
Motions

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

12-11-1973

**District Attorney's Affidavit and Reply Memo to Petitioner's Motion
to Set Aside Verdict**

Lewis M. Steel '63

received 12/11/73

Office Copy
(memo Attached)

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

his wife, and his mother on November 27, 1973, at which time
----- x

I was told by each of them that Michael Febles has had no
THE PEOPLE OF THE STATE OF NEW YORK :
treatment of any kind for any mental disorder subsequent to
his release ~~from~~ ~~at~~ ~~the~~ ~~Rockland~~ ~~Children's~~ ~~Hospital~~ ~~in~~ ~~1956~~.
: AFFIDAVIT

WILLIAM MAYNARD, JR. Febles also told me that he had not told
any police or Assistant District Attorneys prior to the trials
Defendant.
that He had suffered any mental incapacity or treatment.
----- x

7. Mrs. Nash, Michael Febles' mother, informed me
(STATE OF NEW YORK) }
COUNTY OF NEW YORK } ss.:
welfare Department and wanted to help her
son Michael obtain welfare payments in the amount of \$50 - \$100
JURIS G. CEDERBAUMS, being duly sworn, deposes
dollars per month. Having been thus misled as to his true
and says:

identity, Mrs. Nash then gave this investigator certain
information 1. I am an Assistant District Attorney in the
County of New York, presently assigned to the above case.

8. I have spoken to Detective O'Brien, Police
Officer Hans 2. I make this affidavit in support of my memorandum
answering petitioner's motion dated November 26, 1973. Stephen

Sawyer. Each of them has told me that they had no information
whatsoever about Michael Febles' mental problems, nor did any
3. Pursuant to the Court's instructions, I have
subpoenaed all medical records available from Rockland Children's
Hospital, Bellevue Hospital, and St. Luke's Hospital dealing
with Michael Febles from 1956 to the present. All of these
records have been turned over to the Court.
at that time.

4. I have obtained a copy of Michael Febles yellow
sheet, which I have turned over to the Court and to counsel
for the petitioner. this

day of December, 1973.

5. I conducted an interview with Michael Febles, his wife, and his mother on November 27, 1973, at which time I was told by each of them that Michael Febles has had no treatment of any kind for any mental disorder subsequent to his release from Rockland Children's Hospital in 1956.

6. Mr. Febles also told me that he had not told any police or Assistant District Attorneys prior to the trials that He had suffered any mental incapacity or treatment.

7. Mrs. Nash, Michael Febles' mother, informed me that an investigator went to her home and told her he was from the Social Security Department and wanted to help her son Michael Obtain welfare payments in the amount of \$50 -\$100 dollars per month. Having been thus misled as to his true identity, Mrs. Nash then gave this investigator certain information.

8. I have spoken to Detective O'Brien, Police Officer Hanast, Walter Stone (formerly a Lieutenant), and former Assistant District Attorney's Gino Gallina and Stephen Sawyer. Each of them has told me that they had no information whatsoever about Michael Febles' mental problems, nor did any of them have any prior knowledge of his hospitalization at Rockland Children's Hospital from 1954 to 1956. No such information was concealed from the defense, since none existed at that time.

Juris G. Cederbaums

Sworn to before me this

day of December, 1973.

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

THE PEOPLE OF THE STATE
OF NEW YORK

against

WILLIAM MAYNARD, JR.

Defendant.

AFFIDAVIT

FRANK S. HOGAN
DISTRICT ATTORNEY

155 Leonard Street
Borough of Manhattan
New York City

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

... lunatic, or generally insane - either - X at the time he witnessed

THE PEOPLE OF THE STATE OF NEW YORK

... testified at the trial. It is not now suggested that his testimony was incomplete

-against-

REPLY MEMORANDUM TO
PETITIONER'S MOTION
TO SET ASIDE THE
VERDICT

WILLIAM MAYNARD, JR.

Petitioner's reliance in People v. Rensing, 14 N.Y.2d 210 (1964) is misplaced. Defendant, the witness had had a long

standing mental disorder, numerous hospital commitments, and brain surgery. After trial psychiatrists found him still to be

"insane. This memorandum is submitted in reply to petitioner's motion to set aside the verdict, dated November 26, 1973.

testify against the defendant. Febles' testimony was corroborated

The thrust of the present motion is that Maynard is entitled to a new trial because of "newly discovered evidence" relating to the mental condition of one of the People's witnesses at the trial, Michael Febles. Specifically, it is claimed that Febles' stay in Rockland State Hospital in his childhood was virtually identical to those here, the court denied a new trial evidence of a "serious mental disorder" which affected the witness' competence or credibility, and that the People (Gen. Sess 1951), both of which are relied upon by petitioner deliberately failed to disclose this information in violation

of the principle set forth in Brady v. Maryland, 373 U.S. 83 (1963). Since the facts of this case do not fall within the

scope of Rensing and Cienlanski, it becomes necessary to

Information already disclosed to the court reveals that Febles was a patient at Rockland Children's Hospital from May, 1954 - when he was thirteen years old - until July of 1955, when he was placed on convalescent status in the custody of his mother. He was officially discharged as "much improved" on July 9, 1956.

Nowhere is it suggested - nor is there evidence to support the theory that Febles was at any time a complete idiot, a lunatic, or generally insane - either at the time he witnessed the Kroll homicide in April 1967, or at the various times he testified at the trials. It is not now, nor has it ever been, suggested that his testimony was incompetent.

Petitioner's reliance in People v. Rensing, 14 N.Y.2d 210 (1964) is misplaced. In Rensing the witness had had a long standing mental disorder, numerous hospital commitments, and brain surgery. After trial psychiatrists found him still to be "insane." Such is not the case here. Moreover, Rensing involved a trial where the witness in question was the only witness to testify against the defendant. Febles' testimony was corroborated by three other witnesses as well as circumstantial evidence.

Even without Febles' testimony there would have been ample evidence to sustain a conviction. See, United States v. Robinson, 229 F. Supp. 723 (Del. D.C., 1971). Where, upon facts virtually identical to those here, the court denied a new trial and distinguished Rensing and Cieplenski 103 N.Y.S. 2d 391, (Gen. Sess 1951), both of which are relied upon by petitioner herein.

Since the facts of this case do not fall within the scope of Rensing and Cieplenski, it becomes necessary to determine whether the "newly discovered evidence" warrants a new trial. In order for such a motion to be based on "newly discovered evidence" the law in New York holds that five requirements must be met:

Its probative nature would have been minimal because of the remoteness of the subject matter.

Meaning less
no opinion
in either
Cof A or App.
Div.

The Kroll homicide took place in 1967, more than eleven years after Febles' discharge from Rockland at the age of fourteen. See People v. Robinson, 27 N.Y.2d 864 (1970); People v. Bartholmew, 73 Mis.2d 544 (Nassau Co. Ct. 1973).

It must also be stated that Febles' records at Rockland are privileged as a matter of law (C.P.L.R. 4504, MHL section 15;13; See also People v. Robinson, supra, Wilson v. State of New York, 36 A.D.2d 559; Boykin v. State of New York, 13 Misc. 2d 1037, aff'd 7 A.D.2d 819). Petitioner has not shown that Febles will waive this privilege. Therefore, the "newly discovered evidence" may well not even be admissible. In People v. Robinson, supra, the Court of Appeals affirmed the conviction of a defendant who was not allowed to obtain at trial the psychiatric records of the People's key witness.

Petitioner further charges that Febles' psychiatric background was deliberately suppressed. Aside from his bald assertion, there is no evidence to support this contention which is specifically denied (see annexed affidavit).

In sum, the "newly discovered evidence" is merely cumulative and/or impeaching and deals with collateral matters rather than the issues. Even assuming it had been elicited at trial, it is not of such a nature that it would have affected the verdict.

The motion should in all respects be denied.

Respectfully submitted,

FRANK S. HOGAN
District Attonrey

JURIS G. CEDERBAUMS
Assistant District Attorney
Of Counsel

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

THE PEOPLE OF THE STATE
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against

WILLIAM MAYNARD, JR.

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