

158 A.D.2d 708, 552 N.Y.S.2d 158
(Cite as: 158 A.D.2d 708, 552 N.Y.S.2d 158)


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Supreme Court, Appellate Division, Second Department, New York.
The PEOPLE, etc., Respondent,
v.
David DAHAN, Appellant.
Feb. 26, 1990.

Defendant was convicted in the Supreme Court, Kings County, [Kreindler, J.](#), of, inter alia, murder in the second degree, and defendant appealed. The Supreme Court, Appellate Division, held that: (1) it was reversible error to deny defendant discovery of certain *Rosario* material, and (2) the court erred by refusing defendant's request for an interested witness charge as applicable to a prosecution witness.

Reversed.

West Headnotes

[1] Criminal Law 110  **627.7(3)**

110 Criminal Law


110XX Trial

110XX(A) Preliminary Proceedings

110k627.5 Discovery Prior to and Incident to Trial

110k627.7 Statements, Disclosure of

110k627.7(3) k. Statements of Witnesses or Prospective Witnesses. [Most Cited Cases](#)

Criminal Law 110  **1166(10.10)**

110 Criminal Law

110XXIV Review


110XXIV(Q) Harmless and Reversible Error

110k1166 Preliminary Proceedings

110k1166(10.10) k. Discovery and Disclosure; Transcripts of Prior Proceedings. [Most Cited Cases](#)

In prosecution for murder of person who had apparently been involved in international drug trafficking, it was reversible error to deny defendant's re-

newed request for discovery of transcript of interview of main prosecution witness by French law enforcement authorities concerning her knowledge of international drug trafficking; although transcript was initially irrelevant to case, when prosecutor later questioned that witness about her cooperation with French authorities in attempt to bolster her credibility, text of her interview became related to subject matter of her testimony and was then discoverable *Rosario* material. [McKinney's CPL § 240.45, subd. 1\(a\)](#).

[2] Criminal Law 110  **785(9)**

110 Criminal Law

110XX Trial

110XX(G) Instructions: Necessity, Requisites, and Sufficiency

110k785 Credibility of Witnesses

110k785(9) k. Interest or Bias. [Most](#)[Cited Cases](#)

In murder prosecution, where defendant's testimony implicated prosecution witness as murderer and court charged that defendant was interested witness, court erred by refusing defendant's request for interested witness charge as applicable to prosecution witness.

*[159 Joel A. Brenner](#), East Northport ([Richard Langone](#), on brief), for appellant.

[Charles J. Hynes](#), Dist. Atty., Brooklyn ([Barbara D. Underwood](#), [Peter A. Weinstein](#) and Robin A. Forshaw, of counsel), for respondent.

Before KOOPER, HARWOOD, ROSENBLATT and MILLER, JJ.

MEMORANDUM BY THE COURT.

Appeal by the defendant from a judgment of the Supreme Court, Kings County ([Kreindler, J.](#)), rendered March 18, 1987, convicting him of murder in the second degree, attempted murder in the

158 A.D.2d 708, 552 N.Y.S.2d 158
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second degree, assault in the first degree and criminal possession of a weapon in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is reversed, on the law, and a new trial is ordered. The facts have been considered and are determined to have been established.

The defendant was convicted, *inter alia*, of the murder of Maurice Reboh, an Israeli citizen who had apparently been involved in international drug trafficking. The evidence of his guilt rested almost entirely upon the testimony of two eyewitnesses, both of whom were companions of the decedent. Ben-Zion Shalom was himself apparently involved in international drug dealing. The other witness, Patricia Azizi, was a French citizen who had travelled with the two drug traffickers and was familiar with their activities. When these three individuals began lodging in the Golden Gate Motel in Brooklyn, they met the defendant who was the proprietor of the motel coffee shop.

The theory of the prosecution was that the defendant killed Maurice Reboh in retaliation for the beating Reboh had administered upon a female friend named Fatima, who was at best a new and casual acquaintance of the defendant. The defendant, however, testified that Ben-Zion Shalom had killed Reboh in a dispute over money and their competing drug-selling enterprises.

[1] Although we are satisfied that the defendant's guilt was proven beyond a reasonable doubt by legally sufficient evidence, and was not contrary to the weight of the evidence, his conviction must nevertheless be reversed. Patricia Azizi, the main prosecution witness, had been interviewed by French law enforcement authorities in the office of the District Attorney, concerning her knowledge of international drug trafficking. The defense demanded discovery of the transcript of this interview as *Rosario* or *Brady* material. After an in camera examination of this transcript (*see, People v. Poole*, 48 N.Y.2d 144, 422 N.Y.S.2d 5, 397 N.E.2d 697), the court deter-

ined that the transcript "need not be turned over since it has no relevance to the case on trial". This ruling was correct at *160 the time since the transcript concerned matters which would not relate to the subject matter of the witness's testimony (CPL 240.45[1][a]). However, when the prosecutor later questioned Ms. Azizi about her cooperation with French authorities in an attempt to bolster her credibility, the text of her interview became related to the subject matter of her testimony and was then discoverable *Rosario* material. At the very least the defense became entitled to a copy of this statement to ascertain whether her cooperation with French authorities occurred in a manner consistent with her testimony (*see, People v. Ranghelle*, 69 N.Y.2d 56, 511 N.Y.S.2d 580, 503 N.E.2d 1011). The court thus committed reversible error by denying the defendant's renewed request for the discovery of this document.

On retrial the prosecution must fully disclose the existence and scope of any cooperation agreements involving Ben-Zion Shalom regarding his Federal drug-trafficking conviction (*see, Giglio v. United States*, 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed.2d 104), as the existence of such an agreement, as apparently was the case here, also bears on a witness's credibility.

[2] We would further note that the trial court erred by refusing the defendant's request for an interested witness charge as applicable to Ben-Zion Shalom. Since the defendant's testimony implicated this witness as the murderer and the court charged that the defendant was an interested witness, the court should also have charged that Ben-Zion Shalom was an interested witness (*see, People v. Brabham*, 77 A.D.2d 626, 430 N.Y.S.2d 123).

In light of our determination, we need not reach the remaining issues.

N.Y.A.D. 2 Dept.,1990.
 People v. Dahan
 158 A.D.2d 708, 552 N.Y.S.2d 158

158 A.D.2d 708, 552 N.Y.S.2d 158
(Cite as: **158 A.D.2d 708, 552 N.Y.S.2d 158**)

Page 3

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