

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 50

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THE PEOPLE OF THE STATE OF NEW YORK

-against-

RICHARD MADDICKS,

Defendant.  
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AFFIRMATION IN  
OPPOSITION TO DE-  
FENDANT'S MOTION  
TO SEVER

Indictment No. 886/82

HUGH H. MO, an attorney duly licensed to practice before the  
courts of the State of New York, affirms under the penalties of perjury and  
states that:

I. I am an Assistant District Attorney in the office of ROBERT  
M. MORGENTHAU, District Attorney of New York County, charged in association  
with Assistant District Attorney Sonia Sotomayor with representing the People  
in the above-named action and am familiar with the facts and circumstances  
herein.

II. The defendant is charged by indictment filed on February  
19, 1982, with the following thirty-seven counts:

Murder in the Second Degree (3 counts), P.L. §125.25(1)

Murder in the Second Degree (4 counts), P.L. §125.25(3)

Attempted Murder in the Second Degree (3 counts), P.L. §110/125.25(1)

Attempted Murder in the Second Degree (3 counts), P.L. §110.125.25(3)

Robbery in the First Degree (6 counts), P.L. §160.15(2)

Robbery in the First Degree (1 count), P.L. §160.15(4)

Burglary in the First Degree (8 counts), P.L. §140.30(1)

Burglary in the First Degree (3 counts), P.L. §140.30(2)

Burglary in the First Degree (1 count), P.L. §140.30(4)

Attempted Burglary in the First Degree (1 count), P.L. §110/140.30(1)

Burglary in the Second Degree (1 count), P.L. §140.25(1)(c)

Criminal Possession of a Weapon in the Second Degree (2 counts),

P.L. §265.03

Assault in the Second Degree (1 count), P.L. §120.05(2)

III. The defendant moves to sever the various counts in the indictments and to order that he be tried separately on the counts as severed.

IV. This affirmation, submitted in response to the defendant's motion, is made upon information and belief, the sources being conversations with witnesses and police and examination of police records.

V. Counts 1-9 of the indictment (The Clark incident)\*, charge the defendant with three counts of Murder in the Second Degree (intentional and felonious), three counts of Burglary in the First Degree, two counts of Robbery in the First Degree and Criminal Possession of a Weapon in the Second Degree in that:

On December 18, 1981, the defendant entered the apartment of Robert Clark, age 77, at 110 Lenox Avenue, #6N (top floor) (between 115th and 116th Streets), New York City, by extending a ladder at a sharp angle from an adjacent building to a window. To reach said apartment the defendant had crawled on his hands and feet on the ladder perched six stories in the air. While burglarizing said apartment the defendant shot Clark to death with a .32 caliber revolver. As the defendant was ransacking the apartment, Isri Persaud, a boarder,

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\*For convenient reference the incident will be referred to by the name of the primary victim.

entered the apartment. The defendant who had a pistol in each hand confronted Persaud in the apartment's hallway. The defendant ordered Persaud to kneel down and empty his pockets. To frighten him the defendant fired two shots from a .32 caliber automatic pistol near Persaud. The defendant then dragged Persaud to the kitchen, bound Persaud with strips of cloth and fired two more shots from the automatic pistol near Persaud. The defendant then continued to burglarize the apartment.

The defendant took some of the property from the apartment to the roof top by lowering a rope tied to a shopping bag containing food. Among the property taken from the apartment was a checkbook belonging to Robert Clark.

VI. Counts 10-12 of the indictment (The Robinson incident), charge the defendant with two counts of Murder in the Second Degree (intentional and felonious), and Attempted Burglary in the First Degree in that:

On November 9, 1981, Michael and Steven Robinson of 460 Manhattan Avenue, #9, (top floor) (between 119th and 120th Streets), saw defendant prying at a window of their apartment. When defendant saw the two brothers inside the apartment, he fled to the roof by crawling between the Robinson's building and an adjacent building on his hands and feet. Michael and Steven went up to the roof with a stick. As the defendant was about to scale to the top of the roof, Michael started to hit the defendant with the stick. The defendant then crawled down and entered an adjacent abandoned building. The Robinson brothers returned to their apartment and Michael saw the defendant in an adjacent abandoned building. The defendant fired a shot from a .32 caliber revolver striking Steven in the head and killing him instantly.

VII. Counts 13-16 of the indictment (The Barron incident), charge the defendant with two counts of Murder in the Second Degree (intentional and felonious), and two counts of Burglary in the First Degree in that:

On January 25, 1982, Emory Barron, age 63, was sleeping in his apartment at 138 West 113th Street, #4B (top floor) (between Seventh and St. Nicholas Avenues), New York City, when he heard noise coming from his kitchen. Barron went to investigate and was shot in the chest by the defendant. Barron staggered into his living room and died. The kitchen window was smashed and the apartment was ransacked. It is believed that defendant used a rope tied to the roof in lowering himself down to Barron's apartment. The gun used by defendant was a .32 caliber automatic pistol. Among the property taken from the apartment was a shopping cart belonging to Emory Barron's wife and packages of frozen meat.

VIII. Counts 17-20 of the indictment (The Simmons incident), charge the defendant with two counts of Attempted Murder in the Second Degree (intentional and felonious) and two counts of Burglary in the First Degree in that:

On November 29, 1981, Louis Simmons of 10 West 119th Street #18, (top floor) (between Lenox and Fifth Avenues), New York City, was sleeping when he was awakened by footsteps in his apartment. As Simmons was getting up from his bed he saw the defendant pointing a gun at him. Defendant shot Simmons in the face with a .32 caliber revolver and fled with Simmons' money and personal property. Simmons survived the gunshot wound after a period of hospitalization.

IX. Counts 21-25 of the indictment (The Brown incident), charge the defendant with two counts of Attempted Murder in the Second Degree (intentional and felonious) two counts of Robbery in the First Degree and Burglary in the First Degree, in that:

On December 21, 1981, Lucy Brown of 69 West 118th Street, #3W, (3rd floor) (between Lenox and Fifth Avenues), New York City, heard footsteps in her apartment. When she went to investigate she was confronted by the defendant. The defendant fired a shot at Brown when she tried to flee. The defendant took a sum of money from Brown at gunpoint. The defendant then forced Brown into the bedroom where her boyfriend, Michael Davis, was sleeping. The defendant, at gunpoint, robbed Davis of a sum of money. The gun used by the defendant was a .32 caliber automatic pistol. Among the property taken was a pair of gloves belonging to Michael Davis. It is believed that the defendant gained access to Brown's apartment by walking on a window ledge from an adjacent abandoned building.

X. Counts 26-28 of the indictment (The Wells incident), charge the defendant with two counts of Attempted Murder in the Second Degree (intentional and felonious) and Robbery in the First Degree, in that:

On December 2, 1981, the defendant was robbing Arnold Ernest Johnson, age 70, at gunpoint on the second floor hallway of 19 West 116th Street, (between Lenox and Fifth Avenues), New York City, when David Wells, age 65, came out of his apartment. Wells asked the defendant what was going on. Defendant turned and shot Wells in the stomach with a .32 caliber automatic pistol.

XI. Counts 29-30 of the indictment (The Hall incident), charge the defendant with Burglary in the First Degree and Robbery in the First Degree, in that:

On January 22 1982, the defendant crashed into the apartment of Martha Hall at 64 West 116th Street, #4W (4th floor) (top occupied floor) (between Lenox and Fifth Avenues), New York City, by swinging on a rope tied to the roof. Defendant pointed a gun at Hall and removed a sum of money

from her. When Hall fled from her apartment defendant shot Hall's pet dog to death with a .32 caliber automatic pistol.

XII. Counts 31-34 of the indictment (The Johnson incident), charge the defendant with two counts of Burglary in the First Degree, Criminal Possession of a Weapon in the Second Degree and Assault in the Second Degree, in that:

On December 26, 1981, Arnold Ernest Johnson, 19 West 116th Street, #1 (ground floor) (between Lenox and Fifth Avenues), New York City, saw defendant in his apartment. When Johnson tried to flee, defendant shot Johnson in the left hand with a .32 caliber automatic pistol. Defendant took a sum of money from Johnson's apartment.

XIII. Count 35 of the indictment (The Gurley incident), charge the defendant with Burglary in the First Degree, in that:

On November 24, 1981, the defendant entered Christine Gurley's apartment at 2119 Eighth Avenue, #4A (top floor) (between 114th and 115th Streets) by breaking a window with a flower pot. Defendant ordered Gurley at gunpoint to leave her apartment. The defendant then took some personal property from Gurley.

XIV. Count 36 of the indictment (The Bell incident), charges the defendant with Burglary in the Second Degree, in that:

On August 19, 1981, Phillip Bell returned to his apartment at 217 West 110th Street #20, (next to the top floor) (between Seventh and St. Nicholas Avenues), New York City, and saw a bag containing his camera, a tape set and radio being pulled out of the window with a rope coming from the roof. Bell slammed the window on the rope and went up to the roof to investigate. When Bell approached him, the defendant displayed a knife and threatened Bell. When Bell returned to his apartment the bag was already

ulled up to the roof by the defendant. The defendant is believed to have entered Bell's apartment by lowering himself on a rope from the roof.

XV. Count 37 of the indictment (The Hudson incident), charge the defendant with Robbery in the First Degree, in that:

On December 19, 1981, the defendant accosted Ophelia Hudson, at gunpoint, on the second floor landing at 117 West 115th Street (between Lenox and St. Nicholas Avenues), New York City. The defendant demanded money and when Hudson was slow in complying defendant knocked Hudson to the floor and took her pocketbook.

XVI. The thirty-seven count indictment encompasses eleven separate incidents. In all of the incidents the defendant was alone. Ten of these incidents, the Bell incident as the only exception, occurred over a three month period from November 9, 1981 to January 25, 1982, and within an area bounded by 113th to 120th Streets (seven blocks) and Manhattan to Fifth Avenues (five blocks). Seven of these incidents (Clark, Simmons, Brown, Hall, Johnson, Wells, and Hudson) are concentrated within a four block area bounded by 115th to 119th Streets and Lenox to Fifth Avenues. Ten of these incidents, the Hall and Johnson incidents as exceptions, occurred in the afternoon. See People's Exhibit #1, a map of the 28th Precinct with the names, dates and locations of the eleven incidents indicated.

XVII. The points of resemblance evident in the eleven incidents are reflected in People's Exhibit #2, listing some of the common features that characterized each incident.

In ten incidents the defendant was armed with a pistol or pistols. Two pistols, a .32 caliber revolver and a .32 caliber automatic, have been identified by ballistics as having been used in at least eight of the incidents. In the Hudson and Gurley incidents, the defendant displayed a pistol. In the Bell incident, the defendant used a knife.

In nine incidents, with the Wells and Hudson incidents as the exceptions, the defendant was committing or attempting to commit burglaries of the victims' apartments. In seven incidents, the Brown, Johnson, Wells and Hudson incidents as exceptions, the apartments were located on the top or top occupied floor of the buildings. Acrobatic prowess was exhibited by the defendant in gaining entries to seven apartments. A rope was used in at least three and possibly four incidents (Barron, Hall, Bell and Clark) in gaining entry into the apartments. In the Clark incident, the defendant also had a ladder and in the Robinson and Brown incidents he crawled between two buildings to enter into the apartments.

Unprovoked violence was evident in nine incidents. Without any provocation or warning the defendant shot Clark, Robinson and Barron to death, injured Simmons, Johnson and Wells, killed Hall's pet dog, shot at Persaud and Brown and knocked Gurley to the ground. The defendant took property from all of his victims, with the exception of the Robinson incident, after a violent confrontation with them.

XVIII. To a large extent defendant's identification rests on circumstantial evidence. The defendant was arrested on January 28, 1982 after a two month investigation conducted by a team of detectives assigned to the 28th Precinct Detective Unit and Manhattan Detective Task Force. After the defendant's arrest he was placed in two line-ups where he was identified by seven of the eleven living victims: Isri Persaud, Michael Robinson, Lucy Brown, Christine Gurley, David Wells, Ophelia Hudson and Phillip Bell. (Altogether there were fourteen victims -- three being deceased).

In four of the eleven incidents (Barron, Hall, Simmons and Johnson) the only evidence connecting the defendant to the crimes is physical evidence.



XIX. Shortly after the defendant's arrest two searches were conducted at Mabel Ivey's residence at 8 West 119th Street, #20 (between Lenox and Fifth Avenues), New York City, where the defendant was staying during the six months prior to his arrest. Among the items recovered were a .32 caliber automatic pistol used in the Clark, Barron, Hall, Brown, Johnson, and Wells incidents, a checkbook belonging to Robert Clark, a pair of gloves belonging to Lucy Brown's boyfriend, Michael Davis, a shopping cart belonging to the wife of Emory Barron, and a piece of nylon rope. Packages of frozen meat believed to have been taken during the Brown incident were found in a refrigerator inside the apartment but were not vouchered by the police.

XX. The day after the defendant's arrest a .32 caliber revolver was recovered from one Darius Morgan who had bought the gun from the defendant and Mabel Ivey in late December, 1981. Prior to the sale, this gun was used in the Clark, Robinson, and Simmons incidents.

XXI. A number of witnesses will be called to testify about multiple incidents. For example, Mabel Ivey will testify as to ten incidents (the Bell incident excepted). Darius Morgan will testify as to at least three, and possibly five more incidents (Clark, Robinson and Simmons). Detective Stephen Collangelo, Ballistics Section, will testify as to eight incidents, and a number of civilians and police officers will testify as to all eleven incidents concerning the investigation that led to the defendant's arrest on January 28, 1982.

XXII. The People submit that each incident is properly joined with each other because each involves burglary and/or robbery and are similar in law. C.P.L. §200.20(2)(c).

XXIII. The People submit that seven incidents (Clark, Robinson, Barron, Simmons, Brown, Hall and Johnson) are properly joined in a single indictment.

ment on the basis of the distinctive repetitive pattern evident in these incidents that all serve to distinguish the defendant's criminal acts. And the joinder with the remaining four incidents (Gurley, Wells, Hudson and Bells) is predicated on the existence of certain unique features evident in these incidents, which alone, or in combination with the others serve to distinguish the defendant's criminal acts and are highly probative in establishing the defendant's identity. C.P.L. §200.20(2)(b).

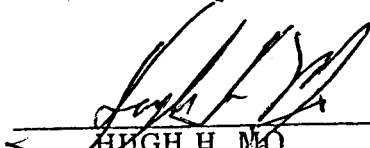
XXIV. The People submit that the counts associated with each of the eleven separate incidents are properly joined as "based upon... the same criminal transactions." C.P.L. §200.20(2)(a) and section 40.10(2)(b).

XXV. To assist the Court in deciding this motion to sever the People have provided the Court with a copy of the grand jury minutes for the Court's in-camera inspection.

WHEREFORE, the People respectfully request that defendant's motion be denied in all respects.

Dated: New York, New York  
June 15, 1982

Respectfully submitted,

  
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HUGH H. MO  
Assistant District Attorney

SONIA SOTOMAYOR  
Assistant District Attorney  
Of Counsel