

The first motion is that the Court dismiss the indictment which has been brought against Sam Sheppard or, in the alternative, instruct the jury to bring in a verdict of not guilty.

THE COURT: That is on the entire picture?

MR. PETERSILGE: On the entire indictment, yes.

The second motion relates to the count of first degree murder, and the defense motion is to that count is that the Court enter judgment for the defendant on the count of first degree murder, or, in the alternative, that the Court instruct the jury to return a verdict of not guilty of first degree murder.

The third motion relates to the other counts of the indictment, namely --

THE COURT: The included counts?

MR. PETERSILGE: The included counts, second degree murder, first and second degree, or voluntary or involuntary manslaughter, assault and battery, and simple assault, and as to each and every one of those counts, the defense moves

that the Court enter judgment for the defendant on those counts or, in the alternative, instruct the jury to return a verdict of not guilty on those counts.

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Now, the indictment in this case charges that Sam H. Sheppard, on or about the 4th day of July, 1954, at the county aforesaid, namely, Cuyahoga County, unlawfully, purposely and of deliberate and premeditated malice, killed Marilyn Sheppard.

Now, as the Court knows, each and every one of those elements is essential, the proof of each and every one must be made by the State in order to sustain the indictment.

Purposely means that there must have been an intent to kill, and as recently as 156 Ohio State --

THE COURT: That is the case in which there was a conviction for murder while in the commission of a felony, and the Court said there still would have to be the intention to kill shown.

MR. PETERSILGE: That is correct. That is the case of State versus Farmer, 156 Ohio State 214, in which the Court thoroughly reviewed the Ohio authorities and concluded that even in the case which your Honor states, that intent to kill had to be proved as a necessary element of first-degree murder.

Now, the next element is "that the defendant of deliberate and premeditated malice," and that means deliberation and premeditation, which means that there must be evidence that the crime was turned over in the mind of the defendant before its commission. The length of time may be very short, but the proof must, nevertheless, establish that the matter was turned over in the mind of the defendant.

Malice was defined as early as State versus Turner, Wright's Reports, Page 20, as being the dictate of a wicked, depraved and malignant heart. "It is not necessary that the malignity should be confined to a particular ill will toward the person injured. It is evidenced by any act which springs from a wicked and corrupt motive, attended by circumstances indicating a heart regardless of social duty and bent on mischief."

Now, again I say that malice, as so understood in the legal sense, must be proved before there can be a finding of guilty of murder in the first degree.

MR. DANACEAU:

May I have that

citation, please?

MR. PETERSILGE: It is Wright, Page 20, the case of State versus Turner. You will also find it quoted in 21 Ohio Jurisprudence, Homicide Section 11.

Now, I say to your Honor that each and every one of those elements must be proved by the State before there is any case to go to the jury, and what is more, the Supreme Court has held, as your Honor knows, in State versus Channer, 115 Ohio State 350, and in Goodlove versus State, 82 Ohio State 365, that where there is an absence of proof of any essential element of the crime charged, that it is the duty of Trial Court to direct a verdict for the defendant.

In order for the case to go to the jury, there must be substantial evidence on all points which are essential to the State's case. If reasonable minds could differ on the matter, that is grounds for submitting the case to the jury. But unless there is substantial evidence, it cannot go to the jury.

And I refer your Honor to State versus Meier, 72 Ohio Appeals 275.

THE COURT: 72 Ohio what?

MR. PETERSILGE: Ohio Appeals, 275,
at Page 277, and State versus Cox, 16 Nisi Prius
new series, 531.

Now, in this case, your Honor, it is the
position of the defense that there is no proof
whatsoever of premeditation and deliberation;
that there is no proof of intent to kill; that
there is no proof of malice, and that there
has been no proof offered of any motive for
this crime with which Dr. Sam Sheppard is charged.

THE COURT: Does there have to
be motive?

MR. PETERSILGE: Motive is not an
essential element of the crime in and of itself,
your Honor, no, but the proof of motive is one
of the things which are taken into consideration
in determining intent and malice.

Now, so far -- and the State has closed
its case -- so far they have proved only this:
That Marilyn Sheppard died by violence and that
Dr. Sam Sheppard was in the house at the time.
They have utterly failed to show anything that
would connect Sam with the crime. As far as
the proof offered by the State goes, Marilyn

Sheppard was killed by an unknown weapon, in an unknown way, and they have offered nothing but an accusation against Sam.

In order to support that, I should like to review the evidence that has been offered in this case on behalf of the State, and they have produced some 30 witnesses.

The first one was Dr. Adelson, the Assistant Coroner, who testified as to the injuries which Marilyn had received and to the cause of her death. There is no dispute about the injuries or the fact that she was dead, but none of Dr. Adelson's testimony connects the crime with Dr. Sam Sheppard. It is purely devoted to a description of the injuries which the decedent received, and his conclusions as to the cause of death.

Dr. Adelson's testimony did develop that he had failed to make a test, a chemical test, to determine whether Mrs. Sheppard had been criminally assaulted, that he failed to make a microscopic examination of the wounds on her head which, he admitted, might have revealed some evidence which would have shown the type of weapon that was used and also which might

have shown the sequence of blows which caused death. And Dr. Adelson did not connect the crime in any way with Sam.

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The next witness was Don Ahern, whose testimony was directed largely to the background of his relationship and his wife's with the Sheppards, and also to the party which had occurred on the night of July 3rd. He and his wife were the last two persons to see Marilyn alive. Mr. Ahern's testimony did not in any way connect Sam Sheppard with the murder.

Mr. Ahern's testimony as to the relationship of Sam and his wife established that they were a happy, normal couple.

That evening the Aherns and the Sheppards had spent a pleasant evening together visiting as any two normal friendly families would. That Sam and his wife and child had come over to the Ahern house before dinner for cocktails. That the Aherns and their children had gone back to the Sheppard home. That they had spent a very pleasant evening together, had had dinner on the porch. That when they got there, Dr. Sheppard and Mr. Ahern walked down to the beach to look at the condition of the lake, because Dr. Sheppard said they had a group of interns and their wives coming for a large party the next day, and that he wanted to see whether it would be possible to

water ski.

When they got back, Dr. Sam and Mr. Ahern went down to the basement with the children, and Dr. Sam showed the boys how to punch the bag.

After dinner, Chip had a broken airplane. He came to his father, asked his father to fix it, and his father fixed it.

They had dinner on the porch, and then sat in the living room looking at television, while Mr. Ahern listened to the ball game, and while that was on, Dr. Sam was tired, laid down on the couch and went to sleep. Mr. Ahern testified it was not unusual for Dr. Sheppard to fall asleep when they were together, and when they left, which was sometime between 12 and 12:30, Dr. Sheppard was asleep on the couch.

Mrs. Ahern followed him. She confirmed in a general way what Mr. Ahern had testified to as to the relationships between the two families, and the kind of an evening that they had had on the night of July 3rd, in which there was nothing to portend the tragedy which occurred later that night. The only thing which Mrs. Ahern added was that in April of 1954, Marilyn had told her about

a conversation which Marilyn had had with Dr. Chapman while in California. The conversation was clearly hearsay, was objectionable, and should not have been admitted, but it is there, and for the purpose of this motion we will have to consider it.

In that conversation Mrs. Ahern said that Dr. Chapman and Sam, while driving up from Los Angeles to the Chapman ranch near Monterey, had discussed the possibility of Sam getting a divorce from Marilyn, and that Dr. Chapman had convinced Sam not to do it.

She later admitted that this was a change from the testimony which she had given at the inquest several months before in which she had stated that Dr. Sam had made up his own mind to abandon any talk of divorce, but whichever one may be correct, your Honor, I call your attention to the fact that the upshot of the conversation was that any idea of divorce which might have been entertained at any time had been dropped.

Mrs. Ahern also testified that Marilyn Sheppard knew about the gift of the wrist watch which Dr. Sheppard had made to Miss Hayes while in California, and when Mrs. Ahern asked whether

she was upset about it, she appeared not to be upset, said she hoped that everything was all over in that field, and from that time on, your Honor, there is no evidence whatever in the record of any thought of divorce or any unpleasantness between Sam and Marilyn. I am speaking about the period from April, 1954, on.

There have been other references to divorce. In the testimony of Dr. Hoversten, he stated that in 1950, when Sam and he were interns at the Los Angeles County Hospital, Sam had shown him a letter which he was intending to send to Marilyn, in which there was a suggestion of a divorce, but that was something which never materialized. Sam and Marilyn lived together as husband and wife, and the evidence is they lived together happily after that occasion.

In 1953, Dr. Hoversten said that when he was in Cleveland there was an occasion in which Sam and he had discussed divorce, but again nothing came of it.

Only this morning, your Honor heard Susan Hayes say that there had been talk of divorce at various times.

But I call your Honor's attention to two things:

In the first place, whatever talk of divorce there was had been many months back of this event. There are many families who have considered divorce and never got divorced, and in this case, the evidence seems to be clear on the State's own case that whatever thought there had been of divorce had been abandoned. That Sam had decided that Marilyn was the woman for him, and that they were living together happily, and during the last few months, prior to Marilyn's death, there is no evidence in this record to contradict that situation.

When Dr. Hoversten arrived at the Sheppard home on the night of July the 1st, what did he find? He found Sam and Marilyn out in the yard raking leaves together, hardly the sort of thing that a husband and wife would be doing who were contemplating divorce.

They went into the house with him, and Sam showed him to his room, and Dr. Hoversten spent the night of July 1st, part of July 2nd, the night of July 2nd, and part of July 3rd, with the Sheppards,

and he testified that at that time they appeared to be a normal, happy couple; that he saw nothing at all out of the way in their relationship.

The next witness to follow Mrs. Ahern to the stand was Mayor J. Spencer Houk. Mayor Houk also gave a good deal of background information about the Sheppards, and Mayor Houk supplemented that by his recital of the events that occurred on the morning of July 4th, because he was the person whom Sam called at about 10 minutes to 6 on the morning of July 4th.

Mayor Houk testified that he had known the Sheppards for several years; that they were neighbors of his; that they were customers of his; that he knew them socially, had attended parties with them.

There had been an occasion on which Mayor Houk and his wife and Dr. Sam and his wife had made a fishing trip to Canada together. That he and Dr. Sheppard owned an aluminum boat in common, and that on the Wednesday night preceding this murder, Mayor Houk and Dr. Sam had climbed into that boat about 2 o'clock in the morning and gone out a couple of miles into the lake to rescue a fisherman whose motor had gone bad. So he knew Dr. Sam and he knew the family. He had been a

frequent visitor to the house, and he said that in all that time he had never seen Sam lose his temper or mistreat his family in any way; that in his opinion, Sam was an even-tempered man; that Sam and his wife got along very well; probably argued less than the average couple.

Mrs. Houk said substantially the same thing, although she said they did have some arguments, but the only things that she could mention were whether they ought to buy a car or some furniture, and she remembered one occasion on which Marilyn had had a dishwasher installed, an automatic dishwasher, while her husband was out of town, and was a little upset to think what he might say when he got back.

Well, I submit to your Honor that if every household in which there has been an argument about whether to buy more furniture or to buy something that the husband would prefer to have, were under suspicion for murder, there would be very few homes where that wouldn't occur, and as far as the installation of the dishwasher, that is a rather substantial purchase, and I think most wives would feel that, if they bought it without their husband's knowledge, he might have something

to say when he got home, but certainly, that is no evidence to show in any way that Sam and Marilyn had anything except the most ordinary run-of-the-mine sort of discussions, nothing on which to predicate an assumption that he wanted to kill his wife.

And, after all, your Honor, there has to be proof of an intention that Sam wanted to kill his wife. I am familiar with the doctrine that an intention to kill, may, in some instances, be inferred from the circumstances of the killing without direct proof of intent, but that can only be important in this case if it is related to Sam. It must not be some general intent to kill. It must be Sam's intent to kill, Sam's malice.

Now, Mayor Houk testified that when he was called on the morning of July 4th, he and his wife climbed into their clothes, drove over to Dr. Sheppard's house, and went in. That they found him slumped in a chair in the den holding his neck. That while Mrs. Houk went upstairs, Mayor Houk asked him what had happened, and that Sam told him substantially the same story that has been told ever since, not in as much detail, but

that he had heard his wife scream; that he had gone up the stairs; that when he got up there, there was a struggle and he was struck down; that later he had come to, had heard a noise downstairs and had followed an intruder down to the beach, some form; that on the beach he grappled with the intruder and was knocked out again; that he later came back upstairs, and after wandering about in a kind of a daze, remembered Houk's number and called him and said, "My god, Spen, get over quick. I think they have killed Marilyn."

Mayor Houk called the police, the Bay Village police. He also notified Dr. Richard Sheppard, who immediately responded, and Dr. Richard Sheppard notified Dr. Stephen Sheppard, who likewise came, arriving somewhat after Dr. Sheppard. In the meantime, the Bay Village police had arrived and started an investigation.

Mayor Houk also notified the Coroner's office and called the Cleveland Police, and in due time all of those persons came.

Now, Mayor Houk testified in a general way as to the investigation that had taken place that day, but there was nothing that developed from his testimony which was inconsistent with the innocence of Sam.

Mrs. Houk followed him to the stand, and in most respects confirmed the story that had been told by the Mayor. I think there was nothing additional that was added by Mrs. Houk's testimony, except her statement that she had seen the brown corduroy coat on the couch. That is the coat which Mr. and Mrs. Ahern had previously testified Dr. Sam was wearing the night before.

Now, Mrs. Houk was followed by Fred Drenkhan, the Bay Village policeman who responded to the Mayor's call. Officer Drenkhan brought with him another officer and a couple of firemen. He went in and saw that Mrs. Sheppard was apparently dead and suggested calling the Coroner's office and also calling for help from the Cleveland

Homicide Squad, and from that time on more or less followed their directions as to what was to be done. He did take some pictures that morning, which have been introduced in evidence and show what the situation was in the house as he at that time found it.

He has since been active in the investigation. In fact, when recalled to the stand, he testified that they had only a week ago gone down to Cincinnati to interview another suspect, and that they were still conducting an investigation of this crime.

Mr. Drenkhan saw Sam that morning, and Mr. Drenkhan subsequently interviewed Sam at Bay View Hospital. He testified at length as to the story that Dr. Sam told on those occasions. When he interviewed Sam at Bay View Hospital, Carl Rossbach, Deputy County Sheriff, was present; Carl Rossbach, Dave Yettra and Mr. Drenkhan.

Mr. Rossbach testified that he had seen Dr. Sam briefly on the afternoon of the 4th, if I recall correctly, and again on Monday, July 5th, each time briefly. But on the afternoon of Thursday, which would be July 8th,

Mr. Rossbach, Mr. Drenkhan and Mr. Yettra interviewed Dr. Sam Sheppard at his room at the hospital for approximately three hours without any interference from anybody.

Now, there has been a lot of talk in this case about a protective wall thrown around Dr. Sheppard. I would like to call your Honor's attention to the fact that on the morning of July 4th Mayor Houk asked Dr. Sam what had happened, Dr. Gerber later saw him at the hospital, Detective Schottke and --

THE COURT: Gareau.

MR. PETERSILGE: -- Gareau interviewed Dr. Sam in the morning at the hospital with nobody being present.

In the afternoon Detective Schottke and Chief Eaton went to the hospital and interviewed Dr. Sheppard with no one else being present. That on the afternoon of July 8th there was a three-hour interview with Dr. Sheppard with nobody present. True, the testimony was to the effect that Dr. Richard or Dr. Steve stepped in for a moment at the time and took his pulse and got out again,

but that is hardly interference. The detectives could ask Dr. Sam anything they wanted to, and they all said that Dr. Sam answered their questions freely. In fact, there is not a syllable of evidence in the record to the effect that Dr. Sam has ever refused to cooperate with the police in this investigation.

On Friday, pursuant to a request that had been made on Thursday afternoon, Dr. Sam voluntarily went out to his home and went through the home for a period of two and a half to three hours answering all the questions that the officers had to ask him, re-enacting the crime as he remembered it -- I mean the events of the night before and the events of that morning, going down to the beach with them, pointing out the location of whatever they asked.

And following that, Mr. Rossbach requested that he come down to the County Jail and make a written statement. The evidence is that because of his condition, Mr. Corrigan objected to his going downtown, but Dr. Sam said, "No, I'll go," and he did come down. He and Dr. Steve and I presented ourselves at the County Jail a little after 8:00 on Saturday, the 10th, and we got

out of the jail about 5:30, quarter to 6:00 that night.

During part of that time Mr. Parrino, Mr. Rossbach, Mr. Yettra, Mr. Schottke questioned Sam by themselves for a period that has been variously estimated at an hour and a half to two hours. Nobody interfered with them.

Then they reduced the statement to writing. I was present while that was reduced to writing, and that statement is in evidence, your Honor. It has been read to the jury by Mr. Schottke.

Subsequently he was interviewed on various occasions by these detectives. But when Mr. Rossbach was on the stand, he testified that the story which Dr. Sheppard had told him on these various occasions was substantially the same, and that it was approximately the same as what appears in the written statement which is in this record.

He also was present during the inquest which Dr. Gerber held on July 22nd and 23rd, at which time Dr. Sheppard was on the stand for a total of five and a half hours and answered all the questions that were propounded to him by Dr. Gerber. And Mr. Rossbach said again that it was substantially the same story as we have heard

from the beginning.

In fact, there is nothing in this record, your Honor, to dispute the story which Sam Sheppard has told: A story of being awakened during the night by hearing his wife call out, of going upstairs, of seeing some form which appeared to be light on top, of grappling with it, being knocked out; that he came to; that he looked at his wife and felt that she was gone; that he went into Chip's room and checked his son and found he was all right; that he heard a noise downstairs; that he went down and saw a form going out through the door toward the porch or crossing the porch toward the outer screen door.

That he followed that form down the steps to the beach and grappled with it again and was knocked out; that as he followed that form down the stairway, it appeared from the back to be a dark form of a rather large man with a large, perhaps, bushy hair -- head of hair.

That when he tackled this form on the beach, he felt something solid, and that he felt a choking sensation, lost consciousness and woke up with his head toward the beach and his feet in the water being gently washed to

and fro in the waves.

That he went back upstairs, went into his wife's room and checked her again and confirmed what he had thought at first, that she was gone.

That he then wandered about in a daze, not quite believing that he was awake, thinking that he would snap out of this horrible dream, and finally, searching for something to do in his mind, thought of Houk's number and called Mayor Houk.

Chief Eaton followed Mr. Drenkhan to the stand, and Chief Eaton, in the main, corroborated what Mr. Drenkhan had said about the investigation, particularly in reference to the first day, because after that, except for occasional contacts, Chief Eaton devoted more of his time to the administration of the Department and didn't follow the case closely. But he related nothing on that --

MR. DANACEAU: Excuse me. May I
be excused for a moment?

THE COURT: Yes.

MR. PETERSILGE: He related nothing
which directly connected Sam with the murder.

Chief Eaton admitted in the course of his testimony that Mr. Stawicki came to him a few

days after the murder and related to him a story of having seen an intruder on Lake Road; that he had gone with Mr. Stawicki, who pointed out the Sheppard residence as the place where he had seen this man, that is, out at the road, and that he had taken a statement from Mr. Stawicki.

He was followed by Larry Houk. Larry is the son of the Mayor and he is the boy who found the green bag on the bank in which were found Sam's watch, his ring, his key chain and keys. That was found during a search that was made in the afternoon of July 4th pursuant to a request from the police that Larry get some of the other boys that he knew and extend the search through the bushes.

Larry had known Sam and Marilyn ever since they had moved out there. He had been over to their house occasionally, he had gone water skiing and swimming with them, he knew them well; and he said, too, that in his opinion Sam was an even-tempered man, had never seen him mistreat anybody or fly off the handle.

As a matter of fact, your Honor, I think I can say, without exception, that the people who knew Sam Sheppard and who have been produced:

by the State have really been character witnesses for Sam. There isn't one of them who has been able to say anything derogatory to this defendant, with the possible exception of young Tom Weigle, who was on the stand this morning, and the only thing that he complained about was that he thought Sam had spanked his son too hard.

Well, I submit to your Honor that if that is the worst that the State can get against Sam Sheppard, they are scraping the bottom of the barrel. Certainly a spanking of a boy by his father is nothing to send a man to the electric chair on.

Now, Larry Houk was followed by Dr. Gerber, and Dr. Gerber related in detail the investigation that had been made by his office and the conferences which he had had with the defendant and the inquest which he had held in Bay Village. He also produced a pillow on which he claimed that there was a mark which, in his opinion, was the mark produced by a surgical instrument, although when your Honor questioned him about it the next day, he said that he did not mean thereby to exclude the possibility that it might have been caused by something other than a surgical instrument.

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Dr. Gerber did not furnish any evidence which bore upon any intent by Dr. Sheppard to commit a murder, nothing which showed any ill-will, malice, or hatred or envy which Dr. Sheppard had which would have occasioned this murder, nothing whatever that would have shown deliberation or premeditation.

Detective Schottke then followed Dr. Gerber on the stand, and Detective Schottke related in great detail the investigation which he had made and the conferences which he had with Dr. Sheppard.

Your Honor will recall that Detective Schottke went to the Sheppard residence on the morning of July 4th in response to the call that had been made by Mayor Houk. He and his partner, Patrick Gareau, arrived there around 9 o'clock, and they were briefed as to what had happened, and then went upstairs and commenced their examination.

He was also, if not accompanied, at least they went out about the same time, by Detective Grabowski from the Bertillon Department, and those detectives commenced their investigation of the Sheppard premises.

After a time, Detective Schottke went down to the hospital, interviewed Dr. Sheppard, came back

from there to the Bay Village police station, from there back to the Sheppard home, at which time he confined himself more to the inside of the house, and Detective Gareau took over some of the search on the beach and on the outside, and then about 3 o'clock that afternoon Detective Schottke and Chief Eaton went down to Bay View Hospital, and on the strength of the investigation which they had made up to that time, Detective Schottke advised Dr. Sheppard that all the physical evidence pointed his way, and that in Schottke's opinion, Dr. Sheppard had killed his wife.

The defense believes, your Honor, that the evidence which has been introduced here shows rather conclusively that the police felt that at that time they had solved the crime, and that their entire investigations from that time on was directed to trying to find something which would pin the murder on Sam.

2 Detective Schottke and Detective Grabowski and Detective Gareau continued their investigation, and I think at this time I might refer to the investigation that was made by Mr. Grabowski on behalf of the Scientific Investigation department, the so-called Bertillon. I think it is rather

interesting to find out just what kind of an investigation is made in a case like this.

Detective Grabowski went out there, and he testified that he first went through the entire house to get a general picture of the situation. That he then took some photographs and checked for fingerprints downstairs, and then went upstairs and took photographs and checked for prints. When he was asked just exactly what he did, it developed that the fingerprint check was as follows:

He went into the living room downstairs and examined the desk which had had the drawers pulled out and the contents, some of them, dumped on the floor. That was a secretary type desk with a drop-leaf that can be used for writing, and he dusted that leaf in and out for fingerprints. He also dusted the fronts of the drawers and the side of the desk, and examined for fingerprints.

With respect to the papers on the floor, Detective Grabowski took a flashlight and held it at a 45-degree angle, tried to see whether he could see any fingerprints, and if he did, if it was something that he thought deserved further scrutiny, he dusted that particular piece of paper. He admitted that there might be fingerprints not visible to the

naked eye which could be brought out by iodine fuming or by another fuming process, but he made no attempt to do so, although he had an iodine fuming kit out in his car.

He also went into the den downstairs, and there saw that the drawers of the desk had been pulled out and were on the floor and some of the contents spread around. Detective Grabowski dusted the desk and the fronts of the drawers, the front of the desk and the top of the desk, but he did not dust the sides of the desk. There he used his flashlight again. He also dusted some of the metal boxes which were on the floor, and he dusted a couple of statuettes which were on the floor, and then he went out in the hall and looked at the door, the Lake Road door, and he said ~~that~~ he examined the door by his flashlight, and he also examined the doorknob, and with that flashlight, he said he could see that there were numerous fingerprints on the doorknob, but they were overlapping and not identifiable, and, therefore, he did nothing further about it. He took no picture of it.

He then went upstairs and he went into the bedroom where Marilyn had been murdered, and the

only thing that he checked for fingerprints was the window which had been opened, that window and that window frame. In answer to a direct question, he said he had not checked Marilyn's bed nor the other bed. He did not check the night stand between the beds. He didn't check the telephone that was on that night stand. He didn't check the alarm clock that was on that night stand. He didn't check the door frame or the door for fingerprints, and that he did not check the stairway going downstairs for fingerprints, although to a layman, it would seem that that would be a logical place to look.

Now, that is the extent of the fingerprint examination that was made.

He testified that on the writing desk in the living room and on one or two other places, he found marks which indicated -- parallel lines, as though made by very fine sandpaper or possibly by a coarse cloth. He also testified that he saw many smudges or undecipherable prints, but the only decipherable print that he was able to take was the palm print on the left of the writing desk, which it was later ascertained belonged to Chip.

Now, of course, his statement that that was the only one that he could take must be taken in conjunction with his statement as to what he did, and it is rather obvious that he did not make any thorough search of that house for fingerprints. Subsequently, some weeks later, Detective Poelking was sent out there to see what he could find, because he is an expert on latent fingerprints, and Detective Poelking testified as to his examination.

He went up into the murder bedroom and he examined, according to his statement, all of the various things which Detective Grabowski had not examined, and the only thing that he was able to find that was not a smudge or an undecipherable print, was a thumb print of Sam's on Marilyn's bed.

We will again submit to your Honor that for a husband to leave a thumb print on his wife's bed is nothing that is very serious.

Detective Poelking said that he did find numerous finger and thumb and hand prints belonging to various detectives who had been working on the case in the meantime, but, of course,

by that time, what was underneath nobody could tell.

Now, Detective Schottke was followed by Dr. Hoversten. I have already commented on Dr. Hoversten's testimony, and I don't wish to go over it again, but merely to add this thought that Dr. Hoversten brought out, and that was that the Sheppards had customarily not kept their doors locked.

Now, Dr. Hoversten testified that when he came home on the night of July 1st, Dr. Samuel Sheppard was up looking at television, and he came in and they talked a moment, turned off the set and went up to bed, but the next night, the night of July 2nd, when he came home, it was about 12:30, the family was in bed and the house was dark, and he walked right in from the roadside door, and it was unlocked. That he just opened it and walked right in. That when he went upstairs, Marilyn called out to him from the bedroom and said, "Is that you, Les?"

And he said yes. She said, "Did you lock the door?"

And he said "No."

She said, "Good, because the maid is coming

in the morning and I want her to be able to get in."

And Dr. Hoversten said at that time that he walked in and the door was unlocked as usual.

Now, Dr. Hoversten had lived with Sam and Marilyn Sheppard in that house for about six weeks when he first came to Cleveland, and he was familiar with the household. The story is further borne out by what the maid, Elnora Helms said, because she said that on numerous occasions Marilyn would arrange with her to leave the door open, and when she came early she could get in.

Also, at the time Sam was in the den, at the time when Mayor Houk first came over and Sam was in a state that has been described by the witnesses as rather dazed and confused, suffering from pain and giving evidence of shock, one of the things that he said was, "And I used to kid Steve about keeping his door locked."

And when Mr. Munn was on the stand this morning, he said that on the morning of July 4th, when he and Marilyn's father went to the hospital and saw Sam, that one of the things that Sam said was that he regretted that he hadn't kept

the doors locked.

Now, those were statements that were made at a time when he was still so far under the influence of the beating that he had received that they certainly are a spontaneous exclamation, and it all ties in with what Dr. Hoversten testified to.

Witness after witness for the State has gotten on the stand and said that he made an examination when he got there on July 4th and found no evidence of forcible entry. Well, of course, if the door was unlocked, you don't have to have evidence of forcible entry. Anybody could walk in, and the fact that they didn't find a broken lock on the door, or that they didn't find a window forced, would not in any way negative the possibility of an intruder having walked into that house.

The next witness was Carl Rossbach, whom I have already discussed, and he was followed by Mr. Earl Johnson, the assistant custodian at the morgue, and all he testified to was that he had removed Marilyn's clothing and identified it, and also the rings.

He was followed by Richard Sommer, one of the firemen in Bay Village, who had accompanied Officer Drenkhan over to the house on the morning of July 4th, and who had helped take a stretcher up to her room. The only thing that he added was that at the request of the Mayor or the Chief of Police, he had gone down onto the beach and talked to one of the fishermen on the pier, or I believe there were two fishermen on the pier, had talked to them, referring to the pier at the westerly end of Huntington Beach Park, which is just a short distance east of Dr. Sheppard's place, and took their names and addresses. He said that when he went over there he did not see any footprints on the beach, but I will call your Honor's attention to the fact that he didn't say there weren't any. He said he didn't see any, which is quite a different thing.

In evidence is a picture that was taken by the Bertillon Department showing footprints on the beach, and one of them -- well, there is more than one -- there are two photographs here which show the imprint of a woman's barefoot on the sand, which was taken on the morning of July 4th at the Sheppard beach.

Mr. Sommer was followed by Mr. Cy Lipaj, who is a teacher in Bay Village, but who is a full-time patrolman in the summertime. Mr. Lipaj was on duty at the Sheppard place for quite a time after the murder, and he was on duty at the time that -- it was on July 14th, 10 days after this, that a T-shirt was found snagged on a wire on the Schuele's pier a few feet out from shore and slightly under the water. He identified the T-shirt.

One of the things that had been brought out by the other witnesses was that on the night of July 3rd, at the time the Hearn's left, Dr. Sheppard had been wearing a white T-shirt. The next morning when Mayor Houk got there, Sam did not have the white T-shirt on, didn't know what had become of it, and a great deal of speculation has been introduced over that T-shirt. As far as the defense is concerned, the defense fails to see how the absence of that shirt connects Dr. Sam with the murder in any way, but the fact is that a few days after a white T-shirt was found snagged on the wire on Schuele's pier which is just the next house west of Sam, and on the night of July the 3rd and the morning of July the 4th,

there had been a northeasterly wind, so that whatever drift there was would have been in that direction.

Mr. Lipaj was followed by the maid, Elnora Helms, who, in addition to speaking about the door being left unlocked, stated that during the spring of 1954, she thought it was in April, maybe the latter part of April, the dog, Koko, had been in heat and had left a trail of blood spots wherever the dog went. Mrs. Helms said that the dog had the complete run of the house, so that meant in the basement, in the garage, bedrooms, downstairs, all through, the kitchen, and she testified that she would wash up the floor, but that she didn't go around the house looking for places to wash up, which I think is understandable to anybody who has help, and she further testified that inasmuch as the carpet was a reddish color and the blood spots blended into the carpet, that they never cleaned up the carpet.

According to her recollection, that would have occurred toward the end of April, which would be roughly two months before Marilyn's murder, but in that connection, I want to call your Honor's

Mrs. Helms also testified that she had worked for the Sheppards since early 1952. that she came there once a week and that she had observed an air of affection between the two, adding her testimony to that of the many friends and other people who knew them that Sam and Marilyn were an affectionate couple and got along well together.

Mrs. Helms was followed by Detective Michael Grabowski, who made the fingerprint tests and took some of the photographs which are in evidence here, and Detective Grabowski was followed by Patrick Gareau. Detective Gareau, in the main, reiterated what we already knew about the investigation that had been made, but added very little to what had gone before.

He was followed by Mrs. Doris Bender, who testified that on the night of July 3rd she and her husband had been visiting friends in Aurora; that the Benders live a short distance to the west of the Sheppards, a quarter to a half mile, something like that, and that on the morning of July 4th she and her husband, coming back from Aurora, passed the Sheppard home sometime between 2:15 and 2:30 in the morning. That at

attention to the testimony of Mary Cowan, that blood spots retain their identity, and unless washed off or interfered with in some way, can be analyzed and identified for months and even years after they have been dropped on a surface.

that time she saw a light upstairs in the dressing room of the Sheppard home and also a light downstairs in the east end of the house, which would be the den.

The testimony of the witnesses who arrived on the morning of July 4th is that when they got there, there was a light burning in the dressing room upstairs but that was the only light that was on in the house.

It is possible that Mrs. Bender was mistaken, but for the purpose of this motion, we will have to assume that she saw a light downstairs in the den at 2:30 in the morning. I still say to your Honor: What difference does it make? It is not connected with Dr. Sheppard in any way. Nobody knows when Marilyn went to bed, whether Marilyn was up at that time and had gone into the den; if there was an intruder, whether the intruder had put a light on in the den at that time. There is no proof whatever that Dr. Sheppard had anything to do with it and no proof when the light went on or when it was turned off.

Mrs. Bender was followed by Detective Poelking, who gave considerable testimony on

technical phases of fingerprint investigation, but whose only finding was a thumbprint of Dr. Sam on the head of his wife's bed.

He was followed by Mr. John Tronti, who was fishing on the westerly pier of Huntington Beach from approximately 10 minutes before midnight on July 3rd until about 1:30 to 2:00 the next morning, and he testified that it was too rough for fishing and so he left at that time and went home. He both came and went through Huntington Beach, and did not know anything about the situation west of Huntington Beach where the Sheppard residence is situated, although, of course, with the winds from the northeast, the Sheppard residence would be in the lee of any pier extending out from Huntington Beach.

Now, he was followed by Jerry Schumacher, who, with a couple of his friends had been driving along the Lake Road and stopped at Huntington Beach Park about 1:00 in the morning or a little after. They walked down through Huntington Beach over to the west pier where these fishermen were and asked the fishermen whether they knew where they could find a

wiener roast, and when they found they couldn't, they walked back the same way they had come, through Huntington Beach and out again.

They were only there for a few minutes. They knew nothing about the condition of the beach west of Huntington Beach Pier.

His recollection was that there was a pretty good size beach at Huntington Beach when he was there, but he didn't know about what it was on the other side.

He was followed by Bill Hallenkamp, who was one of the boys out in Bay Village who had known Sam and Marilyn for a long time and who was recruited to help search the bushes and see whether he could find anything.

His contribution was that some days later when they were searching a spot about 100 to 150 yards east of the Sheppard property and about 15 to 20 yards up the bank from the beach, they found a pair of sun glasses and a handkerchief, which have been introduced in evidence. This spot was a foot path that ran from the beach up to the Lake Road, within a few feet of Huntington Beach Park, which is a public park, of course.

There is no evidence as to who the sun glasses

or handkerchief belonged to, or whether they have any connection whatsoever with the Sheppard case. Hallenkamp, however, had known Sam and Marilyn for a long time and he added his testimony to that of the others, that Dr. Sam was a fine, even-tempered person, never saw him fly off in a rage, never saw him mistreat anybody.

There was other testimony that Dr. Sheppard had a basketball hoop arranged in his garage, used to play basketball with the boys, that many of them came over to his place and went swimming, that he took them out water skiing; that Dr. Sheppard helped the high school football team. When the boys were injured, they were referred over to him and he took care of them, never made a charge for it. In fact, whatever testimony there has been in this record about Dr. Sheppard has been that he has been an outstanding citizen in the community, has been interested in civic things, that he has cheerfully made his contribution and that the people who knew him liked him.

Mr. Hallenkamp was followed by Detective Dombrowski, and he developed the train of what sometimes has been called blood, although Detective Dombrowski said frankly from the

stand that the Luminol test and the benzidine test which he made on these spots indicate merely that it might be blood, not necessarily that it is blood. And as far as he could tell, except for one spot which he found on the basement stairs, the third step from the bottom, he was unable to say whether that was dog blood or human blood or whether it was blood at all.

He admitted that there are many other substances beside blood which will give a positive reaction to a benzidine test or which will fluoresce under Luminol. He denied that Coca Cola would fluoresce under Luminol, but he did mention other substances, such as various vegetables and chemicals.

Dr. Gerber, on the other hand, when asked why he didn't go out there and make a Luminol test immediately, said that he wouldn't use Luminol because Luminol would fluoresce under Coca Cola. In any event, they all seemed to be pretty well agreed that the Luminol test, the benzidine test and, to add Miss Cowan's testimony, the leuchomalachite green test and also the phenolphthalin test, are not positive tests for blood; that they are an indication that it

might be blood, and that is as far as you can go.

Detective Dombrowski, however, did say that there was one spot of blood on the basement stairs which he was able to take off and test with the precipitant test, using anti-human rabbit serum, and that as a result of that test he was able to state that in his opinion it was human blood on that step.

However, Detective Dombrowski also admitted that he could not say whose blood it was, that he had not been able to type it, and that he could not tell how long that drop had been on the stairs. He admitted that a drop of blood might come from many reasons, a cut finger, a crushed insect, and he couldn't say how that drop of blood got there or whose it was or how long it had been there.

Detective Dombrowski also testified that when he got out to the room and made a thorough search under the bed, and that search wasn't made until several weeks after the murder, but when he did he found a fragment of tooth chip which has been introduced in evidence here. It hasn't been connected up in any way, but there it is. It was found, and as far as the

evidence shows, it may have belonged to some intruder. There is no proof on the point.

Detective Dombrowski was followed -- rather, in the midst of his testimony was interrupted to insert Mr. Arthur Baeird from Columbus, who had been fishing with his brother-in-law on the west end of the Huntington Beach pier for a short time on the morning of July 4th. He was there from about 6:00 until 7:30, and he came through Huntington Beach, walked out on the pier, tried a little while, decided it wasn't a good day for fishing, walked back up. He knew nothing about the condition of the beach on the Sheppard property and added nothing to the State's case.

Then Mr. Baeird was followed by Dr. Hexter. You will remember Dr. Hexter, who testified to the injuries which Sam had received. He was called by Chief Eaton on the afternoon of July 4th and subsequently contacted by Dr. Gerber, requested to go over and examine Sam. He did so and he reported that Sam had the injury and swelling to his forehead on the right side, to his right eye; that he had an injury to his mouth; that he could only open his mouth about

50 per cent, although Dr. Hexter had not examined his teeth and didn't know whether the teeth were loose or not.

He also reported that he made an examination of Sam's reflexes, and that he found the cremasteric reflex and the abdominal reflex on the left side missing.

He testified that in his opinion the absence of those reflexes meant nothing, and subsequently said that in and of themselves the absence meant nothing.

He also said, on cross-examination, that he couldn't remember all that stuff about neurology because he graduated from medical school in 1934 and he hadn't studied anything about it since. He did say that since July 4th he has been examining practically all of the patients who come to him for the presence or absence of the cremasteric reflex and also the abdominal reflex so that he can determine what percentage of people normally don't have the reflex, and that he had been doing that regardless of whether the particular thing they came in for for treatment required it or not.

Well, Dr. Hexter's examination of Dr. Sam,

as he pointed out, was only once. He saw him for about 45 minutes, and outside of the fact that Sam did have certain injuries which Dr. Hexter could determine and the absence of certain reflexes which he apparently couldn't evaluate, Dr. Hexter added nothing to the State's case.

The next witness was Miss Mary Cowan, who also testified as to the so-called blood trail. Now, Miss Cowan testified in detail as to the tests which she made of the various spots of blood throughout the house. And the spots which she found and which Detective Dombrowski found have been photographed by the police, they are in the evidence here. Except for the five spots which she claimed were human blood, which I will refer to in a moment, she agreed with Detective Dombrowski that the tests which she made did not indicate whether it was human blood or dog blood or some other substance. Those spots, your Honor, are shown in the photographs, and they show, I believe, that this so-called trail of blood is absolutely incompatible with any thought that it was made by Sam Sheppard.

There are drops all over the place, exactly

as you would find them from a dog wandering about the house. There are drops even in the garage, on the landing going upstairs, on the stairway going upstairs, on the floor upstairs and way back -- and one of them even shows a drop way back in the corner in the storage space. There are drops in the basement, there are drops in the living room, there are drops all over the house.

And one significant thing, I think, is that those drops were approximately the same size no matter where found. If you will assume the State's theory, that Dr. Sam either had blood on his hands or on the weapon and made those spots by walking about the house, you could logically suppose that you would find bigger drops at the place where he left the bed or where he went down the hall, that in going down the stairway you would find larger drops up on top than down at the bottom. Neither Miss Cowan or Detective Dombrowski could say how far you could walk with fresh blood on your hands or on a weapon and leave drops. They did know that the blood would coagulate quickly.

But, in any event, an examination of those spots and of the evidence that is in about them will show that unless somebody had a sponge or something that would renew the supply of fluid, it couldn't have been made by somebody walking out of that bedroom with blood on his hands or blood on an instrument.

The only thing that they are compatible with is what -- the story Mrs. Helms told, of a dog that was in heat and running about the house and splashing drops of blood all over the place.

Now, Miss Cowan related that she had found five spots which she was able to either lift physically with a spatula or a razor blade or which she was able to take off by distilled water and a dropper, making a solution, those spots being on the basement stairs, the treads or risers from the kitchen to the first landing going upstairs and on the stairway to the second floor from the landing. That she had made precipitant tests on those spots which also developed that they were human blood.

Miss Cowan, however, the same as had Detective Dombrowski before her, frankly admitted

on the stand that she could not tell whose blood it was, that she had been unable to type the blood and that she could not tell how long the blood spots had been there.

Now, your Honor is familiar with the principle in Ohio law that you cannot pile an inference on an inference, going back to the old Sobalovitz versus Lubric Oil case in 107 Ohio State. If anything is to be made of these drops of blood by the State, it inevitably involves piling an inference on an inference.

In the first place, if you are going to consider any drops except the five that Miss Cowan referred to and the one that Detective Dombrowski referred to, the jury would have to assume that the other drops were made by human blood instead of either dog blood or some substance which would fluoresce under the tests which were made or would give a positive reaction.

However, even if you don't make that assumption, if you just restrict it to the six spots on which precipitant tests were made, in order for those spots to mean anything on the first-degree murder charge against Sam Sheppard, the jury would have to assume, or

draw the inference, first, that they were not only human blood but were Marilyn's blood; secondly, they would have to infer that the drops were put there on the morning of July 4th, because if they were there beforehand, it wouldn't mean anything in this case even if they were Marilyn's; and thirdly, they would have to assume from that that the drops were put there by Sam Sheppard, which would be an inference on an inference on an inference and clearly would be improper under the Ohio authorities.

Now, Miss Cowan also said that she had found by typing Marilyn's blood, that she was typed with an M factor, RH negative; that in typing or testing the specimens that had been taken from the sheet on Marilyn's bed, she was able to determine that it was type O blood, but couldn't go beyond that.

The watch, Mrs. Sheppard's watch which was found in the den, had blood on it, and Dr. Sam Sheppard's watch, when found on the bank in the green bag, had blood on it.

Miss Cowan testified that she typed those -- tested them for human blood, typed them and

found that it was a type O blood. She couldn't go beyond that.

MR. CORRIGAN: Type M.

MR. PETERSILGE: Excuse me. Yes, type M. Type M blood was found on the watches. That still leaves a considerable gap between Sam Sheppard and how the blood got on the watches, and there is no evidence at all to prove it one way or the other.

Miss Cowan was followed by the witnesses who were on this morning, Mr. Munn -- Miss Cowan also testified that she had examined the trousers which Dr. Sam wore that day, including the belt which was on the trousers, and the socks and the shoes which he wore. On those trousers there was found only one spot of blood, and that was a spot of blood above the right knee, just about at the knee. The rest of the trousers, although examined very carefully, revealed no drop of blood whatsoever, the shoes revealed no drop of blood, the socks revealed no drop of blood, the belt revealed no drop of blood.

There is in evidence here, your Honor, pictures that were taken at the Sheppard home in the murder bedroom, and they show that when

Marilyn was killed, the blood was sprayed around that room as though it had been done by a hose. There were droplets all over the doors, all over the wall back of her bed, even on the wall at the other end, at the north end of the room there are these droplets of blood, and they show very definitely in the photographs. In fact, the photographs, some of them show that the blood went clear down to the bottom of the doors, the closet door and the door of the room which had swung back against the wall.

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It is a certainty that whoever killed Marilyn had that blood sprayed on them. It couldn't have been any other way. Whoever swung that weapon, whatever it was, and struck the blows that caused her death, couldn't have avoided being sprayed with blood. If Sam had done it, there wouldn't be just one drop of blood, there would have been 50 in his trousers or on his shoes or on his belt.

Miss Cowan testified that blood clings to cloth. She testified that it can't be washed out. Even boiling won't take it out. That there are tests which can be made which will still determine the presence of blood, and Miss Cowan made a very thorough test, but she couldn't find a drop on Sam's clothes except for the spot in his knee, which undoubtedly came when, as the evidence showed, he took his wife's pulse and felt of her at the neck. Undoubtedly that is when the blood got on his watch, and the most natural thing in the world, after you have felt somebody, would be to wipe your hand across your trouser leg, but that is the only spot on which there was a spot of blood.

Probably one of the strongest things that speak

out for Sam's innocence is the mute evidence that is given by that pair of trousers, and the socks, and the shoes and the belt showing that there are no drops of blood on them.

Now, Miss Cowan was followed by the witnesses this morning, Mr. Munn, who is the husband of Marilyn's aunt, and who had seen Marilyn and her husband on an average of once a month for the past couple of years. He said that he had never seen Sam mistreat Marilyn. He said that when he went over to the hospital on the morning of July 4th with her father, that they both held his hand and told him to keep his chin up. That they were with him all the way.

He was followed by Marilyn's cousin, Thomas Weigle, who testified to the spanking that I discussed earlier, and he was followed finally by Susan Hayes.

Susan Hayes told about intimate relations which she had had with Dr. Sheppard. There is no use going into any detail on that, but I want to call your Honor's attention to several things.

In the first place, Miss Hayes, although she said that there had been talk about divorce, Miss

Hayes testified that the first talk about divorce was sometime in 1953, and that she had started having relations with Dr. Sam in 1952, December of 1952, before there was any talk about divorce.

She also testified that during their relationship, during their acquaintanceship, that Dr. Sam had frequently told her that he loved his wife. She also testified that at all times she knew that he was a married man.

In view of that situation, your Honor, the defense feels that there is no real significance to the testimony of Susan Hayes. In the first place, your Honor, she testified that when this liaison between herself and Sam started she was working as a medical laboratory technician at the hospital. That is in 1953. She voluntarily left and went down to work in a downtown laboratory. That following that, it was at the instance of Dr. Hartman that she went back to Bay View Hospital, not at the instance of Dr. Sam Sheppard. That when she went there it was only on a temporary basis, and that after she had been there for a short time, she gave notice that she would leave in about a month and a half, and did early in February, and at that time went out to

California, all of which is certainly inconsistent with any theory that there was any intent on the part of Sam Sheppard to divorce his wife and marry Susan Hayes.

But even if you go beyond that, the evidence in this record is strong, as I have stated to your Honor, that whatever thought of divorce there might have been had been abandoned, and that from April of 1954 on, the Susan Hayes incident was passed so far as Sam was concerned.

For the sake of this motion, let's assume for the moment that that is not correct.

THE COURT: Let's assume what?

MR. PETERSILGE: Let's assume that that were not correct. Let's assume that divorce was still contemplated. I still say to your Honor that it would be no proof on which to convict this man, because if that is what Sam had in his mind, to divorce his wife, why would he kill her? There are 12,000 divorces a year go through the courts of Common Pleas in Cuyahoga County. That's 24,000 people who are separated without any violence. It is an easy matter to get a divorce.

THE COURT:

I think you are a

little wrong in your figures. We have 12,000 cases, a little over half of them are divorce cases.

MR. PETERSILGE:

Well, I will accept your Honor's figures.

THE COURT:

We have got too many of them, anyway.

MR. PETERSILGE:

Well, anyway, it is a large number of people.

THE COURT:

It sure is.

MR. PETERSILGE:

And it is not difficult to get a divorce.

If divorce was what he had in his mind, it wasn't murder.

There is one thing I want to say in that connection, and that is, if things were not over between this defendant and Susan Hayes, why would he have needed to kill his wife? He certainly didn't have to kill her in order to get Susan Hayes. He had her whenever he wanted her, and certainly the thought that it was necessary to kill his wife because of Susan Hayes seems to the defense to fall absolutely flat.

THE COURT: Do you want to finish now or would you rather have a little recess?

MR. PETERSILGE: Well, I think I would prefer a little recess, if your Honor please.

THE COURT: Oh, sure. Now, we will have a few minutes' recess, please.

(Thereupon at 3 o'clock p.m. a recess was taken, following which proceedings were resumed at 3:15 o'clock p.m., as follows):

(Thereupon the following proceedings were had were had within the hearing and presence of the jury):

THE COURT: Ladies and gentlemen of the jury, we have some legal matters here in which you are not interested at all, and it looks as if they will take the rest of the day as far as we are concerned, so we are agreed that as far as you are concerned, you are now released until 9:15 tomorrow morning, and will you please be careful in the meantime not to discuss this case with anyone, not even among yourselves?

9:15 tomorrow morning.

(Thereupon the jury retired from the courtroom, after which the following proceedings were had in the absence of the jury):

MR. PETERSILGE: At this time, your Honor, I wish to go into a different point in support of this motion, and that is that the evidence which the State has presented is entirely circumstantial evidence.

Now, as your Honor knows, where reliance for conviction is placed on circumstantial evidence only, it is necessary that the facts and circumstances upon which that theory of guilt is based must all be established beyond a reasonable doubt by substantial evidence, and when taken together, must be so convincing as to be irreconcilable with the defendant's claim of innocence, and also that they must admit of no other hypothesis or solution than the guilt of the accused man.

THE COURT: Isn't that consistency or inconsistency, whichever you call it, isn't it nevertheless a question for the jury, if the evidence is here at all, whether circumstantial or direct?

MR. PETERSILGE: If it is evidence on

which reasonable minds can differ, yes.

Otherwise, not.

And I think that is borne out, your Honor, by the ruling in State versus Nevius, 147 Ohio State 263, where syllabus 5 states that:

"In a criminal prosecution, the corpus delecti may be established by circumstantial evidence where the inference of the happening of the criminal act complained of is the only probable or natural explanation of the proven facts and circumstances."

In other words, if the evidence is such that reasonable minds could not differ on it. if the only inference that you could draw does not support the theory of the defendant's guilt, if the only evidence on which reasonable minds could not differ is such that the crime might have been committed by somebody else, then the State hasn't made a case.

Now, I want to examine the evidence for a moment from the standpoint of that question.

THE COURT: From the standpoint of what?

MR. PETERSILGE: Of that question. In other words, giving the evidence the most favorable interpretation from the State's standpoint, is that irreconcilable with the defendant's innocence? And giving that evidence the most favorable interpretation from the State's standpoint, does it establish that the crime might have been committed either by Sam or by somebody else?

Now, in that connection, it is our position that the facts as brought out by the State are entirely reconcilable with the defendant's innocence and also that they show

that the crime might just as well have been committed by any number of persons as by Sam Sheppard.

The points which are relied upon by the State as establishing the circumstantial evidence which, taken together, points toward Sam Sheppard have, in part, been referred to in the discussion which I made prior to the recess. There are some other things which I believe the State intends to rely on which I want to mention.

The first is the blood on Sam's watch, the fact that there was blood on Sam's watch. That is evidently going to be urged as some indication that Dr. Sam was the murderer. I want to point out to the Court that that is equally consistent with the theory that Dr. Sam was not the murderer.

According to his story, which is the only story that we have in evidence as to what happened, he went up to his wife's room and engaged in a struggle and was knocked out. Now, if the murderer, who undoubtedly, from the appearance of the room and from the quantity of blood spilled, had blood on him --

if the murderer at that time took off Sam's watch and key chain and ring and later in his flight to the beach threw it away, it is entirely understandable how there would be blood on that watch and how that would be found on the bank. There is no evidence of how the bag got there, but, on the other hand, there is no evidence at all as to how that blood got on the watch. And as far as the evidence that has been produced by the State is concerned, it is just as reasonable to assume that it came about in the way that I have mentioned as it is to assume that it came about in some other way.

Now, the State will undoubtedly also refer to the time lag that occurred on the morning of July 4th. In other words, Dr. Gerber expressed his opinion that Marilyn was killed sometime between three and four o'clock. Dr. Sam didn't call Mayor Houk until 10 minutes to six. What happened in the meantime?

The State will urge that that time was used by Dr. Sheppard in cleaning up the house, in setting up the appearance of a burglary and disposing of the murder weapon, washing stains

off and so forth. On the other hand, we have the story which Dr. Sam told to Officer Drenkhan, Mayor Houk, Carl Rossbach, Detective Schottke, which he has in his written statement that is in evidence, that he doesn't know when he was awakened by his wife's outcry.

THE COURT: I am troubled by that, Mr. Petersilge. What if the jury say they didn't believe that? Do they have a right to do that?

MR. CORRIGAN: No.

THE COURT: What if the jury should say, "Well, we don't believe that"? Isn't that their function, to either believe or disbelieve it? Isn't that a question of fact, even though so far we have only the indirect transplanted statement of the doctor?

MR. PETERSILGE: Well, your Honor, there is no refutation of that statement of fact in the record at the moment.

THE COURT: No, but it isn't here direct, either. It is only a transplanted statement, a statement that he made to them during that period. That is all we have here so far. That bothers me, and I am stating it

bluntly and frankly to you.

MR. PETERSILGE: I am glad your Honor does so. It is our view that they cannot disbelieve it at this point for the purpose of this motion, but further, your Honor, even if that particular point could -- it is only one thing in the chain of circumstances, and in order for the State to prevail, all of these circumstances in the chain must be established. Now, even if this particular point that I am raising now were to be ruled out because of the point that your Honor makes, there would still be the other points which I am coming to.

It is our view, your Honor, that it is not in the province of the jury to disbelieve an unrefuted fact, which this is at the moment, but in any event, as I say, if that would be out of the picture, there still are other facts which go to break the chain which I wish to urge upon you.

Now, the point I wish to make in that connection is that according to Sam's story, which is unrefuted, he was knocked out at whatever time his wife was being killed, that he doesn't know how long it was before

he came to, and he chased the intruder down to the beach and was again knocked out; nor does he know how long it was after he came to -- how long he was out down there, or after he came to, how long it was before he called Mayor Houk.

If his story is believed, and it is unrefuted at the moment, then there is ample reason for the time lag which the State will refer to.

Now, the next point -- and it fits into the question of what Sam did that morning -- is the so-called 35 blows which Marilyn Sheppard received. The State's theory, as indicated in the opening statement and in the questioning of the witnesses, has been that when Dr. Sheppard was awakened and heard his wife's call and rushed upstairs, that there wouldn't have been time for these 35 blows to have been struck. That hinges upon whether there were 35 blows. Even assuming that you look only at the 25 blows above the head, you still get into a question of time there.

Now, that is hinged upon the supposition that 25 blows were struck by some instrument. The instrument isn't here at all, it hasn't be presented. However, in the questioning of Dr. Adelson, it was brought out that the blows

on the forehead of Marilyn Sheppard, starting from left to right, there was a half inch between the first and second wounds, and that from there on the wounds were spaced evenly an inch apart.

THE COURT: That they were equi-distant apart.

MR. PETERSILGE: Yes. Also that some of the wounds on top of the head were equi-distant, not the same distance, they were about a half an inch apart, but they were equi-distant.

Now, it is straining the bounds of credulity, your Honor, to assume that anybody could go up and strike with a single weapon, strike blows and space them a half inch apart or an inch apart across somebody's forehead in the dark that way. I don't know what the mathematical chances are, but certainly the Court can take judicial notice that it would be a practical impossibility for somebody to strike that sort of -- to strike at random in the dark like that and have the blows come out that way. It seems almost certain that whatever weapon was used, it was more than a single piece of

wood or pipe, or whatever it may have been, that there was some multi-pronged thing which made the marks in one or two or three or some fewer number of strokes, and that the State's theory on the time lag certainly is not supported by the facts which are now in this record from the Coroner's testimony.

Now, another thing that we expect the State to talk about is the alleged absence of fingerprints. I must say that so far as I am concerned, I see no reason why Dr. Sam would have gone about the house wiping off his own fingerprints.

I expect that in my house there are plenty of my fingerprints, and I believe there would be the same in yours. The natural thing would be to find the fingerprints of the man who lives there.

What motive could Sam have had for going about and wiping off fingerprints? It just doesn't fit. Actually, however, when you sift through the testimony of the fingerprint experts, what you find is that there were many things in the house that they didn't examine where, for all we know, there were plenty of fingerprints. And there are other fingerprints that they found which are undecipherable.

So that although there has been a lot of suggestion that the house was devoid of fingerprints, or that they were all wiped off, the record doesn't bear that out, your Honor. And the one fingerprint that was found on Marilyn's bed, which has been identified as Sam's left thumb, is certainly entirely consistent with his innocence. No reason at all why a husband shouldn't have a fingerprint on his wife's bed.

Now, the next thing that I have noted here is that on the morning of the murder Chip did not wake up until Mrs. Houk woke up, and that the dog didn't bark. Well, there has been very little testimony about the dog, but apparently the dog sometimes barked and sometimes didn't. As far as Chip is concerned, Mrs. Houk testified that when she got there she went upstairs, looked at Marilyn, came down, told the Mayor to call everybody; he called, the police came over, the ambulance came over with sirens going, Dr. Richard arrived, and later Dr. Steve Sheppard. All these people coming into the driveway, rushing into the house and going upstairs, and through all that Chip was sleeping soundly.

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He didn't wake up until they went in there and woke him, and Mrs. Houk and Dr. Richard Sheppard put a wrap around him and took him down the stairs and out into the yard.

Now, I think that it is well within the Court's knowledge of children that little children are very sound sleepers. It is entirely possible that Chip slept through the whole thing, and is the natural thing, and the fact -- in fact, he was still asleep and sound asleep the next morning, and there is nothing in that which shows in any way that Dr. Sam Sheppard was guilty.

It has been suggested by the questions asked by the State that there was no evidence of a struggle in the bedroom.

Now, I call your Honor's attention to the fact that upon going into the bedroom, the witnesses found that Marilyn Sheppard had been beaten to death; that there was blood all over the bed; that there was blood spattered on the walls; that the bedclothes were disarranged and down at the foot of the bed; that Marilyn's leg were under the cross-bar at the foot of the bed; that her pajamas --- one leg --- the left leg had been pulled off, the pajamas had been pulled down; the left

leg was bunched at the right knee; that the top of her pajamas had been pulled up to her breasts.

Also, that upon searching the room very carefully, the detectives found a fragment of tooth underneath the bed. Whose tooth, we don't know. That when Marilyn's body was moved by the Coroner and the funeral home, it was discovered that two chips of her teeth were under her body. That when her body was taken to the morgue, and Dr. Adelson examined the fingers, he found scrapings -- or found material under her fingernails which he scraped and turned over to Miss Cowan for her examination, and Miss Cowan found that under those fingernails, in addition to dried blood, there was material that looked the same as the flake of fingernail polish which had been found on the floor in Marilyn's bedroom. That flake of fingernail polish has been introduced in evidence here, and the testimony is that Marilyn had no polish on her fingernails, that she did have polish on her toenails, but that the flake of nail polish did not match any spot that was -- it didn't come from the toenails, in other words, so that it is some evidence that

somebody else was in that room.

Also in the scrapings from under Marilyn's fingernails, they found a bed of reddish wool, they found two bluish fibers, one apparently wool, one apparently mercerized cotton, and a small fragment of hair, which they haven't been able to identify to anybody.

But all of those things, your Honor, are mute evidence of a struggle in that bedroom. I don't know what more evidence of a struggle you could get.

Another point which we expect the State to mention as supporting its theory is that the lake was rough that night, and that if Sam had actually gone down to the beach and fought with this intruder, that he would have drowned.

Well, in the first place, there is no evidence as to how the lake was at the time when Sam fought with the intruder. There is Sam's statement in his written statement, which was read to the jury, that when he woke up that morning after he had been knocked out the second time, that there were waves coming up on the beach, and that it was a lake which was not too rough to water ski -- too rough to water ski on, but not too rough but what

you could go out in a boat and fish.

2 The evidence of the police officers who took the stand varies from about three feet to 25 feet of beach, but apparently, at the time they were there a little later in the morning, there was enough beach that you could walk around without getting your feet wet. There was some evidence that the lake had been fairly rough the night before, but as your Honor knows from living along Lake Erie, Lake Erie is a lake that can change very rapidly. It can blow up, or it can quiet down in a hurry, and evidence of how the lake was at 8 o'clock or 8:30 the night before when Mr. Ahern and Dr. Sam walked down to the beach, or evidence as to how it was at 6 o'clock the next morning, gives very little indication of what the lake was at the time that Sam was knocked out.

 There is this, though, which corroborates Sam's story, and that is that when Miss Cowan made the examination of his trousers she found in the pockets and she found in the cuffs of those trousers sand, and sand is something which would naturally have been in his trousers as a result of his fight on the beach and as a result

of having lain there. Miss Cowan was unable to identify the sand, apparently she hadn't made any effort to do so, but there in the State's case is proof that there was sand in Sam's trousers.

There is proof that there were no blood spots except this one that I referred to, and also proof that the washing in the lake would not have taken out the blood, as, in fact, it didn't on the one spot.

It will also be suggested, your Honor, that a burglar did not commit this crime because money wasn't taken. There was money in his wallet, and there was money in the secretary and in the desk, and there was money in the little jar that was in the den. The suggestion that it was not a dope fiend because morphine was not missing in a large quantity; that the apparent evidence of someone -- some intruder having been in the house were merely false clues that were arranged to give the impression that there had been such an intruder.

Now, as to that, your Honor, we wish to point out that we have at no time claimed that a burglar did the job or that a dope fiend did it. We don't know. We don't have to know. The job is for the

State to prove how it was done. Until it is overcome

by adequate evidence, the presumption of innocence that attaches to Sam Sheppard stays with him at all times. It is up to the State to establish that, not up to us, and we don't say it was a burglar, we don't say it was a dope fiend, we just don't know.

THE COURT: The only issue here is whether or not Sam Sheppard killed Marilyn Sheppard. That is the only issue, no question about that.

MR. PETERSILGE: Now, the corduroy coat which was on the couch. We expect the State is going to talk about that.

The evidence from the Aherns was that Dr. Sam was wearing the coat during the evening when he laid down on the couch and when they left. In the morning, the evidence of the witnesses was that the coat was across the foot of the couch.

Now, what happened in between, nobody knows. Dr. Sam has no distinct recollection about that as revealed by his statement, but there are a number of things that could have happened to it.

In his statement he relates that his wife --- he dimly remembers that his wife said she was going up, and tried to waken him, and he half awoke and

fell back to sleep. He may have taken the coat off at that time. It may be that when he heard her cry out, that he jumped up and threw off the coat. It might have been picked up by somebody later and put on the couch. We don't know.

But certainly, whatever happened with the coat, that is very slim evidence -- it is a good deal less than substantial evidence to support any theory that Sam Sheppard killed his wife.

The water under the crystal of Sam's watch is another thing which we assume will be mentioned by the State.

Miss Cowan testified that when she examined the watch she found a drop of moisture under the crystal.

Well, Dr. Sam said in his statement that he had been out with the Grahams, he and Marilyn had been with the Grahams a few days before at a stock car racing meet where they had been caught in a heavy downpour without a raincoat, and he thought he might have gotten it in at that time.

In any event, he knew there was water in the crystal of his watch, and his wife was intending to take that back to have that fixed but hadn't gotten around to it.

On top of that, he testified that he had this struggle on the beach and woke up partly in the water, and if the water hadn't come from any other source, it might have worked into the crystal at that time.

We also expect that the State will refer to the so-called blood stain near the telephone in the living room which was shown in one of the pictures that was introduced in evidence.

Now, as to that, your Honor, I will call your attention to the fact that the stain which is shown there is one of the stains that were tested only by benzidine, Luminol, malachite green, or phenolphthalin, and that the tests which were given to that spot do not indicate whether it is human blood or animal blood. In other words, the jury would have to speculate entirely on that in order to come to any conclusion. It is in a spot where the dog might very well have left it.

Some of the other things which I think the State will refer to, such as the so-called trail of blood, the question of divorce, the matter of Sue Hayes, the so-called protective wall around Sam, the mark on the pillow, they claim that he was

not injured as severely as he claimed, the statement that there were lights on at 2:15 to 2:30 in the morning of July the 4th, the light in the den, that is, the statement that there was no evidence -- the claim that there was no evidence of forcible entry, the claim that they were not getting along well because they argued over furniture and automobiles, those are all things which I have covered and will not repeat.

3 There is the statement that Mayor Houk testified to when he was in Sam's den on the morning of July 4th, when Dr. Richard Sheppard had gone upstairs to examine Marilyn, and he came back down, and according to Mayor Houk, Dr. Richard said to him, "Sam, did you have anything to do with this?"

And Sam said "No," according to Mayor Houk. "Hell, no."

It seems to us that it was a very natural question for anybody to have asked, and it seems to us that the answer came with the spontaneity that stamps it with the ring of truth. Sam at that time was suffering from a blow on the neck, he was under great emotional tension. It was at a time when if anybody had committed a murder, the

emotional and physical state was such that it would have been the time to say something about it, and he immediately reacted and said, "No, I am innocent."

And he has consistently since that time said so, and it seems to us, your Honor, that Sam's reaction at a time when he had no control over his emotions and was suffering in pain is a clear indication of his innocence.

Now, all of the points which I have mentioned are entirely consistent with the innocence of Dr. Sam Sheppard. There isn't one of them, and the sum total of all of them taken together is not sufficient to establish by any substantial or even credible evidence, that Dr. Sam Sheppard had the intent to kill his wife, Marilyn. Nor one of them, nor the sum of them taken together, is sufficient to show that Dr. Sam had any malice, in the legal sense of the term, toward his wife.

And certainly, your Honor, there isn't a shred of evidence to establish any deliberation and premeditation. Here we have a couple that are apparently happily married. They have had

friends in the night before. They were planning a party for the interns at the hospital for the next day. Marilyn had gone out and ordered the food. She told people about the party. The Aherns testified that they had a happy and pleasant evening. How could anyone who had murder on his mind laid down that night to watch television, and fallen asleep --

THE COURT: Would he have to have had murder on his mind at the time?

MR. PETERSILGE: No. I think under the authorities the deliberation and premeditation could have occurred later, but there is no evidence that anything happened which would have caused that later, your Honor. The evidence, as far as we have it, negatives any such deliberation or premeditation on the part of Sam Sheppard. There is no evidence whatsoever. How could the jury be allowed to speculate on a question like that? What would they pin it on? And in the absence of proof of deliberation and premeditation, which is an essential element of the crime of first degree murder, under the decisions of the Supreme Court, it is the duty

of the Trial Court to direct a verdict for the defendant on that count.

We also submit, your Honor, that there is no substantial evidence to establish intent to kill; that there is no evidence sufficient to establish malice. In fact, that there is no evidence of any kind to indicate that Sam Sheppard ever laid his hand on Marilyn.

THE COURT: Coming to the intent, if I may go back just a second:

Wouldn't the fact that there were these many injuries, no matter who did it, Sam Sheppard or someone else, wouldn't it indicate some intent, or couldn't it, I mean? That is, from the very nature of the injuries themselves?

MR. PETERSILGE: From the type of injuries and the number of injuries and the seriousness, and so on, I think that an intent can be inferred providing you can pin it up to Sam Sheppard, yes, but it still has to be proved that it was Sam's intent.

THE COURT: It is an intent by someone, nevertheless.

MR. PETERSILGE: It is an intent by someone, yes, but not by Sam.

THE COURT: That is your claim.

MR. PETERSILGE: And, after all, he is the one that is charged.

THE COURT: All right. I have got you.

MR. CORRIGAN: There is just one thing I want to say, your Honor, in answer to the question that seems to be going through the Court's mind on the question of intent as related to the type of injuries received.

You will remember that I spent a great deal of time with Dr. Adelson, receiving some criticism for the time that I spent in that examination. My purpose in doing that was to determine whether he had determined the cause of death in this case. The evidence disclosed, and the evidence will disclose, if it is properly analyzed, that the blows on the head did not cause the death of Marilyn Sheppard. That Marilyn Sheppard died as a result of the flooding of her lungs, and the evidence discloses that she died of that particular situation, because there was no blood in her stomach. Consequently, I raised that question. The type of injury received to the head seemed to me to be a type of injury where there

was a disfigurement intended.

You will remember that even though these pictures show a dislocation of the frontal bone, that before that head was opened and before that picture was taken, Dr. Adelson testified that he manipulated and misplaced by that manipulation the situation in the frontal bone, but that the dura was intact, and the dura is a constituent part of the frontal bone. It is attached to it just as tightly as the covering of the bone on the arm is attached to that, and it is impossible --

THE COURT: True, but he did testify that the skull underneath the dura had been fractured, and that there had been hemorrhages.

MR. CORRIGAN: No. You can't fracture the inner plate, and you cannot damage the inner plate of the skull on the frontal bone without damaging the dura.

Now, there was another thing that in regard to quarrel, whether these people had a quarrel, it is inconceivable that a man like Dr. Sheppard, with what you have before you, should suddenly jump up out of a sound sleep and rush upstairs and murder his wife. In fact, you know, and I know,

and everybody else knows, that when you sleep, and when you wake from sleep, sleep has soothed the troubles of the soul.

THE COURT: I'm not sure the State claims that.

MR. CORRIGAN: But that is what -- all you have before you is -- there is no evidence about quarrel between these two people, and another significant thing demonstrated in the testimony, the medical testimony before your Honor is that when there is trouble between two people, it interferes with digestion. I went into that rather extensively. It interferes with digestion, and the physical evidence shows that Marilyn Sheppard's digestion was perfect that night and never interfered with.

And this case, as your Honor knows and as the evidence has been before you in the bail hearing, was the result of pressure put on the Grand Jury.

That is all we have to say, your Honor, in behalf of our motion.

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MR. MAHON:

If your Honor

please, the State is well aware of the fact that it is the State's burden to prove its case beyond a reasonable doubt. The State is well aware of the fact that it is the obligation on the part of the State to prove all of the elements that go to make up the crime of murder in the first degree or the crime of murder in the second degree or a manslaughter finding.

There have been motions made here, your Honor, by the defense for the Court to dismiss the indictment or, in the alternative, to instruct the jury to find the defendant not guilty on the charge of murder in the first degree. There was also a motion that the Court dismiss this matter or instruct the jury as to second degree murder. Also a motion for the Court to direct as to a charge of manslaughter here, and also a motion to direct on assault and battery, and number six on assault.

Now, as to the last two, assault and assault and battery, I don't think they have any part -- should have any part in this

discussion, because certainly if there was an assault and battery upon the victim here by this defendant, and that assault and battery resulted in her death, then it would be manslaughter. You don't have any assault and battery in this case, you couldn't have.

THE COURT: You can disregard those, Mr. Mahon. The Court will not charge assault and battery, in any event.

MR. MAHON: Now, on a first degree murder case, it is necessary that the State prove that the defendant unlawfully -- or produce some evidence at this time that he unlawfully and purposely and of deliberation and premeditated malice took the life of Martin Sheppard.

Now, how do you prove those elements? You can prove them by direct evidence; you can prove them by circumstantial evidence; you can prove premeditation by what a person says and what a person does and how they do it. You can prove purpose to kill or intention; they are the same, by the acts of the person, by the weapon that is used in the act, you can infer malice from the

as it exists.

Now, what have we here? We have a woman who was killed. She is seen on the morning of July 4th lying in her bed covered with blood, the bed is soaked with blood, her blood. There are many wounds upon her head and upon her hands and face, 35 separate wounds on that woman. Whether some of them might have been done at one time, that is, might have been more than one injury sustained at a blow makes no difference. There were 35 wounds. There were wounds on the face, the head, on the hands, the back part of the hands. And it is easy to infer as to how the blows came -- the wounds came to be on the hands. The impulsive throwing up of the hands to protect her face from these deadly blows that were being rained on her, and that is how the wounds got on the back of the hands.

Fingernail on one hand pretty near torn off. Whoever committed that type of a crime certainly had malice in their heart, had that depraved, wicked mind that you talk about, sir, to commit those kind of acts upon any human being.

Is that any evidence of a purpose to kill or an intent to kill, if your Honor please? The instrument that was used, certainly a deadly instrument that fractured the skull, why, the frontal part of her forehead, Mr. Corrigan -- you saw the photographs, looks like a checkerboard, and the skin was peeled back and photographs taken, it looks like a checkerboard.

Oh, and they say, "No, that isn't what she died from. She died from strangulation because blood got down into her lungs."

Well, where did the blood come from but from the wounds that was in the head? You say that that wasn't the proximate cause of her death.

Can you infer purpose to kill, if your Honor please, from those acts? Is there evidence that there was premeditation, if your Honor please? Whoever killed that woman with whatever instrument was used in accomplishing the thing that was done there was carried into that room. And why would someone carry a deadly weapon into a room if they didn't have something in their mind as to what they were going to use

it for, and did use it for, if your Honor please?

And after that beating the weapon was taken from the room. Is that any evidence of premeditation, if your Honor please? Is there evidence of purpose to kill? Is there evidence of malice? Can't you readily draw those inferences right from the silent facts as they exist?

The lady who -- the maid there said there was nothing missing from that room. The weapon that killed that woman, the weapon that killed that woman was taken from that room, and if there was nothing missing from the room, that is, the regular things that are in the room, then the weapon must have been carried into the room and used. And even the defendant himself, on the 9th day of July when he visited the house in the company of his lawyers and the deputy sheriff, said there was nothing missing that he could see. Now, is that evidence, some evidence -- and there only has to be some substantial evidence -- at this point we are not required that our case be proven beyond a reasonable doubt, but just that there is some

substantial evidence for the jury to consider in this case.

Now, what have we here to tie up this defendant, Sam Sheppard, with the commission of this crime? Have we some evidence, some substantial evidence for the jury to consider in that respect? I am not going to go over all the evidence, your Honor, but we do have the evidence of Don Ahern and his wife, Nancy, who visited Mr. and Mrs. Sheppard on the night of the 3rd of July at their home, and they had dinner there. And the Aherns left there at 12:30 a.m., right after midnight, the morning of July 4th. That's when they left.

Mrs. Ahern had locked the door leading out onto the porch, she had locked that door, put the chain on after they had cleared the table where they ate out on the porch. And when they left, Mrs. Sheppard went to the door leading out to the road, accompanied them to the door, bade them goodnight. When they left, Sam Sheppard was in the living room on a couch. He had on his trousers and shoes, he had on a white T-shirt and he had on a corduroy jacket as he laythere on the couch, and had on his

wrist watch.

The Aherns left. When they left there was living in that house Marilyn Sheppard, Sam Sheppard and the son, Chip, who had been put to bed about ten o'clock at night.

In the morning Mayor Houk received a telephone call to come over, something had happened to Marilyn, and when he arrived there he and his wife -- and that was about 10 minutes to six that that call came to him -- when he arrived there, his wife went upstairs and found Marilyn lying in a pool of blood on her bed dead, horribly beaten. Sam Sheppard was in the study, or den, as they call it, sitting on the chair, slouched over on the chair. And then he told the story of some person being in there that night, and told this story of his hearing Marilyn call or scream or moan, in other words, some noise aroused him from his sleep as he slept there on the couch, and that he went upstairs and as he got upstairs -- and he told a couple of versions of this -- some said that as he got up at the head of the stairs he was clobbered, and the story he told others was he went into the bedroom and there was a form in

there and he was struck, and the next thing that he knew he came to and he saw something shiny on the floor, and it was a badge that he had in his billfold and his billfold was lying on the floor.

And then he heard a noise downstairs, and he went downstairs, through the living room and out on the back porch, or just leaving the back porch at the screen door -- or the front door, it would be, he saw a form; and he chased that form down the steps down to the beach, and there grappled with that form. And he was knocked out again and came to with his legs stretched out in the water and lying on his face, and his body being wallowed back and forth by the waves, and that he then came up and went up to Marilyn's room and there took her pulse, and then later on called Mayor Houk. That's the story that he told the people.

Then when the authorities arrived there, what did they find? They find that the desk in the den there, all of the drawers are taken out of the desk and they are lying on the floor there. The contents are not out, but the drawers

are lying on the floor. Marilyn's watch is lying on that floor in the den, also. And out in the living room, that desk in that room, it is open, the top of it is open, the drawers are pulled out, three or four of them are pulled out. The contents are not disturbed in the drawers and some of them -- they are filled up, they are not disturbed. The photographs show they are full right up to the top, nothing disturbed in them, but there is a bundle of papers on the floor in front of this desk, a bundle of papers right there on the floor. At first hand, you would think that somebody had burglarized the place, and that was the intent, to have people believe that. Nothing was missing except the watch of Sam Sheppard, a key ring that he had -- or a chain, key chain with some keys on it and a ring belonging to him. Those are the articles that are missing.

And in the early afternoon of that same day was found on the bank, or over the bank in the scrubbery, in the weeds back of the house down towards the lake, in a little green bag was the watch of Sam Sheppard, this key chain

and the ring. The watch had blood on it. Those articles were taken to the hospital where Sam Sheppard was, and he identified those articles and identified this green bag as being a bag that he had in his desk or had had in his desk in which he had tools for his outboard motor.

Later on it was analyzed -- and by the way, that watch when it was found showed quarter after four, and it was stopped at quarter after four, and it was after one o'clock when they found it, but that is the time that was on it, and it started up later on in the day, started running again.

The blood on that watch was analyzed, and it was found to be human blood, and it couldn't be definitely determined as to its type, but it was definitely determined that there was an M factor there and that Marilyn's blood had an M factor. And in the study or den, there on the floor was found Marilyn's wrist watch and that had blood on it, and that was analyzed and found to be human blood with an M factor, one of the factors that Marilyn had in her blood.

And it is interesting, if your Honor please, as to the watch of Marilyn Sheppard, and I will come to that in a few minutes, but first I want to talk about this green bag.

While there was blood on the watch belonging to Sam Sheppard that was in that bag, there was no blood on that bag, that cloth bag, there was no blood, which can only mean one thing, if your Honor please: That the blood was dry on that watch when it was placed in that bag.

Now, let's take Marilyn's watch that she had been wearing. There are photographs here in the evidence in this case that show the wrist of Marilyn with blood marks around her wrist, with the indentations of the band of her wrist watch, which means just this, your Honor: That that watch was on her long enough after that blood got on there to dry before the watch was taken off.

And then we have also found in that bedroom the pillow, and on that pillow, which was separated entirely from the blood portion on the bed, on that pillow are blood marks which distinctly show that there was some instrument that was lying on

that pillow that was soaked with blood, because the imprint, the imprint of what Dr. Gerber calls a surgical instrument but which he says might be some other instrument of a similar shape, but that is clearly impressed on that pillow in blood, if your Honor please.

And that is of what significance, if your Honor please? It means that that death weapon, after it was used to pound the life out of that woman, must have been laid down on that pillow and remained there long enough for the blood to dry before it was removed. There can't be any question about that, if your Honor please.

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Now, what does that mean in this case in the circumstantial factors in this case, if your Honor please? There was not an abrasion on Sam Sheppard with the injuries that he had. He had a bruise on the side of his face. He had a black eye, claimed he had an injury to his neck. There was no evidence of any abrasion or bruise there, according to Dr. Hexter, when he examined him that day, and this defendant tells you -- he told the police when they did question him, told the Coroner when he questioned him at the inquest, that he had been clobbered. I believe he told one of them he thought with a fist in the back of the neck.

Can you conceive of a story of that kind in this case, if your Honor please, under these circumstances, that if there was another man there who had committed that crime of killing that woman, that Sam Sheppard, the only person who could possibly identify the murderer, would have been let go with a clobbering in the back of his neck? That this person who was in that room with a weapon raining blows, death blows down on his wife, would not use the same instrument on him when he came up there in response to her cry for help

on that morning?

No, he didn't show any evidence of being hit with a deadly instrument of any kind. And then when he heard a noise and he went downstairs and followed this form down on the beach and was knocked out again, there are no marks to show any blows, no marks at all outside of the black eye, no abrasions, and he is wallowing in the water with his face down, he told the authorities, and his body being wallowed back and forth by the waves.

Mrs. Houk testified that when she retired at 3 o'clock that morning, at 3 o'clock that morning when she retired -- there is a concrete abutment in the rear of her house there on the lake, and the waves were pounding against that, she said, at that time, 3 o'clock that morning.

The fishermen down on the pier said that they had to leave there about 1:30 in the morning because the waves were coming over the pier.

Why, if this defendant was down in that lake as he told the police that he was, why, he would be drowned. The water would have been all over him.

And as he told Dr. Gerber when he testified at

the Coroner's inquest, he couldn't identify the form, give any description of it, couldn't tell whether it was a man or a woman, a beast or a human being. He said he thought it had a ~~hat~~ on, and if it had a ~~hat~~ on, how could he tell it was a bushy-haired person. A phantom is what he was chasing, a phantom is what he was chasing.

I don't have any doubt but what he ran down on the beach and got in the water.

Oh, then, something is said that there is no evidence here -- why, if he had been up there and had killed his wife, he would be covered with blood. Why, his shoes would have had it on and his belt, yes, and his shirt, too, would have had it on. His shirt would have had it on, too. That T-shirt would have had it on. We know he wasn't wearing the jacket upstairs at that time because the jacket was neatly folded lying down on that couch downstairs. This man that rushes upstairs to help his wife stopped long enough to neatly fold the jacket and lay it down on that couch, and then go upstairs.

That shirt would have been covered with blood. The shoes not necessarily, because the

person who had clobbered that woman would have been up close to the bed pounding her, and the blood wouldn't have gone down on his shoes that were alongside the bed, but the shirt, yes, it would have been covered, and that is why it is missing, ~~that~~ is why it is missing, because it was covered with blood.

Sure the walls were covered with blood. Every blow that was rained splattered blood, human blood out.

Is that sufficient evidence, if your Honor please, for this matter -- this case to be submitted to the jury? These circumstances that we have here of this defendant's presence in that house, no property taken -- no property taken -- is this a burglary? No property taken, nothing disturbed outside of some drawers being pulled out. Why, they went to the extent of dumping some tools out of that green bag, to do what? To put a wrist watch, a ring and a **key** chain into it. Why, you could have put all of it in the watch pocket of your trousers. Why, it wasn't a handful, even, and they went to the extent of getting a bag and putting it in, and then this supposed burglar did

what with this property? Why, he went outside 20 feet away from the house and threw it in the weeds, threw it in the weeds. Is that the act of a burglar, if your Honor please, or does that set up the act of a person who is trying to conceal and to deceive people because of the terrible act that he committed there himself? That is what we have in this case, if your Honor please.

It seems to me that when you consider all of the factors here, without going over all of the blood that was found in the house here--and they say, oh, well, that is nothing to that. The dog was the one that caused all that blood around there but, of course, there were some positive tests here that were made by some competent people who found that there was some of that blood, that where there was sufficient quantity to analyze, that in a precipitant test it showed that it was human blood, human blood, and some of that blood was taken from the risers, not on the step where a dog might drop it, but from the risers. Certainly the dog didn't pass any blood up against the riser, so that it was human blood that was there. A lot of it they couldn't determine whether it was human or animal

blood, but there was sufficient quantity to know that someone went down those stairs with blood dripping from their hands, or from some instrument that they were carrying. There can't be any question about that, your Honor please.

Now, is that sufficient for a jury to draw reasonable inferences from to determine whether or not this defendant has been proven guilty beyond a reasonable doubt? It seems to me that the evidence here, while mostly circumstantial, if your Honor please, pretty near all of it circumstantial except the fact, the cold fact that the woman was cold beyond any doubt, and that is direct. There isn't any doubt. She certainly didn't commit suicide. She was killed at the hands of someone. That is direct, but most of the rest of it is circumstantial.

Why, when the police -- they tried to shoo off this thing about attempting to cover this man up. Why, you remember Carl Rossbach. He didn't go there on the 4th of July. He didn't go there until the 5th, and he went to the hospital the 5th and wasn't permitted to talk to Sam Sheppard by Steve and by Mr. Corrigan himself, who was there. He wasn't permitted. On the 6th he was not permitted

to talk. On the 7th, he went there and was not permitted to talk. On the 8th he went there, and after quite a lot of trouble, quite a lot of trouble at the hospital there, was finally permitted to talk to the defendant in the hospital there. Oh, no, there wasn't any cover-up, there wasn't any trying to conceal this man at all from the authorities.

That evidence is in before your Honor, if your Honor please.

Now, it seems to me that when you consider all of that, that there certainly is plenty of evidence here to be submitted to the jury for them to determine whether or not this defendant is guilty or not guilty of this charge.

THE COURT: Mr. Mahon, I have one question: What do you say to Mr. Petersilge's statement or claim that all of this, serious as it all is, perhaps, in any view you take of it, could be equally as consistent with the innocence of Sam Sheppard as his guilt?

MR. MAHON: Well, isn't that a question for the jury to determine, if your Honor please?

THE COURT: Well, that is a

question that bothers the Court. That is why I put it to Mr. Petersilge. Isn't it perhaps for the jury to determine whether that is so?

MR. MAHON: It is a question of fact. That is a question for a jury to determine.

THE COURT: All right. I have got your views.

Have you any more?

MR. PETERSILGE: I would like to say just a couple of things very briefly, your Honor.

THE COURT: Sure.

MR. PETERSILGE: Mr. Mahon referred to Dr. Hexter's testimony that there was no evidence of the injury at the back of Sam's neck --

THE COURT: No evidence of what?

MR. PETERSILGE: No evidence of injury at the back of the neck here or the base of the brain.

I want to call your attention to Dr. Hexter's testimony at page 2919 of the record.

He says there, "Q. You say there was no injury to the base of the brain?

"A. I didn't say that. I said an injury to the forehead and not to the base of the brain.

"Q. I am asking you the question: Do you say there was no injury to the base of the brain?

"A. I don't mean it that way, Mr. Corrigan.

"Q. Well, will you answer the question? Was there or was there not an injury to the base of the brain?

"A. That is a question I can't answer because I only saw Sam once.

"Q. You don't know, then, is that your answer?

"A. No, sir, I don't know."

THE COURT: The court recalls what his testimony was very well.

MR. PETERSILGE: Now, Mr. Mahon also spoke about the T-shirt, that the reason it was missing is because it was soaked in blood.

Well, your Honor, whether the blood would have been below the knee or not may have been a question where the man was standing, but there is no question about it that the blood would have been above the -- would have been on the trousers above the knee, and those trousers show definitely that there was no blood spot sufficient as would have come from the spraying of the blood that was caused by the blows.

Now, Mr. Mahon had nothing to say about that.

So far as the blood on Sam's watch, and the blood on Marilyn's watch being dry, there is no evidence in the record as to how long it takes blood to dry, but in the absence of such evidence, the jury can't be allowed to speculate --

THE COURT: Oh, I think that
Dr. Gerber --

MR. MAHON: There is evidence.
Dr. Gerber testified to that.

THE COURT: That it dried very
rapidly when it is exposed to air.

MR. MAHON: From five to twenty
minutes is the testimony.

THE COURT: There was an element
of time testified to.

MR. PETERSILGE: Yes. I think it
depends on how thick the layer of blood was and
what the conditions were.

THE COURT: That is right, and when
you expose it to the air, in particular, yes.

MR. PETERSILGE: Yes, but the idea that
Marilyn -- that the picture shows that there was
very little blood on her wrist, the idea that her
watch might not have been dried within the time

that Sam was struggling with this man, or that the same man who struck him down was taking off Sam's watch and the key chain and ring, that is purely speculative.

THE COURT: Well, I think Mr. Mahon -- I don't think it is worth the time here now. Mr. Mahon merely referred to that fact as some evidence that the blood was dry because the blood did not get onto the bag after its insertion.

MR. MAHON: No, if your Honor please. As far as her watch is concerned, the blood was dry on her hand with the imprint of the band of the watch on it.

THE COURT: Oh, yes. That is Marilyn's watch?

MR. MAHON: That's right.

MR. PETERSILGE: Yes.

MR. MAHON: The imprint is still on there. It must have been on there until it dried.

THE COURT: Yes, I have got that.

MR. PETERSILGE: Yes, your Honor, I intended to refer to that, but meant that it wasn't necessarily a long time that the watch had been there

before it dried sufficiently when that was taken out.

THE COURT: What he infers is that the entire picture on that issue does disclose that the blood had dried before the watch was removed from the wrist. That was the claim made.

All right. I think we have got that.

Now, 9:15 tomorrow morning. The Court wants to sleep over this matter now. This is not easy, and I hope we will be able, if we decide to go further, to go right ahead at 9:15. The Court may want some little time, he may not, and, of course, if we dispose of it that will end that, and having one or two people here will not be any great inconvenience, so I would like you to be prepared, if we are ready to go, at 9:15 tomorrow morning.

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(Thereupon at 4:40 o'clock p.m. an adjournment was taken to 9:15 o'clock a.m., Thursday, December 2, 1954, at which time the following proceedings were had):