

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D17544
M/nl

_____AD3d_____

Argued - October 4, 2007

REINALDO E. RIVERA , J.P.
GABRIEL M. KRAUSMAN
ANITA R. FLORIO
MARK C. DILLON, JJ.

2006-05031

DECISION & ORDER

The People, etc., respondent,
v Martin Tankleff, appellant.

(Ind. Nos. 1290/88, 1535/88)

Baker Botts LLP, Washington, D.C. (Stephen L. Braga, Courtney G. Saleski, and Sheila Kadagathur of counsel), Kelley Drye & Warren, LLP, Washington, D.C. (Barry J. Pollack and Dawn E. Murphy-Johnson of counsel), Wilmer Cutler Pickering Hale and Dorr LLP, Washington, D.C. (Jennifer M. O'Connor, Brent Gurney and Roberto Gonzalez of counsel), Law Offices of Bruce A. Barket, P.C., Garden City, N.Y., Clifford Chance US LLP, New York, N.Y. (Warren Feldman and Scott Splittgerber of counsel), and Paul, Weiss, Rifkind, Wharton & Garrison LLP, New York, N.Y. (Mark F. Pomerantz of counsel), for appellant (one brief filed).

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Leonard Lato of counsel), for respondent.

Appeal by the defendant, by permission, from an order of the County Court, Suffolk County (Braslow, J.), dated March 17, 2006, which denied, without a hearing, his motion pursuant to CPL 440.30(1-a), inter alia, for forensic DNA testing of certain evidence recovered by the police.

ORDERED that the order is reversed, on the law, the motion is granted, and the People are directed to provide the defendant's counsel with access to Trial Exhibit 125b, consisting of fingernail clippings and scrapings recovered from both hands of Arlene Tankleff, and the known exemplars of the DNA of the defendant, Joseph Creedon, Peter Kent, Jerry Steurman, and Arlene Tankleff for the purpose of performing forensic DNA testing, within 30 days after service upon the People of a copy of this decision and order.

December 18, 2007

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Under the circumstances of this case, the County Court improperly denied the defendant's motion pursuant to CPL 440.30(1-a) for access to Trial Exhibit 125b, consisting of fingernail clippings from both hands of Arlene Tankleff and scrapings therefrom, as well as the known exemplars of the DNA of the defendant, Joseph Creedon, Peter Kent, Jerry Steuerman, and Arlene Tankleff (*see People v Pitts*, 4 NY3d 303, 311; *People v Keene*, 4 AD3d 536, 537).

RIVERA, J.P., KRAUSMAN, FLORIO and DILLON, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court