

# After 2 Years, Test Result Casts Doubt on Rape Verdict

By SELWYN RAAB

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pg. 29

## *After 2 Years, Test Result Casts Doubt on Rape Verdict*

By SELWYN RAAB

On an autumn night in 1983, a gunman broke into a motel room in the Bronx where he raped a woman and then forced her to accompany him on a terrifying car ride to her apartment.

Two days later, Marion Coakley, who was then 28 years old, was arrested for the crime after he was identified by the victim and picked out of a lineup by two men who said they had seen the rapist's face. A jury, relying on the testimony of the three prosecution witnesses and disregarding alibi evidence, needed only six hours of deliberations to convict Mr.

Coakley of rape and robbery. He was sentenced to a prison term of 5 to 15 years.

But now, after Mr. Coakley has served two years in prison, defense lawyers say they have obtained forensic evidence — a serology, or blood, analysis — that “conclusively proves” he was not the rapist.

An analysis completed in July shows that Mr. Coakley has blood type “A” while semen from the rapist that was found on the victim's undergarments is from a man who has blood type “B.”

At Mr. Coakley's trial in June 1985, the presiding judge, Justice David Levy of State Supreme Court in the Bronx, refused to grant the defense an adjourn-

ment to complete the serology analysis. Thus, the jury heard no evidence about the blood types.

Based largely on the analysis prepared by Dr. Robert Shaler, the former chief of serology in the City Medical Examiner's Office, a new team of defense lawyers filed an appeal earlier this month in State Supreme Court to overturn the conviction.

Mr. Coakley's new lawyers, in their appeal, say that Justice Levy declined to postpone the trial in June 1985 on the ground that the Legal Aid Society lawyer who was then representing Mr. Coakley should have done a better job in preparing his case.

In explaining why the serology evidence was not presented at the trial, defense lawyers said in their brief, “If competent expert testimony could be obtained within the time limits of the trial, the judge indicated he would hear it; if not, Judge Levy declared, ‘then the defendant is going to suffer.’ ”

“It was terribly unfair for the judge to deny the adjournment because the defense lawyer had not done a good job,” Barry C. Scheck, director of clinical education at the Benjamin N. Cardozo Law School and who is representing Mr.

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Coakley in the appeal, said in an interview. "It was horrendous for the judge to say the defendant would have to suffer as a consequence."

"It's a matter of opinion," Justice Levy said, replying to Mr. Scheck's assertion that his ruling prejudiced Mr. Coakley's constitutional right to a fair trial. "We'll see what the appellate court says about it. There is often lack of preparation on both sides."

A hearing to release Mr. Coakley on bail pending the outcome of the appeal is set for Tuesday in the Appellate Division of State Supreme Court in Manhattan. Mr. Coakley is an inmate at the state's Green Haven Correctional Facility in Stormville, N.Y.

## 'What Am I Doing Here?'

"I wake up every morning and say to myself: 'What am I doing here? I don't belong here,'" Mr. Coakley said yesterday in a telephone interview from

'What am I doing here? I don't belong here.'

Green Haven, a maximum-security prison. "I'm not a criminal; I'm not a dangerous person. Why was my freedom taken away?"

Edward V. McCarthy, a spokesman for the Bronx District Attorney, Mario Merola, said the prosecution would not oppose the bail request. "We had three solid witnesses," Mr. McCarthy said. "If they are claiming incompetent counsel for the defense, we are not responsible. We also are not responsible for the blood tests."

No date has been scheduled for a hearing on the appeal for a new trial or dismissal of the charges. Mr. McCarthy said the prosecution's position would be disclosed at the hearing.

The rape occurred at the Bronx Park Motel at 2500 Crotona Avenue in the East Tremont section on Oct. 13, 1983.

## Light From Television Set

At Mr. Coakley's trial, the 36-year-old woman who was raped and a male companion testified that a gunman managed to open a locked door and burst into their room. Except for the light from a 19-inch television screen, the man and the woman said, there was no illumination in the room.

After locking the man in the bathroom, the gunman raped the woman and stole about \$300 in cash and jewelry from the couple. The woman testified that the rapist demanded more money. He forced her into her car and with her sitting besides him drove about two miles to her apartment in the West Farms section of the Bronx.

When the woman's brother-in-law opened the door to her apartment, the rapist fled.

Although the gunman warned her not to look at him and sometimes covered her head with a towel, the woman testified, she saw his face for several seconds. Her male companion and her brother-in-law testified that they, too, had briefly seen the rapist's face.

In the courtroom, the three witnesses singled out Mr. Coakley as the assailant.

## Previous Arrest

Mr. Coakley, a janitor and factory worker, was implicated through a photograph. Several hours after the crime, the rape victim picked Mr. Coakley's photo from a group shown to her by detectives. His photo was in the rape and robbery suspects' file because he had been arrested on a rape charge in the Bronx in 1982.

That charge had been dismissed after the complainant failed to appear

for any court hearings. The appeal in the motel rape case notes that the woman who made the earlier rape complaint had a police record as a prostitute and that Mr. Coakley had told the police she had accompanied him willingly to his apartment for what he thought was a tryst. Mr. Coakley maintains that she become angered when he refused to give her any money.

Three defense alibi witnesses, including a minister, testified that at the time of the rape in the motel, Mr. Coakley was four miles away, attending a Bible study meeting near his home in the Mott Haven section of the Bronx. Prosecutors challenged the testimony, contending that the witnesses were mistaken about the time.

"There was someone in the Bronx who was a look-alike for Marion Coakley," asserted Mr. Scheck, the defense lawyer. "Mistaken identification is the leading cause of innocent people being convicted; everybody in the criminal justice system knows that."

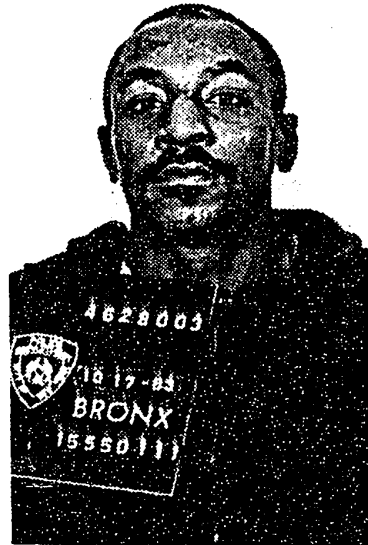
## Issue of Routine Testing

Mr. Coakley's case, the lawyer asserted, points out the need for prosecutors to obtain blood typings of semen in all rape cases. City law-enforcement officials said such testing was not routinely requested by local prosecutors because testimony that the defendant's blood type is the same as that found in the semen is generally inadmissible as evidence.

"There is little return for prosecutors to do so," Mr. Scheck said. "At best it shows that the defendant's blood type is the same as millions of other people and if it is a different type then the prosecution's case is lost."

Defense lawyers, he added, rarely seek such analysis because it is costly and the most accurate findings require testing as soon as possible after the crime when the police and the prosecution are in control of evidence.

The appeal also asserts that the con-



Marion Coakley in a police photograph taken when he was arrested in October 1983.

viction should be reversed because Mr. Coakley was ineffectively defended by the Legal Aid Society. Pat Bath, a spokesman for the Society, which represents indigent defendants, said the private agency would have no immediate comment.

In citing other reasons for a new trial, the defense charged that prosecutors withheld evidence that could have aided Mr. Coakley. The brief said the prosecution concealed information that the rape victim and her companion had brought a \$10 million civil suit against the motel and that the conviction of Mr. Coakley would bolster their case. The civil suit is still pending.

According to the brief, detectives and prosecutors improperly influenced the three identification witnesses through false reports that Mr. Coakley was a suspect in other rape cases.

Asked how he felt about the witnesses who identified him as the rapist, Mr. Coakley, said: "I forgive them. I have nothing against them. Anybody can make a mistake, but this sure was a big one."

## **Based on New Evidence, a Rape Suspect Is Freed**

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### ***Based on New Evidence, a Rape Suspect Is Freed***

A Bronx man convicted of rape and robbery was ordered released from prison without bail yesterday after defense lawyers said they had uncovered evidence that proved the man was innocent. He will remain free pending a hearing on a new trial.

The prisoner, Marion Coakley, was found guilty in 1985 at a trial in the Bronx before tests were completed comparing his blood type to the rapist's blood type in semen found on the victim's clothes. A defense affidavit says the completed tests show that the rapist and Mr. Coakley have different blood types.

Justice John Carro of the State Supreme Court Appellate Division ordered the 32-year-old Mr. Coakley freed in his own recognizance from Green Haven Correctional Facility in Stormville. A hearing for a new trial is set for Nov. 4 before the Administrative Judge of the Bronx, Justice Burton B. Roberts.

"Based on the new evidence it would have been a terrible injustice for Mr. Coakley to continue sitting in a cell awaiting a decision on a new trial," Peter Neufeld, a defense lawyer, said after the bail hearing.

# ***26 Months In a Prison, Wrongly***

By SELWYN RAAB

After being imprisoned 26 months as a convicted rapist, Marion Coakley heard himself declared an innocent man yesterday by a judge and prosecutors in a brief hearing in a Bronx courtroom.

The judge, Justice Burton B. Roberts of State Supreme Court, said a "miscarriage of justice" in Mr. Coakley's case could have been avoided if a test had been conducted to compare his blood type with the blood type of semen found on the victim's underclothes.

Mr. Coakley has been free since his release from a state prison last September, pending the outcome of his appeal for a new trial.

Apologizing to Mr. Coakley for his imprisonment, Justice Roberts, the administrative judge in the Bronx, called on the district attorneys in the city to order routine serology tests on semen in rape cases.

Mr. Coakley, 32 years old, was convicted in June 1985 before an analysis compared his blood and semen with

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# Jailed as Rapist, A Man in Bronx Wins a Reversal

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that of the rapist. The jury heard no evidence about the blood types, and Mr. Coakley was sentenced to 5 to 15 years in prison by Justice David Levy, who presided at the trial.

The original tests had been requested by a lawyer for the Legal Aid Society who represented Mr. Coakley at his trial. But the tests were never completed. A new team of appeals lawyers had the tests completed last July, and Mr. Coakley had type A, and the rapist's semen was from a man with type B.

"The frightening thing in this case," Justice Roberts said in addressing Mr. Coakley, "is the fact that you were positively identified in a lineup. Yet the serology evidence established that you could not have been the person who committed this crime."

City law-enforcement officials said prosecutors did not generally request blood typings of semen because testimony that the defendant's blood type is the same as that found in the semen left by the rapist or sex offender was generally inadmissible as evidence for the prosecution. In effect, defense lawyers said, the tests can really only help the defendant.

## Last Christmas at Attica

Justice Roberts, a former District Attorney who is known for his strong opinions from the bench, said prosecutors should order semen tests in all cases, to exonerate innocent suspects.

Justice Roberts ordered the conviction voided and dismissed the charges after two assistant district attorneys, Robert L. Shepherd and Mitchell Garber, said there was insufficient evidence to retry Mr. Coakley.

After the hearing, Mr. Coakley, smiling broadly, vigorously shook the hands of Justice Roberts, the prosecutors and Barry C. Sheck and Peter Neufeld, the lawyers who had uncovered the evidence that freed him. In an in-



Marion Coakley

terview, Mr. Coakley said he recalled spending most of last Christmas alone in a cell in the Attica prison.

Mr. Coakley, a construction worker, said this Christmas he would be with his parents and relatives in his hometown of Beaufort, S.C.

## At Crotona Ave. Motel

"I prayed hard for my freedom in Attica," he said. "And it has come true."

"I have no hostility against the people who testified against me," he added as he left the Supreme Court Building at the Grand Concourse and 161st Street. "I hope they find the person who committed the crime."

Mr. Coakley's imprisonment stemmed from a rape Oct. 13, 1983, in the Bronx Park Motel at 2500 Crotona Avenue, near 180th Street in the East Tremont section.

The victim, a 36-year-old woman, testified that she was with a man when a gunman slipped into the room. Although the room was dark except for the light from a television screen, the woman and man testified they were able to see the rapist's face.

After locking the man in the bathroom, the gunman raped the woman and stole \$300 and jewelry. The woman testified that the gunman, demanding more money, forced her to accompany him as he drove her to her apartment in the West Farms section. During the two-mile trip, she said, he ordered her to cover her face with a towel.