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(After recess at 11:10 o'clock a.m.)

Thereupon the defendant, further to maintain the issues on his part to be maintained, called as a witness HORACE M. DON, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Corrigan:

Q Will you state your name?

A Dr. Horace M. Don.

Q You can sit up straight, be comfortable in your chair.

Where do you live, Dr. Don?

A At the present time I live in Tipton, Iowa.

Q Are you in the practice of medicine in Tipton, Iowa?

A Yes, sir.

Q When did you start in practice in Tipton?

A I started in practice there August 22nd of this year.

Q And prior to that time where did you practice?

A I practiced in Cleveland.

Q When did you come to Cleveland?

A I came to Cleveland in July of 1952.

Q And when you came here did you become associated with any institution?

A Yes, sir. I came here to -- I started an internship at Bay View Hospital.

Q And during what period did you serve an internship at Bay View Hospital?

A I served from July, '52, to July, '53.

Q And during that time I presume that you became acquainted with Dr. Sam Sheppard?

A Yes, sir.

Q Now, during the period of your internship did you have anything to do with the accident cases that were brought to that hospital?

A Yes, sir.

Q And in relation to those accident cases, did you have any contact with Dr. Sheppard?

A Yes, sir. Dr. Sam was in charge of the accident ward.

Q And during what period of the day or night would most of the accidents occur?

A Well, most of the accidents would occur -- oh, the major ones probably between 10 o'clock in the evening until about 6, 7 o'clock the following morning.

Q Now, during that year, did you have occasion to make an observation of the sleeping habits of Dr. Sam Sheppard?

A Yes, sir.

Q And from your observation can you state whether or not he was a very deep sleeper?

A Yes, sir, he was.

Q Can you state whether or not he was difficult to awake?

A

Yes, sir. Sometimes we had quite a hard time to get him to wake up.

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Q Now, after midnight during that year, did you have occasion from time to time to consult with Dr. Sheppard in regard to accidents that were brought into Bay View Hospital?

A Yes, sir.

Q And how was that consultation conducted after twelve o'clock at night?

A Well, if it was a big case and there were quite a few involved, why, Dr. Sam would be called and he would come to the hospital. However, if it was a minor problem and the police were waiting for your disposition of the case, why, sometimes we would go to his place and take him a film for him to take a look at, see if there was a fracture, or so forth, and just minor things like that.

Q Did you have occasions during that year to leave the hospital after twelve o'clock at night and --

A Yes, sir.

Q Wait a minute, now, until I get through with the question.

(Continuing) -- and drive to Dr. Sam Sheppard's home?

A Yes, sir.

Q And on those occasions, did you bring anything with you?

A Yes, sir.

Q What did you bring with you?

A X-ray films.

Q X-ray films. Will you tell the jury if there were occasions when you arrived at that home after midnight?

A Yes, sir.

Q When the house was dark?

A Yes, sir.

Q And how did you gain entrance or attract the attention of Dr. Sam Sheppard?

A Walked in the Lake Road entrance of the home.

Q Yes. Was the door open?

A Well, the door wouldn't be open, but it wouldn't be locked, either.

Q It would not be locked?

A No, sir.

Q And on those occasions when you walked in, where would you go?

A Well, if it was after midnight and Sam and Marilyn were asleep, why, you would walk into the hall and to your left, the first door to your left would go into the kitchen, and you would go across the kitchen to the door which would lead either to part of the living room or leading upstairs.

Q Now, did you go to -- did you walk into that house after midnight when Sam and Marilyn were asleep?

A Yes, sir.

Q And on those occasions, when you went in, what would you do in regard to attracting their attention and letting them know that you were in the house?

- A Go in, go through the kitchen, as I said previously, and stick your head around the corner and holler upstairs.
- Q And who would you call to?
- A Oh, just holler for Sam or Marilyn. Marilyn usually woke up.
- Q Marilyn would wake up?
- A Yes, sir.
- Q And then after Marilyn woke up, what, as far as you know, did she do?
- A Well, as far as I know, why, she would shake Sam and try to get him awake for him to come down.
- Q And then would Sam come down?
- A Yes, sir.
- Q And where were the X-rays then examined by Sam?
- A Well, right across from the kitchen was Dr. Sam's den, in which he had a view box that he could look at films there.
- Q And that occurred on a number of occasions?
- A Yes, sir, several occasions.
- Q Now, then, did you know Sam Sheppard and his wife during that year and the succeeding year?
- You finished in June of '53?
- A Yes, sir. Well, it would be the first of July of '53.
- Q The first of July, 1953. And then you started in practice for yourself?
- A Yes, sir.

Q And where did you establish your office?

A 332 Bassett Road in Bay Village.

Q And how long did you remain at that office?

A I remained there until July 1 of '54.

Q And on July 1, '54, did you change your office to some other point?

A Yes, sir. To Parma.

Q Now, then, during the year 1953 to '54, when you started into your private practice, did you have contact with Dr. Sam Sheppard?

A Yes, sir.

Q And what kind of a contact was it?

A When I began practice -- of course, everybody needs help to get started -- I worked with Dr. Sam in the emergency room, and Dr. Sam was having to go out of town frequently to do surgery at other hospitals. At that time he was the official police physician for Westlake and was working with the Bay Police Department unofficially. And when I went out to practice, Dr. Sam suggested to the Chief of Police of Westlake that I be appointed with him as the official police physician so that somebody would be there to cover at all times, even though he would be out of town, and also at Bay Village Police, why, he recommended that if he was out of town, that they could call me.

Q And did you work for the Bay Village Police and the Westlake

Police?

A I was appointed the official police physician at Westlake and I worked with the Bay Village Police unofficially.

Q Now, then, during that particular year, did you visit the Sheppard home?

A Yes, sir.

Q And how frequently?

A Oh, I'd say a couple, three times a week, running in and out.

Q And did you make an observation of the conduct of Sam Sheppard towards his wife and his wife towards him?

A Yes, sir.

Q What was your observation?

A My observation, it seemed that they were very happily married.

Q Now, then, you are married, are you, Dr. Don?

A Yes, sir.

Q Did you make an observation of the general conditions that existed around that home in regard to whether or not it was used by other people?

A Yes, sir.

Q Tell the jury.

A Very frequently there were a lot of the high school set that was over at Dr. Sam's house to play basketball and go water skiing, and so forth. In fact, Dr. Sam received a

fractured rib playing basketball with some of the kids one day. But there were always the high school set around. Also the adults, there were always people coming into the Sheppard home water skiing, just talking sports cars, and so forth.

Q They held a sort of an open house there?

A Yes, sir.

Q Now, then, did you accompany Sam Sheppard to Put-in-Bay sometime in June?

A Yes, sir.

Q And as the story has been told here to the jury, Sam flew back. Do you recall that?

A Yes, sir.

Q Did you accompany Marilyn back from Put-in-Bay?

A Yes, sir.

Q And what time did you leave Put-in-Bay, do you recall?

A I don't know the exact time. However we caught the --

Q What day, I mean?

A It was on a Sunday.

Q On a Sunday?

A I believe.

Q It isn't a very great drive, as I remember it.

A No, sir. The big wait was getting on the ferry from Put-in-Bay over to the mainland.

Q About 70 miles or something like that?

A Approximately.

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Now, then, did you see Sam Sheppard during the week preceding the murder of his wife?

A Yes, sir.

Q Do you recall what day it was?

A I believe, oh, the Thursday before, if my memory doesn't desert me, at Mr. and Mrs. Howell's residence.

Q How did you happen to get up to Mr. and Mrs. Howell's residence, you and Sam?

A Well, Sam and I were out -- I had just purchased an MG and I was out riding around waiting for my wife to go off duty at the hospital, and met Dr. Sam, and we were talking about the races at Put-in-Bay prior to that, and the films that -- or the pictures that they had taken, and Sam was interested and so was I to see their films, so we stopped over at the Howells and they showed us their pictures that they had taken of the races.

Q Then did you drive Sam home?

A I don't recall just --

Q You recall being with him, though?

A Yes.

Q Being up to the Howells?

A Yes, sir.

Q Now, then, on the 4th of July do you recall -- withdraw that.

Were you with Sam between the 4th of July, between the Thursday and the 4th of July, the time you were at the

Howells, and the --

A Well, we were together almost every day as far as at the hospital, and so forth.

Q And you worked with him during those days?

A Yes, sir.

Q Now, coming to the 4th of July, the morning of the 4th of July, did you hear of the murder of Marilyn Sheppard?

A You mean on the morning of the 4th?

Q Yes.

A Yes, sir.

Q Where were you when you heard it?

A I was at home.

Q And what were you doing?

A My wife and I were getting ready to go to church.

Q And how did you get the information?

A We received a call from Dr. and Mrs. Selnick.

Q Now, then, when you received the call you abandoned the idea of going to church?

A Yes, sir.

Q Or did you go to church?

A Well, my wife went to church. I got dressed and went to the hospital.

Q What church were you going to go to?

A That was the Baptist Church in Rocky River.

Q When you got the information that this tragedy had

occurred, where did you go?

A I first of all went to the hospital.

Q And did you go into the hospital?

A Yes, sir.

Q Did you go into the room where Dr. Samuel Sheppard was?

A Yes, sir.

Q Did you see him?

A Yes, sir.

Q Did you go in as a physician?

A No, sir.

Q Will you describe to the jury what you saw in that room?

A I went into the room to see Dr. Steve Sheppard, and while I was in the room I naturally noticed Dr. Sam laying there. He had bruises on his face, about the mouth, and swelling of the cheek and of the eye.

Also while I was in there, it was evident that he was under sedation, but he kept moaning over and over, "Why did they do it? Why didn't they do it to me?"

And he seemed to be just like a record just playing over and over, but he didn't recognize anybody that was there, or so forth.

Q Did he recognize you?

A No, sir.

Q Did you have any conversation with him?

- A No, sir.
- Q All you heard was this "Why did they do it? Why didn't they do it to me?"
- A That's right.
- Q Now, then, after you had gone to the hospital, did you go to the Sheppard home?
- A Yes, sir.
- Q And what time did you arrive at the Sheppard home?
- A Well, I'd say approximately 10 o'clock, or around that time.
- Q And when you arrived there, who did you see that you remember now?
- A Well, just as I arrived, Mrs. Dorothy Sheppard, and Mrs. Betty Sheppard were coming out of the house. They had gathered some clothing, I believe it was for Chip. Also around were Sergeant Hubach of the Bay Village police, Dr. Gerber, several men from his department, Patrolman Drenkhan of the Bay Village police. There were several other men. I mean the place was literally crawling with policemen about that time.
- Q Well, after you had made the observation, did you do anything?
- A Yes, sir. Of course, I asked Jay Hubach what seemed to happen and what --
- Q Well, you had a conversation with him?
- A What occurred up to the present time when I got there,

and then afterwards, I believe the fingerprint men were in the house at the time because everybody seemed to be standing out, and it was after that that they discussed about going into the house.

Q Did you see a small boy there that morning?

A Yes, sir.

Q And where did you see the small boy?

A We were out in the front of the house -- that is the Lake Road side -- and Dr. Gerber and a couple of his men were talking about going into the house and searching for any evidence, and there was a boy there, oh, I'd say about 10 or 12 years old, and he asked whether or not he could go into the house also, and Dr. Gerber gave him permission.

Q And then did you go in the house?

A Yes, sir.

Q Did you see the boy?

A Yes, sir. He went in before I did.

Q Where did you see him?

A In the living room-dining room or the cove there.

Q What was he doing?

A Looking around, touching things.

Q Touching things?

A Yes, sir.

Q And going around the downstairs?

A Yes, sir.

Q Did you know who he was?

A No, sir, I didn't. I took it that it possibly was Dr. Gerber's son, or something like that.

Q I think you discovered later that Dr. Gerber didn't have a son?

A I discovered later that Dr. Gerber didn't have a son.

Q Did you go through the house?

A Yes, sir.

Q Were there other people going through the house also?

A Yes, sir. There was Chief Eaton from the Bay Village police, young Patrolman Drenkhan, and his father is also on police the part-time/duty there, and he was there; Dr. Gerber, a couple of his assistants.

Offhand, that's what I remember. And I think there were more there -- of course, the boy -- but I didn't know them.

Q Had Marilyn's body been removed at that time?

A Yes, sir.

Q After you had gone through their house what did you do then?

A Well, while we were going through the house or after?

Q After the search. I suppose you were searching around for anything you could find?

A Yes. We were literally tearing the place apart trying to find some clues or murder weapon, or so forth, and then

afterwards, why, after we had gone through the house thoroughly, they were standing around talking, they hadn't found anything, and Dr. Gerber was talking to his men, and he made the remark, "Well, it is evident that the doctor did this, so let's go get the confession out of him."

Q Well, where did you go then?

A After I left the house I went down to the beach where, by that time, some of the boys in the neighborhood were searching in the lake for any possible weapon, and so forth.

Q How many of them were there, do you remember?

A Oh, I'd say around 10 or 12.

Q Now, then, did you leave the premises and go somewhere?

A After that I went back to the hospital.

Q Now, then, had you been invited to a party that was going to take place at the Sheppard home that day?

A Well, the party had been two-fold --

MR. PARRINO: I object to this,

your Honor. Had he been invited, is the question.

Q Just let's get an answer, Doctor. Were you going to a party at the Sheppards?

A Yes.

Q That is enough. Now, then, did you later return to the Sheppard house that day?

A Yes, sir.

Q And what time did you return?

A Oh, I'd say it was about 3 o'clock in the afternoon, about that time.

Q Was there anybody with you?

A Yes, sir.

Q Who was with you?

A I don't remember his last name. It was Chet. Dr. Selnick's brother-in-law. Brennan. Chet Brennan.

Q What was the name?

A Brennan.

Q And when you returned the second time what time was it?

A I'd say it was about 3 o'clock in the afternoon, or so.

Q Where did you go?

A Well, we went over to the Sheppard house.

Q And did you go in?

A Yes, sir.

Q Both you and Mr. Brennan?

A Yes.

Q Did anybody stop you?

A No, sir.

Q How long did you remain in the house then?

A Well, we walked clear through the house, both upstairs, downstairs. I'd say going through the house would take approximately 15 minutes.

Q Now, then, you were connected at that time in a sort of

unofficial way, or was it an official way, with the Bay Village police?

A It was an unofficial way.

Q Did you later go to the Bay Village police station during the course of the next few days?

A Yes, sir.

Q Did you have a conversation with the Bay Village police?

A Yes, sir.

Q And the conversation was about what?

A Well, it was about the murder and about Dr. Sam. Two of the patrolmen were trying to find any information that they could pertaining to what might have happened.

Q And did you attempt to obtain information yourself?

A Yes, sir.

Q And did you give that information to the Bay Village police?

A Yes, sir.

Q And when you gave the information to the Bay Village police, what were you told?

A Well, when I was asked to go see different ones, they said that they had -- that they'd like for me to ask these questions because they were told by the Cleveland police that they would like to have them stay out of the picture.

Q Have them stay out of the picture?

A Yes.

Q The Cleveland police?