3-22-1973

Lie Detector Test - Transcript of Hearing

Supreme Court of the State of New York

Indictment 337-67

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK: Part 30

THE PEOPLE OF THE STATE OF NEW YORK :

against :

WILLIAM MAYNARD, :

Defendant. :

100 Centre Street, New York, N.Y.

Thursday, March 22, 1973

B e f o r e:

Hon. XAVIER C. RICCOBONO

Appearances:

For the People: JURIS CEDERBAUMS, ESQ.
Assistant District Attorney

For the Defendant: LOUIS P. STEEL, ESQ.

THE CLERK: This is the matter of William A. Maynard, Jr., indictment 337 of 1967.

MR. STEEL: Your Honor, this is an application which I showed to your Honor's law secretary this morning and he informed me he is going to notify the District Attorney. I indicated that would be satisfactory, and I understand the District Attorney is going to take a position with regard to it, and I would

(continued)

want to respond to whatever position he would take.

Your Honor, initially, may I just say that these papers were improperly served on this officer and on this Court. This is not brought as the orders show, nor has this officer received any notice, as required. To get to the merits of this matter, this is an application for William Maynard to take a lie detector test.

MR. CEDERBAUMS: As the Court well knows, or anyone else, your Honor, systems of justice are not determined by machines, specifically lie detectors, but is determined by a Jury of 12. Counsel also well knows that lie dector results are inadmissible to criminal cases of the State of New York.

This is just another attempt by Counsel to bring on frivolous motions, and have these things picked up by members of the press, which has consistently been Counsel's position in this matter, as he consistently failed to mention the District Attorney's position in any way.

As your Honor may be aware of, our office has been vilified by the press as being the persecutors in this matter, whereas our point of view has never been presented. This is just another example of this type of thing. Mr. Steel is bringing what is not a proper motion, and it is his attempt to further influence them against us in this case.

MR. STEEL: First of all, I would like to say that any ordors, as I understand it, that are presented to the Judge, in order for Counsel or somebody to go into a prison, in order to render some service with regard to the case, is in the nature of an ex parte order. This is ture, as 18B, county law, and I'm sure that it applies here.

When your law secretary indicated that he was going to contact the District Attorney with regard to this matter, I took the position, sure. This is a motion which your Honor is aware of, that the District Attorney wants to be aware of it. I don't know if he is entitled but it makes no difference to me.

In terms of the jurisdictional status of this motion, I must say that because I regard it as an ex parte motion, I don't think the District Attorney has standing in any way, shape, manner or form to notice. That's a jurisdictional argument.

I suppose I should answer the remark about the press in this case. The District Attorney files indictments in this Court and commonly calls press conferences, hands out written indictments and calls press conferences, and effectuates front page news stories in advance of trial, with regatd to their contentions in the case at the time of indictment.

Now, for the District Attorney to come into Court and to tell a Judge that it resents defense counsel making available court papers to the press, in light

of its conduct, when indictments are handed down, is to my mind just a further attempt on the part of the District Attorney to regard the access to the press as a one way street.

In other words, the prosecution can make accusations in the press, when they accuse somebody of a crime. Now I suppose the District Attorney's position is that defense responses should be sealed. I really feel in a free and open society, to even grasp that argument, except to say that it makes me shudder.

I would like to address myself to the merits in this matter. As I think your Honor is aware, this case has been a hotly litigated case. The papers which your Honor has before you on the motion to vacate judgement under the CPLR rule, 44010, have attached to them a decision of the Appellate Division. If your Honor has had the opportunity already, your Honor has seen that two justices, including the presiding Justice, found 12 straight errors in this case, in which they would have reversed decision, including repeated examples of misconduct by a specific District Attorney in this case. The press did report on that decision.

If the District Attorney's office wishes to view the particular assistant in that case as a shining example of of its office and become defensive about the press report and of the decision of the Appellate Division, first Department of the State of New York, again, Counsel has

no way of dealing with that. In any event, it is clear that when two justices say, and one of them the distinguished presiding justice, find 12 straight grounds for reversal in one case, that one is in fact, dealing with a matter which is extremely serious. The seriousness also is emphasized because there was a hung jury in the first trial in that case, and the Defendant in this case has been incarcerated for some five and a half years, and because as a matter of fact, this is a case which is the product of eye witnessidentification, who are strangers to the Defendant In other words, none of the eye witnesses knew the Defendant, had ever seen him before, at any time other than their alleged viewing of him committing the crime in question.

I have cited to your Honor in my last memorandum all the huge misjustices which have occurred in the law as a result, including the stranger identification.

Justice Frankfurter, no great liberal as a jurist, but certainly an extremely fair minded Justice, is quoted as saying that stranger eye witnessidentifications are virtually worthless. Yes, there was a conviction here. A jury was out three days. It did come in on the second day and say it couldn't reach a verdict, and finally it did come in on the third day and found my client guilty of the lowest possible count, a man slaughter charge and an indictment of murder in the first degree.

There is now before your Honor the motion based on newly discovered evidence. Part of that motion alleges what I consider to be, frankly, scandelous conduct on the part of another particular Assistant District Attorney and/or the police.

My motion papers make it very clear that given the fact that I am not a member of the office and don't know what occurred internally, it's difficult to perceive what occurred, except for the fact that somebody who was held for seven months as a material witness in civil jail, had been drugged, and that's admitted in the papers.

MR. CEDERBAUMS: What do you mean, admitted?

MR. STEEL: Drug dosages are not denied, and the letter with regard to the drug dosages comes from the warden of civil jail. The letter with regard to the medication of the material witness, which specifies exactly what he got for what period, and there is a letter attached to the papers that was written by a psychiatrist, who for a period of time, in fact he just resigned, had been in charge of the entire mental health unit in the City Department of Correction.

MR. CEDERBAUMS: I just want to make it clear that there is no admission on the part of the District Attorney's Office that we had anything to do with the drugs, and Mr. Steel is trying to imply that we admit that we drugged him, which is not true.

MR. STEEL: The fact is that the drugs were given. There is no explanation given for that drug dosage in the District Attorney's papers.

Your Honor, if you get to that in this case - -

THE COURT: I have been through a good part of the material which, of course, you will have to concede as quite substantial, and as I say, I have been through a good part of it.

MR. STEEL: Right, your Honor. I am telling your Honor this as background. I'm also telling your Honor, and I'm sure you are aware of it, that we have appended to our position the sworn testimony of two people who were on the scene of the crime, by viewing the thing from [illegible] different vantage points, one who did know Maynard from the art village, and it's conceded that he did have a shop in the Village, he testified to that. This particular person viewed different segments of the entire activity which let to the killing, and said that at two crucial points he didn't see Maynard there, and he saw what was going on. Again, your Honor will have to evaluate that.

I must say your Honor, that representing a client who has spent five and a half years in jail, in circumstances of this type is a weighting burden. It weighs heavily on anattorney's head, feeling himself that type of responsibility and knowing that his client has years ahead of

him, of continued incarceration if he does not obtain relief.' And in the spirit of really feeling the effects of that weighting burden, I have submitted to your Honor the motion for a lie detector test, which was given to you this morning.

I do it, among other reasons, because I noted in the press recently, after the Assistant District Attorney out in Queens was subject to a horrendous instance of wrong, that there was a story in the paper which said that essentially the DAs in many of the counties now, in stranger eye witness situations, were taking the position that the lie detector test was worth while. With regard to the whole history of the Defendant's request for a lie detector test here, I would cite to your Honor the transceipt in the first trial, pages 769 through 772, in which a letter, which is people's exhibit 29 was read in that case, and the letter is transcribed in the minutes. It was written at a time when the Defendant was incarcerated in Germany, and he wrote to the District Attorney's office from Germany.

He was in Germany, he was fighting expedition at the same time he wrote this letter to the District Attorney's office, and he ends the letter, and I quote "I'm appealing to you on the grounds of human decency and your sworn duty to uphold justice, to thoroughly investigate this charge fixed against me. I will submit to a lie detector test, or any other test you may desire, to establish my

innocence. Respectful gentlemanly trust, William Maynard, Junior".

That was, unfortunately, in December of 1967. I came into this case on October of 1970. At the time I came in, the Defendant had had one trial. He had had a hung jury; he had attempted to represent himself at a second trial and he had gotten into that tiral and felt that he just couldn't do it and there would be a mistrial, and I came into the case at the request of his sister, who is an extraordinary sculptress in the City of New York, and when I interviewed Mr. Maynard in the tombs, I had no background or idea about this case. One of the first things I asked him was, will you submit to a lie detector test, and he told me, at that time, that from the very beginning he was willing and anxious to submit to a lie detector test, but from the very beginning the District Attorneys office had refused to give him that type of test. Then I conducted whatever interviews I could, and I talked to quite a few people about Mr. Maynard. I talked to friends of his, like William Styron. I talked to people he had worked with, and I developed a feeling about him, which lawyers sometimes get in a case, that my client was innocent. I went to the trial and I asked Mr. Sawyer, I suggested to him that a lie detector test be administered to Mr. Maynard and Maynard, at that time, suggested that he take sodium pentothal, and take whatever they could give him, in order to resolve this matter. Mr. Sawyer refused.

I have, since 1970, at every time I have ever talked to an Assistant DA about this case, I suggested that Mr. Maynard be allowed to take a lie detector test. Frankly, I come into Court now, asking that your Honor sign this order so that I can have somebody go in and give Mr. Maynard a lie detector test, in a situation where I am convinced on the merits, He should prevail without taking any kind of tests, so that I come in asking for this examination fully convinced of its outcome, and I am asking for the examination in that spirit.

I am not coming to the examination of a client who is out of jail, so that whatever would happen with it, the report could be kept secret. Your Honor knows that I have asked for that examination, and your Honor is sitting on this case. What is the posture of this case, your Honor? The posture is a case in which I feel it has just been a monumental injustice, and I want to see relief, and I want to seeit quickly.

Let me say that at this time I have the papers before me, which have thus far been submitted. I don't know if the District Attorney wishes to submit any additional papers. He has till tomorrow to submit additional papers if he wishes to. As I have indicated, I have gone through a very substantial part of the papers that have been submitted thus far.

THE COURT: I am aware of the fact that this matter, at the first trial, ended in a hung jury. That a third trial,

you had an intermediate mistrial there when the Defendant attempted to represent himself. At the third trial, after a substantial amount of deliberation, the jury did come in with a verdict of guilty, as has been stated by Mr. Steel, to the lowest degree of homicide that the jury could find.

I am also not unaware of the fact that when this matter went up on appeal to the Appellate Division and this, of course, I have gleaned from the papers before me, as well as what has been said in this Courtroom, that the Appellate Division, by a divided Court, on a three to two decision found, or rather it set forth in minority opinion, that two of the Justices of that Court, that was Justice Stevens and Justice Murphy, felt that this matter should be sent back for a new trial and that there were numerous errors, in their opinion. As I say, one opinion in which Justice Murphy concurred, that the matter should be sent back for another trial.

We now have this application which is being made on this newly discovered evidence and, of course, you have the application for a lie detector test at this time, at the expense, as I read in the papers, at the expense of the defense.

MR. STEEL: That's correct, your Honor.

THE COURT: Frankly, I don't know why, under these circumstances, there should be objection. I am again,

not unaware of the fact that this is not admissible evidence, but in a situation where you have a very, I would say, tight question where one of the three Justices in the Appellate Division had decided to affirm, if anyone, on the other hand, had agreed with the minority opinion, that would have become the majority opinion. So that this case could very well have been -- I'm sure it would have been once again tried by this time, more than likely. In a matter which has been wrought with some degree of uncertainty, I see no reason why, if this in any way can add to whatever may come, why this shouldn't be granted. However, I think that at this point it may be somewhat premature. I think that this application should be made if you wish to pursue it, after the motion which is before me has been decided. I don't disagree at all that perhaps this should be done.

I haven't, as yet, had an opportunity to read the entire, that is all the papers. In fact, as I say, I don't know if any more papers are to be submitted, although I have gone through most of them. I have come to some kind of a conclusion which, of course, I am not going to divulge at this time, because, as I say, I have not received all the papers and I don't want to prejudge this matter in as far as any determination is concerned.

I want to take a look at all the papers, but I think that that motion should first be decided, and the people

have now been put on notice. I don't know that there is any necessity for a formal notice and formal motion.

When I was advised of ~~this~~ it this morning, I felt that the people should be made aware of it. I had my secretary communicate with the District Attorney's office to determine what their position might be. Obviously, the District Attorney's office is opposing it. As I say, unless you wish to put in any papers in opposition, I think you have made your position quite clear on the record.

MR. CEDERBAUMS: May I just say one thing?

THE COURT: And I'm just going to say that I would take the position at this time, that any disposition of this application should be withheld until the determination of the motion, which is presently before the Court.

MR. CEDERBAUMS: I would just like to say, because of the very reason which your Honor mentions, because of the closeness of the issues in this case, and importance, I think that by injecting this type of thing you are compounding the unreliability. In other words, it is the position of our office that lie detectors are not saying anything in this particular case, because of the very susceptibility of the facts to outside forces, which may not be under our control, in that the injection of additional issues in this case may be proven unreliable. Why compound the matter any more? That is basically my position.

THE COURT: However, as I say, this is the position that your office has taken, and it may be a very proper position, and it may be the fact. However, I guess like everything else, these are susceptible to the positions of other people as well, because other people place a great deal of reliability on these tests. The fact of the matter is, that we know that they cannot be used as evidence. But they have, in some instances, been relied upon in the totality of the circumstances, and this might perhaps be one of those situations where we haven't actually granted this application and depending, of course, upon what the results of this test may be, assuming that they do grant this application. In the totality of the circumstances this may be something that may be desireable and should not be denied. By the same token I'm not saying, at this time, that I will grant thisapplication. I want the opportunity of reading all of the papers, of making a determination of the principal motion which is before me, and I will hold making a determination on thisapplication until that time. Alright?

MR. STEEL: Thank you, your Honor.

THE COURT: I will hold these papers myself. I will hold them in abeyance in the meantime.

Lorraine Ellison

Court Reporter

Certified correct.