
Motions

People v. Maynard, 80 Misc. 2d 279 - NY:
Supreme Court, New York 1974

10-5-1970

Notice of Motion to Suppress Statements / 1969 Huntley Hearing

Lewis M. Steel '63

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
-----:

PEOPLE OF THE STATE OF NEW YORK, : Indictment No.
 : 3937-67
-against- :
WILLIAM A. MAYNARD, JR., : NOTICE OF MOTION
 : TO SUPPRESS STATEMENTS
Defendant. :
-----:

PLEASE TAKE NOTICE that upon the annexed affidavit of Lewis M. Steel, attorney for the defendant, and upon all the papers and proceedings herein, an application will be made at a date to be set by this Court, at 10:00 A.M., or as soon thereafter as counsel can be heard, for an order suppressing from use as evidence in the trial of the above indictment, the statements of the defendant that the people allege bear on the issue of his guilt.

PLEASE TAKE FURTHER NOTICE that the defendant intends to introduce new evidence on the issue of the admissibility of the alleged statements which was not introduced at the time of the Huntley hearing at the original trial in May, 1969,

AND for such other and further relief as to the court may seem just and proper.

Yours etc.,

Lewis M. Steel
Attorney for Defendant
diSuvero, Meyers, Oberman, Steel
350 Broadway
New York, New York 10013

To: HONORABLE FRANK S. HOGAN
Attention: Steven Sawyer, Esq.
District Attorney, New York County
155 Leonard Street
New York, New York

CLERK
Supreme Court
New York County

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----:
PEOPLE OF THE STATE OF NEW YORK, : Indictment No.
 : 3937-67
-against- :
WILLIAM A. MAYNARD, JR., : AFFIDAVIT IN SUPPORT
 : OF MOTION TO SUPPRESS
Defendant. :
-----:

State of New York)
) ss.:
County of New York)

Lewis M. Steel, being duly sworn, deposes and says:

I am the attorney for the defendant herein and I make this affidavit in support of the defendant's motion for an order suppressing from use as evidence the statements of the defendant that the people allege bear on the issue of his guilt.

THE CASE HISTORY

1) On the 17th day of May, 1967, the defendant was brought to the Commanding Officer's room of the Sixth Squad and questioned about the burglary of an apartment, grand larceny of a vehicle, and homicide. After questioning the defendant was charged with burglary and with grand larceny of a vehicle. Immediately after being brought into custody, the defendant, in violation of his privilege against self-incrimination and of his right to be represented by counsel as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, was interrogated by police officers and other persons unknown to him. As a direct consequence of such interrogation, the people claim that the defendant made statements bearing on the issue of his guilt which the District Attorney on September 28, 1970, has given notice he intends to introduce in evidence upon the trial of the indictment.

2) Upon information and belief, the defendant was held in custody until May 23, 1967, when he made bail for the above charges.

3) The defendant was indicted for murder in the first degree on November 1, 1967, Indictment Number 3937-67, and went to trial

upon that indictment on May 9, 1969. The jury was unable to agree on a verdict and was discharged.

THE 1969 HUNTLEY HEARING

4) Prior to the 1969 trial, defendant moved to suppress certain statements which the prosecutor intended to offer into evidence at trial which were alleged by the people to have a bearing on the guilt of the defendant (Transcript of previous trial, page 175 [hereinafter T]). A hearing was held before Honorable Joseph A. Martinis, J.S.C., and the motion was denied.

5) At the hearing which began May 12, 1969, (T 13), Detective O'Brien testified that Lieutenant Stone read a form to the defendant advising him of his rights:

MR. GALLINA: Will you tell us what was done, and what was said?

DETECTIVE O'BRIEN: Well, we have -- the police department has a form which we read him; we have a regular form which we follow.

THE COURT: You say "we."

Q: Who read it.

THE COURT: You mean all together?

A: Lieutenant Stone read it to him.

Q: Lieutenant Stone read this form? A: Yes.

Q: Detective Hanast was also present, was he not? A: Yes, he was.

Q: And did he read anything? If you can't recall, tell us.

A: I don't recall, I don't recall.

Q: But you recall that the form, a form was read to him?

A: It was.

Q: Now, can you recall in essence what was said when this form was read?

A: You want me to give you what I can remember of it?

Q: Yes.

A: You have a right to remain silent, or you may have a lawyer present. You do not have a lawyer we will supply one. Do you

understand? Anything you say here if you do want to go ahead may be used against you in court.

6) Detective O'Brien testified, among other things, that the defendant was properly advised of his rights orally, and that he not only orally waived them, but also executed a written waiver which they saw him read and sign. According to police testimony, the document containing the written waiver could not be located and hence it was not introduced into evidence at this point in the hearing.

7) The defendant then testified that he was not advised of his right to remain silent nor was he advised of any of his rights as required by the Supreme Court's decision in Miranda v. Arizona (T 81). He also testified that he did not make many of the statements attributed to him.

8) The defendant further testified that he did not sign anything waiving his rights (T 96).

9) Next, Lieutenant Stone testified, among other things, that he had advised the defendant of his rights and that he witnessed the reading of rights to the defendant by Detective Hanast (T 113-116). Further Lieutenant Stone testified that he witnessed the defendant signing the form advising him of his rights (T 116).

10) Detective Hanast concluded the hearing testifying, among other things, that Lieutenant Stone advised the defendant of his rights orally (T 149). Further that he (Detective Hanast) read a mimeographed form advising the defendant of his rights (T 150), and that the defendant signed this form in his presence. Detective Hanast testified (T 163) that it was necessary for him to read this mimeographed form because Detective Stone had left out two of the warnings. Further Detective Hanast testified that he believed that Lieutenant Stone witnessed the defendant's signature on the mimeographed form (T 166).

11) After the defense and the prosecution rested on May 13, 1969, the Court reserved decision. On the following morning, May 14, 1969, the prosecution moved to reopen the hearing in order to produce the mimeographed form and testimony concerning it. The application was granted by the Court. The mimeographed form was received into evidence as People's Exhibit 4 (T 183).

12) The defendant was recalled and testified that the signature on the mimeographed form was not his signature (T 187).

13) Thereafter, People's Exhibit 4 was withdrawn from evidence at the request of the prosecution (T 196).

THE COURT'S RULING, 1969

14) On the basis of the testimony of Detective O'Brien, Lieutenant Stone, and Detective Hanast, Justice Martinis denied the defendant's motion to suppress the statements and found the following (T 196-198):

THE COURT: This is a hearing to suppress statements made by the defendant to local law enforcement authorities. Upon the evidence adduced before me, I find,...

that at the 6th Detective Squad, the defendant was advised of his constitutional rights which the defendant acknowledged he understood and waived....

I conclude that the People have proved beyond a reasonable doubt that the defendant intelligently understood the warnings and that the statements allegedly made by him are admissible and accordingly the defendant's motion to suppress such statements at the trial is denied....

THE NEW EVIDENCE, 1970

15) I have examined the purported written waiver, People's Exhibit 4, and have caused it to be examined by Russell D. Osborn of Osborn Associates, Document Examiners, 233 Broadway, New York, New York 10007.

16) Russell D. Osborn has worked for 17 years exclusively as a handwriting expert and has testified for the Legal Aid Society in New York County and for District Attorneys in other jurisdictions.

He has testified over 100 times in civil and criminal cases in both federal and state courts including the states of Rhode Island, Connecticut, New Jersey, Pennsylvania, New York, Ohio, Georgia, and Florida.

17) At my request, Osborn has examined the purported written waiver and has compared the "Maynard" signature on this document with other signatures of the defendant and has preliminarily concluded that the defendant did not sign People's Exhibit 4, but in fact, some other person did.

REASONS COMPELLING A NEW HUNTLEY HEARING

18) Upon information and belief, the signature appearing on the purported written waiver which the police testified was the signature of William Maynard, Jr., is not the defendant's signature.

19) If the signature is not Maynard's, then the truthfulness of the 3 officers who testified they saw Maynard sign the waiver is open to serious doubt, not only as to this one fact, but also as to their entire testimony covering the circumstances surrounding the giving of these challenged statements.

20) Furthermore, without the police testimony as to the reading of the mimeographed form, the prosecution cannot prove beyond a reasonable doubt that the statements were voluntary and hence admissible at trial because, as Detective Hanast testified (T 163), until the time that the mimeographed form was read to the defendant, he had not been informed of two of the five required rights.

20) Evidence as to the validity of the signature on the mimeographed form was not available to the defendant at the original hearing. Clearly, introduction of the document came as a surprise, and the defendant was not afforded an opportunity to obtain an expert opinion. Upon information and belief, had this information been available, it probably would have changed the ruling on defendant's motion to suppress the statement.

22) No prior application based on this new evidence has been presented to the Court.

23) Further grounds for the suppression of the statements will be developed at the time of the hearing of this motion.

WHEREFORE, I respectfully ask that an order be granted suppressing from use as evidence the statements which the people allege bear on the issue of his guilt, and for such further relief as may be deemed just and proper.

LS
Lewis M. Steel
Attorney for Defendant

Daniel L. Meyers
Of Counsel

Sworn to before me this
5 day of October, 1970.

DANIEL L. MEYERS
Notary Public, State of New York
No. 24-2684910
Qualified in Kings County
Comm. expires March 30, 1971

NOTICE OF ENTRY

Sir:- Please take notice that the within is a (certified)
true copy of a
duly entered in the office of the clerk of the within
named court on 19

Dated,

Yours, etc.,

Attorney for

Office and Post Office Address

To

Attorney(s) for

NOTICE OF SETTLEMENT

Sir:- Please take notice that an order

of which the within is a true copy will be presented
for settlement to the Hon.

one of the judges of the within named Court, at

on the day of 19
at M.

Dated,

Yours, etc.,

Attorney for

Office and Post Office Address

To

Attorney(s) for

Index No. 3937

Year 19 67

SUPREME COURT:NEW YORK COUNTY

THE PEOPLE OF THE STATE OF
NEW YORK

-against-

WILLIAM A. MAYNARD, JR.,

Defendant.

MOTION TO SUPPRESS and
AFFIDAVIT

LEWIS M. STEEL

Attorney for defendant

Office and Post Office Address, Telephone

diSuvero, Meyers, Oberman & Steel
350 Broadway
New York, N.Y. 10013 966-7110

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

Attorney(s) for

10/5/70
Copy rec'd
ADA SPS