

THEREUPON the defendant, further to maintain the issues on his part to be maintained, called as a witness JAY H. HUBACH, who, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION OF JAY H. HUBACH

By Mr. Sherman:

Q For the record, will you state your name and spell it, please?

A Jay H. Hubach, H-u-b-a-c-h.

Q Mr. Hubach, where do you live at the present time?

A 26631 Knickerbocker Road, Bay Village.

Q And how long have you lived there?

A Since 1957.

Q Where are you employed at the present time?

A I am with the a plating company.

Q And how long have you been there?

A A little over two years.

Q What was your employment before the plating company?

A On Bay Village Police Department.

Q What was your position on the Bay Village Police Department?

A From patrolman to chief.

Q When you left the Bay Village Police Department,

you were then Chief of Police?

A Yes, sir.

Q Going back to the year 1954, where were you employed at that time?

A Bay Village Police Department.

Q What was your position on the Bay Village Police Department; and would you keep your voice up, please?

A Sergeant.

Q In 1954, you were Sergeant on the Bay Village Police Department?

A Yes, sir.

Q Going back to the morning of July 4, 1954, do you recall being at the Sheppard home on Lake Road in Bay Village?

A Yes, sir.

Q You were there as a result of an investigation of a murder, is that correct, of Marilyn Sheppard?

A Yes, sir.

Q How many times do you recall being in the home on your investigation?

A I would hesitate to say. Many, many times.

Q During your times at the home, do you recall going up the stairs in the home from the first floor to the second floor?

A Yes, sir.

Q Do you recall whether or not there was a rail or a

banister on the stairway going up those stairs?

A Going up the stairs on the left was more of a solid banister type affair.

On the righthand side was a hand rail that was fastened to the side wall.

Q From your trips up the stairs, did you at any time notice anything unusual on this hand rail on the righthand side?

A Yes, sir.

Q Would you tell the Court and jury, please, what you observed on this hand rail?

MR. SPELLACY: May we have a date, your Honor? What date are we talking about?

Q Officer, during what period of time were you in and out of the Sheppard home?

A Well, to put a definite pinpoint, I can't. I was in and out of that home many, many times.

Q You were in the first time on July 4th, on this investigation?

A Yes, sir.

Q To pinpoint the time, can you give us any time, was it before the trial started?

A I would say yes.

Q Is there any way that can pinpoint it closer than this as to the actual date?

A No, sir.

Q In one of your trips up and down the stairs, again, I ask you if you noticed anything unusual on this railing?

A I saw what appeared to be --

MR. CORRIGAN: Objection.

MR. SPELLACY: We still haven't established the time.

THE COURT: Sustained, Counselor.

MR. SHERMAN: May we approach the bench?

THE COURT: Yes.

(Thereupon Counsel and the Court conferred at the Court's bench out of the hearing of the jury.)

MR. SPELLACY: All right, let him testify to it.

MR. SHERMAN: May the reporter read the last question, your Honor?

THE COURT: Mr. Reporter, would you read the last question to Mr. Hubach?

(Last question was read by the reporter.)

A I saw what appeared to be a bloody fingerprint.

Q After you observed what appeared to you to be a bloody fingerprint, was this pointed out to anyone by yourself?

A Yes, sir.

Q To whom was it pointed out?

A I believe that Fred Drenkhan was right with me at the time.

Q Fred Drenkhan, you are referring to the Patrolman of the Bay Village Police Department?

A He was patrolman at that time, yes, sir.

Q Do you know what Patrolman Drenkhan's duties were at that time in connection with this case?

A Being the first officer at the scene, he was with the Sheriff's Department most of that, the early part of the investigation. They worked together.

Q Do you recall, Officer, or, excuse me, Mr. Hubach, returning to the Sheppard home with Mrs. Dorothy Sheppard at any time?

A Yes, sir.

Q And do you recall when this was?

A To the best of my knowledge and recollection, it was in November.

Q How many times have you been in the Sheppard residence with Dorothy Sheppard?

A To the best of my knowledge, that was the only time.

Q On this time, that you were at the house with Dorothy Sheppard, do you recall if anyone else was there at the time?

A I believe the elder Doctor Richard was there, Dorothy,

Dave Phillips, and I am not sure if it was the young Richard Sheppard or Doctor Steve.

Q At this time, Mr. Hubach, do you recall if anything was found in the house?

A Yes, sir. A key was found.

Q And where was this key found?

A It was found in the kitchen near a waste basket.

Q Did you observe the key under the waste basket or near the waste basket?

A That's going back twelve years, but it was close thereby. I don't know exactly.

Q Officer, in 1954, did the Bay Village Police Department have a scientific investigation unit?

A No, sir.

Q Officer, do you know if that waste basket at any time had been moved from this area previous to the time when you were there with Dorothy Sheppard?

A Yes, sir.

Q Do you know if it had been carried around or emptied prior to this time?

A I know it had been carried around, and I believe it was emptied more than once.

Q So this key that was found on that date, to your knowledge, was it there prior to that date?

A Not to my knowledge, it wasn't.

MR. SHERMAN: Your witness.

THE COURT: Any cross examination, gentlemen?

MR. CORRIGAN: Yes, your Honor.

CROSS EXAMINATION OF JAY H. HUBACH

By Mr. Corrigan:

Q You testified in this matter in 1954, did you not, Officer?

A I testified at the trial, yes, sir.

Q And today I understand that you said this key was found in the open?

A I can't recall. It was close to the waste basket, sir, on the floor.

Q Is it not a fact, sir, that in 1954, you testified that the key was found under the waste basket?

A I don't recall that.

MR. SHERMAN: Objection, your Honor.

THE COURT: Overruled.

MR. CORRIGAN: On page 5185.

Q In 1954, what was your rank on the Bay Village Police Department?

A Sergeant, to the best of my knowledge.

Q And what was the rank of Officer Drenkhan?

A Patrolman, sir.

Q You testified here this morning that you saw what you thought was a bloody fingerprint on the banister, is that correct?

A It appeared to be, yes, sir.

Q Now, do you know as a matter of fact, whether or not, it was a bloody fingerprint?

A I was not a fingerprint man.

Q You were asked the question whether or not you had told anybody about this or conveyed this to anyone; do you recall that question being asked of you?

A Yes, sir.

Q And your answer was, "Fred Drenkhan was there at the time"?

A Yes, sir.

Q Now, the question was, did you tell anybody?

A We discussed it. We were together at the time.

Q You discussed it with Fred Drenkhan?

A Yes.

Q Was there not a time, sir, when you were in that home pointing out what appeared to be blood spots to Mary Cowan from the Coroner's Office?

A I was there. I know when Mary Cowan was there. I can't recall that, though, as a definite thing.

Q Did you point out to her any spots on the banister?

A Not I, no, sir.

Q Did you make -- as a Sergeant of the Bay Village Police Department -- did you make a report of what you thought to be a bloody fingerprint on that banister?

A No, sir.

Q Didn't you feel that that was important, Sergeant?

A I suppose it was, sir.

Q But you made no report?

A No, sir.

Q Did you ever point this out to Lieutenant Poelking of the Cleveland Police Department?

A Not to my knowledge.

Q Did you ever point it out to Sergeant Dombrowski of the Cleveland Police Department?

A I am not quite sure on that one.

Q Going back to the key, sir, you say now that you observed the key to be where?

A To the best of my recollection, sir, it was on the floor near the waste basket when it was brought to my attention.

Q It was on the floor near the waste basket when it was brought to your attention, is that correct?

A Yes, sir.

Q And by whom was it brought to your attention?

A To the best of my knowledge, it was Mrs. Sheppard.

MR. CORRIGAN: I have no further questions of this witness.

MR. SHERMAN: Your Honor, we are going after the record, and I would like to have it before we finish with the witness. It will be here very shortly.

THE COURT: Be at ease, ladies and gentlemen.

REDIRECT EXAMINATION OF JAY H. HUBACH

By Mr. Sherman:

Q Going back to 1954, Mr. Hubach, to your knowledge as Sergeant of the Bay Village Police Department, who had charge of this investigation?

A Chief Eaton had charge originally.

Q And was this investigation later changed to someone else's authority?

A The Cleveland Police were called that very morning, the first thing, because we realized it was a bigger thing than we had encountered and were capable of handling.

Q So at that time, at the time of the investigation -- strike that.

At the time when this fingerprint that you observed was found by you, were the Bay Village Police Department in charge of the investigation at that time?

A No, sir.

THE COURT: Page 5185, Counselor.

MR. CORRIGAN: 5185.

MR. SHERMAN: Your Honor, it is

5185 on the left, and the large number is 6801.

Q Handing you, Mr. Hubach, the transcript of the first trial, page 6801, would you refresh your memory from that, please?

A Just this one page?

Q In regards to the location of the key, have you found that, sir?

A Yes.

Q Now, after reading your testimony in the 1954 trial, can you state as to whether or not at that time your statement was that the key was under the basket?

A I didn't say that in this record that I can see.

Q And where did you say it was in 1954?

MR. SPELLACY: May we see it?

A To the best of my recollection, it was out in the open near the waste basket.

Q When you testified in 1954, Mr. Hubach, who called you as a witness?

A The prosecution.

MR. SHERMAN: That is all.

RECROSS EXAMINATION OF JAY H. HUBACH

By Mr. Corrigan:

Q Sir, on redirect examination, you had indicated that the time you saw the bloody fingerprint, the Cleveland Police Department was in charge of the investigation, is that correct?

A Yes, sir.

Q When did you see the bloody fingerprint?

A Sometime within the first two or three weeks, but I couldn't put a definite time on it.

Q You don't know when?

A No, sir.

Q When did Cleveland take over the investigation?

A At that time it was Bob Schottke and Pat Gareau came in, that very morning.

Q That was on July 4th, is that correct?

A Yes, sir.

Q And then they took over on that day?

A Well, I will get into that if you will allow me to. The chief was naturally in charge being our particular city.

But when Schottke and Gareau came in, they reported to Chief Eaton, and asked him what they should do, and he said, "You fellows know more about this thing than we do, and that is why we wanted you out here, we will leave everything in your hands."

We asked if we should take statements for them or anything like that, and they said no, they would handle everything themselves.

Q Was Cleveland there on the 5th of July?

A Very possible. I couldn't say, sir. I was in and out.

Q Was Cleveland there on the 6th of July?

A I couldn't say.

Q Was Cleveland there on the 7th of July?

A I know they were in and out, but what days they were there, I do not know. I had my work back at the station.

Q Were you there on the 5th of July?

A I was probably in there sometime on the 5th of July.

Q Were you there on the 6th of July?

A I would say very probably.

Q On the 7th of July?

A I don't know. I can't recall.

Q Anybody from Cleveland tell you what to do?

A No, sir, we just stayed back out of it.

Q From whom did you get your orders?

A Our orders were not to touch anything, observe but don't touch. This was the job of the investigators and why they were asked to come in.

Q So from the 4th of July on, all you did was make observations, is that correct?

A Yes, sir.

Q From the 4th of July on, all that you observed was one bloody fingerprint on the banister, is that correct?

MR. BAILEY: I object. He was only asked about one phase of this. That question is unfair.

THE COURT: Overruled. Do you understand the question, sir?

THE WITNESS: Could it have it repeated?

THE COURT: Surely. Mr. Reporter, would you be good enough to read the question, or do you want to restate it, Counselor?

MR. CORRIGAN: Will the reporter read the question, please.

(Question was read by the reporter.)

A I saw many things. I can't say I just picked out one bloody fingerprint.

Q With regard to that one bloody fingerprint, you don't know when you observed that?

A No, sir.

Q And you made no report of it?

A No, sir.

MR. CORRIGAN: No further questions of this witness.

MR. SHERMAN: That is all.

THE COURT: Gentlemen, I have
a question from my notes.

On July 4th, Mr. Hubach, were you
a patrolman or were you --- did you have
another rank?

THE WITNESS: I was Sergeant at
the time, sir.

THE COURT: And when did you
leave the Bay Village Police Department?

THE WITNESS: Two years ago,
October.

THE COURT: Anything further,
gentlemen?

MR. SHERMAN: Nothing further,
your Honor.

THE COURT: You are excused.

THE WITNESS: Thank you.

- - -