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THE STATE OF UTAH :
 Plaintiff and Respondent, :
 :
 -vs- :
 :
 LENO MARTINEZ, :
 Defendant and Appellant. :

Case No.
10031

APPELLANT'S BRIEF

Appeal from Judgment of the Second District Court of
 Utah, County of Weber, State of Utah, the Honorable
 Lewis Jones, Judge.

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IN THE SUPREME COURT
of the
STATE OF UTAH

THE STATE OF UTAH, :
Plaintiff and Respondent, :
- v s - : Case No.
LENO MARTINEZ, : 10031
Defendant and Appellant. :

APPELLANT'S BRIEF

STATEMENT OF THE KIND OF CASE

This is a criminal action by the State of Utah against the defendant in which the defendant was charged with the crime of burglary in the second degree.

DISPOSITION IN LOWER COURT

The defendant was arraigned in the Ogden City Court. He waived a preliminary hearing without advise of counsel. He was bound over to the District Court. There he requested an attorney. The defendant later hired Norman Hendricks, attorney, to represent him. Trial was set for March 27, 1963. Two days before trial the defendant hired Gordon Hoxsie, Attorney, to represent him. On the morning of the trial, March 27, 1963, defendant's attorney moved for a preliminary hearing which was denied; a better bill of particulars, which was granted; a continuance of the trial, which

was later withdrawn under unusual circumstances; to change plea to not guilty by reason of insanity and to allow additional time for said defendant to prepare his defense, which was denied.

The trial took place and the defendant was found guilty. The defendant moved for a new trial because the defendant had newly discovered evidence showing his insanity. Defendant introduced letters from Psychiatrist Charles E. Parmalee who wrote that the defendant was in the chronic stage of schizophrenia and needed custodial and remedial care. Defendant further introduced a letter from Ernst G. Beier, psychologist who said defendant's schizophrenia reactions are still capable of appearing under conditions of severe mental stress.

The court denied defendant's motion for a new trial and defendant was released during the appeal.

RELIEF SOUGHT ON APPEAL

Defendant seeks a reversal of the District Court's judgment denying defendant's motion for a new trial.

STATEMENT OF FACTS

On or about December 13, 1962, the defendant was arrested just outside the Jackson Finance Company at Ogden, Utah, after a burglary there had occurred. The police officers said they say the

defendant come out of the finance company office.

The defendant has a serious criminal record, also, a medical record showing he is or has been addicted to heroine and other drugs, a record with the Utah State Mental Hospital where he has received treatment for two different periods for schizophrenia. Psychiatrist, Charles E. Parmalee of Salt Lake City, examined the defendant on three occasions. On December 26, 1962, on May 17, 1963 and on December 17, 1963, the latter on response to his appointment by the Honorable Roger D. Foley, United States District Judge at Las Vegas, Nevada. On all of these occasions, Dr. Charles E. Parmalee found the defendant to be a schizophrenic in need of hospital care. On the last occasion he agreed with Psychologist Ernst G. Beier of Salt Lake City, that defendant would not be able to aid and assist his counsel in his Federal Court Trial at Las Vegas, Nevada. Psychologist, Ernst Beier of Salt Lake City and the University of Utah was much more positive that the defendant was mentally unable to assist counsel in his defense at the Las Vegas trial. He too was appointed by the Honorable Roger D. Foley to examine the defendant.

Their reports are as follows:

May 20, 1963

Mr. Gordon Hoxsie, Attorney-at-Law
First Security Bank Building
Salt Lake City, Utah

re: Leno Martinez

Dear Mr. Hoxsie:

"I saw your client, Mr. Leno Martinez, age 34, of 564 West Third South, Salt Lake City, in my office, May 17, 1963, for a psychiatric evaluation. I had previously evaluated Mr. Martinez at the request of attorney Norman Hendricks of this city on December 26, 1962.

"On the basis of a psychiatric history and psychological testing I feel that your client is suffering from a chronic underlying schizophrenic process. Whereas this disorder in the past was considered a disturbance of a psychological nature (functional), recent research work in neurophysiology and bio-chemistry of the nervous system is bringing many in psychiatric circles to see schizophrenia as a genetically determined disorder of the enzyme systems in the brain tissues. In acute sickness the enzyme system in the functioning is so disturbed that the patient is recognized as "crazy" in the layman's sense. In the chronic stage between acute flareups, the patient operates at a lowered level of performance of mental functioning, i.e. thinking, behaving, feeling.

"Mr. Martinez at present is in the chronic state of schizophrenia. He has shown by his record that he is incapable of living by the rules of society and that he requires close supervision. His mental sickness makes him particularly vulnerable to alcohol and emotional stress and strain. In his present state he is not in a position to learn to control his impulses.

"I feel that in the best interests of all concerned, your client needs an indeterminate period of custodial and remedial care.

(since January) and apparently does not get along well with his wife. He describes himself as an avid gambler who compulsively gameles for high stakes. He explains his burglaries as the only way he knew to satisfy compulsion. He also stated that he has been, on and off, on various drugs, including heroine.

"Mr. M states that when he tries to get a decent job he is often not given responsibilities and he cannot stand the meaningless routine. He finds it extremely hard to "straighten out" as his compulsions seem to get the better of him; he has to gamble and has no control over these "cravings." Recently he had his driver's license withdrawn and is therefore unable to take a job in his field (construction) as travel is essential.

"The psychological test battery shows a person who is of average intelligence (IQ 98) and whose "performance" skills are more adequate than his "verbal" or "reasoning" skills. Emotionally Mr. M is disturbed; he particularly has severe inferiority feelings about his masculinity and his relationship to women. His almost exclusive way of dealing with his problems is to deny them rather than facing them. In that manner his frustrations are accumulative and have to find devious channels of expression -- it is as if he is sitting on a "powder keg" which can be ignited any time. His gambling compulsion (to have madame fortune smile on him), his addiction to drugs and the subsequent burglaries for money supply are all means by which Mr. M tries to alleviate his anxiety about himself and reassure himself that he is still a man. The Rorschach test shows responses (color naming) which are typically seen in persons with thought disorder, apparently under stress

his ordinary defenses are no longer adequate.

"The psychological picture then, is that of a person of average intelligence, who gives the impression, during his relaxed hours of one having the ability to perform reasonably well and has proper judgment. Under stress, however, this picture changes rapidly and the person reacts with thought disturbance and lack of proper judgment. His performance is reminiscent of the "Four Day Alcoholic" who appears well integrated during the month but has a break with reality on his "bender." My impression is that Mr. M, who carried the label schizophrenic reaction (simple) at the Utah State Hospital is now in remission, but that these reactions are still capable of appearing under conditions of severe mental stress.

/s/ Ernst G. Beier, Ph.D.
Ernst G. Beier, Ph. D.
Clinical Psychologist
Diplomate, American Board of
Examiners in Professional
Psychology

December 18, 1963

/The Honorable Roger D. Foley
United States District Judge
301 Stewart Street
Las Vegas, Nevada

Dear Judge Foley:

"In response to your appointment of me as an

expert witness under Rule 28, Federal Rules of Criminal Procedure, in Criminal Case No. 875, United States vs. Leno Martinez, I submit the following Findings and Conclusions regarding the above named subject.

"I first saw Mr. Leno Martinez at the request of Attorney, Norman Hendricks, on December 26, 1962, for a psychiatric evaluation. At that time, it was my feeling that Mr. Martinez was in a state of remission from a schizophrenic disorder. I again saw Mr. Martinez, this time at the request of Gordon Hoxsie, on May 17, 1963, for a follow-up psychiatric evaluation and found the patient's condition essentially unchanged; that he was in a state of remission from a schizophrenic disorder. I was of this opinion because of psychological testing which I performed myself in my office and also on the basis of a psychiatric history of Mr. Martinez. I was again called upon to see Mr. Martinez on December 17, 1963, pursuant to your order, in the Clark County Jail, Las Vegas, Nevada. I was struck by what appeared to a considerable degree of deterioration of the patient's mental status from my last evaluation. Martinez seemed to have a considerable rise in anxiety level; seemed considerably more passive in his over-all interest and attention and seemed more disorganized in his thought processes. I repeated his psychological test material, i.e. Rorschach, Bender-Gestalt and Benjamin's Proverbs. This together with his previous psychiatric history leads me to feel that this man is suffering from a chronic schizophrenic disorder which although is in a state of remission, the patient is at any time extremely vulnerable because of a possibility of an acute flareup of this schizophrenic disorder under psychological or physiological stress.

His will is so completely destroyed that his actions are not subject to it, but are beyond his control.

"There are certain forms of schizophrenia in which there is a minimum or an absence of hallucinatory, delusional or illusory thought processes and I am of the opinion that Mr. Martinez is in this category. Rather, the process of schizophrenia shows itself as a decrement in all areas of mental functioning so that the patient could be considered to be functioning way below his average ability. This effects all areas of the mental apparatus, i.e. thought processes, emotional responses and behavior. At such a low level of performance, I would certainly doubt that Mr. Martinez would be fit to effectively participate in his own defense at the present time.

"The appearance of Martinez is very deceptive because of the patient's under non-stressful conditions seems to be functioning adequately. However, his past history has borne out only too well the fact that when stress has been added, this man breaks down completely and it has been shown that he is entirely unable to function in a normal life situation.

"According to more advanced medical thinking, these patients respond poorly to therapy and in the best interests of society as well as Martinez' own self interest, I would advise that this patient be placed for an indeterminate time in a custodial and remedial treatment center.

Sincerely, yours,

STATEMENT OF POINTS

POINT I.

THE DISTRICT COURT ERRED IN ITS DENIAL OF THE DEFENDANT'S MOTION TO ALLOW A CHANGE OF PLEA TO NOT GUILTY BY REASON OF INSANITY AND A CONTINUANCE OF TRIAL TIME SO DEFENDANT COULD ASSEMBLE TESTIMONY THEREON.

POINT II.

THE DISTRICT COURT ERRED IN ITS DENIAL OF DEFENDANT'S MOTION FOR A NEW TRIAL.

ARGUMENT

POINT I.

THE DISTRICT COURT ERRED IN ITS DENIAL OF THE DEFENDANT'S MOTION TO ALLOW A CHANGE OF PLEA TO NOT GUILTY BY REASON OF INSANITY AND A CONTINUANCE OF TRIAL TIME SO DEFENDANT COULD ASSEMBLE TESTIMONY THEREON.

By forcing this defendant to proceed with trial with an attorney just hired, who had no opportunity to assemble the evidence or to use the defense of insanity for the appellant and defendant herein, the court violated the fourteenth amendment of the Constitution of the United States wherein it provides:

" . . . No State shall deprive any person of life, liberty or property without due process of law "

The spirit of the United States Constitution and the Utah Constitution and the Utah laws provides or intends to provide all defendants including this defendant with adequate opportunity to plead and present a defense of insanity. (See the 5th and 14th amendments to the United States Constitution, Article 1, Sections 11 and 12 of the Utah Constitution, 77-48-1 and 2 and 77-49-1 and 77-24-15 and 77-22-16 of the 1953 Utah Code Annotated.) All of these provisions certainly intend to provide the insane with adequate defense. Leno Martinez in the opinion of two competent and well-known alienists has been found a schizophrenic, incompetent and in need of hospital care and custodial care.

Surely the District Court erred in failing to allow a continuance of trial time and in failing to give this defendant an opportunity to plead and present evidence of insanity.

POINT II.

THE DISTRICT COURT ERRED IN ITS DENIAL OF DEFENDANT'S MOTION FOR A NEW TRIAL.

The defendant and appellant contends the letters of Psychiatrist Charles Parmalee and Psychologist Ernst Beier adequately informed the District Court that the defendant was insane at the time of the crime and at the time of the motion for a new trial.

Under these circumstances, the defendant contends the Court abused its discretion in failing to grant a new trial to the defendant and that this Court should grant this defendant a new trial.

Corpus Juris Secundum, Volume 66 at page 309, Section 110 says:

"In order to be ground for a new trial, the newly discovered evidence must be material and of such importance or force as to make a different result on the new trial reasonably probable."

Utah follows this doctrine. (See State v. Montgomery, 37 U 515, 109 P 815; State v. Molitz 40 U 443, 112 P 86; State v. Weaver, 78 U 555, 560 6 P 2d 167; State v. Cooper, 114 U 531, 201 p 2d 708.)

Surely the reports of Psychiatrist Charles E. Parmalee and Psychologist Ernst G. Beler do just that.

CONCLUSION

It is clear that in the present case, that if justice is to be done, this defendant should be allowed a new trial. The defendant's liberty and mental health is at stake here and he should be allowed his day of court, adequately prepared.

Respectfully submitted:

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