

IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NUMBER: ~~38703~~

73435

JAMES JOSEPH RICHARDSON,
Appellant,

-vs-

STATE OF FLORIDA,
Appellee.

FILED
DEC 29 1963
SUPREME COURT
Deputy Clerk

RESPONSE TO PETITION FOR
WRIT OF ERROR CORAM NOBIS

THE STATE OF FLORIDA, represented by its undersigned State Attorney, hereby responds to the claims contained in the Petition for Writ of Coram Nobis as follows:

FACTS

This case grew out of the death of seven black children in Arcadia, Florida on October 27, 1967. The children ranged in age from three (3) years old to ten (10) years old. Each of the children died of parathion poisoning. Each of the children became sick after eating lunch at home shortly before noon. Three of the children were at school when they became ill. The rest of the children were at home. All were rushed to the hospital. All but one died that day. All the children showed evidence of having ingested a large quantity of parathion, a deadly poison. At the time they became ill, all of the children were residing with James Richardson and their mother, Annie Mae Bryant.

The subsequent investigation of the children's deaths showed that the children had been poisoned by eating a lunch of beans and rice that had been laced with massive amounts of parathion. The beans and rice had been prepared earlier that day and was

1 211

kept in a locked refrigerator. An examination of the dwelling uncovered numerous items within and outside the pad locked refrigerator that showed contamination by parathion. A bag of parathion was found in a locked shed on the property.

Subsequent investigation showed that the night before the children were poisoned, James Richardson had tried to insure the lives of the children for Five Hundred Dollars (\$500.00), a piece.

As the investigation progressed law enforcement officers discovered that James Richardson had confessed to killing the seven children to several of his cell mates in the Arcadia County Jail.

James Richardson was indicted for First Degree Murder. He was tried before a jury in Fort Myers, Florida. He was convicted as charged and sentenced to death. That conviction and sentence was upheld by this Court in a per curiam opinion, Richardson v. State, 247 So.2d 297 (Fla. 1971). In that opinion this Court reviewed the evidence presented by the State and rejected the defendant's claim that the evidence was not sufficient to sustain his conviction with the following observation:

"Defendant's first point on appeal to this Court is that the State has failed to prove the material elements of its case beyond a reasonable doubt. As indicated by the evidence summarized above, the record refutes defendant's contention in this regard. Indeed, a thorough review of the entire record reveals evidence more than adequate to establish defendant's guilt of murder in the first degree beyond and to the exclusion of a reasonable doubt."

The defendant's death sentence was converted to life imprisonment pursuant to the U.S. Supreme Court's Furman decision in 1972.

Now over twenty years after his conviction for first degree murder, and almost a year after the time for seeking post conviction relief has run, Rule 3.850, CRP, the Petitioner seeks the intervention of this Court through the extraordinary Writ of Error Coram Nobis.

The claims now being made by the Petitioner are without merit, and will be discussed in the order in which they were presented in the Petition.

I - KNOWING USE OF PERJURED TESTIMONY

1. The defense claims they have evidence the defendant knew he didn't have insurance on the lives of the seven murdered children.

The State, however, presented compelling evidence to the contrary.

The defendant, himself, admitted that the last life insurance policy that he had taken out before this one, remained in effect for a month even though no premium was paid. (R-525-530; 752 - 757). See Respondent's Exh. K.

The defendant's wife made a statement to investigating officers that her husband had insurance on the lives of the children with United which he had purchased the night before the murders. That statement had been recorded and was played for the jury. (R - 640; 871): See Respondent's Exh. I

The transcript of testimony of Judge Gordon Hayes given at the preliminary hearing was read to the jury. Judge Hayes had testified under oath at the suppression hearing that he had gone to the hospital and talked to the defendant about whether he had insurance. His testimony was as follows:

"Q Now, you say you particularly questioned him about the insurance?

"A Yes, sir.

"Q What possibility he might have of hospitalization or medical insurance, and what did he say then, Judge?

"A He said they were fully insured.

"Q James Richardson told you that, that he was fully insured?

"A Yes, I asked him when he got the insurance and he said just a couple nights ago.

"Q Did you ask him any further questions about the details of the coverage?

"A He said it was double indemnity.

"Q Did he happen to mention what company?

"A Sir?

"Q Did he mention what company?

"A No, sir.

"Q Now, was this supposedly life insurance or medical insurance.

"A Life insurance."

SEE EXHIBIT "H"

The State also presented testimony of Richard Neelius, a reporter for the St. Petersburg Times, that he had questioned the defendant about his insurance on the children told him the following:

"Q What did you say to him. What did he say to you?

A I introduced myself to him and asked if I might talk to him. He said all right, so I asked him some questions about the death of the children the night before, and I asked if he had sufficient funds to bury the children. He said he thought he had. He said that he applied for insurance the night before. I think he said Tuesday night, which was the night before the children died.

I asked the circumstances. He said that he had \$500 in insurance on each of the seven children but the

policies had lapsed and then he told me that the insurance man came around and spoke to him about renewing them. At that time he asked to double the amount of coverage to \$1,000 a child." (See: Respondent's Exh. J)

In addition to the testimony the State presented at trial, the State had available, but chose not to present the testimony of Cliff Powell, a polygraph examiner for the Florida Sheriff's Bureau, to whom the defendant also admitted that he thought he had insurance on the lives of the children. This testimony was not presented because of the potential for a mistrial that might result if any one might, however inadvertently, mention that the defendant was given a polygraph examination. See attached statement of Cliff Powell. (See: Respondent's Exh. M)

A. Petitioner seems to rely solely upon one Gerald Purvis in attacking the prosecution's belief that one of the defendant's motives for poisoning these seven children was to collect life insurance benefits as the result of their deaths.

Mr. Purvis, who was available to testify for the defense at trial, but was not presented by the defense, was the life insurance salesman who sought to sell life insurance to the defendant the night before the poisoning.

The State believes Mr. Purvis engaged in the common illegal practice of debit life insurance salesmen of extending coverage without the payment of a premium in order to maintain a higher commission rate than warranted. The defendant had been the beneficiary of such practice previously. Even now evidence is being presented to the State which shows conclusively that James Richardson thought he had insurance on the lives of his children when he poisoned them. See attached statements of Dr. Calvin Martin, Ruby Faison, and Maxwell Richardson. (See: Respondent's Exh. G, L, O, N)

The Petitioners claimed that Sheriff Cline lied about whether Sheriff Cline "made any investigation as to" the finding of the bag of parathion. The Sheriff denied doing so. The files of the State Attorney, according to the claims of the Petitioner,

contain "literally hundreds of pages of the investigations of Charlie Smith and Betsy Reece King, making the Sheriff a perjurer." This claim is ridiculous and absurd.

Although Mr. Cline in his effort to conduct a thorough investigation of the entire matter, questioned both Charlie Smith and Betsy Reese King, as he did so many other people, he had no basis for investigating them.

He had no evidence that they had performed such poisonings nor had any reason to poison these children, and the polygraph results clearly demonstrate that while Charlie Smith, Betsy Reese and Annie Mae Bryant had no criminal knowledge of the poisoning, the defendant James Richardson clearly did.

That Annie Mae Bryant slept with Betsy Reese the night before the killings, as related by James Weaver, was certainly not so implausible when considering additional confirming testimony and the defendant's jealousy of Annie Mae Bryant paying attention to another apparent lesbian, "Big Mamma."

II

The Petitioners claim James Weaver has recanted his trial testimony twenty years after the trial.

2. The State has not received any recent statement of James Weaver as mentioned by the Petitioner. However, even if produced, the Respondent doubts that there was too much corroboration of Weaver's testimony; no reason for his having fabricated his earlier testimony; and coming twenty years late, it is difficult to accept such a recantation of his sworn testimony. See Exhibit Q.

Weaver, who was from Lakeland, not Arcadia, served the standard 50-day sentence for petit larceny, obviously regretted having told of the defendant's admissions as shown by his original statement, Respondent's Exhibit v , and his subsequent trial testimony. Those with long police records are often reluctant to testify against fellow prisoners.

3. The Petitioner claims that:

James Cunningham committed perjury at trial because he also said at trial that James Richardson did not tell him how he poisoned the children, while he had said in pre-trial interviews that the defendant did tell him how he had done it. The Petitioners, however, have misstated the testimony given by James Cunningham at trial. Before he gave the testimony quoted by the Petitioners, he gave the following testimony:

Q He said, 'They are going to kill me'?

A He said, 'They are going to kill me.' I said, 'For what?' He said, 'I killed my children.'

Q Did he say anything else at this time?

A He said, 'I didn't cook though.' I said, 'Who cooked though?' He said, 'My wife cooked.'

Q What did he say about cooking?

A He said, 'I didn't cook.' I asked him who cooked.

Q What did he say?

A He said, 'My wife cooked.'

Q Do you remember whether his wife entered into this conversation or do you recall?

A She wasn't in it."

Obviously, the witnesses had more to say about James Richardson's statements to him. The fact that neither party mined his testimony to its full potential hardly makes the testimony perjury.

While James Cunningham, a chronic drunkard, may not have expressed himself as clearly as others might have and confused potash with parathion, the bottom line of his testimony was that the defendant admitted performing the killings because he wasn't making enough money to take care of the children, four of whom were not his. See: Respondent's Exh. R.

There were many other equally important witnesses herein. Petitioners practically ignore the testimony of prosecution witness Earnel Washington, which involved much of what Cunningham and Weaver testified about both at trial and during earlier questionings.

Washington testified:

That he had had an argument with Leonard Bryant, the father of four of the poisoned, when he visited from Jacksonville;

That he had been having trouble with his girlfriend, Annie Mae Bryant, and was fearful she would have him arrested if he left her and the children, and that before he would divorce her he would kill the whole family;

That he wanted to get out from under it all...that he had a problem and wanted to get rid of it;

That the defendant resented the fact that his girlfriend Annie Mae was in a cell with "Big Mamma". He admitted putting the poison in the grits being cooked by his wife and sprinkled some in the body powder. See Respondent's Exh. B, C, D, E, F.

II - SUPPRESSION OF EVIDENCE BY THE PROSECUTION

A. The insurance man's card, referred to by the Petitioner as a receipt, was described somewhat by witness Cline in his testimony. Whether or not the State or the defense offered the card in evidence, the Respondent does not recall, and fails to recognize what significance that might have.

B. The Petitioner's reference to the glove of the defendant with parathion found at his home and its mate in Betsy Reece's apartment, helps to prove defendant's guilt and is well explained by Besty Reece's statement attached hereto as Respondent's Exhibit No. S.

C. Defense claim that "...State Attorney Schaub, during opening and closing arguments, asserted that he had been responsible for the deaths of other of his children."

Defendant throughout his testimony continually claimed, often not even in response to questions of counsel, that he was a

loving father, a great and caring husband and a wonderful family man.

He placed these matters in issue many times, and in cross examination by the State in response showed him to be married to four different wives without ever having the benefit of a divorce, that he had five other children, three of whom had died.

It was also shown that Annie Mae Bryant caused him to be arrested for non-support of his children. This not only refuted his claims of knowing of other food, but also supported the notion that he had to poison the children to get out of the obligation of child support and of possibly again being arrested for their non-support.

The State had planned to show he had no concern for any of his children and had deserted his earlier five children.

The prosecution throughout the trial realized their case was very strong and a conviction was assured.

Accordingly anything that might jeopardize the case at trial or in an appeal was meticulously avoided.

The admission by the defendant to the polygraph operator that he had insurance was not offered for fear that the fact that the defendant had taken and failed the polygraph might leak out to the jury.

The defendant's jealousy over Annie Bryant's possible affairs with lesbians was avoided so a character assassination could not be claimed and a mistrial declared.

The possible involvement of James Richardson in the deaths of three of his other children was never mentioned. The only argument or evidence concerning these other children appears in a portion of Respondent's Exhibit T .

III- NEWLY DISCOVERED EVIDENCE

1. The Petitioners have now secured an affidavit of Richard Barnard which supposedly concludes that James Richardson was framed by Frank Cline.

Richard Barnard, however, was called as a witness for the defense at the trial. It is obvious from his trial testimony that he did not like Frank Cline. The fact that he has put his

opinion of the case against James Richardson twenty years later does not constitute newly discovered evidence. He was, in fact, asked for that same opinion when he testified at the trial, and the judge very properly refused to let him give it. His opinion of Frank Cline and this case were not admissible evidence twenty years ago, and they would not be admissible evidence today.

The entire trial testimony of James Barnard is attached hereto as Respondent's Exhibit No. U, which shows this defense witness had no admissible or relevant testimony to offer.

2. The Petitioners have obtained an affidavit from two nurses that Betsy Reece who is in a nursing home, and who has been suffering from alzhiemers disease for the last six years said two years ago that she killed the children, but that she did not know why she did it.

Betsy Reece, who has long suffered from Alzheimers disease, has not been competent for over five years. If she did tell the nursing aids that she killed these children, it is nothing more than we have always known - that she fed the poisonous food to the children but this has no bearing on who placed the poison in the children's food. See Respondent's Exh. W¹, W², W³.

Respondent's Exhibits "A" "X" "Y" clearly demonstrate the baseless nature of the Petitioner's claims of perjury and prosecutive knowledge throughout their Application.

The fact of the matter is that James Richardson is the only one who had any reason to kill the children. The fact that he tried to purchase insurance on the lives of the children less than 24 hours before the seven children were murdered is a coincidence so compelling that it permits only one conclusion. James Richardson, the man who insured the lives of his children the night before they died, the man who had gone to jail in the past for not supporting those children, the man who was working long hours and was living in object poverty because of the financial demands of supporting those children was the person who murdered seven children. As this Court said 17 years ago, no one even claimed that the death of the children was an accident. It was cold blooded planned murder. James Richardson did it. And

nothing has come to light in the last 20 years which coast doubt on that conclusion. See Respondent's Exhibits

Respondent, accordingly, asks this Court to dismiss the Application as being without any legal or factual basis and asks for leave to offer oral argument herein.

STATE OF FLORIDA

BY: Frank Schaub
FRANK SCHAUB, STATE ATTORNEY
TWELFTH JUDICIAL CIRCUIT
Suite 438, 1401 Manatee Ave. W.
P. O. Box 1000
Bradenton, Florida 34206 6-813-747-3077

BY: Richard W. Seymour
Richard W. Seymour
Assistant State Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Response To Petition For Writ of Coram Nobis has been furnished by U. S. Mail to Ellis S. Rubin, Rubin, Rubin & Fuqua, PA, Attorneys for Appellant, N.E. 26th Terrance, Miami, Florida 33137 and Mark Lane, Attorney for Appellant, 105 2nd Street, N.E., Washington, DC 20002; Office of the Attorney General, Department of Legal Affairs, The Capitol, Tallahassee, Florida 32399-1050 on this 29th day of December, 1988.

Frank Schaub
Frank Schaub
State Attorney