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D-5-10-55

NEW TRIAL OF DR. SAM IS DENIED

Judge Blythin Rules Kirk Evidence Is Loaded With Conjecture

Dr. Samuel H. Sheppard was emphatically turned down late yesterday in his demand for a new trial.

Common Pleas Judge Edward Blythin, in a strongly worded 16-page opinion, held that the defense did not present "newly discovered evidence" as claimed, but an affidavit "loaded with criticisms, conjectures and conclusions."

This was a reference to the document submitted by Dr. Paul L. Kirk, professor of criminalistics at the University of California, on whose posttrial investigation the defense relied for the success of its motion.

Conducts Own Trial

"The affidavit seeks to conduct a post mortem examination of the trial," Judge Blythin said. "To state it more graciously, he (Dr. Kirk) seeks to review the case and to conduct his own

"available from the time of the In supporting the prosecutor the court made principally these observations:

1—DR. KIRK'S EVIDENCE WAS NOT "NEW." It was "available from the time of the murder and could easily have been secured in ample time for presentation at the trial."

2—DR. KIRK'S CHIEF FINDINGS WERE SUSCEPTIBLE TO A DIFFERENT INTERPRETATION. On his analysis of blood spots in the murder bedroom "we have opinions which are poles apart by two recognized experts."

Blood Theory Opposed

Dr. Kirk made laboratory tests of a blood spot on the wardrobe door which turned out to be neither Dr. Sheppard's nor his wife's, the criminologist reported.

But a counteraffidavit by Dr. Roger W. Marsters, blood grouping specialist at University Hospitals, held: "The presumption of individual differences of blood origin on the basis of a difference in solubility is certainly unwarranted."

"It is not reasonable to believe that production of the testimony of Dr. Kirk at the trial," Judge Blythin added, "and the counter-testimony of Dr. Marsters would have made the slightest difference in the total evidence."

Corrigan to Appeal

Chief Defense Counsel William J. Corrigan said the court's ruling would be appealed "with dispatch." He added this action would take the form of a filing of a supplementary assignment of errors in the Court of Appeals.

Already pending in the higher court is a demand that it review an earlier ruling by Judge Blythin which denied a new trial requested on the ground of
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constructs the entire picture of the crime in most minute detail and proceeds to draw inferences and firm conclusions from his own picture.

"His conclusions are based on his own theories (and) do not necessarily eliminate Sam Sheppard (as a suspect)."

(Continued From First Page) alleged errors made by the court in the trial ending Dec. 21.

This motion has been set for a hearing in the Court of Appeals on May 23. Corrigan said he would ask that his exceptions to the "new evidence" ruling be heard at the same time.

The first section of Judge Blythin's memorandum reviewed the affidavits submitted by both sides and cited the laws dealing with "newly discovered evidence."

Noted here was the legal requirement that the evidence be of such a nature that it "could not with reasonable diligence have (been) discovered and produced at the trial."

"There is no claim that any new evidence has been discovered other than in the Sheppard home, which was the scene of the murder," the judge observed.

Defends Precaution

While conceding that it was unusual for the prosecutor to retain custody of the entire home until the verdict had been returned, the court pointed out that the premises were open to defense investigators providing they were accompanied by a policeman.

"The condition imposed . . . was merely a precautionary one," the opinion said. "It is not unlikely that failure to take possession of the property and failure to take the precaution . . . could very well have been subject to just criticism.

"It borders on the ridiculous to say that the examination and investigation made by Dr. Kirk within the dwelling could not have been made with precisely the same ease and effect in the presence of a police officer."

Blood Views Weighed

Turning to a discussion of Dr. Kirk's affidavit, Judge Blythin wrote: "The court would feel constrained not to attach final importance to some lack of due diligence (in obtaining evidence) if there was produced some real new evidence, even though such new evidence be not irrefragable."

Here the court's memorandum cited the opposing view held by Dr. Kirk and Dr. Marsters on the blood spots, with the former insisting that the specimen taken from the wardrobe door was the blood of a stranger and with the latter asserting this was impossible to determine.

It was noted that the spot was conceded by Dr. Kirk to be Type "O," the same type ascribed to the murder victim, even though it differed in solubility from Mrs. Sheppard's blood in the experiments conducted by Dr. Kirk.

Theories Criticized

Here are Judge Blythin's comments on some other conclusions advanced by Dr. Kirk:

1—THE KILLER WAS LEFT-HANDED. This was "testified to upon trial and the theory was

then advanced * * * It is still in the realm of theory, as no proof of it has yet been found possible, nor is there evidence at all of it."

2—THE KILLER HAD A SEX MOTIVE. "Assuming the theory to be correct, it does not exclude Sam Sheppard as the attacker."

3—THE MURDER WEAPON PROBABLY WAS A FLASHLIGHT. "This is diametrically opposed to the theory of the defense at the trial."

Recalls Trial "Weapon"

"Great pains were taken (at the trial) to demonstrate that the wounds were approximately the same length, same width and equidistant apart and were not caused by any such weapon as Dr. Kirk imagines but by a multipronged instrument that struck but a few times."

Judge Blythin wrote:

"The affiant (Dr. Kirk) re-