

CROSS EXAMINATION OF DR. PAUL L. KIRK

By Mr. Corrigan:

Q I believe you indicated, Doctor, that you were employed by attorney William Corrigan, is that correct?

A That is correct.

Q When were you so employed?

A I was employed in early January of '55.

Q Then I take it you were again subsequently employed by Mr. Bailey or by someone in connection with the defense in this matter now here on trial?

A Yes.

Q Are you familiar, sir, as a chemist, with copper sulphate?

A Copper sulphate?

Q Yes, sir.

A Yes, sir.

Q Will you tell the Court and jury when copper sulphate is deposited on a fabric, and then comes in contact with water, under a microscope, what color will that copper sulphate give off?

A Copper sulphate is blue.

Q So that because of the color one would not confuse copper sulphate with the color of blood?

A That's correct, one would not.

Q Now, sir, referring to what has been marked for purposes

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of identification as State's Exhibit DD, you have testified I believe with respect particularly to two blood spots on that exhibit; is that correct?

A That is correct.

THE COURT: Pardon me, Counselor,
is your question directed to State's Exhibit D?

MR. CORRIGAN: Defense Exhibit D.

I am sorry.

THE COURT: Let the record show it
is Defendant's Exhibit D.

Please proceed, Counsenor; I am sorry.

Q Now, sir, this morning and this afternoon you testified with respect to blood grouping, did you not?

A I did.

Q And you testified that it was important to determine the blood grouping of blood in a criminal investigation, is that correct?

A It may be very important, yes.

Q Now, did you tell us, sir, what the blood grouping was of those two spots?

A I did.

Q You did?

A Yes.

Q And what did you tell us the blood grouping of those two spots to be?

A I said that they were both O.

Q They were both O?

A That is right.

Q And did you learn what the blood type of Marilyn Sheppard was?

A Yes.

Q What type was that?

A O.

Q So that as far as the grouping is concerned, you do not distinguish one spot from another, is that correct?

A That is right, so far as the group that comes out of your tests.

Q You did indicate that with regard to one of those spots you found it to be different, and different because it had agglutinated slower than the other spot, is that correct?

A That was one reason.

Q That was one reason?

A Yes.

Q Have you had occasion, sir, to perform tests with regard to agglutination, taken from the same source when the blood was known to be exactly the same, and in the test find that one would agglutinate slower than another?

A That happens to some degree, yes.

Q Now, sir, you indicated with regard to one of these blood spots that it was your opinion that it had landed there

and had traveled with a lower or slower velocity, is that not correct?

A That is correct.

Q And this was predicated primarily and particularly because of the size?

A The size, the absence of beating, both; a blood spot this size traveling more rapidly would not have landed this way.

Q I see. Now, did you take into consideration, sir, whether or not the target in this instance was a fixed target or a moving target on occasion?

A Which target do you refer to, the target in the beating or the target of --

Q The victim.

A The victim?

Q Yes.

A Certainly, but that has no influence on the matter at the time of impact. At the time of impact the two surfaces are merely together, regardless whether one previously was moved or not.

Q In your overall evaluation, did you take into consideration whether or not the victim at some time may have been moving?

A I did, yes, I think she was during a portion of the time, very definitely moving.

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Q Did you take into consideration, also, the fact that the assailant may have been moving?

A I'm sure he was.

Q Now, if he was moving and in striking these blows, if he backed away from the bed and toward the wall, he would then be closer to where that blood spot landed, would he not?

A Yes, but he --

Q Would he not, yes or no?

A He would have been closer to the wall, yes.

Q He would have been closer to the wall?

A But further to the victim.

Q Yes, sir; so that the blood spot would not have to travel as far, the distance would have been cut down by virtue of his standing back, is that correct?

A If you make that kind of an assumption, that would be correct, yes.

Q Now, sir, the spots that you referred to in that photo which is marked Defendant's Exhibit D, you observed these in what day?

A I observed them on January 23rd.

Q And you determined them to be significant, did you not?

A Yes.

Q And you caused a photo to be taken of them?

A I took the photo.

Q Did you do anything else in connection with them?

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A Yes.

Q On that day?

A Later. On that day?

Q Yes, sir.

A No.

Q What did you do with them at a later date?

A At a later date, I described what I did with them. I --

Q Did you come back to the Sheppard premises on another occasion?

A No, I didn't.

Q Then the last time you saw these blood spots was on this date in January, January 23rd?

A The last time I saw them was January 24th.

Q January 24th; and then you say they came into your possession at a later date?

A They did.

Q How much later?

A They were -- let's see, I can't tell you the exact date. I would have to check, if you don't mind. I received them on February 18th.

Q So that this was approximately three weeks after you had seen them at the Sheppard premises and they were significant to you, is that correct?

A That's correct, yes.

Q Do you know under what conditions they were removed

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from the door in that room?

A I knew the instructions I gave for the removing. I wasn't present when they were removed.

Q Do you know whether or not those spots had been powdered for fingerprints or for any other substance?

A They had not when I examined, because I examined for that.

Q Do you know what the condition was with regard to paint or grease or oil that might have been on that surface?

A I examined the door carefully, and I was convinced that there was nothing of that kind on the surface of the door.

At the time I received the samples I examined them carefully microscopically to be certain there was no paint, and there was none.

Q At any rate, you did not see the removal of the spots?

A I did not see the removal of the spots.

Q Now, you had testified about velocity. Is it not true, doctor, that the velocity would depend upon the speed with which the direction was changed by the hand in rendering the blow, would it not, so that a snap would cause the blood to fly at a greater rate of speed than a slower swing?

A The blood would not be changed by its snapping. The blood would be changed only if its velocity prior to the snapping was different. You see, all the snapping does is

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detach the blood from the object snapped.

Q So that if I snap something real slow, the velocity of the blood would not be any different than if I snapped something real fast?

A Yes, it would, because you snap at different speeds. If you snap it fast your blood is moving faster before --

Q So it is a combination of the direction of the force in one way, and the immediate reversal in the other direction that gives it its speed?

A It is the velocity of the blood just as it leaves the weapon and that is the speed of the weapon in that instance.

Q Now, one striking 20 or 25 blows, would he of necessity strike each one at the same rate, so that the velocity would be the same as the blood that would fly from that weapon?

A He almost certainly would not.

Q Beg pardon?

A He almost certainly would not.

Q In other words, he would get a little bit tired, perhaps, by the time he got to the 25th blow?

A Well, you just would vary. I don't see how you could avoid some variation.

Q Now, you had indicated, doctor, that it was your opinion that whoever struck these blows did so with the left hand, is that correct?

A That was correct.

Q Were you made aware or did you learn, sir, that the majority of the blows were on the left side of the victim, the left side of her head?

A Yes, I think I knew that fact, and I did see the photographs of the -- the autopsy photographs of the skull.

Q Predicated on that, then, would it not be necessary for the assailant to reach over with the weapon in order to hit the left side of her head?

A Not if her head is turned to the right as it was in the photograph showing the body on the bed.

Q So you are of the opinion he would have no difficulty, or she, whoever the assailant might be, with regard to striking those blows on the left side of the head?

A That's right, because the head was lying to the right.

Q Now, sir, are you familiar with what is generally referred to as defense or defensive wounds?

A Yes.

Q Will you tell the Court and jury what they are?

A They are wounds which are made in defensive movements, for example, in the case of Marilyn her hands had suffered defensive wounds, that is, one nail was detached, and there were injuries to the backs of her hands. These I would say were defensive wounds.

Q Now, sir, from your experience as a criminologist, a criminal investigator, do you have an opinion, sir, as to

whether or not one who is assaulted and who has defensive wounds on her hands may flail her hands and arms?

A I have no doubt that it could all happened. I don't know whether or not it happened in this instance. I have no opinion on that.

Q And if one did flail their arms and there was blood on their hands, would that blood fly?

A It would under certain circumstances, yes.

Q I believe you had testified with regard to State's Exhibit 24, that on your initial examination you did not notice any blood droplets on that exhibit; is that correct?

A That's correct, there was nothing visible, and definitely--

Q I take it from that you did not examine it under a stereomicroscope?

A That's correct, I did not.

Q With regard to the pants of the defendant, State's Exhibit 33, did you have occasion to examine these under a stereomicroscope?

A I am afraid I cannot answer that question. I don't know. I did examine a number of exhibits with the microscope. I did not examine all of them.

Q With a stereomicroscope?

A I am not sure if it was a stereomicroscope or not. I had one available to me in Cleveland. I did not bring one with me.

Q Doctor, you indicated that it was your opinion, too, that the right hand in a back swing could not be used because the individual would be restricted by his shoulder with reference to using that hand in a striking fashion, is that correct?

A Yes.

Q What is the fact, sir, as to the ability to get a greater striking force when one rotates the body and uses the left hand or the right hand in a back stroke fashion?

A If you roll the body with each stroke, you can get much more distance on your stroke, that's true. But it still does not change the fact of the arc.

Q You had indicated, sir, I believe, that one would not use a back stroke because the force would not be there, is that correct?

A Well, I don't remember testifying to that. However, I would agree that that is one of the reasons.

Q Beg pardon?

A I would say, I would agree that that is a reason for not using it.

Q That would be one of your reasons?

A Although I don't remember testifying to that.

Q Now, sir, will you observe that I am now posed in a fashion about to make a backhanded striking blow, is this not correct?

A Yes.

Q Now, sir, would you say that that is a blow struck with force? (indicating)

A Reasonable force, yes.

MR. CORRIGAN: No further questions of this witness.

THE COURT: Anything further, Counselor?

MR. BAILEY: Yes, your Honor.

REDIRECT EXAMINATION OF DR. PAUL L. KIRK

By Mr. Bailey:

Q Doctor, you testified you did not remove the blood spots yourself?

A That's right.

Q Now, you testified you issued some directions?

A That is correct.

Q To whom were they sent?

A I sent them to Doctor Richard Sheppard.

Q And was there any means in your directions indicating which spot you desired to have removed?

A Yes.

Q And did you use any photographs in indicating that?

A Yes, and I had pointed them out to Doctor Sheppard, also, at the time I was there, which ones I wanted to be

removed later.

Q And did you receive some dry blood samples through the mail?

A I did.

Q I will ask you whether or not these photographs represent the containers in which those were received?

A They do, and I still retain the containers in their original form, as well, although I do not have them with me today.

MR. BAILEY: For the record, your Honor, these are Defense Exhibits O and P.

MR. CORRIGAN: No objection.

THE COURT: They are photos, Counselor, of what?

MR. BAILEY: These purport to be photographs of containers addressed to the witness, with the return address of Bay View Hospital, and cancelled stamps appearing.

There being no objection, may they be received?

MR. CORRIGAN: No objection, your Honor.

THE COURT: They are received.

Q It was from these containers that you have just identified in the photographs, Exhibits O and P, that you

took the samples?

A That's right.

Q May I look quickly at the other physical evidence you have?

A The other evidence or the other photographs?

Q The other objects, doctor.

THE COURT: Be at ease, ladies
and gentlemen of the jury, and visit amongst
yourselves if you like.

Are you ready, Counselor?

MR. BAILEY: Yes, your Honor.

THE COURT: Please proceed,
Counselor.

Q Doctor, I am showing you a glass bottle with a black plastic top and a white label with a red border, having a date on it 1-25, I believe --

A 1-21-55.

Q '55, and I ask you if you recognize this object?

A I do.

Q And what is it?

A That is the bottle in which I drew blood from Doctor Sam Sheppard, the defendant.

Q And where did you type this blood?

A In Berkeley.

Q And I believe you already testified that it was A?

A That's right, A.

MR. BAILEY: Thank you, Doctor
Kirk.

MR. CORRIGAN: Nothing further,
your Honor.

THE COURT: You are excused,
doctor.

THE WITNESS: Thank you.

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