

A Yes.

MR. CORRIGAN: Cross examine.

CROSS EXAMINATION OF HORACE M. DON

By Mr. Danaceau:

Q You say that you were an intern at Bay View Hospital for one year?

A Yes, sir.

Q And beginning in July of 1952 and ending in July of 1953?

A Yes, sir.

Q While you were an intern there, where did you stay?

A Well, when I first went there as an intern, I stayed at the hospital. After that my wife came to Cleveland. We -- of course, interns only make \$75 a month, so we got an apartment out at the housing project out by the airport.

Q To whom did you make your application for internship?

A To the Bay Village Hospital.

Q Anybody in particular that you knew or applied to?

A No, sir. I had known of a doctor who had interned there previously, and he told me that it was very good internship, so I wrote.

Q You didn't know Dr. Richard Sheppard, Sr.?

A No, sir.

Q Did Dr. Sam Sheppard stay at the hospital during that period of a year while you were interning? Did he stay at the

hospital overnight, is what I'm getting at? Did he reside there?

A No, sir.

Q During that entire period of time, he resided at his home on Lake Road, is that correct?

A Yes, sir, except during the time of the fire.

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Q When was the fire?

A I don't remember the date of the fire.

Q Well, during that period after the fire, didn't he reside at the Bay View Hospital at any time?

A No, sir.

Q He did not. Now, you said that on a number of occasions you went there to his home to let him see some X-ray plates, is that correct?

A Yes, sir.

Q How many times did you do that?

A Oh, I'd say about half a dozen times.

Q And on each time it was just to see X-ray plates?

A Yes, sir.

Q Nothing else?

A Oh, we'd discuss the case. He'd ask me what happened and what the symptoms were of the patient, and so forth.

Q And who went with you?

A Usually myself.

Q Did you drive there?

A Yes, sir.

Q In your car?

A Yes, sir.

Q And these occasions were all after midnight?

A Well, I didn't write down every occasion. I didn't have any reason to do so, but I remember a couple of instances

where it was after midnight, yes. They were at night.

Q They were at night?

A Yes, sir.

Q A couple of instances after midnight?

A Well, the reason for that --

Q Now, just a minute.

A Yes, sir.

Q A couple of instances after midnight?

A Several instances.

Q And all the others before midnight?

A Well, they were around midnight or after, all of them.

Q You now say that all of them were at midnight or after midnight?

A Well, 11:30 or so. I mean --

Q It might have been 11 o'clock?

A It might have been.

Q It might have been 10 o'clock?

A I doubt that.

Q Well, 11 o'clock would not be midnight or after midnight, would it?

A Well, it's getting pretty close.

Q I see. And you would get there and you would find them both asleep at the time upstairs?

A Well, I didn't know if they were asleep. They were upstairs.

Q You didn't know they were asleep? Then how do you know

that he was a deep sleeper and had to be awakened so that he could come down and view the plates, if you didn't know he was asleep?

A I would presume he was asleep at the time I got there.

Q And is everything that you testified here this morning merely a presumption, sir?

A No, sir.

Q Did you ever go into the bedroom?

A No, sir.

Q Did you ever go upstairs?

A No, sir.

Q Well, then, how do you know that he was a sound sleeper?

A Because of the time that it would take from the time that Marilyn would answer until Dr. Sam would come down, and the way he looked when he came down.

Q It would take some time to get dressed, wouldn't it?

A He didn't dress.

Q All right. How was he dressed when he came downstairs on these occasions?

A In his shorts and shirt, T-shirt.

Q Shorts and a T-shirt. You mean he got out of bed with a T-shirt on?

A He'd wear his T-shirt.

Q Did he ever come down without a T-shirt on?

A Yes, sir.

Q What would he have on if he would not have a T-shirt on?

A Shorts.

Q Just shorts?

A Yes, sir.

Q And no T-shirt at all?

A No.

Q No covering at all other than the shorts?

A (Witness shakes his head negatively.)

Q How many occasions did he do that?

A Oh, I'd say once or twice.

Q Once or twice he came down just with a pair of shorts and nothing else?

A Yes, sir.

Q And the other times it would be with a pair of shorts and a T-shirt?

A Yes, sir.

Q What kind of a T-shirt?

A Just straight T-shirt.

Q What color?

A White.

Q And would he wear the T-shirt inside the shorts, or would it be outside the shorts? Do you understand what I mean?

A I didn't make the observation. I wasn't interested.

Q You have worn a T-shirt, haven't you?

A Yes, sir.

Q And on occasion you wear it outside of your trousers so that it extends down to your hips, isn't that correct?

A That's right.

Q And on other occasions you insert it inside the trousers?

A That's right.

Q Now, which did he do on these occasions when he had the shorts on, was the T-shirt on the outside or on the inside of the shorts?

A I never paid that much attention.

Q You didn't pay that much attention?

A No, sir.

Q Did you ever go out with Dr. Sam to assist him or be with him when he would perform surgery elsewhere outside of the hospital?

A No, sir.

Q Did you ever drive with him in his Jaguar?

A You mean Jaguar?

Q Yes.

A Yes, sir.

Q Did you ever see a surgical kit in that Jaguar?

A Well, he carried his bag with him.

Q Did you ever see a surgical kit in that Jaguar?

A What do you call a surgical kit?

Q Well, perhaps you better tell me. I'm not a doctor.

A Well, do you mean just a medical bag where we keep things in

and carry with us, or do you mean something strictly for surgery?

Q I mean a bag in which surgical instruments are carried when a doctor goes from place to place for the purpose of performing surgery.

A I've seen surgical instruments in the car, yes, sir.

Q You have seen surgical instruments in the Jaguar?

A Yes, sir.

Q In what were they contained?

A Oh, the hospital would wrap them up for him when he was going to some other places to do surgery. They were usually wrapped by the hospital.

Q And what would those surgical instruments consist of?

A His tools that he used in his neuro-surgery.

Q And will you describe those tools?

A Sir, there's quite a few tools.

Q How many are there?

A I'd have to guess. Probably --

Q About how many?

A Oh, when he'd take them with him, probably there'd be about 20 or so things that he would take with him.

Q And in a general way, what did those surgical tools or instruments consist of?

A Oh, there would be his instruments probably for trephining, a drill, probably a hammer, chisels, Gigli saw, the spatulas



that he used when he was touching the brain, and so forth.

Q Now, some of those instruments were small, were they not?

A Yes, sir.

Q And some were larger and heavier?

A Yes, sir.

Q Now, take the larger instruments, will you tell us what some of the larger instruments are?

A Well, probably the largest would be the drills that he possibly used. That would probably be about the largest.

Q And what is the next largest?

A Probably something for the bone cutting, rongeurs.

Q What is that?

A Some of the rongeurs.

Q You said bone cutting?

A Yes, sir.

Q And how do you spell that last word, rongeurs?

A I don't know. I'm not up to my spelling lately.

Q Well, I certainly don't know how. Would you give us an approximation of what it is, the spelling?

A Oh, it's r-o-n-j-o-u-r, something of that nature.

Q And how much does that instrument weigh?

A Oh, less than a pound. I mean, they are not very heavy.

Q Well, is it close to a pound?

A I really couldn't say because I've never weighed them or paid that much attention.

Q And of what is it made? Is it metal?

A Yes, sir. Stainless steel.

Q Stainless steel. Now, the largest instrument, the drill that you spoke of, how much does that weigh?

A Oh, possibly a pound and a half.

Q And of what is that made?

A Stainless steel.

Q Now, what other of the larger instruments are there that you haven't thus far described?

A Well, actually, those would probably be about the largest.

Q Well, is there what they call a bone setting instrument that is included?

A A bone setting?

Q I may not have the phraseology correct.

A I don't know what you would have reference to.

Q Bone holding instrument?

A That is not used in neuro-surgery.

Q Sir?

A That isn't used in neuro-surgery.

Q Now, you have mentioned the drill and --

A Rongeurs.

Q Rongeurs. What other instruments are there that weigh more than a half a pound and are made of stainless steel?

A Oh, that would be about the extent of it.

Q Now, you also know that Dr. Sam Sheppard had a medical bag?

A Yes, sir.

Q In which there would be bandages and tweezers and medicines, is that correct?

A Yes, sir.

Q Now, would these instruments that you have been describing be included in the medical bag or are they other instruments than those that were included in the medical bag or were in the medical bag?

A Well, in the medical bag he didn't carry any instruments particularly.

Q He did not carry any instruments particularly in the medical bag?

A I mean the instruments for neuro-surgery.

Q He did not carry them. What did he carry in the medical bag?

A I never went through his bag to find out.

Q But, at any rate, these instruments that you are describing are not those that he ordinarily carried in his medical bag?

A No. Those would be taken primarily if he had some work to do someplace else.

Q Did he have a bag in that Jaguar in which he carried instruments of that kind?

A Not all the time. Just when he went on trips to other hospitals.

Q I didn't quite understand you. You said just when he went

on trips to other hospitals?

A To other hospitals.

Q Well, did you see that bag that he used when he took those trips to other hospitals?

A No, sir.

Q But you knew he had a bag, didn't you?

A I knew he carried them with something. I don't know what he carried them with.

Q Do I understand you correctly that the number of surgical instruments are approximately over 20, but that just a few of them were of the heavier type?

A Yes. Most of them were small.

Q You say he would get these surgical instruments at the hospital?

A Well, they were kept at the hospital, yes, sir.

Q Well, were they his instruments?

A I presume so.

Q Where at the hospital did he keep the instruments?

A In surgery.

Q In the surgery room?

A In the cabinets where we kept the instruments that weren't sterile, and so forth, or if he had a case, naturally they would be sterilized.

Q Other than Dr. Sam Sheppard's surgical instruments, were other surgical instruments kept at the hospital?

A Yes, sir.

Q And whose were they?

A Oh, they belonged to any of the surgeons at the hospital.

Q They belonged to any of the surgeons?

A Yes, sir.

Q Would they interchange instruments?

A They might.

Q If Dr. Sam needed a surgical instrument that belonged to one of the other doctors, it would be available to him, would it not?

A I imagine.

Q And if any of his instruments were needed by any of the other doctors, his instruments would be available to them, is that correct?

A (Witness nods head affirmatively.)

Q So am I correct in saying that Dr. Sam Sheppard and any of the other doctors who performed surgery had available any and all of the surgical instruments at the hospital?

A There at the hospital, yes.

Q You have a set of surgical instruments, do you?

A No, sir. I'm not a surgeon.

Q Oh, you are not a surgeon. I beg your pardon.

Now, you say that you learned of this tragedy on the early morning of July 4th. What time was it that you learned of it?

A Oh, approximately nine, nine-thirty.

Q And where were you when you learned it?

A Home.

Q And where did you live at that time?

A On Woodstock.

Q Whereabouts is Woodstock?

A That's in Fairview Park, sir.

Q I see. And if I understand your testimony correctly, you then drove to Bay View Hospital?

A Yes, sir.

Q Did you at that time know that Dr. Sam was at Bay View Hospital?

A No, sir.

Q Why did you drive to Bay View Hospital rather than to the home of Dr. Sam Sheppard, if you did not know that he was at the hospital?

A I wanted to find out what had happened.

Q Wouldn't the best place to find out what had happened be right at the home itself?

A Possibly.

Q Well, why did you go to the hospital if you didn't know that Dr. Sam Sheppard was at the hospital?

A Just went to the hospital.

Q Well, why, instead of going to the home if the home was the place where you certainly could find out what happened

there?

A Well, most of the time you want to stay out of the way, and you get to someplace where possibly somebody might know what's going on.

Q At any rate, you want this jury to believe that you had learned that some tragedy had occurred at the home, so instead of going to the home, you went to the hospital without knowing that Dr. Sam Sheppard was there?

A Yes, sir.

Q All right. Now, what time did you get to the hospital?

A Oh, I'd say about five or ten minutes after I received the call.

Q Well, about what time did you arrive at the hospital?

A I don't know exactly what time I left the house. I stated I got the call around 9:00, 9:30, and it was about five or ten minutes after that time.

Q And then you walked into a room to see Dr. Steve Sheppard, is that correct?

A Yes, sir.

Q Is that correct?

A Yes, sir.

Q And you went in to see Dr. Steve Sheppard, and there you saw Dr. Sam Sheppard in his room, is that correct?

A Yes, sir.

Q Why did you go to Dr. Steve Sheppard's room?

A Well, I found out Dr. Steve was there, and I wanted to ask him a question.

Q What room was it that Dr. Steve occupied?

A I don't know the exact number of the room. It was by the nurse's -- well, it was down towards the end of the hall in the new wing. I don't know exactly what the room number is.

Q Is that the room that Dr. Steve Sheppard is always in when he is there? Is it his office or something?

A No, sir.

Q Why did you say it was Dr. Steve Sheppard's room?

A I didn't say it was Dr. Steve Sheppard's room. I went into the room to see Dr. Steve.

Q Well, why did you expect him to be in that room?

A When I went in, I asked a few questions and found out that he was in the room.

Q I see.

A I found out that Dr. Sam was there.

Q What questions did you want to ask Dr. Steve Sheppard?

A The normal curiosity questions that -- all I had been told was that Marilyn was dead, and I wanted to find out some of the particulars. Being a friend, why, naturally, you would want to know those things.

Q Well, you were a very close friend of Dr. Sam Sheppard, were you not?



A Yes, sir.

Q Well, why didn't you go to the house to ask him those questions?

A Well, being around police work a little bit, you might figure that maybe some other people around there are asking a few questions, too.

Q I'm sorry. I didn't understand you.

A Well, you would want to try to stay out of the way of the normal procedures of the police department. I don't know why, but --

Q What normal procedures of the police department were you afraid of?

A I'm not afraid of anything.

Q I don't quite understand you. What were you trying to stay out of?

A The way.

Q The way of whom?

A Whoever might be there.

Q Just what were you afraid that you would do that would be in the way of anything?

MR. CORRIGAN: He didn't say he was afraid. I object to that. The man is not afraid of anything.

THE COURT: Let him explain.

Q Go ahead.

- A What I was afraid of? I wasn't afraid of anything.
- Q Well, just what were you trying to avoid?
- A Well, if you see a fire, do you rush in to get in the way of the firemen, and so forth?
- Q No. But I don't rush somewhere else to inquire about it. In fact, I go right there to take a look at it.
- A You might ask questions around, how it started, and so forth.
- Q All right. At any rate, how long were you at the hospital?
- A Oh, I'd say about 10, 15 minutes.
- Q Did you have any difficulty going into the room?
- A No, sir.
- Q Was there a police officer stationed there at the door at that time?
- A I don't recall if there was or wasn't.
- Q No one stopped you from going in?
- A No, sir.
- Q Did you talk to Dr. Steve Sheppard?
- A Yes, sir.
- Q Did you talk to Dr. Sam Sheppard?
- A No, sir.
- Q Did Steve tell you not to talk to him?
- A No, sir.
- Q Well, why didn't you talk to Dr. Steve -- Sam Sheppard?
- A Being a physician and seeing that Dr. Sam was evidently

hurt, you don't go into a case and start asking a person a lot of questions. It might upset their progress.

Q Did Dr. Steve Sheppard brief you on the situation?

A No, sir.

Q Did he tell you not to ask any questions?

A No, sir.

Q What did he tell you?

A He gave me an answer to the question I asked him.

Q What question did you ask and what answer did he give?

A I don't remember. I think it was something about the telephone operator had asked me if they could take a picture of Dr. Sam, or if they could talk to Dr. Sam, or something like that.

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Did you ask Dr. Steve Sheppard what had happened?

A

No, sir.

Q

You didn't ask Dr. Sam Sheppard what had happened?

A

No, sir.

Q

Did you ask anybody what had happened?

A

I asked some of the doctors that weren't in Dr. Sam's room if they knew what happened.

Q

Did they tell you?

A

They said someone killed Marilyn.

Q

And that is all?

A

Yes, sir.

Q

What time did you leave the Bay View Hospital?

A

As I say, it was about 10, 15 minutes after I arrived.

Q

About what time would that be?

A

I don't know exactly when I got there, sir.

Q

Where did you go?

A

Over to the home of Dr. Sam.

Q

Why did you go to the home of Dr. Sam at that time?

A

I heard that the police were over there, that they were going through, and I thought that maybe I could get some more information as to what had happened.

Q

Did Steve tell you that?

A

No, sir.

Q

Who did?

A

Oh, everybody knew around the hospital that the police were

over there.

Q What time did you get at the home?

A Oh, it takes about five minutes to drive from the hospital to Dr. Sam's home.

Q Now, did I understand your testimony correctly that when you went into the house there, Marilyn's body had already been removed?

A Yes, sir.

Q Did you see the body being removed?

A No, sir.

Q It was removed before you got there?

A Yes, sir.

Q What time did you say you got there?

A I imagine' around 10.

Q Around 10 o'clock?

A 10:30.

Q The body had already been removed?

A Yes, sir.

Q And all that you told about this little boy occurred after the body had been removed?

A Yes, sir.

Q How long after you got there was it that this little boy went in the house?

A Oh, I talked around probably about 15 minutes, or so, before we went in the house.

Q So it was about 15 minutes after you got there that this little boy went in. Did you see this doctor give this little boy a turtle?

A No, sir.

Q Do you know who this little boy was?

A No, sir.

Q Did you ever meet the little boy that belonged to the Aherns?

A No, sir.

Q You didn't see a little pet being turned over to this little boy?

A No, sir.

Q But, at any rate, when this little boy was in the house, Marilyn's body had already been removed?

A Yes, sir.

MR. DANACEAU: I believe that  
is about all, sir.

MR. CORRIGAN: Thank you, Dr. Don.  
(Witness excused.)

THE COURT: Ladies and gentlemen  
of the jury, we will now adjourn for the noon hour,  
and return as soon as possible to 1:15 this afternoon.

In the meantime, please do not discuss this case.

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(Thereupon at 12:05 o'clock p.m. an adjournment was taken to 1:15 o'clock p.m., Tuesday, December 14, 1954, at which time the following proceedings were had):