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REJECTS PLEA ON NEW TRIAL FOR DR. SAM

Judge Spurns First of Two Motions and Assails Corrigan's Stand

BY SANFORD WATZMAN

In a strongly worded 15-page document Common Pleas Judge Edward Blythin refused late yesterday to order a new trial for Dr. Samuel H. Sheppard.

The verdict of guilty of second-degree murder, the court ruled, "is supported by the evidence."

Forty-one charges of "errors" which the defense said were committed in the case were held to have "no merit" by Judge Blythin as he answered the accusations point by point.

Dr. Sheppard has a second motion pending before the court. That one, also for a new trial, is based on "newly discovered evidence," and will require a separate ruling.

Hearing Is Saturday

A hearing on this second demand of the defense has been scheduled for Saturday. Should that also be overruled, the convicted wife murderer would have to carry his case to the Court of Appeals.

In the meantime Dr. Sheppard remains in County Jail. Time spent in the lockup here is not credited toward his life imprisonment sentence, which makes him eligible for parole in 10 years.

Judge Blythin directed that his memorandum on the issue of 41 alleged errors be filed with the record of the case.

He distributed copies of it to newsmen in his chambers shortly after 4 p. m. Neither Dr. Sheppard nor his lawyers nor the state's attorneys were present.

Stinging Rebuke

The paper, in parts, was a stinging personal rebuke to the head of the defense team, William J. Corrigan. He was not mentioned by name, but there were references to the "chief defense counsel."

"The court has deemed this memorandum necessary," the document read, "due to some statements made by counsel for the defense during the trial and repeated or enlarged in said motion."

"Some are not factually true and some others create or tend to create impressions not representative of the true situation."

Informed of the judge's ruling, Corrigan told the Plain Dealer: "I don't comment on those things, except in court."

Summary of Analysis

Here is a summary of Judge Blythin's analysis of the 41 charges:

1—"Error in overruling application for a writ of habeas corpus. This is the first the court has heard of any such application * * * and, certainly, none was denied by him."

2—On his refusal to grant bail to Dr. Sheppard before the trial, Judge Blythin pointed out that "the guilt or innocence of

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Rejects First of Dr. Sam's Two New Trial Motions

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(Continued From First Page) the defendant was not involved" in the bail hearing.

3—Error in not moving the trial to another county:

"Chief counsel for the defense conceded and asserted this to be a fact (that newspaper publicity on the case was almost universal) and stated fervently that the defendant could not have a fair trial in Ohio, or even in the United States.

Branded "Whodunit"

"The only conclusion from that assertion must be that the defendant cannot be tried at all . . . Such a claim furnishes its own answer . . .

"It is to be borne in mind that no issues which break into flames and which tend to produce passion and prejudice were involved in this cause.

"No issue of race, corruption, killing an officer, or the like, was involved — what actually was involved was a mere mystery—a 'whodunit' . . .

"Section 2945.06 Revised Code of Ohio provides that a person charged in a case such as this may waive trial by jury and elect to be tried by a panel of three judges.

Points to Time Lag

"While not challenging the right of a defendant, in a proper case, to a change of venue, it does seem that the lack of confidence in any jury anywhere, coupled with the failure to elect to be tried by a panel of three judges, smacks of objection to any trial at all."

4—"Error in denying application for continuance (a trial postponement). The crime . . . occurred July. Trial started Oct. 18. Defendant's counsel had been engaged and active from a time within hours following the crime and long before defendant's arrest.

"Seventy-five prospective jurors had been summoned with full knowledge of all counsel long before any application for continuance was filed. The only ground stated . . . was 'to permit the extraordinary publicity to quiet down.'

"It was not claimed that counsel were not prepared for trial, nor was any suggestion made as to who was going to 'quiet down' the publicity, nor when nor how."

Defends Action

5 and 6—Judge Blythin said his rulings on two procedural questions "were correct."

7—"Refers to irregularities . . . Too indefinite to justify comment."

8 and 9—These points criticized the court for his handling of the "Juror No. 6" affair. That member of the panel was excused on his own motion after it was found he had a police record. Judge Blythin said his actions here were proper.

10-13—The court, the jury, the prosecutor and the state's witnesses were accused of "irregularities."

These, the court said, "are mere conclusions and the facts, if any, on which they are based are not set forth in the motion, nor even referred to. They will, therefore, be disregarded."

Upholds Verdict

14-17—The court's observations on these charges were substantially the same. The allegations said that the defendant had been denied his constitutional rights, that there was an "abuse of discretion" and that there was "misconduct" by the prosecutor and the state's witnesses.

18-19—"The court cannot agree that either claim (that the verdict was not sustained by sufficient evidence and was contrary to law) has merit in this cause."

20-22 — "No specifications" was the judge's answer to these three claims—"errors of law upon trial" and error in admitting certain evidence but excluding other evidence from the record.

Comments on Instructions

23-24—Here the judge upheld

firmly believes (its) judgment was correct."

31—"Other errors. None specified."

32 — Besides attacking the grand jury, "it is also claimed that the jury (presumably the trial jury) substituted the presumption of guilt for that of innocence. The court is wholly unable to even imagine what can furnish the basis for such a claim. It is not worthy of serious comment."

Discusses Press

33—"This is in the nature of an omnibus complaint, and in view of the statements made and the fact that they were voiced periodically throughout the trial, presumably in the hope that they would impress the jury and inoculate them with the persecution complex of the defense, the court deems it necessary to make clear for the record what the actual situation was."

Judge Blythin then related how he made arrangements for the newsmen covering the case and how he gave orders for entry into the courtroom. He told of the rules he prescribed on picture taking at the trial.

"The defendant and his chief counsel were far more gracious to the press, photographers and gallery than was the court," he continued.

Recalls Press Talks

"A very large number of pictures of the defendant, his family, counsel and friends were taken in the courtroom (outside of court session periods) with their permission and without complaint.

"Counsel for the defense held press conferences in the courtroom with cameras clicking; all to the apparent delight of counsel for the defense and, naturally, without protest."

On the photographing of the jurors, Judge Blythin observed: "Not a single complaint was registered by any juror . . . and it is worthy of note that the defense does not even claim that any juror was affected in the least by it."

Point Is 'Ridiculous'

Corrigan also complained of a sign-carrying religious fanatic who was arrested outside the courthouse. In answer, the judge said he did not know that "any juror saw him or his sign; the entire matter was so meaningless as to make any mention of it at this point border on the ridiculous."

Another of Corrigan's complaints, that an afternoon newspaper published photographs and an interview with the family of an alternate juror, received some backing from the judge.

"* * * While not expressing any opinion as to the legal propriety or impropriety of such action of a newspaper publisher during the progress of the trial, he (the court) does, nevertheless, seriously wonder what has happened to its sense of the ethics of such a situation and its own responsibility to the public it serves and its respect for the processes involved in the administration of justice."

Dismisses Complaint

But "whatever the legal or ethical considerations," Judge Blythin pointed out, "the incident proved to be a nullity in this case," since the alternate did not take part in the deliberations of the jury.

34—"* * * The court cannot say whether 'his (defendant's) picture was taken several hundred times,' but the court must say there was no such picture taking within the courtroom except upon consent of defendant or his counsel or both. * * *

"It is difficult to understand how, in any event, this item could have influenced the jury. The jury would not be present at the taking of such pictures."

35—"Complaint re newspaper articles prior to arrest and prior to trial. These surely had no connection with the trial and the trial court had nothing to do with them. * * *

defendant's 'Own Story' was headlined in unusually bold type on the front page of one Cleveland daily prior to trial. * * *

"This conduct, on the part of at least one member of the defendant's family, bid fair to continue during the trial period and to become critical, during trial, of the actions of the court itself . . . It is fair to say that this conduct ceased promptly upon the attention of one of counsel for the defense being directed to it . . ."

Spurns Complaint

Judge Blythin would not tell reporters which members of Dr. Sheppard's family he was referring to.

37—"Complaint re. care of jurors during deliberations.

"While this court would not for the world minimize the importance of guarding this jury . . . from annoyance or influence, he must express the thought that human beings, whether serving as jurors or not, cannot be wrapped in cellophane and deposited in a cooler during trial and deliberation.

"The jury in the instant case was jealously guarded throughout the entire proceedings and it is worthy of note—and indeed decisive in this court's judgment—that not a suggestion of influence upon the jury is forthcoming from any person or agency.

Defends System

"Interference or influence must be the test. If we are to convict jurors without a scintilla of evidence of undue influence on them it is now pertinent to halt and ask ourselves what becomes of our faith in our decent fellow citizens and of what value is the jury system at all . . . The court had complete confidence in the jury in this case. . ."

38—Judge Blythin denied he took part in a television program on the courthouse steps, asserting he simply exchanged greetings there with a newspaperman.

39 — Corrigan remonstrated with Judge Blythin for not permitting a juror to ask Dr. Sheppard a question.

"This, of course, is a legal matter and will be passed upon on appeal in the event that appeal is prosecuted," the court answered.

Raps Corrigan

"Indicative of the regard of chief counsel for the defense for the proprieties of trial * * * is the remark then made by him to the perfectly honest and sincere juror: 'Go ahead and ask it.'"

40 — This was another complaint that publicity had precluded impaneling an impartial jury. In this connection, Judge Blythin reviewed the testimony of Jurors Louise K. Feuchter and Luella Williams at the new-trial hearing last week.

He pointed out that both denied making statements "indicating enmity or bitterness toward the defendant before or during the trial" and that "not a word of evidence was produced to indicate that either of them had."

Notes "Anathema"

The judge added that a letter received by one of these jurors was not read by her and was turned over to the court. Here the names of Mrs. Feuchter and Mrs. Williams were apparently transposed. It was the latter who received the letter, although the memorandum said Mrs. Feuchter had.

"It is to be noted," the court continued, "that not a single person or agency connected with the investigation of * * * the crime involved escapes the anathema of the defense.

"These include the police, the coroner, his assistants, the prosecuting attorney and his aides, the state's witnesses, the grand jury, its foreman, the

trial jury, the public, the bailiffs and the court.

"The sense of search for truth and the declaration of justice seems to have vanished from a whole community as if by magic overnight. The news agencies of every kind and character are thrown in for good measure.

"In spite of all the charges made not a single specific item is cited in support of the claims made. Only broad generalities are indulged in * * *

"Unless it is shown in very clear fashion that some extrinsic forces plowed through the effort to grant the defendant a fair trial * * * it is fair to assume that none did."

41—The court was attacked for not appointing a female bailiff for the female jurors. It stressed that it announced its appointment of the two male bailiffs in open court "and not a word of objection was voiced by anyone."

The memorandum said in conclusion: "The court is convinced there is no merit in any of the complaints made by the defendant; that he was accorded a fair trial by an unusually intelligent and impartial jury and that the verdict rendered is supported by the evidence adduced upon the trial."

Comments on Instructions

23-24—Here the judge upheld his instructions to the jury and his refusal at one point to give special instructions.

25-27—The court defended its turning over of the case to the jury rather than order a directed verdict of acquittal.

28-30—The court erred, it was said, in permitting the jury to consider the possible verdicts of first and second degree murder and manslaughter. "The court," Judge Blythin said, "still

Cites Family's Action

36—The court stated here it had also had no control over statements condemnatory to Dr. Sheppard which were made by city officials before the trial and published in the newspapers.

"In this connection it is not to be overlooked that the defendant, members of his family and his counsel were fairly prolific in their statements to the newspapers * * * and the de-