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55/05/23 Convicted by 'Public Opinion,' Sam Charges: Appeals Court Hears Fight for New Trial

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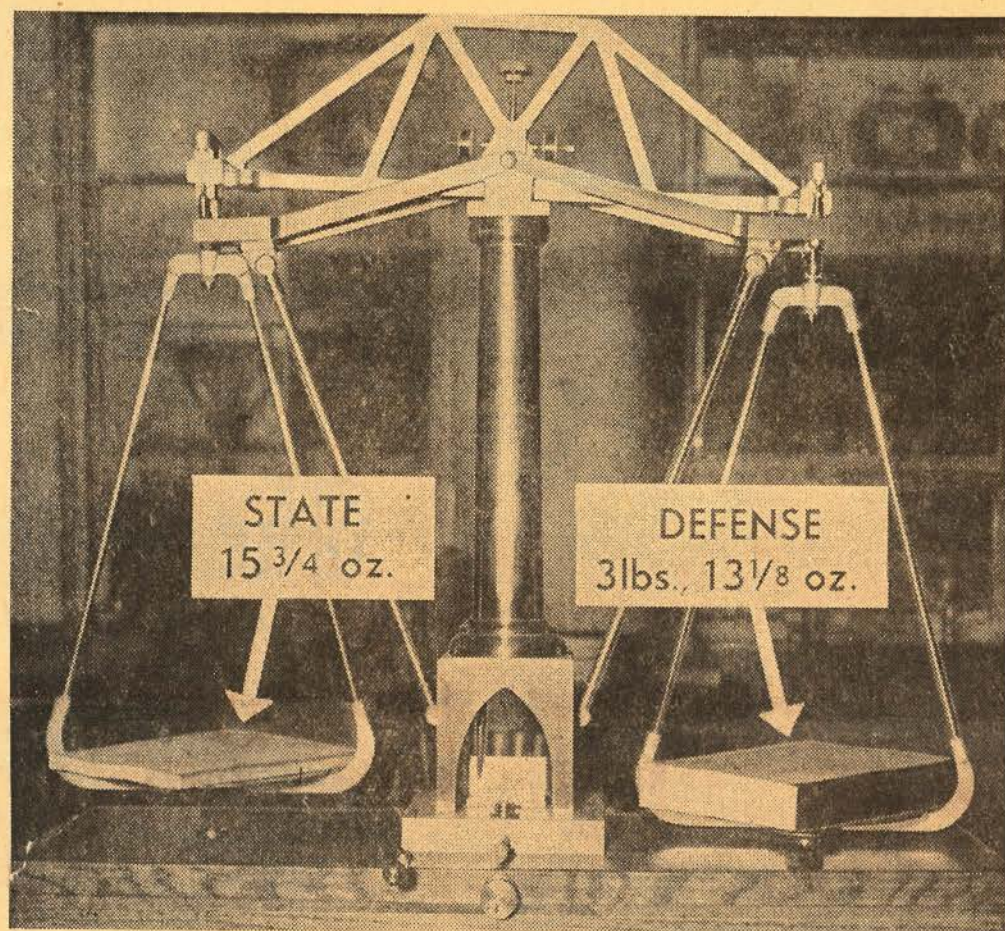
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CONVICTED BY 'PUBLIC OPINION,' SAM CHARGES

Appeals Court Hears Fight For New Trial



The state came out a poor second today at the "weighing-in" at the Court of Appeals where Dr. Samuel H. Sheppard is fighting for a new murder trial. The defense brief weighed three pounds, 13 1/8 ounces, and the state's reply only 15 3/4 ounces. The jurists who will consider this material are shown in a picture taken in the courtroom today. They are (left to right) Appellate Judges Lee E. Skeel, Julius Kovachy and Joy Seth Hurd.

BULLETIN

The state's claim that fingerprints were wiped away from the Sheppard murder house was criticized today by Attorney Arthur E. Petersilge in the Court of Appeals. The attorney charged that police failed to find fingerprints because they used only a flashlight, and did not employ modern, scientific methods.

BY HOWARD BEAUFAIT

Counsel for Dr. Samuel H. Sheppard slashed at the state's murder case as "conviction by popular clamor" today in arguments before the Court of Appeals.

The 31-year-old Bay Village doctor was not in court for his last ditch fight to escape a life sentence in the Ohio Penitentiary, preferring to remain in County Jail.

Attorney William J. Corrigan opened a four-hour defense oral barrage against a jury's verdict which branded Dr. Sam as the slayer of his attractive and pregnant wife last July 4.

Assistant County Prosecutors Saul S. Danaceau and Thomas Parrino will have their innings tomorrow to argue the conviction must stand because it is fully justified by the weight of the circumstantial evidence which caught the prisoner in its elaborate and conclusive web.

Corrigan Opens Arguments

Corrigan opened the arguments with:

"This case is of importance not only to this community, but to the public beyond. It involved the right of a fair trial, the right to be secure from conviction by popular clamor, the right to be acquitted when the proof falls short of the legal requirements.

"This case has attracted attention not only here but throughout the civilized world. What we do here will be widely read, widely quoted and cited throughout the United States."

Corrigan also charged that the indictment of Dr. Sam was "the result of pressure on the foreman and other members of the grand jury . . . They had nothing against Sam Sheppard except that he fell from grace through

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Sam Plea Charges 'Verdict by Clamor'

Continued From Page 1.

his association with Susan Hayes."

Two other defense attorneys argued at the afternoon court session.

Blasts "Half Truths"

Attorney Arthur E. Petersilge told the appellate judges that "the state's case is based on misstatements, half truths, speculations and guesses." He attacked the trail of blood around the murder house as possibly made by the Sheppard dog, Koko, or insects or "ferrous based chemicals."

The state said it was strange the dog did not bark that fatal night, but Petersilge said there was no testimony that the dog was in the house at the time, or he may have barked and on one hear dhim.

Defense Attorney Fred W. Garmone said the conviction verdict should be reversed because the jury was not properly sequestered, that men and women jurors were separated while their pictures were being taken "without the knowledge of the court, the defendant or his counsel, contrary to law."

Cites One Juror

Garmone also argued that Juror Howard Barrish should have been removed for cause because during examination he testified he would give more weight to the testimony of police officers than he would to other witnesses.

Attending the hearing were the prisoner's two brothers and their wives, Drs. Richard and Stephen Sheppard of Bay View Hospital, and Mr. and Mrs. G. R. Brown, aunt and uncle of slain Marilyn Sheppard.

Corrigan told the three man appellate court:

"You will find repeated over and over again in the prosecutor's brief that because Sam was the only person in the house that night capable of committing the murder he must have done it. That is adhering to the obvious.

Raps Police Investigation

"I am astounded and astonished at what the authorities did in this investigation. I am not a policeman or a detective, but if I couldn't have done a better job I'd hang up my ticket and quit

the practice of law."

The attorney said the defense had raised the question of a sex attack as a motive for the brutal murder.

"The state made no examination for a possible sex attack, and the reason was that they thought Dr. Sam had murdered his wife and a quick, sloppy autopsy was performed."

Dr. Lester Adelson, deputy coroner, testified at the trial that he had made an examination and found no evidence of a sexual assault on the victim.

Charges 'Fixed Opinion'

"They were determined to connect Dr. Sam with this murder and they weren't big enough to back away and make an objective examination," Corrigan told the appellate judges. He said that Coroner Samuel R. Gerber on the morning of the murder was overheard to say: "All we have to do now is get a confession from Sam."

Corrigan reviewed many details of the events leading up to and including the murder itself, prefacing his remarks by telling the court he wanted to give it a "background for murder."

"Let's go back to June 30. Dr. Sam and Mayor Spencer Houk that day went miles out into the lake to rescue a stranded boater. Is that the action of a man who, the next Sunday morning, was going to commit a brutal murder? Called "Typical American Boy"

"Dr. Sam's house was open to all the youngsters in the neighborhood. This young man was a typical American boy—in contrast to the horrible murder committed on his wife . . . He was born in this community of a fine, religious family. He was a leader in school and married the girl he had known since she was 13."

Pursuing the defense theory that Mrs. Sheppard was killed by a "peeping Tom" who secreted himself outside the Sheppard home at 28924 West Lake Rd., Bay Village, until Sam Sheppard was asleep on a downstairs cot and his wife had returned to her bedroom, Corrigan said:

"On that night Mrs. Sheppard was dressed in scanty clothes. She was wearing shorts. She was a fine looking woman of athletic build. It was possible for someone to see her from the street in her inviting clothing."

Cites "Love and Affection"

Corrigan also reminded the court that "there was evidence of love and affection between Sam and Marilyn Sheppard the night of July 3 while they were entertaining Mr. and Mrs. Don Ahern.

"Mrs. Ahern (watching Sam sitting in the same chair with his wife), said 'You're not the only ones who can be affectionate,' and she went over and became affectionate with her husband."

The defense attorney also hit at "Gestapo and bungling methods of police" in conducting an investigation of the crime and in interrogating Dr. Sheppard in County Jail after his arrest.

Decision of the Appellate Court

on the motion to set aside the verdict and grant a new trial is not expected for at least a month. When the decision comes it will mean either a second trial for Dr. Sam or a trip to the Ohio Penitentiary to serve a second degree life term for the murder of his wife.

Brief Sums Up

In the defense brief supporting the contention that the prisoner was wrongfully convicted, it was stated:

"A summation of the state's case establishes that Mrs. Marilyn Sheppard was beaten to death with a weapon of unknown type; that there was some blood in various places of the house; what blood it was, how long it had been there, nobody knows; that the murderer attempted to give an impression of burglary; that the appellant (Dr. Sam) was in the house at the time the murder was committed; that he had illicit relations with Susan Hayes, and sometime during his marital life he had mentioned to Dr. Lester Hoverstein and Miss Hayes something about divorce.

Cites Money in House

"If a man were faking a burglary, the first thing he would do would be to remove all the money from the house, and, as the evidence shows there was money in various parts of the house amounting to \$200."

Corrigan argued that an examination of the state's case "discloses an inept, careless and unscientific examination, a hastily drawn conclusion by the authorities that the appellant had committed the murder, and then attempted to justify the accusation by securing a confession of the appellant. If Dr. Sam committed the murder it would be impossible for him not to confess . . . The facts are entirely consistent with his innocence, and inconsistent and irreconcilable with any hypothesis of his guilt."

Assistant County Prosecutors Sayl Danaceau and Thomas Parrino replied for the state:

Hold Evidence Sufficient

"The unreasonableness of the defense hypothesis that Marilyn Sheppard was murdered by an intruder, whose only motive was sex, is so great that it taxes human incredulity to the point of revolt."

The prosecution maintained the verdict of the seven-man five-woman jury was completely sustained by the sufficiency of the evidence.

Three appellate judges hearing the appeal are Joy Seth Hurd, Julius M. Kovachy and Lee E. Skeel. First phase of the appeal to be heard was concerned with the verdict itself and the reasons why it should and should not be set aside and a new trial granted.

In two weeks the court will hear a second phase, the defense contention that the trial Judge, Edward Blythin, erred in overruling a new trial motion on the defense grounds of newly discovered evidence.

In his appeal Dr. Sam has two main lines of attack: He could not have killed his wife under the circumstances; she was beaten to death in their Bay Village bedroom by a left handed intruder, a peeping Tom or sex deviate, who became outraged when his advances were repulsed.