

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 35

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THE PEOPLE OF THE STATE OF NEW YORK, :

: EXHIBITS TO
DEFENDANT'S
C.P.L. § 440.10
MOTION

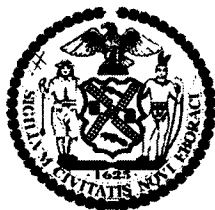
-against- :

JOHN GIUCA, : Ind. No. 8166/2004

Defendant. :

_____X

EXHIBIT A



Kenneth P. Thompson
District Attorney

**DISTRICT ATTORNEY
KINGS COUNTY**
350 JAY STREET
BROOKLYN, NY 11201-2908
(718) 250-2000
WWW.BROOKLYNDA.ORG

Tamara Edelstein
First Deputy Bureau Chief
Conviction Integrity Unit

February 24, 2014

Mark A. Bederow
Bederow Miller LLP
260 Madison Avenue
New York, NY 10016

Re: People v. Guica
Indictment #8166/2004
CIU 14-01

Dear Mr. Bederow,

This serves to acknowledge receipt of your recent letter, as well as Petition and Exhibits on behalf of your client John Guica, dated February 1st, 2014. We have reviewed your submission, and we will investigate, if appropriate, those portions that have not been litigated through post-conviction motions. Please keep in mind that we will not consider procedural violations, legal issues, or prior findings based upon determinations of credibility, as we are not a substitute for an appellate review.

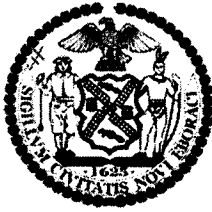
A.D.A. Michael Trabulsi has been assigned to review the case. He may be reached at 718-250-3197. We ask that you turn over any information you obtain with regard to statements, written or oral, as well as other applicable evidence during the course of your investigation. If you have any questions or concerns, please feel free to contact me at 718-250-3038.

Sincerely,

Tamara Edelstein
Assistant District Attorney
First Deputy Bureau Chief
Conviction Integrity Unit

cc: Chief ADA Mark Feldman
ADA Michael Trabulsi

EXHIBIT B



Kenneth P. Thompson
District Attorney

**DISTRICT ATTORNEY
KINGS COUNTY**
350 JAY STREET
BROOKLYN, NY 11201-2908
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April 11, 2014

Via CERTIFIED MAIL and EMAIL

Mark Bederow, Esq.
Bederow and Miller
260 Madison Avenue
New York, New York 10016

RE: People V John Guica
Ind. 8166/2004
CRU No. 14-01

Dear Mr. Bederow:

The Conviction Review Unit has begun examining your current petition and subsequent submissions for the above referenced matter. We are currently assessing the merits of each particular claim and starting to investigate relevant materials and witnesses. In response to your request that this office waive statute of limitations defenses for "failure to raise timely newly discovered evidence claims" in both federal and state courts, the District Attorney acknowledges and agrees that the submitted petition and subsequent submissions do constitute the raising of a claim. As such, this office would not seek to argue in any future post-conviction litigation that the period from the date of submission (February 1, 2014) until the date that the Conviction Review Unit's investigation is completed is a delay. Please note that while the District Attorney acknowledges that the materials submitted constitute the raising of a claim, our office does not concede that this claim or claims constitutes new evidence. Further, we do not concede that your failure to bring your petition or initiate litigation prior to February 1, 2014 was not untimely.

Assistant District Attorney Michael Trabulsi is reviewing the case. He can be reached at 718-250-3197. As the review of the matter continues he or I will contact you and keep you abreast of any relevant information.

Sincerely,

Mark Hale
Counsel
Conviction Review Unit

CC Professor Ronald Sullivan
Deputy Chief Eric Sonnenschein
Assistant District Attorney Michael Trabulsi

EXHIBIT C

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS, CRIMINAL TERM: PART 35

-----X
THE PEOPLE OF THE STATE OF NEW YORK, :

- against - :

JOHN GIUCA, :

Defendant. :

-----X

NOTICE OF MOTION

INDICT. NO.: 8166/2004

Return Date: February 8, 2005

COUNSEL:

PLEASE TAKE NOTICE, that upon the annexed affirmation of LANCE LAZZARO, duly affirmed February 3, 2005, and upon all the prior papers and proceedings herein, the undersigned will move the Supreme Court, Criminal Term, County of Kings, Part 35, 120 Schermerhorn Street, Brooklyn, New York, on the 8th day of February, 2005, at 9:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard for the following relief:

- I. MOTION FOR A BILL OF PARTICULARS PURSUANT TO CPL §§ 200.95 AND 100.45;
- II. MOTION FOR DEMAND FOR DISCOVERY PURSUANT TO CPL § 240.20(1);
- III. MOTION FOR DISCOVERY PURSUANT TO CPL § 240.40(1)(a);
- IV. MOTION TO SUPPRESS IDENTIFICATION TESTIMONY (WADE);
- V. MOTION TO SUPPRESS STATEMENTS (HUNTLEY);
- VI. MOTION TO INSPECT AND DISMISS;
- VII. MOTION TO PRECLUDE CROSS-EXAMINATION OF THE DEFENDANT AS TO PRIOR CRIMINAL BAD ACTS (SANDOVAL);
- VIII. MOTION RESERVING THE DEFENDANT'S RIGHT TO FILE FURTHER MOTIONS PURSUANT TO CPL § 255.20;

and for such other and further relief as this Court deems just and proper.

FOR THE PEOPLE OF THE STATE OF NEW YORK

Dated: Brooklyn, New York
February 3, 2005

Yours, etc.,
LANCE LAZZARO
Attorney for Defendant
Lazzaro & Gregory, P.C.
360 Court Street, Suite 3
Brooklyn, New York 11231
(718) 488 – 1900

TO: CHARLES J. HYNES
DISTRICT ATTORNEY
COUNTY OF KINGS
ASSIGNED ADA: MS. ANNA-SIGGA NICOLAZZI

CLERK
SUPREME COURT, CRIMINAL TERM
PART 35
COUNTY OF KINGS

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS, CRIMINAL TERM: PART 35

-----X

THE PEOPLE OF THE STATE OF NEW YORK, :

- against - :

JOHN GIUCA, :

Defendant. :

-----X

AFFIRMATION

INDICT. NO.: 8166/2004

STATE OF NEW YORK)
) SS.:
COUNTY OF KINGS)

LANCE LAZZARO, Esq., an attorney duly admitted to practice in the Courts of this State and a member of the firm LAZZARO & GREGORY, P.C., hereby affirms under the penalties of perjury the following allegations:

1. All allegations contained herein, unless otherwise indicated, are based upon information and belief, the sources of such information being available court records, conversations with the defendant, and voluntary disclosure by the District Attorney. I make this affirmation in support of the defendant's Omnibus Motion herein.

2. Under Indictment Number 8166/2004, the defendant herein is charged with the following crimes: Murder in the Second Degree (2 counts) (P.L. §§ 125.25(1), (3)); Manslaughter in the First Degree (P.L. § 125.20(1)); Robbery in the First Degree (2 counts) (P.L. §§ 160.15(1), (2)); Robbery in the Third Degree (P.L. § 160.05); Criminal Possession of a Weapon in the Second Degree (P.L. § 265.03(2)); Criminal Possession of a Weapon in the Third Degree (P.L. § 265.02(4)); and Criminal Possession of a Weapon in the Fourth Degree (P.L. § 265.01(1)).

I. MOTION FOR A BILL OF PARTICULARS

1. The defendant respectfully requests that an ORDER be made, pursuant to sections 200.95 and 100.45 of the Criminal Procedure Law, directing the District Attorney of the County of Kings to furnish the defendant with the Request for the Bill of Particulars, which has been served upon the District Attorney.

2. Attached hereto and made part hereof is the Request for the Bill of Particulars, made pursuant to CPL § 200.90(5).

3. While I do not anticipate that the People will refuse to comply with this request, I hereby incorporate said request, in order that it may be before the Court for a ruling pursuant to CPL § 200.90(5), in the event of the People's refusal.

4. In support of the above motion, the defendant's attorney believes that the defendant cannot adequately prepare or conduct his defense without this information, that the information sought would not require the People to recite matters of evidence and that the information sought is within the knowledge and control of the District Attorney of the County of Kings and his witnesses and cannot be obtained from any other sources. Without such particulars, it is your affiant's belief that the defendant would be greatly prejudiced in preparing his defense.

5. Sections 200.20 and 100.45 of the Criminal Procedure Law provide that the Court must grant a Motion for a Bill of Particulars, if it is satisfied that the requested items of information are necessary to enable the defendant to adequately prepare or conduct his defense. Article I, section 6 of the Constitution of New York and the Sixth Amendment of the Constitution of the United States mandate that a defendant have fair notice of the accusations against him. As stated in People v. Iannone, 45 N.Y.2d 539 (1978), "...the Court must be vigilant in safeguarding the defendant's right

to a Bill of Particulars and effective discovery.”

II. DEMAND FOR DISCOVERY

Pursuant to Section 240.20(1) of the Criminal Procedure Law, the defendant DEMANDS that the prosecution disclose and/or make available for inspection, photographing, copying or testing, the following: (if already provided in Request for Bill of Particulars, please ignore)

1. Any written, recorded, or oral statement of the defendant or any co-defendant allegedly made to a public servant engaged in law enforcement activity, or to any person then acting under his direction or in cooperation with him.

2. a. Set forth the exact content of all statements allegedly made by the defendant in the presence of law enforcement officials prior to his arrest. If any such statements were committed to writing by police officers, provide defense counsel with copies of all police reports, memo book entries, and other notes and memoranda which refer to any such statement(s). If any such statements were committed to writing by other law enforcement officials, provide defense counsel with all such statements.

b. State when, where, and to whom each such statement was made.

c. State the name and address (shield and command for law enforcement officers) of each person present at the making of each such statement.

d. State whether Miranda warnings were given to the defendant. If so, then provide the following:

i. The name(s), shield number(s), and precinct(s) of any and all police officer(s) who administered the warnings.

ii. State the exact date, time, and location where such warnings were

administered.

iii. State the names, shield numbers, and precincts of all police officers present at the time the warnings were administered.

3. Any written report or document, or portion thereof, concerning a physical or mental examination, or scientific tests of experiments relating to this criminal proceeding and made by, or at the request or direction of, a public servant engaged in law enforcement activity.

This includes, but is in no way limited to:

a. Any fingerprint tests performed in connection with this case.

4. Any photograph or drawing relating to this criminal proceeding, made or completed by a public servant engaged in law enforcement activity:

a. Include any and all photographs, sketches, or drawings regarding the scene of the crime and/or any items of property involved in this case.

b. Include any and all photographs shown to any witness in this case, for the purpose of identifying the perpetrator and/or the defendant.

c. Include any and all photographs, sketches, or drawings regarding the scene of the crime and/or any items of property involved in this case.

5. Any property allegedly obtained from the defendant during the investigation of this case, or incident to the arrest of the defendant.

a. Specify the exact type of contraband, fruit, or instrumentality recovered.

b. Specify whether the said property was recovered from the person of the defendant, in proximity to the person of the defendant, or from the defendant's residence, or from another person.

c. Specify whether the property was recovered by law enforcement officials, or by private citizens who subsequently turned it over to law enforcement officials.

d. Provide defense counsel with the property voucher(s) or any other written listing, describing such property.

6. With respect to any search conducted of the defendant of his property, state and provide the following:

a. the exact date, time, and location of any and all searches, pursuant to a warrant or not, of any premises.

b. A complete list of all property of every nature and description seized during any search, whether pursuant to warrant or not, whether the People intend to offer such property into evidence, and all vouchers issued with respect to such property.

c. Name(s), address(es), and birth date(s) of any and all persons present at the time of such search(es).

d. Provide defense counsel with copies of any and all warrants permitting each and every aforementioned search.

7. Any tapes or other electronic recordings which the prosecutor intends to introduce at trial.

8. Anything required to be disclosed, prior to trial, to the defendant by the prosecution, pursuant to the Constitution of the United States and the State of New York. This includes, but is not limited to, the following:

a. All evidence within the custody or knowledge of the District Attorney's office which is favorable to the defendant, in accordance with Brady v. Maryland, 373 U.S. 83 (1963), and

United States v. Agurs, 427 U.S. 97 (1976).

b. All evidence within the custody or knowledge of the District Attorney's office, which might tend to adversely affect the credibility of any eyewitnesses that the prosecution intends to call at trial, in accordance with Giglio v. United States, 405 U.S. 150 (1972).

c. Pursuant to CPL § 240.43, and People v. Simpson, 109 A.D.2d 461, all evidence of any prior criminal, vicious or immoral acts about which the District Attorney intends to question the defendant at trial.

9. With respect to each and every eyewitness to the alleged incident, state the following:

- a. Names, addresses, and dates of birth.
- b. The location of the witness when he/she first observed the defendant.
- c. The location of the defendant when first observed by the eyewitness.
- d. The specific actions and substance of the defendant's behavior which each eyewitness observed.

10. With respect to each and every eyewitness who is a police officer, please answer the same questions posed in items 9a through 9d. Additionally, state the precincts and shield numbers of such officer.

11. State the names, addresses, and birth dates of all witnesses present on the date, time, and location of the crime charged.

12. State the names, addresses, and birth dates of all persons that the prosecution intends to call at trial.

13. Provide defense counsel with all written, or otherwise recorded, statements of any witnesses made in connection with this case.

14. With respect to the information regarding the crimes charged herein, state the following:

- a. The exact date, time, and location when the information was first brought to the attention of the police.
- b. The names, dates of birth, and addresses of any person(s) giving said information.
- c. The manner said information was conveyed to police (e.g. by 911 call, walk-in, etc.).
- d. Any description of the perpetrator supplied by any of the aforesaid persons.

15. State whether any civilians (non-police officers) were used by the New York City Police Department and/or Kings County District Attorney's Office, acting as an agent for the Police Department and/or District Attorney's Office, in the course of investigating the death of Mark Fisher. Specifically, state whether civilians acted as agents of the Police Department and/or District Attorney's Office in speaking to individuals associated with said investigation. If civilians were used in the fashion described above, provide defense counsel with:

- a. The names, addresses, and dates of birth of the civilians.
- b. The date, time, and location of any conversations between said civilians and other individuals involved in the investigation of the death of Mark Fisher.
- c. Copies of any written or recorded statements of individuals obtained by said civilians in the course of said investigation.

16. Provide defense counsel with the criminal record of every witness whom the prosecution intends to call as a witness at trial.

a. State whether any prosecution witness has ever received psychiatric treatment or been confined for the purpose of psychiatric treatment.

b. State whether any prosecution witness has ever received treatment for drug abuse or been confined in a drug treatment facility, either under a civilian or criminal commitment.

c. If the answer to either 15a or 15b is yes, provide defense counsel with the substance of any treatment(s) received by the witness, including dates of treatment or confinement.

17. With respect to the arrest of the defendant, state the following:

a. The exact date, time, and location the defendant was first taken into custody and/or detained.

b. The exact date, time, and location that the defendant was formally placed under arrest.

c. The names, shield numbers, and assignments of any and all police officers assisting in or participating in the arrest of the defendant herein, whether or not the People intend to call them as witnesses.

d. Provide defense counsel with copies of any and all police department reports, memoranda, or records prepared in connection with the investigation of the crimes charged herein, and the arrest of the defendant, including, but not limited to, those made by the New York City Police Department.

e. State whether any person, other than the defendant, was either arrested or detained for questioning, with respect to the crimes for which the defendant is now charged.

18. With respect to any identification procedure used, state the following:

a. Specify the nature of each procedure (e.g. line-up, show-up, photo display,

etc.).

- b. The time, date, and location of each procedure.
- c. Whether any witness identified the defendant at the procedure, and the name(s), address(es), and birth date(s) of any such witness(es).
- d. State the name, address, and birth date, and if applicable, the shield number and command of each person present at the procedure.
- e. Set forth a copy of any photograph taken of the defendant for identification by the Court;
- f. If a line-up was held, set forth a clear photograph of such line-up, and provide the names and addresses of all stand-ins who participated in the same.

19. The undersigned, pursuant to CPL § 240.80 DEMANDS compliance with all of the above DEMANDS within fifteen (15) days.

20. DEMAND is further made that any refusal to supply any of the demanded materials be made in writing setting forth the grounds for such refusal (CPL § 240.35), and that a copy of such writing be served upon the undersigned and filed with the Court within fifteen (15) days of receipt of this Demand.

III. MOTION FOR DISCOVERY

Pursuant to Section 240.40(1)(a) of the Criminal Procedure Law, the defendant moves for discovery of the following items on the grounds that discovery of all such is material to the preparation of the defense and that the requests herein are reasonable. The defendant moves this Court to order the prosecution to disclose:

- 1. The name(s), address(es), and birth date(s) of any and all civilian witnesses present

at the time of the alleged occurrence.

2. The name(s), address(es), and birth date(s) of any and all civilians (non-police officers) who acted as agents for the New York City Police Department and/or Kings County District Attorney's Office as articulated in Point Heading II, paragraph 15.

3. The names, shield numbers, and commands of any police officers present at the time of the alleged occurrence.

4. State the names, shield numbers, and commands of all police officers present at the defendant's arrest.

5. State the location and time of said arrest.

6. All reports, forms, memoranda, notes, recordings made, pursuant to Police Department regulations, including but not limited UF61, DD5, UF6, memorandum book entries, the pre-arraignment form, and the arresting officer's information form.

7. If any property was allegedly obtained from the defendant, state where said property was recovered from, by whom said property was recovered and provide defense counsel with a copy of the voucher of said property.

8. State whether the defendant was in possession of said property at the time of his arrest.

9. State whether there was any out-of-court identification by any prosecution witness of the defendant. State the type of identification and the date, time, and place of said procedure.

10. If the defendant is alleged to have made a statement as in paragraph number 1 or 15 in the Demand for Discovery, set forth the location, date, and time of each alleged statement. Also specify the names, shield numbers, and commands of any police officers and/or the name(s) and birth

date(s) of any civilian present at each of the places and times infra.

11. Whether it is alleged the defendant received warnings pursuant to Miranda v. Arizona, 384 U.S. 436 (1966). If so, provide the name, shield number, and command of the officer who allegedly gave the warnings.

12. Provide copies of the arrest records and the true names, any aliases, and dates of birth of all prosecution witnesses.

IV. MOTION TO SUPPRESS IDENTIFICATION TESTIMONY (WADE)

1. The defendant moves this Court to conduct a hearing, prior to trial, and thereupon suppress from evidence all identification testimony in this case.

2. The People have served notice, pursuant to CPL 710.30(1)(b), that evidence will be offered at trial of an out-of-court identification of the defendant at a police conducted procedure. According to the People's notice, on October 14, 2003, at 8:15 p.m., at the 70th precinct, a photograph was shown to "confidential witness #1" who allegedly identified the individual in the photograph as the defendant.

3. Papers filed by the People, and other documents in this case, indicate that the alleged incident involved circumstances and conditions wherein it is doubtful that any reliable identification of a perpetrator could be made. Therefore, it is questionable whether any independent source for reliable identification exists which would be sufficient to overcome the irreparable impact of police suggestion in this case.

4. Police conduct in this case in effect suggested to the witness that the defendant was the person to be identified. As a result of this unnecessary suggestion, any identification of the defendant by this witness at trial must be suppressed as the product of police suggestion, instead of

any reliable independent recollection.

5. The defendant moves to preclude the People from introducing into evidence any observation or identification of the defendant by a witness allegedly made in connection with this case, based upon CPL §§ 710.30(1)(b), (2), and (3).

6. Sections 710.30(1)(b) and (2) of the CPL require that notice of any observation of the defendant be served on the defendant within 15 days of this arraignment on the charges against him.

7. As of the date of this affirmation, the People have served notice of only the one identification procedure mentioned above.

8. Therefore, the defendant moves that this Court order that the People are hereafter precluded from offering any observations or identifications of the defendant in this case, unless already properly served on the defendant, as required by CPL § 710.30(3).

V. MOTION TO SUPPRESS STATEMENTS (HUNTLEY)

1. The defendant moves this Court to conduct a hearing, prior to trial, and thereupon suppress from evidence the statements allegedly made by the defendant regarding this case of which the People gave the defendant proper notice.

2. The People have served notice, pursuant to CPL § 710.30(1)(a), that evidence of two statements allegedly made by the defendant will be offered in evidence against him at trial. According to the People's notice, the defendant allegedly made two statements on July 8, 2004 following his arrest in Florida on an unrelated matter. According to the People's notice, at approximately 6:50 p.m., while seated in the rear of a police vehicle, the defendant stated "is there a warrant for my brother too?". According to the People's notice, later in the day, while at the Pinellas County Sheriff's Office, while the defendant was making a telephone call on his cellular

telephone, a police officer allegedly overheard him stating “call Tommy and Lauren, make sure you call Tommy and Lauren.”

3. The defense contends that any statement made by the defendant, which was properly noticed by the People, must be suppressed, as it was obtained in violation of the defendant’s constitutional protection against self-incrimination.

4. The defendant is not required to make specific factual allegations concerning the circumstances under which the statements were made, as per CPL § 710.60(3), however,

5. No Miranda rights were communicated to the defendant in a manner and setting sufficient to demonstrate that a knowing, voluntary, or intelligent waiver was made of the right to remain silent.

6. Further, any statements which were properly noticed by the People and allegedly made in a situation where Miranda warnings would not be required must nevertheless be suppressed, as such statements were the involuntary product of coercion, under all the circumstances, and therefore not reliable enough to be accepted in evidence. Additionally, at the time that these two alleged statements were made, the defendant had already been indicted on the unrelated matter, and accordingly, his indelible right to counsel had attached. Thus, any statement made by the defendant was obtained in violation of his right to counsel.

7. The defendant moves to preclude the People from introducing into evidence any statement allegedly made by him, and properly served upon him by the People, in connection with this case, based upon CPL §§ 710.30(1)(a) and (2).

8. Therefore, the defendant moves this Court to suppress any statements properly noticed by the People and to preclude the People from offering into evidence any statement which is supplied

without proper notice under CPL § 710.30.

9. Moreover, the two aforementioned statements should also be excluded because the statements are not relevant evidence. As a general rule, only relevant evidence is admissible. Evidence is relevant if it has any tendency in reason to prove the existence of a material fact. See People v. Scarola, 71 N.Y.2d 769, 777 (1988). Material facts include those “ultimate” facts essential to establishing a charge, claim, or defense. The defendant’s alleged statement “is there a warrant for my brother too?” proves absolutely nothing with regard to any material fact in this case. Whether the defendant’s brother had a warrant or whether the defendant was actually concerned if his brother had a warrant is simply irrelevant. In no way does it help to establish any of the elements of the crimes charged within the instant Indictment. The defendant’s second alleged statement “call Tommy and Lauren, make sure you call Tommy and Lauren” is similarly irrelevant. It too does not establish anything with regard to any of the elements of the crimes charged within the instant Indictment. The fact that the defendant allegedly wanted his mother to call Tommy and Lauren does nothing to establish any material facts involved in this case. Additionally, said statements would also be irrelevant in a trial on the instant Indictment because the statements were made following the defendant’s arrest on an unrelated matter. In other words, the defendant’s two alleged statements may have been associated only with the charges he was being arrested for, and nothing to do with the charges in the instant Indictment.

10. Furthermore, if a defendant’s statement is offered to prove its truth, it is not admissible unless it meets a hearsay exception. Thus, if the People are seeking to introduce the two aforementioned statements for their truth, some hearsay exception must be applicable. The defendant’s alleged statements questioning whether the police had a warrant for his brother and

telling his mother to call Tommy and Lauren do not satisfy any hearsay exception; and accordingly, they cannot be admissible in the People's direct case. The defendant's alleged statement is not a confession because it is not an express acknowledgment of guilt by the defendant. See People v. Bretagna, 298 N.Y. 323 (1949); see also People v. Greenwaldt, 72 A.D.2d 836, 421 N.Y.S.2d 679 (3d Dept. 1979). Further, the defendant's alleged statement is not an admission because it is not inconsistent with his position at trial. See People v. Ballinger, 675 N.Y.S.2d 494 (Sup. Ct. Kings Cnty. 1998). No other hearsay exception is satisfied here. Therefore, the defendant's alleged statement must be excluded as inadmissible hearsay.

VI. MOTION TO INSPECT AND DISMISS

1. Inasmuch as the defendant denies any participation in the crimes alleged in the Indictment, the District Attorney evidently either did not properly instruct the Grand Jury on the law or the evidence presented to the Grand Jury was not legally sufficient to sustain any of the charges herein. Trial courts should "be most liberal in granting motions to inspect Grand Jury minutes to the extent of examining them *in camera* for the purposes of determining their sufficiency." Miranda v. Isseks, 41 A.D.2d 176, 178, 341 N.Y.S.2d 176, 178 (2d Dept. 1973).

2. The defendant thus moves, pursuant to CPL §§ 210.10(1)(b), 210.30(2), and 210.30(3) for inspection of the Grand Jury minutes herein, and for dismissal of the Indictment upon the ground that the evidence presented and the charge to the Grand Jury was legally insufficient to support the charges herein.

3. In addition to the other counts of the Indictment that are based upon insufficient evidence, the evidence before the Grand Jury was particularly lacking to establish the second count of the Indictment, Murder in the Second Degree (P.L. § 125.25(1)). The People attempted to

establish that the defendant intentionally caused the death of Mark Fisher by acting-in-concert with Anthony Russo. However, the evidence before the Grand Jury failed to establish the requisite accomplice liability on the part of the defendant. In order to be liable as an accomplice, the defendant must solicit or aid the actual killer in accomplishing a *joint purpose*. See P.L. § 20.00; People v. Torres, 153 A.D.2d 911, 545 N.Y.S.2d 398 (2d Dept. 1989). Thus, the defendant cannot be responsible for the murder unless he actually intended to kill Mark Fisher. Moreover, the sole fact that an individual died cannot be used as a basis to infer the intent of an accomplice. See People v. Ozarowski, 38 N.Y.2d 481, 490-91 (1976). Accordingly, the second count of the Indictment, along with the other counts of the Indictment, should be dismissed since the evidence before the Grand Jury was legally insufficient to establish that the defendant had the requisite intent to establish accomplice liability for the death of Mark Fisher.

4. The defendant thus moves, pursuant to CPL § 210.30(3), that the Court release all or part of the minutes of the Grand Jury proceedings herein relevant to the issue of legal sufficiency of the evidence and charge presented before the Grand Jury (L. 1980, ch. 842).

5. The Indictment is also defective because it fails to conform with the requirements set forth in Article 190 of the Criminal Procedure Law. Specifically, the Indictment is defective because the integrity of the Grand Jury proceeding was impaired, resulting in prejudice to the defendant. See People v. Huston, 88 N.Y.2d 400 (1996). The instant Indictment was the product of a long investigation by the District Attorney's Office. In the process of their investigation, upon information and belief, the People subpoenaed numerous witnesses to testify before the Grand Jury, and after speaking to said witnesses, they selectively chose which witnesses would actually testify before the Grand Jury. By selectively picking and choosing which witnesses were permitted to

testify before the Grand Jury, the People withheld exculpatory evidence from the Grand Jury. After speaking to subpoenaed witnesses, if the People liked what they heard, they had the witness testify before the Grand Jury. However, if the People did not like what a witness was saying because it hurt their case, they would not have the witness testify before the Grand Jury. The People's role in the Grand Jury is a "duty not only to seek convictions but also to see that justice is done." People v. Pelchat, 62 N.Y.2d 97, 105 (1984). By excluding exculpatory witnesses from the Grand Jury proceeding herein, the People severely impaired the integrity of the Grand Jury and prejudiced the defendant by withholding evidence that would have likely prevented his indictment on the instant Indictment.

VII. MOTION TO PRECLUDE THE DISTRICT ATTORNEY FROM CROSS-EXAMINING THE DEFENDANT REGARDING HIS PREVIOUS RECORD (SANDOVAL)

1. The defendant wishes to testify on his own behalf at trial, and his testimony as to the facts and circumstances of the instant case is both critical to the establishment of his defense and to the rendition of all relevant information upon which the fact finder must reach a verdict.

2. The defense requires a pre-trial hearing to determine the permissible scope of cross-examination regarding the defendant's prior criminal record, pursuant to People v. Sandoval, 34 N.Y.2d 371 (1974).

3. The use of the defendant's prior criminal record upon cross-examination would have no probative value as to his truth and veracity; would tend only to establish a criminal predisposition or propensity; would accordingly cause him extreme prejudice and would thereby tax the exercise of his constitutional right to testify on his own behalf or would completely deprive him of same.

**VIII. MOTION RESERVING DEFENDANT'S RIGHT TO FILE FURTHER
MOTIONS PURSUANT TO CPL § 255.20**

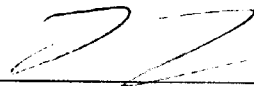
1. Pursuant to CPL § 255.20(3), the defendant requests the permission of the court to extend the time for filing further motions until a reasonable time after the receipt of the Bill of Particulars and discovery material requested herein.

2. Subject to the resolution of the aforesaid motions, the defendant reserves the right to speedily move to suppress any other unlawfully seized evidence upon discovery of such items.

3. The defendant further reserves the right to request an adjournment after pretrial hearings and to investigate information developed at said hearing, pursuant to People v. Peacock, 31 N.Y.2d 907 (1972).

WHEREFORE, the defendant respectfully requests this court to grant the relief requested above, and any further relief as this Court may deem just and proper.

Dated: Brooklyn, New York
February 3, 2005



LANCE LAZZARO

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS, CRIMINAL TERM: PART 35

-----X
THE PEOPLE OF THE STATE OF NEW YORK, :

- against - :

JOHN GIUCA, :

Defendant. :

-----X

REQUEST FOR A
BILL OF PARTICULARS

INDICT. NO.: 8166/2004

REQUEST FOR A BILL OF PARTICULARS

Pursuant to sections 100.45(4) and 200.95 of the Criminal Procedure Law, the defendant requests the following items of factual information, which are not requested in the indictment, and which pertain to the offenses charged, on the ground that the defendant cannot adequately prepare or conduct his defense without the information requested.

1. The substance of each aspect of the defendant's conduct encompassed by the charges contained in each count of the indictment, which the People intend to prove at trial on their direct case.

2. Where applicable, specify the distinctions in conduct between the counts of the Indictment.

3. Whether the People intend to prove that the defendant acted as principal, accomplice, or both.

4. If the People intend to prove that the defendant acted as an accomplice, then set forth the conduct:

a. of the defendant which constitutes the basis for his alleged accessorial liability; and

b. of each other participant, individually, which constitutes the basis for alleged
accessorial liability.

5. State the exact date, time, and location of the alleged crimes charged to the defendant
herein.

6. State the precise Penal Law sections and subsections under which the defendant is
charged as to each offense alleged herein.

7. State the precise manner in which Mark Fisher died.

Dated: Brooklyn, New York
February 3, 2005

Yours, etc.,
LANCE LAZZARO
Attorney for Defendant
Lazzaro & Gregory, P.C.
360 Court Street, Suite 3
Brooklyn, New York 11231
(718) 488 – 1900

TO: CHARLES J. HYNES
DISTRICT ATTORNEY
COUNTY OF KINGS
ASSIGNED ADA: MS. ANNA-SIGGA NICOLAZZI

EXHIBIT D

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 35

-----X
THE PEOPLE OF THE STATE OF NEW YORK, :

- against -

John Giuca

Defendant.

:
:
: PEOPLE'S ANSWER TO
: DEFENDANT'S OMNIBUS
: MOTION AND CROSS-
: MOTION FOR
: RECIPROCAL DISCOVERY

:
No. 8166/04

-----X
ANNA-SIGGA NICOLAZZI hereby affirms under penalty of
perjury as follows:

1. I am an attorney-at-law duly admitted to practice
before the courts of the State of New York and an Assistant
District Attorney in Kings County, New York.

2. I submit this affirmation on behalf of The People
of the State of New York (the "People") in answer to the above-
captioned Defendant's Motion, dated February 3, 2005. I further
submit this affirmation in support of the People's Cross-Motion
for Reciprocal Discovery against Defendant.

3. I believe the following facts to be true based
upon personal knowledge, information in the records and files of
the Office of the District Attorney, Kings County, New York, and
upon conversations with others known to me.

4. The People have previously served upon the
Defendant and filed with the Court a Voluntary Disclosure Form
together with notices and, where appropriate, attachments

CRIMINAL TERM APP/2005
SUPERIOR COURT KINGS
2005 FEB 11 PM 2:50

(hereinafter collectively referred to as "the VDF"). The information contained in the VDF is incorporated herein by reference and constitutes a response to Defendant's motion where appropriate.

5. In his Omnibus Motion, Defendant seeks the following:

- I. Bill of Particulars;
- II. Discovery pursuant to C.P.L. § 240.20;
- III. Discovery pursuant to C.P.L. § 240.40 and Disclosure of Brady Material
- IV. Suppression of evidence of identification (Wade) or, in the alternative, a hearing;
- V. Suppression of evidence of statement (Huntley) or, in the alternative, a hearing;
- VI. Motion to Inspect and Dismiss; Preclusion of cross-examination of Defendant on his prior criminal record or uncharged bad acts (Sandoval);
- VII. Reservation of rights.

6. For the reasons set out with more particularity

below, the People respectfully submit that Defendant's motion be denied except insofar as the People consent thereto, and that the People's cross-motion be granted in its entirety.

BILL OF PARTICULARS

7. The People consent to a written statement, as provided below, specifying items of factual information which are not recited in the indictment and which pertain to the offenses charged and include the substance of Defendant's conduct encompassed by the charge, which the People intend to prove on their direct case:

On or about October 12, 2003 at approximately 6:41am, in front of 145 Argyle Road, in the County of Kings, New York, Defendant, provided a handgun to co-defendant Antonio Russo and the defendant, acting in concert with Antonio Russo, did forcibly take personal property from Mark Fisher and did repeatedly shoot Mark Fisher with a handgun, thereby causing his death.

8. The People reserve the right to file an amended Bill of Particulars prior to or at trial, C.P.L. § 200.95(8), and to introduce additional evidence at trial.

PEOPLE'S RESPONSE TO DEFENDANT'S
DEMAND FOR DISCOVERY AND MOTION
FOR PRE-TRIAL DISCOVERY

9. The items set forth below provide all of the pre-trial discovery to which Defendant is entitled. The other items Defendant seeks are not discoverable or not discoverable at this time. The People oppose any discovery other than that which is provided below. Defendant has failed to allege a sufficient material need for any additional discovery or that the request is reasonable, and the People oppose disclosure of evidentiary material. C.P.L. § 240.40. The People will make a diligent, good faith effort to ascertain the existence of property requested pursuant to C.P.L. § 240.20(1) in Defendant's Demand to Produce, and to cause such property to be made available where it exists but is not in the People's custody or control. The People will not obtain by subpoena duces tecum demanded material which Defendant may thereby obtain, and are not required by law to do so. C.P.L. § 240.20(2); see Matter of Schwartz, 72 N.Y.2d 869, 870 (1988) (discovery matters are "regulated by statute"; thus when a defendant has no statutory right to pre-trial discovery, his request should be denied).

A. STATEMENTS BY DEFENDANT

10. Any written, oral, or recorded statements of Defendant or a co-defendant to be tried jointly, to a public servant engaged in law enforcement activity or to a person then acting under his direction or in cooperation with him, other than

in the course of the criminal transaction, have heretofore been disclosed to Defendant on the VDF. Where a statement has been video- or audio-taped, defense counsel should provide a blank tape for copying.

B. GRAND JURY TESTIMONY

11. Neither Defendant nor a co-defendant to be tried jointly testified before the Grand Jury relating to this criminal action. C.P.L. § 240.20(1)(b).

C. SCIENTIFIC AND MEDICAL REPORTS

12. The People are providing copies of the autopsy report and the crime scene report. (A list of all materials being provided to defense counsel will be provided under separate cover) Additional reports to follow.

D. POLICE REPORTS

13. To be produced.

E. PHOTOGRAPHS AND DRAWINGS

14. To be produced.

F. INSPECTION OF PROPERTY RELEASED PURSUANT TO P.L. § 450.10

15. Not applicable.

G. PROPERTY OBTAINED FROM DEFENDANT OR CO-DEFENDANT

16. Any and all vouchers for property are being provided.

H. TAPES AND ELECTRONIC RECORDINGS

17. To be produced. Counsel should provide the

undersigned blank audio-tapes for copies.

I. APPROXIMATE TIME AND PLACE OF OCCURRENCE

18. The approximate time and place of the occurrence are set forth in the VDF and the foregoing Bill of Particulars.

J. APPROXIMATE TIME AND PLACE OF ARREST

19. The approximate time and place of the arrest are set forth in the VDF and the foregoing Bill of Particulars.

K. IDENTIFICATION

20. Where the People intend to offer at trial testimony or other evidence regarding an observation of Defendant or a co-defendant to be tried jointly, either at the time or place of the commission of the offense or upon some occasion relevant to the information, to be given by a witness who has previously identified the defendant, disclosure of such identification has been made heretofore in the VDF, along with the type, approximate time, and location of the identification, the name of the witness, and the name of law enforcement officers present at the identification.

L. POLICE OFFICERS INVOLVED

21. To be produced.

22. Defendant requests the personnel files of potential police witnesses. Such files are not discoverable absent a showing of "some factual predicate which would make it reasonably likely" that the files contain impeachment material.

See People v Gissendanner, 48 N.Y.2d 543, 550 (1979); N.Y. Civil Rights Law 50a. No such showing has been made in this case.

23. Defendant requests the personnel files of potential police witnesses. Such files are not discoverable absent a showing of "some factual predicate which would make it reasonably likely" that the files contain impeachment material. See People v. Gissendanner, 48 N.Y.2d 543, 550 (1979); N.Y. Civil Rights Law § 50a. No such showing has been made in this case.

M. NON-POLICE WITNESSES

24. Defendant requests the names and addresses of the People's non-police witnesses. The People submit that such a witness list is evidentiary and not discoverable under C.P.L. § 240.20, is not "other property" under C.P.L. § 240.40, and is not properly subject to a motion for discovery or a bill of particulars. See C.P.L. § 200.95(1)(a); accord People v. Miller, 106 A.D.2d 787, 788 (3d Dep't 1984). The names of potential witnesses the People may call in their direct case may be provided to the Court immediately prior to jury selection, in the discretion of the trial Court and the trial Assistant.

25. Defendant requests the dates of birth and/or arrest and criminal history of the People's non-police witnesses. These materials are not discoverable. Defendant also requests evidence tending to impeach the People's non-police witnesses. Except as may be described supra, no such evidence is known at

this time to be exculpatory and the People oppose disclosure as beyond the scope of discovery. Any arguably exculpatory material will be provided to the Court for in camera inspection. Any record of judgment of conviction and pending cases of these witnesses will be provided as prescribed by law. See C.P.L. §§ 240.44(2), (3); 240.45(1)(b), (c).

26. Defendant requests prior statements of the People's witnesses. These materials are not discoverable at this time. See People v. Anderson, 66 N.Y.2d 529, 542 (1985). Rosario material is not due until after the jury is sworn, or, in the case of a bench trial, after the People's opening statement. They will be provided to defendant to the extent and at the time prescribed by law. See C.P.L. §§ 240.44(1), 240.45(1)(a).

PEOPLE'S RESPONSE TO DEFENDANT'S
DEMAND TO PRODUCE AND MOTION FOR
DISCOVERY PURSUANT TO C.P.L. 240.40

27. The People oppose Defendant's motion pursuant to C.P.L. § 240.40 in its entirety. Defendant's motion is premature because it is served concurrently with Defendant's demand to produce pursuant to C.P.L. § 240.20. Clearly, Defendant's motion cannot be made until there has been a demand by Defendant, and a resultant failure to disclose by the People without good cause,

which would necessitate Court-ordered disclosure pursuant to C.P.L. § 240.40.

28. The Defendant is not entitled to discovery beyond the scope of that authorized by C.P.L. § 240.20 unless the Defendant shows, with particularity and for each item requested, that such discovery is both material to the preparation of the defense and a reasonable demand on the People. C.P.L. § 240.40(1)(c). Defendant's bald and conclusory statement that the requested information is necessary for trial preparation is insufficient to demonstrate the materiality of the requested information. People v. Miller, 106 A.D.2d 787 (3d Dep't 1984). Rather, Defendant must either present special circumstances which entitle him to the requested information or demonstrate the harm that would result if the requested information is not disclosed. Id. at 788. Because Defendant has failed to make any such showing, but merely asserts without factual support the necessity of the requested material, the motion should be denied.

29. Moreover, the sum of Defendant's further discovery requests under this motion amounts to discovery of the People's entire file regarding the above-captioned case. The Defendant "is not generally to be afforded free access to the prosecutor's entire file". People v. Tabora, 139 A.D.2d 540, 542 (2d Dep't 1988).

30. Furthermore, the names, dates of birth, and

addresses of the witnesses the People intend to call on their direct case are not discoverable pursuant to Article 240 of the Criminal Procedure Law, nor is such information properly subject of a Bill of Particulars. Article 240 does not permit the discovery of the identities of the People's witnesses upon demand. Unlike various other items of property or records, addresses are not "property" and may not be obtained merely upon request. Miller, 106 A.D.2d 787.

31. Nor may such information be obtained through a Bill of Particulars. The names and addresses of witnesses are certainly not necessary to inform Defendant of the charges against him. Sections 200.95(1), 240.44 and 240.45 of the Criminal Procedure Law require that, prior to any pre-trial hearing or before trial, the People provide Defendant with any statements by witnesses concerning the criminal actions. Thus, to the extent Defendant is concerned with being afforded the information needed for effective cross-examining, such information will be provided at the statutorily designated time.

32. Furthermore, the Defendant will receive, prior to trial, all Rosario material to which he is entitled and a list of the witnesses whom the People intend to call.

33. Therefore, for the foregoing reasons, no remedy under C.P.L. § 240.40 is warranted and this motion should be denied in its entirety.

34. Defendant requests exculpatory material within the meaning of Brady v. Maryland, 373 U.S. 83 (1963) and its progeny. The People are aware of their continuing duty under Brady to disclose exculpatory evidence to the defense and will honor that obligation. Any arguably exculpatory material will be submitted to the Court for in camera inspection. At this time, however, no such evidence is known to the People to exist.

PEOPLE'S RESPONSE TO DEFENDANT'S MOTION
TO SUPPRESS IDENTIFICATION TESTIMONY

35. As the C.P.L. § 710.30(1)(b) notice provided by the People in the VDF and these answers indicate, the People intend to offer at trial identification testimony of witnesses who previously identified Defendant in a police-arranged confrontation. The defendant was identified in a pre-trial photographic procedure conducted by public servants engaged in law enforcement activity. Although the People submit that there was no improper police conduct and deny all allegations to the contrary, the People consent to a Wade hearing limited to the issue of the unduly suggestiveness of the procedure and the viewing.

PEOPLE'S RESPONSE TO DEFENDANT'S
MOTION TO SUPPRESS STATEMENTS

36. As the C.P.L. § 710.30(1)(a) notice provided

Defendant in the VDF and these answers indicate, the People intend to offer on their direct case at trial statements Defendant made to a law enforcement officer after he had been placed under arrest on an unrelated case. The People submit that Defendant's statements were lawfully obtained and deny all allegations to the contrary.

37. The People consent to a Huntley hearing pertaining to the statements made by the defendant.

PEOPLE'S RESPONSE TO DEFENDANT'S MOTION
TO INSPECT THE GRAND JURY MINUTES AND TO
REDUCE OR DISMISS THE INDICTMENT

38. The People consent to the Court's in camera review of the Grand Jury minutes and have previously submitted the same to the Court for consideration in conjunction with this motion. Inspection of the minutes will reveal that the evidence before the Grand Jury amply supports the offense or offenses charged, that the Grand Jury was properly instructed on the law, and that the integrity of the proceedings was unimpaired. The People deny all of Defendant's allegations to the contrary, oppose reduction of any charge, and oppose disclosure of the Grand Jury minutes to the defense. The issues raised in Defendant's motion are straightforward, and disclosure is not necessary to their resolution. C.P.L. § 210.30(3).

PEOPLE'S RESPONSE TO DEFENDANT'S
REQUEST FOR SANDOVAL HEARING

39. The People consent to a Sandoval hearing on Defendant's motion, but respectfully request that this matter be deferred for later consideration by the Court. Immediately prior to the commencement of jury selection, the People will provide notice of prior uncharged criminal, vicious, or immoral acts which the prosecutor intends to use at trial for purposes of impeaching the credibility of the Defendant. See C.P.L. § 240.43.

RESERVATION OF RIGHTS

40. The People oppose the filing of additional motions by Defendant. In general, all pre-trial motions shall be filed at the same time and within forty-five (45) days of arraignment. C.P.L. § 255.20(2). The People request that all motions filed after the forty-five-day period be summarily denied absent a showing of good cause. C.P.L. § 255.20(3).

PEOPLE'S CROSS-MOTION FOR RECIPROCAL
DISCOVERY AND PRECLUSION

1. Pursuant to C.P.L. § 250.20, the People have demanded that the Defendant supply (a) the place or places where Defendant claims to have been at the time of the commission of the crime, and (b) the names, residential addresses, places of

employment and addresses thereof of every alibi witness upon whom Defendant intends to rely to establish Defendant's presence elsewhere than at the scene of the crime at the time of its commission. More than eight days have elapsed since service of that demand and Defendant has not responded to it. Accordingly, the People renew their demand and request that Defendant be precluded from offering alibi testimony at trial if he fails to respond promptly.

2. Pursuant to C.P.L. § 240.30(1), the People served upon Defendant a demand that Defendant supply (a) any written report or document, or portion thereof, concerning a physical or mental examination, or scientific test, experiment, or comparison, made by or at the request or direction of the Defendant, if the Defendant intends to introduce such report or document at trial, or if Defendant has filed a notice of intent to proffer psychiatric evidence and such report or document which relates thereto, or if such report or document was made by a person other than Defendant, whom Defendant intends to call as a witness at trial; and (b) any photograph, drawing, tape, or other electronic recording which the Defendant intends to introduce at trial. We have received no response to that demand and renew it at this time and request that the Defendant be precluded from offering such evidence at trial if he fails to respond promptly.

3. More than 30 days have elapsed since Defendant

pleaded not guilty to the indictment and Defendant has not served notice of an intention to present psychiatric evidence at trial.

Accordingly, Defendant should be precluded from presenting such evidence. See C.P.L. § 250.10(2).

CONCLUSION

For the foregoing reasons, it is respectfully requested that, except as consented to herein, Defendant's motion should be denied and that the People's cross-motion be granted in its entirety.

Dated: Brooklyn, New York
February 17, 2005



ANNA-SIGGA NICOLAZZI
Sr. Assistant District Attorney
Homicide Bureau
(718) 250-2140

EXHIBIT E

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

THE PEOPLE OF THE STATE OF NEW YORK, :
: AFFIDAVIT

-against- :
JOHN GIUCA, : Indictment No. 8166/2004
Defendant. :
_____X

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

Lauren McCulloch, being duly sworn, states under penalty of perjury, as follows:

1. I am 30 years old. I make this affidavit of my own free will. Nobody has provided me with, or promised me, or anyone else, any benefit or consideration in exchange for executing this affidavit. I have reviewed the contents of this affidavit with my attorney, Avrom Robin, Esq.

2. I am married and have a young daughter. I have a Bachelor's Degree in Criminal Justice from John Jay College of Criminal Justice. I am presently employed at a large financial institution in Manhattan.

3. I dated John Giuca ("John") in the early 2000's. In September and October 2003 our relationship was rocky and coming to an end. In October 2003, John and I did not trust each other and we did not confide in each other. We argued frequently.

4. I have not seen John since 2005. I have not spoken to him in over eight years. I have not communicated with him or any of his family members, including his mother Doreen Giuliano, about the contents of this affidavit. In August 2013, I met with John's attorneys, Mark Bederow, Esq. and Adam Miller, Esq. I have spoken with Mr. Bederow a few times on the telephone about the contents of this affidavit.

5. At all times between October 2003, when Mark Fisher was shot and killed, and September 2005, which was the time of John's trial, my father, Salvatore Calciano, was incarcerated.

6. My father's attorney in the criminal case that resulted in his incarceration was Samuel Gregory. Mr. Gregory later became John's attorney, after I gave his name to John when he needed an attorney in connection with the Fisher case. Thus, in the late 1990s and early 2000s, because of his involvement in my father's case, I knew Mr. Gregory well. In fact, Mr. Gregory dined with my family at our house on one occasion during the period of time that he represented my father.

THE TRIAL OF JOHN GIUCA

7. In September 2005, I was called as a prosecution witness at John's trial. Prior to testifying, I was interviewed several times by detectives from the New York City Police Department ("N.Y.P.D.") and members of the Kings County District Attorney's Office ("the D.A."), including the lead prosecutor, Assistant District Attorney ("A.D.A.") Anna-Sigga Nicolazzi.

8. Samuel Gregory never interviewed me or spoke with me about the Fisher case. In fact, I am unaware of any effort that he might have made to interview me at any time during the investigation or before I testified at trial, when Mr. Gregory cross – examined me.

9. At trial, I testified, in sum, that I was present at John's house with John and Albert Cleary ("Albert") the day after Mark Fisher was killed. I testified that John stated, in the presence of Albert Cleary and me, that Antonio Russo ("Tony") had asked him for a gun and that John gave Tony a gun.

10. My testimony was that John stated in the presence of Albert Cleary and myself that Tony asked him for a gun and that he, John, gave Tony a gun after Tony told John he wanted to rob Albert's friend, meaning, Mark Fisher. In fact, John never stated this in my presence. I have regretted this testimony since I first was pressured to claim this by law enforcement officials, including N.Y.P.D. officers and A.D.A. Nicolazzi.

COMING FORWARD

11. For years, I have thought about and regretted the above-described testimony. Several months ago, I became aware of a letter which John had written to my father in which John pleaded with my father to encourage me to step forward and reveal the truth.

12. Because I had successfully moved on from John and this difficult period of my life, and had since become happily married, started a family and obtained excellent employment, my father withheld the letter from me for a long period of time. Eventually, my father did show me the letter.

13. After reading the letter, I addressed the truth with my husband. I felt compelled to come forward and set the record straight. I soon became aware that Mark Bederow, Esq., was

representing John. I contacted Mr. Bederow and advised him that I wished to discuss issues related to John with him. I met with Mr. Bederow and Adam Miller, Esq., his law partner, that same day. I advised them about the issues with my trial testimony and the pressure placed on me by the D.A. and N.Y.P.D. to testify as they wished.

PRESSURE BY LAW ENFORCEMENT

14. In the aftermath of Mark Fisher's death, I was interviewed several times by law enforcement about John's alleged role in the crime. They never asked me about Albert Cleary's alleged involvement. It was clear to me within days of the shooting that law enforcement was trying to build a case against John. Over the course of several months, I repeatedly told them that I did not have any information regarding John's alleged involvement in the crime. I was questioned by A.D.A. Nicolazzi and other officials at a police precinct, the D.A.'s Office, and before the grand jury and at trial. At one of these meetings at the D.A.'s Office in 2004, there were several detectives and prosecutors who grilled me for several hours.

15. In late 2004, I was eventually subpoenaed to appear before a grand jury. Before I testified in the grand jury, A.D.A. Nicolazzi questioned me under oath and recorded me. Before I was recorded, A.D.A. Nicolazzi "practiced" the questions and answers I should give once the recorder was on.

16. Law enforcement pressured and frightened me to the point that I ultimately relented and told them what they wanted to hear. Specifically, I was pressured to "admit" that John had told me that he gave Tony Russo a gun before Tony shot and killed Mark Fisher.

17. The pressure placed on me by the D.A. and police was relentless. It included:

(a) Law enforcement officers suggested that I was involved in the aftermath of the crime by telling me that Albert Cleary had told them that I had removed a gun bag or evidence from John's house. Although this was untrue, I recognized the seriousness of this claim and it intimidated me.

(b) A.D.A. Nicolazzi and detectives told me that they were aware that my father was in prison and that by not cooperating with them I was "going to make this hard on him and my family." This threat terrified me and caused me great concern for the well-being of my father, my family and myself. More than any other factor, this threat influenced me to testify in the manner that they desired.

(c) Law enforcement officers threatened me with jail and told me that I could be charged with obstruction and/or perjury.

(d) Prior to testifying at trial, I had applied for an internship with the U.S. Marshals. I had also expressed an interest in attending law school. The police and D.A. pressured me by often telling me to "think about my future" as they attempted to gain my cooperation. They told me that "this will follow you the rest of your life" if I did not cooperate with them. I interpreted these statements as threats and that they would ruin my future if I did not do as they said.

(e) Before I told law enforcement what they wanted to hear, at one interview, one investigator became extremely animated and yelled at me that my statements "were ridiculous."

(f) Law enforcement officers pushed me to testify simply that John said that he gave Tony Russo the gun. They told me that if I said that it was not as bad as stating that he had used the gun himself.

(g) A.D.A. Nicolazzi told me that if I did not cooperate with her that police would show up at my place of employment with a subpoena.

(h) At one point before I agreed to testify as they wished, a female N.Y.P.D. detective pulled me aside for a "woman to woman" conversation in which she told me that law enforcement had recovered embarrassing photos of me which John had allegedly shared with his friends.

(i) On another occasion before I testified, A.D.A. Nicolazzi referenced a very personal issue between John and me which was discussed only in our private letters. She told me that "you do not want this coming out at trial." I interpreted this as a not so subtle threat that I would be publicly humiliated by the D.A. if I did not cooperate with the D.A., but that they would prevent me from being humiliated if I did cooperate with them.

(j) At one point, I had consulted with an attorney during the investigation. After I became a "cooperating witness," A.D.A. Nicolazzi advised me to discharge the attorney and "save my money for school," even though I had already been threatened with arrest for obstruction and perjury.

18. In fact, I was present at John's house with Albert Cleary the day after Mark Fisher was killed. Although there was general discussion about Mark Fisher and Tony Russo's likely involvement, John did not say that Tony asked him for a gun and he gave it to him, or that he gave Antonio Russo a gun before the shooting. During this meeting, John was very calm. Albert Cleary, however, was nervous, pacing, and worried about whether Mark Fisher was dead or alive.

ALBERT CLEARY'S FALSE TESTIMONY

19. I became aware that Albert Cleary testified at trial about my alleged involvement in "covering" for John, as well as the meeting between John, Albert Cleary and I at John's house the day after Mark Fisher was killed.

20. Albert Cleary's testimony that I removed a gun bag or other evidence from John's house shortly after the murder is outrageous and false.

21. Albert Cleary's testimony that John, in our presence, said that he told Tony Russo "to show Mark Fisher what was up" is false.

22. Albert Cleary's testimony that John, in our presence, said "I told Antonio to do one thing and he did another" is false.

"GHETTO MAFIA"

23. I am familiar with the so-called "gang" known as "Ghetto Mafia." It was a loose and casual association of neighborhood teenagers, including John and some of his friends. Based on my experience with John and many of his friends, Ghetto Mafia was not an organized or structured "gang." I am unaware of any initiation requirements, structure or hierarchy, or violent acts being committed or desired in support of this "gang's" credibility. I am unaware of John being a "boss" or "capo" in any gang. I have never seen him refer to himself, or be referred to by anyone else, in that manner.

24. I was familiar with Antonio Russo in 2003. He and John were friends and lived in the same neighborhood. I had the opportunity to see them interact with each other. Although John is a few years older than Antonio Russo, I never observed Antonio Russo act in a subservient or deferential manner to John. I never saw John give Antonio Russo "orders" or

instruct him to do something in furtherance of "Ghetto Mafia" activity. I never saw Antonio Russo seek John's permission or approval before engaging in any specific behavior or conduct.

25. I am aware that at John's trial A.D.A. Nicolazzi referred to John as a "self-styled Mafioso," "Tony Soprano wannabe," and a "capo" of a gang who was superior to his "soldier" Antonio Russo. I never observed any interactions between John and Antonio Russo which would support these characterizations. In fact, these labels strike me as ridiculous and unfair.

26. In 2003, I knew Antonio Russo to be a violent young man who I was aware had committed numerous acts of violence, including robberies and an assault on his own grandmother. In my opinion, he did not need John's permission or consent to engage in acts of violence.


Lauren McCulloch

Sworn to before me this
23 day of January, 2014



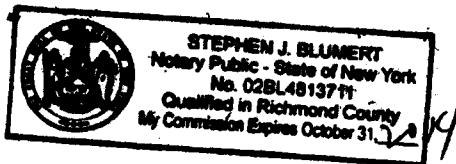


EXHIBIT F

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF KINGS : PART

3 -----X
4 THE PEOPLE OF THE STATE OF NEW YORK, : Indictment #
5 : 6823/2004

6 -against- :
7 JOHN AVITTO, :
8 :
9 Defendant. :

10 -----X

11 120 Schermerhorn Street
12 Brooklyn, New York
13 June 13, 2005

14 B E F O R E: HON. SHERYL PARKER,
15 Justice

16 A P P E A R A N C E S:
17 OFFICE OF THE DISTRICT ATTORNEY
18 KINGS COUNTY
19 350 Jay Street
20 Brooklyn, New York
21 BY: ANNA SIGGA-NICOLAZZI, ESQ.

22 LEGAL AID SOCIETY
23 Attorneys for the Defendant
24 BY: SIGMUND ISRAEL, ESQ.

25 Diann Brunner
Official Court Reporter

1 THE CLERK: Number 49, Indictment 6823 of
2 2004, John Avitto, voluntary return on a sentence
3 warrant.

4 MR. ISRAEL: Sigmund Israel. Good afternoon,
5 your Honor.

6 MS. NICOLAZZI: Office of the District
7 Attorney, Anna Sigga-Nicolazzi.

8 Your Honor, this is a voluntary return on a
9 warrant. Can we approach?

10 THE COURT: Yes.

11 (Whereupon, a discussion was held off the
12 record at the bench.)

13 THE COURT: What I am going to do is vacate
14 the warrant. I want you to stay in contact with LINK,
15 see if they can find a program for you. It's very
16 important that you do that.

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: So I understand you have a place
19 to stay at this point?

20 THE DEFENDANT: Yes, I do.

21 THE COURT: Now I know with the LINK program,
22 easier to find a program if you are out as opposed to
23 incarcerated. You have to cooperate with them fully.
24 If at any point I find that you are not cooperating I
25 have no choice but to put you back into jail; do you

1 understand?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Do you have any questions?

4 THE DEFENDANT: No.

5 THE COURT: All right. It is my understanding
6 that everyone is requesting that I put this on for
7 Wednesday.

8 What is the reason you want it on for
9 Wednesday?

10 MR. ISRAEL: TASC, so they can see him.

11 THE COURT: TASC is usually here on Thursday
12 and Thursday we have got LINK working on the program.

13 LINK REPRESENTATIVE: Thursday would be fine.

14 THE COURT: Do we need it that soon? I have
15 got too many cases on Thursday.

16 LINK REP: Try to set up a crisis bed for next
17 Tuesday.

18 THE COURT: We will put it on for Tuesday, the
19 21st. Defendant is released on his own recognizance.

20 (Whereupon, the matter was adjourned until
21 June 21, 2005.)

22 ***

23 I, Diann Brunner, Official Court Reporter,
24 do hereby certify that the foregoing is a true and
25 accurate transcript.

Diann Brunner

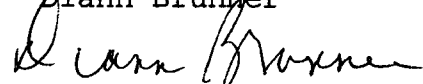


EXHIBIT G

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

THE PEOPLE OF THE STATE OF NEW YORK, :
: AFFIDAVIT

-against- :
JOHN GIUCA, : Indictment No.
Defendant. :
_____X

STATE OF NEW YORK)
COUNTY OF KINGS) ss:

Anthony Beharry, being duly sworn, states under penalty of perjury, as follows:

1. I am 31 years old.
2. I make this affidavit of my own free will. Nobody has provided me with, or promised me, or anyone else on my behalf, any benefit or consideration in exchange for executing this affidavit.
3. I have not spoken to or seen John Giuca since he was convicted in September 2005.
4. In 2003, I was friends with John Giuca, Antonio Russo, and Robert Legister. At no time had I ever heard that Robert Legister was “the boss” of Ghetto Mafia. At no time had I ever heard John Giuca referred to as a “capo” in Ghetto Mafia. At no time had I ever heard of Antonio Russo being referred to as John Giuca’s “soldier in Ghetto Mafia.

5. On or about February 1, 2005, I was interviewed by NYPD detectives and members of the Kings County District Attorney's Office, including ADA Nicolazzi. During this meeting, I denied disposing of a gun shortly after the murder of Mark Fisher. I was then threatened by the police. They told me that both Lauren Calciano and Albert Cleary told them that I removed the murder weapon from John Giuca's house at his request.

6. I was threatened with arrest and told that if I "wanted to see my daughter" I must cooperate with them. At this time, my daughter was less than two years old and I was embroiled in a custody and visitation dispute in Family Court.

7. I was also told by a detective "not to be like Greg" (Ware) and that I should "help myself" because "I had a future." After I was threatened with arrest, I was told that they would let me go home if I cooperated with them.

8. I did tell detectives that I had disposed of a gun for John several months prior to Mark Fisher's murder. That is true. However, detectives continued to pressure me to say that I had disposed of the gun shortly after Mark Fisher's murder.

9. As the result of the pressure, I finally said that I had disposed of a gun for John shortly after Mark Fisher's murder. This was false. They showed me John Giuca's phone records and asked me about a few phone calls between us. I lied to them about the calls and worked the calls into my false story about disposing of the gun a day or two after the murder.

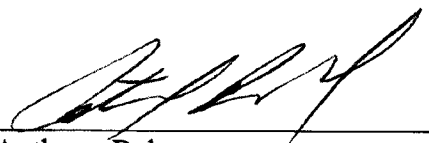
10. Within a day or two after I told the police and DA that I had disposed of a gun for John after Mark Fisher's murder, I went to John Giuca's house and met with Doreen Giuliano (John Giuca's mother) and Sam Gregory. I told them that I said to the police and DA that I had gotten rid of a gun for John after the murder. I told them this was not true and that "I had fucked up."

11. In fact, I did not see John Giuca for approximately a week after the murder.

12. In September 2005, I was called to testify at John's trial. Before I testified, I met with ADA Nicolazzi in a witness room at the courthouse. I told her I would not testify. She told me that if I did not testify, I would be charged with crimes for helping John Giuca get rid of a gun, including perjury for the prior sworn statement I had made. She said I would receive immunity from prosecution if I testified. I did testify that I helped John get rid of a gun after Mark Fisher's murder.

13. I lied when I testified that I disposed of a gun after Mark Fisher's death and in describing how I disposed of the gun. I did this because of the threats made against me by the police and DA that I would be arrested and I was afraid that I would not be able to see my daughter anymore and would suffer other harm as well, such as losing my job. The truth is, as I told the police earlier, I had disposed of a gun for John Giuca months before Mark Fisher was killed.

14. I regret testifying falsely at John Giuca's trial.


Anthony Beharry

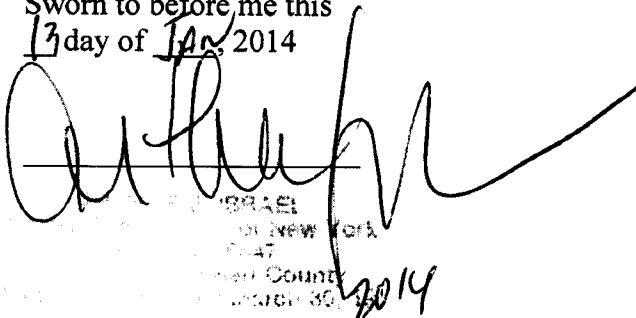
Sworn to before me this
13 day of Jan, 2014

Notary Public for the State of New York
County of Essex
March 30, 2014

EXHIBIT H

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF KINGS - CRIMINAL TERM - PART 30
-----X

3 THE PEOPLE OF THE STATE OF NEW YORK,

4 -against-

5 JOHN AVITTO,

6
7 DEFENDANT
8 -----X

9 Indictment No.
6823/04
10 Plea

320 Jay Street
Brooklyn, New York
February 8, 2005

11
12 B E F O R E:

13 HONORABLE PATRICIA DIMANGO,

14 Justice
15

16 A P P E A R A N C E S:

17 OFFICE OF CHARLES J. HYNES, ESQ.
18 DISTRICT ATTORNEY - KINGS COUNTY
For the People
19 BY: JASON DIZON,
Assistant District Attorney

20
21 Sigmund Israel, Esq.,
For the Defendant
22 Legal Aid Society
23 Brooklyn, New York

24 ROSANNE TERMAN,
25 SENIOR COURT REPORTER

1 THE CLERK: Twenty-one, trial calendar
2 6823 of 04 John Avitto, incarcerated and
3 produced.

4 MR. DIZON: Jason Dizon.

5 MS. ISRAEL: Legal Aid Society by Sigmund
6 Israel of counsel.

7 MS. SMALL: Nicole Small for New York City
8 TASC. Good afternoon, Your Honor.

9 Your Honor, Mr. Avitto was provided for
10 the enforcement team. TASC is recommending that
11 he take a plea today and adjourn the case for two
12 weeks for placement for Paladime.

13 THE COURT: Was his social security number
14 verified?

15 MS. SMALL: We did receive a copy of the
16 social security number from his Mom.

17 THE COURT: DTAP with an alternative of
18 three and one-half to seven.

19 The plea is to which? So that is count
20 seven.

21 MR. DIZON: Burglary in the third degree.

22 THE CLERK: Mr. Israel, do you have an
23 application at this time?

24 MS. ISRAEL: At this time, Your Honor, the
25 defendant respectfully moves to withdraw his plea

1 of not guilty heretofore entered and in its place
2 offers to plead guilty to the class C felony of
3 burglary in the third degree under the seventh
4 count of the indictment.

5 THE COURT: I think burglary in the third
6 degree is a Class D felony.

7 MS. ISRAEL: I'm sorry, Class D felony.
8 You're right Judge under the seventh count of the
9 indictment in full satisfaction of all counts
10 herein.

11 THE COURT: He should sign a waiver of his
12 right to appeal. He's done that.

13 (Whereupon the defendant was
14 sworn by the Clerk of the Court
15 and answered in the affirmative.)

16 THE CLERK: Please state your name?

17 THE DEFENDANT: John Avitto.

18 THE CLERK: Mr. Avitto, your are attorney
19 is standing here with you. Have you had enough
20 time to speak with him and are you satisfied with
21 his representation?

22 THE DEFENDANT: Yes, sir. Yes, ma'am.

23 THE COURT: I'm going to ask you some
24 questions. You may stop at any time and speak
25 with your attorney. You have sworn to tell the

1 truth. All your answers are under oath, do you
2 understand?

3 THE DEFENDANT: Yes.

4 THE COURT: Have you taken any alcohol,
5 drugs or medication in the last 24 hours?

6 THE DEFENDANT: No.

7 THE COURT: Do you feel that you are
8 physically and mentally able to go ahead with
9 this plea at this time?

10 THE DEFENDANT: Yes.

11 THE COURT: Your attorney has entered a
12 plea on your behalf to the seventh count of this
13 indictment, which charges you with a crime of
14 burglary in the third degree. Do you understand
15 that, and is that what you wish to do?

16 THE DEFENDANT: Yes.

17 THE COURT: By your plea, do you admit
18 that on October between, October 20th and October
19 2004 at 6201 15th Avenue in the County of Kings,
20 that you knowingly entered and remained in the
21 building of John Torres with the intent to commit
22 a crime inside?

23 THE DEFENDANT: Yes.

24 THE COURT: Are you pleading guilty of
25 your own free will?

1 THE DEFENDANT: Yes.

2 THE COURT: Has anybody forced you or paid
3 you any money in order to get to you plead
4 guilty?

5 THE DEFENDANT: No.

6 THE COURT: Are you pleading guilty
7 because you are guilty?

8 THE DEFENDANT: Yes.

9 THE COURT: By pleading guilty do you
10 realize you're giving up certain rights including
11 the right to trial by Judge or jury, the right to
12 confront witnesses or to provide witnesses in
13 your own behalf. Do you understand that?

14 THE DEFENDANT: Yes.

15 THE COURT: Also by pleading guilty, it is
16 the same as if you were convicted after trial and
17 you're giving up your Fifth Amendment right to
18 remain silent. Do you understand?

19 THE DEFENDANT: Yes.

20 THE COURT: The promise that's been made
21 to you is that you will be required to enter and
22 complete a residential drug treatment program.
23 That usually takes 18 to 24-months for the
24 residential portion. Then after you have
25 completed that you will go to outpatient where

1 you will be monitored by TASC. If you
2 successfully complete this entire program, then
3 the felony charges against you will be dismissed.
4 However, if you fail to complete the program, for
5 example, if you should leave the program, or if
6 you should get kicked out of the program, then
7 you will receive a state prison sentence of three
8 and one-half to seven years. Do you understand
9 that proposal?

10 THE DEFENDANT: Yes.

11 THE COURT: Obviously if you should get
12 arrested for something new, you could also
13 receive three and a half to seven years. Do you
14 understand?

15 THE DEFENDANT: Yes.

16 THE COURT: Do you have any questions
17 about the promise that's been made to you?

18 THE DEFENDANT: No.

19 THE COURT: Any other promises been made
20 to you?

21 THE DEFENDANT: No.

22 THE COURT: The prosecutor has filed a
23 predicate felony statement. The Court Clerk is
24 going to ask you some questions about that.
25 Please answer all of his questions truthfully.

1 THE CLERK: You have been provided with a
2 statement by the District Attorney. According to
3 Article 400 of the Criminal Procedure Law and 70
4 of the Penal Law state that you have been
5 convicted and sentenced on a prior sentence. SCI
6 number 1148 of 1995 in Kings County on 2-6-95 for
7 the crime of attempted burglary in the third
8 degree an E felony.

9 You may admit, deny or stand mute whether
10 you are the person that was convicted and
11 sentenced on that felony as recited in the
12 statement. If you wish to controvert that
13 statement on any grounds including a violation of
14 your constitutional right, you must state the
15 grounds and you may be entitled to a hearing
16 before this court without a jury. Have you
17 received a copy of the statement?

18 THE DEFENDANT: Yes.

19 THE COURT: Have you discussed this matter
20 with your attorney?

21 THE DEFENDANT: Yes.

22 THE CLERK: Do you admit that you are the
23 person that was convicted of a felony?

24 THE DEFENDANT: Yes.

25 THE CLERK: Do you wish to challenge the

1 constitutionalty of the prior conviction?

2 THE DEFENDANT: No.

3 THE COURT: The defendant is adjudicated a
4 predicate felon. Mr. Avitto, you have signed a
5 waiver of your right to appeal in which you agree
6 to give up any appeal on this matter in return
7 for this plea. In other words, there will be no
8 appeal relating to this case.

9 THE DEFENDANT: Yes.

10 THE COURT: If you could not afford an
11 attorney, one would be assigned to represent you.
12 By signing the waiver and answering my questions,
13 you're giving up your right to appeal, do you
14 understand?

15 THE DEFENDANT: Yes.

16 THE COURT: Are you doing this of your own
17 free will.

18 THE DEFENDANT: Yes.

19 THE COURT: Have you discussed this waiver
20 of right to appeal with your attorney?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you have any questions
23 about it?

24 THE DEFENDANT: No.

25 THE COURT: If you do not complete the

1 program, and I certainly hope that is not the
2 case, if you do not complete the program and I am
3 required to sentence you to the three and
4 one-half to seven years, I'll also be required to
5 impose a mandatory surcharge in the amount of
6 \$250, a \$20 crime victim assistance fee and a \$50
7 DNA data bank registration fee.

8 You are advised that if you are not a
9 citizen of this country, this plea could result
10 in a deportation process being brought against
11 you. Have you understood everything that I've
12 said to you?

13 THE DEFENDANT: Yes.

14 THE COURT: Do you still wish to plead
15 guilty?

16 THE DEFENDANT: Yes.

17 THE COURT: Is this plea, as allocuted,
18 acceptable to the People?

19 MR. DIZON: Yes.

20 THE COURT: The plea is entered, and we
21 can adjourn this for possible placement.

22 MS. SMALL: February 22nd Your Honor.

23 THE COURT: February 22nd. 2-22 for
24 placement.

25 MS SMALL: Yes, for possible placement,

1 Your Honor.

2 THE COURT: You should bring your
3 property.

4 Remand continued.

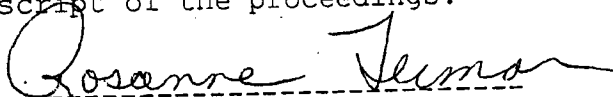
5 (The matter is adjourned until 2-22-05 in
6 Part 30.)

7 *

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8
9 It is hereby certified that the foregoing is a true and
10 accurate transcript of the proceedings.

11 

12 ROSANNE TERMAN,
13 SENIOR COURT REPORTER
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EXHIBIT I

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF KINGS - CRIMINAL TERM - PART: 5

3 -----X
4 THE PEOPLE OF THE STATE OF NEW YORK,

5 -against-

6 JOHN AVITTO,

7 Defendant.

8 -----X
9 Indict. No. 6823/04

10 360 Adams Street
11 Brooklyn, New York
12 September 6, 2005

13
14 B E F O R E:

15 HONORABLE SHERYL PARKER, Justice

16
17 A P P E A R A N C E S:

18 OFFICE OF CHARLES J. HYNES, ESQ.
19 DISTRICT ATTORNEY, KINGS COUNTY
20 Attorney for the People
21 BY: MARK F. WHALEN, ESQ.
22 Assistant District Attorney

23
24 JOHN RYAN, EAC Link

25
STEPHANIE WILLIAMS, CSR
OFFICIAL COURT REPORTER

1 THE CLERK: Adding to the calendar, John
2 Avitto.

3 MR. WHALEN: Mark Whalen, for the People.

4 JOHN RYAN: John Ryan, EAC Link.

5 MR. WHALEN: Can we approach?

6 THE COURT: Yes.

7 (Whereupon, there is a bench conference at
8 this time.)

9 THE COURT: I am sorry to see that you had
10 left the program. The fact that you returned
11 voluntarily is very good.

12 It is my understanding from the Link
13 representative that you will go into a rehab program
14 today. Is that correct?

15 THE DEFENDANT: Yes.

16 THE COURT: Based on that, I am willing to
17 adjourn this for a month, which will put us at October
18 6.

19 However, I have instructed the prosecutor and
20 the Link representative that if you do not go into the
21 program, I want to be notified, and what I will do is
22 issue a warrant for your arrest.

23 You should understand that if you get anymore
24 warrants, there is not much more that I can do for you.
25 Your jail alternative is three and a half to seven. All

1 right.

2 So I'm going to adjourn this for October 6 and
3 we will see how things go.

4

5

* * * *

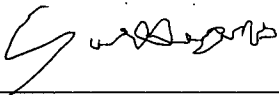
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It is hereby certified that the
foregoing is a true and accurate
transcript of the proceedings.

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STEPHANIE WILLIAMS, CSR
OFFICIAL COURT REPORTER

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EXHIBIT J

EAC



**ADULT LINKAGE-TRANSITION PROGRAM
ADOLESCENT LINKAGE-TRANSITION PROGRAM
MENTAL HEALTH COURT ADVOCACY PROGRAM**

Programs of the
Education & Assistance Corporation
www.eacinc.org

Lance W. Elder
President & CEO

Susan Timler
Division Director

Kenneth Linn
Division Director

Program Sites

Adult LINK
Lauren D'Iaselt
Program Director
175 Remsen Street
Suite 600
Brooklyn, N.Y. 11201
(718) 975-0180
FAX (718) 975-1190

Adolescent LINK
Susannah Karlin
Program Director
175 Remsen Street
Suite 505
Brooklyn, N.Y. 11201
(718) 237-9404
FAX (718) 237-5864

Mental Health Court Advocacy
Dr. J. Buzz Von Ornstein
Program Director
175 Remsen Street
Suite 600
Brooklyn, N.Y. 11201
(718) 975-0180
FAX (718) 975-1190


VIOLATION:

To: Presiding Judge Parker
Date: September 19, 2005
Part: 30
Reference: John Avitto
Next Court Date: October 6, 2005
IND#: 6823/04
NYSID: 5893932P

This is to inform the court of the above named defendants status:

On February 8, 2005 the above named defendant pled guilty to Burglary in the 3rd degree. The defendant was ROR'd to EAC-LINK on February 22, 2005 for placement in Samaritan Village residential treatment program. On June 9, 2005 the defendant absconded from Samaritan Village. On June 13, 2005 the court determined that the defendant would be permitted to remain at his mother's residence and report to EAC-LINK regularly until such time that the defendant could be placed in a new treatment program. During such time the defendant was attending Bridge Back to Life outpatient treatment program. On August 24, 2005 case manager Sean Ryan was contacted by the defendant who admitted to relapsing on cocaine. Due to this the defendant was placed in St. John's Detoxification Center and targeted for Kingsboro Rehabilitation Center. The defendant made intake at St. John's Rehabilitation Center on August 29, 2005, but left against request of EAC-LINK on September 2, 2005. The defendant was referred to and made intake at Kingsboro Rehabilitation Center on September 7, 2005. On September 19, 2005 case manager Sean Ryan was contacted by Kingsboro and informed that the defendant was being discharged for bringing cigarettes into the facility and distributing them to other patients. The defendant has violated the conditions of his plea and release into the community by refusing to adhere to the mandated treatment plan put forth by EAC-LINK.

If you have any further questions please do not hesitate to contact the undersigned at (718)975-0180.


Sean Ryan
Forensic Case Manager



Ruth O'Sullivan
Supervisor

EXHIBIT K

1 SUPREME COURT OF THE STATE OF NEW YORK

2 COUNTY OF KINGS: CRIMINAL TERM: PART 30

-----X

3 :

4 THE PEOPLE OF THE STATE OF NEW YORK, :

5 :

6 -against- :

7 INDICTMENT NO.

8 6823/2004

9 :

10 :

11 Calendar Call

12 :

13 Defendant. -----X

14 320 Jay Street

15 Brooklyn, New York

16

17 September 19, 2005

18

19 B E F O R E: HONORABLE SHERYL L. PARKER

20 Justice of the Supreme Court

21

22

23 A P P E A R A N C E S:

24

25 OFFICE OF KENNETH THOMPSON, ESQ.

DISTRICT ATTORNEY - KINGS COUNTY

Attorney for the People

350 Jay Street

Brooklyn, New York 11201

BY: TAYLOR KOSS, ESQ.

Assistant District Attorney

HAROLD C. BAKER, ESQ.

Attorney for the Defendant

32 Court Street, Suite 507

Brooklyn, New York 11201

EAC LINK

BY: SEAN RYAN

VERA MONACO, RPR

Senior Court Reporter

PROCEEDINGS

1 (Whereupon, the following takes place on the
2 record in open court.)

3 THE CLERK: Added to the calendar as No. 62,
4 Indictment 6823-2004, John Avitto. This matter has been
5 advanced from 10/6/2005 at the request of T.A.S.C.

6 MR. RYAN: Sean Ryan, EAC Link. Good afternoon,
7 Your Honor.

8 THE COURT: Good afternoon.

9 THE CLERK: Mr. Baker, I'm going to need you on
10 this one.

11 MR. BAKER: Okay.

12 THE DEFENDANT: Your Honor, may I speak to you?

13 MR. RYAN: Can I approach, Your Honor?

14 THE COURT: Well, you may.

15 (Whereupon, there was a discussion held off the
16 record sidebar.)

17 THE COURT: Mr. Avitto, I don't quite understand
18 what's going on here. Now listen to me, just listen to
19 what I'm saying to you. The letter, you can see how long
20 this is. It's all underlined. You know what that means?
21 That means it's not good.

22 THE DEFENDANT: Yes.

23 THE COURT: They say you're bringing cigarettes
24 in.

25 THE DEFENDANT: Yes, ma'am. Yes.

PROCEEDINGS

1 THE COURT: Why are you doing that? This is a
2 non-smoking facility. They're trying to get people to get
3 off from addictions and you are bringing in cigarettes.

4 THE DEFENDANT: The people were up there, we
5 were smoking and everything. I went in with cigarettes.
6 They didn't take them from me. So when I went to the
7 hospital for checkups, I bought some more cigarettes to
8 bring in.

9 The only thing is because I have a hard time
10 with the cigarettes. I'm a big smoker. I'm supposed to
11 be testifying for this week in a murder case, so I was
12 smoking a lot. So I apologize for that.

13 THE COURT: All right. Well, apparently, we're
14 going to give you another opportunity but, I mean, not
15 only are you jeopardizing your position in these programs,
16 you know, the jail alternative you face is
17 three-and-a-half to seven. Plus, cigarettes are bad for
18 you. You are going to give yourself lung cancer. I mean,
19 you're going to give yourself a death sentence as well as
20 three-and-a-half to seven. Neither one of those are any
21 good. There aren't too many more times that I can keep
22 giving you another opportunity.

23 THE DEFENDANT: I appreciate it.

24 THE COURT: Do you understand? You have to
25 figure out the rules of the program and follow them or you

PROCEEDINGS

1 go to state prison. That's as simple as I can make it for
2 you.

3 THE DEFENDANT: Yes.

4 THE COURT: Do you understand?

5 THE DEFENDANT: Yes.

6 THE COURT: I can't bring -- Bridge Back to Life
7 says they will take you back, so good luck.

8 THE DEFENDANT: Thank you.

9 THE COURT: Do you want to keep the same date,
10 October 6th?

11 MR. RYAN: Yes, Your Honor.

12 MR. BAKER: Yes.

13 (Whereupon, the matter was adjourned until
14 October 6, 2005 in Part 30.)

15 * * * *

16 Certified to be a true and accurate transcript
17 of the stenographic minutes taken within.

18

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Vera Monaco
VERA MONACO, RPR
Senior Court Reporter

EXHIBIT L

EAC

ADULT LINKAGE-TRANSITION PROGRAM ADOLESCENT LINKAGE-TRANSITION PROGRAM MENTAL HEALTH COURT ADVOCACY PROGRAM

Programs of the
Education & Assistance Corporation
www.eacinc.org

Lance W. Elder
President & CEO

Susan Timler
Division Director

Kenneth Linn
Division Director

Program Sites

Adult LINK
Lauren D'Iselt
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FAX (718) 975-1190

Adolescent LINK
Susannah Karlin
Program Director
175 Remsen Street
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(718) 237-9404
FAX (718) 237-5864

Mental Health Court Advocacy
Dr. J. Buzz Von Ornsteiner
Program Director
175 Remsen Street
Suite 600
Brooklyn, N.Y. 11201
(718) 975-0180
FAX (718) 975-1190


VIOLATION:

To: Presiding Judge Parker
Date: September 20, 2005
Part: 30
Reference: John Avitto
IND#: 6823/04
NYSID: 5893932P

This is to inform the court of the above named clients status:

On February 8, 2005 the above named defendant pled guilty to Burglary in the 3rd degree. The defendant was ROR'd to EAC-LINK on February, 2005 for placement in Samaritan Village residential treatment program On June 9, 2005 the defendant absconded from Samaritan Village. On June 13, 2005 the court determined that the defendant would be permitted to remain at his mother's residence and report to EAC-LINK regularly until such time that the defendant could be placed in a new treatment program. During such time the defendant was attending Bridge Back to Life outpatient treatment program. On August 24, 2005 case manager Sean Ryan was contacted by the client who admitted to relapsing on cocaine. Do to this the defendant was placed in St. John's Detox and targeted for Seafield Rehab. The client entered into St. John's Detox but left against request of EAC-LINK and did not make intake at Seafield Rehab. The defendant has not contact EAC-LINK and his whereabouts are unknown. The defendant has violated the conditions of his plea and release into the community by refusing to adhere to the mandated treatment plan put forth by EAC-LINK.

If you have any further questions please do not hesitate to contact the undersigned at (718)975-0180.


Sean Ryan
Forensic Case Manager

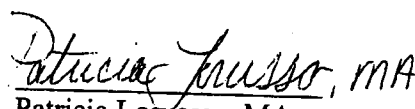

Patricia Lorusso, MA
Senior Case Manager



EXHIBIT M

Brayer Handwriting International

Detecting Forgery and Reducing Fraud Losses since 1986

Date: May 19, 2014

To: Mark A. Bederow, Esq.
Bederow Miller LLP
260 Madison Avenue
New York, New York 10016

From: Ruth Brayer, Forensic Document Examiner
Brayer Handwriting International
249 East 48th Street
New York, NY 10017

Re: Signature Verification

Documents Submitted and Examined

Questioned Document:

Exhibit Q1 Photocopy of Education & Assistance Corporation Violation letter, with signature attributed to "Sean Ryan", dated 9/20/05

Known Documents bearing signatures by Sean Ryan (all photocopies):

Exhibit K1 Education & Assistance Corporation Memorandum to The Court letter, dated 6/16/05

Exhibit K2 Education & Assistance Corporation Court Update letter, dated 7/19/05

Exhibit K3 Education & Assistance Corporation Violation letter, dated 9/19/05

Problem Presented by Client

Determine whether the signature attributed to "Sean Ryan" on Exhibit Q1 is consistent with the known signatures by the same name on Exhibits K1 through K3.

Methodology

The undersigned follows generally accepted methods and procedures of handwriting examination in making a comparison, examination and arriving at an opinion. The process involves the comparison of the questioned handwriting with known exemplars of the individual.

This comparison is the basis for determining whether or not a questioned writing is genuine. The known and questioned signatures are compared to evaluate significant and fundamental differences versus similarities between the known and questioned writing.

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Observations and limitations

The known signatures bearing Sean Ryan display a wide range of variations.

Due to the submission of non-originals (copies), certain examinations are limited such as pen pressure and air strokes. The undersigned recommends submission of the documents bearing original genuine signatures. Determinations made in this report are based on the limited available evidence on the submitted reproductions.

Although there are some indications that the questioned signature was written off in a rapid, free manner, we have observed significant irregularities between the questioned and the known signatures, in terms of form, initial and end strokes, alignment and directional changes, including disjointed lines on the initial letter "S" and on the final stroke on the letter "n".

Conclusion

With the data available for examination, it is my expert opinion with a reasonable degree of certainty that the signature attributed to "Sean Ryan" on Exhibit Q1 is not consistent with known signatures bearing the same name on Exhibits K1 through K3.

This opinion does not exclude the possibility that the signature on Exhibit Q1 was doctored and imported from another document bearing a genuine signature by Sean Ryan.

This report represents a preliminary opinion with a reasonable degree of certainty which can be upgraded to a high degree of certainty when presented the subject's specimens of writing done in my presence.

In the event testimony is required with regard to my findings, the evidence described above must be returned to Brayer Handwriting International at least ten working days prior to such testimony in order to prepare court illustrations.

Ruth Brayer, Forensic Document Examiner

May 15, 2014

Brayer Handwriting International

Detecting Forgery and Reducing Fraud Losses since 1986

Degrees of Certainty

Terminology for Handwriting Verification*

I. Written by the Same Individual

Identification**	Definite identification beyond any doubt. Highest degree of confidence in one's opinion that the handwriting belongs to the identified party.
A high degree of certainty	Critical evidence confirms the "questioned" and "known" documents were written by the same person.
A reasonable degree of certainty	Significant indicators suggest the handwriting samples compared were written by the same person; more data is needed to support a higher degree of certainty.
Inconclusive	Due to insufficient evidence, it is not possible to reach a conclusion.
No Opinion	

II. Not Written by the Same Individual

Elimination	Definite conclusion that the "questioned" and "known" writing are <u>not</u> executed by the same party. Beyond any doubt.
A high degree of certainty	Critical evidence confirms the "questioned" and "known" documents were <u>not</u> written by the same person.
A reasonable degree of certainty	Significant indicators suggest the handwriting samples compared were <u>not</u> written by the same person; more data is needed to support a higher degree of certainty.
Inconclusive	Due to insufficient evidence, it is not possible to reach a conclusion.

* * *

* The conclusion terminology above was standardized by the American Society for Testing and Materials (ASTM) for expressing findings (determinations). Reference document: E-1658 Terminology for Expressing Conclusions of Forensic Document Examiners.

** Identification

This opinion can be reached only in ideal situations: when you have all the originals, perfect pre-and post-incident samples, parallel wording in all documents and an eyewitness. In most cases one of these elements is missing, so this opinion is rarely given. For all practical purposes, "a high degree of certainty" is the most desirable opinion, in the absence of "beyond any doubt".

Brayer Handwriting International

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Curriculum Vitae - Ruth Brayer

Qualified as an Expert Witness by the Supreme Court of the State of New York, Ruth Brayer has testified for the plaintiff as well as the defendant in both criminal and civil cases. Brayer has been used as a forensic expert in multimillion-dollar cases and retained by prosecutors and defense attorneys alike. She has provided services for major law firms, Fortune 500 companies and New York City agencies including the Department of Investigations, the Law Department, and the office of the District Attorney. Ms. Brayer is the author of *Detecting Forgery in Fraud Investigations*, a CLE provider, and a presenter with over 24 years of professional speaking experience.

Expert Testimony:

- ▶ National Association of Securities Dealers
- ▶ U.S. Securities and Exchange Commission
- ▶ Central London County Court, United Kingdom
- ▶ United States Federal Court, Southern District of New York
- ▶ Supreme Court of the County of New York
- ▶ Supreme Court of the State of New York, Troy, NY

Professional Affiliations:

- ▶ American Society for Testing and Materials
- ▶ Society of Professional Investigators
- ▶ Global Speakers Federation
- ▶ National Speakers Association
- ▶ National Speakers Association, Metro New York chapter, former President
- ▶ National Bureau of Document Examiners of New York, former Vice Present
- ▶ American Board of Forensic Examiners, former member
- ▶ American Society for Industrial Security, former member

Education:

- ▶ National Association of Document Examiners (Awarded Certificate)
- ▶ National Bureau of Document Examiners* (Awarded Certificate)
- ▶ American Academy of Forensic Scientists
- ▶ The Jewish Theological Seminary: Masters Degree in the Humanities

Publications:

- ▶ Detecting Forgery in Fraud Investigations: The Insider's Guide, ASIS Sept. 2000
- ▶ When Evidence is on the Line, *Security Management*, Feb. 1998
- ▶ Demystifying Handwriting: Legal & Behavioral Aspects, *ALA*, June 1999

Educational Programs Presented by Ruth Brayer:

- ▶ Detecting Forgery: Effective Strategies to Win Your Case, a CLE program accredited by New York State Continuing Legal Education Board
- ▶ Detecting Forgery in Fraud Investigations, a program designed for the investigators
- ▶ Fraud Matters, a program designed for the general public

* (a.k.a. Manhattan Handwriting Consultant)

Brayer Handwriting International

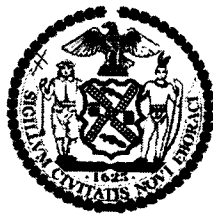
Detecting Forgery and Reducing Fraud Losses since 1986

Court testimony*

Court:	U.S. Securities and Exchange Commission
Judge:	at the United States District Court, Flint, Michigan
Case:	Robert G. Mahony SEC Administrative Proceeding Simpson/Pattee
Court:	Central London County Court, United Kingdom
Judge:	Uziel-Hamilton
Case:	Tejinder Pal Singh Bakshi v. Thomas Cook Group Limited
Court:	United States Federal Court, Southern District of New York
Case	United States of America v. Nadia Germana
Attorneys	Mary J. White, United States Attorney for the Southern District of New York M. Katherine Baird, Assistant United States Attorney
Court	Supreme Court of the County of New York
Judge:	Alice Schlesinger
Case:	Peck vs. Leiberman
Court:	Supreme Court of the State of New York, Troy, NY
Judge:	George Ceresia
Case:	Coleman v. Montoya
Court:	Supreme Court of the County of New York
Judge:	Charles Tejada
Case:	People v. Rosemarie Henry
Court:	Supreme Court of the County of New York, Criminal Term
Judge:	Dorothy A. Cropper
Case:	People v. Juan Tavares
Court:	Civil Court of Kings County, NY
Judge:	Michael Garson
Case:	Alfred Balsam v. The Dept. of General Services/City of New York and S.J. O'Toole

* Partial list

EXHIBIT N



Kenneth P. Thompson
District Attorney

**DISTRICT ATTORNEY
KINGS COUNTY**
350 JAY STREET
BROOKLYN, NY 11201-2908
(718) 250-2000
WWW.BROOKLYNDA.ORG

August 15, 2014

Via EMAIL and Regular US Mail

Mark Bederow, Esq.
Bederow Miller LLP
260 Madison Avenue
New York, New York 10016

RE: People v. John Guica
Ind. 8166/2004
CRU No. 14-01

Dear Mr. Bederow:

In response to request for a status update, the CRU has begun an expansive and comprehensive review of the case. The complete file, hearing and trial transcripts as well the appellate materials are being reviewed and analyzed.

In conjunction with this review, The CRU unit interviewed retired New York Police Department (NYPD) detective Thomas Brynes. We will likely be conducting a follow up interview or interviews at some point in the future.

I have spoken with and corresponded with Mr. Sean Ryan who was formally affiliated with or employed by the TASC EAC-Link program. At my request, Mr. Ryan reviewed the September 19 and the September 20 letters. Mr. Ryan stated that both the signatures that purported to be his appeared to in fact to be his. We will be continuing our investigation regarding this issue.

I have spoken with and corresponded with Ms. Ruth O'Sullivan who was formally affiliated with or employed by the TASC EAC-Link program. At my request, Ms. O'Sullivan reviewed the September 19 letter and confirmed that the signature that purported to be hers appeared to in fact to be hers.

The CRU interviewed Ms. Lauren Calicano. As the investigation continues and if the need arises we will attempt to re-interview her.

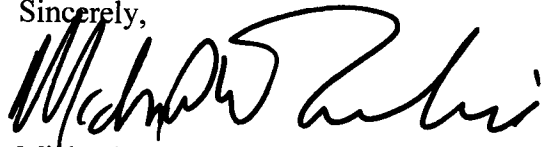
The CRU interviewed Mr. John Avitto. We will be following up on various points of information and may attempt to re-interview Mr. Avitto.

The CRU interviewed Ms. Angel DiPietro. If the need arises we will re-interview Ms. DiPietro.

The CRU has spoken to Mr. Anthony Beharry numerous times and made several appointments for him to be interviewed; he has failed to show without explanation.

We will be continuing the review in a logical and ordered fashion and anticipate that this will include many more interviews and the continued painstaking review of all aspects of the file.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael W. Trabulsi". The signature is fluid and cursive, with the first name "Michael" being the most prominent part.

Michael W. Trabulsi
Senior Assistant District Attorney
Conviction Review Unit

CC Eric Gonzalez, Esq.
Professor Ronald Sullivan
Mark Hale, Esq.
Mark Feldman, Esq.