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Motions

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

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10-4-1970

**Notice of Motion to Suppress Use of Prior Convictions and Prior  
"Bad Acts"**

Lewis Steel '63

LMS

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

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THE PEOPLE OF THE STATE OF NEW YORK,

Indictment No. 3937-67

-against-

WILLIAM A. MAYNARD, JR.,

Notice of Motion to  
Suppress Use of Prior  
Convictions and Prior  
"Bad Acts"

Defendant.

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SIRS:

PLEASE TAKE NOTICE that upon the annexed affidavit of Lewis M. Steel, the defendant will move the Court on a date to be set by the Court, for an order suppressing the use of any of defendant's prior convictions and prior "bad acts" on cross-examination, and for such other and further relief as the Court may deem just and proper under the circumstances.

Dated: October , 1970  
New York, New York

Respectfully submitted,

TO: Hon. FRANK S. HOGAN  
District Attorney  
New York County

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

CLERK  
Supreme Court  
New York County

Daniel L. Meyers  
Of Counsel

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

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THE PEOPLE OF THE STATE OF NEW YORK,

Indictment No. 3937-67

-against-

AFFIDAVIT in support of  
Motion to Suppress the  
Use of Prior Convictions  
and Prior "Bad Acts"

WILLIAM A. MAYNARD, JR.,

Defendant.

-----X

State of New York )

) ss.:

County of New York)

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

1) I am the attorney for the defendant in the above captioned case. He is presently awaiting trial, charged with the crime of murder. This will be his second trial, the first ending with a hung jury.

2) According to information supplied by the prosecution, the defendant's criminal convictions are as follows:

- a. Assault 3; 12-17-63; New York City, \$50/10 days; Malzhin, J.
- b. Section 975 Policy; 7-23-64; New York City; sent. 10-21-64; \$100/10 days; Rao and Babock, J. (sent.).
- c. Attempted Bail Jumping ( a misdemeanor ); 3-21-66; New York City; sentence: time served.
- d. Possession of a Weapon, November 15, 1965; Tangiers, Morocco; sentence: 1 year suspended, fine.
- e. Possession of a loaded weapon; 4-19-66; San Diego, California; sentence - 1 year probation.

3) Upon information and belief, the prosecution intends to cross-examine the defendant with regard to all of the above convictions if he testified in his own behalf.

4) At the first trial the prosecution also sought to damage the defendant by accusing him of prior "bad acts" on cross-examination. The following was charged in cross-examination:

- a) that the defendant had not obtained a Mexican divorce and was therefore bigamist (T 58-60; T 796-799);
- b) that the defendant lied under oath when he obtained a marriage license (T 59-60; T 826);
- c) that the defendant had failed to file tax returns with the Internal Revenue Service (T 63-64; T 794-795);
- d) that the defendant forged a signature on a car registration in Florida (T 778; T 834);
- e) that the defendant threatened an airman with a gun while in the Air Force (T 800);
- f) that the defendant viciously assaulted a police officer, the description of that assault being included in the cross-examination (T 802);
- g) that the defendant was arrested and charged with possession of eight pounds of marijuana and intent to sell (T 805-808);
- h) that the defendant was charged with bail-jumping as a felony (T 805-807);
- i) that the defendant absconded with funds of another (T 819-820);
- j) that the defendant wrote bad checks (T 827; T 836-838);
- k) that the defendant threatened a pregnant woman (T 832);
- l) that the defendant stole a car (T 833);
- m) that the defendant jumped bail (T 839-840);
- n) that the defendant had a carbon dioxide gun (T 841);
- o) that the defendant attacked a prison guard (T 842);
- p) that the defendant was discharged from the Air Force "under unsuitable conditions" (T 865);

q) that the defendant was expelled from a foreign country (T 867).

5) The defendant must make a determination as to whether he wishes to testify in his own defense. The Court's ruling on this motion may have a direct bearing on that decision, as the defendant must weigh the benefit of his testimony against the damage of cross-examination designed to portray him as a man of violence and a hardened criminal.

6) Such use of a record denies the defendant due process of law. See Gordon v. United States, 383 F. 2d 936 (D.C. Cir. 1967). There the Court ruled, in an opinion by the Chief Justice (then Circuit Judge Burger), that the probative value of the convictions as to the issue of credibility must be weighed against the degree of prejudice which the revelation of the defendant's past crimes would cause. Specifically, the Court said that such acts as deceit, fraud, cheating or stealing may reflect on credibility, but "acts of violence...have little or no direct bearing on honesty or veracity."

7) Applied to the present case, the prior crimes such as weapons possession and assault bear no relation to the defendant's integrity or honesty. Instead, these crimes are related to the present charge of murder, and thus are exactly the types of prior convictions that must be excluded in order to prevent prejudice. As the Court explained in Gordon: "Where multiple convictions of various kinds can be shown, strong reasons arise for excluding those which are for the same crime because of the inevitable pressure on lay jurors to believe that 'if he did it before, he probably did so this time.'"

In this case the crimes of gun possession and assault create the identical problem as is created by multiple convictions for the same crime. To paraphrase the Chief Justice, a lay jury will most assuredly think, "if he possessed weapons and committed assault, he probably committed homicide."



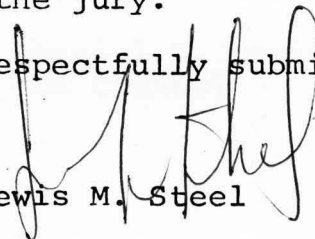
Nor do the defendant's other convictions reflect on his credibility. All, however, in a murder trial, may severely prejudice the defendant's right to a fair trial.

8) The defendant contends that due process prohibits all questioning on alleged prior "bad acts" in which convictions were not obtained. Such questioning serves only to prejudice the jury which cannot help but believe that the prosecution would not make its charges without foundation. Thus the defendant's denials are of little avail. The defendant in this case is charged with murder not with having a questionable life-style. He should only be forced to defend himself against the charge alleged in the indictment, not against every judicially unproven allegation that the prosecution can conceivably muster.

9) Cross-examination on prior "bad acts" of violence or weapons possession are especially prejudicial and violative of due process. If the prosecution should not be allowed to make use of convictions for such crimes, it goes without saying that unsubstantiated charges should be excluded.

10) The defendant respectfully requests that the Court rule on these issues in advance of trial so that counsel can determine how to conduct the voir dire of the jury.

Respectfully submitted,

  
Lewis M. Steel

SWORN TO BEFORE ME THIS  
4 day of October, 1970

DANIEL L. MEYERS  
Notary Public, State of New York  
No. 24-2686510  
Qualified in Kings County  
Comm. expires March 30, 1971

NOTARY PUBLIC