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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

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received 12/11/73

(memo A Hacked)

SUPREME COURT OF THE STATE OF NEW YORK with Michael Febles, COUNTY OF NEW YORK his wife, and his mether on Sevender 27, 1973, at which time

THE PEOPLE OF THE STATE OF NEW YORK : treatment of any kind for any mental disorder subsequent to

has releaseagainstockland Children's Hospital in 1956

WILLIAM MAYNARD rJR bles also told me that he had not told any police or assistant District Attorneys prior to the trials Defendant.

that We had suffered any mental incapacity or treatment.

7. Mrs. Mash, Michael Febles' mother, informed me tSTATE OF NEW YORK) went to her home and told her he was ss.:

COUNTY OF NEW YORK arity Department and wanted to help her

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 spaken to Detective O'Brien, Police

Officer Han 2.t, I make this affidavit in support of my memorandum answering petitioner's motion dated November 26, 1973

3. Pursuant to the Court's instructions, I have subposed all medical records available from Rockland Children's Hospital, Bellevus 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.

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.

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

RECEIVED DEC 7 1973

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF NEW YORK that Pebles was at any time a complete idiot,

lunatic, or generally insand - bither at the time he witnessed

THE PEOPLE OF THE STATE OF NEW YORK at: the various times he

testified at the against- It is not not REPLY MEMORANDUM TO -againstPETITIONER'S MOTION
Buggested that his testimony was income. TO SET ASIDE THE

WILLIAM MAYNARD, JR. : -Petitioner's reliance in People v. Rensing, 14 N.Y. 26 210 (1964) is misplaced. Defendant of the witness had had a long

standing mental disorder, numerous hospital commitments, and

brain surgery. After trial psychiatrists found him still to be

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

The thrust of the present motion is that Maynard is other witnesses as 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 dentical to those evidence of a "serious mental disorder" which affected the witness' competence or credibility, and that the People 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 ease do not fall within the

Rensing and Cieplanski, it becomes necessary to Information already disclosed to the court reveals that Febles was a patient at Rockland Children's Hospital from May, In order for 1954 - when he was thirteen years old - until July of 1955, when he was placed on convalescent status in the custody of equirements must be ma his mother. He was officially discharged as "much improved" on July 9, 1956.

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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 insame - 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. ar impeaching. suggested that his testimony was incompetent. The evidence must be material

to the principal issues involu Petitioner's reliance in People v. Rensing, 14 N.Y.2d The evider 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. a listed Robinson, 229 F. Supp. 723 (Del. D.C., 1971). Where, upon facts virtually identical to those here, the court denied a new trial naterial relating to Febles' menta and distinguished Rensing and Cieplenski 103 N.Y.S. 2d 391, (Gen. Sess 1951), both of which are relied upon by petitioner would have been bound by his answers. Even if cross-examin would have been permitted, independent evidence would have been

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 the trial. Thus, any further attempted improchaent merely requirements must be met: would have been commistive. Its probative nature would have

been minimal because of the remoteness of the subject matter.

- Jan

The Kroll homicide took place in 1967, more than eleven years The evidence must have been 1) after Febles' disdiscovered after the trial age of fourteen.

See People v. 2) The failure to discover must have not been caused by the Bartholmer, 73 M defendant's lack of dilligence.

He services

cof a mappe

5:4

3) The newly discovered evidence must not be merely cumulative or impeaching.

are privileged as a matter of law (O.P.D.R. 4504, MHD section The evidence must be material 4) 15:13; See also Pto the principal issues involved. State of

New York, 36 5). The evidence must be of such a York, 13 Misc. nature that it would probably 2d 1037, aff'd 7 produce an acquittal in the not shown that event of retrial.

Febles will waive People v. Salemi, 309 N.Y. 208;

See also Criminal Procedure Law

discovered evide Section 440.10.

Robinson, supra, the Court of Appeals affirmed the Assuming arguendo that petitioner had no way of distion of a defendant who was not allowed covering or investigating the background of a witness known to paychiatric records of him for several years, and who already testified at a prior trial (See United States v. Robinson, supra), the motion does not lie because the requirements of points 3, 4 and 5, as listed above; are not met. no evidence to support this contention

which is specifically denied (see annexed affidavit). Any material relating to Febles' mental condition could have been utilized solely to impeach his credibility. Counsel would have been bound by his answers. Even if cross-examination would have been permitted, independent evidence would have been inadmissible, as the matter is collateral and not material to the issue of Maynard's guilt or innocence. People v. Sorge 301 N.Y. 198 (1950). The motion should in all respects be denied.

Febles' credibility was under sustained attack during the trial. Thus, any further attemptee impeachment merely would have been cumulative. Its probative nature would have been minimal because of the remoteness of the subject matter. Assistant District Attorney Of Commeel

meaningless
no opinion
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Cob A or App.

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 (Massau 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 Attorrey

JURIS G. CEDERBAUMS
Assistant District Attorney
Of Counsel

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

THE PEOPLE OF THE STATE
OF NEW YORK

against

WILLIAM MAYNARD, JR.

Defendant.

HEPLY MEMORANDOM TO PETITIONER'S MOTION TO SET ASIDE THE VERDICT

FRANK S. HOGAN

DISTRICT ATTORNEY

155 Leonard Street Borough of Manhattan New York City