22-6758

IN THE SUPREME COURT OF THE UNITED STATES

ORIGINAL

OCTOBER TERM, 2022

In Re: MARK MARVIN, EX REL. Petitioner, for
NICOLE LAYMAN, Defendant

Against

SHERIFF OF ORANGE COUNTY, N.Y. , Respondent

PETITION FOR A WRIT OF HABEAS CORPUS
TO
THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Petitioner, pro se
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QUESTIONS PRESENTED

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II, WHETHER HABEAS RELIEF SHOULD BE GRANTED TO LAYMAN WHO WAS DENIED DUE PROCESS:

1, WAS COERCED INTO A GUILTY PLEA FOR MANSLAUGHTER FOLLOWING HER MISCARRIAGE FOR MEDICAL REASONS,

2, WAS CONVICTED OF HOMICIDE FOR HAVING A MISCARRIAGE,

3, WAS VICTIMIZED BY TWO GOVERNMENT MEDICAL DOCTORS WHO DISHONESTLY DESCRIBED A MISCARRIAGE AS "HOMICIDE',

4, WHO UNDER NEW YORK STATE LAW CAN HAVE AN ABORTION UP TO FULL TERM OF PREGNANCY,

5, WHO UNDER NEW YORK LAW HAS FULL AUTHORITY OVER HER PREGNANCY, INCLUDING CONFIDENTAILITY,

6, WHO WAS DENIED A DUE PROCESS SPEEDY TRIAL FOLLOWING THE GOVERNOR'S SUSPENSION OF DUE PROCESS FOR SIX MONTHS,

7, WHO WAS DENIED A DUE PROCESS SPEEDY TRIAL AS THE GOVERNMENT COULD NEVER BE READY FOR TRIAL USING FALSE EVIDENCE THAT MISCARRIAGE WAS A HOMICIDE?

PRAYER FOR RELIEF

Petitioner requests that this Court assert supervisory authority over the courts below, and grant habeas corpus and such other and further relief as is just and proper, as the courts below are paralyzed.

The District Court dismissed the habeas petition rather than allow Layman's next friend to act on her relation, something all courts before and after permitted. Even the Court of Appeals for the Second Circuit which held that the District Court offered a remedy recognized Mark Marvin ex rel. That makes the district court decision: reversed and *res judicata*. The District Court simply refused to adjudicate the habeas question and is presumed recused. The District Court erroneously implied that state remedies were not given first opportunity (Exhibit B-2, fn. 1) In fact, in the interests of judicial economy the Appellate Division was given first opportunity. (Exhibit E)

TABLE OF AUTHORITIES

New York State

Statutes:

Cases:

United States Cases

JURISDICTION

This Court has jurisdiction under 28 U.S.C. 1254. And to grant habeas relief. This Court has supervisory authority over courts below.

CONSTITUTIONAL PROVISIONS

The New York State and United States Courts denied her multiple facets of due process.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page and respondents are represented by the Orange County District Attorney.

SUMMARY OF THE CASE

NICOLE LAYMAN HAD A MISCARRIAGE (ABRUPTED PLACENTA) and panicked while she was outside in December in rural Port Jervis N.Y. The premature fetus died and she was charged with murder. Following imprisonment for some two years, counsel bullied her into a guilty plea for manslaughter.

The two medical doctors described the biology of an abrupted placenta wherein the placenta separates from the uterus depriving the fetus of oxygen. To survive in rare cases, the fetus would have needed immediate care in a neonatal intensive care unit, not available in her situation. During her pre-trial imprisonment the N.Y. Governor suspended habeas corpus subsequent to the Corona situation, the speedy trial period.

PROCEDURAL HISTORY OF THE CASE

Miscarriage: November 12, 2019.

Arraigned following indictment for murder, etc. March 3, 2020.

Coerced plea. Sentenced to 5 to 15 (?) years, December 10, 2021

Petitions for habeas corpus to trial court (June 23, 2021) , local Supreme Court and to Appellate Division (c. July 20, 2021, Sept. 8, 2021). (all summarily denied)

Petition of Nicole Layman and Mark Marvin for habeas relief to U.S.D.C. (S.D.N.Y.) December 12, 2021 dismissed without prejudice because Mark Marvin, ex rel. wrote petition. (DISMISSAL, dated 01/14/22) Never assigned to Magistrate. (28 U.S.C. 636,(b)(1)(B)

SUR MOTION TO VACATE ORDER OF DISMISSAL U.S.D.C. February 14, 2022.

NOTICE OF APPEAL -- PREMATURE NOTICE OF APPEAL August 15, 2022 (there is no appeal as court never adjudicated case as Layman had simultaneous habeas pending never dismissed.

Petition for Mandamus to U.S. C.A. 2d. Circuit, denied, December 15, 2022, intimating that District Court, which abandoned case, is adequate relief, and identified Marvin, ex rel. as petitioner.

STATEMENT OF THE CASE

1, NICOLE LAYMAN, Defendant was indicted for Murder in the second degree, manslaughter in the second degree, first degree assault, abandonment of a child, and tampering with evidence, and arraigned on c.

March 3, 2020 in County Court. Bail was set at $500,000 cash $3 million secured bond, or $5 million unsecured bond. The matter was continued to April 16, 2020, allow for the court ordered psychiatric and competency examination.

2, This indictment arose subsequent to the finding of an extra-uterine fetus in Port Jervis, Orange County, N.Y. c. November 12, 2019, following a miscarriage secondary to an abrupted placenta.

HAVING A MISCARRIAGE IS NOT A CRIME.

3, The Court should please TAKE JUDICIAL NOTICE, that under the New York State Reproductive Health act Section 2599-AA: "The legislature finds that comprehensive reproductive health care is a fundamental component of every individual's health, privacy and equality. Therefore it is the policy of the state that: 2, Every individual who becomes pregnant has the fundamental right to choose to carry the pregnancy to term, to give birth to a child, or to have an abortion, pursuant to this article. 3, The state shall not discriminate against, deny, or interfere with the exercise of the rights set forth in this section in the regulation or provision of benefits, facilities, services or information."

4, The Court should further please TAKE JUDICIAL NOTICE under the New York State Reproductive Health act Section 2599-BB, that "1, A health care practitioner licensed, certified, or authorized under title eight of the education law, acting within his or her lawful scope of practice, may perform an abortion when, according to the practitioner's reasonable and good faith professional judgment based on the facts of the patient's case:

the patient is within twenty-four weeks from the commencement of pregnancy, or there is an absence of fetal viability, or the abortion is necessary to protect the patient's life or health. 2, This article shall be construed and applied consistent with and subject to applicable laws and applicable and authorized regulations governing health care procedures."

5, Given that the defendant is the putative mother of the fetus, and that if so, she has "the fundamental right to choose to carry the pregnancy to term (or not), to give birth (or not), or to have an abortion (or not), and the State shall not ... interfere with the exercise of the rights... and , A health care practitioner ... authorized... acting within her lawful scope of practice (as the mother) may perform an abortion when , according to the (mother's) reasonable good faith ... based on the facts of the patient's case ... may perform an abortion... necessary to protect the patient' (mother's) life or health. The miscarriage was not voluntary, but obligatory.

6, That the statutes do not explicitly recognize the common law precept that the ultimate authority regarding the mother's care rests with the mother, who may request or veto any health care provided by another practitioner, but that a mother has *Superior* authority regarding the fetus or self.

7, That the statutes do not Constitutionally define particularly "term" (2599-AA) nor "commencement of pregnancy" (2599-BB), but specifically grant immunity in this case, making prosecution impermissible.

8, This indictment is predicated on events concerning the death of defendant's premature fetus on, or about November 12, 2019 after birth

secondary to placental abruption (involuntary abnormal delivery). Relevant to the indictment was the report of medical doctors who performed post-mortem of the fetus and reported:

Autopsy: lungs sink in water (containing no air), separate placenta, hemorrhage, (Kathleen McCubbin, M.D.) and Consultation by Alex K. Williamson, M.D. , with Kathleen McCubbin, M.D. reports:

"gestational age of about 30 weeks, lungs appear collapsed, sink in water, gas in gastrointestinal tract, airspaces do not appear expanded, but they are not collapsed, respiratory distress due to insufficient lung surfactant production (p. 4) , "lungs that are incapable of voluminous expansion" (p. 4) , "placental abruption .... It is likely that abruption caused or contributed to preterm delivery of the placenta and baby at 30 weeks gestational age." (p. 4) ... without professional medical attention in the setting of probable placental abruption." (p. 4)

See letter to physicians at appendix.

9, Medical evaluation determined that she suffered from a placenta abrupto, premature birth, and that the lungs of the fetus were non-functional. For unfathomable reasons, the two medical doctors retained by the government described this case as a "homicide." The medical doctors have made a diagnostic error reflecting incompetence or perjury/obstruction of justice, that is inconsistent with professional standing.

10, The District Attorney has shown no inclination to prosecute the medical doctors, but is likewise in no position to utilize perjured or false testimony at trial. Therefore any statement of readiness for trial is illusory. (See: CPL 30.30, 1, 2(a), 5, 5-a.) (*People v. Sibbles*, 2014, 22 N.Y. 3d 1174, *People v. Brown*, 2015, 126 A.D.3d (1st Dept. 2015) Use of known false or perjured testimony is professional misconduct.

11, Given that the fetus was premature, was deprived of maternal oxygen as a result of placental abruption (premature separation of the placenta which transfers maternal oxygen to the fetus) and that the fetus had diagnosed lung failure as a result of prematurity, and had not breathed, it is error for both the medical doctors to diagnose the cause of death as "Homicide" (p. 5) There is absolutely no medical evidence adduced in this case to establish that the premature fetus could survive without the ability to breathe for more than seconds, nor that it died as a result of other than lung failure and lack of oxygen as a result of placenta abruptio. Thus, the physicians' finding that the cause of death was Homicide is unfounded, misleading to the Grand Jury and is highly prejudicial.

12, Count 1 of the indictment alleges that "the defendant had various duties of care and duties to preserve that infant's life". That is absolutely

incorrect, misleading the Grand Jury, as the fetus had died of anoxia.

13, The Court should please TAKE JUDICIAL NOTICE, that under the New York State Reproductive Health act Section 2599-AA, (BB): "The legislature finds that comprehensive reproductive health care is a fundamental component of every individual's health, privacy and equality. Therefore it is the policy of the state that: 2, Every individual who becomes pregnant has the fundamental right to choose to carry the pregnancy to term, to give birth to a child, or to have an abortion, pursuant to this article. 3, The state shall not discriminate against, deny, or interfere with the exercise of the rights set forth in this section in the regulation or provision of benefits, facilities, services or information." (See habeas corpus petition filed by, and with my permission, Mark Marvin.) The government's hypothesis is fundamentally wrong and the government has no authority to prosecute a pregnant woman who may chose, or involuntarily not carry her fetus to term. The government is specifically enjoined from prosecution of a woman who may not carry her fetus to term. The legislature also states that matters of this sort are protected as a privacy interest, not allowing for indictment nor publicity.

14, Counts 2 to 5 are predicated on the same misapprehension of the law. Specifically the government has no interest in the relationship between the pregnant woman and her fetus, and any interference invokes her right to fundamental rights as noted above, by act of the legislature.

15, Count 6 charges the defendant with acts to suppress or conceal evidence. As noted above, the legislature provided for a privacy interest, and consequently the alleged acts of suppression or concealment of

evidence in this matter are non-cognizable as crimes.

16, When your defendant wrote to the physicians and requested clarification on how lung failure caused, to a medical certainty, a homicide, she received no answer. The government has the responsibility under *Brady* to explain how death of a fetus from lung failure is a homicide.

17, Defendant has no reason to believe counsel is investigating this particular meritorious defense, and believes counsel is ineffective in not doing so. (*McMann v. Richardson,* 397 U.S. 759, 769-71)

18, The trial court (County Court) and the Appellate Division were habeas petitioned and denied those petitions. The U.S. District Court was petitioned and has taken no action except to dismiss the petition without prejudice even though Nicole Layman signed the petition. The U.S. Court of Appeals denied a petition for Mandamus and held" Petitioner has not demonstrated that he lacks an adequate alternative means of obtaining relief, that his right to the writ is clear and indisputable, and that granting the writ is appropriate under the circumstances." Meanwhile Layman remains imprisoned for having had a medical miscarriage and the District Court stalls.

TRIAL HAS BEEN ILLEGALLY DELAYED.

19, Defendant has not consented to any delays.

20, The court had abandoned any question of competency one and one half years ago, and defendant has been "without (effective) counsel and must not be deemed to have consented to a continuance and has not been advised by the court of his rights under these rules and the effect of his

consent, which must be done on the record in open court...." (CPL 30.30, 4, (b)).

21, Covid restrictions were suspended March 20, 2020 to November 3, 2020 when Governor Cuomo issued Executive Orders. The Governor's Order was unconstitutional, as Constitutional protections cannot legally be suspended because people in the state are sick, leaving defendants imprisoned at will. The period of the Order is not excludable from speedy trial calculations, and is not chargeable to defendant. (*Ex parte Merryman*, 17 F. Cos. 144) (See Exhibit R-1 to 2)

22, Any statement of readiness for trial is illusory as the government cannot ever be ready for trial using perjured or false testimony on a material question.

23, Prejudice is presumed by lengthy delay in imprisonment. (*People v. Romeo*, 12 N.Y. 3d 51 (2009), *People v. Taranovich*, 37 N.Y. 2d at 447) (see also: *People v. McCummings*, 203 A.D. 2d 656, 3d Dept.)

24, Pre and post accusatory periods are aggregated to determine whether there has been a violation. (*People v. Singer*, 44 N.Y. 2d 241, 253 (1978), (see also p. 253-254 Re: prejudice)

25, Right to speedy trial protections are invoked under the U.S. Sixth and Fourteenth Amendments. (See: *Doggett v. U.S.* 412 U.S. 434, 439-440 (1992)) and a due process violation under New York law. (*People v. Singer*, 44 N.Y. 2d 241, 253 (1978)

26, The trial court, the Appellate Division, and now the U.S. District Court and The Court of Appeals have failed to provide relief for this miscarriage of justice.

ARGUMENT

I, THE COURT OF APPEALS ABUSED ITS DISCRETION AND ERRED WHEN IT HELD THAT THE DISTRICT COURT'S CONTINUING FAILURE TO ADJUDICATE LAYMAN'S PETITION FOR HABEAS CORPUS WAS AN ADEQUATE MEANS FOR OBTAINING RELIEF FOR BEING CHARGED WITH HOMICIDE FOR A MEDICAL MISCARRIAGE WHICH IS NOT A CRIME.

To date the courts have failed to provide relief for a woman imprisoned for a medical miscarriage. It is an abuse of discretion for the Court of Appeals to hold that the District Court offers an adequate remedy for wrongful imprisonment. (*Ex parte Harding*, (1911) 219 U.S. 363, 373, 31 S.Ct. 324, 327) when the District court refuses to act on her habeas petition, or at a minimum assign her petition to a magistrate for preliminary due process. (Id. 373, 327) The District attorney never disputed the mandamus petition.

"A habeas corpus will lie if a citizen is wrongly imprisoned by the highest dignitary, and an action be sustained for the illegal arrest. ((*Kendal v. U.S. ex rel. Stokes,* (1838) 37 U.S. 524, 12 Pet. 524) Habeas corpus is the legal remedy for legal right and no remedies. (*Ex parte Bradley*, (1868) 74 U.S. 364)

In the ordinary course of legal proceedings ...it is the ... constant duty of all judges to discharge their duties with diligence and precision...." (*In re Blodget* (1992) 502 U.S. 236, 239, 112 S.Ct. 674, 676) considering

the "importance of finality of habeas proceedings .... Our case law suggests expedited review of (second) habeas petition." (Id.) and shown that adequate relief cannot be obtained in any other form or from any other court." (Id. 240, 677) and any delay .. Any further postponements or extensions of time will be subject to a most rigorous scrutiny in this Court...." (Id. 241, 677) [2,3,4,5]

The Court of Appeals had the authority in view of the fact that the District Court has, to date, failed to even refer the matter to the magistrate, or order the respondents to answer habeas. Mandamus may be issued to compel them... when they refuse to act in a case at all ...a service which they are bound to perform without further question." (*U.S. ex rel. Dunlap v. Black*, (1888) 128 U.S. 40, 48, 9 S.Ct. 12, 14)

DEFENDANT IS NOT GUILTY OF ANY CRIME FOR HAVING A MISCARRIAGE.

"Instead, the emphasis on actual innocence allows the tribunal also to consider the probative force of **relevant evidence** (p. 328) **that was either excluded or unavailable at trial**. Indeed, with respect to this aspect of the *Carrier* standard, we believe that Judge Friendly's description of the inquiry is appropriate. The habeas court must make its determination concerning the petitioner's innocence in light of all evidence, including that alleged to have been illegally admitted (but with due regard to any unreliability of it) and **evidence tentatively claimed to have been wrongly excluded or to have become available only after trial**." (*Schlup v. Delo*, 513 U.S. 298, 327-28, 115 S.Ct. 851)

II, HABEAS RELIEF SHOULD BE GRANTED TO LAYMAN WHO WAS DENIED DUE PROCESS: INCLUDING BEING CHARGED FOR HOMICIDE FOR HAVING A MISCARRIAGE BASED ON FALSE MEDICAL EVIDENCE, WHICH IS NOT A CRIME UNDER NEW YORK LAW AND SPEEDY TRIAL VIOLATION (DUE PROCESS IN NY) FOR UNLAWFUL DELAY AS GOVERNMENT WOULD NEVER BE READY FOR TRIAL ON FALSE EVIDENCE.

THE CRIMINAL OFFENSES CHARGED ARE NON-COGNIZABLE.

The legislative intent of Section 2599-AA, and BB is clearly to preclude prosecution such as was instituted in this case.

"To satisfy the due process clause a penal statute must define the criminal offense with **sufficient definiteness** that the ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement (*Skilling v. U.S.* 2010, 561 U.S. 358, 130 S.Ct. 2896, 2928-9, citing *Kolender v. Lawson*, 1983, 461 U.S. 352, 357, 103 S.Ct. 1855) "subject to whether the prescription is amenable to a limiting construction" (Id. p. 2930) and "consider any limiting construction that a state court or enforcement agency has proffered" (*Kolender*, p. 357) and "the requirement that a legislature establish minimal guidelines to govern law enforcement. Where the legislature fails to provide such minimal guidelines, a criminal statute may permit a standard less sweep that allows policemen, prosecutors and juries (courts to "define" : *Kolender*, p. 373 Blackmun, Burger, White) to pursue personal predilections. (*Kolender*, p. 358) a statute (or court decision) is

unconstitutionally vague on its face because it encourages arbitrary enforcement by failing to describe with sufficient particularity what a suspect must do in order to satisfy the statute." (Id. *Kolender*, p. 361)

THE INDICTMENT IS IMPERMISSIBLY DEFECTIVE

Pursuant to C.P.L. 210.35(5) on a motion to dismiss an indictment, a Grand Jury proceeding will be found defective when it fails to conform to the requirements of article on hundred ninety to such a degree that the integrity thereof is impaired and prejudice to the defendant may result ... and requires only the possibility of prejudice, not actual prejudice to warrant dismissal (see: *People v. Sayavong*, 83 N.Y.2d 709, 711 (1994))

People's failure to turn over exculpatory evidence prior to Grand Jury proceeding prejudiced defendant's rights under C.P.L. 190.50(5) and (6). Misleading answers to legitimate Grand Jury inquires concerning availability of evidence (*People v. Wilkins*, 68 N.Y. 2d 269 (1986)) (See: *People v. Goldstein*, 73 A.D.3d, 946, 2nd. Dpt, 2010, *People v. Golon,* 174 A.D. 2d, 630, 2nd Dpt. 1991, *People v. Williams*, 298 A.D.535, 2nd Dpt. 2002)

An indictment is deemed constitutionally sufficient if it contains the essential elements of the offense intended to be charged. (*Russell v. U.S.* , 369 U.S. 749, 763-64 (1962)) In this case the defendant was (ham sandwich) indicted for obeying the law, for not doing anything illegal, and on medical evidence that was illogical, false and misleading. Nothing in the autopsy indicated that the fetus died of anything but the consequences of premature lethal birth and lung failure. A grand jury may not give a

prosecutor a blank check. (*U.S. v. Kilpatrick,* 821 F.2d 1456, 1464-65, CA-10, 1987)

"As long ago as *Mooney v. Holohan*, 294 U.S. 103, 294 U.S. 112, (1935) this Court made clear that deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with 'rudimentary demands of justice'. This was reaffirmed in *Pyle v. Kansas*, 317 U.S. 213 (1942). In *Napue v. Illinois*, 360 U.S. 264 (1959), we said 'the same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears.. Id. At 360 U.S. 269. Thereafter, *Brady v. Maryland,* 373 U.S. at 373 U.S. 87, held that suppression of material evidence justifies a new trial 'irrespective of the good faith or bad faith of the prosecution." (*Giglio v. U.S.* , 405 U.S. 150, 153, 92 S.Ct. 763, 766; see also: *Banks v. Drerke,* 540 U.S. 668, 124 S.Ct. 1256; *Cash v. Maxwell,* 132 S.Ct. 611 (2012) ; *Alexander v. Shannon,* 2005 WL 1213903; *Sistrunk v. Rozum*, Ed. , 674 F.3d 181 (2012)

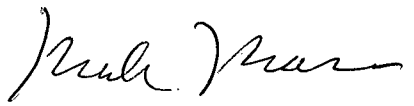
The government should have known that the medical evidence was erroneous, however had it not, it now is under obligation to correct the false evidence, which it cannot scientifically do. Counsel is ineffective. (*Strickland v. Washington,* 466 U.S. 668)

CONCLUSION

WHEREFORE as a matter of law,

the indictments are jurisdictionally insufficient, defective, and violate due process and fundamental constitutional rights including the right to effective assistance of counsel in the prosecution for a non-crime.

Furthermore, the government cannot ever be ready for trial for matters not illegal, and for using perjured or false testimony. The government has failed to provide a speedy trial, and the court must dismiss the indictments. The United States Courts have failed to perform legitimate adjudication of her habeas petition and the Court of Appeals failed to uphold routine due process for habeas corpus when the District Court failed to adjudicate her petition.



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