In the

Supreme Court of the United States

GARY MANNES,

Petitioner,

vs.

LOUIE L. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF OFFENDER REHABILITATION,

Respondent.

Cl

No. 75-6909

Washington, D.C.
March 22, 1977
March 23, 1977

Pages 1 thru 53

Hoover Reporting Co., Inc.
Official Reporters
Washington, D. C.
546-6666

IN THE SUPREME COURT OF THE UNITED STATES

GARY MANESS, Petitioner,	:	
v.	:	No. 75-6909
LOUIE L. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT OF OFFENDER REHABILITATION, Respondent.	:	

Washington, D. C.,

Tuesday, March 22, 1977.

The above-entitled matter came on for arguments at 2:47 o'clock p.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice
LEWIS F. POWELL, JR., Associate Justice
WILLIAM H. REHNQUIST, Associate Justice
JOHN PAUL STEVENS, Associate Justice

APPEARANCES:

BENNETT H. BRUMMER, ESQ., Public Defender, Miami, Florida; on behalf of the Petitioner.

ARTHUR JOEL BERGER, ESQ., Assistant Attorney General of Florida, Tallahassee, Florida; on behalf of the Respondent.

- - -

C O N T E N T S

P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments next in 75-6909, Maness v. Wainwright.

Mr. Brummer, I think you may proceed.

ORAL ARGUMENT OF BENNETT H. BRUMMER, ESQ.,

ON BEHALF OF THE PETITIONER

MR. BRUMMER: Thank you. Mr. Chief Justice, and may it please the Court:

I would like to take this opportunity to introduce Albert G. Caruana, Esq., co-counsel for petitioner and a member of the bar of this Court.

We are before the Court this afternoon on certiorari to review the first decision by the United States Court of Appeals for the Fifth Circuit to interpret and apply this Court's decision in Chambers v. Mississippi. We urge this Court to reverse the court below.

In this case, the repeated application of Florida's voucher rule devastated the petitioner's ability to demonstrate his innocence. The voucher rule clearly serves no legitimate state interest, thus the voucher rule's impact on the petitioner's rights to a fair trial, confrontation and compulsory process deprived the petitioner of due process of law.

This case arose out of the death of the petitioner's daughter as a result of the battered child syndrome. The issue was who was responsible. The state charged the petitioner.

At trial, the defense attempted to prove, one, that the petitioner was innocent; and, two, that the petitioner's wife, Linda, was probably responsible for the child's death. Linda had been the only other suspect.

The defense --

QUESTION: At trial, did you ever really take the position that the mother was guilty of the battery? That is one of the arguments of your opponent, and I didn't find you really squarely raised that in the trial.

MR. BRUMMER: Your Honor, we were not counsel for the petitioner at the trial, but I think that it was clear on the record of this case that Linda was adverse to this petitioner at the time she was called to the stand by the defense, if that is the direction of Your Honor's question.

QUESTION: Well, I suppose the question is did the defendant or his counsel ever specifically advise the trial judge that it was his theory that the wife was guilty of killing the child?

MR. BRUMMER: Absolutely, Your Honor. I believe the record is very clear in this regard, and there are a number of places in the record where this is so. First of all, it is clear on the record that Linda had been the only other suspect. She had given a statement to the police which tended to incriminate the petitioner. She was listed as a state's witness on the state's witness list. She had been subpoenaed to the trial

by the state and brought to the trial by the state from Texas.

In his motion to suppress, the petitioner said that he had confessed in order to protect his wife. In opening statement, the defense said it would show who probably killed the child and it was not the petitioner and that Linda Maness would be the defense's chief witness.

Of course, after Linda took the stand and she testified consistently with the state's theory of the case, any question as to her adversity clearly was cleared up. There is an immediate denial by Linda that she was guilty. In that there are only two suspects here, if she is not guilty, the petitioner is. She --

QUESTION: You would expect her to say, yes, she was guilty?

MR. BRUMMER: We did not expect her to say that she was guilty but we felt that we were entitled to a fair opportunity to present our defense for consideration of the jury. The testimony that she came out with, that she had been out of the house at the time that the baby was injured, and the baby had been alone with the petitioner at that time, was refuted by her letters, by her statements to various witnesses who were present to testify. We wanted from her own mouth to explain before the jury how she made these statements, so the jury could weigh her credibility when she testified that she was not guilty. We also sought --

QUESTION: Did you make an effort in side bar conference or whatever Florida procedure provides in a case like that to show that, regardless of the general rule, the trial judge in this case, after what you had shown, should make an exception to the voucher rule?

MR. BRUMMER: Your Honor, the voucher rule was applied to keep out numerous items of evidence. Each time the petitioner vigorously attempted by every means at his disposal to get the evidence admitted with regard to the letters in particular, counsel said this is of utmost importance that we get these letters into the record, if I don't know how to do it, please tell me. The court would not tell him. He then asked for a recess so that he could research the law in order to find out how to get those letters in, but it was clear that no matter how he turned around, the court had the answer and the answer was the voucher rule. That was the only answer that the court had for the petitioner's attempt to present his side of the story.

QUESTION: There seems to be some suggestion that perhaps some of the evidence that you wanted to introduce was excludable on some other state ground?

MR. BRUMMER: I believe, Your Honor, that the record is imminently clear, the only objection made to this evidence was the voucher rule.

QUESTION: And the only ruling of the court that there

ever was?

MR. BRUMMER: Was on the voucher rule. Additionally, the Fifth Circuit found that the evidence was excluded by the voucher rule. This appears at the appendix, page 227.

QUESTION: Were those letters ever introduced on federal habeas?

MR. BRUMMER: The letters were not, but the petition reflected sworn avermence by the petitioner as to the contents of those letters.

QUESTION: Why weren't they, do you know?

MR. BRUMMER: It seemed to me, and I was counsel at that time and co-counsel at that time, that it was more effective to characterize those letters than to introduce a number of papers, and if respondent had any question he could deny or he could file a motion to produce, if the court had a question the court could have requested the filing of those letters, but neither the respondent nor the court came forward with any request for those letters. As a matter of fact, the respondent completely ignored those allegations.

QUESTION: A while ago you were talking about a party to an action who had some standing for credibility, but on this record how can you suggest that his characterization of those letters would be better than the original documents?

MR. BRUMMER: Your Honor, it was not his characterization of those letters. Those letters were in the possession of

counsel. They were characterized by trial counsel at the time of the trial, they were in the possession of counsel at the time that the petition for habeas corpus was filed, and we read those letters and characterized them ourselves. It was not the petitioner's characterization.

Additionally, there was no response from the respondent questioning our characterization of those letters --

QUESTION: Dod you enter an offer of proof of those letters?

MR. BRUMMER: There was never any request for an offer of proof, Your Honor.

QUESTION: I know, but most people will make an offer of proof, just to protect their offer. But the letters are not in the record, that is my real question?

MR. BRUMMER: No, they are not, Your Honor.

QUESTION: I find it hard to understand why counsel had them in his possession and did not produce them and offer them or at least, as Justice White suggested, make an offer of proof as to what they contained.

MR. BRUMMER: Your Honor, I would not say that we did not make an offer of proof at any time. We did not make an offer of proof in the federal district court because the issue was never raised. The question of the availability of the letters never came to the fore until the Fifth Circuit mentioned the unavailability of the letters in its affirmance of the

lower court. At that time we did file a motion to supplement the record with the letters; that motion was denied.

QUESTION: But it is your burden to convince the court on a petition for federal habeas that some wrong has been done you, isn't it? You can't turn around and say, well, gee, if we had only known we would have supplied the necessary evidence.

MR. BRUMMER: Your Honor, I submit that the federal district court accepted our avermants. Our avermants regarding those letters are reflected in the federal district court's order of dismissal. Secondarily, the letters were but one part of the fabric of this case which is based on the inability of the petitioner to cross-examine Linda Maness and introduce various items of evidence, including --

QUESTION: Were they marked as exhibits?

MR. BRUMMER: No, they were not, Your Honor. At the time of the trial, the trial judge asked to view the letters. The prosecutor protested, the letters are not marked into evidence. The trial judge responded "I know it," and she proceeded in violation of normal procedure to review those letters and rejected them on the basis of the voucher rule. But the letters are just one part of the evidence which was excluded.

QUESTION: Well, do you have a proceeding in Florida whereby an item to be offered in evidence is first marked for

identification and then offered in evidence?

MR. BRUMMER: That's correct, Your Honor.

QUESTION: And had these letters been marked for identification but not admitted in evidence, or had they not even been marked for identification?

MR. BRUMMER: I believe the record reflects that they were not marked even for identification.

The federal district judge found that we had in fact exhausted our state remedies and denied the petition on the merits. On appeal, the Fifth Circuit made certain findings of fact and conclusions of law which we believe to be erroneous.

The first and foremost is that the petitioner's trial did not violate the fundamental fairness standard discussed by this Court in Chambers. The court made some contradictory findings and we believe that they should be the focus of this Court's review of the Firth Circuit's decision.

The Firth Circuit said that the voucher rule undoubtedly worked to the petitioner's detriment, and that some evidence which suggested his innocence had been excluded. Moreover, the integrity of the fact-finding process had been impaired due to the petitioner's inability to cross-examine Linda Maness.

It should be pointed out that he actually attempted to have Linda Maness admit that she knew that Gary Maness, the petitioner, did not do it. He was interrupted in mid-question

by an objection based on the voucher rule which was sustained by the trial court. We feel that the defendant had that right and this was a crucial exercise of that right.

Regardless of the record and regardless of its own findings, the Fifth Circuit concluded that the extent to which the voucher rule interfered with the right to present a defense was not sufficient to constitute a denial of fundamental fairness.

We believe there are two bases on which this decision is incorrect. First, we believe that the record does reflect a violation of the fundamental fairness guarantee. Second, we believe that the record reflects a violation of the Sixth Amendment guarantees incorporated in the due process clause. This lower threshold standard which the Firth Circuit said did not form a part of this Court's decision in Chambers was completely ignored by the Firth Circuit otherwise in its disposition of this case.

We submit that the damage done to the petitioner's case in this case was a greater deprivation than that reflected in Chambers v. Mississippi.

More evidence favorable to the petitioner was excluded in Maness than Chambers. In Chambers, the third party's confession was admitted into evidence and was before the jury for the jury's consideration. Chambers was restricted only in his ability to cross-examine the third party confessor as to his

repudiation of that confession.

QUESTION: Of course, here you don't have a confession at all, do you?

MR. BRUMMER: I submit, Your Honor, that we did on the circumstances where there are only two suspects and Linda Maness says that the petitioner did not do it, I submit that this is as close to a direct confession as you can get. Her statements included references to the fact that not only that the petitioner did not do it, but that Linda was not at the store at the time that she had testified.

MR. CHIEF JUSTICE BURGER: We will resume there at 10:00 o'clock tomorrow morning.

MR. BRUMMER: Thank you, Your Honor.

[Whereupon, at 3:00 o'clock p.m., argument in the above-entield matter was adjourned, to reconvene on Wednesday, March 23, 1977, at 10:00 o'clock a.m.]

- - -