, directly implicating him in the commission of two murders. His statement is credible and, in relevant parts, corroborated by the evidence at trial.

For instance Joseph Guarascio's statement contains an assertion the his father and two others were solicited to murder Seymour and Arlene Tankleff by Jerry Steuerman, and that on the night of the murders, Jerry Steuerman gave the three killers a signal letting them know that it was okay to proceed with the plan to murder the Tankleffs. At trial, the evidence established that Jerry Steuerman was present in the Tankleff home on the night of the murders, along with other individuals, for a card game. Not only was Jerry Steuerman the last person to leave the Tankleff home that night, but the person who left right before him saw Jerry Steuerman supposedly leave the residence right behind him. Curiously, that individual never saw Steuerman get in his car and drive away from the Tankleff home as he had. This supports the assertion within Joseph Guarascio's statement that Steuerman remained and gave Kent, Harris and Creedon, the "signal" to proceed with the murders. Another example that the statement is corroborated by evidence at trial is that Creedon claims that Kent stabbed Mrs. Tankleff "by or in the bed." Photographs of the crime scene, admitted into evidence at trial, depict Mrs. Tankleff's deceased body near the bed inside her bedroom. At trial there was evidence of a bloody glove print found around the light switch in Marty's bedroom. It appeared as if the

person who left the print was groping for the light switch which he could not immediately find. This is consistent with Creedon's assertion that he went up to Marty's room presumably to check on him, and saw him sleeping and left him. Further, Creedon states that he went up some "steps" to Marty's room. The Tankleff residence is a ranch style house and does not have a second floor. However, if one travels from the kitchen or living room to the bedroom one would walk through a sunken living room from which you would have to walk up "steps" to get to Marty's room. That Creedon knew this fact reveals that he was actually in the Tankleff house and establishes that he was in fact one of the murderers.⁷ For these reasons, this Court should find that Joseph Guarascio's sworn statement is "material and not cumulative," to satisfy the fifth inquiry under the Salemi test.

Finally, under Salemi, the law requires that the Defendant establish that the evidence do more than simply impeach or contradict the evidence presented at trial. See People v. Salemi, 309 N.Y.2d at 215-216; see also People v. Burton, 2005 WL 1639191; People v. Caba, 2004 WL 2612880; People v. Wise, 752 N.Y.S.2d at 841; People v. Mazred, 613 N.Y.S.2d at 830. Joseph Guarascio's statement recounting his father's admission to killing Seymour and Arlene Tankleff would not serve to impeach anyone, because neither Joseph Guarascio nor his father, Joseph

⁷ These examples were gleaned from Joseph Guarascio's statement simply to attest the materiality of this new evidence. It by no means represents an exhaustive account the numerous ways in which Joseph Guarascio's statement is corroborated by the evidence at trial. Furthermore, this new evidence must be considered in conjunction with the evidence presented at the evidentiary hearing in support of Mr. Tankleff's pending 440 petition.

Creedon, testified at trial. Moreover, the sworn statement does more than contradict evidence presented at trial, it completely exonerates Martin Tankleff of the murders, by identifying the true perpetrators, and articulates those perpetrators' motive for committing the murders. Those perpetrators were paid henchmen who brutally attacked and killed Seymour and Arlene Tankleff for money, cars, jewelry or whatever favor of payment fashionable at the time. They did so at the order, request and behest of their benefactor, Jerry Steuerman whose motives were exhaustive and well documented throughout the history of this case.

This new evidence of Joseph Creedon's confession, and Creedon's implication of the other perpetrators involved in the Tankleff murders, cries out for reversal of Martin Tankleff's conviction. This assertion is supported not only by the fact that said evidence satisfies the arduous standards set forth in Salemi, as set forth above, but the assertion is further supported by the Appellate Division's recent decision in People v. Wong. The court in that case neither minimized nor disparaged the Salemi requirements in order to vacate that defendant's conviction. To the contrary, the court analyzed each piece of new evidence offered in support of the defendant's motion, and noted those parcels of evidence which would not in fact qualify as newly discovered evidence. In the end, it determined that a full recantation of one of the two eyewitnesses, and statements from others who recounted the actual killer's confession and motive, were parcels of evidence that would surely constitute newly discovered evidence under CPL 440.10 (1)(g). Accordingly, the court vacated the defendant's conviction and ordered a new trial.

Likewise, Martin Tankleff is presenting this Court with credible, and compelling evidence that an individual, other than Martin Tankleff, committed the murders for which Martin

Tankleff remains imprisoned. As in Wong, the new evidence also establishes the motive harbored by those individuals who actually did the killing. The source of this compelling information is the none other than the very own son of one of the murderers, who came forward, with no motive to lie, and under threat of harm to himself and his family, in order to offer information directly given to him by his father. In accord with the Appellate Division's holding in Wong, this Court would be remiss in failing to hold that such powerful evidence, so telling of Martin Tankleff's innocence, constituted "newly discovered evidence" within the meaning of 440.10 (1) (g), especially when the evidence satisfies all prongs of the Salemi inquiry.

According to the Appellate Division's holding in Wong, and in light of the fact that Joseph Guarascio's statement constitutes newly discovered evidence when analyzed under Salemi, the statement alone is sufficient to warrant vacature Martin Tankleff's conviction. Notwithstanding, this Court is additionally furnished with a compelling amount of other evidence, also uncovered subsequent to Martin Tankleff's conviction, which would support a finding to vacate Martin Tankleff's conviction. Among such evidence are the sworn testimonies of: (1) Brian Scott Glass establishing that Jerry Steuerman offered Glass money to kill Seymour Tankleff, which Glass rejected, but passed or offered the "job" to Joseph Creedon;* (2) Joseph Graydon establishing that Joseph Creedon hired him to assist in the murder of Seymour Tankleff (which Graydon knew to have been requested by Steuerman), and that Creedon and Graydon went to a location in order to accomplish that task, but were unable to succeed because Seymour Tankleff was not at that location; (3) Karlene Kovacs who testified that Creedon admitted to her that he had killed the Tankleffs after waiting in the bushes and watching the card game;* (4) and, compellingly, Glenn Harris who not only admits to driving Creedon and Kent to the Tankleff

home, but also admits that Creedon and Kent returned to the vehicle after spending some time in the home, and upon their return to the vehicle, they were covered in blood, discarded a “pipe” along the way, and burned their clothes.*⁸

It is worth noting again that Joseph Guarascio’s statement, in and of itself, is sufficient to require this Court vacate Martin Tankleff’s conviction. However, in the face of the above-mentioned, additional evidence of Martin Tankleff’s innocence, it is hard to imagine that Marty should now remain in prison. Seymour and Arlene Tankleff have been deceased over seventeen years now, and their memories are haunted by the chilling fact that their son remains unjustly convicted for their murders, while the true killers are still at large, despite the mountain of evidence establishing not only their son’s innocence, but the guilt of those responsible.

We recognize that this is yet another piece of evidence offered more than a year after the hearing began and some six months after it closed. In all candor it probably will not be the last. We are compelled to bring to the Court the evidence we find establishing our client’s innocence. To say this will not end today is simply stating that we believe we have correctly identified the murderers of Arlene and Seymour Tankleff and that there is still other evidence in existence which has yet to be discovered. We do not have the power to convene a Grand Jury, subpoena witnesses, grant deals to cooperating defendants, or offer immunity to witnesses. We do not have a police force at our disposal nor do we have a crime lab to analyze evidence. What we do have is the truth and bit by bit the truth has a way of revealing itself. Of course, the most

⁸ Asterisks denote sworn statements which corroborate Joseph Guarascio’s affidavit, annexed as **Exhibit “A”**.

obvious answer to question of why we keep discovering new evidence implicating Steuerman, Creedon, Kent and Harris, is that those four men actually murdered Seymour and Arlene Tankleff and that Marty Tankleff is actually innocent.

This Court should vacate Martin Tankleff's conviction based on the newly discovered evidence of Joseph Guarascio's statement implicating his own father, Kent, and Harris. In the alternative, this Court should reopen the hearing recently conducted pursuant to Martin Tankleff's pending motion pursuant to 440.10, and review for consideration the testimony of Joseph Guarascio before making a determination.

CONCLUSION

**THIS COURT SHOULD VACATE MARTIN TANKLEFF'S
CONVICTION OR REOPEN THE HEARING AND ALLOW
TESTIMONY FROM JOSEPH GUARASCIO BEFORE
MAKING A DETERMINATION.**

Respectfully submitted,

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