
Motions

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

11-1970

District Attorney's Recommendation of Dismissal (+ Steel's Notes)

Lewis M. Steel,'63

This is District Attorney Kuh's recommendation for dismissal. It rather understates the role of his office and the police in Maynard's incarceration. The sad thing is that after keeping Tony Maynard in jail for seven years, the District Attorney could not even muster an apology. All he blandly says is that "the public would not be served by a fourth trial...to request a fourth trial would strip the law of dignity and compassion."

INDICTMENT NO. 3937-67

SUPREME COURT: STATE OF NEW YORK
COUNTY: NEW YORK

THE PEOPLE OF THE STATE
OF NEW YORK

against

WILLIAM A. MAYNARD,

Defendant.

RECOMMENDATION FOR DISMISSAL

FRANK S. HOGAN

DISTRICT ATTORNEY

155 Leonard Street
Borough of Manhattan
New York City

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

-----X

THE PEOPLE OF THE STATE OF NEW YORK :

-against-

: INDICTMENT NO. 3937/67

WILLIAM A. MAYNARD,

:
Defendant.:
-----X

RECOMMENDATION FOR DISMISSAL

INDICTMENT:

The defendant was indicted on November 1, 1967 for the crime of Murder in the First Degree. The indictment alleged that the defendant willfully, feloniously and with malice aforethought shot and killed U.S. Marine Corps Sgt. Michael Kroll on April 3, 1967 in New York County.

HISTORY:

The defendant was first tried on this indictment before the Honorable Joseph Martinis, Acting Justice of the Supreme Court, from May 9 to June 13, 1969. After two days of deliberation, the jury was unable to arrive at a verdict. A second trial was commenced before the Honorable George Carney, Justice of the Supreme Court. This resulted in a mistrial during the early stages of the trial. A third trial was commenced on October 4, 1970 before the Honorable Irwin D. Davidson, resulting in a conviction

of Manslaughter in the First Degree on December 9, 1970. The finding of guilt of Manslaughter in the First Degree operates legally as an acquittal of the primary charge of Murder in the First Degree. The jury deliberated for two days before arriving at this verdict.

The defendant appealed the conviction and, by a divided court, the Appellate Division affirmed the conviction. The affirmance was by a 3 to 2 vote and the dissent was most vigorous and forceful. The main thrust of the dissent was that reversible error had been committed by the trial court in failing to permit the defense to elicit testimony from an expert on lighting conditions, which testimony would have suggested that the area in which the killing occurred was not as well lit as the People contended.

Subsequent to the Appellate Division's decision, the defense moved for a new trial on the grounds of newly discovered evidence and an extended evidentiary hearing was held during January and February of 1974 before the Honorable Irving Lang, Acting Justice of the Supreme Court.

The hearing before Judge Lang disclosed that eye-witness Febles had a long history of institutionalization for mental problems, as well as a more extensive criminal record than was known at the trial. On March 29, 1974, Judge Lang handed down a decision setting aside the conviction and granting a new trial in this matter. Judge Lang found certain material concerning the background of one of the witnesses to this killing, Michael Febles, was of such moment that had the jury been aware of it, their verdict might have been different. This office decided not to appeal Judge Lang's ruling because of our recognition that

the impact of the material concerning Febles' mental state, had it been available and utilized on trial, might have caused the triers of fact to find differently.

EVIDENCE:

At approximately 4:00 a.m. on April 3, 1967, a uniformed sailor, by the name of Robert E. Crist, was in an argument on West 3rd Street, near 6th Avenue in New York County. Crist was arguing with a black man who was accompanied by a white companion. The deceased, Sgt. Michael Kroll, who was in his Marine Corps uniform, drove up in an automobile and asked the uniformed sailor, Crist, if he could be of help. Crist got into Sgt. Kroll's automobile and the black man, hereinafter referred to as the assailant, and his companion walked away.

Crist indicated to Kroll that he wanted to finish the argument and they drove north on 6th Avenue to West 4th Street.

Kroll got out of the car and Crist remained inside. Kroll, with nothing in his hand, approached the assailant. The latter was holding a sawed-off shotgun and told Kroll he would shoot if he came any closer. Kroll didn't stop and the killer discharged the shotgun into Kroll's face.

The assailant and his companion fled on foot going north on 6th Avenue.

These events were witnessed by Dennis Morris and Michael Febles as well as by Crist. At the time of the murder the defendant, William A. Maynard, was 31 years of age, 6 ft. 1 inch tall. Crist, who had admittedly been drinking beer all night and early morning, was apparently intoxicated. His description of the killer was that he was 5 feet 10 or 11 inches and 18 to 20 years of age. Morris described the killer to the authorities as being approximately 5 feet 7 inches to 6 feet and approximately 18 to 22 years of age. Moreover, Morris indicated that the killer reminded him of Martin Luther King,

Jr. Maynard does not resemble the late Reverend King. Febles described the shotgun wielder as being on the tall side and about 19 or 20 years old.

On May 17, 1967, the defendant was viewed in the 6th precinct station house by one Howard Fox, a taxi driver who had driven a black man and a white man to Greenwich Village some 14 hours before the killing. At that time, the white man had in his possession a camera case which was similar to the case which was found near the scene of the crime and which had apparently been dropped by the killer's companion as he fled. Fox identified Maynard as the companion of the white man whom he had driven.

In late August 1967, the defendant went to Hamburg, Germany. On March 19, 1968 the defendant was extradited from Germany and returned to this jurisdiction in the custody of the New York City Police.

PRIOR CRIMINAL RECORD:

The defendant was convicted of Assault in the 3rd Degree in Kings County in 1963, of a misdemeanor in violation of the gambling law in New York County in 1964, of Reckless Driving in New York County in 1964. Subsequent convictions in 1965 and 1966 were for gambling violations and Attempted Bail Jumping.

RECOMMENDATION:

• The defendant had served some 6½ years in prison in connection with this case until he was released on \$5,000 bail on April 4, 1947 with the consent of this office. Upon a retrial of these charges, the maximum sentence which could be imposed in the event of a conviction would be 10-20 years in State's Prison. By such a sentence, under the provisions of the former Penal Law, the defendant would be eligible for parole in less than 3 months.

The events in question occurred over 7 years ago. Serious questions have now arisen as to the credibility of the eye-witness Febles. Apart from the length of time which the defendant has already served and the passage of years since the commission of the crime, the impaired credibility of Febles, coupled with the obvious difficulties in proof of the case, (as witnessed by the first hung jury and the extended deliberation of the jury which brought in the Manslaughter charge) militate strongly against the likelihood of a conviction if this case were retried.

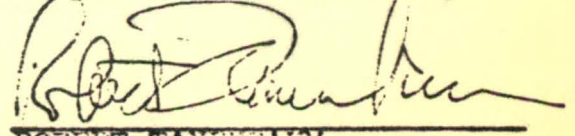
Despite the horror of the crime, under all the circumstances the public would not be served by a fourth trial of Mr. Maynard. And, under all the circumstances, to require a fourth trial would strip the law of dignity and compassion.

Accordingly, the interest of justice would suffer by requiring the defendant to undergo another trial.

WHEREFORE, it is respectfully recommended that the indictment herein be dismissed.

DATED: NEW YORK, NEW YORK
August 22, 1974

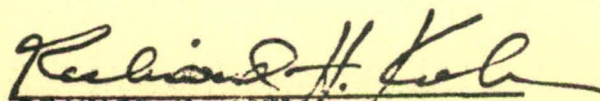
Respectfully submitted,



ROBERT TANENBAUM

Assistant District Attorney

APPROVED:


RICHARD H. KUN
District Attorney

April 29, 1974

STATEMENT OF DISTRICT ATTORNEY
RICHARD H. KSH CONCERNING APPEAL
OF THE MARCH 29, 1974 DECISION OF
JUSTICE IRVING LANG IN THE CASE OF
PEOPLE V. WILLIAM A. MAYNARD, JR.

On March 29, 1974, after a protracted hearing in the Supreme Court of New York County -- which started before I was the District Attorney and ended after I assumed this post -- Acting Supreme Court Justice Irving Lang rendered his decision setting aside the conviction, for the crime of Manslaughter in the First Degree, of William A. Maynard, Jr. Justice Lang's action was premised upon his finding of newly discovered evidence, and that the conviction had been obtained in violation of the defendant's constitutional rights in that exculpatory material had not been given the defense as required by the United States Supreme Court in its opinion in the case of Brady v. Maryland, 373 U.S. 83 (1963).

In early April, 1967, Sergeant Michael Kroll of the United States Marine Corps had part of his head blown off by a shotgun blast, during the early morning hours, on West Fourth Street in New York's Greenwich Village. A month and a half later the defendant Maynard was arrested and charged with that killing. When he was initially tried for Murder, the jury was unable to agree. A second trial aborted in its very early stages, a mistrial having been declared. Upon the third trial, in 1970, the jury convicted Maynard on the charge of Manslaughter in the First Degree. That conviction was affirmed in the Appellate Division in this Department, divided three to two.

There were three eye-witnesses to the slaying of Sergeant Kroll. Clearly, the witness Michael Febles was the most important -- and seemingly the most reliable -- of the three. One of the other two witnesses was intoxicated at the time of the killing, and the remaining witness had initially supplied a description of the killer to the police which, concededly, was at strong variance to the appearance of the defendant Maynard. Hence Febles' reliability was, apparently, critical at the trial.

In ordering Maynard's conviction set aside, Judge Lang relied upon Febles' history of seeming psychiatric disorders and institutionalization including his bizarre sexual activity, none of which had been brought to the defense's attention prior to or at the trial at which Maynard was convicted. Judge Lang noted that in January of 1966, fifteen months before the Kroll killing, Febles had been arrested in the 6th Precinct -- the same precinct in which Sergeant Kroll was killed -- on a Disorderly Conduct charge. Febles was then alleged to have been a peeping Tom and to have made obscene remarks to the complainant. After that arrest he was committed for psychiatric observation and, upon his plea of guilty, received a six months suspended sentence upon his attorney's statement in Court that he would get further psychiatric treatment. Beyond that history, inquiry prior to the Lang hearing showed that Febles had been hospitalized for psychiatric disorders twelve years earlier, at the Rockland State Hospital.

During the hearing Judge Lang conducted, however, no psychiatric testimony was taken concerning Febles' mental state, whether at the time of that hearing, or at the time of the trial, or at the time of the killing, or earlier. Nonetheless, among other statements in the 20 page opinion of Judge Lang, are

"The quintessential evidence here is the long-standing and on-going mental condition of a major eye-witness, in conjunction with a sexual aberration. This mental condition raises the question of the accurateness, perception, truthfulness, and susceptibility to suggestion of Febles as a witness. His capacity to be a witness may even be in question," and

"I conclude that the facts of the disorderly conduct conviction in conjunction with Febles' psychiatric history bear much more than only on the reliability of his specific testimony but also on his trustworthiness as a witness per se," and

"The long, continuous and possibly organic mental condition of a major witness, manifesting itself on at least one occasion aberrant behavior...."

Respectfully, although I, as a fellow layman, can understand Judge Lang's reaction to the Febles' hospitalizations, Judge Lang's "diagnoses" stand virtually without evidentiary support in the record. Insofar as Judge Lang's opinion rests upon his tentative suggestion of "possibly organic mental condition," and a concomitant possible loss of ability to accurately perceive and to truthfully testify, I am satisfied that such opinion is without foundation in the record before him.

Judge Lang noted a number of factors -- which I will not here enumerate -- that suggest that adequate investigation in this major homicide should have turned up this psychiatric background. Properly, however, Judge Lang stated that he did not find any "wilful suppression" by the prosecutor. Although Judge Lang found no "wilful suppression," he did find a "suppression." Respectfully, I find the distinction an uncertain one and deem the "suppression" finding needless to the Judge's decision, and unfair to the enforcement side.

The assistant district attorney who tried the case when Maynard was convicted, Stephen Sawyer, is one whom I personally knew only as an adversary when I participated on the defense side and when he was a prosecutor. He was then and remains an outstanding lawyer of unquestioned integrity. He is now a colleague of New York's Special Prosecutor. Unfairness by Mr. Sawyer is, and always has been, completely foreign to his character. In the course of a recent letter to me he wrote:

"I believe that the critical factor to be considered now is whether, as a matter of basic fairness, Maynard is entitled to a new trial. This depends, in my view, on the bearing of Febles' mental condition upon his identification of Maynard as the killer of Sergeant Kroll."

I am in accord with that statement. And as the successor to the great Frank Hogan, who employed Mr. Sawyer as an assistant prosecutor, I am proud of his objectivity and of his continued sense of fairness.

I am wholly satisfied that Mr. Sawyer was ignorant, at the time of the trial -- as he testified before Judge Lang -- of Febles' 1966 psychiatric observation, and of his 1954 Rockland State hospitalization, and of the factors that led to such hospitalization.

In deciding, however, whether or not to seek appellate reversal of Judge Lang's decision, the issue I have to resolve goes beyond his use of undigested and uninterpreted psychiatric data, and behind his finding of "suppression." It is whether, based on the information now known to us, fundamental fairness to the defendant required that the trial jurors have had available before them full background information on this key witness, Michael Febles, in order that they might properly have determined what credibility to have accorded him as a witness. With the massive advantage of hindsight, I am satisfied that full information about Febles -- information that could have been earlier turned up by diligent prosecutorial investigation -- should have been in the prosecutor's hands before Maynard was tried, and should have been made available to the defense.

Clearly the jurors might properly have weighed Febles' hospitalizations and behavior -- had these items been known -- in determining the credence they gave his testimony. And in this case, where the main charge was Murder, in which -- after two full days of deliberation -- the jurors convicted of the lesser crime of Manslaughter, that information might seriously have impacted upon the jurors' common sense evaluation of Febles' believability as a witness. I do not know that it would have. But it might have. And basic fairness compels my conclusion that, upon the unique facts of the Maynard case, it should have been available. It would therefore be grossly unfair to Maynard to seek to sustain his conviction on the 1970 record in light of the facts as we know them since the hearing conducted by Judge Lang. The District Attorney's role is to safeguard justice, not necessarily to sustain a conviction.

Because of my conclusion in this regard, I have directed that there be no appeal of Judge Lang's recent decision in the Maynard case.

I do not, of course, here suggest that in every case my office, or any prosecutor's office, is to be chargeable retroactively with knowledge of all materials that may appear post-trial. But on the Maynard facts I believe justice is served by considering, as newly discovered evidence, the materials developed before Judge Lang.

At Judge Lang's direction, some weeks ago the Maynard case was placed on the September calendar of the Supreme Court. Prior to that time my associates and I will have reviewed the record, and the new evidence bearing on Febles that we now have, we will have studied both the prevailing opinion in the Appellate Division and the vigorous dissent in that Court, and we will have inquired into the present availability of witnesses, and into other factors.

We shall then determine whether the interests of justice and the protection of the community require that Maynard be again brought

Legal Pad

1- Introduction stuff.

p179 - after leaving NAACP - Bellman + me - housing cases

181- Bill + Lorraine in Miami Warden house - Restricted to house

our wedding

184-5 Some of my - a Criminal cases in Harlem

186 - fear

187-8 the SASSO CASE
Cal. Formia

189-90 Huntington Appeal

191- Dick - Mt Hawaii

See also

in white

Binder p6

193 - Exclusionary zoning

Brooklyn

→ 193 bottom - the NY City of Argos Argent

(K47)

195 - Wachter

196 Again - the one A-A... went along with the majority or like Stevens, tried to separate himself.

-196 the Second Brooklyn case

198 -

+ its

history 202

(1990)

Satmar -
City of N.Y.

p202 - Enter Judge Hicken

p203-4 Victor Kerner

p204 -

the trial

p206 - Pot. tics as usual - Rember
Cleveland Judge - some things

p207 - appeal
209-10 MAZUR Frankel

211 - my code - BIS with
Grayson & Feltwell

213 - my Summation
214

215 - my rebuttal summation
3/5th of a man

→ 217 - years later appeals court decision
- can't use partial memories

217 - 1984
p219 my 2d fair house trial
We won \$1500, no injunction
my anger p222 - 223

↓
Africa
226 - my only child, my son
Ambivalence

227 - Foreboding of death

245 - your words - I describe Church takeover

p247 - MAYNARD joins me - Background

249 - MAE Quinn

253 - more in town

255 - the weather at Africa Melville

258 - Kunstler

270 Bobby Seale

274 Tom Wicker - my annoyance

275 - Couldn't find Maynard

276 - the FEAR

279 - to Wicker: the Game is over.

280 - a hell of a lot of people
are going to get killed

288 - the Attack - Hugging the floor.

294 - Fischer become the prosecutor
62 inmates 4/72 - 1289 crimes

294 ^{bottom} - the McKay Commission
appointed by Chief Judge.

295 - Report released 9/13/72

296 - Wicker Again

297 - I really adopts my position re
Rockett

298 - Haywood Burns

299 - I defended 2

Kunstler + Ramsey Clark

defended the 2 accused of killings
William Quirin

What
a coming
!
the Quirin
was the
name of
the son of
Tom M...
into
(247)

Dec. 1974 - the Malcolm Bell Report
resigned - said whole investigation lacked
integrity.

300 Gov Hugh Cawson Appointed a new
Special Deputy Alfred Scott;

In 12/31/76 - NO more trials
" A DARK Shadow "

Pardons for all except
DACA jews etc
but commuted life sentence -

301 - Elizabeth Fink
sent feed 9/74

302 BACK to MAYNARD

the hallucinations letter confession
I called Stanley Sawyer.

I'll kill you.

Also the drug matter.

p303 thornazine

p304 - Long released MAYNARD

p304 - Long - told me DA's office
had spread the word.

305 1991 - CIA - Core should go
forward.

306 - the trial - & verdict
Block
A Jew's Commitment.

9308 - BACK to AUBURN.

↓ Sam Meyers - Jan the man
the job as messenger

309 - Hail worked out glass
bargain

310 the Robbery

315 - Back Hurricane Carter Case -
but w. in ~~material in between~~
digressions

316 - may/and stuff ↙

317 - the Harlem 4 (6) ↙
mentioned

318 - Roy Cohn → \$

319 - Hurricane Carter Really
starts here

330 - we win reversal of
1st & TRIAL

331 - Mohammed Ali

368 - the guilty verdicts

408 7/22/85 the oral argument before SAROKIN

410 11/7/85 - SAROKIN rules in
our favor

411 - Carter Released

414 - 2/19/88 - Prosecutors agree. -
NO 3rd TRIAL

414 - A week later - CASE dismissed
415 - We walk in to Judge Leo Pizzi

- No pleasure

416 - Ronald MAZMO - next
Court room

417 - 4/18/66 - ARTIS Arrested

419 - # for John Artis

John
PAYS
me
back
421 - 8/7/67 - Back to prison
2 - His post not a deterrent

423 - Leon + I - NJ Supreme Ct
filed 5/2/68

one month later w. entry signed
our order to release

- A few days ~~later~~ later, after being
lectured by the judge - he is
released

431 - Chapter re Cotto / ARTIS
over

432 - NJ Prison case

* 474 - {the subway incident}

Frank
Budd
560 I end thinking of Frank Budd

& Mr Lewis comes back to my mind -

→ Connection to Bill -

p561 -

Read CARE Letter

Moving Forward

— lots of CARE staff -

What about D.J.?

MAYNARD

D. A's recommendation

↓
Dismissal