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Defendant's Brief in Opposition to Plaintiff's Motion for Evidentiary Hearing Regarding Items Destroyed or Lost by Defendant and Affidavit of Patricia A. Costello

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IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY OHIO

FILED

2020 FEB -1 P 12:22

ALAN DAVIS, Special Administrator
of the Estate of Samuel H. Sheppard,

Plaintiff,

vs.

STATE OF OHIO,

Defendant.

CASE NO. 312322

JUDGE SUSTER

DEFENDANT'S BRIEF
IN OPPOSITION TO PLANTIFF'S
MOTION FOR EVIDENTIARY
HEARING REGARDING ITEMS
DESTROYED OR LOST BY
DEFENDANT

Now comes the State of Ohio who submits its opposition to Plaintiff's "Motion for Evidentiary Hearing Regarding Items Destroyed or Lost by Defendant" and urges this Court to deny that motion.

In essence, plaintiff desires to delay the commencement of this trial by having this Court conduct a hearing to determine what happened to certain physical evidence from the murder trials (1954 and 1966) and to then fashion a sanction against the State of Ohio.

Plaintiff's motion should be summarily denied. Plaintiff's factual premise, that the State of Ohio destroyed or lost physical evidence, is a gross misrepresentation of the truth. Also, the case law cited by plaintiff fails to support the request for a hearing.

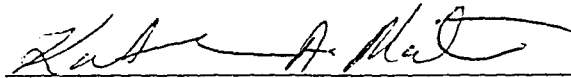
In truth, any "blame" for the fact that certain physical evidence is not available for this trial lies with plaintiff. Of course, plaintiff's delay of decades in bringing this action has compromised the State of Ohio's defense in this matter. Moreover, the property/evidence from the criminal case was returned to Dr. Sam Sheppard after the 1966 trial. See attached affidavit of Patricia A. Costello. Thus, the loss or destruction of

any evidence occurred after it came into Sam Sheppard's custody. Plaintiff's spurious allegation against the State of Ohio of destruction of evidence is particularly outrageous in light of a recent acknowledgment by counsel for plaintiff that he knew that at least some of the evidence had been returned to Dr. Sheppard.

Additionally, none of the case law cited by plaintiff justifies plaintiff's request that this trial be delayed in order to conduct "evidentiary hearings" and to then sanction the opponent of the party who was really responsible for the loss or destruction of evidence.

Respectfully submitted,

WILLIAM D. MASON, Prosecuting Attorney
of Cuyahoga County, Ohio



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ATTORNEYS FOR DEFENDANT

STATE OF OHIO)
) SS.
COUNTY OF CUYAHOGA)

AFFIDAVIT

Now comes Patricia A. Costello, having been duly sworn before a Notary Public and says as follows:

There was a time after the acquittal of Sam Sheppard when John T. Corrigan, the Prosecuting Attorney, told Margaret Dreher (the property clerk in the Prosecutor's Office), in my presence, that Sheppard wanted the property/evidence from that trial that was being held in the property room. Mr. Corrigan told Miss Dreher to give the property to him because the case was closed, Sheppard committed the crime and no one else was going to be tried for that murder.

Sam Sheppard, his wife Arienne and his attorney F. Lee Bailey came to the Criminal Courts Building at 1560 East 21st Street to pick up the property. Due to the unusual nature of returning such evidence to a civilian rather than a police department, etc., Miss Dreher asked another employee of the office, Jean Minerd, to make an itemized listing of the property to be returned and she asked me to be a witness. The box of property was taken into one of the offices, Jean Minerd sat at the desk. Miss Dreher told Sam Sheppard to come into the office, but told the wife and the attorney to stay in the receptionist area. Miss Dreher went through the large box containing bloody items from the case, naming each item. This was done in front of Sam Sheppard and Jean Minerd took the list in shorthand. After going through the whole box, Jean transcribed the list and returned to the office. Sam Sheppard signed the list as a receipt for the property he was taking. After he left with the box of evidence, the receipt was stapled into a "property book" which was kept to keep track of all property received on criminal cases.

Further, affiant sayeth naught.

Patricia A. Costello

SWORN to before me and subscribed in my presence this 31st day of January, 2000.

JEANNE M. CAROME

Notary Public, State of Ohio, Cuy. Cty.
My Commission Expires April 20, 2004

Jeanne M. Carome

CERTIFICATE OF SERVICE

A copy of the foregoing Defendant's Brief in Opposition to Plaintiff's Motion for Evidentiary Hearing Regarding Items Destroyed or Lost by Defendant, was sent by facsimile transmission (216) 621-0427 to Terry Gilbert, attorney for plaintiff, and by ordinary United States Mail, postage prepaid, The Standard Building, 1370 Ontario Street, Cleveland, Ohio 44113, this 1st day of February, 2000.



KATHLEEN A. MARTIN
Assistant Prosecuting Attorney