
Motions

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

1969

Answer (undated)

Lewis M. Steel '63

SURPEME COURT OF THE
STATE OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK

-against-

WILLIAM A. MAYNARD, JR.,

Defendant.

ANSWER

FRANK S. HOGAN

District Attorney
New York County

155 Leonard Street
Borough of Manhattan
New York, N. Y. 10013

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

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THE PEOPLE OF THE STATE OF NEW YORK :
 :
 -against- : Indictment No.
 : 3937
 WILLIAM A. MAYNARD, JR., :
 Defendant. :
----- X

This answer is submitted in opposition to the two motions of the defendant, a motion for "[A]n order permitting the defendant to have an examination of the minutes of the Grand Jury ... or in the alternative to dismiss the said indictment" and a motion "[T]o set aside the indictment"

The people oppose both motions upon grounds set forth below and submit to the court with this answer a copy of the Grand Jury minutes so that the court may inspect them and determine the legality of the indictment.

The defendant's motion to set aside the indictment is governed under the prevision of §313 of the Code of Criminal Procedure. An examination of this section clearly reveals no grounds cited by the defendant for bringing himself within its limited scope.

The defendant's motion to dismiss the indictment, is in effect a demurrer under §321 of the Code of Criminal Procedure. The grounds of such a demurrer, enumerated in §323 of the code are also not met by the defendant in his

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affidavit. As it is clearly the holding of the courts that the factual allegations in an indictment must be accepted as true when a demurrer is made, then the defendant's attack upon the factual allegations therein is not proper. See People v. LoPinto (1966) 49 Misc. 2d 997, 269 N.Y.S. 2d1, offd. 27A.D. 2d63, 275 N.Y.S. 2d 969,; People v. Manasek, (1962), 33 Misc. 2d 911, 225 N.Y.S. 2d 681; People v. Richmond County News Co. (1957), 8 Misc. 2d 162, 167 N.Y.S. 2d 406; People v. Trammell, (1966) 50 Misc. 2d 179, 267 N.Y.S. 2d 434.

In addition, even if the court were to ignore the settled law and procedures described above, it is clear from a reading of the minutes that the defendant's surmises as to what evidence was presented to the Grand Jury is erroneous when he stated "[No other witness testified before the Grand Jury whose testimony established the commission of the crime alleged in the indictment by this defendant." It is evident from the testimony of the witnesses in the Grand Jury that this is not so.

The defendant's motion is all the more astonishing in view of the fact that it was his decision to flee to Germany that dictated the people's procedures in the investigation of this case and prevented the eyewitnesses from viewing the defendant in a lineup. A reading of the due process grounds cited by the court in People v. Ballot, 20 N.Y. 2d 600, clearly indicates that the defendant's

motion by virtue of the law of that case is premature and
erroneous.

Respectfully,

Frank S. Hogan

District Attorney

Gino Gallina

Assistant District Attorney
New York County