

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

THE PEOPLE OF THE STATE OF NEW YORK,

VS

MARTIN H. TANKLEFF,

Defendant,

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:
: BRASLOW, J. C. C.
:
: DATE: March 17, 2006
:
: COURT CASE NO.: 1535-88
: 1290-88
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The defendant was convicted in 1990 of the second degree murder of his parents Seymour and Arlene Tankleff. He now moves this court for an order pursuant to CPL §440-30(1-a) directing that the People provide him with access to trial exhibit 125b, which consists of the fingernails of his mother for DNA testing. The purpose of this request is to determine if those fingernails or their scrapings contain DNA evidence of someone other than the defendant and the victim. The defendant asserts that if it does, than it demonstrates that Mrs. Tankleff was murdered by someone other than the defendant and that a jury would have acquitted him had they been provided with this evidence.

Additionally, the defendant is seeking DNA evidence of Joseph Creedon, and Peter Kent, the individuals the defendant claims actually committed the murders, as well as Jerry Steureman who the defendant claims hired Creedon and Kent to murder his parents. The defendant is also requesting DNA samples of himself and his mother Arlene Tankleff.

The People oppose the motion claiming that the defendant has

already made a motion in 2000 pursuant to CPL §440.30(1-a) for DNA testing. In that motion the defendant included a request, among other specific requests, that the People be required to provide him with: "...whatever other items in their possession that might contain genetic evidence susceptible to DNA testing..."

That motion was granted and specific materials were tested and the results were provided to the defendant.

The People argue that the defendant's current motion is barred as being repetitive and that the defendant should have exercised due diligence and requested the evidence he is seeking when he filed his prior motion for DNA testing.

This court's review of that motion and the order of Judge Cacciabauda dated November 15, 2000 indicates that the People consented to the request and were forthcoming in providing the requested evidence.

The defendant replies that there is no time limit in moving pursuant to CPL §440.30(1-a) for DNA testing, and that there is no requirement that the defendant exercise due diligence in exercising that right, citing People v. Pitts, 4 N.Y.3d 303.

On the other hand, the defendant has no reason why the fingernails of Arlene Tankleff, could not have been tested in 2000 together with the other evidence tested, since it was a trial exhibit. Moreover, it appears that the People were cooperative in 2000 in that they consented to the requested testing.

This court does not read People v. Pitts, 4 N.Y.3d 303 as authorizing repetitive and successive motions for DNA testing, or that it authorizes piecemeal applications. If the defendant wanted his mother's fingernails tested, he could have had it done in 2000 along with the other evidence tested. As the court held in People v. Pugh, 288 A.D.2d 634

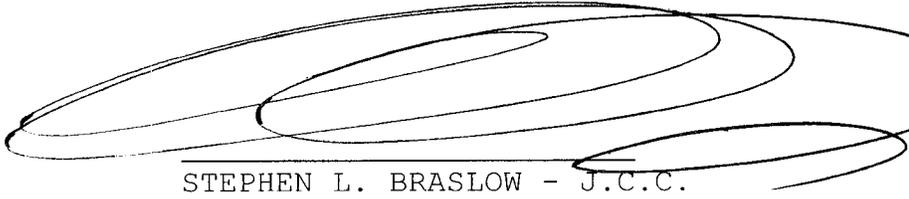
[the defendant] is not entitled to a second opportunity to obtain DNA testing, having failed to pursue such testing either prior to trial (see, People v Kellar, *supra*, at 410) or upon his prior CPL §440.10 motions, despite having been in a position to adequately raise this issue (see, CPL §440.10 [3] [c]).

Likewise, DNA testing of samples from Creedon, Kent, Jerry Steuerman, Arlene Tankleff and the defendant also could have been done at that time to the extent that such samples were in the possession of the People. These items would have been included in the defendant's catch-all request.

Accordingly, the defendant's motion is denied in its entirety.

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

ENTER,

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and curves, positioned above the typed name.

STEPHEN L. BRASLOW - J.C.C.