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Memorandum Regarding Admissibility of Statements of Samuel H. Sheppard Memo Regarding Admissibility of Statements of Sam Sheppard

Kathleen A. Martin
Cuyahoga County Assistant Prosecutor

William D. Mason
Cuyahoga County Prosecutor

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IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

2001.02.17 PM 4:03

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

Plaintiff,

v.

STATE OF OHIO,

Defendant.

: CASE NO. 312322

: JUDGE SUSTER

: MEMORANDUM REGARDING
: ADMISSABILITY OF STATEMENTS
: OF SAMUEL H. SHEPPARD

In a Memorandum Opinion dated February 12, 2000, this Court invited the parties to advise the Court if they wished the Court to revisit the issue of whether the coroner inquest testimony of Samuel H. Sheppard is admissible. Samuel H. Sheppard's testimony at the coroner's inquest is part of a larger issue regarding the admissibility of statements made by Samuel H. Sheppard when those statements do not constitute "former testimony" within the meaning of Evid.R. 804(b)(1).

The State of Ohio wishes to introduce statements of Samuel H. Sheppard of various forms including his testimony at the coroner's inquest, statements to police, various writings of Samuel H. Sheppard, and taped interviews given by Samuel H. Sheppard. In each instance, the admissibility of the statements is not barred by Evid.R. 802 because the statements are not being offered to prove the truth of the matter asserted.

Unless made admissible by operation of another rule, hearsay is not admissible. Evid.R. 802. However, an out of court statement is not “hearsay” when it is not “offered in evidence to prove the truth of the matter asserted.” Evid.R. 801(c).

A statement is not “hearsay” if it is admitted to prove that declarant made it, rather than to prove the truth of its contents. State v. Williamson (1988), 38 Ohio St. 3d 346; State v. Waddy (1992), 63 Ohio St. 3d 424; State v. Workman (Cuyahoga 1984), 14 Ohio App. 3d 385.

In the instant case, Samuel H. Sheppard made many statements to the coroner, the police, lawyers, publicist, and others, in addition to statements made in “former testimony”. The State of Ohio is not desirous of introducing the statements into evidence in order to prove the truth of the matters asserted by Samuel H. Sheppard. To the contrary, the State contends that these assertions are not true. The purpose of their admission is to establish that Samuel H. Sheppard made the statements. They are relevant to a determination of his innocence.

Evid.R. 401 defines relevant evidence:

“Relevant evidence” means evidence having a tendency to make the existence of any fact that is of consequence to the determination of the action no more probable or less probable than it would be without the evidence.

Depending on the particular non-hearsay statement at issue, the relevance varies. By way of example, many of the statements which the State of Ohio desires to introduce into testimony are offered to show that Samuel H. Sheppard’s various explanations of events before, during and following the murder of Marilyn Sheppard expanded with each telling, evolved in such a fashion as to “match” information as it was being learned by investigators, and were inconsistent with each other and with logic. Also, some of the statements are offered to establish

that Samuel H. Sheppard initially lied about his infidelities, etc. It is proper for the jury to consider the fact that Samuel H. Sheppard made these kinds of untruthful and expanding statements in order to consider whether Samuel H. Sheppard was innocent of the murder of Marilyn Sheppard. Such statements have a tendency to make it more probable that Samuel H. Sheppard was not innocent. The evaluation of Samuel H. Sheppard's accounts is inconsistent with innocence.

The State of Ohio has been highly prejudiced by the lapse of time caused plaintiff in bringing this action. It should not be further prejudiced by depriving the jury of consideration of the very words of Samuel H. Sheppard, since they are not being offered to prove the truth of the matter asserted in those statements.

Respectfully submitted,

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



KATHLEEN A. MARTIN (0040017)

Assistant Prosecuting Attorney
The Justice Center, Courts Tower
1200 Ontario Street
Cleveland, Ohio 44113
(216) 443-7785

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

A copy of the foregoing Memorandum was hand delivered to Terry Gilbert and George Carr, attorneys for plaintiff, this 17th day of February, 2000.

A handwritten signature in cursive script, appearing to read "Kathleen A. Martin", written over a horizontal line.

KATHLEEN A. MARTIN
Assistant Prosecuting Attorney