

1973

Defendant's Supplemental Memorandum

Lewis M. Steel '63

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

THE PEOPLE OF THE STATE OF NEW YORK

-against-

WILLIAM A. MAYNARD,

Ind. No.
3937/67

Defendant.

----- X

DEFENDANT'S SUPPLEMENTAL
MEMORANDUM

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WILLIAM A. MAYNARD,

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DEFENDANT'S SUPPLEMENTAL MEMORANDUM

This memorandum is submitted in reply to the District Attorney's supplemental memorandum dated October 19, 1973.

In its latest memorandum, the prosecution has abandoned the position it took in its original memorandum that Lieutenant Stone and Detectives Hanast and O'Brien could not have known that Elizabeth Quinn was to be an alibi witness when they interviewed her on May 19, 1967. This defense no longer being available to it in order to counter the claims made on pages 18 and 19 of the affidavit of Lewis M. Steel, dated August 3, 1973, the District Attorney seeks to construct a new argument out of whole cloth to justify the failure of the trial assistant to turn over DD5 No. 193.

His new position is that regardless of whether or not the District Attorney turned over this Detective Division form, Defense Counsel at trial could have questioned the police officer on this point. This new answer utterly ignores the major thrust of the defendant's contention on this point.

At trial, the Assistant District Attorney attempted to make Elizabeth Quinn appear to be a liar for stating that she told the police on May 19, 1967 that she thought Maynard was at her house when the crime was committed (Tr. 2604-2608; Tr. 3522-3524). This attempt by the District Attorney to convince the jury that Elizabeth Quinn was a liar on this point was, in light of DD5 No. 193, made in bad faith. See, United States v. Drummond, 481 F.2d 62 (2d Cir., 1973), where the Court reversed for conduct much less prejudicial. United States v. White, ___ F.2d ___ (2d Cir.), decided October 11, 1973 and reported in the New York Law Journal, October 18, 1973, page 1, col. 8, is also in point. See, CPL §440.10(F), which requires this Court to consider "improper and prejudicial conduct not appearing in the record ...".

It goes without saying that if the trial assistant would have turned over the Detective Division form, he would not have been able to engage in such conduct. To the contrary, counsel, through the questioning of Stone, Hanast, and O'Brien could have established precisely the opposite of the inference which the District Attorney drew for the jury's consideration.

In order to make the record complete with regard to this aspect of the case, defendant attaches to this memorandum the minutes from the first trial which establish that Stone, Hanast, and O'Brien knew about the defendant's alibi before they interviewed Mrs. Quinn.

Dated: New York, N. Y.
October 26, 1973

Respectfully submitted,

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TO: Hon. Frank S. Hogan
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Att: Arthur Weinstein, Esq.
Assistant District Attorney

Detective O'Brien-for People-directt concerning a burglary of an apartment. And number two was grand larceny of a vehicle.

Q And am I correct in stating then on the seventeenth of May, 1967, you were seeking the defendant Maynard in connection with all three of these matters?

A That is true.

Q Is that correct? A Yes.

Q Now, the matter concerning the burglary and the matter concerning the automobile, they are not related to the issues or the case before us now, are they? A They are not.

Q All right. Now, any questions I ask you concerning statements of the defendant, would you please direct your answers only to the issues in this case, and not concerning anything else? A Yes, I will.

Q Now, pursuant to that information what did you do if anything? A I went to West Tenth Street.

Q Yes. A Myself and other officers. We, as we say in the police department, we planted on the store that is outside the store, at different areas of the block.

Q In other words, you took up surveillance?

A Yes.

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O'Brien - People - Direct

BY MR. GALLINA:

Q Go on. A He didn't recall being down in the village--Greenwich Village--that particular evening.

Q Was he asked whether or not he ever spent any occasion or any time in the Village on Sundays?

A Yes, he was.

Q What did he say? A He said he didn't come down here on Sundays; he usually spent the day with his in-laws.

MR. LENEFSKY: He usually spent the day where?

MR. GALLINA: He said he usually spent the--

THE WITNESS: Sunday, with his in-laws.

Q Did he mention who his in-laws were at that time? A Yes, he did.

Q And what did he say? A He mentioned the name of Quinn--the Quinn--

Q Did he say at that time where they were located? A Queens, Long Island.

Q Did he mention their names in any fashion?

A At that time he--I just remember the name Quinn being brought--

Q That's all you can recall at this time?

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O'Brien - People - Direct

time, as you know of it, what was said, if anything?

A Mr. Maynard was asked if the statement he had made earlier prior to this break was true.

Q This was after you had already spoken to Mr. Quinn? A That's correct.

Q Now, who asked that question? A Lieutenant Stone.

Q And what was said, in essence? A Mr. Maynard said that he had not left the country on that week; that was a lie and he stood corrected and he said he was sorry he made that statement.

MR. LENEFSKY: Would you speak louder so that I can hear?

A Mr. Maynard said he didn't go to Cairo on April 12th; he said he wanted to correct that statement.

Q Now did he make any statement further about Sunday, April 2nd, through Monday morning, April 3rd, in his presence, and where his presence was? A He was asked again if he had been--if he was in the Village on that particular day.

Q What Village? A Greenwich Village--I'm sorry--Greenwich Village--and he still said he believed he was at his in-laws but it was a possibility

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O'Brien - People - Direct

he might have been down there that day.

We asked him if he ever took a cab to the Village--did he take a cab on that particular day and he said, "No."

Q He said he had not? A Right.

MR. GALLINA: I have no further questions.

CROSS-EXAMINATION

BY MR. LENEFSKY:

Q Detective O'Brien, did you testify in the grand jury? A I did not.

Q During the inquiry of--the questioning of Maynard the first time, who was present? A In the inner office, counselor?

Q Yes? A Lieutenant Quinn--

Q Lieutenant-- A Quinn--I stand corrected-- Lieutenant Stone.

Q Yes? A Lieutenant Stone.

Q Who else? A Detective Hannas.

Q Detective who? A Hannas.

Q I understand, yes. A Captain McGuire.

Q Captain McGuire, yes? A Sergeant Kelly.

Q Yes? A Detective MacDonald.

Q All right. Now who--of these--were you

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O'Brien - People - Cross

Q Yes. A "When did you decide to leave the United States?"

Q No, that part--the part about staying at his in-laws. A Oh, when he said he was at his in-laws?

Q Yes, did he say something about staying that Sunday at his in-laws? A Oh, yes.

(continued on following page)

31 Detective O'Brien-for People-cross

Q Would you read that portion. A I don't come to the village on Sunday. I spend it with my inlaws.

Q I see. Now, the time when you asked him whether he and Michael were in -- was specifically directed to April the second, wasn't it? A That is correct.

Q I see. All right. Now, the alleged homicide was committed on the morning of April the third, wasn't it, four-thirty in the morning of April the third?

A Yes.

Q And wasn't that on Sunday, Monday? A That was Monday morning, that is correct, yes.

MR. LENEFSKY: I have no further questions.

REDIRECT EXAMINATION

BY MR. GALLINA:

Q Officer. A Yes.

Q You were asked by defense counsel about the number of officers that were present during the time that you were present questioning the defendant or others questioned the defendant, you recall that?

A Yes, I do.

Q Now, these officers that were present, were they all present at all times during the periods that you were there? A Not at all times, no.

Q What did they -- A There was much moving

Stone - People - Cross

April 2nd or 3rd, did it? A. Well, not directly, no.

Q. Well, could it have been even indirectly if he told you that he was at his mother-in-law's house, which was way out on 30th Avenue? A. Well, I was questioning him about Russell Jackson and he said that he hadn't seen Russell Jackson for five months and the last time he saw him was uptown and that he was with Ralph ~~xxxxxx~~ Cawley at this time.

Q. Well, you had asked him on May 17th? A. No, this was on May 17th that I asked this question.

Q. Right, and he said he hadn't seen for five months, so it couldn't have been April 2nd or 3rd?

A. Right.

Q. Now, did he tell you--did he--did you note that he thought he was with his mother-in-law--at his mother-in-law's house on Sunday? A. Yes, he did.

Q. Did he say something about that that was his usual wont and habit to spend Sundays at his mother-in-law's? A. He said that every Sunday his family--her family got together and he was with them.

Q. And specifically, on April 2nd and 3rd, did he say that he was with them? A. Yes, he did.

Q. And did he tell you who was present at the

Stone - People - Cross

time? A. His wife and her family; he didn't--it wasn't specific oin who the other members of the family were.

Q And well--of course, you questioned him in minute detail as to who the others were who were there, did you not, in any event? A I don't recall.

Q If you did question him, it would be in your notes, would it not?, or in the notes of Detective Hannas? There would be some mention of it, wouldn't there? A Well, there was a lot of conversation that went on for quite a long time; I don't know if they were ~~kn~~ able to copy everything that was said.

Q Well, Lieutenant Stone, this was a homicide case? A Yes.

Q You told the defendant this is a homicide case? A That's correct.

Q And a homicide case, of course, is a matter of serious import? A Yes.

Q And the major reason you questioned him was to see whether or not he had--as a suspect, was implicated in it and--right? A Yes.

Q And he told you that he couldn't have been

Stone - People - Cross

because he was, at that time, at 4.30 in the morning, on April 3rd, at his mother-in-law's house?

A Yes.

Q This would, therefore, would it not, occur to you that it was of vital importance and be very germane to know who was--who his alibi witnesses were, to check it out, right? That was part of your good police work, wasn't it? A Yes,--well, he said--we were questioning him about April the 2nd and April the 3rd; now he said--his answer was that he generally spent Sundays with his family, but with his wife's family.

Q Right. A And that he was with them on that Sunday and--oh, and then he said that he had usually slept over.

Q Well, at that time, didn't you want to know the exact--exactly and specifically who the people were that he--that could corroborate that fact? Wasn't it important to corroborate and substantiate it? A Well, it was important but--

Q Well, do you know whether you did that?

MR. GALLINA: Objection; not relevant.

THE COURT: Overruled.

Stone - People - Cross

A I'm sure we got into some members of the family but I don't have it recorded exactly who of the family was present. He just said his wife's family.

Q Well, did you thereafter bring them in to question them, to see whether he was telling you the truth?

MR. GALLINA: Objection, not relevant to the hearing.

THE COURT: Overruled.

A On this night we did not, no.

Q Well, how long after did you question them?

MR. GALLINA: Objection, not relevant.

THE COURT: Sustained.

Q Now, at the time that you told him about his constitutional rights--incidentally, what time was he brought in, you say? A It was sometime around 7.30, 7.00 or 7.30.

Q And that was on May 17th? A Yes.

Q What day of the week was that? A It was Wednesday night.

Q And he was brought in about 7.30; wasn't he brought in before that--about 6.00 or 6.30-- A Could have been--it could have been as early as seven.

Detective Hanast-for People-direct

A Oh, well, we first did a background on him and asked him about his personal -- his personal history and things like that

Q Was this an intensive questioning period about his background or was it just superficial? A I would say it was fairly intensive.

Q What else was said besides matters of pedigree and background concerning the events surrounding the death of Sergeant Kroll on the third of April of 1967? A Well, he was asked was he in the village at the time of the killing.

Q What did he reply in essence? A And he said no.

Q What else was he asked? A He was asked was he ever -- did he come down to the village on April the second, and he said no, and we asked him did you come down in a taxi on April the second, and he said no, I usually go to my inlaws for dinner on Sundays.

Q Was he asked where he was on Sunday April the second through to Monday April the third? A He was asked, and he said usually I go to my inlaws for dinner.

Detective Hanast-for People-direct

Q What else was he asked about in essence that you recall and what answers did he give? A Well, we asked him were you in the village on April the third. He said no, he was in Cairo, and he -

Q Was this initially or at the end of the conversation? A Well, he started off that way. when he first was asked where was he, he said he was in Cairo and -

Q Did you ask him or did somebody ask him when he went to Cairo? A Then when he was asked when did you go to Cairo, he said that he went on April the 12th and he came -- he stayed there about nine days and came back; and then he went to Canada and Florida.

Q Well, when he said that he had been in -- he had left on April the twelfth, was it then that he was asked where he was on April the second and third? A Right,

Q Then he gave the conversation which you are testifying? A We told him we were not interested in April the twelfth, we wanted to know where he was on April the second; and he said -- he mentioned the fact that he usually had dinner with his inlaws on Sunday and --

Detective Hanast-for People-direct

Q And did he describe in essence who was -- who his inlaws were? A Yes, he -

Q What did he say? A Well, he said that he was married to a Mary Quinn.

Q Yes. A Had a brother in law, Pat and Michael and there was a sister Cathy, and they lived in Queens.

Q Now during this period of time, this period of questioning, which -- this first period of questioning, did there come a time during this -- during which anyone, the three basic officers who were present Lieutenant Stone, yourself or Detective O'Brien had an occasion to leave the room? A Yes, Detective O'Brien left.

Q And at this time, you know for what purpose?

A He left to bring a witness Michael Quinn in.

Q Now, was there any other purpose for which you were in a sense questioning the defendant at length about his background? A Would you repeat that, please, now?

Q I will withdraw the question. A All right.

Q There came a time of course, at the end of the first period, in which the defendant Maynard came to

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Hanast - People - Cross

port or a visa indicating that he had at one time been in Cairo? A. I'm not sure it was Cairo; it seems to me more like Tangiers--something like that.

Q. Tangiers? A. When it was, I don't know.

Q. And--well, anyway, he was groping, was he not, to try to recollect where he had been on April 2nd or 3rd, of '67?--that is, it took place a month earlier--a year earlier; wasn't he groping to try to ascertain and recollected where he had been?

A. He was pretty positive that he had been at his mother-in-law's for dinner on April the 2nd, the evening of April 2nd.

Q. Yes, and he was pretty positive that he had spent it at his mother-in-law's house? A. That's the impression.

Q. It was his custom of spending it there on Sundays? A. He said he went there every Sunday.

Q. Yes. A. Every weekend.

Q. And he also said, did he not, that he recollects it because it was somewhere in the area or vicinity of Cathy's birthday or words to that effect--some kind of affair? A. I don't recall that.